

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARVANA, LLC,

Plaintiff,

v. 23 CV. 8616 (KMK)

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.
-----x

U.S. Courthouse
White Plains, N.Y.
November 20, 2024
10:50 a.m.

Markman Hearing Before: HON. KENNETH M. KARAS,
United States District Judge

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Sue Ghorayeb, R.P.R., C.S.R.
Official Court Reporter

1 THE CLERK: Carvana, LLC v. International Business
2 Machines Corp., 23-cv-8616.
3 Counsel, please state your appearances.
4 MR. LaCORTE: Good morning, Your Honor. Brian
5 LaCorte, of Ballard Spahr, representing Carvana. I'm joined
6 by my partner Wendy Stein, also with Ballard Spahr, for
7 Carvana. We are assisted by two Ballard Spahr lawyers,
8 Charley Brown and Sam Erlanger.
9 THE COURT: All right. Good morning to you all.
10 MR. LaCORTE: Thank you, Your Honor.
11 MR. PACKIN: Good morning, Your Honor.
12 Tamir Packin from Desmarais, LLP, on behalf of IBM.
13 With me I have Lindsey Miller, Jordan Malz, Michael Hilyard,
14 and then we have William Yau, Asim Zaidi, and Lexo Walker.
15 And we also have from IBM sitting in the gallery is Andrea
16 Bauer. So, we have a big team because we like to give junior
17 associates a chance to argue. So --
18 THE COURT: Well, the local cafeteria is going to
19 miss you all today back in your office. Good morning to you
20 all. Please be seated.
21 All right. So, I gather all the tech issues got
22 worked out and Matt came up and helped you all.
23 MR. PACKIN: Yes.
24 THE COURT: Is everything working to your
25 satisfaction?

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1 MR. PACKIN: Yes, Your Honor.
2 THE COURT: All right. That's good to know, because
3 you've paid for this courtroom renovation and, frankly, it
4 hasn't been working. So, I guess we'll have a Markman hearing
5 on that someday.
6 And I saw that you all filed yesterday an amendment
7 to the joint claims -- the joint claim terms charts, so that
8 now there is agreement with respect to the preamble on '719
9 and the stackable on '234. Is that right?
10 MR. LaCORTE: That's correct, Your Honor.
11 MR. PACKIN: Yes, Your Honor.
12 THE COURT: Okay. So you just crushed me. I was so
13 looking forward to that stackable conversation.
14 All right. So, I've read the papers. I had a
15 really lousy average in all STEM classes. So, I'm sure no
16 Judge has ever made that joke before. So, I'm deferring to
17 how you-all want to proceed. So, who's going to go first and
18 what are we doing?
19 MR. PACKIN: Yes, Your Honor. This is Tamir Packin
20 for IBM. What we just -- normally, what we'll do, with Your
21 Honor's indulgence, is we'll go term by term.
22 THE COURT: Yeah.
23 MR. PACKIN: IBM will go first on each term. Then
24 Carvana will respond. And, then, to the extent there is
25 rebuttal and surrebuttal, as Your Honor wishes, we're happy to

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1 do that as well --
2 THE COURT: Okay.
3 MR. PACKIN: -- and just patent by patent and term
4 by term.
5 THE COURT: Okay.
6 MR. LaCORTE: That's right, Your Honor. And we
7 are -- at least, on the Carvana side, the first patent we'll
8 start with is the '346 Patent, the single-sign-on patent. We
9 have a little bit of an overview of the technology, so we'll
10 cover that, and then some claim construction principles and
11 the first term, when it's our turn on that patent --
12 THE COURT: Okay.
13 MR. LaCORTE: -- and then we won't revisit that
14 through the other terms. So, we'll just go term by term --
15 THE COURT: Okay.
16 MR. LaCORTE: -- as Mr. Packin stated.
17 THE COURT: Okay. Fair enough.
18 MR. PACKIN: And we have slides that we can hand
19 up --
20 THE COURT: Yes.
21 MR. PACKIN: -- to Your Honor as well, both sides.
22 THE COURT: Oh, we're going to old school, huh?
23 MR. LaCORTE: Well, we actually -- for Carvana, we
24 have thumb drives and the old man, as I've been accused, hard
25 copies.

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1 undergo. When we talk to the mediator directly, we're not
 2 going through IBM.
 3 THE COURT: Right. But, so, in your example of Home
 4 Depot, Home Depot could communicate directly with the bank.
 5 That's the back-channel, right?
 6 MR. LaCORTE: Right. But the -- it does -- but Home
 7 Depot is not, in this instance, the user, the client. The
 8 browser is the intermediary. It is expressly not using a
 9 third-party, that is the entire point here.
 10 And the problem with IBM's proposal is, it clearly
 11 potentially allows back-channel to include front-channel, and
 12 that's not what back-channel is.
 13 THE COURT: I don't, I don't -- I'm just not
 14 understanding that. Because IBM's proposal is that the
 15 mechanism involves communication directly from a second to a
 16 first system, which is embodied in 9E. Whereas, that's
 17 distinguished from 9C where there's not a direct
 18 communication, right, in steps 966 and 968?
 19 MR. LaCORTE: Yes. And I'm sorry, Your Honor. I
 20 hear you. My partner, Charley Brown, just handed me a note.
 21 So, the back-channel is only for user attribute
 22 retrieval, not for the single-sign-on steps that are
 23 referenced in 9D that have been mentioned. And, so, the
 24 back-channel is for retrieval and that requires -- I'm trying
 25 to say without an intermediary. That requires the enterprises

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1 MR. LaCORTE: And, clearly, our construction is in
 2 suggesting there's a browser role disclosed in -- throughout
 3 the patents and it's the browser is not involved with this.
 4 That's, that's -- the technical dispute is: Are the
 5 enterprises doing it themselves or are they using the client
 6 and the browser? And they can't be the same. So, one is
 7 front-channel and one is back-channel. We would never contend
 8 that a router is a -- and is not, is not disclosed in our
 9 construction.
 10 THE COURT: Okay. All right. So, just in terms of
 11 planning out the day, it's about 12:18 or so, 12:19 by that
 12 clock in the back, which is operated by a battery. Unlike the
 13 clock up here, which is operated by mysterious forces, it says
 14 12:21. So, I don't know how much longer you all -- and maybe
 15 you can't estimate, but I'm trying to figure out whether it
 16 makes sense to take a break, either a short break, and then we
 17 can maybe power through or we just break for lunch.
 18 So, we have a phone conference at 2:00 that we can
 19 probably move or we can just take that quickly while you all
 20 maybe are on a lunch break. So, I'm just throwing it out for
 21 you all to -- whatever you want to do. We're pretty flexible.
 22 MR. PACKIN: Your Honor, whatever is best for the
 23 Court. We've done one term -- I mean one patent.
 24 THE COURT: One patent, right.
 25 MR. PACKIN: We have two patents to go.

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1 to communicate without invoking the browsers.
 2 The browser can be in the front-channel, the method
 3 of routing to get the user attribute information.
 4 Back-channel under Carvana's proposal is, it results
 5 from relying on the direct connection between the enterprises,
 6 not the browser. So, when IBM says its construction allows a
 7 browser, it poisons the construction. That can't be how these
 8 figures and the patent discloses back-channel communications.
 9 That's I think the dispute.
 10 THE COURT: I understand your point. Okay.
 11 MR. LaCORTE: Okay. Thank you.
 12 THE COURT: So, just in terms of -- did you want to
 13 respond to that?
 14 Yes, go ahead.
 15 MR. HILYARD: So, one very brief point I think, Your
 16 Honor.
 17 THE COURT: Please.
 18 MR. HILYARD: And I think this also elucidates the
 19 confusion here. But the Internet is full of intermediaries.
 20 Is a router an intermediary, a Wi-Fi an intermediary, an
 21 Ethernet cable an intermediary? It's very unclear to me based
 22 on Carvana's construction, because these terms are not
 23 specified in this patent specification, what would and
 24 wouldn't count as an intermediary.
 25 THE COURT: Okay.

