

In the Matter of:

MICROSOFT CORPORATION

v.

SURFCAST, INC.

KLAUS LAGERMANN

March 6, 2014

M E R R I L L L A D

1325 G Street NW, Suite 200, Washington, DC
Phone: 800.292.4789 Fax: 202.861.3425

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

--OoO--

MICROSOFT CORPORATION

Petitioner,

vs.

SURFCAST, INC.

Patent Owner.

Patent No. 6,724,403

Issued: April 20, 2004

Filed: October 30, 2000

Inventors: Ovid Santoro, et al.

Title: SYSTEM AND METHOD FOR SIMULTANEOUS DISPLAY
OF INFORMATION SOURCES

Inter Partes Review Nos. IPR2013-00292,
IPR2013-00292, IPR2013-00294, and IPR2013-00295

VIDEOTAPED DEPOSITION OF

KLAUS LAGERMANN

Thursday, March 6, 2014, 8:59 a.m.

1 Job No. 1-245251

2 Pages 1 - 85

3 Reported by: Michele E. Eddy, RPR, CRR, CLR,

4 Videotaped Deposition of KLAUS LAGERMANN,

5 held at the offices of:

6 DLA PIPER, LLP
7 500 Eighth Street, Northwest
8 Washington, D.C. 20004
9 (202) 799-4000

10 Pursuant to Notice, before Michele E.
11 Eddy, Registered Professional Reporter, Certified
12 Realtime Reporter, and Notary public in and for the
13 District of Columbia.
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1 A P P E A R A N C E S

2

3 ON BEHALF OF THE PETITIONER:

4 WONJOO SUH, ESQUIRE

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10

11 ON BEHALF OF THE PATENT OWNER:

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15 Reston, Virginia 20190

16 (703) 773-4148

17 jim.heintz@dlapiper.com

18

19 ALSO PRESENT:

20 Richard Bone, Esquire (via teleconference)

21 David Cooper, Videographer

22

1 EXAMINATION INDEX

2 PAGE

3 EXAMINATION BY MR. SUH 8, 81

4 EXAMINATION BY MR. HEINTZ 72

5

6

7

8 E X H I B I T S

9 PREVIOUSLY MARKED AND REFERRED TO

10 (Retained by Counsel)

11 SURFCAST EXHIBITS PAGE

12 Exhibit 2006 Declaration of Klaus Lagermann, 16

13 13 pages

14 Exhibit 2012 E-mail chain; top e-mail dated 61

15 8-11-99 from Ovid Santoro to

16 Klaus Lagermann;

17 20130207CTRL00006281, three pages

18 Exhibit 2018 E-mail chain; top e-mail dated 64

19 8-10-99 from Klaus Lagermann to

20 Richard Bone; 20130207CTRL00009608,

21 two pages

22

1 EXHIBIT INDEX CONTINUED

2

3 SURFCAST EXHIBITS PAGE

4 Exhibit 2020 E-mail dated 8-19-99 from Klaus 67

5 Lagermann to Richard Bone;

6 20130207CTRL00009669, one page

7 Exhibit 2021 E-mail dated 8-19-99 from Klaus 68

8 Lagermann to Richard G.A. Bone;

9 IPR2013-00292, six pages

10 Exhibit 2022 E-mail dated 8-24-99 from Klaus 70

11 Lagermann to Richard Bone;

12 20130207CTRL00009693, one page

13 Exhibit 2023 Handwritten notebook; 36

14 IPR2013-00292, 25 pages

15 Exhibit 2025 E-mail chain; top e-mail dated 41

16 12-5-98 from Ovid Santoro to

17 Klaus Lagermann;

18 KL_SC_0005524-5525

19 Exhibit 2036 E-mail chain; top e-mail dated 42

20 12-2-98 from Klaus Lagermann to

21 Ovid Santoro; SC0001016-20

22

1

EXHIBIT INDEX CONTINUED

2

3

SURFCAST EXHIBITS

PAGE

4

Exhibit 2048 Data Structure for SurfCast

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Grid; SC0036694-97

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1 THE VIDEOGRAPHER: Here begins video disc
2 number 1 in the video deposition of Klaus Lagermann
3 in the matter of Microsoft Corporation versus
4 SurfCast, Inc., in the United States Patent and
5 Trade Office before the Patent Trial and Appeal
6 Board, cases number IPR2013-00292, IPR2013-00293,
7 IPR2013-00294, IPR2013-00295.

8 Today is Thursday, March 6th, 2014. The
9 time on the video monitor is 9: -- correction, 8:59
10 a.m. We are now on the record.

11 My name is David Cooper. I'm the
12 certified legal video specialist with Merrill LAD,
13 21 Church Street, Suite 150, Rockville, Maryland,
14 20850.

15 This video deposition is taking place at
16 DLA Piper, LLP, in the blue conference room located
17 at 500 8th Street, Northwest, Washington, D.C.,
18 20004.

19 Would counsel please introduce themselves
20 and who they represent.

21 MR. SUH: This is Wonjoo Suh at Sidley
22 Austin representing Microsoft Corporation.

1 MR. HEINTZ: And James Heintz with DLA
2 Piper representing SurfCast, Inc. Also attending by
3 phone is Dr. Richard G.A Bone, also representing
4 Surfcast, Inc.

5 THE VIDEOGRAPHER: The court reporter,
6 Michele Eddy, of Merrill LAD will now swear in the
7 witness.

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

9 KLAUS LAGERMANN,
10 having been duly sworn, testified as follows:

11 EXAMINATION BY COUNSEL FOR PETITIONER

12 BY MR. SUH:

13 Q Good morning.

14 A Good morning.

15 Q Would you please state your full name and
16 address, please.

17 A My name is Klaus Lagermann. I live at
18 Stock Holms Gade, number 19, in Copenhagen.

19 Q Do you understand that you are under oath
20 today?

21 A I understand.

22 Q Are you on any medications that might

1 affect your ability to testify today?

2 A No, I'm not.

3 Q Is there any reason you cannot testify
4 truthfully today?

5 A No.

6 Q You've been deposed before, correct?

7 A I have.

8 Q It seems like you're already aware of the
9 rules, but just as a reminder, your answers are
10 recorded by the court reporter so please answer
11 verbally. That means no shaking or nodding.

12 A Understood.

13 Q When I ask you a question, could you wait
14 for me to finish my question before you start
15 answering?

16 A Yes.

17 Q And if you don't understand the question,
18 please ask for clarification, otherwise I'll assume
19 that you understood the question. Is that fair?

20 A That is fair.

21 Q And we will try to take short breaks every
22 hour. However, if you need a break at any time for

1 any reason, please let me know. All that I ask is
2 if we're in the middle of a question, we can take a
3 break after you finish your answer. Is that fair?

4 A Thank you.

5 Q Could you tell me about your educational
6 background beginning after high school?

7 A I have a bachelor's degree in economics
8 from Copenhagen Business School.

9 Q That's it?

10 A (Nodding head.)

11 Q And can you tell me about your employment
12 history?

13 A Starting from business school, from after
14 business school, I worked at IBM in Denmark.

15 Q What year?

16 A From '81 until '86. And in 1986, I joined
17 a stock brokering company called Per Storhaug.
18 Moved on to another stock brokering company called
19 Sankt Annae Bank. From there moved to a company
20 called Computer Resources International.

21 Q When was Sankt Annae Bank?

22 A Sankt Annae Bank was '89 to '91.

1 And in '91, I had a short stay at Computer
2 Resources International and then moved on to a
3 start-up company called HyperCOM. And in 1995, I
4 started my own company, Cebra Technology.

5 Cebra was merged with a company called
6 CoCom in 1998, and was about a year later sold to
7 Cisco Systems. And I did not join Cisco Systems. I
8 went back to my own company.

9 Q What is your own company, CoCom?

10 A It was -- at the time it was called
11 Lagermann Invest, and I was with that company until
12 it went bankrupt in 2006.

13 Q Any other companies?

14 A There were -- during that time from 2000
15 -- from 2001 until 2006, I also had consultancy
16 roles in other companies. Do you want me to mention
17 all of those?

18 Q Sure.

19 A It's from memory so I may -- I may miss
20 one, but I was with a company called Smartscart
21 Technology. From memory that was from 2001 to 2003.
22 And there I was working with a company called Dansk

1 Bygnings Import, which was a steel building trading
2 company.

3 Q Any other?

4 A There were a few other company names in
5 the group around Dansk Bygnings Import. One was
6 called Steel Building Europe. Another was called CK
7 Development. CK Industry. There may be a few more
8 within the same group.

9 Q Is that all?

10 A There are -- there are more. I'm just
11 trying to get the years right.

12 Q Okay. In 2007 I took a position in a
13 company called Speakkompagniet, and I still have
14 that task today. I'm also with a company from 2009
15 called Functional Foods or Functional Mad in Danish,
16 which is a health food import company. That's my
17 main occupation today, in the health food company.
18 And I have a small role in a company called VBAG
19 Company, which is a motion picture accessory --
20 equipment accessory company. Then there are a few
21 companies where I have, like, board positions or
22 advisory board positions.

1 Q Which are those?

2 A There's one called Pax Recon.

3 Q Which year?

4 A Excuse me?

5 Q Which year was that?

6 A This is probably from -- it's going to be
7 from 2006 or something, around that time. Pax Recon
8 has holdings in various companies. And through my
9 involvement in Pax Recon, I have positions in those
10 companies. One is called XtraSpace. One is called
11 Nordisk Gestalt Institut. One is called Applied
12 Technologies and one is called Institute for
13 Leadership Dynamics.

14 I think that's all of them.

15 Q Were you ever an employee of SurfCast?

16 A That was in -- of course, apologies for
17 not remembering that. SurfCast was -- after the
18 sale of my first owned company to Cisco Systems,
19 then I started working with SurfCast people.

20 Q And which -- when was that?

21 A It began in '98 and in '99, 2000. I left
22 the company in 2001.

1 Q Thank you.

2 Do you have any financial interest in
3 SurfCast?

4 A As part of my consultancy agreement right
5 now, I have a small monthly income from SurfCast,
6 and I also have an option for SurfCast, yes.

7 Q Can you please describe the options?

8 A The option is for -- I believe it to be
9 for half a percent of the company.

10 Q You'd gain financially if SurfCast obtains
11 a money judgment against Microsoft in the Maine
12 litigation ...

13 A Excuse me?

14 Q You would gain financially if Microsoft --
15 if SurfCast obtains a money judgment against
16 Microsoft in the Maine litigation, wouldn't you?

17 A I suppose so.

18 Q You would agree that you have an interest
19 in the outcome of the litigation; is that correct?

20 MR. HEINTZ: Objection. Calls for a legal
21 conclusion.

22 A I suppose so.

1 Q Are there any documents that you reviewed
2 in order to prepare for this deposition?

3 A Yes.

4 Q What are they?

5 A The declaration that I submitted, the
6 various documents that is mentioned in the
7 declaration, as well as the '403 patent itself.

8 Q Anything else?

9 A Various e-mails pertaining to the
10 communication between other SurfCast people and
11 myself.

12 Q Are you personally -- personally
13 represented by counsel today, personally?

14 A I'm uncertain.

15 Q Are you represented by counsel today?

16 A I don't have a personal lawyer, no.

17 Q Is DLA Piper representing you?

18 A Yes.

19 Q And are you paying for the representation?

20 A I am not.

21 Q Do you know who's paying?

22 A I don't know who's paying.

1 (Exhibit 2006 was previously marked
2 and referred to.)

3 Q I'm going to hand you Exhibit 2006.

4 A Thank you.

5 Q Do you recognize this document?

6 A Yes.

7 Q What is it?

8 A It's a declaration.

9 Q Who wrote this declaration?

10 A This was written by me in cooperation with
11 DLA Piper staff.

12 Q On paragraph 2, it's on page 2, you say,
13 "I am currently providing services to Surfcast, Inc.
14 in connection with this Inter Partes review."

15 Do you see that?

16 A Yes.

17 Q What kind of services are you providing?

18 A I have a consultancy agreement and it
19 involves reviewing documents with respect to the
20 '403 patent and to this case.

21 Q Does it include preparation for today's
22 deposition?

1 A Yes.

2 Q Does it include taking today's deposition?

3 MR. HEINTZ: Objection, form.

4 A I'm actually uncertain.

5 Q So you don't know whether your services
6 includes taking this deposition; is that correct?

7 MR. HEINTZ: Objection, form.

8 A I actually don't know.

9 Q Are you being paid for your services?

10 A Yes.

11 Q Are you being paid for your deposition
12 prep time?

13 A Yes.

14 Q Are you being paid for your time to take
15 the deposition today?

16 A I'm uncertain about that, but I suppose
17 so.

18 Q Does your pay -- amount of the pay depend
19 on the outcome of the case?

20 A No.

21 Q On page 2, the same page, if you can look
22 at paragraph 6, you say, "I conceived of the

1 inventions recited in at least independent claims 1,
2 22 and 46, and also dependent claims 2, 3, 5 to 9,
3 12, 17 to 21, 23 to 28, 30, 32 to 33, 35 to 37, 39
4 to 41, 47 and 48, of the '403 patent prior to June
5 29th, 1999."

6 Do you see that?

7 A I see that.

8 Q What claim interpretation did you use to
9 reach this conclusion?

10 A This was done in cooperation with DLA
11 Piper staff, and this series of numbers was proposed
12 to me and I believe them to be true.

13 Q So -- do you know -- perhaps you didn't
14 ask -- understand my question.

15 Do you know what claim construction you
16 used to reach this conclusion?

17 A I'm not sure I understand your question.

18 Q Did you read the Board's order instituting
19 the IPR proceeding that?

20 A Is that a document?

21 Q Yes.

22 A Do you have a copy of it?

1 Q I don't.

2 A I've read so many documents in this case,
3 I would like to see it before I answer.

4 Q So you don't recall right now whether you
5 saw the Board's order instituting the IPR
6 proceeding; is that correct?

7 A I believe I did, but I would need to see
8 it to recognize it.

9 Q In that document, the Board adopted
10 certain interpretations of certain various words and
11 phrases in the claims.

12 Do you remember that?

13 A It sounds familiar.

14 Q Did you use the Board's construction?

15 A I'm uncertain what you mean.

16 Q You say it sounds familiar that the Board
17 interpreted certain claims in that document. Did
18 you use those interpretations from the Board to
19 reach this conclusion?

20 A I don't think I can answer that question.

21 Q Is that a no?

22 MR. HEINTZ: Objection. Mischaracterizes

1 the testimony.

2 A I don't know. I don't think so.

3 Q Just so that I understand, SurfCast filed
4 a motion to amend the claims in this proceeding.
5 Are you aware of that?

6 A Yes.

7 Q So just to be clear, when you say you
8 conceived the claims mentioned in paragraph 6,
9 you're referring to the claims before any of these
10 amendments were made; is that correct?

11 A I'm not aware which amendment -- amendment
12 you mean and when these took effect.

13 Q Are you aware that there were proposed
14 amendments made by SurfCast in this IPR proceeding?

15 A I believe so.

16 Q I just wanted to make sure what the scope
17 of this claims -- what you're saying is.

18 In reaching your conclusion, are you --
19 were you looking at the amended claims or the claims
20 before amendment?

21 A I believe that I saw both so I'm uncertain
22 as to which form the basis for this.

1 Q So you don't know which claims you were
2 referring to in paragraph 6; is that the testimony?
3 I just want to make it clear.

