

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

3 FUNCTION MEDIA, LLC * Civil Docket No.
4 * 2:07-CV-279
4 VS. * Marshall, Texas
5 * January 20, 2010
5 GOOGLE, INC. * 1:20 P.M.

6 TRANSCRIPT OF JURY TRIAL
7 BEFORE THE HONORABLE CHAD EVERINGHAM
8 UNITED STATES MAGISTRATE JUDGE

9 APPEARANCES:

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25 (Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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18 P R O C E E D I N G S

19 COURT SECURITY OFFICER: All rise.

20 (Jury in.)

21 THE COURT: Please be seated.

22 MR. TRIBBLE: May we approach, Your
23 Honor?

24 (Bench conference.)

25 MR. TRIBBLE: We have a nine-minute video
depo, but it's their tax guy to talk about the U.S.
international issues, so we've agreed with them to close
the courtroom for this depo.

THE COURT: Okay. Okay. Let me go ahead
and do it, then, all right?

1 MR. VERHOEVEN: Thank you, Your Honor.

2 THE COURT: Well, Mr. Tribble, come here.
3 And also, can you bring your -- your exhibit man up
4 here, your co-counsel, that -- just in chambers. Bring
5 him up here and get Ms. Candido up here and put on the
6 record the objections I had sustained in chambers.

7 MR. VERHOEVEN: Should we go right now?

8 THE COURT: I can do it right now.

9 MR. TRIBBLE: No, I think it's fine to do
10 it now.

11 THE COURT: Okay.

12 MR. TRIBBLE: Or we can do it later.

13 THE COURT: Well, tell you what. For
14 purposes of the record, we had an in-chambers conference
15 off the record before we came in here today related to
16 demonstratives. And what I told Ms. Candido was that
17 she can tender me those demonstratives that she had
18 objections to, and I would overrule them for the record,
19 or I would give her a running objection, whatever she'd
20 like.

21 What I'm telling you is I'm going to let
22 you play your -- your depositions without -- with the
23 understanding that her objections to them are preserved,
24 okay?

25 MR. VERHOEVEN: Understood.

1 THE COURT: They were timely made. I
2 don't know the extent to which this gets into the same
3 issues. I just don't want her to think that she waived
4 her objections, okay?

5 MR. VERHOEVEN: Okay.

6 THE COURT: If she wants to follow up
7 with the copies of the slides that are going to be used
8 in Mr. Bratic's testimony, that's fine, too.

9 MR. VERHOEVEN: Maybe we'll do that just
10 to make sure.

11 THE COURT: Okay. That's fine.

12 MR. VERHOEVEN: Okay. Thank you.

13 (Bench conference concluded.)

14 THE COURT: All right.

15 Ladies and Gentlemen who are seated in
16 the courtroom, I've got another issue that the parties
17 have agreed and the Court has considered it. It's going
18 to become necessary again to close the courtroom during
19 the testimony that's about to be displayed to the jury.
20 So if you could leave at this time. And, once again, I
21 will try to keep these closures as brief as possible.
22 And I'll have the court security officer notify you
23 immediately when the courtroom is reopened.

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20 MR. PARKER: Your Honor, the Plaintiff

21 calls Lucinda Stone.

22 THE COURT: Ms. Stone, come around. If

23 you'll please pull the microphone toward you and keep

24 your voice up and speak into the microphone.

25 LUCINDA STONE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

1
2 BY MR. PARKER:

3 Q. Would you introduce yourself, please, ma'am.

4 A. My name is Lucinda Stone.

5 Q. Are you nervous?

6 A. I'm sorry?

7 Q. Are you nervous?

8 A. Yes.

9 Q. This -- this will be very brief. I only have
10 a few questions.

11 The jury's heard that you live in Tyler,
12 correct?

13 A. Yes. We've been there about five years.

14 Q. What do you do in Tyler?

15 A. I run our internet business called
16 virtualcities.com.

17 Q. Well, the jury's heard that -- the name of
18 that company before, and I'm going to try to avoid
19 repeating what they've heard from Mr. Dean.

20 Can you just go ahead and quickly refresh our
21 memories about what Virtual Cities is?

22 A. Sure. Virtual Cities is a lodging directory
23 where bed and breakfasts, country inns, small hotels,
24 and vacation rentals and dude ranches can present their
25 facilities.

1 As a side to that, we have a large recipe site
2 that has over 6,000 recipes from innkeepers, chefs, and
3 culinary professionals.

4 Q. What -- what are your day-to-day duties and
5 responsibilities?

6 A. I basically run the business. I do all of the
7 accounting. I work with customer service with our
8 property owners. I do the artwork, the presentation of
9 our web pages, and the upkeep of our website.

10 Q. The jury heard yesterday one of Google's
11 counsel asking Mr. Dean about selling Virtual Cities,
12 and I don't remember whether it was '96 or '97 back in
13 there.

14 Do you recall that?

15 A. Yes, I do.

16 Q. Can you explain that?

17 A. The money -- the \$4,000 came from Michael's
18 brother-in-law, and he was going to lend it to him.
19 Michael felt he needed some sort of a collateral or
20 compensation for that loan. So it was with the premise
21 that we would buy it back from him at a certain time.

22 Q. But he actually sold it to his brother for
23 \$4,000 with the deal that he could buy it back?

24 A. Yes.

25 Q. -- is that correct?

1 A. Yes.

2 Q. Was the money paid back and did you get the
3 company back?

4 A. Yes.

5 Q. Did that company ever own these patents?

6 A. No, it did not.

7 Q. Has it ever owned these patents?

8 A. It has not.

9 Q. Did it own your bed and breakfast advertising
10 internet directory?

11 A. No, it did not.

12 Q. When did you first meet Michael Dean?

13 A. Michael and I met in 1974. He was building
14 homes in Santa Cruz, and I was visiting a neighbor
15 across the street, and they introduced us.

16 Q. Okay. Well, let's -- let's talk a little bit,
17 then about your -- your early background.

18 Where did you grow up and where did you go to
19 high school?

20 A. I grew up in Saratoga, which is part of
21 Silicon Valley, which when I was a kid, they used to
22 call it Santa Clara Valley, in Northern California, and
23 I went to -- I graduated from Saratoga High School.

24 Q. What did you do after graduating?

25 A. I took some college courses. I was a

1 housewife for a while, and then I got involved in the
2 community. I started working. And I worked in a public
3 library and a college library for about eight years, and
4 then I got into nonprofit charity work.

5 Q. Okay. What sort of nonprofit and charity
6 work?

7 A. I was -- I got involved with children
8 services, and I worked briefly for a public radio
9 station. My real love was the children services. I
10 became -- or -- I became a development director for
11 Mount St. Joseph-St. Elizabeth Home for Unwed Teenagers
12 and Abused Girls in San Francisco, and then I also
13 worked as a development director for Sunny Hill's
14 Children Services in Marin County.

15 Q. What is a development director?

16 A. We are in charge of all of the funding for the
17 agency. So that would include grant writing, capital
18 campaigns, working with volunteers, doing the special
19 events, all -- and the publicity and the marketing of
20 the agency.

21 Q. Do you have any children?

22 A. I have three kids. Jessica, Genevieve, and
23 Roger.

24 Q. What about grandchildren?

25 A. I have two grandchildren. I have a grandson,

1 Christopher, who is serving our country in Iraq right
2 now, which we pray for every day. I have -- excuse
3 me -- a little nervous here.

4 I have a grandson who's seven, Cory, and one
5 on the way.

6 Q. So what did you do, then, after you worked for
7 these charities that you mentioned?

8 A. I also did a little bit of grant research for
9 suicide prevention in San Francisco and also the
10 American Heart Association. I volunteered for the March
11 of Dimes, and then I became Executive Director of Big
12 Brothers/Big Sisters in Sonoma County, California.

13 Q. Okay. Did you do any work in the political
14 area?

15 A. I worked for a political consulting firm for a
16 while, and thankfully, it's about the time I met
17 Michael, and he had decided to get involved in the
18 internet.

19 Q. You didn't prefer the political consulting?

20 A. No.

21 Q. And you -- you met Michael again, is that it?
22 About that time?

23 A. We ran into each other again in 1994, and
24 we've been together ever since.

25 Q. And was it about that time that you began

1 virtualcities.com?

2 A. Yes, it is.

3 Q. What -- what is it or what was it that
4 interested you and interested Michael about the
5 internet?

6 A. Everything. I mean, it was such a new
7 frontier. And from my experience in working with -- in
8 a library, I knew that people were hungry for -- to have
9 that information at their fingertips. So it was just
10 an exciting place to start out in those days, and it was
11 very new.

12 You had dial-up modems that went kind of
13 (makes sound), and you waited for pages to come up. But
14 it also was a great blending of my talents, because I
15 worked in libraries so I was good at organizing
16 information. And then the work I did for charity and
17 marketing and working with the media and promoting, it
18 just fit together really well.

19 And Michael and I worked really well, too,
20 because he was so enthusiastic and ready to experiment
21 with a new -- new frontier.

22 Q. Did you and Mr. Dean eventually come up with
23 an idea that you thought you might get a patent on?

24 A. Yes, we did.

25 Q. The jury has seen those patents in some

1 detail. Why don't you just go ahead and in general
2 describe yours and Mr. Dean's idea to the jury in your
3 own words, the idea that you thought could become a
4 patent.

5 A. Our patents cover where a seller can go into a
6 real simple interface, a seller/advertiser. They can
7 choose various media venues to advertise with. They can
8 input information that will end up creating an ad, and
9 that would get into a central processor that also had
10 the information from the media venue of all the criteria
11 that a media venue would want.

12 From having a website of our own, we knew how
13 important it was to have the look and feel throughout
14 your pages. And so we thought it was very important
15 that a seller could do this in one easy manner, and a
16 media venue could accept these ads without having to
17 worry about whether they fit within their page.

18 Q. Okay. Well, what was wrong with the old way
19 of doing things?

20 A. It was pretty cumbersome. For one thing, a
21 seller -- like with our innkeepers, for instance, when
22 we were talking with them, if they had to advertise with
23 us, they had to know what the criteria is, what kind of
24 information we wanted from them, and then they had to
25 provide that.

1 If they had to make a change, like in the
2 early days with companies going in and out of business
3 on the internet, a lot of them were changing their
4 e-mail address quite a bit, so they would have to call
5 us and tell us to change it.

6 It was the same with if they advertised -- if
7 they were smart, they advertised on a whole bunch of
8 different websites. So each place that they advertised,
9 they had to do the same thing over and over again. They
10 had to find out what that -- that web page needed. They
11 had to give it to that website company. And then if
12 they had a change, they had to contact all of us all
13 over again.

14 So it was very cumbersome, and we thought that
15 our patent would address that issue. On the other side
16 of it, if you had a website and you wanted to accept
17 advertisements, you either had to accept the ad the way
18 it was, because there were companies that distributed
19 like banners that all looked alike, or you had to
20 contact each of those advertisers and let them know what
21 your criteria was.

22 Q. When did you and Mr. Dean come up with this
23 idea from a timeframe standpoint?

24 A. Well, it didn't happen overnight, and it took
25 quite a bit. But we started talking about it in --

1 forming our idea in late 1997, and then in December, we
2 moved to Dallas and we continued that collaboration
3 until about August of '98.

4 Q. The jury's heard that after, I think, maybe
5 April or so in '98, Mr. Dean enrolled in some
6 programming classes and started working with a Mr. Hasan
7 on the first phase of programming.

8 What were you doing on this project around
9 that period of time?

10 A. Actually, Michael started taking classes in
11 January of 2008 (sic). He started programming right
12 away, but we -- by April is when we desired -- decided
13 to hire Mr. Hasan, and I think we did hire him in -- in
14 May sometime.

15 During that time, Michael was the primary
16 point person for working with the programming and all of
17 the stuff with our new technology. And I was running
18 the Virtual Cities business because that was the only
19 source of the income we had at the time.

20 Q. Did you assist in the programming?

21 A. No. I'm not a programmer.

22 Q. So what was your involvement in the process?

23 A. Once Michael was programming something and he
24 had a piece of it done, we would review it to see if we
25 were on the same page as far as the progress of our

1 system was.

2 Sometimes I'd make a comment; sometimes I
3 wouldn't, because he was pretty good about what
4 direction we were going in. And I also had a little bit
5 of input about the style and the look of our software.
6 I did the artwork for the -- the software manual and
7 also for the CD that our software -- that encompassed
8 our software.

9 Q. Did Mr. Hasan contribute in any way to the
10 idea that ultimately became the patent?

11 A. Absolutely not.

12 Q. His sole role was in programming; is that
13 correct?

14 A. That's correct.

15 Q. So how did it come about, then, that you filed
16 an application for a patent or patents on this idea?

17 A. When Michael had finished the first phase of
18 the software program and the first phase of the
19 programming, we knew we needed to have some protection,
20 and we weren't sure what kind of a protection we needed.
21 So he called an attorney, and we were advised to get a
22 patent for this.

23 Q. Okay. You are listed as an inventor --

24 A. Correct.

25 Q. -- on the patent. Your role was not

1 programming, but your role, as I understand your
2 testimony, was contributing to the development of this
3 idea, correct?

4 A. Yes. Michael and I were -- it's really
5 wonderful, because when -- we're together all the time,
6 but the synergy of what we can create together was a
7 real give and take. And that was my part of it, is
8 working with him in that area.

9 Q. How many patents do you and Mr. Dean have
10 today?

11 A. We have six.

12 Q. Okay. And which ones are you asserting
13 against Google?

14 A. We're asserting two, which you've heard. It's
15 the '025 and the '059.

16 Q. Why are you suing Google?

17 A. Well, they're using our idea. They're using
18 our system and they're making a lot of money. They're
19 making billions of dollars off of that, and we feel that
20 the Patent Office has given us that property. They have
21 granted us the right to keep that property, and we think
22 that we should be compensated for that.

23 Q. What did you do to try to figure out whether,
24 in your mind, Google might be infringing your patent?

25 A. We looked at their system -- their -- their

1 pages online, and it took a while of investigating and
2 looking at those pages. But once we looked at enough,
3 there was no doubt about it; we thought they were
4 infringing.

5 Q. Now, you were doing this --

6 MS. CANDIDO: Objection. Move to strike.

7 THE COURT: Overruled.

8 Q. (By Mr. Parker) You were -- you were doing
9 this while you were waiting on the patent to issue; is
10 that correct?

11 A. We already --

12 Q. You did this investigation?

13 A. Well, we already had our parent patent, the
14 '045. We had filed that January 10th of 2000, so we
15 already had that. And the other two patents that we're
16 asserting today had not been issued yet.

17 Q. And the '045 has the same specifications and
18 the same drawings as the '025 and '059, correct?

19 A. Yes.

20 Q. Ms. Stone, let me briefly turn to the question
21 of damages. You heard Mr. Dean testify about reasonable
22 royalty, licenses, and lump sums.

23 A. Yes.

24 Q. Okay. Do you agree with his testimony about
25 damages?

1 A. Absolutely.

2 Q. Did you have conversations with Mr. Dean back
3 in those days about whether to license your patents?

4 A. Yes.

5 Q. If you had been approached by Google, would
6 you have been open to licensing your patents to Google?

7 A. Oh, yes, we would have.

8 Q. And what kind of license would you have
9 sought?

10 A. Well, we were definitely interested in a
11 running royalty.

12 MR. PARKER: Your Honor, I pass the
13 witness.

14 THE COURT: Okay. Cross-examination?

15 MS. CANDIDO: Yes. Thank you, Your
16 Honor.

17 CROSS-EXAMINATION

18 BY MS. CANDIDO:

19 Q. Good afternoon, Ms. Stone.

20 A. Hi.

21 Q. My name is Amy Candido. I don't think we've
22 ever formally met.

23 I'd like to ask you first, you have -- have
24 you ever study computer science?

25 A. No.

1 Q. And you mentioned before you're not a
2 programmer, correct?

3 A. Correct.

4 Q. You're not a computer engineer either?

5 A. No, I'm not.

6 Q. Can you read source code?

7 A. Parts of it, yeah, simple parts probably.

8 Q. Do you recall -- well, excuse me.

9 I'd like to -- you had your deposition taken
10 in this case in April 17th, 2009.

11 Do you recall that?

12 A. That was the first one, yes.

13 Q. And you were asked at your deposition the same
14 question regarding source code, and I'd like to play
15 that answer.

16 A. Okay.

17 Q. Question and answer.

18 MS. CANDIDO: Charles, could you please
19 play Page 267, Lines 8 through 14?

20 MR. TRIBBLE: Can I get that page number?

21 MS. CANDIDO: Page 267, Lines 8 through
22 14.

23 (Video clip playing.)

