

EXHIBIT G1

1 MR. LANE: Objection.
 2 THE WITNESS: Well, let's see, let me
 3 find the section here that talks about --
 4 MR. GRINSTEIN: Q. Self-serve, it's on
 5 page 33 of your report.
 6 A. Yes, I have got that. Thanks.
 7 Let me see if I can find a reference.
 8 If you would restate the question one time.
 9 Q. Sure.
 10 Can you name any part of the specification
 11 of the patents you have reviewed that would exclude
 12 a system as being a self-serve interface if a help
 13 desk of some sort was involved?
 14 MR. LANE: Objection.
 15 THE WITNESS: Well, let's see, I
 16 can't sort of -- I don't think I can answer that
 17 question because in this case the self-serve
 18 interface coming out of the claim is something I
 19 think people understood to be one person at either
 20 location interacting with the computer system.
 21 MR. GRINSTEIN: Q. Exhibit 49, Exhibit
 22 B, the list of claim terms, let's go to -- we have
 23 already discussed this a little bit, but let's go to
 24 page 17, term No. 21, which is the second interface.
 25 A. Okay.

1 right?
 2 A. That's correct.
 3 Q. And the dispute between the parties --
 4 one of the disputes between the parties with respect
 5 to this portion of the claim relates to direct
 6 selection of internet media venues versus indirect
 7 selection of the internet media venues; is that
 8 right?
 9 MR. LANE: Objection.
 10 THE WITNESS: Well, no. Let's see --
 11 hang on. Let me read this real fast. Let me catch
 12 up on the language in the claim.
 13 MR. GRINSTEIN: Q. Can I ask quickly, do
 14 you intend to read the entire section?
 15 A. I need to.
 16 Q. Let's go off the record.
 17 VIDEO OPERATOR: Off the record.
 18 The time is 2:23.
 19 (Break taken.)
 20 VIDEO OPERATOR: Going back on the
 21 record.
 22 The time is 2:29.
 23 MR. GRINSTEIN: Let me withdraw the
 24 question and reask it now that you have had a chance
 25 to review this portion of your expert report.

1 Q. That's on page 13 of your expert
 2 report.
 3 A. Let me find the reference.
 4 Q. It's on the bottom of page 17,
 5 reference No. 21.
 6 A. Okay. Second interface?
 7 Q. Yes.
 8 If you look at page 13 of your expert
 9 report, you can see C.2., that's discussing this
 10 claim term, right?
 11 A. Yes.
 12 Q. And in the middle you have got a
 13 statement that says Basis and Reasons, For clarity I
 14 will first discuss the meaning of second interface
 15 followed by discussion of seller to input
 16 information.
 17 Do you see that?
 18 A. This claim term is long, so you broke
 19 it up in two parts, right?
 20 Q. Yes.
 21 I think we have already talked about the
 22 first part, so I want to talk to you about the
 23 second part.
 24 "A seller is prompted," and you discuss that
 25 starting on page 20 of your expert report; is that

1 Q. One of the disputes between the
 2 parties as to the meaning of this claim term focuses
 3 on the difference between direct and indirect
 4 selection; isn't that right?
 5 A. Yes.
 6 Q. What is your understanding of the
 7 distinction between direct and indirect selection?
 8 A. Well, let's see -- well, direct
 9 selection is the seller selecting internet media
 10 venues. Indirect would be having somebody else do
 11 that.
 12 Q. Does direct selection involve naming
 13 the internet media venues by name?
 14 MR. LANE: Objection.
 15 THE WITNESS: It could include that.
 16 MR. GRINSTEIN: Q. What else could it
 17 include other than that?
 18 A. Somebody could collect from a
 19 drop-down menu. Somebody could check box, something
 20 like that.
 21 Q. I don't think my question is very
 22 clear, so let me try it again.
 23 Does direct selection involve using some
 24 method of selecting, whether typing in or checking
 25 off a box or something like that, each individual

1 internet media venue by name, or does it involve
 2 something else?
 3 MR. LANE: Objection.
 4 THE WITNESS: It would include each
 5 internet media venue.
 6 MR. GRINSTEIN: Q. Let me give you a
 7 hypothetical, and maybe that will make this a little
 8 easier.
 9 Suppose the system let you choose internet
 10 media venues such as Time, Newsweek, World
 11 Report.com, the websites of those places, and there
 12 is a little menu, and you can select each one of
 13 them.
 14 A. Yes.
 15 Q. That's one example. Suppose a
 16 different example was the system lets you choose the
 17 category Newsweeklies, or websites of Newsweeklies,
 18 to be clear, and that would -- doesn't have the
 19 names of those in there but they would be included
 20 because they are the websites of Newsweeklies.
 21 Is one of those examples direct selection,
 22 both of them direct selection, neither of them
 23 direct selection?
 24 Which ones do you think?
 25 MR. LANE: Objection.

1 MR. LANE: Objection.
 2 THE WITNESS: Indirect selection
 3 could include a whole host of things, but my
 4 understanding of this claim is that in this
 5 situation where the seller is being prompted to
 6 input information that selects internet media
 7 venues, that's where the seller selects the internet
 8 media venues that they want to place advertising on,
 9 send presentations to.
 10 MR. GRINSTEIN: Q. I hear your answer
 11 there, but I am still not quite sure that answered the
 12 question which was --
 13 A. I will try again.
 14 Q. I hear how you are saying the claim
 15 works, and you are saying the claim involves this
 16 and does not involve indirect selection.
 17 That's what the first sentence on page 21
 18 says, right?
 19 A. Yes.
 20 Q. So explain to me what it doesn't
 21 involve.
 22 What is indirect selection?
 23 A. Well, indirect selection could be a
 24 case where back in 1999 or 2000 you would have an ad
 25 network where the seller would select but not know

1 THE WITNESS: The first example you
 2 gave is an example of a direct selection.
 3 MR. GRINSTEIN: Q. What about the
 4 example of choosing the category of Newsweekly's
 5 websites where it didn't name Time.com, Newsweek.com, so
 6 on and so forth, but if you clicked on Newsweekly
 7 websites, you would get them.
 8 Is that direct selection or indirect
 9 selection?
 10 MR. LANE: Objection.
 11 THE WITNESS: Well, let me respond
 12 this way, which is the best way I can do this, my
 13 understanding is that the only direct selection of
 14 the IMVs is discussed in the patents. Indirect
 15 selection is never discussed. One of ordinary skill
 16 in the art would not have understood the patent or
 17 that claim to include indirect selection.
 18 MR. GRINSTEIN: Q. You yourself wrote
 19 the words "indirect selection is never discussed,"
 20 right?
 21 A. Yes.
 22 Q. So in order to write that sentence you
 23 had to know what "indirect selection" means, right?
 24 A. Uh-huh.
 25 Q. So what does it mean?

1 where the ads are going to run, that is, an ad
 2 network sold a suite of internet media venues, and
 3 the seller would advertise on those without ever
 4 knowing who they are actually advertising on.
 5 Q. Is another word for an advertising
 6 network, another term used to describe it
 7 advertising channel?
 8 MR. LANE: Objection.
 9 THE WITNESS: No, the two aren't the
 10 same.
 11 MR. GRINSTEIN: Q. What's an advertising
 12 channel?
 13 MR. LANE: Objection.
 14 THE WITNESS: Gee whiz, an
 15 advertising channel can be almost any media that you
 16 can place advertising on. An advertising network in
 17 the context of this claim is -- well, advertising
 18 channel is a much broader concept.
 19 MR. GRINSTEIN: Q. Well, tell me what an
 20 advertising channel means to you.
 21 MR. LANE: Objection.
 22 THE WITNESS: Well, let's see, let me
 23 take a look at one thing or two things.
 24 MR. GRINSTEIN: Why don't we go off
 25 the record again?

1 VIDEO OPERATOR: Off the record. The
 2 time is 2:37.
 3 (Break taken.)
 4 VIDEO OPERATOR: We are back on
 5 record. The time is 2:37.
 6 MR. GRINSTEIN: Q. Can you answer the
 7 question, what does an advertising channel mean to you?
 8 MR. LANE: Objection.
 9 THE WITNESS: I am trying to answer
 10 the question in terms of the claims that I was asked
 11 to look at, and I will just have to give you a
 12 definition of that today.
 13 Advertising channel would be anything that
 14 involves paid persuasive communication.
 15 MR. GRINSTEIN: Q. "Anything that
 16 involves paid persuasive communication."
 17 I am trying to work through that definition.
 18 Bear with me for a second.
 19 Is there a difference between advertisement
 20 and advertisement channel in your mind?
 21 MR. LANE: Objection.
 22 THE WITNESS: Yes.
 23 MR. GRINSTEIN: Q. What's the
 24 difference?
 25 A. Advertisement is a single entity,

1 communication.
 2 Q. Would you define an advertisement as
 3 paid persuasive communication?
 4 MR. LANE: Objection.
 5 THE WITNESS: It is one.
 6 MR. GRINSTEIN: Q. Let me -- let's look
 7 at the specification, and maybe that will make it
 8 clearer. Let's look at column 27 of the '025 patent.
 9 If you look at the very first sentence in
 10 column 27, it says, "The presentation database will
 11 have data fields containing information that relates
 12 to the seller's choice of non-resident media or
 13 advertising channels."
 14 Do you see that?
 15 A. Yes, I do.
 16 Q. Used in the context of that sentence,
 17 what is "advertising channels" referring to?
 18 MR. LANE: Objection.
 19 THE WITNESS: I am not -- let's see,
 20 I am not sure how they used it exactly in here. I
 21 mean, that's -- I can't speak for them, the authors
 22 of the patent.
 23 MR. GRINSTEIN: Q. So you can't say as
 24 someone of ordinary skill in the art what that term
 25 meant when it was used in the patent?

1 single message, and a channel can include two
 2 different concepts.
 3 Q. What are the two different concepts?
 4 A. Well, one is a tangible message, and
 5 the other is -- media channel would be where those
 6 messages can be conveyed.
 7 Q. Are you aware that the patent
 8 specification uses the phrase "advertising channel"?
 9 A. I have seen it in here, yes.
 10 Q. And when the patent specification used
 11 the phrase "advertising channel," what did you
 12 understand the patent to be referring to?
 13 MR. LANE: Objection.
 14 THE WITNESS: Well, let's see, my
 15 first definition that I just gave you, when I read
 16 the patent and I looked at the claims, that's the
 17 basis that I used to evaluate everything.
 18 MR. GRINSTEIN: Q. And the first
 19 definition was what?
 20 A. Of an advertising channel?
 21 Q. Uh-huh.
 22 A. Paid persuasive communication.
 23 Q. Anything involving -- I think you
 24 said --
 25 A. Anything involving paid persuasive

1 A. I can give you my understanding of
 2 someone who knew what somebody of ordinary skill in
 3 the art back in 2000 was probably thinking, as I
 4 have already sort of mentioned once.
 5 Q. Do you think that what your
 6 understanding of the phrase "advertising channel"
 7 means is not the same as how it is used here?
 8 MR. LANE: Objection.
 9 THE WITNESS: I can't make that
 10 determination right now on -- just on the quick
 11 reading.
 12 MR. GRINSTEIN: Q. You read the whole
 13 patent, right?
 14 A. Yes.
 15 Q. Cover to cover?
 16 A. Cover to cover.
 17 Q. More than once?
 18 A. Yes.
 19 Q. Turn with me to column 66 of the
 20 patent.
 21 These are some of the claims of the patent,
 22 right?
 23 A. Yes.
 24 Q. Look with me, claim 21, which says,
 25 "The computer system of claim 20 wherein the

1 selection information input by the seller targets
 2 one or more internet media venues by targeting one
 3 or more advertising channels."
 4 Do you see that?
 5 A. I do.
 6 Q. Look at the next claim. It says, "The
 7 computer system of claim 21 where an advertising
 8 channel comprises one or more internet media
 9 venues."
 10 Do you see that?
 11 A. I do.
 12 Q. So based on claim 22, an advertising
 13 channel is something that comprises one or more
 14 internet media venues, right?
 15 MR. LANE: Objection.
 16 THE WITNESS: No. Hold on one
 17 second. Let me look back and make sure that that's
 18 one of the claims I was asked to take a look at.
 19 MR. GRINSTEIN: Q. Well, just to be
 20 clear, I am asking you this question based upon your
 21 understanding of the whole patent as a whole whether or
 22 not it was a claim you were asked to look at.
 23 With that in mind --
 24 A. Let me just check, if you don't mind.
 25 Q. Okay. Let's go off the record.

1 channel" in your report, would you accept my
 2 representation?
 3 A. Yes.
 4 Q. You don't mention "advertising
 5 channel" in your report, and so my question is,
 6 based upon what you see in claims 21 and 22, does
 7 the patent appear to define "advertising channel" as
 8 something that comprises one or more internet media
 9 venues?
 10 MR. LANE: Objection.
 11 THE WITNESS: Let me refer back to my
 12 report so I can give you an answer. I mean, let's
 13 see here. That's not going to help. I don't know
 14 how to answer that question.
 15 MR. GRINSTEIN: Q. Assume with me for a
 16 second that "advertising channel" means a collection of
 17 internet media venues, one or more of them, and assume
 18 with me for a second that these claims, 21 and 22, talk
 19 about selecting internet media venues by selecting the
 20 channel that they comprise but not the -- but I am not
 21 naming the internet media venues by name.
 22 If you assume with me those questions, is
 23 that indirect selection?
 24 MR. LANE: Objection.
 25 THE WITNESS: That's not how I would

1 VIDEO OPERATOR: Off the record. The
 2 time is 2:42.
 3 (Break taken.)
 4 VIDEO OPERATOR: Back on the record.
 5 The time is 2:44.
 6 MR. GRINSTEIN: Q. I am sorry, but when
 7 I go off the record, just let me know that it is time
 8 for you to go back on and then we will record your
 9 answer.
 10 When we are off the record, time is not
 11 being kept, and the Court Reporter is not typing
 12 answers.
 13 A. I understand.
 14 Q. Does what is written in claim 23 -- I
 15 am sorry, 22 -- suggest to you that the way
 16 advertising channel is used in these patents is
 17 meant that an advertising channel is something that
 18 comprises one or more internet media venues?
 19 MR. LANE: Objection.
 20 THE WITNESS: Let me see if I can --
 21 helps me refer to my report. Let me see if I can
 22 find what will help me respond to your question
 23 right.
 24 MR. GRINSTEIN: Q. If I represented to
 25 you that you don't mention the phrase "advertising

1 define indirect selection.
 2 MR. GRINSTEIN: Q. I will give you
 3 another hypothetical.
 4 Suppose that the seller wasn't naming
 5 internet media venues by name but was selecting the
 6 category of all internet media venues that lots of
 7 males ages 18 to 35 frequent. Suppose that's the
 8 way that the seller is selecting internet media
 9 venues.
 10 Is that indirect selection?
 11 MR. LANE: Objection.
 12 THE WITNESS: No.
 13 MR. GRINSTEIN: Q. So in that instance
 14 the seller would be telling the system send this ad to
 15 all the websites out there that that particular
 16 demographic of people likes to visit, and the system
 17 does it for the seller; you would call that direct
 18 selection of the internet media venues?
 19 MR. LANE: Objection.
 20 THE WITNESS: No. Direct selection
 21 involves the seller selecting one or more of the
 22 internet media venues, not a category of internet
 23 media venues.
 24 MR. GRINSTEIN: Q. So selecting by
 25 category like demographics, that would be indirect

