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P R O C E E D I N G S

12:51PM 1
12:51PM 2 MS. GARCIA: Your Honor, I think we have
12:51PM 3 agreement amongst the third parties and the parties who
12:51PM 4 are here regarding sealing the courtroom. And we have,
12:51PM 5 I think, four different orders we'd like to present to
12:51PM 6 you, but there's a couple of things that we need to put
12:51PM 7 on the record, because we've written in some statements
12:51PM 8 where we have agreements --

12:51PM 9 THE COURT: Okay.

12:51PM 10 MS. GARCIA: -- so that's the purpose, but
11 we have agreement.

12:51PM 12 I'd like to start with American's proposed
12:51PM 13 sealing order on American's redacted material. This
12:51PM 14 order was granted last week before the motion to recuse,
12:51PM 15 but we didn't actually get a physical order signed.

12:52PM 16 I have removed the acknowledgment that we
12:52PM 17 had proposed as part of the order because Mr. Fredricks,
12:52PM 18 on behalf of Sabre, and I, as well as the third parties
12:52PM 19 who are currently here present, have agreed on a
12:52PM 20 different form of an order that's going to be submitted
12:52PM 21 as part of our order on third-party documents. It's
12:52PM 22 going to the same form of acknowledgment for all parties
12:52PM 23 and third parties, with the exception that I believe Air
12:52PM 24 Canada is going to have a slightly different variation.
12:52PM 25 But this is the order that American would request that

12:52PM 1 you sign for our temporary sealing order.

12:52PM 2 And one modification, Your Honor, the order
12:52PM 3 in there reflects the fact that the third parties who
12:52PM 4 didn't respond to our letter have essentially waived
12:52PM 5 their claims of confidentiality. That's only for the
12:52PM 6 documents that we specifically asked them to consider in
12:52PM 7 our letter, not all documents produced in the case.

12:52PM 8 MR. FREDRICKS: And deposition testimony.

12:52PM 9 MS. GARCIA: And deposition testimony.

12:52PM 10 THE COURT: Okay. All righty.

12:52PM 11 MR. FREDRICKS: And this is the form of the
12:53PM 12 sealing order with respect to the Sabre confidential
12:53PM 13 documents. That identifies the documents that Sabre has
12:53PM 14 asserted need to be sealed during these proceedings.

12:53PM 15 MS. GARCIA: Your Honor, Mr. Fredricks and
12:53PM 16 I plan to submit to you a conforming copy of the
12:53PM 17 acknowledgement and agreement. We have handwriting in
12:53PM 18 it right now that reflects a few changes we've made this
12:53PM 19 morning, but those orders will simply be amended to
12:53PM 20 include this acknowledgment from both parties. And
12:53PM 21 Mr. Fredricks and I will take care of that with your
12:53PM 22 clerk this afternoon.

12:53PM 23 I also have a proposed order granting
12:53PM 24 American's motion for ruling regarding third-party
12:53PM 25 documents. It is going to have an identical

12:53PM 1 acknowledgment and agreement for those designees,
12:53PM 2 corporate reps, who stay in during the sealed portion.
12:53PM 3 And it also provided for specific information regarding
12:53PM 4 agreements we've reached with various third parties.

12:53PM 5 So this is American's order for use of
12:54PM 6 third-party documents.

12:54PM 7 MR. DREZ: To be clear, to the extent a
12:54PM 8 third party is not mentioned, it does not apply to them,
12:54PM 9 correct?

12:54PM 10 MS. GARCIA: That's correct. Well, it has
12:54PM 11 general language about third parties and what they need
12:54PM 12 to do to assert those rights. So it protects them, but
12:54PM 13 you, Air Canada, who has a specific individual order,
12:54PM 14 that's going to govern.

12:54PM 15 THE COURT: All right.

12:54PM 16 MR. DREZ: Your Honor, I have a temporary
12:54PM 17 sealing order regarding Air Canada documents that I've
12:54PM 18 discussed with counsel for American and Sabre. Attached
12:54PM 19 is Exhibit A. It's the acknowledgment that the
12:54PM 20 corporate reps will sign if the confidential Air Canada
12:54PM 21 information is disclosed in open court.

12:54PM 22 It's my understanding also that the -- that
12:54PM 23 any witness who is questioned regarding the Air Canada
12:54PM 24 confidential information will be bound by the terms of
12:54PM 25 the protective order entered in the case as -- because

12:54PM 1 it's an expert witness.

12:54PM 2 THE COURT: All right. All right. If
12:55PM 3 you'll get that filed. Next?

12:55PM 4 MR. SCHAFER: Your Honor, I have a
12:55PM 5 temporary sealing order as well. My name is Roland
12:55PM 6 Schafer; I represent Expedia, Inc. And this is in
12:55PM 7 regard to an unopposed motion to redact certain
12:55PM 8 documents provided -- the list provided to us by
12:55PM 9 American and Sabre as well as to seal certain documents
12:55PM 10 during the use in open trial.

12:55PM 11 THE COURT: All right.

12:55PM 12 MR. SCHAFER: And we actually received
12:55PM 13 notice of Sabre's intent to use certain deposition
12:55PM 14 excerpts to which we have also provided redactions. And
12:55PM 15 I think what we intend to do and I just want to get the
12:56PM 16 Court's -- how you felt about this -- we'll be filing a
12:56PM 17 second motion for a temporary sealing order specific to
12:56PM 18 the deposition excerpts and then I can just bring it --
12:56PM 19 it will be -- right now it seems it will be unopposed.
12:56PM 20 And I can just bring that down.

12:56PM 21 THE COURT: Okay. That'll be fine.

12:56PM 22 MR. SCHAFER: Thank you, sir.

12:56PM 23 THE COURT: Thank you.

12:56PM 24 MS. GARCIA: Thank you, Your Honor. I
12:56PM 25 believe that's everything.

12:56PM 1 THE COURT: Okeydoke. And you wanted to --

12:56PM 2 MR. DUGGINS: I wanted to argue a motion,
12:56PM 3 if I may.

12:56PM 4 (Discussion off the record.)

12:56PM 5 THE COURT: When you're ready.

12:57PM 6 MR. DUGGINS: Good afternoon, Your Honor.

12:57PM 7 Ralph Duggins for Sabre.

12:57PM 8 When we first met with you Tuesday morning,
12:57PM 9 we alerted you that Sabre would be filing a motion for
12:57PM 10 mistrial based upon errors in the voir dire process and
12:57PM 11 a Batson violation by American. We're not yet in a
12:57PM 12 position to present that in a complete fashion and in
12:57PM 13 writing because despite the very hard and good efforts
12:57PM 14 of Ms. Lindstrom and those working with you -- with her,
12:57PM 15 rather, we don't yet have the reporter's record for the
12:57PM 16 three days of voir dire.

12:57PM 17 But yesterday, your ruling and order on the
12:57PM 18 three e-mails only adds further support to the motion.
12:57PM 19 So before any testimony is taken, Sabre is moving for a
12:57PM 20 mistrial.

12:57PM 21 The irrelevant and highly prejudicial
12:57PM 22 issues were a central issue -- excuse me. The highly
12:57PM 23 prejudicial e-mails were a central issue in the voir
12:58PM 24 dire process as a result of American's plan to introduce
12:58PM 25 those. And Judge Cosby's erroneous ruling they were

12:58PM 1 irrelevant when introduced would not distort the
12:58PM 2 fact-finding process.

12:58PM 3 Yesterday, Mr. Yetter said, and I quote --
12:58PM 4 this is the reporter's record -- "Your Honor, this jury
12:58PM 5 that has been empanelled has been voir dired extensively
12:58PM 6 on the use of bad language."

12:58PM 7 Whether they were or weren't, as I say,
12:58PM 8 when we get the complete reporter's record, we'll know
12:58PM 9 that and see that. But your October 24th ruling and
12:58PM 10 subsequent order makes clear that these e-mails are
12:58PM 11 irrelevant and have no place in this commercial case.
12:58PM 12 Yet the jury that is selected or has been selected was
12:58PM 13 based upon a process that required Sabre to assume that
12:58PM 14 language would be prominently used by AA. And as a
12:58PM 15 result, we have a constitutionally defective jury.

12:59PM 16 First of all, there's no question that this
12:59PM 17 jury and the panel were questioned about very offensive
12:59PM 18 language to women. Now, the actual words were not used,
12:59PM 19 but I don't think there's any doubt that you will see
12:59PM 20 when you read the record that everyone there could
12:59PM 21 assume, and in particular the women, which words were in
12:59PM 22 issue.

12:59PM 23 Two prospective jurors, Jurors 3 and 14,
12:59PM 24 were released for cause based upon their reaction to
12:59PM 25 this type of language. Juror 3 was a -- is a very

12:59PM 1 bright trust officer at Wells Fargo Bank, and she is
12:59PM 2 otherwise a well-qualified juror, but she said a result
12:59PM 3 of a prior experience with an employer who used that
12:59PM 4 type of language towards her, she could not deal with
01:00PM 5 it. And as a result, this otherwise well-qualified
01:00PM 6 juror was stricken for cause based upon evidence that
01:00PM 7 has no place in this case, as you've properly ruled.

01:00PM 8 Juror 14 was a man who, as I remember, said
01:00PM 9 he was a member of a Moose Lodge, and he came up, raised
01:00PM 10 his hand when this topic was discussed, and he said that
01:00PM 11 as a result of a verbal attack by a former boyfriend of
01:00PM 12 his daughter when she was 20, he couldn't deal with it.
01:00PM 13 So he was dismissed for cause as a result of American's
01:00PM 14 insistence on going off in the weeds on these highly
01:00PM 15 inflammatory and irrelevant comments.

01:00PM 16 After peremptories were made by each side,
01:00PM 17 Mr. Lind for Sabre made a Batson challenge noting that
01:00PM 18 American had stricken all men. Judge Cosby denied that
01:00PM 19 challenge without making American provide a neutral
01:01PM 20 explanation for its strikes, even though that's required
01:01PM 21 by the law.

01:01PM 22 In addition, Judge Cosby used inconsistent
01:01PM 23 standards for hardship at American's insistence as a
01:01PM 24 part of American's goal to remove men from this jury.

01:01PM 25 Juror 2 and Juror 20 were each men who had

01:01PM 1 job issues. Juror 37 also had a job issue. The
01:01PM 2 greatest contrast here is Juror 37, who is on our panel,
01:01PM 3 her employer is a doctor here named Mark Palmer. He
01:01PM 4 wrote Judge Cosby a letter and said, This is my surgery
01:01PM 5 coordinator. I've got to have her. Please release her.
01:01PM 6 American insisted that wasn't hardship.

01:01PM 7 But when we had the same exact complaint
01:01PM 8 with respect to Juror 20 who said he was a construction
01:01PM 9 superintendent and his boss was upset because they
01:02PM 10 needed him to perform work, Sabre said that's
01:02PM 11 hardship -- sorry, American said that's hardship.

01:02PM 12 Those two positions are irreconcilable, but
01:02PM 13 it was obvious American was targeting to strike men from
01:02PM 14 this jury.

01:02PM 15 And the fact that the hot-button language
01:02PM 16 was a part of voir dire is incurable error. The jury
01:02PM 17 that we have here will see the redacted e-mails, and
01:02PM 18 having heard the voir dire -- this is very important,
01:02PM 19 Judge -- having heard the illusion to the language, is
01:02PM 20 going to assume what the redacted language is. There's
01:02PM 21 no way to fix that.

01:02PM 22 Had they never heard the voir dire
01:02PM 23 questioning about the bad language, we wouldn't have
01:02PM 24 that problem, but they heard it. And they inferred from
01:02PM 25 the statements by the lawyers what language would be

01:02PM 1 used. Now they're going to see e-mails with redactions,
01:02PM 2 and they're going to know or infer that's what language
01:03PM 3 was in there. That cannot be fixed and that's why the
01:03PM 4 Supreme Court has said the use of this type of language
01:03PM 5 is incurable.

01:03PM 6 So the only remedy for this type of Batson
01:03PM 7 violation and these inconsistencies in the voir dire in
01:03PM 8 terms of hardships is to dismiss this jury and grant
01:03PM 9 Sabre a new trial and empanel a jury where none of this
01:03PM 10 irrelevant and inflammatory language is the subject of
01:03PM 11 voir dire and where the Court employs an even standard
01:03PM 12 on men and women for what is and what is not a hardship
01:03PM 13 and where we don't lose qualified jurors based on
01:03PM 14 alleged cause tied to inflammatory, irrelevant e-mails.

01:03PM 15 THE COURT: Does the plaintiff want to
01:03PM 16 speak to the motion?

01:03PM 17 MR. YETTER: Your Honor, just very briefly.

01:03PM 18 First of all, Your Honor, this is the sort
01:03PM 19 of motion that we could have been given some advance
01:03PM 20 notice on and been able to respond in more detail.

01:04PM 21 But the bottom line, Your Honor, is we have
01:04PM 22 a transcript of the voir dire, at least the third day,
01:04PM 23 which is the day that they say they would have made a
01:04PM 24 Batson challenge, and there is no Batson challenge.

01:04PM 25 The issue of bad language did come up, Your

01:04PM 1 Honor, but no specific language was used. As the Court
01:04PM 2 saw in opening yesterday, there are going to be some
01:04PM 3 e-mails with some bad language. There were some
01:04PM 4 yesterday. The jury was simply asked, would bad
01:04PM 5 language offend you to the point that you could not be
01:04PM 6 fair. Some folks said, yes, it would.

01:04PM 7 There is -- we went through days of voir
01:04PM 8 dire, Your Honor. We have a solid jury that took a lot
01:04PM 9 of work. And this jury has basically rearranged its
01:04PM 10 schedule. What the defendant seems to be doing now is
01:04PM 11 trying to raise a two-week-late Batson challenge when
01:04PM 12 the venire has been released based on what they allege,
01:04PM 13 which we believe the record does not reflect, is some
01:04PM 14 sort of improper questioning. They're the ones that
01:04PM 15 brought all that up.

01:04PM 16 So with due respect, Your Honor, we have --
01:05PM 17 we strenuously object to the motion for mistrial. We
01:05PM 18 are in the middle of trial. We have a proper panel --
01:05PM 19 jury that's empaneled, and we're -- we are prepared to
01:05PM 20 go forward.

01:05PM 21 Thank you.

01:05PM 22 MR. DUGGINS: I'll be very brief, Judge.
01:05PM 23 The transcript is going to show what statements were
01:05PM 24 made about language and what weren't. We're not here
01:05PM 25 just talking about bad language; we're talking about

01:05PM 1 language that is gender specific. And there is no
01:05PM 2 question that the 16 jurors who are in this jury box --
01:05PM 3 not here right now, but who have been seated --
01:05PM 4 understood what words we were talking about. And they
01:05PM 5 are going to be able to fill in the blanks when the
01:05PM 6 redacted e-mails are offered, number one.

01:05PM 7 Number two, this is not a late challenge.
01:05PM 8 This has only been heightened by the fact that you have
01:05PM 9 now followed the law, followed Rule of Evidence 401, 2,
01:06PM 10 and 3, and the *Garza* case and stricken completely
01:06PM 11 irrelevant, gratuitous comments that are gender specific
01:06PM 12 and that American used to target a mostly female jury.
01:06PM 13 We have eight versus four.

01:06PM 14 And the record does also speak for itself
01:06PM 15 about whether a Batson challenge was made. I have that
01:06PM 16 if you want to see that excerpt. I'm happy to tender it
01:06PM 17 to you if you'd like to see it. If I may approach,
01:06PM 18 I'll --

01:06PM 19 THE COURT: All right.

01:06PM 20 MR. DUGGINS: That's the portion of the
01:06PM 21 transcript that does -- where Mr. Lind did make a Batson
01:06PM 22 challenge and the Court, without requiring American to
01:06PM 23 explain its strikes, simply overruled the objection.

01:06PM 24 And the fact that we're in the middle of
01:06PM 25 trial is not -- that's not the point of this. The point

01:06PM 1 is to get a constitutionally firm, fair, objective, and
01:07PM 2 impartial jury, and we don't have that because the
01:07PM 3 entire process was tainted by American's injection of
01:07PM 4 these irrelevant and prejudicial e-mails.

01:07PM 5 THE COURT: All right. In looking at these
01:07PM 6 e-mails, it doesn't -- it doesn't appear to me that the
01:07PM 7 jury's going to necessarily infer that bad language was
01:07PM 8 stricken. The sentences before and the language that
01:07PM 9 was restricted don't necessarily connect in these. I
01:07PM 10 just -- I don't think they're going to necessarily infer
01:07PM 11 bad language.

01:07PM 12 MR. DUGGINS: Well, that's not the only
01:07PM 13 basis for the motion.

01:07PM 14 THE COURT: I understand.

01:07PM 15 MR. DUGGINS: The problem is that the
01:07PM 16 process was tainted by American's efforts to target
01:07PM 17 males and to eliminate males from the jury. And they
01:07PM 18 have -- that is a critical component of this motion.
01:08PM 19 And as I pointed out, when we have the full record, you
01:08PM 20 can see how American employed one hardship standard for
01:08PM 21 females and a different one for males.

01:08PM 22 MR. YETTER: Your Honor, if we're going to
01:08PM 23 talk about a voir dire, there will be a transcript and
01:08PM 24 we can show -- in fact, Judge, there is -- we have -- we
01:08PM 25 have absolutely no basis for this. We believe, Your

01:08PM 1 Honor, no basis for this motion. We had -- we went
01:08PM 2 through a very long voir dire, lots of people were
01:08PM 3 stricken, male and female on both sides. We moved for
01:08PM 4 cause on a number of females and males, so did Sabre.
01:08PM 5 At one point the judge even remarked that Sabre was
01:08PM 6 trying to strike women off the panel.

01:08PM 7 But the bottom line, Your Honor, even this
01:08PM 8 little excerpt, which is not the complete transcript,
01:08PM 9 reflects that there was never -- the word Batson is not
01:08PM 10 even used. The word "discrimination" is not used.
01:08PM 11 "Constitutional rights" is not used. There's no --
01:08PM 12 Mr. Lind doesn't even say "objection." There is nothing
01:08PM 13 here, Your Honor, that would have required anybody to
01:09PM 14 respond at the time. The venire was left, and now two
01:09PM 15 weeks later Sabre wants to create a Batson challenge
01:09PM 16 that never was made at the time in order to try all over
01:09PM 17 again.

01:09PM 18 We -- we mentioned at the outset, Your
01:09PM 19 Honor, Sabre has tried several times to delay this
01:09PM 20 trial. We personally believe that the recusal was an
01:09PM 21 effort to delay the trial. This mistrial, Your Honor,
01:09PM 22 obviously would have a practical effect of significantly
01:09PM 23 delaying the trial. We think this is just another,
01:09PM 24 probably the seventh time that they've tried to delay
01:09PM 25 the trial.

01:09PM 1 And we agree with the Court. Those
01:09PM 2 e-mails, we were never going to build our case around.
01:09PM 3 The redactions are -- it's entirely unclear what comes
01:09PM 4 after -- in the place of those redactions.

01:09PM 5 MR. DUGGINS: Your Honor, Page 10 of the
01:09PM 6 transcript I handed you, the Court said "Any objections"
01:09PM 7 at Line 1. Mr. Yetter said, "We have no objections."
01:09PM 8 Then Judge turned to Mr. Lind. He didn't say Sabre has
01:10PM 9 no objections. He stated an objection. And the Court
01:10PM 10 immediately overruled it without, as required by Supreme
01:10PM 11 Court precedent, requiring American to explain a
01:10PM 12 nongender basis for striking all males.

01:10PM 13 And this is not an effort to delay the
01:10PM 14 trial, nor was the recusal. And if the recusal had been
01:10PM 15 just a frivolous motion, Judge Walker wouldn't have
01:10PM 16 granted it. I can't even believe American has the nerve
01:10PM 17 to bring that up. This is a very serious motion because
01:10PM 18 the voir dire process was flawed from the beginning.

01:10PM 19 And Sabre over and over objected to any
01:10PM 20 efforts to inject these inflammatory e-mails in it, and
01:10PM 21 Sabre also objected to American's efforts to target
01:10PM 22 males to get off the jury, both on hardship basis, and
01:10PM 23 now we know flawed cause grounds. We lost Juror 14
01:10PM 24 based on these e-mails. We lost Juror 3 based on these
01:10PM 25 e-mails.

01:11PM 1 MR. LIND: And, Your Honor, we are
01:11PM 2 recognizing that -- I'm sorry.

01:11PM 3 MR. YETTER: How many lawyers are --

01:11PM 4 MR. LIND: -- not only was there an
01:11PM 5 objection stated, but Judge Cosby specifically
01:11PM 6 recognized it as an objection. He said, "Objection
01:11PM 7 noted. Overruled." There's no question it was an
01:11PM 8 objection.

01:11PM 9 MR. YETTER: Your Honor, if we are going to
01:11PM 10 argue about a voir dire that was transcribed, you should
01:11PM 11 have a transcript in front of you, because all we have
01:11PM 12 are counsel frankly, we believe, unfairly
01:11PM 13 misrepresenting the voir dire. It was a long, careful
01:11PM 14 voir dire that we believe Judge Cosby handled very
01:11PM 15 appropriately, and now at the end, without even saying
01:11PM 16 the word "objection" or "Batson" or "discrimination" or
01:11PM 17 "constitutional rights" or anything -- and I know this
01:11PM 18 Court had handled a number of Batson challenges -- they
01:11PM 19 are coming two weeks later to claim they made a Batson
01:11PM 20 challenge.

