

Deposition Transcript

Case Number: IPR2024-01340

Date: September 11, 2025

In the matter of:

TIKTOK INC. v NTECH PROPERTIES, INC.

Michael T. Goodrich, Ph.D.

**CERTIFIED
COPY**

Reported by:
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TikTok Ex. 1028

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

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TIKTOK INC.,

Petitioner,

VS.

NTECH PROPERTIES, INC.,

Patent Owner.

Case IPR2024-01340
U.S. Patent No.
8,145,704

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REMOTE DEPOSITION UPON ORAL EXAMINATION OF
MICHAEL T. GOODRICH, Ph.D., taken by and before
Douglas J. Zweizig, RDR, CRR, FCRR, CA CSR #14713,
TX CSR #13147, WA CCR, NY Notary, PA Notary, on
Thursday, September 11, 2025, commencing at
9:03 a.m PST.

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13 ---o0o---

14 PRESENT:

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16

17 ---o0o---

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I N D E X

Witness:	Page
MICHAEL T. GOODRICH, Ph.D.	
BY: Attorney Zivojnovic	5

E X H I B I T S

Exhibits	Description	Page
Exhibit 1	United States Patent No. US 8,145,704 B2, dated 3/27/12	7
Exhibit 2	Declaration of Michael T. Goodrich, Ph.D. in Support of Patent Owner's Response	7
Exhibit 3	Declaration of Michael T. Goodrich, Ph.D. in Support of Patent Owner's Preliminary Response	8
Exhibit 4	United States Patent No. US 8,886,753 B2, dated 11/11/12	8
Exhibit 5	Declaration of Dr. Michael T. Goodrich in Support of Patent Owner's Response	8
Exhibit 6	Declaration of Michael T. Goodrich, Ph.D. in Support of Patent Owner's Preliminary Response	8
Exhibit 7	United States Patent No. US 8,555,318 B2, dated 10/8/23	17
Exhibit 8	Abstract Article entitled "IP Geolocation Databases: Unreliable?"	56

1 THE COURT REPORTER: Counsel, I just have
2 to read in this Rule 29 stipulation first for this
3 federal deposition.

4 The attorneys appearing in this deposition
5 acknowledge that I am not physically present in the
6 deposition room, that I will be reporting on this
7 deposition remotely, and that I will administer the
8 oath to the witness remotely.

9 The parties and their counsel further agree
10 that while I am a licensed California Shorthand
11 Reporter, Number 14713, the witness may be in a
12 state where I am not licensed. The parties
13 stipulate that this deposition may be taken before
14 me.

15 If any party does have an objection to this
16 manner of reporting or anything stated above, please
17 state so.

18 ATTORNEY ZIVOJNOVIC: On behalf of
19 petitioner, no objection.

20 THE COURT REPORTER: Great. Thank you.

21 ATTORNEY PRICE: Same for the patent owner.

22 THE COURT REPORTER: Great. Thank you.

23 Doctor, if you would raise your right hand,
24 I will swear you in.

25 ---oOo---

1 MICHAEL T. GOODRICH, Ph.D., having first
2 been duly sworn, was examined and testified as
3 follows:

4 ---o0o---

5 EXAMINATION

6 ---o0o---

7 BY ATTORNEY ZIVOJNOVIC:

8 Q. Could you please state your full name for
9 the record.

9:03AM 10 A. Michael T. Goodrich.

11 Q. Do you understand that you're under oath,
12 the same as in court?

13 A. Yes.

14 Q. If you don't understand a question, please
9:03AM 15 let me know and I will rephrase it. Otherwise, I
16 will assume you understood the question and have
17 given your best answer.

18 Agreed?

19 A. Yes, I agree to that.

9:03AM 20 Q. The court reporter is writing down every
21 word that we say, and so it is important that you
22 give a clear and audible response and not just
23 shakes of the head or "uh-huhs" or "unh-unhs."

24 Understood?

9:03AM 25 A. I understand.

9:03AM 1 Q. We both have to try and let the other
2 person finish so that we can have a clear transcript
3 and the court reporter can catch everything we say.

4 Understood?

9:03AM 5 A. I will do my best.

6 Q. If you need a break at any time, just let
7 me know. However, please do not ask for a break if
8 I have just asked you a question and you have not
9 yet answered it.

9:04AM 10 Understood?

11 A. Yes.

12 Q. Any reason why you cannot give complete and
13 accurate testimony today?

14 A. No.

9:04AM 15 Q. Do you have any printed material or other
16 physical material in front of you related to this
17 case?

18 A. No.

19 Q. Do you have access on your computer
9:04AM 20 currently any electronic copies of any material
21 related to this case?

22 A. Other than the exhibits that you uploaded,
23 I don't have any other windows that are open
24 currently that relate to this case.

9:04AM 25 Q. If for any reason you open any windows or

9:04AM 1 any files or applications on your computer, I ask
2 that you tell me that immediately.

3 Agreed?

4 A. That sounds reasonable to me.

9:04AM 5 Q. So to speed up the process, I have marked
6 six exhibits. And if you could please download
7 those and take a moment to review them, and we can
8 confirm their identity.

9 Let me know when you have them downloaded.

9:05AM 10 A. I downloaded them already before we began,
11 and so I have those open on a separate screen.

12 (Exhibit No. 1 was marked for identification.)

13 BY ATTORNEY ZIVOJNOVIC:

14 Q. Great. So Exhibit 1 is a copy of the

9:05AM 15 '704 Patent.

16 Do you see that?

17 A. Yes.

18 (Exhibit No. 2 was marked for identification.)

19 BY ATTORNEY ZIVOJNOVIC:

9:05AM 20 Q. Exhibit 2 is a copy of the declaration you
21 submitted in connection with patent owner's response
22 for the '704 Patent; right?

23 A. Yes.

24

25 / / /

9:05AM 1 (Exhibit No. 3 was marked for identification.)
2 BY ATTORNEY ZIVOJNOVIC:
3 Q. Exhibit 3 is a declaration you submitted
4 accompanying the patent owner's preliminary response
9:05AM 5 for the '704 Patent.
6 Agreed?
7 A. Yes.
8 (Exhibit No. 4 was marked for identification.)
9 BY ATTORNEY ZIVOJNOVIC:
9:05AM 10 Q. Exhibit 4 is a copy of the '753 Patent.
11 Do you see that?
12 A. Yes.
13 (Exhibit No. 5 was marked for identification.)
14 BY ATTORNEY ZIVOJNOVIC:
9:06AM 15 Q. Exhibit 5 is a copy of a declaration you
16 submitted accompanying the patent owner response for
17 the '753 Patent; right?
18 A. That is correct.
19 (Exhibit No. 6 was marked for identification.)
9:06AM 20 BY ATTORNEY ZIVOJNOVIC:
21 Q. And Exhibit 6 is a copy of a declaration
22 you submitted accompanying the preliminary response
23 of the patent owner for the '753 Patent.
24 Agreed?
9:06AM 25 A. Yes.

9:06AM 1 Q. All right. Great.
2 So with some of that bureaucracy out of the
3 way, if you could please open your declaration on
4 the '753 Patent.

9:06AM 5 A. Which exhibit is that you're referring to?
6 Q. That would be Exhibit 5.
7 A. 5. I have that open in front of me.
8 Q. Okay. And you opine on the claim
9 construction for the term "feed"; correct?

9:07AM 10 A. Yes, that is correct.
11 Q. So if you could please go to paragraph 33
12 in your declaration.
13 A. I am there.
14 Q. I see in paragraph 34 you write, "I agree
9:07AM 15 with NTECH's proposed plain and ordinary meaning of
16 'feed' for the reasons discussed as follows."
17 Do you see that?
18 A. Yes.
19 Q. And that plain and ordinary meaning is "one
9:07AM 20 or more associated media elements."
21 Do you see that?
22 A. Yes.
23 Q. So you go on to opine, and let me get the
24 right paragraph.

9:08AM 25 Is it fair to summarize your opinion that

9:08AM 1 the feed must exist before being selected by a user?

2 A. The opinion is that the feed must be
3 associated with one or more media elements. So the
4 one or more media elements must exist.

9:08AM 5 Q. So, in your opinion, one or more media
6 elements must exist before the user selects the
7 feed; right?

8 A. Yes.

9 Q. Must the one or more media elements be
9:09AM 10 associated with the feed before the user selects
11 that feed?

12 A. I -- could you repeat the question, please.

13 ATTORNEY ZIVOJNOVIC: Could I ask the court
14 reporter to read the question back.

9:11AM 15 (The court reporter read back from the
16 record as requested.)

17 THE WITNESS: I don't recall this being a
18 question I was asked to opine on. Is there a place
19 in my declaration where you believe I've addressed
9:11AM 20 this question?

21 BY ATTORNEY ZIVOJNOVIC:

22 Q. Well, let me ask it differently, then,
23 because I'm asking about your declaration.

24 In your declaration, do you take any
9:12AM 25 position whether or not the one or more media

9:12AM 1 elements have to be associated with the feed before
2 the user selects that feed?

3 A. I just went by the claim language. So the
4 ordering -- any kind of ordering that is implied by
9:12AM 5 the claim. For example, if we look to Claim 1, it
6 would be understood by a person of ordinary skill in
7 the art.

8 So, for example, one of the first elements
9 is delivering by an aggregator to a client a list of
9:13AM 10 feeds. So at that point, each feed in the list must
11 exist; otherwise, there's no notion of a list of
12 feeds.

13 And, likewise, the second element is
14 receiving by the aggregator from the client a
9:13AM 15 selection of one of the feeds. So, again, the
16 selection occurs at that point.

17 So in terms of temporal implications, a
18 person of ordinary skill in the art would understand
19 whatever is required by the claim.

9:13AM 20 Q. Well, you're opining that the definition of
21 "feed" is "one or more associated media elements";
22 right?

23 A. Correct. In other words, a feed cannot
24 just be empty, an empty husk.

9:13AM 25 Q. So let me ask this differently, then.

9:13AM 1 So is it your opinion that a feed does not
2 exist before one or more media elements are
3 associated with that feed?

4 A. That sounds like circular language. So a
9:14AM 5 feed requires that it has one or more media elements
6 associated with it; hence something that would be an
7 empty husk that has no feeds associated with it
8 would -- I mean, media elements associated with it
9 would not be a feed.

9:14AM 10 Q. So if we look back in your declaration, if
11 we look in footnote 1, you write "For example, a
12 feed may be a group of randomly selected of media
13 elements, but the fact that the media elements were
14 selected to be part of the group is sufficient for
9:14AM 15 them to be associated."

16 Do you see that?

17 A. Yes.

18 Q. Before the media elements are selected, are
19 they -- would they be considered associated with
9:15AM 20 that media feed?

21 ATTORNEY PRICE: Objection.

22 THE WITNESS: I think we have to be careful
23 with the word "selected" here because here I'm using
24 it in its general, generic usage. But we also have
9:15AM 25 selection as a claim term, so here I'm -- just to be

9:15AM 1 clear, I'm using it in its generic sense.

2 BY ATTORNEY ZIVOJNOVIC:

3 Q. Okay. So with that understanding, in the
4 example from footnote 1, would there be a feed
9:15AM 5 before the media elements are randomly selected?

6 A. So if -- at the point in time where there
7 is some structure that is empty, that is not a feed.
8 And then once media elements are associated with
9 that object, then it becomes a feed, when there are
9:16AM 10 one or more associated media elements.

11 Q. Well, in footnote 1 in your example, am I
12 correct that this association occurs when specific
13 media elements are randomly selected?

14 A. Again, using the word "selected" in its
9:16AM 15 generic form, not as it is used as a claim term,
16 then that is the definition of an example of a feed
17 that you could -- you could order them, according to
18 some association, which even could be a random
19 association. That still is an association, a
9:16AM 20 linking, if you will, of those media elements to the
21 feed.

22 Q. What if there's an association between
23 categories of media elements but not specific media
24 elements; would that still be a feed?

9:17AM 25 A. I don't recall that being a question.

9:17AM 1 ATTORNEY PRICE: Objection; incomplete
2 hypothetical.

3 THE WITNESS: I don't recall that being a
4 question I was asked to opine on. To do that -- to
9:17AM 5 answer that question would require more time and/or
6 details about what you mean by this.

7 BY ATTORNEY ZIVOJNOVIC:

8 Q. So let me direct you, then, to the specific
9 paragraph. Just give me one second.

9:17AM 10 Okay. So if you could please go to
11 paragraph 67.

