UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOX, INC., and DROPBOX, INC.
Petitioner,

v.

TOPIA TECHNOLOGY, INC.
Patent Owner.

Case Nos.
IPR2023-00427
IPR2023-00433
IPR2023-00432
IPR2023-00431
IPR2023-00430
IPR2023-00429

U.S. Patent Nos.
9,143,516
10,067,942
10,754,823
10,642,787
11,003,622
10,289,607

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Deposition of

HEIDI L. KEEFE

Tuesday, June 20, 2023

REPORTED BY: JOHN WISSENBACH, RDR, CRR, CSR 6862

INDEX OF EXAMINATIONS

BE IT REMEMBERED that, pursuant to the laws governing the taking and use of depositions, on Tuesday, June 20, 2023, commencing at 9:27 a.m., before me, JOHN WISSENBACH, CSR 6862, of San Francisco, California, appeared through videoconference HEIDI L. KEEFE, at Palo Alto, California, called as a witness by the Patent Owner, who, being by me first duly sworn, was thereupon examined as a witness in said action.

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ALSO PRESENT VIA VIDEOCONFERENCE: GUS PHILLIPS, Videographer

* * * * *

09:27:22 THE VIDEOGRAPHER: We are now on the record
09:27:23 for the video deposition of Heidi Keefe -- the time
09:27:27 is 9:27 a.m. June 20th, 2023 -- in the matter of
09:27:33 Box, Incorporated, et al. vs. Topia Technology
09:27:38 Incorporated, et al., Case Number IPR2023-00427,
09:27:50 00433, 00432, 00431, 00430, and 00429, being held in
09:28:03 the United States Patent and Trademark Office before
09:28:06 the Patent Trial and Appeal Board. The court
09:28:10 reporter is John Wissenbach, the videographer is Gus
09:28:13 Phillips, and both are representatives of
09:28:15 GregoryEdwards court reporting.
09:28:16 Will counsel please state their appearances
09:28:19 for the record, beginning with the petitioner.
09:28:24 MR. MEAD: For petitioner, Lowell Mead,
09:28:26 with Cooley LLP, on behalf of the petitioners and
09:28:30 the witness, Ms. Keefe.
09:28:35 MR. RACHUBA: Hi. Lawrence Roman Rachuba,
09:28:38 on behalf of patent owner, and I'm joined by my
09:28:42 co-counsel, Janvi Shah and Raja Saliba.
09:28:46 THE VIDEOGRAPHER: Will the court reporter
09:28:48 please administer the oath.

HEIDI L. KEEFE,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. RACHUBA

09:29:05 Q. Good morning, Ms. Keefe.

09:29:07 A. Good morning.
09:29:08 Q. My name is Roman Rachuba. I am attorney
09:29:11 for patent owner in this proceeding. Would you
09:29:16 please state your full name for the record.
09:29:18 A. Heidi Lyn Keefe.
09:29:22 Q. Are you aware that you're being deposed in
09:29:26 IPR numbers IPR2023-00427, -00433, 00432, 00431,
09:29:40 00430, and 00429?
09:29:44 A. I didn't check all the numbers as you read
09:29:46 them, but yes.
09:29:47 Q. Okay. You'll take my word for it, for that
09:29:51 one?
09:29:51 A. On that one I will.
09:29:52 Q. Have you ever been deposed before?
09:29:57 A. No, I have not.
09:29:57 Q. Do you understand that in this deposition,
09:29:59 you must answer the questions that I ask truthfully
09:30:01 and under oath?
09:30:03 A. Yes.
09:30:03 Q. Are you on any medication that may
09:30:07 influence your ability to answer truthfully and
09:30:09 under oath?
09:30:10 A. No.
09:30:11 Q. Are you aware of any other circumstances
09:30:14 which may impact your ability to answer truthfully

09:30:17 and under oath?

09:30:19 A. No.

09:30:23 Q. To help the court reporter's transcription

09:30:24 services, will you please wait until I finish each

09:30:27 question before providing your answer?

09:30:29 A. Yes.

09:30:30 Q. Likewise, will you please provide a verbal

09:30:34 answer to each question?

09:30:36 A. Yes.

09:30:37 Q. Finally, if you do not understand the

09:30:43 question that I'm asking, please let me know, and I

09:30:45 will try my best to assist your understanding.

09:30:49 A. Okay.

09:30:50 Q. Okay. Have you ever taken a deposition

09:30:56 before?

09:30:57 A. Yes.

09:30:58 Q. How many?

09:30:58 A. Too many to count.

09:31:02 Q. When was the last time you've taken a

09:31:07 deposition?

09:31:08 A. Maybe a year or two ago. It's been a

09:31:12 while.

09:31:12 Q. Did you do anything to prepare for this

09:31:16 deposition?

09:31:17 A. Yes.

09:31:18 Q. Please tell me what you did to prepare.
09:31:24 MR. MEAD: I just want to caution the
09:31:25 witness not to get into the content or substance of
09:31:28 any attorney-client communications. But at a high
09:31:31 level you can answer, without doing so, please.
09:31:33 THE WITNESS: I reviewed my declaration,
09:31:36 and I had a conversation with Mr. Mead.
09:31:39 BY MR. RACHUBA:
09:31:40 Q. Did you review any other documents?
09:31:43 A. I also looked at the JDA that was attached
09:31:47 to my declaration.
09:31:49 Q. Anything else?
09:31:51 A. No.
09:31:51 Q. Did you speak with anyone besides Mr. Mead?
09:31:58 A. Mr. Weinstein teased me about the fact that
09:32:01 I was being deposed.
09:32:04 Q. Anyone else?
09:32:07 A. No.
09:32:12 MR. RACHUBA: At this time I'd like to
09:32:13 designate this transcript as highly confidential,
09:32:16 attorneys' eyes only.
09:32:19 Counsel, do you have any problem with that?
09:32:21 MR. MEAD: No problem in principle. I
09:32:23 mean, I don't think we've gotten into any
09:32:25 confidential information, so what -- you know,

09:32:27 subject to revisiting at the end. But that's fine
09:32:29 for a title placeholder for now.
09:32:33 MR. RACHUBA: Okay.
09:32:36 Q. Ms. Keefe, where are you employed?
09:32:38 A. Was I employed?
09:32:39 Q. Where are you employed?
09:32:41 A. I am a -- I'm a partner at Cooley. I'm not
09:32:49 actually employed. I'm a self -- I'm an owner of
09:32:52 the -- the law firm. So I'm a partner at Cooley
09:32:54 LLP.
09:32:54 Q. How long have you been a partner at Cooley?
09:32:57 A. Since -- since August 31st, 2009.
09:33:01 Q. And were you at Cooley as an employee
09:33:07 before you became a partner?
09:33:08 A. No.
09:33:09 Q. Where were you employed before you were --
09:33:12 became a partner at Cooley?
09:33:14 A. Again, I was not employed. I was a partner
09:33:17 at White & Case LLP.
09:33:21 Q. And for how long were you a partner at
09:33:24 White & Case?
09:33:25 A. From 2005 until -- no, 2004 until 2009.
09:33:36 Q. What area of law do you practice at Cooley?
09:33:40 A. I'm a patent litigator. I also do all
09:33:45 other forms of civil litigation that I'm asked to

09:33:49 do.

09:33:49 Q. What does that entail? What other forms of

09:33:53 litigation are you asked to do?

09:33:55 A. Trade secret, trademark, contract dispute,

09:34:02 license dispute. I've done trademark, copyright,

09:34:07 things like that.

09:34:10 Q. Do you typically represent alleged patent

09:34:17 infringers or patent owners?

09:34:20 A. I have done both.

09:34:22 Q. What would you say you -- do you represent

09:34:26 more of one than the other?

09:34:29 A. Yes.

09:34:30 Q. Which one?

09:34:31 A. Alleged infringers or defendants.

09:34:36 Q. What percentage-wise would you say you

09:34:39 represent more alleged infringers than patent

09:34:43 owners?

09:34:43 A. I've never done a study. I've never

09:34:46 figured that out. I wouldn't know.

09:34:47 Q. Do you have a general idea or rough

09:34:49 estimate?

09:34:51 A. It's much more on the defense side.

09:34:54 Q. Okay. So would you say you are familiar

09:35:00 with patent infringement defenses?

09:35:04 MR. MEAD: Objection; form.

09:35:06 THE WITNESS: I'm not sure what you mean by
09:35:08 "familiar with" patent defenses.
09:35:10 BY MR. RACHUBA:
09:35:11 Q. You testified that your area of expertise
09:35:14 is patent litigation and that you represent alleged
09:35:19 infringers, defendants much more often than you
09:35:22 represent patent owners. So I'm asking if you have
09:35:25 a familiarity with patent infringement defenses.
09:35:31 A. If you mean do I know how patent owners can
09:35:35 defend themselves, I think the answer's yes. I'm
09:35:39 just not sure exactly what you're getting at.
09:35:41 Q. Are you familiar with the law of 35 USC
09:35:45 Section 101?
09:35:47 A. Yes, I am.
09:35:48 Q. How about 35 USC, Section 102?
09:35:51 A. Yes I am.
09:35:52 Q. 35 USC Section 103?
09:35:55 A. Yes, I am.
09:35:56 Q. Do you represent parties before the United
09:35:59 States Patent and Trademark Office?
09:36:00 A. Yes, I do.
09:36:02 Q. Do you represent parties in district court?
09:36:06 A. Yes, I do.
09:36:07 Q. Do you represent parties in the court of
09:36:09 appeals for the federal circuit?

09:36:12 A. Yes, I do.
09:36:13 Q. Of those three venues, which do you
09:36:20 represent parties more often?
09:36:24 A. I --
09:36:25 MR. MEAD: Object. Sorry. Objection to
09:36:26 form.
09:36:26 THE WITNESS: I, honestly, don't know how
09:36:28 to answer that question.
09:36:29 BY MR. RACHUBA:
09:36:29 Q. Okay. Do you represent parties more in
09:36:31 district court or in USPTO proceedings?
09:36:35 MR. MEAD: Objection; form.
09:36:35 THE WITNESS: Again, I don't -- I don't
09:36:36 know how to answer that question. I don't know what
09:36:38 you mean by "more."
09:36:39 BY MR. RACHUBA:
09:36:40 Q. Okay.
09:36:40 A. If -- you're talking about raw hours? Are
09:36:42 you talking about number of times? Are you talking
09:36:44 about number of cases? I literally don't know how
09:36:46 to answer that question.
09:36:47 Q. Let's go -- let's start with number of
09:36:49 cases.
09:36:50 A. In most of my cases, I have represented my
09:36:53 clients in all three areas.

09:37:01 Q. Have you participated in inter partes
09:37:04 review proceedings?
09:37:04 A. Yes, I have.
09:37:05 Q. Are you okay if I call them IPRs from here
09:37:11 on out?
09:37:12 A. That's fine.
09:37:12 Q. How many IPRs have you participated in?
09:37:17 A. I don't know. It's a lot.
09:37:22 Q. Is it more than 25?
09:37:25 A. Yes.
09:37:26 Q. More than 50?
09:37:28 A. Yes.
09:37:29 Q. More than 100?
09:37:32 A. Yes.
09:37:34 Q. More than 200?
09:37:35 A. I think so, but I'm not positive.
09:37:38 Q. Okay. Of the IPRs that you have
09:37:45 participated in, are you more often lead counsel or
09:37:50 backup counsel?
09:37:52 A. Lead.
09:37:52 Q. Would you say you've been lead counsel in
09:37:56 around 200 IPRs?
09:37:59 A. Again, I'm not certain of the number, but
09:38:01 it is a large number.
09:38:02 Q. Have you argued patent invalidity under 35

09:38:15 USC Section 101 in district court before?

09:38:18 A. In district court? Yes.

09:38:19 Q. How many times would you say you've argued
09:38:27 in 101 proceedings?

09:38:28 A. Again, I honestly don't know, but dozens.

09:38:32 Q. Do you have -- how many times have you
09:38:36 argued those 101 motions in the District of
09:38:40 Delaware?

09:38:41 A. Again, I don't know, but, again, I think
09:38:44 dozens.

09:38:45 Q. With the exception of the instant
09:38:54 proceedings, which I will say -- let me rephrase
09:39:01 that.

09:39:01 Have you ever represented a petitioner in
09:39:17 an IPR and a defendant in a related litigation at
09:39:25 the same time?

09:39:25 A. Yes.

09:39:26 Q. Can you list the circumstances where that
09:39:31 has happened?

09:39:33 A. I'm not sure I can. It's -- it's most of
09:39:39 my cases. It's not all, but it's most.

09:39:47 Q. Have you represented a petitioner and a
09:39:56 unrelated third-party defendant in a district court
09:40:00 patent infringement case on the same patents that
09:40:02 were asserted in the USPTO at the same time?

09:40:08 MR. MEAD: Objection; seems vague and
09:40:10 ambiguous.
09:40:10 THE WITNESS: Yeah. Could you rephrase?
09:40:11 I'm sorry. I lost track in the middle what you were
09:40:13 asking me.
09:40:14 BY MR. RACHUBA:
09:40:14 Q. Okay. Yeah. I'm, honestly, having trouble
09:40:16 in my head having to think of this question. So let
09:40:19 me -- let me come back to that, actually.
09:40:22 Okay. Let's switch gears a little bit.
09:40:46 Are you aware of the company Egnyte, Inc.?
09:40:48 A. Yes.
09:40:50 Q. How did you become aware of the company
09:40:53 Egnyte?
09:40:53 A. I had never heard of Egnyte until after Box
09:41:00 was sued by Topia. In researching Topia, I became
09:41:07 aware of the fact that Topia had also sued Egnyte.
09:41:10 That was the first time I became aware of Egnyte.
09:41:12 Q. Do you know the date on which you became
09:41:15 aware?
09:41:16 A. It would have been within a week of Box
09:41:20 being sued by Topia. I don't recall that date off
09:41:23 the top of my head. But it would have been within a
09:41:24 week of that.
09:41:30 Q. So that answers my next question, I

09:41:33 believe. Are you aware of the litigation Topia
09:41:36 brought against Egnyte in the District of Delaware?
09:41:39 A. Again, when I was researching Topia on
09:41:46 behalf of Box, I became aware of the lawsuit that
09:41:49 Topia had filed against Egnyte, which was prior in
09:41:53 time to the Box litigation.
09:41:54 Q. Can you describe the circumstances where
09:41:58 you became aware of Egnyte?
09:42:00 A. I just did.
09:42:01 Q. You said upon your research. Can you
09:42:04 describe that research process?
09:42:06 MR. MEAD: It sounds like that may pry into
09:42:09 attorney work product, Counsel, which I -- and I
09:42:14 trust that's not your intent. But is there a way
09:42:18 you could reframe the question? You're saying --
09:42:20 you're talking about a research process in response
09:42:23 to litigation. That's, like, squarely targeting
09:42:26 attorney work product, you know, and/or
09:42:29 attorney-client communications. And I assume that's
09:42:31 not your intent. But is there a way you can reframe
09:42:33 that so you're not just saying: What was your
09:42:35 attorney work product research?
09:42:38 MR. RACHUBA: Let me see if I can ask a
09:42:40 different way.
09:42:43 Q. Did Box inform you of the litigation

against Egnyte?

MR. MEAD: So, again -- well, if you can answer that -- for this, I guess if the answer is no, then there's no issue. But I want to have a caution to the witness not to disclose attorney-client communications.

THE WITNESS: No, I did not learn it from Box.

BY MR. RACHUBA:

Q. Did you learn it from counsel for Box?

A. No.

Q. Did you learn it from Dropbox?

A. No.

Q. Did you learn it from Unified Patents?

A. No.

Q. Did you learn it from counsel for Unified Patents?

A. No.

Q. Did you learn it from counsel for Dropbox?

A. No.

Q. When was your first contact with Egnyte?

MR. MEAD: I'm sorry. Did you say "when"?

MR. RACHUBA: "When."

MR. MEAD: So you're just looking for a date, to the extent -- okay.

09:43:55 THE WITNESS: I honestly don't remember.
09:43:58 BY MR. RACHUBA:
09:44:00 Q. Would there be anything that could refresh
09:44:03 your recollection on that point?
09:44:05 A. I don't think so.
09:44:06 Q. I'm going to go back to that earlier
09:44:12 question that I had -- we both had trouble
09:44:15 understanding. So let me see if I can rephrase it
09:44:18 better.
09:44:19 For a specific patent, have you ever
09:44:21 represented two unrelated defendants at the same
09:44:25 time, each defendant being sued in a different
09:44:29 forum?
09:44:29 A. So have I ever represented two parties in
09:44:41 different forums on the same patent?
09:44:44 Q. Correct.
09:44:50 MR. MEAD: Sorry. I'm just going to
09:44:52 object, vague and ambiguous, because -- but to the
09:44:56 extent you understand it, you can answer.
09:44:58 THE WITNESS: Again, I'm not sure -- I'm
09:45:02 not sure what you mean by "forums." Do you mean two
09:45:05 separate district court litigations, one in Texas,
09:45:08 one in California? Do you mean -- again, I'm not
09:45:10 sure what you mean.
09:45:11 BY MR. RACHUBA:

09:45:11 Q. What is your understanding of the term
09:45:13 "forum"?
09:45:14 A. When I typically hear it, I think of
09:45:18 different, essentially, venues, like district court
09:45:23 in Texas versus district court in Delaware. That's
09:45:26 typically what I think. I think there are other
09:45:28 ways to think of it.
09:45:29 Q. So for purposes of this question, "forum"
09:45:33 includes different United States districts, district
09:45:37 court, as well as administrative proceedings; for
09:45:42 example, the USPTO, the ITC. It would also
09:45:47 include -- or to the Federal Circuit and the Supreme
09:45:54 Court.
09:45:54 A. So the -- the truthful answer is I'm not
09:45:58 sure. I do think there have been times where I was
09:46:02 representing two or more parties in a JDG in one
09:46:07 district and then had one transferred out. I also
09:46:11 think there may have been other occasions where I
09:46:16 was representing two parties but only one in a
09:46:20 patent office proceeding. I just -- I can't -- off
09:46:23 the top of my head, I can't think of exactly which
09:46:25 ones. I just think that that could have happened.
09:46:27 Q. Okay. How would you go about finding out
09:46:31 specifically, a specific answer to that question?
09:46:34 A. How would I find out?

09:46:36 MR. MEAD: Yeah.
09:46:37 THE WITNESS: I'd use PACER, probably.
09:46:44 BY MR. RACHUBA:
09:46:45 Q. So I'll ask it in a little more specific
09:46:47 manner.
09:46:49 For a specific patent, have you ever
09:46:52 represented two unrelated defendants at the same
09:46:58 time, one defendant of the two being in district
09:47:01 court, the other defendant in United States Patent
09:47:05 and Trademark Office?
09:47:09 MR. MEAD: Objection; vague and ambiguous.
09:47:12 THE WITNESS: I think I already answered
09:47:13 this. And I said I think it was possible. But I'm
09:47:17 not positive. I obviously know that I did so in
09:47:22 this case. I represented Egnyte for the sole
09:47:25 purpose of arguing a 101 motion. That was my
09:47:28 incredibly narrow assignment and incredibly narrow
09:47:33 hire. And I represented Box and Dropbox in PTAB
09:47:38 proceedings.
09:47:38 BY MR. RACHUBA:
09:47:39 Q. So you have no specific recollection?
09:47:42 MR. MEAD: Do you mean prior -- separate
09:47:44 and apart from the present proceedings, Counsel? Is
09:47:47 that where you're getting at?
09:47:48 MR. RACHUBA: Yes.

09:47:49 THE WITNESS: Again, as I've stated, I
09:47:51 think it is possible, but I don't know.
09:47:54 BY MR. RACHUBA:
09:47:54 Q. Okay.
09:48:00 MR. MEAD: If you -- I mean, Counsel, if
09:48:02 you have documentation from PACER, or something,
09:48:04 obviously feel free to -- I don't think we saw that
09:48:06 in the exhibits, but I think that would probably be
09:48:11 publicly available information.
09:48:13 BY MR. RACHUBA:
09:48:13 Q. Okay. Heidi, are you aware of any
09:48:15 documents that would refresh your recollection on
09:48:16 that point?
09:48:19 A. Perhaps printouts from PACER.
09:48:21 Q. Any other sources of information besides
09:48:26 PACER?
09:48:28 A. I don't know. I could probably ask some of
09:48:31 my colleagues, but --
09:48:34 Q. Who would you ask?
09:48:35 A. I don't know. I might ask Mr. Weinstein,
09:48:39 since I've worked with him for so long.
09:48:42 Q. Anyone else?
09:48:44 A. I don't know.
09:48:48 Q. Does Cooley keep a tracking system of the
09:48:57 cases that you have worked on?

09:49:00 A. Tracking system? I don't know what that
09:49:02 means.
09:49:03 Q. A database.
09:49:05 MR. MEAD: You know, that -- you know,
09:49:07 Counsel, I'm not comfortable with that, and -- to
09:49:09 the extent it would be prying into work product if
09:49:12 you're -- you know, some tracking system for
09:49:15 litigation.
09:49:17 MR. RACHUBA: I -- I don't see how that
09:49:19 would be work product. It would be an
09:49:21 administrative internal firm filing system.
09:49:25 MR. MEAD: That could -- that could well be
09:49:26 work product if -- you know, we're talking about
09:49:30 litigations and tracking, involvement in litigation.
09:49:34 That's material created by or on behalf of
09:49:38 attorneys, really, you know, to address litigation.
09:49:42 MR. RACHUBA: I'll move on, Counselor.
09:49:45 MR. MEAD: Okay.
09:49:46 BY MR. RACHUBA:
09:49:49 Q. Does Cooley represent Egnyte?
09:49:54 MR. MEAD: Yeah, I'll object on vague and
09:49:56 ambiguous. But to the extent you --
09:49:58 MR. RACHUBA: Counsel, can we -- can we
09:49:59 keep it to -- speaking objections?
09:50:03 MR. MEAD: Sorry? What's that?

09:50:07 MR. RACHUBA: Can we keep it just form, speaking -- form objections, not speaking objections?

09:50:12 MR. MEAD: I don't think it's inappropriate, if the question's vague and ambiguous, to note that. I'm sorry. I don't want to speak, but -- yeah, objection; vague and ambiguous. That's all I wanted to say there.

09:50:26 MR. RACHUBA: Okay. I -- your objection is noted.

09:50:30 Q. Ms. Keefe, please go ahead and answer.

09:50:32 A. I'm sorry. I've completely lost what the question was.

09:50:36 Q. The question was, does Cooley represent Egnyte?

09:50:38 A. I do not know.

09:50:40 Q. Do you have the ability to find out?

09:50:41 A. I'm -- probably.

09:50:48 Q. How would you find out?

09:50:51 A. I would probably run a conflicts check and then follow up with the person or persons who are listed if such representation was listed on the conflicts check.

09:50:55 Q. Do documents exist that describe -- if Cooley does represent Egnyte, would there be

09:51:35

09:51:43

09:51:47 documents that describe this representation?
09:51:49 A. I do not know.
09:51:52 Q. How would you find out?
09:51:56 A. Same way that I explained to you in the
09:51:59 last question.
09:52:01 Q. Which would be running a conflicts check?
09:52:06 A. And then asking the people whose names
09:52:08 showed up. Assuming that there was representation
09:52:11 in the conflicts database, I would then ask the
09:52:14 people whose names are associated with that
09:52:16 representation.
09:52:18 Q. Okay. Can you explain how you would run a
09:52:21 conflicts check, how that -- what does that process
09:52:26 involve?
09:52:27 A. I usually ask my assistant to do it.
09:52:30 Q. Okay. Do you know what your assistant
09:52:33 does?
09:52:34 A. To be completely honest, I do not.
09:52:36 Q. Okay.
09:52:36 A. She's very good at her job, and I trust her
09:52:39 to get things done.
09:52:40 Q. Okay. Have you ever run a conflicts check
09:52:42 yourself?
09:52:43 A. I don't think that I have.
09:52:45 Q. If Cooley does represent Egnyte, would

09:52:57 there be an engagement letter between Cooley and
09:53:01 Egnyte describing the scope of representation?
09:53:05 A. I don't know.
09:53:07 Q. How would you find out?
09:53:11 A. Same way I described for the last two
09:53:15 questions.
09:53:17 Q. Is it Cooley's practice to have engagement
09:53:20 letters with their clients?
09:53:24 MR. MEAD: Objection; form.
09:53:26 THE WITNESS: I, honestly, think that
09:53:28 question is too broad. I think every circumstance
09:53:32 is a little bit different. But I know there are
09:53:34 often engagement letters with clients. I'm not sure
09:53:37 that they always exist.
09:53:40 BY MR. RACHUBA:
09:53:41 Q. In what circumstances would there be no
09:53:43 engagement letter?
09:53:46 MR. MEAD: Objection to form.
09:53:47 THE WITNESS: I can imagine a hypothetical
09:53:48 scenario under which there was an oral engagement.
09:53:52 I can imagine hypothetical scenarios under which it
09:53:56 was continuing engagement for a new matter and where
09:53:58 another new thing wouldn't be added.
09:54:03 BY MR. RACHUBA:
09:54:04 Q. So in a -- in a continuing matter, would

there be an initial -- initial engagement letter, describing an initial scope of representation?

MR. MEAD: Objection; form.

THE WITNESS: Again, I think -- the question's very, very broad. I think -- hypothetically, that is, I think, good course of action. I do not know that it is always the case. But I would think that would be a good course of action.

BY MR. RACHUBA:

Q. Why do you believe it's good practice to have an engagement letter outlining the scope of representation?

A. It's often helpful later if parties don't agree on what the scope of representation was.

Q. Any other benefits to an engagement letter?

A. Again, there's -- that's such a broad question, I can't possibly answer that.

MR. MEAD: Yeah, I'll just note that's out -- appears to be outside the scope of the declaration. I mean, I think a lot of these questions are. It's -- you know, we're allowing you to ask, you know, background questions, but I'll just note that's not something, I don't think, that Ms. Keefe's declaration --

MR. RACHUBA: I mean, we --
09:55:21 MR. MEAD: -- addressed.
09:55:21 MR. RACHUBA: We strongly disagree on that.
09:55:26 MR. MEAD: Okay.
09:55:26 MR. RACHUBA: Ms. Keefe's declaration put her representation and Cooley's representation of Egnyte directly at issue, and I'm just seeking to delve into details regarding the scope of that representation.
09:55:29 09:55:32 09:55:36 09:55:37
09:55:38 MR. MEAD: Yeah, but you're asking about reasons why one hypothetically would do something as a matter of, like, law firm practice. So I don't think she asserted, you know, law firm practice guidelines in her declaration.
09:55:39 09:55:42 09:55:44 09:55:49
09:55:51 I just want to note that for the record. That's -- you know, that's not something that, you know, is a direct assertion that's being explored in the declaration.
09:55:53 09:55:56 09:55:59
09:56:00 MR. RACHUBA: Okay. Your objection is noted.
09:56:01
09:56:07 Q. Is it Cooley's practice to memorialize the scope of representation to its clients?
09:56:10
09:56:13 MR. MEAD: Yeah, the same objection. But --
09:56:16
09:56:17 THE WITNESS: Again, I -- I think your

09:56:19 question is too broad. I think as a general matter,
09:56:24 when a client's first onboarded, it is typical. I'm
09:56:28 not certain that it is absolute.
09:56:32 BY MR. RACHUBA:
09:56:33 Q. Is it your practice to memorialize the
09:56:36 scope of representation to your clients?
09:56:40 A. Not always, no.
09:56:44 Q. In what situations would you not
09:56:47 memorialize the scope of representation?
09:56:52 A. I can't think of any specific ones off the
09:56:55 top of my head. I think it's a case-by-case basis.
09:56:59 Q. What would be the facts -- let me -- hold
09:57:03 on a second.
09:57:04 Did you memorialize -- sorry.
09:57:11 Do you represent Box?
09:57:13 A. I do.
09:57:14 Q. Do you represent Dropbox?
09:57:16 A. I do.
09:57:17 Q. Did you memorialize the scope of your
09:57:20 representation with Box?
09:57:24 MR. MEAD: Objection; vague and ambiguous
09:57:28 as to "you."
09:57:31 MR. RACHUBA: By "you" I mean Ms. Keefe.
09:57:37 THE WITNESS: In this particular case, I
09:57:38 did not memorialize my representation with Box.

09:57:42 BY MR. RACHUBA:

09:57:42 Q. Did you memorialize your representation with Dropbox?

09:57:47 MR. MEAD: Same objection.

09:57:48 THE WITNESS: In this case, I, Heidi Keefe, did not memorialize my representation of Dropbox.

09:57:52 BY MR. RACHUBA:

09:57:53 Q. Did Cooley memorialize its representation of Box?

09:57:58 A. In this particular case?

09:58:01 Q. Yes.

09:58:04 A. I don't believe so.

09:58:06 Q. Did Cooley memorialize its representation with Dropbox?

09:58:11 A. In this particular case, I'm not sure. I'd have to go back and look.

09:58:22 Q. Okay. Would it be accurate to say that you usually memorialized the scope of your representation with your clients?

09:58:41 A. I don't think I could say that, no.