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1 THE COURT: Right.
 2 MR. PACKIN: By rough measures, we're maybe a third
 3 of the way through. There were fewer terms, but I think some
 4 of the background took a little bit longer on --
 5 THE COURT: Yes.
 6 MR. PACKIN: -- on this patent. So --
 7 THE COURT: So, why don't we -- why don't we keep
 8 pressing ahead, and, then, as we get close to the 1:00 o'clock
 9 hour, maybe we can contemplate a lunch break and figure that
 10 out. Does that -- does that work for you all?
 11 MR. LaCORTE: That does, Your Honor. Thank you.
 12 MR. PACKIN: Yes, Your Honor.
 13 THE COURT: Okay. Okay. So, we're going to '719,
 14 right, what we've agreed on?
 15 MR. PACKIN: Yep. Yes, Your Honor, and my partner,
 16 Mr. Malz, will address those and -- oh, actually, I'm wrong.
 17 Mr. Zaidi will address the '719 Patent.
 18 THE COURT: Okay.
 19 MR. ZAIDI: Good afternoon, Your Honor.
 20 THE COURT: Good afternoon.
 21 MR. ZAIDI: Asim Zaidi on behalf of IBM.
 22 We have here the '719 Patent, which is the next
 23 patent that IBM is asserting in this case. I will be
 24 addressing a general quick background of the patent, as well
 25 as the first two terms that remain, and my colleague, Jordan

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1 Malz, will be addressing the next two terms.
 2 So, the '719 patent is addressed -- is directed to a
 3 programming architecture called the dual-Model-View-Controller
 4 or dual-MVC. Now, the dual-MVC was invented by three
 5 researchers at IBM's Watson Research Center, which is actually
 6 just up the road in Yorktown Heights, and it's -- like the
 7 '346 Patent, it's a patent that IBM has asserted and litigated
 8 previously.
 9 IBM asserted this patent against Zynga, in the Zynga
 10 litigation in the District of Delaware. There, Judge Williams
 11 construed the '719 Patent, including two of the terms that are
 12 at issue here, and the case was tried to a jury in September
 13 and Zynga was found to infringe the '719 patent. So, there is
 14 an extensive litigation history with this patent as well.
 15 So, the '719 builds upon a programming design
 16 paradigm called the Model-View-Controller or MVC. The MVC
 17 separates a program into three related components: the Model,
 18 the View and the Controller. The Model or the M is the data,
 19 rules, and algorithms that are affecting the data. So this
 20 can be, for example, the data in a database.
 21 The View is the visual representation of the Model,
 22 and within the invention described in the '719 Patent, there
 23 is code or logic referred to as View-Generating Logic. So,
 24 it's this View-Generating Logic that would generate the View
 25 for a program, and that can be, for example, HTML script.

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1 the server and it's when it needs it, but it's also easy to
 2 maintain. Because the client has the MVC locally, it can
 3 respond to certain user requests without having to interact
 4 with the server. When you reduce those interactions between
 5 the client and the server, the client -- the application can
 6 move more quickly. So, the dual-MVC gives us the best of both
 7 worlds.

8 So, I'll move on to the first disputed term here,
 9 "application."

10 Now, the "application" in the context of the '719
 11 Patent is the software program that has the dual-MVC. In the
 12 claims, the Model, the View-Generating Logic and the
 13 Controller Logic are each associated with that application.

14 So, for this term, IBM is proposing that no
 15 construction is necessary and the term should carry its plain
 16 and ordinary meaning. Carvana, on the other hand, is
 17 proposing a construction that says that "application" is
 18 defined to mean "software that allows users to access and
 19 update data."

20 So, the principal dispute here is: Should
 21 "application" carry its plain and ordinary meaning, or should
 22 the Court read in Carvana's limitation?

23 So, I'll take you back to the date that the patent
 24 was filed in February of 2000. By that point, we were well
 25 into the Internet age. A person skilled in the art would very

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1 And there is also logic called Controller Logic.
 2 That is the code for the Controller, and the Controller is the
 3 code that causes the Model to be changed and/or the View to be
 4 refreshed.

5 The Model, View, and Controller all work together to
 6 maintain data, display portions of the application to the
 7 user, and respond to user requests by updating either the data
 8 or the display.

9 So, applications implementing MVC mainly on the
 10 client are highly dependent on the user's computer. So, these
 11 applications tend to have quicker response times, but they're
 12 harder to maintain, because if you want to send an update, you
 13 need to send an update to each individual user. On the other
 14 hand, if you wanted to more easily update an application that
 15 was primarily hosted on the server, you could update it very
 16 quickly, but you would rely on a lot of communications between
 17 the user's client device and the server device.

18 So, what IBM's researchers were looking to do is:
 19 How do we strike the balance between having a well-performing
 20 application that doesn't rely so much on communications
 21 between the client and the server? So, that's where the dual-
 22 MVC comes in.

23 IBM's patent has an MVC that is hosted on the server
 24 and then a duplication of, at least, a subset of that MVC on
 25 the client. The client can get the necessary information from

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1 likely have a personal computer at home, they would have a
 2 computer at work, and they would be very familiar with
 3 applications of various types. Those could be a desktop
 4 application, like a word processor, or a web application, like
 5 something that they would access on the website, and they
 6 would have a very general -- a very clear understanding of
 7 what an application would mean at that time, and that's
 8 reflected by the dictionaries that IBM cited in its briefing.

9 So, if you look at the top left definition, that's
 10 from IBM's Exhibit 11, which is the Microsoft Computer
 11 Dictionary. This was, in fact, cited by Carvana itself for a
 12 later term. It explains that an "application" is "a program
 13 designed to assist in the performance of a specific task," and
 14 it gives the example of "word processing, accounting, or
 15 inventory management."

16 And now that was a technical dictionary, but if you
 17 look at the next definition on the right, we have Webster's
 18 American Dictionary, IBM's Exhibit 10, and it defines
 19 "application" as "a task that can be done by a computer."

20 So, this plain and ordinary meaning that a POSITA
 21 would have been well-aware of is reflected by dictionaries of
 22 all types. This is not a term that needs construction. And,
 23 in fact, a court in this District told us that. It says that,
 24 "While it is a court's job to elaborate on claim language that
 25 can sometimes be terse and/or difficult to parse, it need not—

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1 and should not— construe language that is clear on its face."
 2 That's exactly what we're dealing with here with the
 3 "application" term.

4 So, what Carvana has done with its construction here
 5 is it reads in a highly exemplary reference to what typical
 6 applications can do and it is turning that into a limitation,
 7 a claim limitation.

8 So, what we have highlighted at the top here is a
 9 section from the specification that Carvana relies on for its
 10 construction. The section reads, "Typical world wide web" --
 11 applications -- "(e.g., Internet/Intranet) applications allow
 12 users to access and update data on remote servers." That's
 13 all the intrinsic evidence they point to. There is no other
 14 source in the '719 Patent that tells you that an application
 15 in the context of the '719 Patent must allow users to access
 16 and update data. It's not there.

17 This example -- this section is just giving us an
 18 example of what a typical Worldwide Web application can do.
 19 This is not an express definition. This is not a disavowal of
 20 any claims here. And the Federal Circuit has made clear that
 21 the standards for this type of lexicography or disavowal are
 22 exacting. This is not meeting that exacting standard. This
 23 is just giving us a general background.

24 The claims of the '719 Patent aren't limited to
 25 Worldwide Web applications. You won't see that in any --

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1 before some of the folks in this fine courtroom, my fine
 2 colleagues, might have been in grade school or even younger.
 3 But there was a time where connectivity to the Internet was
 4 challenging, and certainly it was in early 2000 when this
 5 patent was filed.

6 So, the dual-MVC (Model-View-Controller) is this
 7 effort to eliminate round-trips to the server. That's the
 8 problem addressed by the patent. And the patent says, "a new
 9 Model-View-Controller architecture for Internet/intranet
 10 applications which does not require continual network
 11 communication..." That clearly is the problem. There's not
 12 much disagreement about this structure because it is well-
 13 described in the prior art.

14 Not a terribly interesting read, but a read of the
 15 background of this invention talks about SmallTalk, which was
 16 a fairly revolutionary Xerox Palo Alto think tank creating
 17 this paradigm. IBM did not invent Model-View-Controller, that
 18 was well-established in the prior art.

