

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 ALLIANCE LAUNDRY SYSTEMS, LLC,
6 Petitioner,

7 v.

8 PAYRANGE LLC,
9 Patent Owner

10 PGR2025-00027
11 U.S. Patent No. 11,966,920

12
13 AND

14
15 UNITED STATES PATENT AND TRADEMARK OFFICE

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17 BEFORE THE PATENT TRIAL AND APPEAL BOARD

18
19 ALLIANCE LAUNDRY SYSTEMS, LLC,
20 Petitioner,

21 v.

22 PAYRANGE LLC,
23 Patent Owner

24 PGR2025-00028
25 U.S. Patent No. 11,972,423

**DEPOSITION OF DR. JEFFREY MILLER,
VIA ZOOM,**

**Taken by the Petitioner Alliance Laundry Systems, LLC, on
Friday, the 30th of January, 2026, via Zoom, commencing at
9:00 a.m. MST, before Marjorie A. Covey, CSR-2616, RPR, Illinois
License 084.004911, Oregon License 20-0468, and notary public.**

APPEARANCES:

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**REPORTED BY: MARJORIE A. COVEY, CSR-2616, RPR
Certified Shorthand Reporter**

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EXHIBITS

MARKED

(THERE WERE NO EXHIBITS MARKED DURING THESE PROCEEDINGS.)

Via Zoom

January 30, 2026 - 9:31 a.m. MST

THE REPORTER: Would you raise your right hand,
please. Do you solemnly swear or affirm that the testimony
that you're about to give will be the truth, the whole truth,
and nothing but the truth so help you God?

DR. MILLER: Yes, I do.

THE REPORTER: Thank you.

EXAMINATION

BY MR. DAVID THOMAS:

Q. Good morning, Dr. Miller.

A. Good morning.

Q. My name is David Thomas. I'm from the Honigman law firm in
Detroit. I'm a lawyer for Alliance Laundry Systems. Can you
please state your full name for the record.

A. Jeffrey Miller.

Q. And this deposition is a cross-examination of the
declarations you submitted in PGR2025-00027, and
PGR2025-00028. Do you understand that?

A. Yes.

Q. Have you ever been deposed before?

A. Yes.

Q. How many times have you been deposed?

A. Somewhere around 25.

Q. Have any of those been remote depositions?

1 A. Yes.

2 Q. So you understand, you know, in a remote context it's
3 important for us not to talk over each other. Sometimes the
4 audio can get mixed up. It certainly makes Margie's job a
5 lot more difficult. So I'm just going to go over a few
6 ground rules to make sure everything goes smoothly, okay?

7 A. Okay.

8 Q. So I'm going to ask you a number of questions today. Some
9 people have a tendency to respond with a head nod or a shrug
10 of the shoulders. I just ask that you make a verbal
11 response, whether that's a "yes" or a "no" or things of that
12 nature. Does that sound okay?

13 A. Yes.

14 Q. The second thing is, like I said, particularly in a video
15 conference setting, it may be tempting to, you know, foresee
16 where my question is going and jump in. I'd just ask, to
17 keep a clean record, you wait for me to complete my question,
18 and I'll do the same. I'll wait for you to complete your
19 response before asking my next question. Is that fair?

20 A. Yes.

21 Q. If you don't understand a question, can you please let me
22 know, and I'll clarify it or rephrase it?

23 A. Yes.

24 Q. And given, you know, potential technical issues, if you
25 answer a question, I will assume that you heard it, there was

1 no lag or delay or audio interruption. Is that fair?

2 A. Yes.

3 Q. You understand that you're testifying under oath today,
4 correct?

5 A. Yes.

6 Q. And you understand that you tell the whole truth, even if you
7 think the truth might be harmful to PayRange?

8 A. Yes.

9 Q. Is there any reason that you would be unable to give truthful
10 testimony today?

11 A. No.

12 Q. You're not under the influence of any medication or other
13 substance that would affect your memory or ability to
14 communicate?

15 A. No.

16 Q. Your counsel may object to certain questions I ask. Unless
17 she tells you not to answer the question specifically, you
18 need to answer.

19 Do you understand?

20 A. Yes.

21 Q. And where are you currently located?

22 A. In Utah.

23 Q. Is that your home office, work office?

24 A. This is my home office.

25 Q. Is there anybody else in the room with you?

1 A. No.

2 Q. So, like I said, this is a cross-examination of declarations
3 you submitted, so I'm going to be referring to documents that
4 are already of record. Do you have access to those documents
5 right now, for -- during this deposition?

6 A. I have access to my declarations and the documents that I
7 cited in my declaration.

8 Q. Okay. Sorry. Go ahead.

9 A. That was it.

10 Q. So I think the easiest way, if you're okay with this, is I
11 will share my screen when we're talking about a particular
12 document. Alternatively, we could, you know, each look at
13 our own version of the documents. It's really up to you
14 whatever is easiest for you.

15 A. If you share your screen, am I still able to look at my own
16 version of the document?

17 Q. Do you have multiple monitors?

18 A. Yes.

19 Q. If you would just prefer to look at your own version, that's
20 fine with me, and then I -- we can just talk about it that
21 way. How's that?

22 A. Okay.

23 Q. Okay. The version that you're referring to, are those marked
24 up copies of the -- the documents in the record?

25 A. No.

1 Q. Do you have any marked up documents with you?

2 A. No.

3 Q. So you've been retained as an expert in these PGR
4 proceedings, correct?

5 A. Yes.

6 Q. And in your role as an expert you submitted two declarations,
7 each marked as Exhibit 2008 in PGR2025-00027 and
8 PGR2025-00028. Is that correct?

9 A. Yes. I did submit two declarations, yes, with the numbers
10 that you just stated.

11 Q. Okay. So can you please open the declaration for
12 PGR2025-00027. And like I said, that's Exhibit 2008.

13 A. Okay.

14 Q. Do you have a copy of that report opened?

15 A. Yes.

16 Q. Okay. So this report is related to U.S. Patent No.
17 11,966,920, correct?

18 A. Yes.

19 Q. And if I refer to that patent as the 920 patent and this
20 particular report as the 920 report, will you understand what
21 I'm referring to?

22 A. Yes.

23 Q. Okay. Can you please turn to page 72 of the 920 report?

24 A. Okay.

25 Q. Is that your signature shown there on page 72?

1 A. Yes.

2 Q. Can you please turn to the next page, page 73?

3 A. Okay.

4 Q. Is this the complete list of materials you considered in
5 forming your opinions in this report?

6 A. I believe that's the complete list, assuming that I didn't
7 miss a citation from within the report.

8 Q. Is there anything, sitting here today, looking at that table,
9 you think may be missing from the report or otherwise?

10 A. No.

11 Q. Did you review the prosecution history of the 920 patent?

12 A. Yes.

13 Q. Can you show me in this table where the prosecution history
14 of the 920 patent is listed?

15 A. Well, as I said, if I missed a citation that I had in the
16 report, then this appendix may not contain a complete list of
17 the materials.

18 Q. Can you point to elsewhere in your report where you state you
19 reviewed the 920 prosecution history?

20 A. I don't know. I'd have to look through the report. And as
21 you see, it's 76 pages.

22 Q. Do you recall stating that you reviewed the prosecution
23 history of the 920 patent in your report?

24 A. I don't recall.

25 Q. Taking another look at the table in 73, did you review U.S.

1 Patent No. 8,958,846 to Freeny in forming your opinions for
2 the 920 report?

3 A. Well, if it wasn't cited in my report or included in the list
4 of materials cited here, then it didn't inform the opinions
5 that I provided in my report.

6 Q. Okay. And did you review U.S. Patent No. 8,255,323 to Casey
7 in forming your opinions for this report?

8 A. That would be the same answer. If it's cited in my report or
9 included here in the list of materials cited, then it
10 informed my opinion. But otherwise, it would not have.

11 Q. Okay. Can you please open Exhibit 2008 of PGR2025-00028?

12 A. Okay.

13 Q. So this is your declaration related to U.S. Patent No.
14 11,972,423, correct?

15 A. Yes.

16 Q. And similar to the other patent and report, if I refer to
17 this patent as the 423 patent and this report as the 423
18 report, will you understand what I'm referring to?

19 A. Yes.

20 Q. Can you please turn to page 61 of the 423 report?

21 A. Okay.

22 Q. And is that your signature shown on page 61?

23 A. Yes.

24 Q. Can you please turn to the next page, page 62?

25 A. Okay.

1 Q. So similar to the other report, did you review the 423 patent
2 prosecution history in forming your opinions for this report?

3 A. If it wasn't included in a citation in the report, or
4 included in this table, then it wouldn't have informed my
5 opinions.

6 Q. Do you recall anywhere in your report where you stated that
7 you had reviewed the prosecution history for the 423 patent?

8 A. I don't recall.

9 Q. And on this table, the 423 patent itself is missing. Is --
10 am I correct that that's just a typo? Maybe the 920 is
11 supposed to be the 423 patent here?

12 A. Perhaps. Although, I'm -- as I said, anything I cited in the
13 report is going to be material that I relied upon in forming
14 my opinion. And the 423 patent will be cited in this report.

15 Q. Okay. Did you review the prosecution history of any family
16 members to the 920 patent or the 423 patent in forming your
17 opinions for either report?

18 MS. TASHA THOMAS: Objection; scope.

19 THE WITNESS: I don't recall whether I did. But
20 anything that informed my opinions for this report would be
21 included in the report itself, cited somewhere in the report.

22 BY MR. DAVID THOMAS:

23 Q. So if there was no reference in your report to prosecution
24 history of a related family member to the 920 patent or the
25 423 patent, then you would not have reviewed or considered

1 that material, correct?

2 A. No, that is not correct. It would just be that any review of
3 that material or other material did not form the -- inform
4 the opinions that I am making in the report.

5 Q. So in forming your opinions for the 423 report, did you
6 review U.S. Patent No. 8,958,846 to Freeny?

7 A. I would have to check to see if I have a citation to that in
8 this report, the 423 report to be able to answer that
9 question.

10 Q. And do you recall if you reviewed U.S. Patent No. 8,255,323
11 to Casey in forming your opinions for the 423 report?

12 A. So I would need to look and see if I have a citation to that
13 patent inside the 423 report to answer that.

14 Q. Do both of these reports contain a complete statement of all
15 opinions that you intend to express in these PGR proceedings?

16 MS. TASHA THOMAS: Objection; form.

17 THE WITNESS: Based on all of the material that I
18 have reviewed, these are all the opinions that I currently
19 have.

20 BY MR. DAVID THOMAS:

21 Q. Do the two reports contain all bases and reasons for
22 opinions -- for your opinions in these proceedings?

23 MS. TASHA THOMAS: Objection; form.

24 THE WITNESS: I don't understand that question.

25 BY MR. DAVID THOMAS:

1 Q. Is there any other bases or reason for forming your opinions
2 that is not described in these reports?

3 MS. TASHA THOMAS: Objection; form.

4 THE WITNESS: I don't know that I understand what
5 you're -- you're asking me.

6 BY MR. DAVID THOMAS:

7 Q. Did you consider any other material that you haven't
8 described or cited or referenced in these reports that were
9 used to form your opinions in either report?

10 A. No. All of the material that I relied upon in forming the
11 opinions in my report are included in the report.

12 Q. Do you believe you -- do you believe you are qualified to
13 serve as an expert in these proceedings?

14 A. Yes.

15 Q. Can you please explain why?

16 MS. TASHA THOMAS: Objection; foundation; form.

17 THE WITNESS: I don't want to contradict any legal
18 explanation here, not being a lawyer. My understanding of
19 what a POSITA is, as of the time of this patent, I'm more
20 than qualified as. And then I continue to have more
21 education, more experience beyond that, before and after the
22 time of the patent.

23 I include my background in the -- in both of the
24 declarations, stating my qualifications, and then having an
25 attachment with my CV to provide further information on that.

1 So based on all that I believe that I am qualified
2 as an expert for this case.

3 BY MR. DAVID THOMAS:

4 Q. Do you have specific education or experience, background, you
5 can point to that you believe qualifies you as a POSITA as of
6 December 2013, which is the earliest priority date of the two
7 patents?

8 A. Yes.

9 Q. Can you please provide some of those examples?

10 A. If we're looking at the declaration for the 920 patent, I
11 provide my qualifications, in paragraphs 1 through 11. And
12 similarly, for the 423 patent, I provide my qualifications in
13 paragraphs 1 through 11 of that declaration.

14 Q. And I see in paragraph one you state, "I am currently a
15 Professor of Computer Science and the former Dean of the
16 College of Engineering and Computational Sciences at Southern
17 Utah University." Is that correct?

18 A. Yes.

19 Q. Other than teaching, are you doing any work outside of
20 teaching?

21 A. Well, as a -- as a tenured professor, in part of the
22 contract, there's three parts to it, which is teaching,
23 research, and service. And so I do fulfill obligations in
24 all three areas.

25 Q. Okay. So why don't you tell me what your -- your research

1 has looked like over the past year or so.

2 A. So over the past several years, my research has been much
3 lower than it was prior to that because I moved into
4 administration. So as a department chair, prior to becoming
5 the Dean of College of Engineering and Computational Sciences
6 at Southern Utah University, I had a more active research
7 agenda. Moving into administrative positions, the
8 expectation of research declines.

9 So I have stayed current in the field. My
10 research, I've continued with the research tracks that I had
11 previously. And -- but obviously the majority of my focus
12 professionally has gone to administrative duties.

13 Q. As part of your teaching obligations, do you have any notable
14 research that would be particularly relevant to either of
15 these two patents?

16 MS. TASHA THOMAS: Objection; form.

17 THE WITNESS: I'm a little confused by your
18 question because you started off by saying "teaching" and
19 then you added the word "research" into it. So can you
20 clarify that?

21 BY MR. DAVID THOMAS:

22 Q. So my understanding is, you said as a teacher you have
23 certain roles. So it would be research, teaching, and
24 service, correct?

25 A. I said, as a professor, those are the three parts of the

1 contract, yes.

2 Q. Okay. I apologize.

3 So as part of your research, is there anything that
4 you have done that's particularly relevant to the technology
5 of these two patents?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: Well, I think that the entire scope
8 of my -- my work and my background, which includes my
9 research, my professional experience, my consulting
10 experience, my education, all plays into things that are
11 relevant to the issues that we're discussing within the
12 patents.

13 BY MR. DAVID THOMAS:

14 Q. And what is the service side of your professor role? What
15 does that include?

16 A. Service is participating in things that are not specifically
17 required for teaching and research. For example, sitting on
18 committees at the university, being active in professional
19 societies, being on the boards of professional societies, or
20 even volunteer hours outside the university.

21 Q. And can you tell me, how did you come to be a former dean?
22 What happened to your role as dean?

23 A. The university made a decision to disband the College of
24 Engineering and Computational Sciences at the end of the
25 '24-'25 academic year.

1 Q. So as part of an organizational change, somebody else stepped
2 in as dean, and you returned to teaching or returned as a
3 professor?

4 MS. TASHA THOMAS: Object to form.

5 THE WITNESS: No. No one else stepped in as dean,
6 because the College of Engineering and Computational Sciences
7 no longer exists at Southern Utah University.

8 BY MR. DAVID THOMAS:

9 Q. Got it. Okay. Do you have any experience with the U.S.
10 patent system?

11 MS. TASHA THOMAS: Objection; relevance.

12 THE WITNESS: Can you clarify what you mean by
13 that?

14 BY MR. DAVID THOMAS:

15 Q. For example, are you a named inventor on any patents or
16 patent applications?

17 A. Yes.

18 Q. How many? Do you know?

19 A. Yes, I'm a named inventor on one patent.

20 Q. Do you know the subject matter of that patent?

21 A. Yes. I'm a named inventor on the patent, so I'm intimately
22 familiar with the patent.

23 Q. What is that subject matter?

24 A. It's a patent for determining when a snowplow is plowing a
25 road.

1 Q. How many times have you served as an expert in a patent case?

2 A. I have the exact number on my CV. Can I pull that up to
3 answer that question?

4 Q. Sure. Yeah, let's pull up Exhibit 2009 of either proceeding,
5 I'm opening the Exhibit 2009 of PGR2025-00027.

6 A. Starting on page 15 of my CV, I have a breakdown of the cases
7 on which I've served as an expert witness. And I see 19
8 cases involving patents.

9 Q. And this total list right here on your CV, starting on page
10 15, there's 51 cases identified, right?

11 A. Yes.

12 Q. Is that the complete list of cases you have served as an
13 expert witness?

14 A. As of the date of this CV, it would be. I -- I don't recall
15 if I've been retained on any case since then.

16 Q. Have you ever had your testimony excluded in any case?

17 A. No.

18 Q. Have you ever worked for PayRange in any prior case or
19 proceeding?

20 A. Yes.

21 Q. Do you recall which case that was?

22 A. Yes. It's listed as number 28 on page 18 of my CV.
23 PayRange, Inc., versus Kiosoft Technologies and TechTrex,
24 Incorporated.

25 Q. And what was that case about?

1 A. It was a case about a patent -- I don't recall if there was
2 more than one patent or not -- and infringement and
3 invalidity.

4 Q. And based on your CV, it looks like you submitted two expert
5 reports, one declaration, and one deposition. Is that
6 accurate?

7 A. Yes.

8 Q. Do you recall what those reports were about? Were they
9 infringement, invalidity, other issues?

10 A. I don't recall.

11 Q. Do you know if there was any overlap between the technology
12 described in the patents in that case and the patents
13 described in this proceeding?

14 A. I don't know.

15 Q. Have you ever, either personally or as part of a team,
16 developed payment processing technology for a machine such as
17 a vending machine or washing, slash, drying machine?

18 A. I have created payment processing systems. I had a company
19 where I created point-of-sale systems that did payment
20 processing. I've also worked at companies that did payment
21 processing through an internet application, a web
22 application.

23 Q. Anything specifically for an unmanned kiosk, like a vending
24 machine?

25 MS. TASHA THOMAS: Objection; form.

1 THE WITNESS: In the point-of-sale system company
2 that I founded, we did create a point-of-sale system that was
3 able to accept orders and payment from a device that was
4 unmanned, to use your word.

5 BY MR. DAVID THOMAS:

6 Q. What is this unmanned device you're referring to?

7 A. It was something similar to a tablet that was sitting on a
8 table at a restaurant. We were focused in the restaurant
9 industry. And customers could come in and sit down at a
10 table and place the order directly at the table, and they
11 could make payment from the table as well.

12 Q. So the tablet was acting as a point-of-sale terminal at the
13 table, rather than, you know, perhaps in the back-of-house
14 kitchen area?

15 A. That's correct.

16 Q. But the tablet was not dispensing or vending any products or
17 anything like that?

18 A. I guess it wasn't doing it completely on its own. Waiters or
19 food runners would bring food out to the customers after they
20 placed the order. But the device was a tablet where they
21 would place the order, similar to a point-of-sale system that
22 would exist, as you said, in the back of the house at a
23 restaurant.

24 Q. When were you first retained for these two proceedings?

25 A. I don't recall the exact date, but it was sometime in 2025.

1 Q. Early 2025? Late 2025? Do you have an estimate?

2 A. I don't believe that it was early in 2025, but I don't know
3 if I can narrow it down much more than that.

4 Q. Who contacted you as part of your expert work in this --
5 these proceedings?

6 A. I believe it was the attorneys who contacted me.

7 Q. And by that, you're referring to the Wilson Sonsini
8 attorneys, correct?

9 A. Yes.

10 Q. Do you recall if they called you, sent you an email, or how
11 they contacted you?

12 A. I believe the first contact was via email.

13 Q. How many hours have you spent working on these proceedings?

14 A. I don't know.

15 Q. More than ten?

16 A. Yes.

17 Q. More than 20 hours?

18 A. I would say it was probably more than 20.

19 Q. More than 30 hours?

20 A. I don't know if I can keep playing this game for too much
21 longer.

22 Q. So somewhere between 20 and 30?

23 A. No, I didn't say that. But I'm pretty sure that it's more
24 than 20 hours. I don't know exactly high it goes beyond that
25 though.

1 Q. Okay. How many hours did you spend on each report, the 920
2 report and the 423 report?

3 A. I don't know.

4 Q. Was it an even split between both reports?

5 A. No, I don't think so.

6 Q. Does that mean you spent more time on one report than the
7 other?

8 A. Yes.

9 Q. Which report do you think you spent more time on?

10 A. I don't remember which one I wrote first and which one was
11 second.

12 Q. Why does that matter?

13 MS. TASHA THOMAS: Objection; form.

14 THE WITNESS: Well, for example, the Qualifications
15 section and the Legal Principles section are extremely
16 similar, if not the same, in each. So after I wrote it for
17 one, I didn't need to rewrite it from scratch for the second
18 one.