09:58:51 Q. Do you represent -- hold on one second.

09:59:05 Are you aware of any documents which describe the scope of Cooley's representation of Box?

09:59:12

09:59:13 MR. MEAD: Objection to form.

09:59:14 THE WITNESS: In this matter?
09:59:16 BY MR. RACHUBA:
09:59:16 Q. Any matter.
09:59:20 A. I think there is such a document.
09:59:24 Q. What is that document?
09:59:28 MR. MEAD: Objection; form.
09:59:30 THE WITNESS: I think there is an initial
09:59:34 engagement letter with Box and Cooley.
09:59:38 BY MR. RACHUBA:
09:59:39 Q. Is there any other documents?
09:59:42 A. I don't know.
09:59:42 Q. Whom at Cooley -- sorry.
09:59:54 Did anyone at Cooley sign this initial
09:59:57 engagement letter?
09:59:59 A. I'm not sure. It wasn't me.
10:00:02 Q. Is there a document memorializing the scope
10:00:12 of Cooley's representation with Box in this matter?
10:00:16 MR. MEAD: Objection; form.
10:00:19 THE WITNESS: I don't know. I don't think
10:00:20 so.
10:00:20 BY MR. RACHUBA:
10:00:23 Q. Does the initial engagement letter between
10:00:26 Cooley and Box cover the scope of representation in
10:00:31 this matter?
10:00:33 A. I'm not quite sure how to answer that.

10:00:36 Q. What do you mean?

10:00:39 A. I'm not sure -- I'm not sure exactly what you're asking when you say "scope." And if it's scope in general, it perhaps does, but I don't think that -- but I know that it doesn't carve out this specific matter in a separate way.

10:00:56 Q. So it's possible that the initial engagement letter between Cooley and Box would cover the scope of the representation in this proceeding?

10:01:12 A. If I understand you correctly, I think the answer is yes, because I think the initial letter would be a broad representation, but it wouldn't specify specifically this case, but it would give some parameters of the engagement.

10:01:31 Q. Okay. And then -- and to be clear, there is not an additional document that memorialized the scope of representation of Box in this proceeding?

10:01:44 MR. MEAD: Objection; asked and answered.

10:01:45 THE WITNESS: Again, I don't believe so, but I cannot categorically answer that. I don't believe so.

10:01:51 BY MR. RACHUBA:

10:01:56 Q. Okay. How would you investigate whether there is such a document?

10:02:03 A. I would probably ask my assistant to look

10:02:05 to see if such a thing exists.
10:02:08 Q. What is the name of your assistant?
10:02:10 A. Jocelyn McIntosh.
10:02:18 Q. Would anyone else have knowledge about the
10:02:22 existence of another document?
10:02:26 A. Some of the other team members might. I
10:02:31 don't know.
10:02:31 Q. What other team members?
10:02:33 A. Reuben Chen.
10:02:36 Q. Anyone else?
10:02:41 A. I think he would probably be the only one
10:02:43 who would maybe know off the top of his head.
10:02:50 Q. Who else is on your team besides Reuben
10:02:53 Chen?
10:02:53 A. On this team, Sam Whitt, Lowell Mead,
10:03:02 anyone else who's listed on the pleadings for the
10:03:07 Topia vs. Box pleading cover sheet.
10:03:10 Q. Okay. Does there exist a document
10:03:21 memorializing the scope of Cooley's representation
10:03:24 of Box in the Northern District of Illinois or the
10:03:27 Western District of Texas?
10:03:32 MR. MEAD: You said ND Illinois?
10:03:35 BY MR. RACHUBA:
10:03:36 Q. Sorry, California, ND -- ND California.
10:03:39 A. Not specifically that I'm aware of.

10:03:42 Q. Okay. Does Cooley have an initial
10:03:52 engagement letter with Egnyte?
10:03:54 A. As I've already testified, I don't know.
10:03:57 Q. Is there anyone besides your assistant who
10:04:03 would know the answer?
10:04:04 A. Again, as I've already testified, if -- if
10:04:08 Cooley has represented Egnyte in the past or does
10:04:13 now -- I don't know -- a conflict check would show
10:04:16 that. And then the person whose names are related
10:04:19 to that company would also know.
10:04:21 Q. Did you run -- before representing Box, did
10:04:44 you run a conflicts check to see if there were any
10:04:46 conflicts for representing Box?
10:04:50 A. The very first time that we represented
10:04:53 Box, yes.
10:04:53 Q. When was that?
10:04:55 A. I don't recall.
10:04:57 Q. Have you -- has Cooley run a conflicts
10:05:01 check since the initial check?
10:05:06 A. I wouldn't need to run a conflicts check
10:05:08 for Box after I started representing them.
10:05:11 Q. And why is that?
10:05:12 A. If you're asking me whether I run a
10:05:16 conflicts check on Box, the answer's, since I began
10:05:19 representing them, I would not need to run that on

10:05:21 Box. I would only need to run it against people who
10:05:24 were suing Box, in order to try to represent them.
10:05:26 I would never run it again on Box, because I'm
10:05:29 currently representing them.
10:05:30 Q. Why -- why would you not need to run it
10:05:32 again on Box?
10:05:34 A. Because I'm actively representing them.
10:05:37 Q. So -- okay.
10:05:39 A. I'm allowed to continue to actively
10:05:40 represent someone that I'm actively representing.
10:05:42 There is no conflict in me representing someone that
10:05:44 I'm actively representing.
10:05:46 Q. Okay. Did you run a conflicts check before
10:05:50 you began representing Dropbox?
10:05:54 MR. MEAD: Objection; vague and ambiguous.
10:05:55 THE WITNESS: I personally did not.
10:06:00 BY MR. RACHUBA:
10:06:01 Q. Did your assistant?
10:06:05 A. I don't think she's the one that did that
10:06:07 on this case.
10:06:08 Q. Who was the one who ran the conflicts check
10:06:11 on this case for Dropbox?
10:06:13 A. I'm not sure. But if I had to guess, it
10:06:16 would be Reuben Chen or his assistant.
10:06:20 Q. Are you -- who else would know?

10:06:25 MR. MEAD: Object to form.
10:06:26 THE WITNESS: Those two people.
10:06:27 BY MR. RACHUBA:
10:06:27 Q. No one else?
10:06:28 A. I -- not that I can guarantee.
10:06:31 Q. Okay. Do you know when that conflict check
10:06:37 would have been run?
10:06:37 A. It would have been before we represented
10:06:39 Dropbox.
10:06:40 Q. Did you or your -- well -- when did you
10:06:48 begin representing Dropbox?
10:06:49 MR. MEAD: Object to form.
10:06:50 THE WITNESS: I don't recall. I'd have to
10:06:52 go back and look.
10:06:53 BY MR. RACHUBA:
10:06:55 Q. Was it -- did you or Cooley -- or anyone at
10:06:59 Cooley represent Dropbox prior to the infringement
10:07:05 suits brought by Topia?
10:07:07 MR. MEAD: Object to form.
10:07:09 THE WITNESS: I don't know the answer.
10:07:10 BY MR. RACHUBA:
10:07:10 Q. Who would know the answer to that?
10:07:13 A. Again, I'd have to run a conflicts check to
10:07:16 find out whether or not there had been prior
10:07:18 representation.

10:07:19 Q. Do you know when Cooley began -- first
10:07:23 began representing Box?
10:07:24 A. As I sit here right now, I don't know the
10:07:28 date.
10:07:28 Q. Who would know the date?
10:07:29 A. I don't think anyone would know the date
10:07:33 off the top of their heads.
10:07:35 Q. Did you or your assistant run a conflicts
10:07:41 check before you began representing Egnyte?
10:07:44 A. Someone did. I don't recall who did.
10:07:47 Q. Who would know?
10:07:49 A. I don't know. I -- I know someone did. It
10:07:54 could have been my assistant. It could have been
10:07:56 Reuben Chen or Reuben Chen's assistant. I just
10:07:58 don't know who of those three people did it. I know
10:08:02 it was done.
10:08:02 Q. Okay. When was that conflict check ran?
10:08:05 A. I don't know the exact date, but I believe
10:08:12 it was sometime in the fall of last year.
10:08:15 Q. Was that conflict check for representing
10:08:26 Egnyte generally, or was it more narrowly tailored?
10:08:30 A. So conflicts checks are usually run
10:08:32 generally.
Q. Okay.
10:08:44 A. But that doesn't mean that the -- that the

10:08:45 representation wasn't narrow.

10:08:47 Q. Okay. When the conflict check was ran for

10:08:54 Egnyte, did the results indicate that Cooley already

10:08:57 represented Egnyte?

10:08:59 A. My recollection is that Egnyte was listed

10:09:05 either as a former client or a current client. And

10:09:08 I cannot remember which it was. I just know that

10:09:11 there was no conflict.

10:09:16 Q. Did you review the conflict check in

10:09:19 detail?

10:09:19 A. I did not.

10:09:23 Q. Can you describe the process that you used

10:09:25 to review the conflict check?

10:09:28 A. I think I was told by someone what the

10:09:34 results were.

10:09:36 Q. Okay. So you personally did not read the

10:09:39 conflict check results?

10:09:41 MR. MEAD: Object to form.

10:09:41 THE WITNESS: Honestly, I don't remember.

10:09:43 I may have skimmed them. I don't know.

10:09:45 BY MR. RACHUBA:

10:09:45 Q. How are the results of conflict checks

10:09:48 disseminated through Cooley?

10:09:50 A. Typically through email to the person who

10:09:55 requested them. They may be forwarded on. I just

10:09:58 don't remember in this case.

10:09:59 Q. Okay. So it's not the case where the

10:10:02 result of a conflict check would be blasted out to

10:10:05 the whole firm?

10:10:06 A. That's correct; it is not.

10:10:08 Q. Okay. Have you personally represented

10:10:17 Egnyte before the proceedings in the District of

10:10:20 Delaware?

10:10:21 A. I entered a pro hac in order to represent

10:10:28 Egnyte in the 101 hearing in Delaware. That was my

10:10:32 narrow engagement. That is all I did. That's all

10:10:33 I've ever done.

10:10:35 Q. Okay. So have you been included in a

10:10:40 Cooley practice group that has previously

10:10:42 represented Egnyte before the case that Topia

10:10:47 brought against them in the District of Delaware?

10:10:49 A. No, I was not.

10:10:51 Q. Has any of your co-counsel on this -- in

10:10:55 this proceeding been included in a practice group

10:10:57 that has?

10:11:05 A. No.

10:11:05 Q. Do you have the ability at Cooley to access

10:11:08 confidential Egnyte information?

10:11:10 A. I do not.

10:11:21 Q. And why not?

10:11:22 A. I'm not active in any other case than this
10:11:24 one. I don't have access to those Z drives or share
10:11:29 drives or anything like that.
10:11:31 Q. What do you mean, you do not have access to
10:11:33 those drives?
10:11:36 A. Typically at Cooley when drives are created
10:11:39 for teams, they are created with access only to
10:11:42 those teams unless you ask for permission to be let
10:11:45 into those databases.
10:11:47 Q. Who would you ask for permission to be let
10:11:53 into those databases?
10:11:54 A. I'm sorry. What?
10:11:55 Q. Who would you ask for permission to be let
10:11:58 into that -- those databases?
10:11:58 A. It depends on the case. It's a different
10:12:02 person who's in charge of each of those databases.
10:12:06 Q. Who is in charge of the database for
10:12:08 Egnyte?
10:12:09 A. I don't know.
10:12:10 Q. How would you find out?
10:12:17 A. Same way that we talked about before.
10:12:21 Q. Which is what? I'm sorry.
10:12:25 A. After having -- if I ran a conflict check
10:12:28 and saw that the conflict check indicated that they
10:12:30 were our client, I would then look to see who was

10:12:32 the name of the people on that, and then I would
10:12:35 reach out to them.
10:12:37 Q. Okay. But in this case, a conflict -- you
10:12:39 testified that a conflict check had been run. So
10:12:40 now -- now the conflict check had been run. How
10:12:43 would you go about finding out who controls access
10:12:45 to the Egnyte drives now?
10:12:48 A. Again, I -- I don't know where that
10:12:50 conflict check is, so at this point, if I wanted to
10:12:53 figure it out, I would probably run the same process
10:12:56 again, just to make sure that I knew who those
10:12:58 people were.
10:12:59 Q. Okay. Once you figured out who has -- who
10:13:09 controls access to these drives, could you request
10:13:12 access yourself?
10:13:13 A. I would have no reason to.
10:13:15 Q. That wasn't the question.
10:13:19 A. Hypothetically I could ask. I'm not sure I
10:13:24 would be given permission. I -- hypothetically, I
10:13:26 suppose I could. I did not. I never did. I
10:13:30 haven't. I've never seen a single piece of
10:13:32 confidential business information from Egnyte.
10:13:34 Q. In determining whether to give you access,
10:13:40 the person who was in charge of those Egnyte
10:13:43 databases, what would they consider?

10:13:46 A. I don't know. You'd have to ask them.
10:13:49 Q. Okay.
10:13:49 A. But it did not happen in this case. I have never had access to any Egnyte information, confidential business information.
10:13:56
10:13:59 Q. In a different case, have you ever had to access -- sorry.
10:14:01
10:14:02 In a different case, have you ever had to ask permission to access a database drive that you did not presently have access to?
10:14:05
10:14:08
10:14:10 A. Have there been cases where I've done that? Yes.
10:14:13
10:14:14 Q. Can you walk me through how that process went?
10:14:17
10:14:20 A. No. I'm not sure I could. There's no one way that anything is done. I can think of one particular case in which I was added to the diligence for an M&A transaction, and I didn't ask for permission at all. I was given permission and put into the group when they added me to the team.
10:14:25
10:14:28
10:14:31
10:14:36
10:14:38
10:14:42 Q. Okay.
10:14:52 A. But, again, nothing like that happened here.
10:14:55
10:15:00 Q. Great. Do you represent Egnyte in the District of Delaware litigation?
10:15:05

10:15:08 A. Right now? No.
10:15:12 Q. Did you represent Egnyte in the District of
10:15:15 Delaware litigation?
10:15:16 A. For the sole purpose of arguing a 101
10:15:19 motion, yes.
10:15:20 Q. When did that representation begin?
10:15:22 A. When did it begin?
10:15:24 Q. Yes.
10:15:24 A. I think it was sometime in mid-November. I
10:15:33 want to say mid-November of last year.
10:15:36 Q. Okay. Can you describe the circumstances
10:15:38 how that representation began?
10:15:42 MR. MEAD: I just want to caution the
10:15:46 witness not to get into the substance of
10:15:48 attorney-client communications or attorney work
10:15:50 product. So, I mean, if you can answer at a high
10:15:52 level, without revealing that type of privileged
10:15:53 information, please feel free to do so.
10:15:57 THE WITNESS: If we can agree that by
10:16:00 answering this question I'm not waiving JDA
10:16:03 privilege, but I want to be able to give you an
10:16:05 answer to your question, then I can answer it, but
10:16:09 only if you agree that I'm not waiving joint defense
10:16:12 privilege.
10:16:18 MR. RACHUBA: Let me -- let me confer with

10:16:20 my co-counsel here for one second.
10:16:25 MR. MEAD: Do you want to go off the --
10:16:28 okay. Should we go off the record, then, for a
10:16:31 minute, or --
10:16:32 THE WITNESS: We've been going about an
10:16:34 hour.
10:16:34 MR. RACHUBA: Do you want to take -- do you
10:16:35 want to take a break now? It's been about an hour.
10:16:37 THE WITNESS: Sure.
10:16:37 MR. MEAD: Yeah, just so you can take your
10:16:39 time to confer, just -- yeah.
10:16:42 MR. RACHUBA: Sure. Do you want --
10:16:43 THE VIDEOGRAPHER: We are -- oh, I
10:16:45 apologize, Counsel. Off record?
10:16:47 MR. RACHUBA: Ms. Keefe, how long do you
10:16:48 want to take a break for?
10:16:50 THE WITNESS: Ten minutes is fine with me.
10:16:53 THE VIDEOGRAPHER: We are off the record.
10:16:54 The time is 10:17 a.m.
10:28:32 (Recess taken.)
10:28:48 THE VIDEOGRAPHER: We are back on the
10:29:10 record. The time is 10:29 a.m.
10:29:15 BY MR. RACHUBA:
10:29:16 Q. Ms. Keefe, what did you do to assure
10:29:20 yourself that you could represent Egnyte in the 101

motion?

A. I made sure that a conflict check was run and that we would be clear.

Q. What do you mean, "and that would be clear," that the --

A. That the conflicts -- that the conflict check did not show that Cooley was adverse to Egnyte.

Q. Okay. And I believe you testified that you do not know when that conflict check was ran?

A. I think I testified that I thought it was run sometime in the fall. But I do not know specifically when it was run.

Q. Okay. Did you do anything else to assure yourself that you could represent Egnyte?

A. I don't know what you mean. But I know that I was comfortable that we were not as a firm adverse to Egnyte.

Q. Did you seek permission from Box?

MR. MEAD: That may be an attorney-client privileged question. Do you mind if we confer on privilege? Let's go off the record and confer about that.

MR. RACHUBA: Sure. Take a three -- two-minute break, three-minute break?

10:30:41 MR. MEAD: Yeah.
10:30:42 THE VIDEOGRAPHER: We are off the record.
10:30:43 The time is 10:31 a.m.
10:31:28 (Recess taken.)
10:32:17 THE VIDEOGRAPHER: We are back on the
10:32:28 record. The time is 10:32 a.m.
10:32:32 BY MR. RACHUBA:
10:32:33 Q. Ms. Keefe, did you have communications with
10:32:36 Box regarding your representation of Egnyte?
10:32:40 MR. MEAD: So, again, Counsel, I think
10:32:42 you're asking a different question now. I -- I
would --
10:32:45 MR. RACHUBA: Yeah, correct.
10:32:46 MR. MEAD: Counsel, I would advise the
10:32:49 witness not to get into the content of any
10:32:52 attorney-client privileged communications. And I
10:32:54 think because your question assumes the content of
10:32:57 attorney-client privileged communications, I would
10:33:00 instruct you not to answer that as framed.
10:33:01 If there's another way you want to try to
10:33:03 get at whatever it is you're trying to get at,
10:33:06 Counsel, that doesn't invade the attorney-client
10:33:08 privilege, please feel to ask differently.
10:33:11 MR. RACHUBA: I don't understand how that
10:33:12 question seeks privileged information. I'm asking

10:33:16 if communications existed.
10:33:20 MR. MEAD: Regarding a certain subject
10:33:22 matter between an attorney and client. So -- that
10:33:31 would be -- generally qualify as invading
10:33:36 attorney-client privilege.
10:33:37 Again, we're not trying to block
10:33:38 nonprivileged information, so if there's a different
10:33:41 way you want to get at whatever it is you're getting
10:33:43 at, please feel free.
10:33:45 MR. RACHUBA: I forget how I asked it now.
10:33:47 So, John, do you mind reading back how I asked that
10:33:49 question.
(The following record was read by the
reporter:
10:32:33 "Q. Ms. Keefe, did you have communications
10:32:36 with Box regarding your representation of.
10:32:39 Egnyte?")
10:34:01 MR. RACHUBA: "Egnyte."
10:34:05 MR. MEAD: So -- yeah, so the -- so, yeah,
10:34:06 same points stand that I just raised. So, you know,
10:34:11 I would instruct the witness not to answer that
10:34:13 question as framed. But if there's a different way
10:34:15 you could try to get at whatever it is you're
10:34:19 getting at, please feel free.
10:34:20 MR. RACHUBA: How is my question any

10:34:21 different than what would be revealed on a privilege
10:34:24 log?
10:34:24 MR. MEAD: Because it's asking for the
10:34:28 content of -- you know, if you're saying --
10:34:30 MR. RACHUBA: Well, I'm not -- I'm not
10:34:31 asking for the content. I'm asking for the
10:34:32 existence of communication.
10:34:34 MR. MEAD: Well, I'm instructing the
10:34:35 witness not to answer that question. If there's a
10:34:37 different way you would like to ask the question,
10:34:39 that would get at -- if you think there's some
10:34:41 relevant information that's nonprivileged that you
10:34:43 want to get at, please feel free.
10:34:45 MR. RACHUBA: Okay. We disagree as --
10:34:47 whether that is privileged. But I will move on.
10:34:59 Q. Ms. Keefe, are you going to follow the
10:35:00 instruction not to answer?
10:35:01 A. Yes.
10:35:02 Q. Okay. Ms. Keefe, do you represent Egnyte
10:35:33 in any other matters besides the 101 issue?
10:35:37 MR. MEAD: Sorry. Objection to form.
10:35:40 THE WITNESS: So to the extent that I
10:35:41 understand your question, no.
10:35:45 BY MR. RACHUBA:
10:35:46 Q. And what is your understanding of my

10:35:47 question?
10:35:48 A. That I have not -- have not, do not
10:35:51 represent Egnyte with respect to anything other than
10:35:53 the single issue of 101 in the district court
10:35:56 litigation.
10:35:57 Q. Okay. Do documents exist that outline the
10:36:06 scope of your representation of Egnyte?
10:36:10 A. No.
10:36:11 Q. Do emails exist that outline the scope of
10:36:23 your representation of Egnyte?
10:36:26 A. No.
10:36:26 Q. Are there any -- are you aware of any
10:36:32 communications that outline the scope of your
10:36:35 representation of Egnyte?
10:36:38 A. I --
10:36:39 MR. MEAD: Object to the form.
10:36:40 THE WITNESS: I had conversations with
10:36:42 Egnyte's outside counsel, who are representing them
10:36:45 in all other aspects of the district court
10:36:47 litigation.
10:36:53 BY MR. RACHUBA:
10:36:54 Q. Who are those outside counsel?
10:36:56 A. I'd have to look at the pleadings to
10:37:01 remember their names. I'm sorry. I'm terrible with
10:37:03 names.

10:37:03 Q. Not a -- as am I.
10:37:07 A. They're nice folks. I just can't remember
10:37:10 their names off the top of my head.
10:37:12 Q. Did you have conversation with Egnyte
10:37:17 itself, not Egnyte's outside counsel?
10:37:19 A. No.
10:37:25 Q. I believe their outside counsel is
10:37:28 FisherBroyles law firm.
10:37:31 A. That sounds familiar.
10:37:32 Q. Okay. Is Cooley outside counsel to Egnyte?
10:37:46 MR. MEAD: Objection; vague and ambiguous.
10:37:48 THE WITNESS: Right now? I don't know.
10:37:49 We've had this conversation already. I don't know
10:37:51 the answer.
10:37:51 BY MR. RACHUBA:
10:37:52 Q. But with respect to this particular -- I'm
10:37:54 trying to see if -- you said you'd spoke with
10:37:56 outside counsel of Egnyte. Does that outside
10:37:59 counsel include Cooley?
10:38:01 A. I would say no, because the only
10:38:04 representation that I had of Egnyte was for the
10:38:08 purpose of arguing the 101 motion in the district
10:38:11 court. Once that ended, the representation ended.
10:38:14 Q. Okay. Did you ever represent to the Court,
10:38:21 the Court for the District of Delaware, that the

10:38:23 scope of your representation of Egnyte was limited?

10:38:29 A. I don't know that I ever used those words.

10:38:32 Q. What words did you use?

10:38:38 A. I do recall -- I do recall being introduced during the oral argument as "Ms. Keefe will be arguing the 101 motion." That was it.

10:38:48 Q. Okay.

10:38:49 A. I did not stand up and say, "Heidi Keefe, representing Egnyte." I was introduced as "Ms. Keefe will be arguing the motion."

10:38:56 Q. Okay.

10:38:56 A. Something along those lines.

10:38:58 Q. Okay. Are you aware of any other statements that you, Egnyte, Egnyte's outside counsel, Egnyte's in-house counsel, other parties before the Court -- any statements made to the Court regarding your limited representation?

10:39:21 MR. MEAD: Objection to form.

10:39:22 THE WITNESS: Again, I think the only statements made to the Court regarding my representation at all were my application for pro hac vice and whatever statements were made at the very beginning of the oral argument for the 101 motion, which is the only time that I've appeared on behalf of Egnyte in this case -- in that case. I'm

10:39:44 not on the service list. I receive no other
10:39:47 information. I've participated in no other portion
10:39:50 of that case.
10:40:00 BY MR. RACHUBA:
10:40:00 Q. So we just talked about communications with
10:40:03 the Court about your scope of representation. Have
10:40:07 there been any papers filed with the court that
10:40:10 discussed your limited representation?
10:40:12 A. The only filing I'm aware of is the pro hac
10:40:17 vice motion.
10:40:17 Q. Any papers served on any of the parties
10:40:21 that mentioned your limited representation?
10:40:23 A. Again, the only paper I'm aware of is the
10:40:26 pro hac motion.
10:40:28 Q. Okay. Have there been any filings in this
10:40:32 proceeding that discussed your limited
10:40:33 representation?
10:40:34 A. Yes, the declaration that I filed with our
10:40:36 reply to the POPR.
10:40:38 Q. Okay. Any other documents?
10:40:40 A. Not that I'm aware of. None was -- none
10:40:44 was necessary until I had to refute your
10:40:47 allegations, that were unsubstantiated, regarding my
10:40:51 representation. And that's what's in my
10:40:54 declaration.

10:40:55 Q. Do you have an understanding of Egnyte's
10:41:01 understanding of the scope of your representation of
10:41:04 Egnyte?
10:41:04 A. You'd have to ask Egnyte.
10:41:07 Q. I'm asking if you have an understanding of
10:41:09 Egnyte's understanding.
10:41:11 A. Again, my understanding has always been
10:41:13 that I was narrowly retained to function only as an
10:41:16 arguer for 101. They already had counsel for
10:41:20 everything else in the case.
10:41:21 Q. No, I'm not -- I'm not asking your
10:41:22 understanding of your representation. I'm asking
10:41:25 whether you have an understanding of what Egnyte
10:41:28 understood to be the scope of your representation.
10:41:31 A. Counsel, I can never know what someone else
10:41:33 thinks. But my strong belief is that their
10:41:36 understanding is the same as mine, given the fact
10:41:38 that they already have -- already had, at the time,
10:41:42 counsel in the case and have continued to have
10:41:44 counsel in the case that are not me. The only thing
10:41:46 I did in that case, ever, was argue the 101 motion.
10:41:50 I have not participated on behalf of Egnyte since.
10:41:53 I have not been contacted by Egnyte. I've never
10:41:55 spoken with Egnyte about anything in the case.
10:41:58 Q. Okay. Are you aware of any other

circumstances besides the fact that Egnyte already had counsel that reflected Egnyte's belief that your representation was limited?

[redacted]

BY MR. RACHUBA:

Q. Okay. Is there anything memorializing those communications?

A. We've already talked about this. No. It was a conversation I had with outside counsel.

Q. Okay. Can you describe that conversation with outside counsel?

A. Again, if you are willing to agree that I am not waiving JDA privilege, then I'm happy to answer the question.

Q. Counsel, I -- I think you just waived privilege by discussing the contents of those communications about the scope of your

representation.

MR. MEAD: I disagree with that. But if you -- if you want an answer to this question, if you want to agree that -- that the witness can go ahead and answer that, she -- well, I think she's just represented she's happy to go ahead and answer if there's an agreement that there's no argument that there's some further waiver or any waiver based on her answer.

MR. RACHUBA: No, we do not agree -- we did not agree to that.

MR. MEAD: Okay. So it sounds like the witness is saying -- well, why don't we go off the record and confer, then. It sounds like the witness is saying this may get into privileged communications.

MR. RACHUBA: Okay. Before we go off the record, John, can you read that question back, just so we have -- I have it fresh in my mind and you all have it fresh in your minds to discuss exactly what the question is.

(The following record was read by the reporter:

"Q. Okay. Can you describe that conversation with outside counsel?")

10:44:10 MR. MEAD: And what -- so what was the
10:44:12 previous question, just so we have the full context,
10:44:15 or previous question and answer.
(The following record was read by the
reporter:
10:42:33 "Q. Okay. Is there anything memorializing
10:42:36 those communications?
10:42:38 "A. We've already talked about this. No.
10:42:41 It was a conversation I had with outside
10:42:43 counsel.
10:42:44 "Q. Okay. Can you describe that
10:42:45 conversation with outside counsel?
10:42:49 "A. Again, if you are willing to agree that
10:42:52 I am not waiving JDA privilege, then I'm
10:42:57 happy to answer the question.")
10:44:40 MR. RACHUBA: For purposes of clarity, I
10:44:41 can ask a question now that -- and then you guys can
10:44:44 discuss scope of waiver and privilege.
10:44:48 MR. MEAD: Sure.
10:44:49 MR. RACHUBA: Okay.
10:44:53 Q. Can you describe --
10:44:54 THE VIDEOGRAPHER: Off record?
I'm sorry, Counsel.
10:44:55 MR. RACHUBA: Well, stay on -- stay on the
10:44:56 record one more time, and then we'll --

THE VIDEOGRAPHER: Yes, sir.

10:44:57 MR. RACHUBA: And then we'll break. One more question.

10:44:58

10:45:01 Are we still on record?

10:45:03 THE VIDEOGRAPHER: Yes, sir.

