

Deposition of
JAMES BELANGER

Date: September 25, 2008

Volume: 1

Case: NORTHEASTERN/JARG v. GOOGLE

SHARI MOSS & ASSOCIATES

Phone: (650) 692-8900 (415) 402-0004

Fax: (650) 692-8909

Email: sharimoss@sharimoss.com

Internet: www.iptranscripts.com

1 Volume 1, Pages 1- 216

Exhibits 7A, 9 - 12

2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF TEXAS
4 MARSHALL DIVISION

5 _____
6 NORTHEASTERN UNIVERSITY and
7 JARG CORP.,

8 Plaintiffs,

9 v.

C.A. No. 2:07-CV-486 (TJW)

10 GOOGLE, INC.,

11 Defendant.
12 _____

13 Rule 30(b) (6) VIDEOTAPED DEPOSITION OF
14 JARG CORPORATION, JAMES H. BELANGER, designee,
15 called by counsel for the Defendant, taken
16 pursuant to the applicable provisions of the
17 Federal Rules of Civil Procedure, before Dana
18 Welch, CSR, Registered Professional Reporter,
19 Certified Realtime Reporter, and Notary
20 Public, in and for the Commonwealth of
21 Massachusetts, at the offices of Fish &
22 Richardson, P.C., 225 Franklin Street, Boston,
23 Massachusetts 02110, on September 25, 2008,
24 commencing at 8:15 a.m.
25

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1 APPEARANCES:

2

3 For the Defendant:

4 FISH & RICHARDSON P.C.

5 12390 El Camino Real

6 San Diego, California 92130

7 858.678.5070 Fax: 858.678.5099

8 wolff@fr.com

9 By: Jason W. Wolff, Esq.

10

11 For the Plaintiffs:

12 VINSON & ELKINS LLP

13 2801 Via Fortuna, Suite 100

14 Austin, Texas 78746-7568

15 512.542.8929 Fax: 512.236.3308

16 sstout@velaw.com

17 mvalek@velaw.com

18 By: Stephen Charles Stout, Ph.D., Esq.

19 and Michael A. Valek, Esq.

20

21 Also Present: Karen Abbott, Esq.

22 Northeastern University

23 Assistant University Counsel

24 Dominick Boucher, Videographer

25

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1 I N D E X

2 WITNESS:

3 JAMES H. BELANGER,

4 Rule 30(b)(60) designee of Jarg Corporation

5

6 EXAMINATION: PAGE:

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10 EXHIBITS MARKED:

11 NO. DESCRIPTION PAGE:

12 Exhibit No. 7A, "Web Search for a Planet: 214

13 The Google Cluster Architecture,

14 with notation on page 23 by Attorney

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16 Exhibit 9, Defendant Google, Inc.'s 20

17 Amended Notice of Deposition to

18 Plaintiff Jarg Corporation

19 Exhibit 10, Reuters article, 33

20 November 11, 2007

21 Exhibit 11, Boston.com article, 44

22 November 10, 2007

23 Exhibit 12, The Anatomy of a Large-Scale 206

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1 PROCEEDINGS
2 THE VIDEOGRAPHER: We are on record now.
3 This is the deposition of James Belanger,
4 taken on behalf of defendant in the case of
5 Northeastern University and Jarg Corp. versus
6 Google, Inc., Case Number CV-486 (TJW), filed
7 in the United States District Court, District
8 Court, Eastern District of Texas, Marshall
9 Division.
10 Today's date, September 25th, 2008. Time
11 on video record is 8:15 a.m. This deposition
12 is being held at 225 Franklin Street, Boston,
13 Massachusetts.
14 My name is Dominick Boucher, representing
15 Budd Legal Video.
16 Will counsel please introduce yourself for
17 the record.
18 MR. VALEK: Michael Valek for the
19 plaintiffs and for the witness, Jarg
20 Corporation.
21 MR. STOUT: Stephen Stout, also for the
22 plaintiffs.
23 MS. ABBOTT: Karen Abbott for the
24 plaintiffs.
25 MR. WOLFF: Jason Wolff from Fish &

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1 Richardson for defendant, Google, Inc.
2 JAMES H. BELANGER,
3 Rule 30(b)(60) designee of Jarg Corporation,
4 having been satisfactorily identified by the
5 production of his driver's license, and duly sworn
6 by the Notary Public, was examined and testified as
7 follows:
8 EXAMINATION
9 BY MR. WOLFF:
10 Q. Good morning, Mr. Belanger.
11 A. Good morning.
12 Q. Could you please state your home address
13 for the record.
14 A. Home address is 13 Clovelly Road in
15 Wellesley, Massachusetts.
16 Q. All right. Thank you.
17 Have you ever been deposed before?
18 A. Yes.
19 Q. How many times?
20 A. Two times.
21 Q. And what was the context?
22 A. What was the context? One case was
23 involving a dispute over a settlement, and the
24 other -- what was the other case -- I'm not
25 recalling immediately, but it was -- it was a --

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1 oh, yes. A question about an ESOP valuation.
2 Q. All right. And the first case, what was
3 that -- what was the subject matter of the case?
4 A. Subject matter of the case was a
5 settlement agreement had been reached between the
6 parties, and several years later, one of the
7 parties came back and alleged that the settlement
8 had been attained by fraud.
9 Q. Was it a patent case?
10 A. No.
11 Q. All right. I'll give you a couple of
12 ground rules you might recall or your attorney may
13 have informed you of the general outline of the
14 deposition.
15 I'll ask a question. I'll assume that you
16 understood the question if you answer it.
17 Your attorney may object. If he objects
18 you still need to answer the question unless he's
19 instructed you not to answer on privilege and you
20 decide to follow that instruction.
21 It's best that we don't talk over each
22 other. So if you could, give me chance to get my
23 question out all the way before you answer. It
24 also gives your attorney an opportunity to enter
25 his objection on the record. And the reporter

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1 can't talk over us if we're -- or can't transcribe
2 the conversation if we're both talking over each
3 other.
4 When I say you, I mean Jarg Corporation.
5 You understand that?
6 A. Yes.
7 Q. All right. And when I refer to the patent
8 or the patent-in-suit or the '593 patent, I'm
9 referring to the one patent that Jarg has alleged
10 Google infringed. Is that understood?
11 A. Okay.
12 Q. I'll do my best to take a comfort break
13 every hour. If we need one more frequently or less
14 frequently than that to get things moving through
15 the day, we'll do that, just let me know. Again, I
16 just ask that you answer the question that's
17 pending, then we'll take the break.
18 Any reason you cannot give me your best
19 testimony today?
20 A. No.
21 Q. When did you start work for Jarg?
22 A. I started work when Jarg Corporation was
23 formed.
24 Q. Were you part of the formation team?
25 A. Yes.

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1 Q. And what is your job today?
2 A. I am an attorney at Burns & Levinson.
3 Q. Do you still work for Jarg?
4 A. Yes.
5 Q. How long have you been practicing law?
6 A. 36 years.
7 Q. Were you Jarg's attorney, too?
8 A. Yes.
9 Q. Do you have any familiarity with patents
10 and patent litigation?
11 A. Limited.
12 Q. Limited. And that would be, I assume, in
13 this context?
14 A. Well, I had another client who was sued on
15 a claim of infringement.
16 Q. All right. Are you currently on payroll
17 at Jarg?
18 A. No.
19 Q. But you work for Jarg?
20 A. I'm their outside counsel.
21 Q. Are you not the CEO of Jarg?
22 A. No.
23 Q. All right. Did you used to be the CEO of
24 Jarg?
25 A. No.

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1 Q. Were you ever an officer of Jarg?
2 A. Clerk, I believe.
3 Q. All right. What is your financial
4 interest in Jarg?
5 A. I don't have any ownership interest in
6 Jarg. I am a partner in a law firm that sends them
7 legal bills.
8 Q. All right. And are you presently owed
9 money by Jarg?
10 A. Um --
11 Q. Personally?
12 A. Who is "you"?
13 Q. Are you personally --
14 A. Me personally, not Jarg?
15 Q. Right.
16 A. My own self?
17 Q. Right.
18 A. No.
19 Q. Is your firm presently owed money by Jarg?
20 A. Yes.
21 Q. All right. When's the last time your firm
22 was paid by Jarg?
23 A. I believe they sent a payment a couple of
24 weeks ago.
25 Q. All right. So there's no outstanding

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1 money that you personally are owed by Jarg?
2 MR. VALEK: Objection. Form.
3 A. There is no money that I personally am
4 owed by Jarg.
5 Q. All right. I thought I saw something in
6 the records that indicated there was some money
7 owed to you.
8 A. Um -- all right, let me make a
9 clarification. There is some -- there are some
10 shares which are issued in my name, which I
11 transferred to the law firm. They may still be in
12 my name on the books of the company, but they
13 belong to the law firm.
14 Q. All right. What is the percentage of the
15 overall company that that represents?
16 A. .0000, some small number after that.
17 Q. All right. Who are the major shareholders
18 in Jarg?
19 MR. VALEK: Objection. Form.
20 A. Michael has a substantial number of
21 shares. I'm not familiar -- you know, I can't
22 recall exactly what the other share ownership is.
23 Q. Michael...
24 A. Belanger.
25 Q. And you are --

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1 A. James Belanger.
2 Q. James Belanger. All right. For some
3 reason, I missed your first name.
4 How many people work at Jarg?
5 MR. VALEK: Objection. Form.
6 A. I don't -- I'm not -- I'm not sure. I
7 don't know. Not many.
8 Q. More than ten?
9 A. No.
10 MR. VALEK: Objection. Form.
11 A. I don't think so.
12 Q. Are there less than five?
13 MR. VALEK: Same objection.
14 A. Don't know the answer to that.
15 Q. Can you name for me a single employee of
16 Jarg?
17 MR. VALEK: Objection. Form.
18 A. I -- can I name a single employee of Jarg?
19 I believe that Michael is an employee. You know, I
20 don't keep track of things on a day-to-day basis
21 there, so I'm not quite sure what the full
22 employment situation is.
23 Q. All right. And what is your relationship
24 to Michael?
25 A. I'm a cousin.

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1 Q. All right. Does Ken Baclawski work for
2 Jarg?
3 A. I don't know what his current status is.
4 Q. Do you know what Jarg's annual revenues
5 are?
6 MR. VALEK: Objection. Form. And what
7 topic is this within, Jason?
8 Q. Can you answer the question?
9 A. I don't know what Jarg's annual revenues
10 are.
11 Q. And what again is your role in this case?
12 MR. VALEK: Objection. Form.
13 A. What is my role in this case? I'm being
14 deposed as a witness at this point.
15 Q. But beyond your deposition today, what is
16 your role in the litigation?
17 MR. VALEK: Objection. Form.
18 A. You want a --
19 Q. Are you managing the litigation for Jarg?
20 A. No.
21 Q. How is it that you were selected as the
22 30(b)(6) witness for --
23 MR. VALEK: Objection. And I'm going to
24 instruct the witness not to answer to the
25 extent it requires you to disclose

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1 communications between Jarg's outside counsel
2 and yourself.
3 A. I'm not going to answer that question.
4 Q. You can't answer any part of that
5 question?
6 MR. VALEK: Same objection. And I am
7 going to instruct the witness not to answer
8 that question.
9 Q. Can you answer it without revealing any
10 privilege information?
11 A. Would you ask the question again?
12 MR. WOLFF: Can the reporter please repeat
13 the question.
14 COURT REPORTER: "Question: 'How is it
15 that you were selected as the 30(b)(6) witness
16 for --'
17 "Mr. Valek: 'Objection. And I'm going to
18 instruct the witness not to answer.
19 A. I'm not going to answer that question on
20 instructions of counsel.
21 MR. VALEK: And again, the basis for my
22 objection is attorney/client privilege.
23 MR. WOLFF: I will have Google's Amended
24 Notice of Deposition to Plaintiff Jarg
25 Corporation marked as Exhibit 9.

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1 (Exhibit 9, Defendant Google, Inc.'s
2 Amended Notice of Deposition to Plaintiff Jarg
3 Corporation, marked for identification.)
4 BY MR. WOLFF:
5 Q. If you could please take a look at that,
6 Mr. Belanger, and let me know when you've
7 familiarized yourself with it.
8 A. Okay.
9 Q. Have you seen that deposition notice
10 before?
11 A. Not this particular one. I have a copy of
12 a prior one.
13 Q. All right. On the -- on the second to
14 last page, Deposition Topics, are you prepared to
15 answer questions on each of these topics on behalf
16 of Jarg Corporation today?
17 A. Yes.
18 Q. What did you do to prepare for this
19 deposition?
20 A. I read through the infringement
21 contentions of Jarg Corporation and met with
22 counsel and other representatives of the company to
23 prepare for the deposition.
24 Q. What other representatives of the company
25 did you meet with?

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1 A. Michael Belanger.
2 Q. Okay. And what counsel did you meet with?
3 A. Michael Valek and Stephen Stout.
4 Q. How long did you spend preparing for the
5 deposition?
6 A. About five hours.
7 Q. Did you read the deposition transcript of
8 Northeastern?
9 A. No.
10 Q. Did you discuss the deposition transcript
11 of Northeastern?
12 A. We didn't discuss the deposition
13 transcript.
14 Q. All right. And again, the documents
15 reviewed were what again, the notice and the
16 infringement contentions?
17 A. There were some additional documents that
18 were present and which I sort of skimmed through in
19 preparation.
20 Q. All right. And what were those documents?
21 A. Those were two of the articles that are
22 cited in the infringement contentions, and also
23 looked at the complaint.
24 Q. All right. Did you read the patent?
25 A. Oh, we had the patent there, too. I mean,

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1 I skimmed through it. I didn't read it word for
2 word.
3 Q. All right. Have you read the file history
4 of the patent?
5 A. No.
6 Q. Okay. Have you spoken with Ken Baclawski
7 about this case?
8 A. Not -- no.
9 Q. So prior to your meeting with counsel
10 yesterday, had you met with Michael before to
11 discuss this case?
12 MR. VALEK: Objection. Form.
13 A. Me personally?
14 Q. Yes.
15 A. We have had some discussions about the
16 case in general.
17 Q. Before it was filed did you have any
18 discussions?
19 A. What do you mean by discussions? I mean,
20 we -- he talked about possible options, but they
21 weren't -- I mean, he was informing me; I was
22 listening.
23 Q. What did he inform you -- what were the
24 options he informed you of?
25 MR. VALEK: I'm going to object to this to

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1 the extent it calls for you to reveal
2 attorney/client communications between
3 yourself and Mr. Belanger.
4 A. And these were all attorney/client
5 communications.
6 Q. I thought you said that he was just
7 proposing options to you.
8 A. Well, and I would listen and... stop.
9 Q. And stop what?
10 A. Yeah. I'm not -- that's as far as I can
11 go.
12 MR. VALEK: Again, I'm going to object.
13 He's Jarg's counsel and he's providing legal
14 advice.
15 MR. WOLFF: Okay. So Jarg selected their
16 lawyer to be their 30(b)(6) witness on the
17 deposition notice, the topics in the
18 deposition notice?
19 MR. VALEK: Well, the topics relate to
20 legal contentions, so yes.
21 Q. Have you spoken with Northeastern about
22 the case?
23 A. No.
24 Q. You haven't met with anybody at
25 Northeastern about the case?

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1 MR. VALEK: Objection. Form.
2 A. No.
3 Q. Are you familiar with any of the
4 discussions between Jarg and Northeastern about the
5 case?
6 A. No.
7 Q. You're not familiar with any discussions
8 about the case between Jarg and Northeastern?
9 MR. VALEK: Objection. Form.
10 A. No.
11 Q. I will hand you what's been previously
12 marked as Exhibit 2. This is the complaint for
13 patent infringement. Now, this is one of the
14 documents you reviewed for your preparation,
15 correct?
16 A. This is one of the documents that was
17 present during the preparation and I scanned through
18 it, yes.
19 Q. All right. So are you familiar with the
20 complaint?
21 A. In the -- in limited respects. I haven't
22 read through it word for word, but I'm generally
23 familiar with the substance of the complaint.
24 Q. All right. Are you -- do you understand
25 the factual bases for the allegations in the

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1 complaint?
2 MR. VALEK: Objection. Form.
3 A. What do you mean by understand?
4 Q. Well, the complaint was predicated upon
5 some factual determinations by Jarg and
6 Northeastern. And my question is whether you are
7 familiar with -- familiar with the complaint enough
8 and the facts surrounding it to speak to the
9 allegations in the complaint?
10 MR. VALEK: Objection. Form.
11 A. The allegations of infringement are set
12 forth in the infringement contentions, and those
13 I'm familiar with.
14 Q. All right. But the infringement
15 contentions did not exist at the time the complaint
16 was filed.
17 MR. VALEK: Objection. Form.
18 A. I don't know.
19 Q. Okay. When did Jarg first learn about
20 Google generally?
21 MR. VALEK: Objection. Form.
22 A. In what respect? I mean, Google has been
23 a name that's been around for a while. Is there a
24 more specific context?
25 Q. I'm just asking generally.

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1 A. I don't know.
2 Q. Since Google -- since 1998?
3 A. I sus -- I don't know.
4 Q. Do you use Google?
5 A. Yes.
6 Q. How long have you used Google?
7 A. Personally?
8 Q. Yes.
9 A. I don't know. I mean, it's -- there have
10 been a lot of search engines before Google came,
11 became fairly prominent.
12 Q. Uh-huh.
13 A. And bounced around. We used AOL. I mean,
14 we had AOL, so I used AOL for a while. Yahoo!. I
15 mean, there -- and I don't -- Google sort of --
16 it's probably been within the past three years that
17 Google really became more -- the more prevalent
18 search engine. So I would say that I started using
19 Google, I don't know when, but within the past
20 three years certainly I've used it a fair amount.
21 Q. Right. In the context of your prior
22 relationship as counsel for Jarg, were you ever
23 aware that there was an issue with Google --
24 MR. VALEK: Objection. Form.
25 Q. -- before the complaint was filed?

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1 MR. VALEK: Sorry. Objection. Form.
2 A. I'm sorry. Ask the question again.
3 Q. Maybe it was a poor question. I'll try to
4 rephrase it.
5 You don't know when Jarg was first
6 familiar with -- when Jarg -- strike that.
7 Do you know when Jarg first learned of
8 potential infringement by Google?
9 A. Well, there was -- I think they became
10 sensitive to the possibility sometime in 2005.
11 Q. And do you know in what context they
12 became sensitive to the possibility?
13 A. I believe it had to do with an article in
14 InfoWeek, which came to the attention of the
15 company.
16 Q. And who at the company did it come to the
17 attention of?
18 A. I think Michael Belanger.
19 Q. And what was it in the article that raised
20 Jarg's suspicion?
21 A. Well, it -- it wasn't a suspicion, I don't
22 believe, at that point. There was a description of
23 the Google process, a general description in
24 InfoWeek. And I believe Michael looked at that and
25 couldn't determine from the article exactly what

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1 the process was, and maybe asked Ken to take a look
2 at it and make -- see if he could tell what it was.
3 Q. All right. Now, what is the basis of the
4 factual testimony you just gave me?
5 A. What is the basis of my factual --
6 information from the company.
7 Q. So who gave that information to you?
8 A. Michael Belanger.
9 Q. When did he give that information to you?
10 A. Yesterday.
11 Q. Did Mr. Belanger tell you about any other
12 information he received pertaining to Google and
13 his suspicion that it may be infringing the patent?
14 A. This was in the context of preparing for
15 the deposition. Is that your question?
16 Q. Uh-huh.
17 A. Yes.
18 Q. And what was that?
19 A. That at a date after that, there came to
20 his attention, apparently, a video of a
21 presentation that had been done by a representative
22 of Google, at which there was a somewhat more
23 explicit discussion of Google's process.
24 Q. Have you seen that video?
25 A. No.

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1 Q. Do you know if that video is referenced in
2 the infringement contentions?
3 A. I don't believe the video is.
4 Q. I'll refer to your cousin Michael Belanger
5 as "Michael," so as not to confuse the record as to
6 which --
7 A. Which Belanger.
8 Q. -- which Belanger I'm referring to.
9 A. That's fine.
10 Q. Did Michael tell you about some attorneys
11 he spoke with that informed him Google may be
12 infringing the patent?
13 A. Yes.
14 Q. Who were those attorneys?
15 A. I believe there were some attorneys at --
16 the first ones may have been attorneys at Mintz
17 Levin.
18 Q. Do you know which attorneys at Mintz
19 Levin?
20 A. Don't know.
21 Q. If I said some names, would you know?
22 A. I could tell you if the names were
23 familiar, but I couldn't tell you who said -- which
24 of them may have informed him.
25 Q. All right. How is it that you know some

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1 of these attorneys at Mintz Levin?
2 A. Well, discussions with Michael, and then
3 there was one meeting at which I was present, but
4 it was not a -- it was not an infringement meeting.
5 Q. What kind of meeting was it?
6 MR. VALEK: To the extent this requires
7 you to disclose attorney/client communications
8 between Jarg and its lawyers at Mintz, I'll
9 instruct you not to answer. If you can answer
10 generally without disclosing privileged
11 information, go ahead.
12 A. I believe the meeting was to explain the
13 Jarg architecture to Mintz with a view toward
14 having Mintz make a financial investment in Jarg.
15 Q. A financial investment in what context?
16 A. In -- as in writing a check.
17 Q. So as part of an investment pool --
18 A. Yes.
19 Q. -- or part of --
20 A. Part of an investment --
21 Q. -- taking on the infringement case?
22 A. No. Part of an investment pool.
23 Q. Were lawyers from the litigation, the
24 patent litigation team present at this meeting?
25 A. I don't -- there was only one.

