EXHIBIT 2

IN THE MATTER OF:

Net Jumper Software, L.L.C.,
a Michigan Limited liability corporation,

     Plaintiff/Counterclaim
     Defendant

vs.

Google, Inc.,
a Delaware corporation,

     Defendant/Counterclaim
     Plaintiff.

     Deposition Testimony of:

     JOSEPH HARDIN

     Multipage™ and Index

Lori Caretti & Associates (586) 415-9008

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 3 of 44

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NET JUMPER SOFTWARE, L.L.C.,
a Michigan limited liability
corporation,

          Plaintiff,   Civil Action No. 04-70366-CV
                            Hon. Julian Abele Cook

vs.
                            Magistrate Judge R. Steven Whalen
GOOGLE INC.,
a Delaware corporation,

          Defendant.
                    /

          DEPOSITION OF JOSEPH HARDIN

     The Deposition of JOSEPH HARDIN taken before Eileen

S. Higer, Notary Public in the County of Oakland, in the above-

entitled cause on Friday, September 16, 2005, at 2000 Town

Center, Suite 900, Southfield, Michigan, commencing at about

8:00 a.m.

APPEARANCES:

For the Plaintiff   GARY HOOD, ESQUIRE
Net Jumper Software WILLIAM F. WARD, ESQUIRE
          for: MICHAEL H. BANIAK, ESQUIRE
          Baniak, Pine & Gannon
          150 North Wacker Drive, Suite 1200
          Chicago, Illinois 60606

For the Defendant   JASON W. WOLFF, ESQUIRE
Google, Inc.   Fish & Richardson, P.C.
          12390 El Camino Real
          San Diego, CA 92130-2081

Reported by: Eileen Higer (CSMR 5018)
          Lori Caretti & Associates
          (568) 415-9008

Page 2

          I N D E X
                         PAGE:
WITNESS:

JOSEPH HARDIN

Page 3

1   Southfield, Michigan
2   Friday, September 16, 2005
3   At about 8:30 a.m.
4
5   J O S E P H   H A R D I N,
6   having been duly sworn was examined upon his oath and
7   testified as follows:
8   -   -   -
9   EXAMINATION
10 BY MR. HOOD:
11 Q Please state your name and spell your last name for the
12   court reporter.
13 A Joseph Hardin, H-a-r-d-i-n.
14 Q Mr. Hardin, what is your current business address?
15 A University of Michigan.
16 Q That's good enough.
17 A Does it need to be closer than that?
18 Q No. That's good enough.
19 A And it's the Duderstadt Center.
20   MR. HOOD: Mr. Hardin, I already introduced
21   myself, but for the record my name is Gary Hood. I'm an
22   attorney in a case involving my client, Net Jumper
23   Software, L.L.C., and we're here for your deposition
24   today. I understand that you have another appointment
25   this afternoon, and we need to finish up about three

Page 4

1   o'clock. Is that correct?
2   THE WITNESS: That's right.
3   MR. HOOD: Okay. We'll do what we can to
4   make sure that you can get to your other appointment.
5 BY MR. HOOD:
6 Q I'd like to show you what has been previously marked.
7   MR. HOOD: It's our understanding, Counsel,
8   correct me if I'm wrong, it's Exhibit
9   Number 30 to the depositions in this case. This is the
10   prosecution history of the '172 patent. That's United
11   States Patent No. 5,890,172.
12   MR. HOOD: Let's also start by marking as --
13   I believe Exhibit No. 95 we're going to start with.
14   (Whereupon Exhibit Number 95 marked for
15   identification.)
16 BY MR. HOOD:
17 Q Mr. Hardin, I'm handing you what's been marked as Exhibit
18   Number 5 to the depositions. Do you recognize that
19   document? Please feel free to review it --
20 A Exhibit Number 95?
21 Q That's correct.
22 A All right.
23 Q Take a look at that and let me know if you recognize that
24   document.
25 A Yep.

Page 5

1 Q And what is --
2 A I recognize the document.
3 Q What is what's been marked as Exhibit No. 95?
4 A It's the declaration and associated exhibits. The
5   declaration being one that I gave, and the exhibits being
6   the ones that are associated with it.
7 Q Let me direct your attention to -- it's an unenumerated
8   page, but it's the page right after page number nine and
9   right before the tab A. It purports to have a signature
10   on it. Is that your signature there on that page, sir?
11 A Yes, it is.
12 Q Okay. Let me direct your attention to Exhibit A to
13   Exhibit Number 95 -- or tab A, I guess it would be.
14 A Uh-huh.
15 Q Let me ask you: Is this your current curriculum vitae,
16   Mr. Hardin?
17 A Yes, it is. It looks current.
18 Q Are there any updates or corrections to this CV that we
19   need to know about?
20 A No. The Assistant Professor, School of Information could
21   be stated Clinical Assistant Professor, School of
22   Information. Either works.
23 Q That's the January 2003 to present --
24 A Right.
25 Q -- entry?

Page 6

1 A Right. To present Director, Collaborative Technologies
2   Lab, yep. Assistant Professor, School of Information.
3   PI, Chairman of the Board. Yep. That all looks current.
4 Q Okay. How about in Section C, Publications, are there any
5   additional publications that you have authored that are
6   not listed there?
7 A Oh, there could be. I don't know. These were a
8   representative set of publications.
9 Q Let me ask you a couple of questions. Back up to Section
10   B, Appointments. You mentioned in the first entry PI and
11   Chairman of the Board, Sakai Project. That's S-a-k-a-i.
12   What was or is the Sakai Project?
13 A Right. The Sakai project is a collaborative software
14   effort, collaborative in two senses of the term. The goal
15   of the project is to build a set of software that can be
16   used for collaboration and a variety of types of
17   collaboration, the main one being between faculty and
18   students in the form of a course management system.
19   There's lots of these around, but combining that with a
20   set of tools that can be used by faculty for research and
21   for collaboration with their peers has advantages we
22   think. And building an open source set of code has
23   significant advantages. So this is a project that was
24   initially funded by the Mellon Foundation and that
25   involved in its first stages University of Michigan,

Page 7

1   Indiana University, MIT and Stanford, and its job -- the
2   first two years of the project the job is to get the core
3   set of software in place. Out of that effort has grown a
4   community of about 80 universities and about a dozen
5   commercial organizations that are now Sakai partners. So
6   this is a -- an open source software effort. It is
7   initiated by a number of universities with contributions
8   of staff and talent, expertise code and experience and has
9   been joined by a number of other universities and
10   commercial organizations.
11 Q Okay. Thank you. The second entry under appointments
12   January 2003 to present is the Assistant Professor, School
13   of Information, University of Michigan. Could you tell me
14   what you teach or have taught in that position at the
15   University of Michigan?
16 A The course that I teach -- I teach one course a year.
17   It's a graduate level course, and it's a course on
18   semantic Web technologies.
19 Q Tell me what that is.
20 A You really want me to?
21 Q Yes, please.
22 A I mean the whole thing?
23 Q Give me the shortened version. We'll see if we --
24 A Right.
25 Q -- need to ask some follow up.

Page 8

1 A Remember that you're talking to a professor here. I
2   mean --
3 Q Sure.
4 A -- I just -- the -- gosh, where to start. The semantic
5   Web is an idea that was developed initially by the same
6   person that came up with the initial protocols for the
7   Web, Tim Berners-Lee, and it involves providing a number
8   of features to the Web, especially to the data that's on
9   the Web to allow that data to be portable. The main way
10   to do that is to provide a set of standard languages,
11   which include something called the resource description
12   framework, RDF, and OWL, the Web ontology language which
13   is spelled O-W-L. Just as Tigger did. Actually it was
14   Owl that -- when talking to Tigger. That's an inside Web
15   joke. Anyway, it allows you to have a way of
16   characterizing data in a database -- or in a -- let's just
17   say in an environment behind a Web portal, for instance,
18   that can be easily read and understood by other people,
19   not the originators. So there's sufficient markup.
20   There's sufficient data modeling and both of those are
21   done in a standard way so that I could go and pull the
22   data off of your site, where it's behind your site and use
23   it in an application that I have. That data portability
24   comes partially through the use of XML as one of the
25   markup languages that is at the foundation, but RDF and

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 5 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 9

1 the modeling capabilities of it add a semantic layer, a
2 layer of machine understandable capability that's not
3 there with just -- I shouldn't say just, but that's not
4 there with simple markup languages. So the whole effort
5 of determining what the correct form for the research
6 description framework or for the OWL language, the
7 ontology language that sits on top of it -- ontologies are
8 dictionaries and descriptive sets of terms that have --
9 that show the relationships between the elements and the
10 data. Building that, getting it through the standards
11 processed or the specification process, more correctly
12 put, at the worldwide Web consortium is that task of those
13 that are interested in building a semantic Web, and
14 bringing that into commercial or applications like Sakai,
15 places where you have things like student information or
16 you have data about who used what tool in their class
17 when, and you want to tag that, and you want to be able to
18 make sure that other tools that are plugged in to
19 something like Sakai are able to read that data. Then the
20 kinds of capabilities that semantic Web technologies
21 provide become useful. The class that I teach is an
22 introduction to the whole idea of semantic technologies.
23 It goes into some detail when it comes to things like the
24 resource description framework or the various ontology
25 languages that have been proposed and the resultant OWL

Page 10

1   language. Where that fits in the whole layer cake, the
2   whole stack of Web technologies that are working their way
3   up from a foundation of simple protocols and methods like
4   we have now in the Web through markup languages like XML
5   up through modeling and markup languages like RDF through
6   ontology languages and up into layers that ultimately have
7   as a goal the ability to develop and transmit trust across
8   the Web.
9 Q   Okay. Thank you. The next entry in your CV, January 2003
10   to present, Director, Collaborative Technologies Lab and
11   Duderstadt Center at University of Michigan. What are
12   your duties or responsibilities or involvement there in
13   that particular position?
14 A   The Collaborative Technologies Lab is a place that was
15   established partially by the School of Information and
16   partially by the Duderstadt Center in order to
17   investigate, build, test, prototype and bring into in some
18   cases production what we thought were collaboration or
19   collaborative technologies that were used to people that
20   were pursuing the scholarly arts. So faculty and students
21   that are engaged in learning and teaching or that are
22   engaged in research, finding ways, evaluating software,
23   building software, evaluating the user experience, looking
24   at the user interfaces, looking at the design, finding out
25   how it fits into the practices of the people that are

Page 11

1   using it in the particular context. Those are the tasks
2   that are sort of given over to the Collaborative
3   Technologies Lab. As the director, my job is to oversee
4   all the activities in the lab, which includes activities
5   of developers and designers and gooey (phonetic)
6   developers and user analysis folks and support people, and
7   move forward at the University of Michigan understanding
8   and application of these kinds of technologies. Sakai is
9   right now the capstone project in that effort.
10 Q   Okay. Moving back to Section C of tab A to your
11   declaration publications, I believe you said that this
12   list is a representative set of your publications; is that
13   correct?
14 A   Right.
15 Q   How did you --
16 A   It was meant to be complete.
17 Q   Okay. How did you choose this particular representative
18   set to list under C?
19 A   These generally -- yeah, excuse me. Go ahead. Finish
20   your --
21 Q   No, go ahead. How did you choose this set?
22 A   These were publications that had to do with Internet
23   technology, Web-based technology, publications from the
24   period that the patent application took place in and that
25   were examples of the work that I've done dealing with or

Page 12

1   talking about and working with early Web technologies.
2 Q   Did you author any other publications other than those
3   listed that fit into those categories that you just stated
4   that are not presently listed in Section C of your CV?
5 A   I'd have to go back and look.
6 Q   Okay. Are you a named inventor on any United States
7   patent?
8 A   A named inventor? No.
9 Q   Are you a named inventor on any patent anywhere in the
10   world?
11 A   No.
12 Q   Okay. Moving to Section D of your CV, again we're on
13   Exhibit -- or tab A to what's been marked as Exhibit
14   Number 95 to the depositions. You say there led the NCSA
15   Software Development Group. Do you see that?
16 A   Yes.
17 Q   What does that acronym, NCSA, stand for?
18 A   The National Center for Super Computing Applications.
19   Full title could be NCSA at University of Illinois,
20   Urbana, Champaign. So sometimes it's characterized as
21   NCSA, UIUC or - UIUC.
22 Q   Moving down to the second to last bullet point in Section
23   D, you mention initiator and development lead for the
24   C-H-E-F, CHEF project, an open source effort to develop
25   collaboration technology. What type of collaboration

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 6 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 13

1   technology are you referring to there?
2 A The CHEF project, which is an acronym for -- well, it's
3   built up out of -- gosh, what is the phrase --
4   Comprehensive Collaborative Framework -- those letters in
5   that order can be found in those three words -- is the
6   project that we were working on prior to the Sakai
7   project. So it carried many of the same types of
8   principles and goals as the current Sakai project, only it
9   was a project that was largely done at the University of
10   Michigan. There were other schools, universities in the
11   states and in other countries that were involved in it,
12   but the Sakai project sort of brought that -- brought the
13   CHEF project into a larger universe of participation by
14   other universities, and it has -- it was working on the
15   same kind of things, building a collaborative learning
16   environment, sometimes called a course management system
17   or a virtual learning environment or an online learning
18   system as well as building the tools that were used by
19   researchers to work across the net and work with
20   collaborators on research projects. It had a component of
21   high performance computing in it. If you're familiar with
22   any of the grid projects that have to do with putting
23   together large scale resources, the kind that you'd find
24   at super computing centers or computation or data storage
25   or visualization or just big pipes for networking. It has

Page 14

1   interfaces and hooks to use a lot of the technology that's
2   been developed through NSF grants around the grid
3   technology, so it was a combination again of trying to
4   bring together the research and the teaching and learning
5   activities of faculty and make sure that they could --
6   they were enabled, facilitated in their work across those
7   domains.
8 Q Okay. Thank you. Let me move next to tab B to your
9   declaration, Exhibit 95. This is titled Hardin Dec.,
10   Exhibit B Documents Considered. Is this, Mr. Hardin, a
11   list of documents that you considered in putting together
12   the declaration that you've submitted as Exhibit 95?
13 A This is the Patent '172, '655, the Infringement Chart for
14   '172, Claim Constructions, Google's Proposed Claim
15   Constructions, Google Toolbar both on the IE browser and
16   the Firefox browser, the NetCarta Corporation CyberPilot,
17   Wood's Hyperspace document which was a general trip into
18   the past. That was a fun one to read again. And then the
19   other documents referenced in my declaration, yes.
20 Q So is this a complete list of everything that you reviewed
21   in preparing your declaration?
22 A Well, it mentions other documents and things referenced in
23   my declaration so it's kind of an open -- that kind of
24   completes the list of things.
25 Q Does that refer to things specifically referenced in your

Page 15

1   declaration?
2 A Yes.
3 Q You're talking about entry number nine there?
4 A Right.
5 Q Okay. Let me ask you: Who provided to you the materials
6   that are listed on Exhibit B -- tab B to your declaration?
7 A Almost all of them were provided by Jason Wolff. The
8   Wood, et al., Hyperspace -- Wood had a number of articles,
9   and the one that was provided to me was a different -- a
10   slightly different version of this particular document.
11   I'd have to go back and remember what the title of it was,
12   but that one I just went and pulled down from the site
13   from the Third International World-Wide Web Conference.
14 Q And you believe that the version that you actually
15   reviewed was a slightly different version than what's
16   listed in number eight here?
17 A I think it is the version listed in number eight. I think
18   what was provided to me from Jason Wolff was a slightly
19   different version. They talk about much the same thing,
20   and they demonstrate many of the same features and
21   capabilities. Wood did a lot of writing around that time
22   because he had a particular method and perspective, and it
23   was generally applicable to lots of different things.
24 Q Okay. Entry number four on tab B says Google's Proposed
25   Claim Constructions. Tell me what that document was.

Page 16

1 A Could we have a copy of that?
2 Q I don't have a copy of that.
3 A So that I could remind myself.
4   MR. WOLFF: I have a copy of it if you want
5   me to --
6   MR. HOOD: Do you?
7   MR. WOLFF: Yeah.
8   MR. HOOD: Yeah. That'd be great.
9   MR. WOLFF: Yeah, Exhibit L I think to my
10   declaration.
11   MR. HOOD: Why don't we go off the record for
12   a second and just take a look at it.
13   (Off the record.)
14   MR. HOOD: Back on the record.
15 BY MR. HOOD:
16 Q With respect to entry number five and entry number six,
17   Mr. Hardin, let me ask you: It mentions Google, Inc.,
18   Toolbar, four. Number five is the Internet Explorer Web
19   browser, and number six is the Firefox Web browser. What
20   in particular did you review with respect to number five,
21   the Google Toolbar for the Internet Explorer Web browser?
22 A Well, I entered -- I looked at the installation of it and
23   the Internet Explorer Web browser and played with it,
24   looked at its operation, did some searches with it, used
25   the different buttons on it and just generally

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 7 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 17

1   investigated how it functioned.
2 Q And was that the same with respect to number six on the
3   Firefox Web browser?
4 A Yes, it was.
5 Q Okay. So what you did, you actually installed an operated
6   that particular Toolbar; is that what you're referring to?
7 A Yes.
8 Q Let me move into your declaration itself, the substance of
9   it, and if I could point you to paragraph number 20. And
10   let me back up and just make sure we're on the same page.
11   I'm going to be referring to, if it works for you, the
12   '172 patent, and by that I mean United States Patent No.
13   5,890,172. Does that work for you?
14 A That works for me.
15 Q Okay. Great. Paragraph number 20 -- I won't read the
16   whole thing, but feel free to. I want to make sure I
17   understand what you believe the subject matter of the '172
18   patent is, and that is subject matter concerns software
19   for navigating or quote, "surfing," end quote a computer
20   network such as the Internet, and in particular software
21   that is used in conjunction with an Internet browser. Did
22   I read that correctly or at least that portion correctly?
23 A Yes.
24 Q That's what you believe to be the subject matter of the
25   '172 patent; am I correct?

Page 18

1 A Yes.
2 Q Okay. Let me move you to paragraph number 26 of what's
3   been marked as Exhibit No. 95 to the depositions. You say
4   in paragraph 26 that it is your opinion that the scope of
5   claims 1 and 5 is the same, meaning neither claim is
6   broader or narrower than the other. Likewise, claims 2-4
7   and 6-8, respectively, are also equivalent in scope.
8   First of all, are you referring in that particular
9   paragraph number 26 to the claims of the '172 patent?
10 A Yes.
11 Q Okay. Tell me what you mean by your opinion that the
12   scope of claims 1 and 5 are the same. Can you elaborate
13   upon that?
14 A Well, I think it's pretty clear I mean that they cover the
15   same thing. They cover the same ground. Neither claim is
16   broader or narrower than the other implies that the ground
17   that they cover is pretty much identical. All right. So
18   the claims -- in my opinion what's claimed in number 1 is
19   largely echoed in the claim in number 5.
20 Q Is it your opinion that there are no differences in the
21   claims 1 and 5?
22 A I'd have to go back and look. I think there are certainly
23   differences in the wording between 1 and 5, but again, I
24   think the scope of the claims is the same.
25 Q And we'll get to the claims so we can get into that in a

Page 19

1   minute. I just want to understand that particular
2   statement. I take it then with respect to claims 2
3   through 4 and 6 through 8 that's what you're referring to
4   as well, that the scope or coverage in your opinion is the
5   same?
6 A Uh-huh.
7 Q Let me ask you some basic background questions so I
8   understand your understanding of certain terms. Based on
9   your experience in the field that we're talking about, and
10   when I say the field we're talking about I'm referring
11   back to the subject matter that you believe the '172
12   patent relates to as you said in paragraph 20 of your
13   declaration. What do you understand an Internet browser
14   to be or refer to?
15 A An Internet browser is a tool for moving around, looking
16   for files, pages on the Internet, so it's an interface
17   that allows you to enter addresses, to look at the files
18   that are displayed usually as HTML and click on elements
19   within those files, which are commonly known as hyperlinks
20   or URLs or just links, and move from one file to the next,
21   back and forth, across the network. This is the concept
22   of surfing, moving along in this larger sea of
23   information. So the browser is the tool that allows you
24   to do that.
25 Q Can a user then of an Internet browser search the Internet

Page 20

1   with the browser?
2 A Yes.
3 Q What's your understanding of the term user interface with
4   respect to the field that we're talking about?
5 A The term user interface, user interface is composed of all
6   of the elements that are presented to the field of view of
7   the user and that are the presentation of an underlying
8   application that the user is expected to control, interact
9   with.
10   Whereupon Mr. Ward entered deposition site.)
11 BY MR. HOOD:
12 Q When a user of a computer is using an Internet browser,
13   tell me what the user interface would be with respect to
14   that user's use of the Internet browser.
15   MR. WOLFF: Object to form, ambiguous. Go
16   ahead and answer the question.
17   THE WITNESS: Could you repeat the question
18   then?
19   MR. HOOD: Could you repeat the question?
20   (Previous question played back.)
21   MR. WOLFF: Same objection.
22   THE WITNESS: Well, the user would be
23   involved in a browser window, would be using a browser
24   that has a window. That window would sit in a context of
25   the desktop or the operating system, whatever the

Page 21

1   background context was, and so the user would be
2   interacting with the different areas in the browser
3   window.
4 BY MR. HOOD:
5 Q And that would be the user interface?
6 A For the browser, right.
7 Q Okay. You used the term window. What is your
8   understanding of that term with respect to this particular
9   technology?
10   MR. WOLFF: Object to form, ambiguous, and
11   calls for a legal conclusion. Go ahead and answer the
12   question.
13   THE WITNESS: My understanding is that it's
14   those elements and all those elements that are within the
15   four corners of the browser. That's the commonly
16   understood. The browser window -- if somebody refers to
17   the browser window, one's referring to the -- to all the
18   things that are inside the rectangle of the browser.
19 BY MR. HOOD:
20 Q Okay. How about a search window? What is a search
21   window?
22   MR. WOLFF: Object to form, ambiguous. Calls
23   for a legal conclusion. Go ahead.
24   THE WITNESS: I would echo the point that
25   that's an ambiguous question. It's difficult to answer.

