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2 UNITED STATES PATENT AND TRADEMARK OFFICE  
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD  
4  
5

SAMSUNG ELECTRONICS AMERICA, INC.,

6 Petitioner

7 V.

8 UNILOC LUXEMBOURG S.A.,

Patent Owner  
9

10  
11 Case No. IPR2017-01797

12 Patent No. 8,724,622  
13  
14  
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17 ORAL DEPOSITION OF WILLIAM C. EASTTOM

18 AUGUST 3, 2018

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25 Job No. 144980

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Case No. IPR2017-01798

Patent No. 8,724,622

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ORAL DEPOSITION OF WILLIAM C. EASTOM

AUGUST 3, 2018

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2           ANSWERS AND DEPOSITION OF WILLIAM C. EASTTOM,  
3     produced as a witness at the instance of the Petitioner,  
4     taken in the above-styled and -numbered cause on the 3rd  
5     day of August, 2018, at 9:52 a.m., before Susan M.  
6     Foreman, a Certified Shorthand Reporter in and for the  
7     State of Texas, at the Renaissance Dallas at Plano  
8     Legacy West Hotel, located at 6007 Legacy Drive, Plano,  
9     Texas 75024, in the City of Plano, County of Collin,  
10    and State of Texas, in accordance with the agreement  
11    hereinafter set forth or in accordance with the Federal  
12    Rules of Civil Procedure.

A P P E A R A N C E S

FOR THE PETITIONER SAMSUNG ELECTRONICS AMERICA, INC.

MR. PHILLIP CITROEN, ESQ.

MR. MICHAEL WOLFE, ESQ.

MR. JOSEPH PALYS, ESQ. (VIA TELEPHONE)

PAUL HASTINGS

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FOR THE PATENT OWNER UNILOC LUXEMBOURG S.A.

MR. RYAN LOVELESS, ESQ.

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I N D E X

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1 WILLIAM C. EASTTOM, II

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

3 WILLIAM C. EASTTOM, II,

4 having been first duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. CITROEN:

7 Q. Good morning.

8 A. Good morning.

9 Q. Nice to meet you. So just for the record  
10 really quickly, my name is Phillip Citroen from Paul  
11 Hastings on Samsung, and here with me today is Michael  
12 Wolfe, and on the line is Joe Palys, also for Petitioner  
13 Samsung and also from Paul Hastings.

14 MR. LOVELESS: And this is Ryan Loveless on  
15 behalf of Uniloc and the witness.

16 Q. Great. How are you this morning?

17 A. Quite well. Thank you.

18 Q. Okay. Can you please state your name for the  
19 record?

20 A. William Charles Easttom, II, usually simply  
21 called Chuck Easttom.

22 Q. Thank you, Mr. Easttom.

23 Can you also state your address for the  
24 record?

25 A. 5605 Woodspring Drive, Plano, Texas.

1 WILLIAM C. EASTTOM, II

2 Q. Thank you.

3 And I believe you've been deposed before,  
4 correct?

5 A. That's correct.

6 Q. Okay. About how many times?

7 A. Well, counting trials, hearings, and  
8 depositions, today will be my 39th time testifying.

9 Q. Okay. So I'm guessing you probably know kind  
10 of the ground rules for going through depositions, but  
11 if you don't mind, I'll just go through them quickly.

12 A. Please.

13 Q. So just so we have a clear record, let's try  
14 not to talk over each other. I'll try not to -- I'll  
15 try to let you finish your answer before I ask another  
16 question if you can let me finish asking my question  
17 before you give an answer. That way we can have a clear  
18 record. Is that okay?

19 A. Certainly.

20 Q. Please respond with a verbal answer instead of  
21 shaking your head or nodding or making just a noise. Is  
22 that okay?

23 A. Understood.

24 Q. If I'm speaking too quickly or you don't  
25 understand a question, just ask me to slow down or

1 WILLIAM C. EASTTOM, II

2 repeat the question, and I'll do so. I'll go ahead and  
3 apologize in advance. I'm a little hoarse, and I'm  
4 losing my voice a little bit, so if I'm speaking too  
5 softly, just let me know.

6 A. I will.

7 Q. Okay. We'll try and take a break about every  
8 hour or so, but if you need a break sooner than that,  
9 let me know. I just ask that if there's a pending  
10 question, that you finish answering the question before  
11 we take a break.

12 A. Certainly.

13 Q. Is there any reason you cannot testify  
14 completely, truthfully, and accurately today?

15 A. No, not at all.

16 Q. Okay. And you understand you're under oath  
17 today?

18 A. Yes, I do.

19 Q. Okay. Do you understand why you're here today,  
20 Mr. Easttom?

21 A. Yes.

22 Q. Okay. And why is that?

23 A. There is an IPR pending on -- I believe we're  
24 doing two patents today, two IPRs, and we're for you to  
25 inquire as to my opinions and the bases thereof.



1 WILLIAM C. EASTTOM, II

2 Q. Okay. I want to hand you a few documents.  
3 Here's the first document, and one more. So I just  
4 handed you three documents, correct?

5 A. Yes.

6 Q. Okay. One of those documents, is it a patent?

7 A. Yes, it appears to be the '622 patent, the  
8 patent at issue today.

9 Q. Okay. And then can you tell me what the other  
10 two documents are that I handed you?

11 A. The two appear to be my declarations regarding  
12 the two IPRs regarding this patent at issue today.

13 Q. Okay. And that's the '622 patent?

14 A. That's correct.

15 MR. WOLFE: What number is that? '622?

16 MR. CITROEN: Can we go off the record just  
17 for one second?

18 (Brief recess.)

19 Q. So you stated that the -- you have your two  
20 declarations involving the '622 patent, correct, in  
21 front of you?

22 A. That's correct.

23 Q. Okay. Is it okay if we refer to the  
24 declaration that is labeled IPR 2017-01797 on the cover  
25 as the 1797 declaration?

1 WILLIAM C. EASTTOM, II

2 A. Yes.

3 Q. Okay. And then the second declaration that you  
4 have with respect to the '622 patent, it's labeled on  
5 the cover IPR 2017-01798. Is it okay if we refer to  
6 that as the 1798 declaration?

7 A. Certainly.

8 Q. And just for record, these are Exhibit  
9 Number 2001 in each respective proceeding.

10 If we can look at your 1797 declaration  
11 quickly. Did you prepare this declaration?

12 A. No.

13 Q. Did you write it yourself?

14 A. Yes.

15 Q. Every word?

16 A. I normally turn over declarations and reports  
17 to attorneys for a little basic editing. I'm actually  
18 kind of renowned for typos and such. And there's  
19 normally some suggested cleanup and things like that.  
20 But I approve or disapprove any suggested changes, and  
21 it is totally my opinions and my thoughts and words in  
22 the final declaration.

23 Q. Okay. Can you look at paragraph 2 in the 1797  
24 declaration?

25 A. I have it in front of me.

1 WILLIAM C. EASTTOM, II

2 Q. Do you see there's a blank about -- I think  
3 it's -- it's in the first sentence, towards the bottom.

4 A. I actually noted that in reviewing this for  
5 this proceeding. I had intended to go back and put the  
6 specific dates for that on there and simply neglected to  
7 do so. But they are in my CV that's attached.

8 Q. The beginning of the sentence, it says from  
9 2000 to 2003, though. So are you referring to different  
10 dates than the 2000 to 2003?

11 A. Well, it would have either been the dates or  
12 the location of the college, which would be Garland,  
13 Texas.

14 Q. Okay. You just couldn't recall where the  
15 college was at the time?

16 A. I don't think I recalled the specific time. I  
17 had to go back and review, and then I just didn't get  
18 around to putting it back into the blank.

19 Q. Okay. Did anyone help you prepare the  
20 declarations, both the 1797 and the 1798 declarations?

21 A. Aside from the basic review that I already  
22 discussed where only suggestions are made, but it's  
23 ultimately my decision, no.

24 Q. Okay. Are there any paragraphs in here you did  
25 not write or have input in?

1 WILLIAM C. EASTTOM, II

2 A. No.

3 Q. Okay. And if you can go to the back of the  
4 1797 declaration before your CV. You can let me know  
5 when you're there, please.

6 A. Are you referring to paragraphs 70 through 72  
7 in the conclusions?

8 Q. Yes, sir.

9 A. I am there.

10 Q. Okay. Is that your signature at the bottom?

11 A. Yes.

12 Q. Okay. And it's dated November 7th, 2017; is  
13 that right?

14 A. That's the date here, but I don't have an exact  
15 recollection of when I signed it, but that sounds about  
16 right.

17 Q. Okay. Could you have signed it after that  
18 date?

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

20 Q. And I just want to ask you the same question  
21 quickly for the 1798 -- 1798, excuse me, declaration, if  
22 you could go to the signature page as well and let me  
23 know when you're there.

24 A. I'm there.

25 Q. Okay. Is that your signature at the bottom of

1 WILLIAM C. EASTTOM, II

2 the page? I believe it's page 42 of your 1798  
3 declaration.

4 A. Yes, it is.

5 Q. And, again, you have a date there of  
6 November 8th, 2017. Is that the date that you signed  
7 the declaration?

8 A. To the best of my recollection. I don't have  
9 an identic memory, and I couldn't guarantee it was on  
10 that date, but it would have been if I put that date on  
11 there.

12 Q. Okay. Do you recall if you signed it after  
13 that date?

14 A. I'm pretty certain I didn't.

15 Q. Okay. So what materials did you consider when  
16 preparing your declarations?

17 And if it's okay with you, when I say  
18 "declarations," plural, I'm referring to both the 1797  
19 and the 1798.

20 A. Certainly.

21 I believe I actually enumerated those in  
22 the declaration. For example, on the 1797 in paragraph  
23 4, I specifically mention that I of course reviewed the  
24 262 patent, its prosecution file wrapper, in other  
25 words, all the files and the prosecution history, the

1 WILLIAM C. EASTTOM, II

2 state of the art at the time, all the references that  
3 Samsung had asserted. There were several of them.

4 Now, I particularly point out Zydney  
5 Griffin. And I'm probably going to mispronounce this  
6 name, Aravamudan and Vuori. And, of course, there were  
7 other declarations that had previously been done on this  
8 same patent that I also took a look at.

9 Q. These other declarations that you're referring  
10 to, are those your own declarations?

11 A. I believe they would have been, yes.

12 Q. Did you review any declarations of other  
13 experts other than Dr. Haas in preparing these  
14 declarations?

15 A. None that I recall.

16 Q. Do you know Dr. Dieuliis?

17 A. The name doesn't strike me as familiar.

18 Q. Okay. I'm going to spell it just in case I'm  
19 mispronouncing it. It's D-I-E-U-L-I-I-S.

20 A. The name doesn't stand out to me. Now, to be  
21 totally frank, I go to a tremendous number of  
22 conferences, and I probably meet 2,000 people a year,  
23 and if I met him, it was a passing meeting at a  
24 conference, but nothing that would cause me to recall  
25 the name or the person.

1 WILLIAM C. EASTTOM, II

2 Q. Did you consider any materials that are not  
3 listed here in paragraph -- I think you said it was 4;  
4 is that right?

5 A. It is paragraph 4; and, no, I did not.

6 Q. Do you recall when you started the process of  
7 preparing these declarations?

8 A. No, I don't.

9 Q. Okay. Do you recall when you were retained for  
10 these proceedings?

11 A. Well, that's difficult to discern because in  
12 late 2016 I was retained for a number of items related  
13 to Uniloc, and they sort of, from my perspective, simply  
14 flowed from one to the other. So the demarcation point  
15 for this specific matter, I don't recall.

16 Q. Okay. Do you recall who contacted you with  
17 respect to these proceedings regarding your retention?

18 A. I don't recall the specific name. I believe it  
19 was one of the attorneys that are now with the firm of  
20 Prince Lobel, who handled some of the other Uniloc  
21 matters. And there was -- there were two or three of  
22 those attorneys that I've worked with in the past when  
23 they were at other firms, and it was one of those two or  
24 three that reached out to me.

25 Q. So it wasn't any of the attorneys at the

WILLIAM C. EASTTOM, II

Etheridge Law Firm?

A. I don't believe so, although I've also worked with Etheridge Law Firm before.

Q. Okay. Did you prepare for today's deposition?

A. Yes.

Q. And how did you prepare for today's deposition?

A. Primary was simply rereading the declarations, rereading the references, rereading the petition for the IPR; and there was a brief conversation with counsel via phone.

Q. When did you have the conversation via phone?

A. I think that was Monday.

Q. And who did you speak to on Monday?

A. This is terribly embarrassing because he's sitting next to me, and I do not recall his name.

Q. That's okay. Is it Mr. Loveless?

A. Yes. Thank you.

THE WITNESS: Very sorry about that. I'm terrible with names.

MR. CITROEN: I am, too. I'm surprised that I remembered.

Q. Okay. And about how long did you talk to Mr. Loveless on Monday?

A. I would estimate between an hour and an hour



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2 and a half.

3 Q. Okay. And the rest of the time that you spent  
4 preparing for today's deposition was on your own?

5 A. That would be correct.

6 Q. You didn't speak to anyone else regarding  
7 today's deposition?

8 A. Other than to tell my wife my schedule, no.

9 Q. Okay. How much time do you think you spent in  
10 total preparing for today's deposition?

11 A. Well, not inclusive of the time spent  
12 originally preparing the declarations, I would say  
13 somewhere in the eight- to ten-hour range.

14 Q. And what -- I apologize. I know you listed  
15 what you reviewed, but I can't see what you stated. So  
16 can you tell me again what you reviewed to prepare for  
17 today's deposition?

18 A. Certainly. Obviously, the declarations  
19 themselves, the '622 patent itself, the actual IPR  
20 petitions that were filed, and the various exhibits  
21 attached to those petitions.

22 Q. Did you review the board's institution  
23 decisions in these two proceedings?

24 A. I believe I saw it, but I don't believe I  
25 focused particularly on that matter.

1 WILLIAM C. EASTTOM, II

2 Q. Okay. So do you know for sure if you saw that  
3 or not?

4 A. I don't know for certainty, no.

5 Q. What about the patent owner's preliminary  
6 responses in these two proceedings, did you review those  
7 in preparing for today's deposition?

8 A. I don't have a specific recollection of  
9 reviewing that. It might have been in the material, but  
10 if so, it didn't stand out particularly to me.

11 Q. And did you look at the patent owner responses  
12 before or in preparation for today's deposition?

13 A. Again, I don't have a specific recollection of  
14 doing that. It may have been amongst the material.

15 Just to be clear, I form independent  
16 opinions based on the technology. So what one party or  
17 the other to the case, their opinions don't influence  
18 mine.

19 Q. So other than reviewing the few materials that  
20 you identified and having the call with Mr. Loveless on  
21 Monday, is there anything else that you did to prepare  
22 for today's deposition?

23 A. No. But just one minor correction. It wasn't  
24 a few materials. As you're probably aware, there were a  
25 lot of exhibits to these IPRs. There was --

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Q. Okay.

A. -- quite a lot of materials. But, no, nothing other than that.

Q. Okay. So did you review every exhibit for the proceeding?

A. At least gave it a quick scan.

Q. Okay. Thanks for the correction.

So do you believe you had sufficient amount of time to prepare for today's deposition?

A. Yes.

Q. So in your own words, what would you describe as your technical expertise?

A. Well, as you may have noted from the CV, there's a wide range of computer science-related expertise. Particularly related to this case, I have specific expertise in a wide range of networking technologies, telecommunications, mobile devices, including mobile programming and even mobile forensics.

Now, there are other areas of computer science that aren't necessarily related to this case. I'm happy to enumerate them if you wish.

Q. That's okay for now.

And, in your opinion, what is the field of the invention with respect to the '622 patent?

1 WILLIAM C. EASTTOM, II

2 MR. LOVELESS: Objection, form.

3 A. The '622 patent involves voice over IP to begin  
4 with it, and then it involves messaging with voice over  
5 IP.

6 Q. Do you have any experience -- strike that.

7 Prior to December 2003, did you have any  
8 experience with instant messaging?

9 A. Yes.

10 Q. And what was that experience?

11 A. It was several. To begin with, in the late  
12 '90s, I worked for a company, Digital Speech Systems,  
13 where I created software for voicemail servers. One of  
14 the applications at that company I personally did was to  
15 integrate different types of messaging into Outlook, so  
16 you would get both instant messaging and voicemail into  
17 your Outlook inbox.

18 Since that time, as I mentioned before,  
19 extensive work with mobile phones, including mobile  
20 phone forensics, which involves not only understanding  
21 the architecture of the phones and the software, but  
22 being able to extract and analyze data from those phones  
23 often including instant messaging.

24 Q. You said software for voicemail servers?

25 A. Yes.

1 WILLIAM C. EASTTOM, II

2 Q. Can you explain what that means?

3 A. Well, a voicemail server is hardware. It's a  
4 box. At the time, I believe we used voicemail cards  
5 from Dialogic, a company that made voice technology.  
6 And I had to write the software, or was part of a team  
7 that wrote the software that made all of that function.  
8 It would store voicemail, allow you to retrieve them.  
9 We would do call forwarding, various things like that.

10 Q. Okay. And just to be clear, so I was asking  
11 you about instant messaging. So is this software that  
12 you designed for the -- or worked on for the voicemail  
13 servers, was that software instant messaging software  
14 for voicemail servers?

15 A. The voicemail servers was not, but as I  
16 indicated, I also personally wrote an application -- not  
17 part of a team, just me -- to integrate a variety of  
18 different messages into your Outlook inbox, so that if  
19 you open up Outlook, you would get your e-mail, of  
20 course, but you would also get voicemail and even  
21 instant messages if they were sent through the  
22 appropriate channels.

23 Q. Was that part of your -- strike that.

24 You stated that that was -- you personally  
25 wrote the application, so that was not part of your work

1 WILLIAM C. EASTTOM, II

2 with Digital Speech Systems?

3 A. That's incorrect. What I meant to indicate was  
4 that some of the software was done by a team.

5 Q. Okay.

6 A. This was still at that company for a particular  
7 customer, but I personally and alone developed that  
8 particular application, as opposed to working as part of  
9 a software engineering team.

10 Q. Understood. Thank you.

11 So you mentioned Outlook. Is that the  
12 e-mail program that you're referring to?

13 A. Microsoft Outlook, which is their e-mail  
14 application.

15 Q. Okay. Is -- in your opinion, before  
16 December 2003, was e-mail an instant messaging system?

17 MR. LOVELESS: Objection, form.

18 A. No. E-mail was precisely asynchronous;  
19 therefore, not instant.

20 Q. Okay. But you integrated instant messaging  
21 into Outlook e-mails; is that correct? I'm just trying  
22 to understand what the system did exactly.

23 A. Well, there are some limits to what I can  
24 discuss. It was a confidential system done for an  
25 embassy, so...

1 WILLIAM C. EASTTOM, II

2 Q. Okay. Understood.

3 A. But, in general, a variety of messages,  
4 including instant messages and voicemail, could be  
5 viewed from within your Outlook inbox. So instead of  
6 you having to check your phone, your instant messaging  
7 device, which could also be a phone or could be  
8 whatever, and checking your e-mail, you simply check  
9 your e-mail, and all of your various communications  
10 appeared with differential icons so you would know this  
11 is a voicemail or this is a message as opposed to an  
12 e-mail.

13 Q. Okay. So the -- so this integration was not  
14 messages integrated within an e-mail message; it was  
15 just within the -- the user interface of Outlook that  
16 you were providing the integrated messages?

17 A. That's correct.

18 Q. So was the integrating messages already known  
19 types of instant messaging systems, such as AOL Instant  
20 Messenger, or was it a proprietary instant messaging  
21 software application that was being integrated?

22 MR. LOVELESS: Objection, form.

23 A. We took messages from a variety of platforms  
24 that were specific to this customer.

25 Q. Okay. And, yes, I don't want you to reveal

1 WILLIAM C. EASTTOM, II

2 anything that's confidential. So, please, if I do ask  
3 anything that touches on confidential information,  
4 please let me know.

5 A. I will.

6 Q. Okay. So if you could, and I apologize if you  
7 did this already, but if the Outlook user interface is  
8 open -- and I'm referring to the system that you helped  
9 design or you did design yourself. If an instant  
10 message was received, what would happen?

11 A. Well --

12 MR. LOVELESS: Objection, form.

13 A. -- as much detail as I can go into,  
14 essentially, it was taken from wherever it would have  
15 normally been sent and additionally displayed within  
16 your inbox. The same thing happened with voicemails.  
17 They go to your voicemail server, but they're also  
18 displayed within your inbox. So you could have accessed  
19 the message through either interface that was preferable  
20 to you.

21 Q. So when you say displayed within the inbox, it  
22 would be displayed along with e-mails, for example?

23 A. Correct. It would be an item in your inbox  
24 that you could open and view.

25 Q. And if you wanted to respond to an instant



1 WILLIAM C. EASTTOM, II

2 message that's displayed in your inbox, how would you do  
3 that?

4 MR. LOVELESS: Objection, form.

5 A. In this system you could not respond to these  
6 messages. They were meant to allow you to receive them  
7 in a single location.

8 Q. And you believe these messages are instant  
9 messages?

10 MR. LOVELESS: Objection, form.

11 A. Yes, they were.

12 Q. And why do you believe they were instant  
13 messages?

14 A. Well, they were sent as instant messages and  
15 would have also been received at the intended device,  
16 such as if someone sent you an instant message, a text  
17 message, to your phone, it would appear on your phone,  
18 but it also would appear in your inbox.

19 So, for example -- and, again, I'm going to  
20 go as far as I can -- there are locations where phones  
21 are not allowed within government agencies, but where  
22 you do have access to e-mail.

23 Q. Uh-huh.

24 A. And if you're in such a location and someone is  
25 sending you an urgent message, you would not receive it

1 WILLIAM C. EASTTOM, II

2 because it's going to your phone, which is normally  
3 stored in a box outside of this room.

4 Q. Uh-huh.

5 A. However, your inbox says, hey, there's an  
6 urgent message. You may wish to be aware of it.

7 Q. Okay. So what does -- in your opinion, what  
8 does "instant" mean?

9 MR. LOVELESS: Objection, form.

10 Q. To be clear, just -- I'm asking in a time frame  
11 before December 2003.

12 A. Certainly.

13 In general, instantaneous -- and we'll have  
14 to refine this within specific context because words do  
15 have meaning within context. But as a general  
16 out-of-context definition, I would say something that's  
17 synchronous. For example, I'm speaking to you live  
18 right now, and it's a synchronous conversation whereas  
19 you can respond in real time, and I can respond to you.  
20 If there was some significant or substantial delay, it's  
21 no longer synchronous; and, therefore, it's no longer  
22 instant.

23 Q. How much of a delay is acceptable in order for  
24 the communication to still be instant?

25 MR. LOVELESS: Objection, form.

1 WILLIAM C. EASTTOM, II

2 A. Well, the issue there can't be quantified as in  
3 X number of milliseconds or seconds. It's more in the  
4 form of a typical conversation that would seem  
5 relatively uninterrupted. And this is a place where  
6 context means everything.

7 For example, if you were doing a moon  
8 landing, even with voice communication, there's  
9 several-second delays simply due to the speed of light  
10 constrictions. That would seem normal to you, and  
11 that's as close to instant as you can get. However, if  
12 every time you ask me a question here, I pause for 8 to  
13 12 seconds to answer, that would be very bizarre and  
14 would not be considered instant. In fact, it would  
15 probably do to question my mental health, but it would  
16 not be instant.

17 Q. What about in the context of the '622 patent,  
18 how much delay would be appropriate --

19 MR. LOVELESS: Objection, form.

20 Q. -- for you to still have an instant message?

21 A. Only enough delay that you could still  
22 facilitate an actual conversation.

23 Q. What do you mean by "facilitate an actual  
24 conversation"?

25 A. Well, the best way to define this is to define

1 WILLIAM C. EASTTOM, II

2 the opposite. If I send you a letter through postal  
3 services, that's the antithesis of instant or real time  
4 because you won't even get it till some period in the  
5 future. And then if you respond, and there will be a  
6 period in the future before you can respond. It's not  
7 possible for us to have a direct synchronized  
8 communication.

