

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3 SAP AMERICA, INC.,)IPR2024-01433
4 PETITIONER,)U.S. Patent No. 8,751,948
5 V.)MOBILE VIDEOCONFERENCE
6 CYANDIA, INC.,)DEPOSITION OF
7 PATENT OWNER.)CHRISTOPHER SCHMANDT
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MOBILE VIDEOCONFERENCE DEPOSITION OF CHRISTOPHER
SCHMANDT, taken remotely before Cheryl A. Rooney, RPR,
CRR, Online General Notary Public within and for the
State of Nebraska, beginning at 9:30 a.m., on June 18,
2025.

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I N D E X

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E X A M I N A T I O N

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DIRECT EXAMINATION:

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BY MR. PRICE..... PAGE 4

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E X H I B I T S

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EXHIBIT NO. MARKED

12

Exhibit 1 | '948 Patent 4

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Exhibit 2 | Schmandt Declaration 4

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Exhibit 3 | May 2009 Parent Application 4

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1 (Whereupon, the following proceedings
2 were had, to-wit:)

3 (Exhibits 1101, 1103 and 1106 marked
4 previously.)

5 CHRISTOPHER SCHMANDT,
6 having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PRICE:

10 Q. Good morning, Mr. Schmandt. How are
11 you today?

12 A. I'm fine. How are you?

13 Q. I'm good, thanks. Do you understand
14 why you're here today?

15 A. I hope so.

16 Q. And what is your understanding of why
17 you're here today?

18 A. To be a deponent.

19 Q. What does it mean to you to be a
20 deponent?

21 A. Well, I authored a declaration, and I
22 authored a declaration for the petitioner and
23 the patent owner has a right to depose me about
24 the contents of that declaration.

25 Q. Okay, great. The declaration that you

1 are referring to, do you have access to the
2 chat? I uploaded a document, I just wanted
3 to --

4 A. Because this is my declaration, I
5 generally have these documents available, and
6 here is hard copy and I prefer to work off of a
7 hard copy. Do you need me to see what's in the
8 chat?

9 Q. I don't need you to see what's in the
10 chat. I am fine with you using a hard copy
11 today.

12 A. They're unmarked, by the way.

13 Q. As long as they're unmarked. And if
14 there are any markings made during the
15 deposition, we will ask for your copies.

16 A. Correct.

17 Q. But, yeah, with those provisos, you're
18 more than welcome to use your hard copies.

19 Do you have anything open on your
20 screen in front of you today on your computer
21 other than the Zoom screen?

22 A. The Zoom takes most of the screen.
23 Looks like in the background I have a calendar
24 window.

25 Q. Nothing related to this case, no

1 browser windows, nothing like that?

2 A. No -- well, the calendar is in the
3 browser but I have nothing about this case.

4 Q. Okay. As long as we can keep that
5 going for the rest of the deposition, I won't
6 hound you on what's on your screen for the rest
7 of the day. Sound good?

8 A. No problem.

9 Q. Okay. So earlier today you mentioned
10 that you drafted a declaration. Just for the
11 record, reading the caption, just to make sure
12 we were talking about the same document, the
13 declaration you're referring to was filed in SAP
14 America, Inc. v. Cyandia, Inc. in Case Number
15 IRP 202401433?

16 A. Yes, that's correct.

17 Q. Okay. And this is challenged in the
18 patentability of U.S. Patent Number 8751948?

19 A. Yes, also correct.

20 Q. Are you okay if we call that the '948
21 patent today?

22 A. Yes, absolutely.

23 Q. Roughly, how many times have you been
24 deposed?

25 A. I've lost track. More than 30.

1 Q. So you're a pro.

2 A. I don't consider this to be my
3 profession, but I do it.

4 Q. Okay. So just -- you should be
5 familiar with the ground rules. I'm going to
6 ask you questions. I need your best truthful
7 answers to all the questions. Any reason that
8 will be a problem today?

9 A. Should not be.

10 Q. And any reasons, medications, drugs,
11 you're not feeling great, that you feel like you
12 won't be able to give your best and most
13 accurate testimony today?

14 A. All is good.

15 Q. Okay. Glad to hear it.

16 If you have your declaration in front
17 of you, can you just turn to Page 73.

18 A. Yes, I'm there.

19 Q. Is that your signature on the
20 signature line?

21 A. Yes, it is.

22 Q. And you signed this document on
23 September 20, 2024?

24 A. That's what it says, so I believe it's
25 correct. I can't remember.

1 Q. As of September 2024, would it be
2 accurate to say that this document contained all
3 of the opinions that you had formed regarding
4 the patentability of the '948 patent in view of
5 the PCT publication and Austin-Lane?

6 A. Yes.

7 Q. Since September 20, 2024, have you
8 developed any new opinions about the
9 patentability of the '948 patent that are not
10 currently contained in your declaration, both
11 for and against patentability?

12 A. Well, the preliminary response and the
13 board's decision raised some discussion about
14 some aspects that I had not opined on, and I
15 certainly have considered them in preparation
16 for today.

17 Q. And what was one of those things that
18 the board opined on -- the board discussed and
19 you did not opine on but you have now a new
20 opinion today?

21 MR. THACKER: Objection; form.

22 THE WITNESS: There are several
23 claimed clauses about notification methodology
24 and notification data, I did discuss those in
25 the context of Austin-Lane but I did not discuss

1 those in the issue of whether or not the patent
2 was allowable at the 2009 date based on those.

3 BY MR. PRICE:

4 Q. Why did you not opine about that issue
5 when you drafted your declaration?

6 A. Because I wasn't asked to.

7 Q. Okay. Did you review the petition at
8 or around the time that you signed your
9 declaration?

10 A. I can't recall.

11 Q. Are you aware of whether or not you
12 knew that petitioner was going to argue that the
13 '948 patent lacked written description for
14 determining a notification method in the 2009
15 priority application?

16 MR. THACKER: Objection; form.

17 THE WITNESS: I can't recall
18 whether I knew that or not. I was focused on
19 the tasks to which I had been assigned.

20 BY MR. PRICE:

21 Q. Okay. Is it your testimony today that
22 since the -- since reading the institution
23 decision you have now developed new opinions
24 about that issue?

25 A. Yes.

1 Q. And what are those opinions?

2 A. My opinion would be that the '948
3 patent is not -- what's the term -- may not
4 claim priority to the 2009 application on the
5 basis of written description for those claimed
6 elements.

7 Q. And is your -- is this new opinion
8 based on a particular construction of the term
9 notification method or something else?

10 MR. THACKER: Objection; form.

11 THE WITNESS: No, I discussed the
12 notification -- I discussed the notification
13 method in my analysis of Austin-Lane with
14 respect to the claims, and I think that's a
15 correct analysis, and I haven't changed on that.
16 I simply had not applied that to an analysis of
17 what exactly the 2009 application said with
18 respect to that.

19 BY MR. PRICE:

20 Q. And that's because you were not asked
21 to do that assignment when you were drafting
22 your declaration?

23 A. That's correct.

24 Q. Did you withhold any opinions about
25 the patentability of the '948 patent from your

1 declaration simply because you were not asked to
2 opine on them by counsel?

3 MR. THACKER: Objection; form.

4 THE WITNESS: I am not sure what
5 you're asking. I think we just discussed that I
6 did not opine on patentability on the basis of
7 the notification methodology and data -- I'm
8 sorry, notification methodology, notification
9 method, because I wasn't asked to. So I didn't
10 spend any time added.

11 It is worth noting that at the time,
12 more or less when this petition was filed, there
13 were four other petitions filed against this
14 family of Cyandia, and so I was rather busy at
15 the time.

16 Q. Yeah, so my question is -- I guess how
17 did you go about developing your opinions about
18 the patentability of the '948 patent? Why don't
19 we start there.

20 A. Well, certainly have to start with
21 conversation with the attorneys about the legal
22 standards of what was required, what would be
23 required for, in this case, the '948 to be able
24 to claim priority back to the 2009 application.
25 And then I was asked to -- I was asked to opine

1 on tactile input and what a POSITA would know
2 about tactile input and the like.

3 Q. Okay. So what was the first thing you
4 read in preparing for your declaration?

5 MR. THACKER: Objection; form.

6 THE WITNESS: Well, that would
7 certainly be the patent. Always start with the
8 patent.

9 BY MR. PRICE:

10 Q. Okay. And did you develop any
11 opinions on the patentability of the '948 patent
12 simply from reading the '948 patent itself?

13 A. Well, I developed the opinion that the
14 '948 was a vapid word salad, but that's not the
15 kind of opinion I would put in a declaration.
16 When I look at a -- when I'm asked to do work,
17 say, opposed to a patent, my primary first pass
18 consideration is do I think there's a germ in
19 here of something that I would, based on my
20 experience, would consider patentable on the
21 basis of novelty. And I did not find that in
22 here. I had built systems that did very similar
23 operation in terms of alerting, without all the
24 word salad about the architecture, in years
25 earlier. So the notification aspects did not

1 strike me as being novel.

2 Q. Mr. Schmandt, I will remind you that
3 your testimony here today is just as live as
4 your testimony that you provided in your
5 declaration. So I'll just let you know that.

6 Okay. And so after you read the
7 patent and determined it was word salad, what
8 was your next step in terms of preparing your
9 declaration?

10 A. Well, I would say certainly I had
11 questions for the attorneys about how this
12 petition was different from the other petition
13 against the '948 patent, for which trial was
14 denied recently, a while ago. So it was a
15 question of what's the, how should you put it,
16 what's the coverage, what's the angle, what's
17 the point of view; right. And those two
18 petitions took different -- were built on
19 different bases. Okay. So I wanted to
20 establish what the basis to be considered here
21 was. Probably that would have involved
22 conversations with the attorneys, of which there
23 were many. And I am pretty sure the next thing
24 on my agenda in order to understand how to
25 proceed would be to have read the PCT

1 application, the 2008 provisional, the 2009
2 provisional, the 2009 application, the 2011
3 application, and the file history.

4 Q. Okay. And after your review of those
5 materials, you did not, on your own, decide that
6 it was worthwhile to challenge the written
7 description support for the notification method;
8 is that correct?

9 MR. THACKER: Objection; form.

10 THE WITNESS: I -- no, I did not
11 make that -- you phrased that as sort of an
12 affirmative negative decision. I did not decide
13 that it was not worthwhile, that it was not
14 appropriate. I simply did not consider it. I
15 considered the tactile aspects because in
16 reviewing the other documents, that's what I had
17 been asked to consider. And there's certainly
18 no point in wasting my time and client's time
19 and money reviewing things that don't need to be
20 considered. So I tend to focus my work.

21 BY MR. PRICE:

22 Q. Were tactile alerts known to persons
23 of ordinary skill in the art at the time the
24 2009 priority application was filed?

25 MR. THACKER: Objection; form.

1 THE WITNESS: That is a question
2 that is too broad. I don't even know in that
3 context what a tactile alert is. There had been
4 people building specific systems, which I
5 included a number of documents of as exhibits in
6 the report, that could utilize tactile
7 sensations in various contexts under different
8 kinds of applications. Those -- the use of
9 those tactile queues was sometimes to reinforce
10 a user's experience with a user interface, which
11 like the user mouse is over a Window boundary.
12 That could be considered alert because it only
13 happens when that event occurs.

14 And there were other attempts to put
15 vibrating motors on phones. In my work I put
16 one on a ring so people could get a vibration on
17 their ring when an event happened. So vibration
18 tactile was certainly used as notification for
19 various kinds of events, yes.

