

EXHIBIT E1

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1 claim 1, it says, "providing a means for 13:22:57
 2 transmitting." If you accept for sake of argument 13:22:59
 3 for the moment that the seller is the one 13:23:04
 4 transmitting in the "whereby clause," you're not 13:23:06
 5 saying those two things are inconsistent with each 13:23:08
 6 other? 13:23:10
 7 A. I think -- 13:23:10
 8 MR. BRANDON: Objection to form. 13:23:11
 9 A. -- when you read the claim as a whole 13:23:12
 10 and read what's taught in the specification about 13:23:14
 11 the structure corresponding to the provided means 13:23:16
 12 for transmitting, it -- it's not directly under the 13:23:22
 13 control of the seller. 13:23:25
 14 Q. (BY MR. LUMISH) I didn't understand. 13:23:31
 15 Sorry. Let me -- let's go back to the "whereby 13:23:32
 16 clause." It's your position in your testimony today 13:23:34
 17 that it's not the seller that is transmitting the 13:23:36
 18 presentation to the respective media venue? 13:23:38
 19 A. Only at -- at the most indirectly. The 13:23:40
 20 seller obviously picks the -- the venues that they 13:23:43
 21 would like to have their advertisement or 13:23:47
 22 presentation be eligible to be sent to if possible. 13:23:51
 23 I think something -- one of the language that's used 13:23:57
 24 in the specification is to target those venues. And 13:23:59
 25 if everything goes according to the seller's intent 13:24:05

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1 and it can be done, then the ultimate presentation 13:24:08
 2 will be transmitted. But I don't think the seller 13:24:12
 3 is directly under control of that as required by the 13:24:16
 4 claim. 13:24:23
 5 Q. I didn't ask about directly under 13:24:25
 6 control. I'm just trying to understand if you think 13:24:26
 7 the language in the "whereby clause" includes 13:24:29
 8 identification of two things the seller does -- or 13:24:31
 9 three things, whether it's a list that follows 13:24:34
 10 "seller may." 13:24:37
 11 A. Not -- not directly. That's the best 13:24:38
 12 answer I can give you. 13:24:40
 13 Q. Okay. It says and transmit in the 13:24:41
 14 singular form. Do you see that? 13:24:46
 15 A. Yes. 13:24:48
 16 Q. What do you think that word is 13:24:48
 17 modifying, if not the "seller may"? 13:24:49
 18 A. I think -- as I said, I think you can 13:24:51
 19 naively read the language to imply -- or to -- to 13:24:54
 20 say that the seller is the one who -- who creates 13:24:57
 21 and transmits. But when you read that "whereby 13:25:01
 22 clause" in the context of the limitations of 13:25:06
 23 claim 1, which track that language, and when you 13:25:09
 24 read what's going on in the specification itself, 13:25:12
 25 that -- that interpretation I don't think is -- I'm 13:25:17

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1 not even sure it would ever read on the preferred 13:25:20
 2 embodiment, and I don't -- I just don't think that's 13:25:23
 3 the appropriate way that -- it -- it can't be that. 13:25:25
 4 Q. Well, what is it? So what I'm asking 13:25:28
 5 you is, it says, comma, "and transmit." I read that 13:25:31
 6 to mean it's the third step -- third in a list of 13:25:33
 7 three things. You're saying it's not? 13:25:35
 8 A. No. 13:25:37
 9 Q. If it's not, what does comma, "and 13:25:38
 10 transmit" modify? 13:25:40
 11 A. It -- 13:25:42
 12 MR. BRANDON: Objection to form. 13:25:42
 13 Q. (BY MR. LUMISH) I think -- 13:25:43
 14 A. It -- it relates to the whereby. 13:25:44
 15 "Whereby the seller may select one or more of the 13:25:45
 16 media venues." And I -- it's not the most artful 13:25:48
 17 English I've ever seen, but I'm -- the seller 13:25:51
 18 doesn't create the presentation and the seller does 13:25:55
 19 not transmit the presentation, at least not 13:25:57
 20 directly. I mean, ultimately, they have something 13:26:01
 21 to do with where they might hope that their 13:26:02
 22 presentation would go, but I -- I don't believe it's 13:26:04
 23 correct to construe a claim in a way that doesn't 13:26:08
 24 read on the preferred embodiment, for example. 13:26:10
 25 Q. And your position is the preferred 13:26:12

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1 embodiment doesn't teach the seller creating the 13:26:14
 2 advertisement and transmitting the advertisement? 13:26:19
 3 A. Well, it says "presentation." I don't 13:26:21
 4 have a problem with you substituting another word, 13:26:24
 5 but, yes, I think -- the answer to your question is, 13:26:26
 6 yes, I don't think that. 13:26:28
 7 Q. But your -- your construction says 13:26:29
 8 "advertisements." Says, "customized 13:26:31
 9 advertisements," which is why I used that. 13:26:33
 10 A. I don't have a -- 13:26:33
 11 Q. You see that? 13:26:35
 12 A. Yeah, I don't have a problem with that, 13:26:36
 13 but forgive me. I was reading the exact bold 13:26:38
 14 language. And I -- I told you I don't have any 13:26:41
 15 problem with substituting presentation with 13:26:42
 16 advertisement. But I don't think that the preferred 13:26:45
 17 embodiment has the seller create the advertisement, 13:26:49
 18 and I don't think the preferred embodiment -- or the 13:26:52
 19 language of the claim requires that the seller do 13:26:55
 20 the present -- excuse me, transmit the presentation. 13:26:58
 21 Q. If the specification did teach the 13:27:02
 22 seller creating the advertisement and transmitting 13:27:04
 23 it to the media venue, would your position be 13:27:07
 24 different, then? 13:27:09
 25 MR. BRANDON: Objection, form. 13:27:11

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1 A. That's a hypothetical. It -- I'd have 13:27:12
 2 to see whether somebody believed that the 13:27:15
 3 specification did that, and it might. 13:27:18
 4 Q. (BY MR. LUMISH) But your position, 13:27:19
 5 then, is that because in your opinion the 13:27:20
 6 specification doesn't teach the seller selecting the 13:27:23
 7 venues, creating the advertisements, and 13:27:26
 8 transmitting them, this claim language can't be read 13:27:28
 9 to mean that the seller does those three things? 13:27:31
 10 MR. BRANDON: Objection to form. 13:27:34
 11 A. Yes. 13:27:35
 12 Q. (BY MR. LUMISH) So let me ask my other 13:27:37
 13 question again, because I don't think we've really 13:27:38
 14 gotten to an answer of it. You've got comma "and 13:27:41
 15 transmit." I want to know what that "and transmit" 13:27:43
 16 is referring to in this claim language. 13:27:46
 17 A. That the presentation -- customized 13:27:48
 18 presentation, as I said on the right-hand side, to 13:27:53
 19 reflect the language of this preamble is transmitted 13:27:56
 20 to as I believe it should be construed to each 13:27:59
 21 representative media venue for publication. But I 13:28:02
 22 don't believe that that should be limited to an act 13:28:04
 23 done by the seller himself or herself. 13:28:08
 24 Q. Who is it -- 13:28:11
 25 A. Ultimately it has to be transmitted. 13:28:12

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1 Q. Who's it done by in the claim? 13:28:14
 2 A. It's done -- in my opinion, it's done by 13:28:15
 3 software. 13:28:18
 4 Q. Any software? 13:28:18
 5 A. No. If you would like to look at where 13:28:19
 6 I construed the means for transmitting in an earlier 13:28:21
 7 claim, I think it's in here. I think I identify the 13:28:26
 8 particular piece of the software. 13:28:30
 9 Q. Well, would you add -- so then are you 13:28:31
 10 saying the claim language should be read to say, 13:28:33
 11 "whereby software may select, create and transmit 13:28:35
 12 the presentations"? 13:28:39
 13 MR. BRANDON: Objection to form. 13:28:41
 14 A. I don't think you need to say that, no. 13:28:42
 15 I just -- I don't know how I can be more clear. 13:28:45
 16 I -- I can understand how someone would naively read 13:28:49
 17 the language of that limitation to construe it to 13:28:52
 18 say that the seller must do A, B and C. But I know 13:28:55
 19 that can't be correct without -- if -- if you do 13:28:58
 20 that, you have -- have failed in my opinion to 13:29:01
 21 encompass the teachings of the preferred embodiment. 13:29:06
 22 And for the record, the -- the 13:29:11
 23 software that I dealt with, if you go back to 13:29:12
 24 page 9, I dealt with the means for transmitting said 13:29:15
 25 presentations to a selected media venue of the media 13:29:18

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1 venues. 13:29:23
 2 Q. (BY MR. LUMISH) Well, it says, "and 13:29:23
 3 transmit," right? It doesn't just -- it doesn't say 13:29:24
 4 transmitting in some generic sense. The claim item 13:29:27
 5 says, "and transmit." 13:29:30
 6 A. Oh, I mean, who could argue with that? 13:29:31
 7 That's exactly the two words that are included in 13:29:33
 8 the "whereby clause." 13:29:36
 9 Q. So what's the thing that's transmitting 13:29:37
 10 in this claim language? 13:29:39
 11 A. In my opinion -- 13:29:40
 12 MR. BRANDON: Objection -- 13:29:42
 13 Q. (BY MR. LUMISH) I'm not asking the 13:29:43
 14 specification. I'm asking the language of the 13:29:45
 15 claim, which I don't think you've answered yet. 13:29:45
 16 A. It would be -- 13:29:45
 17 Q. Is there something you can point me to 13:29:46
 18 in the "whereby clause" that's doing the 13:29:47
 19 transmitting, other than the seller? 13:29:49
 20 A. Have you finished your question? 13:29:51
 21 Q. Yes, sir. 13:29:52
 22 A. It would be the means for transmitting. 13:29:53
 23 Q. But it's a separate limitation in your 13:29:59
 24 opinion? 13:30:01
 25 A. I don't know how to answer that 13:30:03

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1 question. 13:30:04
 2 MR. BRANDON: Objection, form. 13:30:04
 3 Q. (BY MR. LUMISH) So you're saying the 13:30:05
 4 last part of the "whereby clause" is saying that the 13:30:06
 5 limitation before that's in your opinion 13:30:09
 6 disassociated is the thing that's transmitting? 13:30:13
 7 A. Did you say -- 13:30:15
 8 MR. BRANDON: Objection to the form. 13:30:16
 9 A. Did you say "disassociated"? 13:30:17
 10 Q. (BY MR. LUMISH) Disassociated. 13:30:19
 11 A. I don't even know how that would relate 13:30:20
 12 to the claim. Have no way to answer that question. 13:30:23
 13 I don't understand what you mean, "disassociated." 13:30:25
 14 Q. Other than the means for transmitting, 13:30:28
 15 can you point me to anything else in the claim 13:30:29
 16 language -- claim language that you say is 13:30:29
 17 transmitting, that's doing this transmit step at the 13:30:30
 18 bottom of the "whereby clause" shown in your page 13:30:34
 19 12? 13:30:37
 20 A. No, other than the overall method of 13:30:38
 21 using a network of computers. But within that 13:30:49
 22 method I think is the provision of the means for 13:30:52
 23 transmitting. 13:30:55
 24 Q. And the -- the word "and" before 13:31:08
 25 transmit, that also doesn't mean anything to you as 13:31:10

1 far as whether this is in a series of things in a 13:31:13
2 list -- the last entry in a series of a list? 13:31:15
3 MR. BRANDON: Objection to form. 13:31:18
4 A. I think it is the last entry in a -- in 13:31:19
5 a list of three things that -- that are accomplished 13:31:22
6 under the "whereby clause" as a result of doing 13:31:29
7 what's been specified in elements A, B, C and D, and 13:31:32
8 E. 13:31:38
9 Q. (BY MR. LUMISH) Can you turn to 13:31:50
10 page 13, please. 13:31:52
11 A. Okay. 13:31:52
12 Q. Paragraph 42 of your report, do you see 13:31:57
13 that? 13:31:59
14 A. Yeah, let me -- I haven't looked at that 13:32:01
15 in a while. Let me reread that. 13:32:03
16 Q. While you do that, please, I want to ask 13:32:05
17 you about this word "operator" that you italicized. 13:32:07
18 A. Okay. Then I'm just going to sort of 13:32:11
19 back up and see what the story is here with -- I'm 13:32:14
20 going to be -- if you give me a minute -- 13:32:17
21 Q. Of course. 13:32:17
22 A. -- to read paragraph 40 on. 13:32:17
23 Q. I just needed to give you the context so 13:32:19
24 you knew what you were reading for. 13:32:21
25 A. I have it. 13:32:22

1 (Witness Reviews Document.) 13:32:36
2 A. I have a typo I found at the top of 14, 13:32:55
3 and I apologize. I have -- had not seen that 13:32:59
4 before, but I believe there's just an extra 2, but 13:33:01
5 let me -- 13:33:04
6 Q. (BY MR. LUMISH) Top of page 14? 13:33:04
7 A. Yes, sir. In line -- in paragraph 43, 13:33:05
8 the fifth line, see for example. I think that 13:33:08
9 should just say 27 instead of 227. 13:33:11
10 Q. Yes. 13:33:14
11 A. Let me just confirm. Yes, just strike 13:33:15
12 the first 2. Let me continue to read, if you will. 13:33:25
13 Q. Sure. 13:33:29
14 (Witness Reviews Document.) 13:33:30
15 A. Okay. I'll stop with 43. If I need to 13:33:39
16 read any further, I'll let you know. But you had a 13:33:41
17 question, actually, back on 42, so I'm up to speed. 13:33:44
18 Q. (BY MR. LUMISH) Sure. You say there 13:33:46
19 further -- this is the very first line of 13:33:47
20 paragraph 42. Quote, "Further at 54:59 and 55:7, 13:33:49
21 the '045 specification discloses that the operator 13:33:56
22 provides this software and not any hardware," closed 13:34:00
23 quote. How does that relate to the constructions 13:34:04
24 that you offer in the table on pages 12 and 13? 13:34:09
25 A. Well, I -- 13:34:13

1 MR. BRANDON: Objection to form. 13:34:13
2 A. I think it's intended to relate to the 13:34:15
3 construction that I offer on page 13 at the top of 13:34:17
4 the page. And my belief in this case, as -- as the 13:34:20
5 case in several other places, that the means that's 13:34:25
6 called for by claim 1 of the '045 patent is 13:34:29
7 disclosed in the specification and the -- the 13:34:34
8 corresponding structure of that -- those means is -- 13:34:39
9 is computer software. 13:34:41
10 Q. (BY MR. LUMISH) Okay. So that would 13:34:42
11 also apply to the structure you give for the means 13:34:43
12 for the seller to input information at the top of 13:34:46
13 page 12? 13:34:50
14 A. Yes. 13:35:02
15 Q. Neither claim says the word "operator," 13:35:04
16 right? 13:35:06
17 A. No. 13:35:07
18 Q. Now, they're not saying means for an 13:35:11
19 operator to install software; you'll agree with 13:35:15
20 that? 13:35:18
21 A. They don't use those words, but if -- 13:35:19
22 in -- when read in light of the specification and 13:35:22
23 its teachings, you remember that the claims in the 13:35:24
24 '045 say "providing." And I'm identifying the way 13:35:30
25 in which that software is provided using the very 13:35:37

1 language that I previously cited to you out of this 13:35:40
2 exemplary situation with all the ABCs and XYZs. And 13:35:45
3 I pointed out to you that it -- for example, step 3 13:35:52
4 says, down at the bottom of page 13, "A computer 13:35:56
5 operator XYZ installs the software on their 13:35:59
6 computer." That means that the -- the computer 13:36:02
7 preexisted at XYZ. 13:36:10
8 Q. Why does that matter for whether there's 13:36:13
9 a means for inputting, whether the thing preexisted? 13:36:15
10 A. It's -- it's not provided, I think. The 13:36:18
11 hardware is not provided in -- in association with 13:36:23
12 the provision of the means for said media venues to 13:36:26
13 input said guidelines and information. That kind of 13:36:31
14 language. 13:36:34
15 Q. Well, the software preexisted before it 13:36:35
16 was installed, too, right? 13:36:37
17 A. It preexisted with the operator of the 13:36:38
18 invention, but it -- it was not installed and 13:36:40
19 configured at the XYZ site. It didn't exist there. 13:36:45
20 Q. Well, the -- are you reading the claims, 13:36:49
21 then, to say that it means providing these means 13:36:52
22 from some source other than the XYZ seller and then 13:36:55
23 providing it to that seller? 13:37:08
24 MR. BRANDON: Objection to form. 13:37:10
25 A. I don't understand that question at all. 13:37:11

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1 Q. (BY MR. LUMISH) Well, you seem to be 13:37:12
 2 drawing some distinction about whether the 13:37:14
 3 provider -- the seller already has the software or 13:37:15
 4 the hardware. I'm trying to understand it. Is it 13:37:18
 5 your position that the '045 patent claims require 13:37:21
 6 you to provide that software to XYZ from some third 13:37:24
 7 party? 13:37:27
 8 MR. BRANDON: Objection to form. 13:37:28
 9 A. From ABC. Okay. Look at step 2. "ABC 13:37:29
 10 sends XYZ the necessary software to be installed on 13:37:34
 11 their computer." 13:37:37
 12 Q. (BY MR. LUMISH) Well, I'm asking about 13:37:38
 13 the claim requirement, though. Is it your position, 13:37:39
 14 then, providing of these means has to come from some 13:37:41
 15 third party to the seller? 13:37:43
 16 MR. BRANDON: Objection to form. 13:37:45
 17 A. I don't -- I don't know about the third 13:37:51
 18 party part of it, but I don't think the seller had 13:37:53
 19 it in their possession before it was provided to 13:37:56
 20 them in accordance with the claim. 13:37:58
 21 Q. (BY MR. LUMISH) Well, do you have an 13:37:59
 22 opinion or not that the -- in saying "providing" 13:38:00
 23 means for said media venues to input guidelines and 13:38:04
 24 information or "providing" means for the seller to 13:38:07
 25 input information, that those means have to be 13:38:09

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1 provided by a third party to the seller or the media 13:38:13
 2 venues? 13:38:18
 3 MR. BRANDON: Objection to form. 13:38:18
 4 A. Well, in paragraph 42, I'm only dealing 13:38:19
 5 with the seller. So I'm -- I don't see how to 13:38:21
 6 relate that discussion to the media venue. 13:38:24
 7 Q. (BY MR. LUMISH) Well, you told me that 13:38:29
 8 the sentence about the operator applies -- 13:38:30
 9 A. Please let me -- 13:38:32
 10 Q. Oh, I'm sorry, sir. I didn't mean to 13:38:33
 11 interrupt you. I apologize. 13:38:35
 12 A. I just consider my previous answer 13:38:36
 13 incomplete. And so I would like -- I can't really 13:38:38
 14 strike it, but it's not complete. 13:38:40
 15 Q. I apologize. 13:38:40
 16 A. And I don't remember what I was going to 13:38:43
 17 say. So if you want to re-ask your last question, 13:38:44
 18 I'll try to answer it completely. 13:38:46
 19 MR. LUMISH: Could you please read 13:38:46
 20 back my question, please, and his partial answer to 13:38:47
 21 see if he can remember what he wants to say. 13:38:50
 22 (Requested Portion Read Back.) 13:38:53
 23 A. So relative to the seller, I don't know 13:39:29
 24 that I've specifically formed an opinion as to 13:39:32
 25 whether there's some specific person that has to be 13:39:35

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1 in charge of providing it. I simply am saying in 13:39:38
 2 paragraph 42 that the specification in that example 13:39:42
 3 makes it clear that it is ABC which sends XYZ the 13:39:46
 4 necessary software to be installed on their 13:39:53
 5 computer. ABC does not provide the computer system 13:39:55
 6 that's associated with enabling the seller to input 13:40:00
 7 the information that they need to input to the 13:40:04
 8 invention. 13:40:09
 9 Q. (BY MR. LUMISH) And you're saying that 13:40:10
 10 ABC has to provide that computer for it to be 13:40:11
 11 provided within the meaning of the claim language? 13:40:14
 12 MR. BRANDON: Objection to form. 13:40:16
 13 A. I don't understand that question. I'm 13:40:17
 14 saying -- I think I'm saying exactly the opposite. 13:40:19
 15 In that in this example, ABC does not provide the 13:40:23
 16 computer. That's -- that's what I said. 13:40:26
 17 Q. (BY MR. LUMISH) Right. And I'm asking 13:40:27
 18 the -- the flip of that, which is: Are you saying 13:40:29
 19 that for the computer to be the means in the claim 13:40:31
 20 language, it would have to have been provided by ABC 13:40:35
 21 in this example? 13:40:38
 22 A. I don't think I'm saying that. 13:40:39
 23 MR. BRANDON: Objection, form. 13:40:40
 24 A. Yeah, I -- I don't think I'm even 13:40:41
 25 addressing that point. 13:40:43

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1 Q. (BY MR. LUMISH) There's no requirement 13:40:44
 2 in the claims you buy the software from somebody 13:40:46
 3 else, right? 13:40:48
 4 A. I -- I don't -- 13:40:49
 5 MR. BRANDON: Objection, form. 13:40:50
 6 A. I don't understand the context of that. 13:40:50
 7 Q. (BY MR. LUMISH) Well, you're saying 13:40:53
 8 that providing the software, ABC sends it to XYZ, so 13:40:54
 9 it's provided. Are you -- does that mean the claim 13:40:58
 10 language requires you to -- you the seller or you 13:41:00
 11 the media venue, depending on which of these two 13:41:02
 12 terms we're hooking at, to -- to buy the software 13:41:06
 13 for -- from somebody else? 13:41:08
 14 A. I don't say anything about buying at 13:41:09
 15 all. 13:41:11
 16 Q. You say you have to get it from somebody 13:41:11
 17 else? 13:41:13
 18 A. I didn't say that. 13:41:13
 19 Q. Does it say you have -- is there 13:41:14
 20 anything about it that says you can't write it 13:41:15
 21 yourself? 13:41:17
 22 MR. BRANDON: Objection to form. 13:41:18
 23 A. I don't think I've addressed that issue 13:41:22
 24 within the scope of my understanding of what the 13:41:25
 25 claim is. It just -- the claim says that you 13:41:27

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1 provide means for said media venues to input said 13:41:29
 2 guidelines and information. That's in -- there's 13:41:33
 3 actually two very similar languages -- language, but 13:41:36
 4 I -- I think it -- it has to be provided. 13:41:40
 5 And as I said in paragraph 42, the 13:41:43
 6 example in the specification of the '045 patent 13:41:45
 7 discloses that the operator of the invention 13:41:48
 8 provides the software, whereas the hardware that 13:41:51
 9 that software will be executed on is already in 13:41:54
 10 existence at XYZ. 13:41:58
 11 Q. (BY MR. LUMISH) But that's -- 13:41:58
 12 A. That's all -- 13:42:00
 13 Q. But that's -- 13:42:00
 14 A. -- I'm saying. 13:42:01
 15 Q. But that's what I'm trying to understand 13:42:02
 16 is why it matters at all if it's already in 13:42:03
 17 existence. 13:42:06
 18 A. It's not provided, in order to establish 13:42:06
 19 a means for said media venues to input said 13:42:10
 20 guidelines and information. 13:42:12
 21 Q. Because it preexisted? 13:42:14
 22 MR. BRANDON: Objection to form. 13:42:17
 23 A. The -- the hardware's there, but it 13:42:18
 24 can't support the function of allowing the media 13:42:20
 25 venues to input guidelines and information until the 13:42:26

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1 software that I've identified as being the required 13:42:31
 2 software has been provided. 13:42:37
 3 Q. (BY MR. LUMISH) In paragraph -- in that 13:42:41
 4 part 3 there that you read at the bottom of page 13 13:42:46
 5 of your report, paragraph 42 -- 13:42:49
 6 A. Uh-huh. 13:42:49
 7 Q. -- it says that the computer operator 13:42:51
 8 installs the software on their computer, quote, 13:42:53
 9 "that then is configured as Seller Interface 4000," 13:42:56
 10 closed quote. Why isn't it that the configuration 13:43:01
 11 of the computer isn't the provision of the interface 13:43:04
 12 in the form of the computer running the software? 13:43:06
 13 MR. BRANDON: Objection to form. 13:43:09
 14 A. Well, the claim doesn't say anything 13:43:10
 15 about interface, does it? It just says that you 13:43:11
 16 provide a means for the media venues to input said 13:43:15
 17 guidelines and information. 13:43:18
 18 Q. (BY MR. LUMISH) All right. Why isn't 13:43:19
 19 the installation of the software and the 13:43:21
 20 configuration of the computer into the Seller 13:43:26
 21 Interface 4000 the providing of a means for the 13:43:29
 22 seller to input information? 13:43:35
 23 MR. BRANDON: Objection to form. 13:43:38
 24 A. Well, if you read it, it says the -- 13:43:39
 25 that they install the software, and that's the 13:43:44

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1 provided software that's sent to them in this 13:43:46
 2 example. And -- and that then is configured as 13:43:50
 3 Seller Interface, capital S, capital I, 4000, as 13:43:54
 4 shown in figure 2c. If you look at what's shown in 13:43:58
 5 figure 2c, it is the combination of the pre-existing 13:44:02
 6 hardware, the XYZ computer, and the software that 13:44:08
 7 ABC sent to XYZ. 13:44:13
 8 At that point, you do have Seller 13:44:15
 9 Interface 4000, capital S, capital I, as shown in 13:44:17
 10 figure 2c. That much I'll agree with. But you had 13:44:22
 11 most of that before. And the reason it was 13:44:25
 12 incapable, that computer, of -- of meeting the 13:44:30
 13 function of the means to input is that you didn't 13:44:32
 14 have the software. It had not been made available 13:44:37
 15 to XYZ yet. 13:44:39
 16 Q. (BY MR. LUMISH) So are you saying 13:44:41
 17 providing is synonymous with sent here? 13:44:42
 18 A. In the example, the way it's provided is 13:44:45
 19 that ABC sends it the necessary software. That's 13:44:48
 20 just in the example. 13:44:51
 21 Q. And providing doesn't mean to you the 13:44:52
 22 combination, as you put it, of the software on the 13:44:55
 23 hardware to create this interface described as 4000 13:44:58
 24 in figure 2c? 13:45:02
 25 A. Yes. 13:45:03

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1 MR. BRANDON: Objection, form. 13:45:03
 2 Q. (BY MR. LUMISH) It does not mean that; 13:45:04
 3 that's your position? 13:45:05
 4 A. Yes. 13:45:06
 5 Q. So you say here the -- in the text of 13:45:34
 6 '0 -- in paragraph 42 that you wrote before the 13:45:37
 7 quote, that the '045 discloses that the operator 13:45:39
 8 provides this software. That's not what it says, 13:45:42
 9 right? It says ABC provides the software which is 13:45:45
 10 installed by an operator. 13:45:48
 11 MR. BRANDON: Objection to form. 13:45:50
 12 A. That's a misunderstanding. And I -- I 13:45:51
 13 read this last night or the day before, and I 13:45:54
 14 thought that's not very clear. The operator there 13:45:57
 15 is ABC, okay, or a person at ABC. It's not the same 13:46:01
 16 computer operator at XYZ. And I -- I understand 13:46:06
 17 your confusion, and it's poorly written. 13:46:10
 18 Q. (BY MR. LUMISH) Where did you come up 13:46:12
 19 with the word "operator"? 13:46:13
 20 A. It's -- it's in the patent. They refer 13:46:14
 21 to the operator of the invention. 13:46:16
 22 Q. Well, there's lots of operators in the 13:46:18
 23 patent, right? 13:46:21
 24 A. Well, I agree with you that that's not 13:46:21
 25 very clear. By the italicized operator, I'm talking 13:46:24

