

EXHIBIT 35

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

-----x
I/P ENGINE, INC.,

Plaintiff,

v.

Civil Action No.:
2:11-cv-512

GOOGLE INC.,

Defendant.

-----x

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped 30(b)(6) Deposition

of

JAIME G. CARBONELL, Ph.D.

Washington, D.C.

Friday, September 21, 2012

9:04 a.m.

Reported by: Amy E. Sikora, RPR, CRR, CSR-NY, CLR

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1 A. Excuse me a second.

2 Q. No. No problem.

3 A. Sorry. Go on.

4 Q. Okay. So then, the next sentence of
5 column 14 says, "Alternatively, a human editor
6 could assign scores according to judgments made
7 by such editor."

8 Do you see that?

9 A. That's right.

10 Q. So that sentence follows the sentence
11 that we just read that said, "For example, the
12 scores can be initially set to correspond with
13 the frequency of the term occurrence in the
14 article"; correct?

15 A. Correct.

16 Q. Okay. So then, do you understand that
17 "Alternatively, a human editor could assign
18 scores according to judgments made by such
19 editor" refers to, among other things, the key
20 term scores?

21 MR. JACOBS: Objection as to form.
22 Calls for speculation.

23 A. I cannot tell if -- to which scores
24 they refer to. It could refer to the key term
25 scores. It could refer to scores assigned to

1 other terms selected by an editor.

2 Q. Okay.

3 A. Editors typically exercise their
4 editorial capacity.

5 Q. Understood. Okay. So let's just --
6 let's take an example where the editor can assign
7 initial values to the key term scores; okay?

8 A. Uh-huh.

9 Q. And you agree that the key term scores
10 are derived from terms that appear in the
11 articles; correct?

12 MR. JACOBS: Objection.

13 Q. Or the key terms are -- are derived
14 from terms that appear in the articles; correct?

15 A. That's what that paragraph says.

16 Q. Okay. So let's go back to your
17 example in paragraph -- or excuse me, in
18 footnote 5, to paragraph 106 of your report.

19 A. Yes.

20 Q. You used an example of an item that
21 was clicked on a thousand times in response to a
22 query involving a particular key term; correct?

23 A. Yes.

24 Q. And that key term was initialized with
25 a value of one; right?

1 A. Correct.

2 Q. So what you're saying as well, after a
3 thousand clicks, that key term value will be
4 1,001?

5 A. That's right.

6 Q. 1/10th of one percent of that value
7 would be in response to the initial content-based
8 initialization; correct?

9 A. Correct.

10 Q. And the rest of it you say would be
11 based on collaborative feedback data; correct?

12 A. Correct.

13 Q. So now, let's take an example where
14 the editor initialized that key term to a
15 thousand, to have a value of a thousand; okay?

16 A. Okay.

17 Q. Okay. So there that initialization of
18 the key term to a value of a thousand would be a
19 content-based initialization; correct?

20 A. If the editor assigned a value of a
21 thousand and if it was a key term that was
22 contained inside the article.

23 Q. Right. Then it would be a
24 content-based initialization; correct?

25 A. With the two provisos I just gave,

1 yes.

2 Q. Okay. So then, in the same example,
3 if that article then was clicked a thousand times
4 in response to a query that contained that -- the
5 same key term, the value would be a thousand plus
6 a thousand; correct?

7 A. If you were to modify the example in
8 that particular way. One could modify the
9 example in other ways as well.

10 Q. No. Understood. But that's -- based
11 upon this reading of column 14 of Culliss, that's
12 a fair modification of the example; correct?

13 MR. JACOBS: Objection as to form.

14 A. In the -- in that case, the initial
15 usage, the content would dominate, and there
16 would be no significant effect from the
17 popularity part.

18 Q. Right. But after a thousand clicks,
19 the popularity portion, what you're calling the
20 collaborative feedback, would be 50 percent of
21 the value, and the content-based would be
22 50 percent of the value; correct?

23 A. At that -- at that point in time. At
24 the earlier point, the content would dominate.

25 To follow through with your example,

1 A. Yeah.

2 Q. Okay.

3 A. That's why I can't agree when you say
4 he does it one specific way. I don't -- I don't
5 know.

6 Q. Okay. Understood.

7 So now, let's go back to your report,
8 which we've marked as Exhibit 1, and look at
9 paragraph 108. There you say, "Third, Culliss
10 does not disclose filtering each informon for
11 relevance to the query or filtering the combined
12 information for relevance to at least one of the
13 query and the first user."

