

# EXHIBIT 1

Bernard A. Galler  
October 28, 2005

Page 1

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF MICHIGAN

3  
4       NETJUMPER SOFTWARE, L.L.C.,  
5       a Michigan Limited liability  
6       corporation,

7                               Plaintiff,

8                   -vs-

Civil Action

9   No. 2:04CV70366

10       GOOGLE, INC.,

11                               Defendant.

12       \_\_\_\_\_ /

13       PAGE 1 TO 197

14  
15           The Videotaped Deposition of BERNARD A. GALLER,  
16           Taken at 300 East Liberty Street,  
17           Ann Arbor, Michigan,  
18           Commencing at 9:23 a.m.,  
19           Friday, October 28, 2005,  
20           Before Laurel A. Frogner, RMR, CRR, CSR-2495  
21  
22  
23  
24  
25

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1 APPEARANCES:  
 2 MR. ANDREW J. KOCHANOWSKI (P55117)  
 3 Sommers, Schwartz, Silver & Schwartz, P.C.  
 4 2000 Town Center, Suite 900  
 5 Southfield, Michigan 48075  
 6 Appearing on behalf of the Plaintiff  
 7  
 8 MR. JASON W. WOLFF  
 9 Fish & Richardson  
 10 12390 El Camino Real  
 11 San Diego, California 92130  
 12 Appearing on behalf of the Defendant  
 13  
 14 ALSO PRESENT: John Zawacki, Videographer  
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1 Ann Arbor, Michigan  
 2 October 28, 2005  
 3 About 9:23 a.m.  
 4 THE VIDEOGRAPHER: Today's date is  
 5 October 28, 2005, and we are on the record at 9:23 a.m.  
 6 This is a videotaped deposition of Bernard A. Galler.  
 7 We are at 301 East Liberty Street, Suite 500, Ann  
 8 Arbor, Michigan. This matter is pending in United  
 9 States District Court, Eastern District of Michigan,  
 10 NetJumper versus Google, Incorporated, Case Number 04  
 11 CV70366.  
 12 Counsel, would you please put your  
 13 appearance on the record.  
 14 MR. WOLFF: Jason Wolff from the law  
 15 firm Fish & Richardson for Defendant Google, Inc.  
 16 MR. KOCHANOWSKI: Andrew Kochanowski  
 17 for the plaintiff, NetJumper.  
 18 THE VIDEOGRAPHER: Would the court  
 19 reporter please swear the witness.  
 20 BERNARD A. GALLER,  
 21 having first been duly sworn, was examined and  
 22 testified on his oath as follows:  
 23 EXAMINATION BY MR. WOLFF:  
 24 Q. Good morning, Mr. Galler.  
 25 A. Good morning.

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1 Q. Could you please state your full name and  
 2 address for the record.  
 3 A. Bernard A. Galler, 1056 Ferdon Road, Ann  
 4 Arbor, Michigan, 48104.  
 5 Q. All right. Is there any reason you cannot  
 6 provide your best testimony here today?  
 7 A. No.  
 8 Q. Are you under the care or supervision of a  
 9 physician?  
 10 A. Well, like anyone else, yes.  
 11 Q. Are you on any medication or anything that  
 12 would affect your testimony today?  
 13 A. No.  
 14 Q. Have you been deposed before?  
 15 A. Yes.  
 16 Q. How many times?  
 17 A. Maybe 30 times.  
 18 Q. When was the last time you were deposed?  
 19 A. About four months ago maybe.  
 20 Q. And what was the subject matter of that  
 21 deposition?  
 22 A. It was a contract dispute related to  
 23 software.  
 24 Q. And were you an expert --  
 25 A. Oh, yes.

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1 Q. -- in that case? How many times have you  
 2 appeared as an expert witness in a patent case?  
 3 A. In a patent case, maybe a dozen times.  
 4 Q. Do you recall when the last time you were an  
 5 expert witness in a patent case?  
 6 A. It might have been a year ago, I don't  
 7 recall specifically.  
 8 Q. Was it the stamps.com?  
 9 A. Well, that might have -- if that was the  
 10 last one, most recent, yes. I should mention that the  
 11 list you have does not contain cases which are ongoing,  
 12 and I might have been deposed in a patent case. I  
 13 don't think the recent depositions have been patent,  
 14 but that list does not contain ongoing cases, I never  
 15 put them on there.  
 16 MR. WOLFF: Okay. Counsel, I will  
 17 ask that you provide us a list of the current cases.  
 18 MR. KOCHANOWSKI: Yes, I think we  
 19 have that.  
 20 BY MR. WOLFF:  
 21 Q. And are any related to internet  
 22 technologies?  
 23 A. No.  
 24 Q. Any related to any business of Google?  
 25 A. No.

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1 Q. Or any business?  
 2 A. No.  
 3 Q. In the Stamps.com litigation, in what  
 4 capacity were you an expert witness?  
 5 A. I was helping Stamps.com. They were being  
 6 sued by Pitney Bowes for patent infringement.  
 7 Q. So you were on the defendant's side?  
 8 A. In that case, yes.  
 9 Q. And what sort of opinions did you offer  
 10 generally in that case?  
 11 A. Well, the usual opinions related to on the  
 12 one hand validity, on the other hand infringement.  
 13 Q. And you offered an opinion that the patent  
 14 was invalid in that case?  
 15 A. No, I don't give legal opinions, I give  
 16 opinions on the software and the interpretation of the  
 17 patent in terms of technical terms, but I don't give  
 18 opinions on whether something is invalid.  
 19 Q. Did you come to a conclusion in that  
 20 litigation that the patent or some of the patents  
 21 asserted were invalid?  
 22 A. No. I think in that case I think in  
 23 invalidity was I think maybe not an issue, I don't  
 24 recall specifically. It was more an infringement case.  
 25 Q. Okay. And did you offer or come to a

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1 conclusion in that case that one or more of the patents  
 2 were not infringed?  
 3 A. Again, I don't give legal opinions.  
 4 Q. Well, I asked for a conclusion.  
 5 A. Conclusions, well, okay, I believe I -- the  
 6 opinions I gave would have supported conclusions of  
 7 noninfringement.  
 8 Q. Do you have your reports or any declarations  
 9 you submitted in that litigation?  
 10 A. I looked for reports. I don't have any. I  
 11 never did get a copy of that, that I could find.  
 12 Q. Okay. And how about your deposition  
 13 transcript, was your deposition taken in that  
 14 litigation?  
 15 A. Yes, but, again, I couldn't -- I did look in  
 16 case it came up, but I couldn't find a copy.  
 17 Q. Okay. Since you've been deposed before,  
 18 I'll just kind of lay out the ground rules real quick.  
 19 I'll do my best to ask clear and concise questions. If  
 20 you don't understand a question, please ask for a  
 21 clarification.  
 22 A. Okay.  
 23 Q. I'll assume that you did understand the  
 24 question if you provide an answer.  
 25 A. Yes.

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1 Q. From time to time Mr. Kochanowski's  
 2 indicated he will object. You still have to answer the  
 3 question unless he instructs you not to answer the  
 4 question, at which point I will ask you whether you  
 5 intend to follow his instruction not to answer the  
 6 question.  
 7 I will try to take a break  
 8 approximately once every hour. If you need more  
 9 frequent breaks or for any reason you just need to take  
 10 a break, just let me know. We'll finish the question  
 11 and questions we're on and we'll take a break for your  
 12 comfort. There's water and some refreshments off to  
 13 the side, there's restrooms, of course, provided,  
 14 facilities, so any time you need a break, just let me  
 15 know and I'll make sure that you're comfortable.  
 16 A. Sure.  
 17 Q. Now, are you retired presently?  
 18 A. I'm retired from the university.  
 19 Q. Okay.  
 20 A. I have other activities from which I'm not  
 21 retired such as being here.  
 22 Q. Okay. So you still are employed in an  
 23 expert capacity or a consulting capacity?  
 24 A. Yes.  
 25 Q. And how much time do you work approximately

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1 every year?  
 2 A. Not very much. Of course, as you know,  
 3 legal cases sometimes become intense and then are  
 4 dormant for a long time. Perhaps the equivalent of a  
 5 week or two a year.  
 6 Q. All right. And when was the last time you  
 7 taught at the University of Michigan?  
 8 A. 1993, I believe.  
 9 Q. Okay. And have you taught --  
 10 A. I'm sorry, I have given occasional lectures,  
 11 invited lectures at the University over the years since  
 12 then, sure.  
 13 Q. And have you taught or instructed classes  
 14 anywhere else since then?  
 15 A. No.  
 16 Q. Okay. Did you ever teach computer science  
 17 classes?  
 18 A. Yes.  
 19 Q. Okay. Did you ever teach programming  
 20 classes?  
 21 A. Yes.  
 22 Q. Do you consider those to be the same,  
 23 programming and computer science?  
 24 A. No, computer science is a broader term than  
 25 that.

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1 Q. Okay. When is the last time you taught a  
2 computer science course?  
3 A. I believe 1993.  
4 Q. Okay. And what was the course?  
5 A. Well, I taught a variety of courses. That  
6 year it might have been the large first or second  
7 course in programming, but I have taught other courses.  
8 I don't remember specifically what I taught that year.  
9 Q. Well, if it was the first or second course  
10 in programming, what would be the general subject  
11 matter of the course?  
12 A. Introduction to computer languages, some  
13 information on architecture, data structures, history,  
14 I always included some ethics, and overall system  
15 organization, try to give people an idea of how  
16 computers worked and the relationship of the user to  
17 the computer.  
18 Q. Are you familiar with object oriented  
19 programming?  
20 A. Yes.  
21 Q. Have you ever taught courses in object  
22 oriented programming?  
23 A. Not specifically. I mentioned them and  
24 explained them to my students, but I never taught a  
25 course in that.

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1 Q. Have you ever programmed in an object  
2 oriented fashion?  
3 A. I don't think I have.  
4 Q. Have you ever taught C language courses?  
5 A. I didn't teach it as a language. In my more  
6 advanced courses I would assign a project to the entire  
7 course or to small groups in the courses, and then I  
8 would review what they did, and they generally wrote in  
9 C or something related to it. I've also worked with C  
10 in various legal cases, I've written some C programs.  
11 Q. And how about Java, have you programmed in  
12 Java?  
13 A. I have not programmed in Java.  
14 Q. Have you instructed any courses in Java?  
15 A. No.  
16 Q. Are you familiar generally with the Java  
17 architecture?  
18 A. Generally, yes. Again, I've run into it in  
19 these cases, and I went to a short course on it once  
20 and so on.  
21 Q. When your students prepared programs in C,  
22 did you review those programs?  
23 A. Very often I did review them, yes.  
24 Q. So do you have the capacity to review source  
25 code?

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1 A. Yes.  
2 Q. Okay. C source code?  
3 A. Yes.  
4 Q. And Java source code?  
5 A. I'm not sure I would. I would probably have  
6 someone assist me or interpret it for me in Java.  
7 Q. And how about C++?  
8 A. Similar.  
9 Q. So you could read and understand a C++ or C  
10 program?  
11 A. Sure.  
12 Q. But Java you're not so sure about?  
13 A. I probably would ask for some help, yeah.  
14 Q. Okay. Are you familiar with the various  
15 internet standards promulgated by the W3C?  
16 A. In general, not specifically.  
17 Q. How about the HTTP standard?  
18 A. Well, I've used it, but I have not actually  
19 seen the standard.  
20 Q. Okay. And how have you used the standard?  
21 A. Well, I mean as a user, as part of URLs and  
22 so on, but I have not specifically had occasion to  
23 refer to the standard.  
24 Q. And how does the HTTP standard relate to  
25 URLs?

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1 A. Well, a typical URL -- I mean when you  
2 communicate with a browser, you very often embed the  
3 URL in an HTP sequence.  
4 Q. Do you know the difference between a URI and  
5 a URL?  
6 A. I don't think I know the term URI.  
7 Q. Okay. So you're not familiar with the URI  
8 standard, either?  
9 A. No.  
10 Q. Okay. When you say that you've used the  
11 HTTP as a user, does that mean you've implemented a  
12 program that used the HTTP protocol?  
13 A. No.  
14 Q. Or you just used a web browser and it's  
15 inherent?  
16 A. I meant the latter, yes.  
17 Q. Okay. So you've never actually programmed  
18 or used HTTP for purposes of creating a computer  
19 programming?  
20 A. No.  
21 Q. And you've never reviewed the specifications  
22 for HTTP?  
23 A. That's correct.  
24 Q. How about the document object model  
25 specifications?

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1 A. I don't think I know that term.  
 2 Q. Do you -- you've never heard of the document  
 3 object model specifications?  
 4 A. I don't think so.  
 5 Q. If I told you that it was a standard  
 6 promulgated by the W3C, would that refresh your  
 7 recollection?  
 8 A. No.  
 9 Q. Do you know what the W3C stands for?  
 10 A. I think it's related to the Worldwide Web  
 11 Consortium or something, but I don't specifically work  
 12 with that.  
 13 Q. Do you know what the W3C is?  
 14 A. I presume it's a standards group, but I  
 15 don't know.  
 16 Q. Okay. Are you familiar with the Microsoft  
 17 Internet Explorer application programming interface?  
 18 A. Yes.  
 19 Q. And how so?  
 20 A. I've used it.  
 21 Q. The application programming interface?  
 22 A. The API, no, I have not actually used that.  
 23 I've used IE.  
 24 Q. You've used the program, the software  
 25 Microsoft Internet Explorer?

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1 A. That's right.  
 2 Q. As a user?  
 3 A. That's right.  
 4 Q. Have you ever examined it in an expert  
 5 capacity?  
 6 A. No.  
 7 Q. Okay. How about the Mozilla Firefox  
 8 application programming interface, are you familiar  
 9 with that?  
 10 A. Generally, but I have not used it.  
 11 Q. Okay. And, again, the question was about  
 12 the application programming interface. You are  
 13 familiar with the application programming interface for  
 14 the Mozilla Firefox browser?  
 15 A. No.  
 16 Q. You're just familiar with using the Firefox  
 17 web browser?  
 18 A. I am familiar with the availability of it, I  
 19 have not used it.  
 20 Q. You've not used the Firefox?  
 21 A. That's right.  
 22 Q. Web browser?  
 23 A. Right.  
 24 Q. You've never used it?  
 25 A. No.

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1 Q. Okay. Did you -- strike that. Have you  
 2 used the Google Toolbar?  
 3 A. I've had it demo'd for me, so in that sense  
 4 I have used it, I did use it.  
 5 Q. How did you use it?  
 6 A. I asked it to do things for me and it did.  
 7 Q. You typed into your -- you typed into your  
 8 computer?  
 9 A. I typed or I used the mouse, whatever, yes.  
 10 Q. And where did you type and what did you use  
 11 it for?  
 12 A. As part of preparation for this case.  
 13 Q. And was it on your computer at home?  
 14 A. No. I was going to I think install it on  
 15 mine, but it was available at the offices of the legal  
 16 counsel, and so I saw it there.  
 17 Q. So you went to counsel's office?  
 18 A. That's correct.  
 19 Q. And you used the computer yourself?  
 20 A. Yes.  
 21 Q. With the program on it. And what kind of a  
 22 computer do you have at home?  
 23 A. I have a Mac at home.  
 24 Q. And what web browser do you use?  
 25 A. Netscape or Internet Explorer, Safari.

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1 Q. Do you use Firefox?  
 2 A. No.  
 3 Q. You haven't used Firefox?  
 4 A. That's correct.  
 5 Q. And how many times did you go to counsel's  
 6 office to use the computer with?  
 7 A. Twice.  
 8 Q. Twice, and when was that?  
 9 A. The first time was about two weeks ago, and  
 10 the second time was earlier this week.  
 11 Q. And when earlier this week --  
 12 A. Monday.  
 13 Q. -- did you go to counsel's office?  
 14 A. Monday.  
 15 Q. So before -- approximately what was the date  
 16 of the first time you went to counsel's office to use  
 17 the computer?  
 18 A. My records would show it, but about the --  
 19 let's see, about maybe the 10th or 12th or  
 20 approximately till the end of October.  
 21 MR. WOLFF: Counsel, I'll make a  
 22 request on the record for Mr. Galler's records or  
 23 Professor Galler's records indicating when he went to  
 24 counsel's office to inspect the --  
 25 MR. KOCHANOWSKI: I think he's got

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1 his billing records ready to produce. That will be --  
 2 THE WITNESS: Okay, it's on the  
 3 billing record.  
 4 BY MR. WOLFF:  
 5 Q. Okay. And I haven't seen the billing  
 6 records.  
 7 MR. KOCHANOWSKI: Well, I think  
 8 he -- I thought Nabeel sent them.  
 9 THE WITNESS: No, I sent them in  
 10 response to the subpoena, but I don't know how they got  
 11 to you or didn't get to you.  
 12 BY MR. WOLFF:  
 13 Q. They haven't?  
 14 Andy, could you have him e-mail  
 15 those to me?  
 16 MR. KOCHANOWSKI: It's just one  
 17 page.  
 18 MR. WOLFF: That's fine.  
 19 BY MR. WOLFF:  
 20 Q. And so you -- when did you prepare your  
 21 report or your declaration for the summary judgment  
 22 motion?  
 23 A. I see, you're trying to relate when I did it  
 24 to the affidavit. In preparation of the report I saw a  
 25 screen printout of screens of the Google Toolbar, and

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1 my report is based on that, and then I -- on Monday of  
 2 this week I actually went and used it to verify that  
 3 the screens were what I -- what I had learned from the  
 4 screens were -- was really there, and it was, and  
 5 that -- so what's in the report is based on the screens  
 6 that are shown in the report.  
 7 Q. Okay. So at the time you submitted your  
 8 declaration you had not used the Google Toolbar?  
 9 A. That's correct.  
 10 Q. And when was the first time you used the  
 11 CyberPilot program?  
 12 A. I don't recall that. That'll be in the  
 13 records, also.  
 14 Q. Would it have been after your report?  
 15 A. I believe that was before the report, but I  
 16 can't be sure.  
 17 Q. And why do you believe that was before the  
 18 report?  
 19 A. Because I believe that what's in the report  
 20 is based on my use of it, to the best of my  
 21 recollection.  
 22 Q. When was the first time you went to Mr.  
 23 Kochanowski's office?  
 24 A. That's the date I can't remember, that's  
 25 the -- I said maybe the 10th. Now, this date I think

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1 is September 27, as I recall, of the report, so it must  
 2 have been before that, because I'm quite sure the  
 3 report was after I was there, but the record will show.  
 4 Q. But earlier you testified that it was about  
 5 two weeks ago?  
 6 A. Well, that's my faulty memory. The record  
 7 will show what it is.  
 8 Q. And the record being your billing record?  
 9 A. My billing record, yes.  
 10 Q. Your billing record will say, will indicate  
 11 whether you went to counsel's office?  
 12 A. Yes, well, it'll show something, I forget  
 13 what I wrote down, but tried the software or reviewed  
 14 the software or whatever, and, in fact, it'll show that  
 15 I was in, not in Ann Arbor but in Birmingham, West  
 16 Birmingham, I guess it is, at their office. I mean my  
 17 billing record shows what city I was in at the time,  
 18 and so that'll show when I was there. I'm sorry that I  
 19 can't remember the date, and the records will show it.  
 20 Q. But sitting here today you have no  
 21 recollection of when you first used the Google Toolbar?  
 22 A. Well, my sitting here I remember, I believe  
 23 I remember correctly that I saw the CyberPilot and  
 24 modified whatever the draft said about it on the basis  
 25 of my experience using it, that's what I recollect.

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1 Q. So when you say you saw the CyberPilot --  
 2 A. I used it, I put my hands on it, I tried it,  
 3 I did various things with it.  
 4 Q. So in your declaration if you said that you  
 5 used it, then you actually used it, and if you said  
 6 that you saw it, you actually used it, or did you just  
 7 see screen captures of it?  
 8 A. No, no, no. I forget what I said in the  
 9 report. If I said I used it, then that clearly means I  
 10 did it, and it only seemed like two weeks ago, it might  
 11 have been more weeks than that, I just don't recall.  
 12 Q. All right. And who prepared the figures  
 13 that are in your report?  
 14 A. I believe Mr. Kochanowski did.  
 15 Q. And how were those figures provided to you?  
 16 A. On printouts.  
 17 Q. On printouts. Were the figures provided to  
 18 you separately from a report?  
 19 A. No.  
 20 Q. Actually, here, let me strike that. Let me  
 21 go back to a foundational thing. Did you draft your  
 22 declaration?  
 23 A. The original draft was done by Mr.  
 24 Kochanowski.  
 25 Q. Okay. And you received the copy of that

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1 declaration, I presume?  
 2 A. Of the draft?  
 3 Q. Of the draft.  
 4 A. Yes.  
 5 Q. And how was that sent to you?  
 6 A. Probably in PDF as an attachment on e-mail.  
 7 Q. Not in Microsoft Word?  
 8 A. Probably in Word rather than -- yeah,  
 9 because I was modifying it, sure.  
 10 Q. Okay. And that draft included screen  
 11 captures?  
 12 A. Yes.  
 13 Q. The figures that are shown in the report?  
 14 A. Yes.  
 15 Q. Did you ask Mr. Kochanowski to prepare the  
 16 figures for you?  
 17 A. No, that was part of the draft.  
 18 Q. Before you received the draft had you  
 19 discussed any of the figures or information that would  
 20 be in the report?  
 21 A. Not the figures, I don't think so.  
 22 Q. Had you discussed the CyberPilot program?  
 23 A. Yes.  
 24 Q. And what had you discussed about the  
 25 CyberPilot program?

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1 A. Well, the fact that it was -- I had read  
 2 about it in some of the material I had seen in terms of  
 3 invalidity and so on. We discussed, I guess, I don't  
 4 recall specifics, the fact that it would be good for me  
 5 to see it, so we arranged it, to see it and use it, be  
 6 careful, and I don't remember that we discussed  
 7 anything more specific than that. The discussion  
 8 became more specific when I actually sat there in front  
 9 of it and tried things and we discussed its  
 10 capabilities and so on.  
 11 Q. And that would have been after you submitted  
 12 your declaration?  
 13 A. No, I think that's before, that's what --  
 14 Q. Okay. And you think that the billing  
 15 records would clear up that ambiguity --  
 16 A. Yes.  
 17 Q. -- as to whether you had used it before or  
 18 after?  
 19 MR. KOCHANOWSKI: Objection, there's  
 20 no ambiguity from the witness' testimony.  
 21 THE WITNESS: Yeah, that's correct.  
 22 I'm quite sure that I saw it and used it before --  
 23 well, there may have been a draft describing things  
 24 about it, but certainly the final report, which I  
 25 strongly revised and edited and added to, certainly

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1 included my experience using CyberPilot, as far as I  
 2 can recall.  
 3 BY MR. WOLFF:  
 4 Q. And is the same true for the Google Toolbar?  
 5 A. No, the Google Toolbar part of the report  
 6 was based on the screen shots, which I then verified by  
 7 using it just this last Monday.  
 8 Q. Okay. So before you prepared your  
 9 declaration you had not used the Google Toolbar?  
 10 A. That's correct. I should mention, of  
 11 course, I use Google all the time, but I had not used  
 12 the Google Toolbar.  
 13 Q. And have you reviewed any of the Google  
 14 source code?  
 15 A. No.  
 16 Q. So your report is not based on any of the  
 17 Google source code for the toolbar that's been produced  
 18 in this case?  
 19 A. That's correct.  
 20 Q. When you did use the Google Toolbar after  
 21 your report was created, did you have an opportunity to  
 22 go back and look at your report?  
 23 A. Yes.  
 24 Q. And was everything consistent with what you  
 25 experienced when you used it?

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1 A. Yes.  
 2 Q. So when approximately were you first engaged  
 3 in this case?  
 4 A. I think at the beginning of September.  
 5 Q. And how many hours have you spent working on  
 6 this case not including your time today?  
 7 A. Yeah, no, again, the billing record will  
 8 show. I don't recall specifically, 13, 15 hours,  
 9 something of that, not including today I did some  
 10 review, so it might be 18 hours. Again, I want to say  
 11 that the record will show what it actually was.  
 12 Q. The billing record?  
 13 A. The billing record.  
 14 Q. That I don't have?  
 15 A. Which you don't have.  
 16 Q. All right. How many drafts of your report  
 17 were created?  
 18 A. Three or four maybe.  
 19 Q. So Mr. Kochanowski sent you by e-mail the  
 20 first draft of the report?  
 21 A. I believe so.  
 22 Q. And you reviewed that report?  
 23 A. I reviewed it, I added several paragraphs, I  
 24 changed words in many places, and I sent it back.  
 25 Q. And then Mr. Kochanowski sent you another?



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1 A. I think so. We went back and forth a few  
2 times.  
3 Q. And you think that was -- he sent you three  
4 versions of the report and you sent him --  
5 A. Something like that.  
6 Q. More than two?  
7 A. No -- well, I don't know if it's more than  
8 two, maybe three, I don't --  
9 Q. He sent you three. How many times did you  
10 send him reports?  
11 A. I really don't recall. I don't keep drafts.  
12 I have only the most current one always so there's no  
13 confusion, and by the time I get to the final I don't  
14 have any drafts around, and I don't really recall how  
15 many there were.  
16 Q. So what did you do with your e-mail with the  
17 drafts in them?  
18 A. I delete them once I'm done with them.  
19 Q. Do you permanently delete them?  
20 A. The cover e-mail I keep, but the draft  
21 documents I don't.  
22 Q. Where do you put the draft documents?  
23 A. In the trash, I don't print them out  
24 usually.  
25 Q. You put them in trash. You emptied your

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1 trash --  
2 A. Sure.  
3 Q. -- in your Mac?  
4 A. Yes.  
5 Q. Did you check to see if you have any draft  
6 copies of your report in your trash in your Mac?  
7 A. Well, the trash is really gone every time I  
8 quit Eudora, okay. I checked my folders of files  
9 related to this case just a few days ago. In  
10 connection with responding to the subpoena I checked  
11 what do I have in my computer, and I checked, there  
12 were no drafts.  
13 Q. So you used the Eudora e-mail client?  
14 A. Right.  
15 Q. You don't use the mail client that's  
16 provided with the Mac?  
17 A. No.  
18 Q. And when you delete the drafts, you delete  
19 them into your mailbox in Eudora or do you delete them  
20 into the trash bin on your desktop?  
21 A. No, you delete it in the trash of Eudora,  
22 which when you quit Eudora at the end of some session  
23 it sends information back to the server to delete the  
24 images that are retained there.  
25 Q. What server are you referring to?