4 A I'm uncertain.

5 Q On page 3, if you look at paragraph 8, you
6 say, "At the time a user had to open a variety of
7 programs to view different kinds of information,"
8 correct?

9 A Yes.

10 Q What do you mean by this?

11 A I mean that if you wanted to view a web
12 page, you would open a web browser. If you wanted
13 to view a Word document, you would open a Word
14 application.

15 So depending on what you wanted to see,
16 you would have to open the application that was
17 meant for displaying what you wanted to see.

18 Q So when you say "at the time," are you
19 talking about what existed prior to June 29th, 1999?

20 A Yes.

21 Q Is it your opinion that there's nothing
22 novel about calling a variety of programs to view

1 different kinds of information?

2 MR. HEINTZ: Objection. Form. Calls for
3 a legal conclusion.

4 I'm sorry, can I hear that question again.
5 I apologize.

6 (Record read.)

7 MR. HEINTZ: Same objections.

8 A "There is nothing novel" ... I believe
9 that what we described in our invention was novel.

10 Q No, that's not my question. I was asking
11 you about whether calling a variety of programs to
12 view different kinds of information was novel or
13 not.

14 MR. HEINTZ: Objection, form. Objection,
15 calls for a legal conclusion.

16 A What I wrote here, that the user had to
17 open the program meant for displaying the data he
18 wanted to see was common at this time and not novel.

19 Q Was not novel. So calling a variety of
20 programs to view different kinds of information was
21 not novel, correct?

22 MR. HEINTZ: Objection. Mischaracterizes

1 the testimony. Objection, form.

2 A It's -- you say calling.

3 Q Yes.

4 A I say the user had to open. So it's a
5 user action. To me calling is something different.

6 Q Let me -- how is calling different from
7 open?

8 A That it's a user action to open this
9 program to view that and this program to view that.
10 The main idea of our invention was that the SurfCast
11 grid and tile would take care of that for you.

12 Q So the -- are you saying the user cannot
13 call a variety of programs; is that what you're
14 saying?

15 MR. HEINTZ: Objection, form.

16 A I mean, I'm a programmer, so I know that
17 opening a program means that you perform some user
18 action that results in the calling of a certain
19 function in a program.

20 Q So you use open and calling at the same
21 time. Do you mean that opening a program
22 necessarily calls the program?

1 A Opening a program surely must call a
2 function to initialize the program.

3 Q And your -- is it your position that
4 calling a variety of programs to view different
5 kinds of information was not novel; is that correct?

6 MR. HEINTZ: Objection, form.

7 A No, I -- the difference is in the user
8 intervention, that the user is doing something
9 actively to open each program. In our invention,
10 this was done for him so that's why I think it's
11 different.

12 Q Let me step back.

13 A Okay.

14 Q Is it your opinion that there's nothing
15 novel about opening a variety of programs to view
16 different kinds of information?

17 MR. HEINTZ: Objection, form. Objection,
18 calls for a legal conclusion.

19 A There was, at the time, nothing novel
20 about a user opening various programs to view
21 various information.

22 Q So, then, is it your opinion that there's

1 nothing novel about calling a variety of programs to
2 view different kinds of information?

3 MR. HEINTZ: Objection, form. Objection,
4 calls for a legal conclusion.

5 A I would say the same as before, that we
6 thought that the invention we did was novel, that
7 the SurfCast grid and tiles would take care of
8 opening whichever system would be needed for
9 displaying the information that the user wanted to
10 see. That's why we did it.

11 Q That was not my question. I wasn't asking
12 about what SurfCast did. I was asking about your
13 statement here in paragraph 8, and you testified
14 that a user opening a variety of programs to view
15 different kinds of information was not novel. And
16 my question was whether there's anything novel about
17 calling a variety of programs to view different
18 kinds of information.

19 MR. HEINTZ: Objection. Form.

20 A I would agree to the extent that if the
21 user did it by user interaction, then there was
22 nothing novel, but we believed there was something

1 novel in the way that we did it.

2 Q How is -- how is the way we did it?

3 A Excuse me?

4 MR. HEINTZ: Objection, form.

5 Q Strike that.

6 When you say "the way we did it," what do
7 you mean by that?

8 A The SurfCast grid and tile invention.

9 Q Can you describe it in this context?

10 MR. HEINTZ: Objection to form.

11 A The vision we had at this time was that
12 there would be a SurfCast grid and tile application
13 that would display everything that you wanted to see
14 on your screen at the same time. That was the basis
15 for the idea. So different tile types would take
16 care of displaying different information.

17 Q So is it your opinion that calling a
18 variety of programs to view different kinds of
19 information was your invention -- strike that.

20 Calling a variety of programs to view
21 different kinds of information, was that SurfCast's
22 invention?

1 MR. HEINTZ: Objection. Mischaracterizes
2 the testimony. Objection, form, and calls for a
3 legal conclusion.

4 A I'm sorry.

5 MR. SUH: Can you repeat the question.

6 (Record read.)

7 MR. HEINTZ: Same objections.

8 A That was not SurfCast's invention. It was
9 more than that.

10 Q So was that known in 1999? Was that
11 feature known, calling a variety of programs to view
12 different kinds of information, was that feature
13 known at the time, which is 1999?

14 MR. HEINTZ: Objection, form.

15 A The feature was -- the feature was known,
16 that you could write a program that could call
17 functions, call other programs. So this feature was
18 known. The SurfCast invention is something else.

19 Q On page 4, paragraph 11, you say, "At the
20 time the user typically had to click on each window
21 to view updated information from the information
22 source." Correct?

1 A Yes.

2 Q Why typically?

3 MR. HEINTZ: Objection, form.

4 Q Why did you use the word "typically" in
5 this sentence?

6 A In order to describe it, I would have to
7 assume a typical use of applications on a computer
8 screen.

9 Q Was there any programs that did not
10 require clicking on each window to view updated
11 information from the information source?

12 A This section is about -- is about how you
13 use applications on a computer screen and if you
14 wanted to interact with a program, for example, a
15 web browser or a word processing program, you would
16 have to make that program the foreground
17 application, the one receiving the user interface
18 actions.

19 So if you were scrolling down a Word
20 document and you wanted to see the next page or see
21 another page of a web page that was in another
22 application, then you would have to activate that

1 application to bring it to the foreground.

2 This -- this section is about describing
3 how SurfCast was different, that we would display
4 any data that the user wanted to see on the screen
5 simultaneously.

6 Q Now, I'll get to that. But my question
7 was, at the time you say the user typically had to
8 click on each window --

9 A Yes.

10 Q -- to view updated information from the
11 information source.

12 And my question is, why do you use the
13 word "typically"? Does that mean there were certain
14 other programs that did not require this?

15 A There were certainly applications that
16 would -- that would display -- display -- display
17 updated information without the user interacting.
18 That depended on the application. For example, I
19 told you I was in the stockbroking industry. And
20 the updating of a stock price on the screen did not
21 require user intervention. It was something that
22 was triggered by outside events.

1 Q What kind of outside events?

2 A Whatever -- whatever was happening at the
3 stock exchange providing the information.

4 Q Any other examples you can think of?

5 MR. HEINTZ: Objection to form.

6 Q Are there any other samples that did not
7 require clicking on each window to view updated
8 information from the information source?

9 A I can think one up right now, but -- do
10 you want me to do that?

11 Q Sure.

12 A For example, I worked also in -- with
13 television technology in my own company, and one was
14 -- one application was teletex pages. These would
15 update without user intervention depending on the
16 broadcaster's priority and transmission. So if you
17 were viewing a sports result, the page would
18 automatically scroll to the next page whenever the
19 broadcaster transmitted this next page. That would
20 be an example of that.

21 Q Thank you.

22 Then you say in paragraph 11, the next

1 sentence, you say, "But each mosaic or mini screen
2 on our new user interface would be updated without
3 the user having to intervene," correct?

4 A Yes.

5 Q What do you mean by "intervene"?

6 A The whole idea of the SurfCast grid and
7 tile was that -- that the tiles would provide
8 information that would update according to a
9 configuration so the user could sit back and just
10 watch his screen, and his tiles would update
11 according to the configuration. The tiles would
12 present information from various information
13 sources, so you wouldn't have to click on the stock
14 price for it to update. That would be triggered
15 either by a time interval or an outside event.

16 Q When you say "outside event," are you
17 talking about what you just referred to in your
18 previous example of what existed at the time when
19 the user did not have to click on each window to
20 view updated information?

21 A Yes.

22 MR. HEINTZ: Objection, form.

1 A We certainly had stock exchange
2 information systems that would update on the
3 screen -- the screen without the user having to do
4 anything.

5 Q So how is our new user interface novel to
6 the extent that it would be updated without the user
7 having to intervene?

8 MR. HEINTZ: Objection, form. Calls for a
9 legal conclusion.

10 A The title of the SurfCast invention
11 includes the word display, simultaneous display of
12 multiple data streams, and the invention was about
13 managing and controlling the display of information
14 from multiple data streams and presenting this to
15 the user. So that's why it was different, that it
16 was -- it was able to manage and code these
17 different data streams from different sources at the
18 same time without the user having to intervene.

19 Q So just to understand, I don't see what
20 you just said in this statement where it says "but
21 each new mosaic or mini screen on our new interface
22 would be updated without the user having to

1 intervene."

2 So the feature of being updated without
3 the user having to intervene was not novel; is that
4 correct?

5 MR. HEINTZ: Objection, form. Objection,
6 mischaracterizes the testimony.

7 A If you read the sentence that's in the
8 same paragraph, that the user could see
9 simultaneously in one screen updated information
10 from all the information sources that he wanted.

11 Q Yes, but --

12 A That's the novel part.

13 Q So this is the novel part, and the part
14 where the user interface is updated without the user
15 having to intervene, that -- there's nothing novel
16 about that; is that correct?

17 MR. HEINTZ: Objection, form. Objection,
18 mischaracterizes the testimony.

19 A If you take that feature out of the
20 context, I agree that updating information on a
21 computer screen without the user having to intervene
22 in itself is not novel. Our invention was about

1 simultaneous display of multiple data streams which
2 we believe to be novel.

3 Q Here when you say "Our new user interface
4 would be updated without the user having to
5 intervene," so you mean that your user -- new user
6 interface would be updated without the user making
7 any selection of the tiles; is that correct?

8 A The user would have to configure his tiles
9 and set up his grids with various tiles. And then
10 the next time he would open his SurfCast grid and
11 tiles system, they would be like he left them the
12 last time. So it -- it was set up previously the
13 way the user wanted to see his information, the
14 arrangement of the tiles and the configuration of
15 the tiles.

16 Q I'm trying to understand what you mean
17 when you say "Our new user interface would be
18 updated without the user having to intervene."
19 Would you agree that your new user interface would
20 be updated without the user making any kind of
21 selection within the tiles?

22 MR. HEINTZ: Objection, foundation.

1 Objection, form.

2 A Apart from the previous configuration and
3 setup, he would -- he would get updated information
4 without intervening.

5 Q Without any selection?

6 MR. HEINTZ: Objection, foundation.

7 Objection, form.

8 Q Without any selection, would your new user
9 interface be updated even without any selection of
10 the tiles?

11 A Yes.

12 Q If the user puts a mouse over the tile --

13 A Yes.

14 Q -- does that qualify as intervening?

15 MR. HEINTZ: Objection, form. Objection,
16 foundation.

17 A There are -- yes, it qualifies as
18 intervention.

19 Q If the user left clicks an element of the
20 user interface, does that qualify as intervening?

21 A Yes.

22 Q If the user right clicks the element of

1 the user interface, does that qualify as
2 intervening?

3 A Yes.

4 Q If the user double clicks an element of a
5 user interface, does that qualify as intervening?

6 A Yes.

7 (Exhibit 2023 was previously marked
8 and referred to.)

9 Q For the record, I'm handing you Exhibit
10 2023. Do you recognize this document?

11 A Yes.

12 Q What is this?

13 A I recognize the handwriting, and I believe
14 this to be one of Ovid Santoro's notebooks.

15 Q If you could turn to page 20, there's a
16 statement saying, "Tiles are like bookmarks except
17 they are a live link with the website."

18 Do you see that?

19 A I see that.

20 Q Do you agree with this statement?

21 A To a certain extent. I would have to go
22 back and tell you that Ovid Santoro is -- was at the

1 time not a programmer or a technologist. He was a
2 man with ideas and a background in banking, among
3 many other things, and I was a programmer at the
4 time, so these -- these notes would be normally
5 taken by Ovid after our sessions and would be his
6 interpretation of the things that we talked about.
7 Sometimes he would share these with me and I would
8 comment on them and sometimes he would not share
9 them. So I believe this to be Ovid's version of
10 what we talked about at the time.

11 Q As you read it now, are you saying that
12 what's written here, at least this statement, is not
13 accurate?

14 A I would say tiles are a lot more than
15 that.

16 Q But do you agree that tiles are a live
17 link with a website?

18 A Well, there's one tile type that is a
19 browser tile type which can be configured to do what
20 it says here.

21 Q So you do agree with this statement; is
22 that correct?

1 MR. HEINTZ: Objection, mischaracterizes
2 testimony.

3 A I disagree with this as a description of
4 what tiles are, but this is a description of what
5 one type of tile could be like.

6 Q So to rephrase that, just so that I
7 understand, are you saying tiles can be a live link
8 with a website?

9 A Yes, they can be, yes.

10 Q If you can turn to page 7. It says, "So,
11 every frame/second a new tile/channel updates."

12 Do you see that?

13 A I see that.

14 Q Do you know what this means?

15 A I don't know Mr. Santoro's meaning of it,
16 but I can tell you what I think it is.

17 Q Please.

18 A Okay. In these discussions at this time,
19 I would tell Mr. Santoro and whoever participated in
20 the discussions about different technology areas,
21 mostly the ones that I knew about and had worked
22 with before this. And I had worked quite a lot with

1 television technology and with teletex technology,
2 which the television has frames per second
3 properties and teletex has update technologies. I
4 believe that Ovid would use some of these technical
5 expressions as a way to explain to himself what this
6 tile refresh system was about. So he would catch on
7 to a way of formulating it, perhaps taking from
8 different technology areas. And this is an example
9 of that. I can see some of these -- some of these
10 words stem from -- from television technology or
11 teletex technology.

12 Q So does this mean that the tiles would
13 update -- new tiles would update every second, for
14 example, in a round robin fashion?

15 A The way that we talked about tile refresh
16 was that it was configurable individual for each
17 tile. So each individual tile could have its own
18 refresh settings. For some application areas or
19 some tile types, it would make sense to have
20 frequent updates either triggered by a time
21 interval, like is mentioned here, five, ten or 15
22 seconds, or the update could be triggered by another

1 method such as outside events.

2 The round robin idea was something that
3 came from an analogy that we used like a slide
4 projector carousel. It displays the slides in a
5 round robin fashion. And this was used as -- as a
6 way to understand tile updating, but it was
7 certainly not meant as a way to describe the tile
8 refresh system that we envisioned or that I
9 envisioned.

10 Q But if you only focus on the sentence "So
11 every frame/second a new tile/channel updates,"
12 This is talking about the round robin fashion; is
13 that correct?

14 A It looks like it, yes. I believe this
15 context was if you had a television tuner in a PC --
16 at the time the tuners were able to be tuned to one
17 single station at the time. We were using analog
18 television signals at the time.

