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

RPX Corporation,	Case No.: IPR2015-01750
	Patent No: 8,484,111
Petitioner,	
v.	Case No. IPR2015-01751
	Case No. IPR2015-01752
Applications in Internet Time	Patent No.: 7,356,482
LLC,	
Patent Owner.	

CONFIDENTIAL - PROTECTIVE ORDER MATERIAL
DEPOSITION OF WILLIAM W. CHUANG
San Francisco, California
January 30, 2019

Reported by:
Kayla Knowles
CSR No. 14071

RPX Exhibit 1095
RPX v. AIT
IPR2015-01750

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

RPX Corporation,	Case No.: IPR2015-01750
	Patent No: 8,484,111
Petitioner,	
vs.	Case No. IPR2015-01751
	Case No. IPR2015-01752
Applications in Internet	Patent No.: 7,356,482
Time LLC,	
Patent Owner.	

_____ /

Deposition of WILLIAM W. CHUANG, at Barkley Court
Reporters, 201 California Street, Suite 375, San
Francisco, California, beginning at 9:55 a.m., Wednesday,
January 30, 2019, before KAYLA KNOWLES, Certified
Shorthand Reporter No. 14071.

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A P P E A R A N C E S

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San Francisco, California

Wednesday, January 30, 2019

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BE IT REMEMBERED that set on Wednesday, the 30th day of January, 2019, commencing at the hour of 9:55 a.m., at the office of Barkley Court Reporters, 201 California Street, Suite 375, San Francisco, California, before me, Kayla Knowles, CSR No. 14071, a Certified Shorthand Reporter, personally appeared

WILLIAM W. CHUANG,

having been called as a witness by the Patent Owner, who, being by me first duly sworn, was thereupon examined and testified as hereinafter set forth.

---oOo---

EXAMINATION

BY MR. SEREBOFF:

Q Would you state your name for the record, please.

A My name is Will Chuang, C-H-U-A-N-G.

Q Are you the same -- are you also known as William W. Chuang?

A That's my full name, yes. I go by Will.

Q Okay. Well, can we see some form of identification so that we can confirm that you are you?

A Happy to. I have a California driver's license.

Q Thank you. So before we get into the questions

1 and the answers, some general admonishments. Actually,
2 just curious.

3 Have you ever been deposed before?

4 A I have not.

5 Q Okay. Interesting. You're a lucky person.

6 A I view myself that way. Thanks.

7 Q Okay. So we probably will take some breaks,
8 but -- and if you need to take a break, just let me know.
9 We're not allowed to take a break unless I give the go
10 ahead, but I try to be a reasonable person about it.

11 One thing that I'm not reasonable about is if
12 there's a question pending, we won't take a break.
13 Generally speaking, what we try to do is take breaks at
14 logical breaking points, like, you know, a line of
15 questioning gets resolved, and then we can take a break.

16 During the course of this deposition, you can't
17 ask any of your attorneys for help. And I noticed that
18 Mr. Chiang is here.

19 MR. SEREBOFF: Steve, are you here as an
20 attorney? What's the basis for your appearance today?

21 MR. CHIANG: You can address me as Mr. Chiang
22 instead of Steve, and my basis is I am in-house counsel
23 for RPX. Unless there's a rule that you can point to that
24 prohibits my attendance here, please go on with the
25 deposition.

1 MR. SEREBOFF: All I asked is why you're here.
2 So you're here as an attorney for RPX.

3 MR. CHIANG: I'm in-house counsel for RPX.

4 MR. SEREBOFF: Rich, is that correct? Is he here
5 as an attorney for RPX? I'm not trying to play games.
6 I'm just trying to understand what the basis for his being
7 in the room is.

8 MR. GIUNTA: Why do you need to understand what
9 the basis for -- this is a public proceeding; right? We
10 have confidential information, but he's available from
11 RPX.

12 And just so that we're clear, we want to mark the
13 transcript confidential protective order material.

14 What's the problem with Mr. Chiang being here?

15 MR. SEREBOFF: I didn't say that there was.

16 MR. GIUNTA: Okay.

17 MR. SEREBOFF: I just asked why. He got
18 defensive. You got defensive. I just asked a simple
19 question why.

20 MR. CHIANG: Please proceed with the deposition,
21 Mr. Sereboff. You're wasting time.

22 MR. SEREBOFF: It's my deposition, Mr. Chiang. I
23 will decide how we run it.

24 So for the record, my appearance, I am Steven
25 Sereboff appearing for Applications in Internet Time.

1 MR. CHIANG: Do we need to confirm your identity,
2 Mr. Sereboff? Have you brought a driver's license here
3 today?

4 MR. SEREBOFF: Mr. Chiang, if you're going to
5 interrupt me, I am going to ask you to leave.

6 MR. GIUNTA: So he didn't interrupt you. I am
7 Richard Giunta with Greenfield representing RPX. With me
8 is Elisabeth Hunt, also from Wolf Greenfield and
9 Mr. Chiang from RPX.

10 MR. SEREBOFF: Great. Thank you.

11 BY MR. SEREBOFF:

12 Q So getting back to the ground rules.

13 During the course of the deposition, while we are
14 on the record, you're not allowed to ask any of your
15 attorneys for help. Do you understand that?

16 A Yes.

17 Q And as you've already done capably, when I ask
18 you a question, you need to answer audibly, for example,
19 yes or no. Do you understand?

20 A I do.

21 Q Great. So shaking your head doesn't go on the
22 record, but something -- something spoken does. Do you
23 understand?

24 A I do.

25 Q Great. And as I am asking questions, your

1 attorneys may state objections. What I will tell you is,
2 irrespective of an objection, you do have to answer every
3 one of my questions I ask unless your attorneys
4 specifically say not to. Now, of course, if you don't
5 understand a question, you can say that as well. Do you
6 understand?

7 A I do understand.

8 Q Great. And, furthermore, in order to keep the
9 record relatively clean, it works best if we don't
10 interrupt one another. So, for example, if you're
11 speaking, I'm not going to interrupt you; if I'm speaking,
12 you won't interrupt me. Do you understand?

13 A I do.

14 Q So you are an employee of RPX; is that correct?

15 A That is correct.

16 Q And what is your title?

17 A My current title is executive vice president of
18 client services.

19 Q And how long have you worked for RPX?

20 A I guess it would be -- I started at the beginning
21 of 2011; so since January of 2011.

22 Q And do you have -- did you go to university?

23 A For --

24 Q Strike that.

25 Do you have a bachelor's degree?

1 A I do have a bachelor's degree.

2 Q And what is that degree in?

3 A My bachelor's degree is in industrial and
4 operations engineering.

5 Q And did you go to graduate school?

6 A I went to law school after undergraduate.

7 Q Did you work after undergraduate and before law
8 school?

9 A I did not.

10 Q And where did you go to law school?

11 A I went to law school at Harvard.

12 Q And when did you graduate from Harvard?

13 A In summer of 1993.

14 Q And are you a member of a bar anywhere?

15 A I'm an active member of the California Bar.

16 Q And how long have you been an active member of
17 the California Bar?

18 A Well, I guess that would be since December of
19 1993.

20 Q Okay. And since the time that you've been a
21 member of the California Bar, aside from your work at RPX,
22 have you worked as an attorney?

23 A Yes, I've worked as a practicing attorney.

24 Q I'm sorry. You worked as what?

25 A I worked as an attorney in private practice.

1 Q Could you just briefly summarize your work
2 history as an attorney?

3 A Well, I clerked for a year for a federal district
4 court judge in San Francisco in 1993, the year after I
5 graduated.

6 And then I went to a law firm that was called
7 McCutchen Doyle Brown & Enersen back then. And I was
8 there for until 1998, at which point I moved law firms.
9 You want me to --

10 Q Yeah, keep going, please.

11 A Okay. From McCutchen, I went to another firm
12 called Brobeck Phleger & Harrison, and I was there until
13 the -- until Brobeck dissolved, at which point I went to
14 O'Melveny & Myers, and I was at O'Melveny & Myers up
15 until -- that was my previous job before going to RPX.

16 Q And in your current work at RPX, do you consider
17 any of that to be legal work?

18 MR. GIUNTA: Objection. Form.

19 THE WITNESS: Yeah, I'm not sure how you would --
20 I am not sure I understand your question. Are you -- can
21 you clarify your question?

22 BY MR. SEREBOFF:

23 Q Do you view your work at RPX as the work of an
24 attorney?

25 MR. GIUNTA: Objection. Form.

1 THE WITNESS: I don't -- we have attorneys at
2 RPX, in-house attorneys. I'm not one of them.

3 BY MR. SEREBOFF:

4 Q Now, as a member of the California Bar, I assume
5 that -- strike that.

6 As a member of the California Bar, are you
7 familiar with your duties as an attorney, generally?

8 MR. GIUNTA: Objection. Form.

9 THE WITNESS: Do you mean -- do you mean ethical
10 duties?

11 BY MR. SEREBOFF:

12 Q Yes, ethical duties.

13 A Yes.

14 Q And those ethical duties include duty of loyalty?

15 MR. GIUNTA: Objection. Form.

16 THE WITNESS: To my --

17 BY MR. SEREBOFF:

18 Q That an attorney has a duty of loyalty to their
19 client?

20 A Yes.

21 Q An attorney has a fiduciary duty to their client?

22 A Yes.

23 MR. SEREBOFF: Okay. I want to put into the
24 record Will's first and second declaration.

25 (Exhibit No. 2214 marked for

1 identification.)

2 MR. SEREBOFF: That's the first. Here's the
3 second.

4 (Exhibit No. 2215 marked for
5 identification.)

6 BY MR. SEREBOFF:

7 Q So, Mr. Chuang, these were previously marked as
8 Exhibits 1019 and 1073. Do you see that?

9 A I do.

10 Q Okay.

11 MR. GIUNTA: I'm sorry, Steve, to interrupt. I'm
12 not sure it's clear which one is which. Can we make sure
13 the record is clear that -- I assume 2214 is his first
14 declaration, which was formerly 1019, but it wasn't clear
15 to me.

16 MR. SEREBOFF: Yeah.

17 MR. GIUNTA: Thank you.

18 MR. SEREBOFF: I'm sorry if I was unclear.

19 MR. GIUNTA: Thank you.

20 BY MR. SEREBOFF:

21 Q So do you have any reason to believe that these
22 aren't copies of the declarations that you've submitted in
23 these IPRs?

24 A I haven't looked at them; so I don't know. I
25 don't have a reason.

1 Q Okay. And as far as --

2 A I'm assuming.

3 Q As far as I know, they are accurate copies. And
4 if you want to take a minute and leaf through just to
5 confirm, that's fine.

6 A That would help. Thank you.

7 I don't see a reason to doubt that they're
8 copies.

9 Q Great. Thank you.

10 Now, within these two declarations, you use some
11 terms, and I just want to confirm that we can continue
12 using those terms in the way that you use them in your
13 declaration, and these terms are RPX. Okay?

14 A I think so, yes.

15 Q Salesforce?

16 A Yes.

17 Q AIT?

18 A Yes.

19 Q AIT patents? If you want to look and see how
20 you've defined them, that's fine. But, honestly, these
21 are terms I pulled out of your declaration just to make
22 sure that we could just use these so I don't --

23 A You're talking about the defined term AIT
24 patents?

25 Q Right, AIT patents.

1 A Okay.

2 Q CBM.

3 A Do you know where that's used?

4 Q Not offhand.

5 A Okay. So if you're referring to the use of CBM
6 in paragraph 26 of my first declaration, Exhibit 1019,
7 then, yes, I agree.

8 Q Great. So we will keep using CBM in the same way
9 that you used it there.

10 A Yes.

11 Q Great. IPR.

12 A I guess I'm not sure how that's defined. It's --
13 you know, I understand what it means, at least I think I
14 do.

15 Q Well, what I am just trying to confirm is that
16 we're going to use the term -- so just to understand, one
17 of the other terms is AIT IPRs.

18 A Okay.

19 Q So IPR is a general term, and then we will talk
20 about the AIT IPRs. And these are terms you used in your
21 two declarations, and I want to confirm that we can
22 continue using them in the deposition the same way you
23 used them in your declaration.

24 A So I agree we should continue using them in the
25 same way. I'm just not -- I think it will depend on the

1 context. The reference to it may vary, depending on the
2 context of the question or the specific topic that we're
3 talking about. I am just not certain. But happy to be
4 consistent with my declaration.

5 Q So do you find that sometimes terms can have
6 different meanings in different contexts?

7 A Yeah, the same term could mean something
8 different, depending on the circumstances.

9 Q So during the course of today's deposition, the
10 same term could have different meanings, depending on the
11 context?

12 MR. GIUNTA: Objection. Form.

13 THE WITNESS: I don't know. It depends on the
14 your question. I don't know where your line of
15 questioning will go; so I can't tell you there will be a
16 definitive difference in the use of the term.

17 MR. SEREBOFF: Will you read back my question?

18 (Record read.)

19 THE WITNESS: And my response is I don't know
20 where your line of questions is going to go; so I don't
21 know that it will definitively have a different meaning
22 because I don't know what the context is until I hear it.

23 BY MR. SEREBOFF:

24 Q Right. But it's possible?

25 A I would think so, yes.

1 Q And just curious, you think that, in your
2 declarations, could there have been some inconsistent use
3 of terminology?

4 MR. GIUNTA: Objection. Form.

5 THE WITNESS: Not that I'm aware of, but I'm
6 happy to go through and assess it in each instance, if you
7 want.

8 BY MR. SEREBOFF:

9 Q Okay. Let's talk about some other terms just to
10 keep things easy for everybody.

11 When I refer to the petitions, what I'm referring
12 to are the petitions for IPR in the AIT IPRs. Is that
13 clear?

14 A Our petitions.

15 Q Yes. That would be RPX's petitions. So if you'd
16 like, I'll call them RPX's petitions. Would that be
17 clearer?

18 A Yes.

19 Q Okay. And if I refer to the PTAB, do you
20 understand that's the Patent Trial and Appeal Board at the
21 US Patent and Trademark Office?

22 A Yes.

23 Q Great. And if I talk about the CAFC or the
24 federal circuit, you can understand that's the Court of
25 Appeals for the federal circuit?

1 A Yes.

2 Q Am I speaking too fast?

3 (Reporter clarification.)

4 BY MR. SEREBOFF:

5 Q As you were leafing through your declarations,
6 you didn't happen to notice if there was any assertion of
7 privilege in these declarations, did you?

8 MR. GIUNTA: Objection. Form.

9 BY MR. SEREBOFF:

10 Q I just asked if you noticed.

11 A I'm confused by the question.

12 Q As you were leafing through your declarations
13 right now, did you notice if there was any assertion of
14 attorney-client privilege?

15 MR. GIUNTA: Objection. Form.

16 THE WITNESS: I didn't notice, but I wasn't
17 looking for that purpose.

18 BY MR. SEREBOFF:

19 Q Okay. Could you take a few minutes and go
20 through these declarations and tell me if you find any
21 assertion of attorney-client privilege in either of those
22 declarations?