<p style="text-align: right;">Page 158</p> <p>1 selection?</p> <p>2 MR. LANE: Objection.</p> <p>3 THE WITNESS: No.</p> <p>4 MR. GRINSTEIN: Q. If it is not direct</p> <p>5 selection, it is not indirect selection, what kind of</p> <p>6 selection is it?</p> <p>7 A. I am not sure what kind of selection</p> <p>8 that would be, but indirect selection is where the</p> <p>9 seller doesn't choose individual media venues --</p> <p>10 internet media venues.</p> <p>11 Q. In the example I just provided to you,</p> <p>12 the seller says "I want these ads to go to all of</p> <p>13 the websites that guys ages 18 to 35 like to go to,"</p> <p>14 so presumably Better Housekeeping.com isn't going to</p> <p>15 be one of them, but Sports Illustrated.com might be</p> <p>16 one of them.</p> <p>17 In my hypothetical the seller is not</p> <p>18 selecting Sports Illustrated.com by name, the seller</p> <p>19 is saying I want websites that have a certain</p> <p>20 demographic.</p> <p>21 In that hypothetical are we talking indirect</p> <p>22 selection, direct selection or some other type of</p> <p>23 selection which you can name for me?</p> <p>24 MR. LANE: Objection.</p> <p>25 THE WITNESS: I am not sure I can --</p>	<p style="text-align: right;">Page 160</p> <p>1 that.</p> <p>2 MR. GRINSTEIN: Q. If you can't give me</p> <p>3 an example of what indirect selection means, then how</p> <p>4 could you have written in your report that indirect</p> <p>5 selection is never discussed and one of ordinary skill</p> <p>6 in the art would not have understood the patent or this</p> <p>7 claim phrase to include indirect selection, the top of</p> <p>8 page 21?</p> <p>9 A. Yes. Well, the plain language in the</p> <p>10 claim in my mind is clear that the seller selects</p> <p>11 the IMVs, and when the seller selects the IMVs,</p> <p>12 that's not an indirect selection.</p> <p>13 Q. I am not sure that answered that</p> <p>14 question, so let me ask it again.</p> <p>15 If you cannot give me an example of what</p> <p>16 indirect selection means, then how could you say</p> <p>17 that indirect selection is never discussed?</p> <p>18 A. Because somebody of ordinary skill in</p> <p>19 the art at the time this was written would</p> <p>20 understand this claim where a seller is prompted to</p> <p>21 input information it selects in the internet media</p> <p>22 venue, they would have thought that is a direct</p> <p>23 selection.</p> <p>24 Q. Let me ask you to turn back to column</p> <p>25 66 of the '025 patent. Look at claim 23.</p>
<p style="text-align: right;">Page 159</p> <p>1 it is not direct selection. That's about as far as</p> <p>2 I can go based on what your description was.</p> <p>3 MR. GRINSTEIN: Q. Why are you resisting</p> <p>4 calling it indirect selection?</p> <p>5 A. Because as a seller I am not selecting</p> <p>6 each internet media venue.</p> <p>7 Q. So that would mean that my</p> <p>8 hypothetical is indirect selection, right?</p> <p>9 MR. LANE: Objection.</p> <p>10 THE WITNESS: I am sorry, you said is</p> <p>11 indirect?</p> <p>12 MR. GRINSTEIN: Q. Is indirect</p> <p>13 selection.</p> <p>14 A. No, not in my mind anyway.</p> <p>15 Q. Give me an example of indirect</p> <p>16 selection.</p> <p>17 MR. LANE: Objection.</p> <p>18 THE WITNESS: That's not within the</p> <p>19 scope of what I did here, and so I probably couldn't</p> <p>20 give you a good response right now. Again, I was</p> <p>21 asked to look at the claim language and look at the</p> <p>22 meaning of those terms within the claim language and</p> <p>23 give my opinion about what someone would have</p> <p>24 believed back in 1999 and 2000. I don't -- I would</p> <p>25 be off track if I tried to give you an answer to</p>	<p style="text-align: right;">Page 161</p> <p>1 Do you see claim 23?</p> <p>2 A. Yes.</p> <p>3 Q. Claim 23 says, "The computer system of</p> <p>4 claim 20 wherein the selection information input by</p> <p>5 the seller targets one or more internet media venues</p> <p>6 by targeting demographics of one or more internet</p> <p>7 media venues."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And that does not involve indirect</p> <p>11 selection, correct?</p> <p>12 MR. LANE: Objection.</p> <p>13 THE WITNESS: Well, let's see, let me</p> <p>14 just pause for ten seconds and make sure that that's</p> <p>15 a claim that I took a look at. If it is not, I</p> <p>16 probably don't have time here to formulate an answer</p> <p>17 for you.</p> <p>18 If you will give me just about a minute or</p> <p>19 two.</p> <p>20 That's not one of the claims that I took a</p> <p>21 look at.</p> <p>22 MR. GRINSTEIN: Q. Are you aware that's</p> <p>23 one of the claims that is being asserted by Function</p> <p>24 Media in this case?</p> <p>25 MR. LANE: Objection.</p>

1 THE WITNESS: No.
 2 MR. GRINSTEIN: Q. Your sentence that
 3 reads, "Only direct selection" -- page 21 -- "only
 4 direct selection of the internet media venue is
 5 disclosed in the patents. Indirect selection is never
 6 discussed."
 7 You would agree with me that claim 23 of the
 8 '025 patent appears in the '025 patent, right?
 9 A. It does appear in the patent.
 10 Q. So when you say indirect selection is
 11 never discussed in the patent, then that must mean
 12 that claim 23 is not talking about indirect
 13 selection; is that right?
 14 MR. LANE: Objection.
 15 THE WITNESS: No, I think you have to
 16 take the whole thing -- you have to take the patent
 17 from head to toe as you've just mentioned and draw a
 18 judgment on what that claim language -- the term,
 19 what it means.
 20 And I am sorry, everything that I have read
 21 indicates that -- that the seller interface, the
 22 seller selects internet media venues.
 23 MR. GRINSTEIN: Q. "Indirect selection
 24 is never discussed"; those are words you used, right?
 25 A. Yes.

1 THE WITNESS: No. Let's see, my
 2 opinions are based on the language in the claims
 3 themselves, the terms in the claims.
 4 MR. GRINSTEIN: Q. But the first
 5 sentence on page 21 says "indirect selection is never
 6 discussed in the patents."
 7 Isn't that what it says?
 8 A. It does say that, and it also follows
 9 on, "One of ordinary skill in the art would not have
 10 understood the patent or this claim phrase to
 11 include indirect selection."
 12 Q. So neither the claim phrase you were
 13 talking about nor the entire patent includes
 14 indirect selection according to your opinion, right?
 15 A. Restate that because this is
 16 important, obviously.
 17 Q. The phrase you have just read to me
 18 says, "One of ordinary skill in the art would not
 19 have understood the patent or this claim phrase to
 20 include indirect selection."
 21 So in the four corners of the patent you
 22 think indirect selection is not included; is that
 23 right?
 24 MR. LANE: Objection.
 25 THE WITNESS: That was a long

1 Q. "Never discussed" means nothing in the
 2 patents talks about it, right?
 3 MR. LANE: Objection.
 4 THE WITNESS: No.
 5 MR. GRINSTEIN: Q. So you think the
 6 patent does talk about indirect selection?
 7 A. Well, the patent talks about a lot of
 8 stuff, both the claims and specifications and
 9 description in the abstract, obviously.
 10 Q. You made a statement right here that
 11 says "indirect selection is never discussed."
 12 Is it your testimony now that indirect
 13 selection is in fact discussed in the '025 patent?
 14 MR. LANE: Objection.
 15 THE WITNESS: No.
 16 MR. GRINSTEIN: Q. So nowhere in the
 17 '025 patent is indirect selection discussed. That's
 18 what's in your report, and that's in your testimony
 19 today, right?
 20 A. Not within the context of that claim.
 21 Q. You don't limit your sentence on page
 22 21 to any particular claim, do you?
 23 You are talking about the entire patent; in
 24 fact you talk about the patents, don't you?
 25 MR. LANE: Objection.

1 question. If you can run it by me one more time.
 2 I am probably running out of gas right now.
 3 MR. GRINSTEIN: Q. Let me finish up this
 4 line of questioning and we will take a break.
 5 A. That would help me a lot.
 6 Q. This sentence says, "One of ordinary
 7 skill in the art would not have understood the
 8 patent or this claim phrase to include indirect
 9 selection."
 10 What you are saying there, the patent does
 11 not include indirect selection right?
 12 MR. LANE: Objection.
 13 THE WITNESS: The patent nor this
 14 claim.
 15 MR. GRINSTEIN: Q. The one hand the
 16 patent, the other hand the claim, neither of them
 17 include indirect selection, right?
 18 A. Well, the claim that we are talking
 19 about, that is the seller prompting -- the seller is
 20 prompted to input information to select one or more
 21 of the internet media venues. That's the context --
 22 that's the meaning that I applied to that.
 23 Q. But you didn't just write, "One of
 24 ordinary skill in the art would not have understood
 25 this claim phrase to include indirect selection,"

1 you went further than that, right?
 2 A. Yes.
 3 Q. You included the whole word "patent,"
 4 right?
 5 A. Uh-huh.
 6 Q. So if the patent does not include
 7 indirect selection, then in your view claim 23 does
 8 not speak to indirect selection -- does not include
 9 indirect selection, right?
 10 MR. LANE: Objection.
 11 THE WITNESS: I can't speak to claim
 12 23.
 13 MR. GRINSTEIN: Q. It is in the patent,
 14 right?
 15 A. It is in the body of the patent, yes.
 16 Q. So if the patent doesn't include
 17 indirect selection, ergo, claim 23 which is in the
 18 patent doesn't include indirect selection; is that
 19 logic sound?
 20 MR. LANE: Objection.
 21 THE WITNESS: No, it is not.
 22 MR. GRINSTEIN: Q. Explain to me how
 23 claim 23 could include indirect selection but the entire
 24 patent that involves claim 23 does not include indirect
 25 selection?

1 MR. LANE: Objection.
 2 THE WITNESS: Claim 23 is not -- I
 3 will double-check. Let me just look through the
 4 list of the terms -- claim terms that I looked at.
 5 Claim 23 is not one that I took a look at
 6 for this report, so I can't give you an answer right
 7 now.
 8 MR. GRINSTEIN: Q. When you made the
 9 bold affirmative statement that "indirect selection is
 10 never discussed in the patent," did you read the entire
 11 patent to confirm that that was the case?
 12 A. I read the entire patent.
 13 Q. So in reading the entire patent you
 14 must have read claim 23, right?
 15 A. Yes, I did.
 16 Q. And so when you read claim 23, that
 17 didn't cause you to change your opinion that
 18 indirect selection is never discussed, right?
 19 MR. LANE: Objection.
 20 THE WITNESS: Restate that question
 21 because --
 22 MR. GRINSTEIN: Q. Sure.
 23 You read claim 23, it said what it said, and
 24 having read that you still held the opinion that the
 25 entire patent, nowhere in the patent, was indirect

1 selection discussed, right?
 2 MR. LANE: Objection.
 3 THE WITNESS: Again, that was not one
 4 of the claims. That's not one of the claims that I
 5 took a look at in this report, so I can't give you
 6 an opinion. I can't give you a straight answer on
 7 that one.
 8 MR. GRINSTEIN: I will give you that
 9 break that you need.
 10 VIDEO OPERATOR: Going off the
 11 record.
 12 The time is 3:02.
 13 (Break taken.)
 14 VIDEO OPERATOR: We are back on the
 15 record. The time is 3:19.
 16 MR. GRINSTEIN: Q. I want to ask you,
 17 Mr. Kincaid, about another claim in column 66 of the
 18 '025 patent, and that's claim 24.
 19 That claim starts out, as you see, the
 20 computer system of claim 20.
 21 Do you see that?
 22 A. Yes.
 23 Q. And if you follow back to claim 20,
 24 that's the way you read these patents --
 25 A. Yes.

1 Q. -- it is a jigsaw, follow back to
 2 claim 20 it says the computer system of claim 6?
 3 A. Yes.
 4 Q. If you go to claim 6, it says the
 5 computer system of claim 1.
 6 Do you see that?
 7 A. Yes.
 8 Q. Eventually through a circuitous route,
 9 claim 24 eventually depends upon claim 1; is that
 10 fair?
 11 A. Yes.
 12 Q. Claim 24 says, "The computer systems
 13 of claim 20 wherein the selection information
 14 includes identification of individual internet media
 15 venues."
 16 Do you see that?
 17 A. Yes.
 18 Q. That claim is talking about a seller
 19 inputting selection information that includes an ID
 20 of individual media venues, right?
 21 MR. LANE: Objection.
 22 THE WITNESS: Let me double-check.
 23 If I am not mistaken, that's not -- that's not a
 24 claim that I was asked to take a look at. So I
 25 can't sort of give you a response right now that is

1 worthy of giving.
 2 MR. GRINSTEIN: Q. Are you aware that
 3 claim 24 has been asserted against Yahoo! in this case?
 4 MR. LANE: Objection.
 5 THE WITNESS: No.
 6 MR. GRINSTEIN: Q. Let me just ask you
 7 what the words mean because you have read the whole
 8 patent, so I want to know what you thought when you read
 9 those words.
 10 It says, "The computer system of claim 20
 11 wherein the selection information includes an
 12 identification of individual internet media venues."
 13 Do you see that?
 14 A. I see that claim.
 15 Q. Is that talking about direct selection
 16 of internet media venues?
 17 MR. LANE: Objection.
 18 THE WITNESS: Again, that's not one
 19 of the claims that I was asked to take a look at in
 20 the terms -- help or define the terms. I can't take
 21 a flier right now and give you a response.
 22 MR. GRINSTEIN: Q. You can't tell me one
 23 way or the other whether that involves direct selection
 24 of internet media venues?
 25 A. No, I haven't had a chance to look at

1 that one.
 2 Q. If I ask you a question about this
 3 patent that doesn't involve one of the claims that
 4 you looked at, you can't answer that question for
 5 me?
 6 MR. LANE: Objection.
 7 THE WITNESS: No.
 8 MR. GRINSTEIN: Q. You can't answer
 9 questions for me that discuss how other claims that are
 10 in this patent bear on or reflect on your analysis with
 11 respect to the claims that you have analyzed?
 12 MR. LANE: Objection.
 13 THE WITNESS: If you will restate
 14 that one time.
 15 MR. GRINSTEIN: Q. You have analyzed
 16 certain claims in these patents, right?
 17 A. Yes, I did.
 18 Q. But you can't answer questions for me
 19 that discuss how other claims might shed some light
 20 on your analysis of the claims that you did review;
 21 you can't answer those questions?
 22 MR. LANE: Objection.
 23 THE WITNESS: That's correct, I can't
 24 answer those questions.
 25 MR. GRINSTEIN: Q. Have you ever heard

1 of the concept of claim differentiation?
 2 MR. LANE: Objection.
 3 THE WITNESS: No.
 4 MR. GRINSTEIN: Q. You wouldn't know how
 5 that applies?
 6 MR. LANE: Objection.
 7 THE WITNESS: No.
 8 MR. GRINSTEIN: Q. Let me ask you about
 9 another term that you opined on, and this is the term
 10 "presentation rules."
 11 A. Can you point me to the page in the
 12 report, please?
 13 Q. You discuss them starting on page 40.
 14 There might be other places that you discuss them
 15 but that's the section.
 16 A. Let me get to that page.
 17 The term is "presentation rules"?
 18 Q. You can see what both sides are saying
 19 about this, if you will open up Exhibit 49 and flip
 20 to page 14.
 21 A. No. 11.
 22 Q. It is No. 11.
 23 Do you see that?
 24 A. Yes, I do.
 25 Q. And you see there is a definition that

1 Function Media has proposed and there is a
 2 definition that Google and Yahoo! has proposed.
 3 Do you see that?
 4 A. Yes.
 5 Q. And you state in your expert report
 6 that this claim term means "Rules that control and
 7 limit the style and editing, i.e., form of the
 8 presentations created by the system."
 9 Do you see that?
 10 A. Yes. That's correct.
 11 Q. First of all, what's the difference
 12 between style and editing?
 13 MR. LANE: Objection.
 14 THE WITNESS: Well, let's see, that
 15 could take a while. It's okay. If you want to
 16 know.
 17 Do you want me to go into a discussion
 18 between style and editing?
 19 MR. GRINSTEIN: Q. I would like to know
 20 why you included both of those words in your definition
 21 of this claim term, why you thought there was a
 22 distinction between the two that you needed to include
 23 both words.
 24 MR. LANE: Objection.
 25 THE WITNESS: Well, see, I think the

<p style="text-align: right;">Page 174</p> <p>1 definition is sort of face value. Style and editing 2 are components of presentations or ads. 3 MR. GRINSTEIN: Q. I was about to ask a 4 question, it is kind of funny because we just discussed 5 a similar situation off the record, but why don't you 6 tell me what style and editing means in your mind? 7 MR. LANE: Objection. 8 THE WITNESS: Well, let's see, style 9 and editing could include almost anything in terms 10 of the creative process, both words and visuals and 11 any other part. 12 MR. GRINSTEIN: Q. What's the difference 13 between them with respect to an advertisement? 14 MR. LANE: Objection. 15 THE WITNESS: Well, let's see, there 16 is not a difference between the two. They work 17 together, and that's why they are included in the 18 definition. 19 MR. GRINSTEIN: Q. Maybe if I asked you 20 to give me some examples that would help. 21 Give me some examples of rules that might 22 control and limit the style of a presentation 23 created by the system. 24 MR. LANE: Objection. 25 THE WITNESS: Well, let's see, let me</p>	<p style="text-align: right;">Page 176</p> <p>1 about the '025 patent, and what I want to ask you a 2 question about is the very first page of the patent 3 where you see an abstract. 4 A. Yes. 5 Q. Do you know what the abstract is? 6 A. Yes. 7 Q. What is it? 8 A. It is a condensed description in 9 discussion of the entirety of the patent from the 10 inventor's point of view. 11 Q. The first sentence -- I guess I will 12 read the whole thing for clarity, although I don't 13 want to ask a question of the whole -- it says, "An 14 internet advertising system and method that provides 15 a seller self-serve control for creation, 16 publication and display of advertisements on the 17 internet media venues owned or controlled by 18 entities other than the seller in a form 19 automatically modified to comply with the media 20 venue's presentation rules which may include design 21 or style standards for look and feel, editorial 22 standards, and distribution factors." 23 Do you see that? 24 A. Yes, I do. 25 Q. I want to ask you about the last</p>
<p style="text-align: right;">Page 175</p> <p>1 do this, when I looked at the claim language and it 2 said "presentation rules," I had to say what was 3 happening back in 2000, and I think my report 4 clearly says it best. 5 The term "presentation rules" by itself had 6 no real special meaning in the field of internet 7 advertising at the time this '025 patent was filed 8 in January 2000. 9 But in the context of the claim, namely, the 10 IMV's inner presentation rules that control how the 11 electronic advertisements are displayed in their 12 respective venues, one of ordinary skill in 2000 13 would have understood this term to correspond to IMV 14 media kits, and those -- that's what that definition 15 means. 16 MR. GRINSTEIN: Q. Is that the best 17 answer you can give to my question? 18 A. It is, yes. 19 Q. Can you give me an example of rules 20 that would control and limit the editing of the 21 presentations created by the system? 22 MR. LANE: Objection. 23 THE WITNESS: No, I can't give you an 24 example of that right now. 25 MR. GRINSTEIN: Q. I want to talk to you</p>	<p style="text-align: right;">Page 177</p> <p>1 clause of that sentence that says, "comply with the 2 media venue's presentation rules." 3 Do you see that? 4 A. Yes. 5 Q. And then it lists examples of 6 presentation rules, right? 7 MR. LANE: Objection. 8 THE WITNESS: Let's see, let me get 9 down here, you are talking about where -- let me 10 see -- where it talks about "to comply with the 11 media venue's presentation rules" and continuation 12 of that? 13 MR. GRINSTEIN: Q. Yes. It says "which 14 may include," do you see that? 15 A. Yes. 16 Q. And what follows there are examples of 17 presentation rules, right? 18 MR. LANE: Objection. 19 THE WITNESS: No, not according to 20 what my understanding about presentation rules are 21 in the claim itself. 22 MR. GRINSTEIN: Q. Are design or style 23 standards for look and feel presentation rules? 24 MR. LANE: Objection. 25 THE WITNESS: No.</p>

