

## **Exhibit O**

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

1		
2		
3		
4		
5	EMG TECHNOLOGY, LLC,	)
		)
6	Plaintiff,	)
		)
7	vs.	)Case No.
		)6:08-cv-447(LED)
8	APPLE, INC., AMERICAN AIRLINES,	)
	INC., DELL, INC., HYATT	)VOLUME I
9	CORPORATION, MARRIOTT	)
	INTERNATIONAL, INC. & BARNES &	)
10	NOBLE, INC.,	)
		)
11	Defendants.	)
12		
13		

\*\*\* CONFIDENTIAL - ATTORNEYS' EYES ONLY \*\*\*  
(PAGES 307 TO 311)

\*\*\* CONFIDENTIAL\*\*\*  
(PAGES 312 TO 345)

DEPOSITION OF:

ELLIOT GOTTFURCHT  
TUESDAY, DECEMBER 15, 2009  
10:07 A.M.

Reported by: SUSAN LYNN POBOR  
CSR No. 5132

Page 2

1 Deposition of ELLIOT GOTTFURCHT, the witness,  
 2 taken on behalf of the Defendant, APPLE, INC., on  
 3 Tuesday, December 15, 2009, 10:07 a.m., at  
 4 555 West 5th Street, Suite 3500, Los Angeles,  
 5 California, before SUSAN LYNN POBOR, CSR No. 5132,  
 6 pursuant to Notice.

7  
 8 APPEARANCES OF COUNSEL:  
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22  
 23 VIDEOGRAPHER: DANIEL ROCCO  
 24 ALSO PRESENT: JEFF RISH; GRANT GOTTFURCHT  
 25

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 9 INFORMATION REQUESTED  
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 11 (NONE)  
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2

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1 Manatt Phelps & Phillips, representing the witness.

2 MR. GENET: And this is Russ Genet from

3 Nixon Peabody. I'm here on behalf of

4 American Airlines.

5 And for the record, I just want to state

6 that I'm here on behalf of American Airlines, only.

7 I'm not here on behalf of any of the other defendants

8 that have recently been added to the case, such as

9 Dell or Hyatt.

10 THE VIDEOGRAPHER: The court reporter today is

11 Susan Pobor of Merrill Legal Solutions.

12 Will the reporter please swear in the

13 witness.

14 ELLIOT GOTTFURCHT,

15 having been first duly sworn, was

16 examined and testified as follows:

17

18 EXAMINATION

19 BY MR. STEPHENS:

20 Q. Good morning, Mr. Gottfurcht.

21 A. Good morning.

22 Q. Could you please state and spell your

23 name for the record.

24 A. Elliot Gottfurcht, E-l-l-i-o-t,

25 G-o-t-t-f-u-r-c-h-t.

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1 TUESDAY, DECEMBER 15, 2009

2 LOS ANGELES, CALIFORNIA

3 10:07 A.M.

4 ---oOo---

5 THE VIDEOGRAPHER: Here begins Volume I,

6 videotape Number 1, in the deposition of

7 Elliot Gottfurcht, in the matter of EMG Technology,

8 LLC, versus Apple, Inc., et al., filed in the

9 United States District Court, Eastern District of

10 Texas. Case number is 6:08-cv-447 (LED).

11 Today's date is Tuesday, December 15,

12 2009. The time on the video monitor is 10:07 a.m.

13 The video operator today is

14 Daniel Rocco, contracted by Merrill Legal Solutions.

15 This video deposition is taking place at

16 555 West 5th Street, Suite 3500, Los Angeles,

17 California.

18 Counsel, please identify yourselves and

19 state whom you represent.

20 MR. STEPHENS: Garland Stephens of Fish &

21 Rich -- Richardson, representing Apple.

22 With me today is John Lane, also of

23 Fish & Richardson. And also here for Apple is

24 Jeff Risher. He's in-house with Apple.

25 MR. BECKER: And I'm Robert Becker from

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1 Q. And what's your home address?

2 A. 1033 Ocean Avenue, Santa Monica,

3 California, 90403.

4 Q. You've been deposed before, I take it?

5 A. I have not, that I -- that I can recall.

6 Q. Okay. Well, just so you understand,

7 this is a sworn deposition, so you're under oath.

8 You understand that.

9 Right?

10 A. Yes.

11 Q. And in the event that you are unable to

12 attend the trial in Tyler when that happens, or to the

13 extent that anything you say, if you do attend trial,

14 contradicts what you say here today, this videotape

15 testimony can be played at the trial.

16 Do you understand that?

17 A. Yes, I do.

18 Q. Okay. And we need to try not to speak

19 over each other today so that the court reporter can

20 take everything down.

21 Is there any reason why you can't

22 testify truthfully today?

23 A. No.

24 Q. Not taking any medications or anything

25 like that?

Page 10

1 A. None.  
 2 Q. Okay. Could you tell us what it is that  
 3 you invented that is in dispute in this case?  
 4 MR. BECKER: Object to form.  
 5 BY MR. STEPHENS:  
 6 Q. Oh, if your counsel objects, you can go  
 7 ahead and answer it unless he tells you not to.  
 8 A. Okay. I didn't hear what he said.  
 9 Q. I think he just said "Objection," but  
 10 I'll let him --  
 11 MR. BECKER: Object to form. That's what I  
 12 said.  
 13 THE WITNESS: Oh, okay.  
 14 In 1999, on or about July 1st, my son Grant  
 15 and I envisioned how the Internet would be displayed,  
 16 navigated, and look like on mobile devices and  
 17 television.  
 18 BY MR. STEPHENS:  
 19 Q. Anything more?  
 20 A. We thought at that time that sometime in  
 21 the future, Web pages would have to be reformatted to  
 22 be displayed on mobile devices and television.  
 23 Q. Other than thinking that Web pages would  
 24 have to be reformatted to be displayed on mobile  
 25 devices and television, was there anything else that

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1 you thought of as a part of your invention?  
 2 A. Yes. We thought that these Web pages --  
 3 that they would -- it would be necessary to have a  
 4 simplified interface for navigation.  
 5 Q. Anything else?  
 6 A. We thought that the -- the navigation  
 7 system would be with unique inputs.  
 8 Q. Anything else?  
 9 A. We thought that these reformatted  
 10 simplified navigable Web pages would be sister  
 11 sites --  
 12 Q. Anything else?  
 13 A. -- that would relate to the standard Web  
 14 page that was shown on a PC.  
 15 Q. Anything else?  
 16 A. We thought that these Web pages would be  
 17 manipulated -- you would manip -- the user would  
 18 manipulate a region of a screen for zooming and  
 19 scrolling.  
 20 Q. Anything else?  
 21 A. That the content would be organized into  
 22 more general categories.  
 23 Q. Anything else?  
 24 A. Content may appear in a matrix form.  
 25 Q. Anything else?

Page 12

1 A. That's all I can think of at this  
 2 moment.  
 3 Q. Okay. You thought of all of those items  
 4 or aspects that you just mentioned on July 1st, 1999.  
 5 Is that right?  
 6 A. On -- on or about July 1st, 1999.  
 7 Q. What leads you to recall that specific  
 8 date?  
 9 A. That is the date that I moved into a new  
 10 home. That is the date that we installed, I believe,  
 11 the plasma -- the new plasma television on the wall.  
 12 And they also had purchased a new computer.  
 13 Q. Can you tell us what the circumstances  
 14 were?  
 15 You mentioned you bought a new house,  
 16 you bought a new plasma TV and a new computer, and  
 17 that you and Grant came up with this invention.  
 18 Can you describe how you came up with  
 19 it?  
 20 A. I had never used a computer before. And  
 21 so I was sitting in the living room with the plasma on  
 22 the wall that just had been installed. Grant had  
 23 turned on the computer, and my cell phone was -- was  
 24 nearby.  
 25 Q. And what happened then?

Page 13

1 A. I believe Grant went to either Yahoo.com  
 2 or AOL.com.  
 3 Q. And then what?  
 4 A. And he explained to me, This is a -- a  
 5 Web page here. And I was curious, fascinated. I had  
 6 not seen this before.  
 7 I think one of the first things that I  
 8 did was, I -- I counted the choices or links on the  
 9 page. And I think he scrolled down so I could see the  
 10 full page, because you could not see the full page on  
 11 the screen.  
 12 Q. And then what?  
 13 A. I thought it was -- it was fascinating.  
 14 Q. So just to recap, make sure I've got it  
 15 right, on July 1st, 1999, you and Grant were in your  
 16 new home, with your new plasma TV and your new  
 17 computer, and it was the first time you'd ever seen  
 18 the Internet and the first time you'd ever used a  
 19 computer.  
 20 Is that right?  
 21 A. I -- I believe it was the first time  
 22 that I had seen an Internet page, and I don't -- I  
 23 don't recall ever using a computer before.  
 24 Q. Okay. And Grant showed you either  
 25 Yahoo.com or AOL.com.

Page 14

1 Right?  
 2 A. Yes.  
 3 Q. And then you scrolled down the page and  
 4 counted the links on the page.  
 5 Right?  
 6 A. Well, I'm not sure I scrolled down the  
 7 page. I'm not sure I knew how to do that. Grant was  
 8 demonstrating the choices on the page.  
 9 Q. Okay. You or Grant -- or Grant scrolled  
 10 down the page and counted the links.  
 11 Right?  
 12 A. I believe it was Grant that did that.  
 13 Q. Okay. And had you thought of your  
 14 invention at this point?  
 15 A. Well, it was shortly after that moment  
 16 when I -- I think the first thing that I did was, I  
 17 counted the number of choices or links --  
 18 Q. Okay.  
 19 A. -- on the page. And I -- I recall that  
 20 there were -- were ov -- I believe that there were  
 21 over 100.  
 22 Q. Okay. And so at this point, you still  
 23 had not come up with your invention.  
 24 Is that right?  
 25 MR. BECKER: Object to form.

Page 15

1 THE WITNESS: I don't believe so at that  
 2 exact -- at that moment.  
 3 BY MR. STEPHENS:  
 4 Q. Okay. So what happened next in the  
 5 story of your invention?  
 6 A. I looked up at the plasma on the wall, I  
 7 looked down on the -- and this is what I believe  
 8 happened -- on the cell phone. And I said, Sometime  
 9 in the future, this Internet page, the Internet, would  
 10 be on television and on the cell phone.  
 11 Q. Okay. What happened next?  
 12 A. I took out a pad and a pen, I believe,  
 13 and I wrote down what would have to change to -- to  
 14 make it viable to display Web pages on television and  
 15 on cell -- cellular phones.  
 16 Q. Now, did you actually try using the  
 17 Internet first or did you write down the things that  
 18 would have to change after Grant demonstrated the  
 19 Yahoo or AOL homepage?  
 20 A. I -- I don't recall.  
 21 Q. And the things that you wrote down on  
 22 the pad, are those the seven or eight things that you  
 23 mentioned just a few minutes ago as what you invented  
 24 that day?  
 25 A. Yes.

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1 Q. So reformatting, simplified interface,  
 2 navigation with unique input, sister sites, and the  
 3 sister sites would relate to a standard Web page on a  
 4 standard PC, manipulating a region of the screen for  
 5 scrolling and zooming, content organized in more  
 6 general categories, and content in a matrix form,  
 7 those are the things that you wrote down?  
 8 A. Generally speaking. Although, one of  
 9 them you mentioned, I think it was a little different  
 10 than the way I said it.  
 11 Q. Okay. I'm sorry. Which one was that?  
 12 A. Something about a Web page, the --  
 13 Q. That was relating to a standard Web page  
 14 on a standard PC? Is that what I got wrong?  
 15 A. I -- I -- I -- I'm not quite sure what  
 16 context that was said.  
 17 Q. I was just trying to copy down what you  
 18 said, but maybe I got it wrong. It's possible.  
 19 A. Okay.  
 20 Q. Could -- could you tell me what you  
 21 intended to say?  
 22 A. I -- I don't recall.  
 23 Q. It was right after sister sites. I --  
 24 you had mentioned sister sites, and then you said  
 25 something about a normal PC, and maybe I got it wrong.

Page 17

1 Do you remember what that was?  
 2 A. No.  
 3 If you want to read it back, then I  
 4 could --  
 5 Q. No, that's okay.  
 6 A. Okay.  
 7 Q. Anything else that you wrote down that  
 8 would have to change in order to make the Internet  
 9 viable on a television and cell phone?  
 10 A. I don't recall.  
 11 Q. How long was it from the time you first  
 12 saw the Internet to the time you came up with these  
 13 ideas?  
 14 A. Shortly thereafter.  
 15 Q. How -- how short?  
 16 A. Within a few minutes.  
 17 And -- and I don't recall during that  
 18 time whether Grant went to other websites and  
 19 demonstrated more of the Internet for me before I  
 20 thought -- began thinking of these ideas.  
 21 Q. Okay.  
 22 A. And it was Grant who thought of the idea  
 23 of manipulating a region on the screen for zooming and  
 24 scrolling.  
 25 Q. And so you and Grant came up with these

Page 18

1 ideas within a few minutes.  
 2 Do you remember how many minutes?  
 3 A. No.  
 4 Q. Was it more than five?  
 5 A. I don't know.  
 6 Q. Could it have been?  
 7 A. Could -- could have -- could have been.  
 8 I don't recall.  
 9 Q. Less than an hour?  
 10 A. Probably so, but I still -- I don't  
 11 recall.  
 12 Q. Less than a half an hour?  
 13 A. I don't recall.  
 14 Q. I'm just asking for your best  
 15 recollection.  
 16 A. Okay. I -- I -- I --  
 17 Q. Okay.  
 18 A. It was ten years ago.  
 19 Q. Okay. All right. So within a few  
 20 minutes, you and Grant came up with the ideas we've  
 21 talked about.  
 22 And all -- all of them were your ideas  
 23 except for the manipulating the region of the screen  
 24 for scrolling and zooming.  
 25 Is that right?

Page 19

1 A. That's my recollection, but it may have  
 2 been more than a few minutes. So I -- I think we  
 3 clarified that.  
 4 Q. Okay. But definitely less than an hour.  
 5 Right?  
 6 A. I do not recall.  
 7 Q. Okay. Probably less than an hour, I  
 8 think you said.  
 9 A. I don't recall, but it was -- it was  
 10 that day.  
 11 Q. Okay.  
 12 A. It --  
 13 Q. It was a short time.  
 14 Right?  
 15 A. Well, it's relative.  
 16 Q. Was there anybody else there?  
 17 A. No.  
 18 Q. Now, you mentioned that you wrote down  
 19 these things.  
 20 Did you keep that writing?  
 21 A. I don't recall.  
 22 Q. Have -- have you seen it any time in  
 23 connection with this case?  
 24 A. I don't --  
 25 MR. BECKER: Object to form.

Page 20

1 THE WITNESS: I -- I don't think so.  
 2 BY MR. STEPHENS:  
 3 Q. Do you recall what you wrote it on?  
 4 A. No.  
 5 Q. Do you recall what you did with the  
 6 thing you wrote it on?  
 7 A. No.  
 8 Q. Have you ever built your invention?  
 9 MR. BECKER: Object to form.  
 10 THE WITNESS: Personally?  
 11 BY MR. STEPHENS:  
 12 Q. Well, either personally or asked someone  
 13 to do it who worked at your direction or control, yes.  
 14 A. Could you define "built" for me?  
 15 Q. Made a system that practiced your  
 16 invention.  
 17 MR. BECKER: Object. Form.  
 18 THE WITNESS: I'm not sure I'm qualified to  
 19 answer that question.  
 20 BY MR. STEPHENS:  
 21 Q. So you don't know whether you've ever  
 22 built your invention?  
 23 A. Well, we have developed some of the  
 24 invention, I believe, but I -- I'm not qualified to  
 25 respond to your question. I'm not --

Page 21

1 Q. So --  
 2 A. I -- I don't have the expertise to -- to  
 3 answer your question.  
 4 Q. So you, as the inventor, don't know  
 5 whether you've ever made your invention.  
 6 Is that right?  
 7 A. I don't -- no, I said I don't have the  
 8 expertise to res -- answer your question.  
 9 Q. Do you know the answer or not?  
 10 A. I don't have the expertise to answer it.  
 11 Q. So you don't know.  
 12 Right?  
 13 A. I don't have the expertise to answer it.  
 14 Q. What do you mean when you say you don't  
 15 have the expertise to answer it?  
 16 A. I'm not an engineer.  
 17 Q. Okay. And --  
 18 A. I've had --  
 19 Q. Go ahead.  
 20 A. I'm not an engineer, and I've had no  
 21 educational experience to answer the question.  
 22 Q. Okay. Well, what additional experience  
 23 do you think you'd need to have in order to tell  
 24 whether you built the invention?  
 25 A. That's the whole idea. I would not know

Page 22

1 because I'm not qualified.  
 2 Q. Well, that's what I'm trying to  
 3 understand, is what is it that -- what aspect of your  
 4 invention is it that you don't understand whether  
 5 you've made it or not?  
 6 MR. BECKER: Object. Form.  
 7 THE WITNESS: I, again, say, I was -- not  
 8 qualified to answer your question.  
 9 BY MR. STEPHENS:  
 10 Q. So you can't even tell me what parts of  
 11 it you are unsure whether you've built or not.  
 12 Is that right?  
 13 A. I cannot recall at this time what -- I'm  
 14 unable to answer your question --  
 15 Q. Okay.  
 16 A. -- at this time.  
 17 Q. Have you tried to build your invention?  
 18 A. Again, it would fall into the category  
 19 of that I lack the expertise to know what I have done  
 20 and what I have not done, so I'm unable to answer your  
 21 question.  
 22 Q. Well, what have you done?  
 23 A. Well, over the years, we -- I -- with --  
 24 with help, developed a prototype that would illustrate  
 25 some of the elements of the invention.

Page 23

1 Q. And you're not qualified to say whether  
 2 or not that prototype actually is the invention or  
 3 not.  
 4 Is that right?  
 5 A. That's correct.  
 6 Q. Okay. Who has been involved in that  
 7 effort to build a prototype?  
 8 A. Rick Soss, S-o-s-s. His company is  
 9 called Protovu.  
 10 Q. Okay. Anyone else?  
 11 A. That's all I can think of at the time.  
 12 Q. Is Mr. Soss an engineer?  
 13 A. I do not know.  
 14 Q. What is his area of expertise?  
 15 A. I don't have his qualifications, so --  
 16 that I can recall at this time.  
 17 Q. Is he a computer programmer?  
 18 A. I -- I just don't have his  
 19 qualifications.  
 20 Q. What -- what has he done -- what has  
 21 been his involvement in the project?  
 22 A. He developed MailTV, the -- the demo of  
 23 MailTV, the website, the PC website of MailTV, and  
 24 other illustrations or graphics that I used to show  
 25 third parties.

Page 24

1 Q. At what point did you first have a  
 2 prototype that would illustrate some of the elements  
 3 of the invention?  
 4 A. I think probably -- I'm just -- just  
 5 guessing now -- in 2001.  
 6 Q. And who built that prototype?  
 7 A. I do not recall who that person was. It  
 8 was someone that I had hired. I don't recall his name  
 9 at this time.  
 10 But MailTV had several different  
 11 editions over the years. I think that may have  
 12 been -- I mean, it may have started with -- in July of  
 13 1999 when we first envisioned how the Internet would  
 14 be displayed and navigated on mobile devices and  
 15 television. And then it -- throughout the years, I  
 16 tried to improve upon that.  
 17 Q. But it was around 2001 when you first  
 18 had something you would call a prototype of how it  
 19 worked.  
 20 Is that right?  
 21 A. It -- it may have been in 2000.  
 22 Q. Is there anything you can tie it to,  
 23 like the presidential election in 2000?  
 24 Did it happen before that or after it?  
 25 A. I don't recall.

Page 25

1 Q. Anything else in time that might help  
 2 you place when that prototype was completed or built?  
 3 A. I don't recall.  
 4 Q. What was it called?  
 5 A. Prior to MailTV, I think I called it  
 6 Fogie & Jack.  
 7 If you had the production of documents,  
 8 it -- that would be very helpful.  
 9 Q. When did it change from Fogie & Jack to  
 10 MailTV?  
 11 A. I could only guess.  
 12 Q. Go ahead and give me your best guess.  
 13 MR. BECKER: Object. Form.  
 14 THE WITNESS: 2001.  
 15 BY MR. STEPHENS:  
 16 Q. Okay. Now, you mentioned that you are  
 17 not an engineer and you're not qualified to say  
 18 whether the prototype that you have today practices  
 19 all the elements of your invention.  
 20 Right?  
 21 A. Correct.  
 22 Q. Were you capable of implementing your  
 23 invention, yourself?  
 24 MR. BECKER: Object. Form.  
 25 THE WITNESS: Implementing it into --



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1 Can you clarify "implement"?

2 BY MR. STEPHENS:

3 Q. Building it.

4 A. No.

5 Q. Is Grant an engineer?

6 A. No.

7 Q. Would you and Grant together have been

8 able to build your invention?

9 A. No.

10 Q. Are you qualified to say whether anyone

11 could build your invention?

12 MR. BECKER: Object. Form.

13 THE WITNESS: Well, I could only -- I believe

14 that there are people out there, yes, that are

15 qualified to build the invention.

16 BY MR. STEPHENS:

17 Q. And what is the basis of that belief?

18 A. Well, I see the iPhone and Apple

19 products that have built the invention and -- and

20 websites that have built the invention, so I -- what

21 Grant and I envisioned in July of 1999, I see on the

22 market today.

23 Q. And it's your understanding that Apple

24 has built your invention.

25 Is that right?

Page 27

1 A. It's my understanding that Apple has

2 built the invention, yes.

3 Q. Okay. Before Apple built your

4 invention, did anyone?

5 A. I don't recall.

6 Q. So you don't know whether anybody else

7 built what you believe is your invention before Apple

8 did it.

9 Right?

10 A. Yes, sir.

11 Q. Okay. How can I tell if I'm using your

12 invention?

13 If I look at something and I want to

14 figure out whether or not it's your invention, how --

15 how would I go about it?

16 MR. BECKER: Object. Form.

17 And to the extent you're seeking his

18 claim construction positions, I'd object to that

19 and -- and have him not answer claim construction

20 questions.

21 MR. STEPHENS: Well, let's -- let's address

22 that right now. 'Cause if you're going to direct him

23 not to answer anything about the claims, we should

24 call the Court right now.

25 MR. BECKER: Under local rules, we don't have

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1 to -- to provide any contentions or positions on claim

2 constructions.

3 MR. STEPHENS: I'm not asking for the claim

4 constructions you're going to submit to the Court, but

5 I intend to ask him about his understanding of the

6 claim language, as the inventor.

7 If you're going to direct him not to

8 answer that, we should call the Court now.

9 MR. BECKER: I -- I will be instructing him

10 not to answer on the grounds of, if it elicits

11 attorney-client communications or if it violates the

12 local rules --

13 MR. STEPHENS: Well, I'll ask him the

14 questions --

15 MR. BECKER: -- specifically Rule 2.5.

16 MR. STEPHENS: -- and when you direct him not

17 to answer, we'll call the Court.

18 MR. BECKER: Okay.

19 BY MR. STEPHENS:

20 Q. So Mr. Gottfurcht, how would I figure

21 out whether or not I'm practicing your invention if I

22 look at a device?

23 What would I look for to figure out

24 whether or not that device practices your invention?

25 MR. BECKER: Same objection.

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1 THE WITNESS: The information, the

2 understanding that I have pertaining to what you're

3 asking, would be an understanding that I have through

4 discussions with my attorney.

5 BY MR. STEPHENS:

6 Q. So you, yourself, can't tell whether

7 somebody practices your invention without consulting a

8 lawyer.

9 Is that right?

10 A. No. I'm saying the question you asked,

11 that I wouldn't be able to answer that because it's

12 information that -- or it's an understanding of the

13 technology that I received from my attorney.

14 Q. So you are able to tell whether or not

15 somebody is practicing your invention, yourself.

16 Correct?

17 MR. BECKER: Object. Form.

18 THE WITNESS: You -- you'd have to explain in

19 detail what part of the invention that you're talking

20 about.

21 BY MR. STEPHENS:

22 Q. Any part. I'm asking what -- whether

23 you, yourself, are capable of telling whether somebody

24 practices your invention without consulting an

25 attorney.

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1 A. You'd have to clarify that question for  
 2 me.  
 3 Q. What needs to be clarified?  
 4 A. What you mean by "the invention."  
 5 Q. Do you know your invention when you see  
 6 it?  
 7 MR. BECKER: Object. Form.  
 8 THE WITNESS: I -- I -- I -- I know the  
 9 invention when I see it.  
 10 BY MR. STEPHENS:  
 11 Q. Okay.  
 12 A. Maybe --  
 13 Q. Now, explain to me how --  
 14 A. -- some --  
 15 Q. Sorry. I didn't mean to cut you off.  
 16 A. Maybe some embodiments of that  
 17 invention.  
 18 Q. Okay. Explain to me how you know your  
 19 invention when you see it.  
 20 MR. BECKER: Same objections.  
 21 THE WITNESS: When I see a Web page that has  
 22 been -- and this is just an embodiment of the  
 23 invention, not all the embodiments -- when I see a Web  
 24 page that's displayed on a mobile device that has been  
 25 reformatted.

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1 BY MR. STEPHENS:  
 2 Q. Okay. Go on.  
 3 A. And again, I'll preface all these  
 4 comments to -- as one embodiment.  
 5 The Web page would be navigated with  
 6 unique inputs.  
 7 Q. Okay.  
 8 A. The Web page would be -- Web page or an  
 9 application would be a sister site.  
 10 Q. Anything else?  
 11 A. One could manipulate the screen with  
 12 a -- with a finger, a region of a screen for zooming  
 13 or scrolling.  
 14 Q. Anything else?  
 15 A. There would be a simplified navigation  
 16 interface.  
 17 Q. Anything else?  
 18 A. That's all I can think of at the moment.  
 19 Q. Okay. Did you invent multi-touch?  
 20 MR. BECKER: Object. Form.  
 21 THE WITNESS: You'd have to define  
 22 multi-touch.  
 23 BY MR. STEPHENS:  
 24 Q. It's a phrase you -- phrase you've used.  
 25 Right?

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1 A. In this deposition?  
 2 Q. No, but before in real life.  
 3 A. During 408 discussions.  
 4 Q. Have you used it at any other times?  
 5 A. I don't recall.  
 6 Q. You have an iPhone.  
 7 Right?  
 8 A. Yes, I do.  
 9 Q. Do you know what multi-touch is in  
 10 connection with an iPhone?  
 11 A. Yes, I do.  
 12 Q. Did you invent that?  
 13 A. On the iPhone?  
 14 Q. Did you invent multi-touch?  
 15 A. We invented multi-touch as a building  
 16 block for our invention; beyond that, I would have to  
 17 defer to my understanding with legal counsel on that  
 18 subject matter.  
 19 Q. So in order to determine whether you  
 20 invented multi-touch, you'd have to talk to your  
 21 lawyer.  
 22 Right?  
 23 MR. BECKER: Object. Form.  
 24 THE WITNESS: No, I -- I said that the  
 25 information I have was derived from discussions with

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1 my attorney.  
 2 BY MR. STEPHENS:  
 3 Q. Okay. Just because information you have  
 4 was derived from your -- from an attorney doesn't make  
 5 it privileged.  
 6 What you can't -- what I would not ask  
 7 you to tell me is the contents of an actual discussion  
 8 you had with your attorney.  
 9 But facts are not privileged just  
 10 because your lawyer told -- told them to you once upon  
 11 a time.  
 12 So unless he directs you not to answer,  
 13 you should go ahead and answer my question.  
 14 MR. BECKER: I will instruct you not to answer  
 15 any questions that will cause you to divulge the  
 16 advice that was given to you by your attorney.  
 17 BY MR. STEPHENS:  
 18 Q. Okay. So my question again is, do you  
 19 need to consult your lawyer to tell me whether you  
 20 invented multi-touch?  
 21 A. The information I have for multi-touch,  
 22 my understanding of it was from my attorney.  
 23 Q. That doesn't make it privileged.  
 24 Did you invent multi-touch?  
 25 A. The information that I have pertaining

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1 to multi-touch is an understanding from my attorney.  
 2 Q. Okay. And I'm asking you to tell me  
 3 what that understanding is.  
 4 MR. BECKER: So I'm going to instruct him not  
 5 to answer based on attorney-client privilege.  
 6 BY MR. STEPHENS:  
 7 Q. Okay. So you don't have any  
 8 understanding of multi-touch other than what you  
 9 learned from your attorney.  
 10 Is that right?  
 11 A. At this moment, I cannot think of any.  
 12 Q. Even though you have an iPhone in your  
 13 pocket.  
 14 Right?  
 15 A. But prior to buying the iPhone, these  
 16 are discussions that I have had, understandings that I  
 17 have derived from discussions with my attorney on that  
 18 subject.  
 19 Q. I'm not asking about those discussions.  
 20 I'm asking whether you can tell me  
 21 whether you invented what you see when you use your  
 22 iPhone to do multi-touch.  
 23 A. And I'm saying that the information that  
 24 I have pertaining to multi-touch, my understanding  
 25 of that -- of multi-touch is a result of conversations

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1 that I've had with my attorney.  
 2 Q. Did your attorney give you the iPhone  
 3 that you have?  
 4 A. No.  
 5 Q. You bought it, yourself?  
 6 A. Yes.  
 7 Q. And you've used it at times when you're  
 8 not present -- when your attorney is not present.  
 9 Right?  
 10 A. Yes.  
 11 Q. Okay. So I'm asking you, based on your  
 12 experience with the iPhone when your attorney is not  
 13 present, did you invent multi-touch on the iPhone?  
 14 MR. BECKER: Same objection.  
 15 THE WITNESS: The information that I have, the  
 16 understanding that I have about that subject matter  
 17 was as a result of privileged conversations with my  
 18 attorney.  
 19 BY MR. STEPHENS:  
 20 Q. Okay. Well, I just want to make sure,  
 21 then.  
 22 You're not going to testify at trial  
 23 about you inventing iTouch -- or excuse me --  
 24 multi-touch.  
 25 Right?

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1 MR. BECKER: Object to form.  
 2 THE WITNESS: I don't understand your  
 3 question.  
 4 BY MR. STEPHENS:  
 5 Q. Well, I'm asking you, here, now, on --  
 6 in my opportunity to depose you whether you invented  
 7 multi-touch, and you're telling me you can't tell me  
 8 because it's privileged.  
 9 I'm going to take the position that you  
 10 cannot testify at trial on that topic because you're  
 11 claiming that it's privileged and you have no  
 12 understanding other than something that's privileged.  
 13 Do you agree with that?  
 14 A. Well, you said --  
 15 MR. BECKER: Object to form.  
 16 Go ahead.  
 17 THE WITNESS: You said it was invention.  
 18 What I testified to is that in July of  
 19 1999, multi-touch, as we know it today, I was not  
 20 aware the word was even used in 1999.  
 21 It was one of the building blocks of our  
 22 invention.  
 23 BY MR. STEPHENS:  
 24 Q. So you invented multi-touch.  
 25 Right?

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1 A. That's your conclusion.  
 2 Q. No, I'm asking you to answer the  
 3 question.  
 4 And if you're telling me you're not  
 5 going to answer the question, that's fine. But I want  
 6 you to understand, you will not be allowed to testify  
 7 to that effect at trial if you claim privilege in that  
 8 answer today.  
 9 A. That's not what I said.  
 10 I said --  
 11 Q. So will you answer question, sir?  
 12 Did you invent multi-touch?  
 13 A. In 1999 --  
 14 Q. "Yes" or "no," did you invent  
 15 multi-touch?  
 16 A. I'm unable to answer that question --  
 17 Q. Okay. Hold on.  
 18 Are you unable to answer because you're  
 19 claiming privilege, or you don't know the answer?  
 20 Which one?  
 21 A. I'm claiming privileged to the way you  
 22 phrase that question, but there's more to it than  
 23 that.  
 24 Q. So you -- you're claiming privilege in  
 25 the -- the answer to the question of, Did you invent

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1 multi-touch?  
 2 I just want to make sure that we have a  
 3 clear answer on that.  
 4 Right?  
 5 You're claiming privilege in the answer  
 6 to the question, Did you invent multi-touch?  
 7 A. The record speaks for itself, what I've  
 8 said.  
 9 Q. I'm asking you to repeat your answer, if  
 10 you gave me one.  
 11 The answer's "yes."  
 12 Right?  
 13 A. No, my answer is that in July of 1999,  
 14 one of the building blocks for our invention was  
 15 manipulating a region of a screen for zooming and  
 16 scrolling, which many years later, I believe it was  
 17 trademarked by Apple, maybe eight years later, was  
 18 multi-touch.  
 19 So that word "multi-touch", I never knew  
 20 of. I don't think many people knew of that because  
 21 Apple's trademark was many years later.  
 22 Q. Okay.  
 23 A. So I'm --  
 24 Q. So your position is that in 1999, you  
 25 invented what is today called multi-touch?

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1 A. No, I'm not saying that.  
 2 Q. Well, what are you saying, then?  
 3 A. I'm saying that in 1999, manipulating  
 4 with your finger a region of a screen for zooming and  
 5 scrolling was one of the building blocks for our  
 6 invention.  
 7 Q. Okay. And then you said something about  
 8 multi-touch.  
 9 A. I said that today, people refer to that  
 10 as multi-touch.  
 11 And I don't believe it was until many  
 12 years later that that word was invented for the  
 13 building block that we incorporated in our invention  
 14 in July of 1999.  
 15 Q. Okay. So what you invented in July of  
 16 1999 is now referred to as multi-touch.  
 17 Right?  
 18 A. I -- I -- my statement speaks for  
 19 itself. That's your conclusion. And I've said it  
 20 several times, so I stand on my record.  
 21 Q. Now, did you make any written record in  
 22 July of 1999, or in 1999 at any time, of manipulating  
 23 a region of a screen with your finger?  
 24 A. In 9 -- July of 1999, that was one of  
 25 the building blocks that we had included in our

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1 invention.  
 2 Q. Did you make any record of that?  
 3 A. The record would have been what I had  
 4 written down at that time in my notes until I engaged  
 5 Tom Coester to prepare the patent document.  
 6 Q. Okay. Now, your patent that was filed  
 7 in 1999 doesn't mention anything about that.  
 8 Right?  
 9 MR. BECKER: Object. Form.  
 10 THE WITNESS: I -- again, the patent document  
 11 speaks for itself.  
 12 BY MR. STEPHENS:  
 13 Q. Do you know whether or not it mentions  
 14 anything about it?  
 15 A. I -- it speaks for itself. It's a  
 16 legal --  
 17 Q. I'm asking whether you know whether it  
 18 says anything about it.  
 19 Do you know whether it says anything  
 20 about it, sir?  
 21 A. It's a legal document. I'm not an  
 22 attorney.  
 23 Q. So the answer is "no," you don't know  
 24 whether it says anything about it?  
 25 MR. BECKER: Object. Form.

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1 THE WITNESS: I'm going to say my response,  
 2 this is a legal document, it speaks for itself, I'm  
 3 not an attorney.  
 4 BY MR. STEPHENS:  
 5 Q. I'm not asking whether it's a legal  
 6 document, and I'm not asking whether you're an  
 7 attorney.  
 8 I'm asking whether you know whether it  
 9 says anything about what you call multi-touch?  
 10 A. I have the same answer.  
 11 Q. Okay. You said that in order to tell  
 12 whether or not a device is practicing your invention,  
 13 you look and see whether it's displaying something on  
 14 a mobile device that's been reformatted.  
 15 Right?  
 16 A. (No audible answer.)  
 17 Q. What do you -- what do you mean when you  
 18 say you look to see that -- whether or not it's  
 19 displaying something that's been reformatted?  
 20 A. In July of 1999, Grant and I envisioned  
 21 how the Internet would be displayed, what it would  
 22 look like, how it would be navigated on mobile devices  
 23 and television.  
 24 We developed some building blocks for  
 25 this invention. So I would look at these building

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1 blocks to determine whether this vision that we had in  
 2 1999 was the same.  
 3 Q. Are you finished?  
 4 A. Yes.  
 5 Q. Okay. One of those building blocks was  
 6 reformatting.  
 7 Right?  
 8 A. Yes.  
 9 Q. And what do you mean by that?  
 10 A. Well, when I -- 19 --  
 11 MR. BECKER: Let me place an objection.  
 12 I object to form.  
 13 But also, to the extent you're asking  
 14 about our Claim Construction on reformatting, I'll  
 15 instruct him not to answer.  
 16 MR. STEPHENS: I'm going to tell you right  
 17 now, I'm not asking about the claim constructions that  
 18 you're going to --  
 19 MR. BECKER: Well, I --  
 20 MR. STEPHENS: -- submit to the Court.  
 21 MR. BECKER: I --  
 22 MR. STEPHENS: I'm asking for his  
 23 understanding.  
 24 And I want you to stop interrupting my  
 25 questions.

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1 MR. BECKER: This is --  
 2 MR. STEPHENS: You can make your objections.  
 3 MR. BECKER: In the local rules, I'm entitled  
 4 to make this very specific objection. There's no --  
 5 MR. STEPHENS: You are not.  
 6 MR. BECKER: -- need to raise your voice at  
 7 me.  
 8 Yes, it's Rule 2.5. I am entitled to  
 9 make it.  
 10 MR. STEPHENS: You -- you are not entitled to  
 11 make it as an objection.  
 12 You are entitled to make the objection,  
 13 "form," and that's it.  
 14 MR. BECKER: No, you're wrong about that.  
 15 MR. STEPHENS: All right. Well, we'll call  
 16 the Court.  
 17 MR. BECKER: That's fine, but you don't need  
 18 to yell at me.  
 19 It's in the local rules. I'm looking at  
 20 them right on my screen.  
 21 MR. STEPHENS: Tell me where it says you're  
 22 entitled --  
 23 MR. BECKER: One of your -- one of your guys  
 24 can give you the local rules at a break. I don't need  
 25 to show you my computer which has all my notes on it.

