Rockstar Consortium US LP et al v. Google Inc Doc. 105 Att. 2

EXHIBIT A

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

ROCKSTAR CONSORTIUM US LP AND NETSTAR TECHNOLOGIES LLC Plaintiffs, v. GOOGLE INC. Defendant.	Case No. 2:13-cv-00893-JRG-RSP JURY TRIAL DEMANDED

Plaintiffs' Disclosure of Asserted Claims and Infringement Contentions Pursuant to Patent Rule 3-1

Plaintiffs Rockstar Consortium US LP and Netstar Technologies LLC ("Plaintiffs") provide the following Disclosure of Asserted Claims and Infringement Contentions as to Defendant Google Inc. ("Google") in accordance with Patent Local Rule (P.R.) 3-1.

Fact discovery has not yet begun and Google has not yet provided documents or other information to Plaintiffs. Accordingly, Plaintiffs reserve the right to supplement or alter their responses herein based on any information produced by Google or other material located or produced during the course of discovery.

I. Preliminary Statement

Plaintiffs provide their P.R. 3-1 contentions, which contain the following information: (a) a list of each claim of each patent-in-suit that is allegedly infringed by Google; (b) for each asserted claim, the identity of each Accused Instrumentality of which Plaintiffs are aware; (c) charts identifying where each element of each asserted claim is found in each accused instrumentality, including for each element that is governed by 35 U.S.C. §112(6), the identity of

the structure(s) and act(s) in the Accused Instrumentality that perform(s) the claimed function; (d) a statement identifying whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents; (e) for patents that claim priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and (f) identification of Plaintiffs' own product(s) that incorporate(s) or reflect(s) each asserted claim.

In making these contentions, Plaintiffs have not yet received any discovery from Google regarding its infringing methods and systems and has not had access to the source code of the accused methods and systems. Plaintiffs have, however, researched available information, including (1) Google's websites, (2) publicly available information published by Google regarding the Accused Instrumentalities, and (3) publicly available statements and information describing Google's Accused Instrumentalities.

Google engages in the allegedly infringing conduct through computer systems operating proprietary software. Google does not publicly disclose the precise operation of its computer systems and does not publicly disclose its source code. Because Google has not publicly disclosed the specific operation of the Accused Instrumentalities and does not publicly disclose source code for those products and services, Plaintiffs are inherently limited in the degree of specificity they can provide in the preliminary infringement contentions. Under these circumstances, the Eastern District of Texas recognizes that a plaintiff will not be able to provide highly specified infringement contentions and that, under the federal rules, should be permitted further discovery to supplement initial contentions with additional information. *See American Video Graphics, L.P. v. Electronic Arts, Inc.*, 2005 U.S. Dist. LEXIS 3740 *7-8 (E.D. Tex. 2005). Similarly, the law requires that Plaintiffs only provide Google "with notice of infringement beyond that which is provided by the mere language of the patent rules themselves"

and the disclosures are "not meant to provide a forum for litigation of the substantive issues." *Network Caching Technology, LLC v. Novell, Inc.*, 2003 U.S. Dist. LEXIS 9881, 2003 WL 21699799, *4-5 (N.D. Cal. 2003).

Accordingly, Plaintiffs reserve the right to amend these disclosures, including the identity of the claims being asserted, upon receiving discovery from Google.

II. Each Claim Of Each Patent In Suit That Is Allegedly Infringed By Defendant

Based on available information obtained to date, Plaintiffs allege that Google has infringed and is infringing at least the following claims ("Asserted Claims") of the following patents:

Patent	**Claims Alleged Infringed Literally and/or Under the Doctrine of Equivalents**
U.S. Patent No. 6,098,065 ("'065 Patent")	1
U.S. Patent No. 7,236,969 ("'969 Patent")	1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23
U.S. Patent No. 7,469,245 ("'245 Patent")	1, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25
U.S. Patent No. 7,672,970 ("'970 Patent")	1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47
U.S. Patent No. 7,895,178 ("'178 Patent")	1, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18
U.S. Patent No. 7,895,183 ("'183 Patent")	1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
U.S. Patent No. 7,933,883 ("'883 Patent")	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28

III. The Identity of Defendant's Accused Instrumentalities

Based on available information obtained to date, Plaintiffs allege that the following Accused Instrumentalities infringe the Asserted Claims: Google's advertising services and applications including but not limited to Google Ads, Google AdWords, and Google AdWords Express or similar functionality used in conjunction with google.com, the Google Search app, the Android search bar, Google custom search, Google premium search services, youtube.com; Google search services provided to third-party websites such as Custom Search Services or AdSense for Search; and any Google-owned property that matches advertisements based in part on a received search term, along with Google's search algorithm and Google's algorithm for providing advertisements with search results. The Accused Instrumentalities also include any Google system that collects user data through registration, tracking, or other means, including but not limited to Google Plus, Doubleclick, Advertiser IDs for Android or any other system or operation used to track user activity on any Google-owned property, the data from which is used to provide search results and/or advertising to its users. It also includes the computers, databases, data centers, and code versions that perform or have performed the above activities.

IV. Charts Identifying Where Each Element Of Each Asserted Claim Is Found Within Each Accused Instrumentality

The claim charts attached as Exhibits A through G identify where each element of each asserted claim is found within the Accused Instrumentalities, as required under P.R. 3-1(c).

V. Whether Each Element Of Each Asserted Claim Is Claimed To Be Literally Present Or Present Under The Doctrine Of Equivalents In The Accused Instrumentality

Plaintiffs claim that each element of each asserted claim is present literally in the Accused Instrumentalities unless expressly noted in the claim charts attached. To the extent any claim construction results in the Accused Instrumentalities falling outside the literal scope of any asserted claim, Plaintiffs reserve the right to contend that the Accused Instrumentalities still

infringe under the doctrine of equivalents. Once the Court construes the claims at issue, Plaintiffs will designate which of such claims are infringed under the doctrine of equivalents.

VI. Priority Date to Earlier Application

Each of the claims asserted with respect to the Patents in Suit are entitled to a priority date no later than June 6, 1996.

VII. Plaintiffs' Products That Incorporate or Reflect Each Asserted Claim

None.

VIII. Document Production Pursuant To Patent Rule 3-2

Plaintiffs are serving herewith, via FTP, Plaintiffs' initial document production, which includes documents produced pursuant to P.R. 3-2. Plaintiffs have used their best efforts to identify responsive P.R. 3-2 documents and only those documents. However, given the volume of documents, some documents may have been inadvertently listed or inadvertently omitted. To the extent such deficiencies are identified, Plaintiffs will supplement the production accordingly.

These documents have been marked "CONFIDENTIAL" or "CONFIDENTIAL—SOURCE CODE." Pursuant to Patent Local Rule 2.2, access to such documents shall be limited to each party's outside counsel of record and the employees of such outside attorneys until such time as a protective order is entered.

DATED: March 24, 2014 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 24th day of March, 2014 with a copy of this document via the Court's CM/ECF system per Local Rule CD-5(a)(3).

/s/ John P. Lahad

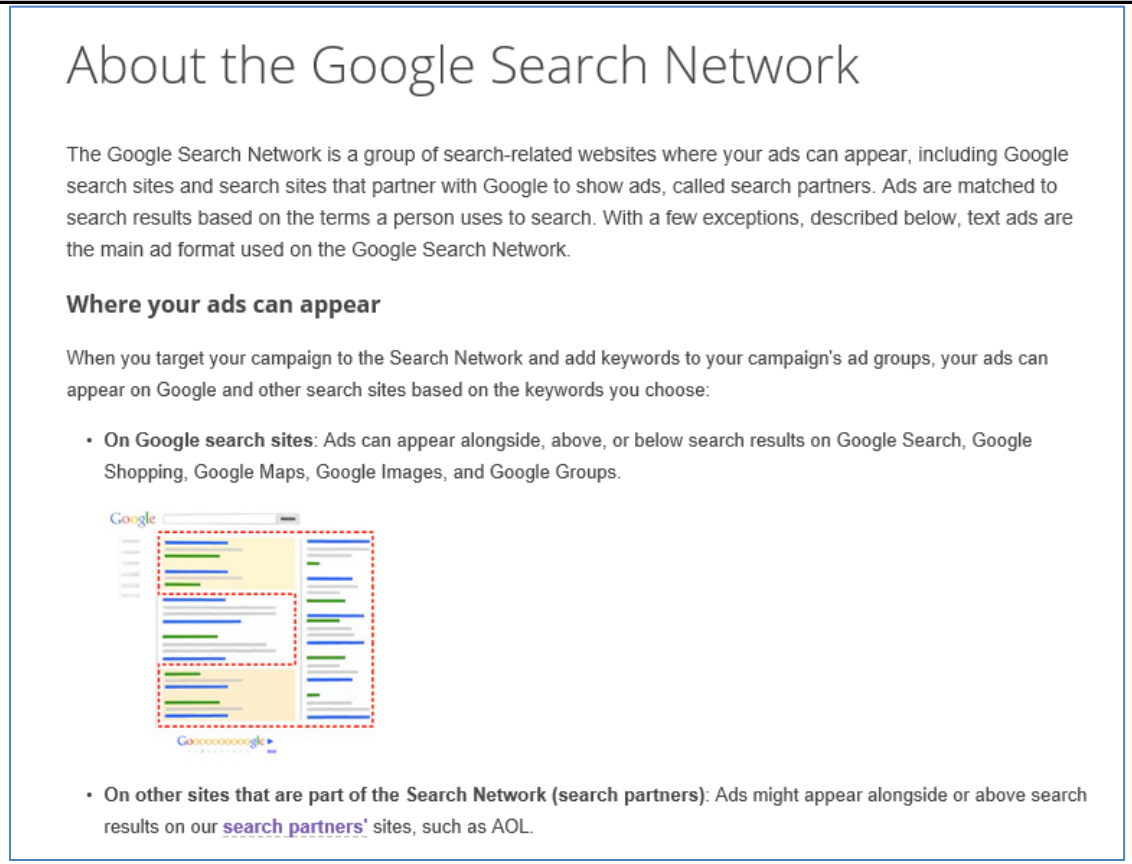
The following analysis shows how each claim element is literally present. In the event that a claim element is deemed to be missing under a literal infringement analysis (e.g., due to claim construction), Rockstar reserves the right to demonstrate the presence of a substantial equivalent of such an element and to pursue infringement under the doctrine of equivalents.