19 BY MR. DAVID THOMAS:

20 Q. Were there any other common aspects of your first drafted
21 report that applied to your second drafted report?

22 A. I don't know. I didn't do a document comparison between the
23 two to see exactly what it is. So I don't know the answer to
24 that.

25 Q. Okay. But you recall specifically the background and

1 qualification, there was significant overlap. You -- you
2 don't recall any other portions where there was overlap?

3 A. I'd have to do a comparison to be able to answer that
4 question honestly.

5 There may be other sections that have overlap as
6 well. I would need to take a look at the two and compare
7 them to answer that though.

8 Q. Paragraph 15 of your 920 report states that you are charging
9 \$600 an hour for your work in these proceedings. Is that
10 accurate?

11 A. Yes.

12 Q. What is your normal hourly rate for expert work?

13 A. \$600 per hour.

14 Q. Were you given any caps on the amount of time you can spend
15 working on these matters?

16 A. No, I don't believe so.

17 Q. So you talked about drafting the reports. Did you draft each
18 of your reports personally?

19 MS. TASHA THOMAS: Objection; form.

20 THE WITNESS: I don't understand that question.

21 BY MR. DAVID THOMAS:

22 Q. Did you type your reports personally?

23 A. I did, you know, type -- type my reports. The content of the
24 reports contains the opinions that I formed in this case.

25 There was collaboration and conversations that occurred

1 between myself and the attorneys in this case.

2 The formatting of it, I understand there's a
3 specific format that needs to be used for these proceedings,
4 and the attorneys helped with that, as well as the Legal
5 Principles section.

6 Q. Were there an exchange of drafts between yourself and the
7 attorneys?

8 A. Yes.

9 Q. Do you know how many drafts were exchanged?

10 A. I don't know.

11 Q. Do you know over what period of time that collaboration
12 occurred?

13 A. No, I don't know.

14 Q. What did you do to prepare for this deposition?

15 A. I reviewed my declarations in this case, and I -- as well as
16 some of the prior art and the citations that I have in my
17 report, including Dr. Neuman's declarations, and I met with
18 the attorneys.

19 Q. When did you meet with the attorneys?

20 A. I met with them yesterday.

21 Q. For how long did you meet?

22 A. Most of the day.

23 Q. Approximately how many hours?

24 A. Six or seven.

25 Q. And by "attorneys," are you referring to Ms. Thomas and

1 Mr. Argenti?

2 A. Yes.

3 Q. Was anybody else on that call or in that meeting?

4 A. No.

5 Q. Do you personally know Dr. Neuman?

6 MS. TASHA THOMAS: Object to --

7 THE WITNESS: He's a former --

8 MS. TASHA THOMAS: -- form.

9 THE WITNESS: He's a former colleague of mine when
10 I worked at the University of Southern California.

11 BY MR. DAVID THOMAS:

12 Q. How long did you guys work together?

13 A. I believe he was there the entire time that I was. I was a
14 faculty member for eight years.

15 Q. Can you please turn to paragraph 20 of your 920 report.

16 A. Okay.

17 Q. Can you read that first sentence out loud?

18 A. "I also understand that the U.S. Patent and Trademark Office
19 issued a Patent Eligibility Guidance in January 2019, which
20 was updated in October 2019, July 2024, and August 2025."

21 Q. What is the Patent Eligibility Guidance and the corresponding
22 updates?

23 A. I continue in that paragraph to explain my understanding.

24 This paragraph, though, is inside of the Legal
25 Principles, which is what I was informed by the attorneys.

1 Q. So do you understand the legal principles set forth in
2 paragraph 20?

3 A. Well, I understand what I included in paragraph 20.

4 Q. Have you reviewed the Patent Eligibility Guidance and the
5 updates?

6 A. Not outside what I included here.

7 Q. Is it your understanding that the Patent Eligibility Guidance
8 changed legal precedent on 35 USC Section 101?

9 MS. TASHA THOMAS: Objection; form.

10 THE WITNESS: I don't know that.

11 BY MR. DAVID THOMAS:

12 Q. Does the Patent Eligibility Guidance affect District Court
13 judges?

14 MS. TASHA THOMAS: Objection; form; scope.

15 THE WITNESS: I feel like you're asking me legal
16 questions. My understanding of the legal principles is
17 included in this section of my report.

18 BY MR. DAVID THOMAS:

19 Q. Right. I'm just trying to understand how you applied this
20 guidance to your Section 101 analysis. Is there anything
21 beyond what's listed in paragraph 20 as to how you applied
22 the Patent Eligibility Guidance to your Section 101 analysis?

23 A. I include an explanation of what I used in my analysis
24 responding to Ground 3 of Dr. Neuman's report, in Section IX
25 of my declaration.

1 Q. So by "Section IX" you're referring to -- this is the
2 header -- "Ground 3: Claims 1 through 20 are directed to
3 subject matter that was not well-known, routine, and
4 conventional." Correct?

5 A. Yes.

6 Q. Does the 920 patent claim the use of artificial intelligence
7 or machine learning?

8 MS. TASHA THOMAS: Objection; scope; form.

9 THE WITNESS: I don't know. It's a very lengthy
10 patent, so I would need to take a look and see if there was
11 any discussion on AI or ML in there.

12 BY MR. DAVID THOMAS:

13 Q. Do you recall reading anything on AI or machine learning?

14 A. I don't know.

15 Q. You don't know as in you don't recall, or you don't know if
16 you recall?

17 A. I don't know if there is anything in the patent related to
18 artificial intelligence and machine learning, so I'd have to
19 go back and look at it.

20 Q. Do you believe that the Patent Eligibility Guidance and the
21 corresponding updates apply to the 920 patent and the 423
22 patent?

23 MS. TASHA THOMAS: Objection; scope; form.

24 THE WITNESS: As I've already stated, the Legal
25 Principles section that I included in my report was provided

1 by the attorneys. And these are based on discussions that
2 we've had. So I don't know under which one of the Patent
3 Eligibility Guidance updates necessarily are relevant here,
4 as opposed to understanding through discussions with the
5 attorneys, what the legal principles are that I was asked to
6 opine on.

7 BY MR. DAVID THOMAS:

8 Q. Looking at that next paragraph, 21, you state:

9 "I have been further advised that it is not enough
10 that the prior art references include multiple, distinct
11 teachings that may somehow be combined to achieve the
12 claimed invention."

13 Do you see that?

14 A. Yes.

15 Q. Do you agree with that statement?

16 A. Well, again, we're in the Legal Principles statement, so I
17 understand that that is the legal principle.

18 Q. So aside from just rereading it, what do you understand that
19 sentence to mean in plain terms?

20 MS. TASHA THOMAS: Objection; form.

21 THE WITNESS: I believe that a POSITA needs to have
22 a reason to combine multiple references together, if they're
23 going to claim that they teach what is in the claimed
24 invention.

25 BY MR. DAVID THOMAS:

1 Q. And what if all of those elements are found in a single
2 reference?

3 A. I don't understand that question.

4 Q. So you refer to multiple distinct teachings. But what if
5 those multiple, distinct teachings were all found in a single
6 reference as opposed to multiple references?

7 A. Was that a question?

8 Q. So if a single prior art reference disclosed all the elements
9 of a claim, would that anticipate the claim?

10 A. Well, in the previous statement I believe that I stated
11 that -- that:

12 "I have been advised that anticipation under 35 USC
13 Section 102 is about prior invention and therefore a
14 single prior art reference must be found to disclose all
15 elements of the claimed invention arranged as in the
16 claim."

17 Q. Right. And so then your next sentence is talking about
18 multiple, distinct teachings within the prior art reference.
19 And I'm asking, is that for a single prior art reference or
20 for multiple prior art references?

21 A. I don't want to try to give a legal opinion. I provided here
22 what my understanding is of Section 102 and Section 103, and
23 I feel like you're asking me to now interpret those, and I
24 provided my understanding of those in this section of my
25 declaration.

1 Q. Right. I'm asking you to explain what you put in your
2 report. So if you don't have specific answers or
3 understanding of what's in section -- paragraph 21, then
4 that's fine.

5 How distinct must different embodiments be for them
6 to not be able to be combined with each other in a single
7 prior art reference?

8 MS. TASHA THOMAS: Objection; form; scope;
9 foundation.

10 THE WITNESS: I think you're asking a question
11 which is very relative to a specific piece of prior art or
12 multiple pieces of prior art. How distinct does it need to
13 be? I think you'd have to take that on a case-by-case basis.

14 BY MR. DAVID THOMAS:

15 Q. Can we jump ahead to paragraph 23?

16 Can you read the last sentence out loud in
17 paragraph 23?

18 A. "This means that even if all of the requirements of the claim
19 cannot be found in a single prior art reference that would
20 anticipate the claim, a POSITA who knew about all this prior
21 art would have come up with the claimed invention."

22 Q. Is that what you understand to be the standard for
23 determining obviousness under Section 103?

24 A. Well, you just had me answering questions about another
25 paragraph where I discussed Section 103 as well, that there

1 also needs to be a motivation to combine prior art
2 references.

3 Q. So you're referring to paragraph 26, where you state:

4 "In evaluating whether such a claim would have been
5 obvious, I may consider whether there is a reason that
6 would have prompted a POSITA to combine the elements or
7 concepts from the prior art in the same way as the
8 claimed invention."

9 Correct?

10 A. Yes, I believe that's part of it. I don't know if that's
11 completely clear, that the prior art references, that there
12 has to be a reason that a POSITA would have considered the
13 prior art references in a manner of combination as well
14 though.

15 Q. So I note in paragraph 26, you used the term "may," as in "I
16 may consider whether there is a reason." So is a reason to
17 combine references a requirement or optional?

18 A. Again, I feel like you're asking a legal question of me here.
19 Ultimately, I believe that it's the authority of the court to
20 determine whether or not there's motivation to combine.

21 But, again, I'm not a lawyer, so I'm at a loss for
22 some of your legal questions right now.

23 Q. Yes, you're right, it's the court's determination as to
24 whether there was an adequate reason to combine. I'm just
25 asking, is a reason to combine necessary for the 101

1 analysis, or is it optional?

2 MS. TASHA THOMAS: Objection; form.

3 THE WITNESS: I'm confused. Are you talking about
4 Section 101 or 103?

5 BY MR. DAVID THOMAS:

6 Q. Section 103.

7 A. I don't know if it's a requirement or not.

8 MR. DAVID THOMAS: All right. I think we've been
9 going for about an hour. This might be a good place for a
10 quick 10-minute break.

11 THE REPORTER: Thank you.

12 MR. DAVID THOMAS: We'll come back at 10:35
13 Mountain Time. Is that okay, Tasha?

14 MS. TASHA THOMAS: Yep, sounds good.

15 MR. DAVID THOMAS: All right. Thanks.

16 (Off the record at 10:25 a.m. MST.)

17 (Back on the record at 10:37 a.m. MST.)

18 BY MR. DAVID THOMAS:

19 Q. All right. Dr. Miller, what is your understanding of the
20 claim construction process?

21 MS. TASHA THOMAS: Objection; form.

22 THE WITNESS: Can you clarify a little?

23 BY MR. DAVID THOMAS:

24 Q. Are you familiar with claim construction in a patent case?

25 A. Yes.

1 Q. What is claim construction in a -- in a patent proceeding?

2 MS. TASHA THOMAS: Objection; form.

3 THE WITNESS: I think that I provide my
4 understanding in paragraph 38 of the 920 declaration.

5 BY MR. DAVID THOMAS:

6 Q. So in paragraph 38 of the 920 report you state, "I understand
7 that this analysis focuses on intrinsic evidence, including
8 how the claim term is used in the claims, specification, and
9 prosecution history." Is that right?

10 A. Yes, that's the first sentence of that paragraph.

11 Q. So how do you perform claim construction? How does that
12 process work?

13 MS. TASHA THOMAS: Objection; form.

14 THE WITNESS: Further reading in paragraph 38, I
15 state:

16 "I also understand that dictionaries or other
17 extrinsic sources may assist in determining the plain
18 and ordinary meaning but cannot override a meaning that
19 is unambiguous from the intrinsic evidence. I have
20 followed these principles in my analysis throughout this
21 declaration."

22 BY MR. DAVID THOMAS:

23 Q. So did you perform a claim construction analysis as part of
24 your 920 report?

25 A. So I was asked to provide a definition of the term

1 "affordance." And so the attorneys informed me about claim
2 construction and using intrinsic evidence, and then looking
3 at dictionaries or other extrinsic sources to determine the
4 plain and ordinary meaning, because my understanding in these
5 cases is that all of the claim terms are to be given their
6 plain and ordinary meaning.

7 Q. Okay. So as part of the definition you provided for
8 "affordance," are you saying that that was not a claim
9 construction analysis; that was just a definition the
10 attorneys asked you to provide?

11 MS. TASHA THOMAS: Objection; form.

12 THE WITNESS: No. One of the sentences I just read
13 to you in paragraph 38 stated, "I have followed these
14 principles in my analysis throughout this declaration."

15 BY MR. DAVID THOMAS:

16 Q. So did you perform a claim construction analysis for the term
17 "affordance"?

18 A. I provided -- I was asked by the attorneys to provide a
19 definition of what the plain and ordinary meaning of the term
20 "affordance" was. And they provided me with an understanding
21 of how claim construction works. So I used that in
22 determining the plain and ordinary meaning of the term
23 "affordance."

24 Q. But you wouldn't say that you performed a claim construction
25 analysis of the term "affordance"?

1 MS. TASHA THOMAS: Objection; form.

2 THE WITNESS: Well, as I said, I understand that
3 the claim terms of the 920 patent were to be given their
4 plain and ordinary meaning. And so I used the claim
5 construction principles that were provided by the attorneys
6 to provide a definition of the term "affordance," giving it
7 the plain and ordinary meaning of what a POSITA would have
8 understood at the time of the invention.

9 BY MR. DAVID THOMAS:

10 Q. So in determining what the term "affordance" means, did you
11 review the intrinsic evidence?

12 A. I definitely reviewed some of the intrinsic evidence.

13 Q. Which intrinsic evidence?

14 A. How the term is used in the claims in the specification.

15 Q. Did you review the prosecution history of the 920 patent?

16 A. I know you asked me that question earlier also. I'll have to
17 look and see if I cited to the prosecution history anywhere
18 in here. I don't recall whether I did.

19 Q. And if you didn't cite to the prosecution history, does that
20 mean you didn't review it?

21 A. No.

22 MS. TASHA THOMAS: Objection; form.

23 THE WITNESS: No. That means that it didn't inform
24 the opinions that I made.

25 BY MR. DAVID THOMAS:

1 Q. So in determining what the term "affordance" means, did you
2 also consider dictionaries or other extrinsic sources?

3 A. Yes.

4 Q. Before even reading either of these patents, did you have an
5 understanding of what the term "affordance" meant?

6 A. Yes.

7 Q. What was that understanding?

8 MS. TASHA THOMAS: Objection; form.

9 THE WITNESS: Well, my --

10 BY MR. DAVID THOMAS:

11 Q. What would be -- what would be the definition?

12 MS. TASHA THOMAS: Objection; form.

13 THE WITNESS: Well, my understanding of the term
14 "affordance" is what I've provided in this declaration.

15 BY MR. DAVID THOMAS:

16 Q. Which is what, exactly?

17 A. In paragraph 39, I provide it when I said:

18 "As I detail more below, a POSITA would have
19 understood the plain and ordinary meaning of the term
20 'affordance' to be an interactive user interface element
21 that informs a user as to how to interact with the
22 element and its intended use."

23 Q. So that sentence in paragraph 39, would you say that's the
24 definition as you would apply to the term "affordance"?

25 A. Well, that's what I just stated in that sentence. That's my

1 understanding of the plain and ordinary meaning of the term
2 "affordance."

3 Q. So you said earlier the claim terms are given their plain and
4 ordinary meaning. And that's in the first sentence of
5 paragraph 37. So did you provide a construction for any term
6 other than "affordance" in the 920 patent?

7 MS. TASHA THOMAS: Objection; form.

8 THE WITNESS: No.

9 BY MR. DAVID THOMAS:

10 Q. Did you provide a construction for any other term in any
11 claim of the 423 patent?

12 A. No.

13 Q. So every other term in the claims of the 920 patent and the
14 423 patent are to be given their plain and ordinary meaning
15 in your opinion; is that right?

16 MS. TASHA THOMAS: Objection; form.

17 THE WITNESS: Well, all of the claim terms in the
18 920 and the 423 patent are to be given their plain and
19 ordinary meaning. The reason that I provided this
20 description in Section VI of my report is because Dr. Neuman
21 was incorrect in his understanding of the term "affordance."

22 And so I felt it was important to provide an
23 accurate definition of the term before responding to what he
24 provided in his declaration and deposition.

25 BY MR. DAVID THOMAS:

1 Q. So the interpretation of "affordance" that you provided in
2 your report is simply what the plain and ordinary meaning of
3 that term is.

4 A. Correct. What I said in paragraph 39:

5 "A POSITA would have understood the plain and
6 ordinary meaning of the term 'affordance' to be an
7 interactive user interface element that informs a user
8 as how to interact with the element and its intended
9 use."

10 Q. So earlier you said you -- you knew that term even before
11 reading these patents, is that correct?

12 A. Yes.

13 Q. How did you know the term "affordance" before reading these
14 patents?

15 MS. TASHA THOMAS: Objection; form.

16 THE WITNESS: I don't recall the first time that I
17 learned the word "affordance," but "affordance" is a word
18 that I knew and used prior to coming on to this case.

19 BY MR. DAVID THOMAS:

20 Q. Can you provide any specific examples of where you had used
21 the term "affordance" previously?

22 A. I don't know if I can off the top of my head. As I said,
23 it's a word that I learned at some point in my life and used
24 in language. I don't know that I can pinpoint exactly when I
25 have used that word. That would be a difficult question for

1 any word.

2 Q. Do you recall using the term as part of any teaching
3 obligation?

4 MS. TASHA THOMAS: Objection; form.

5 THE WITNESS: Maybe I did. Again, it's the same
6 answer. I -- I don't know every word that I've ever used in
7 every lecture that I've given over 25 years of teaching. I'm
8 sure I've used that word at some point in my teaching.

9 BY MR. DAVID THOMAS:

10 Q. Right. I'm not asking for every word, just a single word,
11 "affordance."

12 And do you have any recollection of specific
13 examples where you've used the term "affordance" as part of
14 your teaching?

15 A. As I said, I can't come up with something off the top of my
16 head of where I've used that word in any of my teaching.

17 Q. But you believe that you may have used it as part of your
18 teaching?

19 MS. TASHA THOMAS: Objection; form.

20 THE WITNESS: No. What I said is I know that I've
21 used that word in my teaching and outside of my teaching.

22 BY MR. DAVID THOMAS:

23 Q. But you don't recall specific examples of that term?

24 A. I don't know how many times I have to answer the same
25 question for you. I can't pinpoint exactly where I've used

1 the word "affordance" in my life. But if you were to ask me
2 where I've used another specific word in my life, I don't
3 know that I could point to that either.

4 Q. So aside from specific examples that you particularly recall,
5 can you provide examples of what qualifies as an affordance?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: I've provided a description of
8 affordance, including examples, in this section of my report.

9 BY MR. DAVID THOMAS:

10 Q. Okay. And what are -- what are some of those examples?

11 A. Are you asking me to read multiple paragraphs of my report?

12 Q. I'm just asking for an example of what qualifies as an
13 affordance. If you need time to review paragraphs of your
14 report, you can take your time.

15 A. I have a few examples. One I see is in paragraph 43, where I
16 talk about an affordance in the context of aborting a
17 transaction, where I reference the 920 patent specification.

18 Q. Can we open the 920 patent?

19 A. I'm sorry. I know that I paused, but I wasn't done.

20 Q. Okay.

21 A. Paragraph 46 I discuss an embodiment of the 920 patent,
22 containing an affordance that is slid. That's in the
23 specification as well.

24 And then I provided some examples of affordances
25 that are supported from some technical literature as well.

1 And I provided that in paragraph 49 and paragraph 50.

2 I don't know if that's all that I did, but those
3 are some that I provided in that section.

4 Q. Okay. So in paragraph 50, you say, quote:

5 "One example of an affordance in the context of
6 user interface design is a scrollbar, which 'clearly
7 shows that it is manipulable' and may include arrows to
8 suggest its directionality."

9 Correct?

10 A. Yes.

11 Q. So in the context of user interface design, what is it about
12 a selectable button or icon that distinguishes itself from
13 affordance? What is the difference between a button and an
14 affordance?