19 But the paradigm is, you separate out different
 20 parts of the software. You have a "Model," which is
 21 "application data, rules, and algorithms affecting" that
 22 "application data." You have a View, which is everything you
 23 see on the screen, and you have a Controller, which is the
 24 engine processing user requests, causing the Model -- which is
 25 this data, and rules, and algorithms, and application data --

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1 asserted in any claim at all in the '719 Patent. So, there's
 2 no reason for it to be limited to what a typical Worldwide Web
 3 application can do.

4 So, overall, the Court should adopt IBM's position
 5 of plain and ordinary meaning and reject Carvana's
 6 construction, because IBM's position reflects this -- that
 7 this term has a plain and ordinary meaning, and it reflects
 8 that there is no lexicography or disavowal, and the Court
 9 should reject Carvana's construction because it construes a
 10 term that needs no construction and it reads unnecessary
 11 limitations into the claims.

12 That's all I have for you, but if you have any
 13 questions, I'm happy to answer them.

14 THE COURT: I don't. Thank you very much.

15 MR. LaCORTE: All right. Thank you, Your Honor.

16 On to the '719 Patent, we also would like to go over
 17 the technology overview for this patent.

18 We have a slight disagreement with IBM that this was
 19 well into the Internet. The final date of the patent was
 20 February 8, 2000. This patent has expired and that had its
 21 limitations in some of the litigation that we're not sure
 22 should have been referenced in this context but was. So, what
 23 is the problem addressed by the '719 Patent?

24 The '719 Patent deals with an issue related to the
 25 dreaded screeching noise that a modem made back in the day

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1 causing the Model to be changed or refreshed or updated or
 2 maintained.

3 So, in Figure 2, we have an example of the prior art
 4 system's Thin-Client. Again, this is way back in the day, but
 5 it has now sort of become a modern vestige of the Internet
 6 because of speed.

7 Back in the day, you had a web browser. It's
 8 sometimes called a dumb terminal because it's basically just a
 9 user-interaction window. All of the Model-View-Controller
 10 invented before the patent was server-side, on the Web server.
 11 In this architecture, as described in the patent, everything
 12 is on the server. The client's browser just contains the
 13 user-interaction.

14 Fat-Client applications are well-described in the
 15 '719 Patent in the background. Those were prior art where the
 16 Model-View-Controller was on the browser side or user side and
 17 the web server just had the Model and Controller.

18 Mention was made by counsel of a duplicate or
 19 subset. This was sort of the duplicate. Model-View-
 20 Controller on the client-side. Model-Controller on the Web
 21 server-side, minus on the server-side the View.

22 So, an example of a Fat-Client back in the day we
 23 think would be iTunes. This might be a more fashionable app,
 24 but I'm going to go back to the old iTunes.

25 So, the application data is installed locally. The

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1 client accesses that application data, has a potential to add
2 additional songs, receive them from the server, opens the
3 application, but has also the ability to play locally saved
4 songs on iTunes. That would be an example of a Fat-Client
5 where there is quite a bit of Model-View-Controller on the Web
6 browser side.

7 So, now we turn to the claimed invention, the
8 dual-MVC or duplicate Model-View-Controller server and web
9 browser or at least subsets thereof.

10 In this slide, we see Figure 3, which is what is
11 referred to as essentially the invention. So, in this
12 instance, all or a portion of the Model-View-Controller is on
13 both the client-side and the web server-side. So that the
14 client-side under the patent's allegations can use parts of
15 the program, the Model-View-Controller, without having to
16 interact with the server. The patent gives an example, a
17 practical example of this, that is critical to this absolute
18 purpose of reducing interactions between the client and
19 server. That is stated throughout and is clearly a
20 fundamental part of the patent. So, a help desk example, the
21 dreaded call to the IT support line.

22 In Figure 12 or -- excuse me, Figure 4 of the
23 patent, it describes a Thin-Client architecture, which was the
24 problem of prior art, where the user had to rely on numerous
25 trips to the server in order to get the help desk.

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1 had to go through the server. And, so, the consultant is
2 getting this from the customer and working locally. All of
3 the interactions with the server are avoided, as described in
4 the patent, in order to fill out the ticket or help desk form.
5 All of the information is done locally. Adding a problem can
6 be done locally. This is because this software is running on
7 the consultant's computer without reliance on an Internet
8 connection or interactions with the server. This is all
9 described in the '719 Patent specification.

10 As this process goes, the only interaction with the
11 server, as one scenario described in the patent, is to save
12 the report and send it to the server.

13 So, the terms at issue -- I'm going to pause for a
14 second, Your Honor, because we have resolved the preamble.
15 So, I'm going to fast-forward through those slides.

16 THE COURT: Okay.

17 MR. LaCORTE: We would just ask the Court to
18 disregard the preamble as the parties reached an agreement
19 late last night on that issue.

20 THE COURT: Okay.

21 MR. LaCORTE: So, the first term here is
22 "application." This is "software that allows users to access
23 and update data."

24 I understand IBM's position. Hey, everyone knows
25 what an application is. Your Honor, I would only say this is

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1 So, in this example, using the Figure 4 and the
2 spec, we are describing the consultant, who is the help desk
3 professional, is on the phone with a customer. The
4 customer -- the consultant needs the customer ID number, say
5 an employee ID number. He enters it in the view but has a
6 trip to the server to do that. The server validates the ID
7 and it's entered in the view. These are described in the
8 steps.

9 Next, the consultant asks the customer: What kind
10 of operating system are you using? Another trip to the
11 server. The server sends back the information and an HTML
12 refresh of the screen on the user side.

13 Then another trip to the server for more
14 information, host name. Server returns that. It gives an IP
15 address. Help desk professional puts it in. He solves the
16 problem for the customer.

17 But let's say the customer has an additional problem
18 and he is able to add a problem row, and then the server sends
19 a screen with the old problem and now a new row for the next
20 problem. And then, finally, when that's all completed, the
21 server saves the problem report. So, we've had numerous
22 interactions with the server. That was the old way.

23 The claimed invention describes the same scenario
24 where the help desk professional is using the client-side to
25 get all of the information and validate things that previously

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1 a unique patent. It's a patent covering concepts of Model-
2 View-Controller. We're not just talking about an app, right.
3 Even in the patents, they describe or disclose applications
4 that existed in the prior art that aren't necessarily the
5 application at issue in Model-View-Controller.

6 So, in this dual-MVC environment, application must
7 mean something. So, there are lots of different definitions
8 advanced by IBM. It sort of underscores the point. That's a
9 term that could in different context mean different things and
10 it's disputed here for that reason.

11 I certainly don't want to use a 2024 dictionary, as
12 IBM has done, for that term. Nor would a juror be able to go
13 back to the 2000 time frame, 24 years ago, and try to figure
14 out what is an application in a dual-MVC format.

15 So, we respectfully disagree with IBM that
16 application can be obtained front of mind through plain and
17 ordinary meaning. As evidenced by the briefing, there's lots
18 of different types of applications that could be at issue:
19 thin and thick applications, as described in the patent;
20 mobile apps, web apps, desktop apps, any other form of apps.

21 So, when there is a dispute and there is a term that
22 is susceptible to several meanings in plain and ordinary
23 meaning, that usually spells a situation a construction would
24 be necessary. This is not a case to avoid one, especially to
25 resolve this dispute.

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1 Carvana's construction is directly supported by the
2 specification. I understand the word "typical" is in this,
3 but it is in the '719 Patent as to the application's key here,
4 "allow users to access and update data on remote servers."
5 So, we're dealing here with the purpose of reducing server
6 interactions, and, so, are there applications that are
7 specific to this type of dual-MVC paradigm.

8 Carvana's construction aligns with the definition
9 but removes the update on remote servers because that is not
10 what's claimed. The more modern definitions would not be
11 appropriate. The POSA must consider the definition at the
12 time of the invention.