23 MR. GIUNTA: Objection. Form.

24 THE WITNESS: So just so I understand what I
25 should be doing, you want me to go through and determine

1 whether something in the declaration should be deemed
2 privileged or we would claim that it's privileged? Is
3 that --

4 BY MR. SEREBOFF:

5 Q No. I'm just asking you if there's any statement
6 in your declarations that something is privileged.

7 A I can look.

8 Q I'm not asking for your opinion as a lawyer if
9 something is privileged; I'm just asking if there's an
10 assertion of privilege.

11 MR. GIUNTA: Objection. Form.

12 THE WITNESS: I can look for it. I'll be honest.
13 I'm still confused by the question. What's an example of
14 something that would be a declaration that would be
15 privileged?

16 BY MR. SEREBOFF:

17 Q I'm sorry. I'm the one asking the questions; so
18 if you don't understand a question, that's a legitimate
19 response.

20 A Okay.

21 Q But you do understand what the attorney-client
22 privilege is, don't you?

23 A I do, yes.

24 Q And you're familiar with assertions of
25 attorney-client privilege?

1 A I am.

2 Q So all I'm asking is, is there any assertion of
3 attorney-client privilege in either of these declarations?

4 MR. GIUNTA: Objection. Form.

5 THE WITNESS: You mean an express assertion as
6 part of the declaration?

7 BY MR. SEREBOFF:

8 Q Yes. Great.

9 A Let me look.

10 Q Thanks.

11 A I don't see any express assertions of privilege
12 in any declarations.

13 Q Thank you.

14 Did you prepare for this deposition?

15 A I did.

16 Q What did you do to prepare for it?

17 A I read my declarations with our attorneys.

18 Q Did you review any other documents besides the
19 declarations?

20 A Some of the exhibits.

21 Q Okay. These would be the exhibits to your
22 declarations?

23 A Correct.

24 Q Okay. Paragraph 32 of your first declaration
25 refers to, in the second sentence, Bates range RPX000077

1 to RPX000090. Do you see that?

2 A Yes.

3 Q Okay. I'm going to hand you three more exhibits,
4 which would be the documents in that range.

5 (Exhibit No. 2216 marked for
6 identification.)

7 (Exhibit No. 2217 marked for
8 identification.)

9 (Exhibit No. 2218 marked for
10 identification.)

11 MR. GIUNTA: I'm sorry, Counsel. Just to make
12 the record clear, I believe you said the exhibits are
13 going to be in the range that go up to Bates number ending
14 in -90, and two of these are outside of that range.

15 MR. SEREBOFF: You are correct. Thanks, Rich.

16 BY MR. SEREBOFF:

17 Q So, Mr. Chuang, are you familiar with these three
18 documents? Have you seen any of these three before?

19 A It's been a long time since I've seen them, but I
20 did see them when we put together this first declaration.

21 Q So for the benefit of the record, could you tell
22 me -- so Exhibit 2216 begins -- and as a shorthand, we
23 will just refer to the last two digits of the Bates
24 number.

25 So on Exhibit 2216, it starts with Bates 77.

1 Where does that end?

2 A Sorry. Exhibit 2216?

3 Q Right. So it starts with Bates 77. Where does
4 it end?

5 A What's Exhibit 2216?

6 Q It starts with -- it starts with Bates 77.

7 MR. GIUNTA: I'm sorry. Steve, I think the
8 confusion is -- we don't know yet. You handed three
9 documents, but I am not sure the record was clear about
10 what exhibit numbers you were adding to each of them.

11 THE WITNESS: So I don't know what the reference
12 to Exhibit 2216 is or whatever number you said. There is
13 a Bates stamp RPX000077, but there's no exhibit stamp on
14 it; so I'm not sure.

15 BY MR. SEREBOFF:

16 Q Right. Bates -- so the document that starts with
17 Bates 77 is 2216.

18 A It is.

19 MR. SEREBOFF: See that, Rich? You with me,
20 Mr. Giunta?

21 MR. GIUNTA: I now hear that we're going to mark
22 the one that begins with 77 as Exhibit 2216. So is it
23 okay if the witness is going to write it on his?

24 MR. SEREBOFF: That's fine.

25 ///

1 BY MR. SEREBOFF:

2 Q The one that begins with 91 was marked as 2217,
3 Exhibit 2217. And the one that begins with 94 is marked
4 as 2218.

5 MR. GIUNTA: Thank you.

6 MR. SEREBOFF: You're welcome.

7 THE WITNESS: Thank you.

8 BY MR. SEREBOFF:

9 Q So Exhibit 2216 that begins with Bates 77, where
10 does that end?

11 MR. GIUNTA: Objection. Form.

12 THE WITNESS: I don't -- what is -- I'm not sure
13 I understand your question. Where does what --

14 BY MR. SEREBOFF:

15 Q What is the last Bates number on that exhibit?

16 A Oh, the last Bates number on that Exhibit 2216
17 is -- ends at 90.

18 Q And if you look at Exhibit 2217, starting with
19 Bates 91, and then you see the next page is Bates 92, and
20 the last page is Bates 93. Do you see that?

21 A I see that, yes.

22 Q Great. Now let's look at Exhibit 2218. It
23 starts with Bates 94 and then Bates 95, then Bates 96,
24 Bates 97, and Bates 98; correct?

25 A Correct.

1 Q Good. Okay. And you said that you've seen these
2 before.

3 Do you understand that these were produced by RPX
4 in the AIT IPRs?

5 A I do.

6 Q And do you know what they are?

7 A I was told these were -- I was told what they
8 were.

9 Q What were you told that they were?

10 A They were -- I was told these were a log of the
11 responsive information to your -- to AIT's discovery
12 requests -- to some of them.

13 Q And to your best understanding, what is the
14 information on these documents representative of?

15 A You know, I -- they seem to be a listing of -- in
16 Exhibit 2218, a listing of e-mails that include someone
17 from Salesforce and somebody from RPX.

18 And in Exhibit 2217, it appears to be a listing
19 of phone calls or meetings between someone from RPX and
20 someone from Salesforce. Well, to be more clear, in
21 Exhibit 2217, the meetings between -- this seems to be a
22 listing of the meetings between someone from Salesforce
23 and someone from RPX who is responsible -- who was
24 responsible, at the time, for managing our Salesforce tool
25 used internally.

1 Q What do you mean by "our Salesforce tool"?

2 A We -- RPX uses Salesforce -- Salesforce's general
3 service for its own internal business purposes. And I'm
4 not sure exactly what these -- these phone calls or
5 meetings were about, but they involved the person who was
6 responsible for making sure that we implement -- that
7 we've implemented Salesforce internally correctly and
8 managed the -- the effective use and training of it as a
9 tool.

10 Q And how do you know, from looking at this, that
11 that's the case?

12 MR. GIUNTA: Objection. Form.

13 THE WITNESS: The person, [REDACTED], was --
14 her principal responsibility at RPX was to manage our
15 Salesforce tool for internal use.

16 BY MR. SEREBOFF:

17 Q Does RPX have a name for that Salesforce tool?

18 A We call it Salesforce.

19 Q Okay. We will keep calling it the Salesforce
20 tool.

21 So going back to your declaration, paragraph 32,
22 the first stack. So could you read to me the first two
23 sentences?

24 A Of paragraph 32?

25 Q Yes.

1 A Of my first declaration?

2 Q Yes.

3 A Okay. "AIT's Discovery Request Number 4 calls
4 for documents sufficient to show information relating to
5 meetings or communications between Salesforce and RPX that
6 are not limited to communications about the AIT-Salesforce
7 litigation, the AIT patents, or the AIT IPRs. The
8 document provided is Bates range RPX000077 to RPX000090 --
9 is responsive to that request."

10 Q Thank you. Could you please keep reading?

11 A Continuing in paragraph 32, my first declaration,
12 "The vast majority of e-mail communications were in
13 connection with setting up meetings and did not include
14 any substantive content. The listing of participants in
15 meetings and phone calls is based on best recollection and
16 airs on the side of being overinclusive."

17 You want me to continue?

18 Q Certainly continue. You stopped at a semicolon.

19 A "It is therefore possible that some of the listed
20 individuals may not have actually attended."

21 Q Okay. One more sentence.

22 A "Any meeting or communication not summarized in
23 the Section Roman III above had nothing to do with the
24 AIT-Salesforce litigation, the AIT patents, or the AIT
25 IPRs."

1 Q Okay. So at the time that you wrote your
2 declaration, this last sentence, you said "any meeting or
3 communication."

4 Did you have any reason to believe that there was
5 anything -- that "any" meant anything other than "any"?

6 MR. GIUNTA: Objection. Form.

7 THE WITNESS: Can you restate your question?

8 BY MR. SEREBOFF:

9 Q No. Actually, I'd like you to try to answer it
10 as best you can.

11 A Okay. Can you restate your question or have it
12 read back?

13 (Record read.)

14 THE WITNESS: I think it meant any.

15 BY MR. SEREBOFF:

16 Q And you still believe it means any?

17 A I believe it means what I thought it meant back
18 when I made the declaration.

19 Q Okay. So you have no reason to change your
20 testimony from what's in paragraph 32?

21 A Not that I'm aware of.

22 Q So you believe that Exhibit 2216 identifies any
23 meeting or communication as set forth in the last sentence
24 of paragraph 32?

25 MR. GIUNTA: Objection. Form.

1 THE WITNESS: I guess I'm still confused by
2 that -- I'm confused by that question. The "any meeting
3 or communication" -- sorry. I'm going back to my
4 declaration.

5 Can you restate the last question, please?

6 (Record read.)

7 THE WITNESS: Yes, I believe that Exhibit 2216
8 sets forth the "any meeting or communication" summarized
9 in paragraph 3 of my first declaration.

10 BY MR. SEREBOFF:

11 Q Okay. Great. Now, you talked about
12 Exhibit 2217, and you said this relates to the Salesforce
13 tool; is that correct?

14 A The internal Salesforce tool that we use for our
15 business, yes.

16 Q Okay. And so the -- the meetings logged, as
17 referenced in or summarized in Exhibit 2217, there's no
18 reason to have them included in 2216; correct?

19 MR. GIUNTA: Objection. Form.

20 THE WITNESS: Can you remind me what the
21 discovery request -- I'm not allowed to ask questions.

22 I don't know -- I don't remember -- I don't
23 remember the specific requests that these were responsive
24 to. It's been quite a while.

25 ///

1 BY MR. SEREBOFF:

2 Q That's fine. So you just read paragraph 32 of
3 your first declaration; so I assume that you understand
4 what Exhibit 2216 covers; right? Do you not understand
5 what Exhibit 2216 covers?

6 MR. GIUNTA: Objection. Form.

7 THE WITNESS: Hold on. So please give me a
8 moment, and let me take a look at Roman III of my
9 declaration.

10 BY MR. SEREBOFF:

11 Q Sure. Take your time.

12 A Can I ask to see Discovery Request Number 3? I
13 just don't remember what that discovery request was.

14 Q I don't think I have that handy.

15 A It appears to be -- it appears to be a list of
16 communications that's responsive to Request Number 3, and
17 I don't know -- I don't remember specifically the
18 parameters of that request.

19 Q Okay. Do you see any of the -- referring to
20 Exhibit 2217, do you see any of the entries in
21 Exhibit 2217 included in Exhibit 2216?

22 A I do not.

23 Q Okay. Since we're doing this, why don't you take
24 a look at Exhibit 2218 now.

25 Do you see any of the entries in Exhibit 2218

1 included in Exhibit 2216?

2 A I do not.

3 Q Okay. Looking at Exhibit 2218, did you notice
4 that the entries are not in chronological order; so you
5 can see that the first one is January 16th of 2014? You
6 see that?

7 A Yes.

8 MR. GIUNTA: Objection. Form and scope.

9 BY MR. SEREBOFF:

10 Q And the second is July 14, 2015?

11 A Yes.

12 MR. GIUNTA: Objection --

13 BY MR. SEREBOFF:

14 Q But then if you keep going, the third one is now
15 January 28th of 2015, not in chronological order; right?

16 MR. GIUNTA: Objection. Form and scope.

17 THE WITNESS: Does not appear to be.

18 BY MR. SEREBOFF:

19 Q And as you scan down the list, do you see that a
20 lot of this is not in chronological order?

21 MR. GIUNTA: Objection. Form and scope.

22 THE WITNESS: I think that's fair.

23 BY MR. SEREBOFF:

24 Q Why do you think these entries are not in
25 chronological order?

1 MR. GIUNTA: Objection. Form and scope.
2 Counsel, he didn't testify about this exhibit; so I don't
3 know why he's being asked about this exhibit.

4 MR. SEREBOFF: I'll get there.

5 THE WITNESS: I don't know.

6 BY MR. SEREBOFF:

7 Q Okay. So in your declaration, you testified as
8 to your knowledge of communications between RPX and
9 Salesforce; is that correct?

10 MR. GIUNTA: Objection. Form.

11 THE WITNESS: I testified -- well, I would not
12 say that I testified as to all of the discussions between
13 RPX and Salesforce.

14 BY MR. SEREBOFF:

15 Q And in your declarations, what communications
16 between RPX and Salesforce did you describe?

17 MR. GIUNTA: Objection. Form.

18 THE WITNESS: I described the communications that
19 I was aware of and that I had personal knowledge of and
20 some of which I was close enough to understand what was
21 discussed.

22 But a lot of -- there are a lot of other
23 discussions, particularly relating to the use of
24 Salesforce as a tool for our company, that I'm aware --
25 I'm aware happened on a regular basis but have no personal

1 knowledge of specifics of those discussions other than
2 they relate to the tool -- our use of the Salesforce tool.

3 BY MR. SEREBOFF:

4 Q So, already, we've done some things to create
5 some shorthands to make communications between us in this
6 deposition easier; right?

7 MR. GIUNTA: Objection. Form.

8 THE WITNESS: If you mean going over definitions
9 and the exhibit numbers, yes.

10 BY MR. SEREBOFF:

11 Q Good. Okay. So here's what I'd like to do is,
12 when I talk about communications between RPX and
13 Salesforce, when I talk about that from now on out, I'm
14 excluding any communications relating to RPX's Salesforce
15 tool. Can we agree on that?

16 MR. GIUNTA: Objection. Form.

17 THE WITNESS: I think so.

18 BY MR. SEREBOFF:

19 Q That's a yes?

20 A Yes, I think so.

21 Q Okay. All right. So given that definition of
22 communications between RPX and Salesforce, do you believe
23 that you've had perfect visibility of all of those
24 communications?

25 MR. GIUNTA: Objection. Form.

1 THE WITNESS: Perfect. You mean knowledge of
2 every communication outside of -- with Salesforce outside
3 of the tool?

4 BY MR. SEREBOFF:

5 Q Correct.

6 A I guess I can't say I have perfect knowledge.

7 Q So there could be communications between RPX and
8 Salesforce that you're unaware of?

9 MR. GIUNTA: Objection. Form.

10 THE WITNESS: It's unlikely that there were
11 substantial communications with Salesforce that I wasn't
12 aware of, but I suppose it's a possibility.

13 BY MR. SEREBOFF:

14 Q So from that standpoint, are you 100 percent
15 certain that your declarations cover all communications
16 between RPX and Salesforce?

17 MR. GIUNTA: Objection. Form.

18 THE WITNESS: I would say that I have a high
19 level of confidence that any discussion with Salesforce
20 that involved the AIT litigation or the AIT patents and
21 subsequent to our filing of the AIT IPRs -- the AIT IPRs,
22 I would have known about that.

