EXHIBIT B

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 1              UNITED STATES DISTRICT COURT

 2              EASTERN DISTRICT OF VIRGINIA

 3                   NORFOLK DIVISION

 4   -------------------------x

     I/P ENGINE, INC.,

 5

                   Plaintiff,

 6

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

 7

     GOOGLE INC., et al.,

 8

                   Defendants.

 9   -------------------------x

10

11      CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

12

13     Videotaped Deposition of DONALD M. KOSAK

14                 Washington, D.C.

15              Thursday, May 31, 2012

16                    9:04 a.m.

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

23

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25    Job No. CS397174
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1   Deposition of DONALD M. KOSAK

2 held at the offices of:

3   Dickstein Shapiro LLP

4   1825 Eye Street, N.W.

5   Washington, D.C. 20006

6

7   Pursuant to notice, before Amy E. Sikora,

8 Registered Professional Reporter, Certified

9 Realtime Reporter, Certified Shorthand

10 Reporter (NY), Certified LiveNote Reporter, and

11 Notary Public for the District of Columbia.

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 1              A P P E A R A N C E S

 2   ON BEHALF OF THE PLAINTIFF:

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16   SEARCH & MEDIA, INC., TARGET CORP., AND GANNETT

17   CO., INC.:

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 1              A P P E A R A N C E S

 2                   (Continued)

 3   ON BEHALF OF DEFENDANT AOL, INC.:

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14   ALSO PRESENT:

15   David L. Cohen, Esquire (p.m.)

16   Innovate/Protect

17   Kim Johnson, Videographer

18

19

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1   Q.   Sure.

2   A.   Google AdSense is what I had heard

3   about. The -- the two terms are -- you know, the

4   product names that are both advertising, I got

5   them confused. I'm sorry.

6   Q.   All right. Well, with respect to

7   Google AdSense, you knew about it by 2005?

8   A.   Right.

9   Q.   And that was because you used it at

10   Lycos?

11   A.   Right, right.

12   Q.   Did you have an understanding of how

13   Google AdSense worked?

14   A.   I don't know how it worked internally.

15   We knew enough to put the required tags on the

16   page to call those ads, but what happens after

17   that, I don't know.

18   Q.   Did you have any idea how ads were

19   selected?

20   MS. ALBERT: Objection, vague.

21   Q.   In Google AdSense?

22   MR. BILSKER: Let me withdraw that.

23   Q.   Did you have any idea how ads were

24   selected in Google AdSense in the 2005 time

25   frame?

1   A.   No.

2   Q.   Did you do anything to try to

3   determine how ads were selected in the 2005 time

4   frame in Google AdSense?

5   A.   No.

6   Q.   Is there a reason that you didn't do

7   anything to try to identify how they were

8   selected?

9   A.   Yes.

10   Q.   What was that reason?

11   A.   There was no business reason for me to

12   spend time on analy -- analyzing something that

13   was, you know, wasn't a revenue stream for us.

14   Why -- why would I analyze it?

15   Q.   At that time in 2005, who owned the

16   two patents that are part of this case?

17   A.   In 2005, I'm not sure the ownership.

18   I -- I believe it was probably Dom Communications

19   Corporation.

20   Q.   Not Lycos?

21   A.   Well, Lycos was owned by Dom

22   Communication Corporation at the time. Hence, my

23   uncertainty about the ownership, whether they

24   were owned by a subdivision or the parent company

25   or -- I don't know exactly who had the ownership

1 Q. Yes.

2 A. No, I -- I don't recall.

3 Q. Were you doing anything to determine,

4 in 2005, whether anyone might be using the

5 patents that are part of this case?

6 A. I don't think that I did anything in

7 2005.

8 Q. When was the first time that you did

9 anything to make a determination as to whether

10 somebody was using the inventions that are

11 described in the patents in this case?

12 MS. ALBERT: Objection.

13 A. Could you repeat the question, please?

14 Q. Sure.

15 A. I'm sorry.

16 Q. When was the first time that you did

17 anything to make a determination that someone was

18 using the inventions that are described in the

19 patents in this case?

