1   UNITED STATES PATENT AND TRADEMARK OFFICE

2   BEFORE THE PATENT TRIAL AND APPEAL BOARD

3   _____

4   SIPNET EU S.R.O

5   Petitioner

6   v.

7   STRAIGHT PATH IP GROUP, INC.

8   Patent Owner

9   _____

10   Case IPR2013-00246
                   Patent 6,108,704
11

        Before KALYAN K. DESHPANDE, THOMAS L. GIANNETTI,
12   and TRENTON A. WARD, Administrative Patent Judges

13   DESHPANDE, Administrative Patent Judge

14

15   DEPOSITION OF KETAN D. MAYER-PATEL, PH.D.

16   Washington, D.C.

17   Friday, April 18, 2014

18   Pages: 1- 55

19

20   Reported by:

21   CINDY L. SEBO, RMR, CRR, RPR, CSR, CCR, CLR, RSA

22   JOB NO. 48784

 1

 2

 3   Friday, April 18, 2014

 4   10:35 a.m.

 5

 6

 7

 8   Deposition of KETAN D. MAYER-PATEL,

 9   PH.D., held at the offices of Fisch Hoffman Sigler,

10   LLP, 5335 Wisconsin Ave, Northwest, Eighth Floor,

11   Washington, D.C. 20015, on the above date pursuant

12   to Agreement, before Cindy L. Sebo, Registered Merit

13   Reporter, Certified Real-Time Reporter, Registered

14   Professional Reporter, Certified Shorthand Reporter,

15   Certified Court Reporter, Certified LiveNote

16   Reporter, Real-Time Systems Administrator and Notary

17   Public in and for the District of Columbia.

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 1                          -  -  -

 2                      I N D E X

 3                          -  -  -

 4   WITNESS                                    PAGE NO.

 5   KETAN D. MAYER-PATEL, PH.D.

 6      By Mr. Morlock                               8

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12              (No Exhibits Marked.)

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 2                 DEPOSITION SUPPORT INDEX

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 4

 5   Direction to Witness Not To Answer

 6   Page  Line  Page  Line

 7   (None)

 8

 9

10   Request For Production of Documents

11   Page  Line  Page  Line

12   (None)

13

14

15   Stipulations

16   Page  Line  Page  Line

17     6     1

18

19

20   Questions Marked

21   Page  Line  Page  Line

22   (None)
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1   S T I P U L A T I O N S

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3

4   IT IS HEREBY STIPULATED AND AGREED by and between

5   the attorneys for the respective parties herein,

6   that filing, sealing and certification of the within

7   deposition be waived.

8

9

10   IT IS FURTHER STIPULATED AND AGREED that all

11   objections, except as to the form of the question,

12   shall be reserved to the time of the trial.

13

14

15   IT IS FURTHER STIPULATED AND AGREED that the within

16   deposition may be signed and sworn to before any

17   officer authorized to administer an oath, with the

18   same force and effect as if signed and sworn to

19   before the Court.

20

21

22

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

 2

 3   Washington, D.C.

 4   April 18, 2014; 10:35 a.m.

 5

 6   -   -   -

 7   KETAN D. MAYER-PATEL, PH.D.

 8   after having been first duly sworn, was

 9   examined and testified as follows:

10   -   -   -

11   MR. MORLOCK: This is Michael Morlock,

12   counsel for Petitioner.

13   MR. HOFFMAN: Jason Hoffman, counsel

14   for Patent Owner, Straight Path, as well as

15   for the witness.

16   I'm joined, with my firm, by

17   Michelle Chatelain and Luci Buda, and I'm

18   also joined by Vandana Koelsch, counsel for

19   Straight Path.

20   MR. MORLOCK: Okay.

21   As an initial matter, I'd like the

22   record to reflect that counsel for Patent

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 1    Owner has given the witness a binder.  I've

 2    asked the witness to return the binder.

 3                    -  -  -

 4    EXAMINATION BY COUNSEL FOR THE PETITIONER

 5                    -  -  -

 6         BY MR. MORLOCK:

 7    Q.    Will you return the binder?

 8         MR. HOFFMAN:  Return the binder.

 9         MR. MORLOCK:  To you.

10         MR. HOFFMAN:  Sure.

11         THE WITNESS:  Okay.

12         MR. HOFFMAN:  And, for the record, the

13    binder contains Dr. Mayer-Patel's expert

14    report; a copy of the '704 patent; the two

15    pieces of prior art involved in this IPR;

16    the NetBIOS and WINS; the original petition

17    filed by SIPENT; and the original decision

18    to institute by the board.

19         MR. MORLOCK:  Are there any

20    handwritten notes?

21         MR. HOFFMAN:  I told you it's

22    completely clean.  And you have a copy of it
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1   as well.

2   MR. MORLOCK: Thank you very much.

3   MR. HOFFMAN: You're welcome.

4   BY MR. MORLOCK:

5   Q.   If you need to refer to the binder,

6   please let me know, and I'll object at that time.

7   MR. HOFFMAN: I'm sorry.   And you'll

8   what?

9   MR. MORLOCK: And I will object at

10   that time.

11   MR. HOFFMAN: You will object at that

12   time?