10:45:07 MR. RACHUBA: Okay.

10:45:08 Q. Ms. Keefe, can you describe the conversation you had with Egnyte's outside counsel regarding the scope of your representation of Egnyte with respect to the 101 motion?

10:45:11

10:45:15

10:45:19

10:45:25 MR. MEAD: Okay. Yeah, so we'll -- like we just discussed, we'll go off the record, confer regarding privilege issues, and come back. Thank you.

10:45:27

10:45:29

10:45:32

10:45:32 MR. RACHUBA: Okay. A five-minute break, come back at 10:50?

10:45:34

10:45:37 MR. MEAD: Sure.

10:45:39 THE VIDEOGRAPHER: We are --

MR. RACHUBA: Okay.

10:45:39 THE VIDEOGRAPHER: -- off the record. The time is 10:45 a.m.

10:45:40

10:47:54 (Recess taken.)

10:47:57 THE VIDEOGRAPHER: We are back on the record. The time is 10:48 a.m.

10:48:03

10:48:07 MR. RACHUBA: Okay. John, can you please

10:48:08 read back my last question.
(The following record was read by the reporter:
10:45:08 "Q. Ms. Keefe, can you describe the
10:45:11 conversation you had with Egnyte's outside
10:45:14 counsel regarding the scope of your
10:45:17 representation of Egnyte with respect to
10:45:20 the 101 motion?")
10:48:21 MR. MEAD: I'm going to instruct the
10:48:24 witness not to answer that question, on the basis of
10:48:28 the question calling for disclosure of privileged
10:48:30 communication. So if there's another way you want
10:48:32 to ask your questions, Counsel, that doesn't call
10:48:35 for such disclosure, please feel free.
10:48:38 MR. RACHUBA: We'll go on the record and
10:48:39 say that we disagree with the claim of privilege.
10:48:43 We believe Ms. Keefe has waived that privilege.
10:48:47 Q. That being --
MR. MEAD: Well --
BY MR. RACHUBA:
10:48:48 Q. -- said, Ms. Keefe, will you follow your
10:48:51 counsel's instruction to not answer the question?
10:48:53 A. I will follow the instruction not to
10:48:55 answer.
10:48:56 MR. MEAD: And just -- I will note for the

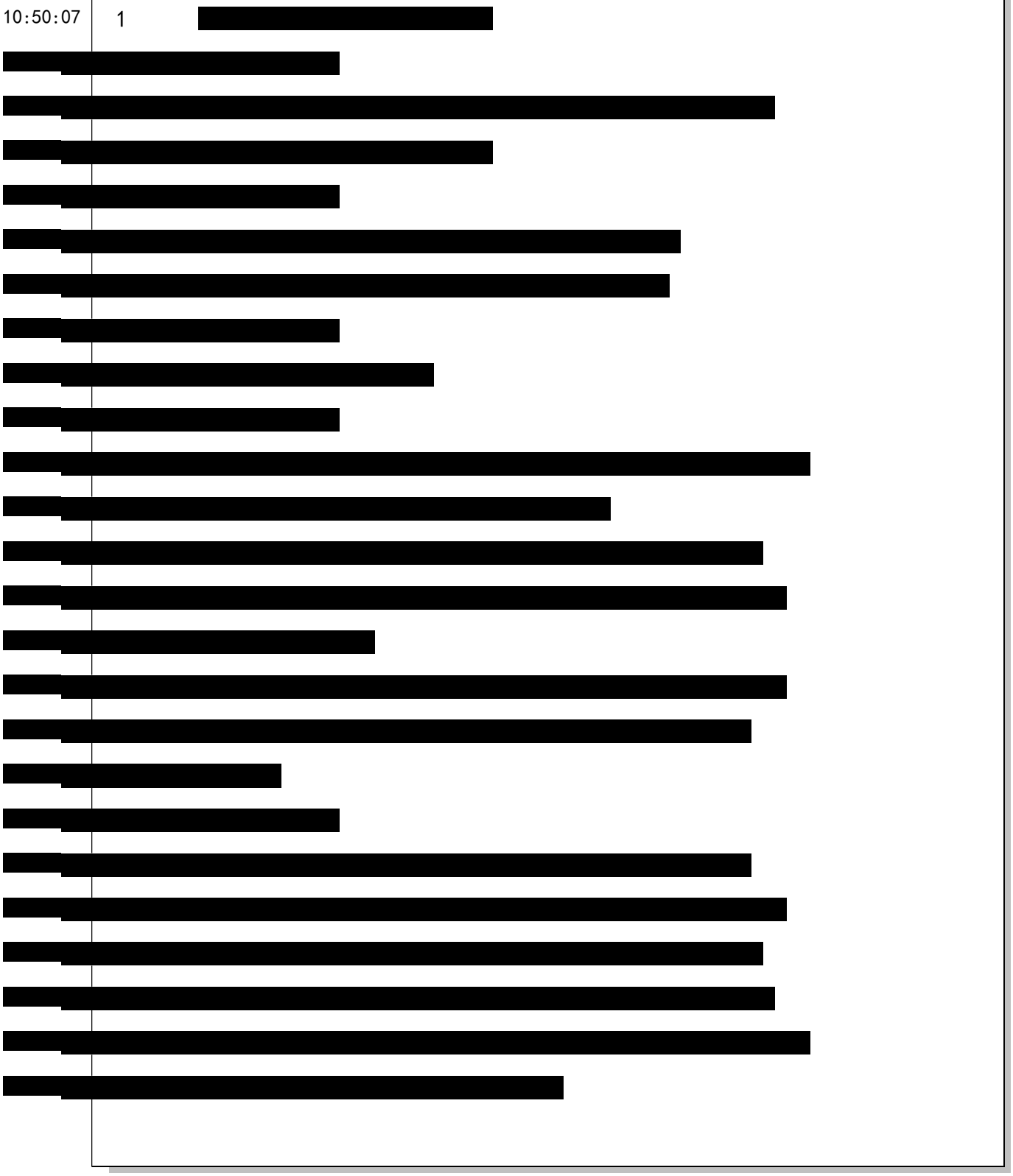
10:48:59 record, we disagree with the claim of waiver. But
10:49:00 you can go ahead with your next question.
10:49:03 MR. RACHUBA: Okay.
10:49:05 Q. All right. Ms. Keefe, if you recall,
10:49:12 this -- this whole -- this whole line of questioning
10:49:13 stemmed from my original question, that is, what is
10:49:16 your understanding of Egnyte's understanding of the
10:49:19 scope of your representation. Do you recall that
10:49:21 line of questioning?
10:49:23 A. I do.
10:49:23 Q. Okay. So is there anything besides the
10:49:27 fact that Egnyte already had counsel and that you
10:49:31 had conversations with Egnyte's outside counsel --
10:49:36 are there any other circumstances -- circumstances
10:49:38 or facts that inform you of Egnyte's understanding?
10:49:47 MR. MEAD: Objection to form.
10:49:47 THE WITNESS: Again, like I answered
10:49:49 before, I can never know exactly what someone else
10:49:51 thinks. So my answer's the same as it was before.
10:49:55 BY MR. RACHUBA:
10:49:57 Q. Okay.
10:49:57 Okay. [redacted]

[redacted]

[redacted]

[redacted]

10:50:07 1



10:51:14 Q. [redacted]

10:51:15 How much time did you spend preparing for
10:51:18 and arguing the 101 motion?
10:51:24 MR. MEAD: Well, you know, Counsel, you'll
10:51:26 agree that you wouldn't argue any waiver of work
10:51:29 product if the witness were to answer that, if you
10:51:31 just want an amount of time?
10:51:34 MR. RACHUBA: I disagree that there's any
10:51:36 work product involved with this question, but I -- I
10:51:39 will agree if Ms. Keefe answered that would not be a
10:51:43 waiver of work product privilege -- work product
10:51:46 protection.
10:51:49 THE WITNESS: I don't know; maybe somewhere
10:51:53 between ten and 12 hours total.
10:51:58 BY MR. RACHUBA:
10:51:58 Q. And how much -- how much do you bill per
10:52:02 hour?
10:52:03 A. I honestly don't know. It changes every
10:52:05 year, and I try not to keep up with it, because it
10:52:08 makes me sad.
10:52:10 Q. Do you have any records of the time you
10:52:16 spent preparing for and arguing the 101 motion for
10:52:20 Egnyte?
10:52:21 A. I don't think so. I don't know.
10:52:27 Q. Do you typically keep track of your time

10:52:31 for your clients?
10:52:33 A. Not as well as I should.
10:52:35 Q. I don't believe that is -- yes or no; do
10:52:45 you -- you threw me off there. Hold on one second.
10:52:48 Generally do you keep track of your time
10:52:52 you've spent representing your clients; yes or no?
10:52:55 A. Depends on the client.
10:52:57 Q. Do you keep track of the time you spent
10:52:59 representing Box?
10:53:01 A. Again, not as well as I should, but yes.
10:53:03 Q. Do you keep track of the time you spent
10:53:05 representing Dropbox?
10:53:07 A. I'm not sure that I kept those separate.
10:53:23 Q. Do you often represent clients without
10:53:27 being compensated?
10:53:31 A. I don't know what you mean by "often." But
10:53:34 I think there are many times that I take phone calls
10:53:36 and don't record them because I believe it to be
10:53:39 part of client relations or things like that. So I
10:53:43 guess the answer's probably yes.
10:53:46 Q. Do you represent clients in -- in a
10:53:50 district court hearing -- let me rephrase.
10:53:54 Do you often represent clients in district
10:54:02 court hearings without compensation?
10:54:05 A. I have in the past.

10:54:08 Q. How many times?

10:54:11 A. I don't know. I've been a lawyer for 27 or

10:54:15 28 years. It's definitely been quite a few times.

10:54:18 Q. How many times in the last five years?

10:54:24 A. Ten to 20.

10:54:43 Q. [redacted]

10:56:16 [redacted]

10:56:21 MR. RACHUBA: Sure. Come back in -- at
10:56:25 2:00? Or I guess -- what is that?
10:56:27 THE WITNESS: 11:00.
10:56:29 MR. RACHUBA: 11:00 your time?
10:56:31 MR. MEAD: Let's -- yeah, as soon as we're
10:56:32 done conferring, we'll come back on. So yeah.
10:56:34 MR. RACHUBA: Okay.
10:56:34 THE VIDEOGRAPHER: We are off the record.
10:56:37 Time is 10:56 a.m.
10:57:42 (Recess taken.)
10:57:49 THE VIDEOGRAPHER: We are back on the
10:57:57 record. The time is 10:58 a.m.
10:58:01 MR. RACHUBA: Okay. John, can you please
10:58:02 read back my last question.
(The following record was read by the
reporter:
10:56:02 [redacted]

10:58:31

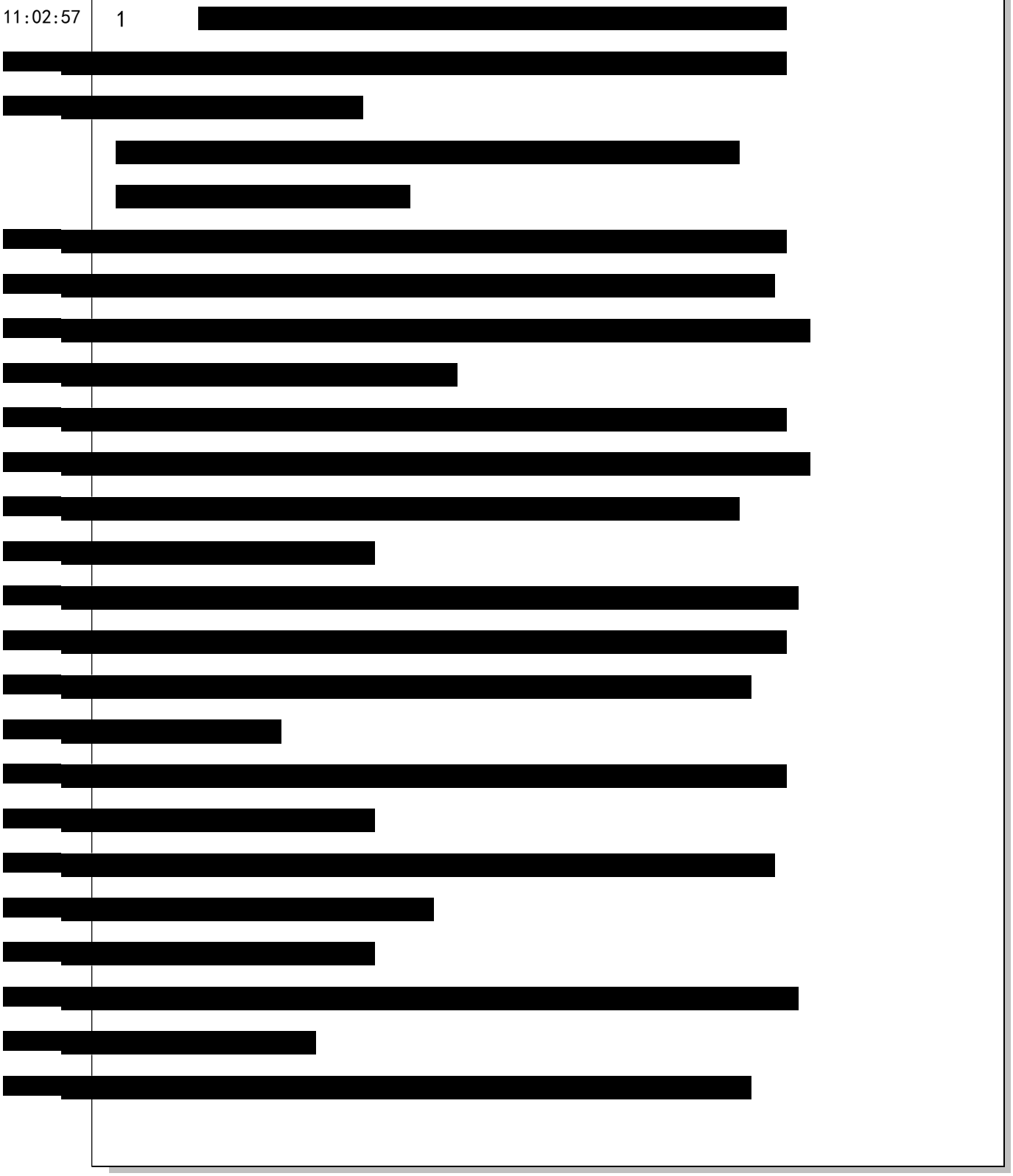
10:59:23 THE VIDEOGRAPHER: We are off the record.

10:59:25 The time is 10:59 a.m.

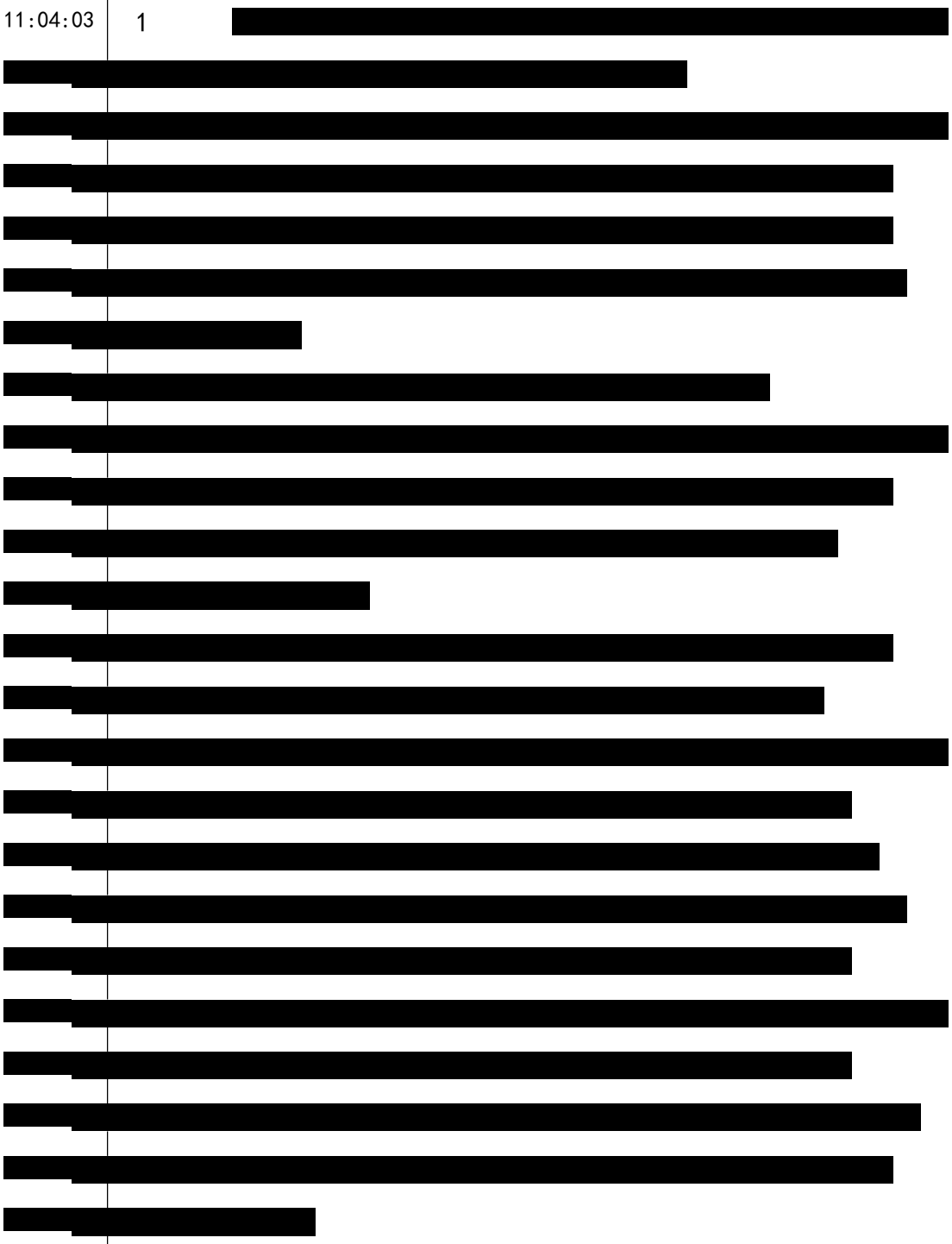
10:59:35 (Recess taken.)

11:00:57 THE VIDEOGRAPHER: We are back on the
11:01:05 record. The time is 11:01 a.m.
11:01:08 MR. RACHUBA: John, can you please read
11:01:12 that question back.
(The following record was read by the
reporter:
10:58:44 [redacted]

11:02:57 1



11:04:03



(The following record was read by the

reporter:

11:04:29 [redacted]

[redacted]

11:05:54 THE VIDEOGRAPHER: We are off the record.

11:05:56 The time is 11:06 a.m.

11:07:25 (Recess taken.)

11:10:33 THE VIDEOGRAPHER: We are back on the

11:10:46 record. Time is 11:11 a.m.

11:10:49 MR. RACHUBA: Okay. John, can you please

11:10:50 read back the last question.

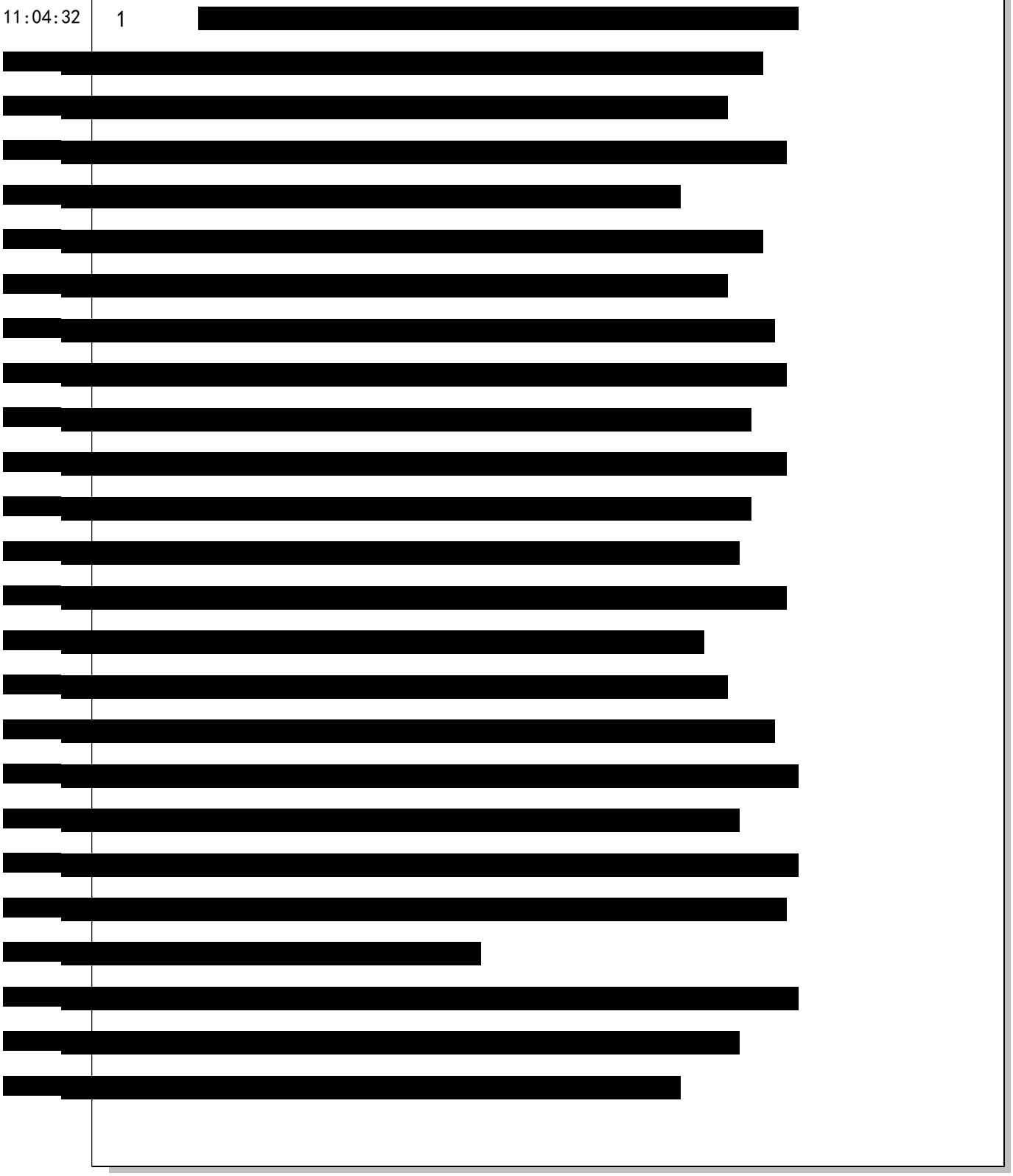
(The following record was read by the

reporter:

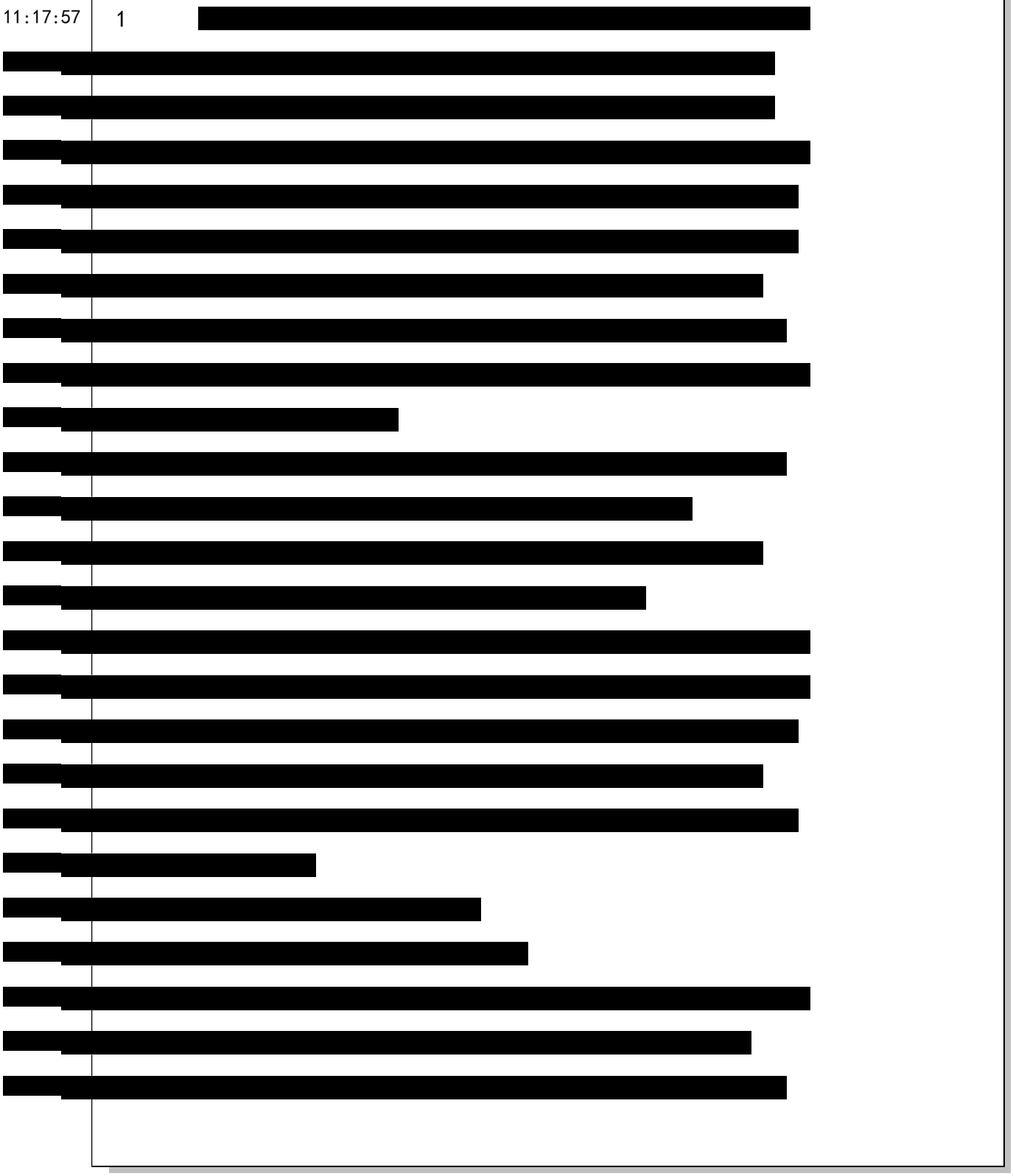
[redacted]

11:11:19 THE VIDEOGRAPHER: We are off the record.
11:11:20 The time is 11:11 a.m.
11:16:11 (Recess taken.)
11:16:12 THE VIDEOGRAPHER: We are back on the
11:16:21 record. The time is 11:16 a.m.
11:16:24 MR. RACHUBA: Okay. John, let's -- let's
11:16:26 try this one more time. Can you please read back my
11:16:28 last question.
(The following record was read by the
reporter:
11:04:29 [redacted]