23 BY MR. SEREBOFF:

24 Q Okay. That wasn't responsive to my question.

25 MR. SEREBOFF: Could you please read the question

1 again?

2 (Record read.)

3 THE WITNESS: The way you've defined
4 communications to be everything with Salesforce other than
5 with respect to the Salesforce tool, I didn't -- my
6 declaration does not address -- cover all of those.

7 My declaration only covers specific -- the
8 specific responsive topics with -- you know, with respect
9 to your discovery requests.

10 BY MR. SEREBOFF:

11 Q Thank you.

12 So in these communications, was there any
13 discussion between RPX and Salesforce regarding the
14 Salesforce litigation?

15 MR. GIUNTA: Objection. Form.

16 THE WITNESS: Salesforce litigation. Did we
17 define that?

18 BY MR. SEREBOFF:

19 Q You know, I don't know if we did; so let's take a
20 look and see if you did define it.

21 Ah, in paragraph 32, you refer to the
22 AIT-Salesforce litigation. So how about if we use that
23 term?

24 A Okay.

25 Q Okay. So let me ask the question again.

1 Were there any discussions between RPX and
2 Salesforce regarding the AIT-Salesforce litigation in
3 general?

4 MR. GIUNTA: Objection. Form.

5 THE WITNESS: So I believe I did testify to that.
6 There have been discussions -- a limited number of
7 discussions between RPX and Salesforce on -- that touched
8 on the AIT-Salesforce litigation.

9 BY MR. SEREBOFF:

10 Q And did you participate in those communications?

11 A I participated in some of them.

12 Q And the ones in which you didn't participate,
13 were you -- are you knowledgeable of them?

14 A Yes.

15 Q And in those communications between RPX and
16 Salesforce regarding the AIT-Salesforce litigation, what
17 specifically was discussed?

18 MR. GIUNTA: Objection. Form.

19 THE WITNESS: Well, I am -- this has been some
20 time; so I'm going back to my declaration, if that's okay.

21 So I think the first time it was discussed was on
22 a call with [REDACTED] of Salesforce on
23 January 7, 2014. And in this discussion, we actually
24 didn't say very much because I don't think RPX actually
25 had very much information about AIT or the litigation at

1 the time.

2 But I did indicate that we had had some previous
3 dealings with the AIT litigation counsel in a separate
4 [REDACTED]. Did you want me to continue?

5 BY MR. SEREBOFF:

6 Q Please, yes.

7 A We had a face-to-face meeting in February,
8 February 24, 2014, where we met at Salesforce offices with
9 [REDACTED]. We -- the
10 purpose of the meeting, principally, was to introduce a
11 new primary contact for the Salesforce relationship.

12 But during that meeting, Salesforce did say that
13 they would like RPX to reach out to AIT and find out
14 information, to the extent we could, about what their
15 intentions were for their litigation campaign and what
16 their expectations might be.

17 And on June 30, 2014, [REDACTED], the new
18 primary contact with Salesforce, and [REDACTED]
19 had a call with [REDACTED] of Salesforce,
20 and in that -- in that call, I was told that Salesforce,
21 again, asked whether we could -- we, RPX, could find out
22 more about AIT's expectations.

23 And then on April -- I'm sorry. August 14, 2014,
24 we had a call -- sorry. Not we. [REDACTED] had a call with
25 [REDACTED] of Salesforce, and at that point,

1 I was told that Salesforce let ██████ know that
2 Salesforce had filed CBMs, had filed for a covered
3 business review -- covered business method review of the
4 AIT patents, and that Salesforce was no longer interested
5 in having RPX reach out to AIT. And as of that time, as
6 of that communication, RPX had not reached out to AIT.

7 On March 11, 2015, there was a call between
8 ██████, Steve Chiang, and ██████. I
9 believe that was a routine communication where -- and I
10 was told that we asked Salesforce if Salesforce would like
11 RPX to reach out to AIT to try to find information about
12 expectations -- AIT's expectations. And Salesforce -- I
13 was told said that they did not want us to reach out at
14 that time and would let us know if they wanted us to.

15 And then in April or May of 2015, there was a
16 call between ██████ and Steve Chiang and ██████
17 ██████ of Salesforce, where Salesforce
18 began to bring up the subject of the AIT-Salesforce
19 litigation, and I believe ██████ immediately indicated that
20 we were not -- we, RPX, were not inclined to discuss that
21 matter. And that was the -- that was the end of that.

22 Q So no further communications regarding the
23 AIT-Salesforce litigation between RPX and Salesforce?

24 MR. GIUNTA: Objection. Form.

25 THE WITNESS: There were follow-up communications

1 with Salesforce on the AIT IPRs, but only to address
2 getting permission to disclose confidential information in
3 conjunction with the AIT IPR proceeding. And I think I
4 actually speak to this in my second declaration, if you
5 want to go into that.

6 BY MR. SEREBOFF:

7 Q No, I don't think we need to go into that.

8 That's fine. Thanks.

9 Now, you mentioned that, it seems on several
10 occasions, Salesforce asked RPX to reach out to AIT, and I
11 refer to, in your first declaration, paragraph 24, and I
12 think you mentioned that just now; that on February 24,
13 2014, Salesforce asked RPX to reach out to AIT; is that
14 correct?

15 A That is correct.

16 Q And then the next paragraph, 25, it seems that
17 Salesforce again, on June 30, 2014, asked RPX to reach out
18 to AIT.

19 A That's correct.

20 Q Okay. And then the next paragraph, 26, we see
21 that Salesforce now says, on August 14, 2014, "do not
22 reach out to AIT"; is that correct?

23 A That is correct.

24 Q So Salesforce asked you on February 24, 2014, to
25 reach out; Salesforce asked you on June 30, 2014, to reach

1 out.

2 Did RPX reach out to AIT in that -- in response
3 to those requests?

4 A We did not.

5 Q Now, do you believe reaching out to -- that RPX
6 reaching out to AIT, would that have been a benefit to
7 Salesforce under its membership and license agreement?

8 MR. GIUNTA: Objection. Form and scope.

9 THE WITNESS: Well, I'm not sure how you would
10 define benefit. It's a -- it was a request that they made
11 of us that we -- you know, which -- you know, which
12 clients do. We may or may not -- we may or may not follow
13 up on that request or execute on the request. You know,
14 I'm not sure -- I'm not sure how else to answer your
15 question.

16 BY MR. SEREBOFF:

17 Q So when Salesforce asked RPX on these two
18 occasions to reach out to AIT, do you believe that RPX was
19 contractually obligated to do that?

20 A No.

21 Q And if RPX were to do that, reach out to AIT on
22 behalf of Salesforce, would that be in the scope of
23 Salesforce being an RPX member?

24 MR. GIUNTA: Objection. Form and scope.

25 THE WITNESS: So we would not reach out on behalf

1 of Salesforce; so that's a -- we never reach out to an NPE
2 or patent owner on behalf of a client. What we do -- the
3 purpose of reaching out is to understand what expectations
4 might be for a potential transaction where RPX would
5 acquire, potentially, license rights under their portfolio
6 for the RPX membership.

7 BY MR. SEREBOFF:

8 Q And was it the expectation in the -- in
9 February 24th, '14, and June 30th of 2014, when Salesforce
10 asked RPX to reach out to AIT, that this could lead to RPX
11 obtaining a license from AIT?

12 MR. GIUNTA: Objection. Form and scope.

13 THE WITNESS: Well, I can't get inside the heads
14 of Salesforce and their expectations, but what they were
15 suggesting is that -- I interpreted their request as
16 suggesting we should explore a potential membership deal
17 with AIT.

18 BY MR. SEREBOFF:

19 Q Great. And a membership deal would mean what?

20 A Membership deal was what I described before, a
21 relatively typical transaction where RPX acquires either
22 the patents or the right to license the patents --
23 sublicense the patents to its membership.

24 Q And so the -- say the desired outcome of reaching
25 out would be that, ultimately, Salesforce could get a

1 sublicense or some rights that would relieve it of
2 liability as asserted in the AIT-Salesforce litigation; is
3 that correct?

4 MR. GIUNTA: Objection. Form and scope.

5 THE WITNESS: I guess where I'm stuck is desired
6 outcome. I think there's a -- there's a -- a lot of
7 times, there's a curiosity. Clients have a curiosity
8 about what the expectations are. And so I don't know
9 if -- there are oftentimes we will find -- we will get
10 expectations, and at least there isn't a desire to -- you
11 know, to get to a deal. Yeah, so that's -- I don't know
12 what their desire -- what motivated their desire.

13 BY MR. SEREBOFF:

14 Q Okay. And that's fair. And, you know, I can
15 tell you, as someone who has interacted with RPX over the
16 years, you know, I certainly can tell you I appreciate
17 what reaching out involves. I'm just trying to help get a
18 clarification on the record.

19 Now, this process of RPX obtaining rights and a
20 patent that it can then provide rights -- patent rights to
21 its members, is that part of -- is that RPX's core
22 services?

23 A Yes.

24 Q Okay. And for the benefit of the record, can you
25 explain why it's better for RPX to obtain rights from a

1 patent holder as opposed to a defendant?

2 MR. GIUNTA: Objection. Form and scope.

3 THE WITNESS: Sorry. Can you -- can you read
4 back the question? I actually don't understand it.

5 (Record read.)

6 THE WITNESS: I don't understand the reference to
7 obtaining rights from a defendant.

8 BY MR. SEREBOFF:

9 Q Yeah, it's a bad question -- or certainly an
10 unclear question.

11 Anyhow, again, after Salesforce asked RPX on
12 February 24, 2014, to reach out to AIT, why didn't RPX do
13 that?

14 MR. GIUNTA: Objection. Scope.

15 THE WITNESS: Well, I don't know the specific
16 reason, but it wasn't an unusual outcome. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 BY MR. SEREBOFF:

23 Q And after Salesforce, on June 30, 2014, asked RPX
24 to reach out to AIT, do you know why RPX didn't reach out?

25 MR. GIUNTA: Objection. Scope.

1 THE WITNESS: It would be -- the answer I gave
2 you from the previous time would apply to this time as
3 well.

4 BY MR. SEREBOFF:

5 Q So you just don't know?

6 A I don't know, but it's not an unusual -- it's not
7 an unusual outcome.

8 Q Okay.

9 MR. GIUNTA: Steve, we've been going about an
10 hour 15. If we can take a break when you get to a good
11 stopping point, I'd appreciate it.

12 MR. SEREBOFF: Sure. Let me take a look.

13 BY MR. SEREBOFF:

14 Q Okay. Now, regarding these two requests by
15 Salesforce for RPX to reach out to AIT, you said that --
16 so RPX didn't reach out to AIT.

17 Did RPX reach out to anyone else that RPX would
18 think had a connection to AIT?

19 MR. GIUNTA: Objection. Form and scope.

20 THE WITNESS: So not that I'm aware of, but it's
21 possible that -- not that I'm aware of.

22 BY MR. SEREBOFF:

23 Q Okay. Now, the communications that we've been
24 discussing between RPX and Salesforce, these
25 communications, does that include communications between

1 outside lawyers for RPX and Salesforce?

2 MR. GIUNTA: Objection. Form and scope.

3 THE WITNESS: I think I would be -- would have
4 been aware of those discussions.

5 BY MR. SEREBOFF:

6 Q So to the best of your knowledge, outside counsel
7 for RPX has never communicated with Salesforce regarding
8 AIT or the AIT-Salesforce litigation or the AIT IPRs?

9 MR. GIUNTA: Objection. Form.

10 THE WITNESS: Did I -- did I -- I don't -- I
11 don't recall any of the -- any discussion about that.

12 BY MR. SEREBOFF:

13 Q Yeah, I don't think that there were. I don't
14 know, but --

15 A Okay. I'm not aware of any.

16 Q Actually, maybe not.

17 MR. SEREBOFF: Anyhow, I think this is a good
18 time to take a break. Let's go ahead and take a break,
19 and we can go off the record. Thanks, guys.

20 (Off the record.)

21 BY MR. SEREBOFF:

22 Q We are back on the record.

23 Okay. Mr. Chuang. So we have been discussing
24 communications between RPX and Salesforce, and I have some
25 more questions for you in that regard.

1 In paragraph 21 of your first declaration, you
2 describe some communications between RPX and Salesforce.
3 Do you see that? And take your time in reading the
4 paragraph.

5 A Yes.

6 Q Okay. And do you recall that September 15, 2015,
7 was after RPX had filed the petitions for IPR and the AIT
8 IPRs?

9 A Honestly, I don't recall the petition filing
10 date -- at least today I don't.

11 Q Okay. So in paragraph 26 of your declaration,
12 you stated that -- oh, I'm sorry. Strike that. Just
13 looking for an easy shorthand way to get the filing date
14 on the record. Okay. So let's go back to paragraph 21 of
15 your first declaration.

16 Okay. In the first sentence, it says,
17 "Subsequent to the AIT IPRs, the only communications
18 between RPX and Salesforce regarding the AIT IPR," et
19 cetera. Do you see that?

20 A Yes.

21 Q Okay. So in the guise of subsequent to the
22 filing of the AIT IPRs and these -- the communications
23 referenced here in 21 by you, in any of these
24 communications, did Salesforce ask RPX to withdraw the
25 petitions?

1 A Not that I'm aware of.

2 Q In any of these communications, did Salesforce
3 comment on the petitions?

4 MR. GIUNTA: Objection. Form.

5 THE WITNESS: Not that I'm aware of.

6 BY MR. SEREBOFF:

7 Q And so in those communications, Salesforce didn't
8 say they weren't happy with the petitions?

9 A I'm not aware they commented on the IPRs in any
10 way.

11 Q Are you aware if Salesforce has ever objected to
12 RPX filing those petitions?

13 MR. GIUNTA: Objection. Form.

14 THE WITNESS: I'm not aware -- objected to us?

15 BY MR. SEREBOFF:

16 Q Yes.

17 A No. I'm not aware of them ever objecting.

18 Q And has Salesforce ever asked RPX to stop
19 pursuing the IPRs -- the AIT IPRs?

20 A Not that I'm aware of.

21 Q And has Salesforce ever objected to RPX for
22 pursuing the AIT IPRs?

23 MR. GIUNTA: Objection. Form.

24 THE WITNESS: Can you read that question back,
25 please?

1 (Record read.)

2 THE WITNESS: Not that I'm aware of.

3 BY MR. SEREBOFF:

4 Q Okay. Now, the telephone call referenced here in
5 paragraph 21 on September 15, 2015, could you point to me
6 in Exhibits 2216, 2217, or 2218 where that phone call is
7 listed?

8 MR. GIUNTA: Objection. Form.

9 BY MR. SEREBOFF:

10 Q I guess you don't even have to look at 2217
11 because you already said that 2217 is relating only to the
12 Salesforce tool.