20 Q. Okay. And so, for example, in
21 Paragraph 47 of your declaration, you say,
22 POSITAs in 2009 were familiar with visual,
23 auditory, and tactile information and their
24 differences?

25 A. I'm sorry, paragraph number?

1 Q. 47.

2 A. Sounds good, but let me just take a
3 look. Yes.

4 Q. In Paragraph 48 you go on to say that,
5 you know, while tactile information was known,
6 it was not the most used form of conveying
7 information to users on laptop and desktop
8 computers; is that correct?

9 A. Yes.

10 Q. Was it a common way to convey
11 information to users of mobile devices in 2009?

12 MR. THACKER: Objection; form.

13 THE WITNESS: Some. Some mobile
14 devices -- well, I excluded pagers here. I
15 don't know if you want to consider a pager to be
16 a mobile device. Do you or do you not? I would
17 not consider a mobile device to be a smartphone,
18 or a wireless PDA or something like that. Do
19 you want to include pagers in that, or not?

20 BY MR. PRICE:

21 Q. You're the expert here.

22 A. Okay. So let's leave pagers out.
23 Now, the -- I want to make sure I answer the
24 question precisely. Could you repeat it?

25 Q. Was it common for smartphones in the

1 2009 time frame to alert users with tactile
2 information?

3 MR. THACKER: Objection; form.

4 THE WITNESS: Okay. So certainly
5 in 2009 some smartphones had vibration, yes. I
6 can't off the top of my head tell you what
7 percentage of them did. But some of them
8 certainly did. The system architecture employed
9 by these devices was such that the phone would
10 get a notification from the system, from the
11 base station, about an event, and the phone
12 would decide, after consulting user preferences
13 in the form of settings, how to notify the user,
14 which could include visual, auditory, and in a
15 phone so equipped, tactile. That was a closed
16 eco system, and it was not available to an
17 application that was not running on the phone.

18 So the system, the mobile telephone
19 system, could not tell the phone to vibrate. It
20 could tell the phone here's an event such as a
21 text or a phone call, and the phone could
22 decide, if it was so equipped, to vibrate.

23 BY MR. PRICE:

24 Q. I uploaded a document into the chat.
25 It's a copy of the '948 patent. You can feel

1 free to download it or --

2 A. I have one. Thank you. One minute.

3 Okay, I have that in front of me.

4 Q. I'm also going to upload the 2009
5 priority application. So you just gave me an
6 answer about tactile information and how there
7 were some cell phones that could provide tactile
8 alerts, but it was something about a closed eco
9 system; is that correct?

10 A. Yes.

11 Q. Is that testimony relevant in any way
12 to your opinions about whether or not there's
13 written description for the term alert in --

14 MR. THACKER: Objection; form.

15 MR. PRICE: I'm not finished.

16 BY MR. PRICE:

17 Q. -- in the 2009 priority application?

18 MR. THACKER: Objection; form.

19 THE WITNESS: Yes.

20 BY MR. PRICE:

21 Q. And why is that relevant?

22 A. Because the -- like I said, the 2009
23 application, the logic here that was posed in
24 the preliminary response was that because the
25 2009 application mentions mobile devices, that

1 that is sufficient written description for
2 tactile alerts. And part of that logic was that
3 the claim that it was common for mobile phones
4 to have the ability to vibrate. I'm not
5 disputing that last sentence. I'm not verifying
6 it, but I'm not disputing it.

7 But the point is that an alert in the
8 context of -- well, there are a number of
9 issues. One issue is that that sentence is only
10 about visual alerts. It doesn't have anything
11 to do with tactile alerts. So everything else
12 is -- everything else that I'm going to say is
13 irrelevant.

14 But if we arguendo say that it did,
15 then the fact that the phone could decide to
16 vibrate does not mean that an application that
17 runs server-based off the phone, such as
18 described in the '948, could on its own decide
19 that some event has happened which should
20 trigger a notification and that that
21 notification could be tactile. Phones at that
22 time simply didn't have a way of doing that. It
23 was supported in the operating system. There
24 was no API, Application Programming Interface to
25 allow that.

1 Q. Do you have any evidence of these
2 claims that you're making?

3 A. I worked extensively in the field. I
4 have a series of publications that talk about
5 similar topics.

6 Q. Okay. And you're aware of the
7 capabilities of every single system at the time
8 in order to be able to make a sweeping statement
9 that none of them allowed the definition of
10 alerts as defined on a remote system; is that
11 your testimony?

12 MR. THACKER: Objection to form.

13 THE WITNESS: Perhaps I shouldn't
14 say none of them because that would mean I would
15 have to go back and analyze every device at the
16 time, which I have not done. Let's say the
17 majority of the ones, the majority of them.
18 Typically those running IOS operating system,
19 Android operating system or Symbian operating
20 system, which were the ones that I had the most
21 familiarity. I also worked with the Motorola
22 iDEN phones. That's lower case i, capital DEN
23 system from Motorola.

24 BY MR. PRICE:

25 Q. So a system sending a text -- I think

1 this is kind of what you have in mind, right --
2 a user gets a text, and the alert is going to
3 come out as -- however it's defined on the
4 mobile device; right?

5 A. Yes.

6 Q. Okay. So do you also agree that
7 there's no written description for sending a
8 visual alert --

9 A. I am not --

10 Q. I'm not finished with my question.

11 A. I'm sorry.

12 Q. Under the same logic do you think that
13 there's no written description for providing a
14 visual alert because the system that's sending
15 it doesn't choose how it's -- in this situation
16 we're talking about, if the system itself
17 doesn't, you know, decide how it's presented on
18 the third party device, the end device, then is
19 there also lack of written description for
20 auditory and visual alerts in the 2009 priority
21 application?

22 MR. THACKER: Objection; form.

23 THE WITNESS: I haven't made that
24 claim. I haven't taken that position one way or
25 the other.

1 BY MR. PRICE:

2 Q. And you can't answer that today;
3 correct?

4 A. Sorry?

5 Q. You can't answer that today?

6 A. I can't answer that today? I'm not
7 going to try to answer it off-the-cuff, no.

8 Q. Why not? What's different about that
9 situation, if what we're concerned about is the
10 fact that the sending party has no control over
11 how the alert is actually presented?

12 MR. THACKER: Objection; form.

13 THE WITNESS: Well, you would
14 have to consider -- you would have to consider
15 what the data was and how it was received on the
16 device. So certainly in 2009 at least some
17 phones supported some level of web browser. If
18 a phone supports a web browser, then a web
19 server can -- a web server sends HTML to the
20 browser and the browser decides how to display
21 it, so the HTML that the server sends to the
22 browser is directing it. That may constitute an
23 alert. So it may be possible to do that in some
24 cases. So I'm not trying to make any -- I'm not
25 trying to make any blanket determination. But

1 there's nothing in HTML that says vibrate.

2 BY MR. PRICE:

3 Q. That's another thing that you can say
4 with confidence, with evidence?

5 A. Yes.

6 Q. Is it your opinion that the term alert
7 as used in the '948 patent only encompasses
8 alerts that are specifically defined and
9 transmitted from the sending device to the end
10 device?

11 MR. THACKER: Objection; form.

12 THE WITNESS: Will you repeat
13 that, please?

14 BY MR. PRICE:

15 Q. Is it your opinion that the term alert
16 as used in the '948 patent only refers to alerts
17 that are transmitted from the sending device,
18 and specifically defined thereon and executed on
19 the receiving device?

20 MR. THACKER: Same objection.

21 THE WITNESS: Well, determining
22 how the alert should appear or sound or feel is
23 described in the patent as art of the operation
24 of I believe what is called the notification
25 server. I'm not certain of that term. Which is

1 server side. So there is nothing in the '948
2 patent that says. Either directly or
3 indirectly, that the alert modality is
4 determined by the client device.

5 BY MR. PRICE:

6 Q. Okay. This sounds like a claim
7 interpretation question. Is it?

8 MR. THACKER: Objection; form.

9 THE WITNESS: It's simply what
10 the '948 discloses.

11 BY MR. PRICE:

12 Q. Okay. You're telling me that the '948
13 patent requires that the notification method
14 have the server side device specifically spell
15 out how the alert is to be presented on the
16 mobile device? Is that your testimony?

17 MR. THACKER: Objection; form.

18 THE WITNESS: Everything until
19 the last major section of Claim I, i.e. before
20 what the claim labels as step H, is performed on
21 the server side, on the apparatus, right, and is
22 only in part H that the notification is
23 transmitted to at least one external device. So
24 all the parts about deciding -- about the
25 notification method are not, explicitly not

1 occurring on the mobile device.

2 BY MR. PRICE:

3 Q. My question was a little different.

4 Where in the claim do you see the requirement

5 that the server side device specify how the

6 alert is to be presented on the at least one

7 external device?

8 A. Well, looking at my declaration, I

9 discussed that under element 1.10, 1.10, my

10 Paragraph 86 in my analysis of Austin-Lane where

11 I opined that the notification method requires

12 determining the device or devices to which send

13 the alert, sending the alert, determining the

14 method of getting it there, the protocol, and

15 the type of alert. So yes, I believe that it is

16 required.

17 Q. Okay. So I'm here with you on

18 Paragraph 86. Do you see where you say

19 specifically Austin-Lane teaches determining a

20 notification method, which then you refer to as

21 a delivery mechanism -- which I'm going to have

22 questions about -- but then it goes on to say,

23 which can include, and then there are three

24 things?

25 A. Yes.

1 Q. What did you mean by can include?

2 A. I probably should have said should
3 include because I think you need all three of
4 these to get an alert to an external device.

5 Q. Is it sufficient to say the alert is a
6 text alert in order to satisfy that third
7 requirement?

8 MR. THACKER: Objection; form.

9 THE WITNESS: Well, you actually
10 have to send the content. I can't tell the
11 device display a text alert without displaying
12 what it is to say. That could be folded into
13 the communication protocol, right. For example,
14 if the communication protocol is one that --
15 let's say it's HTTP -- HTTP for a web browser.
16 So when I send HTML, which is the language of
17 HTTP, I can have a specific directive that says
18 this is text, or this is image, or this is
19 sound. And then I -- in the HTML I actually
20 have the data to display, or a link to the data.

21 So it may be redundant to say, well,
22 it's implicit in the -- it's implicit in the
23 protocol there that this is a text or a visual.
24 If it's a visual, it has an IMG tag. If it's
25 texted, it doesn't. AND the default with the

1 HTML is if I don't say what it is, it's text.

2 BY MR. PRICE:

3 Q. Okay. So if a system, you know,
4 decided -- you know, an event happened, said,
5 okay, when I -- when this event happens the user
6 wants to get notified, presumably that's within
7 the scope of the '948 patent and the 2009
8 priority document?

9 MR. THACKER: Objection to form.

10 THE WITNESS: I'm sorry, I didn't
11 quite catch what you said there.

12 BY MR. PRICE:

13 Q. Okay. So say I have a system and
14 there are events that occur, and those events
15 result in the user getting notified somehow.
16 Would you agree that the '948 patent teaches
17 that, and that the 2009 priority document also
18 teaches that?

19 MR. THACKER: Objection; form.

20 THE WITNESS: And in your -- the
21 way you were phrasing your question, what is the
22 architecture between the user and the system?
23 Are they given the same devices?

24 BY MR. PRICE:

25 Q. Different devices.

1 A. Different devices, okay. So I think
2 the 2009 is inadequate on that.

3 Q. Why do you think the 2009 is
4 inadequate on that?

5 A. Because the 2009 never makes that
6 decision. The 2009 has devices are connected
7 through -- the external device is connected to
8 the system through a web services gateway, and
9 the way the system knows to communicate in the
10 2009 is by pushing data down a channel, which is
11 some form of HTTP connection through a web
12 services gateway, because that's what web
13 services gateways supported at the time.