20 MS. ALBERT: Objection.

21 A. I -- I did nothing to -- to do this.

22 As -- as a technologist, as an engineer, that

23 would be something that the legal department

24 would handle, not -- not myself. So I took no

25 action to determine infringement or -- or, you

1 know, at any point as a technologist for Lycos.

2   Q.   So you never remember seeing any

3 system where you said, hey, they're using

4 collaborative filtering and content-based

5 filtering and that's what our patents claim; you

6 never remember any situation like that?

7   A.   Where I would take some initiative --

8 I'm clarifying the question. Where I would take

9 some initiative to say, hey, these guys are

10 infringing? I -- I don't believe that I ever did

11 that at Lycos.

12   Q.   Were you involved in any way in a case

13 between Lycos and Choice Stream or Netflix?

14   A.   Yes.

15   Q.   And what was your involvement in that

16 case?

17   A.   I'm not familiar with the Choice

18 Stream. I don't recall that. But I remember

19 Netflix, so I'm clarifying my answer there.

20   Q.   What was your involvement in that

21 case?

22   A.   I was approached by our general

23 counsel and asked to collect documents pertaining

24 to the inventions that were mentioned in that

25 case. I don't recall which inventions they were.

1   A.   Yeah.   I -- I don't know what we're --

2   you know, what I would think in 1998.

3   Q.   What would you think today?

4   A.   Well, today it's pretty obvious that

5   those systems, you know, work in a lot of

6   different contexts.

7   Q.   But is it a fair statement that a

8   system for scanning a network and a system for

9   searching a network, in your mind in '98, would

10   be different things?

11   MS. ALBERT: Objection. Vague.

12   Compound.

13   A.   I'm not sure in my mind in 1998 what I

14   would be thinking because that was a long time

15   ago. So I -- I can't -- I don't know about that.

16   Q.   Well, how about in relation to your

17   inventions that are part of this case. When they

18   mention scanning a network --

19   A.   Uh-huh.

20   Q.   -- what is it that you've got in mind

21   there?

22   MS. ALBERT: Objection.

23   A.   Could you rephrase the question or --

24   or --

25   Q.   Sure. When your patents discuss

1   system. The first major commercial one that I

2   wrote was called The Librarian.

3   Q.   All right. Well, let's talk about a

4   search system that combined content-based- and

5   collaborative filtering. What was the first one?

6   MS. ALBERT: Objection.

7   A.   The first one that I personally

8   constructed?

9   Q.   All right. What was the first one in

10   general?

11   MS. ALBERT: Objection.

12   A.   I don't know.

13   Q.   What was the first one that you

14   participated in constructing?

15   MS. ALBERT: Objection.

16   A.   What was the first one? Could you

17   help me to understand the question? What did you

18   mean by "one" in that?

19   Q.   What was the name of the first search

20   system you participated in creating that combined

21   content-based- and collaborative filtering?

22   MS. ALBERT: Objection.

23   A.   Could you repeat that question,

24   please? What was the name?

25   Q.   What was the first search system --

1   combined collaborative filtering and

2   content-based filtering.

3   A.   Could you repeat the question?

4   Q.   When was the first time that you had a

5   search system that combined content-based

6   filtering and collaborative filtering?

7   MS. ALBERT: Objection.

8   A.   I don't recall.

9   Q.   What was name of the first system that

10   you had, working system that you had, that

11   combined content-based- and collaborative

12   filtering?

13   MS. ALBERT: Objection.

14   A.   I don't recall.

15   Q.   What are the possibilities?

16   MS. ALBERT: Objection.

17   A.   The possible names? Well, there are a

18   lot of, you know, different project names, and

19   sometimes research projects had names or -- or,

20   you know, code names or like Greek letters or

21   project numbers. So, I mean, there's a lot of

22   different possibilities. I ran a lot of research

23   projects.

24   Q.   Are there any that -- that you recall?

25   MS. ALBERT: Objection.

1   universities at the time hosting products like

2   Lycos, in '94 and '95, I believe was

3   Lycos.cmu.edu. So there's a fuzzy line in that

4   period of time between research and commercial

5   web properties.

6   Q.   How did you become aware of other

7   collaborative filtering engines on the web such

8   as Firefly and GroupLens?