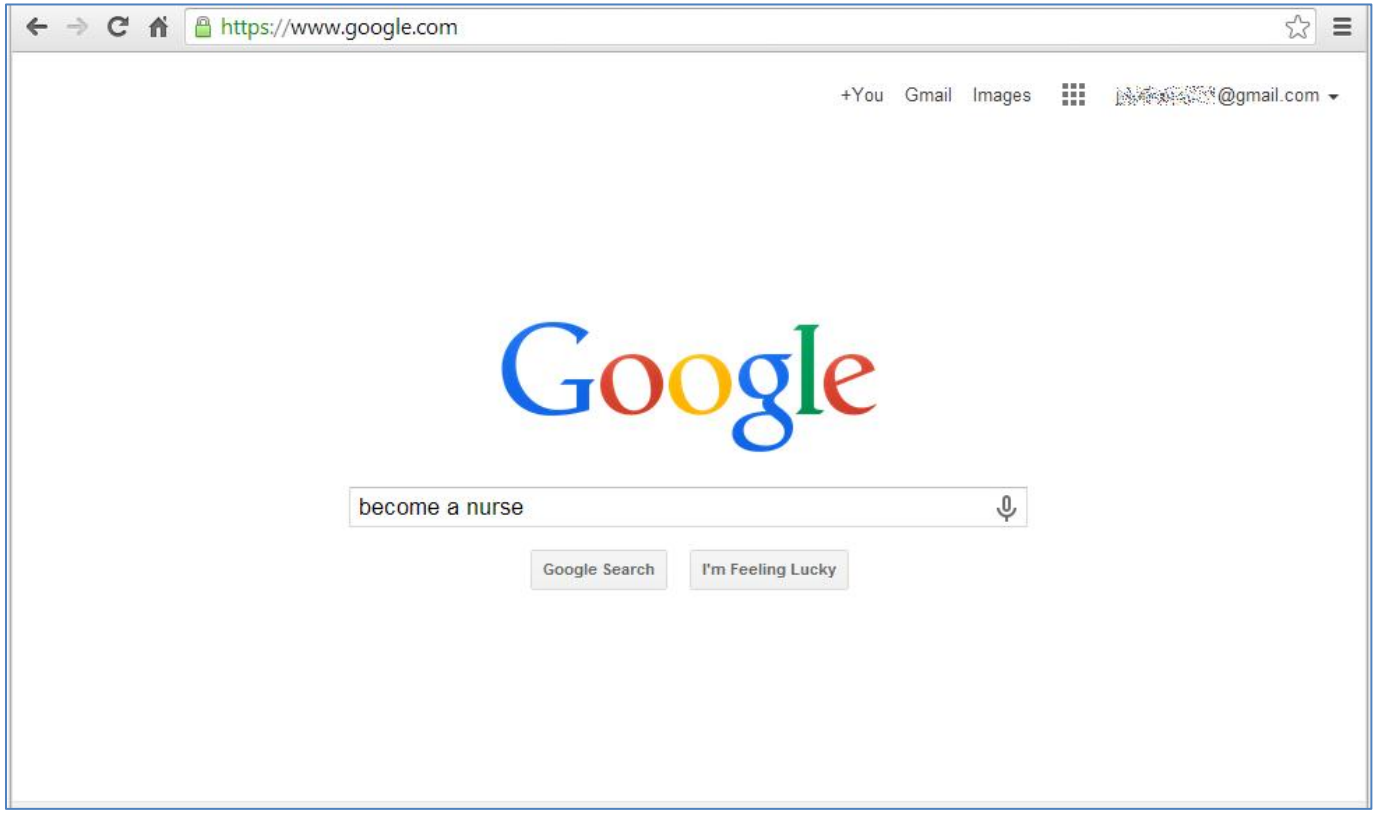
To the extent that the descriptions below give rise to either direct or indirect infringement, Rockstar alleges both.

The screenshots below constitute exemplary results of the Accused Instrumentalities' algorithms and source code and do not serve to limit the scope of alleged infringement. Rockstar alleges infringement by the Accused Instrumentalities at each applicable level of abstraction, *i.e.*, source code, algorithms, infrastructure, etc. Further, Rockstar alleges infringement by third-party applications "powered by" Google or that otherwise rely on the Accused Instrumentalities.

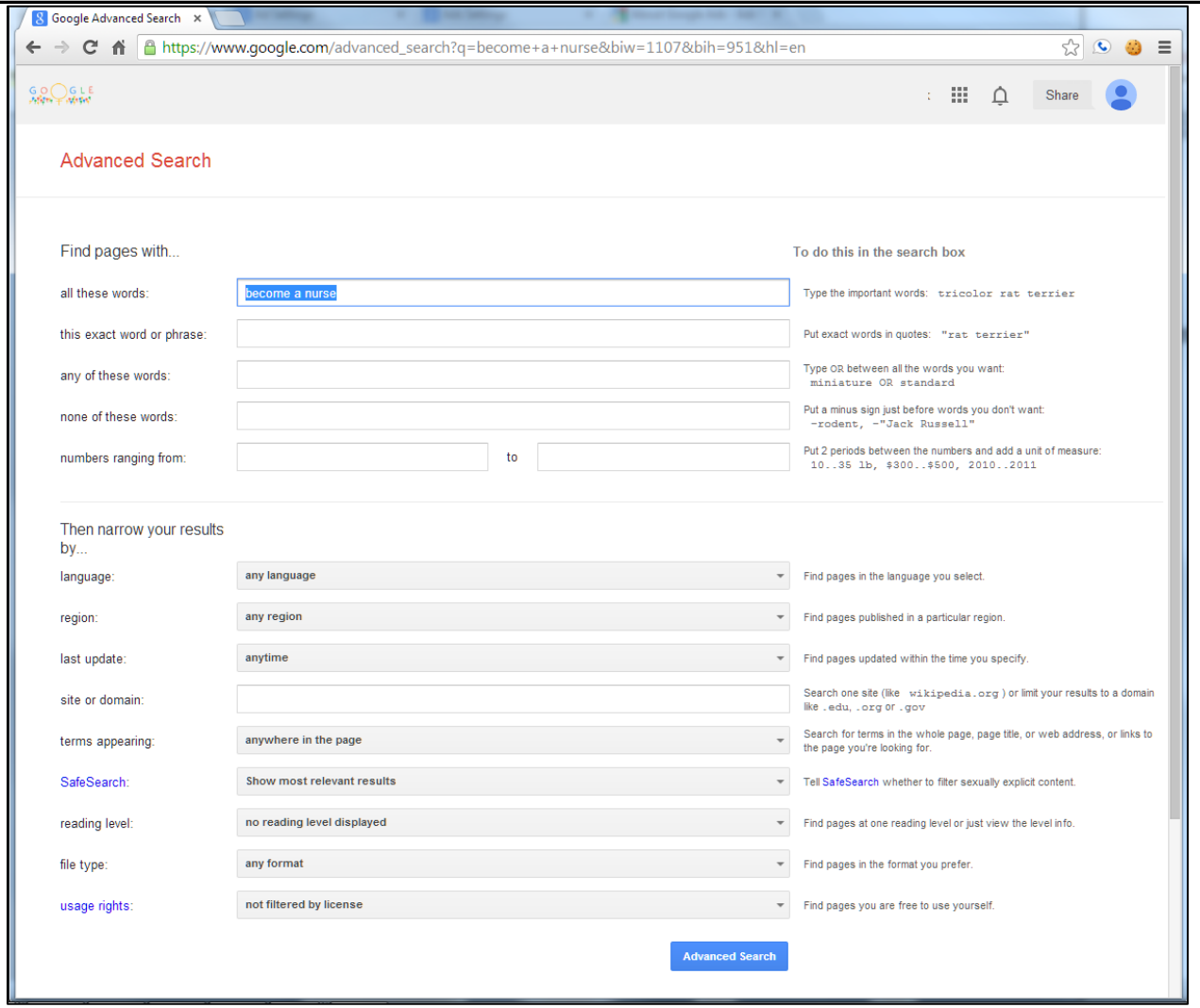
U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY
Claim No. 1	
A method of providing advertisements to a user searching for desired information within a data network, comprising the steps of:	Google's advertising services and applications perform the steps of the claimed method. The infringing services and applications include but are not limited to Google Ads, Google AdWords, and Google AdWords Express (or similar functionality) used in conjunction with google.com, the Google Search app, the Android search bar, Google custom search, Google premium search services, youtube.com, Google search services provided to third party websites such as Custom Search Services or AdSense for Search, and any Google-owned property that matches advertisements based in part on a received search term (hereinafter the "Accused Instrumentalities").[1]