1 MR. GRINSTEIN: Q. Are editorial
2 standards presentation rules?
3 MR. LANE: Objection.
4 THE WITNESS: No.
5 MR. GRINSTEIN: Q. Are distribution
6 factors presentation rules?
7 MR. LANE: Objection.
8 THE WITNESS: No.
9 MR. GRINSTEIN: Q. So when this sentence
10 says that "the media venue's presentation rules may
11 include design or style standards for look and feel,
12 editorial standards and distribution factors," you do
13 not understand what that means?
14 MR. LANE: Objection.
15 THE WITNESS: When I looked at the
16 phrase -- the term inside the claim, "presentation
17 rules," that's not what somebody who is of ordinary
18 skill in the art would have interpreted that as.
19 MR. GRINSTEIN: Q. So the way you came
20 up with what "presentation rules" meant was you
21 considered what somebody of ordinary skill back in the
22 year 2000 would have thought that it meant?
23 A. Yes.
24 Q. And so that was kind of the primary
25 thing you considered above and beyond the words in

1 the patents like in the abstract, right?
2 MR. LANE: Objection.
3 THE WITNESS: No. Let's see, again,
4 the language in the claim talks about presentation
5 rules, and back in 2000, anybody of ordinary skills
6 in the art would have interpreted that -- I used the
7 phrase "media kits," and media kits were well-known
8 to those in the advertising field in 2000. As
9 mechanical specifications that IMVs mandate sellers
10 follow when advertising on their respective IMVs.
11 In 2000 it was common for an IMV to provide
12 media kits that include those rules and
13 specifications.
14 The examples -- for example, common rule
15 related to the size of the banner advertisements
16 that the IMVs would allow posted on their sites.
17 MR. GRINSTEIN: Q. But you understood
18 your role in this case as an expert was to say as
19 between my own experience and understanding of what
20 things meant in the art in 2000 and words and phrases
21 that appear in the patent, your role as an expert was to
22 apply your understanding and experience in construing
23 these claims; is that right?
24 MR. LANE: Objection.
25 THE WITNESS: My role is to use my

1 experience in everything, the items I mentioned in
2 the very first part of the report, all of the things
3 going on.
4 Let me find -- so I am basing all of my
5 opinions based on my -- I am just reading right off
6 of page 1.
7 MR. GRINSTEIN: Q. You can summarize
8 your analysis. I would like to know.
9 A. My opinion is basically based on my
10 personal knowledge, experience, including the level
11 of education and experience of persons in the skill
12 working in the field, types of problems they
13 encountered in the art, prior art patents and
14 publications, activities of others, prior art
15 solutions to problems encountered by the inventor,
16 the sophistication of the technology and the
17 repetitive of which innovations were made.
18 That is exactly what I think I was asked to
19 do.
20 Q. I don't think you mentioned the
21 specification of the patent in there.
22 Did you? Maybe you did and I missed it.
23 A. Let's see, well, in the statement of
24 opinions, the summary of my opinions regarding the
25 meaning of certain claim terms in '025 and '045 is

1 what is spelled out blow. So that includes the
2 patents.
3 Q. I guess what I am trying to get at is
4 the methodology that you employed in your report,
5 and my question is, did you interpret the claims
6 based upon your understanding and experience from
7 having been involved in internet advertising around
8 the year 2000, or did you interpret the claims in
9 light of what the specification said the claims
10 meant?
11 MR. LANE: Objection.
12 THE WITNESS: I included everything
13 in my analysis and have to span both of that and
14 more.
15 MR. GRINSTEIN: Q. And what did you do
16 in a circumstance in which what your analysis and
17 understanding of what the claims meant to you as an
18 ordinary -- as a person of ordinary skill in the art
19 meant -- strike that question.
20 What did you do when there was a situation
21 in which you thought as a person of ordinary skill
22 that the claim meant one thing but the specification
23 had language in it suggesting that the claim meant
24 something else?
25 How did you resolve that conflict?

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1 MR. LANE: Objection.
 2 THE WITNESS: Well, see, the only
 3 thing I was asked to do was look at the claim
 4 language, and so I did that in context of the whole
 5 patent.
 6 MR. GRINSTEIN: Q. So you looked -- you
 7 focused on the claim language and your own experience
 8 but not so much the specification?
 9 MR. LANE: Objection.
 10 THE WITNESS: No. All of those
 11 things were taken into consideration.
 12 MR. GRINSTEIN: Q. So let me ask my
 13 question again.
 14 When you encountered a conflict between what
 15 the specification indicated a claim term meant and
 16 what your own experience as a person of skill in the
 17 art suggested that a claim term meant, how did you
 18 resolve that conflict?
 19 MR. LANE: Objection.
 20 THE WITNESS: Well, I used the
 21 entirety of the patent, all of the specifications,
 22 all the claims, the abstract, everything, plus my
 23 experience regarding what was take taking place back
 24 in 1999 and 2000 and came to an opinion on that.
 25 MR. GRINSTEIN: Q. Was one -- as between

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1 the claim language, the specification and your own
 2 experience, let's call those three factors, what the
 3 specification says, what the claim language says, and
 4 your own experience about what terms mean; as between
 5 those three factors did you consider one of them more
 6 important than the others?
 7 MR. LANE: Objection.
 8 THE WITNESS: No, they are all
 9 equally weighted.
 10 MR. GRINSTEIN: Q. Now we are talking
 11 about the claim term "presentation rules," right?
 12 A. Yes, page 40 of my report.
 13 Q. And you agree on page 41 of your
 14 report that the presentation rules databases contain
 15 the presentation rules, right?
 16 A. There you are talking about in the
 17 specification?
 18 Q. Yes.
 19 A. Section b?
 20 Q. Yes.
 21 A. The specification states that the
 22 presentation rules databases had data fields
 23 containing information that controls and limits the
 24 style and editing of presentation created by the
 25 presentation generation program 1710 which is the

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1 system.
 2 Q. The next sentence you wrote confirms
 3 your understanding that the presentation rules
 4 database contains the presentation rules, right?
 5 A. Yes. A person of ordinary skill in
 6 the art would understand that the fields in the
 7 presentation rules database contains the
 8 presentation rules themselves.
 9 Q. Let me ask you a question about the
 10 specification.
 11 If you will turn with me to column 18.
 12 A. In '025?
 13 Q. Yes, column 18 of '025.
 14 A. Correct.
 15 Q. Start with me on line 40.
 16 That line starts, "The data fields held by
 17 the presentation rules database 1650," right?
 18 A. Yes, I can see that.
 19 Q. We reference back to your report, your
 20 report says, "The fields in the presentation rules
 21 database contain the presentation rules," right?
 22 A. Yes.
 23 Q. So that first sentence, that first
 24 clause that we talked about, "the data fields held
 25 by the presentation rules," those databases are the

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1 presentation rules, right?
 2 MR. LANE: Objection.
 3 THE WITNESS: Let's see, I am trying
 4 to make correspondence between my report and the
 5 citation you gave me.
 6 Would you say it one more time a little bit
 7 slower?
 8 MR. GRINSTEIN: Q. You said in your
 9 report that "the fields in the presentation rules
 10 database contain the presentation rules," right?
 11 A. Yes.
 12 Q. And specification at line 40, column
 13 18, of the '025 patent says "the data fields held by
 14 the presentation rules database."
 15 Do you see that?
 16 A. I am sorry?
 17 MR. LANE: Column 40 or column 18,
 18 line 40?
 19 MR. GRINSTEIN: Q. Column 18, line 40
 20 says that, "the data fields held by the presentation
 21 rules database."
 22 Do you see that?
 23 A. Yes, I see that line.
 24 Q. The data fields that's referring to,
 25 according to your report, are the presentation

1 rules, right?
 2 MR. LANE: Objection.
 3 THE WITNESS: I am trying to
 4 determine the context of your question, so bear with
 5 me.
 6 Would you restate your question one more
 7 time?
 8 MR. GRINSTEIN: Q. Let me ask this
 9 really simply.
 10 The thing I am talking about is the
 11 presentations rules database, right?
 12 A. Yes.
 13 Q. Of the first -- that's what is
 14 discussed right there at line 40, column 18, of the
 15 '025 patent, the presentation rules database, right?
 16 A. Yes.
 17 Q. Is it hard to admit that the
 18 presentation rules database contains presentation
 19 rules?
 20 A. No. I am just trying to make sure
 21 that within the context of what you are asking here,
 22 which is presentation rules, are stored in the
 23 databases.
 24 Q. Can you agree with me that
 25 presentation rules get stored in the presentation

1 the system."
 2 Do you see that?
 3 A. Yes, I do.
 4 Q. Look back at what I just read to you,
 5 and it says, "Some of the fields that might be the
 6 presentation rules database include presentation
 7 cost and options."
 8 That's what that section said, right?
 9 A. Let's see, you just -- you just
 10 read -- what you just said didn't correspond to that
 11 list of items you just ran through.
 12 Q. Look at line 45 and 46, column 18.
 13 A. Presentation rules --
 14 Q. That's one of the rules that is in the
 15 presentation rules database, right?
 16 MR. LANE: Objection.
 17 THE WITNESS: No.
 18 MR. GRINSTEIN: Q. Then what is it?
 19 A. Presentation rules database are the
 20 media kits that IMVs provided to sellers. That's my
 21 understanding of that term in these claims.
 22 Q. You agreed with me earlier that the
 23 presentation rules database holds the presentation
 24 rules, right?
 25 A. Yes.

1 rules database?
 2 A. Yes.
 3 Q. Let me read this sentence.
 4 "The data fields held by the presentation
 5 rules database will vary from seller type to seller
 6 type as well as from one media type to another
 7 depending on the design of the presentations."
 8 Do you see that?
 9 A. Yes.
 10 Q. "Some of the fields that might be
 11 maintained are presentation templates, blocked
 12 words, blocked phrases, blocked references,
 13 presentation cost and options, publication dates and
 14 deadlines, blocked URLs, grammar guidelines,
 15 spelling dictionaries, presentation size
 16 restrictions, photos or graphic specifications such
 17 as size, compression and file format and any other
 18 guidelines, benchmarks or controlling algorithms."
 19 Did I read that correctly?
 20 A. You did read it correctly.
 21 Q. Now, I want you to keep in mind your
 22 definition of presentation rules which is on the top
 23 of page 40.
 24 It says, "Rules that control and limit the
 25 style and editing of the presentations created by

1 Q. The next line of this specification
 2 discusses what is in the presentation rules
 3 database, right, some of the fields that might be
 4 maintained, right?
 5 A. It discusses what these specifications
 6 talk about, but my understanding, again, back in
 7 2000 was different than this entire list.
 8 Q. So you disagree that what is listed
 9 here are presentation rules?
 10 MR. LANE: Objection.
 11 THE WITNESS: Yes, and that's why I
 12 will drop back to my understanding of what anybody
 13 skilled in the art back in 2000 would have
 14 interpreted presentation rules, and that is those
 15 are media kits.
 16 MR. GRINSTEIN: Q. So in your view the
 17 patent has something called -- the system described in
 18 the '025 patent has something called a presentation
 19 rules database, right?
 20 A. It does.
 21 Q. And in your opinion that contains
 22 media kits; is that your opinion?
 23 A. Yes.
 24 Q. And so when the patent says "some of
 25 the fields that might be maintained by implication

1 in the presentation rules database are the
 2 following," you are saying that those actually
 3 aren't maintained in the presentation rules database
 4 because those are not media kits?
 5 MR. LANE: Objection.
 6 THE WITNESS: I am saying those are
 7 not media kits.
 8 MR. GRINSTEIN: Q. So they wouldn't go
 9 in the presentation rules database?
 10 MR. LANE: Objection.
 11 THE WITNESS: I don't know where they
 12 would go, but the presentation rules database,
 13 according to the language in the claim, would be
 14 understood by anybody with ordinary skill in the art
 15 back in 2000 to be media kits.
 16 MR. GRINSTEIN: Q. So as between what
 17 this portion of the specification says is in the
 18 presentation rules database and what your own experience
 19 would suggest should go in the presentation rules
 20 database you are citing with your own experience in
 21 construing this claim term, right?
 22 MR. LANE: Objection.
 23 THE WITNESS: My experience plus the
 24 reading of the patent and my understanding of how
 25 the whole system works as well as everything that

1 has been included.
 2 MR. GRINSTEIN: Q. When you read the
 3 whole patent, you read this part, right?
 4 A. I did.
 5 Q. But you disagree that these things
 6 would go in the presentation rules database, right?
 7 MR. LANE: Objection.
 8 THE WITNESS: I am not sure where
 9 those would go. I know those don't constitute
 10 somebody of ordinary skill, definition of
 11 presentation rule which is a media kit.
 12 MR. GRINSTEIN: Q. And once more, asking
 13 you about the first paragraph on page 40, your
 14 definition, you say that, "presentation rules are rules
 15 that control and limit the style and editing of the
 16 presentations created by the system."
 17 Do you see that?
 18 A. Yes.
 19 Q. Why isn't it a better definition or a
 20 correct definition to say rules that control and
 21 limit the style or editing of the presentations
 22 created by the system?
 23 A. It is not an either/or situation. It
 24 is inclusive.
 25 Q. So style or editing would be

1 equally -- would be an equally valid way to define
 2 the term as opposed to style and editing?
 3 MR. LANE: Objection.
 4 THE WITNESS: No. I think the
 5 definition that we have down here -- that I have
 6 down here is correct.
 7 MR. GRINSTEIN: Q. I take it that when
 8 you wrote definitions or opined these definitions were
 9 the correct definitions, you took care with respect to
 10 each word you included in the definition, right?
 11 A. Yes.
 12 Q. So words didn't just come into your
 13 definitions by happenstance, you thought about them
 14 and made sure they were appropriate before you wrote
 15 them down, right?
 16 A. Yes.
 17 Q. I guess my question is, when you were
 18 defining "presentation rules," why did you think
 19 that the word "and" was appropriate between style
 20 and editing as opposed to the word "or"?
 21 A. Because these rules that control and
 22 limit these media kits -- let's see.
 23 Style and editing is inclusive rather than
 24 "or" which is one has to take priority over the
 25 other. "Or" means one or the other, and "and" is

1 inclusive. Style and editing are both included in
 2 there.
 3 Q. Well, if the claim definition said
 4 rules that control and limit the style or editing of
 5 the presentations, that would give the option that
 6 these rules would either be style, editing or -- I
 7 am sorry -- that would give the option that these
 8 rules would either control style or they control
 9 editing.
 10 Isn't that a broader definition than style
 11 and editing?
 12 MR. LANE: Objection.
 13 THE WITNESS: No, I don't believe so.
 14 MR. GRINSTEIN: Q. What about "and/or"?
 15 You have seen people say "and/or" before,
 16 haven't you?
 17 A. Yes.
 18 Q. Would a definition "and/or" editing be
 19 the best way to phrase that claim term?
 20 MR. LANE: Objection.
 21 THE WITNESS: No, because I think the
 22 definition that I have laid out is the one that I
 23 think is correct.
 24 MR. GRINSTEIN: Q. And I am asking you
 25 what is wrong with the word "or."

1 Why is it incorrect? You are not agreeing
 2 with me that that should be in there. I want to
 3 know why.
 4 A. Because it would place both style and
 5 editing as sort of one or the other. That's not
 6 correct.
 7 Q. Tell me why "and/or" is incorrect and
 8 why you wouldn't include that in there?
 9 A. That's just confusing.
 10 Q. You have used "and/or" before, haven't
 11 you?
 12 A. Not often.
 13 Q. "And/or" opens up the possibility that
 14 it could both or it could be one or the other,
 15 right?
 16 MR. LANE: Objection.
 17 THE WITNESS: No. I mean --
 18 MR. GRINSTEIN: Q. Does every media kit
 19 that you are familiar with contain rules that control
 20 and limit both style and editing?
 21 A. No.
 22 Q. There were some media kits out there
 23 that had style rules and some that had editing rules
 24 but not vice versa?
 25 MR. LANE: Objection.