13 A Right. I believe it shows up on Bates stamp
14 page 90 as the third entry from the top.

15 Q Thank you.

16 Now, paragraph 21 of your first declaration
17 further references an e-mail from [REDACTED]. Do you
18 see that?

19 A Yes.

20 Q Same sentence.

21 And can you tell me where that e-mail is listed
22 in any of these two exhibits?

23 MR. GIUNTA: Objection. Form.

24 THE WITNESS: I can't find it.

25 ///

1 BY MR. SEREBOFF:

2 Q Thank you. Okay. So look at paragraph 27 of
3 your first declaration.

4 Do you see that it references a phone call on
5 March 11, 2015?

6 A Yes.

7 Q And can you tell me if that phone call is
8 included in the logs of paragraph -- of Exhibits 2216 or
9 2218?

10 A We're talking about paragraph 27 of my first
11 declaration?

12 Q Right. So it says March 11, 2015, "in a phone
13 call."

14 Do you see that phone call listed in those logs?

15 A I believe it shows up in the log on Bates stamp
16 page 84 as the last entry.

17 Q Okay. Thanks.

18 Now, looking at paragraph 28 of your first
19 declaration, it refers to a call on April -- in April or
20 May of 2015. Can you point to me where that call is
21 logged?

22 MR. GIUNTA: Objection. Form.

23 THE WITNESS: I'm uncertain -- I'm uncertain
24 which precise call is the correct one. But there are --
25 there is -- on Bates stamp page 87, there's a call listed

1 on the second entry from the top and another call listed
2 at the fourth -- the fourth entry from the top.

3 BY MR. SEREBOFF:

4 Q And so you think --

5 A My best recollection is it was one of those two
6 calls.

7 Q Great. Okay. Thanks. Perfect.

8 So in these communications between RPX and
9 Salesforce, did Salesforce ever make any high-level
10 statements relating to the AIT patents such as, "We know
11 the patents are invalid"?

12 MR. GIUNTA: Objection. Form.

13 THE WITNESS: Not that I recall.

14 BY MR. SEREBOFF:

15 Q Did RPX make any kind of comments like that?

16 MR. GIUNTA: Objection. Form.

17 THE WITNESS: Not that I recall.

18 BY MR. SEREBOFF:

19 Q In these communications between RPX and
20 Salesforce, was there ever a discussion regarding
21 Salesforce losing the CBMs?

22 MR. GIUNTA: Objection. Form.

23 THE WITNESS: That's in my declaration.

24 So in paragraph -- in paragraph 27 of my first
25 declaration, I discuss a call on March 11, 2015, where

1 we -- if Salesforce would like us to reach out to AIT in
2 view of the fact that Salesforce's petition for CBM had
3 been denied, and Salesforce declined at that time.

4 BY MR. SEREBOFF:

5 Q Were there any other discussions?

6 A Not that I recall.

7 Q Okay. Were there any discussions between RPX and
8 Salesforce regarding any other IPR?

9 MR. GIUNTA: Objection. Form and scope.

10 THE WITNESS: Do you mean -- I don't recall
11 discussing any IPR with Salesforce at all.

12 BY MR. SEREBOFF:

13 Q And what about the rest of the team?

14 A Not that I'm aware of. You're asking about IPRs
15 other than the ones that were filed in the AIT matter?

16 Q Yes, correct.

17 A Not that I recall.

18 Q Okay. Do RPX and Salesforce have a common
19 interest agreement?

20 MR. GIUNTA: Objection. Form and scope.

21 THE WITNESS: I guess I'm not sure what a common
22 interest agreement would be.

23 BY MR. SEREBOFF:

24 Q So have you ever seen an agreement called a
25 common interest agreement?

1 MR. GIUNTA: Objection. Form and scope.

2 THE WITNESS: In my private practice, I've seen
3 it once or twice, I think.

4 BY MR. SEREBOFF:

5 Q Okay. And what do you understand a common
6 interest agreement is?

7 MR. GIUNTA: Objection. Form and scope.

8 THE WITNESS: A common interest agreement is a
9 legal -- a legal relationship that litigants will
10 sometimes put in place.

11 BY MR. SEREBOFF:

12 Q And what's the normal reason for putting in place
13 a common interest agreement?

14 MR. GIUNTA: Objection. Form and scope.

15 THE WITNESS: I think it has something to do with
16 retaining privilege.

17 BY MR. SEREBOFF:

18 Q Privilege, like attorney-client privilege?

19 A Or work-product privilege.

20 MR. GIUNTA: Excuse me. Objection. Form and
21 scope.

22 BY MR. SEREBOFF:

23 Q So a common interest agreement is there to
24 provide the attorney-client privilege among two parties --

25 MR. GIUNTA: Objection. Form and scope.

1 BY MR. SEREBOFF:

2 Q -- who might otherwise not have a benefit?

3 A I think it's more work product. I think it's
4 more pertaining to work-product privilege.

5 Q And are you aware if RPX and Salesforce have a
6 common interest agreement?

7 MR. GIUNTA: Objection. Form and scope.

8 THE WITNESS: I am aware of a document that I
9 think we've produced to you which was a [REDACTED]
10 program -- [REDACTED] -- which expired -- I don't
11 recall off the top of my head when it expired.

12 (Reporter clarification.)

13 BY MR. SEREBOFF:

14 Q It's expired. We don't need a date.

15 A So I'm not -- I wouldn't characterize that as a
16 common interest agreement, but that -- there was that
17 agreement.

18 Q In that [REDACTED] -- what did you call it? A
19 [REDACTED] program?

20 A Yes.

21 Q Were those services that RPX provided to
22 Salesforce as part of the membership and licensing
23 agreement?

24 MR. GIUNTA: Objection. Form.

25 THE WITNESS: It was really not a service at all.

1 It was -- we were experimenting with, I think, a way to
2 have clients share [REDACTED] through RPX and, also, if we
3 found some, that we could provide it to our clients in
4 case they found it useful for their own use.

5 BY MR. SEREBOFF:

6 Q Okay. And as it relates to AIT, does Salesforce
7 and RPX share attorney-client privilege?

8 MR. GIUNTA: Objection. Form and scope.

9 THE WITNESS: I don't -- I don't see how. But I
10 would leave it up to the lawyers to decide.

11 BY MR. SEREBOFF:

12 Q Okay. Turning to your second declaration,
13 Section 2, starting at paragraph 12.

14 And in paragraphs 12 and 13, it appears that you
15 are summarizing agreements between RPX and Salesforce; is
16 that correct?

17 MR. GIUNTA: Objection. Form.

18 THE WITNESS: I think that's correct.

19 BY MR. SEREBOFF:

20 Q Do paragraphs 12 and 13 summarize all of the
21 agreements between RPX and Salesforce except for
22 agreements relating to the Salesforce tool?

23 MR. GIUNTA: Objection. Form.

24 THE WITNESS: I believe it does.

25 ///

1 BY MR. SEREBOFF:

2 Q Okay. Now, in paragraph 15 of your second
3 declaration, you refer to [REDACTED] that RPX extended to
4 Salesforce; is that correct?

5 A Yes.

6 Q Okay. And it says that, in [REDACTED], Salesforce
7 [REDACTED]; is that
8 correct?

9 MR. GIUNTA: Objection. Form.

10 THE WITNESS: Yes, in paragraph 15, I say that
11 the Salesforce annual membership and license fee was
12 [REDACTED].

13 BY MR. SEREBOFF:

14 Q Great. So why was [REDACTED]?

15 MR. GIUNTA: Objection. Form.

16 THE WITNESS: Specifically, it's hard to recall
17 because we have lots of members renewing at any given
18 time. There is -- we have a -- we have [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]

21 BY MR. SEREBOFF:

22 Q Of course.

23 A Please keep it that way.

24 [REDACTED] [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 Q Forgive me. I'm a little confused because [REDACTED]
4 was that a [REDACTED], or was that the original agreement --
5 the original membership agreement?

6 MR. GIUNTA: Objection. Form.

7 THE WITNESS: If you give me a moment and give me
8 access to the exhibit, I can actually answer that.

9 BY MR. SEREBOFF:

10 Q Great. Let's do that.

11 MR. SEREBOFF: So this is going to be 2219, and
12 it's the membership agreement.

13 (Exhibit No. 2219 marked for
14 identification.)

15 BY MR. SEREBOFF:

16 Q So having looked at Exhibit 2219, do you believe

17 [REDACTED]

18 original membership agreement, not to a [REDACTED]?

19 MR. GIUNTA: Objection. Form.

20 THE WITNESS: Give me a minute.

21 So [REDACTED] -- the payment in [REDACTED] was the [REDACTED]
22 [REDACTED] of the term -- of their membership term under their
23 membership and license agreement, which is Exhibit 2219.

24 BY MR. SEREBOFF:

25 Q Okay. Was there [REDACTED]

1 for the original membership agreement?

2 MR. GIUNTA: Objection. Form.

3 THE WITNESS: It appears there was [REDACTED]

4 [REDACTED] -- I'm sorry -- [REDACTED]

5 [REDACTED] -- built into this agreement.

6 BY MR. SEREBOFF:

7 Q Okay. Thank you.

8 MR. SEREBOFF: I'm going to hand you -- this will
9 be Exhibit 2220, the first amendment.

10 (Exhibit No. 2220 marked for
11 identification.)

12 MR. SEREBOFF: And I'll give you 2221, the second
13 amendment.

14 (Exhibit No. 2221 marked for
15 identification.)

16 BY MR. SEREBOFF:

17 Q So Exhibit 2219, the membership agreement, is
18 that a multiyear agreement?

19 A [REDACTED]

20 Q And what's the -- what's the term of the
21 agreement?

22 A It's [REDACTED] term.

23 Q Okay. [REDACTED]

24 And looking at Exhibit 2220, can you explain to
25 me what that is?

1 A This is a contractual amendment of the Salesforce
2 membership and license agreement.

3 Q Okay.

4 A And it [REDACTED] Salesforce's RPX membership.

5 Q And what's the [REDACTED]?

6 A [REDACTED]

7 Q So returning to the membership agreement,
8 Exhibit 2219, that's [REDACTED]

9 When did it start?

10 A The effective date is [REDACTED]

11 Q And [REDACTED] would be [REDACTED]?

12 A Correct.

13 Q That's my birthday, [REDACTED]

14 A It's coming up.

15 Q Getting old. All right.

16 So then the first amendment, that's dated

17 [REDACTED]; correct?

18 A Yes.

19 Q Okay. And what's the additional term from that
20 agreement -- or excuse me -- of the amendment?

21 MR. GIUNTA: Objection. Form.

22 THE WITNESS: Sorry. Could you read back that
23 question?

24 (Record read.)

25 THE WITNESS: The amendment [REDACTED] the

1 membership for [REDACTED]
2 the original membership; so it would [REDACTED] the membership
3 [REDACTED]

4 BY MR. SEREBOFF:

5 Q Okay. And how about the second amendment that's
6 Exhibit 2221? Does that have [REDACTED]?

7 A I'm unclear on the question. Are you asking
8 whether the second amendment creates [REDACTED], or
9 are you -- I'm unclear on your question.

10 Q Yeah, so the first amendment includes an
11 [REDACTED]; correct?

12 A That's correct. The [REDACTED] RPX membership,
13 correct.

14 Q So does the second amendment have a similar
15 provision?

16 MR. GIUNTA: Objection. Form.

17 THE WITNESS: Well, I think the second amendment
18 says what it says. It's not -- it's not a document about
19 [REDACTED] the membership.

20 BY MR. SEREBOFF:

21 Q Is Salesforce a member of RPX now?

22 A [REDACTED].

23 Q Could you explain how it is that [REDACTED]
24 [REDACTED] -- I'm sorry.

25 Could you explain how [REDACTED]

1 [REDACTED], by the terms of the first amendment, the term
2 [REDACTED]?

3 A Give me a moment to check back to my declaration.

4 Q Can I help you a little bit? Take a look at the
5 membership agreement, Section 3.2. That might help.

6 But what did you see in your declaration?

7 A If it's okay with you, I'd like to take a look at
8 the [REDACTED], third amendment to the membership and
9 license agreement, which I -- it's Exhibit 1077 to my
10 declaration. I think the answer -- I believe the answer
11 to your question is in that document.

12 Q All right. You know what? I don't know that I
13 have that handy with me, and that's fine. I'll -- I'll
14 trust you on it.

15 So in your best recollection, the third
16 amendment, was that a [REDACTED]? a [REDACTED]
17 [REDACTED]? How [REDACTED]?

18 A Off the top of my head, I don't recall. But I
19 believe [REDACTED] is in that amendment.

20 Q Okay. At the time that RPX and Salesforce
21 negotiated the first amendment, did Salesforce express any
22 dissatisfaction with the services it was receiving from
23 RPX?

24 MR. GIUNTA: Objection. Scope.

25 THE WITNESS: Not that I recall.

1 BY MR. SEREBOFF:

2 Q And when RPX and Salesforce negotiated the third
3 amendment, do you recall if Salesforce expressed any
4 dissatisfaction with RPX's services?

5 MR. GIUNTA: Objection. Scope.

6 THE WITNESS: I wouldn't characterize, actually,
7 the normal [REDACTED] discussions as dissatisfaction.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] So it's not dissatisfaction. I think it's just

12 [REDACTED]

13 BY MR. SEREBOFF:

14 Q So in the guise of the negotiation of the first
15 amendment, did Salesforce say that they were happy with
16 RPX's services?

17 MR. GIUNTA: Objection. Form and scope.

18 THE WITNESS: I don't -- I don't recall -- I
19 mean, that was a long time ago. I don't recall.

20 BY MR. SEREBOFF:

21 Q Okay. Now, in negotiating the third amendment,
22 did Salesforce express to RPX that Salesforce was happy
23 with RPX's services?

24 MR. GIUNTA: Objection. Form and scope.

25 THE WITNESS: What I can tell you that I recall

1 in that -- in the context of that [REDACTED] was that
2 Salesforce was [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 (Reporter clarification.)

6 BY MR. SEREBOFF:

7 Q Has Salesforce ever threatened to terminate its
8 agreement with RPX?

9 MR. GIUNTA: Objection. Form and scope.

10 THE WITNESS: [REDACTED]

11 BY MR. SEREBOFF:

12 Q Now, in the original agreement, you said the
13 [REDACTED]?

14 A Yes.

15 Q Did [REDACTED]?

16 A I believe it [REDACTED].

17 Q What were the circumstances of the [REDACTED]
18 [REDACTED]?

19 MR. GIUNTA: Objection. Form.

20 THE WITNESS: My recollection is that we were
21 [REDACTED]

22 [REDACTED]

23 BY MR. SEREBOFF:

24 Q [REDACTED]?

25 MR. GIUNTA: Objection. Form. Scope.

1 THE WITNESS: If you give me a moment, I can
2 actually check the payment history.

3 I don't -- let me just check it. I don't believe
4 it's [REDACTED].

5 BY MR. SEREBOFF:

6 Q Have you been involved in -- so you were involved
7 in Salesforce's [REDACTED] with RPX?

8 MR. GIUNTA: Objection. Form.

9 THE WITNESS: In some way.

10 BY MR. SEREBOFF:

11 Q Okay. And are you involved in some way with
12 other RPX clients [REDACTED]?

13 MR. GIUNTA: Objection. Form and scope.

14 THE WITNESS: I'm commonly involved with client
15 [REDACTED] as part of my standard role.

16 BY MR. SEREBOFF:

17 Q Could you tell me some of the reasons why RPX
18 might [REDACTED]?

19 MR. GIUNTA: Objection. Form and scope.

20 BY MR. SEREBOFF:

21 Q Strike that.

22 Tell me the reasons, to your knowledge, why RPX
23 has [REDACTED].

24 MR. GIUNTA: Objection. Form and scope.

25 THE WITNESS: I'm uncomfortable answering this

1 question. As I mentioned before, the [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 But as you can imagine, as a -- [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED],
9 [REDACTED]

10 BY MR. SEREBOFF:

11 Q Has RPX ever gotten a premium, like getting paid
12 more than the rate card for a member?

13 MR. GIUNTA: Objection. Form and scope.

14 THE WITNESS: I believe it's publicly disclosed
15 in our SEC filings that we have had clients pay us above
16 the rate card.