Page 22

1   In the context of searching on the Web, it would be
2   everything that's inside the browser window, controls,
3   display, form fields, everything that would be referred to
4   as the overall search environment and the search window.
5 BY MR. HOOD:
6 Q What about the term jumper window? What is your
7   understanding of the term jumper window?
8 A Yeah. Jumper window is a term that I first encountered
9   really in this claim. I had heard the phrase jump, of
10   course. It's often to go across a link. It's the way
11   it's usually used, but it's a separate window that has
12   some kind of controls and display in it that is used to
13   aid or attempt to aid in navigation and the use of the
14   browser.
15 Q Okay. In your experience and/or in your opinion, was the
16   term Internet browser understood differently in say
17   February of 1996 from what you've just testified to?
18   MR. WOLFF: Object to form.
19   THE WITNESS: February of 1996? No, I don't
20   think so.
21 BY MR. HOOD:
22 Q Okay. How about with respect to "window"? Was that term
23   understood differently in February 1996 than what you just
24   testified to?
25 A I wouldn't think so.

Page 23

1 Q And how about the term user interface? Was that term
2   understood differently in February of 1996 than what
3   you've just testified to?
4 A I wouldn't think so.
5 Q You'd mentioned, and we reviewed in tab B to your
6   declaration that you had reviewed the Google Toolbar with
7   respect to two Internet browsers. Do you recall that?
8 A Yes.
9 Q Is it your opinion that the Google Toolbar modifies a
10   browser window?
11   MR. WOLFF: Object to form, ambiguous,
12   incomplete hypothetical, and lastly I don't see exactly
13   what this has to do with anything that Professor Hardin
14   offered the declaration on, so I think that it is fairly
15   outside of the scope of this deposition.
16   MR. HOOD: Are you instructing him not to
17   answer?
18   MR. WOLFF: So I'm instructing the witness
19   not to answer.
20   MR. HOOD: Okay.
21   MR. WOLFF: Unless you want to articulate how
22   it's related, and I would obviously reconsider that --
23   MR. HOOD: Yeah. I'll get specifically into
24   the patent.
25   MR. WOLFF: Okay.

Page 24

1   MR. HOOD: I think you'll see where we're
2   going with that.
3 BY MR. HOOD:
4 Q Let's do that. Paragraph 27, Mr. Hardin, of your
5   declaration. On page number seven of Exhibit 95,
6   subparagraph (a) you state there that "as I understand
7   this claim limitation, and as I understand from my review
8   of the prosecution history of how the United States Patent
9   & Trademark Office (USPTO) examiner understood this claim
10   limitation, a construction of the claim should at least
11   cover the embodiment shown with reference to Figure 5A,
12   referred to by the USPTO in its reasons for allowing the
13   '172 patent." Did I read that correctly?
14 A Yes, you did.
15 Q Why in your opinion should a construction of the claim at
16   least cover the embodiment shown with reference to
17   Figure 5A?
18 A Well, that was one of the main references that was used in
19   the patent, and it was referred to in the USPTO, and it
20   seemed to me to be a clear -- as clear as it could get or
21   as it gets description of the claim and this particular
22   limitation.
23 Q Now, '172 patent -- well, let me back up. Are there any
24   particular statements or pieces of information in the '172
25   patent itself or its prosecution history that you base

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

Page 25

1   that particular paragraph 27A opinion upon? And feel
2   free, -- I think we have Exhibit No. 30, which is the '172
3   prosecution history here for you to review if you'd like
4   to.
5   MR. WOLFF: Object to form. Go ahead.
6   THE WITNESS: So what was the question again
7   exactly?
8 BY MR. HOOD:
9 Q I'd like you to point out if there's anything in the '172
10   patent itself or its prosecution history that you base
11   that particular statement 27(a) upon. I'd like you to
12   point that out for me.
13 A Well, I think the claims talk about, as we quoted here,
14   displaying a first and a second icon separate from the
15   search window on said display screen, so we could go and
16   find that quote if we'd like to. That would be in the
17   claim section of the patent itself. And in the
18   prosecution history, if I remember correctly, the patent
19   was granted when it was made clear that this distinction
20   of displaying in a separate window separate from the
21   search window was made clear. So those are the things
22   that I thought were most important when I was looking at
23   this particular claim.
24 Q How was that distinction made clear as you just stated?
25 A In the text and in the image in 5A.

Page 26

1 Q The text of what?
2 A The text of the patent itself of '172 and in the text of
3   the prosecution history.
4 Q Could you point me where in the text of the patent that
5   statement was made clear? And let me direct you. In the
6   '172 history, I believe the patent starts at the page
7   that's numbered G000075.
8   MR. WOLFF: Object to the form of the
9   question that it's ambiguous.
10   THE WITNESS: This is going to take a minute
11   to dig this out.
12 BY MR. HOOD:
13 Q Okay. Take your time.
14 A You don't happen to have one of these that has this in a
15   slightly larger text, do you?
16 A I think I do.
17 Q There you go.
18   MR. HOOD: Jason, do you want a copy?
19   MR. WOLFF: No.
20   THE WITNESS: So on -- in '172, column 13
21   where we see -- it's down in the first claim. I'm on a
22   page that's identified at the bottom right as G000096.
23   There's the phrase displaying a first and a second icon
24   separate from the search window on said display screen.
25   So that would be where I would look for this in the

Page 27

1   patent.
2 BY MR. HOOD:
3 Q And let me clarify. You're saying that that particular
4   claim language is what at least in part makes clear to you
5   the opinion that you state in paragraph 27(a) of your
6   declaration?
7 A Yes. And in the prosecution history -- gosh.
8   MR. HOOD: Let's take a quick break.
9   (Brief recess.)
10   MR. HOOD: Back on the record.
11 BY MR. HOOD:
12 Q We were discussing Paragraph 27(a) of your declaration,
13   and I'd like to know other than the claim language that
14   you've pointed to in claim one of the '172 patent, what if
15   anything from the prosecution history of the '172 patent
16   makes that opinion in 27(a) of your declaration clear as
17   you testified?
18   MR. WOLFF: Object to form, ambiguous. Calls
19   for a legal conclusion. Go ahead.
20   THE WITNESS: Okay. If we look at page
21   G00286 and the reasons for allowance in the prosecution
22   history, we find the phrase -- or the statement paragraph
23   -- it says -- it's talking about independent claims, and
24   in claim 1 in conjunction with other -- let's see, yada,
25   yada, yada -- displaying a first and second icon separate

Page 28

1   from the search window on said display screen and parsing
2   the location identifiers. It goes on. And then as shown
3   -- and so we've got separate from the search window on
4   said display screen there, and as shown in Figure 5A the
5   first and second icons are provided separate, item 300
6   from the browser window, item 400, and so that seemed to
7   me to be fairly clear and motivates my understanding
8   that's expressed in 27(a).
9 BY MR. HOOD:
10 Q Who made the statement that's -- that you just read from
11   page number G000286?
12 A It says the following is an examiner's statement of
13   reasons for allowance.
14 Q Okay. So you take it that the examiner made that
15   particular statement; is that correct?
16 A An examiner.
17 Q An examiner?
18 A Right.
19 Q Okay. It's your understanding that that statement that
20   you just read was not made by an inventor or applicant for
21   the '172 patent; is that correct?
22 A Well, it quotes the patent, so I would assume that the
23   part that's in quotes was a statement of the inventor or
24   the patent applicant. But this -- reasons for allowance
25   is clearly an examiner's statement.

Page 29

1 Q Okay. Other than the embodiment of Figure 5A, as you
2   reference in paragraph 27(a) of your declaration, are
3   there any other embodiments of the invention that are
4   included in the specification of the '172 patent?
5   MR. WOLFF: Object to form, calls for a legal
6   conclusion, ambiguous.
7   THE WITNESS: By embodiments, are you
8   referring to pictures?
9 BY MR. HOOD:
10 Q Let me ask this -- let me ask a different question. You
11   used the term embodiment in paragraph 27(a), correct?
12 A Prosecution history -- at least cover the embodiment
13   shown. Right.
14 Q I'm asking it in the same way that you're using that word,
15   embodiment, and let me ask you what do you understand the
16   term embodiment to mean as you use it in paragraph 27(a).
17 A Implementation is a -- or bringing, you know, to a form
18   where you can see it or that describes it sufficiently is
19   what I think I'm -- is what I mean by embodiment. There
20   are a number of figures there referenced by -- Figure 5A.
21   I think there is -- we could look, but there is a B, C --
22   or a 5A. There's a 5C. All right. So there's a number
23   of pictures that I would consider embodiments, a Figure 6.
24   Yes.
25 Q Is it your opinion that there are other embodiments in the

Page 30

1   '172 patent other than figures that you've just described,
2   in other words, textual embodiments?
3   MR. WOLFF: Object to form.
4   THE WITNESS: No, no -- yes. There are other
5   things that I would consider as more -- as descriptions,
6   but the embodiments that I was focusing on were those that
7   had to do with clear examples of the interface, and those
8   were in the graphics. All right. The descriptions
9   period. Right.
10 BY MR. HOOD:
11 Q Is it your opinion that a construction of the claim as you
12   describe in paragraph 27(a) covers the other embodiments
13   that in your opinion are shown in the '172 patent?
14   MR. WOLFF: Object to form, ambiguous, calls
15   for a legal conclusion.
16   THE WITNESS: Yeah. I don't know.
17 BY MR. HOOD:
18 Q You have no opinion on that?
19 A No.
20 Q Let me direct your attention to column seven of the '172
21   patent, and this is in the exhibit -- the page marked
22   G000093. Feel free to use the other text version if you
23   want to, but you can at least refer to it. I think it's
24   underneath here. We're in column seven.
25 A Okay.

Page 31

1 Q And particularly I'd like to ask you questions starting on
2   line 22, the paragraph that starts "in alternate
3   embodiments." Do you see that there?
4 A Yes.
5 Q The first sentence in line 22 of column seven says "in
6   alternate embodiments the jumper window may take any of
7   several forms. The user interface may include pop-up or
8   persistent window, a Toolbar, a menu modification of the
9   browser window, a Toolbar modification of the browser
10   window or the use of accelerator keys on the keyboard."
11   Did I read that correctly?
12 A Yes, you did.
13 Q In your opinion do any of those embodiments that are set
14   forth -- or let me back up. Should, as you say in
15   paragraph 27(a) of your declaration, a construction of the
16   claim at least covered those embodiments that are
17   described as I just read from column seven of the '172
18   patent?
19   MR. WOLFF: Object to form. Same objection
20   as before. Go ahead and answer the question.
21   THE WITNESS: I think when I look at this
22   patent, overall the characterization that I have in 27(a)
23   is a better characterization of -- and certainly the best
24   that I can give of the limitations that are expressed in
25   the claim.

Page 32

1 BY MR. HOOD:
2 Q What do you mean by a better characterization, as you just
3   said?
4 A More consistent. It's consistent with more of the -- my
5   reading of the patent and the prosecution history.
6 Q So is it then your opinion that the embodiments, the
7   alternate embodiments that are set forth at lines 22
8   through 26 of column seven are not properly included
9   within a proper claim construction as you've described in
10   your declaration?
11   MR. WOLFF: Same objection.
12   THE WITNESS: No. My understanding is that
13   they would not be consistent if they were to be included.
14   Right. There are too many places where as we just
15   described there's a fairly clear representation of the
16   claim, and these as they're phrased alternate embodiments
17   simply to me don't fit the larger, more consistent
18   coherent pattern of the overall claims.
19 BY MR. HOOD:
20 Q What is that larger, coherent, more consistent pattern of
21   the claims?
22 A As what's described in the claims that we just quoted,
23   that there's a first and second icon separate from the
24   search window, right, that there's a clear delineation
25   between the search window and whatever other window those

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 11 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 33

1   icons or whatever other space those icons appear in.
2 Q Just so I'm clear, it's your opinion then that these
3   alternate embodiments in lines 22 through 26 are
4   inconsistent with that particular claim element?
5 A Yes. They just don't seem to make anywhere near as much
6   sense as the characterization that I've given.
7 Q In your review of the '172 patent, did the applicants
8   specifically disavow or say that any particular
9   embodiments were not included or covered by the claims of
10   the patent?
11   MR. WOLFF: Object to form, calls for a legal
12   conclusion. Go ahead and answer the question.
13   THE WITNESS: Could you repeat the question?
14   So the applicants --
15 BY MR. HOOD:
16 Q Let me ask it a different way.
17 A Yeah.
18 Q I understand it's your testimony that the alternate
19   embodiments on lines 22 through 26 are inconsistent with
20   your view of the claim limitation --
21 A Right.
22 Q -- that we discussed. I want to ask you, did you in your
23   review of the '172 patent, not the prosecution history,
24   just the patent at this point, find anywhere where the
25   patent applicant specifically said that any of those

Page 34

1   alternative embodiments that are described in lines 22
2   through 26 are not covered by the claims of the '172
3   patent?
4   MR. WOLFF: Object to form, incomplete
5   hypothetical, calls for a legal conclusion. Now, I don't
6   understand why you've included the claims, which issued
7   after the prosecution history from the called question
8   asking him to opine as to what was meant when the
9   prosecution -- when the claim is issued. So I don't
10   understand how you can ask a question about the patent as
11   a whole and the claims and then exclude the entire
12   prosecution history.
13 BY MR. HOOD:
14 Q And, Professor Hardin, for your benefit, Counsel, too, I
15   was simply trying to make it as clear as possible. Talk
16   with the '172 patent first and then the prosecution
17   history. If it makes more sense to you feel free to
18   include in the scope of that question the '172 prosecution
19   history. And again, my question -- and let me make it
20   broad to address I think at least in part counsel's
21   concern -- did you find in your review of either the '172
22   patent or the '172 patent's prosecution history anywhere
23   where the applicants for what was issued as the '172
24   patent specifically stated that embodiments of the patent
25   as described in its specification were not somehow

Page 35

1   included or covered by the claims of the patent?
2   MR. WOLFF: Object to form. Same objections
3   as before. And asked and answered. Go ahead.
4   THE WITNESS: I don't have an opinion on
5   that.
6 BY MR. HOOD:
7 Q Okay. I don't think I asked for an opinion. I was asking
8   if you saw anywhere in the prosecution history of the
9   patent where the applicant specifically said that
10   particular embodiments were not covered by the claims of
11   the patent.
12 A Well, I don't have an opinion because I don't remember any
13   specific place, but as I said, my overall reading lead me
14   to the conclusion that the clearer description that was
15   given in the claims and in the reasons for allowance that
16   we cited earlier were sufficient to make a judgment.
17 Q Okay. Let me back you up to paragraphs 16 through 19 of
18   your declaration, which is Exhibit 95. You set forth
19   there in those paragraphs as I understand it your
20   understanding of certain legal standards that are applied.
21   Is that correct?
22 A Yes.
23 Q Do you have any understanding with respect to the coverage
24   of alternative embodiments in a patent by a patent's
25   claims?

Page 36

1   MR. WOLFF: Object to form, ambiguous.
2   THE WITNESS: So you're asking what is my
3   understanding of alternative embodiments?
4 BY MR. HOOD:
5 Q I'm asking do you have any understanding of coverage of
6   alternative embodiments by a patent's claims.
7 A I clearly don't know what the legal standing of such a
8   phrase is. I would expect that alternate embodiments
9   would refer to different ways that the -- that the
10   invention or the method could be realized. And I would
11   expect those if -- to be consistent if I were looking at a
12   coherent set of claims. I would expect them to be
13   consistent with the claims.
14 Q Jumping forward again to paragraph 27 sub (b) of your
15   declaration. And here you state that "based upon my
16   review of the '172 patent and its prosecution history, the
17   claims' reference to a 'search window' must be understood
18   to refer to the browser window (Figure 5A reference number
19   400). The examiner clearly made this connection and
20   interpreted the claims in this manner in the statement
21   [for reasons -- or statement] of reasons for allowance."
22   Did I read that correctly?
23 A Yes, you did.
24 Q Why in your opinion must the term search window refer to
25   browser window as it's used in the '172 patent?

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 12 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 37

1 A Again, to refer you to the same section and the reasons
2   for allowance, I think that's the explicit text there, and
3   again, when I look at this and look at the patent as a
4   whole and the prosecution history as a whole, this is the
5   only interpretation that I can come away with that allows
6   me to have a consistent view of the claims and indeed the
7   overall meaning of the patent itself.
8 Q You mentioned the reasons for statement of allowance. Are
9   you referring again to what we discussed earlier on page
10   G000286 of the prosecution history?
11 A Yes.
12 Q Okay. Are there any other particular statements in the
13   prosecution history upon which you base the opinions set
14   forth in paragraph 27(b) of your declaration?
15 A I'd have to go through and look. There's none that I
16   remember that I can bring to mind specifically. Again, in
17   following through a long strain or a string or a train of
18   discussion like this, I needed to keep a few things clear
19   as to what different terms referred to, and the one -- the
20   only way that I could make a consistent picture out of
21   this -- the only way I think a consistent picture can be
22   made indeed was to characterize the search window as the
23   browser window.
24 Q Just so I'm clear, have you had any discussions verbally
25   with the examiner that issued these reasons for allowance

Page 38

1   that you're referring to in the prosecution history?
2   MR. WOLFF: Object to form. Go ahead and
3   answer that question.
4   THE WITNESS: What is -- no. Could I ask
5   what an objection to form actually means? I mean --
6   MR. HOOD: Let's go off the record for a
7   minute. Go ahead.
8   (Brief recess.)
9   MR. HOOD: Back on the record.
10 BY MR. HOOD:
11 Q I think we had an answer to that question so I'll ask a
12   different question. Let me move to Figure 5A of the
13   patent that you referred to. I believe it's at page
14   G000080 of Exhibit No. 30.
15 A Right. I'm looking at the '172 document that's
16   independent, so I don't have those characterizations. But
17   I'm looking at the page. Sheet 5 of 14 of the '172 patent
18   that's labeled Figure 5A.
19 Q Okay. Do you have any --
20   MR. WOLFF: I'll agree that it's the same.
21   MR. HOOD: Very good. That's good that we
22   can dispense with those kinds of things.
23 BY MR. HOOD:
24 Q And feel free as I ask these questions, Professor Hardin,
25   to look through the patent if you need to. I'm going to

Page 39

1   ask you about certain features of the figure and your
2   understanding. There is a feature number or an item
3   number 400 at the top right. Do you see that with an
4   arrow?
5 A Yes.
6 Q What in your understanding of the '172 patent is
7   feature 400 directed to?
8 A It's directed to the browser window, which is referred to
9   as the search window.
10 Q Referred to where as the search window?
11 A In the discussion that we've had previously in the text of
12   the patent and in the prosecution history.
13 Q Okay. I think I misunderstand. Could you point me in the
14   '172 patent you believe that feature 400 is called the
15   search window?
16 A Well, let's look. So in column seven, we have the browser
17   interface 400, and then over -- let's see if I can find a
18   reference like that. Browser interface 400 in line 51, 2,
19   3, 4, and it's characterized in opposition to a jumper
20   window so -- and later on we see characterizations of
21   search window versus jumper window. That's the conclusion
22   I come to. I don't know if I can find without reading
23   through the whole thing again a specific characterization
24   of the search window.
25 Q But you believe the '172 patent somewhere in the

Page 40

1   specification refers to feature 400 as a search window?
2 A I think that in --
3   MR. WOLFF: Object to form. Sorry. Give me
4   a chance.
5   THE WITNESS: Yeah, I know. I need to slow
6   down. I think as I've said that that's the only
7   consistent characterization that I can make of it.
8 BY MR. HOOD:
9 Q But you believe there's a specific reference in the patent
10   itself to feature 400 as the search window?
11   MR. WOLFF: Object to form, misstates the
12   witness' testimony.
13   THE WITNESS: Yeah. I couldn't state that
14   unequivocally. I have to go back and go through the whole
15   patent again. And again my declaration and my
16   understanding of this encompasses the patent and the
17   prosecution history -- my understanding of those.
18 BY MR. HOOD:
19 Q In column seven, and I believe you just noted this, about
20   line 30 of the '172 patent, and I believe this is what you
21   read -- it says "the browser interface 400 is that of
22   Netscape Navigator"; is that correct?
23 A You read about 30?
24 Q Line 30.
25 A Right.

Page 41

1 Q Yeah.

2 A That was one of the ones that I referenced.

3 Q And then I think you went down. It was 50 --

4 A Yeah, 54.

5 Q Okay. It also says a browser interface 400 at line 54,

6   correct?

7 A Right. And the arrow's pointing to the rectangle that

8   encompasses all of the -- everything inside that browser

9   interface.

10 Q And with reference to Figure 5A then, describe for me your

11   understanding of what the browser interface is.

