

EXHIBIT 10

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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I/P ENGINE, INC., :
Plaintiff, : Civil Action No.
v. : 2:11-cv-512
AOL, INC., et al., :
Defendants. :

-----x

VOLUME 2

CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY
CONTAINS SOURCE-CODE PROTECTED PORTION,
PURSUANT TO PROTECTIVE ORDER
Videotaped Deposition of LYLE UNGAR, Ph.D.
Philadelphia, Pennsylvania
Sunday, September 23, 2012
8:44 a.m.

Job No.: 26363
Pages: 267 - 532
Reported by: Debra A. Whitehead

CONFIDENTIAL VIDEOTAPED DEPOSITION OF LYLE UNGAR, Ph.D., VOLUME 2
CONDUCTED ON SUNDAY, SEPTEMBER 23, 2012

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1	(The ends the portion of the deposition	14:06:34
2	designated Confidential, Source Code Protected,	14:06:34
3	pursuant to Protective Order.)	14:06:42
4	MR. CIMINO: I know it's been a short	14:06:42
5	session, but why don't we take a quick break. We're	14:06:43
6	going to move on from infringement issues.	14:06:46
7	MR. BILSKER: All right.	14:06:49
8	VIDEO SPECIALIST: Off record. The time is	14:06:50
9	2:06 p.m.	14:06:51
10	(Short recess.)	14:06:53
11	VIDEO SPECIALIST: Back on record. The	14:16:58
12	time is 2:16 p.m.	14:16:59
13	BY MR. CIMINO:	14:17:02
14	Q I'd like to ask the court reporter to mark	14:17:02
15	as Ungar Exhibit 9 the report of defendants' expert	14:17:04
16	Lyle H. Ungar, Ph.D., concerning invalidity of several	14:17:08
17	claims of the '420 patent and several claims of the	14:17:13
18	'664 patent.	14:17:15
19	(Plaintiff's Ungar Exhibit 9 marked for	14:17:27
20	identification, to be attached to the transcript.)	14:17:45
21	BY MR. CIMINO:	14:17:45
22	Q Can you identify Ungar Exhibit 9?	14:17:46

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1	A	Yes. I recognize it. Is that --	14:17:50
2	Q	That's your report?	14:17:51
3	A	It is my report.	14:17:53
4	Q	Does your report contain a complete and	14:17:54
5		accurate statement of your opinions concerning	14:18:00
6		invalidity?	14:18:02
7	A	It's accurate. I'm not sure it's fully	14:18:03
8		complete.	14:18:06
9	Q	Are you referring to your supplemental	14:18:09
10		invalidity report?	14:18:11
11	A	No; even beyond that.	14:18:13
12	Q	Oh. Why do you believe it's not complete?	14:18:14
13	A	Well, in looking at Carbonell's report,	14:18:18
14		which I saw after I sent the supplemental, it struck	14:18:24
15		me that there was maybe some argument over filtering,	14:18:30
16		whether Culliss, one of the prior art references, did	14:18:39
17		filtering.	14:18:42
18		And when I looked back at Culliss I	14:18:42
19		discovered that -- or discovered, found there was	14:18:45
20		something I might want to present, which is that	14:18:47
21		Culliss actually has a very explicit section which	14:18:53
22		does filtering which I had not described in either --	14:18:57

1 either this -- by "this" I mean the origin validity 14:18:59
2 report or the supplemental. So that was a recent 14:19:05
3 finding of mine. 14:19:08
4 Q Did you make that finding independently of 14:19:09
5 counsel? 14:19:13
6 A It came from discussions with counsel. 14:19:19
7 Q So no? 14:19:21
8 A Jointly, not independently. 14:19:24
9 MR. CIMINO: Let me mark for completeness, 14:19:31
10 Dr. Ungar, your supplemental report of defendants' 14:19:34
11 expert Lyle Ungar concerning invalidity of the '420 14:19:36
12 and '664 patents. 14:19:39
13 (Plaintiff's Ungar Exhibit 10 marked for 14:19:41
14 identification, to be attached to the transcript.) 14:19:52
15 (Discussion off the record.) 14:19:53
16 BY MR. CIMINO: 14:19:53
17 Q Okay. But for the argument that you would 14:19:54
18 like to make about filtering in Culliss, do Ungar 14:20:05
19 Exhibit 9 and Ungar Exhibit 10 contain a complete and 14:20:10
20 accurate statement of your opinions with respect to 14:20:15
21 invalidity? 14:20:17
22 A Yes. 14:20:19

