

DealerSocket, Inc. vs. AutoAlert, LLC

Deposition of
JAIME CARBONELL, PH.D.
February 05, 2015

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

- - - - -

DEALERSOCKET, INC.,)	
)	
Petitioner,)	Case CBM2014-00139
)	Case CBM2014-00132
vs.)	
)	U.S. Patent No.
AUTOALERT, LLC,)	8,396,791
)	
Patent Owner.)	

- - - - -

DEPOSITION OF JAIME G. CARBONELL, Ph.D.,
THURSDAY, FEBRUARY 5, 2015, 9:09 A.M.

RIVERS CLUB
ONE OXFORD CENTRE
301 GRANT STREET, SUITE 411
PITTSBURGH, PENNSYLVANIA

Reported By:
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RMR, CRR

Job No. 10014388

For the Plaintiff:

For the Defendant:

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I N D E X

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E X H I B I T S

(All exhibits were previously marked and are not
attached by agreement of counsel.

Exhibits are listed here for reference purposes.)

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1 P R O C E E D I N G S

2 JAIME G. CARBONELL, Ph.D.,

3 a witness herein, having been first duly sworn, was
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. SEARS:

7 Q. Good morning, Dr. Carbonell. We met just this
8 morning. My name is Rex Sears, and I'm an attorney
9 representing DealerSocket in various administrative
10 proceedings and also a civil case against AutoAlert.

11 Do you understand that?

12 A. Yes.

13 Q. All right. With regard to the oath that was
14 just administered, do you understand that it is the same
15 oath and carries with it the same force and effect as if
16 you were testifying in a court of law?

17 A. Yes.

18 Q. Is there any impediment to your giving your
19 fullest, most complete and most accurate testimony today?

20 A. No, there isn't. As I mentioned earlier, I
21 got over a cold, so it's possible that my voice, as we go
22 on, may not function as well as it's functioning now.

23 Q. All right. But the content will be just fine.

24 A. Absolutely.

25 Q. You're not on any medications or anything?

1 A. No.

2 Q. All right. You're not under the influence of
3 any other substance?

4 A. No.

5 Q. Okay. What's your current position?

6 A. At Carnegie Mellon University, I have two
7 titles, one is the director of the Language Technologies
8 Institute, that's the administrative title, and the
9 academic title, I'm the Allen Newell Chair Professor of
10 Computer Science.

11 (Previously marked Exhibit 2004 (132) was produced.)

12 BY MR. SEARS:

13 Q. Dr. Carbonell, I'm handing you a document that
14 has been previously been marked as Exhibit 2004 in case
15 CBM 2014-0013 titled Declaration of Dr. Jaime G.
16 Carbonell, in support of AutoAlert LLC's patent owner's
17 response.

18 I'll ask you to take a moment to look through
19 that document, and let me know when you've had a chance
20 to do that.

21 A. Yes. I've had a chance to glance through it.

22 Q. All right. Is this document, Exhibit 2004 in
23 the 132 case, is this a document that you're familiar
24 with?

25 A. Yes.

1 Q. Do you recognize this as a declaration that
2 you prepared to be submitted on AutoAlert's behalf in
3 that case?

4 A. Yes, it is.

5 MR. SEARS: All right. And counsel, just
6 to memorialize an agreement that I think we had
7 beforehand, it's my understanding that the proceeding
8 today, instead of doing two separate depositions, we're
9 going to be doing a single deposition that can be used
10 both in Case No. CBM 2014-00132 as well as Case No. CBM
11 2014-00139. Is that your understanding as well?

12 MR. FULLERTON: Yes. That's my
13 understanding.

14 MR. SEARS: All right. Thank you.
15 BY MR. SEARS:

16 Q. So, Dr. Carbonell, returning back to this
17 Exhibit 2004 in the 132 case, is the information in
18 Paragraphs 2 through 10 accurate?

19 A. Yes, it is.

20 Q. Paragraph 4 references an Exhibit A. Just to
21 save a few trees, I did not bring a copy of that with me
22 today. Is it your understanding that the information set
23 forth in Paragraphs 2 through 10 as well as the
24 information in your CV and that was provided to be
25 submitted with this declaration accurately sets forth all

1 of the training and qualifications that you have that
2 qualify you to render opinions stated in this Exhibit
3 2004?

4 A. Yes. As of the date of my curriculum vitae.

5 Q. Okay.

6 A. Which was probably a few months ago; two,
7 three months ago.

8 (Previously marked Exhibit 2004 (139) was produced.)

9 BY MR. SEARS:

10 Q. Okay. Let me hand you a document also marked
11 as Exhibit 2004, but this one in the 139 case. First,
12 let me ask you to take a minute to look at the case, No.
13 139, Exhibit 2004, is that a document that you're
14 familiar with?

15 A. Yes, it is.

16 Q. Is it a Declaration that you prepared to be
17 submitted on behalf of AutoAlert in the 139 case,
18 relating to the 791 patent?

19 A. That's correct.

20 Q. All right. It looks like Paragraphs 2 through
21 10 of Exhibit 2004 in 139 case are the same as Paragraphs
22 2 through 10 of Exhibit 2004 in the 132 case; is that
23 correct?

24 A. They are meant to be the same.

25 Q. All right. It was a single CV that was

1 submitted in connection with both declarations?

2 A. Yeah. It wasn't two copies of the same one,
3 yes.

4 Q. All right. Great. So, setting aside for a
5 moment the Exhibit 2004 from the 139 case, we'll come
6 back and talk about that in a minute, but let's start off
7 talking about Exhibit 2004 in the 132 case.

8 Looking at Paragraph 10 in that exhibit, that
9 is Exhibit 2004 in the 132 case, starting on the top of
10 page three, in connection with Carnegie Group 3, there's
11 a reference to financial data mining. Can you explain
12 what that is or was.

13 A. Do you want me to explain what Carnegie Group
14 is or what the specific financial data mining?

15 Q. Thank you for clarifying. The financial data
16 mining.

17 A. So, the financial data mining includes
18 consumer finance primarily, in other words loans and
19 credit cards. The purpose of the data mining was to
20 determine credit worthiness, and it was to determine
21 which financial instrument might be more beneficial for
22 the client.

23 Q. The client being Carnegie Group, or the
24 customer -- or the consumer, excuse me.

25 A. The consumer.

1 Q. All right. Then with respect to Citicorp,
2 there's another reference to financial data mining; do
3 you see that?

4 A. Yes.

5 Q. Can you explain what that financial data
6 mining was?

7 A. There was more than one type.

8 Q. Okay.

9 A. Do you want me to mention each type?

10 Q. Please.

11 A. Okay. So, my role there was as a technology
12 consultant for Citicorp over a period of years. It
13 included several technologies, one of which or maybe a
14 primary one of which was the financial data mining.

15 Within there, it included the consumer bank,
16 and the -- at that time they called it the corporate
17 bank. The names have, I think, evolved. That's not what
18 they're called now. Within the consumer one bank, it was
19 methods of determining who would be good customers for
20 the credit card division in order to expand the reach of
21 the credit card division, which customers to go after;
22 depending on their credit worthiness, depending on their
23 financial history, depending on their assets, depending
24 on their point of life, for example, transitioning
25 between student and professional.

1 Citibank was interested in capturing as much
2 of that transition as possible. Where they may not have
3 had a high income as a student, but they were about to
4 have high income, they wanted to be the first ones. So,
5 a lot of that data mining was how to better reach out to
6 consumers.

7 In the corporate side, it involved issues of
8 comparing interest rates, maturities of different loans
9 for different markets, including the middle market, that
10 being -- I guess you would call it middle size
11 corporations, to see which combination of loans would be
12 more beneficial. It also included the analysis of short
13 term investments versus loans as the cash flow would
14 evolve over time.

15 Companies have cash positive times and cash
16 negative times depending upon what payroll must be
17 reached or large purchases versus when the bulk of --
18 depending on the business, for example, consumer
19 purchases like around Christmas would come and that's
20 when there would be a surplus of cash and other times
21 there would be a dearth of cash. And so, the cash
22 management part, and the degree to which it was
23 beneficial for the companies to take out financial
24 instruments like loans for what period of time, and a
25 process called tiling that it can -- you probably don't

1 want to hear about it, but I could go into more detail.

2 Q. Is that tiling or titling?

3 A. No, tiling like ceramic tiles, but financial
4 dots instead of ceramic.

5 Q. A little bit further down, fourth line,
6 connecting with peak strategy; again, there's a reference
7 to financial data mining. Could you describe that?

8 A. Yes. It was extracting financial information
9 from text and other less conventional sources in order to
10 assess the financial status of companies or individuals
11 including high net worth individuals.

12 Q. What kind of text?

13 A. For example, the files, the SEC filings from
14 corporations and for individuals, there was less -- less
15 that could be done there. It had more to do with the
16 declarations that they would give when taking out some
17 large loan.

18 Q. Do you think the work you did for Carnegie
19 Group, Citicorp and Peak Strategy helps to qualify you
20 for the work that you're doing on behalf of AutoAlert?

21 MR. FULLERTON: Object to form.

22 THE WITNESS: To answer your question
23 literally helps to qualify me, yes.

24 BY MR. SEARS:

25 Q. All right. And how so?

1 A. Because it gives me direct experience to
2 supplement my academic knowledge of data mining and
3 financial instruments, direct experience in the corporate
4 world, including the consumer world in the first two of
5 these three regarding the different financial
6 instruments, and the decisions as to whether something --
7 some financial choice is favorable to the customers or to
8 the lending agency.

9 **Q. That's because to your understanding, the**
10 **AutoAlert patents, including the 461 and the 791 patents,**
11 **relate to financial instruments and financial choices?**

12 MR. FULLERTON: Object to form.

13 THE WITNESS: Essentially, yes.

14 BY MR. SEARS:

15 **Q. All right. In fact, to your understanding, do**
16 **the 461 and 791 patents relate to the financial data**
17 **mining?**

18 A. They certainly do, and in the context of
19 automobile or rather than some other types of loans.

20 **Q. To your understanding, the methods described**
21 **by the 461 and 791 patents, do they constitute a**
22 **financial product or service?**

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: They constitute in my opinion
25 primarily a sales device based on financial product or

1 service and financial analysis.

2 BY MR. SEARS:

3 Q. Looking at Paragraph 15 of this Exhibit 2004
4 from the 132 case --

5 A. Could you repeat the paragraph.

6 Q. Sure. Paragraph 15 on page four. This -- oh,
7 sorry. Are you there?

8 A. Yes. I was just checking whether it went to
9 the next page.

10 Q. So, that paragraph ends with a reference to
11 familiarity with automobile financing; do you see that?

12 A. Yes.

13 Q. All right. What degree of familiarity do you
14 think a person of ordinary skill in the art would have
15 had with automobile financing?

16 A. In my opinion they would need to understand
17 how the financing for automobiles works; in particular,
18 that there's more than one form, the primary form being a
19 loan with monthly payments, that comprise both principal
20 and interest. It would help if they were also familiar
21 with leasing as an alternative to the standard financing,
22 and it would help if they knew how to compute the cost,
23 the monthly cost of the financing based on the term and
24 the face value of the loan.

25 Q. All right. So, with regard to the different

1 forms of financing, one being a loan with monthly
2 principal and interest payments and another being
3 leasing, would a person of skill have to know more than
4 that, that there are those two types of financing
5 available?

6 A. So, first of all, to clarify the previous one,
7 I did not mean that those were the only types. I use
8 those as examples. There's balloon payment loans and
9 other forms as well.

10 To answer your question, yes, that, coupled
11 with understanding of the computer science to be able to
12 understand an algorithm for calculating the amount would
13 be, in my opinion, the level of understanding of
14 automobile financing that would be required.

15 Q. Exactly which forms of financing does a person
16 of skill need to be familiar with? Does the person need
17 to be familiar with the three that you mentioned; that
18 is, loans, leasing and balloon payments, or just some
19 sub-set of those, or those plus others?

20 MR. FULLERTON: Objection to form.

21 THE WITNESS: In my opinion, the person
22 would have to be familiar with at least one of them that
23 involved both interest and principal repayment, and from
24 that, they can easily pick up the other variants.

25 BY MR. SEARS:

1 Q. What type of familiarity is required with one
2 of those financing arrangements, just knowing the
3 algorithm for calculating the payments?

4 MR. FULLERTON: Objection to form.

5 THE WITNESS: Yes.

6 BY MR. SEARS:

7 Q. Okay. That algorithm, performing that
8 algorithm does not require performing it on a computer;
9 is that correct?

10 MR. FULLERTON: Objection to form.

11 THE WITNESS: Every single algorithm that
12 one could imagine could be computed in different ways.
13 It could be computed mentally, it could be computed by a
14 computer; however, in order to perform the method
15 accurately and sufficient number of times as -- well,
16 we're not discussing the patent yet -- the specific
17 number of times that would be required to analyze
18 different financing instruments in real-time, that would
19 require a computer.

20 BY MR. SEARS:

21 Q. All right. But just looking at a person of
22 ordinary skill in the art and what level of familiarity
23 with automobile financing is required, the person of
24 ordinary skill in the art, and again, just focusing on
25 the familiarity with automobile financing, the

1 familiarity with automobile financing need not extend to
2 how to program a computer to perform the calculation
3 algorithm, correct?

4 A. I do not agree with that.

5 Q. Okay. So, is your opinion that a person of
6 skill in the art, their familiarity with automobile
7 financing has to include knowledge of how to program a
8 computer to calculate payment amount?

9 A. If they have -- the short answer is yes. If
10 they have the computer science background, and if they
11 understand how these loans and repayment amounts, then
12 they would have all of the ingredients they need to know
13 how to program the computer to make that calculation.

14 Q. Okay. All right. So, the person of skill,
15 provided that person has at least a bachelor's degree in
16 computer science and computer engineering, in management
17 information -- sorry, or management information systems
18 or a related discipline, and also knows the algorithm for
19 calculating a payment amount, then that person will
20 thereby understand how to program a computer to perform
21 the algorithm.

22 Have I correctly stated your opinion in that
23 regard?

24 MR. FULLERTON: Objection to form.

25 THE WITNESS: Essentially, yes.

1 BY MR. SEARS:

2 Q. What sources are there for the algorithm for
3 calculating -- sorry, algorithms for calculating payment
4 amounts; do you know?

5 MR. FULLERTON: Objection.

6 BY MR. SEARS:

7 Q. That is to say --

8 MR. FULLERTON: Sorry.

9 BY MR. SEARS:

10 Q. If I don't know those algorithms, is there a
11 source I can go to to learn those algorithms?

12 MR. FULLERTON: Objection to form.

13 THE WITNESS: Yes. There are published
14 sources that would give them to you. You can use an
15 amortization table. The amortization tables do with the
16 length of the loan and the face amount and interest rate,
17 and then they tell you -- actually, they don't have the
18 face amount -- the length of the loan and the interest
19 rate, and then you multiply that by the face amount and
20 you get the payment amount for it.

21 BY MR. SEARS:

22 Q. All right.

23 A. Accounting books, and for example, the rule
24 continues, you can search for it in the web and find it
25 easily.

1 Q. So, again, with reference to Paragraph 15 of
2 your declaration, someone who has the requisite education
3 and experience in dealing with computers could acquire
4 the necessary familiarity with automobile financing just
5 by looking in an accounting text or searching the
6 internet to find algorithms to perform for calculating
7 payment amounts or just using an amortization table,
8 correct.

9 MR. FULLERTON: Objection to form.

10 THE WITNESS: I need to add a couple of
11 caveats to answer that in the positive.

12 BY MR. SEARS:

13 Q. Sure.

14 A. First of all, they need to know what are the
15 right questions to ask. They need to know that
16 amortization table is the right keywords to issue to a
17 search engine in order to find them, or they need to look
18 on the index of the accounting book for that, and they
19 also need to have the programming skills to take these
20 methods, produce the computer code that actually does the
21 calculation and outputs. With those caveats, the answer
22 to your question is yes.

23 Q. All right. All right. Let's turn to
24 Paragraph 23 of your declaration. Exhibit 2004 in the
25 132 case, that Paragraph 23 is on page eight.

1 So, the --

2 A. Would you permit me to read the paragraph.

3 Q. Oh, certainly. Sorry. Yes. Please read that
4 paragraph, and let me know when you've had a chance to do
5 that.

6 A. Thank you.

7 Q. So, the second sentence of this paragraph
8 begins, "The 461 patent specification and claims apply
9 the term 'realtime,' " in quotes, "to a number of
10 different processes."

11 Do you see that?

12 A. Yes.

13 Q. All right. Can you please identify every
14 process to which the 461 patent specification and claims
15 apply the term realtime?

16 A. From memory I can identify two, and I would
17 need to look at a patent specification to determine
18 whether there are more of them or not. One of them is --
19 the external process would be a person or a potential
20 client in the -- who has arrived at and identified
21 himself or herself in the dealer showroom, and the
22 realtime means making the necessary computations to
23 determine if there is a good sales opportunity; in other
24 words, a different vehicle that may be beneficial for the
25 person to purchase trade in the current vehicle.

1 And the real-time means that while that person
2 is there, before they leave, the computation is made and
3 delivered to the salesperson or to another representative
4 who then conveys it to the salesperson. A second would
5 be real-time in terms of retrieving the information from
6 external sources.

7 For example, financial sources about the
8 current rates, that would be available rates for
9 different customers. It could be the same rate for
10 everyone. It could depend on their credit worthiness.
11 It could depend on the loan amount, and it could depend
12 on the vehicle type and so forth.