17 BY MR. SEREBOFF:

18 Q That's great. Congratulations.

19 All right. So let's review the amounts that
20 Salesforce has paid RPX. And I think it's discussed in
21 your second declaration and maybe in your first.

22 How much -- to the nearest 100,000, how much did
23 Salesforce pay RPX in [REDACTED]?

24 A To the nearest 100,000?

25 Q Sure. Let's round it up -- or round it.

1 A [REDACTED].

2 Q And in [REDACTED]?

3 A [REDACTED].

4 Q [REDACTED]?

5 A [REDACTED]

6 Q [REDACTED]?

7 A Are you asking what their membership payment was
8 for each of these years?

9 Q Yes.

10 A So the membership payment for Salesforce in [REDACTED]
11 was [REDACTED] -- sorry -- for [REDACTED] was
12 [REDACTED].

13 Q Good. [REDACTED]?

14 A In [REDACTED], Salesforce's annual membership rate was
15 [REDACTED].

16 Q In [REDACTED]?

17 A In [REDACTED], Salesforce's annual membership rate was
18 [REDACTED].

19 Q You sure?

20 A Sorry. [REDACTED] [REDACTED].

21 Q And in [REDACTED]?

22 A In [REDACTED], Salesforce's annual membership fee was
23 [REDACTED].

24 Q And help me to understand what Salesforce gets
25 for these payments.

1 A The payment is for RPX membership as set forth in
2 their membership and license agreement. It's a -- they
3 signed up for our core services, which is primarily for us
4 to provide them with rights -- patent rights, defensive
5 patent rights via transactions that we do with patent
6 owners, either to buy the patents and license them to our
7 clients or to acquire the right to sublicense those
8 patents to our clients.

9 Q We talked earlier about reaching out.

10 Is reaching out something that's specified as a
11 service that RPX provides to its members?

12 MR. GIUNTA: Objection. Form.

13 THE WITNESS: I would say that the need to reach
14 out to NPEs is a necessary part of our core services in
15 order to explore the range of transactional opportunities
16 available to RPX.

17 BY MR. SEREBOFF:

18 Q Okay. If you could, I'd like you to review both
19 of your declarations and tell me where in your
20 declarations, if at all, there's any mention of privity.

21 A You mean the word privity or privity in the sense
22 that we enter into a contract with someone?

23 Q Either case. And in either case, when you find
24 it, tell me what you see, please.

25 A Okay.

1 MR. GIUNTA: Objection. Form.

2 I'm sorry. Can I just clarify? Are you asking
3 for his legal opinion as to whether facts described in
4 here meet a privy relationship? I'm just trying to make
5 sure I understand what the question is because we're not
6 here to offer testimony about legal opinions. He's a fact
7 witness.

8 THE WITNESS: So in paragraph 10 --

9 MR. GIUNTA: I'm sorry. I need clarification on
10 the question because I'm not sure I'm comfortable letting
11 him answer -- giving legal opinions at this deposition,
12 and I'm not sure that's what you're asking, which is why
13 I'm seeking clarification on it. What exactly did you
14 want him to do?

15 MR. SEREBOFF: The witness is testifying in his
16 role as an employee of RPX and as the declarant here.

17 MR. GIUNTA: He's here to be cross-examined on
18 his declaration.

19 MR. SEREBOFF: Right. And I am asking him
20 questions about his declaration.

21 So if you have an objection, state it for the
22 record; otherwise, you can caution the witness, you can
23 instruct the witness not to answer, but it's my question.
24 I have the right to ask it.

25 If the witness is uncertain, the witness can ask

1 me for clarification, but it's not your right, Mr. Giunta.

2 MR. GIUNTA: Okay. I respectfully disagree. So
3 I'm going to instruct the witness not to offer any legal
4 opinions on any of the factual scenarios in his
5 declaration and whether he, as a lawyer, considers them to
6 establish a privy relationship, because that's not why
7 he's here today.

8 BY MR. SEREBOFF:

9 Q All right. Answer the question, please.

10 MR. GIUNTA: I just instructed him not to answer
11 the question, not if you're asking him to give his legal
12 opinion about the facts in his declaration.

13 MR. SEREBOFF: Exactly.

14 BY MR. SEREBOFF:

15 Q So could you answer the question?

16 A I am confused. Do I -- who should I be listening
17 to here?

18 MR. GIUNTA: Well, I instructed you to not answer
19 it. You can ignore my instruction.

20 BY MR. SEREBOFF:

21 Q It's a compound question.

22 Do you see the word privy? And if not -- let's
23 start with the simple part.

24 Do you see the word privy in either of your
25 declarations?

1 A I don't see the word privity in either of my
2 declarations.

3 Q Okay. Looking at your first declaration,
4 paragraph 19, do you see in the end of the first sentence
5 it says "RPI"?

6 A Yes.

7 Q What is RPI referring to there?

8 A Real party in interest.

9 Q Okay. Now, in paragraph 45 of the same
10 declaration, could you read the first sentence for me,
11 please?

12 A "Part of the reason RPX established its validity
13 challenge process was to ensure that it was complying with
14 its obligation to name all real parties in interest, RPIs,
15 and privies."

16 Q Okay. And in paragraph 48, could you read to me
17 the first sentence there?

18 A "RPX also confirmed that its best practices had
19 been followed in view of the perceived likelihood that the
20 patent owner would try to avoid the strong merits of RPX's
21 petitions by arguing that RPX was not the sole RPI."

22 Q And keep reading. Next sentence.

23 A "RPX's team confirmed that RPX had not spoken to
24 anyone outside of RPX, other than outside counsel and a
25 prior art search firm, about the possibility of filing the

1 AIT IPRs; confirmed that no entity, other than RPX, was
2 involved in any way in the decision to file the IPRs;
3 confirmed that no confidential information of any third
4 party was used in making the decision to file; and
5 confirmed that RPX should properly be named the sole RPI."

6 Q Okay. And the team referenced here in
7 paragraph 48, [REDACTED]?

8 A [REDACTED]

9 Q And in [REDACTED]
10 [REDACTED]?

11 A [REDACTED]

12 [REDACTED].

13 Q And is that a [REDACTED]

14 A It's [REDACTED]

15 Q It's a [REDACTED]; it's not a [REDACTED].

16 A [REDACTED]

17 Q Okay. So you were involved in the decision of
18 whether RPX should be named as the sole RPI in the AIT
19 IPRs; correct?

20 MR. GIUNTA: Objection. Form.

21 THE WITNESS: Yeah, I would say I was involved.

22 BY MR. SEREBOFF:

23 Q What was your involvement?

24 MR. GIUNTA: Objection. Form.

25 THE WITNESS: I listened to the analysis of the

1 patent quality group on the various factors of the best
2 practices, and I agreed that we have followed them and
3 that we could be -- we would be named this -- we should be
4 named the sole RPI.

5 BY MR. SEREBOFF:

6 Q So you formed an opinion that RPX should be named
7 as the sole RPI?

8 MR. GIUNTA: Objection. Form.

9 THE WITNESS: I agreed with the opinion of the
10 patent quality team.

11 BY MR. SEREBOFF:

12 Q Did the patent quality team discuss privity?

13 MR. GIUNTA: Objection. Form.

14 THE WITNESS: I don't -- I don't recall the
15 specific terminology that was used.

16 BY MR. SEREBOFF:

17 Q So maybe the term privity was used, maybe not?

18 MR. GIUNTA: Objection. Form.

19 THE WITNESS: I don't recall.

20 BY MR. SEREBOFF:

21 Q One way or the other?

22 A Yeah.

23 Q So was there any discussion as to whether
24 Salesforce should be identified as a privy of RPX?

25 MR. GIUNTA: Objection. Form.

1 THE WITNESS: I don't recall any discussion of
2 privy.

3 MR. SEREBOFF: So just to give you guys a
4 heads-up, it's 12:30, and I'm going to take a look at my
5 questions to see if I have a line that would make sense
6 before breaking for lunch; and if not, maybe we will break
7 now for lunch.

8 MR. GIUNTA: Okay.

9 BY MR. SEREBOFF:

10 Q Okay. Let's go back to the membership agreement,
11 2219.

12 Is there any -- in that document, is there any
13 statement of services which are excluded from the
14 agreement?

15 MR. GIUNTA: Objection. Form and scope.

16 THE WITNESS: You mean a statement that we won't
17 be providing something in particular?

18 BY MR. SEREBOFF:

19 Q Exactly.

20 A One moment.

21 So there's a concept of [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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[REDACTED]

[REDACTED]

Q So is it fair to say that the agreement does have at least one express exclusion of services?

A No. I wouldn't characterize that as an exclusion of services. It's a clarification -- it's a clarification that [REDACTED]

[REDACTED]

[REDACTED] It's not an exclusion of a service.

It's actually a clarification of [REDACTED]

[REDACTED] our core service.

Q So this is more in the nature of a statement -- the agreement is more in the nature of a statement of the positive services that -- or the services that RPX will provide, not a statement of services that RPX won't provide?

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: I don't actually see the -- you know, the membership agreement is a contract, which sets out our obligations to -- you know, to our member and actually spends quite a bit of time setting forth the

[REDACTED]

[REDACTED] That's actually one of the primary purposes of the membership agreement.

///

1 BY MR. SEREBOFF:

2 Q Does membership agreement mention IPRs?

3 A You're talking about this membership agreement?

4 Q Yes, yes.

5 A No, it doesn't.

6 Q Does it mention validity challenges? Excuse me.

7 Does it mention post-grant validity challenges?

8 A No, I don't believe it does.

9 Q Okay. And to your best recollection, do the
10 first amendment, the second amendment, and the third
11 amendment that we've discussed mention post-grant validity
12 challenges?

13 A There's no specific mention of post-grant
14 validity challenges. The second amendment that relates to
15 this [REDACTED], you know, contemplates the client's
16 [REDACTED], which I
17 suppose could include post-grant proceedings.

18 Q Just in the membership agreement, is there any
19 expression of duty of loyalty by RPX to Salesforce?

20 MR. GIUNTA: Objection. Form and scope.

21 THE WITNESS: What's a -- what's a statement of
22 duty of loyalty? I'm -- I don't know what that is.

23 BY MR. SEREBOFF:

24 Q Okay. Does the agreement use the word "loyal" or
25 "loyalty"?

1 MR. GIUNTA: Objection. Scope.

2 THE WITNESS: I don't believe it does.

3 BY MR. SEREBOFF:

4 Q Do you see the use -- any use of the term "duty
5 of care"?

6 MR. GIUNTA: Objection. Scope.

7 THE WITNESS: Not that I'm aware of.

8 BY MR. SEREBOFF:

9 Q Are you aware of whether Salesforce has ever
10 expressed to RPX an expectation of duty of loyalty?

11 MR. GIUNTA: Objection. Scope and form.

12 THE WITNESS: I'm not aware of that, no.

13 BY MR. SEREBOFF:

14 Q Are you aware if Salesforce has ever expressed to
15 RPX an expectation of a duty of care?

16 MR. GIUNTA: Objection. Form and scope.

17 THE WITNESS: No, I'm not aware of any of that.

18 BY MR. SEREBOFF:

19 Q Are you aware if Salesforce has ever expressed to
20 RPX its expectation of a duty of diligence?

21 MR. GIUNTA: Objection. Form and scope.

22 THE WITNESS: I don't know what that is, but I
23 don't think they've expressed that, no.

24 BY MR. SEREBOFF:

25 Q And are you aware if Salesforce has ever

1 expressed to RPX an expectation of a fiduciary duty by RPX
2 to Salesforce?

3 MR. GIUNTA: Objection. Form and scope.

4 THE WITNESS: I don't believe they've ever
5 expressed that.

6 BY MR. SEREBOFF:

7 Q As a layperson, do you believe that RPX has a
8 fiduciary duty to Salesforce?

9 MR. GIUNTA: Objection. Form and scope.

10 THE WITNESS: Isn't that a legal conclusion?

11 BY MR. SEREBOFF:

12 Q I'm just asking you as a layperson.

13 MR. GIUNTA: If the witness is not comfortable
14 given that he's a lawyer --

15 THE WITNESS: I don't know how -- I don't know
16 how to answer that because I don't know what it means for
17 me to be a layperson. I am who I am.

18 BY MR. SEREBOFF:

19 Q So it sounds like you're not comfortable
20 understanding a dividing line between you being a business
21 person versus you being a lawyer?

22 MR. GIUNTA: Objection. Form.

23 THE WITNESS: I don't know that I would describe
24 it that way. I think -- I don't think I can
25 compartmentalize one from the other.

1 MR. SEREBOFF: Okay. I think now is a good time
2 to take a break. It's 12:40. Why don't we come back at
3 1:45. Does that work for everybody?

4 MR. GIUNTA: Sure.

5 MR. SEREBOFF: Thank you. Great. Let's go off
6 the record.

7 (Lunch break taken.)

8 BY MR. SEREBOFF:

9 Q Okay. We're back on the record at 1:42 p.m.
10 So I'm going to hand you the validity challenge
11 identification document. This is going to be
12 Exhibit 2222, which I believe -- I can't remember
13 yesterday, but it was previously marked as Exhibit 2025
14 and represents RPX's production, Bates 68 to 73. So this
15 one is 2222.

16 (Exhibit No. 2222 marked for
17 identification.)

18 MR. SEREBOFF: Here is the next one. This will
19 be marked as 2223. It carries RPX Bates number 74 to 75,
20 previously marked as Exhibit 2018.

21 (Exhibit No. 2223 marked for
22 identification.)

23 BY MR. SEREBOFF:

24 Q Mr. Chuang, please take a few minutes and review
25 these documents.

1 A Okay.

2 Q Okay. Referring, Mr. Chuang, to your first
3 declaration, paragraph 39, can you confirm that these two
4 exhibits, 2222 and 2223, are the same documents that are
5 referenced in paragraph 39 of your first declaration?

6 A Yes.

7 Q Thank you.

8 And could you please describe to me what these
9 two documents are?

10 MR. GIUNTA: Objection. Form.

11 THE WITNESS: These documents are, as I recall
12 it, internal documents created and laying out the process
13 for identifying candidates for potential IPR filing and
14 the best practice for doing so.

15 BY MR. SEREBOFF:

16 Q Okay. You can set aside Exhibit 2222 for now.
17 Let's look at 2223.

18 A Okay.

19 Q So with more particularity, can you explain to me
20 what this document is?

21 MR. GIUNTA: Objection. Form.

22 THE WITNESS: It's -- again, my recollection is
23 it's a document that sets out the process for the
24 identification of candidates for RPX IPR filings and
25 identifies the team that's involved and the best practices

1 for -- sorry -- the selection criteria, the factors that
2 should be considered.

