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

SAP AMERICA, Inc.

Petitioner

v.

CYANDIA, INC.

Patent Owner

Case IPR2024-01433

U.S. Patent No. 8,751,948

ZOOM PROCEEDINGS OF CHRISTOPHER SCHMANDT
TAKEN BEFORE CHRISTINE SALERNO, REGISTERED PROFESSIONAL
REPORTER, GENERAL NOTARY PUBLIC WITHIN AND FOR THE
STATE OF NEBRASKA, BEGINNING at 8:37 A.M. CENTRAL
STANDARD TIME ON NOVEMBER 6, 2025, VIA ZOOM.

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Page 4 1 (Whereupon, the following proceedings 2 were had, to-wit:) 3 REPORTER'S NOTE: All quotations from 4 exhibits are reflected in the manner in which they 5 were read into the record and do not necessarily 6 indicate an exact quote from the document. 7 (All parties to this deposition are 8 appearing remotely and have agreed to the witness 9 being sworn remotely.) 10 CHRISTOPHER SCHMANDT, 11 having been first duly sworn, was examined and 12 testified as follows: 13 DIRECT EXAMINATION 14 BY MS. FULLER: 15 Q. Good morning, Mr. Schmandt, how are you 16 today? 17 A. I'm fine, thank you. 18 How are you? 19 Q. I'm doing well. 20 Do you have an understanding why you're here 21 today? 22 A. I believe I'm here to be deposed. 23 Q. Okay. And in connection with your reply 24 declaration submitted in IPR2024-01433, correct? 25 A. I'll trust you got the numbers right, yes.	Page 6 1 I looked at his deposition, I looked at my deposition 2 transcripts, I looked at the board decision, I looked 3 at the PeopleTones paper. I don't know if I mentioned 4 I looked at the '948 patent. 5 I looked at the Finger Ring paper, I looked 6 at the Nomadic Radio paper, and I looked at a whole 7 slough of other papers that have come up somewhat 8 incidentally. I can't recite all of them, but they're 9 all filed as exhibits. I think that's all, but I may 10 have missed something. There's a lot of them. 11 Q. Thank you. 12 Did you write your reply declaration? 13 A. Yes, I did -- 14 Q. Off -- 15 A. Yes, I did. 16 Q. And in Paragraph 2 of your reply declaration, 17 you state that you are addressing other ish -- or 18 pardon me, that you "submit this reply declaration 19 addressing other issues that I've been asked to opine 20 on, including certain opinions provided by Dr. Michael 21 Goodrich." 22 So you're only opining on a subset of 23 Dr. Michael Goodrich's opinions, do you agree with his 24 other opinions in his declaration? 25 A. Oh, no, of course not.
Page 5 1 Q. All right. And you have that reply 2 declaration in front of you; is that correct? 3 A. I have it next to me. 4 Q. Okay. And is that hard copy a clean copy 5 with no markings? 6 A. Yes, it is. Anything I refer to as hard copy 7 in these proceedings is clean. 8 Q. Okay, thank you. 9 Is there any reason why you cannot provide 10 truthful and accurate testimony today? 11 A. None at all. 12 Q. Mr. Schmandt, in preparing for your 13 deposition today, can you walk me through the process? 14 A. I worked on schedule with Klarquist, I asked 15 them to send me hard copies of some of the documents, I 16 got those documents, they confirmed that they had sent 17 what I needed, I reviewed those documents. I had 18 conversations with the attorneys and then I reviewed 19 the documents further afterwards. 20 Q. And what documents are you referencing? 21 A. There's a lot, I'm probably missing some, I 22 looked at my reply declaration, I looked at the '948 23 patent, I looked at the patent owner reply, or response 24 I guess it is, I looked at your expert, Dr. Goodwin 25 (sic). I'm not sure I got the name right, declaration.	Page 7 1 Q. Okay. And did you read his other opinions in 2 his declaration? 3 MR. THACKER: Objection, form. 4 A. Sorry, I was just raising the shade a little 5 bit, I've got clouds coming and going so the lighting 6 changes in here. 7 I certainly skimmed it. I don't know if I 8 read every word, I think I looked at it. 9 BY MS. FULLER: 10 Q. Okay. And why are you just addressing these 11 certain opinions provided by Dr. Goodrich in his reply 12 declaration? 13 MR. THACKER: Objection, form. 14 A. I'm doing what I was asked to -- what I was 15 asked to do. I'm covering the material I was asked to 16 cover. 17 BY MS. FULLER: 18 Q. So counsel asked you to cover this specific 19 material; is that correct? 20 MR. THACKER: Objection -- 21 A. Yes. 22 BY MS. FULLER: 23 Q. So Mr. -- 24 A. I let just -- let me just clarify that. 25 When you said "this specific material," I'm

Page 8 1 not sure of the scope of what you meant by that. I was 2 asked to -- 3 MR. THACKER: Chris -- Chris, I'm going 4 to stop you right there. 5 THE WITNESS: Thank you. 6 MR. THACKER: If to the extent that this 7 gets into like privilege confidential communications 8 that you had with us, I would ask that you not get into 9 that and I -- I would just -- yeah, I'm going to 10 reserve the right to object to the privilege. 11 THE WITNESS: Okay, I'll just stop there 12 then. 13 BY MS. FULLER: 14 Q. Okay, so these certain opinions that you 15 opined on in this reply declaration have to deal with 16 alerts; is that correct? 17 A. Yes, in general. They all funder -- they 18 fall under the category of alerts, but there are 19 specific analyses with respect to how alerts are used 20 in the '948 patent. 21 Q. Okay. In the 2009 timeframe, did you work 22 with or were you familiar with the presentation of 23 information on devices? 24 A. Yes, I was. 25 Q. Okay. And were you familiar with or did you	Page 10 1 research? 2 MR. THACKER: Objection, form. 3 A. Yes, it was published in -- it was published 4 in a conference, it only accepts novel and significant 5 work. The high -- it's a high bar to get into, the 6 high conference. 7 BY MS. FULLER: 8 Q. So in this Finger Ring paper, is it correct 9 that it discloses any -- or it discloses devices that 10 present tactile alerts? 11 A. We made a device that presented a tactile 12 alert in the form of a ring, yes. 13 Q. Okay. In -- in that timeframe, what other 14 types of alerts were devices able to present? 15 A. Devices could present alerts in tactile 16 modality, in visual modality, or in auditory modality. 17 Q. Does like visual alert types, does that 18 encompass texts, SMS, IMs, e-mail messaging? 19 MR. THACKER: Objection, form. 20 A. Well, in my previous deposition we used the 21 term relatively loosely, okay, we should be a little 22 bit more precise. 23 A text itself is not an alert. An alert is 24 something that a human can detect using sensory 25 mechanisms, smell, taste, hearing, vision, touch, okay?
Page 9 1 work with, specifically the presentation device -- 2 presentation of this information? 3 A. I did what was considered to be -- 4 (Court reporter interrupted for 5 clarification.) 6 Q. I'll try to get what I said, might be a 7 paraphrase. 8 Could you please elaborate on your cutting 9 edge resource -- research? 10 A. Would you like me to review my CV with you? 11 I have a list of publications there. 12 Q. Let's just go in reference to anything that 13 was presenting information on a end device. 14 A. It's 20 or 30 papers. I can go over my CV if 15 you would like. I can't summarize it as a one-liner, 16 sorry. 17 Q. Well, let's go to what's in your declaration. 18 In your reply declaration you have Exhibit 19 2027, is that in front of you? 20 A. Can you give me title of 2027? 21 Q. Yeah, it's your Finger Ring paper. 22 A. Yes, I have that. 23 Q. In front of you, okay, as a hard copy? 24 A. Yes. 25 Q. Would that be classified as cutting edge	Page 11 1 So an SMS is not itself alert. An SMS is a 2 message that comes over radio waves, like I'm not 3 sensitive to that. The text goes onto my phone, I 4 don't have sensory organ like a USB connector that can 5 detect text, okay? 6 The text could be used to trigger an alert 7 and that alert could be visual containing text, you 8 know, pixels that spell out the words, or it could be 9 auditory depending on how the phone is configured by 10 the user. 11 BY MS. FULLER: 12 Q. Well, are you saying that a text message is 13 not an alert? 14 A. I am saying that, yes. I am explaining -- I 15 have just explained why. 16 Q. Okay. Do you have your first declaration 17 available to you? 18 A. Yes, I do. 19 Q. Okay. Can you bring that first dec -- or 20 open that first declaration and let's go to -- 21 A. Hold on. 22 Q. -- Paragraph 86. 23 A. Hold on. 24 You said 86? 25 Q. Yes, Paragraph 86, please.

Page 12 1 A. Okay. 2 Q. Okay. So in this paragraph, you opine -- or 3 the paragraph states that a type of alert can include 4 for example, a text or an e-mail. 5 So in your first declaration you do opine 6 that a text or an e-mail is an alert; is that correct? 7 A. I'm clarifying -- I'm clarifying that at this 8 point. If I give you a text, how -- what -- how do 9 you -- how do you sense it? What bodily organ do you 10 sense it with? 11 Q. But is it a -- in your first declaration, a 12 type of alert is in text or an e-mail, correct? That's 13 what you say in your first declaration? 14 A. I have clarified that just now. 15 Q. So when you get an e-mail message, that is a 16 type of alert, you're alerted to that e-mail message, 17 visually, you see that, correct? 18 A. Only if I -- so first of all, I don't see all 19 of my e-mails because I have some filters that hide a 20 lot of them and you probably do too, okay? 21 And then, when the e-mail comes, certainly my 22 phone has a sleep mode, has bedtime, and when it's 23 bedtime, when that e-mail comes, I don't get an alert. 24 So there is really no mapping. So the e-mail can 25 trigger alert, but an e-mail itself is not the alert.	Page 14 1 use of language. 2 Q. And that's incorrect use of language because 3 what -- what's your basis for that? 4 A. Because human beings have no sensory organ 5 which can receive an e-mail. 6 Q. They receive it on their application, so an 7 e-mail application they receive a e-mail alert, 8 correct? So -- so if I have my Microsoft e-mail 9 Outlook open and I'll get a notification that there's 10 an alert, for example, it will pop up as three, four 11 missed -- or unread messages, correct? 12 MR. THACKER: Objection, form. 13 A. I don't know -- sorry, I don't know -- I 14 don't -- I don't use -- I don't use Outlook, so I don't 15 know exactly what kind of notification it may generate. 16 But if there is some notification and we call that 17 notification an alert, then -- which it probably is, 18 then the mail, your case Outlook application, decides 19 to generate that alert. So the alert is triggered by 20 e-mail, but the alert is not identical the e-mail, the 21 e-mail triggers the alert. 22 That's sort of the way the patent language 23 has been a little bit loosey-goosey in terms of saying 24 things like e-mail is an alert. E-mail is a delivery 25 mechanism and the contents of that e-mail may trigger
Page 13 1 The e-mail can trigger or cause an alert or 2 notification to happen and that notification could be 3 auditory, visual or tactile. 4 Q. So are you disagreeing then with your first 5 declaration when you state this a type of alert is an 6 e-mail or text message? 7 MR. THACKER: Objection -- 8 (Court reporter interrupted for 9 clarification.) 10 MR. THACKER: I said objection, form. 11 A. I can't recall what I said, okay, let's 12 repeat the question. 13 MS. FULLER: Can you read my question 14 back? 15 (The record was read by the reporter as 16 requested.) 17 A. As I said several times, I'm clarifying that, 18 I'm not disagree with it. We have, in these 19 proceedings, used that term and the patent uses that 20 term "alert" relatively loosely and I'm clarifying it 21 now. 22 Q. But the patent, the '948 patent, when it uses 23 alerts, it also references the types of alerts that can 24 be text or an e-mail; is that correct? 25 A. It says that, but I think that's incorrect	Page 15 1 an alert, but they may not. 2 BY MS. FULLER: 3 Q. So if I have a user preference that I want to 4 receive alert via e-mail, that delivery is an SMTP 5 protocol, correct? 6 A. I am so -- I have no idea what you're asking, 7 what you mean an e-mail is delivered as an -- by an -- 8 an alert is delivered by e-mail. I don't know what you 9 mean by that. 10 Q. So user preferences where I state as a user I 11 want -- I want to be notified by e-mail. So based upon 12 my user presences then, where I want to be notified by 13 e-mail, a protocol delivers that e-mail, correct? A 14 alert type to my end device; is that a correct 15 understanding? 16 A. So this is some kind of hypothetical that I 17 don't understand. I don't understand what you mean by 18 I have a preference that my alerts be delivered by 19 e-mail. 20 What kind of alert, so what's delivering? 21 What's delivering the alert? I don't know what you 22 mean. 23 Q. So I have my -- I have put into a user 24 preference, for example, not -- user -- alert 25 notifications by e-mail; do you understand that?