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1 A. University of Michigan is my ISP.  
2 Q. And you don't keep local cached copies on  
3 your personal computer of your Eudora mail?  
4 A. Well, I do, of the mail. Now, of  
5 attachments, I usually keep them, too, but in the case  
6 of drafts like this, when a new draft comes or the  
7 final report, I delete previous ones. And those are  
8 files not in Eudora but in the Mac operating system,  
9 and when I empty the trash there, they're gone. I mean  
10 your forensic scientists can probably retrieve them  
11 from my disk if it becomes that important, but they are  
12 deleted, I have not reformatted my disk.  
13 Q. Okay. We'll ask that you do preserve them  
14 and not destroy any draft reports and documents you've  
15 received in the case.  
16 A. No, I have not.  
17 Q. No, I'm asking you now to make sure you do  
18 not?  
19 A. That's right, I have not preserved any  
20 drafts either in the computer or in print form.  
21 Q. Okay.  
22 A. I guess there's a document which I put on in  
23 response to the subpoena called the Google Toolbar,  
24 which were the early printouts. I think it's identical  
25 to what's in the report. I did have that and I

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1 produced that, and that may be considered a draft, but  
2 as far as I know, it's identical to what actually ended  
3 up in the report.  
4 MR. WOLFF: Counsel, is there a  
5 reason we didn't receive those?  
6 MR. KOCHANOWSKI: I can't think of  
7 one, so I had assumed you had gotten that. It was a  
8 very tiny stack of things.  
9 THE WITNESS: Yeah, about five or  
10 six pages, whatever was in the report.  
11 MR. KOCHANOWSKI: And I assumed, and  
12 I just e-mailed Nabeel with the question as to where it  
13 is and why. I don't have an answer for you.  
14 MR. WOLFF: Okay, because that was  
15 part of that drag we had the other day about production  
16 of documents.  
17 MR. KOCHANOWSKI: Well, it was -- I  
18 mean what there is is I think that that little screen  
19 shot thing that Dr. Galler just testified about,  
20 there's one page of billing records and I think an  
21 updated list of cases.  
22 THE WITNESS: Yes.  
23 MR. KOCHANOWSKI: I think -- and  
24 that's it, as I recall.  
25 THE WITNESS: I think so.

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1 MR. KOCHANOWSKI: Yeah. So the  
2 billing record is one page, it just shows the dates  
3 that he worked on, that updated list of cases as he  
4 testified about, and a set of the Google Toolbar screen  
5 shots, I think that's --  
6 THE WITNESS: With a little bit of  
7 text glue between the screen shots.  
8 MR. KOCHANOWSKI: Right.  
9 THE WITNESS: Yes.  
10 MR. KOCHANOWSKI: And that's what  
11 you have. I mean that's what I have for you, and I  
12 don't know why you don't have it.  
13 MR. WOLFF: All right.  
14 MR. KOCHANOWSKI: And I'll try to  
15 get it as soon as --  
16 MR. WOLFF: If you could send it as  
17 a PDF, I could probably grab it and take a look at it  
18 and clear up any ambiguities there might be.  
19 MR. KOCHANOWSKI: There's no  
20 ambiguities. Only suspicious minds have ambiguity.  
21 MR. WOLFF: All right. Now would be  
22 a good time to take a quick break.  
23 THE WITNESS: Fine.  
24 THE VIDEOGRAPHER: We are going off  
25 the record at 9:55 a.m.

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1 (A short recess was taken)  
2 THE VIDEOGRAPHER: We are going back  
3 on the record at 10:02 a.m.  
4 BY MR. WOLFF:  
5 Q. Professor Galler, I'm going to have the  
6 reporter mark as Exhibit 101 a copy of NetJumper's  
7 response to Google's motion for summary judgment. What  
8 I have done with this exhibit is separated out  
9 Exhibit 3 with a better copy from a previous  
10 deposition so --  
11 MR. KOCHANOWSKI: Wait, this is my  
12 call.  
13 MR. WOLFF: Let's go off the record.  
14 THE VIDEOGRAPHER: Off the record at  
15 10:03 a.m.  
16 (A short recess was taken).  
17 DEPOSITION EXHIBIT 101  
18 WAS MARKED BY THE REPORTER  
19 FOR IDENTIFICATION  
20 THE VIDEOGRAPHER: We are going back  
21 on the record at 10:29 a.m.  
22 BY MR. WOLFF:  
23 Q. Before we took a break, Professor Galler,  
24 the reporter marked -- or after we took the break but  
25 before we got back the reporter marked as Exhibit 101,

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1 which is -- which is a copy of Plaintiff's opposition  
2 brief to Google's motion for summary judgment. I've  
3 noted on the front of it that Exhibit 3 to Exhibit 101  
4 has been excluded from it but is provided separately as  
5 Exhibit 30, and so it's here, too. So I'll have the  
6 reporter just enter into the record the fact that we're  
7 putting Exhibit 30 in front of Professor Galler as  
8 well, which is Exhibit 3 of Exhibit 101. Hope somebody  
9 understands that when they review this later.  
10 MR. KOCHANOWSKI: You presume  
11 anybody will care.  
12 BY MR. WOLFF:  
13 Q. Professor Galler, have you seen Exhibit 101  
14 before?  
15 A. Yes.  
16 Q. And when did you first see that?  
17 A. I believe it was one of the documents that  
18 Mr. Kochanowski gave me to read early in my  
19 participation here.  
20 Q. Before you prepared your declaration or  
21 after?  
22 A. Right now I don't recall.  
23 Q. Because your declaration is attached as  
24 Exhibit 2 to -- as Tab 2 to Exhibit 101?  
25 A. Yes. I might have seen a draft, I just

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1 don't recalling.  
2 Q. When you prepared for your deposition did  
3 you review a copy of these papers?  
4 A. Yes.  
5 Q. Okay. And if you could take a look at  
6 Exhibit 30, do you recognize Exhibit 30?  
7 A. This is the file history, I think I saw,  
8 this, too, yes.  
9 Q. Okay. And when did you first see that?  
10 A. Again. It was one of the early documents  
11 that was given to me to become familiar with the case.  
12 Q. And were you provided a copy of Google's  
13 motion for summary judgment?  
14 A. I'm not sure. I'd have to see it to see if  
15 I recognize it.  
16 MR. WOLFF: I'll have the reporter  
17 mark as Exhibit 102 a copy of Google's summary judgment  
18 brief.  
19 DEPOSITION EXHIBIT 102  
20 WAS MARKED BY THE REPORTER  
21 FOR IDENTIFICATION  
22 THE WITNESS: Should I have this?  
23 BY MR. WOLFF:  
24 Q. Yes, you should. Do you recognize  
25 Exhibit 102?

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1 A. I think I saw this, I'm not really sure. I  
 2 mean so much of this is repeated in so many different  
 3 documents that I'm just not sure. I believe I saw  
 4 this.  
 5 Q. You believe you saw this before you prepared  
 6 your declaration?  
 7 A. Oh, yes, yes, this does look familiar, yes.  
 8 I believe I saw this before I prepared my report.  
 9 Q. And how was it provided to you?  
 10 A. By Mr. Kochanowski.  
 11 Q. By e-mail?  
 12 A. Oh, no, I don't think so, I think probably  
 13 on paper.  
 14 Q. Okay. It was a color copy?  
 15 A. No, I don't think it was color.  
 16 Q. Did you have any questions about the figures  
 17 or --  
 18 A. No, I understood.  
 19 Q. Even without the color?  
 20 A. Yeah. I mean the text was clear enough.  
 21 Q. Was it mailed to your home or was it  
 22 something you saw at his office?  
 23 A. No, sent to my home. I don't know if it was  
 24 mailed, might've been delivered.  
 25 Q. Courier?

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1 A. It might have been, I don't recall. I might  
 2 say now I understand the references to Kauai.  
 3 Q. I'll have the reporter mark as Exhibit 103 a  
 4 copy of the declaration of Joseph Hardin with the  
 5 attached exhibits.  
 6 DEPOSITION EXHIBIT 103  
 7 WAS MARKED BY THE REPORTER  
 8 FOR IDENTIFICATION  
 9 BY MR. WOLFF:  
 10 Q. Professor Galler, have you seen what's been  
 11 marked as Exhibit 103 before?  
 12 A. Yes.  
 13 Q. Would you look through each one of the  
 14 exhibits and tell me if you recognize the exhibits, I  
 15 should say the tabs.  
 16 A. (Witness complied.) Yes, I think I've seen  
 17 all of these.  
 18 Q. And would that have been before you prepared  
 19 your declaration?  
 20 A. Yes.  
 21 Q. Would it have been part of the package that  
 22 came with Google's --  
 23 A. Yes.  
 24 Q. -- brief? And, I'm sorry, did you say it  
 25 was in color or not?

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1 A. I didn't say, but I think it was not in  
 2 color.  
 3 Q. Okay. And you considered both of these, the  
 4 Exhibit 103 and 102, in the preparation of your report  
 5 or your declaration?  
 6 A. Yes.  
 7 Q. Now, your declaration begins in Exhibit 101  
 8 at Tab 2. I'm going to have you take a look at Tab 2  
 9 on Exhibit 101 and make sure that that is a correct  
 10 copy of the declaration you executed, and let me know  
 11 when you've confirmed that.  
 12 A. I believe this is a copy of my report. The  
 13 one difference is there is a printed line across every  
 14 page that talks about when the document was filed that  
 15 was not part of the report.  
 16 Q. Okay. Are you able to make out the figures  
 17 that are --  
 18 A. Not very well. I know what figures are  
 19 there, but I can't make them out very well from this  
 20 copy.  
 21 Q. From this copy?  
 22 A. From this copy.  
 23 Q. I'll have the reporter mark as Exhibit 104 a  
 24 clean copy, a color copy provided by Mr. Kochanowski of  
 25 your declaration.

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1 A. Thank you.  
 2 Q. I do not believe that it is signed. It's  
 3 not an issue for me if it's not an issue for you.  
 4 MR. KOCHANOWSKI: Assuming we gave  
 5 you --  
 6 MR. WOLFF: Assuming you gave me the  
 7 right copy.  
 8 MR. KOCHANOWSKI: I think there's  
 9 only one copy.  
 10 MR. WOLFF: And would you like to  
 11 make a representation on the record?  
 12 MR. KOCHANOWSKI: Of what?  
 13 MR. WOLFF: Whether this is the same  
 14 as Exhibit 2 other than the stray lines through the  
 15 pages and the clean --  
 16 MR. KOCHANOWSKI: I don't know.  
 17 MR. WOLFF: You don't know?  
 18 MR. KOCHANOWSKI: I don't know -- I  
 19 mean if this is what we sent you, you were complaining  
 20 about not being able to read the figures, so we printed  
 21 off this to show you the figures, and, you know, I have  
 22 to assume it's the right one, looks like the right one,  
 23 but I'm not comparing it line-by-line. Looks like the  
 24 right one. I mean when we served this, we made sure to  
 25 print off a clean copy with -- in color on this from

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1 this same printer, and that was delivered both to Kathy  
 2 Lang or Pahl Zinn and to Howard, to your partner,  
 3 Howard, at the time, so I can't tell you whether this  
 4 is what we just sent you by overnight courier  
 5 or whether this is --  
 6 MR. WOLFF: Well, I'll tell you that  
 7 that is what I received by overnight courier.  
 8 MR. KOCHANOWSKI: That's fine.  
 9 MR. WOLFF: But you're not sure  
 10 whether this is the same?  
 11 MR. KOCHANOWSKI: I'm just saying  
 12 I'm not comparing line-by-line. I don't know, maybe  
 13 you're sneaky guys, maybe it's -- put in a different  
 14 page, I have no idea.  
 15 MR. WOLFF: All right. Could you  
 16 mark that as Exhibit 104? And we'll use this because  
 17 it's readable.  
 18 THE WITNESS: Sure. I will let you  
 19 know if I observe any discrepancies.  
 20 DEPOSITION EXHIBIT 104  
 21 WAS MARKED BY THE REPORTER  
 22 FOR IDENTIFICATION  
 23 MR. KOCHANOWSKI: I mean just for  
 24 the record, we also delivered a court copy of -- you  
 25 know, that was nice and cleanly printed, because I know

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1 how stuff looks when you get it off of the ECF, the  
 2 Pacer system, it doesn't look so hot, so the Court has  
 3 a clean copy, you have a clean copy, we have a clean  
 4 copy, and hopefully that should do it.  
 5 BY MR. WOLFF:  
 6 Q. Is that a better copy, Mr. Galler?  
 7 A. Yes, thank you.  
 8 Q. All right. Well, let's dig into your  
 9 declaration. At Paragraph 4 on Page 3 of  
 10 Exhibit 104 --  
 11 A. Yes.  
 12 Q. -- you state that for purposes of this  
 13 declaration, I believe, that the level of ordinary  
 14 skill in the art is a person with a Bachelor's  
 15 degree --  
 16 A. And where are you on -- okay, about  
 17 one-third of the page, down the page.  
 18 Q. Correct.  
 19 A. Fine.  
 20 Q. It says, "For purposes of this declaration,  
 21 I believe the level of ordinary skill in the art is a  
 22 person with a Bachelor's degree in computer science or  
 23 equivalent experience in the computer programming  
 24 field." Is that what you believe to be a person of  
 25 ordinary skill in the art?

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1 A. Yes. I mean that term, ordinary skill in  
 2 the art, is perhaps a technical legal term, but when I  
 3 was asked what I thought it ought to be, this was my  
 4 response.  
 5 Q. Okay. And would they have an advanced  
 6 degree or not?  
 7 A. Not ordinary skill in the art. This was my  
 8 response.  
 9 Q. So would this be somebody who just came out  
 10 of undergraduate?  
 11 A. I think so.  
 12 Q. Would they have any programming experience?  
 13 A. Well, with a Bachelor's degree in computer  
 14 science, they should have had experience in  
 15 programming.  
 16 Q. And do you think that this is a high level  
 17 of skill in the art or a low level of skill in the art?  
 18 A. Compared to what population?  
 19 Q. Compared to the general population of people  
 20 that work in the field of computer science.  
 21 A. I think it's fairly low.  
 22 Q. Okay.  
 23 A. But ordinary skill.  
 24 Q. And so you -- is it your opinion that the  
 25 person of ordinary skill in the art would have any work

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1 experience?  
 2 A. Well, I say not necessarily if they have a  
 3 Bachelor's degree or they may have had work experience  
 4 equivalent to that. My view of what goes into a  
 5 Bachelor's degree in computer science, you know, is  
 6 based on my years of teaching, and my students would  
 7 have had programming experience, and many of them would  
 8 have had work experience over the summer during their  
 9 education and so on, but I'll stop there.  
 10 Q. All right. So is it your opinion, then,  
 11 that a person working in the field of the technology  
 12 described in the patent, and I'll refer to this as the  
 13 172 patent, the only one at issue in the motion --  
 14 A. Yes.  
 15 Q. -- would have been a newly minted graduate  
 16 right out of university --  
 17 A. I'm sorry, I interrupted you. Ask the  
 18 question again, please.  
 19 Q. Is it your opinion that a person of ordinary  
 20 skill in the art, the person working on the type of  
 21 technology described in the 172 patent, would have been  
 22 a newly minted graduate right out of the university?  
 23 A. Might have been. I know that the Patent  
 24 Office considers their examiners as ordinary skill in  
 25 the art, and I think a person with a Bachelor's degree

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1 in computer science from a reputable university would  
 2 have as good background as those examiners in this  
 3 field.  
 4 Q. Okay. And what does the phrase or  
 5 equivalent experience in the programming field mean?  
 6 A. Well, there are people who don't go to a  
 7 university and get a degree in computer science, they  
 8 might have a degree in something else or maybe no  
 9 degree or a two-year university, whatever, but then  
 10 they, I would assume they've had some work experience  
 11 equivalent to what a person in a computer science  
 12 undergraduate program would have had.  
 13 Q. And how much work experience are you  
 14 referring to?  
 15 A. I don't know that one can quantify it, two,  
 16 three, four years of work in the industry.  
 17 Q. Work in the industry, would it be a  
 18 particular type of work working on client server  
 19 technology, working on software in general?  
 20 A. Well, I say in the computer programming  
 21 field, that's broad enough.  
 22 Q. So they could have been doing anything to  
 23 qualify as a person of ordinary skill in the art?  
 24 A. I think so.  
 25 Q. It wouldn't have to be on user interfaces

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1 or --  
 2 A. Not for ordinary skill. I think certainly  
 3 one can talk about people with a great deal more skill  
 4 than that.  
 5 Q. Uh-huh.  
 6 A. But I'll stick with this definition.  
 7 Q. If you could turn to Tab 4 of Exhibit 101.  
 8 A. If it's okay with you, I'll take the clip  
 9 off.  
 10 Q. That's fine with me. Just make sure we keep  
 11 them back together.  
 12 A. That's right. Okay, Tab 4.  
 13 Q. Have you -- do you recognize the document  
 14 that begins at Tab 4?  
 15 A. I don't think I've seen this.  
 16 Q. Why don't you take a moment and review it.  
 17 This is the declaration of Anup Mathur.  
 18 A. How much of the exhibit do you want me to --  
 19 Q. The whole thing.  
 20 A. The whole thing? Okay.  
 21 Q. And let me know when you're finished,  
 22 please.  
 23 A. Sure. Okay, thank you.  
 24 Q. Do you know who Mr. Mathur is?  
 25 A. No. From reading this, I assume he was

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1 involved in the early developments of NetJumper, but I  
 2 don't know any more than that.  
 3 Q. If I told you he was one of the inventors,  
 4 the named inventors on the patent in suit, would that  
 5 refresh your recollection?  
 6 A. Well, he says I'm one of the named  
 7 inventors.  
 8 Q. Okay. Does Mr. Mathur qualify under your  
 9 definition of a person of ordinary skill in the art?  
 10 A. He has more than the required background, so  
 11 it depends whether you are using that definition as a  
 12 limiting or an enabling.  
 13 Q. All right. Well, how are you using the  
 14 definition?  
 15 A. I would include him.  
 16 Q. As a person of level -- of ordinary skill in  
 17 the art at the time of the invention?  
 18 A. Yes.  
 19 Q. Are you sure?  
 20 A. Well, it depends the use. I mean I believe  
 21 he has much more skill in the art, so if you ask is he  
 22 of ordinary, no, he's not of ordinary, he's much more  
 23 than that. Would I respect his opinion? I probably  
 24 would, but I would not take him down to the level of  
 25 ordinary skill in the art because he has much more

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1 skill than that.  
 2 Q. Okay. And what I'm trying to do is figure  
 3 out whether you used your definition as a minimum  
 4 threshold for a person of ordinary skill in the art or  
 5 whether you were using your definition as the maximum  
 6 threshold for a person of ordinary skill in the art at  
 7 the time of the invention. Can you tell me which?  
 8 A. Well, again, I think I would have to look at  
 9 it in the context of a specific statement that I might  
 10 make, but in general I think I would use it as a  
 11 minimum.  
 12 Q. Okay. So the level of ordinary skill in the  
 13 art could be, in fact, much greater than what you've  
 14 indicated in your --  
 15 A. No, the level of ordinary skill in the art  
 16 is what I said it is. A particular person might have  
 17 more skill than that.  
 18 Q. But you've said that it's a minimum  
 19 threshold?  
 20 A. Yeah.  
 21 Q. So --  
 22 A. So I would say he qualifies as having  
 23 enough, okay.  
 24 Q. But doesn't he also qualify as having too  
 25 much?

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1 A. That depends on the argument you're making.  
 2 How can one have too much skill?  
 3 Q. Well, did you use a different definition of  
 4 a person of ordinary skill in the art at different  
 5 times in your declaration?  
 6 A. I don't think so. When I said in some  
 7 particular instance that a person of ordinary skill in  
 8 the art would know this or would see this or whatever,  
 9 that doesn't rule out his knowing it. It means that a  
 10 person with at least that much experience or education,  
 11 as I outlined it, would understand what I was claiming.  
 12 Q. So when you've used that term, and you have  
 13 throughout your report, correct?  
 14 A. Yes, yes.  
 15 Q. You always used it in terms of the minimum  
 16 threshold?  
 17 A. If we -- I mean sometimes it's possible to  
 18 misconstrue minimum and maximum. I use it in the sense  
 19 that when I said a person of ordinary skill in the art  
 20 would come to this conclusion or that conclusion, I  
 21 meant that a person who had at least that much skill  
 22 and maybe no more but at least that much would come to  
 23 that conclusion. Certainly I imply that a person with  
 24 more skill in the art would agree with that, would also  
 25 come to that conclusion.

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1 Q. So you used it as a minimum?  
 2 A. I don't want to tag it as minimum or maximum  
 3 because that could be misinterpreted. I just explained  
 4 to you how I used it.  
 5 Q. So do you disagree when I suggested you've  
 6 used it as a minimum in your report?  
 7 A. I just told you the sense in which I used  
 8 the definition of ordinary skill in the art. I say I  
 9 think we can disagree on how the word minimum is used,  
 10 and I guess I don't want to answer that question  
 11 because of the possible misinterpretation of the  
 12 definition of minimum.  
 13 Q. All right. Well --  
 14 A. I think my response is clear.  
 15 Q. So are you refusing to answer whether this  
 16 is the minimum level of ordinary skill in the art?  
 17 MR. KOCHANOWSKI: Objection, now  
 18 you're arguing. He's given you the answer. Let me  
 19 object, let me object.  
 20 THE WITNESS: Go ahead.  
 21 MR. KOCHANOWSKI: Objection, now  
 22 you're arguing. He's given you the answer several  
 23 times, and you're sort of past the point of inquiry now  
 24 into argument, and I don't think it's proper.  
 25 MR. WOLFF: I disagree with the

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1 objection.  
 2 BY MR. WOLFF:  
 3 Q. And, again, what I'm trying to understand is  
 4 that if you used it in any other context in your  
 5 declaration, if you used the term a person of ordinary  
 6 skill in the art, if you used it to mean anything more  
 7 than the minimum threshold that's been identified at  
 8 Paragraph 4 of your declaration.  
 9 A. I think I was consistent in my use of it  
 10 throughout, as I explained a moment ago. I do not want  
 11 to characterize how I used it as minimum or maximum. I  
 12 think I was consistent, and I always used it the same  
 13 way, as I explained.  
 14 Q. And you explained that you used it as the  
 15 baseline?  
 16 A. You're trying to use the word base instead  
 17 of minimum.  
 18 Q. Well, let's use the word minimum.  
 19 A. I don't want to use the word minimum. I  
 20 said that in every case where I stated that a person of  
 21 ordinary skill in the art would come to a conclusion, I  
 22 assume that any person with at least the amount of  
 23 education or experience that I stipulated would come to  
 24 that conclusion, and that doesn't rule out a person  
 25 with more skill in the art coming to the same

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1 conclusion, which I expect it would happen. Now, it's  
 2 your term minimum or base or whatever, and I just don't  
 3 think that's an appropriate way to describe it. I've  
 4 told you what my answer is, and I think I'm consistent,  
 5 I claim consistency throughout my report.  
 6 Q. Okay. At Enumeration 6 in Paragraph 4, this  
 7 is towards the bottom of the --  
 8 A. I'm sorry, where are you now?  
 9 Q. I'm at what's been marked with Roman Numeral  
 10 VI at Paragraph 4 of your declaration --  
 11 A. Back to my report? You're going back to  
 12 104?  
 13 MR. KOCHANOWSKI: Roman Numeral VI?  
 14 You mean Number 6?  
 15 MR. WOLFF: I'm sorry, Number 6.  
 16 MR. KOCHANOWSKI: Okay.  
 17 THE WITNESS: Paragraph 6 of my  
 18 report, okay.  
 19 MR. KOCHANOWSKI: I think it's  
 20 Paragraph 4 and that's Subdivision 6.  
 21 MR. WOLFF: Paragraph 4.  
 22 THE WITNESS: Paragraph 4, I'm  
 23 sorry.  
 24 MR. KOCHANOWSKI: Page 3.  
 25 THE WITNESS: Page 3, okay, fine.

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1 Oh, I see, there's a 6 near the bottom of the page,  
 2 okay. What is the question?  
 3 BY MR. WOLFF:  
 4 Q. Were there any elements in the Claims 1  
 5 through 8 of the 172 patent that were shown in the  
 6 CyberPilot prior art?  
 7 A. I can't think of any right now. If we want  
 8 to go through it and look at them, we can do that, but  
 9 I can't think of any right now.  
 10 Q. I'm just wondering why you used the word  
 11 many instead of all,.  
 12 A. All is harder to defend than many, so it's  
 13 easier to say many and that's enough.  
 14 Q. So there could be some elements, claim  
 15 elements that are found in the CyberPilot --  
 16 A. Possible, I can't think of any right now.  
 17 Q. Okay. And when you say not present in a  
 18 single alleged reference, what are you referring to  
 19 when you say single alleged?  
 20 A. Well, the single alleged reference is  
 21 CyberPilot, that was the only prior art that I believe  
 22 was really offered for invalidity.  
 23 Q. And what do you consider to be that  
 24 CyberPilot reference? Is it the tutorial and the  
 25 software or is it just the software or just the

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1 tutorial?  
 2 A. I think the software.  
 3 Q. Did you look at the tutorial?  
 4 A. I looked at it, but my view of prior art  
 5 would be that the art is there. I guess maybe if  
 6 something is stated in a tutorial, I guess it could be  
 7 considered, but it surely has to be consistent and  
 8 backed up by the software, so I would guess in my  
 9 interpretation, unless somebody tells me otherwise,  
 10 it's the software that is the prior art.  
 11 Q. So did you consider whether the tutorial was  
 12 also prior art in your declaration?  
 13 A. I believe that I did not. I believe that I  
 14 only looked at the software as the claimed prior art.  
 15 Q. Okay. And when you considered the software  
 16 as the claimed prior art, did you consider CyberPilot  
 17 with the Netscape Navigator as prior art or without the  
 18 Netscape Navigator as prior art?  
 19 A. Without any browser necessarily. The  
 20 CyberPilot -- well, it uses a browser in carrying out  
 21 its function, but I believe that the -- well, I guess  
 22 you have to look at the whole thing. CyberPilot plus  
 23 the browser that it's using is what is claimed as the  
 24 prior art, so I guess I would consider both of them  
 25 together.

