

CONFIDENTIAL

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

\_\_\_\_\_  
 FUNCTION MEDIA LLC, )  
 )  
 Plaintiff, )  
 ) NO. 2007-CV-279  
 vs. )  
 )  
 GOOGLE INC. AND YAHOO!, INC. )  
 )  
 Defendants. )  
 \_\_\_\_\_

CONFIDENTIAL

Videotaped Deposition of MICHAEL  
DEAN, at 901 Main Street, Suite 5100,  
Dallas, Texas, commencing at 9:01 a.m.,  
Thursday, April 16, 2009, before  
Karen L. D. Schoeve, RDR, CRR.

1 \* \* \* C O N F I D E N T I A L \* \* \*

2 Q. (BY MR. WOLFF) The '045 patent covers 04:52:14PM  
3 any sort of media venue; is that correct? 04:52:19PM  
4 A. Yes. 04:52:20PM  
5 Q. Including radio? 04:52:21PM  
6 A. Yes. 04:52:21PM  
7 Q. And can you give an example of how you 04:52:22PM  
8 would control the look and feel of a radio ad? 04:52:25PM  
9 A. Well, once again, the '045 was intended 04:52:27PM  
10 for a broad media. Some, you know, presentation 04:52:29PM  
11 standards might not be covered in every instance. 04:52:32PM  
12 That being said, the control of a radio ad is all 04:52:40PM  
13 over the board. I mean, they -- there are systems 04:52:43PM  
14 that serve compressed ads, so the ad is actually 04:52:47PM  
15 made shorter. 04:52:51PM  
16 There are systems that control the 04:52:53PM  
17 various pitches and I'm not an expert on radio. 04:52:54PM  
18 But I'm sure if you sat down with an expert on 04:52:58PM  
19 radio, they would have a variety of standards that 04:53:00PM  
20 could be employed to enhance the, you know, that a 04:53:04PM  
21 given radio station would like to employ for one 04:53:09PM  
22 reason or another. 04:53:12PM  
23 I mean, I'm sure there's just -- 04:53:14PM  
24 there's an infinite number of ways to manipulate 04:53:16PM  
25 the radio presentation based on what a media venue 04:53:20PM

1           \* \* \* C O N F I D E N T I A L \* \* \*

2           and for radio, it would be obviously a radio           04:53:27PM  
3           station that would control those media venues,           04:53:31PM  
4           based on the standards that they wanted to employ.   04:53:34PM

5           Q.     So could they specify the standards for           04:53:39PM  
6           the look and feel?           04:53:42PM

7           A.     Yes.           04:53:44PM

8           Q.     How would they do that?           04:53:45PM

9           A.     Well, once again, I said that I'm not an       04:53:47PM  
10          expert on radio, but if we're talking about the --   04:53:50PM  
11          we want all 30 second spots to run in 25 seconds   04:53:54PM  
12          because we have a station ID that we're going to   04:54:00PM  
13          put at the end of that, then you would be -- you   04:54:03PM  
14          would be dealing with some sort of compression   04:54:06PM  
15          system.           04:54:08PM

16                    If they said we want to, you know,       04:54:09PM  
17          compress the highs and lows of any given radio    04:54:11PM  
18          spot so that -- or the volume so that we have our   04:54:17PM  
19          standard content being played and we want the      04:54:23PM  
20          volume to be upped every time a radio spot comes   04:54:28PM  
21          on. It would seem to me that all those are the      04:54:31PM  
22          look and feel of radio.           04:54:34PM

23                    Now, there may be -- there may be       04:54:37PM  
24          another term that the radio professional would      04:54:39PM  
25          prefer using, but that would be up to -- you know,   04:54:42PM

1                   \* \* \* C O N F I D E N T I A L \* \* \*

2       once again, the operator of the invention would                   04:54:45PM  
3       have to be familiar with the media venues that                   04:54:50PM  
4       they were going to represent and therefore be able               04:54:53PM  
5       to tailor the system to meet the needs of those                   04:54:57PM  
6       media venues.   04:55:00PM

7                   The real -- the real crux of our                       04:55:02PM  
8       invention is to satisfy the needs of the media                   04:55:06PM  
9       venue where the media venue can control the                       04:55:09PM  
10      presentations that they receive. I mean, earlier                  04:55:14PM  
11      there were questions asked about specific claims,               04:55:22PM  
12      and about what we hadn't invented. But those                     04:55:25PM  
13      questions were asked as to bits and pieces of the                 04:55:31PM  
14      claim, not the full claim.   04:55:36PM

15                  When you look at the full claims of                   04:55:38PM  
16      our invention, that becomes the system that                       04:55:39PM  
17      delivers these specific customized ads or                         04:55:42PM  
18      presentations to these various media venues.                     04:55:49PM  
19      Single input. The single input allows the seller                 04:55:54PM  
20      to input data regardless of what it is, radio,                   04:55:58PM  
21      Internet, print, the central processor and                       04:56:04PM  
22      specifically the -- let me give you a specific                   04:56:10PM  
23      here from our '045 -- the Presentation Generation                 04:56:18PM  
24      Program 1710, which is on Figure 2a of Exhibit                   04:56:30PM  
25      Number 51, processes that data to create a                         04:56:33PM