Page 16 1 A. No, what do you mean "alert notifications by 2 e-mail"? 3 Q. I want to be in the -- in this hypothetical, 4 a user wants to be notified via e-mail and they put 5 that in user preferences. 6 A. Okay, let's stop there. 7 The user wants to be notified of what? 8 Q. What -- an alert, they want to be notified 9 via e-mail for some triggering condition, something 10 that triggered an alert, okay? 11 A. Okay, so there's a triggering condition? 12 Q. Uh-huh. 13 A. That the triggering condition is going to 14 cause an e-mail to be sent. Now, that is set up in 15 some user preferences. User preferences for what? 16 Q. To send a notification based off of the 17 triggering event. 18 A. So you're saying there's some application on 19 some server someplace that is configured by you, that 20 you have some control over in terms of preferences, and 21 you have instructed that server that triggering 22 condition should be sent to you as e-mail; is that 23 correct? Is that -- my understanding correct? 24 Q. As indicated by user preferences to be 25 alerted via an e-mail, that's correct.	Page 18 1 A. E-mails can -- e-mails can be used as trigger 2 to cause a visual alert by an e-mail application. The 3 e-mail is not itself the alert. 4 Q. Can we open up -- or let me -- I believe it's 5 marked as Exhibit 1106. 6 A. Can you give me a name? Those numbers mean 7 nothing to me. 8 Q. It is the 2009 patent application. And when 9 I say marked, Mr. Schmandt, there's a Bates number at 10 the bottom. 11 A. Just a minute, I'm looking for the doc. 12 (Exhibit No. 1106, previously marked for 13 identification.) 14 A. Okay, I have that document in front of me. 15 Q. Give me one second, my pen fell. 16 (Discussion off the record.) 17 Q. Paragraph 33, the second to last line -- 18 A. You'll have to give me -- you'll have to give 19 me a minute to read there -- get there. 20 Q. Yes, and sorry, I misstated the paragraph. 21 It's Paragraph 32, the second to last line states 22 "enabling alerts." Let me know when you get there. 23 A. All right, this is a two-page paragraph, I'm 24 going to have to read it. 25 (Witness reading document.)
Page 17 1 A. Okay, and these are user preferences in the 2 server side application which is monitoring the 3 conditions to decide when there's a trigger, correct? 4 Q. Correct. 5 A. Okay. 6 Q. So when there's a triggering event, an e-mail 7 is going to be sent to me to notify me of that 8 triggering event. That would be an -- alerting me of a 9 event, correct? 10 A. That is conveying to you that the event has 11 occurred but the arrival of that e-mail on the device, 12 presumably we're talking about -- wherever the e-mail 13 arrives, okay, that e-mail has to cause something to 14 happen that you can detect about your senses or else 15 you don't know about it. 16 Q. So -- 17 A. If it just comes and sits in my mailbox, then 18 I don't know about it. I don't think I would call that 19 an alert, I might call that a notification. 20 Q. It would be a visual alert as I detect with 21 my senses visually that e-mail, correct? 22 A. Only if the e-mail is displayed on the screen 23 when it arrives. 24 Q. So it would -- visual alerts then would 25 encompass e-mails that are displayed on screens?	Page 19 1 A. Oh, I'm sorry, it was only half a page. I 2 didn't see the break there. 3 Okay, you're looking at the last sentence or 4 the -- sorry? 5 Q. Second to last line. It has -- in that 6 Paragraph 32, it says "enabling alerts." 7 A. "Channel information, e.g., content, enabling 8 alerts and integration to these services may reside in 9 multiple databases." 10 Q. Where it references alerts, would a POSITA 11 understand that this broadly encompasses any particular 12 alert type? 13 MR. THACKER: Objection, form. 14 A. This paragraph doesn't say anything about 15 alerts or alert type. It doesn't say what, what they 16 are -- 17 BY MS. FULLER: 18 Q. So -- 19 A. -- so... 20 Q. The alerts is used broadly and can encompass 21 any -- it's not limited to any particular one, correct? 22 MR. THACKER: Objection, form. 23 A. No, it's obviously limited by the description 24 of alerts in this document. I don't take a word in a 25 100-paragraph document and look at words in isolation.

Page 20 1 This doesn't say anything one way or another about what 2 the range of alerts might be. 3 BY MS. FULLER: 4 Q. A POSITA coming in to -- a POSITA at the 2009 5 timeframe would understand that there are various types 6 of alerts, correct? 7 A. Yes. 8 Q. Okay. Can you provide a list of the various 9 types of alerts in the 2009 timeframe? 10 A. Well, I think I have said that alerts can be 11 visual, auditory or tactile. We don't have ins -- we 12 don't have examples of alerts being provided by smell, 13 by devices, although some people were doing that 14 experimentally in the laboratory, and there was a 15 little bit of work of highly speculative in using taste 16 being able to manipulate senses of taste from a device, 17 but I would say those are edge cases and an ordinary 18 POSITA would think of alerts as possibly being 19 auditory, visual or tactile. 20 Q. So with this knowledge of a POSITA coming in 21 to the 2009 patent, when they would read enabling 22 alerts, would they understand that that could encompass 23 visual, auditory or tactile alerts? 24 MR. THACKER: Objection, form. 25 A. No, because in understanding a document, we	Page 22 1 without further description, how the apparatus or 2 device described in that Paragraph 32 could make these 3 alerts happen on a mobile device. 4 In fact, limiting ourselves to this paragraph 5 there's not even a mention of a mobile device. There's 6 channel, but this paragraph doesn't even describe what 7 these -- channels, right? A user may access channels 8 and interact with them based on the user profile. A 9 channel may be developed through the use of services 10 available to the developer. 11 These -- these don't mean anything. I mean, 12 these don't convey a particular concept of how 13 something like this works. It does say that there's a 14 channel alert server and there's all these management 15 servers, portal servers, so clearly there is this 16 concept here of a server, okay, but a POSITA wouldn't 17 have understanding of how a server could create alerts 18 of any of these forms on some other kind of device. 19 So it doesn't really matter whether a POSITA 20 knew that a phone could generate tactile alerts when I 21 got an e-mail, they wouldn't understand what alerts 22 meant in this context at all. 23 BY MS. FULLER: 24 Q. Would a POSITA understand that APIs from a 25 server or a back end such as a server, could be used to
Page 21 1 don't look at things like dictionary definitions of the 2 word. If I were reading a document like this, I would 3 be asking myself: So what does this document mean -- 4 mean? What does this document mean by alerts? And I 5 would look for illustration of that inside the 6 document. 7 BY MS. FULLER: 8 Q. And based off of this document, what is your 9 understanding that the document means in their 10 reference of alerts? 11 A. I think I gave a fairly detailed analysis of 12 that in my declaration. You want me to take some time 13 and we can go back and look at that? I certainly 14 offered the opinion that it -- to get to the point that 15 you're trying to get to that it did not include any 16 reference to alerts as being tactile. 17 Q. And what is your basis that -- that it does 18 not contain any reference just because it doesn't 19 disclose expressly tactile alerts in that document? 20 MR. THACKER: Objection, form. 21 A. That doesn't even -- it doesn't even mention 22 'em. It doesn't have any concept of them, okay? So 23 understand that this is describing a system, okay. 24 This is not describing these alerts in the abstract, 25 right? And the POSITA would not be able to appreciate,	Page 23 1 generate alerts on end devices? 2 MR. THACKER: Objection, form. 3 A. If you mean APIs in the server, that doesn't 4 have anything to do with what's running on the phone. 5 BY MS. FULLER: 6 Q. I'm meaning that an HTML code, correct, you 7 can put functionality in an HTML code that's sent from 8 a server to a end device; is that correct? 9 A. You can certainly send HTML to a browser on 10 another device, yes. 11 Q. Okay. And HTML code contains functionality 12 such as sound to then present on the device that has a 13 browser a auditory alert, correct? 14 MR. THACKER: Objection, form. 15 A. HTML itself doesn't support sound. HTML 16 would have to reference some piece of external data, 17 which the phone might or might not be able to play as 18 sound. Sound might be incorporated into a video, but 19 the HTML itself doesn't support sound. It's -- HTML is 20 a visual language. 21 BY MS. FULLER: 22 Q. There's APIs that have, for example, a sound 23 development, correct? 24 A. What kind of HPI -- of API? I'm not sure 25 what you're talking about. I wrote lots of code in my

Page 24 1 life that played sounds, that was one of the things 2 that I did, and I had various pieces of code that would 3 have APIs like playing sound. 4 Q. API such as a device.sound element, that's an 5 API, correct? 6 A. I have no idea what a device.sound element 7 is. I don't know what you're referring. 8 Q. Okay, let's go to Exhibit 2020, which is a 9 Bates stamp. 10 (Exhibit No. 2020, previously marked for 11 identification.) 12 A. Okay. 13 Q. Okay. So on the PDF page of Exhibit 2020, 14 Page 11, let me know when you get there. 15 A. Yes. 16 Q. Okay. Do you see where it has a element 17 device.sound? 18 A. I do. 19 Q. Okay. And the behavior is a sound file with 20 this name -- a behavior would be then a sound file; do 21 you see that? 22 A. It sounds sort of like a strange description. 23 Presumably this is something that would play a sound 24 file. 25 Q. Okay.	Page 26 1 A. Yes, I did. 2 Q. Did you review Exhibit 2020 in writing your 3 reply declaration? 4 A. Yes, I did. 5 Q. So on Page 3 of Exhibit 2020, which is the 6 PDF Page 3, I'm going to direct you there. 7 A. Okay. 8 Q. Okay, so let me have you read the first 9 paragraph underneath the header Hybrid Application 10 Development Tools, and let me know once you've finished 11 that read. 12 A. You mean the paragraph that begins quick 13 connect phone, that paragraph or some other paragraph? 14 Q. The first paragraph, so above the quick 15 connect phone. 16 A. (Witness complies.) 17 "This book covers the two most commonly used 18 open-source JavaScript software packages," that 19 paragraph? 20 Q. Yeah. 21 A. Okay. 22 Q. Let you read that. 23 A. Okay, I read it. 24 Q. Okay. So these JavaScript packages were 25 quick connect iPhone and PhoneGap. Were you familiar
Page 25 1 A. Sound to be played, yes. 2 Q. So this API enables a end device to play a 3 sound file; is that correct? 4 A. So I don't know what this API -- what this 5 so-called API does. This is not an adequate 6 description of -- of what it performs. This appears to 7 be some kind of JavaScript. I never heard of the 8 JavaScript, I don't know exactly what it can do. I've 9 never heard of this JavaScript, I've written plenty of 10 JavaScript. 11 I don't know what this does. I can't -- I 12 can't affirm that. It's probably possible to -- well, 13 I don't know whether you can play sounds in JavaScript, 14 so this is not -- so JavaScript is a specification of a 15 language, okay, how commands are -- the syntax of 16 commands and rules for their execution. It's just 17 another programming language, right? 18 That programming language itself can't play a 19 sound. There's no -- this is talking about an API 20 that's presumably provided by something that is some 21 kind of add-on to that JavaScript but I don't know 22 anything about it. I don't know anything more than is 23 written here. 24 Q. Did you review Exhibit 2020 in preparation of 25 your deposition today?	Page 27 1 with these JavaScript packages at any time? 2 A. No, I was -- I was not and I don't think a 3 POSITA would have been either. Because if I think if 4 these were in -- if these were well known, I would have 5 known about it. It was my job. 6 Q. So why does the book then say, "two most 7 commonly used open-source JavaScript software 8 packages." 9 Commonly used means well -- well known, 10 correct? 11 MR. THACKER: Objection, form. 12 A. The book says that, and you're saying that. 13 I don't believe that. I'm not saying that these people 14 are liars, but I'm saying that pointing to text in that 15 book, if -- if you want us to believe that these were 16 commonly used, then I would have expected that you 17 would have bolstered this evidence by finding some 18 examples, finding some references to this in some 19 products, open source so the source code should have 20 been available, but none of those are provided. 21 So I don't think these were commonly used. I 22 don't think a POSITA would have known about these. 23 This document isn't even dated at the appropriate time 24 with respect to the critical dates. I don't take this 25 document very seriously. The mere fact that this

Page 28 1 document says it was commonly used, I don't accept 2 that. I don't believe that's true. 3 BY MS. FULLER: 4 Q. Were you familiar with WebSphere -- or, 5 sorry, Web 2.0 Expo? 6 MR. THACKER: Objection, form. 7 A. I did not go to Web 2.0 Expo. 8 BY MS. FULLER: 9 Q. Were you familiar with Web 2.0 Expo? 10 A. There were -- there were any number of web 11 conferences and expos, I don't recall that one in 12 particular. 13 Q. Okay. 14 A. But in general, I knew about these things and 15 track developments. 16 Q. Okay. So there's a -- I'm going to introduce 17 and mark this as Exhibit 2029. 18 (Exhibit No. 2029, marked for 19 identification.) 20 A. So am I supposed to do something on my end? 21 Q. It should be uploading and it is going to be 22 available in the chat. 23 A. Oh, in the chat. 24 Q. Let me know when you have that. 25 A. Okay, it wants to save it someplace, let's	Page 30 1 start-up that had an open-source development framework, 2 a framework is an architecture, it's not even -- that 3 doesn't even meet the code as written, and that's it. 4 BY MS. FULLER: 5 Q. Okay. But I'm -- I want to go back to your 6 previous testimony that you said that there was no 7 evidence for showing that this -- that this package was 8 well known. 9 Do you agree that this is showing that the 10 start-up was available by -- or was publicly known by 11 April 2nd, 2009, and was voted as the People's Choice 12 winner of the Launch Pad start-up program? 13 MR. THACKER: Objection, form. 14 A. Well, the document says what it says, okay. 15 In the discussion that we were having before, 16 you put this document up, I said there hadn't been any 17 evidence, okay? So now you've introduced something new 18 that I haven't seen before. But I think what this says 19 is if it supports anything was that there was a -- as 20 part of this conference, there was a program called 21 Launch Pad that five companies, I presume they're 22 companies, made presentations and one of them was 23 picked as the best presentation. This company was 24 called PhoneGap and it was working on a development 25 framework for building mobile applications with
Page 29 1 put it in downloads. 2 Okay, I see it and I have it open. 3 Q. Okay, so this document is label -- is dated 4 April 2nd, 2009, and it states that PhoneGap was the 5 winning start-up company in the Web 2.0 Expo. 6 Do you see that? 7 MR. THACKER: Objection, form. 8 A. They announce the People's Choice winner of 9 the Launch Pad start-up program, okay. 10 BY MS. FULLER: 11 Q. So this is corroborating evidence to the 12 Exhibit 2020 statement that PhoneGap is a commonly used 13 open-source JavaScript package for writing applications 14 as -- and April 2nd, 2009, the start-up won the award; 15 and do you agree with that? 16 MR. THACKER: Objection, form. 17 A. You put a lot of your own words into that. I 18 don't agree with any of them off the bat. This is the 19 first time I have seen this document, so I haven't had 20 a chance to figure out what is -- true is, but it says 21 here, it's an open-source development framework. It 22 doesn't say people are using it. It doesn't say 23 it's -- all the other superlatives that you put in and 24 that. 25 So there was some start-up -- there was some	Page 31 1 JavaScript that doesn't say that there's open-source 2 code to do this. It doesn't say that anybody was using 3 it and in fact -- the fact that it is described here 4 as -- as a start-up and there's this presentation of 5 something we don't have the slide, we don't know what 6 they presented, that doesn't tell us that this was well 7 known or was well used, this might be the first time 8 anybody ever heard about it. 9 And, you know, if you look at the quote from 10 this person who was the CEO, "We're excited that the 11 audience enthused about open-source mobile phone 12 development." 13 Sure. Everybody would be interested in that 14 kind of stuff, it's a good, you know, it's a good 15 way -- not everybody, it's a interesting topic. Open 16 source is always interesting. 17 But this doesn't tell me any more than that. 18 BY MS. FULLER: 19 Q. Were you aware of Web 2.0 Expo? 20 MR. THACKER: Objection. 21 A. There were -- there were all kinds of 22 industry conferences like this. I didn't go to all of 23 them, of course not. I knew about them, but I'm not 24 going to fly to San Francisco to go for something 25 like -- like this.