13   MR. MORLOCK: Yes.

14   MR. HOFFMAN: Okay.

15   BY MR. MORLOCK:

16   Q.   Have you testified in prior depositions?

17   A.   Yes.

18   Q.   How many times?

19   A.   Maybe six times.

20   Q.   What were those in connection with?

21   A.   A number of different matters.   Most

22   recently, in November, I was involved in an IPR

 1   deposition. And, prior to that, last year, I was an

 2   expert for Netflix in the International Trade

 3   Commission matter. And it was -- and so I was

 4   deposed as part of my preparation for that -- for

 5   this -- my testimony there.

 6   Prior to that, various other matters,

 7   some of it related to patents, some related to

 8   copyright or trade secret.

 9   Q.   Have you ever testified in a patent

10   litigation?

11   A.   In a patent litigation? I testified in

12   Court?

13   Q.   Yes.

14   A.   No, not in -- not in a patent

15   litigation.

16   Q.   How many IPRs have you provided a

17   declaration for?

18   A.   This one and the one that -- in

19   November.

20   Q.   So two?

21   A.   Two.

22   Q.   And is this -- this is your second

1   deposition for an IPR?

2   A.   This is my second deposition for an IPR,

3   yes.

4   Q.   Okay. So since you're something of an

5   old hand at depositions, I'll give you the short

6   version of the ground rules.

7   We have a court reporter here. Try not

8   to nod; try to answer yes or no; if your counsel

9   objects, try to give him a chance to object; give me

10   time to answer a question -- or ask a question so

11   that we can preserve a full record.

12   Do you understand that?

13   A.   Yes.

14   Q.   Do you understand that your testimony

15   has the same effect as it would if you were in

16   Court?

17   A.   Yes.

18   Q.   Okay. This deposition is going to be on

19   topics covered in a declaration that was served in

20   this inter partes review.

21   A.   Yes.

22   Q.   Have you taken any drugs, alcohol or

1   anything else that affect your ability to testify

2   this morning?

3   A.   Not this morning, no.

4   Q.   I would hope not, but I like to make

5   sure the record it clear.

6   If you need to take a break, let me

7   know. As long as there's not a question pending, we

8   can take a break.

9   Any questions?

10   A.   No.

11   Q.   Great.

12   Did you prepare for this deposition?

13   A.   Yes.

14   Q.   When?

15   A.   Yesterday, I met with counsel pretty

16   much all day. We went over my declaration and the

17   various references and talked about the -- the

18   declaration.

19   And then, prior to that, the last week,

20   I reread the references in my declaration a few

21   times in preparation for this.

22   Q.   "A few times"? You mean each reference?

1   A.   I mean -- I don't remember exactly which

2   references I -- I read and how many times I read

3   them, but I spent a few hours reviewing the various

4   documents involved.

5   Q.   Okay. When you say "documents

6   involved," do you mean NetBios' reference that's

7   Exhibit 1003?

8   A.   Yes.

9   Q.   The '704 patent? It's 6,108,704?

10   A.   Yes.

11   Q.   Exhibit 1001?

12   A.   Yes, the patent, my declaration, the

13   NetBIOS reference and the WINS reference.

14   Q.   Yeah. And you did this yesterday -- you

15   also prepared yesterday?

16   A.   Yes.

17   Q.   For approximately the full day?

18   A.   Approximately.

19   Q.   How much of that time did you spend,

20   give or take, looking at the NetBIOS reference?

21   A.   I can't recall exactly how much was on

22   one versus the other. If I had to guess, maybe a

1   third of the day.

2   Q.   A third of the day?

3   A.   Sure.

4   Q.   Okay. Well, let's start off on some

5   topics, then.

6   Are you familiar with U.S. 6,108,704?

7   A.   Yes.

8   Q.   I'm going to refer to that as the '704

9   patent --

10   A.   Sure.

11   Q.   -- you understand that?

12   A.   Yes.

13   Q.   Okay. Do the claims of the '704 patent

14   recite the term "process"?

15   A.   I believe the claims of the '704 patent

16   do, in fact, refer to a process, yes.

17   Q.   Okay. Is a running computer application

18   a process as recited by the claims of the '704

19   patent?

20   A.   I think that is a fair representation of

21   what a process is, yes, a running application, yeah.

22   Q.   So does that mean a process is created

1 when a program starts?

2   A.   Yes, that's about right.

3   When a program starts on a computer, the

4 process is created to that -- that represents that

5 program running, yes.

6   Q.   And that process ends when the program

7 stops?

8   A.   That process ends when the process ends.

9 So a program might actually, you know, create

10 several processes as part of the program.

11   So when all of the processes associated

12 with the program end, then you can say that the

13 program ends.

14   Q.   So if -- if a -- I'm sorry. I missed

15 that.

16   When all the process -- processes

17 associated with a program end, the process ends?

18   A.   So the process ends when the process

19 ends.

20   So a process is a running -- is an

21 abstraction for a running thread of execution on a

22 computer. And if it ends, then that's the end of

1   the process.

2   Q.   So if the running thread of execution

3   ends, the process ends?

4   A.   That's my understanding, yes.

5   Q.   If a program is started again, is a new

6   process created?