12 A. I am there.

13 Q. Apologies. I actually gave you the wrong
14 paragraph number.

9:18AM 15 If you could please go to paragraph 58, it
16 starts with "That is why."

17 Do you see that?

18 A. Yes.

19 Q. And here, you write: "That is why when a
9:18AM 20 custom media channel is generating real-time,
21 channels are presented according to 'names or
22 identifier selected by a user when creating channel
23 profiles 160' or 'according to attributes' like
24 'baseball' or 'weather,' or organized into other
9:18AM 25 groups or structures."

9:18AM 1 Do you see that?

2 A. Yes.

3 Q. And you go on to write: "The selection of
4 one of these characteristics is not a feed under the
9:19AM 5 plain ordinary meaning of the term, let alone can
6 such a characteristic be concatenated with
7 additional media elements as required by the
8 challenged claims."

9 Do you see that?

9:19AM 10 A. Yes.

11 Q. So is it your opinion that selection of a
12 characteristic applicable to a group of media
13 elements is not selection of a feed?

14 A. That actually is not quite the question
9:19AM 15 that I was answering here. Instead, this is about
16 categories generically, like baseball or weather.

17 And in the Whitehead reference, that is all
18 that the channel is associated with. There are no
19 media feeds at that point in time -- or media
9:20AM 20 elements, rather, in that time, hence there is no
21 feed that is being selected.

22 Q. Now, you understand that in Whitehead, a
23 custom media channel can be associated with a
24 particular content source 135; right?

9:20AM 25 ATTORNEY PRICE: Objection.

9:20AM 1 THE WITNESS: Where are you now in
2 Whitehead?

3 BY ATTORNEY ZIVOJNOVIC:

4 Q. Well, I'm asking about your understanding
9:20AM 5 of Whitehead.

6 Do you share that understanding?

7 A. I have been told by attorneys that
8 depositions are not memory tests. And while I
9 believe I am familiar with Whitehead, I did not
9:20AM 10 memorize it.

11 Is there a specific place in Whitehead
12 you'd like to point me to?

13 Q. Yes. So let me -- this is going to take me
14 a second.

9:21AM 15 I'm just going to admit Whitehead as
16 another exhibit, but I first have to find it.

17 ATTORNEY ZIVOJNOVIC: I would like to mark
18 as, I believe, Exhibit --

19 TECH ASSISTANT: Can I be of any
9:23AM 20 assistance?

21 ATTORNEY ZIVOJNOVIC: I just have to find
22 the right PDF.

23 I would like to mark as Exhibit 7 a copy of
24 the Whitehead reference.

9:23AM 25 (Exhibit No. 7 was marked for identification.)

9:23AM 1 BY ATTORNEY ZIVOJNOVIC:
2 Q. Please let me know when you've had a chance
3 to download that exhibit and confirm its identity.
4 A. Yes, I have that before me now.

9:23AM 5 Q. And if you could please go to column 7,
6 starting at line 8 in Whitehead.
7 A. I am there.

8 Q. Now, do you recall that in Whitehead, each
9 profile 160 corresponds to a custom media channel?

9:24AM 10 A. I'm not seeing that here.
11 ATTORNEY PRICE: Objection.
12 THE WITNESS: I'm sorry. I'm not seeing
13 that here.

14 BY ATTORNEY ZIVOJNOVIC:

9:24AM 15 Q. Well, I'm asking, do you understand that?
16 ATTORNEY PRICE: Objection.

17 BY ATTORNEY ZIVOJNOVIC:

18 Q. Well, let me -- I can direct you if it
19 helps speed things up.

9:25AM 20 If you could please go to column 6, line 10
21 in Whitehead.
22 A. I am there.

23 Q. And do you see in line 10 where it says, "A
24 custom channel profile 160 and a custom media
9:25AM 25 Channel 170 have a one-to-one relationship according

9:25AM 1 to certain embodiments."

2 Do you see that?

3 A. Yes.

4 Q. All right. So do you agree that in

9:25AM 5 Whitehead, that Whitehead discloses that a custom

6 media Channel 170 can correspond to a specific

7 custom channel profile 160?

8 ATTORNEY PRICE: Objection.

9 THE WITNESS: A person of ordinary skill in

9:25AM 10 the art would understand this sentence to be just

11 what it says, that there's a one-to-one relationship

12 according to certain embodiments; but then

13 immediately after that, it also says, "Embodiments

14 are possible in which a single profile 160 is used

9:26AM 15 to define and manage, control information associated

16 with multiple custom media Channels 170."

17 So the one-to-one relationship is just in

18 certain embodiments.

19 BY ATTORNEY ZIVOJNOVIC:

9:26AM 20 Q. But you do agree that certain embodiments

21 in Whitehead, there's a one-to-one relationship

22 between custom media Channel 170 and a custom

23 Channel Profile 160?

24 A. Yes, I agree.

9:26AM 25 Q. And if we now go to column 7, starting at

9:27AM 1 line 8, do you see where it says, "For example, a
2 profile 160 may include fields corresponding to
3 fields stored in metadata 150; e.g., the identity of
4 one or more content sources 135 interest to a
9:27AM 5 specific user"? And then it lists some additional
6 fields.

7 Do you see that?

8 A. Something along those lines, yes.

9 Q. So do you agree that a profile 160 may
9:27AM 10 include a field with the identity of one content
11 source 135?

12 A. Yes.

13 Q. And what is your understanding of what
14 content source 135 may be?

9:28AM 15 ATTORNEY PRICE: Objection.

16 THE WITNESS: So in the Whitehead
17 reference, it states on column 5, line 9: "Media
18 content 155 is provided by content sources 135."

19 BY ATTORNEY ZIVOJNOVIC:

9:28AM 20 Q. Where a custom media Channel 170 has a
21 one-to-one mapping with a profile 160 that
22 identifies a particular content source 135 providing
23 media content 155, is it your position that that
24 custom media channel is associated with that content
9:29AM 25 from the content source?

9:29AM 1 ATTORNEY PRICE: Objection.

2 THE WITNESS: I'm not quite following your
3 question.

4 BY ATTORNEY ZIVOJNOVIC:

9:29AM 5 Q. Okay. So we've identified in Whitehead a
6 scenario where there is a custom media Channel 170
7 that has a one-to-one mapping with a profile of 160,
8 and that profile 160 identifies one content source
9 135 providing media content; fair?

9:29AM 10 A. So far, yes.

11 Q. In that scenario that we were just
12 discussing, is the custom media Channel 170
13 associated with the media content from content
14 source 135?

9:30AM 15 A. Say that again, please.

16 Q. In the scenario we just discussed, is media
17 Channel 170 associated with media content from
18 content source 135?

19 A. Not in the way that we've been talking
9:30AM 20 about in terms of the definition for a feed.

21 Q. Why not?

22 A. So when I'm talking about the association
23 of media elements into something that would be
24 considered a feed, as I explained in my declaration,
9:30AM 25 what this association entails. So let me go back to

9:30AM 1 that.

2 So the word "associate" is meant to be
3 understood to include an association between the
4 media elements and this object that we're calling
9:31AM 5 the feed that then becomes a feed because of this
6 association. It's not simply that you can draw a
7 sequence of connections that are not represented in
8 any way.

9 Q. So is it your opinion that until the
9:31AM 10 specific media content is actually selected for
11 custom media Channel 170, there is no feed?

12 ATTORNEY PRICE: Objection.

13 THE WITNESS: Yeah, I don't recall that
14 being a question I was asked to opine on.

9:32AM 15 So getting back to the -- either the -- I
16 guess the paragraph 58 where we were, that was
17 talking about how the channels that simply have an
18 associated characteristic, like baseball or weather,
19 would not be understood by a person of ordinary
9:32AM 20 skill in the art as being a feed.

21 BY ATTORNEY ZIVOJNOVIC:

22 Q. If you could please go to Exhibit 4, and
23 this is your '753 declaration.

24 Actually, I'm sorry. If you could actually
9:32AM 25 stay where you are. Sorry. Let me actually --

9:32AM 1 since we're already on paragraph ...
2 So I believe you just had opened.
3 I think we're looking at paragraph 67 in
4 your '704 declaration, Exhibit 1.

9:33AM 5 A. No. That is incorrect.
6 Q. Oh, sorry. Which --
7 A. I was at paragraph 58 in my declaration
8 that has been marked as Exhibit 5.
9 And to elaborate, I also was looking at the
9:33AM 10 context of paragraph 57 where I opined that a
11 Channel 170 is not a feed. It is simply this
12 channel that is using this word "channel" in a very
13 broad sense to just mean a conduit for content to
14 pass through. And it is not understood by a person
9:34AM 15 of ordinary skill in the art to be a feed.
16 Q. If you could please go now to Exhibit 1,
17 your '704 Patent declaration.
18 Let me know when you have that open.
19 A. I don't have that document.

9:34AM 20 Q. Exhibit 1?
21 A. I do have an Exhibit 1, but this is the
22 '704 Patent itself.
23 Q. Apologies. That's a mixup on my end.
24 Exhibit 2 should be your '704 declaration.

9:35AM 25 A. I do have an Exhibit 2 that is my

9:35AM 1 declaration for the '704 Patent.

2 Q. Thank you.

3 So if you could please go to Exhibit 2,
4 your '704 declaration, page 25.

9:35AM 5 A. I am there.

6 Q. And do you see that in Section VII and then
7 capital letter A, you addresses independent claims
8 19 and 23?

9 Do you see that?

9:35AM 10 A. Yes.

11 Q. And if you could please go to paragraph 67.

12 A. I am there.

13 Q. And do you see where you wrote: "The
14 selection of one or more of these characteristics
9:36AM 15 from a menu is not a 'media stream' by the proper
16 construction and cannot be concatenated with
17 additional media elements, as is required by the
18 challenged claims"?

19 A. Yes.

9:36AM 20 Q. So is it your position that Claims 19 and
21 23 require concatenating the media stream with
22 additional media elements?

23 A. Yes, we see that. For example, now that
24 we're turning to the '704 Patent, it's a person of
9:36AM 25 ordinary skill in the art would understand when it's

9:36AM 1 talking about the concatenation of the media
2 elements, that these would be additional media
3 elements in addition to media elements that now
4 would be a part of what is claimed as a stream.

9:37AM 5 And this is also supported by the
6 specification. For example, going to column 13,
7 starting at line 25, it says, "The publisher may
8 provide a predetermined stream to a client device
9 which selects additional media elements based on
9:37AM 10 user information to create the user-specific
11 stream."

12 Q. But, in your opinion, Claims 19 and 23
13 require concatenating a media stream with other
14 media elements; correct?

9:39AM 15 A. So I'm using this word "concatenated"
16 consistent with how the claims are using that word.
17 For example, in Claim 22, which is referring back to
18 Claim 19, because that language of the Claim 19 is
19 assembling into a sequence, a temporal sequence,
9:39AM 20 which would involve concatenating.

21 Q. So, in your opinion, when Claim 19 talks
22 about assembling, that's used synonymously with
23 concatenating.

24 Is that fair?

9:39AM 25 A. I would put it slightly the other way

9:39AM 1 around, that concatenating is a part of the
2 assembly.

3 Q. All right. So when you read "assemble" in
4 Claim 19 of the '704 Patent, you read that as
9:40AM 5 requiring concatenating?

6 A. Yes. And more importantly, that it's
7 concatenating with things that exist, and you're
8 concatenating to a stream that has media elements in
9 this case.

9:40AM 10 Q. If you could now please go to Exhibit 4,
11 which should be your '753 declaration, and I'll try
12 to refer both to exhibit numbers and my
13 understanding of what they are to avoid confusion.

14 A. Then could you please rephrase your
9:40AM 15 question, because according to my numbering, you
16 just introduced confusion.

17 Q. Okay. That's why I'm doing it, so glad we
18 spotted it.

19 If you could please go to Exhibit 5, which
9:41AM 20 I believe is your '753 declaration.

21 A. Yes, I agree that that is the Exhibit 5.

22 Q. Thank you.

23 And just so you know, after the next break,
24 I will rename my PDFs, which should simplify things
9:41AM 25 going forward, so thanks for bearing with me.

9:41AM

1

A. No problem.

2

Q. If you could please go to paragraph 36 in
your '753 declaration.

3

A. I'm there.

9:41AM

5

Q. And do you see the last sentence says,
"This language requiring the concatenation of
'additional' media elements with the feed would make
little sense if 'the feed' did not also include
media elements."

9:41AM

10

Do you see that?

11

A. Yes.

12

Q. What do you mean by "media elements" there?

13

A. The plain and ordinary meaning of "media
elements" as is used in the '753 Patent.

9:42AM

15

Q. And I guess, just to be clear, is the
ordinary understanding of the term "media elements,"
does that include the actual media content itself?

