UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD
Case IPR2022-00138
IPR2022-00135

---------------------   :   DEPOSITION OF:
THE DATA COMPANY   :
TECHNOLOGIES INC.,   :   DAVE LEVIN
                         :
      Petitioner   :
                         :
v.   :
                         :
BRIGHT DATA LTD.,   :
                         :
      Patent Owner.   :
---------------------   :

July 22, 2022

         The virtual recorded deposition

of DAVE LEVIN, taken stenographically by Karen

Friedlander, CCR-NJ, RCR-NY, RMR, RDR, CRR, on

the above date, at 9:00 a.m. ET.

Job No.: 5325

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11

      ALSO PRESENT:
12    Luis Garcia, Videographer

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 4     DAVE LEVIN

 5     BY MR. DUNHAM:                                   5

 6     BY MR. WICHMAN:                                 153

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 9                      E X H I B I T S

10   No.        Description                           Page

11

12                   - No exhibits marked -

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1   THE VIDEOGRAPHER: Good morning.

2   We are now on the record. Today's date is

3   July 22, 2022, and the time is 9:03 a.m. Eastern

4   Standard Time.

5   This is the video deposition of

6   Dr. Dave Levin in the matter of The Data Company

7   Technologies, Inc., versus Bright Data LTD,

8   filed in the United States Patent and Trademark

9   Office before the Patent Trial and Appeal Board,

10   and the case number is IPR2022-00135.

11   This deposition is taking place

12   via web videoconference with all participants

13   attending remotely.

14   My name is Luis Garcia, I am the

15   videographer representing TransPerfect Legal

16   Solutions.

17   Will counsel on the conference

18   please identify yourselves and state whom you

19   represent, beginning with the questioning

20   attorney.

21   MR. DUNHAM: This is Tom Dunham

22   for patent owner Bright Data Limited. I'm with

23   the firm of Cherian LLP, and with me today is

24   Elizabeth O'Brien.

25   MR. WICHMAN: This is Adam

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1   Wichman, I represent the data company, The Data

2   Company Technologies, and with me is Dr. Dave

3   Levin.

4   I do want to point out that there

5   are two cases that are involved today. It's not

6   just IPR2022-00135, but also IPR2022-00138.

7   THE VIDEOGRAPHER: Thank you.

8   Our court reporter today is Karen Friedlander

9   representing TransPerfect Legal Solutions.

10   Would the court reporter please

11   swear in the witness.

12   (DAVE LEVIN, having been duly sworn as a

13   witness, testified as follows:)

14   MR. DUNHAM: Okay. Would the

15   videographer please stop the video recording now

16   but keep the video (sic) running.

17   Just to confirm, we are still

18   recording audio, correct?

19   THE VIDEOGRAPHER: Correct.

20   MR. DUNHAM: Okay. Thank you.

21   EXAMINATION

22   BY MR. DUNHAM:

23   Q.   Dr. Levin, are you ready to go?

24   A.   I am.

25   Q.   Great. Well, good morning, and

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1   thank you for being here today.

2   And, Mr. Wichman, thank you for

3   the clarification. I had intended to note as

4   well, by agreement by the parties, the

5   deposition today is applying to two IPRs, the

6   -00135 and the -00138.

7   So, Dr. Levin, please allow me to

8   begin with a little bit of background. Have you

9   been deposed before?

10   A.   No. This is my first deposition.

11   Q.   Great. So let me just go over a

12   few ground rules with you so we can try to make

13   things as smooth as possible.

14   A.   Great.

15   Q.   So I will be asking you a series

16   of questions. From time to time, your counsel

17   may interpose an objection. Unless your counsel

18   instructs you not to answer, even if he has

19   objected, please answer my question, okay?

20   A.   Okay.

21   MR. DURHAM: It appears that the

22   video has frozen of the witness.

23   Is this something that's been

24   going on with your system? I think I heard

25   about that yesterday.

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1   MR. WICHMAN: I think we

2   discovered this -- yes.

3   (Court reporter seeks

4   clarification.)

5   MR. WICHMAN: We discovered that

6   there is this intermittent issue with some calls

7   freezing on the conference room video.

8   MR. DURHAM: Well, we'll work

9   through this. Hopefully, it will go smoothly.

10 BY MR. DURHAM:

11   Q.   Dr. Levin, as I said, I'll be

12 asking you a series of questions, and it's

13 important when you respond to a question, that

14 if you first don't understand the question,

15 please ask me to clarify, and I'll do my best to

16 do so. In addition, you must always answer with

17 a verbal answer. The court reporter will not

18 take down nods or gestures, so please always

19 give an audible answer. Is that understood?

20   A.   I understand, yes.

21   Q.   Thank you. Also, it's important

22 that we all do our best to make sure we only

23 speak one person at a time. If the two of us

24 speak at the same time, it becomes exceptionally

25 difficult for the court reporter and that

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1   creates a lot of problems. So I will do my best

2   when you are answering me, to wait until your

3   answer is complete, and I would ask that you do

4   the same when I am asking questions. Please

5   wait until I have finished asking the questions

6   before you respond and that will give us a much

7   cleaner record at the end of the proceeding.

8   All right?

9   A.   Yep, I'll do my best.

10   Q.   We will be going through some

11   documents today. I do see you have a few

12   binders on the table in front of you and then

13   also some boxes, the boxes we shipped to you,

14   and there should be also one box or envelope

15   from Sir Speedy that was -- I believe red, and I

16   don't know if it's that red box or something

17   different.

18   A.   This red box says Sir Speedy on

19   it, yes.

20   Q.   Great. Most of what I will be

21   talking to you about today will be in that red

22   box with one minor exception, but I do notice

23   you have a couple of binders in front of you.

24   Could you please tell me what

25   materials are in front of you on the table that

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1   are not from those boxes?

2   A.   Yes, in this binder to my left, I

3   have my declaration for the '319 patent, and

4   this binder here to the right, my right, I have

5   my declaration for the '510 patent, and in

6   front, these are just the table of contents from

7   my declaration, and this one I'm pointing to

8   here, these are just a printout of the claim

9   listings from the respective patents.

10   Oh, and here is a printout of

11   Plamondon, as far as I can tell a clean printout

12   of Plamondon -- I'm sorry, this is just a blank

13   legal pad.

14   Q.   Thank you. And I think you

15   anticipated my next question. In terms of the

16   materials in front of you, are there any notes,

17   post-its, markings, tabs, any other markings of

18   any form in any of those documents you just

19   identified?

20   A.   Not to my knowledge, no. I

21   flipped through them. I don't see any, no.

22   Q.   Okay. So as we go through the

23   day today, we'll take a break approximately

24   every hour. If at any time you need a break

25   during the day, please do not hesitate to ask,

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1   and I'll work with you to get you a break as

2   quickly as possible. We may have to finish up a

3   question or two to get to the next break, but I

4   certainly want to make sure we accommodate any

5   scheduling issues or if you need just a mental

6   break or other type of break, that's fine. So,

7   please don't hesitate to let me know. Okay?

8   A.   That sounds good, thank you.

9   Q.   All right. And this question

10   always sounds a little strange to witnesses, but

11   it's important we always ask. Is there any

12   reason today, such as medication or illness,

13   anything of that nature, that would prevent you

14   from giving complete, truthful answers in your

15   testimony?

16   A.   No, not that I can think of, no.

17   Q.   Okay. Thank you.

18   So can you tell me, generally,

19   what you did to prepare for the deposition

20   today?

21   A.   Generally, I read back through my

22   declarations, I read back through and

23   refamiliarized myself with the patents, the '319

24   patent and the '510 patent, and Plamondon and

25   some of the other prior art.

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1   I spoke with Mr. Wichman about

2   what a deposition process is like and watched

3   some YouTube videos, seeing as how I mentioned,

4   this is my first deposition, I wasn't really

5   sure what it was.

6   So basic background preparation,

7   refamiliarizing myself with these documents. I

8   also spoke with my dad. Turns out my dad had

9   given depositions years and years ago and he

10   just gave me some general advice and also sent

11   me some other links to YouTube videos. So

12   generally speaking, that's what I did.

13   Q.   Approximately how much time did

14   you spend preparing for the deposition today?

15   A.   I'm not sure exactly. How much

16   time -- in terms of a number of hours?

17   Q.   Yes.

18   A.   I'm not sure exactly. I started

19   preparing last week and spent time each day this

20   week. In terms of number of hours, I'm not sure

21   off the top of my head.

22   Q.   Would you say more than a full

23   day preparing?

24   A.   Yes.

25   Q.   More than two days?

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1   A.   More than two work days? Yes.

2   Q.   Have you been keeping track of

3   your time in these two matters?

4   A.   I have been keeping track of the

5   time, I just don't remember it off the top of my

6   head.

7   Q.   Sure. Do you have -- can you

8   tell me how many hours in total you have devoted

9   to these two particular matters?

10   A.   In total, even beyond the

11   preparing for the deposition?

12   Q.   Yes, sir.

13   A.   I'm sorry. I don't remember that

14   either.

15   Q.   Do you know if it's more than 50

16   hours?

17   A.   I don't remember. I'm sorry.

18   Q.   I want to mark two exhibits just

19   for -- so they're in the record. These are not

20   going to be among the documents in front of you.

21   These are just your notices of

22   deposition, which are paper 15 from both IPRs.

23   I am assuming from what you've told me, you do

24   not have those in front of you; is that correct?

25   A.   Correct.

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1   Q.   They are in Box 1 that we

2   shipped, and if you are able to open Box 1, they

3   would be in the first file folder to the left.

4   A.   I'm not sure which one is Box 1.

5   Q.   Is there a green tear sheet in

6   the box you just opened on top?

7   A.   Not that I see. I don't see a

8   green tear sheet.

9   Q.   Okay. Can you open the Sir

10   Speedy box, then, the red box, please.

11   A.   There's some tape here. I've

12   just opened it.

13   Q.   There should be two papers, they

14   just will say patent owner's notice of

15   deposition of Dave Levin.

16   A.   I see -- I see one stapled

17   document with three pages that says that, and

18   that refers to case IPR2022-00138.

19   Q.   Sure. And there should be

20   another one just like it for the 135 case.

21   A.   Yes, I have the notice.

22   Q.   Okay. All right. So for the

23   record -- and thank you for retrieving those

24   from the box. These are both marked in the IPRs

25   as paper 15 and these are the notices of

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1   deposition that patent owners served for your

2   deposition today, for both IPRs, the 135 case

3   and the 138 case.

4   And my question is, sir, have you

5   seen these notices of deposition before?

6   A.   I have not.

7   Q.   You do understand you're

8   testifying here today in response to these

9   notices to give testimony about the opinions

10   you've rendered in the two IPRs, the 135 IPR and

11   the 138 IPR, correct?

12   A.   That's my understanding, yes.

13   Q.   So today your testimony is just

14   as if you were in court under oath in front of a

15   tribunal. You understand that, correct?

16   A.   I understand.

17   Q.   Okay. Thank you. That is --

18   that is the bulk of my housekeeping, so you can

19   certainly place those notices aside now.

20   A.   Thank you.

21   Q.   What I would like to do now is

22   proceed to asking you some questions about some

23   things you've made in statements in your

24   declarations, and for convenience, I'm going to

25   work primarily from your declaration in the 135

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1   IPR, and that is Exhibit No. 1003 from the IPR.

2   So if you could get that

3   declaration handy, that would be great. And

4   this would be the declaration on the '319

5   patent.

6   A.   I have that declaration in front

7   of me.

8   Q.   Okay. Before I get into the

9   substance, did you draft your declarations in

10   this case?

11   A.   Yes, I did. There were some

12   parts of it, especially the quite specifics

13   legal background part. I'm not a lawyer, I'm

14   not trained in the law. I did not write the

15   first draft of that, the lawyers did, but I read

16   it, I understand it, and this is my report and I

17   know I'm going to have to answer questions about

18   it.

19   Q.   Did you draft the remaining

20   portions of the declarations, besides the legal

21   section, as you've just explained?

22   A.   Yes, there may have been a couple

23   small parts. So again, there's some legalese

24   here and there in terms of the specific wording

25   of that, that I had -- I may have not drafted

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1   initially or may have had some help with.

2   Things also like the references, I didn't fill

3   in the exact reference numbers to reference

4   paragraphs. There are some things that worked

5   with that, but, yes, I did.

6   Q.   Okay. We had received an email

7   from Mr. Wichman on July 19th at 6:26 p.m.,

8   indicating several corrections that you had

9   wished to make to your declarations, and my

10   question is --

11   MR. WICHMAN: Objection.

12   MR. DUNHAM: Pardon?

13   MR. WICHMAN: That's misstating

14   the record. He identified two typographic

15   errors.

16   BY MR. DUNHAM:

17   Q.   Well, are those errors you wish

18   to correct in your report, sir?

19   A.   I don't recall exactly which

20   errors you're -- which typographic errors you

21   are referring to.

22   Q.   Well, sir, then, sitting here

23   today, are there any corrections that you would

24   wish to make to either of your declarations?

25   A.   I -- if I recall correctly, there

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1   was an email about -- I believe it was paragraph

2   319, if I recall correctly, where I had some

3   claim numbers that were incorrect. I think that

4   was clarified by the attorney. I think that's

5   the typographical error that you are referring

6   to.

7   I noticed a couple of other -- in

8   going back and preparing for this deposition and

9   preparing my declaration, I noticed a few other

10   small typographic errors. I think at one point,

11   for example, I wrote ETDX referring to the

12   Eastern District Court of Texas or the EDTX,

13   little typographic errors like that that -- I

14   think it's still clear from the context what I

15   was referring to.

16   But that one, in terms of the

17   claim numbers, I think that's perhaps the

18   typographical error that you're referring to and

19   I did want that corrected.

20   Q.   So other than the error that you

21   testified about that was captured by the email

22   that counsel sent and maybe some ministerial

23   errors of naming the Court in Texas, were there

24   any other corrections you wish to make to your

25   declarations today?

1   A.   No, just like I said, small

2   little typographical errors, but the context I

3   think still remains clear. But those are the

4   only ones that I recall at this time.

5   Q.   I'd like you to turn to paragraph

6   21 of your declaration, and again, for

7   convenience, we're working out of the

8   declaration in the 135 IPR.

9   And if it's helpful, please take

10   a moment to review that paragraph.

11   A.   Okay. I've read the paragraph.

12   Q.   Sir, are you relying on inherency

13   to support any of your opinions as to

14   anticipation?

15   MR. WICHMAN: Objection. Calls

16   for a legal --

17   THE WITNESS: I understand

18   "inherency" to be a legal term. I'm not a

19   lawyer. I don't think I can really speak

20   definitively to that. As I recall through my

21   declaration, I mainly use "obviousness," but

22   again, I'm not -- I'm not a lawyer, so if -- if

23   there's a specific, like, technical legal

24   question about notion of inherency, I'm not sure

25   I understand the question.

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1   BY MR. DUNHAM:

2   Q.   Well, sir, in your declaration,

3   you say that: "Each and every limitation must

4   be satisfied, expressly, or inherently, and the

5   subject matter provided by a single prior art

6   reference."

7   Do you see that language?

8   A.   I see that.

9   Q.   And my question is: In your

10   analysis, did you find each and every limitation

11   to be expressly disclosed, or did you rely on

12   inherency to support your anticipation opinions?

13   MR. WICHMAN: Objection. Form.

14   Calls for a legal conclusion.

15   THE WITNESS: Again, these are

16   legal terms. I'm not sure exactly what the

17   question is. Throughout my -- if there's a

18   specific part of the declaration, a specific

19   part of my declaration where I'm drawing a

20   conclusion that you -- that you're asking about,

21   that you'd like to ask about, which is whether I

22   implied that it was satisfied expressly or

23   inherently, I'm happy to try to answer that.

24   BY MR. DUNHAM:

25   Q.   So is the answer, you're not sure

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1   if you relied on inherency in any of our

2   opinions on anticipation?

3   A.   I -- I don't recall a specific

4   use of inherency. I remember speaking to

5   obviousness.

6   Q.   Okay. If you look further down

7   in that same paragraph, you reference disclosing

8   the limitation based on inferences that a POSA

9   would reasonably be expected to draw from the

10   explicit teachings.

11   Do you see that reference in

12   paragraph 21?

13   A.   Yes.

14   Q.   What did you mean by that?

15   A.   What I meant -- this is a lot of

16   legalese. I just want to make sure I answer

17   your question to the best of my ability.

18   What did I mean when I said -- I

19   understood the last part -- based on inference

20   is --

21   (Court reporter seeks

22   clarification.)

23   THE WITNESS: Actually, would you

24   mind reading back the question to me, please.

25   (Pertinent portion of the record

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1   is read back.)

2   THE WITNESS: By that, I believe

3   that was in relation to inferences that a person

4   of ordinary skill in the art would reasonably be

5   expected to draw from the explicit teachings of

6   the reference when read in the context provided

7   by the person of ordinary skill in the art.

8   (Court reporter seeks

9   clarification.)

10   THE WITNESS: As I understand,

11   the question was, what did I mean by "that,"

12   where "that" was referring to inferences that a

13   person of ordinary skill in the art would

14   reasonably be expected to draw from the explicit

15   teachings in the reference when read in the

16   context provided by the person of ordinary skill

17   in the arts, knowledge, and experience.

18   So as I understand that, it means

19   that a person of ordinary skill in the art at

20   the time would read the reference and the

21   specification and under what I, as an expert,

22   believe a person of ordinary skill in the art at

23   the time would understand and know at the time

24   that also what, what they would -- what they

25   would infer from a patent, in terms of what it

1   means, what problems it raises, how it might

2   combine with other -- other work that was known

3   at the time. That's -- that's my understanding

4   of it.