7   A.   Generally that is true, yes.

8   Q.   I have some questions about

9   Exhibit 1003.

10   I'm going to read you the full name so

11   we're clear what we're talking about.

12   That is the NetBIOS reference, Protocols

13   for X/Open PC Interworking: SMB, Version 2.

14   And you're familiar with this reference?

15   A.   Yes.

16   Q.   As you said, you reviewed it several

17   times in the past couple of weeks?

18   A.   Sure.

19   Q.   Okay. I'm going to refer to this as

20   either Exhibit 1003 or NetBIOS, just for

21   convenience --

22   A.   Okay.

 1   Q.   -- do you understand that?

 2   A.   Yes.

 3   Q.   Great.

                  Does NetBIOS describe applications?

 5   A.   I would have to refer to -- can I review

 6   the reference?

 7   Q.   The actual reference?

 8   A.   Yes.

 9   Q.   So you don't -- as you sit here, without

10   looking at your notebook, you don't know if NetBIOS

11   discusses an application?

12   A.   I don't know whether that word appears

13   in the -- like, somewhere in the reference. It's a

14   long document. I didn't memorize it.

15   Q.   That's reasonable. It is a long

16   document.

17   So, just to be clear, you can't answer

18   yes or no right now whether or not NetBIOS describes

19   applications without looking at the document?

20   MR. HOFFMAN: Objection: form.

21   THE WITNESS: I can't -- I can't

22   answer whether that word appears in

1   the -- in the document somewhere.

2   BY MR. MORLOCK:

3   Q.   Does NetBIOS discuss the concept of

4 applications?

5   A.   NetBIOS, with respect to this patent, in

6 my understanding of NetBIOS, describes a mapping

7 between names and IP addresses, and a service for --

8 for maintaining that mapping.

9   Q.   Okay. I'm going to turn you to -- you

10 can pick up the notebook if you want. It's

11 Exhibit 1003, Page 377.

12   By "Page 377," I mean the exhibit pages

13 at the bottom.

14   A.   Sure.

15   MR. HOFFMAN: Thank you for that

16   clarification. It's one of the more

17   confusing things about these exhibits.

18   BY MR. MORLOCK:

19   Q.   So you're on that page?

20   A.   Yes.

21   Q.   I'll refer you to -- under Section 5,

22 Overview of NetBIOS.

1   The third paragraph --

2   A.   Sure.

3   Q.   -- reads, NetBIOS applications employ

4 NetBIOS mechanisms to locate resources.

5   A.   I see that.

6   Q.   So does NetBIOS describe applications?

7   A.   That's not how I would characterize it.

8   My understanding of what they mean by

9 "NetBIOS applications" in this phrase are

10 applications that are using NetBIOS for name to IP

11 address mapping.

12   Q.   So does NetBIOS discuss applications?

13   MR. HOFFMAN: Objection: form.

14   THE WITNESS: So NetBIOS describes how

15   applications use NetBIOS to look up mappings

16   between names and IP addresses.

17   BY MR. MORLOCK:

18   Q.   Does NetBIOS use the word

19 "applications"?

20   MR. HOFFMAN: Objection: form.

21   THE WITNESS: The word "applications"

22   appears in the NetBIOS document.

1   BY MR. MORLOCK:

2   Q.   Is a NetBIOS application an application?

3   A.   My understanding of NetBIOS is that

4   NetBIOS is not an application. NetBIOS is a service

5   used by applications to look up names and their

6   mapping IP addresses.

7   Q.   So does -- when NetBIOS describes

8   NetBIOS applications, is NetBIOS referring to an

9   application?

10   A.   NetBIOS is referring, in this case, I

11   believe, to an application that employs NetBIOS.

12   Q.   Okay. Is a running NetBIOS application

13   a process?

14   A.   So you need to define what a NetBIOS

15   application is.

16   Q.   Well, would you describe a NetBIOS

17   application?

18   A.   An application that uses NetBIOS is a

19   running application.

20   Q.   Do the claims of the '704 patent recite

21   "a process is connected to a network"?

22   MR. HOFFMAN: Objection: form;

1   foundation.

2   THE WITNESS: I have to look at

3   the patent more clearly, more specifically.

4   BY MR. MORLOCK:

5   Q.   You can turn specifically to Claim 1, if

6   that will help. And the patent is Exhibit 1001.

7   MR. HOFFMAN: I assume, Counsel,

8   you've withdrawn your objection of him

9   having his binder.

10   MR. MORLOCK: For now.

11   MR. HOFFMAN: I think your objection

12   is now waived.

13   THE WITNESS: Can you repeat the

14   question?

15   BY MR. MORLOCK:

16   Q.   Sure.

17   So do the claims of the '704 patent

18   recite the term "a process is connected to the

19   network"?

20   A.   I believe the patent refers to processes

21   that can connect to each other and to a server,

22   presumably over a network.

1   Q.   When a process starts on a computer

2   that's connected to a network, is that process

3   automatically connected to the network, too?

4   MR. HOFFMAN: Objection to form.

5   THE WITNESS: Well, the computer -- if

6   the computer is connected to the network,

7   then a process that is running on that

8   computer is able to make connections over

9   that network. Until it does, it is just

10   running locally on that computer.