13 So, Carvana's proposal is even consistent with some
14 of the IBM dictionary definitions depending on which you
15 choose. They all just -- many describe software programs that
16 carry out a task and do some sort of assessing and updating
17 and performance. We would simply say look at the patent, not
18 at a dictionary extrinsic record for this.

19 IBM argues Carvana excludes a thin-client
20 application as an embodiment. That's simply not an
21 embodiment. Thin-client was in the prior art. There is no
22 thin-client application that is an alternative embodiment.
23 So, contrary to IBM's suggestion, that's not happening. Nor
24 is Carvana trying to redefine "application." It's looking to
25 how the specification describes it and adopting the patent's

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1 configured to store a subset of a Model, View-Generating Logic
2 and Controller Logic. We don't need to import a definition
3 about the background to have an understanding. The jury can
4 read the claims and have an understanding of what an
5 application means in this context. No additional explanation
6 is necessary.

7 And, just briefly, I want to address a point that
8 Mr. LaCorte made about the dictionary definition we provided.

9 The dictionary definitions I read out to you are
10 contemporaneous. In fact, Exhibit 11 is something that
11 Carvana cites for a '719 term itself. Exhibit 10 is from the
12 year 2000. Exhibit 4 is from an online dictionary, which is
13 from 2024. But as you can see from this slide, all of these
14 definitions -- all of these dictionaries are providing very
15 similar definitions. An application is software that performs
16 a task. There is no need to import the limitation that
17 Carvana is seeking to add.

18 THE COURT: Okay. Carvana, anything else?

19 MR. LaCORTE: Ten seconds, Your Honor, from the
20 table, if I may.

21 The column that counsel was just referring to,
22 actually, it goes on to describe the help desk and the other
23 types of applications, which are software that updates data.
24 So, it can't be any more clearly disclosed in the patent
25 without having to resort to a dictionary.

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1 plain language to that effect.

2 That's it for me, Your Honor.

3 THE COURT: Okay. Thank you.

4 Response, if you want it. I'll give you a chance to
5 do that.

6 MR. ZAIDI: So, first, I would like to respond to
7 something Mr. LaCorte said at the beginning, which is that the
8 application in the context of a dual-MVC is a highly unique
9 application, that you would need to provide a jury an
10 explanation for what is a dual-MVC application, but look at
11 where they got their definition from. This is from the
12 background of the invention. That's where we're getting this
13 definition from. It's talking about the background of what
14 typical Worldwide Web applications did before the patent.
15 This isn't some extensive explanation of what a dual-MVC
16 application is in the context of the '719 Patent. That's not
17 what we're dealing with at all.

18 If you want an explanation of what an application is
19 in the context of a dual-MVC patent -- of a dual-MVC
20 application, you can look at the claims. The claims explain
21 to you what does it mean to be a dual-MVC application in the
22 context of the '719 Patent.

23 You have an application where a server is configured
24 to store a Model, View-Generating Logic and Controller-Logic
25 associated with the application, and you have a client that is

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1 THE COURT: All right. Thank you.

2 Anything else, IBM?

3 MR. ZAIDI: Nothing else on this unless you have any
4 questions.

5 So, I'll move on to the second term, which is a
6 "model associated with the application," and this is the M of
7 the dual-MVC. So, there is a "model associated with the
8 application" that is stored on the server, and then a subset
9 of the "model associated with the application" is stored on
10 the client.

11 So, here, IBM is proposing a construction of "model
12 associated with the application" as "the data, rules, and
13 algorithms affecting the data associated with the
14 application."

15 Carvana, on the other hand, is suggesting that
16 "model associated with the application" means "application
17 data, rules, and algorithms affecting the application data."

18 So, here, the parties agree that "model" at least
19 includes "data, rules, and algorithms," but the dispute here
20 is whether the Court should rewrite the claim language "data
21 associated with the application" to "application data."

22 But IBM's construction comes straight from the
23 intrinsic evidence. On the top image, you can see "model
24 associated with the application" highlighted. So, we have
25 "model" highlighted in blue here, and the specification tells

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1 us what a model is. The specification says, "the 'Model'
2 contains the data, rules, and algorithms affecting the" --
3 "affecting the data."

4 So, what IBM did is, we took out the word "Model"
5 and added "associated with the application" after the
6 explanation that the specification gives us. So there is
7 IBM's construction: "the data, rules, and algorithms
8 affecting the data associated with the application."

9 So, what Carvana's construction is doing is
10 construing the term "associated with." Courts have uniformly
11 held that "associated with" has a well-understood plain
12 meaning that doesn't require any further construction. And,
13 in fact, this is an -- sorry. This is an issue that was
14 squarely dealt with by Judge Williams in the Zynga case.

15 In Zynga, Judge Williams construed "model associated
16 with the application," and there IBM was proposing the same
17 construction that it's proposing here. And Zynga, on the
18 other hand, also proposed a construction that sought to
19 construe "data associated with the application" to something
20 else. They changed it to "data of the application." Now,
21 Judge Williams evaluated this issue and agreed and entered
22 IBM's construction.

23 So, first, Judge Williams found that the claims only
24 require the model to be "associated with the application," in
25 accordance with the plain meaning of that term.

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1 construction because it contradicts the specification's
2 express teaching, it's reading an additional limitation into
3 the claims, and it contradicts the District of Delaware's
4 explicit analysis.

5 THE COURT: Okay. Thank you.

6 MR. LaCORTE: So, Your Honor, the term that is being
7 construed is "model associated with the application" or "with
8 application," and Carvana's proposed construction is, that is
9 the "application data and algorithms affecting" that
10 "application data."

11 While there are cases that say POSAs may have an
12 understanding of "associated with" in particular context of
13 claims or a construction that makes it very clear the nexus or
14 relationship or association, we would respectfully submit that
15 IBM's proposed construction is confusing and is difficult to
16 apply. I'll try to explain why.

17 So, we believe that "model associated with the
18 application" is application data, and it has the agreed upon
19 "rules and algorithms affecting that application data." We
20 submit that is straightforward.

21 So, the problem with "associated with" in IBM's
22 construction is the breadth. It stretches to anything that
23 could be considered "associated with." As long as it's
24 "associated with the application," it's part of "model
25 associated with the application," and the claim term is "model

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1 Next, Judge Williams found that "associated with"
2 had a plain meaning and that nothing in the specification or
3 prosecution history sought to redefine or disavow the plain
4 meaning of that term -- that term. Accordingly, the Court
5 entered IBM's construction, which is, again, the same
6 construction that IBM is proposing here.

7 What Zynga is doing -- I'm sorry.

8 What Carvana is doing here is rehashing the same
9 argument that the Zynga court rejected. All they have done is
10 taken Zynga's "data of the application" and reworded it to
11 "application data." It's merely a cosmetic rewording.
12 There's no substantive difference. And "application data"
13 fails for the same reason that "data of the application"
14 fails. There is no need to depart from the plain meaning of
15 "associated with." There is nothing in the specification that
16 redefines or disavows the plain meaning of "associated with."
17 Any construction on that point is unnecessary and improper.

18 So, the Court should adopt IBM's construction and
19 reject Carvana's construction, because IBM's construction
20 reflects the specification's express teaching that the "model"
21 is the "data, rules, and algorithms affecting the data"
22 associated with the application, and it reflects the District
23 of Delaware's construction and finding that "associated with"
24 should carry its plain meaning.

25 On the other hand, the Court should reject Carvana's

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1 associated with the application." So, having tried some
2 patent cases, our concern would be, this would be an
3 extraordinarily difficult construction to implement by the
4 jury, let alone the experts.

5 The IBM contention that "model" and "application
6 data, rules, and algorithms affecting the data" are distinct
7 claim terms is incorrect. These terms are recited separately
8 in claim 26, that "model comprises application data, rules,
9 and algorithms affecting the data," and thus "application
10 data, rules, and algorithms affecting the data" are essential
11 elements that would be present in the "model," which is the
12 term construed here.

13 Claim 26 in the patent defines "model" as
14 "application data, rules, and algorithms affecting the data."
15 This is also Carvana's construction.