14 So there is no determining which
15 device. It's only one. It's whatever is on the
16 other end of this connection to the web services
17 gateway.

18 Q. I'm sorry, what does the web services
19 gateway have to do with the question I asked?

20 A. Why don't you repeat the question,
21 then.

22 Q. If you would turn to the 2009 priority
23 application. I believe that's been marked
24 Exhibit 1106.

25 A. Okay, I have it.

1 Q. If you would turn to Paragraph 23.

2 A. Okay.

3 Q. Okay. Do you read Paragraph 23 to
4 limiting the way that information is presented
5 to a user as information presented through a
6 channel?

7 MR. THACKER: Objection; form.

8 THE WITNESS: No. The language
9 explicitly says the trigger may cause the
10 information channel to change its appearance or
11 take other actions that may be implemented by
12 the developer.

13 BY MR. PRICE:

14 Q. Okay. So it contemplates doing other
15 things than changing the appearance of the
16 channel; correct?

17 A. Doesn't say that.

18 Q. Well, the word may is there; right?
19 And then the words other are there; right? So
20 what other things are contemplated there other
21 than providing visual information through the
22 channel?

23 A. So overarching from the beginning,
24 whatever happens has to take place through a
25 channel, okay --

1 Q. Why?

2 A. Because it says the trigger may cause
3 the information channel to change its appearance
4 or take other actions. I presume that is -- I
5 parse that as the channel takes other actions
6 that may be implemented by the developer.

7 Q. And are you saying that the 2009
8 application limits the things that the developer
9 can do to providing information through the
10 channel, and if so, can you point me to that
11 location in the 2009 priority document that
12 discloses that limitation?

13 MR. THACKER: Objection; form.

14 THE WITNESS: It's not -- the
15 analysis here is not one of limitations or is
16 saying do not, so establishing boundaries. It's
17 simply a question of what did the inventor
18 disclose to show they had possession of the
19 invention. And simply saying there are other
20 things that can be done without giving some
21 indication of what or how those other things are
22 is insufficient. I'm sorry, I am talking from a
23 technical point of view. I'm not trying to
24 offer a legal opinion, obviously. I am not a
25 lawyer.

1 BY MR. PRICE:

2 Q. If you could turn to Paragraph 39 of
3 the 2009 application.

4 A. Okay, I'm there.

5 Q. Do you see in the very last sentence
6 of paragraph 39, which says the alert can appear
7 as defined on other platforms such as a mobile
8 device, a television, set-top box, a Blu-Ray
9 player or other devices?

10 A. Yes, I could.

11 Q. So in that embodiment is the -- do you
12 see that alert as being limited to occurring
13 through the channel, or a channel?

14 MR. THACKER: Objection; form.

15 THE WITNESS: First of all, you
16 use the term embodiment. I don't see the term
17 embodiment here.

18 BY MR. PRICE:

19 Q. We can talk about the meaning of the
20 term embodiment if you're not aware of what its
21 meaning is.

22 A. My answer is conditioned on that I am
23 not considering this to be in any way a distinct
24 embodiment because I don't see language that
25 teaches me that. What I do see is that

1 Paragraph 39 is discussing the channel alert
2 server, and the paragraphs around it generally
3 begin with several words describing what
4 component of the system architecture is being
5 described in that paragraph. So I would say
6 that yes, this alert would be sent through the
7 channel alert server, which controls channels.
8 It says that in the first sentence.

9 Q. Well, it says that the channel alert
10 server continually monitors application and
11 information activities defined by a channel;
12 right?

13 A. Yes.

14 Q. Does it require that the alerts
15 generated for information about a channel be
16 provided in any particular way, or does it allow
17 for the platform itself to define it?

18 MR. THACKER: Objection; form.

19 THE WITNESS: A few sentences
20 down it reads if an established condition is met
21 the channel alert server 21 may notify the
22 identity management server to -- sorry. If an
23 established condition is met, the channel alert
24 server, 211, may notify the identity management
25 server, 208, to confirm the subscriber of the

1 event, determine the active devices of the
2 subscriber, and then pass through the web
3 services gateway 207 and the channel grid
4 framework 201 to provide a visual or auditory
5 alert in the channel.

6 So yes, this is all about sending the
7 alerts through the channel.

8 BY MR. PRICE:

9 Q. Okay, and then continuing on doesn't
10 it also say the alert can appear as defined on
11 other platforms?

12 A. Yes, it says the alert can appear as
13 defined on other platforms. Now, two things to
14 note. First is those other platforms would
15 really have to be connected to a channel because
16 that's what this invention is all about. But
17 secondly, this is only about -- this sentence
18 applies only to visual alerts.

19 Q. Only?

20 A. The verb is appear.

21 Q. Okay. Is that the only way that -- so
22 are you saying that this paragraph contemplates
23 a mobile device that only allows visual alerts?
24 I don't understand.

25 MR. THACKER: Objection; form.

1 THE WITNESS: It is what it is.
2 That's the inventor's words. This paragraph is
3 not about what the mobile devices capability is,
4 and you can see it. It's pretty broad, right.
5 A mobile device, a set-top box, a Blu-ray
6 player, which was, you know, a CD player, a DVD
7 player. It says the alert can appear.

8 BY MR. PRICE:

9 Q. Okay. And you think the word appear
10 is limited to visual alerts?

11 A. Oh, yes.

12 Q. And you're an expert in the term --
13 and you think that allowing an alert to be
14 played as defined on other platforms would be
15 limited to visual alerts based on this?

16 MR. THACKER: Objection; form.

17 THE WITNESS: Because it says the
18 alert can appear. And in terms of expertise, I
19 worked extensively with visual, auditory, and
20 tactile alerts, and I would never use the word,
21 say, appear to talk about an auditory alert,
22 because appear means it becomes visual.

23 BY MR. PRICE:

24 Q. Is that the only meaning of the term
25 appear?

1 A. Well, since appear hasn't really been
2 defined in the claims, and I haven't tried to do
3 claim construction, I'm just applying the plain
4 ordinary meaning of a POSITA, or you don't even
5 need to be a POSITA to know that the word appear
6 talks about visual in this case. And something
7 that becomes sensorially aware, using the verb
8 appear, is talking about the visual sense.

9 MR. PRICE: We've been going for
10 about an hour. Is this a good time for a break?

11 THE WITNESS: As you wish.

12 (10:25 a.m. - Recess taken.)

13
14 (At 10:37 a.m. with parties present as
15 before, the following proceedings were had,
16 to-wit:)

17 BY MR. PRICE:

18 Q. Welcome back. Did you have any
19 conversations with anybody about the substance
20 of your testimony during the break?

21 A. No. Wife asked how it was going. I
22 said I thought it was going okay.

23 Q. Can we turn back to Paragraph 39 of
24 the 2009 priority application.

25 A. Okay, I have it here.

1 Q. About halfway down do you see where it
2 says likewise, the alert may trigger additional
3 actions affecting channel 202 and the underlying
4 computer application?

5 A. Yes.

6 Q. Does that affect in any way your
7 opinion that alerts may only be provided through
8 the channel in the 2009 parent application?

9 A. It doesn't change my opinion.

10 Q. Why is that?

11 A. Because it doesn't say that. The
12 alert may trigger additional actions affecting
13 the channel, and the underlying application. So
14 the alert can do something else, you know,
15 perhaps an alert. Once you alert that something
16 has started, you may -- let's say you were doing
17 a stock quote alert. You know, you might say
18 tell me when this price reaches 55. So you
19 might get an alert that said it reached 55. But
20 let's say it keeps going up, now it hits 60,
21 which is another 10 percent. Maybe the system
22 would say oh, well, we're going to send another
23 alert because it's going up significantly.
24 That's just an example. But that's in the
25 system that's deciding to make the alert. But

1 that's just the possibility. It's really up to
2 the inventor to tell me what they mean by that.

3 Q. Well, but there's an example that
4 follows, isn't there?

5 MR. THACKER: Objection; form.

6 THE WITNESS: It may establish
7 another channel, okay. I'm sorry, so if the --
8 right, all right. So let's say the channel in
9 the sentence we just looked was a monitoring
10 one, okay. And so this says that, yeah, okay,
11 so if a burglar alarm goes off we may alert law
12 enforcement.

13 BY MR. PRICE:

14 Q. Is that an alert provided through the
15 channel?

16 A. Doesn't say. Doesn't tell us.

17 Q. But presumably not because law
18 enforcement presumably is not a user that is
19 allowed to access this channel?

20 MR. THACKER: Objection; form.

21 THE WITNESS: It could well be in
22 the case of monitoring because it does say
23 protective services group. So it's not
24 necessarily law enforcement. But you can't just
25 auto dial 911. That doesn't work. So it's not

1 clear what the connection is to law enforcement
2 there, a law enforcement agency.

3 BY MR. PRICE:

4 Q. Okay. But it doesn't say that that
5 alert is provided through any channel; correct?

6 A. It doesn't say how the alert is
7 provided. It doesn't tell me that. Everything
8 else in this paragraph is about providing an
9 alert through a channel. So I wouldn't read
10 that as saying it provides it through some other
11 method because it doesn't tell me that.

12 Q. But it also doesn't restrict it in the
13 way that you are seeming to think that it's
14 restricted; correct?

15 A. I'm only reading what the -- I'm only
16 reading what the application says. I'm not --

17 Q. And the application does not say
18 provide an alert to law enforcement through the
19 user's channel; correct?

20 A. No, it clearly does not.

21 Q. Okay. I want to return to the
22 language of Claim I of the '948 patent. If we
23 can turn to Page 45 of the patent, that's where
24 Claim I is. So let me know when you're there.

25 A. Okay.

1 Q. Okay. My question is going to be
2 about limitation that's marked F in Claim I. So
3 let me know when you're there.

4 A. Okay. I'm there.

5 Q. Okay. When developing your opinions
6 about the patentability of that '948 patent in
7 this case did you come to an understanding of
8 what it meant to determine a notification method
9 by which to provide at least one alert means to
10 a POSITA in the context of the '948 patent?

11 MR. THACKER: Objection; form.

12 THE WITNESS: In my analysis and
13 my declaration I certainly discussed how that
14 was satisfied by Austin-Lane. As far as the
15 components of what an alert -- what the
16 notification method entails, that is based on
17 what the '948 patent itself teaches in the
18 specifications.

19 BY MR. PRICE:

20 Q. Where are you looking at the '948
21 patent specification to come up with the meaning
22 of the term notification method in the context
23 of the '948 patent?

24 A. Okay. It's scattered throughout. So
25 bear with me. So Column 6, the paragraph

1 beginning at Line 50 says that configuration
2 user preferences and session information may be
3 used to automatically -- to determine
4 automatically the optimal method. It also talks
5 about a backup mechanism, but that's not
6 necessarily required.

7 Then Column 15, Line 14 paragraph
8 discusses an example of types of alerts that may
9 be generated by eventing an alerting system,
10 subsystem for 52 may include but are not limited
11 to visual alerts, auditory alerts, tactile
12 alerts, email messages, SMS messages, activation
13 of at least one channel of a plurality channel,
14 and, here we are, notifications to a law
15 enforcement agency. So those are all aspects of
16 alerts that would be determined in deciding a
17 notification method, choosing notification
18 method, and we note that email uses an SMTP
19 protocol and SMS uses its own protocol. So
20 protocol is implicated in there.