01:11PM 21 THE COURT: All right. Well, I'll do this.
01:11PM 22 I'll overrule the motion.

01:11PM 23 Are you ready to call your first witness?

01:11PM 24 MR. YETTER: Yes, Your Honor, for American
01:11PM 25 we are.

01:11PM 1 THE COURT: Defendant ready for the jury?

01:11PM 2 MR. GRIMSLEY: Yes, Your Honor.

01:11PM 3 MR. LIND: Your Honor, we'd like to invoke

01:11PM 4 the rule on witnesses, too, sequestration for the

01:12PM 5 witnesses who are actually supposed to be here.

01:12PM 6 MR. YETTER: I don't think we have --

01:12PM 7 THE COURT: Are there any witnesses in the

01:12PM 8 courtroom other than the first witness who will be

01:12PM 9 called?

01:12PM 10 MR. YETTER: And our corporate

01:12PM 11 representative, Judge. None other than our corporate

01:12PM 12 representative and our first witness.

13 THE COURT: All right.

01:12PM 14 MR. DUGGINS: Your Honor, I think Ryan

01:12PM 15 Mikolasik is in the courtroom, and he's definitely a

01:12PM 16 witness.

01:12PM 17 MR. YETTER: Well, we'll have -- he's not

01:12PM 18 one of our witnesses. And if he's one of theirs, we'll

01:12PM 19 certainly remove him, Judge.

01:12PM 20 THE COURT: Well, the rule as to witnesses

01:12PM 21 has been called for. If there are any witnesses in the

01:12PM 22 courtroom, you'll have to remain outside during the

01:12PM 23 testimony. Do not discuss this case or your testimony

01:12PM 24 with anyone. Don't let anyone discuss the case with you

01:12PM 25 or in your presence. You may talk to the attorneys one

01:12PM 1 at a time.

01:12PM 2 (Rule was invoked.)

01:12PM 3 THE COURT: So any witnesses, other than
01:12PM 4 the corporate representatives and the first witness to
01:12PM 5 be called, will have to remain outside the courtroom,
01:12PM 6 and that instruction will remain throughout the trial.

01:12PM 7 MR. ROTHMAN: Your Honor, can we approach
01:12PM 8 for a second?

01:12PM 9 THE COURT: All right.

01:12PM 10 (Discussion off the record.)

01:13PM 11 THE COURT: All right.

01:13PM 12 (Jury present.)

01:15PM 13 THE COURT: Now, ladies and gentlemen, I
01:15PM 14 notice that you have notebooks. You're -- you may take
01:15PM 15 notes during this trial, but your notes are not
01:15PM 16 evidence; therefore, you cannot share your notes with
01:15PM 17 other members of the jury. You can't tell other jurors,
01:15PM 18 this is what was said because I made a note of it and
01:15PM 19 here's the note. You can't do that.

01:15PM 20 Now, at the end of each day of testimony,
01:15PM 21 you'll give your notes to the bailiff and he will keep
01:15PM 22 them and give them back to you for testimony the next
01:15PM 23 day. You cannot share your notes with other members of
01:15PM 24 the jury.

01:15PM 25 All right, Counsel.

01:15PM 1 MR. ROTHMAN: Good afternoon, Your Honor.
01:15PM 2 I'm Rich Rothman. I'm working with Mr. Yetter for
01:15PM 3 American Airlines.

01:15PM 4 MR. LIND: Your Honor, can I just say that
01:15PM 5 my partner Sean Grimsley is going to be handling this
01:16PM 6 witness too. So I think we have a couple of new faces
01:16PM 7 today.

8 THE COURT: All right.

01:16PM 9 MR. LIND: Thank you.

01:16PM 10 THE COURT: Who are you calling as your
01:16PM 11 first witness?

01:16PM 12 MR. ROTHMAN: We call as our first witness
01:16PM 13 Monty Myers, who is our expert on technology and
01:16PM 14 computer software.

01:16PM 15 THE COURT: Right up here.

01:16PM 16 (Witness sworn.)

01:16PM 17 THE COURT: Have a seat and speak into that
01:16PM 18 mic.

01:16PM 19 MONTY MYERS,
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ROTHMAN:

01:16PM 23 Q. Good afternoon, Mr. Myers. Would you please
01:16PM 24 state your full name and what you do for a living for
01:16PM 25 the record.

01:16PM 1 A. My name is Monty Myers. I am a software
01:16PM 2 engineer. I'm the founder of a software company in
01:16PM 3 Austin, Texas.

01:16PM 4 Q. Okay. And can you tell the jury a little bit
01:16PM 5 about your background, Mr. Myers, where you went to
01:16PM 6 school?

01:16PM 7 A. Yes. Well, I started my formal software
01:16PM 8 engineering experience in high school, actually. I
01:17PM 9 continued that in college. Went to Texas A&M and
01:17PM 10 studied engineering. I have a graduate degree -- an
01:17PM 11 honors degree from there. I went on to study graduate
01:17PM 12 studies in engineering at the University of Texas in
01:17PM 13 Austin.

01:17PM 14 And I also founded a software company about
01:17PM 15 26 years ago called Eureka Software, and so that's what
01:17PM 16 I've been doing for most of my adult life is running a
01:17PM 17 software company.

01:17PM 18 Q. And what does Eureka do?

01:17PM 19 A. Eureka Software is a company that is a
01:17PM 20 consulting company. We're hired by companies like Sears
01:17PM 21 and Motorola, Siemens, A&B, ConocoPhillips, and a lot of
01:17PM 22 smaller companies. But they come to me and my team and
01:17PM 23 ask us to help them design software, solve technical
01:17PM 24 problems.

01:17PM 25 In particular, companies often want to get

01:17PM 1 from older technology to something newer and they come
01:17PM 2 to us, and we're experts in that. And we sit down and
01:18PM 3 understand where they are and then help them plan a
01:18PM 4 course for moving to newer technology.

01:18PM 5 Q. How many people work with you at Eureka?

01:18PM 6 A. It fluctuates a bit with the economy, but we
01:18PM 7 have about 25 people now.

01:18PM 8 Q. Now, Mr. Myers, have you ever -- well, let me
01:18PM 9 ask you this first: Can you give the jury a few
01:18PM 10 examples of the kinds of projects you've done at Eureka
01:18PM 11 that may be relevant to what we're talking about here
01:18PM 12 today?

01:18PM 13 A. I'll give a couple of examples. One, for
01:18PM 14 example, Progressive Insurance is a big insurance
01:18PM 15 company. You may have heard of it. They had been on
01:18PM 16 some legacy technology -- well, I'll be talking about
01:18PM 17 that later -- some mainframe technology, and they came
01:18PM 18 to our firm and asked us to -- when the Internet came on
01:18PM 19 the scene, they wanted us to help them figure out a way
01:18PM 20 to get a lot of their data storage and information
01:18PM 21 systems delivered to the Internet. So we -- that's an
01:18PM 22 example.

01:18PM 23 Another good example that's very similar to
01:19PM 24 this one is a company called Rush Enterprises. They are
01:19PM 25 the largest distributor of trucks, big heavy trucks in

01:19PM 1 the U.S. They have -- from coast to coast, they have
01:19PM 2 centers, and so we helped them completely replace their
01:19PM 3 mainframe systems with new technology that they could --
01:19PM 4 to run all their business, from cradle to grave is what
01:19PM 5 we call it, and manage all their quotes for customers
01:19PM 6 and those kind of things.

01:19PM 7 And probably the one that's most directly
01:19PM 8 related to this is we worked with a client in the
01:19PM 9 automotive aftermarket. That's when you take your car
01:19PM 10 into the garage or to the dealership and get work on it,
01:19PM 11 there's a huge system out there that delivers those
01:19PM 12 parts. You take it in, they diagnose your problem, they
01:19PM 13 go online, and they order parts. Well, that -- this was
01:19PM 14 an industry that was way behind, had a lot of old
01:19PM 15 technology, and so they hired my firm to work with them
01:19PM 16 for about three years to help them, you know, migrate to
01:20PM 17 Internet technologies and really transform their
01:20PM 18 business.

01:20PM 19 And they were very similar to airline
01:20PM 20 distribution systems, which we'll be talking about more
01:20PM 21 today, but just in a different industry which was
01:20PM 22 distributing car parts.

01:20PM 23 MR. ROTHMAN: Monica, do you need him to
01:20PM 24 speak a little more slowly? Okay. We'll both try.

01:20PM 25 Q. (BY MR. ROTHMAN) Mr. Myers, have you ever

01:20PM 1 worked for a travel agent?

01:20PM 2 A. No, I haven't.

01:20PM 3 Q. Have you ever been employed by an airline?

01:20PM 4 A. No, I haven't.

01:20PM 5 Q. Do you think your experience working outside
01:20PM 6 the airline industry has helped in your work on this
01:20PM 7 case?

01:20PM 8 A. Yes. I think that's precisely why I was
01:20PM 9 engaged on the project.

01:20PM 10 Q. How so?

01:20PM 11 A. What I'm asked to do in this case is to
01:20PM 12 evaluate and -- broader industry trends and how -- and
01:20PM 13 to compare broader industries to what's been going on
01:20PM 14 particularly in the travel industry.

01:20PM 15 Q. Have you had any experience working in the
01:21PM 16 travel industry?

01:21PM 17 A. Yes. I -- in the course of my consulting at
01:21PM 18 Eureka Software, my firm, we've worked for, I believe,
01:21PM 19 three or four travel -- travel agencies over the years.
01:21PM 20 It's been some time ago, maybe over ten years ago, but I
01:21PM 21 have some experience in the travel industry.

01:21PM 22 Q. And have you had any -- any experience working
01:21PM 23 with a -- with a mainframe computer -- we'll talk about
01:21PM 24 that in a little bit -- or legacy systems like Sabre's?

01:21PM 25 A. Yes, I do.

01:21PM 1 Q. Why don't you give the jury a sense of that.

01:21PM 2 A. Well, I started -- some of my first programming
01:21PM 3 experience was programming on mainframe computers. Back
01:21PM 4 in those days, computers didn't have keyboards and
01:21PM 5 screens. We literally punched holes in cards and would
01:21PM 6 feed them into the computer. That's the way they
01:21PM 7 worked. So computers have come a long way. And so
01:21PM 8 that -- I did that.

01:21PM 9 Also in my professional career, I worked
01:22PM 10 with a variety of mainframes. Mainframes are good at
01:22PM 11 crunching data, so there would be services -- I managed
01:22PM 12 the software division for a transportation research
01:22PM 13 company, and we would create software and we would use
01:22PM 14 mainframes to crunch a lot of that information.

01:22PM 15 Q. How long have you been working on this case,
01:22PM 16 Mr. Myers?

01:22PM 17 A. A little over a year, I believe.

01:22PM 18 Q. And you've been paid for your service?

01:22PM 19 A. Yes, I have.

01:22PM 20 Q. How much do you get an hour?

01:22PM 21 A. Well, I've engaged a team. My rate is \$500 an
01:22PM 22 hour, and my team -- I use engineers from my software
01:22PM 23 engineering firm, and they're paid \$250 an hour.

01:22PM 24 Q. And approximately how many hours have you and
01:22PM 25 your team spent on the case?

01:22PM 1 A. I think it's a couple of thousand hours, is
01:22PM 2 what I would estimate.

01:22PM 3 Q. Okay. Would you describe the -- the work that
01:22PM 4 you did in order to arrive at the conclusions you've
01:22PM 5 come to about this case?

01:22PM 6 A. Well, we've been working very hard for, again,
01:23PM 7 over a year. I have -- first of all, there are many
01:23PM 8 documents that have been produced in this case and --
01:23PM 9 thousands. And so, you know, I've been going through
01:23PM 10 and studying those documents. We use software tools to
01:23PM 11 search and find the relevant documents for me and my
01:23PM 12 team.

01:23PM 13 We -- I interviewed a number of people, I
01:23PM 14 think about 15 or so people. And so -- the other -- the
01:23PM 15 other area I spent a lot of time with is actually
01:23PM 16 testing the software. I'll be talking about that later,
01:23PM 17 I believe, but there's Sabre's technology and software,
01:23PM 18 as well as Direct Connect technology, hands-on use of
01:23PM 19 those technologies.

01:23PM 20 Q. So have you actually used the Sabre system?

01:23PM 21 A. Yes, I have.

01:23PM 22 Q. And what about American's Direct Connect
01:23PM 23 system?

01:23PM 24 A. Yes, I have.

01:23PM 25 Q. Okay. And what was your overall assessment of

01:23PM 1 those two systems?

01:23PM 2 A. I would say overall, the Sabre technology,
01:23PM 3 while it has had some good qualities, it has gotten
01:24PM 4 behind and it has some challenges for it evolving and
01:24PM 5 moving forward.

01:24PM 6 Direct Connect is built on more modern
01:24PM 7 technologies and it's significantly more flexible.

01:24PM 8 Q. Mr. Myers, have you prepared some materials or
01:24PM 9 demonstrative exhibits, slides to go along with your
01:24PM 10 presentation today?

01:24PM 11 A. Yes. I have some very technical topics to talk
01:24PM 12 about, and I think -- I've created some slides that I
01:24PM 13 think will help speed the teaching process along so that
01:24PM 14 the jury will understand that.

01:24PM 15 Q. And me and Mr. Yetter may understand it too?

01:24PM 16 A. I can't say that, but...

01:24PM 17 Q. Would it help if you were to work with the
01:24PM 18 SMART Board on this?

01:24PM 19 A. Yes, it would.

01:24PM 20 MR. ROTHMAN: Your Honor, with your
01:24PM 21 permission, I would ask Mr. Myers to approach the board
01:24PM 22 at this time.

01:24PM 23 THE COURT: All right.

01:25PM 24 Q. (BY MR. ROTHMAN) Mr. Myers, you've referred
01:25PM 25 already to a number of terms --

01:25PM 1 MR. GRIMSLEY: Do you have a copy of that?

01:25PM 2 MR. ROTHMAN: Do we have a hard copy?

01:25PM 3 MR. GRIMSLEY: Judge wants a copy.

01:25PM 4 THE COURT: All right. If you have one.

01:25PM 5 Thank you.

01:25PM 6 Q. (BY MR. ROTHMAN) Mr. Myers, you've used a

01:25PM 7 number of terms already, like "legacy system,"

01:25PM 8 "mainframe computers." There may have been a few

01:25PM 9 others.

01:25PM 10 Would you take the jury now through what
01:25PM 11 you regard to be the relevant history of the technology
01:25PM 12 and software in this industry that will help you explain
01:25PM 13 to us what you think are the important issues in this
01:26PM 14 case?

01:26PM 15 A. Yes, I can. Let me lay out what I'm showing
01:26PM 16 the jury here. I'm going to be talking about some key
01:26PM 17 innovative periods in technology, and they're very
01:26PM 18 important in this case for you to understand what's
01:26PM 19 going on. So this is a timeline starting in 1950, and
01:26PM 20 it goes up through today.

01:26PM 21 And so the first period of innovation I
01:26PM 22 want to talk about is the mainframe computer. And
01:26PM 23 this -- these were the what we call in the industry "big
01:26PM 24 iron systems." These were -- filled up rooms. They had
01:26PM 25 huge tape drives and systems. And for back in the '50s

01:26PM 1 and '60s, this was the state of the art.

01:26PM 2 Here's another shot of that. You get a
01:26PM 3 feel -- here's some punch card technology I mentioned
01:26PM 4 earlier.

01:26PM 5 And at this time, mainframes were -- there
01:26PM 6 were about eight companies. So this was the state of
01:26PM 7 the art. This was the technology. Very expensive,
01:26PM 8 millions of dollars, and only the biggest of companies
01:26PM 9 could be involved in computers.

01:27PM 10 A huge revolution came. It was called the
01:27PM 11 personal computer. Things got a lot smaller. They fit
01:27PM 12 on your desktop. Rather than filling an entire room
01:27PM 13 with a computer, now suddenly you could have it on your
01:27PM 14 desktop.

01:27PM 15 One of the first computers that I
01:27PM 16 personally worked with is this one right here. It's the
01:27PM 17 Radio Shack TRS-80. And so -- interestingly enough,
01:27PM 18 here's a tape recorder. It didn't even have disk drives
01:27PM 19 yet. You would literally -- you know, some of you like
01:27PM 20 me know what a cassette tape is. You would actually
01:27PM 21 save all your programs on a cassette tape.

01:27PM 22 And so this was an amazing -- at the time,
01:27PM 23 an individual person could have a PC, and put it on
01:27PM 24 their desktop, and write software on it.

01:27PM 25 So there's other companies. One that's

01:27PM 1 very notable in this whole history is Apple Computer.
01:27PM 2 There's been a lot of talk -- Steve Jobs died within the
01:27PM 3 last year. This was one of his early computers, the
01:27PM 4 Apple II. So you have whole series of companies
01:27PM 5 delivering new computers. That was amazing at the time.
01:27PM 6 And Apple was early to the market.

01:28PM 7 And guess whose attention that got? It's
01:28PM 8 IBM. They were a big -- they were certainly a big
01:28PM 9 player in the mainframe. IBM was number one there, and
01:28PM 10 IBM did not like this little upstart called Apple
01:28PM 11 Computer delivering to the marketplace this -- this new
01:28PM 12 technology.

01:28PM 13 So they rushed to market a product called
01:28PM 14 the IBM PC. Maybe some of you have seen one of these.
01:28PM 15 Again, this was a great device at the time. One of the
01:28PM 16 things that was very notable about the IBM PC is that it
01:28PM 17 was built upon a very commodity part. They picked the
01:28PM 18 Intel processor. At this time, you know, Intel was not
01:28PM 19 nearly the company they are today, but that selection
01:28PM 20 really helped Intel on the path to where they --

01:28PM 21 MR. GRIMSLEY: Your Honor, I'd just ask for
01:28PM 22 a question to be inserted every once in a while.

01:28PM 23 MR. ROTHMAN: You beat me to the punch.

01:28PM 24 THE COURT: All right. Go ahead. Ask a
01:28PM 25 question.

01:28PM 1 Q. (BY MR. ROTHMAN) Mr. Myers, what do you mean
01:28PM 2 by "commodity parts"?

01:29PM 3 A. Well, what I mean by that is rather than having
01:29PM 4 a proprietary system where only they could sell -- no
01:29PM 5 one else could build similar computers, they were
01:29PM 6 off-the-shelf parts put into the system. And I'll -- a
01:29PM 7 good way to explain that is to talk about Dell computer.

01:29PM 8 Q. Can you go back just for one minute?

01:29PM 9 A. Yes. Well, I'll have to go back -- okay.

01:29PM 10 Q. Can you explain to the jury what the screens
01:29PM 11 were like on these computers at this time?

01:29PM 12 A. Yes. This is what you would call the DOS
01:29PM 13 screen. What I was about to say is that another
01:29PM 14 interesting part of the story is that a company called
01:29PM 15 Microsoft, you know, at that point a very small company,
01:29PM 16 was hired by IBM to build the operating system. And
01:29PM 17 this is the DOS operating system.

01:29PM 18 You see it's what we call a "green screen,"
01:29PM 19 that's where that terminology comes, and this is way the
01:29PM 20 computers looked back in this time period. And so --
01:29PM 21 does that answer your question?

01:29PM 22 Q. And are those screens, types of screens, the
01:30PM 23 green screens being used today?

01:30PM 24 A. I would say, no, not in the -- computer
01:30PM 25 technology in general has moved well beyond the green

01:30PM 1 screen. I'll be talking to that in a moment.

01:30PM 2 Q. Is Sabre still using a green screen?

01:30PM 3 A. Sabre still uses a green screen substantially.

01:30PM 4 Q. What was the next era of development?

01:30PM 5 A. I did want to touch on Dell and tie it -- make
01:30PM 6 sure you understand why this was important to the
01:30PM 7 technology development.

01:30PM 8 Part of the reason why the PC exploded was
01:30PM 9 IBM's decision to use standard parts. That meant other
01:30PM 10 people could go out and build a similar computer. And
01:30PM 11 Michael Dell -- when I was in college, I bought my first
01:30PM 12 PC from him. He was selling them out of his dorm. And
01:30PM 13 word got around this young whippersnapper was building
01:30PM 14 these clone computers. It was an amazing time.

01:30PM 15 Q. Where did he go to school?

01:30PM 16 A. He went to the University of Texas.

01:30PM 17 Q. Okay.

01:30PM 18 A. And so that event, you know, shaped computer
01:31PM 19 history. I mean, him and other people building these
01:31PM 20 clone computers was a big part of that, and we still
01:31PM 21 reap the benefits of that today in the industry.

01:31PM 22 Q. What came next in the developmental history of
01:31PM 23 computer business?

01:31PM 24 A. So the next period is very important as well.
01:31PM 25 And this company called Apple Computer keeps popping up

01:31PM 1 on the screen here because they are very much
01:31PM 2 innovators. Steve Jobs has always been an innovator.
01:31PM 3 He came out with technology called the graphic user
01:31PM 4 interface. Let me explain that. That means -- remember
01:31PM 5 that green screen that looked like this? Suddenly we
01:31PM 6 have a screen that looks like this.

01:31PM 7 This is the first Mac computer. And so you
01:31PM 8 have -- you went -- this is what a DOS screen looked
01:31PM 9 like, and then this is what that first Mac looked like,
01:31PM 10 the Mac that Steve Jobs came out with.

01:31PM 11 And let me explain for those of you who
01:31PM 12 don't know what that means, on the old green screens,
01:31PM 13 you would have to enter a command like "delete" or a
01:32PM 14 real cryptic command that would be hard to learn. With
01:32PM 15 this interface, simple things like the trash can are
01:32PM 16 available. You can just take a file -- use a mouse to
01:32PM 17 drag it to the trash can.