18

A. So, for example, in the '753 Patent, it
says that, beginning at line 25 of column 1, for
example, "Media elements which may include brief
video clips, brief audio recordings, and other types
of media."

9:42AM

20

21

22

23

Q. So, in your opinion, the feed includes the
media itself; fair?

24

9:43AM

25

A. The media -- it has one or more media

9:43AM 1 elements, which I just gave you some exemplary types
2 from the '573 Patent [sic].

3 Q. You're not opining, for example, that a
4 feed could consist of links to media elements stored
9:43AM 5 elsewhere, are you?

6 A. I am not sure where you're at on my
7 declaration. Is there a place you want to point me
8 to?

9 Q. I just want to get an understanding of what
9:44AM 10 you mean by "media elements." And maybe, actually,
11 what might help shed some light is if you could go
12 to Exhibit 2, your '704 declaration.

13 A. I'm there.

14 Q. And if you could please go to paragraph 35,
9:44AM 15 let me know when you're there.

16 A. I'm there.

17 Q. And do you see where you wrote: "This
18 language requiring the assembly of other media
19 elements with the media stream would make little
9:44AM 20 sense if the selected media stream did not also
21 include media data."

22 Do you see that?

23 A. Yes.

24 Q. Okay. What do you mean by "media data"
9:44AM 25 there?

9:44AM 1 A. I'm just using -- now we're back to the
2 '704 Patent, and I'm using it according to the plain
3 and ordinary meaning of "media data" in the
4 '704 Patent.

9:45AM 5 Q. I invite you to do a search in the
6 '704 Patent. I don't believe I see the term "media
7 data" come up. And please let me know if you're
8 seeing it somewhere.

9 A. The exact phrase "media data" does not
9:46AM 10 appear, according to my search, in the '704 Patent.
11 However, it is implied by language that is
12 in the '704 Patent; namely, if we go to column 10 at
13 line 59, it discloses media elements stored in data
14 storage 350.

9:46AM 15 Based on that disclosure, a person of
16 ordinary skill in the art would understand that
17 media elements are media data.

18 Q. So fair to say, then, that in your opinion,
19 both "media feed" and "media streams" include "media
9:47AM 20 data"?

21 A. Yes, they have to. They can't be empty
22 husks and either be a stream or a feed.

23 Q. Which getting to the next question is,
24 what's the difference between a media feed and a
9:47AM 25 media stream?

9:48AM 1 A. I don't recall that being a question I was
2 asked to opine on.

3 Instead, what I did is I was asked to
4 provide separate declarations for the '704 Patents
9:48AM 5 and the '753. In the '704 Patent, the claim term is
6 "media stream." I have an opinion what that should
7 mean.

8 And, likewise for the '753, I have an
9 opinion about what media -- what a feed should be.
9:48AM 10 I was not asked to compare and contrast the two
11 different patents. They are different claims, even
12 though they share a common specification.

13 Q. Do you have any opinion on any difference
14 between a media stream and a media feed?

9:48AM 15 A. I was -- like I said, I was not asked to
16 opine on that. To do that, I would want to spend
17 more time to analyze that question.

18 Q. So if you could go, still in Exhibit 2, the
19 '704 declaration, if you could please just go to one
9:49AM 20 page earlier, page 14.

21 A. I'm at page 14.

22 Q. And am I correct that you agreed that the
23 plain and ordinary meaning of "media stream" is "a
24 continuous sequence of media data"?

9:49AM 25 Do you see that?

9:49AM

1

A. Yes.

2

Q. What do you mean by the word "continuous"?

3

A. That it's data that is following in a

4

sequence. So it's a continuous sequence. There's

9:49AM

5

an order to it. And it -- there's a -- you know, a

6

first element, a second element, third element

7

continuous in that sense.

8

Q. Now, you also opined on the construction of

9

"media stream" in your declaration supporting

9:50AM

10

patent owner's preliminary response.

11

Do you recall that?

12

A. I do recall that.

13

Q. And if you could please -- and if you need

14

to refresh your recollection, I have that

9:50AM

15

declaration as, I believe, Exhibit 3.

16

A. I have that in front of me.

17

Q. Okay. And if you go to page 12 of

18

Exhibit 3, you opine that a "media stream is a

19

concatenated set of media elements."

9:51AM

20

Do you see that?

21

A. Yes.

22

Q. All right. Do media elements have to be

23

concatenated to be continuous?

24

ATTORNEY PRICE: Objection.

9:51AM

25

THE WITNESS: Continuous ...

9:51AM 1 So I'm sorry. I've lost the context of our
2 discussion.

3 BY ATTORNEY ZIVOJNOVIC:

4 Q. Let me ask you it maybe slightly
9:51AM 5 differently. That might help.

6 A. Okay.

7 Q. So you submitted one construction for
8 "media stream" before the institution decision;
9 right?

9:51AM 10 A. Yes.

11 Q. And you submitted a different wording for
12 the construction for "media stream" after the
13 institution decision; right?

14 A. That's right.

9:52AM 15 Q. So I guess my first, maybe just starting at
16 a more general level, is how, if at all, is your
17 construction after institution different from the
18 construction you proposed before institution?

19 A. Yeah, so before institution, my proposed
9:52AM 20 construction was a concatenated set of media
21 elements. And now in the more recent declaration,
22 it is plain and ordinary meaning, which is a
23 continuous sequence of media data.

24 So the wording is different. But in both
9:52AM 25 cases, in my opinion, it is the plain and ordinary

9:52AM 1 meaning of this term "media stream."

2 In the more recent declaration, I'm
3 providing, hopefully, a little cleaner and clearer
4 explanation of what that means in case there was any
9:53AM 5 confusion before of what is a set. But now it's
6 clear what I mean by that is that it is a sequence.

7 Q. So from your perspective, does the
8 construction you provided before institution
9 substantively have the same scope as the
9:53AM 10 construction you're providing after institution?

11 A. My intent was to keep with what I believe
12 is the proper construction. So the refinement in my
13 more recent declaration is just that. It's trying
14 to be a little bit more clear in case there was some
9:53AM 15 confusion before.

16 Q. All right. Now, both the '704 and the
17 '753 Patent claims also refer to media programming;
18 right?

19 A. Yes. They both refer to media programming
9:55AM 20 in their preambles, for example.

21 Q. And so, I mean -- actually, just so we have
22 something to look at, if you could please go to
23 Exhibit 5, your '753 declaration.

24 A. I'm there.

9:55AM 25 Q. And if you could please go to paragraph 31.

9:55AM 1 Please let me know when you get a chance.

2 A. I am there.

3 Q. And so in paragraph 31 -- I believe I said

4 31. Did I say 31?

9:55AM 5 A. Yes, you said 31.

6 Q. Thank you.

7 In paragraph 31, you wrote: "The

8 '753 Patent describes and claims a publisher

9 providing individual customized media programming in

9:56AM 10 response to a selection of a feed from a list of

11 feeds provided to users."

12 Do you see that?

13 A. Yes.

14 Q. And in the next sentence, it goes on to

9:56AM 15 say, "The selection of one of the feeds causes the

16 publisher to compile individual customized media

17 programming by selecting, ordering, and

18 concatenating media elements with the feed selected

19 based on user information."

9:56AM 20 Do you see that?

21 A. Yes.

22 Q. So just to start, do you agree that the

23 '753 Patent claims require that the publisher

24 provide the media programming?

9:57AM 25 And if it helps, I'm referring to that

9:57AM 1 first sentence on paragraph 31.

2 A. I understand. So now here I'm citing from
3 the specification, just generally talking about in
4 high-level terms what the '753 Patent is all about.

9:57AM 5 And then now your question is about the claims, I
6 think.

7 Q. Well, in paragraph 31, you start by saying,
8 "The '753 Patent describes and claims a publisher
9 providing individual customized media programming."

9:57AM 10 Do you see that?

11 A. Yes; which is why I cited to Claim 1 for
12 that sentence. But then you read the following
13 sentence, which I am citing to the specification
14 for.

9:57AM 15 Q. All right. So let's focus on that first
16 sentence, then.

17 Do you agree that the '753 Patent claims
18 require the publisher providing individualized
19 customized media programming?

9:58AM 20 A. So this is a high-level summary. Just like
21 I was saying, it's a part of the background and
22 summary for the '753 Patent. To be clear, when I
23 did my analysis, I did it based on the exact words
24 of the claim.

9:58AM 25 So these words in my overview section

9:58AM 1 should be understood as just that. They're an
2 overview and summary, but my analysis is based on
3 the claim language itself.

4 Q. Well, let's look at that analysis.

9:58AM 5 If you could please go to page 22.

6 A. Are we now still in Exhibit 5?

7 Q. Yes; the '753 declaration.

8 A. Page 22, you said?

9 Q. Yes.

9:59AM 10 A. I'm there.

11 Q. Okay. And I'm looking specifically at the
12 heading VII.A.

13 Do you see that?

14 A. Yes.

9:59AM 15 Q. And the heading says, "Whitehead Does Not
16 Disclose a Publisher 'Acquiring the Feed Selection'
17 and 'Providing Individual Customized Media
18 Programming' by 'Concatenating' Media Elements with
19 the Feed Selected."

9:59AM 20 Do you see that?

21 A. Yes.

22 Q. So is it fair to say that the '753 Patent
23 claims require a publisher providing individual
24 customized media programming by concatenating media
9:59AM 25 elements with the feed selected?

9:59AM 1 ATTORNEY PRICE: Objection.

2 THE WITNESS: So if your question is,
3 "Would a person of ordinary skill in the art
4 understand that the providing step is done by the
10:02AM 5 publisher?" the answer is yes.

6 And the reason is both because of
7 antecedent basis from the previous step, which is
8 the collecting step, as well as the preferred
9 embodiments in the patent, such as illustrated in
10:03AM 10 figure 1, where feed is provided by the publisher to
11 the users.

12 BY ATTORNEY ZIVOJNOVIC:

13 Q. So we've talked about a couple of different
14 concepts here: media elements, media feeds and
10:03AM 15 streams, and now media programming.

16 And I just kind of want to walk through and
17 make sure we're on the same page in terms of the
18 relationship between them.

19 So you agree that a media feed or a media
10:03AM 20 stream consists of media elements; right?

21 ATTORNEY PRICE: Objection.

22 THE WITNESS: I'm sorry. I thought we were
23 still in the '753 Patent. Am I confused about the
24 context?

25 / / /

10:03AM 1 BY ATTORNEY ZIVOJNOVIC:

2 Q. I just want to take a -- so I'm happy to do
3 it patent by patent, but I also just want to make
4 sure that -- let's do it patent by patent. Why not?

10:04AM 5 Do you agree that a media feed consists of
6 media elements?

7 A. Yes. I believe it must, in fact, be one or
8 more media elements.

9 Q. I'm sorry. I believe you said "one or
10:04AM 10 more" -- the feed must be "one or more media
11 elements."

12 So is it your position that a single media
13 element can be a feed?

14 A. That's not my opinion.

10:04AM 15 My opinion is, as I expressed in my
16 declaration, that a feed has its plain and ordinary
17 meaning, which is one or more associated media
18 elements.

19 Q. Can a media stream consist of a single
10:05AM 20 media element?

21 A. I'm sorry. I keep getting confused by your
22 questions where we're switching contexts.

23 Could you please just as, like to help me,
24 if you would be so kind as to, like, preface your
10:05AM 25 questions about the context we're in, because I

10:05AM 1 thought we were still talking about the '753 Patent.
2 And you said you would take it patent by patent just
3 two questions ago.

4 So I'm really -- I really have to apologize
10:05AM 5 that your line of questions is confusing me.

6 So I just have to apologize about that.

7 Q. Okay. So let me stick, then -- I will
8 circle back to that question. Let me stick to
9 the '753.

10:05AM 10 And then am I correct that in the
11 '753 Patent as well, you considered media elements
12 to also correspond to media data?

13 Is that fair?

14 A. Is there a place in my declaration where
10:06AM 15 you feel I've opined on that.

16 Q. I mean, I'm asking -- I think we discussed
17 this.

18 Let me table that question as well. I'll
19 come back to it. I'm going to ask you the same
10:06AM 20 questions once we go back to '704.

21 And then in the '753 Patent, media
22 programming corresponds to concatenation of both
23 selected media feed and media elements; correct?

