EXHIBIT G

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IN THE UNITED STATES DISTRI FOR THE EASTERN DISTRICT O MARSHALL DIVISION 000	
FUNCTION MEDIA, LLC.,)
Plaintiff,)
vs.	/)2007-CV-279 (CE)
GOOGLE, INC. and YAHOO!, INC.,))
Defendants.)

DEPOSITION OF GENE KINCAID

Tuesday, March 17, 2009

REPORTED BY: DENISE A. FORD, CSR 7525 (3-417852)

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1	INDEX	1	
2	INDEX OF EXAMINATIONS	2	
3	Page	3	000
4	EXAMINATION BY MR. GRINSTEIN 5	4	BE IT REMEMBERED that pursuant to Notice and
5		5	on Tuesday, March 17, 2009 commencing at 9:09 a.m.
6		6	thereof, at the Law Offices of Weil, Gotshal &
7		7	Manges, 201 Redwood Shores Parkway, Redwood Shores,
8	PLAINTIFF'S EXHIBITS MARKED FOR IDENTIFICATION	8	CA, before me, Denise A. Ford, a Certified Shorthand
9	No. Description Page	9	Reporter, personally appeared
10	Exhibit 46 Expert Report of Gene Kincaid 8	10	GENE KINCAID
11	Exhibit 47 Exhibit A, Curriculum Vitae 9	11	called as a witness herein, who, having been first
12	Exhibit 48 United States Patent '025 46	12	duly sworn, was examined and testified as follows:
13	Exhibit 49 Exhibit B, Parties' Proposed 67	13	000
14	Constructions and Support	14	
15	Exhibit 50 Computer Dictionary 104	15	
16	Exhibit 51 United States Patent '045 117	16	
17	Exhibit 52 Computer Dictionary 117	17	
18	Exhibit 53 Computer Dictionary 120	18	
19	Exhibit 54 Amendment 218	19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
	Page 3		Page 5
1			EXAMINATION BY MR. GRINSTEIN
2		2	VIDEO OPERATOR: Here begins on
3	FOR THE PLAINTIFF: SUSMAN GODFREY, 1000 Louisiana	3	the record. Today's date is March 17, 2009. The
4	Street, Houston, TX 77002, JOSEPH S. GRINSTEIN, ESQ.	4	time is 9:09. This marks the beginning of videotape
5	FOR VALIOON WETL COTCHAL & MANCER 201 Reduced	5	No. 1, Volume I, in the deposition of the
	FOR YAHOO!: WEIL, GOTSHAL & MANGES, 201 Redwood	6	30(b)(6) deposition of Yahoo! with corporate
7	Shores Parkway, Redwood Shores, CA 94065, MICHAEL	7	designee Gene Kincaid in the case of Function Media,
1 1	LANE, ESQ. and JEFFREY HOMRIG, ESQ.	8	LLC v. Google, Inc. and Yahoo!, Inc. The Case No.
9 10	FOR GOOGLE: FISH & RICHARDSON, 12390 El Camino	10	is 2007-CV-279 (CE) in the United States District
11	Real, San Diego, CA 92130, JASON W. WOLFF, ESQ.	10 11	Court Eastern District of Texas, Marshall Division.
12	Nour out organ on settor should be avoid the settor.	12	This deposition is taking place at the Law Offices of Weil, Gotshal & Manges, 201 Redwood
13		12	Shores Parkway, Redwood Shores, California.
1 1 2	ALS() PRESENT: Patricia Guerrero Video operator		
	ALSO PRESENT: Patricia Guerrero, video operator		
14	ALSO PRESENT: Patricia Guerrero, video operator	14	The videographer today is Patricia Guerrero
14 15		14 15	The videographer today is Patricia Guerrero of Merrill Court Reporting, Houston, Texas located
14 15 16	ALSO PRESENT: Patricia Guerrero, video operator	14 15 16	The videographer today is Patricia Guerrero of Merrill Court Reporting, Houston, Texas located at 315 Capitol Street, Houston, Texas 77002.
14 15 16 17		14 15 16 17	The videographer today is Patricia Guerrero of Merrill Court Reporting, Houston, Texas located at 315 Capitol Street, Houston, Texas 77002. The Court Reporter is Denise Ford of Merrill
14 15 16 17 18		14 15 16 17 18	The videographer today is Patricia Guerrero of Merrill Court Reporting, Houston, Texas located at 315 Capitol Street, Houston, Texas 77002. The Court Reporter is Denise Ford of Merrill Legal Solutions.
14 15 16 17 18 19		14 15 16 17 18 19	The videographer today is Patricia Guerrero of Merrill Court Reporting, Houston, Texas located at 315 Capitol Street, Houston, Texas 77002. The Court Reporter is Denise Ford of Merrill Legal Solutions. Counsel, will you please voice identify
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2 (Pages 2 to 5)

	Page 6		Page 8	
1	Inc.	1	need is A-OK.	
2	MR. LANE: I just want to correct	2	Mr. Kincaid, you are appearing here as	and the second se
3	that. I wanted to correct Gene Kincaid is actually	3	Yahoo!'s expert witness, right?	
4	an expert on claim construction.	4	A. Correct.	
5	VIDEO OPERATOR: Would the Court	5	Q. And for purposes of this case, how	a second
6	Reporter please swear in the witness?	6	would you describe your expertise?	- 4 CO 101 CO
7	(Witness sworn.)	7	A. Could I get a copy of my report	10.00
8	VIDEO OPERATOR: Please begin.	8	because that's where I spell out all of the work I	1000
9	MR. GRINSTEIN: Q. Good morning,	9	have done over the past month or so.	
10	Mr. Kincaid.	10	(Whereupon Exhibit 46 was marked for	
11	A. Good morning.	11	identification.)	
12	Q. Could you just state your name for the	12	Q. Handing you what has been marked as	
13	record?	13	Exhibit 46, that's a copy of your report, right?	
14	A. My name is Gene Kincaid.	14	A. Yes, sir.	
15	Q. And Mr. Kincaid, have you ever had	15	Let me check one thing.	1000
16	your deposition taken before?	16	Yes, that's my report.	
17	A. No.	17	Q. And does this help you answer the	
18	Q. Let me just lay out a few background	18	question how you describe your expertise in this	1111
19	rules for the depo just so things run more smoothly.	19	case?	
20	First of all, to help Denise, our Court	20	A. Yes, it does because, let's see	1000
21	Reporter here, sometimes we like to say give	21	because since this is the first time I have done	
22	nonverbal responses to questions, say "uh-huh" or	22	this, I will stumble through this in the beginning,	
23	shake our heads, something like that, but	23	but this is the report sort of spells out my	
24	unfortunately Denise can't pick that up on the	24	qualifications in the CV, and in addition to that	2000
25	transcript. So if you have got a "yes" or "no," if	25	includes sort of my experience in internet	
25	transcript. So if you have got a yes of ho, if	23	includes sore or my experience in internet	
				4
	Page 7		Page 9	
1	Page 7 vou can try to remember to verbalize it, I would	1	Page 9 advertising and as a web developer.	
1 2	you can try to remember to verbalize it, I would	1 2	advertising and as a web developer.	
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	you can try to remember to verbalize it, I would appreciate that. The other thing is a lot of times you know where I am going with the question while I am in the middle of a question, and I know where you are going with an answer when you are in the middle of the answer. A tendency when you are in a normal conversation is to talk over each other because you are so excited to ask the next question, but the problem, again, is Denise has a hard time picking up when two people are talking. So if you wouldn't mind, if you can try to wait until I am done with the question before answering it, I will try to wait until you are done with an answer before asking another question. A. All right. Q. Any time I ask a question that doesn't make any sense to you, which I am sure I will do throughout the course of the day, please ask me to rephrase it, and I would be happy to do that. Lastly, this is not an endurance contest of any sort. Any time you need a break for whatever	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	advertising and as a web developer. Q. If I were to ask you you are appearing as an exert in this case what are you an expert in, what would you say you are an expert in? A. Internet advertising. Q. Exhibit 47. (Whereupon Exhibit 47 was marked for identification.) Q. Now I have handed you Exhibit 47. Does this appear to be the most up-to-date version of your CV? A. Yes. Q. That's the CV you attached to your expert report? A. That's correct. It is in the back Appendix A in the back of the report. Q. Let me talk to you for a second about your educational background. A. All right.	
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Gene Kincaid - 3/17/2009

	Page 10		Page 12
1	A. Correct.		program is self-taught?
2	Q. You do not have a Ph.D., correct?	2	A. Yes.
3	A. No, I do not.	3	Q. So you say that you are generally
4	Q. Have you taken any course work towards	4	familiar with HTML; is that right?
5	a Ph.D.?	5	A. Yes.
6	A. No.	6	Q. Is it correct to say that everything
7	Q. Do you have an engineering degree of		you see on a web page is basically the result of the
8	any sort?	8	use of HTML?
9	A. No.	9	MR. LANE: Objection.
10	Q. Computer science training, any formal	10	THE WITNESS: No.
11	education training?	11	MR. GRINSTEIN: Q. What do you see on a
12	MR. LANE: Objection.	12	web page that isn't the result of HTML?
13	THE WITNESS: Not formal training in	13	A. Let's say within the context of today?
14	computer science.	14	Q. Sure.
15	MR. GRINSTEIN: Q. Do you have formal	15	A. Well, there are scripting languages
16	training in any technical scientific field?	16	let's see, I am trying to think information is
17	A. No.	17	displayed on websites that is coming out of
18	Q. Now you have done some computer	18	databases that is driven by PHP.
19	network and some website work since the time you	19	Q. How does an inter-browser display
20	received your undergraduate and your master's	20	HTML?
21	degrees; is that right?	21	A. It is like a movie script. A browser
22	A. Yes. That's correct.	22	reads a single line at a time, and based on the HTML
23	Q. And your CV says that you manage the	23	script, the computer display literally what is
24	creation of some websites; is that right?	24	conveyed in that HTML source code.
25	A. Let's see, yes, I do.	25	Q. Would somebody of ordinary skill of
	Page 11		Page 13
1	Q. There is talking about the	1	the art with respect to the patents that are
2	Q. There is talking about the management of the creation of the	2	the art with respect to the patents that are involved in this case say in the year 2000, would
2 3	Q. There is talking about the management of the creation of the A. Department's initial public relations	2 3	the art with respect to the patents that are involved in this case say in the year 2000, would that person understand how HTML works?
2 3 4	 Q. There is talking about the management of the creation of the A. Department's initial public relations website and the Texas media website. 	2 3 4	the art with respect to the patents that are involved in this case say in the year 2000, would that person understand how HTML works? MR, LANE: Objection.
2 3 4 5	 Q. There is talking about the management of the creation of the A. Department's initial public relations website and the Texas media website. Q. When you say you managed the creation 	2 3 4 5	the art with respect to the patents that are involved in this case say in the year 2000, would that person understand how HTML works? MR. LANE: Objection. THE WITNESS: Well, let's see, I
2 3 4 5 6	 Q. There is talking about the management of the creation of the A. Department's initial public relations website and the Texas media website. Q. When you say you managed the creation of them, did you actually program provide 	2 3 4	the art with respect to the patents that are involved in this case say in the year 2000, would that person understand how HTML works? MR. LANE: Objection. THE WITNESS: Well, let's see, I think you have to look at what I put down in the
2 3 4 5 6 7	 Q. There is talking about the management of the creation of the A. Department's initial public relations website and the Texas media website. Q. When you say you managed the creation of them, did you actually program provide computer code for them, or did you oversee their 	2 3 4 5 6 7	the art with respect to the patents that are involved in this case say in the year 2000, would that person understand how HTML works? MR. LANE: Objection. THE WITNESS: Well, let's see, I think you have to look at what I put down in the report to be kind of precise.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	 Q. There is talking about the management of the creation of the A. Department's initial public relations website and the Texas media website. Q. When you say you managed the creation of them, did you actually program provide computer code for them, or did you oversee their content? A. With respect to the Texas Public Relations website and the initial Texas interactive website, I did the coding on that, and those are obviously generations old. Q. So you have written computer code before? A. Yes. Q. What languages have you written it in? A. HTML, Hypertext Markup Language. Q. Any other programs programming languages? A. Not for these websites. Q. Have you worked with other programming languages in other contexts? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	the art with respect to the patents that are involved in this case say in the year 2000, would that person understand how HTML works? MR. LANE: Objection. THE WITNESS: Well, let's see, I think you have to look at what I put down in the report to be kind of precise. I think that somebody back in 2000, 1999 who had ordinary skill in the art would either have a degree in electrical engineering, computer engineering, computer science or three to four years of experience in computer internet working programming, internet advertising or the equivalent to that experience. MR. GRINSTEIN: Q. And those people that you have just described with respect to their ordinary skill in the art for these patents, would those people understand how HTML works? MR. LANE: Objection. THE WITNESS: This is going to sound odd, but I don't have an answer to that question. Can you restate it because you are asking me
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 Q. There is talking about the management of the creation of the A. Department's initial public relations website and the Texas media website. Q. When you say you managed the creation of them, did you actually program provide computer code for them, or did you oversee their content? A. With respect to the Texas Public Relations website and the initial Texas interactive website, I did the coding on that, and those are obviously generations old. Q. So you have written computer code before? A. Yes. Q. What languages have you written it in? A. HTML, Hypertext Markup Language. Q. Any other programs programming languages? A. Not for these websites. Q. Have you worked with other programming languages in other contexts? A. Many, many years ago, FORTRAN 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	the art with respect to the patents that are involved in this case say in the year 2000, would that person understand how HTML works? MR. LANE: Objection. THE WITNESS: Well, let's see, I think you have to look at what I put down in the report to be kind of precise. I think that somebody back in 2000, 1999 who had ordinary skill in the art would either have a degree in electrical engineering, computer engineering, computer science or three to four years of experience in computer internet working programming, internet advertising or the equivalent to that experience. MR. GRINSTEIN: Q. And those people that you have just described with respect to their ordinary skill in the art for these patents, would those people understand how HTML works? MR. LANE: Objection. THE WITNESS: This is going to sound odd, but I don't have an answer to that question. Can you restate it because you are asking me to project what something else would know?

4 (Pages 10 to 13)

	Page 14		Page 16
1	implement the inventions that are described in these	1	question?
2	patents, would that level of skill include a knowledge	2	Q. I will give it to you again.
3	of how HTML works?	3	The process I am talking about is formatting
4	A. No.	4	raw data like text using HTML to give it a certain
5	Q. So someone could construct a system as	5	appearance.
6	described in these patents, the Function Media	6	Would it be above the level of ordinary
7	patents, without any knowledge of HTML?	7	skill in the art with respect to these patents in
8	MR. LANE: Objection.	8	the year 2000 for someone to know how to automate
9	THE WITNESS: No, that's not correct.	9	that process?
10	MR. GRINSTEIN: Q. So to construct a	10	A. Yes.
11	system that reflects the inventions of these Function	11	Q. Do you know how what the process is
12	Media patents, a person would need to know HTML?	12	whereby you enter a URL as text and that becomes a
13	A. Yes.	13	hyperlink in HTML; do you understand that process?
14	Q. Do you know how raw data like text	14	A. Yes.
15	gets formatted in HTML so that it can be displayed	15	Q. Are you aware of how someone might
16	with a certain appearance?	16	automate that process with programming?
17	A. Yes.	17	MR. LANE: Objection.
18	Q. If you wanted to automate that	18	THE WITNESS: No.
19	process, how would you do that?	19	MR. GRINSTEIN: Q. Would that process of
20	MR. LANE: Objection.	20	automating the process of converting a URL entered as
21	THE WITNESS: Let's see, I don't know	21	text into a hyperlink with HTML, would that process be
22	that you can automate that.	22	above the level of skill of one ordinary skill in the
23	MR. GRINSTEIN: Q. So would that	23	art in these patents in the year 2000?
24	process, automating the way that raw data gets formatted	24	A. Let's see, the reason I am hesitating
25	into HTML to have a certain appearance, that knowledge	25	is because I am hung up on the automation part.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 would be above, in your opinion, the level of ordinary skill for someone in these patents in the year 2000? A. No. Q. So someone in the year 2000 of ordinary skill in these patents would be able to figure out how to do that? MR. LANE: Objection. THE WITNESS: They would be able to fill out HTML source code in the year 2000, yes. MR. GRINSTEIN: Q. Would they be able to automate the process of formatting text using HTML to have a certain appearance? A. Could you repeat that? Q. The process A. I want to make sure I get this. Q. The process I am talking about is using HTML to format raw data like text data so that it can be displayed with a certain appearance. 	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Yes, I think that would be above automating HTML. Those two words don't go together for me. They don't have much meaning. HTML is a scripting language. Q. Let me talk for a second about your career after you received let's say your MBA in 1974. Where did you go to work? A. Let's see, I went to work for Church's Fried Chicken in San Antonio. Q. Doing? A. Building a site location model. Q. Then from there, where did you go? A. That's when I returned back to UT and got my degree in let's see here. I don't have my resume with me, so I will try to piece this together. After I came back to UT, then I worked for a
19 20	Are you with me on that? A. Yes.	19 20	company called Capitol National Bank in Austin for about ten years.
20	Q. The process of automating the tasks	20	Q. I am sorry, that's after you received
22	that I have just described, is that something that	22	your MBA or I am sorry, your MA in advertising in
23	someone of ordinary skill in the art for these	23	1983?
24	patents could have done in the year 2000?	24	A. No. Let's see, that was after I got
25	A. Could you repeat that real quick, the	25	my MBA.
			-