12 A Well, it's everything that's inside that window.

13   Everything that's encompassed within the four corners or

14   within that rectangle that's composed of the outside edge

15   that the 400 arrow is pointing to.

16 Q And is that browser interface as it's used in the '172

17   patent different in your opinion than the browser window?

18 A Well, first let me say that there's a number of different

19   terms that are used in the patent itself, and in different

20   places there's some vagueness in referent for the terms.

21   The browser in this case and the term -- I'm qualifying

22   this for a couple of reasons -- one is that there are

23   quite a few places in this that it's difficult to tell

24   exactly what we're talking about. The other is that the

25   term, window, browser window is used at times somewhat

Page 42

1   differently, but again, in the context of reading the

2   whole document and looking at the prosecution history I

3   would say that yes, the browser interface here that's

4   referred to by 400 is congruent with the construction of

5   the term browser window.

6 Q So at least with respect to the patent it's your opinion

7   that browser interface is browser window; is that correct?

8 A In this case, yes.

9 Q And that's what I mean, with respect to the '172 patent.

10 A Yes.

11 Q Okay. With respect to Figure 5A again -- I'm still on 5A,

12   if you want to go back to that figure -- there is an item

13   or element number 404. Do you see that, Professor?

14 A Yes.

15 Q Just below the 400. And what in your understanding is

16   item or element 404 as listed on Figure 5A?

17   MR. WOLFF: Object to form.

18   THE WITNESS: Could you ask the question

19   again?

20 BY MR. HOOD:

21 Q Yeah.

22 A What is element 404?

23 Q I'm just wanting to know exactly in your understanding

24   what is element 404 as shown in Figure 5A of the '172

25   patent?

Page 43

1 A It's an element of the browser window.

2 Q Okay. And let me direct you to line 32 of column seven of

3   the '172 patent. It says a site window 404. Do you see

4   that?

5 A Yes.

6 Q Do you agree with that characterization of that term, site

7   window, as used with 404 in Figure 5A?

8   MR. WOLFF: Object to form. The document

9   speaks for itself.

10   THE WITNESS: Right. I would agree. Yes,

11   the document --

12   MR. WOLFF: Don't agree with my objection --

13   THE WITNESS: The document speaks for itself.

14   I personally in -- as a term within the field it's not the

15   best. Right. A site window. The site -- a site -- and

16   I'm just objecting there to the ambiguity that I think is

17   inherent in the use of the term site and window together

18   there. There's many -- the site that we're at is the

19   Yahoo site. So you could call the site window the display

20   there. Again, it's a sub element of the browser window.

21 BY MR. HOOD:

22 Q Not referring to what the '172 patent calls it, what would

23   you in your experience call element 404?

24   MR. WOLFF: Object to form.

25   THE WITNESS: I'd call it the place where you

Page 44

1   enter a URL.

2 BY MR. HOOD:

3 Q Regardless of what it's called, if I didn't misunderstand

4   you it's your opinion that element 404 is part of the

5   browser window as you've testified?

6 A Yes.

7 Q Okay. Professor, there's also an element that is

8   labeled 406 in Figure 5A. Do you see that? It's at the

9   bottom, kind of bottom right.

10 A Uh-huh.

11 Q What in your opinion does element 406 refer to?

12 A Well, it's pointing to the bottom bar that has the phrase

13   "document done" in the browser window. Its

14   characterization within the text is as a window for

15   viewing a file -- 406. So I would think that it would

16   probably more properly have extended the arrow to match up

17   the text description with the representation to go past

18   that notification bar at the bottom and move into the

19   actual screen area that we see that's used for the HTML

20   display. But again, my understanding is that that is a

21   sub element of the browser window that is part of the

22   overall browser interface.

23 Q So you believe that the arrow on element 406 on Figure 5A

24   should extend into the -- I think you said the search

25   display or screen display?

Case 2:04-cv-70366-JAC-RSW   Document 62-4 ™ Filed 11/03/2005   Page 14 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page ™   Joseph Hardin
Google Inc.   September 16, 2005

Page 45

1   MR. WOLFF: Object to form, ambiguous.
2   THE WITNESS: It would help me in my
3   understanding of what it was pointing to. I have to do a
4   little bit of construction to make sense of exactly what
5   the text is saying and what that arrow's pointing to. So
6   I think that's a yes. Right? It would be better for me
7   as a reader trying to understand what's being
8   characterized here if that arrow was in a slightly
9   different place.
10 BY MR. HOOD:
11 Q Actually going into the --
12 A Yeah.
13 Q -- screen display area?
14 A Right.
15 Q Okay. Let me just ask you a follow up. With respect to
16   what you believe 406 is pointing to, what if anything do
17   you call that particular area of this -- whatever you want
18   to call it, browser window --
19   MR. WOLFF: Object to form.
20 BY MR. HOOD:
21 Q -- of Figure 5A?
22   MR. WOLFF: Are you saying in the patent or
23   in the abstract sense?
24   MR. HOOD: I'm saying in the abstract sense
25   so we can get on the same page. I'm going to refer to

Page 46

1   that area. I just want to use a term that you view that
2   as so that we are talking about the same thing.
3   THE WITNESS: That's a page display.
4 BY MR. HOOD:
5 Q A page display? Okay. Again on Figure 5A, I want to ask
6   you some questions now on the item that is labeled 300,
7   kind of a third of the way down on the right. You see
8   that, Professor?
9 A Yes.
10 Q Okay. What is in your opinion figure 300 referencing --
11   or item 300 rather?
12   MR. WOLFF: Object to form.
13   THE WITNESS: Three hundred is referencing a
14   separate window, which has the characterization here of
15   Internet buffet, and in the text is referred to as a
16   jumper window, I think. Let me find it. Yes. It's -- on
17   column seven again, 19 and 54 again, a jumper window. So
18   it's a separate window from the browser window.
19 BY MR. HOOD:
20 Q And you say that's a separate window from the browser
21   window. Why in your opinion is that a separate window
22   from the browser window?
23 A Well, you can -- there's a number of reasons. One, just
24   by inspection you can see that it is floating above the
25   browser window. It can be moved independently of the

Page 47

1   browser window. It can be opened and closed, re-sized,
2   independently of the browser window. It has a set of
3   controls that are independent of the browser window. It
4   has its own scroll bars. It's a separate rectangle that
5   is commonly referred to as a window, and it is not
6   contained within in any sense of the term that I can think
7   of the browser window, so it's separate.
8 Q Okay. The page display, item 406 as we're going to call
9   it, all in Figure 5A, is it your opinion that that is a
10   window?
11   MR. WOLFF: Object to form, calls for a legal
12   conclusion.
13   THE WITNESS: It could be referred to as a
14   window. It's more properly referred to in this context I
15   think as a component since we're trying to figure out a
16   couple things here as a component of the browser window, a
17   component of the browser display, a component of the
18   browser interface.
19 BY MR. HOOD:
20 Q Would it be reasonable in your opinion to refer to the
21   page display as a window?
22   MR. WOLFF: Object to form, calls for a legal
23   conclusion. You can answer the question.
24   THE WITNESS: It could be in some context,
25   not in this one. In this context it's more properly

Page 48

1   referred to as a sub window of the larger browser
2   interface or browser window. The term window -- I mean
3   the reason that I say that is the term window is in the
4   field of user interface design used fairly loosely. Like
5   there's times in which you'd refer to a form element in
6   that way, but again within the context of my understanding
7   and my construction -- characterization of what's -- what
8   we're talking about here, it's better referred to as a sub
9   window of the larger browser interface or browser window.
10 BY MR. HOOD:
11 Q Okay. Would you disagree with a characterization of
12   element 404 in Figure 5A as a search window?
13   MR. WOLFF: Object to form, calls for a legal
14   conclusion.
15   THE WITNESS: In this context, yes, I would
16   disagree with it as a term for a search window.
17 BY MR. HOOD:
18 Q Why?
19 A It can be used for searching, but the kinds of things that
20   are done and that are described as being part of the
21   functionality of search windows in the patent discuss
22   display, results, things like that, while this window is
23   merely a holder for a URL.
24 Q Let me ask you the same question with respect to element
25   406. Would you disagree with the characterization of

Page 49

1   element 406 as a search window?
2 A I think that again a consistent reading -- or the reading
3   that I have that allows for consistency within the context
4   of the '172 patent that would be a sub element of the
5   larger search window, which in this case is the browser
6   display.
7 Q And what is that position based upon?
8 A My reading of the documents, my understanding of the
9   descriptions of operation, looking at the graphics,
10   reading the text, simply my overall understanding of the
11   patent.
12 Q Are there any particular passages from the patent or its
13   claims that that understanding is based upon? You knew
14   that was coming.
15 A Yeah, yeah. That was the next one, right?
16   MR. WOLFF: Object to form. Go ahead.
17   THE WITNESS: Again, I would have to go
18   through and step through some of the operations. Let's
19   see if I can't -- if I could take a minute to look I will
20   try and find something.
21 BY MR. HOOD:
22 Q Please do.
23 A Well, if we just look at column 15, and we go down to
24   line 17, I think. Is it -- yeah.
25   MR. WOLFF: Just as a moment, it might be

Page 50

1   helpful if we used the actual claims from the patent that
2   we're talking about as opposed to unasserted claims, just
3   for the clarity of the record.
4   THE WITNESS: Right. And I'm in the claims
5   section here.
6   MR. WOLFF: But they have to be the right
7   number.
8   THE WITNESS: Oh, so I should say nine --
9   MR. WOLFF: I'm not telling you what you
10   should say --
11   THE WITNESS: Right. I know you're --
12   MR. WOLFF: -- look at claim one or five. I
13   think that would help us --
14   THE WITNESS: Okay. Look at claim --
15   MR. WOLFF: -- the record.
16   THE WITNESS: -- nine. Right.
17 BY MR. HOOD:
18 Q You're referring to claim nine of the '172 patent; is that
19   correct?
20 A In definitions one, yes. I could alternatively refer to
21   claim one. I think the same thing is there. In either
22   case -- let's look at column 13 and look at claim one. It
23   talks about retrieving an initial data file from the
24   network together with displaying the initial data file in
25   the search window. So there's the obvious conclusion that

Page 51

1   the data file -- and these data files are referencing Web
2   pages. Right. That the search window is -- has at least
3   the function of displaying a file. All right. For
4   instance, I think -- I'm sorry, I've lost the thread. I'm
5   not sure why -- could you repeat the question? Because
6   I'm trying to remember if I'm answering whether or not --
7   giving the reasons why I think that 404 doesn't classify
8   as a search window or why I think something else. So I'm
9   sorry. I'm kind of lost --
10 Q Let's -- yeah, just so you're clear.
11 A Right.
12 Q Let's start with 404. Give me the reasons why you believe
13   that does not classify, as you said, a search window.
14 A Okay. And that is because search windows when they're
15   described as I've said in claim one, section -- or
16   line 57, search windows involve the displaying of data
17   files, and 404 in Figure 5A can't display a data file.
18   Okay. So that would be the -- one of the main reasons.
19   And, in fact, let's just stop there. Yeah.
20 Q Now, let's go to 406.
21 A Okey-doke.
22 Q Why in your opinion can 406 of Figure 5A not be classified
23   as a search window?
24 A While I'm looking in the document --
25   MR. WOLFF: Object to form. Asked and

Page 52

1   answered too.
2   THE WITNESS: I think I'll have to say that
3   it's simply based on my overall characterization of the --
4   and my reading of the claims and the patent and the
5   prosecution history. I can't find a particular quote to
6   point to at this point.
7 BY MR. HOOD:
8 Q Do you believe there is a particular quote that you would
9   base that opinion upon?
10 A I think there's a number of them, and I think again it's a
11   question of the overall characterization that comes from
12   reading the patent and the prosecution history.
13 Q How would you go about finding those particular quotes?
14 A I'd reread the whole thing.
15 Q How long has it been since you last reread the whole
16   thing, the '172 patent and prosecution history?
17 A The patent, a few days. The prosecution history has been
18   read over the last couple months -- three months.
19 Q Okay. Referring again to Figure 5A, is there a place, for
20   lack of a better term, on this particular screen where a
21   user could type in a search query, you know, terms with or
22   without connectors, those kinds of things, to do a search
23   on the Internet?
24 A A place where a user could -- on this interface that's
25   displayed here?

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

Page 53

1 Q That's correct.
2   MR. WOLFF: Object to form. What does this
3 have to do with his declaration?
4   MR. HOOD: He's testified what he believes a
5 search window is. I want to ask him about --
6   MR. WOLFF: So are you --
7   MR. HOOD: -- search.
8   MR. WOLFF: So you've qualified what the term
9 search window means as some place you type in a form?
10   MR. HOOD: I'm just asking him a general
11 question. Is there a place a person could do that kind of
12 a search on this particular window?
13   MR. WOLFF: Object to form, ambiguous. I
14 suppose it calls for a legal conclusion too. Go ahead.
15   THE WITNESS: In this interface that's
16 displayed here just in the browser interface itself people
17 can -- a user can type in a URL. Right. That's the main
18 form of navigation here. To call that a search is to
19 really narrow our concept of what it means to search on
20 the Internet. So this interface is not necessarily
21 designed for searching. It allows people to both use URLs
22 to move to different pages and to click on URLs that are
23 in the pages. Right. So in that sense it does allow for
24 searching.
25 ///

Page 54

1 BY MR. HOOD:
2 Q Would you consider that that you just described, the
3   typing in of a URL to be a search as you understand the
4   term search?
5 A It's part of a search. It is certainly part of
6   navigation. Right. And in the context and with the
7   display of the rest of the elements of the display window
8   of the browser window, one can navigate and one does
9   frequently navigate across the net.
10 Q Just so I'm clear again, with reference to Figure 5A from
11   the patent, Professor --
12 A Yes.
13 Q -- explain to me what your understanding of the term
14   search window is as it's used in the '172 patent referring
15   to Figure 5A.
16   MR. WOLFF: Object to form. Calls for a
17   legal conclusion. Asked and answered.
18   THE WITNESS: I think I've already answered
19   that.
20 BY MR. HOOD:
21 Q I'm sorry if I missed it, but I want to make sure I
22   understand it.
23 A All right. So could you ask the question again?
24 Q With respect to Figure 5A, what on this figure do you
25   consider to be the search window as it's used in the '172

Page 55

1   patent?
2   MR. WOLFF: Same objection.
3   THE WITNESS: Right. I think I've said it's
4   the browser window. The search window would be the
5   totality of functionality that's contained within the four
6   corners of the browser, period.
7 BY MR. HOOD:
8 Q Okay. So in your opinion does the search window include
9   elements 402, for instance?
10 A Sure.
11 Q Okay. 412?
12 A Yes.
13 Q 414?
14 A Yes.
15 Q Okay. What about element 300?
16 A No.
17 Q 306?
18 A No.
19 Q I direct your attention again to column seven on the '172
20   patent. And I'm at line 22 again -- lines 22 through 26.
21 A The alternate embodiments paragraph?
22 Q That's correct.
23 A All right.
24 Q Yeah. Moving to the second sentence there on line 23, it
25   says "the user interface may include pop-up or persistent

Page 56

1   window." Do you see that?
2 A Uh-huh.
3 Q A Toolbar.
4 A Uh-huh.
5 Q And let me ask you about that where it basically says the
6   user interface may include a Toolbar. Going back to
7   Figure 5A is that embodiment in your opinion shown in
8   Figure 5A in any way, shape or form?
9 A No, I think the embodiment is in the Internet buffet
10   rectangle that is labeled as 200.
11 Q Okay. And you're saying that that alternate embodiment
12   that the user interface may include a Toolbar as shown by
13   element 300?
14 A Yes.
15 Q Okay. Point me to the Toolbar as referenced in the
16   embodiment from column seven.
17 A Oh, you have --
18   MR. WOLFF: Object to form and ambiguous. Go
19   ahead.
20   THE WITNESS: Right. You have a Toolbar that
21   has a bunch of buttons on it there below the File, Edit,
22   Action, Help. So that's certainly in my mind part of the
23   user interface. And as it says user interface may
24   include. So again, I think I've already stated that I
25   don't find necessarily this paragraph to be very

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 17 of 44

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

Page 57

1 consistent with the overall reading of the rest of the
2 documents, but if I were forced to point to a Toolbar that
3 is part of a user interface for the jumper window I would
4 simply go to 300 and say the buttons that are there on the
5 bar, which is the third bar after the Internet buffet,
6 File, Edit, Action, Help, and then the icon bars would be
7 what I'd characterize.
8 BY MR. HOOD:
9 Q As the menu bar?
10 A As the --
11 Q Or the Toolbar rather?
12 A Right. The Toolbar.
13 Q Okay. I'll ask you about the next embodiment at line 24
14 of column seven. It says a menu modification of the
15 browser window.
16 A Yes.
17 Q Do you believe that particular embodiment is shown in
18 Figure 5A?
19   MR. WOLFF: Object to form.
20   THE WITNESS: Do I think that a menu
21 modification of the browser window is show in Figure 5A?
22 No.
23 BY MR. HOOD:
24 Q Based on your experience, how would one make a menu
25 modification of the browser window based on your reading

Page 58

1 of the '172 patent?
2   MR. WOLFF: Object to form. Calls for a
3 legal conclusion. I don't really see this as being
4 germane to the witness' declaration. It's an incomplete
5 hypothetical.
6   MR. HOOD: Are you saying that -- I'm sorry,
7 I cut you off.
8   MR. WOLFF: It's an incomplete hypothetical.
9   MR. HOOD: Let me see if I understand your
10 objection. Are you saying that alternative embodiments
11 disclosed in the patent are not germane to his
12 declaration? If that's the case I want to ask about them.
13   MR. WOLFF: If you're asking him his opinion
14 as to how somebody might modify the browser window in the
15 abstract, I don't see that as being germane to his
16 declaration.
17   MR. HOOD: Okay. I will make it specific to
18 the '172 patent. That was my intent. If that's your
19 objection, I can certainly make it specific to this
20 particular patent and the embodiments disclosed.
21 Is that --
22   MR. WOLFF: Yeah --
23   MR. HOOD: -- your concern?
24   MR. WOLFF: -- if I could hear the question I
25 could certainly --

Page 59

1 BY MR. HOOD:
2 Q Let me ask it again so we're all clear, Professor. How
3 would one in the context of the '172 patent make a, quote,
4 "menu modification of the browser window" as that term is
5 used in column seven of the '172 patent?
6   MR. WOLFF: Object to form. Incomplete
7 hypothetical. Go ahead and -- I suppose you can answer it
8 if you can with respect to the patent.
9   THE WITNESS: Right. With respect to the
10 patent and your question, your question says how could one
11 consistently do that, and as I've said before with respect
12 to the patent, I don't think you can consistently do that
13 because you can't at the same time have something that is
14 separate from the browser window and contained in the
15 browser window, and that would be what you would have to
16 do.
17 BY MR. HOOD:
18 Q Well, let me ask you with respect to the claims of the
19 patent, and I think particularly the limitation that
20 you're talking about, if you could look at column 13 of
21 the '172 patent.
22 A Yes.
23 Q At line 53, I believe this is what you're referring to --
24 the displaying a first and second icon separate from the
25 search window on said display screen. Is that what your

Page 60

1 statement is referring to?
2 A That's one of the things, yes.
3 Q Okay. Am I correct to understand your opinion that the
4 alternative embodiment of a menu modification of the
5 browser window is inconsistent with displaying a first and
6 second icon separate from the search window?
7 A Yes.
8 Q That presumes, does it not, that search window means
9 browser window?
10 A It -- that -- in the statement yes, it does presume that
11 in the conclusion. The characterization of the browser
12 window as the search window though is not just based on
13 that. It's based on everything that we've been talking
14 about and the characterization of 400 as the browser
15 window -- the browser interface in this case, so I think
16 it's consistent with all of the characterization that I've
17 given throughout the declaration.
18 Q But it depends, does it not, on a characterization of 400
19 as the search window, not the browser window?
20 A It depends on a characterization of 400 as both the search
21 window and the browser window.
22 Q They have to be equal? The same thing?
23 A They have to be the same. Right.
24 Q Okay. Going back to column number seven at line 24 --
25 or 25. I'm sorry. Line 25. It says a Toolbar

Page 61

1   modification of the browser window when it's referring to
2   alternate embodiments. I want to ask you the same
3   question about that. How would one in the context of the
4   '172 patent modify what's been shown in Figure 5A to
5   implement that embodiment?
6   MR. WOLFF: Same objection as before when you
7   asked this question.
8   THE WITNESS: Right. I notice you dropped
9   the term consistent.
10   BY MR. HOOD:
11 Q I don't believe I used the term consistent. I think you
12   did, but --
13 A I think you --
14 Q -- in any event.
15 A Okay. And again, my answer would hinge on that, that I
16   don't think you can consistently both have a modification
17   of the browser window, which is the search window and at
18   the same time have something that's separate from the
19   search window.
20 Q As long as the browser window is the search window,
21   correct?
22 A Yes.
23   THE WITNESS: I've been drinking too much
24   water.
25   MR. HOOD: You want to take a break?

