

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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In re: VEHICLE TRACKING AND)	MDL No. 11-2249 (DWF/SER)
SECURITY SYSTEM ('844) PATENT)	
LITIGATION)	
_____)	
)	
This Document Relates to)	St. Paul, Minnesota
All Actions)	March 22, 2012
)	10:15 a.m.
)	

BEFORE **THE HONORABLE DONOVAN W. FRANK**
 UNITED STATES DISTRICT COURT JUDGE
 AND BEFORE **THE HONORABLE STEVEN E. RAU**
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

PRETRIAL CONFERENCE HEARING

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P R O C E E D I N G S**I N O P E N C O U R T**

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3 THE HONORABLE JUDGE FRANK: We all may be seated.
4 Thank you. And I will welcome those that are also on the
5 telephone. Something that was entirely my fault, no one
6 else's, at the last hearing, and oftentimes out of deference
7 to lawyers, but it doesn't work for a conference like this,
8 when we are not in trial, we keep the mikes turned off at
9 the podium -- or at the counsel tables, and then we forget
10 we have people on the phone, because if you are not speaking
11 into the microphone, then they can't -- whoever is on the
12 phone can't hear.

13 So, I will just ask today, and you will see notes
14 that Brenda has put by the microphone that if you are
15 speaking from the podium, that is fine, because there is a
16 mike there. But, if anyone speaks or says anything from
17 counsel table, I would just ask that you please try to speak
18 into a microphone on the table so that the individuals that
19 are on the telephone can hear what is being said.

20 With that, for the record, even though we have a
21 list up here, if we could have -- I will start with those
22 individuals on the telephone. If you could each indicate
23 your presence for the record? Maybe so I can help out here
24 so everybody doesn't speak at once, because that is always
25 an issue about who should go first, maybe we can hear from

1 the representative for Mercedes-Benz first.

2 MR. DeFOSSE: Good morning, Your Honor, Jonathan
3 DeFosse, Sherman & Sterling for Mercedes-Benz USA, LLC.

4 THE HONORABLE JUDGE FRANK: And then Brickhouse
5 Electronics?

6 MR. FURTH: Yes, Your Honor. It's Tom Furth from
7 Kudman, Trachten Aloe in New York for Brickhouse.

8 THE HONORABLE JUDGE FRANK: And then ATX Group
9 Inc.?

10 MS. SHAH: Good morning, Your Honor. It's Alicia
11 Shah from Kirkland & Ellis.

12 THE HONORABLE JUDGE FRANK: And then for SAIA
13 Motor Freight Line, LLC?

14 MR. WILLIAMSON: Thank you, Your Honor. Nick
15 Williamson from Bryan Cave.

16 THE HONORABLE JUDGE FRANK: For Fleetmatics USA
17 and -- well, I will start with Fleetmatics.

18 MR. DESAI: Good morning, Your Honor. Sam Desai
19 from Frommer Lawrence & Haug in New York, on behalf of
20 Fleetmatics USA, SageQuest I, and Alan Ritchey.

21 THE HONORABLE JUDGE FRANK: Right, and I should
22 have named both, because I note that in front of me. Thank
23 you. And Lakeville Motor Express, and then NFI Industries,
24 Ryder Systems, Inc., and TeleTrack? I forgot Navtrack, as
25 well, sorry. Ms. Decker?

1 MR. FARNEY: Your Honor, this is Brian Farney for
2 the Plaintiff. I am not sure they are going to be on the
3 phone. We have reached a settlement with them.

4 THE HONORABLE JUDGE FRANK: Oh, all right. She
5 was on earlier.

6 MR. FARNEY: Oh, okay.

7 THE HONORABLE JUDGE FRANK: That is why I was -- I
8 didn't -- in other words --

9 THE CLERK: I will call her office.

10 THE HONORABLE JUDGE FRANK: Just to make sure that
11 she didn't --

12 MR. FARNEY: Mr. Hill had told me he wasn't sure
13 if he was going to call in. I think he was waiting to see
14 if he got a last signature.

15 THE HONORABLE JUDGE FRANK: She will double check.

16 MS. DECKER: Good morning, Your Honor, this is
17 Martha Decker.

18 THE HONORABLE JUDGE FRANK: Hello?

19 MS. DECKER: Yes, this is Martha Decker from Hill
20 Kertscher & Wharton on behalf of those five Defendants.

21 THE HONORABLE JUDGE FRANK: All right. Thank you
22 very much. Thank you.

23 MS. DECKER: Yes, I apologize. Thank you.

24 THE HONORABLE JUDGE FRANK: And then perhaps we
25 can have everyone that is in the courtroom -- unless I

1 missed someone that is on the telephone, we can have
2 everyone with the reminder of if you don't speak into a
3 microphone, and it is not like the microphones that -- to
4 use a phrase that came up in chambers, DJs or heavy rockers
5 use. In other words, you have to be fairly close to it,
6 because if you get too far away, it won't pick you up. So,
7 why don't we just start with defense counsel's table and Mr.
8 Williams and everybody can move around the table and
9 indicate your presence for the record.

10 MR. WILLIAMS: Doug Williams from Barnes &
11 Thornburg, Lead Liaison Counsel for all Defendants.

12 MR. CUNNINGHAM: Tom Cunningham of Brooks Kushman
13 on behalf of General Motors, OnStar and Central Transport.

14 MS. MYERS: Laura Myers from Fredrikson & Byron on
15 behalf of ATX Group, now known as Agero Connected Services.

16 MR. GERASIMOW: David Gerasimow with Fish &
17 Richardson on behalf of Xata Corporation, about 23 of its
18 customers, as well as FedEx Ground Systems, Incorporated.

19 MR. KOPPELMAN: Ryan Koppelman with Alston & Bird
20 in Atlanta on behalf of the U.P.S. Defendants.

21 MR. BREMER: Dennis Bremer with Carlson Caspers
22 Vandenburg & Lindquist on behalf of U.P.S. Defendants.

23 MR. LAVELLE: Your Honor, Joe Lavelle from Dewey &
24 LeBoeuf for BMW.

25 MR. RUSNAK: Good morning, Your Honor, Eric Rusnak

1 from K & L Gates on behalf of Enfora Inc..

2 THE HONORABLE JUDGE FRANK: Now, Brenda, it
3 appeared to me that that front microphone that the three
4 lawyers used didn't work the same as the others.