9 Q. So remaining in the context of the system  
10 described in the '622 patent, if every message was  
11 delayed over a minute, would it still be instant?

12 MR. LOVELESS: Objection, form.

13 A. I think with telecommunications, particularly  
14 at the time, that wouldn't have been that odd, simply  
15 because we had slow connections and slow speeds.  
16 Essentially, the idea is -- let's say my wife sends me a  
17 text right now to tell me that our house is on fire.

18 Q. Uh-huh.

19 A. She wants a response in real time,  
20 synchronized. She does not want a response tomorrow or  
21 later this day. As long as it is within a time that a  
22 normal, reasonable person would consider actually  
23 synchronized, I would consider it instant. And, again,  
24 that's going to be a contextually defined thing, and I  
25 cannot define it down to X number of seconds or

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2 milliseconds.

3 Q. Okay. So when you say "synchronous," is  
4 another way to explain what you mean that -- is that the  
5 conversation is interruptible?

6 MR. LOVELESS: Objection, form.

7 A. No. Any conversation is interruptible, whether  
8 it's synchronous or asynchronous.

9 Q. Is an e-mail interruptible?

10 A. Sure.

11 Q. How is it interruptible?

12 A. You never had an e-mail that didn't go through?  
13 You've never had someone tell you they sent you an  
14 e-mail and then you didn't see it; it went to your spam  
15 folder? That was interrupted.

16 Q. So interruptible in the sense that when I write  
17 an e-mail and send it, someone cannot interrupt my  
18 e-mail midway through, and send a message in between  
19 before I send it?

20 A. Well, I don't know how closely you viewed my  
21 CV, but I frequently teach hacking and penetration  
22 testing classes. So, yes, your e-mail is interruptible.

23 Q. So is e-mail synchronous?

24 A. It's the antithesis of synchronous. It is  
25 specifically asynchronous. One of the reasons I

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2 personally prefer e-mail communication is if I were to  
3 send Mr. Loveless an e-mail, I don't need him to respond  
4 right now if it's busy. He can look at it tonight. So  
5 that's why e-mail is used, so we don't need something  
6 synchronized.

7 Q. Okay. You could also do that with instant  
8 messaging, correct?

9 A. I can send a message, and he may choose to  
10 respond later. But the primary difference there is, for  
11 example, I turn my phone off before we started, because  
12 if I get a text message, it will make a sound and  
13 interrupt us. I may choose to ignore it and not respond  
14 for hours or never. I may never respond. But I was  
15 notified of the message immediately; it was received  
16 immediately.

17 E-mail, unless you have your e-mail client  
18 open and have it set to check periodically, you're not  
19 going to receive that e-mail. And this is very  
20 important at the time of these inventions. Because now  
21 you're probably accustomed to an e-mail client that  
22 checks perhaps every two minutes, every minute,  
23 something like that. Mine is every five minutes. Back  
24 then, that was not the norm. The norm was until you  
25 clicked "check my e-mail," you could have one, a

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2 hundred, or a thousand messages waiting in there that  
3 could have been waiting a minute, an hour, a year.

4 Q. Okay. So, in your opinion, instant messaging  
5 requires instantaneous receipt?

6 MR. LOVELESS: Objection, form.

7 A. Well, as near instantaneous as the technology  
8 allows. There are always delays going through cellular  
9 networks and things of that nature.

10 Q. If it's delayed for an hour, would that still  
11 be instantaneous?

12 MR. LOVELESS: Objection, form.

13 A. I have to consider that within a specific  
14 context. Again, this is all context dependent. And as  
15 I've stated, the word "instantaneous" itself has a  
16 different meaning. If I'm talking to someone who is a  
17 physicist, instantaneous is down to nanoseconds.

18 Q. Okay.

19 A. But I don't think most human beings could even  
20 discern that.

21 Q. Okay. So in the context of the '622 patent and  
22 the way it describes instant messaging, would a delay of  
23 an hour at the time be an instant message?

24 MR. LOVELESS: Objection, form, outside the  
25 scope.

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2 A. It's not really a concept I've considered. I  
3 know all my opinions are in my declaration. I don't  
4 recall having opined on a specific time frame that would  
5 make something instant. So I don't have an opinion on  
6 the specific time frame that would make it instant.

7 Q. Okay. So the claims recited, the term "instant  
8 voice message," I'm asking you what does "instant" mean  
9 in the context of the '622 patent. So my question is:  
10 Is instant something that would be delivered after an  
11 hour?

12 MR. LOVELESS: Objection, form. Objection,  
13 outside the scope.

14 A. I believe I've applied simple, plain and  
15 ordinary meaning, so I would have to default to your  
16 typical reasonable user. And that would, again, be the  
17 context of the message. Some messages can be delayed an  
18 hour. Some messages have to come this minute. If I  
19 call 911, a delay of an hour is horrible. If I called  
20 to make dinner reservations for next Friday, a delay of  
21 an hour doesn't bother me. So you cannot simply define  
22 that an hour is instant or not. It's not just within  
23 the context of the patent; it's within the context of  
24 the application of the individual message.

25 Q. Okay. So then the '622 patent describes an



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2 instant voice message. In your opinion, that could  
3 cover, in certain applications, a message that's  
4 received after an hour?

5 MR. LOVELESS: Objection, form. Objection,  
6 outside the scope.

7 A. What I've actually said I haven't contemplated  
8 that. I haven't opined on that. That's not within my  
9 declaration.

10 But as a general matter, I won't  
11 necessarily rule it out until I've had an opportunity to  
12 carefully reflect on a specific scenario.

13 Q. Okay. So did you consider the meaning of all  
14 of the terms that I recited in the claims of the '622  
15 patent?

16 A. Yes.

17 Q. Okay. So around December 2003 were you aware  
18 of SMS messages?

19 A. Yes.

20 Q. Were SMS messages instant messages?

21 MR. LOVELESS: Form.

22 A. They could be.

23 Q. When could they be instant messages?

24 A. Well, I believe the definition I stuck with  
25 throughout our discussion here has been synchronous. If

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2 those messages are synchronous, then they would be  
3 instant. If they're not, then they would not be.

4 Q. Can you explain a scenario where SMS messages  
5 are synchronous?

6 MR. LOVELESS: Objection, form.

7 A. Well, the modern text messages available on my  
8 Apple iPhone are meant to be synchronous. They're meant  
9 to be sent now and received within very close proximity  
10 by the recipient. I believe pagers, which were still  
11 around in 2003, some of them were meant to be  
12 synchronous; some weren't. Some were meant to send  
13 maybe an alert, a warning, a reminder, but might or  
14 might not be synchronous.

15 Q. So if you received a SMS text message on your  
16 phone in December 2003 and the user has the option to  
17 respond to that text message whenever they please, in  
18 that scenario, would that system be an instant messaging  
19 system --

20 MR. LOVELESS: Objection, form. Outside  
21 the scope.

22 Q. -- in the context of the '622 patent?

23 MR. LOVELESS: The same objection.

24 A. The problem here is we're not describing the  
25 system full enough. I think that's why we're missing

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2 each other's definition. It's not simply that the  
3 person has a chance to respond. I have an opportunity  
4 to respond if you send me a letter. That doesn't make  
5 it instantaneous, and I don't know of anyone who has  
6 ever claimed that the U.S. Postal System was  
7 instantaneous. I think there are quite a few jokes  
8 about it being the antithesis of that.

9 So the issue is how does it get there. For  
10 example -- give you a contrary example. If the message  
11 is forwarded to a server and it sets on that server  
12 until such time as the recipient retrieves it, then  
13 that's not instant message.

14 Q. Okay. So let's go back to the -- an example of  
15 e-mail. Were there e-mail systems at the time,  
16 December 2003 or earlier, that automatically updated  
17 your inbox to show you the e-mail messages that have  
18 been received?

19 MR. LOVELESS: Objection, form. Object to  
20 the scope.

21 A. This is a common misunderstanding. Even today  
22 your e-mail doesn't do that automatically. You can go  
23 into Outlook and configure frequency of how often it  
24 will go and retrieve your e-mail; but if you don't do  
25 that, it's not going to retrieve it for quite some time.

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2 But you could choose the frequency. But as far as  
3 automatically, instantly synchronizing with your server  
4 to begin with, that would be incredibly inefficient.

5 Before I started this deposition, I checked  
6 my e-mail and no new e-mail had come in since I had left  
7 my house 30 minutes prior. If my e-mail client were  
8 constantly checking that e-mail server, that creates an  
9 increase in network traffic for e-mail that's not even  
10 there. It's a waste of time. And I happen to get a lot  
11 more volume of e-mail than the average user.

12 So to implement automatic checking of your  
13 e-mail server, not only is that actually done today; it  
14 may seem that way to you due to your settings in  
15 Outlook, but it's not done today. It would be a really  
16 bad idea.

17 Q. So what if the e-mail system at the time,  
18 December 2003 or earlier, did automatically check the  
19 e-mail server, let's say every second, would a person of  
20 ordinary skill in the art consider that instant  
21 messaging?

22 MR. LOVELESS: Objection, form, scope.

23 A. I don't think so. And, again, this is a great  
24 place -- it's a good question to contrast, say, a text  
25 message and an e-mail.

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2 Q. If you send me an e-mail, regardless of how it  
3 appears to you as an end user, anyone of ordinary skill  
4 in the art, and I mean someone skilled in the art of  
5 computer networks, understands that you did not actually  
6 send to me an e-mail. You sent an e-mail to my e-mail  
7 server, or more likely my internet service provider's  
8 e-mail server. That's who you sent it to. And it will  
9 sit there indefinitely until I retrieve. Now, if I  
10 retrieve it every second or I retrieve it once a week,  
11 it doesn't matter. It will sit there until I actively  
12 retrieve it because you did not actually send it to me.  
13 You sent it to the server.

14 If you send me a text message, if I were to  
15 give you my phone number, you would be sending it to my  
16 number. Now, yes, it will hop through some servers to  
17 get there, but the actual destination is my phone, my  
18 number. It's not destined for an intermediate server.

19 The presence of that intermediate server --  
20 and in this case, an e-mail is not really intermediate.  
21 It's actually the chosen destination -- negates the  
22 possibility of it being an instant message.

23 Q. So a person with ordinary skill in the art  
24 would not consider any system that involves a server as  
25 being an instant messaging system?

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2 MR. LOVELESS: Objection, form, scope.

3 A. It's actually not what I said.

4 What I said, if the server is the actual  
5 destination, such as an e-mail, the e-mail server is the  
6 destination; you just happen to have the ability to  
7 retrieve things from that server.

8 If the server itself is the destination,  
9 and the actual human recipient has to take additional  
10 steps to go grab things from that server, then that's  
11 not instant.

12 But in the case of networking, there are  
13 all sorts of servers involved, intermediate in every  
14 communication, whether it be cellular or a real-time  
15 phone call, has multiple cell towers involved. But  
16 those aren't the destination. They're just facilitating  
17 the transfer of the message.

18 Q. Okay. So at the time of the alleged invention,  
19 would a person of ordinary skill in the art not consider  
20 any system that requires retrieving messages from a  
21 server to be instant messaging?

22 MR. LOVELESS: Objection, form, scope.

23 A. When we ask general statements, never, not, and  
24 make absolute statements, those are almost always prone  
25 to some sort of error.

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2 A better answer would be is if you have a  
3 particular system in mind we could look at, and I would  
4 be happy to opine on. But general, broad-based  
5 statements are usually inaccurate.

6 Q. Okay. So there may be systems at the time that  
7 a person with ordinary skill in the art would consider  
8 to be instant messaging even though you had to retrieve  
9 the message from the server?

10 A. I would be doubtful of that, but I would have  
11 to examine the specific system to form an opinion.

12 Q. Okay. But you can't answer yes or no?

13 MR. LOVELESS: Objection, form.

14 A. That is correct.

15 Q. Okay.

16 Were you aware of e-mail systems at the  
17 time of the alleged invention that pushed e-mails to the  
18 recipient devices?

19 MR. LOVELESS: Objection, form and scope.

20 A. I don't know if at the time of the invention I  
21 was aware of pushing. I am aware they exist now.

22 Q. Okay. Would you consider a messaging system  
23 that pushes messages to the recipient device to be an  
24 instant messaging system? Would a person with ordinary  
25 skill in the art consider such a system to be an instant

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2 messaging system in the context of the '622 patent?

3 MR. LOVELESS: Objection, form, scope.

4 A. Well, again, I would have to look at a specific  
5 system to give you an accurate answer.

6 As a general statement, not with a  
7 particular system in mind, that pushing does not change  
8 the fact that when I sent the e-mail, it was actually  
9 sent to the e-mail server. It wasn't sent to the  
10 person. As a general statement, that's likely to not be  
11 instant messaging. It's just an improvement on the  
12 delivery from the server to the individual.

13 But, again, I can't give definitive  
14 opinions on generalities. I can and I'm happy to on any  
15 specific art you would like to look at.

16 Q. Did you use AOL Instant Messenger in  
17 December 2003 or earlier?

18 A. I'm embarrassed to admit in the mid '90s I did  
19 use AOL for a number of services.

20 Q. And are you aware of the fact that AOL Instant  
21 Messenger used a Super-based system?

22 MR. LOVELESS: Objection, form.

23 A. I believe they would have. I don't have  
24 specific details on their system, but I would believe  
25 that's probably likely.



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2 Q. Would a person with ordinary skill in the art  
3 at the time believe AOL Instant Messenger was an instant  
4 messaging system?

5 MR. LOVELESS: Objection, form and scope.

6 A. We would have to talk about the specific  
7 elements of it, for example, where was the message  
8 destined to, time lag. There are a number of factors  
9 that determine whether or not it's instant messaging or  
10 not.

11 If you have specific documents on that  
12 system, I'm happy to look at them.

13 Q. I'm just asking you as an expert in the field  
14 and as someone who actually used the system as well. So  
15 do you know how AOL Instant Messenger was used in  
16 December 2003?

17 MR. LOVELESS: Objection, form, scope.

18 MR. CITROEN: Strike that. It was a very  
19 broad question.

20 Q. If you wanted to use AOL Instant Messenger in  
21 December 2003 or earlier, would you download a software  
22 application onto your desktop computer, for example?

23 MR. LOVELESS: Objection, form and scope.

24 A. That's been quite a long time since I used AOL.  
25 Without referring to some refreshing documents, I can't

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2 give you any meaningful answers. It's been a long time.  
3 And just for the record, AOL is widely discounted in the  
4 technical industry, and that's why I said I'm  
5 embarrassed to admit that I once used them, but I used  
6 it over 20 years ago.

7 Q. Uh-huh.

8 A. And I don't have an identic memory.

9 Q. Okay. So when I asked you whether a person  
10 with ordinary skill in the art would consider AOL  
11 Instant Messenger to be an instant messaging system in  
12 the context of the '622 patent, you stated it would  
13 depend on where the instant message is destined to go.

14 What did you mean by that?

15 MR. LOVELESS: Objection, form, scope.

16 A. One of the factors I would consider when  
17 analyzing any system is just the analogy I gave you with  
18 e-mail. Did I actually send a message to you, or did I  
19 actually send it to some other destination that then you  
20 can retrieve it from? Then I would look at other  
21 aspects, such as the intended time frame of the  
22 conversation.

23 Now, there are a number of aspects I would  
24 have to contemplate to look at any particular system.

25 Q. Which aspects would you contemplate?

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2 A. I believe I just enumerated those. I would  
3 look, for example, at the intended recipient, not  
4 necessarily what you the user think, but what am I  
5 actually sending this to. I would look at the time  
6 frame. I would look at the intention of the message.  
7 For example, a voice call is intended to be  
8 synchronized. You intend to talk to someone and them to  
9 talk to you simultaneously. An e-mail is not intended  
10 to be a simultaneous conversation. If that other person  
11 happens to be sitting at their desk and happens to be  
12 checking their e-mail, they might happen to respond  
13 immediately or within a short time, but that's not  
14 intended.

15 There are a variety of factors that have to  
16 be considered. Those are three that come immediately to  
17 mind.

18 Q. So at the time of the alleged invention, if  
19 Michael and I use AOL Instant Messenger to communicate  
20 with each other -- is that okay so far?

21 A. It's okay with me if you communicate with each  
22 other. I presume you do.

23 Q. You understand the scenario?

24 A. Yes, I do.

25 Q. If I intended to send Michael an instant

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2 message using AOL Instant Messenger, would that scenario  
3 qualify to a person of ordinary skill in the art as an  
4 instant messaging system in the context of the '622  
5 patent?

6 MR. LOVELESS: Objection, form, scope.

7 A. Again, I would have to review the specifics of  
8 how AOL works. And if you have documents on that, I'm  
9 happy to take a look at them right here and now and give  
10 you an opinion, but without that detail, I can't give  
11 you -- you mentioned earlier you were asking me as an  
12 expert. Well, as an expert, I am aware that just  
13 off-the-cuff generalizations are highly likely to be  
14 inaccurate. So refreshing my memory with actual  
15 documents will allow me to give you that expert opinion.

16 Q. Okay. So you can't answer the question without  
17 documentation explaining how AOL Instant Messenger  
18 worked?

19 A. That would be accurate.

20 MR. LOVELESS: Objection, form.

21 Q. Okay. Were persons with ordinary skill in the  
22 art aware of AOL Instant Messenger at the time of the  
23 alleged invention?

24 MR. LOVELESS: Objection --

25 MR. CITROEN: I'm sorry. Did you hear

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2 that? My voice cut out there a little bit.

3 MR. LOVELESS: Objection, form and scope.

4 A. Yes, I heard the question.

5 Q. Okay.

6 A. I would certainly assume they were aware it  
7 existed.

8 Q. Would you have considered AOL Instant Messenger  
9 to be a popular instant messaging platform at the time  
10 of the alleged invention?

11 MR. LOVELESS: Objection, form and scope.

12 A. I haven't done any particular analysis of its  
13 level of popularity. I know at least in the mid '90s,  
14 AOL, in general, as an internet service provider, was  
15 quite popular. I don't have any knowledge of the  
16 specific level of market saturation at the time of the  
17 invention.

18 Q. So going back to the number of aspects that you  
19 would need to consider to determine whether a system is  
20 an instant voice messaging system -- or, excuse me, an  
21 instant messaging system in the context of the '622  
22 patent, you also mentioned time lag. Do you recall  
23 mentioning time lag?

24 A. Yes.

25 Q. Okay. And what did you mean by time lag?

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2 A. Well, we had quite a bit of conversation about  
3 this earlier. How much time lag is acceptable is  
4 dependent on context. So it's not simply the case that,  
5 oh, this system has a two-second time lag. It doesn't  
6 work. That's not the case. But looking at the time lag  
7 between me sending a message and you receiving it versus  
8 the intended purpose of the system and what the average  
9 user is expecting from the system, those factors  
10 together would let me evaluate if that time lag was  
11 small enough that we could still call it instant.

12 Q. You also mentioned intention of the message as  
13 another aspect that you would need to consider to  
14 determine whether a system was an instant messaging  
15 system in the context of the '622 patent.

16 What did you mean by "intention of the  
17 message"?

18 MR. LOVELESS: Objection, form.

19 A. Well, that's best referring back to some of our  
20 earlier examples we've discussed.

21 We have two aspects that I'm not sure which  
22 one you're asking, so I'll answer both.

23 First is the intention of the software  
24 itself. Is that software sending it to an individual,  
25 such as with a text message, my text software is sending

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2 it to a phone number, or is it sending to a server, such  
3 as an e-mail. Now, that's the intent of the software.

4 Now we have the intent of the user. Is the  
5 user, the general user's intent to have a synchronous  
6 conversation or to simply send you information that you  
7 may process and act upon at your whim at some later  
8 point in time?

9 Q. Does the '622 patent explain that instant  
10 messaging requires a synchronous conversation?

11 MR. LOVELESS: Objection, form, scope.

12 A. If you would allow me, I just need to briefly  
13 -- there was a passage here I'm looking for.

14 Q. Sure.

15 A. I'm looking for a few particular excerpts that  
16 jumped out in my mind, but I don't want to misremember  
17 them. I've encountered the first. Let me provide that  
18 to you, and then I'll move on to the second one.

19 I'm looking at column 7, and about halfway  
20 down, there's a specific mention of using voice over IP  
21 telephones; and, specifically, it mentions the  
22 Alcatel-Lucent, NEC, and Cisco, and also instant voice  
23 messaging clients. But these were all meant for  
24 real-time communication. I know because at the time, I  
25 actually used most of those devices.

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2 But that's only the first. So allow me to  
3 find the next one, then I'll be happy to answer your  
4 questions.

5 Q. If you don't mind, before you move, what line  
6 numbers were you reading from?

7 A. It starts at about 25 and goes through to 45,  
8 where there's discussion of the various voice over IP  
9 telephones.

10 Q. And that was column 7, correct?

11 A. That is correct.

12 Q. Okay. Thank you.

13 A. Another issue that we've just talked about  
14 comes in column 9, starting at about line 5, going  
15 through to about line 15. And it specifically mentions  
16 that this particular patent and invention, the '622  
17 patent, actually delivers -- and I'm going to read it.  
18 "The IBM server thereafter delivers the instant  
19 voicemail to the selected one or more recipients via the  
20 IP network."

21 As I mentioned before, it's not waiting for  
22 them to come retrieve it; it's delivering it straight to  
23 them.

24 And I'll continue on. And, again, I'll be  
25 happy to answer your questions once I've found these



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2 excerpts I was looking for.

3 Here is one of the phrases I was looking  
4 for, and I'm on column 11, beginning right after line  
5 30. It specifically states -- and simply reading it  
6 rather than paraphrasing it would be most accurate.

7 "In addition to the record mode of instant  
8 voice messaging, instant messaging system also supports  
9 an intercom mode of voice messaging. The intercom mode  
10 represents real time" -- and that's the phrase I was  
11 looking for -- "real-time instant voice messaging."

12 That real-time element is the issue that's  
13 at the heart of instant in my opinion.

14 Q. What's real time -- excuse me. What does real  
15 time mean?

16 MR. LOVELESS: Objection, form, scope.

17 A. In my expert opinion, it means synchronous.

18 Q. Is there any difference between real time and  
19 synchronous, in your expert opinion?

20 MR. LOVELESS: Objection, form, scope.

21 A. None that occurs to me.

22 Q. Would a person of ordinary skill in the art  
23 reading the '622 patent believe there is any difference  
24 between real time and synchronous?

25 A. I don't believe so.

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2 Q. So is the record mode described in the '622  
3 patent not an instant messaging system, in the context  
4 of the '622 patent?

5 MR. LOVELESS: Objection, form and scope.

6 A. That's inaccurate because the record mode and I  
7 can go back and read the whole description if you would  
8 like it. It essentially sends you the message right now  
9 in real time, but we just allow for you to play it at  
10 later time. But you get it in real time.

11 Q. So one of the places you took us to is column  
12 9, line 12 to 15.

13 A. I'll return there now.

14 Q. Okay.

15 A. I am there.

16 Q. I believe that was correct. Let me check.

17 MR. WOLFE: That was 9, 5 to 15.

18 A. If you want to be very specific, I think I  
19 specifically read it about line 12, if that helps you  
20 any.

21 Q. Sure. Thank you. That's what I was looking  
22 for.

23 So this sentence reads: The IBM server 202  
24 thereafter delivers the instant voice message to the  
25 selected one or more recipients via the IP network 204.

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2 Can you explain again why you believe that  
3 supports your understanding of instant voice messaging?

4 MR. LOVELESS: Objection, form and scope.

5 A. Well, among other things, the server actually  
6 delivers the voice messages to the recipients. It's not  
7 awaiting their retrieval.