13 So there's a lot of information that needs to
14 be retrieved in order to perform the subsequent
15 computations.

16 **Q. All right. So, the first process to which the**
17 **term real-time is applied in the 461 patent is a customer**
18 **arriving in a showroom, and computation and result**
19 **delivery being accomplished before the person leaves the**
20 **showroom; did I get that right?**

21 MR. FULLERTON: Objection to form.

22 THE WITNESS: Yes. That's essentially
23 right.

24 BY MR. SEARS:

25 **Q. All right. Then I wasn't sure I caught the**

1 full extent of the second step of the process. You
2 mentioned retrieving the information from the external
3 sources. Is that the entire process, retrieving
4 information from external sources. If it helps, by the
5 way, here is the 461 patent, which is marked as DS
6 Exhibit 1001.

7 MR. FULLERTON: Objection to form.

8 THE WITNESS: Okay. So, let me describe
9 the process, and if you want for the detail, I will look
10 at the spec to remind myself.

11 In order to generate the sales
12 opportunities; in other words, to generate for those
13 people for whom there may be a vehicle -- a new vehicle
14 that can be purchased at a rate that may be advantageous
15 to them compared to the current rate, this is the second
16 vehicle information, and the financing associated with
17 that second vehicle information or that may be associated
18 with it, requires the system to update, to generate
19 changed information, as it were, from previous older
20 information about the different financial providers and
21 the rates, the interest rates that they're charging, and
22 the terms, whether it's one year, 48-month, 60-month,
23 36-month, whatever loan, to calculate the -- to then
24 calculate the monthly payments and compare those payments
25 with the current payment.

1 In order to perform that calculation, it
2 requires the retrieval of all of this information in
3 real-time; in other words, while it's still -- the
4 information is still fresh so that when the calculations
5 are made, they're still valid and are delivered to the
6 salesman. It's all based on what's available now, not
7 what was available last week or last month or last year.

8 BY MR. SEARS:

9 Q. All right. So, the second process, just to
10 have a term to apply to it, would a good term be
11 real-time information retrieval?

12 A. Yes.

13 Q. Okay. Are you aware of any other processes to
14 which the 461 patent specification and claims apply the
15 term real-time?

16 A. I would need to review the specification, but
17 the calculation itself that follows the retrieval would
18 also need to be essentially in real-time.

19 Q. Do you know if the 461 patent -- or sorry, if
20 the 461 patent specification or claims apply the term
21 real-time to the calculation process?

22 MR. FULLERTON: Objection to form.

23 THE WITNESS: Are you asking whether they
24 explicitly apply that term, or whether --

25 MR. SEARS: Yes.

1 THE WITNESS: I do not know.

2 BY MR. SEARS:

3 Q. Turning to Paragraph 27 of your declaration in
4 Exhibit 2004 in the 132 case. That Paragraph 27 is on
5 page nine. Please take a minute to read that paragraph
6 and let me know when you've done so.

7 A. Yes.

8 Q. What is your basis for the statement in the
9 last sentence of that Paragraph 27 that the alert must be
10 generated in approximately an hour or less; what is your
11 basis for that time frame?

12 A. That is meant as an example, given that I was
13 informed that this is -- the duration of a visit to a
14 showroom is an hour or more.

15 Q. Okay. All right. So, you were told to assume
16 that a visit to a showroom takes an hour or more?

17 MR. FULLERTON: Objection to form.

18 THE WITNESS: Yeah. That is also
19 consistent with my experience having visited automobile
20 showrooms multiple times.

21 BY MR. SEARS:

22 Q. All right. How many times have you visited
23 automobile showrooms?

24 A. Dozens.

25 Q. For what purpose?

1 A. To purchase a car. Or to examine the cars in
2 order to see whether I wanted to purchase one.

3 Q. What do you drive?

4 A. Right now, a Camry hybrid.

5 Q. Who told you to assume that the average
6 dealership visit is an hour or more?

7 A. I don't remember.

8 Q. Was it one of the AutoAlert attorneys at
9 Knobbe Martens?

10 A. It may have been. I don't actually remember
11 where in the discussion this came up.

12 Q. With whom have you communicated about your
13 work for AutoAlert? And let's start with attorneys. I
14 assume you have communicated with attorneys at Knobbe
15 Martens relating to your work for AutoAlert; is that
16 correct?

17 MR. FULLERTON: Objection to form.

18 THE WITNESS: Yes, I have.

19 BY MR. SEARS:

20 Q. All right. Which attorneys?

21 A. David Jankowski, Dan Fullerton, Cheryl
22 Burgess, and there's at least one other attorney whose
23 name escapes me.

24 Q. Craig Summers?

25 A. It was the attorney that was present at the

1 code review. I really don't remember his name because I
2 only encountered him on that one occasion.

3 Q. Okay. And then what -- how extensive --
4 strike that. Let's start over.

5 What have the nature of your communications
6 been with Mr. Jankowski?

7 MR. FULLERTON: Objection. I'd like to
8 counsel the witness not to disclose any confidential
9 communications that would not otherwise be discoverable
10 under the Federal rules except to the extent the
11 communications formed the basis for one of your opinions.

12 THE WITNESS: So, the communications there
13 were on the -- originally on the nature of the case, and
14 understanding the business of AutoAlert, and
15 understanding the corresponding businesses of
16 DealerSocket and Dominion. Another company called
17 Dominion.

18 BY MR. SEARS:

19 Q. All right. So, your discussions with
20 Mr. Jankowski were background information?

21 A. There was some specifics to the case that I
22 think I should not be disclosing.

23 Q. Did you work with Mr. Jankowski on any of your
24 declarations either in the civil action or in the PTAB
25 proceedings?

1 A. Could you make the statement of work a little
2 more specific so I can answer correctly? Was it -- did
3 you mean just some discussion, yes.

4 **Q. Were there drafts of your declaration**
5 **exchanged with attorneys at Knobbe Martens?**

6 A. Yes.

7 **Q. With whom at Knobbe Martens did you exchange**
8 **drafts?**

9 A. With the different attorneys.

10 **Q. All right.**

11 A. When I exchanged the draft, I exchanged it
12 with the group.

13 **Q. Okay.**

14 A. Not just with one individual, typically.

15 **Q. Okay. That group typically included**
16 **Mr. Jankowski, Mr. Fullerton and Ms. Burgess?**

17 A. Correct.

18 **Q. As well as perhaps one other attorney?**

19 A. I would not know of the other attorneys also
20 reviewed or contributed or did anything else with respect
21 to these drafts.

22 **Q. Okay. Were you asked to make any assumptions**
23 **other than the length of a typical dealership visit?**

24 MR. FULLERTON: Objection to form.

25 THE WITNESS: That requires a little

1 thinking. I was asked to make the assumption that the
2 AutoAlert product and then the accused products are used
3 by automobile dealers for different types of vehicles in
4 different geographical locations.

5 BY MR. SEARS:

6 Q. All right. Now, just to clarify that, you
7 were asked to assume that each product is used for a
8 variety of vehicles in a variety of regions, or that one
9 product is used for one group of vehicles in regional
10 locations, and the other product is used for other
11 vehicles in other locations? Do you get the --

12 A. I get the distinction. It was the former.

13 Q. Okay.

14 A. And after seeing some of the information,
15 including quotes from dealers and so forth, that was all
16 consistent with that initial assumption.

17 Q. All right. Any other assumptions that you
18 recall being asked to make?

19 A. In the initial discussions, I asked about the
20 availability of all of the financial information online
21 from multiple providers, and that was essentially
22 confirmed.

23 Q. Okay.

24 A. I don't know if that counts as an assumption
25 or just a confirmation, since I asked the question as

1 opposed to them telling me to make that assumption.

2 **Q. Okay. And any other assumptions you were**
3 **asked to make?**

4 A. I asked questions about the operations of
5 automobile dealers, and I received some answers about
6 them.

7 **Q. All right.**

8 A. But I cannot think of any other explicit
9 assumptions I was asked to make. It is possible that I
10 was asked to make, but I'm not recalling at the moment.

11 **Q. All right. What information were you provided**
12 **with regard to how auto dealers operate?**

13 A. I was essentially told about the inventory of
14 vehicles that they keep. I was told about the incentives
15 that the manufacturers provide, although I was aware of
16 those before. I was provided additional detail. These
17 are financial incentives for certain vehicles or certain
18 periods of time.

19 And I learned a little bit more about the
20 servicing part, the dealers also provide service to the
21 automobiles after selling them.

22 **Q. Anything else?**

23 A. Probably was something else, but I cannot --
24 right now, I don't remember anything else.

25 **Q. Have you spoken with any AutoAlert employees,**

1 **either present or former?**

2 A. I believe there was one in one of the phone
3 calls in terms of explaining further of the AutoAlert
4 product functions.

5 **Q. And when was that phone call?**

6 A. That was early on in the case.

7 **Q. Was that in 2013, then?**

8 A. I do not recall the date, and that would be a
9 reasonable estimate.

10 **Q. All right. Would it have been before your**
11 **first declaration submitted in support of a motion for**
12 **preliminary injunction?**

13 A. Yes.

14 **Q. All right. Do you recall the name of the**
15 **AutoAlert employee?**

16 A. No.

17 **Q. All right. Any other communications with**
18 **AutoAlert employees -- again, either former or present?**

19 A. I do not believe so.

20 **Q. Have you spoken with anybody else other than**
21 **Knobbe Martens attorneys and AutoAlert employees about**
22 **your work for AutoAlert?**

23 A. Until you added that, I was going to answer
24 yes, until you added that last part. The answer is no.
25 Sorry. There is -- there was one more. There was a

1 person who participated in the code review with me. So,
2 that would be one person other than the set that you
3 mentioned.

4 Q. Which code review was that?

5 A. That was the DealerSocket code review.

6 Q. So, that was another expert?

7 A. Yes.

8 Q. So, you have not, for example, spoken with any
9 auto dealers about AutoAlert?

10 A. The way you're phrasing that question, the
11 correct answer is no, but the way you are phrasing the
12 question means that -- may imply that I have not spoken
13 to any other auto dealers, which I have.

14 In particular, when I was in the process of
15 purchasing my current vehicle, since this case was just
16 started, I grilled -- I guess grilled is exactly the
17 right word -- several of the auto dealers around
18 Pittsburgh, Rohrich Toyota, to the point that they were
19 wondering why I was asking so many questions about how
20 they operate. I was basically educating myself further
21 upon how auto dealerships work, but I did not mention
22 AutoAlert or DealerSocket or any aspect of the case.

23 So, that's why my answer, original answer, is
24 no, to the way you phrased the question is no.

25 Q. Right. But -- and I appreciate the

1 clarification.

2 Your point is that there was -- you did not
3 discuss AutoAlert with the dealers, but you did interview
4 dealers in connection with your work for AutoAlert; is
5 that fair?

6 MR. FULLERTON: Objection to form.

7 THE WITNESS: Well, I was in the market for
8 a vehicle, and so I used that opportunity to instruct
9 myself better upon how the dealers work. So, I was
10 basically doing both activities at once.

11 BY MR. SEARS:

12 Q. What, if anything, did you learn from that
13 process that has been useful to you in your work for
14 AutoAlert?

15 A. Some clarifications about how the dealers
16 determine whether a potential customer is a real -- real
17 one or just somebody doing window shopping; how they --
18 they are really are focused on financing at the instant
19 -- instant, that's the wrong word -- at the immediate
20 level. In other words, what the monthly payments would
21 be rather than focusing on the total cost of a vehicle,
22 which was instructive to me because I don't take auto
23 loans. I just buy the vehicle, but I learned that I'm
24 the exception, not the rule.

25 So, things like the AutoAlert or DealerSocket

1 product addressed the vast majority of the market. I was
2 not really aware of that until I asked the different auto
3 dealers and so forth.

4 Q. So, the focus on monthly payments that was
5 revealed or confirmed for you in that research process
6 was the focus of potential customers?

7 MR. FULLERTON: Objection to form.

8 THE WITNESS: Yes. It was the
9 understanding that the vast majority of potential
10 customers purchased the vehicles -- retail customers, I
11 should say. I don't know about fleets. Retail customers
12 purchased the vehicles in that manner; so, therefore,
13 that the product is quite relevant.

14 BY MR. SEARS:

15 Q. All right. Anything else come out of that
16 process that has been useful in your work prior to
17 learning, that process being grilling the auto dealers
18 around Pittsburgh?

19 A. I learned other things about auto dealers that
20 are not directly pertinent to this process like, for
21 example, that there are some star salesmen and
22 underperformers of significant variance in the
23 performance of the actual salesmen rather than all of
24 them being comparable. That is an example of some of the
25 things I learned that do not directly pertain.

1 MR. SEARS: Okay. All right. We have been
2 going about an hour. It's a good time, I will take a
3 break for a few minutes.

4 THE WITNESS: Okay.

5 MR. SEARS: All right.

6 (RECESS, 10:01 a.m. - 10:08 a.m.)

7 MR. SEARS: Back on the record.

8 BY MR. SEARS:

9 Q. Dr. Carbonell, continuing with Exhibit 2004
10 from the 132 case and looking now at Paragraph 28, it
11 goes over from page nine to page ten. Please take a
12 minute to review that and let me know when you are ready
13 to discuss it.

14 Actually, please conduct your review through
15 Paragraph 31.

16 A. Okay. Okay.

17 Q. All right. So, starting with Paragraph 28,
18 Paragraph 28 quotes in part line 1 from the 461 patent,
19 correct?

20 A. Yes.

21 Q. Then the last quoted clause in Paragraph 28
22 begins with, "In response to the configuration request."
23 Immediately following that appears the following,
24 "Retrieving in real-time changed information since past
25 changed information."

1 Do you see that?

2 A. Yes.

3 Q. What do you think that means?

4 MR. FULLERTON: Objection to form.

5 THE WITNESS: In the context of the claim
6 and the specification, it means that the information
7 relating to the vehicles, and in particular to the
8 financial terms that may be available for those vehicles,
9 changes periodically and over time. The financial
10 institutions such as banks and other lenders will offer
11 different terms over time, depending on changes in the
12 market, other factors. And so, this refers to retrieving
13 the updated or changed information.

14 BY MR. SEARS:

15 Q. What about the phrase, "Since past changed
16 information." Do you understand what that means, either
17 taking a loan or in conjunction with the bolded text,
18 "retrieving in real-time changed information."

19 MR. FULLERTON: Objection to form.

20 THE WITNESS: And in conjunction with the
21 rest of the claim in the spec, it means that the --
22 basically means what I said before, that the information
23 changes periodically. The information was retrieved. It
24 changed. It was retrieved again, it would change, and it
25 will be retrieved again, and it will change and so forth.

1 So, therefore, this is not constant
2 information or a variant information.

3 BY MR. SEARS:

4 Q. So, does this mean -- do you understand this
5 to mean that information is retrieved every time it
6 changes?

7 A. The claim language is silent in that
8 particular issue whether it retrieved when it changes or
9 whether it is retrieved periodically over time. The
10 specification favors the second reading periodically over
11 time, which means that new -- the information retrieved,
12 there's an expectation of a change or an update, but not
13 a guarantee of one.

14 Q. So, if information is retrieved periodically,
15 the information might or might not be changed
16 information, correct?

17 A. The information is new, and in each period,
18 the lenders have worked, as we pointed out earlier, with
19 the banks, which are the counter-party to the purchases
20 here. They provide new information periodically;
21 sometimes monthly, sometimes weekly, and sometimes even
22 more frequently than that, although weekly is, I believe,
23 for consumer information or consumer facing information,
24 weekly is the preferred or update cycle.

25 Q. What's your basis for that understanding that

1 the update cycle is weekly?

2 A. I work with Citibank and First USA and others
3 ones, and that's what they do.

4 Q. All right. So, when information is updated,
5 is it always changed?

6 A. Some of the information is always changed.
7 Not all of the information is always changed.

8 Q. All right. Is there always different
9 information week to week; that is to say, is it the case
10 that information retrieved in one week will always be
11 different from information retrieved in a subsequent
12 week?

13 A. Some of the information will always be
14 different. For example, the period of availability of
15 the financial terms.

16 Q. What do you mean by period of availability?

17 A. From the starting point and the ending point
18 of the financial terms that are being offered will be
19 changed every week.

20 Q. So, how long the offer is open for?

21 A. And when it starts, yes.

22 Q. Maybe you could -- would you mind flushing
23 that out with an example for me?

24 A. So, on Monday the bank can issue -- or the
25 lending organization can issue let's say for starting

1 Tuesday, for seven days the following terms are available
2 for home loan, for automobile loan, depending on the
3 credit worthiness and other conditions.

4 Q. Okay. So, if this coming Monday, February 9,
5 Citibank puts out information, and then the following
6 Monday February 16 puts out the same information relating
7 to automobile financing, they will at least be different
8 in this respect: The information given out on Monday
9 February 9 will say this is good from Tuesday, February
10 10th to Monday, February 16, whereas the information
11 given out on Monday, February 16, will specify that these
12 terms are good or these terms are available from Tuesday,
13 February 17th to Monday, February 23rd. Have I
14 accurately characterized that?

15 A. That is exactly right. There could be other
16 changed information as well, but it's at least that much.

17 Q. All right. Is that update cycle disclosed
18 anywhere in the 461 patent?

19 A. The 461 discloses a batch process that runs
20 periodically. I don't remember if it explicitly said
21 weekly, but it may have said so. I would need to check
22 and that would correspond to that update cycle.

23 Q. Does the 461 patent disclose that financial
24 institutions have a weekly update cycle?

25 A. I do not recall if it makes that explicit

1 disclosure or not.