Page 32 1 BY MS. FULLER: 2 Q. So were you aware of the San Francisco 3 conference? 4 MR. THACKER: Objection, form. 5 A. I can't remember whether I was aware of that 6 particular conference about 16 years ago. 7 BY MS. FULLER: 8 Q. And what type of people go -- industry people 9 go to conferences such as Web 2.0 expos? 10 MR. THACKER: Objection, form. 11 A. Well, presumably it would be people working 12 in -- in the industry. You know, sometimes researchers 13 might go, engineers might go to sniff out the 14 competition, researchers might go to, you know, keep 15 track of what -- what was coming down the pipe. 16 One of my jobs, as somebody who supervised 17 graduate degrees at MIT, was to be able to guide my 18 students to do -- to do novel work that wasn't done by 19 somebody else. And I had instances where students came 20 up with a proposal for a thesis and the proposal seemed 21 pretty solid for a master's thesis anyway, but then 22 some company announced the product that did exactly 23 what that thesis was going to do. In that case, the 24 thesis no longer meets the bar of novelty that is 25 required of a graduate thesis. So it's my job to know	Page 34 1 MR. THACKER: Objection, form. 2 A. Generally not researchers. You know, when I 3 went to some of these kinds of forums, I was sort of an 4 outlier. They tend to be more people in sales and 5 marketing. 6 BY MS. FULLER: 7 Q. I want to now direct your attention back to 8 Exhibit 2020, the -- Page 13. It's the one labeled 9 Developing Hybrid Applications for -- 10 A. Yes. It's still up here. 11 Q. Okay, perfect. 12 And then Page 13 of the PDF, which is stamped 13 below. 14 A. Page 13, yes. 15 Q. Did you review this Appendix C page in 16 preparation for your deposition today? 17 A. Yes. 18 Q. Okay. Do you see where it says "Confirmed 19 means JavaScript functions are found in PhoneGap as of 20 February 23rd, 2009"? 21 A. Yes, I see that. 22 Q. Okay. Does that mean that -- that JavaScript 23 functions were in PhoneGap libraries by that time? 24 A. I don't know what it means. 25 Q. Well, confirmed means JavaScript functions
Page 33 1 about these things. 2 BY MS. FULLER: 3 Q. And these types of conferences provide you 4 with that information; is that correct? 5 MR. THACKER: Objection, form. 6 (Court reporter interrupted for 7 clarification.) 8 A. I'm sorry, I don't know how that happened. 9 There were lots of these kinds of 10 conferences, I don't know exactly what was shown at 11 this particular conference. Like I say, it was a long 12 time ago. 13 You know, if we had a list of presentations 14 or exhibitors or something, I could address that 15 more -- more -- more directly, but absent that, I can't 16 testify as to whether this was a cutting edge 17 conference or not. I can't remember exactly what this 18 conference was. They were all -- like I said, the web 19 was hot and it was doing various kinds of web 20 technology conferences. 21 BY MS. FULLER: 22 Q. And people like yourself and other 23 researchers in industry, people would go to conferences 24 like this to understand the developing products in 25 technology; is that correct?	Page 35 1 are found in PhoneGap as of February 23rd, 2009. That 2 would mean the available -- that those functions are 3 available at that timeframe, correct? 4 A. It means what it says, they're confirmed to 5 be in PhoneGap. It doesn't say anything about the 6 availability of PhoneGap or how one would get it or who 7 might be using it. It does say at the beginning, 8 "Because PhoneGap is early in its development cycle, it 9 is rapidly undergoing change. As such, it is important 10 to closely watch development for updates." 11 To me, that means this is prototypes offer 12 and current -- certainty bet a product line on it. It 13 also references a PhoneGap wiki. That would be an 14 interesting thing to see, but that hasn't been 15 provided. 16 This was pretty vague. 17 Q. And so let's go down to Table C1 where it 18 says, "vibration, iPhone, confirmed. Android, 19 confirmed." 20 Is that confirmed availability in the 21 PhoneGap libraries for these types of devices? 22 MR. THACKER: Objection, form. 23 A. I think I just addressed that. What's 24 different between this question and the previous 25 question?

Page 36 1 BY MS. FULLER: 2 Q. The -- I'm trying to understand -- I'm trying 3 to get that by February 23rd, 2009, these JavaScript 4 functions were available in PhoneGap; is that correct 5 based off of this document? 6 MR. THACKER: Objection, form. 7 A. It doesn't -- it says -- claimed means that 8 the PhoneGap team states that the feature is available, 9 but the author cannot find evidence of this in the 10 downloaded code. 11 That sounds to me like vaporware -- 12 BY MS. FULLER: 13 Q. You're -- 14 A. -- I assume. 15 Q. You're referencing claimed, I was talking 16 about confirmed. 17 A. Confirmed means the JavaScript function, 18 okay, they're found in PhoneGap, okay. 19 So the authors of this say that at some time 20 in the past there was some PhoneGap, presumably 21 library, that had these functions. But it also says 22 it's in its early development cycle and it's undergoing 23 changes. 24 So the fact that the authors of this book 25 believe it's in a library doesn't mean that it was well	Page 38 1 (At 9:48 a.m. Central Standard Time - 2 with all parties present as before, the following 3 proceedings were had, to-wit:) 4 BY MS. FULLER: 5 Q. So Mr. Schmandt, is your position that an 6 alert must be capable of being sensed by a human; is 7 that correct? 8 MR. THACKER: Objection, form. 9 A. Yes. 10 BY MS. FULLER: 11 Q. What is the basis for your understanding? 12 A. Plain and ordinary meaning of the word 13 "alert" in the context of devices. 14 Q. So if an e-mail is received in an 15 application, is it sufficient for the e-mail to show up 16 in an in box and a user to be alerted of that e-mail 17 when they see it? 18 MR. THACKER: Objection, form. 19 A. No, that's not an alert. 20 BY MS. FULLER: 21 Q. Why is that? 22 A. Because an alert should be synchronous with 23 the event. The alert should happen at the time the 24 e-mail arrived. 25 Q. So your position is an alert must be capable
Page 37 1 known, that it was commonly used. You're reading a 2 whole lot -- you're reading a whole lot into this and 3 I'm sorry, but it's just not there. 4 MS. FULLER: All right. We've been 5 going on the record for about an hour now, let us go 6 off the record. 7 (At 9:29 A.M. Central Standard Time - 8 Recess was taken.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 39 1 of being sent by a human at the time the alert arrives? 2 MR. THACKER: Objection, form. 3 A. Okay, so the e-mail is not an alert, okay? 4 So by the time notification of the triggering event 5 alerts -- sorry, by -- by the time the triggering of -- 6 at the time, or shortly thereafter, that the trig -- 7 notification of the triggering event arrives at the 8 device, the alert should be generated for the user. 9 BY MS. FULLER: 10 Q. So when a user has their e-mail open and they 11 receive the e-mail message and visually sense that at 12 that same time; that would be an alert, correct? 13 MR. THACKER: Objection, form. 14 A. No, I wouldn't consider that to be an alert 15 because there's no -- an alert implies some kind of 16 special handling. If -- if I have my mailbox -- if I 17 have an application that has my mailbox open and a new 18 line appears, that's not an alert, that's just an 19 indication that there's a new e-mail and that will 20 happen with any new message. There's nothing special 21 about that. 22 BY MS. FULLER: 23 Q. So you're saying that -- that e-mail message 24 that is visually seen at the time it's received is not 25 an alert?

1 MR. THACKER: Objection, form. 2 A. In the hypothetical situation that you 3 described, no, it's not an alert. 4 BY MS. FULLER: 5 Q. Can I direct you to Exhibit 1101, which is 6 the '948 patent. 7 (Exhibit No. 1101, previously marked for 8 identification.) 9 A. Okay, I'm going to have to clean up some of 10 these other ones first, so give me a minute. 11 Q. Okay. 12 A. Okay, I have the '948 patent here. 13 Q. Is there any place in the '948 specification 14 that defines an alert as capable of being sensed by a 15 human at the time it is received? 16 MR. THACKER: Objection, form. 17 A. There are certainly examples, but I don't 18 recall those words. An interesting example was if I'm 19 not mistaken, the stock price trigger was a good 20 example. 21 BY MS. FULLER: 22 Q. Where -- where exactly, though, I want to 23 know in the '948 specification that defines alert as 24 being capable of being sensed by a human at the exact 25 time that it is received?	Page 40 Page 42 1 say an alert includes a visual alert, an auditory 2 alert, an e-mail message and an SMS message. 3 Q. So Claim 10 had encompassed as an alert a SMS 4 text message and an e-mail message, correct? 5 A. Claim 10 lists them. I don't know the legal 6 import of that to an understanding of how one 7 interprets the specification, that -- that's a legal 8 question. My own position has been clearly stated that 9 an e-mail message, or a text message, is not itself an 10 alert, although it can trigger an alert. And that -- 11 you know, I would say this claim is poorly written. 12 Q. So based on Claim 10, if an e-mail is 13 received in an application and it is a e-mail message, 14 that's sufficient to be an alert as encompassed by 15 Claim 10? 16 A. I disagree. I disagree with that 17 interpretation of what those words mean. 18 Q. And what is your basis for your disagreement? 19 MR. THACKER: Objection, form. 20 A. We've talked about it for the last half an 21 hour. Do you want me to rehash it? 22 BY MS. FULLER: 23 Q. I'm -- where in the specification would be 24 your basis for the disagreement? 25 A. I'm talking about how one understands how a
Page 41 1 MR. THACKER: Objection, form. 2 A. Oh, there's certainly no such definition in 3 the -- in the patent -- in the patent. The applicant 4 has not attempted to be his own lexicographer by 5 defining a term. 6 BY MS. FULLER: 7 Q. Okay. So going to Claim 10 of the '948 8 patent, let me know when you get there. 9 A. Okay. 10 Q. So Claim 10 recites that at least one alert 11 includes at least one of a visual alert, an auditory -- 12 auditory alert, e-mail message, and at least one SMS 13 text message; do you see that? 14 A. I do. 15 Q. So the specification and as claimed defines 16 an alert as being a e-mail message or a SMS message, 17 correct? 18 A. I'm sorry, could you repeat that? 19 Q. The claims in the '948 define an alert as 20 being an e-mail message or an SMS text message, 21 correct? 22 A. I don't know if "define" is a proper verb to 23 ascribe to -- to a claim. I think that might be -- 24 that might be a legal distinction. 25 It is certainly the case that Claim 10 does	Page 43 1 person of ordinary skill in the art understands the 2 term "alert". 3 Q. So do you understand the person of -- a 4 person of ordinary skill in the art understands a term 5 based off -- based on intrinsic evidence; do you 6 understand that? 7 MR. THACKER: Objection. 8 A. Yes, yes, I do. And I don't know the legal 9 import as far as intrinsic evidence of the actual claim 10 language. That's a question that is beyond my 11 technical scope. 12 BY MS. FULLER: 13 Q. So I'm just trying to understand where in the 14 intrinsic evidence do you form -- or supports your 15 basis that an alert is something other than an e-mail 16 message? 17 A. Other than an e-mail message? The 18 specification gives us examples of home security 19 system, it gives an example of a stock price trigger, 20 and both of these have visual and/or auditory results. 21 Q. I mean, I guess to be more particular, where 22 in the specification does it state that an alert is not 23 an e-mail message? 24 A. We can never prove something by the negative. 25 There's no answer to that question.

