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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED STATES AUTOMOBILE) (
ASSOCIATION) (
CIVIL ACTION NO.
VS.) (
2:18-CV-245-JRG
MARSHALL, TEXAS
OCTOBER 30, 2019
WELLS FARGO BANK, N.A.) (
1:22 P.M.

TRANSCRIPT OF JURY TRIAL
AFTERNOON SESSION
BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,
UNITED STATES DISTRICT JUDGE

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18 COURT REPORTER: Shelly Holmes, CSR, TCRR
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23 100 E. Houston
24 Marshall, Texas 75670
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24 produced on a CAT system.)
25

02:45:00 1 So the key -- and this is important -- the key to
02:45:02 2 what the Plaintiff claims to have invented in these patent
02:45:06 3 claims is not simply automatically capturing an image.
02:45:09 4 That's not what they invented. They invented capturing the
02:45:14 5 image when -- when and only when the image has passed or
02:45:20 6 met certain monitoring criterion.

02:45:23 7 That, ladies and gentlemen, is the thing they
02:45:25 8 bargained for with the Patent Office, and that's the fence
02:45:30 9 that they're entitled to have. Nothing narrower, nothing
02:45:35 10 broader than that.

02:45:36 11 Put another way, these patents have a timing
02:45:42 12 condition -- a timing condition. I don't think anyone will
02:45:44 13 dispute that. That's the word "when." And that's why I
02:45:49 14 said at the very beginning, in this case timing is
02:45:55 15 everything.

02:45:55 16 So that leads me to the second thing I want to
02:45:57 17 talk to you about, which is Wells Fargo and what it's done
02:46:01 18 in this area and how its system works differently.

02:46:04 19 Wells Fargo dates back to the 1850s, and it
02:46:08 20 started out with stagecoaches. But by the 2000s, things
02:46:11 21 were a heck of a lot different.

02:46:13 22 Now, Wells Fargo was one of the first banks to
02:46:15 23 offer online banking. In 2007, think back, in 2007, the
02:46:21 24 iPhone came out. And the very first smartphone hadn't even
02:46:26 25 been released yet from Samsung. Over time, as we've

02:46:29 1 learned, these smartphones have gotten better, faster,
02:46:33 2 smarter, and they're able to do a lot more things. So
02:46:37 3 Wells Fargo started offering mobile banking way back in
02:46:41 4 2007.

02:46:42 5 Now, later, they decided to offer mobile deposit.
02:46:50 6 What did we do? We went to this company called Mitek in
02:46:54 7 San Diego.

02:46:55 8 Now, why did we go to Mitek? Well, Mitek held
02:46:59 9 itself out as an industry leader. They held itself out as
02:47:04 10 the industry leader for the mobile deposit software that
02:47:07 11 could work these applications. And, in fact, they still do
02:47:10 12 today.

02:47:11 13 We went to Mitek to help create Wells Fargo's
02:47:15 14 Mobile Deposit app.

02:47:15 15 Now, let's be clear, some of this is Mitek's
02:47:18 16 software, but there's a lot of Wells Fargo's software in
02:47:20 17 there, as well, because, remember, the mobile application
02:47:23 18 is -- has a lot of different features. Some of it is auto
02:47:27 19 capture -- a piece of it is auto capture, but there's many
02:47:30 20 other pieces to it, as well, such as making sure the check
02:47:33 21 gets in the right account, making sure it's the right
02:47:36 22 amount.

02:47:37 23 So Wells Fargo launched its Mobile Deposit feature
02:47:41 24 in May of 2012.

02:47:45 25 Now, that's on our timeline, and it's three years

02:47:48 1 before -- three years before the patents in this case
02:47:52 2 issued.

02:47:53 3 With Mitek's help, we offered our customers manual
02:47:58 4 capture. The customer touched the screen of the phone, the
02:48:02 5 little button, to take the picture of the front and the
02:48:05 6 back of the check.

02:48:06 7 In January of 2014, and that's on the timeline, as
02:48:12 8 well -- or can you see it there January, 2014, it -- Mitek
02:48:19 9 said: We now have MiSnap, which is this auto capture
02:48:25 10 feature. MiSnap was Mitek's version of auto capture.

02:48:30 11 And in May of 2014 -- May of 2014, that's when
02:48:36 12 Wells Fargo decided to add auto capture to its Mobile
02:48:43 13 Deposit app.