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1 Q. And so -- and that's what you did in your  
 2 report, you considered CyberPilot working with the  
 3 Netscape Navigator as prior art?  
 4 A. Actually, I think in the -- in my report it  
 5 wasn't Netscape, it was Internet Explorer, I mean IE.  
 6 Q. And let's -- since you raised it, that's a  
 7 good point. Why did you use Internet Explorer as the  
 8 web browser in your consideration of the CyberPilot  
 9 prior art?  
 10 A. I received the software on a DVD or  
 11 whatever, and I tried to install it on my Mac. It runs  
 12 in Windows, and I do have Virtual PC, and I run Windows  
 13 XP on it. And I got through part of the installation,  
 14 I installed CyberPilot, as I recall, but I was having  
 15 trouble installing Netscape 2.0, which was the Netscape  
 16 of that time at issue here. And about that time Mr.  
 17 Kochanowski suggested that I could see the CyberPilot  
 18 in action if I just came to his office, so I gave up  
 19 installing it on my computer and I went to his office.  
 20 And they happened to have had it installed with IE  
 21 rather than Netscape, and I considered that equivalent  
 22 in terms of the behavior of CyberPilot, that is, its  
 23 use of the browser would have been the same no matter  
 24 what browser was used because the uses it made of the  
 25 browser functionality would have been the same, and so

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1 I was not bothered by using IE instead of Netscape.  
 2 Q. So they would be equivalent for purposes of  
 3 your analysis?  
 4 A. That's right.  
 5 Q. When you said you installed it on your PC,  
 6 the CyberPilot software, how far did you get? Did you  
 7 actually get it to work or not?  
 8 A. No, no, I didn't even try it, because I  
 9 assumed that it needed the browser. When I couldn't  
 10 get the browser in there, as I say, about that time,  
 11 rather than fight with it, I found an easier way to see  
 12 it work by going to their office, and so I did, and I  
 13 gave up any attempt to get it working on my machine, I  
 14 didn't try to execute it at all.  
 15 Q. Did you unpack all of the files that were on  
 16 the DVD you received?  
 17 A. I don't recall now. I went through an  
 18 installation process for CyberPilot in Windows XP. I  
 19 got to some point, and, as I say, I stopped and I -- so  
 20 I really had no experience with CyberPilot at all on my  
 21 machine at home, and I went to see the demonstration  
 22 and tried it and used it, and that was sufficient for  
 23 me.  
 24 Q. All right. The figures that occur  
 25 throughout your report, those were provided to you by

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1 Mr. Kochanowski?  
 2 A. Yes.  
 3 Q. Did you work with Mr. Hamameh at all?  
 4 A. Not at that time.  
 5 Q. But you have since then?  
 6 A. Since then, yes.  
 7 Q. Since the time of your report?  
 8 A. Yes.  
 9 Q. Is that -- when you say since that time --  
 10 A. I'm sorry, you're right, since the time of  
 11 my report. I mean I was thinking of -- I had two  
 12 visits. On the first visit where we did the CyberPilot  
 13 he was not there, I had not yet met him.  
 14 Q. Okay. And you went through at this later  
 15 time all of the steps that are shown in Paragraphs 5  
 16 through --  
 17 A. Now I have to ask you at this later time,  
 18 what do you mean by that?  
 19 Q. At the time you went to inspect it, the  
 20 software at Mr. Kochanowski's office.  
 21 A. Yes, we went through all of the examples and  
 22 lingos.  
 23 Q. So let's turn to Paragraph 13 in your  
 24 declaration.  
 25 A. Okay.

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1 Q. And if you could, take a look at the figure  
 2 that's on Page 9. What exactly are these arrows, the  
 3 blue arrows and the green arrows? Take them one at a  
 4 time, pointing to in the figure on Page 9.  
 5 A. Well, the blue arrow is identifying, as it  
 6 says, browser frame, it's the part of the displayed  
 7 window that is independent of the application, and the  
 8 green or yellow arrow is pointing to the part that is  
 9 presented by the application and is called the web page  
 10 display area or in the context of this patent the  
 11 search window.  
 12 Q. And what do you mean by the term application  
 13 in your answer?  
 14 A. Well, that which is carrying out the  
 15 function which the user wants separate from the  
 16 functions provided by the browser of display and of all  
 17 the icons at the top and so on.  
 18 Q. So you view the arrow that's in green here  
 19 that says Web Page Display Area, that's a separate  
 20 application than the things that are arrows in blue  
 21 that are pointing to the browser frame?  
 22 A. Well, you said do I view the arrow as a  
 23 separate application?  
 24 Q. Do you view what the arrow is pointing to --  
 25 A. What the arrow is pointing to --

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1 Q. -- as a separate application?  
 2 A. -- is a window, a subwindow which is  
 3 separate from that which the blue arrow is pointing to,  
 4 yes.  
 5 Q. Do you mean the green arrow or the blue  
 6 arrow?  
 7 A. On this printout it looks blue. Okay, let's  
 8 identify them, there are blue arrows, two of them, and  
 9 we can call it a green arrow, okay.  
 10 Q. And does the browser frame go beyond where  
 11 you've marked with your blue arrows?  
 12 A. Well, it depends how you interpret what the  
 13 blue arrows are pointing to.  
 14 MR. KOCHANOWSKI: Object to the form  
 15 of the question. I don't know what beyond means.  
 16 BY MR. WOLFF:  
 17 Q. All right. Why don't you take a red pen and  
 18 mark for me with -- circle it or put a box around what  
 19 you think is the browser frame.  
 20 A. It's a little hard to see, I mean it's very  
 21 small. Let's see. I'm trying to read where it says is  
 22 that getting started -- it's hard to read the words  
 23 there.  
 24 Q. Well, you were able to read this before you  
 25 signed your declaration, right?

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1 A. Well, yes, but I wasn't asked to draw a line  
 2 exactly where it is. There's a part -- if I open up a  
 3 browser by itself, okay, some of this will be there and  
 4 some of it won't, and that's the distinction I make.  
 5 If I haven't begun a search or run any application,  
 6 some of this will be there, and, for example, the top  
 7 line will be there.  
 8 Q. What is the top line?  
 9 A. I mean the top blue line will have something  
 10 there from the --  
 11 Q. What is the top blue line? Could you  
 12 identify the text in it for me?  
 13 A. It's a stream of text, I guess, presented  
 14 by -- perhaps by an application to be shown by the  
 15 browser.  
 16 Q. Could you read what the actual text is?  
 17 A. Yahoo search results for Google Mozilla  
 18 Firefox. The next line, which says file, edit, view,  
 19 et cetera, is a browser line, not part of the  
 20 application. The next line is also I would consider  
 21 part of the browser, and it's the next line that's hard  
 22 to read, getting started -- I can't make out that next  
 23 word.  
 24 Q. How about if you just circle with the pen  
 25 the browser frame, make a box around the browser frame



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1 in this figure for me so I know what it is you're  
 2 referring to when you're using this term.  
 3 A. (Witness complied.)  
 4 Q. Okay.  
 5 A. They're not visible, may be a line along the  
 6 left side.  
 7 Q. So what you've done is you've drawn kind of  
 8 a backwards C, a little box around what you say is the  
 9 browser frame?  
 10 A. Uh-huh.  
 11 Q. Is that what you view to be a browser window  
 12 in the context of your report?  
 13 A. No, the browser window would be the entire  
 14 thing, the entire window that's shown.  
 15 Q. So the whole graphics area that's shown  
 16 here, the full, you know, bounded by the four corners  
 17 of the edge of the color is what you say is the browser  
 18 window?  
 19 MR. KOCHANOWSKI: I'm going to  
 20 object for this reason.  
 21 MR. WOLFF: State your objection  
 22 concisely, please.  
 23 MR. KOCHANOWSKI: I'm going to --  
 24 MR. WOLFF: Object to form.  
 25 MR. KOCHANOWSKI: Don't instruct me.

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1 I think --  
 2 MR. WOLFF: I prefer you not  
 3 instruct the witness.  
 4 MR. KOCHANOWSKI: I'm not  
 5 instructing the witness on anything. I'm asking -- I'm  
 6 going to state an objection this way. If you're asking  
 7 what he means by browser window, I don't believe that  
 8 the report purports to have him define it. It defines  
 9 the word search window and disagrees with you on your  
 10 construction. So I don't know what you mean by browser  
 11 window, whether you mean what the patent says it means  
 12 or what you think it means, and that's why I'm  
 13 objecting, because now we're going to start getting  
 14 into your semantics, so why don't you be precise with  
 15 your questions instead of doing the, you know, what  
 16 you've been doing, and that is my objection, and it's  
 17 going to be my objection for the rest of this  
 18 deposition. Ask him what he means by his report,  
 19 terrific. Ask him to interpret what you mean is  
 20 imprecise, incorrect, unfair, and I'm going to object  
 21 to it every single time.  
 22 MR. WOLFF: Counsel, I'd appreciate  
 23 it if you'd just concisely state your objection to form  
 24 and not give long speaking coaching objections to the  
 25 witness.

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1 MR. KOCHANOWSKI: I'll try to make  
 2 you happy, but I can't guarantee I will in every  
 3 instance.  
 4 BY MR. WOLFF:  
 5 Q. So what do you understand the term browser  
 6 window to mean?  
 7 MR. KOCHANOWSKI: Same objection.  
 8 BY MR. WOLFF:  
 9 Q. Professor Galler?  
 10 A. I'm trying to respond in terms of the  
 11 definitions of the patent.  
 12 Q. Uh-huh.  
 13 A. Now, maybe that's not what you're asking.  
 14 Q. That is what I'm asking, and based on  
 15 your -- I assume that your report is based on the  
 16 patent.  
 17 A. Yes.  
 18 Q. And so when you've used the term browser  
 19 window in your report, you're using it in terms of the  
 20 way the patent used it?  
 21 A. Yes.  
 22 Q. And --  
 23 A. At least I tried to, yes.  
 24 Q. And is that what your understanding of what  
 25 the term browser window means?

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1 A. I don't -- I normally don't use the word  
 2 browser window, okay; therefore, I'm using it as I  
 3 believe it was intended in the patent, Number 400 in  
 4 their figures. So the browser window, if we're looking  
 5 at Page 9, I believe, would be the entire picture  
 6 without the arrows, the blue and green arrow. That is  
 7 what I believe the patent identified as Number 400.  
 8 Q. Okay. Now, with the blue pen, could you  
 9 draw a circle around what you say is the browser window  
 10 so I understand.  
 11 MR. KOCHANOWSKI: Same objection.  
 12 THE WITNESS: (Witness complied.)  
 13 BY MR. WOLFF:  
 14 Q. Okay. I see on this Page 9 you've drawn a  
 15 blue line around the entire picture that's shown there.  
 16 A. Yes.  
 17 Q. Is there a reason that when the -- when  
 18 these images were taken the browser application was  
 19 maximized?  
 20 A. Well, first of all, I didn't take these  
 21 pictures, so you're asking me intent on the person who  
 22 did it, and I don't know.  
 23 Q. So you didn't ask why they were maximized?  
 24 A. No.  
 25 Q. And would it make any difference in your

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1 analysis whether the application was maximized or only  
2 a partial screen?  
3 A. No. I'm looking at the function here.  
4 There is a search window and there is what the patent  
5 calls a browser window or browser interface, whatever.  
6 Those terms became very fuzzy at times, and I relied  
7 primarily on the 400 and the 406, the distinction, and,  
8 to me, that has nothing to do with whether something is  
9 maximized or not or whatever. I looked at this  
10 diagram, I looked at the screen.  
11 Q. Okay, and what do you mean when you say that  
12 the terms became fuzzy at times?  
13 A. Well, I mean certainly there are all kinds  
14 of uses of browser interface, browser window, browser  
15 this, browser that, search this, and so on. Not  
16 everybody was totally consistent every time in things I  
17 read. What was consistent was -- were the distinctions  
18 between Window 400 and Window 406 and how they were  
19 used and so on, and that's the way I'm using it.  
20 Q. Okay, and so when you refer to browser  
21 window in your report or your declaration, you're  
22 referring to Element 400?  
23 A. I believe I'm consistent with that, yes.  
24 Q. And when you refer to element or to --  
25 excuse me, strike that. When you refer to the term

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1 search window in your report -- strike that. When you  
2 refer to the term search window in your declaration,  
3 you're referring to Element 406?  
4 A. Well, when I'm referring to the patent.  
5 Now, when you get to CyberPilot where it gets almost  
6 impossible to know what is intended to be the search  
7 window, then there is no 406.  
8 Q. All right. I move to strike your response.  
9 My question is what do you consider -- do you in your  
10 declaration when you used the term search window, is it  
11 Element 406 as shown in Figure 5(a) of the patent?  
12 A. I don't want to be argumentative, but you  
13 struck my response and CyberPilot -- consideration --  
14 Q. I'm not asking about CyberPilot --  
15 A. I know you're not asking about it, but you  
16 said in my report when I use it, and I use the term  
17 search window in discussing CyberPilot. So maybe  
18 that's not what you intended, but that's what you  
19 asked.  
20 Q. We will ask about CyberPilot, but what I  
21 want to know is when you've done your -- when you've  
22 defined this term search window, what portion of the  
23 browser window did you intend it to be?  
24 A. And you're asking not about CyberPilot but  
25 about --

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1 Q. I'm asking about the patent and your  
2 understanding of what the term means as used in the  
3 claims.  
4 A. Okay. As used in the patent and the claims,  
5 search window referred to what they had labeled as 406,  
6 yes.  
7 Q. Why don't we mark as Exhibit 105 -- this a  
8 single printout from the patent.  
9 A. You know, I'm very sorry but I won't  
10 explain, but I'd like to take another break, very short  
11 break.  
12 MR. WOLFF: Okay.  
13 THE VIDEOGRAPHER: Going off the  
14 record at 11:18 a.m.  
15 DEPOSITION EXHIBIT 105  
16 WAS MARKED BY THE REPORTER  
17 FOR IDENTIFICATION  
18 THE VIDEOGRAPHER: We are going back  
19 on the record at 11:23 a.m.  
20 BY MR. WOLFF:  
21 Q. Professor Galler, when you took your break,  
22 did you review any of the notes you brought with you  
23 today?  
24 A. No.  
25 Q. Did you talk about your previous testimony

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1 with your counsel?  
2 A. Yes. I asked him if it was going okay, and  
3 he said yes.  
4 Q. Okay. Do you recognize what's been marked  
5 as Exhibit 105?  
6 A. Yes.  
7 Q. And could you tell me what it is?  
8 A. Well, it's a figure from the patent.  
9 Q. Okay. And in the context of this figure,  
10 could you mark for me with the pen you've been provided  
11 in red what the browser window is, and here you can  
12 just label the text or numeral, if that's easier.  
13 MR. KOCHANOWSKI: Objection, browser  
14 window as what?  
15 THE WITNESS: Well, again, the terms  
16 browser window, browser interface, et cetera, have  
17 been, as I said, muddled. There is a 400 here, and I  
18 believe that's what is referred to as the browser  
19 window in the patent, but if there's ever a difference  
20 between them, it's the 400 that's relevant and not what  
21 the name is that's given to it.  
22 BY MR. WOLFF:  
23 Q. So the words don't matter, the numbers do?  
24 A. Well, everything matters, but if there's a  
25 conflict, the number is what I would take as

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1 determinant.  
2 Q. Okay. Well, in light of what you marked on  
3 Page 9 of Exhibit 104, what would be the equivalent  
4 browser window in Figure 5(a)?  
5 A. I think, well, it's Number 400.  
6 Q. Okay. Could you write browser window next  
7 to 400, please?  
8 MR. KOCHANOWSKI: I'm going to  
9 object. He's given testimony. He's not here to give  
10 you writing lessons. I object continuously, and I will  
11 continue to object to the term browser window as you  
12 are defining it. If you're asking him to agree with  
13 you about your use of browser window, and that's what  
14 this argument's about, he's given his report. If you  
15 want to talk about particular structures, ask him to  
16 tell you about the structures. But this record, I'm  
17 not going to let this little snippets of stuff when you  
18 ask him browser window and get some answer and you ask  
19 him browser window, so it's going to be a continuous  
20 objection, that's all it's going to be.  
21 MR. WOLFF: I'll give you a standing  
22 objection.  
23 MR. KOCHANOWSKI: No, no, I'm going  
24 to keep -- I'm going to make sure it's on the record  
25 every single time.

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1 MR. WOLFF: If you would like, Mr.  
2 Kochanowski, we can call the Court and see if we can  
3 get a protective order.  
4 MR. KOCHANOWSKI: Go ahead.  
5 MR. WOLFF: To get a clear statement  
6 of what it is. Let's take a break.  
7 MR. KOCHANOWSKI: Call him right  
8 now, and you explain to him that you are using the term  
9 you want defined imprecisely in every question, and I'm  
10 objecting to every single question.  
11 MR. WOLFF: Well, let me see if  
12 Pahl's available.  
13 MR. KOCHANOWSKI: Sure.  
14 THE VIDEOGRAPHER: We're going off  
15 the record at 11:26 a.m.  
16 (A short recess was taken)  
17 THE VIDEOGRAPHER: We are going back  
18 on the record at 11:30 a.m.  
19 MR. ZINN: Just for the record, L.  
20 Pahl Zinn, P-a-h-l Z-i-n-n, for Defendant Google,  
21 co-counsel with Mr. Wolff.  
22 BY MR. WOLFF:  
23 Q. Professor Galler, before the break we had  
24 somewhat of an issue with the questions and the  
25 objections, so what I'm going to try to do is ask the

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1 question in a way that it can avoid the objection from  
2 Mr. Kochanowski and make sure that you understand what  
3 it is the question that is being asked.  
4 A. Thank you.  
5 Q. So what I've asked you to do with regard to  
6 Exhibit 105 is identify to me the browser window as you  
7 understand the term as it is used in the patent on  
8 Exhibit 105.  
9 MR. KOCHANOWSKI: And same objection  
10 as before. Are you meaning the way it's used in the  
11 spec, the way it's used in the claims, the way you used  
12 it? There are at least three different ways one can  
13 interpret that question. That's my objection.  
14 MR. WOLFF: I'll give you that  
15 standing objection. So is it your suggestion that this  
16 term means different things in light of all these?  
17 MR. KOCHANOWSKI: Not my suggestion  
18 at all. I'm asking what you mean by the term. Tell  
19 the witness what you mean.  
20 MR. WOLFF: I asked the witness what  
21 he means by the term, and what you understand, Mr.  
22 Galler, I want you to identify for me on Exhibit 105  
23 what the term browser window is referring to as you  
24 understand the patent.  
25 MR. KOCHANOWSKI: And I am posing

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1 the same objection, because you're not pointing him to  
2 any particular claim. Your motion is based on a claim,  
3 on Claims 1 through 8. You're not pointing him to  
4 those claims.  
5 MR. WOLFF: All right.  
6 MR. KOCHANOWSKI: I'm asking  
7 because, you know, it's going to be the same objection.  
8 MR. ZINN: Could we go off the  
9 record for a second?  
10 MR. KOCHANOWSKI: Same exact  
11 objection, and we can call the Court right now if you'd  
12 like. I don't want this deposition to turn into a  
13 snippet.  
14 MR. ZINN: Can we go off the record  
15 for a second?  
16 MR. KOCHANOWSKI: No, I don't want  
17 to be off the record, I want to be on the record.  
18 MR. ZINN: Well, I want to consult  
19 with co-counsel. Thank you very much, Mr. Kochanowski.  
20 So we'll go off the record.  
21 THE VIDEOGRAPHER: We're going off  
22 the record at 11:32 a.m.  
23 (An off the record  
24 discussion was held)  
25 THE VIDEOGRAPHER: We are going back

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1 on the record at 11:33 a.m.  
2 MR. WOLFF: Could I have the  
3 reporter read back the previous question.  
4 (Record repeated as requested).  
5 BY MR. WOLFF:  
6 Q. And I'm going to try the question one more  
7 time. Professor Galler, could you please identify for  
8 me what the term browser window means in view of your  
9 analysis of Claims 1 through 8 of the patent.  
10 MR. KOCHANOWSKI: Same objection.  
11 Those claims do not contain that term.  
12 THE WITNESS: Let's look at Claims 1  
13 through 8, if you will. Could we get a copy of the  
14 patent now and look at them?  
15 BY MR. WOLFF:  
16 Q. You can't do this without looking at the  
17 claims?  
18 A. Well, I'd like to see how the term is used  
19 there. As far as I know, in the patent, as I said  
20 before, the words have gotten muddled, but it is very  
21 clear when they are referring to Number 400, and I want  
22 to see what the claims say.  
23 Q. Okay. We'll mark as Exhibit 106 a copy of  
24 U.S. Patent Number 5890172. You want another copy of  
25 that?

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1 MR. KOCHANOWSKI: Sure.  
2 DEPOSITION EXHIBIT 106  
3 WAS MARKED BY THE REPORTER  
4 FOR IDENTIFICATION  
5 MR. WOLFF: Could the reporter  
6 please read back the question.  
7 (Record repeated as requested)  
8 THE WITNESS: Well, in fact, the  
9 term browser window does not occur in Claims 1 through  
10 8 as far as I can tell by reading them, it talks about  
11 a search window, so I can talk to you about a search  
12 window if you'd like.  
13 BY MR. WOLFF:  
14 Q. But you won't answer me or you won't talk to  
15 me about the term browser window?  
16 A. Well, you said with respect to Claims 1  
17 through 8.  
18 Q. I said with respect to your analysis of  
19 Claims 1 through 8.  
20 A. There is a search window, right, and there  
21 is a window that the patent calls 400.  
22 Q. And --  
23 A. Okay.  
24 Q. -- what is that window that the patent calls  
25 400, is that the browser window?

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1 A. Well, it's 400.  
2 Q. Is it the browser window or no?  
3 A. Look, I told you that the terms have gotten  
4 muddled and different people call them different  
5 things. The Patent Examiner I think called it  
6 something else, whatever. If we want to call it 400  
7 and always refer to it, then we know what we're talking  
8 about. To attach specific labels which later can be  
9 muddled up again I think is not fruitful.  
10 Q. Okay. I will have you turn in Exhibit 30 to  
11 Page G 286.  
12 A. Oh, here, okay. 286?  
13 Q. Yes, and please tell me when you're there.  
14 A. Got you. All right.  
15 Q. Have you reviewed the notice of allowability  
16 that's contained on Pages G 285 through G 287?  
17 A. Yes.  
18 Q. Have you considered this in your report or  
19 in your declaration?  
20 A. Not specifically, but it was one of the  
21 things I looked at.  
22 Q. Okay. If you could, read on Page G 286 the  
23 Examiner's statement of reasons for allowance to  
24 yourself, and let me know when you're finished.  
25 A. Okay.

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1 Q. All right. The second paragraph beginning  
2 as shown in Figure 5(a), what is your understanding in  
3 your analysis of Claims 1 through 8 what the Patent  
4 Examiner's referring to when he refers to the browser  
5 window as Item 400?  
6 A. He's referring to 400.  
7 Q. Is he referring to the claims that he  
8 allowed in the patent in his notice -- his reasons for  
9 allowance?  
10 A. He's referring to 400, he's allowing the  
11 patent, okay, I mean if you -- as shown in this figure,  
12 et cetera, et cetera, and he refers to Item 300 and he  
13 refers to Item 400, okay.  
14 Q. So on Exhibit 105 what -- can you label for  
15 me what your understanding and your analysis of Claims  
16 1 through 8 the Examiner's referring to by Item 400?  
17 MR. KOCHANOWSKI: Objection. The  
18 Examiner's understanding was not at issue in Dr.  
19 Galler's declaration or in Mr. Hardin's, as I recall.  
20 That asks for speculation.  
21 THE WITNESS: I interpret this as  
22 the Examiner's attempt to communicate to the patentees  
23 by mentioning 400, and in their patent the 400 is the  
24 entire window.  
25 BY MR. WOLFF:

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1 Q. The browser window?  
 2 A. The entire window that's shown.  
 3 Q. And what window --  
 4 A. I don't know if they call it a browser  
 5 window, and I don't want to get pinned down to any  
 6 particular names. It's 400. We all know what 400  
 7 means.  
 8 Q. And where is the term 400 in the claims?  
 9 A. It's in the specification, right?  
 10 Q. But in the claims, we need to pin it down  
 11 because these are claims in a patent, and so what I'm  
 12 trying to understand is what -- how you understood the  
 13 Examiner's reasons for allowance. If you -- do you  
 14 think he was mistaken?  
 15 A. He may have been mistaken, I don't know, but  
 16 he referred to 400, and I would assume, as I said  
 17 before, if there's any conflict or tension between the  
 18 number and the words, I'd use the number.  
 19 Q. And the Examiner used it, the Number 400?  
 20 A. Right.  
 21 Q. And so you think that what has been  
 22 identified as Item 400 controls in the Examiner's  
 23 understanding of what the claim is?  
 24 A. I think so.  
 25 Q. And you agree with the Examiner's opinion?