Page 44 1 Q. I'm just trying to -- to understand where 2 your basis is that an alert must be sensed by a human 3 synchronously at or about the same time as a triggering 4 event? 5 A. That is simply how a POSITA would understand 6 the term. 7 Q. So sitting here today, you can't provide me 8 any passage in the specification that would support 9 your statement? 10 A. As I just said, the situation gives us two 11 examples, which dovetail quite nicely with my 12 definition. 13 Q. And that example would be the stock alert? 14 A. The stock price trigger was one, and the home 15 security -- 16 MS. FULLER: That wasn't me, that was 17 Alexa. 18 (Discussion off the record.) 19 A. You better buy some stock alerts. They're on 20 sale this week at Amazon prime. 21 No, the -- I'm sorry, I've had the same thing 22 happen to myself, I'm very sympathetic. 23 Q. I was trying to -- 24 A. In my case it's Google. 25 Q. Yeah, it's trying to turn off my -- my lock	Page 46 1 watch touchlet 316B from, for example, black to 2 yellow." It continues to monitor it. 3 "An example of the alert state is to change 4 the color of the border of the stock watch touchlet to 5 red." So those are visual indications. 6 Q. So the stock example would be a visual 7 example. 8 So what is -- in this -- carrying out this 9 hypothetical, what if the user is not at their device 10 at the time that the visual alert is presented on the 11 device? 12 MR. THACKER: Objection, form. 13 BY MS. FULLER: 14 Q. In this case, it's not perceived by the human 15 at the time it is received? 16 A. It would be capable of being perceived by the 17 human if the human were there. 18 Q. So also in the sense of an e-mail message, it 19 would be -- an e-mail message is capable of being 20 received by a human if the human was there? 21 A. You said "received," I think you meant 22 perceived. 23 The e-mail has to be presented somehow to the 24 user, right? I mean, let's look at this. This, you 25 know, stock -- stock application is an interesting one
Page 45 1 screen and it picked up stock alerts, it could have 2 been worse, so... 3 A. Yeah, I -- well -- I'll get back to your 4 question in a second. I had an example where I was 5 asked a series of questions and I said, "I don't know, 6 I don't know, I don't know", and then Google in my 7 pocket said, "I don't know either. Try asking the 8 question differently." 9 Anyway, the specification gives us two 10 examples there. I don't really see -- I don't recall 11 an example in the specification. Perhaps you could 12 point me to it, where it describes an actual instance 13 of an e-mail as being an alert. 14 Q. The stock alert example, is that an example 15 of a visual alert? 16 A. Let's take a look at it, shall we? 17 So this is generally Column 25, paragraph 18 beginning around Line 30. So it says, "The share price 19 that the user enters is an example of a threshold 20 condition or parameter for triggering an alert 21 notification," okay. 22 Let's see, so -- 25, Line 60, "Figure 16 23 shows that the stock watch touchlet may display a 24 warning state to the user. An example of the warning 25 state is to change the color of the border of the stock	Page 47 1 because presumably there's a stock application which is 2 doing a continuous realtime or near realtime display 3 of -- of stock prices. You know, stock ticker apps are 4 pretty well known. So there's a stock ticker app and 5 it's just gone away and it's changing its numbers and 6 they're changing from green to red and -- well, let's 7 ignore the color, they're just changing the colors -- 8 the numbers are changing, showing the current price. 9 But there's this trigger condition and the 10 trigger condition is, if the price exceeds or falls 11 below some number, and when that number happens, 12 something different happens, that something different 13 is the alert. It changes color to somehow attract the 14 user's attention. 15 The same thing could be said at e-mail. I 16 have an e-mail reader app, personally I use G mail, 17 it's a web-based interface. There's a window, there's 18 a tab in my browser that displays my e-mail messages. 19 I may or may not have that tab open. I may or may not 20 be there -- be using, I may not be in the room when 21 that tab is open, or I may be sleeping, have the phone 22 in my pocket or something like that. So when the 23 message arrives, it will certainly change what's 24 displayed, but that's not an alert. 25 Just like the current stock price is not an

Page 48 1 alert, there's a condition that has to be met, okay? 2 In the case of an e-mail, the condition would be it's 3 from a certain set of people or it has a certain 4 subject line or it's a response to a message that I 5 sent before, or maybe I'm somebody who gets no -- 6 doesn't get any -- doesn't get many e-mails at all and 7 I want to know about every e-mail, so in that case the 8 condition would be any e-mail that arrives. 9 But the alert then is something addition, 10 additional, special, that happens in the treatment of 11 one of those messages that arrives. 12 Q. Can I direct you to Column 15, Lines 14 13 through 19. 14 A. Okay. 15 Q. Okay. So the specification describes 16 examples -- "Examples of types of alerts that may be 17 generated by eventing and alerting subsystem." 18 So generated means when there is a condition 19 that's been triggered, triggering condition, the system 20 generates an alert, correct? 21 A. Yes, the system generates -- the eventing and 22 alerting subsystem generates alerts, yes. 23 Q. And these alerts can include, but are not 24 limited to, SMS text messages, e-mail messages, 25 correct?	Page 50 1 time an e-mail arrived at my computer. There was a 2 process that would analyze the e-mail, and depending on 3 what the e-mail was, it might decide to alert me. That 4 alert could have been auditory, make a sound. Various 5 people when they send me messages could make my 6 compu -- my computer would make various sounds, so when 7 I got a message from my boss, the computer would play 8 the sound of a trumpeting elephant, and when I heard 9 that trumpeting elephant, I would know, oh, that's my 10 boss. I can tell you many other ones, some of which 11 are humorous. 12 The same process could examine that e-mail 13 and on the basis of that e-mail it could execute some 14 program that would do something else for me, okay? So 15 the e-mail was the mechanism whereby something 16 happened, but the e-mail is not itself the alert. The 17 e-mail can trigger the -- the alert, so in this case, 18 if the e-mail -- let's say were the stock ticker 19 application, or that -- and so the e-mail were the 20 stock trigger application, and the stock price exceeds 21 the set point, then the -- the stock ticker application 22 might send an e-mail, but it would take something on 23 the receiving end to turn that into an alert. 24 Now, that could be built into a mail reading 25 program, okay? It could be some other application that
Page 49 1 A. That's what the patent says. 2 Q. So when there is a -- let me just strike 3 that. 4 So what the patent says is that when a 5 triggering condition is met, the system generates an 6 alert and a type -- the alerts can include a text 7 message or an e-mail, correct? 8 A. That's what it says. 9 Q. Do you agree with the specification? 10 A. I do not. 11 Q. And why do you not agree with the 12 specification's definition? 13 MR. THACKER: Objection, form. 14 A. It's what we've been talking about for the 15 last hour, okay? SMS or e-mail could be used as a 16 delivery mechanism, so it could be that the, for 17 example, the stock price system, when it detects that 18 the stock price has exceeded some value, it would 19 perhaps send an e-mail, but that e-mail is -- that 20 e-mail is a notification and the e-mail is the 21 mechanism whereby that would be delivered. But simply 22 the arrival of an e-mail isn't an alert. 23 I personally built systems that would process 24 my e-mail and I could send alerts, I could send 25 notifications that would cause alerts by e-mail every	Page 51 1 gets the e-mail forwarded to it. There are a number of 2 different software architectures that could be used to 3 make that happen. 4 BY MS. FULLER: 5 Q. So let me just understand -- let me make sure 6 I have a correct understanding of what you just 7 testified to. 8 So the definition of how -- how you define 9 alert is not how the specification uses alert? 10 A. Well, the specification uses alert in a way 11 that a POSITA wouldn't ordinarily understand the word 12 alert to mean. 13 Q. So that's your position? 14 A. Yes. 15 Q. A specification is inconsistent with how a 16 POSITA would understand what alert means, correct? 17 A. Yes, although, you know, in these proceedings 18 today we've used the term pretty loosely and we sort of 19 blurred the limits, sort of blurred the meaning. And 20 I'm trying to be precise because at this point we have 21 a -- I'm talking about my reply declaration, which 22 specifically focuses on tactile alerts. So there's an 23 emphasis here on what is an alert and what constitutes 24 a tactile alert, okay? 25 There's a subtext here of what is an alert

Page 52 1 because it's my position that just because a phone can 2 vibrate doesn't mean that that is an alert, okay? And 3 there's another subtext of what does it mean in the 4 context of what's recited in the claims for where that 5 alert comes from. So these are the components here. 6 Now, we've talked in the past about, oh, 7 e-mail is -- is an alert, but what we've really elided 8 over is that the e-mail has to cause some kind of way 9 for the recipient to be alerted to -- to know about 10 whatever it is. And if absent that, the e-mail may 11 carry information that is meant to alert the user to 12 some triggering condition, but unless there's some way 13 of informing the user of that, the user hasn't really 14 been alerted. That's not what we would consider to be 15 an alert. 16 You know, I have a clock on my phone, all 17 right, that clock updates every second. Any time I 18 want to, I can look at that clock and I can see what 19 time it is. But if I set an alarm, and even if the 20 clock is visible, I expect that alarm, which is an 21 alert, to make a noise and I would be very upset if my 22 alarm clock application didn't make that noise because 23 it said, oh, you were looking at the screen or rather 24 the screen was showing the time. 25 In fact, my alarm clock application is	Page 54 1 ask a few questions. 2 One of the questions is going to bring you 3 back to your opening declaration which is on Paragraph 4 86. 5 A. Okay, I'm going to have to get that and spend 6 a little time reading it. 7 Q. Okay, just Paragraph 86. 8 A. I don't read paragraphs in isolation, ma'am. 9 (Witness reading document.) 10 Q. Mr. Schmandt, I'm going to give you three or 11 four more minutes and then I'm going to ask some 12 questions related to Paragraph 86. 13 A. We're talking about Austin-Lane. I'm 14 currently reading it. I'm not prepared to answer any 15 questions until I've had a chance to read the material. 16 I haven't looked at it for about 10 months now. 17 Do you wish me to stop? 18 Q. I want to give you about five more minutes 19 and then I'm going to ask some questioning -- lines of 20 questioning, and if you don't feel comfortable -- and 21 then we'll go from there. That's what I'm going to do. 22 So let's reconvene then at 11:30 a.m. eastern. 23 A. If we're going off the record, then I'm going 24 to take a break. If you want to stay on the record, 25 I'll continue looking at this document. You're
Page 53 1 slightly smart and this morning when I picked up my 2 phone, 15 minutes before the alarm was supposed to go 3 off, of course the phone knew that I picked it up and 4 the phone put up an alert, a visual alert, that said, 5 "You have an alarm in 15 minutes, should I turn it off 6 now?" That was an alert. 7 Q. Is it your opinion that Austin-Lane 8 demonstrates a POSITA -- demonstrates that a POSITA 9 knew how to provide a particular type of alert to 10 another device? 11 MR. THACKER: Objection, form. 12 A. If you want to -- I would say that I'm not 13 prepared to discuss Austin-Lane. Austin-Lane is not 14 something that's been mentioned in my reply 15 declaration. If you wanted me to discuss Austin-Lane, 16 I'm going to have to take some time to read my 17 declaration and read Austin-Lane. I'm not prepared to 18 discuss that at the moment. 19 BY MS. FULLER: 20 Q. Okay. So sitting here today, you're not 21 prepared to discuss Austin-Lane; is that correct? 22 A. Unless counsel advises me that I should take 23 the time to answer this question, I'm going to consider 24 it out of scope of my reply declaration. 25 Q. Well, counsel can object to that, but I will	Page 55 1 controlling the time. 2 Q. Let's stay on the record for the next five 3 minutes -- 4 A. Okay, fine. 5 Q. -- and then I'm going to ask you questions. 6 A. Okay, if you ask me any question about 7 Austin-Lane, before I've had a chance to read it, I'm 8 going to say I am not prepared to answer that question, 9 just so you know. 10 Q. Yeah. All right, Mr. Schmandt, I'm going to 11 ask my line of questioning now. 12 A. As you wish. 13 Q. Okay. So do you have Exhibit 1103, your 14 opening declaration in front of you? 15 A. Let me put this other one away and then I 16 will open it. 17 (Exhibit No. 1103, previously marked for 18 identification.) 19 A. Okay, I have that. 20 Q. Okay. I want to direct your attention to 21 Paragraph 86 of your declaration. Let me know when you 22 get there. 23 A. Okay. 24 Q. So in Paragraph 86, you opine that 25 Austin-Lane teaches determining notification method.

Page 56 1 And then you provide what that in -- can include, which 2 would be in determining notification method example 3 provided is a SMTP protocol for an e-mail, and the type 4 of alert, text or an e-mail. 5 As another example you say that it would be a 6 SMS for text protocol and the type -- and the type of 7 alert would be a text; do you see that? 8 A. I haven't had a chance to read Paragraph 86, 9 yet -- 10 Q. Well, I'll let you -- 11 A. -- can I do that now? 12 Q. Yep. 13 (Witness reading document.) 14 A. Okay. 15 Q. I'll present my question again. 16 So on Paragraph 86 you state that, 17 "Austin-Lane teaches determining notification method, 18 which can include," and then you provide examples. For 19 example, SMT -- SMTP for e-mail protocol, then the type 20 of alert would be e-mail. A SMS for text protocol, the 21 type of alert would be text. 22 So base -- 23 A. Are you -- 24 Q. -- Austin-Lane -- based off of Austin-Lane, 25 would a POSITA know various types of alerts and how to	Page 58 1 POSITA understand how to present a text alert to the 2 user, I would refer to Austin-Lane, Figure 10. 3 BY MS. FULLER: 4 Q. You said text or tactile? 5 A. Text. I believe the question was text. 6 Q. So based off of Austin-Lane's teachings where 7 they teach that the type of alert to provide can be a 8 icon, text, pop-up window, a video, an e-mail, an 9 audible or a tactile alarm, would a POSITA coming into 10 the 2009 application understand how to present these 11 various types of alerts? 12 MR. THACKER: Objection, form. 13 A. I think a POSITA would understand that these 14 are various types of alerts and understand in some 15 circumstances how to present them based on Austin-Lane. 16 For example, Austin-Lane says that if one were using an 17 Instant Message application, if the presence 18 information indicated that one were using Instant 19 Message application, then the alert could be sent as an 20 Instant Message because instant messages when they 21 arrived were immediately displayed visually. 22 BY MS. FULLER: 23 Q. So let's go into Austin-Lane and let's go to 24 Column 4, Line -- let's see, sorry, this is paragraphs. 25 Let's go to Paragraph 39.
Page 57 1 present them on a device based off of what you disclose 2 in Paragraph 86? 3 A. You've misrepresented or misquoted what I 4 said in Paragraph 86. You added some words that aren't 5 there. 6 Q. What did you say in Paragraph 86? 7 A. Well, we were talking about communication 8 protocol. What I said was, quote, the communication 9 protocol to use to send the notification, i.e., how to 10 send a notification, e.g., SMTP parens, for e-mail; 11 SMS, parens, for texts; HTML for web browsers. That's 12 communication protocols. 13 Okay, I didn't say -- I didn't say text was 14 an alert in there. I forget how you mischaracterized 15 it. 16 Q. And then you say, "The type of alert to 17 provide e.g., text, an icon, a pop-up window, a video, 18 an e-mail, an audible or tactile alarm." 19 So based on what Austin-Lane teaches, would a 20 POSITA know by 2009 how to present these various types 21 of alerts on the end user device? 22 MR. THACKER: Objection, form. 23 A. That was a long question, I'm not quite sure 24 how to answer it. 25 To the extent that the question was: Would a	Page 59 1 A. I'm not prepared to discuss Austin-Lane until 2 I've had a chance to finish reading it, which you 3 interrupted. 4 Q. I'm just going to a specific paragraph in 5 Austin-Lane and I would like to ask my question and we 6 can go from there. 7 A. I cannot answer a question about a specific 8 paragraph in this document without understanding the 9 entire document. 10 Q. So your position is that if I ask you a 11 question about a passage in Austin-Lane, you're not 12 prepared to opine on it? 13 A. I'm happy to read it, which I was doing and 14 you interrupted, and in that case I can opine on it. 15 Q. Well, I'm -- 16 A. Other than that -- may I finish, please? I 17 don't believe a deposition is a memory test of what I 18 studied 10 months ago. 19 Q. Well, I'm going to go to a specific passage 20 and ask you some questions, and then we can see whether 21 or not you are prepared to provide answers. 22 So Austin-Lane, Paragraph 39, it states, for 23 example, the user 305 may -- a video, a flashing 24 indicator and/or an audio or tactile alarm; do you see 25 that?