16 Contrary to IBM's assertion, Carvana's definition
17 does not omit "associated with the application." Instead, it
18 just addresses the ambiguity in calling it "application data."
19 The "required functional relationship" between the data and
20 the application remains intact, whereas IBM's proposal
21 attempts to sever or at least obfuscate this functional
22 relationship.

23 So, the "model associated with the application" must
24 be application data. There is no need to wander down the
25 rabbit hole of trying to figure out what is the "associated

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1 with" to qualify as, in essence, "application data." The
 2 easier approach would be to simply call it what it is, which
 3 is application data and the related algorithms.

4 So, for example, we take IBM's position that any
 5 data or logic on a computer could be considered part of the
 6 Model if it affects the "data associated with the
 7 application," and potentially including data and logic from
 8 the View or the Controller, which would violate the whole
 9 purpose of this patent, which is to have a three-part Model-
 10 View-Controller paradigm.

11 So, again, the problem is, you have a construction
 12 that says, "the data, rules, and algorithms affecting the data
 13 associated with the application," and the "associated with"
 14 phrase is to the second instance of data, making it even more
 15 unclear whether the first reference of "data, rules, and
 16 algorithms" are also associated with the application.

17 So, we think the construction is actually counter-
 18 productive and the construction advanced by Carvana is, is
 19 much more in line. The proper construction of "model" must at
 20 least include "application data" as they too are elements
 21 identified in claim 26. Carvana's definition incorporates
 22 these essential components while IBM's proposed construction
 23 disregards what is paramount in the Model-View-Controller
 24 paradigm as claimed in the patent.

25 THE COURT: Okay. Thank you.

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1 Patent, but it has this additional limitation. It says,
 2 "further wherein..." So, in addition to all the limitations
 3 of claim 1, there is a further limitation that describes claim
 4 26, and in patent law, each claim is its own invention.

5 Claim 26 is a different invention from claim 1 of
 6 the '719 Patent. It doesn't make sense to try to apply a
 7 construction from claim 26 onto claim 1. This is a further
 8 limitation that only applies to claim 26. This limitation
 9 doesn't apply to claim 1.

10 And, next, if you apply Carvana's construction to
 11 claim 26, you would render this additional limitation
 12 redundant. So, what we have in this table here is, we have a
 13 substitution of Carvana's construction into the model
 14 additional limitation of claim 26.

15 So, the claim 26 language "a model comprises
 16 application data, rules, and algorithms affecting the data"
 17 becomes "application data, rules, and algorithms affecting the
 18 application data 'comprises application data, rules, and
 19 algorithms affecting the data.'"

20 What Carvana's construction has done is it
 21 completely vitiates any meaning to this additional limitation.
 22 It would render the additional limitation of claim 26
 23 completely redundant. And the Federal Circuit has explained
 24 that a claim construction should give meaning to all of the
 25 claim terms, and a construction that gives meaning to all

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1 IBM.

2 MR. ZAIDI: So, first, I want to address counsel's
 3 point that there is an unnecessary breadth to Carvana's
 4 ([sic]IBM's) construction, and I would respond to that by
 5 saying the experts and the jury in the Zynga case had no
 6 problems dealing with this construction. They applied it and
 7 found infringement in that case.

8 And in terms of the breadth of the term, if counsel
 9 feels that that's too broad, that's the claim language. The
 10 claim language tells us that the model is associated with the
 11 application. It doesn't -- the claim language doesn't give
 12 any further limitation. If Carvana feels that that is more
 13 broad than what the '719 Patent discloses, they could have
 14 showed you something from the specification that says,
 15 "actually, 'associated with' in this context is more limited
 16 than that." They couldn't do that because the '719 Patent
 17 didn't disavow or redefine any scope for "associated with."
 18 "Associated with" in the context of the '719 Patent means
 19 exactly what it says.

20 Next, I want to address Carvana's point about claim
 21 26, but claim 26 undermines Carvana's construction, it doesn't
 22 support it.

23 If you look at claim 26 of the '719 Patent, it is
 24 another independent claim and it duplicates, essentially
 25 verbatim, all of the limitations of claim 1 of the '719

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1 terms is preferred over one that does not do so.

2 That's all I have on this patent -- on this term
 3 unless you have any questions.

4 THE COURT: I don't.

5 MR. LaCORTE: We would defer -- we would spend a lot
 6 of time trying to debunk what was just done, including the
 7 obfuscation through the wordplay here. I would just invite
 8 the Court to carefully read Carvana's response and sur-reply,
 9 which directly addresses this.

10 It would probably take me 20 minutes to walk
 11 through, so I'll just defer to our briefing, which makes quite
 12 clear that we are not excluding an embodiment and we are
 13 dealing with different matters in trying to address what is
 14 the "model associated with the application." So, we'll defer
 15 to the briefing.

16 THE COURT: Okay. All right. And, as I said, I
 17 have read the papers. I know what you're talking about.

18 All right. So, I mean, if we want, we can try to
 19 finish '719 and then break. Does that, does that make sense?

20 MR. PACKIN: Whatever Your Honor prefers.

21 THE COURT: No. I'm flexible.

22 All right. So, there you go.

23 MR. LaCORTE: That is fine with us, Your Honor.

24 THE COURT: Is that okay?

25 MR. LaCORTE: Yes.

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1 THE COURT: All right. So, let's press ahead then.
 2 MR. MALZ: Good afternoon, Your Honor. My name is
 3 Jordan Malz, also from Desmarais, LLP, also for IBM.
 4 I'll be addressing the "controller logic associated
 5 with the application" term. This is the C in MVC and I think
 6 I can handle this one fairly quickly. This term appears in
 7 claim 1, as you can see on this slide, as well as claim 26.
 8 Both of those are independent claims.
 9 So, IBM's proposed construction is "program code
 10 that processes user requests and causes the model to be
 11 changed and/or the view to be refreshed."
 12 Carvana's proposed construction is "program code
 13 that processes user requests and causes the model to be
 14 changed and the view to be refreshed."
 15 So, the parties generally agree on what controller
 16 logic can do.
 17 THE COURT: Can you just wait one second.
 18 Sorry. We just -- we're trying to deal with this
 19 other call, this conference call. So, we are just going to
 20 move it back.
 21 MR. MALZ: Thank you.
 22 THE COURT: Sorry.
 23 MR. MALZ: So, the parties generally agree on what
 24 "controller logic" can do. The principal dispute is: Should
 25 the proper construction reflect the specification's express

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1 the intrinsic evidence, the parties in the Zynga case agreed
 2 that the construction should say "and/or," so this shouldn't
 3 even be a matter of dispute.
 4 Carvana's "and" construction blatantly contradicts
 5 the intrinsic evidence. Carvana's construction changes the
 6 specification's express teaching of "and/or" and rewrites it
 7 just to say "and."
 8 So, what we put side-by-side-by-side on this slide
 9 is the '719 Patent, it says "and/or," IBM's construction says
 10 "and/or," and Carvana's construction blatantly rewrites that
 11 to say "and." And it's well-established under Federal Circuit
 12 law that "it is incorrect to construe claims contrary to the
 13 specification." So, I think it's often said that in many
 14 cases the specification is even dispositive, and in this case
 15 we would submit that it is.
 16 And I think, in the interest of time, I can probably
 17 stop there for now. Just my recap would be -- if I can go to
 18 slide 83. The Court should adopt IBM's construction and
 19 reject Carvana's construction. IBM's construction reflects
 20 the specification's "and/or" teaching, it reflects the
 21 District of Delaware's "and/or" construction, and what Carvana
 22 is doing is contradicting the intrinsic evidence, reading a
 23 limitation into the claims that isn't there. It's excluding
 24 the "and/or" embodiments, and contradicting the District of
 25 Delaware's construction. Thank you, Your Honor.