24 QUESTION: You can't point me to any
25 documents that do that, right, as you sit here?

1 ANSWER: I can't read the source code,
2 so, correct, I could not point you to a document.

3 QUESTION: That was my point.

4 Okay. I understand your testimony. So
5 you believe it's there, but you couldn't read the code
6 to establish that it's there; is that fair?

7 ANSWER: That's fair.

8 (End of video clip.)

9 Q. (By Ms. Candido) Ms. Stone, you don't have any
10 knowledge of the technical details of how to implement
11 the system in your patents, correct?

12 A. That's correct.

13 Q. For example, you could not have implemented
14 the central controller in your patents; is that correct?

15 A. Myself personally, no.

16 Q. Ms. Stone, you testified that you and Mr. Dean
17 conceived of the inventions claimed in the asserted
18 claims of the patents-in-suit by August of 1998; is that
19 correct?

20 A. Yes.

21 Q. You're not aware of any documents dated before
22 that time that relate to the conception of your
23 invention, are you?

24 A. Before April of '98?

25 Q. Yes. That's correct.

1 A. Yeah. There are some materials that we
2 presented you that had dates before April of '98 on it.

3 Q. So is your testimony -- I just want to be
4 clear, because there have been a couple of different
5 months, I think, floating around in this testimony.

6 A. Okay.

7 Q. Is it your testimony that you conceived of the
8 inventions in the asserted claims of the patents by
9 April of 1998 or August of 1998?

10 A. April.

11 Q. Okay. I think you may have said August before
12 or I misheard you.

13 A. Oh, I'm sorry. It's definitely April.

14 Q. Okay. And prior to that time, your testimony
15 is that there are documents that relate to the
16 conception of your invention that exist today; is that
17 correct?

18 A. That's correct.

19 Q. At your -- at your deposition, you were asked
20 if you were aware of any documents dated before March of
21 1998 that relate in any way to the conception of your
22 invention.

23 Do you recall that?

24 A. I recall being asked that. Which deposition
25 are you talking about?

1 Q. At this time, I'm talking about your
2 deposition from September of 2009.

3 A. Okay. Yes.

4 Q. And do you recall whether you were able to
5 identify any documents dated before March of 1998 that
6 relate to the conception?

7 A. I think I identified a couple of them.

8 Q. You mentioned, I believe, at your deposition a
9 portion of source code that you -- you saw that may have
10 been dated earlier than March of 1998.

11 Aside from that, are you aware of any other
12 documents that relate to the conception of your
13 invention prior to March of 1998?

14 A. We produced a workbook that I worked on, and
15 that was to do the artwork for the software. And I
16 believe there are some dates within that that were on
17 that workbook.

18 Q. Well, I'd like to go ahead and play the
19 portion of your deposition from September of 2009.

20 MS. CANDIDO: That's Page 8, Lines 10
21 through 15 -- I'm sorry -- Page 68, Lines 10 through 15.
22 Page 68, Lines 10 through 15.

23 (Video clip playing.)

24 QUESTION: Prior to March of 1998, are
25 you aware of any documents, other than the source code

1 you've already identified, that would relate in any way
2 to the conception of the invention that you believe you
3 and Mr. Dean came up with?

4 ANSWER: I don't recall any at this time.

5 (End of video clip.)

6 Q. (By Ms. Candido) Ms. Stone, you weren't
7 involved in the process of applying for the patents at
8 issue in this case; is that correct?

9 A. That's correct.

10 Q. And you didn't have any involvement in writing
11 the patent claims in those patents; is that correct?

12 A. That's correct.

13 Q. You didn't draft any portion of the
14 specification or written description in those patents?

15 A. Correct.

16 Q. And you didn't draft any of the diagrams in
17 those patents?

18 A. Yes.

19 Q. Yes, it's correct you did not?

20 A. Well, I think you asked me a double negative,
21 so I was trying to say yes.

22 Q. I'll try to clarify.

23 A. Okay.

24 Q. Is it correct that you did not draft any of
25 the diagrams in the patents-in-suit?

1 A. Yes.

2 Q. You were just asked about Mr. Hasan. Is it
3 correct you and Mr. Dean hired a programmer named
4 Mohammad Hasan to help program the Virtual Cities
5 Reservation Network?

6 A. Yes.

7 Q. And you hired Mr. Hasan in April or May of
8 1998; is that correct?

9 A. I think we made the decision in April, and we
10 ended up hiring him in May.

11 Q. And Mr. Hasan worked part-time for you for a
12 couple of years; is that correct?

13 A. Yes, he did.

14 Q. But Mr. Hasan never finished implementing your
15 ideas, did he?

16 A. That's correct.

17 Q. Even with Mr. Hasan's help, you and Mr. Dean
18 never had an embodiment of your invention that contained
19 media venue interface, correct?

20 A. That's not correct.

21 Oh, I'm sorry. You said media venue
22 interface?

23 Q. That's correct.

24 A. That's correct, yes.

25 Q. So just so the record is clear, even with

1 Mr. Hasan's help, you and Mr. Dean never had an
2 embodiment of your invention that contained a media
3 venue interface, correct?

4 A. That's correct.

5 Q. And, Ms. Stone, as far as you know, there has
6 never been a complete embodiment of the inventions
7 claimed in the patents-in-suit, correct?

8 A. Yes.

9 Q. Yes, that's correct?

10 A. Yes.

11 Q. Thank you.

12 Mr. Dean testified yesterday about a video of
13 the Virtual Cities Reservation Network.

14 Do you recall that testimony?

15 A. Yes.

16 Q. I'd like to ask you a few questions about the
17 Virtual Cities Reservation Network.

18 The Virtual Cities Reservation Network had no
19 media venue interface, correct?

20 A. It did not have a media venue interface;
21 you're correct.

22 Q. The Virtual Cities Reservation Network only
23 had a seller interface, correct?

24 A. Yes. We started with the seller. That was
25 our first phase.

1 Q. But you never had -- completed anything other
2 than first phase; is that correct?

3 A. We didn't get to the second phase.

4 Q. So sellers that used the Virtual Cities
5 Reservation Network could only place ads on your media
6 venue; is that correct?

7 A. That's correct.

8 Q. The name of that media venue was
9 lodgingreservations.com; is that correct?

10 A. Yes.

11 Q. The Virtual Cities Reservation Network was not
12 a complete embodiment of the Function Media patents,
13 correct?

14 A. That's correct.

15 Q. And when Virtual Cities Reservation Network
16 was up and running, you only had a handful of people
17 using it, correct?

18 A. Yes.

19 Q. Ms. Stone, I'd like to ask you a few questions
20 about your internet businesses --

21 A. Okay.

22 Q. -- that you -- you were just testifying about.
23 You work for a company called ONS; is that correct?

24 A. Yes.

25 Q. And you're the only employee of ONS?

1 A. At this time.

2 Q. You're the President; is that correct?

3 A. President, bottle washer, everything, yes.

4 Q. Do you own 100 percent of ONS?

5 A. Yes, I do.

6 Q. You testified that ONS runs a lodging
7 directory; is that correct?

8 A. Yes.

9 Q. And that lodging directory resides on
10 virtualcities.com; is that correct?

11 A. It does.

12 Q. ONS -- excuse me -- ONS generates revenue from
13 people who pay to be a part of the Virtual Cities
14 Reservation -- I'm sorry -- strike that.

15 ONS generates revenue from people who pay to
16 be part of the Virtual Cities lodging directory; is that
17 correct?

18 A. Yes, they do.

19 Q. And you also have another company called
20 Virtual Cities, correct?

21 A. Yes. It's a corporation, yes.

22 Q. And you on -- sorry -- strike that.

23 Mr. Dean founded Virtual Cities; is that
24 correct?

25 A. Yes, he did.

1 Q. But you took over the operation of Virtual
2 Cities in 2004; is that correct?

3 A. Yes.

4 Q. And it was --

5 A. Actually, that's incorrect. I'm sorry.
6 Taking over the operations, I took over ownership in
7 2004.

8 Q. Okay. In 2004, you bought Virtual Cities from
9 Robert Pimentel; is that correct?

10 A. Yes, I did, but Michael and I live as a
11 married man and woman, and it's both of ours.

12 Q. You and Mr. Dean live as a married man and
13 woman?

14 A. Yes, we do.

15 Q. You're not actually married?

16 A. Well, we live as a married couple in Texas,
17 and we have for 15 years, so we're married.

18 Q. Have you ever had a civil marriage ceremony?

19 A. Not yet.

20 Q. So you're not actually married; is that
21 correct?

22 A. According to the state of Texas, we are.

23 Q. You're common-law married?

24 A. Yes.

25 Q. Virtual Cities has zero employees; is that

1 correct?

2 A. It has me.

3 Oh, Virtual Cities, no. It has zero
4 employees.

5 Q. You've never received any outside financing
6 for ONS or Virtual Cities aside from you and Mr. Dean;
7 is that correct?

8 A. That's correct.

9 Q. You and Mr. Dean looked into getting private
10 funding for your business from investors, correct?

11 A. We looked into getting funding to develop our
12 system that we had patented.

13 Q. Were you ever able to obtain private funding
14 for the system that you developed?

15 A. Michael went and met with venture capitalists,
16 but they basically told us we were too old.

17 Q. So the question was, you've never received any
18 funding from outside investors; is that correct?

19 A. That's correct.

20 Q. You met with a -- let me rephrase that.

21 Mr. Dean contacted a woman at Bank of America
22 about getting funding; is that correct?

23 A. I believe she contacted us through somebody
24 that knew about us. I think it was Michael's sister
25 that knew her, and the first contact she had was with

1 me, because she -- I was the one who answered the phone.

2 Q. Did Bank of America ever give you any funding?

3 A. They did not.

4 Q. Ms. Stone, you have used Google's product
5 AdSense for Content, correct?

6 A. In the context of Virtual Cities, yes.

7 Q. And AdSense for Content, to be clear, is one
8 of the products that Function Media accuses of
9 infringement, correct?

10 A. Yes.

11 Q. You began using AdSense for Content in August
12 of 2004, correct?

13 A. I believe it was August 31st, 2004.

14 Q. You signed up with Google to have Google place
15 ads on your website, virtualcities.com, right?

16 A. Yes.

17 Q. So in other words, you became an AdSense for
18 Content publisher in 2004; is that correct?

19 A. Yes, we did.

20 Q. So you and Mr. Dean used Google's technology
21 AdSense for Content to display ads in virtualcities.com
22 instead of your own technology, right?

23 A. Yes.

24 Q. And you made as much as \$2,000 a month from
25 having Google's AdSense for Content ads on your website,

1 right?

2 A. That's the most I made in a month, yes.

3 Q. At some point when you were using Google's
4 AdSense for Content, you began to think that there might
5 be an issue with Google possibly infringing your
6 patents, correct?

7 A. That's correct.

8 Q. That point was in August of 2004 when you
9 first saw the AdSense interface, right?

10 A. I don't think that I made that realization
11 that quickly. I think it was sometime when we started
12 using the other side, the AdWords side, that I realized
13 the extent of what may be happening there.

14 Q. Do you recall at your deposition being asked
15 about when you first saw the AdSense interface and the
16 conclusions that you drew?

17 A. Yes. And I think in that deposition I was
18 confused about which came first. I had forgotten
19 whether we had done AdWords or AdSense first, so I'm a
20 little fuzzy about what I actually said there.

21 Q. Well, let's look at your deposition clip on
22 that point. It's from April 17, 2009. It's Page 154,
23 Lines 10 through 18.

24 (Video clip playing.)

25 QUESTION: And earlier you testified that

1 when you first saw the media venue interface, you
2 thought there was an issue?

3 ANSWER: Yes.

4 QUESTION: And you first saw -- media
5 venue, this so-called media venue interface, which you
6 said was the AdSense interface in August of 2004,
7 correct?

8 ANSWER: Yes.

9 (End of video clip.)

10 Q. (By Ms. Candido) You thought there might be an
11 issue, but you continued to use your AdSense account,
12 correct?

13 A. Yes.

14 Q. And you continued to make money from the
15 display of Google's AdSense for Content ads on your
16 website, right?

17 A. I -- well, we gave it right back to Google,
18 too, because we used that money to put ads with the
19 AdWords on our site, so...

20 Q. If you could just answer the question that I
21 asked.

22 A. I'm sorry.

23 Q. So I'll ask it again.

24 A. Okay.

25 Q. You continued to make money from the display

1 of Google's AdSense for Content ads on your website,
2 right?

3 A. Yes.

4 Q. But at some point, you and Mr. Dean decided
5 that you wanted to look into possibly suing Google,
6 correct?

7 A. I think it was about 2005 that we came -- that
8 we were investigating that -- that option.

9 Q. Ms. Stone, you personally began to investigate
10 Google's technology, right?

11 A. Yes.

12 Q. And as you just stated, did you begin that
13 investigation -- that investigation began in earnest in
14 2005; is that correct?

15 A. Yes.

16 Q. As part of your investigation, you looked at
17 Google's online documentation about its products, right?

18 A. Yes.

19 Q. I'd like to show you Defendant's Exhibit 140.
20 And we can have that displayed on the overhead, and as
21 well I have a binder for you.

22 MS. CANDIDO: If I may approach, Your
23 Honor?

24 THE COURT: Yes.

25 Q. (By Ms. Candido) So, Ms. Stone, if you would

1 take a look at Defendant's Exhibit 140. It's on the
2 screen or in the binder in front of you.

3 A. Oh, okay. I read it. Yeah. Okay.

4 Q. Do you recognize this exhibit?

5 A. Yes.

6 Q. This is one of the documents that you created
7 in connection with your investigation of Google; is that
8 correct?

9 A. That's correct.

10 Q. The date on Defendant's Exhibit 140 appears
11 cut off. It says March 13, and then it just has 2-0-0.
12 You agree that it weren't cut off, that would read March
13 13, 2005, correct?

14 A. That's correct.

15 Q. This is a printout of a Google AdWords
16 document, correct?

17 A. Yes.

18 Q. And is that your handwriting on the left side
19 of Page 1?

20 A. It is.

21 Q. Would you please turn to Page 3 of this
22 document?

23 MS. CANDIDO: And, Charles, if you would
24 pull up the third page, please.

25 Q. (By Ms. Candido) Is this your handwriting on

1 the bottom of Page 3?

2 A. That is.

3 Q. Could you please read out -- well, I'm sorry.

4 At the bottom of Page 3, there's also a line
5 from the handwriting up to a paragraph.

6 Do you see that?

7 A. Yes.

8 Q. On the left margin?

9 A. Yes.

10 Q. Could you please read out loud for the jury
11 the paragraph in the typed text that your handwritten
12 line is pointing to?

13 A. Our technology -- oh, I'm sorry.

14 Our technology ensures that your ads appear in
15 the most relevant location across the web so that your
16 customers find you. For more information about
17 advertising publishers within your industry, please
18 visit www.dot -- I can't read that.

19 Q. That's okay. It goes on
20 google.com/ads/metrics/html.

21 A. Okay.

22 Q. At the bottom of this page, you have the
23 letter A and then a note. Would you please read your
24 note out loud for the jury by the first letter A?

25 A. Their sellers choose locations, keywords, and

1 type matches; thus, end up on different websites.

2 Q. So I believe you said websites? Is that what
3 it says?

4 A. Oh, I'm sorry. Media sites.

5 Q. In your notation, when you said their sellers,
6 you were referring to Google's sellers or advertisers,
7 correct?

8 A. Yes, I was.

9 Q. And then under that, you have the letter B and
10 a note. Would you please read your note out loud for
11 the jury next to the letter B?

12 A. Our sellers choose media venues.

13 Q. And when you say, our sellers choose media
14 venue, you're referring to the Function Media patents?

15 A. Yes, I am.

16 Q. So it was your observation that Google's
17 sellers choose locations, keywords, and type matches,
18 and thus, end up on different media sites, and sellers
19 in your patents choose media venues; is that correct?

20 A. That's correct. I was pointing out the
21 similarities.

22 Q. I'd like you to turn, please, to Defendant's
23 Exhibit 111 in your binder.

24 MS. CANDIDO: And, Charles, if you would
25 pull up Exhibit 111, please.

1 Q. (By Ms. Candido) Ms. Stone, do you recognize
2 this document?

3 A. Yes, I do.

4 Q. This document is a page from Google AdWords
5 that you printed out, correct?

6 A. Yes.

7 Q. And is that your handwriting on the page?

8 A. It is.

9 Q. And, again, you printed out the document that
10 is now marked Defendant's Exhibit 111 on March 13, 2005,
11 correct?

12 A. Yes.

13 Q. Again, the date is cut off, so that's why I
14 asked.

15 And you wrote the note on this printout around
16 the same time; is that correct?

17 A. Yes.

18 Q. Again, in this document, there's a line in
19 your handwriting pointing to a paragraph of typed text.

20 Do you see that?

21 A. Yes.

22 Q. Would you please read the first full paragraph
23 on the page under the heading, Can I choose the specific
24 sites in the Google network where my ads appear?