2 Q. All right. You do not recall any such
3 disclosure; is that correct?

4 A. In this spec of the 461, is that right.

5 Q. Right. What about in the claims of the 461?

6 A. That's also -- also true.

7 Q. Okay. And the spec of the 791 patent?

8 A. Again, I do not recall if it makes the
9 disclosure of the periodicity or the typical periodicity
10 of the updates of the lending institutions provided.

11 Q. And likewise for the claims of the 791 patent?

12 A. Right.

13 Q. What about the prosecution history of the 461
14 patent?

15 A. To my recollection, the prosecution history
16 did not address explicitly the periodicity of the updates
17 from the financial institutions.

18 Q. What about the prosecution history of the 791
19 patent?

20 A. That would be the same answer.

21 Q. Okay. Do you know if every financial
22 institution has the same update cycle as Citigroup?

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: No. I do not know that. I
25 know that the ones I've had interactions with do, but no

1 idea if that's universal.

2 BY MR. SEARS:

3 Q. Looking at Paragraph 29 of your declaration,
4 Exhibit 2004 in the 132 case, that paragraph includes the
5 statement, "The term changed information is a reference
6 to the information retrieved by the computer system."

7 Do you see that?

8 A. Yes.

9 Q. All right. So, to your understanding does
10 changed information mean the same as information
11 retrieved by the computer system?

12 MR. FULLERTON: Objection to form.

13 THE WITNESS: In the context of the claim,
14 yes.

15 BY MR. SEARS:

16 Q. So, in the context of the claim, changed
17 information means retrieved information?

18 MR. FULLERTON: Objection to form.

19 THE WITNESS: Yes.

20 BY MR. SEARS:

21 Q. All right. Let's move forward in your
22 declaration, Exhibit 2004 in the 132 case to Paragraph
23 43. It begins on page 14. I'd like to ask you to look
24 through paragraph 43 through 45, and then also 60 through
25 67, and let me know when you are ready to discuss those

1 paragraphs?

2 A. So, you want me to read all of them now to
3 prepare for discussion?

4 Q. Yes. Thank you.

5 A. Okay. Could you remind me which paragraphs in
6 the 60 range you wanted me to read?

7 Q. 60 through 67.

8 A. Okay.

9 Q. All right. So, the paragraphs that you just
10 reviewed, Paragraphs 43 through 45, and 60 through 67,
11 lay out your analysis of what it means to determine
12 whether a change retrieved information may affect
13 favorability, and related to that, why that language is
14 not indefinite, correct?

15 MR. FULLERTON: Objection to form.

16 THE WITNESS: Yes.

17 BY MR. SEARS:

18 Q. All right. So, looking now at Paragraph 43,
19 that paragraph quotes Claim 1 of the 461 patent in full,
20 correct?

21 A. I believe it is in full, yes.

22 Q. All right. Then so, if we look at page 15,
23 starting with the bolded word that appears just a little
24 over halfway down the page, claim one recites,
25 "Determining whether the changed retrieved information

1 may affect whether it is favorable for the customer to
2 replace."

3 And then going down to four lines up from the
4 bottom of that page, the claim also recites, "Determining
5 if the one or more new payments satisfy at least a
6 condition."

7 And then flipping over to the top of page 16,
8 the second line refers to, "Determining whether the
9 difference is less than or equal to a preset, acceptable
10 threshold value."

11 On your analysis, all three of those
12 determinations are the same, correct?

13 MR. FULLERTON: Objection to form.

14 THE WITNESS: Although the determinations
15 are based on calculating at least two numbers; one
16 corresponds to the payments on the existing vehicle, one
17 corresponds to payments in the candidate or second
18 vehicle, calculate the difference, and determining the --
19 the whether magnitude of that difference is less than or
20 greater than the preset threshold value.

21 BY MR. SEARS:

22 Q. All right. I just want to make sure that I
23 followed that correctly.

24 So, all three of them, all three of those
25 determinations, I think you said, required calculating

1 two numbers: First, a payment for a replacement vehicle,
2 then the difference between the replacement vehicle
3 payment and the current vehicle payment. Correct so far?

4 A. Well, for --

5 MR. FULLERTON: Objection to form.

6 THE WITNESS: For at least one replacement
7 vehicle.

8 BY MR. SEARS:

9 Q. Okay. Then determining whether the magnitude
10 of that difference exceeds a preset, acceptable threshold
11 value?

12 A. Yes. Conversely, whether it's less than the
13 threshold value.

14 Q. So, how, if at all, do those three
15 determinations differ; that is, how does determining
16 whether changed retrieved information may affect
17 favorability determining whether new payments satisfy a
18 condition and determining whether the difference is less
19 than or equal to a preset, acceptable threshold value;
20 how, if at all, do those three determinations differ from
21 each other?

22 A. Each one provides more detail or a mechanism
23 for performing the calculation. First, it is stated more
24 generally, then more specifically based on the payments,
25 and then more specifically providing the actual

1 calculation and the comparisons to the preset value.

2 Q. So, the third determination is a more specific
3 statement of the first two determinations?

4 MR. FULLERTON: Objection to form.

5 THE WITNESS: Yes.

6 BY MR. SEARS:

7 Q. There is no difference between the
8 determinations, correct?

9 MR. FULLERTON: Objection to form.

10 THE WITNESS: There is one underlying
11 process that it's stated first in general terms, and then
12 it provides greater specificity, and then it provides the
13 additional specificity.

14 BY MR. SEARS:

15 Q. All right. So, that goes to the specificity
16 with which the determination is stated?

17 A. Yes.

18 Q. With regard to the determination itself, not
19 how it's stated, but the determination, is it correct
20 that under your analysis, all three of those
21 determinations are the same?

22 MR. FULLERTON: Objection to form.

23 THE WITNESS: My reading of this is that
24 the determination is introduced, then the ingredients of
25 the determination are provided, and they would be the two

1 payments, and then the calculation based on those
2 ingredients is stated.

3 So, you know, talking about the same
4 process, all three parts, but they are saying the same
5 thing about that process. Each one is providing greater
6 detail. So, I'm not sure whether that answers your
7 question or not.

8 BY MR. SEARS:

9 Q. Okay. Let's take a look at this language that
10 appears starting four lines from the bottom on page 15 of
11 your declaration.

12 As you interpret this claim, isn't it correct
13 that all of the text beginning with "determining" four
14 lines up from the bottom of page 15 --

15 A. Yes.

16 Q. -- and through the word "comprises" on the
17 last line of page 15, all of that text could be
18 completely removed without changing the claim, correct?

19 MR. FULLERTON: Objection to form.

20 BY MR. SEARS:

21 Q. That is, without claiming -- sorry -- without
22 altering what the claim describes, correct?

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: I would not remove it because
25 then it would be less clear what the difference is

1 between -- that is being stated in the subsequent clause.
2 So, it follows calculating the difference between one or
3 more payments, and that those payments come from the
4 financial terms; otherwise, it would be less clear where
5 those payments would come from. So, I think it adds
6 clarity.

7 BY MR. SEARS:

8 **Q. And what clarity does it add again?**

9 A. The subsequent mentions the periodic payments
10 for the vehicles. In this case it adds that those
11 periodic payments come from the financial terms
12 associated with those vehicles.

13 **Q. Isn't that information already provided by the**
14 **preceding clause, automatically calculating one or more**
15 **new payments derived from the first financial terms and**
16 **based on the second financial terms?**

17 A. Yes.

18 **Q. All right. So, again, the language that I**
19 **identified beginning with "determining" four lines from**
20 **the bottom of page 15 and ending with the word comprises**
21 **at the bottom of page 15, all of that could be omitted**
22 **from the claim on your read, correct?**

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: Yeah. If you are asking me
25 whether the person drafting these claims could have done

1 without that language or that fraction of the language
2 and still had the same meaning here, to me, that is
3 correct. I still believe that it adds some clarity by
4 connecting the financial terms of the vehicle to the
5 actual difference that is being calculated.

6 I am not saying it's necessary.

7 BY MR. SEARS:

8 Q. That same clarity is provided by the preceding
9 clause referencing the calculation of one or more new
10 payments, correct?

11 A. I think this second one also opens the door to
12 there being other components to the calculation. It's
13 based at least in part on the first financial and the
14 second one, rather than assuming it's necessarily the
15 totality.

16 Q. And then looking at page 15, again, on the --
17 at the clause that begins with the bolded word,
18 "determining"?

19 A. Yes.

20 Q. Could that entire four-line clause beginning
21 with "determining" and ending with "by at least" also be
22 removed on your interpretation of the claim?

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: That clause is doing, in my
25 opinion, other functions such as making it clear that

1 this is a calculation to determine whether the first
2 vehicle, which is also the existing vehicle, of the
3 customer is what is being replaced here.

4 And it also sets forth the language about
5 whether it is favorable that is then made explicit in the
6 subsequent part.

7 BY MR. SEARS:

8 Q. Does this clause also, as you put it, in
9 connection with the clause we were discussing earlier,
10 does this clause also clarify the possibility that other
11 considerations might also be factored into whether
12 replacement is favorable?

13 MR. FULLERTON: Objection to form.

14 THE WITNESS: I think as I read it, the
15 clause talks only about the financial terms, not whether
16 there could be -- it does not introduce additional
17 considerations that may or may not be present.

18 BY MR. SEARS:

19 Q. Does it open the door to other considerations?

20 A. I think it is silent.

21 Q. So, it's silent as to whether or not there are
22 other considerations?

23 A. If you look at that clause in isolation,
24 that's right.

25 Q. All right. If you look at it in the context

1 of the entire claim?

2 A. If you look at it in the context of the entire
3 claim, including the door being opened or at least left
4 ajar for the fact that there may be other ones, other
5 considerations beyond the current financial terms as
6 stated below, that would be consistent with that.

7 Q. So, right in the context of the claim, the
8 clause that begins with determining on page 15 of your
9 declaration does leave the door open to other
10 considerations factoring into whether replacement is
11 favorable?

12 Or, sorry, whether the favorability of
13 replacement may be affected.

14 MR. FULLERTON: Objection to form.

15 THE WITNESS: So, in my opinion, the claim
16 is focusing on the financial terms. The fact that there
17 could be other factors as well is -- is -- the door is
18 open for it, but it's somewhat orthogonal to the intent
19 of the claim. The claim is focusing on the financial
20 terms.

21 BY MR. SEARS:

22 Q. Discussing the clause that begins with
23 determining in bold on page 15, that introduces "may
24 affect whether it is favorable," that clause also serves
25 to introduce language that is then used in the second to

1 the last clause quoted in the claim on page 16, correct?

2 A. The second to the last clause of the claim or
3 of the --

4 Q. Yes. Of the claim.

5 A. Or of the subsequent limitation.

6 Q. So, I'm looking here at the part of the claim
7 that begins, "automatically generating a message"?

8 A. Okay. Yes. What I thought you were looking
9 at. That's correct. It ties the limitations together.

10 Q. So, that clause that's quoted on page 16 of
11 your declaration that begins "automatically generating a
12 message," it indicates that a message will be generated
13 if it is determined that the changed retrieved
14 information may affect favorability, and that a message
15 is not generated if it is determined that the changed
16 retrieved may not affect favorability, correct?

17 MR. FULLERTON: Objection to form.

18 THE WITNESS: That's correct.

19 BY MR. SEARS:

20 Q. All right.

21 A. Excuse me. That's correct.

22 Q. All right. Now, if we were to take -- looking
23 now at the immediately preceding clause, so the clause
24 that starts at the bottom of page 15 and continues over
25 to the top of page 16, the last part of that clause

1 references determining whether the difference is less
2 than or equal to a preset, acceptable threshold value."

3 Now, taking -- considering that language that
4 begins -- sorry. Let me just read in full the language
5 that I have in mine. I'd like you to focus on the
6 language, "The difference is less than or equal to a
7 preset acceptable threshold value."

8 Do you have that language in mind?

9 A. Yes.

10 Q. All right. Now, looking at the clause that
11 begins, "automatically generating a message." The phrase
12 that appears in there that begins, "the changed retrieved
13 information" -- I'm trying to short circuit this, but
14 that's not going to work out as well, so I'm going to be
15 a little bit more long-winded.

16 Could the phrase in the automatically
17 generating a message limitation that reads, "The changed
18 retrieved information may affect whether it is favorable
19 for the customer to replace the first vehicle and first
20 financial terms with the second vehicle and second
21 financial terms" be replaced with the language from the
22 preceding limitation, quote, "The difference is less than
23 or equal to a preset, acceptable threshold value."

24 MR. FULLERTON: Objection to form.

25 THE WITNESS: If it is properly read to

1 mean the same difference than was calculated above, that
2 is the difference between the corresponding financial
3 terms of the first vehicle and at least one second
4 vehicle, in my opinion, yes.

5 BY MR. SEARS:

6 Q. All right. Continuing in that automatically
7 generating a message limitation, could the language, "The
8 changed retrieved information may not affect whether it
9 is favorable for the customer to replace the first
10 vehicle and first financial terms with the second vehicle
11 and second financial terms," be replaced with "The
12 difference is not less than or equal to a preset,
13 acceptable threshold value."

14 MR. FULLERTON: Objection to form.

15 THE WITNESS: Once again, if it would read
16 that that is the same difference that was calculated
17 above, in other words, that difference is co-referential
18 to the earlier mentioned one, yes; otherwise, if it would
19 apply, there would be some new difference, then, no.

20 BY MR. SEARS:

21 Q. If those two substitutions were made in the
22 automatically generating a message limitation, then the
23 limitation quoted on page 15 that begins with the bolded
24 word determining, that entire limitation could be omitted
25 if those substitutions were made in the automatically

1 generating a message limitation, correct?

2 MR. FULLERTON: Objection to form.

3 THE WITNESS: So, first of all where does
4 that limitation start and where does it end?

5 BY MR. SEARS:

6 Q. Begins -- well, let me read it in full,
7 "Determining by the computer system whether the changed
8 retrieved information may affect whether it is favorable
9 for the customer to replace a first vehicle and first
10 financial terms with a second vehicle and second
11 financial terms by at least."

12 So, that limitation, I am proposing, could be
13 entirely omitted if the two substitutions that we just
14 discussed in the automatically generating a message
15 limitation were made.

16 Do you agree with that?

17 MR. FULLERTON: Objection to form.

18 THE WITNESS: Not entirely because it
19 would do away with the "at least" that, and it would
20 replace it by "only" the subsequent limitations.

21 BY MR. FULLERTON:

22 Q. So, it would not leave the door open?

23 A. Right.

24 Q. Okay. So, the only reason for having the
25 claim written the way it's actually written instead of as

1 I've suggested it could be rewritten is to leave the door
2 open to other considerations?

3 MR. FULLERTON: Objection to form.

4 THE WITNESS: So, with the caveat that I am
5 not claiming to be an expert on drafting and patent
6 claims, and so, there could possibly be some reason that
7 I am not inferring here; that's correct.

8 BY MR. FULLERTON:

9 Q. So, Dr. Carbonell, previously I handed you the
10 461 patent that. I believe you still have that in front
11 of you, correct?

12 A. Yes.

13 (Previously marked DS Exhibit 1001 was produced.)

14 BY MR. SEARS:

15 Q. I'm now handing you the 791 patent. Both of
16 them are marked DS Exhibit 1001. That's because one of
17 them was so designated in the 132 case and the other was
18 so designated in the 139 case. Now, a couple of
19 questions about the patents, the 461 and the 791 patents.

20 Does either the 461 patent or the 791 patent
21 disclose any computer hardware that was not conventional
22 as of 2002?

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: Could you clarify what do you
25 mean by conventional?

1 BY MR. SEARS:

2 Q. Yes. I'm not sure how. Give me just a
3 minute.

4 Dose either the 461 or 791 patent disclose any
5 advance in the state of the art with regard to computer
6 hardware in 2002?

7 MR. FULLERTON: Same objection.

8 THE WITNESS: Did you mean whether they
9 disclose some events that was not already previously
10 disclosed?

11 BY MR. SEARS:

12 Q. Yes.

13 A. They do not.

14 Q. Okay. Do they require -- sorry. Let me back
15 up. It will be useful for me just to be able to use
16 conventional as a shorthand?

17 A. Okay.

18 Q. So, let me give you some explanation of what I
19 have in mind when I use that term.

20 So, in saying that computer hardware was
21 conventional as of a certain date, I mean that it was
22 already known and in use. Is that --

23 A. That's fair.

24 Q. Okay. All right. So, going back to the
25 ground that we just covered, is it correct that the 461

1 patent does not disclose any computer hardware that was
2 not already conventional as of 2002?

3 MR. FULLERTON: Objection to form.

4 THE WITNESS: Okay. There's a couple of
5 embedded not in here.

6 BY MR. SEARS:

7 Q. Let me try it without. Let me try to weed
8 some of those out.

9 A. Yeah.

10 Q. Does the 461 patent disclose any computer
11 hardware that was not already conventional as of 2002?

12 A. It does not.

13 Q. Does the -- or sorry. Do the claims of the
14 461 patent require any computer hardware that was not
15 already conventional as of 2002?

16 A. So, the literal answer is no; however, they
17 can run on computer hardware that became available after
18 2002.

19 Q. With regard to the 791 patent, does the 791
20 patent disclose any computer hardware that was not
21 already conventional as of 2002?

22 A. That would be the same answer. It does not
23 require. It can run on computer hardware that became
24 conventional since that time. So, it can make use of
25 computer hardware that was not conventional by your

1 definition of conventional, as of 2002. It does not
2 require it. Or disclose it.