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1 Q. There was only one lawyer present?
2 A. Yeah, only one there, who was -- who was a
3 -- he apparently had some -- he had a lot of
4 familiarity with software, and so he was the one
5 who was trying to understand how it worked.
6 Q. And this lawyer that had a lot of
7 familiarity with software, do you remember whether
8 he was an associate or a principal at Mintz Levin?
9 A. Don't remember.
10 Q. Was he younger or older?
11 A. Than ...
12 Q. Dan?
13 A. Younger or older than whom?
14 Q. I'm sorry. That's a fair question.
15 A. He was younger than me.
16 Q. Was he less than 40? Not that 40 is the
17 -- you know, the threshold for old or young, but --
18 MR. VALEK: Objection. Form. Sorry.
19 Couldn't resist.
20 Q. Was he under 40?
21 I will strike the previous comments, so
22 not to offend anyone.
23 Was the attorney younger than 40?
24 A. My guess would be that based on his
25 exterior appearance, that he was somewhere between

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1 32 and 45.
2 Q. All right. Was --
3 A. And that's just a guess based on his
4 appearance.
5 Q. Did he have a foreign sounding name?
6 A. No.
7 Q. No.
8 You wouldn't be related to another
9 Belanger that used to work at Mintz, would you?
10 A. The question is how distantly. There was
11 an immigrant from France in 1620 named Belanger who
12 worked --
13 Q. More detail than I need, but I know there
14 was another one that went to Pepper Hamilton I
15 think.
16 MR. VALEK: You opened up a can of worms.
17 A. We also played third base for the
18 Baltimore Orioles for a while, Golden Glove award
19 for two years, but not related either.
20 Q. Okay. Now, with respect to the complaint,
21 do you know when it was that Jarg finally came to
22 the conclusion that it should file its lawsuit
23 against Google?
24 A. Not specifically.
25 Q. All right. Do you know how many different

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1 law firms they interviewed before they found a firm
2 willing to take the case?
3 MR. VALEK: Objection. Form.
4 A. I don't know how many they interviewed. I
5 -- well, there were -- I know three that they spoke
6 to. I don't know how many there were.
7 Q. And what are those firms?
8 A. I believe the three that they spoke with
9 were Mintz Levin first, and then Clark Burnett, and
10 then finally Vinson & Elkins. And I talked with
11 them a bit about it on behalf of Burns & Levinson
12 but we were never --
13 Q. You talked with who?
14 A. Michael.
15 Q. Michael?
16 A. Yeah.
17 Q. Not the firms Mintz or Clark Burnett.
18 A. No.
19 MR. WOLFF: I'll have the reporter mark as
20 Exhibit 10, a Reuters article dated
21 November 11, 2007.
22 (Exhibit 10, Reuters article, November 11,
23 2007, marked for identification.)
24 Q. Have you read this article before?
25 A. Not word for -- well, let me just -- not

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1 this one.
2 Q. Are you familiar with this article?
3 MR. VALEK: Objection. Form.
4 A. I haven't seen it. This is an article
5 from Reuters News Service. I have not seen a
6 Reuters News Service article.
7 Q. Do you know whether the statements
8 attributed to Michael in this article are correct?
9 MR. VALEK: Objection. Form.
10 A. I'm sorry. Let me read through the
11 article first, if I may.
12 Q. Approximately in the middle -- you can
13 read the whole article, but approximately in the
14 middle on the first page it says, "Michael
15 Belanger" --
16 A. Yeah.
17 Q. -- as the first instance.
18 A. Okay.
19 Q. Regarding the first -- I'm sorry -- the
20 first instance where it mentions Michael Belanger,
21 do you know whether the article is correct as to
22 that paragraph, that Michael Belanger is the
23 president and co-founder of Jarg?
24 A. That I believe is correct.
25 Q. And is it correct that he became aware of

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1 the infringement several years ago?
2 MR. VALEK: Objection. Form.
3 A. All right. I'm sorry. Is what correct?
4 Q. Is it correct that he became aware of the
5 infringement several years ago.
6 A. This would be from 2007. I think that --
7 how this is characterized, I just -- I can't tell
8 whether this is -- from my information, the -- they
9 became sensitive to it in 2005, that would be two
10 years ago from November 2007, give or take 6 or
11 7 months.
12 Q. And is it correct that Jarg lacked the
13 resources to press its case?
14 A. I think that's true.
15 Q. And is it true that Vinson & Elkins is
16 taking the case on a contingency fee basis?
17 A. I think that's true as well.
18 Q. Is it true that Northeastern signed on
19 after Jarg found counsel?
20 A. I don't know.
21 Q. Do you know whether or not Northeastern
22 would not sign on until Jarg found counsel?
23 MR. VALEK: Objection. Form.
24 A. Don't know.
25 Q. If you continue to nearly the bottom, the

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1 penultimate paragraph, it says, "The plaintiffs are
2 looking to be paid for their intellectual property,
3 not put Google out of business." Is that correct?
4 MR. VALEK: Objection. Form. And where
5 is this in the topics?
6 A. Is this -- this doesn't look like a
7 statement by Michael Belanger. It's just sitting
8 there.
9 Q. All right. Well, let's go to the last
10 paragraph.
11 A. And your question is...
12 Q. What is it that Mr. -- that Michael was
13 saying that Jarg was interested in the case as an
14 outcome?
15 A. The article says --
16 MR. VALEK: Objection. Form.
17 A. The article says in quotations, "We are
18 just interested in a normal royalty if the case
19 determines that," ellipsis, "Google is using the
20 technology we developed"; that's what this article
21 says Michael said.
22 Q. Do you believe that this article misquotes
23 Michael?
24 MR. VALEK: Objection. Form.
25 A. I have no idea.

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1 Q. Do you know if -- do you know if a normal
2 royalty would put Google out of business?
3 MR. VALEK: Objection. Form.
4 A. I have no idea.
5 Q. All right. Let's turn back to the
6 complaint. The title of the complaint, and this is
7 Exhibit 2, Complaint for Damages and Injunctive
8 Relief for Patent Infringement. And paragraph 28
9 says, "Google has caused and will until enjoined
10 continue to cause irreparable injury to plaintiffs
11 for which there is no adequate remedy of law." Is
12 that correct? This is page 4.
13 A. Yes, that paragraph 28. I'm looking at
14 what's labeled Exhibit 2, the complaint, and that's
15 what it says in paragraph 28.
16 Q. So do you know what an injunction is?
17 MR. VALEK: Objection. Form.
18 A. Do I know what -- um, I know the legal
19 concept of an injunction.
20 Q. And what is the legal concept of an
21 injunction?
22 A. The legal concept is an order from a court
23 to do or not do something, typically not do.
24 Q. All right. And what would that do to
25 somebody who was accused of patent infringement?

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1 MR. VALEK: Objection. Form. And once
2 again, he's not here to testify about
3 paragraph 28 on behalf of Jarg, because it's
4 not in the noticed topics.
5 I'll let this continue but you're going
6 from -- you're testifying about you
7 personally, you're not testifying about the
8 corporation. Do you understand that?
9 THE WITNESS: Yes.
10 MR. VALEK: Okay.
11 THE WITNESS: Would you ask the question
12 again, please.
13 MR. WOLFF: Would you read the question
14 back, please.
15 COURT REPORTER: "Question: 'And what
16 would that do to somebody who was accused of
17 patent infringement.'"
18 A. All right. Speaking personally, it
19 wouldn't do anything to them as long as they
20 weren't actually infringing.
21 Q. But if a court were to find that they were
22 infringing, wouldn't it put them out of business?
23 MR. VALEK: Objection. Form.
24 A. I have no idea.
25 Q. Would the Google search service still be

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1 available to users on the Internet if an injunction
2 was granted against it?
3 MR. VALEK: Can you read the question
4 back.
5 COURT REPORTER: "Question: 'Would the
6 Google search service still be available to
7 users on the Internet if an injunction was
8 granted against it?'"
9 MR. VALEK: I'm going to object to the
10 form of this question because it goes way
11 beyond any of the deposition topics.
12 A. Now, this is personal, right, at this
13 point?
14 Q. If you can't testify on behalf of Jarg on
15 this topic, yes.
16 MR. VALEK: Objection. Form. You have to
17 notice him before he can testify on behalf of
18 Jarg.
19 THE WITNESS: In this interplay, where are
20 we with things?
21 COURT REPORTER: "Question: 'Would the
22 Google search service still be available to
23 users on the Internet if an injunction was
24 granted against it?'"
25 "Mr. Valek: I'm going to object to the

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1 form of this question because it goes way
2 beyond any of the deposition topics.
3 "Answer: 'Now, this is personal, right,
4 at this point?'
5 "Question: 'If you can't testify on
6 behalf of Jarg on this topic, yes.'
7 "Mr. Valek: Objection. Form. You have
8 to notice him before he can testify on behalf
9 of Jarg."
10 A. My understanding as a lawyer would be that
11 the only way that Google's search engine is going
12 to be prevented from operating is if the terms of
13 the injunction say that it cannot operate and there
14 is no other arrangement made that would permit the
15 terms of the injunction to be relieved.
16 Q. So other than a change in the
17 architecture, what Jarg has alleged as
18 infringement, the business could not exist.
19 MR. VALEK: Objection. Form.
20 A. I have no idea.
21 Q. So do you think that the Reuters article
22 is correct, that Jarg is only interested in a
23 normal royalty?
24 MR. VALEK: Objection. Form.
25 A. Do I think -- I don't know.

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1 Q. All right. Let's turn to paragraph 29 of
2 the complaint. This is in Exhibit 2. What is
3 Jarg's factual basis for the allegation in
4 paragraph 29?
5 A. Until we -- until Jarg -- Jarg has not
6 communicated to Google prior to the filing of the
7 complaint any -- an indication that they believe
8 Google was infringing on Jarg's patent, and not
9 having conveyed that, Google presumably would have
10 no reason to get an opinion of counsel that it was
11 not infringing.
12 Q. All right. Why is it that Jarg never
13 notified Google of this alleged infringement when
14 it found out about it several years ago?
15 MR. VALEK: Objection. Form.
16 A. I'm sorry. The question again?
17 MR. WOLFF: Could you read the question
18 back.
19 "COURT REPORTER: "Question: 'Why is it
20 that Jarg never notified Google of this
21 alleged infringement when it found out about
22 it several years ago?'"
23 MR. VALEK: Objection. Form.
24 A. There's a lot in that question. And I
25 don't -- what Jarg discovered several years ago was

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1 the possibility of infringement. And just
2 infringement is not readily determined by, even by
3 us of our own technology based on the patent and
4 how a court is going to interpret that patent.
5 So until we had counsel and the ability to
6 thoroughly examine what we knew and the terms of
7 the patent, we weren't convinced that there was
8 infringement. But after having reviewed the
9 information that is publicly available and having
10 discussed it with counsel, we filed the complaint.
11 Q. All right. Why is it that Jarg did not
12 notify Google that there may be infringement back
13 when it first learned there may be some?
14 MR. VALEK: Objection. Form.
15 Q. Let me restate the question.
16 Why did Jarg simply sue Google instead of
17 requesting a license?
18 MR. VALEK: Objection. Form.
19 A. The answer to that is I don't know; that
20 was the judgment that they made.
21 Q. Is it your understanding that Jarg would
22 like a reasonable royalty out of this case?
23 MR. VALEK: Objection. Form.
24 A. I suppose that's a question for the board
25 of directors.

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1 Q. Who's on the board of directors at Jarg?
2 MR. VALEK: Objection. Form.
3 A. At this point I believe it's Michael
4 Belanger and Tom Black, if I recall.
5 Q. Who is Tom Black?
6 A. Tom Black is a director of Jarg and an
7 investor in Jarg.
8 Q. What is his relationship in the company
9 besides an investor?
10 MR. VALEK: Objection. Form.
11 A. He's an investor and a director.
12 Q. Okay. Is he an employee of Northeastern
13 University?
14 A. No.
15 Q. Is he just a venture capitalist or --
16 A. He's a private investor.
17 MR. VALEK: Objection. Form.
18 Q. Is Ken Baclawski on the board of directors
19 for Jarg?
20 MR. VALEK: Objection. Form.
21 A. I don't think so, no.
22 Q. Is anyone from Northeastern on the board
23 of directors for Jarg?
24 MR. VALEK: Objection. Form.
25 A. By that, you mean an officer of the

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1 university?
2 Q. Anyone from Northeastern University, if
3 you don't think Ken Baclawski is on the board.
4 MR. VALEK: Objection. Form.
5 A. I think Michael is a graduate of
6 Northeastern University.
7 Q. Is he an employee of Northeastern
8 University?
9 A. No.
10 Q. All right. So you don't know whether any
11 Northeastern employees, officers, agents are on the
12 board for --
13 A. I don't believe that there are.
14 MR. VALEK: Objection. Form.
15 Q. I'll hand you what the reporter -- a
16 Boston.com article from November 10th, 2007.
17 MR. WOLFF: Mark that as Exhibit 11.
18 (Exhibit 11, Boston.com article, November
19 10, 2007, marked for identification.)
20 MR. WOLFF: If you like, we can take a
21 break now. We've been going about an hour.
22 THE VIDEOGRAPHER: Going off the record.
23 The time is 9:02 a.m.
24 (Proceedings interrupted at 9:02 a.m. and
25 reconvened at 9:11 a.m.)

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1 THE VIDEOGRAPHER: We're back on record.
2 The time will be 9:11. You may continue.
3 BY MR. WOLFF:
4 Q. Are you familiar with the document that's
5 been marked as Exhibit 11?
6 A. Only -- only since you gave it to me.
7 Q. All right. Now, you indicated earlier
8 when I gave you the Reuters article, which was
9 Exhibit 10, that you were familiar with a different
10 article.
11 A. Yes.
12 Q. And could this be the other article you
13 were referring to? It was in the Boston Globe as
14 well, I understand.
15 A. All right. I think the article I saw was
16 the Globe article. I don't know if the Globe
17 article, even though it says Boston.com in the
18 Boston Globe, I'm not sure that this is the same --
19 it doesn't actually look like it's the same
20 article. I just don't remember well enough to tell
21 you that.
22 Q. There are three areas in this article that
23 attribute some statements to Michael. The first is
24 in the second paragraph. Do you believe these
25 statements are accurate that are attributed to

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1 Mr. Belanger --
2 MR. VALEK: Objection. Form.
3 Q. -- to Michael?
4 MR. VALEK: Same objection.
5 A. Is it -- I'm sorry. Do you think -- are
6 you asking me if this is what he said or if the
7 language here which is attributed --
8 Q. Yes. Is that what he said?
9 A. I don't know.
10 Q. Did you discuss the Boston Globe article
11 with him?
12 A. Not really, actually. We just looked at
13 it.
14 Q. What do you mean not really?
15 A. Well, I looked at it. Did we discuss it
16 yesterday? I mean, briefly. I don't think there
17 was any big -- I don't recall a big discussion
18 about it.
19 Q. What did you discuss about it yesterday?
20 MR. VALEK: I'm going to object to this on
21 the basis it calls for -- to the extent it
22 calls for privileged information,
23 communications between counsel and yourself
24 and Mr. Belanger yesterday.
25 A. I don't think I can answer that without

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1 revealing attorney/client privilege.
2 Q. Prior to yesterday, had you ever discussed
3 the article with him?
4 A. No.
5 Q. Had you ever mentioned that there was an
6 article in the Boston Globe to Michael?
7 A. No.
8 Q. Did you ever tell him you were familiar
9 with an article in the Boston Globe?
10 A. No.
11 Q. The fourth paragraph indicates that a
12 Boston area law firm told him, seeing the
13 presentation by Google that described the company's
14 web search technology. Can you tell me what firm
15 it was that informed Michael of this?
16 MR. VALEK: Objection. Form.
17 A. I believe that -- well, first of all, I'm
18 not -- what I understand is that, not that the law
19 firm advised Michael of the existence of the
20 InfoWeek article.
21 MR. WOLFF: Could you repeat that answer
22 back.
23 COURT REPORTER: "Answer: 'I believe that
24 -- well, first of all, I'm not -- what I
25 understand is that, not that the law firm

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1 advised Michael of the existence of the
2 InfoWeek article."
3 Q. I did not understand that answer. I'm
4 sorry.
5 A. Okay. I didn't understand it either.
6 Q. It's probably like my questions.
7 A. I think what happened was that the law
8 firm advised Michael, sent him a reference to the
9 InfoWeek article and said, have you looked at this.
10 I think that was the -- also, I'm not --
11 I'm not sure that the -- I don't know what the
12 exact communication was between Michael and the law
13 firm, other than that the InfoWeek article came to
14 his attention.
15 Q. Do you have any personal knowledge of the
16 statements that are attributed to Michael in
17 paragraph 4 of Exhibit 11?
18 MR. VALEK: Objection. Form.
19 A. Personal knowledge? I'm sorry. In
20 paragraph what?
21 Q. In the fourth paragraph --
22 A. Fourth paragraph.
23 Q. -- of the letter.
24 A. In the fourth paragraph, do I have any
25 personal knowledge of...

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1 Q. The facts that are attributed to Michael
2 in this article.
3 MR. VALEK: Objection. Form.
4 A. All right. And I guess I'm -- do I have
5 any personal knowledge of which facts?
6 Q. Any of the -- I guess what I'm trying to
7 understand is you're here to testify about the
8 complaint and the infringement contentions and the
9 factual basis for the complaint and the factual
10 basis or the reasoning behind the conclusions Jarg
11 reached as to infringement. And so what I'm trying
12 to understand is whether you know anything about
13 stuff prior to this complaint being filed or if
14 that's something I need to ask Michael about.
15 MR. VALEK: Objection. Form.
16 A. Whether I know -- I know some things about
17 what happened prior to the complaint.
18 Q. Right. But do you know it or are you just
19 speculating? Because a lot of your answers you say
20 things like I believe or I think, and it's not
21 really a committal as to what happened and what
22 didn't happen.
23 MR. VALEK: Objection. Form.
24 A. Well, I -- okay.
25 MR. VALEK: Go ahead.

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1 A. I mean, what I am describing is
2 information which has been -- relates to this
3 infringement process, but I wasn't personally in
4 attendance each time the communications were made
5 back and forth. So I wasn't present when the
6 interview was made at this article. So I don't
7 have --
8 Q. And you don't have personal knowledge of
9 the things that are referenced in this article
10 either.
11 MR. VALEK: Objection. Form.
12 A. I don't have -- I have knowledge of them,
13 but not by virtue of being a participant in the
14 transaction at the time.
15 Q. All right. Who would be the best person
16 to testify about what happened before the suit was
17 filed, while Jarg was coming to its conclusion that
18 there was infringement?
19 MR. VALEK: Objection. Form.
20 A. Who would be the best person? I don't
21 know.
22 Q. You can't think of anyone?
23 A. There are a number of possibilities, and
24 among those, a best better, more than me, what are
25 you -- I'm just struggling.

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1 Q. Yes. Better than you.
2 A. Better than me.
3 MR. VALEK: Objection. Form. If there's
4 a question.
5 A. All right. So what's the question again?
6 Q. Who would be able to testify about the
7 factual bases behind the complaint --
8 A. I am --
9 MR. VALEK: Objection. Form.
10 Q. -- better than you?
11 MR. VALEK: Or sorry. Form.
12 A. Among others, presumably Michael might be
13 about to provide more direct -- might be able to
14 provide -- might be better than me.
15 Q. Have you had interactions with any other
16 Jarg employees other than Michael?
17 MR. VALEK: Objection. Form.
18 A. For what purpose?
19 Q. For any purpose.
20 A. Yes.
21 Q. Who are those other employees?
22 A. Cathy Reinhold, a number of -- some of
23 their coders, primarily coders.
24 Q. And --
25 A. People who write the code.

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1 Q. And of those people that you've interacted
2 with in the past, who in your view is most familiar
3 with the facts and circumstances surrounding the
4 basis of the complaint that was filed?
5 MR. VALEK: Objection. Form. The witness
6 has come prepared to answer questions as to
7 the noticed topics.
8 A. I don't know the extent of what other
9 people know.
10 Q. Do you think Michael would know more than
11 you?
12 MR. VALEK: Objection. Form.
13 A. Certainly possible.
14 Q. You think -- you think he could know less
15 than you?
16 MR. VALEK: Objection. Form.
17 A. I don't know what he knows.
18 Q. All right. Why do you think Michael is
19 the person that was interviewed by Reuters and the
20 Boston Globe?
21 MR. VALEK: Objection. Form.
22 A. I mean, I can speculate, but I don't know.
23 Q. Why don't you tell me.
24 MR. VALEK: Objection. Form.
25 Q. Why do you think Michael would have been

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1 the person who discussed the case with the press?
2 MR. VALEK: Objection. Form.
3 A. I don't know.
4 Q. And can you guess?
5 MR. VALEK: Objection. Form.
6 A. Can I guess? Yes, I can guess.
7 Q. What would be your --
8 MR. VALEK: Objection. Form.
9 Q. -- guess?
10 MR. VALEK: Sorry. Objection. Form.
11 A. Because he's the president of the company,
12 I would guess.
13 Q. You guess he's the president of the
14 company?
15 A. No.
16 Q. You don't know he's the president of the
17 company?
18 A. He's the president of the company.
19 Q. So he's an officer of Jarg, correct?
20 A. Yes.
21 Q. And he's able to make statements that can
22 be attributed to Jarg?
23 MR. VALEK: Objection. Form.
24 Q. Correct?
25 MR. VALEK: Objection. Form.

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1 A. I would think.
2 Q. The penultimate paragraph, beginning
3 "Belanger said he has no interest in shutting down
4 Google" --
5
6 A. Got it.
7 Q. -- do you have any view whether those are
8 accurate attribute -- excuse me, let me start over.
9 Do you have any idea whether those are
10 accurate attributions to Michael?
11 MR. VALEK: Objection. Form.
12 A. I have no idea.
13 Now, let me make sure I understand the
14 question. I don't -- I don't know what Michael
15 told the reporter; all I know is what's in here.
16 Q. Is it consistent with your understanding
17 of the facts of this case that Michael told the
18 press -- let me strike that.
19 Is it consistent with your understanding
20 of the facts of the case that Michael told the
21 Boston Globe that he had no interest in shutting
22 down Google?
23 MR. VALEK: Objection. Form.
24 A. Consistent with my understanding of facts
25 of the case that he told them that? I have no

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1 idea.
2 Q. Is it consistent -- let me start over. So
3 your answer is you have no idea?
4 MR. VALEK: Objection. Form.
5 THE WITNESS: What was -- was that my
6 question -- was that my answer?
7 COURT REPORTER: "Answer: 'I have no
8 idea.'"
9 A. Yes, that was my answer.
10 Q. It was under your breath. I wasn't sure.
11 A. Sorry.
12 Q. The next sentence, "We expect them to be
13 generous enough to pay a normal royalty if
14 Northeastern and Jarg win the case."
15 Do you have any idea whether that is an
16 accurate statement by Michael?
17 MR. VALEK: Objection. Form.
18 A. I have no idea that -- whether the
19 reporter's -- the statement that Michael -- he is
20 attributing to Michael is in fact what Michael
21 said.
22 Q. If it was in fact what Michael said, do
23 you believe Michael would stand by his statement to
24 the press?
25 MR. VALEK: Objection. Form.

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1 A. I have no idea.
2 Q. You have no idea if he would stand by his
3 statement to the press if it was --
4 A. For what purpose?
5 Q. For the purposes of the suit.
6 MR. VALEK: Object to form.
7 A. I don't know.
8 Q. Is it correct that the complaint asks for
9 injunctive relief? It's Exhibit 2. It's on the
10 title of the complaint.
11 A. Yeah.
12 Q. And it's paragraph 28 as well.
13 MR. VALEK: Objection. Form. Can you
14 read back the question.
15 COURT REPORTER: "Question: 'Is it
16 correct that the complaint asks for injunctive
17 relief? It's Exhibit 2. It's on the title of
18 the complaint.'"
19 A. It's actually in the prayer for relief,
20 pray for a judgment that an injunction be issued.
21 Q. Well, paragraph 28 says that unless
22 enjoined, there's no adequate remedy at law.
23 Isn't it correct that a reasonable -- that
24 a royalty is a remedy at law?
25 MR. VALEK: Objection. Form.

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1 A. Are you asking me personally?
2 Q. Yes.
3 A. Yes, as a lawyer. Okay. You're asking me
4 personally as lawyer again --
5 Q. Yes.
6 A. -- whether a royalty is an adequate remedy
7 at law?
8 Q. Yes.
9 MR. VALEK: Objection. Form.
10 A. Injunction is an equitable remedy, not a
11 remedy at law.
12 Q. Right. But what is a royalty, is it a
13 legal remedy or an equitable remedy?
14 A. Oh, my.
15 MR. VALEK: Object to form.
16 A. I must say, I haven't looked at that
17 question, so I don't -- I can't recall. I suspect
18 it's a legal one, but that's a suspicion; I'd have
19 to go look.
20 Q. All right. Is it inconsistent then, the
21 statements Michael made to the press, that he was
22 not looking to shut Google down, if the complaint
23 is asking for injunctive relief?
24 MR. VALEK: Objection. Form.
25 A. The complaint, I think, speaks for itself.

