

EXHIBIT K (CONT.)

JAMES P. NAUGHTON

1 Q. Rather than doing it by reference to the
2 patent, can you just describe for me in terms of
3 functionality or features what it was that you understood
4 was new prior to the time that you filed the patent
5 application?

6 MS. THAYER: Just to clarify, are you asking him,
7 like, down to code level and that sort of thing?

8 MS. DURIE: No, absolutely not. Just categories.

9 MS. THAYER: Okay.

10 BY THE WITNESS:

11 A. The code was different. The implementation
12 was different. The system after the beta system at some
13 point began acquiring features that we now refer to as
14 the Direct Traffic Center, which allowed on-line account
15 management by advertisers. Just a whole lot of things.

16 BY MS. DURIE:

17 Q. So, on-line account management by advertisers.
18 I'm looking for sort of broad categories of things like
19 that that were different feature sets that you understood
20 had not been present in the prior system but were present
21 in the system that was accessible to you on the web at
22 the time you filed the patent application.

23 Other than on-line account management by
24 advertisers, what other categories of features can you

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1 think of?

2 A. As I say, I was told that the entire
3 implementation was different. The beta system was
4 written in one way in one type of language. And as I
5 understand it the public launch of the system, which I
6 thought was around or about -- on or about June 1st,
7 1998, was just a different structural system, different
8 coding, different software, different architecture.

9 Q. Okay. From the -- leaving aside the issues
10 about a different code base, a different software, from
11 the perspective of a user of the system can you identify
12 for me any other additional features that you understood
13 had been added since the beta system other than the
14 on-line account management by advertisers that you've
15 identified?

16 MS. THAYER: Objection. Vague as to "user."

17 BY MS. DURIE:

18 Q. Well, actually a user could be either a
19 searcher or an advertiser.

20 A. The only things I could think of would be --
21 without seeing screen shots or operating the two systems
22 in those two time frames and noting the differences, as I
23 sit here, for recollection I have to always come back to
24 focus on what was claimed in the patent because that was

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1 my focus. To a great extent I didn't need to know the
2 commercial operation of the GoTo system in the middle of
3 1999 or later.

4 So, -- and as you know, a patent infringement
5 focuses on an invention which may or may not in whole or
6 in part correspond to a commercial embodiment. So, I'm
7 having difficulty with that question for at least that
8 reason.

9 Q. Okay. Fair enough. Well, I guess -- let
10 me -- I just want to -- is there anything that you can
11 remember -- strike that.

12 Are there any feature sets that you can
13 remember that had been added to the GoTo system since the
14 precritical date beta version other than the on-line
15 account management by advertisers, and keeping in mind
16 that you've already referenced that the code base in the
17 software was different?

18 A. A couple of comments. First of all, again
19 you're asking me the differences between two systems.
20 And I explained to you why I have woefully imperfect
21 knowledge of the systems at this point in time as to the
22 feature set of the -- the 1999 version. I just don't
23 have that recollection.

24 At the time I knew a lot about the beta

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1 system. But now you're asking me to compare it to
2 something I don't recall very well. And as far as
3 feature sets, I don't know what you mean by that.

4 DTC, the Direct Traffic Center, encompasses a
5 whole lot of features. So, I just refer to that broadly
6 as DTC.

7 Q. Okay. Can you then tell me what -- give me
8 examples of some of the features within the Direct
9 Traffic Center that you recall being present in the
10 system that you looked at on-line in early 1999, but not
11 being present in the beta system from prior to the
12 critical date?

13 A. I can't bring up in my mind a picture of
14 actually going on the GoTo website in 1999 to see what an
15 advertiser would see. In that regard my knowledge
16 primarily, if not entirely, would be based on what's in
17 the patent application.

18 Q. Okay. So, is it fair to say that other than
19 saying sort of generally that features associated with
20 direct traffic management had been added and were not
21 present in the precritical date system, you can't be more
22 specific about particular features that had been added
23 after 1998 into the GoTo system in 1999?

24 A. Features were being added all the time on a

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1 weekly basis. And as I sit here today, I don't have a
2 specific identification for you of those features --

3 Q. Okay.

4 A. -- that a user would see.

5 Q. You mentioned something about needing to sort
6 of operate the beta system next to the system as it
7 existed in 1999. Did you ever see the beta system in
8 operation?

9 MS. THAYER: Objection. Vague.

10 BY THE WITNESS:

11 A. I did not see the beta system in operation
12 during its original time frame of existence.

13 BY MS. DURIE:

14 Q. Did you see the beta system in operation
15 thereafter?

16 A. I may have. I don't recall.

17 Q. Do you have any recollection as to when that
18 would have been?

19 A. No.

20 Q. Okay. At the time you had initial discussions
21 about filing a patent application for GoTo, was there any
22 discussion about a deadline by when such a patent
23 application must be filed?

24 MS. THAYER: Can I have that read back?

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1 A. I just mentioned to you that depending on the
2 circumstances, and to get background, which may include
3 prior art, an attorney typically on occasion can do this
4 sort of background on-line search.

5 Q. And I guess my question was leaving aside an
6 attorney who's conducting a search for purposes of
7 educating themselves and getting a background in the
8 area, would you instruct an attorney working under your
9 supervision to perform a prior art search in order to
10 uncover potentially relevant prior art for disclosure to
11 the Patent and Trademark Office in the absence of an
12 explicit request from the client that we do that?

13 A. You're not talking about outside searchers,
14 without client authorization. I can't recall having
15 directed an attorney to do that kind of search themselves
16 and not through an outside searcher and without client
17 authorization for the specific purpose you mentioned.

18 Q. Okay. And I take it that you never employ an
19 outside searcher without first being instructed by your
20 client to do so?

21 A. I can't recall using an outside searcher
22 without having had client authorization to do so.

23 Q. Okay. Do you know the scope of any prior art
24 search that was conducted in the case of the '361 patent?

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1 A. In general, yes.

2 Q. Okay. What was done?

3 MS. THAYER: You can communicate results. You
4 should not communicate attorney-client communications in
5 responding.

6 BY THE WITNESS:

7 A. One universe of potential prior art was
8 documentation I obtained as part of my initial
9 investigation that we've discussed.

10 Another universe of prior art would have been
11 prior art we gathered specifically with the idea in mind
12 that we're gathering prior art to submit to the Patent
13 Office in connection with this patent application.

14 Another group of prior art would have been
15 prior art generated by an outside searcher.

16 And then during prosecution I believe
17 additional prior art was cited to the Patent Office or
18 cited by the Examiner.

19 BY MS. DURIE:

20 Q. Okay. Let's take you to those things in
21 turn.

22 The documentation that you gathered as part of
23 your initial investigation, can you describe for me
24 generally what that documentation was?

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1 A. I received a number of documents. That would
2 include at least articles of various kinds, I believe
3 some press releases. I can't immediately think of other
4 documentation that I gathered for that initial
5 investigation that I would put in the category of
6 potential prior art.

7 Q. Did you have any source code?

8 A. I'm sorry?

9 Q. Source code.

10 A. For my investigation initially?

11 Q. Yes. Category 1, documents you gathered as
12 part of your initial investigation.

13 A. I don't recall.

14 Q. Did you have any technical drawings?

15 A. I can't recall.

16 Q. Did you have any screen shots?

17 A. I can't recall.

18 Q. Did you have any examples of search result
19 lists?

20 A. I can't recall.

21 Q. To your knowledge did you have a comprehensive
22 set of the GoTo press releases that related to the
23 pre-May 28th, 1998 system?

24 A. For my initial investigation?