8 Now, e-mail is a great example of the  
9 antithesis of real time, because it is awaiting your  
10 retrieval. Regardless of how frequently you set your  
11 e-mail to retrieve, it's still waiting for you to  
12 retrieve it. If you never retrieve it, then you never  
13 get your e-mail. If you never opened your Outlook, then  
14 your e-mail will sit on that server until the server is  
15 decommissioned.

16 Q. If your e-mail --

17 A. I'm not quite finished, please.

18 Q. I'm sorry. Please continue.

19 A. Unlike that, here it says the server delivers  
20 the message to the one or more recipients. So we're not  
21 waiting for you to come asking for it. We're sending it  
22 to you right away.

23 Q. If the e-mail server delivered the e-mail  
24 message to the recipient, would a person of ordinary  
25 skill in the art consider that an instant voice message

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2 in the context of the '622 patent?

3 MR. LOVELESS: Objection, form and scope.

4 A. Now, just to be clear, that's not the way  
5 e-mail works, and it's not just e-mail clients.

6 There are two sets of protocols used in  
7 e-mail. There are protocols for sending e-mail, simple  
8 mail transfer protocol or SMTP, which is used to send,  
9 and that's all it can do.

10 On the other hand, you have two different  
11 protocols that are used to retrieve. Those are POP3,  
12 Post Office Protocol, version 3, and IMAP, Internet  
13 Message -- I forget the A -- protocol. In any case, the  
14 way e-mail is designed as a standard, as a protocol,  
15 there is no mechanism to directly send it to the person.

16 Q. Let's assume there is a mechanism that allows  
17 it to be directly sent to the person. Would such a  
18 system be an instant voice messaging -- sorry. Excuse  
19 me. Would that system be an instant messaging system to  
20 a person of ordinary skill in the art in the context of  
21 the '622 patent?

22 MR. LOVELESS: Objection, form and scope.

23 A. Hypothetically, if the various standards  
24 organizations were to redesign the e-mail protocols so  
25 that they operated differently than they actually do,

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2 and then various e-mail servers and ISPs would  
3 reconfigure their servers to use these new and different  
4 protocols to operate radically differently than it  
5 currently does, then, yes, it might have a different  
6 outcome.

7 Q. Would that system be an instant messaging  
8 system to a person of ordinary skill in the art in the  
9 context of the '622 patent?

10 MR. LOVELESS: Objection, form and scope.

11 A. With the caveats I just mentioned, a radical  
12 overhaul of the protocols in the server, it might be.

13 Q. Is that a yes or a no?

14 MR. LOVELESS: Objection, form.

15 A. It's a might be.

16 Q. So you can't answer the question?

17 MR. LOVELESS: Objection, form and scope.

18 A. Well, I believe I mentioned earlier, to give  
19 you actual expert opinion on the system, I have to look  
20 at the system. This is a hypothetical system that  
21 actually goes contrary to every actual existing system.  
22 So I don't have enough data. But I'll concede that it  
23 might be.

24 Q. Okay. Well, earlier you explained that the  
25 reason that the e-mail is not an instant voice messaging

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2 system is simply because you have to retrieve the  
3 messages from the server.

4 MR. LOVELESS: Objection --

5 Q. I'm now asking you to assume that the server  
6 sends the messages to the recipient.

7 MR. LOVELESS: Objection, form and scope.

8 Q. Would that change -- would a person of ordinary  
9 skill in the art consider that system an instant voice  
10 message system in the context of the '622 patent?

11 MR. LOVELESS: Objection, form and scope.

12 A. Well, you're misunderstanding my earlier  
13 answer. I don't believe I ever stated -- and if I did,  
14 please let me know. The court reporter can let me know  
15 this. I don't believe I ever stated that was the only  
16 reason e-mail wasn't instant messaging. I just  
17 indicated that that was the most obvious.

18 Q. Okay. Again, with that one change, where the  
19 e-mail server sends the message to the recipient, would  
20 a person with ordinary skill in the art consider that an  
21 instant voice messaging system in the context of the  
22 '622 patent?

23 A. Now, given this is a hypothetical that's  
24 totally different than real-world systems, and given  
25 that we've only altered one of the criteria I've given

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2 for instant messaging, the best I can answer is it might  
3 be.

4 Q. Okay. Are there other criteria related to  
5 e-mail systems at the time of the alleged invention that  
6 would lead a person of ordinary skill in the art to not  
7 consider an instant messaging system in the context of  
8 the '622 patent?

9 MR. LOVELESS: Objection, form and scope.

10 A. Now, you just said are there other criteria in  
11 e-mail systems. I think you meant to ask me are there  
12 other criteria for instant messaging. Is that what  
13 you're asking?

14 Q. I believe I understood your answer correctly.  
15 You said that the server sending messages to a recipient  
16 was only one criteria that you would consider when  
17 determining whether that system is an instant messaging  
18 system.

19 So my question was: What other criteria  
20 would you consider, as a person of ordinary skill in the  
21 art, to determine whether that system is an instant  
22 voice messaging system --

23 A. Sure.

24 Q. -- or instant messaging system?

25 MR. LOVELESS: Objection, form and scope.

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2 A. Sure. And we've already enumerated these. I'm  
3 happy to do so again.

4 We talked about lag, and we said the lag  
5 isn't absolute. It's context dependent, how much lag is  
6 acceptable. The fact that the e-mail is sent either to  
7 a server to be retrieved or is sent ultimately  
8 specifically to a destination was only one of two  
9 intention items I gave. The other was the intent of the  
10 end user.

11 I believe most people of ordinary skill in  
12 the art, and even those with not ordinary skill in the  
13 art, and I probably shouldn't say this on the record,  
14 but I'll use my wife as an example because she's very  
15 much not technical. I don't believe she has any  
16 expectation that an e-mail is going to be received and  
17 responded to instantly, even with her lack of knowledge  
18 of the system. So we have the expectation of the end  
19 user. That's one.

20 We have the actual how the message is sent.  
21 Is it sent to a server for later retrieval, or is it  
22 sent directly to the individual, and the server is just  
23 an intermediary person managing the traffic, so to  
24 speak. And we have the lag time within the context of  
25 the application.



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2 Q. Okay. Thank you.

3 So an e-mail system where the server sends  
4 the e-mail message to the recipient, does so in  
5 milliseconds, and the intention of the users that the  
6 messages are received and responded to in near real  
7 time, would a person of ordinary skill in the art  
8 consider that to be an instant messaging system in the  
9 context of the '622 patent?

10 MR. LOVELESS: Objection, form and scope.

11 A. To be 100 percent clear, considering this  
12 complete hypothetical, that I cannot overemphasize is  
13 radically different than not only the way e-mail works  
14 but the way the protocols would even allow it to work,  
15 if you completely reinvented an entirely new and  
16 different system and just happened to call it e-mail,  
17 then, yeah, that might be instant messaging.

18 Q. Can you answer yes or no to that question?

19 MR. LOVELESS: Objection, form.

20 A. Well, as I stated many times, in hypotheticals,  
21 the best I can give you is it might be or it's likely  
22 not to be. It's very difficult to give a definitive  
23 answer when we have a vague hypothetical.

24 MR. LOVELESS: Counselor, are we going to  
25 move on to the actual declaration? I'm granting a lot

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2 of leeway in these hypotheticals, which are completely  
3 outside the scope, I would assume maybe 15, 20 scope  
4 objections. I would like to move on. You know, I don't  
5 want to -- I want to respect Mr. Easttom's time. So are  
6 we going to actually move on to the actual declaration?

7 MR. CITROEN: This is completely in the  
8 scope of this. I'm asking about the meaning of the  
9 terms in the '622 patent.

10 MR. LOVELESS: You're asking hypotheticals  
11 and starting to harass him about not having the ability  
12 to answer a question on a hypothetical that's not  
13 anywhere in his declaration.

14 MR. CITROEN: I disagree, Counsel. This is  
15 completely in the context of what the claim terms mean.

16 MR. LOVELESS: Your hypotheticals?

17 MR. CITROEN: Absolutely.

18 MR. LOVELESS: Can you point to where Mr.  
19 Easttom testified or has a declaration? This is a  
20 cross-examination of his direct testimony. You can  
21 point me to where he has testified or offered opinions  
22 as to the hypothetical that you expressed, I'm happy to  
23 let you go on. But in absence of that, we really need  
24 to move on. I've granted a lot of leeway here, and  
25 you're starting to get pushback on inability to answer

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2 hypotheticals. And so if you can point to, and if you  
3 can identify what scope you're pointing to in his  
4 opinions, I'm happy to let you move on. In absence of  
5 that, please move on.

6 MR. CITROEN: The claim terms, like the  
7 term "instant," he explained he provided the plain and  
8 ordinary meaning of those terms. I'm trying to  
9 understand what the plain and ordinary meaning is. He's  
10 an expert. Are you saying he cannot answer hypothetical  
11 questions?

12 MR. LOVELESS: I'm saying when you present  
13 a hypothetical system in that did not exist and asking  
14 him the operation of that, knowledge of that, and how it  
15 operated. I mean, that's something that's not within  
16 the scope of his declaration.

17 MR. CITROEN: Okay. I'm going to continue  
18 asking these questions because they are in the scope of  
19 this, and if we need to go to the board we, can.

20 I'm also going to ask you to stop with the  
21 speaking objections. You know they're not appropriate  
22 in an IPR proceeding.

23 MR. LOVELESS: Your objection is noted. If  
24 we have to continue down things outside the scope, we  
25 will go to the board and just shut down the deposition.

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2 Again, I'm happy -- and I've granted you a lot of leeway  
3 to ask hypotheticals touching on the scope of the terms.  
4 But when you get into specific systems and how they  
5 operate or don't operate, that's completely outside the  
6 scope.

7 THE WITNESS: Since there's not a question  
8 pending and it's been an hour, would this be an  
9 opportune time for a restroom break?

10 MR. CITROEN: If you don't mind me just  
11 finishing this line of questioning.

12 THE WITNESS: Oh, I'm sorry. Please do. I  
13 thought we were done.

14 MR. CITROEN: We were almost done.

15 Q. Okay. So with respect to the meaning of  
16 instant messaging system in the context of the '622  
17 patent, I just want to be clear that even though we  
18 explained a system that has lag of less than a second,  
19 the intent of the users is to send and receive messages  
20 in real time, and the server sends the messages, you're  
21 unable to answer whether that falls within the meaning  
22 of an instant messaging system within the context of the  
23 '622 patent?

24 MR. LOVELESS: Objection, form and scope.

25 A. I'm unable to give a definitive yes or no

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2 without being able to examine the system, but I am  
3 definitely conceding that it certainly might be.

4 Q. Okay. But you cannot answer yes or no?

5 A. That would be --

6 MR. LOVELESS: Objection, form.

7 A. -- an accurate statement.

8 Q. Okay.

9 MR. CITROEN: We can take a break.

10 (Brief recess.)

11 MR. CITROEN: Okay. Back on the record,  
12 please.

13 Q. Okay. Welcome back.

14 Mr. Easttom, at the time of the alleged  
15 invention of the '622 patent, was voice over internet  
16 protocol known?

17 MR. LOVELESS: Objection, form, scope.

18 A. Yes. To be more specific, the primary protocol  
19 today used for voice over IP is SIP, and I believe it  
20 became a standard in either 1998 or 1999, but was known  
21 prior to that. And there was a older protocol, H.323,  
22 which predates that, although I don't recall the  
23 specific dates for it.

24 Q. SIP and H.323; is that right?

25 A. That's correct. And SIP is an acronym.

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Q. S-I-P?

A. Yes, for Session Initiation Protocol.

Q. Okay.

A. And I believe it's actually referenced in the patent.

Q. What was the second one?

A. H.323.

Q. And persons with ordinary skill in the art are familiar with voice over IP at the time of the alleged invention?

A. Yes.

Q. Okay. And in forming your opinions, did you consider voice over IP, in forming your opinions in your declarations?

A. Yes. In fact, I believe voice over IP is mentioned several times actually in the '622 patent.

Q. Okay. And did you, yourself, at the time of the alleged invention, use voice over IP?

A. Yes, it was one of the things we worked with when I was at Digital Speech Systems.

Q. Okay. And what was your involvement with -- strike that.

Okay. Is there a common acronym that's used for voice over internet protocol?

1 WILLIAM C. EASTTOM, II

2 A. Well, some people pronounce it VoIP, V-O-I-P.

3 Q. Is that how you pronounce it?

4 A. No.

5 Q. How do you pronounce it?

6 A. Voice over IP.

7 Q. Okay. So we'll use voice over IP.

8 So you mentioned that you had some  
9 involvement with Digital Speech Systems, had to do  
10 Speech Systems with voice over IP. What was that  
11 involvement?

12 A. Well, as I had indicated earlier, at that  
13 particular position we did primarily telecommunications  
14 programming, voicemail servers, and those had to  
15 integrate. In many cases some of our clients were using  
16 voice over IP. Others were using a traditional phone  
17 system, what is commonly called in the industry PSTN, or  
18 public switch telephone network. That's also sometimes  
19 referred to as POTS, which literally means Plain Old  
20 Telephone Service.

21 Q. Okay. Do you know what standard voice over  
22 internet protocol was being used with the system that  
23 you were involved with?

24 A. I don't recall. There is an RFC standard for  
25 all of these protocols. There's one for each version of

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2 SIP, for each version of H.323. There are RFC standards  
3 for real-time protocol, RTP, and variations of it.

4 But after 20 years, I could not tell you  
5 the specific RFC number.

6 Q. Do you recall at a high level at the time of  
7 the alleged invention how voice over internet protocol  
8 worked?

9 A. Yes.

10 Q. Could you explain, please?

11 A. Well, in general, it's not that different than  
12 how it works today. They've refined it. But the  
13 concept is to take a voicemail, which would typically be  
14 sent as an analog signal over the aforementioned PSTN or  
15 POTS, and to instead encapsulate it in a digital  
16 message, an actual internet packet with the typical  
17 internet packet headers that all internet packets have,  
18 so it can be sent over an actual computer network, an IP  
19 network, as opposed to sending it over the PSTN or POTS.

20 Q. So with voice over internet protocol, was a  
21 speech communication recorded before it was sent to the  
22 recipient?

23 MR. LOVELESS: Objection, form.

24 A. Sort of. Now, allow me to explain.

25 Q. Sure.



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2 A. Let's assume that you had set up a microphone  
3 and you were having a voice over IP conversation with me  
4 in 1999, and we're using a computer. Each individual --  
5 you know, as you're speaking, you're speaking fluidly,  
6 but the computer has to jot that into discreet elements  
7 to put them into packets and send them. From one  
8 perspective, I guess you could say that was recording  
9 them, but that wasn't the purpose. The purpose was to  
10 take this analog stream and to chop it into little  
11 packets so that it could be sent over an IP network.  
12 And they weren't actually stored. It was just simply  
13 divided into packets and sent in real time.

14 Q. Okay. So you just mentioned in real time. Was  
15 voice over internet protocol an instant messaging  
16 system?

17 MR. LOVELESS: Objection, form, scope.

18 A. There's a real-time phone system. It wasn't  
19 meant for message. It was meant for you to actually  
20 have a conversation, effectively the same as you would  
21 from picking up the old-fashioned telephone in your home  
22 and communicating over the aforementioned PSTN or POTS.

23 Q. So to a person with ordinary skill in the art  
24 in the context of the '622 patent, what is the meaning  
25 of "message"?

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2 MR. LOVELESS: Objection, form, scope.

3 A. Well, since the patent is in front of me,  
4 rather than answer off the cuff, I'm going to refresh my  
5 memory just briefly.

6 I don't recall anyplace, and correct me if  
7 I'm wrong, where the word "message" is used alone. I  
8 believe there are phrases like "voice messages" or "VoIP  
9 messages." So it doesn't have "message" in isolation.

10 Q. Does the meaning of "message" change if it's  
11 used -- strike that.

12 So the term "message," as it appears in the  
13 Claim 3, for example, does that have a different meaning  
14 than if it's used on its own in the context of the '622  
15 patent --

16 MR. LOVELESS: Objection to form.

17 Q. -- to a person with ordinary skill in the art?

18 MR. LOVELESS: Objection, form and scope.

19 A. I just think it's best to be as accurate as you  
20 can when discussing the patent, and since it uses either  
21 "voice messaging" or "VoIP messaging," I prefer to use  
22 the same terminology the patent did and not try to tease  
23 out portions that it didn't do.

24 Q. Let me just ask you really quickly. Did you  
25 consider the meaning of the claim terms in forming your

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2 opinions?

3 A. Yes, I believe you've asked that before, and I  
4 also said yes then.

5 Q. So the term "message," did you consider the  
6 meaning of that term when rendering your decis- -- your  
7 opinions in your declarations?

8 MR. LOVELESS: Objection, form, scope.

9 A. I consider the term that actually appears in  
10 the patent, which is "voice message" or "VoIP message."

11 Q. Okay.

12 A. Taking a single word out of context will often  
13 alter the meaning.

14 Q. Okay. So in the context of Claim 3, what is  
15 the meaning of "message" to a person of ordinary skill  
16 in the art?

17 A. I'm sorry. You said within the context of  
18 Claim 3 specifically?

19 Q. Yes.

20 A. Allow me to turn over to Claim 3.

21 Again, reading Claim 3, I don't see the  
22 word "message" in isolation. I see "voice message," I  
23 believe, three times, and I'm happy to tell you the  
24 meaning of "voice message."

25 Q. Sure.

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2 A. A voice message is a recorded audio file  
3 destined for someone to listen to either instantly or at  
4 some point in the future, but it's recorded so they may  
5 elect when they're going to listen to the audio file.

6 Q. And what is your understanding of a voice over  
7 internet protocol message?

8 A. A voice over internet protocol message is,  
9 again, a voice message, only it's being delivered by a  
10 voice over internet protocol, and I seem to recall at  
11 the introduction to this patent, it explicitly discusses  
12 voice over IP as an alternative to PSTN.

13 Q. Does the instant voice messaging system  
14 described in the '622 patent use internet protocol?

15 MR. LOVELESS: Objection, form.

16 A. Well, by definition, voice over IP is voice  
17 over internet protocol, so yes.

18 Q. I don't believe I asked you about voice over  
19 IP. I was asking you about instant voice message in the  
20 context of the '622 patent.

21 A. Again, the patent discusses voice over IP and  
22 is using voice over IP. By definition, voice over IP  
23 uses the IP protocol. So, yes, it uses the IP protocol.

24 Q. So the instant voice message described in the  
25 '622 patent is using voice over IP?

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2 A. It can. That's one of the embodiments  
3 discussed in the patent.

4 Q. And where is that embodiment discussed?

5 A. The first embodiment would be clear to one of  
6 ordinary skill in the art, and I'm happy to explain it.

7 It says: According to an embodiment of the  
8 present invention, there is provided an instant voice  
9 messaging system for delivering instant messages over a  
10 packet-switched network.

11 That's an IP network. And that's the first  
12 embodiment discussed.

13 A little further under column 3, starting  
14 at about line 20: According to a further embodiment of  
15 the present invention, there is provided an instant  
16 voice messaging system for delivering instant messages  
17 over a packet-switched network, the system comprising a  
18 voice over internet protocol telephone connected to the  
19 network.

20 And it continues on after that to further  
21 discuss voice over IP. So with just a --

22 Q. If I can stop you really fast.

23 Can you -- can you explain or can you state  
24 where you're reading from for the record?

25 A. I believe I stated I was starting at column 3,

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2 beginning at line 20.

3 Now, to complete my answer, those are just  
4 two that immediately show up. And just casually  
5 glancing even at column 4, beginning at the very first  
6 line: According to yet another embodiment of the  
7 present invention, there is provided an instant voice  
8 messaging system for delivering instant messages over a  
9 plurality of packet-switched networks, the system  
10 comprising a voice over internet protocol telephone  
11 connected to a global network.

12 And, again, it continues on to discuss  
13 voice over IP. I think that's three or perhaps four  
14 embodiments that show up with just even a casual look at  
15 the patent.

16 Q. Okay. So in these portions that you cited,  
17 which you said column 3, starting at 20. I'm not sure  
18 where you ended. Then at the top of column 4, you're  
19 referring to the fact that it says "voice over IP  
20 telephone." You're citing that in support of your  
21 understanding that an instant voice message system as  
22 described in the '622 patent could be voice over IP  
23 system?

24 A. Yes.

25 Q. So, in your opinion, do the claims cover voice

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2 over IP?

3 MR. LOVELESS: Objection, form, scope.

4 A. Well, you would have to clarify for me what you  
5 mean by if they cover voice over IP. They don't claim  
6 to have invented voice over IP.

7 Q. What is a packet-switched network?

8 A. When you're sending stuff over a network,  
9 there's a couple of different ways you can do it.

10 For example, there is what we call a  
11 circuit-based network, in which case, if I'm sending a  
12 document to your computer, we have a specific,  
13 predefined pathway through which the traffic will go.

14 The alternative to that is a package switch  
15 network. My message is divided into packets, each of  
16 which has some sort of header. That header indicates a  
17 number of things, including the destination. And my  
18 packet could take any route it needs to between my  
19 computer and yours, and it will ultimately still end up  
20 at your computer.

21 In fact, during a normal -- let's say  
22 you're surfing the internet and you're on Facebook. A  
23 lot of packets are going back and forth. There's a very  
24 good chance that many of them take slightly different  
25 routes because the packet has the address information

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2 and the route is irrelevant. That is a packet-switched  
3 network.

4 Now, to go just a little further, once upon  
5 a time, there were a few different ways of doing this.  
6 Novel had their own flavor called IPX/SPX, but that  
7 would only work on a Novel network. It wouldn't work  
8 across the internet.

9 Apple had their own method, called  
10 Appletalk, but it would only work within an Apple  
11 network. It wouldn't work on the internet.

12 The internet used to use and still uses  
13 TCP/IP. Now, it's been a very long time -- in fact, by  
14 the time of the patent, almost all networks had moved to  
15 TCP/IP internally, but that has always been the way  
16 things go across the internet.

17 So if a claim like Claim 3, or I believe  
18 Claim 9 discusses voice over IP on a packet-switched  
19 network or discusses any sort of packet-switched network  
20 going over the internet, it would have to be an IP  
21 network because that's all the internet has ever used.

22 Q. The Novel system, can you state what that was  
23 again?

24 A. Sure. Instead of using TCP/IP, they used their  
25 own protocol called IPX/SPX. It was their own brand of



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2 TCP/IP. But to be clear, it would only work inside of a  
3 Novel network. If traffic needed to leave your network,  
4 for example, to go on the internet, you used a device  
5 called a bridge which would translate that to TCP/IP,  
6 which has been the only protocol that has ever been used  
7 for internet communications since DARPA originally  
8 created the internet.

9 Q. Okay. So, in your opinion, internet is a  
10 packet-switched network, correct?

11 A. Yes.

12 Q. What about a local area network?

13 A. Today and for quite a long time, they have all  
14 been packet-switched networks. There was -- a very long  
15 time ago, prior to even these patents, there was  
16 something called a token ring network, and I don't  
17 specifically recall if it was packet switched or not,  
18 but that has been a dead technology for a very, very  
19 long time.

20 Q. Okay. So by December 2003, local area networks  
21 were in existence?

22 A. Yes.

23 Q. And those were packet-switched networks?

24 A. I'm not aware of any that were not packet  
25 switched.

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2 Q. Okay. What about wide area networks?

3 A. Now, those you can do a -- what we call the  
4 circuit connection. I have a permanent circuit. And  
5 that's usually done specifically for site to site. I  
6 don't know your law firm, but let's assume you have two  
7 offices in two divergent cities.