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1 Q. That wasn't my question.
2 A. Okay. What was your question again?
3 MR. WOLFF: Could you read back the
4 question, please, Dana.
5 COURT REPORTER: "Question: 'Is it
6 consistent [sic] then, the statements Michael
7 made to the press, that he was not looking to
8 shut Google down, if the complaint is asking
9 for injunctive relief?'"
10 MR. VALEK: Objection. Form.
11 Q. Let me restate the question.
12 Is it consistent, when Michael told the
13 press that he was not looking to shut Google down,
14 with the remedy requested in the complaint that he
15 was -- that Jarg was seeking an injunction?
16 MR. VALEK: Objection. Form. And again,
17 this has absolutely nothing to do with any of
18 the topics that this witness is prepared to
19 answer here today on behalf of the
20 corporation.
21 Q. Can you answer the question?
22 MR. VALEK: Objection. Form.
23 THE WITNESS: The question again, is?
24 COURT REPORTER: "Question: Is it
25 consistent, when Michael told the press that

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1 he was not looking to shut Google down, with
2 the remedy requested in the complaint that
3 Jarg was seeking an injunction?"
4 MR. VALEK: If you are asking him to
5 testify on behalf of the corporation --
6 MR. WOLFF: Just object and no speaking
7 objections. You know the rules in East Texas.
8 You can only object to the question and you
9 can only instruct the witness not to answer a
10 question if it calls for privilege.
11 MR. VALEK: I'm going to instruct him not
12 to answer if you're asking him to make a
13 representation on behalf of the corporation
14 because it's not noticed. If you're asking
15 him personally, he can answer the question.
16 MR. WOLFF: Please no speaking objections.
17 Object to form. You can deal with the
18 issues with the questions with your objection
19 to form at the time the testimony is tried to
20 be entered at court.
21 MR. VALEK: If you want to take this up
22 with the magistrate, we can. What I'm telling
23 you is if you're asking him to make a
24 representation on behalf of Jarg, the
25 corporation --

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1 MR. WOLFF: I'm telling you --
2 MR. VALEK: -- I'm instructing him not to
3 answer.
4 MR. WOLFF: I understand your objection.
5 Q. You can answer in whatever capacity you
6 think is appropriate.
7 THE WITNESS: Okay. Would you read the
8 question back, please.
9 COURT REPORTER: "Question: 'Is it
10 consistent, when Michael told the press that
11 he was not looking to shut Google down, with
12 the remedy requested in the complaint that
13 Jarg was seeking an injunction?'"
14 MR. VALEK: Objection. Form.
15 A. All right. Speaking personally, and
16 assuming the truth of what Michael -- that the
17 reporter accurately portrayed -- reported what
18 Michael said, and assuming -- I mean, with a lot of
19 assumptions -- well, I just can't put myself in
20 Michael's mind. I don't know what --
21 Q. I'm not asking you to put yourself in
22 Michael's mind. I'm asking whether his statements
23 to the press are consistent with the relief
24 requested in the complaint, which includes the
25 injunction?

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1 MR. VALEK: Objection. Form.
2 A. Yes.
3 Q. It's consistent?
4 A. Yes.
5 Q. How is it consistent?
6 MR. VALEK: Object to form.
7 A. It is consistent in the sense that -- I'm
8 sorry, I think I'm starting to get into an
9 attorney/client privilege here and I -- the
10 complaint speaks for itself. The article speaks
11 for itself. And I -- what the objectives of the
12 company are as they've been discussed with me are
13 matters of attorney/client privilege.
14 Q. So you can't speak to this issue because
15 of some prior communication you've had with the
16 client?
17 A. You're --
18 MR. VALEK: Objection. Form.
19 A. You're asking me to, I believe, relate
20 Michael's -- the company's overall objectives in
21 the litigation and the reasons for taking a stance
22 in the complaint, which in my view are discussions
23 between an attorney and client about the objectives
24 of the litigation and how to get there.
25 Q. Is there some specific communication

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1 you're thinking of that this would invoke the
2 privilege? I mean, I just asked you whether it was
3 consistent.
4 MR. VALEK: Objection. Form.
5 A. Some specific communication?
6 MR. VALEK: And actually, based upon the
7 witness' response, I'll also object as
8 privilege.
9 Q. Jarg put you up as their witness. I'd
10 like to understand the basis for the complaint --
11 MR. VALEK: Objection. Form.
12 A. The basis --
13 Q. -- and the statements made in the press
14 and the relief requested.
15 MR. VALEK: Objection. Form.
16 Q. They knew you were a lawyer when they put
17 you up, right?
18 A. Yes. I'm assuming they did. I believe.
19 Yes, they knew I was a lawyer. And the topics that
20 I am testifying about in this deposition are set
21 forth in the notice of the deposition, which are
22 the basis and foundation for the contentions in
23 paragraphs 26 and 29, the infringement contentions
24 and the basis and the foundation therefore, and
25 testing about Google technology and product, not

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1 about statements that Michael has made in the
2 press, not about reports that Michael has made in
3 the press, they're not part of the deposition
4 topics.
5 Q. So you're saying you can't testify about
6 them at all or you can't testify on behalf of Jarg?
7 MR. VALEK: Objection. Form. Go ahead.
8 A. Off of the topics of the deposition, it
9 seems to me that we are -- have the possibility of
10 intruding into other conversations that I've had
11 with Michael and the company about the litigation,
12 about their objectives in the litigation, about
13 their tactics in getting there, and to the extent
14 that things are consistent or inconsistent, it
15 seems to me gets into that topic.
16 MR. WOLFF: All right. We disagree.
17 We'll take it up with the court.
18 Q. Just to confirm, so your answer is
19 basically that you can't answer the questions based
20 on attorney/client privilege?
21 A. I can't answer the question that you asked
22 me about their -- the consistency between this, the
23 statements that Michael has made as to his
24 objectives in the article and the basis for the
25 complaint.

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1 Q. All right. If you'd like, we can take a
2 short break or we can continue to move on; which
3 would you prefer?
4 A. I'm okay for the time being.
5 Q. All right.
6 A. Thank you.
7 Q. Now, can you tell me the process Jarg went
8 through when it formed its conclusion that Google
9 was infringing the patent?
10 A. Generally speaking, yes.
11 Q. What was that?
12 A. They looked at the information that they
13 had found that was publicly available about Google
14 or that had been provided to them. They -- and
15 this is the company now. The company involved Ken
16 in an analysis of the information that they had
17 available.
18 And from -- from there, they started
19 talking with patent litigators to see if their
20 understanding of their own technology and their
21 understanding of what Google reported its
22 technology to be was in fact a -- constituted --
23 would be such that Google's product constituted an
24 infringement of Jarg's product, Jarg's patents.
25 Q. Who besides Ken at the company did this?

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1 A. Michael.
2 Q. Anyone else?
3 A. I don't know if anybody else was involved.
4 Q. All right. And when was this done?
5 A. This was done starting I believe in around
6 2005 and proceeding right up -- right up until the
7 complaint was filed, even thereafter, I presume.
8 Q. And why do you say you believe in 2005?
9 A. Well, because that's the information I
10 have on behalf of the company.
11 Q. All right. Do you know if the company
12 read the patent as part of that process?
13 A. Do I know if the company --
14 Q. And by -- and the reason I say the company
15 there is because you said the company did this and
16 you didn't -- weren't committing as to any
17 particular person doing it necessarily.
18 A. Right. And I suspect the -- I suspect the
19 -- I'm sorry -- I don't know is the answer.
20 Q. You don't know if they read the patent?
21 A. I don't know if they read the patent.
22 Q. Do you know if they read the file history
23 for the patent?
24 A. I don't know.
25 Q. Do you know what the file history for the

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1 patent is?
2 MR. VALEK: Objection.
3 A. As an abstract question or as a, do I know
4 the contents of it?
5 Q. Well, yes. It could be both. It was a
6 compound question you asked me. Really, I'm the
7 one who's supposed to ask the questions.
8 Do you know what a file history -- a
9 patent prosecution history is?
10 A. Yes.
11 Q. And it's also called a file history.
12 A. Yes.
13 Q. Okay. And you understand that there's a
14 back and forth at the patent office before the
15 patent is issued?
16 A. Yes.
17 Q. Do you know if Jarg read the file history
18 as part of its process of assessing?
19 A. I don't know.
20 Q. Do you know --
21 A. Jarg there being the company.
22 Q. Or anyone at Jarg. Or Ken Baclawski.
23 A. Okay.
24 Q. Again, I'm saying that because you used
25 those words.

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1 A. Yes, that's fine.
2 Q. And you don't know whether there was
3 anyone at the company besides Michael and Ken
4 working on this, correct?
5 A. Correct.
6 Q. Who would you ask to find that out?
7 A. Michael.
8 Q. And besides the InfoWeek article that you
9 mentioned, what other articles were there that
10 Michael or -- I'm sorry. Strike that.
11 Besides the InfoWeek article -- excuse me.
12 Let me start one more time.
13 Besides the InfoWeek article, what other
14 articles about Google's technology did Jarg review
15 as part of this process?
16 A. Well, what other articles? I mean, it
17 wasn't the InfoWeek article. It was the InfoWeek
18 article, then the video, and then proceeding with
19 counsel.
20 And there are articles cited in the
21 contentions, but I'm not -- I don't know the extent
22 to which each of those articles was read by Michael
23 or Ken.
24 Q. When you say to the extent, does that mean
25 you don't know whether those articles were read as

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1 part of the pre-suit or do you know that some of
2 them were or portions of them were?
3 MR. VALEK: Objection. Form.
4 A. It's my understanding that those articles
5 were read by, certainly by Jarg's lawyers and
6 reviewed by Jarg, but I don't know the extent to
7 which Michael or Ken sat down and read through the
8 entire article.
9 Q. When do you think that they were read?
10 MR. VALEK: Objection. Form.
11 A. I don't know.
12 Q. Before the complaint was filed? Do you
13 know if they were read before that time?
14 A. Don't know.
15 Q. Who would you ask to find that out?
16 A. I would ask Michael and I would ask Ken.
17 Q. Anyone else?
18 A. No.
19 Q. And do you know whether Jarg compared the
20 claims of the patent to the information about
21 Google's technology that it had?
22 MR. VALEK: Objection. Form.
23 Q. Again, this is prior to the suit being
24 filed.
25 A. Do I -- I'm sorry. Do I know what?

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1 Q. Prior to the suit being filed, do you know
2 whether Jarg compared its patent claims to the
3 Google technology that it now alleges infringed the
4 patent?
5 MR. VALEK: Objection. Form.
6 A. I know that the -- prior to the complaint,
7 Jarg and its lawyers did. I don't know the extent
8 to which Jarg, Michael or Ken individually did.
9 Q. I'm asking about prior to the complaint
10 being filed.
11 MR. VALEK: Objection. Form.
12 MR. WOLFF: Could you read question back.
13 COURT REPORTER: Question: 'Prior to the
14 suit being filed, do you know whether Jarg
15 compared its patent claims to the Google
16 technology that it now alleges infringed the
17 patent?'"
18 MR. VALEK: Can you read his answer back
19 as well.
20 COURT REPORTER: "Answer: 'I know that
21 the -- prior to the complaint, Jarg and its
22 lawyers did. I don't know the extent to which
23 Jarg, Michael or Ken individually did.'"
24 BY MR. WOLFF:
25 Q. Your answer is non-committal. You don't

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1 know when it was done and you don't know who did
2 what.
3 So do you know whether Jarg, and by this I
4 mean Michael and Ken, because they're the only two
5 people you said you have any basis to know about,
6 do you know whether Michael or Ken compared the
7 claims of the patent to the accused Google
8 technology?
9 A. No, I don't.
10 Q. Who would you ask to find that out?
11 A. Michael or Ken.
12 Q. And again, Jarg never contacted Google
13 prior to the suit being filed, correct?
14 MR. VALEK: Objection. Form.
15 A. Never contacted Google --
16 Q. About this alleged infringement.
17 A. No.
18 Q. All right. Do you know if there are any
19 other interviews Michael has given to the press
20 about this case?
21 A. No. I'm assuming that -- I'm including
22 these -- sorry, the Reuters, the Boston.com and the
23 Globe one, which isn't here.
24 Q. Right.
25 A. No.

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1 Q. I'm going to move to the next module now.
2 If you'd like to take a break, we can. If you'd
3 like to, we can keep going. What would you like to
4 do?
5 A. How long is the next module?
6 Q. It's going to take a while.
7 A. Could take a while?
8 Q. Yeah.
9 MR. VALEK: Let's take a five-minute
10 break.
11 THE VIDEOGRAPHER: Going off. The time is
12 9:47.
13 (Proceedings interrupted at 9:47 a.m. and
14 reconvened at 10:00 a.m.)
15 THE VIDEOGRAPHER: We're back on record.
16 The time is 10:00. You may continue.
17 BY MR. WOLFF:
18 Q. All right. I will hand you what's been
19 previously marked as Exhibit 8. This a copy of U.S.
20 Patent Number 5,694,593.
21 Have you read the patent before?
22 A. Yes.
23 Q. How detailed?
24 MR. VALEK: Objection. Form.
25 Q. How detailed was your review?

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1 MR. VALEK: Objection. Form.
2 A. I read through it. It was not a detailed
3 review.
4 Q. So what is your confidence level to
5 testify about Jarg's understanding of the patent?
6 MR. VALEK: Objection. Form.
7 A. I am, I believe, competent to testify
8 about the infringement contentions. I am not a
9 patent lawyer. I have not reviewed this with the
10 assistance -- not personally reviewed it with the
11 assistance of a patent lawyer, but I am competent
12 to testify about the infringement contentions.
13 Q. All right. Are you able -- I mean,
14 obviously, the contentions depend on Jarg's
15 understanding of its patent and its claims,
16 correct?
17 A. In this particular instance, it's Jarg and
18 its counsel.
19 Q. What's that mean?
20 A. That means that the infringement
21 determinations are made with the assistance of
22 counsel, who are competent to-- who we rely on both
23 in preparing the patent to reflect our technology
24 and in determining that an infringement exists.
25 Q. But Jarg -- this is, Jarg brought this

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1 suit with Northeastern, and Jarg has a position on
2 the scope and content of the patent it has asserted
3 as well as an understanding of the technology that
4 it has alleged infringed.
5 A. Is that a question?
6 Q. Correct?
7 MR. VALEK: Objection. Form.
8 THE WITNESS: Read the question again,
9 please.
10 COURT REPORTER: "Question: 'Jarg
11 brought this suit with Northeastern, and Jarg
12 has a position on the scope and content of the
13 patent it has asserted as well as an
14 understanding of the technology that it has
15 alleged infringed, correct?'"
16 A. Yes.
17 Q. And are you prepared to testify about the
18 scope and content of the patent today?
19 MR. VALEK: Objection. Form.
20 A. I am prepared to talk about the scope and
21 content of the patent insofar as it is infringed
22 and insofar as those are set forth in the
23 infringement contentions.
24 Q. All right. So can you -- before we get to
25 the infringement contentions, can you tell me your

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1 understanding of the patent? And by your, I mean
2 Jarg's understanding of the patent.
3 MR. VALEK: Objection. Form.
4 A. In a general sense, yes.
5 Q. All right. What in a general sense is the
6 patent about?
7 A. In a general sense, the patent is about a
8 distributed system for receiving a query from a
9 user and enabling a multitude of computers to take
10 that query and weigh it against a multitude of
11 documents that are in other computers to determine
12 which documents are most suited to the query that's
13 made.
14 Q. All right. And in the background of the
15 patent, if you can turn to column 1 --
16 A. Background -- the background of the
17 invention?
18 Q. Yes. If you could read column 1, lines 32
19 through 41 and tell me Jarg's understanding of this
20 -- of a drawback of the prior art?
21 A. I'm sorry. What?
22 Q. Of a drawback of the prior art.
23 A. Of the drawback of the prior art?
24 MR. VALEK: I'm going to object to the
25 form of this question.

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1 A. All right. So you want me to read --
2 Q. I tell you what, why don't you read the
3 background of the invention, and at the very last
4 line, line approximately 61 it says, "The present
5 invention avoids these limitations."
6 A. Okay. Read that?
7 Q. I'm just going to give you some context
8 for your review to give you an idea as to what's
9 coming.
10 So column 1, line 61 approximately,
11 indicates that there are some limitations in the
12 prior art, correct?
13 MR. VALEK: Objection. Form.
14 A. All right. Line 60 --
15 Q. They don't line up exactly on these
16 patents.
17 A. Yeah, they don't.
18 Q. But it's right about the summary of the
19 invention.
20 A. Okay. The line says, "The present
21 invention avoids these limitations."
22 Q. Right. And above it, in the three
23 paragraphs above it, there are some drawbacks
24 identified to the prior art. I'm going to ask
25 about those. But why don't you read the background

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1 of the invention and then we'll address it to these
2 paragraphs.
3 A. Okay.
4 Okay. I've read background of the
5 invention.
6 Q. All right. So the first paragraph I'd
7 like to talk about is at column 1, approximately
8 lines 32 through 41. It begins, "It should also be
9 noted." And what I'd like to know is Jarg's
10 understanding of the limitation of the prior art
11 identified in this paragraph?
12 MR. VALEK: I'm going to object to the
13 form of this question. I'll also object to
14 the extent it requires you to disclose
15 discussions that Jarg has had with its
16 litigation counsel. Instruct you not to
17 answer that as privileged.
18 A. And your question again is? I'm sorry.
19 Q. It's basically what is the point of that
20 paragraph at column 1, lines 32 through 41?
21 MR. VALEK: Same objection. And again,
22 I'll object on privilege to the extent it
23 requires you to disclose conversations between
24 Jarg and its litigation counsel.
25 THE WITNESS: What's the question? I'm

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1 sorry. I'm sorry, ask the question again.
2 COURT REPORTER: "Question: 'It's
3 basically what is the point of that paragraph
4 at column 1, lines 32 through 41?'"
5 MR. VALEK: Same objection.
6 A. All right. I'm -- I can read this and
7 tell you what I think the point of it is.
8 Q. That's what I'd like to know.
9 A. Okay.
10 MR. VALEK: And again, to the extent this
11 requires you to reveal communications that
12 Jarg has had with its litigation counsel, I'll
13 advise you not to answer. If you can answer
14 it without doing that, go ahead.
15 A. I don't think I can answer this without
16 revealing attorney/client communications.
17 Q. You don't think you can or you can't?
18 A. I can't answer that without revealing
19 attorney/client communications. I mean, personally
20 I can tell you what -- never mind. I can't answer
21 it without --
22 Q. Why don't you tell me personally then --
23 MR. VALEK: Objection. Form.
24 Q. -- what your understanding of the
25 paragraph is?

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1 MR. VALEK: Again, objection. Form.
2 A. My personal understanding is that
3 databases can be set up either to contain objects
4 or pointers, and that the size of the database as
5 it increases makes it difficult to be handled in a
6 single computer because the memory of the single
7 computer isn't sufficient to contain all of the
8 data that's in the database or even the pointers
9 that point to the information located somewhere
10 else. That's how I personally would read that.
11 Q. Do you see any discussion about indexes in
12 this paragraph?
13 A. It says, "Databases include indexes by
14 which the database locates stored data. Large
15 databases require correspondingly large indexes to
16 maintain pointers to the stored data. Such an
17 index can be larger than the database itself. Such
18 large indexes are stored in relatively slow
19 secondary storage rather than faster main memory
20 because the main memory is controlled by a single
21 computer processor -- I'm sorry -- because the main
22 memory, controlled by a single computer processor
23 is limited in size."
24 Q. So you just read the paragraph back is
25 what you did.

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1 A. What was --
2 Q. I asked a yes or no question, but you read
3 the paragraph back.
4 We'll move on.
5 A. Do I see anything in there --
6 Q. So is it the point that large databases
7 have large indexes?
8 MR. VALEK: Objection. Form.
9 A. Is it the point that large databases
10 require correspondingly large indexes to maintain
11 pointers to the stored data; that's what it says.
12 Q. So is this a drawback of the prior art?
13 MR. VALEK: Objection. Form. And again,
14 to the extent you're going to disclose
15 attorney/client communications, I would
16 caution the witness not to do that.
17 A. And I am not going to do that.
18 Q. Can you answer the question at all?
19 MR. VALEK: I'm going to instruct you not
20 to answer to the extent you would disclose
21 attorney/client communications or attorney
22 work product that's been shared with Jarg. To
23 the extent you can answer otherwise, you may.
24 A. I'm sorry. Your question is?
25 Q. Can you answer -- I mean, can you tell me

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1 what the limitation is of the prior art in this
2 paragraph, as Jarg's representative?
3 A. I can't do that without revealing
4 attorney/client communications.
5 Q. Okay. The second paragraph, which would
6 begin approximately column 1, lines 42, and end at
7 line 50, can you tell me the limitation of the
8 prior art that is conveyed in this paragraph?
9 MR. VALEK: Objection. Form. And then
10 objection to the extent that requires you to
11 disclose attorney work product or
12 attorney/client communications, I'll instruct
13 you not to answer.
14 MR. WOLFF: Counsel, you can just say
15 objection, privilege, and I think the witness
16 is competent enough to understand your
17 instruction without dragging out the objection
18 so long.
19 MR. VALEK: I'll stand by my objection.
20 A. I'm sorry. The question again?
21 MR. WOLFF: Could you read the question
22 back, please, Dana.
23 COURT REPORTER: "Question: 'The second
24 paragraph, which would begin approximately
25 column 1, lines 42, and end at line 50, can

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1 you tell me the limitation of the prior art
2 that is conveyed in this paragraph?"
3 MR. VALEK: Same objection.
4 A. Attorney/client privilege.
5 Q. You can't answer this question on behalf
6 of Jarg?
7 A. Can't answer that question on behalf of
8 Jarg because it will reveal communications between
9 Jarg and its, both patent lawyers and its patent
10 litigators.
11 Q. All right. And the next paragraph,
12 beginning approximately column 1, line 51 and going
13 to line 60, can you tell me what Jarg's
14 understanding of this limitation of the prior art
15 is?
16 MR. VALEK: Objection. Calls for
17 privileged information, same as before.
18 A. And the answer is the same,
19 attorney/client privilege.
20 Q. So you can't answer the question on behalf
21 of Jarg because you believe it invokes
22 attorney/client privilege?
23 A. Both with patent prosecution counsel and
24 with patent litigation counsel.
25 Q. So are you able to testify on behalf of

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1 Jarg as to any of the limitations that the present
2 invention avoids?
3 MR. VALEK: Objection. Form.
4 A. Am I able -- not without going into
5 attorney/client privileged information, both as to
6 patent prosecution counsel and as to patent
7 litigation counsel.
8 Q. So you're not going to answer the question
9 then because it invokes privilege?
10 A. Correct.
11 Q. All right. Moving on to the summary of
12 the invention, beginning approximately column 1,
13 roughly line 64, and it continues to column 2
14 approximately line 17, without reading back to me
15 the text in the patent, can you summarize for me
16 what the invention is as conveyed in the summary of
17 the invention?
18 MR. VALEK: Objection. Form.
19 THE WITNESS: What's the question again?
20 COURT REPORTER: "Question: 'Moving on to
21 the summary of the invention, beginning
22 approximately column 1, roughly line 64, and
23 it continues to column 2 approximately line
24 17, without reading back to me the text in the
25 patent, can you summarize for me what the

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1 invention is as conveyed in the summary of the
2 invention?"
3 MR VALEK: Objection. Form.
4 A. Personally speaking, after a while, yeah.
5 I have to read through it a few times, but --
6 Q. On behalf of Jarg can you --
7 A. On behalf of Jarg.
8 MR. VALEK: Objection. Form.
9 A. It provides for a -- without -- okay,
10 without reading it back. Computer database search
11 system that consists of a computer on which to
12 report -- to receive queries and report responses,
13 and a network of other computers that report back
14 to that computer and are able to receive the search
15 query, perform the search process and return an
16 answer to the end user.
17 The search process essentially consists of
18 taking the query, separating out the different
19 elements of the different words of the query and
20 using those individual words in a distributed way
21 to find corresponding objects in another database
22 or series of databases such that the individual
23 fragments, if you will, are used to perform
24 searches, and then the process is returned and the
25 answer is put on the end computer.

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1 Q. All right. Is there a distinction between
2 different kinds of computers that are described in
3 the summary of the invention?
4 MR. VALEK: Objection. Form. And then
5 also objection to the extent it calls you to
6 reveal communications with litigation counsel,
7 I'll object to privilege.
8 THE WITNESS: I'm sorry. What's the
9 question again?
10 COURT REPORTER: "Question: 'Is there a
11 distinction between different kinds of
12 computers that are described in the summary of
13 the invention?'"
14 MR. VALEK: Objection. Privileged. You
15 can answer to the extent it doesn't require
16 you to disclose privileged information.
17 A. What do you mean by different kinds of
18 computers?
19 Q. Why don't I refer you to column 2, lines 5
20 through 11. There's a home node identified and
21 there's a query node.
22 A. Doesn't say they're different kinds of
23 computers.
24 Q. They're different kinds of nodes; is that
25 correct?