1 THE WITNESS: I can't make that kind
 2 of a statement because I haven't seen all media kits
 3 for everything.
 4 MR. GRINSTEIN: Q. But having seen some
 5 media kits, are you aware that some of them had style
 6 rules but not editing rules, or some of them had editing
 7 rules but not style rules?
 8 MR. LANE: Objection.
 9 THE WITNESS: Let's see, the answer
 10 is no. Back in 2000, that phrase, "presentation
 11 rules," would have just meant, been interpreted as a
 12 media kit.
 13 MR. GRINSTEIN: Q. I am asking you
 14 what's inside of the media kits. You are using that
 15 phrase.
 16 I want to know, media kits back in 2000,
 17 were there some of them that had style rules but
 18 didn't have editing rules or vice versa?
 19 MR. LANE: Objection.
 20 THE WITNESS: I can't answer that one
 21 because media kits include specifications, rules,
 22 about what is acceptable to the internet media
 23 venue.
 24 MR. GRINSTEIN: Q. And back at that time
 25 in 2000 were there some internet media venues that cared

1 only about style and not about editing or some internet
 2 media venues that cared only about editing and not about
 3 style?
 4 MR. LANE: Objection.
 5 THE WITNESS: I can't say that.
 6 That's not a true statement.
 7 MR. GRINSTEIN: Q. Can you not say one
 8 way or the other whether or not -- strike that.
 9 Can you provide me -- first of all, what
 10 internet media venue -- I am sorry -- what media
 11 kits from internet media venues were you familiar
 12 with as of 2000?
 13 MR. LANE: Objection.
 14 THE WITNESS: I can't answer.
 15 MR. LANE: Objection.
 16 THE WITNESS: I can't answer that one
 17 today just rolling off the top of my tongue.
 18 MR. GRINSTEIN: Q. So I assume because
 19 you can't identify them, you can't tell me what was in
 20 them either?
 21 A. I can tell you that they generally
 22 described the mechanical specifications for ads that
 23 would be placed on websites.
 24 Q. Can you give me any really, really
 25 fine detail about what was included in them, like an

1 example of one of them that said only nine point
 2 font or something like that?
 3 A. A little example on page 41, back then
 4 it says, for example, a common rule related to the
 5 size of banner ads that IMVs would allow posted on
 6 their sites, the height and width dimensions.
 7 Q. Is that style or editing?
 8 MR. LANE: Objection.
 9 THE WITNESS: I am not sure I can
 10 answer that question.
 11 MR. GRINSTEIN: Q. You can't tell me
 12 whether or not the size of a banner ad is a style rule
 13 or editing rule?
 14 A. It would be a style.
 15 Q. And are there -- were there any media
 16 kits that only had size of banner ad as their rules
 17 and didn't have anything else?
 18 MR. LANE: Objection.
 19 THE WITNESS: I can't answer that
 20 because I can't recall them right off the top of my
 21 head.
 22 MR. GRINSTEIN: Q. Bear with me for a
 23 second. We have been jumping around a little bit.
 24 A. While we are looking, can I take a
 25 break and go to the bathroom?

1 VIDEO OPERATOR: This is the end of
2 Volume I, videotape No. 3, in the deposition of Gene
3 Kincaid.

4 We are going off the record. The time is
5 3:57.

6 (Break taken.)

7 VIDEO OPERATOR: We are back on the
8 record. This is the beginning of Volume I,
9 videotape No. 4, in the deposition of Gene Kincaid.

10 The time is 4:05.

11 MR. GRINSTEIN: Q. Mr. Kincaid, this
12 time let's go to page 13 of Exhibit 49.

13 A. Page 13?

14 Q. 13.

15 And I am asking you about claim terms 8 and
16 9, which I think correspond to page 36 of your
17 report.

18 A. All right.

19 Q. Are you with me?

20 A. Yes.

21 Q. And if you look at page 13, it lays
22 out each side's constructions. For example, of the
23 term "each of the internet media venues is prompted
24 to input presentation rules."

25 A. Yes.

1 Q. There is the plaintiff's construction
2 and there is the defendants' construction, and the
3 only difference I can see between them is that the
4 plaintiff's construction says, "each internet media
5 venue," and the defendants' construction says,
6 "every one of the internet media venues."

7 Do you see that?

8 MR. LANE: Objection.

9 MR. GRINSTEIN: Q. Do you see that?

10 A. Yes, I see it in the language.

11 Q. To be clear, I think plaintiff says
12 "each internet media venue user," and defendant
13 says, "every one of the internet media venues."

14 Do you see that?

15 A. Yes.

16 Q. Otherwise they are the same, right?

17 A. Yes, "is prompted to input
18 presentation rules."

19 Q. My question for you is what's the
20 difference between "each" and "every one" in your
21 mind?

22 MR. LANE: Objection.

23 THE WITNESS: Let me see, that's a
24 pretty precise question, so let me respond, the
25 bottom of page 36 where it says, "One of ordinary

1 skill in the art would have understood in the plain
2 reading of the claim that each internet media venues
3 mean every one of the internet media venues.

4 Specifically one would have understood by using the
5 word 'each,' the claims with this phrase require
6 every one of the IMVs participating in the computer
7 system to enter presentation rules and enter these
8 rules through the first interface," and that's
9 consistent with the ordinary definition of "each,"
10 "every one of two or more considered individually or
11 one by one."

12 MR. GRINSTEIN: Q. Is the best answer
13 you can give to my question simply reading your report
14 back to me?

15 MR. LANE: Objection.

16 THE WITNESS: That's the clearest
17 answer I have.

18 MR. GRINSTEIN: Q. If I told you I had a
19 bunch of coins in my pocket and I told you either, a, I
20 am going to give you each coin in my pocket, or b, I am
21 going to give you every one of the coins in my pocket,
22 is there any difference between the coins that I am
23 giving to you?

24 MR. LANE: Objection.

25 THE WITNESS: Well, let's see, I

1 can't answer that question other than, again, what I
2 did was take a look at the claim language in here
3 and looked at the terms used in these claims and
4 just gave an opinion on that.

5 I mean, a hypothetical situation, I will be
6 in trouble if I go off in there.

7 MR. GRINSTEIN: Q. So you can't answer
8 my question that if I gave you each coin in my pocket or
9 I gave you every one of the coins in my pocket, you
10 can't tell me sitting here today whether there is any
11 difference in the coins in my pocket that I have given
12 to you?

13 MR. LANE: Objection.

14 MR. GRINSTEIN: Q. Sitting here today as
15 a person out on the street, you can't answer that
16 question for me?

17 A. No.

18 Q. Your expertise is in internet
19 advertising, right?

20 A. That's correct.

21 Q. Does the word "each" have a special
22 meaning to internet advertisers that is different
23 than the meaning that everyone uses it for?

24 A. No.

25 Q. So with respect to the word "each," is

1 your expertise in internet advertising necessary to
 2 understand what that word means?
 3 MR. LANE: Objection.
 4 THE WITNESS: Well, let's see, I
 5 can't -- right now I can't sort of dabble in that or
 6 go off in that area because, again, what I was asked
 7 to do is take a look at claim language and then
 8 render an opinion on that, and that's what I did in
 9 the report.
 10 MR. GRINSTEIN: Q. But you defined --
 11 you came up with an opinion about what the word "each"
 12 means, right?
 13 A. Yes.
 14 Q. And your expertise is in internet
 15 advertising. If your expertise was in cattle
 16 husbandry, would that have any different bearing on
 17 what the word "each" means?
 18 MR. LANE: Objection.
 19 THE WITNESS: I think you have to
 20 take this definition in context of the claim. I am
 21 not trying to evade your question. I am just saying
 22 I can't talk about anything appropriately that's not
 23 sort of contained in the report.
 24 MR. GRINSTEIN: Q. Okay. So sitting
 25 here today, you can't tell me what the difference is --

1 the practical difference between the Function Media
 2 definition that says "each internet media venue user"
 3 and the Google and Yahoo! definition that says "every
 4 one of the internet media venues"?
 5 MR. LANE: Objection.
 6 THE WITNESS: I think that's what my
 7 report points out. It spells out my understanding
 8 and my opinion on that claim, and it just talks
 9 about what someone of ordinary skill in the art
 10 would have understood from a plain reading of that
 11 claim.
 12 MR. GRINSTEIN: Q. When you were
 13 preparing your report, did you look at the way Function
 14 Media was defining this claim?
 15 MR. LANE: Objection.
 16 THE WITNESS: Can you ask that
 17 question again?
 18 MR. GRINSTEIN: Q. When you were
 19 preparing your report, did you take a look and see how
 20 Function Media was defining its claim?
 21 MR. LANE: Objection.
 22 THE WITNESS: If you mean did I have
 23 access to -- let's see -- is this 49?
 24 MR. GRINSTEIN: Q. Yes.
 25 A. Yes, I did. I had access to that when

1 we went through the construction of the report.
 2 Q. The point behind this section of your
 3 report is you are saying that the court should adopt
 4 your definition of this claim term and not Function
 5 Media's definition of this claim term; is that
 6 right?
 7 MR. LANE: Objection.
 8 THE WITNESS: That's correct.
 9 MR. GRINSTEIN: Q. What's wrong with
 10 Function Media's definition of this claim term, in your
 11 mind?
 12 MR. LANE: Objection.
 13 THE WITNESS: Well, in my mind it
 14 goes back to just someone with my background,
 15 ordinary skill in the art at that time, would have
 16 understood this language to be the definition that I
 17 have got down here, which is every one of the
 18 internet media venues is prompted to input
 19 presentation rules.
 20 MR. GRINSTEIN: Q. If you had shown
 21 Function Media's definition to someone of ordinary skill
 22 in the art back in 2000, their definition of claim term,
 23 that person would have said no, no, that's wrong, that's
 24 not the way to define that?
 25 MR. LANE: Objection.

1 THE WITNESS: I am not sure what
 2 anyone else would have said, but that's my
 3 conclusion and my opinion.
 4 MR. GRINSTEIN: Q. If I asked you back
 5 in 2000, you yourself is -- the way to define this claim
 6 term, the way Function Media defined it, you would have
 7 said no way, that's not how it is defined?
 8 MR. LANE: Objection.
 9 THE WITNESS: I would have gone
 10 exactly through the process I went through here and
 11 arrived at the same conclusion.
 12 MR. GRINSTEIN: Q. Why would you have
 13 said -- you would have had to have a reason to say
 14 Function Media's definition is wrong, and I want to know
 15 what the reason is?
 16 MR. LANE: Objection.
 17 THE WITNESS: Well, the plain
 18 language in the claim itself is -- to me speaks for
 19 itself.
 20 MR. GRINSTEIN: Q. You can't give me any
 21 better answer as to why Function Media's proposed
 22 definition of the term "each of the internet media
 23 venues is prompted to input presentation rules" is
 24 wrong?
 25 MR. LANE: Objection.

1 THE WITNESS: I can't give you a
 2 better answer than what the report says.
 3 MR. GRINSTEIN: Q. Let me ask you some
 4 questions about the means plus function claims in the
 5 '045 patent.
 6 A. All right. That would be about
 7 page -- let me find that, if you don't find.
 8 Q. Sure.
 9 A. Starting on page 49.
 10 Q. These are the Ds in your report, not
 11 the Cs. I want to focus my first set of questions
 12 on D.4., which appears at page 62 of your report.
 13 A. All right.
 14 Q. In case you would like to see each
 15 side's differing understandings of this particular
 16 claim, they appear on pages 4 and 5 of Exhibit 49.
 17 While I have a bunch of paper in front you,
 18 it would be helpful to have the patent in front of
 19 you too. If you can find Exhibit 51, which is the
 20 '045 patent.
 21 A. All right.
 22 Q. I am going to ask you a question or
 23 two. It refers back to that, so that might be
 24 helpful. In fact why don't we open that up first.
 25 We are in the '045 patent. I want to ask you to

1 other about that last clause, the "whereby" clause
 2 in claim 1?
 3 A. It came up in construction of the
 4 draft, but I can't remember the exact details of
 5 that.
 6 Q. Well, I want to ask you some questions
 7 about this, so maybe you should read your report and
 8 remember what the dispute is. Take a look at page
 9 63 of your report. Actually, it probably starts at
 10 62.
 11 Why don't we go off the record and let you
 12 refresh your recollection about what this means?
 13 MR. LANE: Can we stay on the record?
 14 MR. GRINSTEIN: Not if he is going to
 15 have to read his report constantly to answer my
 16 questions. He is appearing as an expert witness,
 17 and he can't answer questions without reading his
 18 report again, I am not going to let him filibuster
 19 this deposition.
 20 MR. LANE: He is preparing an
 21 accurate response to your question.
 22 MR. GRINSTEIN: He is preparing an
 23 accurate response to my question by rereading his
 24 report and remembering what his opinions are.
 25 MR. LANE: You can frame a question a

1 flip to the very last page.
 2 You are aware that there is a dispute
 3 between the parties as to what is modified by the
 4 very last phrase in claim 1 of the '045 patent, the
 5 phrase that begins with the word "whereby"?
 6 Are you aware of that?
 7 MR. LANE: Objection.
 8 THE WITNESS: No.
 9 MR. GRINSTEIN: Q. So you are not aware
 10 of any dispute between the parties about the last phrase
 11 of claim 1?
 12 A. No. Let me see. Help me out a little
 13 bit here, if you will be specific to the claim that
 14 I need to take a look at, and that is D.4., item 4?
 15 Q. Well, the claim I am talking about is
 16 claim 1 of the '045 patent, right?
 17 A. Yes.
 18 Q. That's one of the claims that you have
 19 reviewed in the course of your expert work, right?
 20 A. Yes, it is.
 21 Q. And so you focused on the language of
 22 that claim, right?
 23 A. Yes.
 24 Q. Sitting here right now, you don't
 25 remember that there is a dispute one way or the

1 way that he might not have to read his report.
 2 MR. GRINSTEIN: Q. Can you offer any
 3 expert testimony sitting here today without reading your
 4 expert report?
 5 Can you provide any expert testimony or
 6 answer any of my questions about the "whereby"
 7 clause in claim 1 of the '045 patent?
 8 A. I can try to answer your questions.
 9 Q. Then don't read your report.
 10 MR. LANE: Objection.
 11 THE WITNESS: I have to read the
 12 report.
 13 MR. GRINSTEIN: Q. Well, that's my
 14 question right now.
 15 Can I ask you questions and will you respond
 16 to my questions without having to read through your
 17 report, or do you need to read through your report?
 18 MR. LANE: Objection.
 19 THE WITNESS: I need to read through
 20 the report and refresh myself on that.
 21 MR. GRINSTEIN: Q. You can't, sitting
 22 here today, answer my questions without taking the time
 23 to read your report, right?
 24 MR. LANE: Objection.
 25 THE WITNESS: I need to read the

1 report so I can give you a good answer to your
2 questions.

3 MR. GRINSTEIN: Let's go off the
4 record and let you read the report.

5 MR. LANE: No, I don't see why we
6 have to go off the record. He is answering.

7 MR. GRINSTEIN: He has been doing
8 this all day. He has been filibustering this
9 deposition repeatedly throughout the deposition.
10 Every time I ask a question he takes five minutes of
11 my time in this deposition to read his report before
12 he gives me an answer. That is not giving me a full
13 and fair seven hours.

14 If we want to take this up on the discovery
15 hotline, I am happy to do it right now, or we can
16 stay on the record as long as you will agree that if
17 this deposition goes over seven hours you will give
18 me some more time to finish my questions. I am
19 happy to do it either way, but I am not going to
20 allow myself to lose my seven hours when he is
21 spending time not answering my questions.

22 MR. LANE: I can't sit here right now
23 and tell you what questions you are going to ask and
24 what it is going to require in terms of him
25 answering your questions.

1 You are asking me to speculate on what else
2 you are planning to ask. What you are asking is
3 requiring him to look at his report.

4 MR. GRINSTEIN: Sure. And if I ask
5 him a question that says what does page 32 of your
6 report say, he can look at page 32 and read it.

7 If he is going to spend a long time during
8 the deposition reading through his report trying to
9 figure out what his opinion was on a particular
10 issue, I am not going to allow it.

11 MR. LANE: I don't think it has been
12 a long time he has been looking at his report.

13 MR. GRINSTEIN: Q. Are you finished
14 reviewing your report with respect to this "whereby"
15 opinion, Mr. Kincaid?

16 A. Yes. I can answer a question, but it
17 will come right out of my report with respect to
18 this "whereby" clause.

19 Q. Does having read your report, does
20 that refresh your recollection --

21 A. Yes.

22 Q. -- that there is a dispute between the
23 parties about the "whereby" clause?

24 A. Yes, it does.

25 Q. Before you reviewed the report, you

1 didn't remember that, right?