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1 MR. STEPHENS: Okay. So what's your  
 2 objection?  
 3 MR. BECKER: 2.5 A.  
 4 MR. STEPHENS: All right.  
 5 MR. BECKER: I can -- I can instruct him not  
 6 to answer on the grounds that it's premature because  
 7 we have not gotten to the claim construction  
 8 proceedings yet.  
 9 MR. STEPHENS: I'm not asking for your claim  
 10 construction position.  
 11 MR. BECKER: Well --  
 12 MR. STEPHENS: I made that clear, I am not  
 13 asking for your claim construction position.  
 14 I am asking for the inventor's  
 15 understanding of the claims.  
 16 MR. BECKER: Right. And you -- and -- and I  
 17 don't know how that's any different than a claim  
 18 construction position --  
 19 MR. STEPHENS: Shall we call the Court now and  
 20 ask?  
 21 MR. BECKER: If you would like to, yes,  
 22 because I'm going to instruct him not to answer on  
 23 those grounds.  
 24 MR. STEPHENS: Okay. Well, let's --  
 25 MR. LANE: It says parties. It says parties.

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1 It doesn't say persons.  
 2 MR. STEPHENS: That's all right.  
 3 Okay. Let me ask the question. We'll  
 4 get an instruction not to answer, and we'll call the  
 5 Court.  
 6 MR. BECKER: Okay.  
 7 BY MR. STEPHENS:  
 8 Q. Mr. Gottfurcht, what do you mean by  
 9 "reformatting"?  
 10 MR. BECKER: So I will say that if you are  
 11 going to divulge our claim constructions in response  
 12 to this question, then I instruct you not to answer.  
 13 BY MR. STEPHENS:  
 14 Q. And I want to tell you, I'm not asking  
 15 for EMG's claim construction position.  
 16 I'm asking for your understanding of the  
 17 word that you used in testifying about your invention,  
 18 as the inventor.  
 19 MR. BECKER: If you can answer that without  
 20 divulging attorney-client communications or our claim  
 21 construction position, then you're free to answer.  
 22 THE WITNESS: I can answer the question of  
 23 what I meant by reformatting --  
 24 BY MR. STEPHENS:  
 25 Q. Okay.

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1 A. -- from July 1st to July 7th of 1999 --  
 2 Q. Well, we'll start there.  
 3 A. -- that period of time.  
 4 Q. We'll start there.  
 5 A. Okay. If you were to look at the Yahoo  
 6 homepage or the AOL homepage in 1999, as I previous  
 7 testified, there would be many choices or links maybe  
 8 numbering over 100.  
 9 And in July of 1999, my interpretation,  
 10 thought behind reformatting, is that you would take  
 11 that Web page of over 100 links, you would reformat it  
 12 into a simplified page with many fewer links, and  
 13 possibly break it up into categories that could be  
 14 further drilled down to add more choices.  
 15 That was, I believe, one of my thoughts  
 16 in July of 1999.  
 17 Q. Okay. So from July 1st to July 7th of  
 18 1999, what you meant by "reformatting" was starting  
 19 with the Yahoo homepage with 100 links, or at least  
 20 many links, and changing it into a display with many  
 21 fewer links.  
 22 Is that right?  
 23 A. I would think that that is one of the  
 24 thoughts that I had in 19 -- July of 1999.  
 25 Q. Okay. Has your understanding of what

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1 the word "reformatting" means changed?  
 2 MR. BECKER: And again, same instruction. I'm  
 3 instructing you not to divulge specifically any  
 4 attorney-client communications on this subject.  
 5 THE WITNESS: After July 7th, approximately, I  
 6 engaged Tom Coester of Blakely Sokoloff to prepare the  
 7 patent document.  
 8 And I had further conversations and  
 9 understanding of the terms that -- on building blocks  
 10 that I had, with Grant, envisioned for the future of  
 11 displaying and navigating of the Internet on  
 12 television and mobile devices.  
 13 And my knowledge, my understanding of  
 14 these building blocks was further enhanced through my  
 15 discussions with Tom Coester.  
 16 BY MR. STEPHENS:  
 17 Q. Okay. How did your understanding of  
 18 what "reformatting" is change?  
 19 MR. BECKER: Same objections.  
 20 THE WITNESS: I would say that it's  
 21 privileged.  
 22 BY MR. STEPHENS:  
 23 Q. Okay. So you're going to claim  
 24 privilege in what you understand "reformatting" to  
 25 mean today, I take it?

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1 A. No. I think the record speaks for  
 2 itself, what I said.  
 3 Q. Okay. What does "reformatting" mean to  
 4 you today?  
 5 MR. BECKER: Same objections.  
 6 THE WITNESS: My understanding of reformatting  
 7 in July 1st to July 7th, I've testified to.  
 8 BY MR. STEPHENS:  
 9 Q. I'm not asking about that.  
 10 I'm asking about it today.  
 11 A. From July 7th forward, I have an  
 12 understanding of reformatting based upon confidential,  
 13 privileged communications with different attorneys.  
 14 And I'm unable to parse if I have any  
 15 other information other than from the attorneys, so I  
 16 will claim privilege.  
 17 Q. Okay. So you can't tell me what  
 18 reformatting in your invention means to you today  
 19 because it's privileged.  
 20 Right?  
 21 MR. BECKER: Object. Form.  
 22 THE WITNESS: My understanding of reformatting  
 23 in 1999, which I've testified to, from the period in  
 24 July that I engaged legal counsel, over the past  
 25 sev -- ten years plus, my understanding I have on

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1 reformatting has developed through privileged  
 2 conversations with an attorney.  
 3 BY MR. STEPHENS:  
 4 Q. And therefore, you will not tell me what  
 5 your new understanding of reformatting is.  
 6 Right?  
 7 A. Not unless I were able to sit down with  
 8 an attorney and him -- the attorney telling me that  
 9 this much is privileged, and this little bit here, you  
 10 could parse out and say it's not privileged, because  
 11 at this moment, as I'm sitting here, I think it's  
 12 privileged.  
 13 Q. All right. Well, I'm asking you to tell  
 14 me everything that you believe about what the word  
 15 "reformatting" means.  
 16 And you're required to do that unless  
 17 your counsel tells you not to do that.  
 18 A. And I'm telling you that it's  
 19 privileged.  
 20 Q. So you're just not going to answer my  
 21 question because you've decided not to?  
 22 You're not acting on advice of counsel  
 23 at this point.  
 24 Right?  
 25 A. Well, I --

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1 MR. BECKER: I've advised him not to answer  
 2 that question on grounds of advice of counsel.  
 3 MR. STEPHENS: Okay. I just -- so you're  
 4 directing him not to answer that question.  
 5 Right?  
 6 MR. BECKER: To the extent it would require  
 7 him to divulge our advice to him, yes.  
 8 MR. STEPHENS: Okay. Well, why don't you guys  
 9 confer for a second and see if there's anything else  
 10 you can say about what "reformatting" means, and if  
 11 there's not, then you can direct him not to answer and  
 12 we'll have a clear record.  
 13 Okay?  
 14 Take a moment and confer about it.  
 15 MR. BECKER: Want to go off the record?  
 16 THE WITNESS: Okay.  
 17 MR. STEPHENS: We don't need to go off the  
 18 record. You can just lean over --  
 19 MR. BECKER: Well, I'm not going to confer  
 20 with the mics on, sitting here right --  
 21 MR. STEPHENS: Well, take the mics off.  
 22 MR. BECKER: We're going off the record.  
 23 MR. STEPHENS: All right. We'll go off the  
 24 record, then. That's fine.  
 25 THE VIDEOGRAPHER: Going off the record.

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1 The time is 11:00 a.m.  
 2 (Whereupon a recess was taken)  
 3 THE VIDEOGRAPHER: Back on the record.  
 4 The time is 11:04 p.m. -- a.m.  
 5 BY MR. STEPHENS:  
 6 Q. So Mr. Gottfurcht, is there anything you  
 7 can add to your understanding of what "reformatting"  
 8 is?  
 9 A. No.  
 10 Q. Okay. That is, without revealing  
 11 privileged conversations?  
 12 A. Yes.  
 13 MR. STEPHENS: And I take it you're going to  
 14 direct him not to answer?  
 15 MR. BECKER: Yes --  
 16 MR. STEPHENS: Okay.  
 17 MR. BECKER: -- based on the attorney-client  
 18 privilege.  
 19 MR. STEPHENS: I understand.  
 20 BY MR. STEPHENS:  
 21 Q. And Mr. Gottfurcht, you also mentioned  
 22 that the next element of what you invented in July of  
 23 1999 was a simplified interface.  
 24 Could you explain what that means?  
 25 MR. BECKER: Object. Form.

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1 And same instructions, but go ahead and  
 2 answer the question if you can.  
 3 THE WITNESS: My thought of a simplified  
 4 interface prior to engaging Tom Coester was that it --  
 5 it was simpler than the way Web pages were navigated  
 6 on the PC.  
 7 BY MR. STEPHENS:  
 8 Q. What do you mean by that, "simpler"?  
 9 A. Easier, simpler.  
 10 Q. How do I tell if it's simpler?  
 11 A. Well, that -- that's in July 1st to  
 12 July 7, before I engaged Tom Coester, when I thought  
 13 of the invention, "simpler" meant simpler than  
 14 navigating a standard Web page on a PC.  
 15 Q. Okay. So, for example, you mentioned  
 16 having fewer links on a page.  
 17 Right?  
 18 A. Yes.  
 19 Q. Is that an example, a simpler interface?  
 20 A. It could be.  
 21 Q. Okay. Anything else you can think of  
 22 that would be an example of a simpler interface?  
 23 A. It could be one where there would be no  
 24 mouse, and there would be unique inputs, like you see  
 25 on the iPhone today.

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1 Q. Okay. Any other examples you can think  
 2 of that would be a simpler user interface?  
 3 A. That's all I can think of at this  
 4 moment.  
 5 Q. Okay. Now, you mentioned navigation  
 6 with unique inputs.  
 7 What did you understand that to mean  
 8 back in July of 1999?  
 9 A. Before engaging legal counsel, I meant  
 10 it to be that you would see a Web page, you would  
 11 decide what links that you wanted to navigate, and you  
 12 would have, for example, your finger touch a screen,  
 13 as one embodiment, without using a mouse, a one-to-one  
 14 relationship without a mouse.  
 15 It was one of the thoughts I had in July  
 16 before engaging Tom Coester.  
 17 Q. Okay. How is that different than an  
 18 ordinary touch screen at the time?  
 19 MR. BECKER: Object. Form.  
 20 THE WITNESS: Anything beyond that  
 21 understanding, again, was with an understanding of  
 22 privileged conversation with Tom Coester.  
 23 BY MR. STEPHENS:  
 24 Q. I'm not asking about that.  
 25 I'm asking about what happened before

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1 you started talking to  
 2 Tom Coester.  
 3 MR. STEPHENS: And let -- let's just -- in  
 4 order to avoid a tremendous waste of time, let me just  
 5 get clear on the record, you're going to direct him  
 6 not to answer questions involving understandings that  
 7 he had at any time after he first talked to  
 8 Tom Coester?  
 9 Is that right?  
 10 MR. BECKER: No.  
 11 MR. STEPHENS: Okay. Well, why don't you  
 12 guys, again, confer for a moment and figure that out,  
 13 because I'm not going to go through 15 minutes of  
 14 questions on every single thing that I ask him to  
 15 figure out whether or not he's going to tell me things  
 16 after Tom Coester talked to him July 7th.  
 17 MR. BECKER: There's nothing for us to figure  
 18 out. You ask your questions and we'll be object. And  
 19 I -- I don't know --  
 20 MR. STEPHENS: All right, if that's the way  
 21 you want to do it.  
 22 Q. So Mr. Gottfurcht, is there anything you  
 23 can tell me about navigation using unique inputs,  
 24 after you first talked with Mr. Coester, that's not  
 25 privileged?

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1 A. I cannot think of at this moment.  
 2 Q. Okay.  
 3 MR. STEPHENS: And you're going to direct him  
 4 not to answer any questions directed to that.  
 5 Is that right?  
 6 MR. BECKER: Any -- I'm going to direct him  
 7 not to divulge the contents of any attorney-client  
 8 communications.  
 9 MR. STEPHENS: Okay.  
 10 Q. Tell me everything you know about  
 11 navigation using unique inputs, about what it means.  
 12 A. I just testified as to what it is.  
 13 Q. And you can't say anything more without  
 14 revealing privileged communications?  
 15 A. I cannot think of anything more at this  
 16 moment --  
 17 Q. Okay.  
 18 A. -- without revealing privileged  
 19 communications.  
 20 Q. Had you ever seen a touch screen before  
 21 you met Mr. Coester?  
 22 A. I'm sure I have.  
 23 Q. Do you know how you take an action with  
 24 a touch screen?  
 25 A. Yes.

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1 Q. How do you do it?  
 2 A. You touch the screen.  
 3 Q. And you touch the item that you're  
 4 trying to activate.  
 5 Right?  
 6 A. That's correct.  
 7 Q. You didn't invent that.  
 8 Right?  
 9 MR. BECKER: Object. Form.  
 10 THE WITNESS: In what context?  
 11 BY MR. STEPHENS:  
 12 Q. In the context of a touch screen.  
 13 A. In the touch screen that -- that I would  
 14 see at a mall, that was not navigating Internet, if  
 15 you're referring to that kind of context, I was  
 16 familiar with a touch screen.  
 17 Q. Okay. And you didn't invent using a  
 18 link on a touch screen to take you to another page,  
 19 like you would see in a mall.  
 20 Right?  
 21 A. Well, I'm unable to answer that 'cause  
 22 I'm -- I don't know what they were doing in the mall  
 23 with a touch screen. So I'm unable to answer that  
 24 question.  
 25 Q. You're the one who brought that up.

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1 What were you talking about?  
 2 A. I just -- some -- I -- I -- I'm not even  
 3 sure it was prior to 1999, but I have seen a touch  
 4 screen in a mall.  
 5 Q. Okay. And did you invent what that  
 6 device that you're talking about did?  
 7 A. I -- I don't know what the device did,  
 8 so I'm unable to -- to respond to that.  
 9 Q. Well, okay.  
 10 So why did you bring it up?  
 11 A. I have no reason.  
 12 Q. Okay. Do you recall ever seeing a touch  
 13 screen before July of 1999?  
 14 A. I think you asked me that, and I said  
 15 "yes."  
 16 Q. Okay.  
 17 A. I think I did.  
 18 Q. Okay. So what did you see before July  
 19 of 1999 that included a touch screen?  
 20 A. I think I just testified to that.  
 21 Could you read back my response, if  
 22 that's okay?  
 23 Q. Well, I think you then changed your  
 24 testimony and said you didn't remember whether it was  
 25 before or after 1999, and you didn't remember what it



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1 was, so now I'm trying to clarify that.  
 2 A. I see.  
 3 Okay. I -- I don't remember the first  
 4 time I saw a touch screen.  
 5 Q. So you don't know if you ever saw a  
 6 touch screen before 1999?  
 7 A. That's correct.  
 8 Q. Okay. So it's possible that you'd never  
 9 seen a touch screen at the time you invented touch  
 10 screen navigation.  
 11 Right?  
 12 A. It's possible.  
 13 Q. Okay. What's a sister site?  
 14 MR. BECKER: And again, same objections.  
 15 THE WITNESS: Sister site, on Jul -- what --  
 16 what I thought sister site would be, from July 1st to  
 17 July 7th -- 6th or 7th, in that area, was a site that  
 18 would be related to the standard Web page or website,  
 19 such as Yahoo or AOL, would be associated with that,  
 20 call it main site.  
 21 BY MR. STEPHENS:  
 22 Q. Anything else?  
 23 A. What I envisioned, which is just an  
 24 embodiment of sister site, was that it would be  
 25 associated to the -- with the main site, have a

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1 simplified navigation interface, could be navigated  
 2 with unique inputs, could be navigated by manipulating  
 3 a region of the screen with your finger for zooming  
 4 and scrolling.  
 5 Q. Okay. So you said that, as you  
 6 understood it, a sister site was a site that's related  
 7 to the -- a normal page on -- of a regular computer.  
 8 Right?  
 9 A. Yes.  
 10 Q. Related in what way?  
 11 A. The -- the content. Some of the content  
 12 would be the same, but it would be simplified and  
 13 reorganized into fewer options that could be displayed  
 14 on television and -- and mobile device.  
 15 Q. Okay. So a sister site, then, as you  
 16 understood it when you came up with the invention, was  
 17 a site that's related to a normal Web page because it  
 18 has some of the same content, but it's simplified.  
 19 Right?  
 20 A. And I added more to it than that.  
 21 Q. And having fewer options for navigation?  
 22 A. I think I added more than that.  
 23 Q. What did I miss?  
 24 A. I -- could you read it back?  
 25 MR. STEPHENS: Could you read it back, please?

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1 (Whereupon the record was read as follows:)  
 2 "QUESTION: The -- the content. Some of  
 3 the content would be the same, but it  
 4 would be simplified and reorganized into  
 5 fewer options that could be displayed on  
 6 television and -- and mobile device."  
 7 BY MR. STEPHENS:  
 8 Q. So a sister site, then -- I just want to  
 9 make sure I understand what you believed it to be when  
 10 you came up with the invention -- the site that's  
 11 related to a normal website, in that, some of the  
 12 content would be the same, but it would be simplified  
 13 and reorganized into fewer navigation options.  
 14 Is that right?  
 15 A. Yes, that was -- that's -- it was a  
 16 possibility.  
 17 Q. Okay.  
 18 A. I also mentioned that it could also be  
 19 navigated with unique inputs.  
 20 Q. Meaning by a touch screen.  
 21 Right?  
 22 A. That was -- that was a possibility.  
 23 Q. Now, did you envision the unique input  
 24 would include a mouse click?  
 25 A. I envisioned it to be one-on-one. That

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1 could be a finger or it could be on a -- any other  
 2 device, any other mechanism.  
 3 Q. Any pointing device?  
 4 A. It could be a pointing device.  
 5 Q. Like a mouse?  
 6 A. It could -- if that were a pointing  
 7 device, it could be a pointing device but without  
 8 moving a mouse to your selection. So in that sense,  
 9 it may not be a mouse.  
 10 In other words, you would look at a  
 11 page, you would decide, like you do on the iPhone, you  
 12 decide what your selection is going to be and you make  
 13 that selection on a one-to-one relationship.  
 14 Q. By pointing at it.  
 15 Right?  
 16 A. Any way that you could make that  
 17 selection.  
 18 Q. Okay. Any way you can point at it.  
 19 Right?  
 20 A. Any way that you could make a selection.  
 21 Q. Well, obviously you were able to select  
 22 navigation options before your invention.  
 23 Right?  
 24 MR. BECKER: Object. Form.  
 25 THE WITNESS: Well, I --

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1 BY MR. STEPHENS:  
 2 Q. Let me -- let me ask it differently.  
 3 A. Uh-huh.  
 4 Q. Were you able to navigate the Yahoo page  
 5 that Grant demonstrated for you on the day you came up  
 6 with your invention?  
 7 A. I did not navigate the page.  
 8 Q. That was Grant?  
 9 A. It was the fir -- it was the first --  
 10 Grant did.  
 11 Q. Okay. Grant was able to navigate.  
 12 Right?  
 13 A. Yes.  
 14 Q. And how did he do that?  
 15 A. I don't recall.  
 16 Q. Did he use a mouse?  
 17 A. I don't recall. I wasn't paying  
 18 attention to how he would be navigating. It's the  
 19 first time I experienced this.  
 20 Q. You're aware, though, that before your  
 21 invention, people were able to navigate the Web.  
 22 Right?  
 23 A. Of course.  
 24 Q. Okay. And they were able to do it by  
 25 selecting navigation options using a pointing device.

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1 Right?  
 2 A. Well, I -- one -- one of the  
 3 distinctions at that time, one of them, was that you  
 4 would use a pointer device or a -- a mouse to move a  
 5 cursor on a page to the option that you wanted.  
 6 One of my distinctions at that time was  
 7 that that would not be required. That, to me, is --  
 8 that would be two steps. One step is to move the  
 9 cursor around to what you wanted and then click on it,  
 10 two steps. And what I envisioned would be one-to-one  
 11 relationship, would be one step, so --  
 12 Q. I -- I thought you said it was  
 13 navigation with unique inputs.  
 14 A. That's what I -- at that time, that was  
 15 one of the embodiments that I defined as unique input.  
 16 Unique input, to me, is one-on-one.  
 17 Q. Unique input, to you, is one step?  
 18 A. No, it's -- it's -- it's one-to-one.  
 19 Q. Okay.  
 20 A. If you see something on a page, like you  
 21 see on the iPhone, on a -- on a mobile page on the  
 22 iPhone, there's no mouse. You -- you look at that  
 23 page, you decide what you want, and in this case, you  
 24 take your finger and you activate the cell.  
 25 Q. Okay. But you'd never seen the iPhone

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1 in July of 1999.  
 2 Right?  
 3 A. No.  
 4 Q. Okay.  
 5 A. That's what I had envisioned in 1999.  
 6 We envisioned in 1999 what the iPhone is doing today.  
 7 Q. Now, you also envisioned something  
 8 called ABC-123.  
 9 Right?  
 10 A. I -- but that's familiar as something  
 11 that made it into our work product for -- I don't  
 12 recall the reason.  
 13 Q. You don't remember what that was?  
 14 A. No, but I did -- I recall that that --  
 15 that the -- that phrase, I think was a marketing idea  
 16 that we had.  
 17 Q. Okay. So just -- just to be sure I  
 18 understand, then, "navigation by unique inputs" meant  
 19 to you selecting a link with a touch screen.  
 20 Right?  
 21 A. That was one of the embodiments.  
 22 Q. What other embodiments did you have in  
 23 mind when you thought about navigating with unique  
 24 inputs?  
 25 A. In -- in -- before I met with

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1 Tom Coester, you could do it on a remote control and  
 2 any type of gadget that would afford you the ability  
 3 to a one-to-one relationship.  
 4 Q. Okay. What do you mean by "affording  
 5 you a one-to-one relationship"?  
 6 A. That you would have a choice, as one  
 7 example, to activate a link via one-to-one  
 8 relationship. That would be -- that would make --  
 9 Q. I'm asking you to tell me what you meant  
 10 by "a one-to-one relationship."  
 11 A. I -- I -- I -- that's what I meant.  
 12 Q. But you just used the word to define it.  
 13 I don't -- that doesn't enlighten me very much.  
 14 A. Doesn't do much for you, huh?  
 15 Q. No.  
 16 Can you explain what you mean by  
 17 "selecting a link with a one-to-one relationship"?  
 18 A. That's what I meant.  
 19 Q. You meant selecting it by a one-to-one  
 20 relationship, and you can't say any more?  
 21 You meant selecting a link with a  
 22 one-to-one relationship and you can't tell me what  
 23 "selecting a link with a one-to-one relationship"  
 24 means?  
 25 A. Well, I've done it, so I'll try to do it

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1 again.  
 2 Q. Okay. Try to do it again, please.  
 3 A. One embodiment would be, you would see  
 4 an option on -- on a screen and you would be able to  
 5 touch it with your finger. That's one-to-one, finger  
 6 to the option.  
 7 Another would be that you would see an  
 8 option on a screen, and they could be in the form of a  
 9 matrix, and the option you wanted was in a box of a  
 10 matrix, for example. It was in Box 4. You could push  
 11 4 on a remote control.  
 12 You could have a -- a -- a wand and  
 13 point to a particular option.  
 14 Q. Okay.  
 15 A. That's what I mean by one-to-one.  
 16 Q. Okay. Anything else?  
 17 A. Other -- I can't think of anything else  
 18 right now.  
 19 Q. What about using a button to scroll  
 20 through the links and then hitting "select"?  
 21 Would that qualify?  
 22 A. I don't understand what you mean by  
 23 that.  
 24 Q. Do you recall that in the patents in  
 25 this lawsuit, there's a description of scrolling

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1 through links using a button?  
 2 You know what I mean by that?  
 3 A. Pardon me?  
 4 Q. You don't recall a description in the  
 5 patents in this lawsuit, scrolling through links using  
 6 a scroll button?  
 7 A. What was your question?  
 8 Q. I'm asking you if you recall that.  
 9 A. Oh, do I recall that?  
 10 I could not recall all the text in  
 11 the --  
 12 Q. I'm not asking you if you recall --  
 13 A. Oh, I don't recall --  
 14 Q. I'm asking, do you recall that?  
 15 A. It sounds familiar, but I -- until --  
 16 unless I would read it, I couldn't confirm that that's  
 17 what it says -- I could not confirm. I'm sorry.  
 18 Q. Well, let me ask you, if you have a  
 19 remote control with an arrow on it that allows you to  
 20 move from one link to the next, and when you move to a  
 21 link, it's highlighted, and when you push the select  
 22 button, that follows that link, would that be a unique  
 23 input?  
 24 A. From the way you explained it to me and  
 25 the way I understand it, I don't think so.

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1 Q. Okay. Why not?  
 2 A. Well, because it would be too --  
 3 I -- I -- first of all, I -- you'd have to demonstrate  
 4 it in front of me, so I'm just speculating.  
 5 Q. Well, I'll show you the patent in a  
 6 little while --  
 7 A. Okay.  
 8 Q. -- because that's what it describes.  
 9 A. Okay.  
 10 Q. But since you don't remember it, we'll  
 11 just put it off until then.  
 12 All right. Now, you've mentioned  
 13 manipulating a region of a screen for scrolling and  
 14 zooming.  
 15 A. Yes.  
 16 Q. What was your understanding of that at  
 17 the time you and Grant came up with the invention?  
 18 A. Well, Grant mentioned it first. And my  
 19 understanding of the definition of manipulating -- one  
 20 of the definitions of manipulating would be using your  
 21 finger, in this case, on a region of the screen for  
 22 zooming and scrolling.  
 23 When Grant mentioned that phrase, that's  
 24 what I envisioned.  
 25 Q. What is it that you envisioned?

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1 THE WITNESS: Could you repeat the answer,  
 2 please?  
 3 (Whereupon the record was read as follows:)  
 4 "ANSWER: Well, Grant mentioned it first.  
 5 And my understanding of the definition of  
 6 manipulating -- one of the definitions of  
 7 manipulating would be using your finger,  
 8 in this case, on a region of the screen  
 9 for zooming and scrolling.  
 10 When Grant mentioned that phrase,  
 11 that's what I envisioned."  
 12 BY MR. STEPHENS:  
 13 Q. What is the "that," that you're  
 14 referring to?  
 15 A. Manipulating a region of the screen.  
 16 Q. And that's what I'm trying to  
 17 understand, what that means.  
 18 Touching the screen?  
 19 Is that what it means?  
 20 A. I just -- I'll stand by my answer.  
 21 Q. Well, I'm trying to -- to understand  
 22 what your answer means.  
 23 What did you mean when you said  
 24 "manipulating the screen using a finger"?  
 25 A. I'll try again.

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1 Q. Okay, please do.  
 2 A. When Grant mentioned manipulating a  
 3 region of the screen for zooming and scrolling, what I  
 4 understood that he meant was manipulating.  
 5 Manipulating -- the definition of  
 6 manipulating -- one of the definitions of manipulating  
 7 is using your finger, using your hand.  
 8 So when he said that, I envisioned you  
 9 would be using your finger on a region of the screen  
 10 for zooming and scrolling.  
 11 Q. So your understanding of the phrase  
 12 "manipulating a region of the screen for zooming and  
 13 scrolling" is using your hand on a region of the  
 14 screen for zooming and scrolling.  
 15 Right?  
 16 A. Well, hand or finger --  
 17 Q. Okay.  
 18 A. -- yes.  
 19 Q. Okay.  
 20 A. Yeah, that's -- that's what I  
 21 interpreted what he said at that time.  
 22 Q. And he used that -- those exact words?  
 23 A. Well, that's what I recall --  
 24 Q. Okay.  
 25 A. -- yes.

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1 Q. How did you understand the manipulation  
 2 to occur?  
 3 In other words, you're going to use your  
 4 hand or finger on a region of the screen for scrolling  
 5 and zooming.  
 6 How would you use your hand or finger to  
 7 do that?  
 8 What did you understand it?  
 9 A. Well, literally just what it says. You  
 10 would take your finger, you would touch a screen --  
 11 Q. Okay.  
 12 A. -- for zooming and scrolling.  
 13 Q. Okay. What would you do to zoom?  
 14 A. You can do anything. I didn't limit my  
 15 thought of what he meant, by any limitation. It could  
 16 be any touching of the screen for zooming or  
 17 scrolling.  
 18 Q. Okay. Well, so how would you -- what --  
 19 what specifically did you have in mind?  
 20 I understand you're saying you didn't  
 21 limit it.  
 22 Did you have anything specific in mind?  
 23 A. It was very general interpretation.  
 24 Q. Okay. So you didn't have in mind doing  
 25 a double tap or using two fingers or anything like

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1 that?  
 2 A. It could include that.  
 3 Q. But you didn't have those specific  
 4 things in mind?  
 5 A. I can't -- I don't recall.  
 6 Q. You don't recall having anything  
 7 specific like that in mind?  
 8 A. Well, I -- no, I just can't recall if I  
 9 had that in mind. I took -- I interpreted it to be  
 10 general, touching a region of the screen for zooming  
 11 and scrolling. It could mean anything.  
 12 Q. Okay. And you don't recall having any  
 13 more specific thoughts.  
 14 Right?  
 15 A. I can't recall, no.  
 16 Q. Okay. What does zooming mean?  
 17 A. Enlarging.  
 18 Q. Okay. And scrolling?  
 19 A. Means moving the screen up and down.  
 20 Q. Just like you could on a prior art  
 21 browser.  
 22 Right?  
 23 A. Well, I --  
 24 Q. You didn't know --  
 25 A. Yeah.

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1 Q. -- what you could in the prior art.  
 2 Is that Right?  
 3 A. No, I didn't know at that time.  
 4 Q. Okay.  
 5 A. That's certainly one embodiment of what  
 6 that meant.  
 7 Q. Did your understanding of manipulating a  
 8 region of the screen for scrolling and zooming include  
 9 using buttons to do that?  
 10 A. I don't recall.  
 11 Q. Now, you also mentioned content would be  
 12 organized into more general categories.  
 13 What did you mean by that?  
 14 A. Well, I said it could -- it could do  
 15 that. When I would look at the Yahoo or the AOL page,  
 16 and I saw, I believe over 100 links, I noticed that  
 17 some of them kind of were repeated, and that if you  
 18 had a category like entertainment, that may include  
 19 three links, just, you know, assuming that today.  
 20 So that could -- you could reduce your  
 21 options and categories by a third, just, you know, in  
 22 that particular exam.  
 23 That's what I meant.  
 24 Q. You also mentioned content in a matrix  
 25 form.

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1           What did that -- what did you mean by  
2 that?  
3           A. I meant that would be one of the  
4 interfaces that, to organize your content, could be  
5 used, one example.  
6           Q. Okay. What is a matrix form?  
7           A. You're asking for the definition of  
8 "matrix"?  
9           Q. I'm asking what you understood it to be  
10 at the time --  
11           A. Oh.  
12           Q. -- you invented it.  
13           A. At -- at --at that time, I did not have  
14 a definition.  
15           After talking to legal counsel, I  
16 became -- I became more aware of an understanding of  
17 what a -- the legal definition of a matrix would be.  
18           Q. Okay. Well, I'm trying to understand  
19 now what it was you invented when you invented it.  
20           So what did you have in mind when you  
21 invented it?  
22           MR. BECKER: Object. Form.  
23           THE WITNESS: Well, from --  
24           In the first week of July?  
25           ///

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1 BY MR. STEPHENS:  
2           Q. Yes, of 1999.  
3           A. '99.  
4           The -- the matrix was just an  
5 organizational configuration that could be within the  
6 page. It could be the whole page. It could be part  
7 of the page.  
8           And a matrix could have the broadest  
9 definition. It could be different sizes, different  
10 shapes, whatever the maximum definition of a matrix  
11 would be. And that was for organizing content.  
12           Q. So if I understand right, then, as you  
13 conceived it when you invented it, the matrix  
14 organization was really any organizational  
15 configuration.  
16           Right?  
17           A. Yes.  
18           MR. BECKER: Object. Form.  
19 BY MR. STEPHENS:  
20           Q. Now, how did you conceive implementing  
21 this invention that first week in July of 1999?  
22           A. The -- the next morning, I decided that  
23 I would find a patent attorney and file a patent on  
24 the invention.  
25           Q. Okay. I wasn't asking when you decided

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1 to file a patent.  
2           I asked what you had in mind about how  
3 to implement the invention.  
4           A. I wanted to file a patent and have  
5 further discussions with a -- with a patent attorney.  
6           Q. Okay. But how did you expect to be able  
7 to make your invention work?  
8           What was your understanding about how  
9 it --  
10           A. I --  
11           Q. -- would actually operate in the real  
12 world?  
13           A. I wanted some expertise, and I sought  
14 out a patent attorney as my first step.  
15           Q. Okay. Again, I'm not asking about the  
16 patent.  
17           I'm asking about how you would make your  
18 invention work, what you had in mind for making it  
19 actually function.  
20           A. Okay. I -- my first step was to engage  
21 a patent attorney, so I -- I have nothing more than  
22 that.  
23           Q. Okay. So you didn't have any idea other  
24 than to call a patent attorney --  
25           A. That would be my first step.

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1           Q. But I'm asking now if you had any idea,  
2 other than calling a patent attorney, how to implement  
3 your invention when you invented it.  
4           A. The next morning, my --  
5           Q. You said this again -- already.  
6           I'm asking now, what, besides calling a  
7 patent attorney, you had in mind, before you called  
8 the patent attorney, as to how to implement your  
9 invention.  
10           Did you have anything in mind as to how  
11 to implement your invention other than calling a  
12 patent attorney?  
13           MR. BECKER: Object. Form.  
14           THE WITNESS: I can only recall that I called  
15 a patent attorney. That's all I can recall.  
16 BY MR. STEPHENS:  
17           Q. Okay. And you don't remember any other  
18 thoughts about how to implement it.  
19           Right?  
20           A. Not the next morning, other than to call  
21 a patent attorney.  
22           Q. But what about the day you invented it?  
23           A. I -- I don't recall.  
24           Q. Okay. Now, when you were talking about  
25 reformatting with Grant on the day you came up with

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1 your invention, did you envision that reformatting to  
 2 be done by a machine or by people?  
 3 A. I did not -- I don't recall any other  
 4 thought further on -- on how the process would be  
 5 done.  
 6 Q. So you didn't anticipate that it would  
 7 be done by a machine.  
 8 Right?  
 9 A. I -- I had no further thought on it that  
 10 day.  
 11 Q. You had no further thought besides what?  
 12 Besides just the notion of reformatting?  
 13 A. Correct --  
 14 Q. Okay.  
 15 A. -- that I can recall.  
 16 Q. Did you have any thoughts about how you  
 17 would take the normal Web page and turn it into the  
 18 simplified user interface?  
 19 MR. BECKER: Object. Form.  
 20 THE WITNESS: I don't recall.  
 21 BY MR. STEPHENS:  
 22 Q. Did you have any thought about how you  
 23 would provide unique inputs for navigation?  
 24 A. I don't recall.  
 25 Q. Did you have any thought about how you

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1 would create a sister site?  
 2 A. I don't recall.  
 3 Q. Did you have any thought about how you  
 4 would manipulate a region of the screen for scrolling  
 5 and zooming?  
 6 A. You're talking about the first day?  
 7 Q. Yes.  
 8 A. I do not recall.  
 9 Q. Did you have any thought about how you  
 10 would organize the content from the page into more  
 11 general categories?  
 12 A. I do not recall.  
 13 Q. Did you have any thought at that time  
 14 about how you would organize the content from the Web  
 15 page into a matrix form?  
 16 A. I do not recall.  
 17 Q. Do you recall anything about any of  
 18 that, that you can share with me, that's not  
 19 privileged, at any time after you came up with your  
 20 invention?  
 21 A. I do not recall.  
 22 Q. Okay. And just to be clear, by "any of  
 23 that," I meant how you would implement all of these  
 24 different things, reformatting, simplified interface,  
 25 navigation with unique inputs, all of way through to

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1 the matrix form.  
 2 That's what you were answering.  
 3 Right?  
 4 A. That's correct --  
 5 Q. Okay.  
 6 A. -- without -- without divulging  
 7 privilege.  
 8 Q. Okay.  
 9 MR. STEPHENS: All right. Let's take a short  
 10 break.  
 11 THE WITNESS: Okay.  
 12 THE VIDEOGRAPHER: Going off the record.  
 13 The time is 11:39 a.m.  
 14 (Whereupon a recess was taken)  
 15 THE VIDEOGRAPHER: Back on the record.  
 16 The time is 11:53 a.m.  
 17 BY MR. STEPHENS:  
 18 Q. Mr. Gottfurcht, before the break, we  
 19 talked at length about what you conceived in that  
 20 first week of July 1999, and you were -- I --  
 21 constrained by privilege in what you could tell me.  
 22 Is there anything else at all you'd like  
 23 to tell Judge Davis or the jurors in Tyler about what  
 24 you conceived on that day in July of 1999?  
 25 MR. BECKER: Object. Form.

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1 THE WITNESS: I cannot think of anything more  
 2 at this moment.  
 3 BY MR. STEPHENS:  
 4 Q. Okay. Is there anything else at all  
 5 about how you had in mind implementing that invention  
 6 that you'd like to tell Judge Davis or the jurors in  
 7 Tyler?  
 8 A. I cannot recall any more at this moment.  
 9 Q. Okay. Thank you.  
 10 Now, I'd just like to clear up a few  
 11 things.  
 12 You're not claiming that you invented  
 13 the Web.  
 14 Right?  
 15 A. No.  
 16 Q. And you're not claiming you invented  
 17 hypertext.  
 18 Right?  
 19 A. No.  
 20 Q. You're not claiming you invented the  
 21 hypertext transport protocol, HTTP.  
 22 Right?  
 23 A. No.  
 24 Q. You're not claiming you invented the  
 25 extensible markup language, XML.

