

Exhibit 3

1 Volume I Pages 1 - 157

2 Exhibits 1 - 20

3 UNITED STATES DISTRICT COURT

4 EASTERN DISTRICT OF VIRGINIA

5 NORFOLK DIVISION

6 *****

7 I/P ENGINE, INC., *

8 Plaintiff, * Civil Action No.

9 Vs. * 2:11-cv-512

10 AOL, INC., et al., *

11 Defendants. *

12 *****

13

14 AUDIO/VISUAL DEPOSITION of LYCOS, INC.,

15 by and through its designee MARK BLAIS

16 Tuesday, July 31, 2012 at 9:00 a.m.

17 Goulston & Storrs

18 50 Rowes Wharf, 7th Floor

19 Boston, Massachusetts

20

21 ----- Jacqueline P. Shields, RPR, CSR -----

22

23

24 Job No. CS409539

1 A. I do not know.

2 Q. When did Lycos first consider selling the
3 '420 and '664 patents?

4 A. We first considered selling our patent
5 portfolio as a whole in 2009, and so there was never
6 any specific discussion about the '420 patent or
7 that other patent in suit, but it would have been
8 included within the portfolio, so, therefore,
9 indirectly it would have been included within the
10 sale. It was just a straight sale of the whole
11 portfolio.

12 Q. And when Lycos first considered selling its
13 patent portfolio, was that a situation where Lycos
14 was contacted by someone who was interested in
15 selling the patents?

16 MS. ALBERT: Objection. Vague.

17 Q. Or purchasing. Sorry.

18 A. We were contacted by a number of parties
19 about buying specific patents, or the whole
20 portfolio or brokering licenses for the portfolio
21 over time.

22 Q. Was Lycos ever contacted by a license about
23 -- strike that.

24 Was Lycos ever contacted about selling the

1 '420 and '664 patents?

2 A. Not specifically.

3 MS. ALBERT: Objection. Vague.

4 Q. What patent was Lycos contacted about?

5 A. I believe we were contacted at one point
6 about the '799 patent, and we may have been
7 contacted on another specific patent, that I just
8 don't remember right now, but we never engaged in
9 any talks to sell an individual patent. The only
10 talks we engaged in came in 2009 as related to the
11 entire portfolio.

12 Q. And who did Lycos engage in discussions
13 with in 2009 regarding sale of the entire portfolio?

14 A. Altitude Capital Partners.

15 Q. When you say "the entire portfolio," how
16 many patents are you referring to?

17 A. At the time I believe we had around 28
18 patents. As well as patent applications that were
19 pending. That was a guess.

20 Q. Just generally, what fields were those
21 patents in?

22 A. Variety of fields. Search, advertising,
23 online advertising, obviously. Some patents I would
24 need to mention here to explain to you exactly what

1 they do, I don't really know. Some patents had to
2 do with back-end load balancing of networks.

3 I think they all come within that general
4 sphere. There might be a couple outliers, I'm not
5 sure. Oh, and the game patent.

6 Q. Did Lycos ever conduct in the 2009 time
7 frame an evaluation of the value of its portfolio as
8 a whole?

9 A. No, it did not.

10 Q. Is Lycos aware of anyone else who did?

11 A. No.

12 Q. When did Altitude Capital first contact
13 Lycos?

14 A. I believe we were contacted in late 2008
15 maybe. And then -- I don't think we were initially
16 interested, but then 2009 hit and we had an adverse
17 ruling in the ongoing patent litigation that we then
18 wanted to get rid of. We had basically a demand to
19 become profitable. So we were looking at all ways
20 to cut costs.

21 Maintaining patents is an expense. Every
22 single year both with outside law firm and for the
23 maintenance fees.

24 So as part of that I was told to go ahead

1 and have discussions about selling the patents, if I
2 wanted. They really weren't -- our parent company
3 at the time from Korea wasn't very experienced with
4 patents and didn't have a lot of appreciation for
5 them.

6 So it just wanted to reduce costs
7 basically, and expense. So I think that's what made
8 me perhaps contact Altitude again.

9 I'm just trying to remember what happened
10 after that point.

11 Q. Just stepping back, who is Altitude or what
12 is Altitude Capital?

13 A. It's a company based out of New York that
14 they do invest in intellectual property portfolios,
15 and I assume try to monetize those portfolios
16 through licensing or however they do it.