[1] Content demonstrating that preamble elements are found in the accused instrumentalities shall not be construed as an admission that the preamble is limiting.

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY
	 https://support.google.com/adwords/answer/1722047?hl=en&ref_topic=3121771
receiving, from the user, a search request including a search argument corresponding	The Accused Instrumentalities receive, from the user, a search request including a search argument corresponding to the desired information.

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY
to the desired information;	

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY



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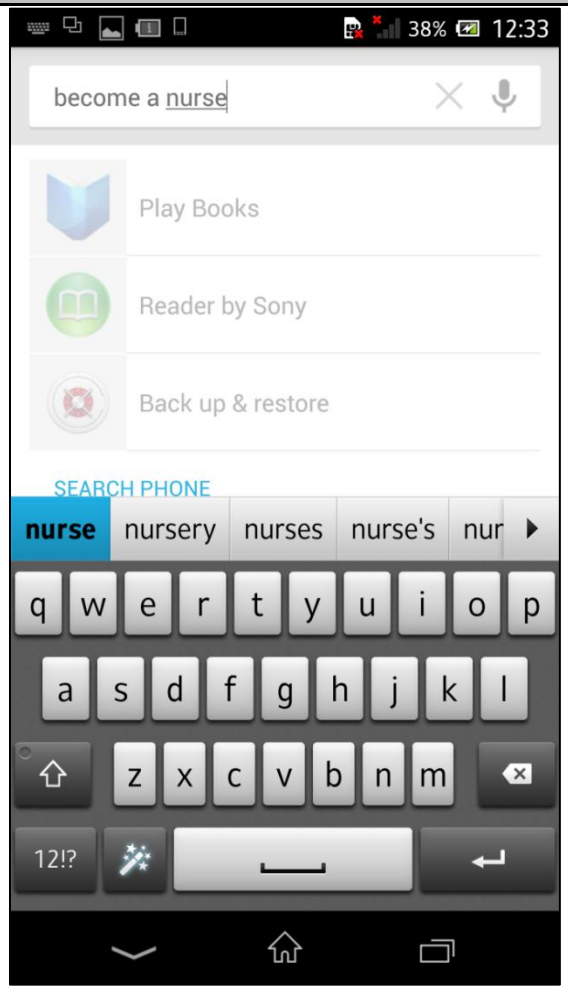
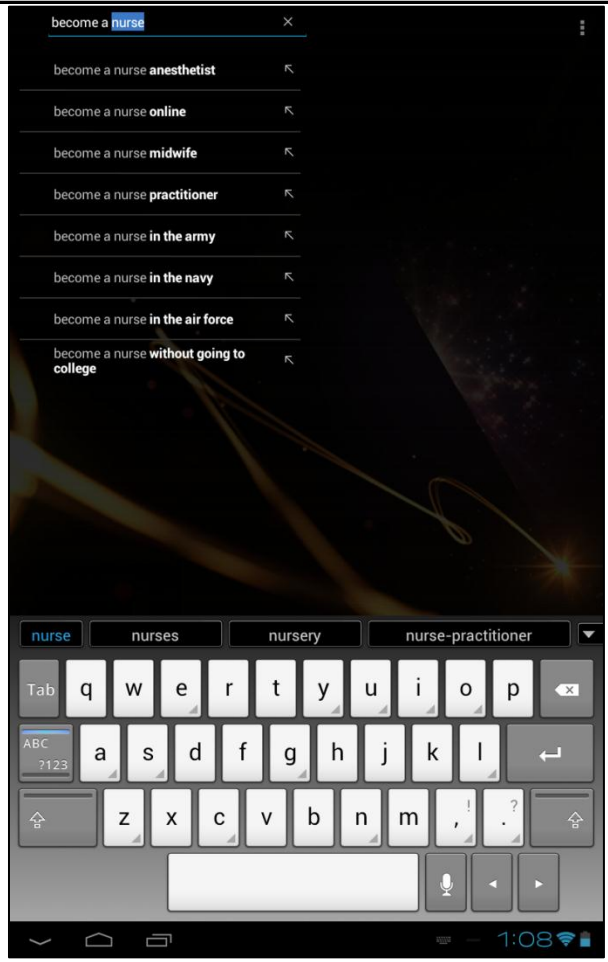
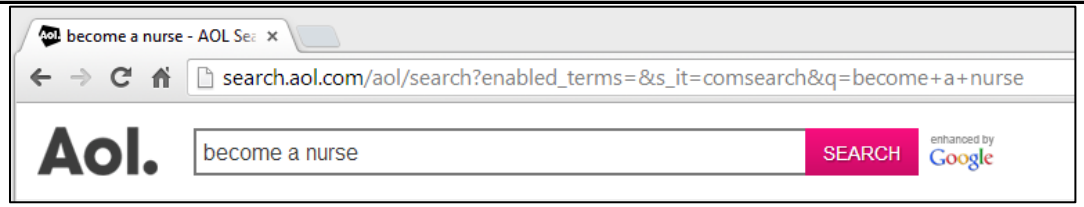
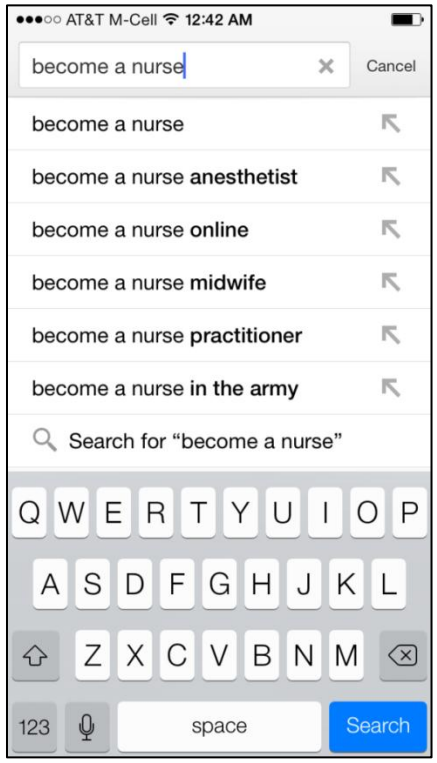
	 Mobile Handset Running Android 4.2

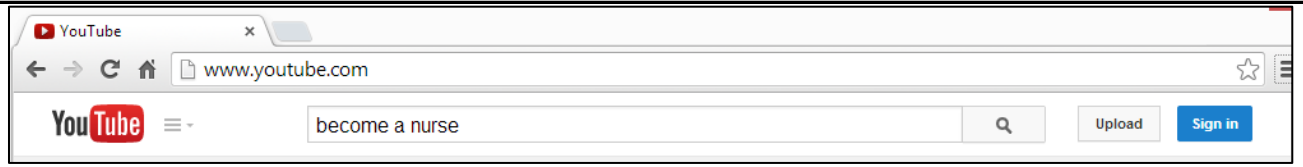
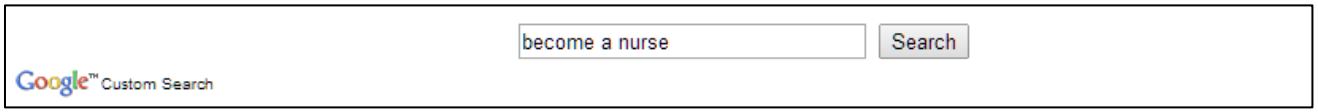
U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY
	 Tablet Device Running Android 4.0.2