21 At the bottom of Column 27, again, the
22 paragraph starting at Line 60, at step 768,
23 referring again to Figure 6, notification
24 manager of eventing and alerting subsystem 452,
25 queries the configuration server 454 for the

1 user's notification preferences, and correlates
2 these notification preferences with the session
3 manager to determine the best notification
4 method. That is the notification manager
5 queries the configuration server 454 and
6 determines, for example, that the user has
7 certain online notification preferences and
8 certain offline notification preferences.

9 So if online notify by a session,
10 continuing to summarize, if offline notify by,
11 for example, an -- I presume that's a typo -- it
12 says TXT, a text message, call the user's
13 landline, call a friend of the user and the
14 like. So those are all using different
15 communication protocols and methods in order to
16 get the message through, and of course we'd have
17 different -- the alert would appear differently.
18 You can't send a text to a landline.

19 So the next paragraph discusses
20 connectedness in session management. And at the
21 end of that says in one example it is determined
22 that the user 116 has an active session on his
23 or her laptop computer, which is one user device
24 118. As a result, it is determined that the
25 best alert notification method is via the laptop

1 computer.

2 And then in the following paragraph,
3 at step 770, referring again to Figure 6, the
4 notification manager of the eventing and
5 alerting subsystem 452 dispatches the event
6 notification i.e. alert through the user's
7 logical queue event -- logical event queue. For
8 example, the client gateway 418 of the
9 facilitation server 416 transmits (via AMF) the
10 alert to one or more user devices. AMF was an
11 alerting protocol, I believe, promulgated by
12 Adobe.

13 Okay. So let's see. So what we
14 clearly have here are different alerting systems
15 requiring different protocols, different types
16 of network connection, different types of data.
17 Choosing between text and email is an example.
18 There's probably more, but I think that
19 suffices. I can take more time, if you'd like?

20 Q. As long as you think that's
21 sufficient, because I'm going to have questions
22 about each section. So if there's other parts
23 of this application that you want to draw our
24 attention to --

25 A. Then I better.

1 Q. -- then let me know that.

2 A. So there is an example, Line 21,
3 Line 28-ish, which is pretty much from the 2009
4 application where the home security channel is
5 specifically a channel -- well, now it's called
6 a touch-lit, can change its appearance, turning
7 red. So that's in-channel alerting.

8 Q. Which -- where was that disclosure?

9 A. 21 -- Column 21, starting at Line 28,
10 through the end of that paragraph. I won't read
11 it, unless you want me to.

12 Q. That's okay.

13 A. So again, Column 23, Line 25,
14 discusses the notification manager queries, the
15 configuration server, and determines, for
16 example, that the user has certain online
17 notifications and certain offline notifications
18 and the text continues as we have cited -- as I
19 cited previously, active session call.

20 Friend of the user, that's the same
21 language. There's more at the beginning. I'm
22 not sure that I gave you Column 6, Line 50, that
23 paragraph -- I think I did. Anyway, that's
24 another.

25 Q. I'm sorry, which?

1 A. Column 6, Line 50, that paragraph. I
2 think I already got one, right.

3 Q. Yeah, you started there.

4 A. So no need to repeat that. Pages are
5 all out of order. Here we go. Column 9,
6 Line 40, says the invention is not limited to
7 presenting information to users 116 in a visual
8 fashion only. Other ways not shown or conveying
9 information to users 116. Maybe, for example,
10 audible indicators, i.e. sound and/or tactile,
11 indicators e.g. vibration. And there is
12 something else, Column -- that's probably it.

13 Q. Okay. So I want to just level set and
14 make sure that we're on the same page about what
15 my questions are going to be about.

16 So I asked you at the beginning of
17 this about what portions of the '948 patent you
18 were relying on to establish your understanding
19 of the meaning of the term notification method.
20 Do you remember that?

21 A. Yes.

22 Q. Okay. And so those messages that you
23 read to me were the ones that you relied on to
24 inform your understanding of what notification
25 means in the context of a '948 patent; correct?

1 A. Yes.

2 Q. And your testimony today, although it
3 may differ from what was in your declaration, is
4 that determining a notification method requires
5 three things, the three things that you listed
6 in Paragraph 86 of your declaration; right?

7 MR. THACKER: Objection; form.

8 THE WITNESS: It requires at
9 least those things, yes.

10 BY MR. PRICE:

11 Q. Okay. It requires a determination of
12 the user device to send the notification to?

13 A. Yes.

14 Q. It requires the communication protocol
15 to use to send the notification?

16 A. Yes. With respect to Number 1, and
17 this bleeds into Number 2, it requires
18 determining the device to send it to, and if the
19 device has multiple applications, choosing which
20 of those applications to send it to. So same
21 device may have multiple ways of getting the
22 message -- getting the alert. Which will be
23 defined in Part 2.

24 Q. Okay. So, for example, the
25 communication protocol might be SMS if it's a

1 text message?

2 A. Yes.

3 Q. Okay. And how is that different from
4 what's required in the third requirement, which
5 according to you is the type of alert to
6 provide, i.e., how to present the notification?

7 A. Well, that's -- the type of alert is
8 whether it's visual, auditory, or tactile, which
9 were specifically enumerated in the patent.

10 Q. Okay. And so if it's a SMS text
11 message, it's going to be a text alert; is that
12 right?

13 A. Right. You can't send an auditory
14 alert -- you can't send an auditory alert by
15 text -- well, you can. You can't send an
16 auditory alert by SMS. You can send it by MMS,
17 multimedia messaging. But specifically the
18 patent talks about SMS, and SMS is a text-only
19 notification method. So if you had an auditory
20 alert, if you decided based upon the other
21 factors that you wanted to send an auditory
22 alert, you would not be able to use SMS because
23 it doesn't support that modality.

24 Q. Okay. And I just want to make sure,
25 it's your opinion and testimony today that

1 determining a notification method in the context
2 of a '948 patent requires all three of those
3 things; correct?

4 A. Yes.

5 Q. Are you aware of whether or not the --
6 SAP took any positions on the meaning of this
7 term in the corresponding district court case?

8 A. No, I have no information on that.

9 Q. Have you reviewed any information that
10 SAP filed in connection with the district court
11 case?

12 A. No, I have not.

13 Q. Have you spoken to any of the experts
14 who provided declarations or expert reports in
15 the corresponding district court case?

16 A. No. I don't even know who they are.

17 Q. Are you aware of whether or not the
18 positions that you are taking today contradict
19 any positions that petitioner is taking in the
20 corresponding district court case?

21 A. No, I am not.

22 Q. Would it surprise you if your opinions
23 today contradicted positions that petitioner is
24 taking in the corresponding district court case?

25 MR. THACKER: Objection; form.

1 THE WITNESS: Would it surprise
2 me? No. They might. I haven't looked at those
3 documents. I have no idea what they said. This
4 declaration reflects my opinion.

5 BY MR. PRICE:

6 Q. Okay. So returning to the places that
7 you pointed me to, I just want to go through
8 them one by one and see if I can understand your
9 basis for your opinion that determining a
10 notification method requires a determination of
11 all of those three things that we just spoke
12 about. Is that okay?

13 A. Sure.

14 Q. Okay. So the first part you pointed
15 me to was -- of the '948 patent was Column 6,
16 beginning at Line 50; is that correct?

17 A. Yes.

18 Q. Okay. What in that section informs
19 you that determining a notification method
20 should be limited to and require determining the
21 type of alert to provide, i.e. how to present
22 the notification?

23 A. User preferences and session
24 information may be used to determine
25 automatically the session information. User

1 preferences and session information may be used
2 to determine automatically the optimal method of
3 delivering alert notifications to users.

4 So a user preference would indicate
5 whether you wanted to get visual, tactile, or
6 auditory alerts. Or it may be based on time of
7 day or some other factors. Location. It could
8 be based on a number of things. But this would
9 be part of what the user would specify in their
10 preferences.

11 Q. This passage uses the word optimal and
12 best. Are those words in the claim?

13 A. No.

14 Q. Okay. Moving on to Column 15,
15 beginning at Line --

16 A. Let me just finish, append to that
17 previous question before you ask the next one.
18 It doesn't say optimal or best, but a POSITA
19 would understand that this is how one configures
20 an application if the application is going to
21 asynchronously notify you. I don't want my
22 phone making noise when I get a random text in
23 the middle of the night, unless it's from my
24 daughter and it's a crisis; right?

25 Q. What does that have to do with the

1 rest of the question, I guess, and the rest of
2 your answer?

3 A. Well, you asked whether the claims
4 specifically say best or optimal, and I'm
5 telling you that implying that -- using the
6 methodology to describe this paragraph would
7 only be required if you wanted to do the best or
8 optimal method of notifying. And I am saying
9 that best or optimal is not the deciding factor.
10 The deciding factor is how a POSITA would
11 understand delivering alerts. And the POSITA
12 would understand that you don't just say
13 arbitrarily, whenever I have an alert from you
14 I'm going to make your phone go
15 ding-a-ling-a-ling.

16 That was never the case in any kind of
17 a system even when people had -- you know, when
18 we were talking earlier about mobile phones
19 being able to do different modalities, the user
20 would control what the modality was. In that
21 case it was the user. In this case it's the
22 system. We would expect the system to have a
23 way of respecting user preferences as discussed
24 in this paragraph, regardless of whether that
25 was the best way or not to do it.

1 Q. So are you telling me it was known for
2 a user to set preferences to determine how and
3 when they are notified about events, via a
4 remote system they're subscribed to?

5 MR. THACKER: Objection; form.

6 THE WITNESS: I built such a
7 system in 1999 called Active Messenger.

8 BY MR. PRICE:

9 Q. That's something that was well known
10 in the art?

11 A. Was it well known? I don't know how
12 widely read that paper was.

13 Q. No. The concept, not your paper.

14 A. The concept of user preferences at
15 some level, yes, it was baked into the user
16 interfaces on most phones. Most phones had some
17 way, in 2009, of the user specifying how the
18 phone would alert the user in response to things
19 like an incoming phone call, like quiet hours
20 and such.

21 Q. Okay. So I guess going back to
22 Column 6, Line 50 where we are talking about
23 here the optimal or best notification, what part
24 of this passage supports your contention that
25 the claims should be limited to notification

1 methods that determine the type of alert to
2 provide?

3 A. Because those would be specified in
4 some form of user preferences, and this
5 paragraph says that user preferences are
6 consulted.

7 Q. Okay. So as long as the information
8 is defined in the user preferences, alert goes
9 out, those preferences are consulted, then you
10 satisfy the determination of the notification
11 method?

12 MR. THACKER: Objection; form.

13 THE WITNESS: No. That's -- I
14 forget. I'm sorry, I forget the words actually
15 used. That's the third aspect of it. I believe
16 that's what we're talking about?

17 BY MR. PRICE:

18 Q. Yes.

19 A. So the third aspect is whether it's
20 auditory, visual, or tactile.

21 Q. Does that passage say anything about
22 determining whether the alert is audio, visual,
23 or tactile?

24 A. That would be defined in user
25 preferences.

1 Q. But does that passage that you pointed
2 me to say anything about whether or not the
3 alert is audio, visual, or tactile?

4 A. No. The patent elsewhere says alerts
5 can be audio, visual, or tactile.

6 Q. Okay. Does it say anything about
7 requiring the notification method to specify
8 whether or not the alert is audio, visual, or
9 tactile?