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1 Right?  
 2 A. No.  
 3 Q. You're not claiming you invented the  
 4 extensible stylesheet language, XSL.  
 5 Right?  
 6 A. No.  
 7 Q. You're not claiming you invented  
 8 cascading stylesheets.  
 9 Right?  
 10 A. No.  
 11 Q. You're not claiming you invented the  
 12 hypertext markup language, HTML.  
 13 Right?  
 14 A. No.  
 15 Q. And you're not claiming you invented the  
 16 extensible hypertext markup language, XHTML.  
 17 Right?  
 18 A. No.  
 19 You're saying by themselves?  
 20 That's what you're referring to, just  
 21 not part of anything but by themselves?  
 22 Q. Right.  
 23 You didn't --  
 24 A. Okay. You --  
 25 Q. You didn't invent any of those

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1 technologies.  
 2 Right?  
 3 A. That's correct.  
 4 Q. You didn't invent the idea of a website  
 5 with a simple interface.  
 6 Right?  
 7 A. I -- that would fall under the -- the  
 8 category of discussions with -- understandings with my  
 9 attorney.  
 10 Q. Okay. Well, Google existed before  
 11 July of 1999.  
 12 Right?  
 13 A. Not much before, I don't believe.  
 14 Q. But it did exist before July 1999?  
 15 A. I -- I can't -- I can't --  
 16 MR. BECKER: Object. Form.  
 17 THE WITNESS: I can't recall.  
 18 BY MR. STEPHENS:  
 19 Q. You don't know, okay.  
 20 So you don't know whether you invented  
 21 the notion of -- or you can't tell me whether you  
 22 invented the notion of a simple website.  
 23 Right?  
 24 MR. BECKER: Object. Form.  
 25 THE WITNESS: I -- I cannot, correct.

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1 BY MR. STEPHENS:  
 2 Q. Okay. Did you invent the notion of an  
 3 alternative Web page that's easier for some people to  
 4 use?  
 5 A. I -- I -- I do not know.  
 6 Q. Okay. You didn't invent cell phones.  
 7 Right?  
 8 A. No.  
 9 Q. And you didn't invent browsing a Web on  
 10 cell phones.  
 11 Right?  
 12 MR. BECKER: Object. Form.  
 13 THE WITNESS: I wasn't aware of browsing the  
 14 Web on cell phones in July of 1999.  
 15 BY MR. STEPHENS:  
 16 Q. So did you invent it or not?  
 17 A. I don't know.  
 18 Q. You didn't invent viewing the Web on  
 19 television.  
 20 Right?  
 21 MR. BECKER: Object. Form.  
 22 THE WITNESS: Could you -- clarify that --  
 23 that question.  
 24 BY MR. STEPHENS:  
 25 Q. What part of it do you need clarifying?

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1 A. Well, navigating the Web on television,  
 2 sure, that could break down into different ways of  
 3 doing that, back --  
 4 Q. But I'm asking now very generally.  
 5 Did you invent navigating the Web on  
 6 television?  
 7 A. I wouldn't be able to answer that  
 8 without you clarifying the question.  
 9 Q. Again, what is it that you need  
 10 clarified?  
 11 A. Well, navigating the Web on television  
 12 could mean being done by a number of different ways.  
 13 Q. Right.  
 14 And I'm asking you if you invented --  
 15 A. One of the ways?  
 16 Q. -- the basic idea -- not -- not a  
 17 specific way, but did you invent the basic idea of  
 18 navigating the Web on a television?  
 19 A. I'm unable to answer that question.  
 20 Q. Okay. You did not invent the iPod.  
 21 Right?  
 22 A. No.  
 23 Q. And you did not invent the iPhone.  
 24 Right?  
 25 MR. BECKER: Object. Form.

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1 THE WITNESS: Well, again, the same thing.  
 2 You'd have to let me know what you define as the  
 3 iPhone.  
 4 BY MR. STEPHENS:  
 5 Q. The device that you have in your pocket.  
 6 You didn't invent that.  
 7 Right?  
 8 A. Well, there -- there's -- there's parts  
 9 to it. So in other words --  
 10 Q. You invented parts of it, you're saying?  
 11 Is that what you're saying?  
 12 A. Yes, I would say that.  
 13 Q. You didn't invent the whole thing?  
 14 A. The whole thing, no.  
 15 Q. Okay. And, in fact, your allegations --  
 16 or EMG's allegations of infringement in this case are  
 17 limited to the Safari browser, the surfing simplified  
 18 websites, and the iTunes Store client on the iPhone.  
 19 Correct?  
 20 A. Let me go back to a question that you  
 21 just said before.  
 22 You said did I invent the iPod.  
 23 Do you mean that to be the iPod and the  
 24 iPod Touch, or just the iPod when you asked the  
 25 question?

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1 Q. We can separate those, if you like.  
 2 A. Okay. Okay.  
 3 Q. Did you invent the iPod?  
 4 A. No.  
 5 Q. Okay. Did you invent the iPod Touch?  
 6 A. Some of the technology that's used on  
 7 the iPod Touch, I believe so. And -- and I -- I  
 8 really can't answer that question more than that  
 9 because I'm not an expert.  
 10 Q. But you didn't invent the device as a  
 11 whole.  
 12 Correct?  
 13 A. The whole thing, everything involved,  
 14 that is correct.  
 15 Q. Okay.  
 16 A. 100 percent, no.  
 17 Q. And, in fact, again, your al -- EMG's  
 18 allegations against Apple in this case are limited to  
 19 the Safari browser, viewing simplified websites, and  
 20 the iTunes Store client, and some apps like the Yahoo  
 21 app for the iPod Touch and the iPhone.  
 22 Correct?  
 23 MR. BECKER: Object. Form.  
 24 THE WITNESS: I'm unable to answer that  
 25 question. That's a question which I would have

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1 reviewed with legal counsel.  
 2 BY MR. STEPHENS:  
 3 Q. Okay. So you can't tell me -- okay.  
 4 Fair enough.  
 5 You didn't invent the telephone portion  
 6 of the iPhone.  
 7 Right?  
 8 A. That's correct.  
 9 Q. And you didn't invent the music-playing  
 10 portion of the iPhone.  
 11 Correct?  
 12 A. That is correct.  
 13 Q. And you didn't invent the e-mail portion  
 14 of the iPhone.  
 15 Right?  
 16 A. That's correct.  
 17 Q. And you didn't invent the music-playing  
 18 part of the iPod Touch.  
 19 Right?  
 20 A. That's correct.  
 21 Q. Or the video-playing part of the iPod  
 22 Touch.  
 23 Right?  
 24 A. That is correct.  
 25 Q. Or the video-playing part of the iPhone.

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1 Right?  
 2 A. That is correct.  
 3 Q. Or the weather application on the  
 4 iPhone.  
 5 Right?  
 6 A. I -- I don't know the application.  
 7 Q. Okay.  
 8 A. So I'm unable to answer that question.  
 9 Q. Fair enough.  
 10 The calendar application, you didn't  
 11 invent that.  
 12 Right?  
 13 A. I don't -- again, I've never used it. I  
 14 don't recall. I mean, I've never used it.  
 15 Q. Okay. So you don't know whether you  
 16 invented that --  
 17 A. That's correct.  
 18 Q. -- because you've never used it?  
 19 A. Right.  
 20 Q. Okay. Can you tell me what aspects of  
 21 the iPhone you did invent?  
 22 MR. BECKER: Object. Form.  
 23 THE WITNESS: That would be privileged.  
 24 BY MR. STEPHENS:  
 25 Q. Is that true for all the other Apple



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1 products involved in this lawsuit?  
 2 A. Yes.  
 3 Q. You didn't invent iTunes.  
 4 Right?  
 5 A. Well, could you elaborate on -- does  
 6 iTunes include the iTunes Store, as is displayed on  
 7 the -- on the Apple devices or --  
 8 Q. Well, let's --  
 9 A. -- or --  
 10 Q. Let's break it apart.  
 11 You didn't invent iTunes on a laptop or  
 12 desktop.  
 13 Right?  
 14 A. That's correct.  
 15 Q. And you didn't invent the iTunes Store  
 16 on a laptop or desktop.  
 17 Right?  
 18 A. That is correct.  
 19 Q. Did you invent the idea of displaying a  
 20 two-dimensional matrix of cells?  
 21 A. That, again, would be privileged.  
 22 Q. So I guess you also can't tell me if you  
 23 invented the notion of displaying a two-dimensional  
 24 matrix of cells displaying hypertext links.  
 25 Right?

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1 A. That would be privileged, yes.  
 2 Q. Did you invent the idea of providing a  
 3 website organized by a hierarchy of categories?  
 4 A. That would be privileged.  
 5 Q. Did you invent transcoding?  
 6 A. I do not believe so.  
 7 Q. What is transcoding?  
 8 MR. BECKER: Object. Form.  
 9 THE WITNESS: The understanding that I have of  
 10 transco -- coding, and I do have an understanding of  
 11 it, was derived from legal counsel.  
 12 BY MR. STEPHENS:  
 13 Q. So you can't tell me about it?  
 14 A. I'd love to tell you about it, but I'm  
 15 not able to tell you about it.  
 16 Q. Your counsel won't let you?  
 17 A. I -- I think so, yes. I learned it from  
 18 counsel.  
 19 MR. STEPHENS: You're going to direct him not  
 20 to --  
 21 MR. BECKER: I direct him not to answer  
 22 anything that would divulge the contents of  
 23 attorney-client communication.  
 24 BY MR. STEPHENS:  
 25 Q. You didn't invent the idea of displaying

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1 Web advertisements.  
 2 Right?  
 3 A. I -- I -- I'm unable to answer that  
 4 question. It's too broad.  
 5 If you could break it down.  
 6 Q. Okay. You didn't invent the idea of  
 7 displaying a Web page with advertisements on it.  
 8 Right?  
 9 A. It depends on the format of the  
 10 advertisements and the format of the Web page.  
 11 Q. So you don't know whether you invented  
 12 it or not?  
 13 A. Well, it would depend on what format.  
 14 Q. I'm asking now about the broad notion of  
 15 a Web page --  
 16 A. The broad notion of it, I -- I would --  
 17 my -- I -- I -- I would not be able to respond to that  
 18 question.  
 19 Q. Because it's privileged?  
 20 A. Privileged, and I -- and I -- and I  
 21 think that there's some areas in there, which may be  
 22 privileged, that the patents did invent.  
 23 Q. And you can't be more specific than that  
 24 without waiving privilege.  
 25 Right?

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1 A. That's correct.  
 2 Q. You didn't invent the notion of  
 3 scrolling a Web page.  
 4 Right?  
 5 A. Well, can you define what you mean by  
 6 "scrolling a Web page"?  
 7 Q. Well, you could scroll a Web page before  
 8 July of 1999.  
 9 Right?  
 10 A. Well, are you talking about a mobile Web  
 11 page or a standard Web page?  
 12 Q. A standard Web page.  
 13 A. No, I did not.  
 14 Q. And you could scroll Web pages on mobile  
 15 devices before July of 1999, as well.  
 16 Right?  
 17 A. I wasn't aware.  
 18 Q. Okay. So you may have invented that  
 19 notion?  
 20 A. I -- I -- I'm not aware of how that was  
 21 done before that, and the answer is it's possible.  
 22 Q. Okay. And you didn't invent the idea of  
 23 zooming a Web page.  
 24 Right?  
 25 A. A Web page on a --

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1           Could you clarify more --  
 2       Q. I mean, the broad notion of zooming a  
 3 Web page.  
 4       A. On a PC?  
 5       Q. On any kind of browser.  
 6       A. I do not recall before 1999 ever seeing  
 7 a Web page -- a mobile Web page that would zoom.  
 8       Q. Okay. So you may have invented the  
 9 notion of zooming on a mobile device?  
 10      A. That's possible.  
 11      Q. Okay. But you didn't invent the notion  
 12 of zooming a Web page on a desktop PC --  
 13      A. That's --  
 14      Q. -- for example --  
 15      A. That's --  
 16      Q. -- right?  
 17      A. That's correct.  
 18 MR. STEPHENS: Okay. Mark that, please.  
 19 (Whereupon E. Gottfurcht Exhibit 1 was  
 20 marked for identification)  
 21 BY MR. STEPHENS:  
 22      Q. Mr. Gottfurcht, do you recognize the  
 23 Exhibit E. Gottfurcht 1?  
 24      A. If you represent that it is the patent  
 25 for the -- of the 845 --

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1       Q. I believe it is a complete and accurate  
 2 copy of U.S. Patent Number 7,020,845.  
 3       A. If it is, I do.  
 4       Q. Okay. And this is one of the patents in  
 5 this lawsuit.  
 6       Right?  
 7       A. That is correct.  
 8       Q. And you are an inventor listed on the  
 9 face of this patent.  
 10      Right?  
 11      A. Yes.  
 12      Q. Along with your son, Grant.  
 13      Right?  
 14      A. Yes.  
 15      Q. And this patent relates to the invention  
 16 that you've testified about this morning that you and  
 17 Grant came up with in July of 1999.  
 18      Right?  
 19      MR. BECKER: Object. Form.  
 20      THE WITNESS: Could you repeat the question?  
 21 BY MR. STEPHENS:  
 22      Q. This patent relates to the invention  
 23 that you've been testifying about here today that you  
 24 and Grant came up with in July of 1999.  
 25      Right?

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1       A. One of the patents, yes.  
 2       Q. Okay. And when you -- when this  
 3 application was filed, you read the application and  
 4 the claims that were filed.  
 5       Right?  
 6       A. Yes.  
 7       Q. And you signed a declaration saying that  
 8 you had read and understood the application and  
 9 claims.  
 10      Right?  
 11      A. Yes.  
 12      Q. And you have an understanding of the  
 13 claims of this patent.  
 14      Right?  
 15      A. I have an understanding based on my  
 16 attorney-client discussions.  
 17      Q. Okay. If you would turn to Claim 6 in  
 18 Column 10.  
 19      A. Okay.  
 20      Q. Are you with me?  
 21      A. Yes.  
 22      Q. Take a moment to read the claim and then  
 23 tell me, if you would, what is the relationship  
 24 between the Web page and the sister site that is  
 25 required by the claim?

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1       MR. BECKER: I'm going to object under local  
 2 rule 2. -- 2.5, that this is premature, and instruct  
 3 him not to answer to the extent it calls for divulging  
 4 attorney-client communications.  
 5 BY MR. STEPHENS:  
 6      Q. Okay. I'm asking for your  
 7 understanding, not for the construction that EMG is  
 8 going to propose to the Court.  
 9      A. My understanding is based upon my  
 10 attorney-client discussions.  
 11      Q. And you have no understanding other than  
 12 what you learned from counsel?  
 13      A. Not that I can recall.  
 14      Q. Okay. Is that true for all of the  
 15 claims of this patent?  
 16      A. Yes.  
 17      Q. Okay. So you will be unable to testify  
 18 at trial about the claims of the 845 patent without  
 19 waiving privilege.  
 20      Is that correct?  
 21      MR. BECKER: Object. Form.  
 22      THE WITNESS: I'm not an attorney, so --  
 23 that's a legal question.  
 24 BY MR. STEPHENS:  
 25      Q. Okay. Well, let me ask it differently.

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1 That's a fair point.  
 2 You will be unable to testify about the  
 3 claims of the 845 patent at trial without divulging  
 4 information that you learned in a conversation with  
 5 your counsel.  
 6 Is that right?  
 7 A. Unless I remember otherwise.  
 8 Q. Okay. Do you remember anything else?  
 9 A. Not right now, not today.  
 10 Q. Is there anything I could do to refresh  
 11 your -- refresh your recollection about things you may  
 12 know about the claims of the 845 patent that you did  
 13 not learn from counsel?  
 14 A. I can't think of anything.  
 15 Q. Okay. Do you have any reason to believe  
 16 that there is anything that you can tell me about the  
 17 claims of the 845 patent that you did not learn from  
 18 counsel?  
 19 A. If you were to parse out what I've  
 20 testified to and how that relates to -- to the claims  
 21 prior to hiring legal counsel, that answer would be  
 22 what I've already testified to.  
 23 Q. So --  
 24 A. But if you're asking me post hiring  
 25 legal counsel, I cannot recall any information that

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1 would be different than what I've learned from legal  
 2 counsel.  
 3 Q. Okay. So in other words, what you've  
 4 told me already today about the conception of the  
 5 invention is all you can say without divulging  
 6 privileged information about the claims of the 845  
 7 patent.  
 8 Is that right?  
 9 A. As I can think about today, as of this  
 10 moment, yes.  
 11 Q. Okay. And again, you have no reason to  
 12 think that there is anything else that you'll think of  
 13 later.  
 14 Right?  
 15 A. There might be.  
 16 Q. Okay. What might it be?  
 17 A. I -- I -- I don't know. It's just  
 18 something that's unknown.  
 19 Q. Well, that's why I'm trying to probe  
 20 it --  
 21 A. I know.  
 22 Q. -- because --  
 23 A. I know.  
 24 Q. -- people have a way of remembering --  
 25 A. I know. I know.

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1 Q. -- things after their deposition.  
 2 A. I know. So far, I'm unable to think of  
 3 anything more.  
 4 Q. Okay. And you also can't think of  
 5 anything that I might do to refresh your recollection.  
 6 Right?  
 7 A. I don't think so.  
 8 Q. Okay. And you don't have any reason to  
 9 believe that there are such things.  
 10 Is that right?  
 11 A. There may be.  
 12 Q. Okay.  
 13 A. There might be. But there's -- but  
 14 there -- there may be. I just can't think of anything  
 15 at this time.  
 16 Q. Okay. What leads you to believe that  
 17 there may be?  
 18 A. Well, you have to always keep the door  
 19 open. Nothing -- nothing is perfect.  
 20 Q. Okay. But there's nothing specific that  
 21 leads you to think there may be.  
 22 Right?  
 23 A. I just at this moment can't think of  
 24 anything.  
 25 Q. Okay. Fair enough.

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1 Could you take look at Figure 1?  
 2 A. (Complying.)  
 3 Q. Can you describe for me how your  
 4 invention works in conjunction with Figure 1, please?  
 5 A. That, again, would fall under my  
 6 attorney-client privilege.  
 7 Q. So you can't say anything about  
 8 Figure 1?  
 9 A. Not that I learned prior to hiring  
 10 Tom Coester, approximately July 7th, 1999.  
 11 Q. And it's your sworn testimony here today  
 12 that you can't testify about anything at all in  
 13 connection with your invention that happened after you  
 14 first talked about it with Mr. Coester that would not  
 15 reveal privileged information.  
 16 Is that right?  
 17 A. No, that's --  
 18 MR. BECKER: Object. Form.  
 19 THE WITNESS: -- that's not correct.  
 20 BY MR. STEPHENS:  
 21 Q. Okay. Well --  
 22 A. Just, I cannot think of anything at this  
 23 moment.  
 24 Q. Yeah, well, that's what I'm asking.  
 25 You can't think of anything at this

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1 moment about your invention that happened or that  
 2 you -- that involved anything that occurred after  
 3 July 7th, 1999, that would not require you to disclose  
 4 privileged information?  
 5 A. Not on Figure 1.  
 6 Q. How about anything else in the patent?  
 7 A. I -- I don't know. I --  
 8 Q. Take a minute and look through, because  
 9 I'm not going to go through and ask you about every  
 10 single sentence if --  
 11 A. You want me to take the time and read  
 12 the patent and go through each word of the patent?  
 13 Q. Well, why don't we start with looking at  
 14 all the figures.  
 15 So take your time, look through the  
 16 figures, and if you see one you can tell me something  
 17 about that you believe is not privileged, then say so.  
 18 MR. BECKER: Object to form.  
 19 You can go on. I just needed to get my  
 20 objection in.  
 21 THE WITNESS: Figure 2-A may be a page, except  
 22 for the sister site insert, which I may have seen  
 23 prior to engaging Tom Coester, Figure 2-A.  
 24 BY MR. STEPHENS:  
 25 Q. Okay. So you -- you may have seen the

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1 AOL.com page we see in Figure 2-A before you engaged  
 2 Mr. Coester?  
 3 A. I don't know if it's the exact page, but  
 4 I did see the AOL.com page, I believe I did, prior to  
 5 engaging Tom Coester.  
 6 Q. Okay.  
 7 A. This page has a sister site designation  
 8 in the upper right-hand corner which would not have  
 9 been on the page that I would have seen prior to  
 10 engaging Tom Coester.  
 11 Q. Okay. How about Figure 2-B?  
 12 A. I cannot recall whether this page was  
 13 prior to engaging Tom Coester or after engaging  
 14 Tom Coester.  
 15 Q. Okay. So does that mean you're not  
 16 going to tell me anything about it?  
 17 A. No, I --  
 18 MR. BECKER: Object. Form.  
 19 THE WITNESS: You can ask me questions about  
 20 it, but I -- I -- I'm -- I don't know if it was prior  
 21 or after --  
 22 BY MR. STEPHENS:  
 23 Q. Okay.  
 24 A. -- at this moment.  
 25 Q. How did you get from Figure 2-A to

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1 Figure 2-B?  
 2 A. Well, that would be an example of  
 3 reformatting, which I mentioned earlier.  
 4 Q. Okay. How do you do that reformatting?  
 5 A. You mean technically, how it's done?  
 6 Q. Yeah.  
 7 A. That would -- that would be an  
 8 understanding of information that I learned from  
 9 Tom Coester.  
 10 Q. Okay. So you learned how -- how to go  
 11 from Figure 2-A to Figure 2-B from Tom Coester?  
 12 A. Or other attorneys along the way.  
 13 MR. STEPHENS: Okay. Let's go a couple more  
 14 minutes, and then we'll take a break for lunch, if  
 15 that's okay with you guys.  
 16 MR. BECKER: Sure.  
 17 MR. STEPHENS: We have five more minutes on  
 18 the tape.  
 19 Q. How about Figure 2-C?  
 20 MR. BECKER: Object. Form.  
 21 THE WITNESS: Figure 2-C is a -- the homepage  
 22 of Yahoo, I believe, and I believe that I had seen  
 23 this page prior to engaging Tom Coester, maybe not  
 24 this exact page but the Yahoo homepage.  
 25 ///

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1 BY MR. STEPHENS:  
 2 Q. Okay. You see the dotted lines on  
 3 Figure 2-C?  
 4 A. Yes.  
 5 Q. What are those?  
 6 A. Those are -- represent -- they represent  
 7 knowledge that I received from Tom Coester.  
 8 Q. So you can't testify about it without  
 9 revealing privileged information?  
 10 A. Not at this time. That's my  
 11 recollection at this time.  
 12 Q. Apart from the dots, is Figure 2-C  
 13 representative of the Yahoo pages that existed before  
 14 you came up with your invention, as you understand it?  
 15 A. It may not have been this exact page.  
 16 Q. I understand some of the details may  
 17 have changed.  
 18 But otherwise, it looks the same.  
 19 Is that right?  
 20 A. To the best of my recollection. I don't  
 21 know if it's the full Yahoo page, it's -- or a  
 22 condensed Yahoo page, but it looks similar to this.  
 23 Q. Is that true for Figure 2-A, as well,  
 24 the AOL page?  
 25 A. Yes, I -- it looks familiar to what I

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1 would have seen -- I believe what I would have seen  
 2 prior to hiring Tom Coester.  
 3 Q. So is it fair to say that what you see  
 4 in Figure 2-A, apart from the sister site link, is  
 5 representative of the prior art before you came up  
 6 with your invention?  
 7 MR. BECKER: Object. Form.  
 8 THE WITNESS: I think so.  
 9 BY MR. STEPHENS:  
 10 Q. Is that true also for Figure 2-C, other  
 11 than the dotted lines?  
 12 A. I think so.  
 13 Did I -- was -- did this page exist, is,  
 14 I think what you're -- is the way I'm answering the  
 15 question, prior to July 1st of 1999.  
 16 Q. Yes, that's my question.  
 17 A. Yes.  
 18 Q. Meaning "yes," it did exist?  
 19 A. I believe so, yes.  
 20 Q. Okay.  
 21 MR. STEPHENS: All right. Let's break for  
 22 lunch, shall we?  
 23 MR. BECKER: Okay.  
 24 THE VIDEOGRAPHER: This marks the end of tape  
 25 Number 1 in the deposition of Elliot Gottfurcht.

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1 Going off the record.  
 2 The time is 12:18 p.m.  
 3 (Whereupon a lunch recess was taken  
 4 from 12:18 p.m. to 1:17 p.m.)  
 5 THE VIDEOGRAPHER: Back on the record.  
 6 Here marks the beginning of tape  
 7 Number 2 in the deposition of Elliot Gottfurcht.  
 8 The time is 1:17 p.m.  
 9 BY MR. STEPHENS:  
 10 Q. Mr. Gottfurcht, looking back at the 845  
 11 patent, I see there's a third inventor named  
 12 Albert-Michel Long.  
 13 Have I pronounced that correctly?  
 14 A. I think so.  
 15 Q. Who is he?  
 16 A. He was a co-inventor on -- on both  
 17 the 1 -- the 845 and the 196 patent.  
 18 Q. And how did he come to be a co-inventor?  
 19 A. He was engaged through a third party.  
 20 Q. Who is the third party?  
 21 A. I think it was called Online Labs.  
 22 Q. What did he contribute to the invention?  
 23 A. He contributed -- well, he worked as a  
 24 co-inventor with the other co-inventors and  
 25 contributed a document that they prepared. He

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1 contributed -- that was on the first patent.  
 2 And on the second patent, his  
 3 contribution involved working on the interface and  
 4 advertising.  
 5 Q. When you say the other patent, you mean  
 6 the 497 patent that's referenced there in the related  
 7 U.S. application data on the first page of the 845  
 8 patent?  
 9 A. Yes.  
 10 Q. And so he worked with the other  
 11 co-inventors on that patent to contribute a written  
 12 document.  
 13 Is that what you meant?  
 14 A. Yes.  
 15 Q. Why are not those other inventors on the  
 16 497 patent also inventors on the 845 patent?  
 17 MR. BECKER: Object. Form.  
 18 And to the extent it requires you to  
 19 divulge legal advice from counsel, I'll instruct you  
 20 not to answer that.  
 21 THE WITNESS: It was --  
 22 BY MR. STEPHENS:  
 23 Q. Go ahead.  
 24 A. It was advised by legal counsel.  
 25 Q. So you can't answer that question

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1 without divulging attorney-client privileged material  
 2 or --  
 3 A. They -- yes, I think that's the correct  
 4 answer.  
 5 Q. Okay. Let me ask it differently.  
 6 Without telling me the reason, do you  
 7 know the reason why they are not listed as inventors  
 8 on the 845 patent?  
 9 A. I believe I do.  
 10 Q. But you can't tell me without revealing  
 11 privileged information.  
 12 Right?  
 13 A. I think so.  
 14 Q. So what was Mr. Long's contribution to  
 15 the 845 patent?  
 16 MR. BECKER: Object. Form.  
 17 THE WITNESS: I -- I just answered the  
 18 question.  
 19 Would you like me to answer it again?  
 20 BY MR. STEPHENS:  
 21 Q. Sure.  
 22 A. Okay. He worked on the interface. He  
 23 worked on advertising. Advertising component and the  
 24 interface component is all I can recall at this time.  
 25 Q. Okay. And when you say the interface

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1 component, what are you referring to?  
 2 A. The simplified interface.  
 3 Q. As shown in Figure 2-B, or something  
 4 else?  
 5 A. Well, it's shown throughout the patent.  
 6 And a lot -- and several of these  
 7 figures, I believe he prepared.  
 8 Q. Okay. Which ones?  
 9 A. This is a guesstimate, but I -- it would  
 10 be Figure 8; Figure 9-A; Figure 9-B, I believe;  
 11 Figure 9-C; Figure 9-D; Figure 10-A; Figure 10-B;  
 12 Figure 10-C; Figure 10-D; Figure 10-E; Figure 10-F;  
 13 Figure 10-G; Figure 11; 12-A; Figure 12-B; Figure 13;  
 14 Figure 14.  
 15 Q. Any others?  
 16 A. In figures?  
 17 Q. Yes.  
 18 A. Well, I believe he did the -- the figure  
 19 on the AOL on Page 1.  
 20 Q. Sorry. You mean the -- the figure on  
 21 the front page of the patent?  
 22 A. Yes.  
 23 Q. That's the same as Figure 2-B, I  
 24 believe.  
 25 Right?

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1 A. I think you're right.  
 2 Q. Okay.  
 3 A. I think that's it.  
 4 Q. So he created Figure 2-B, also?  
 5 A. I think I already mentioned it, but the  
 6 answer is yes.  
 7 Q. Okay.  
 8 A. I believe so.  
 9 Q. Any others?  
 10 A. I believe -- I believe that would have  
 11 been it.  
 12 He may have inserted the sister site  
 13 link on 2-A.  
 14 Q. What's Mr. Long's background?  
 15 Do you know?  
 16 A. I do not recall.  
 17 Q. Is he an engineer?  
 18 A. I think he was more a graphic designer,  
 19 but I -- I -- I don't recall.  
 20 Q. Do you know who created Figure 1?  
 21 A. It was either in the co-inventors  
 22 report -- I'm not sure, but it may have come from the  
 23 co-inventor's report.  
 24 Q. Okay. Anywhere else you think it might  
 25 have come from, or is that --

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1 A. Well, it could have been from  
 2 Tom Coester, review of the co-inventor's report. I'm  
 3 not sure.  
 4 Q. Okay. And Figure 2-A, you thought that  
 5 Mr. Long might have inserted the sister site link.  
 6 Right?  
 7 A. Yes.  
 8 Q. Would he have created the rest of that  
 9 or captured it from the Internet?  
 10 MR. BECKER: Object. Form.  
 11 THE WITNESS: He may have done that, also.  
 12 BY MR. STEPHENS:  
 13 Q. Okay. What about Figure 2-C?  
 14 Do you know who created that?  
 15 A. I do not recall.  
 16 Q. How about Figure 3?  
 17 A. I'm not -- it -- it would have come, I  
 18 would guess, from the co-inventor's report or  
 19 Tom Coester.  
 20 Q. Figure 4?  
 21 A. I would guess from the co-inventor's  
 22 report or Tom Coester.  
 23 Q. Figure 5-A?  
 24 A. Co-inventor's report or Tom Coester.  
 25 Q. 5-B?

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1 A. Co-inventor's report or Tom Coester.  
 2 Q. 5-C?  
 3 A. I think from Tom Coester.  
 4 Excuse me, when I say Tom Coester, it  
 5 could be from someone in his office, either himself or  
 6 someone he directed.  
 7 Q. Okay. So 5-C, you thought came from him  
 8 or someone he directed?  
 9 A. Yes.  
 10 Q. Figure 6?  
 11 A. Again, since I didn't re -- prepare the  
 12 report, I wouldn't -- this should only be a guess, but  
 13 I would think this either came from the co-inventor's  
 14 report or Tom Coester, or a combination thereof.  
 15 Q. Figure 7?  
 16 A. The same.  
 17 Q. What's your understanding of Figure 5-C?  
 18 MR. BECKER: Object. Form.  
 19 THE WITNESS: I did not prepare this figure.  
 20 I'm not an expert in the area.  
 21 BY MR. STEPHENS:  
 22 Q. Do you have an understanding of it?  
 23 A. Well, I think I had -- probably had some  
 24 understanding ten years ago. I haven't looked at it  
 25 for ten years, and so right at this moment, I don't

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1 have an understanding of it.  
 2 Q. Can you tell me anything about it?  
 3 A. No, not at this moment.  
 4 Q. Why don't you take a minute and refresh  
 5 your recollection about looking at the patent, and  
 6 then tell me if you can remember anything about it.  
 7 A. I just don't recall.  
 8 Q. If you look at Column 5 of the patent,  
 9 near the bottom, you'll see a description of it.  
 10 Can you take a minute and look at that  
 11 and see if that refreshes your recollection?  
 12 A. Column 5 at the bottom?  
 13 Q. Yeah, about Line 59.  
 14 A. Okay.  
 15 Q. Does that refresh your recollection?  
 16 A. Not very much. It's been ten years  
 17 since I have reviewed that, and so it doesn't refresh  
 18 my recollection.  
 19 Q. You can't tell me what Figure 5-C is  
 20 about?  
 21 A. I --  
 22 MR. BECKER: Object. Form.  
 23 THE WITNESS: It would be -- I'm not able to,  
 24 no.  
 25 ///

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1 BY MR. STEPHENS:  
 2 Q. Okay. So it's been ten years since  
 3 you've read the 845 patent?  
 4 A. In its entirety, yes.  
 5 Q. When's the last time you read part of  
 6 it, before a few minutes ago, that is?  
 7 A. I don't recall.  
 8 Q. Did you read it when it issued in 2006?  
 9 A. I -- I do not recall.  
 10 Q. You read it when it was filed in 2000.  
 11 Right?  
 12 A. Yes.  
 13 Q. So you -- by ten years, you really meant  
 14 March of 2000?  
 15 A. No, no, no, it was -- it was filed in --  
 16 in -- this is a continuation.  
 17 Q. I don't think so.  
 18 A. It's not a continuation?  
 19 Q. A continuation in part.  
 20 A. Excuse me, continuation in part, which  
 21 was filed -- I'm sorry, it was a continuation in part  
 22 that was filed in March of 2000, so it's been almost  
 23 ten years.  
 24 Q. Yeah, but not ten years?  
 25 A. No, sorry. It was a couple months

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1 later.  
 2 Q. That's what you meant, though. That's  
 3 why I was asking.  
 4 A. Oh, I'm sorry, yes, that's what I meant.  
 5 I meant it's a little shy of ten years.  
 6 Q. Okay. And you didn't read it when it  
 7 was issued in 2006.  
 8 Did you read it --  
 9 A. I don't recall that I read it in 2006.  
 10 Q. Okay. And you just don't remember,  
 11 other than when it was filed in 2000, the last time  
 12 that you read any part of it before today.  
 13 Right?  
 14 A. Well, I may have read a part of it since  
 15 March of 2000. I don't -- I don't recall. I did read  
 16 it very carefully in March of 2000.  
 17 Q. Okay. Did you read any part of it in  
 18 connection with this case at any time?  
 19 A. No.  
 20 Q. So you didn't read it -- you didn't read  
 21 the claims to try to figure out whether Apple  
 22 infringed and you should bring the lawsuit?  
 23 MR. BECKER: Object. Form.  
 24 THE WITNESS: That would be privileged.  
 25 ///

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1 BY MR. STEPHENS:  
 2 Q. The act of reading is not --  
 3 A. No, I did not -- I did not read it for  
 4 that purpose. I relied on --  
 5 Q. My question is, did you read it at all  
 6 in connection with this lawsuit?  
 7 A. In con -- oh, since the lawsuit?  
 8 I do not recall. I relied on legal  
 9 counsel.  
 10 Q. Okay. Did you read it at all since you  
 11 first considered filing a lawsuit against Apple?  
 12 A. I do not recall.  
 13 Q. When did you make the decision to sue  
 14 Apple?  
 15 A. After the 916 was issued.  
 16 Q. What's the 916?  
 17 A. 196.  
 18 Q. Oh, okay. So that was -- you mean  
 19 U.S. Patent 7,441,196 that you, Grant, and Mr. Long  
 20 are also inventors on?  
 21 A. Yes. And I think that was --  
 22 Q. October 2008?  
 23 A. May have been a little bit prior to  
 24 that. The process of the patent office, seems that  
 25 you're likely to have -- a patent would be, between

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1 allowed and being issued, kind of an optimistic period  
 2 that that will happen.  
 3 Q. So you made a decision, after the claims  
 4 were allowed but before the patent issued, that you  
 5 were going to sue --  
 6 A. I think I made the official decision  
 7 after they were issued.  
 8 Q. But you had considered it --  
 9 A. I thought about it.  
 10 Q. Okay. When did you first think about  
 11 suing Apple?  
 12 A. Well, I wasn't -- I would say when it  
 13 was issued.  
 14 Q. That's the first time you thought about  
 15 it?  
 16 A. Well, I may have considered it between  
 17 when it was allowed and when it was -- when it was  
 18 issued.  
 19 Q. Okay. So you never thought about suing  
 20 Apple before the claims of the 196 patent were  
 21 allowed.  
 22 Is that right?  
 23 A. No, not that I recall.  
 24 Q. Okay. And you never thought about suing  
 25 Apple on the 845 patent between the time it issued in

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1 March of 2006 and the time the claims of the 196 were  
 2 allowed?  
 3 A. I believe so.  
 4 Q. You mean you believe you -- so --  
 5 A. I hadn't thought about it.  
 6 Q. Okay. Thank you.  
 7 Take a look at Figure 3 of the 845  
 8 patent, please.  
 9 A. (Complying.)  
 10 Q. Can you tell me what's described there?  
 11 A. I'm not an expert, so -- and I didn't  
 12 prepare the document, so the information that I would  
 13 have at the time that this continuation in part were  
 14 filed, I had reviewed with legal counsel. So that  
 15 would -- that part would be privileged.  
 16 Q. Do you understand what's displayed -- or  
 17 what's described there?  
 18 A. I -- I have some understanding.  
 19 Q. Okay. Can you explain it, please?  
 20 A. Well, it comes from information -- comes  
 21 from -- my understanding comes from my attorney.  
 22 Q. Okay. So other than what your attorney  
 23 told you, you have no understanding of what's in  
 24 Figure 3.  
 25 Is that right?