14 Do you see that?

15 A. I see that.

16 Q. And then further down, you say that --
17 and I'm paraphrasing here because I don't want to
18 just read the whole thing -- that Culliss
19 discloses ranking, but not filtering; correct?

20 A. That's correct.

21 Q. Okay. So can you explain to me what
22 you mean by the difference between ranking and
23 filtering?

24 A. Yes.

25 Q. Please do.

1 A. Ranking is putting a set of elements,
2 whether they be documents or other items, in
3 order. That order would typically be derived
4 from a score, a relevant score. It can be a
5 popularity score. It can be based on other
6 criteria.

7 So ranking is -- is essentially you
8 start with a set, and you end up with an ordered
9 set. Same set in order.

10 Filtering is the process where you
11 examine elements of a set one at a time, and you
12 determine whether or not they qualify according
13 to some filtering criterion.

14 Then that set is divided into two
15 sets, one of which is the filtered or accepted
16 set, one of which is the rejected or filtered out
17 set.

18 Q. So let me have an example. If you
19 have a -- a criterion that says, I want to review
20 the top 10 something, then you rank whatever the
21 candidates are, and you display the top 10, is
22 that ranking or is that filtering?

23 A. That is ranking.

24 Q. Okay. Even though you used a
25 criterion to decide which ones were going to be

1 displayed and which ones were not going to be
2 displayed; correct?

3 A. That -- that criterion is not based
4 on -- it's not an absolute criterion. It is not
5 based on -- it is based on relative properties of
6 the members of the set where they -- where they
7 belong in the ranking.

8 Q. So you think that in order for
9 something to be filtering, it has to -- there has
10 to be a decision being made concerning only the
11 properties of that individual member of the set?

12 A. Right. Say yea or nay, depending on
13 those properties.

14 Q. So if you're including some decision
15 concern -- some criteria concerning properties of
16 other members of the set in your decision to say
17 yea or nay, then you're not filtering?

18 A. If you're comparing this one to the
19 other members of the set in your -- in your
20 criteria, these comparative criterion, then
21 you're not filtering. Bowman calls that
22 subsetting.

23 Q. What -- what was that last part?

24 A. There are -- one of the other
25 references uses a different term for it.

1 your index, along with the key terms, a rating
2 label; correct?

3 A. You can include a rating label, yes.
4 It could be in the index.

5 Q. Okay. So then it goes -- the Culliss
6 reference goes on to say, "The rating key term is
7 considered appropriate for all ages while the
8 rating key term X rated is considered appropriate
9 only for adults."

10 Do you see that?

11 A. Where does he say that? There it is.
12 I found it.

13 Q. It's like line 12, maybe.

14 A. Yes, I see that.

15 Q. Then at line 15 it says, "The articles
16 are initially associated with one or more of
17 these key terms by any possible manner, such as
18 by human judgment or default association."

19 Do you see that?

20 A. I see that.

21 Q. So do you understand a human could
22 initially decide this is G-rated content or this
23 is X-rated content in the article?

24 A. Yes.

25 Q. Okay. And then if we go down a little

1 bit further about line 23, which is the next
2 paragraph there in column 11. It says, "Moreover
3 the rating key terms can be incorporated into the
4 index of key terms and included in the
5 association of the comparison score and, if used,
6 the key term probability score."

7 Do you see that?

8 A. I see that.

9 Q. So the -- the rating can be an
10 additional value in the key term index; correct?

11 A. Yes.

12 Q. And then in the example that's
13 provided here, if we go down about line 39, it
14 says, "The invention operating separately from or
15 in addition to the manner described above would
16 permit or require the user to enter a rating key
17 term in the search query."

18 Do you see that?

19 A. I see that.

20 Q. So there you understand that you could
21 have an example where you put in key terms alpha
22 and gamma, and in addition you say, I want G
23 rated; right?

24 A. You would -- not exactly, but close to
25 what you said. You would provide three key terms

1 in the query: Alpha, gamma, G or G rated.

2 Q. Okay. And -- and we talked about
3 earlier, alpha and gamma can be associated with
4 words that are in the article; correct?

5 A. Yes, they can be.

6 Q. So then, the next sentence there,
7 beginning about line 41, says, "The invention
8 would operate in a similar manner for the rating
9 key terms as described above for the key terms
10 alone, whereby the search activity of the user
11 would alter the key term scores and key term
12 total scores for the rating key terms."