\* \* \* C O N F I D E N T I A L \* \* \*

1  
2 customized, completed presentation to be presented 04:56:41PM  
3 on a given media venue, based on their 04:56:46PM  
4 presentation rules that are being applied. 04:56:48PM  
5 I guess I'm far afield of radio, but 04:56:57PM  
6 I was just trying to point out that, you know, 04:57:00PM  
7 these various media venues all have various 04:57:06PM  
8 standards. 04:57:11PM  
9 Did I answer your question or 04:57:11PM  
10 just -- 04:57:14PM  
11 Q. No, you didn't. 04:57:17PM  
12 A. -- or just confuse the issues? 04:57:18PM  
13 Q. But I'll ask another question now. 04:57:21PM  
14 A. I'm sorry. 04:57:21PM  
15 Q. Is there any disclosures in any of your 04:57:21PM  
16 patents about how a radio ad would be modified to 04:57:25PM  
17 conform to the look and feel specified by a media 04:57:32PM  
18 venue? 04:57:36PM  
19 A. No, of course not. The assumption is -- 04:57:37PM  
20 it seems to me that someone coming in that wanted 04:57:52PM  
21 to set this system up would have the knowledge 04:57:55PM  
22 that they would bring with them to do the 04:57:57PM  
23 programming specific for media venues that the 04:58:02PM  
24 operator of the invention has chosen to embrace or 04:58:07PM  
25 to use as their market. 04:58:12PM

\* \* \* C O N F I D E N T I A L \* \* \*

1  
2           So if you've got an operator of an           04:58:14PM  
3 invention -- or operator of the invention -- and       04:58:16PM  
4 he brings in a programmer, if he's going to           04:58:19PM  
5 embrace radio and that would be his market, that     04:58:23PM  
6 programmer would either have to have experience in    04:58:25PM  
7 radio or he would have to bring in somebody that       04:58:28PM  
8 had experience in radio to help set up the system      04:58:31PM  
9 and do the programming so that it could handle        04:58:34PM  
10 specific media venues.                                   04:58:37PM  
11           Q.    Do you have any experience in radio?     04:58:40PM  
12           A.    No.   None.                                04:58:42PM  
13           Q.    How about television?                    04:58:44PM  
14           A.    None.                                      04:58:45PM  
15           Q.    Who is the operator of the invention in   04:58:47PM  
16 your previous testimony?                                04:58:50PM  
17           A.    Well, the operator of the invention       04:58:54PM  
18 would be the entrepreneur or the person who -- or     04:58:56PM  
19 entity that takes the invention, takes our            04:59:01PM  
20 specification, builds all the software and then        04:59:07PM  
21 operates it going on into the future.                 04:59:10PM  
22                   MR. LUMISH:  Are there any             04:59:17PM  
23 mathematical algorithms disclosed in your patents?     04:59:19PM  
24                   MR. BRANDON:  Objection to form.       04:59:24PM  
25           A.    No, there are no mathematical            04:59:26PM

1           \* \* \* C O N F I D E N T I A L \* \* \*

2           next time that that condition was met, the program     05:16:42PM  
3           would be able to identify it.                             05:16:45PM

4                         And once again here, we were             05:16:48PM  
5           anticipating fairly complex multipage                 05:16:51PM  
6           presentations that would have lots of rules and it     05:16:58PM  
7           wouldn't be difficult to imagine that especially     05:17:03PM  
8           when you initially set the system up.                 05:17:05PM

9                         Some of those rules would not be as     05:17:08PM  
10          finely tuned as they could be, so this was a         05:17:13PM  
11          process by which the operators of the invention       05:17:17PM  
12          could increase the efficiency of the underlying       05:17:20PM  
13          algorithms.   05:17:23PM

14                 Q.     Do your patents describe any fairly     05:17:29PM  
15          complex multipage presentations in the algorithms     05:17:31PM  
16          for handling those?                                     05:17:36PM

17                 A.     No. No. But those --                     05:17:37PM

18                         MR. BRANDON: Objection to form.       05:17:41PM

19                 A.     Whoever was the operator of the         05:17:45PM  
20          invention in combination with whoever was the         05:17:46PM  
21          programmer installing this would know how to           05:17:51PM  
22          handle that programming and set those rules in         05:17:56PM  
23          motion.   05:18:00PM

24                         I mean, it's a fairly simple process     05:18:01PM  
25          for a -- you know, once a programmer knows that       05:18:03PM

1 \* \* \* C O N F I D E N T I A L \* \* \*

2 you have input from media venues and the input 05:18:08PM

3 from the media venues control the resulting output 05:18:12PM

4 of your Presentation Generation Program, you then 05:18:16PM

5 work backwards from that desired results to craft 05:18:21PM

6 your algorithms. That's fairly common. I would 05:18:27PM

7 think that's fairly common. 05:18:32PM

8 Q. (BY MR. WOLFF) All right. And at the 05:18:33PM

9 time of the inventions -- or I should say at the 05:18:36PM

10 time of filing at the '045 patent, could you have 05:18:38PM

11 written that program? 05:18:41PM

12 A. Which one? 05:18:42PM

13 Q. The algorithms you referred to for 05:18:43PM

14 handling the complex presentations. 05:18:46PM

15 A. I did. Yes. 05:18:49PM

16 Q. You did? 05:18:51PM

17 A. Yes, I could handle that. 05:18:52PM

18 Q. You could handle that back at the time 05:18:53PM

19 your patent was filed? 05:18:56PM

20 A. We did. At least if I understand your 05:18:56PM

21 question correctly. All of our -- I mean, the 05:19:00PM

22 whole Virtual Cities software took raw data input 05:19:06PM

23 and then reformatted it and generated customized 05:19:11PM

24 html presentations to go on 05:19:17PM

25 lodgingreservations.com and it did that 05:19:20PM