9   A.   Sometimes I would meet people doing

10 those research projects because I frequently

11 spoke at universities or -- or, you know, gave

12 lectures. So I would shake hands with people and

13 they would tell me about projects. Other times I

14 might find them in a research paper or on a

15 website.

16   Q.   So did you meet the guys from Firefly,

17 guys and girls?

18   A.   While I was doing this, I didn't. But

19 I did have the opportunity to meet Dr. Patti Maes

20 some years after Lycos had acquired WiseWire.

21   Q.   So you say here, "one of the first

22 collaborative filtering engines on the web."

23 What made you different from -- different, if at

24 all, from the other collaborative filtering

25 engines that were on the web?

1   A.   I believe that we were the first that

2   combined content and collaborative filtering in

3   the mechanisms that we -- that we used.

4   Q.   So how come you didn't actually say

5   that? Why didn't you say first content and

6   collaborative filtering engine?

7   A.   Well, if you notice the pattern that I

8   in my profile, my most recent entries tend to be

9   larger. And as I go back, I used less and less

10   leans to describe it. So I only used a single

11   line to describe everything that I did over the

12   two years at WiseWire. So why I chose the

13   particular words, I don't know. Whatever fit in

14   that space at the time, I guess.

15   Q.   Just seems a little curious to me that

16   you have, for example, the '799 patent up on a

17   plaque that you say is content based and

18   collaborative filtering, that you wouldn't have

19   described it as content-based- and collaborative

20   filtering. Can you think of any other reasons

21   why you didn't?

22   MS. ALBERT: Objection, asked and

23   answered.

24   A.   I -- I don't know why I chose

25   particular words when I typed that. I probably

1   typed that years ago.

2   Q.   All right. You started in November of

3   1995 at WiseWire; is that right?

4   A.   Correct. November 15th.

5   Q.   Was it called WiseWire at the time?

6   A.   It was called Empirical Media at the

7   time.

8   Q.   And how is it that you came to be

9   involved with Empirical Media in November of

10   1995?

11   A.   Well, I had wrapped up a project for

12   the United States Senate, and that project

13   involved very early use of one of the very first

14   web browsers in late '94. And I felt that this

15   early technology possibly represented a huge

16   shift in the way that we used computers. And I

17   wanted very much to shift from doing these large

18   systems that I was working on to building systems

19   on the Internet.

20   So in 1994 I started poking around

21   people that I knew that were doing things on the

22   Internet, and I -- I'm not sure exactly who I

23   talked to at Carnegie Mellon, but somebody

24   eventually pointed me towards either Michael

25   Maulden or Ken Lang. Dr. Maulden was a professor

1   that. Could you be more clear on what you mean

2   by "relation"?

3   Q.   Well, in the context of the '799

4   patent, what does "collaborative filtering" mean?

5   MS. ALBERT: Objection.

6   A.   I can talk to you about our invention,

7   but, you know, I haven't looked at the contents

8   of this patent in, you know, quite sometime.

9   Q.   All right. Let's -- let's first take

10   a look at column 3, and then we'll talk about

11   your invention.

12   A.   Okay.

13   Q.   So take a look at column 3.

14   A.   I'm there.

15   Q.   At around line 3 or so.

16   A.   Okay.

17   Q.   "A rating server predicts a score, or

18   rating, based on the heuristic that people who

19   agreed in the past will probably agree again."

20   Do you see that?

21   A.   Mmm.

22   Q.   Was that a decent summary, a fair

23   summary of collaborative filtering?

24   MS. ALBERT: Objection.

25   A.   Yeah. I don't know if that -- that's

1   Q.   But there was a version two to

2   U-Media?

3   A.   Well, there was a version two to this

4   content and collaborative filtering system that

5   we were rolling out. It -- version two may have

6   started out as U-Media and then the name changed

7   to WiseWire. When we changed the name of our

8   company to WiseWire, we also changed the name of

9   the product that we were building to WiseWire.

10   We had several permutations of that.

11   Q.   Was U-Media a website that Empirical

12   Media hosted?

13   A.   I don't recall if it was a website or

14   if it was the name of the product on the

15   empiricalmedia.com website.

16   Q.   What about wisewire.com, that was a

17   website that you hosted; right?