24 A. I'm sorry. I again lost the context.
10:07AM 25 Where are you in my declaration?

10:07AM 1 Q. I'm still on the same page. I mean, I
2 think this would be helpful. If you look, still on
3 page 22, Exhibit 5, '753 declaration.

4 A. Okay. I'm there.

10:07AM 5 Q. Do you agree that the claimed media
6 programming in turn consists of a media feed
7 concatenated with additional media elements?

8 A. So I thought I was clear about this in my
9 paragraph 51 where I say, "Regardless of the level
10 of causation required by the claims, the independent
11 claim does require that a feed (i.e., a plurality of
12 associated media elements) be selected from a list
13 and its media elements concatenated with additional
14 media elements to provide to the client 'individual
10:08AM 15 customized media programming.'"

16 Q. If we could go -- to close the loop on
17 something, if we could go back to Exhibit 2, the
18 '704 Patent declaration.

19 A. I am there.

10:09AM 20 Q. Let me now just get there myself.

21 And if you could please go to page 56 of
22 your declaration.

23 A. I am there.

24 Q. And do you see the heading that says,
10:09AM 25 "Cristofalo in View of Marcus '904 Does Not Disclose

10:09AM 1 a Publisher That 'Assembles the Selected Media
2 Stream and the Other Media Elements.'

3 Do you see that?

4 A. Yes.

10:09AM 5 Q. And then if you look at page 57, there is a
6 footnote 7.

7 Do you see that?

8 A. I do.

9 Q. And here you write: "Although I note that
10:09AM 10 Claim 23 does not explicitly cite what device
11 performs the assembly and provisioning steps, the
12 applicant made clear that it is the publisher that
13 does so."

14 Do you see that?

10:10AM 15 A. Yes.

16 Q. And do you also see the last sentence:
17 "Because the publisher performs Claim 19's and
18 Claim 23's assembles and provides media programming
19 steps, my analysis of Claim 19 applies equally to
10:10AM 20 Claim 23."

21 Do you see that?

22 A. Yes.

23 Q. All right. So do you agree that in
24 Claims 19 and -- let me start over.

10:10AM 25 Do you agree that Claims 19 and 23 of the

10:10AM 1 '704 Patent require that the publisher provide the
2 claimed media programming?

3 A. Yes. That was what I made clear here, that
4 that was made clear also by the applicant and by the
10:10AM 5 specification and by the claims themselves as
6 understood by a person of ordinary skill in the art.

7 ATTORNEY ZIVOJNOVIC: So we've been going
8 for a bit over an hour. Now would be a convenient
9 time to take a break if that works for you.

10:11AM 10 THE WITNESS: That's fine.

11 ATTORNEY PRICE: How long do you want to
12 take?

13 ATTORNEY ZIVOJNOVIC: 15 minutes?

14 ATTORNEY PRICE: Okay.

10:11AM 15 (Recess taken from 10:11 a.m. to 10:28 a.m.)

16 BY ATTORNEY ZIVOJNOVIC:

17 Q. Okay. If you could please go to Exhibit 2,
18 the '704 declaration.

19 A. I am there.

10:28AM 20 Q. And if you could please go to page 14, your
21 construction of the "media stream."

22 Let me know when you're there.

23 A. I'm there.

24 Q. All right. And I believe you opined that
10:29AM 25 the plain meaning of "media stream" is a continuous

10:29AM 1 sequence of media data; fair?

2 A. That's what I said, yes.

3 Q. And we discussed that you're using the
4 terms "media element" and "media data" to refer to
10:29AM 5 the same content, such as, for example, clips.

6 A. Correct.

7 Q. Under your construction of "media stream,"
8 can a single clip constitute a media stream?

9 A. If it's in a stream, that is, that it's
10:29AM 10 being sent as a continuous sequence of data, then,
11 yes, one can. But zero cannot.

12 Q. All right. So you opined that for media
13 streaming, you're "applying plain and ordinary
14 meaning"; right?

10:30AM 15 A. Right; which is "a continuous sequence of
16 media data."

17 Q. And for the output signal term, are you
18 also applying "plain and ordinary meaning"?

19 A. I thought I was until I saw what Petitioner
10:30AM 20 was saying, which is going against even the claim
21 language itself; hence, to be clear, for "output
22 signal," including data indicative of the selection
23 and of user data, a person of ordinary skill in the
24 art would understand that this must be a single
10:30AM 25 signal that includes both data indicative of the

10:31AM 1 selection and user data.

2 Q. Let me ask it differently.

3 For your constructions, you're not relying
4 on concepts such as lexicography, disclaimer, or
10:31AM 5 disavowal, are you?

6 A. I am for the footnote we talked about
7 earlier, but not for "output signal." That comes
8 right out of the claim language itself. I'm
9 shocked, in fact, that Petitioner is challenging
10:31AM 10 that.

11 Q. So I guess maybe, then, to just make my
12 question a little bit more accurate.

13 Besides your construction where Claim 23
14 requires that the publisher provide media
10:31AM 15 programming, you do not rely on lexicography
16 disclaimer or disavowal for your claim constructions
17 in this declaration; right?

18 A. Not that I recall just sitting here today.

19 Q. If you could please go to page 55 of
10:32AM 20 Exhibit 2, the '704 declaration.

21 A. I am there.

22 Q. Now, you understand that Ground 2 is based
23 on a combination of Whitehead and Marcus '904;
24 right?

10:32AM 25 A. That's right.

10:32AM 1 Q. And the petition contends that the
2 combination of Whitehead in view of Marcus '904
3 renders obvious certain additional claim
4 limitations; right?

10:32AM 5 A. Yes.

6 Q. Now, in your analysis for column 2, you did
7 not challenge the obviousness to combine Whitehead
8 and Marcus '904; right?

9 A. I don't have an opinion about that. It
10 wasn't required for my analysis, because already the
11 Ground 2 fails for the same reason that Ground 1
12 fails.

13 Q. And for the limitations that petitioner
14 contends are disclosed in Marcus '904, you do not
10:33AM 15 challenge that combination of Whitehead and
16 Marcus '904 meets those limitations; right?

17 ATTORNEY PRICE: Objection.

18 THE WITNESS: Actually, I do challenge
19 that, but it's for exactly the same reasons that
10:33AM 20 Ground 1 fails; hence, I include by reference
21 implicitly in this statement all of my opinions for
22 Ground 1.

23 BY ATTORNEY ZIVOJNOVIC:

24 Q. Let me re-ask my question and say it
10:33AM 25 differently.

10:33AM 1 In Ground 2 for the limitations that
2 petitioner says are disclosed by Marcus '904, you do
3 not challenge that Marcus '904 discloses those
4 limitations.

10:34AM 5 Fair?

6 A. I would answer that the same way I did
7 before. I believe the Ground 2 fails for exactly
8 the same reason that Ground 1 fails, so additional
9 analysis was not required.

10:34AM 10 Q. If you could please go now to
11 paragraph 102.

12 A. I am there.

13 Q. And do you see the second sentence where
14 you write: "Accordingly, regardless of whether
10:34AM 15 Whitehead's content source 135 provide media in the
16 form of media streams, broadcast TV, video clips,
17 audio clips -- or any other type of media -- that
18 media is still stored in the form of individual
19 media elements within Whitehead's Media DB 156, and
10:35AM 20 custom media channels are still built from those
21 individual media elements."

22 Do you see that?

23 A. Yes.

24 Q. But you don't dispute here that a TV
10:35AM 25 channel itself would qualify as a media stream, do

10:35AM 1 you?

2 A. I'm sorry. I'm not following your
3 question.

4 Q. Well, let me ask you this: You don't
10:35AM 5 dispute that content source 135 provides a media
6 stream?

7 ATTORNEY PRICE: Objection.

8 THE WITNESS: I -- I don't agree with that
9 characterization. Instead, I'm opining on an
10:35AM 10 opinion here that applies, regardless of whether
11 Whitehead's content sources 135 provide media in the
12 form of media streams.

13 BY ATTORNEY ZIVOJNOVIC:

14 Q. So you're not, I guess, disputing or
10:36AM 15 endorsing petitioner's position that Whitehead's
16 content sources 135 provide media streams?

17 A. Not in this paragraph, but I have
18 discussions of this elsewhere.

19 So, again, this is coming later in my
10:36AM 20 declaration where I've already addressed certain
21 other issues that were raised by petitioner, and now
22 I'm saying even if -- you know, setting aside
23 whether or not Whitehead's content sources 135
24 provide media in the form of media streams, that
10:36AM 25 media is still stored in the form of individual

10:36AM 1 media elements within Whitehead's media database
2 156. And custom media channels are still built from
3 those individual media elements.

4 Thus, the petitioner's argument still fails
10:37AM 5 because Whitehead's alleged aggregator -- namely,
6 the mixing server 130 -- does not use content
7 sources 135. It uses the media elements from the
8 media database 156.

9 Q. Do you dispute that Whitehead's content
10:37AM 10 sources 135 correspond to channels, TV channels?

11 A. Is there a different place in my
12 declaration you'd like to point me to? Otherwise, I
13 can just read through it and look for that.

14 Q. Well, I can point you to one more, and
10:38AM 15 paragraph 73 might be also relevant here.

16 But, I mean, I'm ultimately asking you
17 about a negative. So I don't believe you've opined
18 that, but --

19 A. I'm happy to review my declaration on the
10:38AM 20 record if your question requires it. It's up to
21 you.

22 I've done that before at other depositions,
23 for example.

24 Q. Sure. At least in paragraph 102, you don't
10:38AM 25 dispute that content source 135 is a television

10:38AM

1

channel.

2

A. I would answer that the same way I did

3

before. Again, this is an opinion that holds,

4

regardless of whether or not Whitehead's content

10:38AM

5

sources 135 provide media in the form of media

6

streams, broadcast TV, video clips, audio clips, or

7

other types of media. That's how this paragraph

8

should be read, that this opinion holds regardless

9

of that.

10:39AM

10

Q. And here, you don't dispute whether or not

11

a channel is a media stream.

12

ATTORNEY PRICE: Objection; asked and

13

answered.

14

THE WITNESS: I would answer that, again,

10:39AM

15

just the same way I did before.

16

This is an opinion that holds, regardless

17

of whether or not Whitehead's content sources 135

18

provide media in the form of media streams. There

19

could be other places.

10:39AM

20

I'm just not recalling, as I sit here

21

today, where I addressed the question you're asking.

22

But here in paragraph 102, this opinion holds,

23

regardless of whether or not Whitehead's content

24

sources 135 provide media in the form of media

10:39AM

25

streams.

10:39AM 1 BY ATTORNEY ZIVOJNOVIC:

2 Q. If you could please go to paragraph 73.

3 A. I am there.

4 Q. And do you see where you wrote: "As I
10:40AM 5 discuss above, the user selection of a custom media
6 channel does not result in Whitehead's system
7 providing 'media programming' under one of
8 Whitehead's embodiments. Thus, a POSITA would
9 appreciate that even if content source 135 provide
10:40AM 10 'media streams,' there is no sense in which the user
11 selection of the custom media channel selects a
12 content source's 'media stream.'"

13 Do you see that?

14 A. Yes.

10:40AM 15 Q. Okay. So in opining that a user selection
16 of a custom media stream is not the required
17 selection of the media stream, you don't dispute
18 that content source 135 provides a media stream?

19 A. This paragraph should be read in that same
10:41AM 20 kind of light as the other paragraph we discussed;
21 namely, here's yet another opinion of mine that
22 holds, regardless of whether or not content sources
23 135 provide media streams.

24 Q. In paragraphs 72 and 73, you address
10:41AM 25 petitioner's media feed mapping number 2; right?

10:41AM 1 A. That is correct.

2 Q. And in addressing petitioner's media feed
3 mapping number 2, you don't dispute that content
4 source 135 provides a media stream?

10:41AM 5 A. It should not be read that way. Again, I
6 am trying to interpret all of the claim terms
7 appropriately using plain and ordinary meanings
8 where that is appropriate.

9 And so there were certain things that I
10:42AM 10 believe that Petitioner is getting wrong. And my
11 opinions, for example, in paragraph 73 hold even if
12 one were to accept that content sources 135 provide
13 media streams. It's a broader type of opinion that
14 would hold even if, for example, the board accepts
10:42AM 15 that content sources 135 provide media streams.

16 Q. In your identification of what petitioner's
17 media feed mapping 2 allegedly got wrong, you don't
18 include petitioner's position content sources 135
19 provide media feeds; fair?

10:43AM 20 A. Again, I wouldn't characterize it that way.
21 Instead, what I'm saying is, even if you would
22 concede that point, there's still this other missing
23 element in the media feed mapping 2.