8 Q. Uh-huh.

9 A. You might choose to establish permanent circuit  
10 between them for interoffice communication.

11 Q. Okay. What about a WiFi network?

12 A. Those are all packet switch and always have  
13 been.

14 Q. Okay. What about wireless carriers, were any  
15 of those packet switched?

16 MR. LOVELESS: Objection, form.

17 A. By "wireless," are you referring to cellular  
18 communication or 802.11 or what?

19 Q. Like cellular communication.

20 A. Cellular communication and voice communication  
21 operates quite differently. In fact, it's using analog  
22 signals, either radio waves or cellular waves or any of  
23 those are analog signals, and by definition, aren't  
24 really packet switched. We can simulate packet  
25 switching on them, but by definition, they're not.

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2 Q. And at the time of the alleged invention, was  
3 voice messaging known in the art?

4 MR. LOVELESS: Objection, form, at least in  
5 the context of voicemail.

6 Q. Is there a distinction between other types of  
7 voice messaging systems, just so I understand what you  
8 mean by that?

9 A. There could be. I mean, a typical voicemail,  
10 I'm calling your number, and I would actually like to  
11 talk to you, but you're not there. So I'm going to make  
12 a recording to say, Hey, I tried to reach you, please  
13 call me back, or whatever I want to say. You might look  
14 at a voice message as something where I didn't actually  
15 need to talk to you, but instead of typing up something,  
16 I wanted to speak and send you an audible message, but I  
17 might have had no intention of speaking to you in real  
18 time. That's at least a possibility for a voice  
19 message.

20 Q. And in forming your opinions, did you consider  
21 voice messaging?

22 A. Yes.

23 Q. Okay. And, in your opinion, is voice messaging  
24 an instant message?

25 MR. LOVELESS: Objection, form.

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2 A. Well, it can be sent. The instant refers to  
3 the traffic nature, not the message. Anything can be  
4 instant or not instant.

5 Q. So at the time of the alleged invention, voice  
6 messaging could have been instant messaging?

7 A. I didn't say that. I said the term could be  
8 viewed as instant or not. Certainly, it's relevant to  
9 the patent. And I'm just turning here for just a  
10 moment.

11 Q. Actually, I can rephrase the question so it's  
12 clear, if that's okay with you.

13 A. Sure.

14 Q. Is -- let's use voicemail as -- instead of  
15 voice messaging. Is voicemail, which you said is a type  
16 of voice messaging, is that instant messaging at the  
17 time of the alleged invention?

18 A. No.

19 Q. Why not?

20 A. Well, having worked extensively with voicemail  
21 systems at this time, first of all, the various criteria  
22 we had in voicemail, I wasn't intending to send you a  
23 message. We just discussed this. I was intending to  
24 talk to you. You just didn't happen to be there, so I'm  
25 going to record.

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2 Since I recorded, I recorded with the  
3 express purpose of wanting to talk to you, but you're  
4 not there. So I clearly don't have any expectation that  
5 you're going to instantly receive the message. If you  
6 were going to instantly receive it, you would have just  
7 answered the phone and talked to me. So I actually have  
8 the antithesis of an expectation. I expect that you  
9 will get that voicemail at some indeterminate time in  
10 the future.

11 Q. Well, what if the person leaving the voicemail  
12 understand that recipient is standing by their voice  
13 message machine and will hear it as soon as it's  
14 received? Would that be an instant message in the  
15 context of the '622 patent to a person with ordinary  
16 skill in the art?

17 MR. LOVELESS: Objection, form, scope.

18 A. That hypothetical would be impossible.

19 Q. Why is that?

20 A. How could I possibly know what you're doing on  
21 your end at your office. I'm not there. Unless I have  
22 psychic abilities or a hidden camera in your office, I  
23 couldn't possibly know that you're standing there and  
24 for some reason ignoring my phone call, but intend to,  
25 as soon as I'm done, listen to it. A, that would be

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2 impossible; and, B, that would be a very bizarre  
3 situation. You're ignoring my phone call but you're  
4 going to listen to it as soon as I stop. That's a very,  
5 very artificial hypothetical.

6 Q. So knowledge of the recipient's availability is  
7 key for it to be an instant message in the context of  
8 the '622 patent to a person of ordinary skill in the  
9 art?

10 A. I didn't say that. I said that your  
11 hypothetical could not happen because I could not  
12 possibly know that you were about to listen to it in  
13 just a moment.

14 Q. Okay. So with respect to the understanding of  
15 instant messaging in the context of the '622 patent, is  
16 the availability of the recipient a criteria that is  
17 required to determine whether the message is an instant  
18 message?

19 A. Well, since we're now --

20 THE WITNESS: I'm sorry.

21 MR. LOVELESS: Objection, form.

22 A. Since we're going from a hypothetical to the  
23 actual patent, the absolute best place to see what the  
24 criteria are are the claims themselves.

25 You previously drew my attention to Claim

1 WILLIAM C. EASTTOM, II

2 3, and I'm looking at Claim 3, and it does say -- and I  
3 believe this is maybe the fourth paragraph in Claim 3:  
4 A communication platform system maintaining connection  
5 information for each of the plurality of instant voice  
6 message client systems, indicating whether there's a  
7 current connection to each of the plurality of instant  
8 voice message client systems.

9 Now, as you read the patent, it had a  
10 fallback in case the person wasn't available, but it did  
11 actually, to answer your question, maintain some  
12 knowledge of whether or not the person was connected and  
13 could potentially receive a message now or not.

14 Q. Uh-huh. So does the person sending the  
15 message, must they be aware of the availability of the  
16 recipient in order for that message to be an instant  
17 message in the context of Claim 3?

18 MR. LOVELESS: Objection, form.

19 A. Well, now we're getting very concrete. In the  
20 context of Claim 3 there is nothing that says the person  
21 has to be aware. It says a communication platform  
22 system is aware.

23 Q. Where is the communication platform system  
24 located?

25 MR. LOVELESS: Objection, form.

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2 A. I don't recall an explicit required location;  
3 but, presumably, it's at some service provider that  
4 you're subscribing to for this instant voice over IP  
5 messaging service.

6 Q. Okay. And then just to back up, I meant to ask  
7 you earlier. These questions about e-mail and SMS and  
8 instant messaging, voice over IP, these are all  
9 electronic messages that we're referring to, right, as  
10 opposed to nonelectronic messages?

11 A. Yes.

12 Q. Okay. So in the field of the invention, does  
13 the term "message" have any particular meaning?

14 MR. LOVELESS: Objection, form.

15 A. Well, in the context -- as I've already stated,  
16 in forming my opinions, I looked at the patent, and the  
17 patent talked about voice messages. I did not  
18 contemplate a message in isolation apart from a voice  
19 message.

20 Q. Okay. In forming your opinions, did you  
21 consider the state of the art?

22 A. Yes.

23 Q. I believe -- correct me if I'm wrong. I  
24 believe earlier you explained that, in your opinion, the  
25 field that you mentioned is network communications



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2 technology; is that right?

3 A. That would be the broadest. We can narrow it  
4 down further into telecommunications and then, of  
5 course, into voice messaging and voice over IP, if we  
6 want to narrow it even further. It's like saying the  
7 field of an invention is biology. Well, then we can  
8 narrow it down to are we talking ornithology, are we  
9 talking ichthyology, and then narrow it further.

10 Q. Okay. I'm definitely not talking about any of  
11 that stuff.

12 A. Thankfully, I'm not expert in any of those  
13 areas. I just watched the Shark Week with my grandson.

14 Q. So I'm trying to get your understanding of the  
15 state of the art. So in the field of network  
16 communications technology, what would a person of  
17 ordinary skill in the art understand the term "message"  
18 to be?

19 A. Well, to be clear, as I stated both in my  
20 declaration and in response to your direct questions,  
21 yes, I consider the state of the art. However, the  
22 point I was trying to make just now is the state of the  
23 art is an incredibly broad area.

24 In forming my opinions for this case, I  
25 narrowed my focus to the state of the art as it applies

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2 to this patent, and as I previously stated, "message" is  
3 not called out individually. "Voice message" is the  
4 term, and that's the term I contemplated.

5 Q. Okay. Do you -- so in the field of network  
6 communications technology do you know what the  
7 understanding of the term "message" is to a person of  
8 ordinary skill in the art?

9 MR. LOVELESS: Objection, form and scope.

10 A. I would have to narrow it to a very specific  
11 subfield, because, again, networking communication is a  
12 very, very broad field, and that was the point I was  
13 making with the biology analogy. Even in biology, a  
14 certain term means something different in one  
15 subdiscipline than it does another. So I don't believe  
16 there is a blanket definition for "message" that applies  
17 to every piece of networking.

18 Q. Are there any criteria that -- for messages in  
19 all of the context of network communication technology?

20 MR. LOVELESS: Objection, form, scope.

21 A. I'm not quite sure I understood that question.

22 Q. Does a message -- let me give you a specific  
23 example.

24 Does a message in the field of the  
25 invention, which you've identified as network

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2 communications technology, would a person of ordinary  
3 skill in the art understand that a message would have a  
4 identifier for a recipient.

5 MR. LOVELESS: Objection, form, scope.

6 A. Might. They might.

7 Q. It might not?

8 A. It is very context dependent. I mean, a  
9 message -- let's talk just networking communication, all  
10 right?

11 Q. Yes, that's -- my question is in the field of  
12 the invention network communications technology.

13 A. To give you an idea of how that's overly broad  
14 and why in my analysis I focused on just the field of  
15 the art as respects the patent, a message can be  
16 something as simple as a single number returned from a  
17 web server to a browser. It just so happens yesterday I  
18 was teaching Apache web server to a group of engineers,  
19 so this is fresh in my mind. If you request something  
20 from a web server and you get it, it worked. The web  
21 server will send you back a simple message. It has a  
22 code 200, just three digits. In the context of web  
23 servers, that's a message. But in the context of, say,  
24 e-mail, sending me the digits 300, I don't think anyone  
25 would consider that a message. And that's illustrative

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2 of why I can't give you a blanket definition for  
3 "message" that applies throughout the field of  
4 networking. We have to get very specific, as I did in  
5 my analysis for this patent.

6 Q. Okay. Would a message be data that's sent from  
7 one point to another?

8 MR. LOVELESS: Objection, form, scope.

9 Q. In the context of the field of the invention  
10 which you identified as network communications  
11 technology?

12 MR. LOVELESS: The same objection form,  
13 scope.

14 A. In that incredibly broad field, not narrowing  
15 it down to voice systems or telecommunication systems, I  
16 would have to say it very well might be.

17 Q. It might not be?

18 A. Might not be in certain context.

19 Q. Okay.

20 A. Well, for example, a WiFi broadcast is not  
21 being sent to a specific destination. It's being sent  
22 to whoever picks it up.

23 Elaborating on that, it just occurred to me  
24 as I'm speaking there's an entire class of IP addresses  
25 that are set aside just for broadcast messages, and

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2 there's no intended recipient. I just blasted them out  
3 there, and whoever wants to pick them up can. So  
4 there's a case where your definition would not apply  
5 within networking.

6 Q. Would a person of ordinary skill in the art  
7 understand instant voice message in the context of the  
8 '622 patent to be any data that's -- any voice data  
9 that's communicated from one client to another client?

10 MR. LOVELESS: Objection, form, scope.

11 A. That one I can give you a yes-or-no answer, and  
12 the answer would be no, because you simply said any data  
13 communicated from one client to the other. You left out  
14 the word "instant." So certainly voice data that's  
15 sent, not intended to be received in real time, would  
16 not be considered an instant voice message.

17 Q. Would a person of ordinary skill in the art  
18 understand a message, a voice message, that is sent in  
19 real time to another client to be an instant voice  
20 message?

21 MR. LOVELESS: Objection, form.

22 A. Without further details, the best I can answer  
23 you there is very likely. Not just possibly, but very  
24 likely.

25 Q. At the time of the alleged invention, was it

1 WILLIAM C. EASTTOM, II

2 possible to attach files to instant messages?

3 MR. LOVELESS: Objection, form, scope.

4 A. I don't recall files being attached to instant  
5 messages. E-mails, yes. But I don't recall any  
6 systems, and I worked with them at that time, where you  
7 attached files to an instant message. They may have  
8 existed, but I don't have a specific recollection of  
9 them.

10 Q. You don't recall with AOL Instant Messenger  
11 whether you could attach images to instant messages?

12 MR. LOVELESS: Objection, form, scope.

13 A. I simply don't recall.

14 Q. Okay. So in the context of e-mail, what does  
15 it mean to attach a file to an e-mail?

16 MR. LOVELESS: Objection, form, scope.

17 A. Well, there's actually a protocol specifically  
18 for that called MIME, Multipurpose Internet Mail  
19 Extension, which allows me to take any sort of  
20 additional file, perhaps an image that's a good example  
21 or perhaps a text file, a Word document, a PDF, anything  
22 I like, and it is sent along with the message, the  
23 e-mail message.

24 Q. In forming your opinions, did you consider  
25 MIME?

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2 A. Yes, and I'm not certain of this, but I seem to  
3 recall MIME actually being mentioned in the patent at  
4 some point.

5 Q. When you said that MIME sends an attachment  
6 with the message, what do you mean by that?

7 A. Well, it's on both ends. If I send an e-mail  
8 and I put an image with it, a JPEG, a funny cat picture,  
9 those get sent a lot on the internet, then I'm sending  
10 them at the same time to the same e-mail server. When  
11 you retrieve your e-mail, you're going to retrieve the  
12 e-mail and that funny cat picture at the same time; and  
13 when you open up your e-mail, you're going to see this  
14 option that, hey, there's an attachment here; would you  
15 like to also open the attachment?

16 Q. So in the context of the '622 patent, would  
17 that be an attachment --

18 MR. LOVELESS: Objection, form.

19 Q. -- the MIME, using the MIME format?

20 MR. LOVELESS: Objection, form, scope.

21 A. Well, the MIME format generally constitutes an  
22 attachment.

23 Q. And what is the attachment -- strike that.

24 Excuse me.

25 So with respect to the MIME format, what is

1 WILLIAM C. EASTTOM, II

2 the attached data attached to?

3 MR. LOVELESS: Objection, form.

4 A. There's a lot of levels we could get to this.  
5 If we get down to the actual package being sent, it's  
6 actually separate. But I'm willing to go so far as from  
7 the user's point of view, it's attached to the actual  
8 e-mail that I'm sending you.

9 Q. And by "the actual e-mail," are you referring  
10 to the content of the e-mail or something else?

11 A. From the user's point of view, it's the  
12 content. Now, again, if we want to break this down into  
13 getting the fine grained issues of networking, even that  
14 e-mail, a simple e-mail that says, Hey, Chuck, how you  
15 doing --

16 Q. Uh-huh.

17 A. -- that's likely to be broken down into more  
18 than one packet. So you can't really say that the  
19 picture of the funny cat is attached to any one of those  
20 individual packets. That's what I meant earlier when I  
21 said the packets themselves are actually sent  
22 separately, but along about the same time and to the  
23 same destination, or from the user's perspective, that  
24 attachment is usually attached to the e-mail header  
25 part, and I mean the user's vision of the header, not



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2 the packet, where you see the "to," the "from," the  
3 carbon copy, that kind of thing.

4 Q. Uh-huh.

5 A. Which is different from what a network packet  
6 header is.

7 Q. Okay. So you're -- make sure my understanding  
8 of MIME is correct.

9 MIME uses multiple parts as part of the  
10 structure; is that right?

11 A. No, MIME doesn't require multiple parts.

12 Q. I didn't ask that. I'm sorry. Let me make  
13 sure it's clear.

14 The MIME format allows for multiple parts  
15 as part of its format, correct?

16 A. Well, again, that's not coming from the MIME.  
17 That's coming from the nature of packet-switched  
18 networks. Anything you send gets chopped up into  
19 packets and sent, whether it's MIME, whether it's just  
20 an e-mail by itself, whether it's a web page you're  
21 viewing, a video you're watching on YouTube. It doesn't  
22 matter. So, yes, it gets chopped into different  
23 packets, but that's not a function of MIME. That's a  
24 function of packet-switched networks.

25 Q. Did you use MIME at the time of the alleged

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2 invention?

3 A. Yes.

4 Q. Okay. How did you use it?

5 A. Usually to attach a document, a PDF, something  
6 of that nature. And I will confess to occasionally  
7 sending a funny cat picture along to someone.

8 Q. Did you -- have you ever reviewed the MIME  
9 standard?

10 A. Yes.

11 Q. Okay. When did you review the MIME standard?

12 A. Well, several times over the years. It's been  
13 some time since I got into the actual standard and read  
14 the details of the standard. It hasn't been recently.

15 Q. Do you know approximately how long ago it was?

16 A. No, I don't recall.

17 Q. More than five years?

18 A. Probably not, because I frequently teach  
19 networking courses where I have to go into that.  
20 Actually, that does remind me. Earlier this spring I  
21 taught a networking course where we had to go into  
22 detail about MIME, and I seem to recall, I don't have an  
23 exact recollection, of looking at the MIME standard at  
24 that time.

25 Q. Do you recall the structure of a MIME message?

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2 A. I don't have a specific recollection sitting  
3 here, no.

4 Q. You don't. Okay.

5 If you could get the '622 patent in front  
6 of you, if you don't already.

7 A. I have it.

8 Q. Okay. I want to talk to you about Figure 2 of  
9 the '622 patent. Have you reviewed the '622  
10 specification with respect to Figure 2?

11 A. Yes.

12 Q. Just in your own words, what does Figure 2  
13 illustrate?

14 MR. LOVELESS: Objection, form.

15 A. One moment, please. I prefer to actually see  
16 what the patent says rather than to just go off memory,  
17 which could be inaccurate.

18 Q. Of course.

19 A. We're looking at column 6, starting at  
20 approximately line 50 -- or actually, exactly line 50.  
21 Figure 2 is an exemplary illustration of a local instant  
22 voice messaging system 200 according to the present  
23 invention.

24 Q. So the specification -- I believe the portion  
25 you just read refers to it as a messaging system, and

1 WILLIAM C. EASTTOM, II

2 I'm skipping the parentheses there.

3 A. Well, actually, it says "instant voice  
4 messaging system," but yes.

5 Q. Right. The complete sentence, there's more  
6 words. I understand that.

7 What does "messaging" mean here in this  
8 sentence?

9 MR. LOVELESS: Objection, form, scope.

10 A. Well, again, I don't believe that it can be  
11 teased out. I believe we have a voice messaging system,  
12 not a messaging system. We have a voice messaging  
13 system. In fact, the abbreviation is IVM, actually. I  
14 see it three times on Figure 2 --

15 Q. Uh-huh.

16 A. -- which is an abbreviation for instant voice  
17 messaging. If you can direct me to a place in the  
18 patent where it has "messaging" in isolation, I'm happy  
19 to discuss it.

20 Q. No, I'm just asking you what your understanding  
21 of that term is in the context of that sentence.

22 A. As in the context of that sentence, I look to  
23 the complete term, "voice messaging." I did not isolate  
24 subportions of the term.

25 Q. I'm asking you: What is the meaning?

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2 MR. LOVELESS: Objection, form, scope.

3 A. I don't believe it can be teased out. I  
4 believe you have a voice messaging system, and it's one  
5 of those cases where teasing out one word gives you a  
6 different meaning, and it would give you an inaccurate  
7 answer.

8 Q. I'm not asking you for the understanding of the  
9 term "message" in isolation. I'm asking the term  
10 "message" in the context of the sentence, which as you  
11 stated, is local instant voice messaging system.

12 A. Well, in the context of this instance, it is a  
13 voice messaging system, a system for delivering voice  
14 messages instantly or in real time.

15 Q. What do you mean by "delivering"?

16 MR. LOVELESS: Objection, form, scope.

17 Q. Let me just ask you: Did you consider this  
18 portion of the specification in rendering your opinions?

19 A. Yes, I --

20 Q. Okay.

21 A. -- I considered the entire patent.

22 Do you still want the other question  
23 answered?

24 Q. Yes, please.

25 A. I've got to be honest, I've never contemplated

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2 the definition of common ordinary words that everyone  
3 uses. I just assumed everyone knew what "delivery"  
4 meant. But if I reflect on it a moment...

5 Q. Sure.

6 A. Delivering would be, in a generic term, apart  
7 from even the '622 patent, would be getting something to  
8 someone else. If I hand you this coffee cup, I've  
9 delivered you the coffee cup.

10 Q. What does that mean in the context of this  
11 sentence?

12 A. In the context of this sentence, it means to  
13 get the instant voice message to a recipient.

14 Q. Okay. And in the context of this sentence,  
15 what does "instant" mean?

16 A. In real time.

17 Q. Okay. And what does the real time mean?

18 A. Synchronously.

19 Q. The same discussion we had earlier? No  
20 different meaning?

21 A. That would be accurate.

22 Q. Okay. So in the context of this sentence, how  
23 much lag time is allowed?

24 MR. LOVELESS: Objection, form and scope.

25 A. I'm sorry, the way your tone was, it didn't

1 WILLIAM C. EASTTOM, II

2 sound like you were finished, so I was pausing.

3 Q. I am finished.

4 A. Okay. You just had a hang in your tone there.

5 As I said before, the lag time will be  
6 context dependent. In the environment a lot of things  
7 have to be considered. I don't recall anywhere where  
8 the patent specified a particular lag time.

9 Q. Okay. So the instant voice messaging system  
10 described in the '622 patent, there is no specified lag  
11 time for it to be an instant voice messaging system?

12 MR. LOVELESS: Objection, form, scope.

13 Q. Emphasizing the term "instant."

14 A. The patent does repeatedly use the word  
15 "instant" and repeatedly uses -- or at least once uses  
16 the word "real time," and I believe that the inventor,  
17 and I concur with the inventor on this, thought those  
18 were plain and ordinary terms that required no further  
19 definition.

20 Q. Okay. And in the context of this sentence in  
21 the '622 patent that we've been talking about, in order  
22 for it to be an instant voice messaging system, what  
23 must the intent of the sending client or the user of the  
24 sending client be?

25 MR. LOVELESS: Objection, form and scope.

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2 A. Well, within this patent, the inventor did not  
3 discuss intent of the user.

4 Q. Okay. And this sentence that we've been  
5 discussing, again, or this system 200 that we've been  
6 discussing, the '622 patent, does the server 202 send  
7 instant -- or send voice messages to recipient devices,  
8 or are recipient devices retrieving the messages from  
9 the server 202?

10 A. I believe it sends them to recipients.

11 Q. In order for it to be an instant voice  
12 messaging system as recited in the claims of the '622  
13 patent, must the message be received by the client's  
14 device?

15 MR. LOVELESS: Objection, form, scope.

16 A. It has to be sent. It's entirely possible  
17 you've turned off your client device and it doesn't get  
18 perceived. It's entirely possible your client device  
19 just got run over by a car and can't receive. So there  
20 are things outside the possible scope of the inventor to  
21 even know, much less contemplate. So it has to be sent.  
22 But I would say it doesn't necessarily have to be  
23 received.

24 Q. Okay. So in system 200, I believe earlier you  
25 mentioned there was a scenario describing the '622



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2 patent where messages would be temporarily stored at the  
3 server if the receiving client device was not available;  
4 is that right?

5 A. Yes. That was one of the embodiments  
6 discussed.

7 Q. In that particular scenario, would the message  
8 that's temporarily stored on the server be an instant  
9 voice message in the context of the claims of the '622  
10 patent?

11 A. Yes, and the reason being is that I, as sender,  
12 have sent this right now. I just didn't know you  
13 weren't available. The fact -- and you might have  
14 become unavailable after I sent the message. I mean,  
15 there -- it does take a few seconds for something to  
16 traverse a network. It would be entirely possible I  
17 sent you a message while you were available, and for any  
18 number of reasons, you became unavailable in transmit.  
19 That's still an instant message. It's just you've left  
20 the conversation prematurely.

21 Q. So looking at Figure 2, please correct me if  
22 I'm wrong, but there's two -- there's maybe more than  
23 two, but at least two IVM clients shown here, and I'm  
24 just going to identify two of them, 206 and 208. I'll  
25 just stop there to make sure you agree with me before I

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2 move on.