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1 about effectively ABC. 13:46:29
 2 Q. Okay. 13:46:30
 3 A. The company or person that operates the 13:46:31
 4 facilities that are associated in this example with 13:46:34
 5 ABC, ABC's services. 13:46:36
 6 Q. So are you reading claim 1, then, to say 13:46:43
 7 that something called -- you call an operator of the 13:46:46
 8 invention has to perform all of these providing 13:46:49
 9 steps, has to be the thing that provides A, B, C, D 13:46:51
 10 and E in claim 1? 13:46:56
 11 A. No, I'm not making that reading at all. 13:46:58
 12 Q. All these -- 13:47:00
 13 A. I haven't tried -- again, you've got to 13:47:00
 14 keep in mind that other than reading these disputed 13:47:03
 15 terms in the context of the claim, the specification 13:47:05
 16 and the other things that I identified for you, I 13:47:08
 17 have not tried to define what I think the full scope 13:47:11
 18 of these claims would be, say, for an infringement 13:47:15
 19 analysis. I haven't done that. I've looked at that 13:47:18
 20 term, and I haven't made any decision in my mind as 13:47:21
 21 to whether there's some limitation that the 13:47:24
 22 provision has to be made by a single entity or 13:47:27
 23 whatever. Okay. I'm just citing -- this is just an 13:47:30
 24 example that shows -- and -- and the point that's 13:47:33
 25 being made here is that XYZ already had the 13:47:35

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1 hardware. It wouldn't do the function of the means 13:47:39
 2 to input guidelines and information. And it -- it 13:47:44
 3 was incapable of performing that until ABC sent it 13:47:48
 4 the necessary software to be installed on their 13:47:52
 5 computer. That's the point I'm making. 13:47:54
 6 Q. When the claim says in step e, quote, 13:47:56
 7 "providing means for the seller to input 13:47:59
 8 information," are you saying that -- is it your 13:48:02
 9 position or not that the providing of that means has 13:48:05
 10 to come from somebody you call the operator or 13:48:08
 11 something you call the operator of the invention? 13:48:11
 12 A. I -- no, I don't read the limitations of 13:48:13
 13 a claim to be the same as the disclosed examples or 13:48:17
 14 embodiments in the patent. 13:48:22
 15 Q. Is there any limit on what entity or 13:48:24
 16 what thing can provide the means for the seller to 13:48:26
 17 input information in the claims of the '045 patent? 13:48:30
 18 A. I can't offer you one today. I haven't 13:48:33
 19 really tried to define the scope of who or where or 13:48:36
 20 what. I see that as coming in the context of an 13:48:39
 21 infringement analysis. 13:48:42
 22 Q. But as -- for the purpose of claim 13:48:46
 23 construction, you're not opining that the step of 13:48:47
 24 providing means for the seller to input information 13:48:51
 25 requires that provision to come from some specific 13:48:54

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1 place, entity or thing? 13:48:58
 2 A. I -- I actually haven't construed for 13:48:59
 3 the purposes of my report the entirety of the 13:49:01
 4 limitation. It's my understanding that the 13:49:03
 5 disagreement between me and Function Media and you 13:49:07
 6 and I -- I gather your expert was on what the 13:49:10
 7 corresponding structure of that means was. And I 13:49:16
 8 provided you my opinion on that part of that 13:49:18
 9 limitation. 13:49:20
 10 Q. And for claim 5, you're not offering an 13:49:25
 11 opinion today that there's any specific entity, 13:49:27
 12 thing or person who has to provide the means for the 13:49:31
 13 said media venues to input said guidelines, either? 13:49:35
 14 A. I have not in any way tried to decide -- 13:49:38
 15 as I say, I think that's an infringement issue that 13:49:43
 16 would be related to something that Function Media 13:49:45
 17 would hope would be met by some aspect of your 13:49:50
 18 product or Google's product and your -- you and your 13:49:54
 19 expert would probably, hopefully try to find a way 13:49:57
 20 to say that whatever it is it's not the same as what 13:50:00
 21 we do. But I haven't gotten there yet. Okay. I'm 13:50:03
 22 just trying to identify the corresponding structure 13:50:07
 23 of that means to input. 13:50:09
 24 Q. Back at the top of page 12, please, on 13:50:12
 25 the means for the seller to input information, you 13:50:14

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1 change the claim language in the function to say, 13:50:17
 2 quote, "enabling a seller to input information." 13:50:20
 3 The word "enabling" is not in the claim language. 13:50:23
 4 You see that? 13:50:26
 5 A. Yes. And actually I think that I was 13:50:26
 6 trying to adopt sort of in a spirit of camaraderie 13:50:30
 7 as much as the -- of the function proposed by Google 13:50:36
 8 and Yahoo! as I -- I could adopt. 13:50:39
 9 Q. Okay. And you understand, though, it's 13:50:41
 10 describing here that it's the seller that inputs the 13:50:43
 11 information, right? 13:50:45
 12 A. I think you've asked me that numerous -- 13:50:45
 13 MR. BRANDON: Objection, form. 13:50:48
 14 A. -- times. And I -- I continue to 13:50:50
 15 believe when it says "enabling a seller to input 13:50:52
 16 information," it means the seller. 13:50:55
 17 Q. (BY MR. LUMISH) I haven't changed your 13:50:56
 18 mind yet, huh? 13:50:57
 19 A. Well -- 13:50:59
 20 Q. All right. 13:50:59
 21 A. -- I wasn't aware that issue was an 13:50:59
 22 issue here. 13:51:01
 23 Q. No. I'm sorry. 13:51:01
 24 A. That's okay, Mr. Lumish. 13:51:03
 25 Q. That was a -- that was a joke. 13:51:05

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1 A. I took that to be a joke. That's why I 13:51:05
 2 smiled and laughed a little bit. Just out of 13:51:08
 3 courtesy. Wasn't that good a joke. 13:51:11
 4 Q. No, I agree. 13:51:14
 5 All right. Let's talk about the 13:51:19
 6 selection here. You -- in your report -- and I 13:51:20
 7 think this is probably multiple places. But down at 13:51:24
 8 the bottom of page 17, top of 18 you talk about this 13:51:27
 9 notion of -- 13:51:31
 10 A. Give me just a moment. 13:51:32
 11 Q. Yeah. Let me give you the context I'm 13:51:33
 12 asking you about, so you can look at whatever you'd 13:51:35
 13 like. But I want to talk about this notion of 13:51:37
 14 indirectly versus directly selecting media -- 13:51:39
 15 A. Uh-huh. 13:51:39
 16 Q. -- that you discussed in your report. 13:51:41
 17 A. Uh-huh. 13:51:43
 18 Q. You have two citations here at the top 13:51:47
 19 of page 18 for that -- 13:51:50
 20 A. Okay. You're going to have to give me a 13:51:53
 21 minute. 13:51:54
 22 Q. -- position. Are you reading it? I'm 13:51:54
 23 sorry, go ahead. 13:51:56
 24 A. No, I need to -- I -- I think I 13:51:57
 25 understand what the issue is, but I -- I don't 13:51:59

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1 recall exactly what I have here. 13:52:00
 2 Q. Just let me know when you're finished, 13:52:02
 3 please. 13:52:04
 4 A. Okay. 13:52:04
 5 (Witness Reviews Document.) 13:52:05
 6 A. Okay. I remember what this was. 13:52:25
 7 Q. (BY MR. LUMISH) I'm trying to 13:52:31
 8 understand the two specification citations you give. 13:52:33
 9 They both refer to choosing what are called in one 13:52:35
 10 instance, quote, "nonresident media or advertising 13:52:39
 11 channels," and then the second media or advertising 13:52:42
 12 channels. Pardon me. Why does this tell you that 13:52:44
 13 the selection of media venues in the claims can be 13:52:49
 14 what you call indirect? 13:52:53
 15 A. Okay. Maybe I -- I misunderstand what 13:52:54
 16 you and your side of this issue mean by direct, but 13:53:00
 17 I -- it was my understanding -- it is my 13:53:05
 18 understanding that you mean that the seller must 13:53:07
 19 pick a specific venue by name, you know, "I want the 13:53:13
 20 New York Times or CNN.com," as opposed to saying "I 13:53:17
 21 would like this ad to go to sports websites." 13:53:23
 22 That -- that's an advertising channel. It's not -- 13:53:28
 23 when you identify a channel, it's my understanding 13:53:31
 24 that you are not identifying a particular media 13:53:35
 25 output -- outlet or venue, but you are rather 13:53:41

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1 classifying what potentially is a group of channels. 13:53:45
 2 And that's what I -- I meant when I said, "the 13:53:51
 3 seller may also indirectly select media venues by 13:53:55
 4 entering targeting information, such as a desired 13:53:58
 5 advertising channel" at the bottom of page 17. 13:54:02
 6 Q. Let's start with the claim language 13:54:05
 7 again. If you look at claim 1 of the '045 patent, 13:54:07
 8 it doesn't say anything about selecting a channel, 13:54:12
 9 right? 13:54:15
 10 MR. BRANDON: Objection to form. 13:54:16
 11 A. No. 13:54:19
 12 Q. (BY MR. LUMISH) That's not correct? 13:54:20
 13 A. Yes, it doesn't say that. 13:54:23
 14 Q. Okay. Instead it says the seller, 13:54:25
 15 quote, "to select the media venues," closed quote, 13:54:27
 16 right, if you see step d? 13:54:30
 17 A. Yes. 13:54:33
 18 Q. And in the "whereby clause," it says the 13:54:34
 19 seller may select one or more of the media venues. 13:54:36
 20 A. Yes. 13:54:38
 21 Q. Neither one says "channels," right? 13:54:40
 22 A. It doesn't specifically say "channels" 13:54:43
 23 in the language of the claim itself. 13:54:45
 24 Q. In claim 1 of the '025 patent, it talks 13:54:46
 25 about, quote, "to select one or more of the Internet 13:54:51

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1 media venues." Again, not channels? 13:54:54
 2 MR. BRANDON: Objection, form. 13:54:56
 3 A. It says that. It has those words. 13:55:17
 4 Q. (BY MR. LUMISH) Doesn't say "channels" 13:55:19
 5 in claim 1 of the '025? 13:55:21
 6 A. No. 13:55:22
 7 Q. Doesn't say "channel" in claim 179 of 13:55:23
 8 the '025, right? 13:55:25
 9 A. I don't believe that it does. 13:55:41
 10 Q. And you mentioned targeting. Is it your 13:55:45
 11 position that targeting and selecting are the same 13:55:48
 12 things in the -- in the Function Media patents? 13:55:50
 13 A. I think of targeting as one of the ways 13:55:52
 14 for selecting that's taught in the specification. 13:55:54
 15 Q. Couldn't -- couldn't -- well, withdraw. 13:55:58
 16 Are you saying that they're -- so 13:56:01
 17 withdraw. Let me start over. 13:56:03
 18 You're saying targeting is a type of 13:56:04
 19 selecting? 13:56:06
 20 A. Yes. It's taught in the back. 13:56:07
 21 Q. So targeting is narrower than selecting, 13:56:09
 22 in your opinion? 13:56:12
 23 A. In a sense, I think it's -- well, it's a 13:56:12
 24 way of selecting. I -- I don't -- I guess there -- 13:56:15
 25 there are other ways of selecting, so I guess narrow 13:56:17

1 is the right phrase. 13:56:21
 2 Q. I'm going to give you a hypothetical. 13:56:29
 3 A. Okay. 13:56:31
 4 Q. I didn't want to hide it. 13:56:32
 5 A. I think it was your expert who said, 13:56:33
 6 "I'm not sure I have to answer a hypothetical," 13:56:36
 7 but... 13:56:38
 8 Q. He was wrong. 13:56:38
 9 A. Okay. 13:56:38
 10 Q. I bet he answered it, too. 13:56:40
 11 A. I think he did, eventually. 13:56:41
 12 Q. So here's the hypothetical. A seller 13:56:44
 13 wants to advertise her -- her product, her website, 13:56:48
 14 and there's a thousand possible media venues to 13:56:55
 15 choose from. You with me so far? 13:57:01
 16 A. So far. 13:57:04
 17 Q. Total universe is a thousand. 13:57:05
 18 A. All right. 13:57:07
 19 Q. The advertisement, though, she -- is for 13:57:07
 20 her flower shop. 13:57:12
 21 A. Okay. 13:57:14
 22 Q. If she wanted to narrow down that 13:57:22
 23 thousand to some smaller number so she didn't have 13:57:24
 24 to go through all thousand to try to pick the ones 13:57:26
 25 that she really wanted to use as her media venues, 13:57:29

1 couldn't she target those by entering demographics 13:57:32
 2 to get down to a hundred and still not have selected 13:57:36
 3 the specific media venues on which she wants to 13:57:40
 4 advertise? 13:57:42
 5 MR. BRANDON: Objection to form. 13:57:42
 6 A. I would think of that as being -- as 13:57:45
 7 exactly being targeting, and it's a form of 13:57:47
 8 selection. It's not directly selecting specific 13:57:50
 9 venues, but if she said, "I only want to send my ads 13:57:53
 10 to people in Texas" -- 13:57:57
 11 Q. (BY MR. LUMISH) Well, let -- let me 13:57:59
 12 finish. Okay. So that was one step in the 13:58:00
 13 hypothetical. Let's keep going. 13:58:03
 14 A. Uh-huh. 13:58:03
 15 Q. So let me give you several steps, and 13:58:05
 16 then I'll ask you a question. So she has a thousand 13:58:06
 17 to start with. She didn't want to advertise on all 13:58:08
 18 thousand. She wants to target down to Texas and to 13:58:11
 19 people that might be interested in flowers, to 13:58:13
 20 websites that are -- media venues that are about 13:58:16
 21 flowers. Couldn't she enter "Texas," enter 13:58:18
 22 "flowers" in some way in the systems described in 13:58:26
 23 the Function Media patents, and then get back a list 13:58:31
 24 of let's say 50 websites or 50 media venues from 13:58:33
 25 which she chooses 10 to advertise on? 13:58:38

1 A. By name, ten. 13:58:39
 2 Q. Ten by name? 13:58:40
 3 A. These ten, check, check, check, check, 13:58:42
 4 check. 13:58:43
 5 Q. Right. 13:58:44
 6 A. Okay. 13:58:44
 7 Q. Flowers.com, 1 through 10. 13:58:44
 8 A. Uh-huh. 13:58:46
 9 Q. You with me so far? 13:58:46
 10 A. I think. 13:58:48
 11 Q. You're saying that the narrowing down 13:58:53
 12 from a thousand to a hundred is selecting, and so is 13:58:54
 13 the selection by name of the ten that she ultimately 13:58:59
 14 advertises on? 13:59:02
 15 A. Yes. 13:59:03
 16 Q. There's no difference between those two 13:59:03
 17 to you? 13:59:05
 18 A. Oh, no, there's a -- there's a 13:59:06
 19 difference. 13:59:07
 20 Q. What's the difference? 13:59:07
 21 A. I think of it, at least in the 13:59:08
 22 vocabulary that I used in my patent, picking the ten 13:59:09
 23 where you know the names of those venues is what I 13:59:13
 24 thought of as a direct selection. But the 13:59:18
 25 winnowing, if you will, by saying "Texas" and -- and 13:59:22

1 sites that have a -- met a key word or something 13:59:28
 2 like that of flowers or relate to weddings or other 13:59:30
 3 things where she thinks she might be able to elicit 13:59:33
 4 a cross interest in -- in selling her flowers is a 13:59:38
 5 form of selection, as well. That's what I mean by 13:59:42
 6 indirect. She didn't say, "I want this place," but 13:59:46
 7 she said, "I want a set of places like this." 13:59:48
 8 Q. In the language of the patent, as you 13:59:51
 9 put it, would you agree that the winnowing down from 13:59:53
 10 a thousand to a hundred is also targeting? 13:59:57
 11 A. The reason that I used -- I think the 14:00:01
 12 word targeting is interesting -- interesting is that 14:00:03
 13 there's no guarantee given issues like blocked URLs 14:00:08
 14 and the fact that the media venue can basically say, 14:00:11
 15 "I don't want that." Okay. They can reject it in 14:00:15
 16 various ways that you're guaranteed that your ad 14:00:18
 17 will ever show up on a particular -- even if you 14:00:22
 18 check one, you may not make it. And -- and I think 14:00:26
 19 that's sort of the -- the reason that targeting is 14:00:28
 20 an attempt. You've selected it, but that's -- 14:00:31
 21 that's the difference that I'm trying to imply. It 14:00:34
 22 has more to do with ultimately what happens. 14:00:37
 23 Q. But would you agree with me in the 14:00:40
 24 language of the patent, that the winnowing down from 14:00:42
 25 a thousand to a hundred websites in the hypothetical 14:00:44

1 I gave you would be consistent with the notion of 14:00:45
 2 targeting of the patent? 14:00:47
 3 A. Either that or -- or selection. I don't 14:00:48
 4 have any difference there. 14:00:50
 5 Q. You draw no difference between the two 14:00:51
 6 words? 14:00:54
 7 A. I draw a difference between the two 14:00:54
 8 words, but not in the example. It has more to do 14:00:56
 9 with what ultimately happens with respect to the 14:00:58
 10 websites that you have selected or targeted. But 14:01:00
 11 both of those are a selection process. 14:01:06
 12 Q. Is the hypothetical I gave you where you 14:01:20
 13 winnow down or zero in on a hundred sites out of a 14:01:25
 14 thousand and then pick ten specific ones, is that -- 14:01:29
 15 hypothetically, do you think it's consistent with 14:01:31
 16 the process taught in the Function Media patents? 14:01:34
 17 A. I'm not sure I ever saw something 14:01:36
 18 quite -- and I'd have to go back and reread. Seems 14:01:39
 19 to me there was some discussion of being able to use 14:01:43
 20 demographics and geography and all, but I haven't 14:01:45
 21 looked at that aspect of the preferred embodiment in 14:01:48
 22 a while. So I -- I'm just not prepared to give you 14:01:52
 23 a hard answer on that one. 14:01:54
 24 Q. But as you sit here now, there's nothing 14:01:56
 25 about the hypothetical that jumps out to you and 14:01:58

1 says, "Well, that's not the way the patent works" -- 14:02:01
 2 "patents work"? 14:02:03
 3 MR. BRANDON: Objection, form. 14:02:03
 4 A. Well, okay, there's a difference between 14:02:04
 5 your two questions. I don't remember the details of 14:02:06
 6 how the patent and its discussion of preferred 14:02:11
 7 embodiments dealt with issues like geography or 14:02:16
 8 demographics or key words. It seems to me that it 14:02:19
 9 does, but I -- I think both of those are consistent 14:02:22
 10 with the concept of selecting media venues in the 14:02:25
 11 claims that we've been talking -- talking about. 14:02:27
 12 Q. (BY MR. LUMISH) That's a different -- 14:02:31
 13 different than what I'm asking you. I'm asking you 14:02:32
 14 that as you understand the hypothetical in the 14:02:34
 15 Function Media patents, there's nothing you can 14:02:36
 16 point me to now that you think would say that that 14:02:39
 17 hypothetical is inapplicable, given some text in the 14:02:42
 18 specification or something about the claim language 14:02:46
 19 that you think makes it an inapplicable 14:02:47
 20 hypothetical? 14:02:51
 21 A. I -- I can't offer an opinion, really. 14:02:51
 22 Either way. I don't -- if you wish, I think I kind 14:02:53
 23 of remember generally where those kinds of processes 14:02:56
 24 were discussed in the specification, but I just 14:02:59
 25 haven't looked at them in a while. 14:03:03

1 Q. Okay. 14:03:03
 2 A. And in a sense I think what you're doing 14:03:10
 3 is kind of what I referred to in -- on the next page 14:03:12
 4 of my report as -- as picking channels. 14:03:15
 5 Q. Which page is that? 14:03:17
 6 A. Those two -- two quotes where I 14:03:19
 7 underlined at the top of page 18. 14:03:23
 8 Q. But we already discussed the claims 14:03:28
 9 don't use the word "channel," right? 14:03:30
 10 A. We did. That's a fact. 14:03:32
 11 Q. I mean, the hypothetical I gave you, 14:03:42
 12 would it also be consistent with the understanding 14:03:45
 13 of the patent to pick a channel such as, for 14:03:47
 14 example, gardening -- a channel called gardening if 14:03:50
 15 you were my -- my person who wanted to advertise her 14:03:53
 16 flower website, and then find the 50 entries under 14:03:55
 17 gardening and select individual sites on that or 14:04:00
 18 individual media venues on that with which to 14:04:03
 19 advertise? 14:04:05
 20 A. I would think the first step would be 14:04:06
 21 like a channel, and the second one would be like 14:04:08
 22 precise, direct implication of potential media 14:04:12
 23 venues where my ad might show up. 14:04:18
 24 MR. BRANDON: Now a good place for 14:04:27
 25 a -- 14:04:30

1 MR. LUMISH: Sure. 14:04:30
 2 MR. BRANDON: -- break? 14:04:31
 3 THE VIDEOGRAPHER: Off the record, 14:04:31
 4 2:04. 14:04:34
 5 (Recess Taken From 2:04 p.m. To 2:21 p.m.) 14:04:35
 6 THE VIDEOGRAPHER: Back on the 14:20:46
 7 record, 2:21. 14:20:49
 8 Q. (BY MR. LUMISH) Before we broke, sir, 14:20:52
 9 we were talking about the selection of media venues. 14:20:53
 10 I want to stay in that topic for a few moments 14:20:55
 11 longer. In the specification, if you look at column 14:20:59
 12 41 of the '045 patent, please, starting at line 14:21:01
 13 15 -- you have 41, line 15 in front of you? 14:21:05
 14 A. Yeah. It looks like it's in the middle 14:21:21
 15 of a sentence. Should I -- 14:21:24
 16 Q. Well, let me -- let me read the whole 14:21:26
 17 thing into the record, and we'll get back to that 14:21:28
 18 part. So actually starting at line 13, the 14:21:30
 19 specification reads, quote, "As an example, if the 14:21:33
 20 instance of the present invention were configured to 14:21:36
 21 support, quote, 'Sailboats For Sale,' closed quote, 14:21:39
 22 the Seller may be given the choice of three Internet 14:21:43
 23 Directories that specialize in boating-related goods 14:21:46
 24 and services, two printed magazines, and a 14:21:49
 25 subscription-based CD-ROM. The Seller could then 14:21:52

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1 choose one or two or all of the media/means of 14:21:55
 2 communication in which to be represented, with all 14:21:58
 3 presentations created by the Presentation and 14:22:01
 4 Configuration Program." I left out the reference 14:22:06
 5 numerals. 14:22:08
 6 Do you agree with me that this 14:22:10
 7 passage from the Function Media patents is 14:22:11
 8 describing the selection by a seller of media 14:22:14
 9 venues? 14:22:18
 10 MR. BRANDON: Objection to form. 14:22:20
 11 A. I don't have any reason to disagree with 14:22:37
 12 that right now. 14:22:39
 13 Q. (BY MR. LUMISH) And in this 14:22:51
 14 description, it's identifying -- the selection of 14:22:52
 15 the media venues is the choosing of specific media 14:22:55
 16 venues, right? It's not an indirect selection as 14:22:59
 17 you put it before? 14:23:02
 18 A. I think -- I think this -- this is an 14:23:12
 19 example of where they're picking -- I would tend to 14:23:15
 20 use the word "classes," because it says that 14:23:19
 21 they're -- like in printed magazines or Internet 14:23:22
 22 directories that specialize in boating-related goods 14:23:26
 23 and services, it seems to me the only one where 14:23:29
 24 there's a specific selection would be if they 14:23:32
 25 selected a subscription-based CD-ROM, but they're 14:23:34

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1 talking about three different types of media. 14:23:39
 2 Q. All right. Well, let's look at the -- 14:23:47
 3 the example we've looked at a few times, then, for 14:23:49
 4 the same reason. If you go to column 55, please... 14:23:52
 5 A. Okay. All right. 14:23:55
 6 Q. If you look at column 55, beginning at 14:24:10
 7 line 8 going through 11 and 12 there -- excuse me, 14:24:15
 8 let me start over again. 14:24:23
 9 So in the '045 patent column 55, 14:24:25
 10 beginning at line 8, it says, quote, "ABC currently 14:24:27
 11 represents 15 different Media venues within its 14:24:30
 12 instance of the present invention. Information such 14:24:33
 13 as distribution, users or viewers, price, content, 14:24:36
 14 restrictions, et cetera, about each Media venue is 14:24:41
 15 available for review by the XYZ management," closed 14:24:44
 16 quote. 14:24:48
 17 Do you understand this passage in 14:24:49
 18 the specification to mean that the sellers, XYZ 14:24:52
 19 here, can read specific information about each of 14:25:00
 20 the specific media venues? 14:25:04
 21 A. That certainly appears to be the case 14:25:05
 22 here. I don't know how precise it is, but it's 14:25:07
 23 certainly information in those different fields of 14:25:12
 24 identification. 14:25:16
 25 Q. And then going forward, the next 14:25:17

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1 sentence, which is numbered paragraph 7 there, 14:25:19
 2 beginning on line 13 of column 55 says, quote, "XYZ 14:25:22
 3 management reviews available media and chooses The 14:25:26
 4 DEF Sports Web, HIJ Basket Ball Magazine, and The 14:25:29
 5 KLM Newspaper Chain to advertise their schedule of 14:25:34
 6 games," closed quote. 14:25:37
 7 A. Yeah, I read that and thought this -- I 14:25:39
 8 don't think I've ever seen "basket ball." That must 14:25:40
 9 be a new sport to me. Okay. But, yes, I'm familiar 14:25:45
 10 with that. 14:25:47
 11 Q. You understand this description here in 14:25:47
 12 the example to be XYZ as a seller selecting specific 14:25:49
 13 individual media venues? 14:25:55
 14 A. Yes. 14:25:56
 15 Q. And those are specifically the Sports 14:25:57
 16 Web, DEF -- DEF, HIJ and KLM as entities, right? 14:25:58
 17 A. Yes, that's what I -- I took that to 14:26:04
 18 mean. 14:26:06
 19 Q. Nothing in this example, and take your 14:26:12
 20 time to read whatever you want for context, 14:26:14
 21 describes the seller as selecting a category of 14:26:17
 22 media venues, does it? 14:26:23
 23 A. Well, I -- that's a pretty broad 14:26:26
 24 question, so let me -- nothing in that paragraph 7 14:26:28
 25 does. Do you want me to take time to read the rest 14:26:35

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1 of it or... 14:26:37
 2 Q. Yeah, whatever you need to do. I guess, 14:26:39
 3 my -- let me broaden my question a little bit, which 14:26:41
 4 may make it worse for you. 14:26:45
 5 But can you point me to anything in 14:26:47
 6 the '045 patent specification where the selection by 14:26:49
 7 the seller of the Internet media venues is described 14:26:54
 8 to be the selection of a group or a channel or 14:26:57
 9 category, as opposed to specific media venues the 14:27:01
 10 way it's shown in column 55? 14:27:03
 11 A. That's going -- 14:27:06
 12 MR. BRANDON: Objection to form. 14:27:06
 13 A. Yeah, that's going to make it much 14:27:07
 14 worse. I'm not going to be able to answer that 14:27:09
 15 question without essentially rereading the entire 14:27:11
 16 specification. 14:27:13
 17 Q. (BY MR. LUMISH) All right. You can't 14:27:14
 18 do that as you stand here now? 14:27:14
 19 A. I don't -- 14:27:16
 20 Q. You'd have to go reread it? 14:27:16
 21 A. I know I've -- I've actually cited to 14:27:19
 22 you whether there was a discussion of choosing 14:27:20
 23 channels, but whether there's sort of a specific -- 14:27:23
 24 more specific example, I just don't remember. I 14:27:25
 25 know that there is discussion about -- and, in fact, 14:27:28