	Page 18		Page 20
1	Q. In between the MBA and the master's in	1	Village Elders?
2	advertising you worked for Capitol Bank for ten	2	A. I founded it back in my company
3	years?	3	started in 1987, I think, and then I ran that while
4	A. Capitol National Bank.	4	I was in school, and then when I graduated in '92
5	Q. What about after you got your degree	5	and I came back from a stint out here, basically
6	in advertising in '83?	6	started that company back up doing only internet
7	A. Let's see, I ran a small business,	7	work.
	which is what I do, and then I went to work for a	8	Q. You mentioned that you taught a class
8	•		
9	company called CompuAdd Corporation in Austin.	9	in UT in 1992, and today 80 to 90 percent of your
10	Q. What did CompuAdd do?	10	professional life is at UT?
11	A. Manufactured PCs. They were a	11	A. Yes.
12	competitors of Dell's.	12	Q. Did there come a point in time in
13	Q. About when did you work for CompuAdd?	13	which you transitioned between '92 and today into a
14	A. I would have to look at my resume, to	14	more active role at UT?
15	tell you the truth, the exact years.	15	A. No. It has been a full-time position
16	Q. When did you become affiliated with	16	since '92. It is a full-time slot, three courses.
17	the University of Texas, teaching or administrative	17	Q. And you teach courses. Do you also
18	capacity?	18	have administrative responsibilities at UT?
19	A. Let's see, I taught probably 1992, the	19	A. Yes.
20	summer fall of 1992.	20	Q. What are those?
21	Q. What were you teaching in '92?	21	A. I run a lab and then help monitor and
22		22	control the Texas Interactive Sequence inside the
		23	department.
23	campaigns.	24	Q. What's the Texas Interactive Sequence?
24	Q. And your current title is lecturer at		
25	UT, right?	25	A. It is a series of four courses that
<u> </u>	·····		
1	5 10		Dage 01
	Page 19		Page 21
1	A. Senior lecturer.	1	students can take on top of their normal degree to
2	A. Senior lecturer. Q. Senior lecturer?	2	students can take on top of their normal degree to give them background and training in interactive
2 3	A. Senior lecturer.Q. Senior lecturer?A. Yes.	2 3	students can take on top of their normal degree to give them background and training in interactive advertising.
2 3 4	 A. Senior lecturer. Q. Senior lecturer? A. Yes. Q. You would not be considered a 	2 3 4	students can take on top of their normal degree to give them background and training in interactive advertising. Q. What is interactive advertising?
2 3	 A. Senior lecturer. Q. Senior lecturer? A. Yes. Q. You would not be considered a "professor" at UT, would you, in the parlance of UT? 	2 3	students can take on top of their normal degree to give them background and training in interactive advertising. Q. What is interactive advertising? A. Today it includes everything that has
2 3 4	 A. Senior lecturer. Q. Senior lecturer? A. Yes. Q. You would not be considered a 	2 3 4	 students can take on top of their normal degree to give them background and training in interactive advertising. Q. What is interactive advertising? A. Today it includes everything that has a digital component to it, which spans a lot, but
2 3 4 5	 A. Senior lecturer. Q. Senior lecturer? A. Yes. Q. You would not be considered a "professor" at UT, would you, in the parlance of UT? 	2 3 4 5	 students can take on top of their normal degree to give them background and training in interactive advertising. Q. What is interactive advertising? A. Today it includes everything that has a digital component to it, which spans a lot, but primarily includes display advertising, e-mail
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6 (Pages 18 to 21)

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	Page 22		Page 24
1	digital media and another one in 2008 about how to	1	Q. Did you use it in your course work?
2	write a cover letter; is that right?	2	A. Yes.
3	A. Not how to write a cover letter. It	3	Q. I take it you have never been an
4	is that's the title. The title is Killing the	4	expert witness in a lawsuit before; is that right?
5	Cover Letter rather than how to write a cover	5	A. No, I never have.
6	letter.	6	Q. Before this case did you know anything
7	Q. Significant distinction.	7	about patents?
		E -	
8	A. There is, and in that book I encourage	8	A. Only from going through provisional
9	students not to write cover letters.	9	patents for a product that I created a long time
10	Q. So do you have any other publications?	10	ago. A little bit.
11	A. No. Those are the two.	11	Q. What happened to that patent?
12	Q. Would you say that you are familiar	12	A. Let's see, it was not a patent. It
13	with the state of the art of internet advertising as	13	was a product that I invented, and it was never
14	of the year 2000?	14	submitted as a patent.
15	A. Yes.	15	Q. Why didn't you submit it?
16	Q. As of the year 2000 can you name any	16	A. I think the attorney I talked to
17	internet advertising systems that put a seller who	17	suggested I not do that for expense.
18	wanted to advertise a service together with a	18	Q. What was the product?
19	website that wanted to run an advertisement?	19	A. It was a little device that goes in a
20	MR. LANE: Objection.	20	cigarette lighter for a car, fills the hole.
21	THE WITNESS: I can't say the name of	21	Q. Was the idea to keep the hole filled
22	the specific company, but there were ad networks	22	so nothing went in it?
23	back in the year 2000, 1999, back in there.	23	A. It was designed to encourage sort of a
24	MR. GRINSTEIN: Q. And are you aware of	24	protective device for people that don't smoke, so
25	any of those ad networks that provided some sort of a	25	they can take the cigarette lighter out and have
25	any of those at networks that provided some sort of a	25	they can take the eighter of and have
	Page 23		Page 25
1	mechanism that would format automatically a seller's ads	1	something so coins and things wouldn't fall into
1 2		1 2	
	mechanism that would format automatically a seller's ads		something so coins and things wouldn't fall into
2	mechanism that would format automatically a seller's ads to meet the design standards of the websites that were	2	something so coins and things wouldn't fall into it.
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7 (Pages 22 to 25)

	Page 26		Page 28
1	experience of persons of skill working in the field,	1	A. Let's see, back in the appendix there
2	the types of problems encountered in the art and in	2	is a listing of materials. If I can get to that
3	the prior art patents and publications, activities	3	real quick.
4	of others, the prior art solutions to the problems	4	Q. Actually it I have the appendix in
5	encountered by the inventor and sophistication of	5	separate documents.
6	the technology and the receptivity in which	6	Were you provided with some sort of written
7	inventions, innovations are made.	7	materials that you relied upon in forming your
8	Q. For one thing your report includes a	8	opinions about how the claim construction process
9	section of the level of knowledge of a person of	9	works?
10	ordinary skill in the art for these patents; is that	10	A. No.
11	right?	11	Q. It was verbal communications?
12	A. Yes.	12	A. Yes.
13	Q. How did you know that was even	13	Q. When did you first learn about these
14	relevant to put in a report about claim	14	patents?
15	construction?	15	A. I think, let's see, Jeffrey Homrig
16	A. This section?	16	called me probably a year ago and probably late
17	Q. Right.	17	January of this year is when he contacted me again,
18	A. The ordinary skill in the art?	18	and Michael Lane provided me with all of the patents
19	Q. Uh-huh.	19	in the file history.
20	A. From conversations with Michael Lane.	20	Q. How much time have you spent reviewing
21	Q. In figuring out what you needed to say	21	patents?
22	about claim construction in this process that we are	22	A. Probably well over 100 hours.
23	in, you relied on things that the lawyers from Weil,	23	Q. In preparing your report did you meet
		24	with anyone from Yahoo!?
24	Gotshal told you; is that right?	25	A. No.
25	MR. LANE: Objection.	25	A. NO.
			Dage 20
	Page 27	1	Page 29
1	We have a protective order that covers	1	Q. What about getting ready for this
2	We have a protective order that covers communications between counsel.	2	Q. What about getting ready for this deposition, did you meet with anyone from Yahoo!?
2 3	We have a protective order that covers communications between counsel. MR. GRINSTEIN: I want to get what he	2 3	Q. What about getting ready for this deposition, did you meet with anyone from Yahoo!? A. No.
2 3 4	We have a protective order that covers communications between counsel. MR. GRINSTEIN: I want to get what he relied on.	2 3 4	 Q. What about getting ready for this deposition, did you meet with anyone from Yahoo!? A. No. Q. When I say "from Yahoo!" I mean not
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2 3 4 5 6 7	We have a protective order that covers communications between counsel. MR. GRINSTEIN: I want to get what he relied on. Q. You relied on things that in forming your analysis, you relied on things that Weil, Gotshal told you?	2 3 4 5 6 7	 Q. What about getting ready for this deposition, did you meet with anyone from Yahoo!? A. No. Q. When I say "from Yahoo!" I mean not counsel from Yahoo! but somebody who works there. A. No. I am sorry. Q. In the course of your professional
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8 (Pages 26 to 29)

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	Page 30		Page 32
1	MR. LANE: Objection.	1	degrees, right?
2	THE WITNESS: Could you repeat that	2	A. No, I do not.
3	question for me to make sure	3	Q. You yourself would not satisfy
4	MR. GRINSTEIN: Q. Let me ask it again.	4	alternative 1, right?
5	Are you aware of any rules relating to claim	5	A. Correct.
6	construction that have to do with how the preferred	6	Q. The second alternative you list is
7	embodiment impacts how you construe claims?	7	someone with three to four years' experience in
8	A. No.	8	computer, internet or network programming, internet
9	Q. Do you understand the difference	9	advertising or other equivalent experience.
10	between intrinsic and extrinsic evidence?	10	Do you see that?
11	A. No.	11	A. Yes.
12	Q. And let me be clearer on that	12	Q. For someone to satisfy alternative 2,
13	question.	13	do they need to have programming experience?
14	For purposes of the claim construction	14	MR. LANE: Objection.
15	process, do you know the difference between	15	THE WITNESS: Can you sort of better
16	intrinsic and extrinsic evidence?	16	explain what you call programming experience?
17	MR. LANE: Objection.	17	MR. GRINSTEIN: Q. Sure. Say we have
18	THE WITNESS: No.	18	got somebody who has worked for three to four years as a
19	MR. GRINSTEIN: Q. Let me ask you some	19	businessperson at Google and this person is working in
20	questions about the person of ordinary skill in the art	20	the internet advertising field but they are running the
	that you talk about on page 1 of your report.	21	numbers, looking at profits and losses, running the
21	•	22	business side of the operation. They don't have
22	A. Okay.	23	anything to do with the technical side of the operation.
23	Q. Which is Exhibit 46.	23	They have three to four years of experience in internet
24	You provide two alternatives for that	25	advertising, but their experience does not relate to
25	person, right?	25	advertising, but their experience does not relate to
	Page 31		Page 3
1	Page 31	1	Page 3:
1	A. Yes.	1	computer programming.
2	A. Yes. Q. First of all, let me ask you, do you	2	computer programming. Are you with me on that hypothetical?
2 3	 A. Yes. Q. First of all, let me ask you, do you understand why it is necessary to discuss a person 	2 3	computer programming. Are you with me on that hypothetical? A. No, because what you have described is
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	Page 34		Page 36
1	that reflects the claims in the patents we are	1	A. That's correct.
2	talking about without knowing how to code?	2	Q. On the other hand, you say that you
3	MR. LANE: Objection.	3	could understand how the claims in the patents work
4	THE WITNESS: Repeat that question	4	without knowing how to do computer coding; is that
5	because I think I misunderstood you.	5	correct?
6	MR. GRINSTEIN: Q. The patents are	6	A. That's correct.
7	talking about inventions, right?	7	Q. You have got a section in your report
8	A. Yes.	8	that talks about some background on the patents and
9	Q. And you generally, having read them,	9	technology; is that right?
10	over the patents for 100 hours or so, understand the	10	A. Yes, sir.
11	inventions that the patents are claiming, correct?	11	Q. I think that starts on page 2.
12	A. Yes.	12	Is that right?
13	Q. If someone wanted to construct a	13	A. That's correct.
14	device or a system that implemented the inventions	14	Q. Now the '025 and '045 share the same
15	of the patents, could they do so if they didn't know	15	specification; isn't that right?
16	how to code?	16	A. No.
17	A. No.	17	Q. What's different between the '025 and
18	Q. So knowledge of coding is necessary in	18	'045 specification?
19	order to understand how the claims and the patents	19	A. Well, let's see, I think the best way
20	work?	20	to answer your question is to take a look at the
21	MR. LANE: Objection.	21	abstract from the '045 and the '025. The abstract
22	THE WITNESS: No. Knowledge of	22	of the '045 describes the invention as a method and
23	internet advertising is what is required to	23	apparatus that allows competing as well as
24	understand the patents.	24	complementing suppliers, vendors, service providers,
25	MR. GRINSTEIN: Q. So you couldn't	25	purveyors, and other types of sellers' internal
	Page 35		Page 37
	construct a system that reflects the inventions in the		inventory control management as well as control
2	patents without knowing how to code but you could	2	design and publication of presentations for external
3	understand the claims in the patents without knowing how	3	near real-time interactive access to buyer-centered
4	to code; is that your testimony?	4	presentations, sales, distribution and confirmation
5	A. That had two parts to it.	5	systems as well as other traditional media
	Could you repeat that? This is important.	6	advertising and outreach. That's the '045. The '025 abstract describes the invention as
	Q. Your testimony is it has two parts.		
8	I just want to make sure my two parts are right.	8	an internet advertising system and method that provides the seller self-serve control for creation,
9	You could not construct a system or device		
	that reflects the claims in the patents without	10 11	publication, and display of advertisements on internet media venues owned or controlled by
11	knowing how to code, but you could understand how		entities other than the seller in a form
12	the claims in the patents work without knowing how	12 13	automatically modified to comply with the media
13	to code; is that your testimony?		
14	MR. LANE: Objection.	14	venues' presentation rules, which may include
15	THE WITNESS: See, I am trying to	15	designer or style standards for look and feel, editorial standards, and distribution factors.
16 17	answer your question. Just give me a second here. It is important. Not to be bad about this,	16 17	Self-serve, menu-driven interfaces are provided for
	but could you I am trying to answer both parts.	17	sellers to target internet media venues, and for
		1	
18	Could you cort of run through your question	110	
19	Could you sort of run through your question	19	internet media venues to enter their presentation
19 20	just one more time? I apologize.	20	rules.
19 20 21	just one more time? I apologize. MR. GRINSTEIN: Q. Take your time.	20 21	rules. Those are two. They are not the same.
19 20 21 22	just one more time? I apologize. MR. GRINSTEIN: Q. Take your time. On the one hand you say that you could not	20 21 22	rules. Those are two. They are not the same. Q. Do you understand that a patent
19 20 21 22 23	just one more time? I apologize. MR. GRINSTEIN: Q. Take your time. On the one hand you say that you could not construct a system or a device that implements the	20 21 22 23	rules. Those are two. They are not the same. Q. Do you understand that a patent specification is that portion of the patent that is
19 20 21 22	just one more time? I apologize. MR. GRINSTEIN: Q. Take your time. On the one hand you say that you could not	20 21 22	rules. Those are two. They are not the same. Q. Do you understand that a patent

