

UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE

THE PATENT TRIAL AND APPEAL BOARD

FREEWHEEL MEDIA, INC.

Petitioner,

v.

ALMONDNET, INC.

Patent Owner.

Case IPR2024-00416

Patent 8,775,249

IPR2024-00413

Patent US 7.979,307

VIDEO CONFERENCE DEPOSITION OF ROBERT J. SHERWOOD,

produced, sworn, and examined on Tuesday, the 11th
day of March, 2025, between the hours of 8:00
o'clock in the forenoon and 6:00 o'clock in the
afternoon of that day before:

JANIECE Y. YOUNG, RPR, CSR-No. 1217, CCR-No. 798

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within and for the State of Kansas.

Taken on behalf of Petitioner pursuant to Notice to
Take Depositions.

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(Attending via video conference)

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1 (The deposition commenced at 9:01 a.m.)

2 ROBERT J. SHERWOOD,
3 of lawful age, having been first duly sworn to tell
4 the truth, the whole truth, and nothing but the
5 truth, testified as follows:

6 EXAMINATION

7 BY MS. SAUER:

8 Q. All right. Good morning, Mr. Sherwood.
9 Please state your name and address for the record.

10 A. My name is Robert James Sherwood. My
11 address is 12015 Wenonga, W-E-N-O-N-G-A, Lane,
12 Leawood, Kansas 66209-1484.

13 Q. Thank you. And I'd like to start with
14 some basic questions about the video conference
15 today. Where are you located right now?

16 A. I'm located at my residence in Leawood,
17 Kansas. I'm actually on a -- on a -- in my office
18 in the lower floor.

19 Q. Right. Is anyone else physically in the
20 room with you?

21 A. No.

22 Q. All right. And other than the computer
23 you're using to join this call, do you have any
24 other electronic devices in the room with you
25 nearby?

1 A. I -- I have my phone.

2 Q. Your phone, okay.

3 I think earlier we asked if you've ever
4 been -- have you ever been deposed before?

5 A. Yes.

6 Q. And how many times have you been deposed?

7 A. Probably more than 25 times, maybe more
8 than 30.

9 Q. Okay. Is there anything that would
10 prevent you from providing truthful and accurate
11 testimony today?

12 A. No.

13 Q. Okay. If I say anything that confuses
14 you, would you please say so?

15 A. Yes.

16 Q. Okay. And unless you tell me otherwise,
17 you agree it's fair to assume that you heard and
18 understood my question; correct?

19 A. Yes.

20 Q. And you agree to provide verbal answers
21 and not answers by merely shaking or nodding your
22 head?

23 A. Yes.

24 Q. You understand you're under oath for
25 today's deposition; correct?

1 A. Yes.

2 Q. And you understand that if your attorney
3 objects to the form of a question, you are still
4 required to answer my question; correct?

5 A. That's my understanding, yes.

6 Q. Okay. I'll plan to take a few breaks,
7 but if any -- if at any time you need a break,
8 please let me know; okay?

9 A. Yes.

10 Q. All right. And what did you do to
11 prepare for today's deposition?

12 A. I believe I started when I was appraised
13 of it, which might have been a week ago or, you
14 know, eight or nine days. I took a look at my
15 reports. I did that a couple of times in the last
16 seven or eight days. And, then, yesterday I had a
17 preparation meeting with -- with counsel.

18 Q. All right. And that meeting was just
19 with counsel for this case?

20 A. Yes.

21 Q. And you said you met with them yesterday;
22 correct?

23 A. I met with a -- eight -- an attorney
24 yesterday.

25 Q. Okay. How long did you meet for?

1 A. I don't remember if I actually timed it,
2 but I believe it was about 2 1/2, maybe 3 hours
3 tops.

4 Q. Okay. And do you understand that your
5 deposition today is regarding two different IPR
6 proceedings?

7 A. Yes.

8 Q. And you understand that one proceeding
9 involves US Patent No. 8,775,249?

10 A. Yes.

11 Q. Okay. If I refer to the '249 patent
12 during this deposition, will you understand that
13 I'm referring to US Patent No. 8,775,249?

14 A. Yes.

15 Q. And do you understand that the other
16 proceeding involves US Patent No. 7,979,307?

17 A. Yes.

18 Q. And if I refer to the '307 during this
19 deposition, will you understand that I'm referring
20 to US Patent No. 7,979,307?

21 A. Yes.

22 Q. And do you understand that the '307 and
23 '249 patents are related to each other?

24 A. Yes.

25 Q. And do you understand that the '307 and

1 '249 patents share the same drawings and
2 specification?

3 A. I believe that's correct, but I don't --
4 I can't be absolutely sure. I don't remember.

5 Q. Okay. And your substantive analysis for
6 both patents is largely the same; correct?

7 A. I would say yes.

8 Q. Okay. Unless I specify otherwise, my
9 questions will pertain to both proceedings; okay?

10 A. You mean both the '247 -- or '307 and the
11 '249 patent?

12 Q. Yes.

13 A. Yes, I understand that.

14 Q. Okay. If you need clarification as to
15 which patent or proceeding I'm referring to at any
16 time, please let me know; okay?

17 A. Yes.

18 Q. All right. And what materials did you
19 review to prepare for this deposition?

20 A. I believe the only thing -- the only
21 documents that I looked at were my reports. I may
22 have -- I may have scanned, you know, one of the
23 patents. I may have even scanned -- is it
24 Dr. Ranka -- Dr. Ranka's report, but if I did they
25 were just scanning. The only thing I really

1 studied was the -- my reports, my declaration.

2 Q. Okay. Do you have any documents with you
3 today?

4 A. I have on my left the documents that you
5 sent in a FedEx folder.

6 Q. Okay. Do any of those documents have any
7 handwriting, highlighting, or any notes in them?

8 A. I didn't check every one, but it doesn't
9 look like it, yes.

10 Q. Okay. So you mentioned you received the
11 shipment of documents. As I refer to documents
12 today we can either refer to those printed versions
13 or electronic deposition over Zoom. Do you prefer
14 referring to the paper or the electronic version?

15 A. I -- I prefer the electronic versions if
16 they can be blown up so I can see them easily on my
17 screen. I also prefer to be able to scroll through
18 the documents so I'm not looking at just one
19 paragraph but the natural whole document.

20 Q. Understood. So we can refer to the
21 electronic versions, then, for the rest of this
22 deposition?

23 A. As far as I'm concerned, yes.

24 Q. Okay. Based on that I'm going to add a
25 file to the Zoom. Just let me know if you have

1 received it and if you were able to open that.

2 A. It was there a minute ago. How did you
3 send it, by chat?

4 Q. Yes.

5 A. All right. Let me check. Okay. I've
6 got -- it looks like Exhibit 201. Do you want me
7 to open that?

8 Q. Yes, please.

9 A. I don't see it opening on my screen. Oh,
10 here we go. I've got it now.

11 Q. All right. So you were able to open it;
12 right?

13 A. Yes.

14 Q. Okay. Do you recognize this document?

15 A. Let me check the signature page. Yes, I
16 recognize it.

17 Q. Okay. What is it?

18 A. It's a declaration that I prepared in
19 support of patent owner's response to the petition.

20 (Sherwood Deposition Exhibit No. 2001
21 was marked for identification.)

22 Q. (By Ms. Sauer) Okay. And you see this
23 document has been marked as AlmondNet Exhibit 2001
24 on the bottom right of the first page; right?

25 A. Yes.

1 Q. Okay. From what you can see, does this
2 document appear to be a true and complete copy of
3 the declaration you submitted for the '249 patent?

4 A. Yes, it looks like it, yes.

5 Q. Okay. If you turn to page 36, is that
6 your signature?

7 A. That's my signature, yes.

8 Q. Okay. So who did most of the writing for
9 your declaration?

10 MR. MILKEY: I object to form.

11 A. Well, I'm not sure what -- you know,
12 what -- what you mean by most. But in terms of
13 the -- in terms of the document I would say, you
14 know, the boilerplate would have come from counsel,
15 or it may have come from, you know, some other
16 patent work I did because generally the boilerplate
17 tends to be about the same as the patents.

18 Of course my background and
19 qualifications, over time that was probably written
20 by a number of people because it gets edited as --
21 as -- as things change. I believe, again, like
22 plane construction, I would have got that from the
23 lawyer. Definitions, burden of proof,
24 anticipation, obviousness. And, then, in terms of
25 looking at the -- the actual let's say discussion

1 where I'm talking about Rankin's report, that would
2 have been generally in some collaboration. I --
3 I -- I may have drafted what I thought was the
4 issues and asked the lawyers to take a look at it.
5 But eventually I -- I adopted and signed my name to
6 it.

7 Q. Okay. What parts of the declaration do
8 you consider to be boilerplate?

9 A. This, of course, is my interpretation,
10 but when I read something about burden of proof,
11 anticipation, obviousness definitions, I call those
12 things that I see very commonly in -- in the patent
13 work that I do. So from my point of view maybe
14 this is an -- an overreach, but I call it
15 boilerplate. It's language that I see very common
16 to patent work.

17 Q. Okay. Is it accurate to say that there
18 were portions prepared by AlmondNet's counsel that
19 you did not edit?

20 MR. MILKEY: I object to form.

21 And I'll instruct the witness not to
22 specify any attorney-client privileged
23 information but you -- you can answer to
24 the extent that --

25 A. Could you ask the question again, please.

1 Q. (By Ms. Sauer) Is it accurate to say
2 there were portions prepared by AlmondNet's counsel
3 that you did not edit?

4 A. I would say that anybody that, you know,
5 provided any kind of language, even some of the
6 boilerplate I would look at it and -- and edit it,
7 so anything I would see from anyone I would be
8 editing.

9 Q. All right. Roughly how many versions of
10 the declaration did you review?

11 MR. MILKEY: Objection to form.

12 A. Generally I don't -- I mean, some people
13 may call them versions. I actually start off with
14 a -- with what I call the -- the draft. And I just
15 keep working on the draft until I get completion.

16 You know, sometimes I might save it under
17 different names for protection, but I wouldn't be
18 able to reply to how many versions I have --
19 actually versions. I would say it would -- you
20 know, we did -- I did a substantial amount of
21 editing.

22 Q. But you can't give an approximation of
23 number of versions or number of -- of edits that
24 were exchanged?

25 A. Yeah. And when I say editing, I'm very

1 careful because when I say editing, I don't mean
2 just editing other people's ideas or concepts. I'm
3 editing myself. So, for example, I may have edited
4 my -- my background a couple of times just to make
5 sure I didn't make any mistakes. But do I remember
6 how many times I did that? No.

7 Q. When did you begin preparing the
8 declaration?

9 A. Yeah, I -- I kind of anticipated that
10 question, so I started to think about it. And it
11 seems like it would have been probably toward the
12 end of last year. I think the declaration date was
13 December 24th. I -- I likely got involved in it a
14 couple of months before that.

15 Now, the reason I hesitate is because
16 I've done work for AlmondNet before and some of
17 it -- sometimes it goes back a couple of years. I
18 may not remember every patent that was involved,
19 but as far as working on this particular
20 declaration I believe I started at some time in
21 probably been October.

22 Q. So probably around October of 2024; is
23 that correct?

24 A. I -- I don't know exactly what day. I
25 remember December 24th was the day we submitted it.

1 It seems like it was October. It -- it could have
2 been actually into November, but it would have been
3 in that time frame.

4 Q. Okay. Did you review the entire
5 declaration before signing it?

6 A. Yes.

7 Q. Were there any changes made by
8 AlmondNet's counsel to the declaration after you
9 signed?

10 A. No.

11 Q. And what materials did you review in
12 order to arrive at the conclusions described in
13 your declaration?

14 A. Well, typically I looked at the materials
15 that Ranka had used. I'm trying to remember in
16 this case if we prepared a list of materials.
17 Usually we do. But on the other hand I -- I cited
18 certain materials in my report. So I would say the
19 materials I review would be limited to what I cited
20 in my report or what I may have looked at in
21 Ranka's report.

22 Q. Okay. And did you review the entirety of
23 Ranka's report?

24 A. No.

25 Q. No? Which portions did you review, then?

1 A. Well, the -- the -- the engagement I had
2 I was asked to focus on -- by the way, I can read
3 this from my report, but I -- and I'll defer to my
4 report if I use, you know, other language. But in
5 terms of -- of Ranka's report I think the reports
6 were, I don't know, 450 pages long. And I was
7 asked by the counsel to focus on dependant claim 2
8 of the '307, and dependant claim Nos. 5, 15, and 21
9 I think from memory on the '249.

10 So in looking at Ranka's report I looked
11 at those sections at -- that -- that -- where he
12 opined or had some on, dependant claim 2, or
13 dependant claim 5, 5 -- I'm going to use 5 to mean
14 all the ones that I looked at there. I think they
15 are listed. Let's see, I've got the report in
16 front of me now. Yeah, and I talk about claims
17 '550 to 25, but I know I focused on 5 in the
18 writing; so --

19 I would have looked at those sections
20 that affected those claims.

21 Q. Okay. So it's fair to say that for
22 reviewing Ranka's declaration, you reviewed the
23 sections describing those specific dependant claims
24 and not sections related to other claims; correct?

25 MR. MILKEY: Objection to form.

1 A. Yeah, yeah, I believe that's correct --

2 Q. (By Ms. Sauer) Okay.

3 A. -- yeah.

4 Q. In preparation for your deposition today,
5 did you review your declaration?

6 A. Yes, I -- I read -- when I -- when I --
7 when I say I -- when you say today, today I didn't
8 read them but yesterday I did read both
9 declarations, I think, a couple of times.

10 Q. Did you find any errors in your
11 declaration?

12 A. No.

13 Q. When were you retained with respect to
14 the dispute between FreeWheel and AlmondNet?

15 A. That I -- that I don't know. I mean, it
16 could have been a long time ago because I've done
17 some work off and on with -- with AlmondNet for a
18 while, so I don't actually know the exact --
19 I couldn't -- I couldn't even estimate the date.

20 It could have been in the beginning it
21 came up; it could have been just came up when this
22 declaration came up. I don't recall that.

23 Q. Okay. So at least as early as
24 October 2024 --

25 A. Yeah, that's possible --

1 Q. -- possibly earlier?

2 A. Excuse me, yeah. It could be October,
3 November when I started working on this -- on my
4 declaration, yes.

5 Q. Okay. And who retained you?

6 MR. MILKEY: Object to form.

7 A. Well, actually I was retained by -- to
8 you go back to the beginning, I think it was
9 Jim Milkey's, Jim Milkey and his law firm.

10 Q. (By Ms. Sauer) Are you being paid for
11 this?

12 A. Yes.

13 Q. And how much?

14 A. Actually I believe I disclose it in my
15 report. But I think that the law firm is getting
16 billed at 5 -- \$595 an hour.

17 Q. Is this your standard rate?

18 A. Yes.

19 Q. How many hours have you spent preparing
20 your report?

21 MR. MILKEY: I object to form.

22 A. Well, if you mean by report, let's say
23 these two declarations, you know, I don't -- I -- I
24 usually keep track of those things but I didn't
25 check them before this deposition, but I would say

1 it was probably less than 30 hours.

2 Q. And this case is not the first time
3 you've done work for AlmondNet; correct?

4 A. That's correct.

5 Q. Right. You previously did work for
6 AlmondNet in cases against Meta and Samsung;
7 correct?

8 A. I believe that's correct, yes.

9 Q. And in those other cases you worked with
10 the same law firm for AlmondNet; correct?

11 A. As far as I know, yes.

12 Q. Okay. All right. If I use the term
13 "POSA" or "POSITA," you will understand I'm
14 referring to a person of ordinary skill in the art;
15 correct?

16 A. Yes.

17 Q. All right. So referring now to
18 paragraph 33 of your deposition and for the
19 '249 patent, you identified Dr. Ranka's definition
20 of POSITA; correct?