5 THE CLERK: I will adjust the volume and turn it
6 up a little.

7 THE HONORABLE JUDGE FRANK: Okay.

8 MR. WILLIAMS: It is green, so -- it was my bad.
9 That's my bad.

10 THE HONORABLE JUDGE FRANK: Does that mean you
11 were a DJ, Mr. Williams?

12 MR. WILLIAMS: No, Your Honor.

13 THE HONORABLE JUDGE FRANK: We will hear from the
14 Plaintiff?

15 MR. FARNEY: Your Honor, Bryan Farney for PJC
16 Logistics, Plaintiff.

17 THE HONORABLE JUDGE FRANK: Is your little green
18 light on? It has to be pushed.

19 MR. FARNEY: It looks like it is, but no. Bryan
20 Farney for PJC Logistics, Plaintiff.

21 MR. ANDERSON: Alan Anderson for PJC Logistics.

22 THE HONORABLE JUDGE FRANK: The Court would
23 welcome you all here. I would note for the record,
24 primarily for the benefit of those on the telephone, that I
25 met with the counsel that are here in the courtroom in

1 chambers from approximately 9:00, and with a short break,
2 giving us time to move from there into the courtroom.

3 And so, in fairness to all of the lawyers who
4 weren't there, and really all of the lawyers who were there
5 and their respective clients, the rule, I think, is as you
6 would expect it, there was nothing off limits in the --
7 since it wasn't on the record in chambers, it is something
8 that we typically do, some of us in MDL cases.

9 So, all of the lawyers know they are free to
10 discuss anything that came up in chambers. And so there
11 will be a couple of things placed on the record, I
12 anticipate, by counsel, of things that we discussed on a
13 schedule with respect to some of the issues the parties have
14 with how to handle the claim construction issues and
15 exchange of process that will, absent agreement, put one or
16 more issues in front of the Court. And some of those may be
17 discovery related, some of those may be a request for more
18 specificity with respect to the claims and defenses of the
19 parties. Some of those may be in the nature of a
20 dispositive motion. And we won't know that. And I think
21 for those of you that are on the phone, you will soon hear
22 from counsel the schedule that has been essentially agreed
23 upon, even though the issues aren't agreed upon, the
24 schedule to address those issues will soon be placed on the
25 record, I think, to the credit of all of the parties.

1 Because even though a number of the lawyers see some of the
2 issues differently, which is understandable, I think the
3 schedule that has been established with substantial
4 agreement will probably serve the purposes and concerns of
5 each of the parties.

6 Now, I will, and this is meant I guess for all
7 lawyers, but especially the six of you on the phone. I do
8 acknowledge that I haven't considered in the past in other
9 cases or MDLs any request -- because they rarely come in --
10 requests by counsel appearing by phone. I haven't had
11 people appearing by phone on a conference system that we do
12 have, frankly, in my chambers or the conference room that we
13 were in, because I have thought in the past that it kind of
14 changes the flow of information and the ability to
15 communicate with one another.

16 So, if there are individuals on the phone today
17 that have a particular strong view, I will probably check in
18 with you at the end of the hearing, and without agreeing or
19 disagreeing with changing the format, once we set up the
20 next date, which we will do before we adjourn today, because
21 much of the process of exchanging briefs and other written
22 submissions between the parties is going to be geared to
23 this next date, so that everything is brought out in front
24 of all parties, whether they are on the phone like some of
25 you are, or present in the courtroom. And so, we will

1 proceed in that fashion.

2 And I don't know if -- do you still have the stack
3 there? Are you going to wait until the end of the -- yeah,
4 so Brenda is giving out the docket sheets, as well. And if
5 any of the lawyers present need us to e-mail you, what I did
6 is I have the approximately 40-page docket sheet from Judge
7 Lynn's case back in 2002 and thereabouts with the '844
8 Patent, and I also -- because I had discussed with her
9 working with the lawyers to make available portions of the
10 sealed record. And so I provided today a copy of the
11 Protective Order that was stipulated to back at that time
12 that she was kind enough to send me on March 9th after our
13 discussion that she and I had.

14 And then I also -- it's all public information,
15 but I also copied the docket sheet from that same case. So,
16 if any counsel on the phone wants us to e-mail out those two
17 documents to you, because that is probably the easiest way
18 to do it, if you let Brenda know by phone call or e-mail, we
19 will do that.

20 So, with that, I think it would be the best use of
21 our time -- and then if you would like, also, Judge Rau --
22 maybe Mr. Williams, if you want to step to the podium and
23 maybe recite, and maybe not to the exclusion of any other
24 defense counsel if they wish, your understanding of what we
25 discussed, the written submission process and exchange of

1 information between now and the end of April.

2 And I will just state without discussing the next
3 status conference, our goal is to set it sometime in May.
4 And we will have an alternative date -- well, actually, I
5 will just give the date now. We won't discuss it until the
6 end of the hearing. May 10th I said in our chambers
7 conference, and that causes a problem for one or more
8 lawyers. As we work through in the next few minutes any
9 agenda items, take a look on your calendars at May 14th and
10 see what that does for you. And then if one of those works,
11 fine. If it doesn't, we will go to plan B or C.

12 So, Mr. Williams?

13 MR. WILLIAMS: Thank you, Your Honor. This is
14 with respect to the issue of the Defendants' concerns about
15 the adequacy of the infringement contentions. As a result
16 of our discussions prior to the hearing this morning and in
17 chambers, we have concluded a process would be put into
18 place for focusing the issues that still exist between the
19 parties as to the adequacy of the infringement contentions.
20 And the schedule for resolving those issues is as follows.

21 By April 2nd, 2012, the Defendants who are
22 concerned about the adequacy of the Plaintiff's PJC's
23 infringement contentions will advise PJC in writing of the
24 specific concerns that they have with respect to those
25 infringement contentions.

1 By April 16th, PJC will respond in writing to
2 those concerns; and that also the parties can discuss them
3 in advance on the phone and all of that. But, that is the
4 due date for their written response to the individual
5 Defendants' concerns.

6 And then if we are unable to resolve between the
7 parties the adequacy issues of the infringement contentions,
8 simultaneous letter briefs will be submitted on the
9 remaining issues by April 30th.