19 So if you wanted, for example, eight tiles
20 on your screen to display television channels, the
21 tuner would have to tune to each station, grab a
22 frame, tune to the next station, grab a frame. That

1 would be, in effect, a round robin fashion.

2 So for the television channel tile, this
3 could very well describe how it could update unless
4 you had individual priority settings for the update,
5 such as more frequent update of one channel than the
6 other channel. But this -- this could very well
7 describe one way of updating tiles.

8 (Exhibit 2025 previously marked and
9 referred to.)

10 Q I'm going to hand you Exhibit 2025. Do
11 you recognize this document?

12 A No.

13 Q What is it?

14 A It's an e-mail trail between Mr. Santoro
15 and myself.

16 Q If you look on page 2 of Exhibit 2025,
17 Mr. Santoro writes an e-mail to you with a subject
18 line "Web EPG" and says "I have an idea."

19 Do you see that?

20 A Yes, I see that.

21 Q What does this mean?

22 Let me clarify. What does web EPG mean?

1 A Again, the EPG was a concept from the
2 television area. It was an abbreviation for
3 electronic program guide, which is what we today
4 think of as a TV guide, what's on on what channel.
5 I believe at this time that Ovid's initial idea
6 would be an electronic program guide for websites.
7 So he would take a technology from the television
8 area and at least envision it being used in a web
9 browser area, website area.

10 Q Your response to Mr. Santoro's e-mail was
11 R-U-Z-Y-R-I-O-S.

12 A Yes.

13 Q What does this mean?

14 A It means are you serious. And it's --
15 it's actually about how Mr. Santoro and I
16 communicated at the time. We would throw crazy
17 ideas at each other. And I just needed to check
18 with him if he really meant this as a seed of a new
19 idea.

20 (Exhibit 2036 was previously marked
21 and referred to.)

22 Q I'm going to hand you Exhibit 2036.

1 This is an e-mail marked SC 000101621020
2 in the bottom, which is from the Maine litigation.

3 Do you recognize this document?

4 A Yes, I do.

5 Q In preparing for your deposition today,
6 did you read your prior deposition transcript?

7 A Yes, I did.

8 Q Do you recall testifying about this e-mail
9 in your prior deposition?

10 A I believe so, yes.

11 Q Do you recall testifying in that prior
12 deposition that this e-mail does not say anything
13 about assigning a refresh rate to a tile?

14 A Let me just browse through it.

15 I can't find the word refresh rate or
16 assigning refresh rate to a tile, but I can
17 certainly find descriptions of tiles being live or
18 play, which to me is the same thing as refreshing.

19 Q But that was not my question. My question
20 was, do you recall testifying in that prior
21 deposition that this e-mail does not say anything
22 about assigning a refresh tile -- a rate to a tile?

1 A I believe so.

2 (Exhibit 2048 was previously marked
3 and referred to.)

4 Q I'm going to hand you Exhibit 2048. Do
5 you recognize this document?

6 A Yes, I do.

7 Q What is it?

8 A It is a document that I submitted to the
9 patent attorney.

10 Q Are you there? Are you done answering?

11 A Yes.

12 Q I would like to go through the example in
13 this box on page 1.

14 A Yes.

15 Q Starting with html. What does that mean?

16 A Html is a language for defining websites.
17 It's called -- I think the abbreviation is hypertext
18 markup language.

19 Q So this is an html language; is that
20 correct?

21 A In the document I mention in the first
22 paragraph that I called this pseudocode, which is

1 largely similar to html. So in order to tune in the
2 reader to my way of thinking, I'm using an html-like
3 structure.

4 Q So when you say pseudocode, what features
5 were not similar to html?

6 A There were -- some of the keywords in the
7 tile definition that starts with TD and ends with
8 slash TD would be something that I thought of and
9 not something that's normal in a table cell
10 definition.

11 Q So TD is not a standard html command; is
12 that correct?

13 A TD is a table cell definition and is a
14 normal way of marking content as something that is
15 in a table cell. I would use it in this context as
16 a tile definition and inside those two tags, TD and
17 slash TD, would be the markup defining each tile.

18 Q Other than TD, are there other commands
19 that are not standard in html?

20 A For example, my use of the keyword
21 "source," my use of the keyword "refresh."

22 Q Is that it?

1 A The way I use the onmouseover and
2 onmouseout is not the -- the syntax is not correct
3 according to html so it's part of my pseudocode,
4 just meant for displaying or showing how I thought
5 this could be defined in a --

6 Q So what was the definition you were
7 thinking --

8 MR. HEINTZ: I'm sorry, please let the
9 witness answer his question.

10 MR. SUH: Sorry.

11 A -- in a language context.

12 Q Are you done?

13 A Yes.

14 Q So what did onmouseover mean?

15 A This was an example of invoking certain
16 functions of the tile by performing user actions.
17 For example, hovering the mouse over the tile would
18 trigger this action 1 with an argument, if one --
19 argument 1, in this example. And when you then
20 remove the mouse from the tile, the onmouseout would
21 be called -- would be -- would trigger the function
22 action 2 with another argument.

1 Q Can you give me an example of action 1 and
2 action 2?

3 A Yes, I can give you one example. If, say,
4 I had a stock price tile with the price of, let's
5 say, the Microsoft stock was displayed as a number,
6 as a decimal number, I would -- like 27.35. But if
7 I then hovered the mouse over the tile, the tile
8 could, on that action, display further key figures
9 derived from the stock price, for example, the price
10 earnings ratio or the percentage gain or loss within
11 the day. So the level of detail would be influenced
12 by my user intervention.

13 Q Action 1 is a function name for displaying
14 other keys or what you just described?

15 A It's just -- yes, it means that the user
16 -- user intervention to move the mouse over could
17 trigger a function in this system that could do
18 something.

19 Q And what is -- can you give me an example
20 of argument 1, ARG 1?

21 A The example would be that the tile was,
22 for example, a map, map tile type that would show

1 the city I live in. And the argument on the
2 mouseover could be the precision of the mouse so
3 that the action function that was called would know
4 where I was placing the mouse specifically on the
5 map in order to, for example, display information
6 about the point on the map that I was hovering over.

7 Q So argument 1 --

8 A Would be the precision. Sorry.

9 Q Would be in general -- just to go over
10 this a lot faster, it would be, in general, a
11 variable that goes into the function action 1; is
12 that correct?

13 A Yes.

14 Q You also mentioned refresh; can you
15 describe that, please?

16 A Yes, I've given an example of a refresh
17 definition that one way of defining refresh rates
18 was time-based, that these refreshes would occur
19 after a certain time period had elapsed. In this
20 example, refresh timeout 200 would mean it was a
21 time-based refresh and it would occur after 200 time
22 units had elapsed.

1 Q Are the units milliseconds or seconds?

2 A They are not defined at this time.

3 Q But can be milliseconds?

4 A They could be milliseconds or seconds or
5 tens of seconds.

6 Q So just to go through all of these three
7 faster, would you agree that any time you had
8 refresh or timeout and the number following the
9 timeout in parenthesis is the refresher; is that
10 correct?

11 A That's one way of describing it, yes. I
12 had -- as we talked about earlier, I had several
13 other refresh definition styles in my mind at the
14 time, outside events, derived events or even to
15 update based on something completely different.

16 Q Are those -- are those other embodiments
17 in this example?

18 MR. HEINTZ: Objection, form.

19 A In this particular code we're looking at
20 right now?

21 Q Yes.

22 A They're only timeout. Those are specific

1 timeout definition. It's in the third tile
2 definition where it has timeout zero. That's an
3 example of a tile type displaying some information
4 that doesn't require refreshing after a specific
5 time has elapsed. In this case, at least the text
6 here indicates that it's a local document, and local
7 documents have a tendency not to update unless the
8 user does something.

9 Q So if I understand correctly, when you say
10 refresh equals timeout (zero), it's a refresh rate
11 of zero; is that correct?

12 A Yes.

13 Q Can we go up to HREF equals --

14 A Yes.

15 Q --

16 <http://www.somewhere.com/sometarget.html>?

17 A Yes.

18 Q What does this mean?

19 A The HREF keyword is, again, taken from
20 html inspiration. Along with the anchor definition,
21 the A just before it, is a way of describing what
22 happens if this tile is triggered to launch. And

1 then whichever -- whichever application is
2 responsible for displaying html documents will
3 launch as an application and display what data comes
4 from this URL. This form is somewhat similar to a
5 URL.

6 Q Isn't the HREF followed by that command,
7 isn't that command used to create hyperlinks in
8 html?

9 A Yes, it is.

10 Q If I understand correctly, with a link
11 "http://www.somewhere.com/sometarget.html," would
12 this link appear in the tile?

13 A Not necessarily. It's a way of describing
14 that the tile, I call it the tile target, so when a
15 tile is, for example, double-clicked, if that is
16 what is required to launch this tile, then you would
17 be taken to this URL using whichever application
18 your system was configured to use for displaying
19 html documents. In this instance it would launch a
20 browser.

21 Q Do you agree that the HREF command here is
22 a standard html command?

1 A I do agree that the HREF tag exists in the
2 html specification. But, again, I would like you to
3 note that this is pseudocode and not necessarily
4 html. I'm just using an html-like structure.

5 Q Is there anything in this example,
6 pseudocode, suggesting that the link will not appear
7 in the tile?

8 A Well, there is -- if we want to be
9 inspired by html, there's something missing here in
10 order to display the link, and that is the rest of
11 the anchor tag that's not even included here. But
12 the way that -- which I also explained to the
13 recipient of this document, that the HREF is not
14 meant as a visible link to click but, rather, as a
15 launch address once the tile is double-clicked to
16 launch if double-click was the launch action.

17 Q Are you referring to the bottom of page 1
18 where it says "The HREF keyword decides what happens
19 if the user actually selects the tile"?

20 A Yes, that's one way of describing that.

21 Q So what does this mean?

22 MR. HEINTZ: Objection, form.

1 A This means that if the tile is launched,
2 that means the user has done to the tile what is
3 needed to launch it, then this HREF is what will be
4 launched. It's a URL and, in this case, an html
5 document, so the resulting -- the resulting -- the
6 result of the operation would be that a browser
7 would appear on the screen with this particular URL
8 document in it.

9 Q So if I understand correctly, if the user
10 selects the tile, the URL next to this HREF command
11 will launch; is that correct?

12 A Yes, if the tile is made to launch by user
13 intervention. Launching could be done by double
14 clicking. That means if I double click the tile, a
15 browser would appear with whatever the content of
16 somewhere.com/sometarget displayed in it.

17 Q In this example, can you show me where --
18 how -- where it describes how the user can actually
19 select the tile?

20 MR. HEINTZ: Objection, form.

21 A The way that I describe this was that the
22 content -- if you look at the source keyword, the

1 source keyword points to a tile description file,
2 and this is called
3 surfcast.com/tilelibrary/tile2.til. This is a file
4 that describes what the tile can do and how it does
5 it. So if I can get you to turn the page and see
6 the next boxed content --

7 Q Page 2?

8 A Yes, on page 2, here is a definition -- or
9 is a more elaborate definition of a tile. And this
10 could be in this tile definition file or it could be
11 in the -- what we looked at before was actually the
12 grid definition file. Here you see more keywords
13 such as clickmap, toolbar and alarm that would
14 further specify the properties, features and
15 functions of a tile. And especially the clickmap
16 has, in this example, three different areas where
17 you can click and resulting in three different
18 functions of the system to be called. And this
19 means depending on where you click on the tile,
20 certain actions would take place. So that's why
21 I -- just before when we talk about selecting and
22 launching a tile, it's actually definable what --

1 what the user action of clicking on a tile would do.
2 It could be clicking in the top of the tile did
3 something, but clicking in the bottom of the tile
4 would do something different. One thing could be
5 launching it to an external application or another
6 thing could be invoking a configuration setting or
7 something like that. So that's why it's complicated
8 to talk about because it's configurable.

9 Q Are you finished?

10 A Yes.

11 Q So you mention, page 2, clickmap. I see a
12 lot of numbers. First I see -- the first line
13 starts with number 0, 0,50 and 50, and you mention
14 three different areas. Is this one of the three
15 different areas that you mention?

16 A This is -- it's my attempt at defining
17 pixel area in the tile that is clickable. So the
18 0, 0,50,50 would be X,Y of the top left corner and
19 X,Y on the bottom left corner of a rectangle on the
20 screen that is clickable, invoking clickfunction1
21 with clickargument1.

22 MR. SUH: We can take a break.

1 THE VIDEOGRAPHER: This concludes disc
2 number 1 of the video deposition of Klaus Lagermann.
3 The time is 10:13:31 a.m. We are now off the
4 record.

5 (A brief recess was taken.)

6 THE VIDEOGRAPHER: This begins disc number
7 2 of the video deposition of Klaus Lagermann. The
8 time is 10:29:57 a.m. We are now on the record.

9 BY MR. SUH:

10 Q Mr. Lagermann, we left off in the middle
11 of Exhibit 2048. So just to recap, page 1 is an
12 example of the grid you mentioned, grid of tiles,
13 with three tiles. An example -- the second example
14 on page 2 is an example of a single tile.

15 A Yes.

16 Q And we were talking about this clickmap.

17 A Yes.

18 Q And I see three click functions,
19 clickfunction1, clickfunction2, clickfunction3.

20 Is it fair to characterize these as
21 different functions for different click areas?

22 A Yes.

1 Q And next to that I see three click
2 arguments, clickargument1, clickargument2,
3 clickargument3. Are these variables that control
4 the individual click functions?

5 A Yes, it could be an argument passed to the
6 function from the user interface, for example, exact
7 pixel coordinates of where the user clicked.

8 Q And in this example I see three click
9 functions with three click arguments for different
10 -- three different click areas.

11 A Yes.

12 Q And do you agree that users can select a
13 tile by selecting certain areas within the tile?

14 MR. HEINTZ: Objection, form.

15 A The way this was -- this was made to
16 demonstrate that there could be different functions
17 invoked by -- by selecting the tile in different
18 locations on the tile, but all three of these would
19 mean the tile was selected.

20 Q And when you select these certain areas,
21 these certain areas need not be the entire tile; is
22 that correct?

1 A That would be --

2 MR. HEINTZ: Objection, form.

3 A That would be -- there would be specific
4 functions called. If you clicked in these defined
5 areas and if you clicked outside of these areas, the
6 default behavior for this tile type would take
7 action.

8 Q Is it your opinion that clicking on an
9 area within a tile, certain areas, is indeed
10 selecting a tile itself?

11 MR. HEINTZ: Objection, form.

12 A I believe that clicking inside the tile
13 area no matter where you click is selecting the
14 tile.

15 Q And it is your opinion that clicking on a
16 portion of tile can be selecting the tile itself.

17 A Yes.

18 Q Can we go back to the first page. I think
19 we left off at the HREF command.

20 A Yes.

21 Q I think you testified that examples of how
22 users actually select a tile is shown in page 2,

1 clickmap.

2 A That is one example.

3 MR. HEINTZ: Objection, form.

4 Q Can you give me another example?

5 A If no clickmap is defined, then the
6 default behavior of the specific tile type would
7 kick in on the user clicking on the tile and, as
8 such, selecting it.