15 MS. TASHA THOMAS: Objection; form.

16 THE WITNESS: Well, an affordance is an interactive
17 user interface element that informs a user as to how to
18 interact with the element, and its intended use. A button
19 may or may not be an affordance.

20 BY MR. DAVID THOMAS:

21 Q. So just thinking about scrollbar, you know, if you're on a
22 Microsoft Word document there's an X in the upper corner,
23 right? Are you familiar with Microsoft Word?

24 A. Yes.

25 Q. So there's an X in the top corner, right? And if you select

1 that X, it will close the document, right?

2 A. Well, that doesn't have to do with scrollbars, which I think
3 is how you started that question. But, yes, checking the X
4 in the top right-hand corner would begin the action of
5 closing Microsoft Word.

6 Q. So would that X qualify as an affordance?

7 MS. TASHA THOMAS: Objection; form.

8 THE WITNESS: I would have to consider, you know,
9 everything that's going on there. You're asking me a
10 question completely out of context of what I've provided
11 opinions on here in my report. And I don't know whether I
12 would be able to completely enumerate and answer any element
13 whatsoever that you present to me of whether it is an
14 affordance or not.

15 But I can tell you that an affordance is a
16 interactive user interface element that informs a user as to
17 how to interact with the element and its intended use.

18 BY MR. DAVID THOMAS:

19 Q. Right. So let's take it one at a time.

20 Is the X an interactive user interface element?

21 MS. TASHA THOMAS: Objection; form; scope.

22 THE WITNESS: As I said, that's not something that
23 I have provided an opinion on in my declaration. I did
24 provide several examples, that you just had me enumerate, of
25 affordances that are in my declaration. And those are the

1 ones that I considered before writing or while writing my
2 declaration.

3 BY MR. DAVID THOMAS:

4 Q. Are there any other examples of affordances that exist
5 outside of your report that you haven't mentioned?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: Well, of course, there are
8 affordances outside of the few that I mentioned in my
9 declaration.

10 BY MR. DAVID THOMAS:

11 Q. Okay. That's -- that's what I'm trying to get to. I'm
12 trying to understand what some other examples of affordances
13 are.

14 So going back to the X in a Microsoft Office
15 program, would that be an affordance?

16 MS. TASHA THOMAS: Objection; form; scope.

17 THE WITNESS: As I said, I've provided several
18 examples of affordances in my declaration. And so as you're
19 asking me about something outside my declaration, I would
20 need to consider that more prior to answering that question.

21 BY MR. DAVID THOMAS:

22 Q. In paragraph 65 of your 920 report, you refer to Dr. Neuman's
23 first theory, which you note, "...his argument is based on an
24 interpretation 'consistent with Patent Owner's infringement
25 contentions in the related district court litigation'." Do

1 you see that?

2 A. Yes.

3 Q. Have you reviewed PayRange's infringement contentions in the
4 related district court litigation?

5 A. I don't believe that I have. But that sentence is quoting
6 Dr. Neuman's declaration. That sentence is not saying that I
7 reviewed the patent owner's infringement contentions. That's
8 within a quotation citing Dr. Neuman's declaration.

9 Q. Yeah, I understand that. I'm asking if you have reviewed
10 those infringement contentions.

11 A. I don't believe that I have.

12 Q. So based on your report, you state that Dr. Neuman provides a
13 first theory and a second theory for what the term
14 "affordance" means. Is that accurate?

15 MS. TASHA THOMAS: Objection; form.

16 THE WITNESS: This is inside of a section
17 specifically addressing limitation 1.12. And what I was
18 saying here is that Dr. Neuman had two theories that he
19 provided with respect to limitation 1.12.

20 BY MR. DAVID THOMAS:

21 Q. Right. And limitation 1.12 -- this is just above paragraph
22 64 your 920 report -- states:

23 "The user interface includes a visual
24 representation of," ellipses, "an affordance that, in
25 response to a user input, indicates completion of the

1 transaction."

2 Right?

3 A. Yes.

4 Q. So you're characterizing Dr. Neuman's report as having two
5 theories related to limitation 1.12, correct?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: In paragraph 64, I state that, "I
8 understand that Dr. Neuman advances two theories as to how
9 Low discloses the limitation."

10 BY MR. DAVID THOMAS:

11 Q. Right. Do you see any problem with Dr. Neuman advancing two
12 theories as to how Low teaches this limitation?

13 MS. TASHA THOMAS: Objection; form.

14 THE WITNESS: I don't understand your question.

15 BY MR. DAVID THOMAS:

16 Q. Setting aside whether you agree with his theories, is there
17 anything procedurally improper with Dr. Neuman advancing two
18 theories as to how Low discloses this limitation?

19 MS. TASHA THOMAS: Objection; form.

20 THE WITNESS: I don't know if there's any legal
21 restriction behind having two theories as to how Low
22 discloses the limitation, but that wasn't what I was saying.

23 What I am saying in this section is discussing what
24 the two theories are and contrasting them with each other.

25 BY MR. DAVID THOMAS:

1 Q. So for the 920 report you offered a construction for the term
2 "affordance," correct?

3 A. Well, as -- as I said earlier, I understand that the -- all
4 of the claim terms in the 920 patent are to be given their
5 plain and ordinary meaning. And I provided what a POSITA
6 would have understood as the plain and ordinary meaning of
7 the term "affordance," because Dr. Neuman was incorrect in
8 his understanding of the plain and ordinary meaning of the
9 term "affordance."

10 Q. Is the term "affordance" also found in the claims of the 423
11 patent? And you can pull open the 423 patent, if you'd like.

12 A. Yes, the term "affordance" is in the claims of the 423
13 patent.

14 Q. Did you offer a construction for the term "affordance" in
15 your 423 report?

16 A. Yes. In paragraphs 37 through 39 of my 423 declaration, I
17 discussed the term "affordance" and specifically referenced
18 the 920 declaration in that.

19 Q. So paragraphs 37 through 39 of your report in the 423 patent,
20 am I to take your answer that that means you incorporated the
21 construction offered in the 920 patent in that portion?

22 MS. TASHA THOMAS: Objection; form.

23 THE WITNESS: In paragraph 39, I said:

24 "As I discuss in detail in my claim construction
25 discussion in my declaration for the '920 patent, a

1 POSITA would have understood the plain and ordinary
2 meaning of the term 'affordance' to be an interactive
3 user interface element that informs a user as to how to
4 interact with the element and its intended use. This
5 interpretation is consistent with the '423 patent, and
6 the technical literature in the field of user interface
7 design."

8 BY MR. DAVID THOMAS:

9 Q. Right. So you're referencing your construction from the 920
10 report; but are you explicitly offering a construction for
11 the term "affordance" in the 423 report?

12 MS. TASHA THOMAS: Objection; form.

13 THE WITNESS: In the first sentence that I just
14 read to you, I said:

15 "...a POSITA would have understood the plain and
16 ordinary meaning of the term "affordance" to be an
17 interactive user interface element that informs a user
18 as to how to interact with the element and its intended
19 use."

20 As I said, I understand that all of the claim terms
21 in the 920 and the 423 patent are to be given their plain and
22 ordinary meaning. So I've provided a definition of the plain
23 and ordinary meaning of the term "affordance," because Dr.
24 Neuman was incorrect in his understanding of the plain and
25 ordinary meaning of that term.

1 BY MR. DAVID THOMAS:

2 Q. In your opinion, was Dr. Neuman incorrect in his
3 interpretation of the term "affordance" for both the 920 and
4 423 patents?

5 MS. TASHA THOMAS: Objection; form.

6 BY MR. DAVID THOMAS:

7 Q. It looks like you're referencing something. Can I ask what
8 you're referencing?

9 A. Yes. I'm looking for where Dr. Neuman explains the term
10 "affordance" in his deposition, which I included in one of my
11 declarations.

12 In paragraph 41 of the 920 declaration, I stated:

13 "However, I understand that in his deposition, when
14 asked about his views on the plain and ordinary meaning of
15 the term 'affordance,' Dr. Neuman responded that he," quote,
16 "'did have to look that one up,'" end quote, "to understand
17 its meaning."

18 So that tells me that Dr. Neuman did not have an
19 understanding of the plain and ordinary meaning of the term
20 "affordance" at the priority date of the patent, as a POSITO
21 would have understood.

22 Further, that is very clear, in my opinion, because
23 the definition that he used is incorrect.

24 Q. All right. So this is all in the context of your 920 report,
25 correct?

1 A. Well, that was the paragraph that I just read to you, was
2 from the 920 declaration.

3 Q. Right. And you have Section VI titled "Claim Construction."
4 And then under that, on the next page, you have subheader A,
5 quote, affordance. Correct?

6 A. Yes.

7 Q. So am I to understand that to mean that you're offering a
8 construction for the term "affordance" for the 920 patent?

9 MS. TASHA THOMAS: Objection; form.

10 THE WITNESS: I don't want to get caught up in
11 legal terms, because I understand that the term "claim
12 construction" is a legal term. And the reason that I
13 provided this entire section in my report is because Dr.
14 Neuman had an incorrect understanding of the term
15 "affordance." And then openly, in his deposition, stated
16 that he did not know what the term "affordance" meant.

17 In fact, he didn't have an understanding of the
18 term "affordance" even when he was retained on this case,
19 much less back at the priority date of this case, as a POSITA
20 would have understood.

21 BY MR. DAVID THOMAS:

22 Q. Right. I'm just contrasting your 920 report with your 423
23 report which doesn't have the subheader "A. affordance," and
24 simply states that the claims are given their plain and
25 ordinary meaning. And then you reference your opinions

1 regarding the plain and ordinary meaning of the term
2 "affordance" in your 920 report.

3 So in your 423 report, are you offering a Claim
4 Construction for the term "affordance"?

5 MS. TASHA THOMAS: Objection; form.

6 THE WITNESS: Well, again, I am concerned that
7 you're using the term "claim construction." I realize that
8 that's the heading that I have on Section VI in my report,
9 because I understand that the claim terms of the 423 patent
10 are to be given their plain and ordinary meaning. And I
11 provided that, the plain and ordinary meaning, in both my 423
12 declaration and my 920 declaration. And the plain and
13 ordinary meaning is the same in both.

14 BY MR. DAVID THOMAS:

15 Q. So you rely on three pieces of evidence to support your -- I
16 apologize.

17 You take issue with the term "claim construction."
18 What -- what would you be happy with if I used instead of
19 "claim construction" as it relates to affordance?

20 MS. TASHA THOMAS: Objection; form.

21 THE WITNESS: The plain and ordinary meaning.

22 BY MR. DAVID THOMAS:

23 Q. Well, you're defining the plain and ordinary meaning, right?
24 So what about definition? Is that better than "claim
25 construction"?

1 A. I guess. I just want to make sure that there is no confusion
2 on the legal terminology behind this. I've provided the
3 plain and ordinary meaning of the term "affordance" in this
4 section.

5 Q. Right. But that -- are you providing the plain and ordinary
6 meaning of the term "affordance" was part of a claim
7 construction analysis, correct?

8 A. I followed the advice of the attorneys where I provided what
9 my understanding of "claim construction" is in paragraph 38.
10 And I followed those principles in my analysis of determining
11 the plain and ordinary meaning of the term "affordance."

12 Q. Okay. So in your claim construction of the term
13 "affordance," you rely on three exhibits, right? Exhibit
14 2011, 2012, and 2013. Is that correct?

15 MS. TASHA THOMAS: Objection; form.

16 THE WITNESS: It looks like Exhibits 2011, 2012,
17 and 2013 are the technical literature, which I begin
18 discussing in paragraph 49 and continue in paragraph 50.

19 But that is not the only place where I perform this
20 analysis. There's several paragraphs prior to that where I
21 was referencing the 920 patent specification. I reference
22 Dr. Neuman's declaration and his deposition transcript.

23 I'm not sure. I'm just doing a quick scan here
24 through those paragraphs to see if there's any other
25 references in there.

1 But it would not be correct to say that I only used
2 the three technical literature references to determine the
3 plain and ordinary meaning of the term "affordance," when I
4 have an entire section that cites other things as well.

5 BY MR. DAVID THOMAS:

6 Q. Yeah. I don't believe my question was if you only relied on
7 them. I just asked if you relied on those three references.

8 A. I did rely on the references in Exhibits 2011, 2012, and
9 2013, in determining the plain and ordinary meaning of the
10 term "affordance." But I did not only rely on those
11 references.

12 Q. Understood. Why did you feel the need to look to these other
13 references?

14 MS. TASHA THOMAS: Objection; form.

15 THE WITNESS: In paragraph 38 I stated that there
16 is both intrinsic evidence and extrinsic sources that may
17 assist in determining the plain and ordinary meaning.

18 And so, I provided an analysis using the intrinsic
19 evidence of the 920 patent specification, but then also
20 provided extrinsic sources that confirmed the plain and
21 ordinary meaning, as provided in the patent specification.

22 BY MR. DAVID THOMAS:

23 Q. Why was it insufficient to only rely on the intrinsic
24 evidence?

25 MS. TASHA THOMAS: Objection; form.

1 THE WITNESS: I don't know that it was
2 insufficient, but the extrinsic sources further confirmed the
3 plain and ordinary meaning.

4 BY MR. DAVID THOMAS:

5 Q. And you're saying the plain and ordinary meaning set forth in
6 the intrinsic evidence?

7 A. I don't understand what you asked.

8 Q. So you're saying the extrinsic evidence confirmed the plain
9 and ordinary meaning. And I'm asking, is that plain and
10 ordinary meaning what was found in the intrinsic evidence?

11 A. Yes, that was found in the intrinsic evidence. And I cite to
12 sections of the 920 specification that support that in this
13 section.

14 Q. So let's look at some of those. Can you open the 920 patent?

15 A. Okay.

16 Q. So I know there's going to be some jumping back and forth
17 between the 920 patent and the 920 report. But take all the
18 time you need.

19 So you had just mentioned that you provided a few
20 examples from the 920 patent as to what an "affordance" is.
21 Is that right?

22 A. Yes. In the section of my report under the subheading
23 "affordance," I do provide a few examples of where the 920
24 patent supports the plain and ordinary meaning of the term
25 "affordance."

1 Q. Okay. So what is the first of those examples that you
2 provide?

3 A. One example I provided is in paragraph 43 of the 920
4 declaration.

5 Q. Are you referring to the "abort affordance"?

6 A. Yes, the affordance in the context of aborting a transaction.

7 Q. Right. So it looks like that's at column 37, lines eight
8 through 12 of the 920 patent. Can you please go to that
9 section?

10 A. Okay.

11 Q. So can you read out loud column 37, lines eight through 12?

12 A. "For example, the user aborts the transaction by
13 actuating a coin return mechanism of the machine 120.
14 In another example, the user aborts the transaction by
15 selection" of "an abort affordance on the interface of
16 the application 140," parentheses, "{not shown}," closed
17 parentheses.

18 Q. Right. So it looks like you added "of" after "selection,"
19 because that appears to be a typo. But otherwise that
20 appears to be accurate.

21 So can you point me to, in the figures, the abort
22 affordance?

23 MS. TASHA THOMAS: Objection; form.

24 THE WITNESS: Well, the end of the second sentence
25 I just read you says, in parentheses, "not shown."

1 So the abort affordance is not shown in the figure
2 that this paragraph is explaining.

3 BY MR. DAVID THOMAS:

4 Q. So based on the disclosure of the abort affordance and the
5 920 patent's failure to show it in the figures, would you
6 agree that the 920 patent includes certain elements that are
7 not explicitly shown in the figures?

8 MS. TASHA THOMAS: Objection; form.

9 THE WITNESS: My understanding of patents is the
10 specification consists of all of the figures and all of the
11 column descriptions that are part of the patent.

12 So whether something is disclosed in a figure or in
13 the specification, the text included, it's all part of the
14 specification.

15 BY MR. DAVID THOMAS:

16 Q. But you agree the abort affordance is not shown in the
17 figures, correct?

18 A. The -- the sentences you just had me read very clearly say
19 it's not shown.

20 Q. So what would the abort affordance look like?

21 MS. TASHA THOMAS: Objection; form.

22 THE WITNESS: So the specification says, quote,
23 "...the user aborts the transaction by actuating a
24 coin return mechanism of the machine 120." Or "In
25 another example, the user aborts the transaction by

1 selection" of "an abort affordance on the interface of
2 the application 140."

3 BY MR. DAVID THOMAS:

4 Q. Right. So anywhere in that description does it provide
5 structure or character to what the abort affordance looks
6 like?

7 MS. TASHA THOMAS: Objection; form.

8 THE WITNESS: There could be different types of
9 abort affordances that are provided in the interface of the
10 application.

11 BY MR. DAVID THOMAS:

12 Q. What are some types of abort affordances that could be
13 provided?

14 MS. TASHA THOMAS: Objection; form.

15 THE WITNESS: In my declaration, I didn't provide
16 any specific element of what the abort affordance could be.
17 But I stated that:

18 "...the specification of the '920 patent describes
19 an 'affordance' as an interactive user element, (e.g.,
20 an element the user can select) that a user can use to
21 effectuate an operation (e.g. an abort operation). The
22 '920 patent distinguishes this type of user element from
23 user elements that only provide an output that the
24 operation has been performed (e.g., a message that the
25 transaction has been aborted)."

1 BY MR. DAVID THOMAS:

2 Q. Right. So I agree with you on the interactive user element
3 because the specification says that the user aborts the
4 transaction by selection and abort affordance on the
5 interface of the application 140.

6 So to me, that sounds like the element is a
7 interactive user element. Would you agree?

8 A. Yes, I believe the abort affordance is an interactive user
9 element.

10 Q. So my next question is the second part of that sentence in
11 paragraph 43 of your 920 report, where you say, "...that a
12 user can use to effectuate an operation (e.g., an abort
13 operation)."

14 Based on the disclosure of the 920 patent, how do
15 you know that that's what the abort affordance would do?

16 A. Because an abort affordance would have to meet the
17 requirements of what an affordance is, which is an
18 interactive user interface element that informs a user as to
19 how to interact with the element and its intended use.

20 So if there is an abort affordance, the intended
21 use of the abort affordance would be to abort the operation.

22 Q. Right. So I'm asking, what would that look like, as a
23 graphical user interface element?

24 MS. TASHA THOMAS: Objection; form.

25 THE WITNESS: Well, as I said, I didn't provide

1 potentially what that user interface element could look like
2 here. But I also was responding to Dr. Neuman's declaration.
3 That was the whole reason for including this in my
4 declaration, was responding to what he had said.

5 BY MR. DAVID THOMAS:

6 Q. So you can't provide any examples of what an abort affordance
7 would look like?

8 MS. TASHA THOMAS: Objection; form.

9 THE WITNESS: No, that's not what I said. I would
10 have to consider the -- what's -- what's in the patent,
11 making sure that I'm conforming to what's in the patent to be
12 able to answer that question accurately. And it's not
13 something that I provided in my declaration.

14 BY MR. DAVID THOMAS:

15 Q. So without that analysis, you can't provide examples of what
16 an abort affordance looks like.

17 MS. TASHA THOMAS: Objection; form.

18 THE WITNESS: I would need to perform an analysis
19 considering the entirety of the 920 patent to be able to
20 provide an explanation as to what an abort affordance could
21 be, so that it conforms to the specifications of the patent.
22 That's not something that I did in my declaration though.

23 BY MR. DAVID THOMAS:

24 Q. Okay. You mentioned another example of an affordance that
25 you provided in your 920 report. Can you please tell me what

1 that other example is, specifically as it relates to the 920
2 patent?

3 A. In paragraph 46 I say:

4 "The specification of the '920 patent further
5 describes an embodiment of an 'affordance' that is slid.
6 For instance, the specification describes 'a
7 swipe-to-pay feature,' which 'refers to a user's action
8 implemented on his or her mobile device 150 where he or
9 she quickly brushes his or her finger (or other
10 predetermined interaction) on the mobile device's touch
11 screen 152,' in order to transfer payment to the payment
12 accepting unit."

13 Q. Can you please turn to Figure 10A of the 920 patent?

14 A. Okay.

15 Q. Can you describe what you see in Figure 10A?

16 MS. TASHA THOMAS: Objection; form.

17 THE WITNESS: "Column 4 of the patent" -- it's
18 Figures 10A through 10B -- "show a mobile device with a
19 graphical representation of a mobile application shown
20 thereon, the mobile application being used as part of
21 the mobile device to machine payment processing system,
22 in accordance with some implementations."