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1 MR. VALEK: Objection.
2 A. Doesn't say they're different kinds of
3 nodes.
4 MR. VALEK: Objection. Form to the last
5 question.
6 Q. Can you tell me what the home node does?
7 MR. VALEK: Object to form. And then also
8 to the extent this calls for privileged
9 information, I'll instruct you not to answer.
10 A. All right. According to the language in
11 the summary, the home node is a computer that
12 essentially faces the end user, it's where the
13 query is made.
14 Q. And what does the home node do with the
15 query it receives?
16 MR. VALEK: I'm going to object, privilege
17 and instruct the witness not to answer.
18 A. I'm not going to answer on the grounds
19 that it will involve attorney/client
20 communications.
21 MR. VALEK: And attorney work product.
22 A. And attorney work product.
23 Q. So you're not going to answer my question
24 on privilege grounds?
25 A. That's correct.

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1 Q. Can you tell me what the query node does,
2 according to the summary of the invention?
3 MR. VALEK: I'll again object and instruct
4 the witness not to answer on the basis of
5 attorney/client and attorney work product
6 privilege.
7 A. And on the instructions of counsel, I'm
8 not going to respond on the basis of privilege.
9 Q. Can you tell me what a hashed fragment is?
10 MR. VALEK: Objection. And I'm going to
11 instruct the witness --
12 Q. -- in the summary of the invention?
13 MR. VALEK: Sorry. Objection.
14 Privileged. I'm going to instruct the witness
15 not to answer on the basis of attorney/client
16 privilege and attorney work product.
17 A. I will follow that instruction.
18 Q. Can you tell me what is transmitted by the
19 home node, according to the summary of the
20 invention?
21 MR. VALEK: Objection. Privilege. And
22 again, I'll instruct the witness not to answer
23 based on the attorney/client privilege and
24 attorney work product.
25 A. And I will follow that instruction.

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1 Q. So you're not going to answer any of my
2 previous questions on privilege grounds; is that
3 right?
4 A. That's correct.
5 Q. All right. Let's turn to column 3, lines
6 25 through 35 in Exhibit 8. And if you could tell
7 me when you've read that paragraph or that section?
8 A. Okay.
9 Q. Can you tell me what is described in this
10 section of the patent as it pertains to the home
11 node?
12 MR. VALEK: Again, I'll object this calls
13 for privileged information, both
14 attorney/client communications and work
15 product.
16 A. And I will invoke the attorney/client
17 privilege and I will not respond to that question.
18 Q. So you're not going to answer my question
19 on advice of counsel?
20 A. Correct.
21 Q. Column 3, line 36 through 41, can you
22 explain to me the embodiment described in this
23 section of the patent?
24 MR. VALEK: Again, I'll object and
25 instruct the witness not to answer as it calls

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1 for attorney work product and attorney/client
2 privileged information.
3 A. I will follow that instruction.
4 Q. So you will not answer the question based
5 upon --
6 A. Will not answer it --
7 Q. -- based upon objection of counsel?
8 A. Correct.
9 Q. Would you give me the same answer for
10 everything I asked you about the patent?
11 MR. VALEK: Objection.
12 A. No.
13 MR. VALEK: I'm going to object to form of
14 that question.
15 Q. If I asked you to describe anything in the
16 patent, would you give me the same objection?
17 MR. VALEK: Objection. Form.
18 Q. That's a yes or no question.
19 MR. VALEK: Objection. Form.
20 Q. I mean, I can do this every paragraph or
21 you can tell me you're going to do this every time
22 I ask you a question.
23 MR. VALEK: Objection. Form.
24 A. Um -- yes.
25 Q. So you would not answer the questions

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1 based on --
2 A. I will not answer the questions based on
3 attorney/client privilege.
4 Q. Does that include claims as well?
5 MR. VALEK: Objection. Form.
6 Q. Just to make sure.
7 MR. VALEK: Sorry. Objection. Form.
8 Q. The claims begin at column 10, line 25
9 approximately.
10 A. To the extent that the claims are -- are
11 discussed in the contention of infringement -- all
12 right.
13 Sorry. Ask me the question again.
14 COURT REPORTER: "Question: 'Does that
15 include claims as well? The claims begin at
16 column 10, line 25 approximately.'"
17 A. Yes.
18 MR. VALEK: Objection. Form.
19 Q. All right. So you're not going to answer
20 the questions based --
21 A. Pardon me?
22 Q. So you're not going to answer the
23 questions based on the objection of counsel,
24 objections to form and privilege?
25 A. Yes.

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1 MR. VALEK: What questions?
2 MR. WOLFF: The questions about claims.
3 MR. VALEK: Like claim construction?
4 MR. WOLFF: It could be claim
5 construction, yes.
6 MR. VALEK: I mean, I think if you're
7 asking him how many claims there are and
8 whether they're infringed, that would be one
9 thing. So I'm clear, I'm just trying to help
10 you create a clear record.
11 MR. WOLFF: I'm sure you are.
12 BY MR. WOLFF:
13 Q. All right. So let's move on to another
14 exhibit. I will hand you what's been previously
15 marked as Exhibit 3. This is disclosure of
16 asserted claims and infringement contentions. And
17 I will also provide you a copy of Exhibit A, which
18 has been previously marked as Exhibit 4. Exhibit 4
19 is just the attachment to the contentions.
20 A. Okay.
21 Q. Now, you read Exhibits 3 and 4 as part of
22 your preparation, correct?
23 A. Yes. You're talking trial exhibits, yes,
24 the things which you just handed me, yeah.
25 Q. And you're prepared to testify about

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1 Exhibits 3 and 4 on behalf of Jarg, correct?
2 A. Correct.
3 Q. With regard to these -- the contentions in
4 Exhibit 3, did you read the patent rules for the
5 Eastern District of Texas?
6 A. Personally?
7 Q. Yes.
8 A. No.
9 Q. All right. I'll hand you what's been
10 previously marked as Exhibit 5. This is a copy of
11 the Patent Rules in the Eastern District of Texas,
12 and if you could read rule 3-1. It begins on page
13 5 and continues to 3-6 and let me know when you've
14 finished.
15 A. To myself, read it?
16 Q. Yes. Thank you for clarifying.
17 A. Okay.
18 Q. So do you understand generally what these
19 rules require?
20 MR. VALEK: Objection. Form.
21 A. Personally, generally, yes. I mean, I'm
22 not a litigator in the --
23 MR. WOLFF: We'll go off the record for a
24 moment while the reporter changes the tape.
25 THE VIDEOGRAPHER: This is the end of tape

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1 1. Going off record. The time will be 10:34.
2 (Proceedings interrupted at 10:34 a.m. and
3 reconvened at 10:44 a.m.)
4 THE VIDEOGRAPHER: We're back on record.
5 This is the beginning of tape 2. The time is
6 10:44. You may continue.
7 BY MR. WOLFF:
8 Q. All right. Back to Exhibit 3. This is
9 the disclosure of asserted claims and infringement
10 contentions. Are you there?
11 A. Yes.
12 Q. All right. Sorry about that.
13 You are the best person on behalf of Jarg
14 to testify about Exhibit 3?
15 MR. VALEK: Objection. Form.
16 A. I don't know.
17 Q. You don't know. But you understand that
18 Jarg has designated you as the person to testify
19 about this topic.
20 A. Yes.
21 Q. But you don't know whether you're the best
22 person to testify about it.
23 MR. VALEK: Objection. Form.
24 A. Don't know.
25 Q. All right. On the first page, patent rule

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1 3-1(b) it says, "Google's Internet search service,
2 Google Web Search, has infringed and continues to
3 infringe the asserted claims of the '593 patent."
4 How many versions of the Google Web Search
5 have there been?
6 MR. VALEK: Objection. Form.
7 A. I don't know.
8 Q. Is there a distinction in Jarg's
9 contentions between different versions of the web
10 service?
11 MR. VALEK: Objection.
12 Q. I'm sorry. Is there a distinction in
13 Jarg's infringement contentions between different
14 versions of the Google Web Search?
15 MR. VALEK: Objection. Form.
16 A. And there, you're talking about what's
17 labeled as Exhibit 4?
18 Q. Yes. That's correct.
19 A. In the contentions, we talk about the
20 Google Web Search, Google Web Search application,
21 and we don't -- that's all the information we have.
22 We don't have any information about versions.
23 Q. So the contentions don't identify any
24 particular version of the Google web service.
25 MR. VALEK: Objection. Form.

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1 Q. I meant to say Web Search, not web
2 service.
3 A. Pardon me?
4 Q. Let me start that over again. So the
5 contentions do not identify any particular version
6 of the Google Web Search.
7 MR. VALEK: Object to form.
8 A. The contentions speak to the Google's Web
9 Search application, which is the information --
10 which is what Google has described as being its
11 application.
12 Q. But in local rule 3-1(b) in Exhibit 5, it
13 says, "This identification shall be as specific as
14 possible. Each product, device and apparatus must
15 be identified by name or model number, if known."
16 A. And I'm sorry -- three-dash -- 3-1 dash.
17 Q. It's on page 5.
18 A. Page 5. Okay. And your question is...
19 Q. There's no specific model number or
20 versions identified, correct?
21 MR. VALEK: Objection. Form.
22 A. There was some pronouns there. The
23 infringement contention describes the Google Web
24 Search application. That's all we know; we don't
25 have information as to Google's versions.

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1 Q. So is it Jarg's present contention that
2 all versions of Google Web Search infringe the
3 patent?
4 MR. VALEK: Objection. Form.
5 A. I have no way of knowing whether Google's
6 description of its Web Search application applies
7 to -- I don't know how many versions there are.
8 All I know is what's in the contentions,
9 which are that the application is as described in
10 those publications, and on that basis infringes.
11 Q. All right. And do you know what the dates
12 of the -- of the papers are that describe the
13 Google Web Search as Jarg understands it?
14 A. Yes. I think they're cited in the
15 infringement contentions. So that would be the
16 article in "IEEE Micro," which was published in
17 2003; and the presentation by Urs H÷lzle at the
18 University of Washington Department of Computer
19 Science and Engineering Colloquia. Apparently that
20 presentation was made on November 5, 2002. And
21 then a publication in "Computer Networks," "The
22 Anatomy of a Large-Scale Hypertextual Web Search
23 Engine," dated 1998. And then, "The Google Story,"
24 which was published in 2005.
25 Q. What is that "Google Story"?

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1 A. What is it?
2 Q. Is that a document that's authored by
3 Google?
4 A. It's authored by David Vise and Mark
5 Malseed. I don't know who their employer is.
6 Q. So did Jarg look for any information about
7 the Google products that may presently exist?
8 MR. VALEK: Objection. Form.
9 Q. In the most current document, it sounds
10 like this is Google authored, would be 2003.
11 MR. VALEK: Again, objection. Form.
12 A. Sorry. The question again?
13 Q. Did Jarg look for any documents describing
14 the present version of the Google search service?
15 MR. VALEK: Objection. Form.
16 A. And I would -- I do not know whether the
17 company did or not.
18 Q. Who would you ask to find out?
19 A. Probably Michael or Ken.
20 Q. So after the dates of these -- of the
21 articles that are cited in the contentions, does
22 Jarg have any understanding of how Google -- the
23 Google search -- Google Web Search service is
24 implemented?
25 MR. VALEK: Objection. Form. And also to

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1 the extent it requires you to disclose
2 communications with Jarg's lawyers that aren't
3 set forth in the infringement contentions,
4 I'll instruct you not to answer.
5 THE WITNESS: And so ask the question
6 again, please.
7 COURT REPORTER: "So after the dates of
8 the articles that are cited in the
9 contentions, does Jarg have any understanding
10 of how the Google Web Search service is
11 implemented?"
12 A. I believe the contentions speak for
13 themselves. I don't know the extent of further
14 investigation. I assume that -- well, I don't know
15 the extent of further investigation.
16 Q. So you don't know if the Google Web Search
17 service has changed since the dates of the articles
18 identified in your contentions?
19 MR. VALEK: Objection. Form.
20 A. Don't know.
21 Q. Who would you ask to find out?
22 A. Google.
23 Q. What about at Jarg?
24 MR. VALEK: Objection. Form.
25 A. I don't know who I would ask about what

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1 Google has done by way of changing its software.
2 Q. You don't know who at Jarg you would ask
3 that?
4 A. I don't know who at Jarg I would ask to
5 answer the question what has Google done since 1998
6 or 2003 or 2005 to change its software.
7 Q. In 2005. You're picking that up because
8 that's the date of some book that was written by a
9 third-party?
10 A. Right.
11 MR. VALEK: Objection. Form.
12 Q. Would you ask Cathy Reinhold?
13 A. No. Well, no, I wouldn't ask Cathy.
14 Q. Why wouldn't you ask Cathy?
15 MR. VALEK: Objection. Form.
16 A. Because I wouldn't expect her to have the
17 answer.
18 Q. What about Michael?
19 MR. VALEK: Objection. Form.
20 Q. Would you ask Michael?
21 A. I wouldn't expect him to have the answer
22 either.
23 Q. Would you ask Ken?
24 MR. VALEK: Objection. Form.
25 A. I wouldn't expect him to have the answer

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1 either.
2 Q. So do you know if Jarg did any
3 investigation as to how the Google Web Search is
4 presently implemented?
5 MR. VALEK: Objection. Form.
6 A. The company and its lawyers have performed
7 -- well, let me -- let me go back. What's the
8 question again?
9 MR. WOLFF: Could you please read it back.
10 Again, it's a yes or no question.
11 COURT REPORTER: "Question: 'So do you
12 know if Jarg did any investigation as to how
13 the Google Web Search is presently
14 implemented?'"
15 MR. VALEK: Objection. Form.
16 A. The company and its lawyers have looked at
17 what's available.
18 Q. And what's that, what did they look at?
19 A. What's cited in the infringement
20 contentions.
21 Q. And they couldn't find any more current
22 information on the accused products?
23 A. Any more -- any more information relating
24 to the infringement contentions?
25 Q. Yes.

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1 A. That was relevant?
2 Q. Can you answer the question?
3 MR. VALEK: Objection. Form.
4 A. I'm trying to make sure I understand the
5 question.
6 Can you -- in other words, ask me the --
7 THE WITNESS: What's the question again?
8 COURT REPORTER: "Question: 'And they
9 couldn't find any more current information on
10 the accused products?'"
11 MR. VALEK: Objection. Form.
12 A. I'm sorry. Would you ask me one more time
13 on the question? I'm -- I'm having trouble making
14 sure I understand what you're asking.
15 Q. All right. So should I assume that
16 because there's no more current information in
17 Jarg's contentions, that Jarg could not find any
18 more current information as it pertains to how the
19 accused products are presently implemented?
20 MR. VALEK: And I'll object and caution
21 the witness not to reveal any attorney work
22 product that may not be contained in the
23 infringement contention document.
24 A. And I will not be answering that question
25 based on privilege.

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1 Q. You can't answer that question at all?
2 A. I am not going to answer it based on
3 privilege.
4 Q. Okay. Is it Jarg's contention that both
5 versions -- excuse me. Strike that.
6 Is it Jarg's contention that all versions
7 of the accused product are the same?
8 MR. VALEK: Objection. Form.
9 Q. Let me correct that, that's a fair
10 objection.
11 Is it Jarg's contention that all versions
12 of the accused products are implemented in the same
13 way?
14 MR. VALEK: Objection. Form.
15 A. What Jarg understands is what -- is how
16 the software that is related in the various
17 documents cited in the infringement contentions
18 infringe. To the extent that that description of
19 the Google's Web Search application is used by any
20 version of Google, it is our contention that it
21 infringes.
22 Q. So there are two separate contentions
23 identified in Exhibit 4, correct?
24 A. Correct.
25 Q. And is it Jarg's contention that those two

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1 contentions identify different versions or
2 different implementations of the accused product?
3 MR. VALEK: Objection. Form.
4 A. I believe what the contentions say is that
5 the Google search engine -- Google Web Search, as
6 described in the cited publications, infringe in
7 the way set out in the infringement contentions.
8 Q. So you don't know whether they're
9 different versions of the same product?
10 A. We don't know the Google -- how many
11 versions there are or what a version does.
12 Q. But is it your understanding that Jarg
13 believes all versions of the Google Web Search
14 application infringe the patent?
15 A. If they are --
16 MR. VALEK: Excuse me. Objection. Form.
17 A. If they operate in the manner described in
18 the publications cited in the contentions, then
19 they do infringe.
20 Q. All right. That's what I was looking for.
21 On page one of Exhibit 3, patent rule 3-1
22 -- I'm sorry -- page two of Exhibit 3, if you
23 would turn there, and patent rule 3-1(d).
24 A. D as in delta there?
25 Q. Yes. Section 4. Is it Jarg's contention

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1 that infringement is literal or under the doctrine
2 of equivalents?
3 A. Yes.
4 Q. Is it that -- they're mutually exclusive.
5 Is the infringement literal or is it infringement
6 under the doctrine of equivalents?
7 MR. VALEK: Objection. Form.
8 A. I have to look at the contentions for a
9 minute here.
10 Both.
11 Q. Both.
12 So how is it that it infringes both ways?
13 MR. VALEK: Objection. Form.
14 Q. How is it both literal infringement and
15 infringement under the doctrine of equivalents?
16 MR. VALEK: Again, objection. Form.
17 A. I think that's described in the
18 infringement contention.
19 Q. Is it described in the contention or is it
20 just thrown in there as an alternative if the
21 literal infringement isn't correct?
22 MR. VALEK: Objection. Form.
23 A. This is a -- the contention -- contentions
24 say that the application both literally infringes
25 and also satisfy -- constitutes infringement under

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1 the doctrine of equivalents.
2 Q. Do you know what the difference between
3 literal infringement and infringement under the
4 doctrine of equivalents is?
5 MR. VALEK: Objection. Form.
6 A. Personally, myself, now?
7 Q. Jarg.
8 A. Jarg. I think that's a privileged
9 communication.
10 Q. You think it is or you know it is?
11 A. It's privileged.
12 Q. All right. So you can't answer that
13 question?
14 A. Can't answer that question.
15 Q. And you won't answer that question?
16 A. I won't answer that question.
17 Q. In section 5 --
18 A. Section 5 of...
19 Q. -- Exhibit 3, it says, "The asserted
20 claims are entitled to a priority date of no later
21 than October 5th, 1994."
22 A. Okay.
23 Q. So Jarg isn't claiming priority to any of
24 your earlier applications or filings.
25 MR. VALEK: Objection. Form.

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1 Q. Is that correct?
2 A. That's what the complaint says, is it not?
3 In fact, that's what the disclosure document says.
4 "Asserted claims are entitled to a priority date of
5 no later than October 5, 1994."
6 Q. So could the priority date be earlier than
7 October 5, 1994, or not --
8 MR. VALEK: Objection. Form.
9 Q. -- based on the language in Jarg's 3-1(e)
10 disclosure.
11 MR. VALEK: Objection. Form.
12 A. Your question again is?
13 Q. Let me try again here. How does Jarg's
14 answer to rule 3-1(e) tell me whether the claims
15 are entitled to a priority date earlier than the
16 filing date of the patent application?
17 MR. VALEK: Objection. Form.
18 A. How does it tell you that they are
19 entitled to -- I'm sorry. What's the question
20 again?
21 Q. Let's skip that.
22 Do you know what priority date is?
23 A. A priority date?
24 Q. Yes.
25 A. Not precisely. I mean, I'm generally --

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1 when I see priority date in a patent application,
2 that tends to be the date the patent application
3 was filed.
4 Q. All right. So is there another priority
5 date indicated on the face of the patent?
6 A. No.
7 Q. All right. So how could the date, the
8 priority date be no later than October 5th, 1994?
9 MR. VALEK: Objection. Form.
10 Q. Is Jarg reserving the option to say that
11 the priority date is earlier than the filing date
12 of the patent?
13 MR. VALEK: Objection. Form.
14 A. The -- the disclosure document, the
15 disclosure of asserted claims and infringement
16 contention says, "The asserted claims are entitled
17 to a priority date of no later than October 5,
18 1994."
19 Q. But how does that tell me what the
20 priority date could be?
21 MR. VALEK: Objection. Form.
22 Q. It reserves the option to say that the --
23 does it reserve the option to say that the priority
24 date could be earlier than October 5th, 1994?
25 MR. VALEK: Objection. Form.

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1 A. This is -- this particular issue I believe
2 gets into attorney/client privilege. And I think
3 the document speaks for itself, and I'm not going
4 to go behind that because I believe that requires
5 communications between attorney and patent counsel.
6 Q. Are there any specific communications
7 you're thinking of?
8 A. Um -- the -- no. There are no specific
9 communications I'm thinking of.
10 Q. So is it that you won't answer the
11 question or you can't answer the question?
12 MR. VALEK: Object to form of that
13 question.
14 A. What are you --
15 Q. I need to understand whether you're just
16 saying you're not going to answer the question
17 because you think it might implicate
18 attorney/client privilege or are you saying that
19 it's Jarg's position that it can't answer the
20 question?
21 MR. VALEK: Objection. Form.
22 Q. Because your answer doesn't tell me
23 whether you're standing on privilege or not.
24 A. Okay.
25 Q. Because you haven't identified any

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1 communications you're trying to protect.
2 A. Okay. I'm standing on privilege because
3 the nature of the communication would be such that
4 would require attorney/client communications to
5 make a determination about.
6 Q. Okay. So you won't answer the question --
7 A. Right.
8 Q. -- on privilege grounds. All right.
9 Thank you.
10 Patent rule 3-1(f), can you explain to me
11 what the prototype system that practiced the
12 asserted claims in the '593 patent is?
13 A. I believe it's described in the '593
14 patent.
15 Q. Which you told me earlier you couldn't
16 discuss because it was privileged.
17 MR. VALEK: Objection. Form.
18 A. What does it say about the prototype
19 system in the '593 patent?
20 Q. I get to ask the questions, sir.
21 A. I'm sorry?
22 Q. I get to ask the questions.
23 A. Oh, you get to ask the questions. I just
24 give answers.
25 Q. Yeah.

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1 A. Okay. What's your question?
2 Q. What does the patent say about the
3 prototype system? Can you identify in the patent,
4 which is Exhibit 8, what the prototype system that
5 practiced the asserted claims is?
6 A. All right. And so in order to identify in
7 the patent, I need to go to the part of the patent
8 that talks about the prototype system.
9 Okay. So what's the question again?
10 MR. WOLFF: Could you read the question
11 back, please, Dana.
12 COURT REPORTER: "Question: 'Can you
13 identify in the patent, which is Exhibit 8,
14 what the prototype system that practiced the
15 asserted claims is?'"
16 A. The patent says in one embodiment "each
17 computer node is a Sparcstation 10-30 with 32
18 megabytes of random access memory. The computer
19 nodes are interconnected by a twisted pair network,
20 having a maximum data transfer rate --
21 (Interruption by the reporter.)
22 Q. Sorry, can you just stop. Are you just
23 going to read the patent, is that your plan here?
24 A. No. No, no. But I think that's the
25 prototype system.

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1 MR. VALEK: Objection. Form.
2 Q. So I guess the issue is, are you trying to
3 rely on earlier -- is Jarg trying to rely on an
4 earlier embodiment of this patent that predates the
5 filing of the patent for purposes of saying that it
6 is entitled to an earlier date of invention?
7 MR. VALEK: I'll object and instruct the
8 witness not to answer under the fact that that
9 would reveal attorney work product.
10 A. And I will follow those instructions.
11 Q. So you can't identify to me whether Jarg
12 is intending to prove a date of invention that's
13 prior to October 5th, 1994.
14 MR. VALEK: Same objection.
15 A. And I will follow those instructions.
16 Q. All right. So you won't answer the
17 questions based on the objections of counsel --
18 A. Correct.
19 Q. -- which you think invokes privilege. I
20 obviously disagree.
21 MR. WOLFF: We can take a short break. I
22 expect the next section to be maybe the final
23 hurrah, or we can continue on. I think it
24 might take as long as an hour to get through
25 the next section.