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1	Q	Did you do any searching for your own prior	14:20:19
2		art to determine whether you thought the IPE patents	14:20:36
3		were invalid or not?	14:20:40
4	A	I did.	14:20:44
5	Q	Are any of those pieces of prior art relied	14:20:45
6		upon on your report?	14:20:49
7		I'll note for the record that like your	14:20:57
8		infringement report, noninfringement report, this one	14:21:00
9		also has a pretty handy table of contents.	14:21:03
10	A	Yes. So several of the prior art	14:21:06
11		references are ones that I was familiar with in	14:21:31
12		advance of the case.	14:21:35
13	Q	Oh, sure.	14:21:36
14	A	And I'm now having trouble remembering who	14:21:37
15		first identified them as potential prior art, since I	14:21:40
16		knew them before I was aware of the case, even. And	14:21:43
17		certainly some came to mind when -- even when I was	14:21:50
18		first told of the case.	14:21:54
19	Q	Which pieces of prior art do you believe	14:21:55
20		you independently identified as invalidating of the	14:21:57
21		IPE patents?	14:22:01
22	A	So certainly items that came to mind were	14:22:11

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1	four. So in terms of the mark -- in terms of the	16:25:27
2	marketing people, that's a different question. But I	16:25:30
3	think you're asking me what tells, what truly	16:25:32
4	characterizes how [REDACTED] is calculated, as opposed to	16:25:36
5	asking -- would you like to ask me what the marketing	16:25:42
6	people think I will put down?	16:25:45
7	Q What would the marketing people put down?	16:25:47
8	A My guess is that they're more likely to put	16:25:50
9	down B.	16:25:52
10	Q And you from a technical standpoint would	16:25:52
11	be uncomfortable identifying A, B, C, or D as the	16:25:56
12	correct answer. Right?	16:26:01
13	A Correct.	16:26:02
14	MR. CIMINO: I pass the witness.	16:26:04
15	MR. BILSKER: Okay. Do you have your own	16:26:05
16	copy of Culliss? Because I only brought one copy.	16:26:08
17	Can you give that to the court reporter so she can	16:26:15
18	mark it?	16:26:17
19	THE WITNESS: Ah. Yes.	16:26:18
20	MR. CIMINO: Can you give us a second.	16:26:30
21	THE WITNESS: Five-minute break?	16:26:32
22	MR. BILSKER: No, no. He has five minutes	16:26:34

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1	left on the tape.	16:26:35
2	THE WITNESS: Ah. Sorry.	16:26:35
3	MR. BILSKER: We might as well go off, and	16:26:45
4	you might as well switch the tape since they have to	16:26:46
5	go get it.	16:26:48
6	VIDEO SPECIALIST: Off record. The time is	16:26:49
7	4:26 p.m.	16:26:50
8	(Short recess.)	16:28:36
9	VIDEO SPECIALIST: Here marks the beginning	16:30:32
10	of Tape Number 6. Back on record. The time is 4:30	16:30:47
11	p.m.	16:30:51
12	EXAMINATION BY COUNSEL FOR DEFENDANTS AND	16:30:51
13	THE WITNESS	16:30:51
14	BY MR. BILSKER:	16:30:51
15	Q Hello, Dr. Ungar.	16:30:52
16	You in your questioning earlier today	16:30:54
17	mentioned that you wanted to fill out your opinion	16:30:55
18	with respect to the Culliss reference and filtering in	16:30:59
19	response to Dr. Carbonell's report or testimony.	16:31:02
20	What is it that you wanted to add?	16:31:08
21	MR. CIMINO: I object as beyond the scope	16:31:11
22	of my direct and outside the scope of his reports.	16:31:13

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1	BY MR. BILSKER:	16:31:17
2	Q Go ahead.	16:31:17
3	A So I wanted to note that there's an	16:31:19
4	extensive discussion in Culliss of filtering in	16:31:24
5	precisely the form that Carbonell talks about it. And	16:31:28
6	I will flip through so I can point you to that. It is	16:31:34
7	in Columns 11 and 12, under the heading of Ratings.	16:31:36
8	And in this the Culliss patent describes	16:31:44
9	filtering in the sense we're talking about, where one	16:31:50
10	has some number associated with each, say, web page,	16:31:54
11	compares each number to a threshold. And if it's	16:31:59
12	below that threshold, filters it, removes it.	16:32:02
13	And the way that Culliss does that, in the	16:32:06
14	context, is looking at X-rated versus G-rated	16:32:10
15	articles. There's a widespread concern that many	16:32:17
16	people don't want to see X-rated articles. Some	16:32:20
17	people do, so you can't always eliminate them. But	16:32:23
18	one wants to be able to filter them.	16:32:26
19	And so Culliss describes in detail -- and I	16:32:28
20	won't take time to walk through the whole of it -- a	16:32:31
21	process for developing rating scores, numbers	16:32:37
22	associated, based on labels G-rated or X-rated, a --	16:32:43