5   BY MR. DURHAM:

6   Q.   Sir, in paragraph 22 of your

7   declaration, you describe your understanding of

8   when a limitation may be inherent, and you refer

9   to the phrase: "A claim limitation is inherent

10   in a prior art reference if that limitation is

11   necessarily present when practicing the

12   teachings of the reference," and the paragraph

13   goes on from there.

14   Are you relying on an element

15   being necessarily present, as opposed to

16   expressly disclosed in a reference to support

17   any of your opinions as to anticipation?

18   A.   I don't recall any instances

19   where I am relying on it being necessarily

20   present. If there's a specific claim or a

21   specific paragraph from my declaration you'd

22   like to ask about, I'd be happy to. But off the

23   top of my head, I can't think of one.

24   Q.   Is it your understanding, sir,

25   that even if a person of ordinary skill in the

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1   art would not recognize the presence of a

2   limitation in a prior art reference, that

3   limitation may still be present for purposes of

4   anticipation?

5   A.   May I please have that question

6   read back to me?

7   Q.   Sure. Is it your position that

8   even if a person of ordinary skill in the art

9   would not recognize the presence of limitation

10   in a prior art reference, that limitation may

11   still be present for purposes of anticipation?

12   A.   If I'm understanding the question

13   correctly, I believe that's what I say in my

14   paragraph 22. I say: "I understand that the

15   claim limitation is inherent in a prior art

16   reference if that limitation is necessarily

17   present when practicing the teachings of the

18   reference, regardless of whether a person of

19   ordinary skill in the art recognizes the

20   presence of that limitation in the prior art."

21   So as it pertains to inherency,

22   that sounds like my paragraph 22.

23   Q.   If you could take a look at

24   paragraph 27, sir. And if you'd like to take a

25   moment to read it to yourself, that's fine.

1   A.   I've read it.

2   Q.   Sir, would you agree that when

3   combining references in an obviousness

4   combination, if the function of an element were

5   to change in the proposed combination, then such

6   a combination would be improper?

7   MR. WICHMAN: Objection. Calls

8   for a legal conclusion.

9   (Court reporter seeks

10   clarification.)

11   THE WITNESS: Can I have that

12   question read back to me one more time?

13   BY MR. DUNHAM:

14   Q.   I'll repeat it for you, sir.

15   Would you agree that when

16   combining references in an obviousness

17   combination, if the function of an element were

18   to change in the proposed combination, then such

19   a combination would be improper?

20   MR. WICHMAN: Objection. Calls

21   for a legal conclusion.

22   THE WITNESS: I don't know the

23   answer to that question, as I'm not a lawyer. I

24   do know from my paragraph 27, that if the -- if

25   there's no change in their respective functions,

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1   then the combination would have yielded -- I'm

2   sorry, I'm sorry.

3   That -- it's my understanding

4   that a patent claim is invalid as obvious if the

5   claimed elements were known in the prior art,

6   one skilled in the art would have combined the

7   elements as claimed by the methods with no

8   change in their respective functions, and that

9   the combination would have yielded nothing more

10   than predictable results.

11   So since we are describing the

12   same thing, then yes.

13   BY MR. DUNHAM:

14   Q.   If you could please -- if you'd

15   like to read paragraph 28 to yourself, that's

16   fine. I just have a couple of questions about

17   it.

18   A.   Sure. Okay.

19   Q.   I'm mostly going to focus on the

20   last bullet in paragraph 28, if that helps you

21   orient yourself, and my first question, sir, is:

22   In performing your obviousness analysis, did you

23   read every word of each reference that you

24   relied upon?

25   A.   I believe that I did, though I

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1   certainly have not committed them to memory.

2   Q.   Did you consider portions of the

3   references that taught away from your proposed

4   combinations?

5   MR. WICHMAN: Objection. Calls

6   for a legal conclusion.

7   THE WITNESS: I'm not sure I

8   recall any parts that taught away. I would have

9   considered the entire references, but it seems

10   to be presupposing that there are parts that

11   taught away the combination, and I'm not

12   familiar that any part of the prior art did

13   that.

14   BY MR. DUNHAM:

15   Q.   It's your understanding that in

16   an obviousness analysis, in order to modify the

17   prior art reference which combined more than one

18   prior art reference, there must be some

19   teaching, suggestion, or motivation in the prior

20   art?

21   MR. WICHMAN: Objection.

22   THE WITNESS: It is my

23   understanding that -- that that is one -- that's

24   one relevant consideration for motivation, that

25   it was taught in the prior art, but it's also my

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1   understanding that that motivation could have

2   been clear to a person of ordinary skill

3   through, through -- it would have been clear to

4   a person of ordinary skill.

5   BY MR. DUNHAM:

6   Q.   Is it your understanding, then,

7   that the motivation to combine can come solely

8   from outside of the references sought to be

9   modified or combined?

10   A.   I'm not sure I quite understand

11   the question. The motivation -- I mentioned

12   it's all within the context of the --

13   (Court reporter seeks

14   clarification.)

15   THE WITNESS: Can I have the

16   question read back to me, please?

17   BY MR. DUNHAM:

18   Q.   I'll repeat it. My question,

19   sir, is then, is it your understanding that the

20   motivation can come solely from outside of the

21   references sought to be modified or combined?

22   A.   I'm not sure exactly what "solely

23   from outside" means.

24   Q.   In other words, sir, if there's

25   no teaching, suggestion, or motivation inside

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1   the references themselves that you seek to

2   combine, can that motivation to combine come

3   solely from some other source?

4   A.   I believe -- I believe, from my

5   paragraph 28, that it is possible as, for

6   example, a person -- there was a use of a known

7   technique to improve similar devices, methods,

8   or products in the same way.

9   So even if -- my understanding of

10   that is that in that hypothetical situation

11   where the patent -- the prior art -- I'm not

12   sure I quite understand the question still.

13   Solely from outside of the prior

14   art or solely from outside of the patent that

15   you're trying to combine with. I'm sorry, I

16   don't understand your question.

17   Q.   You're on to it. The question

18   is: Can the motivation to combine or modify

19   come solely from outside the references that you

20   actually seek to modify or combine?

21   MR. WICHMAN: Objection.

22   BY MR. DUNHAM:

23   Q.   If you're speaking, sir, we're

24   not receiving audio.

25   A.   Yeah, sorry. I'm just repeating

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1   the question back to myself.

2   From my understanding in my

3   paragraph 28 -- if it was -- there was a known

4   technique to improve similar devices, methods,

5   or products in the same way, if it was known to

6   someone of ordinary skill at the time, if the

7   references themselves, as I understand it, if

8   they didn't expressly articulate or teach it, if

9   it was known to someone of ordinary skill, that

10   -- I believe that that would have sufficed in

11   that hypothetical situation.

12   Q.   Would you please turn to

13   paragraph 141 of your declaration.

14   A.   I'm at 141 of the declaration for

15   the '319 patent.

16   Q.   Sure. If you notice in that

17   paragraph, you state: "I was asked to compare

18   the challenged claims to the disclosures in the

19   Plamondon RFC 2616, RFC 1122, IEEE 802.11-2007,

20   Price and Kozat references."

21   Do you see that?

22   A.   I do.

23   Q.   In performing your analysis, did

24   you look at the claims, the challenged claims

25   from the patents at issue and then try to find

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1   where those particular limitations from the

2   claims appeared in the various prior art

3   references?

4   MR. WICHMAN: Objection. Form.

5   THE WITNESS: I read the

6   challenged claims, I compared them to the

7   disclosures of Plamondon and those other

8   references you just mentioned.

9   BY MR. DUNHAM:

10   Q.   Again, I'm trying to understand

11   the way you did your analysis, sir, and that's

12   my question.

13   So let me ask you another

14   question, for example, with respect to paragraph

15   142.

16   In 142, in part, you indicate you

17   were asked to provide your opinion whether

18   Plamondon describes subject matter that

19   satisfies the limitations in each challenged

20   claim.

21   Do you see that?

22   A.   I see that.

23   Q.   And I'm just trying to understand

24   your analysis. So to do your analysis, did you

25   start with the language of the claim and then

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1   look at the Plamondon reference to see if it

2   disclosed each subject matter that satisfied the

3   limitation from the claim?

4   A.   As part of my analysis, yes, I

5   looked at every part of -- of each of the

6   challenged claims and -- and compared that to

7   Plamondon and the other references for subject

8   matter that satisfied the limitations in each of

9   the challenged claims.

10   Q.   Okay. So, and again, let's talk

11   about your obviousness analysis for a moment.

12   So to do your obviousness

13   analysis, did you start with the claims, look at

14   the language of the claim and then for each

15   claim, look at the different pieces of prior art

16   to see if those limitations were disclosed in

17   some combination of the prior art?

18   A.   That wasn't the entirety of it.

19   In some cases, for example, there was claim

20   language that I had already recognized as being

21   known from some of these prior art references.

22   But then, of course, as -- for

23   the sake of the obviousness analysis, because I

24   had, as I understand, this comparison has to go

25   to show the satisfaction -- to show that it

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1   satisfies the limitations in each of the

2   challenged claims, as part of that analysis,

3   yes, for each part of the challenged claims, I

4   made sure to cite specific parts of these prior

5   art references, but -- but that was -- that was

6   done after having, you know, read and understood

7   these -- these references.

8   So, for example, this mentions

9   RFC 1122. I'm familiar with that. It's

10   something that I think a person of ordinary

11   skill could have been familiar with, I read that

12   ahead of time and still refamiliarized myself in

13   its, you know, its breadth, in its entirety, but

14   then, of course, to show that each limitation is

15   met by this prior art, as certainly as part of

16   my analysis, I had to point to specific parts of

17   these prior art references, absolutely.

18   Q.   Sure. And I understand at the

19   end of the work that you did, you lined up

20   different pieces of the references with the

21   different claim elements.

22   What I'm trying to understand is

23   more about the process of how you started the

24   analysis. So my question, sir, is, in starting

25   your analysis for anticipation or obviousness,

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1   did you start by looking at the elements of the

2   claim and then go look for prior art that would

3   match up to each one of the elements?

4   A.   I was -- I'm sorry, you're asking

5   if that's what I did at the start of my

6   analysis?

7   Q.   Yes, sir.

8   A.   No, I don't recall doing it like

9   that. In some cases, I was asked to compare,

10   for instance, to Plamondon. I don't remember

11   the exact order in which I read various

12   documents, but -- but I tried to fully

13   understand Plamondon to the best of my ability

14   before I identified specific parts. I wanted to

15   understand this in context.

16   Q.   Okay. So now, I want to focus

17   for one more moment on your obviousness analysis

18   where you were combining references, okay?

19   A.   Okay.

20   Q.   My question is a process

21   question. When you were undertaking your

22   obviousness analysis to combine references, did

23   you start with any particular claim that you

24   were interested in, read the elements of that

25   claim, and then go look to see which combination

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1   of references might disclose those elements?

2   A.   I don't recall the exact process,

3   but I recall --

4   (Court reporter seeks

5   clarification.)

6   THE WITNESS: I recall trying to

7   understand, once I was familiar with all of

8   these different references and, you know,

9   refamiliarize myself with some of the ones that

10   I had -- I was already previously familiar with,

11   tried to understand the functionality of the

12   claim to understand how these things

13   functionally might combine, and then, of course,

14   as part of the analysis, would go through

15   limitation by limitation.

16   But if you're asking for, like,

17   precisely the order in which I read anything, I

18   don't remember off the top of my head. But

19   everything that I tried to do was always done,

20   you know, where I tried to understand fully what

21   these references are, so I really understood the

22   context so I wasn't, you know, taking something

23   out of context or anything like that or

24   misquoting or mischaracterizing.

25   I did my best to really try to

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1   capture what these prior art references were

2   doing in the context of -- they were describing

3   as I would understand someone of ordinary skill

4   would have understood them at the time.

5   BY MR. DUNHAM:

6   Q.   Sure. So let me ask it a little

7   different way. So did you identify the

8   particular combinations of references that you

9   settled upon just by reading the references

10   themselves, or did you use the claim as a

11   roadmap to figure out that the combination here

12   might be Plamondon plus, say, 802.11 or instead

13   of Plamondon plus Kozat.

14   How did you -- what I'm trying to

15   get to is the process of how you ultimately

16   chose which combinations you made.

17   A.   Ultimately, when I put the

18   combination in my declaration, I would only have

19   put in my declaration, as I think I clarified

20   and I'm happy to answer any questions.

21   Once I was sure that it did meet

22   all of the claim limitations, but there are many

23   instances where -- that in reading -- in reading

24   Plamondon, that it also just was obvious to me

25   that there were these problems that arose

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1   independent of the -- there was a -- the issues

2   that motivated the combinations as I read

3   Plamondon, these were obvious to me independent

4   of -- of the claim limitations as far as I

5   recall.

6   Q.   Could you turn to paragraph 35 in

7   your declaration, please. And please feel free

8   to read that paragraph to yourself.

9   A.   I've read it.

10   Q.   So I noticed in paragraph 35 that

11   you mentioned working with the people who fit

12   the characteristics of a POSA and being familiar

13   with their level of skill in and around

14   October 2009.

15   And my question is: You did not

16   go so far as to say that you were a POSA.

17   So my question is first: Under

18   your definition of a POSA, did you qualify as a

19   person of ordinary skill in the art as of

20   October 2009?

21   A.   So -- excuse me. I was asked to

22   apply a particular definition of a person of

23   ordinary skill in the art. I explained in my

24   paragraph 34 of that same declaration, page 17

25   of it, and I did add one slight assumption, one

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1   extra assumption to that definition of a person

2   of ordinary skill in the art.

3   I mentioned there, you know,

4   assuming the person described by POSA's

5   definition had some training in networking, I

6   explained that around there. By this

7   definition, yeah -- by both definitions, yes, I

8   met the -- the definition of a person of

9   ordinary skill in the art at that time.

10   Q.   As of October 2009, did you have

11   a Master's degree?

12   A.   I did not.

13   Q.   So to meet the definition, how do

14   you believe that you met the definition of a

15   person of ordinary skill in the art as of

16   October 2009?

17   A.   So in paragraph 32 of my

18   declaration, I say what the patent owner had

19   argued what a POSA was, and it was -- I'll just

20   read that real quick: "An individual who, as of

21   October 8, 2009, had a Master's degree or higher

22   in the field of electrical engineering, computer

23   engineering, or computer science, or, as of that

24   time, had a Bachelor's degree in at least one of

25   the same fields and two or more years of

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1   experience in internet communications."

2   So I did not have a Master's

3   degree, so I didn't meet that first condition.

4   I would just say a Master's degree had not been

5   conferred upon me, but I actually met all of the

6   requirements for a Master's degree in computer

7   science at the University of Maryland.

8   To be honest, I made the personal

9   choice not to do the one last step, which was

10   fill out a form to get that Master's degree.

11   I had been directly admitted into

12   the Ph.D. program and I decided at that point, I

13   did not want to have a Master's degree out of

14   fear that it would present to me an exit ramp

15   that I might say, yeah, I got a Master's degree,

16   that's enough, I won't finish the Ph.D. I

17   wanted to finish the Ph.D. I did finish the

18   Ph.D. In fact, I finished it less than a year

19   after October 8, 2009.

20   But back to the definition, as of

21   that time, had a Bachelor's degree in at least

22   one of the same fields, computer science was one

23   of those fields. I had a Bachelor's degree in

24   computer science, and two or more years of

25   experience in internet communications.

1   So I had received my Bachelor's

2   degree in computer science from the University

3   of Maryland in 2002. This was seven years

4   later. In that seven-year span -- actually,

5   while I was an undergraduate as well, I had

6   interned at Motorola for a couple of years

7   giving me experience in internet communications,

8   but in the seven years between when I graduated,

9   when I received my Bachelor's degree in computer

10   science, until October 2009, I had, over those

11   seven years, more than two years of experience

12   in internet communications.

13   I think this is evidenced by the

14   fact that I had -- but my sense of publication

15   record through that time as a Ph.D. student, I

16   published papers at -- prior to 2009, I

17   published papers at the top networking venues,

18   including a conference called ACM SIGCOMM,

19   that's spelled S-I-G-C-O-M-M.

20   I referenced that in my CV. I

21   had, prior to 2009, prior to October 2009, I

22   received a best paper award from the Network

23   Systems Design and Implementation Conference,

24   one of the top conferences in network systems.

25   I had, for several years, if not more, prior to

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1   2009, published papers on -- and again, it's

2   held conferences and workshops which are the

3   premier venues in computer science, on internet

4   communication, wireless communication, internet

5   routing, peer-to-peer networking.

6   So in these regards -- oh, also

7   at this time, I had been -- given invited talks.

8   I had been recognized, you know, with invited

9   talks and conferences for giving talks, I had

10   one, a Microsoft Live Labs fellowship for my --

11   based largely on my work in networking and

12   that's what ultimately led to me having two

13   summer internships with Microsoft.

14   So the one -- for the select few

15   folks who won this Microsoft Live Labs

16   fellowship, they were guaranteed an internship,

17   and I interned -- I don't remember the name of

18   their group, what it was called at the time, but

19   it was with other folks who also had met these

20   -- these criteria who did have Master's degrees

21   in these kinds of related fields and worked in

22   internet -- with experience in internet

23   communications.

24   So I think with my CV and with

25   these experiences, with the Bachelor's degree

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1   and the years of experience in internet

2   communications, the fact that I was less than a

3   year from completing my Ph.D., that the Master's

4   degree is a subset, the requirements -- I'm

5   sorry, for the Master's degree of computer

6   science, at least at the University of Maryland

7   or some set of the requirements of the Ph.D., I

8   would have already completed those requirements

9   by that point.

10   For all of those reasons, I think

11   that I do meet the definition of a person of

12   ordinary skill in the art.