21 A. Let me get there. What page is it?

22 Q. It's paragraph 33.

23 A. All right. Thank you. Okay, I'm at
24 paragraph 33.

25 Q. Okay. And you see where here you've

1 identified Dr. Ranka's definition of a POSITA;
2 correct?

3 A. Yes, yes.

4 Q. Okay. And now referring to paragraph 34,
5 you adopted Dr. Ranka's proposed level of skill in
6 the art; correct?

7 A. Yes.

8 Q. So this is the standard you applied for
9 your declaration; correct?

10 A. It's the POSITA standard, yes.

11 Q. In your declaration you did not provide
12 an opinion that Dr. Ranka's definition is
13 unreasonable; correct?

14 A. I don't believe I did. I believe I -- I
15 adopted his -- his definition.

16 Q. Okay. So this POSITA definition includes
17 experience with data communications over the
18 internet and database management; correct?

19 A. Let's see what he says. Person skilled
20 in the art, had the priority date of a bachelor in
21 computer engineering, computer science, or similar
22 discipline in two years of relevant industry
23 research experience. Yes, it says that.

24 Q. So with this definition, a POSITA would
25 understand how to add additional data to an

1 existing data base; correct?

2 MR. MILKEY: I object to form.

3 A. Well, that's a very, very broad question.

4 I certainly would -- would concur that a POSITA
5 would have knowledge of -- of how databases worked.

6 And to the extent that he had knowledge of the
7 specific database that he was using, then he would
8 have -- I would think he would be able to go in and
9 make modifications to that database, yes.

10 Q. And a POSITA would have understood how to
11 store a profile in a profile database; right?

12 MR. MILKEY: Objection to form.

13 A. Same kind answer. But, yes, he would be
14 able to at least know how to save a file inside a
15 database.

16 Q. (By Ms. Sauer) You do not have a
17 computer engineering degree; correct?

18 A. I do not have a formal computer
19 engineering degree; correct.

20 Q. And you do not have a computer science
21 degree; correct?

22 A. I do not have a formal computer science
23 degree, yes.

24 Q. Okay. It's your opinion that you qualify
25 based on your -- you qualify as a POSITA based on

1 your experience; correct?

2 A. Experience which includes computer
3 knowledge, yes.

4 Q. I'm now referring to paragraph 12 of your
5 declaration. Give me a minute to go back to there.

6 A. I am there.

7 Q. So your experience has been that you've
8 purchased and posted ads on your company's website,
9 correct?

10 MR. MILKEY: Objection to form.

11 A. Oh, I think -- there's two parts to that.
12 In '90 I was using the internet but not websites.
13 And later in '95, yeah, I did do posts on websites,
14 yes.

15 Q. Is it your opinion that purchasing ads is
16 sufficient to qualify as a POSITA?

17 MR. MILKEY: Objection to form.

18 A. I think that -- that's an important part
19 of industry knowledge, in -- in particular --
20 particularly in this case where we're specifically
21 talking about ads. So, yes, I think it would be
22 helpful to have that experience.

23 Q. (By Ms. Sauer) All right. But is that
24 experience alone sufficient to qualify as a POSITA?

25 A. No.

1 Q. All right. So if it's not, you believe
2 that additional experience is required?

3 A. Well, sure. I believe, you know, one
4 part of experience in advertising is knowing how
5 the purchasing takes place, but obviously there's
6 far more to it. It's a really complex arrangement.

7 Q. What year did you start working with
8 computer and software technology approximately?

9 A. I was hoping you wouldn't ask that
10 question because it goes so far back for me. It
11 probably goes back way over probably close to
12 45 years now, but I first started working with
13 main frame computers, yeah, at least 45 years ago.
14 Software: FORTRAN, COBOL; sure, yes.

15 Q. So probably early '80s; is that fair to
16 say?

17 A. Could have been even a couple years
18 before that because I was assigned to do a --
19 develop an engineering model for the company. And
20 that's when I started really getting into heavy
21 computer work.

22 Q. You're familiar with the company
23 DoubleClick; correct?

24 A. Yes.

25 Q. And you're familiar with the products or

1 services offered by DoubleClick for targeted
2 internet -- internet advertisements; correct?

3 A. I am but I don't know that I'm -- I'm
4 familiar with all the services. I mean, I've been
5 familiar with DoubleClick since probably they
6 started, I mean, in the late -- late -- late '90s.

7 I don't -- I don't think I know every
8 service they offer today. I just haven't taken a
9 look at that, but I'm familiar with what they do,
10 yes.

11 Q. What services are you familiar with?

12 A. Well, they're fundamentally now -- if you
13 mean today or 1999 just so I can be clear.

14 Q. We'll start with in 1999.

15 A. In 1999 I -- I was a DoubleClick user. I
16 was an engaged user. And I was also a GoTo,
17 AltaVista, and Yahoo user; so --

18 And I was doing two things. I was
19 actually, you know, buying ads for customers and,
20 then, placing the ads, you know, going through an
21 ad agency; right? So that comes down to what your
22 question is that I classified DoubleClick in 1999
23 as being an ad agency. Their main function was to
24 enter into agreements with websites, collect data,
25 and -- and use that data for targeting

1 advertisements.

2 Q. Okay. So just to confirm what you said
3 earlier, around the 1999 time frame you were using
4 DoubleClick for buying ads and placing ads; is that
5 correct?

6 A. Yeah. And I can be even more specific,
7 because when -- when DoubleClick came out, they
8 were using banners. And so we were actually
9 purchasing what I would call views, you know,
10 banner views at that time frame, yes.

11 Q. Okay. So looking at Paragraph 49 of your
12 declaration, you discussed DoubleClick and a
13 DoubleClick product; right?

14 A. There's a quicker way to do this.
15 Paragraph 49?

16 Q. Correct.

17 A. Just a second here. I'm at 49, right.

18 Q. All right. And you did not cite to any
19 evidence in paragraph 49; correct?

20 MR. MILKEY: Objection to form.

21 A. Evidence of what -- or clarify the
22 question, please.

23 Q. (By Ms. Sauer) Of any evidence for the
24 statements that are in Paragraph 49.

25 MR. MILKEY: Objection to form.

1 A. Okay. Well let me -- let me go through
2 it. [As read:] Regarding Dr. Ranka's proposed
3 motivation and financial reward websites were
4 provided in the profile information used in target
5 advertising. I do not agree a POSITA would have
6 been motivated to modify Merriman's system in the
7 proposed combination with Jaye to financially
8 reward websites. Okay.

9 What I understand you're asking without
10 reading that entire paragraph is: Do I have any
11 evidence to support the fact that I disagree? Is
12 that the question?

13 Q. Nope. The question was that you didn't
14 cite to any evidence in this paragraph.

15 MR. MILKEY: Objection to form.

16 The document speaks for itself.

17 A. Well, I mean, I -- I don't mean this
18 egotistically, but I consider myself evidence. If
19 I say I do not agree, I'm saying -- I'm saying, in
20 effect, in my mind based on my experience for the
21 last 45 years a POSITA would -- would -- would not
22 have been motivated.

23 So when I say: I do not, to me that's --
24 that's evidence because I'm -- I'm basing that --
25 some of this on my experience, not only just what I

1 read in the documents but on my experience.

2 Q. So is it fair to say that your statements
3 in paragraph 49 about the DoubleClick product are
4 based on your experience with the product around
5 the 1999 time frame?

6 MR. MILKEY: Objection to form.

7 A. Can you be more specific with the
8 question?

9 Q. (By Ms. Sauer) Your paragraph 49
10 discusses the DoubleClick system; correct?

11 A. I don't want to be -- I would say it --
12 yeah, it discusses it. I think I've discussed it
13 in other parts of the report, but it certainly
14 mentions it. Yes.

15 Q. And in this discussion of the DoubleClick
16 system, this is based on your recollection of the
17 system around the 2 -- the 1999 time frame;
18 correct?

19 A. Okay. Now, which -- I want to be sure
20 that I'm answering the question. There's several
21 different statements in this paragraph. Is there
22 one particular statement that you could ask me
23 about that I would, then, be able to respond to?

24 Q. Let's start with the last sentence of the
25 paragraph.

1 A. Okay. So, what's the -- now, that
2 paragraph, the last sentence, just so we're clear,
3 is I do not believe it would have been obvious to
4 identify Merriman. Is that the sentence you're
5 referring to?

6 Q. Looking at the sentence starting with: I
7 am not aware of any instances of DoubleClick paying
8 websites for profile information, as opposed to
9 paying the websites for the advertisements that
10 DoubleClick placed on the website.

11 A. Sure. I see that -- that sentence now.
12 Thank you.

13 Q. Okay. So, now, that sentence describing
14 DoubleClick, is that based on your recollection of
15 DoubleClick in the 1999 time frame?

16 MR. MILKEY: I object to form.

17 A. Well, I'd say it's certainly based on --
18 on my experience. And I think back now on how I
19 was using DoubleClick. But I think it also -- I
20 think it also kind of goes back to the experience I
21 had in the industry. In other words, in 1999, I'm
22 actually a -- I am a -- a POSITA. I'm actually
23 working in the business. So being in the business,
24 I would be familiar with certain ways of
25 DoubleClick working, or Engage working, or GoTo, or

1 any of those things. So I -- I wouldn't want it --
2 I wouldn't want this opinion to reflect only what I
3 recall from using it, but also from what I recall
4 about the industry that existed in the late 1999.
5 Yes.

6 Q. And what do you mean by the industry that
7 existed in late 1999?

8 A. Well, the -- the advertising industry
9 was -- you know, was under incredible rates of
10 growth with the search engine, so -- so what I mean
11 by the industry, I mean the industry related to
12 dropping ads on websites or -- or dropping ads
13 in -- in -- in areas where users would visit. In
14 those days, we didn't have multiple devices, so
15 when I talked about the industry in -- in those
16 days, you -- really, you didn't have an iPhone, you
17 didn't have an iPad, so it pretty much related to
18 desktops and laptops.

19 Q. So when you refer to the industry, does
20 that include other agencies outside of DoubleClick?

21 A. Well, on a broad sense, when I'm thinking
22 of advertising in that particular point of -- in
23 that time, I -- I'm familiar -- I was familiar with
24 how Yahoo did it, how AltaVista did it, I believe
25 AOL. Let's see, who else? Well, GoTo, Overture.

1 So those are a few of the names that -- that were
2 prevalent in the industry at that time frame.

3 Q. And is it fair to say that your position
4 is that you understood how these different agencies
5 operated individually?

6 A. Yeah, I mean, I think I could make some
7 good comparisons. I didn't -- I didn't go into
8 analyzing other third parties in my report. I
9 wasn't asked to do that. And it wasn't -- I don't
10 think it was relevant to what Ranka was doing, so I
11 didn't study that.

12 I mean, if -- if I would have been asked
13 to study it, I probably could have analyzed it
14 and -- but I wasn't asked to do that.

15 Q. Did you ever work for DoubleClick?

16 A. No. The only reason I hesitate is
17 because I -- because I did work -- I was -- I did
18 an engagement for Yahoo. And I'm trying to
19 remember what day they actually bought DoubleClick.
20 And I don't recall that, as I sit here.

21 Not Yahoo, I meant -- excuse me, I meant
22 Google. Excuse me.

23 Q. Okay. So you did an engagement for
24 Google, but you're unsure if that predates --

25 A. Right --

1 Q. Okay.

2 A. I don't know exactly. I can't remember
3 what day. It wasn't part of my report to
4 look at that, so I don't remember offhand. I
5 know -- I know that DoubleClick went public. And,
6 then, there was this -- they had the dot-com
7 problem in the -- in the -- and I think they
8 went -- maybe, then, they maybe went to, oh, some
9 other type of ownership, eventually were purchased
10 by -- by Google. I -- it seems like to me it was
11 maybe 2008, '9, '10, somewhere in that time frame.

12 Q. All right. And when was your engagement
13 with Google?

14 A. I don't recall. I'd have to look at
15 my -- my, you know, my CVs, but I think I did some
16 work for them as long as 15 years ago.

17 Q. All right. And did you ever sign up to
18 voluntarily provide information to DoubleClick?

19 A. As I recall in that -- in that period of
20 1999, when you offered up your website to
21 DoubleClick, there was a form. And the form asked
22 you to put down things like -- I don't remember
23 every part of the form because it wasn't, again,
24 part of my analysis. But from memory, the form
25 included things like: How many visitors to your

1 website. And then there was some -- some boxes
2 that would help you define who they were and what
3 kind of people they were. There may have been some
4 questions regarding income. This is all
5 information that the website owner is filling out
6 on a form.

7 So because I used DoubleClick in that
8 period of time, right, I would have actually then
9 had to fill out some of those forms because we were
10 trying to, like many people, make income off the
11 websites that we managed or consulted with for
12 clients. So, yeah, I would have filled out that
13 form.

14 Now, to get to the -- your question, I'm
15 sure there was some legal thing somewhere that I
16 signed that gave them the rights to all the data,
17 or something akin to that. Yes.

18 Q. All right. But your recollection is that
19 you filled out a -- excuse me -- you filled out a
20 form that provided some information; right?

21 A. Yeah, as I recall, there was -- there was
22 a form involved for DoubleClick and other similar
23 companies if you wanted to, you know, include your
24 website in their portfolio.

25 Q. And you're familiar with the company

1 Engage; correct?

2 A. Yes.

3 Q. And Engage was a competitor of
4 DoubleClick?

5 A. I would say so, yes.

6 Q. So turning to Paragraph 52 of your
7 declaration, in this paragraph you discussed the
8 company Engage and an Engage product; right?

9 A. Yes.

10 Q. And in Paragraph 52, you cite to an
11 Exhibit 2004; correct?

12 A. Yes.

13 Q. And Exhibit -- Exhibit 2004 is trial
14 testimony from AlmondNet versus Amazon; correct?

15 A. Yes.

16 Q. But you did not personally testify in
17 that trial; correct?

18 A. No, I did not testify at that trial.

19 Q. Did you find Exhibit 2004 yourself?

20 A. No, I -- that would have been -- I would
21 have been pointed to that by counsel.

22 Q. Did you ever work for Engage?

23 A. No.

24 Q. Did you ever work on the design or
25 development of an Engage product?

1 A. Well, I'm -- I'm not sure how that's
2 different than working for them. But, no, I never
3 worked on developing Engage's product, no.

4 Q. Did you ever sign up to voluntarily
5 provide information to Engage?

6 A. I do not have that in my memory, as well
7 as I do the DoubleClick. But, in those days, we
8 would have used every agency we could to, you know,
9 make money off our sites, so I would have used
10 Engage, as well as some of the other ones that I
11 mentioned. But I don't have the -- like, the
12 recall on that as I do on the DoubleClick.

13 Q. Now, your CV says you worked for
14 RasterOps from 1986 to 1989. Does that sound
15 correct?

16 A. Sounds correct, yes.

17 Q. All right. During your time at
18 RasterOps, did you integrate any of their ad
19 delivery with any third-party ad server?

20 A. The -- in that period of time -- and I
21 believe I put this in my report -- and when I say
22 period of time, I mean around the 1990 -- 1990 time
23 frame when I worked for RasterOps, '86 to '89. We
24 were getting some new Internet. We weren't using
25 websites yet, per se. So I would say, the only

1 third-party servers would have been the bulletin
2 board servers that we -- that we posted ads or
3 brochures on.

4 Q. Okay. And after RasterOps, you later
5 worked for a company called Smart Text Corporation;
6 is that right?

7 A. It seems like there was an activity in
8 the middle. But, yes, I worked for Smart Text,
9 yes.

10 Q. Okay. And you worked there from 1996
11 through 2015; is that correct?

12 A. Yes.

13 Q. All right. During your time at
14 Smart Text, did you integrate any of their ad
15 delivery with any third-party ad server?