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1 MR. KOCHANOWSKI: Objection.  
 2 BY MR. WOLFF:  
 3 Q. I'm sorry. Strike that. You agree with the  
 4 Examiner's conclusion?  
 5 MR. KOCHANOWSKI: Objection. Why  
 6 don't you ask a predicate question.  
 7 THE WITNESS: I don't know if --  
 8 what's to agree with? He issued the patent.  
 9 BY MR. WOLFF:  
 10 Q. But isn't he referring to Claims 1, 7, 13,  
 11 18, 23, and 25 in his reasons for allowance?  
 12 A. Would you ask that again.  
 13 Q. Well, isn't he referring to the independent  
 14 claims cited in his reasons for allowance and using  
 15 this as his understanding of what these claims mean?  
 16 MR. KOCHANOWSKI: Objection, calls  
 17 for speculation.  
 18 THE WITNESS: Yeah, I don't think I  
 19 want to interpret what the Examiner said. He said what  
 20 he said.  
 21 BY MR. WOLFF:  
 22 Q. Do you have an opinion on what the Examiner  
 23 said?  
 24 A. No, I don't think I have an opinion, he  
 25 allowed the patent, and I assume that the inventors

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1 convinced him of what they had in mind and that it was  
 2 okay to issue the patent. I don't have any opinion on  
 3 that.  
 4 Q. Do you have an opinion on the Examiner's  
 5 statement of reasons for allowance on Page 286?  
 6 MR. KOCHANOWSKI: Asked and  
 7 answered.  
 8 THE WITNESS: I don't think I have  
 9 an opinion.  
 10 BY MR. WOLFF:  
 11 Q. You don't think you have an opinion or you  
 12 don't have an opinion?  
 13 A. I don't have an opinion -- I have an  
 14 opinion -- well, the opinion I have is that it was his  
 15 job to issue the allowance and give his reasons.  
 16 Q. But I want to know if you have an opinion on  
 17 the Examiner's reasons for allowance. Did you use this  
 18 in your analysis of Claims 1 through 8 when you came to  
 19 your conclusions on both infringement and invalidity?  
 20 A. I don't think I used what he said in my  
 21 opinion.  
 22 Q. And do you have any opinion of what the  
 23 Examiner said? Do you agree with it?  
 24 A. Well, that would be certainly on the border  
 25 of being a legal opinion, and I don't give legal

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1 opinions.  
 2 Q. Without it being a legal opinion as --  
 3 reviewing as a person of ordinary skill in the art  
 4 would have reviewed this at the time, do you have an  
 5 opinion as to what the Examiner's statement of reasons  
 6 for allowance meant?  
 7 MR. KOCHANOWSKI: Objection, assumes  
 8 a duty of a person of ordinary skill in the art to read  
 9 and know the reasons for allowance. We know of no such  
 10 duty.  
 11 THE WITNESS: I find no reason to  
 12 disagree with him, let's put it that way.  
 13 BY MR. WOLFF:  
 14 Q. But earlier you indicated that he may have  
 15 been mistaken in his reasons for allowance.  
 16 A. No, not in his reasons. He may -- I think  
 17 there was a question as to whether Item 400 is  
 18 appropriately called a browser window, and I said to  
 19 the extent that there may be tension between the Number  
 20 400 and the term browser window, I would go with the  
 21 400 in reading this, because I in reading the whole  
 22 case history here, I find that people are using the  
 23 words differently in different places, and I will go  
 24 with the number, that's what I said.  
 25 Q. So are you saying that the terms were

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1 intermixed throughout the prosecution history?  
 2 A. No, I'm not saying anything about  
 3 intermixed. I said they've become fuzzy.  
 4 Q. Are they clear?  
 5 A. Pardon?  
 6 Q. Are they clear? Were consistent definitions  
 7 used for --  
 8 A. I'm not sure they were. I think -- and I  
 9 cannot point you to any right now necessarily, but I  
 10 think there was some question about some of the terms  
 11 used, and I certainly know that there's a confusion  
 12 between browser and window and search window throughout  
 13 this case as a basic issue here. I prefer to interpret  
 14 the patent in terms of the numbers given, and that's  
 15 it.  
 16 Q. Okay. So in light of the numbers given and  
 17 on Exhibit 105 can you identify for me where the first  
 18 and second icons must be to fall within the scope of  
 19 Claims 1 through 8?  
 20 MR. KOCHANOWSKI: Objection, that's  
 21 a completely unintelligible question.  
 22 BY MR. WOLFF:  
 23 Q. Can you answer the question, Professor  
 24 Galler?  
 25 A. I think I'm going to have to go back and

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1 look at the patent, but maybe you should repeat the  
 2 question.  
 3 MR. WOLFF: Could you read back the  
 4 question.  
 5 (Record repeated as requested).  
 6 BY MR. WOLFF:  
 7 Q. Let me try that question again. In light of  
 8 the Examiner's reasons for allowance on Page G 286 of  
 9 Exhibit 30, could you please identify for me on  
 10 Exhibit 105 where the first and second icons in Claims  
 11 1 through 8 can be?  
 12 MR. KOCHANOWSKI: Objection, same  
 13 unintelligible question. I'd also pose an objection  
 14 that Dr. Galler did not consider the Examiner's  
 15 opinion, and you're asking for more speculation.  
 16 BY MR. WOLFF:  
 17 Q. Can you answer the question, Professor  
 18 Galler?  
 19 A. I'm not sure I can answer it. You're saying  
 20 in the light of his -- of the Examiner's analysis.  
 21 Q. Reasons for allowance on Page G 286.  
 22 A. I did not really take those into account,  
 23 and I really would prefer not to interpret them. I  
 24 will do what you -- I will try to do what you're  
 25 asking. Maybe you could rephrase the question without

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1 referring to the Examiner's statement.  
 2 Q. So you've offered no opinion or no  
 3 analysis -- you did not consider the Examiner's reasons  
 4 for analysis of allowance in your declaration, is that  
 5 correct?  
 6 A. That's correct. They -- well, everything I  
 7 read was part of my background and analysis, right. I  
 8 did not explicitly refer to his analysis in my report.  
 9 Q. I understand that, but what I want to know  
 10 is if it weighed at all in the analysis in your report,  
 11 not whether you explicitly referenced it in your  
 12 analysis.  
 13 A. It did not weigh in my report.  
 14 Q. At all?  
 15 A. That I can recall. I mean --  
 16 Q. Well, that's equivocal.  
 17 A. Well, it's equivocal. We can't always know  
 18 psychologically what in the past that we've experienced  
 19 or read may have influenced a specific behavior at a  
 20 later time.  
 21 Q. All right. So beyond the psychological  
 22 things that you've suggested here, looking at the  
 23 reasons for allowance on Page G 286, now, do you have  
 24 any opinion on the Examiner's reasons for allowance?  
 25 A. I said I do not have an opinion.

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1 Q. Okay. And is it also your testimony that  
 2 the written description or the specification of what's  
 3 been marked as Exhibit G -- I'm sorry, strike that. Is  
 4 it also your testimony that the term browser window is  
 5 used inconsistently in the patent?  
 6 MR. KOCHANOWSKI: Objection, asked  
 7 and answered, the patent speaks for itself.  
 8 THE WITNESS: I do not recall that  
 9 it's used inconsistently in the patent. I think it's  
 10 used inconsistently in all of the -- many of the  
 11 documents -- in some of the documents that I've read  
 12 about the patent. I can't point you to any now, but I  
 13 remember coming across one or more inconsistencies, but  
 14 not in the patent, as I recall.  
 15 BY MR. WOLFF:  
 16 Q. Okay. And on Exhibit 105 are you able to  
 17 identify for me where the first and second icons may be  
 18 displayed in light of the Examiner's reasons for  
 19 allowance?  
 20 MR. KOCHANOWSKI: Objection, asked  
 21 and answered.  
 22 THE WITNESS: If you will remove the  
 23 reference to the Examiner's allowance, I can try to  
 24 relate that to the patent, but not in terms of what the  
 25 patent -- the Examiner might have thought at the time

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1 he wrote the allowance. I did not interpret his  
 2 statement, and I don't think he's explicit, either,  
 3 there in his allowance.  
 4 BY MR. WOLFF:  
 5 Q. What do you mean he's not explicit?  
 6 A. Well, let me look again at that Page 286, if  
 7 I remember right.  
 8 Well, I don't think the Examiner  
 9 spells out in any sense what are the first and second  
 10 icons, so I'm not about to help him in this regard.  
 11 Q. Well, doesn't the Examiner refer to the  
 12 language displaying a first and second icon separate  
 13 from the search window on said display screen?  
 14 A. Well, certainly not with respect to Figure  
 15 5(a). Oh, okay, he does say the first and second icons  
 16 are provided separate in 300 from the browser window  
 17 400, all right, so he says that, fine.  
 18 Q. Well, on Exhibit 105 would you identify for  
 19 me where these first and second icons can be placed?  
 20 A. Now, let me refer to the description in the  
 21 patent as to where they intended them to be.  
 22 Q. Okay. And you're looking at Exhibit 106?  
 23 A. Yes, Columns 7 and 8 I think are the  
 24 relevant columns.  
 25 Q. Mr. Galler --

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1 A. Yes.  
 2 Q. -- weren't you looking in the patent  
 3 specification for the term browser window?  
 4 A. No, no, no. There was a reference in the  
 5 specification to Figure 5(B), and I wanted to see what  
 6 Figure 5(B) was. You only gave me 5(a) to look at so  
 7 far.  
 8 Q. Well, I gave you the whole patent.  
 9 A. That's why I was looking.  
 10 Q. Exhibit 30 as well.  
 11 A. I was looking in the patent. I mean you  
 12 asked me to answer the question specifically with  
 13 respect to Exhibit 105.  
 14 Q. Right.  
 15 A. That's 5(a).  
 16 Q. Because that's the one that the Examiner  
 17 referred to in G 286.  
 18 A. Right, but in the specification there's a  
 19 reference to 5(b) and 5(c), and I wanted to see to  
 20 understand those.  
 21 Q. Okay. And can you answer the question now?  
 22 A. Not yet. Okay, you asked me for the first  
 23 and second icons in -- as they would show up in this  
 24 example of Exhibit 105, is that correct?  
 25 Q. Correct.

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1 A. Okay.  
 2 Q. In sum or substance.  
 3 A. All right. The first icon was the -- is no  
 4 longer visible here, in my opinion, in the Yahoo  
 5 inter -- implementation. They gave the word rat and  
 6 indicated that. That was the first icon which then  
 7 brought in this display.  
 8 Q. So are you -- what are you referring to when  
 9 you say this display, what reference numeral in Figure  
 10 5(a)?  
 11 A. Yes, well, the display in Window 406.  
 12 Q. Okay.  
 13 A. The search, what the patent calls a search  
 14 window.  
 15 Q. All right. And so your opinion is that the  
 16 first icon is contained within the structure identified  
 17 as Element 406 in Figure 5(a)?  
 18 A. Well, not at this stage. It was.  
 19 Q. It was. What do you mean it was?  
 20 A. Well, it's been replaced by the results of  
 21 the search.  
 22 Q. So going back to the language of the claim,  
 23 let's take, for example, Claim 1, how would that first  
 24 icon be separate from the search window?  
 25 MR. KOCHANOWSKI: Can you read back

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1 the question that preceded that? What is the question  
 2 that is actually being asked here?  
 3 MR. WOLFF: Read the question, not  
 4 the preceding question, the question I just asked  
 5 Professor Galler.  
 6 (Record repeated as requested)  
 7 MR. KOCHANOWSKI: I object. It  
 8 isn't a complete question. How would the first icon be  
 9 separate from the display window, what, in 5(a), in  
 10 anywhere?  
 11 MR. WOLFF: In Figure 5(a), yes.  
 12 MR. KOCHANOWSKI: Then I object.  
 13 The words first icon haven't been defined by you to the  
 14 witness.  
 15 THE WITNESS: I should point out,  
 16 now that I reflect on this, that the search was  
 17 initiated using the -- in this example by the prior art  
 18 browser and Google and not necessarily separate at that  
 19 point.  
 20 BY MR. WOLFF:  
 21 Q. So does it still fall within the scope of  
 22 Claim 1?  
 23 MR. KOCHANOWSKI: Objection, calls  
 24 for a legal conclusion.  
 25 THE WITNESS: Well, let me --

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1 THE VIDEOGRAPHER: I need to change  
 2 the tape.  
 3 MR. WOLFF: All right. Why don't we  
 4 change the tape, go off the record.  
 5 THE VIDEOGRAPHER: We are going off  
 6 the record at 12:04 p.m.  
 7 (An off the record  
 8 discussion was held)  
 9 THE VIDEOGRAPHER: Tape 2. We are  
 10 going back on the record at 12:05 p.m.  
 11 BY MR. WOLFF:  
 12 Q. Are you still working on a response?  
 13 A. Yes, I'm not sure, there's a mixture here  
 14 between the prior art and the jumper window  
 15 interpretation. In the specification they talk about  
 16 the prior art where you enter the search word and cause  
 17 it to search as being in the search window. I think  
 18 with the jumper window example in 5(a) it would have  
 19 been in the jumper window, which is separate from the  
 20 search window, that's not clear from the description.  
 21 MR. WOLFF: I'm sorry, could you  
 22 read his statement back for me?  
 23 (Record repeated as requested).  
 24 BY MR. WOLFF:  
 25 Q. I'm sorry, I did not understand that

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1 response.  
 2 A. Okay. Let me look at this for a moment,  
 3 please.  
 4 MR. KOCHANOWSKI: Well, I object. I  
 5 mean whether you understood it or not, that was the  
 6 response, so unless there's another question pending,  
 7 we should move on.  
 8 BY MR. WOLFF:  
 9 Q. Can you clarify your response, Professor  
 10 Galler?  
 11 A. I will in a moment. I think I will stick  
 12 with the original answer that I gave.  
 13 Q. And what was that?  
 14 A. Well, we can have it read back.  
 15 Q. No, and that was that the -- was that that  
 16 the search, the first icon was displayed in the region  
 17 identified as 406 on Exhibit 105?  
 18 A. Using this prior art software, yes, and that  
 19 the example given is a mixture of the two, I would --  
 20 Q. What do you mean a mixture of the two?  
 21 A. Well, in that the original search is --  
 22 search icon or first icon happens to be displayed in  
 23 the search window of the prior art browser.  
 24 Q. Okay. So how, if it's displayed in the  
 25 search window of the prior art browser, how is that

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1 separate from the search window?  
 2 A. I can't find where they say it in the patent  
 3 and describe it, but I would assume that in an  
 4 implementation where it's separate, it would -- the  
 5 original search would be triggered in the Internet  
 6 Buffet jumper window that they're talking about.  
 7 Q. And can you find any reference to the term  
 8 search window in the patent other than in the claims?  
 9 A. Well, I'll have to look.  
 10 Q. Are you going to read the patent again?  
 11 A. Well, you asked me if I could find one  
 12 anywhere in the patent, and before I can answer that,  
 13 if you want to stipulate that it's not there, I guess I  
 14 could take your word for it.  
 15 Q. Did you find the term search window when you  
 16 did your analysis?  
 17 A. Well, I don't recall, so I'd have to look at  
 18 the patent to answer your question. Are you willing to  
 19 tell me that it's not there? Then I will accept that.  
 20 Q. Well, I will tell you that it's not there.  
 21 A. Okay, other than in the claims.  
 22 Q. Other than in the claims.  
 23 A. All right.  
 24 Q. And it was first added by amendment in 1998?  
 25 A. All right. Let's go from there.

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1 Q. Go from 1998?  
 2 A. No, from your comment, from your stipulation  
 3 that it's not in there.  
 4 Q. Okay. And --  
 5 A. If it's important that you said that it was  
 6 first added then, that's a separate issue.  
 7 Q. Well, I'm trying to understand like how you  
 8 say that something is in the prior art or it's  
 9 described in prior art, but it's also in the claim, and  
 10 so let me see if I can get a question out here. Is it  
 11 your opinion that the first icon is the search icon  
 12 that's displayed in the region identified as 406 in  
 13 Exhibit 105?  
 14 A. Okay, would you repeat that now, please? I  
 15 just want to be sure.  
 16 Q. Well, we'll move on to another question.  
 17 Are there more than one embodiments covered by the  
 18 claims in this patent?  
 19 A. Yes.  
 20 Q. Claims 1 through 8?  
 21 A. No, I mean --  
 22 Q. Do Claims 1 through 8 cover more than just  
 23 the embodiment that's identified in Figure 5(a)?  
 24 A. There are two different embodiments in the  
 25 claims. Right now I'm --



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1 Q. There are two different embodiments covered  
2 by the claims?  
3 A. Yes.  
4 Q. Okay. And can you tell me where in the  
5 written description the second embodiment is, other  
6 than the jumper window that's shown in Figure 5(a), I  
7 assume that's what you're referring to, is that  
8 correct?  
9 A. Yes. Now, what is the question, where?  
10 Q. Where is the alternate embodiment of the  
11 claims described in the written description?  
12 A. Written description, you mean the  
13 specification, for example, or --  
14 Q. Yeah. I used that term a little bit more  
15 precisely. Everything but the claims is the written  
16 description. The specification is the entire written  
17 description and the claims.  
18 A. Okay. Okay. In Column 12 you have some  
19 alternative embodiments.  
20 Q. All right. Let's focus on the first and  
21 second icon limitation. Is there another place in the  
22 written description of the 172 patent where the  
23 alternate embodiment of the claims that you're  
24 referring to in your earlier testimony is described?  
25 And particularly I'm asking about the first and second

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1 icons separate from the search window.  
2 A. Okay. Now, please repeat the question.  
3 Sometimes when you get to the end of the question  
4 you're not sure how it started out, so please repeat  
5 that.  
6 Q. Actually, let me do it this way. Let's go  
7 in your report. If you'll turn to Page 13 of your  
8 declaration, and take a look at Paragraphs 19, 20, and  
9 21, and let me know if you agree with your statements  
10 in those paragraphs. Just a yes or no, yes, I agree.  
11 A. Yes, okay.  
12 Q. Yes, you agree with the statements about  
13 that. And is that referring to the embodiment  
14 generally described in Figure 5(a) in what's been  
15 marked as Exhibit 105?  
16 A. Now, to be complete, you ought to talk about  
17 5(a), 5(b), and 5(c), but generally yes to answer your  
18 question.  
19 Q. Okay. And beginning in Paragraph 22, is  
20 this the alternate embodiment you referred to earlier?  
21 A. Yes.  
22 Q. And how does -- strike that. Which  
23 embodiment do you believe is the preferred embodiment,  
24 the one described in Paragraphs 19, 20, and 21 or the  
25 one described in Paragraph 22?

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1 A. If there is a legal interpretation of that,  
2 I'm not prepared to give a legal interpretation.  
3 Otherwise you're saying --  
4 Q. In your analysis of the patent and your --  
5 A. Well, what is preferred? They give an  
6 example embodiment, and then they say alternate ones  
7 are these kinds. I don't know which is preferred.  
8 They chose to describe one in more detail. I don't  
9 know if that in the legal context says that's -- the  
10 preferred one is the one they chose to use as an  
11 example.  
12 Q. Having read the patent, do you have any sort  
13 of conclusion or analysis as to whether one was  
14 preferred or not?  
15 A. When I read the patent, I read it, as I just  
16 said, that one was chosen as a more explicit example,  
17 and the others are perfectly acceptable, and I did  
18 not -- I didn't read it as one is preferred over  
19 another.  
20 Q. Okay. And is it the conclusion of your  
21 analysis that the embodiment described in 22 is also  
22 covered by the claims, Claims 1 through 8?  
23 A. That was my interpretation, I believe so.  
24 Q. Okay. And Claims 1 through 8, do they use  
25 the term search window or browser window?

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1 A. Search window.  
2 Q. Okay. And 22, in Paragraph 22 of your  
3 report, is that referring to search window or browser  
4 window?  
5 A. Well, in 22 there's specific references to  
6 browser window. I think you should read it as it says.  
7 Q. So in this alternative embodiment, it's your  
8 conclusion that browser window and search window mean  
9 the same thing?  
10 A. Absolutely not. Where did that come from?  
11 Q. Because it's part of the claims, you said it  
12 was covered by the claims.  
13 A. The term search window is in the claims.  
14 This is not part of the claims. This refers to a  
15 modification of a browser -- of the browser window and  
16 does not refer to the search window, and I don't see  
17 any relationship that can be drawn from that.  
18 MR. KOCHANOWSKI: Is now a good time  
19 to take a lunch break? It's almost 12:30.  
20 MR. WOLFF: Yeah, why don't we do  
21 that.  
22 THE VIDEOGRAPHER: We're going off  
23 the record at 12:23 p.m.  
24 (A short recess was taken)  
25 THE VIDEOGRAPHER: We are going back

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1 on the record at 1:24 p.m.  
 2 BY MR. WOLFF:  
 3 Q. Professor Galler, over the lunch break did  
 4 you have an opportunity to review any additional  
 5 documents --  
 6 A. No.  
 7 Q. -- pertaining to your report? You didn't  
 8 review any documents during the break?  
 9 A. I did review some documents, not additional  
 10 documents.  
 11 Q. Okay. Well, what documents were those you  
 12 reviewed?  
 13 A. I looked at the patent some more, and that's  
 14 it, the patent.  
 15 Q. That's it, there's no other documents you  
 16 looked at?  
 17 A. No.  
 18 Q. And did it refresh your recollection at all,  
 19 your previous testimony?  
 20 A. I think with respect to one aspect, my --  
 21 what did you --  
 22 Q. Your recollection.  
 23 A. My recollection.  
 24 Q. Was refreshed?  
 25 A. Okay, in looking at Claim 1 I remembered

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1 better the separation between the parsing step and the  
 2 initial retrieval and so on, but that's -- fine.  
 3 Q. And how does that bear on your previous  
 4 testimony?  
 5 A. I'm not sure it does, we'll see.  
 6 Q. Okay. Before I get, go over this, let's  
 7 turn back in Exhibit 30 to Page G 286.  
 8 A. Okay.  
 9 Q. And in your analysis you did not consider  
 10 this Examiner's reasons for allowance in your analysis  
 11 of --  
 12 A. No.  
 13 Q. -- the patent? Okay. Is there a reason why  
 14 you didn't consider it?  
 15 A. I didn't feel that I needed to.  
 16 Q. Why is that?  
 17 A. Because I was more concerned with the patent  
 18 than the issues in the case.  
 19 Q. So isn't this part of the prosecution  
 20 history?  
 21 A. Yes.  
 22 Q. And so why did you exclude the reasons from  
 23 allowance in your consideration of the prosecution  
 24 history?  
 25 A. I didn't exclude it. As I said, I didn't

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1 come back and pay much attention to it. It was part of  
 2 what I read as background, and then I went ahead with  
 3 the report based on the issues in the case, and this  
 4 was part of my background, but I didn't exclude it.  
 5 Q. And when you considered Google's motion for  
 6 summary judgment, it referenced the reasons for  
 7 allowance, correct?  
 8 A. Yes.  
 9 Q. And did you --  
 10 A. I guess. Again, that was part of my  
 11 background, too. I didn't -- at various times I  
 12 referred to relevant parts of that, but I didn't feel  
 13 the need to come back and look at this.  
 14 Q. Okay. And why didn't you feel the need to  
 15 come back and take a look at this?  
 16 A. That's kind of a negative question. I  
 17 didn't feel the need because I didn't feel the need.  
 18 Q. But it was part of Google's motion for  
 19 summary judgment, correct?  
 20 A. I guess it is, there were references to it.  
 21 Q. And in Professor Hardin's declaration he  
 22 referred to his reasons for allowance, correct?  
 23 A. Maybe. Let's look at my report and see  
 24 where you think I might have needed to refer to it or  
 25 whatever.