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	Page 38		Page 40
1	Q. And is all of that description the	1	drawback?
2	same in the '025 and '045 patents?	2	A. Yes, in 1999 and 2000 that is a
3	A. No.	3	drawback that both patents are trying to address.
4	Q. Look down at your own footnote 1. It	4	Q. Now do you agree that under the system
5	says, "Other than in their abstracts and claims, the	5	that is disclosed in the '025 patent the seller does
6	'025 and '045 patent specifications are essentially	6	not need to know what the media venue's guidelines
7	identical."	7	are?
8	Do you disagree with that statement?	8	MR. LANE: Objection.
9	A. No.	9	THE WITNESS: No.
10	Q. So the '025 and '045 patent	10	MR. GRINSTEIN: Q. You think the seller
11	specifications are the same, right?	11	does need to know what the media venue's guidelines are?
12	A. No. They are I mean, the language	12	A. That's correct.
13	I use in the footnote is correct. Other than the	13	Q. Do you agree that in the system that
14	abstracts in the claims, the '025 and 045 patents,	14	is disclosed in the '025 patent the seller does not
15	the specifications are essentially identical.	15	need to know how HTML works?
16	Q. Other than the abstract in the claims,	16	A. That's correct.
17	tell me the differences between the '025	17	Q. So the seller need not be able to
18	specification and the '045 specification?	18	program an HTML porting the system disclosed in the
10	A. Given the length of both of the	19	'025 patent; is that right?
20	patents, that would take quite a while.	20	A. Yes.
20		21	Q. The system that is described in the
22		22	'025 patent would take care of HTML coding for the
		23	seller, right?
23	that right here right now.	24	MR. LANE: Objection.
24	Q. When you wrote the words "essentially	25	THE WITNESS: I think the seller
25	identical," did you have some difference in mind?	2.5	
	Page 39		Page 41
1		1	inputs all of their information into the seller
	A. The two patents are different. I mean, they are two separate patents, and the		interface, and that's how they control presentation.
2		3	MR. GRINSTEIN: Q. But the does
3	language is not identical in the specifications for '045 and '025. It is not identical.	4	the what process is undertaken to convert the
4	- · - · · · · ·	5	information that is input into the interface into HTML?
5	Q. Just for simplicity's sake today, when	6	A. That's never specified.
6	we are talking about specification of the patent, I	7	Q. Is it a process that the patent or
7	am going to show you the '025 specification. If for		that the '025 patent suggests that the seller
8	some reason or another you think that the '045	8	undertakes?
9	specification is different than what I am showing	9	
10	you, let me know and we will go look at the '045.	10	
11	For simplicity's sake I am going to stick to	11	
12	the '025.	12	information into HTML, does the '025 patent suggest that the seller is undertaking that process his or
13	Is that okay?	13	
14	A. Yes, sir.	14	herself?
15	Q. Now on page 3 of your report down	15	A. No.
16	towards the bottom middle more like it, you say	16	Q. Does the in the invention disclosed
17	that, according to the '025 and '045 patents, a	17	in the '025 patent, does the seller apply the media
18	drawback to these systems you are referring to	18	venue's guidelines or does the system apply the
19	electronic advertising systems was that sellers	19	media venue's guidelines?
20	had to contract and interact individually with each	20	MR. LANE: Objection.
21	media venue to place a presentation.	21	THE WITNESS: Let's see.
22	Do you see that?	22	Could you repeat that question real quick so
23	A. Yes, I see that.	23	I can find my reference in the report because this
24	Q. Do you agree that as to the prior art	24	is pretty important?
25	systems that existed as of 2000 that was in fact a	25	MR. GRINSTEIN: Q. I understand. The
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11 (Pages 38 to 41)

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	Page 42		Page 44
1	invention disclosed in the '025 patent, pursuant to that	1	by the sellers is going to need to have HTML markup
2	invention does the seller apply the media venue's	2	or some other scripting markup applied to it; isn't
3	guidelines or does the computer system apply the media	3	that right?
4	venue's guidelines?	4	A. Nowhere in the patents does it get
5	A. One more time, if you can repeat the	5	that specific. I mean, I can't think of I don't
			•
6	question, so I can get it right.	6	know how to answer your question any other way.
7	Q. With respect to the invention that is	7	Q. You agreed with me earlier the
8	disclosed in the '025 patent, does the seller apply	8	patents the system contemplated by the '025
9	the media venue's guidelines or does the computer	9	patent does not require the seller to need to know
10	systems of the invention apply the media venue's	10	how to program an HTML?
11	guidelines?	11	A. Right.
12	A. Let me see if I can find the exact.	12	Q. Say internet media venue's guidelines
13	Sorry, one more time if you don't mind.	13	are "I want my text ads in blue." Let's say that's
14	Q. The invention disclosed in the '025	14	the guidelines for the internet media venue, "I want
15	patent, pursuant to that invention, does the seller	15	blue."
16	apply media venue's guidelines or does the computer	16	The seller inputs an ad "Eat at Joe's." If
17	system of the invention apply media venue's	17	the seller doesn't know how doesn't need to know
18	guidelines?	18	how to do the HTML markup to turn "Eat at Joe's"
	5		
19	A. The seller applies the internet media	19	into blue text, where does that markup get done?
20	venue's guidelines at the seller interface.	20	A. Well, let's see, that takes place at
21	Q. How can the seller apply the	21	the seller interface.
22	guidelines if the seller does not necessarily	22	Q. So there is some process operating at
23	know need to know how to program a HTML?	23	the seller interface that converts the text entry
24	A. Well, let's see, I think that sort of	24	"Eat at Joe's" into blue text to be sent to the
25	strikes the self-serve, the mention of the invention	25	internet media venue; is that your testimony?
1			
	Page 43		Page 45
1	5	1	Page 45 A. Well, the seller meets the media
1 2	itself. Let me drop so I can be precise on this.	1	-
2	itself. Let me drop so I can be precise on this. My response in the report on page 33 which		A. Well, the seller meets the media
2 3	itself. Let me drop so I can be precise on this. My response in the report on page 33 which talks about self-serve interface, back in 2000	2 3	A. Well, the seller meets the media venue's guidelines, and that takes place at the seller interface.
2 3 4	itself. Let me drop so I can be precise on this. My response in the report on page 33 which talks about self-serve interface, back in 2000 anybody of sort of ordinary skill in the art would	2 3 4	 A. Well, the seller meets the media venue's guidelines, and that takes place at the seller interface. Q. But what I am asking you is how does
2 3 4 5	itself. Let me drop so I can be precise on this. My response in the report on page 33 which talks about self-serve interface, back in 2000 anybody of sort of ordinary skill in the art would have understood that self-serve interface is where	2 3 4 5	 A. Well, the seller meets the media venue's guidelines, and that takes place at the seller interface. Q. But what I am asking you is how does the seller convert he has typed into a box "Eat
2 3 4 5 6	itself. Let me drop so I can be precise on this. My response in the report on page 33 which talks about self-serve interface, back in 2000 anybody of sort of ordinary skill in the art would have understood that self-serve interface is where that takes place.	2 3 4 5 6	 A. Well, the seller meets the media venue's guidelines, and that takes place at the seller interface. Q. But what I am asking you is how does the seller convert he has typed into a box "Eat at Joe's."
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12 (Pages 42 to 45)

	AND R	1	
	Page 46	1	Page 48
1	look through here and give you the right answer.	1	computer system through which a seller is prompted
2	Q. Would it be helpful if I showed you	2	to input information to select one or more of the
3	the patent?	3	internet media venues in the claims of the '025
4	A. No. Everything I need is in here.	4	patent to mean software and hardware at the seller's
5	One more time, can you repeat your question?	5	location through which the seller is prompted to
6	I am trying to hone in on the right answer.	6	enter information to a computer system to enable the
7	Q. You have identified that the seller	7	seller to select one or more of the internet media
8	interface will provide HTML markup or add scripting	8	venues.
9	to information that is input by the seller, so I am	9	Q. You can't give me a more specific
10	asking you which portion of the seller's interface	10	answer to my question at this time?
11	that is identified in the patent, which program,	11	MR. LANE: Objection.
12	subroutine, whatever is responsible for doing that?	12	THE WITNESS: I can read this because
13	A. Well, let's see	13	there are two things going on where there is an
14	Q. Let me withdraw the question. Let me	14	interface and then the seller is being prompted for
15	show you Plaintiff's Exhibit 48.	15	information, and that's the question you are asking,
16	(Whereupon Exhibit 48 was marked for	16	I think.
17	identification.)	17	MR. GRINSTEIN: Q. If I were to read
17	Q. Plaintiff's Exhibit 48 looks like it	17	through your report, somewhere in your report it would
19	•	19	tell me which of the designated sections in Figure 2c is
20	is the '025 patent, right? A. Yes, sir.	20	responsible for adding HTML markup or some other
20	•	20	scripting language to information input by the seller?
22	Q. You have reviewed the '025 patent before, right?	22	A. No, because that's not a definite
22	• =	22	thing. I mean, there is no the Figure 2c that
	A. Yes, I have.		
24 25	Q. Turn with me to Figure 2c. Figure 2c	24 25	you reference in the patent is on page 18, so we can
25	is labeled Seller Interface, right?	25	flip over to that.
			N 1
			D
1	Page 47	1	Page 49
1	A. Yes, it is.	1	Do you mind?
2	A. Yes, it is.Q. My question is, looking at Figure 2c,	2	Do you mind? Q. Page 18 of your report?
2 3	 A. Yes, it is. Q. My question is, looking at Figure 2c, which portion of the seller interface that is 	2 3	Do you mind? Q. Page 18 of your report? A. Yes, sir.
2 3 4	 A. Yes, it is. Q. My question is, looking at Figure 2c, which portion of the seller interface that is identified in this figure is responsible for 	2 3 4	Do you mind? Q. Page 18 of your report? A. Yes, sir. That's the seller's interface which is where
2 3 4 5	 A. Yes, it is. Q. My question is, looking at Figure 2c, which portion of the seller interface that is identified in this figure is responsible for formatting with HTML or any other sort of language 	2 3 4 5	Do you mind? Q. Page 18 of your report? A. Yes, sir. That's the seller's interface which is where the seller inputs all of information and selects
2 3 4 5 6	A. Yes, it is. Q. My question is, looking at Figure 2c, which portion of the seller interface that is identified in this figure is responsible for formatting with HTML or any other sort of language the information that is input by the seller into the	2 3 4 5 6	Do you mind? Q. Page 18 of your report? A. Yes, sir. That's the seller's interface which is where the seller inputs all of information and selects media venues and inputs information that matches up
2 3 4 5 6 7	A. Yes, it is. Q. My question is, looking at Figure 2c, which portion of the seller interface that is identified in this figure is responsible for formatting with HTML or any other sort of language the information that is input by the seller into the interface?	2 3 4 5 6 7	Do you mind? Q. Page 18 of your report? A. Yes, sir. That's the seller's interface which is where the seller inputs all of information and selects media venues and inputs information that matches up with the internet media venue's rules.
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13 (Pages 46 to 49)

		·	
	Page 50		Page 52
1	(Break taken.)	1	Q. And if you compare that with Figure
2	VIDEO OPERATOR: We are back on the	2	4 or 2c, excuse me, there is no Presentation
3	record at 10:27. This is the end of Volume I,	3	Generation Program depicted in Figure 2c, the seller
4	videotape No. 1, in the deposition of Gene Kincaid.	4	interface, right?
		5	A. It is not in those exact words, no.
5	We are going off the record.		
6	The time is 10:27.	6	Let me see, Presentation Generation Program is not
7	(Break taken.)		in 2c.
8	VIDEO OPERATOR: We are back on the	8	Q. And 2c is the seller interface, right?
9	record. This is the beginning of Volume I,	9	A. Yes, sir.
10	videotape 2 in the deposition of Gene Kincaid.	10	Q. Flip with me on the '025 patent to
11	The time is 10:46.	11	column 44, and I am interested in line starting
12	MR. GRINSTEIN: Q. Mr. Kincaid, let me	12	at line 36.
13	ask you questions about Figure 2c in the '025 patent.	13	Are you with me?
14	A. Let me find that in my report. That	14	A. Yes.
15	would be easier for me to reference.	15	Q. It says right there, The Presentation
16	Q. I am going to be flipping between some	16	Generation Program 1710 and that's the same 1710
17	figures. I think you might want to be in the	17	that we were just looking at in the central
18	patent.	18	controller, right?
19	A. Let me find it in my report first so I	19	A. Right.
20	can orient myself.	20	Q the Presentation Generation Program
	-	21	1710, using the information contained within the
21		22	Presentation Rules Database 1650, then formats the
22	A. 2c?		
23	Q. 2c.	23	presentation information for each client outlet,
24	A. Okay. I am on track with you.	24	channel, resident media or non-resident media
25	Q. Figure 2c is the seller interface,	25	(blocks 1130, 11294).
	Page 51		Page 53
1	right?		Do you see that?
2	right? A. Yes.	2	Do you see that? A. Yes.
2 3	right? A. Yes. Q. And that is the interface that people	2 3	Do you see that? A. Yes. Q. So it is the Presentation Generation
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	Page 54		Page 56
1	A. I do.	1	understand the language you are pointing to. My
2	Q. The Presentation Generation Program is	2	understanding of everything we are talking about,
3	responsible for creating the entirety of new	3	the claims if you go back to let me take a
4	presentations; isn't that right?	4	look here.
5	MR. LANE: Objection.	5	My understanding of the seller interface
6	THE WITNESS: No, that's not correct.	6	based on patents and sort of everything that is
7	MR. GRINSTEIN: Q. Well, tell me why	7	contained in here is that that's where the
8	that line in the specification is not correct?	8	presentations are created.
9	A. Well, if you take this patent as a	9	MR. GRINSTEIN: Q. Then how could is
10	whole, the creation process takes place, as you	10	it just the inventor of the patent wrote this wrong and
11	pointed out, in Figure 2c. That's where the seller	11	new presentations are not created in their entirety by
12	inputs information, and that's where the ads are	12	the Presentation Generation Program?
13	created.	13	MR. LANE: Objection.
14	Q. You agree with me that the	14	THE WITNESS: I am not sure why they
15	Presentation Generation Program does not reside at	15	wrote that. Obviously it wasn't there, but my
16	Figure 2c, right?	16	understanding of the seller's interface is that's
17	A. That's correct. It is named	17	where the sellers input information, and that's
18	differently in 2c. It is named the Presentation and	18	where the media internet internet media IMV's
19	Configuration Program, which is unclear about what	19	rules are applied, and that's the point of ad
20	that is.	20	creation or the presentation creation, I am
21	Q. Your testimony is that the	21	sorry.
22	Presentation Generation Program is the same thing as	22	MR. GRINSTEIN: Q. If presentations are
23	the Presentation and Configuration Program?	23	created at the seller interface, according to your
24	MR. LANE: Objection.	24	testimony, do you have any explanation as to what it
25	THE WITNESS: No, they are not the	25	means in column 44, line 40, when the patent says "new
	Page 55		Page 57
1	same.	1	presentations are created in their entirety by the
2	same. MR. GRINSTEIN: Q. Let's go back to	2	presentations are created in their entirety by the Presentation Generation Program"?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	same. MR. GRINSTEIN: Q. Let's go back to column 44 then. When it says "new presentations are created in their entirety," that doesn't leave out the possibility that presentations are being created anywhere else, does it? MR. LANE: Objection. THE WITNESS: Say that one more time. MR. GRINSTEIN: Q. That was a double negative. A. I am sorry, I am Q. "New presentations are created in their entirety by the Presentation Generation Program." That's what it is saying in column 44, right? A. That's what it says. Q. If new presentations are being created in their entirety by the Presentation Generation Program that does not exist at the seller's interface, then it is true the presentations are not	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21	presentations are created in their entirety by the Presentation Generation Program"? MR. LANE: Objection. THE WITNESS: No. MR. GRINSTEIN: Q. What portions of the specification lead you to the conclusion that new presentations are created at the seller interface? A. Well, let's see, let me find hang on one second. Q. Let me withdraw that. I will come at it a different way. A. I am sorry. Q. The line that I just asked you about, the "new presentations are created in their entirety," do you think that that line is inconsistent with the rest of the specification? MR. LANE: Objection. THE WITNESS: Yes. MR. GRINSTEIN: Q. Let me ask you to turn to column 17 starting at line 51. Are you with me on column 17?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	same. MR. GRINSTEIN: Q. Let's go back to column 44 then. When it says "new presentations are created in their entirety," that doesn't leave out the possibility that presentations are being created anywhere else, does it? MR. LANE: Objection. THE WITNESS: Say that one more time. MR. GRINSTEIN: Q. That was a double negative. A. I am sorry, I am Q. "New presentations are created in their entirety by the Presentation Generation Program." That's what it is saying in column 44, right? A. That's what it says. Q. If new presentations are being created in their entirety by the Presentation Generation Program that does not exist at the seller's interface, then it is true the presentations are not being created at the seller's interface, right?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	presentations are created in their entirety by the Presentation Generation Program"? MR. LANE: Objection. THE WITNESS: No. MR. GRINSTEIN: Q. What portions of the specification lead you to the conclusion that new presentations are created at the seller interface? A. Well, let's see, let me find hang on one second. Q. Let me withdraw that. I will come at it a different way. A. I am sorry. Q. The line that I just asked you about, the "new presentations are created in their entirety," do you think that that line is inconsistent with the rest of the specification? MR. LANE: Objection. THE WITNESS: Yes. MR. GRINSTEIN: Q. Let me ask you to turn to column 17 starting at line 51. Are you with me on column 17? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	same. MR. GRINSTEIN: Q. Let's go back to column 44 then. When it says "new presentations are created in their entirety," that doesn't leave out the possibility that presentations are being created anywhere else, does it? MR. LANE: Objection. THE WITNESS: Say that one more time. MR. GRINSTEIN: Q. That was a double negative. A. I am sorry, I am Q. "New presentations are created in their entirety by the Presentation Generation Program." That's what it is saying in column 44, right? A. That's what it says. Q. If new presentations are being created in their entirety by the Presentation Generation Program that does not exist at the seller's interface, then it is true the presentations are not being created at the seller's interface, right? MR. LANE: Objection.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	presentations are created in their entirety by the Presentation Generation Program"? MR. LANE: Objection. THE WITNESS: No. MR. GRINSTEIN: Q. What portions of the specification lead you to the conclusion that new presentations are created at the seller interface? A. Well, let's see, let me find hang on one second. Q. Let me withdraw that. I will come at it a different way. A. I am sorry. Q. The line that I just asked you about, the "new presentations are created in their entirety," do you think that that line is inconsistent with the rest of the specification? MR. LANE: Objection. THE WITNESS: Yes. MR. GRINSTEIN: Q. Let me ask you to turn to column 17 starting at line 51. Are you with me on column 17? A. Yes. Q. Line 51 starts, "The Presentation
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	same. MR. GRINSTEIN: Q. Let's go back to column 44 then. When it says "new presentations are created in their entirety," that doesn't leave out the possibility that presentations are being created anywhere else, does it? MR. LANE: Objection. THE WITNESS: Say that one more time. MR. GRINSTEIN: Q. That was a double negative. A. I am sorry, I am Q. "New presentations are created in their entirety by the Presentation Generation Program." That's what it is saying in column 44, right? A. That's what it says. Q. If new presentations are being created in their entirety by the Presentation Generation Program that does not exist at the seller's interface, then it is true the presentations are not being created at the seller's interface, right?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21 22	presentations are created in their entirety by the Presentation Generation Program"? MR. LANE: Objection. THE WITNESS: No. MR. GRINSTEIN: Q. What portions of the specification lead you to the conclusion that new presentations are created at the seller interface? A. Well, let's see, let me find hang on one second. Q. Let me withdraw that. I will come at it a different way. A. I am sorry. Q. The line that I just asked you about, the "new presentations are created in their entirety," do you think that that line is inconsistent with the rest of the specification? MR. LANE: Objection. THE WITNESS: Yes. MR. GRINSTEIN: Q. Let me ask you to turn to column 17 starting at line 51. Are you with me on column 17? A. Yes.