1 (Court reporter interrupted for 2 clarification.) 3 Q. So Paragraph 39 in Austin-Lane it states, 4 which is on Page 4, the middle of the paragraph on Page 5 4, "For example, the user may select to receive the 6 notification as an instant message, an icon, a pop-up 7 window, a video, a flashing indicator and/or an audio 8 or tactile alarm." 9 Do you see that? 10 A. I'm not prepared to discuss Austin-Lane at 11 this point. 12 Q. You're not prepared to -- to answer yes or 13 no -- yes or no that you see that passage? That you 14 can't answer yes or no to what the passage states? 15 A. I can answer that. 16 Q. So Austin-Lane states that the user may 17 select to receive -- 18 A. Hold -- hold on a minute -- hold on a minute. 19 You're talking about Paragraph 39 now, right? 20 Q. Yes. 21 A. If you're going to tell me what it says, I 22 need to make sure that the quote is correct. 23 Okay, Paragraph 39, yes. 24 Q. It states that "The user may select to 25 receive the notification as an instant message, an	Page 60 1 correct in the document. If you want me to talk about 2 it, I have to read the document. 3 Q. So you agreed that the list of examples in 4 Paragraph 39 were types of alerts, correct? 5 A. I think I did, yes. 6 Q. And these types of alerts are presented on a 7 user end device, correct? 8 A. If you're talking about -- 9 Q. And -- 10 A. I'm not prepared to discuss Austin-Lane until 11 you give me chance to read it. It's your call. 12 Q. Okay. Okay, let's go -- let's give -- would 13 you want to go for a five-minute break, Mr. Schmandt? 14 A. If you want -- it's 11:43 here. If I take a 15 break, it's going to be 15 minutes, but then we're 16 getting into lunch time. I presume you have more 17 questions. In that case, let's take an hour lunch 18 break. 19 Q. Let's -- I think my line of questioning will 20 be -- will -- let me -- give me five minutes and then 21 come back on the record and then we can -- let's -- let 22 me ask you this: Austin-Lane, how far did you get in 23 your reading of Austin-Lane? 24 A. About two thirds of the way through it. 25 Q. Okay. Do you think -- let's just -- let's
Page 61 1 icon, a pop-up window, a video, a flashing indicator 2 and/or an audio or tactile alarm." 3 Do you see that? 4 A. Not at the moment. 5 Q. It's on Page 4 of -- of Austin-Lane. 6 A. Okay, can you repeat that now that I'm at 7 that sentence? I just want to make sure you have it 8 correct. 9 Q. The user may -- "User 305 may select to 10 receive the notification as an instant message, an 11 icon, a pop-up window, a video, a flashing indicator 12 and/or an audio or tactile alarm." 13 Do you see that? 14 A. Yes. 15 Q. Okay. Are these types of alerts? 16 MR. THACKER: Objection, form. 17 A. Well, it says received the notification, so I 18 would say yes, they are alerts. 19 BY MS. FULLER: 20 Q. So the various alert types that could be 21 presented on a user device include, as disclosed in 22 Austin-Lane, a tactile alarm; is that correct? 23 A. I'm not prepared to answer that question 24 until I've had a chance to read the document. I will 25 confirm that that -- that text that you cited was	Page 63 1 just keep going then and I'll let you finish up your 2 read of Austin-Lane and we can get back to this line of 3 questioning then. We'll do it on the record. 4 (Witness reading document.) 5 A. Okay, I've read it. 6 Q. So going back to Paragraph 39. 7 39, so it's -- so 39 discloses that tactile 8 alarms are presented on a MD -- or PDA or mobile phone; 9 is that correct? 10 MR. THACKER: Objection, form. 11 A. I don't think Paragraph 39 limits the tactile 12 alert to a particular device. 13 BY MS. FULLER: 14 Q. It could be a mobile phone, PDA, pager, any 15 of those types of devices? 16 A. It doesn't specify. 17 Q. But a tactile alert is presented on a device; 18 is that correct? 19 A. Yes. 20 Q. Okay. So based off of Austin-Lane, which was 21 issued, has a publication date of 2004, when the 2009 22 patent application was written, a POSITA would know how 23 to present tactile alerts on end devices; is that a 24 correct understanding? 25 MR. THACKER: Objection, form.

Page 64 1 A. Austin-Lane says that tactile alerts can be 2 by an alert that is to be on some kind of physical 3 device because an alert is physical. 4 Austin-Lane is mute as to how a tactile alert 5 is actually presented. It says it may be. A tactile 6 alert is a kind of alert, but it doesn't say exactly 7 how that is done. And it's not indicated in a 8 particular example here. 9 BY MS. FULLER: 10 Q. But the Austin-Lane does disclose the 11 presentation of a tactile alert on a end user device, 12 correct? 13 A. Austin-Lane discloses notifications which can 14 lead to alerts that are delivered in what's called a 15 cascaded delivery mechanism across a number of 16 different possible user devices and applications based 17 on user presence information. 18 So Austin-Lane could be providing a tactile 19 alert as part of that cascade delivery mechanism. 20 Q. So by the 2009 timeframe, a POSITA would 21 understand how to provide a tactile alert from another 22 device to a end user device; is that correct? 23 MR. THACKER: Objection, form. 24 A. I don't think that Austin-Lane tells us how 25 to do that. Austin-Lane --	Page 66 1 tactile alert on an external device? 2 MR. THACKER: Objection, form. 3 A. I'm a little weary of the term "enablement" 4 because that's a legal term. The Austin-Lane discloses 5 exactly what we said. Austin-Lane discloses that 6 alerts can be tactile and that through a notification 7 mechanism alerts can be generated on end user 8 devices -- end user devices, it's obvious there there's 9 some kind of device. 10 Austin-Lane does not tell us how that's done. 11 That's implied in the delivery mechanism. 12 MS. FULLER: All right, we -- let us -- 13 would you be okay to do a 10-minute break and I know 14 we're coming up on lunch time, but I don't foresee that 15 I will have further -- much more questions after we 16 come back from the break. 17 THE WITNESS: Okay, I'll just -- when I 18 take a break, I walk around the block so I'll make it 19 15, okay? 20 MS. FULLER: Okay, sounds good. Off the 21 record. 22 (At 10:58 a.m. Central Standard Time - 23 Recess was taken.) 24 25
Page 65 1 BY MS. FULLER: 2 Q. Go ahead. 3 A. I'm sorry. 4 Austin-Lane says there are tactile alerts and 5 Austin-Lane says there are devices. There's sort of a 6 little bit missing in there. 7 Q. But Austin-Lane does disclose the 8 presentation of tactile alerts on end devices through 9 this cascading system, correct? 10 MR. THACKER: Objection, form. 11 A. Austin-Lane discloses -- well, let's see 12 exactly what it says. 13 I'm going to have to look at what I have said 14 about this previously. In my declaration, so I'm going 15 there. 16 Okay, maybe I should ask you to repeat the 17 question to make sure I answer it exactly as asked. 18 MS. FULLER: Christine, would you please 19 repeat that question. 20 (The record was read by the reporter as 21 requested.) 22 A. Yes. 23 BY MS. FULLER: 24 Q. So does Austin-Lane provide sufficient 25 enablement for a POSITA to understand how to provide a	Page 67 1 (At 11:14 a.m. Central Standard Time - 2 with all parties present as before, the following 3 proceedings were had, to-wit:) 4 Q. Welcome back. 5 Mr. Schmandt, can I direct you to the 2009 6 parent application which is Exhibit 1106. 7 A. Okay, I have it. 8 Q. Okay. I would like you to turn to Paragraph 9 39 and I'll let you review that paragraph and let me 10 know when you're done reviewing. 11 A. (Witness complies.) 12 Okay. 13 Q. Okay. In that paragraph it says that, "The 14 channel alert server 211 may notify the identity 15 management server 208 to confirm the subscriber of the 16 event, determine the active devices of the subscriber, 17 and then pass through the web service Gateway in the 18 channel grid framework 201 to provide a visual or 19 auditor alert." 20 It says "visual or auditory," is the server 21 making a determination of what alert to provide? 22 MR. THACKER: Objection, form. 23 A. Doesn't say one way or another. 24 BY MS. FULLER: 25 Q. To provide a visual or auditory alert implies

Page 68 1 that there's a determination between one -- between the 2 two, correct? 3 MR. THACKER: Objection, form. 4 A. No, it doesn't say how that decision is being 5 made. It may be that certain one -- some devices 6 support one and some devices support another. 7 BY MS. FULLER: 8 Q. "Some devices support one, some devices 9 support another," what is the basis for -- for that 10 opinion? 11 A. The pager was a device that could provide an 12 auditory alert, but not a visual alert. Web browsers 13 can provide a visual alert, but not an auditory alert. 14 Q. So the channel alert 211 may notify the 15 identity management server to provide a visual or 16 auditory alert. The server itself, though, is making 17 the determination of what alert to provide, correct? 18 MR. THACKER: Objection. 19 A. I don't read that text that way. 20 BY MS. FULLER: 21 Q. And how do you read the text? 22 A. As it says, the channel alert server 23 determines the active devices of the subscriber, and 24 then passes through the web services Gateway and the 25 channel grid to provide a visual or auditory alert in	Page 70 1 A. You're reading something into these words 2 that's not there, I disagree. 3 BY MS. FULLER: 4 Q. I'm reading something into a visual or 5 auditory alert? 6 A. I can't answer that because I can't remember 7 your question, it was a little bit long winded. 8 Q. Okay. Do you agree that a visual or auditory 9 alert is a type of alert that's presented on a mobile 10 device? 11 A. Yes. 12 Q. So to make that determination of whether a 13 visual or auditory alert is presented on the mobile 14 device, the server necessarily must make that 15 determination? 16 MR. THACKER: Objection, form. 17 A. I disagree. 18 BY MS. FULLER: 19 Q. And where do you disagree? 20 A. Because the device could make that 21 determination. 22 Q. But the -- Paragraph 39 encompasses the 23 server also making that determination -- 24 MR. THACKER: Objection, form. 25
Page 69 1 the channel. That isn't even -- that's -- that's 2 not -- that's not necessary -- that's not good English, 3 okay. 4 And then pass through, what does it pass 5 through? There's an -- there's an object missing. So 6 something unknown is passed through the web services 7 Gateway and the channel grid framework and it provides 8 an alert. 9 But all that this -- the scope of the work 10 determined is determined the active devices of the 11 subscriber. So that's -- that's all that is confirmed 12 that these surveyors do. 13 Q. But with the or in the visual audit -- or 14 auditory alert, there's an implication that there is a 15 determination of which alert to provide, correct? 16 MR. THACKER: Objection, form. 17 A. I disagree with your characterization of that 18 phrase. 19 BY MS. FULLER: 20 Q. So let's, for an example, where an alert -- 21 where there is a notification provided to a mobile 22 device, the server is making a determination of whether 23 to present a visual or auditory alert on the mobile 24 device based off of that language, correct? 25 MR. THACKER: Objection, form.	Page 71 1 BY MS. FULLER: 2 Q. -- correct? 3 A. I don't see that in the words of this 4 paragraph. 5 Q. Well, where do you see that the mobile device 6 is making that determination? 7 A. It doesn't matter whether I see it or not. 8 You asked me whether the paragraph said this and I 9 disagree. It does not say it. I can offer you 10 examples of how a mobile device may make that 11 determination if you would like. 12 Q. There are also examples where a server can 13 make the determination, correct? 14 MR. THACKER: Objection, form. 15 A. Would you like to point me to some example of 16 that? I don't really understand what you're asking. 17 BY MS. FULLER: 18 Q. Well, would a POSITA understand that servers 19 can make determinations of whether there's a visual or 20 auditory alert presented on a mobile device -- 21 MR. THACKER: Objection. 22 BY MS. FULLER: 23 Q. -- in the 2009 timeframe? 24 A. I haven't seen any examples of that in the 25 literature, no, a POSITA wouldn't understand that.