02:48:44 14 So this is very important. You're going to learn
02:48:47 15 in the evidence that there are multiple ways to do auto
02:48:50 16 capture. The Plaintiff has a specific invention they got
02:48:56 17 dealing with auto capture, but that's not the only way to
02:48:59 18 do it.

02:48:59 19 It turns out that Mitek wrote its software and
02:49:05 20 changed it over the years because technology changed. We
02:49:08 21 all know that cell phones have gotten better in so many
02:49:13 22 different ways since they were first released -- the
02:49:17 23 smartphone concept was first released in 2007. Can't --
02:49:21 24 processors have gotten faster, the cameras have gotten a
02:49:25 25 lot better.

02:49:25 1 So Mitek made certain changes in its software as
02:49:29 2 it went along, and one important change that you'll hear
02:49:32 3 about occurred in late 2014.

02:49:38 4 Now, you'll hear in this case that Mitek did its
02:49:40 5 own work, developed its own product, and came up with a
02:49:43 6 different way of doing things.

02:49:45 7 Now, that's work that Mitek did, not Wells Fargo,
02:49:47 8 and that's why we're going to bring you witnesses from
02:49:52 9 Mitek to come to speak with you in person.

02:49:54 10 You'll hear about the programmers who actually
02:49:57 11 wrote the software that go into the applications that are
02:50:02 12 on these mobile phones. And you'll -- they'll explain to
02:50:05 13 you why the Mitek and Wells Fargo auto capture function
02:50:10 14 works differently than what USAA says it invented.

02:50:15 15 So you can understand how it actually works,
02:50:18 16 you're going to hear from a Mitek engineer, and that's
02:50:21 17 Mr. Andrew Wood. He is knowledgeable of the Mitek source
02:50:29 18 code, and he will come to testify to you in person about
02:50:32 19 how the Mitek source code works.

02:50:35 20 Now, some of y'all have heard about source code.
02:50:37 21 You've heard about it from the Plaintiff. It's simply
02:50:39 22 instructions that human beings can read to talk to
02:50:41 23 computers on how to operate.

02:50:43 24 Now, it's very valuable. Because source code can
02:50:47 25 be read by experts, companies keep their source code pretty

03:47:40 1 feedback may be generated and provided to the user, such as
03:47:43 2 repositioning the check or the camera.

03:47:45 3 So we didn't just tell them something was wrong;
03:47:47 4 we told them how to fix it.

03:47:49 5 Q. And that's described as corrective feedback, sir?

03:47:51 6 A. Yes, sir.

03:47:52 7 Q. What's the next element of the invention?

03:47:53 8 A. So Part 3 is really about -- if we're monitoring the
03:47:59 9 image that's under the camera and we know that it meets all
03:48:03 10 of our monitoring criteria, we don't have to have the user
03:48:06 11 click the button anymore. And, in fact, we prefer to do it
03:48:09 12 automatically with the smartphone processor because we know
03:48:13 13 that it's a valid check image. Something can happen when
03:48:16 14 they press that button.

03:48:18 15 We also had users that did very strange things
03:48:20 16 like take pictures of plants and cats. So we were trying
03:48:24 17 to help them do a better job.

03:48:26 18 But I'll call your attention to Column 1 on
03:48:31 19 Line 48 and -- through 57. So, specifically, where we talk
03:48:35 20 about: The image capture may be performed automatically by
03:48:38 21 the camera, the mobile device, or the financial
03:48:41 22 institution, as soon as the check image of the check is
03:48:44 23 determined to pass the monitoring criteria.

03:48:47 24 Q. In the bottom of that passage, it refers to the user
03:48:52 25 may capture that image. Do you see that, sir?

03:48:54 1 A. Yes, sir.

03:48:54 2 Q. Why did you contemplate that the user may capture the
03:48:57 3 image?

03:48:57 4 A. Well, we -- we contemplated that there might be an
03:49:01 5 instance where the user wants to actually capture the image
03:49:04 6 themselves. In fact, in our mobile app, if the automatic
03:49:07 7 capture is not working for some reason, we do actually
03:49:10 8 present the option to the user to capture manually.

03:49:13 9 Q. Is there a phrase in your experience that has been used
03:49:17 10 by the industry to describe USAA's invention?

03:49:21 11 A. This was well-known in the industry as auto capture.

03:49:24 12 Q. Do you have a view on the necessity of auto capture in
03:49:28 13 banking?