16 A. I think -- yeah, I think in the beginning
17 we were operating a couple of websites where we
18 sold the legal documents. And we were -- let's
19 see, I'm trying -- '80 -- let me make sure I get
20 the dates right.

21 Yeah, so, at that point in time, yeah,
22 we -- I would have been buying ads for myself for
23 my -- for the software products from Smart Text on
24 their website. And we did work with, I think,
25 Kiplinger and Block. And so we had been looking at

1 ads on their websites, so, yeah, I was involved.

2 And I -- I was purchasing or placing ads on
3 websites in the early days of Smart Text, yes.

4 Q. You said earlier, I believe, that you
5 were working with Kiplinger and Block; is that
6 correct?

7 A. Yes.

8 Q. And what did they do with this?

9 A. They were licensees and, let's say,
10 marketing partners of Smart Text.

11 Q. Did any of this work involve working with
12 a DoubleClick ad server?

13 A. Other than what I've already mentioned,
14 I'd say, no. Working with Kiplinger or Block, if
15 there was a DoubleClick ad server, it would have
16 been on the other side of my relationship with
17 them --

18 Q. Okay.

19 A. -- so it could have been, but I wouldn't
20 have known it.

21 Q. Okay. So it's fair to say you did not
22 have access to the profile database of the
23 DoubleClick ad server, then; right?

24 MR. MILKEY: I object to form.

25 A. What database?

1 Q. (By Ms. Sauer) DoubleClick. The
2 profile -- I'm sorry, let me re-ask that.

3 It's fair to say you did not have access
4 to a profile database for DoubleClick; correct?

5 A. Yes.

6 Q. I'd like now to refer to Paragraph 5 of
7 your declaration.

8 Just let me know when you're there.

9 A. I'm at Paragraph 5.

10 I'm sorry, am I still on?

11 Q. Yes.

12 Are you at Paragraph 5 right now?

13 A. Yes, I -- I thought I said that, yes.

14 Q. Okay. So this paragraph was the
15 materials you considered when preparing your
16 declaration; right?

17 A. Yes.

18 Q. And so the materials you considered
19 included the '249 Patent, the prosecution history,
20 Dr. Ranka's declaration, and the documents that you
21 cite in your declaration; correct?

22 A. When preparing this declaration, I
23 reviewed and considered the '249 Patent,
24 prosecution history, the petition, the declaration
25 submitted by Dr. Ranka in this proceeding, and each

1 document cited in my declaration. Yes.

2 Q. Did you review any other materials in
3 addition to those listed in Paragraph 5?

4 A. No, no.

5 Q. Now, moving on to Paragraph 36 of your
6 declaration. And I know we covered this to some
7 extent earlier. But this paragraph indicates your
8 declaration focused, primarily, on claims 515 and
9 25; correct?

10 A. Yes, 515 and 25 was the focus.

11 Q. Okay. And you've not offered an opinion
12 on any other claims in this declaration; correct?

13 A. Yes, that's correct.

14 Q. So is it fair to say that you did not
15 focus on Dr. Ranka's theories with respect to
16 Claim 1?

17 MR. MILKEY: I object to form.

18 A. I'm -- I'm aware of -- of Claim 1, but I
19 didn't provide any opinions on it.

20 Q. (By Ms. Sauer) I'm now moving on to
21 Paragraph 25 of your declaration.

22 A. I'm at 25.

23 Q. Okay. So in Paragraph 25, you state that
24 you've been informed that to determine the meaning
25 of the claims, one should consider the intrinsic

1 evidence, which includes the patent's claims,
2 written description, and prosecution history. Do
3 you see that?

4 A. Yes.

5 Q. All right. So is it your understanding
6 that intrinsic evidence is not required?

7 MR. MILKEY: I object to form.

8 A. I think my understanding is -- is what
9 I've written there: As I've been informed to
10 consider the meaning of the claims, one should
11 consider. I didn't make any other determination,
12 other than what those words say there: One should
13 consider the intrinsic evidence.

14 Q. So do you have any understanding as to
15 whether intrinsic evidence is or is not required?

16 MR. MILKEY: I object to form.

17 A. No, I -- I mean, I didn't make an
18 analysis as to whether or not that could be
19 eliminated. I used the -- the language that I have
20 here in forming my opinion on the claim, so I
21 just -- one should consider it. I didn't do
22 anything more in depth than that.

23 Q. (By Ms. Sauer) So you have no opinion as
24 to whether intrinsic evidence is or is not
25 required, then?

1 MR. MILKEY: I object to form.

2 A. That was not a part of my -- my report,
3 so I didn't study it. I don't have an opinion on
4 it.

5 Q. (By Ms. Sauer) Of the three types of
6 intrinsic evidence you mentioned, what do you
7 consider to be the most important?

8 MR. MILKEY: I object to form.

9 A. I don't know that any of them, just
10 enabling, are -- are more important than one or the
11 other. To me, they're equally important. They
12 could have language in one that -- that becomes
13 more important in the context of the case, but as
14 far as themselves, I don't -- I don't make any
15 prior- -- prioritization on those -- those three
16 items.

17 Q. Okay. Is it fair to say you consider all
18 three to be equally important?

19 MR. MILKEY: I object to form.

20 A. Well, again, the context might make one
21 more important than another. But as far as the
22 words themselves, they're -- they have equal
23 importance.

24 Q. (By Ms. Sauer) All right. In the
25 analysis of Claims 5, 15, and 25 in this

1 declaration, is it fair to say you gave the
2 specification more weight than the claims
3 themselves?

4 MR. MILKEY: I object to form.

5 A. I'm not sure whether or not I weighted
6 one more than the other. My normal methodology
7 would have been to focus on the -- the items that
8 Dr. Ranka had put in his report. And unless he
9 specifically talked about one being important than
10 the other, I probably would not even have commented
11 on it. I just -- I don't recall that without
12 rereading my entire report.

13 Q. I'm going to refer now to Paragraph 31 of
14 your declaration. Let me know when you're there.

15 A. 30 -- I am at 31.

16 Q. Okay. All right. So in this paragraph,
17 you say that obviousness requires the additional
18 showing that a POSITA would have been motivated to
19 combine these references in a manner that would
20 include all limitations of the challenged claim;
21 correct?

22 A. Yeah, under obviousness, yes.

23 Q. And you applied this test for obviousness
24 in considering Dr. Ranka's theories; correct?

25 A. Yes.

1 Q. So do I understand you correctly, that a
2 motivation to combine is required for obviousness?

3 MR. MILKEY: Objection to form.

4 A. Well, let me -- let me read it. I -- I
5 believe the answer is yes, but I understand obvious
6 requires the additional showing that a person of
7 ordinary skill in the art would have been motivated
8 to combine. So, yes, it's a -- as I understand it,
9 obviously requires the additional showing.

10 Q. Okay.

11 MS. SAUER: I see we've been
12 going here for just about an hour.
13 Should we take a short break?

14 MR. MILKEY: How long?

15 MS. SAUER: Does ten minute
16 sound okay?

17 THE WITNESS: Okay for me.

18 MS. SAUER: All right.

19 (Brief recess taken.)

20 MS. SAUER: Back on the record.

21 Q. Mr. Sherwood, I just dropped in a -- a
22 new document in the chat. Just let me know when
23 you've had a chance to open that document.

24 (Sherwood Deposition Exhibit No. 1001
25 was marked for identification.)

1 A. Exhibit 2001?

2 Q. This would be Exhibit 1001.

3 A. It's looks like it's a '249 Patent.

4 Q. That's right. So I would now like to go
5 to Figure 2 of the '249 Patent.

6 A. Okay. Let me blow it up just a bit.

7 Q. Sure.

8 A. I can -- okay, I'm -- I'll have to do --
9 my Zoom won't allow me to blow it up any more than
10 it is; so --

11 Q. Okay.

12 A. I think I can read it okay.

13 Q. All right. Well, we don't have to look
14 at superfine details of this. Maybe I want to look
15 at the arrow going from User 3 to System 4. Do you
16 see that arrow?

17 A. Yes, I do.

18 Q. All right. And maybe, to be a little
19 more specific, that arrow is going to the
20 receiving 5 box of System 4. You see that; right?

21 A. Yes.

22 Q. Okay. So if you look for the related
23 description of Figure 2, this would be at Column 5,
24 between lines 7 and 10.

25 A. All right.

1 Q. And this part of this specification says:
2 The method including the steps of A from a user 3
3 receiving 5, a transaction therein having therein a
4 partial profile.

5 Do you see that in the '249 Patent?

6 A. Yes, I do. But, unfortunately, this is
7 very small. And I'm going to have to be able to
8 blow it up a bit.

9 Q. Okay.

10 A. I'm going to try to -- I'm going to try
11 to do that.

12 Okay. All right. I think I can handle
13 it now.

14 Q. Okay.

15 A. I'm sorry, go ahead.

16 Q. All right. So the receiving 5 is shown
17 as part of System 4; right?

18 A. Okay. I'm looking at Column 5. What
19 line are you reading from?

20 Q. Column 5, line 7 through 10.

21 A. All right. I see those lines.

22 Q. Okay. And that describes the Receiving 5
23 step; correct?

24 A. Here's what I -- for use at a junction in
25 a data communication typology having associated

1 there with a maintained data bank of partial
2 profiles, the method including the steps of from
3 User 3, receiving 5 a transaction having therein a
4 first partial profile. Yes, correct.

5 Q. Okay. All right. And as receiving 5 is
6 shown as in Figure 2, receiving 5 is shown as part
7 of System 4; right?

8 A. Yes.

9 Q. So the arrow going from User 3 to
10 System 4, in Figure 2, shows that System 4 receives
11 partial profile of a visitor -- I'm sorry, of a
12 website visitor from user 3; right?

13 A. I believe that's what it says. I mean,
14 it's -- it's pretty specific in the language from
15 a -- a User 3, receiving 5 transaction, therein a
16 first partial profile. I don't see the actual
17 language you -- you read, but you -- I think you're
18 reading off the figure; is that correct?

19 Q. That's correct.

20 A. Yes, yeah, so that's correct.

21 Q. All right. And User 3 would be a server
22 of a third-party's website; right?

23 A. Yes, it's a -- it's a -- it's a -- an
24 unaffiliated website, if you will, yes, third
25 party.

1 Q. Okay. Now I'd like to refer to Column 4.
2 Can you please review lines 1 through 7 of
3 Column 4?

4 A. Okay. I -- I can see them. I can see
5 those lines.

6 Q. Okay. So these lines describe that a
7 website sends a redirect to a portion of a
8 visitor's web page so that the visitor's browser,
9 then, sends a cookie to a server; right?

10 A. Okay. When I read 1 through 7, I get the
11 website forwards -- I don't know, particulars for
12 the visitor's credentials, a partial profile, as
13 well as, optionally, a redirect, optionally, a
14 redirect to a portion of the visitor's page to a
15 server located in cyberspace and a juncture in data
16 communications topology. Yes, that makes sense to
17 me.

18 Q. Okay. So where redirect does occur --

19 A. Uh-huh.

20 Q. -- a website sends a redirect to a
21 portion of a visitor's web page so that the
22 visitor's browser then sends a cookie to a server;
23 right?

24 A. Are you reading another sentence, or the
25 same sentence?

1 Q. I'm summarizing the lines of -- of
2 Column 4.

3 A. You're summarizing lines 1 through 7?

4 Q. Correct, where there is discussion of a
5 redirect.

6 A. The website forwards particle
7 particulars, from the visitor's credentials to
8 redirect to a portion of visitor's page, a server
9 located in cyberspace.

10 I don't see a mention of a cookie there.
11 I'm just reading the rest of that paragraph, so I
12 don't see that they mention cookie in that -- in
13 those -- that language.

14 Q. Let's start with the -- the sentence
15 beginning on Line 5.

16 A. Okay.

17 Q. By redirecting a portion of the visitor's
18 page to the server, the visitor's browser reports
19 to the server a cookie the server put on the
20 visitor's computer in the past, if any.

21 A. Sure. And I -- and I -- like I say, I
22 was asking about the first sentence, and -- and the
23 first sentence didn't include the cookie. I didn't
24 realize you were asking about the second sentence,
25 too, which mentions a cookie. So, yes, correct.

1 Q. Okay, great. And so just to stay with
2 the terminology that we have in Figure 2, a website
3 would be a User 3; right?

4 A. Yes.

5 Q. And a server would be a server in
6 system 4; right?

7 A. Again, I think if you're -- if you're --
8 I'm not sure if you're asking, is -- is System 4 a
9 server? I would say yes, yes.

10 Q. All right. And the cookie is placed on
11 the visitor's computer by the server in System 4;
12 right?

13 A. A cookie is placed on the visitor's -- I
14 have to repeat it out loud to make sure I
15 understand the sentence.

16 But, yeah, a cookie is placed on the
17 visitor's computer -- actually, on the visitor's
18 computer's browser by the -- by a third-party
19 server, yes.

20 Q. Okay. And the first sentence of that
21 passage refers to forwarding the partial profile
22 separate from the redirect; right?

23 A. The website forwards particulars from the
24 visitor's credentials, as well as a redirect to a
25 portion of the visitor's page to a server located

1 in cyberspace. So I'm not sure how to summarize
2 that language.

3 Q. Well, just to reiterate my question --

4 A. Uh-huh.

5 Q. -- this passage refers to forwarding the
6 partial profile separate from the redirect; right?

7 A. Well, let me read it very carefully,
8 again. The website forwards particulars from the
9 visitor's credentials, as well as -- and, then, it
10 says optionally. So that's an option, I guess.
11 It's not -- it doesn't specifically say it is,
12 optionally, a redirect to the portion of the
13 visitor's page to a server located in cyberspace.

14 Q. And based on that sentence, do you
15 understand that forwarding the partial profile
16 occurs separate from the redirect?

17 MR. MILKEY: Objection to form.

18 A. Again, I'm not sure I -- I'm not sure I
19 studied that. I don't recall if Dr. Ranka
20 discussed that specific language. So I -- I mean,
21 I really didn't study the actual, you know,
22 interpreting the language in different ways.

23 When I see the word "optional," that
24 means, to me, that -- that -- just the plain
25 ordinary meaning of that means to me that it didn't

1 have to happen when the particulars were forwarded.

2 It was an optional redirect.

3 Q. Okay. Next I'd like to refer to
4 Column 11. Can you please review starting at line
5 64 up to line 6 of Column 12? So this is the very
6 last paragraph in Column 11.

7 A. All right, get to it here.

8 All right. I see the last paragraph in
9 Column 11.

10 Q. Okay. And have you had a chance to
11 review that paragraph?

12 A. I've -- I've read it. I haven't studied
13 it.

14 Q. Okay. Is it fair to say that this
15 paragraph describes the website initially providing
16 a partial profile of an entity to a data bank
17 server?

18 A. Okay. I'm not sure why -- why it's
19 necessary to summarize it. If you're referring to
20 the -- the sentence that goes: Initially, a user
21 will interface with the system by providing the
22 system's data bank. Is that the sentence you're
23 referring to?

24 Q. Correct.

25 A. Okay. Let me read the whole thing again,

1 then. Initially, a user will interface with the
2 system by providing the system's data bank with a
3 partial profile consisting of at least one
4 attribute, which will enable the identification of
5 the entity described by the profile in the system's
6 data bank.

7 What -- what's the question now?

8 Q. The question is: Does this describe the
9 website initially providing a partial profile of an
10 entity to a data bank server?

11 A. Well, I don't want to seem argumentative,
12 but I just don't see why we need to summarize what
13 it actually says. So I'm going to stay with the
14 language of the -- what the language says is what
15 I -- is what I read. I don't -- I'm not -- I don't
16 think I can summarize it any other way.