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	Page 58		Page 60
1	media or venues as well as the presentation of their	1	media."
2	products, goods, or services offered to the buyers.	2	Do you see that?
3	This information is a majority of the data that,	3	A. I do see that.
4	when combined with portions of the information	4	Q. Again, that's saying Presentation
5	within the seller database 1630 and the Presentation	5	Generation Program creates the ads, right?
6	Rules Database 1650 and processed through the	6	MR. LANE: Objection.
7	Presentation Generation Program 1710, creates the	7	THE WITNESS: That's not correct.
8	presentations that are transmitted to the Central	8	MR. GRINSTEIN: Q. Explain to me how
9	Presentation and Selection Server 2000 for	9	that line doesn't say that the Presentation Generation
10	presentation to the buyer or to other non-residents	10	Program is creating the ads?
11	media to be published."	11	A. That specific line does say that, but
12	Do you see that?	12	that's not consistent at all with my understanding
13	A. I do see that.	13	of this whole invention.
14		14	Q. I have just read you three
		15	specification sections that talk about the
15	the Presentation Generation Program 1710 that is	16	Presentation Generation Program creating the ads.
16	creating the ad, right?	17	In light of what I've read you, are you
17	MR. LANE: Objection.	18	reconsidering where the ads are created?
18	THE WITNESS: That's the claim.	19	MR. LANE: Objection.
19	That's the language in the specification.		THE WITNESS: No. The ads are
20	MR. GRINSTEIN: Q. And you think that's	20	
21	inconsistent with the rest of the specification too,	21	created at the seller interface.
22	right?	22	MR. GRINSTEIN: Q. In any of the lines
23	MR. LANE: Objection.	23	that I've just read you from the specification from
24	THE WITNESS: Let's see, this is	24	column 17, from column 18, or from column 44, did any of
25	what you've just read is not correct.	25	them mention the seller interface?
	Page 59		Page 61
1	MR. GRINSTEIN: Q. I read it incorrectly	1	A. No.
2	or it is describing the invention incorrectly?	2	Q. So how is it that you can say that the
3	A. Well, let's see, if you will be a	3	seller interface creates the ads when I've just read
4	little more specific when you are talking about the	4	you multiple specification citations that talk about
5	invention, I am used to dealing with the claims and	5	ad creation and never mention the seller interface?
6	trying to define those claims.	6	MR. LANE: Objection.
7	Q. The specification is describing an	7	THE WITNESS: Can you be a little
8	invention, right?	8	more specific in terms of which of the claims you
9	A. Yes.	9	are pointing to so I can respond to that question?
10	Q. Does are the lines that I just read	10	MR. GRINSTEIN: Q. Well, I am not asking
11	you inconsistent with the invention that is being	11	you about claims right now. I am asking you about the
12	described in the specification?	12	invention that is discussed in the specification.
13	MR. LANE: Objection.	13	You have read the specification, correct?
14	THE WITNESS: They that's not	14	A. Yes, I have.
15	consistent with my understanding of where the	15	MR. LANE: Objection.
	presentations are created.	16	MR, GRINSTEIN: Q. How is it how can
1 10		1	it be, in your view, that the seller interface creates
16 17		17	it be, in your view, that are benefit interface of earbo
17	MR. GRINSTEIN: Q. Let me read you	1/	the presentations when I have just read to you multiple
17 18	MR. GRINSTEIN: Q. Let me read you another line.		the presentations when I have just read to you multiple citations from the specification that talk about the
17 18 19	MR. GRINSTEIN: Q. Let me read you another line. Column 18, line 24, are you with me?	18	the presentations when I have just read to you multiple citations from the specification that talk about the
17 18 19 20	MR. GRINSTEIN: Q. Let me read you another line. Column 18, line 24, are you with me? A. Yes.	18 19	the presentations when I have just read to you multiple
17 18 19 20 21	MR. GRINSTEIN: Q. Let me read you another line. Column 18, line 24, are you with me? A. Yes. Q. "The Presentation Generation Program	18 19 20	the presentations when I have just read to you multiple citations from the specification that talk about the Presentation Generation Program creating the ads or the
17 18 19 20 21 22	MR. GRINSTEIN: Q. Let me read you another line. Column 18, line 24, are you with me? A. Yes. Q. "The Presentation Generation Program 1710 in conjunction with the Presentation Database	18 19 20 21 22	the presentations when I have just read to you multiple citations from the specification that talk about the Presentation Generation Program creating the ads or the presentations and never mention the seller interface? How can that be?
17 18 19 20 21 22 23	MR. GRINSTEIN: Q. Let me read you another line. Column 18, line 24, are you with me? A. Yes. Q. "The Presentation Generation Program 1710 in conjunction with the Presentation Database 1640 then creates the new or updated presentations	18 19 20 21 22 23	the presentations when I have just read to you multiple citations from the specification that talk about the Presentation Generation Program creating the ads or the presentations and never mention the seller interface? How can that be? A. Well, let's see, again, this goes back
17 18 19 20 21 22	MR. GRINSTEIN: Q. Let me read you another line. Column 18, line 24, are you with me? A. Yes. Q. "The Presentation Generation Program 1710 in conjunction with the Presentation Database	18 19 20 21 22	the presentations when I have just read to you multiple citations from the specification that talk about the Presentation Generation Program creating the ads or the presentations and never mention the seller interface? How can that be?

16 (Pages 58 to 61)

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	Page 62		Page 64
1	pages let me get this right, let me find the	1	Presentation Generation Program creating the ad?
2	section in my report that addresses that issue, if	2	MR. LANE: Objection.
3	you don't mind.	3	THE WITNESS: No. The seller through
4	To respond to your question, I think if you	4	the seller's interface is where the ad is created.
5	look on page 51 of my report, I am going back to the	5	MR. GRINSTEIN: Q. The seller interface
6	claim that in simple language discloses that what	6	is where the seller inputs information that is then used
7	we are talking about. If you look at the section	7	to create the ad, right?
8	that is highlighted just below E, it talks about	8	MR. LANE: Objection.
9	whereby the seller may select one or more of the	9	THE WITNESS: That's where the seller
10	media venues, create a presentation that complies	10	inputs information that is matched up to the IMV's
11	with the said guidelines, the media venues selected	11	presentation rules.
12	and transmit the presentation to the selected media	12	MR. GRINSTEIN: Q. And what portion of
13	venue's publication.	13	the invention matches does the matching?
14	That's the best response I can give you.	14	It is the Presentation Generation Program,
15	The seller is where the creation process takes	15	right?
16	place.	16	MR. LANE: Objection.
17	Q. That line you just read doesn't say	17	THE WITNESS: It is the entire seller
18	the seller interface creates the ads, does it?	18	interface that does that, and it is made up of two
19	MR. LANE: Objection.	19	parts, software and hardware.
20	THE WITNESS: No, it is the seller	20	MR. GRINSTEIN: Q. You have had a chance
21	through the seller interface.	21	to look through your report. Tell me one place in the
22	MR. GRINSTEIN: Q. Where does it say	22	specification where it says the seller interface does
23	through the seller interface?	23	the matching between the information that is input by
24	A. Let's see, I think you have to go back	24	the seller and the internet media guidelines.
25	to let me find it real quick.	25	MR. LANE: Objection.
		1	
	Page 63		Page 65
1	Page 63 O. Well, actually, let me withdraw the	1	
1	Q. Well, actually, let me withdraw the	1	THE WITNESS: Well, let's see, you
2	Q. Well, actually, let me withdraw the question and ask it clearly. Perhaps you did not	2	THE WITNESS: Well, let's see, you can take a look at page 49 of my report where it
2 3	Q. Well, actually, let me withdraw the question and ask it clearly. Perhaps you did not understand.	2 3	THE WITNESS: Well, let's see, you can take a look at page 49 of my report where it talks about the means for applying corresponding
2 3 4	Q. Well, actually, let me withdraw the question and ask it clearly. Perhaps you did not understand. Where does it say in claim 1 of the '025	2 3 4	THE WITNESS: Well, let's see, you can take a look at page 49 of my report where it talks about the means for applying corresponding guidelines.
2 3 4 5	Q. Well, actually, let me withdraw the question and ask it clearly. Perhaps you did not understand. Where does it say in claim 1 of the '025 that the seller interface creates the ads?	2 3 4 5	THE WITNESS: Well, let's see, you can take a look at page 49 of my report where it talks about the means for applying corresponding guidelines. MR. GRINSTEIN: Q. Yes.
2 3 4 5 6	Q. Well, actually, let me withdraw the question and ask it clearly. Perhaps you did not understand. Where does it say in claim 1 of the '025 that the seller interface creates the ads? MR. LANE: Objection.	2 3 4 5 6	THE WITNESS: Well, let's see, you can take a look at page 49 of my report where it talks about the means for applying corresponding guidelines. MR. GRINSTEIN: Q. Yes. A. It talks about my report says
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2 3 4 5 6 7 8 9 10 11 12 13	Q. Well, actually, let me withdraw the question and ask it clearly. Perhaps you did not understand. Where does it say in claim 1 of the '025 that the seller interface creates the ads? MR. LANE: Objection. MR. GRINSTEIN: I am asking you about the claim language in claim 1 of the '025, which you were just pointing to. MR. LANE: Objection. THE WITNESS: Let's see, the seller interface doesn't create the ad. The seller creates the interface is how the seller interacts	2 3 4 5 6 7 8 9 10 11 12 13	THE WITNESS: Well, let's see, you can take a look at page 49 of my report where it talks about the means for applying corresponding guidelines. MR. GRINSTEIN: Q. Yes. A. It talks about my report says and this is true on the ordinary "one of ordinary skill in the art at the time the '045 patent was filed in 2000 would have understood that the structure corresponding to that function is set forth in the specification at Figure 2c and the '025 patent at 25:12-27, 25:34-36, 26:49-60, and 27:1-34."
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17 (Pages 62 to 65)