17 Q. Was there a particular person that you were
18 in contact with at Altitude Capital?

19 A. Yes.

20 Q. Who was that?

21 A. Howard -- no, sorry. Warren Hurwitz,
22 H-U-R-W-I-T-Z.

23 Q. What was the result of your contacting
24 Altitude Capital again?

1 A. At a certain point we entered an LOI,
2 letter of intent to purchase that portfolio.

3 Q. When you say the patent portfolio, you mean
4 the entire portfolio?

5 A. The entire portfolio. Against my better
6 advice.

7 Q. Do you recall what the terms of the LOI
8 were?

9 A. Generally. They changed because we, at
10 first we entered an LOI subject to, I believe,
11 90 days of due diligence. We, I believe, initially
12 we were going to sell them the patent portfolio in
13 whole for around 4 or 4 and a half million.

14 Q. Do you know who conducted -- well, first,
15 do you know if any due diligence occurred subject to
16 that letter of intent?

17 A. Yes.

18 Q. Do you know who conducted the due
19 diligence?

20 A. Altitude itself did. They had an in-house
21 counsel.

22 Q. Do you know if they had any outside counsel
23 involved?

24 A. They did.

1 Q. Who was that?

2 A. It was Dickstein Shapiro.

3 Q. At the time that it occurred was Dickstein
4 Shapiro still representing Lycos?

5 A. They had not started to represent Lycos
6 yet. I did not have any direct communications with
7 Dickstein at that time.

8 Q. Does Lycos have any knowledge as to the
9 results of that due diligence?

10 A. Only what I was told by Warren.

11 Q. And that is?

12 A. And that is -- well, one of the issues was
13 with the patents in suit at the time, we wanted out
14 of litigation, and so we either needed them to step
15 in after the fact. If we sold them and assigned
16 them, we no longer have standing to prosecute the
17 litigation, and we didn't want to remain in it in
18 name or any capacity. Or we had to finish up the
19 litigation, so we could do the deal. And to sell
20 them outright, it came to a point where they also
21 didn't like the jurisdiction. I don't know if they
22 liked the patents differently or not, they are
23 pretty careful of not sharing that type of
24 information with me. It came to a point where they

1 didn't want to step into the litigation, so I had
2 more pressure on me to just reach settlement to get
3 done with it. And that dragged on for quite a bit
4 because the final settlement with Blockbuster took
5 so long, we reached an agreement and they changed,
6 we thought they changed the agreement, so we had to
7 file a motion about it. It took a while.

8 And Warren also came back, and a couple of
9 patents that we liked, we thought there were more
10 value, they pushed back on, they thought they found
11 some weaknesses in some other patent, namely the
12 game patent. They were worried about some of the
13 prior art on that game patent. And I don't remember
14 specifically, but they also made some comments about
15 the patents in that suit, but I don't remember what
16 their comments were. But it was a way, the whole
17 thing was a way to push down the price of the LOI,
18 which they ended up doing, and we entered a second
19 LOI.

20 Q. When did -- do you know when Lycos entered
21 that second LOI?

22 A. Sometime in 2009.

23 Q. Do you recall what the terms of that second
24 LOI were?

1 A. They were -- I'm trying to remember what
2 the payment was going to be. It got dropped way
3 down to about 1.25 million perhaps, and I believe
4 one of the conditions was that we attempted to have
5 this summary judgment vacated in that litigation,
6 and that may -- I can't remember if there was one
7 price if we got it vacated, and one price if we
8 didn't. That seems to ring a bell, but I don't
9 remember.

10 MS. O'BRIEN: Shall we go ahead and take a
11 break to change the tape?

12 VIDEOGRAPHER: This will be the end of tape
13 3, going off record, the time is 2:05.

14 (Recess was taken at 2:05 p.m.)

15 (Reconvened at 2:09 p.m.)