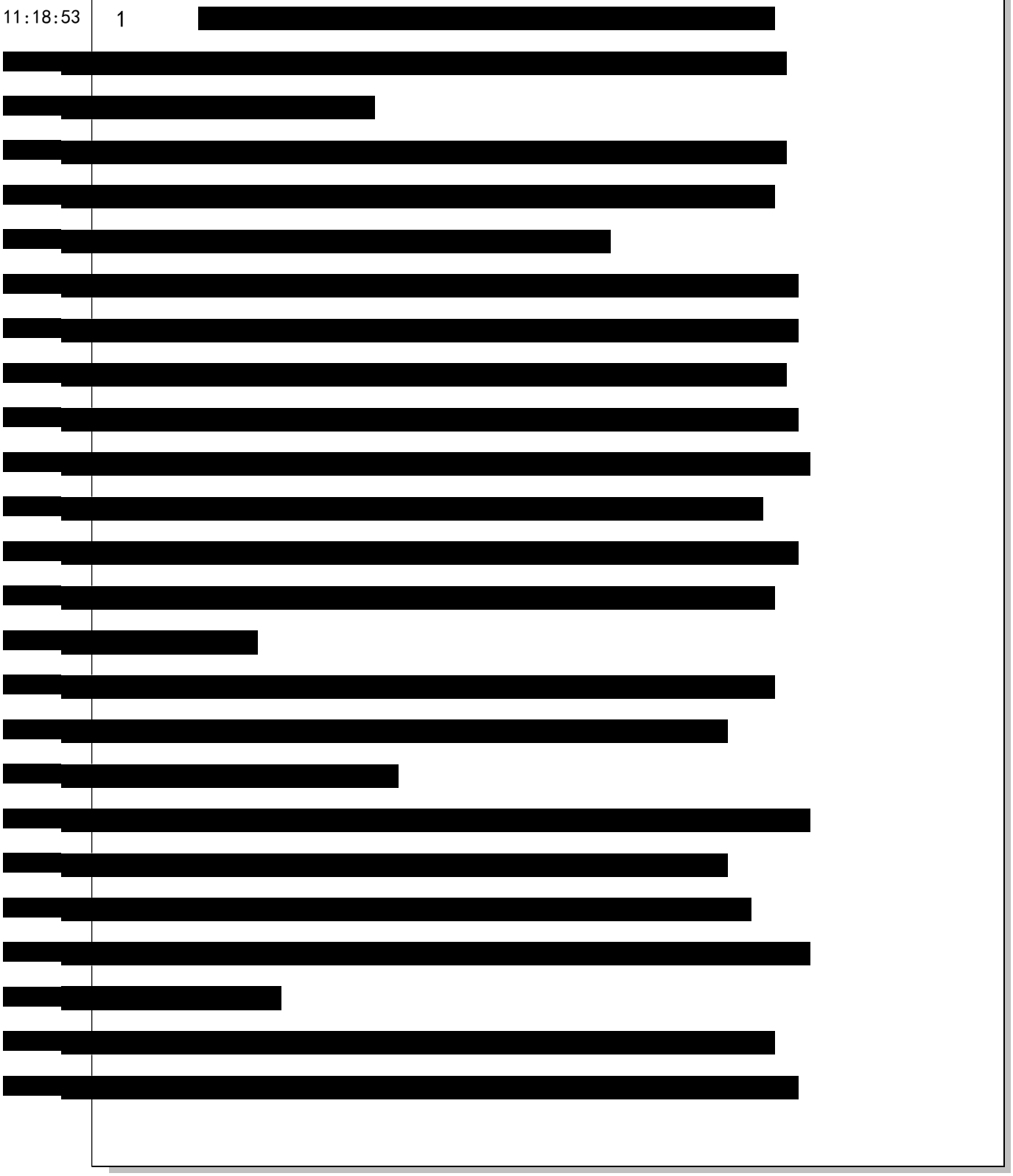
11:04:32 1



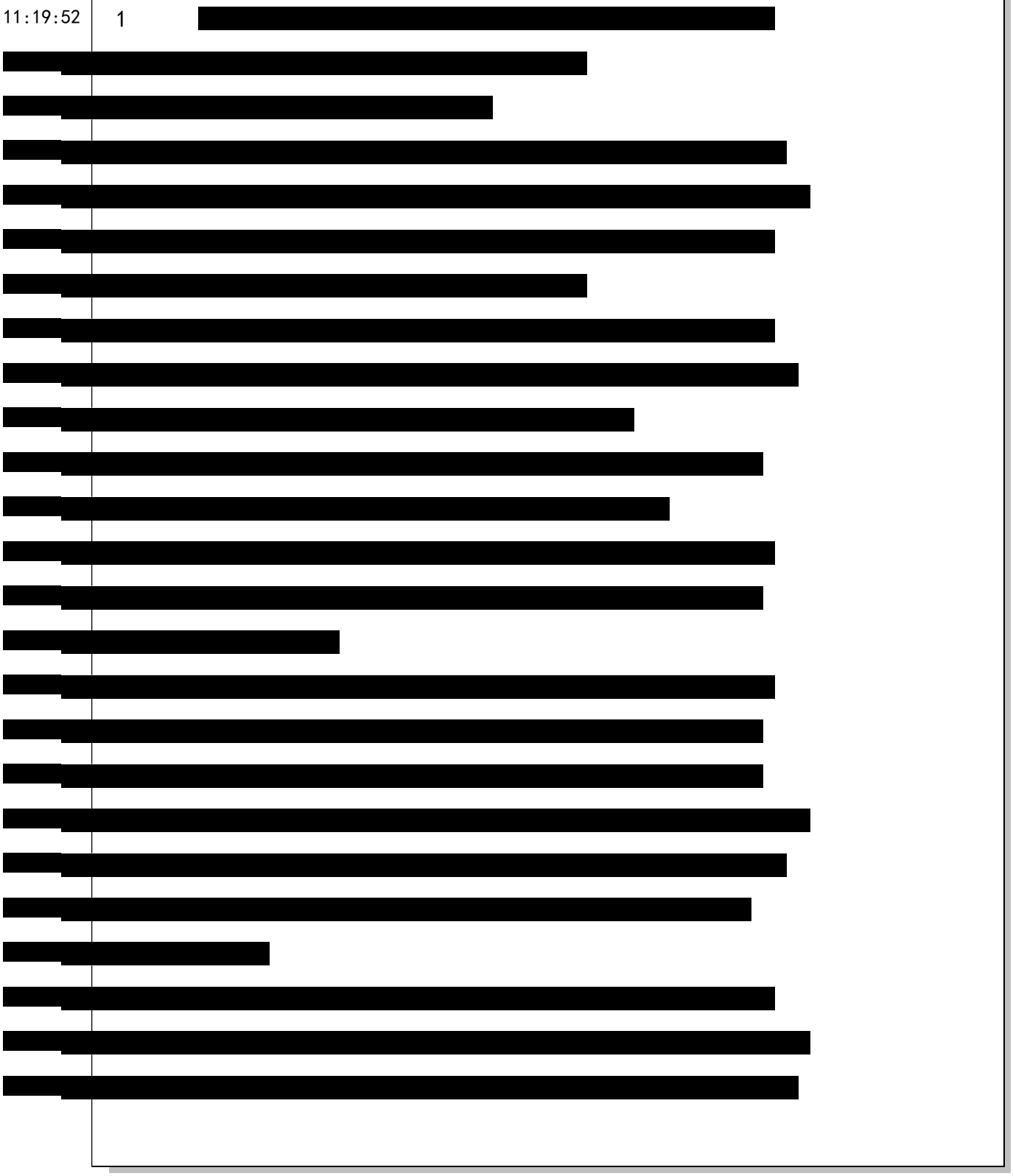
11:17:57 1



11:18:53 1



11:19:52 1



11:23:20 MR. RACHUBA: All right. Well, let's -- let's -- we'll save it. Let's revisit towards the end. And for now we can move on.

Q. Okay. Ms. Keefe, I want to return to some of the testimony you had about your billing rate. Is it your testimony that you do not know your billing rate?

A. That is absolutely true. I do not know my billing rate.

Q. Okay. Do you know -- are you aware of a range of what your billing rate could be?

A. I'd be -- I'd be guessing at this point. I

11:23:55 don't know it. I literally don't know it.
11:23:58 Q. Is it over a thousand dollars an hour?
11:24:01 A. I don't know.
11:24:05 Q. Do you bill for your time representing Box?
11:24:19 MR. MEAD: Objection; form. And, you know,
11:24:21 actually -- well, that's -- yeah, the way that
11:24:27 question's asked, it gets at potentially a number of
11:24:31 things, including attorney work product,
11:24:33 attorney-client communications. So --
11:24:35 MR. RACHUBA: Are you instructing the
11:24:37 witness not to answer?
11:24:38 MR. MEAD: No. It's -- well, honestly, it
11:24:40 depends on what you're asking, if you're asking does
11:24:42 Ms. Keefe send out a bill for her time, or are you
11:24:46 saying does Cooley, or what?
11:24:48 MR. RACHUBA: Let's try both. Does
11:24:49 Ms. Keefe bill for her time for representing Box?
11:24:57 MR. MEAD: Yeah -- yeah, I guess I still
11:25:00 object. That's vague and ambiguous.
11:25:04 THE WITNESS: I don't know that I can
11:25:05 answer this question without revealing
11:25:09 attorney-client communication and -- and/or work
11:25:12 product the way it's phrased.
11:25:14 BY MR. RACHUBA:
11:25:15 Q. Yes or no; do you bill for your time for

services associated with representing Box?

MR. MEAD: So, yeah, the witness -- you might not have heard -- just advised you that she doesn't believe she can answer that without divulging information that shouldn't be divulged. So if you'd like, we can go off the record and confer about that.

BY MR. RACHUBA:

Q. Are you -- are you claiming -- Ms. Keefe, are you claiming privilege?

A. Potentially, yes.

Q. Yes or no?

A. I need to confer with my counsel to make sure one way or the other. I think that there is a possible potential privilege issue in this, the way it is asked.

MR. RACHUBA: Okay. Let's go off the record.

THE VIDEOGRAPHER: We are off the record. The time is 11:26 a.m.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record. The time is 11:30 a.m.

MR. RACHUBA: Okay. John, do you mind reading back that question.

(The following record was read by the reporter:
"Q. Yes or no; do you bill for your time for services associated with representing Box?")
MR. RACHUBA: So, yes, that one.
Q. Yes -- Ms. Keefe, yes or no; do you -- do you or anyone else at Cooley bill for your time associated for services for representing Box?
MR. MEAD: Objection; vague and ambiguous.
THE WITNESS: I -- I can't answer that question as broadly as it is phrased.
BY MR. RACHUBA:
Q. Okay. Let me -- let me try to rephrase.
[redacted]

11:32:13 [redacted]

11:32:22 Q. Do you keep track of your time for services
11:32:25 associated with your representation of Box?
11:32:28 A. Not always.
11:32:30 Q. In what situations do you not?
11:32:35 A. There are a lot of times when I'm not very
11:32:38 good at keeping track of what I'm doing. There are
11:32:41 certain projects that I don't bill them for.
11:32:44 Q. Do you usually keep track of your time?
11:32:51 A. I don't know that I'd want to use the word
11:32:53 "usually." But I do often keep track of my time.
11:32:56 But --
11:32:59 Q. Is it a best practice -- sorry.
11:33:02 Do you consider it a best practice to keep
11:33:04 track of your time for services associated with
11:33:06 representation of Box?
11:33:09 A. Again, I think that question is too broad.
11:33:11 There are times in which it wouldn't matter at all.
11:33:13 There are times in which it would be a best
11:33:16 practice.
11:33:16 Q. In what situation does it not matter at all
11:33:19 that you don't keep track -- that you would not keep
11:33:21 track of your time for services associated with your

11:33:24 representation of Box?
11:33:25 A. I can think of lots of reasons, not the
11:33:28 least of which is client development.
11:33:30 Q. Any other reasons?
11:33:32 A. I'm sure there are other reasons.
11:33:34 Q. Can you tell me them?
11:33:37 A. As I'm sitting here today, I'm not thinking
11:33:39 of them right away. But I'm sure there are other
11:33:41 reasons.
11:33:41 Q. What activities or services of yours do you
11:33:55 bill to Box?
11:33:59 MR. MEAD: Let me caution the witness, you
11:34:03 can answer at a high level. I don't want to get
11:34:04 into attorney-client privileged communications or
11:34:07 work product. If you're not --
11:34:08 THE WITNESS: I legitimately don't
11:34:09 understand the question --
11:34:09 MR. MEAD: Okay.
11:34:09 THE WITNESS: -- so I legitimately don't
11:34:11 know how to answer that question. I don't
11:34:13 understand it.
11:34:14 BY MR. RACHUBA:
11:34:15 Q. Okay. You had testified earlier that you
11:34:17 do charge Box for your services associated with your
11:34:21 representation; is that correct?

11:34:23 A. I've charged for services, yes.
11:34:26 Q. Okay. What is the nature of those services
11:34:29 that you charge for?
11:34:32 A. Representing them.
11:34:33 Q. Can you be more specific?
11:34:36 A. Representing them in giving legal advice.
11:34:44 Q. In what proceedings?
11:34:47 A. There have been many.
11:34:50 Q. Can you name them?
11:34:56 A. I should be able to name all of these
11:34:58 cases, and for the life of me I cannot. But I've
11:35:01 represented Box for more than five years. There
11:35:03 have been numerous cases. There have been district
11:35:08 court litigations. There have been simple matters
11:35:11 of consultation. There have been IPRs.
11:35:16 Q. What proceedings with respect to the
11:35:20 dispute between Topia do you charge Box for your
11:35:26 time?
11:35:28 MR. MEAD: Objection to form.
11:35:28 THE WITNESS: Box has been charged in
11:35:31 connection with both the district court litigation
11:35:33 and the IPRs.
11:35:34 BY MR. RACHUBA:
11:35:34 Q. Okay. Can you describe your activities
11:35:38 involved in representation in those two proceedings

11:35:42 that you have charged to Box?

11:35:44 A. I cannot without revealing attorney-client

11:35:48 communications.

11:35:48 Q. Are you refusing to answer the question?

11:35:51 A. I cannot answer that question without

11:35:53 revealing attorney-client communications.

11:35:58 Q. Do you have a contingency agreement with

11:36:01 Box?

11:36:02 A. I do not.

11:36:04 Q. Do you have a monetary interest in the

11:36:07 outcome of the litigation between Box and Dropbox?

11:36:12 A. I do not.

11:36:13 Q. Did you have a monetary interest in the

11:36:15 outcome of the IPRs between Box and Topia?

11:36:19 A. I do not.

11:36:23 Q. Do you have a monetary interest in the

11:36:25 outcome of the litigation between Egnyte and Topia?

11:36:29 A. I do not.

11:36:29 Q. Does anyone at Cooley have a monetary

11:36:32 interest in the outcome of the litigation between

11:36:35 Box and Topia?

11:36:37 A. We do not.

11:36:38 Q. Does anyone at Cooley have a monetary

11:36:40 interest in the outcome of litigation between Topia

11:36:42 and Egnyte?

11:36:43 A. We do not.
11:36:44 Q. Does anyone at Cooley have a monetary
11:36:47 interest in the outcome of the IPRs between Box and
11:36:50 Dropbox and Topia?
11:36:52 A. We do not.
11:36:53 Q. Okay. I think we can move on for right
11:37:12 now. I'm wondering what time you would like to
11:37:16 break for lunch. Can you go until 12:30, or would
11:37:21 you rather break sooner?
11:37:22 A. Well, given that I haven't gone to the
11:37:24 bathroom in like an hour and a half, I don't want to
11:37:27 go all the way till 12:30. We can break at noon.
11:37:30 We can --
11:37:30 Q. Well, what -- so now is probably a good
11:37:32 time to break, since I'm about to go on a different
11:37:35 line of questioning. So why don't we break now for
11:37:37 maybe ten minutes, and then we can go for another
11:37:39 hour and take a lunch break.
11:37:42 A. Okay, although I would really wish this
11:37:45 would be shorter. But okay.
11:37:46 THE VIDEOGRAPHER: Off record, Counsel?
11:37:48 MR. MEAD: Yeah, let's go off the record.
11:37:51 Yeah.
11:37:51 THE VIDEOGRAPHER: We are --
11:37:51 MR. RACHUBA: We can --

THE VIDEOGRAPHER: -- off the record. The --

11:37:52 MR. RACHUBA: We can do five minutes now if you want.

11:37:54 THE VIDEOGRAPHER: -- time is 11:38 a.m.

11:50:02 (Recess taken.)

11:50:03 THE VIDEOGRAPHER: We are back on the record. The time is 11:50 a.m.

11:50:23 BY MR. RACHUBA:

11:50:24 Q. Ms. Keefe, are you admitted pro hac vice in the District of Delaware to represent Egnyte?

11:50:27

11:50:30 A. I was, yes.

11:50:32 Q. When did you file that motion?

11:50:35 MR. MEAD: Objection to form.

11:50:37 Sorry. Did you say when or why? I'm sorry.

11:50:39

11:50:40 MR. RACHUBA: When.

11:50:41 THE WITNESS: I don't recall the exact date, but I think it was in November. We've talked about this already.

11:50:43

11:50:45

11:50:46 BY MR. RACHUBA:

11:50:46 Q. Did the pro hac vice motion represent to the Court that your representation of Egnyte was limited in any way?

11:50:56

11:51:00

11:51:02 A. I don't recall. I'd have to see the

11:51:04 pro hac petition.

11:51:05 Q. Okay. Let's pull that up.

11:51:37 Okay. I'm going to place into the chat

11:51:40 what has been labeled as Exhibit 2008.

11:51:50 Well, might as well just -- one second.

11:51:58 It's not letting me paste in the chat. Give me one

11:52:01 second.

11:52:22 Okay. I've placed into the chat what has

11:52:26 been labeled as Exhibit 2008. And this is -- this

11:52:30 exhibit is identical to the exhibit patent owners

11:52:36 filed in their preliminary response. So that's why

11:52:38 I'm using that Exhibit 2008 designation.

11:52:42 Ms. Keefe, do you have that in front of

11:52:45 you?

11:52:46 A. Not yet.

11:52:47 Q. Okay. Just let me know when you do.

11:52:57 MR. MEAD: Here.

11:52:57 THE WITNESS: Okay. I see it.

11:52:58 BY MR. RACHUBA:

11:52:59 Q. Okay. Are you familiar with this document?

11:53:02 A. I think I saw it a long time ago. I

11:53:07 haven't seen it recently.

11:53:08 Q. Okay. What is this document?

11:53:11 A. The title is "Motion and Proposed Order for

11:53:14 Admission Pro Hac Vice."

11:53:17 Q. So it is a motion for pro hac vice; is that
11:53:20 correct?
11:53:22 A. The title says it is a "Motion and Proposed
11:53:25 Order For Admission Pro Hac Vice."
11:53:28 Q. Okay. Can you -- do you mind reading into
11:53:30 the record the first paragraph of the -- of the
11:53:33 motion, starting with "Pursuant"?
11:53:35 A. Sure. Document speaks for itself, but it
11:53:39 says, "Pursuant to Local Rule 83.5 and the attached
11:53:44 certification, the undersigned counsel moves for the
11:53:47 admission pro hac vice of Heidi L. Keefe of the law
11:53:51 firm Cooley LLP to represent Defendant in this
11:53:54 matter."
11:53:54 Q. Okay. You can take your time looking over
11:54:01 this motion and the attached proposed order. Is
11:54:05 there any limitations on the scope of your
11:54:08 representation included in this motion?
11:54:14 MR. MEAD: I just object. The document
11:54:17 speaks for itself.
11:54:19 THE WITNESS: Yeah, I agree. The document
11:54:20 does speak for itself.
11:54:22 I don't see any limitation in these
11:54:25 writings. But I maintain, as I have been very clear
11:54:29 the whole time, that my representation of Egnyte was
11:54:32 limited to the 101 motion.

11:54:34 BY MR. RACHUBA:

11:54:34 Q. Okay. And I believe you have testified earlier that there have been no documents or statements made to the Court about the scope of your representation being limited to the 101 motion. Is that correct?

11:54:50 A. That's not what I said.

11:54:51 MR. MEAD: Objection; misstates testimony.

11:54:53 THE WITNESS: That's not what I said. I said I wasn't sure whether or not there had been. My recollection was that at the beginning of the motion, I was simply introduced, and then I made -- and then I made oral argument. I did not say I was representing Egnyte sum toto in the matter, because that's not true. I am not, have not, and will not represent Egnyte in the district court litigation in Delaware for anything other than the 101 oral argument that I represented them in.

11:55:23 BY MR. RACHUBA:

11:55:24 Q. Okay. And were there any other statements that you made or any of Egnyte's other counsel made regarding the scope of your representation besides your introduction in the 101 stay here?

11:55:40 MR. MEAD: Objection; calls for speculation, asked and answered.

11:55:43 THE WITNESS: I don't know what Egnyte's
11:55:46 counsel in the district court litigation have said.
11:55:49 I simply maintain, as I have over and over again,
11:55:53 that my representation of Egnyte was limited to my
11:55:56 appearance in the 101 oral argument.
11:56:00 BY MR. RACHUBA:
11:56:01 Q. Okay. At -- have you made any other
11:56:04 appearances for -- have you appeared in court on
11:56:09 behalf of Egnyte in any other -- in any other --
11:56:18 sorry -- procedure --
11:56:20 A. I have not.
11:56:21 Q. -- besides the one we're here in?
11:56:23 A. I have not.
11:56:24 Q. Okay. Thank you for helping me along
11:56:26 there.
11:56:31 And during your representation of Egnyte
11:56:34 during the 101 hearing, besides the introduction,
11:56:40 where you were introduced as arguing the 101 motion,
11:56:43 did you or any other counsel for Egnyte make any
11:56:47 statements regarding the scope of your
11:56:48 representation?
11:56:50 MR. MEAD: Objection; asked and answered.
11:56:52 THE WITNESS: As I've said before, I don't
11:56:54 know whether or not Egnyte has made any other
11:56:57 statements regarding my representation. I can only

11:56:59 tell you that my representation was limited to the
11:57:02 101 oral argument.
11:57:04 BY MR. RACHUBA:
11:57:11 Q. Okay. Was your motion for pro hac vice
11:57:13 granted by the Court?
11:57:15 A. Yes.
11:57:19 Q. In the order granting your motion, did
11:57:24 Judge Burke or the Court make any comments about the
11:57:28 scope of your representation?
11:57:31 A. Not that I'm aware of. But that does not
11:57:33 change the fact that my representation was limited
11:57:35 to the 101 motion.
11:58:19 Q. Just give me one second. I'm looking for a
11:58:22 document right now.
11:58:37 Okay. Your pro hac vice motion was filed
11:58:41 on December 8th and entered by the Court on December
11:58:44 9th. Does that sound correct to you?
11:58:47 A. If that's what PACER says.
11:58:50 Q. Okay. So would it be fair to say that you
11:58:54 began representing Egnyte on that date that the pro
11:58:58 hac vice motion was entered?
11:59:00 MR. MEAD: Objection to form. And that
11:59:04 might get into attorney-client privileged
11:59:06 information, but --
11:59:06 MR. RACHUBA: Well, let me rephrase. And

11:59:08 let me get the exact date, to be sure.
11:59:39 Q. Okay. Ms. Keefe, when did you first begin
11:59:41 representing Egnyte?
11:59:43 A. I'm not sure, but it would have been prior
11:59:45 to filing for the pro hac motion.
11:59:48 Q. Okay.
11:59:50 A. And I think I've already testified that it
11:59:52 was -- yeah. I'll just leave it at that.
11:59:55 Q. Okay.
11:59:55 A. Some -- I'll wait for a question.
11:59:56 Q. Do you recall how much earlier before the
11:59:58 filing of the pro hac motion?
12:00:01 A. I don't recall it being a lot.
12:00:03 Q. Okay. By "a lot," do you mean days, weeks,
12:00:08 months?
12:00:09 A. I don't recall it being more than a week or
12:00:14 two.
12:00:14 Q. Okay. Have you filed anything with the
12:00:24 District of Delaware court to withdraw your pro hac
12:00:27 vice representation?
12:00:28 A. No. I wish I had.
12:00:32 Q. Has any of Egnyte's counsel filed a motion
12:00:41 to withdraw your pro hac vice representation?
12:00:44 A. I'd have to look on PACER. I don't know
12:00:47 the answer to that.

12:00:49 And, again, I'm not sure why it would have
12:00:51 been necessary, given that my representation of them
12:00:53 has ended.
12:00:55 Q. Why do you believe your representation of
12:01:00 Egnyte has ended?
12:01:01 A. Because I was only representing Egnyte for
12:01:04 the limited, narrow purpose of the 101 oral
12:01:10 argument, have not been involved in the case since.
12:01:12 Q. Why did you not withdraw your pro hac vice
12:01:14 motion?
12:01:15 A. I don't know. Oversight.
12:01:24 Q. Did you seek permission from Box to file
12:01:28 your pro hac vice motion?
12:01:30 MR. MEAD: You know what? That sounds like
12:01:32 it's going to go into attorney-client privileged
12:01:37 communication. So do you want to ask a different
12:01:39 question?
12:01:47 BY MR. RACHUBA:
12:01:48 Q. Were you granted permission to file your
12:01:51 pro hac vice motion?
12:01:52 MR. MEAD: Same -- same point, Counsel.
12:01:55 It's -- you know, that's getting into
12:02:00 attorney-client privileged communication, so I'm --
12:02:03 you know, I would instruct the witness not to
12:02:05 answer. I'm not sure what you're getting at. If

there's some nonprivileged information you want to get in this area, you can ask a different question.

MR. RACHUBA: Okay. Just to clarify, you're instructing the witness not to answer?

MR. MEAD: Yes.

MR. RACHUBA: Okay.

Q. And Ms. Keefe, are you following that instruction?

A. Yes. I cannot answer that question without revealing attorney-client communications.

Q. I understand.

Did you or anyone else in Cooley have communications with Box regarding the filing of your pro hac vice motion?

MR. MEAD: Same, you know, objection and instruction. It's -- you know, you're attempting to pry into attorney-client privileged communications.

MR. RACHUBA: I'm not seeking the substance of communications. I'm just asking whether such communications existed.

MR. MEAD: Such communications regarding a certain subject between an attorney and a client. So you're attempting to pry into -- and so I'm going to instruct the witness not to answer that question as well. I mean, if there's some different line of

12:03:16 questions you want to get at you somehow think is
12:03:20 relevant here, you can do that, but please don't try
12:03:23 to pry into attorney-client privileged discussions.
12:03:26 MR. RACHUBA: We disagree that it's -- that
12:03:27 it's privileged communication. But to be clear, are
12:03:29 you instructing the witness not to answer?
12:03:30 MR. MEAD: Yes.
12:03:31 MR. RACHUBA: Okay.
12:03:32 Q. And Ms. Keefe, are you following that
12:03:34 instruction not to answer?
12:03:36 A. I cannot answer that question without
12:03:38 revealing attorney-client communications.
12:04:01 Q. Ms. Keefe, has the District of Delaware
12:04:04 ruled on Egnyte's 101 motion?
12:04:10 A. The only reason I'm pausing is because I
12:04:14 think it's a little bit complicated. I don't know
12:04:16 if there's a final order or not. I honestly don't
12:04:19 know if there's a final order or not. There was a
12:04:22 ruling from the bench which was to be followed by
12:04:28 some additional briefing. I don't know whether or
12:04:32 not there has been a final order.
12:04:35 Q. Okay.
12:04:41 A. I'm sure -- I'm sure PACER would show that.
12:04:44 Q. Okay. I believe you testified earlier that
12:04:49 you believe your representation of Egnyte has

12:04:53 concluded. Is that correct?
12:04:54 A. That's correct.
12:04:55 Q. And can you please explain to me the basis
12:05:00 for that belief?
12:05:01 MR. MEAD: And I want to caution the
12:05:03 witness not to divulge the content of any
12:05:08 attorney-client or joint defense group privilege or
12:05:10 other privileged material. So, I mean, if you can
12:05:13 answer at a high level, without doing that --
12:05:16 THE WITNESS: Well, again, I think I've
12:05:18 answered this multiple times at this point. My
12:05:20 understanding was that I was only being retained to
12:05:23 do the oral argument for the 101 motion. That
12:05:26 argument is finished; therefore, my representation
12:05:29 is finished. I am not a part of anything -- I have
12:05:34 not been a part of anything that's gone on with
12:05:37 Egnyte in the district court since then. I've not
12:05:39 made any appearances in the district court since
12:05:42 then. I am not included in the service lists on
12:05:46 PACER. I haven't received any information since
12:05:48 then. I'm not involved. They have other counsel.
12:05:52 BY MR. RACHUBA:
12:05:53 Q. Okay. Are there any documents
12:06:00 memorializing the end of your representation, what
12:06:03 you purport to be the end of your representation of

12:06:06 Egnyte?

12:06:07 A. No.

12:06:16 Q. Do you draw a distinction between representation regarding the 101 motions and the oral argument for the 101 motion?

12:06:30 MR. MEAD: Objection; vague and ambiguous.

12:06:33 THE WITNESS: I was retained to argue the 101 motion. That clearly involved me reviewing the materials for the 101 motion in order to argue it.

12:06:46 BY MR. RACHUBA:

12:06:47 Q. Okay. When did you first advise patent owner or patent owner's counsel that you would be representing Egnyte?

12:07:10 A. I'm not sure that I personally ever advised them. And I don't know when they found out. But certainly it potentially came about during the motion for pro hac, which is a public document, which is served on patent owner. But, again, I don't know when they did. And I personally didn't do it myself.

12:07:34 Q. Who asked you to argue the 101 motion?

12:07:39 MR. MEAD: That sounds like again it may be getting into attorney-client privileged discussion. So is there a different way you can ask that question, Counsel, without -- you keep -- for

12:07:50 whatever reason, you keep trying to pry into
12:07:54 attorney-client privileged discussions, which is
12:07:55 just not appropriate.
12:07:58 MR. RACHUBA: We're just looking for a
12:07:59 name. And we don't -- we don't believe that's
12:08:00 privileged. And to any extent if it was privileged,
12:08:04 the declaration has waived it. So --
12:08:07 MR. MEAD: Well, okay, let me --
12:08:08 MR. RACHUBA: I'll ask one more time.
12:08:10 MR. MEAD: Does the declaration answer that
12:08:12 question?
12:08:12 MR. RACHUBA: No, it does not.
12:08:14 MR. MEAD: So -- yeah, so I -- yeah, I'm
12:08:18 going to just counsel the witness not to answer that
12:08:23 without -- we can confer and go -- at a break and
12:08:26 discuss it if you would like.
12:08:30 MR. RACHUBA: All right. Can you -- can
12:08:31 you confer now? I don't want to push this -- keep
12:08:34 pushing this to the break. We can go off the
12:08:36 record.
12:08:37 THE WITNESS: Can you ask the question
12:08:38 again, so that I know exactly what I'm answering?
12:08:40 MR. RACHUBA: John, can you please read
12:08:41 that question back?
(The following record was read by the

reporter:
12:07:35 "Q. Who asked you to argue the 101
12:07:37 motion?")
12:08:51 MR. MEAD: Okay. Let's -- yeah, let's go
12:08:52 off the record.
12:08:53 MR. RACHUBA: Okay. We'll be here.
12:08:55 THE VIDEOGRAPHER: We are off the record.
12:08:56 The time is 12:09 p.m.
12:09:19 (Recess taken.)
12:09:19 THE VIDEOGRAPHER: We are back on the
12:09:26 record. The time is 12:09 p.m.
12:09:32 MR. RACHUBA: John, can you please read
12:09:33 that question back.
(The following record was read by the
reporter:
12:07:35 "Q. Who asked you to argue the 101
12:07:37 motion?")
12:09:54 THE WITNESS: So as a lawyer, I'll object
12:09:56 that it assumes facts not in evidence. No one asked
12:10:00 me.
12:10:07 BY MR. RACHUBA:
12:10:07 Q. Did anyone instruct you to argue the 101
12:10:11 motion?
12:10:12 A. Same objection: assumes facts not in
12:10:14 evidence. No one instructed me.