23 BY MR. DAVID THOMAS:

24 Q. And that's what the patent used to describe that figure,
25 correct?

1 A. Yes.

2 Q. And it was not your interpretation of the figure, correct?

3 A. No. As I said, that's in column 4 of the patent.

4 Q. Right. That was directly from the patent though, correct?

5 A. Yes, I read that from column 4 of the patent.

6 Q. Understood.

7 Can you go back to your 920 report and look at
8 Figure 10C after paragraph 46?

9 A. Okay.

10 Q. Without reading the patent, why don't you just tell me what
11 you see in Figure 10C.

12 A. I think that description in the patent is accurate. I don't
13 understand why I can't read what the patent is saying the
14 figure is.

15 Q. Well, so you reviewed the 920 patent, right?

16 A. Yes.

17 Q. And you understand what it discloses?

18 A. Well, there's 77 pages in that patent.

19 Q. Well, we're talking about one figure, Figure 10C, right now.
20 Do you understand what's disclosed in Figure 10C?

21 A. Yes. That's what I read to you from the patent, which is
22 what's figure -- Figures 10A through 10B.

23 Q. Right. I don't want to read the patent. I want to
24 understand how you interpret Figure 10C.

25 MS. TASHA THOMAS: Objection; form.

1 THE WITNESS: Well, the way I interpret Figure 10C
2 is the same as how the patent describes it.

3 BY MR. DAVID THOMAS:

4 Q. So is this a user device, including a graphical user
5 interface?

6 A. Yeah. It's a mobile device with a graphical representation
7 of a mobile application.

8 Q. Okay. And what does that user interface include?

9 A. I don't understand your question.

10 Q. Are you familiar with graphical user interfaces?

11 A. Yes.

12 Q. Are you familiar with how they present data to users?

13 A. Yes.

14 Q. Are you familiar with interpreting the data that is presented
15 to users on a graphical user interface?

16 MS. TASHA THOMAS: Objection; form.

17 THE WITNESS: I don't understand interpreting data
18 presented in a user interface.

19 But I'm familiar with graphical user interfaces.

20 BY MR. DAVID THOMAS:

21 Q. Okay. So Figure 10C, you just agreed, is a graphical user
22 interface. I'm asking you to describe what is shown on that
23 graphical user interface.

24 A. Well, 10C is not a graphical user interface, to correct what
25 you just said, because that's not what I said.

1 It's a mobile device with a graphical
2 representation of a mobile application.

3 Q. Okay. So you do know what's shown in Figure 10C.

4 A. Yes, that's what the patent tells me is shown there.

5 Q. Okay. So is there a dollar bill icon shown on Figure 10C?

6 A. I'm not sure if the patent states it's an icon. But there is
7 a representation of a dollar bill shown in that figure.

8 Q. And when you compare Figure 10C to Figure 10D, which is just
9 below it in your 920 report, what is happening with that
10 dollar bill representation?

11 A. In paragraph 46, I state:

12 "...the user," quote, "'performs a swipe gesture at
13 a location corresponding to the representation of the
14 dollar bill (e.g., a substantially vertical swipe
15 gesture from a location corresponding to the
16 representation of the dollar bill to the top edge of the
17 mobile device 150),' " end quote, "which causes the
18 dollar bill to move up toward the payment accepting unit
19 shown on the screen, thereby effectuating payment."

20 Q. So a user performs a swipe gesture at a location
21 corresponding to the representation of the dollar bill, and
22 then the representation of the dollar bill moves up across
23 the screen. And that's what's shown between Figures 10C and
24 10D, correct?

25 A. That's what I just read to you from my declaration, and it's

1 also provided in the specification of the 920 patent.

2 Q. So that representation of the dollar bill, is that an
3 affordance that is slid?

4 A. The user sliding his finger on the dollar bill would be the
5 affordance that is slid. But keep in mind that there's
6 another part to an affordance. And that's the intended use
7 of it.

8 Q. Right. So the representation of the dollar bill, is that an
9 affordance that is slid?

10 A. Well, again, it's not solely that the user is sliding his
11 finger on the dollar bill. That's part of the affordance,
12 but then also, the action associated with that. And I cite
13 that in paragraph 46 at the end, where I'm referencing the
14 patent column 7, lines 27 through 31.

15 "The transaction is completed just as if cash was
16 inserted in the machine 120 with the user inputting his
17 selection on the payment accepting unit 120 and the
18 payment accepting unit 120 dispensing the product or
19 service."

20 Q. So the dollar bill representation, is that an affordance that
21 is slid when it is slid toward the payment accepting unit
22 shown on the screen?

23 MS. TASHA THOMAS: Objection; form.

24 THE WITNESS: Can you just repeat that question for
25 me?

1 BY MR. DAVID THOMAS:

2 Q. So I had asked you if the representation of the dollar bill
3 is an affordance that is slid. And you seemed to indicate
4 that that's an incomplete question because there's another
5 component to the representation of the dollar bill and the
6 sliding. Is that accurate?

7 A. I was just referring back to the plain and ordinary meaning
8 of "affordance," that it's not only the interactive user
9 interface element. That element has to inform a user as to
10 how to interact with the element, that would be the sliding
11 of the dollars bill, but also its intended use, which in this
12 case is completing the transaction.

13 Q. Right. So you're talking about the result generated by
14 interaction with the affordance. I'm just asking for what is
15 the actual graphical user interface element that is the
16 affordance shown on Figure 10C.

17 A. No. That's not what I'm saying. The affordance is not
18 solely the user interface element. An affordance is the
19 interactive user interface element that informs a user as to
20 how to interact with the element and its intended use.

21 You're asking what the user interface element is,
22 which is the affordance. And that's not a complete question,
23 because the affordance has to also have the user interface
24 element, inform the user as to how to interact with the
25 element, and provide its intended use.

1 Q. Right. And I'm asking you, does the representation of the
2 dollar bill satisfy that definition you just provided?

3 MS. TASHA THOMAS: Objection; form.

4 THE WITNESS: I'm not sure how else to answer this
5 question. I feel like I'm saying the same thing to each
6 question you're asking.

7 BY MR. DAVID THOMAS:

8 Q. Well, so paragraph 46 of your report starts off by saying,
9 "The specification of the '920 patent further describes an
10 embodiment of an 'affordance' that is slid."

11 I'm asking you to point in the figures to what is
12 the affordance that is slid, if you're able to.

13 A. The dollar bill is the interactive user element, which is
14 part of the affordance. The intended use of that is sliding
15 the dollar bill towards the payment processing machine. The
16 intended action is completing the transaction just as if cash
17 was inserted in the machine.

18 All three of those pieces comprises the affordance.

19 Q. So that process you just described, is that the affordance
20 that, when slid, indicates the initiation of the transaction?

21 MS. TASHA THOMAS: Objection; form.

22 THE WITNESS: Well, as I read from column 7, lines
23 27 through 31, in the patent, it says the transaction is
24 completed. Completing the transaction implies that there was
25 also an initiation of the transaction.

1 But this affordance of sliding the dollar bill up
2 towards the payment processing machine completes the
3 transaction. It doesn't just initiate the transaction.

4 MR. DAVID THOMAS: Okay. Let's take a quick break.

5 And actually, I know it's kind of late on the east
6 coast, but it's about almost noon your time, right, Dr.
7 Miller? Do we want to take a 30-minute break for lunch?

8 MS. TASHA THOMAS: As long as Dr. Miller's okay
9 with that.

10 THE WITNESS: I'm fine with that.

11 MS. TASHA THOMAS: Okay. So, what? 2:20 east
12 coast time?

13 MR. DAVID THOMAS: Yeah, we'll come back at 2:20
14 Eastern.

15 (Off the record at 11:47 a.m. MST.)

16 (Back on the record at 12:22 p.m. MST.)

17 BY MR. DAVID THOMAS:

18 Q. Dr. Miller, did you speak with your attorneys during the
19 break?

20 A. No.

21 Q. Can you please open the 920 patent and turn to claim one on
22 page 76 of the document.

23 A. Okay.

24 Q. So I'm looking at the limitation that starts with "displaying
25 a user interface." Do you see that?

1 A. Yes.

2 Q. So that limitation reads:

3 "...displaying a user interface of the mobile
4 payment application on the display of the mobile device,
5 the user interface being configured to display a visual
6 indication of the one or more payment accepting units
7 and accept user input selecting an available payment
8 accepting unit of the one or more available payment
9 accepting units."

10 Did I read that correctly?

11 A. Yes.

12 Q. Within that limitation, what does the phrase "configured to"
13 mean to you?

14 MS. TASHA THOMAS: Objection; scope.

15 THE WITNESS: I don't know if I provided an opinion
16 related to that specific term. If you can point me to
17 somewhere in my declaration, I could review that.

18 BY MR. DAVID THOMAS:

19 Q. Well, so you reviewed the claims of the 920 patent, correct?

20 A. Yes. That -- that wasn't what I said though. I said if you
21 could point me to where in my declaration I explained more
22 about the phrase "configured to," then I could review that to
23 be able to answer your question.

24 Q. Yeah. I'm asking you, after having reviewed the claims of
25 the 920 patent, which I think you agree you did as part of

1 your 920 report, what does the phrase "configured to" mean?

2 MS. TASHA THOMAS: Objection; form.

3 BY MR. DAVID THOMAS:

4 Q. Do you have an answer to the question, Dr. Miller?

5 A. I'm reviewing my declaration so that I can answer your
6 question accurately.

7 Q. Okay.

8 A. It might take me some time.

9 MR. DAVID THOMAS: I'll note for the record it's
10 been over three minutes in response to this question.

11 MS. TASHA THOMAS: Objection; form.

12 BY MR. DAVID THOMAS:

13 Q. Let me rephrase the question, Dr. Miller.

14 So this limitation states, "...the user interface
15 being configured to display a visual indication of the one or
16 more payment accepting units."

17 Is the user interface required to display a visual
18 indication of the one or more payment-accepting units?

19 MS. TASHA THOMAS: Objection; form; scope.

20 THE WITNESS: I don't know if there's a legal
21 argument here that I don't understand.

22 BY MR. DAVID THOMAS:

23 Q. No legal argument; just interpreting the limitation.

24 A. It seems to me that there -- there does need to be a visual
25 indication of one or more payment-accepting units on the user

1 interface.

2 Q. So you're reading "configured to" as requiring?

3 MS. TASHA THOMAS: Objection; form.

4 BY MR. DAVID THOMAS:

5 Q. Is that accurate?

6 MS. TASHA THOMAS: Sorry. Objection; form.

7 THE WITNESS: Well, limitation says configured to
8 display a visual indication of the one or more
9 payment-accepting units. So it seems to me like there needs
10 to be a space that one or more payment-accepting units would
11 be displayed in the user interface.

12 BY MR. DAVID THOMAS:

13 Q. Is that the meaning you apply to your opinions in these
14 proceedings?

15 MS. TASHA THOMAS: Objection; form.

16 THE WITNESS: Well, I was reviewing my declaration
17 to see if I provided any opinion about the term "configured."
18 The opinions that I provided were in response to what Dr.
19 Neuman provided in his declarations. And I don't know. I
20 felt as if you were rushing me by making your comment about
21 the amount of time that it was taking me to review my
22 declaration and the patent and really being able to
23 accurately answer that question, even though we're dealing
24 with hundreds of pages of documents here.

25 And so, I'd have to take a look, you know, further

1 to see -- because you're -- you're keying in on one word out
2 of a 77-page patent.

3 BY MR. DAVID THOMAS:

4 Q. So are you saying you're unsure of your interpretation of
5 this claim limitation at this point?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: No, that's not what I'm saying.

8 BY MR. DAVID THOMAS:

9 Q. You're saying you would need more time to re-review your
10 opinions; is that accurate?

11 MS. TASHA THOMAS: Objection; form.

12 THE WITNESS: No. My understanding is that I was
13 being deposed on the contents of my declaration. So I was
14 reviewing my declaration to see if I provided opinions
15 specifically on the term "configured," which is what the
16 question that you had asked me concerned.

17 BY MR. DAVID THOMAS:

18 Q. Right. And did you come to the conclusion that you did not
19 provide an opinion on the phrase "configured to"?

20 MS. TASHA THOMAS: Objection; form.

21 THE WITNESS: I don't know. I would need to review
22 more of my declaration to be able to definitively answer that
23 question. But I did provide an answer to your question on
24 what I think that means.

25 BY MR. DAVID THOMAS:

1 Q. Do you have the Low reference available? If not, I can share
2 my screen.

3 A. Yes, I have it.

4 Q. Can you please open Low and turn to Figure 5.

5 A. Okay.

6 Q. Can you tell me what you understand Figure 5 of Low to show?

7 A. Can you direct me to where I cited Figure 5 of Low in my
8 declaration?

9 Q. You reviewed Low in your declaration, correct?

10 A. Yes. That wasn't my question, though.

11 Q. So if you reviewed Low, then you must have reviewed Figure 5,
12 is that correct?

13 A. I reviewed Low. I was asking if you could point me to where
14 I referenced Figure 5 of Low in one of my declarations.

15 Q. Yeah, I don't have an answer to that. I'm saying, if you
16 reviewed Low, then you must have reviewed Figure 5. Do you
17 agree with that?

18 A. I reviewed Low.

19 Q. Okay. So what does Figure 5 of Low demonstrate to you?

20 A. "Figure 5 is a block diagram of a computer system suitable
21 for implementing one or more components in Figures 1 and 4,
22 according to one embodiment of the present disclosure."

23 Q. And you pulled that directly from Low's disclosure, correct?

24 A. Yes. It's the bottom of column one in Low.

25 Q. Is that consistent with your understanding of Figure 5 of

1 Low?

2 MS. TASHA THOMAS: Objection; form.

3 THE WITNESS: That's the description that Low gave
4 for what Figure 5 is.

5 BY MR. DAVID THOMAS:

6 Q. Right. And as a person of ordinary skill in the art who
7 would understand the teachings of Low, is that description
8 consistent with how you interpret Figure 5?

9 A. I have no reason to doubt that description.

10 Q. Can you turn to column 12, lines 26 through 38, of Low?

11 A. What lines?

12 Q. Twenty-six through 38.

13 A. Okay.

14 Q. So do you agree this portion of Low is describing the block
15 diagram of computing -- of computer system 500 in Figure 5?

16 A. That seems to be how the paragraph starts out.

17 Q. And the next sentence states:

18 "The user device may comprise a personal
19 computing device, e.g., a personal computer, laptop,
20 smartphone, tablet, PDA, Bluetooth device, key fob,
21 badge, etcetera, capable of communicating with the
22 network."

23 Right?

24 A. Yes.

25 Q. Are you familiar with those types of personal computing

1 devices?

2 MS. TASHA THOMAS: Objection; form; scope.

3 THE WITNESS: Yes.

4 BY MR. DAVID THOMAS:

5 Q. And you can refer back to Figure 5 if you'd like. But
6 further down, in that column, starting at line 46, it states,
7 "I/O component 404 may also include an output component such
8 as a display 511."

9 Do you see that?

10 A. Yes, I see that sentence.

11 Q. So these personal computing devices that are shown and
12 described in lines 29 through 30, what type of information
13 could they display on that display 511?

14 MS. TASHA THOMAS: Objection; form; scope.

15 THE WITNESS: Did I explain Figure 5 or these
16 components anywhere in my declaration?

17 BY MR. DAVID THOMAS:

18 Q. You tell me if you did.

19 A. I don't recall that I did. So I would need time to study Low
20 and this section in more detail to be able to answer that
21 question.

22 Q. Okay. Let's -- let's go to another part of Low. Let's go to
23 column two, lines 26 through 28. Let me know when you're
24 there.

25 A. I'm there.

1 Q. So this portion of Low says, "Note that in some embodiments
2 multiple machines may send their unique identifiers such that
3 the user's able to select one or more machines to purchase
4 from."

5 Do you see that?

6 A. Yes.

7 Q. So these unique identifiers, is that the type of information
8 that could be displayed on the display 511 shown in Figure 5?

9 MS. TASHA THOMAS: Objection; form.

10 THE WITNESS: I don't know if it is or not. What I
11 know is Low didn't disclose that. Right here it just is
12 saying that multiple machines may send their unique
13 identifiers, but it's not saying anything about displaying
14 them.

15 BY MR. DAVID THOMAS:

16 Q. Right. But could they be displayed on the display?

17 MS. TASHA THOMAS: Objection; form.

18 THE WITNESS: I mean, you're asking a hypothetical
19 question about something that could be displayed. And my
20 understanding is that I -- I was responding to what Dr.
21 Neuman was saying. And in Low, it doesn't disclose that
22 these unique identifiers are displayed.

23 BY MR. DAVID THOMAS:

24 Q. But as a person of ordinary skill in the art, understanding
25 how users would interact with these personal computing

1 devices, is there a scenario where the machine identifiers
2 would be displayed on the display?

3 MS. TASHA THOMAS: Objection; form.

4 THE WITNESS: In my declaration I provide a few
5 scenarios to explain why these unique identifiers would not
6 be displayed on the user device.

7 And I explain this in my declaration.

8 BY MR. DAVID THOMAS:

9 Q. I believe your argument is that they would not necessarily be
10 displayed. Is that accurate?

11 A. I believe that that is something that I said in my
12 declaration.

13 Q. So looking at paragraph 60 of your 920 report, you state:

14 "In my opinion, a POSITA would not have understood
15 that this description would mean that a visual
16 indication of the vending machine itself would be
17 necessarily displayed on the user device."

18 Is that accurate?

19 A. Yes.

20 Q. So the "necessarily" is bold and highlighted -- or
21 underlined, sorry. Is that correct?

22 A. Yes.

23 Q. Why did you feel you needed to emphasize that -- that term?

24 A. That's referring back to something that the Board stated.

25 Just before paragraph 58 of my declaration, I cited something

1 that the Board had said.

2 And they stated:

3 "Based on the current record, we conclude that in
4 order for the user to select a specific vending machine
5 120 to make a purchase, user device 110 would
6 necessarily," quote, "'display a visual indication,'"
7 end quote, "of that machine, as broadly recited in
8 limitation 1.6," parentheses, "(otherwise the user would
9 not be able to make a selection.)"

10 So I was responding to that, that I don't believe
11 that the -- that it's necessary to display a visual
12 indication of the machine --

13 Q. Do you --

14 A. -- based on Low's disclosures.

15 Q. I apologize.

16 Do you think it's possible for Low to disclose the
17 machine identifiers, such that a user may select one of them?

18 MS. TASHA THOMAS: Objection; form; scope.

19 THE WITNESS: Low doesn't disclose it, so I don't
20 quite understand the question with you saying, do I think
21 it's possible for Low to disclose it. Low does not disclose
22 it.

23 BY MR. DAVID THOMAS:

24 Q. So why did you feel the need to emphasize that Low would not
25 necessarily disclose it? Doesn't that imply that there are

1 scenarios where Low would disclose it, but perhaps not all
2 the time?

3 MS. TASHA THOMAS: Objection; form.

4 THE WITNESS: Well, Low didn't explicitly state
5 that he wouldn't display them, but he also did not state that
6 he would. And I've provided in my declaration other ways to
7 show that the machine identifiers do not need to be displayed
8 in Low, for Low's system to still function.

9 BY MR. DAVID THOMAS:

10 Q. Right. And those would be, I believe you refer to an
11 external cue in audio indication. Is that accurate?

12 MS. TASHA THOMAS: Objection; form.

13 THE WITNESS: I provided a couple of examples; but
14 there are, most likely, other examples that would satisfy
15 that as well.

16 BY MR. DAVID THOMAS:

17 Q. So where in Low does it describe an audio indication?

18 A. That wasn't what I was saying in my declaration. I was
19 providing examples of how the machine could be identified
20 while still abiding by Low, without the machine being
21 displayed on the user device.

22 Q. Okay.

23 A. Because Low didn't disclose that the machine was displayed on
24 the user device. So I was thinking about other ways of how
25 Low's disclosures could still be met.

1 Q. Right. But Low also didn't disclose that the user would
2 select a machine based on an audio indication, correct?

3 MS. TASHA THOMAS: Objection; form.

4 THE WITNESS: No, I don't believe that Low
5 disclosed that. But what I was stating in my declaration in
6 response to Dr. Neuman's declaration, is that there does not
7 necessarily need to be a visual indication of the vending
8 machine to abide by Low's disclosures.

9 BY MR. DAVID THOMAS:

10 Q. Right. So the alternative means of the user selecting the
11 machine, you referred to, are an audio indication and an
12 external clue. And one of those other possible means, would
13 that also be displaying on the display of the user device?

14 MS. TASHA THOMAS: Objection; form.

15 THE WITNESS: Well, as I said, I was responding to
16 what Dr. Neuman had stated and then what the Board had
17 stated. And I don't believe that the user device would
18 necessarily display a visual indication of the vending
19 machine.