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY





Google Search App Running on iOS 7.1

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY
	  http://www.4nursing.com/search-our-site-or-search-the-internet.html

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY

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GET https://www.google.com/s?sugexp=chm_pq_q%2Chmss2%
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&bvm=bv.62578216,d.dmQ&fp=2abeaecf5da1ba90&biw=1065&bih=880&dpr=1
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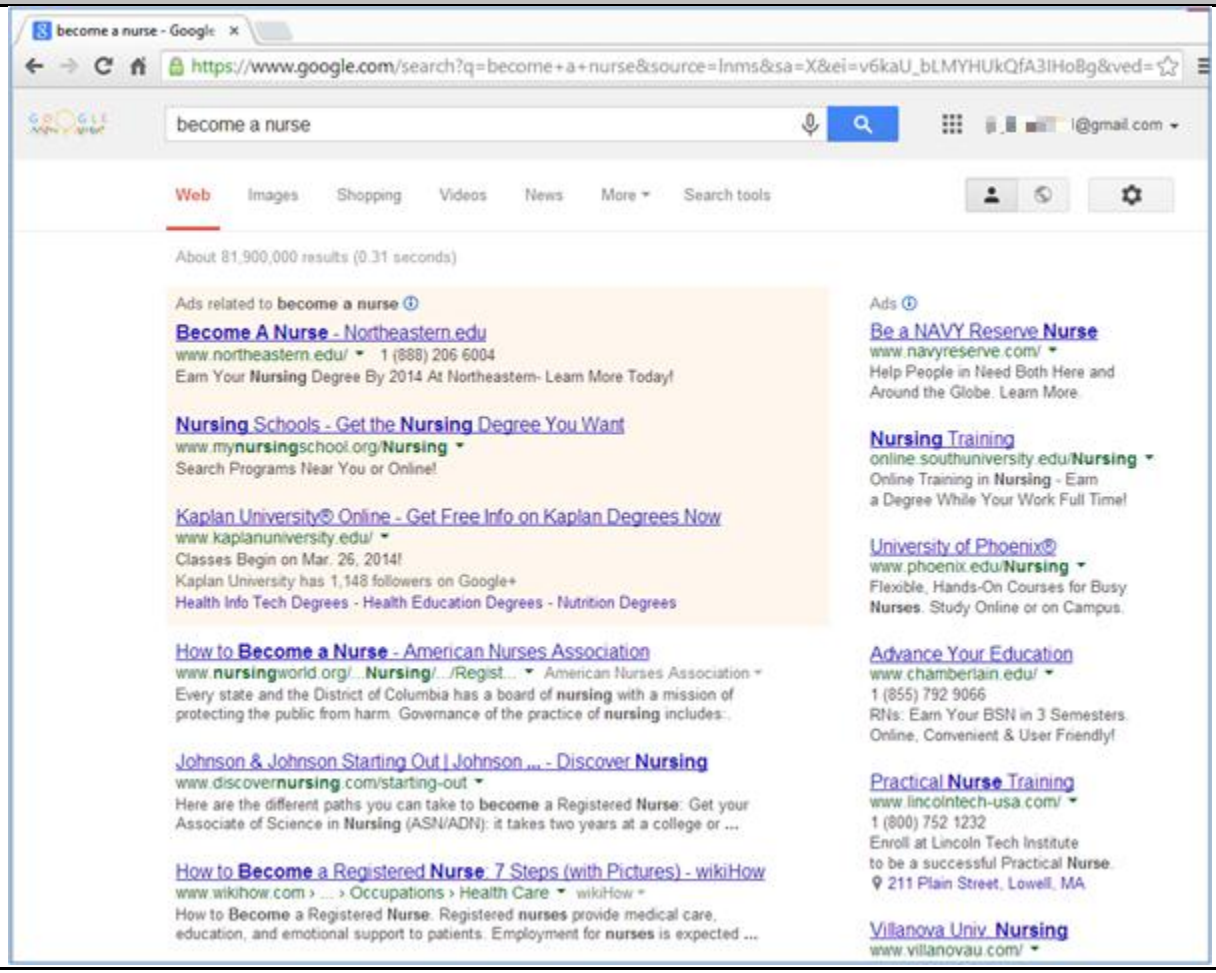
GET request of "Advanced Search"

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY
searching, based upon the received search argument, a first database having data network related information to generate search results;	The Accused Instrumentalities search, based upon the received search argument, a first database having data network related information to generate search results.

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY
	

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	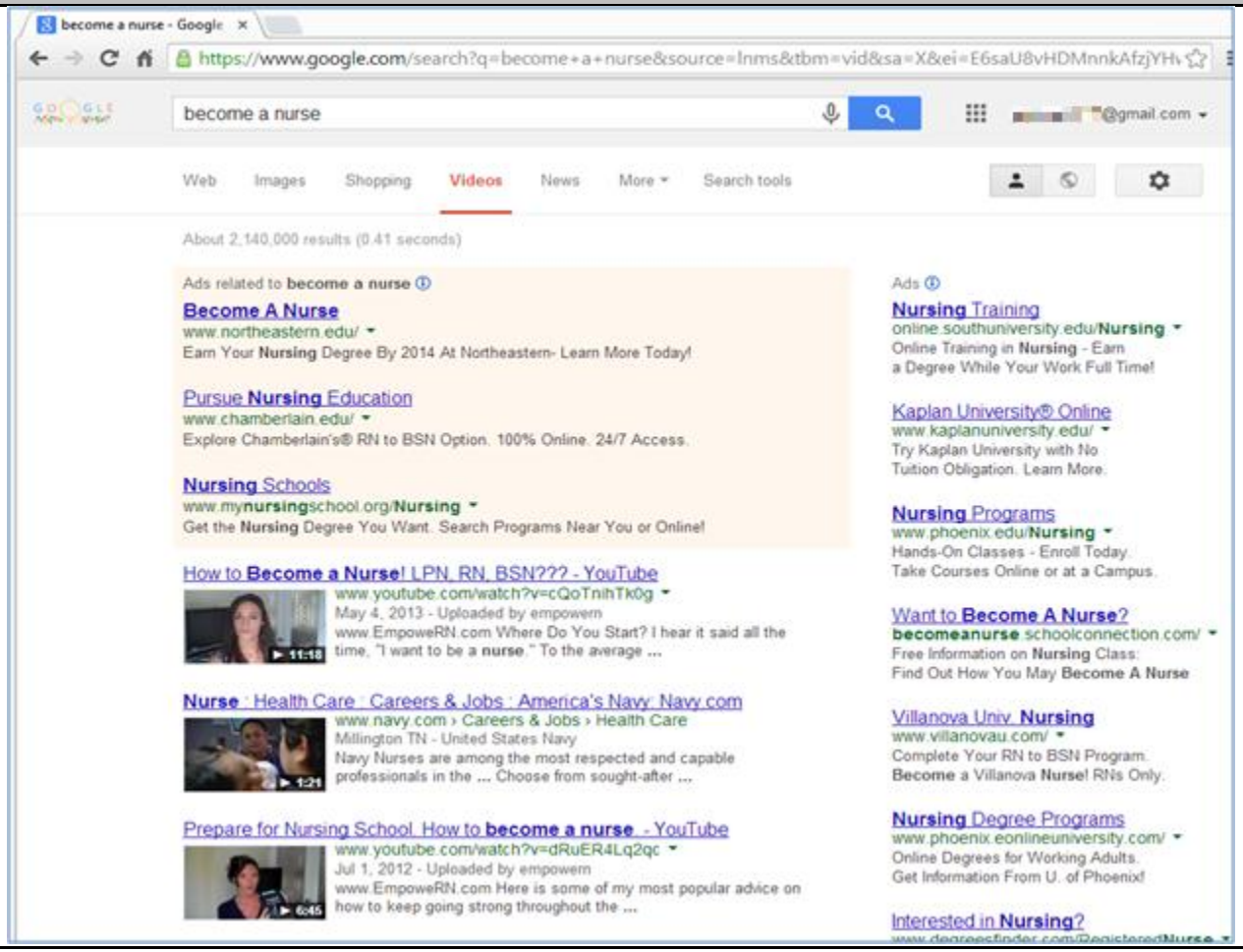