1 wenue to control and limit the style and editing of 2 the presentations, and then the Presentation and 3 Configuration Program which didn't really have any 4 structural description. 1 MR. GRINSTEIN: Fair enough, as 2 amended on February 27, 2009. 3 Q. Does the Presentation Generation 6 program create ads, "yes" or "no"? Q. Lawe you seen Exhibit B before? 4 MR. GRINSTEIN: Q. Let me ask the 10 case, at least as far as you know, Exhibit B lays 11 question again. 1 MR. GRINSTEIN: Q. Let me ask the 10 case, at least as far as you know, Exhibit B lays 11 out what Function Media says that claim term show, Exhibit B lays 11 out what Function Media says that claim term show, Exhibit B lays 11 out what Function Media says that claim term show, Exhibit B lays 11 out what Function Media says that claim term show, Exhibit B lays 11 out what Function Media says that claim term show, Exhibit B lays 11 out what Function Media says that claim terms in this case, 12 mean and it lays out what Google or Yahool claim 13 say that that claim terms in this case, 14 A. That's the purpose of the document. 15 looking at because I am looking at claim 1 of the 16 interface is where the creation program greates place. 17 for the daim synther specific in sort of the claim yunderstanding of 18 interface is where the creation program creates presentations? 19 for the claim stat have been asserted in this case by 19 function Media, any of them, does the Presentation forgram creates 17 presentations? 1 Q. Go to 27. The term in dispute is 12 multish the advertisement to the internet media 13 stalking about. 10 would say that 1 meally don't know. I honestly 10 would say that 1 meally don't know. I honestly 10 would say that 1 meally don't know. I honestly 10 would say	E .	Page 66		Page 68
2 the presentations, and then the Presentation and 3 2 armended on February 27, 2009. 3 Configuration Program which didn't really have any 4 3 Q. Have you seen Exhibit B before? 4 A. Yes. Let me - I will make sure it is 5 all there. 5 Q. Does the Presentation Generation 6 program create ads, 'yes'' or 'no?'? 6 Yes, except for color and format, I have 7 7 MR. LANE: Objection. 10 MR, CRINSTEIN: Q. Let me ask the 11 11 Does the Presentation Generation Program 13 12 Does the Presentations? 14 We can use either. 15 Does the Presentations? 16 MR. LANE: Objection. 17 THE WITNESS: Let's see, can you be a looking at because I am looking at claim 1 of the 20 18 little more specific in sort of the claim you are 10 low can refer back to it so you wont what each side 20 23 MR. CRINSTEIN: Q. With respect to any 24 of the claims that have been asserted in this case 25 26 MR. CRINSTEIN: Q. Then why do you think 3 The WITNESS: No. 29 MR. CRINSTEIN: Q. Then why do you think 3 The WITNESS: No. 2 MR. CRINSTEIN: Q. Then wh	1	· –	1	
4 structural description. 4 A. Yes. Let me - I will make sure it is 5 Q. Does the Presentation Generation 5 all there. 7 MR. LANE: Objection. 7 8 THE WITNESS: The seller's interface 9 2.5 except for color and format, I have 9 creates the ads. 0 Just so we are clear, what this is for 10 MR. GRINSTEIN: Q. Let me ask the 10 out what Function Media says that claim term should them should them says that claim term should them says that claim terms in this case, at least as far as you know, Exhibit B lays 12 Does the Presentation Generation Program 13 say that that claim terms inding task you a lot of 16 MR. LANE: Objection. 15 Q. I am going to ask you a lot of 18 little more specific in sort of the claim you are 18 however you want to call it, out in front of you so 18 interface is where the creation process takes place. 18 The WITNESS: No. 18 20 MR. CANNSTEIN: Q. With respect to any 25 Function Media, any of them, does the Presentations? 2 2 MR. CANNSTEIN: Q. Then why do you think 4 A. Yes. 2 2 MR. CANNSTEIN: Q	2		2	amended on February 27, 2009.
5Q. Does the Presentation Generation6program create ads, "yes" or "no"?7MR. LANE: Objection.8THE WITNESS: The seller's interface9creates the ads.10MR. GRINSTEIN: Q. Let me ask the11question again.12Does the Presentation Generation Program13create ads or presentations?14We can use either.15Does it create ads or presentations?16MR. KLANE: Objection.17THE WITNESS: Let's see, can you be a18little more specific in sort of the claim you are19looking at because 1 am looking at claim 1 of the20Ots, and that's my reading and my understanding of21there diams that have been asserted in this case by23MR. (RINSTEIN: Q. With respect to any24of the claims that have been asserted in this case by25Function Media, any of them, does the Presentations?26MR. LANE: Objection.3THE WITNESS: No.4MR. GRINSTEIN: Q. Then why do you think4the specification, all those clations 1 just read to5MR. LANE: Objection.6you, say the Presentation Generation Program create presentations?7MR. CRINSTEIN: Q. Iwant to talk to you8MR. CRINSTEIN: Q. Iwant to talk to you9MR. CRINSTEIN: Q. Iwant to talk to you14about some of constructions that you wrote a report15MR. CRINSTEIN: Q. Iwant to talk to you16You, say t	3	Configuration Program which didn't really have any	3	Q. Have you seen Exhibit B before?
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7 MR. LANE: Objection. 7 seen it before. 8 THE WITNESS: The seller's interface Q. Just so we are clear, what this is for 9 all the claims terms that are in dispute in this 10 MR. GRINSTEIN: Q. Let me ask the all the claims terms that are in dispute in this 11 question again. create ads or presentations? all the claims terms that claim term shot 12 Does it create ads or presentations? 14 We can use either. 13 14 We can use either. 13 say that that claim term means, right? 14 We can use either. 14 A. That's the purpose of the document. 15 Does it create ads or presentations? 16 questions about different claim terms in this case, so we are going to keep Exhibit 8 or Exhibit 4.9 16 MR. LANE: Objection. 18 however you want to call it, out in front of you so we can refer back to it so you know what each sid is taking about. 11 the eatims that have been asserted in this case by 10 the fore claim store are going to claim to ask you about is in the first one I want to ask you about is in 12 interface is where the creation process takes place. 11 The WITNESS: No. 16 Generations, any of them	5	Q. Does the Presentation Generation	5	all there.
8 THE WITNESS: The seller's interface 8 Q. Just so we are clear, what this is for 9 creates the ads. 9 all the claims terms that are in dispute in this 10 MR, GRINSTEIN: Q. Let me ask the 9 all the claims terms that are in dispute in this 11 Does the Presentation Generation Program case, at least as far as you know, Exhibit B lays that claim term shot 12 Does the Presentations? 10 out what Function Media says that claim term shot 14 We can use either. 11 and that so out what Google or Yahool claim 15 Does it create ads or presentations? 14 A. That's the purpose of the document. 16 MR. LANE: Objection. 15 questions about different claim terms in this case, by 16 MR. GRINSTEIN: Q. With respect to any 10 the entire patent clearly indicates that that seller 11 interface is where the creation process takes place. 12 The first one I want to ask you about is in 12 MR. GRINSTEIN: Q. With respect to any 24 Function Media, any of them, does the Presentation 12 MR. GRINSTEIN: Q. Then why do you think 5 Page 67 1 Generation Program create presentations Fiers one	6	program create ads, "yes" or "no"?	6	Yes, except for color and format, I have
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10 MR. GRINSTEIN: Q. Let me ask the 11 question again. 10 case, at least as far as you know, Exhibit B lays out what Function Media says that claim term shou create ads or presentations? 11 Does the Presentation Generation Program create ads or presentations? 10 case, at least as far as you know, Exhibit B lays out what Function Media says that claim term shou mean and it lays out what Google or Yahool claim say that that claim term means, right? 14 We can use either. 10 case, at least as far as you know, Exhibit B lays out what Function Media says that claim term shou mean and it lays out what Google or Yahool claim say that that claim term means, right? 15 Does it create ads or presentations? 0 I am going to ask you a lot of 16 questions about different claim terms in this case by booking at because I am looking at claim 1 of the 10 so we are going to keep Exhibit B or Exhibit 49. 10 the claim stat seller 17 so we are going to keep Exhibit B, there are 12 12 MR. GRINSTEIN: Q. With respect to any Function Media, any of them, does the Presentation 12 14 25 16 guestions about difference numbers. 25 A. Yes. 25 16 guestions about difference numbers. 25 A. Yes. 2 MR. GRINSTEIN: Q. Then why do you think fot he spatcington, all th	8	THE WITNESS: The seller's interface	8	Q. Just so we are clear, what this is for
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12 Does the Presentation Generation Program 12 mean and it lays out what Google or Yahoo! claim 13 create ads or presentations? say that that claim term means, right? 14 We can use either. 13 15 Does it create ads or presentations? A. That's the purpose of the document. 16 MR. LANE: Objection. 14 17 THE WITNESS: Let's see, can you be a 15 19 looking at because I am looking at claim 1 of the 16 20 Yet, and that's my reading and my understanding of 18 21 mean and it lays out what Google or Yahoo! claim 23 mean and it lays out what Google or Yahoo! claim 24 the entire patent clearly indicates that that seller 25 Function Media, any of them, does the Presentation 19 26 MR. CRINSTEIN: Q. With respect to any 24 27 MR. CRINSTEIN: Q. Then why do you think 4 3 THE WITNESS: No. 2 4 MR. CRINSTEIN: Q. Then why do you think 4 5 he specification, all those citations I just read to 7 7 presentations? 9	10	MR. GRINSTEIN: Q. Let me ask the	10	
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14 We can use either. 14 A. That's the purpose of the document. 15 Does it create ads or presentations? Q. I am going to ask you a lot of 16 MR. LANE: Objection. 16 17 THE WITNESS: Let's see, can you be a 17 18 little more specific in sort of the daim you are 16 19 looking at because I am looking at claim 1 of the 17 20 interface is where the creation process takes place. 18 21 interface is where the creation process takes place. 18 23 MR. GRINSTEIN: Q. With respect to any 24 24 Function Media, any of them, does the Presentation? 25 2 MR. LANE: Objection. 25 3 THE WITNESS: No. 4 4 MR. GRINSTEIN: Q. Then why do you think 5 5 mode and the really don't know. I honestly 26 6 you, say the Presentation Generation Program create presentations? 2 7 MR. GRINSTEIN: Q. Then why do you think 4 5 MR. LANE: Objection. 9 9 THE WITNESS: I am not sure why they 9	12	Does the Presentation Generation Program	12	mean and it lays out what Google or Yahoo! claim
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		1	
	Page 70		Page 72
1	the word "publish" comes almost verbatim out the	1	THE WITNESS: Well, let's see, since
2	glossary in the patents, right?	2	I was asked to sort of comment and render an opinion
3	MR. LANE: Objection.	3	on the claims in the patent, I am trying to figure
1	THE WITNESS: I don't know that for	4	out which one you are referring to.
4		L .	
5	sure.	5	Can you help me out there?
6	MR. GRINSTEIN: Q. Turn with me	6	MR. GRINSTEIN: Q. Well
7	A. Yes.	7	A. I mean, is it term 3?
8	Q. Turn with me to column 11 of the '025	8	Q. If you look on reference No. 27 you
9	patent.	9	can see in Exhibit B, you can see all the claims
10	A. All right.	10	that we are talking about. They are all in the '025
11	Q. If you look down the side to about	11	patent.
		12	Are you asking are you talking about in
12	line 48 or so, there is a definition of the term		
13	"publishing."	13	your expert report?
14	Do you see that?	14	A. Yes. If you will I need to stick
15	A. Yes.	15	true to this.
16	Q. It says "the act of placing or making	16	Q. It appears in C3, page 13 in your
17	available the presentation or information."	17	report you talk about this term.
18	Do you see that?	18	A. Thank you. C3 I think page 27 is
	•	19	that correct in my report?
19			
20	Q. So the definition of "publishing" that	20	Q. Did I mess that up?
21	is provided by the glossary of the '025 patent	21	A. I did that.
22	contains the notion of placing and the notion of	22	Q. Yes, 27.
23	making available, fair?	23	A, Yes.
24	A. Yes.	24	Q. Not 13.
25	Q. Function Media's definition of the	25	This is where you discuss the notion of
	D 71		Daga 72
	Page 71		Page 73
1	term "publishing" includes those two concepts,	1	publishing, right?
2	term "publishing" includes those two concepts, placing or making available, right?	2	publishing, right? A. That's correct.
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19 (Pages 70 to 73)

	Page 74		Page 76
1	discussed more fully below, the claim language,	1	definition of "publish"?
2	specification and file history make clear that	2	MR. LANE: Objection.
3	publishing to selected internet media venues means	3	THE WITNESS: Well, my analysis of
4	placing the advertisement at the media" I am	4	everything that took place in the patents my
5	sorry "means placing the advertisement at the	5	analysis of this patent and how internet advertising
6	internet media venues for public display."	6	was conducted in the year 2000 is my
	And then from the Claim Language, A person	7	understanding is in the report itself, and that is
8	of ordinary skill in the art would have found the	8	in 2000, in 1999, ads are furnished to the internet
		9	media venues. They are provided or placed with the
9	notion of publishing an advertisement to an internet		internet media venues. I mean, that's the language
10	media venue to be unusual an unusual one that	10	
11	does not comport with the basic approach using	11	I use in this report because it is very precise.
12	internet advertising in 2000.	12	MR. GRINSTEIN: Q. What's a glossary?
13	At that time, advertisements were published	13	MR. LANE: Objection.
14	to the media venues I got that wrong.	14	THE WITNESS: Definition.
15	At that time, advertisements were not	15	MR. GRINSTEIN: Q. A glossary provide
16	published to media venues, but they were typically	16	definitions?
17	provided to or placed with the media venues which	17	A. It does.
18	then published the advertisement to the public.	18	Q. There is a glossary in this patent,
19	Q. Can you answer my question without	19	right?
20	just reading back your report?	20	A. Yes, sir, there is.
21	MR. LANE: Objection.	21	Q. So a glossary provides the definitions
22	THE WITNESS: I will be honest with	22	of the terms that are used in the patent, right?
23	you, I prefer to use this report because this is	23	A. Yes.
24	where the very precise language that I have sort of	24	Q. So if we want to find the definition
25	analyzed and put down does a far better job than me	25	of any term that is used in the patent, one of the
25	analyzed and par down does a fair better job than the	25	of dry centrations used in and patering one of and
			Page 77
	Page 75	1	Page 77
1	responding to your questions.	1	first places we would go would be the glossary,
2	responding to your questions. MR. GRINSTEIN: Q. You understand the	2	first places we would go would be the glossary, right?
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20 (Pages 74 to 77)

	Page 78		Page 80
1	on this, but advertisements were furnished to	1	THE WITNESS: I think you have to
2	internet media venues. They were not published to	2	look what the common practice was back in '99 and
3	internet media venues. That's the language I try to	3	2000 and what sort of an ordinary person ordinary
4	use on page 28.	4	skill in the art person would have understood.
5	MR. GRINSTEIN: Q. Is it your	5	MR. GRINSTEIN: Q. Let me ask you a
6	understanding that the way the claim term "publishing"	6	question about a different claim term then. Refer with
7	should be interpreted is to interpret it in view of what	7	me on Exhibit B to the '045 patent, which is at the
8	somebody of ordinary skill in the art would think that	8	front of Exhibit B, claim No. 8.
9	claim term means as opposed to what the patent says that	9	A. Yes, page 7.
10	claim term means?	10	Q. Page 7. That's the claim "media
11	MR. LANE: Objection.	11	venue," do you see that?
12	THE WITNESS: I think you have to	12	A. Yes, I do.
13	let's see, I think you simply have to use your	13	Q. And you can see the two parties
14	understanding of what was going on in internet	14	proposed constructions of that term, and they talk
15	advertising back in '99 and 2000 where ads are	15	about those physical or virtual locations I am
16	provided to the internet media venues. They are not	16	skipping the parenthetical where presentations
17	published to the media venue.	17	are placed or made available. And the definitions
18	MR. GRINSTEIN: Q. In column 11 of the	18	go on.
19	'025 patent, the word "publishing" again is defined in	19	Do you see that?
20	the first line. It talks about the act of placing or	20	A. Yes, I see that.
21	making available the presentation.	21	Q. And apart from that parenthetical that
22	Do you see that?	22	appears after the word "virtual locations," the
23	A. Yes, I do.	23	parties' construction of that term was basically the
24	Q. So the inventors of this patent knew	24	same, right?
25	how to use the phrase "placing a presentation,"	25	MR. LANE: Objection.
	Page 70		Page 81
1	Page 79	1	Page 81 THE WITNESS: Let's see, say that one
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2	right? MR. LANE: Objection.	2	THE WITNESS: Let's see, say that one more time. I was trying to read what you were
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	right? MR. LANE: Objection. THE WITNESS: No. MR. GRINSTEIN: Q. Well, they used it in they have those words down there, right? A. They do. Q. They know how to use the phrase "making available presentation," right? MR. LANE: Objection. THE WITNESS: They have used it in here, but that's not my understanding of what that means. MR. GRINSTEIN: Q. Well, I guess my question is if the word if this claim term that we are talking about was only meant to refer to placing a presentation, why didn't the inventors just use the term "placing the presentation" instead of the more complicated term "publishing"? MR. LANE: Objection. THE WITNESS: I don't know. I don't know what they intended when they wrote that. MR. GRINSTEIN: Q. And you don't think	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE WITNESS: Let's see, say that one more time. I was trying to read what you were saying and listening at the same time. MR. GRINSTEIN: Q. Other than the information that is included in that parenthetical, e.g. or the i.e., do you see that? A. Yes. Q. Other than that information, the parties' definition of the term "media venue" is basically the same; isn't that right? MR. LANE: Objection. THE WITNESS: No. Let's see, let me refer back give me a minute to orient myself with respect to my report, if you don't mind. That will help me out to answer your question. This will answer your question, I think. I am sorry. You asked me if they are the same except for? MR. GRINSTEIN: Q. Except for the parenthetical. A. Well, let's see, this all has to do with the '045 claim 1.

21 (Pages 78 to 81)

l I	Page 82		Page 84
1	A. Okay. Since let's see, I am trying	1	Yahoo! definition includes the notion of addresses,
2	to give you a good precise answer again. I think if	2	which is inside the parentheses.
3	you will take a look at page 47 of my report, which	3	MR. GRINSTEIN: Q. The first word of
4	is what I am much more comfortable with than almost	4	Function Media's definition of "media venue" is "those,"
	anything, the one of ordinary skill in the art at	5	right?
5		6	+
6	the time of the '045 patent that was filed in		
7	January 2000 would have understood the phrase "media	7	Q. The first word of Google's and
8	venue" to mean those physical or virtual locations,	8	Yahoo!'s definition of that term is "those,"
9	i.e., addresses, where presentations are placed or	9	correct?
10	made available to present the information within the	10	A. Yes.
11	framework of the media so that it is accessible by	11	Q. The second word is "physical," both
12	the end users, consumers, viewers or buyers.	12	definitions, right?
13	And so which is what is contained in	13	A. That's correct.
14	after Google and Yahoo.	14	Q. The third word is "or," both
15	Q. Can you answer my question which is	15	definitions, right?
16	A. I will try.	16	A. Correct.
17		17	Q. Fourth word is "virtual," both
		18	-
18	that term "media venue" and look at defendants'		definitions, right?
19	definition of that term "media venue" and confirm	19	A. Yes.
20	for me that really the only difference between those	20	Q. Next word is "locations," both
21	two terms, the way the two parties have defined them	21	definitions, right?
22	is what they have put in that parenthetical?	22	A. Yes.
23	MR, LANE: Objection.	23	Q. We hit the parenthetical. I said
24	THE WITNESS: That Google or who	24	that's different between the two terms, right?
25	are you referring to? I am sorry.	25	A. Yes, you did.
		l	
	Page 83		Page 85
1	MR. GRINSTEIN: Q. There is a column	1	Q. After that you pick up with the word
2	that says Plaintiff's Construction, right?		
2	and says haman s construction, fight:		"Where " both dephilions, right?
	A I got that	2	"where," both definitions, right?
3	A. I got that.	3	A. Yes.
3 4	Q. You understand plaintiff is Function	3 4	A. Yes.Q. "Presentations," both definitions,
3 4 5	Q. You understand plaintiff is Function Media?	3 4 5	A. Yes.Q. "Presentations," both definitions, right?
3 4 5 6	Q. You understand plaintiff is Function Media? A. I understand that.	3 4 5 6	 A. Yes. Q. "Presentations," both definitions, right? A. Yes.
3 4 5 6 7	 Q. You understand plaintiff is Function Media? A. I understand that. Q. There is a column that says 	3 4 5 6 7	 A. Yes. Q. "Presentations," both definitions, right? A. Yes. Q. If I follow this process through the
3 4 5 6	Q. You understand plaintiff is Function Media? A. I understand that.	3 4 5 6 7 8	 A. Yes. Q. "Presentations," both definitions, right? A. Yes. Q. If I follow this process through the rest of the definition we are going to find that
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22 (Pages 82 to 85)