3 A. Yes, I see those. One appears to be a voice  
4 over IP phone. That would be 206.

5 208, I would best describe it by reading  
6 the patent, but it looks like it could be a computer  
7 using voice over IP because I see a keyboard 218 and a  
8 microphone 212.

9 Q. Sure. And just to facilitate our discussion, I  
10 think this is discussed in column 7 around -- I think it  
11 starts at the top of the column.

12 A. Correct.

13 Q. And it looks like it discusses IVM client 208  
14 first -- excuse me. So let me start there.

15 So you can see from line 4 to 6 in column  
16 7, it refers to IVM client is a voice over IP. It uses  
17 the acronym there, but it refers to it as a voice over  
18 IP soft phone. Do you see that?

19 A. Yes.

20 Q. What would a person of ordinary skill in the  
21 art understand that to mean, voice over IP soft phone?

22 A. A soft phone was a software-implemented phone;  
23 in other words, it's not a physical device. It's  
24 software that runs on another physical device, which  
25 supports my earlier assumption that that might be a

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2 computer because it's common to have that running on  
3 some sort of computer. In fact, I used several at that  
4 time.

5 Q. Okay. Which -- which did you use at that time?

6 A. It's been 20 years, I couldn't recall. But to  
7 this day, you could consider things like Skype a soft  
8 phone.

9 Q. And then looking at client 206, and correct me  
10 if I'm wrong, but it looks like line 23 to about 36 of  
11 column 7 describes client 206.

12 A. Yes, it does.

13 Q. Okay. And it refers to it as a voice over IP  
14 telephone in line 25 of column 7. Do you see that?

15 A. That is correct.

16 Q. And what would a person of ordinary skill in  
17 the art at the time understand that term to mean, "voice  
18 over IP telephone"?

19 A. Well --

20 MR. LOVELESS: Objection, form.

21 A. Well, there may have been other manufacturers.  
22 Cisco is probably the leader for voice over IP phones.  
23 They appear to a casual user as just a typical  
24 telephone, as you might have in your home. However,  
25 they're designed to plug into a packet-switched network,

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2 as opposed to plugging into a phone line.

3 Q. So the voice over IP telephone itself would be  
4 a physical handset?

5 A. Yes.

6 Q. Okay. Could either the IVM client 208 or IVM  
7 client 206 be something like a mobile phone at the time  
8 of the alleged invention in the '622 patent?

9 MR. LOVELESS: Objection, form.

10 A. Well, since we are talking about Figure 2,  
11 Figure 2 does not specifically mention a mobile phone.

12 Q. Does the '622 patent mention anywhere that the  
13 IVM client could be a mobile phone?

14 MR. LOVELESS: Objection, form and scope.

15 A. I do not have a specific remembrance of whether  
16 or not it specifically mentioned mobile phone. I could  
17 review it momentarily and check that for you if you  
18 would like.

19 Q. Sure, it's up to you. I think that would be  
20 helpful. I'm happy for you to --

21 A. Give me just a moment.

22 Q. Of course.

23 A. I'll try to read quickly.

24 Q. No problem. Take your time.

25 A. I don't recall and can't find now anything that

1 WILLIAM C. EASTTOM, II

2 explicitly states mobile phone, but I can find nothing  
3 in the claim language that would exclude a mobile phone.

4 Q. What about PDAs, would that be in the scope of  
5 the IVM client described in the '622 patent?

6 MR. LOVELESS: Objection, form, scope.

7 A. Well, I don't recall them specifically calling  
8 out PDAs, but if I look again at figure 2, the client  
9 208 certainly doesn't exclude a PDA or, for more modern  
10 terminology, a tablet.

11 Q. Did mobile phones or PDAs connect to  
12 packet-switched networks at the time of the alleged  
13 invention?

14 A. They certainly could.

15 Q. Were they known to connect to packet-switched  
16 networks at the time of the invention?

17 MR. LOVELESS: Objection, form, scope.

18 A. Anytime you connect any device to a WiFi  
19 network, you're connecting to a packet-switched network,  
20 so yes.

21 Q. So, in your opinion, mobile phones and PDAs  
22 could connect to WiFi networks at the time of the  
23 alleged invention?

24 A. Yes.

25 Q. Why would a mobile phone connect to a WiFi

1 WILLIAM C. EASTTOM, II

2 network as opposed to just connecting to a wireless  
3 carrier network?

4 A. Well, it depends on how far back you want to  
5 go, but --

6 Q. At the time of the alleged invention.

7 A. If we look back to, say, the very, very late  
8 '90s, early 2000s, you have a condition where, first of  
9 all, data usage was incredibly expensive. In fact,  
10 calls were very expensive. I don't know if you're old  
11 enough to recall, but at that time, you only used your  
12 cell phone for emergency purposes because you were  
13 sometimes being charged by the minute. It was quite  
14 expensive.

15 So if you had a phone, and not all would do  
16 it, but if you had a phone, or more likely a PDA, that  
17 could access data sources, it's going to be really  
18 expensive for you to do that over cellular. Now, WiFis  
19 weren't as widespread as they are today, but they did  
20 exist. And if you had access to a WiFi, there would be  
21 a compelling reason to avoid the cellular charges and  
22 instead connect to the WiFi.

23 Q. This -- at what -- what time frame are we  
24 talking about, just to be clear?

25 A. Well, I know for a fact there were at least

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2 widespread use of WiFi networks in offices. In fact,  
3 here in the Dallas area in 2000/2001, many colleges had  
4 at least limited access in '98/99. It certainly wasn't  
5 as widespread as today where you can get a WiFi any  
6 location.

7 Q. So around the time the 802.11 standard came  
8 out?

9 A. Yes.

10 Q. Okay. Figure 2 also shows a Legacy telephone  
11 110 . Do you see that one?

12 A. I do.

13 Q. Okay. Is that an IVM client?

14 A. No.

15 Q. Why not?

16 A. Well, first of all, it's not identified as one  
17 in the figure; but, secondly, a Legacy phone, one of  
18 ordinary skill in the art would understand that your  
19 traditional phone that is designed to connect to a PSTN,  
20 public switch telephone network. Now, figure 2 does  
21 illustrate 114 Gateway, which allows that Legacy phone  
22 to connect into a local network. So looking at the  
23 totality of this picture, I would have to say that the  
24 110 Legacy phone is not inherently an IVM client, but  
25 apparently could be made to be one.

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2 Q. So instead of Legacy phone 110 connecting to a  
3 PSTN network, it's connecting to a local IP network like  
4 204?

5 A. Well, actually, from the diagram, it's  
6 connecting to both. The 112 Legacy switch, that's a  
7 standard phone switch which connects you into PSTN. But  
8 that phone switch is in turn connected to an IP gateway  
9 which, trying to recall things from the late '90s, that  
10 was a pretty common scenario when you wanted to  
11 implement voice over IP, for the simple reason that  
12 voice over IP wasn't so widespread. And if you could  
13 not connect your voice over IP to the public switch  
14 telephone network, and vice versa, you drastically  
15 limited who you can talk to.

16 Q. Okay. So, in your opinion, figure 2 is showing  
17 a Legacy phone that's connected both to a PSTN and it  
18 was touch phone, and also a local IP network; it's also  
19 connected to a local IP network 204?

20 A. Yes, but, actually, it is shown. Anyone of  
21 ordinary skill in the art would understand what a Legacy  
22 switch and 112 is. It's a phone switch.

23 Q. Okay. And you may have stated this, and I  
24 apologize for repeating the question. But what is a  
25 Gateway 114?



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2 A. Gateway 114 is the gateway that allows that  
3 Legacy switch to communicate with an IP network.

4 Q. What do you mean by "allows"? How does it  
5 allow it to do that? That was a question.

6 A. You appeared to be distracted, so I'm waiting  
7 until you're ready.

8 Q. I'm ready. Go ahead.

9 A. By "allow," I mean facilitate. What you have  
10 is two different sorts of communication here. You have  
11 PSTN analog communication, and you have IP  
12 packet-switched digital communication. There has to be  
13 a mechanism to translate from one to the other, and  
14 using a gateway device is a common way to do that, even  
15 today, and has been since the advent of voice over IP.

16 Q. Okay. Without Gateway -- excuse me. Let me  
17 start over.

18 Without Gateway 114, would it be possible  
19 for Legacy phone 110 to connect to local IP network 204?

20 MR. LOVELESS: Objection, form, scope.

21 A. Well, I certainly didn't contemplate in my  
22 analysis hypothetical configurations that weren't  
23 revealed in the patent. I know within the patent figure  
24 2, it does use a Gateway. I haven't given thought to  
25 other alternative mechanisms whereby that same

1 WILLIAM C. EASTTOM, II

2 functionality could be accomplished.

3 Q. Could Legacy phone 110 connect to local IP  
4 network 204 without the Legacy switch 112?

5 MR. LOVELESS: Objection, form, scope.

6 A. I haven't considered configurations that  
7 weren't described in the patent.

8 Q. So a Legacy phone 110, could it connect to an  
9 IP network directly?

10 A. I haven't considered configurations that  
11 weren't revealed specifically either in the patent or in  
12 the asserted prior art.

13 Q. What about in the context of a person of  
14 ordinary skill in the art, would a person of ordinary  
15 skill in the art person understand whether a Legacy  
16 phone 110 could connect to an IP network 204 without  
17 Gateway 114?

18 MR. LOVELESS: Objection, form, scope.

19 A. I haven't really contemplated that issue. It  
20 was not relevant to my deliberations.

21 Q. So the discussion of figure 2 in the '622  
22 patent uses the term "instant voice message."

23 A. Specifically, where are you looking?

24 Q. It's throughout, but I can give you one place.  
25 Column 7, line 6 to 10 is one place.

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2 A. You say column 7?

3 Q. Yes, sir.

4 A. Oh, I'm sorry. It's a little further on. The  
5 point you pointed me to actually says figure 3, but...

6 Q. You are correct.

7 MR. CITROEN: And, actually, we can move  
8 on. We've been going for about an hour. Do you guys  
9 want to take a break before I move on?

10 THE WITNESS: Sure.

11 (Brief recess.)

12 Q. Okay. So before the break we were talking  
13 about the term "instant voice message" as it appears in  
14 the specification of the '622 patent. I believe I  
15 pointed you to one specific example, which is column 7,  
16 lines 6 to 10.

17 A. I have that in front of me.

18 Q. Okay. And so my question is: What is your  
19 understanding of "instant voice message" in the context  
20 of the figure 2, as described in the '622 patent?

21 A. Well, first, simply reading what it states and  
22 then elaborating on it, it discusses figure 3, and it  
23 states: A microphone 212 is connected to the IVM client  
24 208, and enables the recording of an instant voice  
25 message according to the present invention into an audio

1 WILLIAM C. EASTTOM, II

2 file for transmission to the local IVM server over the  
3 network.

4 Now, looking at that entire complete  
5 sentence, it's clear that in this instance, an instant  
6 voice message is, first of all, voice, being audio. It  
7 is recorded and sent instantly in real time.

8 Q. Does the instant voice message have any data  
9 other than the recorded audio?

10 A. Well, based on just this sentence, none has  
11 been revealed yet, and I don't have an identic memory,  
12 so I can't tell you from memory if there's other data  
13 mentioned elsewhere in the patent, but not in this  
14 section.

15 Q. Okay. Do you recall if an instant voice  
16 message includes an identifier of the sender?

17 A. I don't --

18 MR. LOVELESS: Objection, form.

19 A. I don't exactly recall that, but it might -- it  
20 seems likely. And if you can refresh my memory where in  
21 the patent, I think that's very likely.

22 Q. I'm just trying to recall myself.

23 A. I understand.

24 Q. I believe on column 14, beginning at line 19 to  
25 21, possibly a little further -- I'll wait until you get

1 WILLIAM C. EASTTOM, II

2 there and ask you to take a look.

3 A. Certainly.

4 Yes, this does refresh my recollection.

5 Q. So after reviewing this, does the instant voice  
6 message described in the '622 patent include information  
7 identifying the sender?

8 A. Yes.

9 Q. Does the instant voice message also include an  
10 identifier for the recipient?

11 MR. LOVELESS: Objection, form, scope.

12 A. I don't recall a specific element of the  
13 patent, but it would have to or else it couldn't get to  
14 the recipient.

15 Q. Okay.

16 A. And, actually, as I glance here, there is a --  
17 at the top of the section you just had me read: A  
18 message object comprised as an action field, an ID  
19 field, a source field, a destination field, and an  
20 object field.

21 The destination field would be the  
22 recipient.

23 Q. You were reading from column 14, line 6 to 7?

24 A. That would be accurate.

25 Q. What is your understanding of the -- or strike

1 WILLIAM C. EASTTOM, II

2 that.

3 To a person of ordinary skill in the art,  
4 what does the term "field" mean here in the sentence we  
5 just read in column 14, line 6 to 7?

6 A. Well, when we're speaking about -- there's two  
7 contexts here that are relevant. We speak about a  
8 network packet. There are predefined fields in the  
9 header for information.

10 Now, when you have a new technology, you  
11 often add your own header with your own discreet data  
12 portions, which would be the definition of a field.

13 For example, if you add encryption to a  
14 packet, there's a TLS header that has its own little  
15 fields to describe elements of that communication. So.

16 Within that context, a field would be some  
17 discreet piece of data that provides some information  
18 relevant to that communication.

19 Q. How does that differ from other data that may  
20 be included?

21 MR. LOVELESS: Objection, form, scope.

22 A. Well, fields are usually predefined with either  
23 identifiers or locations so that the recipient doesn't  
24 have to scan through a packet hoping to get them.

25 For example, to use e-mail as an example,

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2 there's a very well-defined "to," "from," "carbon copy,"  
3 "blind carbon copy." Those are specific fields. So if  
4 I'm handling that message, writing code to handle it  
5 through a server, I don't have to go scanning for who  
6 this is going to. I look at the "to" field. If I just  
7 put that information somewhere in the body of the  
8 message, then I would have to have some rather  
9 sophisticated algorithms to extract it.

10 Q. Okay. So I'm looking over -- it's column 13 --  
11 excuse me -- 13, and I believe this is referring to  
12 figure 3.

13 A. Where in column 13?

14 Q. That is a good question. Let's see. Let's  
15 look at -- beginning at line 15.

16 A. Okay.

17 Q. There's a mention of audio file 210, which I  
18 think is also displayed in figure 2, which is where it's  
19 using 210 as the identifier. Do you see that?

20 A. Yes, I do, and I believe you're correct.

21 Q. Okay. What is audio file 210 to a person of  
22 ordinary skill in the art?

23 A. In this case, this is the actual file that has  
24 the voice message. In other words, the voice message  
25 could be viewed as the content.

1 WILLIAM C. EASTTOM, II

2 For example, I'm speaking now. That could  
3 be viewed as a voice message. If you record it to a  
4 file, that file is the digital representation of the  
5 audio I just did.

6 Q. So to a person of ordinary skill in the art,  
7 what is meant by the term "file" in this audio file 210?

8 A. A file --

9 MR. LOVELESS: Objection, form.

10 THE WITNESS: Sorry.

11 A. -- is an organized set of bits or bytes on your  
12 hard drive, on your network packet, whatever. It has a  
13 defined start and end, and usually some sort of header  
14 information to describe what kind of file it is.

15 For example, we mentioned JPEGs before,  
16 images. JPEGs have a specific hexadecimal identifier at  
17 the beginning that tells a computer, hey, this is a  
18 JPEG, and you have the data that makes up the image; and  
19 then you have a footer that says, hey, this is the end  
20 of the JPEG. Well, that's true for every type of file,  
21 be it a video file, a Word document, or an audio file.

22 Q. Were audio files known at the time,  
23 December 2003?

24 A. Yes.

25 Q. Do you recall any examples of what an audio



1 WILLIAM C. EASTTOM, II

2 file may be?

3 A. There are lots of recording mechanisms. The  
4 MP3 format, which can be MP3 or MP4, can be used for  
5 audio, and it still is today. The ABI format can be  
6 video and audio. The MOV format is usually video only.  
7 So those are a few that would include audio or simply be  
8 audio.

9 Q. Would you refer to the ones that also have  
10 video as an audio file, or would you refer to it as a  
11 video file?

12 A. Well, I refer to them as a video file because  
13 they're primarily used for that.

14 Q. Okay.

15 A. But I could record my audio as simply an AVI or  
16 an MOV file, and it would just -- when you played it,  
17 because of the file name, your default video player  
18 would launch, but you would see a black screen and just  
19 hear the voice.

20 Q. Understood. Okay.

21 Is it -- in the context of the '622 patent,  
22 to a person of ordinary skill in the art, understand  
23 that you can have an instant voice message without an  
24 audio file, 210?

25 MR. LOVELESS: Objection, form, scope.

1 WILLIAM C. EASTTOM, II

2 A. Well, I've never actually considered that  
3 question, and on the fly, I'm not sure I can totally  
4 analyze it. My initial, at least, thought is no,  
5 because there has to be some sort of file to encompass  
6 the message or I can't send it. If I sent it without a  
7 file, then it would be simply a streaming analog signal.  
8 But, again, I haven't analyzed this. There may be some  
9 mechanism that I just haven't contemplated.

10 Q. Okay. When you said without the message, you  
11 were referring to the voice data?

12 A. That's correct.

13 Q. Okay. Let's go back to figure 2 that we were  
14 discussing earlier, if you don't mind.

15 A. Certainly. I have it in front of me.

16 Q. Okay. And, specifically, I want to talk about  
17 the specifications discussed in figure 2. We can -- let  
18 me see where exactly. Let's look at -- starting column  
19 7. I guess we could start at line 53 just to make sure  
20 we have the proper context.

21 A. Yes.

22 Q. Okay. And, actually, a little further down,  
23 starting at 57, it says: These implementations  
24 implement a record mode of the instant voice messaging  
25 according to the present invention.

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2 And the next sentence states: They will  
3 further be describing intercom mode of the instant voice  
4 message -- messaging according to the present invention.

5 Do you see that?

6 A. Yes, I do.

7 Q. Is your understanding that the discussion in  
8 the remainder of this paragraph is referring to the  
9 record mode, based on those two sentences?

10 MR. LOVELESS: Objection, form and scope.

11 A. You said the remaining of this -- the remainder  
12 of this paragraph?

13 Q. Yes, which extends to column 8.

14 A. I don't know that it excludes the intercom  
15 mode.

16 Q. Okay. Okay. Maybe it will help if -- my  
17 understanding is this is describing the record mode, and  
18 I'm not trying to trick you; I just want to make sure we  
19 either confirm or disagree, or we can reach an agreement  
20 on what's being discussed.

21 So if you go to column 11, starting at line  
22 31, it states, Lastly, with reference to figure 2: In  
23 addition to the record mode of instant voice messaging  
24 system also supports an intercom mode of voice  
25 messaging.

1 WILLIAM C. EASTTOM, II

2 And then it goes on to describe the  
3 intercom mode.

4 A. Yes, it does.

5 Q. Okay. My understanding is this is describing  
6 intercom mode, and the portion we were looking at  
7 previously, column 7 and 8, was describing the record  
8 mode. If you disagree, that's fine, but I just --  
9 that's my understanding, and I want to see if that's  
10 your understanding as well.

11 A. Well, it's clear the section you just point out  
12 in column 11 is discussing the intercom mode. And I  
13 believe we started on column 7?

14 Q. Yes, sir.

15 A. It's clear that that section is discussing the  
16 record mode. All I'm stating is I'm not aware of  
17 anything in those interceding pages that explicitly  
18 excludes any of the items discussed from also being  
19 applicable to the intercom mode.

20 Q. I see. Understood. Okay.

21 So I want to talk about the record mode,  
22 and then separately talk about the intercom mode. Those  
23 are two different modes, correct?

24 A. Yes.

25 Q. Okay. So looking at column 7 and column 8,

1 WILLIAM C. EASTTOM, II

2 there are a series of operations that are described.  
3 And if you look at column 7, line 65 to column 81, it  
4 describes a list of one or more IVM -- excuse me --  
5 strike that. Let me begin at the beginning of the  
6 sentence.

7 The IVM client 208 displays a list of one  
8 or more IVM recipients on the display 216 provided and  
9 stored by the local IVM server 202, as will be  
10 particularly described herein below with reference to  
11 figure 4.

12 Do you see that?

13 A. Yes.

14 Q. Okay. Do you know what this is referring to,  
15 the list that's being displayed on client 208?

16 A. Well, it's pretty clear. It says "displays a  
17 list of one or more IVM recipients," and it specifically  
18 tells us to take a look at figure 4.

19 Q. Uh-huh.

20 A. So I turn over to figure 4. It goes on to give  
21 a little more description, actually, in the text even  
22 better, The user selection is transmitted to the IVM  
23 server 202.

24 So, essentially, this list is a list of IVM  
25 clients that I might choose to send an instant voice

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2 over IP message to.

3 Q. Okay. And I think that's what it says actually  
4 in the next sentence, so column 8, lines 1 to 4, the  
5 user operates the IVM client by using the input device  
6 to indicate a selection of one or more IVM recipients  
7 from the list.

8 Is that consistent with what you were  
9 saying?

10 A. Exactly correct.

11 Q. So you have a list on your IVM client, and you  
12 want to send one of the recipients that's displayed in  
13 the list an instant voice message. You would select the  
14 entry that's shown?

15 A. Yes.

16 Q. Okay. Are you familiar with the term "buddy  
17 list"?

18 A. Yes.

19 Q. Was that a term that was used at the time of  
20 the alleged invention?

21 A. I don't recall if it was commonly used at the  
22 time. I don't recall when it became widely used. It's  
23 certainly widely used today.

24 Q. Okay. Is this feature consistent with what a  
25 person of ordinary skill in the art would have

1 WILLIAM C. EASTTOM, II

2 understood "buddy list" to mean?

3 MR. LOVELESS: Objection, form, scope.

4 A. Not really, because when you look at buddy  
5 lists, they are usually defined through some other  
6 criteria. For example, if you go to Facebook, a list of  
7 people you actually have an active Facebook connection  
8 to, you have elected to "friend" them.

9 Q. Uh-huh.

10 A. If you go to LinkedIN, you've elected to link  
11 into them.

12 My understanding of the IVM list here,  
13 these are just possible IVM clients you might send to.  
14 You may or may not have previously had any sort of  
15 relationship with them.

16 Q. Okay.

17 A. So that would be very different than a buddy  
18 list.

19 Q. Would this description here that we just  
20 discussed, or the '622 patent, would it be consistent  
21 with the buddy list feature that was available with AOL  
22 Instant Messenger at the time of the alleged invention?

23 MR. LOVELESS: Objection, form, scope.

24 A. I don't recall the specifics of the AOL  
25 Messenger buddy list.

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2 Q. Okay. Does this list that's described in the  
3 '622 patent that we're discussing show the availability  
4 of the one or more IVM recipients which are displayed?

5 A. Well, what we've read so far doesn't indicate  
6 that. I don't recall it specifically mentioning that in  
7 the patent. It may. I have to refresh my memory.

8 I do recall, and I think we discussed this  
9 earlier today, that the IVM server is aware of who is  
10 currently connected, and that's not quite the same thing  
11 as availability.

12 Q. Uh-huh.

13 A. But I don't see anything in the text we're  
14 seeing here that indicates that I know they're available  
15 or not.

16 Q. You just mentioned that connected and  
17 availability may not mean the same thing. What is the  
18 difference between the two?

19 A. Well, considering modern social media, you can  
20 make yourself unavailable.

21 Q. And let me just rephrase because I want to make  
22 sure.

23 In the context '622 patent, is there a  
24 difference between those two?

25 A. Well, "connected" means your device is



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2 connected. "Available" means you've indicated in some  
3 way that you're actually listening and ready to receive  
4 some sort of response.

5 Q. You -- for connected, you said it's actually  
6 connected. Do you mean connected to something?

7 A. Connected to the network; it's reachable. And  
8 I believe elsewhere in the patent it specifically  
9 describes the IVM server sending a ping to see if the  
10 device is available.