Page 62

1   THE WITNESS: Five-minute break?
2   MR. HOOD: Sure. You bet.
3   (Brief recess.)
4   MR. HOOD: Back on the record.
5 BY MR. HOOD:
6 Q Professor, you used the term earlier in your testimony
7   navigate --
8 A Yes.
9 Q -- do you recall that? In your opinion does navigate mean
10   something different than search?
11 A That's a good question.
12 Q Thank you. They're not always good. I know that. Go
13   ahead.
14 A No, in the discussion you'd get an "A" on that. There's a
15   -- navigation is often less of a search for unknown items
16   and more a movement through known or well-known or
17   well-structured elements. The two are often used almost
18   interchangeably. We can make a distinction though.
19 Q And the distinction would be as I take it --
20 A Usually -- right. Usually movement through known or well-
21   structured documents.
22 Q Is navigation?
23 A Yeah, so you would navigate through a document and work
24   your way down. You are indeed searching for something,
25   right, but it's different from a search like you would do

Page 63

1   when you simply -- all you had was a text phrase, and you
2   wanted to find out all the different places where it could
3   apply. So there is a difference that could be made
4   between the two.
5 Q Okay. Thank you. Let's move to Exhibit C of your
6   declaration. This is Exhibit 95 to the deposition, tab C.
7 A Yes.
8 Q I think you have a color copy.
9   MR. HOOD: Jason, you have a color --
10   MR. WOLFF: Yes, I do.
11   MR. HOOD: Okay. Good.
12 BY MR. HOOD:
13 Q With respect to Exhibit C, and let's talk about the upper
14   window. It looks like that's the Internet Explorer Web
15   browser that you have on the upper half of the page; is
16   that correct?
17 A Yes, it appears that way. There's a -- the icon in the
18   upper left corner of the browser window there that would
19   lead us to conclude that it's the Internet Explorer
20   browser.
21 Q Okay. And then the lower half is -- looks like another
22   browser. Is that the Firefox Web browser?
23 A Yes, it is. It also has its icon up in the upper left-
24   hand corner.
25 Q There are labels on both of these windows of a 400 with a

Page 64

1   browser window phrase in parentheses. Do you see that?
2   With respect to the upper window can you describe for
3   me -- I see where the arrow points, but just describe for
4   me exactly what you are referring to as the number 400
5   browser window.
6 A Certainly. It's the full rectangle that's displayed there
7   of the browser interface and the browser window. So it's
8   everything in that section of the page that's encompassed
9   in the four corners -- the four outside corners of that
10   window.
11 Q Okay. And let me ask you with respect to the -- I'm
12   looking within the browser window now as you've defined it
13   on tab C. There is a line, I guess I'll call it that says
14   address and then there's a -- it's like an Internet
15   Explorer icon with HTTP://. Do you see where I'm --
16 A Yes.
17 Q -- pointing to?
18 A Right.
19 Q What do you call that particular area?
20 A Again, that's the URL window.
21 Q Okay. Just below that there is the word Google with a
22   little arrow down and then an area that says E.D. Michigan
23   District Court. Do you see that?
24 A Yes.
25 Q What do you call that particular area that says E.D.

Page 65

1   Michigan District Court?
2 A Again, that could be characterized as a form or a sub
3   element of the overall browser window where you would type
4   in a search term.
5 Q Could that be in your opinion referred to as a window?
6 A Loosely. Within the context of this discussion it would
7   be at the very least incomplete and probably confusing
8   given the terminology that we're using here. It's better
9   referred to as a form element in this case specifically,
10   because we talk about forms when we're talking about sub
11   elements of browser windows and that would probably be the
12   best characterization.
13 Q Okay. And then let me ask you below the -- there's kind
14   of a horizontal line between the gray and the blue where
15   we get into the United States District Court down below.
16   Do you see that? Just below the E.D. Michigan District
17   Court. We go from gray all the way across left to right
18   to blue all the way across left to right.
19 A Yes. I think I know what you're referring to.
20 Q Okay. I just want to ask you what is that lower area that
21   has -- looks like an emblem with an eagle, United States
22   District --
23 A Right.
24 Q -- Court Opinions, et cetera, text. What is that area
25   called?

Page 66

1 A I've referred to that as the page display.
2 Q Page display.
3 A That's where the HTML document along with its URLs, its
4   embedded hyperlinks is displayed.
5 Q Could that in your opinion, the page display, be referred
6   to as a window?
7 A Again, it could be because the term window is often used
8   loosely. In the context of the discussion here it's
9   better to refer to it as a sub element of the browser
10   window.
11 Q Why is that?
12 A Because it's more precise.
13 Q And what is it with reference to tab C to your declaration
14   that is being displayed in the page display?
15 A Are you asking for a characterization of the Web page that
16   is displayed there?
17 Q Let me ask it a different way. Did you do whatever was
18   done to create this particular Web shot or screen shot?
19 A No.
20 Q Okay. Who did, if you know?
21 A Well, I think Jason did or somebody who was working for
22   Jason Wolff.
23 Q Okay. What I'm trying to ask you is what's your
24   understanding of how the information that is set forth in
25   the page display was obtained and put into that page

Page 67

1   display? For instance, let me try to be a little bit
2   clearer.
3 A Sure. Sure.
4 Q I'm just trying to get to it. Did somebody do a search
5   with the Internet browser and get to this particular page?
6 A Well, we have to draw conclusions from the -- from what we
7   know, what we can see in front of us. One would conclude
8   by seeing E.D. Michigan District Court in the form that's
9   in the Google bar that's right above the page display
10   there that one had typed in that text and hit a return and
11   to get the display that is displayed in the display
12   window.
13 Q Okay. You believe --
14 A Or display page.
15 Q I didn't mean to cut you off.
16 A No, that's fine. The only hesitation I have is that of
17   course I could reconstruct this window by first -- by some
18   other means, going to the URL that's displayed up in the
19   URL bar there -- the URL area and then typing in to the
20   Google search window the Google display form there those
21   letters. We'd have the same result as far as the picture
22   goes. But the assumption is -- and my assumption and in
23   the discussion with Jason about this was that this was as
24   the result of -- the page that's displayed there was a
25   result of the search that was done.

Page 68

1 Q Okay. So that page was the result of a search done
2   through the -- what I think you called a form or sub --
3 A Yes.
4 Q I'm sorry. Sub element of the browser window?
5 A Right.
6 Q Okay. I'm going to come back to tab C, but I wanted to
7   ask you about the opinion that you set forth in
8   paragraph 27 sub (c) as in Charlie of your declaration.
9 A Starting off with "it is plainly evident"?
10 Q That's correct. You say "it is plainly evident from
11   simply installing the Google Toolbar and activating the
12   optional 'Next & Previous' Web buttons that the next and
13   previous Web buttons in the Google Toolbar, the alleged
14   'first and second icons' from claims 1 and 5, are not
15   separately displayed from the browser window." Have I
16   gotten that correct so far?
17 A Yes, you have.
18 Q Okay. "Attached as Exhibit C are two screen shots of the
19   Google Toolbar showing that the alleged 'first and second
20   icons' (bounded in red) are displayed within the browser
21   window (400)." I just wanted to read that, make sure I
22   got it accurate. Did I get that accurately first of all,
23   Professor?
24 A Yes, you did.
25 Q Okay. Now, going back to the Exhibit C screen shots.

Page 69

1 There is a box, a rectangle that is around -- is red in
2 color and around two arrows, one to the left and one to
3 the right. Do you see where I'm referring to?
4 A Yes.
5 Q In both the upper and the lower screen shot it looks like.
6 A Yes.
7 Q Are those the Next & Previous Web buttons that you're
8 referring to in your opinion?
9 A Yes.
10 Q And you just looked at counsel for that. Is there a
11 particular reason?
12 A I just wondered why he's been quiet for so long. I
13 thought he'd fallen asleep.
14 Q I doubt he fell asleep. In any event -- okay. So those
15 are the Next & Previous Web buttons. Which of those two
16 buttons is the Next button, to the left or the right?
17 A I think it's the button to the right.
18 Q Is the Next button?
19 A Yeah.
20 Q So the one to the left is the Previous button?
21 A That would be -- yes. I'd have to go back and use it to
22 be absolutely sure, but that would be my intuition just
23 from looking at the picture and remembering the use that I
24 had of it. Quite often when you're using something like
25 this, you simply hit one of the buttons to find out and

Page 70

1 then you remember in that context which is the Next and
2 which is the Previous, but I would guess that the way I
3 described it is accurate.
4 Q Okay. As we read in your declaration, it's your opinion
5 that those first and second icons are not separately
6 displayed from the browser window; is that correct?
7 A That's correct.
8 Q Okay. Why do you believe those two buttons, the Next and
9 Previous Web buttons are not separately displayed from the
10 browser window?
11 A Well, the easiest way to answer that is to direct us to
12 Exhibit C again, either of the displays, and recognize
13 that the browser window is the full rectangle there and
14 for them to be sep -- for these two buttons to be
15 separately displayed from that browser window they would
16 have to appear outside of it, and they do not.
17 Q What if anything with reference to the upper screen shot
18 on Exhibit C to your declaration would you consider to be
19 the search window, as that term is used in the '172 patent
20 claims?
21 A Again, I would consider it to be the whole browser window.
22 Q Element number 400?
23 A Yes.
24 Q And that's the same for both the upper and lower screen
25 shots on Exhibit C?

Page 71

1 A Yes.
2 Q So it's your opinion, if I'm not mistaken, that the Next &
3 Previous Web buttons bounded in red are not separately
4 displayed from the search window as that term is used in
5 the '172 patent claims?
6 A Yes.
7 Q And that presumes again that browser window means search
8 window or vice versa?
9 A (Nodding head.)
10 Q You have to answer --
11 A Yes.
12 Q -- verbally. Okay. Are you aware of any other people
13 that you would be -- you would consider to be skilled in
14 this relevant technology area that would consider the
15 search window to be something different than the entire
16 browser window as that term is used in the '172 patent?
17 MR. WOLFF: Object to form. Lacks
18 foundation. Incomplete hypothetical. You can answer. Go
19 ahead.
20 THE WITNESS: I am not aware of anybody that
21 I would consider to have expertise in this area and
22 experience who having read the documents of the patent and
23 the history -- prosecution history who would so conclude.
24 BY MR. HOOD:
25 Q Are you aware of anybody who you would not consider to be

Page 72

1 skilled in this area that would so conclude?
2 A Not after -- I wouldn't think so. Not after they had read
3 the documents. I think this is fairly straightforward.
4 The characterization of the browser window is stated as
5 we've said pretty clearly, and it's characterization as
6 the search window seems to me to be pretty
7 straightforward, so I don't think that anybody who could
8 read the documents -- I would have to stipulate that they
9 be able to work their way through the documents, English
10 speakers and all that. I can't imagine anybody else --
11 well, I would be surprised if anybody would conclude that
12 the browser window was anything other than what was
13 referred to as the search window.
14 Q But claim 1 of the '172 patent uses the term search
15 window, correct?
16 A I'm looking back just to be sure. Claim 1 -- it uses the
17 term search window.
18 Q It does not use the term browser window, correct, claim 1
19 of the '172 patent?
20 A I'm reading it to make sure.
21 Q Please do.
22 A I don't see it. No.
23 Q How about in claim 5 of the '172 patent? Do you see the
24 term browser window used in claim 5?
25 A So claim 5 would be on column 14 starting on line 19. And

Page 73

1   you're asking if the term browser window is used in this
2   claim?
3 Q That's correct.
4 A No, it does not.
5 Q If the court in this case were to rule that the term
6   search window as it's used in the '172 claims, claims 1
7   and 5, were the -- I believe you called them page display
8   as we look at Exhibit C, would your opinion change that
9   the Next & Previous buttons were separately displayed from
10   the search window?
11   MR. WOLFF: Object to form. Incomplete
12   hypothetical. Calls for a legal conclusion. Go ahead.
13   THE WITNESS: I would think the court had
14   made a mistake in its characterization.
15 BY MR. HOOD:
16 Q So your opinion wouldn't change in that instance?
17 A No.
18 Q Okay. If the page display as you've defined it of Exhibit
19   C to your declaration were considered the search window,
20   how would you find that the Next & Previous Web buttons
21   were not separately displayed from the page display?
22 A Could you rephrase that --
23 Q Sure.
24 A -- just for clarity?
25 Q If the page display, the area that you've defined as the

Page 74

1   page display in Exhibit C --
2 A Yes.
3 Q -- were considered the search window as that term is used
4   in the '172 patent claims --
5 A Yes.
6 Q -- how would it be in your opinion that those Next &
7   Previous Web buttons would not be separately displayed
8   from that page display?
9 A How would it be that they were not separately displayed?
10   So what characterization would there be that would result
11   in us concluding that they were not separately displayed?
12 Q Yeah, if I understand your previous testimony just a
13   couple of minutes ago --
14 A Uh-huh.
15 Q -- if the court were to rule that the page display were
16   the search window as that term is used --
17 A Right.
18 Q -- you said your opinion would not change.
19 A Right. I would -- my answer was that I would have thought
20   that the court had made a mistake and mischaracterized,
21   but when you're asking a hypothetical like this that has
22   "if the court ruled" what does that mean for
23   interpretation of a prosecution history or a patent
24   description like this? Is it something that then
25   overrides the rest of the contents and a reader's

Page 75

1   understanding of the content of that history? In other
2   words if a court rules is it something that I have to say,
3   okay in contradiction to my understanding and my reading
4   of the rest of this -- these documents, I'll have to use
5   that in drawing my conclusions?
6 Q I can't give you advice. You'll probably want to talk to
7   counsel about that, but let's assume that's what the law
8   said. That you had to use --
9   MR. WOLFF: Object to form. You can answer
10   the question. I think that that is what you said he's
11   saying, is that he's saying okay, so the court said that
12   within these four corners that is the thing. Are those
13   buttons separate from the -- from what the court has
14   construed that element to be, and even though it
15   contradicts everything you read in the thing, and your --
16   the basis of your opinion, if you just say that that is in
17   fact the case are those -- Counsel, you ask the question.
18   I don't want to ask my own witness the question.
19   MR. HOOD: That's what I tried to say. Yeah.
20   THE WITNESS: I think I'm understanding it
21   now. And if you want to ask the question again I'll
22   answer it.
23   MR. HOOD: Yeah, let me do that.
24 BY MR. HOOD:
25 Q Assuming that the court were to say, Professor, that the

Page 76

1   page display as you've defined it in tab C to your
2   declaration were the search window, as that term is used
3   in the claims of the '172 patent, would it still be your
4   opinion that the Next & Previous buttons were not
5   separately displayed from the search window?
6   MR. WOLFF: Object to form with all the
7   caveats the witness had previously testified. Go ahead
8   and answer the question.
9   THE WITNESS: Yeah. If that was an absolute
10   statement and -- then I would have to conclude that the
11   Next & Previous buttons as they're displayed in Exhibit C
12   would be separate from the display page.
13 BY MR. HOOD:
14 Q They would be separately displayed from the display page,
15   correct?
16 A Yes.
17 Q Let me ask you the same question with respect to the --
18   I'm not quite sure what you call this. I think it was a
19   form or a subpart of the browser window where the term
20   E.D. Michigan District Court is entered.
21 A Yes.
22 Q To the left of the --
23 A Yes.
24 Q -- Next & Previous buttons. If the court were to say that
25   that form or subpart -- supplement of the browser window,

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 22 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 77

1   I think you called it, were the search window as that term
2   is used in the '172 patent, would your opinion be that the
3   Next & Previous buttons were separately displayed from
4   that search window?
5   MR. WOLFF: Object to form. Incomplete
6   hypothetical. And with all the -- and understanding all
7   the caveats the witness had previously testified to, go
8   ahead and answer the question.
9   THE WITNESS: Okey-doke.
10   MR. WOLFF: If you can.
11   THE WITNESS: Yeah. That's a hard one
12   because what you asked I think was whether or not the form
13   entry element there that had -- that's contained in E.D.
14   Michigan District Court is separate from the Next &
15   Previous buttons. Is that what you meant to ask?
16 BY MR. HOOD:
17 Q That is what I meant to ask.
18 A All right. Then I'd have to have a context for a
19   definition of separate from. I mean I have a clear one
20   when I'm reading the current documents, but there I could
21   go either way. If we look at that bar that starts with
22   Google on the left-hand side and ends up with a couple
23   arrows on the right-hand side as one element, then I would
24   say that the E.D. Michigan Court display is part of the
25   same overall element that the Next & Previous buttons are.

Page 78

1 Q I believe you just testified you do have a clear
2   understanding of what separate from means --
3 A Yes.
4 Q -- is that correct?
5 A Yes.
6 Q Tell me what --
7 A In the context --
8 Q -- that is.
9 A -- in the context of the patent and the prosecution
10   history.
11 Q What is that understanding?
12 A The term is used -- I think we talked about this when we
13   looked at Figure 5A, and it's probably best to use that in
14   the patent as the clarification here. Figure 5A shows a
15   browser window 400, which is holding the contents or
16   displaying the contents of a Web page, and also a separate
17   -- separate from window labeled as 300, which has Internet
18   buffet at the top which has three bars at the top, two of
19   which are -- I would characterize as control bars.
20   Actually the top one could be too since it has the close,
21   but the "separate from" means that that element 300, that
22   Internet buffet rectangle is not part of -- in other
23   words, is not contained within the browser -- the four
24   corners of the browser window, and indeed you could go a
25   little further and say that it is independent in its

Page 79

1   actions -- in some of its actions from the browser window
2   altogether, so it can be re-sized. It can be closed. It
3   can be moved. The browser window could be placed on top
4   of it, things like that. So "separate from" means that it
5   has an independent existence and the ability to move
6   around the interface independently of the browser window
7   and is simply a separate user interface.
8 Q Back to paragraph 27 sub (c) of your declaration. I want
9   to understand what you are referring to as the alleged
10   quote, "first and second icons," end quote from claims 1
11   and 5 of the '172 patent. You're referring to the Next &
12   Previous Web buttons, if we look back at Exhibit No. C, as
13   those alleged first and second icons, correct?
14   MR. WOLFF: Object to form.
15   THE WITNESS: But yes. As I say in the
16   declaration, it's plainly evident from simply installing
17   the Google Toolbar and activating the optional Next &
18   Previous Web buttons that the Next & Previous Web buttons
19   in the Google Toolbar, the alleged first and second icons
20   from claims 1 and 5 are not separately displayed from the
21   browser window, so yes, the Next & Previous buttons are in
22   this case the realization of the first and second icons.
23 BY MR. HOOD:
24 Q And --
25 A For claims 1 and 5. Excuse me.

Page 80

1 Q I'm sorry. Go ahead. Okay. Referring to your Exhibit C
2   -- your tab C to your declaration, which of those two
3   buttons is the first icon as that term is used in claim 1
4   and 5 of the '172 patent?
5   MR. WOLFF: I just object to the form. It
6   calls for a legal conclusion, and the witness is
7   testifying about what the alleged icons are.
8 BY MR. HOOD:
9 Q What do you believe the first icon to be as that term is
10   used in the '172 patent claims?
11 A It's not absolutely clear, but let's go back and look at
12   column 13 and the characterization of the claim -- not the
13   characterization -- the claim itself -- the written claim
14   itself. What it talks about there in the second separate
15   paragraph, starting with, displaying a first and second
16   icon separate from the search window. That's what I'm
17   referring to. Now, what those first and second icons can
18   do is not absolutely clear, but let's move down a little
19   bit. Responsive to a selection of the first icon in the
20   fourth paragraph has to do with forming an initial list of
21   location identifiers and that list of location identifiers
22   could be on a page, and that could be the URLs that are in
23   it, so looking at the display in Exhibit C, it could be
24   really either one. Right. The Next & the Previous could
25   both perform functions similar to those described in

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

	Page 81
1	paragraph four there.