13   Q.   At the bottom of paragraph 34 in

14   your declaration, you indicate that assuming the

15   person described by the POSA's definition had

16   some training in networking -- and I'll ask you,

17   did you mean to say by the patent owner's

18   definition before I continue with my question?

19   A.   I think I did mean that. I'm

20   sorry, based on your clarification, I think the

21   context was clear, but, yes, I do believe I

22   meant the patent owner.

23   Q.   So with that correction, so

24   assuming the person described by the patent

25   owner's definition had some training in

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1   networking, you say your analysis, conclusions

2   and opinions would not change if you applied

3   your definition rather than the one from the

4   patent owner.

5   Have you seen that?

6   A.   I see that, yes.

7   Q.   So my question is: What if the

8   POSA did not have training in networking, under

9   the patent owner's definition, would your

10   conclusions change?

11   A.   So as I also say a little earlier

12   in paragraph 34, I cannot comfortably say that a

13   person with only a Master's degree in electrical

14   engineering, for example, but no training

15   whatsoever in networking, would have been able

16   to understand, let alone apply the teachings of

17   the '319 patent, and likewise for the '510, and

18   I clarify here that -- in electrical engineering

19   or for these different degrees that are listed

20   by the patent owner's definition of a POSA,

21   which again are electrical engineering, computer

22   engineering, or computer science.

23   Electrical engineering, for

24   example, one could complete a Master's degree in

25   electrical engineering without ever taking a

1   networking class. You can take electrical --

2   you can choose electrical engineering courses

3   that are one hundred percent hardware and maybe

4   never learn the terms about networking.

5   So in that regard, if one doesn't

6   have -- didn't have, as I mentioned, at least

7   something equivalent to at least undergraduate

8   level class in networking, I'm not sure that

9   they would understand or be able to apply the

10   '319 patent's teachings.

11   Q.   In connection with your analysis

12   in this matter, have you ever heard of the

13   patent owner either by its current name, Bright

14   Data, or its former name, Luminati?

15   A.   I have heard of Luminati.

16   Q.   What knowledge did you have of

17   Luminati?

18   A.   As a company, no real familiarity

19   with the company. One of their products, as I

20   understand it, in one of my papers that I

21   published prior to even learning about this

22   case, some of my collaborators had, for one of

23   the experiments in that paper, had used

24   Luminati, and again, I don't know the specific

25   name of the product, especially used Luminati.

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1   I mean, that there was some

2   Luminati products, I don't know, to perform some

3   internal measurements. I wasn't involved in

4   running that experiment, so I don't know the

5   details. But to the extent that Luminati has a

6   product that allows for that type of

7   experimentation, that was my level of

8   familiarity. But I -- I, myself, had not used

9   it.

10   Q.   Do you know whether Luminati's

11 products have been successful in the market?

12   A.   I'm not sure what -- what you

13 mean by success. Again, my only familiarity was

14 that, for one of the experiments in my paper,

15 some of my colleagues had used some Luminati

16 products to -- to run an experiment, but I'm not

17 familiar with -- I can't really express any

18 familiarity with the products or what -- any

19 degree of success or not of -- in the market.

20   MR. DUNHAM: Okay. I promised

21 you a break every hour. We've been going just

22 over an hour, so why don't we take a ten-minute

23 break.

24   THE WITNESS: I appreciate that.

25 Thank you.

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1   THE VIDEOGRAPHER: The time is

2   10:04 a.m., and we're now off the record.

3   (Recess taken.)

4   (Discussion off the record.)

5   THE VIDEOGRAPHER: The time is

6   10:14 a.m., and we're now back on the record.

7   BY MR. DUNHAM:

8   Q.   Dr. Levin, during the break, did

9   you discuss your testimony with anyone?

10   A.   No.

11   Q.   I'd like you to turn to paragraph

12   41 of your declaration, please.

13   A.   Is this still the declaration for

14   the '319 patent?

15   Q.   Yes. I'm using that one as a

16   proxy.

17   A.   Right. I'm on paragraph 41.

18   Q.   I'm sorry, did you say 41?

19   A.   41, yes.

20   Q.   In paragraph 41, you state: "Any

21   host that makes a request of another host could

22   be considered a 'client.'"

23   Do you see that clause in the

24   paragraph?

25   A.   I see that, yes.

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1   Q.   Is that statement, that: "Any

2   host that makes a request of another host could

3   be considered a client," is that consistent with

4   your understanding of how a POSA understands the

5   term "client device" as used in the claims of

6   the '319 and '510 patent?

7   A.   So I've been asked to apply a

8   particular Court's construction of client device

9   as it pertains to these patents. In my

10   declaration, I also apply the patent owner's

11   construction, so that's the analysis that I was

12   -- that's the analysis that I did as it pertains

13   to the claim.

14   Q.   Well, under what you've referred

15   to as the Court's construction, would you agree

16   that any host that makes a request of another

17   host could be considered a client?

18   A.   The terms -- the constructions

19   that I used that start on page 43 of that

20   declaration, where the Court construed client

21   device to be a communication device that is

22   operating in the role of a client.

23   So I just want to make sure that

24   we're being really clear with the terms. I want

25   to make sure I'm understanding the question

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1   correctly.

2   So a POSA would understand that a

3   host that makes a request of another host would

4   be acting in the role of a client.

5   Q.   Okay. And that's what I'm trying

6   to get to.

7   And then in paragraph 41, your

8   declaration continues and says: "Any host that"

9   requests -- I'm sorry -- "Any host that services

10   the request of another could be considered a

11   server."

12   Do you see that language?

13   A.   I do see that language.

14   Q.   Based on the Court's

15   constructions from this case for the '319 and

16   '510 patents, would you agree that the Court's

17   -- that your statement that: "Any host that

18   services the request of another could be

19   considered a server," would that be consistent

20   with the way you applied the Court's

21   construction?

22   A.   Again, just to make sure that we

23   get the language just right, that I would say,

24   as I put it, a POSA would understand that any

25   host that services the request of another host

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1   would be acting in the role of a server.

2   Q.   Okay. Thank you.

3   What I'd like you to do is take

4   out a copy of the '319 patent, if you have that,

5   sir. And that's Exhibit 1001 from the 135 IPR.

6   A.   Would that be in your Sir Speedy

7   box?

8   Q.   Yes, it would be.

9   And I'm sorry, the video is

10   frozen again, so we are unable to see what

11   you're doing, so I apologize for not knowing

12   that you were trying to retrieve it.

13   A.   I'm just -- should be coming

14   back. I'm just going through it and getting the

15   '319 patent. I've obtained this document.

16   Q.   Great. So in performing your

17   analysis, did you review the '319 patent?

18   A.   Yes, I did.

19   Q.   And did you review the entirety

20   of the '319 patent in performing your analysis?

21   A.   Yes, I did.

22   Q.   I would ask you to turn to figure

23   1 of the '319 patent.

24   A.   I'm on figure 1.

25   Q.   And in particular, I want to ask

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1   you some questions about the relationship of

2   certain of the elements that are shown, and I'll

3   call your attention to those particular

4   elements.

5   So if you could look at client

6   device 14, client device 16, proxy server 6, and

7   web server 32.

8   Do you see those particular

9   elements?

10   A.   I do.

11   Q.   And, sir, when I direct you to

12   something like that, please feel free to review

13   any other portions of the document that you'd

14   like that will be helpful. I'm not trying to

15   prevent you from looking at anything, I'm just

16   trying to help focus your attention. Is that

17   understood?

18   A.   Yes, thank you. I appreciate

19   that.

20   Q.   So again, with reference to

21   figure 1, is it your understanding that

22   according to the '319 patent, client device 14

23   can send a request for content to proxy server

24   6?

25   A.   Can I have the question read back

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1   to me, please?

2   Q.   Certainly. Is it your

3   understanding that, according to the '319

4   patent, client device 14 can send a request for

5   content to proxy server 6?

6   A.   I'm not sure I completely agree

7   with that characterization, because I'm not sure

8   what part of the '319 patent you're referring

9   to.

10   As the '319 patent notes at the

11   bottom of column 3 of the '319 patent, it says

12   that: "Figure 1 is a schematic diagram

13   providing prior art example of use of a proxy

14   within a network."

15   So if you're referring to -- I'm

16   not sure which part of the '319 patent you're

17   talking about. If you're talking about the

18   invention or the claims, then I'm not sure that

19   it is applying to this figure. I wouldn't

20   necessarily characterize it that way, because it

21   clearly says that -- this is talking about prior

22   art.

23   But if your question is about

24   what prior art did, I can try to answer that

25   question.

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1   Q.   Sure. My question is trying to

2   get your understanding of figure 1.

3   And my question is: Reviewing

4   figure 1 of the '319 patent, do you understand

5   that client device 14 can send a request for

6   content to proxy server 6?

7   A.   My understanding is, in the

8   context of this prior work that, yes, a client

9   device would send a request to proxy server 6.

10   Q.   Okay. Thank you.

11   At the point in time when client

12   device 14 sends a request for context to proxy

13   server 6, would it be your opinion that client

14   device 14 was operating in the role of a client?

15   A.   At that particular time on

16   sending the request, I would say client device

17   14 at that particular point, in that particular

18   context, again, as it pertains to this prior

19   work would be acting in the role -- I'm sorry,

20   operating in the role of a client.

21   Q.   Okay. And when proxy server 6

22   receives a request for content from client

23   device 14, would proxy server 6 be operating in

24   the role of a server?

25   A.   I'm not sure I completely agree

1   with that characterization, just receiving a

2   request alone. I wouldn't say it means that

3   somebody is necessarily operating in the role of

4   a server. I could send a packet hypothetically

5   to some computer that is not running any

6   software that influences a server, and if I had

7   just received it, that alone might not be acting

8   in the role as a server, but as part of like a

9   bigger set of things -- so just receiving alone

10   would not necessarily constitute that. It kind

11   of depends on the context, but I would say

12   that's part of -- part of that process.

13   Q.   Let me see if this helps. I want

14   to give some more context to you.

15   A.   All right.

16   Q.   So if client device 14 sends a

17   request for content to proxy server 6, at the

18   time that proxy server 6 receives the request

19   for content, would you understand that proxy

20   server 6 is acting in the role of -- of a

21   server?

22   A.   It's part of the role of acting

23   as a server.

24   Q.   Okay. Now, is it your

25   understanding of figure 1 that when proxy server

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1   6 receives a request for content from client

2   device 14, proxy server 6 can send that request

3   for content on to web server 32?

4   A.   Again, in this context of this

5   being a figure from describing prior art, that

6   is my understanding.

7   Q.   Okay. At the point in time that

8   proxy server 6 sends a request for content to

9   web server 32, would you agree that proxy server

10 6 is acting in the role of a client?

11   A.   Yeah. And this is -- just to be

12 clear, this is a figure from -- describing prior

13 art, but when proxy server 6 sends a request and

14 so much as proxy server 6 sends a request to web

15 server 32, yes, I would say that is acting in

16 the role of a client at that point in time.

17   Q.   Okay. And is it your

18 understanding, then, that web server 32 can

19 receive requests for content from proxy server

20 6?

21   A.   That is my understanding.

22   Q.   Okay. At the point in time when

23 web server 32 receives a request for content

24 from proxy server 6, is web server -- is web

25 server 32 acting in the role of a server?

1   A.   As I mentioned previously, that's

2   part of -- part of it acting in the role of a

3   server.

4   Q.   Well, would you say that web

5   server 32 is acting in the role of a client

6   device when it receives a request for content

7   from proxy server 6?

8   A.   I'm sorry for speaking over you a

9   little bit there.

10   No, I would not say that.

11   Q.   Okay. Now, is it your

12   understanding that, according to the system

13   shown in figure 1, web server 32, upon receiving

14   a request for content from proxy server 6, would

15   send a response to proxy server 6?

16   A.   It's my understanding, of course,

17   if it's a well-formed request and there aren't

18   any other issues, that generally speaking, in

19   this figure describing prior art, that the web

20   server would respond back with a -- with a

21   response to the request that the proxy server

22   had sent.

23   Q.   At the point that web server 32

24   sends a response back to proxy server 6 in

25   response to the request for content that web

1   server 32 received, would it be your

2   understanding that web server 32 is operating in

3   the role of a server?

4   A.   That would be my understanding,

5   that -- when it's sending the response, yes.

6   Q.   And when proxy server 6 receives

7   the response from web server 32 and then in turn

8   sends that response back to client device 14,

9   would it be your understanding that proxy server

10   6 is then acting in the role of a server?

11   A.   Well, you -- your question sort

12   of combined two different steps.

13   When the proxy server is

14   receiving the response from the web server 32,

15   there, it's -- I would say it's acting in the

16   role of a client, and then when it sends that

17   response -- I think you said that it would be

18   forwarding that response, if I recall your --

19   your wording, when it sends that response to

20   client device 14, at that point, for that step,

21   it would be acting in the role of a server.

22   Q.   Okay. Thank you. And thank you

23   for that clarification.

24   Can we turn to figure 3 of the

25   '319 patent, please.

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1   A.   Yes, I'm there.

2   Q.   And just to help focus our

3 discussion, feel free to refer to anything you'd

4 like to, but I wanted to focus initially on

5 client 102, agent 122, and web server 152.

6   Do you see that?

7   A.   I see that, yes.

8   Q.   Is it your understanding then

9 that as shown in figure 3, client 102 can send a

10 request for content to agent 122?

11   A.   Yes, it's my understanding client

12 102 can send a request to agent 122.

13   Q.   Okay. At that point in time,

14 sir, when client 102 sends a request for content

15 to agent 122, is client 102 operating in the

16 role of a client device or a server?

17   A.   At that point in time, it is

18 acting in the role of a client.

19   Q.   Okay. And when agent 122

20 receives a request for content from client 102,

21 is it your understanding that agent 122 is

22 operating in the role of a server?

23   A.   As I mentioned, the context of

24 figure 1, that is part of agent 122 acting in

25 the role of a server.

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1   Q.   Okay. And then further,

2   sir, again, with reference to figure 3, when

3   agent 122 sends a request for content to web

4   server 152, is it your understanding that agent

5   122 is now operating in the role of a client

6   device?

7   A.   Yes.

8   Q.   Okay. So when web server 152

9   receives a request for content from agent 122,

10 is it your understanding that agent -- I'm

11 sorry, that web server 152 is operating in the

12 role of a server?

13   A.   As part of its -- as part of its

14 actions, it's operating in the role of a server.

15   Q.   And you would agree that web

16 server 152 at that point in time is not

17 operating in the role of a client device?

18   A.   Yes.

19   Q.   Now, if -- when -- at the point

20 in time when web server 152 sends a response to

21 agent 122, what role is web server 152 operating

22 in?

23   A.   When 152 sends a response to

24 agent 122, it's operating in the role of a

25 server.

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1   Q.   And when agent 122 receives a

2   response from web server 152, what role is agent

3   122 operating in?

4   A.   At that point in time, when it's

5   receiving a response from web server 152, I

6   would say it is operating in the role of a

7   client.

8   Q.   Okay. And then if agent 122

9   returns that response back to client 102, at

10 that point in time, what role is agent 122

11 operating in?

12   A.   When 122 is sending a response to

13 client 102, at that point, it is operating in

14 the role of a server.

15   Q.   Okay. And when client 102

16 receives the response from agent 122, what role

17 would you understand client 102 to be operating

18 in?

19   A.   At that particular time, client

20 102 would be operating in the role of a client.

21   Q.   So would it be your

22 understanding, then, that agent 122 is operating

23 in the role of a server when it receives

24 requests from client 102, but agent 122 is

25 operating in the role of a client device when it

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1   sends requests to web server 152?

2   A.   Yes.

3   Q.   Okay. Would you please take out

4   the Exhibit 1010, which is the published patent

5   application, that I think today we're referring

6   to as Plamondon.

7   A.   I have that.

8   Q.   Okay. We've been calling it

9   Plamondon, so if I mispronounce it, I'm not sure

10   which one is correct, please understand whether

11   I say Plamondon or Plamondon, my intent is to

12   refer to published United States Patent

13   Application 2008/0228938, which has been marked

14   as Exhibit 1010 in these proceedings.

15   Can we agree that either

16   pronunciation will refer to this same particular

17   reference?

18   A.   I can agree to that. I think I

19   tend to call it Plamondon.

20   Q.   Okay. We'll have three

21   variations, but I will understand also if you

22   refer to it in that fashion.

23   In connection with performing

24   your analysis in this matter, did you review the

25   Plamondon reference?

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1   A.   Yes, I did.

2   Q.   And did you review the entirety

3   of the reference?

4   A.   Yes, I did.

5   Q.   Okay. I'd like you to turn to

6   figure 1C of Plamondon.

7   A.   Okay. I'm on 1C.

8   Q.   And initially, I'd like to focus

9   on the top portion, the upper portion of figure

10   1C, and just for reference, the portion that

11   shows client 102 communicating through network

12   104 with appliance 200, which in turn

13   communicates to network 104 prime with server

14   106.

15   Do you see that portion of the

16   figure?

17   A.   I see that, yes.

18   Q.   Again, feel free to refer to any

19   other portions of the document as helpful to you

20   in answering my questions, but I just wanted to

21   focus you for orientation purposes on what I'm

22   going to focus my questioning on.

23   Is it your understanding that

24   according to Plamondon, as shown in figure 1C,

25   client 102 can send requests for content

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1   directed to server 106?

2   A.   My understanding is that it can

3   send requests for content directly to server

4   106, yes.

5   Q.   Okay. And if client 102 sends a

6   request for content that is directed to server

7   106, is it your understanding that appliance 200

8   intercepts that request?

9   A.   That it can intercept that

10   request, yes.