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1 A. I can -- I -- I'm unable to parse  
 2 whether I learned anything other than from my lawyer,  
 3 so I --  
 4 I do know that I reviewed this with  
 5 Tom Coester on more than one occasion.  
 6 Q. It's not enough to have reviewed a  
 7 document with a lawyer to then not ever have to  
 8 testify about it.  
 9 If you have -- if you have any  
 10 independent understanding of it, you need to tell me  
 11 about it.  
 12 And what you're saying is, you don't  
 13 have any independent understanding.  
 14 Is that right?  
 15 A. Not that I can recall.  
 16 Q. Okay. How about Figure 4?  
 17 Can you tell me what Figure 4 is?  
 18 A. On Figure 4, I did not prepare Figure 4,  
 19 I do not have the expertise to understand Figure 4. I  
 20 reviewed Figure 4 before the patent -- the  
 21 continuation in part were filed.  
 22 And I have no recollection of any  
 23 information other than my understanding from legal  
 24 counsel.  
 25 Q. Okay. Did you ever attempt to build any

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1 hardware in connection with your inventions?  
 2 A. I don't believe so.  
 3 Q. How about Figure 5-A?  
 4 Can you explain what that is?  
 5 A. I don't know. I do not have the  
 6 expertise to explain Figure 5-A.  
 7 Q. How about Figure 5-B?  
 8 A. The same answer.  
 9 Q. 5-C, we've talked about.  
 10 Figure 6?  
 11 A. The same answer.  
 12 Q. ??  
 13 A. Same answer.  
 14 Q. When you came up with your invention,  
 15 did you have in mind a way to transmit the simplified  
 16 interface over a network to the device that you'd view  
 17 it on?  
 18 MR. BECKER: Object. Form.  
 19 THE WITNESS: I don't believe so.  
 20 BY MR. STEPHENS:  
 21 Q. Did you subsequently come up with an  
 22 understanding of how that would happen?  
 23 MR. BECKER: Object. Form.  
 24 THE WITNESS: Could you please repeat the  
 25 question?



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1 BY MR. STEPHENS:  
 2 Q. Yeah, I'll just rephrase it.  
 3 Did you, after your initial conception,  
 4 come up with an idea for how to transmit the  
 5 simplified matrix interface over a network to a device  
 6 that would be used to view it?  
 7 A. If I did, it would have been through  
 8 consulting with my attorney, and that would be my  
 9 understanding. Other than that, I don't recall.  
 10 Q. Okay. So you can't tell me anything  
 11 about how you would transmit the simplified interface,  
 12 for example, that we see in Figure 2-B, over a  
 13 network.  
 14 Right?  
 15 A. I just don't recall at this moment.  
 16 Q. Is that because you don't remember  
 17 whether you ever came up with a solution or that you  
 18 don't remember anything that's not privileged, or  
 19 something else?  
 20 A. I don't remember that's anything  
 21 that's -- wouldn't be privileged.  
 22 Q. Okay. And that's because anything you  
 23 know about how to transmit Figure 2-B over a network,  
 24 you learned from an attorney.  
 25 Is that right?

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1 A. No, I may have learned from another  
 2 source, but I can't recall at this time.  
 3 Q. Okay. So as far as you know --  
 4 A. Did you say 2-B?  
 5 Q. Yes.  
 6 A. Okay.  
 7 Q. As far as you know sitting here today,  
 8 anything you know about how to transmit Figure 2-B  
 9 over a network, you learned from an attorney?  
 10 MR. BECKER: Object. Form.  
 11 THE WITNESS: No, I'm saying that I may have  
 12 learned it through other sources, I just can't recall  
 13 at this time.  
 14 BY MR. STEPHENS:  
 15 Q. Right.  
 16 So therefore, you don't know of learning  
 17 anything about how to transmit Figure 2-B over a  
 18 network, other than what you learned from an attorney.  
 19 Right?  
 20 A. I can't recall.  
 21 Q. Okay. If you'll turn to Column 2 --  
 22 Actually, before we do that, if you  
 23 could turn to Figure 14.  
 24 A. (Complying.)  
 25 Q. Can you tell me what Figure 14 is once

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1 you've gotten there and had a chance to look at it?  
 2 A. I did not prepare the document, so it  
 3 would be difficult for me to guess the context of what  
 4 Figure 14 is.  
 5 Q. So you don't know what it is?  
 6 A. Well, I -- outside of the document, it  
 7 looks to me to be an example of a matrix interface.  
 8 Q. Okay. And is the entire display a  
 9 matrix?  
 10 A. Well, it -- it could be.  
 11 Q. Okay. But it doesn't have to be?  
 12 A. I would -- I would classify that as a  
 13 matrix --  
 14 Q. Okay.  
 15 A. -- an example of a matrix.  
 16 Q. If you turn now to Column 2.  
 17 A. Okay.  
 18 Q. It's referring to Figure 1.  
 19 Do you see that in the "Detailed  
 20 Description"?  
 21 A. I do.  
 22 Q. And it says, "Figure 1 is a block  
 23 diagram of a system employing one embodiment of the  
 24 invention. A wide-area network 10, such as the  
 25 Internet, couples together plurality of communication

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1 nodes. Some nodes, such as node 12, may be a standard  
 2 prior art PC executing any conventional Web browser.  
 3 Alternatively, note 12 might be a set top box and  
 4 television, or an Internet appliance, or a wireless  
 5 device, such as a Web-enabled cell phone."  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. And it goes on to say, "Additionally,  
 9 there are server nodes connected to WAN [sic], such as  
 10 server node 16, which may be any conventional Web  
 11 server."  
 12 And then it says, "Also, coupled to  
 13 WAN 10 are browser nodes [sic] running a custom  
 14 browser that facilitate access to information and  
 15 services provided by [sic] the custom browser  
 16 node 22."  
 17 Do you see that?  
 18 A. Yes.  
 19 Q. Did you ever, in your efforts to make  
 20 prototypes of your invention, develop a custom  
 21 browser?  
 22 A. I don't recall.  
 23 Q. What would you look at to try to figure  
 24 that out, if you were going to go research the  
 25 question?

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1 A. What would I -- my process be?  
 2 Q. Yes.  
 3 A. Well, first process would be -- is to  
 4 call Tom Coester --  
 5 Q. Okay.  
 6 A. -- and review it with him, to explain  
 7 what this means.  
 8 Q. So you'd ask Mr. Coester to explain what  
 9 the patent means?  
 10 A. No, no -- well, yes. Again, I haven't  
 11 looked at this for ten years.  
 12 Q. Okay. And then what?  
 13 A. I would review it with him to refresh my  
 14 recollection, and then I would be better equipped to  
 15 answer your question.  
 16 Q. Okay.  
 17 A. I'm sorry. We had this review with --  
 18 Q. So --  
 19 A. -- Tom.  
 20 Q. -- is it possible you did try to develop  
 21 a custom browser and you just don't remember?  
 22 A. I -- I don't understand what this  
 23 language means, so I -- I'm unable to answer your  
 24 question.  
 25 Q. Okay. You understood it when you filed

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1 the patent application?  
 2 A. Yeah, I -- I read the document several  
 3 times and had -- in meetings with Tom Coester, and I  
 4 had a lot of questions and he explained them to me.  
 5 Q. Okay. But you don't understand it  
 6 today?  
 7 A. That's correct.  
 8 Q. Okay.  
 9 A. Can't recall ten years later.  
 10 Q. In that same place in Column 2, just a  
 11 little bit further on, it says, "Content partners,  
 12 such as content partner node 14 provide content in a  
 13 special -- specified format that facilitates its use  
 14 by the client nodes."  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. What format was that?  
 18 A. Again, I'm not an expert, and I would  
 19 have to rely on a review with Tom Coester.  
 20 Q. Okay. So you just don't know?  
 21 A. I just -- I don't remember. I'm not an  
 22 expert.  
 23 Q. When you say you're not an expert, what  
 24 are you not an expert in?  
 25 A. I'm not a expert in the -- in the field

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1 that would give me information explained here.  
 2 Q. Okay.  
 3 A. I'm not an engineer.  
 4 Q. Can you show me where in this patent it  
 5 talks about scrolling or zooming with a finger?  
 6 A. I believe the language is, "manipulating  
 7 region of the screen."  
 8 Q. Okay.  
 9 A. And I'd have to read the whole patent to  
 10 remember where that is.  
 11 But I re -- my recollection is that the  
 12 patent talked about manipulating a region of the  
 13 screen for zooming and scrolling.  
 14 Q. Okay. Other than the word "manipulate,"  
 15 are you aware of any disclosure in this patent that  
 16 describes using a finger to scroll or zoom?  
 17 A. Understanding that my definition of  
 18 "manipulation" includes a finger.  
 19 Q. I --  
 20 A. Are you saying other than using the word  
 21 "manipulation"?  
 22 Q. Yes.  
 23 Other than that one word, are you aware  
 24 of anything in the patent that discloses using a  
 25 finger to scroll --

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1 A. I would have to take some time and read  
 2 this.  
 3 Q. Go ahead.  
 4 A. It could take an hour.  
 5 You want me to do it?  
 6 Okay.  
 7 Can I mark on this exhibit?  
 8 Q. Sure.  
 9 A. Okay. All right.  
 10 Q. If it helps, Column 5, it's talking  
 11 about Figure 5-B being a flow diagram of client side  
 12 manipulation of a segmented page.  
 13 A. So you're referring me to Column 5?  
 14 Q. I am --  
 15 A. Okay.  
 16 Q. -- Line 5.  
 17 A. Line 5.  
 18 You said I couldn't -- I could mark on  
 19 this?  
 20 Q. You can, yes.  
 21 A. Okay. You're asking me to find the word  
 22 "manipulation"?  
 23 Q. No, I'm asking you to point to me where  
 24 it discloses using a finger to scroll or zoom.  
 25 A. The word "finger", you're asking me if

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1 the word "finger" --  
 2 Q. No. But if you see that, obviously,  
 3 that would be that kind of disclosure.  
 4 I'm asking for any disclosure of any  
 5 kind, whether it's the word "manipulation" or anything  
 6 else.  
 7 A. Oh, you -- so "manipulation" or "finger"  
 8 is what I'm looking for?  
 9 Q. No, I'm asking you for any disclosure of  
 10 using a finger to scroll or zoom.  
 11 Whatever you think that disclosure is, I  
 12 want you to identify it for me.  
 13 A. Okay.  
 14 Q. Doesn't have to be the word "finger."  
 15 It could be --  
 16 A. I understand.  
 17 Q. Okay.  
 18 A. I'm not quite finished, but --  
 19 Q. All right.  
 20 A. Okay. Go ahead.  
 21 Q. So now, if you could just identify for  
 22 me each place where you found disclosure of scrolling  
 23 or zooming using a finger.  
 24 A. Well, you know, I -- I was looking for  
 25 the word "finger." I could not find "finger."

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1 I did find "manipulation."  
 2 I'd have to reread it for -- for the  
 3 words "zooming" and "scrolling."  
 4 Q. Well, no, I'm not asking you to do that.  
 5 A. We'll you're --  
 6 Q. So --  
 7 A. I'll read it again to look for those  
 8 words or --  
 9 Q. No.  
 10 Well, what were you looking for?  
 11 Why don't you tell me that.  
 12 A. I was looking for "finger."  
 13 Q. Okay. And you didn't find that?  
 14 A. I found "manipulating" --  
 15 Q. Okay.  
 16 A. -- "manipulation."  
 17 Q. Anything else?  
 18 A. Well, I was only looking for "finger"  
 19 and "manipulation," but I can read it again.  
 20 Q. Well, I asked you specifically to look  
 21 for anything that disclosed using a finger for  
 22 scrolling or zooming.  
 23 And you didn't find the word "finger";  
 24 you did find the word "manipulation."  
 25 A. Right.

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1 Q. Did you find anything else?  
 2 A. Scrolling and zooming, I did find.  
 3 Q. Okay. I'm asking about using a finger  
 4 to scroll or zoom.  
 5 Other than the word "manipulate," did  
 6 you find anything?  
 7 A. I could not find the word "finger."  
 8 Q. Did you find anything other than the  
 9 word "manipulate" that you believe --  
 10 A. I mean --  
 11 Q. -- discloses using a finger to scroll or  
 12 zoom?  
 13 A. I -- I didn't prepare the document, so I  
 14 could only let you know from a -- you know, a lay  
 15 person reading it to interpret what you mean by that.  
 16 But I saw "manipulation," I saw  
 17 "zooming," I saw "scrolling."  
 18 I did not see "finger."  
 19 Q. Okay. And you didn't see anything other  
 20 than the word "manipulation" that supports the view  
 21 that the patent discloses using a finger to scroll or  
 22 zoom.  
 23 Right?  
 24 A. I -- I wouldn't be -- well, I didn't  
 25 prepare the doc -- the document, so I'm not prepared

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1 to --  
 2 Q. Take -- take as long as -- if you want  
 3 to --  
 4 A. I don't think I'm qualified because I  
 5 didn't prepare the document. I could spend another  
 6 couple hours --  
 7 Q. But in the time that you took, you were  
 8 unable to find anything.  
 9 Right?  
 10 A. No, I was unable to find the word  
 11 "finger."  
 12 Q. I asked you something broader than that.  
 13 If you need more time to answer my  
 14 broader question, take it.  
 15 A. Give me the keywords.  
 16 One of them is "manipulation" --  
 17 Q. I'm not asking for keywords.  
 18 I'm asking for anything, any disclosure  
 19 whatsoever of any kind in the patent that you believe  
 20 supports the idea of scrolling with a finger or  
 21 zooming with a finger.  
 22 A. Scrolling --  
 23 Well, I would say "manipulating."  
 24 Q. Anything else?  
 25 A. Anything that means finger or

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1 manipulation?  
 2 My answer to that would be, not in this  
 3 reading. And I did not write the document, so I  
 4 wouldn't be qualified to interpret the language in  
 5 here at this time, ten years since I've reviewed it  
 6 with counsel.  
 7 So as a lay person, I would say  
 8 "manipulating" would be a word that I understand, and  
 9 I did see it in here.  
 10 Of course, I saw "zooming" and  
 11 "scrolling," and I understand that.  
 12 But there's a lot of words in here I do  
 13 not understand, so I could not give you 100 percent  
 14 answer.  
 15 Q. Okay. But on this reading, you didn't  
 16 find anything other than the word "manipulate," which,  
 17 to you, discloses --  
 18 A. There are a lot of words I didn't  
 19 understand, so I'm unable to tell you whether or not  
 20 they had meanings to mean finger or manipulating or  
 21 something like that.  
 22 Q. I understand that.  
 23 All I'm asking are for the ones you did  
 24 understand.  
 25 A. The ones that I did understand, I found

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1 the word "manipulate" and "manipulation."  
 2 Q. And nothing else.  
 3 Right?  
 4 A. Nothing else that -- in this reading --  
 5 I may miss something -- that would mean -- that would  
 6 be "finger" or "manipulating" or "manipulation."  
 7 Q. But --  
 8 A. There could be other words in here that  
 9 could legally be interpreted by an expert.  
 10 Q. But you didn't see anything else that  
 11 you interpreted --  
 12 A. That I -- that I could interpret, I did  
 13 not see anything else that I could interpret to mean  
 14 that.  
 15 Q. Okay. Did you look at the figures,  
 16 also?  
 17 A. No.  
 18 Q. Okay. Why don't you take a minute and  
 19 look through the figures and see if you see anything  
 20 in there that shows the use of a finger to scroll or  
 21 zoom.  
 22 A. Well, again, I'm not -- I didn't write  
 23 the document. I'm not an expert. So there could be  
 24 words and meanings here that I would -- wouldn't be  
 25 qualified to -- to interpret.

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1 What was your question again?  
 2 Q. Is there anything that you understand in  
 3 the figures to show the use of a finger to scroll or  
 4 to zoom?  
 5 A. Finger, so I -- I didn't see the word  
 6 "finger." I'm not -- just to sum up, I didn't see the  
 7 word "finger." I saw the word "manipulation," that  
 8 means finger.  
 9 There were many words that I did not  
 10 understand, that could mean finger or could mean  
 11 manipulation.  
 12 Q. But nothing that you understand to mean  
 13 finger, as you sit here today.  
 14 Right?  
 15 A. Nothing that I understand -- that I  
 16 could understand to mean finger, other than  
 17 manipulation, in this reading that I did, which isn't  
 18 perfect, today.  
 19 Q. Okay. And that includes the figures  
 20 now.  
 21 Right?  
 22 A. Well, again, the fig -- figures, I  
 23 didn't prepare the figures, I'm not an expert on the  
 24 figures, so I -- I would be unable to conclude whether  
 25 the figures have that meaning or not.

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1 Q. Well, take a look, and if there's  
 2 anything in there that you can conclude shows the use  
 3 of a finger to scroll or to zoom, just point it out  
 4 for us, please.  
 5 A. Well, the -- the problem here is, the  
 6 figures have to be read in context with the  
 7 specifications --  
 8 Q. Okay.  
 9 A. -- the description of the figures.  
 10 And I'm not -- I didn't prepare the  
 11 document, so I'm not -- it's not possible for me not  
 12 to be an expert, to take figures that are described by  
 13 specifications, which I did not understand, and to  
 14 conclude whether or not they mean finger or  
 15 manipulation for scrolling and zooming.  
 16 Q. Now, you understood it when it was  
 17 filed.  
 18 Right?  
 19 A. At the time it was filed, I -- I -- I  
 20 read these doc -- this document and the other patent a  
 21 few times. I had a number of questions.  
 22 I went to see Tom Coester, and he  
 23 answered the questions for me.  
 24 Q. Okay. And so you understood it, and you  
 25 signed a declaration --

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1 A. That's correct.  
 2 Q. -- confirming that you understood it?  
 3 A. That's correct, after I asked him these  
 4 questions.  
 5 Q. And that's true for the 196 patent, as  
 6 well.  
 7 Right?  
 8 A. Yes.  
 9 Q. And you understand that the  
 10 specification and figures are identical in the 196  
 11 patent to the 845.  
 12 Right?  
 13 A. I believe so, yes, yes.  
 14 Q. And that was filed in March of 2006.  
 15 Right?  
 16 A. The 845?  
 17 Q. No, the 196.  
 18 A. If that's what it says, yes.  
 19 Q. It says that on the front, I'll tell you  
 20 that.  
 21 A. Okay.  
 22 Q. And at that point, you read the 196  
 23 application before it was filed --  
 24 A. Correct.  
 25 Q. -- and you understood it?

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1 A. Correct.  
 2 Q. And you affirmed as much under  
 3 penalty of perjury in a declaration filed with the  
 4 Patent Office.  
 5 Right?  
 6 A. Correct.  
 7 Q. So at least as of March of 2006, you  
 8 understood the contents of the specification and  
 9 figures in the 845 patent, right, because they're the  
 10 same as the 196?  
 11 A. I -- yeah, I think that the -- the  
 12 filing was a continuation.  
 13 Q. That's right.  
 14 A. So I read the original, okay, and asked  
 15 ques -- questions on the original. That's when I  
 16 filed under penalty of perjury.  
 17 I think when you file a continuation,  
 18 you don't make a statement.  
 19 Q. That's not true. And I -- if you'd  
 20 like, I'll get you the declaration.  
 21 A. I don't know. If -- if it's true that I  
 22 filed under penalty of perjury, then I guess I read it  
 23 and asked the questions.  
 24 Q. Yeah, we have the declaration. I'd just  
 25 as soon not mark a 300-page document, but --

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1 A. Okay.  
 2 Q. -- you did, in fact, sign a declaration,  
 3 swearing that you read and understood the application  
 4 and claims --  
 5 A. Then I did read it, that's correct.  
 6 Q. -- in 2006?  
 7 A. That's correct.  
 8 Q. Less than ten years ago?  
 9 A. Less than ten years ago.  
 10 Q. But you forgot that understanding in the  
 11 three years since then.  
 12 Right?  
 13 A. That's correct.  
 14 Q. Okay. And again, if you just take a  
 15 look through the figures, if you can't understand the  
 16 figures and can't identify anything that -- that shows  
 17 a finger for scrolling or zooming, just say so.  
 18 But if you do see anything that, in your  
 19 understanding, supports the view that this patent  
 20 discloses a finger for scrolling or zooming, identify  
 21 it for me, please.  
 22 A. Okay. In my review -- I could review it  
 23 again -- my expertise -- I was unable -- I'm unable to  
 24 answer your question because I don't have the  
 25 expertise to understand all the language.

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1 Q. Okay. So you can't point to anything?  
 2 A. Well, I pointed -- there -- there are a  
 3 couple places where manipulation is mentioned. I may  
 4 have missed some. There are places where scrolling is  
 5 mentioned. There's places where zooming is mentioned.  
 6 Q. Okay. And did you mark the places where  
 7 manipulation was mentioned?  
 8 A. I -- I -- there are two places that I  
 9 saw. There may have been others that I missed.  
 10 Q. Okay. If you could just read into the  
 11 record the column and line number. I know you've  
 12 marked them and that's an exhibit, which the court  
 13 reporter will keep, but if you could just read them  
 14 in -- the locations into the record.  
 15 A. And again, I'm reading in the word  
 16 "manipulation" but not including any other references  
 17 which I did not understand.  
 18 Q. Okay.  
 19 A. I'm reading Column 3, Line 14, through  
 20 segmentation. The page is divided into regions.  
 21 "Individual regions may then be brought into focus,  
 22 permitting simplified navigation interface and  
 23 manipulation of the data within that region."  
 24 Q. Okay. And where else did you see the  
 25 word "manipulate"?

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1 A. This would be Column 5, Line 5. Figure  
 2 5-B is a flow diagram of client side manipulation of a  
 3 segmented page in one embodiment of the invention.  
 4 Q. Okay. Did you see the word "manipulate"  
 5 anywhere else?  
 6 A. I could not find it, but I would not say  
 7 that it's not in here. But in the reading that I just  
 8 completed, I could not find --  
 9 Q. Okay.  
 10 A. -- another example, as I understand.  
 11 Q. Understood.  
 12 Take a look at Figure 9-B, please.  
 13 A. 9-B?  
 14 Q. Yeah.  
 15 Can you tell me what that is?  
 16 A. 9-B?  
 17 Q. Yeah.  
 18 A. Could you please repeat your question?  
 19 Q. Yeah.  
 20 Can you tell me what Figure 9-B is?  
 21 A. According to the specifications, Figure  
 22 9-B, "The contents of the focus window have been in  
 23 larger zoom such that only four advertisements are  
 24 displayed in ad cell 900."  
 25 Q. Okay. And that -- if you compare it to

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1 Figure 9-A, you can see that the words Guess,  
 2 Banana Republic, Patagonia, and Nordstrom.com are  
 3 bigger, right, in Figure 9-B?  
 4 A. Than in 9-A?  
 5 Q. Yes.  
 6 A. Correct.  
 7 Q. What's your understanding of how, in the  
 8 preferred embodiment described in the patent, the  
 9 system determined how much to enlarge the contents of  
 10 900?  
 11 MR. BECKER: Object. Form.  
 12 THE WITNESS: I -- I'm not an expert, and it's  
 13 been a number of years since I've read and understood  
 14 that portion of the specifications.  
 15 BY MR. STEPHENS:  
 16 Q. So you don't know?  
 17 A. Well, at this moment, I don't know. I  
 18 don't remember.  
 19 Q. Do you recall what you had in mind when  
 20 you came up with the invention?  
 21 MR. BECKER: Object. Form.  
 22 THE WITNESS: What I had in mind for zooming  
 23 and scrolling?  
 24 BY MR. STEPHENS:  
 25 Q. How -- how the system would figure out

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1 how much to increase the size in zooming.  
 2 A. Well, when we came up --  
 3 You're talking about the July --  
 4 Q. Yes.  
 5 A. -- timeframe?  
 6 Again, the manipulation of a region of a  
 7 screen, or finger manipulating or touching a region of  
 8 a screen for zooming and scrolling, was very broad.  
 9 It's the broadest interpretation that you could have  
 10 with that.  
 11 Q. So you didn't -- you did not have in  
 12 mind a specific way of doing it.  
 13 Is that right?  
 14 A. Well, I had in mind a way where you  
 15 would touch a screen, a region of a screen, for  
 16 zooming and scrolling --  
 17 Q. And how would --  
 18 A. -- yes.  
 19 Q. How would the system figure out whether  
 20 you wanted to zoom or to scroll or to follow a link  
 21 when you touched the screen?  
 22 A. Well, one embodiment it would be,  
 23 what -- whatever the user was doing in the  
 24 manipulation.  
 25 Q. I don't understand.

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1 A. Well, the -- the broadest definition of  
 2 manipulating a region of the screen for zooming and  
 3 scrolling, and it would include all the embodiments  
 4 within that definition.  
 5 Q. So how would the system know when you  
 6 touched the screen whether you wanted it to zoom or to  
 7 scroll or to following a link instead?  
 8 A. It would be the broadest  
 9 interpretation --  
 10 Q. Okay. So under --  
 11 A. -- which would mean --  
 12 Q. -- that broadest interpretation, how  
 13 would the machine --  
 14 A. -- one embodi --  
 15 Q. -- distinguish between those three  
 16 desires of the user when you touch the screen?  
 17 A. You would -- you would touch the screen.  
 18 One embodiment would be how much you touched it, the  
 19 direction you touched it, for zooming and scrolling,  
 20 any embodiment.  
 21 Q. And --  
 22 A. There is any definition.  
 23 Q. And you thought specifically about that,  
 24 about how you would distinguish between those three  
 25 kinds of touches?

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1 A. I don't recall what I thought. That was  
 2 ten years ago. I don't recall ten years ago.  
 3 Q. Are you aware of any documents  
 4 whatsoever that record in any form, your conception of  
 5 manipulating a screen to zoom or scroll in July of  
 6 1999?  
 7 A. No, I'm not.  
 8 Q. Have you done anything to prepare for  
 9 this deposition today?  
 10 MR. BECKER: I caution you not to disclose the  
 11 contents of any attorney-client communications on that  
 12 subject.  
 13 THE WITNESS: I met with Rob for a couple of  
 14 hours yesterday.  
 15 BY MR. STEPHENS:  
 16 Q. Is that all?  
 17 A. Yes.  
 18 Q. Okay. Did you review any documents?  
 19 A. No.  
 20 Q. Okay. Have you ever looked at the  
 21 documents that were produced in this case by EMG?  
 22 A. Yes, I -- I have -- my general practice  
 23 is to review -- try to review all the documents.  
 24 Q. Okay. And when did you do that?  
 25 A. As they were -- along the way --

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1 Q. Okay.  
 2 A. -- when a document was prepared, I  
 3 would, in most cases, receive it, and I would, in most  
 4 cases, review it.  
 5 Q. And you're not aware of any of those  
 6 documents that corroborate the conception of  
 7 manipulating a region of the screen for scrolling and  
 8 zooming in July of 1999.  
 9 Right?  
 10 A. I cannot recall. I've read -- I've read  
 11 a lot of documents in the last year.  
 12 Q. And you don't remember ever seeing any  
 13 that disclosed that, other than the patents,  
 14 themselves?  
 15 A. I -- I don't recall.  
 16 Q. Okay.  
 17 A. I mean, it's a lot of documents that I  
 18 reviewed.  
 19 Q. Did you keep any records of that  
 20 conception in July?  
 21 You said you wrote it down.  
 22 Did you keep that?  
 23 A. The records that I've kept, I produced.  
 24 So all the records that I would have in July would be  
 25 what I produced to you or would be what I produced to

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1 Tom Coester.  
 2 Q. Okay. So if there was any corroboration  
 3 of --  
 4 A. To my best belief.  
 5 Q. If there was any corroborating evidence  
 6 of your conception of manipulating a region of the  
 7 screen for scrolling and zooming, it would be in those  
 8 documents?  
 9 A. It would be in Tom -- given to  
 10 Tom Coester, given to you for the production of  
 11 documents.  
 12 And I believe we've done a thorough  
 13 search, not perfect, but I would believe they would be  
 14 in one of those two documents.  
 15 Q. You asked Mr. Coester for his documents  
 16 in connection with this case?  
 17 A. The attorney -- the -- I think the law  
 18 firm has done that.  
 19 Q. Okay. Is Mr. Coester involved in this  
 20 case at all?  
 21 A. No.  
 22 Q. He's not representing you today?  
 23 A. No.  
 24 Q. In any matter, is he representing you?  
 25 A. Yes, there's an unrelated patent that

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1 he's prosecuting for me.  
 2 Q. Okay. When was the last time you  
 3 communicated with Albert-Michel Long?  
 4 A. Let me shut this off. Sorry about that.  
 5 It won't happen again.  
 6 The last time, Albert called Grant,  
 7 maybe four months ago, five months ago, asked Grant  
 8 that he wanted to be in touch with me.  
 9 I don't remember whether he called me or  
 10 e-mailed me. I did talk to him. We arranged to have  
 11 a lunch shortly after that conversation.  
 12 Q. So you had lunch with him four or  
 13 five months ago?  
 14 A. I -- I think it was three, four,  
 15 five months ago.  
 16 Q. Was that here in Los Angeles?  
 17 A. Yes.  
 18 Q. What did you talk about?  
 19 A. I had not seen him for -- for many years  
 20 and -- or talked to him, probably since mid-2000.  
 21 He said to me that he had been solicited  
 22 by Fish & Richardson. He said to me that he had  
 23 talked to two attorneys at Fish & Richardson, that  
 24 they wanted to engage him as a consultant.  
 25 He said that they were concerned that

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1 they did not have any 102 prior art; that they had one  
 2 piece of prior art which I think was in January of '99  
 3 that related to IBM and the invention of HTML, XML.  
 4 He told me the patent was very valuable,  
 5 and he gave an estimate of \$250 million for the value  
 6 of the patents.  
 7 He said that their defense was going to  
 8 be just small things that they would throw up against  
 9 the wall to see what would stick.  
 10 And he asked me for some money and a  
 11 percentage of the -- of the profits.  
 12 Q. Anything else?  
 13 A. That's all I can recall at the moment.  
 14 Oh, he did say to me -- he called me  
 15 afterwards and said to me on the phone that he had had  
 16 several conversations with people at Apple.  
 17 Q. Okay. Anything else?  
 18 A. I think that's all I can recall.  
 19 Q. So let me make sure I got the timing  
 20 right, here.  
 21 Four to five months ago, he called  
 22 Grant, who asked -- and asked Grant to put him in  
 23 touch with you, and then they arranged to have lunch.  
 24 How did that arrangement happen?  
 25 A. I -- I -- I testified that I think he

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1 called me or e-mailed me or texted me, and I think we  
 2 talked and we arranged to have lunch at Houston's in  
 3 Santa Monica.  
 4 Q. So you had e-mails or calls with him  
 5 directly?  
 6 A. I think -- I think so. We arranged to  
 7 have this lunch.  
 8 Q. I'm sorry. Where was the place again?  
 9 A. Houston's Restaurant on 2nd Street and  
 10 Wilshire.  
 11 Q. Okay. Do you remember anything else  
 12 from those e-mails or calls other than just saying,  
 13 Let's have lunch at Houston's?  
 14 A. I think that's all I recall.  
 15 Q. Okay. Have you given those e-mails to  
 16 your attorneys?  
 17 A. You know, I don't -- I don't -- I don't  
 18 think so.  
 19 Q. Okay.  
 20 A. And again, it may have been text  
 21 messages or phone calls.  
 22 Q. Did you preserve those e-mails, if they  
 23 were e-mails?  
 24 A. I -- I think I have them -- or text  
 25 messages. If they were text messages, I wouldn't have

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1 them.  
 2 Q. Why not?  
 3 A. My phone crashed the other day.  
 4 Q. Okay.  
 5 A. And I had to buy a new iPhone.  
 6 Q. And you didn't tell your lawyers about  
 7 those text messages before your phone crashed?  
 8 A. Oh, I -- I think I may have. I may  
 9 have -- I -- I've told him the story that I'm telling  
 10 you about Albert.  
 11 Q. Okay. And did they do anything to  
 12 collect those text messages before your phone crashed?  
 13 A. I don't recall.  
 14 Q. Okay.  
 15 A. But the text messages would only be, you  
 16 know -- you know, See you at Houston's at 2:00, or  
 17 whatever it was.  
 18 It wasn't anything more than just  
 19 confirming that we were to have --  
 20 Now, I know he said to me, "I texted  
 21 you."  
 22 And I said, "I didn't get your text".  
 23 Or, "I e-mailed you."  
 24 "I didn't get your e-mail."  
 25 And I think I went back to check, and I

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1 think that it was -- it was gone to the junk mail, for  
 2 some reason.  
 3 Q. Okay. And did --  
 4 A. I don't know if I -- I don't know if I  
 5 have those. Some -- some of those in the junk mail, I  
 6 delete.  
 7 Q. So you deleted them after you found  
 8 them?  
 9 A. I -- I don't know. I can't recall. I  
 10 do delete my junk mail.  
 11 And I remember him saying, Well, I sent  
 12 you something. And I went back to my computer and I  
 13 couldn't find anything.  
 14 So I checked, as I do periodically when  
 15 someone says they sent something. And I remember that  
 16 it was -- I think there was some -- the confirmation  
 17 was in the junk mail. And I do delete my junk mail.  
 18 Q. So you deleted that message?  
 19 A. I don't know. I'd have to go back and  
 20 check.  
 21 Q. All right. Well, I'd ask you to go back  
 22 and check, and provide whatever communications you  
 23 had --  
 24 A. Sure.  
 25 Q. -- with Mr. Long to your lawyers.



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1 A. Uh-huh.  
 2 Q. So you hadn't had any contact with him  
 3 at all since mid-2000, prior to this arrangement for  
 4 lunch.  
 5 Right?  
 6 A. That's correct.  
 7 He also said something else. He said  
 8 that Apple had been looking for him for some time and  
 9 had hired a private detective to track him down, and  
 10 that he -- this was all a recent -- they found him  
 11 recently.  
 12 Q. Now, he said that to you when you were  
 13 arranging to have lunch or at lunch?  
 14 A. I don't know if it was -- I think it was  
 15 at lunch.  
 16 Q. Did you have any communication with  
 17 Mr. Long in connection with the filing of the 196  
 18 patent --  
 19 A. 196 patent --  
 20 Q. -- that was filed in March of 2006?  
 21 A. Well, I had not --  
 22 It was a continuation?  
 23 Q. Yes.  
 24 A. And I had not -- I had not had contact  
 25 with Albert Long from about mid-2000, when he left my

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1 employment, until a few months ago.  
 2 Q. Okay. So you did not communicate with  
 3 him in connection with filing the 196 patent?  
 4 A. That's correct.  
 5 Q. Okay. And then -- so other than  
 6 arranging to have lunch, you didn't have any  
 7 substantive communications with him until you had  
 8 lunch with him.  
 9 Is that right?  
 10 A. That's correct.  
 11 Q. Did he tell you why he wanted to have  
 12 lunch, before you had lunch?  
 13 A. I don't recall.  
 14 Q. Okay. Now, you said he asked for money  
 15 and a percentage of the profits?  
 16 A. Correct.  
 17 Q. How much money did he ask for?  
 18 A. He didn't specify.  
 19 Q. What percentage of profits did he ask  
 20 for?  
 21 A. He did not specify.  
 22 Q. How did you respond?  
 23 A. I turned him down.  
 24 Q. Okay. So you're not -- you didn't give  
 25 him any money?

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1 A. I gave no money, gave no percentage of  
 2 the profits.  
 3 Q. Did you have any financial arrangement  
 4 with him, whatsoever?  
 5 A. No. None, whatsoever.  
 6 Q. Is he being represented by your lawyers?  
 7 A. No.  
 8 Q. Okay.  
 9 A. He intimated that -- that he was on your  
 10 payroll.  
 11 Q. So he said he had been contacted by two  
 12 attorneys at Fish & Richardson.  
 13 Did he say who they were?  
 14 A. No, but he -- he indicated that he had a  
 15 few phone calls with these attorneys from  
 16 Fish & Richardson.  
 17 Q. Okay. Did he say when those calls  
 18 happened?  
 19 A. I -- I -- I would think it was recent,  
 20 because he -- he said that they had taken all this  
 21 time to find him with a private detective. And so  
 22 I -- he didn't give me a date, but I would think it  
 23 was recent.  
 24 Q. Okay. Did you take any notes of your  
 25 call -- or excuse me -- your lunch --

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1 A. No.  
 2 Q. -- discussion?  
 3 A. No.  
 4 Q. Did you record it in any fashion?  
 5 A. No.  
 6 Q. Now, you said that he said the patent  
 7 was valuable.  
 8 Was -- did you intend to say that he  
 9 said that Fish & Richardson lawyers said the patent  
 10 was valu -- valuable or that he was saying --  
 11 A. He said. He said the Fish & Richardson  
 12 lawyers seemed concerned. He was a little concerned  
 13 or worried, and that -- as I testified before.  
 14 Q. Well, no, that's what I'm trying to find  
 15 out, 'cause your testimony wasn't very clear.  
 16 A. Okay.  
 17 Q. Did he say that the Fish & Richardson  
 18 lawyers told him the patents were valuable or --  
 19 A. No, he did not. He said -- he valued  
 20 the patents at \$250 million.  
 21 Q. Did he explain anything about how he got  
 22 to that number?  
 23 A. I did not ask him, he did not explain,  
 24 except he did say that it was valuable technology,  
 25 something like that.