9 Q Can the user select the tile by selecting
10 the link?

11 MR. HEINTZ: Objection, form. Objection,
12 mischaracterizes the testimony. Objection,
13 foundation.

14 A I'm not sure what you mean by link.

15 Q Let's go to lines -- the ninth line in
16 this first box where it says "HREF equals" and
17 there's a URL.

18 A Yes.

19 Q Is there anything in this example
20 indicating that this link will not appear in the
21 tile?

22 A Yes.

1 Q Can you point me to that?

2 A It's something that's missing. In order
3 for the link to appear in the tile, there would need
4 to be a further specification of what the link would
5 look like, and it's not present in this example.

6 Q Can you give me an example of what needs
7 to be there in order for a link to appear?

8 A If we, again, using the html analogy, why
9 this is not html but html-like pseudocode, then the
10 normal way of displaying a link is to, inside the
11 anchor tag, the one that begins with the capital A,
12 to have the representation of the link defined
13 before the closure of the anchor tag. There's no
14 representation of the link defined here. In fact,
15 this is slightly incomplete as we are missing a
16 closing tag.

17 But my use of the HREF is -- also is noted
18 below, that this is what will happen if the user
19 selects the tile, and by selecting the tile I mean
20 the default behavior of selecting a tile, which
21 means launching the tile or, in fact, launching the
22 tile HREF.

1 (Exhibit 2012 was previously marked
2 and referred to.)

3 Q I'm handing you Exhibit number 2012.
4 Do you recognize this document?

5 A Yes, I do.

6 Q You agree that this exhibit does not
7 mention patent anywhere in the document, correct?

8 A It does not seem to mention the patent.

9 Q If we can go back to Exhibit 2006 on page
10 9, paragraph 24.

11 A I have 24 on page -- page 9. Sorry.

12 Q Yes, page 9 of the document, page 10 of
13 the --

14 A I got it.

15 Q You cite Exhibit 2012 to support your
16 statement "I exchanged e-mails with my coinventor
17 Ovid Santoro regarding obtaining a patent on a tile
18 user interface invention."

19 Correct?

20 A I see that.

21 Q So was the conversation regarding
22 obtaining a patent in what is now redacted in

1 Exhibit 2012?

2 MR. HEINTZ: Objection. I'm sorry, can I
3 have that sentence reread? May I have that question
4 reread, please?

5 (Record read.)

6 BY MR. SUH:

7 Q I think my question was, was the
8 conversation regarding "obtaining a patent" in what
9 is now redacted in Exhibit 2012?

10 MR. HEINTZ: I'm going to caution the
11 witness not to reveal any attorney-client
12 communication in answering that question.

13 I think the question is but does it call
14 for anything but just cautioning you not to reveal
15 anything about the content of the communication, if
16 you can answer that question.

17 A The way I see this e-mail is that
18 Mr. Santoro is writing to me while he is also in
19 conversation Andrew Gray. So the message to me is
20 he's -- he's asking me what are they waiting for,
21 please, please. And I explained to Ovid, to
22 Mr. Santoro, sorry, what they are waiting for.

1 Q Did you review the unredacted version of
2 Exhibit 2012 before preparing your declaration?

3 A I did not. The thing I reacted to was the
4 -- was the call from -- the message from Ovid
5 Santoro, from Mr. Santoro, urging me to deliver
6 something that was missing.

7 Q So other than you mention -- mentioning
8 Andrew Gray in the e-mail, there's no other basis
9 for your conclusion that this exchange of e-mails
10 between Mr. Santoro and you was regarding obtaining
11 a patent; is that correct?

12 MR. HEINTZ: Objection to form.

13 A It is to me because the "they" that we're
14 talking about, what are they waiting for and they --
15 they are Pennie & Edmonds, our patent attorney and
16 --

17 Q Yes, other than that fact --

18 MR. HEINTZ: I'm sorry, please let the
19 witness finish his answer.

20 A At the time, the only communication I
21 would have with Pennie & Edmonds would be concerning
22 the patent, so the fact that I was to send something

1 to Pennie & Edmonds would certainly be concerning
2 the patent application.

3 Q And for the record, you don't know what's
4 in this redacted box, correct?

5 A I got this e-mail back in '99 and it was
6 not redacted at that time so I have seen it once,
7 but right now sitting here I don't recall what's in
8 there.

9 (Exhibit 2018 previously marked
10 and referred to.)

11 Q I'm handing you Exhibit 2018. Do you
12 recognize this document?

13 A I recognize it.

14 Q What is it?

15 A It's an e-mail from me to Richard Bone at
16 Pennie & Edmonds.

17 Q Do you know what was redacted?

18 A I vaguely recall that, since any
19 communication with Richard would be about documents
20 about the patent application, that Richard had asked
21 me, as is shown further down, whether or not I
22 received a fax from him.

1 Q So in the redacted -- I'm sorry.

2 A No, no, not in the redacted, but in his
3 e-mail to me, the one I'm responding to by sending
4 this e-mail back to him, he's asking me whether or
5 not his fax was received at my end.

6 Q And above that there is a box that was
7 redacted.

8 A Yes.

9 Q Do you know what that is?

10 A I believe -- I believe it would be an
11 answer to his question, whether I received the fax
12 or not.

13 Q Do you know or do you just speculate --
14 are you speculating?

15 A From -- from -- I know I've seen this
16 e-mail back then, in '99, so I don't know -- I don't
17 recall the words or remember the words, but it would
18 be --

19 MR. HEINTZ: I'm going to -- sorry to
20 interrupt you, sir. I'm going to instruct you to be
21 cautious not to reveal any attorney-client
22 privileged communications in answering Mr. Suh's

1 question.

2 THE WITNESS: Okay.

3 BY MR. SUH:

4 Q So are you declining to answer based on
5 your counsel's instructing you not to answer?

6 MR. HEINTZ: You know, I -- just -- to
7 clarify the record. I'm not instructing you not to
8 answer. I'm just instructing you not to reveal any
9 attorney-client communication -- any attorney-client
10 privileged communications --

11 THE WITNESS: Right.

12 MR. HEINTZ: -- in your answer. If you
13 can answer his question --

14 THE WITNESS: Okay.

15 MR. HEINTZ: -- without doing so you may
16 answer.

17 A I sincerely believe that the redacted
18 portion is my answer to his question, whether I
19 received his fax or not.

20 Q But you don't know as a matter of fact
21 whether that is or isn't redacted; is that correct?

22 A Sitting here today, no, I don't know for a

1 fact. I believe it to be so.

2 Q Thank you.

3 (Exhibit 2020 was previously marked
4 and referred to.)

5 Q I'm handing you Exhibit 2012 -- 2020. And
6 do you recognize this document?

7 A Yes.

8 Q What is it?

9 A It's an e-mail from me to Richard Bone in
10 continuation of the e-mail we just talked about.

11 Q Do you know what's in this redacted box?

12 MR. HEINTZ: Again, I'll caution the
13 witness not to reveal any attorney-client privileged
14 communications in answering that question.

15 If you can answer his question without
16 revealing those communications, you may do so.

17 A Yes, the same as with the previous
18 exhibit, I don't -- do not sitting right here
19 remember the words that were redacted, but I can see
20 that I attached a document, so my sincere guess is
21 that it's -- it's comments accompanying the attached
22 document, so it would be a sentence about what's in

1 the document.

2 Q But you don't recall what you said in
3 these redacted boxes; is that correct?

4 A No, I don't recall.

5 (Exhibit 2021 was previously marked
6 and referred to.)

7 Q I'm handing you Exhibit 2021. Do you
8 recognize this document?

9 A Yes.

10 Q What is it?

11 A This is a document concerning input for
12 our -- for SurfCast's patent application sent from
13 me to Mr. Richard Bone.

14 Q Almost everything is redacted here. Do
15 you know what's in these redacted boxes?

16 MR. HEINTZ: Again, I'll instruct the
17 witness that -- not to reveal any attorney-client
18 privileged communications. To the extent you can
19 answer Mr. Suh's question without doing so, you may
20 answer the question.

21 A From a vague memory and help by the first
22 sentence in the document, I believe this to be notes

1 and comments for figures meant for inclusion in the
2 patent application.

3 Q Well, the first sentence, "Here are my
4 notes and comments for the figures and
5 specifications."

6 Other than that, do you know what are --
7 what are in these redacted boxes?

8 MR. HEINTZ: Objection, form. Objection,
9 same instruction about revealing -- not revealing
10 any attorney-client communications that are
11 privileged.

12 A I would say that the way it's laid out on
13 the pages indicate to me that these are figures --
14 drawings or figures meant for inclusion in the
15 patent application.

16 Q Do you recall which figures and which
17 portions of the specification were listed in these
18 redacted boxes?

19 A I don't recall at this time. I vaguely
20 remember many figures and diagrams that are -- that
21 was exchanged -- that was in the patent application,
22 but I don't recall which ones was in this document.

1 Q Do you recall if there were any
2 attorney-client communications in these redacted
3 portions?

4 MR. HEINTZ: Objection, calls for a legal
5 conclusion. Objection, form.

6 A Well, this is a communication between the
7 attorney, and at that time, I was the client.

8 Q Are you done?

9 A So -- so this is attorney-client
10 communication.

11 Q Yes. My -- my question was, your counsel
12 instructed you -- instructed you to caution and not
13 disclose attorney-client communications, and did you
14 decline to answer anything that you remember based
15 on that objection?

16 A No, no. I really don't remember.
17 (Exhibit 2022 previously marked
18 and referred to.)

19 Q I'm handing you Exhibit 2022. Do you
20 recognize this document?

21 A I recognize it.

22 Q What is it?

1 A It's an e-mail from myself to Richard Bone
2 at Pennie & Edmonds.

3 Q Do you know what's in this redacted boxes?

4 MR. HEINTZ: Again, I'll caution the
5 witness not to reveal any privileged attorney-client
6 communications in responding to Mr. Suh's question.
7 If you can answer his question without doing so, you
8 may answer.

9 A Given the date of this e-mail and the
10 previous communication between myself and Mr. Bone,
11 I believe this to be comments -- further comments
12 about the document that I sent to him a few days
13 earlier.

14 Q Do you know what comments that was?

15 A Sitting here today, I don't know. I don't
16 remember what the comments were.

17 Q In your answer is there any
18 attorney-client communication that you are declining
19 to reveal based on your counsel's instruction to
20 caution not to disclose any attorney-client
21 communications?

22 A No. No, I simply don't remember.

1 MR. SUH: So I think this is all, but I
2 would like to check my notes to see if --

3 MR. HEINTZ: Yes, why don't we go off
4 record and it will give you a chance to go back and
5 see and consider what I want to do on redirect.

6 MR. SUH: Thanks.

7 THE VIDEOGRAPHER: The time is 10:52:40
8 a.m. We are now off the record.

9 (A brief recess was taken.)

10 THE VIDEOGRAPHER: The time is 11:11:36
11 a.m. We are now on the record.

12 BY MR. SUH:

13 Q Mr. Lagermann, did you talk to your
14 counsel about the case during this break or the
15 previous break?

16 A No, I did not.

17 MR. SUH: I would like to pass the
18 witness.

19 EXAMINATION BY COUNSEL FOR PATENT OWNER

20 BY MR. HEINTZ:

21 Q Mr. Lagermann, I would like you to pick
22 up, again, Exhibit 2048.

1 Can you recall your earlier testimony
2 about that exhibit?

3 A Yes.

4 Q I'll direct your attention in particular
5 to page 1 of Exhibit 2048. And on page 1, I would
6 ask you to direct your attention in particular to
7 the first line, which I think you characterize as a
8 tile definition that begins "<TD><A
9 HREF=http://www.somewhere.com/sometarget.html."

10 Do you see that?

11 A I see that.

12 Q Can you explain again what that line
13 represents.

14 A Yes.

15 Q Please do.

16 A That line represents the default launch
17 target for this tile.

18 Q Okay. And I think Mr. Suh asked you
19 earlier whether the words -- sorry, whether the URL
20 would appear as a link in the tile, in other words,
21 whether the user would be able to see
22 www.somewhere.com/sometarget.html, those letters

1 would appear on the tile.

2 A Objection, form.

3 Q Let me rephrase it.

4 Would the letters that make up the URL in
5 that line appear in a tile to a user?

6 MR. SUH: Same objection.

7 A The URL would not appear in the tile.

8 Q What would appear in the tile?

9 A Whatever the tile was defined to display.

10 Q Where would the definition of what the
11 tile was defined to display appear?

12 A That definition would be given in what is
13 mentioned at the source keyword where the tile --
14 the tile definition file, which is the file
15 tile2.til. That file would define what is actually
16 shown in the tile screen space.

17 Q And when you say "shown in a tile screen
18 space," is that what the user would see?

19 MR. SUH: Objection to form.

20 A That is what the user would see on his
21 screen, yes.

22 Q You said earlier that the

1 somewhere.com/sometarget.html would be what would
2 happen when the tile was launched, I believe.

3 A Yes.

4 Q Did the behavior of the tile when launched
5 depend on what was visible in the tile to the user?

6 MR. SUH: Objection, form.

7 Q Sorry, as defined in the tile2.til file.

8 MR. SUH: Objection, foundation.

9 A The behavior of the tile is defined in
10 several areas. One area is the tile type itself.
11 For example, the browser tile type would display a
12 portion of a web page, but it could also display
13 something else as defined in the tile definition
14 file even if it was a browser tile. Can I give an
15 example?

16 Q Yes.

17 A If for example -- if I wanted my family
18 website -- if I wanted access to my family website
19 in my SurfCast grid and tile application, I could
20 choose to depict this tile. That means the tile
21 would show a picture of my grandson, but when I
22 clicked on it, it would go to -- it would launch our

1 family website. So the launch target of a tile does
2 not necessarily have to do with what is displayed in
3 the tile. It can be defined as something else.

4 Q So does that mean that -- scratch that.
5 Let me rephrase that. Actually that's fine.

6 I'm going to ask you to direct your
7 attention to Exhibit 2023. That is in the notebook
8 that you have in front of you somewhere.

9 I'll ask you to turn to page 7 of Exhibit
10 2023. Do you recall testifying about the contents
11 of page 7 of Exhibit 2023?

12 A Yes.

13 Q Do you recall in one of your answers you
14 referred to the 5/10/15 seconds on the third line of
15 page 7 of Exhibit 2023?

16 MR. SUH: Objection, beyond the scope.
17 Move to strike.

18 Q Do you recall that, sir?

19 A Yes.

20 Q What do -- what is the significance of the
21 5/10/15 seconds --

22 MR. SUH: Objection, form.

1 MR. HEINTZ: Sorry, let me finish the
2 question, please.

3 Q What is the significance of the 5/10/15
4 seconds on the third line of Exhibit 3, if any?

5 MR. SUH: Objection, form.

6 MR. HEINTZ: What's the objection?

7 MR. SUH: Form.

8 MR. HEINTZ: What's the basis of the
9 objection?

10 MR. SUH: Significance.

11 MR. HEINTZ: Meaning it's not clear what
12 significance means?

13 MR. SUH: Vague and ambiguous.

14 BY MR. HEINTZ:

15 Q Mr. Lagermann, do you have any
16 understanding as to what the -- what the notation
17 5/10/15 seconds on page 20 -- page 7 of Exhibit 2023
18 refers?

19 MR. SUH: Same objection.

20 A In the way I read this sentence is that --
21 that this tile would change, meaning update every 5
22 or 10 or 15 seconds, that it was -- it was a refresh

1 rate setting of a tile.