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1 MR. VALEK: Let's take a short break if we
2 can.
3 MR. WOLFF: Maybe we can get you out of
4 here before 12:30 or so.
5 MR. VALEK: And we can discuss, you and I,
6 that last privilege objection. I just didn't
7 understand exactly what your question was. So
8 if you'd like to discuss that off the record,
9 we might be able to get you an answer here.
10 MR. WOLFF: You want to do it on the
11 record right now?
12 MR. VALEK: We can.
13 MR. WOLFF: Why don't we excuse the
14 witness while we talk.
15 MR. VALEK: Okay.
16 THE VIDEOGRAPHER: Would you like to stay
17 on the video record or it's not --
18 MR. WOLFF: Video record is good.
19 MR. VALEK: We'll stay on.
20 (Whereupon, the witness is leaving the
21 room.)
22 MR. VALEK: I apologize if I misunderstood,
23 Jason, but he did identify where in the patent
24 it discloses the prototype. But I thought
25 your question was directed to whether or not

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1 Jarg was contending that it could claim an
2 earlier priority date. So --
3 MR. WOLFF: An earlier invention date.
4 MR. VALEK: An earlier invention date,
5 yeah.
6 MR. WOLFF: Priority dates and invention
7 dates are obviously different things.
8 MR. VALEK: Uh-huh. That's actually very
9 true.
10 But what I was getting at is if your
11 question is can he identify the prototype in
12 the patent, I'm not objecting to that on the
13 basis of privilege.
14 If you're asking whether or not Jarg is
15 going to contend that there is an earlier
16 invention date, then yes, that's
17 attorney/client work product at this point --
18 or attorney work product at this point.
19 MR. WOLFF: So I guess your explanation
20 here is it doesn't matter what I asked, you
21 were going to object on attorney/client
22 privilege grounds --
23 MR. VALEK: No.
24 MR. WOLFF: -- that the witness couldn't
25 answer.

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1 MR. VALEK: No, no, no, no. If you were
2 asking him to identify where in the patent it
3 discloses the prototype referred to in our
4 infringement contentions, I think the witness
5 did that, and I wouldn't -- I didn't object to
6 that question.
7 But I thought your second question, which
8 I did object to, was asking him whether Jarg
9 was going to contend in this litigation that
10 it was entitled to an earlier invention date.
11 MR. WOLFF: I mean, does it -- I mean,
12 there's no identification of a prototype in
13 its contention. You just generally refer to
14 the patent which was filed on October 4th, 199
15 -- I'm sorry -- October 5th, 1994.
16 So our understanding is you actually have
17 to identify those systems that existed at the
18 time if you intend to rely on them.
19 MR. VALEK: I disagree with your
20 understanding of the local rules. It says --
21 and --
22 MR. WOLFF: I got it right here. Want to
23 look at it?
24 MR. VALEK: I'm looking at it, too.
25 It says, "For any patent that claims

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1 priority to an earlier application, the
2 priority date to which each asserted claim
3 allegedly is entitled"...

4 MR. WOLFF: I'm talking about (f).
5 MR. VALEK: A --
6 MR. WOLFF: 3-1(f).
7 MR. VALEK: Okay. And how is our response
8 to 3-1(f) not responsive to that particular
9 rule in your view?
10 MR. WOLFF: What is Jarg's own apparatus,
11 product, device, process, method, act or other
12 instrumentality to practice the claimed
13 invention that existed prior to the filing
14 date of the patent?
15 MR. VALEK: The prototype system described
16 in the patent itself.
17 MR. WOLFF: But the patent was filed on
18 October 5th, 1994. And you've instructed the
19 witness that he can't answer the question
20 because you think it invokes attorney/client
21 privilege. How am I supposed to identify it?
22 I asked you to identify it in your --
23 MR. VALEK: Nothing in (f) requires the
24 identification of a date of invention.
25 MR. WOLFF: I'm not saying --

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1 MR. VALEK: Nothing in (e) requires --
2 MR. WOLFF: Well --
3 (Interruption by the reporter.)
4 MR. VALEK: Sorry. We'll slow down. We
5 do want you to be able to get this down.
6 Nothing in the local rules requires
7 identification of a particular date of
8 invention. It requires identification of what
9 we contend practiced one or more claims,
10 that's what we've said in 3-1(f).
11 You asked the witness to identify where in
12 the patent it discloses that prototype. He
13 referred you to column 3, lines 10, and then
14 he read on, and you interrupted him.
15 MR. WOLFF: The issue is, is there
16 something other than the patent Jarg and
17 Northeastern wish to rely upon to establish an
18 earlier date of invention?
19 I don't -- I didn't ask what the date was.
20 I just asked whether it was earlier.
21 MR. VALEK: And that's what he objected --
22 that's what I objected to on the basis of work
23 product.
24 MR. WOLFF: So he can't answer that
25 question.

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1 MR. VALEK: I'm not going to let him
2 answer it. If you want to serve
3 interrogatories directed to that, fine. And
4 the documents responsive to that have already
5 been produced.
6 MR. WOLFF: But the question is -- the
7 issue is the witness has been noticed on the
8 30(b)(6) contentions, and this is one of the
9 -- I'm sorry -- the witness is a 30(b)(6)
10 deponent on the contentions.
11 MR. VALEK: Correct.
12 MR. WOLFF: And this is one of the
13 contentions.
14 MR. VALEK: The contentions don't require
15 identification of a date.
16 MR. WOLFF: I haven't said a date. I'm
17 saying its own product apparatus. I don't
18 understand that to mean the patent itself.
19 You have to identify, if there is an
20 embodiment of the patent out there that is
21 Jarg's own or Northeastern's own, that needs
22 to be identified here --
23 MR. VALEK: And we've identified --
24 MR. WOLFF: -- for any purpose, whether a
25 later reduction to practice or an earlier

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1 reduction to practice, it needs to be
2 identified here.
3 MR. VALEK: And we've identified
4 everything that's responsive to 3-1(f).
5 MR. WOLFF: How? You told the witness he
6 couldn't answer the question on privilege
7 grounds.
8 MR. VALEK: No. You asked for priority
9 date.
10 MR. WOLFF: I asked for priority date in
11 section 3-1(e).
12 MR. VALEK: No. You asked him if Jarg is
13 going to contend that the prototype system
14 entitles them to an earlier priority date.
15 MR. WOLFF: Earlier date of invention.
16 MR. VALEK: Okay. Earlier date of
17 invention, how about that? I did object to
18 that on the basis of attorney/client work
19 product because it's not required to be in the
20 infringement contentions. It doesn't say that
21 we have to disclose what we intend to rely on
22 it for.
23 MR. WOLFF: So where does -- I mean, my
24 question to the witness is where is the
25 prototype described in the patent. I mean, is

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1 there some name of a product that existed
2 prior to the filing of the patent?
3 MR. VALEK: He referred you to column 3,
4 line 10, and then he started reading, and you
5 interrupted him.
6 MR. WOLFF: So do you want him -- was he
7 just going to read from patent, which he said
8 yes.
9 MR. VALEK: Well, you asked him where in
10 the patent it was disclosed and he was reading
11 from the patent to show you where it was
12 disclosed.
13 MR. WOLFF: He can identify it by range
14 without, you know, the cute trick of reading
15 the patent that we have here.
16 MR. VALEK: If you'd like him to identify
17 it by range, you can ask him. But he was
18 responding to your question, where in the
19 patent is it disclosed. He started reading
20 column 3, beginning at line 10.
21 MR. WOLFF: But I guess my point is where
22 does the patent disclose Jarg or
23 Northeastern's or Mr. Baclawski's own product
24 or apparatus or device or method?
25 MR. VALEK: Are you asking me?

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1 MR. WOLFF: Yes. Where is it identified
2 in your contentions, in your client's
3 contentions?
4 MR. VALEK: You want us to refer you --
5 okay. Just so I understand the argument:
6 Your argument is our contentions are deficient
7 because they don't identify where in the
8 patent, even though they identify the patent.
9 MR. WOLFF: Not where in the patent. They
10 could identify -- where in the patent would be
11 a good start. It would give us an idea of
12 whether Jarg intends to rely for any purpose
13 on either an earlier date of invention or a
14 later reduction to practice. That's not
15 identified in your contentions now.
16 MR. VALEK: We don't have to tell you the
17 purpose.
18 MR. WOLFF: That's right. But you have to
19 identify what you're going to rely on.
20 MR. VALEK: It's the prototype system in
21 the patent.
22 MR. WOLFF: What is the prototype -- did
23 it have a name?
24 MR. VALEK: I believe that before you were
25 interrupting the witness -- I don't know if it

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1 had a name. Before you interrupted the
2 witness --
3 MR. WOLFF: We'll ask the witness the
4 question again and see what happens.
5 MR. VALEK: Yeah. I think that's the best
6 thing to do.
7 Well, he started responding to your
8 question and you interrupted him.
9 MR. WOLFF: By reading the patent.
10 MR. VALEK: Well, your question was where
11 in the patent does it disclose that.
12 MR. WOLFF: And this is kind of --
13 MR. VALEK: We can continue to argue.
14 MR. WOLFF: Let's bring him in and ask the
15 question again.
16 MR. VALEK: Okay. And again, my objection
17 is only to the extent you're asking what our
18 litigation strategy is, that is my objection.
19 If you're asking him where in the patent
20 it discloses the prototype, I don't object on
21 the basis of privilege to that.
22 Can we go off just a second.
23 THE VIDEOGRAPHER: Going off record. Time
24 11:25 a.m.
25 (Off-the-record discussion held.)

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1 THE VIDEOGRAPHER: Back on the record.
2 The time is 11:27. You may continue.
3 BY MR. WOLFF:
4 Q. All right. We're going to circle back
5 around to Jarg's disclosure under patent rule
6 3-1(f). It says, "A prototype system that
7 practiced at least the asserted claims was
8 described in the '593 patent."
9 Now, to give you a little context of what
10 I'm trying to understand here is that if I file a
11 patent or somebody files a patent, they could have
12 had a product before they filed the patent. They
13 could have had a product after they filed the
14 patent. They could have had a project name; they
15 could have had a prototype name; they could have
16 something. And my question to you is what is the
17 name of the prototype system that practiced the
18 asserted claims in the '593 patent?
19 MR. VALEK: Objection. Form.
20 A. I don't know the name of the prototype
21 system.
22 Q. Does Jarg or Northeastern intend to
23 preserve the right to rely for any purpose on its
24 own product, apparatus, device, method, act or
25 other instrumentality that practiced the claimed

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1 invention for purposes of this litigation?
2 MR. VALEK: Objection. Form.
3 A. I don't know.
4 Q. You don't know?
5 A. I don't know whether they -- ask the
6 question again.
7 MR. WOLFF: Could you read the question
8 back.
9 COURT REPORTER: "Question: 'Does Jarg or
10 Northeastern intend to preserve the right to
11 rely for any purpose on its own product,
12 apparatus, device, method, act or other
13 instrumentality that practiced the claimed
14 invention for purposes of this litigation?'"
15 MR. VALEK: Again, objection. Form.
16 THE WITNESS: All right. Sorry. Read it
17 through one more time.
18 COURT REPORTER: "Question: 'Does Jarg or
19 Northeastern intend to preserve the right to
20 rely for any purpose on its own product,
21 apparatus, device, method, act or other
22 instrumentality that practiced the claimed
23 invention for purposes of this litigation?'"
24 MR. VALEK: Objection. Form.
25 A. I don't know.

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1 Q. Who would know?
2 A. Who would know?
3 MR. VALEK: Objection. Form.
4 A. Um, I assume patent litigation counsel
5 would know or would at least have a position.
6 Michael or Ken might know. And I don't know who at
7 Northeastern might know other than Ken.
8 Q. Do you know why a specific prototype name
9 or anything like that isn't given in Jarg and
10 Northeastern's answer to patent rule 3-1(f)?
11 A. No.
12 MR. VALEK: First of all, objection.
13 Form. Go ahead.
14 A. No.
15 Q. Do you think that the plaintiffs'
16 disclosure under this rule is sufficient?
17 MR. VALEK: Objection. Form.
18 A. I don't know if I'm competent to answer
19 that question under the rules of the East Texas
20 courts.
21 Q. So you understood my example earlier,
22 where somebody had had a project name, a product
23 name, some sort of product that existed before or
24 after the filing date of the patent, that they
25 wanted to rely on for any purposes, they wanted to

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1 show I invented something earlier or I later
2 reduced it to practice. You understood that
3 example, or did you?
4 A. I'm still struggling to try and understand
5 exactly what the question is that you're asking.
6 And if you're asking me what their intentions are,
7 I don't know what their intentions are.
8 MR. VALEK: And I'm not going to let him
9 testify about what litigation counsel's trial
10 strategy is.
11 Q. Right. So what I want to know is under
12 the -- under rule 3-1(f), whether there is some
13 product or device or something that Ken Baclawski
14 made, that Jarg made, that Northeastern made that
15 existed that practiced the asserted claims of the
16 '593 patent.
17 MR. VALEK: Objection. Form.
18 Q. Either before or after the filing date of
19 the patent.
20 A. I think answer to that is yes.
21 Q. And what is it?
22 A. A device of the nature described in the
23 patent.
24 Q. What is that device?
25 A. A --

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1 MR. VALEK: Objection. Form.
2 Q. Did it have a name?
3 A. I don't know.
4 Q. Who would know?
5 A. Ken would know that.
6 Q. Ken would know. And would he know both
7 before and after the filing date of the patent?
8 MR. VALEK: Objection. Form.
9 A. Would he know --
10 Q. Whether that thing that existed was before
11 or after the filing date of the patent.
12 A. I would expect so, yes.
13 Q. Okay. But you're not prepared to testify
14 or identify that prototype system?
15 MR. VALEK: Objection. Form.
16 A. I'm sorry. The question again?
17 Q. You're not prepared to identify what that
18 prototype system is.
19 MR. VALEK: Objection. Form.
20 Q. Correct?
21 A. I don't -- when you say identify the
22 system, what do you mean?
23 Q. It says it in your answer, in your
24 disclosures, "A prototype system that practiced at
25 least the asserted claims of what's described in

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1 the '593 patent."
2 A. And it was described in the '593 patent.
3 Q. Okay. And where is it described in the
4 '593 patent? And you don't have to read it. You
5 can identify the columns and line numbers, save
6 everybody a lot of time here, and by read it, I
7 mean read it into the record.
8 A. I actually -- I should take that back. I
9 am assuming that that is the prototype, the
10 language in column 3, 10 to 16.
11 Q. That's it?
12 A. I'm assuming that that is the prototype
13 device that Ken put together.
14 Q. Did it have a name?
15 A. I don't know.
16 Q. If you can turn to Exhibit 4, these are
17 Plaintiff's Patent Rule 3-1(c) charts -- I think
18 they're also identified in 3-1(b) -- to its
19 infringement contentions. You're prepared to
20 testify about these contentions, correct?
21 A. Correct.
22 Q. And did you understand the charts -- do
23 you understand the charts, what they convey?
24 MR. VALEK: Objection. Form.
25 A. I understand that they describe an element

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1 of the Jarg invention and the information which was
2 gleaned from the cited references to enable one to
3 make a determination as best one could as to
4 whether there was infringement or not.
5 Q. All right. And you're prepared to testify
6 about that today, correct?
7 A. In so -- yes.
8 Q. Was there some qualification you were
9 going to give to that?
10 A. Well --
11 MR. VALEK: Objection. Form.
12 A. Is there? No.
13 Q. Okay. And you reviewed the references and
14 materials relied upon that discuss the Google Web
15 Search application to prepare for this deposition,
16 correct?
17 A. No.
18 Q. You did not?
19 A. I did not go through line by line, read
20 them and -- I did not perform what I would consider
21 a review.
22 Q. And why is that?
23 MR. VALEK: Objection. Form.
24 A. Why is what?
25 Q. Why didn't you perform a review?

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1 A. I did not because -- I didn't -- because
2 the information which I need is here in the
3 infringement contention.
4 Q. You're not able to enlighten me at all as
5 to any inconsistencies or any other statements that
6 may have been taken out of context in those
7 contentions; is that correct?
8 MR. VALEK: Objection. Form.
9 A. I don't understand the -- I mean, are you
10 -- are you saying that I'm not able to tell you
11 that if there is a statement elsewhere in one of
12 these articles that seems at variance with one of
13 these --
14 Q. Yes.
15 A. -- where that statement is? No, I'm not.
16 Q. Okay. I will hand you what's been
17 previously marked as Exhibit 6. This is one of the
18 references identified in the contentions.
19 This is the "Anatomy of a Large-Scale
20 Hypertextual Web Search Engine" paper. Have you
21 reviewed Exhibit 6 before?
22 MR. VALEK: Objection. Form.
23 A. I'm sorry. I'm just paging through here
24 to see if this is the -- okay. What's your
25 question?

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1 Q. Have you reviewed Exhibit 6 before today?
2 A. No.
3 Q. All right. I will hand you what has been
4 previously marked as Exhibit 7. It's a document
5 entitled, "Web Search for a Planet: The Google
6 Cluster Architecture."
7 A. Now, you here is --
8 Q. Jarg.
9 A. -- Jarg?
10 Q. Yes. As well as you personally, since you
11 are the witness that's testifying.
12 Have you reviewed Exhibit 7 before today?
13 MR. VALEK: Objection. Form.
14 A. I personally have not.
15 Q. Has Jarg?
16 A. I believe they have, yes.
17 Q. When?
18 A. I don't know.
19 Q. Do you know who?
20 A. I do not know specifically who.
21 Q. So how do you know you believe they have?
22 A. Through the discussions yesterday.
23 Q. With whom?
24 A. Michael and patent litigation counsel.
25 Q. And what did Michael tell you?

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1 A. I'm not sure I specifically remember what
2 Michael said as opposed to just in general.
3 Q. So you have no personal knowledge of this
4 review of Exhibit 7?
5 MR. VALEK: Objection. Form.
6 A. Yes. What do you mean by -- I did not
7 review it personally. I did not --
8 Q. And you don't know whether Jarg did
9 either?
10 MR. VALEK: Objection. Form.
11 Q. You only know what you think Michael told
12 you, but you can't remember what he said.
13 MR. VALEK: Objection. Form.
14 A. Jarg and its counsel have reviewed these.
15 Jarg and its counsel have discussed these. The
16 extent of Michael's individual analysis of every
17 word or even sentence in here is not something to
18 which I can testify.
19 Q. And what about Ken's?
20 A. Same as to Ken.
21 Q. Okay. Are you prepared to discuss what
22 Exhibit 7 describes?
23 A. Insofar as it's in the infringement
24 contentions.
25 Q. So would you be able to discuss what the

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1 references relied upon discussed if those words
2 were not in the contentions?
3 MR. VALEK: Objection. Form.
4 A. I'm sorry. Would --
5 MR. VALEK: Let me just finish my
6 objection. I'll instruct the witness not to
7 answer that it might reveal -- anything that
8 would reveal discussions with counsel or work
9 product that's not in the infringement
10 contentions.
11 Q. Can you answer that question at all with
12 that objection?
13 A. Would you ask me the question again,
14 please.
15 MR. WOLFF: Would you read the question
16 again, please, Dana.
17 COURT REPORTER: "Question: 'So would you
18 be able to discuss what the references relied
19 upon discussed if those words were not in the
20 contentions?'"
21 A. Okay. One more time.
22 Q. Let me start over. That's fair. That
23 question got a little long.
24 Would you be able to discuss with me today
25 your understanding, or I should say Jarg's

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1 understanding of Exhibit 7?
2 MR. VALEK: And I'll object to the extent
3 that would touch upon things not in the
4 infringement contention document on the basis
5 of privilege. If you're asking him about the
6 infringement contention document, I won't
7 object.
8 A. Right. And I am not going to -- I will
9 address the infringement contention document, but
10 not the extent to which it's derived from the
11 article and how it's derived.
12 What's in the contention is what's in the
13 contention.
14 Q. And the same question as to Exhibit 6.
15 A. And the same response.
16 MR. VALEK: And the same objection to that
17 question.
18 Q. Now, the other thing that's not here is
19 the video presentation that's identified in the
20 contentions as well as the book. Are those
21 materials that you have reviewed?
22 A. No.
23 Q. Would you be prepared to testify on behalf
24 of Jarg as to what those materials discuss?
25 MR. VALEK: Objection. Again, that's

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1 privileged to the extent it goes beyond the
2 infringement contention document and I'll
3 instruct the witness not to answer beyond the
4 infringement contention document.
5 A. To the extent that it's in the
6 infringement document, I am prepared to respond.
7 Q. Okay. But you've never reviewed the video
8 that's referred to, correct?
9 MR. VALEK: Objection. Form.
10 A. Personally?
11 Q. Did Jarg -- Jarg reviewed the video,
12 correct?
13 A. I don't know if Michael or Ken did review
14 the video. I'm trying -- this is, now you're
15 talking now about the video being the -- you're
16 talking about the -- is this a video, the Google
17 Linux Cluster, the presentation by Urs H+lzle at
18 the University of Washington Computer Science and
19 Engineering Colloquia in November 2002.
20 Q. You don't know whether it's a video or
21 not; is that correct?
22 MR. VALEK: Objection. Form.
23 A. Jarg knows, yes.
24 Q. Jarg knows. And what do they know?
25 A. I'm sorry. Michael and Ken I believe are

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1 familiar with this.
2 Q. Okay. And what did they tell you about
3 this video?
4 A. What did they tell me? What --
5 MR. VALEK: I object to that question to
6 the extent it relates to our discussion
7 yesterday.
8 A. Right. And what's in the -- what I know
9 is what's in the infringement contentions.
10 Q. So there's no other information about the
11 video or presentation that you're aware of that
12 would enlighten anything in the contentions?
13 A. That's correct.
14 Q. Okay. Let's turn to Exhibit 4. And why
15 don't you tell me what Jarg -- this is on page 2 of
16 Exhibit 4. And why don't you tell me what Jarg's
17 understanding of fuzzy queries as used in these
18 contentions means?
19 MR. VALEK: I'm going to object and
20 instruct the witness not to answer questions
21 regarding Jarg's contention on claim
22 construction because it's attorney work
23 product.
24 A. And I will comply with those instructions.
25 Q. So you can't tell me what fuzzy queries

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1 mean in Exhibit 4?
2 A. Based on privilege.
3 Q. Based on privilege, you can't answer that
4 question. You can't answer it in any way?
5 MR. VALEK: Objection. Form.
6 Q. Other than to object that you can't answer
7 it.
8 MR. VALEK: Objection. Form. He said
9 he's going to assert privilege.
10 A. Yes. I'm asserting privilege.
11 Q. All right. And can you tell me what
12 Jarg's understanding of a non-relational,
13 distributed database system is?
14 MR. VALEK: Once again, I'll object, calls
15 for attorney work product and instruct the
16 witness not to answer.
17 A. And I will follow those instructions.
18 Q. Okay. Can you tell me what the fuzzy
19 query is in the alleged infringing products?
20 A. The fuzzy query is in the alleged
21 infringing products? Okay. That would be the
22 query, I assume.
23 Q. What query?
24 A. A query.
25 Q. Any query would be a fuzzy query?

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1 MR. VALEK: Objection. Form.
2 A. Any query would be a fuzzy query? This
3 really gets into what a fuzzy query is, and that's
4 our interpretation of the claims and that is a
5 privileged matter.
6 Q. So you can't answer the question based on
7 privilege grounds?
8 A. Correct.
9 Q. Can you tell me what the non-relational,
10 distributed database system identified in your
11 contentions is?
12 MR. VALEK: Objection. Form.
13 A. I'm sorry. Explain? Ask me that question
14 again.
15 Q. Can you identify what the non-relational,
16 distributed database in Jarg's infringement
17 contentions is?
18 MR. VALEK: Objection. Form.
19 A. Other than saying it's a non-relational,
20 distributed database, it is what it is.
21 Q. So why --
22 A. I mean -- I'm sorry. Go ahead.
23 Q. Why is the Google Web Search application a
24 non-relational, distributed database system?
25 MR. VALEK: Objection. Form. And also

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1 objection, privilege, to the extent that
2 question calls for information beyond what's
3 disclosed in the infringement contention
4 document.
5 A. And the infringement contention document
6 says that Google's Web Search application lets
7 different queries run on different processors and a
8 single query using multiple processors.
9 Q. So how is that a non-relational system?
10 MR. VALEK: Again --
11 A. I'm not --
12 MR. VALEK: Objection and -- let me
13 object, please. Objection, privilege, to the
14 extent it goes beyond the infringement
15 contention document.
16 Q. Can you answer the question?
17 MR. VALEK: And again --
18 A. I think the contentions in the document
19 speak for themselves, and the issue of how they
20 relate is a legal issue and that is beyond the
21 scope of the infringement contention itself, and
22 therefore, privileged, and I'm not going to respond
23 further.
24 Q. All right. So you can't answer the
25 question based upon privilege grounds?