17 Q. Okay. And this passage also describes a
18 cookie. Do you see where a cookie is referred to
19 in this passage?

20 A. The sentence that you were just
21 referencing, which is: Initially a user will
22 interface with the system?

23 Q. Yep.

24 A. Okay. Well, that particular sentence
25 doesn't have the word "cookie" in it, so maybe

1 you're talking about the top?

2 Q. You're right. I'm looking at the
3 sentence Column 12, starting at line 4.

4 A. The user enables the server, attach to
5 the data bank receiver the cookie it installed by
6 redirecting a portion of the visitor pages to the
7 data bank server. Yeah, I see that sentence.

8 Q. Okay. Then referring back up to
9 Column 12 at line 1, that refers to the cookie
10 installed on the visitor's computer by the server
11 attached to the data bank. Do you see that?

12 A. Again, I just have an issue with
13 summarizing language that's written very
14 specifically. So, in my mind, whatever comment I
15 have, I would go right to the language of the
16 specifications, as opposed to a summary.

17 Q. Okay. So where the sentence says, the
18 cookie installed on the visitor's computer by the
19 server attached to the data bank, you agree that
20 this says the data bank server installed the cookie
21 on the visitor's computer; right?

22 A. Let's read it again, the cookie installed
23 on the visitor's computer -- a visitor to a
24 website, which is a user of the system, of course,
25 by the server attached to the data bank. Yes,

1 it's -- it's installed by the server and attached
2 to the data bank.

3 Q. Okay. And the website enables the
4 data bank server to receive the cookie it installed
5 by redirecting a portion of the visitor's page to
6 the data bank server; right?

7 A. Now which sentence are you reading now?

8 Q. We're now on that second sentence in
9 Column 12.

10 A. Second sentence being the user -- the
11 user enables the server attached to the data bank
12 to receive the cookie it installed by redirecting a
13 portion of the visitor's page to the data bank
14 server. Yes.

15 Q. Okay. And user, as it's described here,
16 is the website; correct?

17 A. Yes, it enables it to be installed on
18 the -- on the local computer's browser.
19 But, again, the language here is -- is written. I
20 don't -- I would not want to summarize it.

21 Q. But as the language there is written, the
22 cookie that the databank installed on the visitor's
23 computer gets back to the system; right?

24 A. Is what? Back to -- I didn't understand
25 you.

1 Q. Let me read that one more time.

2 The cookie that the databank server
3 installed on the visitor's computer is sent back to
4 the databank server; right?

5 A. Well, it -- it's installed. That's --
6 that's a step. Another step would be when it's
7 retrieved by the server. So -- so, again, I don't
8 want to interpret the language of the
9 specifications. But, generally, the -- the cookie
10 has two parts installing it, and then retrieving
11 data from it.

12 Q. Okay. And the system receives the cookie
13 from the visitor's computer, not from the website;
14 right?

15 MR. MILKEY: Objection to form.

16 A. Yeah, the -- what are you reading because
17 it just sounds not -- it sounds like a summary.
18 What -- what sentence are you at now?

19 Q. (By Ms. Sauer) I'm just trying to
20 understand where the cookie is going in what's
21 described in Column 12.

22 MR. MILKEY: Objection to form.

23 A. Well, is there a specific sentence that's
24 not clear, that -- I mean, I'm not going to
25 interpret the specifications, but I can read them.

1 Is there a specific sentence that -- that you want
2 me to focus on?

3 Q. So based on reading the beginning of
4 Column 12, do you understand where the cookie is
5 going?

6 MR. MILKEY: Objection to form.

7 A. Well, in general, a cookie is going on
8 over to the -- to the -- to the browser on a
9 website.

10 Q. (By Ms. Sauer) So when the data bank
11 receives the cookie, where is that cookie coming
12 from? Is it coming from the website or from the
13 user's -- the visitor's browser?

14 MR. MILKEY: Objection to form.

15 A. I understand that you can ask most any
16 question that you want during a deposition. And
17 I -- and I appreciate that. Most of the questions
18 it seems like you're asking me have -- are not
19 related to my report. They're related to me
20 looking at specifications and trying to summarize
21 them, which I'm kind of reluctant to do because I
22 didn't, you know, make a word-by-word analysis of
23 the specifications. I was focusing on Claim 2 and
24 Claim 5. So I would appreciate it if, in this
25 certain questions that you're asking me, if you

1 could show me in my report where I discussed it or
2 it was mentioned, so I can refer to my report when
3 I'm answering a question.

4 Q. Sure. Fair enough.

5 I'm going to move now to Column 11
6 between lines 41 and 47.

7 A. I see column 41 to 47.

8 Q. Okay. And you're familiar with this
9 section of the specification; right?

10 A. I've gone through it. I don't know if
11 that's characterized as being familiar with it, but
12 I -- I have gone through the specifications. Yes.

13 Q. All right. So this passage describes a
14 micro payment royalty for each use of this
15 attribute purchase from the data bank for each
16 interested party; right?

17 A. Yes. And -- and I believe I -- I kind of
18 mentioned this in my report, so it would be easier
19 for me to respond to any question by looking at the
20 paragraph that discusses this item in my report.
21 Can you point me to that paragraph?

22 Q. We're just looking at the specification
23 language right now.

24 A. Is there a paragraph in my report where
25 this specification language is discussed?

1 Q. I believe 61.

2 A. Okay.

3 Paragraph 61, yeah. I know it's in my
4 report. Is there something in this -- again, I'm
5 just trying to get a clarification on that
6 question, but are you asking me a question about my
7 report, the paragraph you mentioned, or are you
8 asking me to interpret the specifications?

9 Q. I'm -- I'm trying to understand what is
10 in the specification, or what you understand to be
11 in the specification.

12 A. Well, to whatever extent I understood
13 that specification, that would have been written --
14 it would have been included in my report. So if
15 you turn to my report and that would be a better
16 way to interpret what I interpreted on the
17 specifications. I'd be happy to look at my report
18 now if you'd like to.

19 Q. Well, so just looking at this passage in
20 column 11 that we just reviewed, advertisements are
21 not specifically referred to; correct?

22 A. What paragraph are you talking about now,
23 what sentence?

24 Q. We are in column 11.

25 A. Which -- which sentence number, line

1 number?

2 Q. Starting at line 41.

3 A. Forty-one. Only for -- I wish I could
4 blow this up bigger. Only for home utility van
5 such that the first partial profile will now --
6 will now consist of car advertisements only for
7 home utility vans.

8 Is that what you want me to read, that
9 sentence?

10 Q. I believe you're looking at something
11 different. I'm in Column 11, starting at line 41.

12 A. Hold on a second here. I'm in Column 11,
13 and I am looking at line -- line 41. My line 41
14 starts with: Only for home utility vans unless I'm
15 reading something correctly.

16 Q. You -- you're looking at Exhibit 1001?

17 A. Let's see. I'm looking at '249 Patent,
18 column 11. And I don't see -- a second here --
19 there's no exhibit number on the patent I'm looking
20 at. It just says 875,249.

21 Q. Okay. And you're in Column 11?

22 A. I'm in Column 11. Excuse me a second
23 here. My mouse is kind of sensitive here. 11, I'm
24 in Column 11.

25 Q. The sentence starting: By prearranged

1 contract details.

2 A. Okay. Maybe we are in the -- maybe I'm
3 on the wrong document then. I've got Column 11
4 starts with Internet, Intranet, LAN, WAN.

5 Q. That's -- that's -- that's line 1 of
6 Column 11.

7 A. Yeah, I'm -- that's what it starts with.

8 Q. Okay.

9 A. You go to line 41, I will. I just want
10 to make sure I was in the right column. And
11 line 41 on mine. Line 40 ends with the word "the,"
12 and Line 41 starts with visitor's annual income.

13 Q. Okay.

14 A. By preferred contract details, website is
15 given a predetermined micro payment credit to
16 provide this detail. Yeah, I see that. Okay?

17 Q. All right. So you see those two
18 sentences between lines 41 and 47; correct?

19 A. Yes.

20 Q. Okay. So advertisements are not
21 specifically referred to in this paragraph; right?

22 A. Well, let's read it carefully. It says,
23 by rearranged contract details, the website is
24 given a predetermined micro payment credit for
25 providing this detail. This detail, all right.

1 Alternatively, by prearranged contract,
2 the data bank agrees to store the user attribute
3 and to credit the providing website with a micro
4 payment royalty for each use of this attribute
5 purchase from data bank by each infant party. Now,
6 no, I do not see the word "advertisement" in those
7 sentences.

8 Q. Okay. An electronic record is not,
9 specifically, referred to in this passage; right?

10 MR. MILKEY: I object to form.

11 A. I do not see the words "electronic" --
12 what was your -- electronic detail or electronic
13 transfer? What was it?

14 Q. (By Ms. Sauer) let's ask the question
15 again. An electronic record is not, specifically,
16 referred to in this passage; right?

17 A. I don't see the language -- excuse me. I
18 don't see the language, I don't see the words
19 "electronic record." I'm not saying it's not
20 implied. I'm not saying it might be presumed. But
21 I don't not see the words "electronic record" in
22 those passages.

23 Q. Okay. And this passage does not state
24 that a payment requires an update to a record;
25 right?

1 MR. MILKEY: Objection to form.

2 A. I would have the same answer. In looking
3 at that passage, that specific language is not --
4 not expressed.

5 Q. (By Ms. Sauer) Okay. And this passage
6 does not state that any record is made or updated
7 based on payments that are made; right?

8 A. Again, if you're asking me if those words
9 appear in that passage, then the answer is no. I
10 don't see those words in that passage.

11 Q. Okay. This passage does not specify when
12 the payment is made; right?

13 A. I do not see, in that passage, an
14 expressed reference to the payment must be made by
15 a certain date or a certain time frame, no.

16 Q. Okay. If payment is issued at the time
17 of providing an attribute, a record is not needed
18 to track payments owed; right?

19 MR. MILKEY: Objection to form.

20 A. Let me think about that. Ask that
21 question again, please.

22 Q. (By Ms. Sauer) If payment is issued at
23 the time of providing the attribute, a record is
24 not needed to track payments owed; right?

25 A. Well, if your predicate is: If a record

1 is not needed, then -- then what follows, then, is
2 based on that. So I'm not -- I'm just not sure how
3 to -- how to answer the question. If the record is
4 not needed and that's the predicate, then it
5 wouldn't be needed. Ask it again, maybe I can --
6 ask the question again, please.

7 Q. I am going to repeat the question. If
8 the payment is issued at the time of providing the
9 attribute, a record is not needed to track payments
10 owed; right?

11 A. Well, again, it's -- can you reference
12 something in my report where I discussed the timing
13 of the payment being relevant on my comments on the
14 claims?

15 Q. So, right now, we're just discussing the
16 '249 Patent itself.

17 A. Okay. But aren't we discussing it in
18 the -- in the -- I think you asked me, when you
19 said in the beginning that you're going to have to
20 discuss things in the context of the '249 and
21 '307 Patent. So my question has to be -- or on
22 these specifications instead since I did not study
23 them, to the extent that I did not reference these
24 specific specifications in my report, that I'm just
25 trying to understand what's being required of me

1 now.

2 I mean, are you asking me now to study
3 the specifications in more detail than I needed for
4 my report? Are you asking me to interpret the
5 specifications? Those kind of things, I think, are
6 outside the scope of my report.

7 Q. Is it your position that you didn't
8 reference this passage in your report?

9 A. No. In fact, I think I asked you about
10 that. And you said it was referenced, I think,
11 in -- some of this was referenced in '91. I
12 remember discussing some of these things in
13 general. And I'd be happy to go to my report and
14 answer your question with respect to the contents
15 of my report. But trying to interpret a set of
16 specifications that may or may not be related to my
17 report is -- is beyond the scope of my report.

18 Q. But just sitting here now and reading the
19 specification, you don't know how to make sense of
20 what's in this passage?

21 MR. MILKEY: Objection to form.

22 A. Let's go back again. Which passage now
23 are you talking about?

24 Q. (By Ms. Sauer) So, again, we're -- we're
25 still in Column 11 --

1 A. Yeah.

2 Q. -- lines 41 through 47.

3 A. Okay. Just a second. I've got a little
4 guy that's crept in here. Okay, here we go.

5 There's some sort of comment that's come up on my
6 screen, comment or use. I'm going to X it out.

7 41 and -- I mean, all I can do is read
8 these passages. I don't think I can summarize them
9 or interpret them.

10 Q. You don't know how to interpret the
11 passage?

12 A. I can -- I can read the passage. For
13 example, can you -- if you ask me a specific
14 question about a specific line, I can read that
15 passage and understand that passage. But I think
16 you're asking me to put it in different words. And
17 that's -- that's another step.

18 Q. Well, we've agreed that the passage does
19 not describe when a payment is made; right?

20 A. Yeah, I think what I said was that in
21 those series of questions you asked me I said those
22 passage -- passages did not include those specific
23 words.

24 Q. Correct. And -- and it -- included in
25 that is this passage does not state when a payment

1 is made; right?

2 A. Again, I think what I said was that, when
3 I read the passage, I don't see those specific
4 words included in the passage. That doesn't mean
5 they might be inferred, or after somebody studied
6 them and referenced their whole specification, they
7 might come to a different opinion. But as far as
8 those words being included, I did not see those
9 words in the passages that I read.

10 Q. Okay. And so just reading and
11 understanding this passage, if a payment is issued
12 at the time of providing the attribute, a record is
13 not needed to track payments that are owed; right?

14 A. There's a couple parts to that. And for
15 the last part -- and, again, I -- I'm going to
16 defer -- defer to my report if these things were
17 mentioned in my report. But the last part of the
18 sentence has to do with owed. And, of course, if
19 you've already been paid for it, there's no record
20 to track that you -- that you -- the money is owed
21 because it's not owed, technically, at the time
22 it's paid for.

23 The issue of whether or not you want to
24 preserve the record of the profile and the payment,
25 that's -- that's, more or less, kind of a business

1 or a commercial issue.

2 Q. Okay. So the micro payment described
3 here is a payment for use of a particular profile
4 attribute; right?

5 A. Well, I'm going to -- I'm going to defer
6 to the specifications, but that sounds correct,
7 yes.

8 Q. Okay. And you agree that the passage
9 describes payments for use of that data; right?

10 A. Let's -- let's go back to the passage
11 again, which is 41 to 47; right? Visitor's annual
12 income: By prearranged contract details the
13 website is given a predetermined -- a predetermined
14 micro payment credit for providing the detail.
15 Alternatively, the prearranged contract, the data
16 bank agrees to store the user attribute and to
17 credit the providing website with a micro payment
18 royalty for each of the attribute purchased from
19 the databank by each interested party.

20 So I -- the specification makes sense to
21 me.

22 Q. Okay. And so based on that, you agree
23 that this describes payment for use of the data;
24 correct?

25 A. Let me read it again. Alternatively, by

1 prearranged contract, the -- the data bank agrees
2 to store -- to store the user attribute and to
3 credit the providing website with a micro payment
4 royalty for each use of the attribute purchased
5 from the data bank by each interested party.

6 I -- I don't know any other way to say
7 that. That's pretty clear to me.

8 Q. Okay. Just to reiterate the question I
9 asked earlier, this passage describes payment for
10 use of data; right?

11 A. The data bank -- and I'm going to read it
12 because I just think summarizing these passages is
13 not appropriate.

14 That the passage says: The data bank
15 agrees to store -- at the first to store the user
16 attribute and to credit the providing website with
17 a micro payment royalty for each use of the
18 attribute purchased -- for use of the attribute
19 purchased from the data bank by each interested
20 party.

21 Okay. I don't know how else to summarize
22 that.

23 Q. All right. So the phrase "a micro
24 payment royalty for each use of this attribute
25 purchased" describes payment for use of data;

1 right?