2 Q I'm sorry, I did forget to go back. I'm
3 going to ask you to go back again to Exhibit 2048.
4 We're done with Exhibit 2023. So please go back to
5 Exhibit 2048.

6 It was in the html code section.

7 A Sorry. Got it.

8 Q Okay. I'm going to direct your attention
9 to the third instance where the words "HREF" appear.
10 That's near the middle of page 1 of Exhibit 2048.
11 Do you see that?

12 A Yes.

13 Q I believe you testified earlier that this
14 section of code was a definition of a third tile.
15 Is that correct?

16 A Yes.

17 Q Okay. And, again, just to speed this
18 along, I think you said that this had to do with a
19 tile relating to a locally stored document. Is that
20 correct?

21 A That's correct.

22 Q Mr. Suh asked you a question about the

1 meaning of the line "Refresh equals timeout (zero),"

2 correct?

3 A Yes.

4 Q Does that mean that the tile had no

5 refresh rate that was a function of time associated

6 to it; in other words, there was no time at which

7 the tile would be scheduled to refresh?

8 MR. SUH: Objection. Mischaracterizes the

9 testimony. Objection, foundation. Objection,

10 leading.

11 Q All right. Let me rephrase the question.

12 Did this line of code result in a refresh

13 rate specified by a time?

14 MR. SUH: Same objections.

15 A This example shows a tile that refreshes

16 only at its initial display, but then does not

17 refresh again because the timeout zero in this

18 example means that there is no timeout triggering a

19 refresh.

20 Q You -- I'm sorry, I didn't mean to cut you

21 off. Please.

22 A Just meaning that if we look at the other

1 two definitions of timeout where in the first
2 instance there's 200 time units, in the second
3 that's 500 time units, in this third instance, there
4 are no time units, meaning that there's an
5 indefinite period of time or an infinite period of
6 time until refresh.

7 Does that mean that the tile does not
8 refresh at all? Not necessarily, because the source
9 definition of the tile could have an additional
10 definition of what triggers this tile to refresh.

11 Can I continue the example?

12 Q Absolutely.

13 A If, for example, this document that is
14 being referenced is located on a shared drive or a
15 shared server, and somebody else changes this
16 document, then the nature of the document tile type
17 would monitor this document and, based on a change
18 in the document, would refresh the tile. But it is
19 not based on a timeout. It's based on an external
20 event.

21 MR. HEINTZ: Thank you. No further
22 questions.

1 FURTHER EXAMINATION BY COUNSEL FOR PETITIONER

2 BY MR. SUH:

3 Q Can I ask you some follow-up questions.

4 So refresh will time out (zero).

5 Do you recall your testimony saying that
6 this is indicating a refresh rate of zero?

7 A Yes.

8 MR. SUH: Thank you. No further
9 questions.

10 MR. HEINTZ: I don't think I get a
11 recross. We can go off the record.

12 THE VIDEOGRAPHER: This concludes the
13 video deposition of Klaus Lagermann consisting of
14 two DVD discs. The time is 11:23:44 a.m. We are
15 now off the record.

16

17 (Signature having not been waived, the
18 deposition of Klaus Lagermann was concluded at
19 11:23 a.m.)

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ACKNOWLEDGEMENT OF WITNESS

I, KLAUS LAGERMANN, do hereby acknowledge
that I have read and examined the foregoing
testimony, and the same is a true, correct and
complete transcription of the testimony given by me,
and any corrections appear on the attached Errata
sheet signed by me.

(DATE) (SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER

2 I, Michele E. Eddy, Registered

3 Professional Reporter and Certified Realtime

4 Reporter, the court reporter before whom the

5 foregoing deposition was taken, do hereby certify

6 that the foregoing transcript is a true and correct

7 record of the testimony given; that said testimony

8 was taken by me stenographically and thereafter

9 reduced to typewriting under my supervision; and

10 that I am neither counsel for, related to, nor

11 employed by any of the parties to this case and have

12 no interest, financial or otherwise, in its outcome.

13
14 IN WITNESS WHEREOF, I have hereunto set my

15 hand and affixed my notarial seal this 10th day of

16 March, 2014.

17
18 My commission expires June 30, 201719
20 _____
21 MICHELE E. EDDY
22 NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

1 E R R A T A S H E E T

2 IN RE: MICROSOFT CORPORATION V. SURFCAST, INC.

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6 PAGE LINE CORRECTION AND REASON

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1 E R R A T A S H E E T

2 IN RE: MICROSOFT CORPORATION V. SURFCAST, INC.

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<p>A</p> <p>abbreviation 42:2 44:17</p> <p>ability 9:1</p> <p>able 32:16 40:16 73:21</p> <p>Absolutely 80:12</p> <p>access 75:18</p> <p>accessory 12:19,20</p> <p>accompanying 67:21</p> <p>accurate 37:13</p> <p>acknowledge 82:3</p> <p>ACKNOWLEDGE... 82:2</p> <p>action 23:5,8,18 46:18,22 47:1,2,8,13 48:3,11 52:16 55:1 58:7</p> <p>actions 28:18 46:16 54:20</p> <p>activate 28:22</p> <p>actively 24:9</p> <p>additional 80:9</p> <p>address 8:16 52:15</p> <p>adopted 19:9</p> <p>advisory 12:22</p> <p>affect 9:1</p> <p>affixed 83:15</p> <p>agree 14:18 25:20 33:20 34:19 36:20 37:16,21</p>	<p>49:7 51:21 52:1 57:12 61:6</p> <p>agreement 14:4 16:18</p> <p>al 1:13</p> <p>alarm 54:13</p> <p>ambiguous 77:13</p> <p>amend 20:4</p> <p>amended 20:19</p> <p>amendment 20:11,11,20</p> <p>amendments 20:10,14</p> <p>amount 17:18</p> <p>analog 40:17</p> <p>analogy 40:3 60:8</p> <p>anchor 50:20 52:11 60:11,13</p> <p>Andrew 62:19 63:8</p> <p>Annae 10:19,21,22</p> <p>answer 9:10 10:3 19:3,20 46:9 62:16 63:19 65:11 66:4,5,8,12,13,16,18 67:15 68:19,20 70:14 71:7,8,17</p> <p>answering 9:15 44:10 62:12 65:22 67:14</p> <p>answers 9:9 76:13</p> <p>Apart 35:2</p> <p>apologies 13:16</p> <p>apologize</p>	<p>22:5</p> <p>Appeal 1:2 7:5</p> <p>appear 51:12 52:6 53:7,15 59:20 60:3,7 73:20 74:1,5,7,8,11 78:9 82:7</p> <p>application 21:14,16 26:12 28:17 28:22 29:1,18 30:14 39:18 51:1,3,17 55:5 64:2,20 68:12 69:2 69:15,21 75:19</p> <p>applications 28:7,13 29:15</p> <p>Applied 13:11</p> <p>April 1:11</p> <p>area 42:2,8,9,9 55:17 58:9 58:13 75:10</p> <p>areas 38:20 39:8,18 54:16 55:14,15 56:21 57:10 57:13,20,21 58:5,5,9 75:10</p> <p>ARG 47:20</p> <p>argument 46:18,19,22 47:20 48:1,7 57:5</p> <p>arguments 57:2,9</p> <p>arrangement 34:14</p> <p>asked 64:20 73:18 78:22</p> <p>asking 22:10 25:11,12 62:20 65:4</p> <p>assigning 43:13,16,22</p> <p>associated 79:5</p>	<p>assume 9:18 28:7</p> <p>attached 67:20,21 82:7</p> <p>attempt 55:16</p> <p>attending 8:2</p> <p>attention 73:4,6 76:7 78:8</p> <p>attorney 44:9 63:15 70:7</p> <p>attorney-client 62:11 65:21 66:9,9 67:13 68:17 69:10 70:2,9,13 71:5,18,20</p> <p>Austin 3:5 7:22</p> <p>automatically 30:18</p> <p>aware 9:8 20:5,11,13</p> <p>a.m 1:22 7:10 56:3,8 72:8 72:11 81:14,19</p> <tr> <td data-bbox="191 1150 488 1900"></td><td data-bbox="505 1150 813 1900"></td><td data-bbox="829 1150 1138 1900"></td><td data-bbox="1154 1150 1463 1900"> <p>B</p> <p>B 4:8</p> <p>bachelor's 10:7</p> <p>back 11:8 24:12 31:9 36:22 58:18 61:9 64:5 65:4 65:16 72:4 78:2,3,4</p> <p>background 10:6 37:2</p> <p>Bank 10:19,21,22</p> <p>banking 37:2</p> <p>bankrupt 11:12</p> <p>based 49:15 66:4 70:14 71:19 80:17,19,19</p> </td></tr>				<p>B</p> <p>B 4:8</p> <p>bachelor's 10:7</p> <p>back 11:8 24:12 31:9 36:22 58:18 61:9 64:5 65:4 65:16 72:4 78:2,3,4</p> <p>background 10:6 37:2</p> <p>Bank 10:19,21,22</p> <p>banking 37:2</p> <p>bankrupt 11:12</p> <p>based 49:15 66:4 70:14 71:19 80:17,19,19</p>
			<p>B</p> <p>B 4:8</p> <p>bachelor's 10:7</p> <p>back 11:8 24:12 31:9 36:22 58:18 61:9 64:5 65:4 65:16 72:4 78:2,3,4</p> <p>background 10:6 37:2</p> <p>Bank 10:19,21,22</p> <p>banking 37:2</p> <p>bankrupt 11:12</p> <p>based 49:15 66:4 70:14 71:19 80:17,19,19</p>				

basis 20:22 26:14 63:8 77:8	break 9:22 10:3 55:22 72:14 72:15	14:20 22:2,15 23:22 24:18 25:4 27:2 32:8 70:4	72:4
began 13:21	breaks 9:21	can't 43:15	change 77:21 80:17
beginning 10:6	brief 56:5 72:9	capital 60:11	changes 80:15
begins 7:1 56:6 60:11 73:8	bring 29:1	care 23:11 25:7 26:16	channel 41:2,5,6 42:4
BEHALF 3:3,11	broadcaster 30:19	carousel 40:4	channels 40:20
behavior 58:6 59:6 60:20 75:4,9	broadcaster's 30:16	case 16:20 17:19 19:2 50:5 53:4 72:14 83:11	characterize 56:20 73:7
believe 14:8 18:12 19:7 20:15 20:21 22:8 34:2 36:13 37:9 39:4 40:14 42:5 43:10 44:1 58:12 65:10,10 66:17 67:1 68:22 71:11 75:2 78:13	brokering 10:17,18	cases 7:6	check 42:17 72:2
believed 25:22	browse 43:14	catch 39:6	choose 75:20
beyond 76:16	browser 21:12 28:15 37:19 42:9 51:20 53:6,15 75:11,14	caution 62:10 67:12 70:12 71:4,20	Church 7:13
blue 7:16	building 12:1,6	cautioning 62:14	Cisco 11:7,7 13:18
board 1:2 7:6 12:21,22 19:9 19:16,18	business 10:8,13,14	cautious 65:21	cite 61:15
Board's 18:18 19:5,14	Bygnings 12:1,5	Cebra 11:4,5	city 48:1
Bone 3:20 4:20 5:5,8,11 8:3 64:15 67:9 68:13 71:1,10	<hr/> C <hr/>	cell 45:9,13,15	CK 12:6,7
bookmarks 36:16	C 3:1 8:8	certain 19:10,10,17 23:18 29:13 36:21 46:15 48:19 54:20 57:13,20 57:21 58:9	claim 18:8,15
bottom 43:2 52:17 55:3,19	call 23:13 24:1 27:16,17 51:14 62:13 63:4	certainly 29:15 32:1 40:7 43:17 64:1	claims 18:1,2 19:11,17 20:4,8 20:9,17,19,19 21:1
box 44:13 59:16 64:4 65:6 67:11	called 10:17,18,20 11:3,5,10 11:20,22 12:6,6,13 12:15,18 13:2,10,10 13:11,12 44:17,22 46:21 48:3 54:2,18 58:4	CERTIFICATE 83:1	clarification 9:18
boxed 54:6	calling 21:22 22:11,19 23:2,5 23:6,18,20 24:4 25:1 25:17 26:17,20 27:11	certified 2:10 7:12 83:3	clarify 41:22 66:7
boxes 68:3,15 69:7,18 71:3	calls	certify 83:5	clear 20:7 21:3 77:11
		chain 4:14,18 5:15,19	click 27:20 29:8 31:13,19 52:14 53:14 54:17,19 56:18,21 57:1,4,8,9 57:10 58:13
		chance	clickable 55:17,20
			clickargument1 55:21 57:2
			clickargument2

57:2 clickargument3 57:3 clicked 57:7 58:4,5 75:22 clickfunction1 55:20 56:19 clickfunction2 56:19 clickfunction3 56:19 clicking 28:10 30:7 53:14 55:1 55:2,3 58:8,12,15 59:7 clickmap 54:13,15 55:11 56:16 59:1,5 clicks 35:19,22 36:4 client 70:7 closing 60:16 closure 60:13 CLR 2:3 CoCom 11:6,9 code 32:16 49:19 78:6,14 79:12 coinventor 61:16 Columbia 2:12 83:22 comes 51:3 command 45:11 51:6,7,21,22 53:10 58:19 commands 45:18 comment 37:8	comments 67:21 69:1,4 71:11,11 71:14,16 commission 83:18 common 22:18 communicated 42:16 communication 15:10 62:12,15 63:20 64:19 66:9 70:6,10 71:10,18 communications 65:22 66:10 67:14,16 68:18 69:10 70:2,13 71:6,21 companies 11:13,16 12:21 13:8 13:10 company 10:17,18,19 11:3,4,5,8 11:9,11,20,22 12:2,4 12:13,14,16,17,18,19 12:20 13:18,22 14:9 30:13 complete 82:6 completely 49:15 complicated 55:7 computer 10:20 11:1 28:7,13 33:21 conceived 17:22 20:8 concept 42:1 concerning 63:21 64:1 68:11 concluded 81:18 concludes 56:1 81:12 conclusion	14:21 18:9,16 19:19 20:18 22:3,15 24:18 25:4 27:3 32:9 63:9 70:5 conference 7:16 configurable 39:16 55:8 configuration 31:9,11 34:14 35:2 55:6 configure 34:8 configured 37:19 51:18 connection 16:14 consider 72:5 consisting 81:13 construction 18:15 19:14 consultancy 11:15 14:4 16:18 content 45:14 53:15,22 54:6 62:15 contents 76:10 context 26:9 33:20 40:15 45:15 46:11 continuation 67:10 continue 80:11 CONTINUED 5:1 6:1 control 57:3 controlling 32:13 conversation 61:21 62:8,19 Cooper	3:21 7:11 cooperation 16:10 18:10 coordinates 57:7 Copenhagen 8:18 10:8 copy 18:22 corner 55:18,19 Corporation 1:4 7:3,22 84:2 85:2 correct 9:6 14:19 17:6 19:6 20:10 21:8 22:21 24:5 27:22 31:3 33:4 33:16 34:7 37:22 40:13 44:20 45:12 46:2 48:12 49:10 50:11 53:11 57:22 61:7,19 63:11 64:4 66:21 68:3 78:15,20 78:21 79:2 82:5 83:6 correction 7:9 84:6 85:5 corrections 82:7 correctly 50:9 51:10 53:9 counsel 4:10 7:19 8:11 15:13 15:15 70:11 72:14,19 81:1 83:10 counsel's 66:5 71:19 course 13:16 court 8:5 9:10 83:4 crazy 42:16 create 51:7 CRR 2:3
---	---	--	--