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1 teaching of "and/or" or contradict that teaching by rewriting
 2 that phrase and reading in the restrictive word "and" into the
 3 claims?
 4 So, to be clear, IBM's "and/or" construction comes
 5 straight from the specification. It's a direct quotation from
 6 the description of MVC. The specification expressly teaches
 7 that controller logic "causes the Model to be changed and/or
 8 the View to be refreshed."
 9 I'm reading in column 1, lines 44 to 47 is what's
 10 highlighted. "The 'Controller'" -- logic -- "is the logic
 11 that processes user requests, such as pressing a button. The
 12 Controller causes the Model to be changed and/or the View to
 13 be refreshed." So, the specification's express disclosure is
 14 strong intrinsic evidence that the proper construction should
 15 say "and/or."
 16 Now, IBM's "and/or" construction also reflects the
 17 District of Delaware's construction in the Zynga case. The
 18 District of Delaware adopted the "and/or" construction.
 19 The construction adopted by Judge Williams in
 20 Delaware was "program code that processes user requests and
 21 causes the Model to be changed and/or the View to be
 22 refreshed." The same excerpt from that specification. And,
 23 so, this is the same construction that comes straight from the
 24 specification and it's exactly what IBM is presenting to you
 25 again here today. And I would add that due to the clarity of

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1 THE COURT: All right. Thank you. And I note that
 2 in the briefing, we get into Figure 7 and Figure 9. I get all
 3 that. And you're probably going to wait to see what Carvana
 4 says.
 5 MR. MALZ: That's what's I say, Your Honor.
 6 THE COURT: I gotcha. Okay.
 7 All right, Carvana.
 8 MR. LaCORTE: Okay. Thank you, Your Honor.
 9 So, this term, Your Honor, we are arguing over the
 10 phrase "and/or," and/or, and the problem with IBM's proposed
 11 construction of "and/or" is that it essentially takes the
 12 "program code that processes user requests and causes the
 13 model to be changed and the view to be refreshed," it makes it
 14 optional as to whether the view to be refreshed.
 15 Carvana's position in a nutshell is that controller
 16 logic associated with the application has to be capable of
 17 causing the model to be changed -- at least both, causing the
 18 model to be changed and the view to be refreshed. It's not
 19 optional.
 20 And I'm happy to defer to the briefing on the
 21 figures or at least go to them briefly and have Mr. Malz do
 22 the rebuttal. But the fundamental dispute is that controller
 23 logic is program code that processes user requests which can
 24 do one of two things: cause the model to be changed, cause the
 25 view to be refreshed. The use of "or" in this fashion in

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1 IBM's proposed construction indicates that the controller
2 logic associated with the application cannot do both or at
3 least do both. We just disagree with that. It's not just one
4 or the other.

5 So, we know that based on the agreed part of the
6 construction -- excuse me, the agreed construction, that as to
7 "program code that generates a screen or window representation
8 of a subset of the model that the application chooses to
9 display" reflects the construction for "view-generating logic
10 associated with the application."

11 So, we know based on that agreed construction that
12 program code that causes only the view to be refreshed is
13 view-generating logic -- it's not controller logic, it's view-
14 generating logic -- and that's based on the agreed upon
15 construction for "view-generating logic associated with the
16 application."

17 So, IBM's proposed construction violates the MVC
18 paradigm, which organizes an application into the Model, View
19 and Controller. So, "view-generating logic" does the refresh,
20 not "controller logic," and that is based on the agreed
21 construction for "view-generating logic."

22 I'll simply say that we defer to the briefing on the
23 Figure 7. It is Carvana's position that the construction
24 advanced by Carvana is supported by Figure 7.

25 This is application flow for a dual-MVC

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1 And then, lastly, we believe that Carvana is
2 violating the MVC paradigm, not IBM. IBM's constructions for
3 all three terms, including the agreed upon view, is coming
4 straight from the specification's discussion of MVC, the
5 Model, the View, the Controller, and that disclosure expressly
6 says "and/or." So, so with that, we believe that the
7 specification is dispositive.

8 THE COURT: Okay.

9 MR. LaCORTE: May I have 10 seconds, Your Honor?

10 THE COURT: Yes, of course.

11 MR. LaCORTE: So that -- the Court may recall that
12 when we were talking about "application," we were just a few
13 lines above in that specification.

14 THE COURT: Yes.

15 MR. LaCORTE: And it was, "no, you gotta go to the
16 dictionaries." And, then, when we go a few lines down, it
17 seems like, IBM, where all of the sudden that jumps straight
18 out of the specification.

19 There is -- it is correct that in discussion of the
20 prior art there is this "and/or," but what Carvana has done is
21 look to the claims and the actual disclosures and the drawings
22 and the patents, and we defer to our briefing on that.

23 THE COURT: Okay. Did you want to respond or are
24 you going to move on to the next claim?

25 MR. MALZ: I think I can -- I think I can move on to

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1 architecture. I intended to go through step 60 -- or item --
2 elements 6050, 6060 and 6070, but we have done that in detail
3 in the brief. The Court is familiar with it. I can defer to
4 the briefing.

5 We also briefed at length the "T_onChange()"
6 function in Figures 9A through 9C, refreshing the view without
7 changing the model. We want to simply state that the position
8 taken by IBM, Carvana submits, is just flatly wrong.

9 So, I'm ready to move on to the next term. With
10 that, I'm happy to answer any questions, but I think we've
11 thoroughly briefed this point in our --

12 THE COURT: I agree with that last point. Yes.

13 MR. LaCORTE: Okay. Thank you, Your Honor.

14 THE COURT: IBM.

15 MR. MALZ: Just briefly.

16 THE COURT: Okay.

17 MR. MALZ: So, Your Honor, in the interest of time,
18 I'm happy to defer to our briefing on the figures. Suffice it
19 to say that we believe that Figure 9 shows the controller
20 updating the view, but not updating the model.

21 But, in any event, I would just hasten to add that
22 the figures themselves cannot be read in as limitations into
23 the claims. So, what we believe Carvana is doing is
24 mischaracterizing those figures and then reading in the
25 mischaracterizations into the claims.

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1 the next claim.

2 THE COURT: Okay. I hope you -- I mean, I'm not
3 trying to silence anybody, right. The only other thing we
4 have on is a phone conference and we've moved it back. So,
5 I'm not trying to squeeze you all. But, also, I have read the
6 briefing. So, I think sometimes -- I know sometimes judges
7 don't. So, you all assume maybe that we don't. I hope you
8 assume the opposite because I did read it. So --

9 MR. MALZ: Okay. Thank you.

10 THE COURT: All right.

11 MR. MALZ: Then I'll take the liberty of one brief
12 response --

13 THE COURT: Yes.

14 MR. MALZ: -- which is, as Your Honor knows, the
15 fact that something is disclosed in a specification as
16 embodiments, that's evidence that that should be included
17 within the claims. But what Carvana keeps on trying to do is
18 limit things that are disclosed with using things disclosed as
19 specifications as limitations.

20 So, I think in many cases we are pointing to, hey,
21 there is something disclosed in the specification, that's an
22 example of something that should be included. Carvana is
23 looking at that same disclosure and saying, "hey, we're trying
24 to -- not so. We're trying to limit the specification." So,
25 I think that's, that's what's going on.

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1 THE COURT: I certainly understand the fault lines
2 and I understand the counter-arguments. Yes, I understand.
3 MR. MALZ: Okay. Perfect. So, the last term for
4 the '719 Patent is "frame(s)."

5 This term appears only in the dependent claims, so
6 it's not in independent claims 1 and 26. It's in dependent
7 claims 4, 8 and 10.

8 Now, IBM's position is that "frame(s)" does not
9 require construction, it has a plain and ordinary meaning, it
10 means what it says, and it just simply states that Carvana's
11 proposed construction is "section(s) of a webpage, 'each
12 constituting a distinct HTML document,'" and that latter
13 phrase, which is underlined in red, that's the -- that's the
14 real issue that we're having.

15 So, the dispute is: Should "frame" carry its plain
16 meaning or read in Carvana's narrow limitation "section(s) of
17 a webpage, 'each constituting a distinct HTML document'"?

18 So, IBM submits that "frame" does not require
19 construction because it has a readily understood meaning.
20 "Frame" succinctly conveys its meaning in one word and it's
21 generally referring to an area of a browser screen or a
22 section of a browser screen, just like it sounds, and the
23 intrinsic evidence itself, itself makes that clear.

24 Claim 4 refers to "the configuring step further
25 comprises the step of partitioning a screen area associated

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1 appears in the patent. And, indeed, HTML itself is merely an
2 exemplary embodiment.