18   A.   It was a website that the company

19   hosted, yes.

20   Q.   And that was or was not one of the

21   major iterations of the product?

22   MS. ALBERT: Objection.

23   A.   Yeah. I -- I don't know if -- if that

24   was -- like I said, there was a branding change

25   that happened then, but I don't remember if we

1   made a substantive change to the feature set of

2   the software at that point.

3   Q.   What was the -- what substantive

4   change to the features of the software occurred

5   as a result of going from the first iteration to

6   the second iteration?

7   A.   Well --

8   MS. ALBERT: Objection.

9   A.   Yeah, I mentioned that I don't

10 remember exactly which features fell within which

11 major release. These major numbers had as much

12 to do with kind of the architecture of the

13 platform and -- as did the functionality or user

14 experience.

15   Q.   Do you know what the difference

16 between the second release and the third release

17 was?

18   MS. ALBERT: Objection.

19   A.   There were a lot of -- in any major

20 revision -- typically, the way software works is,

21 you have a major revision followed by a number of

22 minor revisions. So you get version 1.0 is

23 filled with bugs, as to be expected of any

24 software. Then version 1.1 comes out and that

25 fixes some of the bugs and you may add a few

1   projects and talk with him. So often I didn't --

2   I didn't see all the details, I just saw the

3   summaries of the -- of the projects.

4   Q.   Who was the manager of the research

5   project that was directed towards search

6   combining collaborative- and content-based

7   filtering?

8   MS. ALBERT: Objection.

9   A.   That particular project --

10   THE WITNESS: Sorry.

11   A.   That particular project was something

12   that Ken and I worked on exclusively.

13   Q.   And did you document the research,

14   that research project, in a Word document?

15   MS. ALBERT: Objection.

16   Q.   Excuse me. In a word processing

17   document?

18   A.   I recall that we had at least one

19   spreadsheet, several documents. We did a lot on

20   the whiteboard as well for this -- for this

21   project.

22   Q.   But any -- any documents that still

23   exist that evidence any of this work that you --

24   that you say you did on search combining content

25   and collaborative filtering?

1   MS. ALBERT: Objection.

2   A.   Yeah. I don't know if anything still

3   exists. I haven't methodically gone through all

4   the materials that are available.

5   Q.   Well, was it part of the document

6   universe that you collected back in, I think you

7   said 2007, for the Netflix litigation?

8   A.   Yeah. I collected a lot of documents

9   from research servers, from backups of machines.

10   I mean, I was pretty diligent in collecting what

11   materials Lycos had. I had the operations

12   manager also help me pull tapes and stuff from --

13   from our backup systems to try to get as many

14   documents from that time period as possible. And

15   I also took snapshots of the source code. Even

16   nonpublic facing source code was in that source

17   code repository, and there were directories in

18   that repository for the different research

19   projects.

20   So is it possible that there are

21   things in that collection? I think it's very

22   possible that there are things in that

23   collection. Do I know of particular documents?

24   I didn't -- I didn't go through as I was picking

25   the documents and review individual documents. I

1   think that I said that probably the earliest it

2   could have been would have been then that -- that

3   we first had an idea of -- of bringing some of

4   these components.

5   There were a lot of different ways to

6   integrate those components. It was a complicated

7   system. So I don't know when we hit upon the

8   idea. It could have been, you know, considerably

9   later that resulted in these or in these patents

10 that we had looked at earlier.

11   Q.   Did you keep any notebooks of your

12 work?

13   A.   I used to have some notebooks at one

14 point, notebooks that had primarily

15 WiseWire/Lycos things, yeah. I don't know if I

16 had anything particularly from the WiseWire time

17 period. I left all of my notebooks that I had

18 at -- at Lycos at that time.

19   MR. BILSKER: We've been going for a

20 little while. We may as well take our lunch

21 break now. That's fine. It's like one o'clock.

22   MS. ALBERT: Oh, it is? Time flies.

23 I'm fine with that. 45 minutes?

24   MR. BILSKER: Yeah.

25   THE VIDEOGRAPHER: This the end of

1   A.   In -- in general or --

2   Q.   Yeah.

3   A.   At my time at Lycos. The question's

4   very broad. I mean, it covers the scope of,

5   what, 14 years? And you're asking me if I ever

6   did something. I don't know if I can answer that

7   in any other way than -- than, I don't know.