2 A. Not today, no.

3 Q. So in preparing for this deposition
4 you didn't review that portion of your report, did
5 you?

6 MR. LANE: Objection.

7 THE WITNESS: No, I read the report.

8 MR. GRINSTEIN: Q. There is a dispute
9 between the parties as to what the function of the claim
10 term that is reflected on page 4 of Exhibit B, Exhibit
11 49 is; isn't that right?

12 A. Let's see, you are talking about the
13 "whereby" -- the clause?

14 Q. Right. Well, let me ask it this way:
15 There is a claim term in claim 1 of the '045 patent
16 that is "means for the seller to input information,"
17 and there is dispute between the parties as to
18 whether or not that claim term goes on or not,
19 right?

20 A. Explain to me what you mean by "goes
21 on." I am sorry.

22 Q. Yahoo! contends that the claim term
23 "means for the seller to input information" should
24 also include the phrase that starts "whereby with
25 the seller," and Function Media contends that the

1 phrase "means for the seller to input information"
2 is a stand-alone phrase and doesn't include the
3 "whereby" clause; is that right?

4 MR. LANE: Objection.

5 THE WITNESS: Let me address this
6 pretty simply and straightforward by just taking the
7 narrative out of my report.

8 You have read this, but I can read it right
9 now.

10 I understand that the Function Media argues
11 that the language "whereby the seller may select one
12 or more of the media venues to create a presentation
13 that complies with said guidelines of the media
14 venues selected and transmit presentations to
15 selected media venues for publication" should not be
16 construed as part of the function for this claim
17 limitation. I disagree with that. The claim
18 language states -- do you want me to read the claim
19 language?

20 MR. GRINSTEIN: Q. No, thank you.

21 A. On page 64, at the top of the page, is
22 where I spell out my opinion on this, which is, "A
23 person of ordinary skill in the art taking the
24 structure of the claim with the clause beginning
25 with 'whereby' is included in the function. This is

1 true for at least two reasons. First the claim
 2 itself is organized into five steps, each beginning
 3 with the letter heading a, b, c, d, and e. And for
 4 each step when the language is too long for a single
 5 line, a succeeding line is indented to the right of
 6 the applicable steps letter heading. Consistent
 7 with this approach, the 'whereby' clause is indented
 8 to the right of Step E and justified with the word
 9 providing. One of ordinary skill in the art would
 10 understand that had the 'whereby' clause constituted
 11 a sixth step, it would have been justified with the
 12 letter heading of each of the five preceding steps,
 13 in other words, it would have been Step F. And
 14 further, the 'whereby' clause describes the
 15 information that the seller inputs enabling the
 16 seller to select one or more of the media venues,
 17 creating a presentation that complies with said
 18 guideline of the media venues selected, and transmit
 19 the presentation to the selected media venues for
 20 publication, and thus it is an integrated function
 21 performed by the means for the seller to input
 22 information."

23 Q. Are you done reading verbatim from
 24 your report?

25 A. Yes.

1 Q. Can you answer any questions for me
 2 with respect to this "whereby" clause in any way
 3 other than reading verbatim to me from your report?

4 MR. LANE: Objection.

5 THE WITNESS: No, because this is --
 6 what I just read to you is the essence of why I
 7 disagree with Function Media.

8 MR. GRINSTEIN: Q. So if I were to ask
 9 you a question about why you think the "whereby" clause
 10 is part of the function for the means for the seller of
 11 limitation -- means for the seller to input information
 12 limitation, you can't provide me any additional
 13 information other than what is stated in the four
 14 corners of your expert report?

15 A. In -- throughout the remainder of that
 16 section, all the way down to D.4. -- I mean, I can
 17 read all of that if you want me to.

18 Q. No, I don't.

19 A. I am not trying to be evasive. I am
 20 not trying to not answer your question, but that's
 21 the most precise language I can come up with.

22 Q. Sure. But if I wanted to ask you what
 23 you meant when you wrote that language, would your
 24 answer just be look at the language?

25 A. Yes, because that's my best

1 construction of my opinion on that "whereby" clause.

2 That's why I don't agree with you.

3 Q. So let me try this out to see where it
 4 will take us.

5 On the Basis and Reasons you say, "I
 6 understand that Function Media argues that the
 7 language" so on and so forth -- page 63. You
 8 conclude that, it says, "should not be construed as
 9 part of the function for this claim limitation."

10 Do you see that?

11 A. Yes, I do.

12 Q. Do you know what it means to be a
 13 function for a claim limitation?

14 A. I have a good general -- yes, a good
 15 understanding of that.

16 Q. And what is that?

17 A. Well, when there is a claim that is
 18 made, there are two parts. There is a function and
 19 then there is a structure that supports that
 20 function, and that's -- the two are linked together.
 21 You have to describe the structure for the function.

22 Q. So you have heard of the notion of
 23 means plus function claims, right?

24 A. Yes.

25 Q. And is the '025 patent a patent that

1 involves means plus function claims?

2 MR. LANE: Objection.

3 THE WITNESS: Let's see, none of the
 4 terms -- "means plus function" in my report only
 5 apply to the '045. You can look at the table of
 6 contents. I think that's correct.

7 MR. GRINSTEIN: Q. So there is a dispute
 8 between the parties as to what the function is for the
 9 claim term "means for the seller to input information,"
 10 right?

11 A. Yes.

12 Q. And that dispute is premised in part
 13 upon that "whereby" clause that appears at the
 14 bottom of claim 1 of the '045 patent, right?

15 A. That's correct.

16 Q. And it is your opinion that the
 17 "whereby" clause provides the function for claim
 18 limitation E but not for the other claim
 19 limitations; is that right?

20 MR. LANE: Objection.

21 THE WITNESS: On page 63, Section E?

22 MR. GRINSTEIN: Q. Uh-huh.

23 A. All of the underscored lines are one
 24 unit that need to be taken together.

25 Q. And what helps you form that opinion

1 you discuss on page 64 in part is the way that that
 2 claim language is formatted, right?
 3 A. Yes.
 4 Q. And the way you see that claim
 5 language is being formatted in claim 1 of the '045
 6 patent, the way the formatting looks to you, it
 7 looks to you like the phrase "whereby the seller may
 8 select" is part of the same functional unit as
 9 Clause E, "providing means for the seller to input
 10 information"; is that right?
 11 A. That's correct.
 12 Q. In forming that opinion, did you look
 13 at the prosecution history of this patent?
 14 A. No.
 15 By "prosecution history" do you mean file
 16 history?
 17 Q. I am sorry, the file history.
 18 A. Yes, I did.
 19 Q. I want to ask you a question about
 20 that file history.
 21 (Whereupon Exhibit 54 was marked for
 22 identification.)
 23 Q. Exhibit 54 I will represent to you
 24 comes out of the file history of the '045 patent.
 25 Have you taken a look at this document

1 before, or do you have any recollection of it?
 2 A. I have looked at the '045 file
 3 history. Yes, I looked at the '045 file history. I
 4 am not sure this is it in its entirety.
 5 Q. I am sorry if I represented otherwise.
 6 It is not. This is one portion of the file history.
 7 It is a big old document, so I wanted to lighten my
 8 load.
 9 I will tell you this is one portion of the
 10 file history. You can tell just from the front page
 11 it is a communication to the Patent and Trademark
 12 Office, bears indications that it is communication
 13 to the Patent and Trademark Office.
 14 Is that fair?
 15 A. Yes.
 16 Q. And this particular document is
 17 entitled Amendment.
 18 Do you see that?
 19 A. Yes.
 20 Q. And if you look on page -- the second
 21 page of Exhibit 54, on the bottom In The Claims, you
 22 can see the language, it says, "In response to the
 23 restriction requirement, applicants formally cancel
 24 claims 24 through 31 without prejudice. Please
 25 substitute the following amended claims for the

1 pending claims with the same numbers."
 2 Do you see that?
 3 A. Yes, I see that part.
 4 Q. And if you look sort of following, you
 5 are going to see a bunch of claims with the word
 6 "Amended" in front of them.
 7 Do you see that?
 8 A. Yes.
 9 Q. And if you will compare for me the
 10 words in the first amended complaint -- first
 11 amended claim appear to be the same as the words in
 12 the first claim of claim -- of the '045 patent; is
 13 that right?
 14 MR. LANE: Objection.
 15 THE WITNESS: Well, let's see, you
 16 are asking me to compare -- I am going to literally
 17 hold this up. This section?
 18 MR. GRINSTEIN: Q. No, the entire claim.
 19 A. I am sorry.
 20 Q. The entire claim as amended right
 21 there appears to have the same language as the claim
 22 that eventually appeared in the '045 patent, claim
 23 1.
 24 A. Let me read that real quick because
 25 that -- I need to do that.

1 Okay, except for the structure, which in the
 2 '045 patent has the "whereby" clause as indicated in
 3 my report, that seems to be the -- based on my
 4 reading today, that's the only difference.
 5 Q. So the structure that is in this
 6 amendment that was filed with the Patent and
 7 Trademark office, by "structure" you mean
 8 typesetting, right?
 9 MR. LANE: Objection.
 10 THE WITNESS: Well, the location of
 11 the sentence. In this -- I am looking at page 3 of
 12 Exhibit 54, there is a line break and different
 13 organization of the words underneath that E.
 14 MR. GRINSTEIN: Q. And that actually is
 15 my question.
 16 Just so I understand -- get a mutual
 17 understanding of your understanding of how word
 18 processing and typesetting works, if you look at
 19 page 2 of Exhibit 54, where it starts out, the
 20 beginning language of the claim, "A method of
 21 using" -- do you see that?
 22 A. Let me find it on page 2.
 23 Q. Right.
 24 A. Yes.
 25 Q. It says, "A method of using a network

1 of computers to contract for, facilitate and control
2 the creating," do you see that?

3 A. Yes.

4 Q. And whoever was hitting -- typing this
5 got to the word "control," it doesn't look like they
6 entered a line break or hit the return key on their
7 computer, they kept typing and the creating and
8 publishing came next, right?

9 MR. LANE: Objection.

10 THE WITNESS: I couldn't say that.

11 MR. GRINSTEIN: Q. You have used word
12 processors before, right?

13 A. Absolutely.

14 Q. And when you word process and you get
15 to the end of a line of text that you are typing but
16 it is still in the middle of the same sentence, you
17 don't typically hit the "enter" key and type the
18 rest of the same sentence, do you?

19 MR. LANE: Objection.

20 THE WITNESS: Let's see, today when I
21 use word processors, no, I don't hit carriage return
22 or the return key at the end of every line.

23 MR. GRINSTEIN: Q. But what appears to
24 have happened with respect to claim E or claim
25 limitation E on the next page, claim 54, is that the

1 "information" and start typing the rest of the
2 information?

3 MR. LANE: Objection.

4 THE WITNESS: Let's see, this is
5 going to sound -- could you restate the question
6 because you are asking me if I know why there is a
7 line break between the E and the "whereby" clause,
8 and the answer is no, I don't know why there is a
9 line there.

10 I know in claim 1 of the '045 patent, which
11 is -- that's what I relied on, it clearly is not the
12 same.

13 Q. And I guess my question is -- I just
14 want to ask you how your ordinary use of word
15 processors, your understanding of how they work, how
16 you might think that this processing came about.

17 Give me an understanding of the way in which
18 this could have been formatted without telling me
19 how they exactly did it, I want to know your
20 understanding of formatting and typesetting because
21 you discuss that in your expert report.

22 MR. LANE: Objection.

23 MR. GRINSTEIN: Q. And so, does it
24 appear to you that one way to make the words appear the
25 way they appear on page 3 of Exhibit 54 would be to hit

1 words "providing means for the seller to input
2 information" were typed and therein follows a carriage
3 return, right?

4 MR. LANE: Objection.

5 THE WITNESS: I can't make that kind
6 of a statement. There is no carriage return.

7 MR. GRINSTEIN: Q. There is a line
8 break, right?

9 MR. LANE: Objection.

10 THE WITNESS: On the -- there is a
11 line break in Exhibit 54 between the E, "providing
12 means for the seller to input information," and the
13 phrase or the clause that is -- that is rendered
14 differently over in the language of the patent
15 itself.

16 MR. GRINSTEIN: Q. And in word
17 processing -- you have used word processors before,
18 right?

19 A. Yes.

20 Q. Without telling me how exactly this
21 was word processed, will you agree with me that one
22 of the ways to make the formatting of this
23 particular section occur is to include -- hit
24 "enter," hit a carriage return, whatever you want to
25 call it, after the semicolon that follows

1 a hard return, carriage return, hit the "enter" key,
2 however you want to say it, after you typed
3 "information;" and then picked up typing again "whereby
4 the seller"?

5 MR. LANE: Objection.

6 THE WITNESS: Well, when you say
7 there is one way, I mean, again, I can't respond to
8 you properly because I don't know who was doing
9 this. I don't know what they were doing. I don't
10 know what they were working on or what word
11 processor.

12 Throughout this whole thing I relied on the
13 '045 patent, and it is just different than what you
14 have shown me right there.

15 MR. GRINSTEIN: Q. I am just asking if I
16 sat you down and said I want you to replicate what is
17 typed right there --

18 A. In Exhibit 54?

19 Q. -- in Exhibit 54, what would you do to
20 make the words line up the way they line up after
21 you would type the semicolon and the word
22 "information"?

23 What would you personally do?

24 MR. LANE: Objection.

25 THE WITNESS: I would have -- let's

1 see, it would have been carriage return or it could
 2 have been a word wrap function. I don't know.
 3 MR. GRINSTEIN: Q. What word wrap
 4 function that you are familiar with would have resulted
 5 in the formatting that you see there on page 2 of
 6 Exhibit 54?
 7 MR. LANE: Objection.
 8 MR. GRINSTEIN: I am sorry, page 3 of
 9 Exhibit 54.
 10 THE WITNESS: Well, here on the spot
 11 I can't point out a particular kind of word wrap or
 12 anything, but I know I have to go back to again what
 13 I was asked to do, which is take a look at, for
 14 instance, this first claim in '045 and give
 15 everybody an opinion on that particular -- how that
 16 was constructed, that paragraph. And not to go
 17 through it again, that's what I spelled out on page
 18 64 trying to be as clear as I could.
 19 MR. GRINSTEIN: Q. With respect to other
 20 claims that you construed in this expert report, you
 21 mentioned things you saw in the file history, right?
 22 A. Yes.
 23 Q. And so do you think it is not fair for
 24 me to ask questions about the file history sections
 25 that you didn't mention?

1 THE WITNESS: To answer your question
 2 bluntly, the language of the claim doesn't indicate
 3 the carriage return or a line break or any spacing
 4 after that semicolon on E.
 5 MR. GRINSTEIN: Q. I am going to come
 6 back to that. Let's talk about the language of the
 7 claim.
 8 You are familiar with the concept of
 9 justification, right?
 10 A. Justification in terms of --
 11 Q. Typesetting.
 12 A. Yes.
 13 Q. You have used Word as your word
 14 processor, right?
 15 A. That's one of them.
 16 Q. And left justify -- when you left
 17 justify something, that means all of the words line
 18 up on the left side of the document that you are
 19 typing, right?
 20 A. That's true.
 21 Q. When you right justify, that means all
 22 the words line up on the right side of the document
 23 that you are typing, right?
 24 A. Yes.
 25 Q. And the phrase full justification

1 MR. LANE: Objection.
 2 THE WITNESS: My understanding is you
 3 can ask any question you want, and I will try to
 4 give you a good honest reply.
 5 MR. GRINSTEIN: Q. You will agree that
 6 on page 64 of your expert report, the first paragraph,
 7 you talk about the typesetting of this claim, right?
 8 By typesetting I mean the way the words
 9 appear on the page.
 10 A. That's correct, I do.
 11 Q. Right now I am asking you about the
 12 typesetting that the inventors used when they
 13 proposed this claim to the Patent and Trademark
 14 Office.
 15 Do you understand?
 16 MR. LANE: Objection.
 17 THE WITNESS: I understand the
 18 question, but you are asking me to -- maybe I
 19 misunderstood your question.
 20 MR. GRINSTEIN: Q. Does it appear that
 21 when the inventors submitted this claim to the Patent
 22 and Trademark Office they included a carriage return, a
 23 hard return, an "enter," something like that after the
 24 word "information;"?
 25 MR. LANE: Objection.

1 means that the words are lined up on both the left
 2 and the right side of the document that you are
 3 typing, right?
 4 A. That's correct.
 5 Q. Let's look at claim 1 of the '045
 6 patent, and I want you to focus first on the word "A
 7 method of using" -- or the phrase, the top of the
 8 patent, "The method of using a network of
 9 computers," do you see that?
 10 A. Yes, I do.
 11 Q. That preamble to claim 1 that starts
 12 with the word "a method" and ends with the word
 13 "comprising," that preamble is fully justified,
 14 right?
 15 MR. LANE: Objection.
 16 THE WITNESS: No, it is not. I am
 17 just looking -- it is not.
 18 MR. GRINSTEIN: Q. When you are typing a
 19 document in Word that's fully justified, oftentimes you
 20 start a new paragraph?
 21 Actually, let me just ask you this question.
 22 Look at your expert report.
 23 A. I am.
 24 Q. Page 64.
 25 A. Yes.