	Page 86		Page 88
1	Billboard would be a physical address.	1	A. It says, "the term media venues is
2	MR. GRINSTEIN: Q. The patents talk	2	defined by the glossary" as you just referenced
3	about	3	"as set forth in the specification as those physical
4	A. Physical location	4	or virtual locations where presentations are placed
5	Q. There is mention of billboard within	5	or made available to present information within the
6	the patents, right?	6	framework of the media so that it is accessible by
7	A. There is.	7	the ends users," and so forth.
8	Q. The claims that we are talking about	8	Q. When you rendered your opinion about
9	in the patents, claims that you have analyzed in	9	what the term "media venue" means, as your report
10	your report, all talk about internet websites,	10	indicates on page 47, you looked in the glossary,
11	internet addresses, things like that, right?	11	right?
12	A. They do.	12	A. I included that in that in my
12	•	13	opinion.
	Q. The claims you have analyzed in this case are not directed towards billboards?	14	Q. What the glossary said supported your
14 15	MR. LANE: Objection.	15	opinion about what that claim term means, right?
15	-	16	A. Yes.
16	MR. GRINSTEIN: Q. Right?	17	Q. Why didn't you look to the glossary
17	A. Well, it is included in there. There	18	when you were trying to define the claim terms that
18	are physical addresses. There are tangible media.		
19	Q. Well, the claims that we have talked	19	talked about publishing?
20	about all talk about internet media venues, right?	20	MR. LANE: Objection.
21	MR. LANE: Objection.	21	THE WITNESS: Well, I did include the
22	THE WITNESS: They talk about media	22	glossary when I let's see, the glossary is part
23	venues.	23	of the patent, so I included the thing from head to
24	MR. GRINSTEIN: Q. Turn with me to	24	toe. And in this case the glossary definition
25	column 10 of the '025 patent.	25	you just asked me why I didn't do something.
	Page 97		Page 89
1	Page 87	1	Page 89 Repeat that one more time so I get it right.
1	A. All right.	1	Repeat that one more time so I get it right,
2	A. All right. Q. Column 10 of the '025 patent talks	2	Repeat that one more time so I get it right, sorry.
2 3	 A. All right. Q. Column 10 of the '025 patent talks about there is a definition there for media 	2 3	Repeat that one more time so I get it right, sorry. MR. GRINSTEIN: Q. You testified you
2 3 4	A. All right. Q. Column 10 of the '025 patent talks about there is a definition there for media venues down at the bottom. Right?	2 3 4	Repeat that one more time so I get it right, sorry. MR. GRINSTEIN: Q. You testified you looked to the glossary when you were considering what
2 3 4 5	 A. All right. Q. Column 10 of the '025 patent talks about there is a definition there for media venues down at the bottom. Right? A. Yes, there is. 	2 3 4 5	Repeat that one more time so I get it right, sorry. MR. GRINSTEIN: Q. You testified you looked to the glossary when you were considering what the definition of "media venue" meant, and it included
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23 (Pages 86 to 89)

	Page 90		Page 92
1	MR. LANE: Objection.	1	A. Yes, sir.
2	THE WITNESS: Let's see, you have to	2	Q. Look back at Exhibit B on page 7, your
3	rephrase that. I am a little bit confused on what	3	definition or I will make it easier for you.
4	you just said, sorry.	4	Just flip to the first page of the section
5	MR. GRINSTEIN: Q. Remember we had a	5	on page 47.
6	long discussion about the fact that the glossary defines	6	A. Yes.
		7	
7	"publishing" as the act of placing or making available.		
8	You remember that?	8	parenthetical after "virtual locations"?
9	MR. LANE: Objection.	9	Do you see that?
10	THE WITNESS: Yes.	10	A. Yes, I do.
11	MR. GRINSTEIN: Q. We talked about how	11	Q. It says, "i.e., addresses"?
12	Function Media included the concept of "making	12	A. Yes.
13	available" in its definition of publishing whereas	13	Q. And then flip to page 48, and in the
14	Google and Yahoo! only included the concept of	14	first sentence you say virtual locations means
15	"placing,"	15	website addresses or URLs; do you see that?
16	Do you remember that discussion.	16	A. Yes.
	•	17	Q. Why didn't you say, i.e., website
17			addresses or URLs when you were defining what
18	Q. My question for you is if "publishing"	18	• •
19	only means placing and doesn't include the concept	19	"virtual locations" meant?
20	making available as you contend, then why when you	20	MR. LANE: Objection.
21	defined "media venue" did you include the concept of	21	THE WITNESS: Well, based on my
22	"making available" along with "placing"?	22	understanding of, again, what somebody of ordinary
23	MR. LANE: Objection.	23	skill back then, they would have understood "virtual
24	THE WITNESS: I think this is just	24	locations" to include let me just read this so I
25	this is if I understand your question correctly,	25	can get it right.
		r	
	Page 91		Page 9:
	Page 91 this is straight from the glossary itself.	1	
1	this is straight from the glossary itself.	1	Let me back up to page 47. I am trying to
1 2	this is straight from the glossary itself. MR. GRINSTEIN: Q. So why didn't you go	2	Let me back up to page 47. I am trying to answer your question. The term "media venues" as
1 2 3	this is straight from the glossary itself. MR. GRINSTEIN: Q. So why didn't you go straight from the glossary for the concept of	2 3	Let me back up to page 47. I am trying to answer your question. The term "media venues" as defined in the glossary, as you just pointed out, as
1 2 3 4	this is straight from the glossary itself. MR. GRINSTEIN: Q. So why didn't you go straight from the glossary for the concept of "publishing"?	2 3 4	Let me back up to page 47. I am trying to answer your question. The term "media venues" as defined in the glossary, as you just pointed out, as set forth those physical or virtual locations or
1 2 3 4 5	this is straight from the glossary itself. MR. GRINSTEIN: Q. So why didn't you go straight from the glossary for the concept of "publishing"? MR. LANE: Objection.	2 3 4 5	Let me back up to page 47. I am trying to answer your question. The term "media venues" as defined in the glossary, as you just pointed out, as set forth those physical or virtual locations or presentations are placed or made available to
1 2 3 4 5 6	this is straight from the glossary itself. MR. GRINSTEIN: Q. So why didn't you go straight from the glossary for the concept of "publishing"? MR. LANE: Objection. THE WITNESS: Because I agree	2 3 4 5 6	Let me back up to page 47. I am trying to answer your question. The term "media venues" as defined in the glossary, as you just pointed out, as set forth those physical or virtual locations or presentations are placed or made available to present the information within the framework of the
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1 2 3 4 5 6	this is straight from the glossary itself. MR. GRINSTEIN: Q. So why didn't you go straight from the glossary for the concept of "publishing"? MR. LANE: Objection. THE WITNESS: Because I agree	2 3 4 5 6 7 8	Let me back up to page 47. I am trying to answer your question. The term "media venues" as defined in the glossary, as you just pointed out, as set forth those physical or virtual locations or presentations are placed or made available to present the information within the framework of the media so it is accessible by the end users, consumers, viewers or buyers, and that's what I
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4	Page 94	1	Page 96
	in 1999, those terms were almost synonymous.	12	this is in your report.
2	Q. One Main Street, Marshall, Texas,	3	A. Oh, okay. I will try to give you a
3	that's an address, isn't it? A. Yes.	4	response. What I am sorry, figure what?
5	A. Tes. Q. When we are talking about virtual	5	Q. 4g.
6	locations, that's not referring to something like a	6	A. Okay, I am on that page.
7	street address, is it?	7	Q. There is a block that says 11380, do
8	A. No, it is not.	8	you see that, in 4g?
9	Q. But the word "addresses" by itself	9	A. Yes, I do.
10	wouldn't exclude that, would it?	10	Q. And that block says "Central
11	A. No.	11	controller and presentation processor identifies
12	Q. Do you understand prosecution	12	internal directory indexes and references affected
13	estoppel?	13	by edits or new presentation, adds to require
14	A. No, that's not a phrase I am familiar	14	publication list."
15	with.	15	Do you see that?
16	Q. Do you understand how statements made	16	A. Yes, I do.
17	in the file history of a patent impact how claims	17	Q. And then it says, if you follow it
18	should be construed in a patent?	18	down to 11390, it says, "Central controller and
19	A. I have a general understanding of	19	presentation processor publishes to presentation and
20	that.	20	selection servers, or third-party directories, all
21	Q. What is it?	21	pages and/or files affected by updates, edits or new
22	A. That those in the file history are	22	presentations."
23	supplemental to the patent itself and they are the	23 24	Do you see that? A. I can see that, yes.
24 25	exchange between I think the inventor and examiner, somebody inside the patent office.	24	Q. Does that figure suggest to you that
	somebody inside the patent office.		
1			
	Page 95		Page 97
1	Page 95 That's my rough understanding of what the	1	Page 97 the central controller and presentation processor is
1 2	Page 95 That's my rough understanding of what the file history includes.	1 2	
	That's my rough understanding of what the		the central controller and presentation processor is publishing directly to the media venue interface? MR, LANE: Objection.
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25 (Pages 94 to 97)

1	Page 98		Page 100
1	of. That will help me orient and answer your	1	an amendment to the definition that changed some of
2	questions, I think.	2	the words to it?
3	Q. I am going to be the question I am	3	MR. LANE: Objection.
4	asking you right now is about page 7 of your report	4	THE WITNESS: No.
5	which talks about claims 1 and 179 of the '025	5	MR. LANE: Are we getting close to
6	patent.	6	the communications?
7	A. Page 7, the first interface?	7	MR. GRINSTEIN: I don't want to
8	Q. Yes.	8	trample that ground. I am just trying to
9	First of all, if you look at Exhibit B	9	understand.
10	A. Yes.	10	Q. The definition read before it was
11	Q there is the Function Media	11	altered, "software and hardware at the internet
12	definition and there is the Google and Yahoo!	12	media venue location that enables an agent of the
13	definition.	13	internet media venue to interact with the computer
14	Do you see those?	14	system."
15	A. Yes, I do.	15	Do you remember that at one time the
16	Q. The Google and Yahoo! definition has	16	proposed definition used the word "agent"?
17	some text underlined. It says, "a person working on	17	A. No. I mean, that language let's
18	behalf of."	18	see, hang on one second. No, when I read the
19	Do you see that?	19	patent, '025, that's what I base this claim language
20	A. Yes.	20	right here. That's what I used.
21	Q. Are you aware that Google and Yahoo!	21	I mean, that's what they asked me to do is
22	made a change to their definition of "first	22	take a look at the claim language and render an
23	interface to the computer system" and that change is	23	opinion on those terms and how they would be
24	reflected by the fact that that text is underlined?	24	understood by somebody with my background ten years
25	A. I wasn't aware of that.	25	ago.
	Page 99		
			Page 101
1	-	1	Page 101 O. Now one of the disputes between the
1	Q. You couldn't tell me the difference	1	Q. Now one of the disputes between the
2	Q. You couldn't tell me the difference between what the previous definition was and what	1 2 3	Q. Now one of the disputes between the parties as to the definition of "first interface" is
2 3	Q. You couldn't tell me the difference between what the previous definition was and what this definition is?	2	Q. Now one of the disputes between the parties as to the definition of "first interface" is that Function Media has defined it to mean software
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26 (Pages 98 to 101)

2Q. What's wrong with the definition of3this term that would just use "software"?4A. Well, the computer system is composed5of both hardware and software.6Q. And so your understanding is that you7can't have software unless you have the hardware8A. Yes.	erm meant is a computer
1venue to interact with the computer system.1MR. GRINSTEIN: Q2Q. What's wrong with the definition of2that you cite to support your Q3this term that would just use "software"?3would understand what that to4A. Well, the computer system is composed3would understand what that to5of both hardware and software.5A. That is correct.6Q. And so your understanding is that you6Q. And you cite that or7can't have software unless you have the hardware7page 8 of your report?8A. Yes.8A. Yes.	opinion that most people erm meant is a computer
2Q. What's wrong with the definition of3this term that would just use "software"?4A. Well, the computer system is composed5of both hardware and software.6Q. And so your understanding is that you7can't have software unless you have the hardware8A. Yes.	opinion that most people erm meant is a computer
 3 this term that would just use "software"? 4 A. Well, the computer system is composed 5 of both hardware and software. 6 Q. And so your understanding is that you 7 can't have software unless you have the hardware 8 running it? 3 would understand what that to dictionary; is that right? 5 A. That is correct. 6 Q. And you cite that on 7 page 8 of your report? 8 A. Yes. 	erm meant is a computer
 A. Well, the computer system is composed of both hardware and software. Q. And so your understanding is that you can't have software unless you have the hardware running it? A. Well, the computer system is composed dictionary; is that right? A. That is correct. Q. And you cite that or page 8 of your report? 8 A. Yes. 	
5of both hardware and software.5A. That is correct.6Q. And so your understanding is that you6Q. And you cite that or7can't have software unless you have the hardware7page 8 of your report?8R. Yes.	n the bottom of
6Q. And so your understanding is that you6Q. And you cite that or7can't have software unless you have the hardware7page 8 of your report?8running it?8A. Yes.	n the bottom of
7can't have software unless you have the hardware7page 8 of your report?8running it?8A. Yes.	n the bottom or
8 running it? 8 A. Yes.	
9 A. Well, you can't have an interface to a 9 Q. Is that right?	
10 computer system without hardware and software. 10 A. That's correct.	
11 Q. Is it possible to run hardware without 11 Q. And I think you cite	ed actually to
12 electricity? 12 be clear, you also cite it on the	
13 A. No. 13 A. Top, yes.	
14 Q. So 14 Q. And that dictionary	is called the
	2
17 Q. Are you aware of any electronic 17 Comprehensive Standard for E	Jusiness, Junuur, Library
18hardware that operates without electricity?18and Home, Microsoft Press.	
19 A. No. 19 Q. The edition you cite	e is the second
20 Q. Why didn't you include software and 20 edition from 1994, right?	
21 hardware and electricity in your definition of claim 21 A. Yes.	
22 7 because you need electricity to run an interface 22 Q. Let me show you the	nat definition. We
23 too? 23 are up to 50.	
24 MR. LANE: Objection. 24 (Whereupon Exhibit 50 w	vas marked for
25 THE WITNESS: Well, when I was asked 25 identification.)	
Page 103	Page 105
	has been marked as
	this appears to
5 have on, I guess, pages 7 and 8, it is talking 5 A. Yes.	
6 about well, let me just read this real quick. 6 Q. If you flip to the n	
7 For one, the first interface, it explicitly 7 see the copyright date is '94.	
8 claims to be an interface between the IMV and a 8 Do you see that?	
9 computer system, and hardware and software both are 9 A. Yes, the top of the	
10 required to form that interface. 10 Q. If you flip to the th	
11 MR. GRINSTEIN: Q. Isn't electricity 11 exhibit, there is a definition the	
12 required too? 12 And at least a portion of that	
13 A. There would be. 13 portion of that definition is w	
14 Q. So why isn't electricity part of your 14 pages 7 and 8 of your expert	
15 definition if that is something that is required? 15 A. Let me read through	
1515151616Q. Sure.	3 dar
	at you quote starts
18 sort of the cascading. You could go forever. I 18 Q. Your definition that	
	o or internating octai
19 think most people would understand if they read that 19 "In computing different types	
19think most people would understand if they read that19"In computing different types20term the first interface to the computer system back20on different levels ranging from	om highly visible user
19think most people would understand if they read that19"In computing different types20term the first interface to the computer system back20on different levels ranging from21in 2000 and 1999 they would understand that first21interfaces that enable people	om highly visible user to communicate with
19think most people would understand if they read that19"In computing different types20term the first interface to the computer system back20on different levels ranging from21in 2000 and 1999 they would understand that first21interfaces that enable people22interface to the computer system is primarily the22programs to often invisible yet	om highly visible user to communicate with et necessary hardware
19think most people would understand if they read that19"In computing different types20term the first interface to the computer system back20on different levels ranging from21in 2000 and 1999 they would understand that first21interfaces that enable people22interface to the computer system is primarily the22programs to often invisible yes23software and the hardware required to interact with23interfaces that connect device	om highly visible user to communicate with et necessary hardware
19think most people would understand if they read that19"In computing different types20term the first interface to the computer system back20on different levels ranging fro21in 2000 and 1999 they would understand that first21interfaces that enable people22interface to the computer system is primarily the22programs to often invisible ye23software and the hardware required to interact with23interfaces that connect device24a computer system, which is what I sort of map out24inside the computer."	om highly visible user to communicate with et necessary hardware
19think most people would understand if they read that19"In computing different types20term the first interface to the computer system back20on different levels ranging from21in 2000 and 1999 they would understand that first21interfaces that enable people22interface to the computer system is primarily the22programs to often invisible yes23software and the hardware required to interact with19"In computing different types	om highly visible user to communicate with et necessary hardware

