

EXHIBIT P

CERTIFIED COPY

United States District Court
Eastern District of Michigan

****Confidential – Under Seal****

30(b)(6) and Individual Deposition

Of

Donnie J. Misino

Volume II

November 30, 2010

The Weather Underground, Inc.

v.

Navigation Catalyst Systems, Inc., et al.

1 There's only, I believe, one or two people
2 that use it. But they -- I believe I've heard them
3 say they're going to do a scrub on certain terms.

4 Q And my -- I'm wondering whether or not that
5 part of the system was developed in order to do the
6 scrub we heard about in 2008 on the existing
7 portfolio of domains that had already been
8 registered?

9 A The third piece specifically where you
10 upload terms --

11 Q Right.

12 A -- and match against?

13 I believe that functionality existed prior
14 to that.

15 Q And one of the things that Seth Jacoby had
16 talked about -- let me ask you if you recall -- was
17 that at some point the decision was made to not only
18 do a trademark analysis within your system of
19 domains prior to the registration, but to go back
20 and do a -- a scrub of the current portfolio against
21 the database.

22 Does that sound familiar to you?

23 A Yes.

24 Q Do you believe that would have been in
25 2008?

1 A When the scrub was specifically done?

2 Q Yeah, when the scrub was specifically done.

3 A I believe that's an ongoing, continuous
4 effort, though I know there was a moment where they
5 queued up our entire domain database to be
6 reevaluated, I believe, in 2008.

7 I believe that's the event you're referring
8 to.

9 Q Exactly.

10 And I think what Seth had testified to is
11 that essentially they -- you stopped, for all
12 practical purposes, registering new domains and
13 devoted the system to this scrubbing in 2008.

14 Does that sound familiar?

15 A I remember the -- yes, it does.

16 Q And that is to say you wanted all the
17 computer resources to be devoted to the scrub and
18 personnel resources, I take it, as well.

19 Does that sound correct?

20 A It sounds correct.

21 Q Now, this ability to upload a number of
22 terms and match it against a trademark database, how
23 is that different than the fuzzy matching tool on
24 new registrations?

25 A When you do new registrations, you're

1 uploading a list of domain names to match against
2 the USPTO database.

3 When you already have the domain names --
4 I'm -- I'm sorry.

5 As far as the scrub that was done in 2008?

6 Q Sure, sure.

7 A That's the same. In both cases, you're
8 uploading a list of domains.

9 Q Right. You're just uploading a different
10 list?

11 A Right.

12 Q But the back-end technology is pretty much
13 the same?

14 A Yes, it is the same.

15 Q And it's still a fuzzy match system?

16 A Yes.

17 Q With regards to the comparison of new
18 registrations against the trademark database, when
19 did that functionality first come into place within
20 the CMS system, to your recollection?

21 MR. DELGADO: Can I have that read back.

22 (The record was read as follows:

23 "Q With regards to the
24 comparison of new registrations
25 against the trademark database,

1 when did that functionality first
2 come into place within the CMS
3 system, to your recollection?")

4 MR. DELGADO: I guess I'll object. It's
5 not new registrations, new candidates for
6 registrations that are being compared.

7 And also I think there's -- there's some
8 ambiguity to the question because I think the
9 documents show that there was a fuzzy match
10 component that he never worked on from 2005, and the
11 one he worked on -- so I don't know if you're asking
12 about either one or the one he worked on.

13 MR. SCHAEFER: That's fair enough.

14 BY MR. SCHAEFER:

15 Q Let's start with the -- let's talk about
16 fuzzy matching.

17 Do you have an understanding of what the
18 system was in 2005 for fuzzy matching of domain
19 prospects against trademarks?

20 A I've heard just a little bit about it.

21 Q What's your understanding of how that
22 system worked?

23 A I know that there was some sort of fuzzy
24 match against the USPTO database, and a list was
25 produced of matches.

1 it worked that way.

2 Q With regards to the CMS system during -- at
3 least towards the end of the domain tasting process
4 after you were able to get some programming in place
5 to deal with some of these issues, how did your
6 system serve up the domains for review -- or strike
7 that -- how did your system serve up the domains to
8 keep for registration?

9 Was there a batch file that got uploaded,
10 or was the data already within the system?

11 Do you understand?

12 A Yes. I believe --

13 Q Where is the check box in the process, I
14 guess?

15 A A spreadsheet would be uploaded to flag to
16 keep. I believe -- I think it was a CSV file.

17 So I believe the process is that they would
18 get an e-mail report with traffic and revenue data
19 for all the domains that are being tasted.

20 From those, they would do their review, and
21 they would select the list that they wanted to keep
22 and upload those via a CSV file to admin.

23 Q Got it.

24 With regards to the fuzzy component of the
25 trademark matching system, the logic of that

1 component, has it changed since first launch until
2 today?

3 A We added the NGram matching.

4 Initially it just used the fuzzy matching
5 component. I believe that it was available to
6 people who worked at the company, though it was
7 still in development. And we pretty quickly
8 afterwards added the NGram portion.

9 Q Okay. What's the distinction between the
10 NGram and the USPTO database trademark matching
11 systems?

12 A It's part of it.

13 From a conceptual level, when we say fuzzy
14 matching, I'm really referring to both the fuzzy
15 matching third-party component, which does its
16 textual term-to-term matching, plus the NGram
17 matching, which splits the two terms up into
18 components and compares the number of repeated
19 components among the two.