24 Q. I'm looking for something.

10:44AM 25 If you could please go to paragraph 62.

10:44AM

1 A. I'm there.

2 Q. All right. And do you see in the second
3 sentence: "In Whitehead's real-time embodiment, the
4 user's selection of a custom media channel is not a
10:44AM 5 selection of a 'media stream' because there is no
6 existing media stream for the user to select or the
7 publisher to assembly with user-specific media
8 elements."

9 Do you see that?

10:44AM

10 A. Yes. That has a slight typo. It should be
11 "assemble," not "assembly."

12 Q. If you could now please go to Exhibit 3,
13 which is the '704 declaration you submitted
14 alongside the preliminary response.

10:45AM

15 A. I am there.

16 Q. And if you could please go to paragraph 36
17 there.

18 A. I am there.

19 Q. And take a moment and read paragraph 36 for
10:45AM 20 yourself and let me know when you've had a chance.

21 A. (Witness complies.)

22 Okay. I've finished.

23 Q. Do you stand by what you wrote in
24 paragraph 36 of Exhibit 3?

10:47AM

25 A. Yes.

10:47AM 1 Q. So then you agree that in Whitehead, "some
2 form custom media channel must exist prior to the
3 content information device 110 receiving the menu"?

4 A. I'm not -- I'm not following what you're
10:47AM 5 saying now. What are you referring to?

6 Q. All right. Do you see in the first
7 sentence you wrote: "Some form custom media channel
8 must exist prior to the content information device
9 110 receiving the menu"?

10:48AM 10 Do you see that?

11 A. Yes. But "channel" now is a very broad
12 term in Whitehead to mean something that could be an
13 empty husk without any data in it.

14 So what I'm referring to here now is the
10:48AM 15 channel as it's used in Whitehead and criticizing,
16 frankly, Dr. Almeroth's opinion that a person of
17 ordinary skill in the art would be motivated to move
18 a back-end server functionality to a front-end
19 set-top box that would degrade the performance of
10:48AM 20 the system, introduce all kinds of security
21 vulnerabilities; hence, in my opinion, that would
22 not be something a person of ordinary skill in the
23 art would be motivated to do.

24 Q. Is it your position that when Whitehead
10:49AM 25 uses the term "channel," it's not using that term

10:49AM 1 how it's understood in the art but generally?

2 A. So the term "channel" is itself a very
3 broad term, and so it always has to be understood in
4 a context.

10:49AM 5 And so I am using the term as it's used in
6 Whitehead here in paragraph 36 of Exhibit 3, which
7 is inclusive of something that could be an empty
8 husk without any content in it.

9 Q. What about a television channel? Would you
10:49AM 10 consider that an empty husk?

11 A. Yes, absolutely. In fact, when I was a
12 little boy, there was times when I got up in the
13 middle of the night thinking I could go watch
14 television; and it would just be static, literally
10:50AM 15 an empty husk with no content.

16 Q. What about during the day, since we're
17 talking about the experience of television channels?
18 During the day, when there is programming and
19 broadcast centers, would you consider a channel then
10:50AM 20 to be a feed or stream?

21 A. That would be a question that I'd need more
22 time to analyze. I don't recall that being a
23 question I was asked to opine on unless there's a
24 place in my declarations where you feel I've
10:50AM 25 addressed that.

10:51AM 1 Q. If you could please go back to Exhibit 2,
2 your '704 declaration.

3 A. I am there.

4 Q. And if you could please go to paragraph 95.

10:51AM 5 A. I am there.

6 Q. And so here, you opine that, quote -- I'm
7 reading about a quarter of the way down on page
8 45 -- "A POSITA would understand that IP addresses
9 are poor proxies for geographic locations."

10:51AM 10 Do you see that?

11 A. Yes.

12 Q. And the next sentence, you reference "a
13 study from 2008"; right?

14 A. Yes.

10:51AM 15 Q. And in the following sentence -- and that
16 study from 2008 is Exhibit 2004; right?

17 A. Correct.

18 Q. And the following sentence, you reference a
19 study from 2011; right?

10:52AM 20 A. Correct.

21 Q. And that study from 2011 is Exhibit 2005;
22 right?

23 A. That is correct.

24 Q. All right. Now, if you could please go to
10:52AM 25 page 1 of your declaration, paragraph 4,

10:52AM

1 specifically.

2 A. I am there.

3 Q. And am I correct that the priority date for
4 the challenge patent, based on your understanding,
10:52AM 5 is "roughly between 2006 and 2007"; right?

6 A. Yes. But, again, I'm citing to those -- so
7 I'm glad you asked this question, because I'm citing
8 to those studies based on not only those studies'
9 findings, which, of course, came earlier based on

10:53AM

10 data that was gathered earlier than their
11 publication dates and also based on my own education
12 and experience where, based on that as well as these
13 studies, a person of ordinary skill in the art
14 already in 2006 and 2007 would understand that IP
10:53AM 15 addresses are poor proxies for geographic locations.

16 Moreover, the concept of virtual private
17 networks, or VPNs, also existed prior to 2006, where
18 it was trivial for people to mask their geographic
19 locations using a VPN.

10:54AM

20 And, indeed, today people routinely use
21 VPNs so they can watch Netflix when they're
22 traveling abroad, for example.

23 Q. But the two studies you actually cited and
24 attached as exhibits both postdate the prior date of
10:54AM 25 the challenged patents; right?

10:54AM 1 A. Which is why I highlighted the fact that
2 they're based on data that came earlier than their
3 publication dates, and I'd be happy to dig into that
4 if you upload either of those exhibits.

10:54AM 5 And, moreover, like I said, this is based
6 on my education and experience as well.

7 Q. But you don't dispute that the studies you
8 cited were published after the priority date of the
9 '704 Patent?

10:54AM 10 A. The publication date of those publications
11 came -- comes after, but, of course, is based on
12 data that was before the publication date. And
13 already by those dates, IP addresses were a poor
14 proxy for geographic location. And that is also
10:55AM 15 what I recall based on my education and experience.

16 (Exhibit No. 8 was marked for identification.)
17 BY ATTORNEY ZIVOJNOVIC:

18 Q. I would now like to introduce as Exhibit 8
19 a copy of what you referenced to as Exhibit 2005 in
10:55AM 20 your declaration, which is the 2011 study.

21 Please let me know when you've had a chance
22 to download and confirm the identity of that
23 document.

24 A. Yes, I have it before me.

10:55AM 25 Q. Okay. And do you see the section titled

10:55AM

1 "Introduction"?

2 A. Yes.

3 Q. And here it says, "With the emergence of
4 internet services requiring location information, IP
5 geolocation techniques (i.e., mapping and IP address
6 to the geographic location of the corresponding
7 host) became a key enabler for many of these

10:55AM

8 services. Examples of such services comprise
9 targeted advertising on web pages, displaying local
10 events and regional weather, automatic selection of
11 languages to first display content, and restricted
12 content delivery following regional policies."

10:56AM

13 Do you see that?

14 A. Yes. And then it's criticizing why that is
15 flawed.

10:56AM

16 Q. All right. But you don't dispute that
17 before 2011, IP geolocation techniques were, indeed,
18 being used for targeted advertising, do you?

19 A. I'm not following your question. Where are
20 you disputing that or asking about that?

10:56AM

21 (Overlapping speakers.)

22 BY ATTORNEY ZIVOJNOVIC:

23 Q. Do you agree?

24 Let me ask you differently.

10:57AM

25 You did not consider whether IP geolocation

10:57AM 1 techniques were, in fact, used for targeted
2 advertising prior to 2011.

3 A. No; I disagree. I -- my opinion is that if
4 now we're talking about claims that require
10:57AM 5 geographic locations, simply relying on IP address
6 would not be a reliable source of information for
7 geographic location.

8 Q. But do you think --

9 A. And I cite studies to support that
10:57AM 10 conclusion, as well as my own education and
11 experience, as well as the VPN evidence that I
12 cite to.

13 Q. But are you saying that the paragraph I
14 just read from the introduction of Exhibit 5 is
10:57AM 15 factually incorrect?

16 A. No, I'm not saying that. I'm saying that
17 whether or not other applications used such things
18 is itself not evidence that that was reliable.

19 Q. But you're not disputing that IP
10:58AM 20 geographic -- geolocation techniques were, in fact,
21 used for targeted advertising application.

22 A. I am not disputing that paragraph that
23 itself was being used. I'm saying that that was not
24 reliable, which is also what the authors of this
10:58AM 25 study have concluded.

10:58AM 1 Q. And then if you look at three paragraphs
2 down -- this is now the second column -- the authors
3 go on to write: "Database-driven geolocation
4 usually consists of a database engine, (e.g.,
10:58AM 5 SQL/MySQL) containing records for a range of IP
6 addresses, which are called blocks of prefixes.
7 Geolocation prefixes may span non-CIDR of the
8 address base and may span only a couple of IP
9 addresses. Examples of geolocation databases are
10:59AM 10 GeoURL, the Net World Map project, and are provided
11 as free or commercial tools."

12 Do you see that?

13 A. Yes.

14 Q. And then this paragraph cites -- one, two,
10:59AM 15 three, four, five, six, seven, eight, nine -- ten
16 different references.

17 Do you see that?

18 A. Yes; and many of these come before the
19 priority date.

10:59AM 20 And then it says in the very next sentence,
21 "The other side of the coin with geolocation
22 databases is that, besides the difficulty to manage
23 and update them, their accuracy is more than
24 questionable" -- it cites 15 and 16 -- "especially
10:59AM 25 due to lack of information about the methodology

10:59AM 1 used to build them."

2 So this is where now the authors are
3 criticizing the use of IP address as a proxy for
4 geolocation and, indeed, citing to a paper that was
11:00AM 5 published in 2007.

6 Q. So it goes on to say, "Few works focus on
7 geolocation databases and their accuracy."

8 Do you see that?

9 A. Yes.

11:00AM 10 Q. It's two paragraphs down from where --

11 A. Yes. Yes, I see that.

12 Q. So what these authors are saying is that
13 even as of 2011, "Few works focus on geolocation
14 databases and their accuracy"; fair?

11:00AM 15 A. Yes. That's a huge criticism that -- all
16 these systems are using IP addresses as a proxy for
17 geolocation data, and it's severely flawed. And so
18 they're pointing out the fact that all these systems
19 are based on flawed data.

11:00AM 20 Q. And if you could please go now to figure 3,
21 and that is on page 3, top right corner.

22 A. I see that.

23 Q. Now, am I reading this correctly that, at
24 least InfoDB under either match criteria was about
11:01AM 25 60 percent accurate within a distance of

11:01AM 1 100 kilometers?

2 A. Yes, which is not a good accuracy to a
3 person of ordinary skill in the art.

4 Q. And 100 kilometers, that's roughly 60 miles
11:02AM 5 or so?

6 A. That's right. And so they're saying that
7 roughly -- it's a coin flip. Your accuracy is
8 roughly a coin flip at that range. That's terrible.

9 Q. And then 1,000 kilometers InfoDB does get
11:02AM 10 to 100 percent accuracy; right?

11 A. Right; which is saying almost nothing,
12 because if -- we're at the range now of thousands of
13 kilometers.

14 Q. Well, it's a thousand kilometers; right?

11:02AM 15 A. Okay. A thousand -- even accepting a
16 thousand kilometers, it's still terrible. A
17 thousand kilometers spans tons of different weather
18 zones, tons of different baseball, different -- so
19 it's useless from the Whitehead perspective of
11:02AM 20 giving you geolocations.

21 Q. Thousand kilometers, that's about
22 600 miles?

23 A. Right. On the East Coast, you have tons of
24 baseball teams that exist on that kind of a radius.
11:03AM 25 It's not helpful for the kinds of geolocation that

11:03AM 1 supposedly Dr. Almeroth thinks it would be obvious
2 to combine and use, IP addresses as proxy for
3 geolocations. It's terrible for that.

4 Q. It would tell you if a customer is in
11:03AM 5 California or Texas, for example.

6 A. No, it wouldn't. Not if they're close to
7 the border. They may even be in Mexico.

8 ATTORNEY ZIVOJNOVIC: No further questions
9 from me.

11:04AM 10 ATTORNEY PRICE: All right. Why don't we
11 go off for about ten minutes and come back.

12 ATTORNEY ZIVOJNOVIC: All right. Thank
13 you.

14 THE WITNESS: Sounds good.

11:04AM 15 (Recess taken from 11:04 a.m. to 11:10 a.m.)