10 A. Well, the notification -- so the
11 alerts may be audio, visual, or tactile, and the
12 paragraph says -- talks about the best method of
13 getting it to somebody. And it seems pretty
14 clear that you would want to respect user
15 preferences. Users were already used to the
16 idea of setting preferences on their device. So
17 the only reasonable way for such a system to
18 work would be to allow the user -- I mean, to
19 allow the user to set those preferences. You
20 build a system that wakes somebody up in the
21 middle of the night three times and they're not
22 going to use your system anymore, unless it's an
23 emergency.

24 Q. Does the 2009 priority application
25 disclose such a system with user preferences?

1 A. I'd have to look. Shall we look?

2 2009 doesn't even disclose tactile alerts. So
3 it's limited there. If you want to discuss
4 whether the 2009 supports user preferences,
5 we'll have to open it up and take a look, which
6 I'm happy to do.

7 Q. To be clear -- and I just want to make
8 sure we stay focused. Because my questions
9 right now are about the scope of the term
10 notification method, and whether or not it
11 actually requires determining those three things
12 that you are saying that it requires. So maybe
13 we can turn to tactile versus auditory versus,
14 you know, visual alerts later.

15 My question is about whether or not a
16 POSITA would read the term notification method
17 in the '948 patent and then also read into that
18 meaning all of these three limitations that you
19 are saying are required.

20 So my question about that first
21 passage is, does it say that determining a
22 notification method requires determining the
23 type of alert to provide?

24 A. Well, given that the scope of the
25 patent covers visual alerts, auditory alerts,

1 and tactile alerts, yes, you would have to
2 decide which of those to use.

3 Q. Would you have to decide it if the
4 notification method was just to appear as
5 defined on the mobile device?

6 MR. THACKER: Objection; form.

7 THE WITNESS: So you use that
8 phrase as defined on the mobile device. That's
9 not something that means much in terms of an
10 external application outside of the phone. Now,
11 you could -- and it's ability, there is no
12 definition of that, right? Now, you could say
13 that we'll send the alert as an SMS and the
14 phone user has the ability, through their
15 preferences, to determine whether SMS will be an
16 auditory or visual alert, and perhaps -- it was,
17 I think, well known that a user could, through
18 those preferences, specify quiet time. And the
19 user may have been able to specify priority
20 message sources. But this is from the system.
21 So that doesn't matter. Okay.

22 So you could shoot the alert as an SMS
23 and figure that user's phone is going to decide
24 how to present it. But that section of the
25 claim is not something that is occurring on the

1 external device, it's something that is
2 occurring inside the system that's disclosed in
3 Claim I, Sections 1 through -- A through G, or
4 top preamble through G. That's describing the
5 functions of an apparatus, I believe, was the
6 term.

7 BY MR. PRICE:

8 Q. So are you telling me that in order
9 for a server to notify a user, it must determine
10 the communication protocol and type of alert to
11 provide?

12 MR. THACKER: Objection; form.

13 THE WITNESS: Well, those are two
14 sections, okay. If it is -- with respect to the
15 second section, if the alert types are auditory,
16 visual, and tactile, it has to decide which of
17 those to use. If it is talking to an external
18 device, it has to know how to communicate with
19 it, which is going to be different kinds of
20 protocols, depending on what the application is
21 at the other end and what type of conductivity
22 you have.

23 For example, the '948 patent talks
24 about calling somebody on a landline. Okay,
25 well, in order to call somebody on a landline

1 you need to be able to be connected to a
2 telephone network and send messages to dial a
3 phone number, right. In the case of analogue,
4 you could go and shoot touch tones down. In the
5 case of ISDN digital network you could send a
6 set-up message which has a phone number.

7 That's different than if you want to
8 communicate with an instant messaging
9 application or email application -- let's say
10 email, because it's in here, an email
11 application in which you used a protocol called
12 SMTP. SMTP is both the messages that are
13 exchanged between the two sides -- well, I guess
14 in SMS you just throw it down. It's like I want
15 to send the message to you. Do you know this
16 addressee? Yes, I know this addressee. Okay.
17 Here's the message. I got the message.
18 Good-bye. Good-bye. Okay. And then that
19 message itself internally is formatted with an
20 email formatting, which is defined in RFC-822,
21 which was the original document describing the
22 format of an email message, you know, to, colon,
23 from, colon, things like that.

24 So depending on what device and what
25 application I'm going to communicate with, that

1 completely requires knowing what protocol and
2 how to format the message within that protocol.

3 BY MR. PRICE:

4 Q. Okay. So would you agree that if a
5 server sends a notification to an end user
6 device, inherent in that process it had to
7 determine the protocol to use and the type of
8 alert to provide?

9 MR. THACKER: Objection; form.

10 THE WITNESS: Well, I'm wary of
11 the term inherent because it has legal
12 connotations, and I can't express a legal
13 opinion without understanding that better. But
14 what I'm saying is in order to send it to a
15 device, yes, it must determine both of those.

16 BY MR. PRICE:

17 Q. I think the next portion of the spec
18 that you pointed me to was Column 15. Starting
19 around -- I think you pointed me to Line 14, but
20 I think it goes up to 15, Line 4 or so, this --

21 A. Yeah, okay, we'll take that whole
22 chunk, right.

23 Q. All right. Can you read the last
24 sentence of that paragraph that begins on Line
25 4? So the sentence says "as a result".

1 A. Right. As a result, the -- as a
2 result, the 1 or user devices 118 receive the
3 alert notification and the alert presented to
4 the user 116 via 1 or user devices 118. It sure
5 likes there's a few typos in there.

6 Q. This section also uses the word best;
7 right? So it says the event manager recognizes
8 that a certain event condition is present. The
9 notification manager checks the user's
10 configuration, which is at configuration server
11 454, as well as the user session information and
12 session manager 456 in order to determine how to
13 best notify the end user. Do you see that?

14 A. Sure.

15 Q. Do the claims require determining how
16 to best notify the end user?

17 A. Well, it would be sort of dumb to
18 invent something that used inferior ways of
19 notifying. The whole point of having
20 preferences and a notification manager is to
21 make a decision. Okay. If all we were going to
22 do is all the time blast all of the alerts to
23 all of the devices, then we wouldn't need a
24 notification manager. Or it wouldn't need to
25 determine the notification method, it would just

1 blast it out, right. But what's disclosed is a
2 system that chooses an appropriate method, which
3 is determining the notification -- determining
4 the notification method. And in determining the
5 notification method you're trying to choose the
6 best one because as I said, otherwise the
7 default is you just would send it to everyone,
8 and isn't that sort of suboptimal. So the claim
9 doesn't say the word best but the reason you
10 would do this was to choose a best or bests or
11 most appropriate method. Because otherwise
12 there's no point, you just send it to everything
13 and there's no logic here.

14 Q. Going back now to Column 20, starting
15 at Line 60, do you see where this language
16 says --

17 A. Hold on a second.

18 Q. -- that the system correlates
19 notification preferences with session manager to
20 determine the best notification method?

21 A. Yes.

22 Q. All right. And in this embodiment
23 there is some disclosure of determining whether
24 or not the user is online or offline and
25 consulting preferences, depending on whether

1 they're online and offline; right?

2 A. Noting that embodiment is your term
3 and not mine, the answer to the rest of the
4 question is yes.

5 Q. Can we talk just briefly about what
6 your concern is with the word embodiment?

7 A. I believe that an embodiment has
8 technical legal meaning in the context of patent
9 language.

10 Q. And what is that technical legal
11 meaning?

12 A. I'm not fully versed on that because
13 I'm not a lawyer. There are cases where patents
14 have different embodiments, and how those are
15 treated in discussions of patentability have an
16 effect. Beyond that, I can't say further
17 without consulting counsel.

18 Q. Okay. So in this portion of the
19 specification that's talking about the specific
20 examples, the notification manager determines
21 whether or not the user has certain online
22 notification preferences, certain offline
23 notification preferences. Do you see that?

24 A. Yes.

25 Q. Do you think that's required for the

1 system to determine a notification method?

2 MR. THACKER: Objection; form.

3 THE WITNESS: Yes. You have to
4 know how to notify the user. The whole point is
5 to give them -- there's an alert -- there's a
6 trigger condition, and you need to alert
7 somebody. So in order to alert somebody, you
8 need to know how to communicate with them. And
9 we all have different devices, we work different
10 schedules. You need to know that information in
11 order to get the message to them.

12 BY MR. PRICE:

13 Q. Can you read to me the last sentence
14 of the paragraph beginning on 21 forward?

15 A. As a result, it is determined that the
16 best alert notification method is via the laptop
17 of the user.

18 Q. Does this session require that any
19 particular -- the determination of any
20 particular type of notification, or does it just
21 say that the notification method is via the
22 laptop computer?

23 MR. THACKER: Objection; form.

24 THE WITNESS: Well, in this case
25 it is determined that the user has an active

1 session. Okay. So the sentence says, we are
2 going to notify them via the laptop computer of
3 the user. But it's plain and obvious that in
4 order to send something to my computer, you have
5 to know its address, you have to know what
6 application to send it to. You know, if I told
7 you my IP address, which I could, if you sent an
8 IP packet to that address that said, hello,
9 Chris, nothing would happen.

10 But if you wanted me to get it as an
11 instant message, then you would make a
12 connection through a protocol such as XMPP and
13 that protocol would be connected to an XMPP
14 handler at my end and that would be connected to
15 an instant messaging app and that would pop it
16 up as an instant message.

17 If you wanted to send it to me as an
18 email, you would make a request using SMTP. The
19 SMTP would be routed to the SMTP server, and as
20 I said before there's a protocol that's a
21 handshake that would happen before that message
22 was exchanged. But if you just send me a packet
23 that said hi Chris, nothing happens.

24 Q. Cognizant of the timing, it was 11:30
25 you have to break?

1 A. I'm going to get a call sometime in
2 the next hour. I can't control it.

3 Q. I see. So you want to keep going
4 until --

5 A. May as well. We don't want to take an
6 hour break. It's a little early for lunch. As
7 long as you're, you know, tolerant of the fact
8 that when the phone rings I have to answer it.

9 Q. I totally understand.

10 A. I tried to get this done the other day
11 but the person I needed to talk to was only
12 available during these times.

13 Q. No problem. I'm trying to be
14 cognizant of your --

15 A. If you don't mind let's just keep
16 going and I'll just have to answer the phone
17 when it rings.

18 Q. Sounds good.

19 So if the system determines that it's
20 going to alert a user of an event that occurred
21 via a channel, right, are you telling me that in
22 order to send that alert to the user, it's
23 necessary to determine ahead of time what
24 communication protocol to use and the type of
25 alert to provide?

1 MR. THACKER: Objection; form.

2 THE WITNESS: If you are running
3 the alert through the channel, the channel is
4 connected to this apparatus through web services
5 gateway, you don't need to determine. You don't
6 need to determine what method to use because
7 that's built into -- that's built into the
8 channel, it's built into the channel's behavior
9 and the channel has a protocol based on HTTP
10 because it uses web service, and there is -- the
11 channel is an open connection.

12 So you know the IP address of the --
13 whatever is on the other end of the channel.
14 Let's say it's a computer. So there's no need
15 to determine -- there's no need to determine
16 those aspects. And the example that we saw of
17 determining -- the example we saw of alerting
18 with the home security system, it didn't have
19 any choice. It simply could change from green
20 to red. So that was built into -- that was
21 built into the mechanism of the channel. So
22 there was no determination of those factors.

23 BY MR. PRICE:

24 Q. I mean, didn't you tell me earlier
25 that you would go into the preferences to

1 determine how the thing is going to be -- an
2 alert is going to be sent and what type of alert
3 it's going to be?