11   Q.   Okay. At the point in time when

12   client 102 sends a request for content, is

13   client 102 acting in the role of a client device

14   or a server?

15   A.   At that particular time, it is

16   operating in the role of a client.

17   Q.   Okay. Now, if client 102 sends a

18   request for content and appliance 200 intercepts

19   that request, at the time that appliance 200

20   intercepts the request, would you say appliance

21   200 is operating in the role of a client or a

22   server?

23   A.   As I mentioned in the previous

24   questions, I would say that that's part of its

25   role of operating in the role of a server.

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1   Q.   Okay. Is it further

2   your understanding, then, that after appliance

3   200 has intercepted a request from client 102,

4   appliance 200 can send that request on to server

5   106?

6   A.   Yes, that's my understanding.

7   Q.   At the point in time when

8   appliance 200 sends a request for content to

9   server 106, is appliance 200 operating in the

10   role of a client device or a server?

11   A.   At that point in time, I would

12   say it's operating in the role of a client.

13   Q.   And then it's your understanding

14   that server 106 will receive the requests that

15   were transmitted by appliance 200; is that

16   right?

17   A.   Generally speaking, yes.

18   Q.   Okay. At the point in time that

19   server 106 receives a request for content from

20   appliance 200, would server 106 be operating in

21   the role of a server or a client?

22   A.   At that point, I would say it's

23   part of its operations as -- part of its role of

24   operating in the role of a server.

25   Q.   Okay. And is it your

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1   understanding, then, that server 106 can send a

2   response to appliance 200, and meaning a

3   response after receiving a request for content?

4   A.   Yes, generally speaking, yes.

5   Q.   At the point in time that server

6   106 provides a response to appliance 200 for a

7   request for content, what role would you say

8   server 106 is operating under, within the

9   meaning of these client device and server terms

10   that we're discussing?

11   A.   Within this context, I would say

12   that server 106 is operating in the role of a

13   server.

14   Q.   Okay. And when appliance 200

15   receives a response from server 106, is

16   appliance 200 then operating in the role of a

17   client or a server?

18   A.   It's operating in the role of a

19   client.

20   Q.   Okay. And then at the point in

21   time that appliance 200 sends that received

22   response back to client 102, is appliance 200

23   operating in the role of a client or a server?

24   A.   At that point in time, when

25   appliance 200 sends the content or the response

1   to client 102, appliance 200 is operating in the

2   role of a server.

3   Q.   Okay. And then when client 102

4   receives the response with the content from

5   appliance 200, is client 102 operating in the

6   role of a client or a server?

7   A.   At that point in time, client 102

8   would be operating in the role of a client.

9   Q.   Okay. I'd like you to turn now

10   in Plamondon to figure 1A.

11   A.   I'm on that figure.

12   Q.   And again, for convenience, I'm

13   going to identify particular network elements so

14   we can sort of walk through the same flow, but

15   feel free to review -- refer to as much of the

16   document as you need, but I'd like to initially

17   focus on the pathway from client 102B through

18   network 104, to appliance 200, through network

19   104 prime to appliance 200 prime, through

20   network 104 double prime to server 106B.

21   Do you see that particular

22   pathway?

23   A.   Yes, I do.

24   Q.   Is it your understanding that in

25   Plamondon, client 102B can send requests for

1   content directly to server 106B?

2   A.   Yes, that's my understanding.

3   Q.   At the point in time that client

4   102B sends a request for content, is client 102B

5   acting in the role of a client or a server?

6   A.   At that point in time, it's

7   acting -- it's operating in the role of a

8   client.

9   Q.   Okay. Is it your understanding

10   that appliance 200 can intercept a request that

11   client 102B has directed to server 106B?

12   A.   That is my understanding.

13   Q.   At the point in time when

14   appliance 200 intercepts a request for content

15   that originated at client 102B, is appliance 200

16   operating in the role of a client or a server?

17   A.   As I mentioned in -- with these

18   previous questions pertaining to the previous

19   figures, I would say that's part of its role as

20   operating as a server.

21   Q.   Okay. Is it your understanding

22   further that once appliance 200 has received --

23   strike that. Let me start that question again.

24   Is it further your understanding

25   that once appliance 200 has intercepted a

1   request for content from client 102B, that

2   appliance 200 will forward that request for

3   content to appliance 200 prime?

4   A.   My understanding is that it can

5   do that, yes.

6   Q.   Okay. At the point in time that

7   appliance 200 forwards a request for content to

8   appliance 200 prime, what role would appliance

9   200 be operating in?

10   A.   At that point, I would say

11   appliance 200 is operating in the role of a

12   client.

13   Q.   Okay. And when appliance 200

14   prime receives a request for content that was

15   sent by appliance 200, what role is appliance

16   200 prime operating in?

17   A.   At -- at that point, it would, I

18   think, depend on what -- what role 200 prime is

19   serving in that particular embodiment.

20   Q.   Would you agree that when

21   appliance 200 prime receives a request for

22   content from appliance 200, that appliance 200

23   prime would be operating in the role of a server

24   insofar as appliance 200 prime has to figure out

25   how to generate a response for appliance 200?

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1   MR. WICHMAN: Objection.

2   THE WITNESS: Again, it depends

3   on the -- the specific embodiment of what 200

4   prime is doing.

5   BY MR. DUNHAM:

6   Q.   I'm sorry. I'll wait to see if

7   you're finished.

8   A.   But to the extent that 200 prime

9   in this particular embodiment would be trying to

10   service -- assist in servicing this request, I

11   would say that receiving that request from

12   appliance 200, when appliance 200 prime receives

13   that request, at that point in time, that's part

14   of it operating in the role of a server.

15   Q.   Okay. And if appliance 200 prime

16   having received a request from appliance 200, if

17   appliance 200 prime thereafter sent that request

18   to server 106B for content, what role would

19   appliance 200 prime be operating in?

20   A.   Similarly, depending on the

21   embodiments, but supposing that 200 prime is

22   trying to help service this request, at that

23   point, I would say appliance 200 prime is

24   operating in the role of a client.

25   Q.   And when server 106B receives

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 1    that request from appliance 200 prime, would you

 2    agree server 106B is operating in the role of a

 3    server?

 4            A.        As part of its operation in the

 5    role of a server.

 6            Q.        Okay.  And when server 106B

 7    responds with content to appliance 200 prime,

 8    what role would you say server 106B is operating

 9    in?

10            A.        When server 106B is sending back

11    a response to that request, server 106B at that

12    time is operating in the role of a server.

13            Q.        Okay.  And when appliance 200

14    prime at the point in time that it receives a

15    response with content from server 106B, would

16    you agree that appliance 200 prime is operating

17    in the role of a client?

18            A.        Again, insofar as appliance 200

19    prime is assisting in resolving this, then, when

20    receiving this content, this response from

21    server 106B, I would say appliance 200 prime, at

22    that point in time, is operating in the role of

23    a client.

24            Q.        Okay.  And obviously, I'm going

25    to work my way back through the path.  So when
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1   appliance 200 prime returns that response with

2   the content to appliance 200, what role would

3   appliance 200 prime be operating in?

4   A.   In the matter that we've been

5   discussing, 200 prime at that point -- appliance

6   200 prime at that point in time would be

7   operating in the role of a server.

8   Q.   Okay. And when appliance 200

9   receives the response with content from

10   appliance 200 prime, what role is appliance 200

11   operating in?

12   A.   At that point in time, appliance

13   200 is operating in the role of a client.

14   Q.   Okay. And if appliance 200

15   thereafter sends that response with the content

16   back to client 102B, what role is appliance 200

17   operating in?

18   A.   At that point in time, appliance

19   200 would be operating in the role of a server.

20   Q.   And when appliance 102B receives

21   the content from appliance 200, what role would

22   client 102B be operating in?

23   A.   I'm sorry, I think you may have

24   said "appliance 102B," is that what you said?

25   Q.   Let me withdraw that question,

1   then, so the record is clear. Thank you for

2   catching that. Let me withdraw my question and

3   ask it again.

4   When client 102B receives the

5   response from appliance 200 with the content

6   that client 102B has requested, what role is

7   client 102B operating in?

8   A.   At that point in time, client

9   102B would be operating in the role of a client.

10   Q.   I'd like to turn back to your

11   declaration. We can use the declaration from

12   the 135 patent if that's convenient for you --

13   I'm sorry, the declaration from the 135

14   proceeding.

15   A.   Okay.

16   Q.   Okay. And if you can turn to

17   paragraph 168 of your declaration.

18   A.   Okay. I'm on that paragraph.

19   Q.   If you'd like, please take a

20   moment to review that paragraph.

21   A.   Yes, I've reviewed it.

22   Q.   Is it your opinion that appliance

23   200 of the Plamondon reference corresponds to

24   the quote: "First client device of the '319

25   patent claims"?

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1   A.   Yes, Plamondon appliance 200 is

2   the first client device.

3   Q.   And is that -- is that because

4   when appliance 200 requests its content from

5   server 106, that appliance 200 is acting in the

6   role of a client?

7   A.   Well, it -- that's part of it.

8   Appliance 200 is the first client device. I

9   applied the Court's construction of this term

10   first client device to be, as I mentioned again

11   on page 43 of my declaration, it --

12   (Court reporter seeks

13   clarification.)

14   THE WITNESS: I'll try to start

15   over. Can I have the question read back to me?

16   BY MR. DUNHAM:

17   Q.   Sure. I'll just restate the

18   question. My question is -- I had asked you

19   that when -- I asked you first, whether you --

20   it was your opinion that appliance 200

21   corresponded to the first client device of the

22   '315 patent claims, and I believe you said, yes;

23   is that correct?

24   A.   That is correct.

25   Q.   And then my follow-on question

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1   where we had the audio glitch was: Is it

2   because when appliance 200 requests content from

3   server 106, that appliance 200 is operating in

4   the role of a client under the Court's claim

5   construction?

6   A.   So that's part of the reason why

7   Plamondon's appliance 200 is the first claim

8   device in these -- in these patent claims. I

9   applied the Court's construction, which is on

10   page -- I recap on page 43, starting on page 43

11   of that declaration for the '319 patent, that a

12   client device is a communication device that is

13   operating in the role of a client.

14   So I do know that appliance 200

15   at some parts does operate in the role of a

16   client, but I see that Plamondon's appliance 200

17   is the first client device because it meets all

18   of the claim limitations. It does everything

19   that the claims say that a first client device

20   does.

21   Q.   If you could look at paragraph

22   186 of your declaration as well. And please

23   take a moment to review that paragraph.

24   A.   Yeah, I've reviewed paragraph

25   186. I'm sorry, did you say 186?

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1   Q.   Yes, sir.

2   A.   Okay. I've reviewed 186.

3   Q.   Is it your opinion that client

4   102 of Plamondon corresponds to the second

5   server of the '319 patent claims?

6   A.   Yes, Plamondon's client 102 is

7   the second server from the '319 patent claims,

8   yes.

9   Q.   I'm sorry, did you say something

10   extra after your answer? I heard a noise.

11   A.   Oh, I think we're still talking

12   about claim 1 from this patent, so -- but client

13   102 corresponds to this second server in this

14   claim 1 that we've been discussing.

15   Q.   And that would be claim 1 of the

16   '319 patent, correct?

17   A.   Correct.

18   Q.   So I'd like you to turn back then

19   to the '319 patent, Exhibit 1001, and I'd like

20   to go to claim 1 with you.

21   A.   Okay.

22   Q.   Please take a moment to review

23   the claim.

24   A.   Okay, I've reviewed the claim.

25   Q.   Is it your understanding that

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1    claim 1 of the '319 patent recites a method

2    performed by the first client device?

3              A.        That is my understanding, yes.

4              Q.        If we could look at the first

5    step of claim 1 that recites:  "Receiving, from

6    the second server, the first content

7    identifier."

8                        Do you see that method step?

9              A.        I see that, yes.

10             Q.        Based on your understanding of

11   claim 1 -- I'm sorry, strike that.

12                       Based on your review of claim 1,

13   is it your understanding that the first client

14   device receives the first content identifier

15   from the second server?

16             A.        Yes, that's -- that's what it

17   says, yes.

18             Q.        Okay.  Can we turn to paragraph

19   192 of your declaration in the 135 IPR.

20             A.        I'm at that paragraph.

21             Q.        And please take a moment to

22   review it, if it's helpful to you.

23             A.        Okay.  All right.  I've reviewed

24   it.

25             Q.        There's a parenthetical you've
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1   included that says: "At step 605, the appliance

2   200 intercepts or otherwise receives a request

3   for an object from a client 102."

4   Do you see that language?

5   A.   I see that, yes.

6   Q.   Is it your opinion that Plamondon

7   discloses appliance 200 receiving the first

8   content identifier from client 102?

9   A.   Yes. As I say in my declaration,

10   in that paragraph, the appliance 200 intercepts

11   or otherwise receives a request for an object

12   from a client 102, and I describe that this

13   request -- that the request from a client to a

14   server to obtain the content or object

15   identified via the URL. And I explained that

16   that URL is the first content identifier.

17   Q.   Okay. And then consistent with

18   your earlier testimony, at the point in time

19   when appliance 200 receives a request for

20   content from client 102, we can agree that

21   appliance 200 is operating in the role of a

22   server, correct?

23   A.   When appliance 200 receives the

24   request from client 102, at that point in time,

25   appliance 200, that is part of its role of

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1   operating in the role of a server.

2   Q.   And at that same point in time,

3   appliance 200 is not operating in the role of a

4   client, correct, when it receives that request

5   for content from client 102?

6   A.   At that point in time, it's

7   operating in the role of a server and not

8   operating in the role of a client with respect

9   to that message exchange.

10   Q.   And I'm still talking about the

11   same message exchange.

12   At the point in time when client

13   102 sends a request for content and that request

14   is intercepted by appliance 200, client 102 is

15   operating in the role of a client, right?

16   A.   At that point in time, client

17   102, when it sends that request to appliance 200

18   is operating in the role of a client.

19   Q.   Okay. Can we go back to the '319

20   patent, please, for the moment?

21   A.   Yes.

22   Q.   Back to claim 1, and I want to

23   focus on the last step, if you can take a moment

24   to review that step.

25   A.   Okay. I've reviewed that last

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1   step.

2   Q.   Okay. So again, just for context

3   for both of us, the last step of claim 1 of the

4   '319 patent recites: "Sending, the first

5   content by the first client device to the second

6   server, in response to the receiving of the

7   first content identifier."

8   Do you see that language?

9   A.   I see that, yes.

10   Q.   Based on the claim language, is

11   it your understanding that the first client

12   device sends the first content to the second

13   server?

14   A.   Yes. My understanding of that

15   language is that the first -- the first client

16   device is sending the first content to the

17   second server.

18   Q.   Okay. If we could turn to

19   paragraph 206 of your dec in the 135 proceeding,

20   and please take a moment to review paragraph

21   206, sir.

22   A.   I've reviewed it.

23   Q.   Okay. I'd like to call your

24   attention to the portion of paragraph 206 where

25   you state, quote: "Plamondon describes several

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1   embodiments in which appliance 200 sends

2   requested content to client 102 in response to

3   receiving the URL comprising the content

4   identifier."

5   Do you see that language?

6   A.   I see that language.

7   Q.   At the point in time when

8   appliance 200 sends the requested content to

9   client 102, would you agree that appliance 200

10 is operating in the role of a server?

11   A.   At that point in time, when

12 sending the requested content to client 102, it

13 is operating in the role of a server.

14   Q.   And at the point in time when

15 client 102 is receiving the requested content

16 from appliance 200, would you agree that client

17 102 is operating in the role of a client?

18   A.   At that particular time when

19 receiving that content, client 102 is operating

20 in the role of a client.

21   Q.   I'd like you to take out the

22 other patent, which -- the '510 patent, which is

23 in the red box, but confusingly, it's also going

24 to have the same exhibit number on it, I

25 believe. Because it's a different proceeding.

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1   It will be Exhibit 1001 from the 138 IPR.

2   A.   I have what I believe to be that

3   document in front of me.

4   Q.   Okay. So this should be United

5   States Patent Number 10,484,510, marked as

6   Exhibit 1, correct?

7   A.   When you say Exhibit 1 --

8   Q.   I'm sorry, Exhibit 1001.

9   A.   Yes. This seems to be that

10   document, yes.

11   Q.   Thank you. In performing your

12   analysis in this case, did you review the '510

13   patent?

14   A.   Yes, I did.

15   Q.   Okay. And did you read all of

16   the patent?

17   A.   Yes, I did.

18   Q.   Okay. I'd like you to turn to

19   claim 1 of the '510 patent and please feel free

20   to take a moment and review it for yourself.

21   A.   Okay. I've -- I've read it.

22   Q.   Thank you. Could you please turn

23   now also to paragraph 166 of your declaration.

24   A.   I'm sorry, which declaration are

25   we talking about now, because we've switched to

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1   a different patent.

2   Q.   Sure. Let me just make sure I've

3   correlated the page numbers.

4   I believe it's the same paragraph

5   of your 138 declaration. So for you, the

6   right-hand binder on the desk, I believe.

7   MR. WICHMAN: Objection.

8   Counsel, can you just tell us

9   which declaration do you want him to look at?

10   MR. DUNHAM: Yes, I said the 138

11   declaration.

12   THE WITNESS: Just to remind me,

13   that's the declaration pertaining to the '510

14   patent, is that --

15   BY MR. DUNHAM:

16   Q.   Yes, sir.

17   A.   Okay. I have that in front of

18   me.

19   Q.   And paragraph 166, sir.

20   A.   Yes, I have that in front of me.

21   Q.   And this, for the record, is

22   Exhibit 1003, which is the declaration of

23   Dr. Levin -- Levin, I apologize -- in support of

24   the petition for the '510 patent.