20 BY MR. DAVID THOMAS:

21 Q. Right. But then you provided two other examples that also
22 aren't necessarily described in Low, which would be the
23 external cue, such as an audio indication. So what I'm
24 asking is, in the list of possible options for how a user can
25 select the machine, will include the external cue, such as an

1 audio indication, would a display of the machine identifier
2 on the display of Low, count as one of those options?

3 MS. TASHA THOMAS: Objection; form.

4 THE WITNESS: Well, I think that I state this
5 clearly in my declaration. And in paragraph 58 I say,
6 "...there would be scenarios that would not involve
7 displaying a visual indication of the vending machine on the
8 user interface of Low's user device."

9 BY MR. DAVID THOMAS:

10 Q. Right. So I'm asking the inverse of that. Would there be
11 scenarios that would involve displaying a visual indication
12 of the vending machine on the user interface of the Low's
13 user device?

14 MS. TASHA THOMAS: Objection; form; scope.

15 THE WITNESS: I mean, you're asking a hypothetical
16 question about Low that is not disclosed. And as I said, I
17 was responding to what Dr. Neuman said and what the Board
18 said.

19 BY MR. DAVID THOMAS:

20 Q. But isn't the external cue, such as an audio indication, a
21 hypothetical that you provided related to Low?

22 A. Yes, I provided another way that would -- that Low's
23 description could be accomplished.

24 Q. And another one of those ways is through the user selecting
25 the machine that's displayed on the display of the user

1 device, right?

2 MS. TASHA THOMAS: Objection; form.

3 THE WITNESS: Well, as I said, I wasn't trying to
4 figure out how to implement Low. I was trying to respond to
5 what Dr. Neuman and the Board said, using the word
6 "necessarily" displaying the visual indication of the vending
7 machine. And having other examples where that is not a
8 requirement, still meets the description of Low. That's what
9 I was trying to state in my declaration.

10 BY MR. DAVID THOMAS:

11 Q. So you referred to the Board's institution decision where
12 they use the word "necessarily." Is it your belief that Dr.
13 Neuman similarly used that term, "necessarily," in his
14 report, as it relates to limitation 1.6?

15 MS. TASHA THOMAS: Objection; form.

16 THE WITNESS: I don't recall whether Dr. Neuman
17 used the term "necessarily." But in paragraph 61 of my
18 report, I state that Dr. Neuman does provide another option
19 to not displaying the machine identifiers on the user device,
20 when he's discussing limitation 1.7.

21 So Dr. Neuman also recognizes that it's not a
22 requirement to display a visual indication of the machine on
23 the user device disclosed in Low.

24 BY MR. DAVID THOMAS:

25 Q. Not a requirement, but is it an option?

1 A. Well, as I said, it wasn't disclosed in Low. And that's what
2 I was responding to. And to support that, Dr. Neuman agrees
3 that a visual indication of the machine does not need to be
4 shown in Low, which also supports my point that the Board
5 saying that Low's description necessarily results in the
6 display of a visual indication on the machine, is not
7 correct.

8 Q. Right. So that was countering the Board's institution
9 decision, not necessarily Dr. Neuman's report, right?

10 MS. TASHA THOMAS: Objection; form.

11 THE WITNESS: Well, as I said, Dr. Neuman
12 identified, in discussing limitation 1.7, that there is
13 another option to not -- to displaying a visual indication of
14 the machines, that he provides a second option that does not
15 provide that display.

16 BY MR. DAVID THOMAS:

17 Q. So that second option you're referring to, is that when Low
18 describes sending menus or items available for purchase for
19 display on the display?

20 A. In paragraph 61, I state:

21 "Dr. Neuman argues that," quote, "'in his opinion,
22 the user device 110 is configured to display either (i)
23 the available machine such that the user is able to
24 interact with the display to select the one or more
25 machines from which to make a purchase or (ii) products

1 available at particular machines, whereby selecting the
2 product necessarily selects the available machine that
3 offers the products.' Thus, Dr. Neuman's declaration
4 confirms that Low's user device is not necessarily
5 configured to display a visual indication of the vending
6 machine, even when 'multiple machines' send their
7 identifiers."

8 Q. So that option (ii), products available at particularly
9 machine -- or particular machines, are you stating those
10 products would not be linked to corresponding machines in any
11 way?

12 MS. TASHA THOMAS: Objection; form.

13 THE WITNESS: I didn't state that. This was
14 quoting from Dr. Neuman's declaration. And what I was
15 stating was that Dr. Neuman said that the machine identifiers
16 were not shown.

17 So he provided an explanation to confirm that Low's
18 user device is not necessarily configured to display a visual
19 indication of the vending machine.

20 BY MR. DAVID THOMAS:

21 Q. So in Low, the user can purchase items from a variety of
22 vending machines, correct?

23 A. I believe that that's true in at least one of the embodiments
24 in Low.

25 Q. Okay. And in this embodiment where there are multiple

1 machines available for purchase, and the machines send their
2 items to the display of the user device, what would the user
3 see on the user device?

4 MS. TASHA THOMAS: Objection; form.

5 THE WITNESS: Well, what you just stated is not
6 accurate for how Low works. So I can't answer that question
7 with respect to Low because your question is not accurate.

8 BY MR. DAVID THOMAS:

9 Q. Okay. How would you correct my question?

10 A. The machine doesn't send the products to the device.

11 Q. Does the server send products to the device?

12 A. The way that Low disclosed it, it is the payment provider
13 serve -- server that sends the available products to the
14 device.

15 Q. Okay. And those products would be displayed on the display
16 of the user device, correct?

17 A. That is one embodiment of Low.

18 Q. Okay. So as opposed -- so what would that look like?

19 MS. TASHA THOMAS: Objection; form.

20 THE WITNESS: I don't know that Low disclosed how
21 it would look, outside of having the products.

22 BY MR. DAVID THOMAS:

23 Q. Okay. So you have a smartphone with a screen, the user
24 interface -- on that user interface there are a list of
25 products. Would you agree that that would be kind of the

1 bare minimum of what's shown in this embodiment?

2 A. One sentence from Low in column 2 says, "The menu is then
3 displayed on the user device." I don't know if it states
4 exactly how the menu is displayed or the products are
5 displayed, but...

6 Q. Right. So the -- the menu is displayed. Say there is a list
7 of available options. Maybe you have some soda, candy bars,
8 things of that nature. Would you expect that each of those
9 items available for purchase are completely agnostic to the
10 specific machine that they would be dispensed from?

11 MS. TASHA THOMAS: Objection; form.

12 THE WITNESS: I'm saying that the specific machine
13 that could dispense that product does not need to be
14 displayed on the user device.

15 BY MR. DAVID THOMAS:

16 Q. Right. And I'm asking something slightly different.

17 So if you wanted to order a Coca-Cola from a bay of
18 vending machines, and 10 different vending machines have a
19 Coca-Cola available, when you select that item for purchase
20 on Low in this menu that we're talking about, how do you know
21 which machine is going to dispense the Coca-Cola?

22 MS. TASHA THOMAS: Objection; form.

23 THE WITNESS: In paragraph 62, I explain
24 alternative ways that the user could know the vending machine
25 that will dispense the product selected.

1 I stated:

2 "I described above in which a menu or multiple
3 menus are displayed to the user; once the user selects a
4 product to purchase, an external cue, such as an audio
5 indication, from the user device or the vending machine
6 can indicate the machine from which the selected product
7 will be dispensed."

8 BY MR. DAVID THOMAS:

9 Q. So in this embodiment, you're saying the user selects an item
10 from the menu, and then there would be an audio indication
11 from the user device saying what?

12 A. There could be an audio indication from the user device, or
13 the vending machine, to indicate the machine from which the
14 selected product will be dispensed.

15 Q. Right. So I'm trying to understand what that audio
16 indication would be.

17 A. Well, I think it's pretty clear, if it's from the vending
18 machine, what it would be. The vending machine makes a
19 noise. The user walks over to that vending machine, receives
20 the item that they purchased.

21 Q. Okay. What about an audio indication from the user device?

22 A. Let's say there were two vending machines in this bay of
23 machines. Maybe the user device beeps once for the machine
24 on the left and twice for the machine on the right.

25 Q. Do you think that's more efficient than displaying the

1 machine identifier on the display?

2 MS. TASHA THOMAS: Objection; form; scope.

3 THE WITNESS: I don't think that's the question
4 here. My --

5 BY MR. DAVID THOMAS:

6 Q. Well, that's my question.

7 A. I wasn't -- I wasn't asked to evaluate Low to provide the
8 most efficient solution to the problem that Low is attempting
9 to solve. And a patent doesn't have to provide the most
10 efficient solution to the problem that they're solving, if I
11 understand patents correctly.

12 Q. All right. So you're saying that methodology of beeping once
13 for left machine, beeping twice for right machine, would not
14 be more efficient than displaying the machine identifier on
15 the display?

16 MS. TASHA THOMAS: Objection; form.

17 THE WITNESS: No, I didn't say that. And in fact,
18 I could think of examples of where it would be more
19 efficient.

20 BY MR. DAVID THOMAS:

21 Q. Such as?

22 A. The user of the device is blind.

23 Q. What about instances where the user of the device can see?
24 Wouldn't it be easier just to read the machine identifier on
25 the display?

1 MS. TASHA THOMAS: Objection; form.

2 THE WITNESS: I feel like we're getting into really
3 hypothetical, outside the scope of even what Low is
4 disclosing here. And what I was responding to was what Dr.
5 Neuman had stated in his declaration.

6 BY MR. DAVID THOMAS:

7 Q. Well, we're perfectly within the realm of your report where
8 you introduce the external cues, such as an audio indication,
9 right? And earlier you agreed with me that Low did not
10 disclose an audio indication. So we're just within your
11 hypothetical example here.

12 So between the options of an audio indication from
13 the user device, or displaying on the display of the user
14 device, which would be more efficient for the user to select
15 an item?

16 MS. TASHA THOMAS: Objection; form; scope.

17 THE WITNESS: Well, there are a lot of
18 considerations to be able to answer a question of what is
19 more efficient. Efficiency is a generic term, and there are
20 many different parameters that go into efficiency.

21 And so I can't answer that question just
22 generically of which one is more efficient, because there are
23 different parameters that would be more efficient based on
24 this or less efficient based on this.

25 The example that I gave you would work for

1 people -- to clarify. The example I gave you of the audio
2 indication could work for people who are blind or people who
3 are not blind; but it would not work for people who are deaf.

4 So does that mean that that's more efficient
5 because two of the three categories I just gave you, and of
6 course I left out of a number of categories of people, that
7 that's more efficient or less efficient? It's a different
8 decision.

9 BY MR. DAVID THOMAS:

10 Q. Understood. So do you understand and agree with me that
11 there could be two options; one is the machine identifier
12 displayed on the display; and the other is an audio
13 indication that you describe in paragraph 62?

14 MS. TASHA THOMAS: Objection; form.

15 THE WITNESS: I don't understand what you're
16 asking.

17 BY MR. DAVID THOMAS:

18 Q. So for the user to select the machine to purchase from,
19 there's a variety of options, just like you said. One of
20 which is an audio indication, other external cues, visual
21 display on the display of the user device, and potentially
22 several others. Do you agree?

23 A. Well, as I stated, I was responding to what Dr. Neuman and
24 the Board was saying. And my opinion is that it is not
25 necessary for Low's user device to have a visual indication

1 of the vending machine. That's my opinion.

2 Q. Can you turn back to claim one of the 920 patent?

3 A. Okay.

4 Q. So we just looked at the limitation that included the term
5 visual indication of the one or more payment accepting units,
6 correct?

7 A. Yes.

8 Q. Further down, starting on line 37, there is a limitation,
9 "...wherein the user interface includes a visual
10 representation of the available payment accepting unit."

11 Do you see that?

12 A. Yes.

13 Q. What's the difference between a visual indication of the one
14 or more payment accepting units and a visual representation
15 of the available payment accepting unit?

16 MS. TASHA THOMAS: Objection; form and scope.

17 THE WITNESS: Since the terms are given their plain
18 and ordinary meaning, a visual indication would be a visual
19 indication. And a visual representation would be a visual
20 representation.

21 BY MR. DAVID THOMAS:

22 Q. Right. So I'm asking you what is a visual indication and
23 what is a visual representation?

24 A. I need to look in the patent to see if they distinguished
25 those terms.

1 Q. Are you familiar with the patent maxim that different terms
2 are given different meanings?

3 A. I don't know if I'm familiar with that, but...

4 Q. So do you think a visual indication is different than a
5 visual representation?

6 MS. TASHA THOMAS: Objection; form; scope.

7 THE WITNESS: I don't know if I agree with that.

8 BY MR. DAVID THOMAS:

9 Q. Are these two different limitations, using the same phrases?

10 A. Are you asking if the word "indication" is the same as the
11 word "representation"?

12 Q. Yes.

13 MS. TASHA THOMAS: Objection; scope.

14 THE WITNESS: Those are two different words.

15 BY MR. DAVID THOMAS:

16 Q. So does that lead you to believe those are two different
17 items in the -- these claims?

18 MS. TASHA THOMAS: Objection; form; scope.

19 THE WITNESS: No, it doesn't -- it doesn't lead me
20 to believe that.

21 BY MR. DAVID THOMAS:

22 Q. Why not?

23 MS. TASHA THOMAS: Objection; form.

24 THE WITNESS: Because I believe there are instances
25 where two different words can mean the same thing.

1 BY MR. DAVID THOMAS:

2 Q. Is this one of those instances?

3 MS. TASHA THOMAS: Objection; form; scope.

4 THE WITNESS: I don't know. That's why I wanted to
5 look to the patent to see if there was descriptions
6 indicating a difference between the word "indication" and
7 "representation."

8 BY MR. DAVID THOMAS:

9 Q. But as of right now you don't have an opinion as to whether
10 those are different or the same?

11 A. No, I don't believe that I provided an opinion on those two
12 words specifically related to each other in my declaration.

13 MR. DAVID THOMAS: Okay. Why don't we take another
14 quick break, if that works for everybody.

15 MS. TASHA THOMAS: Yeah. When you say "quick," how
16 long? What does Dr. Miller say?

17 MR. DAVID THOMAS: Yeah, Dr. Miller, how are you
18 doing? Do you want --

19 THE WITNESS: Ten is fine.

20 MR. DAVID THOMAS: Okay. We'll come back at 1:25
21 Mountain Time.

22 THE WITNESS: Yep.

23 MS. TASHA THOMAS: Sounds good.

24 (Off the record at 1:16 p.m. MST.)

25 (Back on the record at 1:26 p.m. MST.)

1 BY MR. DAVID THOMAS:

2 Q. Dr. Miller, can you turn to Figure 26A of the 920 patent?

3 A. Okay.

4 Q. Do you see element 1306?

5 A. Yes.

6 Q. What is element 1306?

7 A. In column 36, lines 54 through 57 state, "In Figure 26A, the
8 user interface 1302 also includes a message 1306 indicating
9 that the transaction with the machine 120 is complete."

10 Q. Is element 1306 an affordance?

11 A. As we discussed earlier, the affordance needs to be an
12 interactive user element that -- I'm sorry, one second.

13 An affordance is an interactive user interface
14 element that informs the user as to how to interact with the
15 element and its intended use. The message indicated by 1306
16 would not be an affordance then.

17 Q. Can you turn to Figure 26C?

18 A. Okay.

19 Q. Do you see element 1322?

20 A. Yes.

21 Q. Is element 1322 an affordance?

22 A. The message in 1322 would not be an affordance.

23 Q. Can you turn to Figure 26D? Is element 1332 an affordance?

24 A. No. The message in 1332 is not an affordance.

25 Q. Do you own a smartphone, Dr. Miller?

1 MS. TASHA THOMAS: Objection; scope; relevance.

2 THE WITNESS: Was your question whether I own a
3 smartphone?

4 BY MR. DAVID THOMAS:

5 Q. Yes.

6 A. Yes, I own a smartphone.

7 Q. What kind of smartphone do you own?

8 MS. TASHA THOMAS: Objection; scope; relevance.

9 THE WITNESS: I own an iPhone.

10 BY MR. DAVID THOMAS:

11 Q. Have you ever used your iPhone to make a purchase from a
12 web-based marketplace, such as Amazon or eBay?

13 MS. TASHA THOMAS: Objection; scope; relevance;
14 form.

15 THE WITNESS: Yes.

16 BY MR. DAVID THOMAS:

17 Q. Can you describe that process to me, how you interact with
18 your iPhone to purchase an item on -- let's use Amazon as an
19 example.

20 MS. TASHA THOMAS: Objection; scope; form;
21 relevance.

22 THE WITNESS: That's a very generic question. Can
23 you be more specific?

24 BY MR. DAVID THOMAS:

25 Q. So let's say you wanted to buy a pencil on Amazon. Can you

1 just walk me through the steps from looking to purchase a
2 pencil to then actually purchasing that pencil on Amazon?

3 MS. TASHA THOMAS: Objection; scope; form;
4 relevance.

5 THE WITNESS: I don't believe that I provided any
6 testimony about buying something on Amazon or with my own
7 smartphone, in my declaration. Is this really something that
8 I need to answer?

9 BY MR. DAVID THOMAS:

10 Q. It's relevant.

11 A. Okay. I guess I need to make a lot of assumptions here,
12 whether I have the Amazon app on my iPhone or I don't, or I'm
13 purchasing through a browser and what browser that I'm using,
14 and what version of the phone -- of a phone do I have. And
15 there's a lot of variables here. So can you narrow it even
16 further than merely buying a pencil on Amazon?

17 BY MR. DAVID THOMAS:

18 Q. Sure. So would you first search for the item, in this case,
19 a pencil?

20 MS. TASHA THOMAS: Objection; scope; form.

21 THE WITNESS: Where am I searching for this item?
22 I don't know if I have an Amazon app, if I already have an
23 account, if I'm logged into the account, if I'm using a web
24 application.

25 BY MR. DAVID THOMAS:

1 Q. Yeah. Let's say you have an Amazon account, you're logged
2 in, you're in the Amazon app, and there's a search bar at the
3 top, right?

4 A. Okay.

5 Q. Then would you select that search bar and type in the item
6 you're looking for?

7 MS. TASHA THOMAS: Objection; scope; form.

8 THE WITNESS: That would be one way to search for
9 an item that I may be interested in purchasing on Amazon.

10 BY MR. DAVID THOMAS:

11 Q. Yeah. And I'm glad you made that qualifier. This is not the
12 only way. I just -- I just want to understand the steps
13 here.

14 So say you search for something, and what happens
15 next? A number of possible options for purchase pop up,
16 right?

17 MS. TASHA THOMAS: Objection; scope; form.

18 THE WITNESS: Assuming there is multiple items in
19 Amazon's database that match the search term you specified,
20 then there potentially could be multiple items that are
21 displayed on the screen.

22 BY MR. DAVID THOMAS:

23 Q. Okay. And you would use your iPhone to select one of those
24 items, and it would take you to a page providing more details
25 about that item, right? Is that a typical scenario?

1 MS. TASHA THOMAS: Objection; scope; form.

2 THE WITNESS: I don't know if I would say

3 "typical," but that is a scenario.

4 BY MR. DAVID THOMAS:

5 Q. Okay. So then once you're on that item's page, is there an
6 option to add that item to your cart displayed on your
7 iPhone?

8 MS. TASHA THOMAS: Objection; scope; form.

9 THE WITNESS: As long as that item is available,
10 then I believe that there is a button that says something
11 like "add to cart" or something like that. I don't recall
12 exactly what it says.

13 BY MR. DAVID THOMAS:

14 Q. Right. And so the cart is, you know, kind of indicative of
15 the online world where in real life you would have like a
16 shopping cart, you add items to your shopping cart, and then
17 you check out like at a grocery store, right? That's what --
18 that's what a cart, as referred to in Amazon or some of these
19 other web-based marketplaces, is, correct?

20 MS. TASHA THOMAS: Objection; scope; form.

21 THE WITNESS: I think that's a generalization of
22 what the cart is, because there's definitely different
23 information that is included than what you would have in a
24 shopping cart at a supermarket, for example.

25 BY MR. DAVID THOMAS:

1 Q. Okay. What would you describe the cart as then?

2 MS. TASHA THOMAS: Objection; scope; form.

3 THE WITNESS: The cart is a holding place where
4 people have indicated their interest in purchasing an item,
5 but they have not yet purchased it. I guess I -- I'm giving
6 a description off the top of my head without really having
7 investigated this to be able to answer this line of
8 questioning.