	Page 106		Page 108
1	A. Yes, I do.	1	real quick.
2	Q. These patents are not do not speak	2	Well, my reading of the claim language is
3	to the process of connecting devices and components	3	that in to respond to your question right it
4	inside a computer, do they?	4	would be more towards, it says here let me back
5	A. In the seller interface well, in	5	up. Let me go back all the way here.
6	the specifications it talks about RAM and ROM and	6	I am trying to answer your question. Bear
7	serial ports and all kinds of things.	7	with me here for a second.
8	Q. Have the inventors I am sorry.	8	I think the claim language here talks about
9	A. No, I am just trying to flesh out the	9	someone at an internet media venue, they are being
10	answer and make sure I get it right.	10	prompted to input presentation rules, and that would
11	Q. Have the inventors of this invention	11	be a person interacting with a computer monitor and
12	claimed they have invented a new kind of ROM?	12	a keyboard, something like that.
13	A. No.	13	MR. GRINSTEIN: Q. A user?
14	Q. Have they claimed that they have	14	A. A user.
15	invented a new kind of serial port?	15	Q. Mr. Kincaid, you think that the
16	A. No.	16	where these inventions fall on this range of
17	Q. And does the specification describe	17	interfaces is they are more like user interfaces
18	how hardware interfaces connect devices and	18	because you quote the next sentence of this
19	components a new way of connecting devices and	19	definition which talks about user interfaces, right?
20	components inside a computer?	20	MR. LANE: Objection.
21	A. No.	21	THE WITNESS: Well, let's see, I
22	Q. This sentence I just read you said	22	think that rephrase that again because I just
23	there are different types of interfaces. On the one	23	got I am trying to read the definition and make
24	end you have got user interfaces, and on the other	24	sure I get it right.
25	end you have hardware interfaces, is essentially	25	MR. GRINSTEIN: Q. The definition
			Dana 100
-1	Page 107 what it says?	1	Page 109 describes a range of interfaces going from user
1 2	MR. LANE: Objection.	2	interfaces to hardware interfaces?
3	THE WITNESS: Let's see, I mean, the	3	A. Right.
4	definition is pretty straightforward. It talks	4	Q. You think that the inventions that are
5	about it doesn't talk about one on one end and	5	discussed in these patents involve the user
6	one on the other. It talks about different types of	6	interface side of that range because the only other
7	interfacing operating at different levels ranging	7	sentence of this definition that you have quoted
8	from visible to what they call often invisible yet	8	refers to user interfaces; isn't that right?
9	necessary hardware interfacing.	9	MR. LANE: Objection.
10	MR. GRINSTEIN: Q. It does talk about a	10	THE WITNESS: Well, let's see, my
11	range, doesn't it?	11	understanding of a user interface, given, again,
12	A. Yes, occurring on different levels.	12	what somebody of ordinary skill in the art in 2000
13	Q. Ranging from user interfaces to	13	or 1999 would have been familiar with is the
14	hardware interfaces, right?	14	ordinary meaning of that is both hardware and
15	A. Yes.	15	software through which a user communicates with a
16	Q. The interfaces that where do the	16	computer system. If that answers your question,
17	interfaces that are discussed in these inventions	17	then that's what I intended.
18	fall on that range?	18	MR. GRINSTEIN: Q. Mr. Kincaid, try to
19	Are they more like user interfaces that	19	listen to my question.
20	enable people to communicate with programs, or are	20	A. Listening.
21	they hardware interfaces that connect devices and	21	Q. The first sentence of this definition
22	components inside the computer?	22	that you quote which you quote on page 8 of your
23	MR. LANE: Objection.	23	report says that there are a range of interfaces
24	THE WITNESS: Well, let's see, let me	24	ranging from user interfaces to hardware interfaces;
00			
25	go back to let me go back to the claim language	25	isn't that right?

1 A. Yes. 1 that's software, right? 2 Q. And I am acking you, doesn't the fact that you then quote the next sentence of this definition which tables about user interfaces, so dearst that mean that you think these interfaces is definition which tables about user interfaces is definition. 1 that's software, right? 3 THE WITNESS: Well, I can only go back to what my understanding of what a user to interface is, and that is it is as I spelled out in the tast paragraph - 1 an trying to answer your 12 question - but its its point where the user 13 interface is between the intermet media venue and 14 the computer system. The users use interfaces to the applical design, commands, prompts an addition to user to the computer system. The users use interface to the computer system. The users there are applical design, commands, prompts an addition to user to the computer system. The users the user to the computer system. The users the user to the computer system. The users the task is allowed in the user there are applical design, commands, prompts and that in here are applical design, commands, prompts and that in here are applical design, commands, prompts and there are applical design, commands, promptis and there are applical design, commands		Page 110		Page 112
2 Q. And I am asking you, doesn't the fact. 2 MR. LANE: Objection. 3 THE WITNESS: Yes, prompts are caused 4 definition which talks about user interfaces, 3 THE WITNESS: Yes, prompts are caused 5 doesn't that mean that you think these inventions 6 MR. GRINSTEIN: Q. It says, "and other 6 definition which talks about user interfaces 6 MR. CARE: Objection. 7 MR. LANE: Objection. 7 right? 8 THE WITNESS: Well, I can only go 9 beak to what my understanding of what a user 10 10 interface is between the internet media venue and 11 the computer system. The users use interfaces to 11 the computer system. The users use interfaces to 11 11 11 12 MR. LANE: Objection. 12 op ou see that? 2 A. That's correct. 11 11 11 11 12 12 12 12 12 13 14 14 14 14 14 14 14 14 14 14 14 14 14 14 14 14 14 14 14	1		1	
i that you then quote the next semitence of this 3 THE WITNESS: Yes, prompts are caused 4 definition which talks about user interfaces, best, to what my understanding of what a user MR, GRINSTEIN: Q. It says, "and other 6 fail on the user interface side of that range? MR, CRINSTEIN: Q. It says, "and other 9 back to what my understanding of what a user On therface is, and that is it is as 1 spelled out in 10 interface is, and that is it is as 1 spelled out in It is asymagraph - I am trying to answer your 11 the last paragraph - I am trying to answer your Q. The other devices - this definition 11 the last paragraph - I am trying to answer your MR, GRINSTEIN: Q. Move to strike as 12 question - but it is the point where the user MR, CRINSTEIN: Q. Move to strike as 13 interface is between the internet media venue and the computer system. 14 the computer system. MR, GRINSTEIN: Q. Move to strike as 15 connect to the computer system. MR, GRINSTEIN: Q. Move to strike as 16 addition, towards the bottom of the page there is a alscussion there about in hardware interfaces are 20 A And it agoes on to say other words, right? 21 A. Yes, it does. Q. And it agos, "user interfaces consist of 14 eroptical design, the commands, prompts and			2	
4 definition which taiks about user interfaces, ide of that range? 4 by software – brought about by software. 5 desent that mean that you think these inventions 5 MR, GRUSTEN: Q. It says, "and other 6 fall on the user interface side of that range? 7 MR, LANE: Objection. 7 MR, LANE: Objection. 8 A. That's correct. 9 back to what my understanding of what a user 9 C. The other devices – this definition 10 interface is between the internet media venue and 11 the computer system. 11 11 the computer system. 12 MR, LANE: Objection. 13 12 users to interface that enable a user to interface that in your expert report. 10 for our things. Graphical design, commands, prompts and other devices. 2 A. I do. 2 A. Yes, it does.				
5 desn't that mean that you think these inventions MR. GRINSTEIN: Q. It says, "and other 6 devices that enable a user to interact with a program," 7 MR. LANE: Objection. 8 THE WITNESS: Well, I can only go 9 back to what my understanding of what a user 10 interface is, and that is it is as 1 spelled out in 11 the last paragraph -1 and trying to answer your 12 question - but it is the point where the user 13 interface is between the internet media venue and 14 the computer system. The users use interfaces to 15 connect to the computer system. 16 MK. GRINETEIN: Q. Move to strike as 17 onoresponsive. 18 Q. And it says, user interfaces consist 19 definition, towards the bottom of the page there is 24 Q. And it goes on to say other words, 25 right? 24 A. No, I did not. 25 you quoted that in your expert report - the only other sentence you quoted in your 26 Q. You did not quote that in your expert report - the only other sentence you quoted in your report. 36 A. That's correct.			4	by software brought about by software.
6 fall on the user interface side of that range? fall on the user interface side of that range? feature that is an spectra of the computer system. The wITNESS: Well, I can only go 9 back to what my understanding of what a user of interface is set that is as 1 specified out in the last paragraph – I am trying to answer your 7 right? 11 the last paragraph – I am trying to answer your 10 is describing the graphical design, the commands and prompts as devices, right? 12 question - but it is the projection. 11 10 is describing the graphical design, the commands and prompts as devices, right? 14 the computer system. The users use interface the user interface that enable a user to interface consists of." Hose are the elements that imate up the user interface that enable a user to interface consist of the computer system. The software. 16 MR. LANE: Objection. 11 the computer system. The users use interface the anable a user to interface consist of the optimum interfaces are and ofter devices. 12 Do you see that? 2 A. Yes, it does. 2 A. Yes, it does. 25 right? Page 111 A. No, I did not. 3 Sorry, can you repeat the of the second sentence you quoted in your report, with a program." 14 the graphical design, the commands, prompts and other devices that anable a user to interact with a program." Page			5	MR. GRINSTEIN: Q. It says, "and other
7 MR. LANE: Objection. 7 right? 8 THE WITNESS: Well, I can only go 8 A. That's correct. 9 back to what my understanding of what a user 10 10 10 interface is, and that is it is as 1 spelled out in 11 11 11 the last paragraph - 1 and trying to answer your 11 11 11 12 question but it is the point where the user 12 MR. LANE: Objection. 13 13 Interface is between the internet media venue and 13 THE WITNESS: Well, Jet's see, it is 14 the computer system. 14 defining this sentence you are pointing to, "user 15 interface consits of, "hose are the elements that 16 ontersponsive. 16 of four things: Graphical design, commands, prompts 17 onoresponsive. 18 Q. And it seys, user interfaces consist 16 a. Ho, a. Ido. 22 Q. When it uses the word "other devices." 24 Q. And it goes on to say other words, 79 it means devices other than graphical design, commands, prompts and 1 A. Yes, it does. Q. When it uses the word "other devices."			6	devices that enable a user to interact with a program,"
8 THE WITNESS: Well, I can only go 9 A. That's correct. 9 back to what my understanding of what a user 0 C. The dre devices — this definition 11 the last paragraph — I am trying to answer your 10 Is describing the graphical design, the commands and 11 the last paragraph — I am trying to answer your 10 Is describing the graphical design, the commands and 12 question — but it is the point where the user 11 THE WITNESS: Well, I can only go 13 interface is, and that is the sas I spelled out in 10 Is describing the graphical design, the commands and 14 the computer system. 11 14 Hell well, left see, it is 16 mRL ANE: Objection. 11 11 14 MRL ANE: Objection. 18 Try ou look down at the rest of the 19 10 10 10 10 12 Do you see that? 2 0. And it says, user Interfaces consist 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 11 10 10 10 10 10		-	7	right?
9 back to what my understanding of what a user 9 Q. The other devices this definition 10 interface is, and that is it is as I spelled out in 10 Is describing the graphical design, the commands and 11 the last paragraph I am trying to answer your 11 Is describing the graphical design, the commands and 12 question but it is the point where the user 11 Interface is between the interner media venue and 14 the computer system. The users use interfaces to 11 MR. GRINSTEIN: Q. Move to strike as 16 MR. GRINSTEIN: Q. Move to strike as 11 make up the user interface that enable a user to 17 nonresponsive. 17 interface in the says, user interfaces consist 17 18 Q. And it goes on to say other words, 21 Do you see that? 22 A. I do. 22 A. Yes. 23 A. I do. 23 Q. When it uses the word "other devices" 24 Q. You did not quote that in your expert 20 When it uses the word "other devices" 24 A. Yes, it does. 22 A. Let me see how I treated that in here 2 25 right? A. Inat's correct. 5			8	
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29 (Pages 110 to 113)