1 there are even claims, I think. If not in the '045, 14:27:31
 2 maybe I'm remembering the '025. But there's some 14:27:38
 3 claims about having these kinds of characteristics 14:27:41
 4 like demography and -- and so forth -- demographics 14:27:45
 5 and so forth. But I -- I can't do it without 14:27:49
 6 skimming through it. 14:27:51
 7 Q. Well, if you look at claim 23 of the 14:27:55
 8 '025 patent, that says that "the seller targets one 14:28:06
 9 or more Internet media" -- 14:28:10
 10 A. Uh-huh. 14:28:10
 11 Q. -- "venues by targeting demographics." 14:28:11
 12 A. Yes, that's right. 14:28:13
 13 Q. Is that what you're referring to? 14:28:13
 14 A. That's at least one thing that -- that I 14:28:14
 15 was thinking about that kind of bubbled up in the 14:28:16
 16 back of my head. But I think that's true for 14:28:19
 17 several of the claims in that general area. 14:28:22
 18 Q. This claim is using the word "targets," 14:28:24
 19 not "selects," as far as the action taken by the 14:28:27
 20 seller right there, isn't it? 14:28:31
 21 MR. BRANDON: Objection to form. 14:28:32
 22 A. They're saying the selection targets. 14:28:38
 23 They're talking about a way of selecting. 14:28:41
 24 Q. (BY MR. LUMISH) It says selection 14:28:43
 25 information -- 14:28:45

1 A. Uh-huh. 14:28:45
 2 Q. -- is used to target, not to select, 14:28:46
 3 right? 14:28:49
 4 MR. BRANDON: Objection; form. 14:28:50
 5 A. Yeah, but -- work my way back. If 14:28:54
 6 you -- they -- they work their way back to claim 1. 14:28:56
 7 And claim 1 the -- at column 65, line 3, says that 14:28:59
 8 the second interface to the computer -- "a second 14:29:05
 9 interface to the computer system through which a 14:29:08
 10 seller is prompted to input information to select 14:29:10
 11 one or more." I -- I think of that as being the 14:29:12
 12 ultimate antecedent for that selection information. 14:29:15
 13 Q. (BY MR. LUMISH) Well, so the language 14:29:18
 14 in claim 1, though, specifically says "to select," 14:29:20
 15 right? 14:29:22
 16 A. Yes. 14:29:23
 17 Q. But in 23 it says "targets," not select? 14:29:23
 18 MR. BRANDON: Objection; form. 14:29:29
 19 Q. (BY MR. LUMISH) You -- you read those 14:29:30
 20 as exactly the same? 14:29:31
 21 A. I read claim 23 to say the computer 14:29:33
 22 system of claim 20, wherein the selection 14:29:35
 23 information input by the seller targets. 14:29:38
 24 Q. Right. 14:29:41
 25 A. So the -- it is talking about 14:29:42

1 information that's used to select. 14:29:43
 2 Q. I'm asking about the action words, 14:29:46
 3 though. There's -- in the -- in claim 1 it says 14:29:47
 4 "select," to select. That's the verb, right? 14:29:50
 5 MR. BRANDON: Claim 1 of the '025? 14:29:54
 6 MR. LUMISH: Yes, sir. 14:29:56
 7 A. Information -- to -- input information 14:29:58
 8 to select one or more of the input Internet media 14:30:08
 9 venues. 14:30:13
 10 Q. (BY MR. LUMISH) Right. 14:30:13
 11 A. I think that phrase is the antecedent 14:30:14
 12 for the chain of claims that ultimately reaches 14:30:18
 13 claim 23, where in claim 23 they refer to that as 14:30:24
 14 the selection information input by the seller. 14:30:27
 15 Q. But I'm asking a different question. 14:30:29
 16 I'm just asking a simple question. Which is: In 14:30:31
 17 that claim, claim 1, the action that's occurring, 14:30:33
 18 the verb, is to select, right? 14:30:37
 19 MR. BRANDON: Objection to form. 14:30:41
 20 A. I don't -- I'm -- I don't think that's a 14:31:00
 21 verb in the sense of -- it's "input information to 14:31:02
 22 select." Okay. So it's -- it's modifying the 14:31:08
 23 nature of the input information. 14:31:12
 24 Q. (BY MR. LUMISH) It's not modifying what 14:31:15
 25 the seller is doing, in your opinion? 14:31:17

1 A. The seller is input -- is prompted to -- 14:31:19
 2 to input. Okay. To select. Input information to 14:31:22
 3 select. So I -- I'm answering your question 14:31:27
 4 relative to claim 23. The antecedent for the 14:31:31
 5 selection information input by the seller, that's 14:31:37
 6 the information that's input to select one or more 14:31:42
 7 of the Internet media venues. And in claim 23, they 14:31:44
 8 say as a result of that, the seller has targeted one 14:31:47
 9 or more venues by targeting demographics or 14:31:51
 10 something along that -- you know, it's -- 14:31:58
 11 Q. Where does claim 23 say that targeting 14:32:00
 12 is the result of the selecting? 14:32:03
 13 A. It refers to the selection information 14:32:04
 14 input by the seller targets. 14:32:07
 15 Q. Where does it say "results from"? 14:32:10
 16 MR. BRANDON: Objection to form. 14:32:13
 17 A. I gather I must have said "results 14:32:16
 18 from," but, frankly, I don't remember where I said 14:32:18
 19 it. Put it back in context for me. 14:32:21
 20 Q. (BY MR. LUMISH) You were saying that 14:32:23
 21 the targeting in claim 23 is the result of the input 14:32:23
 22 information to select -- 14:32:26
 23 A. Yeah. 14:32:28
 24 Q. -- in claim 1. 14:32:28
 25 A. That's right. 14:32:30

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1 Q. Where do you see the "result from" 14:32:30
 2 language? 14:32:32
 3 A. Well -- 14:32:32
 4 Q. Where do you get that from? 14:32:33
 5 A. It is the selection information input by 14:32:34
 6 the seller. It has a purpose. Okay. 14:32:36
 7 Q. Can't have two purposes, one in the 14:32:41
 8 independent claim and one in the dependent claim? 14:32:43
 9 MR. BRANDON: Objection to form. 14:32:46
 10 A. I can't answer that. I mean, I don't 14:32:50
 11 think that's what's happening here. 14:32:52
 12 Q. (BY MR. LUMISH) Well -- 14:32:53
 13 A. I disagree with what you're trying to 14:32:54
 14 say is an appropriate understanding of claim 23 in 14:32:56
 15 relation to the original independent claim 1. I -- 14:33:00
 16 I don't -- I don't see any reason to take the view 14:33:04
 17 that you're taking. I'm perfectly comfortable with 14:33:06
 18 the interpretation I've had on claim 23 that I 14:33:10
 19 just -- just described to you. 14:33:13
 20 Q. In general, dependent claims can add 14:33:15
 21 limitations to independent claims; that's consistent 14:33:18
 22 with your experience as a patent agent and a person 14:33:20
 23 who's done a lot of these cases, right? 14:33:23
 24 A. Yes. 14:33:26
 25 Q. Targets in -- there are different words 14:33:29

1 used in claims 1 and claim 23, at least give you 14:33:32
 2 that, right? One says target, one says input 14:33:36
 3 information to select? 14:33:39
 4 A. I don't agree with that. I keep telling 14:33:40
 5 you that. 14:33:43
 6 Q. No different in words there? 14:33:43
 7 A. Well, there's a new word there, but 14:33:44
 8 the -- when the claim 23 refers to the selection 14:33:47
 9 information input by the seller, that is a reference 14:33:51
 10 back to input information to select one or more 14:33:54
 11 Internet media venues. And they say the way they -- 14:33:57
 12 in claim 23, the way that information is used to 14:34:05
 13 target one or more venues by targeting demographics. 14:34:07
 14 Q. You're saying that you can't read the 14:34:14
 15 dependent claim to describe a different -- an 14:34:16
 16 additional function performed by the input 14:34:20
 17 information in claim 1? 14:34:23
 18 A. It's -- I don't know whether you 14:34:25
 19 intentionally did or accidentally did, but as it's 14:34:27
 20 referred to in -- in claim 23, it's referred to as 14:34:31
 21 the selection information input, which in my opinion 14:34:33
 22 is a reference back to the input information to 14:34:39
 23 select one or more of the Internet media venues. 14:34:43
 24 Q. I -- I understand that. I'm not trying 14:34:46
 25 to argue with you about it. I'm trying to 14:34:48

1 understand what your -- what the bounds of your 14:34:51
 2 position are here. So let's assume, and then I'll 14:34:53
 3 just accept. Let's -- let's just go with the 14:34:55
 4 discussion that the input information -- or I'm 14:34:57
 5 sorry, the selection information described in 14:35:00
 6 claim 23 is the same information referenced in 14:35:03
 7 claim 1 as the, quote, "information to select one or 14:35:07
 8 more." 14:35:13
 9 A. Uh-huh. 14:35:13
 10 Q. Okay. Is that -- is that the basic 14:35:13
 11 principle you're espousing there? 14:35:15
 12 A. Yes. 14:35:18
 13 Q. All right. Let's just accept that for a 14:35:18
 14 minute. My question is: Is it your position that 14:35:20
 15 that information can't perform two functions, one 14:35:22
 16 being to select, and the second being to target in 14:35:26
 17 claim 23? 14:35:29
 18 A. I think claim 23 is simply explaining 14:35:30
 19 how that information is used to select using the 14:35:32
 20 term "target," because it's not specific to a 14:35:35
 21 particular location, but rather, they say by 14:35:39
 22 targeting demographics of one or more Internet media 14:35:42
 23 venues, they are in a sense aiming at multiple 14:35:50
 24 venues based on demographics, rather than 14:35:53
 25 specifically trying to identify one based on the 14:35:55

1 name of the venue or whatever. 14:35:58
 2 Q. Aiming at meaning targeting? 14:36:02
 3 A. Yes. 14:36:04
 4 Q. Zeroing in on? 14:36:05
 5 A. In a sense, except it's -- it's a group 14:36:08
 6 concept based on demographics. 14:36:11
 7 Q. The -- going back to your report, 14:36:32
 8 please, on top of page 18, I think you mentioned 14:36:35
 9 several answers back, you said there was part of 14:36:39
 10 your report where you had some citations about 14:36:42
 11 channels. 14:36:44
 12 A. Uh-huh. 14:36:45
 13 Q. So here you're specifically referring to 14:36:45
 14 column 27, lines 1 through 22, column 28, lines 42 14:36:47
 15 through 48. And you -- you have choice of 14:36:49
 16 nonresident media or advertising channels in the 14:36:52
 17 first quote. You see that? 14:36:55
 18 A. Yes. 14:36:57
 19 Q. It says, "or," right? You understand 14:36:58
 20 these are two alternatives? 14:36:59
 21 A. I think with this particular 14:37:01
 22 construction, they are. 14:37:02
 23 Q. So it's media or channels? 14:37:03
 24 A. That's what I think my wife would call a 14:37:04
 25 restrictive appositive, but I think that's what it 14:37:07

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1 is. 14:37:10

2 Q. You're not taking the position that the 14:37:10

3 channels in the media and that are the same thing, 14:37:13

4 then? 14:37:15

5 A. I'm not -- 14:37:16

6 MR. BRANDON: Objection to form. 14:37:16

7 A. I'm not taking the position that they 14:37:16

8 have to be completely different. But I -- I think 14:37:18

9 it says that you can choose nonresident media or 14:37:22

10 advertation -- advertising channels, but that's not 14:37:27

11 to say that among the advertising channels there 14:37:29

12 can't be any nonresident media. 14:37:32

13 Q. (BY MR. LUMISH) And then in -- 14:37:34

14 A. It's just two different ways of 14:37:35

15 choosing. 14:37:37

16 Q. In the second quotation you have, it 14:37:37

17 says, "which media or advertising channels the 14:37:39

18 Seller wishes to participate." You see that? 14:37:43

19 A. Uh-huh. 14:37:45

20 Q. Again, there's an "or" between media and 14:37:45

21 advertising channels that's telling you there are 14:37:48

22 two alternatives there. 14:37:51

23 A. I think they're two alternative ways to 14:37:53

24 choose. 14:37:55

25 Q. And you -- well, they're two different 14:37:55

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1 things. 14:37:58

2 A. But I don't think they're like an 14:37:58

3 exclusive. Okay. That just says you can choose -- 14:38:01

4 I -- I would think media would be specific or 14:38:03

5 channels is just a channel. 14:38:05

6 Q. Okay. Well, it's saying, though, that 14:38:08

7 the chip seller can choose media or advertising 14:38:10

8 channels. 14:38:14

9 A. Yes. 14:38:14

10 Q. Those are different things, right? 14:38:15

11 A. Two different ways to choose. 14:38:15

12 Q. I'm not asking about ways to choose. 14:38:15

13 I'm asking about things to choose. 14:38:18

14 MR. BRANDON: Objection, form. 14:38:21

15 Q. (BY MR. LUMISH) You can choose media or 14:38:22

16 you can choose advertising channels in this 14:38:23

17 sentence; is that what it says? 14:38:26

18 A. That's the -- you can define your choice 14:38:27

19 either with relation to media or advertising 14:38:29

20 channels. 14:38:31

21 Q. I think before -- let me switch gears 14:38:47

22 here. We talked a little bit about whether the 14:38:50

23 seller -- withdraw. 14:38:52

24 Let me just point to something 14:38:53

25 instead of starting -- instead of referring back on 14:38:55

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1 your -- would you turn to column 19, around line 10 14:38:59

2 of the '045 patent? And as always read whatever 14:39:05

3 you'd like for content, and you can see that the 14:39:23

4 paragraph really starts at the bottom of page 18 -- 14:39:25

5 A. I think I'm generally familiar with that 14:39:28

6 paragraph, so if you want to go ahead and ask your 14:39:31

7 question, if I need to read back, I will. 14:39:34

8 Q. Sure thing. This -- in general, this 14:39:36

9 paragraph is talking about the Presentation 14:39:38

10 Generation Program generating advertisements. Do 14:39:41

11 you agree with that -- 14:39:46

12 A. Yes. 14:39:46

13 Q. -- in general principle? 14:39:47

14 A. Yes. 14:39:49

15 Q. All right. If you look at line 10, I'm 14:39:49

16 going read from there. It says, quote, "With the 14:39:55

17 same rules and guidelines" -- wait, withdraw. I 14:39:57

18 need to start a little bit before that. 14:40:01

19 Let's start at line 5. "It should 14:40:03

20 be noted that in the preferred embodiment of the 14:40:06

21 present invention the same rules and guidelines 14:40:09

22 contained in the Presentation Rules Database 1650 14:40:12

23 are also held in the Presentation Rules Database 14:40:15

24 4650 figure 2c, which is part of the Seller 14:40:19

25 Interface 4000 figure 2c. With the same rules and 14:40:22

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1 guidelines as those in Presentations Rules Database 14:40:27

2 1650 applied and enforced during data input at the 14:40:30

3 Seller Interface 4000 of figure 2c module, no 14:40:35

4 modification or editing should be necessary at the 14:40:40

5 Central Controller and Presentation Processor 1000 14:40:43

6 module," closed quote. 14:40:48

7 A. Yes. 14:40:49

8 Q. That's a long sentence, but do you 14:40:50

9 understand this to be saying that the advertisements 14:40:52

10 are first generated on the seller interface and then 14:40:54

11 don't need to be modified or edited when they get to 14:40:58

12 the central controller and presentation processor? 14:41:01

13 A. This is a -- in this preferred 14:41:04

14 embodiment, the way I understand that is that the 14:41:06

15 presentation rules database is replicated at the 14:41:09

16 Seller Interface, the capital S, capital I, 4000. 14:41:13

17 And in that embodiment, they allow for the rules to 14:41:17

18 be applied to inputs that are being entered by the 14:41:20

19 seller so that they don't input something that down 14:41:23

20 the road when the presentation rules are applied as 14:41:29

21 part of the process of getting the ad ready for a 14:41:35

22 particular venue, that they will not -- this seller 14:41:40

23 will not have inadvertently entered something that 14:41:45

24 was going to be ruled out or found to be invalid 14:41:48

25 when the Presentation Generation Program itself 14:41:54

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1 actually runs with that same rules database. It's 14:41:59
 2 kind of like an early editorial control for that 14:42:01
 3 preferred embodiment. 14:42:07
 4 Q. Well, the next sentence, you read the 14:42:07
 5 whole thing to yourself, you can, but it ends by 14:42:09
 6 saying that "both processes should be utilized to 14:42:12
 7 insure consistency and quality control." 14:42:15
 8 A. That's what that -- 14:42:17
 9 Q. You see that? 14:42:18
 10 A. -- that preferred embodiment says. I 14:42:19
 11 took that to mean like if the -- if the ultimate 14:42:21
 12 venue wants the ZIP code without the extra digits, 14:42:27
 13 okay, or with the extra digits at the end of the ZIP 14:42:33
 14 code, that while I'm typing in something over here 14:42:36
 15 on the seller and I'm giving you my home address -- 14:42:39
 16 the seller's address, that -- you know, if you did 14:42:44
 17 or didn't leave -- if you'd added them or left them 14:42:46
 18 out and the other guy really wanted to see them, it 14:42:49
 19 would kind of in this preferred embodiment say, 14:42:50
 20 "Hey, you know, I need those other four digits" or 14:42:52
 21 "don't put those other four digits." 14:42:55
 22 Another example would be do you 14:42:58
 23 want the phone number with dashes or parenthesis in 14:42:59
 24 it. Those kinds of thing s. I gather they're just 14:43:02
 25 saying it would be nice to have an early warning 14:43:02

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1 here. 14:43:05
 2 Q. But do you understand that this portion 14:43:05
 3 of the patent is describing the processing of the -- 14:43:07
 4 of presentation at the central controller as being a 14:43:12
 5 quality control and consistency check, as opposed to 14:43:16
 6 anything else? 14:43:19
 7 A. Well, that's what they say the goal of 14:43:19
 8 doing this is in this preferred embodiment. This is 14:43:21
 9 one way of doing it. 14:43:25
 10 Q. All right. Let's look at the example 14:43:26
 11 again, please, now on column 55. 14:43:28
 12 A. Okay. All right. 14:43:30
 13 Q. Paragraph 9 there on line 25 says, 14:43:40
 14 quote -- "On" -- "upon approval of those items, the 14:43:44
 15 Seller Interface 4000 prompts the operator for the 14:43:48
 16 necessary text, graphics, and any other information 14:43:51
 17 as required by the three chosen media to create and 14:43:54
 18 format the individual ads for the chosen media." 14:43:58
 19 This passage is describing a Seller 14:44:02
 20 Interface 4000 as creating the ad, isn't it? 14:44:07
 21 A. In this particular instance, they -- 14:44:11
 22 they are -- it's -- it was always interesting to me 14:44:14
 23 when I read this a few times, that I tended to think 14:44:17
 24 of the seller would input text, graphics, and other 14:44:19
 25 information just in a generic sense, even before 14:44:22

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1 they actually went out to -- to pick a venue. This 14:44:27
 2 seems to imply that the seller has not entered 14:44:30
 3 anything, other than the selection of the venue. 14:44:34
 4 And at that point, they, then, would be prompted in 14:44:37
 5 this example to -- to enter the necessary text, 14:44:40
 6 graphics, in accordance with what the three chosen 14:44:46
 7 media that the seller had picked actually required. 14:44:49
 8 Q. I don't mean this to be snide, but I'm 14:44:57
 9 not sure if that was a yes or a no, though. So my 14:44:59
 10 question was whether you agree that this paragraph 9 14:45:02
 11 is describing the Seller Interface 4000 as the thing 14:45:05
 12 that creates and formats the individual ads. 14:45:09
 13 MR. BRANDON: Objection to form. 14:45:12
 14 A. I -- I apologize, then. I didn't mean 14:45:13
 15 not to answer your question. Let me keep -- I want 14:45:15
 16 to see something further down the way here. 14:45:18
 17 (Witness Reviews Document.) 14:45:30
 18 A. Assume hereafter the example breaks off 14:45:37
 19 into selling tickets, and -- but I -- I think it 14:45:40
 20 does say that the information required to create and 14:45:43
 21 format the ads for the chosen media is entered. I 14:45:49
 22 don't think it says that the seller interface is 14:45:53
 23 necessarily the aspect of the ABC system that has to 14:45:56
 24 do that. What's -- what's required is to gather up 14:46:02
 25 from the seller the information necessary as 14:46:06

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1 required by the three chosen media to create and 14:46:10
 2 format the individual ads. 14:46:13
 3 Q. (BY MR. LUMISH) If you look down at 14:46:16
 4 paragraph 14, which is column 55, lines 62 through 14:46:17
 5 65 -- 14:46:22
 6 A. Yes. 14:46:23
 7 Q. -- I think this is elaborating on 14:46:23
 8 paragraph 9 among other things. You can tell me if 14:46:26
 9 you disagree, but it says, quote, "At any point 14:46:29
 10 during the content input phase, the operator may 14:46:31
 11 view the final formatted presentation products based 14:46:34
 12 on each Media venue's restructuring of the 14:46:37
 13 information to create specific" -- "specific Media 14:46:40
 14 presentations," closed quote. That's described -- 14:46:43
 15 this is all in the seller participation part -- part 14:46:46
 16 of the example. You see that? 14:46:48
 17 A. Let me think about that. 14:46:50
 18 Q. Can I tell you what the question is 14:46:54
 19 while you're thinking? 14:46:56
 20 A. Sure. 14:46:57
 21 Q. Okay. The question is -- 14:46:57
 22 A. I thought that was the question. 14:46:58
 23 Q. Well, that was sort of a foundational 14:46:58
 24 point. The question is -- that I really want to get 14:47:00
 25 your opinion on is whether this paragraph that I 14:47:02

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1 just read establishes that it's -- that the seller 14:47:06
 2 interface is being used by the seller here to create 14:47:09
 3 the specific media presentations. 14:47:12
 4 A. I won't agree with that. And -- and the 14:47:15
 5 thing that concerned me, again, from the first time 14:47:18
 6 I read 14 is it says, "at any point during the 14:47:21
 7 content input phase." Yet paragraph 9 talks about 14:47:24
 8 the necessary text, graphics and other information 14:47:28
 9 as required. I'm not sure how you can view the 14:47:31
 10 final formatted presentation at a point when you 14:47:35
 11 haven't fully entered the information that's 14:47:40
 12 required or necessary. You understand my -- 14:47:42
 13 Q. Uh-huh. 14:47:46
 14 A. -- concern? 14:47:47
 15 But it -- it doesn't necessarily say 14:47:48
 16 in 14 that at the seller computer that the final 14:47:49
 17 format presentation has been generated. What it 14:47:56
 18 says is that in some way -- and I took the operator 14:47:59
 19 in 14 to mean -- I -- I took that in that context to 14:48:02
 20 be the operator at the seller's location, as 14:48:08
 21 opposed, for example, the operator that I talked 14:48:12
 22 about where I kind of -- not well labeled in 14:48:16
 23 paragraph 42. 14:48:18
 24 It may be that that operator has the 14:48:20
 25 ability to reach over to the central computer 14:48:22

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1 facility where the program -- Presentation 14:48:26
 2 Generation Program is running and see what it looks 14:48:29
 3 like so far. If I were writing this, I probably 14:48:32
 4 wouldn't have said "the final formatted 14:48:36
 5 presentation." I would have said "like the 14:48:39
 6 currently" or so -- you know, "thus far." But I -- 14:48:41
 7 it certainly in 14 says that, if I'm reading it 14:48:46
 8 right, that the selling operator -- seller operator 14:48:50
 9 can in some way view a formatted presentation. 14:48:54
 10 Q. The purpose of the seller viewing the 14:48:59
 11 presentation is to decide whether it's done, right, 14:49:02
 12 in the context of this example? 14:49:04
 13 MR. BRANDON: Objection, form. 14:49:06
 14 A. Given that it begins with "at any point 14:49:07
 15 during the input phase," I would say it's just to 14:49:09
 16 see what it looks like so far. That's why I'm -- I 14:49:12
 17 can't resolve those two phrases in this particular 14:49:15
 18 example. And that I don't see how it can have a 14:49:19
 19 final formatted presentation until I have entered in 14:49:25
 20 all the necessary text, graphics and any other 14:49:30
 21 information as required by the chosen media. 14:49:34
 22 Q. (BY MR. LUMISH) Well, the next -- 14:49:37
 23 paragraph 15 beginning in line 66 on column 55 says, 14:49:38
 24 "When the XYZ management is satisfied with the 14:49:42
 25 results as presented by the Seller Interface 4000, 14:49:45

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1 they indicate their approval of the presentations 14:49:49
 2 and charges and then transmits the information to 14:49:52
 3 the ABC Central Controller and Presentation 14:49:54
 4 Processor 1000." Isn't that saying that in the 14:49:59
 5 context -- in combination with paragraph 14, there, 14:50:01
 6 that the seller can generate the ad, look at the ad, 14:50:04
 7 decide that it's satisfied with the ad and then 14:50:09
 8 transmit it to the processor? 14:50:14
 9 MR. BRANDON: Objection, form. 14:50:16
 10 A. I -- I haven't read it that way. I took 14:50:17
 11 the "transmits the information" in the top of 14:50:19
 12 column 56 to be the information, that they've 14:50:21
 13 approved it, what they are now able to see, and that 14:50:24
 14 they're willing to pay the charges. 14:50:31
 15 THE VIDEOGRAPHER: This is the end 14:50:33
 16 of tape 3. Off the record, 2:50. 14:50:34
 17 (Recess Taken From 2:50 p.m. To 3:02 p.m.) 14:50:38
 18 THE VIDEOGRAPHER: This is the 15:02:25
 19 beginning of tape 4. Back on the record, 3:02. 15:02:29
 20 Q. (BY MR. LUMISH) If we could look at 15:02:33
 21 page 9 of your report, sir, Exhibit 84... 15:02:34
 22 A. Okay. 15:02:41
 23 Q. This is the -- where you address the 15:02:42
 24 means for transmitting said presentations to a 15:02:44
 25 selected venue -- media venue on the media venues 15:02:46

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1 limitation. You see that? 15:02:50
 2 A. Yes. 15:02:51
 3 Q. And, again, your position is that the 15:02:51
 4 structure here is only computer software. How would 15:02:54
 5 software actually transmit a presentation to a media 15:02:58
 6 venue? 15:03:05
 7 MR. BRANDON: Objection to form. 15:03:05
 8 A. The software sets up and controls the 15:03:11
 9 transmission process and initiates it. And, 15:03:16
 10 thereafter, once that's been set up, the 15:03:21
 11 transmission takes place, but I don't know what more 15:03:25
 12 to tell you than that. 15:03:28
 13 Q. (BY MR. LUMISH) Well, but the parties 15:03:29
 14 agree on the function here, right? 15:03:31
 15 A. Uh-huh. 15:03:33
 16 Q. See that at the top of the page, 15:03:33
 17 paragraph 35, parties agreed that -- agree that the 15:03:35
 18 function is transmitting presentations to a selected 15:03:38
 19 media venue. 15:03:42
 20 A. Yeah. 15:03:42
 21 Q. So my question is how does this software 15:03:42
 22 itself actually transmit; it doesn't, right? 15:03:46
 23 MR. BRANDON: Objection to form. 15:03:50
 24 A. It controls the transmission by -- 15:03:51
 25 actually got a cite there at the Presentation 15:03:55