16 ATTORNEY PRICE: No redirect.

17 ATTORNEY ZIVOJNOVIC: All right. My
18 favorite thing to say on the record after a break
19 like this, so I think we're done.

11:11AM 20 THE COURT REPORTER: Mr. Price, are you
21 ordering the transcript?

22 ATTORNEY PRICE: We don't need a rough.
23 We'll take the regular transcript. It doesn't have
24 to be expedited.

11:11AM 25 THE COURT REPORTER: Thank you.

11:11AM

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ATTORNEY ZIVOJNOVIC: Please do send the
rough tonight, if it's possible.
THE COURT REPORTER: I will. No problem.
(Proceeding concluded at 11:11 a.m. PST)

C E R T I F I C A T E

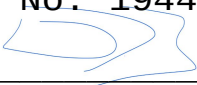
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prior to the commencement of the examination,
MICHAEL T. GOODRICH, Ph.D. was duly sworn by me to
testify to the truth, the whole truth, and nothing
but the truth.

I DO FURTHER CERTIFY that the foregoing is
a true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
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I DO FURTHER certify that I am neither a
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DATED: September 11, 2025
Steno Job No. 1944914


Douglas J. Zweizig, RDR, CRR, FCRR, CA-CSR

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Exhibits Exhibit 1 3:9 7:12,14 22:4,16,20,21 Exhibit 2 3:10 7:18, 20 22:24,25 23:3 27:12 29:18 39:17 41:17 43:20 54:1 Exhibit 3 3:12 8:1,3 30:15,18 51:12,24 53:6 Exhibit 4 3:15 8:8,10 21:22 25:10 Exhibit 5 3:16 8:13, 15 9:6 22:8 25:19,21 32:23 35:6 39:3 58:14 Exhibit 6 3:18 8:19, 21 Exhibit 7 3:21 16:23, 25 Exhibit 8 3:22 56:16, 18 - ---000--- 4:25 5:4,6 1 1 7:12,14 11:5 12:11 13:4,11 22:4,16,20,21 26:19 34:11 36:10 44:11,20,22 45:8 54:25 1,000 61:9 10 17:20,23 28:12 100 61:1,4,10 102 45:11 47:24 48:22 10:11 41:15 10:28 41:15 110 52:3,9 11:04 62:15 11:10 62:15 11:11 63:4	12 30:17 13 24:6 130 47:6 135 15:24 19:4,11,14, 18,22 20:9,14,18 45:15 46:5,11,16,23 47:7,10, 25 48:5,17,24 49:9,18, 23 50:4,12,15,18 14 29:20,21 41:20 14713 4:11 15 41:13 59:24 150 19:3 155 19:18,23 156 45:19 47:2,8 16 59:24 160 17:9,24 18:7,14,23 19:2,9,21 20:7,8 160' 14:23 170 17:25 18:6,16,22 19:20 20:6,12,17 21:11 22:11 19 23:8,20 24:12,18,21 25:4 40:19,24,25 19's 40:17 2 2 7:18,20 22:24,25 23:3 27:12 29:18 39:17 41:17 43:20,22 44:6,11 45:1,7 49:25 50:3,17,23 54:1 2004 54:16 2005 54:21 56:19 2006 55:5,14,17 2007 55:5,14 60:5 2008 54:13,16 2011 54:19,21 56:20 57:17 58:2 60:13 22 24:17 35:5,8 39:3 23 23:8,21 24:12 40:10, 20,25 43:13	23's 40:18 25 23:4 24:7 26:19 29 4:2 3 3 8:1,3 30:15,18 51:12, 24 53:6 60:20,21 31 32:25 33:3,4,5,7 34:1,7 33 9:11 34 9:14 35 27:14 350 28:14 36 26:2 51:16,19,24 53:6 4 4 8:8,10 21:22 25:10 54:25 45 54:8 5 5 8:13,15 9:6,7 19:17 22:8 25:19,21 32:23 35:6 39:3 58:14 51 39:9 55 43:19 56 39:21 57 22:10 40:5 573 27:2 58 14:15 21:16 22:7 59 28:13 6 6 8:19,21 17:20 60 60:25 61:4 600 61:22	62 50:25 67 14:11 22:3 23:11 7 7 16:23,25 17:5 18:25 40:6 704 7:15,22 8:5 22:4, 17,22,24 23:1,4,24 25:4 27:12 28:2,4,6,10,12 29:4,5,19 32:16 38:20 39:18 41:1,18 43:20 51:13 54:2 56:9 72 49:24 73 47:15 49:2,24 50:11 753 8:10,17,23 9:4 21:23 25:11,20 26:3,14, 18 29:5,8 32:17,23 33:8,23 34:4,8,17,22 35:7,22 36:23 38:1,9, 11,21 39:3 8 8 17:6 19:1 56:16,18 9 9 19:17 904 39:25 43:23 44:2, 8,14,16 45:2,3 95 54:4 A a.m. 41:15 62:15 63:4 abroad 55:22 absolutely 53:11 accept 50:12 accepting 61:15 accepts 50:14 access 6:19 accompanying 8:4,16,22
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accuracy 59:23
60:7,14 61:2,7,10
accurate 6:13 43:12
60:25
acknowledge 4:5
Acquiring 35:16
actual 26:17
addition 24:3
additional 15:7 19:5
23:17,22 24:2,9 26:7
39:7,13 44:3 45:8
address 49:24 57:5
58:5 59:8 60:3
addressed 10:19
46:20 48:21 53:25
addresses 23:7
54:8 55:15 56:13 59:6,9
60:16 62:2
addressing 50:2
administer 4:7
admit 16:15
advertising 57:9,18
58:2,21
aggregator 11:9,14
47:5
agree 4:9 5:19 9:14
18:4,20,24 19:9 25:21
33:22 34:17 36:19 37:5
39:5 40:23,25 46:8 52:1
57:23
agreed 5:18 7:3 8:6,
24 29:22
alleged 47:5
allegedly 50:17
Almeroth 62:1
Almeroth's 52:16
alongside 51:14
analysis 34:23 35:2,
4 40:19 44:6,10 45:9
analyze 29:17 53:22
and/or 14:5
answering 15:15

antecedent 36:7
Apologies 14:13
22:23
apologize 38:4,6
appearing 4:4
applicable 15:12
applicant 40:12 41:4
application 58:21
applications 7:1
58:17
applies 40:19 46:10
applying 42:13,18
appropriately 50:7
argument 47:4
art 11:7,18 18:10 21:20
22:15 23:25 28:16 36:3
41:6 42:24 52:17,23
53:1 55:13 61:3
assemble 25:3
51:11
assembles 40:1,18
assembling 24:19,
22
assembly 25:2
27:18 40:11 51:7,11
assistance 16:20
ASSISTANT 16:19
associate 21:2
association 13:12,
18,19,22 20:22,25 21:3,
6
assume 5:16
attached 55:24
ATTORNEY 4:18,21
5:7 7:13,19 8:2,9,14,20
10:13,21 12:21 13:2
14:1,7 15:25 16:3,17,21
17:1,11,14,16,17 18:8,
19 19:15,19 20:1,4
21:12,21 30:24 31:3
36:1,12,21 37:1 41:7,
11,13,14,16 44:17,23
46:7,13 48:12 49:1
56:17 57:22 62:8,10,12,

16,17,22 63:1
attorneys 4:4 16:7
attributes 14:23
audible 5:22
audio 26:21 45:17
48:6
authors 58:24 59:2
60:2,12
automatic 57:10
avoid 25:13

B

back 10:14,15 12:10
20:25 21:15 24:17 28:1
38:8,19,20 39:17 54:1
62:11
back-end 52:18
background 34:21
base 59:8
baseball 14:24 15:16
21:18 61:18,24
based 24:9 28:15
33:19 34:23 35:2 43:22
55:4,8,9,11,12 56:2,5,
11,15 60:19
basis 36:7
bearing 25:25
began 7:10
beginning 26:19
behalf 4:18
bit 32:14 41:8 43:12
blocks 59:6
board 50:14
border 62:7
box 52:19
boy 53:12
break 6:6,7 25:23
41:9 62:18
broad 22:13 52:11
53:3

broadcast 45:16
48:6 53:19
broader 50:13
build 60:1
built 45:20 47:2
bureaucracy 9:2

C

California 4:10 62:5
called 59:6
calling 21:4
capital 23:7
careful 12:22
case 6:17,21,24 25:9
32:4,14
cases 31:25
catch 6:3
categories 13:23
15:16
causation 39:10
centers 53:19
challenge 44:7,15,
18 45:3 55:4
challenged 15:8
23:18 55:25
challenging 43:9
chance 17:2 33:1
51:20 56:21
channel 14:20,22
15:18,23 17:9,24,25
18:6,7,22,23 19:20,24
20:6,12,17 21:11 22:11,
12 45:25 48:1,11 49:6,
11 51:4 52:2,7,11,15,25
53:2,9,19
channels 14:21
18:16 21:17 45:20 47:2,
10 53:17
characteristic
15:6,12 21:18
characteristics
15:4 23:14

characterization 46:9
characterize 50:20
circle 38:8
circular 12:4
cite 40:10 58:9,12
cited 34:11 55:23 56:8
cites 59:14,24
citing 34:2,13 55:6,7 60:4
claim 9:8 11:3,5,19 12:25 13:15 24:17,18, 21 25:4 29:5 34:11,24 35:3 39:11 40:10,17,18, 19,20 42:20 43:8,13,16 44:3 50:6
claimed 24:4 39:5 41:2
claims 15:8 23:7,18, 20 24:12,16 29:11 32:17 33:8,23 34:5,8,17 35:23 39:10 40:24,25 41:5 58:4
cleaner 32:3
clear 5:22 6:2 13:1 26:15 32:6,14 34:22 39:8 40:12 41:3,4 42:21
clearer 32:3
client 11:9,14 24:8 39:14
clip 42:8
clips 26:21 42:5 45:16,17 48:6
close 39:16 62:6
Coast 61:23
coin 59:21 61:7,8
collecting 36:8
column 17:5,20 18:25 19:17 24:6 26:19 28:12 44:6 59:2
combination 43:23 44:2,15
combine 44:7 62:2

commercial 59:11
common 29:12
compare 29:10
compile 33:16
complete 6:12
complies 51:21
comprise 57:8
computer 6:19 7:1
concatenated 15:6 23:16 24:15 30:19,23 31:20 39:7,13
concatenating 23:21 24:13,20,23 25:1, 5,7,8 33:18 35:18,24
concatenation 24:1 26:6 38:22
concede 50:22
concept 55:16
concepts 36:14 43:4
concluded 58:25 63:4
conclusion 58:10
conduit 22:13
confirm 7:8 17:3 56:22
confused 36:23 37:21
confusing 38:5
confusion 25:13,16 32:5,15
connection 7:21
connections 21:7
consent 20:18
considered 12:19 20:24 38:11
consist 27:4 37:19
consistent 24:16
consists 36:20 37:5 39:6 59:4
constitute 42:8

construction 9:9 23:16 30:8 31:7,12,17, 18,20 32:8,10,12 41:21 42:7 43:13
constructions 43:3,16
contends 44:1,14
content 15:24 19:4, 10,14,18,22,23,24,25 20:8,9,13,17 21:10 22:13 26:17 42:5 45:15 46:5,11,16,23 47:6,9,25 48:4,17,23 49:9,12,18, 22 50:3,12,15,18 52:3,8 53:8,15 57:11,12
context 22:10 31:1 36:24 37:25 38:24 53:4
contexts 37:22
continuous 29:24 30:2,4,7,23,25 31:23 41:25 42:10,15
contrast 29:10
control 18:15
convenient 41:8
copies 6:20
copy 7:14,20 8:10,15, 21 16:23 56:19
corner 60:21
correct 8:18 9:9,10 11:23 13:12 24:14 29:22 38:10,23 42:6 50:1 54:17,20,23 55:3
correctly 60:23
correspond 18:6 38:12 47:10
corresponds 17:9 38:22
counsel 4:1,9
couple 36:13 59:8
court 4:1,20,22 5:12, 20 6:3 10:13,15 62:20, 25 63:3
create 24:10
creating 14:22

Cristofalo 39:25
criteria 60:24
criticism 60:15
criticizing 52:15 57:14 60:3
custom 14:20 15:23 17:9,24 18:5,7,16,22 19:20,24 20:6,12 21:11 45:20 47:2 49:5,11,16 51:4 52:2,7
customer 62:4
customized 33:9,16 34:9,19 35:17,24 39:15