Page 72 1 Q. Austin-Lane example that we were just 2 discussing before the break, we can go back to 3 Paragraph 39, but those disclosed visual or auditory 4 alerts I believe, want to go back to Austin-Lane? 5 A. Sure. 6 Q. Okay. 7 A. However, five minutes I'm going to take a 8 lunch break, 'cause I'm hungry. 9 Q. Okay. Sounds good. 10 A. Okay, I have August Lane. You want to look 11 at Paragraph 39? I don't remember what the number was. 12 Q. Yeah, so in Paragraph 39 we said -- or 13 Austin-Lane states, "The user may select to receive the 14 notification as an instant message, an icon, a pop-up 15 window, a video, a flashing indicator and/or an audio 16 or tactile alarm." 17 You see that? 18 A. Yes. 19 Q. So in Austin-Lane, the notification service 20 then must make a determination of the type of alert the 21 user wants when presenting the alert to the user; is 22 that correct? 23 A. No, I think the -- that -- I think that 24 what's happening here is that the server would look at 25 the user preferences and decide what to do. I don't	Page 74 1 delivery method is determined based on user preferences 2 and session information, correct? 3 A. Yes. 4 Q. So the system is using user preferences to 5 determine an alert delivery method, correct? 6 A. Yes, this is the method, right. 7 Q. So for example where user preferences state a 8 visual red alert, the system would look at those user 9 preferences to determine that the user wanted a visual 10 red alert and to present that type of alert on the user 11 device? 12 A. You're reading a lot into these words. 13 These -- it's not in these words, that's not correct. 14 And the five minutes is up, so I need to take a lunch 15 break. 16 Q. Well, let's -- let's finish this -- this -- 17 A. No, I'm sorry, I'm sorry. I gave you five 18 minutes, I came back. I have a right to lunch. 19 Q. Well, we'll give a lunch break, but then 20 we'll pick up this line of questioning once you come 21 back from lunch. 22 A. Whatever you would like. 23 I generally take an hour for lunch, I'll see 24 you at 1:30 Eastern. 25 MS. FULLER: All right, off the record.
Page 73 1 think that's making a determination, it's just looking 2 something up in a table. 3 Q. When a server looks at a user preference, 4 there's a determination of what preference the user 5 wants, correct? The user wants an e-mail or a text, 6 the system is making the determination based off of 7 user preferences? 8 A. No, the user made the determination of what 9 they put in the user -- what they put in the 10 preferences. The server is simply looking it up. 11 Q. Can we go to par -- '948 patent, which is 12 Exhibit is 1001 (sic). 13 A. Sure, I'll put this away and I'll open it 14 right up. 15 Okay, I have that. 16 Q. So I'm going to direct your attention to 17 Column 6, Lines 50 going to 54. Let me know when 18 you've read those passages. 19 A. (Witness complies.) 20 Yes. 21 Q. So that passage, the alert delivery method is 22 determined based on user preferences and session 23 information, correct? 24 A. Can you repeat that, please? 25 Q. In the passage, it states that the alert	Page 75 1 (At 11:27 a.m. Central Standard Time - 2 Recess was taken.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Page 76 1 (At 12:31 p.m. Central Standard Time - 2 with all parties present as before, the following 3 proceedings were had, to-wit:) 4 BY MS. FULLER: 5 Q. All right, so before we took a break, we were 6 discussing Exhibit 1101, which is the '948 patent and 7 the disclosure of session information and user 8 preferences used to determine a notification method. 9 Do you recall that line of questioning, 10 Mr. Schmandt? 11 A. Yeah, I don't recall exactly where we were in 12 the document but -- so you have to reorient me. 13 Q. Okay. Let us go back to the '948 patent 14 which is going to be Column 6 starting on Line 50 and 15 going through Line 54. 16 A. Okay, so you want to look at Column 6, Line 17 50, right? 18 Q. Starting at Line 50 and going through Line 19 54. That's what we were discussing prior to the break. 20 A. Okay, I'm not sure we were on that paragraph 21 but I'm there now, okay. 22 Q. So based on this passage, user preferences is 23 respected by the system to determine the alert type for 24 presentation on the end device; is that a correct 25 understanding on this passage?	Page 78 1 kind of provides the protocol or application involved 2 to present the alert, is that the correct understanding 3 of what you just testified to? 4 MR. THACKER: Objection, form. 5 A. Yes, it is. 6 BY MS. FULLER: 7 Q. Does user preferences include a -- a user 8 preference of the way they want their -- to be 9 presented an alert? So for example, if a user wants to 10 be presented visually or auditor -- via sound, would 11 that be included in user preferences? 12 MR. THACKER: Objection, form. 13 A. That could be considered a user preference 14 under some circumstances. I'm not sure there's any 15 language to -- to indicate that that's how it's used in 16 the '948. If you would like to direct me some place we 17 can look at it. 18 BY MS. FULLER: 19 Q. So for example, let's go to Column 20, 20 Line -- starting at Line 60, it discusses a user's 21 notification preferences. 22 Would those notification preferences include 23 a particular way a user wants their alert to be 24 presented on a -- on their device? 25 MR. THACKER: Objection, form.
Page 77 1 A. User preferences and session information may 2 be used to determine automatically the optimal method 3 of delivering alert and notifications to the user, 4 yeah, okay, so this is about deliver -- the method of 5 delivery, okay. The best method of delivering is not 6 if the alert is unsuccessful or not available, the next 7 best delivery method is applied, okay. Okay. 8 Q. So it said user preferences is consulted by 9 the system to determine a alert type for presentation 10 on the end device; is that correct? 11 A. Well, it is consulted to determine the 12 optimal method of delivering. Delivering, looking at 13 the next sentence, talks about delivering in the 14 context of delivery method, so that would be what 15 protocol, or what application is -- is invoked based on 16 that information. I don't see in there where it talks 17 about alert type. 18 Q. When you say protocol or application both 19 based off of that information, are you saying protocol 20 such as S -- SMS, SMTP, HTTP? 21 A. Yes. 22 Q. So -- 23 A. Other pro -- other protocols too accept TT to 24 send instant messages, things like that. 25 Q. Okay. So based off of user preferences, it	Page 79 1 A. So, I'm sorry, can you repeat again, column 2 and line? 3 BY MS. FULLER: 4 Q. Column 20, Line 60. Starting at Line 60. 5 A. It doesn't say anything about auditory versus 6 visual versus tactile or anything. It says the, 7 Notification preferences -- "User has certain online 8 notification preferences and certain offline 9 notification preferences," and then gives an example. 10 If online, notify by the user's active session, 11 presumably that's a channel session because this is all 12 about channels. 13 If offline, if the user isn't paying 14 attention to the channel, you can notify by sending a 15 text message, calling the user's phone, call a friend 16 of the user, and such. 17 So this is more -- this is not how -- what 18 sense or modality is used to deliver the message, this 19 is -- it's basically we're back to -- to protocol and 20 application, whether it's going through the session -- 21 sorry, whether it's going through a channel session or 22 going around or bypassing the channel session and, for 23 example, calling -- calling friend of the user. 24 Q. Let's go down to Line -- which is Column 21 25 and then starting at Line 32 going to 36, it says

Page 80 1 "turning red"? 2 A. Okay, yes. 3 Q. So the alert is a red alert, would that be a 4 correct understanding on this home security touchlet? 5 A. Yes. It's a combination of a caller and a 6 textual notification, 'cause it says motion deleted. 7 So it turns red and says delete -- it says, "Motion 8 detected." 9 Q. Would the notification preferences include 10 the user's -- or include the red alert? 11 A. I don't see any evidence here to indicate 12 that that would be true. 13 Q. Going back to Column 20, Line 60, where it 14 says that the notification manager quar -- paraphrasing 15 here, that there is notification manager that creates a 16 configuration server for the user's notification 17 preferences and correlates those notification 18 preferences with the session manager. 19 Would those user notification preference 20 include an alert type of a visual red alert that the 21 system would use in its determination? 22 MR. THACKER: Objection, form. 23 A. The patent doesn't -- doesn't say that. The 24 patent talks -- in that context the patent is talking 25 about the on -- the online notification preferences and	Page 82 1 MS. FULLER: Christine, could you 2 restate the question? 3 (The record was read by the reporter as 4 requested.) 5 MR. THACKER: Objection on form. 6 A. No, it would have to turn red in response 7 to -- well, it could be several different ways. It 8 could be that the -- it could be that the touchlet is 9 in direct communication with the home security system. 10 This is possible, of course, because it's the home 11 security system. So any determination of, for example 12 motion that is being made by the home security system, 13 is being made in the home and if we're in a case where 14 the channel is being displayed on a system like maybe 15 on my phone when I'm upstairs in my bed or something 16 like that, in the home, the touchlet could receive that 17 information directly and have logic that dis -- that 18 makes it decide to turn red. 19 Alternatively, the information from the home 20 security system could be sent to home security monitor 21 application, I'm not sure what the proper word is, on 22 the server which creates the channel and then that 23 server could send the message through the channel to 24 the touchlet. Since the touchlet is associated with a 25 channel, I think it would be reasonable to assume that
Page 81 1 the offline notification presences, and these are more 2 delivery mechanisms rather than things like configuring 3 the touchlet as to whether it turns red or blue or 4 something else, or doesn't turn a color at all. 5 BY MS. FULLER: 6 Q. And what is your understanding, based off of 7 the '948 patent, how the system determines -- how the 8 home security touchlet turns red; do you have a basis 9 or understanding? 10 A. Well, the home security touchlet is clearly 11 in -- the home security touchlet is clearly in 12 communication with some home security channel, and -- 13 so the touchlet is a -- so what exactly is a touchlet? 14 So there are the visual components of the associated 15 touchlet, so I have to figure out what a touchlet is, I 16 don't recall. 17 Before I impute a mechanism, do you know 18 where in here they describe what a touchlet is? 19 Q. Touchlet is described in paragraph or Column 20 9, starting at 57. 21 A. Thank you. 22 So a touchlet is some representation of the 23 channel which is less than full screen, but clearly 24 it's an extension of the channel. So I'm sorry, I've 25 lost track of what the question was, my apologies.	Page 83 1 communication to the touchlet could happen through the 2 channel, although that is left -- that is left vague 3 here in the '948 specification. 4 BY MS. FULLER: 5 Q. Do you agree that the visual red alert is a 6 type of alert that's presented on the touchlet? 7 A. Sure, touchlet turns red, yes. And we're 8 saying that red change color that indicates an alert, 9 it is, yes. 10 Q. And then do you agree that in the '948 patent 11 description of determining a notification method, that 12 determination is based off of the user preferences? 13 MR. THACKER: Objection, form. 14 A. It does say, as we discussed that, that that 15 wouldn't say necessarily it's based on, but it includes 16 as an input the user preferences and that was 17 described. But that was described not in terms of 18 changing color but rather what protocol was being used 19 to -- to convey this to the user. For example, I -- a 20 user may say -- you know, a user may want the touchlet 21 to change color but the user may instead have, you 22 know, when I'm offline and can't see it, then maybe it 23 should call my phone or maybe it should call a friend's 24 phone or something like that. 25 BY MS. FULLER:

Page 84 1 Q. To determine the notification method of the 2 system, do you agree that in determining a notification 3 method, the system consults the user preferences that 4 would include the red alert type to therefore present 5 the red alert on the security channel? Is that a way 6 of how the red alert would be presented? 7 MR. THACKER: Objection, form. 8 A. Your statement, your question began would I 9 agree and my answer is I would not agree. 10 BY MS. FULLER: 11 Q. And why would you not agree? 12 A. Because I don't see that disclosed in the 13 specification. 14 Q. Would a POSITA know that alert preference -- 15 that user preferences includes a user's alert 16 preferences? 17 A. User preferences could be a lot of different 18 things and I don't think -- I don't think you should 19 assume one or another unless it's clearly stated. 20 Q. Coming in to -- based off of your general 21 knowledge, did you know systems that incl -- that had 22 user preferences that included the type of alert a user 23 wanted? 24 MR. THACKER: Objection, form. 25 A. Well, we haven't seen any. We haven't seen	Page 86 1 introduce it into -- into the record again. 2 Do you have Exhibit 2022 available to you or 3 if not, I can put it in the chat? 4 A. Can you tell me what that exhibit is? 5 Q. It is your first deposition transcript. 6 A. Yes, I do have that. I have that electronic 7 copy. 8 Q. Okay. 9 A. But I'm going to have to clean this up here a 10 little bit first or I'll never be able to find anything 11 again. 12 Q. And I'm just introducing this into the chat. 13 MS. FULLER: Christine, this has already 14 been marked as Exhibit 2022 and in our proceeding, so 15 it's not a new marking. 16 (Exhibit No. 2022, previously marked for 17 identification.) 18 A. Let me find that. 19 Q. It's also in the chat, Mr. Schmandt, if you 20 want to just pull it up in the chat. 21 A. Oh, I would rather just find it if that's a 22 file because otherwise I have to pull it up in the chat 23 and then it goes off to a file and I have to put it 24 someplace. So as I said -- 25 Q. Whatever your preference is, we'll go with
Page 85 1 any in this matter in which those user preferences were 2 anywhere other than on the user's device. Of course a 3 POSITA would understand that, for example on a user's 4 phone they could decide whether an incoming text would 5 make a noise or not and probably even appreciate that 6 the user could configure what noise it made. You know, 7 we had ring tones, for example, is an example on that. 8 But in those examples, the server, or the 9 system, which in that case is the cellular network, 10 wouldn't have access to or know about those. So they 11 could be user preferences, but they wouldn't be being 12 used by the piece of the system that was generating the 13 notification. 14 BY MS. FULLER: 15 Q. In this example, are you talking about a 16 cellular network example; is that correct? 17 A. Yes, SMS and phone calls are delivered over 18 the network. 19 Q. Okay. You're not talking about a specific 20 system example? 21 A. I'm talking about my cell phone, how's 22 that's? 23 Q. Okay. But do you recall your earlier 24 testimony when you testified that -- and I can bring -- 25 I can introduce this testimony, so why don't we just	Page 87 1 your preference. 2 A. Okay, I have that open. 3 Q. Let's go to -- this is the PDF, Page No -- 4 let's see, PDF Page 50 and Line 16 through 25. 5 A. Okay. 6 Q. So in this testimony, you stated, "That it -- 7 was never the case in any kind of a system even when 8 people had, you know, when we're talking earlier about 9 mobile phones being able to do different modularities 10 (sic), the user would control what modality it was. In 11 that case it was a user. In this case, it's the 12 system, we would expect the system to have a way of 13 respecting user preferences as discussed in this 14 paragraph, regardless of whether that was the best way 15 or not to do it." 16 So based off of this testimony, the system 17 would still respect the user preferences even if the 18 user preference was set on the mobile device; is that 19 correct? 20 A. Well, this is -- the last sentence here is, 21 "user preferences as discussed in this paragraph." I 22 don't know what that paragraph was, what the document 23 it -- we were obviously looking at some document, but I 24 don't know what it was. 25 Q. You're free to -- to read the earlier line of