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1 Generation Program as part of the publishing. And 15:03:59
 2 I -- I guess I was just astounded at -- at the 15:04:05
 3 degree to which your -- your side of the case 15:04:07
 4 reached out into the Bell Telephone System and the 15:04:12
 5 Internet and all in terms of trying to identify 15:04:15
 6 the -- the corresponding structure. 15:04:23
 7 As you can see at the last sentence 15:04:25
 8 of paragraph 37, I think that's a cite from the 15:04:27
 9 specification of the Function Media patents. "The 15:04:32
 10 Presentation Generation Program," it's a program, 15:04:35
 11 "1710, then either transmits the presentation to the 15:04:38
 12 appropriate destination or holds it for a 15:04:41
 13 publication date to be submitted for a particular 15:04:45
 14 deadline or predetermined promotional market." 15:04:47
 15 And I think while I'm there, I'll 15:04:50
 16 comment to you that you showed me figure -- what was 15:04:54
 17 it, 4g? Wasn't it 4f? And you took me down the 15:04:57
 18 right side. But I think part of what's being 15:05:04
 19 discussed there is -- I believe it's 4f. If you 15:05:07
 20 look on the left side of that figure straight down 15:05:11
 21 to box 11360, you didn't ask me about the electronic 15:05:14
 22 publication, which I think is an important part, 15:05:18
 23 maybe the most important part of what ultimately 15:05:21
 24 this case is about, where it talks about publishing 15:05:24
 25 it through the Internet or an intranet or some other 15:05:28

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1 form of electronic processing. 15:05:31
 2 But I think that -- the 15:05:34
 3 specification says that the Program 1710 either 15:05:36
 4 transmits the presentation. So I -- I think that's 15:05:41
 5 a clear characteristic set forth in the 15:05:47
 6 specification. 15:05:49
 7 Q. (BY MR. LUMISH) So this thing you said 15:05:50
 8 is the parties -- the defendants reaching out, you 15:05:51
 9 understand that the structure listed there is all a 15:05:54
 10 quote from the patent, right? 15:05:56
 11 A. I do. 15:05:57
 12 Q. We're not reaching out beyond the 15:05:58
 13 patent, are we? 15:06:00
 14 A. Oh, there's certainly a disclosure of 15:06:01
 15 the ways in which the physical structure of a 15:06:05
 16 network could be put together for this thing. I -- 15:06:09
 17 I didn't -- didn't intend to imply that you were 15:06:12
 18 making that up. It's just -- you know, I think one 15:06:14
 19 of the examples that was used in one of these two 15:06:18
 20 depositions in the last few days is, you know, are 15:06:21
 21 you going to include the plug into the wall and 15:06:23
 22 Austin Power & Light and, you know, the Rockdale 15:06:27
 23 Generation Plant, and the earth. You know. I mean, 15:06:29
 24 how far do you go? And I've tried to explain to you 15:06:33
 25 what my opinion is. I think it's well formed, and 15:06:36

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1 it's based on the specification and what the 15:06:40
 2 specification says about the transmission process. 15:06:42
 3 Q. In the quote from the patent that Google 15:06:43
 4 and Yahoo! used for this structure, do you agree 15:06:45
 5 that the things listed in that quote are, in fact, 15:06:48
 6 used to transmit the presentations to the media 15:06:52
 7 venues? 15:06:56
 8 A. Well, you -- forgive me for asking you a 15:06:56
 9 question. Are you familiar -- are you familiar with 15:06:59
 10 like the OSI model, the seven-layer model? Does 15:07:01
 11 that mean anything to you? 15:07:04
 12 Q. Yes, sir. 15:07:07
 13 A. I think those kind of for the most part 15:07:07
 14 fall at the physical layer or something. They're 15:07:08
 15 sort of low-end, point-to-point structures. And, I 15:07:11
 16 mean, the phone line has no idea that it's going to 15:07:14
 17 be used to perform the function of transmitting 15:07:19
 18 presentations to a selected media venue of the media 15:07:21
 19 venues. That's all accomplished by software running 15:07:25
 20 in the inventive system. 15:07:28
 21 These are the things that ultimately 15:07:30
 22 will push the bits, but -- and they are disclosed as 15:07:32
 23 ways in which information can be carried, but, you 15:07:37
 24 know, I don't -- I don't think anyone would have 15:07:42
 25 been intending in describing this patent and using 15:07:45

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1 means-plus-function elements to incorporate the -- 15:07:48
 2 the microwave towers and a satellite network as 15:07:53
 3 being required to be provided by the invention. 15:07:58
 4 Q. I don't think you answered my question. 15:08:06
 5 Or maybe I misunderstood you. But my question is 15:08:09
 6 simply: Do you agree that these things in quotation 15:08:11
 7 from Google and Yahoo! in the structure are, in 15:08:13
 8 fact, described in the patent as things that 15:08:17
 9 transmit presentations to the media venues at that 15:08:19
 10 physical layer? 15:08:25
 11 A. I think they are things that carry the 15:08:25
 12 information. But I -- I don't recall whether they 15:08:28
 13 used the term "transmit" for these things or not. 15:08:33
 14 They -- they are just -- if your question had been 15:08:37
 15 are they described in some sense, my recollection is 15:08:40
 16 they are. 15:08:44
 17 Q. Okay. The parties agreed construction 15:08:45
 18 of the function doesn't say "initiating" or 15:08:47
 19 "controlling" the transmission, right? 15:08:49
 20 A. It does not. 15:08:52
 21 Q. But your position is that that's what 15:08:54
 22 the structure should correspond to is that 15:08:57
 23 initiation or control of a data transmission, as 15:08:59
 24 opposed to the transmission or carrying of the 15:09:04
 25 specific signals or packets? 15:09:07

1 MR. BRANDON: Object to the form. 15:09:10
 2 A. I've really got two opinions. I think 15:09:11
 3 that's the appropriate thing that's disclosed in the 15:09:13
 4 patent by that software. And I would cite to you 15:09:15
 5 the -- the quote that's in paragraph 37 on page 10. 15:09:19
 6 And, secondly, I think it's inappropriate to have 15:09:22
 7 considered -- proposed that the corresponding 15:09:25
 8 structure of the means for transmitting would 15:09:30
 9 include all of those things. So I like mine, and I 15:09:32
 10 think yours is inappropriate. 15:09:36
 11 MR. LUMISH: I'm going to pass you 15:09:45
 12 to my colleague here, Mr. Wolff, who's going to ask 15:09:47
 13 you some questions. As mentioned before, he's 15:09:50
 14 counsel for Google. 15:09:54
 15 THE WITNESS: I understand. 15:09:56
 16 EXAMINATION 15:10:35
 17 BY MR. WOLFF: 15:10:44
 18 Q. We may have been two ships crossing in 15:10:44
 19 the night in the -- in the reports, but -- so this 15:10:46
 20 can be clear, is it your view that the preambles are 15:10:50
 21 limitations? 15:10:54
 22 A. I think we'd have to look at each 15:10:56
 23 preamble to be sure, but I think so. 15:10:59
 24 Q. Or do you think there might be some 15:11:02
 25 that -- you -- do you want to look at the preambles 15:11:04

1 and make sure or you weren't sure? 15:11:07
 2 A. If you -- I can tell you that having 15:11:09
 3 carefully examined the preamble of claim 1 of the 15:11:11
 4 '045 and claims 1 and 179 of the '025, because I 15:11:15
 5 find language in those preambles that is referred to 15:11:18
 6 later in the limitations of the claims, the way I 15:11:22
 7 understand the question of is it limiting or is it 15:11:26
 8 not, it's my opinion that those preambles are 15:11:30
 9 limiting. 15:11:37
 10 Q. I'm sorry, did you say the -- the '059 15:11:40
 11 patent, too, or not? 15:11:42
 12 A. I'm sorry, I should have said -- 15:11:44
 13 Q. You don't have the '059 patent. 15:11:47
 14 A. No, I misspoke. 15:11:47
 15 Q. I had a -- I had a stack of patents over 15:11:50
 16 here, and I think I have an extra copy. 15:11:52
 17 A. I think I did, and I misspoke. I meant 15:11:54
 18 to refer to the '025. 15:11:57
 19 MR. BRANDON: Jason, why don't we 15:12:02
 20 take a look at the various preambles so we can know 15:12:04
 21 what he's referring to, because I'm kind of unsure 15:12:07
 22 myself. 15:12:10
 23 MR. WOLFF: If that would make you 15:12:10
 24 happy, we can do that. 15:12:12
 25 MR. BRANDON: Thanks. 15:12:13

1 MR. WOLFF: Where are we, 85? I'll 15:12:14
 2 have the court reporter mark as Exhibit 86 a copy of 15:12:20
 3 US patent No. 7249059, which I'll refer to as the 15:12:22
 4 '059 patent. But Mr. Lumish already commented 15:12:28
 5 earlier today that we'll just talk about those being 15:12:31
 6 the patents. 15:12:33
 7 (Deposition Exhibit No. 86 Marked.) 15:12:34
 8 THE VIDEOGRAPHER: Jason, your 15:12:34
 9 microphone. 15:12:36
 10 Q. (BY MR. WOLFF) So are you looking at 15:12:48
 11 the '045 patent right now? 15:12:49
 12 A. Yes. 15:12:51
 13 Q. And would you agree the preamble there 15:12:51
 14 is a limitation? 15:12:54
 15 A. I believe so, based on the fact that the 15:12:55
 16 preamble talks about facilitating and controlling 15:12:56
 17 the creating and publishing of presentations and, 15:12:59
 18 for example, element c at the top of column 64 15:13:01
 19 refers to said presentations. 15:13:05
 20 Q. All right. 15:13:08
 21 A. And I believe that -- that means that I 15:13:08
 22 have to refer to the preamble, at least that portion 15:13:11
 23 of the preamble. 15:13:14
 24 Q. Okay. If you could take a look at the 15:13:15
 25 '025 patent, claims 1 and 179. 15:13:18

1 A. Give me a second, because I may need -- 15:13:20
 2 I may need to clarify. I would say the preamble in 15:13:22
 3 that claim, claim 1 of the '045 is -- is limiting to 15:13:37
 4 the degree at which the element c at the top of 15:13:40
 5 column 64 makes reference to said presentations. 15:13:46
 6 And it's -- you have to refer back, as I read the 15:13:52
 7 claim, to a portion of the preamble where -- to find 15:13:55
 8 an antecedent for the -- for the publications. So 15:14:02
 9 then let me look at claim 1 of the '025 quickly. 15:14:05
 10 Q. You don't think that it's a limitation 15:14:15
 11 as to any other portions of the preamble? 15:14:17
 12 A. I see media venues. The plurality of 15:14:28
 13 media venues is also there. 15:14:31
 14 Q. What about controlled -- owned or 15:14:36
 15 controlled by other than the seller, is that a 15:14:38
 16 limitation in the claim? 15:14:40
 17 A. Based on what I recall from the file 15:14:49
 18 history and the fact that that was, I believe, added 15:14:51
 19 during prosecution, I think it -- it should be 15:14:54
 20 considered to be limiting. 15:14:57
 21 Q. All right. 15:14:58
 22 A. It was argued that way in order to -- as 15:14:59
 23 it was -- as I recall, obtained allowance of that 15:15:01
 24 claim. 15:15:06
 25 Q. And now you're looking at the '025 15:15:13

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1 patent to verify that -- whether the preambles are 15:15:16
 2 limitations, correct? 15:15:19
 3 A. Yes. I believe that the limitation of 15:15:19
 4 claim 1 is -- that -- that the preamble of claim 1 15:15:31
 5 is limiting because the way the claim is 15:15:36
 6 constructed. I -- I -- it's my opinion here today 15:15:39
 7 that the preamble of claim 179 is limiting. 15:15:56
 8 Q. All right. Let's do the same thing in 15:16:01
 9 the '059 patent. 15:16:03
 10 A. Okay. 15:16:04
 11 Q. I believe that's claims 1 and 27. 15:16:04
 12 A. I believe that the preamble of claim 1 15:16:28
 13 of the '059 should be considered to be a limitation 15:16:30
 14 on the scope of the claim. And you said 27, I 15:16:33
 15 think. I believe that the preamble of claim 27 of 15:16:37
 16 the '059 patent should be considered a limitation on 15:16:50
 17 the scope of that claim. 15:16:53
 18 Q. Earlier today, you testified that a key 15:16:56
 19 piece of the inventive software was the Presentation 15:16:58
 20 and Configuration Program 4715; is that correct? 15:17:04
 21 A. Is that my language that I said -- did I 15:17:05
 22 say "key piece"? I don't remember saying that, but 15:17:08
 23 I don't -- 15:17:10
 24 Q. Yes, you said those words. 15:17:10
 25 A. -- disagree with that. That's fine. 15:17:12

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1 Okay. 15:17:12
 2 Q. Is that -- you still agree with that? 15:17:12
 3 A. I don't disavow that. I just didn't 15:17:14
 4 remember using the precise words "key piece." 15:17:17
 5 It's -- it has a role to play in the process. 15:17:19
 6 Q. So was it -- is it not a key piece of 15:17:21
 7 the inventive software? 15:17:23
 8 A. I -- I think it's an aspect of the 15:17:25
 9 overall invention that is important to satisfy most 15:17:27
 10 of the claim limitations, at least one limitation 15:17:30
 11 of -- of the asserting claim, so, yes. 15:17:33
 12 Q. Would you say that it is part of the 15:17:36
 13 preferred embodiments of the claims? 15:17:41
 14 A. I think that the preferred embodiment 15:17:47
 15 that is disclosed has that program in it. Which, 15:17:49
 16 Presentation and Configure -- 15:17:58
 17 Q. Presentation and Configuration Program 15:18:00
 18 4715? 15:18:03
 19 A. Okay. I just wanted to be sure I heard 15:18:03
 20 you right. Yes. I think that's -- in fact, when I 15:18:05
 21 was mapping the corresponding structure for the -- 15:18:08
 22 some of the claims that we've talked about in 15:18:14
 23 detail, I pointed for a portion -- for -- for at 15:18:16
 24 least one element to that particular program. 15:18:22
 25 Q. Can you tell me again what the 15:18:38

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1 Presentation and Configuration Program 4715 does? 15:18:41
 2 A. I can cite you again. May take me a 15:18:46
 3 minute to find it, but I think I ultimately cited to 15:18:58
 4 the statement that's made in column 27, that the 15:18:58
 5 Presentation and Configuration Program 4715 is both 15:19:01
 6 the gateway to the present invention and the 15:19:05
 7 controlling software interface for the seller. And 15:19:07
 8 then for the remainder of that paragraph, it talks 15:19:11
 9 about some of the things that it does. And I 15:19:13
 10 believe I cited to one other part of the patent. I 15:19:18
 11 can look for it again. I don't remember exactly 15:19:22
 12 where it was. Seems to me it was a little further 15:19:24
 13 back relative to the prompting. But I -- I can read 15:19:26
 14 you the paragraph -- 15:19:32
 15 Q. No, you don't need to read the 15:19:33
 16 paragraph. 15:19:34
 17 A. I didn't think you wanted that. 15:19:35
 18 Q. Yeah. If you'll turn to column 41 in 15:19:36
 19 the '045 patent since that's what you've been 15:19:40
 20 referring to today -- 15:19:43
 21 A. Okay. 15:19:48
 22 Q. -- and I think you talked about this 15:19:48
 23 earlier, too, perhaps. But lines 21 through 42, is 15:19:54
 24 that section of the '045 patent describing one of 15:20:04
 25 the preferred embodiments of the invention? 15:20:09

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1 A. It's describing a -- a -- what did you 15:20:11
 2 say, 21 through what? 42? 15:20:15
 3 Q. Roughly 42. 15:20:18
 4 A. All right. Let me just re-read the 15:20:19
 5 entirety of that. 15:20:22
 6 (Witness Reviews Document.) 15:20:23
 7 A. That's one -- in -- as it says back up 15:20:34
 8 at -- somewhere. They're talking about an instance. 15:20:36
 9 They're saying if this is one way that that program 15:20:57
 10 could operate. And then it certainly describes a 15:21:00
 11 way of operation that that program could provide. 15:21:05
 12 Q. (BY MR. WOLFF) Okay. And given your 15:21:08
 13 construction of the claims and, for example, the 15:21:10
 14 '045 patent, would this description that we've just 15:21:13
 15 referred to be covered by the claims? 15:21:17
 16 MR. BRANDON: Objection to form. 15:21:19
 17 A. I don't think it would rule out being 15:21:21
 18 covered by the claim, but I don't think the language 15:21:26
 19 of the claim requires all of the detail there. 15:21:28
 20 The -- it's a comprising-type claim. And if you add 15:21:32
 21 this input qualification capability that's described 15:21:35
 22 there in column 41, that doesn't mean you don't 15:21:37
 23 infringe, but I don't think that this -- this simple 15:21:40
 24 requirement in claim 1, for example, that providing 15:21:42
 25 means for a seller to select media venues or 15:21:59

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1 providing means for the seller to input information 15:22:02
 2 requires that capability. 15:22:07
 3 It doesn't say here, for example, in 15:22:08
 4 claim 1, that that inputting of information is 15:22:11
 5 controlled or qualified in some specific way. 15:22:14
 6 Q. (BY MR. WOLFF) Now, could this be 15:22:16
 7 referring to the means for applying? 15:22:19
 8 A. That's not the reading that I've made. 15:22:35
 9 And -- I'm -- I'm perfectly comfortable with the 15:22:37
 10 reading that I have provided you, which I think was 15:22:42
 11 the Presentation Generation Program. 15:22:48
 12 Q. So you don't think that the means for 15:22:55
 13 applying limitation is consistent with this 15:22:57
 14 disclosure in the written description of the '045? 15:23:07
 15 MR. BRANDON: Objection to form. 15:23:11
 16 A. I think this is shown as kind of an 15:23:17
 17 added capability to be provided over and above the 15:23:20
 18 disclosure of the Presentation Generation Program 15:23:24
 19 within the Presentation and Configuration Program. 15:23:29
 20 But I don't think that -- I certainly would 15:23:32
 21 have never have pointed to this feature of the 15:23:37
 22 presentation -- excuse me, the Presentation and 15:23:38
 23 Configuration Program as meeting the means for 15:23:43
 24 applying. I think that that's resident in the 15:23:44
 25 program generation -- Presentation Generation 15:23:49

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1 Program. 15:23:54
 2 Q. (BY MR. WOLFF) Is there any -- is there 15:23:54
 3 any disclosure in the patent of a systematic 15:24:01
 4 sequence of mathematical or logical operations to 15:24:07
 5 perform the means for applying in claim 1 of the 15:24:11
 6 '045 patent? 15:24:15
 7 MR. BRANDON: Objection to form. 15:24:16
 8 A. I think so. I actually searched for -- 15:24:17
 9 what's it, 4717? I'm trying to remember what the 15:24:23
 10 number for that program is. It seems to me it's -- 15:24:35
 11 let me just take a look for a moment. 1710, I 15:24:38
 12 guess. And -- and found over 40 references where 15:25:00
 13 ways in which that program would actually do a step 15:25:08
 14 in the process of implementing the overall 15:25:14
 15 presentation generation process. 15:25:19
 16 So I -- I think -- I can't -- you 15:25:20
 17 know, we can start from the beginning and look for 15:25:25
 18 1710 manually if you wish, but I think that -- that 15:25:27
 19 there is a lot said about the manner in which that 15:25:30
 20 program applies constraints, rules, sizes, stuff, 15:25:33
 21 those sorts of things. So, yeah, I think that -- 15:25:38
 22 that there's plenty of discussion about how that -- 15:25:41
 23 that particular program does its task. 15:25:46
 24 Q. (BY MR. WOLFF) And you've referenced 15:25:49
 25 that in your report? 15:25:52

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1 A. I don't think I specifically did. I 15:25:52
 2 didn't -- 15:25:54
 3 Q. Is there a reason you didn't reference 15:25:54
 4 it in your report? 15:25:56
 5 A. Nobody had asked me that question. 15:25:57
 6 Q. But you knew there was a dispute between 15:25:58
 7 the parties as to whether there was sufficient 15:26:00
 8 structure? 15:26:03
 9 A. I thought the dispute was whether or not 15:26:04
 10 there was hardware versus software. Maybe I've 15:26:06
 11 mischaracterized the totality of the dispute, but 15:26:10
 12 that -- that's certainly been my understanding of 15:26:17
 13 where the dispute really lie -- lay. 15:26:20
 14 There's also a dispute, I think, in 15:26:23
 15 at least one case, if not two, as to what -- where 15:26:25
 16 your -- your -- you and your experts identified a 15:26:33
 17 program or a point in the operation between where 15:26:38
 18 you did identify software, what software you 15:26:43
 19 identified. 15:26:47
 20 Q. Are there any examples in the spec of 15:26:50
 21 actually applying a presentation rule with the 15:26:53
 22 Presentation Generation Program 1710? 15:27:01
 23 MR. BRANDON: Objection to form. 15:27:05
 24 A. You mean like the -- kind of like that 15:27:13
 25 example in columns 53? 15:27:14

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1 Q. (BY MR. WOLFF) Right. 42 I think is 15:27:17
 2 where it is, where we were just referring -- or 41, 15:27:19
 3 I'm sorry. 15:27:22
 4 A. 41, uh-huh. 15:27:22
 5 Q. And the example there was the 15:27:30
 6 difference -- maybe one venue says you can have 15:27:34
 7 3,000 characters and the other venue says 300 15:27:38
 8 characters, and the -- the seller seems to be 15:27:41
 9 prompted redundantly to input information to create 15:27:47
 10 the presentation. 15:27:57
 11 MR. BRANDON: I'm sorry, what's the 15:28:00
 12 question? 15:28:02
 13 A. Yeah, I didn't understand that to be a 15:28:02
 14 question. 15:28:04
 15 Q. (BY MR. WOLFF) Well, so you were 15:28:04
 16 asked -- I'm just giving you an example of something 15:28:06
 17 in the spec that was an example of applying a 15:28:08
 18 presentation rule. Would you say the number of -- 15:28:11
 19 let me strike the question. 15:28:13
 20 Would you say that the number of 15:28:14
 21 characters that an ad may have is a presentation 15:28:16
 22 rule? 15:28:18
 23 A. That's an example of a presentation rule 15:28:19
 24 in -- in the number of characters a text block could 15:28:22
 25 have in a -- in an ad. 15:28:25

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1 Q. What about the cost or the price, would 15:28:30
 2 that be an example of a presentation rule? 15:28:33
 3 MR. BRANDON: Objection to form. 15:28:35
 4 A. Yeah, the word "price" is used in a 15:28:36
 5 variety of ways. Do you mean the price of the 15:28:38
 6 product? 15:28:40
 7 Q. (BY MR. WOLFF) The -- the price that 15:28:41
 8 the -- that the media venue wants for whatever it's 15:28:42
 9 going to allow the -- the buyer to -- I'm sorry, 15:28:46
 10 the -- the seller to place the ad. 15:28:50
 11 A. Okay. The -- the amount of money that 15:28:54
 12 the seller's going to have to pay to somebody to be 15:28:56
 13 able to place their ad once it's been generated as 15:29:00
 14 presentation on a particular venue? 15:29:06
 15 Q. No, I mean if -- if the media venue 15:29:08
 16 says, "I'm only willing to accept ads where the 15:29:10
 17 seller pays at least \$10," is that a presentation 15:29:14
 18 rule? 15:29:19
 19 A. To the media venue? 15:29:19
 20 Q. To the media venue, yes. 15:29:20
 21 A. I think that's what I meant to say, if I 15:29:21
 22 didn't say that very clearly. I don't think it was 15:29:23
 23 a constraint on the ad, not on the presentation. 15:29:29
 24 It's more like a gateway to even being willing to -- 15:29:33
 25 that's part in a sense maybe the selection criteria. 15:29:36

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1 Q. So it's -- it's not a presentation rule 15:29:39
 2 in your view? 15:29:41
 3 A. I would think that as being more of a 15:29:41
 4 selection criteria for menus. I don't want to pay 15:29:43
 5 that much for this, but that wouldn't have anything 15:29:47
 6 to do with the nature of the Presentation Generation 15:29:49
 7 Program's task. 15:29:52
 8 Q. All right. How about the dates the 15:29:56
 9 media venue is willing to allow sellers to place 15:29:58
 10 ads, would that be a presentation rule? 15:30:02
 11 A. I -- I don't know that I can separate 15:30:05
 12 that between a form of selection and a form of 15:30:08
 13 presentation. 15:30:11
 14 Q. What do you mean by form of selection? 15:30:11
 15 A. Well, I mean, if I go in and say, "I 15:30:13
 16 only want to go to venues where I'm going to" -- 15:30:16
 17 "it's not going to cost me more than \$10," okay, if 15:30:19
 18 I had an interface as a seller that allowed me to do 15:30:23
 19 that, that has nothing to do with the generation of 15:30:26
 20 the presentation that ultimately is going to go to 15:30:28
 21 those venues. That's more of a selection rule to 15:30:31
 22 me, the less than \$10. 15:30:35
 23 Q. And what are selection rules again? 15:30:39
 24 A. Those would be things that I'm saying as 15:30:41
 25 I go through the section of the media venues where 15:30:43

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1 I'm willing to have my ad to be targeted to be 15:30:45
 2 placed. 15:30:47
 3 Q. So you're saying that that's a -- a 15:30:48
 4 seller option, not a media venue option? 15:30:53
 5 MR. BRANDON: Objection to the form. 15:30:59
 6 A. No. 15:31:00
 7 Q. (BY MR. WOLFF) Does the patent describe 15:31:02
 8 that media venues can specify the -- the price or 15:31:04
 9 rate for space? 15:31:08
 10 A. I don't remember. 15:31:10
 11 Q. How about the dates of availability for 15:31:11
 12 the media venue? 15:31:16
 13 A. There's some discussion of a procedure, 15:31:18
 14 for example, where if I want to pay -- if I'm 15:31:20
 15 willing to pay a surcharge, I can -- I think of it 15:31:23
 16 like a newspaper. I can get it in tomorrow's 15:31:26
 17 edition, as opposed to they'll fit it in sometime in 15:31:28
 18 the next two weeks, and they talk about that as 15:31:32
 19 being a charge. 15:31:34
 20 Q. Would that be a presentation rule or 15:31:34
 21 not? 15:31:36
 22 A. I -- if you wish, I'll go find where 15:31:37
 23 they talk about that and see if they characterize it 15:31:40
 24 as a presentation rule. I don't immediately think 15:31:43
 25 of that as a presentation rule, unless for some -- I 15:31:45

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1 think of that as being sort of another ancillary 15:31:48
 2 capability separate from -- sort of selecting the 15:31:50
 3 media venues. But I tend to think of the input 15:31:53
 4 information that I'm going to put in that's going to 15:31:59
 5 ultimately generate the presentation as being more 15:32:01
 6 formatting kinds of things. 15:32:04
 7 Q. What do you mean "formatting kinds of 15:32:06
 8 things"? 15:32:09
 9 A. How big a -- do I -- will I accept a 15:32:09
 10 photograph? Will I accept video? Will I accept 15:32:10
 11 text? Are there words that I don't want to see 15:32:14
 12 here? Or what other colors that I would like to 15:32:15
 13 have for the text or the borders around the figures? 15:32:18
 14 There's a whole list of these kinds 15:32:20
 15 of things that are described in here. I can find it 15:32:22
 16 if you wish, but I -- I just don't remember all of 15:32:25
 17 them off the top of my head. 15:32:28
 18 Q. If you'll turn in your report -- I don't 15:32:56
 19 know what exhibit -- Exhibit 84? 15:32:58
 20 A. 84, uh-huh. 15:33:01
 21 Q. If you'll turn there to page 28 in 15:33:02
 22 paragraph 73. 15:33:05
 23 A. I have it. I haven't read it yet, but 15:33:11
 24 if you'll give me -- do you want me to read it or 15:33:14
 25 you want to ask me a question? 15:33:16