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1 A. Correct.
2 Q. All right. Can you tell me what a -- what
3 -- strike that.
4 Can you tell me what the clause "a
5 plurality of home nodes" means to Jarg?
6 MR. VALEK: Objection. And I'll instruct
7 the witness not to answer on the basis of work
8 product.
9 A. And I will follow those instructions.
10 Q. So can you answer the question?
11 A. No.
12 Q. Because it invokes privilege?
13 A. Privilege.
14 Q. Can you tell me what the home nodes are in
15 the alleged infringing products?
16 MR. VALEK: I'll object, but only to the
17 extent that you would answer beyond what's
18 already disclosed in the infringement
19 contention document. I'll object to anything
20 beyond as privileged.
21 A. The intentions describe -- language in the
22 Google documents describe a cluster with a few
23 thousand machines that is -- that -- which are
24 apparently the Google Web Servers. Now, that's --
25 but the contentions are as they are in here. And

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1 beyond that, I'm not prepared to go.
2 Q. So would any cluster of a few thousand
3 machines be a plurality of home nodes?
4 MR. VALEK: Objection. Form. And also
5 I'll object to the extent this calls for
6 attorney work product relating to the
7 construction of the term home node.
8 A. Right. And I will not answer that based
9 on privilege.
10 Q. All right. Let's turn to the next page.
11 Can you tell me what the term "a plurality of query
12 nodes" means to Jarg?
13 MR. VALEK: Objection. And I'll instruct
14 the witness not to answer based on work
15 product.
16 A. I will follow that instruction.
17 Q. So you can't answer the question based on
18 privilege grounds?
19 A. That's correct.
20 Q. Can you tell me what it is in the accused
21 products that is the plurality of query nodes?
22 MR. VALEK: Objection. Form.
23 A. The infringement contention describes
24 document servers fetching documents from disks and
25 extracting the title. It describes clusters of a

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1 few thousand machines. It describes multiple
2 server replicas. And those are all -- those are --
3 that's the description that Google has provided to
4 those, and that's what we I believe infringes.
5 Q. Is there a specific thing in here that you
6 want to identify as the query node?
7 MR. VALEK: Objection. And I'll caution
8 the witness not to go beyond what's disclosed
9 in the infringement contention document, on
10 the basis of privilege.
11 A. And I will follow that instruction and
12 can't go any further than that.
13 Q. All right. So I mean, does the document
14 say that Google's document servers literally meet
15 the limitation of query nodes?
16 A. Does the document meet the limitation of
17 what?
18 Q. I mean, doesn't it state here that
19 Google's document servers literally meet the
20 limitation of a plurality of query notes?
21 A. That's what the contention says.
22 Q. And why is it that Google's document
23 servers literally meet the limitation of a
24 plurality of query nodes?
25 MR. VALEK: Again, I'll object on the

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1 basis of privilege to the extent the question
2 asks him to go beyond what's disclosed in the
3 contentions.
4 A. And I can't go beyond what's disclosed in
5 the contentions.
6 Q. Let's go back to the previous page. At
7 the bottom of the page it says, "The Google Web
8 Server and Index Servers literally meet the
9 limitation of a plurality of home nodes."
10 So why is it that the Google Web Servers
11 and Index Servers literally meet this limitation?
12 MR. VALEK: Again, I'll object. Privilege
13 to the extent this calls for information
14 beyond the reasons given in the infringement
15 contention document.
16 A. And I think we've -- I described before
17 the contentions and therefore, I'm not going to go
18 beyond those based on privilege.
19 Q. All right. But it's your understanding
20 that the Google Web Servers and Index Servers are
21 the home nodes, correct?
22 MR. VALEK: Objection. Form.
23 A. So ask the question again, please.
24 MR. WOLFF: Could you repeat the question,
25 please.

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1 COURT REPORTER: "Question: 'But it's
2 your understanding that the Google Web Servers
3 and Index Servers are the home nodes,
4 correct?'"
5 A. That's what the contention says: "Google
6 Web Servers and Index Servers literally meet the
7 limitation of the plurality of home nodes."
8 Q. All right. And that is of course what it
9 says in the next contention on page 3, which is,
10 "Google document servers literally meet the
11 limitation of plurality of query nodes."
12 So Jarg's position is that the document
13 servers are the query nodes, correct?
14 A. The contentions say what they say. The
15 fact that the -- these Web Servers, Index Servers,
16 document servers -- document servers isn't
17 capitalized. The document servers literally meet
18 the limitation of a plurality of query notes and
19 the Google Web Servers and Index Servers literally
20 meet the limitation of a plurality of home nodes,
21 that's what we concluded.
22 Q. All right. So moving on to the next
23 clause here, "connected by a network, said method
24 comprising the step of," what is Jarg's
25 understanding of the phrase "connected by a

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1 network."
2 MR. VALEK: Objection. Work product. And
3 I'll instruct the witness not to answer that
4 question.
5 A. And I will follow those instructions on
6 the basis of privilege.
7 Q. Is it Jarg's position that any computers
8 connected with a network or connected via Ethernet
9 satisfies this limitation?
10 MR. VALEK: Again, I'll object and
11 instruct the witness not to answer on the
12 basis of work product.
13 A. And I will follow those instructions. The
14 network that connects the home nodes and the query
15 nodes literally meets the claim limitation.
16 Q. Does it matter how they're connected?
17 MR. VALEK: Again, I'll object and
18 instruct the witness not to answer that
19 question on the basis of work product.
20 A. I will follow those instructions.
21 Q. So on the basis of your counsel's
22 objection, you will not answer the question?
23 A. Beyond the answer that I gave, no.
24 Q. All right. Can you tell me what the
25 phrase "randomly selecting the first one of said

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1 plurality of home nodes" means to Jarg?
2 MR. VALEK: Objection. Work product and
3 I'll instruct the witness not to answer that
4 question.
5 A. And I will follow those instructions.
6 Q. So you can't answer based on the --
7 A. Privilege.
8 Q. -- privilege objection.
9 Can you tell me why Jarg believes that the
10 Google Web Search application literally satisfies
11 this limitation?
12 A. Which limitation?
13 Q. "Randomly selecting a first one of said
14 plurality of home nodes."
15 A. Can I tell you why?
16 Q. Yes.
17 MR. VALEK: And I'll object to the extent
18 this calls for things beyond what's disclosed
19 in the infringement contentions.
20 A. And our basis is that the load balancing
21 system minimizes the round trip time for the user's
22 request, while also considering the available
23 capacity of the various clusters.
24 Q. So you just read from the document?
25 A. That's --

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1 Q. You can't give me any more insight as to
2 what your contention is here?
3 A. That would constitute privileged
4 information.
5 Q. Okay. Why does it identify the Web Search
6 application entirely in Jarg's contention?
7 MR. VALEK: Again, I'll object on the
8 basis of attorney work product and instruct
9 the witness not to answer.
10 A. I will follow those instructions.
11 Q. Can you tell me what the clause
12 "fragmenting by said selected home node, a query
13 from a user into a plurality of query fragments"
14 means to Jarg?
15 MR. VALEK: Objection. And I'll instruct
16 the witness not to answer on the basis of work
17 product.
18 A. I will follow those instructions.
19 Q. Can you tell me what an inverted index is?
20 MR. VALEK: Objection to the extent it
21 calls for information not disclosed in the
22 infringement contention document that would be
23 communicated by Jarg's lawyers to Jarg.
24 A. I can -- the context of the response on
25 the infringement contention, I cannot go beyond

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1 what's stated in the infringement contention
2 without disclosing privilege information, and
3 therefore, I will not do that.
4 Q. So you can't answer the question --
5 A. Based on privilege.
6 Q. -- based on privilege.
7 Can you tell me why Jarg contends that the
8 home nodes literally satisfy the fragmenting
9 limitation?
10 A. Because the "Index Servers consult an
11 inverted index that maps each query word to a
12 matching list of documents. The Index Servers then
13 determine the set of relevant documents by
14 intersecting the hit list with the individual query
15 words."
16 Q. And so what is it in that phrase that
17 triggers in Jarg's understanding that this
18 limitation is satisfied?
19 MR. VALEK: I'll object to that question
20 and instruct the witness not to answer because
21 it calls for information beyond the
22 infringement contention document.
23 A. I'll follow those instructions.
24 Privileged information.
25 Q. All right. Next page. The limitation

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1 beginning "hashing." Can you tell me what this
2 clause means to Jarg?
3 MR. VALEK: Objection. Work product and
4 I'll instruct the witness not to answer.
5 A. I will follow those instructions.
6 Q. Can you -- strike that.
7 Can you tell me how Jarg's understanding
8 of this limitation applies to Google?
9 MR. VALEK: Objection. I'll caution the
10 witness not to go beyond the infringement
11 contention document.
12 A. And I believe that the manner in which we
13 believe -- the elements which cause us to believe
14 that it does so are set forth in the infringement
15 contention.
16 Q. And can you identify with any more
17 particularity what those elements in the Google
18 accused products are?
19 MR. VALEK: Objection. Form. And I'll
20 also instruct the witness not to go beyond the
21 infringement contention document if it would
22 cause him to disclose attorney/client
23 communications or work product.
24 A. And I would be responding by reading
25 what's contained in the infringement contention.

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1 If you wish me to do that, I will.
2 Q. No, that's all right. I can read.
3 If we look at this claim element it says,
4 "hashing by said selected home node." Can you tell
5 me what performs the hashing function based on this
6 claim language?
7 MR. VALEK: Objection. Privilege to the
8 extent it goes beyond the infringement
9 contention document.
10 THE WITNESS: Read the question back for
11 me, please.
12 COURT REPORTER: "Question: 'If we look
13 at this claim element it says, 'hashing by
14 said selected home node.' Can you tell me what
15 performs the hashing function based on this
16 claim language?'"
17 MR. VALEK: Objection. Form. Same
18 objection on privileges.
19 THE WITNESS: Okay. What's the question?
20 I'm sorry. Read it again.
21 COURT REPORTER: "Question: 'If we look
22 at this claim element it says, 'hashing by
23 said selected home node.' Can you tell me what
24 performs the hashing function based on this
25 claim language?'"

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1 MR. VALEK: Objection. Form. And then
2 objection to the extent it goes beyond the
3 infringement contentions, it's privileged.
4 A. And the element that's listed in the claim
5 contention says, "hashing by said selected home
6 node."
7 Q. So you would agree that the hashing is
8 performed by the selected home node?
9 MR. VALEK: Objection. Calls for work
10 product. I'll instruct the witness not to
11 answer.
12 A. And I will follow those instructions.
13 Q. So can you answer my question?
14 A. I -- the last question which you asked, I
15 cannot answer, based on instructions from counsel
16 and based on privilege.
17 Q. Can you tell me what the -- which language
18 in the right-hand side of Jarg's infringement
19 contentions identifies the hashing function in
20 Google?
21 MR. VALEK: Objection. Form.
22 A. Other than the language that's in the
23 infringement contention, no.
24 Q. Well, can you identify which language in
25 your contention it is?

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1 MR. VALEK: Objection. Form.
2 Q. There's only one -- one paragraph or one
3 snippet of text you've identified here that says
4 anything about hashing, correct?
5 MR. VALEK: Objection. Form.
6 A. Okay. So the question again is?
7 Q. Is it correct that there's only one
8 snippet of text in here from the Google documents
9 you've cited that identifies any hashing function?
10 A. No. I don't know -- I'm sorry. The
11 infringement contentions describe information which
12 has led us to conclude that there's an
13 infringement. The word "hash" as a specific word
14 is in the second line of the third infringement
15 contention in the sentence that starts, "So, for
16 example, on the document server side, where we have
17 the cached web, we basically hash the URL into, you
18 know, a 128-bit number, or something like that, and
19 then that number modulo, whatever, you know, your
20 server, number of server shards that you have,
21 gives you the server, the clone set number, that
22 contains this document."
23 Q. All right. So what does that statement
24 say is hashed?
25 MR. VALEK: Objection. Form. And I'll

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1 object to the extent the question calls for
2 information beyond what's quoted here in the
3 infringement contentions.
4 A. And I think I responded to you with what's
5 in the infringement contentions and therefore can't
6 go beyond that.
7 Q. I mean, can you tell me? It says the URL,
8 right, it says it hashes the URL.
9 MR. VALEK: Objection. Form. And also
10 objection to the extent that this calls for
11 you to reveal attorney/client communications.
12 A. And I agree that the words say hash the
13 URL.
14 Q. Is a URL -- do you know what a URL is?
15 MR. VALEK: Objection. Form.
16 A. Me, personally?
17 Q. Does Jarg know what is URL is? We'll get
18 to you next.
19 A. Generally, yes. In the context of the
20 infringement contention, what URL means there is an
21 issue that has been determined by Jarg and its
22 lawyers, and I'm not going to go beyond that.
23 Q. So is a URL a query fragment?
24 MR. VALEK: Objection. And I'll instruct
25 the witness not to answer based upon work

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1 product and attorney/client privilege.
2 A. I will follow those instructions.
3 Q. You can't answer my question because of
4 privileged grounds; is that correct?
5 A. That's correct.
6 Q. All right. Can you tell me what a URL,
7 what a person would do with a URL?
8 MR. VALEK: Objection. Form.
9 A. Me, personally?
10 Q. Yes.
11 A. Okay. URL generally means Uniform
12 Resource Locator when talking on the Internet, and
13 it is an Internet address that consists of 3, 6, 9
14 -- 11 or 12 numbers, generally in three-bit
15 sections followed by periods.
16 Q. That's a URL or an IP address?
17 A. I think it's a URL.
18 MR. VALEK: Objection. Form.
19 Q. Okay. Can you tell me what Jarg's
20 understanding of a URL is?
21 MR. VALEK: Objection. Form. And I'll
22 instruct the witness not to answer based upon
23 privilege.
24 A. I will follow those instructions.
25 Q. So you can't answer the question based on

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1 privilege grounds?
2 THE WITNESS: What's the question again?
3 COURT REPORTER: "Question: 'Can you tell
4 me what Jarg's understanding of a URL is?'"
5 MR. VALEK: And I will -- to the extent
6 the question is asking for an understanding of
7 URL in a general sense, you can answer. To
8 the extent it's asking for something beyond
9 these infringement contentions, I'll instruct
10 you not to answer.
11 A. Okay. In the general sense, I believe
12 that Jarg understands that URL stands for Uniform
13 Resource Locator.
14 Q. And can you tell me what a query is?
15 MR. VALEK: And again, I'll object to the
16 extent that they're asking you about query as
17 it's used in the claims, but in a general
18 sense you can answer that question.
19 A. All right. In a general sense, a query is
20 a -- in the context of a search, what you enter
21 into one or more computers as a way to activate the
22 search.
23 Q. And what, would those be words, those
24 things that are entered?
25 MR. VALEK: Objection. Form.

1 A. What one enters in the computer could be
2 words. Depends on the design of the -- it depends
3 on the design of the search system. I mean, it's
4 conceivable one could enter in a set of numbers,
5 dates. Any -- anything that can be represented by
6 digital information can be searched for somehow,
7 provided that you design an engine that is capable
8 of doing it.

9 Q. Can a query be a URL?

10 MR. VALEK: Objection. Form. And I'll
11 also instruct the witness not to answer to the
12 extent it's calling for information that's not
13 in the infringement contention document.

14 A. Generally speaking, if one were to have a
15 search engine capable of accepting URLs as queries,
16 one could have a query that was a URL.

17 Q. Okay. And if you had let's say a string
18 of terms or characters in a query, let's say you
19 had three, what would the -- what does the patent
20 require to be fragmented? Would it be breaking out
21 those, say, three terms into individual terms?

22 MR. VALEK: Objection. Privilege. And
23 I'll instruct the witness not to answer that
24 question.

25 A. I will follow those instructions.

1 Q. So you can't answer the question?

2 A. Based on privilege.

3 Q. Okay. The cited excerpt in the right-hand
4 column doesn't say anything about hashing query
5 fragments, does it?

6 MR. VALEK: Objection. And I will again
7 instruct the witness not to answer on the
8 basis of privilege.

9 A. I don't even know which element and
10 response you're speaking about.

11 Q. I'm referring to the one we've been
12 talking about this whole time, which is at page 4
13 of column -- of Exhibit 4.

14 A. Okay.

15 Q. And the clause in the right-hand column
16 says, "So, for example, on the document server
17 side, where we have the cached web, we basically
18 hash the URL into, you know, a 128-bit number."
19 That doesn't disclose hashing a query fragment,
20 does it, sir?

21 MR. VALEK: Objection. And I instruct the
22 witness not to answer to the extent you would
23 reveal information not contained in the
24 document itself.

25 A. I will follow those instructions.

1 Q. So you can't answer the question?

2 A. Not going to answer on the basis of
3 privilege.

4 Q. Can you tell me in this same clause what
5 is performing the hashing function described in the
6 Google document?

7 A. I don't understand the question.

8 Q. Well, what is doing the hashing?

9 MR. VALEK: Objection. And I'll instruct
10 the witness not to answer anything beyond
11 that's given in the infringement contentions
12 based on privilege.

13 A. I can't go beyond what's in the
14 contention, which says, "on the document server
15 side where we have the cached web, we basically
16 hash the URL."

17 Q. Okay. So is it the document server that
18 is hashing the URL?

19 MR. VALEK: Objection. Form. And also
20 objection. Privilege. I'll instruct the
21 witness not to answer that question.

22 A. I believe already responded to you to the
23 extent of the contentions and I can't go beyond
24 that.

25 Q. Does this document say that the document

1 server hashes a URL?

2 A. It says what it says.

3 Q. Does the -- does this excerpt indicate to
4 you that the document server hashes the URL?

5 MR. VALEK: Objection. And I'll instruct
6 the witness not to answer beyond what's set
7 forth in the infringement contention based
8 upon privilege.

9 A. And I have said as much as I can about
10 what's in the infringement contention without
11 getting into privileged documents.

12 Q. Can you answer the question yes or no?

13 MR. VALEK: Objection. Form. And I'll --

14 Q. My question is a yes or no question.

15 MR. VALEK: He can answer the question
16 however he wants. Objection. Form.

17 THE WITNESS: Would you read the question,
18 please.

19 COURT REPORTER: "Question: 'Does this
20 excerpt indicate to you that the document
21 server hashes the URL?'"

22 A. I can't go any further than the
23 information which I've already provided, and I
24 won't do it on the basis of privilege.

25 Q. My question --

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1 A. My refusing to do so is on the basis of
2 privilege.
3 Q. So you can't tell me whether this document
4 -- one way or the other whether this snippet of
5 text indicates that the document server is what
6 hashes the URL?
7 MR. VALEK: Objection, Form. And
8 objection, privilege, to the extent it goes
9 beyond the infringement contention document.
10 And I'll instruct the witness not to answer
11 beyond what's set forth in this document.
12 A. And therefore, I refuse to respond further
13 on this particular issue based on privilege.
14 Q. I want your answer. Can you tell me your
15 answer? Not further. Can you give me your answer
16 again then?
17 THE WITNESS: Would you go back to where I
18 answered that the question, please, and read
19 it.
20 Q. It's a different question I asked you.
21 And what you're doing is referring back to
22 different answers. I asked a specific question. I
23 want an answer to the question.
24 THE WITNESS: Okay. Can I have the
25 question for which the specific answer is

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1 being requested.
2 COURT REPORTER: "Question: 'So you can't
3 tell me one way or the other whether this
4 snippet of text indicates that the document
5 server is what hashes the URL?'"
6 MR. VALEK: Objection. And I'll instruct
7 the witness not to answer beyond what's stated
8 in the infringement contention document, based
9 on privilege.
10 A. And I will comply with those instructions
11 and will not answer the question beyond what's
12 stated in the document.
13 Q. All right. Can you tell me whether the
14 document server is a home node or a query node
15 under Jarg's contentions?
16 MR. VALEK: Objection. Privileged. I'll
17 instruct the witness not to answer beyond
18 what's set forth in the infringement
19 contention document.
20 A. Okay. And your question again is?
21 Q. Is it Jarg's contention that the document
22 server in the alleged infringing products is a
23 query server under the claims?
24 MR. VALEK: Objection.
25 A. And in what --

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1 MR. VALEK: Privilege.
2 A. What element are we speaking of here?
3 Q. This would be a plurality of query nodes,
4 found at the top of page 3 of Exhibit 4.
5 A. And I think that we would say that the
6 document servers literally meet the limitation of a
7 plurality of query nodes as stated in the
8 infringement contentions.
9 Q. Right. And if we turn back to page 4, you
10 also earlier agreed that the hashing was done by
11 the selected home node.
12 MR. VALEK: Objection. Form. And
13 objection. Privilege.
14 Q. Correct?
15 MR. VALEK: Objection. Privilege. And
16 instruct you not to answer that question.
17 A. I will comply with those instructions.
18 Q. Do you see an inconsistency in your
19 infringement contentions, sir?
20 A. An inconsistency?
21 Q. Yes. In the example, you've said that the
22 document server is what hashes a URL. But earlier,
23 you said that the document server was the query
24 server. But in this particular claim element, the
25 hashing element, it says hashing was done by the

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1 selected home node.
2 MR. VALEK: Objection. Form. And
3 objection. Privilege. And I'll instruct him
4 not to answer to the extent that goes beyond
5 the infringement contention document and
6 completely misrepresents everything that's
7 been said to date.
8 MR. WOLFF: Counsel, please, no speaking
9 objections.
10 A. The infringement contentions I believe are
11 fairly clear, that the home node -- Google's home
12 node literally fragments the query into a plurality
13 -- fragments the query into a plurality of query
14 fragments.
15 Q. And what is the Google home node that
16 you're identifying?
17 A. In the contention document, the language
18 in Google's description from, its the IEEE article,
19 says, "In the first phase, the Index Servers
20 consult an inverted index that maps each query word
21 to a matching list of documents," which is referred
22 to as the "hit list." "The index servers then
23 determine a relevant set of documents by
24 intersecting the hit list with the individual query
25 words."

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1 Q. So the Index Server is the home node?
2 MR. VALEK: Objection. Form.
3 A. The language of the contention speaks for
4 itself. And to go beyond that is -- I can't answer
5 because of privilege.
6 Q. All right. Let's turn to Exhibit 7 and
7 page 23 of Exhibit 7.
8 A. Seven.
9 Q. Okay.
10 A. And page 23?
11 Q. If you look at Figure 1, is this --
12 A. Query-serving architecture.
13 Q. So in this diagram, Figure 1, can you
14 identify with a pen what the home node is?
15 MR. VALEK: I'll object to the form of the
16 question. And if you need to look at the
17 infringement contentions, you're free to do
18 so.
19 A. Okay. And you want me to identify --
20 Q. With a pen, I want you to mark on the
21 document, Exhibit 7, what Jarg's contention is as
22 to which of the Google block diagrams there satisfy
23 the home node requirement?
24 A. I believe that's privileged information.
25 Q. So you can't answer the question based on

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1 privilege grounds?
2 A. The manner in which this diagram comports
3 with the infringement contentions and the
4 conclusions which flow from that are conclusions
5 which have been reached and reflected in the
6 infringement contentions, and to go beyond that
7 gets into privileged information.
8 Q. Well, isn't it true that your contentions
9 identify the Google Web Server and the Index Server
10 as the home node?
11 MR. VALEK: Objection. Form. Which
12 contentions?
13 A. Let's see -- so, it says here in
14 infringement -- in the first infringement
15 contention, in the second element on page 2, that
16 "The Google Web Servers and Index Servers literally
17 meet the limitation of a plurality of home nodes."
18 These servers -- should be servers, "severs [sic]
19 also meet the limitation under the doctrine of
20 equivalents."
21 So that is our contention, that Web
22 Servers and Index Servers literally meet the
23 limitation of a plurality of home nodes.
24 Q. Could you hand me Exhibit 7? Since you
25 won't do it, I will. (Indicating).