25 A. You can decide which general type site will

1 display your AdWords ads. Your ads will always appear
2 on the Google search site, but you can also choose to
3 have your campaigns appear on your content network or
4 search engine network or both. Learn how to view or
5 edit your ad distribution preferences. Please click
6 here.

7 Q. Okay. I'm sorry. I meant to direct you to
8 the first full paragraph under the question that's
9 posed. It begins at this time.

10 Do you see that paragraph?

11 A. Yeah.

12 At this time, it isn't possible to select
13 specific sites where you'd like your ads to appear, and
14 it isn't possible to see a report of the individual
15 pages where your ads have appeared, because our
16 advertising service dynamically matches the keywords you
17 select to the content, sites, and products available in
18 our network.

19 You want me to go on?

20 Q. Please.

21 A. We can't guarantee that your ads will appear
22 in a particular location at a specific time; however,
23 Google technology ensures that your ads appear only
24 within high level quality websites and -- or I'm
25 sorry -- sites and products that are directly relevant

1 to your service.

2 Q. And would you now please read your note at the
3 bottom of the page, your handwritten note?

4 A. Could be out for them, question mark.

5 Q. I'm sorry. I believe -- does it say: Could
6 be an out for them; is that correct?

7 A. Yes. Sorry.

8 Q. I know it's hard to see these things from a
9 distance.

10 And in your handwritten note, them refers to
11 Google, correct?

12 A. Yes.

13 Q. While you were doing this investigation of
14 Google, you never informed Google that you thought that
15 there might be an issue with respect to Function Media's
16 patents, did you?

17 A. No.

18 Q. You never sent Google an e-mail to let them
19 know your concerns?

20 A. No.

21 Q. You never sent Google a letter to let them
22 know your concerns?

23 A. No.

24 Q. You never called Google up on the phone to let
25 them know your concerns?

1 A. No.

2 Q. Prior to filing this lawsuit, did you ever ask
3 anyone at Google if they wanted to license your patents?

4 A. No.

5 Q. I believe you testified earlier that sometime
6 in 2005, you and Mr. Dean decided that you intended to
7 sue Google for patent infringement, correct?

8 A. No. I think that we were investigating
9 whether we were going to sue you for patent
10 infringement.

11 Q. Did you have an intent, as of 2005, with
12 respect to whether or not you would sue Google for
13 patent infringement in the future?

14 A. We were still investigating, yes. Yes.

15 Q. Your intent is that you would sue Google in
16 the future, correct?

17 A. I wouldn't say would, because that is a
18 definite, and we did not know anything definite in 2005.

19 Q. Are you aware that Mr. Dean has testified that
20 you did have an intent in 2005 of suing Google for
21 patent infringement in the future?

22 A. An intent, yes.

23 Q. So I need to rephrase my question again.

24 A. Okay.

25 Q. Is it correct to say that you and Mr. Dean had

1 an intent in 2005 to sue Google for patent infringement
2 in the future?

3 A. Yes.

4 Q. But you didn't file this lawsuit against
5 Google until July of 2007, two years later, right?

6 A. That's correct.

7 Q. Prior to suing Google in July of 2007, did you
8 contact Google to let them know that there was an issue,
9 and you were considering litigation?

10 A. No.

11 Q. On July 3rd, 2007, the '025 issued, correct?

12 A. Yes, it did.

13 Q. And you didn't contact Google that day to let
14 them know about the patent, did you?

15 A. I think it was pretty close to that date.

16 Q. Well, just to be clear, on July 3rd, 2007,
17 neither you nor Mr. Dean called up to or wrote to Google
18 to inform them about the existence of your patent?

19 A. Not at all, no.

20 Q. And the same day that the '025 patent issued,
21 you filed this lawsuit against Google, correct?

22 A. Yes.

23 Q. And then the '059 patent issued on July 24th
24 of 2007, correct?

25 A. Yes, it did.

1 Q. And on that same day, you amended the lawsuit
2 to assert the '059 patent against Google, correct?

3 A. Yes.

4 Q. You didn't call up Google first to inform them
5 about the '059 patent issuing?

6 A. No.

7 Q. Now, going back for a moment to 2005, after
8 you decided that you had a future intent to sue Google
9 for patent infringement, you continued to use the
10 AdSense system, correct?

11 A. Yes.

12 Q. In 2005, you didn't go on your website and
13 remove all of the AdSense for Content ads?

14 A. No.

15 Q. In fact, you didn't take -- even take off
16 Google's ads off your website -- sorry. Let me start
17 that question over. I think I had three negatives in
18 that one.

19 In fact, you didn't take Google's ads off your
20 website even after you filed suit against Google in
21 2007, correct?

22 A. I started removing them right before we filed.

23 Q. Well, when you had your deposition taken in
24 September of 2009, you testified that you still have
25 Google's AdSense for Content ads on your website; is

1 that correct?

2 A. That's correct. To this day, I still have a
3 few stragglers out there.

4 MS. CANDIDO: Thank you.

5 THE COURT: Redirect?

6 MR. PARKER: Very briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. PARKER:

9 Q. Ms. Stone, how long have you called Michael
10 Dean husband?

11 A. It's been about 15 years.

12 Q. How long has he called you wife?

13 A. About 15 years.

14 Q. But you haven't gotten around to having an
15 actual ceremony or celebration?

16 A. You know, we keep talking about it, but it's
17 just -- it's almost like throwing a monkey wrench.
18 Everything is so wonderful with us right now.

19 Q. On the screen shots that we saw during
20 cross-examination that contained your handwritten notes,
21 I believe they were dated in '05 --

22 A. Yes, they were.

23 Q. -- is that correct?

24 And they were there for two years before the
25 patents in this case issued, weren't they?

1 A. Yes.

2 Q. Therefore, those notes do not apply to these
3 patents, correct, or did I misunderstand?

4 A. Correct. Correct.

5 Q. Are you aware of any rule that requires a
6 patent owner to call up and have contact with someone
7 who is infringing their patent before you set out to
8 protect it?

9 A. No. In fact, I -- we were fearful of doing
10 that, because from what we understood, is, if we did
11 notify them, they could sue us in California.

12 Q. And what would be the problem with that?

13 A. We couldn't afford a lawsuit that we had to go
14 to California to fight.

15 Q. Okay. Did -- you and Mr. Dean thought this
16 was your most viable way to protect your property --

17 A. Yes.

18 Q. -- is have this case where you live?

19 A. Yes.

20 MR. PARKER: Thank you, Your Honor.
21 That's it.

22 THE COURT: Recross?

23 MS. CANDIDO: Side-bar, Your Honor?

24 THE COURT: Yes.

25 (Bench conference.)

1 MR. VERHOEVEN: I took notes on the last
2 question, and the patents in this case issued two years
3 later, and the patents in this case include the '045,
4 Your Honor, and the '045 was asserted against us, and I
5 think that opens the door.

6 THE COURT: Well, to what?

7 MR. VERHOEVEN: To their --

8 THE COURT: What -- what --

9 MR. VERHOEVEN: -- explanation for why
10 they --

11 THE COURT: What do you want to -- what
12 do you want to get into?

13 MR. VERHOEVEN: Well, I think that --

14 THE COURT: She testified that the --
15 earlier in her testimony, that the '045 had already
16 issued, right?

17 MR. VERHOEVEN: Well, I think it -- I
18 think -- what I would suggest is that it's appropriate
19 to set the -- for an accurate record, because they sued
20 Google on the '045, and it did -- it did not issue two
21 years later; it issued in 2003.

22 And in this -- and the question was, the
23 patents in this case issued two years later, and the
24 patent -- and the patents in this case, when they filed
25 it, included the '045. And --

1 THE COURT: What do you -- what do you --

2 MR. VERHOEVEN: -- what I would propose
3 is that there was a patent in this case. I won't say
4 it's invalid, nothing like that. There was a patent
5 that was asserted in this case that -- that had issued,
6 issued in 2003. It's not -- it's not here now, but it
7 was asserted.

8 And just to set the record correct --
9 correctly, because that's actually what the facts were,
10 Your Honor.

11 THE COURT: You can -- you can ask the
12 question whether you had originally asserted the '045
13 patent, but you're not asserting it in this trial.

14 That's the extent of it, okay?

15 MR. VERHOEVEN: Thank you, Your Honor.

16 MR. TRIBBLE: He can't ask any questions,
17 right?

18 MS. CANDIDO: No. I understand. It's
19 me.

20 THE COURT: No. That's right.

21 MR. VERHOEVEN: Thank you.

22 (Bench conference concluded.)

23 Q. (By Ms. Candido) Ms. Stone, there was a patent
24 originally asserted in this lawsuit, the '045 patent; is
25 that correct?

1 A. Yes.

2 Q. When did that patent issue?

3 A. I believe it was 2002.

4 Q. And that '045 patent is not a part of this
5 trial; is that correct?

6 A. That's correct.

7 Q. But when the '045 patent issued and you
8 subsequently formed a belief that Google might be
9 infringing Function Media's patents, you didn't call
10 Google about the '045 patent either, did you?

11 A. No.

12 MS. CANDIDO: Thank you.

13 THE COURT: Redirect?

14 MR. PARKER: Nothing further, Your Honor.

15 THE COURT: Okay. Ma'am, you may step
16 down.

17 THE WITNESS: Do I --

18 THE COURT: Somebody will take care of
19 it.

20 THE WITNESS: Okay.

21 THE COURT: Call your next witness.

22 MR. TRIBBLE: Your Honor, we're now going
23 to call by video deposition Ms. Bravomalo. And it's
24 about four minutes long, Your Honor.

25 (Video playing.)

1 QUESTION: Please state your full name
2 for the record.

3 ANSWER: Mireya Bravomalo.

4 QUESTION: How long have you worked at
5 Google?

6 ANSWER: Seven years, about seven years.

7 QUESTION: What is your position at
8 Google?

9 ANSWER: I'm currently the global revenue
10 recognition manager.

11 QUESTION: What are your job
12 responsibilities as global revenue recognition manager?

13 ANSWER: I oversee the recording of the
14 revenue for Google.

15 QUESTION: You understand that you are
16 here in a corporate capacity today as Google's corporate
17 representative for certain designated topics; is that
18 right?

19 ANSWER: Yes, I do.

20 QUESTION: You understand that with
21 respect to those topics, your answers bind the
22 corporation?

23 ANSWER: Yes, I do.

24 QUESTION: You agree that according to
25 this document, in bold letters, AdSense for Content is

1 the leading mechanism to capture brand spend and to
2 leverage the growth of the internet, correct?

3 ANSWER: That's what the title says,
4 so -- and, in fact, all these people work in AdSense
5 Online or AdSense for Content. I mean, they are the
6 people who are writing the presentation, so of course
7 they're going to say something that highlights their
8 importance.

9 QUESTION: Could you just please read for
10 me and the jury that box in bold letters at the bottom
11 of Page 2?

12 ANSWER: AFC is the leading mechanism to
13 capture brand spend and to leverage the growth of the
14 entire internet.

15 QUESTION: You would agree that according
16 to the AdSense for Content team at Google, AdSense for
17 Content is what they saw as the leading mechanism to, in
18 their words, leverage the growth of the entire internet,
19 correct?

20 ANSWER: That's what the presentation
21 says. They need to have a catchy phrase, right, to
22 capture the audience.

23 QUESTION: You agree that according to
24 this document, AdSense is designed to monetize the
25 traffic and to create revenue for Google when Google

1 attracts readers through all of Google's other products,
2 such as Google Video, Google News, Google Print, Google
3 Site Maps, and others?

4 ANSWER: I mean, that's what the
5 illustration says.

6 QUESTION: Thank you.

7 ANSWER: As you say, they attract by
8 Google other products.

9 QUESTION: I'm sorry. Could you repeat
10 that?

11 ANSWER: I mean, it attracts through --
12 the acquisition of the products were through other
13 products, and at the back end, maybe AdSense, correct.

14 QUESTION: And AdSense monetizes that,
15 correct?

16 ANSWER: That's what the illustration
17 says. I don't have any knowledge.

18 QUESTION: In terms of the importance of
19 a particular feature of AdSense for Content to the
20 product's profits, success, and strategy, do you know
21 which, if any, features contribute to the product's
22 success and profitability?

23 ANSWER: I don't know.

24 (End of video clip.)

25 MR. TRIBBLE: Your Honor, we now call by

1 video depo Google's Amin Zoufonoun. He's in corporate
2 development, I believe. This is about three and a half
3 minutes long.

4 (Video playing.)

5 QUESTION: Can you please state your full
6 name for the record.

7 ANSWER: Sure. Amin Zoufonoun.

8 QUESTION: Mr. Zoufonoun, who is your
9 employer?

10 ANSWER: Google.

11 QUESTION: What do you do for Google?

12 ANSWER: I am in corporate development,
13 so my group is responsible for strategic acquisitions
14 and investments for the company.

15 QUESTION: What is your specific title?

16 ANSWER: Principal, corporate
17 development.

18 QUESTION: How long have you been with
19 Google?

20 ANSWER: Since September of 2003.

21 QUESTION: Mr. Zoufonoun, in this
22 document, what do you think the letters I and P stand
23 for?

24 ANSWER: Again, I mean, I can't say what
25 the -- I don't know who drafted this and for what

1 purpose, so I can't say conclusively what IP in this
2 context stands for.

3 QUESTION: You are telling me and the
4 jury that in this document, when it says opportunistic
5 acquisitions for IP, you don't know what the phrase IP
6 means; is that right?

7 ANSWER: I can't conclusively say what --
8 I know what it means, no.

9 QUESTION: Does Google monetize content
10 through advertisements?

11 ANSWER: Sure.

12 QUESTION: If Google were to choose to
13 monetize FeedBurner, it would be through advertisements,
14 correct?

15 ANSWER: That I can't say, because it
16 depends. I think it -- again, it depends on a number of
17 factors and the most salient one being user experience.

18 QUESTION: Can you please read for me and
19 the jury, under status, what Google was recommending to
20 deal with this issue, risk?

21 ANSWER: Under status for Item No. 1, the
22 documents --

23 (Video stopped.)

24 MR. NELSON: Your Honor, may we approach?

25 THE COURT: Yes.

1 (Bench conference.)

2 MR. NELSON: They have not raised this
3 issue, and they have notice of our clips, but what is

4 [REDACTED]

5 [REDACTED]

REDACTED BY ORDER OF THE COURT

6 [REDACTED]

7 I just want to be clear, we have
8 disclosed that to the other side. They have not
9 objected to this, but in light of what just happened
10 downstairs, I just want -- I'm trying to be really
11 careful here.

12 MS. CANDIDO: We do object to that in
13 light of the conversation.

14 MR. NELSON: Well, that's why I brought
15 it up. I've given them plenty of notice.

16 THE COURT: Well, hold on. Hold on a
17 second.

18 Are you objecting to it on the grounds
19 that it's the purchase price of an acquisition, or is
20 it -- or are you objecting to me having the courtroom
21 open while it plays?

22 MS. CANDIDO: The -- the former.

23 THE COURT: Okay. That objection is
24 overruled. I just didn't know if I needed to excuse
25 folks. I will, but I -- I understand your objection to

1 the relevancy of it.

2 MS. CANDIDO: If I could, I think my
3 client would have an issue with the -- with the
4 courtroom, but --

5 THE COURT: Okay.

6 MS. CANDIDO: -- I can check briefly to
7 make sure that's -- if that's okay.

8 THE COURT: Please check.

9 MS. CANDIDO: Okay.

10 THE COURT: We had a couple of issues
11 downstairs, so that was one of them.

12 MR. NELSON: And then...

13 (Pause in proceedings.)

14 MS. CANDIDO: This one clip is fine, Your
15 Honor.

16 THE COURT: Okay. All right. Your
17 objection to the substantive aspect of it is overruled.

18 MS. CANDIDO: Thank you.

19 (Bench conference concluded.)

20 ANSWER: -- says recommend BD Team to
21 engage in acquisition discussions with AS.

22 QUESTION: Doesn't it mean that at the
23 time of this document, February 2003, Google saw the
24 main risk to the Content Ads program to be [REDACTED]

25 [REDACTED] **REDACTED BY ORDER OF THE COURT** [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 **REDACTED BY ORDER OF THE COURT**

4

4 [REDACTED]

5

5 [REDACTED]

6

6 [REDACTED]

7

7 [REDACTED]

8

8 [REDACTED]

9

9 [REDACTED]

10

10 [REDACTED]

11

11 QUESTION: Okay. Many of -- and not just
12 speaking about the deals we've talked about, but just
13 generally, Google would often structure its acquisitions
14 to have an upfront purchase price and then milestone or
15 earn-out payments if certain goals were reached,
16 correct?

17

17 ANSWER: We've certainly had deals
18 structured in that manner, yes.

19

19 (End of video clip.)