8   Q.   All right. So let's cabinet it in

9   time, then.

10   A.   Okay.

11   Q.   Prior to December 1998, did you ever

12   adapt any techniques from information filtering

13   to search systems that you were creating?

14   A.   We certainly used various techniques

15   in some of those research projects that we built.

16   Q.   And what techniques were those?

17   A.   Various ways of parsing documents.

18   Various ways of stemming -- stemming is a

19   technical term. Different linguistic analysis.

20   Just an entire litany of -- of techniques.

21   Q.   Any techniques related to

22   collaborative filtering?

23   A.   Certainly some of the techniques had

24   something to do with collaborative filtering.

25   Q.   Do you remember which of the

1   techniques had to do with collaborative filtering

2   that you used in search --

3   A.   I don't know.

4   Q.   -- or adapted from the early

5   information filtering techniques?

6   MS. ALBERT: Objection.

7   A.   It's difficult for me to answer

8   because we had a lot of different research

9   projects, and many of them were on around ways of

10   improving the search experience. And this was,

11   you know, 1998 that we're talking about. I don't

12   recall exactly which experiments had which pieces

13   in it.

14   You know, these are not things that I

15   spent hours every day on the experiments. They

16   were things that I parceled off to people to run

17   tests and get results back to me. So I've got

18   possibly a few hours of experience on some of

19   them and, you know, maybe a day of experience on

20   another. They're not things that are going to be

21   indelibly etched in my memory.

22   Q.   See, now I'm confused because earlier

23   today you said that you and Mr. Lang were the

24   only ones that were working on the search part of

25   the project?

1   Q.   So the first time a user made a demand

2   search and there wasn't a wire for it, the

3   collaborative part of the algorithm did not kick

4   in?

5   MS. ALBERT: Objection.

6   A.   Well, there -- there were instances

7   that we could use the information that we might

8   have on one of the results that came up to make a

9   determination as to whether, you know, the

10   ranking of that result should be moved up or

11   down.

12   Q.   So tell me how that worked.

13   A.   In our prototype system, when -- when

14   you had multiple queries coming through, the

15   queries didn't necessarily have to generate the

16   exact same result set. But there might be a

17   document that's in common between those result

18   sets. The fact that somebody at this

19   semi-related query (indicating) clicked on that

20   document, might make that document rise up

21   numerically its score higher. So that pattern of

22   behavior might influence other queries.

23   Q.   How did you know that a query was

24   semi-related as opposed to -- if it wasn't

25   identical, how did you know that it was

1   semi-related?

2   A.   Well, in my example I'm talking about

3   a case where the same result or the same document

4   was shown in both queries. So I'm drawing the

5   conclusion that there was a relationship between

6   the queries because they returned an instance of

7   the same document. And I'm kind of talking about

8   a very finite example here.

9   Q.   And then when you used -- when you

10   used that information where somebody had clicked

11   on the same document that showed up in the two

12   queries, what happened next?

13   A.   I don't know. I could speculate. I

14   mean, this -- this prototype that we're talking

15   about is a collection of different things and

16   it's, what? 12 years ago. We could walk through

17   hundreds of different corner cases. I know that

18   it did something for those corner cases. I can't

19   remember every single corner case a decade after

20   it was done.

21   Q.   Well, let's not go for every single

22   one. Let's just talk about the ones you

23   remember.

24   A.   Well, okay. On those corner cases, I

25   don't know.

1   Q.   What do you mean by "corner cases"?

2   A.   When you get down to the detail level

3   of how some particular co-occurrence of different

4   things by different users for different document

5   sets for hypothetical queries, I'm not going to

6   be able to answer questions like that 10 years

7   after, you know, this was done.

8   Again, to remind you, I didn't build

9   these prototypes. I helped collaborate with the

10   design of these things with Ken Lang who directed

11   the building of these prototypes. He would be

12   much more familiar with the prototypes than

13   myself.

14   Q.   So when the prototypes were built, did

15   the builders have any leeway on how they were

16   implementing things or were they told exactly

17   what to do?