11 So, for example, my phone will be  
12 considered available now even though it's turned to  
13 silent in my pocket and I won't respond to any messages.  
14 I'm not available. But the phone is connected.

15 Q. So in the list -- or in the record mode that's  
16 being described here in the '622 patent, must the list  
17 that's displayed on client 208 show that a potential  
18 recipient is available in order for the device to send  
19 that recipient a message?

20 MR. LOVELESS: Objection, form, scope.

21 A. I don't recall anything to that effect, and  
22 there's certainly nothing to that effect in the text  
23 we've just been talking about. There could be something  
24 else from the patent I don't really recall. But I do  
25 recall that the IVM server at some point is aware of

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2 whether or not the recipient is connected, and, if not,  
3 that's when it stores a message for them to get later  
4 whenever they do connect again.

5 Q. Okay. So the user of the client could send a  
6 message to a recipient that's not displayed as  
7 available, but it may not actually be received by the  
8 recipient because the server must check whether they're  
9 available before sending it to them?

10 A. Well, now we're conflating the words  
11 "connected" and "available," again, which is why I used  
12 them specifically.

13 I see nothing in the text we've read and  
14 don't have an immediate recollection of anything that  
15 would indicate in the list that they're connected or  
16 not. As far as I recall, the IVM server itself  
17 determines, hey, you're connected, I'm going to send you  
18 this right now in real time; hey, you're not connected,  
19 I'm going to hold onto it. And, interestingly enough,  
20 it was explicit, and I actually reread this earlier in  
21 one of my readings. As soon as you do connect, I'm  
22 going to send you that message. So you don't have to  
23 retrieve it. It's going to be sent to you as soon as  
24 you connect.

25 Q. Okay. So starting at line 4 of column 8, it

1 WILLIAM C. EASTTOM, II

2 explains that the user selection is transmitted to  
3 server 202. Do you see that?

4 A. Yes.

5 Q. And then the next sentence, 5, starting on line  
6 5, it explains that that selection generates a start  
7 signal.

8 And continuing to line 7 of column 8: The  
9 start signal causes the client to start capturing audio  
10 via the audio device 212, and store it in an audio file  
11 210.

12 Do you see that?

13 A. Yes.

14 Q. Okay. What is audio device 212, by the way?

15 MR. LOVELESS: Objection, form.

16 A. I'm not sure which figure we're referring to.

17 Q. Two, I believe, since it's -- I think it's  
18 audio device 212, I believe. I believe it's displayed  
19 in figure 2.

20 A. Ah, there's a microphone.

21 Q. You're looking at the figure itself?

22 A. That is correct.

23 Q. Okay.

24 A. And also, logically, that would be what you  
25 would need to record voice.

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2 Q. Okay. So just to summarize, so a user viewing  
3 the list on the client would select a potential  
4 recipient, which would cause the client to begin  
5 recording audio using device 212, which might be a  
6 microphone, into audio file 210. Is that fair?

7 A. Yes.

8 Q. And then looking at column 8, starting at  
9 line 11: The audio file is finalized via stop signal,  
10 which is generated by the user via input device 218, or  
11 a preset time period without speech input.

12 Do you see that?

13 A. Yes.

14 Q. What's your understanding -- or how would a  
15 person of ordinary skill in the art understand that  
16 portion of column 8?

17 A. Two options for ending your recording. Most  
18 microphones have an on/off, or some of them you have to  
19 hold something down, and when you release --

20 Q. Okay.

21 A. -- that would be an indicator, a physical  
22 indicator that you're stopping. It's also -- and it has  
23 been for a long time, voice-activated systems today do  
24 this, when you're speaking into them, if there's a  
25 period of silence, whatever they've determined, they

1 WILLIAM C. EASTTOM, II

2 assume you're done talking and stop recording.

3 Q. Okay. So then -- so looking at line 15 again  
4 in column 8. Again, using the input device 218, the  
5 user generates a send signal, indicating that the  
6 instant voice message is ready to be sent?

7 A. Well, actually, it says the IVM client 208  
8 generates a signal that the digitized audio file 210  
9 instant voice message is ready to be sent.

10 It doesn't say the specific element of the  
11 client 208 that generates that signal. So, presumably,  
12 anyway, it gets generated is acceptable.

13 Q. Yeah, I think I combined two sentences maybe.

14 If you look at line 18, it says: The user  
15 generates the send signal when the user operates the IVM  
16 client 208 via the input device.

17 A. Correct.

18 Q. Okay. So your understanding there would be  
19 that the user would, again, I guess you mentioned, it  
20 would be maybe a button that would indicate that the  
21 message should be sent?

22 A. Well, the patent right here indicates that it  
23 could be through pressing a key on a keyboard, clicking  
24 a button on a mouse. Those are two possible ways to  
25 generate the send signal.

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2 Q. Okay. And then the next sentence, line 21 of  
3 column 8: The client device then transmits the  
4 digitized audio file and sends signal to the server 202.

5 Correct?

6 A. That's correct.

7 Q. Okay. So is the fact that in this way of  
8 generating the instant voice message, the record mode,  
9 recording the entire voice speech using the button for  
10 releasing, is that what distinguishes it from the  
11 intercom way of generating the voice message?

12 MR. LOVELESS: Objection, form, scope.

13 A. Well, if you want to discuss the intercom, we  
14 should probably discuss it first and then compare and  
15 contrast them.

16 Q. Okay. Sure.

17 A. And I forget. You were kind enough to identify  
18 where that starts and I don't recall.

19 Q. It's column 11, starting at line 31.

20 A. Thank you.

21 Q. And, actually, I apologize for doing this.  
22 There was one last step, and I don't want to --

23 A. Sure.

24 Q. -- I don't want to leave it incomplete --

25 A. That's fine.

1 WILLIAM C. EASTTOM, II

2 Q. -- for the record mode here.

3 In column 8, line 26, it says: After  
4 receiving the audio file, the IVM server thereafter  
5 delivers the transmitted instant voice message to the  
6 selected one or more recipients via local IP network.

7 I think -- I believe I forgot to mention  
8 that last step.

9 So would a person of ordinary skill in the  
10 art understand that once the server receives the instant  
11 voice message, it will then send it on to the recipient  
12 device that was selected by the user of the client?

13 A. Yes.

14 Q. And you mentioned that the server would check  
15 the recipient client's availability before delivering a  
16 message.

17 A. I don't believe that's discussed here, but  
18 later in the patent and other places, it discusses that  
19 it's going to figure out if they -- or at least be aware  
20 if the recipient is actually connected before sending  
21 something to them that they couldn't possibly receive.

22 Q. Okay. Actually, I was just reading further  
23 down. It looks like maybe line 34 of column 8 says: It  
24 is noted that if a recipient IVM client is not currently  
25 connected to the local IVM server 202, (i.e., is

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2 unavailable), the IVM server temporarily saves the  
3 instant voice message and delivers it to the IVM client  
4 when the IVM client connects to the local IVM server  
5 202, (i.e., is available).

6 A. That is precisely the section I was actually  
7 thinking about earlier.

8 Q. Okay.

9 So now let's go to the intercom mode in  
10 column 11, starting at line 31. And I'll just ask you  
11 once you've had a chance to review, what is the  
12 difference between the way of generating a record mode,  
13 as we just discussed, and the way of generating an  
14 intercom mode message in column 11?

15 MR. LOVELESS: Objection, form and scope.

16 A. Well, reading this entire paragraph, the  
17 primary difference is that in the record mode, it's  
18 going to intentionally record the entire message, then  
19 send it. In the intercom mode, it makes very clear that  
20 it has one or more buffers of some predetermined size,  
21 and as soon as one buffer is full, it sends that buffer  
22 on, and then when the next buffer is full, sends that  
23 on. So, essentially, the communication is occurring  
24 right now in real time.

25 And, in fact, at about line 59, it actually



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2 states that: The foregoing buffering and transmission  
3 allows a real-time instant voice message to be  
4 transmitted to the one or more IVM recipients.

5 Q. So if the instant voice message is generating  
6 using an intercom mode method, how is that different  
7 than the voice over IP that was known at the time?

8 MR. LOVELESS: Objection, form and scope.

9 A. Well, there are several different things  
10 happening here, one of which is we have an entire  
11 process in which the IVM server is determining whether  
12 or not people are available. In fact, if you read a  
13 little further beyond where I was just at, it goes ahead  
14 to say: The intercom mode may be designated as a  
15 default mode when an IVM recipient is online.

16 Well, the record mode may be designated as  
17 a default if the IVM recipient is unavailable, not  
18 online.

19 Now, voice over IP, by itself, in and of  
20 itself, based on the standards for the various  
21 protocols, SIP and RTP and all of those, has no  
22 mechanism for even knowing if you're online or not. And  
23 for deciding I'm going to record a message or I'm going  
24 to send it to you now.

25 Voice over IP is simply for me to pick up a

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2 phone and call you. Now, if I have voice over IP by  
3 itself, no additional technology, no add-ons, then the  
4 only thing that will happen if you're not there is your  
5 phone will ring until I get tired of listening to it  
6 ring and hang up.

7 Q. Okay.

8 So another way of maybe -- like please  
9 correct me if I'm wrong -- of describing voice over IP  
10 is you're essentially mimicking a PSTN type of phone  
11 call, but you're using IP networks instead of the PSTN  
12 networks?

13 A. That's exactly correct.

14 Q. Okay. So the -- so if the instant voice  
15 message is generated using the intercom mode method,  
16 does it also involve using a speaker to record the  
17 speech of the user of the client?

18 A. I think you meant to ask involve using a  
19 "microphone" to record the speech.

20 Q. What did I say?

21 A. Speaker.

22 Q. Yes. I meant a microphone.

23 A. Well, that's perfectly understandable. Today  
24 you probably have both in one device, so --

25 Q. Right.

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2 A. -- you would be accustomed to that.

3 But to answer your question, yes, it would  
4 involve a microphone, some sort of device, or else  
5 there's no way to even note that I'm making audible  
6 noise.

7 Q. Okay. And thank you for the correction.

8 So in both the record mode and the intercom  
9 mode of generating an instant voice message, does the  
10 '622 patent describe using encryption and compression?

11 MR. LOVELESS: Objection, form, scope.

12 A. Well, there are discussions throughout. For  
13 example, earlier in column 11, starting at line -- I  
14 think it's 12, there's a whole paragraph discussing  
15 various encryption algorithms, DES, Triple DES,  
16 Blowfish, Twofish, Serpent, similar algorithms. Before  
17 that, the Rijndael encryption algorithm.

18 THE WITNESS: I apologize to the court  
19 reporter for all these terms.

20 Q. Cryptologists were creative --

21 A. Yes.

22 Q. -- with their naming conventions.

23 A. Well, Rijndael is actually taken from two  
24 gentlemen's names, and they're from Belgium, so they  
25 have names that may sound odd to us that were fused

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2 together.

3 Q. Right.

4 A. Blowfish, Twofish, and Serpent are actually  
5 named after specific animals.

6 But in any case, this was actually  
7 mentioned before we got down to the section for intercom  
8 mode. So I see nothing in the patent that would make me  
9 think that you can't apply encryption and compression to  
10 either mode.

11 Q. Let's look at figure 3. It's a detailed  
12 description of figure 3. And, obviously, you can see --  
13 look at the figure itself as well. But I'm going to  
14 look at beginning of column 12, line 51, where it starts  
15 to describe what's shown in figure 3.

16 A. I have it in front of me.

17 Q. Okay. Just in your words, what is shown in  
18 figure 3 of the '622 patent? Excuse me.

19 MR. LOVELESS: Objection, form and scope.

20 A. Well, the larger box, 208, is identified in the  
21 text as the entire -- it says it's the IVM client.

22 Q. Okay.

23 A. In fact, I'm reading: It is assumed that the  
24 local IVM server 202 has determined the IVM client 208  
25 is available to receive an instant voice message by

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2 checking the IVM client 208's current status.

3 So what we're seeing within that box 208  
4 are specific portions of the IVM client. And this also  
5 directly addresses your preceding question because we  
6 can see 316 facilitates encryption/decryption; 318,  
7 compression/decompression. We also have the actual  
8 audio file, 210. We have a file manager because you  
9 have more than one file; a message database; and, in  
10 fact, a messaging system, which in turn connect to 204,  
11 the local IP network, which will in turn connect to 202,  
12 the local IVM server.

13 Q. So one of the boxes that's in client platform  
14 302 is document handler 306. What would a person of  
15 ordinary skill in the art understand the document  
16 handler 306 to be?

17 A. One moment, please.

18 Q. Sure.

19 MR. LOVELESS: Objection, form, scope.

20 A. There's not a great deal of discussion of that  
21 within the patent text. But if I may direct your  
22 attention to column 13, beginning at approximately what  
23 appears to me to be about line 33: The attachment of  
24 one or more files is enabled conventionally via  
25 methodology such as drag and drop and the like, which

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2 invokes the document handler 306 to make the appropriate  
3 linkages to the one or more files and flags the  
4 messaging system 320 that the instant voice message also  
5 has attached one or more files.

6 So based on the text, combined with the  
7 actual diagram itself, the document handler, which is,  
8 again, 306 is used if you're going to attach an  
9 additional file to your voice message.

10 Q. So one of the terms you read there was "drag  
11 and drop." What would a person of ordinary skill in the  
12 art understand "drag and drop" to mean at the time of  
13 the alleged invention?

14 A. Well, that's one of those things that still  
15 means the same today.

16 Q. Okay.

17 A. In many cases, and I've done this myself just  
18 in this week, I'm sending someone an e-mail, and I would  
19 like to attach a PDF to it. I might elect to go to the  
20 body of the e-mail, go to the drop-down menu, maybe pick  
21 some menu op that says attach a file, or I can open up  
22 my Windows Explorer, take that PDF, drag it over to the  
23 e-mail, and then just let go. And then the computer  
24 interprets that as, oh, you would like to attach this  
25 PDF to the e-mail.

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2 Q. So it's describing basically a user interface  
3 feature?

4 A. Yes.

5 Q. And the result of the drag and drop would be,  
6 in your scenario, identical to selecting a file attach  
7 option?

8 A. Yes.

9 Q. In here, the section you read, which is column  
10 13, beginning at line 33, explains that: The  
11 drag-and-drop methodology invokes the document handler  
12 to make appropriate linkages to the one or more files  
13 and flags the e-mail system that the instant voice  
14 message also has the attached one or more files.

15 What would a person of ordinary skill in  
16 the art understand "linkages" to mean?

17 A. Well, if I'm sending you, in this case, a voice  
18 message that also has an additional file attached, there  
19 has to be some mechanism under the hood, unbeknownst to  
20 you, that connects this voice message goes with this  
21 attachment, and that's the linkage.

22 Q. So what are some of those mechanisms that a  
23 person of ordinary skill in the art would know, at the  
24 time?

25 A. Any number of ways you could do it, and I note

1 WILLIAM C. EASTTOM, II

2 that the patent specifically says "enabled  
3 conventionally via methodology such as drag and drop."

4 So what the patent inventor was clearly  
5 saying is any of the conventional methods. So what I  
6 might do is add some additional information onto a file  
7 that identifies the message it's attached to, for  
8 example, message ID, and I might also in the message add  
9 some information that identifies the file that's  
10 attached to it, perhaps a file ID.

11 Now, those are just generic possibilities  
12 of how one might go about programming the linkage. But  
13 the patent language is pretty clear, that any  
14 conventional methodology, drag and dropping, one  
15 example, is acceptable.

16 Q. What if the instant voice message does not  
17 include additional information identifying the attached  
18 document, or to-be-attached document, and the  
19 to-be-attached document also does not include additional  
20 information to identify the instant voice message?  
21 Could they still be attached?

22 A. Sure. For example, here it states that: The  
23 document handler provides a linkage, makes the  
24 appropriate linkage, and flags the messaging system.

25 So just as a hypothetical, I could



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2 potentially write the program that would say, I'm going  
3 to identify this message and identify this file. I'm  
4 not going to do anything to them. But I'm going to stay  
5 aware of this information and send that connected  
6 information over to the messaging system. So I'm aware  
7 of the document handler. That's the "I" in this  
8 sentence. The message handler is aware. But nothing  
9 has been altered in the two files.

10 Q. Okay. So as long as the recipient device,  
11 whatever it may be, knows that those two documents were  
12 associated, they would be attached?

13 A. Yes.

14 Q. So earlier we discussed that an instant voice  
15 message may include information identifying the source  
16 information identifying the destination. Do you recall  
17 that?

18 A. Yes.

19 Q. So if you attach a document to an instant voice  
20 message using any of the conventional methods, would a  
21 person of ordinary skill in the art consider the  
22 attachment to be an attachment to all the information  
23 within the instant voice message?

24 A. I think what a person of ordinary skill in the  
25 art would understand that that's -- pardon me -- but not

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2 even -- that question isn't even wrong.

3 The information about the voice message is  
4 just identifying information for the computer.

5 Q. Uh-huh.

6 A. It has nothing to do with you as a user sending  
7 or receiving. You don't even know it's there. There's  
8 a whole bunch of stuff that goes on with all your  
9 e-mails that you're not aware of and probably don't  
10 care.

11 So what a person of ordinary skill in the  
12 art would understand is that I'm attaching a file to a  
13 voicemail. The extraneous header information that both  
14 the file has and the voicemail message has are really  
15 kind of irrelevant to that linking process.

16 Q. So earlier we also talked about the -- and  
17 maybe your last answer pretty much answered this  
18 question. But we talked about an instant voice message  
19 being included in an audio file. An example was 210 in  
20 figure 2.

21 A. Can you restate that again? I'm not sure I  
22 heard what you just said.

23 Q. Sure.

24 So earlier we were discussing an instant  
25 voice message would include an audio file, such as audio

1 WILLIAM C. EASTTOM, II

2 file 210.

3 A. Well, I wouldn't say it includes an audio file.  
4 I said it pretty much is the audio file.

5 Q. Okay. So if you attach -- let me ask you: How  
6 would you attach a document to an audio file?

7 A. Well, in the same --

8 MR. LOVELESS: Object, form.

9 THE WITNESS: Sorry. I jumped the gun.

10 A. In the same mechanisms I just described. I  
11 could conceivably have a system, in this case a document  
12 handler and a voice messaging system that are both aware  
13 that these two files are meant to go together, without  
14 touching the files, or I could just append some little  
15 small bit of information, a few bits that says, hey, you  
16 go with this other file; they go together. Both those  
17 are acceptable. And, again, the patent doesn't include  
18 one or the other. It pretty much says, I think,  
19 conventional methods.

20 Q. Let's look at figure 5 on the '622 patent, and  
21 the corresponding text, which I think is in column 15.

22 A. I have the figure and the column in front of  
23 me.

24 Q. Okay. And just to be clear, I think it begins  
25 in column 15. It goes for a few columns.

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2 What would a person of ordinary skill in  
3 the art understand figure 5 to show?

4 MR. LOVELESS: Objection, form, scope.

5 A. Well, in this case, the first few sentences are  
6 really enough for us here, starting at -- I believe it's  
7 line 31. Figure 5 is an exemplary illustration of a  
8 global instant voice messaging system 500, according to  
9 the present invention. Now, the previous ones we looked  
10 at were for locals. This is to operate on a global  
11 scale. And you can see one of the primary differences  
12 is it's specifically identifying you have IVM clients in  
13 a local network, and then you have other IVM servers and  
14 clients elsewhere that are connected via item 102, which  
15 is the internet.

16 Q. So actually looking at that figure 2 and figure  
17 5 in comparison?

18 A. One moment, please.

19 Q. Sure.

20 A. This is becoming a bit of a mess.

21 Q. Feel free to reorganize if you need to.

22 A. I will just get this organized again. Okay. I  
23 have them side by side. Thank you.

24 Q. Okay.

25 So my question is just going to be:

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2 There's the dotted line in figure 5, and I think it's  
3 identified as 510.

4 A. Actually, it's identified as 500.

5 Q. I think 500 is referring to the entire figure.

6 A. Oh, yes, I see where you're looking at 510.  
7 You're correct.

8 Q. Okay. And correct me if I'm wrong here or if  
9 you disagree. What's inside of that dotted box 510 is  
10 the local IVM system that you see in figure 2?

11 MR. LOVELESS: Objection, form.

12 A. Yes, essentially figure 510 is figure 2.

13 Q. So the only difference in terms of what you see  
14 in the figures themselves is in figure 5, you have the  
15 additional components shown there to the right of  
16 box 510, which could be the network 102, and then  
17 components 502, 506, 504, and 508?

18 A. That is correct.

19 Q. Okay. And it's the addition of those  
20 components that I just listed that make this a global  
21 IVM system --

22 MR. LOVELESS: Objection, form, scope.

23 Q. -- along with how it operates, of course?

24 A. That is correct.

25 Q. What is the difference between local IP network

1 WILLIAM C. EASTTOM, II

2 204 and an IP network 102?

3 A. Fundamentally, relevant to the patent, not a  
4 lot, other than where things are at.

5 Now, if we want to get in depth into how  
6 networks work, normally in your local network you use a  
7 different sort of address called a private IP address.  
8 On the internet you have to use public IP addresses.  
9 That really has nothing to do with how the packets are  
10 sent or how voice messages are sent, but that's part of  
11 networking.

12 So, fundamentally, the issue is whether I'm  
13 restricted to IVM clients on my actual network, who have  
14 logged-in to the same network as me, as in figure 2; or,  
15 as in figure 5, I can speak to IVM clients anywhere on  
16 the planet.

17 Q. So local IP network 204, that could be  
18 something like a corporate internet -- intra, sorry.

19 A. Corporate network.

20 Q. I was trying to say intranet, but it was not  
21 coming out. But, yes.

22 A. Well, no, not intranet. Intranet specifically  
23 refers to internet-type things like web pages that are  
24 only exposed inside your network.

25 Q. Uh-huh.

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2 A. Normally you would simply say your local  
3 corporate network. So, for example, if you two are  
4 sitting in the same office and you send him an e-mail,  
5 there's a very good chance it doesn't ever leave your  
6 corporate network. There's no need to.

7 Q. Okay.

8 A. But if you send this gentleman an e-mail, yes,  
9 it has to go out across the internet in the real world.

10 Q. Okay. So local IP network 204 could be  
11 something like a WiFi-based network, whereas 102 it says  
12 in parentheses in the figure, internet. Is that a  
13 possible --

14 A. Well, now you've mixed terms. Whether it's  
15 WiFi or hard-wired has nothing to do if it's local or  
16 internet.

17 Q. I understand. I was just presenting an example  
18 just to give my understanding of what these two  
19 different networks are.

20 A. Well, the best way I know to describe it is a  
21 local network is composed primarily of private IP  
22 addresses that is separated from the rest of the world  
23 via some gateway device, normally a gateway router.

24 Q. Okay. And what's the difference between a  
25 local IVM server 202 and a global IVM server system 502?

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2 MR. LOVELESS: Objection, form, scope.

3 A. Their scope.

4 Q. And what is the difference in scope?

5 A. 202 is only talking to IVM clients within that  
6 local network. 502 can be connected to IVM clients  
7 anywhere in the world. They could be themselves on  
8 small local networks; they could be just somewhere out  
9 on the internet. It really doesn't matter.

10 Q. So if -- well, let me ask this: So IVM client  
11 208 is connected to local IP network 204, which is  
12 within the local IVM system 510, right?

13 A. That's correct.

14 Q. If IVM client 208 wanted to communicate with  
15 IVM client 508, what would be the route that the message  
16 would take?

17 A. Well, at some point in the process, the message  
18 would have to leave the local network, which is  
19 identified in this figure as 510, and eventually make  
20 its way to the global IVM server 502 via the internet  
21 102.

22 Q. In that scenario, would local IVM server 202 be  
23 involved?

24 A. I don't recall specifically. I would have to  
25 re-examine the patent to see if it's involved in that



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2 forwarding process.