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	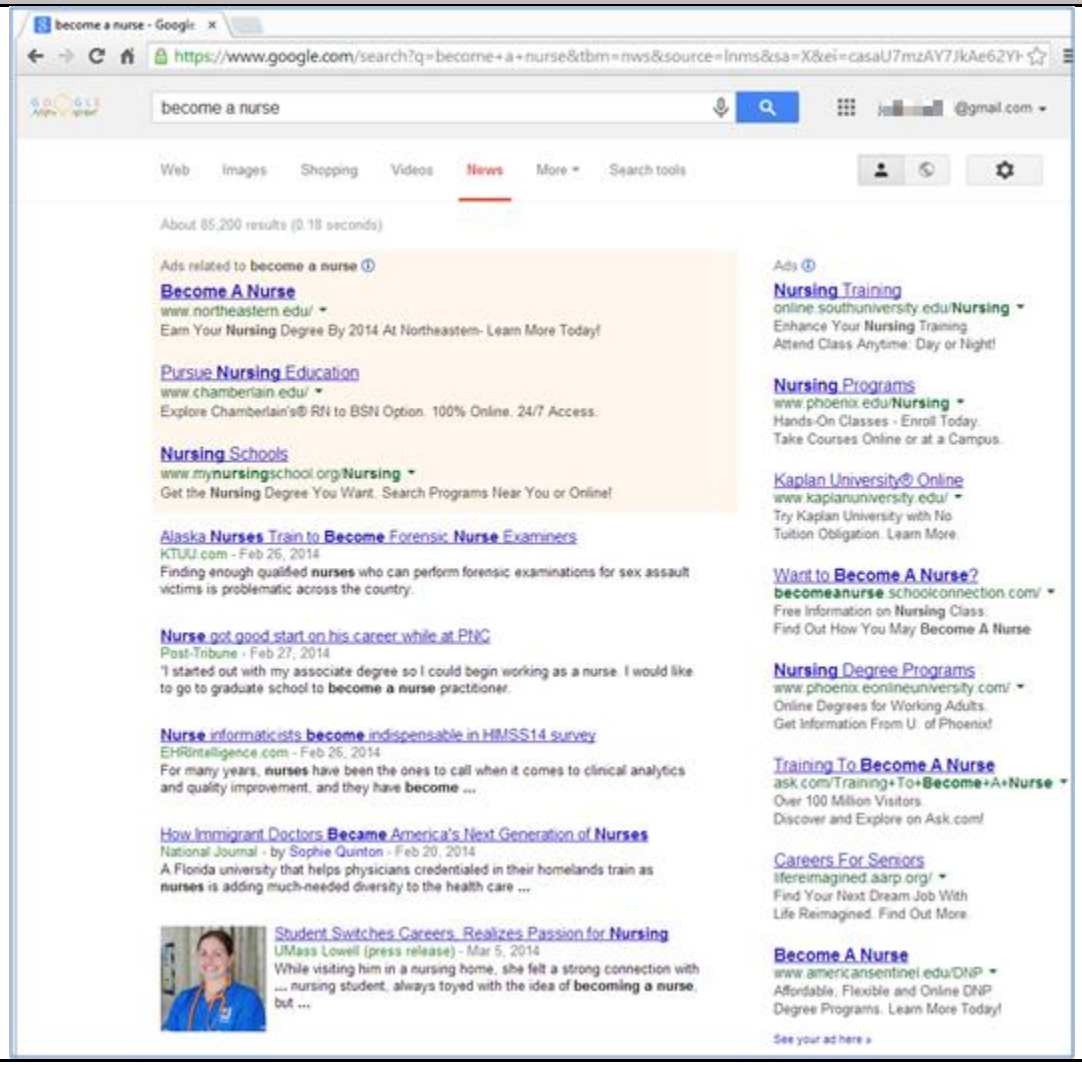

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	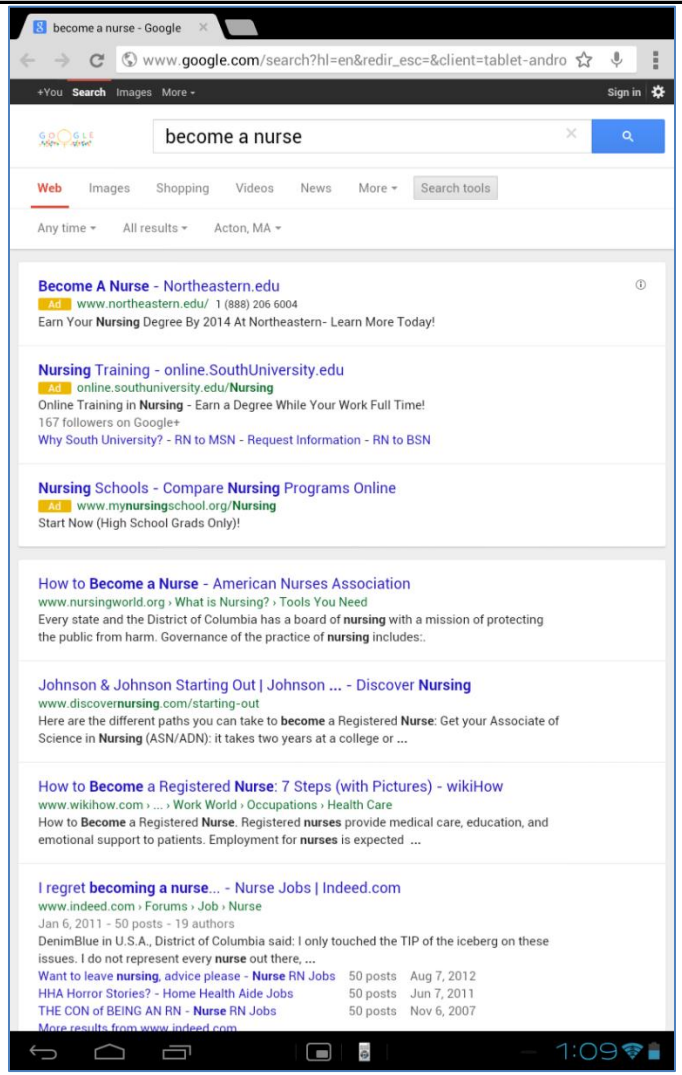

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	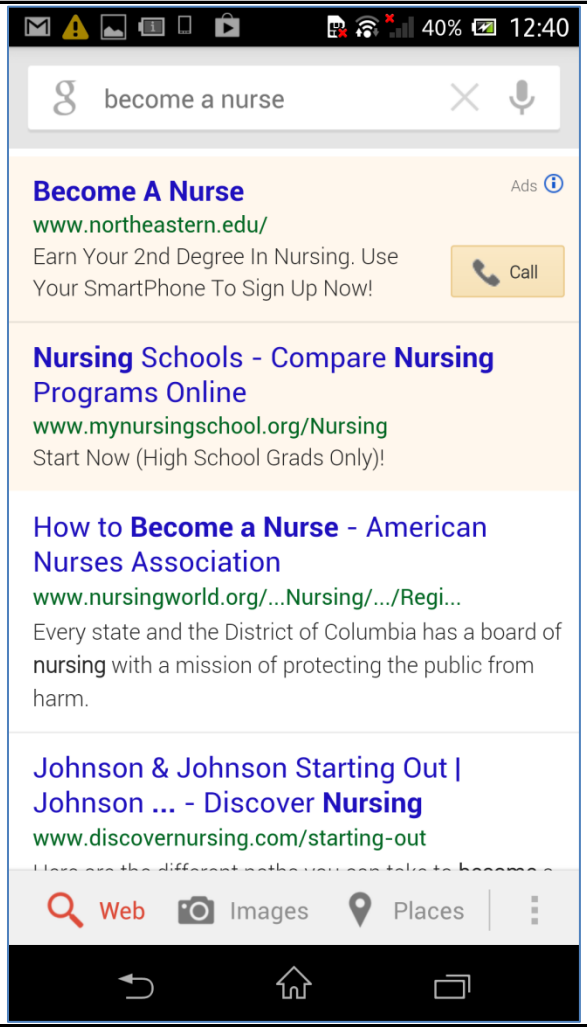

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	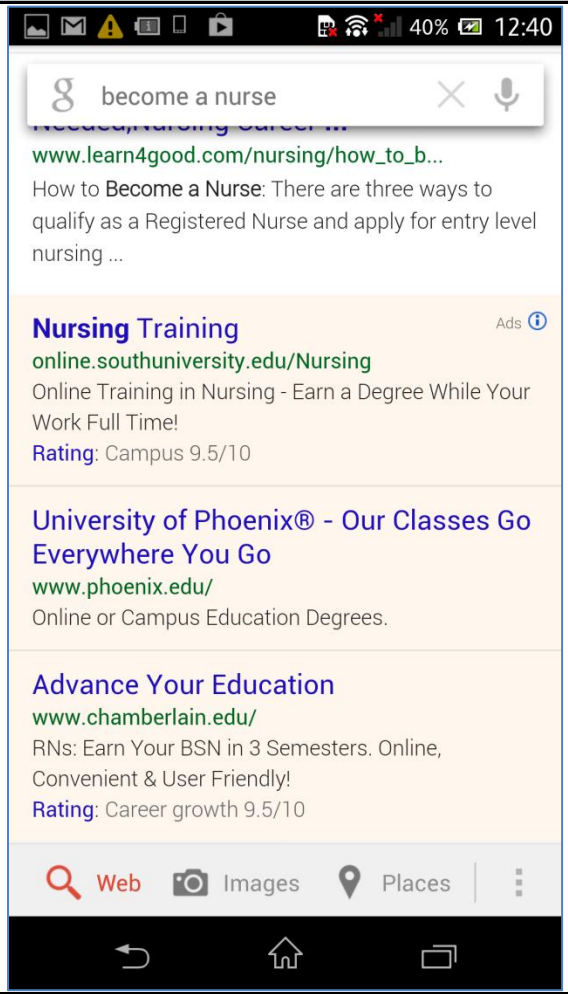

