01:00:21 1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
2 MARSHALL DIVISION

3 UNITED STATES AUTOMOBILE)(
ASSOCIATION
4)(CIVIL ACTION NO.

5 VS.)(2:18-CV-245-JRG

6)(MARSHALL, TEXAS
OCTOBER 30, 2019
7 WELLS FARGO BANK, N.A.)(1:22 P.M.

8

9 TRANSCRIPT OF JURY TRIAL

10 AFTERNOON SESSION

11 BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,

12 UNITED STATES DISTRICT JUDGE

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

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 (Recess.)

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 10/30/19
SHELLY HOLMES, CSR, TCRR Date
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

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

UNITED STATES AUTOMOBILE ASSOCIATION	)(	
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WELLS FARGO BANK, N.A.	)(	1:07 P.M.

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AFTERNOON SESSION

BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,

UNITED STATES DISTRICT JUDGE

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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,

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 _____ 10/31/19 ____
SHELLY HOLMES, CSR, TCRR Date
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

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

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

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2 CERTIFICATION

3

4 I HEREBY CERTIFY that the foregoing is a true and

5 correct transcript from the stenographic notes of the

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

7 ability.

8

9

10 /S/ Shelly Holmes 11/4/19

SHELLY HOLMES, CSR, TCRR Date

11 OFFICIAL REPORTER

State of Texas No.: 7804

12 Expiration Date: 12/31/20

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