9 BY MR. DAVID THOMAS:

10 Q. Yep. So once you want to actually make that purchase -- so,
11 you know, have the items that are in your cart, then actually
12 complete that purchase -- what is a typical scenario for that
13 type of process?

14 MS. TASHA THOMAS: Objection; scope; form.

15 THE WITNESS: Well, again, I don't know that there
16 is a typical scenario, but there are different scenarios for
17 how to purchase items that have been added to your Amazon
18 cart.

19 BY MR. DAVID THOMAS:

20 Q. What would you say is the most common scenario?

21 A. I don't know.

22 Q. What is a single scenario?

23 MS. TASHA THOMAS: Objection; scope; form.

24 THE WITNESS: Well, one scenario that I've seen is
25 going into the Amazon cart. So I believe there's a link to

1 the cart. And then there's -- I don't know what it is.
2 Something to pur- -- to buy it, to buy the items you have in
3 the cart. And then based on a lot of different variables, it
4 may ask for a shipping address, billing address, credit card
5 number. It may have some that are saved already.

6 So there's potentially multiple screens before you
7 are able to purchase the items in your cart.

8 BY MR. DAVID THOMAS:

9 Q. What is the final step to complete that transaction?

10 MS. TASHA THOMAS: Objection; scope; form.

11 THE WITNESS: What is the transaction you're
12 referring to?

13 BY MR. DAVID THOMAS:

14 Q. So when you, in this example, are going to purchase your
15 pencil from Amazon, and you fill out all the necessary
16 information, shipping address, credit card information, all
17 of that, is there a button that you can select to say
18 purchase this item, or something to that effect?

19 MS. TASHA THOMAS: Objection; scope; form.

20 THE WITNESS: I believe there's something to say,
21 buy this item. Again, I don't recall exactly what it is or
22 what it says.

23 BY MR. DAVID THOMAS:

24 Q. But some selectable graphical user interface element to make
25 that purchase, right?

1 A. Again, I don't know exactly what it is or what it says; but
2 there's something to be able to purchase that item.

3 Q. Okay. Can you turn to column 2 of Low?

4 A. Okay.

5 Q. So I want to start at column 2, line 16, where Low discloses:

6 "The noninternet connected machine, NICM,
7 transmits a machine identifier to the user device, which
8 allows the user device to retrieve a menu of items at
9 the specific machine from the payment provider, or an
10 operator of the machine."

11 Low goes on to say, at line 29, "The user may then
12 add items -- add desired items from one or more machines to a
13 cart, and make the purchase through a payment provider."

14 So that whole Amazon example we just walked
15 through, I'm not going to ask you to align it perfectly with
16 what's disclosed here in Low, but I want to take this step by
17 step.

18 So when the noninternet connected machine transmits
19 a machine identifier to the user device, which allows the
20 user device to retrieve a menu of items at the specific
21 machine from the payment provider or an operator of the
22 machine, does that mean the user can -- as quoted later in
23 Low, the user is able to select one or more machines to
24 purchase from?

25 MS. TASHA THOMAS: Objection; form.

1 THE WITNESS: No. I don't believe that's what it's
2 saying. The user is able to select one or more items.

3 BY MR. DAVID THOMAS:

4 Q. Okay. And how would they select one or more items?

5 A. Well, Low doesn't disclose how they would.

6 Q. Do you think it would be similar to that example we just
7 walked through, where the user is interacting with their user
8 interface, selecting buttons, selecting items, physically
9 interacting with the touchscreen?

10 MS. TASHA THOMAS: Objection; scope; form.

11 THE WITNESS: Again, Low doesn't disclose how items
12 are added. What Low says is the user may then add desired
13 items from one or more machines to a cart. But it doesn't
14 disclose how those items are displayed or how they're added
15 to a cart.

16 BY MR. DAVID THOMAS:

17 Q. Is one option for adding a desired item to a cart by
18 selecting it, using the touchscreen of the user device?

19 MS. TASHA THOMAS: Objection; scope; form.

20 THE WITNESS: I don't know how Low intended this to
21 happen. But to add items into a cart somehow has to -- you
22 have to designate what items you want to add to the cart.

23 BY MR. DAVID THOMAS:

24 Q. Right. And similar to the Amazon example, one of those
25 possibilities is selecting the item by pressing on the

1 touchscreen at that item, right?

2 A. Again, I don't know what Low's thought was for how that was
3 happening because it's not disclosed here. And that's not
4 something that I've opined on in my declaration.

5 Q. Do you think Low needed to describe with that much
6 particularity how to add desired items from one or more
7 machines to a cart? Or somebody like yourself, a person of
8 ordinary skill in the art, would understand that that would
9 encompass interacting with a touchscreen as just one possible
10 option?

11 MS. TASHA THOMAS: Objection; form; relevance.

12 THE WITNESS: Again, that's not something that I
13 was asked to opine on for this. My declaration is responding
14 to Dr. Neuman's declaration. And you're asking me questions
15 about analyzing Low, in detail, of how it would actually be
16 implemented. And that wasn't what I was asked to do for
17 these declarations.

18 BY MR. DAVID THOMAS:

19 Q. Right. I'm asking you, right now, during this deposition,
20 how would this aspect of Low be implemented.

21 MS. TASHA THOMAS: Objection; form; scope.

22 THE WITNESS: I don't have an answer for that,
23 because I would need to really study Low in detail to
24 understand everything that is required so that whatever
25 solution I come up with conforms to the teachings of that

1 patent.

2 BY MR. DAVID THOMAS:

3 Q. So when we looked at Figure 5 earlier of Low and talked about
4 the personal computing devices, those personal computing
5 devices would include a touchscreen display, correct?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: In column 12 at the description of
8 Figure 5, it doesn't seem to require that the devices that
9 are included have a touchscreen.

10 BY MR. DAVID THOMAS:

11 Q. So at column 12, starting at line 42 -- and this is referring
12 to the computer system 500 shown in Figure 5 -- Low
13 discloses:

14 "Components include an input," slash, "output
15 component 504 that processes a user interaction, such as
16 selecting keys from a keypad, keyboard, selecting one or
17 more buttons or links, etcetera, and sending a
18 corresponding signal to bus 502."

19 So are you saying that input/output component 504
20 would not include a touchscreen?

21 A. What I said is that the input/output component 504 doesn't
22 have to be a touchscreen. And in fact, the sentence that you
23 read includes keyboard, keypad, buttons. So it seems like it
24 doesn't have to be a touchscreen.

25 Q. I didn't ask if it had to be a touchscreen. I said could it

1 be a touchscreen.

2 A. Okay. Maybe I misheard your question.

3 Some of the devices that were specified in column
4 12, starting at line 29, seem like they could include a
5 touchscreen.

6 Q. Okay. And I don't think it matters whether it's a
7 touchscreen or a keypad with a mouse, which is also disclosed
8 on line 48. The user device of Low includes some type of, as
9 it's described, input/output component, correct?

10 MS. TASHA THOMAS: Objection; form.

11 THE WITNESS: Yes, it says components include an
12 input/output component 504 on line 42 and 43.

13 BY MR. DAVID THOMAS:

14 Q. That processes a user interaction, right?

15 MS. TASHA THOMAS: Objection; form.

16 THE WITNESS: It says that processes a user action.

17 BY MR. DAVID THOMAS:

18 Q. User action. My apologies.

19 So in that earlier portion of Low, where it's
20 discussing the user may add desired items from one or more
21 machines to a cart, would that interaction be through the I/O
22 component 504 that processes a user action?

23 MS. TASHA THOMAS: Objection; form; scope.

24 THE WITNESS: I don't know that Low is clear
25 relating those two sections to each other. But, again, this

1 is not what I was asked to opine on or what I provided in my
2 declaration.

3 BY MR. DAVID THOMAS:

4 Q. So why don't you think Low adequately associated the I/O
5 component with the user making a selection?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: I don't see, in this paragraph that
8 we're referring to in column 12, that this is referring to
9 making a selection.

10 BY MR. DAVID THOMAS:

11 Q. Right. But this is part of the disclosure of Low, correct?

12 A. Well, yes, this is in the specification for Low.

13 Q. Right. So when it describes a user making a selection,
14 wouldn't you, as a person of ordinary skill in the art,
15 understand that to mean, at least as one option, that
16 selection could be made through the I/O component 504 that
17 processes a user action?

18 MS. TASHA THOMAS: Objection; form; scope.

19 THE WITNESS: I don't know. I don't relate the two
20 to each other. But I would have to really study Low in more
21 detail with regards to that question to really give you an
22 answer, since that wasn't part of what I was responding to
23 from Dr. Neuman's declarations, in my declarations.

24 BY MR. DAVID THOMAS:

25 Q. Do you believe my question exceeds your qualifications as a

1 POSA such that you're unable to answer it?

2 MS. TASHA THOMAS: Objection; form.

3 THE WITNESS: No, I don't.

4 BY MR. DAVID THOMAS:

5 Q. So you think you're capable of answering this question?

6 A. Yes.

7 Q. But you don't have an answer to the question?

8 MS. TASHA THOMAS: Objection; form.

9 THE WITNESS: I have answered your question. What
10 I said is that I would need to study Low, specifically with
11 regards to that question, so that I could answer it in a way
12 that is consistent with the teachings of the patent.

13 I didn't provide an opinion on this specific issue
14 in my declarations because I was responding to Dr. Neuman's
15 declarations.

16 BY MR. DAVID THOMAS:

17 Q. Let's go back to column two of Low, starting at line 29.

18 So this portion says, quote, "The user may then add
19 desired item, parentheses S, from one or more machines to a
20 cart and make the purchase through a payment provider."
21 Correct?

22 A. Yes.

23 Q. What do you understand, as a POSA, that message -- or I'm
24 sorry -- that sentence to mean?

25 MS. TASHA THOMAS: Objection; form.

1 THE WITNESS: I think the sentence speaks for
2 itself. It says the user may then add desired items from one
3 or more machines to a cart and make the purchase through a
4 payment provider.

5 BY MR. DAVID THOMAS:

6 Q. So you understand what that sentence means, correct?

7 A. Yes, I believe I understand that sentence.

8 Q. So it doesn't need any additional analysis or interpretation?
9 It's clear on its face, right?

10 MS. TASHA THOMAS: Objection; form.

11 THE WITNESS: I don't fully understand your
12 question. But as I said, I'm clear on what that sentence
13 says.

14 BY MR. DAVID THOMAS:

15 Q. Okay. So we talked about the user adding the items to their
16 cart, right? And I asked, would that include some type of
17 selection, whether that's through a touchscreen or a mouse or
18 a keyboard selecting an item. And it's your opinion that
19 you're not in a position to answer that question; right?

20 MS. TASHA THOMAS: Objection; form.

21 THE WITNESS: No, that's not my position.

22 BY MR. DAVID THOMAS:

23 Q. Can you please clarify what your position is?

24 A. I believe what I answered is that the user needs to have some
25 way to add desired items to a cart. That's what that

1 sentence is saying.

2 Q. Right. And what are those ways that the user can add an item
3 to their cart?

4 MS. TASHA THOMAS: Objection; form; scope.

5 THE WITNESS: Well, I think that there could be
6 multiple ways to do so; and Low doesn't disclose the ways to
7 do it.

8 BY MR. DAVID THOMAS:

9 Q. But you just understand it as a POSA that there are multiple
10 ways, correct?

11 A. Yes, I understand there are multiple ways to add items to a
12 cart.

13 Q. Okay. And what are some of those ways?

14 MS. TASHA THOMAS: Objection; form; scope.

15 THE WITNESS: Well, as I said, I would need to look
16 in Low in more detail, because the way that I say would have
17 to conform to the teachings of the patent. And perhaps some
18 ways of adding items into a cart would not conform to all of
19 the teachings that are provided in Low's patent.

20 BY MR. DAVID THOMAS:

21 Q. So let's set aside the teachings of Low. Just reading this
22 sentence, you told me you understand how a user would add
23 items to a cart, correct?

24 A. I don't think that's exactly what I said. I said I
25 understand what the sentence says.

1 Q. You said you understand there are -- there must be a way for
2 the user to add items to a cart; you would just need to
3 verify that it confirms with the teachings of Low. Is that
4 accurate?

5 A. Yes, I believe that's accurate.

6 Q. So let's ignore that verification with the teachings of Low.
7 I just want to understand the possible ways the user can add
8 items to a cart.

9 A. Again, this is not what I was asked to opine on. And I don't
10 believe that I provided in my declaration different ways to
11 do this.

12 But if I did, and you can point me to that section,
13 I'd be happy to review it.

14 Q. No. I'm asking you, as you sit here today, what are those
15 ways that a user can add items to a cart?

16 MS. TASHA THOMAS: Objection; form; scope;
17 relevance.

18 THE WITNESS: Well, I don't think that I can take
19 this completely out of context, since this is a sentence that
20 exists in Low. And so I would want to make sure that any
21 answer that I give is conforming to the teachings of that
22 patent.

23 BY MR. DAVID THOMAS:

24 Q. So without reviewing Low in more detail, you're unable to
25 answer that question, is that right?

1 MS. TASHA THOMAS: Objection; form.

2 THE WITNESS: Well, I want to make sure I answer it
3 with respect to Low, since that's where this sentence is
4 coming from. And it's not something that I believe I opined
5 on in my declarations.

6 Q. Okay. What about the second half of that sentence, "The user
7 may make the purchase through a payment provider." What do
8 you understand that to mean?

9 MS. TASHA THOMAS: Objection; form; scope.

10 THE WITNESS: Well, again, I think that the
11 sentence speaks for itself, that the user may make the
12 purchase through a payment provider.

13 BY MR. DAVID THOMAS:

14 Q. So going back to your Amazon example, would there be some
15 item, button, graphical user interface element at some point
16 during that process the user would select?

17 MS. TASHA THOMAS: Objection; form; scope.

18 THE WITNESS: I believe, with the Amazon example
19 from earlier, there is some element that allows the user to
20 make the purchase.

21 BY MR. DAVID THOMAS:

22 Q. Would you expect something similar here for the user to make
23 the purchase?

24 MS. TASHA THOMAS: Objection; form; scope.

25 THE WITNESS: I wouldn't expect it to be similar or

1 work in the same way.

2 BY MR. DAVID THOMAS:

3 Q. So they would not select a button or item to make the
4 purchase is your opinion?

5 MS. TASHA THOMAS: Objection; form.

6 THE WITNESS: I didn't say that. I said that I
7 wouldn't expect that. It's not disclosed here, and I don't
8 believe that's the only way.

9 BY MR. DAVID THOMAS:

10 Q. Okay. So further down in column two, starting on line 47
11 through 48, Low does describe an option. "The user selects a
12 payment button or option on the user device."

13 So is that an example of how the user would make
14 the purchase?

15 MS. TASHA THOMAS: Objection; form; scope.

16 THE WITNESS: So further down, where you just
17 directed me, moves us into a different embodiment than the
18 previous one. And I did explain that Dr. Neuman tried to
19 take a similar approach in his declaration of mixing and
20 matching those two things together, when they are clearly
21 distinguished as different embodiments.

22 BY MR. DAVID THOMAS:

23 Q. What are those two different embodiments that you believe are
24 present in Low?

25 A. I state this in my declaration. If you know where it is and

1 can direct me there, this would be quicker. But I can find
2 it, if you don't have that.

3 Looks like I explain these starting in paragraph 67
4 of the 920 declaration.

5 Q. Yeah, let's turn to paragraph 69.

6 A. Okay.

7 Q. So you say there are two different ways in which a user can
8 purchase a product from a machine in Low, right?

9 A. Yes.

10 Q. Can you describe what those two different ways are?

11 A. I said in the first sentence of paragraph 69, one way is:

12 "...items that can be purchased from a machine can
13 be displayed on the user device, which the user can
14 select from using the user device, causing a purchase
15 request to be generated by the user device and
16 transmitted to the payment provider for approval; or (2)
17 the user can select a product to purchase by making the
18 selection at the vending machine itself, upon which the
19 machine transmits a purchase request to the user device
20 for review by the user, which, after selecting a payment
21 button or option on the user device, causes the
22 communication of a payment request to the payment
23 provider."

24 Q. So that first example was the cart example we referred to
25 earlier, right?

1 MS. TASHA THOMAS: Objection; form.

2 BY MR. DAVID THOMAS:

3 Q. Or I'm sorry. That first -- first embodiment that you
4 believe exists in Low was the user adding items to a cart and
5 then making a purchase through a payment provider, correct?

6 A. The first embodiment that I included there would be what was
7 explained, I believe, maybe from lines 11 through 37, in
8 column two of Low, which does include the statement that we
9 were discussing about a cart.

10 Q. Right. So looking at your description of the two
11 embodiments, in the first you say, "...items that can be
12 purchased from a machine can be displayed on the user device,
13 which the user can select from using the user device."

14 So earlier when I asked you how did a user select
15 items for their cart, here you're saying the user can select
16 from using the user device, is that right?

17 A. Yes.

18 Q. And that selection would be touchscreen, cursor, keypad,
19 keyboard, a variety of different options, correct?

20 A. Well, I didn't specify how the user could select the items,
21 and Low didn't disclose how the user could select the items.

22 Q. Okay. Then you say, "...causing a purchase request to be
23 generated by the user device and transmitted to the payment
24 provider for approval." Correct?

25 A. Yes.

1 Q. But isn't that inconsistent with the sentence we just read in
2 Low at column two, lines 29 through 31? You're missing a
3 step.

4 MS. TASHA THOMAS: Objection; form.

5 THE WITNESS: I don't know what you're saying.

6 BY MR. DAVID THOMAS:

7 Q. So your summary of the first embodiment of Low indicates that
8 when the user selects an item from the user device, using the
9 user device, that causes a purchase request to be generated
10 by the user device and transmitted to the payment provider
11 for approval.

12 I'm saying, that's inconsistent with column two,
13 lines 29 through 31, where that sentence makes clear, the
14 user first adds an item to their cart, and then makes a
15 purchase through a payment provider, which then is, in your
16 words, causing a purchase request to be generated by the user
17 device and transmitted to the payment provider for approval.

18 So I'm saying your summary is missing the
19 make-the-purchase aspect.

20 MS. TASHA THOMAS: Objection; form; scope.

21 THE WITNESS: I don't believe that it's missing
22 that. The sentence says the user may, so it seems like
23 that's not a requirement.

24 BY MR. DAVID THOMAS:

25 Q. But earlier you told me the cart is just a holding place for

1 items. So here you're saying the cart is where items would
2 be automatically triggered to cause a purchase request.

3 MS. TASHA THOMAS: Objection; form.

4 THE WITNESS: Well, I don't know the answer to that
5 because Low doesn't disclose it one way or the other. Low is
6 not saying how that's working. And I'm not inferring that it
7 has to be a specific way.

8 BY MR. DAVID THOMAS:

9 Q. So how else is your summary in paragraph 69 supposed to be
10 interpreted, if it's not how you're inferring how Low
11 operates?

12 A. Well, what you're talking about in lines 29 through 31 don't
13 include what's stated in the sentence that starts on line 31,
14 that says the purchase request is communicated to the payment
15 provider over a wireless network.

16 Q. So you're saying you don't understand how making the purchase
17 causes a purchase request?

18 MS. TASHA THOMAS: Objection; form.

19 THE WITNESS: Well, I think we talked earlier about
20 the words in patents, right; and didn't you tell me that if
21 it's not the same word that it means something different?

22 BY MR. DAVID THOMAS:

23 Q. Well, that's in the claims. We're not in the claims.

24 So what do you understand in that first embodiment
25 of Low, the phrase "make the purchase" to mean?

1 MS. TASHA THOMAS: Objection; form; scope.

2 THE WITNESS: I mean, looking at the next sentence,
3 perhaps it means that the purchase request is communicated to
4 the payment provider over a wireless network.

5 BY MR. DAVID THOMAS:

6 Q. Okay. And that purchase is made by some type of user
7 interaction with a user device, correct?

8 MS. TASHA THOMAS: Objection; form.

9 THE WITNESS: Yeah. I don't think Low states that.

10 BY MR. DAVID THOMAS:

11 Q. But Low is to be interpreted from the perspective of a person
12 of ordinary skill in the art, such as yourself, right? So as
13 somebody who understands this technology and how a user
14 interacts with user interfaces, you would expect the term or
15 the phrase "make the purchase" to include some type of user
16 interaction, right?

17 MS. TASHA THOMAS: Objection; form; scope.

18 THE WITNESS: I don't -- I don't think that I would
19 say that.

20 BY MR. DAVID THOMAS:

21 Q. So then how does the user make the purchase?

22 MS. TASHA THOMAS: Objection; form; scope.

23 THE WITNESS: Again, I think that there could be
24 different ways to do so. But I would need to look through
25 what Low is teaching to make sure that any option that I come

1 up with conforms to the requirements in the patent.