25   So if you'd like to take a moment

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1   to look at paragraph 166 in the 138 declaration,

2   that would be fine.

3   A.   Okay. I've reviewed it.

4   Q.   It's your opinion that appliance

5   200 of Plamondon corresponds to the first client

6   device of the '510 patent claim; is that right?

7   A.   Yes. Plamondon's appliance 200

8   is the first claim device in this -- in this

9   first patent.

10   Q.   And is it further your opinion

11   that client 102 of Plamondon corresponds to the

12   second server of the '510 patent claims?

13   A.   It corresponds -- I'm sorry.

14   Client device 102 for Plamondon corresponds to

15   the second server in this claim 1 that we're

16   looking at, in the '510 patent.

17   Q.   Okay. So let's -- let's look

18   specifically now at claim 1 of the '510 patent.

19   Do you have that in front of you,

20   sir?

21   A.   I do.

22   Q.   Would you agree that the method

23   of claim 1 of the '510 patent is a method

24   performed by a first client device?

25   A.   Yes, I see that here.

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1   Q.   And I'd like you to look at the

2   first step of claim 1 of the '510 patent that

3   reads: "Establishing a transmission control

4   protocol (TCP) connection with a second server."

5   Do you see that?

6   A.   I see that.

7   Q.   Now, if it helps you to refer, we

8   can look at paragraph 187 of your 138

9   declaration.

10   A.   I see paragraph 187 from my '510

11   declaration.

12   Q.   Is it your opinion that Plamondon

13   describes appliance 200 establishing a TCP

14   connection with client 102 via network stack

15   267?

16   A.   Yes, that's a quote from

17   paragraph 187 of my declaration, yes.

18   Q.   Would you agree that Plamondon

19   only discloses establishing a TCP connection in

20   the context of client 102 requesting content

21   from a server 106?

22   A.   I'm not sure I would agree with

23   that characterization.

24   Q.   Are you able to point me to any

25   disclosure in Plamondon where client 102

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1   establishes -- well, strike that.

2   Are you able to point me to any

3   disclosure in Plamondon where a TCP connection

4   is established between client 200 and client

5   102, other than when client 102 makes a request

6   for content that is intercepted by appliance

7   200?

8   A.   Can I have that question read

9   back to me one more time, please?

10   Q.   Sure. Are you able to point me

11   to any disclosure in Plamondon where a TCP

12   connection is established between client 102 and

13   appliance 200, other than when client 102 is

14   requesting content from server 106 that is

15   intercepted by appliance 200?

16   A.   Yes. So in paragraph -- I'm

17   sorry, on page 77 of my declaration, paragraph

18   90 and further down the quote, that's a little

19   bit lower from -- it's a quote from Plamondon,

20   says -- I'll read a little bit of that: "When

21   an end node, such as the client 102 opens a new

22   TCP connection with another end node, such as

23   the server 106," and then it continues to

24   describe aspects of establishing the connection.

25   Also, on the next page, paragraph

1   191, I have another quote from Plamondon that

2   talks about appliance 200 establishing a TCP

3   connection with client 102, but all of these --

4   this establishment of the connection at this

5   point is happening at this TCP establishment --

6   during the TCP establishment stage, and that can

7   come before the client has issued a request for

8   the content.

9   So I word it -- the way I

10   believe, if I recall correctly, that you

11   characterized it was that it only establishes a

12   connection upon the client issuing the request,

13   but one of ordinary skill would have understood

14   that -- that generally speaking, from each TCP,

15   one first establishes a connection and then

16   issues the request.

17   There are some other variants

18   that one of ordinary skill would have understood

19   that might not directly always apply, but it

20   does not have to be -- this establishment of the

21   TCP connection does not itself have to be as a

22   direct result of the request being sent by the

23   client. The establishment can happen before the

24   client has issued the request.

25   Q.   In terms of the portions of

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1   Plamondon that you have cited in your report,

2   would you agree that the establishment of the

3   TCP connection between client 102 and appliance

4   200 occurs as part of the process of client 102

5   issuing a request for content directed to server

6   106?

7   A.   I'm not sure I would necessarily

8   characterize it that way.

9   Again, for some -- for many of

10   the initiations of TCP, it would be a necessary

11   precursor to it, but I don't know that I would

12   necessarily characterize it as it being part of

13   sending that request.

14   Q.   Well, can you point me to any

15   disclosure in Plamondon that indicates that a

16   TCP connection will be established between

17   client 102 and appliance 200 and appliance --

18   I'm sorry, and client 102 will not thereafter

19   issue a request for content directed to server

20   106?

21   A.   I'm not sure I can recall, off

22   the top of my head, precisely where Plamondon

23   would have articulated exactly that, but I can't

24   recall a part -- a specific quote that would

25   have said exactly that, but -- but a person of

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1   ordinary skill would have understood that --

2   that there's TCP establishment, you know,

3   there's also sending a request and that -- that

4   these are two different things, one would

5   understand that claim could have failed, that

6   after issuing that request, the request from the

7   user's perspective, for example, could have been

8   cancelled.

9   So I can't recall off the top of

10   my head a specific place in Plamondon where it

11   would have said specifically that, but one of

12   ordinary skill would have understood that it can

13   happen.

14   Q.   Well, is there anyplace in your

15   report, sir, of your analysis here that we're

16   looking at, that you can point me to, where you

17   described the establishment of a TCP connection

18   between client 102 and appliance 200, other than

19   related to client 102 issuing a request for

20   content directed to server 106?

21   A.   Where I discuss the establishment

22   of the TCP connection?

23   Q.   My question, sir: Is there

24   anyplace in your report, in your declaration,

25   that you can point me to, where you describe

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```
1    establishing a TCP connection between client 102

2    and appliance 200 other than in connection with

3    client 102 issuing a request for content

4    directed to server 106?

5            A.        The specific quotes that I had

6    just mentioned from paragraphs 190 and 191 from

7    my declaration in the '510 patent discuss

8    establishing a TCP connection, and as I'm

9    looking through this, does not explicitly

10   mention sending the request in the broader

11   context of -- of these claims, and being the

12   claim limitations, the -- that established TCP

13   connection is what's -- is what's used at least

14   for sending the first content, that's a final

15   step of that -- I'm sorry, I'm not quite

16   understanding the question.

17           Q.        Well, would you agree in

18   paragraph 190 -- let me start it again.

19                     Would you agree that in your

20   report in paragraph 190, as captured by the last

21   sentence to the initial part before the block

22   quote, you say:  "Plamondon describes in detail

23   the process by which client 102 and server 106

24   established a TCP connection via appliance 200."

25           A.        I say that, yes.
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1   Q.   Is there any other part in

2   paragraph 190 or anywhere else that you can

3   point me to, where client 102 and server 106

4   established a TCP connection via appliance 200,

5   other than in connection with client 102 sending

6   a request for content?

7   A.   Again, I would point you to

8   paragraph 191, where I discuss another way in

9   which appliance 200 establishes a TCP connection

10   with 102 and a TCP connection with server 106.

11   And here, I'm not -- in this

12   example, I'm not explicitly mentioning the

13   request for it, but I think generally speaking,

14   this would -- this would precede the client --

15   if the client was sending a request, this would,

16   in most --

17   Q.   Would precede what, sir?

18   A.   Would precede the client sending

19   that request. The client 102 sending that

20   request.

21   Q.   So let's go back to the '510

22   patent and my question for you, sir, is: Would

23   you agree that when client 102 sends a request

24   for content directed to server 106 and that

25   request is intercepted by appliance 200, client

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1   102 is operating in the role of a client?

2   MR. WICHMAN: Objection.

3   Misstates the record.

4   Actually, Counsel, can we just

5   clean this up? Before -- you said, you want to

6   refer to the patent -- the '510 patent and you

7   referred to a request being intercepted by

8   appliance 200, but I think you meant to say

9   something different, because appliance 200 is

10   Plamondon.

11   MR. DUNHAM: I'm happy to ask

12   another question. I disagree that my question

13   was inappropriate or improper, but I will ask a

14   fresh question.

15   BY MR. DUNHAM:

16   Q.   Dr. Levin, when client 102 of

17   Plamondon sends a request for content and that

18   request is intercepted by appliance 200, would

19   you agree that client 102 is operating in the

20   role of a client?

21   A.   In Plamondon, when client 102

22   sends a request for content, that --

23   (Court reporter seeks

24   clarification.)

25   THE WITNESS: When client 102 is

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1   sending a request for content to appliance 200,

2   or if it's intercepted by appliance 200, at that

3   point in time, client 102 is operating in the

4   role of a client.

5   BY MR. DUNHAM:

6   Q.   Okay. And if we could go, then,

7   to the '510 patent, claim 1, and in particular,

8   to the last step, which reads: "Sending the

9   received first content, to the second server

10   over the established TCP connection, in response

11   to the receiving of the first content

12   identifier."

13   Do you see that language?

14   A.   I see that language, yes.

15   Q.   Based on that claim language, is

16   it your understanding that the first client

17   device sends the first content to the second

18   server?

19   A.   First client device sends the

20   first content to the second server. That's my

21   understanding, yes.

22   Q.   And could you please turn to

23   paragraph 211, 211 of your '510 dec from the 138

24   IPR. And please feel free to review that

25   paragraph.

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1   A.   I've reviewed that paragraph.

2   Q.   In the first sentence, do you see

3   the language that reads, quote: "Plamondon

4   describes several embodiments in which appliance

5   200 sends received content to client 102 in

6   response to receiving the URL comprising the

7   content identifier."

8   Do you see that?

9   A.   I see that language, yes.

10   Q.   At the point in time when

11   appliance 200 sends the requested content to

12   client 102, would you agree that appliance 200

13   is operating in the role of a server?

14   A.   At that point in time, I would

15   say appliance 200 is operating in the role of a

16   server.

17   Q.   And at the point in time when

18   client 102 receives the requested content from

19   appliance 200, would you agree that client 102

20   is operating in the role of a client?

21   A.   At that point in time, that

22   client 102 is operating in the role of a client.

23   MR. DUNHAM: I try to be honest

24   with everyone. I see I've gone actually a

25   little bit over my hour, so why don't we take

1   another ten-minute break.

2   THE WITNESS: Okay, thank you.

3   THE VIDEOGRAPHER: The time is

4   11:20 a.m. and we're now off the record.

5   (Recess taken.)

6   THE VIDEOGRAPHER: The time is

7   11:32 a.m. and we are now back on the record.

8   BY MR. DUNHAM:

9   Q.   Dr. Levin, would you agree that

10   the Plamondon reference is directed to

11   prefetching objects for caching using QOS?

12   A.   Some of Plamondon's embodiments

13   involve that.

14   Q.   In Plamondon, do you agree that

15   they describe appliance 200 being an

16   intermediary for a client in a branch office and

17   a server on a corporate LAN?

18   A.   Can you point me to a specific

19   paragraph for Plamondon that you might have had

20   in mind?

21   Q.   First, I'd like to know if that's

22   your understanding of Plamondon, and then I will

23   point you to a portion of the reference.

24   A.   Okay. Could you say it one more

25   time?

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 1              Q.         Sure.  Would you agree that
 2     Plamondon discloses appliance 200 being an
 3     intermediary between a client and a branch
 4     office and a server on a corporate LAN?
 5              A.         I would agree that that's one of
 6     the many embodiments and architectures and
 7     setups so to speak that Plamondon describes.
 8     One of many.
 9              Q.         If we could flip back to your 135
10     declaration from the '319 patent.
11              A.         Okay.
12              Q.         And specifically paragraph 154.
13                         This is citing Plamondon, but I'm
14     just thinking you might be more comfortable in
15     your report.  So it's your paragraph 154.
16              A.         Yes, I see that paragraph.
17              Q.         And I guess I'll ask it this way.
18                         If you could review paragraph
19     154, I just want to ask if you stand by what you
20     wrote in paragraph 154.
21              A.         Okay, I've reviewed it, and yes,
22     I stand by it.
23              Q.         Okay.  Could you look at
24     paragraph 2 of Plamondon, and I'm kind of
25     bouncing back and forth a little bit between the
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1   patent and your report.

2   A.   Okay, I've -- I've read paragraph

3   2 of Plamondon.

4   Q.   With reference to the second

5   sentence of paragraph 2 in the Plamondon

6   reference, would you agree that as of the date

7   of Plamondon, back in 2008, 2009, it would be a

8   fair statement that many business entities

9   desired to consolidate their computing

10   infrastructure to a single geographic location

11   in order to simplify maintenance and

12   administration?

13   A.   I see that Plamondon mentions

14   that, and I can understand, and I think one of

15   ordinary skill at the time would have understood

16   that there are some benefits conferred by

17   consolidating computing infrastructure in that

18   way, sure.

19   Q.   In connection with the opinions

20   that you render in this case that you describe

21   in your report, you -- I believe you testified

22   earlier, and please correct me if I'm wrong,

23   that all of the assessments you made were from

24   the perspective of a person of ordinary skill in

25   the art; is that right?

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1   A.   Yes, that's what I -- that's how

2   I attempted to do my analysis, yes.

3   Q.   And when you applied the analysis

4   -- strike that.

5   When you performed your analysis

6   from that perspective, what timeframe were you

7   using, like, reading the references as of what

8   timeframe?

9   A.   I mentioned that in my

10   declaration -- just a moment.

11   So I mentioned -- in that -- my

12   declaration for the '319 patent on paragraph 18,

13   I mentioned that I applied that analysis, you

14   know, in reference to the October 2009

15   timeframe.

16   Q.   Now, in the analysis of Plamondon

17   that you discussed in your declarations -- so I

18   want to focus you carefully to the analysis that

19   you performed and discussed of Plamondon.

20   Would you agree that in each of

21   the notes that you discuss, all traffic from

22   client 102 destined to server 106 would pass

23   through appliance 200?

24   A.   In -- in all of the scenarios

25   that involves client 102 communicating through

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1   appliance 200 in order to reach server 106,

2   then, yes, the -- the relevant traffic, at least

3   particularly the traffic as it pertains to the

4   claims goes through appliance 200.

5   Q.   Okay. Thank you for that

6   clarification.

7   Further in the analysis of

8   Plamondon that you discuss in your declarations,

9   is it your understanding that client 102 sends

10   requests with a destination address of server

11   106?

12   A.   My understanding -- give me just

13   a moment, please.

14   Q.   Certainly.

15   And the camera, sir, has frozen,

16   so if you could please just tell us what

17   materials you are referring to, I would

18   appreciate it.

19   A.   Oh, sure. I'm looking through my

20   declaration.

21   Q.   All right. Thank you.

22   A.   Would you mind repeating the

23   question or could I have that read back to me?

24   Q.   Sure, I'll repeat it. What I'm

25   trying to get to is, in the analysis that you

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1 describe in your report, do you agree that the

2 client 102 sends requests with a destination

3 address of server 106?

4   MR. WICHMAN: Objection. Form.

5   THE WITNESS: It's my

6 understanding that at least in some embodiments,

7 that can involve client 102 sending a packet

8 where the destination address is server 106, but

9 it's not clear to me that it precludes other --

10 other kinds of embodiments.

11 BY MR. DUNHAM:

12   Q.   My question, sir, is: In the

13 analysis that you performed and discussed in

14 your declaration, is there anyplace where you

15 discussed client 102 sending packets for -- with

16 request for content that are -- that do not have

17 a destination address of server 106?

18   A.   I think I specifically stated

19 exactly what the destination address is in all

20 cases, but there are instances where an

21 embodiment, as one of ordinary skill in the art

22 at the time would have understood, it could

23 involve client 102 sending a packet with server

24 106 as the destination address.

25   Q.   But my question is -- is a little

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1   bit different, which is: In the analysis that

2   you described in your report, is there anyplace

3   where you discuss client 102 sending a request

4   for content with a destination address with

5   something other than server 106?

6   A.   This is a little bit hard

7   question to answer because a -- so I think of a

8   request in this context of HTTP, for example.

9   This request, an HTTP request, that application

10   layer request message is the payload of another

11   packet at, for example -- for example, the

12   payload of, say, the TCP packet which could in

13   turn be a payload of an IT packet.

14   Of course, as one of ordinary

15   skill would understand at the time, that request

16   could be in the payload of an IT packet, but

17   that IT packet could itself be the payload of

18   another IT packet, and those could both

19   potentially have different destination IP

20   addresses. This would be an example of -- what

21   I think I called tunneling in my background

22   section on networking.

23   So I'm having a little bit of

24   trouble answering your question because the

25   given request could be associated with more than

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1   one destination IP address, as -- I've

2   understood what Plamondon has taught.

3   As I think one of ordinary skill

4   in the art would have understood at the time,

5   that it can intercept messages in many different

6   ways.

7   One way would be where the

8   client, or there's, say, a single destination IP

9   address, in which case the client would put --

10   in this example, the server 106's IP address as

11   the destination IP address in that single IP

12   header, but it also teaches interception in a

13   way that one of ordinary skill in the art would

14   understand could include, that it would have

15   that IP packet with the IP header of the server

16   106 -- with the server 106's IP address in the

17   destination IP address, but that could be

18   encapsulated inside of another IP packet where,

19   for example, appliance 200 could have been the

20   destination IP address.

21   So I just want to be really

22   careful in answering the question that -- which

23   destination IP address are you talking about,

24   and what -- what exactly do you -- are you

25   referring to when you say associating that

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1   request with a -- with a destination IP address.

2   And I believe you said

3   destination IP address, if I'm recalling

4   correctly from the question.

5   Q.   Would you agree that in the

6   embodiments that you relied upon in your

7   declaration, that when server 106 receives a

8   request for content that originated with client

9   102, the request received by server 106 would

10   include the IP address of server -- of client

11   102?

12   A.   I'm not sure I would necessarily

13   agree with that characterization.