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1 Q. Well, let's look at --  
 2 A. And if I did, I did. I don't recall.  
 3 Q. What I'm trying to do is figure out what  
 4 your -- if you have an opinion on it, and it sounds  
 5 like you don't have any opinion on the reasons for  
 6 allowance.  
 7 A. That's right.  
 8 Q. Okay. And it was your decision to ignore  
 9 the reasons for allowance in your --  
 10 A. No, I don't say that I ignored it. I did  
 11 not -- well, I don't recall referring to it explicitly  
 12 in my report, and if I didn't refer to it explicitly, I  
 13 didn't feel a need to. For the statements I was making  
 14 in my report I referred to the documents I needed to  
 15 refer to, and I didn't exclude anything deliberately, I  
 16 just, if something wasn't included, it's because it  
 17 wasn't needed.  
 18 Q. In your view, is the reasons for allowance a  
 19 substantive part of the prosecution history of the 172  
 20 patent?  
 21 A. It can be, it can be, depending on the  
 22 patent and the case and so on. I don't know that it  
 23 was -- I felt that it was relevant to refer back to it  
 24 in this case.  
 25 Q. And in what circumstances can it be part of

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1 the --  
 2 A. Well, if there's a dispute on the history of  
 3 something or other, that could be part of the history  
 4 of it.  
 5 Q. And isn't there a dispute in this case as to  
 6 the history, to the prosecution history?  
 7 A. Well, you show me what you have in mind.  
 8 Q. Well, do you recall whether there is or not?  
 9 A. I don't recall it, no.  
 10 Q. Okay. If you could turn to Exhibit 103,  
 11 Declaration of Joseph Hardin, Paragraph 27.  
 12 A. Okay.  
 13 Q. And familiarize yourself with Paragraph 27  
 14 again.  
 15 A. Okay.  
 16 Q. Did you consider Professor Hardin's  
 17 statement in Paragraph 27 in your analysis?  
 18 A. Yes.  
 19 Q. And where did you do that in your analysis  
 20 in your report?  
 21 A. I don't -- I have to look for it.  
 22 I'm smiling because I see you  
 23 looking at this that I did make extensive reference to  
 24 the history and to the Examiner and so on, but I  
 25 remember that it went by so fast here, it was so clear

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1 and logical what I said that I just didn't remember  
 2 that that was the issue, whether or not it referred to  
 3 the file history. I'll stand by what's in the report.  
 4 Your question has to do with Mr. Hardin's statements,  
 5 and I guess the main dealing with what he says is the  
 6 argument simply that he bases almost everything he says  
 7 on the identity between the search window and the  
 8 browser window, which I disallow, disavow from the  
 9 start; therefore, I disagree with almost everything he  
 10 says.  
 11 Q. Now, but with respect to the Examiner's  
 12 reasons for allowance, you offered no opinion of that  
 13 in your declaration?  
 14 MR. KOCHANOWSKI: Okay. I'm going  
 15 to object now. This is the 7th time you've asked this  
 16 question, and at this point I'm going to, if you ask it  
 17 one more time, I am going to call the Judge.  
 18 MR. WOLFF: Call the Judge.  
 19 MR. KOCHANOWSKI: Because you can't  
 20 ask a question, the same question seven times.  
 21 MR. WOLFF: I want an answer to the  
 22 question.  
 23 MR. KOCHANOWSKI: No. Are you still  
 24 confused about whether or not Dr. Galler addressed this  
 25 snippet that you like to quote from Page G 286? Is

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1 there a confusion in your mind?  
 2 MR. WOLFF: Yes.  
 3 MR. KOCHANOWSKI: There is confusion  
 4 in your mind?  
 5 Dr. Galler, have you answered seven  
 6 times already in this deposition that you did not  
 7 address that particular snippet from the Examiner's  
 8 reasons for allowance in reaching your opinion?  
 9 THE WITNESS: I think I answered it.  
 10 I think there's a discussion of a history here, but  
 11 that has to do with the actions of the inventors in  
 12 modifying their -- in responding to the initial  
 13 rejection and so on and so on. The specific wording of  
 14 his allowance I don't think made much difference to  
 15 anything here, the history is here, and I guess I've  
 16 answered it.  
 17 BY MR. WOLFF:  
 18 Q. So your opinion is the statement of reasons  
 19 for allowance does not matter?  
 20 A. No, I'm certainly not saying that something  
 21 doesn't matter. I'm saying everything matters. It's a  
 22 matter of what you choose to say in the report, and  
 23 I'll stick with what I said in the report.  
 24 Q. And in your report you did not address the  
 25 Examiner's reasons for allowance, correct? It's a yes

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1 or no question.  
 2 A. I'll have to look at my report again and see  
 3 if I specifically reference those words. I just don't  
 4 recall. Either you know I do or you know I don't, and  
 5 I don't recall --  
 6 Okay. On the bottom of Page 24 of  
 7 my report I say, "It is my opinion the patentees never  
 8 disavowed a claim, et cetera. The sole distinct --  
 9 introduced by them to address a particular thing by the  
 10 Examiner was to require" -- and that's -- apparently,  
 11 you know, he allowed the patent with those changes. He  
 12 allowed it, period.  
 13 Q. But I want to know about his reasons for  
 14 allowance and I --  
 15 A. Those are his reasons, those are his  
 16 reasons. I don't presume to know his reasons. He  
 17 asserted on Page 286 a statement that says, "I'm  
 18 allowing it," and he gave a few sentences, okay.  
 19 Q. And so what's --  
 20 A. I have no reason to disagree with him; I  
 21 said that before.  
 22 Q. I guess that's where I'm getting hung up is  
 23 because you never specifically addressed it, and so I  
 24 can't tell whether you agree with his reasons for  
 25 allowance if substantively he was correct or if you

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1 disagree as well, if you agree or disagree with  
 2 Paragraph 27 (a) and (b), for instance, of Professor  
 3 Hardin's declaration.  
 4 MR. KOCHANOWSKI: Is that a  
 5 question? I object to the form of the question.  
 6 THE WITNESS: That's correct, is  
 7 there a question specifically?  
 8 BY MR. WOLFF:  
 9 Q. What is your response or your opinion  
 10 regarding Professor Hardin's declaration and his  
 11 consideration of the reasons for allowance?  
 12 MR. KOCHANOWSKI: Objection, calls  
 13 for a narrative answer, it's contained in the 25-page  
 14 report.  
 15 THE WITNESS: Well, you pointed me  
 16 to Paragraph 27 of Professor Hardin's report.  
 17 BY MR. WOLFF:  
 18 Q. Correct.  
 19 A. Okay. For example, in Part B of that, the  
 20 claims referenced to a search window must be understood  
 21 to refer to the browser window, Number 400. The  
 22 Examiner clearly made this connection and interpreted  
 23 the claims in this manner. Well, I disagree with that.  
 24 I mean Mr. Hardin says the Examiner did something, and  
 25 I don't agree that the Examiner did that, period. And

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1 almost everything else he says is based on his making  
 2 the equivalence between search window and browser  
 3 window 400, and to the extent that it's based on that,  
 4 I don't agree with him.  
 5 Q. Okay. So if search window as used in Claims  
 6 1 through 8 is Element 400 --  
 7 A. Which I disagree with.  
 8 Q. But if it is --  
 9 A. Well, that's hypothetical that I disagree  
 10 with so, I mean I disagree with the assumption even  
 11 making it a hypothetical, but go ahead if you want,  
 12 better be labeled as hypothetical, because I will not  
 13 answer it any other way.  
 14 Q. If the search window is Element 400, as  
 15 shown in Figure 5(a) of the 172 patent and referenced  
 16 by the Examiners as reasons for allowance, isn't it  
 17 true that Google would not infringe?  
 18 A. That's a legal opinion which I surely  
 19 wouldn't give.  
 20 Q. You won't give me your --  
 21 A. No.  
 22 Q. -- opinion on this?  
 23 A. Whether something infringes or not is a  
 24 legal opinion, I wouldn't do it, and, besides, I guess  
 25 you're entitled to ask any hypothetical you want, but I

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1 surely find it impossible to give any kind of an  
 2 opinion, legal or otherwise, based on -- I can't say a  
 3 false premise but an inoperable premise, if you will.  
 4 Q. So you can't give me -- let me see, so if  
 5 it's -- if search window refers to Element 406 as shown  
 6 in Figure 5(a), would you give an opinion on  
 7 infringement of the patent?  
 8 A. No, I would not give an opinion on  
 9 infringement. I'll be happy to give you lots of  
 10 opinions, but that I regard as a legal opinion.  
 11 Q. So your report offers no opinion on  
 12 infringement?  
 13 A. I don't know, does it? I hope not.  
 14 Q. Well, you offer an opinion on -- you say  
 15 that Google's analysis of it not infringing the patent  
 16 is incorrect.  
 17 A. The analysis, I think, is incorrect.  
 18 Q. Is it -- so what is your analysis? If you  
 19 were to assume that Element 400 is the search window,  
 20 can you give me an opinion as to whether Google would  
 21 infringe Claims 1 through 8 of the patent?  
 22 A. I would have a very difficult time making  
 23 that assumption, because I don't believe it's correct.  
 24 Q. Well, I want you to assume that it's  
 25 correct.

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1 A. All right, and then you're saying can I give  
 2 you a legal opinion based on that.  
 3 Q. I'm asking an opinion.  
 4 MR. KOCHANOWSKI: Objection.  
 5 THE WITNESS: Yeah, you're asking  
 6 for a legal opinion.  
 7 BY MR. WOLFF:  
 8 Q. I'm asking you for an opinion, however your  
 9 opinion is.  
 10 MR. KOCHANOWSKI: I'm objecting to  
 11 this line of questions. Now, the witness has given you  
 12 an answer. You want to ask a question if assume you  
 13 killed your wife, can you give an opinion whether  
 14 you're a murderer. Okay. Well, yeah, I guess if you  
 15 assume that, then the assumption predefines its own  
 16 terms, and, you know, and you're looking for snippets,  
 17 and you are not asking substantive questions, and to  
 18 that extent, I'm probably about three minutes away from  
 19 calling not the Judge but the Magistrate, who I think  
 20 is across the street so, and I'd be happy to show him  
 21 the transcript of this deposition to this point.  
 22 MR. WOLFF: I'm happy to do that,  
 23 too.  
 24 MR. KOCHANOWSKI: Fine, keep asking  
 25 questions --

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1 MR. WOLFF: What I want is a  
2 response to the question. What I want to know is if  
3 the Court construed the search window to be Item 400,  
4 would Google infringe Claims 1 through 8?  
5 MR. KOCHANOWSKI: Objection. This  
6 is outside the scope of his report. His report  
7 addressed the narrow issue you raised. Now you're  
8 asking about infringement. There could be other  
9 embodiments, as you well know. He's not been asked  
10 those questions. I'm not going to have this deposition  
11 turn into -- turn into an a-ha, because that's how you  
12 operate, it's just not going to happen, sorry.  
13 BY MR. WOLFF:  
14 Q. Okay. Do you know what claim element is at  
15 issue in Google's noninfringement motion?  
16 A. I'm not sure how to pin --  
17 Q. Okay.  
18 A. -- the claim statements in there.  
19 Q. Let's go back -- let's look at Exhibit 102.  
20 MR. KOCHANOWSKI: Is that the file  
21 history? Which one you looking at?  
22 THE WITNESS: No, it's the corrected  
23 brief in support of Google's motion.  
24 BY MR. WOLFF:  
25 Q. Okay. And beginning at Page 30 there is

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1 analysis as to why Claims 1 through 8 of the 172 patent  
2 are not infringed by Google Toolbar.  
3 A. Yes.  
4 Q. Have you reviewed this section before?  
5 A. I don't think so. Well, I don't know, it  
6 says corrected, so I just don't remember if I saw the  
7 corrected version, whatever that is. I did read a  
8 version of this.  
9 Q. Okay. And here the issue that's before the  
10 Court is whether Claim Element 1(c) is found in or is a  
11 limitation that's met by the Google Toolbar as used  
12 with one of the browsers, okay?  
13 A. Yes.  
14 Q. And the Claim Element 1(c) is displaying a  
15 first and second icon separate from the search window  
16 on said display screen. You understand what that  
17 claim --  
18 A. Yes.  
19 Q. -- means? And your view -- you can correct  
20 me if I'm wrong -- is that search window is Element 406  
21 as shown in Figure 5(a)?  
22 A. Yes.  
23 Q. Okay. And Professor Hardin's view is that  
24 it's referring to Element 400 in Figure 5(a), do you  
25 understand that?

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1 A. I believe that's right, okay.  
2 Q. Okay. Now, if the Court picks your view,  
3 takes your view, meaning that the search window is 406,  
4 do you believe that this limitation is met by the  
5 Google Toolbar?  
6 A. Yes.  
7 Q. And if the Court takes the view that the  
8 search window means Element 400, would your opinion  
9 change?  
10 MR. KOCHANOWSKI: Objection  
11 because -- objection, calls for opinions that have not  
12 been offered in this case.  
13 THE WITNESS: Well, I was going to  
14 ask you to say my opinion changed -- flesh out that  
15 part of it so that I know exactly what the question is.  
16 BY MR. WOLFF:  
17 Q. Well, what I'm wondering is if you even  
18 considered Google's analysis of the claims in making  
19 your to declaration. See, your declaration, as I  
20 understand it, assumes that search window means Element  
21 406, and what I want to know is whether your analysis  
22 considered Google's position, and that is that the  
23 search window is Element 400.  
24 A. I don't recall if I had put any analysis of  
25 that in my report. I don't think I really considered

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1 that because it was to me so obvious that it didn't,  
2 that the predicate is false.  
3 Q. Okay. Now, if the predicate were correct or  
4 were true, would your analysis and your conclusions  
5 have changed?  
6 A. Well, there might be other circumstances, et  
7 cetera, I don't know, I'd have to think through the  
8 whole thing again. I did not consider that. I find it  
9 very difficult to internalize that hypothesis because  
10 it simply isn't true. I don't understand how the Court  
11 could come to that conclusion given that the patent  
12 says 400 is this, and 406 is that, and if there was any  
13 reason to assume that those are the same, they would  
14 not have made that distinction. I'll stop there.  
15 Q. But you understand that the Examiner then  
16 would, of course, have disagreed with you in his  
17 reasons for allowance.  
18 MR. KOCHANOWSKI: Objection.  
19 THE WITNESS: I don't know anything  
20 about the Examiner, and I certainly won't comment on  
21 his possible analysis, his motivation or intent or  
22 whatever, I can't answer that question.  
23 BY MR. WOLFF:  
24 Q. So you can't offer any opinion on what the  
25 Examiner said in his statement of reasons for

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1 allowance?  
 2 MR. KOCHANOWSKI: Objection Number  
 3 10, the 10th time you asked this question.  
 4 THE WITNESS: I think I said I found  
 5 no reason to disagree with him, I think I've said this  
 6 before. I don't want to evaluate his statement. I see  
 7 no reason to differ with him, and that is the history.  
 8 BY MR. WOLFF:  
 9 Q. Well, I guess my problem is it's equivocal,  
 10 because the Examiner's statement says that the search  
 11 window says the search window and browser window are  
 12 essentially the same.  
 13 A. You show me where he says that.  
 14 Q. All right. Let's look at Page G 286 again.  
 15 All right. So in the first paragraph the Examiner  
 16 identifies all independent claims that were then  
 17 pending, correct?  
 18 A. Okay, well, I -- he identifies some, I don't  
 19 know if it's all, I mean unless we go back, I will not  
 20 say all, but go ahead.  
 21 Q. And the language from the claims that the  
 22 Examiner references is separate from the search window  
 23 on said display screen, correct?  
 24 A. Yes.  
 25 MR. KOCHANOWSKI: Objection. Are

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1 you asking the professor to now reach more opinions as  
 2 to what the Examiner thought? If that's where you're  
 3 going, I'm going to call the Magistrate now. Yes or  
 4 no?  
 5 MR. WOLFF: I'm not sure.  
 6 MR. KOCHANOWSKI: No, no, no, you  
 7 know.  
 8 MR. WOLFF: I don't understand your  
 9 question.  
 10 MR. KOCHANOWSKI: No, you're  
 11 absolutely sure. I mean this is now 10 times, I think  
 12 11, you've delved into this issue. So I'm going to  
 13 call the Magistrate unless you move on to a different  
 14 topic.  
 15 MR. WOLFF: I'm going to finish  
 16 examining the witness on the reasons for allowance.  
 17 MR. KOCHANOWSKI: I'd like to call  
 18 the Magistrate.  
 19 MR. WOLFF: Let's go off the record  
 20 for just one second. We'll go back on to get the  
 21 Magistrate on the phone. We'll just go off the record  
 22 real quick while I get local counsel.  
 23 THE VIDEOGRAPHER: We're going off  
 24 the record at 1:52 p.m.  
 25 (An off the record

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1 discussion was held)  
 2 THE VIDEOGRAPHER: We are going back  
 3 on the record at 2:03 p.m.  
 4 BY MR. WOLFF:  
 5 Q. Professor Galler, if you could turn to  
 6 Exhibit 102, Page 31, in fact, actually, let me strike  
 7 that, let's do this a different way. If you could turn  
 8 to Exhibit 103, Tab C.  
 9 A. Yes.  
 10 Q. Could you identify for me on the figure  
 11 shown at Tab C where the search window is?  
 12 A. If you look at the -- either of the two  
 13 pictures, there is a horizontal dark blue line across  
 14 the middle of the screen that's presented here. That  
 15 horizontal blue line down, not including the very  
 16 bottom line, I would consider the search window.  
 17 Q. Okay. Now, is that Element 406 as described  
 18 in Figure 5(a)?  
 19 A. I believe so.  
 20 Q. Okay. Now, if the search window were  
 21 construed by the Court to be Element 400, understanding  
 22 all your reservations about how illogical that might  
 23 be, are the Google Toolbar next and previous icons  
 24 which are bounded in red separate from the search  
 25 window 400?

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1 A. Given that hypothetical premise with which I  
 2 disagree, I mean one can't exactly disagree with a  
 3 premise, one can disagree with assuming the predicate  
 4 on the premise, the next and previous icons would be  
 5 contained, they are contained, let's put it that way,  
 6 they are contained in Window 400.  
 7 Q. So they would not be separate from the  
 8 Window 400?  
 9 A. They are not separate from 400, period,  
 10 under any circumstances.  
 11 Q. Can you explain what you mean by they are  
 12 not separate from 400 under any circumstances?  
 13 A. Well, they're contained in Window 400.  
 14 Q. Okay. I see what you're saying. So if the  
 15 Court were to construe search window to be Element 400,  
 16 the browser window, the next and previous buttons would  
 17 not be -- or, I'm sorry, they would be displayed within  
 18 the search window?  
 19 A. I'm a logician.  
 20 Q. Okay.  
 21 A. Given the premise, one can draw that  
 22 conclusion. That doesn't mean one has to accept the  
 23 premise or the conclusion.  
 24 Q. All right. We'll move on.  
 25 MR. KOCHANOWSKI: Who says you can't

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1 learn anything?  
 2 BY MR. WOLFF:  
 3 Q. If you could turn to Page 35.  
 4 A. I'm sorry, which document?  
 5 Q. I'm sorry, Paragraph 35 of your report, your  
 6 declaration, Exhibit 104.  
 7 A. Paragraph 35?  
 8 Q. Paragraph 35, correct.  
 9 A. Okay.  
 10 Q. What is your definition of the term parsing?  
 11 A. Let me first say that from my experience in  
 12 the computer industry, I don't believe there is a  
 13 technical definition of parsing that is specific to the  
 14 computer industry. I have always regarded that term as  
 15 a common English language linguistic term. So you  
 16 asked me my definition, it's whatever I would find in  
 17 an ordinary dictionary, which would be to accept --  
 18 well, the dictionary wouldn't explain it this way  
 19 necessarily, but you accept input of some form, you  
 20 break it into the parts, and you understand the parts.  
 21 That's, I think, as far as I would go in a definition.  
 22 Q. And how do you understand the parts in your  
 23 definition?  
 24 A. By some analysis, I mean it's normally  
 25 applied -- it's normally applied to linguistics like

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1 taking a sentence apart, and so the analysis would say  
 2 I have a word here and my analysis says it's a verb,  
 3 and I look at another word and my analysis says this  
 4 function is as a noun, but the analysis is relevant to  
 5 the purpose and the context of parsing.  
 6 Q. And the purpose and the context of parsing  
 7 in the 172 patent is what?  
 8 A. I think there are several places where the  
 9 word parse is used in different context. The purpose  
 10 is always to accept some input and break it down and  
 11 maybe to extract some information.  
 12 Q. Have you ever heard of a YACC parser?  
 13 A. Yes.  
 14 Q. And what is a YACC parser?  
 15 A. It accepts input language and trans -- takes  
 16 something apart so that it can be translated into  
 17 something else.  
 18 Q. And how does it do that?  
 19 A. I don't remember any details. I remember my  
 20 students used it once in a translator, fine, but I did  
 21 not question how it does it.  
 22 Q. So is it fair to say that whatever your  
 23 definition of parsing is, it's broader than what Google  
 24 defined it as?  
 25 A. I think so.

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1 Q. But you don't have a specific definition?  
 2 A. Well, it happens that I this morning looked  
 3 in an ordinary dictionary, and I found a definition, so  
 4 I prepared it in case it was relevant.  
 5 Q. Okay.  
 6 A. I'll give it to you here. This is from the  
 7 Webster's New World Dictionary of the American  
 8 Language, David B. Gorelnic, editor in chief, published  
 9 by the Faucett Library New York, copyright 1979 by  
 10 William Collins Publishers, Inc. Parse, to break, and  
 11 then in parentheses (a sentence), because I think  
 12 they're sort of suggesting that there is a linguistic  
 13 interpretation, but you don't need that, to break down,  
 14 giving the form and function of each part. So I'll  
 15 give you this, and I think that's a pretty good, common  
 16 definition, which is what I had in mind.  
 17 Q. Okay. And that was a 1973 dictionary?  
 18 A. 1979.  
 19 Q. 1979?  
 20 A. Actually, I think it was published before  
 21 that, and that was the latest copyright that was in  
 22 that particular book.  
 23 Q. So you would use a regular dictionary to  
 24 define the word parse?  
 25 A. I would.

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1 Q. You would not use it in terms of computer  
 2 science?  
 3 A. I always have, in all of my years of  
 4 teaching and of talking about languages and  
 5 translators, which was my area of expertise, I used the  
 6 word parse without ever pinning it down any more  
 7 technically than that.  
 8 Q. And you went back and looked at your papers  
 9 from 1968 and earlier?  
 10 A. I didn't go back, I just remembered from my  
 11 experience how I used the language.  
 12 Q. Okay. Let's turn to Paragraph 36 in your  
 13 report. Now, I want to make sure I understand what  
 14 exactly you considered, and I think you testified  
 15 earlier today that you did not consider the CyberPilot  
 16 tutorial?  
 17 A. Well, I looked at it once in a while. I  
 18 don't think that I relied on it for any specific  
 19 wording, although I think it's in the report, there are  
 20 some references to the document maybe.  
 21 Q. Are the paragraphs from 36 to 43 where you  
 22 are discussing the CyberPilot prior art, are they  
 23 referring to the software that you used then?  
 24 A. Software and maybe the wording of tutorial,  
 25 I think somewhere it says I relied on something, but

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1 it's primarily the software, I mean let's talk about  
 2 the facts of how the thing behaves.  
 3 Q. Okay. Well, if you could turn back to  
 4 Exhibit 103, this is the declaration of Joseph Hardin,  
 5 and take a look at Tab F.  
 6 A. Yes.  
 7 Q. And here -- well, I'll represent to you that  
 8 Professor Hardin is referring to the CyberPilot  
 9 tutorial. Did you look at the CyberPilot tutorial and  
 10 do any analysis of this chart that is Hardin  
 11 declaration, Exhibit F?  
 12 A. I think for the things that he points to, I  
 13 think, yes, I did look and see those quotes, yes.  
 14 Q. You've looked in the user manual -- the  
 15 CyberPilot tutorial?  
 16 A. It's part of that other deposition, is it  
 17 Stark?  
 18 Q. Stark, it's attached to the Stark  
 19 declaration?  
 20 A. That's right, that's where I got it.  
 21 Q. And did you -- and what parts of Exhibit F  
 22 did you disagree with, if any?  
 23 A. Well, let's look at my report, if we can.  
 24 In Exhibit F, on the first page of Exhibit F, Claim  
 25 1(b), on the right-hand side it says the web browser

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1 constructs a search window on the display screen of the  
 2 local computer to browse the data files. CyberPilot  
 3 does not construct the search window. I mean we're  
 4 talking about CyberPilot here as the prior art. Well,  
 5 so I would expect that CyberPilot would construct a  
 6 search window, but it doesn't.  
 7 Q. Well, it says actually at 1(b) that the web  
 8 browser, Netscape Navigator, constructs the search  
 9 window on the display screen of the local computer.  
 10 A. Well, I don't think the web browser  
 11 constructs the search window, either.  
 12 Q. And with reference to Figure 5(a) in the  
 13 patent -- I forget which -- Exhibit 105, what is  
 14 constructing a search window in this embodiment of the  
 15 claims?  
 16 A. You know, I think I said before that I  
 17 thought -- no, strike that. Ask me a question again,  
 18 please.  
 19 MR. WOLFF: Could you read the  
 20 question back again, please.  
 21 (Record repeated as requested)  
 22 MR. KOCHANOWSKI: Object to form,  
 23 calls for a legal conclusion.  
 24 You can answer it.  
 25 THE WITNESS: I think the browser in

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1 this case, as a result of the search, the initial  
 2 search constructs the search window.  
 3 BY MR. WOLFF:  
 4 Q. So the Netscape Navigator shown there in  
 5 Figure 5(a) is what constructs the search window?  
 6 A. Yes.  
 7 Q. Okay. And why do you disagree, then, with  
 8 1(b), with Professor Hardin's analysis on Claim Element  
 9 1(b) in Exhibit 103?  
 10 A. Because I don't think there's a search  
 11 window when CyberPilot starts up, I don't think the web  
 12 browser has yet been invoked and there is no search  
 13 window.  
 14 Q. So you think there's a particular sequence  
 15 that must be performed in Claim 1, a particular  
 16 sequence of the steps?  
 17 A. I've interpreted it that way, yes.  
 18 Q. Okay. If you could turn to Figure 4 in the  
 19 172 patent.  
 20 A. Yes.  
 21 Q. Can you tell me what -- can you describe to  
 22 me your understanding of what's displayed in Figure 4?  
 23 A. Let me see what they say is displayed in  
 24 Figure 4. They say that Figure 4 shows a prior art  
 25 browser user interface and a query form of an

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1 information index provider. So that's what the prior  
 2 art provides.  
 3 Q. And is it showing a search window as you  
 4 understand it?  
 5 A. I think probably at the time that this  
 6 browser was created they didn't have any idea of a  
 7 search window, but it is, in fact, in 406 -- I mean in  
 8 Figure 4 there is a pointer 406, so that there would be  
 9 in the interpretation of this patent a search window.  
 10 Q. But Figure 4 is labeled prior art, correct?  
 11 A. Yes.  
 12 Q. Do you disagree that Figure 4 is showing you  
 13 prior art?  
 14 A. No.  
 15 Q. So the prior art is the Netscape Navigator  
 16 with a search window shown in it?  
 17 A. Yeah.  
 18 Q. With regard to the second sentence in 1(b),  
 19 CyberPilot was intended and does work in conjunction  
 20 with a web browser like Netscape Navigator. Do you  
 21 agree with that statement?  
 22 A. Well, it doesn't really say anything. I  
 23 mean I work in conjunction with a browser like Netscape  
 24 Navigator, but it doesn't mean anything.  
 25 Q. If you could turn in Exhibit 103 to Tab D.



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1 A. Yes.  
 2 Q. Is what's shown in Exhibit D --  
 3 A. D, I'm sorry, B or D?  
 4 Q. D as in dog.  
 5 A. Okay, all right. Okay.  
 6 Q. Is this showing a search window as that term  
 7 is used in the claims?  
 8 A. I believe so.  
 9 Q. And is this showing icons separate from the  
 10 search window?  
 11 A. Yes.  
 12 Q. Did you consider in your analysis the --  
 13 whether each of the icons --  
 14 A. I'm sorry, we're both looking at Figure 5(a)  
 15 in D?  
 16 Q. I'm sorry, you know what, is there another  
 17 page to this that is missing in mine? I'm looking at  
 18 Page 2, comparison of the 172 patent, Figure 5(a).  
 19 A. So let's disregard my previous answers.  
 20 Q. All right.  
 21 A. Now --  
 22 Q. Where it says comparison of 172 patent,  
 23 Figure 5(a), to working copy of CyberPilot with  
 24 Netscape Navigator.  
 25 A. Okay.