2 BY MR. DAVID THOMAS:

3 Q. So it's not enough that Low discloses personal computing
4 devices that you're familiar with? There are additional
5 criteria that you would need to confirm with Low, right?

6 MS. TASHA THOMAS: Objection; form.

7 THE WITNESS: Yes, there are other criteria that I
8 would need to consider before saying these are the ways,
9 based on the teachings in Low, that the -- this specific
10 functionality could be implemented.

11 BY MR. DAVID THOMAS:

12 Q. So a user interacting with a personal computing device,
13 through an input/output component, such as a touchscreen,
14 keyboard, or mouse and cursor, you would not be comfortable
15 saying that is just one way in which a user can make a
16 purchase?

17 MS. TASHA THOMAS: Objection; form.

18 THE WITNESS: I didn't say that.

19 BY MR. DAVID THOMAS:

20 Q. So you would be comfortable agreeing with me on that?

21 MS. TASHA THOMAS: Objection; form.

22 THE WITNESS: I didn't say that either. That could
23 be a way that this occurs; but I would need to study Low in
24 detail with regard to that question to be able to say that
25 that is an option for how this could occur.

1 BY MR. DAVID THOMAS:

2 Q. So that make the purchase, could that include the purchase --
3 sorry -- payment button or option described later on in Low?

4 MS. TASHA THOMAS: Objection; form; scope.

5 THE WITNESS: If you're asking about the payment
6 button that is in the subsequent paragraph, starting on line
7 39, that's a different embodiment. So the payment button
8 explained there is not part of the embodiment that is being
9 described in the paragraph starting on line 29.

10 BY MR. DAVID THOMAS:

11 Q. But could it be part of that first embodiment?

12 MS. TASHA THOMAS: Objection; form; scope.

13 THE WITNESS: I don't understand if you're asking
14 if Low had written the specification for the patent
15 differently, could he have included a payment button in that
16 paragraph? That's a question I don't know that I can answer.
17 That's going to the thought process of Low.

18 What I can tell you is that he did not include a
19 payment button in the paragraph from lines 29 through 37.

20 BY MR. DAVID THOMAS:

21 Q. If you were to take the payment button or option described in
22 column two, lines 47 through 48, and just plugged it into
23 that sentence in column two, lines 29 through 31, such that
24 it read, "The user may then add desired items from one or
25 more machines to a cart and make the purchase, using a

1 payment button or option on a user device, through a payment
2 provider," would that make sense to you?

3 MS. TASHA THOMAS: Objection; form; scope.

4 THE WITNESS: You're asking me a question about
5 changing the specification of a piece of prior art. I --
6 again, this isn't something that I considered in making the
7 declarations that I did in this case.

8 So I would need to consider the ramifications of
9 that and ensure consistency with the teachings in Low to be
10 able to answer that question.

11 But, clearly, what you just asked is not what Low
12 says, because you took something out of a different paragraph
13 and added it to a previous one in the specification. So it's
14 very clear that that's not what Low is saying.

15 BY MR. DAVID THOMAS:

16 Q. Can you please turn to column 13, line 60 of Low?

17 A. Okay.

18 Q. So this reads:

19 "Where applicable, the ordering of various steps
20 described herein may be changed, combined into composite
21 steps, and/or separated into sub steps to provide
22 features described herein. Embodiments described herein
23 are exemplary only. One skilled in the art may
24 recognize various alternative embodiments from those
25 specifically disclosed."

1 So would you agree with me that what I just
2 described to you was an alternative embodiment?

3 MS. TASHA THOMAS: Objection; form; scope.

4 THE WITNESS: No, I wouldn't agree with that
5 without studying Low in more depth, with respect to that
6 question, to make sure that what you are proposing would
7 conform to the teachings in Low.

8 BY MR. DAVID THOMAS:

9 Q. Is there anything in Low that would preclude the combination
10 of these two different embodiments, as you perceive them?

11 MS. TASHA THOMAS: Objection; form; scope.

12 THE WITNESS: I don't know.

13 BY MR. DAVID THOMAS:

14 Q. Are you aware of any description in Low that would preclude
15 such a combination?

16 MS. TASHA THOMAS: Objection; form; scope.

17 THE WITNESS: As I said, I would have to study the
18 patent with respect to that specific combination of the
19 embodiments to make sure that it conforms to the requirements
20 in Low before being able to answer that question.

21 So I don't know. That's not something that I
22 addressed in my declaration.

23 BY MR. DAVID THOMAS:

24 Q. Can you please turn to Low at column seven, line 29?

25 A. Okay.

1 Q. So starting at line 35 of that paragraph, can you please read
2 that out loud?

3 A. "In some embodiment, database 146 may include cross
4 promotional products and/or preferences for use in
5 upselling products. For example, displaying a message
6 to user 102, after purchasing a drink, such as," quote,
7 "would you like chips with your drink," end quote.

8 Q. Would that message displayed to the user be displayed on the
9 user device?

10 MS. TASHA THOMAS: Objection; form.

11 THE WITNESS: I believe I addressed this in my
12 declaration. The short answer is, no, there's no disclosure
13 that that would be displayed on the user device.

14 BY MR. DAVID THOMAS:

15 Q. But it's displayed to the user somehow, right?

16 A. The sentence says "displaying a message to user 102," so the
17 message is displayed to the user.

18 The question you asked was, is it displayed on the
19 user device, to which I was saying, it doesn't have to be
20 displayed on the user's device.

21 Q. Is one of the options, based on your interpretation of that
22 sentence, that the message is displayed on the user device?

23 MS. TASHA THOMAS: Objection; form; scope.

24 THE WITNESS: Well, my -- my declaration addresses
25 this because Dr. Neuman said in his declaration, the message

1 displayed to user 102 would be displayed on the user
2 interface of the user device 110, only after the purchase
3 drink transaction is completed.

4 And that statement is not true. That's what I was
5 addressing in my declaration.

6 BY MR. DAVID THOMAS:

7 Q. So you're saying there's no scenario where that message would
8 be displayed to the user on the display of the user device?

9 MS. TASHA THOMAS: Objection; form.

10 THE WITNESS: No, that's not what I said. I was
11 responding to Dr. Neuman's statement where he said, the
12 message displayed to user 102 would be displayed on the user
13 interface of the user device.

14 And that's not a true statement. That's not what
15 Low is disclosing.

16 BY MR. DAVID THOMAS:

17 Q. So the message cannot be displayed on the user device?

18 A. No, I didn't say that.

19 Q. So the message can be displayed on the user device?

20 A. What I said was, in my declaration I was responding to Dr.
21 Neuman, where he said, the message displayed to user 102
22 would be displayed on the user interface of the user device.

23 And my response to that is, no, that is not true.
24 Low doesn't disclose that, and there are other places the
25 message could be displayed.

1 Q. Such as?

2 A. In paragraph 81 I state:

3 "...a POSITA would have understood from Low that
4 the message could be displayed on the vending machine
5 itself. For example, Low describes that the vending
6 machine 120 may include a display capable of displaying
7 information to the user."

8 Q. Doesn't the user device 110 of Low include a display capable
9 of displaying information to a user?

10 A. I believe that's true in certain embodiments.

11 Q. So couldn't the user device, likewise, display the message,
12 would you like chips with your drink?

13 MS. TASHA THOMAS: Objection; form.

14 THE WITNESS: The user device you pointed me to
15 from Figure 5, in column 12 of Low, said "...e.g., a personal
16 computer, laptop, smartphone, tablet, PDA, Bluetooth device,
17 key fob, badge, etcetera."

18 Not all of those would have a visual display.

19 BY MR. DAVID THOMAS:

20 Q. What about the ones that do include a visual display?

21 MS. TASHA THOMAS: Objection.

22 THE WITNESS: I don't --

23 MS. TASHA THOMAS: Form; scope.

24 BY MR. DAVID THOMAS:

25 Q. For the personal --

1 A. I don't understand the question.

2 Q. -- computing devices -- I apologize.

3 For the personal computing devices that do include
4 a display, could they display the message, would you like
5 chips with your drink?

6 A. Well, again, that wasn't what I was opining on. I was
7 responding to Dr. Neuman saying that that message would be
8 displayed on the user interface. And my response to that is,
9 no, that's not true. And Low provides support to show that
10 it could be displayed somewhere else, such as on the vending
11 machine.

12 And in fact, even some of the personal computing
13 devices that Low discloses don't have a user interface;
14 therefore, the message couldn't be displayed on the user
15 interface in those cases.

16 BY MR. DAVID THOMAS:

17 Q. In instances where the user device 110 includes a display,
18 could that display display to the user the message, would you
19 like chips with your drink? Yes or no.

20 MS. TASHA THOMAS: Objection; form; scope.

21 THE WITNESS: As I said, I was responding to Dr.
22 Neuman's declaration where he stated the message would be
23 displayed on the user interface.

24 And my response to Dr. Neuman is, no, that is not a
25 requirement. And there are other places that the message

1 could be displayed, such as the vending machine.

2 BY MR. DAVID THOMAS:

3 Q. And such as the user device that includes a display, correct?

4 MS. TASHA THOMAS: Objection; form.

5 THE WITNESS: As I said, I didn't provide an
6 opinion on that because my opinion was in response to Dr.
7 Neuman's declaration.

8 BY MR. DAVID THOMAS:

9 Q. Where he's talking about the display on the user device,
10 right?

11 A. Yes. And Dr. Neuman stated that the message displayed to the
12 user would be displayed on the user interface of the user
13 device, which is not true. That was what I was responding
14 to, and that is what my opinion is.

15 Q. And I'm asking you, is it your opinion that the user device
16 that includes a display, could display the message to the
17 user? Yes-or-no answer.

18 MS. TASHA THOMAS: Objection; form; scope.

19 THE WITNESS: That's not an opinion that I made in
20 my declaration.

21 BY MR. DAVID THOMAS:

22 Q. Is it your opinion that the user device that includes a
23 display could not display the message to the user?

24 MS. TASHA THOMAS: Objection; form; scope.

25 THE WITNESS: No, I didn't make that opinion in my

1 declaration.

2 BY MR. DAVID THOMAS:

3 Q. Can you please turn to Figure 1 of Low?

4 THE WITNESS: Can we take a break?

5 MR. DAVID THOMAS: Yes, we can take a break now.

6 (Off the record at 2:35 p.m. MST.)

7 (Back on the record at 2:46 p.m. MST.)

8 BY MR. DAVID THOMAS:

9 Q. Okay. Dr. Miller, can we -- can you please open Figure 1 of
10 Low?

11 A. Okay.

12 Q. So I see here a vending machine 120, a user device 110, a
13 user 102, a network 160, payment provider server 140, and
14 vendor server 150, correct?

15 A. Yes, I see all of that in Figure 1.

16 Q. And do you see the double-sided arrows in between various
17 components?

18 A. Yes.

19 Q. What do you understand those dual arrows to represent?

20 A. I don't see that the specification provides any explanation
21 as to those arrows.

22 Q. Do you have an understanding of what those arrows represent?

23 A. Without an explicit explanation in the specification, it
24 seems like it would be ways that data could flow or
25 communication means.

1 But I don't know without the specification
2 disclosing that.

3 Q. And the fact that they point in both directions, does that
4 mean there's a mutual exchange of data or information?

5 MS. TASHA THOMAS: Objection; form.

6 THE WITNESS: Again, I -- I can't answer
7 definitively because it's not disclosed in the patent; but it
8 would seem as if data could flow in both directions.

9 BY MR. DAVID THOMAS:

10 Q. So can we follow the path of those arrows from the vending
11 machine 120 to the payment provider server 140? And can you
12 explain to me how data would flow from the vending machine to
13 the payment provider server?

14 MS. TASHA THOMAS: Objection; form; scope.

15 THE WITNESS: Well, it appears that the vending
16 machine could send data to the user device, which sends
17 through the network 160 to the payment provider server.

18 BY MR. DAVID THOMAS:

19 Q. And can you do the same for data sent from the vending
20 machine 120 to the vendor server 150?

21 A. It appears that data could be sent from vending machine 120
22 to user device 110 through the network 160 to vendor server
23 150.

24 Q. So are there any instances where the payment provider server
25 140 exchanges data directly with the vending machine 120,

1 without the user device 110 as an intermediary?

2 A. From what's shown in Figure 1, the specific embodiment, it
3 doesn't look like that's a viable path.

4 Q. And similarly, is there any flow of data between the vending
5 machine 120 and the vendor server 150, without the user
6 device 110 as an intermediary?

7 A. Again, from this figure, for this specific embodiment, it
8 doesn't appear as if vending machine 120 can communicate with
9 vendor server 150 without going through user device 110.

10 Q. And vending machine 120 is referred to in this specification
11 as a non-internet-connected machine, correct? You can look
12 at column two, line 16 through 17.

13 A. Column two, line 16 through 17, do not reference vending
14 machine 120.

15 Q. What does it reference?

16 A. It says the non-internet-connected machine, NICM, transmits a
17 machine identifier to the user device and so on. It's not
18 referencing vending machine 120 there, though.

19 Q. Can you turn to column seven, lines 52 through 53?

20 A. Okay.

21 Q. Can you read that sentence out loud, please?

22 A. "Vendor server 150 may be maintained, for example, by a
23 consumer product provider which may provide an NICM, such as
24 vending machine 120, for use by user 102."

25 Q. So do you agree that the vending machine 120 is a

1 non-internet-connected machine?

2 A. It seems that that sentence is saying that a
3 non-internet-connected machine could be vending machine 120.

4 Q. So talking about the exchange of data, that description of
5 the vending machine, which can be a non-internet-connected
6 machine, is consistent with the vending machine being unable
7 to exchange data directly with the servers, right?

8 MS. TASHA THOMAS: Objection; form.

9 THE WITNESS: Well, if network 160 is the internet,
10 and the payment provider server and vendor server are not
11 able to connect to the vending machine through any means
12 other than the internet, then I would agree with that
13 statement.

14 BY MR. DAVID THOMAS:

15 Q. Can you please turn to Figure 4 of Low?

16 A. Okay.

17 Q. So similar questions here. There's a vending machine 420,
18 which appears to be in communication with the user device
19 410, which is in communication with a payment provider server
20 440 and vendor server 450 through a network 460. Is that an
21 accurate characterization of Figure 4?

22 A. Yes, that seems accurate.

23 Q. So is payment provider server 440 able to communicate and
24 exchange data with vending machine 420 directly, without user
25 device 410 as an intermediary?

1 A. Can you repeat your question?

2 Q. Can payment provider server 440 communicate directly with
3 vending machine 420, where the user device 410 is not an
4 intermediary?

5 MS. TASHA THOMAS: Objection; form.

6 THE WITNESS: It appears that there is an
7 embodiment where vending machine 420 does not communicate
8 with payment provider server 440 directly, but communicates
9 through user device 410.

10 BY MR. DAVID THOMAS:

11 Q. Similar question for vendor server. Does vendor server 450
12 communicate with vending machine 420 directly, without the
13 user device 410 as an intermediary?

14 MS. TASHA THOMAS: Objection; form.

15 THE WITNESS: It appears that there is at least one
16 embodiment where vendor server 450 communicates with vending
17 machine 420 through user device 410.

18 BY MR. DAVID THOMAS:

19 Q. Can you please turn to column 10, lines 51 through 54, of
20 Low?

21 A. Okay.

22 Q. Can you read that out loud starting with, "As previously
23 discussed"?

24 A. "As previously discussed, transaction processing
25 application 142 may determine if there are any

1 restrictions and/or limitations corresponding to the
2 user account, and may take appropriate actions as
3 desired."

4 Q. So the transaction processing application 142, what does it
5 mean for that application to determine if there are any
6 restrictions and/or limitations?

7 A. Starting on line 42 of column 10, it says:

8 "Transaction processing application 142 of payment
9 provider server 140 may processes of funding source
10 according to payment details included in the payment
11 request, such as a product, price, and/or transaction
12 number. Transaction processing application 142 may
13 utilize a user account provided with the purchase
14 request to acquire a funding source, or the funding
15 source may be provided in the purchase request."

16 And in the sentence that you had me read:

17 "As previously discussed, transaction processing
18 application 142 may determine if there are any
19 restrictions and/or limitations corresponding to the
20 user account and may take appropriate actions as
21 desired."

22 Q. Yes. So what are examples of restrictions and/or limitations
23 corresponding to the user account?

24 A. In column nine, starting at line 33, states:

25 "Transaction processing application 142 may verify

1 the funding source and/or user account. Transaction
2 processing application 142 may determine if there are
3 any limitations and/or restrictions on a user account,
4 included in database 146, and if the restrictions are
5 met."

6 Q. So what would be an example of a restriction on a user
7 account?

8 A. Well, from reading that sentence, it seems that there's a
9 verification of the funding source and/or the user account.

10 Q. So would that be, you know, checking to see if there are
11 sufficient funds? Would that be an example?

12 A. I don't know if Low is disclosing that further in another
13 location.

14 Q. Well, based on your understanding of these terms, and having
15 designed payment processing systems yourself, do you
16 understand what "limitations and/or restrictions on a user
17 account" mean?

18 MS. TASHA THOMAS: Objection; form.

19 THE WITNESS: I think that those are general terms.
20 It's not disclosing exactly, here at least, what -- what I
21 just read, that there is enough funding in that specific
22 source. It says verify the funding source.

23 BY MR. DAVID THOMAS:

24 Q. So would that be more like verifying the numbers of a credit
25 card are accurate, as opposed to the quantity of -- of funds

1 available?

2 A. That may be what it means. It doesn't seem extremely clear
3 here.

4 Q. What about restrictions? Would that be, you know, if a user
5 account has been flagged as a scammer account, or something
6 of that nature?

7 MS. TASHA THOMAS: Objection; form; scope.

8 THE WITNESS: I don't know. That doesn't seem to
9 be what Low has disclosed here, unless it's in a different
10 part of the specification.

11 BY MR. DAVID THOMAS:

12 Q. So you have a different interpretation of what "restrictions
13 on a user account" means?

14 MS. TASHA THOMAS: Objection; form.

15 THE WITNESS: I wasn't thinking that restriction
16 had to do with scammers, but I -- I don't know exactly what
17 Low was intending by that.

18 BY MR. DAVID THOMAS:

19 Q. Okay. So if not, you know, flagging a scammer account, what
20 could Low be talking about with these restrictions on a user
21 account?

22 MS. TASHA THOMAS: Objection; form; scope.

23 THE WITNESS: I don't see that I provided an
24 opinion on what restrictions in Low could represent in my
25 declarations.

1 BY MR. DAVID THOMAS:

2 Q. So do you have an opinion on what "limitations and/or
3 restrictions on a user account" means as stated in Low?

4 A. I have a response to where Dr. Neuman cited the restrictions
5 and limitations in my declaration. I don't see that I formed
6 an opinion on exactly what restrictions or limitations are.

7 Q. And going back to column 10, lines 51 through 54, it says,
8 "The transaction processing application may take appropriate
9 actions as desired."

10 What do you understand "appropriate actions" to
11 mean?

12 A. Well, it seems that the transaction processing application
13 can approve the purchase request as stated in column nine on
14 lines 39 through 40. I would assume that it may also be able
15 to deny the purchase request. I don't know if that's the
16 entirety of "appropriate actions," but that seems as if it
17 may be two actions that could be taken by the transaction
18 processing application.

19 Q. Okay. Approval and denial. Any other examples that you
20 think fit within the "appropriate actions"?

21 A. Those are the two that come to mind, based on the
22 specification that I'm looking at here.

23 Q. What about cancelling the transaction?

24 A. Can you direct me to somewhere in Low that specifies that?

25 Q. I'm not sure it's in there. I'm just asking if that's

1 subsumed within the phrase "appropriate actions."

2 A. I don't know.

3 Q. Would "appropriate actions" include an abortion of the
4 transaction?

5 A. Well, what we're referring to here is the transaction
6 processing application 142, and looking at Figure 1 that's on
7 the payment provider server. So aborting the transaction
8 would be something that is user initiated, not something
9 that's server initiated necessarily.

10 So I don't know if that would be an appropriate
11 action, because this is all happening on the server, is where
12 that transaction processing application is.

13 Q. Do you have Arora available?

14 A. Yes.

15 Q. Can you please open the Arora reference?

16 A. Okay.

17 Q. Did you review Arora in forming your opinions for these two
18 reports?

19 A. Yes. I included Arora in my list of materials cited in the
20 920 declaration.

21 Q. Can you please turn to column 13, starting at line 28?

22 A. Okay.

23 Q. Can you read line 28 through 35?

24 A. "Determining customer 17 location may use one or
25 more technologies, including GPS, 11; cellular

geolocation, 15; LAN identification from access points, such as 22 and 20; inertial guidance; vision-based location determination; RFID; badge reading," parentheses, "(not shown in Figure 2)," parentheses, "NFC, 21; manual location entry by the customer, 17; and other technologies. Inertial guidance may use an accelerometer and other sensors in the customer 17's personal electronic device, 18."