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1 Q. Okay. So let me just recap what I think  
 2 you've told me he said and ask if you remember  
 3 anything else.  
 4 A. Okay.  
 5 Q. So he said he had been solicited by  
 6 Fish & Richardson, had talked to two attorneys at  
 7 Fish & Richardson that wanted to engage him as a  
 8 consultant.  
 9 He said that the Fish & Richardson  
 10 lawyers were concerned that they had no 102 art,  
 11 they had one patent by IBM, and that he --  
 12 Albert-Michel Long thought that the patent was  
 13 valuable, and that he thought it was worth  
 14 \$250 million.  
 15 Then you said that he said the defense  
 16 was small things to throw up against the wall and see  
 17 what would stick.  
 18 Now, did Mr. Long tell you that the  
 19 Fish & Richardson lawyers told him that, or something  
 20 else?  
 21 A. I believe he said the Fish & Richardson  
 22 lawyers told him that.  
 23 Q. But again, he didn't say who they were?  
 24 A. No, he did not.  
 25 Q. And you don't know when that

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1 conversation occurred?  
 2 A. I did ask them if it was you --  
 3 Q. Yeah, and what did he say?  
 4 A. "No" -- and Healey.  
 5 Q. Did you ask him about anybody else?  
 6 A. No.  
 7 Q. You didn't ask about Mr. Lane?  
 8 A. Did not.  
 9 Q. Now, after you had lunch four or  
 10 five months ago --  
 11 Can you place -- actually, before I go  
 12 on, can you place it any more accurately than that,  
 13 four to five months ago?  
 14 Is there any event or anything else that  
 15 allows you to place it in time?  
 16 A. Grant may remember, but you can ask him  
 17 tomorrow.  
 18 Q. Sure.  
 19 Nothing else comes to your mind?  
 20 A. Nothing else comes to my mind.  
 21 Q. Okay. Now, you had a phone call after  
 22 that.  
 23 How long after?  
 24 A. I would, guess again, a couple of weeks.  
 25 Q. What was the reason for that call?

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1 A. He wanted to know if I thought about it  
 2 and changed my mind.  
 3 Q. What did you tell him?  
 4 A. "No."  
 5 Q. And you said that Mr. Long told you in  
 6 that subsequent phone call, that he had had several  
 7 conversations with people at Apple.  
 8 Right?  
 9 A. I believe it was in that phone call.  
 10 Q. Okay. Did he say who those people were?  
 11 A. No.  
 12 Q. Did he say when those conversations  
 13 occurred?  
 14 A. No.  
 15 Q. Did you infer that they had occurred  
 16 after the time you had lunch with him?  
 17 A. I -- I -- I don't know if it was after  
 18 or before.  
 19 Q. Did you understand him to be referring  
 20 to different conversations than the ones he had had  
 21 with the Fish & Richardson attorneys?  
 22 A. I would guess and say, I think they were  
 23 separate, but he said there were several.  
 24 Q. Okay. Anything else that he said to you  
 25 on that call?

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1 A. I do recall that I had asked him, I  
 2 think at lunch or somewhere there, that that -- was he  
 3 engaged by Fish & Richardson, or Apple.  
 4 And he told me "no."  
 5 Q. I thought you said that he had intimidated  
 6 that he was on the Fish & Richardson payroll.  
 7 A. He did, but that was my conclusion. But  
 8 I asked him, and he said "no."  
 9 Q. Did he say why?  
 10 A. I didn't ask him.  
 11 Q. Did he say anything else about any  
 12 potential engagement with Apple or Fish & Richardson?  
 13 A. No, but I -- I had asked him if he  
 14 wanted to be a consultant to us, and he said he'd  
 15 think about it.  
 16 Q. Was that on the phone call after the  
 17 lunch or --  
 18 A. I don't recall.  
 19 Q. Do you remember anything else about  
 20 those conversations?  
 21 A. No, I do not.  
 22 Q. Have you had any other communications  
 23 with Mr. Long?  
 24 A. No.  
 25 MR. STEPHENS: Could you mark that, please,

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1 as --  
 2 THE WITNESS: Do you want me to hold this  
 3 or --  
 4 BY MR. STEPHENS:  
 5 Q. You can hold it.  
 6 MR. STEPHENS: -- as E. Gottfurcht 2.  
 7 (Whereupon E. Gottfurcht Exhibit 2 was  
 8 marked for identification)  
 9 BY MR. STEPHENS:  
 10 Q. Mr. Gottfurcht, you're an inventor on  
 11 this patent, as well.  
 12 Right?  
 13 A. Correct.  
 14 Q. And this patent, as we've discussed  
 15 already, is a continuation of the 845 patent.  
 16 Right?  
 17 A. Yes.  
 18 Q. And just for the record, this is  
 19 Exhibit E. Gottfurcht 2, which is U.S. patent  
 20 7,441,196.  
 21 Right?  
 22 A. Yes.  
 23 Q. Okay. It says that it was assigned to  
 24 you and to the Grant Gottfurcht 2003 Irrevocable Trust  
 25 into the Marlo Longstreet 2003 Irrevocable Trust.

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1 Do you see that?  
 2 A. Yes.  
 3 Q. What's the Grant Gottfurcht 2003  
 4 Irrevocable Trust?  
 5 A. Just what it says. It's a  
 6 Grant Gottfurcht 2003 Irrevocable Trust.  
 7 Q. Okay. But I don't know what that means.  
 8 What is it?  
 9 A. It's the trust that Grant has.  
 10 Q. What's the purpose of the trust?  
 11 A. It's Grant's trust.  
 12 Q. What's the purpose of it?  
 13 A. I -- I wouldn't know unless I read the  
 14 document, so --  
 15 Q. Did you set it up?  
 16 A. I was involved in setting it up, and  
 17 it's been, what, about seven years since that was set  
 18 up.  
 19 Q. Was it set up specifically in connection  
 20 with this patent?  
 21 A. I don't recall.  
 22 Q. Does the Grant Gottfurcht 2003  
 23 Irrevocable Trust have any money in it?  
 24 A. I -- you'd have to ask Grant.  
 25 Q. Does it have --

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1 Have you ever contributed any assets to  
 2 it, money or otherwise?  
 3 A. Well, there's the asset from -- the  
 4 patent asset.  
 5 Q. Anything else?  
 6 A. No.  
 7 Q. Now, the patent asset has been  
 8 transferred from the Grant Gottfurcht Irrevocable  
 9 Trust.  
 10 Right?  
 11 A. Yes.  
 12 Q. Who did that?  
 13 A. A law firm.  
 14 Q. Are you a trustee?  
 15 A. Of the trust?  
 16 No.  
 17 Q. Who are the trustees?  
 18 A. I -- I think now -- I haven't read it,  
 19 but I think it's -- Grant is a trustee of his and  
 20 Marlo is a trustee of hers, but I don't recall.  
 21 Q. And who is Marlo?  
 22 A. My daughter.  
 23 Q. Just to be clear, are there any -- are  
 24 you aware of any assets that have ever been  
 25 transferred to either the Marlo Longstreet 2003

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1 Irrevocable Trust or the Grant Gottfurcht 2003  
 2 Irrevocable Trust, other than an interest in the  
 3 196 patent?  
 4 A. And the 845 and other patents.  
 5 Q. Okay. Are you aware of any assets,  
 6 money or otherwise, that have ever been transferred to  
 7 those trusts, other than the patents?  
 8 A. No.  
 9 Q. Do those trusts have any financial  
 10 interest in the outcome of this lawsuit?  
 11 A. They're members -- I believe they're  
 12 members of EMG.  
 13 Q. What other members are there of EMG?  
 14 A. It's -- it's -- the members of EMG  
 15 include myself in a revokable trust, Marlo and Grant  
 16 in their irrevocable trusts.  
 17 Q. Any others?  
 18 A. No.  
 19 Q. Were those trusts set up for tax  
 20 reasons?  
 21 MR. BECKER: To the extent that this requires  
 22 you to divulge advice from your attorneys, I'll  
 23 instruct you not to answer.  
 24 THE WITNESS: Okay.  
 25 / / /

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1 BY MR. STEPHENS:  
 2 Q. Were they set up for tax reasons?  
 3 A. I will abide by what Mr. Becker said,  
 4 and it would be attorney-client privilege.  
 5 Q. So you won't discuss your reasons for  
 6 being involved in setting up trusts for yourself and  
 7 your children.  
 8 Is that right?  
 9 MR. BECKER: Same objection.  
 10 THE WITNESS: Well, I'm not sure that was an  
 11 accurate description of what happened.  
 12 BY MR. STEPHENS:  
 13 Q. I'm not understanding.  
 14 A. I -- I -- if you read the question back,  
 15 I -- maybe it needs to be rephrased.  
 16 Q. Okay. You said -- you testified that  
 17 you were involved in setting up the trusts for Marlo  
 18 and Grant.  
 19 Right?  
 20 A. Involved in a -- you know, in a minor  
 21 way.  
 22 Q. What was the way?  
 23 A. I don't recall. But I wasn't involved  
 24 in preparing the trusts, reviewing the trusts.  
 25 Q. So you weren't involved in creating the

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1 trusts or reviewing the trusts?  
 2 You were not?  
 3 A. I did not review the trusts. I did not  
 4 prepare the trusts.  
 5 Q. Well, you're not a lawyer.  
 6 Right?  
 7 A. That's correct.  
 8 Q. A lawyer prepared the trust.  
 9 Right?  
 10 A. Yes.  
 11 Q. And did you instruct the lawyer to  
 12 prepare the trust?  
 13 A. I don't know who instructed the lawyer  
 14 to prepare the trust, whether it was Marlo, Grant, or  
 15 myself.  
 16 Q. That's true for your trust, as well?  
 17 You don't know who --  
 18 A. Well, my trust is different. Mine's a  
 19 revokable trust, and I was -- I was 100 percent  
 20 involved --  
 21 Q. Okay.  
 22 A. -- in setting up that.  
 23 Q. And why did you set up that trust?  
 24 MR. BECKER: Same objection. If it calls for  
 25 the advice of counsel to respond to that question, I

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1 would instruct you not to answer it.  
 2 THE WITNESS: That's -- I will not answer it  
 3 because it's privileged, from my advice of my  
 4 attorney.  
 5 BY MR. STEPHENS:  
 6 Q. Okay. So there's -- you can't disclose  
 7 anything about why you set up the trust without  
 8 disclosing advice of counsel.  
 9 Is that right?  
 10 A. Yes.  
 11 Q. Okay. Now, if you would turn to  
 12 claim 58 of Exhibit E. Gottfurcht 2, which is the 196  
 13 patent.  
 14 Could you explain for me, please, your  
 15 understanding of that claim?  
 16 MR. BECKER: I'll caution you, if that  
 17 requires you to divulge the advice you received from  
 18 counsel, I'll instruct you not to answer it, to that  
 19 extent.  
 20 THE WITNESS: It would require advice I  
 21 received from counsel.  
 22 BY MR. STEPHENS:  
 23 Q. So you can't tell me anything about your  
 24 understanding of Claim 58 of the 196 patent without  
 25 divulging advice of counsel?

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1 A. I believe so.  
 2 Q. Is that true for all the other claims?  
 3 A. Yes.  
 4 Q. If you would take a look at --  
 5 MR. BECKER: Just for the record, I also  
 6 object under Rule 2.5, but it appears that that's not  
 7 necessary.  
 8 MR. STEPHENS: Okay.  
 9 BY MR. STEPHENS:  
 10 Q. If you would look at Claim 66. It's on  
 11 the very last page.  
 12 A. Uh-huh.  
 13 Q. It refers to a primary navigation  
 14 option -- or rather, primary navigation options.  
 15 Do you see that?  
 16 A. Claim 66?  
 17 Q. Yes.  
 18 A. Yes.  
 19 Q. What's your understanding of a primary  
 20 navigation option?  
 21 MR. BECKER: Same objections.  
 22 THE WITNESS: It's defined in the patent.  
 23 BY MR. STEPHENS:  
 24 Q. Okay. Can you point me to where?  
 25 A. Sure. It's on Column 7, Line 47 -- 46.

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1 Q. "Primary navigation options as used  
 2 herein are those navigation options that necessarily  
 3 change between successive matrix layers changing from  
 4 general to more specific with increases in depth in  
 5 the matrix."  
 6 Is that what you're referring to?  
 7 A. Yes.  
 8 Q. What does that mean, an option that  
 9 necessarily changes between successive matrix layers?  
 10 MR. BECKER: Same objections.  
 11 THE WITNESS: And that would be  
 12 attorney-client privilege.  
 13 BY MR. STEPHENS:  
 14 Q. So you can't tell me anything about your  
 15 understanding of that phrase without revealing  
 16 attorney-client privileged information.  
 17 Is that right?  
 18 A. I do not believe so. I -- I -- I  
 19 believe that that's something which I had reviewed  
 20 early on with Tom Coester.  
 21 Q. That same quote that I read refers to  
 22 increases in depth in the matrix.  
 23 What does -- what does the depth of the  
 24 matrix mean?  
 25 A. Well, I'll go to, from July 1st to

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1 July 7, what I would think about at that time.  
 2 Q. Okay.  
 3 A. And at that time, one of the embodiments  
 4 would be that there would be a drill-down from general  
 5 to more specific.  
 6 Q. Kind of like Yahoo had at the time?  
 7 A. Pardon me?  
 8 Q. Like Yahoo had at the time --  
 9 MR. BECKER: Object to form.  
 10 BY MR. STEPHENS:  
 11 Q. -- where you have categories and you can  
 12 get more specific?  
 13 A. Right.  
 14 Q. Okay.  
 15 A. It would be like that.  
 16 Q. And depth refers to how many links in a  
 17 hierarchy of categories, something like that?  
 18 A. At that particular moment in time, I  
 19 would think that -- probably thought that that was an  
 20 embodiment that I had thought about during the period  
 21 of July 1st to July 7, 1999.  
 22 Q. Okay. And that -- that's what you meant  
 23 when you said, in some of your documents in that  
 24 period, that you were working on a filtered Yahoo.  
 25 Is that right?

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1 A. I don't recall that.  
 2 Q. You don't remember that?  
 3 Okay. We'll get to that.  
 4 Now, earlier, you mentioned Online Labs  
 5 and that that was where Albert-Michel Long was  
 6 employed.  
 7 Is that right?  
 8 A. I don't know what his relationship with  
 9 Online was, whether it was an employee or consultant.  
 10 Q. What was Online Labs' role in connection  
 11 with your invention?  
 12 A. They were referred to me by legal  
 13 counsel.  
 14 Q. Mr. Coester?  
 15 A. No, by Jill Pitirini at -- at Manatt.  
 16 Q. How do you spell that name?  
 17 A. G -- G -- J-i-l-l.  
 18 Q. J-i-l-l?  
 19 A. Yeah.  
 20 Q. What's the last name?  
 21 A. P-i-t-r-i-n-i, I believe.  
 22 Q. Jill Pitirini?  
 23 A. Yes.  
 24 Q. Okay. And how did that happen?  
 25 How did Jill Pitirini happen to refer

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1 Online Labs to you?  
 2 A. I decided sometime, I think in July,  
 3 that I would need to engage experts, for them to  
 4 prepare their component, another component of the  
 5 invention, other than what Grant and I had supplied to  
 6 Tom Coester.  
 7 So I wanted to engage consultants,  
 8 experts that could work on preparing a document for  
 9 Tom Coester pertaining to some of the components of  
 10 the invention.  
 11 Q. What components are you referring to?  
 12 A. It was ten years ago, and I was guessing  
 13 that it was -- would have to do with some of the  
 14 technology, the HTML, XML technology.  
 15 Q. Did you have any understanding of HTML  
 16 prior to your interaction with Online Labs?  
 17 A. I did not have any knowledge of it prior  
 18 to meeting Tom Coester. So my knowledge of it would  
 19 have been from Tom Coester. My understanding would  
 20 have been from Tom Coester prior to hiring  
 21 Online Labs.  
 22 And I don't recall what that -- what --  
 23 that knowledge I would have had or understanding I  
 24 would have had during that period of time in 1999.  
 25 Q. What was Manatt's role in your

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1 invention?  
 2 MR. BECKER: I'll instruct you, to the extent  
 3 it requires you to divulge any privileged  
 4 conversations or advice, I instruct you not to answer.  
 5 THE WITNESS: I don't believe they were  
 6 involved in the invention at all other than a  
 7 referral.  
 8 BY MR. STEPHENS:  
 9 Q. And how did you happen to get the  
 10 referral from Manatt?  
 11 MR. BECKER: Same instruction.  
 12 THE WITNESS: Can I answer that?  
 13 MR. BECKER: As long as you don't divulge the  
 14 contents of our privileged conversation.  
 15 THE WITNESS: Jill recommended Tom Coester and  
 16 recommended Online Labs, and I had been a client of  
 17 Manatt for many years.  
 18 BY MR. STEPHENS:  
 19 Q. In patent matters or other things?  
 20 A. No, real estate matters.  
 21 Q. So what happened next after you were  
 22 introduced to Online Labs?  
 23 A. I asked them to assemble a group of  
 24 experts that I could work with, that Tom Coester could  
 25 work with, to prepare a component which -- of the

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1 invention, write a report, and to give that  
 2 information to Tom Coester, who would write the patent  
 3 document.  
 4 Q. And when did you ask him to do that?  
 5 A. I'm guessing it was in July or early  
 6 August of 1999.  
 7 Q. Okay. Who wrote the application that  
 8 led to the 845 patent?  
 9 A. The application?  
 10 Q. Yeah.  
 11 A. Tom Coester would have written the -- he  
 12 would have prepared the patent document.  
 13 Q. Now, was Tom Coester at  
 14 Morrison & Foerster at the time?  
 15 A. No, Blakely Sokoloff.  
 16 Q. Did you change law firms during the  
 17 course of prosecution of the 845 patent?  
 18 A. I think the prosecution was over with.  
 19 I believe it was over with. And I -- I believe that  
 20 the board had written its report, its brief, reversing  
 21 the examiner's decision.  
 22 It was on that process, several-month  
 23 process where it goes back to the examiner.  
 24 Q. And that's when you changed law firms?  
 25 A. I believe so.

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1 Q. And why did you change?  
 2 A. That's attorney-client privilege.  
 3 Q. So you -- you changed on advice of  
 4 counsel?  
 5 A. No, I'm saying that it was  
 6 attorney-client privilege.  
 7 Q. Well, your decision to change counsel is  
 8 not attorney-client privileged unless you did it  
 9 because an attorney advised you to do it.  
 10 A. It --  
 11 Q. If you made up -- if you made up your  
 12 own mind to do, it's not privileged.  
 13 A. Okay. I -- it was in conversation with  
 14 Tom Coester.  
 15 Q. And you can't tell me what the reason  
 16 was without revealing --  
 17 A. Well, I -- I may be able to, if I can go  
 18 off record and speak to --  
 19 Q. Sure.  
 20 A. Because I don't mind telling you. It's  
 21 just, I want to make sure I do it right.  
 22 Q. Okay.  
 23 MR. BECKER: Is this a good time for a break,  
 24 anyways?  
 25 MR. STEPHENS: Sure.

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1 THE VIDEOGRAPHER: This marks the end of tape  
 2 Number 2 in the deposition of Elliot Gottfurcht.  
 3 Going off the record.  
 4 The time is 3:02 p.m.  
 5 (Whereupon a recess was taken)  
 6 THE VIDEOGRAPHER: Back on the record.  
 7 Here marks the beginning of tape  
 8 Number 3 in the deposition of Elliot Gottfurcht.  
 9 The time is 3:32 p.m.  
 10 BY MR. STEPHENS:  
 11 Q. Mr. Gottfurcht, before the break, we  
 12 were talking about Online Labs, and you mentioned that  
 13 you had asked them to assemble some experts to put  
 14 together a report that would then work -- Mr. Coester  
 15 would then use, in part, to draft the patent document.  
 16 Right?  
 17 A. Yes.  
 18 Q. And Online Labs did that.  
 19 Right?  
 20 A. Yes, they did.  
 21 Q. And that report was dated sometime in  
 22 October.  
 23 Does that sound right?  
 24 A. That sounds about right.  
 25 Q. Did they have an ongoing involvement

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1 after that?  
 2 A. No, after they -- the co-inventors  
 3 signed off on the patent application, that terminated  
 4 their engagement, and I continued to engage  
 5 Albert Long.  
 6 Q. So Online --  
 7 Well, I guess -- let me -- let me back  
 8 up.  
 9 Did Online Labs ever try to actually  
 10 implement anything for you?  
 11 A. No.  
 12 Q. Did Mr. Long separate from whatever  
 13 relationship he had with Online Labs at that point?  
 14 A. Yes, I believe so.  
 15 Q. And he worked directly for you at that  
 16 point?  
 17 A. Yes.  
 18 Q. And how long did he continue to work for  
 19 you?  
 20 A. This would have been from approximately  
 21 November 1999, approximately May of 2000.  
 22 Q. So Mr. Long worked directly for you from  
 23 November '99 to about May of 2000?  
 24 A. Correct.  
 25 Q. About six months?

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1 A. That would be correct.  
 2 Q. And what did Mr. Long do for you in that  
 3 period?  
 4 A. He worked on the -- the 845 patent and  
 5 another patent that we had filed where Mr. Long was a  
 6 co-inventor.  
 7 Q. What was that other patent?  
 8 A. I think it was "Make My Tune" patent.  
 9 Q. What was that about?  
 10 A. That was about converting a photograph  
 11 on the fly into a cartoon.  
 12 Q. Did you get a patent on that?  
 13 A. No.  
 14 Q. How many other patents do you have  
 15 that -- or sorry, let me ask it differently.  
 16 How many patent applications have you  
 17 filed that claim priority to the parent of the patents  
 18 in this lawsuit, in other words, the 497 that was  
 19 filed in November 1999?  
 20 A. Can you rephrase the question?  
 21 Q. Yeah.  
 22 How many applications have you filed  
 23 that are based in any way on the 497 patent that was  
 24 originally filed in November of 1999?  
 25 A. I don't recall.

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1 Q. More than three?  
 2 A. Yes.  
 3 Q. More than five?  
 4 A. Yes.  
 5 Q. More than ten?  
 6 A. I don't recall.  
 7 Q. How many patents have issued in that  
 8 family?  
 9 A. Four.  
 10 Q. So at least some have gone abandoned.  
 11 Right?  
 12 A. Yes.  
 13 Q. Have you instructed your lawyers to turn  
 14 those documents over, the -- the patent filings and  
 15 the -- the file histories for those abandoned  
 16 applications in this litigation?  
 17 A. I don't believe so.  
 18 Q. Okay.  
 19 MR. STEPHENS: We need those, Rob. We should  
 20 have had those before this deposition.  
 21 THE WITNESS: Are -- are you -- let me just  
 22 clarify something.  
 23 Are you talking about new -- new  
 24 specifications or off the same original  
 25 specifications?

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1 BY MR. STEPHENS:  
 2 Q. I'm talking about anything that claims  
 3 any benefit of any kind from the original filing of  
 4 the 497, whether it's a continuation in part or merely  
 5 a related application that says, This is a related  
 6 application.  
 7 A. Or a continuation?  
 8 Q. Or a continuation.  
 9 A. So you're talking about any continuation  
 10 of the 845?  
 11 Q. For the 497.  
 12 A. For the 497?  
 13 Q. Yes.  
 14 A. Okay.  
 15 Q. So between five and ten is your best of  
 16 how many applications --  
 17 A. I -- I -- I can't recall how many. I  
 18 think there may have been more than ten.  
 19 Q. I've seen a document, and we'll probably  
 20 look at it here in a minute, that said you had 30  
 21 patent applications pending.  
 22 Does that ring a bell?  
 23 A. I don't call -- recall how many, but  
 24 there were a number of applications that were pending.  
 25 Q. Could there have been 30 applications?

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1 A. There could have been.  
 2 Q. Could there have been 30 relating to the  
 3 497 family?  
 4 A. There could have been.  
 5 Q. So four have issued.  
 6 Do you know how many remain pending?  
 7 A. I -- I think the two continuations.  
 8 There are two continuations pending.  
 9 Q. So it's possible that dozens of  
 10 applications relating to the 497 patent have gone  
 11 abandoned.  
 12 Is that right?  
 13 A. I don't know dozens, but there are a  
 14 number of them.  
 15 Q. Potentially more than 20.  
 16 Right?  
 17 A. There -- it could be.  
 18 Q. And did you make the decision to abandon  
 19 the applications that went abandoned?  
 20 A. That would have been attorney-client  
 21 privilege.  
 22 Q. No, I don't think so. Whether or not  
 23 you're the person that makes the decision is not  
 24 attorney-client privilege.  
 25 A. Well --

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1 Q. I'm not asking what the decision was or  
 2 the basis for it. I'm asking whether you made that  
 3 decision.  
 4 A. Oh, did I make the decision to abandon  
 5 them based upon --  
 6 Q. I'm not asking what it was based on.  
 7 A. Oh.  
 8 Q. I'm just asking whether you made the  
 9 decision at all.  
 10 A. Did I make the -- yes, I did.  
 11 Q. And I think you already testified that  
 12 after May of 2000, Albert-Michel Long didn't have any  
 13 contact with you -- is that right -- until --  
 14 A. Approximately, that's correct.  
 15 Q. Did you make any efforts to build your  
 16 invention --  
 17 I guess maybe I -- let me ask it  
 18 differently.  
 19 When did you first start making efforts  
 20 to build your invention?  
 21 MR. BECKER: Object. Form.  
 22 THE WITNESS: I'm not qualified to -- I'm not  
 23 an expert. I'm not qualified to answer that question.  
 24 BY MR. STEPHENS:  
 25 Q. When did you first start efforts to make

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1 any sort of prototype?  
 2 A. I think it would have been approximately  
 3 2000.  
 4 Q. And how did you do that?  
 5 A. It -- it would have been part of the  
 6 documents that we produced to you. So I would have  
 7 engaged experts to put together the prototypes.  
 8 Q. And who did you engage?  
 9 A. I don't remember the first expert. But  
 10 there were different editions of what I later called  
 11 MallTV.  
 12 And I don't recall who I used for the  
 13 first edition, but I have used Rick Soss for many  
 14 years, that would have done other editions.  
 15 Q. When did you first engage Mr. Soss?  
 16 A. I do not recall, but it's been a number  
 17 of years.  
 18 Q. And what kinds of things has Mr. Soss  
 19 done for you?  
 20 A. He did Flash. I believe that his work  
 21 product was produced to you in a DVD.  
 22 Q. Is that work product that was produced  
 23 to us the only things he's ever done for you?  
 24 A. I -- I don't recall, but it was the bulk  
 25 of what he has performed.

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1 Q. And has he -- when you say he did Flash,  
 2 you mean the Adobe animation product?  
 3 A. Yes.  
 4 Q. And what was he using Flash to do?  
 5 A. The -- the prototype. He was developing  
 6 a prototype.  
 7 Q. Is Mr. Soss involved in this litigation?  
 8 A. No.  
 9 Q. Has he done any work for your lawyers?  
 10 A. No, not that -- not that I believe so.  
 11 Q. Has he done any work, either directly or  
 12 indirectly, at the direction of your lawyers?  
 13 A. I don't believe so.  
 14 Q. And he's not a lawyer, himself?  
 15 A. No.  
 16 Q. Now, you mentioned the first edition of  
 17 the prototype. That was Fogie & Jack.  
 18 Is that right?  
 19 A. I don't recall if it was Fogie & Jack,  
 20 or if it was MallTV. I don't recall. It would have  
 21 been done nine or ten years ago.  
 22 Q. Can you tell us what Fogie & Jack was?  
 23 A. It was just two animated characters that  
 24 would demonstrate the displaying of the reformatted  
 25 Web pages on television and wireless devices.



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1 Q. And you were going to try and hire  
 2 Jack Nicholson or Jack Lemon to play the role of Jack.  
 3 Is that right?  
 4 A. You know, there may have been a  
 5 conversation like that. It was more of a marketing  
 6 discussion.  
 7 Q. Did you ever approach either of them?  
 8 A. No.  
 9 Q. Did you approach any other actors to  
 10 play any roles in connection with your invention?  
 11 A. No.  
 12 Q. Did you ever discuss the details of your  
 13 patents with Mr. Soss?  
 14 A. I don't recall.  
 15 Q. Did you ever discuss the claims with  
 16 him?  
 17 A. I don't recall.  
 18 Q. How do you normally communicate with  
 19 Mr. Soss?  
 20 A. Telephone calls and e-mails.  
 21 Q. How many e-mail accounts do you use?  
 22 A. One.  
 23 Q. What's the e-mail address?  
 24 A. Elliot@MallTV.com.  
 25 Q. Have you ever used any other e-mail

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1 addresses?  
 2 A. I -- I think so.  
 3 Q. What other ones?  
 4 A. I -- I don't recall.  
 5 Q. When's the last time that you used an  
 6 e-mail address other than Elliott@MallTV.com?  
 7 A. Several years.  
 8 Q. When you say several --  
 9 A. Several years ago.  
 10 Q. -- more than two?  
 11 A. Oh, yes.  
 12 Q. Okay. More than four?  
 13 A. Yeah, I believe so.  
 14 Q. Do you communicate with Mr. Soss using  
 15 your iPhone?  
 16 A. I don't recall having done that, but  
 17 it's possible.  
 18 Q. Do you communicate with Mr. Soss using  
 19 voicemail?  
 20 A. If he has a voicemail on his -- on his  
 21 line, which I think he does, I would have left  
 22 messages for him.  
 23 Q. And do you recall what e-mail address  
 24 you used for Mr. Soss in your e-mailing him?  
 25 A. No, I do not.

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1 Q. Do you know if it's more than one?  
 2 A. I think it's just one e-mail.  
 3 Q. Did you have any conversations with  
 4 Mr. Soss about preserving evidence in connection with  
 5 this case?  
 6 A. I asked him to prepare a DVD of all his  
 7 work product that we have produced for you.  
 8 Q. Did you ask him to prepare a DVD  
 9 including his e-mails with you?  
 10 A. I think I've submitted the e-mails I've  
 11 had with him.  
 12 Q. But I'm asking whether you collected  
 13 e-mails from him.  
 14 A. No.  
 15 MR. STEPHENS: Rob, I'd ask you to do that.  
 16 MR. BECKER: From Mr. Soss?  
 17 MR. STEPHENS: Yeah.  
 18 You don't have to if you don't want  
 19 to --  
 20 MR. BECKER: No, I --  
 21 MR. STEPHENS: -- but we'll certainly subpoena  
 22 him.  
 23 MR. BECKER: I can do that.  
 24 BY MR. STEPHENS:  
 25 Q. So you didn't -- you didn't tell

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1 Mr. Soss he needed to pre -- preserve his e-mails?  
 2 A. No, I did not.  
 3 Q. Okay. But you did tell him to collect  
 4 his Flash work product?  
 5 A. His work product.  
 6 Q. Okay. Did you tell him to preserve his  
 7 work product?  
 8 A. I told him to put his work product on a  
 9 DVD, which we, I believe, delivered to you.  
 10 Q. And that only goes back to about 2006.  
 11 Is that as long as he's been working for  
 12 you?  
 13 A. I don't recall.  
 14 Q. So there may be work product from before  
 15 that time?  
 16 A. There may be work product, but I --  
 17 I asked him to put together his Flash  
 18 work product because it was difficult for us to do  
 19 that.  
 20 But I produced work product from him  
 21 that you would have in our work product, and I don't  
 22 know if that goes back before.  
 23 Q. Okay.  
 24 A. But -- but I did ask Mr. Soss to prepare  
 25 his work -- his Flash work product in particular.

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1 Q. Has he been continuing to develop the  
 2 MallTV.com website during the course of this  
 3 litigation?  
 4 A. No, we have -- we've put it on hold.  
 5 Q. When did you put it on hold?  
 6 A. I would say about the time that the  
 7 litigation commenced.  
 8 Q. What did you tell Mr. Soss about that?  
 9 A. I don't recall if I told him anything.  
 10 Q. How did it get put on hold?  
 11 A. I just didn't call him to do additional  
 12 work.  
 13 Q. I see.  
 14 And he didn't have any projects  
 15 outstanding?  
 16 A. He didn't -- pardon me?  
 17 Q. He did not have any projects outstanding  
 18 at the time the litigation commenced?  
 19 A. Any projects?  
 20 Q. Changes to the MallTV.com site?  
 21 A. I -- I think that we didn't change the  
 22 MallTV.com site except that -- at the bottom of it  
 23 where it says "copyright," we added 2009, at the  
 24 bottom of the web page.  
 25 I don't know if he did it for the mobile

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1 site. He may have made that change for the mobile  
 2 site.  
 3 Q. When did the iPhone version of MallTV go  
 4 online?  
 5 MR. BECKER: Object. Form.  
 6 THE WITNESS: I don't recall.  
 7 BY MR. STEPHENS:  
 8 Q. Was it 2008?  
 9 A. It's possible 2008.  
 10 Q. 2007?  
 11 A. It's possible.  
 12 Q. 2009?  
 13 A. No, I think it was 2007, 2008.  
 14 Q. Okay. Who else has been involved in  
 15 constructing prototypes of your invention for you?  
 16 A. Bob Bajor -- Bajaris at Art & Logic.  
 17 Q. How do you spell his last name?  
 18 A. I -- I don't recall.  
 19 Q. Okay. B-a-j-a-r-i-s or something like  
 20 that?  
 21 A. Something like that.  
 22 Q. Now, did you say that Mr. Soss is at  
 23 Protovu?  
 24 Was that the name?  
 25 A. Protovu is his company.

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1 Q. Anyone else besides Mr. Soss and  
 2 Mr. Bajaris that was -- has been involved in creating  
 3 prototypes for you?  
 4 A. I think that was -- that was -- it was  
 5 just those two.  
 6 Q. Who is Angel Gulermovich?  
 7 A. She works for Art & Logic. She was a  
 8 consultant for Art & Logic.  
 9 Q. And who is Daisy Trayham?  
 10 A. She is also a consultant for  
 11 Art & Logic.  
 12 Q. Are there any other people that have  
 13 been involved in creating prototypes for you?  
 14 A. I think that Angel's -- was not involved  
 15 in prototypes. I think that Daisy was involved in the  
 16 mobile site, working under the direction of -- of Bob.  
 17 Q. What was Angel's role?  
 18 A. She was a -- a consultant for  
 19 Art & Logic.  
 20 Q. But what was her role in connection with  
 21 any project for you?  
 22 A. I think she was just someone that Bob  
 23 had said had some knowledge, may have wanted to talk  
 24 to her.  
 25 Q. And did you talk to her?

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1 A. I did.  
 2 Q. And what was the nature of that  
 3 conversation?  
 4 A. I discussed certain components of the --  
 5 that were on my mind.  
 6 Q. What components?  
 7 A. I don't recall. I think one had to do  
 8 with transcoding.  
 9 Q. Anything else?  
 10 A. I don't recall. There may have been  
 11 something else.  
 12 Q. And how did you come to talk to Angel  
 13 about transcoding?  
 14 A. Bob had recommended that if I wanted to  
 15 have discussions, that she was a knowledgeable person  
 16 and she's located in Los Angeles, and that I could  
 17 have some conversation with her.  
 18 Q. About transcoding specifically?  
 19 A. No, just about whatever, generally, that  
 20 I -- you know, would come to my mind.  
 21 Q. What's -- what kind of work has  
 22 Art & Logic, generally speaking, done for you?  
 23 A. They've done -- the bulk of the work was  
 24 that they had prepared the -- the mobile website,  
 25 MallTV mobile website.

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1 Q. That includes the iPhone portion?  
 2 A. Yes.  
 3 Q. And there are other portions, as well?  
 4 A. I think so. I think it could be  
 5 accessed from a BlackBerry.  
 6 Q. So Mr. Soss did the Flash prototype, and  
 7 Art & Logic did the mobile por -- version.  
 8 Is that right?  
 9 A. Art -- they may have worked together on  
 10 some of the layout, put them in touch with each other.  
 11 Q. Now, Flash is not XML.  
 12 Right?  
 13 A. I -- I don't believe so.  
 14 Q. How many discussions did you have with  
 15 Angel?  
 16 A. A guess, a half a dozen.  
 17 Q. And when did those -- what period did  
 18 those take place?  
 19 A. I think they took place in 19 -- 2008.  
 20 Q. All of them in 2008?  
 21 A. I believe so.  
 22 Q. You talked to her about transcoding.  
 23 Do you remember any -- anything else  
 24 that you talked to her about?  
 25 A. I do not recall. I may have talked to

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1 her about some other things. I just don't recall.  
 2 Q. So what do you remember about your  
 3 discussions with her?  
 4 A. I wanted to ask her just -- I'm very  
 5 curious about -- about mobile websites and -- and  
 6 things like that, and I -- if I had a question during  
 7 that period of time, I'd call her up and I would ask  
 8 her.  
 9 Q. Did Angel do any work for your lawyers?  
 10 A. No, I don't believe so.  
 11 Q. Did she do any work directly or  
 12 indirectly under their direction or control?  
 13 A. No, not -- not that I can recall. I  
 14 don't believe so.  
 15 Q. Did Mr. Bajaris do any work for your  
 16 lawyers?  
 17 A. No, I don't believe so.  
 18 Q. Did anyone at Art & Logic do any work  
 19 for your lawyers?  
 20 A. I do not believe so.  
 21 Q. Is that also true for the people at  
 22 Protovu?  
 23 A. Yes.  
 24 Q. So they really had no involvement in  
 25 this lawsuit?

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1 A. That's correct.  
 2 Q. Or any other lawsuit.  
 3 Is that right?  
 4 A. Any other lawsuit?  
 5 Q. Yeah.  
 6 A. Any other lawsuit --  
 7 Q. Involving you, I should say.  
 8 A. No.  
 9 Q. Okay.  
 10 MR. STEPHENS: Rob, I was asking you about  
 11 preserving Mr. Soss' e-mails, and you -- you said you  
 12 don't have any obligation to do that.  
 13 Do I understand that right?  
 14 MR. BECKER: I just --  
 15 The question is to me?  
 16 MR. STEPHENS: Yeah.  
 17 MR. BECKER: That's what I think I said.  
 18 MR. STEPHENS: Well, do you have an ob -- do  
 19 you believe that --  
 20 MR. BECKER: I have --  
 21 MR. STEPHENS: -- you or Mr. Gottfurcht have  
 22 an obligation to preserve?  
 23 MR. BECKER: I -- I don't know. I -- I  
 24 wouldn't -- I haven't been handling that, so I would  
 25 have to consult with the others.