2 A. Again, for me, it's -- it describes what
3 it says: A micro payment royalty for each use of
4 the attribute purchased.

5 Q. Okay. And it's your opinion that the
6 patent teaches tracking micro payments; right?

7 A. I'm sorry, patent teaches what?

8 Q. Tracking the micro payments.

9 A. I believe that's correct, yes.

10 Q. All right. And while that's your
11 opinion, you would agree that the patent doesn't
12 expressly describe tracking the micro payment;
13 right?

14 A. I just don't recall every -- every line
15 of this specification, so there may be a line that
16 does exactly that. I just don't recall all that.

17 Q. But sitting here today, you can't point
18 to anything that describes that; right?

19 A. Describes what right, please.

20 Q. For tracking the micro payments.

21 MR. MILKEY: Objection to form.

22 A. So in other words, if I were to go back
23 to my report now and reread these sections, it may
24 help me recall the answer to that question.

25 Without rereading those sections, as I sit here, I

1 don't recall that specific discussion. But I know
2 I have discussion on that. I just don't recall
3 every word of it.

4 Q. (By Ms. Sauer) Okay. I see you would
5 agree that one way to track micro payments
6 would be to store the party that's to receive the
7 micro payment and the party that is to pay the
8 micro payment; right?

9 A. Could you -- could you break that
10 question down into separate parts, please.

11 Q. Sure. So it's your position that
12 tracking micro payments occurs here; right?

13 A. Well, again, when you say occurs here,
14 you mean it's discussed -- can you help me with
15 this, do you mean discussed in specifications,
16 discussed in my report, or -- or which?

17 Q. So it's your opinion that the patent
18 teaches tracking micro payments; right?

19 MR. MILKEY: Objection to form.

20 A. I have to think about whether it teaches
21 how to do it. And, again, I don't remember every
22 line -- word in this -- in the specifications. It
23 certainly discusses it, but I don't know if it
24 specifically goes, you know, step A, step B, step C
25 for how to do it. I don't recall that. I mean, we

1 could go through the specification now again and we
2 can see if we find that. But as I recall, I
3 don't -- I don't remember that specific language.
4 It doesn't mean it's not there. It means I don't
5 recall it.

6 Q. Okay. And you would agree that one way
7 to track micro payments is by storing the party
8 that's to receive the micro payment and the party
9 that is to pay the micro payment; right?

10 A. Could you break that question down? You
11 had two parts to it. Again, please.

12 Q. I'm not sure how much more I can break it
13 down. One way of tracking micro payments is
14 storing the party to receive the micro payment and
15 the party to pay the micro payment?

16 A. In general, if you're making a payment, a
17 micro payment, then you're going to need two
18 things. You're going to need, you know, who's
19 going to pay it and who's going to receive it. So
20 I'd say yes.

21 Q. Understood. Okay. So just to go with an
22 example, if A purchased an email address provided
23 by B for 20 cents, what you need to know for the
24 record is that A owes B 20 cents; right?

25 A. It's impossible to answer that question

1 because we don't know what we're going to do with
2 the record. It would depend -- it would depend on
3 what the record is going to be used for, what we're
4 going to -- whether we store it at all, what are
5 we -- what are we going to do with it.

6 So the whole context of the email
7 purchase, I don't know why it's being done. There
8 certainly would be strong reasons why you'd want to
9 store all the records. And there are certain
10 reasons -- a situation why it wouldn't be
11 economically beneficial to do that.

12 Q. All right. You would agree that for
13 accounting purposes, you don't need to store the
14 email address that was provided; right?

15 A. I don't know what accounting means. I
16 mean, accounting -- my experience with financial
17 departments is, very often, they need a lot more
18 than it seems to me they do need. So I don't know
19 what the accounting department would -- would need
20 in that case.

21 Q. All right. Can you give any reason why
22 the email address would need to be stored?

23 A. Yes, I want to store it for future
24 reference.

25 Q. And what would the future reference be

1 for?

2 A. I don't know at the time I'm storing it.
3 I mean, it -- it's a hypothetical question. Why
4 would anybody want to store an email? I store
5 emails. I'm sure you do. I -- sometimes I store
6 them for a long time and then erase them. I don't
7 always know what I am going to use them for when I
8 actually store them.

9 Q. Okay. So is it your opinion that
10 tracking a micro payment requires creating a record
11 of the attribute that was used in exchange for the
12 micro payment?

13 MR. MILKEY: I object to form.

14 A. Can you break that sentence down into
15 certain parts -- or that question down?

16 Q. (By Ms. Sauer) It's your opinion that
17 tracking a micro payment requires a record of that
18 micro payment; right?

19 A. Stop right there. So the question is:
20 Is it my opinion that tracking a record of a --
21 tracking a micro payment requires a record of that
22 payment?

23 Q. Sure.

24 A. If I want to track -- and the way I would
25 answer is this, if I want to track a micro payment,

1 I want to track it, right, then I would need a
2 record of it.

3 Q. Okay. So is it also your opinion that
4 tracking that micro payment requires a record of
5 the attribute that was used in exchange for the
6 micro payment?

7 A. So now the question revolves around
8 whether or not I need to track the attribute that
9 was used for the micro payment, whether or not that
10 requires a record? Is that the question?

11 Q. I will re-ask the question.

12 So is it your opinion that tracking the
13 micro payment requires a record of the attribute
14 that was used in exchange for the micro payment?

15 A. So do I need to track the attribute that
16 was used for that micro payment in order to make
17 that payment? That's a very hypothetical question
18 for me. I would say -- I would say, in principle,
19 I'd say most people want to track as many things as
20 they could. And if they are making a payment for a
21 specific attribute, they would certainly want to be
22 able to record that as a separate transaction.

23 Now, again, I didn't study that. I think
24 I may have discussed certain parts of that in my
25 report, but I would defer to my report for a more

1 complete answer.

2 Q. But just to reiterate what you said, you
3 said most people would want to track it, but the
4 question is: Would tracking the micro payment
5 require creating that record of the attribute?

6 A. Well, if I'm going to make -- this is a
7 very, very general question in my mind. But if I
8 want to make a payment to somebody for an
9 attribute, right, then I'm going to have to create
10 a record for that specific attribute. Yes, in
11 order to do that. The record will have to exist
12 somewhere in order for that payment to be -- to be
13 made.

14 MS. SAUER: All right. I see
15 it's been about an hour. Now might be a
16 good time to take another short break.
17 Is ten minutes okay, or do we need any
18 more?

19 (Brief recess taken.)

20 MS. SAUER: All right. We're
21 going back on the record.

22 (Sherwood Deposition Exhibit No. 1035
23 was marked for identification.)

24 Q. (By Ms. Sauer) And, Mr. Sherwood, I just
25 sent you another document in the chat. And that's

1 Document 1035. Just let me know when you've had a
2 chance to open that up.

3 A. It's thinking about it, but it hasn't
4 opened it yet. There it is. Okay. That's
5 Merriman Patent --

6 Q. That's right.

7 A. -- let me blow it up here, so it's actual
8 size. All right, that helps.

9 All right. I've opened the Merriman
10 Patent.

11 Q. All right. So I want to refer to
12 Figure 1 of Merriman, just to understand what's
13 happening in Merriman's system.

14 A. Uh-huh.

15 Q. Are you familiar with this figure, or
16 should we review the related description?

17 A. Well, it depends on the question, but am
18 I -- I'm familiar with the figure, yes.

19 Q. Okay. Are you familiar with each of the
20 messages shown in Merriman's Figure 1, which
21 includes messages, 20, 22, 23, 24, 26, and 28?

22 A. I'm familiar with the advertising server,
23 affiliate website, advertisers' website, HTTP
24 protocol, and user's browser.

25 Q. Okay. So referring to Figure 1, first a

1 user's Browser 16 goes to website 12; right?

2 A. Yes, that's the way it's diagrammed.

3 Q. And this is shown by Line 20; right?

4 A. Yes.

5 Q. Okay. And, next, website 12 transmits
6 Message 22 back with information to be displayed by
7 the user's browser; right?

8 A. Yes.

9 Q. Okay. And, then, the user's browser
10 transmits Message 23 to ad server with information
11 about the user browser and the web page the user is
12 visiting; right?

13 A. Yes.

14 Q. Okay. And, then, the Ad Server 19 sends
15 back Message 24 with an advertisement to be
16 displayed on the web page; right?

17 A. It doesn't actually say that, but
18 that's -- that's what's happening, yes.

19 Q. Okay. And if the user clicks on the
20 advertisement, Message 26 is sent to the
21 advertiser's website; right?

22 A. Well, it certainly could happen.
23 Whether -- I'm not sure how they discuss this
24 figure without reading it again, but information is
25 sent back very often, whether it's clicked on or

1 not. It can just -- just display the fact that
2 it's displayed the ad.

3 But I believe the way they're trying to
4 discuss it here, it's a -- a click is what sends
5 information to another -- to another server, yes.

6 Q. Okay, okay. So next, I'd like to direct
7 you to Figure 3A of Merriman.

8 A. All right.

9 Q. All right. And you see that that far
10 right column is "Pages Ads Seen On"; right?

11 A. Yes.

12 Q. All right. So this column indicates the
13 web page that an ad was seen on; right?

14 A. Yes.

15 Q. Okay. So considering our discussion of
16 Figure 1, this information was initially provided
17 by the website; right?

18 MR. MILKEY: Objection to form.

19 A. Well, the server is -- is sending the ad
20 to the website, so the server is tracking which ads
21 were sent and which pages it was targeted to be
22 displayed on. That's how I would describe it.

23 Q. All right. You agree that Figure 3A
24 shows a database that the Ad Server 19 has; right?

25 A. Well, I see Figure 3A as a -- yeah, a

1 database. And the last -- last field is "Pages Ad
2 Seen on," yes.

3 Q. Okay. And how does ad server get that
4 information?

5 A. Well, he -- the browser is -- is, you
6 know, rendering calls as it -- as it goes through
7 the web page. And it's -- and it's, essentially,
8 calling the server to display the ad. And the
9 website is responding that it has received the ad.
10 And that -- that's not exactly what happens in the
11 protocol, but that's essentially how it would be
12 described.

13 Q. So, again, referring back to Figure 1:
14 When the user's browser transmits Message 23 to the
15 ad server, you see that line; right?

16 A. Yes.

17 Q. And that has information about the user
18 browser and the web page that the user is visiting;
19 right?

20 A. It could, yes.

21 Q. Okay. And the information about the web
22 page the user is visiting, previously came from the
23 Affiliate website 12; right?

24 A. The website that the user is visiting has
25 to be identified to the -- to the whole process,

1 yes.

2 Q. Okay. So, then, referring to Figure 3A,
3 the "Pages Ads Seen On" column would show pages
4 that the -- on website 12 in which ads were seen
5 on; right?

6 A. Let's go back to -- go back to 1 again.
7 Yeah, the ads are being displayed on
8 website 12. That's correct.

9 Q. Okay. So the "Pages Ad Seen On" shows
10 which website contributed that piece of
11 information; right?

12 MR. MILKEY: Objection to form.

13 A. Well, at this point, we're -- at this
14 point, based on just these figures and the
15 language, what's being collected is what website
16 was visited.

17 Q. Okay. And the information of which
18 website was visited came from that website; right?

19 A. Well -- well, yes. I mean, it sounds
20 like a -- a simple question, but it's actually not.
21 But, certainly, the website has to deliver its
22 identifier to the advertising server in order for
23 the ad to be placed, yes.

24 Q. Okay. And the attributes in Merriman's
25 database are used for targeting advertisements;

1 right?

2 A. As far as I know, yes. Merriman, to me,
3 I think of Merriman, I think of DoubleClick. I
4 think he's one of the founders, so he's -- they're
5 using the data that they captured to -- in
6 targeting advertising, yes.

7 Q. Okay. It would have been within a
8 POSITA's capabilities to add additional columns to
9 the database in Figure 3A; right?

10 A. Yeah, I think you asked me that earlier.
11 And the part is the -- was the POSITA database
12 knowledgeable enough to add a column? I think the
13 answer is yes. It doesn't necessarily mean he
14 would know what column to add, but he certainly
15 would have been able to. As I understand it, in
16 that time frame, he would be able to go in that
17 database and add a column.

18 Q. Okay. And it would have been within a
19 POSITA's capabilities to add a column that includes
20 the website associated with a web -- with the
21 column pages -- sorry, let me redo that one.

22 It would have been within a POSITA's
23 capabilities to add a column to the database to
24 include the website associated with the "Pages Ads
25 Seen On"; right?

1 A. There's two parts to this question, in my
2 mind. The first part is, does a POSITA have the
3 technical knowledge to add a column to a database?
4 The answer to that question in my opinion is -- is,
5 yes, he would have that knowledge.

6 Now, the second part is: Would he know
7 what column to add, would he know why to add that
8 column, would it be motivated to add a column?
9 That's a secondary question. The answer to the
10 first question is: Of course. If he's a database
11 manager, he can add a column. Knowing what column
12 to add is a separate issue.

13 Q. All right, understood.

14 But just to reiterate, a POSITA would
15 have had the technical knowledge to add the column;
16 right?

17 A. A POSITA would have had the technical
18 knowledge about a database to add a column to a
19 database.

20 Q. All right. All right, and this would
21 have generated a record of which party contributed
22 that attribute; right?

23 A. Well, if he was capturing that data and
24 that was the column that he added, then that column
25 would have that information in it.

1 Q. Okay. Next, I want to direct you to
2 Column 5 of Merriman starting around Line 64. And
3 it's just that one sentence starting at Line 64.

4 A. What column is it, 5?

5 Q. Column 5.

6 A. Okay, just a second, line 64. "Each
7 advertisement along with a table of the targeting
8 profile criteria for the advertisement and other
9 data regarding the advertisement."

10 Is that the sentence you're talking
11 about?

12 Q. That's right.

13 A. Okay. What's -- what's the question,
14 please?

15 Q. All right. So that sentence ends with,
16 "and other data regarding the advertisement
17 currently available is stored in a database." So
18 the question is: Storing data in a database means
19 that a data entry is initially generated; right?

20 MR. MILKEY: Objection to form.

21 A. Well, it would -- it's kind of like an
22 issue of semantics. Certainly, if I have a
23 database, in general, I have to have a data entry
24 point, some point in which I entered the data.
25 That would depend on the interfaces involved in the

1 database, but data has to have an entry point, I
2 think, by -- by nature.

3 Q. Okay. And you agree that storing data in
4 the data -- database also means that the data is
5 maintained for some period of time; right?

6 A. Well, I think -- you know, I don't see
7 that language, or maybe the language is there, but,
8 generally, if you're storing it, it would depend
9 on, you know, what you're storing for and how long
10 you want to use it as to what period of time it is.
11 But, generally, it's not permanently stored,
12 although it could be.

13 Q. Okay. Does Merriman have any statements
14 that it embodies a DoubleClick commercial product?

15 MR. MILKEY: Objection to form.

16 A. I don't know about that language, but
17 when I look at Merriman, to me, that -- that is
18 DoubleClick, what he describes in the -- in the
19 patent.

20 Q. (By Ms. Sauer) Okay. And that's based
21 on your knowledge of DoubleClick; right?

22 A. Well, it's based on my knowledge of
23 DoubleClick and -- and reading the patent in front
24 of me and seeing Merriman's name on it. And I know
25 Merriman, I think -- I -- I believe is one of the

1 founders.