currently 16:13	75:7,9,13 76:3	describing 29:2 49:11 50:21 51:13 52:20	displaying 21:17 22:17 25:9 26:16 46:4 47:13 50:3 51:2,18 60:10
cut 79:20	defining 44:16 45:17 48:17 55:16	description 38:3,4 54:1	displays 40:4
D	definition 45:7,10,13,16 46:6 48:17 49:13 50:1,2 50:20 54:8,9,10,12 73:8 74:10,12,14 75:13 78:14 80:9,10	descriptions 43:17	District 2:12 83:22
D 8:8	definitions 80:1	detail 47:11	DLA 2:6 3:13 7:16 8:1 15:17 16:11 18:10
Danish 12:15	degree 10:7	Development 12:7	document 16:5 18:20 19:9,17 21:13 28:20 36:10 41:11 43:3 44:5,8,21 50:6 52:13 53:5,8 61:4,7,12 64:12 67:6 67:20,22 68:1,8,11 68:22 69:22 70:20 71:12 78:19 80:13,16 80:16,17,18
Dansk 11:22 12:5	deliver 63:5	diagrams 69:20	documents 15:1,6 16:19 19:2 50:7 51:2,19 64:19
data 6:4 22:17 29:4 32:12 32:14,17 34:1 51:3	demonstrate 57:16	didn't 18:13 79:20	doesn't 50:4
date 71:9 82:12 84:22 85:22	Denmark 10:14	difference 24:7	doing 24:8 66:15 68:19 71:7
dated 4:14,18 5:4,7,10,15,19	depend 17:18 75:5	different 21:7 22:1,12,20 23:5,6 24:4,11,16 25:2,15 25:17 26:15,16,18,21 27:12 29:3 32:15,17 32:17 38:20 39:8 49:15 54:16,17 55:4 55:14,15 56:21,21 57:9,10,16,17	don't 9:17 15:16,22 17:5,8 19:1,4,20 20:2,2 21:1 32:19 38:15 64:3,7 65:16,16 66:20,22 67:18 68:2,4 69:19 69:22 70:16 71:15,15 71:22 72:3 81:10
David 3:21 7:11	depended 29:18	direct 73:4,6 76:6 78:8	double 36:4 53:13,14
day 47:11 83:15	dependent 18:2	disagree 38:3	double-click 52:16
days 71:12	depending 21:15 30:15 54:19	disc 7:1 56:1,6	double-clicked 51:15 52:15
decides 52:18	depict 75:20	disclose 70:13 71:20	Dr 8:3
decimal 47:6	deposed 9:6	discs 81:14	drawings 69:14
declaration 4:12 15:5,7 16:8,9 63:2	deposition 1:20 2:4 7:2,15 15:2 16:22 17:2,6,11,15 43:5,6,9,12,21 56:2,7 81:13,18 83:5	discussions 38:18,20	
decline 70:14	derived 47:9 49:14	display 1:15 26:13 29:3,16,16 29:16 32:11,11,13 34:1 40:20 47:8 48:5 51:3 52:10 74:9,11 75:11,12 79:16	
declining 66:4 71:18	describe 14:7 26:9 28:6 40:7 41:3,7 48:15 53:21	displayed 47:5 53:16 76:2	
default 58:6 59:6 60:20 73:16	described 22:9 47:14		
definable 54:22	describes 53:18 54:4		
define 74:15			
defined 46:5 49:2 58:4 59:5 60:12,14 74:9,11			

drive 3:14 80:14	49:16	44:12 45:20 46:15,17	external 55:5 80:19
duly 8:10	employed 83:11	46:19 47:1,3,9,19,21	e-mail 4:14,14,18,18 5:4,7,10
DVD 81:14	employee 13:15	47:22 48:5,16,20	5:15,15,19,19 41:14
Dynamics 13:13	employment 10:11	49:17 50:3 51:15	41:17 42:10 43:1,8
D.C 2:7 3:7 7:17	ends 45:7	52:5 53:17 54:16	43:12,21 62:17 63:8
<hr/> E <hr/>	entire 57:21	56:12,13,13,14 57:6	64:5,15 65:3,4,16
E 2:3,9 3:1,1 4:8 8:8,8	envision 42:8	57:8 59:2,4,19 60:5,6	67:9,10 71:1,9
83:2,21 84:1,1,1 85:1	envisioned 40:8,9	75:11,15,17 79:15,18	e-mails 15:9 61:16 63:9
85:1,1	EPG 41:18,22 42:1	80:11,13	<hr/> F <hr/>
earlier 49:12 71:13 73:1,19	equals 50:10,13 59:16 79:1	examples 30:4 58:21	fact 60:14,21 63:17,22
74:22 78:13	equipment 12:20	exchange 30:3 32:1 63:9	66:20 67:1
earnings 47:10	Errata 82:7	exchanged 61:16 69:21	fair 9:19,20 10:3 56:20
economics 10:7	especially 54:15	Excuse 13:4 14:13 26:3	familiar 19:13,16
Eddy 2:3,10 8:6 83:2,21	Esquire 3:4,12,20	exhibit 4:12,14,18 5:1,4,7,10	family 75:17,18 76:1
Edmonds 63:15,21 64:1,16 71:2	et 1:13	5:13,15,19 6:1,4 16:1	fashion 39:14 40:5,12 41:1
educational 10:5	Europe 12:6	16:3 36:7,9 41:8,10	faster 48:10 49:7
effect 20:12 41:1	event 31:15,16 80:20	41:16 42:20,22 44:2	fax 64:22 65:5,11 66:19
eight 40:19	events 29:22 30:1 40:1 49:14	44:4 56:11 61:1,3,6,9	feature 27:11,12,15,15,17
Eighth 2:6	49:14	61:15 62:1,9 63:2	33:2,19
either 31:15 39:20	exact 57:6	64:9,11 67:3,5,18	features 45:4 54:14
elaborate 54:9	EXAMINATION 4:1,3,4 8:11 72:19	68:5,7 70:17,19	figures 47:8 69:1,4,13,14,16
elapsed 48:19,22 50:5	81:1	72:22 73:2,5 76:7,9	69:20
electronic 42:3,6	examined 82:4	76:11,15 77:4,17	file 54:1,3,10,12 74:14,14
element 35:19,22 36:4	example 28:14 29:18 30:12,20	78:3,4,5,10	74:15 75:7,14
embodiments	31:18 39:8,14 40:19	EXHIBITS 4:11 5:3 6:3	filed 1:12 20:3
		existed 21:19 31:18	financial 14:2 83:12
		exists 52:1	financially 14:10,14
		expires 83:18	find
		explain 39:5 73:12	
		explained 52:12 62:21	
		expressions 39:5	
		extent 25:20 32:6 36:21	
		68:18	

43:15,17 fine 76:5 finish 9:14 10:3 63:19 77:1 finished 55:9 first 13:18 44:21 55:12,12 58:18 59:16 68:21 69:3 73:7 80:1 five 39:21 focus 40:10 followed 51:6 following 49:8 follows 8:10 follow-up 81:3 food 12:16,17 Foods 12:15 foregoing 82:4 83:5,6 foreground 28:16 29:1 forget 78:2 form 17:3,7 20:22 22:2,14 23:1,15 24:6,17 25:3 25:19 26:4,10 27:2 27:14 28:3 30:5 31:22 32:8 33:5,17 35:1,7,15 49:18 51:4 52:22 53:20 57:14 58:2,11 59:3,11 63:12 69:8 70:5 74:2 74:19 75:6 76:22 77:5,7 formulating	39:7 foundation 34:22 35:6,16 59:13 75:8 79:9 frame 40:22,22 frames 39:2 frame/second 38:11 40:11 Freedom 3:14 frequent 39:20 41:5 front 76:8 full 8:15 function 23:19 24:2 46:21 47:13,17 48:3,11 57:6 79:5 Functional 12:15,15 functions 27:17 46:16 54:15,18 56:18,21 57:4,9,16 58:4 further 47:8 54:14 60:4 64:21 71:11 80:21 81:1,8 <hr/> G G 8:8 Gade 8:18 gain 14:10,14 47:10 general 48:9,10 Gestalt 13:11 give 47:1,3,19 59:4 60:6 72:4 75:14	given 48:16 71:9 74:12 82:6 83:7 go 36:21 44:12 48:9 49:6 50:13 58:18 59:15 61:9 72:3,4 75:22 78:2,3,4 81:11 goes 48:11 going 13:6 16:3 41:10 42:22 44:4 62:10 65:19,20 76:6 78:3,8 Good 8:13,14 grab 40:21,22 grandson 75:21 Gray 62:19 63:8 grid 6:5 23:11 25:7 26:8,12 31:6 34:10 54:12 56:12,12 75:19 grids 34:9 group 12:5,8 guess 67:20 guide 42:3,4,6 G.A 5:8 8:3 <hr/> H H 4:8 84:1 85:1 half 14:9 hand 16:3 41:10 42:22 44:4 83:15 handing	36:9 61:3 64:11 67:5 68:7 70:19 handwriting 36:13 Handwritten 5:13 happen 60:18 75:2 happening 30:2 happens 50:22 52:18 head 10:10 health 12:16,17 hear 22:4 Heintz 3:12 4:4 8:1,1 14:20 17:3,7 19:22 22:2,7 22:14,22 23:15 24:6 24:17 25:3,19 26:4 26:10 27:1,7,14 28:3 30:5 31:22 32:8 33:5 33:17 34:22 35:6,15 38:1 46:8 49:18 52:22 53:20 57:14 58:2,11 59:3,11 62:2 62:10 63:12,18 65:19 66:6,12,15 67:12 68:16 69:8 70:4 71:4 72:3,20 77:1,6,8,11 77:14 80:21 81:10 held 2:5 help 68:21 hereunto 83:14 he's 62:20,20 65:4 high 10:6 history 10:12
---	---	--	---

holdings 13:8	52:11	inspiration 50:20	31:15 39:21
Holms 8:18	includes 17:6 32:11	inspired 52:9	intervene 31:3,5 32:7,18 33:1,3 33:15,21 34:5,18
hour 9:22	inclusion 69:1,14	instance 51:19 78:9 80:2,3	intervening 35:4,14,20 36:2,5
hovered 47:7	income 14:5	Institut 13:11	intervention 24:8 29:21 30:15 35:18 47:12,16 53:13
hovering 46:17 48:6	incomplete 60:15	Institute 13:12	introduce 7:19
HREF 50:13,19 51:6,21 52:1 52:13,18 53:3,10 58:19 59:16 60:17,22 78:9	indefinite 80:5	instituting 18:18 19:5	invention 22:9 23:10 24:9 25:6 26:8,19,22 27:8,18 32:10,12 33:22 61:18
HREF=http 73:9	independent 18:1	instruct 65:20 68:16	inventions 18:1
html 44:15,16,19 45:1,5,11 45:19 46:3 50:20 51:2,8,19,22 52:2,4,9 53:4 60:8,9 78:6	INDEX 4:1 5:1 6:1	instructed 70:12,12	Inventors 1:13
html-like 45:2 52:4 60:9	indicate 69:13	instructing 66:5,7,8	Invest 11:11
http 50:16 51:11	indicates 50:6	instruction 69:9 71:19	invoked 57:17
HyperCOM 11:3	indicating 59:20 81:6	Inter 1:17 16:14	invoking 46:15 55:6,20
hyperlinks 51:7	individual 39:16,17 41:4 57:4	interact 28:14	involvement 13:9
hypertext 44:17	industry 12:7 29:19	interacting 29:17	involves 16:19
	infinite 80:5	interaction 25:21	IPR 18:19 19:5 20:14
<hr/> I <hr/>	influenced 47:11	interest 14:2,18 83:12	IPR2013-00292 1:17,18 5:9,14 7:6
IBM 10:14	information 1:16 21:7 22:1,12,20 24:5,16,21 25:2,9,15 25:18 26:16,19,21 27:12,21,21 28:11,11 29:10,11,17 30:3,8,8 31:8,12,12,20 32:2 32:13 33:9,10,20 34:13 35:3 48:5 50:3	interface 28:17 31:2 32:5,21 33:14 34:3,6,17,19 35:9,20 36:1,5 57:6 61:18	IPR2013-00293 7:6
idea 23:10 26:15 31:6 40:2 41:18 42:5,19	initial 42:5 79:16	International 10:20 11:2	IPR2013-00294 1:18 7:7
ideas 37:2 42:17	initialize 24:2	interpretation 18:8 37:6	IPR2013-00295 1:18 7:7
import 12:1,5,16	input 68:11	interpretations 19:10,18	isn't 51:6,7 66:21
include 16:21 17:2	inside 45:16 58:12 60:10	interpreted 19:17	Issued 1:11
included		interrupt 65:20	it's 11:19 13:6 16:8,12 23:2,4,8 24:10 41:14
		interval	

42:14,15 44:17 46:3 47:15 50:1,6,10 51:13 53:4 54:22 55:7,8,16 60:2,5 64:15 67:9,21,21 69:12 71:1 77:11 80:19	keys 47:14 keyword 45:20,21 50:19 52:18 53:22 54:1 74:13 keywords 45:6 54:12 kick 59:7 kind 16:17 30:1 34:20 kinds 21:7 22:1,12,20 24:5 24:16 25:2,15,18 26:18,21 27:12 Klaus 1:21 2:4 4:12,16,19 5:4,7,10,17,20 7:2 8:9,17 56:2,7 81:13 81:18 82:3 KL_SC_0005524-55... 5:18 knew 38:21 know 10:1 15:21,22 17:5,8 18:13,15 20:2 21:1 23:16 38:14,15 48:3 64:3,17 65:9,13,15 65:16 66:6,20,22 67:11 68:15 69:6 71:3,14,15 known 27:10,11,13,15,18	language 44:16,18,19 46:11 largely 45:1 launch 50:22 51:3,16,19 52:15,16,16 53:3,11 53:12 73:16 75:22 76:1 launched 53:1,4 75:2,4 launching 53:13 54:22 55:5 60:21,21 lawyer 15:16 Leadership 13:13 leading 79:10 left 13:21 34:11 35:19 55:18,19 56:10 58:19 legal 7:12 14:20 22:3,15 24:18 25:4 27:3 32:9 70:4 letters 73:22 74:4 let's 47:4 59:15 level 47:11 line 41:18 55:12 59:15 73:7,12,16 74:5 76:14 77:4 79:1,12 84:6 85:5 lines 59:15 link 36:17 37:17 38:7 51:10,12 52:6,10,14 59:10,14,20 60:3,4,7 60:10,12,14 73:20 listed	69:17 litigation 14:12,16,19 43:2 live 8:17 36:17 37:16 38:7 43:17 48:1 LLP 2:6 3:5,13 7:16 local 50:6,6 locally 78:19 located 7:16 80:14 locations 57:18 look 17:21 21:5 41:16 53:22 60:5 79:22 looked 54:11 looking 20:19 49:19 looks 40:14 loss 47:10 lot 37:14 38:22 48:10 55:12
I'll 9:18 29:6 67:12 68:16 71:4 73:4 76:9 I'm 7:11 9:2 12:10,14 15:14 16:3 17:4,16 18:17 19:15 20:11,21 21:4 22:4 23:16 27:4 34:16 36:9 41:10 42:22 44:4 45:2 46:8 52:4 59:14 61:3 62:2 62:10 63:18 64:11 65:1,3,19,20 66:7,8 67:5 68:7 70:19 76:6 78:2,2,8 79:20 I've 19:2 48:16 65:15	<hr/> J <hr/> James 3:12 8:1 jim.heintz@dlapipe... 3:17 Job 2:1 join 11:7 joined 10:16 judgment 14:11,15 June 18:4 21:19 83:18 <hr/> K <hr/> K 3:6 key 47:8	<hr/> L <hr/> LAD 7:12 8:6 Lagermann 1:21 2:4 4:12,16,19 5:5,8,11,17,20 7:2 8:9,17 11:11 56:2,7 56:10 72:13,21 77:15 81:13,18 82:3 laid 69:12	<hr/> M <hr/> M 3:12 Mad 12:15 main 12:17 23:10 Maine 14:11,16 43:2 making 34:6,20 man 37:2 manage 32:16