D

data 27:21,24 28:3,7, 9,13,17,20 29:24 30:3 31:23 38:12 42:1,4,10, 16,22,23,25 43:1 52:13 55:10 56:2,12 60:17,19
database 47:1,8 59:4
Database-driven 59:3
databases 59:9,22 60:7,14
date 55:3,24 56:8,10, 12 59:19
dates 55:11 56:3,13
day 53:16,18
DB 45:19
decision 31:8,13
declaration 7:20 8:3,15,21 9:3,12 10:19, 23,24 12:10 20:24 21:23 22:4,7,17,24 23:1,4 25:11,20 26:3 27:7,12 29:19 30:9,15 31:21 32:2,13,23 35:7 37:16 38:14,25 39:3,18, 22 41:18 43:17,20 46:20 47:12,19 51:13 54:2,25 56:20
declarations 29:4 53:24

define 18:15	dispute 45:24 46:5 47:9,25 48:10 49:17 50:3 56:7 57:16	embodiments 18:1,12,13,18,20 36:9 49:8	expressed 37:15
definition 11:20 13:16 20:20	disputing 46:14 57:20 58:19,22	emergence 57:3	F
degrade 52:19	distance 60:25	empty 11:24 12:7 13:7 28:21 52:13 53:7, 10,15	fact 12:13 37:7 43:9 53:11 56:1 58:1,20 60:18
delivering 11:9	Doctor 4:23	enabler 57:7	factually 58:15
delivery 57:12	document 22:19 56:23	end 22:23	fails 44:11,12,20 45:7, 8 47:4
deposition 4:3,4,6, 7,13	download 7:6 17:3 56:22	endorsing 46:15	fair 9:25 20:9 24:24 26:24 28:18 35:22 38:13 42:1 45:5 50:19 60:14
depositions 16:8 47:22	downloaded 7:9,10	engine 59:4	familiar 16:9
describes 33:8 34:8	draw 21:6	entails 20:25	favorite 62:18
details 14:6	due 59:25	equally 40:19	federal 4:3
device 24:8 40:10 52:3,8	duly 5:2	events 57:10	feed 9:9,16 10:1,2,7, 10,11 11:1,2,10,21,23 12:1,3,5,9,12,20 13:4,7, 9,16,21,24 15:4,13,21 20:20,24 21:5,11,20 22:11,15 26:7,8,23 27:4 28:19,22,24 29:9,14 33:10,18 35:16,19,25 36:10,19 37:5,10,13,16 38:23 39:6,11 49:25 50:2,17,23 53:20
difference 28:24 29:13	E	evidence 58:11,18	feeds 11:10,12,15 12:7 15:19 33:11,15 36:14 50:19
differently 10:22 11:25 31:5 43:2 44:25 57:24	e.g 59:4	exact 28:9 34:23	feel 38:15 53:24
difficulty 59:22	e.g. 19:3	EXAMINATION 5:5	field 19:10
dig 56:3	earlier 29:20 43:7 55:9,10 56:2	examined 5:2	fields 19:2,3,6
direct 14:8 17:18	East 61:23	Examples 57:8 59:9	figure 36:10 60:20
disagree 58:3	education 55:11 56:6,15 58:10	exemplary 27:1	files 7:1
disavowal 43:5,16	elaborate 22:9	exhibit 7:12,14,18,20 8:1,3,8,10,13,15,19,21 9:5,6 16:16,18,23,25 17:3 21:22 22:4,8,16, 20,21,24,25 23:3 25:10, 12,19,21 27:12 29:18 30:15,18 32:23 35:6 39:3,17 41:17 43:20 51:12,24 53:6 54:1,16, 21 56:16,18,19 58:14	find 16:16,21
disclaimer 43:4,16	electronic 6:20	exhibits 6:22 7:6 55:24 56:4	findings 55:9
Disclose 35:16 39:25	element 11:13 30:6 37:13,20 42:4 50:23	exist 10:1,4,6 11:11 12:2 25:7 52:2,8 61:24	fine 41:10
disclosed 44:14 45:2	elements 9:20 10:3, 4,6,9 11:1,8,21 12:2,5, 8,13,18 13:5,8,10,13, 20,23,24 15:7,13,20 20:23 21:4 23:17,22 24:2,3,9,14 25:8 26:7,9, 12,14,16,20 27:1,4,10, 19 28:13,17 30:19,22 31:21 33:18 35:18,25 36:14,20 37:6,8,11,18 38:11,23 39:7,12,13,14 45:19,21 47:1,3,7 51:8	existed 55:17	finished 51:22
discloses 18:5 28:13 45:3	Elements.' 40:2	existing 51:6	flawed 57:15 60:17, 19
disclosure 28:15	embodiment 51:3	expedited 62:24	
discuss 49:5		experience 53:17 55:12 56:6,15 58:11	
discussed 9:16 20:16 38:16 42:3 49:20		explained 20:24	
discussing 20:12		explanation 32:4	
discussion 31:2		explicitly 40:10	
discussions 46:18			
display 57:11			
displaying 57:9			

flip 61:7,8	Ground 43:22 44:11, 20,22 45:1,7,8	illustrated 36:9	IP 54:8 55:14 56:13 57:4,5,17,25 58:5,19 59:5,8 60:3,16 62:2
focus 34:15 60:6,13	group 12:12,14 15:12	immediately 7:2 18:13	issues 46:21
footnote 12:11 13:4, 11 40:6 43:6	groups 14:25	implications 11:17	
form 13:15 45:16,18 46:12,24,25 48:5,18,24 52:2,7	guess 21:16 26:15 31:15 43:11 46:14	implicitly 44:21	
forward 25:25		implied 11:4 28:11	K
frankly 52:16	H	important 5:21	key 57:7
free 59:11	hand 4:23	importantly 25:6	kilometers 61:1,4,9, 13,14,16,17,21
front 6:16 9:7 30:16	happy 37:2 47:19 56:3	include 19:2,10 21:3 26:8,17,20 27:21 28:19 44:20 50:18	kind 11:4 36:16 37:24 49:20 61:24
front-end 52:18	head 5:23	includes 26:23 42:25	kinds 52:20 61:25
full 5:8	heading 35:12,15 39:24	including 42:22	
functionality 52:18	helpful 39:2 61:25	inclusive 53:7	L
G	helps 17:19 33:25	incomplete 14:1	lack 59:25
gathered 55:10	high-level 34:4,20	incorrect 22:5 58:15	language 11:3 12:4 24:18 26:6 27:18 28:11 35:3 42:21 43:8
gave 14:13 27:1	highlighted 56:1	independent 23:7 39:10	languages 57:11
general 12:24 31:16	hold 50:11,14	indicative 42:22,25	let alone 15:5
generally 34:3 53:1	holds 48:3,8,16,22 49:22	individual 33:9,16 34:9 35:17,23 39:14 45:18,21 46:25 47:3	letter 23:7
generating 14:20	host 57:7	individualized 34:18	level 31:16 39:9
generic 12:24 13:1, 15	hour 41:8	Infodb 60:24 61:9	lexicography 43:4, 15
generically 15:16	huge 60:15	information 18:15 24:10 33:19 52:3,8 57:4 58:6 59:25	licensed 4:10,12
geographic 54:9 55:15,18 56:14 57:6 58:5,7,20	husk 11:24 12:7 52:13 53:8,10,15	institution 31:8,13, 17,18,19 32:8,10	light 27:11 49:20
geolocation 57:5, 17,25 58:20 59:3,7,9,21 60:4,7,13,17 61:25	husks 28:22	intent 32:11	likewise 11:13 29:8
geolocations 61:20 62:3	hypothetical 14:2	interest 19:4	limitations 44:4,13, 16 45:1,4
Geourl 59:10	I	internet 57:4	lines 19:8
give 5:22 6:12 14:9	i.e 39:11 57:5	interpret all 50:6	linking 13:20
giving 61:20	identification 7:12, 18 8:1,8,13,19 16:25 50:16 56:16	introduce 52:20 56:18	links 27:4
glad 25:17 55:7	identified 20:5	introduced 25:16	list 11:9,10,11 33:10 39:12
good 61:2 62:14	identifier 14:22	introduction 57:1 58:14	lists 19:5
Goodrich 5:1,10	identifies 19:22 20:8	invite 28:5	literally 53:14
Great 4:20,22 7:14 9:1	identity 7:8 17:3 19:3,10 56:22	involve 24:20	local 57:9
			location 56:14 57:4,6 58:7

locations 54:9
55:15,19 58:5

long 41:11

loop 39:16

lost 31:1 38:24

M

made 40:12 41:3,4

make 26:7 27:19
36:17 37:3 43:11

manage 18:15 59:22

manner 4:16

Map 59:10

mapping 19:21 20:7
49:25 50:3,17,23 57:5

Marcus 39:25 43:23
44:2,8,14,16 45:2,3

mark 16:17,23

marked 7:5,12,18
8:1,8,13,19 16:25 22:8
56:16

mask 55:18

match 60:24

material 6:15,16,20

meaning 9:15,19
15:5 26:13 28:3 29:23
31:22 32:1 37:17 41:25
42:14,18

meanings 50:7

means 32:4

meant 21:2

media 9:20 10:3,4,5,
9,25 11:21 12:2,5,8,12,
13,18,20 13:5,8,10,13,
20,23 14:20 15:7,12,19,
23 17:9,24 18:6,16,22
19:17,20,23,24 20:6,9,
12,13,16,17,23 21:4,10,
11 23:15,17,21,22 24:1,
2,3,9,13,14 25:8 26:7,9,
12,13,16,17,20,22,24,
25 27:4,10,18,19,20,21,
24 28:3,6,9,13,17,19,
24,25 29:6,9,14,23,24

30:9,18,19,22 31:8,12,
20,23 32:1,17,19 33:9,
16,18,24 34:9,19 35:17,
18,24 36:14,15,19,20
37:5,6,8,10,12,17,19,20
38:11,12,21,23 39:5,6,
7,12,13,14,15 40:1,2,18
41:2,21,25 42:1,4,7,8,
12,16 43:14 45:15,16,
17,18,19,20,21,25 46:5,
11,12,16,24,25 47:1,2,
3,7,8 48:5,7,11,18,24
49:5,7,10,11,12,16,17,
18,23,25 50:2,4,13,15,
17,19,23 51:4,5,6,7
52:2,7

meets 44:16

memorize 16:10

memory 16:8

menu 23:15 52:3,9

metadata 19:3

methodology
59:25

Mexico 62:7

Michael 5:1,10

middle 53:13

miles 61:4,22

mine 49:21

minutes 41:13 62:11

missing 50:22

mixing 47:6

mixup 22:23

moment 7:7 51:19

motivated 52:17,23

move 52:17

multiple 18:16

N

names 14:21

negative 47:17

Net 59:10

Netflix 55:21

networks 55:17

night 53:13

non-cidr 59:7

note 40:9

notion 11:11

NTECH's 9:15

number 4:11 14:14
49:25 50:3

numbering 25:15

numbers 25:12

O

oath 4:8 5:11

object 13:9 21:4

objection 4:15,19
12:21 14:1 15:25 17:11,
16 18:8 19:15 20:1
21:12 30:24 36:1,21
44:17 46:7 48:12

obvious 44:3 62:1

obviousness 44:7

occurs 11:16 13:12

one-to-one 17:25
18:11,17,21 19:21 20:7

open 6:23,25 7:11 9:3,
7 22:18

opened 22:2

opine 9:8,23 10:18
14:4 21:14 29:2,16
30:18 53:23 54:6

opined 22:10 30:8
38:15 41:24 42:12
47:17

opining 11:20 27:3
46:9 49:15

opinion 9:25 10:2,5
12:1 15:11 21:9 24:12,
21 26:23 28:18 29:6,9,
13 31:25 37:14,15 44:9
46:10 48:3,8,16,22
49:21 50:13 52:16,21
58:3

opinions 44:21
50:11

order 13:17 30:5

ordering 11:4 33:17
62:21

ordinary 9:15,19
11:6,18 15:5 18:9 21:19
22:15 23:25 26:13,16
28:3,16 29:23 31:22,25
36:3 37:16 41:6 42:13,
18,23 50:7 52:17,22
55:13 61:3

organized 14:24

output 42:17,21 43:7

overlapping 57:21

overview 34:25 35:2

owner 4:21 8:16,23

owner's 7:21 8:4
30:10

P

pages 57:9

paper 60:4

paragraph 9:11,14,
24 14:9,11,14,15 21:16
22:1,3,7,10 23:11 26:2
27:14 32:25 33:3,7
34:1,7 39:9 45:11 46:17
47:15,24 48:7,22 49:2,
19,20 50:11,25 51:16,
19,24 53:6 54:4,25
58:13,22 59:14

paragraphs 49:24
59:1 60:10

part 12:14 24:4 25:1
34:21

parties 4:9,12

party 4:15

pass 22:14

patent 4:21 7:15,21,
22 8:4,5,10,16,17,23
9:4 22:17,22 23:1,24
25:4 26:14,18 27:2
28:2,4,6,10,12 29:5
30:10 32:17 33:8,23