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1 But I -- I don't think he's an employee  
 2 of Elliot's. He's a consultant that works for another  
 3 firm.  
 4 COURT REPORTER: I don't think he's an  
 5 employee of what?  
 6 MR. BECKER: He's an employee of  
 7 Mr. Gottfurcht's, but rather, a consultant that  
 8 works for someone else.  
 9 BY MR. STEPHENS:  
 10 Q. Is he an employee of EMG, Mr. Soss?  
 11 A. Oh, no.  
 12 Q. Okay. Have you ever corresponded with  
 13 Mr. Soss at the request of Manatt?  
 14 A. Request of who?  
 15 Q. Your lawyers.  
 16 A. No.  
 17 MR. STEPHENS: Rob, is Manatt representing  
 18 Mr. Soss?  
 19 THE WITNESS: No.  
 20 MR. BECKER: No.  
 21 BY MR. STEPHENS:  
 22 Q. Okay. Is Manatt representing any of the  
 23 folks at Protovu?  
 24 A. No.  
 25 Q. Are they representing any of the people

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1 at Art & Logic?  
 2 A. No.  
 3 Q. Did you ask any of the people at  
 4 Art & Logic to preserve their documents?  
 5 A. No.  
 6 Q. Have you collected any documents from  
 7 the people at Art & Logic?  
 8 A. I think I produced them.  
 9 Q. What did you produce?  
 10 A. Well, it would be in my production of  
 11 documents, so I -- I don't recall. There were, I  
 12 think, thousands of pages.  
 13 Q. So your recollection is that you  
 14 collected and produced thousands of pages from the  
 15 people at Art & Logic?  
 16 A. No, not thousands of pages from them,  
 17 but I -- my recollection is that we produced our  
 18 documents from Art & Logic.  
 19 I'm not sure the -- the mobile website,  
 20 I'm not sure that we produced that in a DVD.  
 21 Q. Okay. So you have not -- let me -- you  
 22 have not, as you understand it, produced the mobile  
 23 website in code form.  
 24 Is that right?  
 25 A. I believe that's correct.

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1 Q. Okay. Have you collected it from  
 2 Art & Logic?  
 3 A. No.  
 4 Q. Who actually operates the MallTV.com  
 5 server?  
 6 A. I do not know.  
 7 Q. Who do you talk to when you want to have  
 8 changes made to it?  
 9 A. I -- I talk to Bob.  
 10 Q. Who actually owns the MallTV.com site?  
 11 A. I would think that -- that -- that I own  
 12 it. That's my guess.  
 13 Q. You, Mr. Gottfurcht, personally?  
 14 A. Well, I -- I never thought about it, but  
 15 I would assume that I do.  
 16 Q. Okay. It's not the property of EMG?  
 17 A. Well, it -- it -- it -- it may be but it  
 18 may not be. I'd have to go check the records, whether  
 19 it was assigned over to them or not.  
 20 Q. If you asked Mr. Bajaris to collect the  
 21 code from MallTV.com and give it to you, he would do  
 22 that, though.  
 23 Right?  
 24 A. I would think so, yes.  
 25 Q. You just haven't done that?

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1 A. Correct.  
 2 Q. And you mentioned that you use  
 3 Elliott@MallTV.com as your -- your only e-mail.  
 4 Is that right?  
 5 A. That's correct.  
 6 Q. What steps have you taken to preserve  
 7 e-mails?  
 8 A. Over what period of time?  
 9 Q. Since you first contemplated this  
 10 litigation.  
 11 A. Oh, I -- I -- I would have -- I believe  
 12 I would have them all.  
 13 Q. Well, you testified earlier that you  
 14 delete e-mails.  
 15 Right?  
 16 A. No, no, I was talking about deleted  
 17 e-mails. I was talking about junk e-mails, deleted  
 18 e-mails.  
 19 Q. But you were talking --  
 20 A. Those, I delete.  
 21 Q. You deleted junk e-mails that included  
 22 e-mails from Mr. Long.  
 23 Right?  
 24 MR. BECKER: Object. Form.  
 25 THE WITNESS: No, I'm -- I -- I -- if I did,

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1 that was inadvertent.  
 2 BY MR. STEPHENS:  
 3 Q. Okay. Now I'm asking you what steps  
 4 you've taken to prevent that kind of inadvertent  
 5 deleting of relevant e-mails from happening.  
 6 A. Oh, well, I have them on my computer.  
 7 Q. Except the ones you've deleted.  
 8 Right?  
 9 A. That's correct. That's the only --  
 10 Q. Okay. What -- what -- what changes did  
 11 you make in your normal activities with respect to  
 12 e-mail after you contemplated litigation in this case?  
 13 A. I haven't made any changes.  
 14 Q. Okay. So you've continued to delete  
 15 e-mails --  
 16 A. No, no, no. Well, I -- I have the  
 17 e-mails. I -- I -- from my recollection, I have  
 18 reserved all the e-mails.  
 19 Q. Except the ones from Mr. Long that went  
 20 into your junk e-mail folder.  
 21 Right?  
 22 A. I said I may have -- I do delete e-mails  
 23 that go into -- to the -- the junk e-mail.  
 24 Q. Okay.  
 25 A. And so I -- I don't know if the one that

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1 he sent was one that I had deleted.  
 2 Q. Okay. But he told you he sent some  
 3 e-mails --  
 4 A. He said, "I sent you an e-mail."  
 5 And I said -- I said, "Oh, I didn't  
 6 receive an e-mail."  
 7 But then I went back and I looked, and  
 8 it was in my junk e-mail.  
 9 Now, I thought that his e-mail would be  
 10 Albert Long, so that's what I looked for, but it  
 11 wasn't. It was some initials.  
 12 And so it's possible it went in there  
 13 automatically or it's possible that when I delete junk  
 14 e-mails, that I wasn't familiar with it and I would  
 15 have deleted it.  
 16 Q. Did you or -- see an e-mail from him or  
 17 not in your junk e-mail?  
 18 A. Yeah, I did. I went back to junk e-mail  
 19 and it was, like, confirmed for Hous --  
 20 Oh, I think he -- he may have asked,  
 21 "Are you talking about the Houston's in Century City  
 22 or the Houston's in Santa Monica?"  
 23 I think -- I remember getting something  
 24 like that.  
 25 Q. Okay. And then you think you may have

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1 deleted it?  
 2 A. I may or may not have deleted it.  
 3 Q. Okay. Have you taken any steps to  
 4 preserve voicemails?  
 5 A. No, but I seldom receive messages by  
 6 voicemail.  
 7 Q. Have you taken any steps to preserve  
 8 text messages?  
 9 A. No.  
 10 Q. And you did receive some from Mr. Long  
 11 that you deleted, right, or they --  
 12 A. If there were text messages on my phone,  
 13 whatever he sent me on my phone, I lost because my  
 14 battery went dead and I had to go buy a new iPhone.  
 15 Q. Okay. And you didn't take any steps to  
 16 preserve those.  
 17 Right?  
 18 A. Oh, in between?  
 19 Q. Yes.  
 20 A. No, I did not.  
 21 Q. Okay. And you're not taking any steps  
 22 now to preserve text messages or voicemail messages.  
 23 Right?  
 24 A. That's correct.  
 25 MR. STEPHENS: I'd like that marked, please.

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1 (Whereupon E. Gottfurcht Exhibit 3 was  
 2 marked for identification)  
 3 THE WITNESS: Do you want me to keep those,  
 4 still?  
 5 BY MR. STEPHENS:  
 6 Q. Yes, you can keep those.  
 7 The court reporter has handed you the  
 8 exhibit marked E. Gottfurcht 3, and that's  
 9 U.S. Patent 6,604,97.  
 10 Right?  
 11 A. That's correct.  
 12 Q. And you're an inventor on that patent.  
 13 Right?  
 14 A. Yes.  
 15 Q. And that's the parent to the two patents  
 16 in this lawsuit.  
 17 Is that right?  
 18 A. Yes.  
 19 Q. I'm reminded that we took a break  
 20 sometime earlier today so you guys could consult and  
 21 figure out whether you could tell me why you decided  
 22 to change law firms.  
 23 A. Uh-huh.  
 24 Q. And what did you determine?  
 25 A. That I could tell you.

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1 Q. Okay. Go ahead and tell me, please.  
 2 A. Could you repeat the question?  
 3 Q. Yeah.  
 4 Why did you decide to switch from  
 5 Blakely Sokoloff Taylor & Zafman to  
 6 Morrison & Foerster when prosecuting the 845 patent?  
 7 A. Well, I don't believe it was for  
 8 prosecuting of the 845. I think that it had been  
 9 fully prosecuted and was in that period between the  
 10 appeal board sending its decision reversing the  
 11 examiner's decision back to the examiner.  
 12 So I don't think there was any  
 13 prosecution.  
 14 At that particular time, Tom Coester was  
 15 going on I believe a four-month sabbatical that his  
 16 firm offers I think every eight years.  
 17 And Jonathan Miller, who did the bulk of  
 18 the work at that time, was leaving the firm.  
 19 That left me without my two attorneys  
 20 that I had worked with, and so that is the reason why  
 21 I left the firm.  
 22 Q. Okay. Looking at the 497 patent,  
 23 there's a number of inventors there.  
 24 Can you tell me which of those inventors  
 25 were associated with Online Labs?

<p style="text-align: right;">Page 206</p> <p>1 A. Yes, Manuel Beltran, Steven Woesner, 2 John Marinuzzi, Albert Long, Donald Dukeshire. 3 Q. And who is Teague McKnight? 4 A. Teague McKnight? I hired Teague I think 5 starting in July of 1999 to work on the graphics of 6 the interface and the advertising, part of those 7 graphics. 8 Q. Uh-huh. And how did you come to hire 9 Mr. McKnight? 10 A. He was a friend of a friend. 11 Q. And who was the friend he was a friend 12 of? 13 A. I don't remember his name, because he 14 was a friend of another friend. 15 Q. Okay. What was Mr. McKnight's 16 background? 17 A. He -- graphics, graphic design, the 18 Internet, computers. He had graduated college, I 19 believe, and was in that period before going to 20 business school. 21 Q. So can you just run through the 22 inventors, here, and tell me what they contributed 23 to of the invention? 24 A. Well, I'm not able to tell you 25 specifically, because there were times when we all met</p>	<p style="text-align: right;">Page 208</p> <p>1 What figure? Figure 8? 2 Q. Figure 8, yeah. 3 A. Just some slight changes. 4 Q. Not in the 845, is there? 5 A. Between the 845 and the -- 6 Q. Figure 8 in the -- Figure 8 in the 497, 7 and Figure 8 in the 845 -- oh, I see. The F and J 8 changed -- 9 A. Correct. 10 Q. -- in this. Yeah, you're right. 11 I think you mentioned that 12 Alber-Michel Long contributed Figure 8 in the 845 13 patent. 14 Did he also contribute part of Figure 8 15 in the 497? 16 A. He may have. 17 Q. Was his contributions to the 497 patent 18 primarily graphical? 19 A. He worked with the team, so they -- they 20 were a team and they worked together. And so I was 21 not privy to all their conversations and meetings. 22 They did write a report. 23 I'm able to -- I'm unable to distinguish 24 what part of that report was contributed to each 25 co-inventor.</p>
<p style="text-align: right;">Page 207</p> <p>1 together and everybody threw out a contribution. 2 But the report was prepared by 3 Manuel Beltran. He was the leader of the group. And 4 Steven -- Steven Woesner, John Marinuzzi, and 5 Albert Long and Donald Dukeshire, they worked on the 6 report. 7 Q. Did they provide contributions to the 8 invention other than the things that are described in 9 the report? 10 A. Not that I recall. 11 Q. Could you just leaf through the figures 12 of the 497 patent and tell me what, if anything, you 13 can identify as a contribution of Mr. McKnight? 14 A. He may have worked on Figure 4-A; he 15 may have worked on Figure 5; 4-B is questionable; 16 Figure 8; Figure 9-A, is my recollection; Figure 9-B; 17 Figure 9-C; Figure 9-D; Figure 10-A; 10-B; 10-C; 10-D; 18 10-E; 10-F; 10-G; 11; 12-A; 12-B; 13. 19 That's the best of my recollection. 20 Q. Now, Figure 8 is the same as Figure 8 in 21 the later patents. 22 Right? 23 A. Figure what? 24 Q. Figure 8? 25 A. 8?</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Okay. So you don't really know exactly 2 who contributed what to the 497 invention. 3 Right? 4 A. That would be generally correct. 5 Q. Okay. Is there anything that you can 6 specifically identify with any of the individual 7 inventors? 8 A. Well, I remember going to a meeting. We 9 had a -- I think the co-inventors had day jobs, and 10 they worked at night and the weekends. And I recall a 11 couple times I reserved a room at a hotel in 12 Orange County. 13 I thought during that meeting -- I could 14 be wrong, here -- that Manuel Beltran, being the 15 leader of the team, said to Albert, Did you complete 16 the history portion of Figure 11? 17 That's my recollection. 18 Q. Okay. Is there any other individual 19 contribution of any inventor that you can recall? 20 A. No, I -- individually, no. It was the 21 report that they all worked on collectively. 22 MR. STEPHENS: Mark that, please. 23 (Whereupon E. Gottfurcht Exhibit 4 was 24 marked for identification) 25 MR. STEPHENS: This is Number 4.</p>

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1 Right?  
 2 COURT REPORTER: Yes.  
 3 BY MR. STEPHENS:  
 4 Q. Do you have Exhibit E. Gottfurcht  
 5 Number 4?  
 6 A. Yes.  
 7 Q. Can you tell me what that is?  
 8 A. This is a -- a print of a envelope that  
 9 I sent to myself registered mail. That's the first  
 10 page, on August 2nd, 1999. And then there's some  
 11 pages that were inside this envelope.  
 12 Q. Okay. Is that a complete collection of  
 13 the pages that were in the envelope?  
 14 A. I cannot remember. But I gave this  
 15 envelope to my attorney and asked them to include it  
 16 in our production of documents.  
 17 Q. Okay. So as far as you know, this would  
 18 be a complete set?  
 19 A. Yes.  
 20 Q. You didn't hold anything back?  
 21 A. No.  
 22 Q. Okay.  
 23 A. In fact, they opened the envelope. I  
 24 brought them the envelope sealed.  
 25 Q. Okay. And why did you send this to

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1 yourself on August 2nd?  
 2 A. I was just trying to establish a record  
 3 as to some dates when certain things -- you know, that  
 4 I had thought about.  
 5 Q. Why were you trying to do that?  
 6 A. Just to keep a -- a record of dates.  
 7 Q. And why were you trying to keep a record  
 8 of dates?  
 9 A. Well, I was planning to file a patent.  
 10 I thought that may be handy one day.  
 11 Q. Okay. So you were trying to keep a  
 12 record of what you had thought about on that date?  
 13 A. Or, you know, a week before.  
 14 Q. Okay. Is this August 2nd mailed to  
 15 yourself a record of what you invented in July?  
 16 MR. BECKER: Object. Form.  
 17 THE WITNESS: I don't -- I don't really know  
 18 if -- you know, what part this played in the  
 19 invention, but it was ideas that I had, visions that I  
 20 had, about August 2nd.  
 21 BY MR. STEPHENS:  
 22 Q. How does it relate to what you invented  
 23 in July?  
 24 A. I don't have any idea. I haven't read  
 25 it.

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1 Q. Well, take a minute and read it, and  
 2 tell me how it relates to your invention.  
 3 A. Okay.  
 4 Q. How does it relate to your invention?  
 5 A. I don't recall.  
 6 Q. So you can't tell from looking at it how  
 7 it relates to your invention?  
 8 A. It -- my guess would be that it was some  
 9 thoughts for a prototype.  
 10 Q. That's just a guess?  
 11 A. Yes.  
 12 Q. Can you tell anything else about it?  
 13 A. No.  
 14 Q. Is there anything in here about  
 15 scrolling or zooming?  
 16 A. I don't recall.  
 17 Q. And you can't tell -- see anything  
 18 looking at it.  
 19 Right?  
 20 A. Well, I -- this has been ten years ago.  
 21 Q. Okay.  
 22 A. And I -- I cannot recall.  
 23 Q. Again, I'm not asking about what you  
 24 recall. I'm asking about what you can tell from  
 25 looking at it.

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1 You don't see anything about scrolling  
 2 and zooming from looking at it?  
 3 A. I don't recall. I don't recall in my  
 4 mind at that -- ten years ago whether some of what's  
 5 in this document related to zooming and scrolling. I  
 6 don't know. I don't remember.  
 7 Q. There's nothing you can point to now  
 8 that shows scrolling or --  
 9 A. I cannot recall now what I thought about  
 10 ten years ago when I prepared this document.  
 11 Q. Okay. So -- so as a result, there's  
 12 nothing you can point to here now today and say, This  
 13 is about scrolling and zooming --  
 14 MR. BECKER: Object. Form.  
 15 BY MR. STEPHENS:  
 16 Q. -- right?  
 17 A. I do not recall my mind set ten years  
 18 ago when I prepared this document --  
 19 Q. Right.  
 20 A. -- if I had zooming and scrolling in my  
 21 mind at that time.  
 22 Q. I'm not asking about what you had in  
 23 your mind. I'm asking about what's in the document.  
 24 Is there anything in the document about  
 25 scrolling or zooming?

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1 A. I'm unable to tell you that when I  
 2 prepared this document, that I -- that I -- whether I  
 3 had scrolling and zooming in my mind --  
 4 Q. I'm not asking what you had in your  
 5 mind.  
 6 I'm asking whether there's anything in  
 7 this document about scrolling or zooming.  
 8 Is there?  
 9 A. I -- I cannot recall.  
 10 Q. You cannot answer is what you mean?  
 11 I'm not asking about your recollection.  
 12 I'm asking about what's in the document.  
 13 Is there anything in the document about  
 14 scrolling or zooming that you can point to, sitting  
 15 here today?  
 16 A. I prepared the document ten years ago.  
 17 I do not recall when I prepared the document if I had  
 18 in my mind --  
 19 Q. I'm not asking what was in your mind.  
 20 A. Today --  
 21 Q. Is there anything you can point to today  
 22 about scrolling or zooming in the document?  
 23 A. I cannot recall ten years ago when I  
 24 prepared this document if it had anything to do with  
 25 scrolling or zooming.

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1 Q. So you're not going to answer my  
 2 question?  
 3 A. That's my answer.  
 4 Q. Sir, one more time.  
 5 MR. STEPHENS: Could you read the question  
 6 back, please?  
 7 (Whereupon the record was read as follows:)  
 8 "QUESTION: I'm not asking what was in  
 9 your mind.  
 10 Is there anything you can point to  
 11 today about scrolling or zooming in the  
 12 document?"  
 13 THE WITNESS: I stand on my answer.  
 14 BY MR. STEPHENS:  
 15 Q. Okay. Actually, before we go on, if you  
 16 can look at the last page, Number 1327 in the lower  
 17 right corner, can you tell me what that is?  
 18 A. EMG 0 -- 001327?  
 19 Q. That's right.  
 20 A. I would assume when these documents were  
 21 prepared for you by the attorney, that that's --  
 22 Q. I'm not asking about the Bates number.  
 23 I'm asking what's on the page.  
 24 I'm sorry. I may not be clear.  
 25 A. Okay. What was your question again?

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1 Q. What's shown on that page?  
 2 A. It looks like a -- hardware.  
 3 Q. Okay. And what kind of hardware?  
 4 A. I -- I don't recall ten years ago what  
 5 kind of hardware this would have been.  
 6 Q. Okay. So you can't tell what it is  
 7 today.  
 8 Right?  
 9 A. No.  
 10 Q. Okay.  
 11 MR. STEPHENS: Mark this, please.  
 12 (Whereupon E. Gottfurcht Exhibit 5 was  
 13 marked for identification)  
 14 BY MR. STEPHENS:  
 15 Q. The court reporter has handed you a  
 16 document marked E. Gottfurcht 5. It has the Bates  
 17 numbers EMG 001402 through 001428.  
 18 Can you tell me what that document is?  
 19 A. The cover is a copy of a manila envelope  
 20 which I mailed to myself, I think on August 13 -- it's  
 21 two dates. It's August 13, 1999 and August 16th,  
 22 1999.  
 23 Q. Why are there two dates?  
 24 A. I don't know.  
 25 Q. Why did you mail this to yourself?

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1 A. There's some -- the same reason I  
 2 mentioned before. These are some ideas which -- which  
 3 I had, that I reduced to writing and wanted to keep a  
 4 record.  
 5 Q. So you wanted to establish a date for  
 6 these ideas?  
 7 A. Yes.  
 8 Q. And that's because you were thinking  
 9 about filing a patent application?  
 10 A. Yes.  
 11 Q. Okay. Can you tell me what's disclosed  
 12 in here?  
 13 A. You want me to go page by page?  
 14 Q. Sure.  
 15 A. Okay. First page, it says, Fogies.com.  
 16 Q. I don't want you to read it to me. You  
 17 can just tell me generally.  
 18 A. Okay. Well, it's entitled,  
 19 "Mission Statement," then there's certain -- then  
 20 three points pertaining, I assume, to this mission  
 21 statement.  
 22 Q. Okay. Can you tell generally what this  
 23 document is about?  
 24 While you're looking through it page by  
 25 page, please make sure to point out anything you see



<p style="text-align: right;">Page 218</p> <p>1 that talks about scrolling or zooming.                  2 A. You want me to start over again?                  3 Q. Sure.                  4 A. Is there anything else you want me to                  5 look at?                  6 Q. Yeah, if there's anything that describes                  7 a sister site.                  8 A. Okay. So you want a sister site,                  9 zooming and scrolling, anything that describes sister                  10 site, zooming and scrolling?                  11 Q. Yeah, and also anything that describes                  12 zooming or scrolling with a finger.                  13 A. A finger?                  14 Q. Yeah.                  15 A. Okay. Okay.                  16 Q. Okay. Did you find anything relating to                  17 scrolling or zooming?                  18 A. This document was prepared ten years                  19 ago, and any time that there is a -- a page here, in                  20 my mind at the time, this could have been -- page                  21 could be manip -- manipulated by zooming and                  22 scrolling, and it could be -- could have been a sister                  23 site that I had in mind.                  24 Q. Okay. Could you show me where the                  25 scrolling or zooming is?</p>	<p style="text-align: right;">Page 220</p> <p>1 Go ahead and do it. Identify it for me,                  2 please.                  3 A. I'm saying that I -- when this -- I                  4 prepared this ten years ago.                  5 Q. I know that.                  6 A. I'm not sure what I had in my mind                  7 pertaining to zooming and scrolling and sister site.                  8 Q. Okay. So can you identify anything in                  9 here that --                  10 A. Well, it's possible that there's a                  11 number of sister sites in here. It's possible that                  12 these pages could be navigated with zooming and                  13 scrolling.                  14 Q. Okay. So show me the sister sites --                  15 A. Well --                  16 Q. -- right now.                  17 MR. BECKER: Object. Form.                  18 THE WITNESS: Well, let's start with this page                  19 right here.                  20 BY MR. STEPHENS:                  21 Q. Okay. And what's that a sister site of?                  22 A. Could be a sister site of Yahoo or                  23 AOL --                  24 Q. Okay.                  25 A. -- or a number of sites. It could be a</p>
<p style="text-align: right;">Page 219</p> <p>1 A. Well, it could be on any one of                  2 these proposed pages.                  3 Q. I'm not asking where it could be. I'm                  4 asking where it is.                  5 Show me exactly the disclosure you're                  6 talking about.                  7 A. Well, I -- as I say, it's ten years ago,                  8 and I don't recall each one of -- each part of this                  9 document --                  10 Q. Well --                  11 A. -- that I had in mind when I prepared                  12 it.                  13 Q. If there's anything you can point to                  14 that you recall that discloses scrolling or zooming,                  15 please identify it.                  16 A. I cannot recall.                  17 Q. Okay.                  18 A. It may be in here, but I cannot recall.                  19 Q. Okay. So you're unable to point to                  20 anything that you know discloses scrolling or zooming.                  21 Right?                  22 A. No, I just can't recall ten years later                  23 what I meant when I prepared this document.                  24 Q. Okay. If you can -- you told me no,                  25 that I was wrong when I said, you can't.</p>	<p style="text-align: right;">Page 221</p> <p>1 sister site.                  2 Q. Okay. Where does it say that?                  3 A. It doesn't say. It could have been in                  4 my mind when I prepared it.                  5 Q. But you don't recall?                  6 A. I don't recall which sister site this                  7 may be, but this could -- this could be a sister site.                  8 Q. Okay. But is it a sister site?                  9 A. It could be.                  10 Q. I'm not asking whether it could be.                  11 Is it, was it?                  12 A. I don't -- it may have been.                  13 Q. Okay.                  14 A. It may have been a sister site for a                  15 prototype of a sister site, an example of a sister                  16 site for AOL or Yahoo or others.                  17 Q. Okay. But you don't know?                  18 You don't recall.                  19 Right?                  20 A. That's what I said. I don't recall.                  21 Q. Okay.                  22 A. But it could have been.                  23 Q. Now, did you see anything about                  24 scrolling or zooming with a finger?                  25 A. Well, this -- this could -- again, any</p>

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1 of these pages, you could scroll and zoom with a  
 2 finger.  
 3 Q. Is there anything in here that says  
 4 that?  
 5 A. Well, when -- ten years ago, this may be  
 6 what I had in mind when I prepared this, that  
 7 navigation could be zooming or scrolling a sister site  
 8 with a finger.  
 9 Q. Okay. What in here tells you that  
 10 that's what you had in your mind?  
 11 A. Well, I prepared it ten years ago and  
 12 the invention was in my mind, so I could have --  
 13 Q. That --  
 14 A. -- had that in my mind when I prepared  
 15 this.  
 16 Q. That's what I'm trying to establish,  
 17 sir.  
 18 How do you know the invention was in  
 19 your mind?  
 20 What is it that you are referring to  
 21 that tells you that on the first week of July 1999,  
 22 you and Grant discussed scrolling and zooming by  
 23 manipulating a region on a screen?  
 24 A. Would you repeat the question, please?  
 25 Q. What is it that you are relying on to

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1 date your invention with respect to scrolling and  
 2 zooming with a finger?  
 3 A. My memory.  
 4 Q. And nothing else?  
 5 A. I don't know. There -- as I say,  
 6 there's a number of documents which I've given to  
 7 Tom Coester, a number of documents which I've given to  
 8 you.  
 9 Q. And you've not reviewed any of those  
 10 before today, right, and recently?  
 11 A. I've not reviewed any of the documents  
 12 I've given you or Tom Coester prior to --  
 13 Q. So you're not relying on any of those  
 14 today?  
 15 A. I'm not relying that I've read those  
 16 recently.  
 17 Q. Okay. So you're relying solely on your  
 18 memory for the specifics of what you invented on that  
 19 day in July of 1999.  
 20 Right?  
 21 MR. BECKER: Object. Form.  
 22 THE WITNESS: That's correct.  
 23 BY MR. STEPHENS:  
 24 Q. Okay. Even though you can't remember  
 25 anything else about your invention when we've looked

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1 at the disclosures.  
 2 Right?  
 3 A. No, I remembered quite a bit about  
 4 the --  
 5 Q. Okay. But there are many things --  
 6 you'd agree with me, there are many things you don't  
 7 remember from ten years ago.  
 8 Right?  
 9 A. There are many things I do not remember  
 10 from ten years ago.  
 11 Q. Okay. But it's purely from recollection  
 12 and not any contemporaneous record, that you remember  
 13 that you invented scrolling and zooming with a  
 14 finger --  
 15 A. Well, the record would have been  
 16 documents and conversations I had with Tom Coester.  
 17 Q. But you're not relying on any of those  
 18 documents.  
 19 Right?  
 20 You haven't looked at any of those to  
 21 refresh your -- refresh your recollection?  
 22 Right?  
 23 A. That's correct.  
 24 Q. Okay.  
 25 A. But that's my -- my recollection, that

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1 there are documents back in January -- excuse me, July  
 2 of 1999 pertaining to the invention.  
 3 Q. Okay. If you'll turn to the page with  
 4 Bates number ending in 1412.  
 5 A. Okay.  
 6 Q. In the upper right corner, there's some  
 7 names.  
 8 One of those is Tom Coester?  
 9 A. Yes.  
 10 Q. Is that the lawyer you've been referring  
 11 to?  
 12 A. Yes.  
 13 Q. And there's some other names there.  
 14 Can you tell me who those people are?  
 15 A. I don't recall those names.  
 16 Q. Okay. You don't know who they are?  
 17 A. Well, I don't recall them now.  
 18 Q. Think they worked with Mr. Coester at  
 19 the time?  
 20 A. I don't recall them as -- as working  
 21 with Mr. Coester, but I could be wrong.  
 22 Q. Okay. What do you remember about this  
 23 document?  
 24 A. Well, I don't remember the document  
 25 specifically, but I remember that during this period

<p style="text-align: right;">Page 226</p> <p>1 of time, every few days, a period of time, I would jot                  2 down some of what we were working on and then mail it                  3 to myself --                  4 Q. Okay. Why --                  5 A. -- to --                  6 Q. Why is Mr. Coester's name on this                  7 document?                  8 A. I -- I don't have any idea.                  9 Q. So your best recollection is that this                  10 is some notes that you jotted down about what you were                  11 working on that you mailed to yourself, and you can't                  12 remember anything else about it?                  13 A. Other than the words on the page, that                  14 speak for itself, I cannot recall quite a bit of this                  15 document.                  16 Q. Do you remember anything about it?                  17 A. Well, let's go through word by word and                  18 I can tell you what I do recall.                  19 Q. I don't want to do that.                  20 A. Okay.                  21 Q. Is there anything you can point to                  22 specifically that you remember?                  23 A. Well, I -- I remember that we were --                  24 these inter -- interfaces, sister site interfaces.                  25 These are just examples. I would assume that's what I</p>	<p style="text-align: right;">Page 228</p> <p>1 thought that ABC 123 rhymed and that it would be a                  2 catch phrase to describe the simplified navigation                  3 interface.                  4 That's my best recollection.                  5 Q. Okay. And the simplified navigation                  6 interface was shown on the page just before it,                  7 Fogies.com.                  8 That's the page with Bates number ending                  9 in 1411.                  10 Is that right?                  11 A. No, I don't think so. I think 1411 was                  12 a -- a hardware device. I think that was a hardware                  13 device.                  14 Q. Okay. And -- and how did that relate to                  15 the rest of the disclosure?                  16 Is that the device you would display                  17 your simplified user interface on?                  18 A. That's -- that's a possibility that that                  19 could be a mobile device.                  20 Q. Okay. So is it the case that you would                  21 display the user interface, for example, on Page 1405,                  22 on the display shown in Page 1411?                  23 A. Well, it doesn't necessarily have to be                  24 on that device. It could be on any device, on 1405.                  25 Q. Okay. But you could display it on 1411.</p>
<p style="text-align: right;">Page 227</p> <p>1 was thinking about at the time.                  2 There were -- I mentioned to you that                  3 one of the components back in early July was                  4 categories, summaries of -- of content. I see some of                  5 that here.                  6 Q. Looking back at the page with Bates                  7 number ending 1412, it talks about Fogie ABC-123.                  8 Do you see that?                  9 A. Yes.                  10 Q. What is that?                  11 A. I remember that we thought that it was a                  12 catchy phrase, "ABC 123," it rhymed, and it would be                  13 something that -- for marketing purposes that we                  14 should consider.                  15 Q. And what did it refer to?                  16 A. It referred to how we should probably                  17 market our prototype.                  18 Q. In fact, it referred to selecting cells                  19 in the user interface that you see, like the page you                  20 held up earlier, by pressing the corresponding number                  21 on a keypad.                  22 Right?                  23 A. I don't think so.                  24 Q. No?                  25 A. My -- my recollection was that we</p>	<p style="text-align: right;">Page 229</p> <p>1 Right?                  2 A. I think so.                  3 Q. And how would you select the various                  4 options that you see in the display on Page 1405 when                  5 it was displayed on the device in -- on Page 1411?                  6 A. If it were on this particular device,                  7 you would do it by unique inputting numbers and                  8 letters.                  9 Q. So you press the number on the keypad?                  10 A. Which would be corresponding with the                  11 numbers on the interface.                  12 Q. Okay. So it would be a unique                  13 correspondence, a one-to-one correspondence between                  14 the number on the keypad and the number that you see                  15 in the cells on the display.                  16 Right?                  17 A. I think that was one embodiment.                  18 Q. Okay. So for the cells in 1, 2, or 3,                  19 you would press the corresponding Number 1, 2, or 3 to                  20 select that option.                  21 Right?                  22 A. I think that was one embodiment.                  23 Q. The same would be true for cells labeled                  24 A, B, or C.                  25 Right?</p>

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1 A. I believe so.  
 2 Q. Okay. Does the document that you see on  
 3 Page 1412 reflect notes of a conversation you had with  
 4 Mr. Coester?  
 5 A. I don't believe so.  
 6 Q. Why do you say that?  
 7 A. I don't recall taking notes of a  
 8 conversation I've had with Tom Coester.  
 9 Q. Ever?  
 10 A. No, not -- not in this document, and --  
 11 and -- so I don't recall that that would have been  
 12 notes from conversations with Tom Coester.  
 13 Q. Okay. But it's ten years ago.  
 14 It could have happened.  
 15 Right?  
 16 You just don't remember?  
 17 A. I don't think so.  
 18 MR. BECKER: I'll object to form.  
 19 BY MR. STEPHENS:  
 20 Q. How are you so sure?  
 21 A. Because I don't recall it.  
 22 Q. Okay. But there's a lot of things you  
 23 don't recall.  
 24 A. I understand.  
 25 Q. There's a lot of things you don't recall

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1 from ten years ago.  
 2 Right?  
 3 A. That's correct.  
 4 Q. But you do recall that this is not notes  
 5 from a conversation with Tom Coester.  
 6 Right?  
 7 A. I do not -- I do not recall. I do not  
 8 believe that it is.  
 9 Q. But you don't know why you read his name  
 10 on the page, either.  
 11 Right?  
 12 A. That's correct.  
 13 Q. Okay. If you turn to Page 1424, it  
 14 says, "Fogies.com, enjoying a longer life."  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. And then to the left of that, there's  
 18 some words that are written down, "Jill and Tom," and  
 19 then there's letter -- words to the left of that.  
 20 Can you read those?  
 21 A. Looks like "trademark" next to Jill, and  
 22 Tom -- portal? I can't -- I don't know what that  
 23 says.  
 24 Q. And who was Jill?  
 25 A. I don't recall.

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1 Q. And who was Tom?  
 2 A. I don't recall.  
 3 Q. Is that Tom Coester?  
 4 A. I don't recall.  
 5 Q. And if you'll turn to Page 1428, the top  
 6 of that page says, "Business Plan"?  
 7 A. Yes.  
 8 Q. Did you develop a business plan around  
 9 your invention?  
 10 A. I don't recall.  
 11 Q. How much money have you spent trying to  
 12 exploit your invention?  
 13 MR. BECKER: Object to form.  
 14 THE WITNESS: From 1999?  
 15 BY MR. STEPHENS:  
 16 Q. Yes.  
 17 A. A guess?  
 18 Q. Your best guess, sure.  
 19 A. About \$2 million or more.  
 20 Q. And how much of that is -- was spent on  
 21 patent filings and prosecuting?  
 22 A. Well, that would be included as part of  
 23 that.  
 24 Q. Well, no, I'm asking you to break it  
 25 down.

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1 A. I don't know how -- I couldn't break  
 2 that down.  
 3 Q. You spent more than a million on  
 4 patents?  
 5 A. No, I think I -- I -- I think that it  
 6 was about \$2 million for patent prosecution,  
 7 prototypes, and any other related expenses.  
 8 Q. Has that all been your own money?  
 9 A. Yes.  
 10 Q. No investors?  
 11 A. No.  
 12 Q. Do you have records of what you've  
 13 spent?  
 14 A. I don't recall.  
 15 Q. You don't have anybody in charge of  
 16 keeping records?  
 17 A. Well, I'd have to go see if I could find  
 18 records pertaining to that.  
 19 That go back ten years?  
 20 Q. Any period of time.  
 21 A. Yeah, I'd have to check to see if I have  
 22 those records.  
 23 Q. You didn't check to see if you have  
 24 those records in connection with this lawsuit already?  
 25 A. No.

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1 Q. Well, I'd ask you to do that and produce  
 2 them.  
 3 Do you know if patent prosecution made  
 4 up for more than half of that two million?  
 5 A. I don't recall.  
 6 Q. How much money do you have?  
 7 How wealthy are you?  
 8 MR. BECKER: Object. There's a --  
 9 MR. STEPHENS: You want me to explain why  
 10 that's relevant?  
 11 MR. BECKER: Yeah. 'Cause there's -- there's  
 12 a -- there's a constitutional right in California as  
 13 to privacy, and so --  
 14 MR. STEPHENS: But the suit was brought in  
 15 Texas.  
 16 MR. BECKER: But you're deposing a California  
 17 resident in California.  
 18 But go ahead. You were going to tell us  
 19 why that's relevant.  
 20 BY MR. STEPHENS:  
 21 Q. It's relevant because I want to  
 22 establish that you have the resources to exploit your  
 23 invention.  
 24 How much money do you have, sir?  
 25 MR. BECKER: I don't see how that's relevant.

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1 You're talking about the past. He has exploited it.  
 2 MR. STEPHENS: Are you going to direct him not  
 3 to answer?  
 4 MR. BECKER: I'll see what he's willing to do.  
 5 THE WITNESS: I'm not going to answer the  
 6 question.  
 7 BY MR. STEPHENS:  
 8 Q. Why not?  
 9 A. Because I think I have a constitutional  
 10 right in California not to disclose that information.  
 11 Q. Okay. Well, we'll take it up with the  
 12 Court, and we will get you back to answer that  
 13 question.  
 14 MR. BECKER: We're happy to talk to the  
 15 referee on that issue.  
 16 MR. STEPHENS: Well, let's call him up right  
 17 now.  
 18 MR. BECKER: Okay.  
 19 COURT REPORTER: Off the record?  
 20 MR. STEPHENS: It's closed in Texas. We can't  
 21 do it.  
 22 We're just going to have to have him  
 23 back.  
 24 Q. You can either answer the question now  
 25 or we're going to have you back to answer it later.