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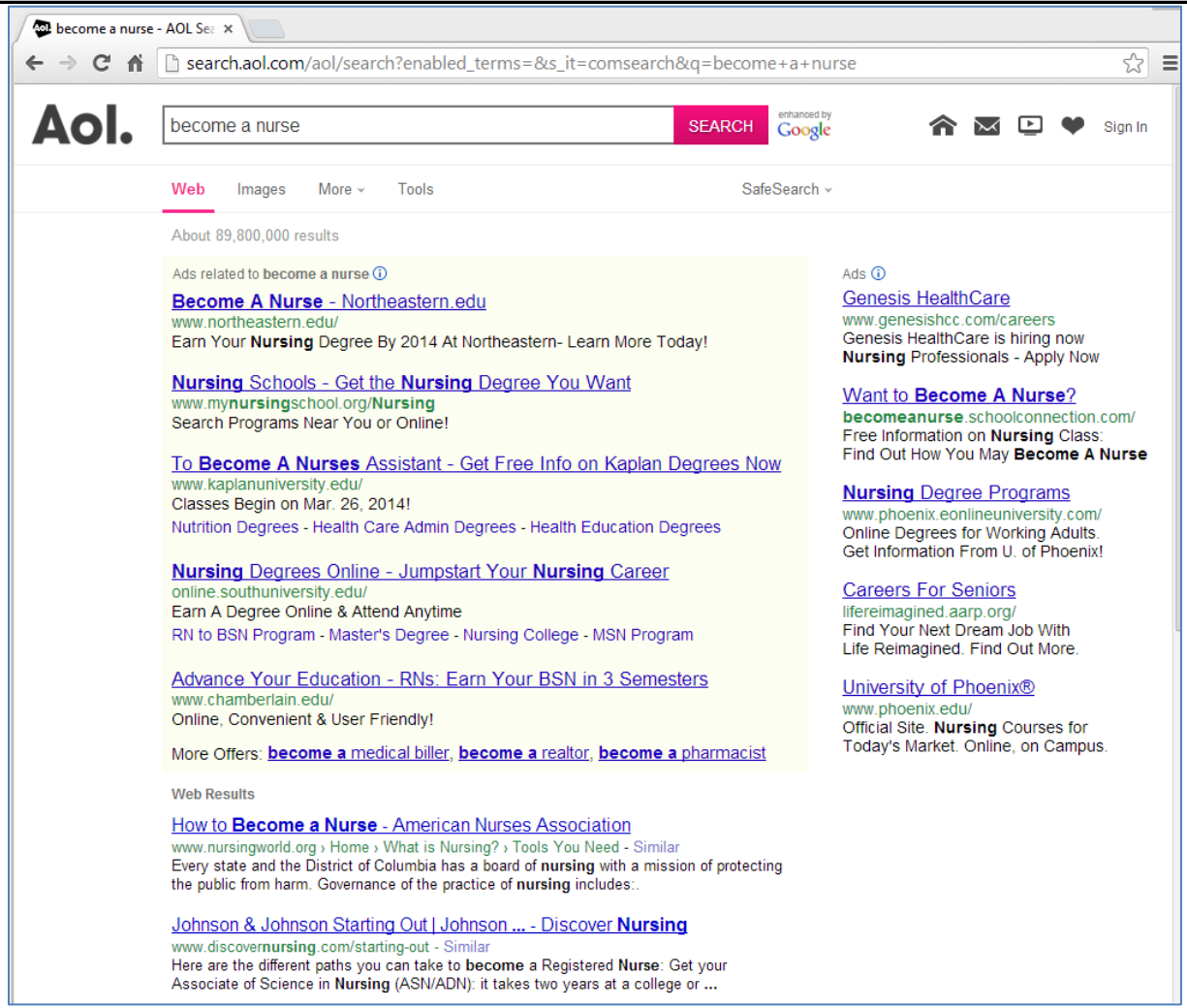

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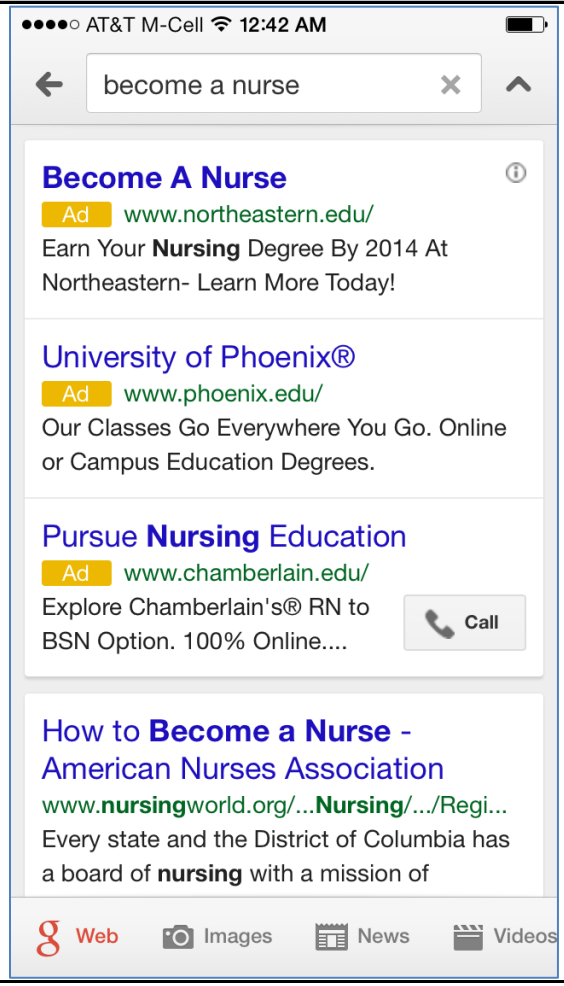

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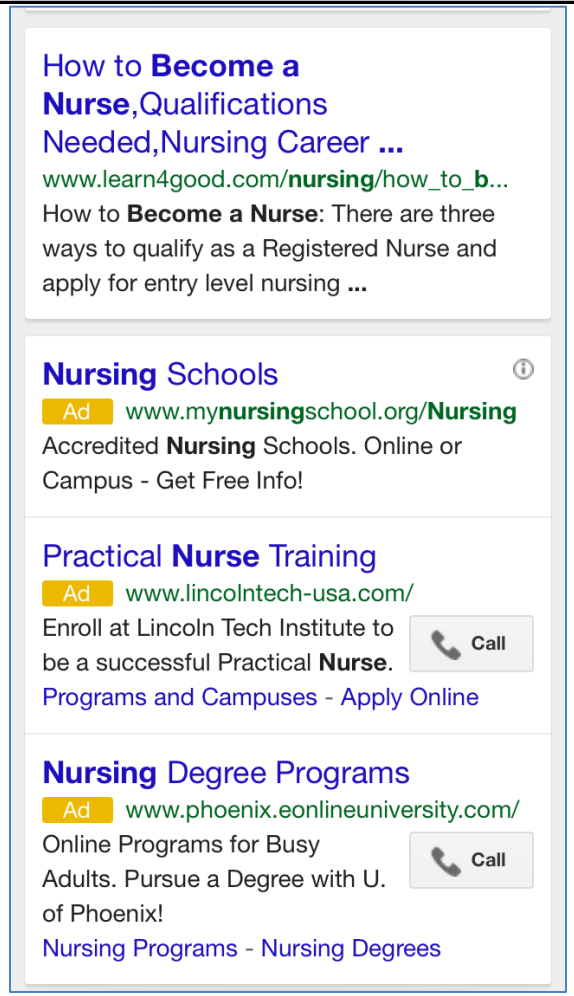