14   Q.   Let me make sure the question is

15   clear because I made a mistake at the end of it.

16   So let me reask it and just listen carefully,

17   please.

18   Would you agree that the

19   embodiments of Plamondon that you relied upon,

20   when server 106 receives a request for content

21   that originated from client 102, the source

22   address of client 102 would be included as part

23   of the request that was received by server 106?

24   A.   I would not necessarily agree

25   with that characterization.

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1   (Court reporter seeks

2   clarification.)

3   THE WITNESS: Shall I continue?

4   BY MR. DUNHAM:

5   Q.   What I'd like you to do is point

6   me to something in your report where you say

7   that server 106 would receive a request for

8   content that originated from client 102, but the

9   IP address, the source IP address of client 102

10   would not be part of that received request.

11   A.   In my declaration for the '510

12   patent, page 78, paragraph 191. I can give you

13   a moment to go there, but I'll --

14   Q.   I'm there.

15   A.   Okay.

16   I mention paragraph 0256 from

17   Plamondon, which is one of -- it's several

18   embodiments in which appliance 200 establishes a

19   TCP connection with client 102, and what it

20   describes here, I've underlined it, in other

21   embodiments, the appliance 200 terminates the

22   first transport layer connection, such as a TCP

23   connection of a client 102, and establishes a

24   second transport layer connection to a server

25   106 produced by or on behalf of the client 102.

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1   For example, the second transport

2   layer connection is terminated at the appliance

3   200 and the server 106.

4   So there are -- one of ordinary

5   skill in the art would understand that there are

6   multiple ways of doing that. One of which

7   involves appliance 200 being the source IP

8   address -- I'm sorry, wait a minute.

9   Appliance 200's IP address as

10   being the source IP address in that TCP

11   connection -- sorry. Let me -- let me make sure

12   I get that right.

13   An appliance 200's IP address is

14   the IP address associated with the TCP

15   connection. The second transport layer

16   connection that appliance 200 establishes with

17   server 106, in that particular embodiment, which

18   would have been pretty well known to someone of

19   ordinary skill in the art, from server 106's

20   perspective, if the -- appliance 200's IP

21   address would be in the source -- would be the

22   source IP address in the packets that the server

23   106 receives over that second transport layer

24   connection.

25   But again, one of ordinary skill

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1   in the art would understand that that's one

2   embodiment. There are other embodiments where

3   appliance 200, even while establishing that

4   second TCP connection, it could reuse client

5   102's IP address. It would depend on that

6   particular network's apology and embodiment and

7   Plamondon teaches us that these networks can

8   take on virtually any network's apology.

9   BY MR. DUNHAM:

10   Q.   Which declaration are you in,

11   sir, so I'll give you the corresponding

12   paragraph number.

13   A.   I'm looking at the -- the

14   declaration pertaining to the '510 patent right

15   now.

16   Q.   So could you turn to paragraph

17   158, please, in that particular declaration?

18   A.   Yeah, I'm at paragraph 158.

19   Q.   And the first -- please take a

20   moment to read the paragraph.

21   A.   Okay. I've read that paragraph.

22   Q.   My first question is -- and

23   again, I just asked you to read it carefully.

24   Do you stand by everything you

25   stated in paragraph 150, today, as you testify

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1   under oath?

2   A.   Yes, I stand by this.

3   Q.   Could you look to your 135

4   declaration from the '319 patent, please.

5   A.   Okay, I'm at the '319

6   declaration.

7   Q.   And if you could please turn to

8   paragraph 388 and review that paragraph.

9   A.   I've reviewed paragraph 388 in

10   the '319 declaration.

11   Q.   I just want to make sure I

12   understand one of the sentences, and it's the

13   second sentence that says: "Like the computing

14   devices in Plamondon and the '319 patent, the

15   Price coordinating computer is a general purpose

16   computer."

17   Do you see that language?

18   A.   I see that.

19   Q.   Again, just a matter of grammar.

20   I want to make sure I understand it.

21   Is it your opinion that the

22   computing devices in Plamondon, the computing

23   devices in the '319 patent, and the Price

24   coordinating computer are each general purpose

25   computers?

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1              A.      Yes, that's my position.  I would

2    agree with that.

3              Q.      Okay.  Thank you.

4                      If we could turn to Plamondon

5    again for a moment, sir, and in particular, to

6    figure 1A.

7                      Please let me know when you're

8    there.

9              A.      Okay.  I'm there.

10             Q.      Did you discuss any embodiments

11   in your declaration where, if appliance 200 were

12   to forward requests for content, they would not

13   be intercepted by appliance 200 prime?

14             A.      Just give me a moment.

15             Q.      Certainly.

16             A.      I'm looking again at my

17   declaration for the '510 patent, paragraph 144.

18             Q.      I'm sorry, was that 144?

19             A.      144 on page 57.  I mention that

20   it can use one or more network optimizational

21   appliances, 200, 200 prime.  Those are what it's

22   referring to, Plamondon paragraph 0202.

23                     So in that case, because it's one

24   or more, there could be instances where

25   appliance 200 is operating without appliance 200
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1   prime, and, therefore, that appliance 200 prime

2   would not necessarily be intercepting the

3   messages from appliance 200.

4   Q.   Sure. What I'm asking is: In

5   the embodiments that you've analyzed where there

6   are both appliance 200 and 200 prime, would you

7   agree that in the conditions where appliance 200

8   forwards a request for content, that that

9   request will always go to appliance 200 prime?

10   A.   I wouldn't agree with the

11   characterization in that not all of the

12   embodiments that I reference require an

13   appliance 200 prime.

14   Q.   Sure. So let me make sure my

15   question is clear.

16   I'm limiting it to the

17   embodiments where there are both an appliance

18   200 and an appliance 200 prime.

19   And my question is: Where there

20   is both an embodiment -- I'm sorry, both an

21   appliance 200 and an appliance 200 prime, would

22   you agree that in each case where appliance 200

23   forwards a request for content, that request

24   will be intercepted by appliance 200 prime?

25   A.   In a specific embodiment where --

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1   you're asking in the event where there exists

2   both an appliance 200 and a 200 prime, I believe

3   that question is asking if every single request

4   coming from appliance 200 towards server 106,

5   for example, if every single request necessarily

6   goes through appliance 200 prime.

7   And I wouldn't completely agree

8   with that characterization because Plamondon

9   speaks of, on paragraph -- sorry, on page 59 of

10   my '510 declaration, paragraph 150, I know that

11   he says that these networks can take any form of

12   its apology.

13   So as a result, there can be

14   network forms of apologies where not necessarily

15   every single request coming from appliance 200

16   goes through a appliance 200 prime.