2 Q. Okay. Before you said you were a user of
3 DoubleClick; correct?

4 A. Yes.

5 Q. All right. And simply as a user, you did
6 not have access to DoubleClick's user profile
7 database; right?

8 A. No, I don't believe we did.

9 Q. All right. I want to refer to
10 Paragraph 50 of your declaration.

11 A. Okay. That's not showing open -- oh, it
12 is open now.

13 Okay. Paragraph 50, and we're talking
14 about Exhibit 2001?

15 Q. Correct.

16 A. Paragraph 50. Okay. I'm at
17 paragraph 50.

18 Q. Okay. In Paragraph 50, you discussed
19 testimony from DoubleClick founder, Kevin O'Connor;
20 right?

21 A. Yes.

22 Q. All right. And, then, referring to the
23 next paragraph, Paragraph 51, you reference another
24 DoubleClick patent; correct?

25 A. Yes.

1 Q. And I believe you refer to that as the
2 DoubleClick's Boomerang system patent; right?

3 A. Yes.

4 Q. All right. And that's
5 Patent No. 8566154; right?

6 A. Yes.

7 Q. Okay. I'm next going to provide a copy
8 of that patent. Just let me know when you've had a
9 chance to open that.

10 (Sherwood Deposition Exhibit No. 1053
11 was marked for identification.)

12 A. I lost my chat. Just a second here. Let
13 me get out of this PDF for a second here.

14 Okay. That's Exhibit 1053?

15 Q. Correct.

16 A. Let me open that. It is opened. Let me
17 blow it up a bit.

18 Q. All right. You see that the top
19 right-hand corner lists the patent number as
20 8,566,154; right?

21 A. Yes, I see it.

22 Q. And you see the bottom right corner has
23 this marked as Exhibit 1053; correct?

24 A. Yes.

25 Q. Does this appear to be the patent that

1 you refer to in Paragraph 51 of your declaration?

2 A. Yes.

3 Q. Oh, so you're familiar with this patent,
4 then; right?

5 A. It was part of the materials I looked at,
6 yes.

7 Q. Okay. So for simplicity, I'll refer to
8 this as the Merriman '154 Patent, and the Merriman
9 we just looked at I will refer to that as the
10 Merriman '061 Patent.

11 Now, the Merriman '154 Patent does not
12 make any reference to the Merriman '061 Patent that
13 we were just discussing; right?

14 A. I don't recall. I'd have to look at it
15 again. And I would have to read my report to see
16 what was referenced, but --

17 Q. Okay. And Merriman '154 was filed at a
18 later time from the Merriman '061; right?

19 A. I don't know, I didn't -- I mean, I don't
20 recall. I guess I could read it now and look at
21 it, but I didn't make that analysis; so --

22 Q. Okay. I'd like to go to Column 3,
23 starting at line 18.

24 A. I need to go back to my report for a
25 second because --

1 Q. Sure.

2 A. -- sometimes the patent numbers get me a
3 bit -- a bit confused; right?

4 Q. Uh-huh.

5 A. Okay. So, now, what exhibit do you want
6 me to go to, which -- which patent number, '154?

7 Q. Correct.

8 A. Okay. Just -- I want to make sure I'm
9 there. Oh, that's the '061. Okay. I've got to go
10 back and -- and download it again. I apologize.

11 Okay. I have the '154 in front of me
12 now.

13 Q. Okay, great. If you could go to
14 Column 3, please.

15 A. I'm at Column 3.

16 Q. Okay. Do you see the subheading starting
17 around Line 18 that says, "Retargeted Advertising"?

18 A. Yes.

19 Q. Okay. If you could just review that
20 paragraph afterwards starting at Line 20 up through
21 Line 34.

22 A. I -- I stopped reading for a second. I
23 was trying to see if I could blow it up a little
24 bit more, but, I mean, I'll just work with what
25 I've got.

1 Okay. I've -- I've -- I've read it. I
2 didn't study it, but I'm aware of that paragraph.

3 Q. Okay. So this paragraph describes
4 retargeting advertising to a user based on that
5 user's past actions; right?

6 A. Comparison to targeting advertising,
7 which an ad is selected based on responses of other
8 viewers. Retargeted advertising and history
9 specific to the present user. That makes sense to
10 me.

11 Q. Okay. And Merriman '061 does not include
12 the same description of retargeted advertising;
13 right?

14 A. I'm sorry, what was the question again?

15 Q. Merriman at '061, meaning the earlier
16 Merriman that we were discussing, does that include
17 the same description of retargeting advertising;
18 right?

19 A. I want to check my report because I
20 remember looking at '154. The -- the -- the patent
21 that I reference in my report is the '154 patent.
22 And I believe you're now asking me a question about
23 this -- the '061 patent?

24 Q. Correct.

25 A. Yeah, I don't remember mentioning that in

1 my report or -- or studying it. '154 is what comes
2 to my mind. I haven't read the rest of my report.
3 And I don't believe I referred to it. And if I
4 did, I'd have to be directed to that paragraph to
5 refresh my memory.

6 Q. Okay. So just to be clear, Merriman '061
7 was the Merriman applied in the obviousness grounds
8 for these proceedings. And Merriman '154 was not
9 applied, correct?

10 A. Well, that I have to -- when you say the
11 proceeding, you mean the petition or -- or the
12 declaration by Dr. Ranka?

13 Q. For this purposes, both.

14 A. Yeah, I -- I don't remember, you know,
15 the petitioner's report. I don't remember Ranka
16 referring to the '061. He may have. I usually --
17 I just mention the '154, so I'm not sure what the
18 petitioner did. And I was really focused on
19 Ranka's report. And I don't remember him focusing
20 on that. He may have, but I just don't recall as I
21 sit here. And I don't see it mentioned in my
22 report. I am doing a quick read now.

23 Q. Do you recall which Merriman Dr. Ranka
24 applied in his obviousness analysis?

25 MR. MILKEY: Objection to form.

1 A. Well, the only one I reference is the
2 '154, so, no, I don't recall as I sit here, if he
3 referred -- if he referenced more than that or not.

4 Q. (By Ms. Sauer) Okay. So sitting here
5 today, you don't recall which Merriman Dr. Ranka
6 applied for his obviousness grounds?

7 (Stenographer asks for clarification.)

8 MS. SAUER: For his obviousness
9 grounds.

10 A. Well, I don't see where I referenced any
11 other report, so as far as I can see, he used the
12 '154.

13 Q. So to be clear, Mr. Sherwood, Dr. Ranka
14 applied '061 in the obviousness grounds.

15 A. Well, I don't remember, and I don't see
16 in my report where I discussed that specific
17 patent.

18 Q. Do you recall reviewing the
19 Merriman '061?

20 A. No, I don't.

21 Q. Okay. So I guess returning to my
22 question of whether Merriman '061 includes the same
23 description of retargeted advertising that we were
24 just looking at in Merriman '154, it sounds like
25 you're not familiar with Merriman '061 enough to

1 state --

2 A. I don't remember --

3 Q. -- one way or the other; is that correct?

4 A. -- going through the '061. And I'm
5 looking through my report to see if I discussed it.
6 And I don't see where I discussed it. If you -- if
7 you have a specific paragraph that you're referring
8 to in my report, I would be happy to read it and
9 perhaps give you a better answer.

10 Q. Let's take a look at Paragraph 66 of your
11 declaration.

12 A. And we are still on the 2001 Declaration;
13 right?

14 Q. That's correct.

15 A. All right.

16 Q. Just let me know when you've had a chance
17 to review Paragraph 66.

18 A. I will, I will. Sometimes these
19 declarations get confused in my mind. I want to
20 make sure I am on the right one. Okay. So we're
21 still on the 240249. Paragraph 61?

22 Q. 66.

23 A. 66, all right. I'm at 66.

24 Q. Okay. I'm looking at that second
25 sentence, "Instead in the context of targeted ad

1 systems like Merriman and Jaye." Do you see that?

2 A. Yes.

3 Q. Okay. And that sentence ends with: As
4 described by Merriman. And you cite to
5 Exhibit 1035.

6 A. Yes, I see that.

7 Q. Okay. So to be clear, Exhibit 1039 is
8 the Merriman '061 patent.

9 A. 1035?

10 Q. I'm sorry, yes, 1035 is Merriman '061.

11 A. I thought it came up. I just didn't
12 remember exactly where I referenced it. Thank you.

13 Q. Okay. All right. So this just refers to
14 your referencing of the Merriman '061 Patent;
15 correct?

16 A. Yeah, I'm referencing his use of the term
17 "success rate" in that -- in that reference, yes.

18 Q. Okay. And Merriman '061 does not have a
19 description of retargeted advertising; right?

20 A. I thought we just read that. And it had
21 a sentence. I may -- again, I may be confused. I
22 can check them again. But one of the patents you
23 just showed me we looked at the definition of
24 retargeting.

25 Q. All right. So just to be clear we were

1 previously looking at Merriman '154, which has a
2 discussion of retargeting advertising?

3 A. Yes.

4 Q. Now, the Merriman '061, that's applied in
5 the obviousness grounds by Dr. Ranka does not
6 include a discussion of retargeting advertising;
7 correct?

8 A. Well, let's -- let's take another look at
9 it here. I have to read the whole patent again to
10 see if it references retargeting. So I -- I could
11 do a search. And I don't know if I can search this
12 PDF now. But I don't recall -- again, I don't
13 recall every word of it. But I don't recall it. I
14 likely would have mentioned if it did in the
15 report, but -- so I don't recall if it -- if it has
16 that specific language or not.

17 Q. Okay. I'd like to refer back to the
18 Merriman '154 Patent.

19 A. Okay. I'll go back there. All right.
20 I'm at the 154 Patent.

21 Q. All right. If you could go to Column 5
22 and review starting at Line 60.

23 A. I -- I read -- I've read it.

24 Q. Okay. So, again, this is another
25 discussion of retargeted advertisements, right, at

1 least based on that first sentence?

2 A. Use of the user activity list to generate
3 and distribute retargeted advertisements as
4 illustrated in Figure 3, so yes.

5 Q. Okay. And this paragraph discusses
6 storing user's past actions; correct?

7 A. Well, let's read it: Past user activity
8 is stored in an activity table. So, yes, the past
9 activity is stored in an activity table.

10 Q. Okay. And, then, later on in this
11 paragraph, there's an example given of users who
12 looked at product X description at a given website
13 at least twice in the last two weeks, but did not
14 purchase. Do you see that example?

15 A. I see a sentence that says: An example
16 selection criteria is a screen meeting the
17 following parameters, users who looked at product X
18 description at a given website at least twice --
19 okay, I -- I see that.

20 Q. Okay. So at least in this given example,
21 this explains that, as part of retargeting
22 advertisements, it stores users' past actions;
23 right?

24 A. Well, I don't know that it gives the
25 reason for it, but it -- certainly, the paragraph

1 describes past user activity is stored, yes.

2 Q. Okay. So, maybe if we go -- if we
3 continue on Column 6 we'll get to the reason from
4 lines 5 through 17.

5 A. I see -- I see the lines.

6 Q. Okay. So this provides a further
7 retargeting example; right?

8 A. Well, let's read it. I don't know if
9 it's another example or the same example. But it
10 says: In operation, a user browser visits
11 affiliate website such as AltaVista, travel along,
12 et cetera, the other affiliated websites in the
13 network. The ad banner space contains a redirect
14 to the advertising server where an ad banner
15 corresponding to a selected ad -- advertisement
16 will be selected for delivery to the AltaVista
17 web page.

18 Okay. I -- I see that.

19 Q. Okay. So when a user visits an
20 affiliate -- an affiliate website, let's say
21 Dilbert, an ad banner space contains a redirect to
22 an ad server; right?

23 A. Yeah, the ad banner contains a redirect
24 to the advertising server, yes.

25 Q. Okay. And the ad server uses the user ID

1 to look up past activities, like past visits or
2 purchases; right?

3 A. I see that's described later on, but,
4 yes, it would have to be associated, at some point,
5 with a user ID, yes.

6 Q. All right. So, for example, the user may
7 have visited Travelocity twice and not made a
8 purchase. And the ad server, then, selects a
9 Travelocity ad to be placed in the ad banner space;
10 right?

11 A. Well, the user ID is looked up in the
12 list of user IDs preselected for a -- for a
13 retargeted advertisement. If the user is found in
14 the table as having been preselected, then the
15 preselected ad banner is delivered to the AltaVista
16 web page. That's my understanding of how
17 DoubleClick works, yes.

18 Q. Okay. And do you agree that in the
19 example I provided, a Travelocity ad would have
20 been placed in the ad banner space?

21 A. Well, I didn't know you provided an
22 example, but I -- are you referring to the
23 specifications, again, on the Line 7 where they use
24 Travelocity?

25 Q. I am referring to the specification. And

1 I'm providing an example case in which a user may
2 have visited Travelocity twice and not made a
3 purchase. So in that example, the ad server would
4 then have selected a Travelocity ad to be placed in
5 the ad banner space; right?

6 A. Well, if the user visited Travelocity
7 twice, and at that point all -- all the server may
8 know is that the user visited it twice. Now,
9 the -- the next step, which is selecting the ad to
10 be served is a function of how -- how the
11 algorithms for DoubleClick worked. That they're --
12 they're -- they memorialize two separate functions.
13 That's one recording the data, and then the second
14 acting on the data.

15 Now, again, I -- you know, I -- to me,
16 we're getting far off of my report. I don't know I
17 discussed this specific language in my report, so,
18 you know, I'm giving you my opinion as I sit here
19 today. If I studied the -- some of your questions,
20 which I consider to be outside the scope of my
21 report, if I studied them more, I might have a
22 different -- a slight different opinion.

23 But based on what you're saying and the
24 question is that: If you visited twice, okay, we
25 know it's visited twice. The decision to send an

1 ad down is a separate decision.

2 Q. Okay. But we can agree that the ad
3 server would have considered that the user had
4 previously visited Travelocity before; right?

5 A. Well, I don't know what the server is --
6 server is thinking. The server has a -- as I -- as
7 I understand it, the server would have a data
8 point, or, maybe, two data points that a user had
9 visited this particular site twice. It would
10 have -- it would have those data points in some
11 form, yes.

12 Q. Okay. And in this example, information
13 from the user's past visits to Travelocity would
14 have come from Travelocity itself; right?

15 A. Yeah, it would be originating from
16 Travelocity because Travelocity, at that point, is
17 the only website that knows it actually was
18 visited.

19 Q. Okay. And in this example, Travelocity
20 would have been motivated to provide profile
21 information in the hopes of having a retargeted ad
22 to its website, like in this example; right?

23 A. Well, I don't -- I don't exactly know
24 what their specific motivations were, but if they
25 wanted to -- to implement retargeting, you know,

1 then they would have -- they would have had to
2 provide some information to the server for that
3 retargeting to take place.

4 Q. Okay. So Travelocity would have
5 voluntarily given profile information for the
6 purpose of retargeted ads; right?

7 A. Well, it certainly could have. They
8 could have voluntarily did it. I mean, I don't --
9 I wouldn't put it outside the possibility they
10 might have paid for it in some form. But as I
11 understand it, they're providing that kind of
12 information for free.

13 Q. Okay. And the previous Merriman patent,
14 the Merriman '061, it does not include this same
15 description of storing past user activity for
16 retargeted advertisements to that user on another
17 website; right?

18 A. I don't know that to be a fact without
19 rereading the whole patent. I don't recall
20 discussing that specific item in my report. But,
21 as I sit here, I certainly don't remember reading
22 that particular language in the '061.

23 Q. Okay. So the features that we just
24 discussed in this Merriman '154 patent, like
25 storing user activity for retargeting ads, those

1 are absent from Merriman '061; right?

2 A. Again, I don't -- I don't think I made a
3 direct comparison of -- of all the language, of all
4 the claims and all the specifications of the two
5 patents, but -- so as we sit here, I just -- I just
6 can't offer a specific opinion on that. I didn't
7 actually study those -- those differences. I was
8 really focused on the -- on the -- on my report and
9 what Dr. Ranka talked about.

10 Q. Okay.

11 (Off-the-record discussion.)