20

20 MR. NELSON: Your Honor, Plaintiff calls
21 Walter Bratic to the stand.

22

22 And before we start, can you --

23

23 THE WITNESS: Your Honor, I have not been
24 sworn.

25

25 THE COURT: My clerk was telling me that.

1 Hold on just a second.

2 Y'all have an issue to take up before --

3 (Bench conference.)

4 MR. NELSON: I'm just trying to get some
5 clarification about what specifically with Applied
6 Semantics I can get into.

7 Can I talk about [REDACTED] [REDACTED] [REDACTED]

8 [REDACTED] **REDACTED BY ORDER OF THE COURT** [REDACTED] which is not -- I mean,
9 that's in the Houlihan-Lokey documents, and I -- I just
10 don't know what -- what's going on. And I really want
11 to be -- I'm trying so hard to be careful.

12 MS. CANDIDO: We're trying to be
13 cooperative with respect to that quote --

14 MR. NELSON: That's --

15 MS. CANDIDO: -- and not close the
16 courtroom for two questions.

17 MR. NELSON: I understand, but...

18 THE COURT: I don't -- I'm not sure
19 either what -- exactly which portion of it Google is
20 requesting that the courtroom be closed for.

21 MS. CANDIDO: Justin, if you
22 could clarify -- I'm sorry. You're talking about the
23 technology charges?

24 MR. NELSON: Yes. Yes.

25 MS. CANDIDO: I think that that -- that

1 that portion is okay. Not the portions where it's
2 valuing --

3 MR. NELSON: I understand.

4 MS. CANDIDO: -- specifically assets, but
5 a charge in the accounting prospect is fine.

6 MR. NELSON: And there's one issue about

7 **REDACTED BY ORDER OF THE COURT** We found in the transcript at the
8 opening argument where Mr. Verhoeven specifically talks
9 about -- **REDACTED BY ORDER OF THE COURT**

10 **REDACTED BY ORDER OF THE COURT**

11 THE COURT: Listen, I'm going to stick
12 with my ruling, okay?

13 MR. NELSON: Okay.

14 THE COURT: On that.

15 How -- I'm going to do this as fairly as
16 I can closing the courtroom, but it's -- it isn't by
17 agreement at this point, okay?

18 MS. CANDIDO: I understand.

19 THE COURT: So -- but -- but I understand
20 the -- I understand y'all are requesting that it be
21 closed for portions of it. I just need you to approach.
22 You know, I'm putting it on you --

23 MR. NELSON: Yes, sir.

24 THE COURT: -- to raise the issue with
25 me.

1 MR. NELSON: Do you want me to preserve
2 any objections that I have about things beyond the scope
3 of the revenue share, or does that just not matter?

4 THE COURT: Well, I think it's preserved.

5 MR. NELSON: Okay. Thank you.

6 MS. CANDIDO: Your Honor, so is now the
7 time you want to handle our objections to the slides?

8 THE COURT: You have them to tender to
9 me?

10 MS. CANDIDO: There's the specific
11 slides.

12 THE COURT: Okay.

13 MS. CANDIDO: There's one additional
14 slide I neglected to mention, but -- I had mentioned it
15 to Justin, but I had not mentioned outside.

16 These calculations here are new. They're
17 not in the report or his deposition. These rates are
18 and the royalty base is, but these calculations are new.

19 MR. NELSON: He discloses all of these
20 rates. It's a summary slide that talks about the rates,
21 and it's clear which one he's talking about.

22 MS. CANDIDO: These calculations are
23 simply not in the report or the deposition.

24 MR. NELSON: I understand that, but he
25 has the rates in there. This is a summary slide talking

1 about everything else that's in there.

2 THE COURT: Well, you're not going to get
3 to this until the end of his testimony.

4 MR. NELSON: Correct.

5 THE COURT: Okay. Well, we're going to
6 be on a break then, so I'll take it up at the break.
7 But with respect to those others that she's handed me,
8 these were presented timely in chambers, and she lodged
9 an objection to those, and I've overruled. I'm going to
10 allow the use of these slides for demonstrative
11 purposes.

12 And to the extent there was a substantive
13 objection made in chambers as well, I've overruled that
14 objection, which I feel I'm being consistent with the
15 orders that I issued at pretrial, as well as the issues
16 that Ms. Candido raised, particularly with the
17 computation and testimony concerning the profit premium
18 issues that were raised in the slides.

19 So your objection is preserved. You may
20 have a running objection through the course of
21 Dr. Bratic's testimony to those topics, okay?

22 MS. CANDIDO: We appreciate that, Your
23 Honor.

24 THE COURT: All right. And I'll file
25 these as Court's 1 to indicate what I've ruled on.

1 MS. CANDIDO: Thank you.

2 MR. NELSON: Thank you.

3 (Bench conference concluded.)

4 THE COURT: All right. Mr. Bratic, if
5 you'll be sworn in.

6 COURTROOM DEPUTY: Raise your right hand.

7 (Witness sworn.)

8 THE WITNESS: May I be seated, Your
9 Honor?

10 THE COURT: Yes. Speak into the
11 microphone and keep your voice up.

12 THE WITNESS: Thank you.

13 WALTER BRATIC, PLAINTIFF'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MR. NELSON:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Please state your name for the record.

19 A. Sure. My name is Walter Bratic.

20 Q. Mr. Bratic, where are you from?

21 A. Houston, Texas.

22 Q. Have you been asked to perform a damages
23 analysis on behalf of Function Media in this case?

24 A. Yes, I have.

25 MR. NELSON: Could we put up the slides?

1 Q. (By Mr. Nelson) Mr. Bratic, is this a summary
2 of qualifications that you have prepared?

3 A. Yes.

4 Q. Could you please take me and the jury through
5 some of these qualifications that you have?

6 A. Okay.

7 Q. Let's start at the first one. It says
8 certified licensing professional. First, who certified
9 you, and second, what does that mean?

10 A. All right. Well, the organization that
11 certified me as a certified licensing professional is
12 the Licensing Executive Society of the United States and
13 Canada.

14 Q. And how do you become a certified licensing
15 professional through the Licensing Executive Society?

16 A. Okay. Well, now we've got to go to the third
17 point, the third line item on the chart where it says 30
18 plus years experience in patent licensing and analysis.
19 So when I applied for this designation as a certified
20 licensing professional, I had to demonstrate to the
21 Licensing Executive Society that I have actually been
22 negotiating licenses for intellectual property, patents,
23 trademarks, trade secrets, for 30 some years.
24 The first license I ever negotiated was back in 1975
25 when I first got out of college.

1 So I had to demonstrate to them that I had all
2 that experience, and then I had to give them a number of
3 references of clients who they could validate and verify
4 that I actually represented those clients.

5 And those clients have been universities,
6 corporations, individual inventors, and the like.

7 Q. And just to be clear for the jury here, this
8 is -- we're talking about real world licensing
9 negotiations?

10 A. Yes, real world. For example, I was a chief
11 financial officer of a company that made -- I'm sorry,
12 we didn't make -- we designed equipment for the energy
13 market. And we had 35, 40 engineers in the company.
14 And they were developing ideas and concepts, and so we
15 were working to patent those ideas.

16 I, as the chief financial officer, was
17 responsible for getting involved in licensing our
18 technology to other people who had interest in our
19 technology.

20 Likewise, we came across some technology from
21 other companies or inventors that we were interested in
22 getting rights to, so I negotiated what we called
23 in-bound licenses as well.

24 And that was all part of my years of
25 experience that I had to document for the Licensing

1 Executive Society.

2 Q. We skipped over the second bullet point there,
3 which is certified public accountant in Texas. Could
4 you just briefly summarize that, Mr. Bratic?

5 A. Yes. I'm a certified public accountant, and
6 I've been licensed by the State of Texas since 1981 to
7 be a certified public accountant.

8 And what that means is, I actually receive a
9 license from the State of Texas. And in order to get
10 that license, I had to take a number of courses in
11 college in accounting subjects to qualify to take the
12 exam. Then I had to take a multi-part exam.
13 Then I had to have experience working in public
14 accounting, which I did for a number of years, and then
15 every year, I have to renew my license by taking 40
16 hours of class.

17 In other words, I have to go to school every
18 year for 40 hours, document my classes and send them in
19 to Austin to get my license renewed.

20 Q. And, Mr. Bratic, are you also a forensic
21 accountant?

22 A. Yes. I'm a certified forensic expert.

23 Q. What does that mean?

24 A. Well, I have two designations in forensics,
25 but, basically, it's forensic investigations where,

1 basically, it really involves into digging into economic
2 financial accounting details to ferret out what
3 happened, whether it was a fraud or other things.

4 Q. Now, we've talked about the third bullet
5 point. What is your educational background, as
6 reflected in those next two bullet points?

7 A. Well, I have -- in the middle of the slide, I
8 am a -- I have a bachelor's degree in economics and a
9 minor in accounting from the University of Pennsylvania,
10 which is in Philadelphia, Pennsylvania.

11 I also have what's called an MBA or a Master
12 of Business Administration from the Wharton School at
13 the University of Pennsylvania. And that's a -- after
14 my four-year program and my bachelor's degree, I then
15 attended the same university to get an additional degree
16 in business, which took another two years.

17 Q. And the next bullet point is -- could you
18 please describe for the jury this next bullet point?

19 A. Well, it says guest lecturer on intellectual
20 property and author of articles on licensing and
21 valuation, and maybe I'll start with the latter part of
22 that phrase.

23 But I have written a number of articles over
24 the years for various publications on licensing issues,
25 valuation of intellectual property, patents.

1 I have lectured and have attended many
2 conferences in the United States and around the world
3 where I have been invited by your governments or
4 conferences to speak on the subject of intellectual
5 property licensing and valuation.

6 I also teach every year courses in the fall
7 and in the spring at the University of Houston Law
8 School on intellectual property subjects, and I've been
9 doing that for now seven or eight years. In fact, my
10 next class will be next month.

11 Q. And your last bullet point, can you please
12 describe that?

13 A. Just briefly, and I don't mean to be speaking
14 too fast. I hope I'm not.

15 But I also sit on the editorial board of a
16 publication called Managing Intellectual Property. And
17 that's a publication that's a -- published in the United
18 States, in Europe, in Asia.

19 It's a worldwide publication for lawyers and
20 for business people dealing with the subject of
21 intellectual property, whether it's highlighting issues
22 about various lawsuits that are important or that courts
23 have ruled on or trends in economics of licensing or
24 business activity involving intellectual property.

25 Anyway, long and short of it, my role on the

1 editorial board -- and I've been on that about 10
2 years -- one of my jobs as an editorial board member is,
3 I assist in reviewing articles or screening articles to
4 make sure that they, you know, are -- I'm, basically, a
5 quality control guy from time to time for different
6 articles that may appear in the magazine, and I've also
7 authored articles for that publication.

8 Q. Are you being compensated here at your
9 standard hourly rate?

10 A. I am.

11 Q. What time (sic) of generally your time here
12 is -- call it real-world negotiating licenses or
13 participating in the negotiation of licenses versus
14 court-related expert testimony?

15 A. In the last few years, court-related or
16 litigation-related matters, whether they're patents or
17 other types of IP or any other issues, including
18 bankruptcy issues, have been a little more than half my
19 time.

20 The other time, I'd say 45 percent to 40
21 percent, depending on the year, has been devoted to
22 licensing and valuation issues.

23 Q. Is the way you charge for your services
24 consistent with other experts in this field?

25 A. Yes, it is.

1 Q. Was your compensation here dependent in any
2 way on the outcome of this case or the conclusions that
3 you've reached?

4 A. No, none whatsoever.

5 MR. NELSON: Your Honor, at this point,
6 we'd move to qualify Mr. Bratic as a qualified expert in
7 the fields of patent licensing and patent damages.

8 MR. VERHOEVEN: No objection, Your Honor.

9 THE COURT: The Court will hear his
10 testimony, as will the jury.

11 MR. NELSON: Let's go to the next slide,
12 please.

13 Q. (By Mr. Nelson) Now, we're going to be talking
14 about this in a lot of detail, but briefly, could you
15 please summarize for the jury the opinion that you've
16 reached in this case?

17 A. Yes. What I -- my opinion in this case has
18 shown in the -- if I can get it to work, the box over
19 here on the right -- oh, there it is.

20 My opinion is that a reasonable royalty, which
21 is the amount of damages that would be due and owing in
22 this case, to date are about \$607 million.

23 Now, that's based on a formula I used, which
24 is commonly used to determine license amounts, which is
25 a royalty rate, which I'm going to be talking in a

1 little more detail about where that came from, but I
2 determined that an appropriate and reasonable royalty
3 rate in this case would be 12 percent of the sales of
4 the accused products.

5 To date, since July 2007, which is the date
6 I've been asked to assume is the date of first
7 infringement, through this past Monday, January 18th,
8 2010, Google's accused sales for AdSense for Content
9 online and AdSense for Content mobile, have been a
10 little over \$5 billion.

11 So if you multiply a 12 percent royalty, which
12 is like paying rent on an apartment, times the -- for
13 example, the number of months you might stay in the
14 apartment, the usage of \$5 billion, you end up with
15 reasonable royalties of \$607 million.

16 Q. And we're going to spend some time going
17 through how you calculated both of those numbers, but
18 for now, before we get into that, could you please
19 describe the procedures and how you performed your
20 analysis in this case?

21 A. Okay. Well, I've been working on this project
22 off and on for about a year and a half, and there are a
23 number of procedures I performed as part of my study and
24 research investigation to reach my opinions.

25 And I'll shorten up what I've done, because it

1 took a long period of time and covered a lot of things,
2 but as a high-level thing, one of the things I did, I
3 looked at the legal pleadings, because both parties
4 filed legal documents with the Court, and I've reviewed
5 various of those types of documents.

6 Google has produced a lot of business records,
7 and what I mean by business records, they've produced a
8 lot of sales records and detailed sales records I was
9 able to go through to figure out how they got just a
10 little over \$5 billion in infringing sales.

11 They proved -- excuse me -- they produced
12 information on various acquisitions that Mr. Zoufonoun
13 talked about, so they've made acquisitions of companies.
14 They produced information that I've studied regarding a
15 license activity that they've engaged in.

16 A number of Google witnesses, some of which
17 you've seen the clips of today, have been deposed, and
18 I've read their depositions, and I've also read the
19 exhibits and studied the exhibits to those depositions.
20 Function Media has also produced documents that I've
21 studied and poured over.

22 I've also interviewed on several occasions Dr.
23 Rhyne, who's Function Media's technical expert, and I
24 interviewed both Mr. Dean and Ms. Stone on several
25 occasions before filing my expert report.

1 So -- oh, and I might say that I also read the
2 expert report of Google's damages expert, Mr. Wagner. I
3 read his expert report.

4 And I also read Mr. Lanning's expert report,
5 and he was the -- he's the technical expert for Google,
6 as I understand it.

7 So that's kind of a high-level overview of the
8 different kinds of things I did.

9 Q. Why, Mr. Bratic, is Function Media entitled to
10 a reasonable royalty here?

11 A. Well, the patent law -- and I'm not a lawyer,
12 but as I understand the law, what the law says is that a
13 patent owner is entitled to no less than a reasonable
14 royalty.

15 Function Media doesn't have products that use
16 the '045 and '0 -- '025 and '059 patents, and so,
17 therefore, they don't compete with Google and haven't
18 lost any sales. But the patent statute says you can
19 still claim no less than a reasonable royalty.

20 So, in my opinion, a reasonable royalty is the
21 appropriate measure of damages in this case.

22 Q. Okay.

23 MR. NELSON: Let's go to the next slide,
24 please.

25 Q. (By Mr. Nelson) What are we looking at here,

1 Mr. Bratic?

2 A. What you're looking at here is a
3 representation of what's called a hypothetical
4 negotiation. What we know has actually happened is that
5 the patents are in litigation here, and no license was
6 ever executed between Function Media and Google.

7 Now, the court cases, and one in particular
8 I'm going to talk about a little more called
9 Georgia-Pacific, which is a patent case from almost 30
10 years ago, that case, the Court talked about setting up
11 a hypothetical negotiation.

12 And you can see here at the bottom, I say the
13 hypothetical negotiation takes place in July 2007.
14 So the Court -- I'm required to assume, as the Court
15 instructed me to assume, that Function Media, as the
16 patentee and the licensor, and Google, as the licensee
17 and infringer, would have sat down at the time of
18 Google's first infringement of the patents-in-suit,
19 which would have been on or July -- around July 3rd,
20 2007.

21 Q. What is your understanding, Mr. Bratic, about
22 whether Google's damages expert, Mr. Wagner, applies the
23 same methodology?