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1 MR. BECKER: Wait. Are we back on the record?  
 2 COURT REPORTER: We didn't go off.  
 3 THE WITNESS: I thought you were calling a  
 4 referee.  
 5 BY MR. STEPHENS:  
 6 Q. We can't, because the court's closed.  
 7 A. Oh.  
 8 Q. It's after 5 o'clock. That's what  
 9 happens when you start late.  
 10 All right. Well, you're refusing to  
 11 answer.  
 12 Right?  
 13 A. Yes.  
 14 Q. Okay. Has there been any -- well, leave  
 15 it at that.  
 16 COURT REPORTER: I'm sorry. I need to call my  
 17 office.  
 18 MR. STEPHENS: Oh, I'm sorry. Okay. Yeah,  
 19 we'll take a break.  
 20 THE VIDEOGRAPHER: Going off the record.  
 21 The time is 4:56 p.m.  
 22 (Whereupon a recess was taken)  
 23 (Whereupon Grant Gottfurcht departed the  
 24 deposition)  
 25 THE VIDEOGRAPHER: Back on the record.

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1 The time is 5:20 p.m.  
 2 THE WITNESS: I have -- I have just a general  
 3 question.  
 4 BY MR. STEPHENS:  
 5 Q. Sure.  
 6 A. How much time are you going to have  
 7 before you finish? It's getting late. And also, how  
 8 much time will be allocated to American Airlines?  
 9 BY MR. STEPHENS:  
 10 Q. Well, we have seven hours on the record  
 11 that we're entitled to take. It's pretty clear that  
 12 we're going to need more time, given your refusal to  
 13 answer some questions and -- and your -- and the claim  
 14 of privilege, which I think will be disputed.  
 15 But, yeah, we have seven hours. And he  
 16 has some questions he'd like to ask.  
 17 I'm going to try to make as much  
 18 progress as I can, and we'll give him some time. But  
 19 we'll go seven hours on the record today.  
 20 A. Okay. And how much time have we gone so  
 21 far?  
 22 Q. Five hours, I think. We have about two  
 23 hours left.  
 24 A. So we have two hours left, and you're  
 25 going to give American Airlines some time?

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1 Q. Yeah.  
 2 A. Okay.  
 3 MR. LANE: Apple -- Apple noticed the  
 4 deposition.  
 5 MR. STEPHENS: Yeah, but out of -- out of  
 6 courtesy, we'll let them have some time.  
 7 THE WITNESS: Is it seven hours for both of  
 8 you or seven hours --  
 9 BY MR. STEPHENS:  
 10 Q. Well, like I said, we're going to need  
 11 more time. And we'll go to the Court if we have to  
 12 get it, given your refusal to answer some questions  
 13 and the privilege issues that we see here.  
 14 But, yes, the normal rule is seven hours  
 15 per witness on the record.  
 16 A. So it's around 5:20, so it's around  
 17 8 o'clock we'll finish?  
 18 Q. I think that's reasonable.  
 19 Yeah, we'll break for today. And that's  
 20 the one problem with starting late. Seven hours is a  
 21 long day even if you start early.  
 22 MR. STEPHENS: So -- okay. Ready when  
 23 you guys are.  
 24 THE VIDEOGRAPHER: We're on the record.  
 25 COURT REPORTER: We are on the record.

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1 MR. STEPHENS: Oh, we are, sorry. Didn't  
 2 realize that.  
 3 (Whereupon E. Gottfurcht Exhibit 6 was  
 4 marked for identification)  
 5 (Whereupon E. Gottfurcht Exhibit 7 was  
 6 marked for identification)  
 7 (Whereupon E. Gottfurcht Exhibit 8 was  
 8 marked for identification)  
 9 (Whereupon E. Gottfurcht Exhibit 9 was  
 10 marked for identification)  
 11 (Whereupon E. Gottfurcht Exhibit 10 was  
 12 marked for identification)  
 13 (Whereupon E. Gottfurcht Exhibit 11 was  
 14 marked for identification)  
 15 BY MR. STEPHENS:  
 16 Q. Okay. I'm handing you what's been  
 17 marked E. Gottfurcht 6 through 11.  
 18 And given the length of time that you  
 19 took to answer simple questions about the previous  
 20 letters that you mailed to yourself, at this point, I  
 21 just want to ask you to look through those and tell me  
 22 if those are all letters that you mailed to yourself  
 23 in order to preserve the dates in connection with the  
 24 ideas you were having relating to the invention in  
 25 this case?

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1 A. Do you want me to answer each exhibit  
 2 individually, or wait until I finish reading them all?  
 3 Q. However you want to do it.  
 4 A. Okay.  
 5 Q. I just want to make sure the record's  
 6 clear for each exhibit that it's --  
 7 A. Okay.  
 8 Q. -- something you mailed to yourself to  
 9 preserve the dates for ideas relating to your  
 10 invention.  
 11 A. I'm first reviewing Exhibit 6.  
 12 Q. Okay.  
 13 MR. STEPHENS: And just for the record,  
 14 Exhibit 6 has Bates numbers EMG 001328 through 1350.  
 15 I'll tell you what. Why don't we do it  
 16 this way. Let's go off the record. You can review  
 17 the whole pile, and then when you're done, we'll go  
 18 back on the record and you can tell us your answers.  
 19 MR. BECKER: We can do that, but we're not  
 20 going to deduct that from our -- it will keep the  
 21 clock running.  
 22 MR. STEPHENS: No, it won't.  
 23 MR. BECKER: Yeah, we will.  
 24 MR. STEPHENS: No, we won't.  
 25 MR. BECKER: And why is that?

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1 MR. STEPHENS: Let's go off the record.  
 2 Because it's taken a ridiculous amount  
 3 of time to review these documents.  
 4 MR. BECKER: Well, you're asking him --  
 5 MR. STEPHENS: I asked him a simple question:  
 6 Are these documents that you mailed to yourself in  
 7 connection with the invention?  
 8 You don't have to read the entire  
 9 document page for page to make that answer. If that's  
 10 what he's going to do, it's out of your time.  
 11 MR. BECKER: Well, I disagree. This whole  
 12 thing is your time. It's your deposition. I'm not  
 13 going to tell you --  
 14 MR. STEPHENS: Well, okay. So we'll be asking  
 15 for more. That's fine.  
 16 If you want to do it on the record,  
 17 we'll do it on the record, and we'll just point out to  
 18 the judge that he took an hour to answer a very simple  
 19 question.  
 20 MR. BECKER: Okay. I doubt -- seriously doubt  
 21 that's going to happen, but go ahead.  
 22 MR. STEPHENS: You can doubt it.  
 23 COURT REPORTER: So we're staying on the  
 24 record?  
 25 MR. STEPHENS: We can go off the record, and

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1 then you'll just tell us when you're ready. And then  
 2 the record will reflect the amount of time you took to  
 3 answer the question.  
 4 MR. BECKER: No, it won't reflect it, because  
 5 we're off the record.  
 6 MR. STEPHENS: The record tells you what time  
 7 we go on and off.  
 8 COURT REPORTER: So do all counsel stipulate  
 9 to go off the record?  
 10 MR. BECKER: Just stay on.  
 11 MR. STEPHENS: No, we don't. I think we  
 12 should go off. But if he's going to insist that we're  
 13 going to go on, then -- it seems a little silly to  
 14 fight about it -- we'll stay on the record.  
 15 The main thing is, we need to know how  
 16 long he's taking to answer this simple question,  
 17 whether these are documents that he mailed to himself  
 18 that relate to the invention.  
 19 So 5:26 now. I guess I should say that  
 20 it's 5:26 by my clock. The record will reflect what  
 21 it is.  
 22 THE WITNESS: What was your question?  
 23 BY MR. STEPHENS:  
 24 Q. Are Exhibits 6 through 11 documents that  
 25 you've mailed to yourself in order to preserve the

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1 date in connection with ideas that you had relating to  
 2 the invention?  
 3 A. Exhibit 6 seems to be that.  
 4 Q. Okay.  
 5 A. Okay. I'm going to read Exhibit 7.  
 6 Q. Okay.  
 7 A. Exhibit 7 also seems to be a document  
 8 that I sent to myself.  
 9 Q. And it relates to ideas in connection  
 10 with this invention?  
 11 A. Yes.  
 12 Q. Okay.  
 13 A. I believe so.  
 14 Exhibit 8 seems to be a document that I  
 15 sent to myself.  
 16 Q. In connection with ideas you were trying  
 17 to date related to this invention?  
 18 A. Marketing -- some of it were marketing  
 19 ideas, so they were mixed up between marketing ideas  
 20 and -- and the invention ideas.  
 21 Q. Okay. But the marketing was also about  
 22 marketing the invention?  
 23 A. Yes.  
 24 Q. Okay.  
 25 A. Exhibit 9, I've reviewed, and it -- it

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1 looks like a document that I sent to myself.  
 2 Q. Okay. And that -- again, that document  
 3 relates to ideas you were trying to date in connection  
 4 with the invention?  
 5 A. It included games and other ideas for  
 6 navigating the Internet --  
 7 Q. Okay.  
 8 A. -- on a simplified navigation interface.  
 9 I've reviewed Exhibit 10.  
 10 Q. Okay. And does it -- is it a document  
 11 that you sent to yourself in order to date ideas  
 12 relating to the invention?  
 13 A. Yes, and marketing, marketing and games  
 14 and other ideas.  
 15 Q. Okay. This is Exhibit 11.  
 16 A. Exhibit 11, I've reviewed.  
 17 Q. And is it also a document you mailed to  
 18 yourself in order to date ideas in connection with the  
 19 invention?  
 20 A. Yes, I believe so.  
 21 MR. STEPHENS: Mark that, please.  
 22 MR. BECKER: What is this one?  
 23 MR. STEPHENS: 12.  
 24 (Whereupon E. Gottfurcht Exhibit 12 was  
 25 marked for identification)

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1 BY MR. STEPHENS:  
 2 Q. Mr. Gottfurcht, do you have Exhibit  
 3 EG -- or E. Gottfurcht 12, which has Bates numbers  
 4 EMG 002099 through 2127?  
 5 A. Yes.  
 6 Q. Can you tell me what that is?  
 7 A. This appears to be the document prepared  
 8 by the co-inventors that was presented to Tom Coester.  
 9 Q. And the co-inventors are the ones named  
 10 on the document, itself?  
 11 A. Yes, yes.  
 12 Well, it also has my name, and it does  
 13 not have one of the co-inventors.  
 14 Q. And that's Teague McKnight?  
 15 A. That's Teague McKnight, right, and  
 16 Grant.  
 17 Q. And Grant.  
 18 And is it your understanding that this  
 19 document reflects the contribution of those  
 20 co-inventors other than Grant, and Teague McKnight?  
 21 A. Well, I don't know if it's the actual  
 22 document, so -- but I know that these co-inventors did  
 23 prepare a document, and I do not know if this is the  
 24 document.  
 25 Q. Okay.

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1 A. But I would say that the co-inventors  
 2 submitted a document to Tom Coester, which  
 3 incorporated their component that they worked on of  
 4 the invention. I can't verify that this is the  
 5 document.  
 6 Q. Okay. This was sent from Manuel Beltran  
 7 to you.  
 8 Right?  
 9 A. That's correct.  
 10 Q. On October 15th, 1999.  
 11 Is that right?  
 12 A. I -- I would -- it looks that way. It  
 13 looks like his fax number. It doesn't have my fax  
 14 number. It has my name at the top.  
 15 Q. Do you have any reason to think you did  
 16 not receive this document on or about October 15th of  
 17 1999?  
 18 A. No, if it's a complete document, that's  
 19 probably how I received it.  
 20 Q. Okay. Are you aware of any other  
 21 document that might be the report that you've  
 22 testified about that the co-inventors prepared,  
 23 reflecting their contribution to the invention?  
 24 A. No, I believe they prepared one report.  
 25 I just cannot verify that this is their complete

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1 report.  
 2 Q. Well, that's what I'm trying to  
 3 establish.  
 4 Do you have any reason to think it's  
 5 not?  
 6 A. I -- I -- couldn't respond to that. I  
 7 haven't --  
 8 Q. Okay. We got it from you, and we don't  
 9 know anything about it other than we got it from you.  
 10 So I'm depending on you to tell me  
 11 whatever you can about it.  
 12 A. Well, I -- I haven't looked at it for  
 13 ten years, so I cannot recall whether or not this is  
 14 the exact document or not.  
 15 Q. Okay. Is there some other document that  
 16 you think would be it instead?  
 17 A. Pardon me?  
 18 Q. Are you aware of some other document  
 19 that you think would be --  
 20 A. No, I --  
 21 Q. -- the report that you --  
 22 A. My recollection is that they prepared  
 23 one document.  
 24 Q. Okay.  
 25 A. And this seems similar to the cover

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1 page. I don't know if all the other pages are  
 2 included.  
 3 Q. What do you mean by that?  
 4 A. Well, my recollection, ten years ago,  
 5 that this looked like the cover page of the document,  
 6 but I can't verify that this is the complete document.  
 7 Q. In other words, you can't verify that  
 8 it's all here.  
 9 Right?  
 10 A. Correct.  
 11 Q. Okay.  
 12 A. This looks very similar to the cover  
 13 page I saw ten years ago.  
 14 Q. Okay. And looking through it, do the  
 15 contents of it also appear similar to the report that  
 16 you saw ten years ago?  
 17 A. I wouldn't be able to recall what the  
 18 document --  
 19 Q. Okay.  
 20 A. -- the complete document included ten  
 21 years ago.  
 22 Q. Do you have any reason to believe this  
 23 is not the report that you've testified about?  
 24 A. If you -- if you say that is the report,  
 25 then I would believe it's the report.

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1 Q. I don't know. I got it from you. I  
 2 know nothing about it other --  
 3 A. Well --  
 4 Q. -- than I got it from you and what it  
 5 says on it.  
 6 A. I stand by my response.  
 7 Q. So you just don't know whether this is  
 8 the report or not?  
 9 A. The complete report. It looks like the  
 10 report. The cover page looks like the cover page of  
 11 the report. I cannot verify that all the other pages  
 12 were the pages of the report.  
 13 Q. Okay. Thank you.  
 14 So you believe that the pages that are  
 15 here are pages from the report.  
 16 You just can't be sure whether or not  
 17 there was something else?  
 18 A. Yeah, I believe the cover page is --  
 19 is -- looks like the cover page I received ten years  
 20 ago.  
 21 Q. Do you have any reason to think that any  
 22 of the other pages are not the report?  
 23 A. I do not have any reason, because I  
 24 haven't read it.  
 25 Q. Okay. Well, take a minute and look



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1 through it, and tell me if you think it's the report  
 2 or not.  
 3 A. Well, I looked at this report ten years  
 4 ago, so I wouldn't be able, even looking at it, to  
 5 determine whether or not it was the report.  
 6 I don't think I'm able to give you any  
 7 more information, after quickly reviewing the report,  
 8 other than what I've already testified.  
 9 Q. Okay. Well, let's take this a piece at  
 10 a time.  
 11 You testified that the people who are  
 12 listed here, other than yourself, prepared a report  
 13 that was the basis of their contribution to the  
 14 invention.  
 15 Right?  
 16 A. That's correct.  
 17 Q. And you've testified that they only  
 18 prepared one report.  
 19 Right?  
 20 A. That's my recollection.  
 21 Q. And you don't recall ever seeing any  
 22 other document other than the one report.  
 23 Right?  
 24 A. That's correct.  
 25 Q. Okay. So if this document is not the

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1 report, then you never saw this document before.  
 2 Is that right?  
 3 A. Well, the first page looks like it's the  
 4 first page of the report.  
 5 Q. Okay. So --  
 6 A. I --  
 7 Q. -- what else could it be?  
 8 A. I -- I would assume it is, but in order  
 9 to testify that it is the report that was given to me  
 10 ten years ago, I'm unable to do that.  
 11 Q. Okay. But you received this from the  
 12 people who wrote it.  
 13 Right?  
 14 A. I received a report from the people who  
 15 wrote it, yes.  
 16 Q. And you received this document from the  
 17 people who wrote the report?  
 18 A. No, that's what I'm trying to say.  
 19 I received a document from the people --  
 20 these co-inventors mentioned in this report, and the  
 21 front page looks like the front page of the report  
 22 that I received ten years ago.  
 23 Q. Okay.  
 24 A. But I'm unable to verify whether the  
 25 other pages were exactly what the pages of the

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1 original report consisted of.  
 2 Q. Is that what you're going to tell the  
 3 jury when you're asked about this document in court?  
 4 A. Yes.  
 5 Q. Okay. That you can't tell what it is?  
 6 A. No, I didn't say I can't tell what it  
 7 is.  
 8 You -- you asked me if this was a  
 9 document that was prepared by these co-inventors.  
 10 Q. Okay.  
 11 A. And my answer was that the front page --  
 12 I haven't read it for ten years, and the front page  
 13 looks like the front page of the document that I  
 14 received ten years ago.  
 15 But I cannot verify whether the pages  
 16 after the front page were all the pages in the  
 17 document that I received ten years ago.  
 18 Q. And that's what you're going to testify  
 19 at trial?  
 20 A. I believe so.  
 21 Q. Okay.  
 22 MR. STEPHENS: Mark that, please.  
 23 (Whereupon E. Gottfurcht Exhibit 13 was  
 24 marked for identification)  
 25 / / /

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1 BY MR. STEPHENS:  
 2 Q. Mr. Gottfurcht, the court reporter has  
 3 handed you E. Gottfurcht Exhibit 13 bearing Bates  
 4 numbers EMG 002599.  
 5 That's an e-mail from you to  
 6 aditya@yahoo-inc.com.  
 7 Right?  
 8 A. Yes.  
 9 Q. And you sent that Tuesday, May 4th,  
 10 2004.  
 11 Right?  
 12 A. Yes.  
 13 Q. Who is aditya@yahoo-inc.com?  
 14 A. He was, I believe, one that was going to  
 15 review our patents to determine if Yahoo had interest  
 16 in launching MallTV -- that's what I believe -- six  
 17 years ago, over six years ago. But I believe that's  
 18 what it was about.  
 19 Q. And then you had spoken to him that day.  
 20 Is that right?  
 21 A. Yes.  
 22 Q. And in the e-mail, in the second  
 23 paragraph, you're saying, "The television user selects  
 24 the desired services from a set of displayed options  
 25 using a remote control by pressing one-click on a

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1 corresponding key."  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. And then you say, "Our patent  
 5 Number 6,600,497 covers the full operation of the  
 6 MallTV/Yahoo cable channel, including all Web content,  
 7 shopping, games and entertainment, on a simplified  
 8 matrix interface navigated with single clicks (unique  
 9 inputs) on a remote control."  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. Those are your words.  
 13 Right?  
 14 A. Yes.  
 15 Q. And you're describing what the claims of  
 16 the 497 patent cover to Mr. Aditya.  
 17 Correct?  
 18 A. I -- I was describing -- it was quite  
 19 some time ago, but I believe I was describing what the  
 20 prototype could do.  
 21 Q. You were describing specifically what  
 22 the 497 patent covers?  
 23 A. I -- I -- I understand what it says  
 24 there, but in my mind, I was relating to a cable  
 25 channel that would be navigated in this fashion.

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1 Q. Could you read the next paragraph out  
 2 loud, please?  
 3 A. "In addition, if either patent  
 4 application outlined in BST&Z's intellectual property  
 5 report listed as B-1, apparatus and method for  
 6 simplified wide-area network navigation, (all Web  
 7 content reconfigured for simplified navigation on any  
 8 system including scrolling), or B-2, quote, 'method to  
 9 advertise and search on television for Web content  
 10 using a simplified interface', close quote, were  
 11 issued. Others attempting to offer similar services  
 12 would most likely infringe on these patents."  
 13 Q. Okay. Did you provide BST&Z's  
 14 intellectual property report to Aditya at Yahoo?  
 15 A. I don't recall.  
 16 Q. What's the relationship between B-1 and  
 17 B-2 in the patents in this lawsuit?  
 18 A. I don't recall.  
 19 Q. They're -- they're the applications that  
 20 resulted in the patents in this lawsuit.  
 21 Right?  
 22 A. No, I don't recall.  
 23 Q. Okay. You just don't know one way or  
 24 other?  
 25 A. Yeah, I don't know.

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1 Q. Okay. Do you have a copy of BST&Z's  
 2 intellectual property report?  
 3 A. Only what I have supplied to you in the  
 4 production of documents.  
 5 Q. Did you request -- did you request a  
 6 copy of it from Blakely Sokoloff?  
 7 A. I do not recall.  
 8 MR. STEPHENS: Well, we don't have one, so we  
 9 need it.  
 10 Also, it's our position that this letter  
 11 waives any privilege that Mr. Gottfurcht has been  
 12 asserting in the coverage of the patents and refusing  
 13 to answer on that basis.  
 14 So we will be asking for Mr. Gottfurcht  
 15 to return and testify pursuant to that waiver,  
 16 assuming you're not going to just agree that there's a  
 17 waiver --  
 18 MR. BECKER: I do not agree.  
 19 MR. STEPHENS: Okay.  
 20 Okay. We need to take a short break  
 21 just to change the tape. We don't really have to  
 22 leave the room or anything unless you guys need to.  
 23 THE VIDEOGRAPHER: This marks the end of tape  
 24 Number 3 in the deposition of Elliot Gottfurcht.  
 25 Going off the record.

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1 The time is 5:49 p.m.  
 2 (Whereupon E. Gottfurcht Exhibit 14 was  
 3 marked for identification)  
 4 THE VIDEOGRAPHER: Back on the record.  
 5 Here marks the beginning of tape  
 6 Number 4 in the deposition of Elliot Gottfurcht.  
 7 The time is 5:55 p.m.  
 8 BY MR. STEPHENS:  
 9 Q. Mr. Gottfurcht, do you have  
 10 E. Gottfurcht 14, which has Bates numbers EMG 00613  
 11 through 617?  
 12 A. Yes.  
 13 Q. Can you tell me what that is?  
 14 A. This is an e-mail from my daughter to me  
 15 on May 21st, 2008, 8:20 p.m.  
 16 Q. 2004.  
 17 A. Excuse me, 2004. Thank you.  
 18 Q. And what's it about?  
 19 A. I cannot recall exactly what it was  
 20 about, but I have a recollection that Yahoo asked for  
 21 certain information, and I think this was some of the  
 22 information that they had requested.  
 23 Q. Did you provide this information to  
 24 Yahoo?  
 25 A. I don't know if I provided it in this

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1 form and I don't know if we provided all this  
 2 information, but I think some of this information, I  
 3 recall, is what Yahoo requested for their review.  
 4 Q. Okay. And -- and some of it, you  
 5 provided to them?  
 6 A. I -- I think some of it looks familiar.  
 7 Q. Okay. Did you ever do a deal with  
 8 Yahoo?  
 9 A. No.  
 10 Q. Does Yahoo infringe your patents?  
 11 MR. BECKER: I'll instruct you not to answer  
 12 that if it requires you to divulge attorney-client  
 13 communications.  
 14 THE WITNESS: Okay.  
 15 BY MR. STEPHENS:  
 16 Q. Is it your belief that Yahoo infringes  
 17 your patent?  
 18 A. It would -- it would reveal  
 19 attorney-client privilege.  
 20 Q. Okay. Did you believe at the time that  
 21 your daughter and you compiled the information in  
 22 E. Gottfurcht Exhibit 14, that Yahoo was infringing  
 23 your patents at the time?  
 24 A. I do not believe so.  
 25 Q. You did not think they were infringing?

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1 A. I -- I do not believe so. I don't  
 2 recall, but I -- it's something that I don't re --  
 3 Q. Okay.  
 4 A. -- I remembered.  
 5 Q. Now, there's a discussion of prior art  
 6 in here.  
 7 Right?  
 8 A. Reference patent -- where would that be?  
 9 Q. So, for example, on the Page 2615,  
 10 there's a discussion of a bunch of patents.  
 11 A. So the three patents under "A"?  
 12 Q. Yeah. So the -- the top of that page,  
 13 it says, "MallTV's patent claims differ from all prior  
 14 art, primarily in four areas."  
 15 Do you see that?  
 16 A. Yes, I do see that.  
 17 Q. It says, "Web content on simplified  
 18 interface?"  
 19 A. Right.  
 20 Q. On -- why don't -- let me ask him to  
 21 read it, actually.  
 22 Could you just read those --  
 23 A. Yes.  
 24 Q. -- four words into the record?  
 25 A. "Web" --

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1 Q. Let me -- let me just ask you to start  
 2 with "MallTV's patent claims," and read through there  
 3 to the --  
 4 A. "MallTV's pat --  
 5 Q. Go ahead.  
 6 A. "MallTV's patent claims differ from all  
 7 prior art, primarily in four areas: Web content on  
 8 simplified interface, easy one-click navigation,  
 9 reconfigured Web content on simplified interface,  
 10 advertise and search for Web content on simplified  
 11 interface."  
 12 Q. And you shared that information with  
 13 Yahoo?  
 14 A. I don't recall.  
 15 Q. Okay. And then it discusses quite a bit  
 16 of prior art following that.  
 17 Right?  
 18 A. There are three references, I believe,  
 19 to prior art.  
 20 Q. Did you, yourself, compare MallTV's  
 21 patented claims with that prior art?  
 22 A. I don't recall.  
 23 I know that Yahoo requested certain  
 24 information, and I don't know if this was part of  
 25 their request. I just don't recall.

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1 Q. I'm not asking about their request. I'm  
 2 asking whether you, yourself, compare the claims in  
 3 your patents with the prior art that's listed here.  
 4 A. I don't recall.  
 5 Q. Okay. Now, it mentions on Page 2616,  
 6 "WebTV, among other things."  
 7 Do you see that?  
 8 A. Yes.  
 9 Q. Did you ever own a WebTV?  
 10 A. I don't recall. I don't believe so.  
 11 Q. Now, Apple sent a collection of prior  
 12 art to your counsel some weeks ago.  
 13 You're aware of that.  
 14 Right?  
 15 A. Yes, I am.  
 16 Q. Did you look at any of that art?  
 17 A. I did.  
 18 Q. And did you look at the WebTV art in  
 19 particular?  
 20 A. I don't -- I don't recall. I think I  
 21 saw it. I'm not sure I read it in detail.  
 22 Q. How do your patented claims differ from  
 23 WebTV?  
 24 MR. BECKER: And if that requires you to  
 25 divulge attorney advice on that issue, I instruct you

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1 not to answer.  
 2 THE WITNESS: Well, I don't own a WebTV, so I  
 3 wouldn't be able to answer that question. I'm not  
 4 familiar with WebTV.  
 5 BY MR. STEPHENS:  
 6 Q. Okay. Did you look at the World Wide  
 7 Web Consortium art that we provided?  
 8 A. I looked at the cover page. I did not  
 9 read it in detail.  
 10 Q. How do your patented claims differ from  
 11 the World Wide Web Consortium prior art that we  
 12 provided?  
 13 MR. BECKER: Same objection.  
 14 MR. STEPHENS: Okay.  
 15 Q. And what's your answer, sir?  
 16 A. My answer is, I don't have the  
 17 expertise, and I did not read the W3C report.  
 18 Q. Okay. Did you do enough analysis of any  
 19 of the art that we provided to make a determination as  
 20 to whether or not your claims are invalid with respect  
 21 to that art?  
 22 MR. BECKER: Same objection.  
 23 BY MR. STEPHENS:  
 24 Q. I'm asking about what you, yourself,  
 25 did; not what you were informed by your lawyers.

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1 A. No, I -- I reviewed the patents, and in  
 2 my review, I was unable to see -- in my limited  
 3 review, I was unable to see how they were prior art.  
 4 Q. What do you mean?  
 5 That they were not prior art, in other  
 6 words, they were dated after your --  
 7 A. Some -- my recollection is that -- and  
 8 this is just guessing now, as to my memory -- that  
 9 there were 15 patent references.  
 10 Q. I'm not asking about those. I'm asking  
 11 about the World Wide Web Consortium references.  
 12 A. Oh, that one?  
 13 I did not read that document.  
 14 Q. Okay. But that was prior art.  
 15 Right?  
 16 You could tell that from the cover page?  
 17 MR. BECKER: Object. Form.  
 18 THE WITNESS: I saw it in the document. I --  
 19 I -- that's all I can say, that it was part of the  
 20 documents that you supplied.  
 21 BY MR. STEPHENS:  
 22 Q. Okay. And you don't know anything more  
 23 about it?  
 24 A. No.  
 25 Q. And the same thing's true with the WebTV

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1 references we provided?  
 2 A. That's correct.  
 3 Q. Okay. Other than --  
 4 A. Other than what my -- attorney-client  
 5 privilege.  
 6 Q. Now, we also made available to your  
 7 counsel a WebEX presentation online last Friday.  
 8 Did you view that?  
 9 A. No.  
 10 Q. Did -- have you seen any of the results  
 11 from it?  
 12 In other words, have you seen any  
 13 information derived from that WebEX display?  
 14 MR. BECKER: Object. If that -- if that  
 15 information is advice from your counsel or counseling  
 16 from your counsel, then I would instruct you not to  
 17 answer with respect to that.  
 18 BY MR. STEPHENS:  
 19 Q. Okay. So just to be clear, your counsel  
 20 sat and watched it for four hours, took detailed notes  
 21 and provided those to you, and you're not going to  
 22 testify about it.  
 23 Right?  
 24 MR. BECKER: Object to form.  
 25 / / /

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1 BY MR. STEPHENS:  
 2 Q. Is that what happened?  
 3 A. I don't know how many hours they looked  
 4 at it.  
 5 Q. I do. They spent four hours looking at  
 6 it.  
 7 A. Okay. But I -- I didn't look at it --  
 8 Q. Okay.  
 9 A. -- for four hours.  
 10 Q. And they provided you information about  
 11 it.  
 12 Right?  
 13 MR. BECKER: And any communication from your  
 14 attorneys and/or advice from your attorneys on the  
 15 subject, I instruct you not to answer that.  
 16 BY MR. STEPHENS:  
 17 Q. And are you going to --  
 18 A. That's correct.  
 19 Q. Okay. You're not going to answer that  
 20 question?  
 21 A. That's true.  
 22 Q. What makes you think that Apple  
 23 infringes your patents, other than advice of counsel?  
 24 MR. BECKER: Same objection.  
 25 THE WITNESS: Are you instructing me not to

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1 answer?  
 2 MR. BECKER: To the extent that your answer  
 3 will divulge attorney-client communications or advice  
 4 on this.  
 5 BY MR. STEPHENS:  
 6 Q. I'm not asking for advice.  
 7 A. I -- I understand.  
 8 I'll go back to July 1st to July 7th,  
 9 and if I just focus on that period of time before I  
 10 hired any counsel, I'd be able to have the privilege,  
 11 if it was before counsel was hired.  
 12 I see on the -- on the iPhone, the iPod  
 13 Touch, sister sites in the form of applications, in  
 14 the form of reformatted Web pages that are very  
 15 similar to what the invention was in July of 1999.  
 16 I see on Apple devices, I see that on  
 17 reformatted Web pages, I see navigation -- simplified  
 18 navigation interfaces, I see unique input navigation,  
 19 I said -- I see sister sites, and I see manipulating a  
 20 screen for zooming and scrolling.  
 21 So what I have seen on Apple's devices  
 22 looks the same as what I envisioned in July of 1999  
 23 for displaying Internet content on cell phones and  
 24 wireless devices.  
 25 I see them displayed on the iPhone and

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1 on the iPod Touch, what I had -- we had invented in  
 2 1999.  
 3 Q. Okay. And that's the basis of your  
 4 belief that Apple infringes.  
 5 Is that right?  
 6 MR. BECKER: Same instruction.  
 7 THE WITNESS: Well, that's separate from --  
 8 BY MR. STEPHENS:  
 9 Q. Advice of counsel?  
 10 A. -- advice of counsel. That's -- that --  
 11 well, that's part of it. There may be more.  
 12 The iTunes mobile page seems to me to be  
 13 a reformatted page, similar to the inventions in 1999.  
 14 Q. Now, you understand with respect to the  
 15 iPhone reformatted Web pages, that Apple doesn't do  
 16 that reformatting.  
 17 Correct?  
 18 MR. BECKER: Object. Form.  
 19 And again, if it would require you to  
 20 divulge advice of counsel, I would instruct --  
 21 THE WITNESS: Yeah, I think that --  
 22 MR. BECKER: -- instruct you not to divulge  
 23 that.  
 24 THE WITNESS: I think that would --  
 25 / / /

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1 BY MR. STEPHENS:  
 2 Q. Let's -- let's put that to one side and  
 3 say, I'm going to ask you to assume and I'm going to  
 4 represent to you that Apple does not do the  
 5 reformatting of websites that's been accused in this  
 6 case.  
 7 Does that affect your view of whether or  
 8 not Apple infringes --  
 9 A. You mean including the iTunes site?  
 10 COURT REPORTER: Does that affect your view --  
 11 BY MR. STEPHENS:  
 12 Q. -- of whether Apple infringes in this  
 13 case?  
 14 A. No, that's --  
 15 MR. BECKER: Same instruction.  
 16 THE WITNESS: That would not -- that's --  
 17 BY MR. STEPHENS:  
 18 Q. So it doesn't matter whether or not  
 19 Apple does the reformatting,  
 20 Apple infringes just because they can  
 21 display the reformatted Web page --  
 22 MR. BECKER: Wait, wait, wait.  
 23 BY MR. STEPHENS:  
 24 Q. -- is that --  
 25 MR. BECKER: Do not divulge the contents of

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1 any --  
 2 MR. STEPHENS: Stop coaching him.  
 3 MR. BECKER: -- attorney-client privilege.  
 4 MR. STEPHENS: I don't -- I don't want you  
 5 to -- I'm not asking for --  
 6 MR. BECKER: I'm entitled to make my  
 7 objections.  
 8 MR. STEPHENS: You're not entitled to coach  
 9 the witness.  
 10 MR. BECKER: I'm entitled to make an  
 11 attorney-client objection.  
 12 THE WITNESS: Well, let me give my answer.  
 13 MR. BECKER: I'm entitled to make an  
 14 attorney-client objection. I'm instructing my witness  
 15 not to answer the question if it divulges  
 16 attorney-client communications.  
 17 MR. STEPHENS: He's a smart guy; he knows  
 18 that.  
 19 BY MR. STEPHENS:  
 20 Q. Go ahead.  
 21 A. It would divulge attorney-client  
 22 privilege.  
 23 Q. So you can't tell me whether or not the  
 24 fact that Apple doesn't reformat the Web pages has any  
 25 effect on your view of whether or not Apple practices

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1 the invention, as you understood it back in 1999 --  
 2 MR. BECKER: Same instruction.  
 3 BY MR. STEPHENS:  
 4 Q. -- right?  
 5 A. I will go with counsel.  
 6  
 7  
 8  
 9  
 10 **REDACTED**  
 11  
 12  
 13  
 14  
 15  
 16 Q. And you believe that Apple should pay  
 17 also for displays of Bloomberg websites on the iPhone.  
 18 Right?  
 19 MR. BECKER: Object. Form.  
 20 THE WITNESS: Do I believe that -- that would  
 21 be a legal document, would be interpretation of a  
 22 legal document, which I'm not qualified to make.  
 23 BY MR. STEPHENS:  
 24 Q. No, I'm just asking for your belief that  
 25 Apple owes you money for the use of the Bloomberg

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1 website on iPhones.  
 2 A. Well, that would -- that would -- to me,  
 3 that would go to the license with Bloomberg.  
 4 Q. And do you believe you've licensed  
 5 Bloomberg in such a way that Apple also has to pay for  
 6 the display --  
 7 A. That's a legal question I'm unable --  
 8 that's a legal question and I'm not able to answer  
 9 that.  
 10 Q. So you don't have an opinion?  
 11 A. No.  
 12 Q. You, in fact, are seeking money from  
 13 Apple, though, on that.  
 14 Right?  
 15 MR. BECKER: Object. Form.  
 16 THE WITNESS: And again, that's -- that would  
 17 be a legal --  
 18 BY MR. STEPHENS:  
 19 Q. It's not a legal question. It depends  
 20 on interpretation. It's a fact.  
 21 Your counsel has sent us an e-mail  
 22 saying that they are continuing to assert infringement  
 23 against Apple based on the Bloomberg Web pages and  
 24 application.  
 25 You're aware of that.