1 Q. Is the first paragraph on page 64
 2 fully justified?
 3 A. Well, let's see, all the text lines up
 4 on the left and all the text lines up on the right.
 5 There is an indentation for the first sentence
 6 and -- except for the last line in the first
 7 paragraph.
 8 Q. And you are familiar with Word, right?
 9 A. Yes, I have used Word.
 10 Q. You understand that when you have got
 11 the fully justified function that is working in Word
 12 you can indent the first part of a paragraph and it
 13 will not print that along the left side of the
 14 document, right?
 15 MR. LANE: Objection.
 16 MR. GRINSTEIN: Q. And if you have
 17 got -- the paragraph ends and there is one word on the
 18 last line or two words on the last line of the
 19 paragraph, Word doesn't stretch out the words to run the
 20 whole length of the last line, it just prints the two
 21 words and moves on to the next paragraph, right?
 22 MR. LANE: Objection.
 23 THE WITNESS: Let's see, the number
 24 of times I have used full justification I can count
 25 on my left hand. I can't tell you what it does.

1 run all the way out to the right side.
 2 Do you see that?
 3 A. Yes.
 4 Q. Next line, left justified, words run
 5 all the way out to the right side.
 6 Do you see that?
 7 A. Yes.
 8 Q. Next line, left justified, the words
 9 do not run all the way out to the right side but the
 10 clause stops right there, right?
 11 A. After the colon.
 12 Q. After the colon, right?
 13 A. Yes.
 14 Q. So the way this -- that portion of the
 15 claim appears to be justified is the first word of a
 16 thought or concept is indented and then when the
 17 concept or the phrase ends, the words don't run all
 18 the way out to the right side, right?
 19 A. Yes.
 20 Q. And there are other parts of this set
 21 of claims that do the same thing, like look at claim
 22 16 on the same page?
 23 A. Okay.
 24 Q. The word "the" is indented to the
 25 right side -- I am sorry -- is indented and the

1 MR. GRINSTEIN: Q. You can't tell me if
 2 you typed this report using full justification?
 3 A. I didn't type the report.
 4 Q. You can't even tell me whether or not
 5 this report -- who did type it?
 6 MR. LANE: Objection.
 7 MR. GRINSTEIN: Q. Let me ask this
 8 question, did an assistant of yours type it?
 9 A. No.
 10 Q. We will keep going. Maybe we can get
 11 some -- strike that.
 12 I will keep asking you questions about this.
 13 A. Yes, sir.
 14 Q. Let's look at the manner in which
 15 claim 1 of the '045 patent is typeset.
 16 A. Right.
 17 Q. If you look at the manner in which it
 18 is typeset, the first paragraph or the first section
 19 of claim 1, there is an indentation and the words
 20 run all the way out to the right side.
 21 Do you see that?
 22 A. Where it says, 1, a method?
 23 Q. Yes.
 24 A. Yes.
 25 Q. The next line, left justified, words

1 words run all the way out to the right side.
 2 Do you see that?
 3 A. Yes, I see that.
 4 Q. The word "includes" is left justified,
 5 the words run all the way out to the right side,
 6 "corresponding," do you see that?
 7 A. That's correct.
 8 Q. The word "editorial," left justified,
 9 the claim ends -- the sentence ends, and so the word
 10 "standards" is in the middle of the line.
 11 Do you see that?
 12 A. I see that.
 13 Q. It seems to be the way this document
 14 is being typeset, right?
 15 A. Yes. That looks like the style that
 16 they are using to create the document.
 17 Q. Let's look at claim limitation a.
 18 A. Okay.
 19 Q. There is -- it says -- I am sorry,
 20 claim limitation a of claim 1 of the '045 says
 21 "providing a media database having a list of
 22 available media venues."
 23 Do you see that?
 24 A. Yes, I do.
 25 Q. The word "providing" is left justified

1 out through that indentation, and the words run all
 2 the way out to the right side and pick up again with
 3 "media venues."
 4 Do you see that?
 5 A. Yes, I do.
 6 Q. Claim limitation b starts with the
 7 word "providing," it is left justified, words run
 8 out all the way to the right side ending with the
 9 word "guidelines" and picks up again "of the media
 10 venues" on the next line.
 11 Do you see that?
 12 A. I do.
 13 MR. LANE: Objection.
 14 MR. GRINSTEIN: Q. Because the claim
 15 term ends at the word "media venues" -- with the word
 16 "media venues" "venues" doesn't stretch all the way out
 17 to the right side; it is not right justified?
 18 A. The word "venues" is not spread out.
 19 Q. Let's look at claim limitation e,
 20 "providing a means for the seller to input
 21 information."
 22 Do you see where the semicolon is and the
 23 word "information"?
 24 A. Yes, I do.
 25 Q. That does not run all the way out to

1 the right side, does it?
 2 A. It doesn't appear to.
 3 Q. And so, just like the last words of
 4 all of the preceding limitations ended in the middle
 5 of a line when the limitation ended, the word
 6 "information" is ending in the middle of a line,
 7 right?
 8 MR. LANE: Objection.
 9 THE WITNESS: It is ending where it
 10 ends, at the end of that phrase.
 11 MR. GRINSTEIN: Q. It is not justified,
 12 right?
 13 It is not right justified, right?
 14 A. It is not up against the right margin.
 15 Q. If the person typing this phrase typed
 16 "providing means for the seller to input
 17 information; whereby the seller" and didn't include
 18 any sort of a hard return or carriage return after
 19 the semicolon, wouldn't the word "information;" be
 20 right justified?
 21 MR. LANE: Objection.
 22 THE WITNESS: I can't make that
 23 statement.
 24 MR. GRINSTEIN: Q. Isn't every other
 25 line in this patent consistent with that notion, that

1 where you are typing a line that goes over to a second
 2 line, you are typing a clause or a phrase that goes over
 3 to a second line, the first line is right justified?
 4 A. I can't say every line. I can't say
 5 the entire patent is built that way.
 6 Q. Everywhere you are looking on this
 7 page that's what occurs, right?
 8 A. Uh-huh. Yes.
 9 Q. So are you saying that the typesetting
 10 for the phrase, "e, providing means for the seller
 11 to input information" is somehow different than the
 12 way the rest of the claims in this patent were
 13 typeset?
 14 A. I am not saying that. I am just
 15 saying plain reading of this language in the claim,
 16 by the way I looked at it and the way I read it,
 17 every time that section e is a single unit.
 18 Q. But part of the reason why you
 19 conclude that is the way it is typeset, right?
 20 A. Well, the reason I include it is
 21 because all of the lines are nested together. I
 22 mean, they are part of an entire block here and
 23 there is no indication otherwise.
 24 Q. Do you think that if the "whereby"
 25 clause was intended to be part of claim limitation

1 e, the person typing this patent would have included
 2 a hard return in between semicolon and "whereby"?
 3 MR. LANE: Objection.
 4 THE WITNESS: I can't answer. I
 5 mean, I don't know the answer to that question. I
 6 don't know what the person who created this did
 7 other than just the plain -- in the copy of the
 8 documents you gave me, which is patent '045, which
 9 is what was recreated down here but it is
 10 underlined, e constitutes a unified piece of that
 11 claim.
 12 MR. GRINSTEIN: Q. Do you think the way
 13 that it is typeset in Exhibit 54, page 3, suggests that
 14 the "whereby" clause is a unified part of claim e?
 15 MR. LANE: Objection.
 16 THE WITNESS: I can't say that. I
 17 mean, all I can rely on, quite frankly, is just a
 18 very simple reading of the claim, claim 1, from head
 19 to toe where each of the sub a, sub b, sub c, sub d,
 20 sub e are inclusive in and among themselves. That's
 21 the unit. That is a paragraph.
 22 MR. GRINSTEIN: Q. Let me ask the
 23 question again.
 24 You opined about typesetting with respect to
 25 the way the claim appears in the '045 patent, so I

1 am asking you about typesetting the way the claim
 2 appears in the file history.
 3 Do you understand?
 4 A. Yes.
 5 Q. The way the "whereby" clause is
 6 typeset in the file history of the '045 patent, does
 7 that suggest to you that the "whereby" clause is
 8 part of claim limitation e in the same way that the
 9 typesetting suggested to you in the '045 patent that
 10 the "whereby" clause was part of claim limitation e?
 11 MR. LANE: Objection.
 12 THE WITNESS: To clarify, you are
 13 asking me is this typesetting equal to this
 14 typesetting?
 15 MR. GRINSTEIN: Q. When you looked at
 16 the typesetting in the '045 patent you concluded that
 17 the way the "whereby" clause was typeset supported your
 18 opinion that the "whereby" clause is part of claim
 19 limitation e, right?
 20 A. That's correct, it is, yes.
 21 Q. Providing that -- following that same
 22 analysis and using the same analytical method, is
 23 the way that the claim limitation, the "whereby"
 24 clause typeset in the file history lead you to
 25 conclude that the "whereby" clause is part of clause

1 e?
 2 MR. LANE: Objection.
 3 THE WITNESS: Well, let's see, I am
 4 just being honest here. I don't know what they
 5 intended with this typesetting and formatting in the
 6 file history, but I know what the intent appears to
 7 be in the claim itself.
 8 MR. GRINSTEIN: Q. How do you know what
 9 the intent is based on the typesetting in the '045
 10 patent but you don't know what the intent is based on
 11 the typesetting in the file history?
 12 A. Because I focused on the claim in the
 13 patent itself.
 14 Q. So is the typesetting irrelevant to
 15 your opinion about what the "whereby" clause
 16 modifies with respect to claim 1 of the '045 patent?
 17 MR. LANE: Objection.
 18 THE WITNESS: No, it is not
 19 irrelevant. Again, I am not being argumentative,
 20 but the top of page 64 where -- in my opinion, if
 21 that "whereby" clause, which you refer to, was
 22 intended to be anything other than what it is here,
 23 it would have been labeled with an indentation that
 24 said f.
 25 MR. GRINSTEIN: Q. Isn't it possible

1 that what the "whereby" clause is doing is summarizing
 2 the effects of steps a through e?
 3 MR. LANE: Objection.
 4 THE WITNESS: I don't think that's
 5 the case at all.
 6 MR. GRINSTEIN: Q. Well, you are saying
 7 that if it was intended to be separate, it would have
 8 been labeled with an f, but a through e that preceded
 9 start with the word "providing," don't they?
 10 A. Yes, they all start with that.
 11 Q. The "whereby" clause doesn't start
 12 with the word "providing," right?
 13 MR. LANE: Objection.
 14 THE WITNESS: Yes, that clause of
 15 that e doesn't start with "providing."
 16 MR. GRINSTEIN: Q. So if it was a
 17 separate entity, a separate thought, a separate concept,
 18 it wouldn't necessarily be labeled f because it doesn't
 19 look like a through e, right?
 20 MR. LANE: Objection.
 21 THE WITNESS: No, I can't make that
 22 statement.
 23 MR. GRINSTEIN: Q. Let's look at your
 24 expert report again. Look at page 63.
 25 A. All right.

1 Q. Actually 63 is --
 2 A. That's where the claim is.
 3 Q. That's where we are talking about it?
 4 A. Yes.
 5 Q. Let's look at page 51.
 6 A. 51?
 7 Q. Uh-huh.
 8 Page 51 you have repeated claim e -- I am
 9 sorry -- claim 1 of the '045 patent.
 10 You retyped it, or someone retyped it on
 11 your behalf?
 12 A. Yes, that's the '045 patent, claim 1.
 13 Q. And when they retyped it on your
 14 behalf they didn't reproduce it in a way that looks
 15 like it appears in claim 1 in the '045 patent was
 16 actually published, did they?
 17 A. No, they didn't.
 18 Q. The "whereby" clauses is wholly
 19 separate from claim e, isn't it?
 20 A. On page 51, yes, it is.
 21 Q. And, for example, e, "providing means
 22 for the seller to input information," there is a
 23 semicolon there, right?
 24 A. There is.
 25 Q. There is more than enough room

1 remaining on that one line right there to type the
 2 word "whereby" and for it to appear on that line,
 3 right?
 4 MR. LANE: Objection.
 5 THE WITNESS: There probably is.
 6 MR. GRINSTEIN: Q. So whoever typed this
 7 hit the semicolon and then had to have done a carriage
 8 return or something like that to get "whereby" to appear
 9 below where it is, right?
 10 A. Well, they did something to separate
 11 those two.
 12 Q. So when you reproduced claim 1 of the
 13 '045 patent on page 51 of your expert report, you
 14 separated by the "whereby" clause from clause e,
 15 right, or someone acting on your behalf did?
 16 A. Yes. That's correct.
 17 Q. Let me ask you to take a look at the
 18 '025 patent.
 19 A. All right.
 20 Q. I want you to look at claim 1 of the
 21 '025 patent. I am sorry, it is column 65 -- or
 22 actually column 64.
 23 A. 64 it starts, yes.
 24 Q. And this is one of the claims you
 25 analyzed, right?

1 plain reading includes it in that last paragraph.
 2 MR. GRINSTEIN: Q. And there is a comma
 3 in between "media venue" and "whereby," right?
 4 A. Yes, there is.
 5 Q. There is a semicolon in between "input
 6 information" and the "whereby" in the '045 patent,
 7 right?
 8 A. That's correct.
 9 Q. And in the '025 patent where the
 10 "whereby" clause follows "internet media venue," it
 11 is all typed as one contiguous line, there is no
 12 line break, it doesn't appear on a separate line,
 13 right?
 14 A. That's correct.
 15 Q. In the '045 patent, the whereby clause
 16 does appear on a separate line, right?
 17 A. Yes.
 18 Q. In the '025 patent the word "venue,"
 19 appears and then "whereby" is separated by one
 20 space, maybe two spaces, but a space between the
 21 comma, right?
 22 A. There is a space in there.
 23 Q. And in the '045 patent there is the
 24 semicolon that follows the word "information" and
 25 there are multiple spaces and a line break, right?

1 A. Yes, it is.
 2 Q. Flip to the second page of the claim,
 3 which is on 65.
 4 Do you see the final limitation, the
 5 computer controller, do you see that?
 6 A. Yes.
 7 Q. That says, "A computer controller of
 8 the computer system processing and publishing the
 9 electronic advertisement to one or more of the
 10 selected internet media venues in compliance with
 11 the presentation rules of the internet media venue,
 12 whereby the electronic advertisement."
 13 Do you see that?
 14 A. Yes, I do.
 15 Q. So there is a "whereby" clause that
 16 follows at the end of the computer controller
 17 limitation, right?
 18 A. That's correct.
 19 Q. And -- first of all, does that
 20 "whereby" clause, "whereby the electronic
 21 advertisement," does that modify every limitation of
 22 that claim, or does it modify the computer
 23 controller limitation?
 24 MR. LANE: Objection.
 25 THE WITNESS: Well, let's see, the

1 MR. LANE: Objection.
 2 THE WITNESS: I can't tell if there
 3 is a line break, but there is a semicolon and then
 4 there is a space, and then the next line says
 5 "whereby the seller may select one or more of the
 6 media venues."
 7 MR. GRINSTEIN: Q. Doesn't claim 1 of
 8 the '025 patent suggest to you that the "whereby" clause
 9 is meant just to limit one portion of the claim, a comma
 10 precedes the "whereby" clause and there is no hard
 11 return that precedes the "whereby" clause?
 12 MR. LANE: Objection.
 13 THE WITNESS: No, I can't make that
 14 statement.
 15 MR. GRINSTEIN: Q. You are basically
 16 saying that the "whereby" clause is functioning the same
 17 way in claim 1 of the '025 patent as it is functioning
 18 in claim 1 of the '045 patent in terms of merely and
 19 only modifying the last claim limitation, right?
 20 MR. LANE: Objection.
 21 THE WITNESS: Let's see, since we
 22 have gone back and forth, I want to make sure I get
 23 this right, it is important, so can you restate
 24 that?
 25 MR. GRINSTEIN: Q. Sure.