03:49:30 14 A. So auto capture, in my mind, is an essential component
03:49:35 15 to be able to use mobile remote deposit at scale. I liken
03:49:41 16 it to the steering wheel or the braking system in a car.
03:49:44 17 It's required for -- for -- to operate at scale.

03:49:47 18 Q. And what do you mean by operate at scale?

03:49:49 19 A. So USAA deposits about 90,000 checks per day. And so
03:49:57 20 you can imagine every failed check, those numbers get very,
03:50:01 21 very large. And so it -- as we take that many deposits,
03:50:05 22 our success rate, if it's very low, means we've got to
03:50:09 23 process a lot of those replacement checks. It becomes cost
03:50:13 24 probative.

03:50:13 25 Q. Do you have any experience with what happens when auto

03:50:15 1 capture is not available when there's deposit at scale?

03:50:19 2 A. Yes. Actually in November of 2014, it was a little
03:50:23 3 over a year after we launched auto capture, Apple changed
03:50:26 4 one of their libraries in their new version of iOS. And it
03:50:31 5 actually broke auto capture.

03:50:33 6 And our iOS success rates prior to that were about
03:50:36 7 8 percent. And while auto capture was broken, our --
03:50:39 8 our -- sorry, our failure rate was 8 percent. Our failure
03:50:44 9 rate jumped to 19 percent for those three weeks until we
03:50:47 10 could get it repaired.

03:50:49 11 Q. Is auto capture the same as auto focus?

03:50:51 12 A. No. Auto focus is completely different. It's -- auto
03:50:55 13 focus is about trying to get -- to prevent a blurry image
03:50:58 14 or get an image that's in focus.

03:51:00 15 Auto capture is about using monitoring criteria in
03:51:04 16 terms of when to take a good picture of the check image.

03:51:08 17 Q. I want you to turn to PX-0199.

03:51:14 18 Do you recognize this class of document?

03:51:16 19 A. This is what we call an innovation evaluation form.
03:51:23 20 This is the form that we fill out when we want to start the
03:51:26 21 process of protecting intellectual property at USAA.

03:51:29 22 Q. And if you could turn to Page 2 of that document.

03:51:32 23 I'm going to pull up the description section.

03:51:37 24 Do you recognize this description?

03:51:41 25 A. This is a description of the ideas that are captured in

03:56:33 1 THE COURT: All right. Let's proceed.

03:56:34 2 MR. SHEASBY: Thank you.

03:56:34 3 (Bench conference concluded.)

03:56:41 4 THE COURT: Let's proceed.

03:56:42 5 Q. (By Mr. Sheasby) Did USAA -- did USAA implement the
03:56:50 6 patented auto capture system?

03:56:52 7 A. Yes. USAA implemented the ideas in this patent in our
03:56:58 8 Deposit@Mobile application, which opens a video stream. It
03:57:02 9 obtains individual frames from the video stream. It
03:57:05 10 monitors those. And then upon successful monitoring,
03:57:09 11 captures those and submits them for deposit.

03:57:12 12 Q. Could a user tell when you had switched from a manual
03:57:16 13 capture system to an auto capture system, in your
03:57:19 14 experience?

03:57:19 15 A. Absolutely. It's palpable. You really just have to
03:57:26 16 hold the phone over the check. It's almost like magic. It
03:57:29 17 does it all by itself.

03:57:30 18 Q. Is there a demonstrative of the system, that you've
03:57:33 19 prepared?

03:57:33 20 A. Yes, sir.

03:57:41 21 Q. And let me actually withdraw the question and say it
03:57:44 22 differently.

03:57:44 23 Is there a demonstrative of the system that has
03:57:47 24 been prepared?

03:57:48 25 A. Yes, sir. So you can see here, they open up the USAA

03:57:55 1 mobile app. They'll select that they want to do a deposit.
03:58:01 2 Here's where they pick the bank account they want to go,
03:58:04 3 and it immediately turns on the live video feed.

03:58:06 4 And you notice all he has to do is hold the check,
03:58:09 5 and it determines on its own when a valid check image is in
03:58:14 6 purview of the camera. And it captures that, both for the
03:58:17 7 front and back. So you can see that little box is giving
03:58:20 8 the user real-time feedback around what they need to do
03:58:23 9 with the camera.

03:58:25 10 Q. Before the picture is taken and you see that live view,
03:58:28 11 what's going on underneath in that system?