	Page 83
1	list responsive to a selection of the first icon." Do you

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 24 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 85

1   questions about your understanding of the term parsing and
2   parsing in response to, and just to short circuit this, as
3   I look at Exhibit Number 96, there is in the first entry
4   row the terms, quote, "parsing," end quote, and, quote,
5   "parse," end quote. Do you see that?
6 A Yes.
7 Q And then to the right there is a column labeled Google's
8   construction, and it starts "the act of examining." Do
9   you see where I'm reading there?
10 A Yes.
11 Q And is that the definition of the terms parsing and parse
12   that you believe apply in the context of the '172 patent?
13 A Yes, they are.
14 Q Moving to the third entry row in the table on document
15   number 96, it states quote, "parsing in response to
16   selection of an icon," end quote. Do you see that?
17 A Yes.
18 Q And then over to the right, there's a Google construction
19   that starts, quote, "the act of parsing" et cetera. Is
20   that stated Google construction your understanding of that
21   term as it's used in the '172 patent?
22 A It's my -- the Google construction is in my understanding
23   a good characterization of the phrase parsing in response
24   to selection of an icon. I haven't spent a lot of time
25   and don't have an opinion on how this precisely applies in

Page 86

1   the context of the patent. I've been looking largely at
2   questions of interface and the question of having separate
3   windows and haven't formed an opinion yet about the
4   different levels of parsing and what would be a perfect
5   definition. This one looks like a good one with those
6   qualifications.
7 Q Okay. Do you have an opinion as of today with respect to
8   whether the Google Toolbar parses the location identifiers
9   from the initial data file as that phrase is used in claim
10   one of the '172 patent?
11   MR. WOLFF: Object to form. Calls for a
12   legal conclusion. And I will instruct the witness not to
13   answer questions that pertain to subject areas where he is
14   not formed an opinion.
15 BY MR. HOOD:
16 Q My question: Do you have an opinion?
17 A No, I do not. At this point in time I have not formed an
18   opinion on the parsing actions and their sequence.
19 Q Okay. Let me ask you questions now, Professor, on
20   paragraph 27 sub (d), as in dog, of your declaration. You
21   can turn there, please.
22 A Yes.
23 Q Paragraph sub (b) states that "the arrangement by which
24   the Google Toolbar's Next & Previous Web buttons are
25   displayed in the browser window particularly given the

Page 87

1   statements made to secure the grant of the '172 patent is
2   not at all equivalent to what is required by the claims,
3   namely that the icons be 'separate from the search
4   window.'" Did I read that correctly first?
5 A Yes, you did.
6 Q When you refer in that paragraph to the statements made to
7   secure the grant of the '172 patent, what are you
8   referring to specifically? What statements are you
9   referring to?
10 A They would be from the prosecution history and they would
11   be those leading up to the conclusion of the examiner that
12   we referenced on G000286.
13 Q Can you point me to those statements that led up to that
14   as you just testified?
15 A I'd have to go through the documents. No, I can't point
16   directly to one from memory.
17 Q Do you recall anything about any of those statements?
18 A Well, yes, generally statements are that the two windows
19   are separate, that the map window or the jump window is
20   separate from the search window and that that distinction
21   was recognized by the examiner in the section that we just
22   referenced and that's what I'm basing that on.
23 Q Okay. You say at the end of that paragraph sub (d) of
24   paragraph 27 that -- I won't read the whole thing again,
25   but it "is not at all equivalent to what is required by

Page 88

1   the claims." Let me ask you: Is it your opinion that the
2   Google Toolbar does not infringe the claims of the '172
3   patent under the doctrine of equivalents?
4   MR. WOLFF: Object to form to the extent it
5   calls for a legal conclusion. I think the witness'
6   statements in the declaration are relatively clear. I
7   just don't know whether he's going to understand the legal
8   term you've used in your particular --
9   MR. HOOD: Yeah.
10   MR. WOLFF: -- the idea of doctrine of
11   equivalents.
12 BY MR. HOOD:
13 Q Let me ask you that, and that's really want I wanted to
14   get to, Professor. Do you have an understanding of the
15   phrase or term, doctrine of equivalents infringement, as
16   it's used in patent law?
17 A I have what I think is a basic understanding where
18   equivalents would be things that are substantially the
19   same. Right. I mean that would have to be interpreted
20   given the context. This context is -- I would interpret
21   that as being substantially the same between the different
22   elements.
23 Q And all I'm trying to understand is when you use the
24   phrase not at all equivalent to what is required by the
25   claims, are you referring there to that doctrine of

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

Page 89

1   equivalents as you understand it?
2   MR. WOLFF: Object to form. The statement is
3   in the declaration what the statement is. I don't know
4   that the witness has the exact legal definition of
5   doctrine of equivalents. Go ahead. Could you rephrase
6   the question?
7   MR. HOOD: Let's go off the record for a
8   minute.
9   (Off the record.)
10   MR. HOOD: We're back on the record.
11 BY MR. HOOD:
12 Q Professor, your counsel and I just spoke about your
13   statements in paragraph 19 of your declaration.
14 A Yes.
15 Q And your discussion in paragraph 19 about what you call
16   the quote, "equivalent," end quote.
17 A Uh-huh.
18 Q Do you see where I'm talking about. The bottom --
19 A Where it says either literally or by equivalents?
20 Q That's correct.
21 A That's the phrase? Yes.
22 Q You go on to say in paragraph 19 that "with regard to
23   equivalents, it is my understanding that for an aspect of
24   an accused product to be 'equivalent' to a claim
25   limitation, it must be insubstantially different from the

---

Page 90

1   claim."
2 A Right.
3 Q "Stated another way, something is considered equivalent in
4   patent parlance if it performs substantially the same
5   function, in substantially the same way, to achieve
6   substantially the same result as that which is claimed."
7   Is that correct?
8 A Right.
9 Q And is that your understanding of an equivalent for
10   purposes of infringement in patent parlance as you've
11   described it?
12 A Yes, it is.
13 Q Okay. I'm going to go back to your paragraph 27 sub (d)
14   on page eight --
15 A Uh-huh.
16 Q -- of your declaration. When you refer to the phrase "is
17   not at all equivalent to what is required by the claims,"
18   end quote, are you using that term equivalents there as
19   you've stated your understanding of it in paragraph 19?
20 A Yes.
21 Q Okay. Tell me then how the Google Toolbar's Next &
22   Previous Web buttons in your opinion is different or
23   substantially different from what is required by the
24   claim?
25   MR. WOLFF: Object to form. You mean the

Page 91

1   display of the Web buttons or do you mean the Web buttons
2   in general?
3   MR. HOOD: I mean the arrangement by which
4   the Web buttons are displayed in the browser window.
5   MR. WOLFF: Okay.
6 BY MR. HOOD:
7 Q Just as you said in paragraph (d) there.
8 A So I'm sorry the question again?
9 Q I would like to know how you believe that quote, "the
10   arrangement by which Google's [Next] -- Toolbar's Next &
11   Previous Web buttons are displayed in the browser window,"
12   end quote. And then that goes on.
13 A Right.
14 Q Is not equivalent to --
15 A Right.
16 Q -- or substantially different --
17 A Sure.
18 Q -- whatever terminology you want --
19 A Right. Right.
20 Q -- to use, what's required by the claims.
21 A Right. They are not separate from the search window.
22 Q Anything else?
23 A That's enough.
24 Q Okay. They're not literally separate from the search
25   window?

Page 92

1 A They are not in any sense of the term separate from the
2   search window. Sense of the term that could be
3   characterized given a reading of the documents' patent and
4   the prosecution history.
5 Q Do you have an opinion with respect to what the function
6   of the quote, "separate from the search window," end
7   quote, element of the '172 patent is?
8 A Excuse me?
9 Q I'm referring back to your paragraph number 19.
10 A Right.
11 Q If I can refresh you there.
12 A Yeah.
13 Q The last sentence in that paragraph you say "stated
14   another way, something is considered equivalent in patent
15   parlance if it performs substantially the same function,
16   in substantially the same way, to achieve substantially
17   the same result as that which is claimed," end quote.
18 A Right.
19 Q And I'm asking do you have an opinion as to what the
20   function of the claim limitation separate from the search
21   window is as it's used in the '172 patent claims?
22   MR. WOLFF: Object to form. Ambiguous.
23   THE WITNESS: Yeah. The function here, I
24   would -- my opinion would be focused around the user
25   display and the functionality that is garnered from that,

---

Page 93

1   so it's separate from the search window. I was focusing
2   more on substantially the same way as well as -- or
3   focusing as much on substantially the same way as having
4   the same function. Does that -- is that clear or is that
5   -- the user interface embodies a number of things
6   simultaneously, function, form, feature. And in this case
7   I think that it's fairly clear from the characterization
8   of "separate from the search window" that it does not meet
9   any -- the criteria of the claim.
10   BY MR. HOOD:
11   Q With respect to the "substantially the same way" is that
12   what you're saying?
13   A Both. Right.
14   Q Function and way?
15   A Yeah.
16   Q Okay. And what I'm asking you is what is your opinion as
17   to the function of that claim limitation as it's used in
18   the '172 patent on which you base that opinion.
19   MR. WOLFF: Object to form. Ambiguous. Go
20   ahead and answer.
21   THE WITNESS: The function of the separate
22   from the search window claim?
23   BY MR. HOOD:
24   Q Correct.
25   A This is more speculative in that I'm trying to remember

Page 94

1   specifically the reasons that were specified for having a
2   separate window. The reasons that you would normally have
3   a separate window would be to manage user focus, and I
4   don't have a strong opinion about whether or not that
5   function -- well, I think I'm drifting from the question.
6   There clearly is a functional component to having a
7   separate search window, and that clearly is part of the
8   claim.
9   Q And is it your opinion then that the Google Toolbar Next &
10   Previous Web buttons don't perform substantially the same
11   function as you understand the term function?
12   MR. WOLFF: Object to form, and I'll instruct
13   the witness not to answer that question as it was phrased.
14   Professor Hardin has not rendered an opinion as to whether
15   the Web buttons are equivalent to the icons, but as to
16   whether the icons are displayed in the same manner as --
17   with respect to the claims. So if you want to rephrase
18   your question as to whether the Web buttons in their
19   display in the Google Toolbar are equivalent, go ahead and
20   ask that question. I'll allow that.
21   MR. HOOD: Thanks.
22   BY MR. HOOD:
23   Q Well, let me back up, because I don't think I understand
24   paragraph 27 sub (d) based on what your counsel's just
25   said. Your statement reads literally that the arrangement

Page 95

1   by which the Google Toolbar's Next & Previous Web buttons
2   are displayed in the browser window, particularly given
3   the statements made to secure the grant of the '172 patent
4   is not at all equivalent to what is required by the
5   claims, namely that the icons be separate from the search
6   window. Let me ask the question I think that your counsel
7   suggested. Is it your opinion that the Next & Previous
8   Web buttons of the Google Toolbar are not equivalent to
9   the first and second icons as set forth in the claims of
10   the '172 patent?
11   MR. WOLFF: Object to form. Again, the same
12   instruction. If you want him to step out for a moment. I
13   don't want to create an issue with polluting him. I'm
14   happy to have a conversation with you offline.
15   MR. HOOD: Yeah, why don't we do that. I
16   just want to make sure we're on the same page. Yeah.
17   MR. WOLFF: So we know you understand why I'm
18   saying --
19   (Off the record.)
20   BY MR. HOOD:
21   Q Professor Hardin, I'm focusing back on paragraph 27, sub
22   (d) of your declaration. And before I ask you specific
23   questions on that I would like to direct your attention to
24   the patent claims again of '172, claim number one. This
25   is in column 13, and I'd like to direct you to line 54, I

Page 96

1   believe it is, and the limitation that says displaying a
2   first and second icon separate from the search window on
3   said display screen. Do you see that limitation?
4   A Yes.
5   Q Do you have an opinion -- let me start with this: Do you
6   have an opinion as to what the function of that limitation
7   of claim one is in the '172 patent?
8   A I'm not sure I understand the question. The function of
9   that limitation -- I simply approach it as a limitation.
10   Right. It's a requirement for understanding what is --
11   what the patent calls for and so hence what it would
12   restrict in other things. I'm not sure how you're using
13   the term function there. If you want to clarify for me
14   what you mean by function.
15   Q I would. That leads me to the other part of my question.
16   As you state in paragraph 27 (d) you say that, quote, "the
17   arrangement by which the Google Toolbar's Next & Previous
18   Web buttons are displayed in the browser window" -- then
19   you have another phrase there -- "is not at all equivalent
20   to what is required by the claims."
21   A Right.
22   Q And I am in asking the question and using the term
23   function referring back to your understanding as you say
24   in paragraph 19 of that term, as it's used in equivalents
25   analysis in patent law. And I'm asking what if anything

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 27 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 97

1 is your opinion as to the function of that claim
2 limitation in the '172 patent.
3 A So the function would be -- of that claim limitation would
4 be in the broadest sense but the clearest sense to simply
5 have the first and second icon separate from the search
6 window. That's the function of the claim.
7 Q Okay. As is required by that claim limitation, I want to
8 ask you what your understanding or opinion is with respect
9 to what the way in which -- the look on your face --
10 A The way in which --
11 Q -- let me back up. Let me back up. I'm going back to
12 paragraph 19 of your declaration.
13 A Okey-dokey.
14 Q And you talk in the last sentence there -- you use the
15 words function, way, and result, which is what --
16 A Right.
17 Q -- the patent lawyers work with when we talk about
18 equivalents. We just asked about your opinion with
19 respect to the function of the claim limitation displaying
20 a first and second icon, et cetera. I'm now asking you
21 what your understanding is of the way that is required by
22 that claim limitation of the '172 patent.
23 A In the phrase, in substantially the same way?
24 Q Correct.
25 A Is that what you mean there?

Page 98

1 Q That is correct.
2 A Right. In substantially the same way would be to have it
3 -- my understanding would be that it would be -- it would
4 have to be displaying a first and second icon separate
5 from the search window on said display screen. That would
6 be the way in which it would have to be displayed.
7 Q Okay. And final question of the tripartite, substantially
8 the same result. What is your opinion with respect to
9 substantially the same result as required by the claim
10 limitation of the '172 patent that we're talking about?
11 A To achieve substantially the same result. Displaying the
12 first and second icon separate. The result would have to
13 be having a result of separate first and second icons and
14 a separate search window on said display screens.
15 Q Okay. Let me ask you this: Do you have an opinion as to
16 whether or not the Google Toolbar Next & Previous Web
17 buttons are the alleged first and second icons of the
18 claim limitations of the '172 patent?
19   MR. WOLFF: Object to form. Confusing.
20 You're asking about the -- whether he has an opinion that
21 the Plaintiff has alleged that these are the first and
22 second icons?
23   MR. HOOD: No. Let me ask it again. I'm
24 trying to get to what we had talked about.
25   MR. WOLFF: Or if they are the first and

Page 99

1 second icons.
2   MR. HOOD: That's correct.
3   MR. WOLFF: Okay.
4   MR. HOOD: Yeah.
5 BY MR. HOOD:
6 Q You used the term in paragraph 27 sub (c), Professor --
7 A Uh-huh.
8 Q -- about three lines down, quote, "the alleged 'first and
9 second icons.'" Do you see that?
10 A Correct.
11 Q I want to know do you have an opinion as to whether or not
12 the Google Toolbar Next & Previous Web buttons are the
13 first and second icons as that term is used in the '172
14 patent?
15 A No, I do not.
16 Q Let me move to subparagraph (i) of paragraph 27(d).
17 A Uh-huh.
18 Q You say there that "to say the arrangement of these Web
19 buttons in the browser window is equivalent to what is
20 required by claims 1 and 5 is to completely remove this
21 requirement (that they be 'separate from the search
22 window') of the claims: because the Next & Previous Web
23 buttons are integrated into the [Web] browser, they are
24 the opposite of a set of icons separately displayed from
25 the browser window." Did I read that correctly?

Page 100

1 A Yes, you did.
2   MR. WOLFF: Object to form. Actually you did
3 not read that correctly.
4   MR. HOOD: I'm sorry --
5   THE WITNESS: No?
6   MR. HOOD: -- what did I miss?
7   MR. WOLFF: You said Web browser instead of
8 browser window.
9   MR. HOOD: Browser window. Thank you very
10 much.
11 BY MR. HOOD:
12 Q Continuing -- it's lunch time.
13 A It is.
14 Q "Stated another way, the implementation of the next and
15 back buttons in the Google Toolbar is, in this respect,
16 substantially different from that disclosed and claimed in
17 the asserted claims." Did I read at least that last
18 sentence correctly?
19 A I'll go for it.
20 Q Okay. Is it your opinion that -- I'm going to go back to
21 the function and way and result that we talked about
22 earlier, Professor, as you used those terms in
23 paragraph 19 of your declaration -- is it your opinion
24 that the function of the Google Toolbar Next & Previous
25 Web buttons is substantially different than the first and

Page 101

1 second icons as set forth in claim one of the '172 patent?
2   MR. WOLFF: Object to form. I'm going to
3 instruct the witness not to answer. Again, you're asking
4 the witness about the function of the first and second
5 icons, and there is no foundation for this. If you ask
6 about the display --
7   MR. HOOD: Okay. Thanks. We'll go back to
8 that.
9 BY MR. HOOD:
10 Q Professor, is it your opinion that the function of the
11   claim limitation displaying a first and second icon as
12   we've discussed it with respect to that, that the Google
13   Toolbar Next & Previous Web buttons are substantially
14   different in function?
15 A Yes.
16 Q Okay. And tell me in what way.
17 A Because they're not displayed in a separate search window.
18 Q Okay. I take it then that it's your opinion because
19   they're not displayed in a separate search window that the
20   way in which the Google Toolbar Next & Previous Web
21   buttons are displayed is substantially different than as
22   required by the claim limitation display in a first and
23   second icon, et cetera?
24 A Right. And I should have said separate from the search
25   window, not in a separate search window. They're not

Page 102

1 displayed separate from the search window, and then all
2 the -- all -- the rest of what you said follows.
3 Q Okay. And is it then your opinion that the result of the
4   Google Toolbar Next & Previous Web buttons is
5   substantially different than as required by the claim
6   limitation displaying a first and second icon?
7   MR. WOLFF: Objection, asked and answered.
8 Go ahead.
9   THE WITNESS: Yes.
10 BY MR. HOOD:
11 Q And on what grounds?
12 A That they are not separate from the search window.
13 Q Okay. In paragraph 27(d) sub (i) -- let me find my place
14   here. After the colon three lines in you say "because the
15   Next & Previous Web buttons are integrated into the
16   browser window."
17 A Uh-huh.
18 Q Do you see where I'm reading there?
19 A Yes.
20 Q Tell me what you mean by the words "integrated into the
21   browser window."
22 A Part of, not separate from.
23   MR. HOOD: Okay. When do you want to break
24   for lunch?
25   MR. WOLFF: You want to do it now or --

Page 103

1   MR. HOOD: Yeah. It might be good now and
2 then we can get some time --
3   MR. WOLFF: You want to just do -- you want
4 to do a short --
5   MR. HOOD: Yeah. Let's take like a half
6 hour.
7   (Recess taken from 11:50 a.m. to 12:30 p.m.)
8 BY MR. HOOD:
9 Q Professor Hardin, back after lunch. Let me go back to
10   column number seven of the '172 patent.
11 A Yes.
12 Q And I'm back to the alternative -- or alternate
13   embodiments that we talked about earlier starting at
14   line 22 of column 7 --
15 A Yes.
16 Q -- through line 26. Were there any -- let me back up.
17   In 1996 -- I'm not talking 2005, but in 1996, 1995, that
18   time frame -- if we need to be more specific let me
19   know -- were there any technical reasons why an alternate
20   embodiment as described here including a Toolbar as the
21   user interface could not have been implemented with
22   respect to the invention that's claimed in the '172 patent
23   to your knowledge?
24   MR. WOLFF: Object to form. Again, it falls
25   outside of the scope on which the witness has offered a

Page 104

1 declaration. I think that it's inappropriate to ask the
2 witness this scope of questions. So I'll instruct the
3 witness not to answer and get a clarification of the
4 question that fits within the proper context.
5 BY MR. HOOD:
6 Q Well, I believe it was your testimony, Professor, earlier
7   today that the ultimate embodiments listed here in column
8   seven are not consistent with your understanding of the
9   '172 patent; is that correct?
10 A That's correct.
11 Q Okay. And I want to clarify whether it in your opinion
12   was technically not feasible to implement any of these
13   particular alternate embodiments in the 1995-96 time
14   frame.
15   MR. WOLFF: Object to form. Incomplete
16   hypothetical. But go ahead and answer the question.
17   THE WITNESS: It would depend on what market
18   you were implementing for. If you were willing to work
19   with the public domain code that came from NCSA -- the
20   NCSA Mosaic code I think was still available at that time
21   -- you could take that code and do with it as you would.
22   As far as the spyglass the derivative Microsoft code or
23   the independently developed Netscape code, they were still
24   pretty well locked down at that time. It was difficult to
25   do this kind of thing. I couldn't -- I'd have to go back

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 29 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 105

1   and look at the specific time frame and look at the
2   specific browser states, but for the commercial browsers,
3   for those that were not in the public domain -- and Mosaic
4   wasn't the only one. There were still others at that time
5   that were open -- relatively open source -- but the
6   definition of open source changes -- that would have been
7   possible, but for the commercial ones difficult, yet
8   possible.
9 BY MR. HOOD:
10 Q You use the term lock down. What did you mean by that?
11 A Difficult to get inside. Difficult to use the browser
12   display area.
13 Q Why? Because it was proprietary and Microsoft, for
14   instance, didn't allow access to it? Is that what we're
15   talking about?
16   MR. WOLFF: Object to form. Ambiguous. What
17   are you referring to? Are you referring to the source
18   code or are you referring to the API?
19 BY MR. HOOD:
20 Q Well, you used with respect to calling it lock down.
21   That's what I'm referring to right now. And let me ask
22   you that. What were you referring to as being locked down
23   in that time period?
24 A The browsers, the code that they were based on was not
25   publicly available. The APIs that were publicly available

Page 106

1   were limited except for the noncommercial ones that I
2   described earlier.
3 Q Sure. Moving down to the claim, claim number one of the
4   '172 patent. We're on column 13 back there. And I am
5   focused again on the claim element displaying a first and
6   second icon at line 54. Do you see where I'm at,
7   Professor?
8 A Yes.
9 Q Let me ask you with respect to the first and second icon.
10   I believe it's your opinion as set forth in your
11   declaration that you talked about -- hold on one second.
12   Let me get your declaration so I'm on the right page.
13   Well, let me ask this: Do you have opinion as to whether
14   or not the Google Toolbar Next & Previous Web buttons
15   constitute or could constitute the first and second icons
16   as used in claim one?
17   MR. WOLFF: Object to form. Asked and
18   answered. I'll instruct the witness not to answer areas
19   upon which he's not rendered an opinion. We've had this
20   discussion offline without Professor Hardin in the room
21   before. If you want to limit it to the claim he examined
22   in his report that's in display, go right ahead.
23   MR. HOOD: You're not going to let him answer
24   whether he has an opinion?
25   MR. WOLFF: Yeah. Go ahead. He's --

Page 107

1   MR. HOOD: That's all I'm asking.
2   MR. WOLFF: -- asked -- you've asked the
3   question --
4   MR. HOOD: That's all I'm asking.
5   MR. WOLFF: -- and he answered it already.
6   But go ahead, Professor Hardin.
7   THE WITNESS: Could you re-ask the question
8   after all that?
9 BY MR. HOOD:
10 Q Do you have an opinion whether the Google Toolbar Next &
11   Previous Web buttons could constitute the first and second
12   icons as set forth in claim one of the '172 patent?
13 A No, I don't have an opinion.
14 Q Okay. Do you have an opinion as to whether or not -- and
15   you may want to refer to Exhibit C to your declaration.
16   And I'm looking at the -- to the left of the Next &
17   Previous buttons that are bounded in red. There is what
18   looks to be a button of some sort that has an icon with
19   Search Web. Do you see that?
20 A Yes.
21 Q Do you have an opinion as to whether or not that button,
22   the Search Web button as I'll call it, could constitute
23   either the first or second icons as used in claim one of
24   the '172 patent?
25 A No, I don't have an opinion. I'm sorry.