20 Those both come together to give us what we
21 conceptually call the fuzzy match result.

22 Q Okay. And -- let's just take a quick
23 break.

24 THE VIDEOGRAPHER: Time is 11:42 a.m.

25 We are off the record.

1 from a table that I had loaded it into.

2 That's about the earliest first step I ever
3 would have taken in building some trademark
4 application, which is to get the trademark data to
5 make it available to some system.

6 So this would have, you know, preceded any
7 system I -- I built. This would have been one of
8 the first steps. So this is well before fuzzy
9 matching and those sort of things came later.

10 Q Because earlier you had thought, based on
11 that same exhibit, that it was possible that you
12 could have been deployed as of June 2006.

13 Are you reconsidering that testimony at
14 this point?

15 MR. DELGADO: Objection; mischaracterizes
16 his testimony.

17 THE WITNESS: If I said that, that would
18 have been incorrect because this clearly
19 indicates -- I believe I said that something was in
20 development.

21 But this certainly would indicate that
22 nothing would be available at this time.

23 BY MR. SCHAEFER:

24 Q And how much longer after doing that stored
25 procedure would you estimate it would have taken you

1 to actually deploy your system?

2 A If the development came after this date, it
3 was -- it took a good while.

4 I remember we started building a basic
5 system and realized the difficulty of doing the
6 matching. As we said, the literal matching didn't
7 work. So we began investigating fuzzy matching
8 approaches and different components.

9 And in doing it, I do remember it took us a
10 bit longer than we would have liked.

11 But there was a lot of other -- there was
12 other things going on. I -- I -- it's hard for me
13 to say. You know, if what we built as of today
14 after this date, if I sat in a room and did nothing
15 but that, it would still take at least, you know --
16 it would take a while to do this. It's hard to
17 guess.

18 Q At least what? Days, months, or years?

19 A It was certainly months, but I remember
20 through -- we went through several iterations of
21 trying to make it work, and then later on, after we
22 asked for other opinions, we added the NGram
23 separate.

24 I would think it's probably at least a year
25 after this date before our system was functional

1 similar to -- similar to the way it is today.

2 Probably a little bit longer than that.

3 Q Okay. So maybe sometime late in 2007?

4 A That would be a decent estimate.

5 Q Okay.

6 A Maybe. Maybe.

7 Q And so during this entire period before the
8 launch, as I understand your prior testimony, the
9 old trademark matching system would have been the
10 thing that would have been used by the human
11 reviewers, whatever that system was?

12 A I wasn't aware of it. I don't know.

13 As I said, prior to recently I wasn't even
14 aware that there was another system in place before
15 mine.

16 Q How did you became aware that there was a
17 system before yours?

18 A I believe when I was hearing about Mavi's
19 deposition testimony, she -- I -- I didn't read her
20 transcript, but someone had said that she had
21 mentioned that there was an old trademark system in
22 place that she was aware of before I started working
23 at Firstlook.

24 Q And before your system was deployed, the
25 entire trademark database was, in fact, available

1 want that brought to someone's attention, and I know
2 those are treated very seriously and reviewed very
3 carefully if there's a blacklist term match for
4 registering.

5 Q Okay. So hypothetically, if someone wanted
6 to enter the term WND into that part of the system,
7 that would come back as flagged as a blacklist term
8 for the human reviewer to consider?

9 A Yes.

10 Q And on the first part of the system with
11 the domain name, you just simply enter in the
12 literal domain name with the dot-com or whatever,
13 and it's automatically excluded from being -- from
14 working its way through your system at all?

15 A It's excluded from the registration path.

16 Q Now, how long has that first part of the
17 system been in place where you can enter in a domain
18 name and it will preclude it from coming up for
19 consideration of registration?

20 A It's hard to say, but sometime between
21 2008, two thousand -- late 2007 maybe.

22 Q And who -- would you have implemented that
23 part of the system?

24 A I did.

25 Q And who would have asked you to do that?

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss:
3

4 I, JUDY SAMSON, do hereby certify:

5 That I am a duly qualified Certified Shorthand
6 Reporter, in and for the State of California, holder of
7 certificate number 6916, which is in full force and
8 effect and that I am authorized to administer oaths and
9 affirmations;

10 That the foregoing deposition testimony of the
11 herein named witness was taken before me at the time and
12 place herein set forth;

13 That prior to being examined, the witness named
14 in the foregoing deposition, was duly sworn or affirmed
15 by me, to testify the truth, the whole truth, and
16 nothing but the truth;

17 That the testimony of the witness and all
18 objections made at the time of the examination were
19 recorded stenographically by me, and were thereafter
20 transcribed under my direction and supervision;

21 That the foregoing pages contain a full, true
22 and accurate record of the proceedings and testimony to
23 the best of my skill and ability;

24 That prior to the completion of the foregoing
25 deposition, review of the transcript was requested.

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1 I further certify that I am not a relative or
2 employee or attorney or counsel of any of the parties,
3 nor am I a relative or employee of such attorney or
4 counsel, nor am I financially interested in the outcome
5 of this action.

6

7 IN WITNESS WHEREOF, I have subscribed my name
8 this 10th day of December, 2010.

9

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JUDY SAMSON, CSR No. 6916

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