3 Q. Okay.

4 A. Although, just simply glancing, I just happened  
5 to glance, and at the top of column 16, it does state:  
6 Alternatively, the global contact list may be replicated  
7 to the local IVM server 202 within the local IVM system  
8 510.

9 So apparently there's at least some  
10 interaction between that local IVM server and the global  
11 IVM server. I would have to read further to get more  
12 details.

13 Q. Okay. Is IVM client 208 connected to the IP  
14 network 102 or just to local IP network 204?

15 A. I'm sorry. Could you say that again?

16 Q. Sure. Is IVM client 208 connected to IP  
17 network 102?

18 A. The basic structure of a network would be that  
19 it's connected to the local network 204, and that, in  
20 turn, has something like a gateway router that connects  
21 it to the internet 102. That's something anyone of  
22 person of ordinary skill in the art would be very  
23 familiar with.

24 Q. Okay. So is IVM client 208 connected to the IP  
25 network 102 as well? Sorry, I'm not sure I understood

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2 your answer.

3 A. In this diagram, it is. It goes through the  
4 local network. And the way it works in any network,  
5 even within this patent or without, if you're  
6 communicating on your local network, then your  
7 communication looks at the destination address and says,  
8 hey, you're going to the computer two cubicles over; let  
9 me just send you over there.

10 If you choose to access a resource outside  
11 your network, then the only difference is, is your  
12 nearest computer switch says, hey, that's not on my  
13 network; I need to send you to the gateway router so you  
14 can go out to the real world.

15 So, yes, you're connected to the internet,  
16 but you only utilize that connection if you want to  
17 leave your network.

18 So to answer, directly, your question, 208  
19 does have a connection to 102, the internet, and it only  
20 utilizes that when something needs to go outside the  
21 local network.

22 Q. Okay.

23 (Discussion off the record.)

24 MR. CITROEN: I think now is a good time to  
25 stop for lunch. Is that okay with you guys?

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2 MR. LOVELESS: Yes.

3 MR. CITROEN: Okay.

4 (Brief recess.)

5 Q. Welcome back.

6 A. Thank you.

7 Q. I hope you had a nice lunch.

8 A. Yes, I did.

9 Q. I'm going to hand you a document.

10 A. Thank you.

11 Q. No problem.

12 And what I've handed you should be labeled  
13 on the bottom right Samsung Exhibit 1005; is that right?

14 A. It is.

15 Q. Okay.

16 MR. CITROEN: And just for the record, this  
17 is Exhibit 1005 in both proceedings, the 1797 and 1798  
18 proceedings.

19 Q. Do you recognize this document?

20 A. Yes, I do.

21 Q. And what is this document?

22 A. It is U.S. Patent 8,150,922, otherwise known as  
23 Griffin.

24 Q. Is it okay if we refer to it as Griffin today?

25 A. That's perfectly fine.

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2 Q. Okay. And when did you first see this  
3 reference, if you recall?

4 (Discussion off the record.)

5 A. To the best of my recollection, it would have  
6 been somewhere maybe September of 2017, maybe earlier.  
7 I don't recall specifically. But at least by that date,  
8 I have seen it.

9 Q. Okay. Did you review this reference in  
10 preparation of your declarations in these two  
11 proceedings?

12 A. Yes.

13 Q. And did you review this reference in  
14 preparation for today's deposition?

15 A. Yes.

16 Q. Okay. Did you review this reference in its  
17 entirety?

18 A. Yes.

19 Q. Do you believe you've had enough time to review  
20 this reference in preparation for today?

21 A. Yes.

22 Q. Okay. If we can just go to figure 1 of the  
23 Griffin patent. And can you tell me what's shown in  
24 figure 1?

25 MR. LOVELESS: Objection, form, scope.

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Q. Then let me just ask you quickly: In forming your opinions, did you consider the disclosure of Griffin in its entirety?

A. Yes.

Q. Okay. Okay. Thank you.

Just to repeat my earlier question, what is shown in figure 1?

A. Well, the best answers comes from reading Griffin, and it states: Figure 1 is a schematic illustration of a wireless mobile terminal in accordance with the present invention.

Q. And do you know some examples of what mobile terminal 100 could be?

A. I'm sorry. 100?

Q. I think it's labeled 100, isn't it?

A. In figure 1, yes.

Q. Yes, yes.

MR. LOVELESS: Objection, form, scope.

A. Well, again, Griffin himself gives the best answer, and I'm looking at column 3 at approximately line 14: Figure 1 illustrates a wireless mobile terminal 100 that may comprise any wireless communication device, such as a handheld cellular phone or a wirelessly-enabled personal digital assistant, or

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2 PDA.

3 Q. Okay. And figure 1 includes microphone 107.  
4 What is that for?

5 A. It's a microphone.

6 Q. What does it do?

7 A. Again, Griffin gives us the best answer a  
8 little further in that same column: A microphone 107  
9 that captures audio, such as the user's speech.

10 Q. Okay. Figure 1 also shows a speaker 103.

11 A. That's correct.

12 Q. What is the speaker for in figure 1?

13 A. And, again, referring to what Griffin actually  
14 states: The mobile terminal 100 comprises a speaker 103  
15 for rendering signals such as received speech, audible.

16 Q. In other words, it allows the user of terminal  
17 100 to hear the speech message?

18 A. Well, to hear the speech. I haven't noted the  
19 word "message" yet, but to hear "speech," yes.

20 Q. Okay. And what is the push-to-talk button 101?

21 A. Push-to-talk button 101 allows the user to  
22 initiate recording and transmission of audio.

23 Q. So what is your understanding what would a  
24 person of ordinary skill in the art understand that to  
25 mean?

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2 A. Push-to-talk allows recording of audio and then  
3 transmitting of the audio.

4 Q. So an example would be holding down a button on  
5 terminal 100 while you transmit or record speech, and  
6 then you let it go to transmit the audio?

7 A. Well, we haven't dug that far yet, that the  
8 letting go causes it to transmit. But other than that,  
9 yes, I agree with what you stated.

10 Q. And is it true that Griffin describes a  
11 scenario where the push-to-talk button may be omitted or  
12 replaced with automatic voice detention mechanisms? And  
13 you can see that further down in column 3, line 35.

14 A. Thank you. Yes.

15 Q. What does that mean, "automatic voice  
16 detention," or what would a person of ordinary skill in  
17 the art understand that to mean?

18 A. You would have some mechanism within the  
19 hardware to detect someone is speaking and decides to  
20 start recording that speech, presumably, based on  
21 frequency, decibel level, that sort of thing.

22 Q. So when we were talking about push-to-talk  
23 button 101, it mentioned that it would be used to  
24 initiate recording and transmission of audio. And in  
25 the latter scenario that we just discussed where the

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2 button 101 is omitted and replaced with automatic voice  
3 detention mechanisms, what would be a person of ordinary  
4 skill in the art's understanding of how the recorded  
5 speech would then be transmitted if there's no longer a  
6 button 101?

7 MR. LOVELESS: Objection, form.

8 A. Presumably, when there's been a period of  
9 silence that you quit talking.

10 Q. So after the period of silence, it would then  
11 transmit?

12 A. Yes.

13 Q. So looking down in column 3, line 43, it says:  
14 The input devices available on the wireless mobile  
15 terminal (e.g., keypad, soft keys, et cetera) may be  
16 employed by a user of the wireless mobile terminal to  
17 initiate a session of chat software, when the operation  
18 of the chat software to initiate one or more chat  
19 conversations as described in greater detail below.

20 What's your understanding of the chat  
21 software that's described here? What is the purpose of  
22 it in Griffin's system?

23 MR. LOVELESS: Objection, form --

24 A. One moment, please.

25 MR. LOVELESS: -- scope.



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2 Q. Sure.

3 A. Well, if you look at column 4 and you get to  
4 approximately line 11, preferably, when a plurality of  
5 users chat together, i.e., send chat messages from one  
6 terminal 100 to another, data comprising text, speech,  
7 and/or graphical messages, or some combination thereof  
8 are sent to the server complex 204.

9 Q. So the chat software is what provides that  
10 functionality?

11 A. Yes.

12 Q. So the portion we just read in column 4 relates  
13 to sending speech and/or graphical messages to the  
14 server 204.

15 Would the chat software also handle the  
16 reception of speech and/or graphical messages from the  
17 server 204?

18 A. One moment, please.

19 Q. Sure.

20 A. Yes, I believe so.

21 Q. Are you -- are you looking at a certain portion  
22 of Griffin?

23 A. Well, beginning not too long after where we  
24 were just at, a line about 27: Figure 3, illustrates in  
25 more detail components found in both the terminals

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2 100 --

3 In other words, there would be more than  
4 one.

5 -- and the server complex 204 used to  
6 exchange group speech and text messages.

7 And then if I looked over at figure 3,  
8 which is where I was just glancing, we can see we have a  
9 mobile terminal with a server complex. And, presumably,  
10 there's another mobile terminal on the other side to  
11 receive the messages.

12 Q. Okay. Look at figure 2 now of Griffin. And  
13 can you just tell me in your words what Griffin shows in  
14 figure 2?

15 MR. LOVELESS: Objection, form, scope.

16 A. Again, Griffin is the best place to see what he  
17 means. And if I look at column 3, at approximately line  
18 49: Figure 2 illustrates the overall system  
19 architecture of a wireless communication system  
20 comprising a plurality of mobile terminals 100 in  
21 accordance with the present invention.

22 So reading that and referring back to  
23 figure 2, I notice there are four mobile terminals 100;  
24 there are two separate wireless carriers that are in  
25 turn talking to a network 203; and there's ultimately a

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2 server complex 204.

3 Q. Are the mobile terminals 100, they're labeled  
4 the same as the terminal 100 that we discussed in figure  
5 1, correct?

6 A. Yes, I believe those are each figure 1s.

7 Q. Okay. And in Griffin's system, would these  
8 terminals 100 be able to communicate with each other?

9 A. Well, at some level, yes. I don't know at this  
10 point. We haven't discussed yet the nature of the  
11 communication. But they do send messages to a server  
12 complex that are then retrieved from the server complex  
13 by other mobile terminals.

14 Q. What is server complex 204 that's shown in  
15 figure 2?

16 A. Well, it's mentioned several times in Griffin,  
17 but I think one of the better places to see what it  
18 really does is on column 5, approximately line -- I  
19 think that's 43: The server complex 204 may also  
20 include a plurality of other components, like  
21 speech-to-text and text-to-speech translators, natural  
22 language translators, voice transcoders, and other  
23 similar information gateways to transform the message,  
24 its contents, and any attachments, e.g. ring tones,  
25 images, and so on, to a more meaningful and usable

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2 format by the receiver.

3 Based on that reading and the other parts  
4 of the Griffin patent, the server complex is sort of a  
5 central focal point for the entire process.

6 Q. Does it receive speech and/or graphical  
7 messages from terminal 100?

8 A. From a terminal 100, yes.

9 Q. And does it send copies of the received  
10 messages out to target terminals 100?

11 A. One moment, please. Yes.

12 Q. And what are you looking at to base your answer  
13 on?

14 A. Well, I began in column 6 briefly reading from  
15 approximately line 37 through column 7, approximately  
16 line 17, and what I was trying to refresh my memory on  
17 was does this simply indicate there's a message for  
18 retrieval, or does it actually send it.

19 Now, there's complexities to how it sends  
20 it. Apparently it has to extract the address of the  
21 receiver from another methodology using their nickname,  
22 and then discover where it needs to send it to. But  
23 then it does say, and I'm reading at about line 10 of  
24 column 7: The message broadcaster 303 extracts the  
25 receiver's address 703 from the presence manager 302 and

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2 sends the inbound message 500 to the receiver's terminal  
3 100 via the router 301.

4 Q. Okay. You were just reading from column 7,  
5 line 8 to 11, correct? You may have said that.

6 A. I think it's about 8, yes.

7 Q. Okay. So it's the message broadcaster 303  
8 that's responsible for sending speech or graphical or  
9 text messages to target terminals 100?

10 A. That's correct.

11 Q. If you look at figure 3, there's a voice codec  
12 307.

13 A. I do see that.

14 Q. Are you familiar with voice codecs?

15 A. Yes, and with codecs in general.

16 Q. Okay. In the time frame around December 2003,  
17 what was a voice codec?

18 A. Well, first we have to define what a codec is  
19 in general. It's normally a formatting mechanism. So a  
20 voice codec would have been a particular methodology for  
21 formatting voice. A video codec would have been the  
22 same thing for video.

23 Q. And what was the purpose of having the codec?

24 A. Well, you have to have a standard format so  
25 that various software can play it. Again, using the

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2 video example because it's much more prevalent, whether  
3 you're using QuickTime or iTunes or what have you, they  
4 all understand the codec for AVI files; and, therefore,  
5 they can all play an AVI. And it doesn't matter if you  
6 recorded that AVI on a Macintosh computer and sent it to  
7 someone running a Windows 10 because they all understand  
8 that codec.

9 The same purpose is used in voice codec.  
10 If I have voice files that are formatted in a particular  
11 fashion, then I'm not concerned with the particular  
12 hardware or operating system you're utilizing. As long  
13 as you recognize that codec, you can replay the voice.

14 Q. Okay. So if you have an audio file, an MP3?

15 A. Yes.

16 Q. You would need a codec in order to play it?

17 A. A MP3 defines a particular codec. That's what  
18 the MP3 standard is.

19 Q. I see.

20 A. And so as long as you have software that  
21 understands that codec, you can play it. And that's a  
22 really great example. That's why you can play the same  
23 MP3 file on your iPhone, your Samsung phone, your  
24 Windows computer, your Lenox computer, or whatever.

25 Q. So is it universal, or does each platform have

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2 a different codec?

3 A. Well, that's a yes-and-no question. The codec  
4 itself defines an interface that you need to use, but  
5 that's going to be obviously implemented a little  
6 differently in, say, Android than it is in, say,  
7 Windows. But as long as they all follow the standard,  
8 you now have a file that's universal.

9 Q. Okay. And codecs are used to encode -- the  
10 voice codec, I should say, that's used to encode speech?

11 A. Yes.

12 Q. What does it mean to encode speech?

13 A. Put it in a particular format.

14 Q. So that -- using the MP3 example again. So you  
15 would take speech and encode it so that it's an MP3  
16 file?

17 A. That's precisely correct.

18 Q. And then to decode speech, that would be  
19 taking, for example, an MP3 file and then decoding it so  
20 that you can audibly play it on a speaker?

21 A. Somewhat. If you have an MP3-compatible  
22 software on the receiving end, there's no need to decode  
23 it; it's capable of playing MP3 files. The whole  
24 purpose of encoding it was so that we don't have to go  
25 back and forth all the time. Once you put something in

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2 MP3, any MP3-compliant player will be able to play it.

3 Q. Okay. Can you explain to me, then, what  
4 Griffin means in column 4, line 54 to 56, where it's  
5 talking about decoding?

6 A. Line what?

7 Q. 54 to 56, column 4.

8 A. Well, you notice what Griffin actually says is:  
9 Similarly, the voice from the server complex may, when  
10 necessary --

11 Q. Uh-huh.

12 A. -- be decoded using the voice codec.

13 I believe -- I mean, I haven't spoken to  
14 Mr. Griffin, so I don't know this for a fact, but I  
15 believe that what he was envisioning is at least the  
16 possibility that you have a scenario where I have to  
17 decode this into some other format and we could still  
18 play it. He's just envisioning that possibility.

19 But at the time of the invention and now,  
20 that wouldn't be a common scenario.

21 Q. Okay. So an example would be if, for some  
22 reason, your system doesn't handle MP3 files, you would  
23 need to decode it and then put it into some other format  
24 that your system can handle?

25 A. Precisely.



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2 Q. Okay.

3 Otherwise, that system wouldn't be able to  
4 audibly play the speech tape?

5 A. Correct.

6 Q. Okay. Thank you.

7 So looking at figure 3 again, so we have  
8 the mobile terminal 100 and server complex 204. Mobile  
9 terminal 100 has a network interface 306. And that --  
10 so is that connected to the router, the server complex,  
11 which is labeled as 301?

12 A. Yes, the diagram shows a connection from the  
13 network interface to the router.

14 Q. What's the difference between a network  
15 interface and the router?

16 A. Oh, that's a really good one.

17 Network interfaces allow you to take data  
18 and put them on some network medium.

19 For example, the laptop you have sitting in  
20 front of you I am certain has at least two network  
21 interfaces, one for me to plug a cable into if you're on  
22 a hard-wire network, and a second one for WiFi.

23 The problem is that just sends a packet out  
24 there. Where do we take it from there? I mean,  
25 presumably, you're sending the packet to some

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2 destination. The purpose of a router is to look at  
3 packet headers and then to literally route the traffic  
4 along the correct path based on the destination.

5 This is easily seen if you watch your  
6 traffic between, say, your computer and a very  
7 well-known website, let's say Samsung's website. I'm  
8 willing to bet that you would have at least 10 or 12  
9 different immediate steps, hops. So what the router is  
10 responsible for is determining what is the next step to  
11 get you from your machine to Samsung's website.

12 Q. Okay.

13 A. Traffic direction.

14 Q. So how come terminal 100 doesn't have a router  
15 shown in figure 3 to help route the packets?

16 A. Well, this is something that I think one of  
17 ordinary skill in the art would immediately understand.  
18 The devices never have a router in them. Your computer,  
19 your laptop in front of you does not have a router in  
20 it; your phone does not have a router in it, because the  
21 router has to have, first of all, a mechanism for  
22 directing traffic.

23 Normally a router will have multiple ports,  
24 could be eight ports, could be 32, could be 64, in a  
25 very large-scale router. And so it looks at the packet

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2 it's received; it looks at the headers, telling it the  
3 destination; and determines which path is next.

4 To use an analogy, your laptop or, in this  
5 case, mobile terminal 100 is very much like a car, and  
6 it comes to an intersection. The traffic lights are the  
7 router determining which way to go. Well, your car  
8 cannot do that itself because it's not aware of all the  
9 others cars and all the other possible destinations.

10 The router is.

11 Q. Okay. Figure 3 in the server complex 204 also  
12 shows a presence manager 302. What is the presence  
13 manager, 302?

14 A. One moment, please.

15 Q. Sure.

16 A. The presence manager has a few functions that  
17 are explained in different parts of the patent.

18 If you look at column 8, starting at line  
19 1: The presence manager 302 may send buddy list to  
20 update messages 600 to terminal 100 upon receiving a  
21 refresh request from the terminal 100.

22 So the presence manager, among other  
23 things, is going to, when requested for a refresh, let  
24 the terminal 100 know there has been a change of some  
25 type in the buddy list; perhaps someone's available now

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2 that was not previously available; someone was  
3 previously available and they're not now, that sort of  
4 thing.

5 Q. So does the presence manager maintain the  
6 status of terminals in Griffin's network?

7 A. It maintains presence information about the  
8 terminals and/or the users.

9 Q. So is it -- I'm looking at column 5, if it's  
10 helpful, starting around line 9: The presence manager  
11 maintains status using a table such as that shown in  
12 figure 7.

13 A. Well, I'm assuming you meant around line 11,  
14 because line 9 starts discussing the broadcast, message  
15 broadcaster 303.

16 Q. Uh-huh.

17 A. At line 11 it states: It then queries the  
18 presence manager 302 to establish the recipient's  
19 current status 702, i.e., an indicator whether the  
20 recipient is ready to receive the particular type of  
21 message, speech, and/or text message only, et cetera;  
22 and the terminals address 703. Figure 7 illustrates a  
23 table with the plurality of presence data record 700  
24 contained within the presence manager.

25 Now, this is very interesting, because

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2 obviously he's labeled the presence manager 302, but  
3 here he says within the presence manager 303. So I'm  
4 assuming that was a typo on his part. I won't hold it  
5 against him. I'm known for typos myself.

6 And then, of course, I refer to figure 7,  
7 where it shows me an ID, a status, an address, a public  
8 nickname, a public short name, and a subscriber ID.

9 Q. I'm sorry. You're looking at figure 7?

10 A. That is accurate.

11 Q. So in figure 7, is that showing a record for  
12 different -- or strike that.

13 Is each row a record for a terminal 100?

14 A. Well, it appears to be a record for an ID, but  
15 I would assume that that matches a particular terminal.  
16 But, for example, ID 136, is that some particular  
17 terminal?

18 Q. So the status in each record is shown in column  
19 702.

20 What would a person of ordinary skill in  
21 the art understand the status of "off" to be?

22 A. Unavailable for any communication at all.

23 Q. Would it mean that they're not connected?

24 A. Simply that they're unavailable for whatever  
25 reason. They may have simply declined to communicate.

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2 Q. So they may be connected, just have indicated  
3 that they're not free to communicate?

4 A. I don't recall that being explicitly  
5 differentiated in Griffin. I may refresh my memory and  
6 discover that. But what I do recall is "off" simply  
7 means you can't communicate with them in any fashion.

8 Q. Okay. It just doesn't explain?

9 A. I don't recall it explaining right now.

10 Q. Okay. Excuse me.

11 And the status "available" that's shown for  
12 one of the records, what would a person of ordinary  
13 skill in the art understand "available" to indicate?

14 A. Well, it's best for in contrast with the third  
15 record, which is "text only." It would seem to one of  
16 ordinary skill in the art that "text only" means --  
17 excuse me -- "available" means that person is available  
18 or that ID is available for any sort of communication,  
19 voice or text or graphical.

20 Q. Okay. And then the "text only" means that  
21 they're connected but they can only do text?

22 A. They're only receiving texts, for whatever  
23 reason. I don't recall the specific reasons given at  
24 this point.

25 Q. Okay. So just to make sure I understand. So

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2 "available," you would be connected and you can receive  
3 any type of message. "Text only," you're connected but  
4 you can only send texts? Is that what you said? Or  
5 receive texts.

6 A. You can only receive texts.

7 Q. Okay. But that's otherwise correct, what I  
8 just stated?

9 A. Yes. And this is an important question because  
10 pretty much the focus of Griffin was updating these  
11 buddy lists. That's what it's all about, is giving you  
12 indications of availability and types of availability.  
13 It's the entire purpose of Griffin.

14 Q. Okay. So on that point maybe let's look at  
15 figure 9.

16 A. I'm sorry. Figure what?

17 Q. I'm sorry. 9, of Griffin.

18 A. I have it in front of me.

19 Q. Okay. Can you just tell me what figure 9  
20 shows, please?

21 A. One moment, please.

22 Again, Griffin himself is the best to  
23 explain what Griffin does, and I'm looking right now at  
24 column 8, line 15: Figure 9 illustrates a buddy list  
25 display with entries sorted alphabetically. In a

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2 preferred embodiment, the screen 102 is divided into  
3 three regions.

4 So this is a buddy list display.

5 Q. So let's talk about the first region of the top  
6 region, the topmost region. I think it begins  
7 describing it at line 17 of column 8. I believe it  
8 refers to it as the title bar region 901.

9 A. That is correct.

10 Q. Okay. Looking at figure 9, there's an icon  
11 labeled 904. What is that?

12 A. This is the user's own presence indicator; in  
13 other words, I'm the person using this. And according  
14 to Griffin right there a few lines past, where you were  
15 directing my attention, it states: The title bar 901  
16 comprises the user's own presence indicator 904.

17 Q. And then I see 24 it continues with: The  
18 presence indicator 904 is an icon that varies in  
19 appearance, depending on the presence status 702, and  
20 then it goes on.

21 A. That's correct.

22 Q. Okay. So 904 corresponds to the presence  
23 status 702 that we discussed in figure 7?

24 A. For the user, yes.

25 Q. For the user of that terminal?



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2 A. That's correct. That also illustrates the  
3 earlier point we made that, clearly, the user in Griffin  
4 can determine what he's available to receive because why  
5 else would you want a presence indicator for yourself.  
6 You know if you're online or connected or not. This is  
7 more to the effect of I'm saying I only want text  
8 messages.

9 Q. Okay.

10 A. I don't want any voice right now. And this is  
11 a big part of Griffin, the whole idea of you displaying  
12 your own presence, you filtering what people can send  
13 you.