01:32PM 18 And part of the -- the mouse really wasn't
01:32PM 19 part of a computer like they are today. These screens
01:32PM 20 are more typing on a keyboard predominantly.

01:32PM 21 And then this is another example. Not to
01:32PM 22 be outdone, Microsoft, after seeing what the Mac came
01:32PM 23 out with, they quickly launched the Windows system to
01:32PM 24 compete with that.

01:32PM 25 Q. And what was the next era in the history of the

01:32PM 1 computer industry?

01:32PM 2 A. This is the Internet. Of all these innovative
01:32PM 3 periods, this one changed everything the most. Some of
01:32PM 4 you remember that the press called it the "Information
01:32PM 5 Superhighway." So for the first time, we could
01:32PM 6 communicate very rapidly all over the planet.

01:32PM 7 And so I want to brag on our state a little
01:33PM 8 bit. We -- we here in Texas, and particularly in
01:33PM 9 Austin, were really at the cutting edge. And so THEnet
01:33PM 10 was the Texas Higher Education Network that was set up
01:33PM 11 here in Texas here in the late '80s. This was -- before
01:33PM 12 the Internet was used by everybody, we were using it to
01:33PM 13 research. I was a graduate student. We were
01:33PM 14 communicating. We had e-mail for the first time. It
01:33PM 15 was amazing. And then --

01:33PM 16 Q. Excuse me. So before this point in time, there
01:33PM 17 was no e-mail?

01:33PM 18 A. That's correct.

01:33PM 19 Q. Okay.

01:33PM 20 A. And so another, I think, high-water point for
01:33PM 21 Austin, in particular, and Texas is that the first --
01:33PM 22 MCC, a consortium of research was selected -- the
01:33PM 23 University of Texas at Austin donated some land and it
01:33PM 24 was a big deal. This research for microcomputers and
01:33PM 25 electronics and computer technology consortium brought

01:33PM 1 in amazing talent and a lot of money, and so Austin
01:33PM 2 became a center for technology. You know, there's the
01:33PM 3 Silicon Valley, there was Austin and Boston, so we were
01:34PM 4 right at the forefront, you know, at this time in
01:34PM 5 Austin, Texas.

01:34PM 6 Q. What were you doing in those days?

01:34PM 7 A. Well, I had a front-row seat. I was running a
01:34PM 8 software company. And we were riding the wave. It was
01:34PM 9 a lot of fun, but it was a crazy time. Venture capital
01:34PM 10 was flowing and this was -- you may remember the dot-com
01:34PM 11 boom, and this was the boom. It was crazy, but it
01:34PM 12 was -- it was a fun time and a lot of neat innovation
01:34PM 13 was going on in this time period.

01:34PM 14 Q. And you have icons on there for Google,
01:34PM 15 American Airlines, Southwest, Amazon.

01:34PM 16 Why is that?

01:34PM 17 A. Well, I think this list speaks for itself.
01:34PM 18 Look at these, what are now household names, what was
01:34PM 19 changing.

01:34PM 20 So in this period -- just so everybody's
01:34PM 21 clear, 1995, the government finally said, we're going to
01:34PM 22 be let the Internet be completely public. We're not
01:34PM 23 going to keep control of it, so it was all commercial at
01:34PM 24 that point.

01:34PM 25 So look at this. Yahoo.com in '94,

01:35PM 1 Amazon.com in '95, Google in '96. And even in the
01:35PM 2 airline industry, Southwest Airlines and American both
01:35PM 3 are some of the first airlines to launch Web sites.

01:35PM 4 So before this, companies didn't even have
01:35PM 5 Web sites where you go and get information. So this was
01:35PM 6 the Internet boom. It was changing everything about
01:35PM 7 computers and technology and the businesses that use the
01:35PM 8 technology.

01:35PM 9 Q. Were those companies, Yahoo! and Google,
01:35PM 10 relying on the mainframe computers?

01:35PM 11 A. No. These companies were using new, modern
01:35PM 12 technologies and not relying on mainframes.

01:35PM 13 Q. And what was the next era that you'd like to
01:35PM 14 talk about?

01:35PM 15 A. Well, the next era here is what we call
01:35PM 16 convergence. All of these technologies have built upon
01:35PM 17 each other, and so today we have benefits of combining
01:35PM 18 these together. And I have this graphic to illustrate
01:35PM 19 this. Remember you used to have a separate telephone,
01:35PM 20 you used to have a separate calendar, you used to have a
01:36PM 21 phone, you used to have mail on your desktop, a radio,
01:36PM 22 and today all of that's now converged into one device
01:36PM 23 that many people have like an iPhone like I do. So this
01:36PM 24 is the concept. All of those technologies have come
01:36PM 25 together.

01:36PM 1 Now, what that means is that in the world
01:36PM 2 we all live in now, we have some key elements going on
01:36PM 3 that we all experience every day. Online shopping is
01:36PM 4 huge. We all buy much more of our stuff for life
01:36PM 5 through online shopping. Increasingly, it is
01:36PM 6 customized. What I mean by that is that it's
01:36PM 7 personalized. We get offers, we get special deals, I
01:36PM 8 love a good coupon or something like that. I'll talk of
01:36PM 9 some examples there.

01:36PM 10 Q. Wait a second. What is Randalls?

01:36PM 11 A. Randalls is one -- well, that's a grocery store
01:36PM 12 in Austin, and they have an iPhone app that is called
01:36PM 13 "Just For You." And so I can download -- I have that on
01:36PM 14 my phone, and Randalls is right next door to my office.
01:37PM 15 I eat lunch there regularly, so I'll get a coupon. You
01:37PM 16 go online and -- what I mean is that that's what we mean
01:37PM 17 by customized or personalized. You know, they look at
01:37PM 18 what I've bought in the past and they give me good deals
01:37PM 19 on what I like to buy, so...

01:37PM 20 Q. I won't ask you what you're buying, Mr. Myers.

01:37PM 21 A. And I think that was probably my next point
01:37PM 22 here. Mobile is a key part of that. Increasingly, it's
01:37PM 23 not only what you're doing at home, but it's also mobile
01:37PM 24 technology as part of delivering these functionalities
01:37PM 25 or capabilities when you're out and about town.

01:37PM 1 And then it's increasingly social.
01:37PM 2 Everybody's heard about Facebook. These, you know,
01:37PM 3 companies are looking at your network of people and
01:37PM 4 targeting information to give you a better deal based on
01:37PM 5 what you like.

01:37PM 6 Q. What about CarMax?

01:37PM 7 A. CarMax is a good example of helping you hone in
01:37PM 8 on what you really want, taking a lot of noise and
01:37PM 9 helping you filter down and find the car that looks
01:38PM 10 good. You may have seen their commercials. That's part
01:38PM 11 of their technology is to, you know, look at all the
01:38PM 12 cars out there and filter down by color and model and
01:38PM 13 all those features. That's the way they work.

01:38PM 14 And any other examples here of interest?

01:38PM 15 Q. Well, you've got American Airlines up there.
01:38PM 16 Have you seen any development in the airline business
01:38PM 17 that seeks to do the kinds of things you've talked about
01:38PM 18 in the era of convergence?

01:38PM 19 A. There are a few, definitely, and American
01:38PM 20 Airlines, that is a -- they have an iPhone app that I
01:38PM 21 use when I travel American. Southwest has one as well.
01:38PM 22 It's an app where you can check your flight, get your
01:38PM 23 boarding pass, all of those kinds of things. So this
01:38PM 24 is -- you know, what I'm trying to show here is that
01:38PM 25 technology has come to where we are today and there's a

01:38PM 1 lot of new and exciting, innovative services that can be
01:38PM 2 delivered through this cumulative technology here.

01:38PM 3 Q. And have you seen in the airline business any
01:38PM 4 attempt to do the kind of personalization you've talked
01:38PM 5 about?

01:39PM 6 A. Yes, companies are trying to do that.

01:39PM 7 Q. Okay. Now, let's step back. And you know this
01:39PM 8 case is about the GDS business and the Sabre product.

01:39PM 9 What I'd like you to do now is to help us
01:39PM 10 understand the production and the development of the
01:39PM 11 Sabre GDS, if you could. Where did it begin?

01:39PM 12 A. So this is a really interesting story. It
01:39PM 13 starts back in 1953. There was -- well, it's covered up
01:39PM 14 by the icon there.

01:39PM 15 The CEO of American Airlines happened to
01:39PM 16 sit on an airline next to an IBM salesman. This is
01:39PM 17 1953. IBM had been working on some --

01:39PM 18 MR. GRIMSLEY: Your Honor, may we approach
01:39PM 19 the bench?

01:39PM 20 THE COURT: All right.

01:39PM 21 (Discussion off the record.)

01:40PM 22 Q. (BY MR. ROTHMAN) Go ahead, Mr. Myers.

01:40PM 23 A. So this chance meeting between the CEO of
01:40PM 24 American Airlines and an IBM salesman, they get to
01:40PM 25 talking about the problems of American Airlines. The

01:40PM 1 problem was they were paper based. If you called up
01:40PM 2 your airline and wanted to book a flight, someone
01:40PM 3 effectively had a clipboard and had to look and see if
01:40PM 4 there's a space on an airplane. That's a complicated
01:40PM 5 process. You know, there was no computer at that time.
01:40PM 6 IBM had been working with some government research. And
01:40PM 7 these two gentlemen talked about it and said, I think we
01:40PM 8 can put this -- you know, put something together.

01:40PM 9 So about a year or two later, they kick off
01:40PM 10 a project. And then in about 1960 to '62, the first
01:40PM 11 version of Sabre was launched. At that time the
01:41PM 12 astronomical amount of money of about \$40 million was
01:41PM 13 spent on that project. In today's dollars, that's over
01:41PM 14 \$300 million was spent by one airline, American
01:41PM 15 Airlines. They were a key innovator in the industry.
01:41PM 16 And just to make sure you're clear on that, Sabre was
01:41PM 17 part of American Airlines at this time, and this was the
01:41PM 18 first system that was developed.

01:41PM 19 Q. Do you have a picture of what the Sabre system
01:41PM 20 looked like?

01:41PM 21 A. Yes. This is a video I found online. This is
01:41PM 22 American Airlines center, and this is the actual first
01:41PM 23 version in 1965 of the American Airlines Sabre system,
01:41PM 24 mainframe technology. So this was a documentary
01:41PM 25 produced by AT&T who was a part of it. I'll speak to

01:41PM 1 that in a moment. Things have changed a little bit.

01:41PM 2 Q. What was the next significant development in
01:42PM 3 the development of the Sabre system?

01:42PM 4 A. Well, the network was completed in 1964. Let
01:42PM 5 me tell you what that means. Remember, this was before
01:42PM 6 the Internet. There was no way to talk among all the
01:42PM 7 computers and systems, and that's why AT&T, they put
01:42PM 8 about 10,400 phone lines all over the country. They
01:42PM 9 effectively built their -- the first version of the
01:42PM 10 Internet, at least for American Airlines. So that came
01:42PM 11 out in about 1964.

01:42PM 12 And, you know, frankly, this was a
01:42PM 13 remarkable system. It was way before its time,
01:42PM 14 cutting-edge technology. They spent millions of dollars
01:42PM 15 and it was, you know, really phenomenal at the time.

01:42PM 16 Q. And what was the next stage?

01:42PM 17 A. So then the next innovation for American
01:42PM 18 Airlines was to go and put these terminals at travel
01:42PM 19 agencies. Prior to this, this was just the system used
01:42PM 20 by the airline itself. So if you called the airline or
01:42PM 21 you went to the ticket counter, they were using the
01:43PM 22 Sabre system to book your trip that you were taking. So
01:43PM 23 they started this in 1976. They were in 130 travel
01:43PM 24 agencies. This was revolutionary at the time. The
01:43PM 25 other airlines started to respond and it concerned them,

01:43PM 1 so they went and started building competing systems.

01:43PM 2 But this was creating a lot of competition in the

01:43PM 3 market.

01:43PM 4 Q. What was the next stage?

01:43PM 5 A. Sabre is -- the Sabre system is continuing to

01:43PM 6 evolve and change. So you may remember, this is before

01:43PM 7 the Internet, but they had CompuServe and America

01:43PM 8 Online, these dial-up services where you had a modem

01:43PM 9 that made weird sounds and you could log in and

01:43PM 10 communicate. This is a pre-Internet way so that people

01:43PM 11 could log into the system and start to shop for their

01:43PM 12 airline travel.

01:43PM 13 Q. And what are you depicting here in this

01:43PM 14 diagram?

01:43PM 15 A. So I'm showing a few milestones in the

01:44PM 16 development of Sabre. This is where the Sabre system

01:44PM 17 starts to show some of its age. Remember, it was

01:44PM 18 first -- started development back here in the '50s, and

01:44PM 19 it has been improved. A lot of money has been invested

01:44PM 20 in the system. We have -- the Internet boom begins

01:44PM 21 here, and American launches Travelocity.com, and they

01:44PM 22 launch Best Fare Finder. These are just the milestones.

01:44PM 23 They are improving the product and continuing to invest

01:44PM 24 in that.

01:44PM 25 Q. And you have a note there for the Y2K Project.

01:44PM 1 What was that?

01:44PM 2 A. Yes. Hopefully you guys remember the Y2K. It
01:44PM 3 was kind of a crazy time. That stands for "Year 2000."
01:44PM 4 The older computer systems like this were -- you know,
01:44PM 5 back in those days you just used a term like "76" for
01:44PM 6 the year 1976. The problem was, they didn't -- no one
01:44PM 7 thought these systems would still be around where we'd
01:44PM 8 have to use the date 2000. So after 1999 there was no
01:44PM 9 storage in the system for that -- for dates beyond
01:45PM 10 December 31, 1999.

01:45PM 11 So this was something -- and, you know, a
01:45PM 12 lot of people -- but particularly older systems,
01:45PM 13 Sabre -- the Sabre system had to spend five years and
01:45PM 14 about a million hours on that project to make -- to deal
01:45PM 15 with that problem.

01:45PM 16 And that goes to -- to something I want to
01:45PM 17 mention here. The Sabre system is built in very
01:45PM 18 low-level technology. This goes back to -- when the
01:45PM 19 system was first built, it used a similar code. I know
01:45PM 20 that's a techy word, but that means it's basically
01:45PM 21 hardware. Modern programming languages that are easy and
01:45PM 22 flexible to change your program weren't even available
01:45PM 23 when that project started. This was basically
01:45PM 24 hardwiring the machine code, millions and millions of
01:45PM 25 lines of machine code, and that made projects like Y2K a

01:45PM 1 big problem because you had to go in and really dig in
01:45PM 2 the weeds to try to figure out how to fix those
01:45PM 3 problems.

01:45PM 4 Q. So let's take a look now at Sabre in the
01:46PM 5 convergence period.

01:46PM 6 A. So I think this is important. Up to this point
01:46PM 7 in 2000, Sabre is part of American Airlines and the
01:46PM 8 company is sold. I think you heard that yesterday in
01:46PM 9 the openings. And the -- this is a notable milestone
01:46PM 10 here, this Sabre ATSE. That is -- for the first time,
01:46PM 11 Sabre is figuring out that we have a big problem, and
01:46PM 12 the Internet is creating that. Remember -- remember, I
01:46PM 13 talked about the amazing revolution here of the
01:46PM 14 Internet. And so I'm going to draw a picture here in a
01:46PM 15 minute of what that looks like.

01:46PM 16 In fact, can I pull up a chalkboard here so
01:46PM 17 I can draw on this? I just need a blank sheet.

01:46PM 18 MR. YETTER: I think Kim is doing it over
01:46PM 19 there.

01:46PM 20 THE WITNESS: So what's important to
01:47PM 21 understand here is up until here -- up until about 2001,
01:47PM 22 the core Sabre system, this is the TPF mainframe, okay.
01:47PM 23 So we have travel agents. In about 2000 there were --

01:47PM 24 Q. (BY MR. ROTHMAN) Are you demonstrating now why
01:47PM 25 you're a software expert and not an artist?

01:47PM 1 A. Yes. I'm just trying to make -- this will
01:47PM 2 help, I think, illustrate what's going on. Sorry about
01:47PM 3 the -- my artistic talent's not great.

01:47PM 4 But these are agencies. Okay? So in about
01:47PM 5 2000, there were about 10,000 travel agencies and they
01:47PM 6 had been communicating with Sabre. And when they went
01:47PM 7 to work every day, they would log in and they would
01:48PM 8 communicate with that system.

01:48PM 9 And so then what happened is the
01:48PM 10 Internet -- I'm going to just spare you a lot of
01:48PM 11 graphics here -- but there's a lot of people. Now,
01:48PM 12 suddenly, when we launch Travelocity, Orbitz, Expedia,
01:48PM 13 millions of people now need to access the system. It's
01:48PM 14 a whole different ball game, and so Sabre had to scratch
01:48PM 15 their head and say, what are we going to do? It's a
01:48PM 16 good problem to have. We got a lot of new people coming
01:48PM 17 into our system.

01:48PM 18 So just to put it in perspective, you know,
01:48PM 19 10,000 agents, about 15,000 locations for travel
01:48PM 20 agencies, which are a big part of this case, there were
01:48PM 21 about 280 million people in the U.S. So when you open
01:48PM 22 it up and let people shop, it was really overloading
01:48PM 23 their system. They had some decisions to make on how
01:48PM 24 they would deal with that technologically.

01:49PM 25 Q. What did they do?

01:49PM 1 A. So what they began to do is, what I'll say is
01:49PM 2 wrap the system. I'm going to draw this as a wrapper.
01:49PM 3 They had to protect it. There was no way that this old
01:49PM 4 technology that had been developed -- sure, they had
01:49PM 5 been working to improve it, put a lot of time and effort
01:49PM 6 into improving it, but they had -- there was no way the
01:49PM 7 mainframe could handle this. This is, you know, well
01:49PM 8 documented. And so they internally decided to go with a
01:49PM 9 wrapper.

01:49PM 10 And what this is, this is modern
01:49PM 11 technology. This is what companies would use to build
01:49PM 12 their -- they would start from scratch. This is the,
01:49PM 13 what we call service-oriented architectures, and it's
01:49PM 14 the latest and greatest. So Sabre today has this system
01:49PM 15 that is all modern. And it is current technology. They
01:49PM 16 made that, but they also have a substantial footprint
01:49PM 17 that is still at its core to this mainframe system.
01:49PM 18 It's this legacy technology that I'm going to be talking
01:49PM 19 about later today. While, you know, at one point it was
01:50PM 20 their strength, it was an amazing system, today it is
01:50PM 21 very antiquated and it's really the ball and chain
01:50PM 22 that's helping hold them back from innovating. So --
01:50PM 23 and they have the added expense of, you know,
01:50PM 24 maintaining two systems, modern and mainframe.

01:50PM 25 Q. So I want to go back to the picture, Mr. Myers.

01:50PM 1 A. Okay.

01:50PM 2 MR. GRIMSLEY: Do we -- I apologize. Do we
01:50PM 3 still have in the computer there somewhere that picture
01:50PM 4 that you just drew?

01:50PM 5 THE WITNESS: I don't think so.

01:50PM 6 MR. GRIMSLEY: Or is it gone? Okay. I'd
01:50PM 7 just ask that before we erase anything like that from
01:50PM 8 now on that I just have an opportunity to use one of
01:50PM 9 those iPhones to take a picture of it. All right?

01:50PM 10 MR. ROTHMAN: Yeah, that's totally fine.

01:50PM 11 MR. GRIMSLEY: Is that all right, Your
01:50PM 12 Honor?

01:50PM 13 THE COURT: Yes, sir.

01:50PM 14 MR. ROTHMAN: And if you'd like, he can
01:50PM 15 draw it again for you so you'd have it.

01:50PM 16 MR. GRIMSLEY: Thank you.

01:50PM 17 Q. (BY MR. ROTHMAN) Okay. Mr. Myers, let's go
01:51PM 18 back to the screen.

01:51PM 19 So I think we were talking about Sabre in
01:51PM 20 the era of convergence. Okay. And I believe you just
01:51PM 21 talked about the ATSE.

01:51PM 22 You haven't tried here to record everything
01:51PM 23 that Sabre did in this era, have you?

01:51PM 24 A. No. I'm hitting the key high points that I
01:51PM 25 think are relevant to this case.

01:51PM 1 Q. Okay. And we see you have in 2010 a note that
01:51PM 2 says, "Sabre Red with graphical view."

01:51PM 3 What is that?

01:51PM 4 A. Well, this is a good example of where Sabre is
01:51PM 5 struggling to keep up with technology. Remember I
01:51PM 6 mentioned earlier that graphical systems were being
01:51PM 7 launched in the marketplace with that Mac computer and
01:51PM 8 Windows computer. That was back mid -- 1984 was the
01:52PM 9 Mac, so by the end of the '90s, those were very
01:52PM 10 prevalent.

01:52PM 11 Sabre is launching -- still trying to
01:52PM 12 launch a graphical view here in 2010, and they're still
01:52PM 13 working on that. It's been a challenge for them to do
01:52PM 14 that. They've made a few attempts over time, but
01:52PM 15 they're making a renewed attempt even the last couple of
01:52PM 16 years.

01:52PM 17 And "My Sabre" was the previous version of
01:52PM 18 that -- "MySabre Red," we're going to hear a lot about
01:52PM 19 that, that is the agent desktop software. When the
01:52PM 20 travel agent gets up, goes to work, sits down at their
01:52PM 21 computer and they get a call from a traveler, that's
01:52PM 22 the -- that's the system that they type on and search
01:52PM 23 for airfare and other travel-related items.