4 MR. THACKER: Objection; form.

5 THE WITNESS: Well, this is a
6 difference between what's disclosed in the 2009
7 and 2011 application. Because the 2009
8 application talks about how you send an alert
9 through the channel. 2011 supports a much
10 richer array of devices and methods and
11 protocols.

12 BY MR. PRICE:

13 Q. And you're maintaining your opinion
14 that the 2009 application is limited to
15 notifications that occur through the channel,
16 even though it also contemplates alerts that go
17 to law enforcement agencies; correct?

18 A. Yes. Those alerts are not alerts to a
19 user's external device in terms of what is
20 claimed in Claim I.

21 Q. Okay. And the notifications that
22 appear as defined on the mobile device, those
23 are also not the right type of notification;
24 correct? In your opinion?

25 MR. THACKER: Objection; form.

1 THE WITNESS: Well, you can't
2 read too much into that one cryptic sentence.
3 So that implies that these are only -- since
4 2009 is all about using channels, that there's a
5 channel connected to those devices, and you're
6 simply using the channel mechanism.

7 BY MR. PRICE:

8 Q. Okay. And computers execute
9 instructions that are stored in memory; right?

10 A. Yes; right.

11 Q. Presumably the instructions about how
12 to provide a notification alert through a
13 channel are also going to be encoded in some
14 code on the system?

15 MR. THACKER: Objection; form.

16 THE WITNESS: Can you say that
17 again?

18 BY MR. PRICE:

19 Q. Presumably the information about how
20 to pass information through a channel is also
21 encoded in instructions on the system?

22 MR. THACKER: Same objection.

23 THE WITNESS: Yes. But this is
24 my --

25 BY MR. PRICE:

1 Q. There is some difference between
2 consulting user preferences versus the
3 instructions that tell you the notification
4 method to use that are -- is that the
5 distinction you're trying to make?

6 A. The distinction is whether there's any
7 determination, whether there's any choice,
8 whether there's any decision. The instructions
9 say this is -- this is how you send a message on
10 the channel. The instructions don't say how
11 should I get this -- in the 2009, how should I
12 get this message to the user.

13 Q. Doesn't the 2009 contemplate lots of
14 different types of notifications through the
15 channel, including, like you said, changing the
16 color? Is that not, you know, determining
17 the -- let me get the -- determining the
18 protocol or type of alert to provide?

19 A. So one example, not lots. The 2009
20 application does not disclose any decision being
21 made or any -- it doesn't disclose a
22 methodology. From the way I read it, this would
23 be a behavior that was built into the home
24 security monitoring channel. And the server
25 side, using some undisclosed protocol with that

1 channel, would tell the channel to go into alert
2 mode and that channel knows it means to change
3 color. That's what I see as the extent of the
4 disclosure there. So even though the 2009 says
5 auditory -- audio and visual alerts, there's no
6 choice being made there. It doesn't have a
7 choice.

8 Q. I mean, doesn't there have to be a
9 choice made if you're doing one or the other?
10 How do you provide an auditory or a visual alert
11 without deciding which one it's going to be?

12 MR. THACKER: Objection; form.

13 THE WITNESS: There's no
14 discussion in -- there's no discussion in the
15 2009, besides that phrase auditory or visual
16 alert, to see that any decision is being made,
17 and there are no examples. The example is in
18 the home security system, the only alert
19 disclosed is a visual alert. So there is no
20 auditory alert disclosed. So there's no choice.

21 BY MR. PRICE:

22 Q. I'm sorry, it says visual or auditory.
23 How are you telling me that it's only visual if
24 it says visual or auditory?

25 A. I have an application, I have a

1 channel that's disclosed that can change color
2 between red and green. What does green sound
3 like? What does red sound like?

4 Q. I'm sorry, Mr. Schmandt. We're
5 talking about what the reference discloses to a
6 POSITA; correct?

7 A. Yes.

8 Q. If the reference says provide an
9 auditory alert, does a POSITA understand what an
10 auditory alert is?

11 A. Yes.

12 Q. So why are you discounting that
13 disclosure in the priority application just
14 because there are other disclosures also
15 providing visual alerts?

16 A. Because in the 2009 application, other
17 than that phrase, auditory or visual alert,
18 there is no discussion or teaching as to how you
19 might choose one or the other.

20 Q. Can you turn to Paragraph 21 of the
21 2009 application.

22 A. Sure. Give me a second. I'm sorry,
23 which paragraph was that?

24 Q. 21.

25 A. Okay.

1 Q. Just read that for me.

2 A. Information may be delivered to a user
3 based on the user's identity as established
4 when -- as established by the system when the
5 user session is established. Because the user
6 is known and authenticated, references and
7 rights to certain information types can be
8 defined and managed for the user.

9 Q. Are these user preferences that would
10 define how a user prefers to receive certain
11 information?

12 MR. THACKER: Objection; form.

13 THE WITNESS: This disclosure
14 does not say. It does say -- sorry?

15 BY MR. PRICE:

16 Q. What are preferences here?

17 A. I prefer mountains in the summertime.
18 That's a preference. I prefer deserts in the
19 winter. That's a preference. You have to say
20 what the preference is in reference to.

21 Q. Okay. I prefer text messages over
22 emails. Is that a preference?

23 MR. THACKER: Objection; form.

24 THE WITNESS: Sure, that's a
25 preference, but nothing in the specification

1 here discusses preferences in that format,
2 preferences of that information.

3 BY MR. PRICE:

4 Q. Okay. I prefer auditory alerts over
5 visual alerts. Is that a preference?

6 MR. THACKER: Objection; form.

7 THE WITNESS: Sure. All these
8 things are preferences but that's not what is
9 disclosed in the patent, and the following
10 paragraph is talking about how information is
11 delivered over the channels.

12 BY MR. PRICE:

13 Q. In Paragraph 39 talks about providing
14 an auditory or visual alert; correct?

15 A. It does.

16 Q. Isn't that the kind of thing a user
17 would specify in user preferences?

18 MR. THACKER: Objection; form.

19 THE WITNESS: It might be. But
20 the patent doesn't teach us that. The
21 application doesn't. The question is what does
22 the inventor tell us. And the inventor doesn't
23 tell us that.

24 BY MR. PRICE:

25 Q. Well, doesn't the inventor tell you

1 that you can provide either auditory or visual
2 alerts?

3 A. They do.

4 Q. Doesn't the patent tell you how to
5 establish user preferences that once the user is
6 known and authenticated that manage the
7 user's -- how the information is delivered to
8 the user?

9 MR. THACKER: Objection; form.

10 THE WITNESS: That information,
11 as I understand it, is what channels the user
12 subscribes to and how they are authenticated on
13 those channels, and that doesn't apply to
14 alerts.

15 BY MR. PRICE:

16 Q. And you're skipping over the word
17 preferences again, Mr. Schmandt. Why?

18 A. Well, the preferences -- no, there are
19 preferences. The preference is -- I have some
20 channels. Okay. I prefer CNN to Fox News. I
21 prefer the Boston Globe to the New York Times.
22 I prefer the -- this is another setting. I
23 prefer the weather for Boston, Massachusetts,
24 and not for Washington D.C. These are
25 information that control what channels -- what

1 channels I get and how those channels are
2 configured; right?

3 All right. So when I click
4 AccuWeather, I want to see the radar for Boston.
5 I don't want to see the weather for someplace
6 else. Those are user preferences.

7 Q. And you don't think that user
8 preferences would also define how the
9 information is delivered to the user?

10 MR. THACKER: Objection; form.

11 THE WITNESS: Well, that's
12 information as to -- it says how the information
13 is delivered to the user in the context of this
14 channel grid. How is the grid laid out, what
15 channels are in the grid. That's what the 2009
16 is all about.

17 BY MR. PRICE:

18 Q. Okay. And so the next paragraph talks
19 about how information is presented to the users;
20 right?

21 A. Yes.

22 MR. THACKER: Objection; form.

23 BY MR. PRICE:

24 Q. Is one of the ways email?

25 A. So this is information that goes into

1 the channel. It is not methods that the channel
2 is using to convey that.

3 Q. You told me earlier that if you were
4 using email you would understand how to send an
5 email; right? And what protocol to use.
6 Wouldn't that all be defined in order to make
7 this actually work?

8 MR. THACKER: Objection; form.

9 THE WITNESS: Other than this
10 sort of laundry list of inputs that might go
11 into the channel, I don't recall disclosure in
12 the 2009 application as to any differences in
13 the way the channel is transmitted to the end
14 user device. It's not clear what it means. The
15 fact that the channel can show email, which is
16 implied here, does not mean that the channel is
17 using email protocols to convey that information
18 to the user. The channel is using its own
19 protocols, again, through web services gateway,
20 which is an odd email. So presumably the
21 channel has some way of showing me, you know,
22 you have new email. That's how I would read
23 that. But the channel is not running through
24 email. I see no disclosure about that.

25 BY MR. PRICE:

1 Q. Doesn't it say these channels may be
2 preconfigured and may contain any information
3 format?

4 A. Yes. But that says they contain
5 information. It doesn't say how -- it doesn't
6 say anything at all about how that information
7 gets to the user, to the user's device. And it
8 would be absurd to say putting a sentence like
9 that in means that the inventor was aware of
10 every possible way of communicating channel
11 information. I'm sorry, that doesn't make any
12 sense.

13 Q. I guess my question is not whether or
14 not the inventor knew of every single way of
15 providing channel information, it's whether or
16 not the inventor disclosed, in 2009, that a
17 channel can be preconfigured and may contain any
18 information format, or if it's limited to some
19 nondescript web services protocol that you are
20 not finding any information about in the
21 specification?

22 MR. THACKER: Objection; form.

23 THE WITNESS: If I am not
24 mistaken, the specification specifically refers
25 to web services gateway. And I and a POSITA

1 knows what a web services gateway does.

2 BY MR. PRICE:

3 Q. Okay. And using a web services
4 gateway, does it communicate with a -- between a
5 server and an end device using a communication
6 protocol?

7 A. Using HTTP, yes, a single protocol.

8 Q. Where do you see that?

9 A. That's what a web services gateway
10 does. It's called web services. It works over
11 the web.

12 Q. Okay. And so if I am sending an alert
13 through a channel via the web services gateway,
14 I have to determine the device to send it to;
15 right?

16 A. Well, the web services -- the channel
17 is already connected to a device. You don't
18 have to determine that.

19 Q. What if the device is offline?
20 Because isn't part of this you have to look at
21 concession data?

22 MR. THACKER: Objection; form.

23 THE WITNESS: I don't recall any
24 discussion in the 2009 application of
25 communicating with a device that's offline. If

1 I'm wrong, you're welcome to point me to it.

2 BY MR. PRICE:

3 Q. Okay. And you're also assuming that
4 if a device is online it is connected and
5 actively receiving information via the channel
6 grid framework?

7 A. That's the only method that is
8 disclosed, yes.

9 Q. Where does it say that?

10 A. The only method that is disclosed. It
11 doesn't say that no other method is allowable.
12 It says this is how it is done. That is the
13 only method that is disclosed.

14 Q. And that, you think -- the reference
15 to providing a notification to the user in
16 Paragraph 23 you believe is only a notification
17 that's provided over HTTP by the web services
18 gateway via the channel?

19 A. That is the only thing that is
20 disclosed in the 2009 application, yes.

21 Q. Okay. And a person of ordinary skill
22 in the art reading this notification in
23 Paragraph 23 wouldn't give it the broad reading
24 of the word notification as it's known to a
25 person of ordinary skill in the art but would

1 specifically require it to be a notification via
2 the web services gateway disclosed in the 2009
3 application?