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1 Q. Now, in what has been identified as the  
 2 Browser Window 400, is that showing a search window as  
 3 that term is used in the claims?  
 4 MR. KOCHANOWSKI: Objection to the  
 5 form. Now you're mixing up words again.  
 6 THE WITNESS: I guess my answer is  
 7 it's up to -- in the context of this being argued as  
 8 prior art, I think it's up to the people who are  
 9 presenting this as prior art to show that it's a search  
 10 window, not me.  
 11 BY MR. WOLFF:  
 12 Q. Well, do you have an opinion on whether  
 13 that's a search window, whether a search window is  
 14 shown with reference to --  
 15 A. Well, I think I argued in my report that  
 16 there is no search window or nothing that satisfies  
 17 search window, so if you want to ask me about that,  
 18 I'll be happy to --  
 19 Q. Yeah, so why don't you tell me what does the  
 20 term search window mean to you?  
 21 A. Well, first of all, it's a window that  
 22 reports the results of a search.  
 23 Q. And how did you come to that conclusion?  
 24 A. First of all, by the choice of name, but by  
 25 the use of the term in the claims, for example, and I

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1 think from the common use of the word search in the  
 2 computing field and the whole description of the patent  
 3 as directed toward search engines.  
 4 Q. And in Exhibit 103 at Tab B you don't think  
 5 that that qualifies as a search window?  
 6 A. Because I don't think, yes, that's correct,  
 7 because I don't think it reports the result of a search  
 8 in the sense of a search engine.  
 9 Q. So it -- in your view, does it -- did the --  
 10 to be a search window, do you actually have to be on  
 11 the domain name where the search engine is?  
 12 A. I didn't see anything about domain names.  
 13 Let's start over again, please.  
 14 Q. Well, what I want to know is is it context  
 15 specific then, the term search window in your  
 16 construction?  
 17 A. At least that much context, that is, that it  
 18 shows the results of the kind of search that people  
 19 understand from a search engine.  
 20 Q. So it would be the results list from doing a  
 21 query at a search website?  
 22 A. A query with search parameters of the kind  
 23 that we have come to expect from Google, for example.  
 24 Q. Convenient the way you defined it in terms  
 25 of the product.

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1 A. Well, I Google all the time, that's my point  
 2 of reference.  
 3 Q. I forgot if I asked this earlier, had you  
 4 used the toolbar before you started working on this  
 5 case?  
 6 A. You may have asked me, no, I use Google a  
 7 lot but not the toolbar.  
 8 Q. So is -- what is the search window? Does it  
 9 depend on the type of information that's displayed in  
 10 Element 406?  
 11 A. That's a factor, but it's not sufficient,  
 12 okay. The type of information that a search engine  
 13 displays might be displayed by another application, but  
 14 that doesn't make the other application a search  
 15 engine. A search engine searches.  
 16 Q. You mean a search window or a search engine?  
 17 A. A search window depends on having in the  
 18 context a search engine which does the kind of search  
 19 that we expect from Google, for example.  
 20 Q. What is the initial data file referenced in  
 21 Claims 1 through 8, in your opinion?  
 22 A. Well, it's whatever comes back -- I presume  
 23 it can take various forms, because it has not yet been  
 24 parsed, but it's the initial data file is what comes  
 25 back from the network after a search.

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1 Q. And it says here in the claim retrieving  
2 initial data file that it's displaying the initial data  
3 file in the search window.  
4 A. Yes.  
5 Q. And your construction of search window is  
6 still the same as it was for Element 1(b), is that  
7 correct?  
8 A. Yes.  
9 Q. So there's still a query box and a search  
10 button, is that how you're understanding search window?  
11 MR. KOCHANOWSKI: At what point in  
12 time? Objection.  
13 BY MR. WOLFF:  
14 Q. At the time this claim -- you're displaying  
15 an initial data file in a search window.  
16 A. Well, let's start over again, please. Ask  
17 the question again, please.  
18 Q. When the initial data file is displayed in  
19 the search window, according to this claim element,  
20 it's 1(d), what is the search window?  
21 A. I guess it's where the initial data file is  
22 displayed.  
23 Q. Is that Element 406 in the patent?  
24 A. Yes.  
25 Q. Is that a general area on the screen?

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1 A. I don't know what you mean by general area.  
2 Q. Well, is it just a geography on the screen  
3 or is it something context specific?  
4 A. I think it's context specific.  
5 Q. So it actually has to be -- there has to be  
6 something more than just four corners in a window for  
7 something to be a search window?  
8 A. Yeah, it has to be a place where search  
9 results are displayed.  
10 Q. Okay. But you could not have any data from  
11 a search engine and still be a place where search  
12 results are displayed, correct?  
13 A. I'm not sure I follow that.  
14 Q. Okay. Let's move down to Claim Element  
15 1(f).  
16 A. I'm sorry, you're looking in --  
17 Q. At the 172 patent. This would be the --  
18 A. There's no (f) yet. Are we in Hardin's --  
19 Q. You can do Hardin's or we can look at the  
20 patent, whatever is easiest for you.  
21 A. But there's no (f) in the patent itself.  
22 Q. Okay.  
23 A. So where are we looking? I guess we're  
24 looking at --  
25 Q. Hardin, Claim Element 1(f).

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1 A. All right. Okay.  
2 Q. What is the first data file in Claim 1(f)  
3 according to the patent,?  
4 A. According to the patent, it's a data file  
5 which corresponds to one of the location identifiers  
6 that you've selected.  
7 Q. Can it be a search result?  
8 A. I think the accepted interpretation of  
9 search result in the computing industry is the location  
10 identifier, which is then used to get a data file. I  
11 think one would probably reserve the term search result  
12 to the location identifiers, but they come from a  
13 search.  
14 Q. Uh-huh. A search from a search engine?  
15 A. Yes.  
16 Q. Okay. If you could turn to Figure 6 in the  
17 172 patent.  
18 A. Yes.  
19 Q. Is Figure 6 showing what happens in  
20 accordance with Claim Element 1(f)?  
21 A. I'm sorry, I need to get better organized  
22 here. I'm sorry, I'm getting some of these pages a  
23 little mixed up. I don't want to do that. Okay. I'm  
24 in Column 8 of the patent. It says a later search of  
25 the search session is shown. It shows a File 600,

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1 which is the inset window there, my terminology, it  
2 shows a File 600 in Browser View Window 406, URL  
3 corresponding to 600 in Browser U 404, and a highlight  
4 602 around Hotlink 580. In both the jumper drop-down  
5 list and the jumper -- the File 600 was obtained in a  
6 drill-down conducted in the Browser Window 406. So  
7 they haven't shown the intervening steps here, that's  
8 my interpretation, okay. Now, could you ask your  
9 question again?  
10 Q. Sure.  
11 A. I'll have it in context.  
12 Q. I'll try that. So if in the -- what's been  
13 identified as the Internet Buffet, and I believe it was  
14 previously marked as 300 in an earlier figure shown in  
15 Figure 6, if a user had selected on the hyperlink at  
16 602, is it your understanding that the page associated  
17 with the hyperlink -- I should say with Element 602  
18 would be called up in the search window?  
19 A. I believe that's right.  
20 Q. So it would still be a search window, what's  
21 been identified as 406 in Figure 6, even though there  
22 was not a text entry area displayed in that region?  
23 A. I don't think there needs to be a text entry  
24 area in the search window.  
25 Q. Okay.

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1 MR. KOCHANOWSKI: Can we take a  
2 two-minute break?  
3 MR. WOLFF: Go ahead.  
4 THE VIDEOGRAPHER: We're going off  
5 the record at 2:42 p.m.  
6 (A short recess was taken)  
7 THE VIDEOGRAPHER: We are going back  
8 on the record at 2:47 p.m.  
9 BY MR. WOLFF:  
10 Q. If you could please turn to Page 26 of your  
11 declaration that's in Exhibit 104, Dr. Galler.  
12 A. Uh-huh. Page 26?  
13 Q. 26. And we're going to look at Paragraph  
14 37.  
15 A. Okay.  
16 Q. Now, this -- you agree with this, what you  
17 said in this paragraph, correct?  
18 A. Oh, yes.  
19 Q. Okay. Did -- have you -- do you know where  
20 Defendants got the CyberPilot prior art, where we  
21 located it?  
22 A. I don't think so.  
23 Q. Okay. I'll give you what's been marked as  
24 Exhibit 62 and ask if you've seen that document before?  
25 MR. KOCHANOWSKI: May I see it,

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1 please?  
2 MR. WOLFF: For the record, this  
3 document was produced by NetJumper to Google.  
4 THE WITNESS: You asked me if I've  
5 seen this before?  
6 BY MR. WOLFF:  
7 Q. Yes.  
8 A. No.  
9 Q. Okay. Do you see the date at the lower  
10 right corner of the first page?  
11 A. May 24, '96.  
12 Q. Right. And do you know what date the patent  
13 was filed?  
14 A. Well, it says filed October 8th, '96.  
15 Q. Have you met with Gilbert Borman?  
16 A. No.  
17 Q. Have you spoken to him over the phone?  
18 A. No.  
19 Q. Have you seen or been provided any documents  
20 that could establish that CyberPilot is not prior to  
21 his alleged invention?  
22 A. No.  
23 Q. But you're not sure whether it qualifies as  
24 prior art, is that correct?  
25 A. Well, the date shows prior date. I guess

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1 I'm arguing I don't think it's prior art for this  
2 patent.  
3 Q. Okay, in the 102 or 103 sense of Title 35,  
4 is that correct?  
5 A. I don't make those distinctions, those are  
6 legal distinctions.  
7 Q. Okay. And in Paragraph 38, do I understand  
8 your testimony correct that you do not believe that the  
9 Netscape Navigator shown in connection with the  
10 CyberPilot prior art qualifies as meeting Claim Element  
11 1(b)? If you want, you could look at Hardin  
12 Declaration Tab F.  
13 A. Okay. Now repeat the question, please.  
14 Q. Is it your testimony that you don't believe  
15 that the Netscape Navigator described in Professor  
16 Hardin's declaration would qualify as meeting the  
17 Limitation 1(b) in Claim 1(a) -- I'm sorry, Claim 1?  
18 A. I understand what you mean. I don't -- I  
19 agree -- sorry, let's put it this way. I do not  
20 believe that the Netscape Navigator constructs a search  
21 window, because I explained what I mean by a search  
22 window, and I don't think that's what happens. I  
23 should mention, I mean we said it before, that I  
24 observed the Internet Explorer, this talks about  
25 Netscape, but in terms of the equivalence I described

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1 before, I think what I'm saying holds.  
2 Q. And what was it you said before again?  
3 A. That the functions that the CyberPilot  
4 expects to be carried out by whatever browser it works  
5 with will be the same whether it's Netscape or IE. So  
6 that the answer to this question is independent of  
7 which browser we're talking about.  
8 Q. Did you consider in your analysis CyberPilot  
9 working with the Netscape Navigator when the Netscape  
10 Navigator was directed to the Yahoo search page?  
11 A. I think you have to be more explicit. What  
12 do you mean by directed? Who directed Navigator to a  
13 Yahoo search page?  
14 Q. Well, Professor Hardin did an analysis of  
15 the CyberPilot Pro software working in conjunction with  
16 the Netscape Navigator, correct?  
17 A. Well, he claims to have, yes, okay.  
18 Q. Well, do you dispute that it can work in  
19 conjunction with the Netscape Navigator?  
20 A. I'm sorry, say it again.  
21 Q. Do you dispute that it can work in  
22 conjunction with the Netscape Navigator?  
23 A. No. You were saying something about what he  
24 did, and I'll take your word for it that he says  
25 something.

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1 Q. I just want to know whether you performed or  
2 you conducted the same experimentation as Professor  
3 Hardin to confirm whether Professor Hardin's opinion  
4 was or analysis was correct?  
5 MR. KOCHANOWSKI: Well, objection, I  
6 think Professor Hardin testified he didn't even operate  
7 the software, so to that extent you're asking questions  
8 that are not in evidence.  
9 THE WITNESS: Maybe we should start  
10 over and you should ask me very explicitly what it is  
11 you're asking me about what he did or said or whatever  
12 and what I did or said.  
13 BY MR. WOLFF:  
14 Q. Okay. If you turn to Tab D, I think this is  
15 the second page in Tab D of Professor Hardin's  
16 declaration.  
17 A. Okay.  
18 Q. Where he shows a comparison of the 172  
19 patent Figure A to a working copy of CyberPilot with  
20 Netscape Navigator.  
21 A. Yes. This is from the CyberPilot tutorial,  
22 okay.  
23 Q. These are actually screen shots.  
24 A. From the tutorial.  
25 Q. No, from --

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1 A. It says so.  
2 Q. -- his use of the software.  
3 A. It says so.  
4 Q. Well, in 1(d)? I'm sorry, in Tab D?  
5 A. Okay, we're missing again. I went to E. I  
6 thought you said E. D, now we're talking about the  
7 second page now?  
8 Q. The second page.  
9 A. Okay. Okay.  
10 Q. Did you perform the same test or  
11 experimentation with CyberPilot as Professor Hardin  
12 did?  
13 A. You're asserting that he did this?  
14 Q. Yes.  
15 A. Okay. And I say I did the equivalent  
16 experimentation with the Internet Explorer browser with  
17 comparable results.  
18 Q. And does all your analysis turn on what the  
19 term search window means?  
20 A. Most of it, yes.  
21 Q. Okay. And so if the Court were to construe  
22 the term search window consistent with the way Google  
23 has proposed it be constructed, would your ultimate  
24 analysis or conclusion be different?  
25 A. I don't think I can answer that because

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1 whatever the Court might construe, I would then have to  
2 say, okay, in that light, whatever it is, now tell me  
3 what you think it is as prior art, what do you think  
4 the search window is, et cetera. Only then could I  
5 make -- comment or answer the kind of question you're  
6 asking now, because with different assumptions there  
7 would be different claims as to prior art.  
8 Q. So sitting here today you have no opinion  
9 with regard to --  
10 A. No, that's not --  
11 Q. -- what Professor Hardin did?  
12 A. No, that's not the point. The point is that  
13 for prior art, the burden is on the person who's  
14 claiming something is prior art to argue that it is,  
15 and I would not want to give opinions. I still think  
16 that there is no search here. So no matter what the  
17 windows are, there is no search in the sense of a  
18 search engine in the computer industry here, so I guess  
19 my opinion wouldn't change in that respect.  
20 Q. Even though in Tab D it's showing the Yahoo  
21 search site?  
22 A. In Tab --  
23 Q. In Tab D as in dog.  
24 A. D?  
25 Q. Right.

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1 A. Well, I thought we were talking about  
2 CyberPilot as the prior art.  
3 Q. But --  
4 A. Not Yahoo.  
5 Q. Well, what I'm asking, it's showing Netscape  
6 Navigator working on the Yahoo website, correct?  
7 A. I'm sorry, say it again.  
8 Q. What is shown in the second figure in Tab D  
9 of Professor Hardin's declaration, it's showing  
10 CyberPilot Pro working in conjunction with the Netscape  
11 Navigator at the Yahoo website, correct?  
12 A. Whatever in conjunction means.  
13 Q. Did you create a web map in CyberPilot of  
14 the Yahoo website?  
15 A. I don't know that we did it of the Yahoo  
16 website. We did it for various websites. Might have  
17 been the Yahoo, I don't recall.  
18 Q. And where is this reflected in your report?  
19 A. Page 27, Paragraph 38.  
20 Q. Okay. So did you create a web map of the  
21 Yahoo site with CyberPilot?  
22 A. I created a web map of one or more websites,  
23 index pages of websites. I don't recall whether we did  
24 it for Yahoo.  
25 Q. Did you -- when you created these web maps,

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1 did you test each of the icons that were created in the  
 2 CyberPilot window to see what happened when they were  
 3 selected?  
 4 A. I tested several, certainly not all.  
 5 Q. Uh-huh.  
 6 A. What came back was a web map, a list of  
 7 items that you could select, I selected some, I saw  
 8 what happened.  
 9 Q. And what happened when you selected some,  
 10 and which icons were you pressing -- selecting when  
 11 things happened?  
 12 A. Well, I don't recall which icons, but they  
 13 were several subsidiary icons to the home page, and  
 14 then what was displayed was the subsidiary icons or  
 15 links from those page.  
 16 Q. Did you see icons that Google identified as  
 17 the first and second icons?  
 18 A. No.  
 19 Q. So you didn't see a question mark icon ever  
 20 come up?  
 21 A. Oh, I saw question marks.  
 22 Q. Did you see a question mark icon come up as  
 23 that icon is identified at Tab D of Professor Hardin's  
 24 declaration?  
 25 A. Yes.

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1 Q. And what happened when you selected on the  
 2 question mark icon?  
 3 A. It expanded into the web map for the  
 4 subsidiary, subdirectory.  
 5 Q. Could you tell from your analysis whether it  
 6 went out to a website and collected hyperlinks from a  
 7 page?  
 8 A. As I recall, it did not go out at first. If  
 9 you went deep enough, it went out.  
 10 Q. How do you mean deep enough?  
 11 A. Down to enough levels.  
 12 Q. But if -- so Mr. Stark submitted a  
 13 declaration that you considered, correct?  
 14 A. Yes.  
 15 Q. And Mr. Stark said that selecting a question  
 16 mark icon, what was identified as a control icon, I  
 17 believe, parsed an HTML file and created a series of  
 18 subsidiary icons which he identified as object icons,  
 19 you recall that?  
 20 A. Yes.  
 21 Q. And did you -- do you dispute Mr. Stark's  
 22 declaration?  
 23 A. No. I think that I accept what he says.  
 24 Q. You don't challenge any of what Mr. Stark  
 25 has said in his declaration, is that correct?

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1 MR. KOCHANOWSKI: Whoa, whoa, whoa,  
 2 objection. That's --  
 3 THE WITNESS: From what you just  
 4 said, I don't dispute it.  
 5 BY MR. WOLFF:  
 6 Q. Okay. Was there anything else in his  
 7 declaration that -- was there anything else in his  
 8 declaration that you did dispute?  
 9 A. Not that I can recall right now.  
 10 Q. Okay. If we looked at Mr. Stark's  
 11 declaration, would that refresh your recollection as to  
 12 whether there was anything that was disputed?  
 13 A. I don't think there's anything to dispute  
 14 with him right now.  
 15 Q. Right now?  
 16 A. Well, I mean I can't recall any, and I have  
 17 no idea if we're looking at it I would think of  
 18 anything that was there. I think the differences we  
 19 have here are in the interpretation of what he says,  
 20 not what he says.  
 21 Q. And, again, it sounds like --  
 22 A. But we could look at it. I mean if he uses  
 23 terms like search window and browser window and so on,  
 24 I'd be very careful how I looked at it, I just don't  
 25 recall if he confuses those issues which are the issues

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1 of the case.  
 2 Q. I think, but I'm not sure, do you have a  
 3 copy of Stark's declaration, Mr. Hardin?  
 4 A. I don't have it with me.  
 5 Q. I think you do, actually.  
 6 A. If you could point me to the things you want  
 7 to use out of his statement, I could tell you whether I  
 8 disagree with them or not. Otherwise, we're going to  
 9 go through the whole thing.  
 10 Q. Sure. I'll have the reporter mark as --  
 11 this is a copy of Exhibit B from Mr. Stark's  
 12 declaration.  
 13 DEPOSITION EXHIBIT 107  
 14 WAS MARKED BY THE REPORTER  
 15 FOR IDENTIFICATION  
 16 A. Okay.  
 17 Q. If you could turn -- now, have you reviewed  
 18 this document before?  
 19 A. Yes.  
 20 Q. Okay. And you considered that in your  
 21 declaration that you submitted to the Court?  
 22 A. Yes.  
 23 Q. Did you provide any specific analysis of the  
 24 CyberPilot tutorial that's been marked as Exhibit 107?  
 25 A. No. There are references -- I think one

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1 place where I said I relied on him to back up a  
 2 statement I made, but I think that's all.  
 3 Q. If you turn to Page 12 of Exhibit 107.  
 4 A. Okay.  
 5 Q. And at Numeral 1 it says double click a page  
 6 with black label. Could you read the two sentences  
 7 there that follow.  
 8 A. You want me to read it out loud or --  
 9 Q. You could read it to yourself.  
 10 A. Okay.  
 11 Q. Tell me when you're done, please.  
 12 A. Okay, fine.  
 13 Q. Okay. Now, here the term browser window is  
 14 used, correct, the last sentence?  
 15 A. Yes.  
 16 Q. It says, "Set up your browser window so that  
 17 it's next to the CyberPilot Pro window."  
 18 A. Yes.  
 19 Q. And if you'll turn to the next page, does  
 20 that show the browser window set up so that it's next  
 21 to the CyberPilot Pro window?  
 22 MR. KOCHANOWSKI: Objection to the  
 23 extent you're using it as used in the patent as opposed  
 24 to this tutorial.  
 25 THE WITNESS: Yeah, he doesn't have

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1 a number 400 or 406 after it, so one can't necessarily  
 2 relate this to the patent.  
 3 BY MR. WOLFF:  
 4 Q. So you think it has to have a 400 or a 406  
 5 in prior art reference to relate it to the patent?  
 6 A. Well, if you want to argue from it to  
 7 something in the patent, I think you better know which  
 8 one he's referring to. He is -- I think my  
 9 interpretation of his language is that your browser  
 10 window is the subwindow that he's telling you to locate  
 11 it next to the left part of the overall display window,  
 12 and he's calling it a browser window, and one can infer  
 13 from that that he has in mind that there will be  
 14 several windows, one can move them around, and one can  
 15 locate them.  
 16 Q. Now, I'm sorry, which one of these windows  
 17 did you think is the CyberPilot window, the one on the  
 18 left or the one on the right, and I'm referring to Page  
 19 13?  
 20 A. The one on the right.  
 21 Q. The one on the right is --  
 22 A. I think what he's calling the browser  
 23 window.  
 24 Q. Okay. And that would be the whole four  
 25 corners of the Netscape Navigator?

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1 MR. KOCHANOWSKI: Objection.  
 2 BY MR. WOLFF:  
 3 Q. The area defined here?  
 4 MR. KOCHANOWSKI: Objection to the  
 5 form.  
 6 THE WITNESS: I don't know --  
 7 MR. KOCHANOWSKI: I think that's  
 8 asking him to interpret what Mr. Stark meant.  
 9 THE WITNESS: It would be nice if we  
 10 had this in front of us and we could move it around and  
 11 see what part is moving at that point so we can tell  
 12 what it is he's telling you to move. Looking at a  
 13 static window like this, it's not entirely clear, but  
 14 it looks like the Net -- that there's a Netscape window  
 15 there, yes, okay.  
 16 BY MR. WOLFF:  
 17 Q. And that's what he's referring to when he  
 18 says the browser window, in your understanding, is that  
 19 correct?  
 20 A. It appears that that's what he's referring  
 21 to as the browser window -- as your browser window.  
 22 Q. And what were you saying about moving  
 23 something around?  
 24 A. Well, that's what he says.  
 25 Q. What who says?

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1 A. Or he says, "Set up your browser window so  
 2 that it's next." I interpret that as move it to that  
 3 particular position.  
 4 Q. I'll have the reporter mark as Exhibit 108  
 5 the declaration of Randall Stark.  
 6 DEPOSITION EXHIBIT 108  
 7 WAS MARKED BY THE REPORTER  
 8 FOR IDENTIFICATION  
 9 THE WITNESS: Should I hold onto  
 10 this page?  
 11 BY MR. WOLFF:  
 12 Q. You can hold onto that page, sure.  
 13 A. Okay.  
 14 Q. And could you turn to Page 2 of Exhibit 108  
 15 and read Paragraph 5(a)?  
 16 A. Okay.  
 17 Q. And earlier you mentioned about running the  
 18 program and seeing whether you could move the -- it  
 19 sounds like move the browser window around in the  
 20 display screen?  
 21 A. I said that he made it sound like you could.  
 22 I didn't say I did, but I think I may have.  
 23 Q. You may have. You don't recall whether you  
 24 did or didn't?  
 25 A. That was not something I was particularly

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1 interested in.  
 2 Q. But you've raised it when you were giving  
 3 your previous answer, so I was wondering if it somehow  
 4 made a difference to you in your analysis as to whether  
 5 you could move this browser window around on the  
 6 display screen.  
 7 A. No, I don't think it makes any difference.  
 8 Q. Okay, all right, so -- but you have no issue  
 9 with Paragraph 5(a) in Mr. Stark's declaration, is that  
 10 correct?  
 11 A. No, no, if that's what you were moving  
 12 toward, no, I have no issue.  
 13 Q. I wasn't sure whether your statement on your  
 14 analysis was somehow dependent on whether you could  
 15 move the browser window around in the display screen.  
 16 A. Fine, no.  
 17 Q. No. Thank you. And you don't recall  
 18 whether you moved the browser window around to --  
 19 A. I think I did.  
 20 Q. Okay. And when you did double click on  
 21 object icons -- you know what object icons are?  
 22 A. Yeah, uh-huh.  
 23 Q. Did it open up a web page in the browser  
 24 window?  
 25 MR. KOCHANOWSKI: Object to the use

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1 of the word browser window unless you tell him exactly  
 2 what you mean.  
 3 BY MR. WOLFF:  
 4 Q. The Netscape Navigator -- I'm sorry, not the  
 5 Netscape Navigator because you didn't use the Netscape  
 6 Navigator, the Microsoft Internet Explorer?  
 7 A. It opened up an IE window with that web  
 8 page.  
 9 Q. And you don't think that meets Limitation  
 10 1(f) that Mr. Hardin identified in -- at Tab F of his  
 11 declaration, is that correct?  
 12 A. Well, I think every answer to this kind of  
 13 question is going to be subject to my saying that they  
 14 don't have a search window; therefore, none of this  
 15 applies.  
 16 Q. So your whole analysis is premised on your  
 17 construction of what is a search window?  
 18 A. Well, I don't know about the whole analysis.  
 19 I start out that way, and, therefore, almost everything  
 20 else falls out of it. CyberPilot does not do a search,  
 21 it does a web map, period.  
 22 Q. There's no teaching or suggestion in the  
 23 CyberPilot product to do any sort of a search?  
 24 A. Not --  
 25 MR. KOCHANOWSKI: Objection, you

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1 didn't move for obviousness, you moved for  
 2 anticipation, so to that extent, he's not been offered  
 3 as obviousness expert at this juncture.  
 4 BY MR. WOLFF:  
 5 Q. Does the CyberPilot teach performing any  
 6 type of a search?  
 7 MR. KOCHANOWSKI: Same objection.  
 8 THE WITNESS: Any type is pretty  
 9 broad. It does not teach doing a search of the kind I  
 10 expect to see in a search engine, which says give me  
 11 key words and I will search for whatever pages on the  
 12 network contain those terms. Giving an URL and saying  
 13 go get this for me is not part of my definition of a  
 14 search.  
 15 BY MR. WOLFF:  
 16 Q. Okay. Let's turn back to the CyberPilot Pro  
 17 tutorial. Would you turn to Page 20.  
 18 A. Okay.  
 19 Q. And do you see the section that begins  
 20 search the NetCarta web map?  
 21 A. Yes.  
 22 Q. Did you consider this description in the  
 23 CyberPilot tutorial when you prepared your declaration?  
 24 A. I don't recall this part.  
 25 Q. And are you reviewing it now?