13 Do you see that?

14 A. I see that.

15 Q. So, in other words, users -- you'd
16 have a key term score associated with the rating
17 that's initialized at some particular value;
18 right?

19 A. Yes. It seems to be once here.

20 Q. Yeah. In the example that's shown,
21 for example, in the index, you know, surrounding
22 line 35 of column 11, they're initialized to the
23 values of one; correct?

24 A. Yes.

25 Q. And then continuing with the example,

1 one of the key terms that the user would enter in
2 the query in this embodiment is to include a
3 rating key term; correct?

4 A. You're referring to 47 through 55?

5 Q. Correct.

6 A. Yeah, that's what it says there.

7 Q. And so that rating key term score
8 would be altered by both whether an article is
9 returned, as well as whether it's selected by the
10 user as per the previous examples that we
11 discussed; correct?

12 A. Yes. Under the embodiment where it
13 keeps both scores with a slash notation as -- as
14 exemplified here, that would be correct.

15 Q. Okay. So then, if we look toward the
16 bottom of column 11, continuing onto the top of
17 column 12, it says, "In this manner," peo --
18 "people looking for X-rated material will
19 identify and effectively label that material as X
20 rated. Such X-rated material can then be
21 screened entirely from the rating key term of
22 G rated by precluding articles entirely from the
23 search results which have a key term probability
24 score or comparison score for the rating key term
25 X rated above a predetermined threshold."

1 Right, you see that?

2 A. I see what it says here, yes.

3 Q. So in what's described there, the --
4 the rating key term will be evaluated for each
5 article individually; correct?

6 A. It -- he's talking about putting in
7 the ratings as -- in the same way you would put
8 other data associated with the -- with the
9 article such as key terms.

10 Q. Understood. But here in the part that
11 I just read at the bottom of column 11, the
12 rating key term for each of the articles is
13 evaluated to determine whether the article will
14 be displayed independently of any of the other
15 articles in the set; correct?

16 A. It doesn't say that it's evaluated
17 with respect to whether the article will be
18 displayed.

19 Q. Well, it says, "In this manner, people
20 looking for X-rated material will identify and
21 effectively label that material as X" -- "as X
22 rated. Such X-rated material can then be
23 screened entirely from the rating key term of
24 G rated by precluding articles entirely from the
25 search results which have a key term probability

1 score or comparison score for the rating key term
2 X rated above a predetermined threshold"; right?

3 A. That's what it says.

4 Q. So isn't that saying that the rating
5 key term score will be evaluated independently
6 for each article to determine whether that
7 article will be screened entirely from the search
8 results?

9 A. The -- the X rated or the G-rated key
10 term will have a score, and then that score can
11 be modified over time, depending on the feedback
12 from the user and the key term probability score
13 or comparison score above a predetermined
14 threshold, and then that -- that key term, then,
15 can be used as -- as a factor or criterion in
16 determining what to show or what to -- what to --
17 not to show, it doesn't say show. What does he
18 say? From the search results.

19 Q. Right. And if we look -- let's just
20 look further. Maybe we can shed a little bit
21 more light on this in the example.

22 Continuing in column 12, about line 6,
23 it says, "For example, suppose article A3
24 contained adult content, and articles A1 and A2
25 contained not adult content, which would not be

1 users."

2 Do you see that?

3 A. I see that.

4 Q. So where is it that you believe that
5 that has to be a content-based query?

6 A. It's implicit on the third limitation
7 content-based filter system for combining the
8 information from the feedback system and the
9 information from the scanning system. If -- the
10 feedback system being the -- the popularity or
11 user-based replies, and so, therefore, if that
12 needs to be combined with something different,
13 that leads to the implication of the scanning
14 system would be the content based.

15 Q. But the -- the last element of
16 content-based filter system, that's a separate
17 element from the scanning system, you agree?

18 A. The content-based filter system is
19 different from the scanning system.

20 Q. Right. And, in fact, the
21 content-based filter system receives an input
22 from the scanning system; correct?

23 A. Right. And receives an input from
24 the -- the -- what is it called? The feedback
25 system.

1 Q. Right. So it receives inputs from
2 both of those systems?

3 A. That's right.

4 Q. So let's look back at the claim 1 of
5 the '420 patent for a minute.

6 A. Okay.

7 Q. So if you look at -- keep your report
8 open to that page 24 where you were just reading.

9 A. Yes.

10 Q. So element A says, "A system for
11 scanning a network to make a demand search for
12 informons relevant to a query from an individual
13 user."