10 Also, on the 2nd of April, I believe it was that
11 there was one remaining declaratory judgment -- or whoever
12 remains in the declaratory judgment category, that PJC is
13 going to identify its concerns about what they would like to
14 see and try to resolve those issues about the remaining
15 Declaratory Judgment Plaintiffs in the case. And that they
16 would then be given a response date also of April 16th.

17 My recollection is, Your Honor, that only involves
18 Xata at this point in time. So, I trust if that is
19 inaccurate, we will follow-up on that. But, I am sure that
20 Xata and PJC will be in contact on that issue. So, I
21 believe that takes care of the schedule issue, Judge, that
22 we have agreed upon?

23 THE HONORABLE JUDGE FRANK: Yeah, and I think, in
24 the interest of clarity, we will probably have -- even
25 though that is a schedule, I think we have two or three

1 other counsel that may want to, both for U.P.S., also Ms.
2 Myers, Mr. Cunningham, there may be some other issues raised
3 here that they may characterize: Well, we have some issues
4 that may go beyond this lack of specificity or what you have
5 described. But, we will make sure in fairness to them and
6 the Plaintiff that it is on the record, here. So, at least
7 even if people don't agree on what should be an issue or
8 whether they have complied, everybody will know what is
9 going to be going on in the next few weeks. And maybe -- I
10 don't think it is premature to suggest -- regardless of who
11 else steps to the podium or the plate today, that my
12 understanding was -- and Judge Rau's understanding was that
13 I think to the credit of all counsel, one given the nature
14 of the substantial agreement on the 26(f) report and to
15 continue to give meaning to some of these meaningful
16 deadlines and the spacing between them, that it is kind of
17 agreed upon that we will just push back each of those dates
18 to build in this process so that we don't -- I don't think
19 there is anyone saying, you know, these dates shouldn't have
20 any effect. We should stay true to these dates and not --
21 and bump them, proportionally. And then I think Ms. Myers
22 may have an issue, along with any other newly-arrived
23 Defendant. And I think the Plaintiff agreed that -- it
24 seems like there is an agreement to make those adjustments
25 to let this process take its course, because it is probably

1 going to focus the issues to the benefit of all parties, I
2 think.

3 Is that your understanding as well, Mr. Williams?

4 MR. WILLIAMS: Yes, Your Honor.

5 THE HONORABLE JUDGE FRANK: All right. Anything
6 else you want to address on this issue at this time?

7 MR. WILLIAMS: On the scheduling issue? No, Your
8 Honor.

9 THE HONORABLE JUDGE FRANK: Well, why don't we get
10 that set in stone, here. Or not stone -- absent an
11 objection from the Plaintiff, maybe you could make one
12 response to each of them, Counsel? I will have any other
13 Defendant who wants to say, well, our issue may not be
14 restricted, confined to the specificity argument, but here
15 is what we are also going to be exchanging during the next
16 few weeks, because I have an idea one or more of you for
17 each couple of the Defendants want to speak and get
18 something on the record, here.

19 MR. KOPPELMAN: Your Honor, Ryan Koppelman with
20 Alston & Bird. With respect to the infringement
21 contentions, as we had discussed earlier, the two main
22 issues were: The charting of licensed systems, which we
23 didn't believe were appropriate; and the providing of
24 infringement contentions with, sort of, "expect to find"
25 language for certain claim elements.

1 There is also sort of general specificity issues
2 that were outlined in our letter, but those were the main
3 issues that we had discussed, and we are amenable to the
4 process that Doug had just put on the record. U.P.S. is
5 agreeable to that, or resolving those.

6 In addition, we have a pending motion that has
7 been taken off the calendar?

8 THE HONORABLE JUDGE FRANK: Yes.

9 MR. KOPPELMAN: And as part of this process we
10 will look at whether it makes sense to renew that motion.

11 THE HONORABLE JUDGE FRANK: And consistent with
12 what you have said, which is consistent with, I think, the
13 exchange that we had back in chambers, when April 30th
14 comes, it would appear to me that that is also the time when
15 whatever hasn't been ironed out or worked out, regardless of
16 whether it is an issue from the point of view of the
17 Plaintiff, or you or other Defendants, we will know that in
18 those submissions. And then a decision, whether it is a
19 request to proceed with that motion -- because as I said in
20 chambers, whether it is the Plaintiff initiating a request
21 or one of the Defendants, we will try to, in the spirit of
22 kind of how MDL cases are supposed to be, but yet be fair to
23 each individual party, try to set it up so if there is oral
24 argument, which there will likely be on some of these
25 issues, that we set that up so that they occur at the next

1 status conference, unless it seems, with or without
2 objection, that that just isn't fair or practical under the
3 Rules. But that will kind of be the goal. So, we are going
4 to know on April 30th how each of you feel about, well, here
5 is what we say the issues are that we need a court decision
6 on or are unresolved. So, I think that makes sense.

7 MR. KOPPELMAN: Yes, Your Honor, that makes sense
8 to the U.P.S. Defendants, as well.

9 THE HONORABLE JUDGE FRANK: Thank you. Next?

10 MR. CUNNINGHAM: Your Honor, Tom Cunningham. I
11 will be speaking on behalf of Central Transport. As we
12 discussed in chambers, the issue for Central Transport is
13 that we didn't receive any infringement contentions.

14 We received a letter indicating that a Qualcomm
15 system -- they believe my client had used a Qualcomm and a
16 PeopleNet system. They provided claim charts for those.
17 Those systems had been licensed for some time. They
18 indicate that they believe we may have other systems, but
19 they provided no evidence of that, no claim charts, no
20 contentions whatsoever. We believe Central Transport should
21 be out of the case for that reason right now.

22 I'm not sure the letter process is going to help.
23 It seems like Mr. Farney and I are at an impasse, and
24 probably the best way to go about it is for us to file a
25 motion to dismiss.

1 THE HONORABLE JUDGE FRANK: Well, I kind of
2 assumed in light of what you said and Mr. Farney said in
3 chambers, in the conference that we had earlier, that if not
4 before, by April 30th it is going to be crystal clear that
5 whether it is a scope of discovery issue, as perhaps
6 Plaintiff feels, or your view that, well, it should be --
7 obviously, whether it is appropriately characterized from
8 your point of view as a Rule 12 dismissal, or perhaps as Mr.
9 Farney implied in chambers, that well, it may be a Rule 12
10 dismissal that's -- well, it is cloaked as a Rule 12
11 dismissal, but it looks more like a Rule 56 motion.