17   So as I mentioned, again, on --

18   my paragraph 144, it could be one or more, 200,

19   200 prime, and that implies that there could be

20   a 200 double prime. So to say that it all

21   necessarily goes through 200 prime, even if --

22   even if it were the case that there was only

23   exactly 200 and 200 prime, as I think your

24   question is trying to establish, even in that

25   case, Plamondon doesn't teach away instances

```
 1    where the requests from appliance 200 would not

 2    go through 200 prime, but it also teaches that

 3    it could be for network forms of apologies where

 4    all requests go from appliance 200 through 200

 5    prime, so I don't think it limits it to that,

 6    but it also doesn't preclude it.

 7              Q.        Other than generic statements, as

 8    you pointed to in paragraph 150 of your

 9    declaration that states:  "These networks can

10    take any form of apology."

11                        Can you point me to any specific

12    embodiment in Plamondon where a request for

13    content that has been intercepted by appliance

14    200 and it's destined towards server 106, where

15    that request, they forward it towards the

16    server, does not go through appliance 200 prime?

17              A.        As the embodiments that I

18    mentioned in 144 where it says there's one or

19    more appliances, 200 and 200 prime.

20              Q.        So is that your answer, that just

21    the -- the generic recitation, that there could

22    be many or any of these different devices is --

23    is the support for your contention that requests

24    for content that are forwarded from appliance

25    200 towards server 106, they do not necessarily
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 1      go through 200 prime.  Is that your testimony?
 2                    A.        Not that it's just that, but that
 3      also combined with this -- this idea that the
 4      networks can take any form of its apology and it
 5      describes some network's apologies, and then
 6      also says that the network -- I'm sorry,
 7      Plamondon, paragraph 204, says network 104 and
 8      network's apology may be of any such network or
 9      network's apology, as known to those ordinarily
10      skilled in the art or people supporting the
11      operations herein.
12                          So it's my opinion that one of
13      ordinary skill in the art would have understood
14      that the embodiments -- where it does -- where
15      the traffic -- the request, going from 200
16      towards server 106 could go through appliance
17      200 prime, or could not go through appliance 200
18      prime.
19                    Q.        But sitting here today, can you
20      point me to specific words in Plamondon that say
21      that the requests for content that appliance 200
22      may be forwarding on towards server 106, can you
23      point me to any specific language where it says
24      if there was a 200 prime, that those requests
25      would not have to go through it?
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1   MR. WICHMAN: Object. Asked and

2   answered.

3   THE WITNESS: I believe I

4   answered that question.

5   BY MR. DUNHAM:

6   Q.   Okay. Can you turn to paragraph

7   314, just for reference of your 135 deck which

8   is the '319 patent?

9   A.   What was that number again? I'm

10   sorry.

11   Q.   314, and it's really an anchor

12   point for you, and this is of the '319

13   declaration in the 135 proceeding.

14   A.   I see that.

15   Q.   Is it your understanding that in

16   Plamondon, a cached object may be located on

17   appliance 200 or on appliance 200 prime?

18   A.   It's my understanding that in

19   some embodiments, yes, the cached object could

20   be on 200 -- appliance 200 or 200 prime.

21   Q.   Okay. And in paragraph 314, are

22   you describing that basic possibility, that a

23   cached object, for example, may not be on

24   appliance 200, but it may be on appliance 200

25   prime?

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1   A.   That's what I'm describing in

2   this paragraph, yes.

3   Q.   Okay. And you're citing in the

4   brackets in paragraph 314 of your declaration,

5   you cite bracket 0446, close bracket.

6   That's paragraph 446 of

7   Plamondon, correct?

8   A.   That's what I'm referring to

9   there, yes.

10   Q.   Would you agree that in paragraph

11   446 of Plamondon, the reference does not

12   disclose that a request for an object from

13   client 102 is sent directly to appliance 200

14   prime instead of being sent to appliance 200?

15   A.   Paragraph 446 is I think building

16   off of the context established in paragraph 444

17   that says that it's appliance 200 -- it says:

18   "The appliance 200 intercepts or otherwise

19   receives a request for an object from a client

20   102."

21   Q.   Right. So I'm just trying to

22   make sure that we're clear.

23   In the situation where a cached

24   object of interest is located at appliance 200

25   prime, according to the cited portion of

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1   Plamondon, client 102 would direct a request for

2   that object that would be intercepted first by

3   appliance 200 and then forwarded on to appliance

4   200 prime; is that right?

5   A.   Yes.

6   Q.   Okay. And in that case, where

7   the object of interest by client 102, that

8   object of interest was on appliance 200 prime

9   and appliance 200 forwarded the request to 200

10   prime, would you agree that appliance 200 prime

11   would ultimately return that object via

12   appliance 200 to get it back to client 102?

13   MR. WICHMAN: Object.

14   THE WITNESS: It does -- it does

15   describe an embodiment in which that would

16   happen, yes.

17   BY MR. DUNHAM:

18   Q.   Are you aware of any embodiments

19   where, if client 102 made a request for an

20   object, that request was intercepted by

21   appliance 200, that same request was forwarded

22   and intercepted by appliance 200 prime, are you

23   aware of any embodiment where appliance 200

24   prime would return that object directly to

25   client 102 without it passing back through

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1   appliance 200?

2   MR. WICHMAN: Objection. Form.

3   THE WITNESS: Can I have the

4   question read back to me, please?

5   BY MR. DUNHAM:

6   Q.   Sure. What I'm asking is -- and

7   I'll just repeat it for you, sir.

8   Are you aware of any embodiments

9   in Plamondon that you've discussed where -- when

10   an object of interest by client 102 is located

11   on appliance 200 prime and the request for that

12   object has reached appliance 200 prime through

13   appliance 200, are you aware of any embodiment

14   where appliance 200 prime will return that

15   object to client 102 bypassing client -- I'm

16   sorry, appliance 200?

17   MR. WICHMAN: Objection. Form.

18   BY MR. DUNHAM:

19   Q.   Let me ask another question.

20   I'll withdraw that question. Let me ask it this

21   way. I'm trying to get to the same point, but

22   I'd like to ask a clearer question.

23   If client 102 issues a request

24   for an object and that object exists in the

25   cache of appliance 200 prime but not on

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1   appliance 200, and the request from client 102

2   reaches appliance 200 prime by coming through

3   appliance 200, are you aware of any disclosure

4   in Plamondon where appliance 200 prime could

5   return that object to client 102 bypassing

6   appliance 200?

7   A.   I don't believe that Plamondon

8   teaches that away. I'm just saying, I don't

9   think it says that it cannot happen. On

10   paragraph 447, it just refers to the appliance

11   transmits the cached object to 102, and so in

12   this case, I believe one of ordinary skill would

13   -- could understand that in this case, it could

14   be, as you describe, the cached object going

15   from 200 prime to 200, back to the client.

16   There could potentially be an

17   embodiment where the appliance there refers to

18   200, but in the -- certainly, what you've

19   described is an embodiment that Plamondon

20   describes.

21   MR. DUNHAM: Okay. I'm looking

22   at the clock and I promised you about quarter

23   after, we could take a lunch break, so this is

24   -- in terms of where we are, I think a good

25   point to take that break.

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1   MR. WICHMAN: How long, 30

2   minutes, 20 minutes?

3   MR. DUNHAM: 30 minutes is fine

4   by me, 30 or 45, certainly, either of those will

5   work. Whatever is good for Dr. Levin.

6   MR. WICHMAN: Why don't we shoot

7   for 30.

8   MR. DUNHAM: Okay.

9   MR. WICHMAN: If that's agreeable

10   to everybody. So 12:45 -- by local time, 12:45

11   local here, we'll resume.

12   MR. DUNHAM: It works.

13   THE WITNESS: Thank you.

14   THE VIDEOGRAPHER: The time is

15   12:14 p.m. and we are now off the record.

16   (RECESS TAKEN)

17   THE VIDEOGRAPHER: The time is

18   12:47 p.m. and we are now back on the record.

19   BY MR. DUNHAM:

20   Q.   Dr. Levin, did you discuss your

21   testimony with anyone during the lunch break

22   that we took?

23   A.   No, I did not.

24   Q.   Sir, I meant to ask you earlier,

25   are you the named inventor on any patents?

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1   A.   I believe I -- I do have a patent

2   where I'm one of the named inventors.

3   Q.   Do you know if that patent has

4   issued?

5   A.   I don't know exactly. This was

6   -- this would have been work as a result of one

7   of my internships with Microsoft Research. So

8   they -- Microsoft was the one who filed for that

9   patent and I never really tracked the status of

10   it.

11   Q.   I understand that you have

12   retrieved from the box of materials that we

13   provided, two particular documents. One is

14   Exhibit 1023, which is United States Patent

15   Publication to Price, and that's document No.

16   2006/0026304, and the other document is

17   Exhibit 1024, another United States Patent

18   Publication to Kozat, publication No.

19   2009/0055471.

20   Do you have those two exhibits

21   before you, sir?

22   A.   I have what appear to be those

23   exhibits, yes.

24   Q.   Do you have some reason to

25   believe you do not have complete copies of

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1   Exhibits 1023 and 1024?

2   A.   No, not that I can tell, but just

3   flipping through it, it looks like it's all

4   there, but if it -- it looks like it's all

5   there.

6   Q.   Let's start with Exhibit 1023

7   which is the Price reference.

8   Can we refer to this as Price,

9   would that be acceptable?

10   A.   Sure.

11   Q.   Have you reviewed the Price

12 reference before?

13   A.   Yes, I have.

14   Q.   And was that in connection with

15 preparing your declaration in this matter?

16   A.   Yes.

17   Q.   Did you read all of the Price

18 reference?

19   A.   Yes, I have.

20   Q.   Is the Price reference something

21 that had been provided to you for your work in

22 this matter, or was this something that you

23 uncovered in connection with your work?

24   A.   This particular reference was

25 provided to me. I was -- I was -- it was

1   provided to me.

2   Q.   Okay. Would you agree that the

3   Price patent publication is directed to a system

4   and method for updating software in electronic

5   devices?

6   A.   Yes.

7   Q.   With reference to the Plamondon

8   patent publication, can you -- strike that. I

9   apologize.

10   If you could turn in your

11   declaration, and the '319 declaration is fine,

12   to paragraph 388.

13   A.   Okay. I'm at that paragraph.

14   Q.   Would you agree as recited in the

15   first paragraph -- I'm sorry, the first sentence

16   of your paragraph 388, that the Price

17   publication generally describes a software

18   versioning system involving a coordinating

19   computer that automatically or semiautomatically

20   keeps software on subscribing devices updated?

21   A.   Yes, that's a quote from my

22   declaration and I stand by that.

23   Q.   So would you agree that in the

24   embodiments disclosed in Price, they basically

25   talk to software versioning and software

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1   patching as ways to keep software updated on

2   subscribing devices?

3   A.   Generally speaking, they pertain

4   to the -- Price and pertains to updating

5   software.

6   Q.   Can you point me to any

7   disclosure in the Plamondon reference for the

8   embodiments that you are relying on in your

9   declaration where Plamondon states that it's

10   needed a solution for software versioning and

11   software updating problems?

12   A.   It's my opinion that a person of

13   ordinary skill in reading Plamondon would have

14   given what was well known at the time, would

15   have inferred that there was a problem, a

16   potential problem of having to maintain

17   consistent and up-to-date versions of software

18   and that -- and that Price would have offered a

19   solution to that problem that one of ordinary

20   skill would have inferred.

21   Plamondon does refer to version

22   numbers of -- well, it does at some point refer

23   to version numbers of software. But what I

24   believe one of ordinary skill would have

25   inferred that problem from Plamondon.

1   Q.   Would the embodiments in

2   Plamondon that you relied on, in forming your

3   opinions, would those embodiments in Plamondon

4   work for their intended purpose without adding

5   any solutions that may be proposed in Price?

6   MR. WICHMAN: Objection. Form.

7   THE WITNESS: Are you referring

8   to any particular -- copies of a particular

9   claim or a particular part of Plamondon?

10   BY MR. DUNHAM:

11   Q.   No. You relied -- you said

12   you've read the entirety of Plamondon, correct?

13   A.   Yes.

14   Q.   And you selected certain

15   embodiments from Plamondon that you discuss in

16   the analysis in your declaration, correct?

17   MR. WICHMAN: Objection. Form.

18   THE WITNESS: Can you repeat the

19   question, please?

20   BY MR. DUNHAM:

21   Q.   Sure. I believe you testified

22   you read the entirety of Plamondon, correct?

23   A.   Yes.

24   Q.   And you discussed certain

25   embodiments from Plamondon as part of your

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1   analysis in your declaration, correct?

2   A.   In my declaration, I do speak

3   about various different embodiments of

4   Plamondon.

5   Q.   Sure. And the question is: For

6   the embodiments of Plamondon that you reference

7   in your declaration, would those embodiments

8   work for their intended purpose without adding a

9   solution for software versioning and updating as

10   described in Price?

11   A.   It depends on the setting that

12   one is in, as I mentioned, one of ordinary skill

13   in the art, when applying Plamondon in a

14   practical setting would have, you know, would

15   have, as I describe in my declaration, would

16   have known that there are software updates that

17   happen to address, for instance, security issues

18   that might arise in a particular implementation

19   of a particular piece of functionality for some

20   software.

21   And so in that sort of practical

22   setting, where we are constantly evolving our

23   software, adapting our specific implementations

24   of functionality that -- in those cases, it is

25   important to keep software up to date, and as I

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1   mention in my declaration, I pointed to the fact

2   that it was well known at the time that ideally

3   the software updates would be automated.

4   So in terms of sort of

5   theoretical, idealized version of Plamondon, if

6   one were to assume a perfect, flawless

7   implementation, which is essentially impossible,

8   or not impossible, I don't want to say

9   impossible, but essentially, you know, very

10   rare, it's not expected in a practical setting,

11   but in that very theoretical scenario where one

12   did not need to ever update any software, then

13   -- then one wouldn't need any more versions of

14   software, but I don't know, I'm not really

15   familiar with any software in a practical

16   setting where when we're trying to apply the

17   teachings of Plamondon, that one would not have

18   observed the need to keep the software up to

19   date.

20   It's -- Plamondon is a very

21   powerful and feature-full system with many

22   different functions, and moreover, even -- even

23   if the implementation of Plamondon itself were

24   perfect, it makes use of -- of HTTP, for

25   example, TCP, for example, and even in these

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1   cases, there are -- there are updates and there

2   are also, as Plamondon -- you know, specific

3   versions of operating systems, and I think it's

4   well known -- it was well known to -- it was

5   well known to one of ordinary skill in the art

6   that there are operating system versions of

7   these as well, and so -- so I think in a very

8   practical setting like that, it would be

9   recognized by one of ordinary skill at the time

10 that they would have recognized how important it

11 would be to have software updates.

12   Q.   I may come back to the Price

13 reference, but I'd like now for you to turn to

14 the Kozat reference for the moment, Exhibit

15 1024.

16   A.   I have that reference in front of

17 me.

18   Q.   In connection with the work that

19 you've done in this matter, was the Kozat

20 reference something that was provided to you, or

21 is this something that you uncovered or brought

22 to you in the process of performing your

23 analysis?

24   A.   I don't recall.

25   Q.   Do you recall bringing any

1   references to the attention of counsel in this

2   particular matter, references that were not

3   provided to you?

4   A.   Yes, absolutely. For example,

5   I'm just going to turn back to the exhibit list.

6   I'll provide some examples.

7   Exhibit Number 1033, Peterson

8   text, 1034, I believe -- actually, sorry, I take

9   that back.

10   1038, that NIST publication; I

11   believe 1041, Prem Ramaswami -- I'm sorry, I

12   take that back.

13   1045, Ratnasamy; 1044, Rowstron;

14   1046, the Padmanabhan; and 047, the Freedman

15   reference and several others.

16   So there were quite a few that I

17   had brought to lawyers, but as for Kozat

18   specifically, I just don't recall off the top of

19   my head.

20   Q.   Did you review the Kozat

21   reference in its entirety?

22   A.   Yes, I did.

23   Q.   Would you agree that the Kozat

24   patent publication is directed to a system and

25   method for media streaming in a peer-to-peer

1   network?

2   A.   A system, method and apparatus,

3   just to be clear, these are some legal patent

4   terms, I just want to make sure that I'm not

5   agreeing to something that -- that's not there.

6   I was just saying that --

7   (Court reporter seeks

8   clarification.)

9   THE WITNESS: I just want to make

10   sure that some of the legal patent terms, that

11   I'm not confusing or shortcutting anything. It

12   describes the system, method and apparatus for

13   media streaming with online caching and

14   peer-to-peer forwarding.

15   BY MR. DUNHAM:

16   Q.   I'm sorry, could you please

17   repeat that answer because some of the audio cut

18   out for me.

19   A.   Sorry. I wanted to be clear, so

20   as not to get any of the patent language wrong.

21   I believe you mentioned a system and method. I

22   just want to make sure I'm not shortcutting

23   anything or misrepresenting this Kozat

24   reference. It mentions that it's a system,

25   method and apparatus for media streaming with

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1   online caching and peer-to-peer forwarding.

2   Q.   Okay. Can you point me to any

3   disclosure in Plamondon for the embodiments you

4   relied on that stated that Plamondon needed a

5   solution for caching and streaming media content

6   to and from peers in a peer-to-peer network?

7   A.   I can point you to a couple

8   things. First paragraph, 0439, of Plamondon

9   mentions the techniques or portions thereof of

10   method 500 and 550 described above, may be

11   performed together in the same appliance 200, or

12   in a plurality of appliances acting in

13   conjunction or cooperation with each other.

14   One of ordinary skill at the time

15   would have recognized that as -- as being

16   implementable by a peer-to-peer system.

17   As for -- you mentioned media

18   streaming, if I can have just one more moment --

19   (Court reporter seeks

20   clarification.)

21   THE WITNESS: Just give me one

22   moment to address that other part.

23   In the -- sorry. In my '319

24   declaration on page 92, paragraph 243, I mention

25   that when Plamondon -- paragraph 0246, that it

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1   discloses streaming video and/or audio.

2   BY MR. DUNHAM:

3   Q.   Would the embodiments of

4   Plamondon that you relied on in your declaration

5   work for their intended purpose without adding

6   any solutions that may be presented in the Kozat

7   reference?

8   A.   If -- so what -- what one of

9   ordinary skill in the art would have recognized

10   as a problem with Plamondon's architecture is

11   what might happen if an appliance alone would

12   not have sufficient capacity to cache as much

13   content as one might want to achieve the

14   performance of -- of improvements that

15   Plamondon's architecture tries to achieve, and

16   that's where the motivation to combine with

17   Kozat would have been clear to one of ordinary

18   skill in the art at the time.

19   However, provided that there is

20   enough storage capacity at a, say, given

21   appliance 200, it may not strictly need it.

22   It would somewhat depend on what

23   the -- what the context of the deployment is and

24   what the desired performance improvements would

25   be.

1   Q.   I'd like you to turn to paragraph

2   61 of your declaration from the '319 patent and

3   I'm really pointing you there by way of

4   reference.

5   A.   Paragraph 61 of the -- of my '319

6   declaration; is that correct?

7   Q.   Yes. I'm interested in the

8   section entitled: "Proxies and middle boxes,"

9   that starts I guess at paragraph 61.

10   A.   I'm at that section.

11   Q.   Okay. Would you agree that in

12   October of -- do you need a minute to review,

13   sir, I'm happy to wait.

14   A.   Just a moment.

15   Q.   Certainly.

16   A.   I've reviewed that section.

17   Q.   Great. Is it your opinion that

18   in October of 2009, a person of ordinary skill

19   in the art would have known how to use a proxy

20   server as an intermediary between a client

21   device and a web server?

22   A.   One of ordinary skill would have

23   known of -- of some ways to use a proxy server

24   as an intermediary between a client and a web

25   server.

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1   Q.   And when a proxy server, as of

2   October 2009, was used as an intermediary

3   between a client device and a web server, would

4   that proxy server be forwarding packets that it

5   received from the client device and then

6   forwarding those packets to the web server?

7   A.   As I describe in this section, it

8   depends. There are some proxies that do

9   essentially forward packets and there are

10   others, as I describe in this section, that

11   would not necessarily just forward packets

12   exactly as they are.

13   In fact, I even mention here, I

14   mention this notion of a web proxy -- I mention

15   paragraph 64, for example, a web proxy can store

16   copies of web pages it has obtained on behalf of

17   clients and then when a future request asks for

18   the same content, the proxy may simply return

19   its copy rather than forward the request to the

20   ultimate destination.

21   So it's not always necessary that

22   it simply forwards the packets. In fact, it may

23   not send any packets along to another -- another

24   server at all, but these proxies in general

25   don't necessarily have to precisely forward

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1   packets. Some do, but not all of them.

2   Q.   I'm sorry?

3   A.   I was saying some do but not all

4   of them.

5   Q.   So in the case of an intermediary

6   proxy that does not have any content cached on

7   it, would that type of proxy forward packets

8   received from a client device on to a web server

9   that would have the desired content?

10   A.   Again, not necessarily in every

11   embodiment of a proxy. So they might issue a

12   slightly different request, for example.

13   Q.   I see. You mentioned something

14   in paragraph 64 I'm interested in.

15   Would you agree that because

16   proxy servers operate at a higher level of

17   abstraction, a route or a switch, proxy servers

18   can perform additional processing that a router

19   or switch cannot?

20   A.   That doesn't completely

21   characterize what I said. I said proxies

22   typically operate at a higher level of

23   abstraction, and that they -- as a result, that

24   they can operate at those higher levels of --

25   I'm sorry, I'm sorry, I think I just misspoke.

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1   I think I just said at a higher

2   level of abstraction. I meant at a higher layer

3   in the networking stack.

4   (Court reporter seeks

5   clarification.)

6   THE WITNESS: Routers and

7   switches operate at layer 3. Proxies typically

8   operate at layer 4 or above. Not always

9   necessarily, but they can, and also, just to --

10   just to clarify, I'm speaking to the extent that

11   your question referred to operating at a higher

12   layer than -- than routers or switches, for

13   example.

14   So they can operate at this

15   higher layer and doing so does allow them to do

16   additional processing that something operating

17   strictly at a lower layer would not able to do.

18   BY MR. DUNHAM:

19   Q.   I'd like you to turn back to the

20   Plamondon reference, please, and I would draw

21   your attention just as a reference point again

22   to paragraph 9.

23   A.   Paragraph 9 of Plamondon or of my

24   declaration?

25   Q.   Of Plamondon, sir.

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1   A.   Oh, I'm sorry. Okay. I'm in

2   paragraph 9.

3   Q.   So I'm interested in the

4   prefetching technique that is disclosed in

5   Plamondon. For example, as mentioned in

6   paragraph 9.

7   And my question is: Would you

8   agree that Plamondon teaches this prefetching

9   technique to be used before a client has made a

10   request for the particular content?

11   A.   I'm not sure I would necessarily

12   agree with that characterization. It's possible

13   that that client had requested it in the past,

14   and this is another request -- and then later in

15   the future, prefetching is applied in

16   anticipation of that client potentially making

17   that request, which might be the first time

18   they're making the request, it might be a

19   subsequent time that they've made the request,

20   but that the goal specifically with prefetching

21   is to try to, as it explains, is to try to

22   anticipate what that client will request in the

23   hopes of getting it ahead -- ahead of that

24   request.

25   Q.   Okay. Would you agree, sir, that

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1       the challenged claims in this case relate to

2       fetching content after a client has made a

3       request for the content?

4                       MR. WICHMAN:  Objection.  Form.

5                       THE WITNESS:  I would not

6       necessarily characterize it as such.

7                       May I have this question read

8       back to me one more time.

9       BY MR. DUNHAM:

10              Q.      All right.  I'd like to wait

11      until the sirens clear, if we could.

12              A.      Oh, sure, sure.

13              Q.      My question, sir, is:  Would you

14      agree that the challenged claims in these

15      matters relate to fetching content after the

16      client has made a request for the content?

17                      MR. WICHMAN:  Objection.  Form.

18                      THE WITNESS:  I would not

19      necessarily characterize it as such, no.

20      BY MR. DUNHAM:

21              Q.      If you look at the '319 patent,

22      claim 1.

23                      Do you have that in front of you,

24      sir?

25              A.      I do.
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1   Q.   Do you see the first step, it

2   says: "Receiving from the second server, the

3   first content identifier"?

4   A.   I see that step, yes.

5   Q.   Do you understand that that is

6   the first client device receiving request for

7   content?

8   A.   I understand that's the first

9   client device receiving the first content

10   identifier from the second server.

11   Q.   So would the first client device

12   receive that first content identifier before

13   there was a request for content?

14   A.   I don't see that the claim

15   necessarily limits it to that.

16   Q.   So what is your understanding of

17   the claim, then? Your understanding of the

18   claim that the -- let me make sure I quote the

19   language. Is your understanding of claim 1 of

20   the '319 patent that the -- receiving from the

21   second server, the first content identifier step

22   will occur before there's a request for content.

23   MR. WICHMAN: Objection.

24   THE WITNESS: So my understanding

25   in reading claim 1 of the '319 patent is that it

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1   does not necessarily say the order in which all

2   of these steps occur.

3   It says, for example, you're

4   referring to this first step, receiving from the

5   second server, the first content identifier, and

6   you're referring to the next step, sending to

7   the first server over the internet, a hypertext

8   transfer protocol request, HTTP request, that

9   comprises the first content identifier.

10   And if I understand your question

11   correctly, you're asking if that -- the

12   receiving of these two steps, you're asking if

13   the receiving step must always happen before the

14   sending step, and I would say the claim does not

15   limit it to happening precisely in that order.

16   It just says that these two steps

17   have been. And I think if it -- if it were

18   requiring that they happen in the order in which

19   they're listed, then -- then I wouldn't

20   understand the need for claim 27, which says the

21   -- it's a dependent claim on claim 1, the

22   method, according to claim 1 wherein the steps

23   are sequentially executed.

24   So because there was nothing in

25   claim 1 that says that the receiving from the

```
1    second server in the first content identifier

2    has to happen before sending to the first server

3    over the internet, a hypertext transfer protocol

4    request that comprises the first content

5    identifier.

6                      That -- the way that you put it,

7    that the second server would first be sending

8    the request for the first content identifier,

9    that -- I don't see that that step has to come

10   before the first client device sends the first

11   content identifier to the first server.

12   BY MR. DUNHAM:

13            Q.       Well, can the fourth step of

14   claim 1 of the '319 patent occur before the

15   first step, under your understanding?

16            A.       Under my understanding, that

17   fourth step, just to make sure it's clear to

18   everybody, is -- says:  "Sending, the first

19   content by the first client's device to the

20   second server, in response to the receiving of

21   the first content identifier."

22                      My understanding of -- of the --

23   of the language in this is that when it says:

24   "In response to the receiving of the first

25   content identifier," that at that point, it is
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1   talking about that first step, receiving from

2   the second server, the first content identifier,

3   in which case that last step would have to be in

4   response to the first step.

5   So in that case, as I would read

6   it, in response to that would mean that that

7   last step happens after the first step, but not

8   necessarily -- it doesn't confer where steps --

9   where step 2 would have to -- where in step 2

10   would have to happen in relation to step 1.

11   Q.   So is it your position, then,

12   that according to your understanding, the claim

13   step 4, which is the sending step, second

14   sending step could -- could occur before step 2,

15   the first sending step, as the claim is drafted?

16   A.   I don't see the claim limiting

17   it, so that step 2 could not happen after the

18   fourth step.

19   Q.   I'd like you to turn back to your

20   135 declaration, please, and tell me when you're

21   there, please.

22   A.   Yeah, I have that declaration in

23   front of me.

24   Q.   I'm sorry, your video keeps

25   freezing. So basically, I see a still image of

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1   you and I'm not aware of what's happening after

2   that.

3   A.   Sorry. I have the declaration in

4   front of me. Was there a particular paragraph?

5   Q.   Yes. I'd like you to look at 444

6   and maybe if you could read that through 448 and

7   let me know when you've reviewed those.

8   A.   Okay. I've -- I've reread those

9   paragraphs.

10   Q.   Thank you. I have some questions

11   about something you refer to in here as

12   Plamondon-Price, the Plamondon-Price

13   combination.

14   Do you see that reference?

15   A.   Yes, I do.

16   Q.   By that Plamondon-Price

17   combination, are you referring to Plamondon as

18   modified by certain teachings from Price as you

19   describe in your declaration?

20   A.   I describe, you know, specific

21   elements, the specific components of Plamondon,

22   the appliance 200, appliance 102, 102, AB6

23   support. I'm taking on the additional

24   functionality of Price as described in my

25   declaration.

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1   Q.   So I'm just trying to get to

2   common vocabulary with you.