14 Do you see that?

15 A. I see that.

16 Q. So if you look at paragraph 102, and I
17 think we covered this earlier, you don't offer an
18 opinion in your report that the element I just
19 read is absent from Culliss; correct?

20 A. Right.

21 Q. Okay. But then if we look at the
22 first element of claim 1, for example, the '664
23 patent, it reads, "A scanning system for
24 searching for information relevant to a query
25 associated with the first user in a plurality of

1 users"; correct?

2 A. Right.

3 Q. And in particular, you say the aspect
4 of that element that requires searching for
5 information relevant to a query associated with a
6 user is absent from the Culliss reference?

7 A. Only to the extent that that is
8 interpreted to mean that that is a content-based
9 search.

10 Q. So then going back to claim-- the
11 first element of claim 10 of the '420 patent, you
12 don't interpret that element, "A system for
13 scanning a network to make a demand search," as
14 requiring a content-based search; right?

15 A. Not necessarily, because there is
16 another element that talks about the content --
17 content-based filter system receiving the
18 information. So the content-based component
19 could be interpreted to be contained within this
20 second element.

21 Q. Okay. Well, in the '664 patent, the
22 third element has a content-based filter system;
23 correct?

24 A. Yes.

25 Q. But you don't think in the '664 patent

1 that the content-based aspect can be found in the
2 third element?

3 A. Well, to the degree that that is found
4 in the third element, that would suffice. To the
5 degree that the -- that the searching
6 content-based filtering.

7 Q. Okay. So let's go to the Culliss
8 reference now, which we marked as Exhibit 4, and
9 sticking on this searching for information
10 relevant to a query associated with the first
11 user.

12 A. Right.

13 Q. Can you look at figure 1 of the
14 Culliss reference?

15 A. Yes.

16 Q. So box 10 says, "Receive first search
17 query from first user and identify related
18 articles."

19 And box 20 says, "Present articles
20 related to first search query to a first user."

21 Do you see that?

22 A. Yes.

23 Q. So you don't think that those boxes
24 from figure 1 describe searching for information
25 relevant to a query associated with the first --

1 terms; correct? Because the claim has queries
2 specifying each of the terms of the query to
3 produce a ranking value for the item?

4 A. That's right. It could also specify
5 other terms. Basically, I'm agreeing with you.
6 I'm just -- just -- clarifying.

7 Q. Yeah, yeah. Okay. I think we're on
8 the same page. So let's -- and maybe I can go --

9 A. Okay.

10 Q. -- back and explore something else and
11 make sure of that. So if you look at claim 22,
12 you have the first two steps which are basically
13 identical to the first two steps we read in 28;
14 right?

15 A. It's a method claim, but yes.

16 Q. Right. But the steps themselves are
17 the same?

18 A. Right.

19 Q. Okay. So then that last element says,
20 "For a plurality of items identified in the query
21 result, combining ratings of frequencies with
22 which users select the item in earlier queries
23 specifying one or more terms of the query" --

24 A. Right.

25 Q. -- "to produce a ranking value for the

1 item."

2 Do you see that?

3 A. I see that.

4 Q. So in claim 28, we're talking about
5 each of the terms in the query, whereas in 22
6 it's one or more; correct?

7 A. In 22, it's one or more. Let me
8 reread 28.

9 I believe you are right.

10 Q. Yeah. So let's just take an example.
11 If somebody put in the query "lightweight running
12 shoes"?

13 A. Light weight, one word or two words?

14 Q. Let's just say it's one.

15 A. And running shoes, two words.

16 Q. Correct. Lightweight running shoes.

17 So then under claim 28, in order to
18 get this ranking score, I would go back and sum
19 the item scores for queries that also included at
20 least those three terms: Lightweight, running,
21 and shoes; correct?

22 A. I believe that's the right reading.
23 Let me read it again because this is a little
24 confusing.

25 Yeah. It says "satisfying" -- sorry,

1 "to select an item in earlier queries," specify,
2 not satisfying, "specifying each of the terms on
3 the query to produce a ranking value."