24 A. He applied the same methodology.

25 Q. Okay.

1 MR. NELSON: Next slide, please.

2 Q. (By Mr. Nelson) What are we looking at here?

3 A. Well, first of all, you'll see at the very
4 bottom, I'm showing you that Georgia-Pacific case, where
5 it came from. But there's some basic guidelines, if you
6 will, or rules that govern the hypothetical negotiation
7 between Function Media and Google.

8 One is that the hypothetical negotiation, as
9 I've already said, occurs in July of 2007 when the '025
10 patent was first infringed. Both parties, Function
11 Media and Google, understand that the '025 and '059 are
12 valid patents and that Google has infringed those
13 patents.

14 Q. And let me stop you there.

15 How does that differ from real-world licenses
16 that are negotiated?

17 A. Well, in many of -- in most of the licenses
18 I've ever dealt with in the real world and that I'm
19 familiar with, there's usually a question mark as to
20 whether the patent is really valued. I may have --
21 valid. Excuse me. It may have issued, but there's
22 still a question mark that it -- you know, that it may
23 not be a valid patent.

24 And there's always a question mark whether
25 the -- in license negotiations, whether the company that

1 might need to take a license, whether they infringe or
2 not.

3 So these are question marks and issues that
4 are part of the give and take in a real-world
5 negotiation.

6 That doesn't happen here, because both
7 Function Media and Google have to assume that the patent
8 is -- the patents are valid and that Google has
9 infringed those patents.

10 Q. And what else would they agree on? What's
11 that last bullet point?

12 A. The last part, they agree on what the products
13 are. In other words, what are the products that will be
14 licensed. And they will agree on what the royalty rate
15 should be for that license.

16 Q. Okay.

17 MR. NELSON: Let's go to the next slide.

18 Q. (By Mr. Nelson) And what does this show?

19 A. Well, that's that same formula we talked
20 about. I've just kind of highlighted it in red on the
21 left side, because I'm really going to spend some time
22 right now talking about the royalty rate portion of this
23 formula to arrive at reasonable royalties.

24 Q. Now, Mr. Bratic, to you, what is the benefit
25 of a running royalty?

1 A. Well, one of the benefits of running
2 royalties, as Mr. Dean has mentioned during his
3 testimony, is, both parties get to participate in the
4 upside in sharing the risk.

5 In other words, the licensee, if the products
6 aren't sold, then there's no royalty paid.

7 If there are significant sales or lots of
8 sales, then the patent -- the licensor or the patentee,
9 in this case, Function Media, would have the opportunity
10 to benefit from that additional performance of those
11 underlying product.

12 Q. Now, is -- in some cases, is a lump-sum
13 license appropriate?

14 A. Sure. That can be the case.

15 Q. Is it appropriate here?

16 A. I don't believe it would be appropriate or
17 would have been arrived at in this case.

18 Q. Why not?

19 A. Well, in this case, based on my study and my
20 investigation, these patents are worth in the hundreds
21 of millions of dollars, and Google would not have wanted
22 to pay all that money upfront in July of 2007. It would
23 have been more logical for them to say: We'll pay you a
24 royalty as these sales occur.

25 Q. Did you also base your opinion on the

1 comparable licenses in the Georgia-Pacific Factors here?

2 A. Oh, yes, of course. I looked at
3 Georgia-Pacific Factors, which I'm going to explain in a
4 little more detail, and actually, some of Google's own
5 licensing practices.

6 Q. Okay.

7 MR. NELSON: Let's go to the next slide.

8 Q. (By Mr. Nelson) What are we looking at here,
9 Mr. Bratic?

10 A. Okay. Now, this is just -- that's an earlier
11 slide, but what I've got here in the left-hand corner is
12 8 to 20 percent for Function Media.

13 Q. What does that represent?

14 A. Now, that represents Function Media's starting
15 position in its negotiations.

16 Based on my interviews of Mr. Dean and the
17 documents I've reviewed from -- you know, from Function
18 Media's records, Function Media had -- and Mr. Dean and
19 Ms. Stone had been researching in the early part of this
20 decade, well before the patents issued, how the internet
21 industry was evolving and how licenses in that industry
22 were evolving and licenses for royalties. And so they
23 knew that royalties were running at least 8 percent.

24 Now, Mr. Dean also said in my interviews, and
25 as he's testified here in Court, that the 20 percent was

1 very appropriate because he -- because he believed these
2 patents were very important, and Google was getting lots
3 of benefits from these patents.

4 So he would have approached a negotiation
5 insisting on a 20 percent royalty. So that's what's on
6 the left-hand side.

7 Q. And it says: Patentee has upper hand. Are
8 you basing that on evidence in the record?

9 A. Yes. I'm basing it on Google's own statements
10 about the perspective of the patentee, what the patentee
11 has going into the hypo -- into a negotiation.

12 MR. NELSON: Your Honor, we have about a
13 minute and a half clip. Is -- should we finish the
14 clip, or do you want to take a break now or --

15 THE COURT: Let's keep going.

16 MR. NELSON: Okay.

17 Q. (By Mr. Nelson) I'm going to show you --
18 you're aware -- let me ask you first: Are you aware of
19 who Johnny Chen is?

20 A. Yes. Mr. Chen is an executive at Google, and
21 I understand that he was the person designated to be
22 responsible for testifying about licensing issues at
23 Google, you know, in this litigation.

24 Q. Okay. We're about to play Mr. Chen's
25 testimony, which is Lines 10:09 through 18; 11:02

1 through 8; 13:24 through 14:08; 52:17 through 20; 63:05
2 through 9; and 89:14 through 21.

3 MR. VERHOEVEN: May I approach, Your
4 Honor?

5 THE COURT: Yes.

6 (Bench conference.)

7 MR. VERHOEVEN: They're going to play a
8 whole slew of designations of this witness within the
9 context of another witness testifying.

10 I would submit that if they want to play
11 designations for Mr. Chen, they would compile them and
12 submit them like they did with the other witnesses. I
13 think this is inappropriate to have the expert do a
14 running commentary on these deposition designations that
15 are all glumped together like this.

16 MR. NELSON: All right. Response?

17 THE COURT: Well, yes.

18 MR. NELSON: First of all, they're all
19 disclosed in Mr. Bratic's report. Rule 32 allows this.
20 This goes directly to the point he has. It's a minute
21 and a half clip.

22 THE COURT: I'll let you play the clips
23 that you disclosed in his report and ask him what -- you
24 know, whether he relied on them, but, you know, we're
25 going to -- we're almost to the afternoon break. You

1 know, let's not move back and forth from depo clips to
2 the testimony.

3 Rule 32, I'm not sure which provision
4 you're citing to me there, but I'll take a look at
5 whether it says that you're entitled to do --

6 MR. NELSON: Okay.

7 THE COURT: -- what you're getting ready
8 to do.

9 I'm going to -- I'm going to allow it. I
10 don't think there's any prejudice to you, and I think
11 that he can use the clips to support what his expert's
12 saying.

13 So I'm going to let you do it at this
14 point.

15 MR. NELSON: Thank you.

16 (Bench conference concluded.)

17 MR. NELSON: Let's go ahead and play the
18 clip, please.

19 (Video playing.)

20 QUESTION: Please state your full name
21 for the record.

22 ANSWER: Johnny Chen.

23 QUESTION: You understand, Mr. Chen, that
24 you are under oath?

25 ANSWER: Yes.

1 QUESTION: You understand that the oath
2 that you just took is just as solemn as what you took as
3 if you were before a jury; is that right?

4 ANSWER: Yes.

5 QUESTION: What is your current position
6 at Google?

7 ANSWER: Business development manager.

8 QUESTION: You understand you are here as
9 Google's corporate representative for certain topics in
10 this case?

11 ANSWER: Yes.

12 QUESTION: You understand that with
13 respect to these topics, you are not just testifying in
14 your personal capacity and that you are testifying as
15 Google's corporate representative; is that correct?

16 ANSWER: Yes.

17 QUESTION: You understand, with respect
18 to those answers, your answers bind the corporation for
19 this lawsuit; is that correct?

20 ANSWER: Yes.

21 QUESTION: Do you believe that it is a
22 good thing to have intellectual property and to protect
23 ideas?

24 ANSWER: Yes.

25 QUESTION: You agree that the value of

1 intellectual property is not something that just Google
2 values, correct?

3 ANSWER: I would assume other companies
4 value their intellectual property.

5 QUESTION: Okay. But do you know whether
6 Google has a strategy of trying to acquire assets from
7 third parties with respect to patents?

8 ANSWER: Again, the word strategy -- the
9 word strategy is very vague. I can say that we have no
10 formal policy in acquiring licenses for patents.

11 (End of video clip.)

12 Q. (By Mr. Nelson) Now, Mr. Bratic, Mr. Chen
13 there has testified about the fact that Google has no
14 formal policy.

15 Did you also rely on e-mails that Mr. Chen
16 wrote about what Google's position would be in any
17 hypothetical negotiation?

18 A. Yes.

19 MR. NELSON: Let's put up Plaintiff's
20 Exhibit 313, please, and let's blow that up.

21 Q. (By Mr. Nelson) This is from Johnny Chen; is
22 that right? I'm sorry. This is Plaintiff's Exhibit
23 313.

24 MR. NELSON: If we can scroll out again
25 and see this.

1 Q. (By Mr. Nelson) And so --

2 MR. NELSON: Yeah. And so let's go back
3 in.

4 Q. (By Mr. Nelson) And this is from Johnny Chen;
5 is that right?

6 A. It is.

7 Q. And can you please maybe describe what's going
8 on in this document to the jury?

9 A. Yes. This is an internal e-mail from Mr. Chen
10 to somebody else at Google dealing with the issue about
11 a license that Google was in negotiations to take.

12 In other words, Google was going to license in
13 the technology from a company on the subject line called
14 VoiceAge. So that's kind of the backdrop of this memo.

15 Q. Okay. And what is he saying here in this
16 first highlighted portion?

17 A. Right. Well, it says here: I think just
18 saying that we want to cap because we are Google does
19 not seem like a compelling argument.

20 Q. What -- what is he saying there?

21 A. Well, what he's saying is a cap mean -- you
22 know, a cap, a limit, on how much we -- we, Google,
23 would pay to VoiceAge. He's saying that just saying
24 we're Google is not enough to force the other people to
25 take or accept the cap.

1 Q. Okay. And what's that next highlighted
2 portion right there?

3 A. It says: If you want to take our patented
4 technology, you need to pay the license fees.

5 Q. What does that mean?

6 A. Well, that just means saying -- he's saying
7 here that if you wanted to take -- Google wanted to take
8 the technology from VoiceAge, they'd have to pay
9 VoiceAge license fees.

10 Q. Okay. And this last highlighted portion says:
11 Take it or leave it.

12 A. Right.

13 Q. What does that mean?

14 A. Well, what that means in the context of this
15 memo, is, basically, that Google is saying that you
16 either have -- they either have to take the license, as
17 proposed by VoiceAge, or they have to leave it, meaning
18 don't practice the patents.

19 Q. Okay. And does this support your position
20 that Google would come into this hypothetical
21 negotiation knowing that the patentee, Function Media
22 here, has the upper hand because they would essentially
23 have to take it -- take the license or leave it, meaning
24 don't practice the technology?

25 A. Yes, as well as the fact that Georgia-Pacific

1 requires the parties to assume that the patents are
2 valid and have been infringed. So you would take a
3 license or you don't get to use the technology.

4 Q. Okay. Thank you.

5 MR. NELSON: Let's go to the next slide,
6 please.

7 Q. (By Mr. Nelson) What are we looking at here?

8 A. Okay. I mentioned several times that
9 Georgia-Pacific case. And what this is, is a list of 15
10 factors. That case, the Court -- that was a patent
11 infringement case, and one of the issues in that case
12 was reasonable royalties for patent infringement.

13 The Court in that case said there's 15 factors
14 to look at. And I'll jump to the 15th real quick,
15 because I mentioned that before. That's the
16 hypothetical negotiation, Factor 15.

17 The Court said: Use these 15 factors as a
18 checklist. These 14 factors, apply them in every patent
19 infringement case.

20 Now, that doesn't mean they all are important
21 or that they all necessarily apply, but you have to go
22 through that checklist and -- and investigate it.
23 And then at the end of all of those 14 factors, the
24 Court said, you roll them all up into the hypothetical
25 negotiation to figure out how that license, for example,

1 with Google and Function Media, would have shook out
2 after that analysis of those 14 factors.

3 Q. And are we going to go through all of these 14
4 factors to determine how they affect the starting point
5 of the negotiations in this hypothetical negotiation?

6 A. Yes, we are. And I might add, there's one
7 other thing the Court said in that case -- two other
8 things the Court said. Not all -- because there's 14
9 factors here, they're not all of equal weight
10 necessarily. You have to look at every single case and
11 the specifics of every case.

12 So they don't all necessarily have equal
13 weight.

14 And the Court also said there are other
15 factors you can consider. You're not limited to these
16 15.

17 Q. Okay.

18 MR. NELSON: Let's go to the next slide,
19 please.

20 Q. (By Mr. Nelson) Mr. Bratic, what are we
21 looking at here?

22 A. Well, what I've done is, these 15 factors,
23 some of them go together.

24 In other words, they cluster for similar
25 subject matter. So what I've done is I've kind of

1 grouped them in buckets, because they're similar themes.

2 And so you see, I have one theme for licensing
3 characteristics, one for commercial success, and I list
4 the Georgia-Pacific factor number within each of those
5 buckets.

6 And so I've kind of taken the 15 factors and
7 put them in five buckets, and that's how I'm going to
8 discuss them.

9 Q. Okay. We're going to talk about each of these
10 buckets.

11 A. Yes.

12 Q. Okay.

13 THE COURT: Well, we'll talk about them
14 after the break.

15 MR. NELSON: Yes, sir.

16 THE COURT: Ladies and Gentlemen, be back
17 ready to come in the courtroom at 3:35.

18 Remember my prior instructions, and don't
19 talk about the case. Take 20 minutes.

20 COURT SECURITY OFFICER: All rise.

21 (Jury out.)

22 THE COURT: All right. Y'all have a
23 seat.

24 Mr. Tribble, to which side do I charge
25 the three deposition clips? Is that all to y'all?

1 MR. TRIBBLE: Bravomalo is -- excuse me,
2 Your Honor. Bravomalo was all Function Media, and you
3 can just charge all of it to us. I think they had 14
4 seconds or something in there. I'll give them a couple
5 of minutes.

6 Oh, never mind. They had four minutes,
7 Your Honor.

8 THE COURT: Is that the first clip?

9 MR. TRIBBLE: Well, Your Honor, I'll have
10 to give you that information. I had it here. Here it
11 is.

12 Okay. On Hutchinson, it was 5 minutes,
13 46 seconds to Function Media; 3 minutes, 29 seconds to
14 Google.

15 Zoufonoun, Function Media, 3 minutes, 35
16 seconds; 17 seconds to Google.

17 And Bravomalo is all -- all Function
18 Media, 4 minutes and 14 seconds.

19 THE COURT: Okay. Thank you.

20 I'll see y'all at 3:35.

21 There's an issue about a slide that I
22 assume we're going to get to this afternoon.

23 MS. CANDIDO: Yes, Your Honor.

24 THE COURT: Well, give me a copy of the
25 slide to take with me, if you have a copy.

1 Thank you.

2 MS. CANDIDO: Thank you.

3 THE COURT: All right. We're in recess.

4 (Recess.)

5 COURT SECURITY OFFICER: All rise.

6 (Jury in.)

7 THE COURT: Please be seated.

8 Counsel, approach real quick.

9 (Bench conference.)

10 THE COURT: All right. The rates, as I
11 understand it, were disclosed previously, correct?

12 MR. NELSON: Yes.

13 MS. CANDIDO: That's correct.

14 THE COURT: Tell me what -- tell me what
15 these other numbers represent on your AdSense for
16 Content and AdSense for Mobile Online.

17 MR. NELSON: These are simply -- so we're
18 about to get to a slide, or later on, that is broken
19 down by the revenues for AdSense for Content Online, the
20 revenues for AdSense for Mobile Online. And it breaks
21 it out by each product, and this is the total. So it's
22 one plus one equals two -- or one plus -- you know.

23 THE COURT: Well, were these numbers
24 previously disclosed?

25 MS. CANDIDO: No, they were not. The

1 revenues are numbers were disclosed.

2 THE COURT: But adding them together
3 wasn't?

4 MR. NELSON: Yes, they were.

5 MS. CANDIDO: I'm sorry. To be clear,
6 Google's revenue clearly was disclosed. They've used it
7 for the purposes of applying this rate to the revenue
8 calculated damages figure. The only damages figure
9 provided was based on this red-line calculation down
10 here, none of the other information.