16 VIDEOGRAPHER: We are back on record,
17 beginning of tape 4, the time is 2:09, you may
18 continue.

19 Q. Do you recall how long the second letter of
20 intent with Altitude was in effect?

21 A. I believe there was only supposed to be an
22 additional 30-day due diligence period, however,
23 again, things were really contingent upon our
24 settling with all matters with Blockbuster in the

1 litigation. As long as that was pending we couldn't
2 complete a sale, and that kept on lingering. And it
3 was around that time frame that Dickstein took over
4 as counsel for us directly. Again, that would have
5 been, you know, June, July 2009.

6 Q. So Lycos's negotiations with Altitude
7 Capital continued after the settlement agreement
8 with ChoiceStream and Blockbuster?

9 A. No.

10 Q. Do you know why not?

11 A. Because by that time it was already spring
12 of 2010 and our parent company had just entered a
13 letter of intent with Ybrant to sell Lycos, so that
14 would have been a transaction out of the ordinary
15 course, which would have prohibited doing that at
16 that point.

17 Second, if we were going to have a new
18 parent, that parent may have a very different
19 opinion of the patent portfolio and the price. It
20 was not legal advice, I could disclose I had advised
21 from a business standpoint the company to not accept
22 1.25 million for the entire portfolio, because I
23 thought it was absurd. But in their cost-cutting
24 frenzy, they were just doing, they were just doing

1 anything. So when it got to that point, our hands
2 were tied. And I think Ybrant wanted to look at
3 this after the fact if they were buying our company.
4 They wanted to buy it in place. So we stopped all
5 negotiations at that time.

6 Q. Did Lycos ever begin negotiations regarding
7 the sale of its patents after it entered -- after
8 its acquisition by Ybrant?

9 MS. ALBERT: Okay. Vague.

10 A. Say that one more time. Sorry.

11 Q. It's a terrible question. Let's try again.

12 A. I didn't say that.

13 Q. That's fair. I will, I will own that. Did
14 Lycos and Altitude Capital ever have any other
15 negotiations regarding the sale of patents after the
16 spring of 2010?

17 A. After the --

18 MS. ALBERT: Objection. Vague.

19 A. After the fall of 2010, yes.

20 Q. And when was that?

21 A. That would have been sometime late spring
22 or summer 2011.

23 Q. What patents were involved in that
24 negotiation?

1 A. Well, I was contacted by another -- at that
2 time we were not, we did not -- let me step back.
3 We had received an offer from a third party, another
4 party related to the patents in suit here.

5 Q. And who is that third party?

6 A. Stayko Staykov. And that is S-T-A-Y-K-O
7 S-T-A-Y-K-O-V.

8 Q. Who is Stayko Staykov?

9 A. He's from that Borat movie, I think. No,
10 he owns an intellectual property investment type of
11 company. I believe it was called Eidos, E-I-D-O-S,
12 if I remember correctly. And a smaller company.
13 And he's invested in intellectual portfolio s
14 before, and he contacted me.

15 Q. And when did he contact you?

16 A. Sometimes in the spring of 2011. And he
17 came up and met with me.

18 Q. When you said the patent at issue in this
19 case, which patents specifically did he indicate
20 that he was interested in?

21 A. The '664 patent and the '420 patent.

22 Q. Any others?

23 A. Well, I mean, I think the discussion
24 necessarily included the whole patent family. So if

1 I remember correctly, he -- I don't know if he
2 actually cited those two specifically, but he wanted
3 the family of patents.

4 Q. When did you first meet with him?

5 A. Spring of 2011, I believe.

6 Q. Did he make an offer to purchase the patent
7 of families at the time? The family of patents at
8 that time?

9 A. After our meeting he did some brief due
10 diligence and sent me some information about
11 himself, and then made an offer.

12 Q. And what was that offer?

13 A. It's hard for me to remember right now, but
14 it was in the 1 million range. And, again, at this
15 point we're only talking about this one patent
16 family, not the whole portfolio.

17 Q. Did he say why he was interested in this
18 patent family?

19 A. I think he just said so that he could
20 monetize it in some fashion.

21 Q. Did he tell you how he identified this
22 patent family?

23 A. I know that Dickstein had him contact me.

24 Q. How did you respond to the offer from Mr.

1 Staykov?

2 A. I told him it was too low.

3 Q. Did you provide a counter offer?

4 A. It took a while for me to get any response
5 from Israel, which is where our parent company's
6 kind of business is operated. It's not where our
7 parent company is operated. Our parent company is
8 located in Indiana, but the business operations of
9 Ybrant is in Israel. It took me a while to get a
10 response back.