12:10:16 Q. Did anyone suggest that you argue the 101
12:10:23 motion?
12:10:30 A. The only reason I'm hesitating, because no
12:10:33 one outside of myself suggested that I argue the
12:10:36 motion.
12:10:39 Q. Who did you suggest that you should -- or
12:10:43 who -- to whom did you suggest that you should argue
12:10:46 the 101 motion?
12:10:49 A. I don't think I can answer this question
12:10:51 without waiving joint defense privilege.
12:10:57 Q. Are you refusing to answer the question on
12:11:00 that basis?
12:11:01 A. Yes.
12:11:09 Q. Can you -- who approved you arguing the 101
12:11:15 motion?
12:11:16 MR. MEAD: Now, Counsel, the witness said
12:11:19 sounds like it gets into attorney-client and other
12:11:23 privileged information. So --
12:11:26 BY MR. RACHUBA:
12:11:26 Q. Can you --
12:11:26 MR. MEAD: If you can't answer it without
12:11:28 divulging privileged information, please don't
12:11:31 answer.
12:11:31 THE WITNESS: I don't think I can answer
12:11:32 that question without revealing attorney-client

12:11:34 communications. The mere question involves the
12:11:37 substance of communication.
12:11:39 MR. RACHUBA: I -- how? I'm just asking
12:11:41 for an identity of a person. Can you explain the
12:11:44 basis for your privilege objection?
12:11:46 MR. MEAD: It -- the basis is that your
12:11:49 questions all through today, including this one, are
12:11:53 improperly seeking disclosure of privileged
12:11:56 information, so that --
12:11:57 MR. RACHUBA: I understand that's your
12:11:58 position. Can you explain the basis for your
12:12:00 position?
12:12:01 MR. MEAD: Yeah, the basis is that your
12:12:03 question was who approved. So the question is:
12:12:07 Let's assume there -- there was a content of an --
12:12:10 of a communication, you know, potentially between
12:12:14 client and lawyer. Now, please tell us which client
12:12:18 or which, you know, human made that attorney-client
12:12:24 privileged communication. So --
12:12:28 MR. RACHUBA: Should be the type of
12:12:29 information that's included on a privilege log.
12:12:31 MR. MEAD: You're not going to get an
12:12:32 answer to that question. So you can ask your next
12:12:34 question.
12:12:35 MR. RACHUBA: Okay. Are you instructing

12:12:36 the witness not to answer the question?
12:12:37 MR. MEAD: Yep.
12:12:38 BY MR. RACHUBA:
12:12:38 Q. Okay. And Ms. Keefe, are you following
12:12:40 that instruction?
12:12:41 A. I am, because I could not answer that
12:12:43 question without revealing attorney --
12:12:47 attorney-client communication and/or joint defense
12:12:49 privilege.
12:12:49 Q. Ms. Keefe, can you tell me why you cannot
12:12:55 answer that question without waiving those
12:12:58 privileges?
12:13:00 A. To answer --
12:13:00 MR. MEAD: Yeah, I think she just did,
12:13:03 but -- yeah, you know, I don't want you asking the
12:13:07 witness regarding basis for privilege. I'm happy to
12:13:10 confer off-line if you'd like.
12:13:11 But if you're comfortable answering, please
12:13:13 feel free.
12:13:13 THE WITNESS: You've answered it.
12:13:17 MR. MEAD: So, yeah, the -- you already
12:13:19 have the basis, Counsel. So you can ask your next
12:13:21 question.
12:13:23 MR. RACHUBA: Well, Mr. Mead, she was the
12:13:24 one who testified that she cannot answer on the

basis of privilege. She was not merely following your instruction not to answer. So I'm -- I'm asking a follow-up question on her previous testimony, where she said she cannot answer on the basis of privilege. So I'm asking her to explain her testimony of why she cannot answer on the basis of privilege.

MR. MEAD: She already told you. Because the basis is privileged.

MR. RACHUBA: No. No. Stop. She did not instruct that. I'm asking her the basis for why she's claiming privilege.

THE WITNESS: Because to answer the question would reveal attorney-client and/or joint defense privileged communications. That's what privilege is.

BY MR. RACHUBA:

Q. How would it reveal such information?

MR. MEAD: You know what? You're not going to get -- you know, you're trying to pry into these privileged communications. It's not appropriate. The witness already told you the basis that she's not answering. I've also counseled that. So please move on.

MR. RACHUBA: Okay.

12:15:16 Q. Is Egnyte still a party to the joint
12:15:18 defense agreement?
12:15:22 A. I don't know. I assume so.
12:15:28 Q. Okay. Let's switch gears a little bit.
12:15:31 Ms. Keefe, are you familiar with Topia's
12:15:33 case against Egnyte?
12:15:37 MR. MEAD: Objection; vague and ambiguous.
12:15:38 And I'd caution -- you know, if you have -- well --
12:15:42 MR. RACHUBA: Mr. Mead, can we -- can we
12:15:44 keep the objections to form only?
12:15:46 MR. MEAD: No, we can't. And when you keep
12:15:48 asking questions that might invoke disclosure of
12:15:51 attorney-client privilege and communication, I need
12:15:53 to advise the witness about that.
12:15:56 MR. SALIBA: Well, Mr. Lowell, this is Raja
12:15:59 Saliba. I'm just going to advise you, and I'm sure
12:16:01 your client is also -- the witness is also aware,
12:16:03 given her extensive experience in IPR proceedings,
12:16:06 that the PTAB guidelines specifically instruct
12:16:08 defense counsel or -- or the counsel for a witness
12:16:11 to limit the objections to a single word. And we're
12:16:15 not just talking about here -- and to be clear, it's
12:16:18 not about the privilege objections, which we've
12:16:19 allowed you to go off the record in order to consult
12:16:22 with your client. We're talking about objections

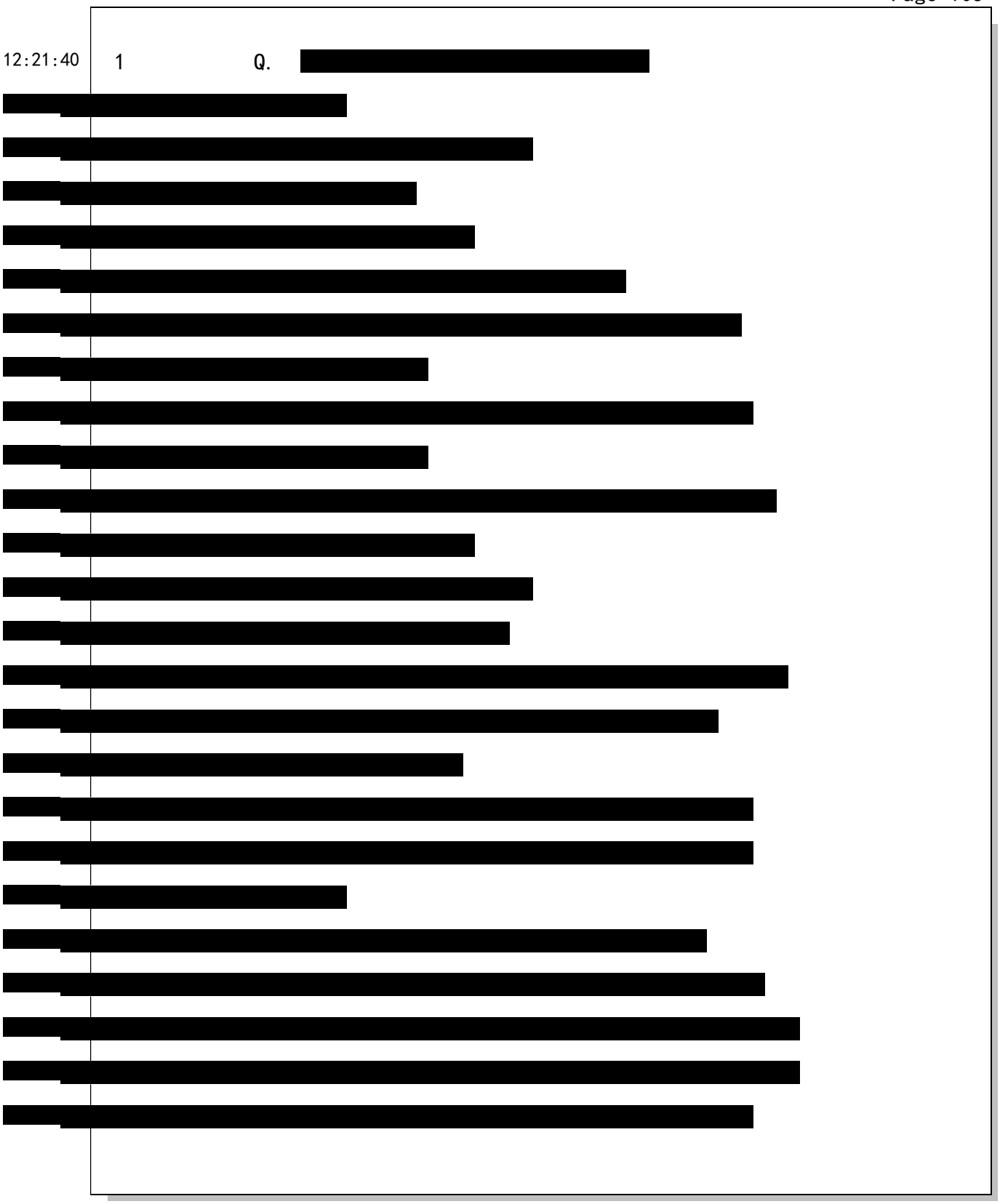
12:16:25 "vague" and "ambiguous." These are the type of
12:16:27 objections that are specifically prohibited under
12:16:31 the regulations by the PTAB. So I'm going to ask
12:16:34 you again to refrain from doing so. Keep your
12:16:37 objections concise and follow the rules. Thank you.
12:16:46 MR. RACHUBA: Okay. I'll ask my question
12:16:47 again.
12:16:48 Q. Ms. Keefe, are you familiar with Topia's
12:16:50 case against Egnyte?
12:16:52 A. I don't know what you mean by "familiar."
12:16:54 I'm aware that it exists.
12:16:55 Q. What is your understanding of the term
12:16:57 "familiar"?
12:16:58 A. "Familiar" would be that I know all the ins
12:17:01 and outs of the case. And that is -- I absolutely
12:17:03 do not.
12:17:04 Q. Okay. Have you read Topia's complaint
12:17:10 against Egnyte?
12:17:13 A. No.
12:17:14 Q. Have you read --
12:17:15 A. Not fully. Not fully. I skimmed it.
12:17:18 Q. Have you read Egnyte's answer to the
12:17:26 complaint?
12:17:27 A. No.
12:17:28 Q. Have you skimmed Egnyte's answer to the

12:17:31 complaint?
12:17:32 A. No.
12:17:35 Q. Have you read Egnyte's opening 101 brief?
12:17:38 A. Yes.
12:17:39 Q. Have you read Topia's response?
12:17:42 A. Yes.
12:17:43 Q. Have you read Egnyte's reply?
12:17:46 A. Yes.
12:17:54 Q. Are you familiar with the patents asserted
12:17:56 in the case?
12:18:02 A. I don't know what you mean by that. But if
12:18:04 you mean have I read the patents that are asserted
12:18:07 against Box, which overlap with patents that are
12:18:10 asserted against Egnyte, then the answer is yes.
12:18:14 I've read those patents.
12:18:15 Q. In connection with preparing for the 101
12:18:17 hearing, did you read the patents being asserted
12:18:20 against Egnyte?
12:18:22 A. Yes.
12:18:28 Q. In association with preparing for the 101
12:18:31 hearing, did you read the file histories of the
12:18:34 patents being asserted against Egnyte?
12:18:36 A. In preparation for the 101 hearing? No.
12:18:42 Q. When did you read the file histories of the
12:18:46 patents being asserted against Egnyte?

12:18:51 MR. MEAD: Just --
12:18:52 THE WITNESS: I think that calls for work
12:18:54 product. But if you want to ask me whether or not
12:18:56 I've read them, I can answer that. But in terms of
12:18:59 when, for whom, and how, I don't think I can answer
12:19:02 that.
12:19:07 BY MR. RACHUBA:
12:19:08 Q. Well, you did just answer that you did not
12:19:10 read them for a specific client, so wouldn't that
12:19:13 waive the privilege with respect to how and when you
12:19:18 read them for a different client?
12:19:20 MR. MEAD: No.
12:19:20 THE WITNESS: No. No.
12:19:22 MR. MEAD: No. Yeah, I mean, I'll answer
12:19:25 that. No. So --
12:19:26 MR. RACHUBA: Oh, actually -- actually,
12:19:27 Mr. Mead, I want to ask Heidi on that, because she
12:19:31 answered and gave testimony, and --
12:19:32 MR. MEAD: Please don't call the witness by
12:19:35 her first name. And we won't do that --
12:19:39 MR. RACHUBA: My apologies.
12:19:40 MR. MEAD: -- for you, Counsel.
12:19:42 MR. RACHUBA: My apologies.
12:19:43 Q. Ms. Keefe, can you please explain why you
12:19:47 informing me that you did not read the file

12:19:50 histories of the patents asserted against Egnyte in
12:19:52 association with the 101 history does not waive
12:19:54 privilege with respect to giving me an answer of
12:19:57 whether you read the file histories of the patents
12:20:00 with respect to a different client.
12:20:01 A. I never said that it waived privilege. I
12:20:03 said work product. And I -- I specifically said
12:20:07 that I couldn't answer it vis-a-vis when. You asked
12:20:11 me a yes-or-no question, did I review them in
12:20:13 preparation for the 101, and I said no.
12:20:16 Q. Did you read the file histories of the
12:20:19 patents asserted against Egnyte before the 101
12:20:22 hearing?
12:20:23 A. Yes.
12:20:24 Q. Ms. Keefe, are you aware of Egnyte's
12:20:35 alleged infringing products?
12:20:39 A. I only know that Egnyte is charged with
12:20:45 infringing Egnyte products, not Box or Dropbox
12:20:48 products. Beyond that, I know nothing about the
12:20:50 products.
12:21:24 Q. Okay. Let's move on a little bit.
12:21:30 Ms. Keefe, does there exist a joint defense
12:21:33 agreement between Box, Dropbox, and Egnyte?
12:21:36 A. Among other people, yes. There are others
12:21:38 involved.

12:21:40 1 Q. [redacted]



12:23:22 [redacted]

12:23:23 Q. Who were the parties of the oral agreement
12:23:30 that you just mentioned?
12:23:31 A. Egnyte and myself. The one that you -- I'm
12:23:44 sorry. Maybe I'm -- I want to make sure I'm
12:23:47 answering the question correctly. I told you there
12:23:50 was an agreement between Box and Dropbox, that
12:23:55 Egnyte was not a party to in any way. I also told
12:23:57 you there was an agreement between Egnyte and myself
12:24:00 to represent them during the oral argument on 101.
12:24:05 I don't know how to more carefully answer that. And
12:24:08 so if you have another question, please ask me. But
12:24:11 I don't understand anything else.
12:24:12 Q. I understand.
12:24:13 With respect to the oral agreement between
12:24:15 yourself and Egnyte, is that agreement between
12:24:19 yourself and Egnyte's counsel or Egnyte itself,
12:24:23 as -- as a corporate entity?
12:24:24 A. The only oral agreement I had was with --
12:24:27 the only oral conversation I ever had was with
12:24:30 Egnyte's outside counsel, the ones who are
12:24:32 representing them in the district court case.
12:24:36 Q. When was the effective date of the oral
12:24:41 agreement between you and Egnyte?
12:24:44 A. I don't remember.

12:24:48 Q. Was it in 2022?
12:24:57 A. What year is this? This is 2023?
12:25:00 Q. So the 101 hearing was in 2022.
12:25:03 A. 2022? I'm sorry. I'm really terrible with
12:25:06 dates.
12:25:06 Yes, it would have been in late 2022.
12:25:10 Q. Okay. In December 2022?
12:25:13 A. Either November or December. I don't
12:25:16 remember which. I think I've testified to that
12:25:18 already earlier this morning.
12:25:22 Q. Which of Egnyte's outside counsel was a
12:25:28 party to the agreement?
12:25:31 A. I don't remember their names.
12:25:33 Q. Was it Ryan Beard?
12:25:37 A. He was definitely one of the people I spoke
12:25:39 with.
12:25:42 Q. Was it Chris Kinkade?
12:25:45 A. I don't recall the name of the other person
12:25:47 I spoke with. I do know that there was one other
12:25:49 person on the phone.
12:25:50 Q. One other person besides Ryan Beard and
12:25:52 yourself?
12:25:53 A. That's my memory, yes.
12:25:54 Q. Okay. Was it Carl Neff?
12:26:04 A. I don't recall.

12:26:08 Q. Was this one conversation or a series of
12:26:13 conversations?
12:26:15 A. I recall two conversations.
12:26:23 Q. When was the first conversation?
12:26:26 A. Again, right in that same time frame.
12:26:29 Q. How far apart were the two conversations?
12:26:33 A. Not far.
12:26:35 Q. Like a week, a month, a day?
12:26:39 A. Days, or maximum a week.
12:26:42 Q. What was discussed during the first
12:26:45 conversation?
12:26:47 MR. MEAD: Let me caution the witness.
12:26:49 That may very well get into privileged
12:26:53 communications again, so -- yeah, I don't know -- I
12:26:57 don't know that that can be answered without
12:26:59 revealing privileged communications. But I'd defer
12:27:04 to you on -- on that.
12:27:05 THE WITNESS: I don't think I can answer
12:27:06 that without revealing the substance of
12:27:07 attorney-client communications.
12:27:08 BY MR. RACHUBA:
12:27:09 Q. Are you refusing to answer the question on
12:27:11 the basis of attorney-client privilege?
12:27:13 A. Yes.
12:27:14 Q. What was discussed in the second

12:27:16 conversation?

12:27:18 MR. MEAD: Same points. I mean, it's --

12:27:20 you're -- I don't know why, Counsel, you keep asking

12:27:22 questions that go squarely at --

12:27:23 THE WITNESS: I can't answer.

12:27:24 BY MR. RACHUBA:

12:27:25 Q. Okay.

12:27:25 A. On the basis of privilege.

12:27:26 Q. Okay.

12:27:45 Regarding the agreement between Box and

12:27:47 Dropbox about the IPRs --

12:27:53 A. Sorry. I had to get a tissue.

Q. Okay.

12:28:01 A. Go ahead.

12:28:01 Q. Sorry. Regarding the agreement between Box

12:28:04 and Dropbox with respect to the IPRs, is that one

12:28:09 agreement or a series of agreements?

12:28:12 A. I believe it's one. But I'm not sure.

12:28:16 Q. Does that agreement discuss funding?

12:28:21 A. I don't remember. I don't remember.

12:28:24 MR. MEAD: Yeah, I would object to

12:28:25 questions if you're trying to pry at the content of

12:28:31 a attorney-client agreement. So --

12:28:33 MR. RACHUBA: Mr. Mead, already been

12:28:35 answered. It's okay.

12:28:44 Q. Do the parties to the joint defense
12:28:47 agreement communicate regarding the series of
12:28:52 litigations by Topia?
12:28:55 A. I can't answer that question without
12:28:58 revealing joint defense privileged communications.
12:29:13 Q. Do the parties to the joint defense
12:29:16 agreement communicate amongst themselves outside of
12:29:20 counsel's presence?
12:29:23 A. I don't know the answer.
12:29:35 I sincerely doubt it. But I don't know the
12:29:38 answer.
12:29:40 Q. We're coming up on 12:30. I have
12:29:49 probably -- I would say I'm probably about halfway
12:29:52 finished, my -- my questioning. How would you like
12:29:57 the rest of this afternoon to go as far as breaks
12:30:01 and timing for lunch and --
12:30:05 A. Take an hour.
12:30:07 MR. MEAD: Take lunch now and --
12:30:09 THE WITNESS: Take lunch now, take an hour,
12:30:10 come back.
12:30:12 MR. RACHUBA: Okay. Yeah, I can -- yeah.
12:30:14 Okay. That would be good.
12:30:16 THE VIDEOGRAPHER: We are off the record.
12:30:17 Time is 12:30 p.m.
(Whereupon, a lunch recess was taken.)

13:30:35 AFTERNOON PROCEEDINGS

THE VIDEOGRAPHER: We are back on the record. The time is 1:31 p.m.

BY MR. RACHUBA:

Q. Ms. Keefe, did you speak with anyone over our break about this deposition?

A. About the deposition? No.

Q. Did you review any documents while we were on break related --

A. No.

Q. -- to this deposition?

A. No.

Q. Okay. Did you review any documents related to IPRs?

A. There was an email in my Inbox from another case about an IPR, but not anything related to this case.

Q. Okay. Prior to you arguing the 101 hearing in the Egnyte case, Ms. Keefe, have you prepared or drafted briefs on 101 issues?

A. In cases other than this case?

Q. Correct.

A. Yes.

Q. And I believe you testified earlier that

13:32:04 you are familiar with analysis under 35 USC Section
13:32:08 101?
13:32:08 A. Yes.
13:32:09 Q. How is a patent claim evaluated under 35
13:32:12 USC Section 101?
13:32:15 MR. MEAD: Objection; form.
13:32:16 THE WITNESS: I'm not sure I understand the
13:32:19 breadth of your question. But the typical way is in
13:32:23 a two-part test, that were set down through Alice,
13:32:29 Mayo, Bilski, and its progeny -- progeny.
13:32:33 BY MR. RACHUBA:
13:32:33 Q. Okay. Can you explain part one of the
13:32:35 Alice/Mayo test?
13:32:38 MR. MEAD: Objection; form.
13:32:39 THE WITNESS: I, honestly, don't understand
13:32:40 what this has to do with my declaration, but, okay,
13:32:42 sure.
13:32:42 Part one of the test asks whether or not
13:32:46 the claim is directed to an abstract idea.
13:32:52 BY MR. RACHUBA:
13:32:52 Q. And how does one determine whether a claim
13:32:54 is directed to an abstract idea?
13:32:56 A. There are a number of case. There are some
13:32:58 federal circuit cases that say you look to other
13:33:02 existing cases and you figure out how close or far

13:33:04 apart you are to the facts of those cases. Others
13:33:08 say you look to whether or not the claimed subject
13:33:13 matter could be done in -- on pen and paper, whether
13:33:17 it could be done in the mind of a human. Then there
13:33:22 are countervailing arguments. Do you fall into one
13:33:27 of the exceptions that are set out in a series of
13:33:29 cases, including cases like DDR, Bascom, et cetera.
13:33:35 There are a number of cases like that.
13:33:37 Q. Can you explain part two of the Alice/Mayo
13:33:40 test?
13:33:41 A. Under part two, the question becomes if --
13:33:45 despite the fact that the invention, claimed
13:33:48 invention, is directed to an abstract idea, is there
13:33:51 something in the claims that gives rise to an
13:33:54 inventive concept beyond that abstraction that would
13:33:58 take it out of the realm of the abstract.
13:34:00 Q. And what is an inventive concept in this --
13:34:04 related here?
13:34:04 A. It is a very squishy and somewhat unclear
13:34:08 thing. For most courts it has to do with whether or
13:34:12 not you are using the materials claimed in anything
13:34:15 other than routine or unconventional ways. There's
13:34:18 also, however, case law that specifically says that
13:34:21 regardless of how things are being used, if the
13:34:25 inventive -- alleged inventive concept is merely a

13:34:28 re-recitation of the abstraction, that it cannot
13:34:31 suffice to add something inventive.
13:34:34 Q. What do you mean by the terms "routine" and
13:34:38 "conventional"?
13:34:39 MR. MEAD: Objection to form.
13:34:40 THE WITNESS: For example, a computer
13:34:42 working in its normal ways or normal pieces of
13:34:47 computers or anything else that are being claimed in
13:34:51 using them the way that was known before. I think
13:34:55 one of the most routine examples is both Alice and
13:35:02 Bilski themselves have to do with doing something,
13:35:04 quote, "on a computer," and if the computer that is
13:35:09 claimed is nothing more than the same way that a
13:35:12 computer already was operating in its normal course,
13:35:17 then that would be considered routine and
13:35:18 conventional.
13:35:19 BY MR. RACHUBA:
13:35:21 Q. If a process is considered routine and
13:35:23 conventional in relation to an alleged -- an alleged
13:35:28 abstract invention, would that be a prior art
13:35:33 system?
13:35:35 MR. MEAD: Objection; form.
13:35:35 THE WITNESS: Not necessarily. Case law is
13:35:37 also very clear that 103 and 101 are mutually --
13:35:42 that they're exclusive concepts. And so just

13:35:44 because something is granted a patent as being
13:35:47 nonobvious does not mean that it's necessarily
13:35:49 inventive. For example, E=mc2 may be one of the
13:35:54 most -- Mayo says this. E=mc2 may be highly
13:35:58 inventive, but that does not take it out of the
13:36:01 realm of the abstract.
13:36:05 And I also caution that everything that I'm
13:36:07 discussing here is in a very, very high level. All
13:36:11 of these would need facts specific to any individual
13:36:14 claim or any individual patent.
13:36:17 BY MR. RACHUBA:
13:36:28 Q. Okay. When trying to determine if a
13:36:30 process is routine and conventional, would one look
13:36:36 to the prior art to make that determination?
13:36:39 A. It's one possibility. It depends on the
13:36:42 facts of the case.
13:36:43 Q. In evaluating 101 issues, would one
13:36:54 consider the level of ordinary skill in the art?
13:36:58 A. Potentially, yes. Again, it would depend
13:37:00 on the facts of the case.
13:37:02 Q. You just testified that looking to prior
13:37:06 art is -- is one approach for determining whether
13:37:08 a -- a alleged abstract idea is directed to
conventional or routine subject matter. Give me
another one.

(Discussion off the record.)

13:37:20 MR. RACHUBA: Yes.

13:37:20 Can the court reporter please read back Ms. Keefe's response to the question I previously

13:37:28 asked.

13:37:33 (Discussion off the record.)

MR. RACHUBA: It should begin with "one

13:37:38 possibility."

13:37:40 (The following record was read by the reporter:

"A. It's one possibility. It depends on

13:36:40 the facts of the case.")

13:36:41 BY MR. RACHUBA:

13:37:50 Q. Ms. Keefe, what are some other possibilities?

13:37:50 A. The specification itself often sets out

13:37:51 what it considers to be routine and conventional.

13:37:54 Q. If a specification describes what is

13:37:56 purported to be routine and conventional, is that

13:38:18 admitted prior art?

13:38:21 A. Not necessarily.

13:38:22 Q. In what circumstances would it be admitted

13:38:23 prior art?

13:38:25 A. If it says this is patent owner admitted

13:38:29 prior art, that would certainly be one such

13:38:30

13:38:33

13:38:35 instance.

13:38:36 Q. Are there any other instances that you can

13:38:39 think of?

13:38:40 A. If they're describing it within the context

13:38:44 of the background of the patent and they mention a

13:38:47 piece of prior art that is itself background.

13:38:52 Q. Is the determination of whether a alleged

13:39:00 abstract idea is routine and conventional, is that a

13:39:02 factual determination?

13:39:04 A. That is a -- that is a legal conclusion for

13:39:10 the Court to make.

13:39:11 Q. Are you familiar with the patent case

13:39:26 Berkheimer v. HP Inc.? It's a Federal Circuit case

13:39:31 from 2018.

13:39:33 A. Yes, I am. And by "familiar," I mean I've

13:39:36 read the case.

13:39:37 Q. Okay. I'm trying to share -- I guess I'll

13:39:48 mark this as Exhibit 2017 -- a decision in the

13:39:54 Berkheimer case.

13:40:13 Give me one second. I have to find it.

13:40:22 I'm placing this decision -- the Berkheimer

13:40:25 decision in the chat.

(Deposition Exhibit 2017 was marked for identification.)