11 THE COURT: But as I read these two
12 numbers, are they just summed?

13 MR. NELSON: Yes.

14 MS. CANDIDO: Well, these two are summed
15 to get to here.

16 THE COURT: Right.

17 MS. CANDIDO: They never applied this
18 rate to the revenue to get these numbers. These are
19 damages figures.

20 MR. NELSON: If I can try to stay your
21 argument, so I think what she's saying -- sorry.

22 MR. VERHOEVEN: She should have her
23 own --

24 MR. NELSON: All right.

25 MS. CANDIDO: They have the revenue

1 figures. Those were in his report. He's applied these
2 percentages to the revenue to get the damages figure.

3 THE COURT: So 8 percent multiplied by
4 whatever the revenue?

5 MS. CANDIDO: Correct.

6 THE COURT: Okay.

7 MS. CANDIDO: But he's never provided
8 those calculations before.

9 THE COURT: Well, I'm overruling that
10 objection. These are percentage calculations and
11 figures that have previously been provided. I'm going
12 to overrule it.

13 (Bench conference concluded.)

14 THE COURT: Please proceed.

15 Q. (By Mr. Nelson) We were on this bucket slide,
16 and could you please describe -- I think you were in
17 the -- just ending your description of the different
18 buckets here; is that right?

19 A. Right.

20 Well, what I was saying right at the break
21 was, those 15 Georgia-Pacific Factors, there's a
22 relationship among some of them to make them similar.
23 So I just reorganized that list of 15 and put them in
24 these buckets.

25 For example, licensing characteristics I put

1 Georgia-Pacific Factor 1, 2, and 12 under that bucket
2 for a discussion for that subject and then so forth and
3 so on with the other buckets that are all highlighted in
4 yellow.

5 Q. Thank you.

6 Now, let's go to the next slide, please. What
7 is this?

8 A. Well, I've highlighted licensing
9 characteristics in red, because that's the first of the
10 Georgia-Pacific buckets I'm going to talk about.

11 Q. Okay. Let's go to the next slide.

12 Now, Mr. Bratic, did Function Media have any
13 relevant licenses for these patents-in-suit?

14 A. No.

15 Q. What did you look to to determine whether the
16 starting point that you previously described of 8 to 20
17 percent was in the same ball park of reasonability?

18 A. Well, one of the things I did -- I mean, I did
19 a number of things, but one of the things I looked at, I
20 looked at internet industry royalty rates.

21 And this is an annual publication from a --
22 from the Licensing Economics Review. And if I can just
23 briefly describe what it is.

24 So this is from various years, from 2001
25 through 2008. And there's a column telling you what the

1 average royalty rate was for licenses. I'm going to
2 give you an example. I've highlighted 2006, because
3 that's the year right before the hypothetical
4 negotiation.

5 And in 2006, for example, the average royalty
6 rate for licenses in the internet industry was 13
7 percent. Now, it also said the median was 9 percent.

8 Q. What's the difference between the average and
9 the median?

10 A. Well -- and let me go to the far right and
11 explain that this publication looked at 107 licenses in
12 the internet industry licenses. And so the average
13 means, if you took all the royalty rates for all 107
14 licenses, the average in that year was 13 percent.
15 The 9 percent, as a median, meant that half of the 107
16 licenses were above 9 percent and half were below 9
17 percent. So those give you some data points and
18 benchmarks, if you will.

19 Now, that was -- of course, the important
20 thing about this chart is that the royalty rates have
21 been climbing in the internet industry from 2001 through
22 2008. And they were even higher in 2007, the year of
23 the hypothetical negotiation.

24 Q. Now, why was -- you have 2006 highlighted in
25 red on this chart.

1 A. Right.

2 Q. Why is 2006 in particular highlighted?

3 A. Well, that was the year before the
4 hypothetical negotiation. So -- so, again, one of the
5 things about Georgia-Pacific in the hypothetical
6 negotiations, it's assumed that Function Media and
7 Georgia -- excuse me -- and Google would have known
8 about certain information, including this kind of
9 information.

10 That's just assumed and attributed to the
11 parties in a negotiation.

12 Q. Now, in 2007, halfway during the timeframe of
13 this actual hypothetical negotiation, what happened to
14 the rates?

15 A. Well, the rate actually increased. The
16 average went up to 13-1/2 percent for the average, and
17 the median went up to 10 percent.

18 And the reason these royalty rates have been
19 climbing during the better part of this decade is
20 because the internet has become more important as a
21 major factor in everyday life and everyday economics.

22 Q. And actually, what happened in 2008 according
23 to this study?

24 A. Well, the average and -- both the average and
25 the median rate actually went even higher.

1 Q. Now, are you aware on -- about whether
2 Google's expert, Mr. Wagner, has ever relied on these
3 studies?

4 A. Yes. He has looked at industry royalty rates
5 as well.

6 Q. And are you aware, Mr. Bratic, one way or
7 another whether the 2009 study has come out yet?

8 A. No, it has not, because we're at the very
9 beginning of 2010.

10 Q. Okay. Now, did you also look at Google's
11 licenses and the relevant technology field?

12 A. Yes.

13 Q. And can you briefly describe what you looked
14 at?

15 A. Well, Google -- as I mentioned earlier, I
16 studied and investigated various Google licenses that
17 Google executed, both technology that Google licensed
18 out as well as licenses that Google licensed in --
19 technology that Google licensed in, including any patent
20 rights.

21 Q. Did you rely on the testimony of Mr. Chen for
22 any descriptions of the licenses or the lack of
23 testimony from Mr. Chen?

24 A. Yes. A number of the licenses -- I should say
25 some of the licenses that were produced by Google, I

1 couldn't rely on or make any interpretation of because
2 Mr. Chen didn't know anything about them and couldn't
3 say much about them.

4 MR. NELSON: May we approach, Your Honor?

5 THE COURT: Yes.

6 (Bench conference.)

7 THE COURT: Are we there?

8 MR. NELSON: No, actually we're not.

9 THE COURT: Okay.

10 MR. VERHOEVEN: I'm just trying to take
11 notes at the same time. I'm sorry.

12 MR. NELSON: I'm about to play a
13 deposition clip, and I know Your Honor had expressed an
14 issue on it before, and I wanted to have the ruling.
15 Mr. Bratic has relied on these I-don't-know answers.
16 There's a few short clips of Mr. Chen testifying,
17 including on Meyer that he doesn't know.

18 THE COURT: I'm going to allow it.

19 MR. VERHOEVEN: While we're here, so I
20 don't take another time, putting up exhibits and having
21 this witness testify as to what Google meant by those
22 exhibits, I didn't stand up the first time, but if that
23 happens again, I'm going to stand up and object.

24 THE COURT: Well, I'll be waiting for it.

25 MR. NELSON: Fair enough.

1 (Bench conference concluded.)

2 Q. (By Mr. Nelson) Mr. Bratic, did you rely on
3 Mr. Chen's testimony about his lack of knowledge and
4 inability to tell you about what some of these licenses
5 meant?

6 A. Yes.

7 Q. Okay. Let's please play excerpts of the Chen
8 deposition, Page 139:25 through 143; 244:05 through
9 246:10; 247:20 through 22; 249:18 through 22; and 252:20
10 to 253:02.

11 (Video playing.)

12 QUESTION: What were the circumstances of
13 this negotiation between Hewlett-Packard and Google?

14 ANSWER: I can't speak to the
15 circumstance, as I was not involved in this negotiation.

16 QUESTION: What technology is involved in
17 the patent purchase and sale agreement?

18 ANSWER: In the third patent is method
19 algorithms and computer programs for optimizing the
20 performance of messages, including advertisements in an
21 interactive measurable medium.

22 And then the two -- the two applications
23 are system and methods for improving the performance of
24 electronic media advertising campaigns through
25 multi-attribute analysis and optimization and method

1 algorithms and computer programs for optimizing the
2 performance of messages, including advertisements in an
3 interactive measurable medium.

4 So it seems that these patents are
5 related to algorithms and methods and computer programs.

6 QUESTION: How did this patent portfolio
7 come to your attention?

8 ANSWER: To my personal attention?

9 QUESTION: To Google's attention.

10 ANSWER: I do not know.

11 QUESTION: Can you tell me anything with
12 respect to the circumstances of how Google purchased
13 this patent portfolio?

14 ANSWER: You mean how this came about in
15 the first place?

16 QUESTION: Yes.

17 ANSWER: Is that your question? I don't
18 know.

19 QUESTION: Did Carl Meyer -- who is Carl
20 Meyer, first of all?

21 ANSWER: Carl Meyer is an individual
22 residing at 20252 Hill Avenue in Saratoga, California.

23 QUESTION: Besides that, you don't know
24 anything about who Carl Meyer is?

25 ANSWER: He appears to be the owner of

1 these patents.

2 QUESTION: Besides what is on the face of
3 the agreement, can you tell me anything else about Carl
4 Meyer?

5 ANSWER: No.

6 QUESTION: Did Carl Meyer threaten to sue
7 Google?

8 ANSWER: I don't know.

9 QUESTION: How much did Google contribute
10 to Twister for Twister to buy the licensed patents?

11 ANSWER: I don't know.

12 QUESTION: Do you know whether Mitsubishi
13 offered Google the standard terms it offered everybody
14 else?

15 ANSWER: I don't know.

16 QUESTION: One way or the other?

17 ANSWER: I don't know.

18 QUESTION: Are you aware of an agreement
19 between Google and Alcatel-Lucent?

20 ANSWER: Yes. I saw this during
21 yesterday's deposition preparation.

22 QUESTION: Other than what's on the face
23 of the document, can you tell me anything about the
24 circumstances behind this agreement?

25 ANSWER: No.

1 (End of video clip.)

2 Q. (By Mr. Nelson) Mr. Bratic, are you aware of
3 other answers that we didn't play of Mr. Chen testifying
4 that he did not know of Google's licensing and the
5 circumstances behind those licenses?

6 A. Yes.

7 Q. And when he didn't know about what Google
8 licensed and why Google licensed, how did that affect
9 your opinion for Google's licenses here?

10 A. Well, in those circumstances, it made it very
11 difficult to understand the circumstances and nature of
12 those licenses. And one of the things you have to do in
13 order to analyze licenses is understand something about
14 their nature.

15 Q. Now, did you define the relevant field for the
16 technology at issue of Google's licenses here?

17 A. Yes.

18 Q. And what was that relevant field?

19 A. Search and advertising.

20 Q. Do you know whether you and Mr. Wagner,
21 Google's expert, are in agreement on the relevant
22 technology field here?

23 A. Yes, we are.

24 Q. And did you rely on any deposition -- let
25 me -- let me back up.

1 Why did you -- I understand why you would rely
2 on advertising licenses. Why would you rely on search
3 licenses as being part of the relevant field?

4 A. Well, because based on my investigation and
5 study in this case, my extensive discussions with
6 Dr. Rhyne, for example, and what I learned, is that
7 search alone doesn't monetize.

8 And what happens -- with AdSense for Content
9 Online and AdSense for Mobile Online is what happens is
10 Google uses its search techniques and abilities in an
11 automated fashion, but Google has to monetize that
12 search. And the only way Google makes money is by
13 marrying advertising to search capability. And that's
14 why they're relevant.

15 Q. Is this the monetization that we've heard so
16 much about during this trial?

17 A. Yes. Monetization means how do you make
18 money? How do you generate revenues or sales? How do
19 you generate profits?

20 Monetizing means you've got to be able to make
21 money with it. And search by itself doesn't monetize,
22 because Google makes search available for free. Google
23 monetizes search by marrying it or coupling it with
24 advertising, and then it's able to generate revenues.

25 And in the case I gave you, at least \$5

1 billion to date for the accused products.

2 Q. Now, did you rely on any deposition testimony
3 from Google's corporate witnesses about what this
4 relevant technology field was and the relationship
5 between search and advertising?

6 A. Yes.

7 Q. Okay.

8 MR. NELSON: Can we please play the
9 deposition testimony of Amin Zoufonoun who we just heard
10 from previously?

11 This is Page 254, Lines 1 through 15.

12 MR. VERHOEVEN: Same objection, Your
13 Honor.

14 MR. NELSON: No, no. Sorry. We have not
15 heard this particular testimony of the witness.

16 MR. VERHOEVEN: This also takes away our
17 ability to do 106 designations, Your Honor. It's not
18 the way the designation should be played.

19 MR. NELSON: Rule 32(a) --

20 THE COURT: Overruled.

21 MR. NELSON: Let's play the clip, please.

22 (Video playing.)

23 QUESTION: The core would include
24 essentially search and advertising, correct?

25 ANSWER: That's my understanding, yes,

1 search and search-related advertising as we've known it
2 throughout Google.

3 QUESTION: Well, you agree that AdSense
4 and AdWords, under any definition of core and under
5 Google's corporate definition, fall within the
6 70-percent core, correct?

7 ANSWER: I would characterize it as such,
8 yes.

9 (End of video clip.)

10 Q. (By Mr. Nelson) Now, Mr. Bratic, did -- were
11 you able to rely on some of Google's licenses in the
12 preparation and analysis of your opinions here?

13 A. Yes.

14 MR. NELSON: Let's please go to
15 Plaintiff's Exhibit 318.

16 Q. (By Mr. Nelson) What are we looking at here,
17 Mr. Bratic?

18 A. Well, it may be hard to see on the screen.
19 What this is, this is a license agreement that was
20 executed back in 1998 between Google and Stanford
21 University.

22 You see it says the Board of Trustees of
23 Leland Stanford University.

24 Q. And what was this license about?

25 A. This license was basically a license for a

1 patent application relating to Google's search engine,
2 which actually Stanford had the rights to that patent
3 application, and they were licensing it to Google. And
4 it was really the core of the start of Google.

5 Q. Was -- Google's search application, was it
6 able to be monetized?

7 A. No. You couldn't monetize it. You had to do
8 something with it like couple it or marry it to
9 advertising.

10 Q. Does Mr. Wagner, Google's expert, agree with
11 you that this is a relevant license to be analyzed in
12 this litigation?

13 A. Yes.

14 Q. Now, were there any relevant terms --
15 particular relevant terms that you looked at in your
16 analysis of this license?

17 A. Yes. There were a few.

18 Q. Okay. Let's just go through them. Let's just
19 start with what's highlighted.

20 A. Okay.

21 Q. What are we looking at here?

22 A. Well, this was a license that says Google
23 desires a license under said technology, software, and
24 inventions. So this was a license to a patent
25 application -- important patent application for search

1 capability.

2 It also included technology license. For
3 example, it included the rights to software and source
4 code. So it was more than just a bare license for a
5 patent.

6 Q. Okay. Let's go to the next highlighted
7 portion.

8 And what's the relevance of this particular
9 clause?

10 A. Well, this is the patent application that was
11 licensed. And all it's pointing out here is the license
12 patent here is defined to mean the patent application,
13 because at that time the patent hadn't issued yet.

14 Q. Now, how does that affect your analysis that
15 this was just for a patent application and not for the
16 patent itself?

17 A. Well, at the time in 1998 when this license
18 was executed, because it was a patent application, it
19 was no certainty the patent would issue.

20 In our hypothetical negotiation, we know the
21 patents were issued, and they're also assumed to be
22 valid in the hypothetical negotiation between Function
23 Media and Google.

24 So that would tend to favor Google -- I mean,
25 Function Media in their negotiations with Google.

1 I should also point out in fairness that up
2 above the technology license that we talked about, the
3 earlier section -- I can't see the number.

4 Q. 1.4?

5 A. I'm sorry. 1.4. That involved more than just
6 a patent application. That Stanford license involved
7 technology, software rights and the like.

8 So in that sense, there was more being given
9 to Google by Stanford than Function Media would give to
10 Google in this case. And so that would tend to tilt or
11 favor the negotiation on that point in Google's favor.

12 Okay. Now, are there any other terms?

13 A. Yes.

14 Q. Being it's -- let's see the next one.

15 A. The licensed field of use meant -- means
16 internet search applications. In other words, there
17 was -- in other words, there was a limitation or a
18 restriction on what Google could do with the licensed
19 technology.

20 It was limited to search applications. In the
21 hypothetical negotiation, there's no limits to what
22 Stan -- excuse me -- Google does with Function Media's
23 patents so long as they pay for the use.

24 Q. So is it fair to say that this particular
25 factor would cut in Function Media's favor in comparison

1 between the license and the hypothetical negotiation?

2 A. Yes.

3 Q. Okay. What's the next clause here?

4 A. Well, this is a clause that said that this
5 particular license from 1998 was going to be exclusive
6 for six years. In other words, Google would enjoy
7 exclusivity for at least six years, according to this
8 license back in 1998.

9 Q. How would that affect your comparison of this
10 license with the hypothetical negotiation in this case?

11 A. The hypothetical negotiation in this case is
12 not an exclusive license. Function Media gets to
13 license other companies or other individuals that they
14 want. So that tends to favor Google in this
15 hypothetical negotiation.

16 Q. Is it fair?

17 A. Because Google is getting less than Google
18 got, for example, in the Stanford license in terms of
19 restrictions.