Page 108

1   MR. WOLFF: No, go ahead.
2 BY MR. HOOD:
3 Q Based on your understanding of the '172 patent and its
4   prosecution history, do you have any reason to think that
5   or believe that the Search Web button as shown in Exhibit
6   C could not constitute a first or second icons as used in
7   claim 1 of the '172 patent?
8   MR. WOLFF: Object -- same objection as
9   before. Asked and answered.
10   THE WITNESS: Right. I don't have an
11   opinion. I wasn't -- I don't have an opinion on it.
12 BY MR. HOOD:
13 Q We've gone through paragraph 27 of your declaration,
14   Professor Hardin, and the bases for your opinion of
15   noninfringement. Other than what you state in
16   paragraph 27 of your declaration, Exhibit 95, do you
17   presently have any other opinions with respect to the
18   noninfringement of the Google Toolbar with respect to the
19   '172 patent?
20   MR. WOLFF: Object to form. Go ahead and
21   answer.
22   THE WITNESS: No. The opinions I have are
23   laid out in the declaration.
24 BY MR. HOOD:
25 Q Okay. And with respect to noninfringement, I just want to

Page 109

1   make sure the opinions that you have currently with
2   respect to noninfringement are all set forth in
3   paragraph 27; is that correct?
4 A I'm looking to see if that's where all the conclusions
5   were. "Opinion on Noninfringement" is the title there of
6   paragraph 27. So the answer's yes.
7 Q Okay. Do you have any opinions with respect to whether
8   or not the Google Toolbar infringes United States
9   Patent 6,226,655 -- the '655 patent?
10   MR. WOLFF: Object to form, and I'll instruct
11   the witness not to answer it because there's no claim in
12   the '655 patent that has even been accused or alleged to
13   be infringed by the Google Toolbar.
14   MR. HOOD: Okay. I'm just --
15   MR. WOLFF: So --
16   MR. HOOD: -- asking him do you have an
17   opinion. I can tell what the answer's going to be, but I
18   want to make sure I know.
19   THE WITNESS: No, I do not have an opinion.
20 BY MR. HOOD:
21 Q Okay. Have you been asked to render an opinion of whether
22   or not the Google Toolbar infringes the '655 patent?
23 A No, I have not been asked to render an opinion.
24 Q Back to Exhibit C to your declaration, Professor. And I
25   want to ask you another question about the Search Web

Page 110

1   button that we talked about earlier --
2 A Yeah.
3 Q -- which is to the left of the red enclosed Previous &
4   Next buttons. Similar to a question I asked you earlier
5   on another point, but if the court were to say that the
6   Search Web button were the first icon as that term is used
7   in claim one of the '172 patent, would your opinion change
8   at all that the first icon was displayed separately from
9   the search window as used in claim one of the '172 patent?
10   MR. WOLFF: Object to the form. Incomplete
11   hypothetical and calls for a legal conclusion and lacks
12   foundation.
13 BY MR. HOOD:
14 Q Go ahead.
15   MR. WOLFF: If you can understand the
16   question --
17   THE WITNESS: Go ahead.
18 BY MR. HOOD:
19 Q Go ahead.
20 A So you're asking if a court said that the -- or ruled that
21   the Search Web button was the same as the first icon
22   that's described in the patent, then what?
23 Q Would your opinion that the first and second icons are not
24   separately displayed from the search window change?
25 A No. I'm sorry.

Page 111

1   MR. WOLFF: After he's answered, I don't know
2   what the point is of an objection at this point --
3   MR. HOOD: Go ahead.
4   MR. WOLFF: -- but it's an incomplete
5   hypothetical, and again, the same objection as before.
6   THE WITNESS: Yes. And the same elaboration
7   on my part on before. It would be inconsistent with the
8   rest of the -- of my characterization and understanding of
9   the patent and the prosecution history for a court to so
10   rule. In any case, I would not consider that element to
11   be separate from the search window.
12 BY MR. HOOD:
13 Q Is that based on your interpretation of search window
14   meaning browser window?
15 A Yes.
16 Q Okay. Moving to paragraph 28 of your declaration just
17   below the title "Opinion on Invalidity" -- this is at page
18   eight. Let me just confirm, Professor, that in your
19   opinion, claims 1 through 8 of the '172 patent are invalid
20   because of the -- what you call CyberPilot in paragraph 28
21   of your declaration?
22 A Yes.
23 Q Okay. I want to just ask you a general question to make
24   sure we're on the -- just basically the same starting
25   point. Let me ask this: When was the first time that you

Page 112

1   had occasion to either operate, review, or have any
2   interaction with CyberPilot that you've described in your
3   declaration?
4 A Probably about three or four months ago.
5 Q Okay. Before that had you not ever come across, dealt
6   with, or otherwise interacted with CyberPilot?
7 A I might have come across it, but I hadn't spent any time
8   or evaluated it.
9 Q Okay. Tell me what you did starting several months ago
10   that you described with respect to CyberPilot. Did you
11   operate the program?
12 A Well, the first thing I did was look at some images that
13   Jason Wolff had sent to me and looked at the documentation
14   for CyberPilot, and that was the foundation for much of my
15   understanding of it. Since then I have operated the
16   program itself and confirmed what the documentation says
17   as to its operation.
18 Q Okay. What documentation was it that you reviewed with
19   respect to CyberPilot?
20 A Isn't that one of the exhibits in here? Number -- it was
21   put in here. We have an annotated screen shot.
22   MR. WOLFF: Are you referring to the
23   documents from a different exhibit -- I mean from a
24   different declaration?
25   THE WITNESS: Me?

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 31 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 113

1   MR. WOLFF: Yes.
2   THE WITNESS: No.
3   MR. WOLFF: Okay.
4   THE WITNESS: The documents are the
5   CyberPilot tutorial.
6 BY MR. HOOD:
7 Q CyberPilot tutorial? Yeah. Let me direct you to tab D to
8   your declaration. There's some materials here that appear
9   to pertain to CyberPilot. Are these two pages at tab D
10   the CyberPilot tutorial that you're referencing or is that
11   something different?
12 A Well, the first page in Exhibit D is the Figure 5A that's
13   been annotated, so it's not from the CyberPilot Tutorial.
14   The second page I think was constructed outside of the
15   tutorial using CyberPilot itself.
16   MR. HOOD: Okay. Let's mark this one,
17   please.
18   (Whereupon Exhibit Number 97 marked for
19   identification.)
20 BY MR. HOOD:
21 Q Professor Hardin, I'm showing you what's been marked as
22   Exhibit Number 97 to the depositions.
23 A Yes.
24 Q And if I can -- first of all, do you recognize what's been
25   marked as Exhibit Number 97?

Page 114

1 A Yes, I do.
2 Q You've seen this document before?
3 A Yes, I have.
4 Q When did you first see the document marked Exhibit
5   Number 97?
6 A Probably two weeks ago, maybe -- no, previous to that.
7   I'd have to stop and think. It's been in the last --
8   within the last couple months. I don't remember exactly
9   when.
10 Q Okay. Let me point you to tab B to Exhibit Number 97.
11 A Tab B?
12 Q Yeah, tab B.
13 A A Trip to Hawaii?
14 Q Yeah, with CyberPilot Pro.
15 A Right.
16 Q Is this by chance the tutorial -- CyberPilot tutorial that
17   you were referencing a bit earlier?
18 A Yes, it is.
19 Q Okay. Go ahead and take a look through that to make sure
20   that that's what you had reviewed.
21 A Okay.
22 Q Do you believe what's been marked as tab B to Exhibit
23   Number 97 is the CyberPilot tutorial that you reviewed?
24 A Yes.
25 Q Okay. What kind of computer did you operate CyberPilot on

Page 115

1   when you operated it?
2 A It was an IBM box that was running a virtual machine of
3   Windows 95.
4 Q Okay. Where was that machine located?
5 A It was in Ann Arbor.
6 Q Is it still in Ann Arbor?
7 A I don't know.
8   MR. WOLFF: It's in my car.
9   MR. HOOD: Oh.
10 BY MR. HOOD:
11 Q Okay. Who loaded CyberPilot onto that machine that you
12   just discussed?
13 A I don't know.
14 Q Okay. Where did you get the machine? Let me ask you
15   that.
16 A Jason Wolff had it with him.
17 Q Okay. So Mr. Wolff provided you the machine?
18 A Yes.
19 Q And did you do anything to the machine as far as
20   installing any particular software, making any hardware
21   modifications before you operated CyberPilot?
22 A No.
23 Q Okay. Just to preface this so you know where I'm going, I
24   want to walk you through CyberPilot and how it works, and
25   we can certainly use the tutorial if that's easier. If

Page 116

1   you want to in the first instance walk me through what you
2   did. I just want to make sure that we do this in the
3   easiest way possible so I understand how you operated it.
4 A Uh-huh.
5 Q Let me ask you first if you can just walk me through when
6   you sat down at the box, that computer that you talked
7   about in Ann Arbor, what did you do to operate the
8   CyberPilot?
9   MR. WOLFF: Object to form. Calls for a
10   narrative. Go ahead and answer the question the best you
11   can.
12   THE WITNESS: Well, I opened up the
13   CyberPilot application, and --
14 BY MR. HOOD:
15 Q How did you do that?
16 A By double clicking on an icon. And looked at it a bit.
17   Basically just checked out the controls on it and then
18   closed it back down and opened up a Netscape browser and
19   reopened the CyberPilot application.
20 Q Okay.
21 A Clicked on open -- put in a URL, got an initial Web map.
22   Probably previous to that I displayed a page in the
23   browser and then started opening -- clicking on the
24   question mark icons that were in the CyberPilot Pro
25   application to investigate what was further down in the

Page 117	Page 119
1 tree of document pages, icons, and used that to display in 2 the Web browser. I think I closed it on one of the 3 occasions. I saved a file, a Web map file. 4 Q Okay. You say on one of the occasions. Was there another 5 occasion that you operated the CyberPilot? 6 A Yeah. All within the same 15-minute period. Right. 7 Sure. Opened it up, closed it down, try -- you know, see 8 if it's got any problems. I want to see if it blows up. 9 It's confused a little bit. So yeah, I opened it up and 10 closed it down a couple times, and on one of those 11 occasions I saved a Web map. 12 Q Okay. This session or this time that you were using 13 CyberPilot you said it was about 15 minutes; is that 14 correct? 15 A Oh, I think that the first -- when I first looked at it, I 16 spent about 15 minutes with it and then spent another 17 probably hour after I'd gotten the -- confirmed my basic 18 understanding of it just playing around with it. 19 Q Okay. Was this on the same day -- this -- 20 A Yeah. 21 Q -- additional hour it was? 22 A Yeah. 23 Q Okay. Other than those two occasions have you operated 24 CyberPilot, whether on that box or on another computer? 25 A No, I have not.	1 declaration, Professor, which it looks like you already 2 have up which is the invalidity chart. In the first row, 3 the first text entry row after the titles in tab F, you 4 indicate that the 1a -- I guess we use the tags that we 5 have there, the 1a, that that particular aspect of claim 6 one, is at least in your description you say "CyberPilot96 7 is a software product for navigating and finding 8 information on a network of nodes (computer network)." Do 9 you see where I'm reading there? 10 A Yes, I do. 11 Q Okay. It's your opinion, am I correct, that 1a, that 12 aspect of claim one is disclosed in CyberPilot96? 13 A Yes. 14 Q Okay. Moving to 1b, limitation of the '172 patent as you 15 indicate in the chart, constructing a search window on a 16 display screen of the local computer. Tell me where in 17 CyberPilot96 you find that particular claim limitation. 18 A Well, CyberPilot was meant to work in conjunction with the 19 Web browser like Netscape Navigator. So the search window 20 that's constructed is the browser window. So in 21 constructing a browser window you have two choices with 22 CyberPilot Pro. You can independently construct the 23 search window, the browser window or having launched 24 CyberPilot Pro and double-clicked on one of the object 25 icons, you can cause Netscape to -- if I remember

Page 118	Page 120
1 Q Is it your opinion, Professor, that the CyberPilot as you 2 described in your declaration discloses all of the 3 elements of claim one of the '172 patent? 4 MR. WOLFF: Objection, asked and answered. 5 Go ahead and answer. 6 THE WITNESS: The answer is yes. 7 BY MR. HOOD: 8 Q Okay. I'm going to walk you through each of those 9 elements, so you might want to pull out your patent. 10 A Would it be useful at this point to have the invalidity 11 chart in front of us? 12 MR. WOLFF: Your decision. 13 BY MR. HOOD: 14 Q Yeah, it probably would and what counsel just told you 15 that is your decision. I'm going to ask you some specific 16 questions and if reference to that chart assists you, feel 17 free to refer to that chart. 18 A Certainly. 19 MR. WOLFF: Obviously as well as any counts 20 in the declaration. 21 MR. HOOD: That is correct. 22 BY MR. HOOD: 23 Q You have to go to the claims in the '172 patent. So we're 24 in column 13 and starting at line 44. It's your opinion 25 that -- and I am referring to Exhibit -- tab F to your	1 correctly, you can Netscape to launch and set -- take that 2 file and display it, at the very least constructing a 3 search window on a display screen of the local computer 4 can be done using the Web browser. 5 Q You said you can independently construct that search 6 window. How do you mean you can independently construct a 7 search window? 8 A By opening up your browser. 9 Q Okay. And with respect to the second way you said you can 10 double click on an icon; is that correct, in CyberPilot? 11 A I think that launches Netscape. I'd have to go back and 12 remember. It certainly loads the displays of the file 13 that you're double clicking on. 14 Q In your understanding of having operated CyberPilot, if 15 the Netscape browser is not open or activated at the time 16 that you double click on the icon in CyberPilot, is it 17 your understanding that CyberPilot then launches Netscape? 18 A I'd have to go back and check. I honestly don't remember. 19 Q Okay. If that is not the case, if double clicking on that 20 object icon in CyberPilot does not launch Netscape or the 21 browser that I guess you're using, is it still your 22 opinion that this particular claim limitation as you've 23 labeled it 1b is disclosed by CyberPilot? 24 A Since it's built to work as my understanding of Net Jumper 25 and the patent itself with a -- in conjunction with a Web

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 33 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 121

1   browser, then yes.
2 Q Yes, what? I guess --
3 A It would anticipate this.
4 Q This particular claim limitation --
5 A Right.
6 Q -- 1b?
7 A Yes.
8 Q Okay. But as you sit here now, and I know we don't have
9   CyberPilot here. I don't think we have counsel's car here
10   to pull out the box --
11   MR. WOLFF: It's actually downstairs and --
12   MR. HOOD: We may do that afterwards.
13   MR. WOLFF: If you've got a network
14   connection we can -- I'm certainly open to let you guys
15   inspect it.
16   MR. HOOD: We might do that. Whether it's
17   today or not --
18   MR. WOLFF: Yeah.
19   MR. HOOD: -- that may be something else too.
20   MR. WOLFF: Absolutely. We can arrange that.
21 BY MR. HOOD:
22 Q As we sit here today understanding that you don't have the
23   program with you right now to operate -- or I just want to
24   get a sense. Is it your belief that yes, indeed double
25   clicking on an icon will independently launch a browser --

Page 122

1   the Netscape browser or do you not recall? I just --
2 A I simply don't recall, period. Right.
3 Q Good enough. Let's move to 1c, claim limit 1c. Well, let
4   me back up before we move to 1c. Let me ask first, would
5   a user of CyberPilot be able to search a computer network
6   using CyberPilot?
7   MR. WOLFF: Object to form.
8   THE WITNESS: A user of CyberPilot would be
9   able to navigate and search in a couple of different ways
10   using CyberPilot.
11 BY MR. HOOD:
12 Q And you use the words navigate and search.
13 A Right.
14 Q I understand you --
15 A Be able to do both. So yes -- the answer is yes, you
16   would be able to search.
17 Q How would a user be able to search using CyberPilot?
18 A Searching with CyberPilot would involve clicking on the
19   icons that either pull down more information than is
20   currently in the CyberPilot window and clicking on the
21   results of that or simply scrolling up and down and
22   clicking on Previous or Next or sequentially through the
23   documents that are displayed in the CyberPilot window.
24   And indeed you don't have to do it sequentially. You can
25   -- they're displayed sequentially, but you can click and

Page 123

1   move around in that and investigate that space in that
2   fashion.
3 Q How would a user navigate using CyberPilot?
4 A In a similar fashion. In the distinction in the case of
5   CyberPilot would be that if I knew a starting point, for
6   instance, that I wanted to go to, I would be able to type
7   that into a form window, a URL window and use that as the
8   starting point for my search.
9 Q Is there any way in which a user of CyberPilot could enter
10   a search query, a number of search terms, not a URL but a
11   search query and actually search a network, a computer
12   network?
13   MR. WOLFF: Object to form. Calls for a
14   narrative.
15   THE WITNESS: Not to my knowledge.
16 BY MR. HOOD:
17 Q Turning, Professor, to Exhibit D to your declaration,
18   particularly the second page there. Does this particular
19   page, Exhibit D to your declaration show what you consider
20   to be the search window as we've used that term in claim 1
21   of the '172 patent?
22 A Here it is labeled as the browser window, and the answer
23   is yes.
24 Q Browser window 400 --
25 A Yes.

Page 124

1 Q -- with the arrow at the top? Okay. That browser window,
2   am I correct, is a Netscape browser window that currently
3   has yahoo.com displayed?
4 A Correct. By inspection.
5 Q I'm still on Exhibit D to your declaration. In the
6   browser window area, section 400, the area that's labeled
7   to the left of location and then it has the http:\ area,
8   what with respect to this particular screen shot would you
9   call that area where the http:\ is located?
10 A That's the URL form.
11 Q Okay. The area -- it's shown here in white. It's below
12   the gray. You have the buttons What's New, What's Cool,
13   Handbook, et cetera. A little bit more gray and then we
14   go into white where there's a Yahoo page --
15 A Yes.
16 Q -- displayed. Do you see where I'm talking about?
17 A Yes.
18 Q What would you consider in this particular screen shot
19   that area -- everything below the gray from left to right
20   where we have Yahoo displayed?
21   MR. WOLFF: ·Object to form. Go ahead and
22   answer.
23   THE WITNESS: Yeah. That is the display area
24   for the HTML file.
25 ///

Page 125

1 BY MR. HOOD:

2 Q Okay. Within that particular area there is a -- the words
3   Search for: and then what looks to be a box -- a blank
4   box. Do you see that, Professor?

5 A Yes, I do.

6 Q What would you call that area, that blank box?

7   MR. WOLFF: Object to form. Go ahead and
8   answer.

9   THE WITNESS: I'd call that a search entry
10   form. It's a place that you can put in search terms and
11   the Yahoo search engine will go and match them, return
12   hits, URLs.

13 BY MR. HOOD:

14 Q Moving then to what's been labeled -- what you labeled
15   as 300 CyberPilot map window. Do you see where I'm at?

16 A Uh-huh.

17 Q Let me ask you some questions on that. You have a green
18   border around a number of things here in number 300.

19 A Yes.

20 Q Do you call that the items within that green border
21   anything in particular?

22 A They're labeled as CyberPilot icons.

23 Q Okay. And I'm trying to get a sense for what is included
24   as a CyberPilot icon. There are a number of things that
25   are within that green border. Is everything in your

Page 126

1   opinion within that green border a CyberPilot icon?

2   MR. WOLFF: Object to the form. Go ahead and
3   answer.

4   THE WITNESS: Yeah. The buttons that you see
5   across the top row, the icons, the graphic icons that you
6   see down the left-hand side, things that can be clicked
7   on, those are what I refer to as icons.

8 BY MR. HOOD:

9 Q Okay. Back with respect to claim one of the '172 patent
10   the next limitation -- and feel free to refer back to
11   your --

12 A Certainly.

13 Q -- chart if you'd like to -- of the patent is displaying a
14   first and a second icon separate from the search window on
15   said display screen. Is it your opinion that that
16   particular limitation is disclosed in CyberPilot?

17 A Yes.

18 Q Tell me in your opinion what the first icon, as that term
19   is used, in claim one of the '172 patent is in CyberPilot.
20   Feel free to reference the screen shot if you'd like or
21   anything else.

22 A Yeah. If we look at the Exhibit D that has the picture
23   we've been discussing the image of, the Netscape Navigator
24   browser window and the CyberPilot map window, you'll see a
25   couple of buttons that could be characterized as first

Page 127

1   icon buttons, either the question mark icon or the spider
2   icon. The second -- did you ask for second icon too?