13:40:32 THE WITNESS: Is this something that you

13:40:32 had previously emailed?
13:40:34 BY MR. RACHUBA:
13:40:34 Q. This is not. This is -- this is something
13:40:36 we found after we had already sent over the other
13:40:41 exhibits. This is not something that would be
13:40:43 printed out.
13:40:43 I just want to draw your attention to a
13:40:47 portion in the decision. And you can take a look
13:40:53 over -- over the file to see if it is -- you
13:40:57 recognize the decision.
13:40:59 MR. MEAD: Hang on one second. We're just
13:41:02 loading up the document. This is like a LexisNexis
13:41:04 version you sent?
13:41:06 MR. RACHUBA: Yes.
13:41:06 MR. MEAD: Okay.
13:41:12 THE WITNESS: I have the decision in front
13:41:13 of me. It's been a long time since I've read the
13:41:16 entire decision, so if you want to point me to
13:41:19 something, I may have to read more of it to answer
13:41:22 your question, depending what your question is.
13:41:24 BY MR. RACHUBA:
13:41:24 Q. Okay. Not a problem. I'm looking at the
13:41:27 portion that begins at the last paragraph of page, I
13:41:35 think -- of page 7 of the PDF, right after the page
13:41:40 number 1368. It begins with "The question of

13:41:51 whether a claim element or combination of elements
13:41:54 is well-understood, routine and conventional to a
13:41:57 skilled artisan in the relevant field is a question
13:42:00 of fact."
13:42:02 A. I see that.
13:42:04 Q. What is your understanding of the Court's
13:42:09 holding there?
13:42:11 MR. MEAD: Objection to the form.
13:42:15 THE WITNESS: I think the language spells
13:42:16 it out better than I can explain it. "The question
13:42:20 of whether a claim element or combination of
13:42:22 elements is well-understood, routine and
13:42:23 conventional to a skilled artisan in the relevant
13:42:26 field is a question of fact." I --
13:42:28 BY MR. RACHUBA:
13:42:28 Q. I'm just confused by your -- you previously
13:42:32 just testified that whether an element is routine
13:42:34 and conventional is a matter of law for the Court.
But --
A. I did not say that.
13:42:38 Q. -- Berkheimer seems to hold the opposite,
13:42:40 that it's a question of fact.
13:42:41 A. I did not say that. I said step one was a
13:42:44 question of law for the Court. You asked me about
13:42:46 step one. Step one, whether something is abstract,

13:42:48 is a question of law for the Court. Step two says
13:42:52 is there something beyond that which can be
13:42:54 determined inventive. One of the ways that you look
13:42:56 to that is you look to see whether or not what's
13:42:58 claimed is routine and conventional. They are
13:43:00 separate steps.
13:43:01 Q. Okay.
13:43:02 A. Step one is an issue of law. Step two can
13:43:05 be a combination of law and fact.
13:43:06 Q. Okay. When you argued the 101 hearing in
13:43:20 the Egnyte case, did you make representations that
13:43:23 alleged additional steps in the asserted claims
13:43:26 involve nothing more than routine and conventional
13:43:30 implementations?
13:43:31 MR. MEAD: Object to form.
13:43:32 THE WITNESS: Counsel, I don't remember
13:43:34 exactly the arguments that I made. If you have a
13:43:35 transcript and you want me to look through them, I'm
13:43:38 happy to do so.
13:43:40 BY MR. RACHUBA:
13:43:40 Q. Let's see if we can find that.
13:44:40 We can come back to this point.
13:44:46 I'm having trouble pulling up the exhibit
13:44:49 right now, so let's move on.
13:45:12 Okay. Ms. Keefe, are you lead counsel for

13:45:17 each of the petitions Box and Dropbox filed against
13:45:21 Topia's patents?
13:45:22 A. Yes.
13:45:25 Q. Did you draft each of the petitions?
13:45:28 MR. MEAD: Is the question did she draft?
13:45:31 Is that your question?
13:45:32 MR. RACHUBA: That -- correct.
13:45:35 THE WITNESS: What do you mean by "draft"?
13:45:37 BY MR. RACHUBA:
13:45:37 Q. What's your understanding of the term?
13:45:39 A. It can have different meanings to different
13:45:42 people. And I also am a little worried about
13:45:45 whether or not this gets into work product.
13:45:51 Q. Are you familiar with the context --
13:45:53 contents of each of the petitions?
13:45:57 A. Yes. I -- there -- when -- the answer is,
13:46:00 yes, I have been familiar with the contents of the
13:46:02 position -- the petitions. The only reason I say
13:46:05 "have been" is that it's been a while since they
13:46:08 were filed, and I certainly do not have them
13:46:10 memorized.
13:46:11 Q. Understandable.
13:46:11 A. But absolutely I am familiar with the
13:46:13 contents of the petitions.
13:46:14 Q. Understandable.

13:46:31 When did you begin working on the IPR
13:46:34 petitions?
13:46:37 MR. MEAD: I want to caution the witness, I
13:46:41 think that may get into privileged and/or work
13:46:43 product information.
13:46:47 MR. RACHUBA: The date?
13:46:49 THE WITNESS: The answer is I don't know a
13:46:54 specific date. It was certainly after I was
13:46:56 retained by Box.
13:46:58 BY MR. RACHUBA:
13:46:58 Q. Was it after you were retained by Egnyte?
13:47:01 A. No.
13:47:05 The reason I'm having a hard time answering
13:47:07 the question is because working on IPRs is a very
13:47:12 fluid process, which includes any number of things
13:47:15 that are going on in a case. I want to be very
13:47:18 careful to not waive work product or attorney-client
13:47:21 communications. But I can tell you that it is a
13:47:24 part of things that I was working on from the very
13:47:26 beginning of the case, from my representation of
13:47:31 Box.
13:47:31 Q. Okay.
13:47:59 Ms. Keefe, under what invalidity grounds
13:48:04 can an IPR be brought?
13:48:07 MR. MEAD: Objection; form.

13:48:08 THE WITNESS: I'm not sure I totally
13:48:09 understand your question. But to the extent I
13:48:11 understand it, it can be brought only based on
13:48:15 patents or printed publications. And I think --
13:48:18 BY MR. RACHUBA:
13:48:18 Q. Do you --
13:48:19 A. Sorry.
13:48:19 Q. Sorry. You go ahead. I didn't mean to cut
13:48:21 you off.
13:48:22 A. I was just going to say, under -- under
13:48:24 Sections 102 and/or 103.
13:48:26 Q. Can you bring a Section 101 challenge in an
13:48:29 IPR?
13:48:29 A. Not unless claims are amended and added.
13:48:33 If a motion to amend claims is granted and the
13:48:38 amended claims are presented in the case, then, yes,
13:48:41 a 101 motion can be brought against them then, but
13:48:44 not at the initial petition phase.
13:48:46 Q. Okay.
13:49:28 Ms. Keefe, how were the references used in
13:49:32 the grounds rejection in the petition selected?
13:49:38 MR. MEAD: Counsel, it's another question
13:49:43 that's going into work product and/or
13:49:47 attorney-client privileged communications.
13:49:49 So I'd caution the witness, if you can

13:49:52 answer that without divulging privilege or work
13:49:57 product information, then you may be able to do it,
13:50:00 but otherwise please don't answer the question.
13:50:02 THE WITNESS: I cannot.
13:50:25 MR. RACHUBA: Mr. Mead, it's our position
13:50:26 that to the extent privilege did exist, it has been
13:50:31 waived by Ms. Keefe's petition -- or, sorry,
13:50:34 Ms. Keefe's declaration. And I'm pulling it up now
13:50:37 to -- I'm trying -- I won't recall the exact
13:50:40 paragraph off the top of my head, but Ms. Keefe had
13:50:43 testified about the nature of how the references
13:50:46 were selected.
13:50:48 MR. MEAD: Okay. If -- I -- I disagree
13:50:51 with that. But if you can point me to a sentence
13:50:53 where it says "Here is how the references were
13:50:55 selected" and discloses that, I'm -- I'm quite
13:50:57 confident that's not in the declaration, but feel
13:51:00 free to show it to us.
13:51:14 MR. RACHUBA: Give me -- give me one minute
13:51:15 to confer. We can go off the record.
13:51:18 THE VIDEOGRAPHER: We are off the record.
13:51:20 The time is 1:51 p.m.
13:52:34 (Recess taken.)
13:52:35 THE VIDEOGRAPHER: We are back on the
13:52:47 record. The time is 1:53 p.m.

13:52:49 MR. RACHUBA: Okay. So Mr. Mead, on
13:52:52 paragraph 3 of petitioner's reply to our patent
13:52:58 owner preliminary response, middle of the page
13:53:02 reads, "When preparing the instant Petitions,
13:53:05 Petitioners and their expert independently (1)
13:53:08 selected the five specific references for IPR
13:53:11 challenges, (2) developed obviousness arguments for
13:53:17 the" mapping "and" motivation "to combine these
13:53:18 references."
13:53:18 In support of that, in -- the
13:53:20 "independently" selection, the brief cites to
13:53:23 Ms. Keefe's declaration at paragraphs 12 to 13, 17,
13:53:28 19 to 21, 23, and 25. In our position, the
13:53:33 description of the -- how the references were
13:53:35 selected is sufficient to waive work product
13:53:40 protection and attorney-client privilege on -- on
13:53:46 how those references were selected.
13:53:48 MR. MEAD: Okay. So we disagree.
13:53:51 MR. RACHUBA: What -- what is the basis for
13:53:52 your disagreement?
13:53:53 MR. MEAD: That no such waiver was made, is
13:53:56 the basis for the disagreement.
13:53:58 MR. RACHUBA: That's your position. I'm
13:53:59 asking what the basis is for that position.
13:54:01 MR. MEAD: That there is -- there is no

13:54:03 waiver of -- so if you're talking about the reply
13:54:07 brief, if -- the independent -- right. So the point
13:54:11 of the -- that you cited from the reply brief, which
13:54:14 is not Ms. Keefe's declaration -- but you're -- so
13:54:17 sounds like you're saying the declaration -- I mean,
13:54:19 if you want -- do you want to have this argument on
13:54:22 the record, or what?
13:54:22 MR. RACHUBA: Counsel, yes, I do.
13:54:23 MR. MEAD: Okay. Yes, so if the point is
13:54:27 that -- what language from the reply brief? There
13:54:31 was independent of --
13:54:33 MR. RACHUBA: Here, I -- do you want me
13:54:35 to -- do you want me to share it on the screen so
13:54:38 you can pull up, or do you have it --
13:54:39 MR. MEAD: I see it now, right.
13:54:40 So your -- your point was the language
13:54:40 "When preparing the instant Petitions, Petitioners
13:54:44 and their expert independently" -- right. The point
13:54:46 is -- yeah, the whole -- that whole paragraph and
13:54:47 the previous paragraph is saying Egnyte did not
13:54:50 select the references or provide any of the other
13:54:52 input. That doesn't waive affirmatively if --
MR. RACHUBA: Well, that's --
13:54:57 MR. MEAD: -- all this stuff happened.
13:54:58 MR. RACHUBA: That paragraph does not

13:54:59 mention Egnyte. That paragraph refers to
13:55:01 "Petitioners and their expert" and describes how
13:55:03 petitioners and their expert selected the five
13:55:06 specific references.
13:55:07 MR. MEAD: No, actually, what -- the
13:55:09 statement you just made is incorrect. The previous
13:55:11 sentence says, "PO speculates." So you all
13:55:15 incorrectly speculated and included a false
13:55:18 statement in your paper, that Egnyte financed the
13:55:22 work that formed the petition. And that --
13:55:26 MR. RACHUBA: So -- so --
13:55:26 MR. MEAD: So that statement is incorrect.
13:55:28 And there's no waiver whatsoever in terms of the
13:55:33 actual privileged process by which the references
13:55:35 were selected. This was just a statement that
13:55:37 Egnyte was not involved in that.
13:55:41 MR. RACHUBA: If that was the case, then
13:55:43 why wouldn't the brief just say Egnyte wasn't
13:55:45 involved? Why -- why is there this additional
13:55:47 detail about the references being independently
13:55:49 selected with expert and petitioners' involvement?
13:55:52 MR. MEAD: The point of this -- the
13:55:54 relevant point of this -- I mean, the paper says
13:55:57 what it says. I mean, it -- so -- I mean, if you
13:55:59 want to address it further, we can address whatever

13:56:01 you'd like further. But there has been no such
13:56:04 waiver to the -- of the subject matter that you all
13:56:07 apparently incorrectly believe there has been. So I
13:56:10 don't know if you want to reask your question or ask
13:56:12 another question. We can just move forward with the
13:56:14 deposition.
13:56:17 MR. RACHUBA: Okay. Let's -- can the court
13:56:19 reporter just please read back my initial question.
(The following record was read by the
reporter:
13:49:28 "Q. Ms. Keefe, how were the references used
13:49:32 in the grounds rejection in the petition
13:49:35 selected?")
13:56:39 MR. MEAD: So I think we've already
13:56:40 addressed that that question improperly seeks to
13:56:42 invade privileged and/or work product material. I
13:56:46 think the -- well, I think the witness already
13:56:48 stated, or if she hasn't already, that to answer
13:56:51 that would reveal attorney-client privilege and/or
13:56:54 work product information. So I would instruct the
13:56:56 witness not to answer that.
13:57:01 MR. RACHUBA: Okay. We -- we disagree. We
13:57:04 believe the privilege has been waived.
13:57:08 Q. Ms. Keefe, are you refusing to answer the
13:57:09 question on behalf of counsel's instruction?

13:57:12 A. Yes.
13:57:13 Q. Okay.
13:57:43 Ms. Keefe, why were those five references
13:57:45 selected?
13:57:47 MR. MEAD: I'm sorry, Counsel. You may
13:57:50 think it's appropriate to keep attempting to pry
13:57:52 into privileged and work product information. I
13:57:54 don't think it's appropriate. But I'll just say,
13:57:56 you know, all the same discussion we just had
13:57:58 applies equally to that question.
13:58:00 BY MR. RACHUBA:
13:58:00 Q. Okay. Ms. Keefe, are you refusing to
13:58:02 answer the question on behalf of counsel's
13:58:04 instruction?
13:58:05 A. Yes.
13:58:06 Q. Okay.
13:58:38 Ms. Keefe, can Egnyte proceed on the same
13:58:44 grounds raised in the petitions in the District of
13:58:47 Delaware?
13:58:48 A. I don't understand the question.
13:58:54 Q. Can Egnyte raise as invalidity defenses the
13:58:58 same grounds that were raised by petitioners in the
13:59:01 instant IPRs in the District of Delaware litigation?
13:59:04 A. You mean is it legally possible for them to
13:59:06 do so? Yes, because they are not a party to the

13:59:09 IPRs.

13:59:10 Q. Okay. And can they raise defenses that
13:59:13 petitioners reasonably could have raised in these
13:59:16 IPR petitions?

13:59:18 A. Again, hypothetically can they do that?
13:59:22 The answer's yes, because they are not parties to
13:59:24 the IPRs.

13:59:26 Q. Okay.

13:59:26 A. And, in fact, these are arguments that --
13:59:28 yes. Sorry.

13:59:30 Q. Do Box and Dropbox have an interest in
13:59:38 invalidating the asserted patents by Egnyte?

13:59:44 MR. MEAD: Objection to form.

13:59:46 I just caution the witness, if you're --

13:59:47 THE WITNESS: So I -- the answer is, I'm
13:59:49 not sure I understand the question. I don't know
13:59:50 what Egnyte wants. I know that Dropbox and Box want
13:59:54 the claims invalidated.

13:59:56 BY MR. RACHUBA:

13:59:56 Q. Okay. Do you know if Egnyte also wants the
13:59:58 claims invalidated?

14:00:01 A. I do not know for certain. I --

14:00:03 Q. Do you know --

14:00:04 A. Let me -- let me rephrase -- let me clarify
14:00:06 that. I know that they wanted the claims

14:00:09 invalidated under 101. I do not know what the rest
14:00:12 of their theories are in the case.
14:00:15 Q. Okay. If a claim -- is there a different
14:00:21 result in invalidation from 101 as opposed to 102 or
14:00:25 103?
14:00:27 MR. MEAD: Object to form.
14:00:28 THE WITNESS: So I'm not a hundred percent
14:00:30 sure what you mean, but if -- if a claim is found
14:00:34 invalid under 102 or 103 or unenforceable under 101,
14:00:41 the result is that the claim cannot be used in an
14:00:44 action for infringement.
14:00:46 BY MR. RACHUBA:
14:00:46 Q. Okay. So no matter how the claims are
14:00:49 invalidated, either 101, 102, 103, the effect is the
14:00:53 same, that the patents can no longer be asserted; is
14:00:56 that correct?
14:00:58 MR. MEAD: Object to form.
14:00:58 THE WITNESS: So claims only, not patent;
14:01:01 and with that caveat, I -- I think I agree with you,
14:01:04 yes.
BY MR. RACHUBA:
14:01:31 Q. Okay. Ms. Keefe, I think I'm ready to go
14:01:35 into your declaration now. So this is Exhibit -- I
14:01:43 believe it's 1029, the attorneys' eyes only, highly
14:01:46 confidential version of your declaration. I am

14:01:48 placing that into the chat window. Well, attempting
14:01:52 to.
14:02:11 A. It just arrived.
14:02:11 Q. Okay. I'm going to share my screen also,
14:02:14 so it's easier for you to see.
14:02:22 Okay. Ms. Keefe, can you see that, the
14:02:24 shared screen?
14:02:24 A. I can.
14:02:25 Q. Okay.
14:02:26 A. It's very far away and very small, but I
14:02:29 can.
14:02:29 Q. Sorry about that. Let me -- is that -- is
14:02:34 that good, or is that too zoomed in, not enough?
14:02:37 A. Yeah, it will depend on how much I need to
14:02:39 see of the screen. But right now I can read the
14:02:41 words on it.
14:02:42 Q. Okay. Okay. What is this document that I
14:02:47 just put on the screen?
14:02:48 A. It is entitled "Declaration of Heidi L.
14:02:51 Keefe in Support of Petitioners' Preliminary Reply."
14:02:56 There is a footnote that I can't read. And this one
14:02:58 appears to be related to the '561 patent.
14:03:01 Q. Okay. Did you --
14:03:03 A. And the footnote -- the footnote indicates
14:03:05 that the "declaration was authorized by the Board's

14:03:07 Order of June 1st, 2023 (Paper 8)."

14:03:11 Q. Okay. Did you sign this declaration?

14:03:13 A. I did.

14:03:20 I should say I e-signed the declaration.

14:03:24 Q. Whose decision was it to submit this

14:03:26 declaration?

14:03:28 MR. MEAD: Again, it appears to get into

14:03:33 attorney-client privilege and work product

14:03:36 materials.

14:03:36 I caution the witness, if you can answer it

14:03:39 without divulging anything, go ahead, but otherwise

14:03:42 please don't divulge anything that's privileged.

14:03:46 THE WITNESS: I think it would get to work

14:03:48 product and privilege.

14:03:50 BY MR. RACHUBA:

14:03:50 Q. Okay. Are you refusing to answer the

14:03:52 question, on the basis of your counsel's

14:03:54 instruction?

14:03:54 A. Yes.

14:03:55 Q. Why was this declaration submitted?

14:04:03 MR. MEAD: And I'll -- I'll have the same

14:04:05 points. I mean -- yeah, I -- yeah, all the same

14:04:10 points apply regarding privilege, so --

14:04:14 BY MR. RACHUBA:

14:04:15 Q. Okay. Ms. Keefe, are you refusing to

14:04:16 answer that question as well?
14:04:18 A. On the grounds that it would violate
14:04:21 attorney-client privilege and/or work product, yes.
14:04:23 Q. Ms. Keefe, why did you submit this
14:04:30 declaration, as opposed to somebody else?
14:04:33 MR. MEAD: Again, Counsel, all the same
14:04:35 points apply there. You're asking about decision
14:04:38 making for a -- you know, a -- you know, an
14:04:42 adversarial proceeding document that's been
14:04:44 submitted here.
14:04:45 So if you can answer that without divulging
14:04:47 any attorney-client or work product information, you
14:04:50 could do so, but otherwise please don't.
14:04:52 THE WITNESS: I cannot.
14:04:54 BY MR. RACHUBA:
14:04:55 Q. Okay. Ms. Keefe, are you refusing to
14:04:57 answer the question, related to your counsel's
14:04:59 instruction?
14:05:00 A. Yes.
14:05:01 Q. Okay. Ms. Keefe, I have scrolled down to
14:05:12 paragraph 1 of your declaration. Did you write this
14:05:17 paragraph?
14:05:22 MR. MEAD: I want to caution the witness,
14:05:24 if there's work product involved in the creation of
14:05:27 the declaration, please don't reveal work product.

14:05:32 But if you can answer without doing so, you could go
14:05:36 ahead and answer.
14:05:37 THE WITNESS: I stand behind everything in
14:05:39 paragraph 1, and I was a part of the process.
14:05:44 BY MR. RACHUBA:
14:05:45 Q. Can you describe that process?
14:05:48 A. Words were typed. Edits potentially were
14:05:54 made. Declaration was signed and submitted. That's
14:05:57 all I can say without getting into work product.
14:05:59 Q. Okay. Do you have personal knowledge about
14:06:03 the facts in this paragraph?
14:06:04 A. I do.
14:06:05 Q. Does anyone else?
14:06:11 A. It's possible.
14:06:13 Q. Does anyone else at Cooley?
14:06:16 A. It's possible. I think many people know
14:06:19 that I am an attorney with Cooley. It's public
14:06:22 knowledge that I'm lead counsel for petitioners in
14:06:25 those IPRs. "I make this declaration" is -- it's
14:06:31 public now that it's been filed. "I have personal
14:06:36 knowledge" is probably limited to what I know. So
14:06:40 the last one might be just that they've read that I
14:06:43 said that I had personal knowledge. But --
14:06:48 Q. Okay. I guess -- so I guess my question
14:06:51 is, with the exception of the last sentence in that

14:06:53 paragraph, are you aware of other persons with
14:06:56 personal knowledge of the facts in the paragraph?
14:06:59 A. I don't know what is in anyone else's head.
14:07:02 I maintain that it is possible that other people
14:07:04 know this information.
14:07:05 Q. Okay.
14:07:06 A. But I cannot tell -- say one way or another
14:07:08 what's in someone else's head.
14:07:11 Q. Okay. Let's go on to paragraph 2. Did you
14:07:15 write this paragraph?
14:07:17 A. Again, the same answer as before.
14:07:21 Q. Do you have personal knowledge about the
14:07:24 facts in this paragraph?
14:07:25 A. I do.
14:07:25 Q. Does -- are you aware of anyone else who
14:07:30 does?
14:07:30 A. Same answer as before. It's possible that
14:07:33 there are many people who are aware that patent
14:07:36 owner sued Egnyte in the District of Delaware. It
14:07:39 is a public document. I even cite the document.
14:07:47 Whether or not people are aware that I am
14:07:49 aware, I don't know that anyone would have been
14:07:51 before I signed this declaration and submitted it.
14:07:55 Q. Okay. Let's move on to paragraph 3. Same
14:07:59 question. Did you write the paragraph?

14:08:01 A. Same answer as before.
14:08:04 Q. Do you have personal knowledge about this
14:08:06 paragraph?
14:08:07 A. I do.
14:08:07 Q. Do you know of anyone else who has personal
14:08:11 knowledge about the facts in this paragraph?
14:08:13 A. Same answer as before. I think it's well
14:08:17 known that I have experience arguing Section 101
14:08:19 motions in Delaware. It's a matter of public
14:08:22 record, both on PACER and in court filings. The
14:08:27 grant of my pro hac is public. The fact that I
14:08:31 argued a motion is a matter of public record.
14:08:39 Q. Okay. Next paragraph. Did you write this
14:08:41 paragraph?
14:08:42 A. Same answer as before.
14:08:44 Q. Do you have personal knowledge about the
14:08:47 facts in this paragraph?
14:08:48 A. I do.
14:08:48 Q. Are you aware of anyone else who has
14:08:50 personal knowledge about the facts in this
14:08:52 paragraph?
14:08:53 A. Again, anyone who's read my declaration
14:08:57 could potentially have knowledge of the facts in
14:09:01 that paragraph.
14:09:05 Q. In your described "extensive experience

14:09:09 arguing Section 101 motions in the District of
14:09:12 Delaware," does that extensive experience include
14:09:15 prior representation of Egnyte?
14:09:17 A. It does not.
14:09:18 Q. Does that include prior representation of
14:09:21 Box or Dropbox?
14:09:23 A. I don't -- I have definitely represented
14:09:28 Box on prior 101 issues. I don't remember if they
14:09:32 were in Delaware, the Northern District of
14:09:34 California, or Texas. I'd have to go look that up.
14:09:37 Q. Okay.
14:09:38 A. But I've definitely represented a number of
14:09:40 clients in the District of Delaware with respect to
14:09:43 101 motions.
14:09:45 Q. Okay. So I'm trying to get --
14:09:47 A. And argued them very successfully, in front
14:09:50 of I think all, if not most, of the seated judges as
14:09:54 well as a number of judges who have gone on to other
14:09:56 positions.
14:09:56 Q. Okay. In the first sentence, it reads "it
14:10:01 was agreed that I would argue the Section 101 motion
14:10:04 on behalf of Egnyte." By whom was it agreed?
14:10:10 A. Sorry. Where are you reading from?
14:10:21 MR. MEAD: Right there.
14:10:23 THE WITNESS: Where are you reading from?

14:10:26 BY MR. RACHUBA:

14:10:26 Q. The highlighted portion, so the latter half

14:10:29 of the first sentence in paragraph --

14:10:30 A. Paragraph 4. Sorry. I was back up at

14:10:33 paragraph 5.

14:10:34 I'm sorry. Could you ask your question

14:10:36 again?

14:10:37 Q. Yes. So the portion that I'll highlight on

14:10:39 the screen reads "and it was agreed that I would

14:10:41 argue the Section 101 motion on behalf of Egnyte."

14:10:45 Who were the parties to that agreement?

14:10:47 A. As we've discussed at length before,

14:10:51 outside counsel for Egnyte, who represent them in

14:10:56 the district court litigation, and myself.

14:10:59 Q. [redacted]

14:13:17 BY MR. RACHUBA:

14:13:20 Q. Ms. Keefe, who knew about the decision to
14:13:24 have you argue the 101 hearing before the 101
14:13:28 hearing?

14:13:30 A. I don't know all of the people who knew.

14:13:33 Q. Did Box know?

14:13:37 A. I believe so. But I'm not sure.