34:4,8,17,22 35:22
36:9,23 37:3,4 38:1,2,
11,21 39:18 41:1 55:4
56:9
patents 29:4,11
55:25
PDF 16:22
PDFS 25:24
people 55:18,20
percent 60:25 61:10
performance 52:19
performs 40:11,17
person 6:2 11:6,18
18:9 21:19 22:14 23:24
28:15 36:3 41:6 42:23
52:16,22 55:13 61:3
perspective 32:7
61:19
petition 44:1
petitioner 4:19
42:19 43:9 44:13 45:2
46:21 50:10
petitioner's 46:15
47:4 49:25 50:2,16,18
Ph.d. 5:1
phrase 28:9
physical 6:16
physically 4:5
place 10:18 16:11
27:7 38:14 47:11 53:24
places 48:19
plain 9:15,19 15:5
26:13 28:2 29:23 31:22,
25 37:16 41:25 42:13,
18 50:7
plurality 39:11
point 11:10,16 13:6
15:19 16:12 27:7 47:12,
14 50:22
pointing 60:18
policies 57:12
poor 54:9 55:15 56:13

POSITA 49:8 54:8
position 10:25 19:23
23:20 37:12 46:15
50:18 52:24
postdate 55:24
preambles 32:20
predetermined
24:8
preface 37:24
preferred 36:8
prefixes 59:6,7
preliminary 8:4,22
30:10 51:14
present 4:5
presented 14:21
previous 36:7
Price 4:21 12:21 14:1
15:25 17:11,16 18:8
19:15 20:1 21:12 30:24
36:1,21 41:11,14 44:17
46:7 48:12 62:10,16,20,
22
printed 6:15
prior 52:2,8 55:17,24
58:2
priority 55:3 56:8
59:19
private 55:16
problem 26:1 63:3
proceeding 63:4
process 7:5
profile 17:9,24 18:7,
14,23 19:2,9,21 20:7,8
profiles 14:23
programming
32:17,19 33:9,17,24
34:9,19 35:24 36:15
38:22 39:6 40:18 41:2
43:15 49:7 53:18
Programming'
35:18
programming.'
39:15

project 59:10
proper 23:15 32:12
proposed 9:15
31:18,19
provide 24:8 29:4
33:24 39:14 41:1 43:14
45:15 46:11,16,24 48:5,
18,24 49:9,23 50:12,15,
19
provided 19:18 32:8
33:11 36:10 59:10
providing 19:22
20:9 32:3,10 33:9 34:9,
18 35:17,23 36:4 49:7
provisioning 40:11
proxies 54:9 55:15
proxy 56:14 60:3,16
62:2
PST 63:4
publication 55:11
56:3,10,12
publications 56:10
published 56:8 60:5
publisher 24:7 33:8,
16,23 34:8,18 35:16,23
36:5,10 40:1,12,17 41:1
43:14 51:7
put 24:25

Q

qualify 45:25
quarter 54:7
question 5:14,16 6:8
10:12,14,18,20 13:25
14:4,5 15:14 20:3 21:14
25:15 28:23 29:1,17
34:5 36:2 38:8,18 43:12
44:24 46:3 47:20 48:21
53:21,23 55:7 57:19
questionable 59:24
questions 37:22,25
38:3,5,20 62:8
quote 54:6

R

radius 61:24
raise 4:23
raised 46:21
random 13:18
randomly 12:12
13:5,13
range 59:5 61:8,12
re-ask 44:24
read 4:2 10:14,15
25:3,4 34:12 47:13 48:8
49:19 50:5 51:19 58:14
reading 54:7 60:23
real-time 14:20 51:3
reason 6:12,25 36:6
44:11 45:8
reasonable 7:4
reasons 9:16 44:19
recall 10:17 13:25
14:3 17:8 21:13 29:1
30:11,12 43:18 53:22
56:15
recalling 48:20
receiving 11:14
52:3,9
recent 31:21 32:2,13
recess 41:15 62:15
recollection 30:14
record 5:9 10:16
47:20 62:18
recordings 26:21
records 59:5
redirect 62:16
refer 25:12 32:17,19
42:4
reference 15:17
16:24 19:17 44:20
54:12,18
referenced 56:19

references 59:16	review 7:7 47:19	services 57:4,8	specific 13:12,23 14:8 16:11 18:6 19:5 21:10
referring 9:5 24:17 33:25 52:5,14	room 4:6	set 30:19 31:20 32:5	specifically 35:11 55:1
refinement 32:12	rough 62:22 63:2	set-top 52:19	specification 24:6 29:12 34:3,13 41:5
refresh 30:14	roughly 55:5 61:4,7,8	setting 46:22	speed 7:5 17:19
regional 57:10,12	routinely 55:20	severely 60:17	spend 29:16
regular 62:23	Rule 4:2	shakes 5:23	spotted 25:18
relate 6:24	S	share 16:6 29:12	SQL/MYSQL 59:5
related 6:16,21	scenario 20:6,11,16	shed 27:11	stand 51:23
relationship 17:25 18:11,17,21 36:18	scope 32:9	shocked 43:9	start 33:22 34:7 40:24
relevant 47:15	screen 7:11	Shorthand 4:10	starting 17:6 18:25 24:7 31:15
reliable 58:6,18,24	search 28:5,10	sic 27:2	starts 14:16
rely 43:15	section 23:6 34:25 56:25	side 59:21	state 4:12,17 5:8
relying 43:3 58:5	security 52:20	signal 42:17,22,25 43:7	stated 4:16
remotely 4:7,8	select 51:6	simplify 25:24	statement 44:21
rename 25:24	selected 10:1 12:12, 14,18,23 13:5,13,14 14:22 15:21 21:10 27:20 33:18 35:19,25 38:23 39:12 40:1	simply 21:6,17 22:11 58:5	states 19:17
renders 44:3	selecting 33:17	single 18:14 37:12,19 42:8,24	static 53:14
repeat 10:12	selection 11:15,16 12:25 15:3,11,13 23:14 33:10,15 35:16 42:22 43:1 49:5,11,15,17 51:4,5 57:10	sit 48:20	stay 21:25
rephrase 5:15 25:14	selects 10:6,10 11:2 24:9 49:11	sitting 43:18	step 36:4,7,8
reporter 4:1,11,20,22 5:20 6:3 10:14,15 62:20,25 63:3	send 63:1	skill 11:6,18 18:9 21:20 22:15 23:25 28:16 36:3 41:6 42:23 52:17,22 55:13 61:3	steps 40:11,19
reporting 4:6,16	sense 13:1 22:13 26:8 27:20 30:7 49:10	slight 51:10	stick 38:7,8
represented 21:7	sentence 18:10 26:5 33:14 34:1,12,13,16 40:16 45:13 51:3 52:7 54:12,15,18 59:20	slightly 24:25 31:4	stipulate 4:13
requested 10:16	separate 7:11 29:4	sounds 7:4 12:4 62:14	stipulation 4:2
require 14:5 23:21 24:13 33:23 34:18 35:23 39:11 41:1 58:4	sequence 21:7 24:19 29:24 30:4 31:23 32:6 42:1,10,15	source 15:24 19:11, 14,22,25 20:8,14,18 45:15 46:5 47:25 49:9, 18 50:4 58:6	storage 28:14
required 11:19 15:7 23:17 39:10 44:10 45:9 49:16	server 47:6 52:18	source's 49:12	stored 19:3 27:4 28:13 45:18 46:25
requires 12:5 43:14 47:20		sources 19:4,18 46:11,16,23 47:7,10 48:5,17,24 49:22 50:12, 15,18	stream 23:15,21 24:4,8,11,13 25:8 27:19,20 28:22,25 29:6, 14,23 30:9,18 31:8,12 32:1 36:20 37:19 40:2 41:21,25 42:7,8,9 45:25 46:6 48:11 49:16,17,18 50:4 51:5,6 53:20
requiring 25:5 26:6 27:18 57:4		span 59:7,8	stream.' 49:12
response 5:22 7:21 8:4,16,22 30:10 33:10 51:14		spans 61:17	streaming 42:13
restricted 57:11		speakers 57:21	streams 28:19 36:15 45:16 46:12,16,24 48:6,
result 49:6			

18,25 49:10,23 50:13,15	techniques 57:5,17 58:1,20	traveling 55:22	view 39:25 44:2
structure 13:7	television 47:25 53:9,14,17	trivial 55:18	VII 23:6
structures 14:25	temporal 11:17 24:19	turn 39:6	VII.A. 35:12
studies 55:8,13,23 56:7 58:9	ten 59:15 62:11	turning 23:24	virtual 55:16
studies' 55:8	term 9:9 12:25 13:15 15:5 26:16 28:6 29:5 32:1 42:17 52:12,25 53:2,3,5	TV 45:16,24 47:10 48:6	VPN 55:19 58:11
study 54:13,16,19,21 56:20 58:25	terms 11:17 20:20 34:4 36:17 42:4 50:6	type 45:17 50:13	VPNS 55:17,21
submitted 7:21 8:3,16,22 31:7,11 51:13	terrible 61:8,16 62:3	types 26:21 27:1 48:7	vulnerabilities 52:21
substantively 32:9	testified 5:2	typo 51:10	
sufficient 12:14	testimony 6:13		
summarize 9:25	tests 16:8	U	W
summary 34:20,22 35:2	Texas 62:5	uh-huhs 5:23	walk 36:16
support 58:9	thing 62:18	ultimately 47:16	watch 53:13 55:21
supported 24:5	things 17:19 25:7,24 50:9 58:17	understand 5:11,14,25 11:18 15:22 17:15 18:10 23:25 28:16 34:2 36:4 42:24 43:22 54:8 55:14	weather 14:24 15:16 21:18 57:10 61:17
supporting 30:9	thinking 53:13	understanding 13:3 16:4,6 19:13 25:13 26:16 27:9 55:4	web 57:9
supposedly 62:1	thinks 62:1	understood 5:16,24 6:4,10 11:6 21:3,19 22:14 35:1 41:6 53:1,3	Whitehead 15:17,22 16:2,5,9,11,15,24 17:6,8,21 18:5,21 19:16 20:5 35:15 43:23 44:2,7,15 52:1,12,15,24 53:6 61:19
swear 4:24	thought 36:22 38:1 39:8 42:19	unh-unhs 5:23	Whitehead's 45:15,19 46:11,15,23 47:1,5,9 48:4,17,23 49:6,8 51:3
switching 37:22	thousand 61:14,15,16,17,21	update 59:23	windows 6:23,25
sworn 5:2	thousands 61:12	upload 56:4	word 5:21 12:23 13:14 21:2 22:12 24:15,16 30:2
synonymously 24:22	time 6:6 13:6 14:5 15:19,20 29:17 41:9 53:22	uploaded 6:22	wording 31:11,24
system 49:6 52:20	times 53:12	usage 12:24	words 11:23 34:23,25
systems 60:16,18	titled 56:25	useless 61:19	works 41:9 60:6,13
	today 6:13 43:18 48:21 55:20	user 10:1,6,10 11:2 14:22 19:5 24:10 33:19 42:23 43:1 49:5,10,15 51:6	World 59:10
T	told 16:7	user's 51:4	write 9:14 12:11 14:19 15:3 40:9 45:14 59:3
table 38:18	tonight 63:2	user-specific 24:10 51:7	writing 5:20
talked 36:13 43:6	tons 61:17,18,23	users 33:11 36:11	wrong 14:13 50:10,17
talking 20:19,22 21:17 24:1 34:3 38:1 53:17 58:4	tools 59:11		wrote 23:13 27:17 33:7 49:4 51:23 52:7
talks 24:21	top 60:21	V	
targeted 57:9,18 58:1,21	transcript 6:2 62:21,23	video 26:21 45:16 48:6	
teams 61:24			
TECH 16:19			

Z

ZIVOJNOVIC 4:18
5:7 7:13,19 8:2,9,14,20
10:13,21 13:2 14:7
16:3,17,21 17:1,14,17
18:19 19:19 20:4 21:21
31:3 36:12 37:1 41:7,
13,16 44:23 46:13 49:1
56:17 57:22 62:8,12,17
63:1

zones 61:18