11 In the meantime I spoke with our CEO, who
12 told me to see if I could get other parties
13 involved, and that's when I reached out to Altitude
14 again and said, hey, you know, the previous LOI's
15 have no effect anymore, but I wanted to give you a
16 courtesy call, give you a heads-up that we're in
17 discussion to sell this one patent family, not our
18 portfolio anymore, and that we have an offer on the
19 table. And if you want to throw in your hat, let me
20 know. So they were a little perturbed by that whole
21 thing, but it's business. And then Dickstein also
22 put me in contact with another company, which was
23 Hudson Bay Capital, and Alex Burger.

24 Q. Is Dickstein representing Lycos at the

1 time?

2 A. No. Dickstein made the introductions, but
3 they were not involved in the discussions.

4 Q. After you reached out to Altitude Capital
5 did they respond?

6 A. In the meantime I met with Alex Burger's
7 company, then was Hudson Bay Capital, he came up and
8 met with me with one of his colleagues to discuss
9 this family of patents. He then went back and did
10 some very quick due diligence over a span of days,
11 and then made an offer, and I had not heard back
12 from Altitude yet, I conveyed the highest offer we
13 had to Altitude, and eventually Altitude came back
14 and made an offer. I conveyed all this to Staykov.
15 Staykov made more of an offer, and the three parties
16 basically negotiated off themselves until we finally
17 agreed at 3.2 million with Hudson Bay.

18 I believe, I believe Altitude had gone up
19 to 3 million, and I believe Staykov had gone up to
20 2.5 million before he dropped out. And Hudson's
21 last offer was more of take it or leave it at 3.2,
22 and I wanted to get it done. And we ended up
23 accepting that, although we threw a couple of
24 additional patents into the mix for the extra

1 200,000.

2 Q. So then the 3.2 is, the 3.2 million was the
3 highest offer that you received?

4 A. Yes, to date. Yeah, and Altitude basically
5 made his 3 million the final offer, so I never went
6 back to Altitude with the 3.2.

7 Q. So just stepping back, that first meeting
8 you had with Alex Burger of Hudson Bay, you said one
9 of his colleagues was there. Do you know who that
10 was?

11 A. I don't remember.

12 Q. Do you know what was discussed during that
13 initial meeting?

14 A. It was very background type of stuff. They
15 told me about them, the background, the company. I
16 told them about Lycos. And we just discussed the
17 possibility of selling these potential patents.

18 Q. Did they discuss any of their plans to
19 monetize the patents?

20 A. They did not. And, again, they never
21 specified any specific patents within the family per
22 se. It was all discussion on the family as a whole.

23 Q. So then your discussions with Hudson Bay,
24 did they ever specify an amount for specific

1 patents?

2 A. No.

3 Q. Do you know if Hudson Bay ever did an
4 evaluation of the value of the specific patents?

5 MS. ALBERT: Objection. Vague.

6 A. I have no idea.

7 Q. Similarly, do you know if Altitude Capital
8 ever did any evaluations of the value of the patents
9 in the '799 family?

10 MS. ALBERT: Same objection.

11 A. I don't know if it did a valuation. I know
12 it conducted due diligence. Extensive due
13 diligence.

14 Q. Were there any factors that influenced
15 Lycos's decision to sell the '799 patent family to
16 Hudson Bay other than the 3.2 million purchase
17 price?

18 MS. ALBERT: Objection. Vague.

19 A. No. It was just all based on the highest
20 price we could get. And the size of Lycos, it was a
21 good amount of cash.

22 Q. About how long did the negotiations with
23 Hudson Bay last?

24 A. It was short. It all happened very

1 quickly. Within the span of an -- I was going back
2 and forth with people for a couple weeks, and it was
3 done. It was very fast.

4 MS. O'BRIEN: I will hand you what I will
5 mark as Exhibit 17, and I'll just note for the
6 record this, when it was produced, was marked
7 confidential, outside counsel only. Printer just
8 hates me today.

9 And this is a document that was produced
10 last night by I/P Engine.

11 (Exhibit No. 17, marked; Letter dated May
12 16, 2011.)