01:52PM 24 Q. Okay, Mr. Myers, you can have a seat.

01:52PM 25 Now, are there things that the Sabre system

01:52PM 1 does well in this modern environment?

01:53PM 2 A. Yes. Sabre, you've got to give it credit
01:53PM 3 for -- it has a lot of airlines being in business a long
01:53PM 4 time. They've accumulated a lot of airlines. You know,
01:53PM 5 they're -- I don't know that anybody is better than them
01:53PM 6 in terms of having the most airlines. I think they have
01:53PM 7 400.

01:53PM 8 Their -- their -- the basic flight
01:53PM 9 information that they have, they've been strong there.
01:53PM 10 And so I think they -- they -- also while they were
01:53PM 11 faced with the challenge of the Internet, they found a
01:53PM 12 way to finesse it and they have, you know, wrapped it,
01:53PM 13 as I showed the wrap there, to handle the growth of the
01:53PM 14 Internet.

01:53PM 15 Q. Have they made investments in the system?

01:53PM 16 A. Yes. I think they've made substantial
01:53PM 17 investments.

01:53PM 18 Q. Let's talk now about a few aspects of the Sabre
01:53PM 19 system.

01:53PM 20 First, how does the information about
01:53PM 21 airline flight availability and fares get from the
01:53PM 22 airlines to the travel agents using a GDS like Sabre's?

01:54PM 23 A. Yes, this is a very important part of the Sabre
01:54PM 24 system. So -- can I have a clicker where I can control
01:54PM 25 that?

01:54PM 1 Q. Yeah, I will relinquish the clicker.

01:54PM 2 MR. YETTER: Your Honor, here is -- I don't
01:54PM 3 know if you need a laser pointer in case you want to use
01:54PM 4 it up there.

01:54PM 5 THE WITNESS: Okay. Okay. So this is a
01:54PM 6 very important part of what makes the Sabre system --
01:54PM 7 it's causing it to have some challenges today as we try
01:54PM 8 to move to the modern era. And when the Sabre system
01:54PM 9 was first contemplated decades ago, we didn't have the
01:54PM 10 Internet. Remember I mentioned that. There weren't
01:54PM 11 high-speed connections.

01:54PM 12 And so a very logical way to manage that
01:54PM 13 problem was to process all these hundreds of airlines --
01:54PM 14 if you look at my first box there, all the airlines have
01:54PM 15 to get their flight information about the fares that
01:55PM 16 they have, the schedules. How are you going to allow
01:55PM 17 people to find the best options among all those?

01:55PM 18 So they got together and created a
01:55PM 19 warehouse. And you may hear these words, ATPCO and OAG.
01:55PM 20 Don't worry about those. Those are really just the
01:55PM 21 third-party warehouse where all this information is
01:55PM 22 uploaded.

01:55PM 23 Q. (BY MR. ROTHMAN) Where does it go from there?

01:55PM 24 A. From the warehouse, Sabre accesses that
01:55PM 25 information. And let me describe why this is such a

01:55PM 1 challenge for Sabre today. This is -- this is what --
01:55PM 2 the way their system works, four times a day that
01:55PM 3 information could be uploaded. Meaning if American
01:55PM 4 Airlines or any airline wants to change a fare, they're
01:55PM 5 going to have to wait four to maybe an average of six
01:55PM 6 hours to do that, because it's only that period of time
01:55PM 7 where they upload that. That -- that -- in a modern,
01:55PM 8 realtime world in computers, that's excruciatingly slow.

01:56PM 9 But it's worse than that. The
01:56PM 10 processing -- there's so much data that Sabre has to
01:56PM 11 process -- that second era there where I'm talking
01:56PM 12 about -- it takes another, my testing shows, about two
01:56PM 13 hours and 40 minutes to two hours and 50 minutes. So it
01:56PM 14 can take eight to ten hours for data to flow up from --
01:56PM 15 into the warehouse and for Sabre to have it live, and we
01:56PM 16 tested that.

01:56PM 17 Q. When you say you tested it, what did you do?

01:56PM 18 A. Well, we asked American Airlines to file some
01:56PM 19 new fares through the warehouse, you know, using the --
01:56PM 20 this is what they do every day. This is the way they
01:56PM 21 upload that information. And then we literally sat on
01:56PM 22 the computer and on -- we logged into the Sabre Red
01:56PM 23 system, which is -- which was provided to us by Sabre in
01:56PM 24 this case, and we just for a couple of hours sat there
01:56PM 25 and waited till that information came online. We did

01:56PM 1 that four times to prove that it was repeatable.

01:57PM 2 Q. Now, has ATPCO tried to shorten that time gap?

01:57PM 3 A. There is talk in Europe -- I think it's down to
01:57PM 4 an hour upload and -- but you still have the processing
01:57PM 5 time. Whatever the duration is, you still have
01:57PM 6 two and a half to three hours of processing on top of
01:57PM 7 that. So however you slice it, this is a big problem.

01:57PM 8 Remember I showed the personalization, the
01:57PM 9 dynamic products where American and other airlines are
01:57PM 10 wanting to, you know, dynamically offer things to the
01:57PM 11 client that are very relevant? It's hard to do that in
01:57PM 12 a system that from its core is built in this legacy
01:57PM 13 technology. Again, it was a great way to go back in the
01:57PM 14 '60s and '70s, but today it's causing challenges for
01:57PM 15 innovation.

01:57PM 16 Q. Where did information go from Sabre?

01:57PM 17 A. Well, the next part of the story here is I want
01:57PM 18 to introduce companies. We're -- we're -- which are --
01:57PM 19 we have three companies; Company A, Company B, and then
01:58PM 20 Company C. These represent corporate travel. That can
01:58PM 21 be IBM. Let's say Company B, this gentleman right here
01:58PM 22 is Joe.

01:58PM 23 Joe calls up his travel agent and says, I
01:58PM 24 need to go on business trip from Dallas to New York,
01:58PM 25 help me out, and he describes his travel.

01:58PM 1 So here's the way the Sabre system works
01:58PM 2 today: That travel agent logs into that Sabre Red
01:58PM 3 system, and that's the first arrow there I just added.
01:58PM 4 They send the basic request: Give me your flights.
01:58PM 5 Give me the options.

01:58PM 6 That then had to flow to the airline
01:58PM 7 systems. The airlines -- what -- the missing piece that
01:58PM 8 was not in the warehouse, the airlines have always had
01:58PM 9 the availability, you know, what seats are available.
01:58PM 10 All that pre-flying had to happen ahead of time because
01:58PM 11 the Internet didn't exist. But they -- the small
01:58PM 12 communication there that I'm talking about is the
01:58PM 13 airline keeps a record of what seats are available, so
01:59PM 14 that's why they have to communicate back to the airline.

01:59PM 15 They use a standard called EDIFACT, which
01:59PM 16 is a United Nations standard, believe it or not.

01:59PM 17 Q. What do you mean by "United Nations standard"?
01:59PM 18 When was it developed?

01:59PM 19 A. Well, it started being developed in the '70s
01:59PM 20 and '80s. It replaced a previous standard called X.11.
01:59PM 21 But it is -- it's indicative of -- this legacy
01:59PM 22 technology is very hard. If you want to go to a
01:59PM 23 committee of -- that involves the United Nations to get
01:59PM 24 your interface changed, it's not happening very fast.
01:59PM 25 So innovation is really blocked in this environment.

01:59PM 1 Q. Now, do you have a slide that shows how the
01:59PM 2 information flows differently in what you called the
01:59PM 3 "modern" or the "convergence" era?

01:59PM 4 A. I have one more to finish on this one just to
01:59PM 5 show that -- the last arrow, if you see that, the travel
01:59PM 6 agent finally gets the information back.

01:59PM 7 So this is the basic workflow. I'll call
02:00PM 8 this the legacy workflow of Sabre. Again, it worked
02:00PM 9 pretty well decades ago, but it's really struggling to
02:00PM 10 keep up with modern times.

02:00PM 11 Q. And now let's look at the more modern way of
02:00PM 12 doing it, Mr. Myers.

02:00PM 13 A. Okay.

02:00PM 14 Q. What are you showing on this slide?

02:00PM 15 A. This -- this slide is very straightforward. As
02:00PM 16 you can see, it's Direct Connect. This is a
02:00PM 17 demonstrative to show how Direct Connect works.

02:00PM 18 The upper part of the screen has the same
02:00PM 19 companies. They call their travel agent, and there's a
02:00PM 20 direct connection for all information between the
02:00PM 21 airline and the travel agent.

02:00PM 22 Again, this is using modern Internet-based
02:00PM 23 technology. You see that in the middle. The technology
02:00PM 24 has been built from the ground up to be realtime
02:00PM 25 latencies. It's very short so you can get the latest

02:00PM 1 update and it's easier on everybody and the whole supply
02:00PM 2 chain to operate under that method.

02:01PM 3 Q. Now, we've talked about Sabre's system
02:01PM 4 beginning with the mainframe technology.

02:01PM 5 Are Sabre -- is Sabre's system still based
02:01PM 6 entirely on the mainframe computer?

02:01PM 7 A. No. That's what I was describing earlier. The
02:01PM 8 wrapping -- they have protected the mainframe to the
02:01PM 9 extent they can, and they have put modern technologies
10 around that.

02:01PM 11 And it's also important to note they have
02:01PM 12 upgraded the mainframe itself as well. They have
02:01PM 13 gone -- the system has gotten old. IBM has forced them
02:01PM 14 to upgrade at times because they sunset technology.
02:01PM 15 They moved from what was called version 4.1 to ZTPF,
02:01PM 16 which is the latest version that IBM has for the TPF
02:01PM 17 mainframe, so they have made investments.

02:01PM 18 THE REPORTER: Can you slow down?

02:01PM 19 THE WITNESS: Sorry.

02:01PM 20 They've had to do that because the scale
02:01PM 21 and all the traffic on the Internet has been increasing
02:01PM 22 rapidly. So they've wrapped and they've improved their
02:02PM 23 mainframe.

02:02PM 24 Q. (BY MR. ROTHMAN) During the course of your
02:02PM 25 work, have you seen any evidence regarding concerns that

02:02PM 1 Sabre has about its mainframe technology?

02:02PM 2 A. It is -- the concern is well documented within
02:02PM 3 Sabre's internal documents. They have a number of
02:02PM 4 documents that describe the problem and how -- they ask
02:02PM 5 themselves, how are we going deal with it? Do you want
02:02PM 6 to completely rewrite and replace all that old
02:02PM 7 technology?

02:02PM 8 They discuss whether they want to use that
02:02PM 9 what would -- straddle method where they have some
02:02PM 10 technology in mainframe and some in the modern
02:02PM 11 technology. So it's well known within Sabre that this
02:02PM 12 is a challenge for the company.

02:02PM 13 Q. How has Sabre done in terms of keeping up with
02:02PM 14 the -- the kinds of -- delivering the kinds of modern
02:02PM 15 product that we saw in the era of convergence?

02:02PM 16 A. Well, the biggest problem is just their ability
02:02PM 17 to deliver in a timely manner. Sabre has a lot of
02:03PM 18 really smart people. They work very hard. They spend a
02:03PM 19 lot of money. They have to because they have these two
02:03PM 20 big behemoth systems that have to work together, but --
02:03PM 21 so they have worked hard to do that, but time to market
02:03PM 22 and the flexibility of this system to be able to add new
02:03PM 23 features that the market is demanding is -- is perhaps
02:03PM 24 their biggest Achilles heel at this point.

02:03PM 25 Q. Let's take a look now at the next slide that

02:03PM 1 you've prepared. What are you trying to show here,
02:03PM 2 Mr. Myers?

02:03PM 3 A. This is an example of what I was talking about
02:03PM 4 earlier in the convergence. We're talking about all the
02:03PM 5 shopping and options. This is representative of -- the
02:03PM 6 basic airfare is in the middle. That's the Chevy
02:03PM 7 Suburban. That's been around for a long time. But
02:03PM 8 airlines now want to offer extra services, like the
02:03PM 9 Sirius XM radio, 4-wheel drive, heated seats. That's --
02:03PM 10 that's where the industry is going. There's a whole
02:04PM 11 series of things you can buy.

02:04PM 12 And so translating this to the airline
02:04PM 13 industry, they have extra legroom. You can board early.
02:04PM 14 Go to the lounge while you're waiting for your flight.
02:04PM 15 Particularly in the business travelers, people that are
02:04PM 16 traveling a lot, you know, these are the kind of
02:04PM 17 amenities that are important to them, and that's what is
02:04PM 18 important in this case.

02:04PM 19 Q. All right. By the lounge, I take it you don't
02:04PM 20 mean the men's room?

02:04PM 21 A. No, I mean the airline lounge.

02:04PM 22 Q. Okay.

02:04PM 23 A. Let me mention one other thing.

02:04PM 24 Q. Excuse me.

02:04PM 25 A. Another important aspect of this slide is to

02:04PM 1 show these branded bundles of features. Airlines are
02:04PM 2 increasingly wanting to have a package. For example,
02:04PM 3 American Airlines has a bundle of extra services called
02:04PM 4 "Boarding and Flexibility" package. If any of you have
02:04PM 5 been to their system or their Web site, you'll see that.
02:04PM 6 That allows you to have early boarding. It allows you
02:05PM 7 to have -- go on standby, and it gives you a reduced
02:05PM 8 change fee, the kind of thing a business traveler might
02:05PM 9 value because they have a business meeting and they
02:05PM 10 don't know when they're going to be leaving, and so
02:05PM 11 those are -- for a small fee, they can add those
02:05PM 12 features to their package.

02:05PM 13 Q. Now, are a lot of airlines using Sabre to
02:05PM 14 deliver these kinds of personalized packages?

02:05PM 15 A. I would say very few. Out of 400 airlines that
02:05PM 16 they serve, there's approximately four that have some
02:05PM 17 form of an extra service, and they have -- I think they
02:05PM 18 have a handful that may be on the way. At least I've
02:05PM 19 seen announcements that they're working on that.

02:05PM 20 Q. In what ways, if any, is Sabre's system limited
02:05PM 21 in its ability to provide these types of either special
02:05PM 22 products or branded or bundled products?

02:05PM 23 A. Well, generally speaking, it's just inflexible
02:06PM 24 in the way it was built and architected from a
02:06PM 25 technological standpoint. Sabre's approach to extra

02:06PM 1 services now is to really double down on that warehouse
02:06PM 2 approach. Instead of updating their systems to be
02:06PM 3 modern and realtime on the Internet, what they're
02:06PM 4 proposing to the industry is to keep the warehouse
02:06PM 5 system and actually dramatically increase the problems
02:06PM 6 associated with it by -- by uploading all of this
02:06PM 7 additional information to the warehouse.

02:06PM 8 Q. Now, I believe you said that you have used the
02:06PM 9 Sabre system?

02:06PM 10 A. Yes, I have.

02:06PM 11 Q. What have you done?

02:06PM 12 A. I have studied it as a travel agent. I've
02:06PM 13 worked with -- first of all, let me say I haven't
02:06PM 14 endeavored to become a travel agent as part of this
02:06PM 15 project. I'm not an expert on the system. It's a big,
02:06PM 16 complicated system. I have really focused on the
02:06PM 17 process of shopping and comparing airfares, particularly
02:07PM 18 as it relates to the industry trends like extra services
02:07PM 19 and bundles and branded fares.

02:07PM 20 Q. Okay. Now, do you have a few slides on the
02:07PM 21 Sabre system that you can show the jury?

02:07PM 22 A. Yes, I do.

02:07PM 23 Q. What are we seeing here, Mr. Myers?

02:07PM 24 A. We have a technical issue there.

02:07PM 25 MR. YETTER: I see a blank screen.

02:07PM 1 THE WITNESS: Is there any way to move
02:07PM 2 that?

02:07PM 3 MR. ROTHMAN: That little icon?

02:07PM 4 THE WITNESS: That little icon.

02:07PM 5 MR. GRIMSLEY: That's not Sabre's fault.

02:07PM 6 MR. ROTHMAN: Right.

02:07PM 7 THE WITNESS: Outstanding.

02:07PM 8 Q. (BY MR. ROTHMAN) Okay. So what are we looking
02:07PM 9 at there, Mr. Myers?

02:07PM 10 A. Okay. I mentioned earlier the Sabre Red
02:07PM 11 Software. This is the software that a travel agent goes
02:07PM 12 to work, they login, and this is the screen they see.
02:08PM 13 And I've zoomed in on the key part of the green screen
02:08PM 14 that they look at. Now, I think you'll notice right off
02:08PM 15 the bat this is not a graphical user interface. This is
02:08PM 16 the, what even they call a green screen.

02:08PM 17 Q. Would it help if you were closer to the screen?

02:08PM 18 A. I think it would.

02:08PM 19 So what I'm going to demonstrate is how
02:08PM 20 today a typical agent finds a flight for me. In fact,
02:08PM 21 this is Monty Myers. They've entered my name in here,
02:08PM 22 and so a travel agent has to go through a process to
02:08PM 23 book a flight.

02:08PM 24 And I want to say, that Sabre does have a
02:08PM 25 graphical view, is what they call it. It's not widely

02:08PM 1 used. This is predominantly what the agents use today,
02:08PM 2 and I'll talk to some of the issues on why that is. But
02:08PM 3 this is still the standard in the travel agency business
02:08PM 4 for what Sabre provides to their customers.

02:09PM 5 So the first command here is -- this is
02:09PM 6 called the availability command. These are called
02:09PM 7 cryptic commands. So, again, this is not graphical.
02:09PM 8 You have to study it. It takes agents a long time to
02:09PM 9 learn all of this cryptic technology here. But the 1
02:09PM 10 command means that I want to find available flights on
02:09PM 11 the 1st of November from JFK to LAX at 8 a.m., and so
02:09PM 12 that -- that command is issued.

02:09PM 13 Q. And what are we looking at now?

02:09PM 14 A. So this is the response to that command. So
02:09PM 15 important to me, as I study this industry, this command
02:09PM 16 has no pricing on it. All it does is give you -- give
02:09PM 17 the agent a general sense of what's available in the
02:09PM 18 marketplace. It doesn't -- you don't know what they
02:09PM 19 cost. The only indication of cost are these buckets
02:09PM 20 like C, D, Z. Those are the classes. You've probably
02:09PM 21 all booked in a Y class or a J class. So, again, this
02:10PM 22 was built back decades ago and when it was very
02:10PM 23 expensive to send information, so they tried to keep it
02:10PM 24 very small so it's not particularly informative.

02:10PM 25 So all we've done now is get some basic

02:10PM 1 availability. You'll notice that there's United
02:10PM 2 Airlines, there's a New Zealand, and there's American
02:10PM 3 Airlines at Line 4. Okay.

02:10PM 4 Q. What's the next search?

02:10PM 5 A. So the next task the agent would do is actually
02:10PM 6 book that. This is the sale, one seat on Class N, Line
02:10PM 7 4. So they had this cryptic command that books one seat
02:10PM 8 right there. That's the way the agent works. So
02:10PM 9 there's the response to that. It just confirmed that
02:10PM 10 I -- and that basically reserved the seat on the
02:10PM 11 airplane.

02:10PM 12 Q. And then what happens?

02:10PM 13 A. So that is just the outbound flights. So if
02:10PM 14 it's a round trip -- I'm going on a business trip, so
02:10PM 15 that's just the -- those first two steps just have
02:11PM 16 temporarily reserved the outbound. So now I have to do
02:11PM 17 the next command, which is show me what's available for
02:11PM 18 a return flight on November 5th.

02:11PM 19 And so the agent enters that command, and
02:11PM 20 you see a similar availability screen here. And, again,
02:11PM 21 the cryptic commands, agents learn what these things
02:11PM 22 mean. No pricing information. We're still guessing or
02:11PM 23 the agent is making their best guess at what might be
02:11PM 24 the best deal for the client. And you'll notice here,
02:11PM 25 here is American Airlines on Line 2 and United Airlines

02:11PM 1 on Line 5.

02:11PM 2 Q. And then what's next?

02:11PM 3 A. The next command is, I have to do that sell
02:11PM 4 command again. This is to reserve the return flight.
02:11PM 5 So I do sell one seat, Class N, for Line 2, which is
02:11PM 6 American Airlines.

02:11PM 7 Q. Mr. Myers, in the real world if we weren't
02:11PM 8 demonstrating for the jury, would this move more quickly
02:11PM 9 with a real travel agent --

02:12PM 10 A. Yes. That's a good point. An agent is going
02:12PM 11 to be -- obviously, they do this every day, they'll be
02:12PM 12 quicker at this. But I'm trying to give you a sense of
02:12PM 13 the way they have to work and the commands and the
02:12PM 14 complexity of these commands.

02:12PM 15 So this confirms that I've now reserved my
02:12PM 16 seat, my return flight. So there's more. The next is
02:12PM 17 simply, I want to display what I've saved. Here is the
02:12PM 18 display all. And not all agents do this. You know,
02:12PM 19 many will show a summary of there's that outbound
02:12PM 20 flight, there's my return flight.

02:12PM 21 Next command, will you price, is what it's
22 commonly known as. I have to -- now for the first time
02:12PM 23 I'm going to get a price. I'm done, and so I did the WP
02:12PM 24 command. Wait, let me go back.

02:13PM 25 Okay. WP command, and here we get the

02:13PM 1 first pricing of the -- of the process. So for the
02:13PM 2 seats that I booked on the outbound and return flight,
02:13PM 3 this one is \$395.60 and that's with the tax and this has
02:13PM 4 got some general rules for that flight. Okay.