Q. Can you define "inertial guidance" for me?

MS. TASHA THOMAS: Objection; form; scope.

THE WITNESS: Well, within the Arora patent it seems like the only use of the term "inertial guidance" is provided in those two sentences that you had me read.

BY MR. DAVID THOMAS:

Q. So are you able to provide a definition, based on the disclosure of Arora, of the phrase "inertial guidance"?

MS. TASHA THOMAS: Objection; form.

THE WITNESS: Well, there is no definition of "inertial guidance" provided in Arora.

BY MR. DAVID THOMAS:

Q. What does that phrase mean to you as a person of ordinary skill in the art?

A. "Inertial guidance," in my opinion, would be based on acceleration or deceleration, negative acceleration.

Q. And is that based on your understanding of the term

1 "inertia"?

2 A. Sure, partially. I mean, "inertia" is defined as an object
3 in motion, will stay in motion unless acted on by an outside
4 force, so, yeah. So accelerating or decelerating means that
5 there's an outside force acting on whatever the object is.

6 Q. Is there a directional component to inertial guidance?

7 MS. TASHA THOMAS: Objection; form; scope.

8 THE WITNESS: I don't believe with solely having
9 inertia that a direction is included.

10 BY MR. DAVID THOMAS:

11 Q. Do you think direction, particularly as it relates to the
12 positioning of a customer 17, can be determined based on any
13 of these other technologies listed on column 13, lines 28
14 through 32?

15 MS. TASHA THOMAS: Objection; form; scope.

16 THE WITNESS: I missed the first part of the
17 question. I got the reference that we're talking about here
18 in column 13. What was the first part of the question?

19 BY MR. DAVID THOMAS:

20 Q. Yeah, sorry. Do any of those technologies in that portion of
21 Arora determine the direction that a customer 17 is moving?

22 MS. TASHA THOMAS: Objection; form; scope.

23 THE WITNESS: I could see how some of those
24 technologies there could be used to determine direction.

25 BY MR. DAVID THOMAS:

1 Q. Any ones in particular that stand out as indicating direction
2 of a customer?

3 A. GPS could be used. Cellular geolocation could be used.
4 Vision-based location determination could be used. Perhaps
5 RFID, NFC. I guess manual location entry by the customer
6 could be used.

7 Q. Okay. Can we turn back to Low at column eight, starting at
8 line 24?

9 A. Okay.

10 Q. So can you read line 24 through 28?

11 A. "Inventory data 154 may be received from vending
12 machine 120, for example, using an internet connection
13 of user device 110, after a short-range communication
14 link is established between user device 110 and vending
15 machine 120."

16 Q. So based on this embodiment, is inventory data 154 received
17 from vending machine 120 after a short-range communication
18 link is established between user of device 110 and vending
19 machine 120?

20 MS. TASHA THOMAS: Objection; form.

21 THE WITNESS: It seems like that's what that
22 sentence is saying. And the "internet connection of user
23 device 110, after a short-range communication link is
24 established between user device 110 and vending machine 120,"
25 is one example.

1 BY MR. DAVID THOMAS:

2 Q. Okay. Earlier we discussed the term "affordance." Do you
3 recall that?

4 A. Yes.

5 Q. And is it your position that a person of ordinary skill in
6 the art would understand what an "affordance" is at the time
7 of these patents?

8 A. Yes.

9 Q. And can you remind me of what that understanding is again?

10 A. An "affordance" is an interactive user interface element that
11 informs a user as to how to interact with the element and its
12 intended use.

13 Q. And that's the plain and ordinary meaning of that term,
14 right?

15 A. Yes.

16 Q. And you were familiar with that plain and ordinary meaning,
17 even before being retained for this case or reading these
18 patents, correct?

19 A. I had an understanding of what the term "affordance" meant
20 before being retained on this. Obviously, writing this out
21 in this way was as a result of being retained and being asked
22 to come up with the plain and ordinary meaning of the term
23 "affordance."

24 Q. So in the December 2013 timeframe, was the term "affordance"
25 well understood, routine, and conventional?

1 MS. TASHA THOMAS: Objection; form.

2 THE WITNESS: I cited to technical literature in my
3 declaration that provided definitions of the term
4 "affordance." And that was prior to December of 2013.

5 I don't know that I would say it is whatever the
6 three terms were that you just said. I feel like there's a
7 legal implication behind those three terms.

8 BY MR. DAVID THOMAS:

9 Q. Do you think "affordance" was well understood as of December
10 2013?

11 MS. TASHA THOMAS: Objection; form.

12 THE WITNESS: The term "affordance" existed prior
13 to 2013.

14 With respect to the patent and how the affordance
15 is actually being used in the claims, I think looking at the
16 claims as a whole is where the unique invention comes from.

17 BY MR. DAVID THOMAS:

18 Q. Can you please turn to claim one of the 920 patent?

19 A. Okay.

20 Q. Claim one of the 920 patent recites a mobile device, correct?

21 A. Yes.

22 Q. Is this mobile device --

23 MR. DAVID THOMAS: Strike that.

24 BY MR. DAVID THOMAS:

25 Q. Was the mobile device claimed in claim one of the 920 patent

1 known as of December 2013?

2 MS. TASHA THOMAS: Objection; form.

3 THE WITNESS: Well, as I said, the invention is the
4 entirety of the claims. And, you know, not a specific term
5 that is included in them. And I think I explained this in my
6 declaration as well.

7 BY MR. DAVID THOMAS:

8 Q. Inventions are inherently built on known components, would
9 you agree with that?

10 A. I believe that that could be true. I was looking in my
11 declaration, in paragraph 18, where I state, "the Supreme
12 Court has explained that at some level, all inventions
13 embody, use, reflect, rest upon or apply laws of nature,
14 natural phenomena, or abstract ideas."

15 Q. Okay. I'm not talking about "laws of nature, natural
16 phenomena or abstract ideas." I'm asking about whether
17 specific components were known at the time of the invention.

18 And so, was the mobile device claimed in claim one
19 of the 920 patent known at the time of the invention?

20 MS. TASHA THOMAS: Objection; form.

21 THE WITNESS: Well, again, the invention is the
22 entirety of the claims. And if you're merely asking if
23 mobile devices existed in 2013, I don't believe that I
24 provided an opinion on that. But I believe mobile devices
25 existed.

1 BY MR. DAVID THOMAS:

2 Q. And is it your opinion that the claims of the 920 patent
3 purport to invent a new mobile device?

4 MS. TASHA THOMAS: Objection; form.

5 THE WITNESS: Well, I think that we need to look at
6 the specific claim that you're referring to.

7 You directed me to claim one, and claim one is a
8 method claim. It says, "a method of presenting
9 representations of payment accepting unit events comprising",
10 and then it says, "at a mobile device," so on. And then many
11 of the limitations that we have been discussing today.

12 BY MR. DAVID THOMAS:

13 Q. Right. So when you said the mobile device existed as of the
14 time of the invention, I'm asking, that means PayRange did
15 not invent a brand new mobile device, correct?

16 MS. TASHA THOMAS: Objection; form.

17 THE WITNESS: I didn't provide an opinion on that
18 in my declaration.

19 BY MR. DAVID THOMAS:

20 Q. I think we got just a few more questions. Do you want to
21 just take a quick break, and we can finish up?

22 MS. TASHA THOMAS: Sure, do you want five minutes
23 or --

24 MR. DAVID THOMAS: Yes, let's just do five minutes,
25 and then we won't be going much longer.

1 MS. TASHA THOMAS: So back at 3:35 Mountain.

2 (Off the record at 3:29 p.m. MST.)

3 (Back on the record at 3:35 p.m. MST.)

4 MR. DAVID THOMAS: All right.

5 BY MR. DAVID THOMAS:

6 Q. Dr. Miller, were processors known as of December 2013?

7 MS. TASHA THOMAS: Objection; form; scope.

8 THE WITNESS: Computer processors existed in 2013.

9 BY MR. DAVID THOMAS:

10 Q. Did memory exist as of December 2013?

11 MS. TASHA THOMAS: Objection; form; scope.

12 THE WITNESS: Yes, computer memory existed as of
13 2013.

14 BY MR. DAVID THOMAS:

15 Q. Did displays exist as of December of 2013?

16 MS. TASHA THOMAS: Objection; form; scope.

17 THE WITNESS: Yes, displays existed in 2013.

18 BY MR. DAVID THOMAS:

19 Q. Did radio transceivers exist as of 2013?

20 MS. TASHA THOMAS: Objection; form; scope.

21 THE WITNESS: Yes, radio transceivers existed in
22 2013.

23 BY MR. DAVID THOMAS:

24 Q. So using a radio transceiver, was it well known to establish
25 a wireless communication path with those radio transceivers?

1 MS. TASHA THOMAS: Objection; form; scope.

2 THE WITNESS: I think the application behind how
3 you're using the radio transceiver is unique to different
4 applications.

5 BY MR. DAVID THOMAS:

6 Q. Can you provide more specificity on what you mean by that?

7 MS. TASHA THOMAS: Objection; form.

8 THE WITNESS: What I'm saying is the use of radio
9 transceivers, based on specific applications, could be unique
10 because of the application. That's why I keep saying that
11 it's the entirety of the claims which is unique.

12 BY MR. DAVID THOMAS:

13 Q. Right, I'm just talking about radio transceivers in general
14 and the wireless communication path using radio transceivers,
15 and were those wireless communication paths well known as of
16 December 2013?

17 MS. TASHA THOMAS: Objection; form.

18 THE WITNESS: Radio transceivers were known as of
19 2013. Establishing a specific path could be unique to a
20 certain application.

21 So the establishment of the path is not something
22 that necessarily was well known in 2013, because that could
23 be specific to an application.

24 BY MR. DAVID THOMAS:

25 Q. Was Bluetooth well known as of December 13 -- 2013?

1 MS. TASHA THOMAS: Objection; form; scope.

2 THE WITNESS: I don't believe that I provided an
3 opinion about Bluetooth specifically, and whether it was
4 known as of 2013.

5 BY MR. DAVID THOMAS:

6 Q. But do you know, as a POSA, whether Bluetooth was well known
7 as of 2013?

8 MS. TASHA THOMAS: Objection; form.

9 THE WITNESS: I believe that Bluetooth existed as
10 of 2013. I think the term "well known" is relative though.

11 BY MR. DAVID THOMAS:

12 Q. Was near-field communication well known as of December 2013?

13 MS. TASHA THOMAS: Objection; form; scope.

14 THE WITNESS: I think the same answer. I think NFC
15 existed as of 2013. I'm not sure about the well-known aspect
16 because I didn't look into that, or provide an opinion on it.

17 BY MR. DAVID THOMAS:

18 Q. Was wi-fi well known as of December 2013?

19 MS. TASHA THOMAS: Objection; form; scope.

20 THE WITNESS: Again, wi-fi existed as of 2013. I'm
21 not sure about the degree of well known and what legal
22 implications that term means, and I didn't provide an opinion
23 on that.

24 BY MR. DAVID THOMAS:

25 Q. Do you know what CDMA means in the communication context?

1 A. Yes.

2 Q. What does CDMA mean?

3 A. Code-division multiple axis.

4 Q. Was code-division multiple axis well known as of December
5 2013?

6 MS. TASHA THOMAS: Objection; form; scope.

7 THE WITNESS: Again, I believe CDMA was in
8 existence in 2013; I don't know about the well-known aspect.
9 And I didn't provide an opinion on that.

10 BY MR. DAVID THOMAS:

11 Q. Do you know what GSM in the context of communication means?

12 A. Yes.

13 Q. What does GSM mean?

14 A. I don't recall what the specific acronym is, but I know what
15 GSM is.

16 Q. Is it global system for mobile communications?

17 A. That sounds right.

18 Q. Was global system for mobile communications well known as of
19 December of 2013?

20 MS. TASHA THOMAS: Objection; form; scope.

21 THE WITNESS: GSM existed in 2013. I don't know
22 about the well-known aspect though, and I didn't provide an
23 opinion on that.

24 BY MR. DAVID THOMAS:

25 Q. Can we turn back to claim one of the 920 patent?

1 A. Okay.

2 Q. Do you agree with me that the claim step -- the claimed step
3 of "identifying one or more payment accepting units that are
4 available to accept payment from a mobile payment
5 application, executing on the mobile device, 'is a function
6 performed by the mobile device.'"

7 MS. TASHA THOMAS: Objection; form; scope.

8 THE WITNESS: Well in reading claim one, it says,
9 at a mobile device, so on, identifying one or more payment
10 accepting units. So it seems that it's the mobile device
11 that is identifying the one or more payment accepting units.

12 BY MR. DAVID THOMAS:

13 Q. So that limitation is a function performed by the mobile
14 device?

15 MS. TASHA THOMAS: Objection; form; scope.

16 THE WITNESS: I believe that that is. I mean claim
17 one is a method claim, so it seems like those are all
18 different methods that comprise the mobile device.

19 Sorry, the limitations that are under that, are all
20 methods comprising the mobile device.

21 BY MR. DAVID THOMAS:

22 Q. So in a similar vein, the claim step of, quote, "displaying a
23 user interface of the mobile payment application on the
24 display of the mobile device," quote, "is another function
25 performed by the mobile device"?

1 MS. TASHA THOMAS: Objection; form; scope.

2 THE WITNESS: I didn't provide an opinion on that.

3 It seems to be the case though.

4 BY MR. DAVID THOMAS:

5 Q. And the claimed step of, quote, "establishing via the one or
6 more radio transceivers a wireless communication path,
7 including the mobile device, and the available payment
8 accepting unit of the one or more payment accepting units,"
9 quote, "is another function performed by the mobile device,
10 in this case in communication with one of the payment
11 accepting units"?

12 MS. TASHA THOMAS: Objection; form; scope.

13 THE WITNESS: Well, again, I didn't provide an
14 opinion on this. The establishing via the one or more radio
15 transceivers, a wireless communication path, including the
16 mobile device and the available payment accepting unit, of
17 the one or more payment accepting units, would require both
18 the mobile device and an available payment accepting unit to
19 both establish -- to agree to establish that wireless
20 communication path.

21 BY MR. DAVID THOMAS:

22 Q. And the claimed limitation of, quote, "The user interface
23 being configured to display a visual indication of the one or
24 more payment accepting units, and accept user input selecting
25 an available payment accepting unit, of the one or more

1 payment accepting units, is another function of the mobile
2 device," correct?

3 MS. TASHA THOMAS: Objection; form; scope.

4 THE WITNESS: Again, I didn't provide an opinion on
5 this.

6 BY MR. DAVID THOMAS:

7 Q. So you don't have an opinion as to whether that's a function
8 performed by the mobile device?

9 MS. TASHA THOMAS: Objection; form; scope.

10 THE WITNESS: That limitation says that the user
11 interface of the mobile payment application is on the display
12 of the mobile device; so the mobile device is displaying the
13 user interface, and then the limitation continues on to
14 explain things about the user interface. So it seems as if
15 it's functionality that is on the mobile device. But, again,
16 I didn't provide an opinion on this.

17 BY MR. DAVID THOMAS:

18 Q. The claimed step of, quote, "After establishing the wireless
19 communication path, enabling user interaction with the user
20 interface of the mobile payment application, to complete a
21 transaction with the available payment accepting unit,"
22 quote, "is another function performed by the mobile device."
23 Correct?

24 MS. TASHA THOMAS: Objection; form; scope.

25 THE WITNESS: Again, I didn't provide an opinion on

1 this; but it appears to be functionality that's on the mobile
2 device.

3 BY MR. DAVID THOMAS:

4 Q. The claimed, quote, "Affordance that in response to a user
5 input indicates completion of the transaction," quote, "is
6 the function performed by the affordance on the mobile
7 device." Correct?

8 MS. TASHA THOMAS: Objection; form; scope.

9 THE WITNESS: I don't agree that the functionality
10 behind the affordance to indicate completion of the
11 transaction is solely located on the mobile device.

12 BY MR. DAVID THOMAS:

13 Q. Where else is that functionality located?

14 A. It would be located wherever is necessary to indicate
15 completion of the transaction.

16 Q. I'm not sure what you mean by that. Can you explain further,
17 please?

18 MS. TASHA THOMAS: Objection; form.

19 THE WITNESS: The limitation says, "An affordance
20 that in response to a user input indicates completion of the
21 transaction." So whatever is indicating completion of the
22 transaction would determine where that functionality rests to
23 meet that claim limitation.

24 BY MR. DAVID THOMAS:

25 Q. Okay. I understand. So the, "indicates completion of

1 transaction," is that the result generated by a user input
2 interacting with the affordance?

3 MS. TASHA THOMAS: Objection; form; scope.

4 THE WITNESS: This is going back to the definition
5 of affordance. Which is an interactive user interface
6 element that informs a user as to how to interact with the
7 element, and its intended use.

8 And so, in the claim limitation, it states an
9 affordance that in response to a user input, indicates
10 completion of the transaction. Whatever results in the
11 completion of the transaction is going to determine where the
12 functionality rests that meets that limitation.

13 BY MR. DAVID THOMAS:

14 Q. Right. So I'm saying the, indicating completion of the
15 transaction, is a result generated by the user interacting
16 with the affordance, correct?

17 MS. TASHA THOMAS: Objection; form; scope.

18 THE WITNESS: I don't think what you're saying is
19 correct, because the affordance is the interactive user
20 interface element that informs the user as to how to interact
21 with the element in its intended use.

22 And so in this case, the intended use of that
23 affordance is to complete the transaction.

24 BY MR. DAVID THOMAS:

25 Q. Okay. The claimed step of, quote, "Exchanging information

1 with the available payment accepting unit via the one or more
2 radio transceivers in conjunction with the transaction,"
3 quote, "is another function performed by the mobile device."
4 Correct?

5 MS. TASHA THOMAS: Objection; form; scope.

6 THE WITNESS: I didn't provide an opinion on that.
7 But it appears as if that's functionality that will be on the
8 mobile device.

9 BY MR. DAVID THOMAS:

10 Q. And the last claim step of, quote, "After exchanging the
11 information, displaying on the display, an updated user
12 interface of the mobile payment application to the user of
13 the mobile device," quote, "is another function performed by
14 the mobile device." Correct?

15 MS. TASHA THOMAS: Objection; form; scope.

16 THE WITNESS: I didn't provide an opinion on that,
17 but it appears as if that is functionality that will be on
18 the mobile device.

19 MR. DAVID THOMAS: Okay. Thank you, Dr. Miller, no
20 further questions.

21 MS. TASHA THOMAS: Okay, can we meet back at 6
22 o'clock Eastern, so 4 o'clock Mountain?

23 (Off the record at 3:53 p.m. MST.)

24 (Back on the record at 4:00 p.m. MST.)

25 MS. TASHA THOMAS: All right. We have no further

1 questions.

2 Thank you, Dr. Miller.

3 MR. DAVID THOMAS: Yes, thank you for your time,
4 Dr. Miller.

5 THE WITNESS: Thank you.

6 THE REPORTER: Counsel, may I ask, are you ordering
7 this, and what is your timeline? Also, should it be marked
8 Confidential?

9 MR. DAVID THOMAS: It doesn't need to be marked
10 confidential.

11 If we could get it rush delivery, that would be
12 great, to our email. I can give you the emails that it needs
13 to go to.

14 THE REPORTER: I can have it to you on Monday, if
15 needed?

16 MR. DAVID THOMAS: If you're able to do Monday,
17 that would be fantastic.

18 THE REPORTER: Ms. Thomas, what is your timeline?

19 MS. TASHA THOMAS: We don't need rushed.

20 THE REPORTER: So just regular order?

21 MS. TASHA THOMAS: Yes.

22 (Deposition concluded at 4:00 p.m. MST)
23
24
25

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STATE OF MICHIGAN)

) SS

COUNTY OF OTTAWA)

I certify that this transcript, consisting of 152 pages, is a complete, true, and correct record of the testimony of DR. JEFFREY MILLER held in this case on January 30, 2026.

I also certify that prior to taking this deposition DR. JEFFREY MILLER was duly sworn to tell the truth.

I also certify that I am neither attorney, nor counsel for, nor related, nor employed by any of the parties to the action in which this examination is taken; further, that I am not a relative or employee of any attorney of counsel employed by the parties hereto or financially interested in this action.

DATE: February 1, 2026

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