3 Q. Okay. What about programming? Does the 461
4 patent disclose or require any computer programming that
5 was not already conventional as of 2002?

6 MR. FULLERTON: Objection to form.

7 THE WITNESS: Do you mean programming
8 skills or programming languages, or do you mean the
9 specific software implementation of the methods disclosed
10 in the patents?

11 BY MR. SEARS:

12 Q. Let me try rewording the question. Could the
13 inventions claimed by the 461 patent be implemented using
14 programming languages and techniques that were already
15 conventional as of 2002?

16 A. Yes.

17 Q. Could the inventions claimed by the 791 patent
18 be implemented using programming languages and technique
19 that were already conventional as of 2002?

20 A. Yes. In both cases they disclosed new
21 methods, but those new methods could be implemented in
22 the programming languages and techniques that were
23 already available as of 2002.

24 Q. Does the 461 patent disclose any code, any
25 software code?

1 MR. FULLERTON: Objection to form.

2 THE WITNESS: I don't think I can answer
3 that in the affirmative or the negative. By disclosing
4 any software code, that could mean does it actually
5 provide the computer code as part of the specification,
6 and is that --

7 BY MR. SEARS:

8 Q. Yes.

9 A. -- is that --

10 Q. That's the question.

11 A. That's a good paraphrase of your question?

12 Q. Yes.

13 A. It does not.

14 Q. Does the 791 patent disclose any programming
15 code?

16 A. Again, by disclosing programming code, if you
17 mean does it actually provide the code as part of the
18 specification, the answer is no.

19 Q. All right. Does the 461 patent disclose any
20 programming techniques?

21 MR. FULLERTON: Objection to form.

22 THE WITNESS: So, I have in mind what
23 programming techniques means, and you have something in
24 mind by that same phrase. Can we make sure it's the same
25 thing?

1 BY MR. SEARS:

2 Q. And your understanding is likely to be more
3 refined than mine. So, would you mind just explaining
4 what you have in mind by programming techniques?

5 A. So, I have in mind general methods for
6 reducing algorithms to practicing computer code. For
7 example, object oriented programming, functional
8 programming. I could go -- I can be more elaborate, but
9 there's probably no need. Techniques that would be
10 taught to a computer science major or would -- or
11 advanced, at least, that would be taught in graduate
12 school and would be used by the major programming
13 companies or practitioners.

14 If that's what you mean also, then I can
15 answer your question.

16 Q. That is what I -- yes, let's use that
17 definition that you've given.

18 A. So, could you -- it's been a little while
19 since the question.

20 Q. Sure. Right. Does the 461 patent disclose
21 any programming techniques?

22 A. Given my definition of programming techniques,
23 it does not disclose any new programming techniques.

24 Q. All right. So, it does not disclose any
25 programming techniques that would have been new as of

1 2002?

2 A. That's not -- I do not --

3 MR. FULLERTON: Objection. Sorry.

4 THE WITNESS: I do not recall whether it
5 mentions existing programming techniques or not. It does
6 not disclose or invent new programming techniques.

7 BY MR. SEARS:

8 Q. All right. Does the same hold true of the 791
9 patent?

10 MR. FULLERTON: Objection to form.

11 THE WITNESS: Yes.

12 BY MR. SEARS:

13 Q. So, in your opinion the methods disclosed by
14 the 461 and 793 patents were new as of 2002?

15 A. Yes.

16 Q. You would agree that the inventions of the 461
17 patent consist in the application of conventional
18 hardware and conventional programming to an
19 unconventional end?

20 MR. FULLERTON: Objection to form.

21 THE WITNESS: Another as that goes, yes.

22 BY MR. SEARS:

23 Q. You would also agree that the inventions
24 claimed by the 791 patent consist in the application of
25 hardware and programming that were conventional as of

1 2002 to an unconventional end?

2 MR. FULLERTON: Same objection.

3 THE WITNESS: Yes. In both cases they
4 disclose steps and calculations and comparisons, so
5 forth. If that's what you mean by the unconventional
6 end, I agree.

7 BY MR. SEARS:

8 Q. Did you have a chance to review deposition
9 testimony given by Jeffrey Cotton?

10 MR. FULLERTON: Objection as to the scope
11 of the question.

12 BY MR. SEARS:

13 Q. Let me replace it with a better one.
14 Have you ever reviewed transcripts of
15 deposition testimony given by Jeffrey Cotton?

16 MR. FULLERTON: Objection. It's outside
17 the scope.

18 THE WITNESS: No.

19 BY MR. SEARS:

20 Q. Are you familiar with how Mr. Cotton described
21 the processes that he used prior to inventing the
22 AutoAlert system?

23 MR. FULLERTON: Objection, beyond the
24 scope.

25 THE WITNESS: I have not had these

1 discussions or other such communications with Jeffrey
2 Cotton, so I do not know.

3 BY MR. SEARS:

4 Q. All right. Has anyone ever described to you
5 what Mr. Cotton was doing before inventing the AutoAlert
6 system?

7 MR. FULLERTON: Same objection.

8 THE WITNESS: Only in a very general sense.

9 BY MR. SEARS:

10 Q. What has been explained to you with regard to
11 Mr. Cotton's pre-invention process or processes?

12 MR. FULLERTON: Objection, beyond the
13 scope.

14 THE WITNESS: Only with respect to the fact
15 that he was in the business, in the auto sales and
16 dealership business, that he believed there were sales
17 opportunities that were being missed, and that he was
18 looking to improve the process by adding automation and
19 by better seeking out the potential customers.

20 MR. SEARS: All right. Why don't we take a
21 break for a few minutes.

22 (RECESS, 11:09 a.m. - 11:20 a.m.)

23 MR. SEARS: Back on the record.

24 BY MR. SEARS:

25 Q. Dr. Carbonell, if I could ask you to get your

1 declaration in the 139 case, so Exhibit 2004 in the 139
2 case relating to the 791 patent, and turn if you would to
3 page 10. Then if you could also, if we want to bounce
4 back and forth a little bit, pick up the 791 patent and
5 turn to where the claims begin on column 24.

6 A. Okay.

7 Q. So, looking at your declaration in the 139
8 case, and in particular looking at Paragraph 29 on page
9 10, there's a reference to the two steps of automatically
10 retrieving various categories of information; do you see
11 that?

12 A. Yes. It's the beginning of the paragraph.

13 Q. Yes. Now, looking at the 791 patent, do the
14 claims in fact require or recite automatically retrieving
15 information?

16 A. Speaking about Claim 1, retrieving at least a
17 portion of customer information, first financial terms of
18 that customer for the first vehicle, and first vehicle
19 information, and then the next limitation, retrieving at
20 least a portion of second vehicle information, and so
21 forth.

22 Q. All right. So, do the claims require that
23 that retrieving be done automatically?

24 MR. FULLERTON: Objection to form.

25 THE WITNESS: It says -- I don't know if

1 that's part of the preamble or not, and that's -- well,
2 the method comprising is part of the preamble. By a
3 computer system comprising computer hardware.

4 BY MR. SEARS:

5 Q. All right. Let's also try to fold into the
6 next the 461 patent. If you could also turn to column 24
7 of the 461 patent.

8 Now, if you look at Claim 1 of the 461 patent,
9 it does reference automatically retrieving information,
10 correct?

11 A. Yes, it does.

12 Q. All right. Going back now to your 139 case,
13 declaration, if you look at Paragraph 27, it references
14 the 461 patent. If you look at Paragraph 28, it
15 references the 461 patent. If you look in Paragraph 29,
16 it references automatically retrieving information, which
17 is recited in the 461 patent, but not the 791 patent.

18 Is it fair to say that Paragraphs 27 through
19 33 of your declaration in the 139 case do not in fact
20 pertain to the 791 patent?

21 A. No. I think it applies equally well to the
22 791 patent.

23 Q. Okay. Okay, let's look at what I said about
24 the paragraphs applying equally to both patents, and then
25 we can discuss them in connection with both patents.

1 Before we do that, I would ask to you take a look at your
2 declaration in the 132 case and look at Paragraphs 68
3 through 74 of that declaration.

4 And my preliminary question for you, and take
5 the time you need to look at the document, but it appears
6 to me that Paragraphs 68 through 74 of your 132 case
7 declaration are the same as Paragraphs 27 through 33 of
8 your 139 case declaration.

9 A. That is correct. In the 139, it should have
10 mentioned the 391 instead of the 461, but the statements
11 are still correct.

12 Q. Okay. So, we can -- just to streamline
13 things, we can talk about Paragraphs 27 through 33 in the
14 139 case declaration, and everything said there will
15 apply equally to both patents, both the 461 and the 791
16 patent, correct?

17 A. I checked the first three paragraphs. Now,
18 you're going all the way to 33, so let me check that as
19 well.

20 Q. Sure.

21 A. Okay. So, up through 33 in the 139 and up
22 through 74 in the 132, they apply equally.

23 Q. So, given that, what we'll do is we'll just
24 talk about Paragraphs 27 through 33 in the 139 case
25 declaration understanding that what you say there applies

1 equally to Paragraphs 68 through 74 of the 132 case
2 declaration and applies equally to both patents; is that
3 fair?

4 A. For this -- for this section, yes.

5 Q. Okay. So, Paragraph 29 of the 139
6 declaration, second sentence in that paragraph says that
7 some of the information is typically located in disparate
8 third party sources; do you see that?

9 A. Yes.

10 Q. Do the claims require that? That is, do the
11 claims of either the 461 or 791 patent require that the
12 information be located in disparate third party sources?

13 A. They require retrieving the information, for
14 example, about the second vehicle financing terms
15 regardless of where they are.

16 Q. Okay. So, the claims do not require that the
17 information be located in disparate third party sources,
18 correct?

19 A. No. That's typically where the information is
20 located. The terms require finding that information,
21 retrieving that information.

22 Q. But do the claims require that the information
23 be located in disparate third party sources? That is,
24 setting aside where the information may in fact be
25 located, do the claims require going to disparate third

1 party sources?

2 A. The terms require getting that information
3 regardless of where it is.

4 Q. Okay. Which may or may not be in disparate
5 third party sources or rather without regard to whether
6 they are in disparate third party sources?

7 MR. FULLERTON: Objection to form.

8 THE WITNESS: The latter, yes.

9 BY MR. SEARS:

10 Q. Looking now at Paragraph 31 of your 319 case
11 declaration, that paragraph refers to repeated retrieval
12 of the underlying information; do you see that?

13 A. Yes.

14 Q. All right. Do the claims of either of 461 or
15 791 require repeated retrieval of the underlying
16 information?

17 A. The specification provides for the periodic
18 retrieval of the information, periodic repeated -- or in
19 this context mean the same thing, and in order to perform
20 the calculations, you need to have the up-to-date
21 information which, if you are going to be executing or
22 practicing Claim 1, that requires the repeat.

23 Q. So, what is it in Claim 1 of the 461 patent
24 that requires repeated retrieval of information?

25 A. Both of the automatically retrieving steps,

1 especially the second one, since the second vehicle
2 information will change over time, when second vehicles
3 are available, what the prices are, what the financing
4 terms may be, and so forth.

5 Q. So, it's your testimony that Claim 1 of the
6 461 patent, in the particular delimitation that runs from
7 column 24, line 44, to column 24, line 46, it's your
8 testimony that that limitation requires repeated
9 retrieval of the underlying information?

10 MR. FULLERTON: Objection to form.

11 THE WITNESS: It's my testimony that in
12 order to be practicing that claim, it so requires, yes.

13 BY MR. SEARS:

14 Q. Okay. So, my question is: With regard to the
15 claim, what limitation or limitations in the claim
16 require repeated retrieval of the underlying information?

17 A. As I just said, that in order to practice that
18 claim, it requires the up-to-date information, and so, if
19 the information has not been retrieved very recently, it
20 requires a repeat of the retrieval -- re-retrieval of
21 that information.

22 Q. How many times must information be retrieved
23 in order to practice the invention in Claim 1 of the 461
24 patent?

25 A. Sorry. I don't quite understand what you are

1 asking.

2 Q. So, in Paragraph 31 of your declaration, you
3 reference the step of retrieving changed information?

4 A. Yes.

5 Q. And sorry. Let me back up on one thing here.

6 So, Paragraph 31 of your declaration says that
7 the step of retrieving changed information requires the
8 computer to perform a retreated retrieval.

9 So, is it the limitation that begins on column
10 24, line 49, and runs to line 55 of the 461 patent, is it
11 that limitation that requires a repeated retrieval?

12 A. It requires repeated retrieval each time the
13 configuration request is issued.

14 Q. Okay. So how many times must information be
15 retrieved in order to practice the invention of Claim 1
16 of the 461 patent; that is, what is the smallest number
17 of iterations of information retrieval required in order
18 to practice Claim 1 of the 461 patent?

19 A. Normally, this would be repeated over and
20 over, and the minimal number, I would say, two.

21 Q. Does the same hold true of every claim of the
22 461 patent; that is, is there any claim of the 461 patent
23 that requires more than two iterations of information
24 retrieval?

25 A. If you would permit me to review the claims.

1 **Q. Certainly.**

2 A. The claims dependent on Claim 1 of the same
3 answer applies as for Claim 1.

4 **Q. All right.**

5 A. Claim 7 is somewhat better formatted, but...
6 no, the same also applies for Claim 7.

7 **Q. All right, so...**

8 A. And its dependent claims.

9 **Q. All right. So, none of the claims of the 461**
10 **patent require more than two iterations of information**
11 **retrieval in order to practice what is claimed which**
12 **those claims, correct?**

13 A. Normally, the way that these would be applied
14 is that it would retrieve the information from multiple,
15 different financial providers of financial services, and
16 multiple, different vehicles or providers of vehicles of
17 their own inventory or maybe another dealer in the same
18 chain.

19 So, the normal operation, this would be
20 repeated over and over and over and over again.

21 **Q. But in terms of what the claims required, the**
22 **bare minimum required in order to practice the claims of**
23 **the 461 patent, is it the case that no more than two**
24 **iterations of information retrieval are required to**
25 **practice any claim with the 461 patent?**

1 A. The claims themselves do not require more than
2 that.

3 Q. Okay. What about the 791 patent; do any
4 claims of the 791 patent require more than two iterations
5 of information retrieval in order to practice what is
6 claimed there?

7 A. The same answer applies.

8 Q. All right. So, my question was do any claims
9 of the 791 patent require more than two iterations of
10 information retrieval in order to practice what is
11 claimed. You said the same answer applies. I think the
12 answer to the question is no?

13 MR. FULLERTON: Objection to form.

14 BY MR. SEARS:

15 Q. Is that the answer that you meant applies?

16 A. I meant the entire answer is the same. That's
17 not a -- a normal operation would be multiple retrievals
18 or some significant value of multiple, but that the claim
19 language itself does not require more than two.

20 Q. Thank you. Looking at Paragraph 31 of your
21 declaration --

22 A. Of which declaration?

23 Q. Sorry. Thanks for asking. The 139 case
24 declaration.

25 A. Paragraph 29, you said?

1 Q. 31.

2 A. Okay.

3 Q. So, four lines up from the end of this
4 paragraph, you reference financial lenders perhaps not
5 permitting manual retrieval of information.

6 Do you know if the information required for
7 practicing the inventions claimed by the 461 and 791
8 patents, was that information made available by lenders
9 before AutoAlert?

10 MR. FULLERTON: Objection to form.

11 BY MR. SEARS:

12 Q. If it helps to add a time with this date,
13 let's just say as of 2002. So, 2002 or before, did
14 lenders provide the information that is required to
15 practice the methods of the 461 and 791 patents otherwise
16 than via a computer?

17 MR. FULLERTON: Same objection.

18 THE WITNESS: So, I cannot answer for all
19 of the lenders because I do not know. The big lenders
20 provided that information electronically. That would be
21 by a computer.

22 BY MR. SEARS:

23 Q. All right. In 2002 they provided it
24 electronically?

25 A. Yes.

1 Q. Did they ever at any point prior to 2002
2 provide it otherwise than electronically?

3 A. I would surmise that would have been true, but
4 I did not work with them at the time when they basically
5 dealt with everything in pencil and paper.

6 Q. Okay.

7 A. They existed before computers existed.

8 Q. And they provided information before computers
9 existed?

10 MR. FULLERTON: Objection to form.

11 THE WITNESS: I do not know what type of
12 information.

13 BY MR. SEARS:

14 Q. All right.

15 A. So, I do not know, for example, whether they
16 provided information for loans at different periods of
17 time for repayment, and for specific vehicles and things
18 like that like they do now.

19 Q. Did they provide information about rates?

20 MR. FULLERTON: Objection to form.

21 THE WITNESS: They must have -- again, I am
22 surmising here because I do not have firsthand
23 experience, but they must have provided information about
24 rates. It may not have been -- it probably was not the
25 full panoply that they're providing now that permits

1 these comparisons.

2 BY MR. SEARS:

3 Q. Paragraph 32 of your 139 case declaration
4 references the large number of mathematical calculations.
5 Do you see that?

6 A. Yes.

7 Q. All right. What is the minimum number of
8 calculations required by any of the claims of the 461
9 patent? Let me try to complicate that question a little
10 bit, but hopefully not too much.

11 Which claim of the 461 patent requires the
12 most calculations?

13 MR. FULLERTON: Objection to form.

14 THE WITNESS: I would have to see whether
15 the dependent claims add additional calculations on top
16 of the independent claims, which I am much more familiar
17 with.