20 Q. Is it a fair summary of your testimony that of
21 the factors that you looked at, a couple cut in favor of
22 Function Media and a couple cut in favor of Google in
23 terms of comparing this license with the hypothetical
24 negotiation?

25 A. Yes, that would be a fair summary.

1 Q. Now, what were the terms of the license
2 between Google and Stanford?

3 A. Okay. Well, let's see. There's a feature
4 about the royalties, and I think there it is. You're
5 going to highlight it. Section 8.1.

6 So what happened is, in recognition of this
7 license in 1998, Google gave Stanford 25 -- excuse me --
8 I'm sorry -- 2 percent of the stock of Google at that
9 time. So whatever stock Google had at that time, they
10 gave to Stanford. And that was about 2 -- a little over
11 2-1/2 million shares of stock.

12 Q. Now, was -- the 2 percent back then in 1998,
13 is it still equivalent to 2 percent of Google today?

14 A. No.

15 Q. What approximate percentage does that
16 2 percent, then, work out to today?

17 A. A little less than 1 percent.

18 Q. Okay. At the time of the hypothetical
19 negotiation in July 2007, how much -- once you do the
20 dilution of the little less than 1 percent --

21 A. Yeah.

22 Q. -- could you please tell the jury how much
23 that stock was worth in July of 2007?

24 A. Yeah. That was about \$1.4 billion. In other
25 words, if you took those original shares that were given

1 to Stanford by Google and if you said what's the value
2 of them at the time of the hypothetical negotiation in
3 July 2007, it's about \$1.4 billion.

4 Q. Now, since then, has the stock increased a
5 little bit?

6 A. It's gone up and it's gone down a little.
7 Right now, it's a little higher. If you were to look at
8 it based on last Friday, because Monday was a holiday,
9 the stock price would have been worth about 1.5 billion,
10 just a little higher.

11 Q. Now, are you primarily focused about it at the
12 time of the hypothetical negotiation?

13 A. I am.

14 Q. Okay.

15 A. Because that would have been known. That
16 would have been something that would have considered at
17 the hypothetical negotiation.

18 Q. Now, did -- when Stanford got this stock, did
19 it have an agreement with the inventors of this patent
20 application about whether it would share in the proceeds
21 of this license agreement?

22 A. Yes, it did.

23 Q. What were the terms of that agreement?

24 A. Well, first of all, the patent application
25 that we're talking about for that core search

1 capability, which was owned by Stanford, the inventors
2 were what became the two co-founders of Google:
3 Mr. Brin and Mr. Page.

4 And because they had worked on that invention,
5 which was owned by Stanford while they were students at
6 Stanford, Stanford gave them 28 percent of the stock
7 that they got from Google.

8 So of the 2 percent stock of the 2-1/2 million
9 shares, they gave up 28 percent of those 2-1/2 million
10 shares to Mr. Brin and Mr. Page, who are co-inventors of
11 that patent application.

12 Q. Were you able, Mr. Bratic, to learn from
13 publicly available sources how much Stanford ended up
14 selling its remaining stock -- minus that 28 percent it
15 gave to Mr. Brin and Mr. Page -- how much it sold that
16 remaining stock for?

17 A. Yes.

18 Q. How much was that?

19 A. They sold 72 percent that they held for around
20 \$365 million.

21 Q. Now, we saw earlier one of the terms of the
22 license was that Google had an exclusive license for a
23 period of, I think, six years is what the license said.

24 A. That's the original license, correct.

25 Q. What is your understanding -- as a patent

1 licensing expert, when someone has an exclusive license
2 for a period of years, are they then able to sublicense
3 that license?

4 A. Yeah. In the case of this license, they had
5 the rights to sublicense this Stanford license. In
6 other words, Google could turn around -- turn around and
7 license the technology they just got from Stanford.

8 Q. And are you aware whether Google licensed this
9 technology to others?

10 A. Yes, they did license this search technology,
11 Stanford's search technology.

12 Q. Could you please tell the jury whether -- when
13 Google licensed this technology, the form of how it
14 licensed the technology?

15 A. Yes. The form -- when Google turned around
16 and licensed Stanford's search technology, it licensed
17 it in the form of running royalties based on usage.

18 Q. What did Google call that form of running
19 royalty?

20 A. Well, they called it, I believe, it was CPM,
21 cost per thousand.

22 Q. CPM stands for cost per thousand?

23 A. Thousand, yes.

24 Q. Can you please briefly explain what cost per
25 thousand means and why that is equivalent to a running

1 royalty?

2 A. A running royalty is a usage royalty. In
3 other words, you can pay based on a percentage of sales.
4 You can pay based on number of widgets manufactured.
5 So it's based on usage. You know, the more you use, the
6 more you pay. The less you use, the less you pay,
7 however you want to use it.

8 Now, in the case of what Google did as an
9 example, they would license it, because they were doing
10 search results. I'll give you an example in a minute
11 with AOL.

12 So they would go out and do search results, so
13 they would charge per thousand search results they would
14 do for clients. They would charge them so many cents
15 per thousand search results.

16 And because it's based on the volume or usage
17 of search results, that's a form of running royalty.

18 Q. Do you have an example of how Google, when it
19 tried to license its search technology from this license
20 to others, whether it mentioned the fact that it was in
21 the process of applying for patents?

22 A. Yes.

23 Q. Let's please turn to Plaintiff's Exhibit 1665.

24 A. 16 --

25 Q. And let's just pause here. This is

1 Plaintiff's Exhibit 1665.

2 A. Right.

3 Q. Mr. Bratic, what is the date we're looking at
4 of this document?

5 A. May of 2001.

6 Q. Okay. Let's go to Page 14 of this document.
7 What are we looking at here?

8 A. Well, this is from that presentation in 2001,
9 and this is a document talking --

10 MR. VERHOEVEN: Excuse me, Your Honor.
11 We believe this is outside the report.

12 MR. NELSON: It's in the supplemental
13 that he just filed, Exhibit 15. We can approach if you
14 want.

15 Your Honor, as you are aware, Google just
16 produced a lot of documents.

17 THE COURT: Well, let's approach.

18 (Bench conference.)

19 MR. NELSON: This --

20 THE COURT: Yes?

21 MR. NELSON: This document was just
22 produced.

23 THE COURT: Voice down.

24 MR. NELSON: Sorry, sorry.

25 This document was just produced.

1 Mr. Bratic discloses in a supplemental report where he
2 explained it as --

3 MR. VERHOEVEN: 16th of January.

4 MR. NELSON: Your Honor, this is part of
5 the new production. Mr. Bratic specifically says what
6 he relies on in the report. It came from Apex
7 Production, and he disclosed it.

8 We were waiting to file the report until
9 we got the numbers. Literally, as soon as we got the
10 numbers, we filed the supplemental report.

11 THE COURT: When was the document
12 produced?

13 No, not the report. The document on
14 which he's relying.

15 MR. NELSON: Late November, early
16 December.

17 THE COURT: Late November, early
18 December?

19 MR. NELSON: Yes.

20 THE COURT: I'm sustaining the objection.
21 And, counsel, we're not going to get into the timing of
22 the production.

23 MR. NELSON: Oh, I'm sorry.

24 THE COURT: -- of the documents in this
25 case.

1 MR. NELSON: I'm sorry.

2 (Bench conference concluded.)

3 MR. NELSON: Your Honor, actually --

4 (Bench conference.)

5 MR. NELSON: It's time. It's that time.

6 THE COURT: Okay. All right.

7 MR. VERHOEVEN: I'm sorry. What?

8 MR. NELSON: Closing the courtroom.

9 (Bench conference concluded.)

10 THE COURT: All right. Ladies and
11 Gentlemen seated out in the audience, there are a couple
12 of issues that, once again, there's been a request to
13 close the courtroom from the public view by virtue of
14 the extremely confidential nature of the material.

15 So I'm going to have to ask you to leave
16 once again at this time. Once again, I'll try to keep
17 the -- your absence at a minimum. You'll be invited
18 back in promptly upon completion of the areas of
19 testimony that implicate the confidential production.

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13 Q. (By Mr. Nelson) Mr. Bratic, were you aware,
14 in the course of your negotiation and analysis of the
15 negotiation, of whether Google acquired the relevant
16 patented technology through other means beyond just
17 patent licenses?

18 A. Yes. One of the other ways that Google
19 acquired access to technology it wanted, which included
20 patents and patent application, was doing acquisitions,
21 like DoubleClick -- am I allowed to say that?

22 Q. I think you can talk about that they did
23 acquire DoubleClick.

24 A. Okay.

25 Q. Yes.

1 A. And Applied Semantics.

2 Q. And you mentioned the Applied Semantics
3 transaction?

4 A. That's another -- that's another example of
5 how they got access to technology and intellectual
6 property rights --

7 Q. Okay.

8 A. -- by buying companies.

9 MR. NELSON: Now let's go to Plaintiff's
10 Exhibit 445.

11 Q. (By Mr. Nelson) Mr. Bratic, did you rely upon
12 this document in the formation of your opinion here?

13 A. Yes. It was one of the many documents I
14 relied on and analyzed.

15 Q. Okay.

16 MR. NELSON: And let's go to the relevant
17 page, please.

18 Q. (By Mr. Nelson) Mr. Bratic, in the bottom
19 left-hand corner, it says Houlihan Lokey Howard & Zukin.

20 A. Yes.

21 Q. Who is Houlihan Lokey Howard & Zukin?

22 A. Okay. That is an independent consulting firm
23 that values businesses.

24 So there are lots of companies like Google and
25 other companies that go to them when they do

1 acquisitions to get them to value the different assets
2 that they purchased.

3 Q. And, Mr. Bratic, what was the reason,
4 besides -- so Houlihan-Lokey -- or Google would go to
5 Houlihan-Lokey --

6 A. Yes.

7 Q. -- and ask them to provide a valuation for
8 Google; is that right?

9 A. Yes. Let me explain, if I can, briefly --

10 Q. Sure.

11 A. -- how it works.

12 What happens is, it's not that Houlihan-Lokey
13 determined the price. They were -- what the price was
14 determined, they have to come in afterwards for tax
15 reasons and for what we call financial reporting
16 purposes to prepare the financial statements of the
17 company for its investors and lenders and everybody
18 else.

19 They have to determine what that purchase
20 price was and how it gets allocated to the different
21 parts of the assets that were acquired.

22 And so that's the purpose for a company like
23 Houlihan-Lokey doing these kinds of studies.

24 Q. In the Applied Semantics acquisition --

25 A. Yes.

1 Q. -- did Applied Semantics have any patents at
2 that time?

3 A. They did.

4 Q. And could you please explain?

5 A. Well, based on my investigation and research,
6 I learned that -- in my study, I learned that Applied
7 Semantics -- at the time of this acquisition by Google,
8 Applied Semantics had one patent and one patent
9 application with the United States Patent & Trademark
10 Office.

11 Q. How was this patent and patent application
12 related to its core technology?

13 A. Well, it was -- part of the patented
14 technology that was being acquired was part of what was
15 called the CIRCA core patented technology.

16 Q. And do you have a document about that?

17 A. Yes. That's how Google described the
18 acquisition. They had a press release, I believe.

19 Q. Okay.

20 MR. NELSON: Let's go to Plaintiff's
21 Exhibit 846.

22 Q. (By Mr. Nelson) What are we looking at here,
23 Mr. Bratic?

24 A. This is a -- I believe a press release
25 regarding Google announcing that it acquired -- was in

1 the process of acquiring Applied Semantics.

2 Q. Okay. And in the press release, did they
3 discuss the fact that it was the patented CIRCA
4 technology?

5 A. Yes.

6 MR. NELSON: And let's go -- I think it's
7 the third paragraph up from the bottom, please. That
8 third paragraph. There we go.

9 A. Yes. Well, this is a description. Google is
10 saying in its press release regarding this acquisition
11 that it's basically buying -- and the products they are
12 buying are Applied Semantics' products that are based on
13 its -- its being Applied Semantics -- patented CIRCA
14 technology.

15 Q. (By Mr. Nelson) Okay.

16 MR. NELSON: Now, let's go -- actually,
17 let's go back to Plaintiff's Exhibit 445.

18 A. Yes.

19 [REDACTED]

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Q. Whose testimony did you rely on?

A. That was, I believe, Mr. Zoufonoun.

Q. Okay.

MR. NELSON: Let's please play
Mr. Zoufonoun's relevant testimony here.

(Video playing.)

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3 QUESTION: In this context, when it says,
4 Google, Inc., Acquisition of Applied Semantics, Inc.,
5 Valuation of Intangible Assets, why was Houlihan-Lokey
6 hired?

7 ANSWER: Again, I can't say with
8 certainty why they were hired and what it means in this
9 context. If you want my best guess, I would say they
10 are trying to assign value to intangible assets for the
11 purposes of accounting.

12 [REDACTED]
13 [REDACTED]
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16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 (End of video clip.)

20 Q. (By Mr. Nelson) And what was Google's
21 inability to explain [REDACTED] -- how is
22 that relevant to your analysis?

23 A. Well, I did my best to try and fill in the
24 blanks. And so I went back and I looked at the press
25 release talking about the patented core technology for

1 Applied Semantics.

2 I went to the U.S. PTO website, I and my
3 staff, working with my assistance -- under my
4 assistance, and we found an Applied Semantics' patent
5 and the Applied Semantics patent application.

6 And then, of course, I looked at the press
7 release that said that Google was acquiring Applied
8 Semantics' patented core technology.

9 And the core technology then -- Houlihan-Lokey
10 said [REDACTED]

11 [REDACTED] **REDACTED BY ORDER OF THE COURT**

12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED]

14 Q. Now, Mr. Bratic, did -- based on your study --

15 A. Yes.

16 Q. -- did Google end up using this core
17 technology it bought?

18 A. No, it did not.

19 Q. Why did Google purchase Applied Semantics?

20 A. First of all, I should say, the only thing
21 Google did use from Applied Semantics, based on my
22 research, was the AdSense name.

23 In other words, what we now know as AdSense
24 wasn't called AdSense before. It only became that name
25 after Applied Semantics was purchased.

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4 Q. Did Houlihan-Lokey perform other outside
5 consultant valuation studies besides the one it
6 conducted on behalf of Applied Semantics?

7 A. Yes, they did.

8 Q. Did Houlihan-Lokey do a study with respect to
9 DoubleClick?

10 A. They did.

11 Q. Okay.

12 MR. NELSON: Let's please put on 1689.

13 Q. (By Mr. Nelson) And, Mr. Bratic, what are we
14 looking at here?

15 A. Well, this is the cover page from the
16 DoubleClick analysis done by Houlihan-Lokey, the same
17 firm that did the study for Applied Semantics.

18 Q. Now, would Houlihan-Lokey --

19 A. And you can see that in the lower left-hand
20 corner, Houlihan-Lokey.

21 Q. When Houlihan-Lokey conducted this report, did
22 Google rely on this report for its financial statements?

23 A. Yes.

24 Q. Was Google a public company at this time in
25 2007?

1 A. By -- by -- yeah, by -- 2008 is the date of
2 this study. But, yes, Google was a public company by
3 that time.

4 Q. Are you aware of Google's obligations to
5 report accurately its financial statements?

6 A. Well, yes. Google is a public company, and I
7 think later on I have a document to show you -- a
8 document they filed at the Securities and Exchange
9 Commission.

10 And when they have to file their documents
11 with the Securities and Exchange Commission, they're --
12 they're subject to penalties, perjury and the like --

13 Q. What --

14 A. -- if they're false or misleading.

15 Q. What did Houlihan-Lokey determine was the
16 technology royalty rate for this transaction and for
17 acquiring this technology?

18 Go on, Mr. Bratic.

19 A. Yeah. No. What -- I was just going to
20 correct you just a little.

21 Q. Sure.

22 A. What they did is, the -- there was a key core
23 technology in this company, too, called DART. It was
24 DoubleClick's product. And it was an internet ad --
25 search and ad management system. And Google acquired

1 this core -- developed core technology.

2 So what -- one of the things that Houlihan did
3 is, they acquired different assets -- and I'm not
4 suggesting at all that the only thing they bought when
5 they bought DoubleClick was this DART technology,
6 because that's not the case.

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Q. Did you, in your analysis, rely on other Houlihan-Lokey studies in coming up with your royalty rate in this case?

A. I did.

Q. Do you have a chart showing that?

A. In part, though. I want to make it clear that's one of the many things I looked at.

Q. All right.

1 MR. NELSON: Let's go to the next slide,
2 please. Next slide.

3 Yeah, there we go.

4 Q. (By Mr. Nelson) What are we looking at here,
5 Mr. Bratic?

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19 Q. Now, I want to focus on these other
20 transactions in --

21 A. Right.

22 Q. -- right below that.

23 A. Right.

24 Q. Were those transactions core technology to
25 Google, based on your analysis?

1 A. Well, based on my analysis and the deposition
2 of Google witnesses, those -- all the other
3 transactions -- those transactions were not core
4 technology to Google.