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1 he develops a score for each rating term, for each 16:32:53
2 article, as he says, As described above for the key 16:32:55
3 terms. 16:33:00
4 And then perhaps jumping ahead to the very 16:33:01
5 end of that section, he says that the system screens 16:33:04
6 out those articles which have an X-rated key term 16:33:12
7 score above a predetermined threshold. 16:33:15
8 I think this is important because it shows 16:33:19
9 that Culliss is precisely teaching how to do filtering 16:33:20
10 in the sense I think both parties agree is some score 16:33:25
11 above some predetermined threshold. 16:33:28
12 Q What about the Culliss reference in light 16:33:33
13 of Bowman under Dr. Carbonell's definition of 16:33:35
14 filtering; do you have any opinion with respect to 16:33:38
15 that? 16:33:41
16 MR. CIMINO: Same objections. 16:33:42
17 A So it's also the case that in addition to 16:33:45
18 this explicit description of thresholding, that I 16:33:48
19 think it would have been obvious to one of skill in 16:33:54
20 the art at the time that filtering by using a 16:33:57
21 threshold based on a score, using, for example Bowman, 16:34:02
22 as described in Bowman, it's a very obvious extension 16:34:06

1 to -- to the Culliss system. 16:34:11

2 MR. BILSKER: Let me ask you to pass to the 16:34:15

3 court reporter the Bowman reference for the court 16:34:17

4 reporter to mark as the next in line. 16:34:19

5 (Plaintiff's Ungar Exhibits 12 and 13 16:34:21

6 marked for identification, to be attached to the 16:34:21

7 transcript.) 16:34:21

8 BY MR. BILSKER: 16:34:33

9 Q Dr. Ungar, you have in front of you Exhibit 16:34:33

10 Number 13, the '558 patent to Bowman. 16:34:35

11 Do you recognize that document? 16:34:39

12 A I do. 16:34:41

13 Q And when you were being asked questions 16:34:41

14 earlier today regarding matching of the query to the 16:34:44

15 item, you had mentioned that there were occurrences of 16:34:49

16 that same terminology in the specification. And I 16:34:52

17 just wanted to ask you where in the specification you 16:34:56

18 might have been referring to. 16:34:59

19 A So there are a number of mentions. I was 16:35:01

20 in particular thinking -- and here give me a second 16:35:04

21 while I flip through to find them. I haven't 16:35:06

22 memorized Bowman either. 16:35:10

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1	I wish I had an automatic search piece	16:35:13
2	here.	16:35:16
3	MR. CIMINO: What column are you reading,	16:35:40
4	Dr. Ungar?	16:35:42
5	THE WITNESS: I'm looking at -- I'm	16:35:43
6	starting at the beginning, Columns 1 and 2. But I'm	16:35:45
7	in Column 1 at the moment. I recall it was fairly	16:35:48
8	early in the article, in the patent.	16:35:51
9	BY MR. BILSKER:	16:36:13
10	Q Well, let me ask you, is Column 1, Line 43,	16:36:14
11	what you were thinking about, since we want Frank to	16:36:18
12	get home to his football game?	16:36:23
13	A So that was one of the examples. So the --	16:36:25
14	that example says that a list may be ordered by the	16:36:29
15	extent to which the identified item matches the terms	16:36:35
16	of a query. So that's matching the terms of a query	16:36:40
17	to the words in, for example, the web page. So that's	16:36:42
18	one. There were others as well.	16:36:47
19	Q Are you able to find any of the others	16:36:49
20	quickly?	16:36:51
21	A There was one in Column 2. Not a -- a less	16:36:53
22	important one, as a technique for displaying items,	16:36:59

1 even when no items completely match the query. 16:37:05

2 MR. CIMINO: Where is that? 16:37:08

3 THE WITNESS: That is the very bottom of 16:37:09

4 Column 1, the start of 2. It's continuing the same 16:37:11

5 discussion, again talking about items matching a 16:37:14

6 query. And that's exactly the sense in which I'm 16:37:18

7 reading the claims. 16:37:21

8 I think there were further ones down, but 16:37:25

9 again, it may take a little time to find them. That 16:37:27

10 may suffice for -- for now, or would you like more? 16:37:31

11 Q Well, if there's one that's easy at your 16:37:34

12 fingertips, that's fine. We don't have to go through 16:37:39

13 the whole reference right now. 16:37:41

14 A There was another one I think also farther 16:37:42

15 down the page. I apologize for not remembering 16:37:44

16 exactly where everything is. 16:37:46

17 Q But those express what you were thinking 16:37:51

18 about? 16:37:53

19 A Those and the later ones, which can easily 16:37:53

20 be found, express precisely what I was thinking about, 16:37:56

21 matching the terms in the query to the terms in the 16:38:01

22 item. 16:38:03

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1	MR. BILSKER: I pass the witness.	16:38:04
2	MR. CIMINO: No further questions.	16:38:05
3	Thank you, Dr. Ungar.	16:38:07
4	VIDEO SPECIALIST: Here marks the end of	16:38:09
5	the deposition. Off record. The time is 4:38 p.m.	16:38:10
6	(Signature having been not waived, the	
7	deposition of LYLE UNGAR, Ph.D., was concluded at	
8	4:38 p.m.)	
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