14:13:42 Q. When did Box first become aware that you
14:13:46 were going to argue?
14:13:48 A. I don't recall.
14:13:50 Q. Was it months before, days, weeks?
14:13:59 A. I don't recall, though I know it couldn't
14:14:02 have been months.
14:14:03 Q. Was Dropbox aware?
14:14:08 A. I don't know.
14:14:41 Q. Okay. Moving on to paragraph 5, did you
14:14:45 write this paragraph?
14:14:46 A. Same answer as before.
14:14:48 Q. Do you have personal knowledge about the
14:14:50 facts in this paragraph?
14:14:51 A. I do.
14:14:53 Q. Are you aware of anyone else who has
14:14:56 personal knowledge about the facts in this
14:14:58 paragraph?
14:14:59 A. Again, I'm not sure. Obviously this
14:15:02 document has been publicly filed, and so it is
14:15:05 entirely possible that others have knowledge of this
14:15:07 as well.
14:15:08 Q. Ms. Keefe, to be clear, when I was asking
14:15:34 if you knew -- if you're aware of anyone else with
14:15:35 public knowledge about the facts in this paragraph,
14:15:38 I'm specifically referring to prior to the filing of

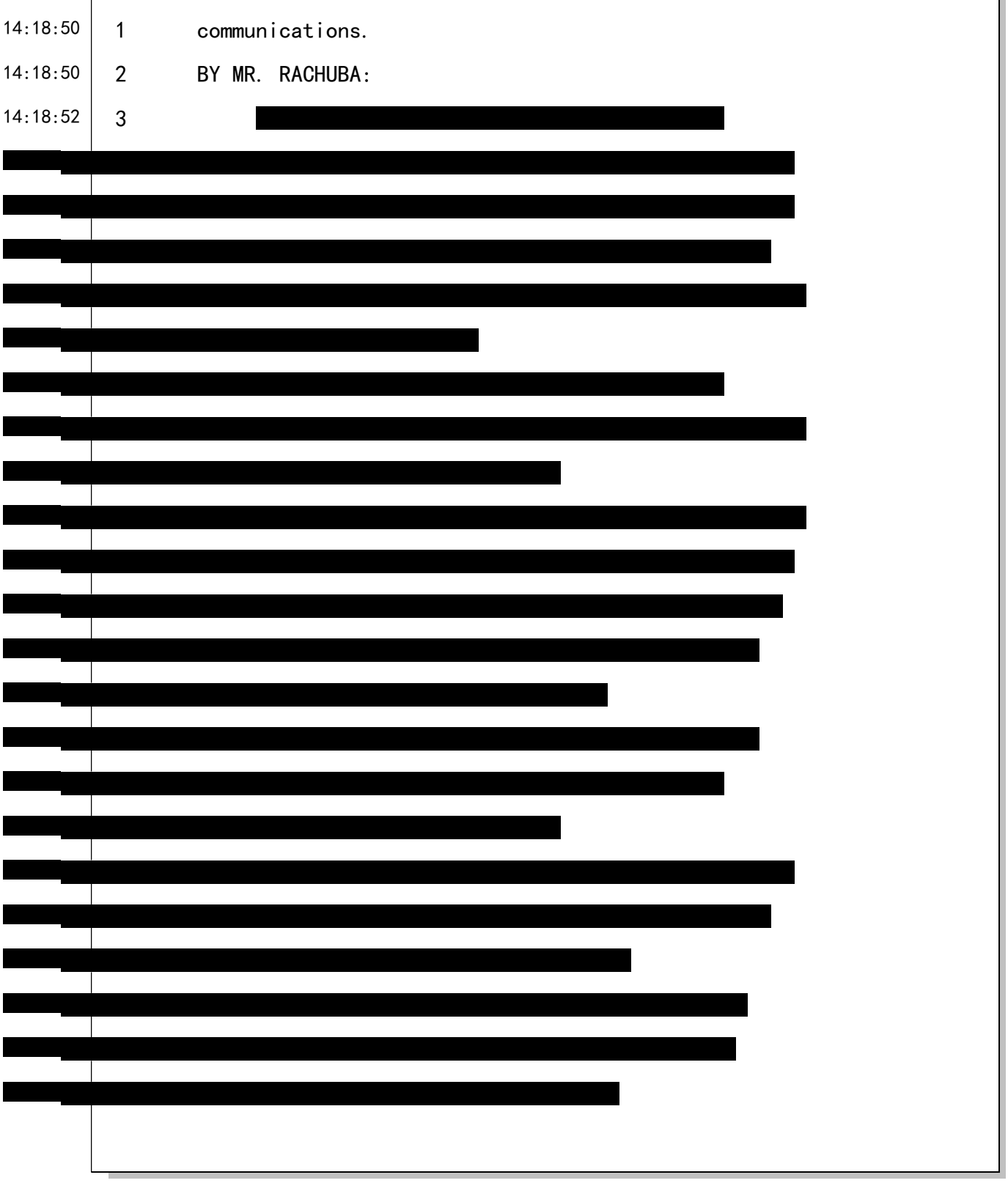
14:15:41 this declaration. So does that -- does that change
14:15:45 your answer at all with respect to paragraph 5?
14:15:48 A. No.
14:15:49 Q. What about paragraphs 1 through 4?
14:15:52 A. No.
14:15:53 Q. Okay.
14:16:17 Okay. I was just informed by my co-counsel
14:16:20 that I may have asked the question incorrectly.
14:16:24 With respect to paragraph 5, prior to the
14:16:28 submission of the declaration, did anyone have
14:16:31 knowledge of the facts recited within the paragraph
14:16:35 besides yourself?
14:16:37 A. I would think so, yes.
14:16:40 Q. Who; who else?
14:16:42 A. My colleagues and the outside counsel for
14:16:49 Egnyte.
14:16:50 Q. Same question with respect to paragraphs 1
14:16:54 through 4. Are you aware of anyone who had
14:17:02 knowledge of the facts included in paragraphs 1
14:17:05 through 4 prior to the submission of the
14:17:07 declaration?
14:17:09 A. Straight knowledge, potentially yes;
14:17:13 personal knowledge, maybe not.
14:17:15 Q. What's the difference between straight
14:17:18 knowledge and personal knowledge?

14:17:19 A. Well, for example, I have personal
14:17:21 knowledge of the fact that I have extensive
14:17:22 experience arguing 101. Other people may only know
14:17:25 it from essentially hearsay, from hearing it from me
14:17:29 or from, you know, reading PACER, but they don't
14:17:32 know whether or not I have extensive experience
14:17:35 arguing it. So there are things in -- you know,
14:17:38 certain sentences in some of these that I think may
14:17:41 be best suited to me because it is my personal
14:17:44 knowledge. But certainly I think with respect to
14:17:46 almost all of these facts, the knowledge itself
14:17:49 would have been out there because of publicly
14:17:54 available information.
14:17:56 Q. Okay. Staying on paragraph 5, who decided
14:18:14 that your oral argument on the Section 101 motion
14:18:22 would be the full extent of your representation of
14:18:24 Egnyte?
14:18:25 MR. MEAD: I want to caution the witness
14:18:27 again with respect to privileged communications that
14:18:29 are covered by one or more privileges. So if you
14:18:34 can answer without revealing that, it would be okay.
14:18:39 Otherwise, please don't reveal the content of any
14:18:41 privileged communications.
14:18:46 THE WITNESS: I'm not sure I can answer
14:18:48 that without revealing attorney-client

14:18:50 communications.

14:18:50 BY MR. RACHUBA:

14:18:52 [redacted]



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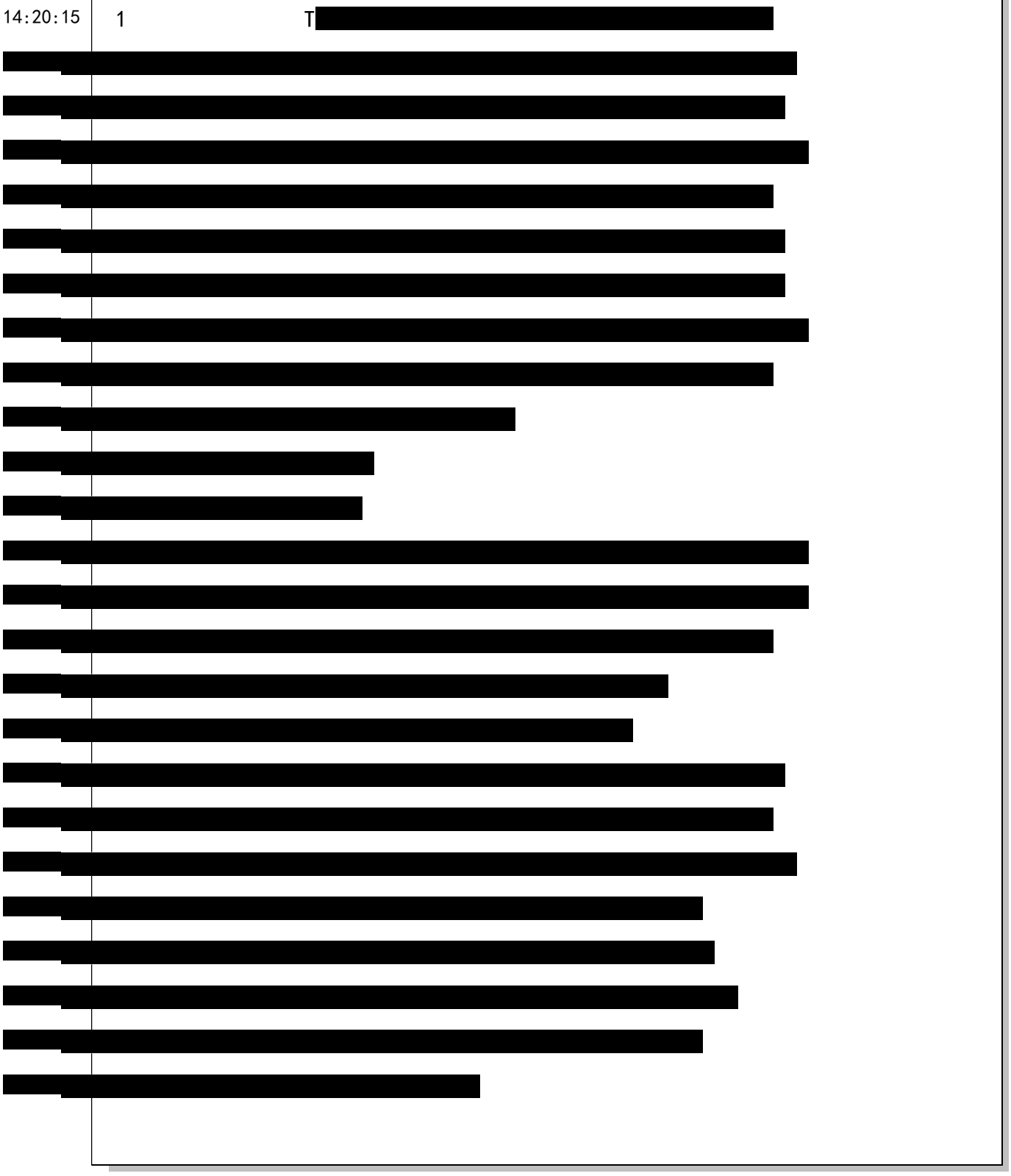

14:21:57 1

14:22:43 13

14:23:23 25

14:23:25 1 [redacted]

13 BY MR. RACHUBA:

14:24:10 14 Q. In patent office proceedings such as IPRs,

14:24:14 15 is it the parties who make the determination

14:24:17 16 regarding RPIs, or is it the board?

14:24:23 17 MR. MEAD: Objection to form.

14:24:28 18 THE WITNESS: I'm not sure that I fully

14:24:30 19 understand what you're asking. But I think it's the

14:24:34 20 board that does, but based on information given to

14:24:39 21 it by the parties and the facts as they exist. And

14:24:45 22 some of those facts can include how the parties --

14:24:47 23 what the parties believe, how the parties have

14:24:50 24 interacted, et cetera.

14:24:59 25 In this case Egnyte is not an RPI.

14:25:03 BY MR. RACHUBA:

14:25:04 Q. Can a party be found to be an RPI in an IPR
14:25:08 despite believing that it's not an RPI?

14:25:12 A. I'd need a lot more facts.

14:25:15 Q. Just hypothetically.

14:25:18 A. Is it possible in some obscure portion of
14:25:22 the universe? Potentially.

14:25:29 Q. Let's move on to paragraph 7. Did you
14:25:34 write paragraph 7, Ms. Keefe?

14:25:36 A. Same answer as before.

14:25:38 Q. Are you aware of any person who has
14:25:42 knowledge about the facts in the paragraph prior to
14:25:47 the filing of the declaration beside yourself?

14:25:54 A. Yes, potentially other counsel involved in
14:25:59 the JDA. But, again, I can't -- I can't tell you
14:26:02 exactly who knows what. I only know what I know.
14:26:05 And that's why this declaration is put in on the
14:26:08 basis of my personal knowledge.

14:26:09 Q. The -- what you described as, quote, "a
14:26:17 large set of dozens of publicly available prior art
14:26:21 references," how many references were ultimately
14:26:23 identified by parties to the JDA?

14:26:25 A. I don't know. I don't recall.

14:26:28 Q. Were all the prior art references found by
14:26:32 parties to the JDA included in Box's contentions?

14:26:39 A. I honestly don't recall.
14:26:40 Q. Is there anything that would refresh your
14:26:42 recollection?
14:26:44 A. Not that I can think of.
14:26:51 Counsel, whenever you reach a good breaking
14:26:55 point, I could use a biological break.
14:26:58 Q. Now's good. Five minutes, ten minutes?
14:27:01 THE VIDEOGRAPHER: We are off the record.
14:27:02 The time is 2:27 p.m.
14:33:56 (Recess taken.)
14:33:57 THE VIDEOGRAPHER: We are back on the
14:34:10 record. The time is 2:34 p.m.
14:34:12 BY MR. RACHUBA:
14:34:13 Q. Okay. Ms. Keefe, I'm going to go back to
14:34:15 sharing the screen with the -- with your declaration
14:34:18 on it.
14:34:20 A. Okay.
14:34:21 Q. And we are still -- hold on.
14:34:27 We're still on paragraph 7. The paragraph
14:34:31 begins with "Parties to the JDA identified a large
14:34:35 set of dozens of publicly available prior art
14:34:38 references." Is Egnyte included in the parties to
14:34:42 the JDA?
14:34:45 A. I believe so, though as I sit here today
14:34:50 and as I was writing this declaration, I don't

14:34:56 recall any art that was identified specifically by
14:34:58 Egnyte.
14:34:59 Q. Okay. But are you sure, or you just don't
14:35:10 know?
14:35:10 A. I'm not positive.
14:35:12 Q. Okay. Is it possible that Egnyte
14:35:16 identified prior art references?
14:35:18 A. It's possible.
14:35:19 Q. Was the entire -- the totality of the list
14:35:29 of found prior art references, was that ordered list
14:35:33 publicly available?
14:35:36 A. Was the ordered list? I'm not sure if
14:35:39 there ever was --
14:35:40 Q. It may not have been ordered.
14:35:41 Was the list of prior art references that
14:35:42 were found by parties to the JDA, was that list
14:35:45 publicly available?
14:35:50 A. At what time?
14:35:52 Q. Prior to the submission of any party's
14:35:57 contentions.
14:35:59 A. No.
14:36:00 Q. Okay.
14:36:07 A. The artists would have been publicly
14:36:09 available. A listing of the art would not have
14:36:14 been.

14:36:14 Q. Was the list of prior art references shared
14:36:16 between the parties to the joint defense agreement?
14:36:20 A. I'm not sure that there ever was an
14:36:22 individuated list. In fact, I can guarantee there
14:36:25 was no such thing as an individuated list.
14:36:27 Q. So when references were just individually
14:36:30 found, they were shared throughout the JDA parties?
14:36:39 MR. MEAD: Objection to form and
14:36:40 foundation.
14:36:40 THE WITNESS: Yeah, I'm not sure -- I'm not
14:36:43 sure that that's true of every case, in every case.
14:36:47 But as the declaration states, "Parties to the JDA
14:36:51 identified a large set of dozens of publicly
14:36:54 available prior art references." "All of the prior
14:36:58 art exchanged between the parties to the JDA and
14:37:00 provided with Petitioners' invalidity contentions
14:37:03 was publicly available and would have been
14:37:05 discoverable."
14:37:08 I just can't say how each and every piece,
14:37:12 when and where and how it was shared.
14:37:14 BY MR. RACHUBA:
14:37:15 Q. Okay. When you refer to "all...the prior
14:37:18 art exchanged," does that -- is that all of the
14:37:21 large set of dozens of publicly available prior art
14:37:24 references?

14:37:24 A. That's what I meant by that, yes.
14:37:26 Q. Okay. And then later in the paragraph, you
14:37:34 write, "All...the prior art exchanged...was publicly
14:37:41 available and would have been discoverable in the
14:37:44 respective district court proceedings involving
14:37:47 Topia."
14:37:47 How would that -- how would that prior art
14:37:50 be discoverable?
14:37:55 A. If the -- so when invalidity contentions
14:38:00 are exchanged, they can be requested in different
14:38:03 piece -- in different case proceedings. Also,
14:38:07 because the art is publicly available, it's free to
14:38:12 be found by anyone. And that -- I meant both
14:38:16 things.
14:38:24 Q. Okay. Moving on to paragraph 8. And I'm
14:38:27 going to speed this up a little bit. Did you write
14:38:30 paragraph 8?
14:38:31 A. Same answer as before.
14:38:33 Q. Okay. Did you write all the paragraphs in
14:38:35 your declaration?
14:38:36 A. Same answer as before with respect to all
14:38:39 of them.
14:38:39 Q. Okay. Are you aware of persons other than
14:38:43 yourself who have knowledge about the facts in all
14:38:48 of your paragraphs in your declaration prior to the

14:38:51 submission of the declaration?

14:38:52 A. Again, I can never know what is inside

14:38:55 anyone's head. It is logical to assume that there

14:38:58 are other people who had personal knowledge. If the

14:39:01 paragraph is about what the JDA knew, I would assume

14:39:04 someone else in the JDA knew it. But I submitted

14:39:06 this declaration based on my personal knowledge of

14:39:09 what I knew.

14:39:11 Q. Okay. Thank you.

14:39:20 Ms. Keefe, what is a system reference?

14:39:24 A. A system reference is a reference based on

14:39:26 a system, not based on a patent or a printed

14:39:29 publication.

14:39:30 Q. Can a system reference be used as a basis

14:39:34 for an invalidity grounds in an IPR petition?

14:39:39 A. It cannot. Only patents and printed

14:39:41 publications.

14:39:59 The only caveat I'd make to that is I'm not

14:40:02 sure -- I would literally have to go back and look

14:40:04 at the law on an amended claim or a proposed amended

14:40:07 claim, whether or not you could submit evidence

14:40:09 regarding the existence of a system. The same way

14:40:12 that 101 and 112 come in for the possibility of

14:40:16 amended claims, I think it's possible that there may

14:40:18 be a mechanism by which you can submit evidence

14:40:20 regarding system claim -- or, sorry, systems.

14:40:23 Q. Okay. But not -- sorry. Go ahead.

14:40:26 A. But not for a petition.

14:40:28 Q. Okay.

14:40:36 Okay. Paragraph 9. When did counsel for petitioners share a copy of the preliminary invalidity contentions with counsel for Egnyte?

14:40:49 MR. MEAD: I'm sorry. Did you say "when" or "why"? I just didn't hear over the video.

14:40:54 MR. RACHUBA: "When."

14:40:55 THE WITNESS: The reason there's no date in this paragraph is because I couldn't remember the exact date, and I couldn't find it quickly. So I know that we shared a copy of our preliminary invalidity contentions with Egnyte, and I know it was soon after the invalidity contentions were served in the Box case.

14:41:18 BY MR. RACHUBA:

14:41:18 Q. Okay.

14:41:19 A. But I do not remember a specific date.

14:41:22 Q. Okay. Why did counsel for petitioners share the invalidity contentions with counsel for Egnyte?

14:41:31 MR. MEAD: I caution the witness there that to the extent answering gets into privileged

information, please don't divulge such information.

THE WITNESS: I don't think I can answer the "why" without revealing either JDA or attorney-client privileged communications.

BY MR. RACHUBA:

Q. Okay.

A. Although I would say that the JDA agreement contemplates such things, so --

Q. Okay. What was counsel for petitioner's expectation of sharing the preliminary invalidity contentions with Egnyte?

A. I think --

MR. MEAD: I'm sorry. Objection; foundation.

And I again caution. I think that may get into privilege and attorney work product issues, so please don't answer that would divulge that.

THE WITNESS: I just -- I already testified that I thought that we exchanged them soon after serving them in the district court case. If you're asking me about what my hopes and dreams in terms of expectation that way were, I can't answer that without revealing privilege or work product communications. But in terms of when I think it happened, I'd already testified that I thought it

14:42:44 was soon after service in the district court Box
14:42:48 case.
14:42:49 BY MR. RACHUBA:
14:42:52 Q. Okay. Moving on to paragraph 10, what do
14:43:00 you mean by the first sentence in the paragraph I
14:43:06 just highlighted here: "The invalidity arguments
14:43:08 present" -- "present in Petitioners' preliminary
14:43:10 invalidity contentions in district court are not
14:43:12 'the same invalidity challenges' presented in the
14:43:15 IPRs"? What do you mean by that sentence?
14:43:18 A. I chose the words carefully. I think they
14:43:21 mean exactly what they say.
14:43:25 Q. Which is -- which is what?
14:43:27 A. That the invalidity arguments present in
14:43:30 the preliminary invalidity contentions in the
14:43:31 district court are not the same invalidity
14:43:34 challenges presented in the IPRs.
14:43:37 Q. Are the invalidity arguments present --
14:43:43 sorry.
14:43:44 Are the invalidity challenges presented in
14:43:47 the IPRs inconsistent with the invalidity arguments
14:43:52 present in petitioners' preliminary invalidity
14:43:54 contentions?
14:43:56 MR. MEAD: Objection; form.
14:43:57 THE WITNESS: I'm not sure I understand

14:44:00 what you mean by that.
14:44:01 BY MR. RACHUBA:
14:44:01 Q. What is your understanding of the term
14:44:03 "inconsistent"?
14:44:04 A. "Inconsistent" usually means that it
14:44:10 doesn't mean the same thing or it doesn't -- it's
14:44:14 not the same as.
14:44:18 Q. Do -- the invalidity arguments in the IPRs,
14:44:29 do they contradict any of the invalidity arguments
14:44:34 present in the preliminary invalidity contentions?
14:44:39 MR. MEAD: Object to form.
14:44:39 THE WITNESS: It's a difficult question to
14:44:41 answer, because many times you're trying to cover
14:44:45 different permutations of how a piece of art may be
14:44:49 read or may be seen, and so if the patent owner is
14:44:54 arguing something is blue, then here's something
14:44:57 that's blue; if, on the other hand, you're arguing
14:45:00 that something's red, here's something that covers
14:45:03 red as well, I would not deem that to be
14:45:05 inconsistent or contradictory, and so my answer
14:45:07 would be no. But if your version of what do you
14:45:12 mean by inconsistent or contradictory is that there
14:45:15 is potentially a way to read the challenges
14:45:19 differently for different references, then potential
14:45:23 yes. It's just not an easy question to answer.

14:45:50 BY MR. RACHUBA:

14:45:51 Q. Okay. We can move on to paragraph 11.

14:46:11 The last sentence of the paragraph reads, "Neither I nor anyone else at Cooley LLP advised Egnyte regarding what to include in its preliminary invalidity contentions."

14:46:24 When you use the term "Egnyte" here, does that include Egnyte's counsel?

14:46:28 A. Yes.

14:46:30 Q. When you use the term "Egnyte's counsel," does that include yourself?

14:46:33 A. No. I was not counsel to Egnyte at that time. My representation of them ended after the oral argument of the 101 hearing, which happened in December. At this time I was not representing them vis-a-vis invalidity contentions or anything else. That was never a part of my scope -- the scope of my representation.

14:47:08 Q. Moving on to paragraph 12. Ms. Keefe, I believe you testified earlier that it may have been possible that Egnyte contributed some prior art references to the set shared between the JDA parties. Is that correct?

14:47:35 A. So I think you started the whole sentence with "moving on to paragraph 12." I don't see

14:47:41 anything in paragraph 12 about that. And, in fact,
14:47:43 paragraph 12 specifically talks about the fact that
14:47:46 "All costs related to the IPRs - including filing
14:47:49 fees, attorneys' fees, and all other costs - have
14:47:52 been paid by Petitioners. Petitioners did not
14:47:54 receive any funding from Egnyte related to the
14:47:57 IPRs."
14:47:58 Q. That's correct. May -- should I stop
14:48:00 sharing the screen and go back to that question?
14:48:02 Would that be easier for you to follow?
14:48:04 A. No, you had simply started your question
14:48:06 with "moving on to paragraph 12," and then you asked
14:48:09 a question that had nothing to do with paragraph 12,
14:48:12 so I was just making sure that there wasn't an --
14:48:14 Q. I see. I see.
14:48:16 A. -- unfortunate conflation of answers based
14:48:19 on a potentially compound question.
14:48:21 Q. I see. I appreciate the concern.
14:48:26 So that being said, without -- without me
14:48:30 trying to conflate the issues, I believe you had
14:48:35 testified earlier that it may have been possible
14:48:37 that Egnyte had contributed to the JDA by
14:48:44 identifying prior art references that were shared
14:48:46 between parties in the JDA. Is that correct?
14:48:49 A. I said that while I couldn't recall any

such thing happening, it was possible.

Q. Okay. Now, is it possible that Egnyte found references that were cited in the IPRs?

A. It is possible -- it is within the realm of possibility that Egnyte found prior art that was cited in the IPRs. It was not possible that Egnyte contributed those references to the IPRs. They had nothing to do with the IPRs.

Q. [redacted]

Q. So are you saying that Box and Dropbox found all of the references cited in the IPRs?

A. I'm saying that either Dropbox or Box found all of the references, yes.

Q. So Ms. Keefe, before, you testified that the references listed in the invalidity -- the

14:50:49 preliminary invalidity contentions, they did not
14:50:52 know where those references came from. Now it's
14:50:55 your testimony that those references came from Box
14:50:57 and/or Dropbox?
14:50:59 A. That's not what I said.
14:51:01 Q. Why don't we -- I'm going to pull up the
14:51:04 contentions. I want to see if you can tell me where
14:51:07 the references are found.
14:51:08 A. I will not be able to do that.
14:51:10 Q. Then how can you --
14:51:12 A. I can tell you right now that I will not be
14:51:14 able to tell you exactly which references were found
14:51:16 by which parties. I can tell you for an absolute
14:51:20 fact that the references used in the IPRs were found
14:51:26 by either Box or Dropbox.
14:51:29 Q. And your --
14:51:30 A. Just because I know those facts does not
14:51:32 mean that I can identify every single other one.
14:51:34 Q. And -- and what is your basis for the
14:51:38 statement that the references in the IPRs were found
14:51:40 by Box and/or Dropbox?
14:51:43 A. I have personal knowledge.
14:51:48 Q. Does anyone else have personal knowledge of
14:51:51 that fact?
14:51:53 A. I believe attorneys for Box and/or Dropbox

14:52:00 could have that personal knowledge as well. But,
14:52:02 again, I do not know exactly what is in their heads,
14:52:05 what they recall, and what they know. But it would
14:52:08 stand to reason that they would.
14:52:10 Q. Are there any -- are there any documents or
14:52:15 written communications that would tend to show that
14:52:22 Box and/or Dropbox were the ones that found the
14:52:25 references cited in the IPRs?
14:52:27 MR. MEAD: I'll just caution the witness
14:52:29 not to divulge information that would be work
14:52:32 product or JDA-related communications. So -- I
14:52:36 mean, if you -- if you -- if you know and you could
14:52:37 answer at a high level without divulging --
THE WITNESS: I don't think --
14:52:41 MR. MEAD: -- things --
14:52:41 THE WITNESS: I do not think there are
14:52:44 documents that would show absolutely that, or even
14:52:47 tend to show that, necessarily, no. I don't believe
14:52:50 there are such documents.
14:52:52 [redacted]

14:53:25 [redacted]

14:54:14 Q. Not a problem.

14:54:19 We can actually come back to this question

14:54:21 later on.

14:54:22 While we're on -- so I was trying to bring

14:54:27 this whole thing back in -- towards paragraph 12 of

14:54:29 your declaration, which I'll share again, which

14:54:34 relates to the costs related to the IPRs.

14:54:37 Do you bill your time that you spend

14:54:43 working on the IPRs?

14:54:46 MR. MEAD: Objection to form.

14:54:50 THE WITNESS: Complicated question. No, I

14:54:58 do not bill my time working on the IPRs.

14:55:04 BY MR. RACHUBA:

14:55:05 [redacted]

14:55:15 [redacted]

14:56:25 MR. MEAD: And I don't think that's an
14:56:27 appropriate line of questioning, Counsel.
14:56:30 MR. RACHUBA: Relevancy is not a basis to
14:56:32 not answer a question during this deposition.

14:56:34 And --
14:56:35 MR. MEAD: But work product --
14:56:36 MR. RACHUBA: I don't see how work product
14:56:37 applies here.
14:56:39 THE WITNESS: Counsel, I don't remember.
14:56:42 MR. RACHUBA: And -- and, furthermore, it's
14:56:46 in issue by being in the -- in the declaration.
14:56:48 But I digress. We can move on.
14:57:08 Q. Ms. Keefe, when did Egnyte become aware
14:57:11 that Box and Dropbox were planning on filing IPRs?
14:57:16 A. The answer is I don't know. I don't know
14:57:19 that they -- I mean, I assume they know now, but --
14:57:24 by virtue of them having them filed publicly. But I
14:57:26 do not know, other than the public filing, when they
14:57:29 became aware of them.
14:57:30 Q. Did you inform Egnyte or counsel for Egnyte
14:57:39 that petitioners would be filing the IPRs before
14:57:43 they were filed?
14:57:43 A. No.
14:57:45 Q. Are you aware if any other counsel for --
14:57:49 counsel or outside counsel for petitioners informed
14:57:52 Egnyte or its counsel?
14:57:54 A. I can't speak to other people, but I don't
14:57:56 believe so.
14:57:56 Q. What is your basis for that belief?