managing 32:13	11:19,21 68:21	motion 12:19 20:4	normal 45:9,14 60:10
map 47:22,22 48:5,6	mention 11:16 44:21 55:11,13 55:15 61:7,8 63:7	mouse 35:12 46:17,20 47:7 47:16 48:2,4	normally 37:4
March 1:22 7:8 83:16	mentioned 15:6 20:8 39:21 48:14 56:12 74:13	mouseover 48:2	Northwest 2:6 3:6 7:17
marked 4:9 16:1 36:7 41:8 42:20 43:1 44:2 61:1 64:9 67:3 68:5 70:17	mentioning 63:7	move 47:16 76:17	Nos 1:17
marking 45:14	merged 11:5	moved 10:18,19 11:2	notarial 83:15
markup 44:18 45:17	Merrill 7:12 8:6	multiple 32:12,14 34:1	Notary 2:11 83:21
Maryland 7:13	message 62:19 63:4	<hr/> N <hr/>	notation 77:16
matter 7:3 58:13 66:20	method 1:15 40:1	N 3:1 8:8	note 52:3
may 11:19,19 12:7 62:3 66:15 67:16 68:19 71:8	Michele 2:3,9 8:6 83:2,21	name 7:11 8:15,17 47:13	notebook 5:13 76:7
mean 19:15 20:12 21:10,11 23:16,21 26:7 29:13 31:5 34:5,16 39:12 41:21,22 42:13 44:15 46:14 48:20 50:18 52:21 57:19 59:14 60:19 76:4 79:4,20 80:7	Microsoft 1:4 7:3,22 14:11,14,16 47:5 84:2 85:2	names 12:4	notebooks 36:14
meaning 38:15 77:11,21 79:1 79:22 80:4	middle 10:2 56:10 78:10	nature 80:16	noted 60:17
means 9:11 23:17 38:14 42:14 47:15 53:1,2 53:14 54:19 60:21 75:20 77:12 79:18	milliseconds 49:1,3,4	near 78:10	notes 37:4 68:22 69:4 72:2
meant 21:17 22:17 40:7 42:18 46:4 52:14 69:1,14	mind 49:13	necessarily 23:22 51:13 52:3 76:2 80:8	Notice 2:9
medications 8:22	mini 31:1 32:21	need 9:22 19:7 57:21 60:3	novel 21:22 22:8,9,12,18,19 22:21 24:5,15,19 25:1,6,15,16,22 26:1 32:5 33:3,12,13,15 33:22 34:2
memory	mischaracterizes 19:22 22:22 27:1 33:6 33:18 38:1 59:12 79:8	needed 25:8 42:17 53:3	number 7:2,6 8:18 47:5,6 49:8 55:13 56:2,6 61:3
	missing 52:9 60:2,15 63:6	needs 60:6	numbers 18:11 55:12
	money 14:11,15	neither 83:10	<hr/> O <hr/>
	monitor 7:9 80:17	new 31:2 32:5,21,21 34:3,5 34:17,19 35:8 38:11 39:13 40:11 42:18	O 8:8
	monthly 14:5	ninth 59:15	oath 8:19
	morning 8:13,14	nodding 9:11 10:10	objection 14:20 17:3,7 19:22 22:2,14,14,22 23:1
	mosaic 31:1 32:21	Nordisk 13:11	

23:15 24:6,17,17 25:3,3,19 26:4,10 27:1,2,14 28:3 30:5 31:22 32:8 33:5,5,17 33:17 34:22 35:1,6,7 35:15,15 38:1 49:18 52:22 53:20 57:14 58:2,11 59:3,11,11 59:12 62:2 63:12 69:8,8 70:4,5,15 74:2 74:6,19 75:6,8 76:16 76:22 77:5,6,9,19 79:8,9,9 objections 22:7 27:7 79:14 obtaining 61:17,22 62:8 63:10 obtains 14:10,15 occupation 12:17 occur 48:18,21 October 1:12 Office 1:1 7:5 offices 2:5 Okay 12:12 24:13 38:18 66:2,14 73:18 78:8 78:17 once 52:15 64:6 ones 38:21 69:22 onmouseout 46:2,20 onmouseover 46:1,14 OoO 1:3 open 21:6,12,13,16 22:17 23:4,7,8,20 24:9	34:10 opening 23:17,21 24:1,15,20 25:8,14 operation 53:6 opinion 21:21 24:14,22 26:17 58:8,15 option 14:6,8 options 14:7 order 15:2 18:18 19:5 28:6 45:1 48:5 52:10 60:2 60:7 outcome 14:19 17:19 83:12 outside 29:22 30:1 31:15,16 40:1 49:14 58:5 Ovid 1:13 4:15 5:16,21 36:14,22 37:5 39:4 61:17 62:21 63:4 Ovid's 37:9 42:5 owned 13:18 Owner 1:8 3:11 72:19 <hr/> P <hr/> P 3:1,1 8:8 page 4:2,11 5:3,6,12 6:3 16:12 17:21,21 21:5 21:12 27:19 28:20,21 28:21 30:17,18,19 36:15 38:10 41:16 44:13 52:17 54:5,7,8 55:11 56:11,14 58:18 58:22 61:9,11,11,12 61:12 73:5,5 75:12	76:9,11,15 77:17,17 78:10 84:6 85:5 pages 2:2 4:13,17,21 5:9,14 30:14 69:13 paid 17:9,11,14 paragraph 16:12 17:22 20:8 21:2 21:5 25:13 27:19 30:22 33:8 44:22 61:10 parenthesis 49:9 part 14:4 33:12,13,13 46:3 Partes 1:17 16:14 participated 38:19 particular 49:19 53:7 73:4,6 parties 83:11 pass 72:17 passed 57:5 patent 1:1,2,8,10 3:11 7:4,5 15:7 16:20 18:4 44:9 61:7,8,17,22 62:8 63:11,15,22 64:2,20 68:12 69:2,15,21 72:19 Pax 13:2,7,9 pay 17:18,18 paying 15:19,21,22 PC 40:15 Pennie 63:15,21 64:1,16 71:2 people	13:19 15:10 percent 14:9 percentage 47:10 perform 23:17 performing 46:16 period 48:19 80:5,5 personal 15:16 personally 15:12,12,13 pertaining 15:9 Petitioner 1:5 3:3 8:11 81:1 phone 8:3 phrases 19:11 pick 72:21 picture 12:19 75:21 Piper 2:6 3:13 7:16 8:2 15:17 16:11 18:11 pixel 55:17 57:7 place 7:15 54:20 placing 48:4 play 43:18 please 7:19 8:15,16 9:10,18 10:1 14:7 38:17 46:8 48:15 62:4,21,21 63:18 73:15 77:2 78:4 79:21 point 48:6 60:1
--	--	--	---

points 54:1	28:15	67:14,15 68:19,20	receiving 28:17
portion 58:16 66:18 75:12	Professional 2:10 83:3	70:11 71:6,7 77:2	recess 56:5 72:9
portions 69:17 70:3	program 22:17 23:9,9,17,19,21	78:22 79:11	recipient 52:13
position 12:12 24:3	23:22 24:1,2,9 27:16	questions 80:22 81:3,9	recited 18:1
positions 12:21,22 13:9	28:14,15,16 42:3,6	quite 38:22	recognize 16:5 19:8 36:10,13
precision 48:2,8	programmer 23:16 37:1,3	<hr/> R <hr/>	41:11 43:3 44:5 61:4
prep 17:12	programs 21:7,22 22:11,20	R 3:1 8:8 84:1,1 85:1,1	64:12,13 67:6 68:8
preparation 16:21	23:13 24:4,15,20	rate 43:13,15,16,22 50:10	70:20,21
prepare 15:2	25:1,14,17 26:18,20	78:1 79:5,13 81:6	Recon 13:2,7,9
preparing 43:5 63:2	27:11,17 28:9 29:14	rates 48:17	record 7:10 22:6 27:6 36:9
present 3:19 31:12 60:5	projector 40:4	ratio 47:10	56:4,8 62:5 64:3
presenting 32:14	properties 39:3 54:14	reach 18:9,16 19:19	66:7 72:4,8,11 81:11
previous 31:18 35:2 67:17	proposed 18:11 20:13	reaching 20:18	81:15 83:7
71:10 72:15	provide 31:7	reacted 63:3	recorded 9:10
previously 4:9 16:1 34:12 36:7	providing 16:13,17 30:3	read 18:18 19:2 22:6 27:6	recross 81:11
41:8 42:20 44:2 61:1	pseudocode 44:22 45:4 46:3 52:3,6	33:7 37:11 43:6 62:5	rectangle 55:19
64:9 67:3 68:5 70:17	60:9	77:20 82:4	redacted 61:22 62:9 64:4,6,17
price 29:20 31:14 47:4,4,9,9	public 2:11 83:21	reader 45:2	65:1,2,7 66:17,21
prior 18:4 21:19 43:6,9,11	Pursuant 2:9	really 42:18 70:16	67:11,19 68:3,14,15
43:20	puts 35:12	Realtime 2:11 83:3	69:7,18 70:2 71:3
priority 30:16 41:4	<hr/> Q <hr/>	reason 9:3 10:1 84:6 85:5	redirect 72:5
privileged 65:22 66:10 67:13	qualifies 35:17	recall 19:4 43:8,11,20 64:7	reduced 83:9
68:18 69:11 71:5	qualify 35:14,20 36:1,5	64:18 65:17 68:2,4	referenced 80:14
probably 13:6	question 9:13,14,17,19 10:2	69:16,19,22 70:1	referred 4:9 16:2 31:17 36:8
proceeding 18:19 19:6 20:4,14	18:14,17 19:20 22:4	73:1 76:10,13,18	41:9 42:21 44:3 61:2
processing	22:10 25:11,16 27:5	81:5	64:10 67:4 68:6
	29:6,12 43:19,19	recap 56:11	70:18 76:14
	46:9 62:3,7,12,13,16	received 64:22 65:5,11 66:19	referring 20:9 21:2 52:17
	65:11 66:1,13,18		refers 77:18

refresh 39:6,15,18 40:8 43:13 43:15,16,22 45:21 48:14,16,17,20,21 49:8,13 50:10,10 77:22 79:1,5,7,12,17 79:19 80:6,8,10,18 81:4,6	15:13,15 representing 7:22 8:2,3 15:17 represents 73:13,16 require 28:10 29:14,21 30:7 50:4 required 51:16 reread 62:3,4 Resources 10:20 11:2 respect 16:19 responding 65:3 71:6 response 42:10 responsible 51:2 rest 52:10 Reston 3:15 result 30:17 53:6 79:12 resulting 53:5,5 54:17 results 23:18 Retained 4:10 RETURN 84:5 85:4 reveal 62:11,14 65:21 66:8 67:13 68:17 71:5,19 revealing 67:16 69:9,9 review 1:17 16:14 63:1 reviewed 15:1 reviewing	16:19 Richard 3:20 4:20 5:5,8,11 8:3 64:15,19,20 67:9 68:13 71:1 right 12:11 14:4 19:4 30:9 35:22 49:20 64:7 66:11 67:18 79:11 robin 39:14 40:2,5,12 41:1 Rockville 7:13 role 12:18 roles 11:16 room 7:16 round 39:14 40:2,5,12 41:1 RPR 2:3 rules 9:9 R-U-Z-Y-R-I-O-S 42:11 <hr/> S <hr/> S 3:1 4:8 8:8 84:1 85:1 sale 13:18 samples 30:6 Sankt 10:19,21,22 Santoro 1:13 4:15 5:16,21 36:22 38:19 41:14,17 42:15 61:17 62:18,22 63:5,5,10 Santoro's 36:14 38:15 42:10 saw 19:5 20:21	saying 20:17 23:12,14 36:16 37:11 38:7 81:5 says 32:20 37:20 38:10 41:18 52:18 59:16 SC 43:1 scheduled 79:7 school 10:6,8,13,14 scope 20:16 76:16 scratch 76:4 screen 26:14 28:8,13 29:4,20 31:1,10 32:3,3,21 33:9,21 40:20 53:7 55:20 74:16,17,21 scroll 30:18 scrolling 28:19 SC0001016-20 5:21 SC0036694-97 6:5 seal 83:15 second 39:2,13 56:13 80:2 seconds 39:22 49:1,4,5 76:14 76:21 77:4,17,22 section 28:12 29:2 78:6,14 see 16:15 18:6,7 19:3,7 21:15,17 22:18 25:10 26:13 28:20,20 29:4 32:19 33:8 34:13 36:18,19 38:12,13 39:9 41:19,20 54:5 54:12 55:11,12 56:18
---	---	---	--

57:1,8 61:20 62:17 67:19 72:2,5 73:10 73:11,21 74:18,20 78:11 seed 42:18 seen 64:6 65:15 select 53:19 57:12,20 58:22 59:9 selected 57:19 selecting 54:21 57:13,17 58:10 58:13,16 59:8,9 60:19,20 selection 34:7,21 35:5,8,9 selects 52:19 53:10 60:19 send 63:22 sending 65:3 sense 39:19 sent 68:12 71:12 sentence 28:5 31:1 33:7 40:10 62:3 67:22 68:22 69:3 77:20 series 18:11 serious 42:14 server 80:15 services 16:13,17 17:5,9 sessions 37:5 set 34:9,12 83:14 setting	55:6 78:1 settings 39:18 41:4 setup 35:3 shaking 9:11 share 37:7,8 shared 80:14,15 sheet 82:8 short 9:21 11:1 SHORTHAND 83:1 show 47:22 53:17 75:21 showing 46:4 shown 58:22 64:21 74:16,17 shows 79:15 Sidley 3:5 7:21 signals 40:18 Signature 81:17 82:12 84:22 85:22 signed 82:8 significance 76:20 77:3,10,12 similar 45:1,5 51:4 simply 71:22 simultaneous 1:15 32:11 34:1 simultaneously 29:5 33:9 sincere 67:20	sincerely 66:17 single 40:17 56:14 sir 65:20 76:18 sit 31:9 sitting 64:7 66:22 67:18 71:15 six 5:9 slash 45:8,17 slide 40:3 slides 40:4 slightly 60:15 small 12:18 14:5 Smartscart 11:20 sold 11:6 somebody 80:15 somewhat 51:4 somewhere.com/so... 53:16 somewhere.com/so... 75:1 sorry 22:4 27:4 46:8,10 48:8 61:11 62:2,22 63:18 65:1,19 73:19 75:7 77:1 78:2,7 79:20 sounds 19:13,16 source 27:22 28:11 29:11 30:8 45:21 53:22 54:1 74:13 80:8	sources 1:16 31:13 32:17 33:10 space 74:16,18 Speakkompagniet 12:13 specialist 7:12 specific 49:22 50:4 58:3 59:6 specifically 48:4 specification 52:2 60:4 69:17 specifications 69:5 specified 79:13 specify 54:14 speculate 65:13 speculating 65:14 speed 78:17 sports 30:17 staff 16:11 18:11 standard 45:11,19 51:22 start 9:14 started 11:4 13:19 Starting 10:13 44:15 starts 45:7 55:13 start-up 11:3 state 8:15 statement
---	---	---	--