02:13PM 5 So what's important here is I've gone
02:13PM 6 through six steps at this point, and I have a good guess
02:13PM 7 at the right price. The travel agent's job is to find
02:13PM 8 the best deal for me as a traveler, and now we've gone
02:13PM 9 through six steps, and so we don't have that. We have a
02:13PM 10 good guess. Depending on the skill of the agent, they
02:13PM 11 may have a good idea of what that is.

02:13PM 12 So Sabre has additional commands called low
02:13PM 13 fare commands to find the -- this is the WPNI there.
02:14PM 14 This is the low fare search with their extras. Now, let
02:14PM 15 me explain this one. This is where it's going to go out
02:14PM 16 for the first time and find the best deal. This is what
02:14PM 17 Sabre offers to do that. And so this represents -- WPNI
02:14PM 18 is the base command, slash D says I want only direct
02:14PM 19 flights, passenger one is an adult, and this is the air
02:14PM 20 extras. Remember, we're talking a big part of this case
02:14PM 21 are these extra services that need to be bundled in.
02:14PM 22 People are no longer just buying the airfare, they want
02:14PM 23 all the fixings that go with that.

02:14PM 24 And this one is saying I want -- in-flight
02:14PM 25 entertainment is what IE stands for. And so they do

02:14PM 1 that command, and here it goes out and searches for
02:14PM 2 those. So here's the command and this is the response.
02:14PM 3 It shows the original guess that I made. See, it's 396.
02:14PM 4 And it also shows that it found a better price here of
02:14PM 5 \$306.35. So that is the basic flow of the Sabre green
02:15PM 6 screen software.

02:15PM 7 Q. Now, do the various GDSs use the same language,
02:15PM 8 same coding?

02:15PM 9 A. No. One of the interesting things about the
02:15PM 10 travel industry is that some of the other GDSs have
02:15PM 11 these similar cryptic commands, but they're all
02:15PM 12 different. If a travel agent goes to a different
02:15PM 13 company that uses a different, like a Worldspan, then
02:15PM 14 they have to learn all of this over again. There's a
02:15PM 15 whole different set of commands.

02:15PM 16 Q. Now, I believe you said that Sabre also has a
02:15PM 17 graphical display?

02:15PM 18 A. Yes, I did.

02:15PM 19 Q. Would you explain what they've done in that
02:15PM 20 regard?

02:15PM 21 A. Yes. So what Sabre's done in their Sabre Red
02:15PM 22 products, they have recognized the challenges of just
02:15PM 23 having that old legacy green screen. They are working
02:15PM 24 towards having a more graphical view. It's not a
02:15PM 25 complete rewrite. They're trying to, you know, have one

02:16PM 1 foot still in the old technology and another foot
02:16PM 2 introducing some new features here. And a key thing
02:16PM 3 here is that most agents are not using this technology.
02:16PM 4 It just is not compelling enough, and I'll show you some
02:16PM 5 of the reasons why that is. But, clearly, it's
02:16PM 6 something they're working hard on to try to address
02:16PM 7 these deficiencies.

02:16PM 8 So, again, this just shows that -- before I
02:16PM 9 do that, let me say the graphical view only represents
02:16PM 10 about half of the total commands. So even if an agent
02:16PM 11 wanted to start using some of these graphical features,
02:16PM 12 they're going to have to go and work a lot in that green
02:16PM 13 screen that I've just showed you. So that's part of the
02:16PM 14 reason why it's been slow to be adopted by the travel
02:16PM 15 agents. It's not very efficient and good.

02:16PM 16 Q. Mr. Myers, what do you mean when you say it
02:16PM 17 only -- it only has half of the commands? What does
02:16PM 18 that mean?

02:16PM 19 A. So this first one here is availability.
02:16PM 20 Remember, I did two availability searches earlier and it
02:17PM 21 goes through -- I'm sorry. Let me just show this to
02:17PM 22 you. So this is the graphical view for Sabre that
02:17PM 23 they've implemented, JFK and LAX, 1st of November, a lot
02:17PM 24 of the same information.

02:17PM 25 Q. This is still Mr. Monty Myers traveling to LA?

02:17PM 1 A. Yes, it is.

02:17PM 2 MR. GRIMSLEY: Excuse me, Your Honor. Is
02:17PM 3 this the video or is somebody actually entering this
02:17PM 4 stuff in right now?

02:17PM 5 MR. ROTHMAN: This is a video.

02:17PM 6 THE WITNESS: It's a video.

02:17PM 7 And so there it comes back. Now, that's
02:17PM 8 the same. It's the same multistep process, but they've
02:17PM 9 put a graphical face on it. So it's not particularly
02:17PM 10 more efficient, but it is still generally the same
02:17PM 11 process.

02:17PM 12 Q. (BY MR. ROTHMAN) So has the adoption or the
02:17PM 13 implementation of the graphic view solved the
02:17PM 14 limitations of the Sabre system?

02:18PM 15 A. No, it hasn't. And I've got some more
02:18PM 16 demonstratives here. I'll describe that.

02:18PM 17 So one of their latest additions,
02:18PM 18 recognizing that the key to success for an agent is to
02:18PM 19 be able to -- or one of the key successes is to have
02:18PM 20 them find the best fare efficiently, the best deal for
02:18PM 21 the customer. Every customer wants to know they're
02:18PM 22 getting the right package, and they have added a
02:18PM 23 fare-led search.

02:18PM 24 In fact, what you're looking at right there
02:18PM 25 is their latest and greatest. They released this about

02:18PM 1 five or six weeks ago when I was working on this case.
02:18PM 2 So this is -- this is hot off the presses here. And
02:18PM 3 it's where they can go and search for the widest
02:18PM 4 spectrum of the right deal for the customer. And there
02:18PM 5 are some -- some key deficiencies in this.

02:18PM 6 Again, this case is about innovation and
02:18PM 7 moving towards these air extras. And, again, this was
02:18PM 8 not in Sabre's system prior to about four to six weeks
02:19PM 9 ago. This is something they just provided to me in the
02:19PM 10 last few weeks.

02:19PM 11 But there's some key problems with what
02:19PM 12 they've done here. This is, I think, showing the
02:19PM 13 difficulty they're having in migrating their technology
02:19PM 14 due to all the mainframe technologies that they're
02:19PM 15 dealing with. So the first thing is there's no
02:19PM 16 personalization. This is a -- this is an Achilles heel
02:19PM 17 for their system.

02:19PM 18 Q. Why is that?

02:19PM 19 A. Because, again, in the modern age they --
02:19PM 20 airlines want to have an offer that's relevant to me.
02:19PM 21 They know my history of where I've flown. For example,
02:19PM 22 if they lost my bag, they -- the airlines want to be
02:19PM 23 able to say, look, we're going to give you a free bag on
02:19PM 24 your next flight. Things like that are not possible in
02:19PM 25 the Sabre system. So there's just no access to the

02:19PM 1 information and data to make that happen.

02:19PM 2 Q. Anything else that you'd like to point out on
02:19PM 3 this?

02:19PM 4 A. Yes. So no personalization.

02:19PM 5 So another key part of the Sabre system is,
02:19PM 6 I mentioned earlier that they are doubling down on the
02:20PM 7 warehouse. I talked about the hours length going
02:20PM 8 through that system. So there's a standard that they've
02:20PM 9 put forward that they want everybody to follow and/or
02:20PM 10 they're promoting.

02:20PM 11 Q. What do you mean by a standard?

02:20PM 12 A. This is ATPCO. Working with ATPCO, there is a
02:20PM 13 standard that's been defined that they're adopting or
02:20PM 14 suggesting that get used. And it is -- defines what all
02:20PM 15 of these messages look like and what are the types of
02:20PM 16 information that can be part of an airfare.

02:20PM 17 And what's notable about this is the
02:20PM 18 standard that they're promoting, about half of the
02:20PM 19 items, like standby, upgrades, rule override, lounge,
02:20PM 20 and others, are not implemented in the Sabre system. So
02:20PM 21 these are all the Xs.

02:20PM 22 So -- and more significant than that is
02:20PM 23 this is a major deficiency in their latest technology.
02:21PM 24 This shows the difficulty they're having.

02:21PM 25 Remember I mentioned in my sample,

02:21PM 1 in-flight entertainment was what I put on the command
02:21PM 2 line. There's lots of in-flight entertainment. In
02:21PM 3 their own standard, Sabre has said, this is what we want
02:21PM 4 to do; we want to have this standard, but they haven't
02:21PM 5 implemented it.

02:21PM 6 In-flight entertainment can be Internet
02:21PM 7 access. That's important to business travelers. You
02:21PM 8 know, I use that a lot. I want to have power. In-seat
02:21PM 9 power is very important.

02:21PM 10 Sabre's system, their latest and greatest,
02:21PM 11 you can't specify any subcategory in their own standard
02:21PM 12 that they're promoting. So they have -- none of these
02:21PM 13 are available. And there's probably -- each of these
02:21PM 14 categories has numerous options, and so you can't search
02:21PM 15 the -- the fundamental flaw here is that you cannot make
02:21PM 16 a search within the Sabre system to differentiate on and
02:21PM 17 tell the system that I want these items. So that's a
02:22PM 18 problem.

02:22PM 19 Q. Do you know approximately how many airlines are
02:22PM 20 using Sabre to sell these types of specialized products?

02:22PM 21 A. I think I mentioned earlier there's about four
02:22PM 22 airlines and a few on the way that are selling extra
02:22PM 23 services. And they have a few that are selling some
02:22PM 24 form of a branded fare.

02:22PM 25 Q. Which ones are those, do you know?

02:22PM 1 A. I don't remember the exact -- I think Qantas
02:22PM 2 and Porter Airlines has some brand fares.

02:22PM 3 Q. Now -- you can have a seat, Mr. Myers.

02:22PM 4 A. I have couple more I was going to show to be
02:22PM 5 complete.

02:22PM 6 Q. I'll have a seat.

02:22PM 7 MR. GRIMSLEY: Can he ask a question?

02:22PM 8 THE COURT: We'll let counsel lead the
02:22PM 9 witness, rather than the witness leading counsel.

02:22PM 10 MR. ROTHMAN: Well, he knows more than me,
02:22PM 11 Your Honor.

02:22PM 12 Q. (BY MR. ROTHMAN) All right. Mr. Myers, now,
02:22PM 13 earlier we talked about Direct Connect. Can we go back
02:23PM 14 to the slide where you showed previously how the
02:23PM 15 information flows there?

02:23PM 16 A. Yes.

02:23PM 17 Q. Okay. And can you -- can you explain to the
02:23PM 18 jury, what are the airline Direct Connects, what are
02:23PM 19 they attempting to do?

02:23PM 20 A. The airline Direct Connects are attempting to
02:23PM 21 have systems where they can have the complete view of
02:23PM 22 their customer and offer these specialized deals for
02:23PM 23 their clients using modern technology. They'll be
02:23PM 24 personalized. They'll be up to date. And hopefully
02:23PM 25 they'll give the traveler exactly what they want at the

02:23PM 1 best price for that customer.

02:23PM 2 Q. Now, does a Direct Connect product like
02:23PM 3 American contain the full range of airline fares that
02:23PM 4 Sabre has, for instance?

02:23PM 5 A. No. It's not intended to do that.

02:23PM 6 Q. Why not?

02:23PM 7 A. Well, Direct Connect by its name is about an
02:23PM 8 individual airline having its content. And the idea is
02:24PM 9 that -- there are today a lot of airlines that have
02:24PM 10 Direct Connects, and they can connect and control and
02:24PM 11 have the personalization and manage their data. So it's
02:24PM 12 just a much more personalized relationship between the
02:24PM 13 travel agent, the traveler, and the airline.

02:24PM 14 Q. Are there examples of other airlines beside
02:24PM 15 American that have Direct Connects?

02:24PM 16 A. Yes.

02:24PM 17 Q. Can you name a few?

02:24PM 18 A. Some that people will recognize, Southwest
02:24PM 19 Airlines has a Direct Connect technology. Air Canada is
02:24PM 20 one that's had a real success with their Direct Connect.

02:24PM 21 Q. Do you have a slide relating to the Air Canada
02:24PM 22 Direct Connect?

02:24PM 23 A. I do.

02:24PM 24 Q. Would you show that.

02:24PM 25 A. Air Canada has been real successful in -- with

02:24PM 1 their Direct Connect. And they have I think 2- to 3,000
02:24PM 2 agencies using their Direct Connect in Canada.

02:24PM 3 They have -- this shows Hawkeye, which is a
02:24PM 4 product by Farelogix. This is important. Let me
02:25PM 5 mention this too; I don't think I did earlier. When --
02:25PM 6 with Direct Connect, the Direct Connect is the plumbing
02:25PM 7 and the engine. And what you're looking at here is the
02:25PM 8 face that's called Hawkeye. So this is not Direct
02:25PM 9 Connect proper; this is a face that shows you the
02:25PM 10 capabilities of the Direct Connect, which is, you know,
02:25PM 11 under the -- under the hood, so to speak.

02:25PM 12 So this is a search that they do. And this
02:25PM 13 is -- you see these branded fares. It's very popular
02:25PM 14 now for certain airlines to have branded fares. You see
02:25PM 15 that latitude? I'll blow that up. This is where an
02:25PM 16 airline can build a package. This one happens to be
02:25PM 17 fully refundable. They can do flight changes for the
02:25PM 18 price of the fare difference. They can get 100 percent
02:25PM 19 of their miles, complementary seat, and complementary
02:25PM 20 snack. So very quickly the customer can hone in on
02:25PM 21 exactly what they'd like to have in terms of a package.
02:25PM 22 It's making shopping in this more complex world easier
02:26PM 23 through this mechanism.

02:26PM 24 Q. Which came first, the Air Canada Direct Connect
02:26PM 25 or American's?

02:26PM 1 A. Air Canada came first.

02:26PM 2 Q. Okay. Now, I believe you said you've used the
02:26PM 3 American Direct Connect product?

02:26PM 4 A. Yes, I have.

02:26PM 5 Q. What's your assessment of that? First of all,
02:26PM 6 what have you done with it?

02:26PM 7 A. Well, I've tested it at several levels. I have
02:26PM 8 hands-on used with -- well, that is I call it the
02:26PM 9 face -- like a SPRK product. I'll show that to you in a
02:26PM 10 moment. But more importantly, I've really done a lot of
02:26PM 11 testing of the interface, the plumbing, because that's
02:26PM 12 what Microsoft effectively offers, is they have a hookup
02:26PM 13 where anybody that wants to have their -- their
02:26PM 14 information, their fares, they can hook up and use that
02:26PM 15 in their system. So we've done extensive testing of
02:26PM 16 that plumbing or the interface to their system.

02:26PM 17 I've also done reviews of code and walked
02:26PM 18 through with the engineering teams that built it, so
02:26PM 19 I've spent a lot of time over the last year looking at
02:26PM 20 that.

02:26PM 21 Q. And what's your assessment of American's Direct
02:26PM 22 Connect?

02:26PM 23 A. American Direct Connect is a very solid product
02:27PM 24 built on all the modern technologies I mentioned
02:27PM 25 earlier. It's an Internet-age product. It scales

02:27PM 1 horizontally. It's stateless. It's modular. A lot of
02:27PM 2 things that we look for -- if my firm were going to
02:27PM 3 build it, it's very similar to what we would build. So
02:27PM 4 it's good technology.

02:27PM 5 Q. When you say it's "stateless," what do you mean
02:27PM 6 by that?

02:27PM 7 A. That is important. It's very technical. It
02:27PM 8 allows you to be much more flexible with your interface
02:27PM 9 and not have to maintain as much context on the server.
02:27PM 10 It means you can scale a lot easier.

02:27PM 11 Mainframes are hard to scale because
02:27PM 12 they're monolithic. It's all in one big system.

02:27PM 13 Q. I'm sorry to slow you down. What do you mean
02:27PM 14 by "scale"?

02:27PM 15 A. Scale means the ability to handle a lot more
02:27PM 16 people accessing the system. So as a company grows, you
02:27PM 17 have to add more capacity. And so "scale" means your
02:27PM 18 ability to add capacity to handle more shopping.

02:28PM 19 Q. And one more clarification. What do you mean
02:28PM 20 by "modular"?

02:28PM 21 A. Modular is an important aspect of a modern
02:28PM 22 system because it allows you to pick and choose what you
02:28PM 23 want to use for a certain -- if you don't like the
02:28PM 24 functionality of a certain piece, you can plug in
02:28PM 25 something else. For example, Air Canada's Direct

02:28PM 1 Connect uses one -- a firm -- I'm sorry.

02:28PM 2 American Airlines' Direct Connect uses ITA
02:28PM 3 Google as their shopping engine. And so that is
02:28PM 4 something that's -- they believe gives them a
02:28PM 5 competitive advantage. And the system is built where
02:28PM 6 they can add value quickly by plugging that into their
02:28PM 7 system.

02:28PM 8 Q. And are there things that Direct Connect
02:28PM 9 enables American to do today that it can't do using the
02:28PM 10 GDS?

02:28PM 11 A. Yes. It's built to support the personalization
02:29PM 12 that I talked about earlier to support up-to-the-minute
02:29PM 13 updates -- if a traveler's bag is lost, all of those are
02:29PM 14 capabilities within that engine and can be enabled.

02:29PM 15 Q. Is it offering today all of the kinds of
02:29PM 16 products that it's capable of offering?

02:29PM 17 A. No. It's like any technology, it's evolving
02:29PM 18 and changing and they're rolling out new capabilities
02:29PM 19 and features as they can.

02:29PM 20 Q. And is American today offering any personalized
02:29PM 21 products or bundles to travelers?

02:29PM 22 A. Yes. I mentioned those earlier. A couple of
02:29PM 23 them are the same-day standby feature. They have
02:29PM 24 Group 1 boarding. They have a change -- reduced change
02:29PM 25 fee, and they package that in a bundle. They have some

02:29PM 1 paid seats where you can get a premium seat with a plug,
02:29PM 2 for example, or -- or in a more -- a more beneficial
02:29PM 3 part of the plane.

02:29PM 4 Q. Do you have a demonstration of the American
02:30PM 5 system that you can show the jury?

02:30PM 6 A. Yes. So, again, this is not American Direct
02:30PM 7 Connect from the -- what you're seeing on the screen.
02:30PM 8 American Direct Connect is the plumbing that's
02:30PM 9 underneath this. This is a way to see how it's working.

02:30PM 10 Q. What is -- I see here this SPRK. What is that?

02:30PM 11 A. SPRK is a product that is -- that a company
02:30PM 12 called Farelogix, who is a key technology partner behind
02:30PM 13 American Airlines' Direct Connect --

02:30PM 14 Q. And --

02:30PM 15 A. -- their user interface.

02:30PM 16 Q. What is the business of Farelogix?

02:30PM 17 A. They -- they are a technology company that
02:30PM 18 builds aggregation tools and Direct Connect technology.

02:30PM 19 Q. And by "aggregation tools," what do you mean?

02:30PM 20 A. They have technology to talk to multiple Direct
02:30PM 21 Connects or in the GDS, if allowed to, and bring that
02:30PM 22 information together for comparison shopping.

02:30PM 23 Q. Okay. What are we looking at on the screen
02:31PM 24 here now, Mr. Myers?

02:31PM 25 THE COURT: Excuse me, Counsel. You've

02:31PM 1 changed exhibits. We're halfway through our working
02:31PM 2 afternoon. We'll take 15 minutes.

02:31PM 3 (Break taken from 2:31 p.m. to 2:47 p.m.)

02:47PM 4 THE COURT: Counsel.

02:47PM 5 Q. (BY MR. ROTHMAN) Mr. Myers, I think before the
02:48PM 6 break you were about to -- you were about to talk to us
02:48PM 7 about the American Direct Connect over SPRK. What are
02:48PM 8 we seeing on the screen here now?

02:48PM 9 A. Yes. Just as we left, I had performed a
02:48PM 10 fare-led search, which is a fill-in-the-form, and this
02:48PM 11 is the result in one step. And the important thing
02:48PM 12 about the Direct Connect technology, instead of being,
02:48PM 13 you know, six or seven steps to get a list of fully
02:48PM 14 priced fares, it's a one-step process. So it's a lot
02:48PM 15 more efficient with the technology.

02:48PM 16 Q. Now, on its face, this doesn't look a whole lot
02:48PM 17 different, at least to me, than what we saw in the Sabre
02:48PM 18 graphic interface. From a technology standpoint, what
02:48PM 19 differences are there between the Direct Connect that
02:48PM 20 we're seeing now or that's underneath the hood, as you
02:49PM 21 said, and the Sabre system?

02:49PM 22 A. Yes. Well, you can't judge a book by its cover
02:49PM 23 in this case, because it's the capability to do the
02:49PM 24 customization, the personalization, filtering out all
02:49PM 25 the options, being able to search based on the criteria

02:49PM 1 for a particular traveler. Do they want in-flight
02:49PM 2 entertainment? Do they want other criteria as part of
02:49PM 3 their search? It's not as many steps. There's a number
02:49PM 4 of differences.

02:49PM 5 Q. You showed us before a number of the -- the
02:49PM 6 products that we see in what you called the era of
02:49PM 7 convergence?

02:49PM 8 A. Yes.

02:49PM 9 Q. How does Direct Connect compare with those in
02:49PM 10 terms of technology basis and what they're trying to do?