12 It seems to me, no matter what it is, we are going
13 to know no later than April 30th. And then if the request
14 is made, whether it's your request for the dismissal motion
15 to tee it up, or absent some agreement, procedurally,
16 between the two of you, or Plaintiff's view of, well, that
17 is what they call it, but it is really a discovery issue as
18 far as we are concerned.

19 I do admit for the folks that are on the phone,
20 the Court agreed that we would make a response with a fairly
21 quick turnaround so that people know how and when we are
22 going to tee these things up or they are heard, so we can
23 get them decided and move on. All right?

24 MR. CUNNINGHAM: Thank you, Your Honor.

25 MR. FARNEY: Your Honor, on that last issue on

1 Central Transport, this is Bryan Farney for the Plaintiff.

2 THE HONORABLE JUDGE FRANK: All right?

3 MR. FARNEY: Mr. Cunningham had three clients that
4 were kind of in a similar situation with Central Transport.
5 And we had discussed with Mr. Cunningham getting a
6 declaration as to what other systems they used or didn't
7 use. And assuming it is appropriate, we would agree to
8 dismiss them out. And we have accomplished that on two, and
9 dismissed them out.

10 On this third one, I think Mr. Cunningham and I
11 both believed it would be handled the same way. And there
12 has been a couple of weeks of sort of no action. And Mr.
13 Cunningham has informed me this morning that the reason is
14 that the owner of the business is in jail. And he has not
15 been able to reach him anymore or get a response from him.
16 So, I think that we very well may not be briefing this issue
17 at all, but Mr. Cunningham and I will be able to work it out
18 just like the, you know, the other two.

19 I think if they give us the declaration on how
20 many other units, which is all we have asked for, which
21 essentially is the discovery that we say we are entitled to,
22 we will be able to dismiss them out. So, I don't think it
23 is going to linger. I think once his client gets bail or
24 whatever, we will be able to get this -- he will get an
25 answer and we'll get it resolved.

1 THE HONORABLE JUDGE FRANK: Well, if you need an
2 answer -- and I don't want to make light of somebody in
3 jail, but maybe it would speed it up if you post bail for
4 Mr. Cunningham's client.

5 MR. FARNEY: He hasn't asked that, but perhaps
6 that is an option.

7 MR. CUNNINGHAM: Your Honor, that was a complete
8 misrepresentation of what I told him. But that said, my
9 client -- the owner of the client is a billionaire involved
10 in a dispute with the government over -- whatever, the
11 Ambassador Bridge between Detroit and Canada. And they have
12 some issues. With that said, my client is out on bail, the
13 owner.

14 But, I have been dealing with counsel. That is a
15 settlement issue with the general counsel, as to whether the
16 general counsel wants to settle under the terms which he has
17 proposed. That is a completely different issue.

18 The issue here is, do they have the basis to go
19 forward? He is correct, we have talked about possibly
20 dismissing them. He is asking for terms which my client
21 would give up certain rights, such as pursuing attorney fees
22 because they had no basis to file suit in the first place.
23 And that is the issue, main issue with my client, is should
24 they give up that right. Otherwise, I think he agrees that
25 they should be dismissed, but he won't do it until my client

1 signs something saying they won't go after him for attorney
2 fees.

3 So, that is basically what the issue is. And I'm
4 not sure my client is willing to do that. So, that said, we
5 are at this impasse, and summary judgment will probably deal
6 with it.

7 MR. FARNEY: I would like to respond.

8 THE HONORABLE JUDGE FRANK: I thought you would.

9 MR. FARNEY: What is at issue, as we have done
10 with every other settlement is the party is to sign mutual
11 releases so that there is peace between us when the case is
12 settled. And that is what he is talking about, is if that
13 happens, his view is that incorporates some issue he thinks
14 he can file about, pre-filing investigation, which we have
15 shown in this he has got no basis for that. In fact, filing
16 one would cause us to file one in response.

17 So, it is just a matter of the mutual release and
18 the fact that he told me out in the hall that the reason he
19 hasn't been able to get back to me on this, as he has with
20 the other two and we got them settled out, and he and I have
21 our differences about the case, but when we have got them
22 done. I still think we can get this done, and that was my
23 only comment, that we --

24 THE HONORABLE JUDGE FRANK: Well, what we know for
25 sure is this, that --

1 MR. FARNEY: I'm glad to hear his client is out of
2 jail.

3 THE HONORABLE JUDGE FRANK: -- if not before, by
4 April 30th, if it hasn't been resolved, we will set
5 something in process.

6 MR. FARNEY: Sure.

7 THE HONORABLE JUDGE FRANK: And whether that means
8 it will be ready for a ruling from the Court the next time
9 we get together or in some other avenue, we will set up a
10 procedure with input from each of you so this gets resolved
11 sooner, rather than later. So, all right?

12 MR. FARNEY: Sure.

13 THE HONORABLE JUDGE FRANK: Ms. Myers?

14 MS. MYERS: Your Honor, Laura Myers on behalf of
15 Agero Connected Services. In addition to the specificity of
16 Plaintiff's infringement contentions, we also had some
17 concerns about the product that was identified in the
18 infringement contentions versus the products that were
19 accused in the Complaint. Only one product of one car
20 manufacturer, so it was a product not even used by us, was
21 charted in our infringement charts. And we were accused in
22 connection with multiple car manufacturers and the products
23 used by those car manufacturers. So, we had some questions
24 about that that we will address in our letter.

25 In addition to that, we also had a related

1 question regarding some claims that were charted that cover
2 things that are not used by Agero, and that again we will
3 raise in our letter brief.

4 In addition to that, because we weren't in the
5 case yet at the time of the 26(f) meeting, we have some
6 additional concerns regarding discovery limitations. And we
7 will take those up with the Plaintiff prior to the May
8 status conference so that we are prepared to agree to a
9 schedule and discovery limitations at that time.

10 THE HONORABLE JUDGE FRANK: And my impression
11 from -- our impression from our in-chambers exchange when
12 this issue was raised is that I think even if some of those
13 earlier issues you raised there is not a meeting of the
14 minds, that the Plaintiff's counsel has said: Well, given
15 your new arrival, he was quite confident that the concern
16 you had that you would be subject to the same precise
17 guidelines, that will be able to be worked out. And if for
18 some reason it is not, we will know that by the end of
19 April.