13 Q. And obviously take your time to look at the
14 document, I will just first ask if you recognize the
15 document.

16 A. Yes, I recognize it.

17 Q. What is it?

18 A. This would be the letter of intent that
19 Lycos entered with Hudson Bay. It's a little
20 earlier in 2011 than I had remembered. I thought it
21 was June or July, but that's close enough.

22 Q. I want to just look at the first page, the
23 section "form of acquisition."

24 A. Yes.

1 Q. About maybe a third of the way down the
2 sentence that begins "The purchase agreement."

3 A. Yes.

4 Q. It refers to a royalty-free, worldwide
5 license back to the patents. Do you see that?

6 A. Yes.

7 Q. Do you know if Lycos placed any value on
8 the license back of the patents in this agreement?

9 A. Monetary value?

10 Q. Right.

11 A. No. It was more just cross our T's, dot
12 our I's and be protected going forward so nobody
13 could sue us on patents we sold, or I'd look like an
14 idiot.

15 Q. Do you know if at the time Lycos was
16 practicing any of the patents in Schedule A of this
17 agreement?

18 MS. ALBERT: Objection. No foundation.

19 A. I really don't know.

20 Q. And just looking at the section No. 2,
21 purchase price, do you see that on the bottom of the
22 first page?

23 A. Yes.

24 Q. It refers to "Purchasers shall pay to the

1 seller \$3,100,000 in exchange for the patent"; do
2 you see that?

3 A. Yes.

4 Q. Was that \$3.1 million an amount that was
5 proposed by Hudson Bay or by Lycos?

6 A. Hudson Bay, because at that point Lycos
7 wasn't throwing any numbers out there. To be honest
8 with you, I was being honest with all parties saying
9 I have a third-party offer, I can't tell you who it
10 is, but this is the offer. If you want to beat it,
11 beat it. And they kept on increasing the amount,
12 and until we get to the 3 million, and that's when
13 Altitude said this is our final offer. I don't
14 think Altitude didn't believe me that we had all
15 these other offers. And so I took them at their
16 word and Hudson Bay offered 3.1, that was the
17 highest, Eidos dropped out, I had heard final offer
18 from Altitude, accepted this offer and didn't go
19 back to Altitude, and Altitude was mad at that. And
20 I said don't say final offer if you don't mean it.

21 Q. Okay. I think we can put that one aside.

22 MS. O'BRIEN: Mark as Exhibit 18 document
23 produced IPE 0022792 through 796.

24 (Exhibit No. 18, marked; Letter dated June

1 15, 2011.)

2 Q. Obviously take your time to look at it, my
3 first question is do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. This is an amendment to the letter of
7 intent that we just looked at.

8 Q. Do you know what the purpose of this
9 amendment was?

10 A. I think we extended the time by which we
11 could close, and we added an additional patent to
12 the sale, and increased the purchase price to
13 3.2 million. I believe that was the purpose. So
14 all of a sudden when we were negotiating final
15 agreement, they requested this additional patent
16 that we had never discussed with anybody
17 specifically. So it wasn't anything on our radar,
18 but they said it was a mistake not to include it in
19 the original, and I said, well, we already
20 negotiated the purchase price, you're going to have
21 to give something for it. And our parent company at
22 the time was fine with just getting an extra
23 100,000. They had -- 3.1 was already more than they
24 had expected, so we just threw another 100,000 in

1 there for good faith.

2 Q. Did Hudson Bay ever explain why they wanted
3 to add this additional patent?

4 A. No. I was mistakenly leaving it out. It
5 should have been included. I don't know why that is
6 though.

7 Q. And just looking at the first page of the
8 agreement, it refers to Hudson Bay Master Fund, and
9 then also to Smart Search Labs Incorporated.

10 A. Yes.

11 Q. Do you know why Smart Search Labs
12 Incorporated was added to the agreement between
13 Hudson Bay and Lycos?

14 A. I was told that the ultimate, that the
15 contractual parties would ultimately be Smart Search
16 Labs. That was my only understanding.

17 Q. And who told you that?

18 A. I believe it was Alex Burger.

19 Q. And he didn't explain why?

20 A. No.

21 Q. Did the change in the parties have any
22 impact on your decision to enter into the agreement
23 with Hudson Bay and Smart Search?