14 Q. Okay. Looking at figure 9, there's a similar  
15 icon shown, and it's a different label, 911. So is that  
16 the presence indicator for other users or other  
17 terminals, other than the terminal that's currently  
18 being used that this is displayed on?

19 A. One moment, please.

20 Q. No problem.

21 A. The buddy's present status, 911, and that's at  
22 approximately line 50 of column 8. So, yes, these are  
23 whichever nickname you're looking at. So, for example,  
24 nickname 10 that's highlighted, that graphic, which  
25 would be 911, is the one that indicates that person's

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2 status.

3 Q. Okay. What is icon 905? And it's in that  
4 topmost region of figure 9.

5 A. It -- again, just to read Griffin himself,  
6 starting at about line 29 of column 8: Preferably, the  
7 inbound chat message indicator 905 is an icon  
8 accompanied by an audible sound when the icon is first  
9 displayed.

10 So it indicates you have a chat.

11 Q. A chat. I'm sorry. Where were you reading  
12 from?

13 A. Approximately, I believe that that's line 29  
14 from column 8.

15 Q. Oh, I see. And it looks like it goes on. Line  
16 30: Combine the visual and audible notice, indicate to  
17 the user there is at least one unheard and/or unread  
18 inbound chat message that has arrived at the terminal  
19 100?

20 A. That's correct. And then the portion I read  
21 mentioned an audible indicator as well as the graphical.

22 Q. I see. So when that icon -- when you first --  
23 if you don't have any messages, I suppose, when you  
24 first receive one, it's going to display this icon 905  
25 and also play an audible sound?

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2 A. Well, hopefully, to use Griffin's word,  
3 "preferably accompanied by an audible sound." So  
4 apparently that isn't required, but it's a preference.

5 Q. It says when it's first displayed. So I  
6 suppose if you receive another message, it won't play  
7 the sound again, but the icon would remain visible?

8 A. Well, Griffin doesn't, to my recollection,  
9 explain that in any detail. But based on what we just  
10 read, that seems like a reasonable inference.

11 Q. So in this sentence from line 30 to 32 of  
12 column 8, it says "at least one unheard and/or unread  
13 inbound chat message."

14 What would a person of ordinary skill in  
15 the art understand by "at least one"?

16 A. Well, this goes back to the inference you just  
17 made that I think is correct. The only thing I can tell  
18 if I see that little icon and hear a sound is there's at  
19 least one message. There could be 1,000 for all I know,  
20 but there's at least one that I haven't listened to or  
21 read yet.

22 Q. Okay. And in that same sentence, "unread," is  
23 that referring to text chat messages?

24 A. Well, since it says "unheard and/or unread,"  
25 I'm going to assume "unread" is logically inferred to be

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2 text, and "unheard" is logically inferred to be voice.

3 Q. So with figure 9, if a user using terminal 100  
4 that's displaying this buddy list wanted to communicate  
5 with any of these terminals that are displayed, how  
6 would they go about doing that?

7 A. One moment, please.

8 Q. Sure.

9 A. Well, the first step in the process is  
10 indicated at approximately line 39 of paragraph 8: In  
11 the middle of region of the display is a content region  
12 903. In the case of the buddy list display, the  
13 software preferably places a multiselection list in the  
14 content region.

15 One of ordinary skill in the art would  
16 understand that that means you can select more than one,  
17 a multicontext selection.

18 Which list has a plurality of entries, each  
19 representing a buddy, that was received by the terminal  
20 from the server complex 204 in a buddy list update  
21 message and stored in temporary storage 309. Each entry  
22 can be highlighted, 908, by the user. Highlighting and  
23 navigating list entries are implemented using common  
24 techniques in the art.

25 So based on this reading, the first step is

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2 to highlight one or more buddies in your buddy list.  
3 Now, if we go a little further and we're to column 9,  
4 starting at line 1: If the user activates the left soft  
5 key with a single click, referred to onward as single  
6 clicking, the highlighted entry 908 is selected or  
7 deselected if it's already selected; and consequently,  
8 its selection indicator 906 changes to reflect a new  
9 state.

10 Now, if we continue reading on -- let me  
11 skip down just a little bit.

12 When you get down to approximately line 17,  
13 I think, in column 9, it begins to discuss the soft key  
14 label as chat, as opposed to voice. So once you have  
15 selected one or more buddies, you can then record or  
16 transmit a speech message or start a text thread.

17 Q. Look at figure 11, please.

18 A. Certainly.

19 Q. Just let me know when --

20 A. I have it in front of me.

21 Q. And do you agree this is disclosing the -- or  
22 illustrating the chat history display that's described  
23 in Griffin?

24 A. That is precisely the language Griffin even  
25 uses.

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2 Q. Got something right.

3 And it says that in column 10, line 20,  
4 chat history display?

5 A. Exactly.

6 Q. And what does the chat history display?

7 A. A history of messages you have received to  
8 date, and it indicates in figure 11 that these could be  
9 -- there are some text messages, I believe. I believe  
10 1105 is a voice message.

11 Q. And does the chat history display include both  
12 inbound chat messages and outbound chat messages, or  
13 could it, I should say?

14 A. Actually, Griffin again explicitly details this  
15 just a little -- a few lines beyond where we were just  
16 reading: The content region 903 of the display is a  
17 single selection list comprising a plurality of entries  
18 representing inbound chat messages 500, received by the  
19 terminal 100, and a plurality of entries representing  
20 outbound chat messages 400 transmitted by the terminal  
21 100.

22 Q. That was column 10, line 20 to 25?

23 A. I think it started about line 21, but yes.

24 Q. Okay. So the terminal 100 can store both  
25 messages it's received and the messages that it has

1 WILLIAM C. EASTTOM, II

2 sent?

3 A. Well, I haven't seen yet that it's storing it.  
4 I've seen that it's representing them.

5 Q. Okay.

6 A. I don't have that specific recollection. I'm  
7 sure we'll get into that as we go forward in Griffin.

8 Q. Is it possible to display a message if it's not  
9 stored on the device in some way?

10 A. Certainly. For example, most e-mail servers  
11 give you the option of leaving the e-mail on the server.  
12 But you're displaying it and looking at it in your  
13 inbox. I don't do that, but you could if you wanted to.

14 Q. And the next sentence that starts on line 25 in  
15 column 10 refers to echoing back messages. What is that  
16 referring to?

17 A. Well, again, to read what Griffin actually  
18 states: Outbound chat messages are preferably echoed  
19 back to the center, in full or in part, e.g., speech  
20 messages might not include the actual speech sent in the  
21 form of inbound messages.

22 In other words, he's stating here that if I  
23 send out a message, at least a part of it is echoed back  
24 to me to be displayed.

25 Q. Okay.

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2 A. And he specifically says if it's a speech  
3 message, I might just give you enough to indicate the  
4 message and not the entire voice.

5 Q. So it could either include the speech, but it  
6 may not?

7 A. Correct, and this is actually an answer to your  
8 previous question. Clearly, in at least some scenarios,  
9 Griffin is displaying a message, but it didn't store it,  
10 or at least didn't need to store it for this purpose.

11 Q. Okay. So in some scenarios, it won't store it;  
12 in some, it will?

13 A. Well, we haven't explicitly got to that level  
14 of detail in Griffin yet, but that seems a possibility  
15 based on the text we just discussed.

16 Q. So figure 13, I'd like to ask you about that  
17 figure in Griffin.

18 A. Certainly.

19 Q. And it states that it illustrates a detailed  
20 view display of an inbound chat message 500.

21 And I'm reading from column 12, line 9 --  
22 or, sorry, 18 to 19.

23 A. Correct.

24 Q. And I think it also describes figure 13 in  
25 column 3, line 4 to 6, where it says it's a, quote:



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2 Display of a single communication message in accordance  
3 with the present invention. End quote.

4 A. Correct.

5 Q. So is your understanding that figure 13 is  
6 displaying, as an example, one of the incoming messages  
7 that it displayed in figure 9 -- or, I'm sorry,  
8 figure 11?

9 A. That's correct.

10 Q. If it was a speech chat message, is that  
11 message played back to the user -- well, let me strike  
12 that, please.

13 If you look in column 12, starting at line  
14 38, Griffin explains: Click holding the right soft key  
15 presents the user options such as playing back the  
16 available speech.

17 And it goes on. I want to ask you about  
18 click holding the right soft key to play the available  
19 speech. Do you understand what that's referring to with  
20 respect to figure 13?

21 A. Yes.

22 Q. What is that?

23 A. First of all, soft keys, if you have a scenario  
24 in which a full-size keyboard is either unavailable or  
25 impractical, you could display a softer version of the

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2 keyboard on the screen, so it's a soft key. And in this  
3 case, we're back, I think you said 38. Holding the  
4 right soft key gives you the option of playing back the  
5 speech.

6 So they have a few keys that are software  
7 keys, not physical, tangible keys, that are on the  
8 display, and if the user clicks and holds the right one,  
9 presumably, while highlighting a message, they get the  
10 option of listening to that speech.

11 Q. And I just noticed. So column 12, line 35, it  
12 says: The right soft key label 607 is right.

13 A. Correct.

14 Q. And I -- just looking at figure 3, there is a  
15 soft key on the right --

16 A. Uh-huh.

17 Q. -- bottom that has "right" written there, but  
18 it's labeled 1307. I presume that's a typo then in the  
19 spec because it labels it as 607 in the spec.

20 A. I would agree with that. One or the other is a  
21 typo. It's not really material to my analysis.

22 Q. Okay.

23 A. I can't really hold typos against people.

24 Q. I make them all the time.

25 So a user could click -- if this was a

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2 speech chat message, would click that right soft key in  
3 figure 13, which in the figure itself is labeled 1307,  
4 and they would be given the option to play back the  
5 speech message?

6 A. Well, presumably, click and hold, not just a  
7 quick click, but it says "click holding."

8 Q. So click holding the key?

9 A. It usually means holding it down for a short  
10 period of time.

11 Q. Understood. Okay.

12 MR. CITROEN: Why don't we take a break?

13 (Brief recess.)

14 Q. Welcome back.

15 A. Thank you.

16 Q. Just let me hand you another document here.  
17 And this document should be labeled Samsung Exhibit 1006  
18 in the bottom right corner.

19 A. It is.

20 MR. CITROEN: And for the record, this is  
21 Exhibit 1006 for both proceedings at issue today.

22 Q. And do you recognize this document?

23 A. Yes, it's an international patent. I believe  
24 we've been calling it Zydney after the named inventor.

25 Q. Is it okay if we refer to it as Zydney, Ziz --

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2 strike that.

3 Is it okay if we refer to this as Zydney  
4 for purposes of our deposition?

5 A. Yes, yes.

6 Q. Okay. I promise I'm not trying to make up a  
7 new name for it to confuse everyone.

8 Okay. And before I start asking questions  
9 about Zydney, have you had any discussions with counsel  
10 today regarding your testimony?

11 A. No.

12 Q. Okay. So have you reviewed this document in  
13 its entirety before today?

14 A. Yes.

15 Q. And did you review this document in preparing  
16 your declarations for these proceedings?

17 A. Yes.

18 Q. And did you also review this document in  
19 preparation for today's deposition?

20 A. Yes.

21 Q. Have you had -- do you believe you've had  
22 enough time to review this document --

23 A. Yes.

24 Q. -- for today's deposition?

25 A. Yes.

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2 Q. Okay. And you considered the teachings of  
3 Zydney in forming your opinions?

4 A. Yes, I did.

5 Q. Okay. So looking at the title on the cover,  
6 which is towards the bottom, Zydney has as its title  
7 Method and System for Voice Exchange and Voice  
8 Distribution. Do you see that?

9 A. Yes.

10 Q. And looking at the abstract underneath that, it  
11 again says, A method for voice exchange and voice  
12 distribution between users and computer networks  
13 comprising the following steps.

14 And then it has a few steps there. Do you  
15 see that?

16 A. Yes, I do.

17 Q. Okay. So, in your opinion, what is the purpose  
18 of Zydney?

19 A. It's a good question. Zydney was completely  
20 focused, and this whole concept of a container for voice  
21 messages, and the bulk of the patent goes to the  
22 construct and utilization of that container.

23 Q. And does it describe the exchange of messages  
24 using these containers?

25 A. Well, it describes the exchange of the

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2 containers which happen to have messages in them. I  
3 think it's very important, though, to differentiate  
4 between a container and content.

5 For example, I have this glass of water  
6 here, and I find the water very refreshing and I enjoy  
7 ingesting it, but I doubt very much I would enjoy  
8 ingesting the glass.

9 Q. Okay. What's your understanding of Zydney's  
10 voice containers? What are they?

11 A. Well, to answer that, it's best if I refer back  
12 to my actual declaration, if you'll give me just one  
13 moment, please.

14 Q. Okay.

15 A. Because I believe I discussed this at some  
16 length within that declaration.

17 Well, beginning on paragraph 33 of my  
18 declaration, Zydney explains -- and here I quote Zydney:  
19 The present invention is a system and method for voice  
20 exchange and voice distribution using a voice container.

21 Now, in a later sentence I state: Those  
22 voice containers -- and again I'm quoting from Zydney --  
23 can be stored, transcoded, and routed to the appropriate  
24 recipients instantaneously or stored for later delivery.

25 Now, throughout this, I discuss at length

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2 Zydney's reliance on voice containers. It describes a  
3 container object, and, in fact, again, I quote from  
4 Zydney frequently in here, so it's not merely my  
5 opinion; it's Zydney's statements.

6 Looking again at paragraph 33: A voice  
7 container is a container object that contains no methods  
8 but contains voice data or voice data and voice data  
9 properties.

10 So I think that a person of ordinary skill  
11 in the art would easily understand this. Zydney's  
12 containers and object, and I mention in my declaration,  
13 and I'm happy to elaborate on here, that objects are  
14 well known in programming. Particularly Java and C++  
15 programmers would be very familiar with these.

16 Q. What are the software agents in Zydney?

17 A. Well, again, I actually address that directly  
18 in my declaration, and about -- towards the bottom part  
19 of paragraph 34: The software agent of the recipient  
20 unpacks the voice container, including the various  
21 files.

22 So one of the interesting or important  
23 activities of the software agent is to, on one end,  
24 unpack; and then just before that, I discuss on the  
25 sending end, it compresses it. So the software agent

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2 is, among other things, responsible for compressing  
3 everything into these containers on the sending end, and  
4 then unpacking it on the receiving end.

5 Q. The software agent, is that something that  
6 would be, for example, on a PC?

7 A. Well, a software agent would be easily  
8 understood by one of ordinary skill in the art to be  
9 essentially a small program.

10 Q. Okay. So it can be on a number of different  
11 devices?

12 A. Any computing device capable of executing the  
13 program based on the programming language it might be  
14 written in.

15 Q. And what is a central server in ZydneY?

16 A. I'm going to have to refresh my memory. I  
17 don't recall if I discussed that in any detail in my  
18 declaration, so let me just take a peek inside ZydneY  
19 here.

20 If we get to page 13 of ZydneY -- and,  
21 unfortunately, it's not formatted like U.S. Patents, so  
22 I can't give you a column and line. It's the second  
23 paragraph from the bottom. ZydneY says: The central  
24 server provides the following functionality. Register  
25 and authenticate the senders and receivers, control the



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2 identifiers of software agents, maintain and provide the  
3 status of all software agents, store the voice container  
4 if the recipients are not available, convert the voice  
5 container for PSTN, public switch telephone network, and  
6 generate outgoing calls and emulate the software agent  
7 when the sender or recipient is a traditional phone or  
8 other voice container-enabled device.

9 Q. It looks like there's, on the next page, 14,  
10 the second full paragraph, Central server.

11 A. Certainly. And I'll be happy to read that as  
12 well.

13 Central server. The central server, in  
14 conjunction with the software agent, controls, stores,  
15 and switches the voice containers to the appropriate  
16 recipients. The server will initially register and  
17 authenticate the software agent. It will track and  
18 maintain the status of all software agents. It will  
19 notify the software agent to send the voice container  
20 directly to the recipient if the recipient is available,  
21 or it will store the voice container for the intended  
22 recipient if the recipient is not available. In  
23 addition, it will also convert the voice container for  
24 delivery over traditional phone networks if the  
25 recipient is a phone or to other voice container-enabled

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2 devices.

3 It's a great paragraph to direct my  
4 attention to. We see here the word "voice container."  
5 I ran out of account of how often it's mentioned in a  
6 single paragraph, which illustrates my earlier point  
7 that Zydney is all about these containers.

8 Q. Okay. So in that paragraph you read: It will  
9 notify the software agent to send a voice container  
10 directly to the recipient if the recipient is  
11 unavailable but will store the voice container for the  
12 intended recipient if the recipient is not available.

13 So in Zydney the server is responsible for  
14 directing messages based on the availability of software  
15 agents?

16 A. No.

17 Q. No?

18 A. That's incorrect.

19 Q. How do you interpret this sentence?

20 A. Well, very simple. It's responsible for  
21 directing containers, depending on whether or not the  
22 recipient is available or not. Those containers happen  
23 to have a voice message in them. But Zydney, when you  
24 read Zydney, the message itself is almost extraneous.  
25 It's the container that's important. And, presumably,

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2 you could put anything you want in that container. It  
3 wouldn't have to be a voice message.

4 Q. I see. So the only part of what I said that  
5 you didn't agree with was I said "message" instead of  
6 "voice container"?

7 A. Yes, but that's a nontrivial part given how  
8 many times the word "container" appears in just one  
9 paragraph. I'd say that's a pretty substantial  
10 difference.

11 Q. Well, let me just rephrase.

12 A. Please.

13 Q. So the server is responsible for directing  
14 where the voice containers are sent based on the server  
15 determining the availability of the software agents?

16 A. I would agree with that, yes.

17 Q. Okay.

18 Does a server send the availability of  
19 software agents to all the software agents that are in  
20 the system?

21 A. Give me just one moment because I don't recall  
22 and I need to refresh my memory.

23 Well, sitting here, I cannot find where it  
24 explicitly states that. That may be just a lapse in my  
25 memory.

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2 If you could point me to a part of Zydney  
3 and refresh my memory, that would be helpful.

4 Q. Let me see. Maybe one place is on 13, the same  
5 paragraph you read from before the second to last. One  
6 of the clauses says "maintain and provide the status of  
7 all software agents."

8 A. And that might suggest what you're stating, but  
9 that one phrase is not clear enough to conclude that  
10 with any level of scientific certainty. Not sure who  
11 it's providing it to. It's obviously maintaining it.  
12 How it's providing it, I don't know. And, again, this  
13 could be just a lapse in my memory. I just don't recall  
14 that specific segment of Zydney.

15 Q. Okay. And the bottom of page 14, the last  
16 paragraph, which runs on to the next page --

17 A. One moment, please.

18 Q. Sure.

19 A. Okay. I've read it.

20 Q. So reading that sentence, what is your opinion  
21 on whether the server sends the status of software  
22 agents to other software agents?

23 A. It does. In fact, the specific sentence that  
24 jumps out to me now that you've helped to refresh my  
25 memory is: The status of all recipients entered

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2 software agent is frequently conveyed to the software  
3 agent by the central server.

4 Now, unfortunately, I don't know exactly  
5 how those software -- how those recipients were entered  
6 into the software agent. Previous in this paragraph it  
7 does say that a list of names that have been previously  
8 entered into the software agent. So if I'm reading this  
9 paragraph in its entirety, I would surmise that the  
10 central server is only going to notify, for example,  
11 your software agent about the presence of specific  
12 entities that you've entered into your software agent.  
13 And you won't know about other people.

14 Q. Understood. Okay.

15 Do you recall Zydneyn describing the two  
16 different ways of generating -- let me see.

17 Do you recall Zydneyn describing a  
18 pack-and-send mode of generating a voice message?

19 MR. LOVELESS: Objection, form.

20 A. I may have recalled reading that. I don't have  
21 a specific recollection sitting here now. Of course, if  
22 you can direct my attention, as you were so kind to do a  
23 moment ago, that could refresh my memory.

24 Q. At the top of page 11, the -- there's a  
25 sentence that begins in the middle of the first line: A

1 WILLIAM C. EASTTOM, II

2 pack-and-send mode.

3 Do you see that?

4 A. Yes, to read that in its entirety: A  
5 pack-and-send mode of operation is one in which the  
6 message is first acquired, compressed, and then stored  
7 in a voice container 26, which is sent to its  
8 destination.

9 Q. And you recall whether Zydney also describes  
10 what's referred to as an intercom mode?

11 A. I do recall an intercom mode. I don't recall  
12 the details of it. But, yes, there is an intercom mode.

13 Q. If you could look on page 16, the first full  
14 paragraph, there's a sentence, the third sentence, I  
15 believe: If the real-time intercom mode has been  
16 invoked.

17 Do you see that?

18 A. If the real-time intercom mode has been  
19 invoked, a small portion of the digitized voice is  
20 stored to account for the requirements of the internet  
21 protocols for retransmission and then transmitted before  
22 the entire conversation has been completed.

23 Q. So to a person who were skilled in the art at  
24 the time, what would the difference be between the  
25 pack-and-send mode and the intercom mode in Zydney?

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2 MR. LOVELESS: Objection, form, scope.

3 A. Well, going on and reading more in that section  
4 you were kind enough to direct my attention to: Based  
5 on status information received from the central server,  
6 the agent then decides whether to transport the voice  
7 containers to a central file system and/or send it  
8 directly to another software agent using the IP address  
9 previously stored in the software agent.

10 So, essentially, what this says, and  
11 there's a few more sentences that elaborate a bit more,  
12 but I'm happy to opine on what we've read so far.  
13 Essentially, if it is detected that there is another  
14 software agent, one of the recipient's software agents,  
15 that is apparently ready and willing to receive, then  
16 these containers can be sent right now as opposed to  
17 sending them later.

18 MR. CITROEN: Let's take a break. We may  
19 be done.

20 (Brief recess.)

21 Q. Mr. Easttom, thank you for your time. We don't  
22 have any more questions.

23 A. Thank you.

24 MR. LOVELESS: And I don't have any  
25 questions either.

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2 (End of Proceedings.)

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1 WILLIAM C. EASTTOM, II

2 STATE OF TEXAS )

3 COUNTY OF DALLAS )

4  
5 I, Susan M. Foreman, A Certified Shorthand  
6 Reporter duly commissioned and qualified in and for the  
7 State of Texas, do hereby certify that there came before  
8 me on the 6th day of August, 2018, at 9:52 a.m., at the  
9 Renaissance Dallas at Plano Legacy West Hotel, 6007  
10 Legacy Drive, Plano, Texas 75024, the following named  
11 person, to-wit: WILLIAM C. EASTTOM, who was by me duly  
12 sworn to testify the truth, the whole truth, and nothing  
13 but the truth of knowledge touching and concerning the  
14 matters in controversy in this cause; and that he was  
15 thereupon examined upon oath and his  
16 Examination reduced to typewriting under my supervision;  
17 that the deposition is a true record of the testimony  
18 given by the witness.

19 I further certify that pursuant to the FRCP  
20 Rule 30(e)(1) that the signature of the deponent:

21 \_\_\_\_\_ was requested by the deponent or a party  
22 before the completion of the deposition, and that  
23 signature is to be before any notary public and returned  
24 within 30 days from date of receipt of the transcript;

25 \_\_\_X\_\_\_ was not requested by the deponent or a

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2 party before the completion of the deposition.

3 I further certify that I am neither attorney  
4 or counsel for, nor related to or employed by any of the  
5 parties to the action in which this deposition is taken,  
6 and further that I am not a relative or employee or any  
7 attorney or counsel employed by the parties hereto, or  
8 financially interested in the action.

9 Certified to me this 8th day of August, 2018.

10  
11  
12 \_\_\_\_\_  
Susan M. Foreman

13 Texas CSR Number 5240

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## ERRATA SHEET

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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_

(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_