

# EXHIBIT 23

Volume I

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

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I/P ENGINE, INC., \*

Plaintiff, \*

Vs. \*

AOL, INC., et al., \*

Defendants. \*

\*\*\*\*\*

Civil Action No.

2:11-cv-512

AUDIO/VISUAL DEPOSITION of LYCOS, INC.,

by and through its designee MARK BLAIS

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

Goulston & Storrs

50 Rowes Wharf, 7th Floor

Boston, Massachusetts

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

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?

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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.

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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

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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?

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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

<p style="text-align: right;">Page 138</p> <p>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.</p>	<p style="text-align: right;">Page 140</p> <p>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</p>
<p style="text-align: right;">Page 139</p> <p>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</p>	<p style="text-align: right;">Page 141</p> <p>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</p>