14:57:59 A. There was no reason to. They weren't a
14:58:05 part of what we were doing.
14:59:08 Q. With respect to paragraph 15, Ms. Keefe,
14:59:13 did you discuss the contents of this paragraph with
14:59:16 Egnyte or its counsel?
14:59:18 A. I did not.
14:59:19 Q. In the Northern District court -- Northern
14:59:36 District of California Box and Dropbox cases, do you
14:59:38 recall advising the Court of the 101 motion
14:59:41 decision?
14:59:46 A. I believe that we did, or at least that it
14:59:50 has come up.
14:59:53 Q. In what context do you recall it coming up?
14:59:58 A. I recall during a CMC mentioning to the
15:00:05 court in the Northern District of California that
15:00:08 there had been a 101 hearing and that at least two
15:00:14 of the patents were found to be unenforceable during
15:00:19 the oral argument and that there was, I think, some
15:00:22 briefing continuing to go on. I do recall telling
15:00:24 the Court that during a CMC. And it may have even
15:00:28 been in the CMC papers, you know, the status
15:00:31 conference papers that are provided to the Court
15:00:33 beforehand.
15:00:34 Q. Why did you inform the Court of that?
15:00:37 A. I --

15:00:41 MR. MEAD: Yeah. And please don't reveal
15:00:43 any privileged communication, but if you can do --
15:00:45 answer without doing that.
15:00:47 THE WITNESS: The Court specifically asks,
15:00:49 in its -- in the delineated things, that it wants to
15:00:53 know about cases. It wants to know about related
15:00:56 cases and procedural history. And I thought that
15:01:01 was something the Court would want to know, because
15:01:04 this is a related case involving the same patents.
15:01:16 I would always inform a Court if two
15:01:20 patents out of the six were invalidated by a
15:01:22 different court. That's definitely something a
15:01:24 Court would want to know.
15:01:34 BY MR. RACHUBA:
15:01:35 Q. Ms. Keefe, what is your understanding of
15:01:38 Egnyte's interests with respect to the asserted
15:01:41 patents?
15:01:42 MR. MEAD: So objection; form and
15:01:44 foundation. And caution the witness not to reveal
15:01:46 any privileged, work product, or otherwise protected
15:01:50 material. So if you can answer without doing that.
15:01:52 THE WITNESS: The only interests of which I
15:01:56 am aware of Egnyte's to which I have personal
15:02:00 knowledge were Egnyte's interests in invalidating
15:02:03 the claims under 101, for which I was narrowly asked

15:02:09 to represent them during the 101 hearing. Beyond
15:02:12 those interests, I know nothing about what Egnyte
15:02:15 wants or doesn't want in this case.
15:02:17 BY MR. RACHUBA:
15:02:24 Q. Egnyte was interested in invalidating
15:02:29 claims of the asserted patents; is that true?
15:02:31 A. Under 101, yes.
15:02:39 That's my only personal knowledge regarding
15:02:42 Egnyte's interests.
15:04:12 Q. Ms. Keefe, did Egnyte pursue a strategy of
15:04:16 invalidation of the claims of the asserted patents
15:04:19 in district court?
15:04:22 MR. MEAD: Object to form and foundation.
15:04:25 THE WITNESS: I don't have personal
15:04:27 knowledge of that.
15:04:28 BY MR. RACHUBA:
15:04:30 Q. What was your -- what do you contend was
15:04:33 your representation of Egnyte?
15:04:34 A. My representation of Egnyte was -- so can
15:04:40 you reask your first question? Maybe I
15:04:42 misunderstood it.
15:04:43 Q. Yes. Did Egnyte pursue a strategy of
15:04:49 invalidation of claims of the asserted patents in
15:04:51 district court?
15:04:53 A. My personal knowledge was that Egnyte was

15:04:56 pursuing a method to render the claims unenforceable
15:05:03 under 101, that I helped them with by narrowly being
15:05:07 asked to represent them in the 101 hearing. That is
15:05:11 my knowledge.
15:05:13 Q. Okay. And in the instant IPRs, Box and
15:05:18 Dropbox are pursuing a strategy of invalidation of
15:05:21 claims of the asserted patents also; is that
15:05:23 correct?
15:05:25 A. Counsel, you said the word "also." I
15:05:28 disagree. I just told you that Egnyte was seeking
15:05:31 to have the claims rendered unenforceable under 101
15:05:36 because they claim ineligible subject matter.
15:05:38 That's an unenforceability. Box and Dropbox --
15:05:44 that's unenforceability under 101. The result is
15:05:48 that they can't be used in infringement, but that
15:05:50 does -- that's not the same as pursuing an
15:05:52 invalidation theory under 102 and 103.
15:05:56 So I cannot answer the question the way you
15:05:58 want me to, because Egnyte wanted the claims found
15:06:04 unenforceable for claiming invalid subject matter.
15:06:08 That's a 101 argument. That is not the same as
15:06:13 seeking to have the claims invalidated under 102 and
15:06:17 103. And that's what Box and Dropbox were doing.
15:06:20 Q. Okay. But the effect of that is the same,
15:06:23 right? If -- whether claims are invalidated under

15:06:28 103 or rendered unenforceable under 101, those
15:06:33 claims cannot be used for -- to be inserted --
15:06:36 sorry. Those claims can no longer be used as
15:06:39 asserted grounds of infringement. Is that correct?
15:06:42 A. That's correct. But they are not the same
15:06:44 theory. And, for example, I made that very clear in
15:06:48 paragraph 17. Patent owner attempted to put words
15:06:52 into my mouth and say that Egnyte and petitioners
15:06:57 were "pursuing a single and unified invalidity
15:07:00 defense strategy in all forums." That is
15:07:02 absolutely, 100 percent not true.
15:07:05 Again, 101 is where claims are rendered
15:07:09 unenforceable for failure to claim eligible subject
15:07:13 matter. That is different for invalidity under 102
15:07:15 and 103. The Fed Circuit has made incredibly clear
15:07:19 that the 101 analysis is separate from the 103
15:07:22 analysis.
15:08:11 Q. Ms. Keefe, did you assist Egnyte -- sorry.
15:08:20 Let me scratch that. I -- this question's in my
15:08:24 head, and I have to put it into words.
15:09:48 Referring to paragraph 20 of your
15:09:51 declaration, Ms. Keefe, what benefit are you
15:09:56 referring to in the paragraph?
15:10:11 A. The benefit is -- the hope -- the hoped-for
15:10:15 benefit would be that the claims are found to be

15:10:21 invalid under 102 or 103 by the patent office.
15:10:26 Q. And what would the -- what would the
15:10:30 benefit be to petitioners of invalid -- invalid
15:10:35 claims?
15:10:38 A. One would hope that it would end the case.
15:10:45 Q. In the District of Delaware case with
15:10:49 Egnyte, if the claims were found to be unenforceable
15:10:55 under Section 101, would that also end the case?
15:11:01 MR. MEAD: Objection; form and foundation.
15:11:06 THE WITNESS: Had the claims been found
15:11:09 unenforceable under 101, my hope is that it should
15:11:13 have ended the case with respect to Egnyte in the
15:11:16 district court -- in the District of Delaware case.
15:11:29 BY MR. RACHUBA:
15:11:29 Q. Would petitioners not receive that same
15:11:31 benefit?
15:11:33 A. Potentially. I think there are a lot of
15:11:36 procedural hoops that may or may not have to be
15:11:40 leapt through. It's possible, for example, that the
15:11:43 judgment could be appealed, in which case the
15:11:45 Northern District case would continue to go forward
15:11:47 because a judge decided not to stay the case pending
15:11:49 the outcome of that appeal. I just don't know.
15:11:52 There are too many variables, especially procedural
15:11:54 variables that could happen, especially with respect

15:11:56 to timing.

15:12:05 Q. With respect to Egnyte, would Egnyte not

15:12:11 receive the same benefit that petitioners would

15:12:13 receive if the patent claims were held invalid in

15:12:17 the IPR proceeding?

15:12:19 MR. MEAD: Objection; form and foundation.

15:12:22 THE WITNESS: Again, I don't know. Their

15:12:26 case is on a different track. I don't know whether

15:12:28 or not the Court would -- I don't know whether or

15:12:31 not their case would have finished by the time the

15:12:35 IPR, assuming it goes perfectly well, the different

15:12:39 tracks and the different schedules that they're on.

15:12:41 The -- the courts have said vis-a-vis any individual

15:12:46 defendant, it can be that judgment is final before

15:12:52 another case or another judgment is final. So I

15:12:55 simply -- I cannot answer the question. There

15:12:56 are -- there are very far too many variables. And

15:12:58 it's entirely possible that Egnyte would not receive

15:13:01 the benefit that Box would receive.

15:13:20 BY MR. RACHUBA:

15:13:20 Q. Moving on to paragraph 21, do you have any

15:13:25 knowledge on why Egnyte chose to copy the invalidity

15:13:30 contentions that petitioners served?

15:13:33 A. So two things. No, I have no knowledge as

15:13:36 to why they would have done that; and, two, I'm not

15:13:40 sure that they did. I've never run a red line
15:13:43 comparison to see if they're identical or not. So
15:13:47 the answer is an unequivocal no. I have absolutely
15:13:52 no knowledge on that.
15:13:53 Q. Okay.
15:14:14 Moving on to paragraph 23, the last
15:14:21 sentence of the paragraph reads, "Petitioners and
15:14:23 Egnyte did not collaborate" -- sorry.
15:14:27 Sorry. The first sentence of the paragraph
15:14:29 reads, "Petitioners and Egnyte are competitors,
15:14:32 share no board members, and had no prefiling
15:14:35 communications regarding the potential content of
15:14:38 Petitioners' IPR petitions."
15:14:41 What about counsel for petitioners and
15:14:42 counsel for Egnyte? Did such counsel have prefiling
15:14:47 communications regarding the potential content of
15:14:49 petitioners' IPR petitions?
15:14:52 A. No.
15:14:53 Q. What about with yourself?
15:14:56 A. I was not counsel regarding IPRs. So, no,
15:15:04 I did not. I was, again, retained by Egnyte for a
15:15:08 very limited window, for the very limited purpose of
15:15:12 arguing the 101 motion.
15:15:14 Q. At the time the IPR petitions were filed,
15:15:18 your pro hac vice motion was still active in the

15:15:21 District of Delaware; is that correct?
15:15:26 MR. MEAD: Objection to form.
15:15:26 THE WITNESS: I believe so. But as I've
15:15:28 stated numerous times, my representation of Egnyte
15:15:31 ended with the oral argument.
15:15:34 BY MR. RACHUBA:
15:15:34 Q. Your pro hac motion is still active today;
15:15:37 is that correct?
15:15:37 A. As I've testified, I believe so. But my
15:15:41 representation of Egnyte is over. It ended as soon
15:15:45 as the 101 hearing ended. I have not been
15:15:49 representing Egnyte since then. I have not been
15:15:52 involved with anything with Egnyte since then. I
15:15:54 did not discuss anything about the IPRs with Egnyte.
15:15:58 Q. How do you know --
A. Or its counsel.
15:16:02 Q. Sorry. Continue. I didn't mean to cut you
15:16:04 off.
15:16:04 A. Or its counsel.
15:16:05 You seemed to make a difference between
15:16:07 them and their counsel, and I'm just reiterating I
15:16:10 didn't discuss anything about the IPRs with Egnyte
15:16:13 or its counsel.
15:16:16 Q. Thank you.
15:16:17 Ms. Keefe -- Ms. Keefe, how do you know

15:16:19 that petitioners and Egnyte are competitors?

15:16:27 A. They're in the same general field, and I

15:16:32 know they occasionally compete for customers, or

15:16:35 they at least advertise their products similarly.

15:16:39 Q. How do you know they're in the same general

15:16:42 field?

15:16:43 A. Things that I've reviewed on their

15:16:47 websites.

15:16:58 Q. And how do you know they have the same

15:17:00 customers?

15:17:03 MR. MEAD: Objection; foundation.

15:17:04 THE WITNESS: I think I actually said I

15:17:06 think they might have -- they might go after the

15:17:08 same customers, or something like that. If I -- if

15:17:10 I said I know they have the same customers, I do

15:17:13 not. I do not know exactly who their customers are.

15:17:15 So if I misspoke, I apologize.

15:17:17 BY MR. RACHUBA:

15:17:17 Q. Okay. I think I -- I may have misspoke.

15:17:19 How do you know they go after the same customers?

15:17:22 A. That's my supposition, based on things that

15:17:26 I've read on their website about the fact that --

15:17:28 you know, what the products may or may not be. I

15:17:32 have no -- I don't know that there has been a single

15:17:36 customer that they have exactly gone after at the

15:17:39 same time. But I don't think that's what it -- I
15:17:42 don't think that is required to be a competitor.
15:17:47 Q. When did you compare Egnyte's website to
15:17:50 the website of petitioners?
15:17:52 A. I don't think I ever compared the websites.
15:17:54 I think I said that I learned about Egnyte from
15:17:57 looking at its website. I didn't even know who
15:18:01 Egnyte was before I saw that they had been sued by
15:18:06 Topia. At that time, I think I went on and looked
15:18:09 at their website.
15:18:10 Q. Referring to paragraph 24, Ms. Keefe, you
15:18:36 write that "I do not have," quote, "'intimate
15:18:39 knowledge of Egnyte's interests and attendant
15:18:41 invalidity strategies,'" unquote.
15:18:46 Do you have access to this type of
15:18:48 information?
15:18:49 A. I do not.
15:18:51 Q. Could you get access to this type of
15:18:53 information?
15:18:55 A. I don't believe I could.
15:18:56 Q. Why not?
15:18:58 A. I do not represent Egnyte with respect to
15:19:01 any of that. My limited representation of Egnyte
15:19:04 was with -- was with respect to oral argument of the
15:19:09 IPR motion. Sorry. I -- wow. I said that exactly

absolutely backwards.

My only representation of Egnyte was with respect to the 101 motion. And that -- the quotational knowledge -- sorry. The quotational marks and the language used therein was your language, not mine. I've never had intimate knowledge of Egnyte's interests and attendant invalidity strategies aside from my representation regarding Section 101 motion hearing, as I stated.

Q. Ms. Keefe, do you have control over the IPRs filed by petitioners?

MR. MEAD: Objection; form, foundation.

THE WITNESS: So I am -- I am counsel. I have power of attorney from my clients. I don't, in that sense, believe that I ever have control. I think that it's the clients who have control. But I do act as their attorney in such regards. And in this case Box and Dropbox were controlling the IPRs.

BY MR. RACHUBA:

Q. Does anybody have control -- or sorry. Did Egnyte have control over the entirety of the 101 motion proceeding?

A. So, yes, I believe it did.

Q. Did you have any degree of control over that proceeding?

15:21:34 A. So as a trusted counselor, I think I had
15:21:39 control over the words that I used. But it was
15:21:42 always Egnyte that had control over what was filed
15:21:48 and who argued it. But, you know, I certainly have
15:21:52 control over my own words, and I have control over
15:21:54 what I say. So I'm not -- I'm not sure that I --
15:22:01 I'm not sure how to answer your question. I was not
15:22:03 a puppet. But by the same token, I did not decide
15:22:09 the strategy. That was Egnyte.
15:22:11 Q. Looking at paragraph 27, Ms. Keefe, you
15:22:36 write, "As far as I am aware, neither of the
15:22:39 Petitioners received prior notice of the petition
15:22:41 for IPR filed by Unified Patents." And next you
15:22:45 write, "To my knowledge, Petitioners did not know it
15:22:48 was going to be filed or what it would contain, and
15:22:50 did not rely upon it to prepare their Petitions."
15:22:53 Did you investigate either of these facts
15:22:56 personally?
15:22:57 A. I know that I never received knowledge.
15:23:00 And I did investigate whether or not outside counsel
15:23:04 had received prior knowledge.
15:23:32 MR. RACHUBA: Ms. Keefe, now may be a good
15:23:34 time for a break. Do you want to take --
15:23:36 THE WITNESS: Okay.
15:23:37 MR. RACHUBA: -- ten minutes?

15:23:38 THE WITNESS: Sounds great.
15:23:39 THE VIDEOGRAPHER: We are off the record.
15:23:41 The time is 3:23 p.m.
15:36:05 (Recess taken.)
15:36:06 THE VIDEOGRAPHER: We are back on the
15:36:18 record. The time is 3:36 p.m.
15:36:21 BY MR. RACHUBA:
15:36:28 Q. Ms. Keefe, are you aware that Unified
15:36:31 Patents filed an IPR petition against one of the
15:36:34 patents that Topia is asserting against petitioners?
15:36:39 A. I did become aware of that.
15:36:41 Q. When did you become aware?
15:36:44 A. I don't recall. Certainly after it was
15:36:47 filed.
15:36:48 Q. Did you become aware before the petitions
15:36:54 in this proceeding were filed?
15:36:55 A. I believe so, yes.
15:37:01 Q. Are you aware that the Unified IPR was
15:37:05 instituted?
15:37:07 A. Yes.
15:37:08 Q. That petitioner filed their patent --
15:37:11 patent owner preliminary response and patent owner
15:37:14 response?
15:37:16 A. You mean that patent owner filed it? I
15:37:18 think you said petitioner filed it.

15:37:19 Q. Sorry. I meant patent owner, yes.

15:37:21 A. So am I aware that Unified filed the petition? Yes. Am I aware that that petition was granted? Yes. I think you then said: Are you aware that patent owner filed a response?

15:37:34 Is that what you're asking?

15:37:35 Q. Filed both a preliminary response and a response.

15:37:37 A. I honestly don't recall whether or not there was a POPR. I may have known at one point. I just don't -- as I sit here today, I don't recall. And I do think I recall there being a response as well, although I don't remember reading it in depth.

15:37:41 Q. Okay. Did you read the preliminary response?

15:37:44 A. I'm not even sure I remembered that there was a preliminary response. So I don't believe I did.

15:37:47 Q. Did you read -- well, sorry. Is it possible that you did?

15:37:50 A. It's possible. I don't recall doing it. But I suppose someone could have put it on my desk and said, "Hey, look this happened," something like that. I honestly don't recall reading it.

15:37:54 Q. Okay. Did you read the response?

15:37:57

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15:38:33 A. Again, I recall -- I recall it being on my
15:38:39 desk. I don't recall studying it. I think I may
15:38:43 have skimmed it.
15:38:44 Q. Okay. Well, why was it on your desk?
15:38:49 A. I don't actually remember. Someone put it
15:38:54 there. I don't know. It wasn't me.
15:39:05 Q. Do you know if petitioners or other --
15:39:11 other counsel for petitioners besides yourself were
15:39:15 aware of the Unified IPR prior to the filing of the
15:39:19 petitions in this case?
15:39:21 A. I think I already answered that question.
15:39:24 And the answer was that, no, they weren't aware of
15:39:28 the petitions before they were filed.
15:39:30 Q. No, no, not -- not before they filed. I'm
15:39:34 saying before the petitions in this proceeding were
15:39:36 filed.
15:39:37 A. I know for a fact that I knew about it,
15:39:40 because it's actually referenced in the petition.
15:39:45 Whether or not Dropbox knew before we wrote that
15:39:51 portion of the petition, I don't know. But given
15:39:54 that they read the petition before it was filed --
15:39:57 at least I assume they did -- then they would have
15:40:00 known before the filing.
15:40:03 Q. And --
15:40:04 A. And I have a hard time ever testifying of

15:40:08 what someone 100 percent knew or didn't know.
15:40:10 Q. Understandable.
15:40:11 Is Box a Unified Patents member?
15:40:16 A. I don't remember.
15:40:19 Q. Is Dropbox?
15:40:20 A. Same answer.
15:40:22 Q. Is Egnyte?
15:40:24 A. I have no idea.
15:40:32 Q. Have you had communications with Unified
15:40:35 Patents about the litigations brought by Topia or
15:40:40 the IPRs brought by petitioners?
15:40:43 A. I have not.
15:40:43 Q. Do you know if petitioners themselves had
15:40:46 such communications?
15:40:48 A. If, by "petitioners," you mean Box or
15:40:51 Dropbox --
15:40:52 Q. Yeah.
15:40:52 A. -- I'm nearly certain the answer is no.
15:40:54 You'd asked me that question earlier, and I said
15:40:56 that I had investigated and the answer was no.
15:40:59 Q. Do you know if Egnyte or Egnyte's outside
15:41:02 counsel did?
15:41:02 A. I have no idea.
15:41:04 Q. Do you have an understanding of the grounds
15:41:18 that Unified included in their petition?

15:41:21 A. I know what the Unified petition said, yes.
15:41:25 I read it. I read -- the answer is, I read the
15:41:29 names of the prior art references that were in the
15:41:31 petition, yes.
15:41:33 Q. Okay. And you read that before petitioners
15:41:40 in this proceeding filed the six IPR petitions; is
15:41:45 that correct?
15:41:45 A. Before the filing, yes.
15:41:48 Q. Okay. Are you a registered patent attorney
15:41:57 with the USPTO?
15:41:59 A. Yes, I am.
15:42:00 Q. What is your registration number?
15:42:01 A. Oh, lord. I want to say it's 38,960,
15:42:08 but -- I thought maybe it was included in one of the
15:42:15 petitions. But like I said, I want to say it's
15:42:20 38,960, but I -- I don't remember.
15:42:22 Oh, he's -- oh, 40,673.
15:42:26 Q. Close enough.
15:42:27 A. In the same vein.
15:42:32 Q. Do you have an understanding of the duties
15:42:37 and responsibilities you owe to your clients while
15:42:41 representing them at the USPTO?
15:42:44 A. I believe so.
15:42:45 Q. What is your understanding of those duties
15:42:48 and responsibilities?

15:42:51 MR. MEAD: Objection; relevance.
15:42:53 THE WITNESS: With respect to what? I
15:42:55 mean, there's -- the MPEP is full of pages and pages
15:42:59 of -- of things. I owe clients duty of candor. I
15:43:04 owe zealous advocacy. I owe truthfulness. I have
15:43:09 to have read things that I file with the PTO. I
15:43:13 don't know what all you're getting at.
15:43:16 BY MR. RACHUBA:
15:43:16 Q. What is your -- what is your understanding
15:43:17 of the term "zealous advocacy"?
15:43:22 A. To do a good job representing my client, to
15:43:27 be honest with them.
15:43:31 Q. Do you owe a duty of jealous advocacy while
15:43:35 representing clients in the Northern District of
15:43:37 California?
15:43:38 MR. MEAD: I'm sorry. Did you say
15:43:40 "jealous" or "zealous," with a Z?
15:43:43 MR. RACHUBA: Oh. "Zealous," with a Z,
15:43:44 zeal.
15:43:46 THE WITNESS: I think all lawyers owe a
15:43:50 duty of zealous advocacy to their clients for the
15:43:55 issues on which they are asked to represent clients.
15:43:59 I do not believe that lawyers owe any duty to a
15:44:04 client beyond the scope of the representation.
15:44:08 BY MR. RACHUBA:

15:44:08 Q. What defines the scope of representation?
15:44:12 A. We've discussed this before. It's an
15:44:14 agreement or an understanding between client and
15:44:17 attorney.
15:44:20 Q. Can you be adverse to a client outside the
15:44:43 scope of your representation?
15:44:46 A. There are certainly occasions where you can
15:44:48 be, yes.
15:44:50 Q. Such as?
15:44:51 A. Clients make agreements to all sorts of
15:44:56 things. I -- there are waivers. Every law firm is
15:45:00 full of tons of waivers where a client can be
15:45:03 adverse in one transaction and represented in
15:45:05 another transaction.
15:45:30 Q. Do you recall any such waiver with respect
15:45:32 to Egnyte?
15:45:34 A. I didn't -- there is no waiver, because I
15:45:36 didn't have to get a waiver.
15:46:17 Q. Was your representation of petitioners ever
15:46:21 adverse to your representation of Egnyte?
15:46:23 A. No.
15:46:46 Q. Ms. Keefe, do you recall the date of the
15:46:51 101 hearing in the Egnyte case?
15:46:54 A. I believe it was in the middle of December,
15:46:58 December 9th or 12th or something like that.

15:47:02 Q. I have in my notes as it being December
15:47:05 20th. Does that sound correct to you?
15:47:08 A. Sure, if -- I mean, I'm sure PACER will
15:47:12 indicate it. But, yes, I remember it being in
15:47:15 December.
15:47:17 Q. Okay. Did you owe a duty of zealous
15:47:21 advocacy to Egnyte on December 20th, or, if I'm
15:47:26 incorrect, the date of the 101 hearing?
15:47:30 MR. MEAD: Objection to form.
15:47:30 THE WITNESS: On December 20th, or whatever
15:47:32 the date was of the oral argument, I owed a duty of
15:47:36 zealous advocacy regarding the oral argument on 101,
15:47:40 which was the purpose for which I had been retained.
15:47:46 BY MR. RACHUBA:
15:47:46 Q. Did you owe a duty of zealous advocacy with
15:47:50 respect to any other issues to Egnyte --
15:47:53 A. No.
15:47:55 Q. -- on that date?
15:47:58 A. No.
15:47:59 And I repeat for the record, Egnyte was
15:48:02 already represented by counsel vis-a-vis all other
15:48:05 issues.
15:48:05 Q. On that date of the -- the oral hearing,
15:48:13 could you be adverse to Egnyte?
15:48:18 A. I could have been had I asked them and they

15:48:21 said yes. There was no reason to, because I have
15:48:23 never been adverse to Egnyte, then or now.
15:49:18 Q. Sorry. I think I've lost my video. Let me
15:49:21 see.
15:49:21 A. You're there.
15:49:23 Q. Okay.
15:49:25 Ms. Keefe, what is your understanding of
15:49:30 the term "real parties" -- "real party in interest"?
15:49:35 A. A real party in interest in a IPR petition
15:49:40 is the person who controls the petition.
15:49:48 I think there's better case language --
15:49:51 case law language, but it's a person who controls
15:49:54 the petition.
15:50:03 Q. Are you familiar with the -- I believe it's
15:50:09 Applications in Internet Time vs. RPX. It's a
15:50:13 precedential PTAB decision.
15:50:15 A. I'm sure I've read it at one time or
15:50:18 another.
15:50:19 Q. Post that decision, is control the only
15:50:22 factor in an RPI analysis?
15:50:24 A. I don't believe so. I believe there are a
15:50:26 number of factors that go into a gestalt analysis,
15:50:29 and I think it's very fact dependent on individual
15:50:32 cases.
15:50:34 Q. Do you know what factors go into that

15:50:39 analysis?

15:50:40 A. I'd want to look at the case to lay them
15:50:46 all out and repeat them all. I can only tell you
15:50:48 that as far as I'm concerned, our -- in this case
15:50:52 Egnyte was not a real party in interest.

15:50:55 Q. Again with respect to IPR proceedings, what
15:50:59 is your understanding of the term "privity"?

15:51:02 A. In privity? So in privity here would mean
15:51:08 essentially linked at the hip in colloquialisms.
15:51:14 There are, I'm sure, better definitions in case law,
15:51:17 but linked together in a formalized relationship for
15:51:22 that particular purpose.

15:51:25 Q. What is your understanding of the
15:51:27 difference between a real party in interest and a
15:51:29 privity?

15:51:33 MR. MEAD: Object to form.

15:51:34 THE WITNESS: I'm not sure there is a
15:51:37 difference.

15:51:39 BY MR. RACHUBA:

15:51:56 Q. Ms. Keefe, can you tell me why you wanted
15:51:58 paper copies of exhibits for this deposition?

15:52:01 A. Because my eyes are very bad, I tend to be
15:52:04 much more able to read things in front of me with my
15:52:08 glasses. I'm also ancient, and ancient people tend
15:52:12 to prefer paper to electronics. It's just

15:52:15 familiarization and the way that I like to work. If
15:52:20 you see my office, you'd understand. There's a lot
15:52:22 of paper in it.
15:52:29 MR. RACHUBA: Ms. Keefe, I might -- I might
15:52:30 be finished. Why don't we take a ten-minute break,
15:52:33 and I'll check my notes to see if there's anything
15:52:36 else I need to -- need to ask for.
15:52:37 THE WITNESS: Thank you.
15:52:38 THE VIDEOGRAPHER: We are off the record.
15:52:39 The time is 3:52 p.m.
16:03:16 (Recess taken.)
16:03:17 THE VIDEOGRAPHER: We are back on the
16:03:31 record. The time is 4:03 p.m.
16:03:37 BY MR. RACHUBA:
16:03:38 Q. Ms. Keefe, at the 101 hearing were there
16:03:44 any representatives from Egnyte that were present
16:03:47 there, too?
16:03:49 A. I don't recall, if you mean from the party
16:03:55 itself. I know that their -- I know outside counsel
16:03:57 were there. I don't recall whether anyone else was
16:04:00 there.
16:04:00 Q. Yes, I mean from the party itself.
16:04:03 A. The answer is I don't know.
16:04:04 Q. Okay.
16:04:05 A. I don't recall.

16:04:11 MR. RACHUBA: Okay. I have no more
16:04:13 questions right now, subject to the extent Mr. Mead
16:04:18 has any redirect questions. We reserve re-redirect.
16:04:23 MR. MEAD: Okay. We just want to reserve
16:04:27 the right to read and sign, and we -- well, we -- I
16:04:31 think we noted confidentiality earlier with respect
16:04:33 to the transcript, John. We can address that
16:04:36 off-line, because there's some confidential --
16:04:40 potentially confidential information here on the
16:04:42 petitioner's side. But otherwise no questions.
16:04:45 MR. RACHUBA: Okay.
16:04:46 THE VIDEOGRAPHER: We are -- oh, I
16:04:47 apologize, Counsel. Off record?
16:04:49 MR. RACHUBA: Oh, I'm saying thank you,
16:04:50 Ms. Keefe. Thank you for your time. Thank you for
16:04:52 staying. And that's it.
THE VIDEOGRAPHER: We are --
16:04:53 THE WITNESS: Thank you.
16:04:53 THE VIDEOGRAPHER: -- off the record. Time
16:04:54 is 4:05 p.m.
(Whereupon, the deposition session ended at
4:05 p.m.)
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I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, California, this _____ day of _____, 2023.

_____

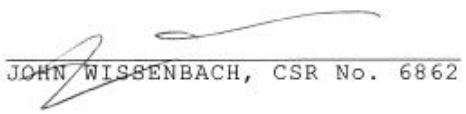
Signature of the witness

CERTIFICATE OF REPORTER

I, JOHN WISSENBACH, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed into typewriting, that the pertinent provisions of the applicable code or rules of civil procedure relating to the notification of the witness and counsel for the parties hereto of the availability of the original transcript of the deposition for reading, correcting, and signing have been met, and that the transcript is a true record of the testimony given.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

DATED: June 21, 2023



JOHN WISSENBACH, CSR No. 6862