1 You have agreed with me in claim 1 of the
 2 '025 patent the "whereby" clause only modifies the
 3 last claim limitation, "computer controller," right?
 4 MR. LANE: Objection.
 5 THE WITNESS: I don't know if I
 6 can -- the way that claim is constructed, I just
 7 read that in a plain reading as being a part of that
 8 paragraph.
 9 MR. GRINSTEIN: Q. And you are saying
 10 that in claim 1 of the '045 patent the "whereby" clause
 11 is also part of the same paragraph as claim limitation
 12 e, right?
 13 A. That is -- it is a unit.
 14 Q. It is --
 15 A. Yes. In the report where I
 16 underscored that last paragraph, which is claim e,
 17 the e portion of the first claim, I read that as a
 18 single unit.
 19 Q. You would agree with me that the '025
 20 patent and the way it is typeset, "whereby" in that
 21 last limitation is different than the '045 patent
 22 and the way it is typeset "whereby," right?
 23 MR. LANE: Objection.
 24 THE WITNESS: Well, let's see, the
 25 two are different. I mean, that's obvious from just

1 claim limitation e as opposed to a comma?
 2 A. I mean, I can't make -- let's see. I
 3 don't know the answer to that question.
 4 Q. Structurally you don't know any reason
 5 why they would have used a semicolon there instead
 6 of a comma?
 7 A. Well, let's see, it is just
 8 punctuation in the paragraph that makes the
 9 paragraph read properly.
 10 Q. Well, we saw the punctuation in the
 11 paragraph for the '045 patent -- I am sorry, the
 12 '025 patent used a comma before the "whereby,"
 13 right?
 14 A. Yes.
 15 Q. Why wouldn't that '045 paragraph that
 16 we are talking about read just as clearly using the
 17 same punctuation as was used in the '025 patent?
 18 MR. LANE: Objection.
 19 THE WITNESS: Again, I mean, I don't
 20 know the intent of the author of this or how they
 21 typeset it or typed or carriage return or did
 22 anything. I just -- my plain reading of the
 23 language in claim 1 puts section e as a single unit.
 24 I don't want to beat a dead horse; that's
 25 why in my report I talk about if there had been --

1 looking at the structure of the paragraph.
 2 MR. GRINSTEIN: Q. But you are saying
 3 that they operate in the same manner in the sense they
 4 are both modifying the last claim limitation only,
 5 right?
 6 MR. LANE: Objection.
 7 THE WITNESS: Well, I am just saying
 8 that in the '025, that's part of that paragraph, and
 9 in the '045, the "whereby the seller may select," on
 10 down is a part of e.
 11 MR. GRINSTEIN: Q. Let me just round out
 12 this line of questioning.
 13 In the '045 patent, claim limitation e, can
 14 you provide me with any explanation as to why a
 15 semicolon that follows the word "information" is not
 16 right justified?
 17 MR. LANE: Objection.
 18 THE WITNESS: No. I mean, I can't --
 19 I don't know how it was typeset or who did it, how
 20 they constructed it. I just know that's what -- it
 21 seemed to me to be pretty obvious that that was --
 22 that underline for emphasis is one unit.
 23 MR. GRINSTEIN: Q. Can you provide me
 24 with any explanation as to why in claim 1 of the '045
 25 patent a semicolon follows the word "information" in

1 let's see, it would have been a step f if it had
 2 been any other way.
 3 MR. GRINSTEIN: Q. You believe that
 4 the -- another part of your opinion with respect to the
 5 "whereby" clause is that the "whereby" clause modifies
 6 only claim limitation e because all of the things that
 7 are occurring in the "whereby" clause are occurring in
 8 the seller interface; is that right?
 9 A. I believe that's correct. Let me read
 10 e.
 11 VIDEO OPERATOR: Going off the
 12 record.
 13 The time is 5:08.
 14 (Break taken.)
 15 VIDEO OPERATOR: Back on the record.
 16 The time is 5:09.
 17 MR. GRINSTEIN: Q. Let me ask the
 18 question again so it is fresh.
 19 Page 64 of your expert report.
 20 A. 64?
 21 Q. Yes.
 22 There is a sentence that starts "further."
 23 You say, Further the whereby clause
 24 describes the information that the seller inputs
 25 enabling the seller to select one or more media

1 venues, create a presentation that complies,
 2 transmit the presentation.
 3 That's what it says. I paraphrased, but
 4 that's what it says, right?
 5 A. That's correct.
 6 Q. And so in your view the seller inputs
 7 information to select one or more of the media
 8 venues, right?
 9 A. Yes.
 10 Q. The seller inputs information to
 11 create a presentation that complies with guidelines,
 12 right?
 13 A. Yes, of the media venues selected.
 14 Q. What information does the seller input
 15 to transmit the presentation?
 16 A. I think I spell that out on page 66
 17 where it talks about -- let me start there. This is
 18 having to do with the structure.
 19 So back on page 65 --
 20 Q. Yes.
 21 A. -- which says, "The seller's point of
 22 interaction with the central controller and
 23 presentation processor is the seller interface
 24 4000," and that's depicted in 2c.
 25 "The seller interface includes software in

1 A. I am just trying to find where you
 2 are.
 3 Q. Right on 66, right before the line I
 4 just quoted.
 5 A. Yes.
 6 Q. You say the seller uses the interface
 7 to transmit the presentation to the selected media
 8 venues, right?
 9 A. Yes.
 10 Q. The support that you quote talks about
 11 the seller using interface to transmit the
 12 information to the central controller and
 13 presentation processor, right?
 14 A. Yes. That's a quote I pulled.
 15 Q. The central controller and
 16 presentation processor is not the media venue,
 17 right?
 18 A. That's correct.
 19 Q. So how does that citation, column 56,
 20 support the sentence that you cited it for that says
 21 the seller interface transmits to the selected media
 22 venues?
 23 A. Let's see, since this is pretty
 24 precise language and this was a difficult section to
 25 put together, are you asking me how the seller --

1 the form of presentation and configuration program
 2 4715, which through the seller interface allows the
 3 seller to input information whereby the seller can
 4 select one or more of the media venues and create a
 5 presentation that complies with the media venue's
 6 rules."
 7 My narrative continues, and then it says in
 8 about the middle of the paragraph on page 66, where
 9 it says, "The seller then uses the seller interface
 10 4000 to transmit the presentation to the selected
 11 media venues for publication."
 12 Q. There is my question right there.
 13 You cite the specification column 56, and
 14 you say, "When the XYZ management is satisfied with
 15 the results, as presented by the seller interface
 16 4000, they indicate their approval of the
 17 presentations and charges and then transmits the
 18 information to the ABC central controller and
 19 presentation processor 1000."
 20 Do you see that?
 21 A. Yes.
 22 Q. You said in your narrative that the
 23 seller uses the seller interface to transmit the
 24 presentation to the selected media venue for
 25 publication, right?

1 Q. I am asking you questions about
 2 discrepancies. Maybe there is no discrepancy and
 3 you can explain it to me between the sentence you
 4 wrote and the citation that you say.
 5 The sentence you wrote talks about
 6 transmission to the media venues, whereas the
 7 citation that you cited talks about transmission to
 8 the central controller, right?
 9 A. Yes.
 10 Q. And the central controller is not the
 11 media venue, right?
 12 A. That's correct.
 13 Q. So how is it that the seller transmits
 14 the presentation to the media venue if the seller is
 15 transmitting the information to the central
 16 controller?
 17 MR. LANE: Objection.
 18 THE WITNESS: Well, the seller
 19 creates the ad on the seller interface, and when it
 20 is submitted it goes to the central controller, and
 21 that's where quality control takes place. It is
 22 transmitted to the media venues.
 23 MR. GRINSTEIN: Q. So what happens is
 24 the seller interface, in your understanding, transmits
 25 the presentation to the central controller and then the

1 central controller transmits the presentation to the
2 media venue, right?
3 A. Yes.
4 Q. So there is an intervening step, it is
5 not the seller is going directly to the media venue,
6 the seller is going to the central controller and
7 then it goes to the media venue, right?
8 MR. LANE: Objection.
9 MR. GRINSTEIN: Q. And the -- I am
10 sorry, were you about to say something?
11 A. I just -- run through the steps again.
12 I am sorry -- I am not sorry.
13 Q. The seller doesn't send the
14 presentation directly to the media venue, the seller
15 sends the presentation to the central controller and
16 then the central controller sends the presentation
17 to the media venue.
18 That's your understanding of how the system
19 works, right?
20 A. Yes.
21 Q. So the central controller is
22 transmitting the media -- the presentation on behalf
23 of the seller basically, right?
24 MR. LANE: Objection.
25 THE WITNESS: Not on behalf of. The

1 occurs, it goes through the central controller, right?
2 A. Yes.
3 Q. I mean, this might be clearer if we
4 look at Figure 1.b. of the '045 patent.
5 A. Let's see.
6 Q. Which is not in -- actually, it is in
7 your report somewhere. It would be quicker if you
8 looked at '045.
9 A. That's true.
10 Q. Look at page 38 of your expert report.
11 Do you see that?
12 A. Yes, I do.
13 Q. That's Figure 1.b. that you recreated
14 from the '025 and '045 patents, right?
15 A. That's correct.
16 Q. Up at the top there you see seller
17 interface 4000, right?
18 A. Yes.
19 Q. The left side there is 1000 central
20 controller presentation processor.
21 Do you see that?
22 A. Yes.
23 Q. That is not part of the seller
24 interface, right?
25 A. Correct.

1 seller uses the interface to the system after they
2 have created the presentation, and the central
3 controller is where quality control takes place to
4 make sure that they comply with media venue rules,
5 and then it is transmitted to the media venues.
6 MR. GRINSTEIN: Q. Transmitted from the
7 central controller, right?
8 A. Yes.
9 Q. So the seller interface does not
10 itself do the transmission, it is the central
11 controller, right?
12 MR. LANE: Objection.
13 THE WITNESS: Well, let me read
14 through here again. That's a precise question.
15 I am just going back to the claim language
16 which is what I rely on a lot. The presentation
17 is -- the paragraph we were talking about, the whole
18 claim talks about providing means for the seller to
19 input information, select one or more of the media
20 venues, create a presentation that complies with
21 said guidelines of the media venues selected, and
22 transmit the presentation to the selected media
23 venues for publication. It goes through the central
24 controller.
25 MR. GRINSTEIN: Q. When the transmission

1 Q. You can see where the lines are
2 running, lines run from the seller interface to the
3 central controller and presentation processors,
4 right?
5 A. Yes, they do.
6 Q. There are no lines running from the
7 seller interface to any box that would have anything
8 to do with media venues, right?
9 A. That's correct.
10 MR. LANE: Objection.
11 MR. GRINSTEIN: Q. So when the claim
12 language in claim 1 of the '045 patent talks about -- I
13 will read this to you -- talks about "whereby the seller
14 transmits the presentation to the selected media venues
15 for publication," when it talks about that, it is
16 talking about the seller doing that via the central
17 controller and presentation processor, right?
18 A. Yes, that's where the seller
19 interfaces -- interacts with the 1000.
20 Q. But it is not seller interface that is
21 actually doing the transmission to the media venues,
22 it is the central controller and presentation
23 processor, right?
24 MR. LANE: Objection.
25 THE WITNESS: Let me just make a

1 reference from my report real quick.
 2 Sorry, again, if you can replay your
 3 question one more time.
 4 MR. GRINSTEIN: This time you are
 5 going to have to read it back to me.
 6 (Record read.)
 7 THE WITNESS: That's correct.
 8 MR. GRINSTEIN: Q. So if the central
 9 controller and presentation processor can be the thing
 10 that is satisfying one portion of the "whereby" clause,
 11 logically it could also be the thing that is satisfying
 12 other portions of the "whereby" clause, right?
 13 MR. LANE: Objection.
 14 THE WITNESS: I don't think I can
 15 make that -- we are back on the language in claim 1?
 16 MR. GRINSTEIN: Q. Claim 1, "whereby"
 17 clause.
 18 A. Section e?
 19 Q. Yes.
 20 A. And your question is?
 21 Q. If the central presentation -- central
 22 controller can be the thing that transmits the
 23 presentation selected media venues, could it also be
 24 the thing that creates the presentation that
 25 complies with said guidelines?

1 venues. That's all in reference to the seller
 2 interface.
 3 Q. I think I got what I need on that
 4 point. Let's move to a different term.
 5 The claim term I want to talk to you about
 6 actually appears in the '025 patent.
 7 MR. LANE: One second. Are you
 8 feeling okay?
 9 THE WITNESS: Could I take a break?
 10 VIDEO OPERATOR: This is the end of
 11 Volume I, videotape No. 4 in the deposition of Gene
 12 Kincaid.
 13 The time is 5:26.
 14 (Break taken.)
 15 VIDEO OPERATOR: We are back on the
 16 record. This is the beginning of Volume I,
 17 videotape No. 5, in the deposition of Gene Kincaid.
 18 The time is 5:40.
 19 MR. GRINSTEIN: We have an hour left.
 20 I am going to try real hard not to use it all. I
 21 know it is getting late.
 22 Q. I want to ask you a question about a
 23 claim term that you discuss on page 28 of your
 24 report.
 25 A. All right.

1 A. Can the central controller create the
 2 presentation?
 3 Q. Could it be, yes?
 4 A. No.
 5 Q. Why not?
 6 A. Because the seller interface is where
 7 the presentations are created, and the central
 8 controller is not the same as the seller interface.
 9 Q. Does anything in the "whereby" clause,
 10 as you have read it, lead you to that conclusion?
 11 A. My conclusion is based on everything
 12 that is in the patent, and not that -- no. My
 13 conclusion about where things take place is based on
 14 my entire reading of the patent and everything in
 15 there and the claims, in particular this one, which
 16 is the first claim in the '045 patent, which says --
 17 let me make sure I am looking at the right one.
 18 It is just a simple language in the
 19 "whereby" clause that you just mentioned that
 20 says -- and this is talking about providing a means
 21 for the seller to input information whereby the
 22 seller may select one or more of the media venues,
 23 create the presentation that complies with said
 24 guidelines in the media venues selected and then
 25 transmit the presentation to the selected media

1 Q. And I guess you introduce it on page
 2 27.
 3 A. Yes.
 4 Q. And the claim term is "create an
 5 electronic advertisement for publication to the
 6 selected internet media venues."
 7 Do you see that?
 8 A. Yes, the top of the page 28.
 9 Q. You define it to mean "create an
 10 advertisement for placement at the internet media
 11 venue location selected by the seller for public
 12 display."
 13 Do you see that?
 14 A. Yes.
 15 Q. Look with me on Exhibit 49, which is
 16 that exhibit of everybody's constructions, page 9.
 17 A. No. 1?
 18 Q. No. 1.
 19 And that's the same claim we are talking
 20 about, "create an electronic advertisement for
 21 publication to the selected internet media venues."
 22 Do you see that?
 23 A. Yes.
 24 Q. Over on the right-hand side do you see
 25 Google and Yahoo!'s definition, which is, "create an

1 advertisement for placements at all of the internet
2 media venue locations selected by the" -- seller in
3 this case -- "for public display."

4 Do you see that?

5 A. One second, page 9?

6 Q. Page 9, up in the upper right corner.

7 A. Yes.

8 Q. Look at the definition that Google and
9 Yahoo! propose up in the upper right corner.

10 A. Got you.

11 Q. Do you see that, Google and Yahoo!?

12 A. Yes, I do.

13 Q. It says, "create an advertisement for
14 placement at all of the internet media venue
15 locations selected by the" -- in this case we are
16 talking about seller -- "for public display."

17 Do you see that definition?

18 A. Yes.

19 Q. Comparing that to your definition on
20 page 28 of your report, the words are different,
21 right?

22 A. Yes.

23 Q. And specifically the Google and Yahoo!
24 proposed definition on Exhibit 49 includes the word
25 "all" which is missing from your definition which is

1 A. Yes.

2 Q. And would that be the presentation
3 rules database?

4 MR. LANE: Objection.

5 THE WITNESS: Well, let's see, I am
6 just looking at -- again, back on the language of
7 No. 8 on page 42.

8 MR. GRINSTEIN: Q. Yes.

9 A. Where it talks about processing,
10 electronic advertisement in compliance with the
11 presentation rules of the internet media venue.

12 And your question was?

13 Q. What -- you have talked about a first
14 database there. You put that into your definition
15 of this term.

16 Do you see that?

17 A. Yes.

18 Q. Is that first database to which you
19 are referring the presentation rules database?

20 MR. LANE: Objection.

21 THE WITNESS: Let's see, let me
22 refresh myself on page 43; that's what I am trying
23 to do.

24 To answer your question -- let's see, sorry,
25 looked and then forgot the question.

1 on page 28 of your expert report, right?

2 A. That's correct.

3 Q. And you believe your definition on
4 page 28 of your expert report is how someone of
5 ordinary skill in the art would understand that
6 claim term to mean?

7 A. Yes.

8 Q. That's all I want to ask about that.

9 Now let me ask you about -- flip back to the
10 '025 patent. I know we were talking about the '045
11 patent for a little bit.

12 And the discussion I want to have with you
13 concerns the claim term that talks about processing
14 which you discuss on claim -- at page 42 of your
15 expert report.

16 Are you with me?

17 A. Yes, I am with you. I am on page 42.

18 Q. And again, with Exhibit B, just so you
19 know what both sides propose for this, as the
20 definitions here, the two sides' definitions appear
21 on page 19.

22 The Yahoo! definition of this term includes
23 the notion that there is a first database from which
24 the presentation rules are taken.

25 Is that right?

1 MR. GRINSTEIN: Q. The first database
2 that you talk about in your definition here of this
3 claim term, is that first database the presentation
4 rules database?

5 A. Yes.

6 Q. The presentation rules are rules that
7 come from the internet media venues, right?

8 That's what you suggest on the bottom part
9 of that definition, right?

10 A. That's correct.

11 Q. You don't mean to suggest that a
12 presentation could be created using only
13 presentation rules, do you?

14 A. No.

15 Q. The seller has to input information
16 too?

17 A. The seller interface has to have a
18 hand in that.

19 Q. But the definition that you have
20 proposed right there, "obtaining and applying the
21 presentation rules from the first database to create
22 the electronic advertisement in compliance with the
23 presentation rules of the internet media venue,"
24 that doesn't mention any information that has been
25 input by the seller, does it?

