EXHIBIT 3

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

MARSHALL DIVISION 2:07-CV-371-CE

BRIGHT RESPONSE, L.L.C.,　　：　VIDEOTAPED
　　　　　　　　　　　　　　　：　DEPOSITION
　　　　　　　　　　　　　　　：　　　OF
　　　　　　vs.　　　　　　　 ：　RICHARD GREGSON
　　　　　　　　　　　　　　　：
　　　　　　　　　　　　　　　：
GOOGLE, INC., et al.　　　　 ：
　　　　　　　　　　　　　　　：
　　　　　　　　　　　　　　　：

　　　　　　Defendants. ：

　　　　　T R A N S C R I P T of the

stenographic notes of LISA FORLANO, CCR, CRR, RMR,

Certified LiveNote Reporter and Notary Public, taken

at the offices of Veritext Pennsylvania, 1801 Market

Street, 18th Floor, Philadelphia, Pennsylvania,

19103, on Friday, July 10, 2009, commencing at 9:15

a.m.

　　　Job No.: 206497

1   case-based search to obtain the best case match.

2   Certainly it's an interactive message based with the

3   two together.

4   Q   Okay, any other differences?

5   A   Consequently, the system would not

6   provide satisfactory results if the input to the

7   system was an electronic message and no user

8   interaction was provided.

9   Q   And so this seems like it's getting to

10   the interactive, not the interactive message we

11   talked about before?

12   A   Right. It would be the way to

13   distinguish this piece of prior art from it.

14   Q   When you receive a message in the

15   system claimed in the '947 patent, how do you know

16   up front whether it's interactive or not

17   interactive?

18   MR. RAFILSON: Objection to form.

19   THE WITNESS: The way I -- the way I

20   understood this would be that there's no

21   interaction going back and forth. It receives

22   the message and it processes it without

23   further input.

24   BY MR. WHITE:

25   Q   So when you get a message, though, if

1 BY MR. WHITE:

2   Q   Honestly, that's what I'm struggling

3 with, too, is how do you define a non-interactive

4 message from an interactive message? What about the

5 message makes it not interactive? I understand the

6 system may not ask for follow up, but I'm trying to

7 understand in a message, when you're looking at a

8 collection of data, how do you say this collection

9 of data is an interactive message or it's a

10 non-interactive message? Does that -- do you follow

11 me on that?

12   A   I'm not sure what would be within -- if

13 it's been addressed in this spec or trying to keep

14 it broad or more broadly than the general concept of

15 you're going to get it all at once in one direction

16 from the sender to the system as opposed to having

17 it come in pieces and probably require even

18 something from the system going back to get

19 additional information in some fashion.

20   Q   Okay, so that's the best you can do

21 with the non-interactive message?

22   A   Sitting here today, yes.

23   Q   Okay.

24   Are you familiar with the Yahoo web

25 page, home page search engine?

1   A   I've been to the Yahoo web page, yes.

2   Q   How about the Google web page, do you

3   ever use Google?

4   A   I've used Google.

5   Q   When you type in a search string which

6   could be even just a couple of characters, is that a

7   non-interactive message?

8   MR. RAFILSON: Objection, form.

9   THE WITNESS: I'd have -- I don't have

10   an opinion as to -- I could see arguments

11   either way, yeah.

12   BY MR. WHITE:

13   Q   What are the arguments against it not

14   being an interactive message?

15   MR. RAFILSON: Objection, form.

16   THE WITNESS: It depends on how --

17   again, tell me -- give me the full definition

18   of what are all those elements that I talked

19   about that are defined what that message is as

20   per the spec and the claims. Does it have

21   specific sender and receiver and that kind of

22   stuff and is that packaged up within the html

23   packet which is sent from the web page to, you

24   know, with the IP addresses and the like. I

25   don't know if that would fit. You've got to

1   give me what is the legal definition as

2   interpreted in the claims and all the file

3   history and all the stuff.

4   BY MR. WHITE:

5   Q   And that's where we're hoping you can

6   help us out because you prosecuted it.

7   A   I -- I don't have -- you know, I -- the

8   embodiment that's described -- the exemplary

9   embodiment is an e-mail. Whether or not the fact

10   that it was -- the claim says message thinking

11   something broader than that I would certainly as a

12   prosecuting attorney would try to say yes, it's

13   something broader. We were never challenged, as I

14   recall, on this as to what the parameters of that

15   would be, as to whether or not a search query

16   packaged inside in each e-mail packet sent qualifies

17   as a message.

18   Q   Okay. And that's what we were hoping.

19   A   That's a legal definition that is for

20   this case to decide, not for me.