11   BY MR. MORLOCK:

12   Q.   When would that process receive a

13   network protocol address?

14   MR. HOFFMAN: Objection: foundation.

15   THE WITNESS: That process would

16   receive a network protocol address when it

17   uses the operating system in order to make a

18   connection to some other process on some

19   other computer.

20   BY MR. MORLOCK:

21   Q.   So referring to another part of NetBIOS,

22   does NetBIOS describe NetBIOS applications register

1   their names?

2   A.   I wouldn't characterize that as the

3   application registry of the name. NetBIOS describes

4   a computer -- a mapping being registered between a

5   name and an IP address, and that IP address

6   represents a computer.

7   Q.   I'd like to turn you to Exhibit 1003.

8   Again, page number, at the bottom, is 378.

9   A.   Yes.

10   Q.   The first full paragraph under

11   Section 5.2, Name Service, reads, NetBIOS resources

12   are referenced by name. Lower-level address

13   information is not available to NetBIOS

14   applications. An application, representing a

15   resource, registers one or more names that it wishes

16   to use.

17   Does an application in NetBIOS register

18   a name?

19   A.   An application may cause the

20   registration of a mapping between a name and IP

21   address. I would agree to that.

22   The IP address, however, can't identify

1   a process; it identifies a computer.

2   Q.   But a process is an application

3   executing on a computer?

4   A.   A process is an application executing on

5   a computer; that is true.

6   Q.   Okay. Paragraph 34 of your

7   declaration -- if you want to turn to it to confirm

8   what I'm saying is true.

9   A.   What's your question?

10   Q.   Are you at Paragraph 34?

11   A.   I am at Paragraph 34.

12   Q.   It says, In NetBIOS, a registration may

13   extend indefinitely regardless of whether the node

14   remains connected to the computer network.

15   A.   That is correct.

16   Q.   Does NetBIOS disclose that names are

17   given a lifetime during their name registration?

18   A.   I believe NetBIOS describes the ability

19   to associate a lifetime with the mapping.

20   Q.   Does NetBIOS disclose this lifetime may

21   be any definite period?

22   A.   I believe the description of the

1   lifetime is that the NetBIOS -- it might be a

2   definite period and/or it might be an indefinite

3   period.

4   Q.   So not all NetBIOS name registrations

5   extend indefinitely?

6   A.   It depends exactly on the -- the -- on

7   how NetBIOS is being used. But it -- it is possible

8   that a name mapping in NetBIOS is associated with a

9   lifetime.

10   Q.   And that lifetime is a finite period?

11   A.   That lifetime can be a finite period.

12 It can also be an indefinite period.

13   Q.   So a NetBIOS name registration can have

14 a finite period?

15   A.   It is possible for a mapping between the

16 name and an IP address to have a finite lifetime

17 period associated with it, yes.

18   Q.   Does NetBIOS disclose that end-nodes may

19 send refresh messages?

20   A.   Let me refer to NetBIOS.

21   (Whereupon, the witness

22   reviews the material provided.)

1   THE WITNESS: Yes, NetBIOS does

2   describe a mechanism for refresh.

3   BY MR. MORLOCK:

4   Q.   Okay. And that is a name refresh

5   request packet?

6   Page 400 is my copy.

7   A.   Yes, I believe they refer to this as a

8   name refresh request packet.

9   Q.   Does NetBIOS disclose that if end-node

10   does not send a refresh message, it may be removed

11   from the group?

12   A.   NetBIOS describes a -- a mechanism that

13   if a refresh packet is not received, the mapping may

14   be removed, yes.

15   Q.   So that refresh message renews the

16   lifetime of a registered name?

17   A.   That refresh message, I believe, does

18   renew the lifetime of the mapping between a name and

19   IP address, yes.

20   Q.   Okay. And that's renewing the

21   registered name?

22   A.   And that's renewing a registered name,

1 yes.

2   Q.   Can a NetBIOS application remove its

3 name registration before its registration time

4 expires?

5   MR. HOFFMAN: Objection: form.

6   THE WITNESS: I think you've

7   mischaracterized the -- the mapping.

8   The mapping is not between a name and

9   an application. So an end-node can refresh

10   the mapping between a name and an IP

11   address.

12   BY MR. MORLOCK:

13   Q.   Can a NetBIOS name be released

14 explicitly by an end-node?

15   A.   I believe it is possible for an end-node

16 to release a map -- a name explicitly.

17   Q.   Right.

18   I'll turn you to Page 395 of

19 Exhibit 1003.

20   A.   I'm there.

21   Q.   Under Section 15.1.3, Name Release --

22 it's three-quarters of the way down the page.

1   A.   Yes.

2   Q.   So could you read that for me?

3   A.   NetBIOS names may be released explicitly

4   or silently by an end-node. Silent release

5   typically occurs when an end-node fails or is turned

6   off. Most of the mechanisms described below are

7   present to detect silent name release.

8   Q.   Thank you.

9   I'll just ask again for clarity.

10   Does NetBIOS disclose that names may be

11   released explicitly by an end-node?