20 MS. MYERS: That is my understanding, as well,
21 Your Honor.

22 THE HONORABLE JUDGE FRANK: All right. Anybody
23 else need to be heard out? Mr. Farney, do you want to
24 respond both to anything -- it seems like on the schedule,
25 itself, we kind of have that procedure set up?

1 MR. FARNEY: Yes, I don't really have any points.
2 The two points I wanted to clarify, and I think I have
3 understood it, on the issues regarding perhaps reviving a
4 motion to dismiss, and one issue that wasn't brought up was
5 the motion to stay customers that --

6 THE HONORABLE JUDGE FRANK: Yes, yes.

7 MR. FARNEY: -- Xata wanted to bring?

8 My understanding is that we are supposed to tell
9 you by April 30th if those issues are still issues and then
10 work out a briefing schedule between us on that so that the
11 briefing occurs before the status conference.

12 THE HONORABLE JUDGE FRANK: Right.

13 MR. FARNEY: But those issues are not on the April
14 2nd, 16th, 30th briefing schedule timeline. That is what I
15 wanted to clarify.

16 THE HONORABLE MAGISTRATE JUDGE RAU: It is my
17 impression that you are going to decide shortly about the
18 issue of the motion to stay, and that you will get a
19 briefing schedule in place so that the motion to stay can be
20 heard and argued orally on May 14th.

21 MR. FARNEY: Yes, that is right, but not
22 necessarily by April 30th. That is all I wanted to make
23 sure I understood properly.

24 THE HONORABLE JUDGE FRANK: In other words, that
25 the briefing isn't done by April 30th?

1 MR. FARNEY: Right. My understanding is the
2 briefing on the contentions, the disputes about the
3 contentions and so forth, you have to have those by April
4 30th. But, on the substantive issues we can just work out a
5 schedule among ourselves and get it to you before the 14th,
6 or whenever the schedule is --

7 THE HONORABLE JUDGE FRANK: Yes, as long as I
8 have, at least, you know, 4 or 5 days to take a look at it.

9 MR. FARNEY: I just wanted to clarify that, Your
10 Honor. And the second thing, and I think we can try to work
11 this out amongst ourselves, first, but I don't know how many
12 of issues of these contentions they are going to try to
13 bring up; but, we would just want -- we are not looking for
14 lots of pages, but we would just want a fair number of pages
15 if they are each going to submit separate five-page briefs
16 on this, we would want some reasonable amount of space to
17 respond. So, hopefully, I think we can work that out with
18 them.

19 THE HONORABLE JUDGE FRANK: Yeah, and if you
20 can't, then, you know, I assume without, you know, without
21 any delay, if we are made aware of that, we will make a --
22 we will do it one of two ways. We will either get a
23 paragraph or one-page letter from everybody to keep people
24 on the phone and make a decision pronto.

25 MR. FARNEY: Sure. I just didn't want to be in a

1 position where I have five, five-page briefs, and I was
2 trying to do everything in five pages, alone.

3 THE HONORABLE JUDGE FRANK: I suspect you will be
4 able to work that out.

5 MR. FARNEY: That was my only further two
6 thoughts.

7 MR. GERASIMOW: Okay if I --

8 THE HONORABLE JUDGE FRANK: Yeah, I thought that
9 you might want to --

10 MR. GERASIMOW: Sure. David Gerasimow for Xata
11 Corporation and a number of its customers. And I want to
12 bring up an issue about the motion to stay customer suits
13 and it is scheduling related, in a way.

14 I understand the procedure is that at some point
15 this morning we are going to agree on when the next status
16 conference is going to be. And then we will try our best to
17 comply with the Local Rules regarding briefing schedules to
18 get that in. And so if, for instance, the next scheduling
19 conference is 45 days out, then we shouldn't have any
20 problems abiding by the Local Rules. If it is not, then we
21 will agree to something slightly compressed, or as much as
22 possible.

23 THE HONORABLE JUDGE FRANK: Yes, and I would think
24 by the nature of the motion, you won't hear a complaint from
25 the Court about, well, don't agree to too expeditious of a

1 schedule. I think given the nature of the motion, I would
2 think that something could be agreed upon that would be
3 compatible with us hearing that for everybody's benefit on
4 May 10th.

5 Now, obviously, if somebody takes the position on
6 either side that, well, what looked to be feasible and fair
7 on that date in March, it now is apparent that we can't
8 agree, then I assume we will be informed of that and then
9 make the call on it and we will commit to an immediate
10 turnaround time.

11 So, in other words you don't say, well, we
12 submitted this because we can't agree, and now it has been
13 seven days or ten days and we haven't heard a thing from the
14 Judge. That won't happen, so --

15 MR. GERASIMOW: Okay, that should be fine.

16 THE HONORABLE JUDGE FRANK: All right?

17 MR. GERASIMOW: Thank you.

18 MR. KOPPELMAN: Your Honor, I just wanted to
19 address what Mr. Farney said. I thought when we spoke
20 earlier that it was relatively clear how we would proceed
21 with contentions and how that related to U.P.S.'s motion.

22 He sort of lumped together the U.P.S. motion with
23 the customer stay issue and that briefing. And now I am a
24 little confused as to what the expectations are for what the
25 Court wants to see on the U.P.S. motions.

1 THE HONORABLE JUDGE FRANK: Why don't you give
2 your understanding and we will soon find out if we are all
3 on the same page? Because I am thinking -- I am hoping we
4 are probably closer than you think, but we will soon find
5 out.

6 MR. KOPPELMAN: Well, my understanding was that we
7 would submit our letter, they would respond, and then by the
8 30th we would provide briefs to the Court, simultaneous
9 briefs to the Court on the issue. That was my
10 understanding.

11 It sounded like he was thinking about working out
12 a separate briefing schedule is what I thought I heard Mr.
13 Farney say. But, maybe I misunderstood him. I am just
14 looking for clarity.

15 MR. FARNEY: No, I guess we do have a
16 misunderstanding, and that is what I was trying to get at.
17 My understanding is they have some concerns about the
18 contentions weren't detailed enough or what have you, and
19 that we provided them also charts about licensed parties.
20 Those issues I thought they were going to provide to us by
21 April 2nd, writing on the 16th. By the 16th, we would tell
22 them what our position on it was or respond, and if we
23 didn't have an agreement on the 30th, we would submit briefs
24 on that issue.