3   A.   Sure.

4   Q.   If I refer to Plamondon-Price

5   combination, will you understand that to mean

6   the combination as you envisioned Plamondon

7   modified by Price?

8   A.   Yes, I'll agree with that.

9   Q.   Okay. Under your understanding

10   of the Plamondon-Price combination that you

11   envision, when appliance 200 intercepts a

12   request for updated software that was requested

13   by client 102A, will the appliance 200 download

14   the software from a web server and then forward

15   that software to client 102A?

16   A.   As I mention in paragraph 448,

17   page 156, if the requested updated software

18   version is not already in appliance 200's cache,

19   appliance 200 downloads it over the internet

20   from the web server and forwards it to client

21   102A.

22   Q.   Okay. So let's -- let's work

23   with that embodiment as you've described it,

24   where the requested updated software was not

25   already in the cache of appliance 200, so

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1   appliance 200 downloaded that software from a

2   web server and forwarded it to client 102A.

3   Are you with me?

4   A.   I'm with you.

5   Q.   In that example of

6   Plamondon-Price as you envision it, when

7   appliance 200 downloads the updated software

8   from the web server and forwards it to client

9   102A, would appliance 200 also cache a copy of

10   that updated software in its cache?

11   A.   Potentially, yes.

12   Q.   Under what circumstances would

13   appliance 200 not cache the updated software

14   when it retrieved it from the web server and

15   forwarded it to client 102A?

16   A.   It depends how exactly the

17   caching would be implemented. Or if, for

18   example, there was an error in writing into the

19   cache -- there could be some exceptions to it,

20   but it, generally speaking, as a caching proxy,

21   it -- you know, barring some of these

22   exceptions, that's when -- it certainly could

23   cache it.

24   Q.   Okay. So once that sequence has

25   occurred, is it your position that in the

1   Plamondon-Price combination, client 102A would

2   be acting as the coordinating computer?

3   A.   Would you mind repeating the

4   question, please.

5   Q.   Sure. So after that sequence has

6   occurred -- strike that.

7   Let me ask you this as a

8   prefatory question. Is it your understanding --

9   strike that. Let me really try again.

10   In your envisionment of the

11   Plamondon-Price computer, would client 102A from

12   Plamondon be operating as the coordinating

13   computer?

14   A.   Client 102A in the

15   Plamondon-Price combination that I described in

16   my declaration, acts as the coordinating

17   computer that's described by Price.

18   Q.   So under the scenario we were

19   discussing, where client 102A has requested

20   updated software and appliance 200 did not have

21   that software in cache, so appliance 200 went

22   out to a web server, downloaded the software and

23   forwarded it back to client 102A, client 102A

24   would be receiving that software as the

25   coordinating computer, correct?

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1   A.   I'm not quite understanding the

2   question. If client 102A -- because it is the

3   coordinating computer in the Price-Plamondon

4   combination, because of that, in this particular

5   embodiment, it -- it -- that caused it to make

6   the request, at the point where it is issuing

7   that request, at the point where it's receiving

8   the data from appliance 200 in this case.

9   It's -- at that point, that's

10   where it's acting in the role of the client 102A

11   from -- from Plamondon, but this is in that

12   broader context of it doing this because of its

13   -- because of its functionality as the

14   coordinating computer.

15   Q.   Well, I'm interested in the

16   sentence at the start of paragraph 449 that

17   says: "Subsequently," so that's following from

18   paragraph --

19   (Court reporter seeks

20   clarification.)

21   BY MR. DUNHAM:

22   Q.   So let me start again so we have

23   a clear record.

24   So I'm interested in the first

25   sentence of paragraph 449 that reads:

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1   "Subsequently, Price's coordinating computer

2   embodied in Plamondon's client 102A in the

3   Plamondon-Price combination, proceeds per

4   Price's method which Plamondon-Price carries out

5   to transmit the updated software version to

6   appliance 200 functioning as a managed device in

7   Price's method" -- I'm sorry, let me strike that

8   because I messed up my quote of your dec and I

9   don't want to have that in the record so let me

10   begin again, please.

11   Looking at paragraph 449 and I'm

12   interested in the first sentence that's

13   following the discussion we've had from

14   paragraph 448, where that first sentence reads:

15   "Subsequently, Price's coordinating computer

16   embodied in Plamondon's client 102A in the

17   Plamondon-Price combination, proceeds per

18   Price's method which Plamondon-Price carries out

19   to transmit the updated software version to

20   appliance 200 so that appliance 200 functioning

21   as a managed device in Price's method can

22   install it."

23   Do you see that language?

24   A.   I see that language, yes.

25   Q.   I'm just making sure I understand

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1   the flow, and -- between paragraph 448 and

2   paragraph 449 that we just reviewed, is it your

3   understanding that when appliance 200 downloads

4   software that client 102A has requested it and

5   appliance 200 forwards that software to client

6   102A, acting as the coordinating computer,

7   client 102A is going to transmit that updated

8   software back to appliance 200.

9   A.   Yes, that's what I described

10   here.

11   Q.   All right. Why would client 102A

12   need to forward the software back to appliance

13   200 if appliance 200 had just downloaded a fresh

14   copy of that software from the web server?

15   A.   Though these -- the facts that,

16   you know, in this -- in this -- in this

17   combination of Plamondon-Price that I described,

18   the fact that client 102A would take on the

19   functionality of Price's coordinating computer

20   does not necessarily mean that we're starting

21   with the Plamondon software and modifying that

22   software. It could mean that we're running the

23   Price software on that same device.

24   And so as a result, this cache

25   that's there in appliance 200 that we described

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1   in paragraph 448, that's the cache that's part

2   of the Plamondon software, but it's very, very

3   common to have two different software

4   applications running on the same computing

5   device that might each have their own -- their

6   own, you know, form of optimizations, their own

7   caches, their own, in general, information that

8   these two pieces of software might not know

9   about from one another.

10   For example, you might have a --

11   an email client, for example, that is

12   downloading icons as part of rendering an email,

13   and it's possible those icons are getting

14   downloaded from a web server, for example. It's

15   possible that on your computer, you also have a

16   web browser that has previously downloaded those

17   -- those icons.

18   But if these pieces of software

19   are different, that email software might not

20   know that that content is already locally cached

21   on that computer, because it might not know

22   everything that's going on in that other piece

23   of software.

24   So in this case of the

25   Plamondon-Price combination that I've described

1   here and this particular embodiment of it, this

2   would be a case where -- where the Price

3   software may not be cognizant of -- of Plamondon

4   being there. If anything, what I think that

5   this shows is just how, how -- how easy it would

6   be to combine these two pieces of -- of art,

7   Price and Plamondon, that they compose so well

8   that they could do so without, I think, I think

9   one of ordinary skill in the art at the time

10   would have also thought that you could combine

11   them without them even necessarily having to

12   really know about one another.

13   You wouldn't have to, like,

14   reimplement Price or Plamondon or reimplement

15   Plamondon-Price. These could be two pieces of

16   software running on similar -- similar kinds of

17   communication devices that they described in

18   their respective patents, and -- and that they

19   would compose well in that regard.

20   So -- so that's why, you know,

21   the -- the nice thing about having modularity

22   and having separation in the software that we

23   make, it's fantastic, because that means we can

24   innovate in one without having to necessarily

25   know all of the details of every other piece of

1   software that's running on a computer system.

2   But the one potential downside of

3   these layers of the social abstraction and

4   isolation as it's sometimes referred to in

5   computing terms, as a term of art, one of the

6   potential downsides is that sometimes you do end

7   up missing out on potential optimizations like

8   that.

9   When I describe a particular

10   embodiment that would have been clear to the

11   person of ordinary skill in the art at the time,

12   that would have been a very straightforward way

13   of combining them and one that would have

14   combined them in a way that I think would have

15   conferred reasonable expectations of success.

16   Q.   So you would agree that as

17   described in paragraph 448 and 449 of your -- of

18   your declaration, that in the Price-Plamondon

19   combination you envisioned, the coordinating

20   computer transmitting a copy of the updated

21   software that it just received from appliance

22   200 and transmitting it back up to appliance 200

23   would be an unnecessary extra step, right?

24   MR. WICHMAN: Objection.

25   THE WITNESS: I'm not sure I

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1   would characterize it that way.

2   BY MR. DUNHAM:

3   Q.   Would you agree that in the

4   Price-Plamondon combination that you describe in

5   paragraph 448 and 449, if the client 102A that

6   had just received the updated software from

7   client 200 did not send that software back to

8   appliance 200, then the remainder of the method

9   would continue to operate, correct?

10   MR. WICHMAN: Objection.

11   THE WITNESS: Sorry, the

12   remainder of -- of what method?

13   BY MR. DUNHAM:

14   Q.   The -- let me ask it a different

15   way.

16   Would you agree that if Price --

17   if the Plamondon client 102A acting as the Price

18   coordinating computer in the Price-Plamondon

19   combination that you envisioned, if that

20   coordinating computer did not send the updated

21   software back to appliance 200, appliance 200

22   would still have that software in its cache from

23   when it obtained it for client 102 in the first

24   instance?

25   A.   As I said earlier, it depends on

1   whether or not it cached it, whether or not it

2   cached it in its entirety. It potentially

3   could, but it's not necessarily guaranteed that

4   it would completely be inside of that cache.

5   Q.   So it's your testimony, as an

6   expert today, in the method you envision

7   operating as described in paragraph 448 and 449,

8   if appliance 200 obtained an updated copy of

9   software for client 102, forwarded it to client

10   102 and client 102 forwarded it right back to

11   the appliance 200, that the appliance might not

12   have that software from when it downloaded it,

13   but it would have that software in cache from

14   when client 102 forwarded it right back to it?

15   MR. WICHMAN: Objection.

16   THE WITNESS: A couple of -- a

17   couple things about that -- that question you

18   just said. You referred to 102. Here we were

19   referring to 102A.

20   BY MR. DUNHAM:

21   Q.   Sure. So let me ask -- let me

22   ask the question again. I want to make sure on

23   the record your expert testimony, sir, is that

24   in the Plamondon-Price combination that you

25   describe in paragraphs 448 and 449, it is your

1   testimony today here, under oath, that if

2   appliance 200 obtained updated software

3   requested by client 102A, if appliance 200

4   forwarded that updated software to client 102A

5   and client 102A forwarded that software back to

6   appliance 200, it is your testimony that

7   appliance 200 might not have that software in

8   its cache from when it obtained it, but would

9   have its software in its cache from when client

10   102A forwarded it right back to it?

11   MR. WICHMAN: Objection.

12   THE WITNESS: I'm not sure which

13   cache you're referring to when you say that

14   client 102A forwards that software update to

15   appliance 200.

16   I don't think I said anything

17   about when client 102A, acting as the

18   coordinating computer and when it uploads --

19   when it transmits the updated software from

20   client 102A to appliance 200, I don't think that

21   I said anything about that getting put into a

22   cache, I'm not sure which cache that you're

23   referring to there.

24   BY MR. DUNHAM:

25   Q.   Well, according to paragraph 449,

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1   when client 102A transmits the updated software

2   version to appliance 200, what is appliance 200

3   doing with it?

4   A.   It's receiving that transmitted

5   software update.

6   Q.   I'd like you to turn to paragraph

7   459 of your declaration.

8   A.   You said 459; is that correct?

9   Q.   Yes, sir.

10   MR. DUNHAM: And, in fact, I see

11   we've gone another full hour. Would you like to

12   take a short ten-minute break?

13   THE WITNESS: Yes, I would, if

14   that's all right.

15   MR. DUNHAM: Sure.

16   THE VIDEOGRAPHER: The time is

17   1:47 p.m. and we're now off the record.

18   (Recess taken.)

19   THE VIDEOGRAPHER: The time is

20   1:57 p.m. and we're now back on the record.

21   BY MR. DUNHAM:

22   Q.   Dr. Levin, if you could turn to

23   paragraph 314 of your declaration in the '319

24   patent, and I'm pointing you there again just

25   for reference purposes.

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1   A.   Okay. I'm at 314 of my '319

2 declaration.

3   Q.   If you'd like to take a moment to

4 review it, please feel free to do so.

5   A.   Okay. I've read it.

6   Q.   I want to call your attention to

7 the phrase "prefetcher 904," that's right at the

8 start of paragraph 314.

9   Do you see that?

10   A.   Yes, I see that.

11   Q.   My question, sir, is: Would the

12 prefetcher 904 of Plamondon work to manage

13 caching in Plamondon without the addition of any

14 teachings from Kozat?

15   A.   Yes, even without the teachings

16 from Kozat, prefetcher 904 could operate, as I

17 described in paragraph 314, without -- without

18 having to combine with Kozat.

19   MR. DUNHAM: Dr. Levin, I want to

20 thank you for your time today and subject to any

21 redirect by counsel for petitioner, patent owner

22 has no further questions at this time.

23   MR. WICHMAN: Well, Tom, let's go

24 off the record for about ten minutes and think

25 about whether we have any redirect. Does that

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1   sound good?

2   MR. DUNHAM: Sounds good. We'll

3   come back at 10 after.

4   MR. WICHMAN: Okay. Thanks.

5   THE VIDEOGRAPHER: The time is

6   2:01 p.m. and we're now off the record.

7   (RECESS TAKEN)

8   THE VIDEOGRAPHER: The time is

9   2:10 p.m. and we're now back on the record.

10   EXAMINATION

11   BY MR. WICHMAN:

12   Q.   Dr. Levin, do you recall that

13   Mr. Dunham asked you about your testimony in

14   paragraph 388 of your declaration in support of

15   the petition on the '319 patent?

16   A.   Yes.

17   Q.   He asked you about the sentence

18   describing computing devices as general purpose

19   computers.

20   Do you recall that?

21   A.   I recall.

22   Q.   Can you turn to Plamondon

23   paragraph 238, this is Exhibit 1010, which he's

24   been referring to throughout the deposition.

25   Just let me know when --

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1   A.   Yes, I'm at 238 of Plamondon.

2   Q.   So do you see the first sentence

3   of paragraph 238, that this section in Plamondon

4   refers to computing device 100?

5   A.   Yes, I see that.

6   Q.   It says that: "Computing device

7   100 may have different processors, operating

8   systems and duplicate devices consistent with

9   the device"?

10   A.   I see that, yes.

11   Q.   Okay. Thank you.

12   And if you drop down to the last

13   sentence of this paragraph, can you read that

14   for me, please.

15   A.   This is the sentence starting:

16   "Moreover."

17   "Moreover, the computing device

18   100 can be any work station, desktop computer,

19   laptop or notebook computer, server, handheld

20   computer, mobile telephone, Smartphone, any

21   other computer, or other form of computing or

22   telecommunications device that is capable of

23   communication and that has sufficient processer

24   power and memory capacity to perform the

25   operations described herein."

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1   Q.   So in that -- in that list of

2   things that the computing device 100 can be,

3   would some of those things fit the description,

4   general purpose computer?

5   A.   Some of them would.

6   MR. DUNHAM: Objection. Leading.

7   Sorry, sir. I need to have time to object.

8   Objection. Leading.

9   THE WITNESS: Looking at this

10   paragraph, I'm going to say that some of these

11   could be considered general purpose computing

12   devices -- I'm sorry, I think you said general

13   purpose computers.

14   BY MR. WICHMAN:

15   Q.   Would a POSA reading this

16   sentence understand it to describe only general

17   purpose computers?

18   A.   I don't believe a person of

19   ordinary skill at the time would have read it to

20   only mean general purpose, particularly given

21   that it says: "Any other computer or other form

22   of computing or telecommunications device that

23   is capable of communications and that has

24   sufficient processer power and memory capacity

25   to perform the operations described herein."

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 1                    So even if it weren't completely

 2   general purpose, to the extent that that means a

 3   computer that -- to the extent of that being any

 4   form of -- to the extent that that is not a

 5   special purpose computer is what we call it,

 6   then no, I don't think a person of ordinary

 7   skill would say that it's strictly limited to

 8   what might be termed a general purpose computer.

 9            Q.        So the person of ordinary skill

10   in the art reading Plamondon, paragraph 238,

11   would they have understood that a computing

12   device 100 is not limited to a general purpose

13   computer?

14            A.        That's my opinion, yes.

15                    MR. WICHMAN:  No further

16   questions.

17                    MR. DUNHAM:  Nothing further from

18   patent owner.

19                    MR. WICHMAN:  Can we go off the

20   record.

21                    MR. DUNHAM:  Yes, please.

22                    THE VIDEOGRAPHER:  Counsel, can I

23   go off the video record?

24                    MR. WICHMAN:  Yes, please.

25                    THE COURT:  Thank you.  Or the
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1   audio record? The audio record, I apologize.

2   The time is 2:14 p.m. and we're

3   now off the record.

4   MR. WICHMAN: Dr. Levin is going

5   to read and sign.

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 1                    CERTIFICATE

 2

 3

 4              I, Karen Friedlander, a

 5   Certified Court Reporter of the State of New

 6   Jersey, do hereby certify that prior to the

 7   commencement of the examination, the witness

 8   and/or witnesses were sworn by me to testify to

 9   the truth and nothing but the truth.

10              I do further certify that the

11   foregoing is a true and accurate computer-aided

12   transcript of the testimony as taken

13   stenographically by and before me at the time,

14   place and on the date hereinbefore set forth.

15              I do further certify that I am

16   neither of counsel nor attorney for any party in

17   this action that I am not interested in the

18   event nor outcome of this litigation.

19

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                   S/Karen Friedlander
21                 Certified Court Reporter
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4
     WITNESS: Dave Levin
5

6    PAGE/LINE        CHANGE          REASON

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19   _____

20

                  _____
21
                       Dave Levin
22
     Subscribed and sworn to before me
23
     this ____ day of _____, 20__.
24
     _____.
25         Notary Public
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