21   Q   Okay. So you can't say one way or the

22   other?

23   A   I will not, no.

24   Q   You understand in the Yahoo system and

25   in the Google system, after you type a search query,

1 you get a whole possible selection of results that

2 the user has to go on and select to actually get to

3 an end page, correct?

4   A   Yeah, you get a web page back with a

5 bunch of links to other things.

6   Q   That the user then can click on and

7 select to sort of get to the end page, right?

8   A   Right.

9   Q   Is that interaction, does that take it

10 out of the context of a non-interactive message?

11   MR. RAFILSON: Objection, form.

12   THE WITNESS: It depends on whether the

13   claim is trying -- saying the response is the

14   ultimate end page or whether it is the search

15   results is what is meant by the response, you

16   know, that the system as this tends to receive

17   something and then sends something back. The

18   response, the response is the search results,

19   you know. You can clearly argue that that set

20   of search results is the response.

21 BY MR. WHITE:

22   Q   Do you know whether or not that's

23 predetermined as the claim requires, Claim 26?

24   MR. RAFILSON: Objection, form.

25   THE WITNESS: No, I don't.

1   BY MR. WHITE:

2   Q   And just one last question on this

3   line, can you give us the sort of parameters as to

4   what a non-interactive message is based upon

5   everything that we've talked about? Sort of give us

6   those parameters, a non-interactive message has

7   these attributes, these qualities, this is what it

8   means?

9   MR. RAFILSON: Objection, form.

10   THE WITNESS: No.

11   MR. WHITE: I need to stop, so I'm

12   going to have no further questions for you at

13   this point. I don't know if David has --

14   MR. PERLSON: I just have a couple.

15   MR. WHITE: Do you want to just go off

16   the record real quick and we'll switch.

17   VIDEO OPERATOR: We're going off the

18   record.

19   The time is 11:31 a.m.

20   (Brief recess.)

21   VIDEO OPERATOR: The time is 11:36 a.m.

22   We're going back on the record.

23   BY MR. PERLSON:

24   Q   Mr. Gregson, my name is David Perlson.

25   I'm attorney for Google and AOL in this case.

1   prosecution history for the '947 patent and go to

2   BR625, please.

3   A   Okay.

4   Q   And if you look to the middle of the

5   page, it refers to the term case base has a meaning

6   that is well-defined in the art and Outlook does not

7   have any features that fall within such meaning and

8   then it goes on to say a case-based reasoning system

9   is described in the present specification as one

10   which compares an incoming set of facts (a problem

11   with a stored set of exemplar cases) and -- now, you

12   would agree that that's the same language we just

13   read in the --

14   A   Yes.

15   Q   Let me finish. In the '947 patent in

16   column 2, right?

17   A   Yes, there's more -- I mean I don't

18   want to be picky, but there's more in here on the

19   tri-gram character matching and whatever, but yes,

20   there's a problem and an exemplar is making the

21   comparison.

22   Q   Right, so during the prosecution in

23   trying to explain what case-based reasoning was, the

24   applicants pointed back to this provision in the

25   specification to provide a definition of what it

1   was, right?

2   A   Page --

3   MR. RAFILSON: Objection to form.

4   THE WITNESS: I mean there's a cite

5   here, which is to the one that's in here. I'm

6   assuming it's the same -- page 3, line 19 to

7   20.

8   BY MR. PERLSON:

9   Q   Actually, why don't you look -- if you

10   look at BR551, which is in the same thing.

11   A   Okay.

12   Q   It's actually the application.

13   A   It is the same. Okay, they're pointing

14   to that.

15   Q   Right. And so you're --

16   A   In this amendment, they are pointing to

17   that definition, yeah.

18   Q   Right. As a definition for case-based

19   reasoning. Yes?

20   A   Yes.

21   Q   All right. And then --

22   MR. PERLSON: I have no further

23   questions.

24   VIDEO OPERATOR: Are you going to ask

25   any?

1   C E R T I F I C A T I O N

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3   I, LISA FORLANO, a Certified Realtime

4   Reporter, Certified Court Reporter and Notary

5   Public, do hereby certify that I reported the

6   deposition in the above-captioned matter, that

7   the said witness was duly sworn by me; that

8   the foregoing is a true and correct transcript

9   of the stenographic notes of testimony taken

10 by me in the above-captioned matters.

11   I further certify that I am not an

12 attorney or counsel for any of the parties,

13 not a relative or employee of any attorney or

14 counsel connected with the action, nor

15 financially interested in the action.

16

17   LISA FORLANO, CCR, CRR, RMR

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19 DATED: July 22, 2009

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