3 BY MR. SEREBOFF:

4 Q Okay. And this was referenced in your first
5 declaration; correct?

6 A Yes.

7 Q So is -- do you have a shorthand way of referring
8 to this document?

9 A Not really. We don't have a term of art or
10 anything that we use.

11 Q Okay. And is there a difference between --
12 substantively between what's in Exhibit 2222 and 2223?

13 MR. GIUNTA: Objection. Form.

14 THE WITNESS: I mean, they're not completely
15 identical. There's variations in the language.

16 BY MR. SEREBOFF:

17 Q Now, do you see in paragraph 39 of your first
18 declaration that you seem to refer to these documents as
19 the validity challenge process?

20 A Yes.

21 Q And for the sake of simplicity, can we refer to
22 these two documents together as the validity challenge
23 process?

24 A I think so.

25 Q And since the time of your first declaration, has

1 RPX changed the validity challenge process as reflected in
2 these documents?

3 MR. GIUNTA: Objection. Form and scope.

4 THE WITNESS: [REDACTED]

5 BY MR. SEREBOFF:

6 Q Okay. Now, looking at Exhibit 2223, which
7 carries RPX Bates 74, you see the heading "selection
8 criteria"?

9 A Yes.

10 Q Okay. Could you read the sentence that follows
11 that?

12 A "The identification team will identify potential
13 candidates, based, in part, on the following factors.
14 Candidate challenges will be chosen based on the totality
15 of the circumstances, which may also take into account
16 feedback received from other RPX team members."

17 Q So is it fair to say that this introductory --
18 this is an introductory sentence?

19 MR. GIUNTA: Objection. Form.

20 THE WITNESS: I'm not sure what the criteria are
21 for an introductory sentence. It's actually not a
22 complete sentence because it leads into the list.

23 BY MR. SEREBOFF:

24 Q Okay. And the list that you're referring to is
25 what?

1 A The list of the factors to consider for
2 selection -- as selection criteria.

3 Q And those are the bullet points after what you
4 just read?

5 A Yes.

6 Q Okay. Now, in your reading of that first
7 sentence or sentence fragment, however it can be
8 characterized, do you read that these bullet points are
9 the exclusive factors to consider?

10 MR. GIUNTA: Objection. Form and scope.

11 THE WITNESS: Well, I think the fragment makes it
12 clear that, you know, these are factors. But it also --
13 they might not be the exclusive factors.

14 BY MR. SEREBOFF:

15 Q So all of these factors would be considered, but
16 maybe others could be considered?

17 MR. GIUNTA: Objection. Form and scope.

18 THE WITNESS: Yeah, that may be what was
19 contemplated.

20 BY MR. SEREBOFF:

21 Q Okay. So let's talk about them. Although
22 they're bullets, maybe we can refer to them numerically.
23 Might be easier.

24 A Okay.

25 Q Okay. So let's talk about Factor Number 1.

1 Could you read that and explain it to me?

2 MR. GIUNTA: Objection. Form.

3 THE WITNESS: Just a second. I'm numbering these
4 so I don't lose track.

5 Bullet Point Number 1 -- the first bullet point
6 in the list: "Number of patents/patent families asserted
7 in the campaign."

8 BY MR. SEREBOFF:

9 Q And what does that mean?

10 MR. GIUNTA: Objection. Form.

11 THE WITNESS: Well, this is based on my
12 interpretation; so I -- my interpretation of that is it
13 has to do with [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 BY MR. SEREBOFF:

17 Q So are you using campaign and litigation to mean
18 the same thing?

19 A Kind of. At RPX, the concept of a campaign is --
20 could extend beyond an individual litigation to encompass
21 other cases -- again, other companies, other defendants --
22 that might have overlapping litigation assets but that are
23 perceived to be part of the same NPE endeavor, which is
24 the monetized -- a particular portfolio.

25 Q So in your usage, campaign might include patents

1 that have not been asserted in litigation?

2 MR. GIUNTA: Objection. Form.

3 THE WITNESS: Well, I think that's actually a
4 [REDACTED], what you just described. Bullet
5 Point [REDACTED], the [REDACTED] one in the list, talks about

6 [REDACTED]
7 [REDACTED]. The [REDACTED] bullet point is about the

8 [REDACTED]
9 [REDACTED]

10 BY MR. SEREBOFF:

11 Q Now, would you also view it as, for example, if a
12 patent owner had accused a party of infringement, is that
13 an action that you would see as part of a campaign?

14 MR. GIUNTA: Objection. Form and scope.

15 THE WITNESS: If it's an NPE and they file a suit
16 against a defendant, in general, that -- the first one of
17 those initiates the campaign. And then follow-on
18 litigation cases filed against that defendant or other
19 defendants with patents that are the same or overlapping
20 or related can end up being in the same campaign.

21 BY MR. SEREBOFF:

22 Q So does a campaign ever involve actions by an NPE
23 other than litigation?

24 MR. GIUNTA: Objection. Form and scope.

25 (Reporter clarification.)

1 THE WITNESS: I think in the most common sense,
2 yes. It refers to a litigation campaign. There's --
3 there's sometimes, although more rarely, the concept of an
4 assertion campaign where there's actually no litigation
5 but there's extensive allegations of infringement outside
6 of a litigation case, which, you know, could be referred
7 to as a campaign as well.

8 BY MR. SEREBOFF:

9 Q It doesn't seem to be as common as it used to be.

10 A No.

11 Q Okay. [REDACTED]

12 A [REDACTED]

13 MR. GIUNTA: Sorry. Objection. Form and scope.

14 And I'm not sure there was a question.

15 THE WITNESS: Oh, was that a question?

16 BY MR. SEREBOFF:

17 Q Yes, it was. Explain [REDACTED]

18 MR. GIUNTA: Objection. Form and scope.

19 THE WITNESS: [REDACTED] in the list of selection

20 criteria is [REDACTED]

21 [REDACTED]

22 And that's just a reference to whether [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 BY MR. SEREBOFF:

2 Q Got it. Thanks. [REDACTED] This is referred to
3 as [REDACTED]
4 [REDACTED]?

5 MR. GIUNTA: Objection. Scope.

6 THE WITNESS: I -- I don't know if it would be
7 limited, necessarily, to -- it would, I think, be a
8 reference to [REDACTED]

9 [REDACTED]
10 [REDACTED]

11 BY MR. SEREBOFF:

12 Q And when you refer to asset, what does that mean?

13 A Sorry. Yeah, so I refer to a -- I am referring
14 to an issued patent.

15 Q Okay. Because sometimes asset might also refer
16 to a pending application.

17 A Correct. That's not how I meant it.

18 Q And so what does -- strike that.

19 What does [REDACTED] refer to?

20 MR. GIUNTA: Objection. Scope.

21 THE WITNESS: So my understanding is that it
22 refers to [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] -- wherever they may appear where
2 we would have access to review them.

3 BY MR. SEREBOFF:

4 Q Okay. All right. [REDACTED] What does that
5 refer to?

6 MR. GIUNTA: Objection. Scope and form.

7 THE WITNESS: [REDACTED] is a reference to [REDACTED]
8 [REDACTED]

9 [REDACTED]

10 BY MR. SEREBOFF:

11 Q Who is someone else?

12 A It could be anyone else.

13 Q Anyone other than RPX?

14 A Yes.

15 Q Okay. [REDACTED]

16 MR. GIUNTA: Objection. Scope.

17 BY MR. SEREBOFF:

18 Q What does that refer to?

19 A Can I read it for the record?

20 Q Sure.

21 A Bullet Point [REDACTED] is: "Number of RPX
22 clients, including those covered under RPX insurance
23 policies in suit."

24 Q Okay. And what does that mean?

25 MR. GIUNTA: Objection. Scope and form.

1 THE WITNESS: It's a reference to [REDACTED]

2 [REDACTED]

3 BY MR. SEREBOFF:

4 Q That would be like you saying in the campaign --

5 A In active litigation.

6 Q Okay. By the same NPE that --

7 A In the same campaign, correct.

8 Q Okay. Got it. As regards RPX clients, we've

9 [REDACTED]

10 What is an RPX client?

11 MR. GIUNTA: Objection. Scope.

12 THE WITNESS: An RPX client is -- [REDACTED]

13 an RPX client.

14 BY MR. SEREBOFF:

15 Q Okay. And [REDACTED] ?

16 MR. GIUNTA: Objection. Scope.

17 THE WITNESS: [REDACTED]

18 [REDACTED]

19 BY MR. SEREBOFF:

20 Q Okay. So all members of the core services,
21 they're all clients?

22 MR. GIUNTA: Objection. Scope.

23 THE WITNESS: Yes.

24 BY MR. SEREBOFF:

25 Q Okay. And are there any RPX clients that are not

1 also RPX members?

2 MR. GIUNTA: Objection. Scope.

3 THE WITNESS: Sorry. I'm thinking about it.

4 There's some difference in nomenclature within our own
5 organization. Put it this way: There are insureds; there
6 are member insureds; and there are members.

7 BY MR. SEREBOFF:

8 Q Who are not insureds.

9 A Who are not insureds.

10 Q Okay. But all three of them would be clients?

11 MR. GIUNTA: Objection. Scope.

12 THE WITNESS: I view an insured that is also a
13 member -- I don't view them as a client, but some may
14 refer to them as clients in a more generic -- in a more
15 natural use of the term.

16 BY MR. SEREBOFF:

17 Q Okay.

18 A My use of the term client is someone who is an
19 RPX member that receives rights via to our -- via our
20 transactions.

21 Q But there's no formal definition with RPX of RPX
22 client?

23 MR. GIUNTA: Objection. Scope.

24 THE WITNESS: I mean, I think the term of art for
25 my role is someone who is an RPX member and receives

1 rights via our transactions is a client.

2 BY MR. SEREBOFF:

3 Q But other -- other employees of RPX, they use the
4 term RPX client differently than the way you've just
5 defined it; is that true?

6 MR. GIUNTA: Objection. Form and scope.

7 THE WITNESS: I can't dictate how they use the
8 terminology; so there -- there may be folks who refer to
9 our insureds as clients as well, but they're a distinct
10 group. When I say RPX client, I'm not referring to them.

11 BY MR. SEREBOFF:

12 Q Thank you. Okay.

13 [REDACTED]. You want to read that and explain it,
14 please?

15 MR. GIUNTA: Objection. Scope.

16 THE WITNESS: Bullet Point [REDACTED] is: [REDACTED]

17 [REDACTED]

18 And that refers to [REDACTED]

19 [REDACTED]

20 BY MR. SEREBOFF:

21 Q And why do you call them [REDACTED]? Or why
22 are [REDACTED]?

23 MR. GIUNTA: Objection. Form and scope.

24 THE WITNESS: A prospect is anyone who isn't
25 already an RPX member who potentially could become an RPX

1 member.

2 BY MR. SEREBOFF:

3 Q And that potential -- would that include
4 companies that RPX has contacted about becoming a member
5 and not -- and not? Or is it only companies that have
6 been contacted by RPX about being a member?

7 MR. GIUNTA: Objection. Form and scope.

8 THE WITNESS: That's not -- that's not a criteria
9 for determining whether someone is a prospect. A prospect
10 is someone who is -- and bears some kind of relevance to
11 our core services buying that we think would see value in
12 the membership.

13 BY MR. SEREBOFF:

14 Q Thank you. So [REDACTED]

15 A Bullet point --

16 MR. GIUNTA: Objection. Scope.

17 BY MR. SEREBOFF:

18 Q It's the same question. Read it and explain it,
19 please.

20 A Okay. Bullet Point [REDACTED]: [REDACTED]

21 [REDACTED]

22 That's a reference to [REDACTED]

23 [REDACTED]

24 [REDACTED]. So someone who we don't perceive as likely

25 seeing value in RPX membership.

1 Q Okay. So given what you've just explained about
2 Bullets [REDACTED], do they go together as a group of
3 factors?

4 MR. GIUNTA: Objection. Form and scope.

5 THE WITNESS: What do you mean by "go together"?

6 BY MR. SEREBOFF:

7 Q Well, do they relate to similar considerations?

8 MR. GIUNTA: Objection. Form and scope.

9 THE WITNESS: I don't know. It's hard to say in
10 the abstract.

11 BY MR. SEREBOFF:

12 Q How about the first three bullets? Do they, to
13 you, logically group together?

14 MR. GIUNTA: Objection. Form and scope.

15 THE WITNESS: I think they could be different.
16 There's probably a set of circumstances where they could
17 be similarly situated, and there's probably some where
18 they could be distinct.

19 BY MR. SEREBOFF:

20 Q Okay. Let's look at Bullet [REDACTED]

21 MR. GIUNTA: Objection. Form and scope.

22 THE WITNESS: Bullet [REDACTED] in the list:

23 [REDACTED]

24 So this is a reference to [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

BY MR. SEREBOFF:

Q And how about Bullet [REDACTED]?

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: Bullet [REDACTED]: [REDACTED]

[REDACTED] is a reference to [REDACTED]

[REDACTED]

BY MR. SEREBOFF:

Q [REDACTED]? I'm sorry. [REDACTED]. Thank you.

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: Bullet [REDACTED]:

[REDACTED]

This is a reference to the -- to the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

BY MR. SEREBOFF:

Q Okay. Turning to the next page, we have Factor

[REDACTED].

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: Bullet [REDACTED]:

[REDACTED]

This is a reference to -- [REDACTED]

[REDACTED]

1 [REDACTED] Yeah.

2 BY MR. SEREBOFF:

3 Q And is that because RPX has interest in certain
4 [REDACTED]?

5 MR. GIUNTA: Objection. Form and scope.

6 THE WITNESS: That's a possibility. It's also --
7 yeah, that's a possibility.

8 BY MR. SEREBOFF:

9 Q Okay. Can you think of any other reason why it's
10 there?

11 MR. GIUNTA: Objection. Scope and form.

12 THE WITNESS: Are you referring to Bullet
13 [REDACTED]?

14 BY MR. SEREBOFF:

15 Q Yes.

16 A I think it helps us -- it helps us to understand

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q And Bullet [REDACTED]?

22 MR. GIUNTA: Objection. Form and scope.

23 THE WITNESS: Bullet [REDACTED]: [REDACTED]

24 [REDACTED]

25 This is a reference to [REDACTED]

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[REDACTED]

BY MR. SEREBOFF:

Q Okay. And [REDACTED]?

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: Bullet [REDACTED]: [REDACTED]

[REDACTED]

This is a reference to [REDACTED]

[REDACTED]

BY MR. SEREBOFF:

Q So what do you mean by [REDACTED]?

A Based on --

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: Based on an interpretation of the claims, whether it is likely or unlikely for the plaintiff

[REDACTED]

[REDACTED]

BY MR. SEREBOFF:

Q So it's like, you know, the likely -- the likelihood that a court would agree with a defendant that the claims [REDACTED]

[REDACTED]?