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1 MR. LANE: Objection.
 2 THE WITNESS: Let me back up. Let me
 3 look at the claim language.
 4 I think if you look on page 43 where it
 5 talks about specifications, describing a two-step
 6 process for creating and publishing advertisement,
 7 the first step involves -- let's see. If you will
 8 rephrase your question, maybe I can take a better
 9 stab at it real fast. I am --
 10 MR. GRINSTEIN: Q. You don't mean to
 11 suggest in the way you have phrased your definition in
 12 this claim term that no seller's information goes into
 13 the creation of an ad?
 14 MR. LANE: Objection.
 15 THE WITNESS: I don't -- you are
 16 using like a double negative.
 17 MR. GRINSTEIN: Q. I am terrible about
 18 that. Let me try again.
 19 Do you mean to suggest in the way you have
 20 phrased this claim limitation that only presentation
 21 rules are used to create ads?
 22 A. No.
 23 Q. Seller's information is necessary too,
 24 right?
 25 A. Yes.

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1 Q. But you don't mention seller's
 2 information in your definition of this claim term,
 3 do you?
 4 MR. LANE: Objection.
 5 THE WITNESS: Let's see, I am drawing
 6 a blank right now. I am not sorry. I am just
 7 drawing a blank. I am trying to read my report.
 8 The question is is the seller's information
 9 included in the creation process of the
 10 presentation?
 11 MR. GRINSTEIN: Q. Let me rephrase my
 12 question for you.
 13 In your expert report you provide a
 14 definition of processing the electronic
 15 advertisement, right?
 16 A. Yes.
 17 Q. And that definition appears in bold on
 18 page 42, right?
 19 A. It does.
 20 Q. Does that definition mention any
 21 information input by the seller?
 22 MR. LANE: Objection.
 23 THE WITNESS: Well, let's see, let me
 24 rely on my report, page 43 and down, which lays out
 25 the series of steps relevant to that claim term, and

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1 there are -- let's see, sort of three steps in
 2 there: IMV enters the presentation rules through
 3 the first interface, rules are stored in the first
 4 database, and then the computer controller system
 5 processes the advertisement in compliance with those
 6 rules.
 7 And then let's see, maybe I do not
 8 understand your question.
 9 MR. GRINSTEIN: Q. What you have just
 10 mentioned to me, you never used the word "seller," did
 11 you?
 12 A. No, I didn't use the word "seller."
 13 Q. And you never referred to any
 14 information that had been input by the seller, did
 15 you?
 16 MR. LANE: Objection.
 17 THE WITNESS: Well, if you look at --
 18 further down the page when it talks about the first
 19 step in creating advertisement, uses seller
 20 interface 4000.
 21 MR. GRINSTEIN: Q. But you didn't
 22 mention seller interface or anything like that when you
 23 typed out the words of this definition, right?
 24 A. No, seller interface is not mentioned
 25 in that definition.

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1 Q. Seller information is not mentioned in
 2 that definition?
 3 MR. LANE: Objection.
 4 THE WITNESS: Well, maybe I am --
 5 let's see, I am either more tired than I thought or
 6 I can't get organized in my thinking right now
 7 because there are presentation rules and then there
 8 are -- there is input by the seller at the seller
 9 interface, and that's where the ads are created.
 10 MR. GRINSTEIN: Q. But the seller
 11 doesn't input presentation rules, right?
 12 A. No.
 13 Q. Those are internet media venue
 14 presentation rules?
 15 A. That's correct.
 16 Q. So of the information that you
 17 discussed in your definition of this claim term that
 18 appears on page 42 of your expert report, the only
 19 information that is referred to there are the
 20 presentation rules input by the internet media
 21 venues, right?
 22 MR. LANE: Objection.
 23 THE WITNESS: Well, let me read
 24 through the claim language again.
 25 The best thing I can do right now is

1 literally just take my report and play it back to
 2 you because --
 3 MR. GRINSTEIN: Q. The best way you know
 4 to answer my question is just read back your report to
 5 me; is that right?
 6 A. Yes.
 7 Q. Let's look at your definition on page
 8 42 of this claim term, and it says "Obtaining and
 9 applying the presentation rules from the first
 10 database to create the electronic advertisement."
 11 Do you see that?
 12 A. Uh-huh.
 13 Q. Your definition here talks about
 14 creation of the ad, right?
 15 A. Yes.
 16 Q. What part of the invention is doing
 17 this claim term, doing processing, the electronic
 18 advertisement and compliance?
 19 A. To create the electronic
 20 advertisement?
 21 Q. Right.
 22 A. That's the seller interface.
 23 Q. So your testimony is that the thing
 24 that is doing the "processing" in this claim term is
 25 the seller interface?

1 MR. LANE: Objection.
 2 MR. GRINSTEIN: Q. Is that right?
 3 A. Well, at the seller's interface is
 4 where the ads are created that match or meet the
 5 internet media venues rules.
 6 Q. But you are construing here a claim
 7 that says "processing the electronic advertisement
 8 in compliance with the presentation and internet
 9 media venue," right?
 10 A. Yes.
 11 Q. I am asking you what part of the
 12 system that is disclosed in the '025 patent is
 13 performing the step of processing?
 14 A. It is the seller's interface.
 15 Q. Let's look at actually the claim that
 16 this claim language appears in, which is claim 1 of
 17 the '025 patent, and that appears -- starts in
 18 column 64 of the '025 patent. Actually, you have
 19 got some ellipses here. I want you to look at the
 20 entire claim. Take a look at the '025 patent. That
 21 starts on column 64. If you look on the next page
 22 in column 65.
 23 A. Yes.
 24 Q. At the last claim limitation, it says,
 25 "A computer controller of the computer system

1 processing and publishing the electronic
 2 advertisement to one or more of the selected
 3 internet media venues in compliance with the
 4 presentation rules of the internet media venue."
 5 Do you see that?
 6 A. Yes.
 7 Q. That's where the claim term that we
 8 just have been discussing appears in claim 1 of the
 9 '025 patent, right?
 10 A. Yes.
 11 Q. And so according to that limitation of
 12 the '025 patent, what is doing the processing?
 13 A. It is a seller interface.
 14 Q. Doesn't it say a computer controller
 15 of the computer system processing?
 16 A. Uh-huh.
 17 Q. So is the seller interface processing
 18 or is the computer controller of the computer system
 19 processing?
 20 MR. LANE: Objection.
 21 THE WITNESS: It is the seller
 22 interface. I mean --
 23 MR. GRINSTEIN: Q. Skip up to
 24 limitations.
 25 Do you see a "second interface to the

1 computer system through which a seller is prompted,"
 2 do you see that?
 3 A. Yes.
 4 Q. That's referring to the seller
 5 interface, right?
 6 A. Yes.
 7 Q. The claim term "processing electronic
 8 advertisement" that we have been discussing doesn't
 9 appear in that claim limitation that talks about the
 10 second interface, does it?
 11 A. No.
 12 Q. It appears in the last claim
 13 limitation which talks about a computer controller,
 14 right?
 15 MR. LANE: Objection.
 16 THE WITNESS: Let's see, in the last
 17 section of the first claim -- let's see -- "computer
 18 controller of the computer system processing and
 19 publishing the electronic advertisement to one or
 20 more of the selected internet media venues in
 21 compliance with the presentation rules and the
 22 internet media venue" -- I either do not understand
 23 your question or can't get there.
 24 MR. GRINSTEIN: Q. Are you telling me
 25 that it is the seller interface that is processing and

1 publishing the electronic advertisement and not the
2 computer controller or the computer system that is
3 processing?

4 MR. LANE: Objection.

5 THE WITNESS: My understanding of
6 the -- my understanding is that the seller interface
7 is where the ads are created. I keep repeating that
8 because I am trying to stick with what I know is
9 true.

10 MR. GRINSTEIN: Q. But doesn't this part
11 of the claim say that the processing which you have
12 already defined to mean creating is occurring at the
13 computer controller?

14 Isn't that what it says in that limitation?

15 MR. LANE: Objection.

16 THE WITNESS: Let's see, let me take
17 a look at the rest of my -- even though it may take
18 a little time, let me take a look at the rest of
19 this report so I can answer your question right.

20 MR. GRINSTEIN: Q. Let me focus you in
21 just on the language of this claim.

22 Okay?

23 A. Yes.

24 Q. Just on the language of this claim, is
25 anything identified as doing the processing other

1 THE WITNESS: Well, no, because the
2 ads are created by the seller interface.

3 MR. GRINSTEIN: Q. You remember that you
4 were sworn in at the beginning of this deposition?

5 A. Yes, I do.

6 Q. Sworn to tell the truth, the whole
7 truth and nothing but the truth, right?

8 A. Yes, I do.

9 Q. You realize your testimony is going to
10 go to the court and help the judge at the claim
11 construction process, right?

12 A. I do.

13 Q. So you want to give your best
14 testimony and your most truthful and most honest
15 answers to my questions to help the court, right?

16 A. Yes.

17 Q. Are you telling the court that when
18 this claim term says, "A computer controller of the
19 computer system processing," it does not mean that
20 the computer controller does the processing?

21 Is that your testimony to the court?

22 A. Yes, to create the ads. I go back to
23 where the ads are created.

24 I sound like a broken record.

25 Q. Did the inventors miswrite the claim

1 than the computer controller?

2 MR. LANE: Objection.

3 THE WITNESS: Well, the language --
4 again, there are a series of steps that take place,
5 and I can read through the two-step process for
6 creating and publishing advertisements, but the
7 creation of the ad itself is going to take place.
8 The first step involves creating the ad using the
9 seller interface.

10 MR. GRINSTEIN: Q. Look with me at the
11 last limitation, claim 1, of the '025 patent.

12 It says, "A computer controller of the
13 computer system processor," right?

14 A. That's what it says.

15 Q. Is it your testimony to the court that
16 the thing that is doing the processing is not the
17 computer controller in this claim?

18 MR. LANE: Objection.

19 THE WITNESS: I am trying to answer
20 your question as best I can, and the computer
21 controller reference in the first claim is not where
22 the ads are created.

23 MR. GRINSTEIN: Q. Is it where the
24 processing occurs?

25 MR. LANE: Objection.

1 or write the claims of this patent wrong and it
2 should have said the seller interface, processing
3 and publishing electronic advertisement?

4 MR. LANE: Objection.

5 THE WITNESS: I don't know what they
6 wrote, but I know that when I read the claim it is
7 clear to me that the creation process, the
8 advertising, presentation and creative process takes
9 place at the seller interface which is not in that
10 part of the claim. It is -- above it says the
11 second interface -- well --

12 MR. GRINSTEIN: Q. So you would agree
13 with me that the seller interface is something separate
14 from the computer controller, right?

15 MR. LANE: Objection.

16 THE WITNESS: Well, there are a
17 number of components to the whole system, one of
18 which is a seller interface.

19 MR. GRINSTEIN: Q. And another one is
20 the central controller?

21 A. Central controller which is 1000.

22 Q. And the computer controller of the
23 computer system is not the same thing as the seller
24 interface, right?

25 MR. LANE: Objection.

1 THE WITNESS: The computer
 2 controller -- I misunderstood that.
 3 MR. GRINSTEIN: Q. There are words right
 4 here in this claim that say "computer controller,"
 5 right?
 6 A. Words are on the page.
 7 Q. The computer controller that is being
 8 referenced right there is not the same thing as
 9 seller interface, right?
 10 MR. LANE: Objection.
 11 THE WITNESS: Going back on a broken
 12 record, the seller interface is a separate part than
 13 the central controller, we agree on that, and I
 14 think -- and in my understanding, in my opinion, is
 15 that the seller interface is where the creative
 16 process takes place.
 17 MR. GRINSTEIN: Q. So you would say that
 18 the seller interface is what is processing the
 19 advertisement -- electronic advertisement in compliance
 20 with the presentation rules of the internet media venue?
 21 MR. LANE: Objection.
 22 THE WITNESS: The seller interface is
 23 where the seller inputs their information, and
 24 that's where that -- including the selection of
 25 internet media venue and their rules, and that's

1 where the creative process takes place.
 2 MR. GRINSTEIN: Q. So you would say that
 3 when the claim 1 of the '025 patent talks about
 4 processing the electronic advertisement in compliance
 5 with the presentation rules of the internet media venue,
 6 it means the seller interface is processing the
 7 electronic advertisement?
 8 MR. LANE: Objection.
 9 MR. GRINSTEIN: Q. Is that your
 10 testimony?
 11 A. Well, again, I can read through and
 12 probably the safest thing for me to do -- smartest
 13 thing for me to do, so you have the right answer, is
 14 simply read through the way I have constructed my
 15 understanding of this from about page 43 down, which
 16 I would be happy to do, because I want to give you
 17 the correct, right answer.
 18 Q. I can read your report, so I don't
 19 need to hear the report back.
 20 I guess my question -- I am just trying to
 21 understand what you are saying in your report, and
 22 are you saying in your report that this step is
 23 being performed by the seller interface?
 24 You talk about what is going on in the step,
 25 so you must know where it is occurring.

1 A. In this step -- well, let's see, the
 2 application of the presentation rules for the first
 3 database to create the ads takes place at the seller
 4 interface, and that's where the presentations are
 5 created.
 6 Q. So the seller interface processes and
 7 publishes the electronic advertisement to one or
 8 more of the selected internet media venues?
 9 MR. LANE: Objection.
 10 THE WITNESS: No, there are a number
 11 of steps involved, and again, I can walk through
 12 that if you want me to. I mean, you have read this
 13 as well as I have, but there are a series of steps
 14 that take place.
 15 Seller's interface is where the seller
 16 selects internet media venues, and that's where they
 17 input all of their information. That's where the
 18 rules are applied, the internet media rules,
 19 internet media are applied. And that's -- I am
 20 trying to answer your question. That's where the
 21 ads are created at and nowhere else.
 22 MR. GRINSTEIN: Q. Why can't you tell me
 23 where the step processing and publishing the electronic
 24 advertisements occurs?
 25 MR. LANE: Objection.

1 THE WITNESS: I probably need to
 2 refresh myself and go through this, quite frankly,
 3 so I can rely on what I wrote down. I am much
 4 better at writing things down than I am responding
 5 to questions from you because this embodies my
 6 understanding of how that worked.
 7 MR. GRINSTEIN: Q. So if you were to
 8 read your report in this section, you could tell me
 9 where this processing step occurs?
 10 A. By that you mean the application of
 11 the presentation rules?
 12 Q. By that I mean you have defined
 13 processing to mean obtaining and applying the
 14 presentation rules from the first database to create
 15 an electronic advertisement in compliance with the
 16 presentation rules of the internet media venue.
 17 I am asking you what part of the invention
 18 obtains and applies the presentation rules?
 19 A. That's the seller interface.
 20 Q. So if that's the seller interface that
 21 does that, then when we read this claim and it says
 22 a computer controller of the computer system, you
 23 are saying the computer controller of the computer
 24 seller is the seller interface?
 25 MR. LANE: Objection.

1 THE WITNESS: No, I am not saying
2 that at all. I am just saying that obtaining and
3 applying the presentation rules from the first
4 database to create the electronic ads in compliance
5 with the presentation rules of the internet media
6 venue, that takes place at the seller interface.

7 MR. GRINSTEIN: Q. If it takes place at
8 the seller interface, that's your understanding of how
9 the claim works.

10 Why does the claim say a computer controller
11 of the computer system processing and publishing?

12 Do you have any idea?

13 MR. LANE: Objection.

14 THE WITNESS: I can't -- let's see, I
15 don't know the answer to that question because after
16 reading the entire patent and taking a look at the
17 claim, it is clear to me that the seller interface
18 is where the seller does their part and their input
19 is matched up with the internet media venue rules,
20 and at that point that's the point of creation for
21 presentations for ads.

22 MR. GRINSTEIN: Q. Is there any
23 testimony you have given in this deposition today that
24 you want to correct?

25 A. No.

1 I declare under penalty of perjury the
2 foregoing is true and correct. Subscribed at
3 _____, California, this ____ day
4 of _____ 2009.

5 _____
6 Witness
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1 Q. All the answers you have given are
2 your best and most thorough answers that you can
3 give?

4 A. Yes, they are.

5 Q. Okay. It has been a long day. Why
6 don't we call it a day.

7 I appreciate your time, Mr. Kincaid. Thank
8 you for sitting for the deposition.

9 A. You are welcome.

10 VIDEO OPERATOR: This is the end of
11 volume I, videotape No. 5, in the deposition of Gene
12 Kincaid.

13 We are going off the record.

14 The time is 6:14.

15 (Whereupon, the deposition was
16 adjourned at 6:14 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 I, DENISE A. FORD, a Certified Shorthand
4 Reporter, hereby certify that the witness in the
5 foregoing deposition was by me duly sworn to tell
6 the truth, the whole truth, and nothing but the
7 truth in the within-entitled cause;

8 That said deposition was taken down in
9 shorthand by me, a disinterested person, at the time
10 and place therein stated, and that the testimony of
11 the said witness was thereafter reduced to
12 typewriting, by computer, under my direction and
13 supervision;

14 I further certify that I am not of counsel
15 or attorney for either or any of the parties to the
16 said deposition, nor in any way interested in the
17 event of this cause, and that I am not related to
18 any of the parties thereto.

19
20 DATED: March 26, 2009.
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23
24
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DENISE A. FORD, CSR No. 7525