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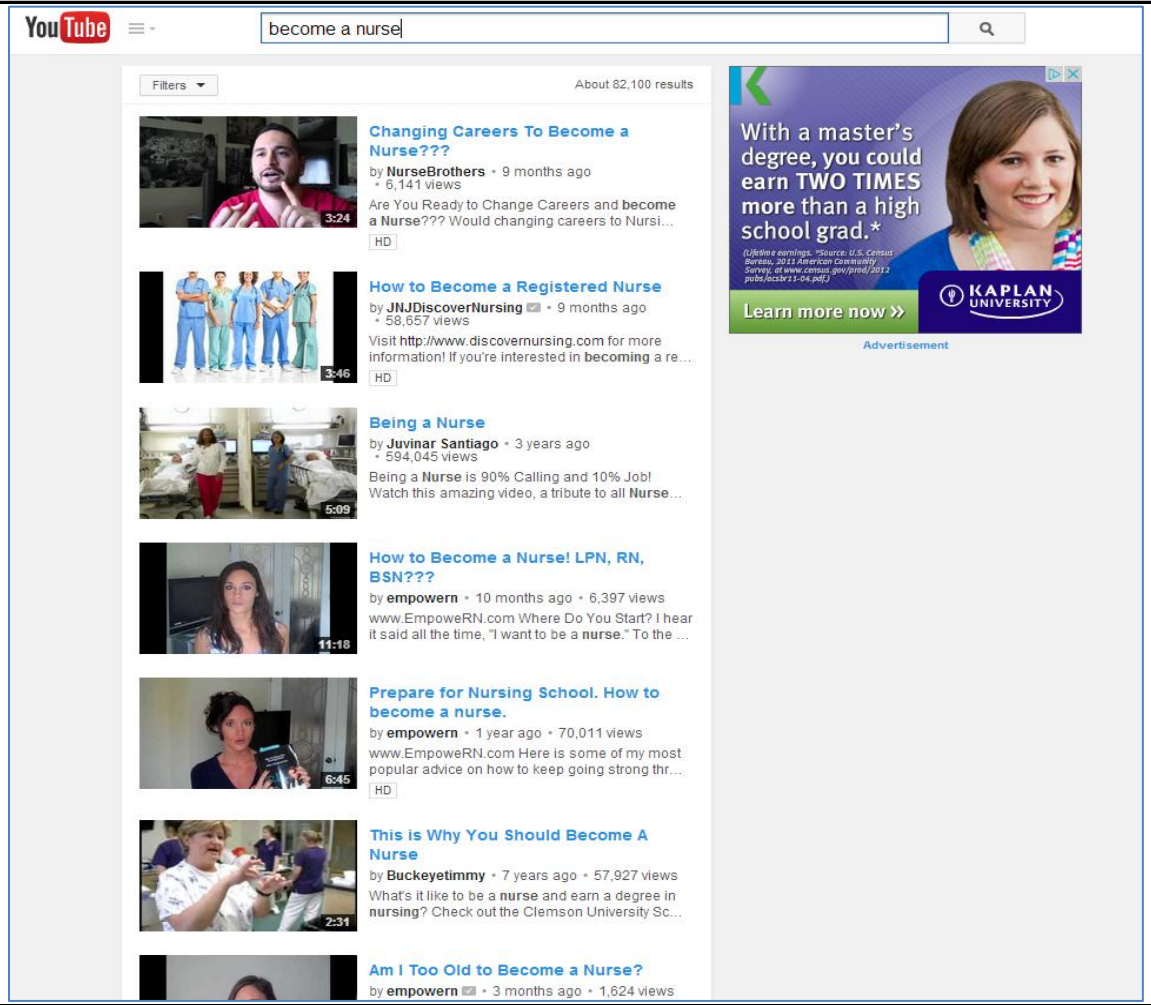
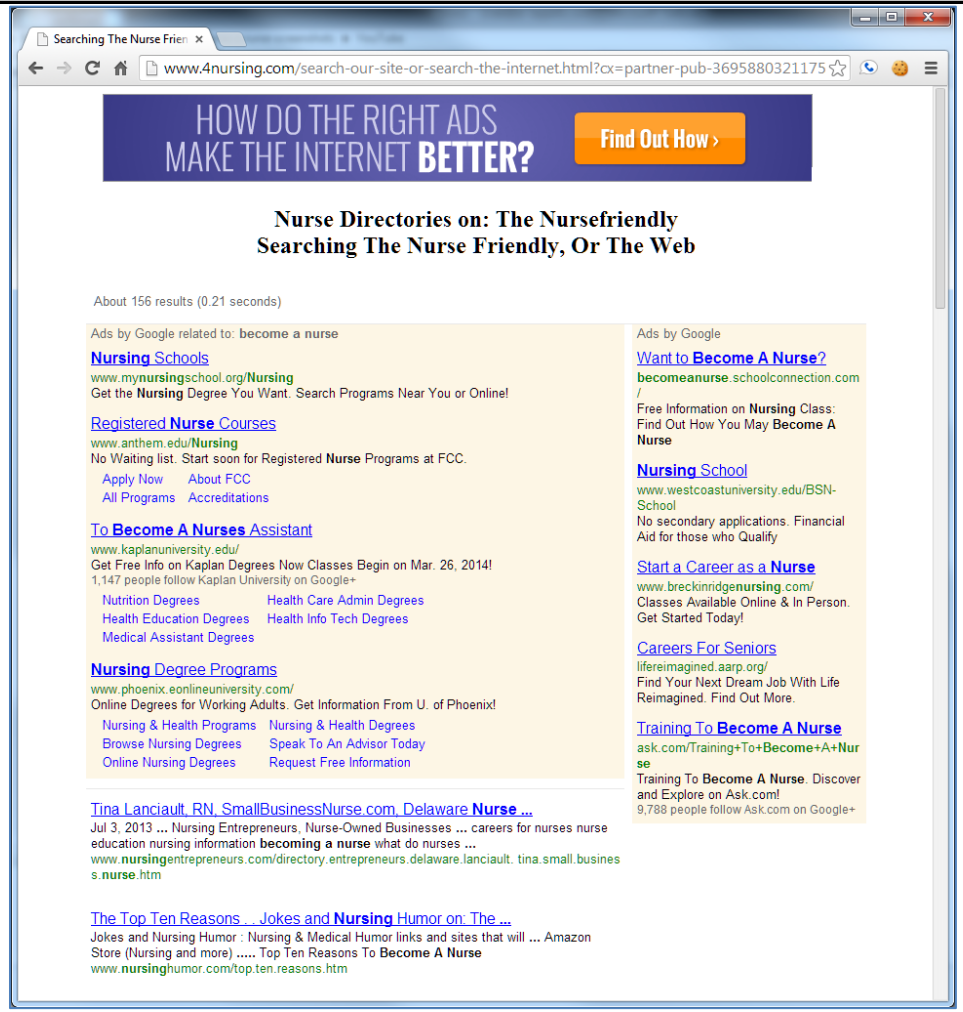
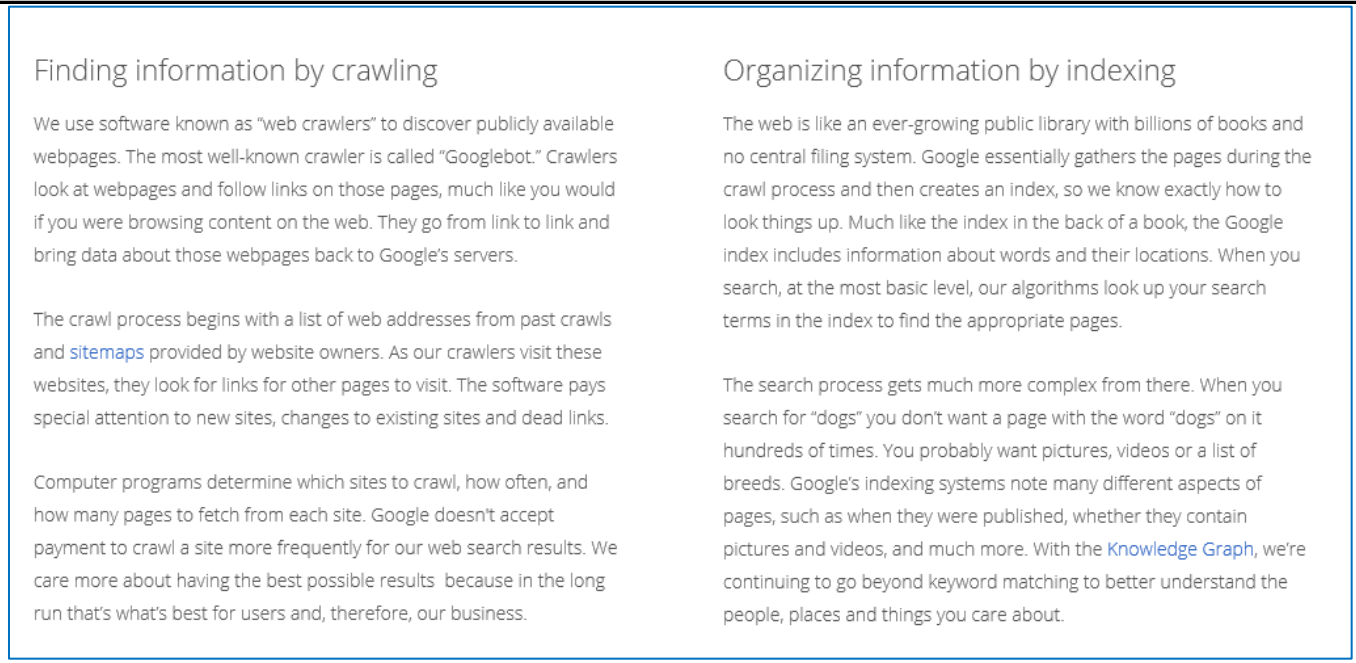
	

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY



Google Custom Search Results Page

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY



Finding information by crawling

We use software known as "web crawlers" to discover publicly available webpages. The most well-known crawler is called "Googlebot." Crawlers look at webpages and follow links on those pages, much like you would if you were browsing content on the web. They go from link to link and bring data about those webpages back to Google's servers.