Page 88 1 questioning if you care to. 2 A. Okay, I will have to go back then and see 3 what it was. 4 (Witness reading document.) 5 A. Okay, so this is in reference to Column 6 6 beginning at Line 50. Okay, so now let's see. 7 Okay, so what this is -- this is following up 8 on a previous answer where I said I don't want my phone 9 making noise when I get a random text in the middle of 10 the night, unless it's from my daughter and it's a 11 crisis. So that has to do with exactly what I was 12 referring to earlier about being online and offline and 13 trying different devices. 14 So this doesn't -- this doesn't say -- so 15 we're talking about user preferences as discussed in 16 this paragraph, right, and this paragraph is the WPN's 17 (sic) sixth and fifth, Column 6, Line 50. And it says 18 the optimal method -- "Best method of delivering the 19 alert is unsuccessful and/or not available." 20 So this is talking about, as I read it, a 21 delivery method and not whether the alert is visual or 22 audible or such. That's how I understand it. 23 Q. So going back to your previous testimony 24 about your mobile device and the network architecture, 25 I just want to understand that as you say it here in	Page 90 1 only alert me to e-mails or SMS from my immediate 2 family. And I do that in case there's an emergency. 3 But the e-mail server, or the SMS service in 4 the network, doesn't know that. It doesn't queue all 5 these things up and then wait until I'm awake and turn 6 off bedtime mode, it just sends them. A message comes 7 at 3 a.m., it gets sent to my phone. My phone is 8 making the determination that, oh, it's -- it's bedtime 9 and bedtime means I don't alert and I apply bedtime to 10 e-mails unless they are from my close family group. 11 BY MS. FULLER: 12 Q. So you -- a user would -- or a POSITA would 13 not expect the system to have a way of representing 14 user preferences? 15 MR. THACKER: Objection, form. 16 BY MS. FULLER: 17 Q. And it's just the phone that makes that 18 determination; is that what you're testifying to? 19 A. What do you mean by "the system"? 20 Q. A system, such as the system in the '948 21 patent. 22 A. Okay. Well, the system in the '948 patent is 23 all the back end, it's all the stuff that drives the 24 channel, at least that's what's claimed. And yeah, it 25 should respect user preferences, okay. So the user
Page 89 1 Exhibit 2022, Page 50. Even in a mobile device network 2 architecture example that you just testified to, "We 3 would expect the system to have a way of respecting 4 user preferences." 5 Correct? 6 A. Yes. I specifically talked about not 7 making -- not making the phone beep in the middle of 8 the night. Although, in fact, that's actually usually 9 done on the phone itself, but... 10 Q. So if a user preference -- so for a system to 11 determine whether to present auditory or visual alert, 12 the system would respect user preferences to make that 13 determination; is that correct? 14 MR. THACKER: Objection, form. 15 A. Getting pretty hypothetical, hypothetical off 16 of hypothetical, and I'm not sure exactly how to answer 17 that. 18 My phone and was -- as was known at the time, 19 a user could configure their phone to make various 20 kinds of alerts in response to notifications of 21 triggering events. That information was generally 22 known on the phone and not in the back end. 23 So for example, if I didn't want -- let's say 24 I didn't want to be alerted to e-mail, I mean, my phone 25 is set up so that when I'm in bedtime mode, it will	Page 91 1 preferences may -- may say -- in this case the user 2 preferences may say don't send me anything if I'm 3 asleep. Does it? I don't know. You know, the '948 is 4 not very clear. It talks a lot about user preferences, 5 but as with many aspects of the '948, the detail is -- 6 is minimal. 7 Specifically when we talked about user 8 preferences, it talked about whether the user was 9 online or offline and choosing different ways of 10 alerting whether the user was online or offline, and 11 presumably those are driven by user preferences. 12 Let's say -- so one of the examples of user 13 preferences is call a friend. Well, obviously -- 14 obviously the thing that runs the channel doesn't know 15 who my friends are, or what their phone numbers are, 16 and hopefully it's not going to start just calling 17 random people who are in my contact list because in 18 that case it may wake up Sam Thacker at midnight 19 because he's in my contact list, right? So in that 20 case, certainly a user preference would indicate when 21 it says -- when it says call a friend, it doesn't 22 literally start calling my friends. It's going to -- 23 what that means is there's going to be a user 24 preference that says, you know, my friend is John 25 and -- and this is his -- this is his number.

Page 92 1 I can imagine situations, you know, where if 2 one spends a lot of time away from home and a lot of 3 time at John's house, which might be if somebody was in 4 a romantic relationship with John, that a user might 5 want that to happen. But that would only happen 6 because the user said, you know, if I'm offline and 7 some type of notification comes, then call me at -- 8 call me at this phone number. 9 Q. And that -- and those instances, those are 10 respected by the system in making this determination of 11 how to notify the user, correct? 12 MR. THACKER: Objection, form. 13 A. They're respected -- they're -- yeah, they're 14 conforming to what the user is basically instructing 15 the system on some aspects of its behavior in terms of 16 choosing delivery mechanisms. So yeah, it's -- they're 17 respected because the system does what it's told. It's 18 not -- it's not one of these silly AI systems that does 19 things because it feels like it. 20 MS. FULLER: All right, I'm going to 21 have to take a quick break. Can we go off the record. 22 (At 1:06 p.m. Central Standard Time - 23 Recess was taken.) 24 25	Page 94 1 in the protocol, correct? 2 MR. THACKER: Same objection. 3 A. I'm sorry, you said "that type of message," I 4 don't know what -- what you mean by "that type of 5 message". 6 BY MS. FULLER: 7 Q. That e-mail -- 8 A. I know -- I know -- I know SMTP well 'cause I 9 quote some SMTP handler, so I'm happy to discuss it, 10 but I'm not sure what you're asking. 11 Q. So an e-mail is implicit in the SMTP 12 protocol, correct? 13 MR. THACKER: Same objection. 14 A. The SMTP protocol is the protocol for 15 delivering e-mails, the M is SMTP stands for mail. 16 BY MS. FULLER: 17 Q. So where there's a SMTP protocol that's 18 delivering an e-mail, the type of alert is implicit in 19 the deter -- the protocol that's been determined. So 20 in this instance, the determination of the type of 21 alert is not required; is that correct? 22 MR. THACKER: Objection to form and 23 outside the scope. 24 A. SMTP has nothing to do with alerts. 25
Page 93 1 (At 1:14 p.m. Central Standard Time - 2 with all parties present as before, the following 3 proceedings were had, to-wit:) 4 BY MS. FULLER: 5 Q. Mr. Schmandt, can we go to your Paragraph 86 6 of your first declaration. 7 A. Sure, just give me a minute to dig it out. 8 Q. Yep. 9 A. Okay, I'm there. 10 Q. Okay. So you state in this paragraph, 11 "Determining a notification method which can include," 12 aspect three, "the type of alert to provide." 13 Is that always necessary in the determination 14 when a alert is implicit in the protocol? 15 MR. THACKER: Objection, outside the 16 scope. 17 A. I'm not sure what you mean by an alert being 18 implicit in the protocol. 19 BY MS. FULLER: 20 Q. When -- there's an SMTP protocol that 21 provides a e-mail message; is that correct? 22 MR. THACKER: Objection -- 23 A. Yes, that's correct. 24 BY MS. FULLER: 25 Q. Okay. That type of message, that's implicit	Page 95 1 BY MS. FULLER: 2 Q. When an SMTP protocol includes e-mails -- 3 includes an e-mail, correct? 4 A. If the -- the protocol establishes whether a 5 recipient is prepared to accept an e-mail for a 6 particular person, or -- sorry, for a particular e-mail 7 address. If the -- if the other side says, yes, I can 8 accept that, then it is built into the protocol that 9 the next thing that is sent is the message body. 10 Q. So in this protocol, there -- is not a 11 necessary step of determining the alert because it's 12 already built into the protocol; is that correct? 13 MR. THACKER: Objection, form, outside 14 the scope. 15 A. As I said earlier, the SMTP protocol has 16 nothing to do with alerts. There's no alert in the 17 SMTP. 18 BY MS. FULLER: 19 Q. It's providing an e-mail, correct? 20 A. It provides an e-mail message, yes. 21 Q. And an e-mail message is an alert type, 22 correct? 23 A. We talked about that for a couple hours this 24 morning and I disagree. 25 Q. And you disagree because it's not -- okay,

Page 96 1 you disagree because it's not able to be visually 2 perceived by a user synchronou -- at the time it's 3 presented on the device; is that correct? 4 MR. THACKER: Objection, form. 5 A. More or less an e-mail message is -- is a 6 bunch of text and the text has certain header fields, 7 header fields which were originally defined in RFC 822 8 and have been updated since, that's what we call the 9 e-mail header. So the e-mail message that's sent 10 across SMTP is all of the characters that are in the 11 header and then all of the characters that are in the 12 message body and that is what is sent. No more, no 13 less. 14 BY MS. FULLER: 15 Q. So based on your testimony, it's your belief 16 that SMTP -- the e-mail message is not an alert type so 17 therefore what's implicit in the e-mail, you still have 18 to -- or what's implicit in the SMTP you still have to 19 determine the type of alert? 20 MR. THACKER: Objection, form, outside 21 the scope. 22 A. Whether -- how any alert happens in the case 23 of -- of SMTP is that there's a user mail agent which 24 receives the message from SM -- SMTP is just moving 25 bits across the network, has nothing to do with where	Page 98 1 A. Okay, so after that exchange I've lost track 2 of the question, so could you ask the question again, 3 please? 4 BY MS. FULLER: 5 Q. I'm trying to figure out this hypothetical 6 where SMTP protocol is being used, an alert message is 7 not an alert, so what type of alert is being determined 8 to be presented in SMTP protocol based off of your 9 definition of an alert? 10 MR. THACKER: Same objections. 11 A. I cannot understand that question. SMTP has 12 nothing to do with alerts. 13 BY MR. THACKER: 14 Q. SMTP is a protocol that -- that provides 15 e-mail messages, correct? 16 A. That is correct. 17 Q. Okay. And implicit in that protocol would be 18 the e-mail message, correct? 19 A. As I testified a few minutes ago, the e-mail 20 message is sent inside the constraints of that 21 protocol, yes. 22 Q. But you also testified that an e-mail message 23 is not an alert, correct? 24 A. An e-mail message in itself is not an alert. 25 An e-mail message can trigger an alert, but an e-mail
Page 97 1 they go, how long lived they are, whatever, okay? So 2 SMTP receives that text, something has to do something 3 with that text and that's something is what's called a 4 user mail agent and one of the things that the user 5 mail agent can do is save it as a file so that I can 6 look at it later. 7 Another thing that it could do is put it in 8 something called a mailbox and the user mail agent may 9 be further configured to do something like make a 10 noise, or in -- in the case of my homemade user mail 11 agent add on to play the sound of a trumpeting elephant 12 when I got e-mail from my boss. But that's -- that's 13 completely separate from SMTP. 14 BY MS. FULLER: 15 Q. So based off of your -- your definition of 16 alert, I'm going to carry out this SMTP example. The 17 protocol would be determined, SMTP protocol is 18 determined, and then how -- what -- what alert is 19 determined then in -- for this protocol? 20 MR. THACKER: Objection, form, outside 21 the scope. 22 MS. FULLER: I'm -- I'm -- I am 23 asking -- something the witness questions based off of 24 his definition of alert that he had presented earlier 25 this morning.	Page 99 1 message is not an alert. 2 Q. So when the SMTP protocol is providing an 3 e-mail message, what is that -- what is the alert 4 that's actually being presented on the -- on the end 5 device? That's what I'm trying to figure out. 6 MR. THACKER: Objection, form, scope. 7 A. Under SMTP there is no alert, there's no 8 provision for an alert, there's no concept for -- of an 9 alert. 10 BY MS. FULLER: 11 Q. So no concept for an alert. 12 So e-mail message is included in the SMTP 13 protocol and that is provided to the machine -- to an 14 end device where a user can receive it, correct? 15 A. It's the message is received by a user mail 16 agent and the user mail agent decides what to do with 17 it. The user mail agent could delete it and the user 18 might never see it. The user mail agent could put it 19 in a folder that the user can look at whenever they 20 feel like looking at that folder, or the user mail 21 agent could provide some kind of auditory alert or a 22 visual alert. 23 Q. Well, then how does the system determine the 24 type of alert in -- when an SMTP protocol is used? 25 MR. THACKER: Objection, form, scope.

Page 100 1 BY MS. FULLER: 2 Q. Based off of Paragraph 66 -- Paragraph 86, 3 where we're going with the hypothetical that it's 4 determining how to send the notification, SMTP for 5 e-mail, and then the type of alert to provide which 6 states an e-mail? 7 MR. THACKER: Same objection. 8 A. The question is what is the -- so the e-mail 9 is a triggering event, okay? The user mail agent, 10 something has to -- something has to make a 11 determination that this does or does not cause a 12 trigger. Okay, that's going to be common in any kind 13 of system. It may be that every time an e-mail comes 14 in it causes a trigger, it may be ever hundredth 15 message causes a trigger, it may be if it's a message 16 from my wife it causes a trigger. It could be any one 17 of those, okay? 18 Then the user mail agent having seen, here's 19 the e-mail, the e-mail is the trigger, the trigger is 20 over the bar, so this is going to cause an alert. Then 21 the user mail agent would decide how to alert the user. 22 It may be baked into the user mail agent or it may be 23 configured by user preferences. 24 So my user mail agent looked at user 25 preferences, the one that I wrote, looked at user	Page 102 1 device because it has to be received by the user, and 2 that is determining whether to play a sound and if it 3 will play a sound which sound to play. 4 Q. So is it your opinion then that in 5 determining a notification method, the type of alert to 6 provide must always be part of that determination, it's 7 not just implicit in a protocol? 8 A. If there is any alert for e-mail, it must be 9 determined by something other than the protocol because 10 the protocol for e-mail is SMTP, and as I've said 11 multiple times, SMTP has no concept of alerting, 12 there's no protocol message about alerting. 13 Q. And for the -- for e-mail, that determination 14 can be done at the user's device; is that correct, what 15 you just testified to earlier? 16 MR. THACKER: Objection, form, scope. 17 A. In the case of the system that I was 18 describing, yes. I mean, nothing can be done that's -- 19 assuming that the user device is the thing that is -- 20 it receives the SMTP message, there's no way that logic 21 would happen at the other end because the other end of 22 an SMTP connection is the originating computer, and 23 there's no way that every possible originating computer 24 on the internet would know what my personal preferences 25 are. So it would have to be done at the recipient's
Page 101 1 preferences and it had a set of rules, and the rules 2 related to triggers, and one of the triggers was for a 3 message from my boss, it didn't say "my boss," it said 4 a message from N. Negroponte (phonetic), which was the 5 e-mail address of my boss. Okay, so if it saw that, 6 then -- saw that in the header, then the rest of the 7 rule said place on elephant trumpeting. 8 So that was a piece of a user mail agent that 9 happened to be a piece that I wrote. 10 BY MS. FULLER: 11 Q. And this is being done at the user's end 12 device; is that correct? 13 A. Yes, that's correct. 14 Q. So are you saying that the user end device, 15 in determining a notification -- wait a second, so 16 based off of your testimony, are you saying that 17 determining a notification method can be done at the 18 user end device? 19 MR. THACKER: Objection, form, scope. 20 BY MS. FULLER: 21 A. Well -- 22 Q. Where it determines the alert? 23 A. So certainly in the situation we're 24 discussing of the variable auditory alerts, that is 25 being done -- of course it's being done to the user	Page 103 1 end of the SMTP connection. 2 BY MS. FULLER: 3 Q. So does -- Mr. Schmandt, does your 4 construction of determining notification method hinge 5 on your definition of an alert? 6 MR. THACKER: Objection, form, scope. 7 A. I don't recall that I've offered a 8 construction. I might have, I would have to look at my 9 declaration. 10 BY MS. FULLER: 11 Q. Well, I guess going back to Paragraph 86 of 12 your -- of the 1103 opening, or first declaration and 13 what you just testified to earlier, it seems like how a 14 alert is determined is based off of your definition 15 of -- of an alert? 16 MR. THACKER: Objection form, scope. 17 A. I'm going to have to take a minute here to 18 re-sort my papers here because I've got things out of 19 order, so... 20 Okay, I've messed up my filing because we've 21 been going back and forth between the earlier 22 declaration, so I ask that -- just bear with me, I have 23 to get them back together. 24 BY MS. FULLER: 25 Q. Take your time.