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1 A. Yes.  
 2 Q. Okay. Tell me when you're done.  
 3 THE VIDEOGRAPHER: End Tape 2. We  
 4 are going off the record at 3:15 p.m.  
 5 (An off the record  
 6 discussion was held)  
 7 THE VIDEOGRAPHER: Videotape 3. We  
 8 are going back on the record at 3:16 p.m.  
 9 BY MR. WOLFF:  
 10 Q. Professor Galler, did you test the  
 11 functionality of the --  
 12 A. No.  
 13 Q. -- CyberPilot product?  
 14 A. No.  
 15 Q. Okay. In your view, would it -- would this  
 16 type of a search as described here be different than  
 17 the search you've defined in your declaration?  
 18 A. Very different.  
 19 Q. Very different. How's that?  
 20 A. Well, I'm looking on Page 23 about five  
 21 lines down. He says, "You'll note that one thing you  
 22 can't do is search for text on a page. That's because  
 23 you'd have to access the remote file server to do that.  
 24 When you search, you're only searching the web map, not  
 25 the website itself." And, of course, he claims this is

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1 an advantage.  
 2 My definition of a search, a search  
 3 engine that does a real search connects to the  
 4 worldwide web, does a search on the web for, in  
 5 particular, key words that have shown up on pages, and  
 6 he's explicitly disclaiming that.  
 7 Q. Who is explicitly disclaiming that?  
 8 A. The tutorial, Mr. Stark, if he wrote it.  
 9 Q. Okay. And so your construction is that it  
 10 has to do a search on the internet to be qualified as a  
 11 search?  
 12 A. I think that is the intent and  
 13 interpretation of the patent.  
 14 Q. Are you sure that's the right construction?  
 15 A. I think so, yes, I'm quite sure.  
 16 Q. If you'll turn to Page 8 of your  
 17 declaration, I'm looking at Exhibit 104.  
 18 A. Page 8.  
 19 Q. I'm looking at the figures at the end of  
 20 Paragraph 12.  
 21 A. Okay. The context here is the Google  
 22 Toolbar?  
 23 Q. That's correct.  
 24 A. Okay.  
 25 Q. Does what is shown or displayed in the

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1 figures on Page 8 meet this limitation of search as  
 2 required in Claims 1 through 8?  
 3 MR. KOCHANOWSKI: Objection, what  
 4 form are you asking him about? What limitation are you  
 5 asking him about?  
 6 BY MR. WOLFF:  
 7 Q. Can you answer the question?  
 8 A. Well -- I think I can answer it. Let's hear  
 9 it again. I'd like to be sure I know what I'm  
 10 answering.  
 11 Q. Does what is shown in the figures at the end  
 12 of Paragraph 12, does it show the search as you've  
 13 defined that as being somehow required by all the  
 14 claims, Claims 1 through 8?  
 15 MR. KOCHANOWSKI: Same objection.  
 16 THE WITNESS: What is shown is  
 17 the results of the kind of search I've been describing,  
 18 and the whole point of the next and previous buttons so  
 19 you don't have to go back and show the location  
 20 identifiers, but you can select among them by these  
 21 buttons, but what you are working on is the results of  
 22 a real search as I've been discussing.  
 23 Q. And what is the search window in these  
 24 figures in Paragraph 12?  
 25 A. The part where the data page is displayed.

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1 Q. What do you mean the data page?  
 2 A. Well, the data page is what came back from  
 3 the internet, Flickr, et cetera, and the text below it,  
 4 and the paragraphs there, and so on.  
 5 Q. But didn't you say earlier that a search  
 6 page had to have like a text area and a way to perform  
 7 the search?  
 8 A. I don't think I used those words.  
 9 Q. So you still think that what's shown in  
 10 Figure 12 is one of the one of the -- it meets  
 11 limitations for example 1(f) in Claim 1?  
 12 A. Yes, I do.  
 13 Q. Okay. Are you sure?  
 14 MR. KOCHANOWSKI: Objection. Okay,  
 15 I've asked you two --  
 16 MR. WOLFF: I can ask that question.  
 17 MR. KOCHANOWSKI: No. You asked him  
 18 the same question twice, and I think you asked him are  
 19 you sure twice, so I don't know what they teach you but  
 20 once is usually enough.  
 21 BY MR. WOLFF:  
 22 Q. Referring to Paragraph 38 in your  
 23 declaration, it says first or, I'm sorry, the second  
 24 sentence, "CyberPilot is a stand-alone piece of  
 25 software that can be used to create hot links -- create

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1 a hot links map of any website." Did that statement  
 2 somehow factor into your analysis? I mean is this some  
 3 limitation of the claims?  
 4 A. No, it's a description of CyberPilot.  
 5 Q. But is that something that would make it not  
 6 be prior art because it's a stand-alone application --  
 7 I'm sorry, a stand-alone piece of software?  
 8 A. No. The fact it's a stand-alone piece of  
 9 software does not, but the fact that it is used to  
 10 create a hot links map is what is important there as  
 11 supporting the first sentence that it doesn't construct  
 12 a search window.  
 13 Q. So why did you use the term a stand-alone  
 14 piece of software in that sentence?  
 15 A. It's just descriptive. I don't think  
 16 that's -- one could leave that out. CyberPilot is  
 17 software. Sometimes you put in extra words just  
 18 because they help understand things. I would not put  
 19 any weight on that.  
 20 Q. Okay. And the sentence, the last sentence  
 21 that begins on Page 26 says, "It is" -- and it  
 22 continues to Page 27, "It is merely a tool for aiding  
 23 in the navigation of an already known website -- I'm  
 24 sorry -- an already known site."  
 25 A. Thank you. What about that?



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1 Q. And does that sentence somehow affect your  
2 analysis that CyberPilot is not prior art?  
3 A. Yes.  
4 Q. Okay. And that's --  
5 A. That supports the previous sentence that  
6 there's no indication that it performs a search.  
7 Q. Okay. Well, a search in the context of  
8 being on the internet, a search of a web map file.  
9 A. That's the context I'm using.  
10 Q. Okay. And then the next two sentences, if  
11 you could read those.  
12 A. Uh-huh.  
13 Q. Tell me when you're done.  
14 A. Oh, yeah.  
15 Q. One does not enter key words or terms to  
16 search the internet but enters an already known URL?  
17 A. Right.  
18 Q. Now, is that something that makes CyberPilot  
19 not prior art?  
20 A. Yes, that's what makes it not a search.  
21 Q. Okay. And where is this limitation found in  
22 Claim 1, for instance?  
23 A. The limitation there has to be a search?  
24 Q. Yes.  
25 A. Well, let's look at the patent. Claim 1

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1 says a computer implemented method for searching so,  
2 and then you have to construct the search window, and  
3 my definition of searching and search window imply that  
4 it has to do a search.  
5 Q. And what is it in the term search window,  
6 just the term search, the fact that they've used the  
7 term search that makes you --  
8 A. Yes.  
9 Q. And was that argued during prosecution of  
10 the patent?  
11 A. I don't recall if it was argued. Certainly  
12 in amending the original application, they made a point  
13 of introducing the word search or the concept of  
14 searching, in order to limit the scope of the patent,  
15 it was well understood that this was searching, and I  
16 don't recall if they defined it, I just don't know, but  
17 I think it is -- searching as understood in the  
18 computer industry and certainly that's the way I read  
19 it.  
20 Q. Now, can you show me where in the  
21 prosecution history they added the term search for the  
22 reasons you've just described?  
23 A. I think you quoted it to me this morning. I  
24 can look through it if you wish. We're going back to  
25 the file history now?

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1 Q. Yes.  
2 A. It's going to take a while for me. Maybe  
3 you could help me find where it is.  
4 I would welcome any help. I don't  
5 find my way around this file history very easily.  
6 Q. You could turn to Page G 249. This is the  
7 actual -- in Exhibit 30 -- this is the actual final  
8 response to the August action.  
9 A. I'm sorry, you say 239?  
10 Q. G 249.  
11 A. 49, okay. Well, I guess it's right on Page  
12 250, a computer implemented method [and system for  
13 retrieving information from] -- and I guess that's  
14 what's deleted -- for searching on a local computer, if  
15 I understand the underlining means that that's added,  
16 am I correct that that's the interpretation?  
17 Q. Yes.  
18 A. So that's where it's introduced.  
19 Q. So because they added this limitation, you  
20 said that it restricts the scope of the claim?  
21 A. I think so, yes. And then Line 7 you have  
22 to construct a search window.  
23 Q. Was this limitation added to get around any  
24 of the prior art?  
25 A. Well, now you're asking me for their

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1 motivation.  
2 Q. I'm asking you for your analysis of the  
3 prosecution history.  
4 A. Well, I don't know if -- I know that saying  
5 that first and second icon, whatever, has to be  
6 separate was to get around the prior art. I don't know  
7 why it was restricted to a search engine or searching,  
8 I don't know that it was necessary. They did it, and I  
9 don't know their motivation, but it's there.  
10 Q. But can you show me in here where in the  
11 response to the Office Action, where they said that  
12 this was being amended to get around the prior art?  
13 A. It may be here somewhere. I can't -- as I  
14 say, I can't find things in here easy. And, again, it  
15 would be, seems to me, it would be somebody else's job  
16 to find prior art that would have made this necessary,  
17 but I don't know, they did it, the Examiner accepted  
18 it, it's a limitation on the scope of the patent, so  
19 they must have felt it was important to do it or  
20 necessary, and I don't know why.  
21 Q. But in your analysis you couldn't find  
22 anything or you don't know one way or the other whether  
23 there's anything in this prosecution history that --  
24 A. I did not look for it, I don't know.  
25 Q. If you turn to Page G 258 --

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1 A. Uh-huh.  
 2 Q. -- do you know what 35 USC 112 refers to?  
 3 A. I've never really pinned down the 102, 103,  
 4 12, whatever it is. You can help me, tell me, if you'd  
 5 like, and we'll talk about it.  
 6 Q. Do you -- sitting here today do you have any  
 7 understanding of what that term means?  
 8 A. Well, these are the obviousness and  
 9 usefulness and so on conditions. I know the  
 10 conditions, but I've never worried about which section  
 11 they come from in the patent code.  
 12 Q. You don't know what Section 112 refers to,  
 13 35 USC 112?  
 14 A. Usually from context I can but -- okay, 1 to  
 15 6 rejected as being indefinite. I don't know what that  
 16 means, I didn't worry about that. I did not try to do  
 17 the work of the inventors or the Examiner. I said,  
 18 "Okay, they've made these arguments, he's accepted  
 19 them, we've got a patent," and as appropriate, things  
 20 are, you know, quoted from here, et cetera, but this is  
 21 part of the legal part that I'm exempted from, if you  
 22 will, okay, I don't make legal conclusions.  
 23 Q. But you submitted a declaration --  
 24 A. Yeah.  
 25 Q. -- saying that CyberPilot does not

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1 anticipate the patent --  
 2 A. Well.  
 3 Q. -- Claims 1 through 8.  
 4 A. That's right, but I'm not pointing you to a  
 5 particular part of the legal code, I'm saying I don't  
 6 think it anticipates it.  
 7 Q. But you've made a legal conclusion.  
 8 A. I made a technical conclusion. What they  
 9 have is not a search window.  
 10 Q. So that's all your analysis is premised on,  
 11 your understanding what the term search window means?  
 12 MR. KOCHANOWSKI: Objection, that's  
 13 the fourth time you've asked that question.  
 14 THE WITNESS: Every time you say  
 15 that's all, no it's not all.  
 16 BY MR. WOLFF:  
 17 Q. It's one of the things.  
 18 A. It's one of the things.  
 19 Q. But in each of your each step of your  
 20 analysis you assumed that search window meant Element  
 21 406 and not 400?  
 22 A. Yes, yes.  
 23 Q. Okay. If you could look at Claims 23  
 24 through 26, and they begin at G 255, this is in this  
 25 amendment we're still looking at.

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1 A. These are the original claims numbered this  
 2 way.  
 3 Q. Correct.  
 4 A. Okay. Which ones specifically?  
 5 Q. All, I think all of those claims, Claims 23  
 6 through 26, and tell me if you see the word search  
 7 window in any of these claims.  
 8 A. No, I think these claims as amended don't  
 9 refer to a search window.  
 10 Q. Okay. What do they refer to instead?  
 11 A. A browser window.  
 12 Q. Okay.  
 13 A. And a -- let's see, and a jumper window. I  
 14 mean there are more than one window being referred to  
 15 here.  
 16 Q. In your view, the browser window is not the  
 17 same thing as the search window?  
 18 A. That's correct.  
 19 Q. Okay. Now, if you'll turn to Page G 286,  
 20 the first paragraph says, "Examiner is looking at  
 21 Claims 1, 7, 13, 18, 23, and 25," correct?  
 22 A. And these are obviously the initial, the  
 23 initial --  
 24 Q. These are the claims from the previous  
 25 amendment.

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1 A. Right.  
 2 Q. Okay. And the language he cites is that  
 3 each of those claim limitations or, I'm sorry, I won't  
 4 say that, but if you go down about five lines, he says,  
 5 he notes that he cites to Claim 1, Lines 8 through 15,  
 6 and says substantially similar and others.  
 7 A. Well, you're just referring to the first  
 8 paragraph now?  
 9 Q. Yes.  
 10 A. Okay.  
 11 Q. Do you have any view as to why he says  
 12 substantially similar when he's referring to all of the  
 13 independent claims?  
 14 A. When it says substantially similar,  
 15 generally to avoid repeating them, but the word  
 16 substantially generally implies but with minor  
 17 differences, but I don't know why he said it. You're  
 18 asking me why he says something.  
 19 Q. I'm just asking if you have some analysis  
 20 of --  
 21 A. That would be my interpretation of why he  
 22 said that, that there is similar wording in the others  
 23 but there may be minor differences which are not  
 24 relevant here or not important that's how I read what  
 25 he says. Could be wrong. I mean this may be technical

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1 legal language that I'm not familiar with.  
 2 Q. Okay. And then in the next paragraph when  
 3 he refers to why he's allowed this, he uses the term  
 4 browser window instead of the term search window.  
 5 A. Well, I don't know if it's instead of  
 6 something. No, he uses Item 400 which we have been  
 7 interpreting as the entire browser window, so I don't  
 8 know that he's using something instead of something  
 9 else. He says 400, and 400 is 400. We've been through  
 10 this.  
 11 Q. Okay. And you did not consider this in your  
 12 analysis, these statements?  
 13 MR. KOCHANOWSKI: It's Number 12  
 14 just for the record, please.  
 15 THE WITNESS: I didn't say one way  
 16 or the other. I didn't necessarily quote this, I  
 17 think, but everything was considered. I'm not going to  
 18 agree with that statement.  
 19 BY MR. WOLFF:  
 20 Q. Okay. If you could turn to Paragraph 27 in  
 21 your declaration.  
 22 A. In my declaration?  
 23 Q. Exhibit 104. And I'd like you to read that  
 24 paragraph and let me know if you agree with their  
 25 conclusion.

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1 A. I agree with it.  
 2 Q. So you don't think there's anything  
 3 inconsistent in the claim language and in the patent  
 4 specification?  
 5 A. No.  
 6 Q. With regard to the term search window and  
 7 browser window?  
 8 A. No. I don't have any problem with what's  
 9 there.  
 10 MR. WOLFF: Now would be a good time  
 11 for a break.  
 12 THE VIDEOGRAPHER: We're going off  
 13 the record at 3:40 p.m.  
 14 (A short recess was taken)  
 15 THE VIDEOGRAPHER: We are going back  
 16 on the record at 3:48 p.m.  
 17 BY MR. WOLFF:  
 18 Q. If you could turn to Paragraph 41 of your  
 19 declaration, Professor Galler.  
 20 A. Okay.  
 21 Q. Now, here I think is the first spot where  
 22 you've analyzed Claim 2. Is your analysis premised on  
 23 the statement that reads "From what is displayed during  
 24 operation of the software, I see no basis for this  
 25 statement"?

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1 A. I'm not sure I understand the question.  
 2 Q. Well, Claim 2, the portion that you cite,  
 3 says the initial data file comprises information in a  
 4 markup language. Do you -- is hypertext markup  
 5 language file a file in a markup language?  
 6 A. I suppose so, well, yes, I mean what's the  
 7 point of the question?  
 8 Q. Well, what type of a page is displayed in a  
 9 web browser?  
 10 A. Are you talking about the display or the  
 11 page that's being understood to be displayed?  
 12 Q. I'm talking about the underlying file that  
 13 is displayed in the web browser, what type of file is  
 14 it?  
 15 A. It's typically an HTML file.  
 16 Q. And was that the case prior to 1996?  
 17 A. I don't know when that came in, it might  
 18 have been around then.  
 19 Q. Do you disagree with the statement that a  
 20 web browser displays a hypertext markup language file?  
 21 A. That's one of the forms of a file it might  
 22 display, but there might be other forms.  
 23 Q. Sure, sure, but it could have?  
 24 A. It could have.  
 25 Q. At the time -- before the time that the

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1 alleged invention a web browser could display an HTML  
 2 file?  
 3 A. Even now it could.  
 4 Q. I'm talking about before the time of the  
 5 patent.  
 6 A. All right. My point here in Paragraph 41 is  
 7 that I don't know from looking at it without looking at  
 8 the source code exactly what it's interpreting, what  
 9 it's -- what it brings in and what it -- whether  
 10 initial data file is in a markup language. All I'm  
 11 saying is I don't know that it is, I don't know that it  
 12 isn't.  
 13 Q. Because when you ran the software you  
 14 couldn't see the markup?  
 15 A. That's right.  
 16 Q. Okay. But did you try to open up the page  
 17 that was displayed in the web browser?  
 18 A. I didn't.  
 19 Q. Why not?  
 20 A. I wasn't particularly interested in it at  
 21 the time.  
 22 Q. But you've said that -- I mean doesn't that  
 23 mean that if you had, this statement might not be true  
 24 in Paragraph 41?  
 25 A. No. What it says is from what is displayed,

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1 I don't see a basis for the statement. I could have  
 2 gone further, I didn't, I don't know that he did in  
 3 making his comparison chart, but there's no argument,  
 4 there's no support in the comparison chart for that  
 5 statement, that's all I'm saying here, from what is  
 6 displayed I don't see a basis.  
 7 Q. You don't think a web page is a page that  
 8 can contain hypertext text markup?  
 9 A. It can contain, he's saying it does, and I  
 10 say I don't have a basis for that statement. Either he  
 11 or I could have pursued it further and found that out.  
 12 I didn't, and I don't see anything to suggest he did.  
 13 All I'm saying is I see no basis for saying so from  
 14 what is displayed, that's all I'm saying.  
 15 Q. Just what's shown on the computer screen  
 16 without trying to examine the underlying file?  
 17 A. That's right.  
 18 Q. But do you disagree that a web browser could  
 19 display a hypertext markup language file in 1995, for  
 20 instance?  
 21 A. I don't know what was available in 1995,  
 22 everything was just getting going at that point, and I  
 23 don't know what was available, but web browsers  
 24 probably could have displayed it. What I'm saying here  
 25 is there's no indication from what is displayed, I see

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1 no basis for saying it was. I'm not arguing that it  
 2 wasn't. I mean just what my report says is what I  
 3 stick with.  
 4 Q. Now, turning to Paragraph 43, you're  
 5 referring to the Claims 4 and 8. What I'd like to do  
 6 is try to understand how you interpret Claims 4 and 8.  
 7 Do you think that Claims 4 and 8 essentially mean the  
 8 same thing?  
 9 A. No, I would never say two claims mean the  
 10 same thing because you wouldn't have both of them there  
 11 obviously.  
 12 Q. You think they're equivalent?  
 13 A. I wouldn't think they're equivalent.  
 14 They're both there because something is different, but  
 15 that's not the issue here. The issue here is  
 16 apparently he is saying that they don't add anything,  
 17 and that's the issue.  
 18 Q. And why do you think he said that they don't  
 19 add anything?  
 20 A. Well, I'd have to go back and look. At the  
 21 time I read his, that was the understanding I got. You  
 22 want to help me find it?  
 23 Q. Yeah, it's in the Hardin declaration,  
 24 Exhibit F. Did you find it?  
 25 A. Yeah, I think it's Page 8, right?

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1 Q. Page 8, Page 4, I think.  
 2 A. Page 4, let's see.  
 3 Q. Are you looking at -- I'm looking at Exhibit  
 4 F, Tab F.  
 5 A. Oh, I was looking at his --  
 6 Q. His declaration?  
 7 A. Yeah, the declaration. All right. You're  
 8 saying Page 4 is a good place to look at it?  
 9 Q. Page 4 in Tab F is where he addresses Claim  
 10 4.  
 11 A. Well, this is where he's totally -- it's  
 12 totally nonsensical to claim that there is a first  
 13 button and a last button, and so on. If that's what  
 14 you want to argue about what they're talking about in  
 15 Paragraph 43, I thought we were talking about they add  
 16 nothing to the previous claims, but that's fine, they  
 17 do add something to the previous claims, the automated  
 18 buttons that we're talking about --  
 19 Q. No, I asked you whether you thought  
 20 Professor Hardin's analysis was that Claim 4 added  
 21 nothing to Claim 1(f).  
 22 A. Yeah, I don't see where he says specifically  
 23 it adds nothing but --  
 24 Q. Well, if you could look at Paragraph 43 of  
 25 your --

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1 A. Yeah, I know I said that. I was trying to  
 2 find where he said that it added nothing, I may have  
 3 overstepped on those words, but, you see, he says --  
 4 well, right now, okay, I guess right now I can't pin  
 5 down where he said that they're essentially  
 6 unnecessary, but his argument that these next and  
 7 previous are present in CyberPilot, I'm prepared to  
 8 discuss that anytime, it's ridiculous.  
 9 Q. Next and previous what?  
 10 A. Buttons.  
 11 Q. Buttons?  
 12 A. Well, or let's see what he says. Okay. On  
 13 Page 4 of the chart there on the right-hand side, the  
 14 location identifiers stored in the list in the web map  
 15 file are arranged in sequence and comprise a next,  
 16 prior, first, last, et cetera. The whole point  
 17 apparently is that you can chose the first one to ask  
 18 for, and, therefore, that must be equivalent of a next  
 19 button or I mean of a first button, and I don't --  
 20 Q. And why do you keep using the term button  
 21 instead of location identifier?  
 22 A. Okay, location identifier, right.  
 23 Q. Is there a difference between the term  
 24 button and location identifier?  
 25 A. If you wish, if we need to make that

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1 distinction, I'll make that distinction.  
 2 Q. What is that distinction?  
 3 A. Well, it might not be in the form of a  
 4 button, that's all, it might be some other way of  
 5 looking at it.  
 6 Q. Do you understand a location identifier can  
 7 be a URL?  
 8 A. Yeah, but, you see, I read -- I don't read  
 9 this as a next location identifier, I read it as a next  
 10 location identifier, a prior location identifier, and  
 11 so this is an identifier, which means next location and  
 12 prior location, and there isn't any such thing in  
 13 CyberPilot.  
 14 Q. So --  
 15 A. All right, go ahead.  
 16 Q. So you think that -- you think that the  
 17 terms location identifier here is completely different  
 18 than the term location identifier in Claim 1(d)?  
 19 A. No.  
 20 Q. You don't?  
 21 A. No. I'm saying that there is a next  
 22 location identifier, it's a way of reading that  
 23 three-word phrase, okay, and a last location  
 24 identifier, and if you look at the Google Toolbar, for  
 25 example, you have an icon, a button, whatever you want

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1 to call it, which when you click on it or indicate it  
 2 somehow gives you the next location, the identifier of  
 3 the next location. That's how I'm interpreting next  
 4 location identifier. To me, it's the identifier of the  
 5 next location. It's not the next one of a bunch of  
 6 things called location identifiers in a list.  
 7 Q. Had you considered whether the location  
 8 identifier could be a URL in your analysis, so meaning  
 9 that -- I know you construed the term to mean first  
 10 location and then some separate identifier.  
 11 A. No, not separate identifier, no, no, no. If  
 12 you look at Claim 4, it talks about one of the location  
 13 identifiers in the stored list selected from a group,  
 14 so there has to be a group of some sort consisting of a  
 15 next location, a prior location, a first location, and  
 16 a last location identifiers.  
 17 Q. Okay, but you've just skipped the word  
 18 identifier in each --  
 19 A. No, I've factored it out.  
 20 Q. You factored it out?  
 21 A. Yeah, that is, if I talk about John Smith,  
 22 Joe Smith, Tom Smith, I might say John, Joe, and Tom  
 23 Smith, okay, I have a bunch of Smiths, and I'm  
 24 referring to the three different ones. And here I'm  
 25 saying I have a bunch of identifiers, there's one

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1 called the first location, the next location, the prior  
 2 location, the last location, because they're identified  
 3 as a group. There's nothing grouping about the  
 4 description in the right-hand side of the page.  
 5 There's a list, and the list says, oh, by the way, you  
 6 can chose the first one if you want to, you can choose  
 7 the last one if you want. That's a totally different  
 8 interpretation.  
 9 Q. So what does the term identifier mean to  
 10 you?  
 11 A. A symbol or a piece of text or any  
 12 representation of something which identifies something.  
 13 Q. So could it be a URL?  
 14 A. Yeah.  
 15 Q. Okay. And so if you take the construction  
 16 that identifier means URL --  
 17 A. All right, and I want a group of first  
 18 location URL? I want a group, somewhere where I could  
 19 identify it as a group, a first, last, next, and  
 20 previous, and there's no such thing in CyberPilot.  
 21 Q. Do you know what a Markush claim is?  
 22 A. Markush no I'm sorry I don't know that term.  
 23 Q. Did you read the summary judgment motion,  
 24 correct, that Google filed?  
 25 A. Yeah, I think so, yeah.