18 BY MR. SEARS:

19 Q. So, why don't you take a minute to look
20 through the claims, and then also look through the claims
21 of the 791 patent. And once you've had a chance to do
22 that, the two questions will be: Which claim in each
23 patent requires the most calculations, and how many
24 calculations does that claim require?

25 MR. FULLERTON: Objection to form.

1 THE WITNESS: I believe that dependent
2 Claim 5 and corresponding system claim, dependent claim,
3 and there's an equivalence claim on the 461, which would
4 be -- it's also a dependent Claim 5 in the method claims
5 section probably requires the most calculations.

6 BY MR. SEARS:

7 Q. So, with regard -- so, first just to make sure
8 I got your answer, dependent Claim 5 of the 461 patent
9 and dependent Claim 5 of the 791 patent are the claims in
10 those patents that require the largest number of
11 calculations; correct?

12 A. The corresponding system dependent claims.

13 Q. All right. So, with regard to Claim 5 of the
14 461 patent, what is the corresponding system claim?

15 A. Sorry. What -- could you repeat the question?

16 Q. Sure. With respect to Claim 5 of the 461
17 patent, what is the corresponding system claim?

18 A. I'm sorry. There isn't a directly
19 corresponding system claim. Let me rephrase that and say
20 that it would be the one that would be probably required
21 the most computation on the systems claim would be Claim
22 9, but that does not directly correspond to dependent
23 Claim 5.

24 Q. Okay. So, with regard to the method claims in
25 the 461 patent, Claim 5 requires the largest number of

1 computations, correct?

2 A. Yes.

3 Q. With regard to the system claims in the 461
4 patent, Claim 9 requires the largest number of
5 computations, correct?

6 A. That's correct.

7 Q. And then with regard to the 791 patent and the
8 method claims in particular, Claim 5 requires the largest
9 number of computations, correct?

10 A. Yes.

11 Q. And with regard to the system claims in the
12 791 patent, Claim 7 requires the largest number of
13 computations, correct?

14 A. Yes.

15 Q. All right. So, with regard to the 461 patent,
16 and Claim 5 in particular, how many calculations does
17 that require? I'll warn you, my follow-up question would
18 be what calculations are they, so if it helps in your
19 answer to recite what they are, that gets us to the same
20 place.

21 MR. FULLERTON: Objection to form.

22 THE WITNESS: So, there are retrieval
23 calculations, extraction calculations, and numerical
24 calculations.

25 BY MR. SEARS:

1 Q. All right. One moment. So, there's retrieval
2 calculations, extraction calculations, and then numeric
3 calculations?

4 A. Numeric calculations.

5 Q. All right. What are the retrieval
6 calculations required by Claim 5 of the 461 patent?

7 A. That requires retrieving the information from
8 the first vehicle. So, it's identifying the first
9 vehicle, looking up the properties of the first vehicle,
10 things like model number, day of purchase, so forth, the
11 financial terms of that vehicle, the amount of the loan,
12 the outstanding amount of the loan, the current equity in
13 the vehicle, maybe positive or negative, the monthly
14 payments in that vehicle, the interest rate and so forth,
15 and then corresponding information about the second
16 vehicle, and that would be also augmented by which
17 financial terms could be available to the customer.

18 So that retrieval would also include
19 calculations based on the credit worthiness of that
20 customer. Since the financial terms available to a
21 customer are dependent on the vehicle and dependent on
22 the length of time, depending on the what the financial
23 institution is currently offering and are dependent on
24 the credit worthiness or the financial strengths of the
25 person who is taking out the loan.

1 **Q. All right. And then with regard to**
2 **extraction?**

3 A. So, it with regard to extraction, the
4 information that comes from the bank or from the
5 financial institution typically comes bundled. It is in
6 a -- it can come in different ways. It can come into,
7 for example, in a comma separated or space separated VMS
8 file. Whichever way it does it, the patent does not
9 require any specific format. The information that is
10 requested must be extracted from that, and then assigned
11 to variables or parameters, and it can then be used
12 later, for example, in the configuration request and in
13 the other subsequent calculations.

14 **Q. All right. Then the numeric calculations.**

15 A. The numeric calculations would be for the
16 first vehicle. The numeric calculations are already --
17 have already been done. It's just a retrieval for the
18 second vehicle. You would have to look at the price of
19 the vehicle, the amount of the loan, the actual amount of
20 principle and interest depending on the period of time.

21 So, you would have to use the amortization
22 table or the formulas that basically calculate that
23 amortization, multiplied by the amount of the loan, and
24 then be able to do the comparison between the residual --
25 you're also doing a comparison on the equity of the

1 vehicle, but the primary comparison is based on the
2 monthly payments of that second vehicle, typically there
3 would be many second vehicles, against the monthly
4 payments of the current ones, then comparing that --
5 calculating that difference, comparing it against the
6 preset threshold, or if there's more than one preset
7 threshold, for each one of the preset thresholds and then
8 inserting those -- the results of those numerical
9 calculations into the right fields in the message, if the
10 -- if the preset threshold calculation is favorable, and
11 stopping there if it isn't.

12 Q. All right. What is the -- you mentioned the
13 credit worthiness calculation. What is that? What's
14 entailed in that? What's required for that?

15 MR. FULLERTON: Objection to form.

16 THE WITNESS: That would require retrieving
17 the credit worthiness from the credit bureaus for that
18 particular person, that the credit bureaus output
19 different kinds of information, the primary one would be
20 just a numerical rating, and that numerical ID rating
21 then is compared to the thresholds that the financial
22 institution says that this rate is open for people whose
23 numerical rating is this value or above for this rating
24 agency, this value or above for that rating agency, this
25 value and above for another, for typically three

1 primarily rating agencies, and then actually seeing which
2 one the person actually qualifies for and going back and
3 extracting the ones that they qualify for and not
4 extracting the ones they do not qualify for.

5 BY MR. SEARS:

6 Q. You made reference to an equity comparison.

7 A. Yes.

8 MR. FULLERTON: Objection to form.

9 THE WITNESS: So, that depends on whether
10 the person has positive or negative equity in the current
11 vehicle. So that gets into account that -- it is taken
12 into account in the -- if they're selling, then, the
13 secondary vehicle, they could have negative equity, and
14 it costs them money in selling, where if they have
15 positive equity, they get that money back.

16 BY MR. SEARS:

17 Q. So, the equity positive or negative is an
18 input into the payment calculation for the second
19 vehicle, correct?

20 A. That's right. Because they have to pay more
21 if they have negative equity. They have to pay less if
22 they -- it's just an adjustment.

23 Q. But there's not a direct comparison to your
24 understanding made between equity and something else,
25 it's just whatever the equity is gets folded into the

1 **second vehicle calculation?**

2 MR. FULLERTON: Objection to form.

3 THE WITNESS: It can be done. It needs to
4 be taken into account. The easiest way is to fold it in
5 directly. There are other ways that are a little more
6 complicated that you pay off the negative equity now, and
7 simplifies the calculation going forward.

8 BY MR. SEARS:

9 **Q. All right. Why did you identify Claim 5 of**
10 **the 461 patent as the one requiring the highest number of**
11 **calculations or the largest number of calculations?**

12 A. Because it requires all of the calculations
13 that we just described in a plurality of possible
14 different time periods.

15 So, if we take either 24-month repayment, 36,
16 or 48 or 60 month and so forth, Claim 5 requires
17 performing those calculations for the different time
18 periods. It's a multi-duplicative affect to the number
19 of calculations.

20 **Q. Could the method of the Claim 5 of the 461**
21 **patent be done by a human being without using a computer?**

22 MR. FULLERTON: Objection to form.

23 THE WITNESS: No.

24 BY MR. SEARS:

25 **Q. Why not?**

1 A. It requires all of the steps in Claim 1, which
2 requires doing all of those electronic retrievals of
3 information, and it requires the computer to computer
4 communication.

5 Q. Okay. So, if we consider -- let's start with
6 Claim 1 of the 461 patent. Better yet, let's start with
7 Claim 1 of the 791 patent.

8 So, setting aside the "by a computer system
9 and comprising computer hardware limitation" that appears
10 at column 24 line 40, setting aside the, "in response to
11 the configuration request" that that appears at column 24
12 line 49, and setting aside the "by the computer system"
13 that appears in column 24, line 56, could what remains of
14 the method be performed by a human being without using a
15 computer?

16 MR. FULLERTON: Objection to form, and
17 relevance.

18 THE WITNESS: Okay. So, to clarify, you're
19 saying suppose that there was a hypothetical claim?

20 BY MR. SEARS:

21 Q. Yes.

22 A. That was missing at least those three
23 elements?

24 Q. Yes. And I'm sorry, I should have also added
25 the "receiving a configuration requests" that appears at

1 line 24 -- sorry, column 24, lines 47 to 48. So, let me
2 again recite what we would be setting aside.

3 So, what we would be setting aside is the "by
4 a computer system comprising computer hardware" at column
5 24, line 40. We would set aside "receiving a
6 configuration request for replacing the first vehicle of
7 the customer with a different vehicle" that appears at
8 column 24, lines 47 to 48. We would set aside "in
9 response to the configuration request" that appears at
10 line 24, line 49, and we would remove "by the computer
11 system" from column 24, line 56.

12 So, yes, a hypothetical claim derived from
13 Claim 1, by making those excisions, could that method be
14 practiced by a human being without using a computer?

15 MR. FULLERTON: Objection to form and
16 relevance.

17 THE WITNESS: Okay. So, if you do not
18 receive the configuration request or the results from the
19 configuration request is unclear, how you could perform
20 the subsequent steps?

21 BY MR. SEARS:

22 Q. Why is that? What do you need from the
23 configuration request in order to perform the subsequent
24 steps?

25 A. The configuration request is what permits you

1 to identify the vehicles; for example, the second
2 vehicles and their financial terms associated with them.
3 So, you can't excise something without substituting
4 something else for it that would enable or permit the
5 other steps to take place.

6 Q. All right. So, let's talk about the
7 configuration request. Could a person receive a
8 configuration request without using a computer?

9 MR. FULLERTON: Objection to form and
10 relevance.

11 THE WITNESS: The term configuration
12 request was created in the context of computer science to
13 mean, as I mentioned in I think earlier declarations, to
14 mean either one of two things: How different computer
15 modules would be set up to communicate with each other,
16 or a set of parameters for a computer system to operate
17 on. It's the latter one in this case, in this context.
18 BY MR. SEARS:

19 Q. Okay. So, could a human being receive a set
20 of parameters without a computer?

21 MR. FULLERTON: Objection to form and
22 relevance.

23 THE WITNESS: A human being receive a set
24 of parameters, yes.

25 BY MR. SEARS:

1 **Q. Okay.**

2 A. But the parameters that would need to be used
3 to retrieve the information is in the computer database
4 that contains the information about the vehicles and the
5 financial terms.

6 **Q. All right.**

7 A. So the computer comes back in.

8 **Q. Where does the computer come back in?**

9 A. To perform the retrieval or the access to the
10 vehicle information and the financial information.

11 **Q. So, vehicle information and financial**
12 **information cannot be retrieved without a computer; is**
13 **that your testimony?**

14 MR. FULLERTON: Objection to form.

15 THE WITNESS: Not if it lives in the
16 database.

17 BY MR. SEARS:

18 **Q. Okay. Does the vehicle information and**
19 **financial information live anywhere besides a computer**
20 **database?**

21 MR. FULLERTON: Objection to form.

22 THE WITNESS: I don't know if it does in
23 any way that would be accessible to a dealer or anybody
24 else.

25 BY MR. SEARS:

1 **Q. Did it ever so exist?**

2 MR. FULLERTON: Same objection.

3 THE WITNESS: We're going back to our
4 earlier discussion, pre my engagement with the financial
5 institutions, it may have.

6 BY MR. SEARS:

7 **Q. It must have?**

8 A. I'm saying it may have.

9 MR. FULLERTON: Objection to form.

10 THE WITNESS: I basically have not observed
11 it directly, so I cannot state one way or the other.
12 Banks and financial institutions did operate prior to
13 computers.

14 BY MR. SEARS:

15 **Q. Were cars sold prior to computers?**

16 MR. FULLERTON: Objection to form.

17 THE WITNESS: Yes, they were.

18 MR. SEARS: All right. Let's go off the
19 record for a minute.

20 (Off the record.)

21 (RECESS, 12:08 p.m. - 1:01 p.m.)

22 MR. SEARS: Back on the record.

23 BY MR. SEARS:

24 **Q. Dr. Carbonell, just for clean-up, if I could**
25 **ask you to go back to your Declaration in the 132 case,**

1 and looking specifically at page ten. And this is, I
2 guess, just more a reference point than anything else,
3 but is it correct that in your opinion, provided
4 information is retrieved at least weekly, it is retrieved
5 in real-time; is that your opinion?

6 MR. FULLERTON: Objection to form.

7 THE WITNESS: Retrieving in real-time means
8 retrieving in a fashion that is as fast or faster than
9 the external process and changes that information or that
10 consumes that information. So, since the -- if the
11 information is updated weekly, which to my knowledge it
12 is, that would be the correct reading for real-time,
13 changing it.

14 BY MR. SEARS:

15 Q. Okay. Information that is retrieved more
16 frequently than weekly is retrieved in real-time, in your
17 opinion?

18 A. Yes. Absolutely.

19 Q. Okay. So, looking at this limitation quoted
20 on page ten, "In response to the configuration request,
21 retrieving in real-time changed information since past
22 information," that is satisfied by any information
23 retrieval that is more frequent than weekly; is that
24 correct?

25 MR. FULLERTON: Objection to form.

1 THE WITNESS: That each time that the
2 retrieval is done, it concludes well before the
3 information -- the information gets stale long before a
4 week. There's two aspects here; how fast the information
5 retrieval happens, and then how often it happens.

6 BY MR. SEARS:

7 Q. Okay. All right.

8 A. They both have to be in real-time. So, that
9 means that the information has to be -- in order to be
10 up-to-date, it has to be retrieved at least weekly, and
11 the retrieval process has to be fast, also.

12 Q. All right. How fast?

13 A. Again, at least weekly. Practice is much
14 faster than --

15 Q. All right. So, provided that you have an
16 information retrieval process that takes less than a week
17 to perform, and is performed at least weekly -- sorry, is
18 performed more frequently than weekly, that would satisfy
19 the limitation?

20 MR. FULLERTON: Objection to form.

21 THE WITNESS: Weekly would satisfy.

22 BY MR. SEARS:

23 Q. What if it's more frequently than weekly?

24 A. That would also satisfy.

25 Q. Okay. But if information is retrieved more

1 frequently than weekly, it might not be changed, correct?
2 It might not -- sorry, now that I botched up the
3 question, let me just try and state it again.

4 So, if information is retrieved more
5 frequently than weekly, the information might be
6 unchanged?

7 MR. FULLERTON: Objection to form.

8 THE WITNESS: That is true. There's no
9 need to retrieve the information more frequently than its
10 update period. So, in practice you would not -- there
11 would be no point to retrieving unchanged information.

12 BY MR. SEARS:

13 Q. But if you do have an information retrieval
14 process -- well, let me ask this: The information
15 retrieval processes taught by the 461 and 791 patents, do
16 they include any distinction between changed and
17 unchanged information?

18 MR. FULLERTON: Objection to form.

19 THE WITNESS: I'd have to check the
20 corresponding claim language of the 791. If you don't
21 mind, I'll do that.

22 BY MR. SEARS:

23 Q. Sure.

24 A. No. There isn't in fact a difference in the
25 claim language, wherein the 791 says current information

1 rather than changed information; therefore, if the
2 information has not been changed, it could still be
3 current, meaning that the latest version of the
4 information.

5 **Q. So, let me ask this: To your understanding,**
6 **is Claim 1 of the 461 patent, does it contemplate a**
7 **periodic information retrieval process?**

8 MR. FULLERTON: Objection to form.

9 THE WITNESS: In context of the
10 specification, yes.

11 BY MR. SEARS:

12 **Q. The same for Claim 7 of the 461 patent, does**
13 **it contemplate a periodic information retrieval process?**

14 MR. FULLERTON: Same objection.

15 THE WITNESS: The same answer.

16 BY MR. SEARS:

17 **Q. Yes?**

18 A. Yes.

19 **Q. All right. And Claim 1 of the 791 patent,**
20 **does it contemplate periodic information retrieval?**

21 MR. FULLERTON: Same objection.

22 THE WITNESS: By contemplate, you mean in
23 all of these cases, you mean would it normally be done in
24 a periodic retrieval. So, the answer to that is yes.

25 BY MR. SEARS:

1 Q. All right.

2 A. It can also be done on demand.

3 Q. All right. Then what about Claim 6 of the 791
4 patent. The same question. Does it contemplate periodic
5 information retrieval, again with the gloss on
6 contemplation being provided.

7 MR. FULLERTON: Same objection.

8 THE WITNESS: It would be the same answer;
9 mainly, that the same expected normal operation it would
10 be periodic, but it could also be done on demand.

11 BY MR. SEARS:

12 Q. The periodic information retrieval processes
13 described in the specification of the 461 patent, do
14 those processes distinguish between changed and unchanged
15 information; that is, do those processes involve any
16 discrimination in the retrieval process between changed
17 and unchanged information?

18 MR. FULLERTON: Objection to form.

19 THE WITNESS: The invocation of those
20 processes would -- the processes themselves -- I would
21 have to go back and read the specification, but I do not
22 recall any difference in the process. It's also a
23 process would be invoked when there's an expectation of
24 changed information.