03:58:31 12 A. So that -- that video that you see that's going on in
03:58:34 13 the background, that's the live video stream. And so what
03:58:37 14 we're doing is -- live video is anywhere from 24 to 120
03:58:41 15 frames per second.

03:58:42 16 So we're grabbing -- we're obtaining the frames
03:58:46 17 from that video stream. And then, like I said, those
03:58:48 18 things that we talked about earlier, looking at the MICR
03:58:50 19 number, looking to see if we could separate the edges from
03:58:54 20 the background, if -- if the image is bright enough, all of
03:58:57 21 that is happening in real-time in the background.

03:59:00 22 And then once we pass all those monitoring
03:59:03 23 criteria, then we take that frame that we analyzed. We
03:59:08 24 create a JPEG image out of it. That's where it becomes
03:59:13 25 permanent. And we commit that image so that we can later

03:59:16 1 send that for deposit.

03:59:17 2 Q. And can you describe in greater detail exactly how auto
03:59:22 3 capture works in Deposit@Mobile?

03:59:23 4 A. Exactly what I said. It's the opening of video stream.
03:59:26 5 It's obtaining those individual frames, analyzing those for
03:59:32 6 monitoring criteria, and then once we find that the check
03:59:35 7 image is good, we'll take that video frame, create a JPEG
03:59:40 8 out of it, and send it on.

03:59:43 9 Q. Do you have an understanding -- let me withdraw that
03:59:45 10 question.

03:59:45 11 Did you have an understanding at the time of your
03:59:47 12 work about how the auto capture system works in relation to
03:59:53 13 when someone presses the shutter button on a digital camera
03:59:58 14 phone?

03:59:58 15 A. Are you talking about like when you use the normal
04:00:02 16 camera app or --

04:00:03 17 Q. Yes, sir.

04:00:04 18 A. Okay. When you, you know, bring out your phone and
04:00:08 19 you're holding it up, you're seeing that live feed, but a
04:00:10 20 capture doesn't actually occur until you press the button,
04:00:13 21 and that's a manual capture. What's happening behind the
04:00:16 22 scenes is that's when it creates an image and stores it on
04:00:19 23 your device permanently.

04:00:20 24 Q. What -- what type of format is it standard for the
04:00:23 25 image to be created in?

04:00:25 1 A. The standard format is JPEG.

04:00:28 2 Q. And that's the same format that's used at the end of
04:00:32 3 the Deposit@Mobile USAA system?

04:00:34 4 A. Yes, sir. We -- we have to create an industry standard
04:00:37 5 recognizable image format. JPEG is the most common.

04:00:42 6 Q. In your patents, do you discuss the relationship
04:00:44 7 between cameras and video cameras?

04:00:45 8 A. Yes, sir, we do. In fact, I'll refer you back to
04:00:51 9 PX-0002, and Section -- just a second, let me get there.

04:01:02 10 On Section 5 on Lines 45 through 49, I'll call out
04:01:08 11 a video source such as a video camera, a web camera, or a
04:01:13 12 video-enabled phone -- on the first three lines -- for
04:01:17 13 example, to obtain the video of the check.

04:01:24 14 Q. Is the concept of obtaining preview frames from a live
04:01:28 15 video stream and then capturing the frame once it satisfies
04:01:32 16 the monitoring criteria described in the patent
04:01:35 17 specification?

04:01:36 18 A. Yes, sir, it's continued on in the next line. A frame
04:01:39 19 of the video may be obtained and monitored with respect to
04:01:44 20 the monitoring criteria as described further herein.

04:01:47 21 Q. So your patent is describing the concept of obtaining
04:01:52 22 frames from a video stream?

04:01:54 23 A. Yes, sir.

04:01:55 24 Q. And then assessing them using monitoring criteria; is
04:01:59 25 that correct?

04:01:59 1 A. Yes, sir.

04:02:00 2 Q. In the specification, is there a teaching as to whether
04:02:03 3 you capture the same image you monitor?

04:02:05 4 A. Well, that's the image that we want because that's the
04:02:10 5 image that we just analyzed. If we did anything after
04:02:16 6 that, we wouldn't have the confidence that we have a good
04:02:19 7 check image. So we want the frame that we analyzed.

04:02:21 8 Q. Is there an example of this concept in your patent
04:02:24 9 specification?

04:02:24 10 A. Yes. Just a second.

04:02:27 11 Q. And by this concept, I mean the concept of capturing
04:02:30 12 the same image that you're analyzing?