3 Q I didn't, but you're anticipating a question so let's move
4   there.

5 A Maybe I need some coffee.

6 Q Would you like some?

7 A Yeah, I'd like some. Yes.

8   MR. HOOD: Let's take a break and get some
9   coffee. Sure.

10   (Brief recess.)

11 BY MR. HOOD:

12 Q Professor, why do you consider the question mark -- let's
13   start with that -- to be a first icon as that term is used
14   in claim 1 of the '172 patent?

15 A Let's go back and take a quick look at the invalidity
16   chart. These are control icons and object icons
17   respectively as I say there. They're displayed in a
18   separate window from the search window -- the browser
19   window. So that's what's called for in 1c displaying a
20   first and second icon separate from the search window on
21   the said display screen.

22 Q Why is the question mark a first icon and not a second
23   icon?

24 A Let's see. Isn't that more a question that would lead us
25   to 1e?

Page 128

1 Q If that helps you, sure. That's fine.

2 A All right. If we go back responsive to a selection of the
3   first icon is at the bottom of 1e there. So functionally
4   what we're looking for is something that will take the
5   location identifiers from the initial data file to form an
6   initial list of location identifiers together with storing
7   the initial list responsive to a selection of the first
8   icon. That's basically saying that you're taking in
9   response to a click or a double click. you are taking a
10   data file, the Web page, an HTML file, and pulling out the
11   location identifiers and displaying them, and that's what
12   happened when you click on either the spider button which
13   is a more general button or specifically the question mark
14   button that is associated with any one of the top level
15   data files there. So it leads me to believe that it is
16   the same thing as what's described as a first icon.

17 Q Okay. With respect to 1a, what do you consider to be the
18   location identifiers as that term is used in claim 1 of
19   the '172 patent?

20 A The location identifiers -- if you'll look in the example
21   here, you'll see that a location identifier is displayed
22   in the blue text that's surrounded by a box. It's the one
23   that's selected there. The http://rds.yahoo.com/, et
24   cetera, that is a URL, and my understanding and
25   characterization of the term location identifiers in the

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 35 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 129

1   context of the patent and the rest of the documents would
2   lead me to characterize a URL as a location identifier.
3 Q Okay. Back up in what you call the URL form window I
4   think, back up top in the Yahoo -- the Netscape window for
5   Yahoo.
6 A Are we talking about the window that says Location --
7 Q Yes.
8 A -- next to it?
9 Q Yes. That's exactly what I was getting to. Do you
10   consider that particular address, that URL address, to be
11   a location identifier as that term is used in the '172
12   patent?
13 A I think that classifies as a location identifier, yes.
14 Q Okay. Going back to 1c -- and if you need to refer to a
15   later part of the patent that's fine -- I want to ask you
16   what you consider to be the second icon disclosed by
17   CyberPilot.
18 A The second icon which in the text accompanying 1c to the
19   right there. Characterized first icon it says control
20   icons and second icons as object icons. Second icons are
21   -- let's see if we can't find a specific reference to the
22   second icon. Responsive to the selection of the second
23   icon. Look at 1f. It's on the next page there. So
24   responsive to a selection of the second icon you retrieve
25   a data file and that data file is displayed. What happens

Page 130

1   when you click on one of the object icons in CyberPilot is
2   that that page is retrieved and displayed. So it is -- it
3   performs the same activity, initiates the same activity as
4   the second icon in the patent.
5 Q Where is that page displayed when you click on the second
6   icon?
7 A The page is displayed in the search window.
8 Q And where is that search window?
9 A It's the browser window.
10 Q Okay. What do you consider to be the first data file,
11   looking at 1f on your invalidity chart with respect to
12   CyberPilot?
13 A 1f. Retrieving -- I think it's a first data file, so it's
14   basically any of the data files that one would click on.
15   That would be an initial data file. A specific first data
16   file corresponding to a selected -- in other words, one
17   that you had selected, location identifier in the stored
18   initial list together with displaying first data file,
19   that data file that you clicked on or whose icon you
20   clicked on in the search window. Does that answer the
21   question?
22 Q I'm sure you did, but I didn't understand the answer so
23   I'm going to have to ask you --
24 A Okay. So ask it --
25 Q -- a follow-up question.

Page 131

1 A -- ask it again, and I'll --
2 Q I'm just trying to --
3 A -- slow down a little bit.
4 Q Just trying to get a sense for what you consider to be the
5   first data file as shown in your Exhibit D on this, and
6   you're saying if I'm correct in my understanding that it's
7   any one of the -- I don't know what to refer these to as
8   pages or something like that. The Finance, Music, Travel,
9   Mail, et cetera?
10 A The icons that are sitting there that look like pages.
11 Q Yeah. Is that what you're referring to?
12 A Sure.
13 Q Okay. So the pages with the blue -- it looks like a
14   little folded over right-hand top part next to Finance,
15   Music, Travel, Mail, et cetera.
16 A Absolutely.
17 Q Is that it?
18 A Exactly.
19   MR. WOLFF: Object to form. Ambiguous.
20   MR. HOOD: Let's not make it ambiguous then.
21 BY MR. HOOD:
22 Q I want to make sure I understand what you're talking
23   about. I want to know what you consider to be the first
24   data file as that term is used in claim 1 of the '172
25   patent with the use of your Exhibit No. D and a

Page 132

1   CyberPilot.
2 A What the first data file is.
3 Q Correct.
4 A So let's look at the narrative that's next to it, so
5   selecting a second icon -- an object icon in this case
6   versus a first icon, right, which would be a control icon
7   -- in the CyberPilot window causes the Web browser to
8   retrieve and display a first data file, a Web page. All
9   right. Associated with the location identifier
10   hyperlinked to the icon. So the first data file would be
11   the Web page that's associated with the hyperlink that is
12   linked to that icon.
13 Q So it's not the icon?
14 A The second -- no, it's not the icon.
15 Q It's the Web page associated with that icon?
16 A Yes, indeed it is.
17 Q Okay. Did you have occasion to operate the Explore
18   feature of CyberPilot, Professor Hardin?
19 A The Explore feature. Would you point me to where that's
20   in the Tutorial?
21 Q I don't know if it's in the Tutorial. I'm just asking if
22   that rings any bell for you if you operated that feature
23   of CyberPilot.
24 A I don't recall.
25 Q Okay. Let's go to Mr. Starks' declaration. I think we

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

Page 133

1   can find that. Exhibit B to what's been marked as Exhibit
2   Number 97.
3 A   Yes.
4   MR. WOLFF: Page five.
5 BY MR. HOOD:
6 Q   And it's at page 5 of 30 -- top right-hand corner of each
7   page it says page X of 30. And you see about
8   three-quarters of the way down it says "Explore more of
9   the site."
10 A Yes.
11 Q Go ahead and review that if you'd like to. It's that
12   particular feature of CyberPilot that I'd like to know if
13   you operated.
14 A Choose Explore from the WebMap menu. Yes, I have. Right.
15   The Explore -- I'm trying to remember which icon the
16   Explore icon was. It's not clear from this. I think it
17   was the simple page icon. It's up in the upper left-hand
18   corner. It's slightly different.
19 Q You do recall performing work with this Explore feature as
20   it's indicated in Exhibit B?
21 A I remember selecting Limit Levels to the check box, so
22   let's see. This tells -- to limit its exploration to the
23   site for how deep it goes. That's true. Then we're going
24   to -- then CyberPilot's going to build a map. Right.
25   First it located the home page. Right. Then it located

Page 134

1   any objects pointed to by links on the home page. So it's
2   drilling down. You're telling it how far to drill down,
3   whether to look at all those links and all the links that
4   link to them or go down however many levels. After that
5   it locates any links on those pages, yada, yada, yada.
6   Since you limited exploration to three levels, go to the
7   Web --
8 Q   You might want to slow down.
9   MR. WOLFF: Slow down, please.
10   THE WITNESS: CyberPilot Pro will go on the
11   Web and look up objects in the site only as far as the
12   grandchildren -- two levels down -- of the home page. For
13   more information, yada, yada. A note on the map
14   hierarchy. Click OK. You'll see an Exploring status box
15   while CyberPilot Pro looks up pages on the site. So
16   that's a user interface status box. It says I'm doing
17   something. The application's telling the user. After a
18   few minutes the map is redisplayed. The question mark
19   icons are replaced by plus icons and more of the site is
20   shown. You'll be clicking some of these plus icons
21   shortly, the Tutorial says. So yes, I do recall using
22   that feature.
23 BY MR. HOOD:
24 Q   Do you have any opinion whether the Explore button as it's
25   described in the materials marked as Exhibit B, the

Page 135

1   CyberPilot Tutorial, constitutes either the first or
2   second icon as that term is used in claim one of the '172
3   patent?
4 A   It would seem to characterize -- well, let me think a
5   second. Yes.
6 Q   And what is that opinion?
7 A   Oh, the opinion. The opinion is that yes, it does
8   characterize a -- an example of a first icon.
9 Q   First icon?
10 A Yeah. If we look at 1e in the claims on the invalidity
11   chart it talks about parsing the location identifiers from
12   the initial data file. 1d and 1e together, retrieving the
13   data file, 1e, parsing the location identifiers, forming
14   an initial list. That's essentially getting the Web page,
15   going through the Web page and looking at the URLs and
16   indeed in this case going down to the next level of those
17   URLs, then storing that list responsive to a selection of
18   the first icon.
19 Q Okay. I'd like to move to 1d in your invalidity chart.
20   This addresses the claim limitation, retrieving an initial
21   data file. Do you see where I'm at, Professor?
22 A Uh-huh.
23 Q From the network together with displaying, et cetera.
24   It's your opinion, I take it, that CyberPilot Pro
25   disclosed this particular limitation 1d of claim one of

Page 136

1   the '172 patent?
2 A   Yes.
3 Q   How did CyberPilot Pro quote, "retrieve an initial data
4   file" as that term is used there in the claim?
5   MR. WOLFF: Object to form. Asked and
6   answered. Go ahead.
7   THE WITNESS: Are you asking from the user
8   perspective or are you asking from any particular
9   perspective different from what I've already said?
10 BY MR. HOOD:
11 Q   I just -- and if I asked it before, I apologize. I don't
12   recall asking it in that way, but I'd like to know from
13   your understanding perspective how did CyberPilot Pro
14   retrieve an initial data file together with displaying the
15   initial data file in the search window and the initial
16   data file including location identifiers?
17 A I didn't -- my understanding in response to selection of
18   an icon, CyberPilot Pro went out, got the initial data
19   file, the Web page, retrieved it, and displayed that in
20   the search window and in the browser window and including
21   its location identifiers, then parsed the location
22   identifiers and built its map.
23 Q   You said in response to selection of an icon it did that.
24   In response to selection of what icon did CyberPilot
25   perform that?

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page™

Joseph Hardin
September 16, 2005

Page 137

1 A As we pointed out, let's see, in Exhibit D. We have some
2   choices here. Could be the question mark icon. Could be
3   the spider icon.
4 Q Is your -- I'm sorry, I didn't mean to cut you off.
5 A Right. Right. No. Either of those.
6 Q It's your opinion that CyberPilot retrieved an initial
7   data file in response to the activation of either the
8   question mark or spider icon; is that correct?
9 A Yes.
10   MR. WOLFF: Object to form. Mischaracterizes
11   prior testimony.
12   THE WITNESS: I'm sorry. Could you ask that
13   again?
14 BY MR. HOOD:
15 Q No, I'll move on to another question. Thanks. Moving to
16   limitation 1e in your invalidity chart, this is the
17   limitation, parsing the location identifiers from the
18   initial data file to form an initial list of location
19   identifiers together with storing the initial list
20   responsive to a selection of the first icon. What is your
21   understanding -- well, first of all, let me ask is it your
22   opinion that CyberPilot did disclose this particular
23   location, 1e of the '172 patent?
24 A Yes, it is.
25 Q And what understanding of the term parsing, as it's used

Page 138

1   in that limitation, do you consider CyberPilot to have
2   performed? Let me ask you, is it the same as what has
3   been indicated in Exhibit 96, Google's Proposed Claim
4   Constructions?
5 A Yes, it is.
6 Q So that would be, quote, "the act of examining a string of
7   text, breaking it into subunits and establishing the
8   relationships among the subunits"; is that correct?
9 A Yes.
10 Q Okay. And it's your opinion that CyberPilot did that
11   parsing, as you've used that term, responsive to a
12   selection of the first icon as we've discussed; is that
13   correct?
14 A Yes.
15 Q Let me move to claim four, Professor Hardin, in the
16   invalidity chart. This is claim four of the '172 patent.
17   Is it your opinion that claim four is disclosed in
18   CyberPilot96?
19 A Yes.
20 Q That claim says "the computer implemented method of claim
21   one wherein said retrieving act further compromises
22   retrieving the first data file corresponding to the one of
23   the location identifiers in the stored initial list
24   selected from a group consisting of a Next location
25   identifier, a Prior location identifier, a First location

Page 139

1   identifier and a Last location identifier together with
2   displaying the first data file in the search window
3   responsive to a selection of the second icon." Let me ask
4   you, and feel free to refer back to the screen shot if
5   that helps you, what in CyberPilot96 do you consider to be
6   the Next location identifier as it's used in the claim of
7   the '172 patent?
8 A Where was that? That was Exhibit -- I lost the exhibit.
9   Exhibit D?
10 Q Yes, that's correct.
11 A All right. Well, let's look at the -- again at the
12   narrative that's in the claims and validity chart here.
13   The location identifiers stored in the initial list, the
14   Web Map file now, are arranged in sequence and compromise
15   the Next location identifier, a prior location identifier,
16   a first location identifier, and a last location
17   identifier, and examples of this -- or let me just
18   continue reading. For example, with reference to the
19   figure below -- and this is now a reference to the figure
20   on page 5 of the document that has the invalidity chart.
21 Q This is Exhibit F to your declaration?
22 A Yeah. As reference to the figure below, the first
23   location identifier in the CyberPilot Web Map file is the
24   URL corresponding to the places label. So we see that on
25   the left there.

Page 140

1 Q Uh-huh.
2 A All right. The last location identifier is the URL
3   corresponding to the Moloka'i label. Okay. When the
4   Kaua'i -- the Garden Island object icon is selected -- so
5   if we selected the Kaua'i object icon, the Garden
6   Island -- if that's selected. The Next location
7   identifier is the URL corresponding to the activities in
8   Kaua'i, and the previous location identifier is the URL
9   corresponding to the island of Kaua'i. So you can see the
10   pattern. Right. There's an initial what's called here a
11   Next location, a Prior, a First location and a Last
12   location. And those are relative to where you are.
13 Q And it's your opinion then that those particular
14   identifiers as you've described are retrieved responsive
15   to a selection of a second icon in CyberPilot96?
16 A I'm sorry?
17   MR. WOLFF: Object to form. I don't know if
18   you're trying to characterize his testimony or ask him if
19   he agrees with the statement.
20   MR. HOOD: Well, let me ask it a different
21   way.
22 BY MR. HOOD:
23 Q In your invalidity chart, claim number four, I understand
24   your opinion to be that CyberPilot96 discloses all of the
25   limitations of claim four; is that correct?

Page 141

1 A Yes.
2 Q And you've just gone through that you considered to be the
3   Next location identifier, prior location identifier, first
4   location identifier and last location identifier. The
5   last part of claim four, after the final comma says,
6   responsive to a selection of the second icon. We've gone
7   through your understanding of second icon with respect to
8   CyberPilot. Is it your opinion that those particular
9   identifiers, the Next location, Prior location, et cetera,
10   are retrieved responsive to selection of the second icon?
11   MR. WOLFF: Object to form. Confusing. I
12   don't understand what claim limitation you're referring
13   to, Counselor.
14 BY MR. HOOD:
15 Q Let me ask you this: What do you understand that the
16   phrase "responsive to a selection of the second icon as
17   it's used in claim four" to mean, Professor?
18 A The phrase responsive to the selection of the second icon?
19 Q Correct.
20 A Well, again, looking at the text, in this case under 1f,
21   we can talk about selecting a second icon, a page object
22   icon in the CyberPilot window, so selection of a second
23   icon in that case would result in retrieving a data file,
24   parsing it, displaying it.
25 Q And that in your view includes the Next location

Page 142

1   identifier, Prior location identifier, First location
2   identifier and Last location identifier?
3   MR. WOLFF: Object to form. Confusing.
4 BY MR. HOOD:
5 Q Let me ask this: Is it your opinion that claim four is
6   different in any respect than claim one? You've referred
7   back to claim 1f.
8   MR. WOLFF: Are you including 1f with 1?
9   MR. HOOD: No, no.
10 BY MR. HOOD:
11 Q Let me ask: Is it your opinion that claim four is
12   different in any respect, at least as we're talking about
13   it with respect to CyberPilot in claim one?
14   MR. WOLFF: Objection, ambiguous. Go ahead
15   and answer, if you can.
16   THE WITNESS: Yeah. I'm not -- it's a --
17   you're asking if claim four is different in any way than
18   claim one; is that correct?
19 BY MR. HOOD:
20 Q That's correct.
21   MR. WOLFF: Are you talking about the claim
22   itself or are you talking about as applied or as applied
23   to CyberPilot?
24   MR. HOOD: Well, right now I'm just asking
25   about the claim itself. Is it your opinion that claim 4

Page 143

1   differs in any regard to claim one of the '172 patent?
2   MR. WOLFF: It's the language of the claim?
3   MR. HOOD: Correct.
4   MR. WOLFF: Okay.
5   THE WITNESS: Well, if we're talking about
6   the language of the claim, then there is some
7   specification in four that's not in one.
8 BY MR. HOOD:
9 Q And what is that?
10 A It's the specification of the Next, Prior, First and Last
11   identifiers.
12 Q Okay. It's your opinion I think you just testified that
13   those identifiers are disclosed by the CyberPilot96; is
14   that true?
15 A Yes.
16 Q Okay. Are there any other differences in your opinion
17   between claims one and four of the '172 patent other than
18   what you've already testified to?
19   MR. WOLFF: Object to form. Ambiguous. Go
20   ahead and answer.
21   THE WITNESS: I think that this is pretty
22   much -- as I say in the declaration, they're associated
23   with claim four. This is pretty much the same as 1f. The
24   location identifiers that are referenced here or that are
25   made explicit in this claim are the initial list that is

Page 144

1   of the Web Map file that's arranged in sequence. In my
2   opinion, this doesn't add a lot of specification to that.
3   It's simply labeling what is a sequence of elements, the
4   initial list.
5 BY MR. HOOD:
6 Q Does it add any specification as you just used that term
7   to the client?
8   MR. WOLFF: Object to form. Ambiguous. Go
9   ahead and answer it.
10   THE WITNESS: Are you asking a legal
11   question? Do I think --
12 BY MR. HOOD:
13 Q No, you just said --
14 A -- do I think that --
15 Q Go ahead.
16 A Yeah. Do I think that this wording and the listing of
17   Next -- how do we go here -- Next, Prior, First and Last
18   adds any significant specification to it? Is that what
19   you're asking?
20 Q I was following up on your statement that it doesn't add a
21   lot of specification. Does it add any specification as
22   you use that phrase to the claim?
23   MR. WOLFF: Object to form. Asked and
24   answered. Go ahead and answer.
25   THE WITNESS: Yeah. It adds a set of labels

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 39 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 145

1   to an already existing sequence.
2 BY MR. HOOD:
3 Q Is it the case then in your opinion that claim 4 does not
4   require any additional limitations to be found in
5   CyberPilot96, in order to infringe?
6   MR. WOLFF: Object to form. Mischaracterizes
7   his prior testimony. Go ahead and answer the question.
8   THE WITNESS: Could you ask the question
9   again?
10 BY MR. HOOD:
11 Q In your invalidity chart and in some of your testimony,
12   you have referred to this particular claim four as the
13   same as 1f, which is what you say there in column number
14   two of your invalidity chart. What do you mean by same as
15   1f as you use it in that invalidity chart?
16 A As I've said simply labeling the Next, Prior, First and
17   Last elements of a sequentially displayed list is not in
18   my opinion adding a lot of specification. It's not adding
19   anything that would not be, you know, obvious to a user,
20   what is the First, what is the Next. If you're talking
21   about those as simply being sequential, then I think
22   that's understood. Even if that were not the case, even
23   if it were something that added some specification, it
24   still is contained in the CyberPilot product.
25 Q Okay. I understand.