1 Q. I'm going to ask you a question. I just 15:33:17
 2 wanted you to turn there. 15:33:20
 3 A. All right. 15:33:20
 4 Q. How -- how is your construction of the 15:33:21
 5 term "presentation rule" consistent with what you 15:33:22
 6 just told me about the -- the cost or the -- the 15:33:24
 7 dates? 15:33:30
 8 A. I don't see how it's inconsistent with 15:33:32
 9 it. I didn't -- I didn't say -- 15:33:37
 10 Q. Well, your definition would seem to 15:33:38
 11 include cost. Wouldn't the cost be a control set by 15:33:41
 12 the media venue? 15:33:43
 13 A. I -- I don't -- I'm not going to -- I 15:33:55
 14 don't think I have the capability to rule it in or 15:33:56
 15 rule it out as being a presentation. 15:33:59
 16 Q. Well, I'm trying to get the bounds of 15:34:01
 17 your construction, trying to figure out the scope 15:34:03
 18 and whether there's a disagreement between us or 15:34:05
 19 not. And so I'm just asking whether -- wouldn't 15:34:08
 20 cost be an example of a control? You haven't 15:34:10
 21 limited your construction in any way to the style or 15:34:13
 22 editing of the presentations. 15:34:16
 23 A. I don't think that the -- I would tend 15:34:18
 24 to rule it out. But, again, as I've said earlier, I 15:34:20
 25 have not attempted to look at the total scope at 15:34:24

1 which one of the -- these claims may or may not 15:34:29
 2 fall. That's more of an infringement issue. Okay. 15:34:32
 3 I don't think of cost as being associated with 15:34:36
 4 creating advertisements for publishing on that media 15:34:40
 5 venue. 15:34:43
 6 Q. What about the date, is that a control 15:34:43
 7 set by the media venue? 15:34:46
 8 MR. BRANDON: Objection to form. 15:34:49
 9 A. If you -- all right. I'm sorry, we're 15:34:50
 10 going to come to a full stop for a few minutes. I'm 15:34:53
 11 going to find that column and see if the -- my 15:34:56
 12 initial reaction is, no, I wouldn't consider that to 15:34:58
 13 be a presentation rule. But it may be that that 15:35:01
 14 section of the patent characterizes that as a 15:35:05
 15 presentation rule, and I don't want to be -- 15:35:07
 16 Q. (BY MR. WOLFF) If you want to tell me a 15:35:11
 17 word you're looking for, I can try to find it real 15:35:13
 18 quick for you, then. 15:35:19
 19 A. Yeah, I kind of remember where it is. 15:35:19
 20 Just give me a minute. 15:35:19
 21 Q. Okay. 15:35:19
 22 A. Surcharge. If you want to -- here -- I 15:35:20
 23 think I may have it already. I think it's in 15:35:24
 24 column 19. 15:35:27
 25 (Witness Reviews Document.) 15:35:51

1 A. I don't think they character -- I mean, 15:35:55
 2 I've just read through pretty much the section in 15:35:56
 3 column 19 that's right after a portion that had been 15:36:00
 4 discussed before. And I don't think they 15:36:02
 5 characterize it as rules. I may be missing it. But 15:36:07
 6 down at column 19, line 53, it says, "In this 15:36:15
 7 embodiment of the present invention, the 15:36:21
 8 Presentation Generation Program would be set to 15:36:24
 9 immediately process any 'Urgent Publishing' request 15:36:25
 10 and any associated required structures. All other 15:36:29
 11 'Standard Publishing' would be processed as a batch 15:36:33
 12 at a preset low-traffic or low-utilization time." 15:36:36
 13 That says that the Presentation Generation Program 15:36:39
 14 would not even be brought into invocation until it 15:36:42
 15 had decided some -- some other decision had been 15:36:48
 16 made about whether you were willing to pay the 15:36:52
 17 surcharge or not, which sounds like that decision 15:36:53
 18 isn't real hurried or I can wait a while is made 15:36:59
 19 independent of the role of the Presentation 15:37:02
 20 Generation Program 1710. 15:37:06
 21 Q. You're nodding as if I understood what 15:37:07
 22 you said. 15:37:10
 23 A. Oh, I'm sorry. 15:37:10
 24 Q. So looking at your construction, I don't 15:37:12
 25 see how controls to be set by the media venue for 15:37:14

1 use by the computer system programming in creating 15:37:18
 2 the advertisements for publishing on that media 15:37:23
 3 venue, how this rules out the cost or the date. 15:37:27
 4 MR. BRANDON: Objection. That -- 15:37:30
 5 that -- is there a question? 15:37:32
 6 Q. (BY MR. WOLFF) Can you explain to me 15:37:35
 7 how this rules out the cost or the date? 15:37:36
 8 MR. BRANDON: You can feel free to 15:37:42
 9 read this section if you wish. 15:37:43
 10 THE WITNESS: Thanks. I appreciate 15:37:45
 11 that. Lord, yes. 15:37:47
 12 A. Well, the best example I can give you is 15:37:55
 13 to take a look at the quoted paragraph at the top of 15:37:57
 14 page 29. And I'm -- I'm going to -- I think that 15:38:00
 15 paragraph cites to a portion of the -- I guess it's 15:38:03
 16 couched in terms of the '025 specification as to 15:38:10
 17 where it's located. But there are things that are 15:38:13
 18 in that list of what you would find in the 15:38:16
 19 Presentation Rules Database 1650 that are not 15:38:19
 20 covered by the proposed construction that Google and 15:38:24
 21 Yahoo! made, which in -- proposes to interpret 15:38:29
 22 presentation rules as rules that control and limit 15:38:36
 23 the style and editing of presentations created by 15:38:38
 24 the system. And included there is -- are 15:38:42
 25 publication dates and deadlines. But look at things 15:38:45

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1 like blocked URLs. 15:38:49
 2 Q. (BY MR. WOLFF) Wait, wait, wait. I'm 15:38:51
 3 sorry. You think dates and deadlines are included 15:38:53
 4 or are not included in Google's and Yahoo!'s 15:38:56
 5 construction? 15:39:00
 6 A. I -- I think they are not. They're not. 15:39:01
 7 Q. And you agree that they're not? 15:39:05
 8 A. Well, I don't -- 15:39:05
 9 Q. They should not be covered, the dates? 15:39:08
 10 A. No. No. I -- I think that they should 15:39:10
 11 be because I -- I'm looking at the quotation at the 15:39:14
 12 top of page 29 where the specification says that the 15:39:17
 13 database -- excuse me, the Presentation Rules 15:39:20
 14 Database will include fields, and then they list a 15:39:28
 15 variety of things, some of which would be excluded 15:39:31
 16 by the narrower construction proposed by Google and 15:39:33
 17 Yahoo! 15:39:37
 18 Q. Okay. And you think that among the 15:39:38
 19 things included would be the date? 15:39:39
 20 A. Well, I'm -- I'm -- the specification 15:39:41
 21 says that. Okay. The presentation -- I'm quoting, 15:39:43
 22 "The Presentation Rules Database will vary from 15:39:46
 23 seller type to seller type, as well as one media 15:39:49
 24 type to another depending on the design of the 15:39:53
 25 presentations. Some of the fields that might be 15:39:56

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1 maintained are presentation templates; blocked 15:39:59
 2 words; blocked phrases; blocked references" -- oh, 15:40:02
 3 it actually says "presentation costs." So I -- I 15:40:06
 4 would -- I'm going to do whatever the specification 15:40:09
 5 says. 15:40:11
 6 So clearly, then, they're saying 15:40:13
 7 that the cost would be included, publication dates, 15:40:14
 8 and deadlines and blocked URLs, et cetera. 15:40:17
 9 Q. (BY MR. WOLFF) So the cost would be a 15:40:22
 10 presentation rule? 15:40:23
 11 A. That's what the spec says, as an 15:40:23
 12 example. 15:40:31
 13 Q. Have you -- it's covered by your 15:40:32
 14 construction, correct? 15:40:34
 15 A. I think so. 15:40:35
 16 Q. Okay. But it -- 15:40:36
 17 A. It's not -- it's not covered by the one 15:40:37
 18 proposed by Google and Yahoo!. 15:40:40
 19 Q. So if you'll turn to page 29 of your 15:40:49
 20 report... 15:40:51
 21 A. Okay. 15:40:52
 22 Q. And -- and I'm going to -- this -- it 15:40:53
 23 looks like the construction breaks on the page to 15:40:55
 24 scroll over to the next page, so I'll ask you a 15:40:58
 25 couple of questions about paragraph 75 and 76. 15:41:01

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1 A. Okay. 15:41:04
 2 Q. Your design or style standards, your -- 15:41:06
 3 your construction is presentation rules which 15:41:09
 4 control the look and feel of an advertisement. 15:41:11
 5 A. Okay. 15:41:15
 6 Q. How do I tell what the scope of the 15:41:20
 7 feel -- the look and feel of an advertisement is? 15:41:24
 8 MR. BRANDON: Objection to form. 15:41:27
 9 A. Well, I understand that at least 15:41:28
 10 yesterday or the day before, whenever one of your 15:41:31
 11 experts was deposed, he took the position that he 15:41:34
 12 had no idea what look and feel were. I think that's 15:41:37
 13 a well-understood term in the field. Look generally 15:41:40
 14 has -- at least in my understanding, has to do with 15:41:44
 15 the pictorial images that the device produces that 15:41:48
 16 you see when you're -- when you're looking at an 15:41:53
 17 interface, colors, shapes, animations, things that 15:41:55
 18 you see. And feel, to me, has to do with the way in 15:42:01
 19 which you manipulate moving in and out and through 15:42:06
 20 that display. 15:42:10
 21 Do I pull down menus, and if I do, 15:42:15
 22 do I open up hierarchal menus or do I click on one, 15:42:18
 23 and it gives me the hierarchy? That's kind of the 15:42:22
 24 action aspect of what it provides, and -- 15:42:25
 25 Q. (BY MR. WOLFF) But -- but look and feel 15:42:31

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1 is design or style standards are for the 15:42:33
 2 presentations, correct? 15:42:40
 3 A. Presentation rules which control the 15:42:41
 4 look and feel of an advertisement. 15:42:43
 5 Q. Right. And -- and what you just 15:42:45
 6 described to me was the look and feel for the way to 15:42:47
 7 input something, correct? Pull-down menus, how is 15:42:51
 8 that -- you mean an advertisement has to have a 15:43:02
 9 pull-down menu? 15:43:04
 10 A. No. But I'm just trying to tell you 15:43:05
 11 what, in general, the terms look and feel mean to 15:43:07
 12 those with skill in the art, okay, and what they 15:43:11
 13 meant in 2000. I don't think the term is 15:43:13
 14 indefinite. And I think the reason it has two words 15:43:14
 15 is one of them is what it looks like and the other 15:43:16
 16 one what -- is what it feels like if I interact with 15:43:19
 17 it. If you have a static ad, then the look and feel 15:43:21
 18 is basically, it's look. Okay. It's -- it's just a 15:43:25
 19 picture, a newspaper. Ads have a look, I think. 15:43:29
 20 You know, you could sort of say it has a feel if 15:43:34
 21 it's got a hot car with a big sweep across or 15:43:36
 22 something that gives you some emotional reaction. 15:43:42
 23 But if it has -- if you had an ad that was displayed 15:43:47
 24 that had animation in it -- 15:43:50
 25 Q. Uh-huh. 15:43:50

1 A. -- or -- and I don't know -- again, I 15:43:52
 2 know virtually nothing about how your ads are 15:43:54
 3 produced in your two systems. But if you produce an 15:43:57
 4 ad that allows me to click on a URL that's embedded 15:44:00
 5 in it or something, that begins to move out of pure 15:44:06
 6 look into feel. And do I mouse on it and does it 15:44:09
 7 change color? Does it highlight -- if I click on 15:44:11
 8 it, does something happen or -- that's what I think 15:44:14
 9 those of skill in the art understand look and feel 15:44:18
 10 to mean. 15:44:21
 11 Q. So if you move your mouse over an ad and 15:44:22
 12 some -- what, some -- some prompt or something 15:44:24
 13 popped up, that would be an aspect of the feel that 15:44:28
 14 you're referring to? 15:44:32
 15 A. That's -- that's what I think of. The 15:44:32
 16 reason that they're two words that I've always 15:44:34
 17 interpreted when I used to teach this, talk about 15:44:37
 18 these terms. And, you know, I -- I was listing 15:44:39
 19 cases that I thought might have relevance with 15:44:45
 20 Mr. Lumish a while ago. I -- I probably should have 15:44:50
 21 mentioned I did a case that essentially dealt with 15:44:52
 22 look and feel dealing with FedEx. And a big aspect 15:44:55
 23 of that case was the fact that when you go to a 15:45:00
 24 FedEx website, you'll find that they carefully use 15:45:04
 25 their logo and their colors. There's a FedEx purple 15:45:09

1 and a FedEx orange and a FedEx green and gray. And 15:45:14
 2 as I recall -- I can't remember whether the claims 15:45:20
 3 at issue -- I was representing a plaintiff in a 15:45:22
 4 patent suit, whether they dealt with look and 15:45:25
 5 field -- feel or whether they were construed to -- 15:45:27
 6 to deal with look and feel, but we went through all 15:45:32
 7 kinds of explanations and understandings and 15:45:35
 8 depositions and things about what that meant. And I 15:45:38
 9 think everybody had a pretty good understanding of 15:45:42
 10 what it means. 15:45:44
 11 Q. All right. And -- and one of the things 15:45:45
 12 you mentioned, there was the -- what was it, the 15:45:47
 13 user's kind of reaction to the ad? 15:45:51
 14 A. I think that look and feel can 15:45:53
 15 incorporate a reaction. 15:45:55
 16 Q. And how does the presentation rule 15:45:57
 17 apply? How does it -- does it change the ad or 15:46:00
 18 whatever it is you're saying is done when it creates 15:46:03
 19 the ad? How does it -- how does the -- strike the 15:46:06
 20 question. 15:46:09
 21 How does the Presentation Generation 15:46:10
 22 Program apply this look and feel standard according 15:46:14
 23 to the patent? 15:46:18
 24 A. A good example would be colors. Okay. 15:46:19
 25 Or text size or whether you have a black background 15:46:23

1 with white letters in the front or whether you have 15:46:27
 2 a white background with black letters in the front. 15:46:29
 3 If you're going to -- just basically how the ad is 15:46:33
 4 assembled. Is it static? You know, if I were a 15:46:38
 5 seller and I offered up a photograph as well as a -- 15:46:42
 6 a video clip with a particular -- you know, 15:46:50
 7 obviously a newspaper is not going to accept a video 15:46:54
 8 clip. But if -- if my ad made its way to -- to 15:46:56
 9 CNN.com, it might be possible to have what would 15:47:00
 10 otherwise be a still photograph, be a picture of a 15:47:03
 11 car or running through the woods or something. I -- 15:47:07
 12 those are the kinds of things that I think the 15:47:09
 13 presentation rules associated with a particular 15:47:11
 14 media venue would control look and feel. 15:47:13
 15 Q. Well, what I'm asking is how they're 15:47:16
 16 applied. How do I change that ad with the 15:47:18
 17 Presentation Generation Program described in the 15:47:22
 18 patent so that it's not a static image, and it's, in 15:47:24
 19 fact, a picture of a child or somebody running 15:47:28
 20 through the woods? 15:47:30
 21 A. You apply the rules that are in a 15:47:30
 22 Presentation Rule Database, at least the ones that 15:47:33
 23 are associated with look and feel. Okay. 15:47:35
 24 Q. And what rules would those be? 15:47:37
 25 A. Well, I would exclude, for example, 15:47:38

1 blocked URLs. Okay. I wouldn't think that blocking 15:47:41
 2 a URL -- if I'm Nike and I say, "I don't want my ad 15:47:44
 3 to show up on the Adidas' website," okay, probably 15:47:47
 4 be the other way around, but, I mean, if you 15:47:51
 5 understand what a blocked URL is, I don't think of 15:47:53
 6 that as being something that -- that controls look 15:47:58
 7 and feel. Okay. But I think that -- what's it -- 15:47:59
 8 what's it called? Let me get the precise wording, 15:48:03
 9 the design or style standards are those aspects of 15:48:05
 10 the presentation rules as reflected in the 15:48:11
 11 Presentation Rules Database, which control look and 15:48:14
 12 feel. And they would take the same basic generic 15:48:17
 13 information that the seller had input and format it 15:48:20
 14 in a way that's compatible with the framework that 15:48:23
 15 the media venue was willing -- had defined and was 15:48:26
 16 willing to accept as far as that ad goes. 15:48:30
 17 Q. Right. And I'm saying how? How is that 15:48:32
 18 done? How is that described being done in the 15:48:35
 19 patent? 15:48:37
 20 A. I don't think that will give you -- 15:48:38
 21 MR. BRANDON: Objection, form. 15:48:39
 22 A. I'm sorry, I don't think they give you 15:48:40
 23 software. I think for anyone of skill in the art if 15:48:42
 24 they understand what I just told you to do, they 15:48:45
 25 know how to do that. It -- a good example would be 15:48:47

1 in the -- in the HTML world. They would know how, 15:48:52
 2 given a -- let's say a JPEG image that was a static 15:48:56
 3 image, and if they had a venue that said, "I'm 15:48:59
 4 willing to accept at this place on my screen on 15:49:04
 5 the" -- "within the HTML that defines my" -- "my 15:49:09
 6 imagery that I'm going to put up when you go to my 15:49:17
 7 website," that they would say, "I -- I want this 15:49:21
 8 image to be produced with a black border around it, 15:49:23
 9 in this particular size, at this particular place on 15:49:27
 10 the screen." And there's HTML that you can then 15:49:29
 11 write, create to do that, given -- given a generic 15:49:33
 12 picture that could be sized small to big, whatever 15:49:37
 13 you want to do with it. 15:49:41
 14 Q. (BY MR. WOLFF) And you think you can -- 15:49:42
 15 you can change the generic picture size with HTML? 15:49:43
 16 A. I believe -- I -- I think you can at 15:49:48
 17 least change the space that's allotted for it. 15:49:51
 18 Okay. It's been a while. Maybe a better way to 15:49:54
 19 say, suppose I had multiple opportunities -- you 15:49:59
 20 know, I think you can, but if I'm -- again, that's a 15:50:02
 21 fact. And if I'm wrong about that, I'm wrong about 15:50:05
 22 that. 15:50:07
 23 Q. What do you mean "that's a fact"? 15:50:08
 24 A. You either can -- I mean, within HTML 15:50:09
 25 you can either change the side of a generic JPEG or 15:50:12

1 a TIFF or whatever it may be or you can't. But I 15:50:16
 2 think you can. But if I'm wrong about that, I'm 15:50:19
 3 just wrong. It's a fact. It's not an opinion. 15:50:21
 4 Okay. 15:50:23
 5 Q. But you think the patent discloses 15:50:23
 6 sufficient detail for a person of ordinary skill in 15:50:26
 7 the art to have done that? 15:50:28
 8 A. I think they tell you enough about what 15:50:30
 9 the rules do. They tell you enough about the 15:50:32
 10 concept of what the Presentation Generation Program 15:50:36
 11 is supposed to do with those rules. You understand 15:50:38
 12 what the media venues want and don't want. And I 15:50:40
 13 think anyone of ordinary skill in the art without 15:50:44
 14 undue experimentation would be able to accomplish 15:50:46
 15 that. 15:50:53
 16 Q. What was -- what would an example of 15:50:54
 17 those rules look like in the database? 15:50:55
 18 MR. BRANDON: Objection to form. 15:50:57
 19 Q. (BY MR. WOLFF) And by "database," I 15:51:02
 20 mean the Presentation Rules Database. 15:51:07
 21 A. Photo or graphic specification such as 15:51:10
 22 size, form of compression, file format -- be a good 15:51:13
 23 example for images. 15:51:19
 24 Q. But that's just a -- that's just a name 15:51:20
 25 or parameter, right? That's not a -- that's not the 15:51:22

1 actual rule? 15:51:24
 2 A. Well, if the rule said, "I want this 15:51:25
 3 picture to be two-inches wide, and" -- "no more than 15:51:27
 4 two-inches wide and two-inches high," and if I -- if 15:51:32
 5 I have an image that's not that big, if I can resize 15:51:35
 6 it, which I think I can resize it to that shape or 15:51:38
 7 if not, put it on a black background and center it 15:51:41
 8 in a two-by-two space and show that. 15:51:46
 9 Q. But would you agree that the '045 patent 15:51:50
 10 covers things like radio ads? 15:51:52
 11 A. Yeah. 15:51:54
 12 Q. Okay. 15:51:54
 13 A. I -- I think. 15:51:56
 14 Q. And how would you change the look and 15:51:57
 15 feel of a radio ad? 15:51:58
 16 A. I don't think that would necessarily be 15:51:59
 17 applicable to that. You basically would say, 15:52:01
 18 "You're going to have to give me a wave file or some 15:52:04
 19 sort of a tech -- MPEG file with audio on it," and 15:52:08
 20 the look and feel in the sense. Look wouldn't make 15:52:12
 21 good sense, but the -- that venue would reach over 15:52:16
 22 to the seller location. And if the seller had 15:52:18
 23 provided an audio file, then there would be no way 15:52:21
 24 to do anything with that. 15:52:26
 25 Q. Well -- well, give me an example from 15:52:27

1 the patent where it describes how to change the look 15:52:29
 2 and feel of a radio -- radio ad. 15:52:31
 3 A. I don't think it does. 15:52:32
 4 Q. How about a skywriter, it covers 15:52:34
 5 skywriters, right? 15:52:36
 6 A. I saw that. 15:52:37
 7 Q. Yeah. 15:52:37
 8 A. It occurred to me they probably wouldn't 15:52:38
 9 want 300 characters. At least I wouldn't want to be 15:52:40
 10 the guy flying the plane that had to do that. Or 15:52:44
 11 it -- it couldn't be Arabic or something. It's kind 15:52:47
 12 of hard to turn your plane that short. But I -- I 15:52:50
 13 gather that a seller who was willing to accept as a 15:52:55
 14 selected media venue, a skywriter would provide in 15:52:58
 15 the advertising do what they call it, collateral or 15:53:05
 16 content, they would have provided something that 15:53:09
 17 would be compatible with -- the rule there I think 15:53:12
 18 would be all capital letters in block form and no 15:53:14
 19 more than 10 or 12. 15:53:18
 20 Q. Was that an example from the patent or 15:53:19
 21 one you just made up? 15:53:21
 22 A. No, I think it's one that makes sense. 15:53:22
 23 I think it's one of which one in the ordinary skill 15:53:24
 24 in the art would understand. 15:53:27
 25 Q. Okay. 15:53:27

1 A. They may need to know more about 15:53:29
2 skywriting than I do, but that -- and they've got 15:53:30
3 billboards, you know. For example, you probably 15:53:31
4 wouldn't want a two-inch by two-inch picture on a 15:53:35
5 billboard. 15:53:36
6 Q. Or in the sky? 15:53:36
7 A. I don't think you can do a picture in 15:53:36
8 the sky. Well, we're getting off into stuff that's 15:53:39
9 pretty irrelevant. But I've actually seen some -- 15:53:43
10 what's it, YouTube pictures of groups of planes 15:53:46
11 flying almost wing to wing where they modulated the 15:53:49
12 smoke in little puffs much like you do a dot matrix 15:53:53
13 print, and -- and actually made amazingly pretty 15:53:57
14 pictures. Not something I've ever seen since then, 15:54:01
15 but it can be done. 15:54:07
16 Q. So your -- your construction of the next 15:54:13
17 term in this group is "control look and feel of the 15:54:17
18 advertisement." 15:54:20
19 A. Uh-huh. 15:54:20
20 Q. And in your -- your previous 15:54:22
21 construction, your -- your construction is control, 15:54:24
22 look and feel of an advertisement. So it -- it 15:54:28
23 seems like you're using another claim term to -- as 15:54:32
24 the construction of your claim term. 15:54:35
25 MR. BRANDON: Objection to form. 15:54:40

1 A. When I put them together into that 15:54:41
2 two-row table, I -- I don't disagree with you. It 15:54:44
3 would not offend me if one -- if Judge Everingham 15:54:47
4 decided to rewrite the first one to say, 15:54:51
5 "presentation rules which control" -- "control the 15:54:55
6 appearance of an advertisement." 15:54:57
7 Q. (BY MR. WOLFF) But you agree that both 15:55:02
8 terms occur in the same claim, right? 15:55:03
9 A. You know, I -- I'm going to have to 15:55:07
10 check that and see. 15:55:10
11 Q. I think it's in the '025 patent -- 15:55:11
12 A. It is. 15:55:13
13 Q. -- around claim 47. 15:55:13
14 A. Let me just take a look. 15:55:15
15 Q. That's from memory, so I could be wrong. 15:55:16
16 A. That's where they -- that's the first 15:55:19
17 one that I've cited. They're both in that same 15:55:21
18 claim, but they talk about the presentation rules 15:55:48
19 comprise -- include at least design and style 15:55:51
20 standards. And then they go on to say that as a 15:55:55
21 result of the filter, which is automatically applied 15:56:00
22 to use those style standards to control the look and 15:56:05
23 feel. I don't know what more to tell you. I think 15:56:10
24 that those -- those are -- 15:56:17
25 Q. I mean, would you have the same phrase 15:56:18

1 in the patent in the claim twice, control the 15:56:20
2 appearance of an ad, control the -- I mean, if you 15:56:22
3 went through and logically followed this to the end, 15:56:24
4 wouldn't you have -- you replace control, look and 15:56:27
5 feel with your definition of control, look and feel? 15:56:29
6 A. No. Because the first one is 15:56:32
7 presentation rules which, and if you change -- you 15:56:35
8 know, I'm -- I'm fine with what's there, which 15:56:39
9 control the look and feel of an advertisement would 15:56:41
10 be -- it would say, wherein the presentation rules 15:56:43
11 which control the look and feel of an Internet media 15:56:49
12 venue comprise" -- I misread that. Wherein the 15:56:52
13 presentation rules of the Internet media venue 15:56:58
14 comprise presentation rules which control the look 15:57:00
15 and feel of an advertisement, further comprising a 15:57:02
16 computer program design filter to automatically 15:57:06
17 comply -- apply or compare the Internet media 15:57:09
18 design -- or you could then plug that term in there, 15:57:14
19 to control the appearance of the advertisement to be 15:57:19
20 displayed on the -- I don't think it -- I -- I use 15:57:26
21 the term Markmanizing the claims. If we were to get 15:57:29
22 those out of Judge Everingham, one of the first 15:57:33
23 things I will do is to take the actual language of 15:57:36
24 the claim and go through and substitute the court's 15:57:39
25 constructions into the claim just to see what they 15:57:41