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: The way I would -- the way I would describe it is we will sometimes see very aggressive interpretations of a patent claim by the plaintiff to the

1 point where we believe that [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 BY MR. SEREBOFF:

6 Q Got it. Okay. Bullet [REDACTED].

7 MR. GIUNTA: Objection. Form and scope.

8 THE WITNESS: [REDACTED]
9 [REDACTED]

10 BY MR. SEREBOFF:

11 Q And that refers to RPX [REDACTED]
12 [REDACTED]?

13 A Correct.

14 Q And that would be RPX [REDACTED]
15 [REDACTED]
16 [REDACTED]?

17 MR. GIUNTA: Objection. Form and scope.

18 THE WITNESS: Yeah, that's the most typical type
19 [REDACTED].

20 BY MR. SEREBOFF:

21 Q Okay. [REDACTED]?

22 MR. GIUNTA: Objection. Form and scope.

23 THE WITNESS: Bullet [REDACTED], "estimated cost of
24 litigation defense." This is a reference to our estimate
25 [REDACTED]

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[REDACTED]

BY MR. SEREBOFF:

Q Why is that relevant?

MR. GIUNTA: Objection. Scope.

THE WITNESS: The relevancy has to do with -- the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] -- I don't want to speak for the validity group because this is really their purview. But there's scenarios where [REDACTED]; it makes the candidate more interesting.

BY MR. SEREBOFF:

Q And the [REDACTED] bullet point. That's [REDACTED], by my count.

MR. GIUNTA: Objection. Form and scope.

THE WITNESS: Bullet 17 is: "Potential reputational benefits."

So, actually, I -- I testify about this in my first declaration the -- there are times where RPX believes filing an IPR can benefit its reputation in the market -- the patent market, which is the way we view, kind of, the litigation landscape -- the NPE litigation landscape.

///

1 BY MR. SEREBOFF:

2 Q So given the ■ factors here, are the factors
3 here listed in order of priority or importance?

4 MR. GIUNTA: Objection. Form and scope.

5 THE WITNESS: Well, I didn't order them; so I
6 don't know why they were ordered that way. I don't
7 believe they are ordered in terms of priority.

8 BY MR. SEREBOFF:

9 Q Okay. And so one factor could be dominant over
10 all of the other factors?

11 MR. GIUNTA: Objection. Form and scope.

12 THE WITNESS: There could be circumstances where,
13 you know, one or a few factors are weighed more than the
14 others.

15 BY MR. SEREBOFF:

16 Q And here I recall that you testified that Factor
17 Number 17, the reputational benefits, that was the primary
18 factor driving RPX's decision to file the AIT IPRs?

19 MR. GIUNTA: Objection. Form.

20 THE WITNESS: I'm just looking at my declaration
21 real quick.

22 BY MR. SEREBOFF:

23 Q Okay.

24 A So I didn't say primary. The reputational -- the
25 potential reputational benefit was, at least to me as one

1 of the folks that was consulted, an important factor in
2 filing. But there were other important factors as well.

3 Q Okay. Thank you.

4 So you use the term "reputational benefit." What
5 does that mean?

6 MR. GIUNTA: Objection. Form.

7 THE WITNESS: So RPX views itself as a -- as a
8 participant in the broader patent market and that its
9 position is, you know, neutral, credible -- a neutral,
10 credible party able to assess the value of patent rights
11 in a way that can bring efficiency to the market.

12 The market has gone through changes over the
13 years, and the perception of patent risk has evolved in a
14 way that, at this time period, we found there were --
15 there was a rising sentiment in certain market sectors in
16 particular -- technology sectors, market sectors -- that
17 patents were mostly invalid or mostly worthless and that
18 their -- you couldn't know the value of a patent unless
19 you knew -- unless you challenged it or could credibly
20 assess it for validity.

21 And a market participant like RPX is -- there
22 were people in the market, potential competitors or
23 commentators, that were suggesting that RPX was not -- was
24 interested in doing deals on patents that were not worth
25 it, not valuable, and that we were too close to NPEs and

1 didn't have the stomach to challenge their assertions with
2 respect to the validity of their assets.

3 And so we viewed filing IPRs as a potential way
4 to improve our reputation amongst some of the companies
5 that were -- that seemed to be holding that view, and
6 that's what I mean by a potential reputational benefit for
7 filing an IPR.

8 BY MR. SEREBOFF:

9 Q And so does RPX's reputation impact its ability
10 to attract new members?

11 MR. GIUNTA: Objection. Scope.

12 THE WITNESS: Yes, it does.

13 BY MR. SEREBOFF:

14 Q And does RPX's reputation impact RPX's ability to
15 retain existing members?

16 MR. GIUNTA: Objection. Scope.

17 THE WITNESS: [REDACTED].

18 BY MR. SEREBOFF:

19 Q Okay. Again, we're looking at Exhibit 2223.

20 Bullet [REDACTED] is: "Number of RPX clients, including
21 those covered under RPX insurance policies, in suit."

22 In the case of the AIT IPRs, how many RPX clients
23 were implicated?

24 A One.

25 Q And Bullet [REDACTED], how many [REDACTED]?

1 MR. GIUNTA: Objection. Scope.

2 THE WITNESS: None.

3 BY MR. SEREBOFF:

4 Q And Bullet [REDACTED]?

5 MR. GIUNTA: Objection. Scope and form.

6 THE WITNESS: None.

7 BY MR. SEREBOFF:

8 Q Okay. And referring to paragraph 42 of your
9 first declaration, could you read to me the first two
10 sentences?

11 A "RPX determined that, if the AIT patents are not
12 invalidated, it is highly likely that they will ultimately
13 be broadly asserted against the industry. For example,
14 RPX determined that the technology tags for the asserted
15 AIT patents have a broad reach. They were [REDACTED]
16 [REDACTED] to [REDACTED] different companies, including [REDACTED] RPX
17 clients and prospective clients as of the date the AIT
18 IPRs were filed."

19 Q Okay. So that -- those statements, does that
20 relate to Bullet [REDACTED] in Exhibit 2223, [REDACTED]
21 [REDACTED]?

22 A I think you're referring to Bullet [REDACTED].

23 Q You are correct, yes.

24 A Yes, [REDACTED]
25 [REDACTED]

1 Q Okay. And so if RPX succeeded, as it hoped, in
2 invalidating the AIT patents and the AIT IPRs, then there
3 wouldn't be lawsuits against additional companies; right?

4 A Particularly because there were only two patents,
5 yes.

6 Q So do you think these [REDACTED] different companies
7 would be happy to see the AIT patents held invalid?

8 MR. GIUNTA: Objection. Form and scope.

9 THE WITNESS: I don't know.

10 BY MR. SEREBOFF:

11 Q Now, you talked about RPX's core business
12 including obtaining patent rights from NPEs and
13 sublicensing those to members; correct?

14 A Correct.

15 Q Okay. By invalidating the AIT patents in the AIT
16 IPRs, would that eliminate RPX's ability to provide those
17 core services to its members?

18 MR. GIUNTA: Objection. Form.

19 THE WITNESS: With respect to the AIT patents?

20 BY MR. SEREBOFF:

21 Q Yes.

22 A I don't know. Not necessarily.

23 Q Why not?

24 A Well, perhaps -- I'll just ask the question about
25 your question. Are you saying that it's gone through its

1 full appeals and complete and final determinations?

2 Q Yes.

3 A Okay. The reason I'm hesitating is because I
4 can't actually remember. Does AIT own any other patents?

5 Q Yes.

6 A Okay. Then the answer is no.

7 Q Would RPX succeeding in invalidating the AIT
8 patents, the two in the AIT IPRs, eliminate the risk that
9 an RPX member might otherwise be exposed from those
10 patents?

11 MR. GIUNTA: Objection. Form and scope.

12 THE WITNESS: Again, assuming full and final
13 determination, fully exhausted appeals? Yes, the risk of
14 those patents would be extinguished, invalidated.

15 BY MR. SEREBOFF:

16 Q Right. An RPX client can't be sued on a patent
17 that's been finally held invalid.

18 A I don't believe so.

19 Q Okay. In paragraph 26 of your declaration, you
20 refer to a stay. See that?

21 A Yes.

22 Q And what does that mean here?

23 A I understood it to mean that Salesforce believed
24 it was going to obtain a stay in its own AIT litigation on
25 the basis of the petitions that -- the CBM petitions they

1 filed.

2 Q And a stay is what?

3 A A stay is a halting of the proceeding, of the
4 litigation proceeding.

5 Q Do you know if AIT-Salesforce litigation is
6 currently stayed?

7 A I don't know today. I believe it was stayed.

8 Q And stayed is a consequence of the AIT IPRs?

9 MR. GIUNTA: Objection. Form and scope.

10 THE WITNESS: I was told that Salesforce was able
11 to obtain a stay.

12 BY MR. SEREBOFF:

13 Q So Salesforce asked the court for a stay based on
14 the AIT IPRs?

15 MR. GIUNTA: Objection. Form and scope.

16 THE WITNESS: I think that's right. I think they
17 filed some kind of motion.

18 BY MR. SEREBOFF:

19 Q So Salesforce filed a motion for stay, and the
20 motion for stay was granted; right?

21 MR. GIUNTA: Objection. Form and scope.

22 THE WITNESS: I haven't -- I believe that's
23 right.

24 BY MR. SEREBOFF:

25 Q So Salesforce got what they wanted, if that's the

1 case.

2 MR. GIUNTA: Objection. Form and scope.

3 THE WITNESS: I don't know what they wanted, but
4 they got a stay.

5 BY MR. SEREBOFF:

6 Q Well, presumably, if they move for a stay, they
7 wanted a stay. Is that reasonable?

8 MR. GIUNTA: Objection. Form and scope.

9 THE WITNESS: I mean, it's not my litigation;
10 so...

11 BY MR. SEREBOFF:

12 Q Okay. Do you believe Salesforce has benefitted
13 in any way from the AIT IPRs at any time?

14 MR. GIUNTA: Objection. Form and scope.

15 THE WITNESS: They may have. I don't know.

16 BY MR. SEREBOFF:

17 Q In your experience working for RPX, do you
18 believe that RPX has gained reputational benefit from
19 filing IPRs, both against AIT and other companies, other
20 NPEs?

21 A Yes.

22 Q And do you believe that this improvement in --
23 excuse me -- this reputational benefit has helped RPX in
24 negotiating in its negotiations with NPEs?

25 MR. GIUNTA: Objection. Form.

1 THE WITNESS: Which NPEs? The ones -- in
2 general, you mean?

3 BY MR. SEREBOFF:

4 Q So in negotiating with NPEs about acquiring
5 patent rights from the NPE, do you believe that the
6 improvement in RPX's reputation has led to better ability
7 to -- on pricing?

8 MR. GIUNTA: Objection. Form and scope.

9 THE WITNESS: [REDACTED]
10 [REDACTED] [REDACTED]

11 BY MR. SEREBOFF:

12 Q And in RPX's core services, RPX -- you said RPX
13 obtains patent rights and then sublicenses those to its
14 members; right?

15 A Or it acquires patents that are automatically
16 licensed to its members.

17 Q And in those core services -- so when RPX obtains
18 a license from an NPE, do the members automatically have a
19 sublicense?

20 MR. GIUNTA: Objection. Form and scope.

21 THE WITNESS: Yes. Well, so based on the form
22 membership agreement, if we acquire the right to license
23 patents to the members, they will automatically be
24 licensed via their membership agreement.

25 ///

1 BY MR. SEREBOFF:

2 Q And so does a member have to pay any extra fee to
3 RPX for getting such a sublicense?

4 MR. GIUNTA: Objection. Form and scope.

5 THE WITNESS: Usually not.

6 BY MR. SEREBOFF:

7 Q Can you give me an example? Maybe something from
8 the record which would be one of the exceptions from that
9 "usually not"?

10 MR. GIUNTA: Objection. Form and scope.

11 BY MR. SEREBOFF:

12 Q [REDACTED]

13 A Are you referring to [REDACTED]

14 Q Well, that's what I was thinking, yes.

15 MR. GIUNTA: Objection. Scope and form.

16 THE WITNESS: [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] yes, that is an
21 example of a one-off transaction that doesn't qualify as a
22 standard member deal.

23 BY MR. SEREBOFF:

24 Q It was brilliant work, by the way.

25 A Thank you.

1 Q You're welcome.

2 To your knowledge, has RPX, in its negotiation
3 with an NPE about acquiring patent rights from the NPE,
4 ever used the threat of an IPR by RPX as a negotiation
5 tool?

6 MR. GIUNTA: Objection. Form and scope.

7 THE WITNESS: [REDACTED]

8 [REDACTED]
9 [REDACTED]

10 BY MR. SEREBOFF:

11 Q Okay. It's 2:45. I'll give you guys the option
12 about taking a break. Do you want to take a break now or
13 in about half an hour to 45 minutes?

14 Mr. Chuang, what would you prefer?

15 A I am fine.

16 MR. GIUNTA: I would prefer to take a quick
17 break.

18 (Off the record.)

19 BY MR. SEREBOFF:

20 Q Okay. We were talking before about Exhibit 2223.
21 It's Bates 74. Factor -- the [REDACTED] bullet, [REDACTED]

22 [REDACTED]

23 As it relates to the AIT IPRs, what [REDACTED]

24 [REDACTED] are you aware of?

25 MR. GIUNTA: Objection. Form and scope.

1 THE WITNESS: I'm not aware of any.

2 BY MR. SEREBOFF:

3 Q Well, there's the Salesforce CBMs.

4 A Okay. You're right.

5 Q That's okay. And I suppose -- well, it's not a
6 prior, but you'd expect in the AIT-Salesforce litigation,
7 Salesforce is going to argue invalidity -- well, actually,
8 they are arguing invalidity.

9 MR. SEREBOFF: It's not a question. You can't
10 object to that.

11 BY MR. SEREBOFF:

12 Q All right. Okay. The [REDACTED] factor: "Likelihood
13 of a new validity challenge by another entity."

14 So as related to RPX's decision to pursue the AIT
15 IPRs, what was your assessment -- what was the assessment
16 of that factor?

17 MR. GIUNTA: Objection. Form. Scope.

18 THE WITNESS: I believe I said something about
19 this.

20 BY MR. SEREBOFF:

21 Q How about paragraph 43, your first dec. I have
22 the benefit of being able to search it. A control-F, as
23 your colleague calls it.

24 A Yeah, so, you know, once the CBM petitions that
25 Salesforce had filed were denied, our validity team

1 believed that it was unlikely that another party other
2 than RPX would challenge the AIT patents unless and until
3 the AIT-Salesforce litigation was resolved.

4 Q And that's because, by that time, Salesforce was
5 estopped from filing IPRs against the AIT patents?

6 MR. GIUNTA: Objection. Form.

7 BY MR. SEREBOFF:

8 Q Excuse me. Not an estoppel. There's a statute
9 of limitations to file --

10 A Statutory bar. You know, it's been too long for
11 me to remember specifically, but -- I don't remember the
12 exact bar date, but -- I think it was because they were
13 time barred; so it was unlikely that they would be able to
14 file a challenge at the PTO or PTAB.

15 BY MR. SEREBOFF:

16 Q And, certainly, by the time of RPX filing the
17 petitions in the AIT IPRs, Salesforce was time barred?

18 A I think that's right.

19 MR. GIUNTA: Objection. Form.

20 BY MR. SEREBOFF:

21 Q That's why we're here.

22 A Yeah, I think that's right. That's right.

23 Q Okay. In your second declaration, Mr. Chuang,
24 paragraph 31 -- if you look in the middle, you'll see the
25 number 1286.