24 MS. ALBERT: Objection. Vague.

1 A. I know I had discussions with them, because
2 in my opinion it caused some potential risk, greater
3 risk to Lycos, because I didn't know anything about
4 Smart Search. I didn't know how they were funded, I
5 didn't know anything about them. So I did have a
6 little bit of concern about it. I just don't recall
7 how we got around that. What type of assurances he
8 gave me in terms of payment and whatnot.

9 I mean, as this deal -- there wasn't that
10 much risk because it was just the one. If it was a
11 deal where we were going to be paid out over time or
12 something like that, it would have been one thing,
13 but we were being paid immediately. And once we got
14 our money and transferred the patents effectively
15 the transaction is over. The risk was small, but
16 still, I didn't know anything about this company,
17 didn't know whether it was adequately funded, didn't
18 really know anything about it. I know I had
19 discussions with him about that, because it did
20 raise concerns, but apparently I got over whatever I
21 had.

22 Q. I think you can put that one aside too.

23 MS. O'BRIEN: Mark as Exhibit 19 document
24 produced Lycos 000001.

1 (Exhibit No. 19, marked; Patent Purchase and
2 License Agreement dated June 22, 2011.)

3 Q. And, again, please take your time to look
4 at it and the first question is just do you
5 recognize that document?

6 A. Yes.

7 Q. What is it?

8 A. Patent purchase and license agreement that
9 we entered, Lycos entered with Smart Search Labs to
10 sell the patent family that we've been discussing,
11 along with the two additional patents.

12 Q. Do you recall which were the two additional
13 patents?

14 A. Not without looking at the agreement.

15 Q. And I think the schedule of patents is
16 listed on Lycos 22, if that helps.

17 A. It would be the final two patents.
18 Estimating the usefulness of an item in a collection
19 of information, patent 6640218 and serving content
20 to a client, patent No. 7228493.

21 Q. And did either Hudson Bay or Smart Search
22 ever explain why it was interested in the '218
23 patent?

24 A. It did not.

1 Q. Do you have any understanding of the fields
2 that the '218 patent is in?

3 MS. ALBERT: Objection. Vague.

4 A. I don't.

5 Q. If you turn to page 9 of the agreement,
6 which is Bates No. Lycos 12.

7 A. Yes.

8 Q. There's a section 5.05, patent litigation,
9 do you see that?

10 A. Yes.

11 Q. Has Smart Search made any payments to Lycos
12 in connection with this case?

13 A. In connection with this case, no.

14 Q. Have you had any involvement in this case
15 other than responding to the subpoena as being here
16 today?

17 A. No, I have not.

18 Q. During the negotiations did Lycos assume
19 that the patents it was selling were valid?

20 MS. ALBERT: Objection. Vague, asks for
21 legal conclusion.

22 A. Yes, we assumed they were valid.

23 Q. Do you know if Smart Search and Hudson Bay
24 assumed that the patents were valid?

1 MS. ALBERT: Objection. Speculation.

2 A. I hope so.

3 Q. Did anyone raise any concerns about the
4 validity of the patents during the negotiations?

5 A. No.

6 Q. And similarly, did anybody raise any
7 concerns about the enforceability of the patent
8 during negotiations?

9 MS. ALBERT: Objection.

10 A. No.

11 Q. We were discussing that the final amount of
12 the sale of the patents was 3.2 million.

13 A. Yes.

14 Q. Is there any reason that Lycos wouldn't
15 have agreed to sell the patents in this agreement to
16 Google for \$3.2 million?

17 MS. ALBERT: Objection. Speculation, vague.

18 A. No reason we wouldn't have sold to whoever
19 would have given us the most.

20 Q. Similarly, do you have reason to believe
21 that Lycos wouldn't have licensed the patent in this
22 agreement for \$3.2 million?

23 MS. ALBERT: Objection. Vague, speculation.

24 A. No, I have no -- can you repeat the

1 question? Sorry.

2 MS. O'BRIEN: Would you mind rereading it
3 for me, I don't know if I can.

4 (Read back.)

5 A. No. I have no reason to believe one way or
6 the other.

7 Q. Do you have any reason to believe that
8 Lycos wouldn't have licensed the patents in this
9 agreement for \$3.2 million in 2004?