02:49PM 11 A. Well, the plumbing is there to provide those
02:49PM 12 services that are being delivered to the market. I
02:49PM 13 showed you Air Canada, for example, they have branded
02:49PM 14 fares where a traveler can select a brand. They have
02:49PM 15 extra services that you can add to your flight, and so
02:50PM 16 the technology supports a lot of flexibility.
02:50PM 17 One-to-one marketing is what we call that. It's where
02:50PM 18 the offer can be based on what that particular traveler
02:50PM 19 wants. Like a lost bag, they can -- the airline can
02:50PM 20 respond and say, look, we're going to give you a free
02:50PM 21 trip to the -- to the lounge or whatever you'd like.

02:50PM 22 Q. Are there any agencies that are using Direct
02:50PM 23 Connect today?

02:50PM 24 A. There are about a dozen or so agencies using
02:50PM 25 Direct Connect.

02:50PM 1 Q. Who's got the clicker, Mr. Myers?

02:50PM 2 A. I do.

02:50PM 3 Q. Okay. Let's go to the next slide.

02:50PM 4 What are we seeing here? The title is

02:50PM 5 "Priceline Uses American's Direct Connect."

02:50PM 6 A. Yes. This is -- Priceline is probably a name
02:50PM 7 that everyone here has heard of. They are a well-known
02:50PM 8 online travel agency. Consumers or businesspeople can
02:51PM 9 go on there and book flights.

02:51PM 10 Q. Who is this guy?

02:51PM 11 A. That's William Shatner. "The Negotiator," I
02:51PM 12 think he's known as.

02:51PM 13 Q. I remember him as "Captain Kirk."

02:51PM 14 A. So this is -- Priceline is a firm that uses
02:51PM 15 American Airlines' Direct Connect, and this is showing
02:51PM 16 that -- the seat selection where you can have a premium
02:51PM 17 seat -- maybe it has power or it may have other
02:51PM 18 features -- and it's tied into American's Direct Connect
02:51PM 19 from Priceline.

02:51PM 20 Q. And you've heard the term "shopping" in
02:51PM 21 connection with distribution of airline tickets?

02:51PM 22 A. Yes.

02:51PM 23 Q. What does that mean?

02:51PM 24 A. That's the process of looking for the best deal
02:51PM 25 for the client based on all of the requirements that

02:51PM 1 they have.

02:51PM 2 Q. Is Priceline using Direct Connect for the
02:51PM 3 shopping function?

02:51PM 4 A. No. It's using it for the booking and for the
02:51PM 5 extra service there that's showing on the screen.

02:51PM 6 Q. What does it use for the shopping function, if
02:52PM 7 you know?

02:52PM 8 A. They use Worldspan, another company that -- for
02:52PM 9 that feature.

02:52PM 10 Q. Now, Sabre is -- I think you were here for the
02:52PM 11 opening statements yesterday?

02:52PM 12 A. Yes, I was.

02:52PM 13 Q. And you heard Mr. Lind talk about a number of
02:52PM 14 things that Sabre believes is not so good about Direct
02:52PM 15 Connect?

02:52PM 16 A. Yes.

02:52PM 17 Q. Okay. You heard Mr. Lind talk about some
02:52PM 18 documents which refer to Direct Connect as vaporware?

02:52PM 19 A. I heard him say that.

02:52PM 20 Q. Do you agree that Direct Connect could be
02:52PM 21 fairly described today as vaporware?

02:52PM 22 A. No. I have had my hands in the clay. I've
02:52PM 23 tested it; I've used it. I know it's not vaporware.

02:52PM 24 Q. And when you say you've tested it, what did you
02:52PM 25 test it for?

02:52PM 1 A. Well, just functionality as well as
02:52PM 2 performance. We do -- in my normal business, we test
02:53PM 3 interfaces. I mentioned the plumbing is a key part of
02:53PM 4 how these kind of systems work in the Internet age.

02:53PM 5 Q. Give it to me again, Mr. Myers, what do you
02:53PM 6 mean by "functionality"?

02:53PM 7 A. Those are the capabilities that it supports,
02:53PM 8 the messages, the responses. And these are just the
02:53PM 9 nuts and bolts of what an interface does.

02:53PM 10 Q. Now, I think you also may have heard Sabre
02:53PM 11 asserts that Direct Connect is -- will kill transparency
02:53PM 12 or the ability to comparison shop. Did you hear that?

02:53PM 13 A. I did hear that.

02:53PM 14 Q. Do you agree with that?

02:53PM 15 A. I do not.

02:53PM 16 Q. Aside from anything Sabre is doing, can --
02:53PM 17 should travelers or travel agencies be able to
02:53PM 18 comparison shop using Direct Connect?

02:53PM 19 A. Yes, they should.

02:53PM 20 Q. How would they do that?

02:53PM 21 A. There are a number of ways they can do that.
02:53PM 22 There are aggregation technologies that can communicate
02:54PM 23 with various providers. They're used a lot in the
02:54PM 24 industry today. And they put everything on an
02:54PM 25 integrated screen where the agent can go find the best

02:54PM 1 option for the customer.

02:54PM 2 Q. Have you prepared a slide that focuses on that?

02:54PM 3 A. Yes.

02:54PM 4 Q. This one is entitled, "Comparison Shopping with
02:54PM 5 Direct Connects."

02:54PM 6 Would you explain, Mr. Myers, what we're
02:54PM 7 looking at here? First of all, what are these -- what
02:54PM 8 are these companies that we see inside the travel agency
02:54PM 9 box?

02:54PM 10 A. So this is the travel agency, the green box.
02:54PM 11 And today, travel agents are using a variety of tools to
02:54PM 12 facilitate comparison shopping, meaning they pull
02:54PM 13 information from different sources and compare it so
02:54PM 14 they can find the very best deal for the customer. And
02:54PM 15 these -- Concur, Farelogix, Travelfusion, Rearden,
02:55PM 16 BookingBuilder, AgentWare, and PASS -- are all examples
02:55PM 17 of companies that sell technology that do aggregation
02:55PM 18 and comparison shopping.

02:55PM 19 Q. They sell them to travel agents?

02:55PM 20 A. Yes. They're used extensively in travel
02:55PM 21 agencies.

02:55PM 22 Q. And what do these -- what do these boxes on the
02:55PM 23 outside with the airline names in them, what do they
02:55PM 24 represent?

02:55PM 25 A. Well, these are examples of airlines with

02:55PM 1 Direct Connects. So many of these airlines are -- are
02:55PM 2 being connected via a Direct Connect technology with
02:55PM 3 these tools, Concur, TraveIfusion, PASS. And so Direct
02:55PM 4 Connects are used extensively in the marketplace today.

02:55PM 5 Q. And so what is a firm -- let's take Concur or
02:55PM 6 Rearden, for instance, what do they do in order to
02:55PM 7 enable travel agents or corporate customers to
02:55PM 8 comparison shop if they're only getting flight
02:56PM 9 information from one airline, one particular airline on
02:56PM 10 the Direct Connect?

02:56PM 11 A. Well, they bring it all together so the travel
02:56PM 12 agent can see all the options. And I think I have a
02:56PM 13 slide here. This is an example of the Rearden as the
02:56PM 14 corporate booking tool where it shows Southwest Airlines
02:56PM 15 right next to United Airlines, and I believe it's
02:56PM 16 Continental and American.

02:56PM 17 So this is what I mean by comparison
02:56PM 18 shopping, bringing all the content, whether it's in a
02:56PM 19 Direct Connect or from a GDS or whatever the source,
02:56PM 20 where it can be compared in one place.

02:56PM 21 Q. From a technology standpoint, is that difficult
02:56PM 22 to do in this day and age?

02:56PM 23 A. No, it's straightforward.

02:56PM 24 Q. Now, I believe -- well, strike that.

02:56PM 25 Did you hear Mr. Lind say in his opening

02:56PM 1 that in order to adopt the Direct Connect, the travel
02:56PM 2 agency would have to find their own way to aggregate all
02:56PM 3 those fares and flights? Did you hear that?

02:57PM 4 A. I did.

02:57PM 5 Q. Setting aside Sabre's conduct, how difficult
02:57PM 6 would it be to find an aggregator for a travel agent who
02:57PM 7 wanted to aggregate fares from American and fares from a
02:57PM 8 GDS?

02:57PM 9 A. There is -- there are several options in the
02:57PM 10 marketplace with success aggregating content, and so it
02:57PM 11 would be very straightforward.

02:57PM 12 Q. Now -- can you shrink this?

02:57PM 13 A. (Complying.)

02:57PM 14 Q. With respect to the Direct Connects, in order
02:57PM 15 for Concur or Rearden to aggregate, does the airline
02:57PM 16 need to directly access the Sabre system?

02:57PM 17 A. I'm sorry. I didn't hear your question.

02:57PM 18 Q. In order for an aggregator like Concur or
02:57PM 19 Rearden to aggregate the flight information from the
02:58PM 20 Direct Connect and information that the aggregator is
02:58PM 21 getting from Sabre, does the airline have to directly
02:58PM 22 insert itself into the Sabre system?

02:58PM 23 A. It wouldn't have to, no.

02:58PM 24 Q. Now, can you give us some examples of some of
02:58PM 25 the larger travel agencies who were using these kinds of

02:58PM 1 aggregators and taking advantage of the -- of the
02:58PM 2 offerings of Direct Connects?

02:58PM 3 A. Sure.

02:58PM 4 This is a slide I produced that shows --
02:58PM 5 let me describe this. On the left column, I have
02:58PM 6 several large travel agencies: American Express, CWT as
02:58PM 7 it's called, BCD, HRG. These are four of the biggest
02:58PM 8 travel agencies that are in the business -- they serve
02:58PM 9 business clients predominantly.

02:58PM 10 Q. Which is the biggest?

02:58PM 11 A. American Express.

02:58PM 12 Q. And what are we seeing in the second column
02:59PM 13 under "Agency Tool Access Direct Connects"?

02:59PM 14 A. Well, these are agency tools -- these are the
02:59PM 15 tools I just showed you in my last slide that are being
02:59PM 16 used by these agencies. American Express, for example,
02:59PM 17 is using Concur, they're using Farelogix, they're using
02:59PM 18 AgentWare and Rearden.

02:59PM 19 And you can see down the list, we have
02:59PM 20 other aggregation technologies that these companies are
02:59PM 21 using.

02:59PM 22 Q. And then in the third column, what is that
02:59PM 23 reflecting?

02:59PM 24 A. This shows airlines that are enabled or
02:59PM 25 connected to these tools. All of these would be readily

02:59PM 1 accessible via these tools. So these are a number of
02:59PM 2 Direct Connects that are being used in the marketplace.

02:59PM 3 Q. Now, Mr. Myers, I want to show you a document.

02:59PM 4 MR. ROTHMAN: And, Kim, if you could put it
02:59PM 5 up. It's Plaintiff's Exhibit 1004.

03:00PM 6 Q. (BY MR. ROTHMAN) This is a document, you see
03:00PM 7 it's entitled "Universal Agent Desktop Partner Request,"
03:00PM 8 and I believe it's an American Express business travel
03:00PM 9 document.

03:00PM 10 Have you reviewed this?

03:00PM 11 MR. GRIMSLEY: Excuse me, Your Honor. Can
03:00PM 12 you let me know what exhibit number that is?

03:00PM 13 MR. ROTHMAN: Yes, I said PTX 1004.

03:00PM 14 MR. GRIMSLEY: Thank you.

03:00PM 15 MR. ROTHMAN: Sure.

03:00PM 16 Q. (BY MR. ROTHMAN) Is this a document you've
03:00PM 17 reviewed in the course of your work, Mr. Myers?

03:00PM 18 A. Yes, it is.

03:00PM 19 Q. What is it?

03:00PM 20 A. This is what we call a "Request for
03:00PM 21 Information" or "Request for Proposal." This was
03:00PM 22 produced by American Express, the largest travel
03:00PM 23 management company in the United States. And what an
03:00PM 24 RFI is, is where a company puts -- clearly documents
03:00PM 25 what they want from a product or technology and they

03:00PM 1 provide it to other companies so they can solicit
03:00PM 2 responses from other companies that -- how they would
03:01PM 3 address the needs expressed in that document.

03:01PM 4 So it's really common in the technology
03:01PM 5 industry that a company like American Express would put
03:01PM 6 that together and ask for companies to respond to that.
03:01PM 7 It expresses very clearly what they want.

03:01PM 8 Q. And let's take a look, if we could, at Page 4.
03:01PM 9 And we've highlighted the first paragraph. And you see
03:01PM 10 under "Vision and Purpose," the document says, "It is
03:01PM 11 American Express's vision to have a single point of sale
03:01PM 12 throughout its network. It will be GDS and content
03:01PM 13 diagnostic and offer functionality at a minimum equal to
03:01PM 14 but preferably greater than current GDS content and
03:01PM 15 transaction coverage."

03:01PM 16 And then you'll see in the last sentence of
03:01PM 17 the paragraph it says, "It should be intuitive in
03:01PM 18 nature, easily trained, stable and reliable, with access
03:02PM 19 to both GDS and non-GDS content."

03:02PM 20 Can you translate that for the laymen in
03:02PM 21 the room here?

03:02PM 22 A. Yes, I'd be glad to. That's very simply saying
03:02PM 23 that American Express has a vision where they want their
03:02PM 24 technology for their agents on their desktop to be able
03:02PM 25 to access both GDS and non-GDS content on an integrated

03:02PM 1 screen. And non-GDS content is the same as Direct
03:02PM 2 Connect. And so that's what this is saying.

03:02PM 3 Q. Let's flip ahead to Page 8. And here we see in
03:02PM 4 the second bullet point -- 2.1, (as read) "The ability
03:02PM 5 to connect with multiple content providers, paren, GDS
03:02PM 6 and non-GDS, and to integrate search results into a
03:03PM 7 single presentation layer."

03:03PM 8 What is your understanding of what American
03:03PM 9 Express is doing here?

03:03PM 10 A. American Express is making this very clear that
03:03PM 11 in this key component of their system called "the
03:03PM 12 supplier gateway," they want to have a technology that
03:03PM 13 combine both GDS and non-GDS Direct Connect content on
03:03PM 14 an integrated screen.

03:03PM 15 Q. And finally let's take a quick look, if we
03:03PM 16 could, at Page 11. And rather than reading, I will let
03:03PM 17 the jury read and ask you if you could explain what
03:03PM 18 we're looking at here.

03:03PM 19 A. This is a diagram in the American Express RFI
03:03PM 20 that shows, again, in a graphical way that they need to
03:03PM 21 have non-GDS content. And then they particularly
03:03PM 22 mention aggregators like Farelogix, which is the
03:03PM 23 technology behind American Airlines' Direct Connect.

03:04PM 24 Q. Now, let's take a look at another document.
03:04PM 25 This one is PTX 1005. And you see this is a Sabre

03:04PM 1 document entitled "Desktop for the Future, Response to
03:04PM 2 American Express Universal Agent Desktop RFI."

03:04PM 3 What is this document, Mr. Myers?

03:04PM 4 A. So this document represents the response by
03:04PM 5 Sabre to that -- our request for information that -- the
03:04PM 6 document we saw previously -- AmEx presented to several
03:04PM 7 companies what they would like to have in their
03:04PM 8 technology products. And this is Sabre responding to
03:04PM 9 that.

03:04PM 10 This is a very detailed response. In our
03:04PM 11 industry, a lot of time and effort goes into formulating
03:04PM 12 these. This document is maybe three-quarters of an inch
03:04PM 13 thick and approximately half an inch. So it's a very
03:05PM 14 formal response to that request.

03:05PM 15 Q. Let's take a look at Page 1, and here you see
03:05PM 16 Sabre's saying, "With appropriate executive level
03:05PM 17 project governance from AmEx and Sabre, the scope
03:05PM 18 outlined in the RFI and the full global deployment of
03:05PM 19 the AmEx universal agent desktop can be achieved in a
03:05PM 20 time frame of 18 to 24 months from contract agreement."

03:05PM 21 What do you understand that to mean, sir,
03:05PM 22 based on your experience in the technology field?

03:05PM 23 A. This is Sabre communicating back to American
03:05PM 24 Express that your vision as described in your RFI and
03:05PM 25 our response to that, we can deliver that, what you've

03:05PM 1 asked for, in approximately 18 to 24 months.

03:05PM 2 Q. And now let's skip ahead, if we could, to
03:05PM 3 Page 48. And here Sabre says that the cost for
03:06PM 4 development, implementation, and hardware is estimated
03:06PM 5 to range between \$4 million to \$5 million. The fees do
03:06PM 6 not include annual maintenance fees, which typically
03:06PM 7 runs at 25 percent of development.

03:06PM 8 Mr. Myers, based on your experience, does
03:06PM 9 Sabre's -- does Sabre's proposal showing that it
03:06PM 10 believed it could develop the system in 18 to 24 months
03:06PM 11 for 4- to \$5 million, is that surprising to you?

03:06PM 12 A. No, that seems very reasonable.

03:06PM 13 Q. Have you seen evidence that other travel
03:06PM 14 management companies or travel agents have sought to
03:06PM 15 develop similar multisource solutions to what AmEx is
03:06PM 16 doing?

03:06PM 17 A. Yes, I have.

03:06PM 18 Q. By the way, I use the word "multisource." What
03:06PM 19 does that mean in the field?

03:06PM 20 A. Multisource is another word for the technology
03:07PM 21 we've been talking about that aggregates and pulls
03:07PM 22 information from multiple sources. So multiple sources,
03:07PM 23 the GDS, one Direct Connect, a second Direct Connect, it
03:07PM 24 pulls it all together for comparison shopping by a
03:07PM 25 travel agent.

03:07PM 1 Q. And, Mr. Myers, I'd like to go back now, and
03:07PM 2 maybe ahead in our presentation with the slide, we
03:07PM 3 showed the various aggregators.

03:07PM 4 What is the -- no, let's go to the next
03:07PM 5 one, if we could. Right.

03:07PM 6 Now, you recall you said that companies
03:07PM 7 like Concur and Rearden are aggregating the content from
03:07PM 8 Direct Connect, such as Air Canada or Southwest, with
03:07PM 9 the information in Sabre in order to enable travel
03:08PM 10 agents to comparison shop. Do you recall that?

03:08PM 11 A. Yes.

03:08PM 12 Q. Are they also doing that for American?

03:08PM 13 A. No, they're not.

03:08PM 14 Q. Why not?

03:08PM 15 MR. GRIMSLEY: Objection, Your Honor,
03:08PM 16 foundation on this issue.

03:08PM 17 THE COURT: I'll sustain it. I'll sustain.

03:08PM 18 Q. (BY MR. ROTHMAN) Mr. Myers, have you examined
03:08PM 19 actions that Sabre has taken in order to determine
03:08PM 20 whether or not the content from American's Direct
03:08PM 21 Connect is being aggregated?

03:08PM 22 A. Yes, I have.

03:08PM 23 MR. GRIMSLEY: And I would just object,
03:08PM 24 again, Your Honor, as beyond the scope of this
03:08PM 25 gentleman's expertise.

03:08PM 1 THE COURT: Well, I'll let him answer.
2 Overruled.

03:08PM 3 Go ahead.

03:08PM 4 THE WITNESS: Yes. I've reviewed the
03:08PM 5 entire situation here and I -- one of the critical
03:08PM 6 components of the American Airlines technology is that
03:08PM 7 it's built on a company called Farelogix. And Farelogix
03:09PM 8 was an authorized developer of Sabre, and there was a
03:09PM 9 termination by Sabre of the authorized developer
03:09PM 10 agreement which effectually blocked the use of
03:09PM 11 American's Direct Connect.

03:09PM 12 Q. (BY MR. ROTHMAN) Why did it block the use of
03:09PM 13 Direct Connect? How did it affect -- how did the
03:09PM 14 termination of Farelogix affect the development of
03:09PM 15 Direct Connect?

03:09PM 16 MR. GRIMSLEY: Objection, again, Your
03:09PM 17 Honor. This is beyond the scope of this gentleman's
03:09PM 18 expertise.

03:09PM 19 MR. ROTHMAN: Your Honor, this is exactly
03:09PM 20 what --

03:09PM 21 THE COURT: Overruled. I'll let him answer
03:09PM 22 it.

03:09PM 23 MR. ROTHMAN: Thank you, Your Honor.

03:09PM 24 THE WITNESS: Would you ask the question
03:09PM 25 again, sir?

03:09PM 1 Q. (BY MR. ROTHMAN) Yes. What was the practical
03:09PM 2 effect, from a technology standpoint, of the termination
03:09PM 3 of Farelogix upon the development of Direct Connect?

03:09PM 4 A. Well, there were two practical effects. Number
03:09PM 5 one, because the underlying technology of American's
03:09PM 6 Direct Connect was built on Farelogix, it meant none of
03:09PM 7 the integrators that are on that screen or anyone else
03:10PM 8 would be able to access that information if they had an
03:10PM 9 existing relationship with Sabre.

03:10PM 10 Q. You said there were two. Was there anything
03:10PM 11 else?

03:10PM 12 A. Yes. That termination was certainly a big
03:10PM 13 chilling effect in the industry, and I've talked to
03:10PM 14 other companies that were -- it was very -- when one
03:10PM 15 company like Farelogix was terminated and no longer
03:10PM 16 could be a developer in that --

03:10PM 17 MR. GRIMSLEY: Your Honor, I'll object
03:10PM 18 again, just in terms of this gentleman not being an
03:10PM 19 expert on what the facts or the determination of
03:10PM 20 Farelogix was on other industry players. He's a
03:10PM 21 technical expert.

03:10PM 22 THE COURT: I'll sustain that objection.