Page 104 1 A. Okay, so my proposed construction of provide 2 an alert says it should be construed as least in part 3 as present a tactile, auditory or a visual 4 notification. 5 So a tactile, auditory or visual notification 6 is my definition of an alert, which was a predicate of 7 your question. 8 So where do we go from there? 9 Q. Well, do you recall earlier this morning 10 where you testified that alert must be sent by human at 11 or about the same time it's a triggering event? Do you 12 require (sic) that, that's what you were testifying to 13 what an alert is? 14 A. Well, if a tree falls in the forest and 15 there's nobody there to hear it, did it create a sound? 16 And I think we generally say yes, it did. 17 So if a device creates a sound and there's 18 nobody there to hear it, I think we would still say it 19 was an alert. So it doesn't necessarily have to be 20 received approximately synonymously, but if it is 21 received, it would have to be received approximately 22 synonymously. 23 And sound is an interesting example because 24 audio is a transitory medium and if you don't hear it, 25 it's gone. So if my computer makes a noise, and I walk	Page 106 1 A. I'm afraid I can't -- I can't consider a 2 hypothetical that begins with a falsehood. 3 BY MS. FULLER: 4 Q. So you're not going to opine or offer an 5 answer to my hypothetical then, is that... 6 A. The answer to your hypothetical is irrelevant 7 because it's not possible. 8 Q. Well, I mean, if you go back to the '948 9 patent, Claim 10, where it's describing alert types as 10 including an alert message, the specification shows 11 that it is possible. 12 MR. THACKER: Objection, form. 13 BY MS. FULLER: 14 Q. So I want to go based off of Claim 10 where 15 a -- an alert message is an alert, and based off of 16 Claim 10, does determining notification method require 17 the third aspect? 18 MR. THACKER: Objection, form, scope. 19 A. I'm sorry, you're going to have to figure out 20 some other way of asking the question. I'm not going 21 to answer a hypothetical that says -- that starts with 22 a falsehood. 23 You know, it's like asking if the sun doesn't 24 come up tomorrow, is your cat going to meow because 25 it's hungry. I mean, what's the point?
Page 105 1 in my office, I don't know that it made a noise. If my 2 cat makes a noise up in my bedroom, unless I happen to 3 hear it downstairs, I don't know that she made a noise. 4 Of course if I were in the bedroom, I would know that 5 she made a noise. Now maybe that's an alert because 6 maybe she's making that noise 'cause she sees a mouse 7 or one of the damn Woodpeckers which is always trying 8 to eat my siding of my wooden frame windows, but... 9 So I think, you know, we have to -- we -- we 10 don't necessarily require that the alert is sensed, but 11 that it could be sensed if there was a human there to 12 sense it. 13 Q. E-mail messages would fall into that category 14 then? 15 A. An e-mail mess -- an e-mail message is not an 16 alert. We've gone around this many times. We can keep 17 going around it if you want to do it again. 18 Q. Well, let's just -- 19 (Court reporter interrupted for 20 clarification.) 21 Q. I want to do a hypothetical where I assume 22 that an e-mail message is an alert. If that's the 23 case, does determining a notification method require 24 the third aspect, which is determining the alert type? 25 MR. THACKER: Objection, form, scope.	Page 107 1 BY MS. FULLER: 2 Q. Let's go to the '948 patent then. Let's go 3 to Claim 10. 4 A. We were there before. 5 Q. Okay, but let's go back. 6 A. We discussed it exhaustively. You want to 7 spend more time on it, fine. 8 Q. I want to -- 9 A. Okay. 10 Q. I want to -- 11 A. All right. 12 Q. I want to discuss this hypothetical. 13 A. That's not a hypothetical, but -- I know what 14 a hypothetical is and this is not a hypothetical. 15 Q. Is it your understanding that this is false, 16 is that -- is that why? 17 A. Let's not go down the rat hole of trying 18 do -- come to a mutual definition of what a 19 hypothetical is, that's going to waste all of our time. 20 Q. Well, let's go to Claim 10 then. 21 A. Fine. 22 Q. Okay. Wherein the at least one alert 23 includes at least one of, one e-mail message. So based 24 off this claim, where the alert is one e-mail message, 25 does determining notification method require the third

Page 108 1 aspect? 2 MR. THACKER: Objection, form, scope. 3 A. I can't answer a question where I don't 4 understand the conditions on which the question is 5 based. I don't understand how an e-mail message is an 6 alert, so I just can't answer the rest of your 7 question. 8 BY MS. FULLER: 9 Q. So the determining a notification method 10 where we're discussing in Paragraph 86 is based off of 11 your interpretation of an alert, where it's -- what 12 would we testify to earlier, must be sent by human in 13 -- sincro -- synchronously at or about the same time as 14 the triggering event in requir -- that's -- that's your 15 definition of alert which an e-mail message does not 16 fall into? 17 A. I believe that's the plain and ordinary 18 meaning of the term "alert," and that's how a POSITA 19 would understand the word alert. And in that context, 20 an e-mail message is not an alert. An e-mail message 21 could contain a notification, which might trigger the 22 alert, might trigger an alert, but an e-mail message 23 itself is not an alert. 24 Q. So then based off of your definition of what 25 an alert, which does not include an e-mail message,	Page 110 1 Recess was taken.) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 109 1 then determining notification method requires 2 determining the alert type, which is No. 3 in Paragraph 3 83 (sic); is that correct? 4 MR. THACKER: Objection, form, scope. 5 A. Can you try saying that one more time, 6 please? 7 BY MS. FULLER: 8 Q. So based off of your definition of what an 9 alert is, in Paragraph 86 then, where it says 10 determining a notification method which can include, 11 and it says No. 3, the type of alert to provide. So 12 that is required part of the determination is the -- 13 determining the type of alert to provide based off of 14 your definition of an alert? 15 A. Yes. 16 Q. All right. 17 MS. FULLER: All right, thank you. I 18 don't have any further questions. 19 MR. THACKER: Can we take a quick 20 five-minute break, Jenna? I just want to -- I don't 21 think that I'll have any redirect questions, but I just 22 want to make sure. 23 MS. FULLER: Certainly. 24 MR. THACKER: Okay, thanks. 25 (At 1:44 p.m. Central Standard Time -	Page 111 1 (At 1:50 p.m. Central Standard Time - 2 with all parties present as before, the following 3 proceedings were had, to-wit:) 4 MR. THACKER: All right, I have no 5 questions. 6 COURT REPORTER: Okay, is the witness 7 reading and signing? 8 THE WITNESS: Say what? 9 COURT REPORTER: I was asking, Sam, is 10 the witness reading and signing through you? 11 MR. THACKER: Yeah, if we can do an 12 errata that would be great. 13 COURT REPORTER: Okay, are you ordering 14 a copy of the transcript? 15 MS. FULLER: Who are you talking to, I'm 16 sorry? 17 COURT REPORTER: Mr. Thacker. 18 MR. THACKER: Typically the taker of the 19 deposition, which would be patent owner in this case, 20 would be responsible for the cost of the transcript, so 21 Jenna, if you can just send us -- yeah. 22 COURT REPORTER: Are you ordering a copy 23 of the transcript, Mr. Thacker? To receive your own 24 copy -- 25 MR. THACKER: Jenna --

1	COURT REPORTER: -- to receive your own	Page 112
2	copy you need to pay and order a copy. That's what I'm	
3	asking you if you're ordering a copy of the transcript?	
4	MR. THACKER: Okay, interesting. I	
5	guess then we will -- we will order a copy, yes.	
6	COURT REPORTER: Okay. And Jenna?	
7	MS. FULLER: And Christine, we have our	
8	order, do you have that or do you want me to list that	
9	off for you?	
10	COURT REPORTER: No, I have a standard	
11	order for you guys and I have that it's a rush so I'll	
12	get that rushed out to you. Do you need anything	
13	rough?	
14	MS. FULLER: I'll take a rough. It	
15	doesn't have to be today, if you can get it tomorrow	
16	that's fine.	
17	COURT REPORTER: Okay, but you want the	
18	transcript in 5 days correct, the final?	
19	MS. FULLER: Yeah, expedited, so five	
20	business days I think we had it expedited for?	
21	COURT REPORTER: Yeah, that's what I was	
22	told. The 11th?	
23	MS. FULLER: Or I think the order was	
24	for the 11th, November 11th, I think, so 3 business	
25	days.	
1	COURT REPORTER: Okay, that's fine.	Page 113
2	Do you need anything rushed for you,	
3	Mr. Thacker, for your transcript order? Regular, okay.	
4	MR. THACKER: No, okay.	
5	(1:57 p.m. - Adjournment.)	
6	** ** *	
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1	C E R T I F I C A T E
2	STATE OF NEBRASKA)
3	: ss.
4	COUNTY OF LANCASTER)
5	I, Christine M. Salerno, Registered Professional
6	Reporter, General Notary Public within and for the
7	State of Nebraska, do hereby certify that the
8	foregoing testimony of CHRISTOPHER SCHMANDT was taken
9	by me in shorthand and thereafter reduced to
10	typewriting by use of Computer-Aided Transcription,
11	and the one hundred fourteen (114) pages contain a
12	full, true and correct transcription of all the
13	testimony of said witness, to the best of my ability;
14	That I am not a kin or in any way associated
15	with any of the parties to said cause of action, or
16	their counsel, and that I am not interested in the
17	event thereof.
18	IN WITNESS WHEREOF, I hereunto affix my
19	signature and seal this 10th of NOVEMBER, 2025.
20	
21	
22	Christine M. Salerno, RPR
23	GENERAL NOTARY PUBLIC
24	Registered Professional Reporter
25	My Commission Expires: October 02, 2027.

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< O'Reilly news

Nitobi's PhoneGap is People's Choice Winner of Web 2.0 Expo San Francisco Launch Pad

April 2, 2009

Five Finalists Present On Stage for Real-Time Feedback from Judges and Audience Attendees

SAN FRANCISCO, April 2 - O'Reilly Media, Inc. and TechWeb, co-producers of [Web 2.0 Expo](#), Web 2.0 Summit and Gov 2.0 Summit, today announced the People's Choice winner of the Launch Pad startup program. Nitobi's PhoneGap, one of five on-stage presenters, was selected as the People's Choice Winner on Thursday, April 2 during Web 2.0 Expo San Francisco at Moscone West.

Launch Pad, sponsored this year by Microsoft BizSpark, is a unique public forum for unveiling distinctive new companies and products. Web 2.0 Expo hosts the Launch Pad program to showcase the best Web 2.0 startups and provide a unique public forum for unveiling new companies and products. Web 2.0 Expo is the leading global gathering of developers, designers, marketers, and business professionals building the next generation Web. For more information visit: www.web2expo.com/sf.

Nitobi's PhoneGap, <http://www.phonegap.com/>, the winning startup, is an open source development framework for building mobile applications with JavaScript. PhoneGap allows users to author applications in HTML and JavaScript and still take advantage of native mobile device capabilities like geo-location, camera, vibration and sound. PhoneGap applications run on iPhone, Android and Blackberry.

"We're excited that the audience was enthused about open source mobile phone development with web technologies," said Andre Charland, CEO of Nitobi. "We feel honored to be selected as the People's Choice winner of today's Web 2.0 Expo Launch Pad." Voting was conducted via a real-time SMS system where the audience was asked to select the company of their choice.

"There was great participation in this year's Launch Pad and we are really pleased with all five companies that presented today at Web 2.0 Expo San Francisco," said Brady Forrest, Web 2.0 Expo Co-Chair. "We appreciate the

C. Schmandt
2029
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"There was great participation in this year's Launch Pad and we are really pleased with all five companies that presented today at Web 2.0 Expo San Francisco," said Brady Forrest, Web 2.0 Expo Co-Chair. "We appreciate the friendly competition that took place on stage and want to applaud Nitobi's PhoneGap for capturing the audience with their innovation. We'll look forward to their successes in the future."

A forum for creativity, engineering, and innovation, Web 2.0 Expo San Francisco includes a multi-track conference, an "unconference" program called Web2Open, a major tradeshow, and multiple networking events. Web 2.0 Expo will hold its New York event November 16-19, 2009 and will return to San Francisco May 3-6, 2010.

To learn more about the 2009 Web 2.0 Expo San Francisco visit:

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To see articles, blogs, and other coverage of this year's event, visit:

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If you have ideas about areas you'd like to see included at the conference, send a note to: idea@web2expo.com

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