10 MS. ALBERT: Objection. Speculation.

11 A. I have no reason. What we would have done
12 in 2004, I mean, like I said, a lot of this was
13 internally driven. We would have been a much
14 different company back then, larger in all respects,
15 much bigger parent company, and just the overall
16 business forces would have been different. This was
17 largely driven by our lack of profitability at the
18 time, our need for some cash, things like that.
19 Circumstances being completely different, I have no
20 idea what we would have done back then.

21 Q. And just to confirm, was Lycos profitable
22 in 2004?

23 A. No.

24 Q. Was Lycos profitable in 2005?

1 A. No.

2 Q. If we can take a quick break, I think I'm
3 finished, I will check my notes.

4 VIDEOGRAPHER: Going off record, the time is
5 2:41.

6 (Recess was taken at 2:41 p.m.)

7 (Reconvened at 2:45 p.m.)

8 (Exhibit No. 20, marked; Subpoena.)

9 VIDEOGRAPHER: We are back on the record.
10 The time is 2:45, you may continue.

11 Q. I've handed you what's been marked
12 Exhibit 20, which is notice of subpoena for Lycos,
13 Inc. Do you recognize this document?

14 A. Yes.

15 Q. Did Lycos collect documents in response to
16 this subpoena?

17 A. Yes.

18 Q. What did Lycos do to collect documents in
19 response to this subpoena?

20 A. Reviewed all the categories, and I searched
21 my own emails, and I searched our former CEO's
22 emails. He and I would have been the only two to
23 have real communications surrounding the sale of the
24 patents. Also, yeah, or related to my discussions

1 with Altitude, things like that in the past, and
2 certain things were, you know, specific like, you
3 know, the WiseWire merger, I had to get those
4 documents from Iron Mountain, because those
5 documents are long gone, but we still had them
6 somewhere, so I had to order those, produce, look
7 through. McDermott, Will and Emery had sent back at
8 some point a lot of documents that were ours
9 relating to all the patents that they had looked at
10 in our portfolio, so I had like seven boxes of
11 documents, and I went through all those documents
12 and pulled those related to any of the patents
13 requested in here, unless it was like the complaint
14 or something. And, again, looked up other specific
15 documents, such as the Ken Lang consulting
16 agreement, and the purchase agreement, and I already
17 knew of the license agreements we had entered, so I
18 went into our system and pulled those. I don't
19 think there was anything else for me to do because,
20 as I said, I was the only one still at the company
21 that would have any documents responsive, other than
22 the ones that were specifically mentioned, and I
23 knew where they were.

24 Q. You can put that one aside.

1 In 2004 would Lycos have known what other
2 contributions would be necessary to commercialize
3 the inventions claimed in the '420 patent?

4 MS. ALBERT: Objection. Vague, no
5 foundation.

6 A. I don't know what Lycos would have known
7 about that in 2004, nor do I know if it even
8 considered it.

9 Since I've been in the company, there's
10 never been a discussion about that patent.

11 Q. Similarly, was there ever any discussion
12 about commercializing the '664 patent since you were
13 at Lycos?

14 MS. ALBERT: Same objection.

15 A. No.

16 Q. Did Lycos at any time believe that Google
17 had successfully commercialized the '420 patent?

18 MS. ALBERT: Objection. Vague.

19 A. We never did any analysis of anything
20 Google was doing in relation to these patents in
21 suit or that family.

22 MS. O'BRIEN: I have nothing further.

23 MS. ALBERT: I just have a couple of, if I
24 can, follow-ups.

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CROSS-EXAMINATION

BY MS. ALBERT:

Q. Earlier you had testified that you believed Altitude had done extensive due diligence on the family of patents that they were bidding on; do you recall that?

A. Yes.

Q. What is that, what is your testimony based on? How do you know that?

A. It's based on the volume of requests that I received from them for due diligence, and the amount of documents I personally produced relating to the chain of title of the patents, past assignments. It was a lot of documents were hard to find because I had to go back to Iron Mountain and get a lot. I had to piece together certain chains of title through various mergers and whatnot. So that was time consuming.