25 BY MR. SEARS:

1 Q. So, the process itself is not directly
2 responsive to whether information is changed; is that
3 correct?

4 A. That's what I do not recall that it is any
5 different. I would have to know read the corresponding
6 process specification to be more definitive.

7 Q. The specification of the 461 and the 791
8 patents are the same, correct?

9 A. Yes.

10 Q. So, with regard to the specification of the
11 461 patent, and more specifically the periodic
12 information retrieval processes discussed therein, when
13 those processes are performed, they indiscriminately
14 retrieve both changed and unchanged information, correct?

15 MR. FULLERTON: Objection to form.

16 THE WITNESS: Well, it would be the same
17 answer that I've provided, that the invocation of the
18 process depends on the expectation of change, and the
19 process itself to my knowledge is the same, but I cannot
20 answer that second part definitively without re-reading
21 those sections of the specification.

22 BY MR. SEARS:

23 Q. So, does the periodic information retrieval
24 process taught in the specification sweep in both changed
25 and unchanged information?

1 MR. FULLERTON: Objection to form.

2 THE WITNESS: Sweep in. You would be able
3 to retrieve both changed and unchanged information, but I
4 cannot tell you for sure whether the process would be
5 identical in both cases.

6 BY MR. SEARS:

7 Q. Are there distinct processes taught in
8 specification for disclosing changed as opposed to
9 unchanged information?

10 A. I do not know of any. I would have to -- to
11 answer definitively, I would have to go back and revisit
12 those parts of the specification.

13 Q. Okay. Do you know where those parts of the
14 specification are that you would need to revisit?

15 A. No, not exactly. I would have to -- it's
16 mentioned in more than one place.

17 Q. Okay. All right. Over the next break, I'll
18 ask you to spend a few minutes leafing through the patent
19 and see if you are able to find the sections.

20 A. Okay.

21 Q. So, looking at Claim 5 of the 461 patent, what
22 is the minimum number of calculations that that claim
23 requires?

24 MR. FULLERTON: Objection to form.

25 THE WITNESS: I have basically described

1 the process that includes all of the calculations before,
2 and this one then has this multi-duplicative effects of
3 having to do it for different respective time periods.
4 So, we were doing it for let's say four time periods,
5 there would be four times as many as the ones for Claim
6 1.

7 BY MR. SEARS:

8 Q. What is the minimum number of time periods
9 that have to be -- that the calculations have to be done
10 for in order to satisfy Claim 5?

11 A. It says different respective time periods, and
12 it says, wherein one or more new payments comprise
13 payments for different -- so, I would read that to be at
14 least two.

15 Q. Looking at your declaration in the 139 case,
16 looking specifically at Paragraph 32 where it spills over
17 to the top of page 12, there's a reference to millions of
18 calculations every day, and --

19 A. Yes.

20 Q. Does Claim 5 of the 461 patent require
21 millions of calculations?

22 A. Normally, they -- it would either be hundreds
23 or thousands of possible clients. There would be some
24 number of potential vehicles that could be replacement
25 vehicles, and the so-called second vehicle. There would

1 be multiple different financial institutions offering
2 terms, and then there would be different lengths of each
3 one of those financing terms. So, when you multiply that
4 out, 1,000 times 10 times 50 times 20, you get a number
5 that's in the millions.

6 **Q. Okay. What does -- I think you said 1,000**
7 **times 10 times 20 times 50?**

8 A. Approximately, yes. I said supposedly you
9 have a thousand potential customers.

10 **Q. All right.**

11 A. Ten potential new vehicles per customer, which
12 would be either the same make or the same model or
13 comparable ones, then there would be -- I don't know, 20
14 possible or 50 possible financial providers, and then
15 there would be different financing terms, whether it's a
16 balloon mortgage, whether it's leasing, whether it's a
17 standard amortization type mortgage, and then for each
18 one of those there would be different time periods; 12,
19 24, 30, 36, 48, 60 months.

20 **Q. Okay. So, the time periods, what do you**
21 **think, up to five different time periods?**

22 A. That would be normal.

23 **Q. Okay. And the terms, how many different kinds**
24 **of terms would there be?**

25 MR. FULLERTON: Objection to form.

1 THE WITNESS: Let's say three or four.

2 BY MR. SEARS:

3 Q. Okay. All right. So, if you take a thousand
4 customers times 10 new vehicles times 50 financial
5 providers, times four terms, times five time periods,
6 that's how you get up into the millions of calculations?

7 A. That's correct.

8 Q. All right. How many customers does Claim 5 --

9 A. Sorry. That's not just it. That's assuming
10 that there's only one calculation per set of options
11 here.

12 Actually, each one of those has multiple
13 calculations as well because that includes the retrieval
14 steps, extraction steps, the difference, the comparison
15 against the threshold and so forth. So, all of those ten
16 steps and then multiplied by the number we just
17 discussed.

18 Q. All right. So, how many customers does Claim
19 5 of the 461 patent require?

20 A. It doesn't state.

21 Q. So, what is the minimum number of customers
22 for which the process would have to be performed in order
23 to satisfy Claim 5?

24 MR. FULLERTON: Objection to form.

25 THE WITNESS: In order for this invention

1 to be meaningful to be used in practice, it would have to
2 be a number of customers. If you only had one or two
3 customers, you just pay attention to them all the time.

4 BY MR. SEARS:

5 Q. So, when is the minimum number of customers
6 required to satisfy Claim 5?

7 A. The patent -- the claim is silent as to the
8 number of customers to which it must be applied.

9 Q. So, would one customer be enough?

10 A. If it was only one potential customer in the
11 entire world, then there would be no need for this
12 process described in this patent. There would be no
13 motivation for creating this patent. You would just be
14 trying to sell to that person.

15 The whole point is to determine which
16 customers are present good sales opportunities, which
17 vehicles, and which payment terms.

18 Q. Does Claim 5 require more than one customer?

19 A. Claim 5 is silent with respect to requiring --

20 Q. Okay.

21 A. -- a number of --

22 Q. Does Claim 5 require more than one new
23 vehicle?

24 A. Again, Claim 5 is silent with respect to the
25 number of new vehicles.

1 Q. Does Claim 5 require more than one financial
2 provider?

3 A. Same answer. Claim 5 is silent with respect
4 to the number of financial providers.

5 Q. Does Claim 5 require more than one term?

6 A. Yes.

7 Q. How many terms does it require?

8 And here I should -- just to make sure we're
9 both on the same page here, earlier I think you used the
10 term to refer to balloon payment, lease, financing, and
11 you used a time period to refer to the period over which
12 payments might be stretched.

13 MR. FULLERTON: Objection to form.

14 THE WITNESS: So, Claim 5 is silent with
15 respect to that as well.

16 BY MR. SEARS:

17 Q. All right. Then how many time periods does
18 Claim 5 require?

19 A. Well, it's plural, so it would be at least
20 two.

21 Q. Okay. So, if we take one customer times one
22 new vehicle times one financial provider, times one term,
23 times two time periods, times however many calculations
24 are required for each iteration, how many calculations
25 does Claim 5 require?

1 A. I would have to go through step by step and
2 then algorithm, probably a couple hundred.

3 Q. A couple hundred?

4 A. Yes.

5 Q. So, Claim 5 itself of the 461 patent does not
6 recite any calculation, correct?

7 A. It depends on Claim 1 that -- that does have
8 the description of the steps which contain the
9 calculations.

10 Q. All right. So, Claim 5 does not add any new
11 calculations to Claim 1, correct?

12 A. It states that it must be for multiple terms,
13 so it basically says that the calculations for Claim 1
14 have to be repeated for each time.

15 Q. Okay. So, the calculations set forth in Claim
16 1 have to be repeated at least twice?

17 A. That's right.

18 Q. So, let's look at Claim 1 of the 461 patents.
19 Looking at column 24 starting at line 61, there's a
20 reference to calculating one or more new payments; do you
21 see that?

22 A. Sorry. Which line number?

23 Q. Column 24, line 61.

24 A. Yes.

25 Q. All right. Then column 25 starting on line 1

1 references calculating a difference between one or more
2 new payments and an existing periodic payment. Do you
3 see that?

4 A. Yes.

5 Q. Where else does Claim 1 reference any
6 calculation? That is, where else does Claim 1 of the 461
7 patent reference a calculation other than those two
8 calculations just identified as column 24, line 61, and
9 column 25, line 1?

10 A. From the very beginning, if you are trying to
11 retrieve customer information, the database retrieval has
12 within it a set of calculations as calculating the index
13 location for the particular customer, for the particular
14 vehicle, for the particular financial terms.

15 It is retrieving that information. It is
16 extracting it from that retrieval. It is then
17 calculating from the second vehicle information, which
18 means also calculating the indexes for one or multiple
19 potential second vehicles. It is also doing a comparison
20 between the current vehicle in order to generate
21 candidate second vehicles.

22 You're not going to generate a Sherman tank as
23 a second vehicle if the person owns a sports car, and it
24 is also financial terms available to the customer. It
25 means it has to retrieve the financial terms. It has to

1 retrieve from the credit agencies the credit ratings of
2 that customer. It has to then do a comparison of that
3 credit rating against the credit rating of each of the
4 possible financial vehicles to determine which one or
5 ones that person is actually eligible for, and I mean,
6 and so forth. I could go on describing additional
7 calculations for each one of these things.

8 Q. Let's go through step by step here. So,
9 starting at Claim 1, of the 461 patent, starting at
10 column 24, line 41, retrieving at least a portion of
11 customer information, first financial terms that a
12 customer has for a first vehicle, and first vehicle
13 information.

14 Is it possible to do that, is it possible to
15 retrieve a portion of customer information, first
16 financial terms that a customer has for a first vehicle,
17 and first vehicle information without using a computer?

18 MR. FULLERTON: Objection to form and
19 relevance.

20 THE WITNESS: So, no, because that
21 information is contained in the computer database, and
22 because the preamble requires it.

23 BY MR. SEARS:

24 Q. So, my question is is it possible to retrieve
25 a portion of customer information -- let's break it down

1 even further.

2 Is it possible to retrieve a portion of
3 customer information without a computer?

4 MR. FULLERTON: Objection to form and
5 relevance.

6 THE WITNESS: Since that information is
7 stored in the computer database, no.

8 BY MR. SEARS:

9 Q. Okay. So, I am unable for -- would a
10 customer's name be customer information?

11 A. Customer's name is typically what you use as a
12 retrieval key.

13 Q. Is a customer's name customer information?

14 MR. FULLERTON: Objection to form.

15 THE WITNESS: A customer's name is customer
16 information.

17 BY MR. SEARS:

18 Q. All right. Do I have -- is a computer
19 required to retrieve a customer's name?

20 MR. FULLERTON: Objection to form and
21 relevance.

22 THE WITNESS: From a database, yes.

23 BY MR. SEARS:

24 Q. Is a computer required to retrieve a
25 customer's name?

1 MR. FULLERTON: Objection to form and
2 relevance.

3 THE WITNESS: From a database, yes.

4 BY MR. SEARS:

5 Q. Okay. So, instead of revising my question to
6 a question that I did not ask, please answer the question
7 that I'm asking you, which is: Is a computer required to
8 retrieve a customer's name?

9 A. I said on the specified question. That's an
10 unspecified question. From where would you be retrieving
11 it. To retrieve it, you need a thing to retrieve and a
12 source to retrieve it from. So, that's why --

13 Q. When you bought your -- what kind of car do
14 you drive right now? I think you said a Camry hybrid?

15 A. Camry hybrid.

16 Q. How did the dealer -- how did the salesman you
17 were working with get your name?

18 A. I gave it to him.

19 Q. All right. Did he ask you for your name?

20 A. I don't remember if I volunteered or he asked
21 me for it.

22 Q. All right. Did he retrieve your name without
23 using a computer?

24 A. No. He did not retrieve it. That's not
25 retrieving.

1 Q. Do you know if anyone has ever retrieved your
2 name from a piece of paper?

3 MR. FULLERTON: Objection to form.

4 THE WITNESS: I'm sure that my name has
5 been written on many pieces of paper. Some people have
6 read it from a piece of paper.

7 BY MR. SEARS:

8 Q. All right. Is that retrieving your name from
9 a piece of paper?

10 MR. FULLERTON: Objection to form and
11 relevance.

12 THE WITNESS: I would not call it
13 retrieving. I would call it reading. Depends how
14 broadly you wish to interpret the word retrieve.

15 BY MR. SEARS:

16 Q. All right. Did you trade in? When you bought
17 your 2013 Camry hybrid, did you trade in a vehicle for
18 it?

19 A. Yes, I did.

20 Q. All right. Was that other vehicle paid off?

21 A. I don't engage in vehicle loans, so...

22 Q. So, it was paid off?

23 A. So, yes, it was --

24 Q. All right. Did you ever finance a vehicle?

25 A. Never.

1 Q. Never?

2 A. Never.

3 Q. Have you ever helped anyone who has financed a
4 vehicle?

5 A. Oh, yes. Many times.

6 Q. All right. Did you help anyone finance a
7 vehicle in the early 1980s? That is to say, not as in
8 provide the financing, but help them arrange the
9 financing.

10 A. Yeah. I understood it the way you just
11 clarified. I don't remember. Possibly not.

12 Q. Okay. What's the date of your earliest
13 experience helping someone arrange vehicle financing?

14 A. In the late '80s.

15 Q. Late '80s. Okay. What information can you
16 give me about that? I just want to use it as an example.

17 MR. FULLERTON: Objection to form.

18 BY MR. SEARS:

19 Q. Are you comfortable telling me who it is, what
20 kind of a car, that sort of thing?

21 A. It was a neighbor that came from Europe and
22 did not quite know how to go about purchasing a car --

23 Q. Okay.

24 A. -- in the U.S. So, I actually helped him
25 through that process of visiting vehicles, Consumer

1 Reports, visiting the dealers, and then he had some
2 problem because he did not have a established credit
3 rating in the U.S.

4 Q. I think you said Consumer Reports. Did I hear
5 that right, you mentioned looking at Consumer Reports for
6 information?

7 A. Right.

8 Q. Okay. All right. So, was this a hard copy of
9 Consumer Reports?

10 A. I don't remember. It probably was.

11 Q. Okay. So, how did you get hold of a hard copy
12 of Consumer Reports?

13 A. He did.

14 Q. He did. Did the Consumer Reports have
15 information on potential replacement vehicles?

16 A. Replacement. It had information on vehicles.

17 Q. All right. Did you retrieve that information
18 about those vehicles from Consumer Reports?

19 MR. FULLERTON: Objection to form.

20 THE WITNESS: We read Consumer Reports, and
21 then had some information about the reliability of the
22 vehicles from Consumer Reports.

23 BY MR. SEARS:

24 Q. Okay. Did he retrieve information about those
25 vehicles from Consumer Reports?

1 MR. FULLERTON: Objection to form.

2 THE WITNESS: He read the information from
3 Consumer Reports. I would not use the word -- I used the
4 word retrieve on a more technical sense than you're using
5 it.

6 BY MR. SEARS:

7 Q. All right. So, the way you use the word
8 retrieve, it necessarily has written into it that you're
9 retrieving it from an electronic source; is that correct?

10 A. Essentially, you're issuing a query, and based
11 on that query, you're retrieving information that matches
12 the query, which is normally done from an electronic
13 source.

14 Q. All right. So, is it possible to obtain
15 customer information without using a computer?

16 MR. FULLERTON: Objection to form and
17 relevance.

18 THE WITNESS: It is possible by asking a
19 customer, for example.

20 BY MR. SEARS:

21 Q. Okay. Is it possible to obtain first
22 financial terms that a customer has for a first vehicle
23 without using a computer?

24 MR. FULLERTON: Same objections.

25 THE WITNESS: I don't know. That

1 information is typically stored electronically by the
2 lending agency and so forth.

3 BY MR. SEARS:

4 Q. All right.

5 A. Either the computer prints out something. It
6 still came from the computer.

7 Q. Okay. All right. But do you know if it was
8 ever possible to obtain financial terms that a customer
9 has for a vehicle without using a computer?

10 A. I suppose it must have been, yes.

11 Q. And how would that have been done?

12 MR. FULLERTON: Objection to form.

13 THE WITNESS: Again, a long time ago before
14 these things were computerized, there were probably a lot
15 fewer options in terms of possible financing of vehicles,
16 or possible lenders would be ineligible in the region,
17 and it might be only the local bank, for example, and
18 then it would have been done from a ledger or from some
19 other non-computerized list.

20 BY MR. SEARS:

21 Q. The configuration request that's referenced in
22 the claims of the 461 and 791 patents, I think you said
23 earlier that that sets the parameters for potential
24 replacement; is that correct?

25 A. Those are parameters for a vehicle that may

1 serve as a potential replacement, correct.

2 Q. So, when we were talking about the number of
3 calculations required to practice, for example, Claim 1
4 of the 461 patent, a lot of the calculations that you
5 were reciting had to do with calculating indexes and
6 things of that nature; do you recall that?

7 A. Yes. Those are not the total set of
8 calculations, but those are among them.

9 Q. All right. So, there are the calculations
10 identified as such in Claim 1; that is to say,
11 calculating one or more new payments and calculating a
12 difference between the one or more new payments and an
13 existing periodic payment. There are those calculations.
14 There are indexes calculations that have to do with
15 locating information for retrieval. What other types of
16 calculations are there?

17 A. Well, for example, referring to estimating the
18 equity on a vehicle, and that also requires a set of
19 calculations.

20 Q. All right. What calculations are those, do
21 you know?

22 A. I know how this was performed some time ago.
23 If it's done the same way now, yes, I do know.

24 Q. Okay.

25 A. The vehicle value has a certain depreciation

1 coefficient which are adjusted by model and by year.