The crawl process begins with a list of web addresses from past crawls and sitemaps provided by website owners. As our crawlers visit these websites, they look for links for other pages to visit. The software pays special attention to new sites, changes to existing sites and dead links.

Computer programs determine which sites to crawl, how often, and how many pages to fetch from each site. Google doesn't accept payment to crawl a site more frequently for our web search results. We care more about having the best possible results because in the long run that's what's best for users and, therefore, our business.

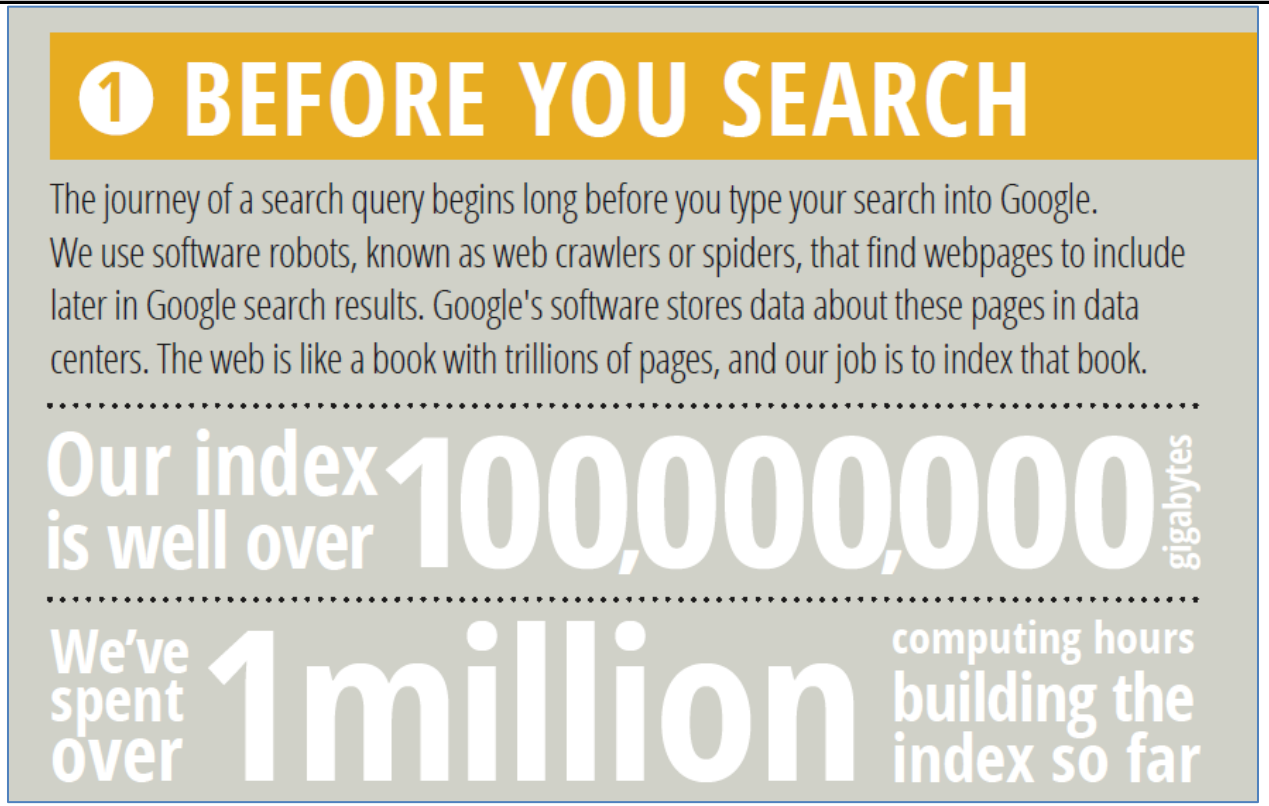
Organizing information by indexing

The web is like an ever-growing public library with billions of books and no central filing system. Google essentially gathers the pages during the crawl process and then creates an index, so we know exactly how to look things up. Much like the index in the back of a book, the Google index includes information about words and their locations. When you search, at the most basic level, our algorithms look up your search terms in the index to find the appropriate pages.

The search process gets much more complex from there. When you search for "dogs" you don't want a page with the word "dogs" on it hundreds of times. You probably want pictures, videos or a list of breeds. Google's indexing systems note many different aspects of pages, such as when they were published, whether they contain pictures and videos, and much more. With the Knowledge Graph, we're continuing to go beyond keyword matching to better understand the people, places and things you care about.

https://www.google.com/intl/en/insidesearch/howsearchworks/crawling-indexing.html

U.S. PATENT NO. **7,236,969**	INFRINGEMENT BY EXEMPLARY ACCUSED INSTRUMENTALITY



https://static.googleusercontent.com/media/www.google.com/en/us/intl/en/insidesearch/howsearchworks/assets/searchInfographic.pdf

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	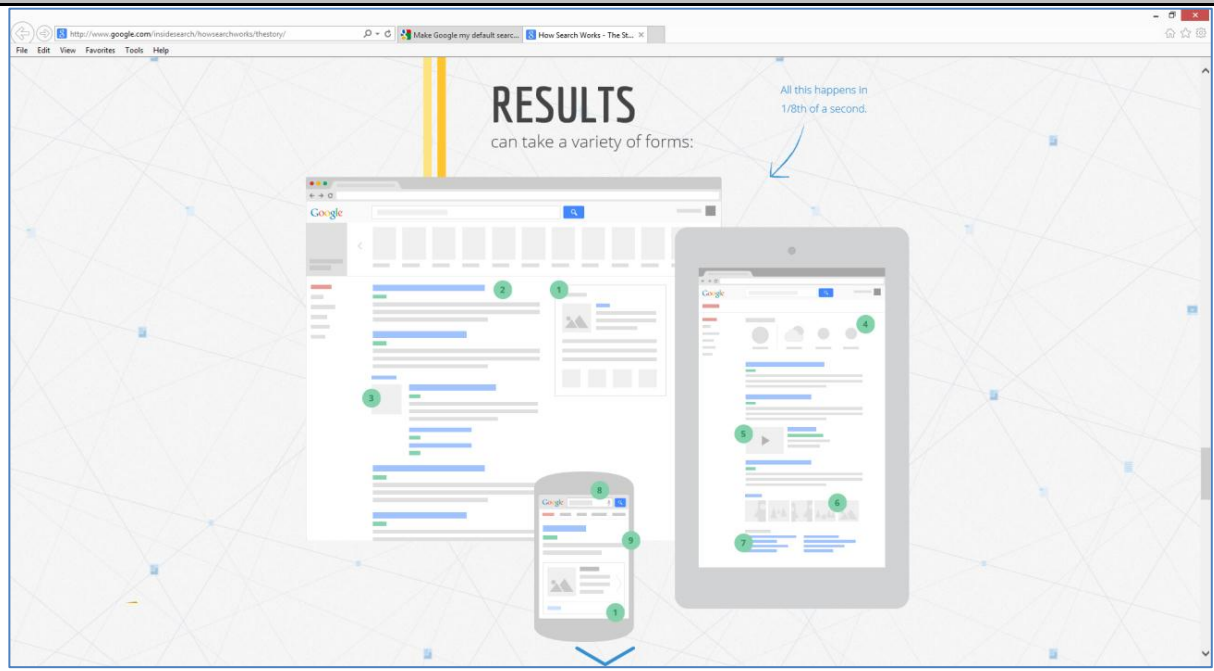 http://www.google.com/insidesearch/howsearchworks/thestory/
correlating the received search argument to a particular advertisement in a second database having advertisement related information; and	Upon information and belief, the Accused Instrumentalities correlate the received search argument to a particular advertisement in a second database having advertisement related information. See above.