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1 Right?  
 2 MR. BECKER: Object. Form.  
 3 THE WITNESS: I don't -- if they sent it to me  
 4 and it happened and I've read that particular e-mail,  
 5 I would be aware of it.  
 6 BY MR. STEPHENS:  
 7 Q. And you control this litigation.  
 8 Right?  
 9 If you told them to stop asserting that,  
 10 they would stop.  
 11 Right?  
 12 MR. BECKER: Object. Form.  
 13 THE WITNESS: Well, if they told me to stop,  
 14 it would be my decision whether I would stop.  
 15 BY MR. STEPHENS:  
 16 Q. I'm not asking whether they told you to  
 17 stop.  
 18 I'm saying, if you decided to stop  
 19 making the assertion that Apple should pay you for  
 20 displaying Bloomberg Web pages by its customers, you  
 21 could tell them to stop and they would.  
 22 Right?  
 23 A. Yes.  
 24 Q. Okay. So it's your decision that  
 25 Apple -- you believe that Apple should pay for Apple

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1 customers displaying Bloomberg websites.  
 2 Right?  
 3 MR. BECKER: Object. Form.  
 4 THE WITNESS: I -- again, that's a le -- that  
 5 goes into a legal interpretation of the agreement.  
 6 BY MR. STEPHENS:  
 7 Q. Okay. So do you believe today that  
 8 Yahoo infringes your invention, as you understood it  
 9 in 1999?  
 10 MR. BECKER: Again, I'm just cautioning you  
 11 not to divulge attorney-client communications. I'm  
 12 not sure --  
 13 MR. STEPHENS: Maybe -- let me rephrase it.  
 14 MR. BECKER: -- if he needs to rephrase it.  
 15 BY MR. STEPHENS:  
 16 Q. Do you believe today that Yahoo is  
 17 practicing your invention that you conceived of back  
 18 in 1999?  
 19 MR. BECKER: Same instructions.  
 20 THE WITNESS: That would be advice of counsel.  
 21 BY MR. STEPHENS:  
 22 Q. You don't have a view other than what  
 23 counsel has told you?  
 24 MR. BECKER: Same instruction.  
 25 THE WITNESS: If you ask -- if you ask me

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1 something more specific, maybe I can give you a more  
 2 specific response.  
 3 BY MR. STEPHENS:  
 4 Q. I'm not sure how to ask it more  
 5 specifically.  
 6 Do you believe that -- that Yahoo  
 7 performs the elements that you conceived of back in  
 8 July of 1999?  
 9 MR. BECKER: Same objection.  
 10 THE WITNESS: And that would be a legal  
 11 question.  
 12 BY MR. STEPHENS:  
 13 Q. I'm not --  
 14 A. I --  
 15 Q. I'm not asking for claim construction.  
 16 I'm just asking whether they practiced  
 17 your invention.  
 18 You've looked at their website.  
 19 Right?  
 20 A. Their mobile website.  
 21 Q. On -- on the iPhone?  
 22 A. Yes, I have.  
 23 Q. And do you believe that Yahoo was  
 24 practicing what you conceived of back in July of 1999?  
 25 MR. BECKER: Same objection.

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1 THE WITNESS: I believe that I should listen  
 2 to my attorney because that's a legal question.  
 3 BY MR. STEPHENS:  
 4 Q. And you're not going to answer --  
 5 A. I'm not going to answer a legal  
 6 question --  
 7 Q. Okay.  
 8 A. -- unless my attorney says it's okay.  
 9 Q. And he's not -- he's not telling you  
 10 it's okay, so you're not going to answer it.  
 11 Right?  
 12 A. (No audible response.)  
 13 Q. Okay. Well, we'll just -- we'll deal  
 14 with it.  
 15 Now, did your invention, as you  
 16 conceived it back in July of 1999, encompass the  
 17 notion of two completely separate people developing  
 18 completely separate websites but sharing content, one  
 19 being simpler than the other?  
 20 MR. BECKER: Object. Form.  
 21 THE WITNESS: Well, there were several  
 22 embodiments I had in mind, if that -- during the  
 23 six-day period before I -- it was flushed out, further  
 24 developed, more embodiments were added.  
 25 And during that particular time, I

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1 thought that the -- the sister site would be related  
 2 to the main site, so they would be related. It could  
 3 be a separate site, as long as it related and some of  
 4 the content were the same content.  
 5 BY MR. STEPHENS:  
 6 Q. So how would they need to be related  
 7 other than having the same content, some of the same  
 8 content?  
 9 A. They would -- at that time -- I'm  
 10 talking about during those six days, if -- that -- if  
 11 the content were on a standard site and the sister  
 12 site would have some of that same content, fewer  
 13 options, different layout, that there would have to be  
 14 a relationship between the two in order for that  
 15 content to be -- some of the content to be identical,  
 16 as it would be on the sister site.  
 17 Q. And I -- that's what -- that's what I'm  
 18 trying to understand.  
 19 What is the relationship?  
 20 Is it just that they have some of the  
 21 same content?  
 22 A. No, there must be a relationship beyond  
 23 that. I don't think that people can just access  
 24 randomly other people's database and -- and -- and  
 25 prepare these sites. There has to be a relationship.

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1 Q. And what's that -- what -- what does  
 2 that relationship have to be?  
 3 A. Well, it could take many forms.  
 4 Q. Can you give me some examples?  
 5 A. Well, it could be the same owner. It  
 6 could be like -- like one was preparing -- Yahoo  
 7 prepared a standard site and they would have other  
 8 people that would prepare the mobile site. They could  
 9 hire somebody to do that. But they'd have to be  
 10 related.  
 11 Q. So as long as --  
 12 A. They'd have to be associated.  
 13 Q. So as long as the two websites were  
 14 owned by the same company and they had some content in  
 15 common, that's all that's required?  
 16 A. No, no, I said -- no, not at all.  
 17 Q. Okay.  
 18 A. I said, first of all, that was just  
 19 during those six days. It could be done either way.  
 20 It could be done where they hired an outside person  
 21 that said, Come on, here's access to our database.  
 22 We want to have a reformatted -- mobile  
 23 site, to be on a simplified navigation interface or an  
 24 application or sister site. But they would have to in  
 25 some way have an arrangement, relationship.

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1 Q. So I'm just trying to understand an  
 2 example of where that relationship would hold.  
 3 So if you have two websites designed by  
 4 different people, they have some content in common,  
 5 one is simpler than the other, and they're both owned  
 6 by the same company, would that satisfy the  
 7 relationship that you're talking about?  
 8 A. Could you repeat that?  
 9 MR. BECKER: Object to form.  
 10 BY MR. STEPHENS:  
 11 Q. Two separate websites --  
 12 A. Please repeat the question.  
 13 (Whereupon the record was read as follows:)  
 14 "QUESTION: So I'm just trying to  
 15 understand an example of where that  
 16 relationship would hold.  
 17 So if you have two websites  
 18 designed by different people, they have  
 19 some content in common, one is simpler  
 20 than the other, and they're both owned by  
 21 the same company, would that satisfy the  
 22 relationship that you're talking about?  
 23 MR. BECKER: Object to form."  
 24 THE WITNESS: Could you break the question  
 25 down? I saw two different items in there that seemed

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1 to conflict with each other.  
 2 If you can break it down, I could  
 3 certainly --  
 4 BY MR. STEPHENS:  
 5 Q. Okay. Well, I thought you said that it  
 6 wasn't enough for there to be content in common.  
 7 Right?  
 8 That's not your invention, just to have  
 9 the same content -- some of the same content on one  
 10 site that's simpler than another site?  
 11 A. That would be -- that would be -- in  
 12 July, that would be one of the criteria, to have some  
 13 of the content be the same.  
 14 Q. Okay. And I'm just trying to understand  
 15 what else is required.  
 16 Is it enough that it's owned by the same  
 17 people?  
 18 MR. BECKER: Object. Form.  
 19 THE WITNESS: Well, the content -- some of the  
 20 content would be the same. It would have to be on a  
 21 simplified navigation interface versus a standard Web  
 22 page interface. It would be called a sister site.  
 23 Navigation, it would be a different type  
 24 of navigation. It would be navigation with unique  
 25 inputs, whether with the mouse and so forth. It would

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1 be touching, for example, a region of the screen for  
 2 zooming and scrolling.  
 3 So those are all different things.  
 4 MR. STEPHENS: Would you mark that, please.  
 5 (Whereupon E. Gottfurcht Exhibit 15 was  
 6 marked for identification)  
 7 BY MR. STEPHENS:  
 8 Q. Mr. Gottfurcht, you have E. Gottfurcht  
 9 Exhibit 15, which has Bates numbers EMG 004482 through  
 10 4490?  
 11 A. Yes.  
 12 Q. Can you take a look at that and tell me  
 13 what it is?  
 14 A. Yes.  
 15 The -- the first page is what I believe  
 16 I sent to Rick Soss in order to develop a document.  
 17 This court claim construction is -- is  
 18 what he prepared. He just did this on his own. He  
 19 does a lot of patent work.  
 20 I did not instruct him to do what he  
 21 calls the court's claim construction. He interpreted  
 22 what I was looking for to be that.  
 23 That's not what I was looking for at  
 24 all. He did this on his own. We never used it. He  
 25 was just -- does this frequently and just went on his

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1 own to do this page.  
 2 The first part, what I believe I  
 3 requested was, was a presentation that I made to  
 4 you -- it's part of his documents that he requested.  
 5 It was a presentation I made during  
 6 mediation, where I had -- part of it was, I had the  
 7 claim -- the 196 claim on the left side, and on the  
 8 right side, I had the NBC sister site and the NBC  
 9 standard site.  
 10 And that was the presentation that I  
 11 made to you that you have a copy of, that I requested.  
 12 Instead, he went ahead and did this on  
 13 his own.  
 14 Q. Okay. So these are his interpretations?  
 15 A. I -- I don't know what he even did here.  
 16 I didn't pay attention to it. I didn't read it. And  
 17 I called him up --  
 18 Rick did a lot of legal work for these  
 19 kinds of things, and I -- I said I didn't want that at  
 20 all.  
 21 And I explained to him what I wanted.  
 22 This one page is some of what I wanted and is part of  
 23 my production of documents that leads into where you  
 24 go through sentence-by-sentence of animation of the  
 25 196 claim.



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1 Q. Okay. So the first page is the cover  
 2 e-mail, the second page is the document that you sent  
 3 to him asking him to do the work, and then the  
 4 attachments are what he sent you back.  
 5 Right?  
 6 A. He went solo on this, and I have no idea  
 7 why he did it. And I -- and I said -- notified him  
 8 this is not what I wanted and explained to him what I  
 9 wanted.  
 10 Q. Okay. Did you keep any record of  
 11 telling him that?  
 12 A. I told him that he didn't do the right  
 13 thing and that -- ignore it, and -- and it had no use  
 14 for me.  
 15 And -- he does this all the time, so I  
 16 think that's -- he -- he interpreted this to mean what  
 17 I was describing, but it wasn't at all.  
 18 Q. Again, did you keep any record of  
 19 telling him that it wasn't what you wanted?  
 20 A. I may have it in an e-mail to him, but I  
 21 probably -- something like this, I would call him up  
 22 and say, Rick, this is not what I had in mind.  
 23 MR. STEPHENS: Okay. Mark this, please.  
 24 (Whereupon E. Gottfurcht Exhibit 16 was  
 25 marked for identification)

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1 MR. BECKER: Could I have a copy of that,  
 2 Garland?  
 3 MR. STEPHENS: Didn't I hand it to you?  
 4 I guess I didn't.  
 5 MR. LANE: Here you go.  
 6 MR. BECKER: Thank you.  
 7 BY MR. STEPHENS:  
 8 Q. Do you have E. Gottfurcht Exhibit 16,  
 9 which is Bates numbers EMG 004720 and 4721?  
 10 A. Yes.  
 11 Q. Tell me what that is.  
 12 A. This is an e-mail that I sent to Angel  
 13 when we were having this discussion on transcoding.  
 14 This is what I sent to her.  
 15 Q. And could you just read into the record  
 16 the -- the stuff that you sent to her on the second  
 17 page of this exhibit?  
 18 A. Yes.  
 19 The title is "Reformatting Content Via  
 20 Transcoding."  
 21 "1, It is inherent that there must be an  
 22 intermediate step required.  
 23 2, Figure 2-A content reformatted into  
 24 Figure 2-B must include an intermediate step of a  
 25 human designing, laying out, and organizing the

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1 content of Figure 2-B. It is impossible to do this  
 2 solely with a transcoder.  
 3 3, The correct drill-down sequence to  
 4 purchase the Technic receiver would be impossible by  
 5 solely using a transcoder which requires an order --  
 6 which requires, in order:  
 7 Figure 10-A, (shopping and products);  
 8 10-B, (electronics); 10-C, (audio); 10-D, (receivers);  
 9 10-E, (stereo only); 10-F, (Technics); 10-G,  
 10 (purchasing Technics)."  
 11 Q. And those are all your words?  
 12 A. Yes.  
 13 Q. And why did you send that to Angel?  
 14 A. I think in a discussion I had with  
 15 Angel, she had said something different about this.  
 16 I then looked it up in Wikipedia, and  
 17 this is the definition that I derived at, inserting  
 18 different figures that were in the -- in the patent.  
 19 Q. You looked up "transcoding" in Wik --  
 20 Wikipedia?  
 21 A. That's correct.  
 22 Q. Okay. And your analysis of -- after  
 23 looking up the meaning of transcoding was that you  
 24 can't go from Figure 2-A to Figure 2-B in your patent  
 25 using a transcoder.

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1 Right?  
 2 A. That's correct. It's a process.  
 3 Q. Okay.  
 4 A. And that's the definition that -- that I  
 5 looked up in Wikipedia.  
 6 Q. Okay. How do you go from Figure 2-A to  
 7 Figure 2-B?  
 8 A. Well, my original knowledge of that was  
 9 with -- with counsel, so -- I think I answered this  
 10 before, that there's a line there. It's hard for me  
 11 to parse what counsel told me years ago and anything I  
 12 would learn in the future that may differ from what  
 13 counsel told me years ago.  
 14 Q. And, in fact, you refused to answer my  
 15 questions earlier today about how you get from  
 16 Figure 2-A to Figure 2-B.  
 17 A. That's correct. And -- and here, I  
 18 looked it up in Wikipedia and reported it back to her.  
 19 Q. And you didn't -- it didn't stop you  
 20 from telling her about how you'd get from Figure 2-A  
 21 to 2-B.  
 22 Right?  
 23 A. Well, we were having this conversation  
 24 back and forth, and I was -- that was what came to me,  
 25 to mind --

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1 Q. Okay.  
 2 A. -- is to look it up in Wikipedia and  
 3 deliver it back to her.  
 4 Q. So Figure 3 of the 845 patent wouldn't  
 5 allow you to get from Figure 2-A to Figure 2-B by  
 6 itself.  
 7 Right?  
 8 MR. BECKER: Object. Form.  
 9 THE WITNESS: I don't -- I don't have those --  
 10 BY MR. STEPHENS:  
 11 Q. That's the figure that shows the  
 12 transcoder?  
 13 A. Oh, that's Figure --  
 14 Q. 3.  
 15 A. -- 3, okay.  
 16 And the information I learned about  
 17 Figure 3 was from counsel.  
 18 Okay. This is later, almost ten years  
 19 later, when I looked it up in Wikipedia.  
 20 Q. Do you think -- well, let me ask it  
 21 differently.  
 22 Do you have any reason to think that  
 23 Apple copied anything you did?  
 24 A. I have no reason to believe that they  
 25 copied anything that I did. I have no evidence that

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1 they were privy to my patent documents or any of the  
 2 information that I supplied to others.  
 3 Q. Now, other than the licenses in this  
 4 lawsuit with Bloomberg, UPS, and Continental, have you  
 5 ever derived any revenue from your inventions?  
 6 A. No.  
 7 Q. So you haven't been able to license it  
 8 to anybody else outside the litigation.  
 9 Right?  
 10 A. As of today?  
 11 Q. Yes.  
 12 A. No.  
 13 Q. And you haven't been able to derive any  
 14 revenue from the MallTV.com site.  
 15 Right?  
 16 A. I have not derived any income from the  
 17 MallTV.com site.  
 18 Q. And it's not for want of trying.  
 19 Correct?  
 20 A. I don't know what it's -- well, I -- I  
 21 think there's much more to it than that.  
 22 Q. Well, explain, then.  
 23 A. Yes.  
 24 During the several years, I met with  
 25 several potential partners to launch MallTV.

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1 Q. Okay. Go ahead.  
 2 A. And I found that until I had a meeting  
 3 with NBC right after the iPhone came out, I don't  
 4 think any of them ever understood how -- because I was  
 5 describing -- I -- I learned later, I was describing  
 6 the iPhone for many years. And -- and these different  
 7 companies never understood what I was saying.  
 8 Finally, in a meeting with NBC -- I  
 9 think it was the president of NBC.com. I don't  
 10 remember his name -- he's the first person that really  
 11 understood what I was talking about.  
 12 Q. You don't remember who that was?  
 13 A. No, I do not.  
 14 Q. What did he say?  
 15 A. He was fascinated by it, and he -- he  
 16 said -- I showed him that Disney.com had been  
 17 reformatted into a sister site, M.disney.com, for the  
 18 iPhone.  
 19 And he was absolutely -- he had never  
 20 heard it before. He -- he had never realized that on  
 21 a mobile device, that you would need to reformat your  
 22 content, as he was in charge of, as I understood, at  
 23 NBC, into this simplified navigation interface.  
 24 Q. So he was in charge of reformatting  
 25 Disney?

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1 A. No, he was -- no, he -- he was in charge  
 2 of, I believe, NBC.com.  
 3 And when I went to see him and I -- and  
 4 I showed him the demo, and had other information that  
 5 I showed him, he was fascinated that he had not  
 6 thought of -- he had not thought of how NBC, which I  
 7 think was his responsibility, would be displayed on a  
 8 mobile device.  
 9 Q. When did this meeting happen?  
 10 A. I think it was shortly after the iPhone  
 11 came out.  
 12 Q. If you invented this user interface back  
 13 in 1999, why didn't you build it sooner?  
 14 MR. BECKER: Object. Form.  
 15 THE WITNESS: It -- it wasn't necessarily my  
 16 plan to build it. My plan was -- well, one of my  
 17 plans was to joint venture.  
 18 BY MR. STEPHENS:  
 19 Q. But you couldn't get anybody interested  
 20 in doing a joint venture.  
 21 Right?  
 22 A. What I was saying is, the reason is,  
 23 that -- that -- that I would -- in 1999 and 2000,  
 24 2001, so forth, every single year, as I've evidenced  
 25 to you in my documents, I tried.

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1 And no one understood -- I was  
 2 demonstrating the iPhone, how it would navigate the  
 3 Internet, not the iPhone for music, not the iPhone for  
 4 telephone, but the -- what the iPhone does and other  
 5 smart phones do today for navigating Web pages and  
 6 applications.  
 7 Q. So every year since 2000, you've  
 8 demonstrated the simplified user interface that you  
 9 came up with in 1999 to large companies.  
 10 Right?  
 11 A. Yes.  
 12 Q. And none of them ever wanted to do a  
 13 joint venture with you.  
 14 Right?  
 15 A. They didn't understand it. I -- I think  
 16 that's why Apple ended up coming into first place,  
 17 because I think the industry was asleep.  
 18 Q. Now, why didn't you just develop it  
 19 yourself?  
 20 A. That wasn't my plan.  
 21 Q. But why didn't you plan to do that?  
 22 A. Because in this world, it takes a  
 23 substantial amount of -- of wherewithal and -- and --  
 24 and resources, which I -- which I did not choose to  
 25 pursue.

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1 Q. Is it because you did not have enough  
 2 resources and money to do it?  
 3 A. I probably did not have enough. I  
 4 didn't have the interest. It wasn't something that  
 5 I --  
 6 I needed a partner.  
 7 Q. What was the date you met with this  
 8 person at NBC?  
 9 A. I think that a lot of these -- these  
 10 documents were in production to you.  
 11 Q. But I'm asking you for your  
 12 recollection.  
 13 A. Yeah, I -- I think it was shortly after  
 14 the iPhone was dis -- was released.  
 15 Q. But I'm asking you when it was --  
 16 A. Oh.  
 17 Q. -- not -- not with reference to when the  
 18 iPhone was released.  
 19 A. Well, the iPhone was 2007, so it would  
 20 have been sometime in 2007, I believe.  
 21 Q. How long after the iPhone was released?  
 22 A. I think pretty short period after the  
 23 iPhone --  
 24 My recollection, there weren't many  
 25 reformatted websites. And at the beginning, since I

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1 followed them, the first one that I was aware of was  
 2 the Disney.  
 3 Q. So you went -- you went to the NBC and  
 4 you showed them Disney on the iPhone, and you said, I  
 5 invented that?  
 6 Is that what you did?  
 7 A. No.  
 8 Q. What did you do, then?  
 9 A. I -- I showed them how Disney.com  
 10 reformatted their content into a simplified navigation  
 11 interface with unique inputs, sister site,  
 12 manipulating a region of a screen for zooming and  
 13 scrolling.  
 14 And this gentleman was absolutely  
 15 fascinated. He indicated he'd never heard about this,  
 16 he had never seen this before.  
 17 Q. Is it your understanding that the iPhone  
 18 was the first mobile device to use reformatted  
 19 websites?  
 20 A. It -- it was -- it was the first phone  
 21 that I had seen to utilize the building blocks of the  
 22 invention.  
 23 Q. Is it the first phone -- or first mobile  
 24 device that you're aware of that did reformatting of  
 25 websites?

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1 A. It --  
 2 MR. BECKER: Object. Form.  
 3 THE WITNESS: It was the -- again --  
 4 BY MR. STEPHENS:  
 5 Q. I'm not asking what you're about to  
 6 answer.  
 7 I'm asking, in that period --  
 8 A. Oh, I don't -- I don't have an answer.  
 9 I don't know.  
 10 Q. You don't know, okay.  
 11 So it's possible that other phones did  
 12 it before the iPhone, in other words, reformatted  
 13 websites?  
 14 A. I don't know.  
 15 MR. BECKER: Object. Form.  
 16 BY MR. STEPHENS:  
 17 Q. You don't know, okay.  
 18 A. So he asked me at that time --  
 19 Q. I -- I -- I'm done with that question.  
 20 A. Okay.  
 21 Q. What other companies did you make your  
 22 pitch to?  
 23 A. Over the whole period of time?  
 24 Q. Yeah.  
 25 A. And again, I think we provided these

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1 documents. But to my memory, at Time Warner, AT&T,  
 2 Fox, Yahoo, Comcast, I think Microsoft, Cisco. Those  
 3 are some of the companies I believe that I talked to.  
 4 Q. And which of those companies did you  
 5 have meetings with?  
 6 A. Time Warner, Fox, NBC, AT&T.  
 7 That's all I can think of then.  
 8 Q. So you didn't meet with Yahoo?  
 9 A. I -- I spoke to them on the phone.  
 10 Q. You didn't meet with Comcast?  
 11 A. I spoke to them on the phone.  
 12 Q. You didn't meet with Microsoft?  
 13 A. I spoke to them on the phone.  
 14 Q. And you didn't meet with Cisco?  
 15 A. I talked to them on the phone.  
 16 Q. Okay. Does EMG have any employees?  
 17 A. No.  
 18 Q. Where is its office?  
 19 A. The office is at my residence, and we  
 20 have an office in Tyler, Texas.  
 21 Q. And is the office in Tyler, Texas, the  
 22 office operated by your lawyer, local counsel?  
 23 MR. BECKER: Object. Form.  
 24 THE WITNESS: It's an office where we have our  
 25 original documents stored.

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1 BY MR. STEPHENS:  
 2 Q. Anything else happen there?  
 3 A. I think we have a computer, telephone  
 4 service, I think maybe a safe for the documents.  
 5 Q. Is that -- was that office arranged for  
 6 by your lawyer in Tyler?  
 7 MR. BECKER: And I'll instruct you not to  
 8 answer, only to the extent that you have to divulge  
 9 attorney-client advice --  
 10 MR. STEPHENS: Right.  
 11 MR. BECKER: -- or communication.  
 12 MR. STEPHENS: It's got to be legal advice.  
 13 Renting a space for him does not qualify as legal  
 14 advice.  
 15 MR. BECKER: I didn't tell him that.  
 16 BY MR. STEPHENS:  
 17 Q. Okay. Did the lawyer arrange for your  
 18 space in Tyler?  
 19 A. Did he arrange for the space in Tyler?  
 20 I think I did.  
 21 Q. And who did you call?  
 22 A. I called Charlie Ainsworth's office, our  
 23 local counsel.  
 24 Q. And you talked to Charlie and said, I  
 25 want some space?

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1 A. I can't recall who I talked to.  
 2 I said, "We're sending documents to you.  
 3 We'd like you to arrange for a space and we'll pay  
 4 rent to store the documents -- the original  
 5 documents."  
 6 Q. You paid your rent to  
 7 Parker Bunt & Ainsworth?  
 8 A. No. No, no, no.  
 9 Q. Who do you pay your rent to?  
 10 A. I don't know who it is, but it's the  
 11 landlord of the building.  
 12 Q. Okay. But Mr. Ainsworth arranged for  
 13 the --  
 14 A. I'm not sure whether he did. I -- I'm  
 15 not testifying to that.  
 16 Q. Okay. But he's the one you talked to,  
 17 to make that happen --  
 18 A. I can't -- I'm not -- somebody --  
 19 Q. -- that you talked to, to get the space?  
 20 A. I don't recall.  
 21 Q. Do you write a check every month for  
 22 that rent?  
 23 A. Does EMG write a check?  
 24 Q. Yes.  
 25 A. Yes.

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1 Q. And who does that check -- who is that  
 2 paid to?  
 3 A. I don't recall the name.  
 4 Q. Okay. It doesn't show up on your legal  
 5 bill?  
 6 A. No, no, not at all.  
 7 Q. Is there any activity that occurs there  
 8 other than storing documents?  
 9 A. As far as activity that I know of?  
 10 Q. Yeah.  
 11 A. No.  
 12 Q. Have you ever been there?  
 13 A. No.  
 14 Q. Do you know anyone who has ever been in  
 15 that space?  
 16 A. Well, I would think that there's  
 17 somebody from the local counsel's office that had been  
 18 there to arrange our original documents.  
 19 Q. But do you know of anyone who's ever  
 20 been there, specific person?  
 21 A. No.  
 22 Q. Okay. Now, tell me about your  
 23 education, please.  
 24 A. I graduated from University of  
 25 Southern California, I think in 1962.

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1 Q. And what kind of degree did you have?  
 2 A. I think it was a Bachelor of Science,  
 3 majoring in English.  
 4 Q. Did you study any technical subjects?  
 5 A. No.  
 6 Q. Any other education after college?  
 7 A. Other than real estate broker, some  
 8 real estate.  
 9 Q. Okay. And now could you describe your  
 10 employment history?  
 11 A. I've been self-employed, doing --  
 12 Q. Your entire career?  
 13 A. My entire career.  
 14 Q. Doing real estate the entire time?  
 15 A. Doing real estate most of the time.  
 16 Q. What else have you done?  
 17 A. Well, in 1999, I invented technology and  
 18 filed patents. In the last ten years, I've been  
 19 focused on the prosecution of the patents.  
 20 Q. Okay. Other than real estate and the  
 21 patents in this lawsuit, anything else?  
 22 A. Not -- not -- that's it.  
 23 Q. How did you get into the real estate  
 24 business?  
 25 A. I started developing projects.

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1 Q. Was -- was your family in the  
 2 real estate business?  
 3 A. No.  
 4 Q. Your father do any real estate, himself?  
 5 A. No, he was a jeweler, and then he was a  
 6 lender of money.  
 7 Q. Did you use any money -- family money in  
 8 getting started in real estate?  
 9 A. No.  
 10 Q. Could you describe for us the biggest  
 11 projects that you've done, briefly?  
 12 A. Probably Beverly Park.  
 13 Q. And what's Beverly Park?  
 14 A. Beverly Park is 350 acres above the  
 15 Beverly Hills Hotel.  
 16 Q. What was the magnitude, dollar-wise, of  
 17 that project?  
 18 A. Well, there's approximately 80  
 19 properties. There's three gate houses. Their gate  
 20 houses are about 4,000 square foot each.  
 21 The properties which -- that particular  
 22 project, I did -- did the planning, the zoning, the  
 23 off-site improvements.  
 24 Q. That -- that's -- I'm not asking about  
 25 everything you did.

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1 I'm asking about the dollar magnitude of  
 2 the project, if you can estimate.  
 3 A. Well, these -- these -- these were homes  
 4 that we sold lots, and the lots sold from 2- to  
 5 \$4.5 million, and the homes are 20-, \$30 million,  
 6 maybe even more on these properties. They're  
 7 generally an acre and a half level or larger.  
 8 Q. Were you involved in the actual building  
 9 of the houses?  
 10 A. No.  
 11 Q. So just the sale of the lots?  
 12 A. The development and the sales of the  
 13 lots --  
 14 Q. Okay. So, in other words --  
 15 A. -- the development, the improvements,  
 16 the off-sites, the infrastructure.  
 17 Q. Understand.  
 18 So the zoning and the sewer and stuff  
 19 like that?  
 20 A. Sewers, storm drains, grading,  
 21 sidewalks, curbs, gutter, streets, gate houses.  
 22 Q. Any other major projects that you want  
 23 to mention?  
 24 A. I developed Beverly Glen Park, which is  
 25 300 acres above Holmby Hills, approximately 900 homes

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1 and a shopping center.  
 2 Q. Anything else?  
 3 A. The -- what's -- the W Hotel in  
 4 Westwood, which was originally a student dormitory --  
 5 the W Hotel in Westwood Village. It was originally a  
 6 student dormitory, which I redeveloped into a hotel.  
 7 MR. STEPHENS: Why don't we take a break.  
 8 THE VIDEOGRAPHER: Going off the record.  
 9 The time is 6:44 p.m.  
 10 (Whereupon a recess was taken)  
 11 THE VIDEOGRAPHER: Back on the record.  
 12 The time is 6:56 p.m.  
 13 BY MR. STEPHENS:  
 14 Q. Have you or EMG been irreparably harmed  
 15 by Apple?  
 16 A. That would be a legal --  
 17 MR. BECKER: Object -- object as to form.  
 18 And I instruct you not to answer with  
 19 resp -- if -- if it would require you to -- to  
 20 divulge, excuse me, advice of counsel.  
 21 THE WITNESS: I'm unable to respond.  
 22 BY MR. STEPHENS:  
 23 Q. Can you look the camera in the eye and  
 24 tell Judge Davis and the jury that you don't know,  
 25 other than what your lawyers tell you, whether you've

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1 been irreparably harmed by Apple?  
 2 MR. BECKER: Same instruction.  
 3 BY MR. STEPHENS:  
 4 Q. Would you do that?  
 5 A. Would you rephrase your question?  
 6 Q. Yeah.  
 7 Would you look the camera -- look at the  
 8 camera, tell Judge Davis and the jury that you don't  
 9 know whether you've been irreparably harmed by Apple  
 10 other than what your lawyers tell you?  
 11 MR. BECKER: So I'm going to instruct you not  
 12 to answer if the question is simply -- would require  
 13 you to divulge the contents of advice of counsel.  
 14 THE WITNESS: I'm unable to answer that  
 15 question.  
 16 BY MR. STEPHENS:  
 17 Q. Now, you've already told me that you  
 18 haven't licensed the patent, other than in settling  
 19 with some of the defendants in this case.  
 20 Right?  
 21 A. (No audible answer.)  
 22 Q. Have you -- I'm sorry.  
 23 Yeah, you need to answer "yes" or "no,"  
 24 or at least verbally.  
 25 A. Answer?

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1 Q. The question.  
 2 I said, you've already told me that you  
 3 have not licensed the patents other than settling with  
 4 some of the defendants in this case.  
 5 Right?  
 6 A. That's correct.  
 7 Q. Okay. Have you attempted to license the  
 8 patents other than with those defendants?  
 9 A. Yeah.  
 10 MR. BECKER: Object to form.  
 11 Go ahead.  
 12 THE WITNESS: Yes.  
 13 BY MR. STEPHENS:  
 14 Q. Have you made offers to license them?  
 15 A. (No audible answer.)  
 16 Q. All right. Let me put it differently.  
 17 Have you attached dollar amounts to  
 18 those attempts?  
 19 A. That would be attorney-client privilege.  
 20 Q. I don't understand how that could be.  
 21 It's not advice of counsel.  
 22 A. It was in the presence of counsel.  
 23 Q. That isn't enough.  
 24 A. I know, but it was with their advice.  
 25 Q. That is not enough, either.

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1 Have you --  
 2 MR. BECKER: I can instruct him.  
 3 I don't -- I didn't understand exactly  
 4 your question. I didn't know who "them" was and "the  
 5 defendants," so --  
 6 MR. STEPHENS: I'm asking very general.  
 7 MR. BECKER: -- I can -- I can clarify.  
 8 MR. STEPHENS: Okay. Go ahead.  
 9 MR. BECKER: No, if you ask -- if you restate  
 10 your question or something, I can clarify.  
 11 MR. STEPHENS: Fair enough.  
 12 MR. BECKER: I'm not sure where we are.  
 13 MR. STEPHENS: Fair enough.  
 14 BY MR. STEPHENS:  
 15 Q. I'd like for you to tell me who you've  
 16 tried to license the patents to first -- let's do  
 17 that -- beyond the defendants that you've actually  
 18 settled with.  
 19 A. Are you talking about me, personally, or  
 20 that my attorney?  
 21 Q. Well, any that you're aware of.  
 22 A. Well, I certainly cannot speak for what  
 23 my attorney has done.  
 24 Q. Well, you can if you know about it, and  
 25 I'd like for you to.

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1 THE WITNESS: Am I able to convey what you  
 2 have --  
 3 MR. BECKER: He's just asking you for -- right  
 4 now, for what knowledge you have of licensing  
 5 attempts, not the contents of any conversation.  
 6 THE WITNESS: I do have knowledge.  
 7 BY MR. STEPHENS:  
 8 Q. Okay. And -- and who have you or your  
 9 attorneys or anyone connected with the patents  
 10 attempted to license the patents in this lawsuit to?  
 11 MR. BECKER: You can identify the names of  
 12 parties, but with respect to any discussions, we'll  
 13 have to go one-by-one because some are privileged and  
 14 some are potential --  
 15 THE WITNESS: I can name names?  
 16 MR. BECKER: They're --  
 17 Can we go off the record for one minute.  
 18 MR. STEPHENS: Sure.  
 19 THE VIDEOGRAPHER: One moment.  
 20 Going off the record.  
 21 The time is 7:00 p.m.  
 22 (Whereupon a discussion was held off the record)  
 23 (Whereupon a recess was taken)  
 24 (Whereupon Jeff Risher exited the  
 25 deposition room)

<p style="text-align: right;">Page 306</p> <p>1 THE VIDEOGRAPHER: Back on the record. 2 The time is 7:07 p.m. 3 (The following pages 307 through 311 are 4 Confidential - Attorneys' Eyes Only:) 5 /// 6 /// 7 /// 8 /// 9 /// 10 /// 11 /// 12 /// 13 /// 14 /// 15 /// 16 /// 17 /// 18 /// 19 /// 20 /// 21 /// 22 /// 23 /// 24 /// 25 ///</p>	<p style="text-align: right;">Page 308</p>
<p style="text-align: right;">Page 307</p>	<p style="text-align: right;">Page 309</p>

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85 (Pages 334 to 337)

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22  
23  
24  
25

(This concludes the Confidential section,  
and the Nonconfidential section resumes  
at page 346)  
///

87 (Pages 342 to 345)



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1 MR. LANE: Let me just add -- I just want to  
 2 add one thing on the record for American, since we  
 3 haven't -- I think that we have been prejudiced by the  
 4 deposition, given the number of questions the witness  
 5 hasn't been able to answer.  
 6 It's caused the deposition to take an  
 7 inordinate amount of time, the amount of time it took  
 8 to review documents, as well as now, we found out a  
 9 lot of documents haven't been produced.  
 10 So just for American Airlines, we will  
 11 need to seek additional time to depose Mr. Gottfurcht.  
 12 Thank you.  
 13 MR. BECKER: And we disagree with that  
 14 characterization.  
 15 MR. STEPHENS: Okay.  
 16 THE WITNESS: Thank you very much.  
 17 THE VIDEOGRAPHER: This concludes Volume I in  
 18 the deposition of Elliot Gottfurcht.  
 19 The number of tapes used was four. The  
 20 original videotapes will be retained by Merrill Legal  
 21 Solutions, Woodland Hills, California.  
 22 Going off the record.  
 23 The time is 7:51 p.m.  
 24 COURT REPORTER: Okay. And you both wanted  
 25 roughs?

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1 MR. STEPHENS: Yes.  
 2 MR. BECKER: Yes.  
 3 MR. GENET: And I'll just take a copy.  
 4 COURT REPORTER: Okay. Did you need the  
 5 roughs tonight, or is it okay for the morning?  
 6 MR. STEPHENS: Tomorrow is fine.  
 7 MR. BECKER: That's fine.  
 8 (Whereupon the deposition was concluded  
 9 at 7:52 p.m.)  
 10  
 11  
 12  
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 25

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1 PENALTY OF PERJURY  
 2  
 3  
 4  
 5 I hereby declare I am the deponent in the  
 6 within matter; that I have read the foregoing  
 7 proceeding and know the contents thereof and I declare  
 8 that the same is true of my knowledge except as to the  
 9 matters which are therein stated upon my information  
 10 or belief, and as to those matters I believe it to be  
 11 true.  
 12 I declare under penalty of perjury that the  
 13 foregoing is true and correct.  
 14 Executed on the \_\_\_\_\_ day of  
 15 \_\_\_\_\_, 2009, at \_\_\_\_\_,  
 16 California.  
 17  
 18  
 19  
 20  
 21 \_\_\_\_\_  
 22 ELLIOT GOTTFURCHT  
 23  
 24  
 25

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1 STATE OF CALIFORNIA )  
 2 )  
 3 ) ss.  
 4 COUNTY OF LOS ANGELES )  
 5  
 6 I, SUSAN LYNN POBOR, Certified Shorthand  
 7 Reporter No. 5132 for the State of California, do  
 8 hereby certify:  
 9 That prior to being examined, the witness  
 10 named in the foregoing deposition, was duly sworn to  
 11 testify the truth, the whole truth, and nothing but  
 12 the truth;  
 13 That said deposition was taken down by me in  
 14 shorthand at the time and place therein named and  
 15 thereafter reduced by me to typewritten form and that  
 16 the same is a true, correct, and complete transcript  
 17 of said proceedings.  
 18 Before completion of the deposition, review of  
 19 the transcript [X] was [ ] was not requested. If  
 20 requested, any changes made by the deponent (and  
 21 provided to the reporter) during the period allowed  
 22 are appended hereto.  
 23 I further certify that I am not interested in  
 24 the outcome of the action.  
 25 Witness my hand this \_\_\_\_\_ day of  
 \_\_\_\_\_, 2009.  
 \_\_\_\_\_  
 Susan Lynn Pobor, CSR No. 5132