12   A.   NetBIOS does describe releasing a name

13   explicitly by an end-node.

14   Q.   Okay. Thank you.

15   Paragraph 17 of your declaration --

16   A.   I'm there.

17   Q.   Okay.

18   -- starts off with, One of the

19   objectives of the '704 patent is to provide a

20   connection between two end-line processes so that

21   the process may establish a point-to-point

22   communications over the network.

1   A.   Yes.

2   Q.   It continues, To achieve this objective,

3   the '704 patent teaches tracking the on-line status

4   of registered processes, rather than simply

5   maintaining a database of these processes.

6   A.   Yes.

7   Q.   And I'm going to skip down. It looks

8   like the last full sentence of that same paragraph

9   reads, One illustrative way of determining this

10 on-line status is by use of an ongoing time stamp

11 application with which the system actively checks

12 whether a process is still connected to the network.

13   A.   Yes.

14   Q.   Does this ongoing time stamp

15 application, as used in the '704 patent, mean that a

16 registration would be removed from the connection

17 server sometime after it was created?

18   MR. HOFFMAN: Objection: form.

19   THE WITNESS: I don't think I quite

20   understand your question.

21   BY MR. MORLOCK:

22   Q.   Okay. The '704 patent describes an

1   ongoing time stamp application?

2   A.   It describes one possible way of

3   achieving the goal of tracking on-line status of a

4   process is to use a ongoing time stamp in order to

5   make sure that that process is still active and

6   on-line.

7   Q.   So the '704 patent describes a

8   connection server that checks time stamps?

9   A.   So the '704 patent does use a -- does

10 illustrate the possibility of using a time stamp.

11 That's not the only way to achieve the goals of the

12 '704 patent.

13   But the important distinction is

14 between, for example, NetBIOS and what the '704

15 patent is asking is the difference between a

16 computer connected to a network and a process

17 connected to a network. So the '704 patent is

18 tracking the on-line status of a process.

19   Q.   So does the '704 patent describe that

20 the connection server checks time stamps of

21 registered records periodically?

22   MR. HOFFMAN: Objection: form.

1   THE WITNESS: So the '704 patent does

2   provide a illustration of one way of

3   achieving its goals. And one way to achieve

4   that would be to check the time stamp

5   associated with processes that are known to

6   be on-line.

7   BY MR. MORLOCK:

8   Q.   And it would remove processes that had

9   an expired time stamp?

10   A.   Not necessarily. It could -- if -- the

11   expired time stamp might simply prompt the server to

12   communicate with that process in order to then

13   confirm whether or not that process is still on-line

14   or not.

15   Q.   Is that described in the '704 patent?

16   A.   It describes this somewhat implicitly

17   where it talks about the connection server using the

18   stamps to update the status of each processing unit.

19   So to update the status of each

20   processing unit would be to confirm whether that

21   processing unit is on-line or not.

22   Q.   Does that -- you're talking about

1   Column 5, Line 39, give or take?

2   A.   Yes.

3   Q.   Does that explicitly describe sending an

4   update message?

5   A.   It doesn't explicitly describe how it is

6   able to confirm the on-line -- how -- how it updates

7   the status of the -- of the -- of the process.

8   Q.   So does the '704 patent describe that if

9   time stamps are -- let me rephrase that.

10   Does the '704 patent describe checking

11   time stamps and periodically removing records with

12   an expired time stamp?

13   A.   I don't recall it describing removing

14   records associated with an expired time stamp.

15   Q.   Does the '704 patent describe

16   maintaining on-line status information so that it

17   is, quoting, relatively current?

18   A.   It does describe maintaining on-line

19   status information, so it's relatively concurrent.

20   I also see, on Column 6 around Line 5,

21   that it describes either removing the user's

22   information or simply flagging the information as

1   being off-line.

2   Q.   So it describes removing the user's

3   information?

4   A.   It describes that as one possibility for

5   how it maintains its internal data structures.

6   Q.   Do any claims of the '704 patent require

7   removal of expired records from the connection

8   server database?

9   MR. HOFFMAN: Objection: scope.

10   (Whereupon, the witness

11   reviews the material provided.)

12   THE WITNESS: It does not describe

13   that explicitly, but there's an implicit

14   inference that can be made for Claims 32

15   through 38, where they describe maintaining

16   a list of on-line processes that are

17   connected.

18   So if one of those processes in the

19   list that is -- that are connected

20   become -- subsequently become not

21   connected, then, presumably, to maintain a

22   list of processes that are connected, that

1   process would have to be removed from that

2   list.

3   BY MR. MORLOCK:

4   Q.   Okay. A minute ago, you referred to --

5   it was Column 6, Line 6, give or take, referring to

6   updating user's information in the database 34?

7   A.   Yes.

8   Q.   Does this off-line message -- is that a

9   deregistration message?

10   A.   Not necessarily. The off-line message

11   simply would indicate that that process is now

12   off-line.

13   So the -- the database could still

14   maintain the record but simply include information

15   about the on-line or off-line status of that

16   process.

17   So that would not be deregistering the

18   record in any way; it would simply be updating the

19   record to reflect the off-line status.

20   Q.   But it could be deregistering the

21   record?