25 But, it also raised the question that I guess they

1 had a previous interest in filing some form of motion to
2 dismiss, which I am going to say was really a separate
3 issue. And I thought by the 30th they were going to
4 identify if they still wanted to pursue that.

5 THE HONORABLE JUDGE FRANK: Yes.

6 MR. FARNEY: And then we would work out a briefing
7 schedule on that because that was different than the others.

8 THE HONORABLE JUDGE FRANK: Right. Right, I think
9 we are all on the same page, then, on that.

10 MR. KOPPELMAN: I guess, perhaps. The briefing --
11 I was expecting maybe by the 14th we would be ready to argue
12 it. But if there is a briefing schedule that is going to
13 come after the 30th --

14 THE HONORABLE JUDGE FRANK: On the motion to
15 dismiss now you are talking about?

16 MR. KOPPELMAN: Yes.

17 THE HONORABLE MAGISTRATE JUDGE RAU: The motion to
18 dismiss I don't think is being contemplated to be heard on
19 May 14th.

20 MR. KOPPELMAN: Okay.

21 THE HONORABLE MAGISTRATE JUDGE RAU: I think that
22 what is being distilled is on April 30th, you are going to
23 be able to decide whether you are going to pursue your
24 motion to dismiss or not. And you may advise us of that in
25 your letter briefs. And then that will be separate and

1 independent from the motion to stay, and maybe separately
2 scheduled on the calendar with Ms. Schaffer.

3 THE HONORABLE JUDGE FRANK: And I will promise we
4 will expedite it, but that was my thought, as well. Unless
5 for some reason the issue is such that you have agreed that,
6 well, if that is really the key issue on that motion -- we
7 agree we will be ready on the 14th, but I don't think that
8 that is probably going to happen.

9 And I think that is a separate issue and Mr.
10 Cunningham is coming, because I think it is likely we may be
11 hearing your -- in other words, if we get to that point,
12 because I think your situation is a bit different, but we
13 will soon find out, Mr. Cunningham.

14 MR. CUNNINGHAM: That is what I wanted to make
15 sure of, Your Honor. Because our motion -- ours, I believe,
16 is teed up. I believe we have discussed it and we are at an
17 impasse.

18 MR. FARNEY: I think that is right. But I think
19 it is also an issue that if we have to work out a schedule
20 on that, I am happy to do that. But, it is not part of the
21 2nd, 16th and 30th briefing.

22 THE HONORABLE JUDGE FRANK: No, that one I assumed
23 if you were at an impasse, that will be set up in such a way
24 that we will hear that on the -- assuming the 14th becomes
25 the operative status conference date. And then with respect

1 to the other formal motion to dismiss, if it looks like we
2 find out no later than the 30th, well, we want this heard,
3 and here is what we think the timing should be and here is
4 what our clients' status should be until you hear it if
5 there is any dispute about discovery and the like. Then a
6 decision will have to be made by the Court and we will just
7 promise to expedite it. Because it may be, depending upon
8 the Plaintiff's point of view, that even if you had this
9 disagreement, maybe it won't need the full-blown 45-day
10 spin. But, we will find out, because obviously the concern
11 sometimes by a plaintiff and by a defendant is, well don't
12 lump us all in as if we have exactly the same issues. And
13 frankly, that is sometimes one of the criticisms of MDLs,
14 everybody just gets lumped in together. So, we will do our
15 best to be efficient, but fair about it.

16 Are we kind of then on the same page, even if
17 maybe you would prefer it happened a little quicker, we will
18 handle it in that way?

19 MR. KOPPELMAN: No, that is perfectly fair, Your
20 Honor. And I appreciate clarification from both of Your
21 Honors.

22 THE HONORABLE JUDGE FRANK: All right? Thank you.
23 Now, I have seen Mr. Williams try to come to the podium a
24 couple of times, so you are welcome to it if you want it.

25 THE HONORABLE MAGISTRATE JUDGE RAU: Your

1 colleagues have short arms.

2 MR. WILLIAMS: I wanted to first address Mr.
3 Farney's concern about whether or not they would have a fair
4 response to all of the letter briefs, and I haven't had a
5 chance to canvas the Defendants yet; but, I am confident
6 that if we end up filing four or five separate letter
7 briefs, that in fairness, the Plaintiff ought to be able to
8 respond to each of those with its full five pages. So, that
9 should resolve it.

10 I would also commit to the fact that we will
11 advise him in advance how many separate ones are going to be
12 done, so that he will know what it is he has got to address,
13 so that should be pretty clear.

14 THE HONORABLE JUDGE FRANK: Before you leave the
15 podium, do you want to discuss -- not that you are the only
16 one who has an interest in this. But, do you want to
17 discuss our kind of discussion back there about this gaining
18 access to some of the information down in the Northern
19 District of Texas and the role that the Court can play or
20 should play in order to try to do whatever is needed to do
21 that as quickly and as expeditiously as possible?

22 MR. WILLIAMS: Yes, Your Honor, and I apologize.
23 I thought we were taking those points in order.

24 THE HONORABLE JUDGE FRANK: Oh, I'm sorry.

25 MR. WILLIAMS: So, that is why when I concluded on

1 the discussion about the specificity of the invalidity
2 contentions -- but it sounds like we have resolved most of
3 the other issues now --

4 THE HONORABLE JUDGE FRANK: It would seem so.

5 MR. WILLIAMS: -- except for that issue of the
6 *Raytheon Litigation*.

7 And what we discussed in chambers, and I think
8 makes a great deal of sense, Your Honor offered that perhaps
9 you would propose an interim protective order that would be
10 in place to facilitate the immediate production of those
11 documents. And I think that that probably is the best way
12 for us to proceed.

13 Then we will work very quickly to get the final
14 protective order that will take care of both productions on
15 the Plaintiff's side and the Defendants' side. But, at
16 least to get access to the *Raytheon* documents the Court
17 offered up that suggestion, we think it would be a good one
18 for that to take place.

19 THE HONORABLE JUDGE FRANK: Anyone else want to be
20 heard on that? I think that would probably benefit everyone
21 all the way around. And I think one of the issues we raised
22 in chambers, and I think it would be the same issue even if
23 I hadn't had the discussion with Judge Lynn, since that
24 order was pursuant to -- the protective order down there was
25 pursuant to stipulation, that there may or may not be an

1 issue about, well, is everyone that needs to agree to this
2 that is not part of this lawsuit, is there going to be
3 anyone that was involved and has control over some of that
4 information that may object to this? It doesn't sound like
5 that is going to be the case, as long as the proper
6 protective order is in place.