12 Q. (By Ms. Sauer) Sorry, bear with me one
13 moment. I may have lost my window.

14 Mr. Sherwood, I'm sending you another
15 document over the chat.

16 (Sherwood Deposition Exhibit No. 1037
17 was marked for identification.)

18 A. The Exhibit 037 -- 1037?

19 Q. (By Ms. Sauer) Correct. Just let me
20 know when you've had a chance to open that
21 document.

22 A. What come up for me was 322. Maybe I
23 read it -- no, I -- never mind. I confused the
24 exhibit with the actual patent.

25 Okay. So I have Jaye Patent in front of

1 me.

2 Q. Okay. I'd like to direct you to
3 Column 6, the paragraph starting at line 32. Can
4 you review that paragraph, please.

5 A. I've read it.

6 Q. Okay. Now, towards the end of this
7 paragraph, this explains that the "special URL may
8 also contain additional information, such as
9 information identifying the local server and
10 information indicating the local ID of the user.
11 The additional information may be appended to the
12 end of the URL."

13 Do you see that?

14 A. Yes, I see it.

15 Q. Okay. So the information identifying the
16 local server ID indicates which server contributed
17 that information; right?

18 A. Well, let's read it. The special URL
19 points to the enterprise server, calls for
20 insertion of a graphic image in the zero width and
21 height. A special URL may also contain additional
22 information, such as information identifying the
23 local server and identifying the local server #
24 information included in the local ID of the user.
25 Additional information may be appended to

1 the end of the URL in the form of an
2 http, slash [as read] -- yes, that -- that makes
3 sense to me.

4 Q. Okay. Just to reiterate my question,
5 that was the information identifying local server
6 ID indicates which server contributed the
7 information; right?

8 A. Well, let's -- let's be specific. The
9 special URL may also contain additional
10 information, such as information from identifying
11 such as. It says may. [Mumbling] and calls for
12 insertion --

13 [Witness is mumbling. Not reportable.]

14 THE STENOGRAPHER: Sir, you
15 can't -- I can't have you mumbling.

16 THE WITNESS: I'm sorry.
17 I'm -- I'm trying to read out loud. I
18 beg your pardon. Right?

19 A. Let me try to read it more carefully.
20 The special URL may also contain
21 additional information, such as information
22 identifying the local server.

23 So as I read that, it -- it doesn't say
24 it has to include it, but it does say that it may
25 include identification of the local server.

1 Q. (By Ms. Sauer) Okay. And where it is
2 included, that information identifying the local
3 server indicates which server contributed that
4 information; right?

5 A. I believe you're asking me to interpret
6 that question, interpret that language, the
7 language which states the special URL may also
8 contain additional information, such as information
9 identifying the local server and information
10 indicating the local ID of the user. It doesn't
11 specifically say that it's -- it's associating the
12 local server with information that it's collecting,
13 but I -- I believe it certainly could do that, yes.

14 Q. All right. The information that's being
15 sent is sent from that local server; right?

16 A. I think that's what it says, yes.

17 Q. So the information identifying local
18 server ID indicates a source of information that's
19 being provided; right?

20 MR. MILKEY: I object to form.

21 A. Yeah, when you say indicates a source, it
22 doesn't mean it indicates the source. But it -- it
23 certainly indicates that it came from the local
24 server.

25 Q. (By Ms. Sauer) Okay. I'd next like to

1 go to Column 14 of Jaye.

2 A. I'm at Column 14.

3 Q. Okay. I'd like to review the paragraph
4 starting at Line 15 up through 27.

5 A. I read it.

6 Q. Okay. So looking at the sentence
7 starting at Line 22, this explains that "the
8 enterprise server may parse the global user profile
9 and release to an interested party, such as an
10 advertiser, only those portions that are of
11 interest to the advertiser." Do you see that?

12 A. I see that sentence, yes.

13 Q. Okay. So this means that, in addition to
14 the local user ID, additional profile information
15 can be provided to an interested party; right?

16 A. I believe it means the enterprise server
17 may parse the global user profile and release it to
18 an interested party, such as an advertiser, only
19 those portions that are of interest to the
20 advertiser and/or to which the advertiser
21 subscribes. Makes sense to me, yes.

22 Q. Okay. So you agree that profile
23 information is provided to an interested party in
24 this sentence; right?

25 A. I agree that the enterprise server may

1 parse the global user profile and release it to an
2 interested party, yes.

3 Q. Okay. And Jaye describes parsing the
4 global profile. So that means there's the ability
5 to provide just selected portions of a profile;
6 right?

7 A. The enterprise server may parse the
8 global user profile, so I would say, yes, it may
9 parse it.

10 Q. Okay. And the profile portions are
11 provided to advertisers; correct?

12 A. Well, according to this sentences, it
13 says: The enterprise server may parse the global
14 user profile and release to an interested party,
15 such as an advertiser, yes.

16 Q. Does Jaye have any statements that it
17 embodies any Engage commercial product?

18 MR. MILKEY: I object to form.

19 A. Yeah, I just took another quick look.
20 I -- I don't see where they're referencing a
21 specific commercial product, but I didn't -- I
22 didn't re-read every aspect of the patent. But I
23 don't see it in just a quick review.

24 Q. (By Ms. Sauer) Okay. But sitting here
25 right now, you're not aware of any statements in

1 Jaye that it embodies an Engage commercial product;
2 right?

3 MR. MILKEY: I object to form.

4 A. Are you asking me if in the patent that
5 we're looking at, the term "Engage" is actually
6 used or "Engage commercial product" is used?

7 Q. I'm asking if Jaye has any statements
8 that it embodies any Engage commercial product.

9 A. So not whether it refers to them, but
10 whether or not it actually uses the term "Engage
11 commercial product." I associate the patent
12 with -- with Engage, but I don't -- I don't see, in
13 the patent, where the term "commercial product" is
14 used.

15 Q. Okay. And you agree that a patent being
16 assigned to a particular company does not, by
17 itself, indicate that it embodies a commercial
18 product of that company; right?

19 A. Yeah, I would agree that you could assign
20 a patent to any number of people. It wouldn't
21 necessarily be related to a commercial product of
22 this company, yes.

23 MS. SAUER: I think we've been
24 going for about an hour. Did you want to
25 take a short break?

1 MR. MILKEY: I -- maybe, we --
2 we can take a break, but maybe we can go
3 off the record.

4 (Brief recess taken.)

5 Q. (By Ms. Sauer) Mr. Sherwood, I just had
6 one remaining question on Engage before we move on.
7 Did you say that you were a previous user
8 of the Engage system?

9 A. Actually, what I -- what I thought I said
10 was that I had very good recall of using
11 DoubleClick because, I believe, it was, like, the
12 leading, you know, ad agency in that '99 time
13 frame. And I remember using Engaged, but I
14 don't -- I don't have the recall that I do with the
15 DoubleClick.

16 Because I know, at that time frame, I
17 was, you know, doing consulting work, but also
18 placing ads on my own websites. And so I -- I
19 would have looked at -- I know remember looking at
20 DoubleClick, Engage, GoTo, Overture, AltaVista,
21 AOL, but I don't have the exact recall on Engage
22 that I do of DoubleClick.

23 Q. Okay. And based on your recall of
24 Engage, as a user, you did not have access to
25 Engage's user profile database; right?

1 A. I believe that's correct, yes.

2 Q. Okay. Profile information is known to be
3 valuable to advertisers; right?

4 A. I'd say they -- they like it. But in and
5 of itself, it's -- it's trumped by the -- the
6 results that the ads get. So if the best profile
7 data doesn't produce, you know, some sort of
8 outcome that the advertiser believes is important,
9 then -- then the profile data doesn't have value in
10 those cases. The advertiser is looking for more
11 outcomes than actually the data itself.

12 Q. Okay. But in at least some cases,
13 profile information would have some value to
14 advertisers; right?

15 A. Well, I want to first make sure when I
16 answer the question, that I'm answering it with
17 respect to the period of 1999 because, if we were
18 to look at the same types of things, you know,
19 eight or nine years later, then advertisers would
20 have a different view of -- of profile information.

21 But as an advertiser in 1999, I'm looking
22 at how much money I spent and what was the outcome?
23 So I'm looking at the actual success of the ad
24 campaign with respect to, you know, my own income
25 statement and balance sheet, rather than the actual

1 profile data.

2 Q. So is it your opinion that in the 1999
3 time frame, advertisers would not have valued
4 profile information?

5 MR. MILKEY: I object to form.

6 A. Well, I can't say unequivocally that that
7 information isn't -- isn't interesting, but it's
8 not what an advertiser is looking for in that
9 period of time, if we look at what existed then. I
10 mean, that was pre-iPhone, you know, pre-iPad. We
11 had 56K modems.

12 So the advertiser was looking at the
13 things that they could measure easily from -- in
14 that time frame in a non-sophisticated manner. And
15 that would have been, basically, outcomes.

16 That doesn't mean they didn't look at the
17 profile information, but no matter what the profile
18 information said, they're going look at the
19 outcomes to be their measure of success.

20 Q. (By Ms. Sauer) But you agree that
21 profile information would at least been of interest
22 to advertisers; right?

23 A. Yeah. And I want to make sure -- of
24 interest. And I can say this, as an advertiser in
25 1999, if you sent me an email with the profile of a

1 user, I'd probably look at it and file it because
2 it's interesting. But what I'm really am concerned
3 about is the outcome of my investment.

4 Q. All right. Do you agree that advertisers
5 would have valued some kinds of profile information
6 more than other kinds?

7 MR. MILKEY: I object to the
8 form.

9 A. Well, I'm going to go back again. And
10 I'm going to answer in the context of 1999, not in
11 hindsight, not ten years later. But at that
12 particular point in time, as I said earlier, what
13 the advertiser is looking at is the outcomes.
14 Not -- not the profiles of the -- of the actual
15 users or even the websites. They're looking at the
16 outcome, whether it's a click-through rate on a
17 banner or a click-through rate or a view op on a
18 banner, they're looking at outcomes.

19 Q. (By Ms. Sauer) But earlier you agreed
20 that profile information would at least be of
21 interest; right?

22 A. Yeah, but I characterized the interest in
23 a very specific way. I am saying, as an advertiser
24 if I get an email about, you know, DoubleClick --
25 let's say, hypothetically, DoubleClick sends me an

1 email that says my user profiles are the following,
2 I'd -- thank you very much, but it doesn't matter
3 to me because I'm looking at outcomes.

4 So it's a very, very specific interest
5 the way I'm -- the way I'm describing it. Not
6 interest from the standpoint of I'm going to go
7 study it or I am going to use it because
8 advertisers look at outcomes in 1999.

9 Q. Do you agree that there's some cost
10 associated with collecting, maintaining, and
11 verifying profile data?

12 MR. MILKEY: Object to form.

13 A. Well, sure, if you're an ad agency like
14 DoubleClick and you have to capture the data, you
15 have to set up an infrastructure to capture it.
16 Now, the capturing itself, in terms of paying the
17 website, generally, is free, but you need
18 infrastructure to store it: Server, computer, you
19 know, computer programmers. So there's -- there's
20 costs associated with capturing it that DoubleClick
21 would -- would incur, yes. Or -- or an advertising
22 agency like DoubleClick, yes.

23 Q. So if an advertising agency like
24 DoubleClick does not have enough profile
25 information, it would have known to use incentives

1 for parties to provide it with profile information;
2 right?

3 MR. MILKEY: Object to form.

4 A. Well, I don't -- I can't speak for
5 DoubleClick's, you know, strategic thinking. My
6 experience in even commenting about DoubleClick is
7 what I knew about DoubleClick at the time. As far
8 as I know, you know, they weren't going to pay
9 anybody for information that they already get for
10 free.

11 Q. (By Ms. Sauer) Understood. Let's assume
12 an example where an ad agency does not have enough
13 profile information.

14 A. Uh-huh.

15 Q. In that scenario it would have known to
16 use incentives for parties to provide it with
17 profile information; right?

18 MR. MILKEY: Objection to form.

19 A. No, I don't -- I don't think that
20 necessarily follows. If they -- if they were
21 lacking profile information, the most obvious thing
22 for them to do would be to go sign up more websites
23 and collect more profile information.

24 Q. And you said the most obvious thing for
25 it to do would be to sign up more websites?

1 A. Yeah, based on what I understood your
2 question to be, which is: What would a -- what
3 would an agency do if they lacked profile
4 information?

5 Well, if they gather profile information
6 from websites and they lacked profile information,
7 then the first thing they would do is sign up more
8 websites.

9 Well, I'm presuming that -- that in your
10 hypothetical that they're already capturing all the
11 data they can, partial parsed-out data in the
12 current websites they have in their portfolio. So
13 if they want to get more -- more profile data, and
14 they're capturing all they can now from their
15 current websites, then they would have to sign up
16 more websites.

17 There may be other options available to
18 them, but I would think that would be one they
19 would look at carefully.

20 Q. Okay. And do you agree that in order to
21 sign up more websites, that ad agency might need to
22 use incentives to get those websites to sign up?

23 MR. MILKEY: I object to form.

24 A. Well, again, in hindsight, if I -- if I'm
25 thinking about the year 2015, I might be able to

1 buy into that. But if I look at 1999, that's just
2 not happening in that period of time. Agencies
3 like DoubleClick were capturing, were getting
4 websites to sign up, essentially, for free.
5 They're capturing the data for free. DoubleClick
6 is growing. There would be no reason in my mind
7 for them change that basic model.

8 So, you know, the model being, you know,
9 sign-up websites, capture data, you know, and drop
10 ads. So, no, I wouldn't think that's a necessary,
11 or even an obvious thing to do, frankly.

12 Q. (By Ms. Sauer) And that's based on your
13 premise that these agencies are already capturing
14 enough data from websites already; right?

15 A. Well, it's not based on that premise.
16 It's based on the fact that when I look at the
17 industry in 1999, people were -- or the industry --
18 the industry was still developing.

19 I mean, no one knew, at that time,
20 whether clicks were going to be successful, or
21 views were going to be successful, or whether
22 search engines, like GoTo or Overture would take
23 over what -- what DoubleClick was doing.
24 DoubleClick was -- was growing. They were all
25 growing, but it was competitive.

1 So from a competitive nature I would not
2 see them going in and -- and offering to pay for
3 something that they're already getting for free.

4 (Sherwood Deposition Exhibit No. 1039
5 was marked for identification.)

6 Q. (By Ms. Sauer) Okay. I'd like next to
7 go to the Coleman reference. And that's
8 Exhibit 1039.

9 Just let me know when you've had a chance
10 to open that one.

11 A. Okay. I see Exhibit 1040. Where's 39?
12 I don't see it in the chat. Oh, wait a minute --
13 no. No, I don't see the exhibit. The last exhibit
14 I have is Exhibit 1040.

15 Oh, wait a minute, 1039?

16 Q. Correct.

17 A. Yeah, okay. I've got it. It's up here.

18 Q. Okay.

19 A. Okay. Just a second.

20 Okay. I think I just may have --

21 Q. Once you have that open, if you could
22 scroll to Paragraph 111.

23 A. Just a second here because -- all right.
24 I want to make sure I am right here, so
25 Exhibit 1039. Blow it up just a bit here. Okay,

1 okay. I'm not -- I've got Figure 2. I'm not
2 scrolling very fast here.

3 All right. Let me try again. Here we
4 go. I'm sorry, now which page did you want me to
5 go to?

6 Q. Paragraph 111.

7 A. Paragraph 111. What -- what column
8 number? Let me -- I'm in -- I'm in -- let
9 me make sure I'm in the right one her now. I'm in
10 US 23651.

11 Q. That's right.

12 A. Is that the right one?

13 Q. Correct.

14 A. Okay. Oh, I see, there are paragraphs
15 that are numbered here -- numbered here.

16 111?