22   MR. HOFFMAN: Objection: form.

1   THE WITNESS: Depending on how you've

2   implemented, it could possibly deregister.

3   That's one possibility.

4   Here, it seems to be updating.

5   BY MR. MORLOCK:

6   Q.   So one possibility is it could be

7 deregistering?

8   MR. HOFFMAN: Objection: form.

9   THE WITNESS: It could be one

10   possibility for how this is implemented.

11   The description in Column 6 seems to

12   describe updating the information.

13   BY MR. MORLOCK:

14   Q.   But one possible implementation would be

15 deregistering?

16   MR. HOFFMAN: Objection: form.

17   THE WITNESS: One possible

18   implementation for how a '704 patent

19   implementation might work would be to

20   deregister an entry if that entry is --

21   if -- if the implementation is only

22   maintaining entries for on-line processes,

1   then -- when the process goes off-line,

2   then, presumably, it would remove that from

3   the list.

4   BY MR. MORLOCK:

5   Q.   So, yes or no, would one implementation

6   of this off-line message be a message that

7   deregistered?

8   MR. HOFFMAN: Objection: form.

9   THE WITNESS: Again, you know, without

10   a full implementation, I can't answer that,

11   you know, whether or not it -- it is meeting

12   the -- the requirements of the patent.

13   If the patent requires

14   them -- the patent does require

15   it -- the -- the implementation to maintain

16   a list of on-line processes; one possible

17   way of doing this is to only maintain a

18   list of on-line processes and then, if a

19   process goes off-line, then to remove it

20   from the list.

21   BY MR. MORLOCK:

22   Q.   And that process could be removed from

1   the list because it sent a deregistration message

2   before it went off-line?

3   MR. HOFFMAN: Objection: form.

4   THE WITNESS: It might result from the

5   process indicating that it is now off-line.

6   BY MR. MORLOCK:

7   Q.   Via an off-line message?

8   A.   So "off-line message" is not a term of

9   art.

10   So do you want to define "off-line

11   message"?

12   Q.   Yeah. As used in Column 6, Line 6 uses

13   the phrase "by an off-line message such as a data

14   packet sent automatically from the processing unit."

15   A.   Sure.

16   So this seems to indicate a message

17   indicating off-line status of a process is being

18   sent to the server. And the server then would

19   update whatever data structures that it's using to

20   track on-line versus off-line processes.

21   Q.   So this would be a deregistration

22   message?

1   MR. HOFFMAN: Objection: form.

2   THE WITNESS: Again, there's no

3   present technical term for off-line message

4   or deregistration message; so it depends.

5   If it is an off-line message, it updates the

6   status of that second process, however that

7   implementation is -- is doing it, that would

8   depend on the implementation.

9   BY MR. MORLOCK:

10   Q.   But that could be a message sent to

11   instruct -- instruct that the process be

12   deregistered?

13   MR. HOFFMAN: Objection: form.

14   THE WITNESS: I wouldn't characterize

15   it like -- that way.

16   It is a message sent to indicate the

17   process is off-line. The server then needs

18   to update its data structures in order

19   to -- to incorporate that new piece of

20   information.

21   BY MR. MORLOCK:

22   Q.   So could an off-line message, as

1   described in Column 6, Lines 6 through 16, be used

2   to notify the connection server that a registered

3   process is about to disconnect?

4   MR. HOFFMAN: Objection: form.

5   THE WITNESS: What do you mean by

6   "about"?

7   BY MR. MORLOCK:

8   Q.   Will go off-line or will disconnect

9   within a certain period.

10   A.   So, as described in Column 6, it doesn't

11   describe anything about some future off-line status.

12   It simply suggests -- it simply describes a process

13   sending a message to indicate that it's currently

14   off-line.

15   Q.   Could one implementation be indicating

16   future off-line status?

17   MR. HOFFMAN: Objection: form.

18   THE WITNESS: I mean, as described in

19   Column 6, it doesn't describe anything about

20   indicating future off-line status. It seems

21   to suggest that it's simply updating the

22   current status of the process.

1   BY MR. MORLOCK:

2   Q.   Could that off-line status message be

3   used to indicate that a registered process is about

4   to become inaccessible to the network?

5   MR. HOFFMAN: Objection: form.

6   THE WITNESS: Again, the off-line

7   message, if it's indicating that it's

8   off-line, would suggest the process is

9   off-line. Whether there is additional

10   mechanism for indicating some future time in

11   which that process is off-line, that's not

12   described here (indicating).

13   BY MR. MORLOCK:

14   Q.   Does this mechanism, describing sending

15   a going off-line message, mean that the process

16   deregisters itself?

17   MR. HOFFMAN: Objection: form.

18   THE WITNESS: I wouldn't characterize

19   it as deregistering. It is simply informing

20   the server that it is -- its status is now

21   off-line.

22   Then the server needs to do whatever

1   it's going to do in order to maintain

2   whatever data structures it is using in

3   order to -- to track the on-line status of

4   that process.

5   BY MR. MORLOCK:

6   Q.   Does that mean that the operation of

7   sending the message is not initiated by the

8   connection server itself?