4 MR. THACKER: Objection; form.

5 THE WITNESS: In the context of
6 this claimed invention, that's the only way
7 notification can be delivered. A POSITA could
8 invent something else, but that's not the
9 question here at hand.

10 BY MR. PRICE:

11 Q. That's fine. I guess my next question
12 is, then, your opinion is that if a notification
13 is hard coated and it's the only possible way to
14 notify a device, that does not qualify as
15 determining a notification method; is that
16 correct?

17 A. That is correct.

18 Q. Okay. So where are you getting the
19 requirement that there must be more than one
20 available way and you have to make a decision
21 between multiple available ways of providing the
22 alert?

23 MR. THACKER: Objection; form.

24 THE WITNESS: Well, I think the
25 plain and ordinary meaning involves making a

1 choice. So there has to be choices made, which
2 means there has to be options. It is only in
3 the context of the material discussed in this
4 invention that I can say that those choices
5 would be device protocol and modality.

6 BY MR. PRICE:

7 Q. Okay. So if I have an external device
8 that only has one possible notification method,
9 right, it's -- it only allows incoming calls,
10 right, there's no text messages available,
11 right, its only mode of communicating is via a
12 cellular voice call, is that external device
13 outside of the scope of the '948 patent?

14 MR. THACKER: Objection; form.

15 THE WITNESS: It is outside the
16 scope of the 2009 application but not outside
17 the scope of the '948 patent.

18 BY MR. PRICE:

19 Q. Okay. You think it's outside the
20 scope of the 2009 patent. Why?

21 MR. THACKER: Objection; form.

22 THE WITNESS: There's no
23 discussion of any way that a channel could be
24 conveyed solely by auditory information. And
25 that's all that you get with a phone call. And

1 if the channel -- you know, if there's a grid,
2 how do you do a 3-by-4 grid of information
3 sources? What's even the meaning of a grid if
4 the information source is audio, which is all
5 you get in an audio call?

6 Q. I mean, I'm looking at Paragraph 22
7 again and it says nonlimiting examples of
8 channels and the information of formatted
9 channels can include audio.

10 A. It does, but it does not teach us how
11 to do that. That's not my job to figure out
12 what the inventor might mean if it's not
13 obvious. Even if it is obvious. It's up to the
14 inventor to teach me how to do it.

15 Q. Okay. So a channel is a relatively
16 broad term; right?

17 MR. THACKER: Objection; form.

18 BY MR. PRICE:

19 Q. Even in the context of the 2009
20 application, right, a channel is something that
21 can contain any information format; right?

22 MR. THACKER: Objection; form.

23 THE WITNESS: I'm not sure I
24 could agree with that. I would say it's a vague
25 term, not a broad term.

1 BY MR. PRICE:

2 Q. Why is it a vague term? Does a POSITA
3 not know what a channel is?

4 A. Because -- yeah, because -- a
5 channel -- a channel has a broad range of
6 meaning. Simply saying, oh, I have a channel
7 that can convey any kind of information is not
8 convincing that I know how to make a channel.
9 If I describe it in such broad terms, then it's
10 something -- how could I conceive what a channel
11 is? I have to look to the specification to
12 understand what a channel is. All right, so you
13 can say it could be this, it could be other
14 things, but then all you tell me about is one
15 type. It's not obvious -- it's not obvious that
16 if I have a channel that can pop up a window on
17 a screen that I know how to make noise. How
18 would that channel -- you know, how does that
19 channel appear as auditory only? It's not
20 obvious. I don't know how to do it. It depends
21 on what's in the channel. The details are just
22 not there.

23 BY MR. PRICE:

24 Q. If I tune my radio to a channel, is
25 that an audio format?

1 MR. THACKER: Objection; form.

2 THE WITNESS: You turn your radio
3 to a frequency. I have not construed the term
4 channel -- a channel could be a communication
5 channel. I'm not beginning to construe the word
6 channel, and I think it's used fairly vaguely
7 here. But to the extent that a channel is
8 something that appears on a 4X3 grid, I don't
9 know how audio fits into that.

10 BY MR. PRICE:

11 Q. Well, a channel can appear on a 4X3
12 grid; right?

13 A. Tell me how, please.

14 Q. I said a channel.

15 A. Oh, a channel? Yeah, in the
16 application these are all visual, yes, the
17 little pictures of things; right.

18 Q. Does the word channel require its
19 showing in a 4X3 grid or any other kind of grid,
20 or does the word channel mean something else and
21 it's something that could be displayed in a
22 grid?

23 MR. THACKER: Objection; form.

24 THE WITNESS: I'm not going to
25 begin to try to construe the word channel. But

1 channel as disclosed here, I read this
2 disclosure and I understand it, I look at the
3 figures, I understand it as a 4X3 grid, sources
4 of visual information. I have a paragraph here
5 that you cite that says it can be anything. But
6 if it's anything, I don't know how those appear
7 in the 4X3 grid and I don't see any alternatives
8 in the application to tell me how to display it
9 in any other way.

10 BY MR. PRICE:

11 Q. I mean, don't you agree that the way
12 that a particular channel might be shown in a
13 grid format doesn't necessarily depend on the
14 content that is being conveyed through the
15 channel?

16 MR. THACKER: Objection; form.

17 BY MR. PRICE:

18 Q. I'll give you -- what if I had a
19 channel that was a series of podcasts, all
20 right, and you know, I click on the little box
21 but all it gives me is audio. Isn't that
22 something that you can envision happening?

23 A. I'm sorry, what is the little box?

24 Q. There's a -- you know, in the channel
25 grid, right, there is something on the back end,

1 right, that can present a channel grid on a
2 device; right?

3 A. Okay.

4 Q. Isn't that independent -- you know,
5 whether or not you have a grid of these things,
6 isn't that independent of what information is
7 communicated via those channels?

8 A. Well, the grid is a graphical format,
9 it's a graphical layout. That's one aspect.
10 All right? And the channels are arrayed in a
11 grid. But then each channel -- and I think this
12 may be what you said, I'm not sure -- has its
13 own content. So there's always a channel in the
14 upper left-hand corner if it's a 4X3 grid. What
15 content that channel displays is a function of
16 which channel it is.

17 Q. Right. And one channel might give you
18 email; right?

19 MR. THACKER: Objection; form.

20 THE WITNESS: One channel could
21 display your email -- it could display the text
22 of your email, yes, I agree. But it's not an
23 email reader. You can't respond to it.

24 BY MR. PRICE:

25 Q. Another channel might just provide

1 audio; right?

2 MR. THACKER: Objection; form.

3 THE WITNESS: In which case there
4 is still a grid square allocated for it. Okay.
5 So there's a grid square allocated, you know,
6 that maybe has some text that says what the
7 information is. And then I'm hearing the audio,
8 yes, that's possible.

9 BY MR. PRICE:

10 Q. Earlier you told me that determining a
11 notification method means that you have multiple
12 options of the type of art provided; correct?
13 Is that accurate?

14 A. Yes.

15 Q. Is it your opinion that the multiple
16 methods have to be coded into the system in some
17 way so that when you make a determination, there
18 are multiple possibilities encoded in the system
19 to choose among when you make that
20 determination?

21 MR. THACKER: Objection; form.

22 THE WITNESS: I don't know what
23 you mean by -- I can't parse your question,
24 multiple -- multiple something encoded into the
25 system. I'm not sure what you mean by encoded

1 into the system.

2 BY MR. PRICE:

3 Q. Well, I think before you told me that
4 you would have user preferences that tell you,
5 for example, that I want to receive text message
6 alerts for a particular event; right?

7 A. Yes.

8 Q. Okay. Do the user preferences have
9 to, for every single possible external device,
10 be chosen from a list of possible communication
11 methods, or is it sufficient to hard code that
12 information into the system?

13 MR. THACKER: Objection; form.

14 THE WITNESS: If it's hard coded,
15 it's not user preferences, because preferences
16 imply that the user has a choice and can
17 specify.

18 BY MR. PRICE:

19 Q. Well, my question, I guess, is does it
20 have to be user-defined for it to be a
21 notification method that is chosen from among
22 possible notification methods?

23 MR. THACKER: Objection; form.

24 THE WITNESS: No, because the --
25 the capabilities of the application which is

1 receiving the notification are going to dictate
2 which notification modalities are available to
3 it as well. So choosing the notification
4 methodology depends on the combination of active
5 sessions and user preferences, and it depends on
6 rules that would be encoded into the system. So
7 let's say the user says I only want auditory
8 alerts, and yet the active session says the only
9 way to reach this user is by SMS. Okay. So now
10 the system has to make a choice. The choice is
11 which dominates. All right. If the active
12 session dominates, then it says, okay, the
13 active session is SMS. I'd like to send it by
14 auditory alert because the user wants that but I
15 can't do that so I'll send it as text, a visual
16 alert. Okay.

17 Another way of coding the system would
18 be the user says they want auditory alerts.
19 There is no device currently accessible that has
20 auditory alerts; therefore, I can't send this
21 alert. Sort of a question of one way or the
22 other depending how the system was coded.

23 BY MR. PRICE:

24 Q. So at what point does the system have
25 to be aware of multiple possible choices for

1 notification method in order for it to be able
2 to make a determination? Is it before the code
3 for the system is written? Is it when the user
4 decide how they want to be notified? When does
5 that narrowing from, you know, multiple possible
6 notification methods to potentially only one
7 happen?

8 MR. THACKER: Objection; form.

9 THE WITNESS: Well, the code is
10 clearly written before -- the code is clearly
11 written before the alert happens. But when the
12 alert happens the code executes and makes a
13 decision at that time. You can't make a -- I
14 suppose you could make an application that could
15 send somebody only SMS alerts, but if there was
16 an application that did that, I don't think we
17 would be discussing it today because it wouldn't
18 be -- it wouldn't really read on the '948
19 patent. It wouldn't be a relevant piece of art.
20 So we wouldn't be talking about it.

21 MR. THACKER: Hey, Jeff, it's
22 after noon eastern. Can we take a 30-minute
23 break either now or soon? I know Chris is
24 supposed to get his call in the next 30 minutes,
25 too, so it might make sense to stop now.

1 THE WITNESS: Maybe I'll get it,
2 you know, maybe I won't. I'm happy to take a
3 break. If we're going to have a lunch break,
4 though, I'm going to want more like 45 minutes.

5 MR. PRICE: Yeah, I agree, if
6 we're going to break now, it should be
7 45 minutes. But if we want to keep going until
8 the call, then maybe take a shorter one. It's
9 up to you guys.

10 THE WITNESS: Well, I'm going to
11 want to eat lunch at some point relatively soon.
12 Not necessarily immediately. But unless we're
13 going to be done here in half an hour, I'm going
14 to want to have a lunch break. So only you know
15 how much more we're going to do.

16 MR. PRICE: Well, why don't we
17 break now, come back in 45. If your call
18 happens during that and we pop on and you're not
19 there, we'll assume that you're going to be on
20 soon.

21 THE WITNESS: Right, okay. But
22 I'm taking a lunch break.

23 MR. PRICE: Right.

24 MR. THACKER: So return at 12:50.

25 THE WITNESS: Sounds good.

1 (12:04 p.m. - Lunch recess taken.)

2

3 (At 12:55 p.m. with parties present as
4 before, the following proceedings were had,
5 to-wit:)

6 BY MR. PRICE:

7 Q. Welcome back.

8 A. Thank you.

9 Q. Did you have any conversations with
10 anybody during the break concerning the subject
11 matter of your testimony today?