1 A Yes.

2 Q And that sentence says -- could you read that
3 sentence?

4 A "Today, RPX has secured dismissals of 1,286
5 lawsuits against RPX clients through acquisition of the
6 patent in suit or a license with sublicensing rights."

7 Q And that's part of RPX's core service, is to do
8 just that?

9 A Yeah, through our transactional practice.

10 Q That's a really good record.

11 A Thank you.

12 Q You're welcome.

13 Okay. Paragraph 32. It says there, "RPX has
14 only ever filed a total of 57 IPR petitions to date";
15 correct?

16 A Correct.

17 Q It says, "and those 57 petitions challenged
18 patents that were involved in total in 85 cases of active
19 litigation against an RPX member at the time the petition
20 was filed."

21 I'm a little confused about the relationship of
22 these 85 cases to the 57 petitions. Can you explain that?

23 A Well, the relationship is going to vary. We file
24 the total of 57 IPR petitions. That's spread among a
25 certain number of campaigns. I don't have the number off

1 the top of my head; so there may be multiple petitions for
2 a single campaign.

3 And, you know, with respect to the campaigns in
4 which we filed on, we counted the number of active
5 clients -- clients that were in active litigation at the
6 time we filed, and that total is 85. So I don't have the
7 breakdown in front of me, but that's the total.

8 Q And we know that, from other parts of your
9 declaration, at least some of those petitions were
10 directed to patents for which there was no active
11 litigation against any RPX member.

12 A That is correct.

13 Q Okay. In paragraph 28 of your second
14 declaration, I think those are some examples of those IPR
15 petitions for which no RPX member was in an active
16 litigation; is that correct?

17 That's a terrible question. I withdraw it.

18 A Okay.

19 Q So in the -- paragraph 28 cites a number of IPRs;
20 correct?

21 A Correct.

22 Q Okay. And each one of those citations, starting
23 with IPR followed by a year, a dash, and another number,
24 each one of those is a separate proceeding; right?

25 A Right.

1 Q Okay. How many -- could you count the number of
2 IPRs that are mentioned in paragraph 28? I counted ten.

3 A I count ten as well.

4 Q All right. Good. So now what I want to do is,
5 can you help me square the ten petitions mentioned or
6 listed in paragraph 28 with the 57 referenced in paragraph
7 32?

8 A I can try. Was that a question? I was waiting
9 for a follow-up question from you.

10 Q No, it really wasn't. So doing simple math, 57
11 minus ten is 47.

12 Now, paragraph 28 lists those ten IPRs, but it
13 only says "for instance"; correct?

14 A Right.

15 Q Which means that there could be more than ten
16 petitions that RPX filed for which no RPX member was in
17 litigation.

18 MR. GIUNTA: Objection. Form.

19 THE WITNESS: [REDACTED]

20 [REDACTED]

21 BY MR. SEREBOFF:

22 Q And if there were more than ten, it would be a
23 relatively small number, more than ten. It could be one
24 or two measuring, it could be three more, but it wouldn't
25 be 20 more.

1 MR. GIUNTA: Objection. Form.

2 THE WITNESS: [REDACTED]

3 BY MR. SEREBOFF:

4 Q Okay. So, in other words, like the vast majority
5 of the 57 petitions referenced in 32, minus the 10 in 28,
6 would have been where an RPX member was -- had been sued?

7 MR. GIUNTA: Objection. Form.

8 THE WITNESS: Can you read me the question back?

9 (Record read.)

10 BY MR. SEREBOFF:

11 Q No. Let's try again.

12 Okay. So of the -- so we started with 57
13 petitions referenced in paragraph 32. You subtract 10
14 petitions listed in paragraph 28, and we wind up with 47
15 petitions?

16 A Right.

17 Q So those 47 petitions would either all or nearly
18 all have been against patents in which an RPX member was
19 in active litigation at the time of the filing by RPX of
20 the petition?

21 MR. GIUNTA: Objection. Form and scope.

22 THE WITNESS: [REDACTED]

23 [REDACTED]

24 BY MR. SEREBOFF:

25 Q [REDACTED] [REDACTED]

1 But really, like, you know, it was about 47
2 petitions were filed, and an RPX member was being sued on
3 the patent that you guys were seeking to IPR?

4 MR. GIUNTA: Objection. Form and scope.

5 THE WITNESS: [REDACTED]

6 BY MR. SEREBOFF:

7 Q Okay. Thanks.

8 So your second declaration was pretty good with
9 some statistics. One of the things that I didn't see was
10 how many of RPX's IPRs resulted in dismissals of lawsuits.
11 Did I miss that, or is there any kind of a statistic or
12 number or count where an RPX IPR resulted in dismissal of
13 a lawsuit?

14 MR. GIUNTA: Objection. Form and scope.

15 THE WITNESS: I don't -- I don't know the answer
16 to that.

17 BY MR. SEREBOFF:

18 Q So in your experience, from your knowledge, have
19 lawsuits -- any lawsuits against RPX members been
20 dismissed as a consequence of an RPX filed IPR?

21 MR. GIUNTA: Objection. Form and scope.

22 THE WITNESS: I'm aware that we've done
23 transactions with NPEs where, I believe, there was an RPX
24 IPR.

25 ///

1 BY MR. SEREBOFF:

2 Q And then the lawsuit against the member got
3 dismissed?

4 A Right.

5 Q Presumably, the IPR proceeding itself was
6 dismissed early or petition withdrawn?

7 MR. GIUNTA: Objection. Form and scope.

8 THE WITNESS: I honestly haven't followed it that
9 closely, but I believe there were -- there were -- there
10 was at least one transaction where we reached a deal with
11 the NPE [REDACTED]

12 BY MR. SEREBOFF:

13 Q To your knowledge, has Salesforce ever disclaimed
14 any interest or benefit from the AIT IPRs?

15 MR. GIUNTA: Objection. Form and scope.

16 THE WITNESS: I don't know. I haven't seen that.

17 BY MR. SEREBOFF:

18 Q Okay. Referring to your first declaration,
19 paragraph 23. Okay. Could you read the first sentence,
20 please?

21 A "On January 7, 2014, I had a telephone call with
22 [REDACTED] of Salesforce during which I mentioned that
23 RPX had become aware that Salesforce had been sued by
24 AIT."

25 Q Was that the first call you've ever had with

1 [REDACTED]?

2 A No.

3 Q Have you ever had -- did you have -- had you had
4 meetings with [REDACTED] prior to that telephone call?

5 A I definitely had prior calls.

6 Q Don't know if you had met him in person?

7 A I might have. I can't remember.

8 Q Okay. Did you have any conversations with [REDACTED]
9 [REDACTED] of Salesforce after that January 7, 2014, telephone
10 call?

11 A Yes.

12 Q And did you have any conversations with [REDACTED]
13 [REDACTED] after RPX filed the petitions for IPR in the AIT
14 IPRs?

15 A Yes.

16 Q Did the subject of AIT's counsel ever come up in
17 any of those conversations?

18 A Not that I recall -- other than the reference in
19 the January 7, 2014, call where I told him that we had
20 encountered AIT's counsel before with respect to a
21 previous potential transaction.

22 Q So in the telephone calls with [REDACTED] in
23 which you were involved, did [REDACTED] ever mention that
24 he knew me?

25 A He did not.

1 Q Okay. So in the course of RPX pursuing IPRs, are
2 you aware of any RPX member canceling its membership
3 because RPX filed one of these IPRs?

4 MR. GIUNTA: Objection. Form and scope.

5 THE WITNESS: No, I'm not aware of that.

6 BY MR. SEREBOFF:

7 Q Now, in your second declaration, Mr. Chuang, in
8 paragraph 8, I recalled that you talk about information
9 gathering as part of RPX's core services.

10 Could you please explain to me this business of
11 RPX gathering information and providing information to its
12 members as part of the core services?

13 MR. GIUNTA: Objection. Form and scope.

14 THE WITNESS: Yeah. So it's really a -- we view
15 it as a -- an inherent part of our core services from the
16 standpoint of we are -- in order for us to be successful
17 doing these transactions and understanding best what the
18 values of these rights should be, we collect and aggregate
19 as much information as we can, public -- and mostly public
20 information, and we, as part of our regular interaction
21 with our clients, try to get that information to our
22 clients because it's helpful to them, but it's also
23 helpful for us for them to know it because it facilitates
24 the conversations that we want to have with them to try to
25 understand how to prioritize and value the different

1 opportunities that we see in the market.

2 BY MR. SEREBOFF:

3 Q And in paragraph 8, there's a reference to
4 defensive patent aggregation. What is that?

5 A That's a -- that's a way to describe our core
6 services.

7 Q The core services of --

8 A The transactional acquisition of rights that we
9 then license or sublicense to our clients.

10 Q Okay. And besides the aggregation transaction
11 business and information gathering, what else does RPX do
12 for its members in core services?

13 MR. GIUNTA: Objection. Form.

14 THE WITNESS: I think that is our core service.

15 BY MR. SEREBOFF:

16 Q That's it. Just those two items. That's it?

17 A I mean, from the standpoint of what we consider
18 to be the service, that is correct.

19 Q Okay. And RPX filing IPRs for reputational
20 benefit, that's not part of core services; right?

21 A No, it's not.

22 Q And to the --

23 A Unless -- unless a member approaches us or we
24 approach them to co-file an IPR, which may also be for
25 reputational benefits.

1 Q In those situations, is that a separate service,
2 or would that be included in the standard member benefit
3 that RPX provides to that member?

4 A I would say it's separate from the core services,
5 but it's more of an adjunct to our patent quality -- our
6 own IPR filing program.

7 Q Does the member pay RPX extra for that extra
8 service?

9 MR. GIUNTA: Objection. Form.

10 THE WITNESS: [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 BY MR. SEREBOFF:

15 Q Okay.

16 A But they would always be a named co-filer in that
17 case.

18 Q So tell me this.

19 In situations where RPX succeeds in an IPR and
20 the patents are invalidated, at that point, there's
21 nothing for the NPE to license; right?

22 MR. GIUNTA: Objection. Form and scope.

23 THE WITNESS: I guess, if you're assuming that
24 it's reached full and final determination with the appeals
25 completely exhausted, perhaps -- I don't -- if you're

1 talking about our specific IPRs, I don't think we actually
2 have many IPRs that have gone that far through the
3 process. I think there have been a couple of instances
4 where the NPE has taken an adverse judgment or disclaim to
5 claims, in which those claims would no longer be
6 enforceable.

7 BY MR. SEREBOFF:

8 Q And if they're no longer enforceable, there's
9 nothing to license by the NPE; right?

10 MR. GIUNTA: Objection. Form and scope.

11 THE WITNESS: If they didn't have any other
12 assets or other claims. But I don't actually know if
13 there's an instance of that -- a real instance of that.

14 MR. SEREBOFF: Okay. I think I have no further
15 questions for you now. Thank you, Mr. Chuang.

16 THE WITNESS: Thank you.

17 MR. GIUNTA: Can we go off the record?

18 MR. SEREBOFF: Yes, we can go off the record.

19 (Off the record.)

20 EXAMINATION

21 BY MS. HUNT:

22 Q All right. Thank you, Mr. Chuang. We have just
23 a few questions for you on redirect. First, could you
24 please turn to your first declaration at paragraph 32.

25 A Okay.

1 Q And could you please read that paragraph to
2 yourself and let me know when you're finished.

3 A Okay.

4 Q All right. So do you see the first sentence of
5 this paragraph talks about AIT's discovery request to
6 Number 4?

7 A Yes.

8 Q And then do you see the second sentence of this
9 paragraph says the document provided as Bates range
10 RPX000077 to RPX000090 is responsive to that request?

11 A Yes.

12 Q And then does the rest of this paragraph describe
13 the document referenced in that sentence?

14 A Yes.

15 Q All right. So the sentence beginning "The vast
16 majority of e-mail communications," is that describing the
17 e-mail communications referenced in that document?

18 A Yes.

19 Q And then the next sentence refers to the listing
20 of participants in meetings and phone calls.

21 Is that referring to the listing of participants
22 in meetings and phone calls referenced in that document?

23 A Yes.

24 Q And then the final sentence refers to any meeting
25 or communication not summarized in Section 3 above.

1 Is that referring to any meeting or communication
2 listed in this document that's not summarized in Section 3
3 above?

4 A Yes.

5 Q All right. Could you please turn to paragraph 27
6 of your first declaration, the same one we were just
7 looking at -- the same first declaration we were just
8 looking at.

9 A Okay.

10 Q So do you see that this paragraph begins "on
11 March 11, 2015, in a phone call between [REDACTED],
12 Steve Chiang, IP counsel, and senior patent engineer, and
13 me from RPX"?

14 A Yes.

15 Q And so is this -- your testimony here in your
16 declaration is that you were a participant on this phone
17 call on March 11, 2015; is that correct?

18 A Yes.

19 Q And do you still believe that to be accurate?

20 A Yes.

21 Q All right. I think we're done. Thank you.

22 A Thank you.

23 MR. SEREBOFF: Okay. So standard stipulations
24 for him reviewing and all that?

25 MR. GIUNTA: Yes.

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MR. SEREBOFF: Good. Thank you.

You'll get us a rough today/tomorrow time frame.

MS. HUNT: Are we still on the record?

MR. SEREBOFF: Yeah, we're on the record. That's okay. You know what? Let's go off the record.

(Off the record at 3:36 p.m.)

I have read the foregoing deposition transcript and by signing hereafter, subject to any changes I have made, approve same.

Dated _____.

(Signature of Deponent)

*** Signed on errata page inserted as page 122A following this page.**

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ERRATA SHEET

I, WILLIAM W. CHUANG, certify under penalty of perjury that I have read the transcript of my deposition of January 30, 2019, and have signed it subject to the following changes, if any:

PAGE	LINE	CORRECTION
<u>26</u>	<u>16</u>	<u>Change "airs" to "errs"</u>
<u>73</u>	<u>16</u>	<u>Change "this litigation" to "its litigations"</u>
<u>81</u>	<u>21</u>	<u>Change "again, other" to "against other"</u>
<u>81</u>	<u>24</u>	<u>Change "the monetized" to "to monetize"</u>
<u>85</u>	<u>1</u>	<u>Change "judgments, motions" to "judgment motions"</u>
<u>87</u>	<u>12</u>	<u>Change "is also" to "isn't also"</u>
<u>97</u>	<u>18</u>	<u>Change "their" to "there"</u>
<u>118</u>	<u>12</u>	<u>Change "to share" to "to say share"</u>
<u>119</u>	<u>4</u>	<u>Change "disclaim to" to "disclaimed their"</u>

Feb. 28, 2019

DATE


William W. Chuang

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF SACRAMENTO)

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On January 30, 2019 before me, Kayla Knowles,
personally appeared _____

_____,'

who proved to me on the basis of satisfactory evidence to
be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on
the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws
of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

1 The deposition was taken at 201 California
2 Street, Suite 375, San Francisco, California, and began at
3 9:55 a.m., on Wednesday, January 30, 2019, and ended at
4 3:36 p.m.

5 Before completion of the deposition, review of
6 the transcript was requested. Changes made by the
7 deponent, are appended hereto and have also been made to
8 the transcript. (Fed. R. Civ. P. 30(e)).

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Dated: February 11, 2019.



KAYLA KNOWLES

Certified Shorthand Reporter No. 14071