1 look like. 15:57:45
2 Q. Did you do that when you prepared your 15:57:45
3 report? 15:57:47
4 A. I don't have a Markman ruling. That 15:57:47
5 would be -- 15:57:50
6 Q. Well, I think -- 15:57:50
7 A. That -- 15:57:50
8 Q. You want the -- you say these are the 15:57:50
9 correct constructions, right? 15:57:52
10 A. Yes. 15:57:54
11 Q. And so you think these are the 15:57:55
12 constructions you -- you would live with. 15:57:56
13 A. I haven't done it yet. I'm -- if -- 15:57:57
14 Q. But the -- that's not my question. My 15:57:59
15 question is: These are constructions you could live 15:58:01
16 with, correct? 15:58:03
17 A. I believe so. I think they're the 15:58:03
18 appropriate constructions, yeah. 15:58:05
19 Q. So when you were -- when you're done 15:58:10
20 substituting your -- your language for design or 15:58:12
21 style standards, you have presentation rules which 15:58:17
22 control the look and feel of an advertisement. 15:58:20
23 Would you then go through and replace control of the 15:58:22
24 look and feel of an advertisement with your 15:58:25
25 construction of control of the look and feel of an 15:58:27

1 advertisement? 15:58:30
 2 A. Yes. 15:58:30
 3 Q. So in a sense, the second construction 15:58:32
 4 swallows the first? 15:58:35
 5 A. I -- I told you when I put the two of 15:58:36
 6 them together, I don't -- I don't have a problem 15:58:38
 7 with substituting presentation rules which control 15:58:41
 8 the appearance of an advertisement. 15:58:44
 9 Q. So both constructions would be the same? 15:58:48
 10 A. No. The -- the first one is 15:58:51
 11 presentation rules. Okay. The first one is a noun, 15:58:53
 12 and the second one's a verb. Okay. So they're not 15:58:57
 13 the same. I won't nod at you again. I can see from 15:59:05
 14 the look on your face, you don't -- either don't 15:59:09
 15 understand or don't agree, and I never know which it 15:59:11
 16 is. But I'm -- I'm comfortable with them as they 15:59:13
 17 are stated. Okay. 15:59:17
 18 But -- and the other thing I'm very 15:59:20
 19 uncomfortable with and surprised by is that you 15:59:22
 20 found an expert who would testify that look and feel 15:59:24
 21 as of 2000 in the computer science and computer 15:59:27
 22 engineering art was indefinite. I just -- 15:59:30
 23 MR. WOLFF: Move to strike. 15:59:33
 24 Q. (BY MR. WOLFF) We -- using your 15:59:40
 25 construction of control the appearance of an ad, 15:59:42

1 would the number of words in an ad be -- satisfy 15:59:44
 2 that? Would they control the appearance of an ad? 15:59:50
 3 A. I would think so. And a good example 15:59:53
 4 would be as -- as people get older, text size 15:59:55
 5 becomes very important. And so depending on the -- 15:59:58
 6 if you had a -- if -- if you're going to place an ad 16:00:01
 7 on a website that appeals to older people, you might 16:00:06
 8 not want to have as many words, but you'd like to 16:00:11
 9 have them bigger. Whereas, if it was an ad for 16:00:13
 10 younger people, you might be willing to put a little 16:00:17
 11 smaller text and a little larger number of words. 16:00:19
 12 Q. And would the number of words also be a 16:00:22
 13 design or style standard? 16:00:24
 14 A. Yes, I would think so. It could be. I 16:00:27
 15 don't know why it wouldn't be. 16:00:29
 16 Q. How would I change -- with this 16:00:39
 17 Presentation Generation Program that's described in 16:00:42
 18 the patent, how would I change an -- how would the 16:00:44
 19 presentation -- let me strike that and start over. 16:00:50
 20 How would the Presentation 16:00:52
 21 Generation Program change an ad that has 3,000 16:00:55
 22 characters into an ad that has 300 characters? 16:00:58
 23 A. I think -- if you take the first 300 16:01:02
 24 characters, you could do that. 16:01:05
 25 Q. Is that what's described in the patent? 16:01:08

1 A. No, it doesn't say how to do that 16:01:10
 2 specifically, but I think those -- 16:01:12
 3 Q. How does it say it? Not specifically, 16:01:14
 4 but does it generally say it or what does it say? 16:01:16
 5 A. No, it just cited that I think as an 16:01:18
 6 example of a rule that could be applied as -- just 16:01:21
 7 as an example of a rule that would restrict text. 16:01:25
 8 Q. And you would just take -- you would 16:01:28
 9 just take the first 300 and lop off the other 2700? 16:01:33
 10 A. I didn't say I would do that. But you 16:01:36
 11 asked me how could it be done. That's one way to do 16:01:38
 12 it. 16:01:40
 13 Q. What's another way to do it? 16:01:40
 14 A. Well, you could have some sort of syntax 16:01:41
 15 ware that went through and tried to analyze the 16:01:45
 16 syntax. If -- if one as a seller understood that 16:01:48
 17 those were the repertoire of rules that could be out 16:01:52
 18 there, you would probably more intelligently do the 16:01:56
 19 way that the newspaper editor -- newspaper writers 16:02:00
 20 do. They recognize that the copy editors may only 16:02:03
 21 take the first two paragraphs of their story 16:02:06
 22 although they might write a, you know, full column 16:02:09
 23 story. And as a result, they put the part that they 16:02:11
 24 think really ought to be important into the first 16:02:15
 25 two paragraphs. 16:02:19

1 And so what I would expect, then, if 16:02:20
 2 I understood as a seller that not all of the text 16:02:23
 3 I'm going to write describing my wonderful 16:02:25
 4 basketball shoes, okay, was necessarily going to 16:02:29
 5 show up on all of the set of menu -- media venues, I 16:02:33
 6 might want to put them -- you know, you would expect 16:02:36
 7 to put the hot stuff in the first part and -- and 16:02:41
 8 expect the -- a more intelligent approach than just 16:02:43
 9 truncating the first 300 to look for like a 16:02:49
 10 paragraph mark. Stop there, and then format what 16:02:51
 11 you could get. 16:02:54
 12 Q. So what you just described to me there 16:02:55
 13 was a human being doing that? 16:02:58
 14 A. No. 16:02:59
 15 Q. Oh, this is a computer program that does 16:03:01
 16 this? 16:03:03
 17 A. The human being -- the copy editor would 16:03:03
 18 format -- would -- would prepare the text that would 16:03:06
 19 be the generic seller text available to multiple 16:03:09
 20 menu -- media venues, such that if they understood 16:03:13
 21 that one of the presentation rules applicable to 16:03:16
 22 different venues was to truncate the text, that some 16:03:19
 23 of them will take 3,000 words and some of them won't 16:03:23
 24 take but -- excuse me, 3,000 characters, and some of 16:03:25
 25 them will only take 300, then I -- I think I 16:03:28

1 certainly would -- would try to make sure that the 16:03:31
2 first 300 were the part that I really liked. But 16:03:36
3 I'd probably also ask the person -- or some 16:03:39
4 representative of the company I'm contracting with 16:03:42
5 to understand, you know, what -- what's going to 16:03:45
6 happen here if that happens. I just like to better 16:03:46
7 understand how it was. But I don't think, you 16:03:49
8 know -- I don't think anyone of ordinary skill in 16:03:52
9 the art would have trouble implementing some way of 16:03:55
10 doing that. It might be draconian or it might be 16:03:58
11 intelligent, but that's just a task to be 16:04:02
12 implemented by the Presentation Generation Program. 16:04:04
13 Q. Okay. And is there a structure in the 16:04:06
14 patent that describes that task? 16:04:08
15 MR. BRANDON: Objection, form. 16:04:12
16 A. There's not a specific example of how 16:04:13
17 that would be done, other than the fact that there's 16:04:16
18 talk about HTML, there's talk about what the general 16:04:19
19 Presentation Generation Program does. You know, I 16:04:24
20 already mentioned to you that it describes these 16:04:27
21 kinds of rules. And I think once I understand these 16:04:30
22 kinds of rules and where the Presentation Generation 16:04:33
23 Program fits into the process, that it's very easy 16:04:37
24 to reduce that to an actual practice. 16:04:39
25 Q. (BY MR. WOLFF) So your -- so you would 16:04:41

1 agree that it's not disclosed, as like a systematic 16:04:43
2 sequence of instructions, but you -- your position 16:04:47
3 seems to be that a person of ordinary skill in the 16:04:53
4 art reading the patent could go out and implement 16:04:57
5 such a system? 16:05:03
6 MR. BRANDON: Objection to form. 16:05:04
7 A. I don't -- I don't agree with the first 16:05:05
8 part of what you said. As I said, I searched 16:05:06
9 through this to see all of the things that were 16:05:09
10 described about the nature and character of the 16:05:10
11 Presentation Generation Program, and it is just -- 16:05:14
12 it's just described in -- in terms of its 16:05:18
13 subfunctions, which would be the steps all over the 16:05:23
14 place. They just -- as I say, I think there were 16:05:26
15 over 40 references to its numerical identifier. 16:05:29
16 Q. (BY MR. WOLFF) So you agreed with the 16:05:40
17 second part of my question, that -- that a person of 16:05:42
18 ordinary skill in the art reading the patent could 16:05:46
19 know how to implement -- 16:05:48
20 A. Yes. 16:05:50
21 Q. -- the structure? 16:05:50
22 A. I thought I had already agreed with it 16:05:52
23 once before. 16:05:54
24 Q. Let me strike that. I think the 16:05:55
25 question came out wrong. 16:05:58

1 So a person of ordinary skill in the 16:05:59
2 art reading a specification could come up with an 16:06:01
3 algorithm to apply the presentation rules? 16:06:05
4 MR. BRANDON: Objection to form. 16:06:08
5 A. I don't think that's necessary. I think 16:06:10
6 the person of ordinary skill in the art reading the 16:06:11
7 specification could implement the steps that are 16:06:14
8 described in various places in the specification to 16:06:17
9 be accomplished by the Presentation Generation 16:06:20
10 Program 1710. It's far more than a box with these 16:06:23
11 three words in it. It's described in -- in a lot of 16:06:30
12 places in the patent in a lot of detail. 16:06:33
13 Q. (BY MR. WOLFF) But you didn't refer to 16:06:36
14 that in your declaration, did you? 16:06:37
15 A. You already asked me that, and I said to 16:06:40
16 you then that I understood the issue here to be 16:06:42
17 whether or not it -- this was a hardware only -- 16:06:46
18 excuse me, a software only or software plus hardware 16:06:49
19 issue, and that's primarily what I addressed. Until 16:06:52
20 I saw -- and the reason I did the other was I think 16:06:56
21 I saw a report, you know, somebody -- one of your 16:06:59
22 various experts wrote which raised this new question 16:07:03
23 of whether or not there were -- there was an 16:07:06
24 adequate disclosure of the algorithm to implement 16:07:10
25 that in a program. And that's what led me to say, 16:07:13

1 you know, that's a good question, let me go see if I 16:07:17
2 can answer it for myself. 16:07:19
3 Q. All right. Let's go to page 30 of your 16:07:20
4 report. 16:07:22
5 A. All right. 16:07:23
6 Q. "Distribution factors" is the term. You 16:07:26
7 could take a look at your construction. And I'm 16:07:28
8 just trying to understand the bounds of your 16:07:34
9 construction to see whether there's a disagreement 16:07:36
10 or not. But can you give me an example of a rule 16:07:39
11 concerning whether advertising content may be 16:07:42
12 published on a particular media venue? 16:07:45
13 A. I think I gave you some on the next 16:07:47
14 page. "Blocked words; blocked phrases; blocked 16:07:53
15 references; blocked URLs." I think those would be 16:07:57
16 some good examples. 16:08:04
17 Q. And you've got cost in there, too, 16:08:05
18 correct? 16:08:07
19 A. I do. I -- I didn't. I mean, I'm 16:08:07
20 quoting again a section of the actual specification. 16:08:09
21 Q. Well, I mean, do you agree that cost is 16:08:10
22 an example of the distribution factor or not? 16:08:12
23 A. I do. 16:08:15
24 Q. Okay. And you -- what is it that you 16:08:15
25 disagree with Google and Yahoo!'s construction? 16:08:26

1 A. They don't say "rules," they just say 16:08:41
 2 "information." And I think in the context of the 16:08:44
 3 patent we're talking about what are called 16:08:46
 4 presentation rules that are found in the 16:08:49
 5 presentation rules database. That's the first 16:08:55
 6 thing. And I don't understand really what it means, 16:08:57
 7 where the Internet media venue will make the 16:09:00
 8 advertisement available. I -- I think that those 16:09:02
 9 rule -- those factors come into play to -- to decide 16:09:20
 10 what venues you will allow your advertising to go 16:09:23
 11 to. And that's not a decision made -- it seems like 16:09:31
 12 maybe the way that the Google and Yahoo! proposal is 16:09:39
 13 written, it's as if I've selected a venue, it will 16:09:42
 14 accept my stuff, and then it's going to decide 16:09:46
 15 whether to put it on a billboard, a skywriter or a 16:09:49
 16 bus bench or something like that. I may be reading 16:09:51
 17 something into that that Google and Yahoo! didn't 16:09:54
 18 intend, but I just -- I didn't think that made 16:09:57
 19 sense. 16:09:59
 20 Q. If you took off the example and you 16:10:00
 21 deleted the word "Internet," would -- is that 16:10:02
 22 construction better to you? 16:10:07
 23 A. No. No, it's not the Internet issue. 16:10:08
 24 It's -- the way that reads, it sounds like the ad 16:10:10
 25 has already made its way to a media venue, whether 16:10:13

1 it's an Internet media venue or not. And then the 16:10:15
 2 menu decides where the ad's going to be placed. 16:10:18
 3 Q. Where do you get this decision stuff? 16:10:21
 4 A. Information about where the Internet 16:10:23
 5 media venue will make the advertisement available. 16:10:26
 6 Q. But it's -- it's just a rule that's 16:10:31
 7 supposed to be specified, right? 16:10:34
 8 A. I don't even understand what that means. 16:10:36
 9 Q. Well, you've got it in yours. You've 16:10:38
 10 got a rule concerning whether advertising content 16:10:41
 11 may be published on a particular media venue. 16:10:44
 12 A. Right. 16:10:45
 13 Q. So could the -- could the size of the ad 16:10:45
 14 be a distribution factor? 16:10:53
 15 A. Yes. If -- if there were menu -- if 16:10:54
 16 there were media venues that had a size limitation, 16:11:02
 17 either too big or too small or something along those 16:11:05
 18 lines. 16:11:08
 19 Q. So a color could be a distribution 16:11:09
 20 factor, too? 16:11:11
 21 MR. BRANDON: Objection to form. 16:11:12
 22 A. I'd be reluctant to say it couldn't be. 16:11:12
 23 I tend to think of that as being more over/under the 16:11:16
 24 design or style standard kinds of things. 16:11:20
 25 Q. (BY MR. WOLFF) I'm sorry, it's late. 16:11:25

1 I'm lost on that one. Is it a -- the color is not a 16:11:26
 2 distribution factor? 16:11:29
 3 A. Well -- well, I mean, it could be, I 16:11:30
 4 guess. In the sense that if somebody said, "I'm 16:11:32
 5 only willing to accept black and white pictures," 16:11:35
 6 maybe a newspaper, and you didn't have a black and 16:11:38
 7 white picture, and you had no capability to decolor 16:11:40
 8 a color photograph, which you can do, then that 16:11:44
 9 color could play a role in that. But I just think 16:11:48
 10 the distribution -- really the claim at issue here 16:11:52
 11 makes it pretty clear. It says, "determine 16:11:54
 12 whether" -- I'm at the top of page 31 -- "to publish 16:11:59
 13 the advertisement to the venue. I'm not sure I can 16:12:01
 14 give you the full limit of what the rules would or 16:12:06
 15 wouldn't be. 16:12:09
 16 Q. You know, I -- I think that's my problem 16:12:10
 17 is I just -- I can't tell what it is from your 16:12:11
 18 construction. And so you don't -- 16:12:14
 19 A. But you think you -- 16:12:16
 20 MR. BRANDON: Objection to form. 16:12:17
 21 A. Well, then we're even. I can't tell 16:12:18
 22 what in the world your party's construction -- 16:12:21
 23 Q. (BY MR. WOLFF) Well, I'm asking about 16:12:21
 24 yours. 16:12:26
 25 A. I understand. 16:12:26

1 Q. Okay. 16:12:27
 2 A. Well, no, earlier you were asking me 16:12:27
 3 about yours, so... 16:12:27
 4 Q. Right. I did earlier. 16:12:27
 5 A. Okay. But now -- 16:12:28
 6 Q. I just told you, the problem now is I 16:12:28
 7 just can't tell what the bounds is, and it sounds 16:12:30
 8 like you can't tell what the -- 16:12:33
 9 A. Well, no, I don't have a -- I don't have 16:12:33
 10 a -- it would be a rule concerning whether 16:12:35
 11 advertising content may be published on a particular 16:12:36
 12 media venue. It would be something that would 16:12:39
 13 determine whether or not a seller's advertising 16:12:41
 14 content can be placed on a particular venue, and -- 16:12:45
 15 and color could be a factor. Cost, speed, all of 16:12:54
 16 these things could play a role. 16:12:58
 17 MR. WOLFF: Let's take a -- let's 16:13:05
 18 take a break. 16:13:06
 19 MR. BRANDON: All right. 16:13:07
 20 THE VIDEOGRAPHER: Off the record, 16:13:08
 21 4:13. 16:13:10
 22 (Recess Taken From 4:13 p.m. To 4:26 p.m.) 16:13:11
 23 THE VIDEOGRAPHER: This is the 16:26:30
 24 beginning of tape 5. Back on the record, 4:26. 16:26:32
 25 Q. (BY MR. WOLFF) In -- in your 16:26:36

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1 constructions, Dr. Rhyne, you use two different 16:26:38
 2 terms. One is executing a systematic sequence of 16:26:41
 3 mathematical or logical operations, two, and then 16:26:45
 4 you put in some function. 16:26:49
 5 A. Uh-huh. 16:26:51
 6 Q. Example would be the means for applying 16:26:52
 7 or processing in paragraphs 44 through 57. And then 16:26:54
 8 in a -- in a couple of others, particularly in the 16:27:00
 9 '045 patent, you say, a computer software -- 16:27:02
 10 A. Give me a cite so I can kind of link up 16:27:08
 11 with you. What page are you -- 16:27:10
 12 Q. On page -- I'm sorry, paragraphs 36 16:27:12
 13 through 38. 16:27:16
 14 A. All right. 16:27:20
 15 Q. In the means for transmitting, for 16:27:20
 16 example, you say -- in that construction, you use 16:27:22
 17 the -- and my -- my issue isn't so much with the 16:27:24
 18 particular constructions of the -- of the specific 16:27:27
 19 terms where you've used it, it's just what's the 16:27:30
 20 difference. And let me spit the question out 16:27:32
 21 cleanly. 16:27:35
 22 What's the difference between 16:27:36
 23 executing a systematic sequence of mathematical 16:27:37
 24 and/or logical operations and computer software 16:27:40
 25 executable on a processor capable of? 16:27:45

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1 A. I -- I think the origin for those two 16:27:51
 2 choices of words fell based on the original language 16:27:54
 3 of the claim. And let me confirm that to myself. 16:28:00
 4 MR. BRANDON: Jason, can you please 16:28:28
 5 tell us to what you're referring when you say 16:28:30
 6 "executing a systematic sequence," like, what 16:28:32
 7 particular term so we can turn to it in the report? 16:28:35
 8 A. Page 32 would be an example. 16:28:39
 9 THE WITNESS: I'm not Jason, but 16:28:41
 10 I -- I was familiar what he had cited me to. 16:28:42
 11 A. I think where there is not a 16:28:54
 12 means-plus-function element, I -- I used kind of a 16:28:58
 13 standard definition of what it means to perform 16:29:03
 14 something, for example, the applying or comparing 16:29:10
 15 step, similar to what some people think of as an 16:29:14
 16 algorithm or some people think of as processing. 16:29:17
 17 But I -- I think each one was just my best reading 16:29:22
 18 as to what I thought the -- 16:29:24
 19 Q. (BY MR. WOLFF) Okay. So -- 16:29:24
 20 A. -- appropriate language would be. 16:29:26
 21 Q. In the -- let me see if I understand. 16:29:27
 22 So -- in -- in, for example, this one on page 32 -- 16:29:29
 23 A. Uh-huh. 16:29:29
 24 Q. -- "automatically applying or 16:29:31
 25 comparing," you say, "Executing a systematic 16:29:33

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1 sequence of mathematical or logical operations." 16:29:35
 2 You use that language in that claim -- for that 16:29:38
 3 claim term because it's not a means-plus-function, 16:29:41
 4 correct? 16:29:44
 5 A. I wish I could say to you that -- that 16:29:44
 6 my recollection is that I had that specific goal in 16:29:47
 7 mind. If you -- if you look, for example, in 16:29:51
 8 claim 47 of the '025, it says, "further comprising a 16:30:02
 9 computer program design filter to automatically 16:30:06
 10 apply or compare the Internet media venue," et 16:30:08
 11 cetera. Okay. And so this -- this is a reference 16:30:12
 12 to that function being performed by a computer 16:30:19
 13 program. And I -- I just have -- seems like maybe I 16:30:23
 14 had picked that language up or something from a 16:30:30
 15 previous case that I worked on in the Eastern 16:30:32
 16 District or something that -- that that is -- is 16:30:34
 17 language that relates to what a computer program 16:30:40
 18 does to the -- you know, the execution of a computer 16:30:43
 19 program. 16:30:46
 20 Q. And -- and by that language, you're 16:30:46
 21 referring to as executing a systematic sequence of 16:30:49
 22 mathematical or logical operations? 16:30:52
 23 A. Yes. 16:30:56
 24 Q. Okay. But when you -- on page 31, for 16:30:57
 25 example, when you used computer program design 16:31:00

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1 filter or computer program distribution filter, you 16:31:03
 2 used software that processes fill in a blank. 16:31:07
 3 A. I understand. And I -- and I -- sitting 16:31:15
 4 here today, I can't tell you why I went one way with 16:31:18
 5 one and one way with the other, except for the fact 16:31:21
 6 that -- that I think I'm responding to the 16:31:24
 7 automatically applying or comparing. 16:31:27
 8 Q. So it -- 16:31:32
 9 A. That it's done automatically, as opposed 16:31:33
 10 to any other way that it might be done. Whereas 16:31:35
 11 these things over here on page 31 are -- are sort of 16:31:37
 12 structural. They're a filter in both cases, and I 16:31:44
 13 focused on what the filter is, whereas on page 32, 16:31:49
 14 we're dealing with -- my wife could clarify whether 16:31:52
 15 that's a gerund or a participle, words that tend to 16:31:56
 16 end in i-n-g. But we're dealing with an action 16:32:01
 17 that's -- that's done automatically. And I think I 16:32:03
 18 was trying to capture the idea that it's -- it's 16:32:05
 19 done automatically by a program. And -- and that's 16:32:07
 20 a way of characterizing what computer programs do. 16:32:11
 21 Q. Okay. And then if we went back to 16:32:16
 22 page 31 where you've got this computer program 16:32:18
 23 design filter and computer program distribution 16:32:21
 24 filter, there you're saying that that's structure 16:32:23
 25 and that's why that's software? 16:32:26

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1 A. It's a noun, okay, as opposed to kind of 16:32:28
 2 a verb, I guess. 16:32:31
 3 Q. Is the computer program design filter 16:32:32
 4 described in the specification? 16:32:35
 5 A. I -- I -- gosh, I remember looking for 16:32:38
 6 the word "filter" in the spec, and I don't think I 16:32:40
 7 found it. I can't -- again, that's a fact. It's 16:32:43
 8 either in there or it's not. I don't think I did. 16:32:47
 9 But I searched for discussion in the specification 16:32:52
 10 as to what the design filter did, and it's -- there 16:32:56
 11 is -- it is described in terms of -- what I've said 16:33:01
 12 here, software that processes design or style 16:33:07
 13 standards, as opposed to in the second case, 16:33:09
 14 software that processes distribution standard -- 16:33:12
 15 factors. 16:33:15
 16 Q. And how is it that you mean software is 16:33:15
 17 structure? 16:33:19
 18 A. It's a program. It's something that 16:33:22
 19 people have written to perform an algorithm, which 16:33:24
 20 accomplishes the goals -- or the -- the function 16:33:30
 21 that's required of it. And in this case, it's 16:33:33
 22 processing design or style standards. 16:33:37
 23 Q. And is -- and is an algorithm a 16:33:39
 24 systematic sequence of mathematical or logical 16:33:41
 25 operations? 16:33:45

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1 A. That's a common definition of an 16:33:45
 2 algorithm. 16:33:47
 3 Q. So, again, that's where I -- I get 16:33:48
 4 confused here, because on page 32, you use the 16:33:50
 5 executing a systematic sequence of mathematical or 16:33:55
 6 logical operations, but here you use software. 16:34:00
 7 A. Well, I'll tell you one more time. The 16:34:03
 8 filters that are described on page 31 are nouns. 16:34:05
 9 Okay. And the term that I was addressing on 16:34:08
 10 pages 32 and 33 -- terms, were terms that are verbs. 16:34:18
 11 And so I -- I characterized that in terms of 16:34:25
 12 verbiage, executing. 16:34:30
 13 Q. So even in the apparatus claims in the 16:34:33
 14 '025 patent, this automatically applying or 16:34:40
 15 automatically apply or compare, that's a noun or 16:34:45
 16 that's -- is that a verb? 16:34:48
 17 MR. BRANDON: Objection, form. 16:34:49
 18 A. It's a purpose assigned to a noun, I 16:34:50
 19 guess. 16:34:54
 20 Q. (BY MR. WOLFF) And what noun is it 16:34:57
 21 assigned to? 16:34:58
 22 A. The -- for example, the -- I'm reading 16:35:01
 23 from the language of claim 47 at column 67 beginning 16:35:05
 24 at line 39, "comprising a computer program design 16:35:08
 25 filter to automatically apply or compare," et 16:35:12

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1 cetera. I think that's exactly the -- where the 16:35:15
 2 language on page 32 came from. 16:35:18
 3 Q. The claim language you're referring to, 16:35:23
 4 not your definition? 16:35:28
 5 A. The -- the stuff in bold -- 16:35:29
 6 Q. Right. 16:35:30
 7 A. -- on the left. 16:35:31
 8 Q. Right. I agree that's part of the claim 16:35:32
 9 language. 16:35:34
 10 A. Okay. Yeah. Yes, sir. 16:35:35
 11 Q. All right. But then for -- in -- in the 16:35:39
 12 '045 patent, and this is referring to paragraph 31, 16:35:44
 13 I think, of your report, the means for applying is 16:35:47
 14 executing systematic sequence of mathematical or 16:35:50
 15 logical operations. 16:35:53
 16 MR. BRANDON: Is there a question? 16:36:01
 17 Q. (BY MR. WOLFF) And so -- so there that 16:36:07
 18 would be a -- some action that's supposed to be 16:36:09
 19 happening, correct? 16:36:13
 20 A. No, it's supposed to be a structure that 16:36:17
 21 is the corresponding structure of that means. 16:36:20
 22 Q. But -- but you told me earlier that 16:36:21
 23 the -- that the difference that you used here, the 16:36:23
 24 distinction you made between using this executing 16:36:27
 25 this systematic sequence of mathematical or logical 16:36:28