25:13 32:20 36:16,20 37:12,21 61:16	72:6,12,17 73:18 74:6,19 75:6,8 76:16 76:22 77:5,7,10,13 77:19 78:22 79:8,14 81:2,8	T	30:13 39:1,2,10 40:15 40:18,20 41:2 42:2,7
States	Suh's	T	tell
1:1 7:4	65:22 68:19 71:6	4:8 84:1,1 85:1,1	10:5,11 36:22 38:16 38:19
station	Suite	table	ten
40:17,21,22	3:14 7:13	45:9,13,15	39:21
stay	supervision	tag	tendency
11:1	83:9	52:1,11 60:11,13,16	50:7
steel	support	tags	tens
12:1,6	61:15	45:16	49:5
stem	suppose	take	testified
39:10	14:17,22 17:16	9:21 10:2 17:14 23:11 25:7 26:15 33:19 42:7 54:20 55:22 58:6	8:10 25:13 58:21 78:13
stenographically	sure	taken	testify
83:8	11:18 18:17 20:16 30:11 59:14	37:5 50:19 51:17 56:5 72:9 83:5,8	9:1,3
step	surely	talk	testifying
24:12	24:1	54:21 55:8 72:13	43:8,11,20 76:10
stock	SurfCast	talked	testimony
8:18 10:17,18 29:20 30:3 31:13 32:1 47:4 47:5,9	1:7 4:11 5:3 6:3,4 7:4 8:2,4 13:15,17,19 14:3,5,6,10,15 15:10 16:13 20:3,14 23:10 25:7,12 26:8,12 27:18 29:3 31:6 32:10 34:10 75:19 84:2 85:2	37:6,10 39:15 49:12 67:10	20:1 21:2 23:1 27:2 33:6,18 38:2 59:12 73:1 79:9 81:5 82:5 82:6 83:7,7
stockbroking	SurfCast's	talking	text
29:19	26:21 27:8 68:12	21:19 31:17 40:12 56:16 63:14	50:5
stored	surfcast.com/tilelib...	target	Thank
78:19	54:3	51:14 73:17 76:1	10:4 14:1 16:4 30:21 67:2 80:21 81:8
Storhaug	swear	task	Thanks
10:17	8:6	12:14	72:6
streams	sworn	TD	that's
32:12,14,17 34:1	8:10	45:7,8,11,13,16,17,18 73:8	10:9 12:16 13:14 22:10 24:10 25:10 32:15 33:7,12 45:9 49:11 50:2 52:11,20 54:20 55:7 60:2 76:5 78:10,21 80:3
Street	syntax	task	there's
2:6 3:6 7:13,17	46:2	12:14	13:2 21:21 24:14,22 25:16 33:15 36:15 37:18 52:9 59:17 60:13 63:8 80:2,4
strike	system	technical	They're
26:5,19 76:17	1:15 25:8 34:11 39:6 40:8 47:17 51:18 54:18	39:4	49:22
structure	systems	technologies	thing
6:4 45:3 52:4	11:7,7 13:18 32:2	13:12 39:3	43:18 55:4,6 63:3
styles		technologist	
49:13		37:1	
subject		technology	
41:17		11:4,21 30:13 38:20 39:1,1,8,10,11 42:7	
submitted		teleconference	
15:5 44:8		3:20	
suggesting		teletex	
52:6		30:14 39:1,3,11	
Suh		television	
3:4 4:3 7:21,21 8:12 27:5 46:10 55:22 56:9 62:6 66:3 72:1			

things 37:3,6	80:7,9,10,16,18	4:14,18 5:15,19 55:2 55:18	36:15 38:10 54:5 76:9
think 13:14 19:20 20:2 24:10 30:4,9 38:16 42:4 44:17 58:18,21 62:7,13 72:1 73:7,18 78:18 81:10	tiles 25:7 31:7,10,11 34:7,8 34:9,11,14,15,21 35:10 36:16 37:14,16 38:4,7 39:12,13 40:19 41:7 43:17 56:12,13	Trade 7:5 TRADEMARK 1:1 trading 12:1 trail 41:14 transcript 43:6 83:6 transcription 82:6 transmission 30:16 transmitted 30:19	TV 42:4 two 4:21 45:16 80:1 81:14 type 37:18,19 38:5 47:22 50:3 58:6 59:6 75:10 75:11 80:16
thinking 45:2 46:7	tile/channel 38:11 40:11	trial 41:14 transcript 43:6 83:6 transcription 82:6 transmission 30:16 transmitted 30:19	types 26:15 39:19 typewriting 83:9 typical 28:7 typically 27:20 28:2,4 29:7,13
third 50:1 76:14 77:4 78:9 78:14 80:3	tile2.til 74:15 75:7	Trial 1:2 7:5 trigger 46:18,21 47:17 triggered 29:22 31:14 39:20,22 50:22 triggering 79:18 triggers 80:10 true 18:12 82:5 83:6 truthfully 9:4 try 9:21 trying 12:11 34:16 tune 40:21,22 45:1 tuned 40:16 tuner 40:15,21 tuners 40:16 turn	<hr/> U <hr/> uncertain 15:14 17:4,16 19:15 20:21 21:4 understand 8:19,21 9:17 18:14,17 20:3 32:19 34:16 38:7 40:6 50:9 51:10 53:9 understanding 77:16 understood 9:12,19 United 1:1 7:4 units 48:22 49:1 80:2,3,4 unredacted 63:1 update 30:15 31:8,10,14 32:2 39:3,13,13,22 41:3,4 41:5 49:15 50:7 77:21 updated 27:21 28:10 29:10,17 30:7 31:2,20 32:6,22 33:2,9,14 34:4,6,18
thought 25:6 45:8 46:4	time 7:9 9:22 11:10,14 13:7 17:12,14 21:6,18 22:18 23:21 24:19 26:11,14 27:13,20 29:7 31:15,18 32:18 34:10,12 37:1,4,10 38:18 39:20 40:16,17 40:18 42:5,16 48:19 48:21 49:2,7,14 50:5 56:3,8 63:20 64:6 69:19 70:7 72:7,10 79:5,6,13 80:2,3,4,5 80:6 81:4,14	transmission 30:16 transmitted 30:19	
three 4:17 49:6 54:16,17 55:14,14 56:13,18 57:1,8,9,10,18	timeout 48:20 49:8,9,22 50:1,2 50:10 79:1,17,18 80:1,19	transmitted 30:19	
throw 42:16	time-based 48:18,21	transmitted 30:19	
Thursday 1:22 7:8	title 1:15 32:10	transmitted 30:19	
tile 23:11 26:8,12,15 31:7 35:12 37:18,19 38:5 39:6,15,17,17,19 40:6,7 41:2 43:13,16 43:22,22 45:7,16,17 46:16,17,20 47:4,7,7 47:21,22 50:1,3,22 51:12,14,14,15,16 52:7,15,19 53:1,2,10 53:12,14,19 54:1,4,9 54:10,15,19,22 55:1 55:2,3,17 56:14 57:13,13,17,18,19,21 58:6,9,10,12,14,16 58:16,22 59:6,7,9,21 60:3,19,19,20,21,22 61:17 73:8,17,20 74:1,5,7,8,9,11,13,14 74:16,17 75:2,4,5,9 75:10,11,13,14,19,20 75:20 76:1,3 77:21 78:1,14,19 79:4,7,15	today 7:8 8:20 9:1,4 12:14 12:17 15:13,15 17:15 42:3 43:5 66:22 71:15 today's 16:21 17:2 told 29:19 toolbar 54:13 top		

34:20 35:3,9 updates 38:11 39:20 40:11 updating 29:20 33:20 40:6 41:7 urging 63:5 URL 51:4,5,17 53:4,7,10 59:17 73:19 74:4,7 use 18:8 19:14,18 23:20 28:4,7,13 29:12 39:4 45:15,20,21 46:1 51:18 60:17 user 21:6 22:16 23:4,5,8,12 23:17 24:7,8,20 25:9 25:14,21,21 27:20 28:17 29:4,7,17,21 30:15 31:2,3,9,19 32:3,5,6,15,18,22 33:3,8,14,14,21 34:3 34:4,5,5,6,8,13,17,18 34:19,20 35:8,12,19 35:20,22 36:1,4,5 46:16 47:12,15,16 50:8 52:19 53:2,9,12 53:18 55:1 57:6,7 59:7,9 60:18 61:18 73:21 74:5,18,20 75:5 users 57:12 58:22 <hr/> V <hr/> V 84:2 85:2 vague 68:21 77:13 vaguely 64:18 69:19 variable 48:11 variables 57:3	variety 21:6,22 22:11,19 23:13 24:4,15 25:1 25:14,17 26:18,20 27:11 various 13:8 15:6,9 19:10 24:20,21 31:12 34:9 V BAG 12:18 verbally 9:11 version 37:9 63:1 versus 7:3 video 7:1,2,9,12,15 56:2,7 81:13 Videographer 3:21 7:1 8:5 56:1,6 72:7,10 81:12 Videotaped 1:20 2:4 view 21:7,11,13,22 22:12 22:20 23:9,9 24:4,15 24:20 25:2,14,17 26:18,20 27:11,21 28:10 29:10 30:7 31:20 viewing 30:17 Virginia 3:15 visible 52:14 75:5 vision 26:11 vs 1:6 <hr/> W <hr/> wait 9:13 waiting	62:20,22 63:14 waived 81:17 want 11:16 21:3 30:10 52:8 72:5 wanted 20:16 21:11,12,15,17 22:18 25:9 26:13 28:14,20 29:4 33:10 34:13 40:19 75:17,18 Washington 2:7 3:7 7:17 wasn't 25:11 watch 31:10 way 26:1,2,6 34:13 39:5,7 39:15 40:6,7 41:7 45:2,14 46:1 48:17 49:11 50:21 51:13 52:12,20 53:21 57:15 60:10 62:17 69:12 77:20 web 21:11,12 28:15,21 41:18,22 42:8 75:12 website 36:17 37:17 38:8 42:9 75:18,18 76:1 websites 42:6 44:16 went 11:8,12 we're 10:2 49:19 63:13 78:4 what's 37:12 42:4 64:3,7 67:11,22 68:15 71:3 77:6,8 WHEREOF 83:14 whichever 25:8 51:1,17 who's	15:21,22 window 27:20 28:10 29:8 30:7 31:19 witness 8:7 46:9 62:11 63:19 66:2,11,14 67:13 68:17 71:5 72:18 82:2 83:14 Wonjoo 3:4 7:21 word 21:13,13 28:4,15,19 29:13 32:11 43:15 words 19:10 39:10 65:17,17 67:19 73:19,20 78:9 79:6 worked 10:14 30:12 38:21,22 working 11:22 13:19 wouldn't 14:16 31:13 write 27:16 writes 41:17 writing 62:18 written 16:10 37:12 wrote 16:9 22:16 wsuh@sidley.com 3:9 www.somewhere.co... 50:16 51:11 73:9,22 <hr/> X <hr/> X 4:8 XtraSpace 13:10 X,Y 55:18,19
--	---	---	---

Y	27:19 30:22	200	2022
year	11:11:36	48:20,21 80:2	5:10 70:17,19
10:15 11:6 13:3,5	72:10	2000	2023
years	11:23	1:12 11:14 13:21	5:13 36:7,10 76:7,10
12:11	81:19	20004	76:11,15 77:17 78:4
You'd	11:23:44	2:7 7:18	2025
14:10	81:14	20005	5:15 41:8,10,16
you're	11911	3:7	2036
9:8 20:9,17 23:13	3:14	2001	5:19 42:20,22
You've	12	11:15,21 13:22	2048
9:6	18:3	2003	6:4 44:2,4 56:11 72:22
	12-2-98	11:21	73:5 78:3,5,10
Z	5:20	2004	20850
zero	12-5-98	1:11	7:14
50:2,10,11 79:1,17	5:16	2006	21
81:4,6	13	4:12 11:12,15 13:7	7:13 18:3
	4:13	16:1,3 61:9	22
0	15	2007	18:2
0	39:21 77:22	12:12	23
55:13,18	150	2009	18:3
0,50	7:13	12:14	24
55:13	1501	2012	61:10,11
0,50,50	3:6	4:14 61:1,3,15 62:1,9	25
55:18	16	63:2 67:5	5:14
000101621020	4:12	20130207CTRL000...	27.35
43:1	17	4:17	47:6
	18:3	20130207CTRL000...	28
1	19	4:20	18:3
1	8:18	20130207CTRL000...	29th
2:2 7:2 18:1 44:13	1986	5:6	18:5 21:19
46:18,19 47:1,13,20	10:16	20130207CTRL000...	
47:20 48:7,11 52:17	1995	5:12	3
56:2,11 73:5,5 78:10	11:3	2014	3
1-245251	1998	1:22 7:8 83:16	18:2 21:5 77:4
2:1	11:6	2017	30
10	1999	83:18	1:12 18:3 83:18
61:12 77:22	18:5 21:19 27:10,13	2018	300
10th		4:18 64:9,11	3:14
83:15	2	20190	32
10:13:31	16:12,12 17:21 18:2	3:15	18:3
56:3	41:16 46:22 47:2	202	33
10:29:57	54:7,8 55:11 56:7,14	2:7 3:8	18:3
56:8	58:22	2020	35
10:52:40	20	5:4 67:3,5	18:3
72:7	1:11 36:15 77:17	2021	36
11		5:7 68:5,7	5:13

37	68	7:9 18:2 61:10,11,12	
18:3	5:7	91	
39		10:22 11:1	
18:3	<u>7</u>	98	
	7	13:21	
<u>4</u>	38:10 76:9,11,15	99	
4	77:17	13:21 64:5 65:16	
27:19	70		
403	5:10		
15:7 16:20 18:4	703		
41	3:16		
5:15 18:4	72		
42	4:4		
5:19	736-8831		
44	3:8		
6:4	773-4148		
46	3:16		
18:2	799-4000		
47	2:7		
18:4			
48	<u>8</u>		
18:4	8		
	4:3 21:5 25:13		
<u>5</u>	8th		
5	7:17		
18:2 77:21	8-10-99		
5/10/15	4:19		
76:14,21 77:3,17	8-11-99		
50	4:15		
55:13	8-19-99		
500	5:4,7		
2:6 7:17 80:3	8-24-99		
	5:10		
<u>6</u>	8:59		
6	1:22 7:9		
1:22 17:22 20:8 21:2	81		
6th	4:3 10:16		
7:8	85		
6,724,403	2:2		
1:10	86		
61	10:16		
4:14	89		
64	10:22		
4:18			
67	<u>9</u>		
5:4	9		