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	Page 114		Page 116
1	Q. So it is characterizing graphical	1	that your testimony?
2	design, commands and prompts as software, right	2	MR. LANE: Objection.
3	strike that question.	3	THE WITNESS: Well, let's see, sorry,
4	Do you think the word "other devices" is	4	if you will just ask that question again, I will try
5	meant to refer to hardware?	5	to give you a good answer.
6	MR. LANE: Objection.	6	MR. GRINSTEIN: Q. Your testimony is
7	THE WITNESS: Well, let's see.	7	that you used a dictionary from 1994 because a 1994
8	MR. GRINSTEIN: Q. I am only asking you	8	definition of the word "interface" is more relevant to
9	what this definition means. I am not asking you about	9	these 2000 patents patents from the year 2000 than
10	the patents.	10	would be a 2009 dictionary which is nine years after the
11	A. I understand that. I mean, that's	11	patents; is that your testimony?
12	what I have to go back to.	12	MR. LANE: Objection.
13	Q. Let me strike the question and be	13	THE WITNESS: Yes.
14	clear.	14	MR. GRINSTEIN: Q. Now the Microsoft
15	Right now I am asking you what this	15	computer dictionary that you cited predates the first
16	definition that you quoted in your expert report	16	patent by six years; is that right?
17	means. I am not asking you anything about the	17	A. That's correct.
18	patents. I am just asking you to explain the	18	Q. 1994, the first patent was filed in
19	definition that you utilized.	19	2000; is that right?
20	When you utilized that definition, did you	20	A. I think the first patent was let's
21	understand the word "other devices" to refer to	21	see, it is either '99 or 2000. Let me look.
22	hardware?	22	Q. Do you want to look at the first
23	A. Yes.	23	patent?
24	Q. If that refers to hardware, why is the	24	A. That would help. Let me take a look.
25	word "other" in there?	25	Q. Let me mark what we are going mark
	Page 115		Page 117
1	A. From the dictionary in the quote?	1	this as Exhibit 51.
2	Q. How is that how is your	2	(Whereupon Exhibit 51 was marked for
3	understanding that that word refers to hardware	3	identification.)
4	consistent with the fact that the definition		A. That's '045.
		4	A. That's '045.
		5	Q. That's the '045.
5	includes the word "other" after just having		Q. That's the '045.
5 6	includes the word "other" after just having described software?	5	Q. That's the '045. If you look at the top of that patent in box
5 6 7	includes the word "other" after just having described software? A. Well, let's see, I am trying to answer	5 6	Q. That's the '045.
5 6 7 8	includes the word "other" after just having described software? A. Well, let's see, I am trying to answer your question, but that sentence has to be coupled	5 6 7	Q. That's the '045. If you look at the top of that patent in box 22 you see a file date January 2000.
5 6 7 8 9	includes the word "other" after just having described software? A. Well, let's see, I am trying to answer your question, but that sentence has to be coupled up just like it is in the dictionary with the	5 6 7 8	Q. That's the '045. If you look at the top of that patent in box 22 you see a file date January 2000. Do you see that?
5 6 7 8 9 10	includes the word "other" after just having described software? A. Well, let's see, I am trying to answer your question, but that sentence has to be coupled up just like it is in the dictionary with the previous sentence. The whole thing is I took it	5 6 7 8 9	 Q. That's the '045. If you look at the top of that patent in box 22 you see a file date January 2000. Do you see that? A. Yes, I do. Q. Does that confirm your understanding
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1	Page 118	1	Page 120 did you?
1 2	 A. Yes. Q. If you look at the second page, it 	2	A. No, I didn't.
3	Q. If you look at the second page, it says copyright 1997, right?	3	Q. Did you know that there is a fourth
4	A. It does.		edition of the Microsoft computer dictionary that
5		5	was published in 1999?
	•	6	A. No.
6	dictionary that you cited in your expert report,	7	Q. Let's look at that one.
F	right? A. Yes.	8	A. All right.
8		9	Q. This will be Exhibit 53.
9	Q. Flip with me to the third page of Exhibit 52.	10	(Whereupon Exhibit 53 was marked for
10 11		11	identification.)
12		12	Q. The front page of Exhibit 53 says
		13	Microsoft Computer Dictionary Fourth Edition.
13	Microsoft computer dictionary's definition of the word "interface."	14	Do you see that?
14		15	A. Yes, I do.
15	A. Yes.	15	
16	Q. Do you see that?	17	Q. If you flip to the next page, it has a copyright date of 1999.
17	A. I do.	18	Do you see that?
18	Q. Definition No. 1 says, "The point at	10	A. Yes.
19	which a connection is made between two elements so	20	
20	that they can work with each other."	20	Q. Flip to the third page, it has the definition of interface there, the second
21	Do you see that?	21	definition, which is "software that enables a
22	A. I do.	22	program to work with the user, the user interface
23	Q. That's not really relevant to our	1	which can be a command line interface, menu driven
24	discussion today about whether interface means	24 25	
25	hardware or software, is it?	25	or interface with another program such as the
	Page 119		Page 121
1	Page 119 MR. LANE: Objection.	1	Page 121 operating system or with the computer's hardware."
1	MR. LANE: Objection.	1	operating system or with the computer's hardware."
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2 3	MR. LANE: Objection. THE WITNESS: Well, let's see, it is kind of hard for me to react to that sort of on	23	operating system or with the computer's hardware." Do you see that? A. Yes, I do.
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	Page 122		Page 124
1	A. That could be true.	1	dictionary be more appropriate to the time frame?
2	Q. If any edition of the Microsoft	2	MR. LANE: Objection.
3	computer dictionary is going to be relevant to how	3	THE WITNESS: It could have been.
4	someone of ordinary skill in the art would interpret	4	MR. GRINSTEIN: Q. And so you didn't
5	these patents in the year 2000, it is going to be	5	even consider the 1999 version; is that right?
		6	
6	the 1999 edition; isn't that right?	-	
7	MR. LANE: Objection.	7	Q. Is that just an oversight on your
8	THE WITNESS: I don't think that's	8	part?
9	correct at all.	9	MR. LANE: Objection.
10	MR. GRINSTEIN: Q. You just testified	10	THE WITNESS: No, it is not an
11	earlier that you cited the 1994 edition of the computer	11	oversight.
12	dictionary	12	MR. GRINSTEIN: Q. Having seen the
13	A. Yes.	13	dictionary definitions that you have just seen, the 1999
14	Q as opposed to a contemporary	14	version and the 1997 version, if you were to write your
15	dictionary because 1994 is more relevant to what	15	expert report again today would you cite the 1994
16	somebody of ordinary skill in the art would think	16	version of that computer dictionary?
17	these patents meant in 2000.	17	MR. LANE: Objection.
18	That was your testimony then, right?	18	THE WITNESS: If I were to rewrite it
19	A. Yes.	19	today knowing that these two exist, would I have
		20	cited that, yes.
20		20	MR. GRINSTEIN: Q. Why?
21	dated patent than is 2009 then plainly 1999 is more		
22	relevant to a 2000 patent than 1994; isn't that	22	A. Well, more current information, closer
23	right?	23	to the patent date.
24	MR. LANE: Objection.	24	Q. You would have cited the 1994
25	THE WITNESS: I don't think you	25	A. No, I thought you said '99. I am
	Page 123		Page 125
1	can no. I mean, somebody who is like me, my	1	sorry.
2	understanding would be based on sort of the current	2	Q. I am saying if you were to rewrite
3			
	dictionary that I had.	3	your expert report today would you cite the '94
4	dictionary that I had. MR. GRINSTEIN: Q. And wouldn't the		your expert report today would you cite the '94
45	MR. GRINSTEIN: Q. And wouldn't the	3 4	your expert report today would you cite the '94 dictionary definition or the 1999 dictionary
5	MR. GRINSTEIN: Q. And wouldn't the current dictionary that the date these patents be filed	3 4 5	your expert report today would you cite the '94 dictionary definition or the 1999 dictionary definition now that you know '99 exists?
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. GRINSTEIN: Q. And wouldn't the current dictionary that the date these patents be filed be the 1999 version? A. I don't know that it would be. Q. Did you do you own the 1994 edition of the computer dictionary? A. No. Q. This is something that was provided to you? A. This came up in the back and forth between Michael and myself. Q. So was it just an oversight that your patent excuse me your expert report skips two versions of the Microsoft computer dictionary, the fourth edition and third edition, and goes back to the second edition to find its definition of "interface"? MR. LANE: Objection. THE WITNESS: No, I think that was	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>your expert report today would you cite the '94 dictionary definition or the 1999 dictionary definition now that you know '99 exists? MR. LANE: Objection. THE WITNESS: I would I would use the '99 dictionary. MR. GRINSTEIN: Q. Let's take a look at the specification for a second of the '025 patent. A. Okay. Let's see, which claim are you at so I can find it? Q. I am talking about the specification right now. Just to be clear, we are still talking about the claim first interface, but I want you to look at the patent itself, which is the '025 patent, which is Exhibit 48. A. All right. What where would you like me to look at that? Q. If you would, can we look at column 5, and I want to focus in on lines 31 through 34.</pre>
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	Page 126		Page 128
1	Q. 31 through 34.	1	Q. So you would agree that the present
2	A. Thank you.	2	invention part of the present invention is the
3	Q. Those read, "The present invention	3	seller interface, right?
4	partially resides on the seller's computers,	4	MR. LANE: Objection.
5	controls and edits the presentation and then	5	THE WITNESS: Well, let's see, again,
6	automatically transmits that information and data	6	when you are talking about the invention, this is
7	for publication in traditional media and electronic	7	the '025, which is the second term?
8	networks."	8	MR. GRINSTEIN: Q. Uh-huh. Well, '025 I
		9	don't think is the second term but the second interface.
9	A. Yes, it does.	10	If you look at '025 claim 1, which is back
10	Q. Do you see that?	11	in the claims section, there are a bunch of terms,
11	A. Yes, I see that.	12	and it is one of the terms.
12	Q. Have you reviewed that portion of the	13	A. Okay.
13	specification before?	14	Q. And my only question is, the seller
14	A, Yes.	15	interface is part of the invention, right?
15	Q. Did you look at it again in	16	MR. LANE: Objection.
16	anticipation of this deposition?	17	THE WITNESS: Yes.
17	A. Just no. When I that was before		MR. GRINSTEIN: Q. And your testimony is
18	I wrote the report, so I haven't reviewed it since I	18	
19	wrote the report.	19	that the second interface, the seller interface,
20	Q. The seller interface of course is part	20	includes hardware, right?
21	of the present invention, right?	21	 A. Hardware and software, yes. O. And that hardware includes the
22	MR. LANE: Objection.	22	
23	THE WITNESS: Let's see, when you	23	seller's computer, right?
24	talk about the present invention, you will help me	24	A. Yes, includes hardware, computers at
25	out if you sort of be if you tell me which of	25	the seller's location, yes.
	Page 127		Page 129
1	Page 127 these claims the terms that you are talking	1	
1	these claims the terms that you are talking	1 2	Q. So when the line here says, "the
2	these claims the terms that you are talking about, it will help me sort of respond to you.	1 2 3	Q. So when the line here says, "the present invention partially resides on the seller's
2 3	these claims the terms that you are talking about, it will help me sort of respond to you. MR. GRINSTEIN: Q. Well, on	2	Q. So when the line here says, "the present invention partially resides on the seller's computers," if you understand "interface" to mean
2 3 4	these claims the terms that you are talking about, it will help me sort of respond to you. MR. GRINSTEIN: Q. Well, on A. Because the '045 and '025 are two	2 3	Q. So when the line here says, "the present invention partially resides on the seller's computers," if you understand "interface" to mean hardware, that line is essentially saying the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 these claims the terms that you are talking about, it will help me sort of respond to you. MR. GRINSTEIN: Q. Well, on A. Because the '045 and '025 are two different things. Q. We are talking about the claim term "first interface to the computer system." A. Okay. Q. And that claim term appears in the '025 patent, claim 179. A. Okay. Q. The seller interface is actually the second interface to the computer system, isn't it? A. Let me check real quick. Let's see, the first interface, hardware, software, internet media venue, location, and then the second interface to the computer system is through which the seller is prompted to input information to select one or more of the internet media venues, so yes. Q. I skipped a little bit. To be clear, I am talking about the second interface, right? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. So when the line here says, "the present invention partially resides on the seller's computers," if you understand "interface" to mean hardware, that line is essentially saying the hardware and software partially resides on the seller's hardware; isn't that right? MR. LANE: Objection. THE WITNESS: If you will rephrase that, I will try to give you a straight answer. MR. GRINSTEIN: Q. We agreed that the seller interface is part of the present invention, and your opinion is that the seller interface includes hardware like the seller's computer. If that's the case, then essentially what this line in the specification is saying is that the seller's computer partially resides on the seller's computer, doesn't it? MR. LANE: Objection. THE WITNESS: Say it one more time because MR. GRINSTEIN: Q. I will do it one more time. We have agreed that the present invention

33 (Pages 126 to 129)

Page 130Page 1321computer, right?understand. I apologize.2A. The seller interfaces both the3hardware and software, eyes.4Q. One part of the hardware and software.5is the seller's computer, right?6A. You just said something that was7confusing, when you said one part of the hardware is8hardware and software.9Q. You say that the second interface, includes hardware and software.11right?12A. Yes.13Q. And this is the seller we are talking14obt, right?15A. Yes.16Q. So it is the seller's computer as part17of that hardware, right?18A. Yes.20the seller interface and if the seller interface21the seller's computer, the what this line22so fit the present invention includes23the seller's computer, the what this line24right?11THE WITNESS: Wait a second. Let's25MR. LANE: Objection.12THE WITNESS: Wait a second. Let's26seller's computer' more that mergani that you just said.14A. I apologize. I am truly not trying to25MR. CLANE: Objection.26rege 13117THE WITNESS: Wait a second. Let's26seller's computer' make you a system, a computer word hardware' twice. When you said the present invention partially resides on the seller's26rege 133 <td< th=""><th></th><th></th><th> </th><th></th></td<>				
2 A. The seller interfaces both the hardware and software is the seller's computer, right? 2 Q. If the seller's interface includes the seller's computer, right? 4 Q. One part of the hardware and software is the seller's computer, right? 3 seller's computer, right? 5 is the seller's computer and software. 7 MR. LANE: Objection. 9 Q. You say that the second interface, the seller interface, includes hardware and software. 7 11 right? A. Yes. 7 12 A. Yes. 12 14 about, right? MR. GRINSTEIN: Q. Let's go back to unth ardware, right? 16 Q. So it is the seller interface and if the seller's computer as part includes the seller's computer, the network this line in the specification is saying is that the seller's computer partially resides on the seller's computer, interface interface and if the seller's computer, interface interface interface interface interface in the specification is saying is that the seller's increase of the interface inteseller interface inthe seller's interface inte		Page 130		
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4 the 5 in y 6 the 7 8 9 und 10 tha 11 we 12 CD 13 ena 14 loc 15 16 tha 17 pat 18 19 20 21 of y 22 loc 23 24	Q. Let me ask the question again. If the internet media venue was accessing interface or at least the software component of interface via the internet, would that involve, your words, software installed and a computer at internet media venue location? MR. LANE: Objection. THE WITNESS: No, because my derstanding based on the claim language, the terms at I took a look at and all of the specifications re that software was installed I think via the CD, -ROM, on the internet media venue's hardware to able the internet media venue somebody at that ation to interface with the system. MR. GRINSTEIN: Q. Is it your belief at the only way to infringe the claims of the '025 tent is to install software via CD-ROM? MR. LANE: Objection. THE WITNESS: No. MR. GRINSTEIN: Q. There are other ways getting the software to the internet media venue ation, right? MR. LANE: Objection. THE WITNESS: Well, at this point in the that was the most again, when I read this	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 7 18 9 20 21 22 24 25 24 25 24 25 24 25 24 25 25 24 25 25 25 25 25 25 25 25 25 25	Q. On Exhibit 49, it is in the '025 reference No. 6 on page 12. And I want to talk to you about the difference between parties' constructions here. The word I want to focus in on in the Google and Yahoo! construction is the word "directly." Do you see there is Google and Yahoo!'s definition of software and hardware at the internet media venue or seller location that a person working on behalf of the internet media venue or seller uses directly without the aid of anyone else? Do you see that. A. I must be on the wrong page. Q. It is page 12, term 6, reference No. 6. A. Okay. All right, I am with you. Q. Do you see the word "directly"? A. Yes. Q. Why is that word necessary there? MR. LANE: Objection. THE WITNESS: Well, let's see, let me take a look at my report real quick so I can sort of refresh myself on this section and respond to you. MR. GRINSTEIN: Q. You can't answer the question without looking at your report?
1 and 2 inst 3 ver 4 doi 5 6 tha 7 sof 8 9 10 11 Vol 12 Kin 13 14 1:4 15 16 17 rec 18 vid 19 20 21 to 1 22 wh	Page 135 d the language in the specification talks about talling software from a CD at the internet media nue's location, that was the most common way of ing that. MR. GRINSTEIN: Q. Can you name a claim at is in dispute in this case that limits the way tware gets installed to just being a CD-ROM? MR. LANE: Objection. THE WITNESS: No. VIDEO OPERATOR: This is the end of lume I, videotape No. 2, in the deposition of Gene locaid. We are going off the record. The time is 47. (Break taken.) VIDEO OPERATOR: We are back on the tord. This is the beginning of Volume I, eotape No. 3 in the deposition of Gene Kincaid. The time is 2:08. MR. GRINSTEIN: Q. Mr. Kincaid, I want now talk about the claim term "self-serve interface," ich, again, to help understand what the dispute is, if u look on Exhibit B I will let you hit the report	$\begin{array}{c}1\\1\\2\\3\\4\\5\\6\\7\\8\\9\\10\\11\\2\\13\\14\\15\\16\\17\\8\\19\\0\\21\\22\\3\\4\\25\end{array}$	Page 137 A. I prefer to look at my report. Q. Okay. A. I am sorry, if you repeat your question real quick. Q. You used the term the word "directly" in your definition of "self-serve interface," and my question is why was it necessary to include that word in the definition? MR. LANE: Objection. THE WITNESS: Let's see, let me read directly from my report that speaks to that. It says, "With respect to the second difference, self-serve, in my opinion one of ordinary skill in the art in January 2000 would have understood from the claim language that a self-serve interface was one via which a person is working at seller's location with respect to the second interface or on behalf of the IMV at the IMV's location with respect to the first interface interacted directly with the computer system." Q. And I guess my question is, is if the word "directly" wasn't in there, would let me strike that and ask it this way: The opposite of direct is indirect, of course, right? MR. LANE: Objection.

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	Page 138		Page 140	
1	THE WITNESS: No.	1	Q. And let me step back a second.	1000
2	MR. GRINSTEIN: Q. Is there some sort of	2	When you are using the online bank	and the Association
3	indirect usage of the self-serve interface that you are	3	without on your own and just doing your banking	10170-000
4	intending to exclude by using the word "directly"?	4	without talking to anyone, would you consider that	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
5	A. If you will restate that. I am	5	an example of being self-served?	1 1 V 645 5
6	just	6	MR. LANE: Objection.	101710-11
7	Q. Is there some sort of indirect use of	7	THE WITNESS: Today, yes, I would	10000
8	the self-serve interface that you mean to exclude by	8	include that.	
9	using the word "directly" in the definition of	9	MR. GRINSTEIN: Q. If the online bank	
10	"self-serve interface"?	10	website that you use, let's call it Bank of America, if	100000
11	A. No.	11	the Bank of America website allowed you to do self-serve	
12	Q. There is another difference between	12	banking but also had a little portion of the website	
13	the parties on this claim term. You see that the	13	that said, listen, if you have any questions or need any	
14	Function Media definition says has the phrase	14	help, call us up and we will help you, if they had that	4147-14 V
15	"uses without requiring the aid of anyone else."	15	extra sort of help feature on the website, would you no	
16	And the Google and Yahoo! definition says "uses	16	longer consider it self-serve?	
17	directly without the aid of anyone else."	17	MR. LANE: Objection.	111111
18	Do you see that difference?	18	THE WITNESS: Hypothetically, if you	121421
19	A. Yes, I see the difference.	19	are getting help from somebody else, then it is no	
20	Q. What do you understand to be the	20	longer self-serve.	
21	distinction the practical distinction between	21	MR. GRINSTEIN: Q. But what if the	
22	those two phrases?	22	website didn't require you to get the help, it just said	1
23	MR. LANE: Objection.	23	if you needed it, there is someone to ask, otherwise	
24	THE WITNESS: Well, let's see, if you	24	have your	100 M 100 M
25	will ask that question again maybe rephrase that.	25	MR. LANE: Objection.	
	Page 139		Page 141	-
1	Page 139 MR. GRINSTEIN: O. What's the practical	1	Page 141 MR. GRINSTEIN: O. If that was the way	_
1 2	MR. GRINSTEIN: Q. What's the practical	1	MR. GRINSTEIN: Q. If that was the way	
2	MR. GRINSTEIN: Q. What's the practical difference between in your mind between the		MR. GRINSTEIN: Q. If that was the way the website was constructed, and it is probably the way	
2 3	MR. GRINSTEIN: Q. What's the practical difference between in your mind between the Function Media definition and the Google and Yahoo!	2	MR. GRINSTEIN: Q. If that was the way	
2	MR. GRINSTEIN: Q. What's the practical difference between in your mind between the	2 3	MR. GRINSTEIN: Q. If that was the way the website was constructed, and it is probably the way your online bank is constructed, would you consider that	
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