3 And, so, the patent says, column 3, lines 10 to 13,
4 "Also, the dual-MVC approach of the invention preferably uses
5 HTML and JavaScript constructs..." The patent itself does not
6 require HTML.

7 So, what Carvana is trying to do is improperly read
8 a limitation into the claims, and it's well-established under
9 Federal Circuit law that "we do not read limitations from the
10 embodiments in the specification into the claims," and that's
11 established in many Federal Circuit cases.

12 And I think the last point I have -- the last two
13 points I have on this are: What Carvana is doing is cherry-
14 picking a couple of dictionary definitions that it thinks
15 support its construction, but there's no basis to elevate
16 Carvana's narrow definitions over the intrinsic evidence,
17 which does not include any "distinct HTML document"
18 limitation, or IBM's dictionary definitions, which don't
19 include that type of limitation either.

20 And it's well-established in Phillips that extrinsic
21 evidence is less significant than intrinsic evidence. "Undue
22 reliance on extrinsic evidence poses the risk that it will be
23 used to change the meaning of claims." So, that's our concern
24 about what Carvana is doing now. It's doing everything
25 backwards, relying on extrinsic evidence to contradict

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1 with the browser software into frames." So, again, we're
2 talking about screen area.

3 The specification, column 3, lines 33 to 35: "The
4 client's browser screen may be divided into multiple frames."
5 So, again, we're talking about what's on the screen.

6 And even Webster's Dictionary definition for
7 "Computers: the information or image on a screen or monitor at
8 any one time." So, we're talking about what's on the screen.

9 So, we would submit that "frame" means exactly what
10 it sounds like and in this case there's been no lexicography
11 or disavowal that would alter or limit that plain meaning.

12 Now, I would just hasten to add, so the issue is
13 with the second half of Carvana's construction. We think
14 "frame" is succinct and clear and well-understood by a person
15 of ordinary skill in the art, but we're frankly okay with the
16 first half or we're okay with area of a screen, section of a
17 screen, section of a webpage. It's the second half where
18 Carvana is trying to read limitations into the claims without
19 intrinsic support.

20 So, there's nothing in the claims or specification
21 that limits "frame" to "a distinct HTML document." I
22 personally searched probably 20 times just to make sure I
23 wasn't missing anything, but "HTML document" never appears in
24 the patent. The word "distinct" never appears in the patent,
25 and certainly the collective "distinct HTML document" never

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1 intrinsic evidence.

2 I think the last point I have is that there is also
3 claim differentiation support for IBM's construction where
4 there is a dependent claim 11 that depends from claims 4, 8
5 and 10, that requires the views being implemented in
6 accordance with HTML, HyperText Markup Language. So, the
7 claims on which claim 11 depends -- 4, 8, 10 -- are
8 presumptively broader than that and should not be limited to
9 HTML.

10 So, with that, IBM's position we believe is correct
11 because "frame" succinctly reflects its meaning, there has
12 been no lexicography or disavowal, and Carvana's construction,
13 in particular, the latter half of their construction, lacks
14 intrinsic support, reads limitations into the claims, elevates
15 extrinsic evidence over intrinsic evidence, and violates the
16 presumption of claim differentiation.

17 THE COURT: All right. Thank you.

18 All right, Carvana.

19 MR. LaCORTE: Okay, Your Honor. I'm actually going
20 to take my laptop because I have a couple of notes on there
21 for this. So, if I can just have a second.

22 THE COURT: I'll note, it looks from here like you
23 do not have an IBM laptop.

24 MR. LaCORTE: Yes, they're hard to find these days.
25 All right. Your Honor, "frames," frames is a little

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1 bit of a lift, and there is some discussion in the briefing
2 that I will certainly highlight. This is not the easiest
3 thing to end with before maybe a break, but I'll give it a go.

4 So the, at least, position that we seem to
5 understand IBM to be taking that there is a variety of
6 different either definitions or context advanced by IBM that
7 are not precise or consistent, which appears to acknowledge
8 that "frame(s)" requires construction. To simply punt to
9 plain and ordinary meaning would be inappropriate.

10 Frames have a readily understood plain meaning in
11 both computer science and, according to IBM, the '719 Patent.

12 We believe, Your Honor, that the jury will not be a
13 collection of computer scientists who know how "frames" were
14 used by webpages in 2000 at the dawn of the Internet. And,
15 frankly, within the claims and the specification, this is not
16 readily obtainable.

17 So, what -- in terms of, at least -- and IBM is
18 correct, there is no exact definition, but there is very clear
19 reference to what "frames" involve and what they constitute
20 that are specific to the '719 Patent, and not just simply
21 screen partitioning or whatever plain and ordinary meaning of
22 the variety of different dictionaries or extrinsic evidence
23 that IBM is referring to.

24 So, first, in the column 3, lines 26 through 32:
25 "It is to be appreciated that the term 'frame' as used herein

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1 We would respectfully suggest that IBM has not
2 provided intrinsic evidence of a consistent use of "frame" in
3 an accordance or in accord with the plain and ordinary meaning
4 dictionaries.

5 So, to the contrary, in claim 4, "The method of
6 claim 3, wherein the configuring step further comprises the
7 step of partitioning a screen area associated with the browser
8 software into frames," and then, "A frameset comprises one or
9 more frames, which are like sub-windows inside a frameset
10 window," and then a "client's browser screen may be divided
11 into multiple frames," this is not a consistent use of frame
12 that if you compare to the IBM dictionary definitions that is
13 consistent.

14 I wanted to talk in this -- I brought my laptop
15 because this is complicated -- about claim 10 and claim 11 and
16 the claim differentiation argument.

17 Claim 11 depends on claim 10, and thus is presumed
18 to be narrower than claim 10. I hope that Jordan and I can
19 agree on that much.

20 The use of HTML in claim 11 does not relate to
21 frames. HTML in claim 11 is defining the views that can be
22 produced using an API in claim 10.

23 The API in claim 10 is accessed through a frame,
24 namely, what's termed the "application-independent view-
25 generating logic and controller" frame. However, the fact

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1 has a similar usage as in HTML." Web browsers typically
2 display in one or more windows on a screen, but they
3 correspond to what the patent discloses as "HTML frames" or an
4 "HTML frameset." And the frameset can be comprised of one or
5 more frames, but these are one or more, we would submit,
6 HTML -- HTML frames, "which are like sub-windows inside a
7 frameset window."

8 These windows are the content on the screen and
9 contain the HTML frames, are separate windows of a webpage
10 that can act independently, as if they were standalone
11 webpages. That of its very nature would involve HTML.

12 Carvana's construction is consistent with a key
13 requirement of the '719 Patent. This is a complicated part of
14 the patents and is a vestige of very old days of the Internet.
15 But the '719 Patent calls for the ability for "invisible
16 frames" for client-side application to update the view, so
17 that the client or local operation of the application would
18 update through these invisible frames.

19 The '719 Patent emphasizes that without the
20 invention of invisible frames, the Model-View-Controller
21 interactions claim of the patent on the client-side would not
22 be possible. In fact, the update of the View would destroy
23 the Controller logic by overwriting it and the Model data.
24 So, it would be a catastrophic event without the invisible
25 frames, and that is a significant aspect of the invention.

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1 that the API is accessed through a frame does not have any
2 bearing on the fact that claim 11 limits the views that can be
3 created using that API to HTML.

4 The frame that permitted access to the API is an
5 HTML page. However, the views generated by the API and HTML
6 are not necessarily frames. That final point deserves
7 emphasis.

8 The frame that permitted access to the API in the
9 HTML page -- however, the views generated by the API in HTML
10 are not necessarily in frames. They can be in something other
11 than frames. So, there is no claim differentiation that
12 applies here. So, the view is the issue in claim 10.

13 Claim 11 further requires that the view be
14 implemented in accordance with HTML, but this does not mean
15 that the frame of claim 10 can be something other than an HTML
16 document, it merely means the view of claim 11 employs HTML.