03:10PM 23 Q. (BY MR. ROTHMAN) Mr. Myers, based on your
03:10PM 24 knowledge of technology, is it important for a company
03:10PM 25 like Farelogix or Concur or Rearden to have a

03:10PM 1 relationship with Sabre?

03:10PM 2 A. It's very important. Sabre is the -- the
03:10PM 3 800-pound gorilla in the industry. And, for example, I
03:10PM 4 interviewed the CEO of PASS Consulting and he told me
03:11PM 5 that he would be out of business if they lost access to
03:11PM 6 any of the top three GDSs.

03:11PM 7 Q. Why would they be out of business?

03:11PM 8 A. Because so much of the marketplace uses Sabre
03:11PM 9 as part of their system. If you're a travel -- if
03:11PM 10 you're a company that's a developer that serves the
03:11PM 11 travel agency industry, you have to be able to build
03:11PM 12 products that work with the Sabre ecosystem.

03:11PM 13 Q. Now, would you go to the next slide, Mr. Myers.

03:11PM 14 What has been the impact of Sabre's actions
03:11PM 15 upon American from a technology standpoint?

03:11PM 16 A. Well, very -- very clearly, American Direct
03:11PM 17 Connect, while all the other Direct Connects here have
03:11PM 18 been allowed to participate, the American Direct Connect
03:11PM 19 has been blocked.

03:11PM 20 Q. And has Sabre blocked Southwest?

03:12PM 21 A. No.

03:12PM 22 Q. Air Canada?

03:12PM 23 A. No.

03:12PM 24 Q. Are you familiar with the term "passive
03:12PM 25 segments"?

03:12PM 1 A. Yes, I am.

03:12PM 2 Q. What are passive segments?

03:12PM 3 A. Passive segments is a technique used in the
03:12PM 4 industry for if a booking is made through another source
03:12PM 5 like a Direct Connect and the travel agent wants it to
03:12PM 6 flow through their mid-office and back office systems,
03:12PM 7 those are the systems that crunch the data and process
03:12PM 8 it for reporting purposes and other purposes. If they
03:12PM 9 want it -- passive is a way to enter that booking from
03:12PM 10 another system and have it flow into the travel agency's
03:12PM 11 normal system.

03:12PM 12 Q. Why would a travel agent want to do that?

03:12PM 13 A. Because that's the way they work. It's their
03:12PM 14 normal process and it has all of their recordkeeping and
03:12PM 15 reporting. It's part of that system.

03:12PM 16 Q. And does Sabre generally charge agents to use
03:13PM 17 passive segments?

03:13PM 18 A. Yes, they do.

03:13PM 19 Q. Does it generally allow agents to use passive
03:13PM 20 segments?

03:13PM 21 A. It allows agencies to use passive segments.

03:13PM 22 Q. Can travel agents use passive segments with
03:13PM 23 American's Direct Connect?

03:13PM 24 A. No, there's a --

03:13PM 25 MR. GRIMSLEY: Objection, Your Honor.

03:13PM 1 Again, this is going to the contractual agreements of
03:13PM 2 Sabre's contract. This is not a technical issue.
03:13PM 3 There's no technical issue with regard to how or why
03:13PM 4 Direct Connect could use passive segments. Those are
03:13PM 5 all commercial issues.

03:13PM 6 THE COURT: I'll let him answer that
03:13PM 7 question.

8 MR. ROTHMAN: Thank you.

03:13PM 9 THE COURT: Overruled.

03:13PM 10 Q. (BY MR. ROTHMAN) You can -- you have the
03:13PM 11 question, Mr. Myers?

03:13PM 12 A. Yes. Sabre has a policy of not allowing this
03:13PM 13 passive segments of American Airlines to flow through
03:13PM 14 the system -- anybody's -- any agency's system.

03:13PM 15 Q. You heard Mr. Lind say yesterday that travel
03:13PM 16 agents don't like or want Direct Connect. Do you recall
03:14PM 17 hearing that?

03:14PM 18 A. I heard that.

03:14PM 19 Q. Do you recall him saying that the fact that
03:14PM 20 travel agents haven't embraced Direct Connect has
03:14PM 21 nothing to do with Sabre?

03:14PM 22 A. I remember him saying that.

03:14PM 23 Q. Let me show you now a document that's been
03:14PM 24 labeled Plaintiff's Exhibit 991.

03:14PM 25 MR. ROTHMAN: Your Honor, can we approach?

03:14PM 1 THE COURT: Sure.

03:14PM 2 (Discussion off the record.)

03:14PM 3 THE COURT: Go ahead, Counsel.

03:14PM 4 MR. ROTHMAN: Do you want to -- do we need

03:14PM 5 to excuse people?

03:15PM 6 THE COURT: Who needs to be excused?

03:15PM 7 MR. ROTHMAN: It would be...

03:15PM 8 (Discussion off the record.)

03:15PM 9 THE COURT: All right. Anyone except for

03:15PM 10 the attorneys in the courtroom, if you'd step out in the

03:15PM 11 hall just a minute, please, except for the attorneys.

03:15PM 12 MR. ROTHMAN: Attorneys and corporate

03:15PM 13 representatives.

03:15PM 14 THE COURT: And corporate representatives,

03:15PM 15 yes.

03:15PM 16 (Discussion off the record.)

03:16PM 17 MR. ROTHMAN: This is a document that was

03:16PM 18 produced by American Express. They're not a party to

03:16PM 19 the litigation. They're what we call a third party, and

03:16PM 20 there are certain numbers in this document which they

03:16PM 21 felt were very confidential and they didn't want shown

03:16PM 22 to anybody but the jury and the lawyers. So that's why

03:16PM 23 we've asked people to leave.

03:16PM 24 THE COURT: And this part of the court

03:16PM 25 reporter's record will be sealed until I note otherwise.

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MR. ROTHMAN: Fair enough.

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67TH DISTRICT COURT

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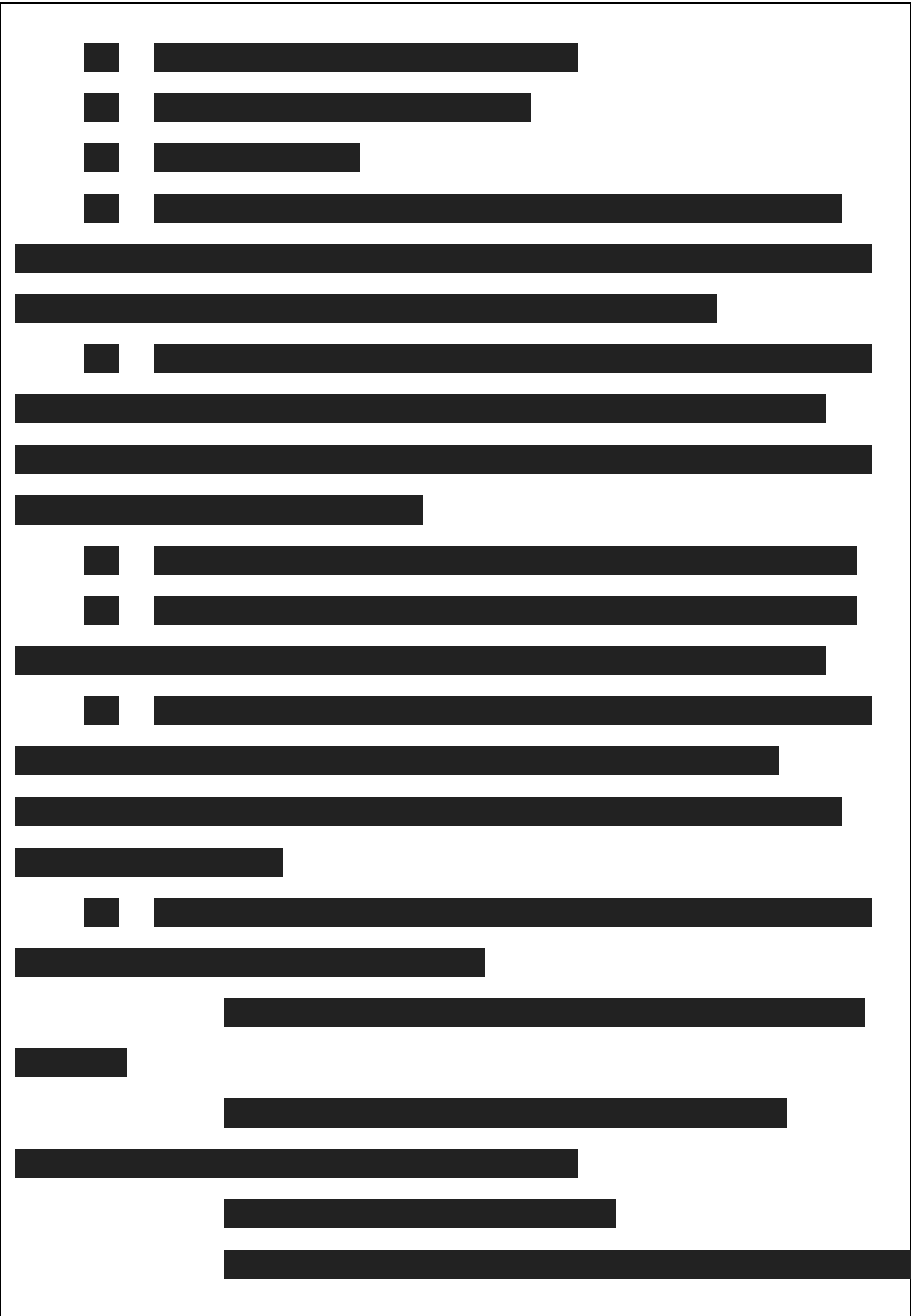
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THE COURT: Reach a logical stopping place

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about 4 o'clock.

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MR. GRIMSLEY: I'll let you know, Your

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Honor.

03:35PM

11

CROSS-EXAMINATION

12

BY MR. GRIMSLEY:

03:35PM

13

Q. Good afternoon, Mr. Myers.

03:35PM

14

A. Good afternoon.

03:35PM

15

Q. You don't work for American Airlines, do you?

03:35PM

16

A. No, I don't.

03:35PM

17

Q. You don't work for Sabre, do you?

03:35PM

18

A. No, I don't.

03:35PM

19

Q. You've never worked for an airline, have you?

03:35PM

20

A. As I mentioned in my direct, I have not.

03:35PM

21

Q. You have not worked for a GDS, have you?

03:35PM

22

A. I have not.

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23

Q. You were not responsible for actually

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24

developing the technology from the Sabre GDS that you

03:35PM

25

talked about during your direct examination, were you?

03:35PM 1 A. No, I was not.

03:35PM 2 Q. You didn't participate in that at all, did you?

03:35PM 3 A. No, I did not.

03:35PM 4 Q. You didn't participate in the development of

03:35PM 5 the American Airlines Direct Connect product, did you?

03:35PM 6 A. No, I didn't.

03:35PM 7 Q. And as you've said, you've actually never

03:35PM 8 worked for a travel agency, have you?

03:35PM 9 A. Not as an employee.

03:35PM 10 Q. You've done some consulting work, you said, for

03:35PM 11 travel agencies?

03:35PM 12 A. That's correct.

03:35PM 13 Q. But that was over ten years ago?

03:35PM 14 A. Yeah. I think I said that on direct, yes.

03:35PM 15 Q. But you've not been a travel agent?

03:36PM 16 A. No, I haven't been a travel agent.

03:36PM 17 Q. Prior to your being hired by American Airlines

03:36PM 18 in this case, had you used the Sabre Red workspace?

03:36PM 19 A. No, I have not.

03:36PM 20 Q. Had you used American Airlines' Direct Connect?

03:36PM 21 A. No, I had not.

03:36PM 22 Q. How many hours do you think you've actually

03:36PM 23 spent on the Sabre Red workspace yourself working?

03:36PM 24 A. I would say maybe 50 to 60.

03:36PM 25 Q. How many hours or how many days does a travel

03:36PM 1 agent, do you think, work to get that level of time? A

03:36PM 2 week? Two weeks, maybe?

03:36PM 3 A. I don't know how the travel agent would manage

03:36PM 4 their time.

03:36PM 5 Q. And you don't profess to be a travel agent, do

03:36PM 6 you?

03:36PM 7 A. No, I'm not a travel agent.

03:36PM 8 Q. Now, you talked a bit about the Sabre

03:36PM 9 technology. Do you recall that testimony?

03:36PM 10 A. I do.

03:36PM 11 Q. And you talked about the architecture and the

03:36PM 12 development of the Sabre technology up here on the SMART

03:36PM 13 Board?

03:36PM 14 A. Yes.

03:36PM 15 Q. Now, you would agree that the people who would

03:37PM 16 know best about the development of the Sabre technology,

03:37PM 17 and the GDS in particular, would be those people at

03:37PM 18 Sabre who actually developed it, right?

03:37PM 19 A. I think they all know a lot about that system.

03:37PM 20 Q. Well, they would be the best people to know

03:37PM 21 about the actual timeline of the development, sir,

03:37PM 22 wouldn't they?

03:37PM 23 A. Yes, I believe so.

03:37PM 24 Q. And they would be the best people to ask about

03:37PM 25 what type of hardware is actually used in the Sabre GDS

03:37PM 1 for a particular purpose; isn't that right?

03:37PM 2 A. I think they'll have good visibility of those
03:37PM 3 things.

03:37PM 4 Q. Well, they're the ones who actually work with
03:37PM 5 it on a day-to-day basis, right?

03:37PM 6 A. Yes.

03:37PM 7 Q. And they would be good people, perhaps, to ask
03:37PM 8 about what mainframes are used for versus what open
03:37PM 9 systems are used for in the Sabre GDS, right?

03:37PM 10 A. They would have visibility of that.

03:37PM 11 Q. Because you know, sir, that mainframes are not
03:37PM 12 the only technology that are used at the Sabre GDS;
03:37PM 13 isn't that right?

03:37PM 14 A. Yes. I tried to describe that earlier and show
03:37PM 15 they had a lot of new technology as well.

03:37PM 16 Q. In fact, there's a lot of open system
03:37PM 17 technology actually being utilized at the Sabre GDS
03:38PM 18 right now?

03:38PM 19 A. Absolutely.

03:38PM 20 Q. Now, did you go out and interview any of those
03:38PM 21 people from Sabre about Sabre's information technology
03:38PM 22 as you prepared your work in this case?

03:38PM 23 A. I did not have access to those people.

03:38PM 24 Q. Did you ask maybe to talk to any of those
03:38PM 25 people?

03:38PM 1 A. I -- I asked to talk to the broadest spectrum
03:38PM 2 of people I could.

03:38PM 3 Q. You understand that there are things called
03:38PM 4 depositions that were taken in this case?

03:38PM 5 A. Yes, I do.

03:38PM 6 Q. In fact, I took your deposition?

03:38PM 7 A. Yes, you did.

03:38PM 8 Q. And American Airlines had the opportunity to
03:38PM 9 take the deposition of any of the Sabre employees it
03:38PM 10 wanted to. Do you realize that?

03:38PM 11 A. That's probably a legal matter that I don't
03:38PM 12 know about.

03:38PM 13 Q. Can you name me a single Sabre IT employee that
03:38PM 14 American Airlines deposed in this case to ask about the
03:38PM 15 Sabre system?

03:38PM 16 MR. ROTHMAN: Objection, Your Honor.

03:38PM 17 THE COURT: Sustained.

03:39PM 18 THE WITNESS: I --

03:39PM 19 THE COURT: Excuse me. You don't need to
03:39PM 20 answer that question.

03:39PM 21 THE WITNESS: Okay.

03:39PM 22 Q. (BY MR. GRIMSLEY) Well, there was -- you
03:39PM 23 studied the depositions in this case for purposes of
03:39PM 24 coming up with your expert opinions?

03:39PM 25 A. I have.

03:39PM 1 Q. Have you seen any, in your study of depositions
03:39PM 2 to come up with your expert opinions, any deposition of
03:39PM 3 a Sabre IT person?

03:39PM 4 A. I don't recall seeing one offhand.

03:39PM 5 Q. Do you recall having seen a deposition of Barry
03:39PM 6 Vandevier, the head of Sabre's IT department?

03:39PM 7 A. I don't recall seeing a depo by him.

03:39PM 8 Q. Do you recall seeing the deposition of Robert
03:39PM 9 Wiseman, the chief technology officer at Sabre?

03:39PM 10 A. I do not.

03:39PM 11 Q. Do you recall seeing the deposition of Shelly
03:39PM 12 Terry in this case, somebody responsible for
03:39PM 13 merchandising products in the Sabre GDS?

03:39PM 14 A. I don't recall seeing a deposition by her.
03:39PM 15 I've seen some materials relating to her, but I have not
03:39PM 16 seen a deposition.

03:39PM 17 Q. Wouldn't you personally as an expert have been
03:39PM 18 interested to hear what they might have to say about the
03:39PM 19 Sabre system?

03:39PM 20 A. I -- I -- as an expert I access as much as I
03:40PM 21 can and base my opinions on what I'm provided.

03:40PM 22 Q. Well, you talked to a lot of folks at American
03:40PM 23 in their IT department, right?

03:40PM 24 A. I wouldn't say a lot, but a few.

03:40PM 25 Q. Well, Mr. Kumar you spoke with?

03:40PM 1 A. Yes.

03:40PM 2 Q. And there were others that you spoke with?

03:40PM 3 A. Maybe two or three others.

03:40PM 4 Q. And you spoke with the technology guys at
03:40PM 5 Farelogix?

03:40PM 6 A. Yes, I did.

03:40PM 7 Q. But Sabre, you haven't spoken to them, one, and
03:40PM 8 you haven't seen a deposition from any of them?

03:40PM 9 A. No, I haven't. But I was provided a lot of
03:40PM 10 documentation, internal documentation, which is what I
03:40PM 11 used extensively.

03:40PM 12 Q. You didn't show any of that documentation,
03:40PM 13 though, during your presentation, did you?

03:40PM 14 A. No. Well, I should correct that. I mean,
03:40PM 15 there were elements of the documents I've seen reflected
03:40PM 16 in my slides.

03:40PM 17 Q. Well, you showed some American Express
03:40PM 18 documents. I remember that. But you didn't show any
03:40PM 19 actual Sabre documents on Sabre's technology, did you?

03:40PM 20 A. No. What I was saying is when I was outlining
03:40PM 21 the Sabre -- the history and technology, a lot of that
03:41PM 22 history is based on, you know, internal documents that
03:41PM 23 Sabre has that I reviewed.

03:41PM 24 Q. Now, on some of your slides you put up when you
03:41PM 25 were explaining the history of the computer age, you put

03:41PM 1 up a number of companies at various points. Do you
03:41PM 2 remember that?

03:41PM 3 A. Yes.

03:41PM 4 Q. And you put up Yahoo!, Target, Netflix, Amazon.
03:41PM 5 Do you recall those?

03:41PM 6 A. Yes, I do.

03:41PM 7 Q. Are any of those using American Airlines'
03:41PM 8 Direct Connect?

03:41PM 9 A. No, they're not.

03:41PM 10 Q. One that you focused on predominantly was
03:41PM 11 Apple. Do you remember that?

03:41PM 12 A. I don't know if I predominantly did, but I did
03:41PM 13 mention it.

03:41PM 14 Q. Well, you mentioned that they're an innovative
03:41PM 15 company. You talked about Steve Jobs. Do you remember
03:41PM 16 that?

03:41PM 17 A. Yes.

03:41PM 18 Q. Do you know what distribution technology Apple
03:41PM 19 uses for its travel?

03:41PM 20 A. No, I don't.

03:41PM 21 Q. Would it surprise you if it's Sabre?

03:41PM 22 A. It wouldn't surprise me.

03:41PM 23 Q. Would it surprise you if you found out that
03:42PM 24 there's actually somebody from Apple on Sabre's advisory
03:42PM 25 board advising about technology at Sabre?

03:42PM 1 A. It wouldn't surprise me.

03:42PM 2 Q. And you know that the Apple folks who work at
03:42PM 3 Apple have this program called Get There on their
03:42PM 4 desktops. Do you know what Get There is?

03:42PM 5 A. Yes, I do.

03:42PM 6 Q. What is Get There?

03:42PM 7 A. It's a product that is a corporate booking tool
03:42PM 8 or online booking tool, and it allows an employee to
03:42PM 9 book their own travel and look for options.

03:42PM 10 Q. And Get There is actually Sabre's corporate
03:42PM 11 booking tool, right?

03:42PM 12 A. That is correct.

03:42PM 13 Q. It's a tool provided by Sabre Corporations, and
03:42PM 14 behind that tool is running the Sabre GDS?

03:42PM 15 A. That is correct.

03:42PM 16 Q. All right. So that's, would it surprise you,
03:42PM 17 the program that's on the desktop of the Apple folks?

03:42PM 18 A. That wouldn't surprise me. Sabre's a very big
03:42PM 19 company.

03:42PM 20 Q. Yeah. Would it also surprise you that Get
03:42PM 21 There is on their mobile devices, given what you said
03:42PM 22 earlier about Sabre technology?

03:42PM 23 A. It wouldn't surprise me.

03:43PM 24 Q. It wouldn't surprise you that Get There has
03:43PM 25 mobile technology where people can look at flights, book

03:43PM 1 them, right from their iPhone?

03:43PM 2 A. It has some mobile technology that I've seen.

03:43PM 3 Q. I want to ask you some questions about -- can I
03:43PM 4 hook up here?

5 A. Yeah.

03:43PM 6 Q. I want to ask you a few questions just about
03:43PM 7 the Sabre GDS and some of its capabilities because it
03:43PM 8 sounded like it was pretty old and tired technology from
03:43PM 9 your presentation.