2 Q. Okay. Hang on just a second. Okay. Please
3 continue.

4 A. So, a typical calculation may be starting with
5 an MRP and a discount. And MRP, manufacturer's retail
6 price, I think, or recommended price, minus a discount.
7 Discount being because they don't always sell at that a
8 second discount based on the fact that it's a private
9 party that owns it rather than a dealer. Then there is a
10 -- either an exponential or a linear yearly decline in
11 value as the vehicle ages. That is then -- those two
12 numbers are multiplied, the discount factor and the
13 original value of the vehicle, to arrive at the estimated
14 value of the vehicle. Then there is adjustments on that
15 based on mileage, wear and tear and location. A vehicle
16 --

17 Q. All right. One minute. So, adjust for
18 mileage, wear and tear and location?

19 A. Possibly other factors as well. Those are the
20 ones I recall.

21 Q. Okay.

22 A. The greater the mileage, the more the
23 discounted value, for example. Wear and tear is visible
24 signs that somebody would input into the system, and it
25 would take those and enter them into the calculation.

1 And location are things like if it's in an
2 area like Pittsburgh where they put salt on the roads,
3 the vehicle discount is somewhat higher than if it were
4 in Tampa. I'm making up Tampa. Specifically, a place
5 where they don't put salt in the roads and so forth.

6 So, all of these factors are combined,
7 typically multiplied or subtracted, it's either a
8 coefficient, less than one or a difference, to estimate
9 the current vehicle's value.

10 **Q. Okay.**

11 A. Then there's a calculation to estimate the
12 current total payments that were made on that vehicle,
13 which involves the downpayment, involves the declining
14 balance -- no, actually, it's not a declining balance.
15 It's the opposite. It's increasing the balance of
16 non-interest payments or principle payments that are paid
17 over time for the vehicle as it's summed up over all of
18 the payments that have been made.

19 So, for example, at the end of year two, there
20 would be 24 numbers to sum up. That would then be the
21 value, the estimated value of the vehicle would then be
22 compared to the estimated payments of the vehicle, and
23 then you would be able to generate the estimated equity
24 in the vehicle, and that could be a positive number or a
25 negative number. If the depreciation of the vehicle has

1 been faster than the payment schedule, it's negative
2 equity; otherwise, it's positive equity.

3 Q. All right. Then what other calculations. So,
4 we have got the calculations denominated as such, the
5 calculations that go into estimating a vehicle's equity,
6 and the indexes of calculations. What other calculations
7 are there in Claim 1?

8 A. Well, there are calculations, for example, on
9 -- determining the eligibility of the person for the
10 financing terms. That calculation, I guess, is standard
11 enough that I can't see exactly how Citi did it, but
12 generically speaking, it involves the credit rating of
13 the individual, it involves the number of years in which
14 they have been making steady payments for another
15 vehicle, or the current vehicle, and if the current
16 vehicle has not been owned a sufficient number of times,
17 there's a same calculation for the earlier vehicle that
18 the person owned. Then they also look at total
19 outstanding debt that that person has. Usually it's, you
20 know, what standing non-mortgage debt. So, you subtract
21 out the mortgage, and so, the remaining things would be
22 like credit card or student loan or other such kinds of
23 debt that the person would have. Then these numbers are
24 compared against reference numbers for other people.
25 It's adjusted by region. I don't think that's a big

1 adjustment, but it's still an adjustment, and then it's
2 compared to the minimum threshold that would allow that
3 person to qualify for the particular terms being offered
4 by that lender.

5 **Q. Okay.**

6 A. And then that is compared to repeated for
7 other lenders or for other terms. Especially if they
8 don't qualify for first term, the most favorable term,
9 then you redo that calculation and compare it with the
10 next most favorable terms.

11 In other words, the person has to pay a
12 somewhat higher interest or a put a higher downpayment,
13 and then they may qualify for those terms.

14 **Q. Okay.**

15 A. So, those are additional calculations that go
16 into the entire processes.

17 **Q. All right. Any others?**

18 MR. FULLERTON: Objection to form.

19 THE WITNESS: There may well be others that
20 -- the dealer usually makes additional calculations, but
21 they're not explicitly stated in the pack of claims here.

22 BY MR. SEARS:

23 **Q. Okay.**

24 A. For example, the dealer makes calculations
25 based on the incentives provided by the manufacturer for

1 the different vehicles, and the dealer makes calculations
2 based on the time that a certain car has remained in
3 inventory to decide if they wanted to discount them more
4 or less, and all of those calculations are taken into
5 account for the overall calculation here.

6 Q. So, if you set aside the indexes calculations
7 that are incidents of computerization in Claim 1, what do
8 you end up with, somewhere between 20 and 30
9 calculations?

10 MR. FULLERTON: Objection to form and
11 relevance.

12 THE WITNESS: I think it would be more than
13 that.

14 BY MR. SEARS:

15 Q. All right. So, help me out here. There's two
16 calculations identified as such. When you get around to
17 estimated equity, one calculation is the -- I'm going to
18 go ahead and count these out.

19 At first you're going to take MRP minus a
20 discount, reflecting actual typical sales price and minus
21 a private party discount. So there's one calculation.

22 A. No, that's two subtractions.

23 Q. Okay. All right. Call that two calculations.
24 All right. Then we're going to apply the depreciation
25 coefficient, right? That's another calculation.

1 A. The depreciation coefficient has to be applied
2 for each period of time that you own the car, because the
3 depreciation coefficient is either on a yearly or a
4 monthly basis.

5 Q. Mm-hmm.

6 A. So, if there was a yearly basis, and you own
7 the car for two years, it would be two coefficients, if
8 it was a monthly basis, there would be 24 of them.

9 Q. All right okay. All right. Let's assume one
10 year, and then annual coefficients, so that's two more
11 calculations.

12 A. Well, it could be two years and 24
13 coefficients.

14 Q. What I'm interested in is the minimum number
15 of calculations to satisfy for practicing Claim No. 5.
16 That's what I want to get to. I want to get to the
17 minimum until of calculations to practice Claim 5 of the
18 461 patent setting aside indices?

19 MR. FULLERTON: I'm go to object to this
20 whole line of questioning on relevance grounds.

21 THE WITNESS: Okay. So, if the
22 depreciation is stored or calculated or estimated
23 monthly, then you could not use a yearly number. I've
24 seen it done both ways. I do not know whether the common
25 practice these days is yearly or monthly or mixed.

1 BY MR. SEARS:

2 Q. So, it could be done yearly?

3 A. No, I don't know whether it could be done
4 yearly. I don't know what the current -- whether the
5 practice permits it to be done yearly now. It could --
6 what you are saying could be true. I just don't know.

7 Q. All right. Yeah. So, it has at times been
8 true. It sounds like that you did the -- that the method
9 was to apply an annual depreciation coefficient, correct?

10 MR. FULLERTON: Objection to form.

11 THE WITNESS: It has at times, and for
12 certain models.

13 BY MR. SEARS:

14 Q. All right. So, then, we have got the two
15 subtractions to get the value. We have got -- throw in a
16 couple of calculations to apply the depreciation
17 coefficient, and then we do separate distance for
18 mileage, wear and tear and location?

19 A. Yes.

20 Q. All right. So that's three more calculations.
21 So, I come up with a minimum of seven calculations for
22 equity? Is there something I'm missing in that?

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: Yes. Quite a bit.

25 BY MR. SEARS:

1 Q. All right.

2 A. So, for example, the mileage calculation is a
3 non-linear. If you run it 5,000 miles, then the discount
4 is bigger for the next 5,000, and it's bigger for the
5 next 5,000, and so on. The amount of discount decreases
6 over time. The fact that you have the car and used it
7 for 5,000 miles is a discount, and then there's another
8 discount for the next. So, the number of calculations to
9 establish the discount for mileage is multiple.

10 Q. What's the smallest number of those we need to
11 do in order to practice Claim 5 of the 461 patent?

12 A. How long would you have owned the car?

13 Q. I guess the minimum would be for one period,
14 right?

15 MR. FULLERTON: Objection to form.

16 THE WITNESS: I don't know if you owned it
17 for one year. You may have to apply three or four
18 calculations for that.

19 BY MR. SEARS:

20 Q. Okay. Let's call it four. We'll call it
21 four. All right. So, I'm up to eight calculations for
22 the equity determination.

23 A. For the --

24 MR. FULLERTON: Objection to form.

25 BY MR. SEARS:

1 Q. Again, we're not talking about every car.
2 We're just talking about what is the minimum number of
3 calculations that have to be performed in order to
4 practice the method of Claim 5 of the 461 patent?

5 A. So, you --

6 Q. I don't think there's anything in there, and
7 if there is, please point me to it. I don't think
8 there's anything in Claim 5 that requires that the car
9 has been owned for a certain amount of time or the car
10 have a certain number of miles on it or anything like
11 that. Do you see any sort of restrictions like that in
12 Claim 5?

13 MR. FULLERTON: Objection to form.

14 THE WITNESS: No. In the spec, it has to
15 be a car that the person has owned for enough times so
16 that the financial conditions have changed so that there
17 may be a better condition, but the exact period of time
18 is not stated. So, I did not answer your question.

19 BY MR. SEARS:

20 Q. So, what do you --

21 A. About eight.

22 Q. All right. So, what do you think the minimum
23 number of calculations are that are required to determine
24 equity in accordance with what is claimed in Claim 5?

25 MR. FULLERTON: Objection to form.

1 THE WITNESS: Okay. So, we just estimated
2 -- we just estimated with these -- you know, pushing it
3 all the way to the extreme as you were trying to do with
4 the calculations, not -- not I'm not done.

5 BY MR. SEARS:

6 Q. Okay.

7 A. That's not to calculate the equity that is to
8 calculate the value. The value and the equity are not
9 the same thing. The equity also needs to take into
10 account the amount of money that you owe on that car.

11 Q. All right.

12 A. Okay. So that -- so, you have to calculate
13 that number as well. That number is calculated by
14 summing the downpayment, calculating the fraction of each
15 payment subsequent to that payment, corresponds to
16 principle repayment. And so, if it's a standard loan,
17 that would be for one year, it would be 12 such
18 calculations.

19 Q. Now, it's also possible to just consult an
20 amortization table for that, correct?

21 MR. FULLERTON: Objection to form.

22 THE WITNESS: The amortization table tells
23 you the amount that you are paying monthly, and based on
24 the -- it may be possible to have an amortization table
25 that contains both the principle and the interest amount

1 in the declining part. Normally, it just has a total.

2 BY MR. SEARS:

3 Q. All right. Those sorts of amortization tables
4 were available in 2002?

5 A. Yes.

6 Q. Okay. All right. So, we use the amortization
7 table to figure out how much is owing?

8 A. So, you have to go to -- you look up on the
9 table, and based on the rate, so, you need to have looked
10 up the rate and you need to look it up according to the
11 year, and these are other index calculations. Then you
12 need to multiply it by the value of the -- by the
13 difference between the value of the car and the
14 downpayment.

15 So, there's a difference there, a
16 multiplication there, that lookup, and now you have the
17 total payments made on the car. Now, you have to
18 subtract the first from the second in order to finally
19 get the estimated equity.

20 Q. So, using an amortization table, how many
21 calculations do you get to -- how many calculations do
22 you count to get the amount owing?

23 A. About four or five.

24 Q. Okay. Call it five there to get the amount
25 owing. And then we're going to perform another

1 calculation to get the equity, correct?

2 A. Yes.

3 Q. Okay. All right. So, that's a minimum by
4 your count 14 calculations to get the vehicle equity?

5 A. Not counting calculation of indexes down to
6 retrieve information.

7 MR. FULLERTON: Objection to form.

8 BY MR. SEARS:

9 Q. Correct. Yep. All right. So, there are 14
10 -- a minimum, let's say, of 14 calculations for equity,
11 two calculations identified as such in Claim 1 of the 461
12 patent, and then we're setting aside the indexes
13 calculations. Are there any other calculations required
14 by Claim 1 of the 461 patent?

15 MR. FULLERTON: Objection to form.

16 THE WITNESS: Yeah. I just talked about
17 the calculations for whether the person qualifies or does
18 not qualify for a particular financing option.

19 BY MR. SEARS:

20 Q. All right. How many calculations are entailed
21 in that?

22 MR. FULLERTON: Objection to form.

23 THE WITNESS: Normal.

24 BY MR. SEARS:

25 Q. For a single lender, single financing program.

1 A. My problem is that if the person does not
2 qualify for that single financing program, then you would
3 redo the calculations for the next most advantageous one
4 until we find one that they qualify for.

5 **Q. Okay. So, let's just take the -- say we get**
6 **lucky, and the customer qualifies for the first one that**
7 **you check for; how many calculations?**

8 A. Most customers don't get lucky. Usually you
9 have to go two or three down the list before they qualify
10 for one, but that's the part I got from grilling these --
11 the auto dealers.

12 That would entail the credit rating lookup.
13 It would entail the tallying up the other sources of
14 loans that -- other debt that the person has, how many
15 credit cards does a person normally have, or student
16 loans or home equity loans or --

17 **Q. Does Claim 5 require any minimum number of**
18 **credit cards, or how many equity loans?**

19 A. It requires determining the available lines of
20 credit. So, implicitly requires making these kinds of
21 calculations. That's how you --

22 **Q. Then, so, for purposes of the exercise we're**
23 **going through trying to calculate the minimum number of**
24 **calculations required to practice Claim 5, what is the**
25 **smallest number of credit cards or student loans that a**

1 customer has to have in order for Claim 5 to read on the
2 process?

3 A. Well, the person has to be able to qualify for
4 a loan, and if that number was zero, they had never
5 exercised credit, then he has all kinds of difficulty.
6 Like my neighbor that I was telling you in the late '80s
7 had all kinds of difficulties in qualifying for a loan,
8 so they make alternate calculations that are required for
9 the loan. Let's assume they have three or four such
10 previous exercises of credit.

11 Q. All right.

12 A. So there would be three or four such
13 calculations, and then a conversion of the credit score
14 into an internal normalized score, and then a
15 multiplication, and then one more, and then let's say
16 seven or eight calculations for that.

17 Q. Anything else? Besides the qualifications and
18 the equity calculation, the indexes calculations and the
19 calculations identified as such.

20 MR. FULLERTON: Objection to form.

21 THE WITNESS: Well, then there would be the
22 calculation of the monthly payment, the difference
23 between the two monthly payments, and the comparison
24 against the threshold.

25 BY MR. SEARS:

1 Q. All right. So, there's three more
2 calculations. So, by my count, setting aside the indexes
3 calculations, we have a minimum of 14 equity
4 calculations, and according to the process that you've
5 described, eight qualification calculations, three
6 calculations identified in the claim, that is calculating
7 a new payment, calculating a difference and comparing
8 that to a threshold, and have I missed anything?

9 MR. FULLERTON: Objection to form.

10 THE WITNESS: These are the strict numeric
11 calculations. As I said, the computer does all of these
12 other calculations for extracting the data, for indexing
13 to the database, for generating hash keys and so forth
14 that you're not counting, but are part of the
15 calculation.

16 BY MR. SEARS:

17 Q. So, if we take those 25 non-indexes
18 calculations and we double it because Claim 5 requires
19 two respective -- different respective time periods, that
20 gets up to 50 calculations. Is a computer required to
21 perform 50 calculations?

22 MR. FULLERTON: Objection to form and
23 relevance.

24 THE WITNESS: This whole line of
25 questioning is going to a situation where this patent

1 would not be practiced. If you had a single vehicle, if
2 you had a single customer and so forth. So, this
3 absolutely minimal situation you're trying to create here
4 is not what the whole patent is for. That's not what the
5 spec directs the patent is, which is at examining a large
6 number of customers, multiple vehicles, multiple
7 financing, multiple lenders, in order to find the most
8 advantageous terms and generate sales opportunities.

9 BY MR. SEARS:

10 Q. I'm sorry. Would you remind repeating that
11 list. Large number customers, multiple vehicles --

12 A. Multiple lenders and multiple financing terms
13 per lender in order to be able to generate the most
14 favorable sales leads.

15 Q. Does Claim 5 of the 461 patent require
16 multiple customers -- or sorry, a large number of
17 customers?

18 A. No. We have been through that. The claim
19 language itself does not require those things.

20 Q. All right. Likewise, the claim language does
21 not require multiple vehicles, correct? Multiple
22 replacement.

23 A. Requires two.

24 Q. Does the claim language require multiple
25 replacement vehicles?

1 A. No.

2 Q. Does the claim language require multiple
3 lenders?

4 A. No.

5 Q. Does the claim language require multiple
6 financing terms per lender? Given how Claim 5 is worded,
7 does the Claim 5 language require more than two financing
8 terms per lender?

9 A. No.

10 Q. That goes for all of the claims of the 461 and
11 791 patents; I believe that is to say with regard to all
12 of the claims of the 461 and 791 patents, none of the
13 claims require a large number of customers, correct?

14 MR. FULLERTON: Objection to form.

15 THE WITNESS: Literally, your statement is
16 correct. They would operate under the setting we have a
17 large number of customers, but in claim terms do not --
18 the claim language does not require it.

19 BY MR. SEARS:

20 Q. All right. Does the claim language of any of
21 the claims of the 461 and 791 patents require more than a
22 current vehicle and one potential replacement vehicle?

23 MR. FULLERTON: Objection to form.

24 THE WITNESS: Again, normally they would
25 have multiple replacement vehicles, but that's not a

1 requirement.