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1 Q. And Google did an analysis where it talked  
 2 about this element being a Markush grouping?  
 3 A. I don't recall that, I'm sorry.  
 4 Q. Okay. So you had no opinion on that because  
 5 you didn't consider that?  
 6 A. I don't recall seeing it, I mean I must have  
 7 seen it but I don't recall, so I have no idea.  
 8 Q. Okay, fine.  
 9 THE VIDEOGRAPHER: Off the record at  
 10 4:05 p.m.  
 11 (An off the record  
 12 discussion was held)  
 13 MR. KOCHANOWSKI: I want to the put  
 14 on the record, then, I want to put on the record that  
 15 we were interrupted by a phone call from the Magistrate  
 16 who called, and apparently -- and I asked Mr. Wolff  
 17 whether we still have a problem, and he indicated we do  
 18 not, he's finished with his examination, and I so  
 19 informed the Magistrate, and finished with his  
 20 examination on the topics that we had an argument about  
 21 and called the Court about originally, so I have so  
 22 informed the Magistrate and we hung up, but we did not  
 23 discuss it any further.  
 24 THE VIDEOGRAPHER: We are going back  
 25 on the record at 4:07 p.m.

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1 BY MR. WOLFF:  
2 Q. Okay. And so, Professor Galler, before the  
3 break we were talking about the various location  
4 identifiers in Claim 4, and can you explain to me what  
5 this group consisting of the various location  
6 identifiers is to you structurally in the claim?  
7 A. Well, structurally I don't think the word  
8 group has any technical interpretation, so I rely on my  
9 normal interpretation of the word group, which would  
10 mean that somehow in the structure of whatever I'm  
11 looking at I can identify a substructure of what I  
12 perceive to be in a group. If they're all over the  
13 place not connected by anything at all, it would be  
14 hard for me to perceive a group. If it's a list of  
15 things such as CyberPilot has a web map, the fact that  
16 there is a first and a last and something as amorphous  
17 as next and previous, which I have no idea what that  
18 means, they explain it that if you're looking at  
19 something, then there is clearly a next and a previous,  
20 but that's not a grouping of something that I can  
21 interpret as available as a group in my interpretation  
22 of the normal use of that word.  
23 Q. Okay. So is it your conclusion, then, that  
24 this -- the Claim 4 and Claim 8 require all four of  
25 these what you've referred to as identifiers?

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1 MR. KOCHANOWSKI: Objection, I think  
2 that calls for a legal conclusion. I think he's given  
3 you a technical answer. You can answer if you can.  
4 BY MR. WOLFF:  
5 Q. Please do answer it.  
6 A. Yeah, I will try to answer it. It reads as  
7 if one ought to have the group, all four, but, again,  
8 there may be a legal interpretation of the way it's  
9 written, so that one need not have all of them present,  
10 I don't know.  
11 Q. But in your interpretation, you never  
12 considered whether only one was required?  
13 A. Oh, I think it isn't a group unless you have  
14 more than one.  
15 Q. Let's say if you had two.  
16 A. Well, I don't know. I would expect all  
17 four.  
18 Q. So you'd have to have at least -- CyberPilot  
19 would have to have at least four of these identifiers?  
20 A. Well, if it's going to anticipate this as  
21 prior art, it's got to have at least one, I mean that  
22 could be identified this way.  
23 Q. Did -- and I can't recall if we covered  
24 this, did you open the web map file that you created  
25 with CyberPilot in a text editor to see the contents of

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1 the file?  
2 A. No, I saw the web map.  
3 Q. And why didn't you open the web map file to  
4 see what its underlying structure was?  
5 A. The patent is at the level of the user of  
6 the system, and I wanted to have a view of it as  
7 described in the patent. I didn't see a need to go  
8 below. If it had been a copyright case of people  
9 copying the source code, I would have gone to the  
10 source code, but that was not the issue here.  
11 Q. Okay. Now, later on in the same paragraph,  
12 Paragraph 43 towards the bottom of the page, the  
13 sentence beginning "Moreover, in my opinion, CyberPilot  
14 is less broad than the art considered and rejected by  
15 the Examiner during the prosecution history."  
16 A. Yes.  
17 Q. Why did you make that statement?  
18 A. Well, that's what came to mind when I was  
19 looking at CyberPilot. I immediately thought that some  
20 of the things that were considered prior art had more  
21 than it had. I mean it really had very little of the  
22 search, anything we'd call searching and so on. I  
23 think I remarked that to Mr. Kochanowski, and when he  
24 drafted this thing he put that in there, and I was  
25 happy with it.

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1 Q. Now, why do you say less broad?  
2 A. Well, because they provided some facility,  
3 some function which -- such as the next icon, which  
4 CyberPilot didn't provide. I mean it was even weaker  
5 than they were. It's just an observation, it's not,  
6 there's no legal context as far as I know, well, maybe  
7 somebody would read that into it, but I don't.  
8 Q. Did you agree with the -- or let me strike  
9 that. Do you agree that you can press an icon in  
10 CyberPilot and parse URLs from a hypertext source? I'm  
11 sorry, strike that. I'm thinking of another case.  
12 MR. KOCHANOWSKI: I don't know what  
13 you're talking about. I have no idea what you're  
14 talking about, but even I didn't object.  
15 THE WITNESS: Well, I was trying to  
16 parse what he said.  
17 BY MR. WOLFF:  
18 Q. I meant to say an HTML file. Let's start  
19 again. Do you agree that you can -- that CyberPilot  
20 provides the functionality to parse URLs from an HTML  
21 file?  
22 A. Actually, I don't know what or how it does  
23 it. For example, I don't know if there's a directory  
24 of hot links that may come in with a file, in which  
25 case that parsing is already done and it gets it, or if

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1 it somehow has to get the file and parse it. According  
 2 to this tutorial, it has not made a connection to the  
 3 internet until later. So it may be that it gives a  
 4 directory and uses that until it has to actually get  
 5 the data file, I don't know what goes on underneath, so  
 6 I don't know how to answer it.  
 7 Q. But you ran the program, correct?  
 8 A. Yes.  
 9 Q. And you clicked -- you went to live websites  
 10 with the program, correct?  
 11 A. Yes.  
 12 Q. And you clicked on the question mark --  
 13 A. Yes.  
 14 Q. -- icon in CyberPilot?  
 15 A. Right.  
 16 Q. And when you selected the question mark  
 17 icon, the web map file expanded and added more icons to  
 18 the web map, correct?  
 19 A. That's right, but I don't know how much of  
 20 that was provided by the software that goes out to  
 21 follow the URL to get something how much of that came  
 22 in as -- maybe it -- I just don't know, maybe it  
 23 provided all the hot links first down to some level,  
 24 and I remember in the tutorial it says you can specify  
 25 the level that you want. So it may be that those come

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1 in without -- that CyberPilot doesn't have to do the  
 2 parsing until it gets beyond some level when it has to  
 3 go out there and get more, I don't know how it works  
 4 underneath. If I were designing the system, I might  
 5 design it that way for speed, but I don't know.  
 6 Q. When you were running CyberPilot, do you  
 7 recall what was happening at the bottom, the bottom of  
 8 the little display screen that was presented on the  
 9 display window?  
 10 A. Not specifically, but I know that up to some  
 11 point it had not yet connected to the internet and used  
 12 the browser, so that it was doing something with what  
 13 it got without asking for the full functionality of the  
 14 whole system, so I don't know how much it -- how it did  
 15 things underneath.  
 16 Q. But you don't recall seeing the little URLs  
 17 flashing up --  
 18 A. I don't.  
 19 Q. -- when you clicked on the question mark  
 20 icon?  
 21 A. I don't recall that.  
 22 Q. You don't recall it at all?  
 23 A. No.  
 24 Q. And you didn't test it a couple ways to  
 25 verify that it did not?

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1 A. No, I was interested more in the search  
 2 window, browser window distinction and the fact that it  
 3 wasn't doing searching, I did not pay a lot of  
 4 attention to what it did do underneath. Those are  
 5 interesting questions. I just didn't follow up on them  
 6 at the time.  
 7 Q. But I just assume that when you ran the  
 8 software you were looking at all of the functionality  
 9 to make sure --  
 10 A. Yes, but what you're asking about is a  
 11 detail that I just don't recall.  
 12 Q. If you could turn to Tab F in Exhibit 103,  
 13 this is the declaration of Joseph Hardin, and I'm  
 14 looking at claim Element 1(E) and his analysis and then  
 15 citation to the CyberPilot tutorial.  
 16 A. Uh-huh.  
 17 Q. Can you tell me how you understand, you  
 18 understand what's happening in CyberPilot from this  
 19 section, and if you would like, if you'd rather look at  
 20 Exhibit 107, that tutorial --  
 21 A. Let me read this and see if it's enough.  
 22 Okay. Let's see what your question is.  
 23 Q. Do you have an understanding of how  
 24 CyberPilot works from that section of text?  
 25 A. I have some understanding. Let's see what

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1 your questions are.  
 2 Q. Okay. So the first sentence says, "However,  
 3 since CyberPilot has only located the home page so far,  
 4 the child pages have question mark icons next to them.  
 5 This means CyberPilot Pro found the links on the home  
 6 page but hasn't actually gone on the web yet to locate  
 7 the objects those links point to."  
 8 A. Okay.  
 9 Q. So doesn't that say that CyberPilot goes out  
 10 to the web and gets the pages?  
 11 A. It gets one page, the home page, right.  
 12 Q. But he's referring to the child pages.  
 13 A. It hasn't gotten those yet.  
 14 Q. Right, and what he's saying is that's  
 15 what -- he's saying that it hasn't actually gone out to  
 16 the web yet to locate the object those links point to.  
 17 A. Right.  
 18 Q. So you wouldn't conclude that CyberPilot  
 19 actually does ever go out to the internet to get web  
 20 pages?  
 21 A. Well, somehow it appears that it's got the  
 22 home page without going to the internet, it's done a  
 23 certain level of URL following to a location and it  
 24 retrieves a page, okay. That much it does. There's no  
 25 browser involved yet.

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1 Q. Okay. And if you clicked on the question  
2 mark, do you have an understanding of what happens?  
3 A. Well, I presume at that point it does go to  
4 the browser, it wouldn't have to, it can use the same  
5 facility the browser uses to go out and retrieve more  
6 pages, another level of pages, and extract the links  
7 from those.  
8 Q. Okay. And you didn't look for that in the  
9 CyberPilot software? You don't recall whether it did  
10 that or not?  
11 A. Well, yes, I do, I remember noticing that  
12 the browser had not yet been invoked when it got the  
13 initial page and so on, yes.  
14 Q. And so if you double clicked on an object  
15 icon, would it invoke the browser?  
16 A. I think it probably would.  
17 Q. Okay. And did it display the page that was  
18 corresponded to the object icon in the browser?  
19 A. Yes.  
20 Q. And if the web map file was for the Yahoo  
21 home page, would it show the Yahoo search engine in the  
22 browser?  
23 MR. KOCHANOWSKI: Objection to the  
24 extent you're using the word browser generically, you  
25 know, same objection I've had the whole deposition. As

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1 long as we understand what you're talking about is the  
2 browser display area, go ahead.  
3 THE WITNESS: Yeah, I'm going to  
4 ignore the word browser there and talk to the context  
5 of what you're asking. If it went to the Yahoo page,  
6 it would treat the Yahoo website like any other website  
7 and give you a web map of the Yahoo home page and so  
8 on. There's nothing about the Yahoo search engine  
9 that's involved in any of what we just said. Yahoo has  
10 hot links in its home page. CyberPilot would go there  
11 and extract the hot links or the location identifiers  
12 and give you a list of them. As I say, you mentioned  
13 the Yahoo search engine, that is not involved, that is  
14 not involved in any aspect of this.  
15 BY MR. WOLFF:  
16 Q. So you don't think somebody could have  
17 created a web map from the Yahoo website?  
18 A. Yes, somebody could have created a web map,  
19 period, but that's not a search and that's not a search  
20 engine.  
21 Q. Okay. If we can take another quick break, I  
22 think I can wrap this up in another couple minutes.  
23 THE VIDEOGRAPHER: We're going off  
24 the record at 4:24 p.m.  
25 (A short recess was taken)

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1 THE VIDEOGRAPHER: We are going back  
2 on the record at 4:30 p.m.  
3 BY MR. WOLFF:  
4 Q. Professor Galler, if you could turn to  
5 Paragraph 22 on Exhibit 104.  
6 A. 104 is my report?  
7 Q. Yes.  
8 A. Yes, Paragraph 22?  
9 Q. That's correct.  
10 A. Okay.  
11 Q. And read that paragraph to yourself, and  
12 then we're going to look at the patent and have you  
13 describe to me what -- how you interpret.  
14 A. Okay. Now the patent. Column 7?  
15 Q. Right.  
16 A. Okay.  
17 Q. Now, this is an embodiment, as I understand  
18 your declaration, you're saying that the claims cover  
19 this embodiment, too, Claims 1 through 8?  
20 A. Which embodiment?  
21 Q. The one that's referenced in Paragraph 22.  
22 A. Well, Paragraph 22 says there are a number  
23 of alternate embodiments. So when you're saying the  
24 embodiment, which one do you have in mind?  
25 Q. I'm referring to the one you referenced in

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1 Paragraph 22, the one at Column 7, Lines 22 to 26.  
2 A. We're not reaching each other. Those lines  
3 talk about several alternate embodiments, okay, not  
4 just one.  
5 Q. Okay. Let's go to Paragraph 19.  
6 A. Okay.  
7 Q. I think I understand what you're saying.  
8 A. Okay.  
9 Q. Here in Paragraph 19 I understand you to be  
10 saying that the patent Claims 1 through 8 cover  
11 multiple embodiments that are described in the written  
12 description.  
13 A. They allow several alternate embodiments,  
14 okay, yes.  
15 Q. And then the last sentence says the granted  
16 claims of the 172 patent pertain to these two general  
17 embodiments. What are the two general embodiments?  
18 A. The general embodiments are, one, a jumper  
19 window that is an identifiable separate window which  
20 contains the first and second icons and so on, and an  
21 embedded -- an embodiment that embeds the appropriate  
22 things in the browser.  
23 Q. Okay. And then in Paragraph 22 I understand  
24 you to be identifying this second general embodiment,  
25 is that correct?



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1 A. I see what you mean now. Yeah, they're  
2 saying -- wait a minute now, the jumper window may take  
3 any of several forms. All right. User interface may  
4 include a pop-up window, et cetera, et cetera. Okay,  
5 let me get that back in the context of the patent  
6 itself. Okay. I'm ready to answer questions.  
7 Q. Okay. Which -- are all of these embodiments  
8 of the claims, all of what's described in this  
9 cited -- or, excuse me, I'm on West Coast time still,  
10 are all of the embodiments described here this general  
11 second embodiment that you referred to in Paragraph 19?  
12 A. Let me say it a different way. As I read  
13 this, and I believe I'm reading it correctly, they have  
14 been describing a jumper window with various  
15 characteristics, and in this little paragraph they're  
16 saying the jumper window itself may or the  
17 functionality of it may show up in other ways, it may  
18 be a modification of the browser window, a toolbar, or  
19 whatever, it need not be a separately identifiable  
20 jumper window, that's what they're saying. And any one  
21 of the ones on the list would represent the same  
22 functionality that the jumper window provides, that's  
23 what I believe this paragraph is saying.  
24 Q. Okay. Now, what is a menu referring to in  
25 this section of the written description?

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1 A. Well, I would interpret that to be something  
2 you might pull down from a word at the top of the menu  
3 bar at the top.  
4 Q. Okay. If you'll refer to Paragraph 7, Line  
5 27 --  
6 A. I'm sorry, Column 7?  
7 Q. Column 7, Line 27, there's a paragraph that  
8 describes various elements that --  
9 A. Yes.  
10 Q. Do you understand, do you understand the  
11 term a menu modification of the browser window to be,  
12 for example, a browser menu bar 402?  
13 A. You mean a modification of --  
14 Q. Right.  
15 A. -- 402?  
16 Q. Right.  
17 A. Let me see the picture again. Yes, that  
18 would be, I think, how I would interpret a menu  
19 modification, perhaps an additional word along that bar  
20 with a menu pull-down to represent the functionality  
21 here.  
22 Q. Okay. And what -- and a toolbar  
23 modification of the browser window, what does the  
24 toolbar modification -- what is that?  
25 A. Well, that might refer to the line just

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1 below 402 or one of the lines, two or three lines just  
2 below that where they might insert the functionality.  
3 Q. And where are you -- are you looking at  
4 Figure 4?  
5 A. I happen to be looking at 5(b) just there,  
6 but let's see. It's the same comments.  
7 Q. And is the accelerator keys on the keyboard  
8 also covered by the claims?  
9 MR. KOCHANOWSKI: Object to form,  
10 that's a --  
11 THE WITNESS: Well, it says so, it  
12 says or the use of accelerator keys on the keyboard.  
13 BY MR. WOLFF:  
14 Q. So if there were keys on a keyboard you  
15 could do this functionality with, it would also qualify  
16 as this icon, the first or second icon?  
17 A. I think they're claiming it could, yes.  
18 Q. How do you understand the claims?  
19 A. I think one could, they're separate from the  
20 search window certainly.  
21 Q. Okay. Are they displayed on the display  
22 screen?  
23 A. I don't, I suppose they could be, I don't  
24 recall that they are, but if we look at the claims,  
25 let's see if they have to be. Displaying the first and

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1 second -- well, they're not, but they could be, I mean  
2 you could have a representation of those accelerator  
3 keys on there.  
4 Q. Are you saying they're covered by the claims  
5 or not?  
6 MR. KOCHANOWSKI: Objection, this is  
7 asking hypotheticals.  
8 THE WITNESS: That's a legal  
9 question, sorry.  
10 MR. KOCHANOWSKI: No, no, the  
11 objection is he's not been offered for that opinion.  
12 MR. WOLFF: He cited the section in  
13 the --  
14 MR. KOCHANOWSKI: That's fine.  
15 MR. WOLFF: -- in the patent about  
16 alternate embodiments. I just want to know if he's  
17 saying that this is something that's covered by the  
18 claims.  
19 MR. KOCHANOWSKI: But those are two  
20 separate questions. I mean he may be, he may not be.  
21 I don't know.  
22 BY MR. WOLFF:  
23 Q. Do you know whether you are or you aren't?  
24 A. You better say the whole question.  
25 Q. Do you know whether you're saying this is an

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1 embodiment of the claims or not?  
 2 MR. KOCHANOWSKI: Objection.  
 3 BY MR. WOLFF:  
 4 Q. In particular, the use of accelerator keys  
 5 on a keyboard?  
 6 MR. KOCHANOWSKI: Go ahead.  
 7 THE WITNESS: The inventors claimed  
 8 it. Whether they are or are not I guess is really a  
 9 legal question. They're saying, you know, you could do  
 10 it this way. Well, whether you -- if you do it that  
 11 way, it's covered by the claims or not, I guess I don't  
 12 know, because one could display the accelerator keys on  
 13 the screen, too, and then you could use the accelerator  
 14 keys and be the same as selecting something on the  
 15 screen, so I wouldn't rule it out.  
 16 BY MR. WOLFF:  
 17 Q. Okay. What do you understand to be the  
 18 browser window that's referred to in this passage?  
 19 A. In this -- in Paragraph --  
 20 Q. Column 7, Lines 22 through 26.  
 21 A. I'm sorry -- I would interpret that to be  
 22 400.  
 23 Q. Okay, not 406?  
 24 A. Not 406.  
 25 Q. Okay. One more document I have to look at;

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1 probably excited to hear that.  
 2 MR. KOCHANOWSKI: Depends what the  
 3 document is.  
 4 THE WITNESS: Well, one more  
 5 document could be an hour.  
 6 MR. WOLFF: Go off the record for  
 7 just one second.  
 8 THE VIDEOGRAPHER: Going off the  
 9 record at 4:42 p.m.  
 10 (An off the record  
 11 discussion was held)  
 12 THE VIDEOGRAPHER: We're going back  
 13 on the record at 4:43.  
 14 BY MR. WOLFF:  
 15 Q. Professor Galler, if you could turn to  
 16 Exhibit 30, the prosecution history.  
 17 MR. KOCHANOWSKI: I trust you're not  
 18 going to go to Page G 286 now, are you?  
 19 MR. WOLFF: No.  
 20 THE WITNESS: What page  
 21 specifically.  
 22 BY MR. WOLFF:  
 23 Q. We're going to go to the Office Action that  
 24 begins on Page G 249.  
 25 A. Okay.

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1 Q. Now, if you will --  
 2 MR. KOCHANOWSKI: I'm sorry, you  
 3 said 249?  
 4 MR. WOLFF: 249, yes.  
 5 BY MR. WOLFF:  
 6 Q. Would you turn to Page G 262.  
 7 A. 262.  
 8 Q. And the penultimate paragraph beginning "The  
 9 applicant claims the ability to select a parsing."  
 10 A. Okay.  
 11 Q. And read that paragraph to yourself, and let  
 12 me know when you're finished.  
 13 A. Okay.  
 14 Q. Okay. Is it correct that here the applicant  
 15 is referring to the term search window in the claims  
 16 when it's describing how his claims differ over the  
 17 prior art?  
 18 A. I lost the second half of that question. Is  
 19 he referring to the search window? Yes. And what's  
 20 the rest of the question?  
 21 Q. Right. And he's distinguishing over the  
 22 prior art?  
 23 A. Well, are you asking me in the context of  
 24 this paragraph? I suppose so, but I read the  
 25 paragraph. Let's stick with that.

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1 Q. Okay. Do you understand -- you suppose so.  
 2 You're not sure?  
 3 A. Well, let's see what the question is.  
 4 Q. Well, that's the question. Is he  
 5 distinguishing over the prior art when he's making this  
 6 argument in the paragraph on Page G 262?  
 7 A. I guess so, yes.  
 8 Q. Okay.  
 9 A. Uh-huh.  
 10 Q. And he uses the term search window, correct?  
 11 A. Yes.  
 12 Q. Okay. And that's the term that's in the  
 13 claims, correct?  
 14 A. Yes.  
 15 Q. Claims 1 through 8?  
 16 A. Right.  
 17 Q. Okay. If you turn to Page G 264, the first  
 18 paragraph, read that to yourself.  
 19 Do you understand why in the  
 20 paragraph on Page 264 both the term search window and  
 21 browser window are used in reference to Claims 23  
 22 through 26?  
 23 A. I guess at this point I don't see -- there's  
 24 probably a reason, I just don't recall. I can't  
 25 reinterpret the reason for that.

Bernard A. Galler  
 October 28, 2005

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1 Q. Okay. Do Claims 23 through 26 in this  
 2 amendment we're referring to in Exhibit 30, do those  
 3 claims use the term search window?  
 4 A. No, they refer to -- I assume that these,  
 5 without checking back, these are the ones that turned  
 6 into the 15 to 18, is that correct?  
 7 Q. Let's just talk about them as 23 to 26.  
 8 A. Well, we did look at them before, and  
 9 they've become 15 -- all right, 23, 25 would probably  
 10 be 15 to 17.  
 11 Q. I think it's marked on there with the  
 12 numbers.  
 13 A. Yeah, all right, and so what's the question?  
 14 Q. Do you have any understanding why the term  
 15 search window and browser window were used in the same  
 16 claim or with reference to Claims 23 through 26?  
 17 A. I believe these are the claims that refer to  
 18 the embodiment about the jumper window, et cetera, but  
 19 I'm not sure I can answer your question intelligently  
 20 at this point.  
 21 Q. Okay. No further questions.  
 22 THE WITNESS: Thank you.  
 23 MR. KOCHANOWSKI: Okay.  
 24 THE VIDEOGRAPHER: This deposition  
 25 is concluded at 4:50 p.m.

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1 (The deposition was concluded at 4:50 p.m.)  
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1 CERTIFICATE OF NOTARY  
 2  
 3 STATE OF MICHIGAN )  
 4 ) SS  
 5 COUNTY OF OAKLAND )  
 6 I, Laurel A. Frogner, Certified Shorthand  
 7 Reporter, a Notary Public in and for the above county  
 8 and state, do hereby certify that the above deposition  
 9 was taken before me at the time and place hereinbefore  
 10 set forth; that the witness was by me first duly sworn  
 11 to testify to the truth, and nothing but the truth,  
 12 that the foregoing questions asked and answers made by  
 13 the witness were duly recorded by me stenographically  
 14 and reduced to computer transcription; that this is a  
 15 true, full and correct transcript of my stenographic  
 16 notes so taken; and that I am not related to, nor of  
 17 counsel to either party nor interested in the event of  
 18 this cause.  
 19  
 20  
 21  
 22 \_\_\_\_\_  
 23 Laurel A. Frogner, CSR-2495, RMR, CRR  
 24 Notary Public,  
 25 Oakland County, Michigan  
 My Commission expires: 4-22-08

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