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1 So is what I have circled, which is the
2 Google Web Server and the Google Index Server, is
3 that what Jarg's contention is the home node?
4 (At the conclusion of the deposition
5 Exhibit 7A was marked for identification.)
6 MR. VALEK: Objection. Form.
7 A. And the -- this diagram was not prepared
8 to support the infringement contentions. The
9 diagram is part of this article.
10 The extent to which the article and the
11 diagram are speaking about the things which are
12 spoken of in the contentions is a matter for
13 privilege and is one which I won't get into.
14 Q. So you won't answer the question?
15 A. So I won't answer the question based on
16 privilege.
17 Q. So to follow up, isn't it correct that the
18 query nodes that Jarg has identified are the
19 document servers?
20 MR. VALEK: Objection. Form.
21 A. The infringement contentions are that
22 "Google's document servers literally meet the
23 limitation of a plurality of query nodes. These
24 servers also meet the limitation under the doctrine
25 of equivalents."

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1 Q. So that's correct?
2 A. The first infringement contention says,
3 "Google's document servers literally meet the
4 limitation of a plurality of query notes. The
5 servers also meet the limitation under the doctrine
6 of equivalents."
7 Q. So referring back to Figure 1 of
8 Exhibit 7 --
9 A. Figure 1 of Exhibit 7 -- oh, there we go.
10 Q. -- what is not circled there is the
11 document server, correct?
12 A. What is not --
13 Q. One of the things not circled is the
14 document server, correct?
15 A. One of the things not circled is a portion
16 of the diagram which in this article is labeled as
17 "document server."
18 Q. Okay. But you're relying on this article
19 to show that Google satisfies the claim
20 limitations, correct?
21 A. I am relying on analysis of all of the
22 information that we have available from Google and
23 advice of counsel and our analysis of our patent.
24 I'm not relying specifically on this diagram.
25 Q. Is this diagram a useful diagram in

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1 discussing the Google architecture?
2 MR. VALEK: Objection. Form. And I'll
3 object to that question as privileged.
4 A. And I will not respond to that question
5 based on privilege.
6 Q. So if we turn back to the hashing
7 limitation on page 4 of Exhibit 4, it says,
8 "hashing by said selected home node."
9 And so doesn't that mean to Jarg that the
10 home nodes identified in the Google search
11 application would have to be the Google Web Server
12 and the Google Index Servers?
13 MR. VALEK: Objection. Privileged. Work
14 product. And I instruct the witness not to
15 answer that question.
16 A. And I will follow those instructions based
17 on privilege.
18 Q. So you can't answer the question?
19 A. Based on privilege.
20 Q. But you can't answer the question at all,
21 right, other than to object on privilege grounds?
22 A. "The Google Web Servers and the Index
23 Servers literally meet the limitation of a
24 plurality of home nodes."
25 Q. All right.

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1 A. And also under the doctrine of
2 equivalents.
3 Q. Okay. But the infringement contention you
4 have here on page 4 is that the document server
5 hashes a URL.
6 MR. VALEK: Objection. Form.
7 A. Was there a question in that?
8 Q. Probably not.
9 Your contention on page 4 regarding the
10 hashing limitation is that the document server is
11 what hashes a URL, and that this excerpt from the
12 Google document satisfies the hashing limitation;
13 is that correct?
14 MR. VALEK: Objection. Form. And I will
15 instruct the witness not to answer that
16 question to the extent it goes beyond what's
17 already stated in the infringement contentions
18 because it's privileged.
19 A. And on the document server side where
20 Google has the cached web, Google basically hashes
21 the URL into 128-bit number or something like that.
22 I mean -- these are the infringement contentions.
23 Q. Thank you for telling me that.
24 A. What's the question?
25 Q. How on earth does this satisfy the claim

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1 limitation, this snippet of text from this
2 University of Washington presentation, how does
3 that satisfy the hashing limitation of the claim?
4 MR. VALEK: Objection. Form. Objection.
5 Privileged. And I will instruct the witness
6 not to answer to the extent it goes beyond
7 what's stated in the infringement contention
8 document.
9 A. And I believe I have responded with what's
10 in the infringement contention document, and
11 therefore, I can't go any further based on
12 privilege.
13 Q. But you'll agree that Jarg and
14 Northeastern identified the document server as the
15 query node, and this excerpt of text is basically
16 saying if Jarg's contentions are correct, that the
17 query node hashes the URL. But the claim requires
18 that the home node hashes the query fragment,
19 correct?
20 MR. VALEK: Objection. form. And also
21 privilege, to the extent it goes beyond what's
22 stated in the infringement contention
23 document.
24 A. All I point out is that the language in
25 the infringement document, contention document, and

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1 the language in the presentation says, "So for
2 example, on the document side, where we have the
3 cached web, we basically hash the URL." It says,
4 "for example."
5 Q. So there's no explicit teaching in here of
6 hashing by the home node Jarg has identified --
7 MR. VALEK: Objection. Form. Objection.
8 Q. -- as infringing.
9 MR. VALEK: Objection. Form. Objection.
10 Privilege. And I instruct the witness not to
11 go beyond what's disclosed in the infringement
12 contention document.
13 A. And therefore, I think I've said what I
14 can say about the infringement contention and it's
15 as set forth in the document; and beyond that is
16 privileged information, and my answer is concluded.
17 Q. Next claim element, "transmitting." Do
18 you see that?
19 A. Yes.
20 Q. All right. What is -- what does this
21 clause mean to Jarg?
22 MR. VALEK: Objection. Privileged, work
23 product, and I instruct the witness not to
24 answer.
25 A. And I will follow those instructions based

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1 on privilege.
2 Q. Can you give me any -- can you give me
3 Jarg's understanding of how this limitation applies
4 to Google?
5 MR. VALEK: Again, same --
6 A. The contention document provides the
7 information that we have about Google, which we
8 believe demonstrate that the home nodes literally
9 meet this limitation. They also meet it through
10 the doctrine of equivalents.
11 Q. All right. So in the excerpts that Jarg
12 has identified in Exhibit 4, page 4, on the
13 right-hand side, from the Google documents, what
14 language is Jarg relying on -- Jarg and
15 Northeastern relying on to satisfy the transmitting
16 limitation, what language identifies the act of
17 transmitting?
18 MR. VALEK: Objection. Form.
19 A. I believe that the language in the
20 contention documents describe what is necessary to
21 demonstrate infringement on the -- from the
22 materials that Google has presented to us, and that
23 the home nodes literally meet the limitation and
24 meet it under the doctrine of equivalents.
25 Q. But what language are you relying on in

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1 here? Just pick a word, something --
2 A. Well --
3 MR. VALEK: Objection.
4 Q. -- that identifies this transmitting step.
5 MR. VALEK: Objection. Form.
6 A. And to the extent that that requires me to
7 go beyond the language which is in the infringement
8 contentions and therefore, I'm not going to answer
9 on the basis of privilege.
10 Q. So you can't answer my question on
11 privilege grounds; is that correct?
12 A. That's correct.
13 Q. Are you sure?
14 A. Ask me the question one more time.
15 MR. WOLFF: Could you read the question
16 back, please.
17 COURT REPORTER: "Question: 'But what
18 language are you relying on in here? Just
19 pick a word, something --'
20 "Mr. Valek: Objection."
21 "Question: 'That identifies this
22 transmitting step.'"
23 MR. VALEK: My objection was to form.
24 MR. WOLFF: Your objection interrupted my
25 question, too.

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1 Q. Can you tell me what language or what word
2 in the right-hand column for this claim element
3 teaches the transmitting step?
4 MR. VALEK: Objection. Form.
5 A. There are a number of references in the
6 language in the infringement contentions here which
7 rely upon or relate to communication or
8 transmitting. How we determined which of those we
9 are relying upon in reaching the conclusion of
10 infringement is a matter of privilege.
11 Q. So you can't answer my question?
12 A. I am -- I am not going to answer your
13 question beyond the language that's set forth in
14 the infringement contentions.
15 Q. So other than reading the language --
16 A. Other than reading the language -- well
17 for instance --
18 Q. I don't need you to read the language
19 again, sir. I can read.
20 A. Okay.
21 Q. Does the language Jarg has relied upon
22 here in the Google documents identify Figure 1 of
23 Exhibit 7?
24 A. I'm sorry. Does the language --
25 Q. Does the language Jarg has relied upon for

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1 part of its infringement contentions identify
2 Figure 1 from Exhibit 7?
3 A. I'm still not -- where is the language
4 you're looking at in here?
5 Q. You can't find the language that
6 identifies Figure 1 from Exhibit 7?
7 A. I was looking at the contentions. What
8 are you -- what are you --
9 Q. In right-hand column, it says, first
10 infringement contention.
11 A. Yes.
12 Q. And then the paragraph or the snippet
13 beginning, "The final result of this" --
14 A. Yes. Okay.
15 Q. Do you see that? Do you see, "as Figure 1
16 shows"?
17 A. Oh. "As Figure 1 shows the second phase
18 involves taking this list of document IDs and
19 computing the actual title and URL of these
20 documents" -- and then that number... "Figure 1
21 shows the second phase involves taking this list of
22 document IDs and computing the actual title and
23 Uniform Resource Locator of these documents, along
24 with the query specific document summary." So that
25 language should be coming from architecture 23, 24.

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1 Okay. It starts on the bottom of 23. As
2 Figure 1 shows the second phase -- so this language
3 does come from this article.
4 Q. So you relied on Figure 1, correct?
5 A. So we relied on this language because
6 that's what in the infringement contentions.
7 Figure 1 is not in the infringement contentions.
8 MR. WOLFF: All right. Let's take a short
9 break while the reporter changes the tape.
10 THE VIDEOGRAPHER: This is the end of tape
11 2. Going off record. The time is 12:44.
12 (Proceedings interrupted at 12:44 p.m. and
13 reconvened at 12:54 p.m.)
14 THE VIDEOGRAPHER: We're back on record.
15 It's the beginning of tape 3. The time is
16 12:54. You may continue.
17 BY MR. WOLFF:
18 Q. All right. Turning to Exhibit 4, page 4,
19 the clause that spans the next page 2, "using by
20 said query node," can you tell me what this claim
21 limitation means to you?
22 MR. VALEK: Objection. Privileged work
23 product. I'll instruct the witness not to
24 answer that question.
25 A. And I will follow those instructions not

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1 to answer based upon privilege.
2 Q. All right. So you can't answer the
3 question?
4 A. I think that's what I just said.
5 Q. And I'll stop asking that question. I
6 just like to confirm it for the record that the
7 witness is not going to answer the question. So if
8 you tell me again that you're going to follow the
9 instruction and not answer the question, I'm going
10 to understand that you cannot answer the question
11 at all without revealing privileged information; is
12 that fair?
13 A. Yes.
14 Q. Okay. Maybe that will speed things along
15 here.
16 Can you tell me how --
17 A. Well, I'm sorry. I can answer to the
18 extent that it's in the infringement contentions;
19 beyond the infringement contentions, I can't
20 answer.
21 Q. But you can only read basically from the
22 infringement contentions; is that correct? You
23 haven't been able to explain anything in the
24 contentions to me other than to just simply read
25 them.

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1 MR. VALEK: Objection. Form.
2 A. I believe that my responses have described
3 why, as far as I can go, and the extent to which I
4 can't go beyond the infringement contentions. So
5 the infringement contentions are what they are; to
6 the extent that we need to go behind those, there
7 are -- we may get into privileged information.
8 Q. Right. And that's what the issue is,
9 right? When you say you can't answer based upon
10 privilege grounds, you're saying that we're going
11 beyond the language in the contention, and
12 therefore you can't answer it --
13 A. Correct.
14 Q. -- because of all these privilege and work
15 product issues apparently.
16 So can you tell me how this clause, the
17 "using" clause applies to the alleged infringing
18 Google products?
19 A. I believe the manner is described in the
20 infringement contentions, which are set forth there
21 in the infringement document, in the response. Do
22 you want me to --
23 Q. Well, what is the local hash table in the
24 Google product?
25 MR. VALEK: Objection. Form.

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1 A. What is the local hash table? I don't see
2 a specific reference in the infringement
3 contentions to a -- I don't see the words "local
4 hash table."
5 Q. Are you referring to a particular column?
6 A. I'm looking at -- I'm looking at the --
7 the right-hand column, under the heading, "this
8 element is present, see," for example, "see e.g."
9 and I don't see the words "local hash table."
10 What's the question again?
11 Q. Let me just ask it again. What is the
12 local hash table required by the claim in the
13 alleged infringing products?
14 MR. VALEK: Objection. Form.
15 A. The extent to which there's a local hash
16 table is either set forth in the infringement
17 contentions or as of -- in the infringement
18 contentions as a whole or can be inferred from
19 them. And I don't -- I don't see a -- the label
20 "local hash table" in the language in the first
21 infringement contention for that particular element
22 of the claim.
23 Q. So how did Jarg infer that there's a local
24 hash table in the Google products?
25 MR. VALEK: Objection. And I'll instruct

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1 the witness not to answer to the extent it
2 goes beyond what's set forth in the
3 infringement contentions, based upon
4 privilege.
5 A. And I therefore will follow those
6 instructions based on privilege.
7 Q. So the next claim element begins
8 "returning." This is on page 5 of Exhibit 4.
9 Can you tell me what Jarg's understanding
10 of an object identifier is?
11 MR. VALEK: Object. Privilege, work
12 product and I'll instruct the witness not to
13 answer.
14 A. I will follow those instructions based on
15 privilege.
16 Q. Can you tell me in the right-hand column
17 for this claim element --
18 A. This is the "using" one -- I'm sorry --
19 the "using" one again?
20 Q. This is the "returning" one.
21 A. The "returning" one.
22 Q. Do we need to start over with the
23 question?
24 A. No.
25 Q. Can you tell me where in the right-hand

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1 column the Google documents identify -- let me
2 start over with that.
3 Can you tell me where in the right-hand
4 column for this claim element the excerpts identify
5 the "returning" claim limitation in the Google
6 products?
7 MR. VALEK: Objection. Form.
8 A. I don't see the word "returning" in this.
9 I think the query nodes, as they have been overall
10 described, meet the limitation, both literally and
11 under the doctrine of equivalents.
12 Q. But in this excerpt of text that Jarg has
13 here, what is it in this excerpt of text that
14 satisfies this "returning" limitation?
15 MR. VALEK: Objection. Form.
16 A. I'm not sure that this, as a whole the
17 infringement, first infringement contention
18 responses identify the manner in which the Google
19 Web Server infringes on the Jarg -- on these claims
20 of the Jarg patent, in this particular case, claim
21 one. I don't see a specific reference to a -- I'm
22 sorry -- this was "returning," right?
23 Q. The "returning" limitation. I'm not just
24 referring to returning language, but you could
25 certainly start there.

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1 MR. VALEK: Objection. Form.
2 THE WITNESS: Okay. I'm sorry. Would you
3 read the question back again? Not that one,
4 the one before, the one that I'm trying to
5 respond to.
6 COURT REPORTER: "Question: 'But in this
7 excerpt of text that Jarg has here, what is it
8 in this excerpt of text that satisfies this
9 returning limitation? The returning
10 limitation. I'm not just referring to
11 returning language, but you could certainly
12 start there.'"
13 Q. Just answer the question. I was trying to
14 qualify it as to whether you're saying I don't see
15 returning language or you don't see how this thing
16 satisfies the returning limitation.
17 You could start with the word "returning"
18 and say where is the returning in here, but you
19 could move on and say where is the object
20 identifier in here as well.
21 MR. VALEK: Objection. Form.
22 MR. WOLFF: There's no question.
23 MR. VALEK: That's why I'm objecting.
24 MR. WOLFF: I'm trying to help the
25 witness.

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1 A. Yeah. That's okay.
2 Q. How is it that the language cited in the
3 first contention satisfies the "returning" claim
4 limitation? What is it in this language that Jarg
5 believes cause Google's products to infringe the
6 patent?
7 A. As to this particular element, I assume.
8 Q. As to this particular element.
9 MR. VALEK: And I'll ask -- I'll object as
10 privilege to the extent it calls for
11 information beyond the infringement
12 contentions document.
13 A. And I would think that "document servers
14 fetch" is a description for returning. I mean, the
15 Google documents, aren't patent documents, in other
16 words, these articles aren't patent applications,
17 they're articles. So I would assume that fetching
18 would bring to mind a dog, which when you throw
19 something, the dog goes out and gets it and brings
20 it back.
21 Q. All right.
22 A. So I would understand that -- just in
23 looking at this language, I would understand that
24 to satisfy, to be one way in which the returning
25 requirement might be satisfied, based upon this

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1 language.
2 Q. And what is the object identifier then?
3 MR. VALEK: Objection. And I'm going to
4 instruct the witness not to answer that
5 because it goes beyond the infringement
6 contention document based upon privilege.
7 A. And I'll comply with those instructions.
8 Q. So if I asked you Jarg's understanding of
9 the clauses in the remaining claims, would I get
10 the same answer you've been giving me all day,
11 which is that you can't answer based upon privilege
12 grounds?
13 A. Allowing for the different contexts in
14 which you answered the questions, I would say yes.
15 Q. Which I answered the questions or do you
16 mean I asked the questions?
17 A. Asked the questions. Sorry.
18 Q. So do I need to go through every one of
19 these and ask you what Jarg's understanding of the
20 claim elements are?
21 A. When you ask me that question, I can
22 respond with what's in the claim contentions, but
23 going beyond that --
24 Q. I'm just asking about your understanding
25 of the claim limitation. I'm not saying how it

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1 applies yet; that's the second part, we'll get to
2 that.
3 A. Okay. So in the claim element column.
4 Q. Yes.
5 A. If we were to go to the claim element
6 column.
7 Q. Yes.
8 MR. VALEK: I'll tell you that to the
9 extent you're asking about Jarg's
10 understanding of the meaning of those claim
11 terms, I will object and instruct him not to
12 answer based upon privilege. So if that helps
13 you.
14 A. Yes. And I will follow those
15 instructions.
16 Q. Okay.
17 MR. VALEK: So we can shortcut that. I
18 understand what you're trying to do. I'm not
19 trying to --
20 MR. WOLFF: I just don't want to waste
21 everybody's time going through the same
22 exercise for every one of these claim elements
23 now that we've gotten one independent claim
24 done.
25 BY MR. WOLFF:

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1 Q. And would I be getting the same response
2 with regard to the information on the right-hand
3 side of the column of the infringement contentions?
4 MR. VALEK: Objection.
5 Q. Which is you're not going to testify about
6 anything outside of the language that's been
7 expressly identified --
8 A. That's correct.
9 Q. -- in the column?
10 A. That's correct.
11 Q. And does Jarg understand that many of the
12 limitations are the same as between the different
13 claim elements? I'm sorry. Does Jarg understand
14 that many of the -- let me strike that again. It's
15 been a long depo.
16 A. Yeah.
17 Q. Does Jarg understand that or is it Jarg's
18 contention that the claim terms mean the same thing
19 as between similar elements and the claims? So for
20 example, if each of the independent claims required
21 a home node, it's your contention that all the home
22 nodes would be the same?
23 MR. VALEK: Objection. Privilege and work
24 product, and I'll instruct him not to answer
25 that question.

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1 A. I'll follow those instructions.
2 Q. Same question with regard to query nodes.
3 Am I going to get the same objection on every one
4 of these?
5 A. Same answer.
6 MR. VALEK: Yes, I'll give you --
7 MR. WOLFF: We will move along.
8 Q. Let's turn to the second infringement
9 contention. How's everybody doing?
10 MR. WOLFF: Go off the record for just one
11 second.
12 (Off-the-record discussion held
13 at 1:11 p.m.)
14 THE VIDEOGRAPHER: Back on record. Time
15 is 1:12. You may continue.
16 BY MR. WOLFF:
17 Q. If you could turn to page 13 of Exhibit 4.
18 This is the beginning of Jarg and Northeastern's
19 second infringement contention. This contention is
20 dependent upon a different document than the first
21 contention, correct?
22 MR. VALEK: Objection. Form.
23 A. The specific references are to the
24 "anatomy."
25 Q. Right. And that is Exhibit 6, right?

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1 A. That is Exhibit 6.
2 Q. And there's another book that's referred
3 to as well and that is the Vise, et al. --
4 A. "The Google Story."
5 Q. -- book from 2005.
6 So again, you haven't read Exhibit 6,
7 right?
8 MR. VALEK: Objection. Form.
9 A. I personally have not read Exhibit 6.
10 Q. Okay. Can you tell me what the -- what
11 Jarg's understanding of the home nodes are as
12 described in Exhibit 6?
13 MR. VALEK: Objection. Privilege, work
14 product, and I instruct the witness not to
15 answer.
16 A. I will comply with those instructions.
17 Q. Can you tell me what Jarg's understanding
18 of a plurality of query nodes is with respect to
19 Exhibit 6?
20 MR. VALEK: Objection. Form.
21 A. So the -- I'm sorry. The question is?
22 Q. Can you tell me what Jarg's understanding
23 of what the query nodes are as they are described
24 in Exhibit 6?
25 MR. VALEK: Objection, Form. And

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1 objection, privilege to the extent it would
2 require you to go beyond the infringement
3 contentions document.
4 A. And query nodes as they're described in
5 Exhibit 6 would involve attorney/client privilege.
6 Q. Okay. So you can't answer the question
7 based on privilege?
8 A. Privilege.
9 Q. Your answer was a little bit different
10 than it was in the past. I wasn't sure if that's a
11 distinction you were trying to make --
12 A. No.
13 Q. -- or something else.
14 A. No.
15 Q. Can you tell me how Jarg's understanding
16 of the plurality of home nodes and plurality of
17 query nodes connected by a network is satisfied by
18 Exhibit 6?
19 A. Satisfied by Exhibit 6?
20 MR. VALEK: I'll object as privileged to
21 the extent it goes beyond the language quoted
22 here in the infringement contentions.
23 A. And so the question is again, I'm sorry,
24 how does this -- how does the --
25 THE WITNESS: Read the question again,

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1 please.
2 COURT REPORTER: "Question: 'Can you tell
3 me how Jarg's understanding of the plurality
4 of home nodes and plurality of query nodes
5 connected by a network is satisfied by
6 Exhibit 6?'"
7 A. One example of that way from the language
8 in the infringement contentions is the statement of
9 Google that it intends to speed up Google
10 considerably through distribution and hardware,
11 software and algorithmic improvements. So that
12 that is only going to be possible if there's a
13 plurality of things connected together.
14 And so one way from this language that I
15 would infer that is through the last statement.
16 And the same inference from the prior -- that
17 refers to disks spread over a number of machines.
18 In order for them to be capable of working
19 together, they have to be networked. So these are
20 inferences from here, these are example.
21 Q. Can you tell me -- I'm sorry.
22 A. No. These are examples, and to go beyond
23 that --
24 Q. Right. Beyond that what?
25 MR. VALEK: Objection.

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1 A. Stop.
2 MR. VALEK: And I'm going to instruct him
3 not to answer beyond what's disclosed in the
4 infringement contentions.
5 Q. All right. So can you tell me why Jarg
6 has identified the language from section 4.21 in
7 Exhibit 6, which is "big files or virtual files"?
8 MR. VALEK: Objection, privileged and work
9 product. I'll instruct him not to answer
10 that.
11 A. I will follow those instructions.
12 Q. You can't tell me why this language is in
13 your infringement contentions?
14 MR. VALEK: Same objection.
15 A. Same answer.
16 Q. All right. The next clause, beginning
17 "wherein," can you tell me what Jarg's
18 understanding of the Google system is that
19 satisfies this claim limitation?
20 MR. VALEK: I'll object to privilege to
21 the extent it goes beyond what's stated in the
22 infringement contention document and instruct
23 the witness not to go beyond what's stated in
24 that document.
25 THE WITNESS: The question again is?