5 Q. Okay. Now, what -- how did you apply these
6 different royalty rates?

7 A. Well, first of all, let me also mention that
8 each one of these transactions either involved a
9 patent -- patents or patent applications or both. And
10 so what I did is I took --

11 Q. Let me -- let me stop you.

12 And do you know whether those patents and
13 patent applications related to the technology acquired?

14 A. Well, the technology acquired as part of those
15 acquisitions --

16 Q. Yes.

17 A. -- yes.

18 Q. Okay. Go on.

19 A. Well, what I mean by that is, Google acquired
20 all those rights.

21 Q. Yes. Okay.

22 A. In fact, if you go to the PTO website, you'll
23 see that there were assignments by these companies that
24 either owned the patents or patent applications, and
25 they were assigned to Google, much like Mr. Dean and Ms.

1 Stone assigned the patents-in-suit to Function Media.

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1 Q. Now, let me focus you in on one of these
2 transactions, the dMarc Broadcasting transaction.

3 A. Yes.

4 Q. Mr. Bratic, are you aware with how that
5 transaction was structured?

6 A. Yeah. The structure of it?

7 Q. Yes.

8 A. Yes, generally.

9 Q. Can you please describe for the jury how that
10 transaction was structured?

11 A. Well, first of all, dMarc Broadcasting was an
12 acquisition that was intended to take AdSense, which we
13 know is AdSense Online, from the internet and expand
14 that core product into radio ads.

15 [REDACTED]

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2 MR. NELSON: Let's please go to the next
3 slide.

4 Q. (By Mr. Nelson) We've already talked about
5 this a little bit --

6 A. Yes.

7 Q. -- Mr. Bratic.

8 How specifically did you rely on these
9 industry rates here in the formation of your opinion as
10 one data point?

11 A. Well, again, it's one data point, and it's
12 information that would have -- is -- is implied or it's
13 assumed that these -- both Function Media and Google
14 would have known about these industry royalty rates.
15 And I might add that Function Media and Google at the
16 hypothetical negotiation would also know about these
17 Houlihan-Lokey studies. Because unlike the real world
18 of negotiations where nobody shares their information
19 necessarily, in the hypothetical negotiation, as
20 required under Georgia-Pacific, all the cards are on the
21 table; in other words, no surprises.

22 So everybody goes in -- both Function Media
23 and Google go in having knowledge of these facts in our
24 hypothetical negotiation.

25 And I might add that in the 2006 and then 2007

1 timeframe, you will see that these industry royalty
2 rates are very consistent with the average pretax
3 royalty -- or technology rate used in the Houlihan-Lokey
4 studies, which was 12 percent.

5 Q. Now, I want to be clear here. Did you rely on
6 any one of these 107 or 115 licenses in particular in
7 the analysis here?

8 A. No. I didn't have access to all -- to those
9 individual licenses.

10 Q. How did you use the study then?

11 A. I used it as a data point or as a benchmark
12 for my analysis, as a guide post.

13 Q. Okay. Now, in sum, we've looked at these
14 licenses and licensing factors.

15 How do these three Georgia-Pacific Factors
16 relate and how do they affect the hypothetical
17 negotiation in this case?

18 A. Well, my opinion, they would tend to push the
19 royalty rate up at the hypothetical negotiation.

20 Q. Okay.

21 MR. NELSON: Your Honor, may we approach?

22 (Bench conference.)

23 THE COURT: Another issue?

24 MR. NELSON: No. This is just another
25 time where -- it's for approaching this profit margin

1 issue. And I'm going to try to be very limited, and
2 it's going to be about two or three minutes, but we're
3 going to get into confidential information.

4 THE COURT: Okay. That's what I --

5 MR. NELSON: Oh, yes.

6 THE COURT: Okay. Just a second. It's
7 okay. How many times more times am I going to have to
8 do this today?

9 MR. NELSON: This will be the second of
10 three, and I don't know if we're going to get to the
11 third.

12 THE COURT: Okay. Well, I just want to
13 give them some advance notice, but, you know, I'm not --
14 well, I'll -- I'll tell them what I'm going to tell
15 them.

16 MR. NELSON: Okay.

17 (Bench conference concluded.)

18 THE COURT: All right. Again, folks back
19 there, I'm going to have to ask you to leave the
20 courtroom at this time.

21 Just for your information, there's going
22 to be a brief period of time that I need to ask you to
23 step out to hear some confidential information.

24 There will be one other time as well, but
25 I'm -- I'm breaking them up, because I'd rather have you

1 in here for as much of the testimony as I can let you in
2 here for. So that's why I'm asking you to excuse
3 yourself at this time.

4 I think it will take about two minutes to
5 get through this portion of the testimony. Then there
6 will be another brief portion of the testimony possibly
7 before 5:00 o'clock today that I'll have to ask you to
8 leave again.

9 So that's the schedule for today.

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5 Q. (By Mr. Nelson) I'm going to go ahead and get
6 started, Mr. Bratic.

7 A. Sure.

8 Q. Did you rely on documents also showing the
9 commercial success of the product for Google?

10 A. Yes.

11 Q. Okay.

12 MR. NELSON: Let's please turn to
13 Plaintiff's Exhibit 166, Page 15.

14 A. Did you say 166?

15 Q. (By Mr. Nelson) Yes.

16 A. Thank you.

17 Q. And actually, that reminds me --

18 MR. NELSON: I apologized for this
19 earlier. It's been sitting right here. But I have
20 notebooks.

21 Let's please turn to Page 15 of this.

22 Q. (By Mr. Nelson) Mr. Bratic, did you rely on
23 this document in the formation of your opinion?

24 A. Yes.

25 Q. Could you please read it to the jury?

1 A. Well, this is an internal document at Google,
2 and it says: The same big-thinking approach applies to
3 AdSense content pages. Sergey's billion-dollar idea was
4 at an offsite three years ago when he said, quote, there
5 are hundreds of millions of searches but billions of web
6 pages out there. Why aren't we monetizing them?

7 Q. Was this a billion-dollar idea?

8 A. It was much more than a billion-dollar idea.
9 It's eight times more than that. It's been about 8
10 billion in sales so far.

11 And I might add, just to make sure everybody
12 knows who Sergey is, Sergey Brin is one of the
13 co-founders of Google.

14 Q. Okay.

15 MR. NELSON: Let's please go to
16 Plaintiff's Exhibit 1700.

17 A. Okay.

18 Q. (By Mr. Nelson) Now, Mr. Bratic, did you rely
19 on -- on this document?

20 A. Yes.

21 Q. Okay. And what does -- how did Sergey Brin
22 describe AdSense for Content's technology?

23 A. Well, the highlighted point here talks about
24 AdSense for Content, and it says: This team engineered
25 a technology as we come --

1 MR. VERHOEVEN: Sorry, Your Honor. We
2 object to this as not in the report, the same issue as
3 before.

4 MR. NELSON: Can we approach?

5 THE COURT: Yes.

6 (Bench conference.)

7 MR. NELSON: This literally came up at
8 the deposition of Sergey Brin a few days ago, and we did
9 searches. We got a whole swath of documents. Again, I
10 can't represent when specifically this came in, but
11 we've been trying our hardest to represent -- this -- we
12 just found out about this document.

13 THE COURT: Well, it's already been
14 published, and I'm going to allow this, in light of
15 when -- when I know the testimony was taken from
16 Mr. Brin and the fact that the documents came in just
17 prior to his deposition.

18 So, I mean -- not prior. I mean sometime
19 in November or December, correct?

20 MR. NELSON: Yes.

21 THE COURT: Okay. I'm going to overrule
22 the -- overrule the objection.

23 (Bench conference concluded.)

24 MR. NELSON: Let's please put that back on the board,
25 please. And let's zoom in on what Sergey Brin

1 describes.

2 A. Yes. Well, what he said is that AdSense for
3 Content has become the monetization engine for Google,
4 and he talks about the billions of impressions and so
5 forth. But also at the very end, he says it was a
6 colossal achievement.

7 Q. (By Mr. Nelson) Okay. Now, are you aware of
8 whether the CEO, Eric Schmidt, has also made similar
9 statements about the AFC being the monetization engine
10 of Google?

11 A. Yes.

12 MR. NELSON: Let's --

13 Q. (By Mr. Nelson) Did you rely on any other
14 documents?

15 A. Yes. There were other documents like this.

16 MR. NELSON: Let's please turn to
17 Plaintiff's Exhibit 372.

18 Q. (By Mr. Nelson) What are we looking at here?

19 A. This is a document for -- from an internal --
20 internal Google presentation in March of 2007, which is
21 shortly before the hypothetical negotiation.

22 And it says: AFC Overview for Joan. And I'm
23 not sure if I got her last name right, but I think it's
24 a lady by the name of Joan Bratty (phonetics).

25 Q. Okay. And did you rely on any portion of this

1 document?

2 A. Yes.

3 Q. Okay.

4 MR. NELSON: Let's go to that page,
5 please.

6 Q. (By Mr. Nelson) What does it say down here?

7 A. Well, this says at the bottom that -- in this
8 document, that AFC, AdSense for Content, is the leading
9 mechanism to capture brand spend and to leverage the
10 growth of the entire internet.

11 Q. And how does that affect your analysis?

12 A. Well, that's clearly an indication, not just
13 of commercial success, but that AdSense for Content is
14 very valuable to help the company use as leverage or a
15 springboard for growth.

16 Q. By the way, we heard testimony from Dr. Rhyne
17 today that there's AdSense for Content Online, and
18 there's AdSense for Content Direct --

19 A. Yes.

20 Q. -- which is not an accused product here.
21 You're aware of that?

22 A. I am aware of that.

23 Q. Can you please tell the jury, when we hear or
24 see figures for AdSense for Content in general, what is
25 the breakdown of revenues between AdSense for Content

1 Online and AdSense for Content Direct?

2 A. AdSense for Content Online accounts for about
3 84 percent of total AdSense for Content sales, and then
4 the remaining 14 percent relates to AdSense for Content
5 Direct, which is not an accused product.

6 Q. Now, in addition to Google's profit margin and
7 what their profit margin is, do publishers receive any
8 benefits from these patents?

9 A. Oh, publishers receive, obviously, lots of
10 benefits.

11 Q. What are the benefits that publishers receive?

12 A. Well, one of the key benefits is that
13 publishers get significant payments from Google. They
14 get to share in the ad revenues, and they get to take
15 the content on their website, which is not generating
16 any money for them, in terms of revenue, and they get to
17 monetize it.

18 That's -- that's what all these documents have
19 been talking about, monetizing, including monetizing
20 those websites.

21 Q. What is your understanding from Dr. Rhyne
22 about the importance of these patents to enabling
23 publishers to benefit from this system?

24 A. I'm sorry. Could you repeat that again?

25 Q. Sure.

1 What is your understanding from Dr. Rhyne
2 about the importance of publishers being able to benefit
3 from these invention?

4 A. Oh. Well, without practicing the
5 patents-in-suit, the publishers would not be able to
6 monetize or generate advertising revenue because all of
7 this is done in an automated fashion for these many,
8 many millions of publishers.

9 Q. Do you have any evidence that Google knows and
10 is aware of the benefit to publishers?

11 A. Oh, yes.

12 MR. NELSON: Let's please turn to
13 Plaintiff's Exhibit 192.

14 A. Okay.

15 Q. (By Mr. Nelson) What are we looking at here?

16 A. Well, this is a communications plan. And I
17 might mention, if you -- if I can --

18 Q. Yes, sir.

19 A. -- the very top says: Project -- just so
20 everybody knows -- Fresh Choice Launch. That was
21 AdSense for Content Online. And I mentioned that the
22 name changed. After the acquired acquisition of Applied
23 Semantics, they then swapped out the name Fresh Choice
24 for AdSense. But that's -- we're talking about AdSense
25 for Content Online.

1 And then if you look down here, it talks --
2 top-line positioning, and it says: Google's fully
3 automated, self-service program allows publishers to
4 profit from showing Google AdWords on their websites.

5 Q. Okay. And did that affect your analysis here?

6 A. Yes, because I have to look at the benefits to
7 those who practice the patent. That's part of the
8 Georgia-Pacific analysis. And benefits are not just to
9 Google, but it's to its publisher partners as well.

10 Q. Did you rely on any other documents?

11 A. Yes.

12 MR. NELSON: Let's please go to
13 Plaintiff's Exhibit 677.

14 A. 677. Okay.

15 Q. (By Mr. Nelson) And what are we looking at
16 here, Mr. Bratic?

17 A. I'm sorry. This is a -- well, the title of it
18 is Content-Targeted Advertising Discussion. Again, this
19 is an internal Google study from March 2003, which is
20 pretty close, I believe, to the time AdSense for Content
21 Online was launched.

22 Q. Okay. And is there a particular part of this
23 document you relied on?

24 A. Yes.

25 Q. Okay.

1 MR. NELSON: Let's please go to 206 of
2 that document.

3 A. 206?

4 Q. (By Mr. Nelson) Yeah.

5 A. All right. So this is one of the things
6 they're focusing on at Google, which is easy
7 monetization for hard-to-sell inventory. And this is --
8 when we mean inventory, we mean to publishers' websites.
9 And so Google is talking about the ability to ease --
10 how easy it is to monetize hard-to-sell inventory; in
11 other words, inventory or publisher partner websites
12 that aren't generating any revenue or profits for the
13 partners or anybody else.

14 Q. Did you rely on Google's public filings at all
15 to determine whether these products are a commercial
16 success?

17 A. Yes.

18 MR. NELSON: Let's please go to
19 Plaintiff's Exhibit 1047.

20 A. Okay.

21 Q. (By Mr. Nelson) What document is this,
22 Mr. Bratic?

23 A. This is -- excuse me. I mentioned earlier
24 about the Securities and Exchange Commission, and this
25 is a document called the 10-K filing.

1 It's an annual report that companies like
2 Google that are publicly traded -- in other words, their
3 stocks are sold on a stock exchange in the United
4 States. They've got to file this kind of document
5 called the 10-K; file every year -- excuse me -- a 10-K
6 form every year.

7 And it's got a lot of financial information.
8 It's got a lot of discussion about the company's
9 business, its operations. And this happens to be for
10 the year ended December 31st, 2008, I believe.

11 Q. Mr. Bratic, did Google make any statements
12 related to AdSense in this public filing?

13 A. They did.

14 MR. NELSON: Let's please go to Page 12
15 of the pdf.

16 A. What page was it? I'm sorry.

17 Q. (By Mr. Nelson) It's Page 9 of the document,
18 but it's Page 12 of the pdf.

19 MR. NELSON: If you can zoom in on it up
20 on the screen.

21 A. Okay. Great. Thank you.

22 Q. (By Mr. Nelson) Did you rely on these
23 statements, Mr. Bratic, in the formation of your
24 opinion?

25 A. Yes. And if I can just read some of the

1 highlighted language -- I don't want to bore you with
2 everything, but it says: Access to advertisers, so
3 that's part of the benefits.

4 It says: Many small website companies and
5 content producers do not have the time or resources to
6 develop effective programs for generating revenue from
7 online advertising.

8 And then I'm jumping down: And Google AdSense
9 promotes effective revenue generation.

10 The last sentence I've highlighted is: The
11 Google network member determines -- the member --
12 network member would be the publisher -- determines the
13 placement of the ads on its website and controls and
14 directs the nature of the ad content.

15 Q. Did the benefit to publishers -- aside from
16 Google's profit, did the benefit to publishers factor
17 into your determination of a royalty rate here?

18 A. Yes.

19 Q. How so?

20 A. Well, as I said just a little while ago, you
21 have to consider, under Georgia-Pacific, the benefits to
22 everybody who practices the patent.

23 THE COURT: Well, we're going to take up
24 there in the morning --

25 THE WITNESS: Okay.

1 THE COURT: -- okay?

2 Ladies and Gentlemen, I'm going to excuse
3 you this evening. We've got to break right -- just a
4 little before 5:00 today. I've got another commitment I
5 need to attend to.

6 So if you'll remember my prior
7 instructions, and don't talk about the case. Have a
8 nice evening and a safe trip home.

9 COURT SECURITY OFFICER: All rise.

10 (Jury out.)

11 THE COURT: All right. Y'all have a
12 seat.

13 Y'all have anything to take up tonight?

14 MR. VERHOEVEN: Not from our side, Your
15 Honor.

16 MR. TRIBBLE: Nothing here, Your Honor.

17 THE COURT: All right. Court's in
18 recess.

19 (Court adjourned.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/_____
SHELLY HOLMES, CSR
Deputy Official Court Reporter
State of Texas No.: 7804
Expiration Date 12/31/10

Date