12 A. No.

13 Q. Can you return to Paragraph 23 of the
14 2009 priority document? It's the one that's
15 labeled Exhibit 1006 -- 1106.

16 A. Yes, I'm there.

17 Q. I want you to focus on the last two
18 sentences.

19 A. Okay.

20 Q. Reading these two sentences, do you
21 agree that the one action that may be
22 implemented is to provide a notification to the
23 user does not involve causing the information
24 channel to change its appearance?

25 MR. THACKER: Objection; form.

1 THE WITNESS: It can change its
2 appearance or take other actions, which are
3 unspecified, that may be implemented by the
4 developer.

5 BY MR. PRICE:

6 Q. What do you mean they're not
7 specified? Isn't that what it says in the
8 second sentence?

9 A. It says there are other actions.
10 Doesn't say what they are. It says other
11 actions may be -- what's the term -- may be
12 implemented by the developer.

13 Q. Can you read the next sentence, which
14 I also asked you to read, please?

15 A. Yes. Oh, I'm sorry, okay. Right. By
16 way of nonlimiting example, one action that may
17 be implemented is to provide a notification to
18 the user.

19 Q. Okay. So my question was, do you
20 agree that providing a notification to the user
21 does not involve causing the information channel
22 to change its appearance?

23 MR. THACKER: Objection; form.

24 THE WITNESS: I wouldn't agree.

25 BY MR. PRICE:

1 Q. Isn't that another action other than
2 causing the information channel to change its
3 appearance?

4 A. It's impossible to know what the
5 inventor means here unless the inventor tells
6 you something. So it can change its appearance
7 or take other actions. Okay. Only action that
8 may be implemented is to provide a notification
9 to the user. The only way we know about
10 providing notification to the user is to change
11 the appearance of the channel. So since nothing
12 is said about what a developer may or may not
13 use, there's no way to understand what that
14 means.

15 Q. There's no way at all? Don't you read
16 this from a point of view of a person of
17 ordinary skill in the art, Mr. Schmandt? Do you
18 know what a notification is?

19 MR. THACKER: Objection; form.

20 THE WITNESS: Yes, I know what a
21 notification is.

22 BY MR. PRICE:

23 Q. Does a POSITA know what a notification
24 is?

25 A. My understanding is that on the issue

1 of does the inventor possess the invention in
2 the description is does the inventor convey,
3 through the language of the specification, that
4 the inventor has a fully-formed idea of the full
5 scope of the claimed invention. And trying to
6 imagine what a POSITA may or may not think
7 doesn't convey possession of the invention by
8 the inventor.

9 Q. So you're telling me some legal
10 principles that you're aware of in terms of what
11 does and does not qualify as a description;
12 right?

13 A. Well, that's the -- I believe that is
14 what we are discussing, that the fundamental
15 question here is whether the '948 patent is
16 entitled to the 2009 date based on use of the
17 term notification method, determine notification
18 method.

19 Q. Right. And my question is are you
20 aware that the specification of a patent is
21 written for the person of ordinary skill in the
22 art and does not have to disclose what is well
23 known to a person of ordinary skill in the art?
24 Is that something that you were apprised of when
25 you were providing your opinions today? Because

1 I know you didn't do it in your declaration.

2 MR. THACKER: Objection; form.

3 THE WITNESS: I am -- well, to
4 the extent you're asking a question requiring a
5 legal opinion, I can't answer that. Because I
6 am not a lawyer. Okay. My understanding is
7 that the language of the patent is supposed to
8 convey to a POSITA that the inventor had
9 possession of the idea, and throwing a few
10 phrases here and there does not satisfy that
11 from a technical perspective in my opinion.

12 BY MR. PRICE:

13 Q. Is that based on the fact that your
14 opinion is that a POSITA wouldn't understand
15 what was meant by provide a notification to the
16 user in Paragraph 23?

17 MR. THACKER: Objection; form.

18 THE WITNESS: A POSITA would
19 understand what a notification to the user is,
20 but a POSITA would not understand what that
21 means in terms of something implemented by a
22 developer, other than for the channel to change
23 its appearance.

24 BY MR. PRICE:

25 Q. I'm sorry, Mr. Schmandt. You read the

1 sentence where it said change its appearance or
2 take other actions. What do you think the word
3 or means there?

4 MR. THACKER: Objection; form.

5 BY MR. PRICE:

6 Q. You're reading the sentences without
7 reading all the words in them. Is that how a
8 POSITA reads these things?

9 A. Thank you for the lesson in the
10 English language. I appreciate that, sir, and
11 the conjunction or. A POSITA has got these two
12 sentences to look at, and the question is what
13 is a POSITA going to understand those two
14 sentences mean. Okay. And the POSITA sees or
15 other actions taken by a developer. Okay. But
16 there's no discussion about what those other
17 actions are. How is a POSITA supposed to have
18 any idea what those might possibly be without
19 some exculpation or example?

20 Q. And you're saying a POSITA doesn't
21 understand what the word notification means as
22 the other example of what you can do, aside from
23 changing the channel's appearance; is that
24 right?

25 MR. THACKER: Objection; form.

1 THE WITNESS: A POSITA

2 understands what the term notification means but
3 a POSITA doesn't see any way through the
4 description here of doing that other than for a
5 channel to change its appearance.

6 BY MR. PRICE:

7 Q. Is an auditory alert a notification?

8 A. An auditory alert can be a
9 notification, yes.

10 Q. Is a visual alert a notification?

11 A. A visual alert can be a notification,
12 yes.

13 Q. Does a POSITA know how to send a
14 visual or auditory alert to a user?

15 A. Not to one of these channels, no. In
16 fact, that question is beyond hypothetical.
17 It's too vague to answer.

18 Q. Again, this is also assuming the alert
19 has to be provided through the channel; right?

20 A. The only method disclosed in the 2009
21 application is for an alert to be provided
22 through a channel.

23 Q. But we already established that alerts
24 are sent to law enforcement, not through a
25 channel; right?

1 MR. THACKER: Objection; form.

2 THE WITNESS: We have no idea how
3 alerts are sent to law enforcement.

4 BY MR. PRICE:

5 Q. You are an expert; right? You have no
6 idea how to send an alert to law enforcement?

7 A. Actually, the only way I know to alert
8 law enforcement is to dial 911. I have had
9 systems that would dial telephone numbers and
10 try to have voice interactions with people. I
11 would not have dreamed of calling 911 from a
12 computer and try to have a voice interaction
13 with somebody. I don't know of other methods of
14 communicating such things with law enforcement.
15 Very recently, some law enforcement agencies
16 have started accepting text messages on 911, but
17 that's only in the last three or four years that
18 I am aware of.

19 Q. Okay. Instead of law enforcement,
20 what about a protective services group?

21 A. Sorry?

22 Q. What about a protective services
23 group? Are they receiving alerts through the
24 channel grid?

25 A. Well, that would depend entirely on

1 the architecture of the home security system.
2 There certainly are protective service agencies
3 that do get alerts from houses already without
4 any intervention whatsoever from some, you know,
5 channel grid invention or something like that.
6 That already exists. And in fact, in that case
7 it is the security system that's making the
8 decision, not an adjunct computer. So if there
9 were an adjunct computer server, it is not clear
10 at all how it would communicate with the
11 security system provider. You know, usually the
12 communication with the security system provider
13 is from the house, either wire line or wireless,
14 directly to the protective agency. It is not
15 clear how -- that's proprietary. It's not at
16 all clear that -- how a server in the context of
17 this 2009 application would be able to do that.

18 Q. Doesn't the server respond to events
19 that are triggered that can be defined for any
20 type of information? Mr. Schmandt, you're an
21 expert; right? And you're reading this thing
22 from the point of view of an expert. Is that
23 what you're telling me today? And you just
24 can't possibly figure out how a protective
25 service agency is going to get notified after

1 seeing an alarm triggered? It's disclosed,
2 isn't it?

3 MR. THACKER: Objection.

4 THE WITNESS: No, it's not.
5 Simply saying that it could do this does not
6 disclose how to do that.

7 BY MR. PRICE:

8 Q. We may just have very, very different
9 conceptions of what the word disclose means
10 then, and I think we can move on from there.
11 Because if it says it, to me it's disclosed. So
12 for you it's not, I guess. Is that right?

13 A. I'm sorry, that was a question?

14 Q. For me, if it says it, it's disclosed.
15 For you, if it says it, it's not disclosed
16 sufficiently? I don't understand the claim that
17 you're making.

18 MR. THACKER: Objection; form.

19 THE WITNESS: You know, simply
20 saying -- simply saying, um -- simply saying
21 something does not in any way indicate whether
22 it is possible or whether I know how to do it,
23 or whether anyone else knows how to do it.

24 BY MR. PRICE:

25 Q. Okay. 2009, did a POSITA understand

1 how to send any notification from one device to
2 another?

3 A. Yes.

4 Q. Okay. Can you turn to Paragraph 83 of
5 your declaration.

6 A. Okay. I'm there.

7 Q. Okay. Do you agree that the PCT
8 publication discloses limitation 1.7C, which is
9 receiving configuration data indicating one or
10 more user preferences regarding alerts
11 transmitted via the first channel based on the
12 user profile?

13 A. Yes, assuming what I said here, I
14 stand by that.

15 Q. And you stand by what you said in
16 Paragraph 82, as well?

17 A. Yes.

18 Q. Okay. So you agree that the PCT
19 publication teaches a user profile that
20 identifies user preferences, platform
21 identities, and service support instructions as
22 to how the user wishes information to behave on
23 the selected platform?

24 A. Yes.

25 Q. Is an alert information?

1 A. Well, this is in the context of --
2 let's see, let me make sure we're well grounded
3 here. I need to put this in context. Well, so
4 this is the secure user center information, and
5 I believe your question was is a notification
6 user-centric information; am I correct?

7 Q. Yes.

8 A. Okay. So 1.6 is the secure
9 user-centric information. So antecedent to that
10 is the secure user-centric information. Okay, I
11 guess I would have to agree that notification is
12 a form of user-centric information. So I
13 believe my answer to your question is yes.

14 MR. PRICE: Mr. Schmandt, I do
15 not have any other questions for you today.

16 MR. THACKER: Can we take a
17 quick, five-minute break? And then come back?

18 MR. PRICE: Sure thing.

19 (1:15 p.m. - Recess taken.)

20

21 (At 1:27 p.m., with parties present as
22 before, the following proceedings were had,
23 to-wit:)

24 COURT REPORTER: (Requests orders
25 for the record.)

1 MR. PRICE: Standing order.

2 MR. THACKER: 26th is fine.

3 (12:29 p.m. - Adjournment.)

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

2 STATE OF NEBRASKA)
3 COUNTY OF DOUGLAS) Ss.

4 I, Cheryl A. Rooney, Registered
5 Professional Reporter, General Notary Public
6 within and for the State of Nebraska, do hereby
7 certify that the foregoing testimony of
8 CHRISTOPHER SCHMANDT was taken by me in
9 shorthand and thereafter reduced to typewriting
10 by use of Computer-Aided Transcription, and the
11 foregoing one hundred three (103) pages contain
12 a full, true and correct transcription of all
13 the testimony of said witness, to the best of my
14 ability;

15 That I am not a kin or in any way
16 associated with any of the parties to said cause
17 of action, or their counsel, and that I am not
18 interested in the event thereof.

19 IN WITNESS WHEREOF, I hereunto affix
20 my signature and seal this 26th of June, 2025.

21

22 _____
23 CHERYL A. ROONEY, RPR
24 GENERAL NOTARY PUBLIC
Registered Professional Reporter

25 My Commission Expires: November 24, 2026

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