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1 operations was whether it was doing something. 16:36:30
 2 A. Yes. 16:36:33
 3 Q. Like a gerund -- 16:36:33
 4 A. Uh-huh. 16:36:33
 5 Q. -- or something, as opposed to some sort 16:36:34
 6 of structure. But you just told me that -- 16:36:37
 7 MR. BRANDON: Objection to form. 16:36:40
 8 Q. (BY MR. WOLFF) -- the means for 16:36:42
 9 applying was a structure. 16:36:43
 10 A. It is structure, but it's characterized 16:36:43
 11 as a structure which performs a function, and 16:36:46
 12 because it's a means-plus-function element. And I 16:36:50
 13 used that language in describing the function that's 16:36:53
 14 performed by the means, the corresponding structure 16:36:56
 15 being computer software. And in paragraph 31, I 16:36:59
 16 very specifically even identify it for the preferred 16:37:01
 17 embodiment that it's the -- I think that that is met 16:37:05
 18 by the Presentation Generation Program, which 16:37:07
 19 performs that set of sequence -- that set of steps, 16:37:10
 20 not necessarily in sequence, but that's what the 16:37:13
 21 specification says that it does. 16:37:16
 22 Q. I'm going to ask about that. Why -- why 16:37:21
 23 do you say at paragraph 31 of your report that 16:37:24
 24 these -- the four steps that you've enumerated are 16:37:28
 25 not performed in any particular order? 16:37:31

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1 A. I'll tell you exactly. Because -- 16:37:33
 2 because lawyers such as yourself in cases that I've 16:37:37
 3 had before have tried to argue, for example, that 16:37:41
 4 the steps in a means plus -- in a -- in a method 16:37:43
 5 claim do or don't have to be performed in a 16:37:47
 6 particular order. And I -- I'm probably just -- put 16:37:50
 7 that parenthetical in there just possibly in an 16:37:54
 8 overabundance of caution. When I look at what those 16:38:01
 9 are, I -- I just -- that's just the way I've 16:38:04
 10 developed to write my expert reports and 16:38:11
 11 declarations. 16:38:15
 12 Q. So are you -- are you saying that's your 16:38:15
 13 opinion, then, these particular steps do not have to 16:38:17
 14 be performed in any particular order? 16:38:19
 15 A. Let me take a look again. 16:38:21
 16 (Witness Reviews Document.) 16:38:30
 17 A. I think step 2 has to be done before -- 16:38:32
 18 after step 1. Okay. Because I -- it says in 16:38:35
 19 step 1, "identifying one or more selected media 16:38:39
 20 venues for publication." And then No. 2, "accessing 16:38:42
 21 data representing each identified media venue's 16:38:44
 22 guidelines. So two has to go before one. But three 16:38:47
 23 doesn't have to go -- it could go before one or 16:38:51
 24 between one and two. I think step four would have 16:38:54
 25 to be done last. 16:39:01

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1 So, really, it's step three that I 16:39:03
 2 think is open, in terms of order. 16:39:05
 3 Q. (BY MR. WOLFF) How did you -- where did 16:39:18
 4 you -- strike that. 16:39:21
 5 What's the basis for your steps 2 16:39:23
 6 and 3 where you use the -- the term "accessing"? 16:39:27
 7 MR. BRANDON: Objection to the form. 16:39:32
 8 A. There's a -- I -- I think that came out 16:39:33
 9 of my understanding of the databases that are 16:39:37
 10 described as being sources of information for the 16:39:40
 11 Presentation Generation Program. 16:39:44
 12 Q. (BY MR. WOLFF) Is -- is this four-step 16:39:45
 13 sequence enumerated in the specification for the 16:39:48
 14 patents? 16:39:54
 15 A. It is. I don't know that it's ever 16:39:54
 16 shown as -- you know, in a little paragraph or 16:39:56
 17 something, but that's -- that's my understanding of 16:39:59
 18 exactly what the Presentation Generation Program 16:40:01
 19 does in order to apply the corresponding guidelines 16:40:05
 20 of the media venues. 16:40:08
 21 Q. And that's from taking a look at the 16:40:10
 22 patent as a whole? 16:40:12
 23 A. I don't think -- 16:40:14
 24 MR. BRANDON: Objection to the form. 16:40:15
 25 A. Yeah, I don't think -- I don't think I 16:40:17

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1 had to look at every single column and line of the 16:40:19
 2 patent, but in the area where it discusses what the 16:40:22
 3 program -- what the Presentation Generation Program 16:40:25
 4 does in those areas, I looked at the specification 16:40:27
 5 to understand what it was. 16:40:31
 6 Q. (BY MR. WOLFF) And that these are the 16:40:33
 7 areas that you recited in your report here on 16:40:34
 8 page 8? 16:40:40
 9 A. Those are -- those are a representative 16:40:40
 10 set of areas and those are the -- primarily the ones 16:40:43
 11 that -- in fact, I went back and looked at those. I 16:40:46
 12 don't -- I don't think that there were any typos as 16:40:48
 13 best I can remember, but those are the ones that -- 16:40:50
 14 that I had -- I had reference to. I think if you 16:40:52
 15 look at those in concert, you'll find the support 16:40:55
 16 for what I said on the previous page. 16:40:58
 17 Q. Okay. 16:41:00
 18 A. I did at least. 16:41:00
 19 Q. I'm going to switch gears on you a 16:41:02
 20 little bit and go back to this computer software 16:41:03
 21 executable on a processor capable of. You're -- 16:41:06
 22 what you described earlier was that that conveys 16:41:09
 23 structure to you, right? You used that where you 16:41:11
 24 saw it was a computer program or something in the 16:41:15
 25 claim? 16:41:17

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1 A. That's the corresponding -- 16:41:17
 2 MR. BRANDON: Objection, form. 16:41:18
 3 A. That's the corresponding structure for 16:41:19
 4 several of the limitations that are expressed in the 16:41:20
 5 means-plus-function form. 16:41:24
 6 Q. (BY MR. WOLFF) And then in the '045 16:41:25
 7 patent, you used that definition for the means for 16:41:27
 8 transmitting, the means for the seller to select, 16:41:30
 9 and the means for the media venues to input. If you 16:41:34
 10 want reference to your paragraphs, it's 36 through 16:41:37
 11 40, roughly. 16:41:39
 12 A. Okay. 16:41:40
 13 Q. Is it because you think that those steps 16:41:42
 14 are structure? 16:41:44
 15 MR. BRANDON: Objection, form. 16:41:47
 16 Q. (BY MR. WOLFF) Or those means are 16:41:49
 17 structure? 16:41:51
 18 A. I don't understand the question at all. 16:41:51
 19 Q. Well, I'm just trying to understand 16:41:53
 20 why -- why the -- the means for applying is this 16:41:55
 21 executing a systematic sequence of mathematical or 16:41:58
 22 logical operations, yet the means for transmitting 16:42:01
 23 or selecting or inputting are computer software 16:42:04
 24 executable on a processor capable of -- 16:42:09
 25 MR. BRANDON: Objection, form. 16:42:15

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1 A. Well, if you -- if you look at what I 16:42:16
 2 did with the means for applying the guidelines, I 16:42:17
 3 actually broke out a four-step process. Okay. And 16:42:20
 4 so I had more detail there I thought that was 16:42:26
 5 appropriate, given the nature of the applying 16:42:30
 6 corresponding guidelines of the media venues. 16:42:31
 7 And the others were -- were -- you 16:42:37
 8 know, transmitting is transmitting. I just gave you 16:42:39
 9 language dealing with initiating a data 16:42:44
 10 transmission. There's not -- there's not as many 16:42:49
 11 steps associated with accomplishing that function as 16:42:51
 12 I had identified relative to the computer software 16:42:55
 13 that I specified for the means for applying. 16:42:57
 14 Q. (BY MR. WOLFF) But a person of ordinary 16:43:01
 15 skill in the art looking at the patent would say 16:43:03
 16 when they see -- saw these terms in the -- in the 16:43:05
 17 claims, they would say, ah ha, there are some -- 16:43:08
 18 this means some computer software where executable 16:43:10
 19 on a processor? 16:43:15
 20 MR. BRANDON: Objection to form. 16:43:16
 21 A. Yes. 16:43:17
 22 Q. (BY MR. WOLFF) Okay. And -- and would 16:43:21
 23 they -- would they think that there should be some 16:43:21
 24 corresponding description in the written 16:43:24
 25 description? 16:43:25

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1 MR. BRANDON: Objection to form. 16:43:27
 2 A. Yes. 16:43:28
 3 Q. (BY MR. WOLFF) And -- and is there? 16:43:29
 4 A. Yes. I cited -- in each one of these 16:43:31
 5 cases, it isn't like I just left you in hand with 16:43:34
 6 computer software executable. I actually then in 16:43:37
 7 the pros following these tables gave you 16:43:41
 8 illustrative examples of specific programs by name 16:43:43
 9 and number that I felt like were the examples of 16:43:48
 10 that particular computer software. 16:43:53
 11 Q. But those -- those are just names -- 16:43:56
 12 more names; they're not actually algorithms, right? 16:43:59
 13 MR. BRANDON: Objection to form. 16:44:02
 14 A. I -- I don't agree with that. The names 16:44:03
 15 tell you what the nature -- the names coupled with 16:44:05
 16 the written description that's present in the 16:44:10
 17 specification tell you what those various programs 16:44:12
 18 do. We already went through that, I think, with 16:44:14
 19 respect to the Presentation Generation Program. And 16:44:18
 20 in each case I cited to you portions of the 16:44:20
 21 specification which describe the nature of what 16:44:26
 22 those programs do as they are executed on the 16:44:30
 23 processor step by step. 16:44:34
 24 Q. (BY MR. WOLFF) If you'll turn to 16:44:42
 25 page 15 of your report -- 16:45:02

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1 A. Okay. 16:45:07
 2 Q. -- this is the creating limitations 16:45:08
 3 here. 16:45:11
 4 A. Uh-huh. 16:45:11
 5 Q. I -- I think you testified earlier today 16:45:12
 6 that the -- the creating -- you -- you disagree with 16:45:25
 7 the defendants that the creating is the step that's 16:45:29
 8 performed by the seller? 16:45:31
 9 A. That the creating the ultimate ad or 16:45:34
 10 presentation, I don't believe that that's done by 16:45:37
 11 the seller on the -- at the seller end of the 16:45:39
 12 inputs. That's correct. 16:45:43
 13 Q. You think that's done by the 16:45:44
 14 Presentation Generation Program? 16:45:46
 15 A. Yes, as an example of the computer 16:45:46
 16 software executable on a program that does all that 16:45:50
 17 stuff. 16:45:53
 18 Q. With -- and I think that your -- I think 16:45:53
 19 that your testimony earlier was -- was clear to me 16:45:55
 20 that I understand what your position is with respect 16:45:57
 21 to the '045 patent. But on the '025 patent where is 16:46:00
 22 it in the claim language that makes you think that 16:46:04
 23 that is a step that's performed by the Presentation 16:46:08
 24 Generation Program? 16:46:15
 25 MR. BRANDON: Objection to form. 16:46:15

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1 A. I think it's the same specification, and 16:46:17
 2 it teaches that that's what is done by the 16:46:19
 3 Presentation Generation Program. 16:46:22
 4 Q. (BY MR. WOLFF) So it's -- it's not 16:46:24
 5 something in the claims that's guiding you there; 16:46:25
 6 it's something in the specification? 16:46:27
 7 A. Well -- 16:46:38
 8 MR. BRANDON: Let me just object to 16:46:40
 9 form on that question. 16:46:41
 10 A. I -- I guess relative to differences of 16:46:44
 11 opinion over claim constructions, I don't 16:46:47
 12 understand -- 16:46:50
 13 Q. (BY MR. WOLFF) Right. 16:46:50
 14 A. Can you show me where in any of these 16:46:51
 15 tables there is -- there are competing constructions 16:46:53
 16 that capture the point you're trying to make? 16:46:57
 17 Q. (BY MR. WOLFF) Well, I guess what I'm 16:47:00
 18 going at is your testimony earlier today. I think 16:47:02
 19 that it was clear. Doug asked you -- excuse me, 16:47:05
 20 counsel for Yahoo! asked you earlier about the -- 16:47:08
 21 the seller and the word "create" occurs in the 16:47:11
 22 "whereby clause." And your testimony there was that 16:47:15
 23 that wasn't a reasonable way to -- to construe the 16:47:19
 24 create requirement in the '045 patent, correct? 16:47:22
 25 A. Okay. Now I'm beginning to get a little 16:47:30

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1 context. You're talking about with respect to that 16:47:33
 2 "whereby clause" at the end of claim 1? 16:47:37
 3 Q. Right. And I think I'm clear. I 16:47:38
 4 understand what your position is on the '045 patent. 16:47:39
 5 A. Okay. I'm not trying to repeat it. 16:47:41
 6 Q. Yeah, and I don't want you to repeat it. 16:47:43
 7 Trust me. What I -- what I want to know is -- and 16:47:45
 8 because what you said was that the -- that the 16:47:48
 9 creating is something that's done by the 16:47:50
 10 Presentation Generation Program. 16:47:53
 11 A. Well, maybe a clearer way to say it in 16:47:55
 12 general is that it is not required to be done at 16:47:57
 13 the -- at the seller end of the system. 16:48:00
 14 Q. Okay. But in -- in the claims of the 16:48:02
 15 '025 patent, the word "create" doesn't occur in the 16:48:08
 16 computer controller limitation, does it? 16:48:10
 17 MR. BRANDON: Objection to form. 16:48:14
 18 What claims are we talking about, the '025? 16:48:15
 19 MR. WOLFF: Claims 1 and 179. The 16:48:22
 20 only two independent claims in the patent that have 16:48:25
 21 been inserted. 16:48:29
 22 (Witness Reviews Document.) 16:48:58
 23 A. Again, I don't think I understand what 16:49:07
 24 the issue you're -- you're addressing is. 16:49:10
 25 Q. (BY MR. WOLFF) Let me pin you down a 16:49:43

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1 little bit more -- 16:49:44
 2 A. Okay. 16:49:44
 3 Q. -- then, so that maybe -- maybe this 16:49:45
 4 will help. In paragraph 50 you say that the -- that 16:49:47
 5 the system is what is doing the creating. And 16:49:51
 6 what's unclear to me is what the -- what you mean by 16:49:55
 7 the system. Based on your earlier testimony, the 16:49:57
 8 example that you've cited here, it's the 16:50:01
 9 Presentation Generation Program 1710. 16:50:04
 10 A. Well, that's support in the 16:50:09
 11 specification for the language that we -- that's 16:50:11
 12 cited at the top of page 16. 16:50:16
 13 (Witness Reviews Document.) 16:50:42
 14 A. To be frank, what's throwing me is I -- 16:50:52
 15 I can't find the two quoted -- help me. I can't 16:50:56
 16 find the two quoted things that are found at the 16:51:04
 17 bottom of page 15, for example, in claim 1 of the 16:51:18
 18 '05 -- '025. 16:51:09
 19 Q. (BY MR. WOLFF) Well, claim -- claim 1 16:51:10
 20 and 179 of the '025 -- well, I think, actually, 16:51:13
 21 you're -- you're confusing two terms here. I think 16:51:21
 22 that the first limitation is referring to the '045 16:51:23
 23 patent. 16:51:27
 24 A. Okay. 16:51:27
 25 Q. And I think that the second one -- 16:51:27

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1 A. All right. I understand. 16:51:27
 2 Q. -- is referring to the '025 and '059 16:51:29
 3 patents. 16:51:32
 4 A. Okay. All right. Yeah. The first row 16:51:38
 5 is the one I thought we just had finished talking 16:51:40
 6 about, which is the "whereby clause." Okay. Now, 16:51:42
 7 you're saying that these are in the '059? 16:51:46
 8 Q. The '059 and the '025. I'll just 16:51:48
 9 represent to you so it's faster that the place -- 16:51:53
 10 the limitation that you can find these in is in the 16:51:55
 11 '025, it would be in the seller interface -- I'm 16:51:56
 12 sorry, the second interface. And the '059, it would 16:51:58
 13 be in the third interface. 16:52:02
 14 A. Ah, I finally found it. I think my eyes 16:52:06
 15 are just tired. Okay. There it is. Okay. Now -- 16:52:09
 16 MR. BRANDON: And what -- can I ask 16:52:17
 17 what the question is? 16:52:18
 18 A. I was coming back to that myself. So 16:52:20
 19 what's the question? 16:52:23
 20 Q. (BY MR. WOLFF) Okay. In paragraph 50 16:52:24
 21 of your report -- 16:52:25
 22 A. Uh-huh. 16:52:25
 23 Q. -- you say that the system creates and 16:52:26
 24 publishes these customized advertisements, and then 16:52:28
 25 you cite language that talks about the -- I -- I 16:52:31

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1 assume it's the central controller. And what I'm 16:52:34
 2 trying to understand here is whether in your 16:52:41
 3 construction you think that -- or in your mind, you 16:52:43
 4 think that this creating -- this create limitation 16:52:47
 5 in the claims in the '025 patent and the '059 patent 16:52:51
 6 are steps that are associated with the computer 16:52:56
 7 controller. 16:53:03
 8 MR. BRANDON: Objection to form. 16:53:08
 9 A. I don't have a -- I mean, certainly that 16:53:35
 10 was my focus here. But as I've said a couple of 16:53:37
 11 times, I'm not trying to do an infringement or 16:53:40
 12 validity analysis. I haven't, and could I with the 16:53:43
 13 same claims in the '025 and the '059 find 16:53:47
 14 infringement likely in a system where something 16:53:58
 15 other than the central computer perform that step, 16:54:00
 16 I -- it's too soon for me to tell. 16:54:04
 17 Q. (BY MR. WOLFF) All right. And my basis 16:54:06
 18 is not to get your infringement or validity 16:54:08
 19 opinions. My understanding -- I'm trying to 16:54:12
 20 understand the scope of the issues here and the 16:54:14
 21 differences in our -- in our constructions. And you 16:54:19
 22 would agree with me, would you not, that the word 16:54:23
 23 "create" appears in the interface limitations in the 16:54:25
 24 '025 and the '059 patents? 16:54:31
 25 MR. BRANDON: Objection to the form. 16:54:34

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1 A. It -- it's -- it does. But, again, I 16:54:36
 2 don't think that necessarily -- the way it's -- it 16:54:40
 3 appears implies that it's the second interface that 16:54:43
 4 has to be associated with the creation. What -- 16:54:47
 5 what that's associated, the second interface, is 16:54:50
 6 associated with prompting the user to input 16:54:54
 7 information to create. In a sense, will eventually 16:54:58
 8 be -- or may be used to create an advertisement, but 16:55:03
 9 it's not linked as being done at the second 16:55:06
 10 interface. 16:55:10
 11 Q. (BY MR. WOLFF) Is it -- is it linked to 16:55:10
 12 being done with a computer controller in either 16:55:12
 13 claim -- 16:55:15
 14 A. I think -- 16:55:15
 15 Q. -- in either patent, I should say? 16:55:16
 16 A. I don't think that there's -- the claim 16:55:18
 17 specifically limits it to any particular place. 16:55:20
 18 It's just that when I look for support, I cited 16:55:23
 19 the -- again, the Presentation Generation Program on 16:55:26
 20 page 16. 16:55:29
 21 Q. So in your view, this creation -- this 16:55:30
 22 creating limitation in the '025 and the '059 patents 16:55:34
 23 is not bounded by any specific element in the claim? 16:55:38
 24 MR. BRANDON: Objection to form. 16:55:46
 25 A. That's an issue I've just never thought 16:55:46

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1 about. I -- I can -- and I thought the issue here 16:55:49
 2 is whether it was customizing to one of them or each 16:55:52
 3 of them one at a time or to all of them. And that's 16:55:57
 4 what I really addressed in my report. But I don't 16:56:02
 5 think I'm prepared here today to -- to say that the 16:56:08
 6 creation has to be done or can't be done at any 16:56:11
 7 point along the system. I have not formed an 16:56:15
 8 opinion one way or the other on those two 16:56:17
 9 limitations. 16:56:20
 10 Q. (BY MR. WOLFF) But you would agree 16:56:26
 11 you -- you actually think it could be done in either 16:56:27
 12 one, though, right? 16:56:29
 13 A. In either one of what? 16:56:30
 14 Q. Either the computer controller or the 16:56:32
 15 first -- or in the second interface of the '025 16:56:34
 16 patent or the third interface in the '059 patent. 16:56:37
 17 MR. BRANDON: Objection, form. 16:56:40
 18 A. I'm not offering any opinion on that 16:56:40
 19 today. I haven't -- that's an issue I haven't 16:56:42
 20 really thought about from -- from the point of view 16:56:45
 21 of those additional claims. 16:56:47
 22 Q. (BY MR. WOLFF) And the reason I'm 16:56:49
 23 asking is just because in your -- in your report, 16:56:51
 24 that's kind of how you limit it. You -- you don't 16:56:53
 25 have any other examples of the -- of the -- for 16:56:56

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1 example, the seller interface or the third-party 16:57:01
 2 professional interface. 16:57:05
 3 A. Creating. 16:57:07
 4 Q. Creating an ad. 16:57:08
 5 A. Yeah. I mean, my purpose in citing what 16:57:09
 6 I cited on page 16 was to show in a sense there was 16:57:12
 7 written support for that limitation. This is one 16:57:15
 8 place that they show it. You're asking me do I 16:57:17
 9 think that's the only place. I haven't thought 16:57:21
 10 about that. I would have to go back and rework my 16:57:23
 11 way through -- 16:57:26
 12 Q. Would you -- 16:57:26
 13 A. -- the whole patent. 16:57:27
 14 Q. Would you agree with me that the -- that 16:57:28
 15 the patent discloses the seller interface creating 16:57:29
 16 an ad? 16:57:30
 17 MR. BRANDON: Objection to form. 16:57:30
 18 A. It -- the seller interface -- you're 16:57:32
 19 talking about that column 19 section, I think, that 16:57:34
 20 we went through earlier? 16:57:36
 21 Q. (BY MR. WOLFF) Or we could be talking 16:57:37
 22 about column 42 in the '025 patent or in the '045 16:57:40
 23 patent. 16:57:44
 24 MR. BRANDON: Objection to form. 16:57:45
 25 Q. (BY MR. WOLFF) That's a discussion of 16:57:47

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1 the Presentation and Configuration Program 4715. 16:57:48
 2 A. I don't remember that in detail. But I 16:57:50
 3 think there is some discussion in some specific 16:57:52
 4 embodiments of doing that at least in part. Whether 16:57:55
 5 it says it's redundant or something, doing it 16:57:58
 6 there -- I think it's always something that's 16:58:01
 7 considered or looked at in the Presentation 16:58:02
 8 Generation Program. 16:58:07
 9 Whether it might be done in other 16:58:07
 10 places, there seems to be some support for that, but 16:58:08
 11 again I haven't really tried to -- to work through 16:58:12
 12 that at all. I didn't think that was an issue. 16:58:14
 13 Q. So you have no opinion on that today? 16:58:17
 14 A. I -- I know a place where it is 16:58:19
 15 disclosed to be done. I'm not ready to tell you 16:58:22
 16 that I think the claim is limited to only doing that 16:58:24
 17 there. I -- I don't have an opinion about that yet. 16:58:29
 18 And I won't if I don't have to, but I don't have one 16:58:33
 19 to offer to you today. I'd have to work my way 16:58:35
 20 through that whole thing along that point. And, 16:58:38
 21 again, I didn't think that was one of the issues in 16:58:40
 22 the difference of opinions between the parties. 16:58:42
 23 Q. What is meant by "customized" in 16:59:01
 24 paragraph 49 of your report? 16:59:04
 25 A. I guess I don't understand what you 16:59:10

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1 don't understand about it. It's customized to each 16:59:11
 2 of the selected media venue's presentation rules. 16:59:14
 3 So for each one of them, the -- I think this create 16:59:18
 4 a presentation that complies, it -- it takes one 16:59:23
 5 media venue, creates an ad that matches its 16:59:27
 6 presentation rules. If there's another selected 16:59:30
 7 media venue with different presentation rules, then 16:59:33
 8 there will be a customized presentation created 16:59:36
 9 using that one's -- that media venue's presentation 16:59:39
 10 rules, et cetera. 16:59:42
 11 Q. And then at paragraph 51 you -- you use 16:59:44
 12 the word "transformed" instead of customized. And 16:59:48
 13 I'm just -- what's -- what's the word transformed 16:59:54
 14 mean in -- in paragraph 51? 16:59:56
 15 A. Well, customized in the previous one was 16:59:58
 16 an adjective. Okay. Well, I guess it's not, is it? 17:00:01
 17 I tend to think of it as a customized presentation, 17:00:05
 18 but it's not. I don't know that I meant anything 17:00:08
 19 different. 17:00:10
 20 MR. BRANDON: I'm going to object to 17:00:11
 21 the form of the previous question. 17:00:12
 22 Q. (BY MR. WOLFF) So the transform doesn't 17:00:18
 23 mean anything special in your -- 17:00:20
 24 A. I think it just means -- 17:00:22
 25 Q. -- report? 17:00:24

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1 A. -- what the standard meaning of what 17:00:25
 2 transformed means, it's changed. And each one of 17:00:28
 3 them that would be customized, if you will. 17:00:30
 4 Q. But you think that this creating 17:00:35
 5 limitation is transforming or customizing a 17:00:37
 6 presentation? 17:00:41
 7 A. It's -- it's bringing the seller 17:00:43
 8 information into compliance with the presentation 17:00:48
 9 rules for each one of the selected media venues 17:00:55
 10 individually. And, again, that's what I thought the 17:00:59
 11 issue was. The construction proposed by your side 17:01:02
 12 of the dispute was that you thought that -- 17:01:05
 13 Q. I don't need to know that. 17:01:10
 14 A. Okay. Thank you. 17:01:12
 15 MR. BRANDON: Well, I think, you 17:01:13
 16 know, you asked a question, he should be able to 17:01:14
 17 finish his answer. 17:01:16
 18 MR. WOLFF: It's nonresponsive. 17:01:17
 19 Q. (BY MR. WOLFF) Paragraph 54 of your 17:01:24
 20 report, you -- you talk about the processing 17:01:27
 21 limitation. 17:01:33
 22 A. Yes. 17:01:34
 23 Q. Is there a difference in your mind 17:01:38
 24 between the terms "processing" and "created"? 17:01:41
 25 A. Create -- 17:01:49

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1 Q. I'm sorry, let me -- strike that. Let 17:01:50
 2 me put those in the same tense, right. 17:01:52
 3 Is there a difference in your mind 17:01:55
 4 between the terms "processing" and "creating"? 17:01:56
 5 A. In general, I think I would say there 17:02:06
 6 is. In this particular case, I think that the -- 17:02:08
 7 the processing that's in the term at dispute is 17:02:12
 8 processing that creates a customized advertisement. 17:02:19
 9 So if -- in this particular context, there isn't, 17:02:25
 10 because the processing we're talking about is to 17:02:32
 11 bring the electronic advertisement into compliance 17:02:36
 12 with the presentation rules of the media venue. 17:02:39
 13 And while we're here, this -- this 17:02:53
 14 finally got me to where I was thinking about 17:02:55
 15 earlier. I believe that I have been involved at 17:02:57
 16 least indirectly in a case where that executing a 17:03:01
 17 systematic sequence of mathematical and/or logical 17:03:06
 18 operations has been a Markman construction for one 17:03:08
 19 of the Eastern District of Texas judges for the term 17:03:13
 20 processing in a -- in a computing processing point 17:03:16
 21 of view. I think that's where I picked that up. 17:03:20
 22 That may not be appropriate here, but that's where I 17:03:26
 23 got that particular set of words. It was -- I was 17:03:28
 24 trying to find out where it was. It was for the 17:03:30
 25 term "processing," I think, in a computer context. 17:03:33