7 MR. WILLIAMS: I would think so, Your Honor.

8 THE HONORABLE JUDGE FRANK: All right.

9 THE HONORABLE MAGISTRATE JUDGE RAU: And it struck
10 me that what we've agreed to is that, essentially, assuming
11 you get the permission of the parties that were privy to
12 that particular litigation, that we would simply agree on
13 the record to impose and use the same identical terms as
14 were used in that protective order, pending your negotiation
15 of a multi-tiered protective order; is that correct?

16 MR. WILLIAMS: That is correct, Your Honor. And
17 it would be our anticipation that the Defendants would not
18 be producing any documents. There are no outstanding
19 requests that makes that urgent. So, the only documents now
20 for the interim basis would be these *Raytheon* documents and
21 that should work for that purpose.

22 THE HONORABLE JUDGE FRANK: All right.

23 MR. FARNEY: I believe we have no objection to
24 them getting these *Raytheon* documents. I think someone told
25 me from the Defendants' side that they are held -- or at

1 least many of them are still held by the counsel in the
2 case.

3 THE HONORABLE JUDGE FRANK: I think that is true,
4 yes.

5 MR. FARNEY: Whatever rights the Plaintiff has to
6 say yea or nay on it, we are not going to get in there way
7 on it and not object. We are fine with the procedure that
8 has been outlined.

9 THE HONORABLE JUDGE FRANK: Shall we discuss the
10 May 14th? The 10th had some problems? What does May 14th
11 look like for everyone?

12 MR. BREMER: Your Honor, I know that I am not
13 available on the 14th.

14 MR. FARNEY: I think Mr. Anderson had a problem up
15 until the 17th. I am open, as I said.

16 THE HONORABLE JUDGE FRANK: Let us regroup, here,
17 for just a minute.

18 Does anybody know the week of -- excluding Monday,
19 which is Memorial Day, May 28th, the 30th -- we don't want
20 you travelling on Memorial Day unless everybody insists on
21 it. So, Memorial Day is Monday, the 28th of May. Tuesday
22 is the 29th. So Brenda is going to check my schedule and
23 Judge Rau's for the 30th and 31st. Is that out of touch for
24 folks here?

25 MR. FARNEY: It is fine with Plaintiffs.

1 THE HONORABLE JUDGE FRANK: How about on the --

2 MR. WILLIAMS: It looks like for those present in
3 the courtroom that it is fine. And for the Defendants on
4 the phone, I don't know what that is, but anybody on the
5 phone have any issue with --

6 THE HONORABLE JUDGE FRANK: What about the 30th or
7 31st of May for those -- I'm sorry, what about the 30th or
8 the 31st for those of you on the phone, May?

9 MR. FURTH: This is Tom Furth, Your Honor. I will
10 be travelling the week of May 28th.

11 THE HONORABLE JUDGE FRANK: Anyone else want to be
12 heard about the 30th or the 31st? Well, why don't we wait
13 to see what Brenda comes back with? We may have to go with
14 one of those. Everybody at the counsel table is available
15 on those dates?

16 MR. WILLIAMS: It is my understanding everybody in
17 the courtroom is available on the 30th or the 31st.

18 MR. FURTH: Your Honor, this is Tom Furth. If
19 need be, I can have a co-counsel or somebody else --

20 THE HONORABLE JUDGE FRANK: Can you speak up a
21 little bit, Counsel? It is very hard to hear you.

22 MR. FURTH: I'm sorry, Your Honor, I apologize.
23 If need be, I can have co-counsel or somebody else attend
24 on --

25 THE HONORABLE JUDGE FRANK: That would be very

1 much appreciated if that would work out. And they are
2 coming back with the dates as we speak. And I believe those
3 dates -- I am just looking -- I have access to my calendar
4 on the computer, which is here. But, we will know in just
5 the next couple of minutes.

6 While we are waiting, any other issues that people
7 want to bring, raise, whether they are issues that you need
8 to address today or put on the back burner or front burner
9 to say: Well, here is what may come up again at the --
10 which the plus to the May -- if one of those dates works,
11 that might increase the likelihood of some more compatible
12 briefing schedules, as well, for -- depending on what
13 remains an issue that we could hear that day with the extra
14 time.

15 But, Mr. Williams, you happen to be at the podium.
16 Anything else you would like to --

17 MR. WILLIAMS: The only thing, Your Honor, that we
18 might do in the interim is we could confirm our
19 understanding of at least where the Plaintiff is at this
20 point in time that they are approaching potential
21 settlements with the new defendants in the Delaware case,
22 and there may be one additional defendant that they were
23 possibly going to sue. But that at this point in time was
24 all they contemplated for new and additional parties. So,
25 therefore, I think we are at a point where finalizing in the

1 near future that our schedule for everything should begin to
2 be something that we can accomplish.

3 THE HONORABLE JUDGE FRANK: Mr. Farney? Does the
4 Plaintiff agree with that?

5 MR. FARNEY: The parties that have already been
6 sued, all I can tell you is it looks to me like those
7 parties will resolve out. I think given the fact that the
8 next conference now won't be until the end of May, we are
9 going to have plenty of time to either get them out or bring
10 them in and let them have plenty of time to participate.

11 The other party who I believe will be sued this
12 week, I can't speak for them or what they'll do, but we do
13 not think they are going to be an early settlement. So, we
14 will file, serve them, and transfer them into this case
15 immediately so they can make whatever issue they want. We
16 are happy to accommodate whatever additional schedule they
17 may need.

18 To my knowledge, there is only one other party
19 that has been identified to us as possibly also infringing
20 these patents, but we are in the middle of the investigation
21 stage now and I just don't know. But, we should be able to
22 resolve it within a week or so, and that is all I know about
23 it.