03:43PM 10 How many --

03:44PM 11 A. Is there a way to get to my screen here? It's
03:44PM 12 got a problem.

03:44PM 13 Q. Can you see right here?

03:44PM 14 A. I'll try to look over this. Okay.

03:44PM 15 Q. And this is just a graphic that shows some of
03:44PM 16 the processing capabilities of Sabre. Sabre does
03:44PM 17 1 billion -- handles 1 billion data requests or API
03:44PM 18 calls a day. Do you have any reason to doubt that?

03:44PM 19 A. No, I don't.

03:44PM 20 Q. What companies out there actually handle that
03:44PM 21 level of volume besides Sabre?

03:44PM 22 A. There's very few that handle the transactions,
03:44PM 23 but it's important to make sure you're looking at the
03:44PM 24 right kind of transactions. Transactions aren't all
03:44PM 25 created equal.

1 Q. Okay.

03:44PM 2 A. So it's just symmetric.

03:44PM 3 Q. In terms of number of transactions per day,
03:44PM 4 it's actually Sabre's system is on par with Google,
03:44PM 5 Facebook, and Twitter, in terms of just number of
03:44PM 6 transactions that are processed daily; is that right?

03:45PM 7 A. I won't dispute that they have a lot of
03:45PM 8 transactions. They're a great big company and they do
03:45PM 9 have a lot of technology, but the transactions that I
03:45PM 10 think Sabre taunts are a bit different than -- and not
03:45PM 11 necessarily comparable to other systems.

03:45PM 12 Q. Do you know how many low-fare searches are
03:45PM 13 actually performed per day on the Sabre system?

03:45PM 14 A. I haven't been provided that system.

03:45PM 15 Q. 23 million sound surprising to you?

03:45PM 16 A. No, it doesn't. Doesn't surprise me.

03:45PM 17 Q. And are you aware that Sabre is the system that
03:45PM 18 actually powers Expedia?

03:45PM 19 A. Yeah, I'm aware of that.

03:45PM 20 Q. So when consumers go online and they put in all
03:45PM 21 this search information and the results come back,
03:45PM 22 that's all coming back from Sabre?

03:45PM 23 A. Yes.

03:45PM 24 Q. Were you aware that Sabre stores 2.3 billion
03:45PM 25 airfares in the Sabre system at any given time?

03:45PM 1 A. I was aware that they stored several billion or
03:45PM 2 multibillion of fares.

03:45PM 3 Q. And that Sabre sells roughly 385 million
03:46PM 4 airline segments every year. Do you know that?

03:46PM 5 A. I don't know that I knew that precise number.

03:46PM 6 Q. How many API calls a day does American's Direct
03:46PM 7 Connect currently handle?

03:46PM 8 A. It handles a few thousand.

03:46PM 9 Q. Not a billion?

03:46PM 10 A. No.

03:46PM 11 Q. Do you know how many it handled at the end of
03:46PM 12 2010 in the period of development for American's Direct
03:46PM 13 Connect?

03:46PM 14 A. No. I didn't focus on the historical
03:46PM 15 perspective. I've looked at it in today's technology is
03:46PM 16 more what I focused on.

03:46PM 17 Q. So you didn't look to see whether in fact
03:46PM 18 American Airlines' Direct Connect product was ready to
03:46PM 19 go in 2009?

03:46PM 20 A. No. I think other people will be speaking to
03:46PM 21 that. I evaluated the technology today.

03:46PM 22 Q. But from a technology perspective, you didn't
03:46PM 23 assess whether American Airlines' Direct Connect was
03:46PM 24 ready to go in 2009?

03:46PM 25 A. Well, I was aware that it was in production in

03:46PM 1 Qatar Airlines and it was being used, and in that time
03:47PM 2 frame I believe American's Direct Connect had started.
03:47PM 3 So I had a general awareness that it was online and
03:47PM 4 actually booking tickets, but I didn't try to go analyze
03:47PM 5 that period of historical time.

03:47PM 6 Q. You mentioned Qatar Airlines as Direct Connect.
03:47PM 7 That's not American's Direct Connect, right?

03:47PM 8 A. It's based on Farelogix's engine which is the
03:47PM 9 same as American's Direct Connect.

03:47PM 10 Q. Well, American's Direct Connect is not just the
03:47PM 11 Farelogix technology, right, sir? There's a shopping
03:47PM 12 engine that's involved, there's a host system that's
03:47PM 13 involved for American Airlines' Direct Connect, right?

03:47PM 14 A. Yes. I mentioned those earlier.

03:47PM 15 Q. Okay. So you didn't look to see in 2009
03:47PM 16 whether, from a technology perspective, American
03:47PM 17 Airlines' Direct Connect was ready for widespread use
03:47PM 18 amongst travel agencies?

03:47PM 19 A. I did not go study that particular time frame.

03:47PM 20 Q. So you have no opinion on that in particular,
03:47PM 21 because you didn't study it, sir?

03:47PM 22 A. I think I know people who will be speaking to
03:47PM 23 that, so I don't have an opinion on it.

03:47PM 24 Q. And you didn't study that for the beginning of
03:47PM 25 2010 either, did you?

03:48PM 1

A. No.

03:48PM 2

Q. And similarly you did not study that for the beginning of 2011, did you?

03:48PM 3

03:48PM 4

A. No, I did not.

03:48PM 5

Q. What you've looked at really is where is American's Direct Connect today?

03:48PM 6

03:48PM 7

A. I think that I would better characterize it like this: I think this case is about where it is today and where it needs to go and wants to go. So my analysis was much more on a forward-looking basis.

03:48PM 8

03:48PM 9

03:48PM 10

03:48PM 11

Q. So you were looking at what it could do today and what maybe it could do in the future?

03:48PM 12

03:48PM 13

A. Yes. And what's in the engine and the plumbing to support the industry and the needs and trends.

03:48PM 14

03:48PM 15

Q. Now, you said you thought that -- well, let's talk about the green screen for a minute because you spent some time on that.

03:48PM 16

03:48PM 17

03:48PM 18

A. Okay.

03:48PM 19

Q. Are you aware that Sabre attempted to launch much earlier than 2010 a graphical user interface version of its desktop?

03:48PM 20

03:48PM 21

03:48PM 22

A. Yes. They have had at least a couple of big failures in that effort. In ninety -- about '98 and '99 they had their Planet -- Planet Sabre launch that was pretty widespread, and representative of a failure.

03:49PM 23

03:49PM 24

03:49PM 25

03:49PM 1 Then they also came back in the early 2000s with another
03:49PM 2 product called eVoya, and it struggled in the market.
03:49PM 3 So I think I tried to describe that they have attempted
03:49PM 4 to, you know, innovate in that area, but it hasn't gone
03:49PM 5 like they'd like it.

03:49PM 6 Q. Well, you're certainly aware, then, sir, that
03:49PM 7 the reason or one of the principal reasons it failed is
03:49PM 8 that travel agencies didn't want it; isn't that right?

03:49PM 9 A. I don't know that that's the case.

03:49PM 10 Q. They actually preferred having the green screen
03:49PM 11 to use because that's something they had gotten used to,
03:49PM 12 right?

03:49PM 13 A. That may have been a portion of that. People
03:49PM 14 get used to something, but you also have to have
03:49PM 15 something compelling to go to. And if you look at even
03:49PM 16 Sabre's, what they're offering in the market today, it's
03:49PM 17 a very incomplete and unconvincing offer, even after all
03:50PM 18 of these years.

03:50PM 19 Q. But, sir, you haven't actually gone out and
03:50PM 20 interviewed any travel agencies about whether they would
03:50PM 21 prefer a graphical user interface over the green screen,
03:50PM 22 have you?

03:50PM 23 A. I haven't done interviews of them.

03:50PM 24 Q. But you've looked at documents in this case
03:50PM 25 that have said many travel agencies, in fact, prefer the

03:50PM 1 green screen today, haven't you?

03:50PM 2 A. Some do, and I've seen other information that
03:50PM 3 would -- that would indicate others want more graphical
03:50PM 4 user interface. So there's a mixture.

03:50PM 5 Q. Now, when you were using the green screen
03:50PM 6 earlier, you said that there was a certain workflow to
03:50PM 7 it, and you did what's called an availability search and
03:50PM 8 you talked about how prices aren't there and how
03:50PM 9 somebody has to kind of guess at what the price was. Do
03:50PM 10 you remember that?

03:50PM 11 A. Yes.

03:50PM 12 Q. You are aware, though, sir, that there are
03:50PM 13 other ways you can search, even through the native
03:50PM 14 format in the Sabre GDS, that would yield prices
03:50PM 15 immediately, don't you?

03:50PM 16 A. Yes.

03:50PM 17 Q. Okay.

03:50PM 18 A. But, you know, no prices, though, with
03:50PM 19 ancillaries and options. I showed the way that you can
03:50PM 20 do that with -- particularly focused on what's at issue.

03:51PM 21 Q. Well, let's break it down. There are searches
03:51PM 22 that you could have done, had you chosen to do so,
03:51PM 23 called low-fare searches that would have brought back in
03:51PM 24 the green screen or the graphical display prices of
03:51PM 25 flights compared to one another?

03:51PM 1 A. Well, you do have to see the way the Sabre
03:51PM 2 system is set up. You have to -- it uses the basic
03:51PM 3 commands to feed into the low-fare searches. So
03:51PM 4 there -- you know, there are several ways to flow
03:51PM 5 through the system. And what I represented is the
03:51PM 6 common approach that most agents use in the real world.

03:51PM 7 Q. But you haven't interviewed a lot of travel
03:51PM 8 agencies about what the most common approach is that
03:51PM 9 they use, have you?

03:51PM 10 A. Well, I was involved with people with extensive
03:51PM 11 experience in the travel agent industry as part of the
03:51PM 12 team that I was working with.

03:51PM 13 Q. As a matter of fact, prior to coming to the
03:51PM 14 opinions that you put in your report, you didn't talk to
03:51PM 15 anybody at AmEx, any travel agent at BCD, any travel
03:52PM 16 agent at CWT, or any travel agent at HRG. A lot of
03:52PM 17 letters, but those are the four largest travel agents in
03:52PM 18 the world, aren't they?

03:52PM 19 A. Well, I did work extensively with a gentlemen
03:52PM 20 that had been at American Express for a good while, so
03:52PM 21 he was certainly a part of my team and helped educate
03:52PM 22 me. I was trying to become a travel agent. I used his
03:52PM 23 experience to help me understand the way the system is
03:52PM 24 typically used.

03:52PM 25 Q. But he was not a travel agent?

03:52PM 1 A. He certainly was involved in the travel agency
03:52PM 2 extensively. I don't think he booked flights all day
03:52PM 3 every day.

03:52PM 4 Q. But you never did go out and interview any
03:52PM 5 travel agent that actually worked at any of those four?

03:52PM 6 A. No, I did not.

03:52PM 7 Q. But yet you were going to say you understand
03:52PM 8 what the typical travel agency workflow is here?

03:52PM 9 A. I have -- as I said, I have talked to
03:52PM 10 individuals that -- on a team that have been involved in
03:52PM 11 agencies. And I studied the manuals. And Sabre has a
03:53PM 12 number of videos online that I studied that describe
03:53PM 13 their system. And so I used a number of tools to try to
03:53PM 14 understand that. And I think we captured it well at the
03:53PM 15 end.

03:53PM 16 Q. But you did all that after being hired by
03:53PM 17 American Airlines in this case, right?

03:53PM 18 A. Yes.

03:53PM 19 Q. You were being paid as an expert in this case
03:53PM 20 by American Airlines at that point, weren't you?

03:53PM 21 A. Yes.

03:53PM 22 Q. And how many hours did you say you've worked on
03:53PM 23 the case, do you think?

03:53PM 24 A. I don't know the exact number. It's not just
03:53PM 25 me. I had a team. I had a team of five or six people.

03:53PM 1 It was probably a couple of thousand hours. I don't
03:53PM 2 know the exact number.

03:53PM 3 Q. How many hours have you personally worked on
03:53PM 4 the case?

03:53PM 5 A. It would be 800 to 1,000 as an estimate.

03:53PM 6 Q. So we're talking about roughly half a million
03:53PM 7 dollars you've made off this case?

03:53PM 8 A. That's probably an estimate. Not me. It goes
03:53PM 9 into my company.

03:53PM 10 Q. How much have you made off of this case?

03:53PM 11 A. I don't know. We -- just like any company, we
03:53PM 12 have revenues come in and I get a paycheck. I don't
03:53PM 13 equate the two directly.

03:53PM 14 Q. Well, sir, you actually get 49 percent of all
03:54PM 15 profits over and above salaries and cost for your
03:54PM 16 employees, right?

03:54PM 17 A. That's true.

03:54PM 18 Q. So the big check comes in, you get 49 percent
03:54PM 19 of anything above normal costs, right?

03:54PM 20 A. Yes.

03:54PM 21 Q. You haven't bothered to check how much of this
03:54PM 22 amount of money coming in from American Airlines has
03:54PM 23 gone in your own pocket?

03:54PM 24 A. This project is relatively small in the scheme
03:54PM 25 of what we do. We have a real software company running

03:54PM 1 every day and I'm a busy person. I don't stand around
03:54PM 2 trying to calculate that.

03:54PM 3 Q. Well, sir, when I deposed you, you said that
03:54PM 4 roughly 20 to 25 percent of not only your time but your
03:54PM 5 company's time has been dedicated to this case since you
03:54PM 6 took on the assignment. Does that sound about right?

03:54PM 7 A. I don't think that's what I said. I think I
03:54PM 8 was saying my time -- I do try to spend about 30 to
03:54PM 9 35 percent of my time on these cases. I do run the
03:54PM 10 software company, and so this is something I do
03:54PM 11 occasionally on the side.

03:54PM 12 Q. Well, do you know how much -- maybe I asked the
03:55PM 13 wrong question -- how much of Eureka's revenue has come
03:55PM 14 from American Airlines over the last year or so since
03:55PM 15 you took on your engagement here?

03:55PM 16 A. I looked that up after you deposed me because
03:55PM 17 you asked me that question and I didn't know. It's
03:55PM 18 under 10 percent.

03:55PM 19 Q. Well, you had said at the time you thought it
03:55PM 20 was about 20 percent, right?

03:55PM 21 A. Yes, I said under 20, I think, but I didn't
03:55PM 22 know exactly. That was -- but I looked at and it's
03:55PM 23 under 10 percent.

03:55PM 24 Q. I want to go back to the questions on the green
03:55PM 25 screen.

03:55PM 1 You're aware that there have been actually
03:55PM 2 studies done quite recently about travel agencies' use
03:55PM 3 of the green screen versus graphical user interfaces,
03:55PM 4 don't you?

03:55PM 5 A. I've seen some studies.

03:55PM 6 Q. In fact, there's a study by an organization
03:56PM 7 called Focus Right?

03:56PM 8 A. Yes.

03:56PM 9 Q. You're familiar with them?

03:56PM 10 A. I am.

03:56PM 11 Q. And you're aware they did, in fact, do a study
03:56PM 12 on this very issue, the role of how travel agencies use
03:56PM 13 GDSs? Have you taken a look at that study?

03:56PM 14 A. I can't recall looking at this specific study,
03:56PM 15 but I've seen others. I may have seen this one.

03:56PM 16 Q. It's Defendant's Exhibit 2599. Look to Page 4.
03:56PM 17 Do you see that, "Green Screen versus GUI Transit Agents
03:56PM 18 Drive Slow Transition"?

03:56PM 19 A. Yes, I see that.

03:56PM 20 Q. Okay. And do you see up here what is actually
03:56PM 21 said about the green screen and travel agencies even as
03:56PM 22 of today in terms of what their preference is? It says:
03:57PM 23 "Most agents" -- and I'm looking at the highlighted
03:57PM 24 portion -- "Most agents schooled in the esoteric arts of
03:57PM 25 GDS command languages became extremely efficient in the

03:57PM 1 legacy system and prized the near subsecond response
03:57PM 2 times that slowed considerably with the introduction of
03:57PM 3 the GUI environment."

03:57PM 4 That's graphical user interface
03:57PM 5 environment, correct?

03:57PM 6 THE REPORTER: Can you slow down?

03:57PM 7 Q. (BY MR. GRIMSLEY) It goes on to say, "Still
03:57PM 8 travel agents today spend far more time in the classic
03:57PM 9 GDS environment than in more modern GUI systems when
03:57PM 10 conducting any type of itinerary research."

03:57PM 11 Do you see that?

03:57PM 12 A. I see that.

03:57PM 13 Q. You have any reason to disagree with that?

03:57PM 14 A. I have seen materials in this case that would
03:57PM 15 indicate that this is not necessarily a consistent view.
03:57PM 16 And I have a bit of a skeptical view toward this kind of
03:57PM 17 research. Focus Right, I've seen studies that they do
03:57PM 18 and some funded by your companies that you represent,
03:57PM 19 Sabre, and so --

03:58PM 20 Q. You're not saying this was funded by us or --

03:58PM 21 A. I don't know.

03:58PM 22 Q. You have no reason to be skeptical of this
03:58PM 23 particular study, do you, sir?

03:58PM 24 A. I have seen a number of Focus Right studies
03:58PM 25 that have been funded by parties that had an invested

03:58PM 1 interest.

03:58PM 2 Q. If you look at -- it says at the bottom, "The
03:58PM 3 percentage of time spent in legacy environments by
03:58PM 4 corporate agents is understandably higher at 82
03:58PM 5 percent."

03:58PM 6 Do you see that? So it's saying here that
03:58PM 7 82 percent of the time spent by corporate travel agents
03:58PM 8 is spent in the native environment, the green screen?
03:58PM 9 Do you see that?

03:58PM 10 A. That doesn't surprise me. There's not much
03:58PM 11 else to be in today in Sabre.

03:58PM 12 Q. And you mentioned a number of times what this
03:58PM 13 case was about during your direct examination. This
03:58PM 14 case is about corporate travel agents at the end of the
03:58PM 15 day, isn't it, and what technologies they use, right?

03:58PM 16 A. Yes, that's at the heart of this case.

03:58PM 17 Q. Now, I know that the green screen looks a
03:58PM 18 little strange to people who are not used to it, but
03:58PM 19 just because something looks strange doesn't mean it's
03:59PM 20 old or useless or antiquated, does it?

03:59PM 21 A. Not necessarily.

03:59PM 22 Q. In fact, there are a lot of devices in the
03:59PM 23 world that for the uninitiated, they might look odd, but
03:59PM 24 to those using it, they're very efficient, fast, and
03:59PM 25 much better than the other options out there, aren't

03:59PM 1 there?

03:59PM 2 A. Yes, that's what the GUIs are being designed
03:59PM 3 for. In fact, in the AmEx proposal or RFI that Sabre
03:59PM 4 responded to, creating graphical user interfaces was a
03:59PM 5 key need in the industry to train new agents. You know,
03:59PM 6 the old agents, because they've learned something, they
03:59PM 7 don't necessarily want to move, but training of new
03:59PM 8 agents is a key element that this is not capturing.

03:59PM 9 Q. Just because something looks old doesn't mean
03:59PM 10 it's not useful or there's a better way to do things?

03:59PM 11 A. If you can't hire people that want to learn
03:59PM 12 that stuff, it does impact your business.

03:59PM 13 Q. Well, there's somebody in this courtroom,
04:00PM 14 Monica, who's using a device that looks kind of strange
04:00PM 15 to the rest of us, but do you think she'd prefer that
04:00PM 16 over a regular computer with a regular interface?

04:00PM 17 A. I don't think that translates to what we're
04:00PM 18 talking about here.

04:00PM 19 Q. Have you asked travel agencies whether it in
04:00PM 20 fact translates?

04:00PM 21 A. I've looked at the documents produced in this
04:00PM 22 case with travel agents, yes.

04:00PM 23 Q. One of which says 82 percent of them still use
04:00PM 24 the green screen?

04:00PM 25 A. Is this the travel agencies saying this or is

04:00PM 1 this a study of some kind?

04:00PM 2 Q. It's a study of travel agencies.

04:00PM 3 See right here, "The GDSs are again making
04:00PM 4 a push to introduce new GUI environments as part of the
04:01PM 5 new generation of agent desktop platforms. These
04:01PM 6 platforms provide a mix of traditional green screen
04:01PM 7 interfaces to accommodate agents that want to stick with
04:01PM 8 the environments they know, as well as the new GUIs and
04:01PM 9 tools to aid in the user migration from green screen to
04:01PM 10 point-and-click."

04:01PM 11 Do you see that?

04:01PM 12 A. Yes.

04:01PM 13 Q. And so you acknowledge that Sabre has its own
04:01PM 14 graphical view?

04:01PM 15 A. That's exactly what I demonstrated earlier in
04:01PM 16 my direct.

04:01PM 17 Q. But, again, 82 percent of agents still use the
04:01PM 18 green screen?

04:01PM 19 A. Yes. The incompleteness of the current
04:01PM 20 graphical screen would almost demand that.

04:01PM 21 MR. GRIMSLEY: Stopping point, Your Honor.

04:01PM 22 THE COURT: All right. Ladies and
04:01PM 23 gentlemen, we're going to recess each day at about
04:01PM 24 4 o'clock. The court reporter has a lot of work to do
04:01PM 25 and the attorneys have work to do, so that's the reason

04:01PM 1 we're quitting at 4:00. We'll see you at 8:30 in the
04:01PM 2 morning. Have a good evening.

04:01PM 3 (Jury not present.)

04:02PM 4 (Recess for the day at 4:02 p.m.)

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