I produced all of our patent files related to all of those, all the patents in our portfolio, and I know they also spent a number of days with McDermott, Will & Emery themselves discussing their analyses to the extent -- well, obviously McDermott had to be careful in terms of what it discussed,

1 because we were not yet represented, but there was
2 some due diligence that they did with McDermott.
3 They contacted McDermott with my approval. So it
4 was just based on the amount of the overall
5 documents that were delivered. It seemed like they
6 weren't leaving much unturned.

7 Q. Did they provide any documents to you
8 relating to their due diligence?

9 A. In terms of requests or?

10 Q. Results.

11 A. No.

12 Q. No?

13 A. No.

14 Q. Did they discuss with you any results
15 relating to their due diligence?

16 A. Yes.

17 Q. What did they discuss?

18 A. When Alex came back to me to push back on
19 the original LOI, he gave me a list of criticisms or
20 concerns that had been raised during due diligence.
21 He seemed like he wasn't interested anymore in
22 monetizing the game patent, and originally that was
23 one of the patents that they thought could be
24 lucrative within our portfolio. After due diligence

1 they weren't really sure of that. There was not
2 much interest in it.

3 They also didn't have interest in,
4 especially after the summary judgment ruling, of
5 getting involved in that litigation. He did
6 mention, however, that they had interest in two of
7 the other patents within the family of patents, but
8 he did not or would not disclose to me which patents
9 those were, and that was a negotiation tactic, and I
10 didn't ask.

11 So basically he just, he basically tried to
12 make it out to be these two patents were the only
13 ones they were really interested in, and they were
14 only doing us a favor by taking the rest.

15 Q. But he didn't specify which ones?

16 A. No.

17 Q. You had stated that it was Alex, did you
18 mean Warren Hurwitz?

19 A. Yes, Warren. No, it was Warren.

20 Q. All right. Just one more. If you pull out
21 -- well, let me step back.

22 You had testified earlier, and I'm
23 paraphrasing, I'm not trying to put words in your
24 mouth, so if I'm, you know, if I flub it up, let me

1 know, that you weren't sure whether the Overture/
2 Lycos settlement agreement covered the patents in
3 suit in this case, the '420 and '664; do you recall
4 that? We can take a look at it, it's Exhibit 15, I
5 think the question is from.

6 A. I don't believe that the Overture licensure
7 agreement had anything to do with these patents. I
8 don't think it's in this agreement.

9 Q. I just want to clarify, because I believe
10 in the line of questioning, if you look at page six
11 of the agreement, the cross license agreement
12 section, paragraph 11.1, I believe the questions
13 were, do you know whether the '420 patent would be
14 included in this cross license, and I believe your
15 testimony was you do not know.

16 A. Well, no patent is specifically included.
17 It depends on whether the patent covers the criteria
18 in here, which is in the field of art covered by the
19 claim of the licensed patents made by the terms of
20 this license by licensee.

21 Q. And by licensee they're referring to Lycos?

22 A. Yes.

23 Q. Would that first sentence there mean that
24 it had to be an invention created by Lycos during

1 the term of the patent -- strike that.

2 Does that first sentence mean that the
3 invention, that Overture would have a license to --
4 would have to be made by Lycos during the term of
5 this agreement?

6 MS. O'BRIEN: Objection. Vague.

7 A. I'm just going to take a second to read
8 this.

9 Q. That's fine.

10 A. Yes, it would have to be within the field
11 of art covered by the terms of this license
12 agreement.

13 Q. And do you know or do you have a
14 recollection when the '420 patent was filed?

15 A. It was before this license agreement, so it
16 would not come within this.

17 Q. And the same question regarding the '664
18 patent, do you have a recollection of when that
19 patent was filed?

20 A. Also before this agreement was entered. So
21 it would not be included in this section.

22 Q. Okay. I think that's all I have.

23 MS. O'BRIEN: I think I have just one
24 follow-up.

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REDIRECT EXAMINATION

BY MS. O'BRIEN:

Q. Did Hudson Bay provide you with any of the results of its due diligence?

MS. ALBERT: Objection. No foundation.

A. No, it did not.

MS. O'BRIEN: That's it.

MS. ALBERT: No further questions.

VIDEOGRAPHER: This concludes the deposition. Going off the record, the time will be 2:56.

(Whereupon the deposition concluded at 2:56 p.m.)