04:02:33 13 A. Yes, sir, just a second.

04:02:39 14 THE COURT: Let me ask both of you gentlemen to
04:02:40 15 speak up a little bit. I want to make sure everybody,
04:02:43 16 including the jury, hears everything you have to say.

04:02:46 17 MR. SHEASBY: Yes, Your Honor.

04:02:47 18 THE WITNESS: Yes, sir.

04:02:48 19 A. If you go to Column 1, Lines 49 -- I'm sorry, 50.

04:02:59 20 So what we say is the image may be captured
04:03:02 21 automatically without user intervention as soon as the
04:03:06 22 image is in field of view. So it's --

04:03:09 23 Q. (By Mr. Sheasby) And what -- and why do you want to
04:03:12 24 capture it as soon as it's in the field of view?

04:03:14 25 A. Because we -- that gives us the highest confidence that

04:03:17 1 we're going to be able to take a valid check image.

04:03:20 2 Q. All right. Let me -- let me turn to 16, 5 through 14.

04:03:32 3 MR. SHEASBY: Column 16, 5 through 14.

04:03:39 4 Q. (By Mr. Sheasby) And when it says the occurrence of
04:03:42 5 non-conforming images downstream is reduced, what does that
04:03:47 6 mean?

04:03:47 7 A. So when we have those images that can't be read by the
04:03:49 8 bank computers, that's called a non-conforming image. So
04:03:54 9 auto capture, the whole point of it, is to reduce
04:03:56 10 non-conforming images in our backend process.

04:03:59 11 Q. How does the description in the patent relate to the
04:04:03 12 original version of auto capture that was built at USAA?

04:04:08 13 A. We -- we went to implement auto capture as written in
04:04:11 14 the patent. The Android system at the time was capable of
04:04:17 15 handling it as designed in the patent. Unfortunately Apple
04:04:21 16 devices weren't ready, and so we had to create a workaround
04:04:24 17 initially. But then we implemented it in the Apple devices
04:04:27 18 as intended, as soon as it was available from Apple.

04:04:30 19 Q. And by implemented it, you meant obtaining video
04:04:34 20 frames, monitoring those frames, and then creating a JPEG?

04:04:37 21 A. Yes, exactly.

04:04:38 22 Q. When did USAA launch an auto capture system on
04:04:42 23 Deposit@Mobile to individuals outside of the company?

04:04:44 24 A. We launched auto capture in May of 2013.

04:04:53 25 Q. Why did it take until May of 2013?

04:04:56 1 A. Well -- well, first of all, in 2009, when we conceived
04:05:03 2 this idea -- I'm sorry, 2008, when we conceived this idea,
04:05:06 3 the ability to monitor a live video stream didn't actually
04:05:11 4 exist.

04:05:12 5 We went and met on multiple occasions with both
04:05:15 6 Apple and Google, who provide those platforms, asking them
04:05:21 7 to provide this capability so that we could build it as
04:05:23 8 described in the patent. And it didn't take -- we didn't
04:05:26 9 get it, unfortunately, until the 2011/2012 time frame.

04:05:34 10 MR. SHEASBY: If I could have the ELMO again.

04:05:36 11 Q. (By Mr. Sheasby) Do you see on this demonstrative that
04:05:39 12 was shown by Wells Fargo how it notes that the iPhone app
04:05:44 13 was launched in June 2007 -- I'm sorry, the iPhone was
04:05:50 14 launched in June 2007?

04:05:51 15 A. Yes, sir, I do see that.

04:05:52 16 Q. And do you see how it indicates that app for the iPhone
04:05:55 17 was launched in July 2007?

04:05:56 18 A. Yes, sir.

04:05:57 19 Q. Is that possible?

04:05:59 20 A. I don't think that's possible because Apple didn't
04:06:03 21 allow anyone to release apps to their phone until June of
04:06:08 22 2008.

04:06:09 23 Q. Do you see the -- were you in the courtroom when
04:06:20 24 Wells Fargo made reference to the fact that they had to go
04:06:23 25 to their vendor, Mitek, to understand how their system

05:47:54

1 (Recess.)

2

3 CERTIFICATION

4

5 I HEREBY CERTIFY that the foregoing is a true and

6 correct transcript from the stenographic notes of the

7 proceedings in the above-entitled matter to the best of my

8 ability.