Page 146

1   MR. WOLFF: Is this a good time for a break?
2   MR. HOOD: Yeah, it's fine.
3   (Brief recess.)
4   MR. HOOD: Back on the record, Professor.
5 BY MR. HOOD:
6 Q I'd like to direct you to paragraph 32 of your
7   declaration, which is Exhibit 95 to the deposition.
8 A Twenty-eight -- 32.
9 Q It starts out "URLs found in the Web Map..."
10 A Yes.
11 Q Do you see that? "...or extracted from a HTML file
12   presented in the browser window by selecting a control
13   icon (e.g. shown as a gray box with a question mark)
14   displayed in the CyberPilot Map window." Let me ask you,
15   first of all, on what do you base that particular
16   statement in paragraph 32? Is that something that came
17   out of your operation of CyberPilot?
18 A So which part of it are you asking the question about?
19 Q Well, particularly the first sentence --
20 A Whether or not --
21 Q -- right now.
22 A So URLs found in the Web Map were extracted from an HTML
23   file presented in the browser window by selecting a
24   control icon. That's how the documentation -- or that's
25   how I read the documentation. Selecting a control icon, a

Page 147

1   gray box -- for example a gray box with a question mark in
2   it, which is -- that control icon is displayed in the
3   CyberPilot Map window, right, caused the HTML file that
4   that was next to, the object icon representing the HTML
5   file that the question mark was next to, to be parsed --
6 Q Well --
7 A Let's just use the terminology here. To take the URLs and
8   extract them, period. Okay?
9 Q Okay.
10 A So the answer to the question would be that I understood
11   that from the documentation for CyberPilot.
12 Q Have you had occasion to review any code, source code,
13   HTML code, any of that type thing for CyberPilot?
14 A I have not looked --
15   MR. WOLFF: Object to form. Go ahead.
16   THE WITNESS: Yeah. I have not looked at any
17   source code for CyberPilot. I have looked at some of the
18   Web Maps, indeed looking for the URLs that are described
19   here.
20 BY MR. HOOD:
21 Q When did you do that, look at the Web Maps that you just
22   described?
23 A I looked at those recently when I was working with
24   CyberPilot on the machine in order to verify my
25   understanding of what was going on from the documentation.

Page 148

1 Q Okay. Did you form any opinion as to how this extraction,
2   as you've used it in that particular paragraph 32, is
3   accomplished by CyberPilot?
4 A Yes. And my opinion is that that extraction is performed
5   simply by parsing the HTML file and pulling out the URLs
6   and then listing those.
7 Q And is that in response to a particular user action in
8   CyberPilot?
9 A In the case that's described here, it's in response to
10   selecting a control icon, the question mark icon.
11 Q Okay. Let me go back to the invalidity chart, Exhibit F
12   to your declaration.
13 A Uh-huh.
14 Q And let's talk about limitation that you've labeled 1E.
15   Limitation parsing the location identifiers from the
16   initial data file. You see where I'm at there?
17 A Yes.
18 Q Explain to me what is happening in CyberPilot during this
19   particular parsing step, if you know.
20 A Again, the narrative that is associated with this
21   describes that. URLs from the initial data file are
22   parsed in response to selection of an icon, the question
23   mark icon, for instance, and an initial list of location
24   identifiers. The red map file identified as a file with
25   the suffix .wmp is displayed in the CyberPilot which is

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 40 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 149

1 displayed in the CyberPilot window is stored for use by
2 CyberPilot. What's happening there is pretty simply
3 what's described there. The initial data file is parsed.
4 In other words, you can go to the definition and see what
5 we mean by parsing. It's examined. You can consider a
6 text to be a string of texts, a document to be a string of
7 texts. It's broken into its subunits. In this case the
8 relevant subunits are the URLs. All right. And then the
9 relationship in this case, the sequence of those URLs is
10 established, and that's what in my understanding
11 CyberPilot is doing.
12 Q Okay. And you refer to the proposed claim constructions
13   of Exhibit 96. In that same context you define the term
14   parsing or the proposed claim construction includes the
15   term parsing in response to selection of an icon. Do you
16   see that? The third entry down.
17 A Yes.
18 Q And it states that the act of parsing of the hyperlinks is
19   performed on the initial data file only after one of the
20   two separately displayed icons has been selected. Is it
21   your opinion then that parsing as it's used in claim
22   limitation 1e is being performed in that manner as
23   constructed on Exhibit 96 by CyberPilot?
24 A As the -- yeah. As we say here, the URLs from the initial
25   data file are parsed in response to selection of an icon,

Page 150

1 the question mark icon, for instance.
2 Q Okay. Do you have any understanding of where the parsing
3   is I guess physically accomplished when you're using
4   CyberPilot? In other words, kind of what I'm getting at,
5   is it locally on a computer? Is it out on a network?
6   Just tell me if you have an understanding of where or by
7   what this parsing is being performed in CyberPilot.
8   MR. WOLFF: Object to form, vague. Go ahead
9   and answer.
10   THE WITNESS: It's on the client machines.
11 BY MR. HOOD:
12 Q Okay. Have you had occasion to review the Google Toolbar
13   HTML code as part of your duties in this particular case?
14   MR. WOLFF: Object to form. Lacks
15   foundation. What is the Google Toolbar HTML code?
16 BY MR. HOOD:
17 Q With respect to the accused Google Toolbar that we've been
18   discussing, Professor, I'm asking if you've had occasion
19   to review any software code for that particular Toolbar?
20 A No, I have not.
21 Q Professor, do you presently have any opinion regarding any
22   other piece of either software or hardware technology of
23   some sort like CyberPilot that in your opinion invalidates
24   any claims of the '172 patent?
25   MR. WOLFF: Object to form.

Page 151

1   THE WITNESS: So you're asking if there are
2   any other potentially invalidating prior art pieces of
3   software that I've investigated and formed an opinion on?
4 BY MR. HOOD:
5 Q Sure. You can answer that question for me first. That'd
6   be great. Thank you.
7   MR. WOLFF: Self-deposition.
8   Self-employed --
9   MR. HOOD: We can all go home, right? Just
10 let him do his own.
11   THE WITNESS: Right.
12 BY MR. HOOD:
13 Q Sure. Go ahead and answer that.
14 A Yeah. The answer is no.
15 Q Okay. Is it then the case that you don't presently have
16   an opinion that claims of the '172 patent are invalid
17   based on anything other than CyberPilot?
18 A It's my opinion currently that CyberPilot is sufficient to
19   invalidate the '172 claims.
20 Q So is that a yes or a no or a maybe? I don't mean to --
21 A Right.
22 Q -- to be technical. I just want to understand if you
23   believe presently as you sit here today --
24 A Right.
25 Q -- that there is any other piece of prior art, as you've

Page 152

1   used that term, that invalidates any claims of the '172
2   patent other than CyberPilot, which we've reviewed?
3 A I haven't formed an opinion on that.
4 Q Okay. Do you have any other pieces of prior art in mind
5   that you believe might invalidate claims of the '172
6   patent?
7   MR. WOLFF: Object to form. Calls for
8   speculation.
9   THE WITNESS: None that are as complete as
10 CyberPilot.
11 BY MR. HOOD:
12 Q List for me those that are not as complete as CyberPilot,
13   as you just referred to.
14 A Well --
15   MR. WOLFF: Object to form. Calls for a
16 narrative. Ambiguous.
17   THE WITNESS: Yeah. If we look at the Wood
18 article, we see descriptions of things that are -- that
19 could be on further investigation invalidating, but I
20 haven't formed an opinion on it.
21 BY MR. HOOD:
22 Q What are the names of those things as you just referred to
23   that could be invalidated?
24 A The viewer, the use of a separate window to display search
25   results. That's from a reading of a article that was at a

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 41 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 153

1   conference. To -- if I were to consider that as -- to
2   seriously consider it as invalidating prior art, I'd have
3   to go much deeper, but first look there are things there
4   that could potentially apply to this.
5 Q The same question I asked you on infringement with respect
6   to the '655 patent. Have you been asked to render any
7   opinions on validity of that particular patent or its
8   claims?
9 A No, I have not.
10 Q Professor, we went through earlier your CV, which is
11   Exhibit -- or Exhibit A rather, to your deposition. Would
12   you consider yourself to have any particular expertise
13   right now, any specialty, anything of that nature in what
14   you currently do?
15 A Do I have any particular expertise? How would I
16   characterize a specialization?
17 Q Let me phrase that -- rephrase that. Do you have any
18   particular specialty in the work that you do?
19 A Well, I think the vitae speaks for itself. If we look at
20   it again -- where was that?
21 Q It's Exhibit A to your declaration.
22 A Right. The things that are described there are software
23   manage -- software development management, organizational
24   management, analysis and direction of software development
25   efforts and teaching, specifically teaching Web

Page 154

1   technologies.
2 Q Have you ever testified in court before?
3 A No.
4 Q Have you ever testified at deposition before today?
5 A Yes.
6 Q When was the last time you testified at a deposition?
7 A Well, I knew that was going to be the next one, and I
8   don't remember. It was probably five years ago. It was
9   after I moved to Michigan, which was in '97.
10 Q Okay. What type of case was that in?
11 A It was a software patent case.
12 Q Did you testify as an expert in that case?
13 A No, I testified about the facts of the case.
14 Q Who are the parties involved in that case?
15 A I'm trying to remember exactly. I think it was Eolas vs.
16   Microsoft.
17 Q I think we know that case. Before that had you testified
18   at any deposition?
19 A No, I don't think so.
20 Q Where did that deposition take place?
21 A That took place in Ann Arbor.
22 Q Paragraph 16 of your declaration, you say you have been
23   informed on several principles concerning validity, et
24   cetera. Who was it that informed you of those several
25   principles?

Page 155

1 A It was Jason Wolff and colleagues.
2 Q Do you have any understanding of any presumptions that
3   attached to the issuance of a patent in the United States
4   patent system?
5 A The issuance of a patent?
6 Q Any presumptions that attach to the issuance of a patent
7   in the United States?
8 A My understanding is that once issued, the patent is
9   presumed to have force.
10 Q Is it your understanding that once issued a patent is
11   presumed to be valid?
12 A Yes, that's my understanding.
13 Q Okay. On what is that understanding based?
14 A Communications with Jason Wolff and general background
15   understandings from working previously in a patent case.
16 Q What case was that?
17 A That was the Eolas case.
18 Q Okay. The same case that you testified at --
19 A Yeah.
20 Q -- deposition on?
21 A Right.
22 Q Tell me in that case what work you did on a patent. I
23   think you said you testified about facts. Is that correct
24   -- in the case?
25 A Yes, that's correct.

Page 156

1 Q Did you render any opinions in that case with respect to a
2   patent or patents?
3   MR. WOLFF: Object to form. Ambiguous.
4   MR. HOOD: Let me clarify the question unless
5   you want to --
6   MR. WOLFF: Go ahead.
7   MR. HOOD: -- go ahead. You can.
8   MR. WOLFF: No, you can clarify it.
9   MR. HOOD: Sure.
10   MR. WOLFF: I withdraw the objection.
11 BY MR. HOOD:
12 Q Let me ask first of all at the deposition that you have
13   discussed, Professor, in the Eolas vs. Microsoft case, did
14   you testify as to any opinions that you had about any
15   subject matter that was at issue in that deposition?
16 A As I remember almost all of the questions -- indeed all of
17   the questions centered around questions of facts, not
18   opinion.
19 Q Did you testify to any opinions at that deposition?
20 A Not that I remember. They were questions about where I
21   was, what I knew, who I had worked with, things like that.
22   Those are questions of fact, not opinion.
23 Q Okay. Had you been engaged by either of the parties to
24   provide any kind of consultation or assistance to those
25   parties?

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 42 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 157

1 A Yes.
2 Q And who was it that hired you in that case or engaged your
3   services?
4 A I don't remember the name of the firm. It was on the side
5   of the plaintiffs, I think -- no, since I get those terms
6   mixed up. It was on the Eolas side of the case.
7 Q Okay. And what were you engaged to do in the Eolas case?
8   MR. WOLFF: Objection. If you're under a
9   confidentiality restriction because of that consultancy or
10   whatever it was you did, I think you'd probably have to
11   preserve that, and I suppose you have to take -- see if
12   you can take discovery upon the Eolas folks.
13   MR. HOOD: Let's ask that foundational
14   question. If we get that we'll deal with that.
15   MR. WOLFF: Okay.
16 BY MR. HOOD:
17 Q Professor, do you have any understanding of whether you
18   are under a confidentiality requirement provision or order
19   out of the Eolas case or pertaining to that case?
20 A I think that my conversations with counsel there, I
21   presume that they were under confidentiality, but I would
22   not be -- I could not be forced to disclose them, and I
23   would prefer not to.
24   MR. HOOD: And maybe, Counsel, for the record
25   just to be safe and not to put the professor in a bad spot

Page 158

1   -- I don't mean to go down that road if he is, in fact.
2 Maybe we can preserve that. If we find out later if it's
3 relevant that he is not, we can address it if we have any
4 questions. I don't know that we do. I don't want to
5 press it today. It doesn't sound like we know for sure,
6 and if he is I don't want press him anyway.
7   MR. WOLFF: I have no knowledge either what
8 that is. If your questions are foundational, and they
9 somehow relate to facts in the Eolas case as they pertain
10 to this case, I don't know that he's -- I mean if he's got
11 personal knowledge of facts in Eolas that would relate to
12 this case, I don't have an objection to your asking those
13 questions that pertain to facts. I don't know what it
14 could possibly do with this declaration that's been
15 submitted here, but I generally don't have questions to
16 facts about his personal knowledge. I think that the
17 consulting work that he did if any for the other side and
18 the communications he had with counsel would probably be
19 privileged or work product and may be protected for those
20 reasons, but I don't have any basis to know. But I don't
21 -- so without knowing what the relevance is, you know, I
22 can kind of -- somewhat disagree with your reservation of
23 right, but, you know, I don't have any basis to know one
24 way or the other either.
25   MR. HOOD: Well, I would. I can ask the

Page 159

1 question if you want to so that you can object, and we can
2 go on, but I would get into more the latter then the
3 former, not the facts, but, you know, the basis of any
4 consulting that he may have done. There sounds like there
5 was some consulting. So would you like me to ask --
6   MR. WOLFF: About the work product?
7   MR. HOOD: -- that question? To the --
8   MR. WOLFF: So you want to ask the work
9 product question, then I'll --
10   MR. HOOD: Effectively, yeah, to find out.
11 It sounds like we had an answer that yeah, he was engaged.
12   MR. WOLFF: Yeah. I think that my concern is
13 that if he's got a confidentiality restriction and
14 somebody holds a privilege or a work product protection to
15 those conversations, I don't know that that party has been
16 notified of your intent to go into those communications
17 and, therefore, you know, I don't know what contractual
18 issues or other legal issues Professor Hardin would have
19 as a result of your prying into these questions. So I
20 would object probably and instruct him not to answer until
21 we can figure out what exactly the scope of that --
22   MR. HOOD: Yeah. Let me --
23   MR. WOLFF: -- arrangement was.
24   MR. HOOD: -- ask that question. I'm new
25 enough to the case, I don't know. I don't know if that's

Page 160

1   been explored. It may not have been, as you say. So let
2   me ask a question.
3 BY MR. HOOD:
4 Q Professor, with respect to the Eolas case that we've been
5   discussing -- I want to do this to allow for him to do
6   what he needs to do -- first of all, what was the law firm
7   that you were engaged by? Do you recall the name of that
8   firm?
9 A I do not recall.
10 Q Okay. Did you have discussions with an attorney or
11   attorneys at that law firm about the case, the Eolas case?
12 A Yes, I did.
13 Q And what were those discussions?
14   MR. WOLFF: Objection, calls for an opinion
15   or I should say -- strike that.
16   Objection. Calls for privileged
17   communications and/or work product information, and I do
18   not know whether Mr. Hardin has some confidentiality
19   restriction that would preclude or prevent him from
20   disclosing the substance of those communications. On the
21   basis of that instruction -- or that objection, I will
22   instruct you not to answer the question.
23 BY MR. HOOD:
24 Q Are you going to follow the instruction?
25 A Yes.

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 43 of 44

Net Jumper Software, L.L.C. vs.
Google Inc.

Multi-Page ™

Joseph Hardin
September 16, 2005

Page 161

1   MR. HOOD: Why don't we take a quick break
2   and see if there's any other follow-up questions I have,
3   and if Jason needs to we can get that done too and be
4   done.
5   (Brief recess.)
6   MR. HOOD: Okay. Back on the record,
7   Professor. We're going to wrap up here. I know you've
8   got to get going.
9 BY MR. HOOD:
10 Q I wanted to ask you a follow-up question about your
11   invalidity chart, Exhibit F to your declaration, which is
12   Exhibit 95. And I'm looking at the limitation that you've
13   labeled 1e again on page two of Exhibit F to Exhibit 95.
14   This is the limitation that starts "parsing the location
15   identifiers from the initial data file." Do you see that?
16 A Yes.
17 Q I want to go back to CyberPilot too, if you want to call
18   up that screen shot.
19 A Which one? The one that's Exhibit D?
20 Q I believe that is correct. Yes. Exhibit D to your
21   declaration.
22 A Okay.
23 Q Can you tell me with reference to Exhibit D, the screen
24   shot with CyberPilot, where or what the quote, "initial
25   data file," end quote is in that screen shot?

Page 162

1 A The initial data file would be the HTML that is being
2   displayed in the search window.
3 Q Can you point me to that on the document itself on Exhibit
4   D or just describe it for me so I know where you're
5   referring?
6 A Right. It's the Yahoo website that is displayed in the
7   browser window.
8 Q Okay. And what is the -- again, with reference to
9   limitation 1e and the CyberPilot screen shot, what is the
10   initial data file -- I'm sorry, that's what I just asked
11   you -- the initial list of location identifiers?
12   MR. WOLFF: Object to form.
13   THE WITNESS: The initial list of location
14   identifiers would be the URLs that are underlying these --
15   or that are associated with these icons.
16 BY MR. HOOD:
17 Q What icons?
18 A The icons that are in the green area that start with
19   Yahoo, have Finance, Music, Travel, Mail. And I can form
20   an initial list of location identifiers. Yes, together
21   with storing the initial list. We --
22 Q Those are the -- I'm sorry. Go ahead.
23 A Yeah. If we look at the text the URLs from the initial
24   data file are parsed in response to selection of an
25   icon -- the question mark icon. An initial list of

Page 163

1   location identifiers is stored for use by CyberPilot, and
2   then in the rest of the text down here, it says
3   CyberPilot's only located -- the home page so far as the
4   child pages have question mark icons next to them -- the
5   child pages that are being referred to are the icons that
6   look like little pages there.
7 Q That's in the CyberPilot Map window that you labeled 300
8   on Exhibit D; is that correct?
9 A Yes, it is.
10 Q Okay. Let's see, Professor, if I have any final questions
11   for you.
12   Other than your involvement in this case that
13   we're here in the deposition today for, the Net Jumper v.
14   Google case, have you worked with Mr. Wolff's law firm
15   before?
16 A No, I have not.
17 Q Have you done any work on behalf of Google, Incorporated,
18   before your involvement in this particular case?
19 A The University of Michigan has a number of projects
20   ongoing with Google. I've been peripherally involved, not
21   directly involved, with some of those, specifically the
22   ones that have to do with library and the scanning in of
23   books and indexing them. Other than that, I don't recall
24   any direct involvement with Google Corporation.
25 Q How did you come to be involved in this particular case?

Page 164

1 A In this particular case?
2 Q Correct.
3 A I was approached by Jason Wolff.
4 Q Okay. When did that take place?
5 A I think initially it was in late winter.
6 Q Of 2004/'5?
7 A Whatever we're in. Yeah, 2000 -- this year, 2005.
8   MR. HOOD: Okay. Counsel, I believe I --
9   that's all I have for now. Any follow-up questions?
10   MR. WOLFF: I have a couple of follow up.
11   - - -
12   EXAMINATION
13 BY MR. WOLFF:
14 Q Earlier in the day I believe there was some questions
15   about whether the Google Toolbar included a first and
16   second icon as that term was used in patent claims; is
17   that correct?
18 A Yes.
19 Q Okay. All right. Did you make any assumptions in your
20   answers earlier today regarding whether the Google --
21   strike that. It's been a long day for me, too.
22   Did you make any assumptions in your answers
23   earlier today regarding whether the Google Toolbar
24   included a first and second icon?
25 A Yes, I did.

Case 2:04-cv-70366-JAC-RSW   Document 62-4   Filed 11/03/2005   Page 44 of 44

Net Jumper Software, L.L.C. vs.   Multi-Page™   Joseph Hardin
Google Inc.   September 16, 2005

Page 165

1 Q And what was that assumption?

2 A That the allegations that were contained in the

3   infringement documents, the infringement chart were

4   accurate. Those were the assumptions that I was working

5   under.

6 Q Okay. And I believe you already testified to those, but

7   just to make sure the record is clear, have you performed

8   any investigation as to whether the Google Toolbar

9   includes a first and second icon as that term is used in

10   claims 1 and 5?

11   MR. HOOD: And just for the record I'll

12   object as asked and answered, but go ahead. You can

13   answer the question.

14   THE WITNESS: No, I have not.

15   MR. WOLFF: Okay. No further questions. He

16   might have some more. Give him a minute.

17   MR. HOOD: We get to go back and forth here.

18   No, I have nothing further. We'll leave it at that.

19   (At 2:55 p.m., the deposition

20   testimony of JOSEPH HARDIN is

21   concluded.)

22

23

24

25

Page 166

CERTIFICATE OF COURT REPORTER - NOTARY

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

     I, EILEEN S. HIGER, a Notary Public acting in and for
the above county and state, do hereby certify that the
deposition of JOSEPH HARDIN, was taken before me at the time
and place hereinbefore set forth. That the witness was, by me,
first duly sworn to testify to the truth, the whole truth and
nothing but the truth. That thereupon the foregoing questions
were asked and the foregoing answers made by the witness, which
were duly recorded by me, later reduced to typewriting, and I
certify that this is a true and correct transcript as taken.

     I further certify that the signature to and the
reading of the deposition by the witness was waived by counsel
for the respective parties hereto. Also, that I am not of
counsel to either party, nor interested in the events of this
cause.

          _____
          EILEEN S. HIGER, CSMR-5018
          Oakland County, Michigan
My Commission Expires:
September 7, 2010