24 With one exception, all of those parties when I
25 was standing before you the last time, we didn't know

1 existed. So, they have been identified to us in discussions
2 with other Defendants, so that is how it came about. So, I
3 can't say there may not be another one --

4 THE HONORABLE JUDGE FRANK: All right.

5 MR. FARNEY: But there is none that we know of
6 right now.

7 THE HONORABLE JUDGE FRANK: All right. We will
8 set this, absent further objection or comment, for -- we
9 will start the in-chambers at 9:00 -- I am willing to start
10 earlier if you wish -- on May 30th. And I think you should
11 probably set aside -- don't assume we will be done in the
12 morning, because one of the things that strikes us is by
13 April 30th, if any of the Defendants are of the view, and I
14 guess you will know this after the 16th; but, come
15 April 30th, with that deadline, if you are of a view as you
16 approach that date that, well, we now have these exchanges,
17 and our next step, we weren't certain back in March in front
18 of the Court, we now are going to bring a motion to dismiss
19 given that we don't feel there is sufficient specificity of
20 contentions that there is a case here against our client,
21 then I believe that we should know that. Because it is
22 entirely feasible, if depending on the nature of the issue,
23 that we may have the expectation to brief, if there are some
24 issues in common, and there may or may not be, to get as
25 much accomplished, I think to the benefit of all parties, to

1 if not dismiss parties or portions of the case, to focus in
2 on the issues.

3 And since we can use to our advantage this later
4 date of May 30th to get on -- without being unfair to
5 anyone, to get as much on people's plates as possible. So,
6 if there is a concern by one of the Defendants or maybe one
7 of the Plaintiffs saying, well there ought to be some limit
8 if we get these submissions and we can't agree and it looks
9 like there is a group of people that want to bring in
10 motions, and they may not be all entirely the same.

11 Well, worst case scenario isn't a very bad
12 scenario. We would probably schedule a very short telephone
13 conference, or even without it, depending upon how the
14 issues are framed to say, here is what we are going to tee
15 up on the 30th of May. So, it will be well in advance of
16 that date that everybody knows exactly what we are going to
17 do. And so we can probably use that date to our advantage,
18 depending upon the number and nature of the issues. But, we
19 are going to set aside -- not to panic anybody, but we are
20 going to set aside the whole day that day. So, if we need
21 it, we have it. But, if we don't need it, no harm, no foul.
22 So, if we do need it, whether it is because of motion
23 practice or other issues, or more lengthy agenda for a
24 status conference, or it becomes apparent on the 30th, there
25 is a strong divergence of view on what the timing should be

1 for some of these motions or issues, then we can -- we will
2 address that so everybody will know long before they come to
3 town, with or without a briefing schedule, they will know
4 what to do. And maybe it should work as an advantage to
5 some of you to know that, well, we can all agree; but, will
6 the Court set aside the time, if need be, on that day? Yes,
7 we will.

8 So, that is how we will proceed. That will be the
9 date. And then we will be more specific as this exchange
10 goes on about once we get to the end of April, some of this
11 may be agreed to, some of it may not. And we will say here
12 is what we are going to hear on that day in May.

13 So, in that context we can start with Mr. Williams
14 and go around the room here and see what, if anything, that
15 leaves us to address today or any concerns that raises at
16 this time.

17 MR. WILLIAMS: Your Honor, if we could continue
18 with our 9:00 a.m. start time?

19 THE HONORABLE JUDGE FRANK: That is fine.

20 MR. WILLIAMS: The defense group gets together for
21 coffee at 7:30, 7:45, and that is helpful for us to really
22 kind of get focused with respect to what we present. 9:00,
23 if we could continue to start there, that would be helpful.

24 THE HONORABLE JUDGE FRANK: That is fine.

25 MR. WILLIAMS: And in fact we needed that today

1 for Mr. Cunningham who had a wardrobe malfunction and he had
2 to take a cab all the way to Minneapolis to the Men's
3 Warehouse, get his shirt. And then Minnesota nice, Tom,
4 they pressed a brand new shirt for him there at the Men's
5 Warehouse and got him on a cab and got him back here in time
6 for the hearing today. So --

7 THE HONORABLE JUDGE FRANK: You know we have some
8 fairly well-pressed orange jumpsuits downstairs.

9 MR. WILLIAMS: Apparently his client may need
10 them. So, Your Honor, if we could start at 9:00 a.m., that
11 will help us continue to do that.

12 THE HONORABLE JUDGE FRANK: That is fine.

13 MR. WILLIAMS: Apart from that, I checked my notes
14 and it appears we are correct.

15 THE HONORABLE JUDGE FRANK: Well, what we will do,
16 just because of -- and if we don't need the time, then no
17 one has been prejudiced. But, we will set that to begin at
18 9:00. We will set the in-court issues -- now, some of this
19 may be more further specified and spaced out if there's
20 formal motions and arguments we are hearing separate from
21 our normal status conference in the courtroom.

22 But, we will set the conference to begin at 10:30
23 that day, not 10:00. And then we will see, because we will
24 know -- I mean, we are all going to know, with or without
25 agreement by the end of April, likely, what is going to be

1 set and taken up that day, with or without any formal
2 motions.

3 So, any other Defendants want to be heard on any
4 additional issue?

5 Plaintiff?

6 MR. FARNEY: No, Your Honor.

7 THE HONORABLE JUDGE FRANK: Well, we appreciate
8 everybody coming in.

9 For those of you not from Minnesota, even though
10 it is a little cooler today, it is still unseasonably warm.
11 Was it you, Counsel, who said that you didn't even want to
12 report back to your family or your law firm last time you
13 were here that it was warmer up here than it was down in
14 Texas?

15 MR. FARNEY: Yes, I did. And it turned out a year
16 ago this time I was here, just about this time, it had
17 snowed the day I was coming. So, my little boy who
18 remembered that wanted me to take him with. And I said they
19 don't have snow this year. So, it has been different again
20 from the last time I was here.

21 THE HONORABLE JUDGE FRANK: Is there anything for
22 those of you that are still on the phone that you wish to
23 inquire of the Court about or state for the record?

24 Silence is golden, sometimes they say. So, we
25 will stand adjourned. I thank you all.

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MR. WILLIAMS: Thank you, Your Honor.

THE HONORABLE JUDGE FRANK: We are in recess,
thank you. Safe travels, everybody.

ALL COUNSEL: Thank you, Your Honor.

(Adjournment.)

* * *

I, Jeanne M. Anderson, certify that the foregoing
is a correct transcript from the record of proceedings in
the above-entitled matter.

Certified by: s/ Jeanne M. Anderson
Jeanne M. Anderson, RMR-RPR
Official Court Reporter