9

10

11 /S/ Shelly Holmes

12 SHELLY HOLMES, CSR, TCRR

13 OFFICIAL REPORTER

14 State of Texas No.: 7804

15 Expiration Date: 12/31/20

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10/30/19

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED STATES AUTOMOBILE) (
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TRANSCRIPT OF JURY TRIAL

AFTERNOON SESSION

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UNITED STATES DISTRICT JUDGE

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18 COURT REPORTER: Shelly Holmes, CSR, TCRR
19 Official Court Reporter
20 United States District Court
21 Eastern District of Texas
22 Marshall Division
23 100 E. Houston
24 Marshall, Texas 75670
25 (903) 923-7464

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24 produced on a CAT system.)
25

02:13:35 1 product?

02:13:35 2 A. No, not yet.

02:13:37 3 Q. Approximately how far behind USAA was the rest of the
02:13:44 4 industry at that time?

02:13:45 5 A. Well, for -- certainly for Bank of America, we were
02:13:49 6 three years behind. Bank of America didn't release its
02:13:52 7 manual capture solution until 2012. And it wasn't -- as I
02:13:56 8 said, as you said, until after I left, that they even
02:14:00 9 released auto capture.

02:14:01 10 Q. Did USAA have a reputation in the industry?

02:14:06 11 A. Well, yes, they were the pioneer. They invented this
02:14:10 12 whole -- this whole technology and capability to use a
02:14:14 13 smartphone to capture an image of a check of sufficient
02:14:17 14 quality to make it all the way through to deposit.

02:14:21 15 Q. Now, sir, are you personally the inventor on any
02:14:25 16 patents?

02:14:25 17 A. I am.

02:14:28 18 Q. Approximately how many, if you know?

02:14:30 19 A. I'm a named inventor on 96 issued U.S. patents.

02:14:36 20 Q. Sir, you left Bank of America in 2013; is that right?

02:14:42 21 A. That's right.

02:14:42 22 Q. Are you employed today?

02:14:43 23 A. Yes. I have my own consultancy. At that point, our
02:14:47 24 kids were grown and out of the house, and it seemed like a
02:14:50 25 good time to start my own thing.

02:45:30 1 input form. It has a couple of different names. But
02:45:33 2 essentially what you have are these little tiny -- they're
02:45:36 3 called thumbnail images, so it's sort of miniature pictures
02:45:40 4 of the check and the amount that the -- the user keyed in.
02:45:43 5 It's a, you know, \$20.00 deposit, what have you, and the
02:45:46 6 checking account to which -- or the account to which I'm
02:45:49 7 depositing.

02:45:50 8 Only once those are all satisfied, does the
02:45:54 9 deposit button sort of light up and become active. So if
02:45:57 10 you haven't gotten two good images and you haven't entered
02:46:02 11 your account and entered the amount, that button is grayed
02:46:06 12 out. And no matter how hard you push it, it's not going to
02:46:09 13 work.

02:46:10 14 Both apps in the same way when those information
02:46:12 15 pieces are assembled and ready, only then does the deposit
02:46:14 16 button light up and the user pushes that button and that's
02:46:17 17 the actual submission to the bank.

02:46:20 18 Q. Okay. Going back to your analysis of the data, were
02:46:23 19 you able to analyze the complete data set provided by Wells
02:46:29 20 Fargo to determine on average whether there is a difference
02:46:33 21 between the failure rate through auto capture versus the
02:46:36 22 failure rate if someone is choosing the manual option?

02:46:40 23 A. So I was able to use the official verified data from
02:46:44 24 Ms. Lockwood-Stein to compute the difference in performance
02:46:48 25 over that time frame, over that -- almost three-year time

02:46:52 1 frame between the manual capture mode at Wells Fargo and
02:46:54 2 the auto capture mode.

02:46:56 3 And what we see on the left is that -- some
02:47:00 4 slightly different values for manual and still, 32.45 for
02:47:05 5 manual, 28.59 for -- for still. But together about an
02:47:11 6 average failure rate for manual modes of 30.52 percent, and
02:47:17 7 that compares to an auto capture average failure rate of
02:47:20 8 10.38 percent.

02:47:22 9 That's a decrease of two-thirds, and it explains
02:47:31 10 why auto capture is a must-have feature. If I may, think
02:47:35 11 back to those hundred users. Out of a hundred users using
02:47:38 12 manual capture, 30 percent were having problems. Auto
02:47:41 13 capture, only 10 people or so, a little more, out of a
02:47:44 14 hundred were having the same kind of problems. And so it's
02:47:47 15 a two-thirds decrease in rate of failure.