9   A.   Which message?

10   Q.   The off-line message.

11   A.   The situation described in Column 6

12   describes the process sending the off-line message.

13   Q.   So that means that it's received by the

14   connection server?

15   A.   The example in -- in -- in Column 6, I

16   believe, is the off-line message is received by the

17   server, yes.

18   Q.   And sent by the process?

19   A.   And sent by the process.

20   Q.   If that process was running on a

21   computer that was physically disconnected from the

22   network, would this off-line message allow the

1   connection server to maintain an accurate list of

2   that process' status?

3   MR. HOFFMAN: Objection: form.

4   THE WITNESS: Are you saying that the

5   off-line message was sent after the computer

6   was disconnected from the network?

7   BY MR. MORLOCK:

8   Q.   No.

9   If the computer just went -- if the

10   computer is disconnected, could an off-line message

11   be sent?

12   A.   If a computer is physically disconnected

13   from the network, a process running on that computer

14   would not be able to send a message.

15   Q.   That makes sense.

16   Is this off-line message described in

17   any claim of the '704 patent?

18   MR. HOFFMAN: Objection. Scope.

19   (Whereupon, the witness

20   reviews the material provided.)

21   THE WITNESS: All right. It's a

22   little bit complicated. The term "off-line

1   message" is used in some of the claims but

2   not in the same way as used in Column 6.

3   So, in Column 6, the example we were

4   talking about, they use the term "off-line

5   message" to indicate a message sent by a

6   process in order to update the server as to

7   its own on-line status.

8   So there is reference to an off-line

9   message in some of the Claim 1, but it's

10 not -- it's -- those aren't the same

11 things. Because the -- in the claim

12 language, that specific term is used to

13 indicate a response by the server to a

14 separate process that has asked for the

15 on-line status of some process that is

16 off-line.

17   So there's some confusion with

18 respect to having reused the term "off-line

19 message" in the Column 6 example in a

20 different way than the claim example. But

21 that claim example, the use of "off-line

22 message" doesn't match.

1   However, in some of the later claims,

2   there is reference to deleting an entry of

3   a on-line -- of a list of -- of -- of

4   on-line processes due to some predetermined

5   event. That predetermined event could be

6   a -- the reception of an off-line message

7   in the respect being used in Column 6,

8   which is the -- the -- the process sending

9   a update status -- a status update.

10   So that language of predetermined

11   event occurs in, I believe, Claim 37 and

12   then, again, in Claim 42.

13   BY MR. MORLOCK:

14   Q.   Okay. Thank you.

15   I'll refer you back to the '704 patent,

16   Column 5, Lines 39 through 40.

17   A.   Sure.

18   Q.   That describes, generally, time stamps?

19   A.   These lines describe time stamps as part

20   of updating the status of processes, yes.

21   Q.   Okay. And at Paragraph 17 of your

22   declaration, you wrote, One illustrative way of

1 determining this on-line status is by use of an

2 ongoing time stamp application with which the system

3 actively checks whether a process is still connected

4 to the network.

5   A.   That is correct.

6   Q.   Besides an ongoing time stamp

7 application and an off-line message, does the '704

8 patent describe any other method of tracking on-line

9 status of registered processes?

10   A.   So the claims all describe the

11 requirement of tracking processes to be -- as being

12 on-line, they do use some illustrative examples,

13 including the time stamps and the use of the

14 off-line messages, as well as polling, actively

15 asking a process whether or not it was on-line.

16   Q.   Can you point me to where those are

17 disclosed?

18   A.   Column 5, Lines 39 through 41 is where

19 the time stamps we talked about that -- Column 6 in

20 the example that we previously talked about, I

21 believe around Lines 5 through 10. And then the

22 polling, I think, is described in Column 6 between

1   Lines 55 and 60.

2   Q.   Other than those three, are there any

3   others?

4   A.   Not that I recall.

5   Q.   Do you want to take a minute to confirm

6   that?

7   (Whereupon, the witness

8   reviews the material provided.)

9   MR. MORLOCK: While you do, Jason, can

10   you pass me a bottle of water?

11   I can walk over there.

12   MR. HOFFMAN: Sure.

13   THE WITNESS: So in addition to using

14   time-outs -- or using -- I'm sorry -- time

15   stamps, explicit messages of on-line and

16   off-line status by a process, and polling

17   processes, it does describe inferring

18   off-line status because of

19   nonresponsiveness, which actually is a sort

20   of a polling.

21   So those are the three methods that

22   are described by the patent for -- in

1   the -- in the description of -- of possible

2   embodiments.

3   BY MR. MORLOCK:

4   Q.   Do you mean three or four when you

5   said -- when you gave the number?

6   A.   Well, updating the status based on

7   nonresponsiveness is basically a form of polling.

8   So do you want to count that as a

9   separate --

10   Q.   Do you?

11   A.   I would count that as part of polling.

12   Q.   Okay. And that -- where is that

13   disclosed, what paragraph or what column?

14   A.   The polling?

15   Q.   Yeah.

16   A.   I think I told you already. Like, in

17   Column 6, around Lines 55 through 60.

18   Q.   I think you mean Column 5.

19   A.   H'mm, the polling for every three to

20   five seconds language occurs in Column 6.