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1 COURT REPORTER: "Question: 'The next
2 clause, beginning "wherein," can you tell me
3 what Jarg's understanding of the Google system
4 is that satisfies this claim limitation?'"
5 MR. VALEK: Same objection.
6 A. Right. The language and the second
7 infringement contention addresses this, and beyond
8 that is privileged information which I -- and I'm
9 not going to go there.
10 Q. Okay. Can you turn to Exhibit 6 and find
11 for me in section 4.4, the sentence that you've
12 cited here, "Every word is converted into a wordID
13 by using an in-memory hash table, a lexicon."
14 A. Word into -- into wordID by using
15 in-memory hash table or lexicon. I don't see it in
16 4.4.
17 Q. I don't mean to turn it into a trick
18 question. It's not there.
19 A. Yeah. I came to the same conclusion.
20 Q. So if you didn't read this document and
21 you didn't read other documents, how is it that
22 you're able to testify about how this limitation is
23 satisfied?
24 MR. VALEK: Objection. Form.
25 A. I'm sorry. Say that again?

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1 MR. WOLFF: Could you read the question
2 back, please.
3 COURT REPORTER: "Question: 'So if you
4 didn't read this document and you didn't read
5 other documents, how is it that you're able to
6 testify about how this limitation is
7 satisfied?'"
8 BY MR. WOLFF:
9 Q. Let me start over. Let me get another
10 question for you because this document might be
11 confusing.
12 If you didn't read Exhibit 6 and you're
13 only relying on the contentions here, how is it
14 that you're able to testify on behalf of Jarg that
15 this claim limitation is satisfied?
16 MR. VALEK: Objection. Form.
17 A. I am able to testify based on the overall
18 infringement contentions and the information that I
19 have received from Jarg and its counsel.
20 Q. And what information is that?
21 A. The information that is contained in the
22 infringement contentions.
23 Q. But this sentence isn't in the reference.
24 A. That isn't in the reference.
25 MR. VALEK: Objection. Form.

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1 A. It isn't in section 4.4 of "anatomy."
2 That that is anything more than a typographical
3 error isn't clear yet.
4 Q. But you didn't read Exhibit 6 prior to
5 today.
6 MR. VALEK: Objection. Form.
7 A. That's right. I did not read Exhibit 6
8 prior to today.
9 Q. And again, this -- the same issue with the
10 next clause on page 15 beginning, "hashes."
11 A. "Hashes," each query -- "each said query
12 fragment."
13 Q. Uh-huh.
14 A. And the same issue with respect to --
15 Q. Well, it's got the same issue with regard
16 to the citation. But my other question is how is
17 it that Jarg contends that Google satisfies this
18 hashing limitation?
19 MR. VALEK: Objection. Privilege and work
20 product to the extent it goes beyond what's in
21 the infringement contention document.
22 A. Okay. And I believe that our manner of
23 addressing the infringement is set forth in the
24 infringement contentions.
25 Q. Right. And can you tell me the context in

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1 which the sentence that is miscited is used?
2 A. The context in which the sentence that is
3 miscited is used.
4 Q. And I'm referring to the context of the
5 document from which it's cited from.
6 A. I'm -- I'm afraid you have to ask me that
7 question again.
8 Q. So this excerpt on hashing, other than
9 this excerpt that's obviously some sort of
10 miscitation, Jarg hasn't identified any evidence of
11 hashing for this limitation.
12 MR. VALEK: Objection. Form.
13 Q. Correct?
14 MR. VALEK: Sorry. Objection. Form.
15 THE WITNESS: Okay. I'm sorry. What's
16 the question again?
17 COURT REPORTER: "Question: 'So this
18 excerpt on hashing, other than this excerpt
19 that's obviously some sort of miscitation,
20 Jarg hasn't identified any evidence of hashing
21 for this limitation, correct?'"
22 MR. VALEK: Objection. Form.
23 A. Among other things, I mean, looking --
24 forgetting looking at all of the infringement
25 contentions for the second infringement contention

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1 as a whole of the detail, converting words into
2 wordIDs, you can't create a word into a wordID
3 unless you isolate the word, and in order to do
4 that, you have to hash the query.
5 Q. All right. And what is the basis of your
6 -- the statement you just made?
7 A. What is the basis of my statement that I
8 just made?
9 MR. VALEK: Objection. Form.
10 Q. How can it only be hashing that this
11 happens through?
12 MR. VALEK: Objection.
13 A. I'm sorry. In order to convert a word --
14 MR. VALEK: You need to let me object.
15 Objection. Form.
16 A. In order to convert a word into a document
17 ID, you have to have a word.
18 Q. Right.
19 A. All right. And forget putting aside the
20 meaning of hashing and everything else, to have a
21 word and a wordID, you have to separate the word
22 from the other words, at least for that wordID,
23 which would imply some sort of activity of
24 isolation of the word so that one might apply a
25 wordID to it.

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1 Q. So any activity would be hashing under
2 Jarg's contention?
3 A. Pardon me?
4 MR. VALEK: Objection. Form. And then I
5 will object as to privilege and work product
6 and instruct the witness not to answer that.
7 A. And I will not answer that based on that.
8 Q. Do you know whether -- never mind.
9 Can you tell me what the first portion and
10 the second portion of the hashed query fragment in
11 the alleged infringing Google system is?
12 MR. VALEK: I'll object, privilege and
13 work product to extent it calls for
14 information that's not set forth explicitly in
15 the second or the infringement contentions
16 document, Exhibit 4.
17 THE WITNESS: And the question again is?
18 COURT REPORTER: "Question: 'Can you tell
19 me what the first portion and the second
20 portion of the hashed query fragment in the
21 alleged infringing Google system is?'"
22 MR. VALEK: Again, objection, privileged
23 and I instruct you not to go beyond what's set
24 forth in Exhibit 4.
25 A. The "is" refers to...

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1 THE WITNESS: What's the question again?
2 COURT REPORTER: "Can you tell me what the
3 first portion and the second portion of the
4 hashed query fragment in the alleged
5 infringing Google systems is?"
6 A. What is the first portion and the second
7 portion? Other than saying it's the first portion
8 and the second portion, I'm -- explain. Sorry.
9 Q. I want to know what it is in here, what it
10 is that you've identified here as the hashed query
11 fragment, where is the first portion and the second
12 portion in this?
13 MR. VALEK: Objection. That's privileged
14 to the extent it goes beyond what's set forth
15 expressly in Exhibit 4.
16 A. And I think that to try and go beyond, I
17 can't explain that without going beyond what's in
18 here.
19 Q. So can you go beyond there or not?
20 A. I will not go beyond there based on
21 privilege.
22 Q. Okay. Can you tell me how Jarg
23 understands the next clause, which begins "and
24 transmits" with regard to the alleged infringing
25 Google products?

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1 MR. VALEK: Once again, objection
2 privilege to the extent it goes beyond what's
3 set forth expressly there on page 15 of
4 Exhibit 4.
5 A. The language in the second infringement
6 contentions for that element describes storing, it
7 describes sorting, it describes resorting, it
8 describes processing by a sorter. It goes seeking
9 in a short barrel. I mean, all of these things are
10 ways of transmitting. We're not lim -- but these
11 are what are described in the contentions
12 generally. They're examples, not intended to be a
13 limitation.
14 Q. And these are all steps that need to be
15 performed by the home node, correct?
16 MR. VALEK: Objection, and privileged,
17 work product and I'll instruct the witness not
18 to answer that.
19 A. And I will follow those instructions.
20 Q. Can you tell me what -- how Jarg
21 understands the next clause to apply to the alleged
22 infringing Google systems? And the next clause
23 begins "further wherein." This is again on page 15
24 of Exhibit 4.
25 MR. VALEK: Objection, privileged to the

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1 extent it calls for information not set forth
2 expressly in Exhibit 4.
3 A. All right. And the language in the second
4 infringement contention -- I mean, what we're
5 talking about here is "using," that?
6 Q. Uh-huh.
7 A. So "processing by the sorter, containing a
8 pointer," these are all ways of, different ways of
9 using; again, examples, but not limitations. So
10 the language in the contention describes ways of
11 using.
12 Q. So can you tell me what the query are?
13 Strike that.
14 Can you tell me what the query nodes are
15 in the alleged infringing Google system --
16 MR. VALEK: Objection. Form.
17 Q. -- with respect to this claim limitation?
18 A. The query nodes are described overall in
19 the infringement contentions. Query nodes. It's
20 our view that the language that's explained here,
21 that's set forth here, demonstrates that they --
22 the language in the contention generally states
23 that query nodes meet the limitation in the patent
24 and that they also meet it under the doctrine of
25 equivalents.

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1 Q. And can you tell me what the local hash
2 table is in the language that Jarg has cited in its
3 second infringement contention?
4 MR. VALEK: Objection. Form. And then
5 I'll object to the extent that calls for
6 information that's not expressly disclosed in
7 Exhibit 4 on the basis of privilege.
8 A. And I can't do that without going beyond
9 the language that's in exhibit -- that's in the
10 second column, the third column actually for that
11 element.
12 Q. So has Jarg expressly identified the
13 language that satisfies the local hash table
14 requirement?
15 MR. VALEK: Objection. Form.
16 A. Has Jarg --
17 THE WITNESS: I'm sorry. The question
18 again is...
19 COURT REPORTER: "Question: 'So has Jarg
20 expressly identified the language that
21 satisfies the local hash table requirement?'"
22 A. Other than what's in the infringement
23 contentions, no.
24 Q. And can you answer that question outside
25 of what's in the infringement contentions?

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1 MR. VALEK: I'll object and instruct you
2 not to go beyond what's in the infringement
3 contentions based upon privilege.
4 A. I will follow those instructions.
5 Q. With regard to the next claim limitation
6 on page 16 of Exhibit 4 beginning, "returns an
7 object identifier," can you tell me what it is that
8 is supposed to be performing this function as
9 required by the claim?
10 MR. VALEK: Objection. Form and
11 objection, privilege to the extent your
12 question calls for information not disclosed
13 expressly in Exhibit 4.
14 A. It's our contention that the query nodes
15 literally meet that limitation, that they also do
16 so under the doctrine of equivalents.
17 Q. And what are the query nodes?
18 Let me start over. What is Jarg's
19 contention that the query nodes are?
20 A. What does Jarg contend that query nodes
21 are?
22 MR. VALEK: Objection. Form.
23 Q. Let me ask the question one more time.
24 What in the Google -- start over again.
25 In the alleged infringing Google products,

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1 what is it that Jarg contends are the query nodes?
2 MR. VALEK: Objection. Form.
3 A. Among other things, for example, Google's
4 barrels literally meet the limitation of a
5 plurality of query nodes. They also meet it under
6 the limitation of the doctrine of equivalents.
7 Q. All right. And with regard to the
8 language Jarg has cited for this claim limitation
9 beginning "returns an object identifier," where is
10 it in these citations that the barrels are
11 identified as performing this step?
12 MR. VALEK: Objection to form and --
13 A. This is one infringement contention,
14 right? And where does it say?
15 THE WITNESS: I'm sorry. Would you read
16 me the question again, please.
17 COURT REPORTER: "Question: 'And with
18 regard to the language Jarg has cited for this
19 claim limitation beginning "returns an object
20 identifier," where is it in these citations
21 that the barrels are identified as performing
22 this step?'"
23 A. Beginning object identifier. The -- I'm
24 looking at the language in the right-hand column
25 under the second infringement contention for the

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1 element, "returns an object identifier
2 corresponding to said access data to said home
3 node," that's one we're talking about; is that
4 correct?
5 Q. Yes.
6 A. The word "barrel" isn't there.
7 Q. So can you tell me what it is in the
8 Google systems that is performing these steps
9 identified in Jarg's contentions?
10 MR. VALEK: Objection. Form. And
11 objection, privilege, to the extent it calls
12 for information that goes beyond the
13 infringement contentions document.
14 A. And I think I've referred to the
15 description, the overall contention and can't go
16 beyond that based on privilege.
17 Q. All right. And what is it in the overall
18 contention specifically?
19 A. I think the overall contention describes a
20 process in Google's -- of Google's software, its
21 Web Search application.
22 Q. Right. But the Web Search application
23 isn't a query node.
24 A. The Web Search application isn't a query
25 node?

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1 MR. VALEK: Objection.
2 A. It contains a query node.
3 MR. VALEK: Objection. Form. You need to
4 give me a little time to object.
5 A. It contains a query node.
6 Q. All right. And the query node here you've
7 earlier testified is the barrel, correct?
8 MR. VALEK: Objection. Form.
9 A. It's our contention that Google's barrels
10 literally meet the limitation of a plurality of
11 query nodes and also meet the limitation under the
12 doctrine of equivalents.
13 Q. And how is that the barrels perform these
14 steps?
15 MR. VALEK: Objection. Form. And
16 objection, privilege, to the extent it calls
17 for information beyond that in Exhibit 4.
18 A. And the question you've asked calls for
19 information which goes beyond that which is in the
20 infringement contentions and therefore, I can't
21 respond on the basis of privilege.
22 Q. Can you tell me with regard to page 18 of
23 Exhibit 4 the limitation beginning, "each said home
24 node," can you tell me what "enqueueing a
25 predetermined task" means?

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1 MR. VALEK: Objection. Privilege,
2 attorney work product, and I'll instruct the
3 witness not to answer that.
4 A. I will follow those instructions.
5 Q. Can you tell me how this limitation is
6 satisfied by the cited excerpts from the Google
7 documents?
8 MR. VALEK: Objection, privilege to the
9 extent it calls for information that's not set
10 forth there expressly in Exhibit 4.
11 THE WITNESS: Diane [sic], the question
12 again, please.
13 COURT REPORTER: "Question: 'Can you tell
14 me how this limitation is satisfied by the
15 cited excerpts from the Google documents?'"
16 A. Beyond stating what's in the second
17 infringement contention and the column for second
18 infringement contention, I can't go because of
19 privilege. So that the language in the second
20 infringement contention is the manner which we
21 believe demonstrates the infringement.
22 Q. If I continued down these claims asking
23 the same pattern of questions, am I going to get
24 the same response from you every time?
25 A. You will.

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1 Q. And that is that you can't based on
2 privilege grounds?
3 A. I can't answer beyond the language in the
4 contentions based on privilege.
5 Q. Can you answer with respect to Exhibit 6?
6 A. Can I answer with respect to Exhibit 6?
7 Answer what?
8 Q. Well, if I were to ask the question and
9 have you answer with respect to your understanding
10 of Exhibit 6, would I still get another privilege
11 objection?
12 A. You'd get another privilege objection.
13 MR. WOLFF: Can we agree that's what's
14 going to happen here?
15 MR. VALEK: To the extent you're asking
16 him to go beyond the infringement contentions
17 document, yes, I will instruct him not to
18 answer based on privilege and work product.
19 MR. WOLFF: Okay. I have no further
20 questions at this time, though I will not
21 formally close this deposition, obviously,
22 given all the objections, and give you an
23 opportunity to, right now, if you want,
24 redirect.
25 MR. VALEK: Yeah. We're going to do a

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1 short redirect. Let's go off the record
2 first.
3 THE VIDEOGRAPHER: Going off record. The
4 time will be 1:46.
5 (Off-the-record discussion held.)
6 THE VIDEOGRAPHER: We're back on record.
7 The time is 1:50. You may continue.
8 MR. VALEK: During the break I explained
9 that the document cited in Exhibit 4, entitled
10 "The Anatomy of a Large-Scale Hypertextual Web
11 Search Engine" was actually a miscitation.
12 There's two versions of that paper. Exhibit 6
13 is one version. We've entered the other
14 version as Exhibit 12.
15 (Exhibit 12, The Anatomy of a Large-Scale
16 Hypertextual Web Search Engine, marked for
17 identification.)
18 EXAMINATION
19 BY MR. VALEK:
20 Q. Do you have that in front of you?
21 A. I have.
22 Q. If I can direct your attention quickly to
23 Exhibit 12.
24 A. Exhibit 12.
25 Q. Earlier Mr. Wolff asked you some questions

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1 regarding section 4.4 of the anatomy paper.
2 A. This is Exhibit 12 now, right?
3 Q. Yes. I'd like you to turn to section 4.4
4 of Exhibit 12.
5 A. Yes, I have it.
6 Q. Okay. And the language that you referred
7 to earlier appears several times throughout
8 Exhibit 4, which is the infringement contention
9 document. I'll point you to one instance of that,
10 that is on page 15. And it's the --
11 A. 4.4 on page 15?
12 Q. Yes. It's in the top row, the second
13 citation from the top. It begins with the phrase
14 -- it says, "Every word is converted into a wordID
15 by using an in-memory hash table, the lexicon." Do
16 you see that in Exhibit 4?
17 A. I see --
18 Q. In Exhibit 4.
19 A. Yes. I'm sorry. In Exhibit 4. Yes. I
20 see that. Each word -- every word is -- yes, I
21 have that in Exhibit 4.
22 Q. Now I'd like you to turn to Exhibit 12
23 quickly.
24 A. Okay.
25 Q. And can you find that same language in

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1 Exhibit 12, which is the other version of the
2 "anatomy" paper.
3 MR. WOLFF: Object to form.
4 A. "Every word is converted into a wordID."
5 Yes. It's in the second bullet paragraph. Let me
6 just make sure it's the same. "Every word is
7 converted into a" -- yes.
8 Q. Okay. What page of Exhibit 12 does that
9 language appear on?
10 A. 11.
11 MR. VALEK: And Jason, as we said off the
12 record, this was an oversight on our part, the
13 miscitation in the contentions, and we will
14 send you a letter formally correcting that.
15 I have no further questions.
16 EXAMINATION
17 BY MR. WOLFF:
18 Q. All right. So, have you read Exhibit 12
19 before today?
20 A. No.
21 Q. Have you seen Exhibit 12 before today?
22 A. No.
23 Q. So you were unprepared to speak about
24 Exhibit 12 until today, correct?
25 MR. VALEK: Objection. Form.

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1 A. I'm prepared to speak about the
2 infringement contentions.
3 Q. All right. Now, with regard to section
4 4.4, can you tell me what the title of that section
5 is in Exhibit 12?
6 A. Exhibit 12, 4.4 is entitled -- section 4.4
7 is entitled "Indexing the Web."
8 Q. All right.
9 A. 4.4, "Indexing the Web."
10 Q. All right. And can you tell me what it is
11 that is doing the hashing that you've referred to
12 in section 4.4?
13 MR. VALEK: Objection, privilege and work
14 product to the extent it goes beyond what's
15 cited in the infringement contention document,
16 Exhibit 4.
17 MR. WOLFF: How can that possibly be
18 privileged? The witness said he didn't see
19 this document before his deposition today.
20 MR. VALEK: It calls for attorney/client
21 communications -- or attorney work product.
22 MR. WOLFF: How would he know attorney
23 work product if you never communicated it to
24 him?
25 MR. VALEK: He's testifying on behalf of

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1 Jarg.
2 MR. WOLFF: I'll disagree with that
3 objection.
4 Q. But can you answer the question?
5 THE WITNESS: What's the question?
6 COURT REPORTER: "Question: 'And can you
7 tell me what it is that is doing the hashing
8 that you've referred to in section 4.4?'"
9 A. Well, I didn't refer to -- 4.4 is a
10 reference to the article, and the language in the
11 article says, "Every word is converted into a
12 wordID by using an in-memory hash table, a
13 lexicon." It's a passive word which doesn't have
14 -- it describes an operation but does not describe
15 the operator.
16 Q. And again, the title of section 4.4 was
17 what?
18 A. The title of section 4.4 is, "Indexing The
19 Web."
20 Q. All right. And with regard to the claim
21 in this particular limitation in Exhibit 4, page
22 15, is this talking about querying or indexing?
23 MR. VALEK: Objection. Privilege and
24 objection, work product. And I'll instruct
25 the witness not to answer that question. I'll

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1 instruct any Jarg witness not to go beyond the
2 infringement contentions document on the basis
3 of privilege.
4 A. I will follow those instructions.
5 Q. So you can't tell me what it is that this
6 language that's cited in Exhibit 12 refers to?
7 MR. VALEK: Same objection.
8 A. Same answer.
9 Q. Can you tell me whether this language
10 that's referred to in Exhibit 12 in Jarg's
11 infringement contentions, how it pertains to the
12 act of hashing a query fragment?
13 MR. VALEK: Objection, work product and
14 objection, privileged. I'll instruct the
15 witness not to answer that question.
16 A. I will follow those instructions.
17 Q. Do you see anything in the language in
18 section 4.4 that refers to what is done with a
19 query?
20 MR. VALEK: Objection. Form.
21 THE WITNESS: And what's the question
22 again?
23 COURT REPORTER: "Question: 'Do you see
24 anything in the language in section 4.4 that
25 refers to what is done with a query?'"

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1 MR. VALEK: Objection. Form.
2 A. What is done with a query. I don't see
3 the word "query," I don't think, in section 4.4.
4 Q. Why don't you turn to section 4.5 and tell
5 me what the title of that section is.
6 A. 4.5 is "Searching."
7 Q. Now, searching you would indicate -- or
8 let me strike that.
9 Is searching an activity that you would
10 understand to be associated with query?
11 MR. VALEK: Objection to form.
12 A. Generally speaking, I would think when one
13 talks about search engines in general, the making
14 of the query is a shorthand term for making an
15 entry into a software search engine to cause it to
16 go perform its search function.
17 Q. All right. In section 4.5, where is there
18 any discussion of query?
19 MR. VALEK: Objection. Form.
20 Q. I'm sorry. Strike that.
21 In section 4.5, where is there any
22 discussion of hashing?
23 MR. VALEK: Objection. Form.
24 A. That I -- there is -- without -- because
25 I'm just reading this language, which I have not

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1 read before --
2 Q. Uh-huh.
3 A. -- there in section 4.5, there's a
4 reference to Figure 4. And I see from this article
5 that the first line of Figure 4 says, "Parse the
6 query." Now, parse is a language -- a word that is
7 used in this article in a certain way which does
8 not appear in 4.5. So I'm not exactly sure what
9 the meaning of parse is and I'm not -- I'm not
10 going to go into the extent to which that is an
11 equivalent to hash.
12 Q. How about, can you tell me how the word
13 "parse" relates to the term "fragmenting"?
14 MR. VALEK: Objection. Privileged, work
15 product, and I'll instruct the witness not to
16 answer that question.
17 A. And I will follow those instructions.
18 MR. WOLFF: All right. We will suspend
19 the deposition.
20 A. Pardon me?
21 MR. WOLFF: We can suspend the deposition.
22 A. Suspend?
23 THE VIDEOGRAPHER: This will conclude the
24 videotaped deposition. Going off record. The
25 time will be 2:01 p.m.

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1 (Deposition suspended at 2:01 p.m., after
 2 which time Exhibit 7A was notated by counsel.)
 3 (Exhibit No. 7A, "Web Search for a Planet:
 4 The Google Cluster Architecture, with notation
 5 on page 23 by Attorney Wolff, marked for
 6 identification.)
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1 CERTIFICATE
 2 Commonwealth of Massachusetts
 3 Suffolk, ss.
 4
 5 I, Dana Welch, Registered Professional
 6 Reporter, Certified Realtime Reporter and Notary
 7 Public in and for the Commonwealth of
 8 Massachusetts, do hereby certify that JAMES H.
 9 BELANGER, the witness whose deposition is
 10 hereinbefore set forth, was duly sworn by me and
 11 that such deposition is a true record of the
 12 testimony given by the witness.
 13 I further certify that I am neither related
 14 to nor employed by any of the parties in or counsel
 15 to this action, nor am I financially interested in
 16 the outcome of this action.
 17 In witness whereof, I have hereunto set my
 18 hand and seal this 29th day of September, 2008.
 19
 20
 21 _____
 22 Dana Welch
 23 Notary Public
 24 My commission expires:
 25 October 22, 2010

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1 CERTIFICATE
 2
 3 I, JAMES H. BELANGER, do hereby certify that
 4 I have read the foregoing transcript of my
 5 testimony, and further certify that it is a true
 6 and accurate record of my testimony (with the
 7 exception of the corrections listed below):
 8 Page Line Correction
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19 Signed under the pains and penalties of
 20 perjury this ____ day of _____, 2008.
 21
 22 _____
 23 JAMES H. BELANGER
 24
 25

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