17 I hesitate to ask if you have any questions. I
18 understand that is a rather dense discussion of claims 10 and
19 11. We did try to brief this and correspond to frames. This
20 is not a simple term that befits or would be appropriate for a
21 plain and ordinary meaning. The jury and in fact the experts
22 in analyzing this aspect of this part of the patent for
23 infringement purposes would benefit from a construction.
24 Thank you, Your Honor.

25 THE COURT: All right. Thank you very much.

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1 MR. MALZ: Can I just take 30 seconds from --

2 THE COURT: Yes. There is no time limit, so.

3 MR. MALZ: So, IBM has full faith that the jury can
4 apply the term "frames," and one piece of evidence that we
5 have for that is that the jury in the Delaware case, in Zynga,
6 was able to apply this term. So, this was not a term that
7 caused any issue for the jury to apply.

8 And I would just sort of reiterate, the issue we're
9 having is with the second half of Carvana's construction. We
10 think "frame" is succinct and speaks for itself. The first
11 half of the construction we're probably okay with, but then
12 someone is going to say: What does section mean? So, we
13 would like to stick with frames.

14 And, lastly, everything that Mr. LaCorte was
15 respectfully doing at the podium were examples of reading
16 limitations into the claims. And I would just note that
17 nowhere did he point to anywhere in the specification where it
18 said, "HTML document," "distinct," or "distinct HTML
19 document." So that's reading something into the claims
20 without proper support.

21 THE COURT: Okay. Anything else?

22 MR. LaCORTE: Your Honor, we've been trying to be
23 respectful of the continued reference to other litigation and
24 jury results. Clearly, whether another court has construed
25 "frames" without reference to the dispute at issue here or

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1 take a giant leap as to the small portion of the second part.
2 I agree there's no document reference, but clearly there's
3 reference to HTML. Thank you.

4 THE COURT: Okay. All right. So, we have one left
5 to go, right?

6 And, so, my proposal will be that we will give you
7 all a break, get something to eat. We'll come back in roughly
8 an hour and we'll finish up. Does that work for you all?

9 MR. LaCORTE: It certainly does for Carvana, Your
10 Honor.

11 THE COURT: Okay.

12 MR. PACKIN: Yes, Your Honor.

13 THE COURT: Okay. And some local eating
14 establishment would be delighted to have you all walk in and
15 add to their daily revenue. So, we'll give you a full hour,
16 because there's not a lot of places that are right across the
17 street. There are some that are nearby. If you want
18 recommendations, you can ask. I can't do product placement
19 but others can help out. But we'll reconvene at like around
20 2:35. Does that work?

21 MR. LaCORTE: Yes, Your Honor. Thank you.

22 THE COURT: Okay. Then, we'll see you in about an
23 hour. Thanks.

24 (Luncheon recess)

25

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1 that did not resolve the dispute at issue here is of little

2 value. I don't know what happened in the Zynga case. We're
3 reading the transcripts. But the jury's ability to, to parse
4 out frames in the context of a *Farmville game on an
5 application is a whole different exercise than an e-commerce
6 website that involves, you know, numerous aspects to the site.
7 So, this continued comparison to the Zynga outcome as
8 illustrative, which I'm not even sure is in the record of the
9 briefing other than the court's orders in that case, is of
10 little value.

11 THE COURT: Also, we don't know if the jury had a
12 hard time or not. The fact that they reached a verdict
13 doesn't mean they didn't flip a coin.

14 MR. LaCORTE: True. And one final point on the
15 intrinsic record. I didn't point a line that said "document,"
16 but a frame is a discrete -- I don't think the parties
17 disagree on this.

18 A "frame" is a discrete part of a webpage. It
19 always has been from the beginning of the Internet. The whole
20 idea of having -- separating things out into frames is that
21 you can change it without having to change the whole thing.
22 It's sort of like correcting one mistake in a painting. And,
23 so, it is distinct by its nature and it involves HTML. It's
24 the view, it's the thing that is front facing.

25 So, I don't think that we are asking the Court to

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1 THE COURT: Please be seated.

2 All right. So, '234.

3 MR. YAU: Yes, Your Honor.

4 MR. PACKIN: Yes, Your Honor.

5 THE COURT: Look at you ready to go.

6 MR. PACKIN: Before we get to '234, I just want
7 to -- there's one issue I want to clarify for the record.

8 THE COURT: Yes. Yep.

9 MR. PACKIN: I was lead counsel in the -- in the
10 Zynga trial in Delaware. Mr. Zaidi brought up that trial,
11 because I think it was in response to a comment that the
12 experts and the jury wouldn't be able to do it.

13 THE COURT: Yes.

14 MR. PACKIN: And then Mr. Malz brought it up as
15 well. The frames claim, that dependent claim, was not an
16 issue in the trial. Claim 1 was an issue and the jury found
17 it to infringe. So, I just wanted to clarify that on the
18 record.

19 THE COURT: Thank you for that. I appreciate that.
20 Okay. So, who's speaking on '234?

21 MR. PACKIN: Mr. Yau, from my firm, will be next.

22 THE COURT: All right. Mr. Yau, the floor is yours.

23 Since you've been here all day, you know what the
24 redline is in terms of speed.

25 MR. YAU: That I do, Your Honor.

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1 THE COURT: Okay. All right. Anything else from
 2 either side?
 3 MR. PACKIN: Not from IBM, Your Honor.
 4 MR. LaCORTE: Only, Your Honor, that I take to heart
 5 your point of "we don't do a lot of paper." So, if the Court
 6 would like Carvana or the parties to submit the Powerpoints
 7 electronically in some sort of an e-mail or submission, we're
 8 happy to do that, so you don't have a physical copy that
 9 you're thumbing through.
 10 THE COURT: You saw that Sarah just shook her head
 11 yes, so.
 12 MR. LaCORTE: And I get the thumb drive, but I'm not
 13 sure what the preferred mode was. The last trial we had it
 14 was a thumb drive. So, if the Court's staff would let us
 15 know, we'll be glad to --
 16 THE COURT: I think a zip drive might work, right?
 17 Yes, a zip file of some sort. I'll tell you what,
 18 let's talk to Matt, who I think some of you might have met
 19 this morning. He was helping out. And let's just make sure
 20 that I didn't, you know, ask for something that I'm not
 21 allowed to ask for, and, then, we'll just e-mail you all and
 22 let you know.
 23 I do -- I do note the irony of in a case involving
 24 patents that relate to e-commerce that we killed a bunch of
 25 trees today, but sometimes it's unavoidable. And, again, some

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1 MR. LaCORTE: Thank you.
 2 MR. PACKIN: Thank you, Your Honor.
 3 MR. MALZ: Thank you, Your Honor.
 4 MS. MILLER: Thank you, Your Honor.
 5 THE COURT: And I bid you all a Happy Thanksgiving.
 6 MR. LaCORTE: You too as well.
 7 MS. MILLER: You too as well.
 8 MR. PACKIN: You too.
 9 (Case adjourned)

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1 of it is our security protocols with thumb drives and things
 2 like that, so. But all right. So, we'll get back in touch
 3 with you on that.
 4 MR. LaCORTE: And the only thing from Carvana is
 5 that we always value the chance to be in court, and, so, there
 6 were -- certainly, the last couple of years that it's been hit
 7 and miss. It was a pleasure and we appreciate the Court's
 8 patience with these technical terms and the amount of time
 9 that you gave us. We really appreciate it.
 10 THE COURT: Well, what I was going to say is, I
 11 really appreciate your advocacy. I thought the briefing was
 12 excellent. You know, it's always a challenge, I'm sure for
 13 you all, when you're not in the Federal Circuit, you're
 14 dealing with whatever the wheel gives you, the proverbial
 15 wheel, on technical cases.
 16 This is Sarah's first Markman hearing. I think
 17 she's not going to quit.
 18 So, I mean, I appreciate the advocacy today. I
 19 really do. I think you all did a great job of advocating to a
 20 lay person some technical terms. And, so, I know one client
 21 is here, but please convey to the other client, who is not
 22 here, how much I appreciate the lawyering by all of you in
 23 this case, and I hope the clients appreciate how well-served
 24 they were today and in the briefing before today. So, thank
 25 you very much to all.

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