2 BY MR. SEARS:

3 Q. All right. Do any of the claims of the 461 or
4 791 patents require multiple lenders?

5 MR. FULLERTON: Objection to form.

6 THE WITNESS: Same answer. Normally, it
7 would be multiple lenders, and the claim language is not
8 requiring.

9 BY MR. SEARS:

10 Q. None of the claims requires more than two
11 financing terms per lender, correct?

12 MR. FULLERTON: Objection to form.

13 THE WITNESS: Again, it's the same kind of
14 answer. Normally there would be multiple terms, and
15 claim language does not require more than two.

16 BY MR. SEARS:

17 Q. All right. Can information be up to date even
18 if it has not changed?

19 MR. FULLERTON: Objection to form.

20 THE WITNESS: Can it be or is it
21 necessarily? Can it be. Yes, it can be.

22 BY MR. SEARS:

23 Q. So, up-to-date information is not necessarily
24 changed information?

25 MR. FULLERTON: Same objection.

1 THE WITNESS: It means the latest
2 information available.

3 BY MR. SEARS:

4 Q. Whether or not it's changed?

5 A. Exactly.

6 Q. So, it need not be changed information?

7 MR. FULLERTON: Objection to form.

8 THE WITNESS: Right.

9 BY MR. SEARS:

10 Q. Dr. Carbonell, I'm handing you what is Paper
11 No. 12 is Case No. CBM 2014-00139, a document titled
12 "Decision" that was entered on October 23, 2014.

13 Please take what time you need, and then after
14 you've had what time you need to look at the document,
15 please tell me if you have seen this document before.

16 A. This is a decision instituting the CBM
17 proceedings.

18 Q. Yes.

19 A. Yes. I have seen it before.

20 Q. Okay. Then handing you as well the document
21 that is numbered -- sorry, that is Paper 11 entered
22 October 29, 2014, in the 132 case, that is in case CBM
23 2014-00132, and the question is, have you seen this paper
24 before?

25 A. This one here?

1 Q. Yes.

2 A. Yes. I've seen this one before.

3 Q. All right. So, with regard to Paper 11 in the
4 132 case, could you turn to page 42. Looking at the
5 sentence that begins on the third line, "Here we observed
6 that each challenged claim as a whole --" let me just
7 finish reading it -- "is directed to the fundamental
8 concept of providing vehicle sales opportunities based on
9 loan or lease payments."

10 Do you think that that's a fair summary of
11 what the 461 and 791 patents teach; that is, providing
12 the vehicle sales opportunities based on loan or lease
13 payments?

14 MR. FULLERTON: Objection to form and
15 beyond the scope.

16 THE WITNESS: I think that's an incomplete
17 description.

18 BY MR. SEARS:

19 Q. All right. How is it incomplete?

20 MR. FULLERTON: Same objections.

21 THE WITNESS: It is not based on loan or
22 lease payments. It's based on second vehicles that may
23 be available to them. It is based on a comparative
24 analysis of pre-existing and new loan and lease payments
25 and so forth. This does not mention the comparison

1 aspects. This does not mention the thresholding aspects.
2 It does not mention the changed market environment on the
3 financial side or the vehicle side.

4 BY MR. SEARS:

5 Q. Okay. Is it possible to provide vehicle sales
6 opportunities based on loan or lease payments without
7 using a computer?

8 MR. FULLERTON: Objection to form and
9 beyond the scope.

10 THE WITNESS: I would have to imagine ways
11 of doing it, but possibly, yes.

12 BY MR. SEARS:

13 Q. What is one way of doing it that you would
14 imagine?

15 MR. FULLERTON: Same objections.

16 THE WITNESS: Suppose that there's been
17 some closeout sale on some vehicle lines, and they're now
18 available at an extremely low price. And then regardless
19 of what loan terms were available, they still might prove
20 advantageous to a large number of people. In other
21 words, there could be some exogenous factor that would
22 make these interesting sale opportunities.

23 BY MR. SEARS:

24 Q. So, in your view, absent some exogenous
25 factor, a computer is required to make the process cost

1 **effective?**

2 MR. FULLERTON: Objection to form and
3 relevance and beyond the scope.

4 THE WITNESS: I would say both cost
5 effective and effective. Just plain effective.

6 BY MR. SEARS:

7 **Q. All right. And why would it not be effective**
8 **without a computer?**

9 MR. FULLERTON: Same objections.

10 THE WITNESS: Because in the absence of
11 some overwhelming factor that would, you know, lower the
12 price or come up with extremely cheap loans or something
13 like that, you would have to enumerate the various
14 combinations of vehicles, customers that qualified for
15 the physical vehicles, financial vehicles, and customers
16 that qualify for the financial vehicles, and compare that
17 against their current automobile expenditures in order to
18 find some that would be priced at or below, or by some
19 other threshold attractive enough. The combinatorics
20 here would not permit.

21 BY MR. SEARS:

22 **Q. So, the process has to be run for many**
23 **iterations in order to yield an appreciable number of**
24 **leads?**

25 MR. FULLERTON: Same objections.

1 THE WITNESS: And needs to be done fast
2 enough before the opportunities go away; that the banking
3 finance terms change or the vehicles are already sold by
4 somebody else.

5 MR. SEARS: Take one last break.

6 MR. FULLERTON: Sure.

7 (RECESS, 2:15 p.m. - 2:26 p.m.)

8 MR. SEARS: Back on.

9 BY MR. SEARS:

10 Q. So, Dr. Carbonell, after we went through
11 trying to figure out a minimum number of calculations for
12 Claim 5 of the 461 patent, we came in at something less
13 than 30, and I asked the question is a computer required
14 to perform 30 calculations in time for the information to
15 be useful. Never got a straight yes or no answer to that
16 question. So, let me put the question to you again. Is
17 a computer required to perform 30 calculations?

18 MR. FULLERTON: Objection to form.

19 THE WITNESS: I believe we -- on the
20 earlier part, I believe we came out there was 24 or 25
21 for Claim 1, and then that would double for Claim 5, that
22 would be closer to 50 rather than 30.

23 BY MR. SEARS:

24 Q. Okay.

25 A. Now your question is is a computer required to

1 make 50 calculations. The answer to that question does
2 not bear directly on the patent claims because a number
3 of other items are also required, like the retrieval, the
4 indexing calculations and so forth.

5 **Q. So we can let the Board sort out whether it**
6 **matters or not. My question to you is is a computer**
7 **required to perform 50 calculations?**

8 MR. FULLERTON: Objection to form and
9 relevance.

10 THE WITNESS: Those calculations could be
11 performed, for example, with a hand held calculator.

12 BY MR. SEARS:

13 **Q. In how much time?**

14 MR. FULLERTON: Same objections.

15 THE WITNESS: In order to make sure that
16 you got them right, I don't know, a half hour.

17 BY MR. SEARS:

18 **Q. All right. And we've focused on Claim 5 of**
19 **the 461 patent because it was the claims in the 461**
20 **patent, the one that you said that would require the**
21 **largest number of calculations. Does Claim 5 of the 791**
22 **patent require any more calculations than Claim 5 of the**
23 **461 patent?**

24 **A. I believe it's equivalent. Let me check it**
25 **again. It's equivalent.**

1 Q. So, the same number of calculations?

2 A. Yes. We left out all of the indexing,
3 retrieval, extraction and other such calculations in
4 terms of the numerical mathematical calculations that you
5 focused on, the substantive calculations, yes.

6 Q. In fact, not only is it the same number of
7 calculations, it's the same calculations, correct?

8 A. That is correct.

9 MR. SEARS: That's all I have.

10 MR. FULLERTON: Okay. I will have a few
11 redirect questions, but I would like to take a short
12 break before then. So, go off the record.

13 (RECESS, 2:29 p.m. - 2:37 p.m.)

14 EXAMINATION

15 BY MR. FULLERTON:

16 Q. Back on the record. Dr. Carbonell, earlier in
17 this deposition, there were some questions about whether
18 changed information in the claims of the 461 and 791
19 patents means the same thing as retrieved information; do
20 you recall that?

21 A. Yes. I recall that line of questioning. I
22 don't recall the specific questions.

23 Q. Okay. Are there differences in your -- in
24 between the terms changed information and retrieved
25 information?

1 A. Yes, there are.

2 **Q. What would some of these differences be?**

3 A. For example, one can retrieve information
4 about the first vehicle that may not have been changed,
5 and is some of the information that can come from the
6 financial lenders may be changed or may not be changed.
7 It's up-to-date information. I think we discussed that
8 need not necessarily have been changed.

9 And then also, second vehicle information, if
10 the same vehicles were available as the last time that
11 the query was issued, that information need not be
12 changed information. It may be if new vehicles are
13 available.

14 **Q. So, the terms changed information and**
15 **retrieved information in the context of the claims do not**
16 **have the exact same meaning; is that correct?**

17 A. That's correct.

18 **Q. If you could take a look at Paragraph 43 of**
19 **your declaration, Exhibit 2004 in the 132 case.**

20 A. What was the paragraph number again?

21 **Q. 43. It's on pages 14, 15 and 16. Do you**
22 **recall the line of questioning about whether -- let me**
23 **strike that.**

24 Paragraph 43 in this declaration, what is in
25 Paragraph 43?

1 A. That is the recitation of Claim 1 of the 461
2 patent.

3 Q. Okay. Claim 1 of the 461 patent uses the term
4 "determining" three times; is that correct?

5 A. I see two times. There's probably a third one
6 in there.

7 Q. There must be. Earlier in your testimony
8 there was a line of questioning about whether these three
9 determination steps, being, I'm going to paraphrase, the
10 first one being determining by the computer system
11 whether the changed retrieved information may affect
12 whether it's favorable?

13 A. Yes.

14 Q. The second one being determining if the one or
15 more new payments satisfy at least a condition, and the
16 third one being determining whether the difference is
17 less than or equal to a preset acceptable threshold
18 value?

19 A. Right.

20 Q. Do you recall a line of questioning about
21 whether those three determination steps were the same?

22 A. Yes. I recall that what I said that
23 essentially, they were the same, each was providing
24 narrower or more specific information.

25 Q. Okay. So, starting with the first

1 determination step, which is determining by the computer
2 system whether the change retrieved information may
3 affect whether it is favorable, what steps are required
4 to perform that determination step?

5 A. The steps that are stated for the --

6 Q. Can you please read them?

7 A. Yes. "Automatically determining if one or
8 more of the new payments satisfy at least a condition
9 based on at least part of the first financial terms and
10 the second financial term, whether the determination
11 comprises calculating the difference between one or more
12 new payments and an existing periodic payment for the
13 first vehicle, and determining whether the difference is
14 less than or equal to a pre-set acceptable threshold
15 value."

16 Q. Okay. Above that limitation, is the
17 limitation starting with automatically calculating one or
18 more new payments part of the first determination step as
19 you understand the claim?

20 MR. SEARS: Objection leading.

21 THE WITNESS: Yes. That's just what I just
22 read.

23 BY MR. FULLERTON:

24 Q. In your previous answer, you did not identify
25 that limitation. So, let me ask the question again: Can

1 you --

2 A. Okay. I meant to.

3 Q. Can you please identify the steps that are
4 required as far part of the first determination step that
5 starts with, "Determining by the computer system whether
6 the changed retrieved information may affect whether it's
7 favorable."

8 A. Okay.

9 It's automatically determining if one or more
10 of the new payments, these are different lenders, satisfy
11 at least a condition based on at least part of the first
12 financial terms, and the second financial terms where the
13 determination comprises calculating the difference
14 between one or more of the new payments and an existing
15 periodic payment for the first vehicle, and determining
16 whether the difference is less than or equal to a preset
17 set of threshold value.

18 Q. Can you please read the limitation that
19 starts, "Above that limitation, starting with
20 automatically calculating one or more new payments."

21 A. Yes. "That calculation automatically
22 calculating one or more payments based on an estimated
23 equity value of the first vehicle derived from the first
24 financial term and based on the second financial term is
25 a prerequisite step."

1 Q. So, is that also a part of the first
2 determination step?

3 A. Yes.

4 Q. Okay. This second determination step we
5 discussed was below automatically determining if the one
6 or more new payments satisfy at least a condition?

7 A. Yes.

8 Q. Do you see that? What steps are required to
9 perform that determination step?

10 A. You need to calculate what the new payments
11 are based on the vehicle, the financial terms available
12 for that vehicle, for the person -- whether the person
13 qualifies for those financial terms, and for performing
14 the computation on a monthly payment basis compared to
15 the previous vehicle or what it's called here, the first
16 vehicle, and subtracting one from the other and seeing
17 whether then that difference is less than or equal to our
18 threshold.

19 Q. Okay. Then finally, the third determination
20 step, determining whether the difference is less than or
21 equal to a preset acceptable threshold value; what is
22 required to do that?

23 A. It's required that a threshold value be
24 provided. The patent spec gives examples of typical
25 threshold values like zero or 10 percent, and zero being

1 implying that the new vehicle is less expensive or equal
2 in terms of monthly payment than the previous vehicle.
3 10 percent, maybe you have to pay a little bit more, but
4 you get a brand new vehicle.

5 **Q. Do you have to -- what do you do with the**
6 **comparison? Excuse me, the threshold value.**

7 A. The threshold value is used to compare against
8 the output of the calculation so that if a calculation is
9 below or equal to the threshold value, this comprises a
10 search -- excuse me, a sales opportunity, and hence the
11 system, you go to the next limitation, and the system
12 automatically generates a message based on that.

13 **Q. And you referred to -- you compare the**
14 **threshold value against the output of the calculation.**
15 **What is the calculation that you are talking about?**

16 A. The calculation is the difference between the
17 new payment, the new monthly payment, and the old monthly
18 payments.

19 **Q. Then finally this afternoon, we discussed at**
20 **length the minimum number of payments -- or excuse me,**
21 **the minimum number of calculations required to practice**
22 **the claims. Do you recall that line of questioning?**

23 A. Yes. It was a fairly long line of questions.

24 **Q. Some of your answers in that line of**
25 **questioning, you gave very thorough explanations of the**

1 calculations that would be required to arrive at some of
2 the values required by the claims such as arriving or
3 calculating an equity; do you recall that?

4 A. Yes.

5 Q. Every step or calculation that you described
6 as part of calculating equity, for example, is that
7 necessary in every case to arrive at an estimated equity
8 value.

9 A. Well, I gave the way that I know how to
10 estimate an equity value based on my experience with a
11 consumer bank.

12 Q. Okay.

13 A. I do not -- I believe that there are variant
14 ways of calculating the equity value, and in fact there
15 are variant ways of making some of the other calculations
16 as well.

17 Q. Okay.

18 A. They are usually more complicated and more
19 involved. I say the simplest way that I knew how to do
20 it.

21 Q. So in answering Mr. Sears' questions as to the
22 minimum number of calculations, you were basing your
23 answer on the way that you know how to perform the
24 calculations required?

25 A. Either one; that I was -- I know more than one

1 way. He was asking for the minimum number of step, so I
2 was attempting to comply with his question in answering
3 when I know more than one way, the simplest, the
4 computation that has the fewest operations. So, I know
5 some other ways that are a little more involved, and
6 there are alternate ways as well which I have less
7 familiarity.

8 Q. Okay.

9 MR. FULLERTON: That's all I have.

10 MR. SEARS: Nothing more.

11 MR. FULLERTON: All right.

12 (Signature not waived.)

13 (CONCLUDED, 2:49 p.m.)

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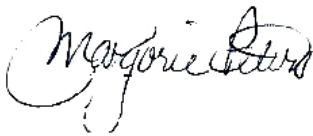
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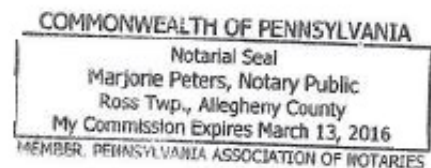
1 CERTIFICATE OF COURT REPORTER

2 I, Marjorie Peters, Registered Merit Reporter,
3 Certified Realtime Reporter, and Notary Public in the
4 State of Pennsylvania, before whom the foregoing
5 deposition was taken, do hereby certify that the witness
6 Jamie Carbonell was sworn according to the law; that the
7 foregoing transcript is a true and correct record of the
8 testimony given; that said testimony was taken by me
9 stenographically and thereafter reduced to typewriting
10 under my direction; and that I am neither counsel for,
11 related to, nor employed by any of the parties to this
12 case and have no interest, financial or otherwise, in its
13 outcomes

14 I further certify that signature was not
15 waived by the witness.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand this 13th day of February, 2015.

18
19
20 
21 _____



22 Marjorie Peters, RMR, CRR

23 My commission expires March 13, 2016.
24
25

DECLARATION UNDER PENALTY OF PERJURY

Case Name: DealerSocket, Inc. vs. AutoAlert, LLC

Date of Deposition: 02/05/2015

Job No.: 10014388

I, JAIME CARBONELL, PH.D., hereby certify that I have read the transcript of my deposition and that this transcript accurately states the testimony given by me, with the changes or corrections, if any, as noted on an errata sheet or errata sheets.

Executed this _____ day of _____, 2015, at _____.

JAIME CARBONELL, PH.D.

NOTARIZATION (If Required)

State of _____

County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____,

by _____, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____ (Seal)

1 DEPOSITION ERRATA SHEET

2 Case Name: DealerSocket, Inc. vs. AutoAlert, LLC
Name of Witness: Jaime Carbonell, Ph.D.
3 Date of Deposition: 02/05/2015
Job No.: 10014388

4 Reason Codes: 1. To clarify the record.
2. To conform to the facts.
5 3. To correct transcription errors.

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