02:47:54 16 Q. All right. After you -- I'm sorry, is it possible for
02:48:02 17 you to clear that? There's some purple on the screen.

02:48:06 18 A. I've been watching the Judge. Let's see if I can do
02:48:10 19 it.

02:48:10 20 Q. Perfect, thank you.

02:48:10 21 THE COURT: You can also do it from the podium,
02:48:14 22 counsel.

02:48:14 23 MS. GLASSER: Oh.

02:48:14 24 THE COURT: Let's proceed.

02:48:15 25 MS. GLASSER: I should be doing it, thank you,

1 CERTIFICATION

2
3 I HEREBY CERTIFY that the foregoing is a true and
4 correct transcript from the stenographic notes of the
5 proceedings in the above-entitled matter to the best of my
6 ability.

7
8
9 /S/ Shelly Holmes
10 SHELLY HOLMES, CSR, TCRR
11 OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

10/31/19
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED STATES AUTOMOBILE) (
ASSOCIATION) (
CIVIL ACTION NO.
VS.) (
2:18-CV-245-JRG
MARSHALL, TEXAS
NOVEMBER 4, 2019
WELLS FARGO BANK, N.A.) (
8:32 A.M.

TRANSCRIPT OF JURY TRIAL

MORNING SESSION

BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,
UNITED STATES DISTRICT JUDGE

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23 (Proceedings recorded by mechanical stenography, transcript
24 produced on a CAT system.)

25

08:40:29 1 hovering over the check image?

08:40:32 2 ANSWER: It's not Wells Fargo functionality. It's
08:40:36 3 auto capture and Mitek's product.

08:40:39 4 QUESTION: You understand that the Wells Fargo
08:40:42 5 application is an application distributed by Wells Fargo,
08:40:46 6 correct?

08:40:47 7 ANSWER: Yes.

08:40:48 8 QUESTION: You understand that that application
08:40:49 9 has code on it, correct?

08:40:51 10 ANSWER: Yes.

08:40:52 11 QUESTION: It's your testimony that some of that
08:40:55 12 code is Mitek's code, correct?

08:40:57 13 ANSWER: Yes.

08:40:58 14 QUESTION: And you don't know how that application
08:41:02 15 works, correct?

08:41:04 16 ANSWER: I don't.

08:41:05 17 QUESTION: You are aware that USAA has a mobile
08:41:12 18 deposit capture system, correct?

08:41:15 19 ANSWER: Yes.

08:41:15 20 QUESTION: When did you become aware of USAA's
08:41:18 21 system?

08:41:19 22 ANSWER: So USAA primarily came into play when we
08:41:23 23 were looking at multiple check capture. Someone thought
08:41:28 24 they offered that capability. And also when we were
08:41:32 25 looking at manual capture and we were looking at different

08:41:36 1 competitors' UI, USAA was included in that UI review.

08:41:40 2 QUESTION: So let's unpack that. "UI" refers to
08:41:46 3 user interface, correct?

08:41:49 4 ANSWER: Yes.

08:41:50 5 QUESTION: You joined the mobile product deposit
08:41:53 6 group at Wells Fargo in 2014, correct?

08:41:55 7 ANSWER: Yes.

08:41:57 8 QUESTION: You've been in that project for five
08:42:00 9 years, correct?

08:42:02 10 ANSWER: The product manager for five years, yes.

08:42:05 11 QUESTION: At some point after the date of joining
08:42:08 12 that product, your group examined the user interfaces that
08:42:13 13 USAA uses for its mobile check deposit system, correct?

08:42:18 14 ANSWER: Specific to manual and auto capture and
08:42:23 15 specific to multiple check capture.

08:42:25 16 QUESTION: Did you make Wells Fargo legal counsel
08:42:29 17 aware of the USAA press release announcing its licensing
08:42:35 18 program for mobile remote deposit capture?

08:42:39 19 ANSWER: I don't recall.

08:42:40 20 QUESTION: And to be clear for the record, you are
08:42:43 21 the manager of the remote deposit capture program for Wells
08:42:49 22 Fargo from the first quarter of 2014 through the present?

08:42:52 23 ANSWER: Product manager, yes.

08:42:54 24 QUESTION: Would it be fair to say that you've
08:42:58 25 been observing approximately a 10 percent year-over-year

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

11/4/19
Date