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1 Q. And, Doug -- and counsel for Yahoo! may 17:03:40
 2 have asked this earlier, and I apologize. You can 17:03:44
 3 just tell me if you remember what you told him, but 17:03:47
 4 what's the difference between applying and 17:03:49
 5 comparing? 17:03:52
 6 A. I have no idea whether we talked about 17:03:52
 7 that earlier. 17:03:54
 8 Q. Can you tell me what the difference 17:03:55
 9 between applying and comparing is? 17:03:57
 10 A. Applying is just a more general term 17:03:59
 11 than comparing, I think. You can apply the rules 17:04:02
 12 without necessarily doing a comparison. That's the 17:04:04
 13 way I -- I've looked at those. It says applying and 17:04:08
 14 comparing, does it not, in the -- wherever that 17:04:11
 15 language is in the claim? 17:04:13
 16 Q. Yeah, I think it was in claim 47. 17:04:13
 17 A. Wherever it is, I don't think they have 17:04:16
 18 the same scope. I tend to think you can apply the 17:04:19
 19 rules without doing a comparison. 17:04:21
 20 Q. Can you compare without applying? 17:04:24
 21 A. I wouldn't think so. I think 17:04:25
 22 applying -- comparing is a form of application. 17:04:27
 23 Q. And what's the basis for that? 17:04:29
 24 A. My understanding of what those words 17:04:31
 25 generally mean in a broad context and my 17:04:33

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1 understanding of what the Presentation Generation 17:04:35
 2 Program does. 17:04:38
 3 Q. And when the -- when the claim refers to 17:04:38
 4 applying or comparing, does that mean it has to 17:04:41
 5 do -- make a decision as to whether to apply or 17:04:48
 6 compare? 17:04:50
 7 A. I don't think so. 17:04:50
 8 Q. You could do either one and still 17:04:51
 9 satisfy the limitation? 17:04:54
 10 A. Could do both. 17:04:54
 11 Q. But that would still be doing either one 17:04:56
 12 and still satisfy the limitation? 17:04:59
 13 A. Yeah, Boolean guys like me would say 17:05:01
 14 that's an inclusive order instead of an exclusive 17:05:03
 15 order, if that means anything to you. 17:05:06
 16 Q. I used to be an electrical engineer. 17:05:08
 17 I'm recovering. 17:05:11
 18 A. Okay. I thought you said you used to be 17:05:11
 19 a lawyer and trying to recover. No. Well, I -- 17:05:13
 20 then you know what I'm talking about. And that's 17:05:15
 21 just the way the claim's written. It says applying 17:05:18
 22 or comparing. I -- I tend to think of them as being 17:05:21
 23 a little bit different. I don't know that that's 17:05:25
 24 going to be an issue here. 17:05:28
 25 Q. Is there a difference between selecting 17:05:44

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1 and identifying? 17:05:47
 2 A. You know, in -- in general English, I 17:05:51
 3 think there's a -- there is a difference, but I -- 17:05:53
 4 if you want me to give you something in terms of a 17:05:56
 5 recommended claim construction, we're going to have 17:05:59
 6 to go to a specific claim. 17:06:01
 7 Q. Well, selecting is something that occurs 17:06:03
 8 in I think all of the independent claims, correct? 17:06:05
 9 A. I think so. I think that means to pick 17:06:07
 10 it, and then use that as something that I'm going to 17:06:10
 11 do with it. Okay. And I tend to think of, you 17:06:13
 12 know, like the difference between selecting someone 17:06:19
 13 and taking them to dinner or saying, "That's Fred 17:06:22
 14 over there." Okay. But, again, if you want to put 17:06:24
 15 it in a claim context, we're going to have to look 17:06:27
 16 at a specific claim. 17:06:30
 17 Q. And I just did with the selecting, and I 17:06:31
 18 guess the identifying is the one I don't have a 17:06:33
 19 claim for, right? 17:06:35
 20 MR. BRANDON: Objection to form. 17:06:35
 21 Q. (BY MR. WOLFF) In your report, you use 17:06:37
 22 the term "identifying," correct? 17:06:38
 23 A. Show me. 17:06:40
 24 Q. Find the right one here. Skip that one. 17:06:56
 25 I think it's in one of your -- it's in your 17:08:20

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1 definition of "means for applying." You use 17:08:22
 2 identifying. 17:08:25
 3 A. I did? In No. 1 on page 7. 17:08:27
 4 Q. Yeah. Let's skip that one. Earlier in 17:08:33
 5 the day you testified about there being separate 17:08:36
 6 interfaces in the claims. 17:08:41
 7 A. I was asked a sequence of questions 17:08:44
 8 about whether I thought those interfaces had to be 17:08:46
 9 maintained separately. 17:08:48
 10 Q. And what -- forgive me if I don't 17:08:49
 11 recall, but can you recall what your testimony was? 17:08:52
 12 I thought you said that they had to be separate. 17:08:54
 13 MR. BRANDON: Object to the form. 17:08:57
 14 A. I don't think I did. I don't think I 17:08:58
 15 was that specific in my answer. 17:09:03
 16 Q. (BY MR. WOLFF) All right. Well, let's 17:09:06
 17 go to claim 1 of the '025 patent. 17:09:09
 18 A. All right. 17:09:16
 19 Q. Would you agree that there is a first 17:09:17
 20 interface and a second interface claim -- 17:09:19
 21 A. Yes. 17:09:23
 22 Q. -- there? 17:09:23
 23 Would you agree that they are 17:09:24
 24 separate interfaces? 17:09:26
 25 A. They're separately called out in the 17:09:32

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1 claim. And -- and where that kind of gets to be 17:09:34
 2 hard is whether or not they could both be 17:09:37
 3 implemented on the same computer or something. I -- 17:09:40
 4 that -- that -- as I say, that's the kind of 17:09:43
 5 question that's really more of infringement scope 17:09:45
 6 than -- 17:09:47
 7 Q. Well, I mean, isn't the infringement 17:09:49
 8 defined by the scope of the claim? 17:09:51
 9 A. Not necessarily. I mean -- 17:09:54
 10 Q. The claim scope doesn't affect 17:09:57
 11 infringement? 17:09:59
 12 A. No. I mean, I -- I think I understand 17:09:59
 13 exactly what the scope is. They're -- they are 17:10:02
 14 called out for -- as far as the first and second. 17:10:05
 15 But suppose somebody showed me a system where on the 17:10:08
 16 same computer system at -- at one time the seller 17:10:10
 17 happened to go sit down in the chair and use that 17:10:14
 18 computer system and do something, and then later on 17:10:16
 19 the -- one of the media venue guys came by and used 17:10:21
 20 that same computer. I could understand how somebody 17:10:26
 21 might argue, "Well, hey, the claim says that they 17:10:30
 22 have to be separate, so they can't be the same 17:10:32
 23 computer." The claim calls for them separately 17:10:34
 24 in -- in separate elements, but -- 17:10:39
 25 Q. Again, I'm not talking about a separate 17:10:43

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1 computer, per se. I'm just asking about is it 17:10:45
 2 separately calls out for a first interface and a 17:10:48
 3 second interface? So in your understanding, would 17:10:50
 4 the first interface have to be different from the 17:10:53
 5 second interface? 17:10:55
 6 A. I like that question. Yes, I think they 17:10:55
 7 would be, because they elicit different responses 17:10:57
 8 from different types of representation. 17:10:59
 9 Q. Would they be different computer 17:11:02
 10 programs? 17:11:04
 11 A. Now you're beginning to get into an area 17:11:06
 12 that I -- I don't know. I mean, how -- what do you 17:11:09
 13 call a computer program, you know? 17:11:11
 14 Q. What do you call a computer program? 17:11:13
 15 A. Well, I think of it as a bunch of 17:11:14
 16 instructions that accomplish some particular task. 17:11:17
 17 But, you know, if -- it -- they certainly would -- I 17:11:20
 18 think present different character on the screen or 17:11:22
 19 whatever you would be eliciting that stuff from. 17:11:28
 20 But somebody might say, "Hey, they're all in one 17:11:31
 21 great big computer program that here it is; it's got 17:11:36
 22 25,000 lines," you know. That -- I don't know that 17:11:38
 23 I can give you a definitive opinion. 17:11:43
 24 Q. Well, if I had to install two separate 17:11:45
 25 pieces of software, would that be two separate 17:11:48

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1 computer programs? 17:11:51
 2 A. I would think that's generally the case. 17:11:51
 3 Q. And if I installed one piece of 17:11:52
 4 software, would that be one computer program? 17:11:54
 5 A. I suppose it was the merging of the 17:11:54
 6 previously separated two. 17:11:56
 7 Q. Okay. 17:11:56
 8 A. Doesn't -- that's why I say, you know, 17:11:59
 9 is -- is Word a computer program? Yeah. Is Excel a 17:12:02
 10 computer program? Yeah. If I install Office, is 17:12:06
 11 that a computer program? And I get Word and Excel 17:12:09
 12 both on my computer? That's the -- that's why I 17:12:13
 13 say, I don't -- I don't think that's an issue here. 17:12:15
 14 I don't think we've had a construction of the 17:12:18
 15 program. 17:12:20
 16 Q. And in the '059 patent, there's a first 17:12:21
 17 interface, a second interface and a -- 17:12:25
 18 A. A third. 17:12:28
 19 Q. -- a third interface? 17:12:29
 20 A. Yes. 17:12:30
 21 Q. And those would all be separate 17:12:30
 22 interfaces, too? 17:12:34
 23 MR. BRANDON: Objection to form. 17:12:35
 24 A. I'm more comfortable with saying that 17:12:37
 25 the character of the first and second one are 17:12:39

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1 different enough that I think that they would -- 17:12:41
 2 their look and feel would be different. The third 17:12:46
 3 one, I'd have to go back and convince myself that 17:12:48
 4 there's something so different about its character 17:12:52
 5 that you -- you couldn't effectively use the seller 17:12:55
 6 interface in a similar way, but you're just a 17:12:59
 7 different person achieving different goals. 17:13:02
 8 I -- I just -- again, that's an 17:13:04
 9 issue that I haven't thought about. And like when I 17:13:05
 10 form opinions like that or express them in front of 17:13:10
 11 a video camera under oath, I -- I tend to be very 17:13:13
 12 careful about that. 17:13:16
 13 Q. (BY MR. WOLFF) All right. Well, 17:13:17
 14 let's -- let's turn to claim 1 in the '059 patent. 17:13:17
 15 A. Okay. 17:13:20
 16 Q. And claim 1 in the '059 patent talks 17:13:22
 17 about the third interface. 17:13:26
 18 A. All right. 17:13:30
 19 Q. And is there a -- a particular 17:13:34
 20 function -- strike that. 17:13:41
 21 Is there a particular function that 17:13:41
 22 is supposed to be achieved by the third interface? 17:13:47
 23 A. Yes. 17:13:51
 24 Q. And what is that function? 17:13:51
 25 A. It's -- it's supposed to allow a 17:13:52

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1 third-party professional -- excuse me. It's 17:13:56
 2 supposed to prompt a third-party professional to 17:14:00
 3 input information to select one or more Internet 17:14:03
 4 menu -- media venues and to create an electronic 17:14:06
 5 advertisement for the seller for publication to the 17:14:12
 6 selected Internet media venues. 17:14:15
 7 Q. Okay. And why did you drop out the 17:14:17
 8 prompted to input information? 17:14:20
 9 A. I just -- I'm tired. You're absolutely 17:14:21
 10 right. And it should be prompted to input 17:14:25
 11 information to create an electronic advertisement 17:14:28
 12 for the seller for publication to the selected 17:14:30
 13 Internet media venues. 17:14:33
 14 Q. And you would agree that that is a 17:14:34
 15 function that should be ascribed to the third 17:14:36
 16 interface? 17:14:39
 17 A. Oh, yeah. I don't have any problem with 17:14:39
 18 that. The question on this one -- and I misspoke 17:14:41
 19 earlier. I said the first and third. Previously I 17:14:44
 20 think that function was pretty much assigned to the 17:14:48
 21 second interface. And so they've now split it and 17:14:51
 22 said the seller's just going to identify themselves 17:14:55
 23 through their terminal or their interface, whatever 17:14:58
 24 you want to call it, that piece of software that 17:15:00
 25 prompts them for that purpose. And now they've come 17:15:03

1 in and said that the third interface is going to do 17:15:07
 2 the other part of what previously the seller did to 17:15:09
 3 select the venues, that those have to be done 17:15:12
 4 through two separate interfaces. 17:15:17
 5 I don't have an answer for that 17:15:19
 6 right here. Yeah, they could be. It could be that 17:15:20
 7 the second interface never has the capability of 17:15:23
 8 prompting anyone who sits down at -- and is -- 17:15:27
 9 starts trying to respond to that interface to select 17:15:33
 10 or create an ad. I -- I don't know. 17:15:37
 11 Q. And why is it you don't know? 17:15:46
 12 A. I've never studied the -- that issue. I 17:15:48
 13 never tried to decide yes or no on that. It's a 17:15:52
 14 complicated issue. I don't know what the patent 17:15:56
 15 specification teaches that might lead me to conclude 17:15:59
 16 that they had to be separate or that they could be 17:16:01
 17 accomplished through the same situation. That's the 17:16:06
 18 best answer I can give you today. I -- I haven't 17:16:11
 19 studied it. 17:16:14
 20 Q. Do the patents -- the '025 and the '059 17:16:19
 21 patents also call for separate databases for each of 17:16:22
 22 the interfaces, correct? 17:16:27
 23 A. No. I don't think of them as 17:16:28
 24 necessarily being separate, particularly the way 17:16:30
 25 database is described. I don't know what -- what 17:16:32

1 you would mean. I guess like program. Okay. 17:16:36
 2 Q. Do you think that's an unreasonable 17:16:41
 3 position that the -- that the databases have to be 17:16:43
 4 separate? 17:16:46
 5 A. No. It's a position I have no opinion 17:16:46
 6 on at this point, whether they have to be separate 17:16:51
 7 or not. That's the best I can give you. 17:16:55
 8 Q. They're separately called out in the 17:17:01
 9 claim, correct? 17:17:03
 10 A. Absolutely. They're identified 17:17:04
 11 separately in two separate limitations of the claim. 17:17:06
 12 Q. Would you expect them to be a single 17:17:16
 13 database? 17:17:17
 14 A. Database is such an amorphous term 17:17:19
 15 sometimes. I mean, it -- they could be on the same 17:17:23
 16 disk drive. They could be merged together into a 17:17:25
 17 single database where you query them and -- and get 17:17:28
 18 whatever information you need out of them. I -- 17:17:33
 19 sitting here today as best I could tell you, I don't 17:17:39
 20 think it would make a difference to me one way or 17:17:41
 21 the other. But I would have to see what the -- 17:17:43
 22 Q. What do you mean it wouldn't make a 17:17:45
 23 difference? 17:17:47
 24 A. If -- if you basically took one SQL 17:17:47
 25 database and put both sets of information into it so 17:17:50

1 you could query out of that one installation of some 17:17:52
 2 SQL database and get the presentation rules and you 17:17:56
 3 could get the seller information and whatever else 17:17:59
 4 these different -- I think there's three or four of 17:18:02
 5 them. And, you know, if you said to me, "Well, hey, 17:18:04
 6 we've only got Oracle. We've got one installation 17:18:07
 7 of Oracle, but that's it." So that's one database, 17:18:11
 8 and we don't have two databases, I probably wouldn't 17:18:13
 9 consider that to be a basis for noninfringement, and 17:18:17
 10 that's what I said. I see these questions largely 17:18:21
 11 as -- as having to do with given the language of the 17:18:23
 12 claim, would this particular implementation 17:18:25
 13 reasonably fall into it either directly, literally 17:18:28
 14 or under the doctrine of equivalency. 17:18:31
 15 And those are -- as I say, those are 17:18:33
 16 more infringement issues. I know what the claim 17:18:34
 17 says. It says there's a first and a second, and 17:18:36
 18 they give them different names and -- and that's as 17:18:38
 19 far as I can give you today. 17:18:40
 20 Q. Okay. And you said that with respect to 17:18:41
 21 infringement, you couldn't say -- you would say that 17:18:42
 22 there would probably be an infringement it sounds 17:18:46
 23 like. In the same context, it would be an 17:18:49
 24 infringement, it would be an anticipation or -- it 17:18:51
 25 would be something that would be found in the prior 17:18:53

1 art, too, if -- if you had a single database in the 17:18:55
 2 prior art. 17:18:57
 3 MR. BRANDON: Objection to form. 17:18:58
 4 MR. WOLFF: That's a fair objection. 17:19:02
 5 Q. (BY MR. WOLFF) If it's an infringement 17:19:09
 6 issue, it's also a validity issue, too, correct? 17:19:12
 7 A. It may be. You don't have invalidity 17:19:14
 8 under the doctrine of equivalence. 17:19:16
 9 Q. You could have obviousness? 17:19:18
 10 A. Different -- different question. Okay. 17:19:20
 11 Q. Right. 17:19:22
 12 A. Yes, you could. 17:19:23
 13 MR. WOLFF: I have no further 17:19:39
 14 questions at this time. 17:19:40
 15 MR. BRANDON: I'm going to -- let's 17:19:41
 16 take a brief break, and I'm going to look at my 17:19:43
 17 notes. 17:19:45
 18 MR. WOLFF: Okay. 17:19:46
 19 THE VIDEOGRAPHER: Off the record, 17:19:47
 20 5:20. 17:19:48
 21 (Recess Taken From 5:20 p.m. To 5:29 p.m.) 17:19:49
 22 THE VIDEOGRAPHER: Back on the 17:29:23
 23 record, 5:29. 17:29:27
 24
 25

1 EXAMINATION 17:29:28
 2 BY MR. BRANDON: 17:29:29
 3 Q. Dr. Rhyne, we've talked a lot today 17:29:29
 4 about prompting. Do you recall that discussion? 17:29:33
 5 A. Yes. 17:29:35
 6 Q. Take a look at claim 1 of the '025 for 17:29:35
 7 example. 17:29:39
 8 A. I have it. 17:29:51
 9 Q. All right. Just taking a look there at 17:29:51
 10 the bottom of the page, bottom of column 64, it 17:29:54
 11 says, "a first interface of the computer system 17:29:59
 12 through which each of the Internet media venues is 17:30:03
 13 prompted." 17:30:05
 14 A. Yes. 17:30:06
 15 Q. And there's a seller -- a similar 17:30:06
 16 language with respect to the seller interface, for 17:30:08
 17 example. 17:30:11
 18 A. Yes. 17:30:11
 19 Q. And my question to you is simply what 17:30:11
 20 initiates or generates a prompt? 17:30:15
 21 A. I think in each of those cases -- 17:30:15
 22 MR. WOLFF: Objection. 17:30:16
 23 THE WITNESS: Sorry. That's all? 17:30:18
 24 MR. WOLFF: That's all. 17:30:21
 25 A. Okay. In each of those cases, I 17:30:22

1 identified a specific program as a representative 17:30:24
 2 type of computer program that initiated the 17:30:28
 3 prompting. 17:30:30
 4 Q. (BY MR. BRANDON) Is there any 17:30:31
 5 difference between initiating the prompt and 17:30:32
 6 displaying the prompt? 17:30:36
 7 A. Yes. 17:30:37
 8 Q. What are the differences? 17:30:38
 9 A. The software that executes in the 17:30:40
 10 processor creates -- initiates the prompt. It gets 17:30:43
 11 to a point where its instruction says, "I want to 17:30:49
 12 show a prompt to the viewer," but that then has a 17:30:51
 13 path that it has to follow. We talked about wires, 17:30:58
 14 we talked about a driver, we talked about a card, 17:31:02
 15 and ultimately then it will reach the screen of the 17:31:06
 16 display device and then be displayed. 17:31:08
 17 Q. Speaking temporarily here, does 17:31:11
 18 initiating the prompt and displaying the prompt 17:31:17
 19 occur at the same time? 17:31:19
 20 A. No. 17:31:20
 21 Q. Which occurs first? 17:31:22
 22 A. Initiated by the software. 17:31:23
 23 Q. And you remember earlier today, 17:31:26
 24 Dr. Rhyne, when Mr. Lumish was asking you about 17:31:28
 25 whether the term buyer appears anywhere in certain 17:31:30

1 claims -- 17:31:35
 2 A. Yes. 17:31:35
 3 Q. -- same claim 1 of the '025? 17:31:36
 4 A. Yes. 17:31:38
 5 Q. And what was your answer to that 17:31:38
 6 question? 17:31:39
 7 A. I told him that the word "buyer" didn't 17:31:40
 8 appear in the claim itself. That's an obvious fact. 17:31:42
 9 Q. Now, does the term "publishing" appear 17:31:47
 10 in the claim, say, claim 1 of the '025? 17:31:50
 11 A. Yes. 17:31:54
 12 Q. And how, if at all, does the function -- 17:31:54
 13 do the Function Media patents define publishing? 17:31:58
 14 MR. WOLFF: Objection. 17:32:02
 15 A. In column 11 -- and I'm -- here I'm 17:32:02
 16 using the '025. It's before me, and I won't swap 17:32:06
 17 for time. It defines publishing at column 11, 17:32:12
 18 line 48, as "the act of placing or making available 17:32:13
 19 the presentation or information within the framework 17:32:16
 20 of media venue so that it is accessible by the end 17:32:21
 21 users, consumers, viewers or buyers." There's some 17:32:25
 22 additional information about HTML and so forth, but 17:32:30
 23 there is a reference to buyers in that construction 17:32:34
 24 of the word "publishing." 17:32:37
 25 Q. (BY MR. BRANDON) Is there anything in 17:32:40

1 claim 1 of the '025 that limits or specifies that 17:32:45
 2 the advertisements get published to the media venue 17:32:49
 3 interface? 17:32:54
 4 A. There is not -- 17:32:57
 5 MR. WOLFF: Objection. 17:32:57
 6 THE WITNESS: I apologize, 17:32:58
 7 Mr. Wolff. 17:33:00
 8 A. There's -- there's no reference in 17:33:00
 9 claim 1 of the '06 -- of the '025 to a media venue 17:33:02
 10 interface. What is referenced there is the Internet 17:33:06
 11 media venues. 17:33:10
 12 Q. (BY MR. BRANDON) And is the term "media 17:33:12
 13 venue" defined in the '025? 17:33:15
 14 A. Yes. 17:33:17
 15 Q. Now, how does a buyer access a 17:33:25
 16 presentation on the Internet? 17:33:29
 17 MR. WOLFF: Objection. 17:33:31
 18 A. They use a browser to contact through 17:33:33
 19 the Internet a website, for example, and the server 17:33:37
 20 for that website or some group of servers assemble a 17:33:44
 21 set of typically these days HTML code and send it to 17:33:50
 22 that destination at the buyer's browser, which then 17:33:55
 23 interprets the HTML and creates a display on the 17:34:00
 24 screen of the buyer's computer. 17:34:04
 25 Q. (BY MR. BRANDON) Does the operator of 17:34:15

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1 the invention -- as it's discussed in the Function 17:34:16

2 Media patents, does the operator of the invention 17:34:20

3 have to provide the Internet? 17:34:23

4 A. No. They don't provide the browser, 17:34:25

5 either. 17:34:33

6 MR. BRANDON: Let's go off the 17:34:38

7 record. 17:34:39

8 THE VIDEOGRAPHER: Off the record, 17:34:39

9 5:35. 17:34:41

10 (Recess Taken From 5:35 p.m. To 5:36 p.m.) 17:34:44

11 THE VIDEOGRAPHER: Back on the 17:35:42

12 record, 5:36. 17:35:47

13 MR. BRANDON: All right. Dr. Rhyne, 17:35:48

14 I have no further questions at this time. 17:35:51

15 MR. WOLFF: I just have a couple of 17:35:53

16 follow-up questions, I think. 17:35:54

17 FURTHER EXAMINATION 17:35:55

18 BY MR. WOLFF: 17:35:56

19 Q. You -- you said that the software does 17:35:56

20 it -- 17:35:58

21 A. Initiates. 17:35:58

22 Q. -- and you're referring -- initiates the 17:35:59

23 stuff? 17:36:00

24 A. Yeah. 17:36:00

25 Q. The software can't do it without running 17:36:00

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1 on a computer correct? 17:36:03

2 A. Software is executed on a computer. 17:36:04

3 Q. Okay. But software can't do it by 17:36:06

4 itself, correct? 17:36:07

5 MR. BRANDON: Objection to form. 17:36:08

6 A. I've answered that before, and it -- it 17:36:09

7 cannot in and of itself. 17:36:11

8 Q. (BY MR. WOLFF) All right. And your -- 17:36:14

9 your testimony about the buyer issue I'm not clear 17:36:16

10 about. Is it your position that publishing includes 17:36:18

11 sending the -- the presentation to the buyer? 17:36:24

12 A. No. 17:36:29

13 THE WITNESS: I'm sorry. 17:36:31

14 MR. BRANDON: Objection to form. 17:36:31

15 A. No, not necessarily. I think the 17:36:32

16 definition of publication is making it available. 17:36:36

17 Q. (BY MR. WOLFF) Does it have to be made 17:36:40

18 available from the media venue? 17:36:42

19 MR. BRANDON: Objection to form. 17:36:44

20 A. That depends on who -- whose definition 17:36:48

21 of media venue is ultimately adopted by Judge 17:36:51

22 Everingham, as I answered earlier to Mr. Lumish. 17:36:55

23 The way I believe the media venue term should be 17:37:00

24 construed, it -- it will come from there. That's 17:37:02

25 where the buyer would go to obtain it. 17:37:07

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1 MR. WOLFF: Okay. No further 17:37:12

2 questions. 17:37:12

3 THE VIDEOGRAPHER: Off the record, 17:37:14

4 5:37. 17:37:15

5 (Deposition Concluded At 5:37 p.m.) 17:37:17

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1 I, V. THOMAS RHYNE, Ph.D., have read the

2 foregoing deposition and hereby affix my signature

3 that same is true and correct except as noted

4 herein.

5

6

7 _____

8 V. THOMAS RHYNE, Ph.D.

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CERTIFICATE

1
2
3 I, Micheal A. Johnson, Certified
4 Realtime Reporter and Notary Public for the State of
5 Texas, certify that on the 25th day of March, 2009,
6 I reported the Oral and Videotaped Deposition of V.
7 THOMAS RHYNE, Ph.D., after the witness had first
8 been duly cautioned and sworn to testify under oath;
9 said deposition was subsequently transcribed by me
10 and under my supervision and contains a full, true
11 and complete transcription of the proceedings had at
12 said time and place.

13 I further certify that I am neither
14 counsel for nor related to any party in this cause
15 and am not financially interested in its outcome.
16 GIVEN UNDER MY HAND AND SEAL of office on
17 this 8th day of April, 2009.

18
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MICHEAL A. JOHNSON, CSR, CRR, CLR
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EXHIBIT INDEX
V. THOMAS RHYNE, Ph.D.

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NUMBER	DESCRIPTION	IDENTIFIED
Exhibit 84	Declaration of V. Thomas Rhyne in Support of Function Media's Claim Construction	005
Exhibit 85	Exhibit A, Curriculum Vitae of Vernon Thomas Rhyne	107
Exhibit 86	US Patent 7,249,059	212

PREVIOUSLY MARKED DEPOSITION EXHIBITS
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NUMBER	DESCRIPTION	IDENTIFIED
Exhibit 48	US Patent 7,240,025	006
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V. THOMAS RHYNE, Ph.D.

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