4 Yes. So that would be -- be all the
5 terms.

6 Q. Okay. So it would be all the terms.
7 But you -- you could have a situation where the
8 subsequent term, just sticking with the example,
9 would be like blue lightweight running shoes?

10 A. Right.

11 Q. But you would still go back and look
12 at queries for the item scores associated with
13 queries that ran at least the terms
14 "lightweight," "running," "shoes"?

15 A. Correct.

16 Q. Okay. So now let's look at claim 29.

17 A. Uh-huh.

18 Q. So claim 29 is dependent from
19 claim 28; right?

20 A. Yes.

21 Q. So I think we covered this earlier.
22 It includes all the limitations of 28, plus
23 what's added in claim 29; right? Do you agree?

24 A. That's what a dependent claim means,
25 yes.

1 Q. Okay. So then claim 29 says, "The
2 computer readable medium of claim 28 wherein the
3 contents of the computer readable medium further
4 cause the computer system to perform the step of
5 adjusting the ranking value produced for each
6 item identified in the query result to reflect
7 the number of terms specified by the query that
8 are matched by the item."

9 Do you see that?

10 A. I see that.

11 Q. Okay. So you agree that the system of
12 claim that's in claim 29 has to be covered by
13 claim 28 as well; right?

14 A. It has to be covered by -- it's an
15 additional limitation on top of page 28, yes.

16 Q. Right. So anything that would fall
17 within claim 29 also has to fall within claim 28;
18 right?

19 A. Yes.

20 Q. Okay. So the way I understood your --
21 the discussion earlier concerning your
22 understanding of Bowman is that the summing of
23 the ranking scores is always a function of the
24 items that are in the index table; correct?

25 A. In the rating table, correct?

1 patent that we marked as Exhibit 3.

2 A. Okay.

3 Q. And in claim 1, I think the element
4 you're referring to there is "a scanning system
5 for searching for information relevant to a query
6 associated with the first user in a plurality of
7 users."

8 Do you see that?

9 A. I see that.

10 Q. Now, let's pull up the '6 -- or,
11 excuse me, the '420 patent again.

12 MR. NELSON: And that one, just for
13 the record, we marked as Exhibit 2 to your
14 deposition.

15 A. I have it.

16 Q. That first element in claim 10, again,
17 is "a system for scanning a network to make a
18 demand search for informons relevant to a query
19 from an individual user."

20 Do you see that?

21 A. I see that.

22 Q. Now, if you look back to paragraph 78
23 of your report, also there on page 17, you don't
24 offer an opinion in your report that the first
25 element of claim 10 is absent from the Bowman

1 reference; correct?

2 A. Correct.

3 Q. Okay. So does the difference between
4 your opinion on the first element of claim 1, for
5 example, the '664 patent, go back to what we
6 talked about earlier with respect to the Cullis
7 reference, is dependent upon an interpretation
8 that that first element of claim 1 of the '664
9 patent requires some kind of content-based
10 analysis?

11 A. That's correct. Yeah, to the degree
12 that it requires content-based analysis, that
13 belongs there. To the degree that it doesn't,
14 then it's -- I'm not objecting to it.

15 Q. Okay. So then the next element that
16 you have listed in paragraph 80 that you believe
17 is absent from the Bowman reference with respect
18 to the asserted claims of the '664 patent is
19 "combining the information from the feedback
20 system with the information from the scanning
21 system and filtering the combined information for
22 relevance to at least one of the query and the
23 first user."

24 Do you see that?

25 A. Yes.

1 Q. And then you list the corresponding
2 element right after that from claim 26 of the
3 '664 patent; correct?

4 A. Right. Which I believe is a method
5 equivalent to that claim.

6 Q. Agreed. So is your opinion that the
7 element from the '664 patent that we just
8 identified from paragraph 80 of your report is
9 absent because you don't believe that Bowman does
10 filtering or content-based analysis?

11 A. That's correct. That's for the same
12 reasons that we just discussed for the '420.

13 Q. Okay. Okay. Let's put that one aside
14 for -- well, let's just hopefully just put it
15 aside.

16 A. You mean, Bowman aside?

17 Q. Yeah.

18 Okay. So let's turn to your report,
19 which we've marked as Exhibit 1. And
20 particularly on page 32, I want to start there.

21 A. Under the obviousness, yes.

22 Q. Yeah. Under the obvious -- I think
23 the obviousness starts on page 31 under Roman
24 numeral heading XIV; correct?

25 A. Oh, yes. You're right.