21   Q.   Oh, I see.

22   Yeah, I had the wrong column.

1   And the other polling example you gave?

2   A.   It describes being nonresponsive in

3 Column 6, Lines 20 through 25.

4   So . . .

5   Q.   Okay.

6   Could I turn you to Column 6 -- or I'm

7 sorry -- Column 5, Lines -- about -- 55 through 61.

8   A.   Sure.

9   Q.   And that reads, The connection server 26

10 then searches the database 34 to determine whether

11 the callee is logged in by finding any stored

12 information corresponding to the callee's e-mail

13 address indicating that the callee is active and

14 on-line?

15   A.   Yes.

16   Q.   Does this mean that finding a

17 registration in a database is an indication for the

18 connection server that the registered process is

19 active and is on-line?

20   A.   Not necessarily.

21   That's -- it might be part of the

22 information that the server uses.

1   The next sentence basically says, if the

2   callee is active and on-line. So, somehow, the

3   server needs to come to some determination that the

4   callee is active and on-line.

5   Using the information in the database is

6   part of that process, but it doesn't describe every

7   step the server might be making.

8   Q.   So, so using the information in the

9   database is part of the process of determining the

10   process is active and on-line?

11   A.   In this example description, yes.

12   Q.   Okay.

13   MR. MORLOCK: I think we can take a

14   break.

15   MR. HOFFMAN: Okay.

16   - - -

17   (Whereupon, a brief recess was

18   taken from 11:29 a.m. to 11:40 a.m.)

19   - - -

20   BY MR. MORLOCK:

21   Q.   A couple final questions about the

22   notebook you have.

1   Are there any notes in that?

2   A.   Not that I'm aware of.

3   Q.   Did you make any notes in that notebook?

4   A.   No.

5   Q.   Okay.

6   MR. MORLOCK: You're representing

7   there are no notes in the notebook?

8   MR. HOFFMAN: There's no notes in the

9   notebook.

10   MR. MORLOCK: Great. Thank you.

11   BY MR. MORLOCK:

12   Q.   What did you talk about during the

13 break?

14   A.   I didn't talk to anyone during the

15 break.

16   Q.   Okay.

17   MR. MORLOCK: I am done with my

18   questions. It's your witness for redirect.

19   MR. HOFFMAN: I've got no questions

20   for the witness.

21   I'd like the witness to have the

22   ability to read and sign.

1   MR. MORLOCK: Great.   I have no

2   recross then, obviously.

3   - - -

4   (The deposition concluded at 11:41 a.m.)

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1   C E R T I F I C A T E

2   DISTRICT OF COLUMBIA:

3   I, Cindy L. Sebo, a Notary Public within

4   and for the Jurisdiction aforesaid, do hereby

5   certify that the foregoing deposition was taken

6   before me, pursuant to notice, at the time and place

7   indicated; that said deponent was by me duly sworn

8   to tell the truth, the whole truth, and nothing but

9   the truth; that the testimony of said deponent was

10   correctly recorded in machine shorthand by me and

11   thereafter transcribed under my supervision with

12   computer-aided transcription; that the deposition is

13   a true record of the testimony given by the witness;

14   and that I am neither of counsel nor kin to any

15   party in said action, nor interested in the outcome

16   thereof.

17

18

19

20   _____

21   Cindy L. Sebo, RMR, CRR, RPR, CSR,

22   CCR, CLR, RSA, Notary Public

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 2              Please read your deposition over

 3   carefully and make any necessary corrections.  You

 4   should state the reason in the appropriate space on

 5   the errata sheet for any corrections that are made.

 6              After doing so, please sign the errata

 7   sheet and date it.

 8              You are signing same subject to the

 9   changes you have noted on the errata sheet, which

10   will be attached to your deposition.

11              It is imperative that you return the

12   original errata sheet to the deposing attorney

13   within thirty (30) days of receipt of the deposition

14   transcript by you.  If you fail to do so, the

15   deposition transcript may be deemed to be accurate

16   and may be used in court.

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 1                    E R R A T A

 2       PAGE  LINE  CHANGE

 3       ____  ____  _____

 4            REASON:  _____

 5       ____  ____  _____

 6            REASON:  _____

 7       ____  ____  _____

 8            REASON:  _____

 9       ____  ____  _____

10            REASON:  _____

11       ____  ____  _____

12            REASON:  _____

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14            REASON:  _____

15       ____  ____  _____

16            REASON:  _____

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18            REASON:  _____

19       ____  ____  _____

20            REASON:  _____

21       ____  ____  _____

22            REASON:  _____
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 1                ACKNOWLEDGMENT OF DEPONENT

 2

 3          I, _____, do

 4    hereby certify that I have read the foregoing

 5    pages, 1 to 51, and that the same is a correct

 6    transcription of the answers given by me

 7    to the questions therein propounded, except for

 8    the corrections or changes in form or substance,

 9    if any, noted in the attached errata sheet.

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11

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13    _____        _____

14    DATE                        SIGNATURE

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16    Subscribed and sworn to me this_____ day

17    of_____, 20_____.

18        My Commission expires:

19    _____

20

21    _____

22        Notary Public
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