18   A.   I don't know how Ken directed them. I

19   did not attend any of Ken's staff meetings or,

20   you know, research group meetings. I was, you

21   know, busy. The collaboration was between Ken

22   and myself.

23   Q.   The people that were busy building the

24   system, what kind of backgrounds did they have?

25   A.   Are you talking about the people who

1   MS. ALBERT: Objection.

2   A.   I think that Lycos in 1998 was one of

3   the major leaders in the field, and there were

4   only a handful of companies that were employing

5   the same caliber of people.

6   Q.   Now, on the prototype that was

7   developed that you're familiar with, was it the

8   content-based filter that combined the results

9   that came from the content filter and the

10 collaborative filter?

11   MS. ALBERT: Objection.

12   Q.   Let me -- let me withdraw that.

13   A.   Go ahead.

14   Q.   Where was the combination done of

15 information that came from the content-based

16 filter and the collaborative filter?

17   A.   The question "where" doesn't make a

18 lot of sense to me. I mean --

19   Q.   In what software module was the

20 combination carried out?

21   A.   I don't think that we had a module

22 called the combiner module or anything like that.

23 I -- I don't know how to answer the question.

24   Q.   So was there a content-based filter

25 system that did the combining?

1   A.   I think that I've answered that

2   question.

3   Q.   What's the answer?

4   A.   That I don't know.

5   Q.   Even in -- in the prototype you don't

6   know?

7   A.   I didn't go through the source code of

8   the prototype. I looked at some of the results

9   and some of the test queries. And, in fact, I

10   don't think that I actually used the live

11   prototype. I think that I had, here's the search

12   results we got, A. Here's the search results we

13   got, B. Which do you think are better. Well, I

14   like these. Well, that was with the thing turned

15   on or this turned off or these factors. Look,

16   we're making progress. Isn't this great. That's

17   the type of interaction I had with the system.

18   Q.   All right. So I'm a little confused

19   again, because one of the things you said was

20   you're not intimately familiar with the patent,

21   but you're intimately familiar with your

22   invention and how it worked.

23   A.   Uh-huh.

24   Q.   And now I'm asking you about --

25   A.   You're asking me about code in a

1 prototype from 10 years ago, and I'm answering

2 you, I'm not sure exactly where in this code in a

3 prototype 10 years ago that I didn't write a

4 particular mathematical function happens.

5   Q.   So you don't know whether there was a

6 content-based filtering system that did the

7 combining of the content-based information in and

8 the collaborative-based information?

9   A.   I do not know.

10   (Kosak Exhibit No. 13, Kosak

11   PowerPoint presentation created for

12   WiseWire, bearing Bates Nos.~IPEL0000306

13   through IPEL0000314, marked for

14   identification as of this date.)

15   Q.   Do you recognize this document?

16   A.   I think this was a PowerPoint

17 presentation that I created for WiseWire.

18   Q.   What is agent mediated versus query

19 based on that first page?

20   A.   In the late '90s, agent mediated was a

21 buzz word in the industry, meaning that software

22 acted on your behalf. And the other side of that

23 equation versus query based, that's you're acting

24 on your own behalf entering a query and results

25 are coming out. That's how I interpret it today.

1   BY MR. BILSKER:

2   Q.   Mr. Kosak, when you were at Lycos, did

3   you fill out any kind of official form detailing

4   your invention before the '440 -- '420 or '664

5   were filed?

6   A.   I don't recall.

7   Q.   Were you involved in any way in the

8   prosecution, the back and forth between -- with

9   the patent office over the '420 or '664 patent?

10   A.   I was involved in about 50 or 60

11   patents with Lycos. I don't recall exactly which

12   patents I handled particular pieces of inquiries

13   from the patent office. I'm assuming on the ones

14   that I'm a listed inventor that -- that I saw

15   them.

16   Q.   Did you help in distinguishing any of

17   the prior art?

18   MS. ALBERT: Objection.

19   A.   One of the difficulties I have in

20   answering this question is that the patent

21   numbers don't get assigned until years after the

22   fact. And in many of the patents that I worked

23   on, I did research into prior art, and some of

24   the patents somebody else, one of the other named

25   inventors, did research in the prior art.