17 Q. That's right.

18 A. Okay. I'm at Paragraph 011 it looks
19 like, 111.

20 Q. Okay. So feel free to review that
21 paragraph in its entirety, but I'm focusing on the
22 second-to-last sentence of that paragraph.

23 A. Which starts with what?

24 Q. It starts with "Upon the payment 809."
25 Do you see that?

1 A. "Upon payment 809." I do see it.

2 Q. So this says "Upon Payment 809," from an
3 advertiser to the system proprietor, profiles 805
4 may be applied to the advertisers. You see that;
5 right?

6 A. Yes, I do see that.

7 Q. All right. So this states that
8 advertisers pay for profile information; right?

9 MR. MILKEY: Objection to form.

10 A. No, it doesn't say that.

11 Q. (By Ms. Sauer) So I see, upon payment
12 from an advertiser to the system proprietor
13 profiles may be provided to the advertisers. Do
14 you see that?

15 A. Yes, I do. That's correct.

16 Q. So profiles are provided to advertisers
17 upon payment; right?

18 A. Well, the way I read it, it says: Upon
19 payment the profiles may be provided.

20 Q. Okay. So in that sentence, profiles may
21 be provided upon payment from an advertiser; right?

22 A. Upon payment from an advertiser to the
23 system proprietor profiles may be provided to the
24 advertisers. Yes.

25 Q. Okay. So this states that advertisers

1 pay for profile information; right?

2 MR. MILKEY: Objection to form.

3 A. No, it doesn't say that. It says that
4 upon payment from an advertiser to the system
5 proprietor, profiles may be provided to the
6 advertiser.

7 Q. (By Ms. Sauer) Do you agree that this
8 shows payment by an advertiser for profile
9 information?

10 A. I agree that it says, upon payment from
11 an advertiser to the system proprietor, profiles
12 may be provided to the advertiser. Yes, I agree
13 with that.

14 Q. Okay. So you agree that this shows it
15 was known to provide profile information to
16 advertisers?

17 A. I don't -- what do you mean by: It was
18 known?

19 Q. This shows that at the time that this
20 patent application was written profile information
21 was provided to advertisers for payment, right,
22 based on that sentence?

23 A. I beg to differ with you. It doesn't say
24 was provided, or must be provided, or even is
25 provided. It says: Upon payment from an

1 advertiser to the system proprietor, profiles may
2 be provided to the advertiser.

3 Now, I don't -- I don't have, clearly, in
4 the top of my head all the context of the rest of
5 the patent, so, you know, that may impact that.
6 But that particular sentence just says: It may be
7 provided.

8 Q. Okay. Can you read the sentence and
9 interpret it?

10 A. I'll read it. Upon payment from an
11 advertiser -- that's clear to me. Upon payment
12 from an advertiser to the system proprietor,
13 profiles may be provided to the advertiser. I
14 don't read that sentence to say: Must be provided,
15 is provided, was provided. I read that sentence to
16 say, may be provided to the advertisers.

17 Q. Okay. So you could agree that profiles
18 may be provided to advertisers upon payment from an
19 advertiser?

20 A. I would word it the way the language is,
21 which is the reverse more or less of what you said,
22 but the same thing, in essence. Upon payment from
23 an advertiser to the system proprietor, profiles
24 may be provided to the advertiser.

25 Q. Is there any difference between the

1 order?

2 A. I didn't -- I didn't study that, but I'd
3 rather stick with the order the specification
4 describes.

5 Q. All right. And do you see the last
6 sentence of Paragraph 111?

7 A. I see a sentence that reads, in one
8 embodiment only profiles having certain criteria
9 are provided to the advertisers. I see that
10 sentence.

11 Q. Okay. So only profiles having certain
12 criteria. Do you agree that this indicates only a
13 subset of profile information may be provided?

14 A. Let me read it carefully. In one
15 embodiment -- again, I -- I don't -- I don't recall
16 every embodiment discussed in this particular
17 patent, but it says, in one embodiment, only
18 profiles having certain criteria are provided to
19 advertisers.

20 So I -- I wouldn't want to interpret that
21 any different than what the language says.

22 Q. Do you understand what only profiles '805
23 having certain criteria means?

24 A. Yes, it means only profiles having
25 certain criteria.

1 Q. You just restated it. You didn't explain
2 what that means.

3 A. I don't -- I don't think it needs an
4 explanation. It says: Only profiles having
5 certain criteria. But I'm -- I'm not going to sit
6 here and rewrite this specification because that
7 doesn't make sense to me to do that. And I don't
8 think I even discuss that in my report. But you're
9 asking me about that particular sentence. To me,
10 the sentence speaks for itself.

11 Q. And you can't read this and interpret it?
12 You can only say exactly what's in here; right?

13 MR. MILKEY: I object to form.

14 A. I don't see any reason to reinterpret it.
15 It -- it's the language of the specification.
16 Somebody worked pretty hard for that sentence.
17 I -- I think it makes sense.

18 Q. (By Ms. Sauer) Okay. So you can't agree
19 that only profiles having certain criteria
20 indicates a subset of profile information as
21 provided?

22 MR. MILKEY: I object to the
23 form.

24 A. It sounds like an easy question with an
25 easy answer to jump to that's a derivative. But I

1 don't see a reason why to reinterpret it when it
2 says: Only profiles having certain criteria are
3 provided to the advertiser.

4 Q. Do you read that and interpret that to
5 mean all profiles are provided to advertisers?

6 A. I read it to say in one embodiment only
7 profiles having certain criteria are provided to
8 the advertisers.

9 Q. Do you know what it means to have certain
10 criteria?

11 A. Well, sure, in a -- in a -- in a
12 general -- general sense if I have criteria A, B,
13 and C, then B might be certain criteria.

14 Q. Okay. So in that example, only a subset
15 meets that criteria; right?

16 MR. MILKEY: Object.

17 A. Well, the reason I'm -- I'm hesitating is
18 to -- is to redefine it as a subset or a
19 derivative. I guess a person could do that, but I
20 don't see any reason to do that when the language
21 is clear. In -- in one embodiment, only profiles
22 having certain criteria are provided to
23 advertisers. I didn't study that issue in -- in
24 detail such that, you know, could it be possible
25 that -- that only profiles were not a derivative,

1 or maybe only profiles refer to something that's --
2 that's not described there. But the sentence
3 itself, I still think speaks for itself.

4 Q. I am going to move on to --

5 (Stenographer asks for clarification.)

6 Q. (By Ms. Sauer) We're going to move on to
7 Paragraph 114, now.

8 A. Okay. I have paragraph 114.

9 Q. Okay. And I'm looking at a sentence
10 starting about midway down. Do you see, "In
11 another embodiment, a registered user 801"?

12 A. [Witness is whispering/mumbling. Not
13 reportable.] Yeah, in one embodiment, the
14 registered user 801. Yes, I see that sentence.

15 Q. Okay. So this says, "In another
16 embodiment, a registered user 801 may be
17 compensated based on the level of personal
18 information provided by the registered user 801.
19 For instance, a registered user 801 who has
20 provided detailed information requested in a high
21 level (as explained above) will be compensated at a
22 greater rate than a second registered user 801 who
23 has provided less detailed information (of a lower
24 level.)

25 A. You had -- you're just reading a little

1 faster than I do. What -- what -- well, we don't
2 have line numbers here; so --

3 I thought I had where you started. It
4 says, the first time I see 81 [as spoken]
5 references where it says, in one embodiment, the
6 registered user 801, is that the sentence you're
7 talking about?

8 Q. No, it starts with: In another
9 embodiment.

10 A. All right. Let me see if I can find that
11 one.

12 Okay. I see it. In another embodiment,
13 a registered user may be compensated based on the
14 level of personal information provided by the
15 registered user. I -- I see that, yes.

16 Q. Okay. All right. And you -- do you
17 understand that -- those two sentences then?

18 A. I understand that in another embodiment a
19 registered user may be compensated based on the
20 level of personal information provided by the
21 registered user. For instance, a registered user
22 who has provided detailed information requested in
23 a high level will be compensated at a greater rate
24 than a second registered user who was provided less
25 detailed information. I see those sentences, yes.

1 Q. Okay. So this describes differing
2 compensation levels; right?

3 A. I'd say at a very high level it requires
4 different compensation levels, yes.

5 Q. Okay. And in one example, there's a high
6 compensation level for detailed information. Do
7 you see that?

8 A. Yes.

9 Q. And, then, a lower level compensation for
10 less detailed information. Do you see that?

11 A. Yes.

12 Q. All right. So this describes providing
13 compensation based on the amount of profile
14 information given; right?

15 A. Again, I -- I don't see the word "amount"
16 in there. It may be there, but I don't see it.
17 They're talking about detailed information. In
18 this particular sentence, they don't really
19 describe what that is. But a registered user may
20 be compensated based on the level of personal
21 information provided by the registered user. I
22 don't see that, the term, "amount" or "quantity,"
23 just level of personal information.

24 Q. Do you see compensated at a greater rate?

25 A. I see, will be compensated at a greater

1 rate than a second registered user.

2 Q. Great. And that second registered user
3 provided less detailed information; right?

4 A. Yes -- well, it doesn't really describe
5 what less is or what detailed information is.
6 And it -- but it does -- has a term, which has
7 provided less detailed information.

8 Q. Okay. So you agree that it describes a
9 greater rate of compensation for detailed
10 information, as opposed to less detailed
11 information?

12 A. I believe it -- I think you've almost
13 quoted it exactly, but will be compensated at a
14 greater rate than a second registered user, who has
15 provided less detailed information. Yes, it makes
16 sense --

17 Q. Okay.

18 A. -- to me.

19 Q. Okay. So this describes a greater rate
20 of compensation for more detailed profile
21 information being provided; right?

22 A. I don't think it describes it
23 necessarily, but it states it.

24 Q. Okay. And Coleman describes using this
25 profile information for targeted advertising;

1 right?

2 A. Let me -- let me take a look again at
3 this patent.

4 Q. So you could start at least at the
5 beginning of that same paragraph, Paragraph 114.

6 A. Let me go back and take another look.

7 Paragraph 114 states: In one embodiment,
8 specific advertisements may be presented to a
9 registered user via email. And such advertisements
10 may be presented based on the commercial usage or
11 commercial message selection criteria as explained
12 above.

13 So, yes, it's -- it's pretty clear that
14 he's talking about advertisements going to a user.

15 (Sherwood Deposition Exhibit No. 1045
16 was marked for identification.)

17 Q. (By Ms. Sauer) Okay. I'd like to turn
18 to the Bistriceanu reference next. I might be
19 mispronouncing that, but that's Exhibit 1045.

20 A. Is that a new one?

21 Q. It should be in the chat already --

22 A. All right.

23 Q. -- but we have not looked at that one.

24 A. What's the exhibit number again?

25 Q. 1045.

1 A. I'm just looking at the top of mine.

2 Okay. Let me go find it.

3 Q. Bistriceanu is the name on the reference.

4 A. Okay. My 1045 -- my Exhibit 1045 says:

5 United States Patent, Gardner, Patent No.,

6 determining and -- unless I've got the wrong one.

7 That's my Exhibit 1045.

8 Q. You might be looking at 1043.

9 A. Ah, you know, you're right. My -- my --
10 my mistake, I can't get this thing blown up enough,
11 so let me try again. Thank you.

12 Yeah, okay, thank you. I think I now
13 have the right -- the right one. Okay.

14 Q. Okay. So I'd like to direct you to
15 Column 4, the last paragraph on Column 4.

16 A. All right. I'm in Column 4. And I'm
17 having a paragraph that starts with, "In accordance
18 with yet another aspect."

19 Q. Do you see the last paragraph of Column 4
20 that starts: Generally, a system employing?

21 A. Yes. Yes, I see it. Generally, a system
22 employing. Yes, I see that paragraph.

23 Q. All right. I'd like to start with that
24 second full sentence of that paragraph. It says,
25 "Further, the system provides website visitors with

1 incentive awards (i.e. points) in exchange for
2 interacting with the websites in a predefined
3 manner. Anyone who uses the Internet can be a
4 participating website visitor. To participate, a
5 user must visit a registration website and complete
6 a questionnaire."

7 You see that; right?

8 A. Yes.

9 Q. All right. So this paragraph explains
10 that the system provides website visitors with
11 incentive awards for responding to a questionnaire;
12 right?

13 A. A system employing the present invention
14 provides website proprietors with demographic
15 information about the users who visit their
16 websites. Further, the system provides website
17 visitors with incentive awards, for example, points
18 in exchange for interacting with the websites in
19 a predefined manner. Anyone who uses the
20 Internet -- yeah, I see that -- it makes sense to
21 me, yes.

22 Q. Okay. So this explains that the system
23 provides website visitors with incentive awards for
24 responding to the questionnaire; right?

25 A. Further, the system provides website

1 visitors with incentive awards in exchange for
2 interacting with the website, yes.

3 Q. Okay. And later in this paragraph the
4 questionnaire responses are used to create a user
5 profile. Do you see that?

6 A. To participate, a user must visit a
7 registration website and complete a questionnaire.
8 Again, I'd have to read the next sentence to see if
9 the questionnaire was profile information. Just
10 give me a minute here.

11 Q. Okay.

12 A. Yes, I would say the questionnaire does
13 collect profile information.

14 Q. Okay. But, later, this paragraph
15 explains that additional points can be earned by
16 completing supplemental questionnaires; right?

17 A. Now, we're back into Column 5, which is
18 optionally, the participant may therefore earn
19 additional points by completing the supplementary
20 questionnaires. These questionnaires expand the
21 user's profile. Yes, that makes sense to me.

22 Q. Okay. And just to reiterate that
23 question, it was that additional points can be
24 earned by completing supplemental questionnaires;
25 right?

1 A. It says optionally. Optionally, the
2 participant may thereafter earn additional points
3 by completing supplementary questionnaires. Yes.

4 Q. Okay. So with this discussion of
5 additional points by completing supplementary
6 questionnaires, Bistriceanu describes incentives
7 for providing more profile information; right?

8 A. Okay. I -- it looked like you -- did you
9 read a sentence from this specification, or did you
10 add a sentence? What I see is the, "Optionally,
11 the participant may thereafter earn additional
12 points by completing supplementary questionnaires.
13 These new questionnaires expand the user's profile
14 with new information or update the user's profile
15 when information becomes outdated." I see that.

16 Q. So -- so you see that the new
17 questionnaire's expand the user's profile, right?

18 A. I see the new questionnaires expand the
19 user's profile.

20 Q. Okay. And you see that the user -- that
21 the participant earns additional points by
22 completing those supplementary questionnaires;
23 right?

24 A. I see that a participant may thereafter
25 earn additional points by completing supplementary

1 questionnaires, yes.

2 Q. Okay. So based on those two sentences,
3 this describes incentives for profile providers for
4 providing more profile information; right?

5 A. I wouldn't say it describes it because it
6 doesn't describe how it's done or any of the
7 details. But it certainly states it, that it's --
8 that it's possible. It says, optionally, the
9 participant may thereafter earn additional points.
10 It doesn't say they do, or they don't, or they
11 might, or they will. But it does say, optionally,
12 the participant may thereafter earn additional
13 points by completing supplementary questionnaires.
14 Yes.

15 Q. Okay. So it states that it's possible to
16 provide incentives for providing more information?

17 A. It says: Optionally, the participant may
18 thereafter earn additional points by completing
19 supplementary questionnaires, yes.

20 (Sherwood Deposition Exhibit No. 1040
21 was marked for identification.)

22 Q. (By Ms. Sauer) Okay. All right. I'd
23 like to turn to the Herz reference next. And
24 that's Exhibit 1040. It's already in the chat.

25 A. Okay. I have in front of me,

1 Herz, et al, Patent Application Publication.

2 Q. Okay. Can you scroll to Paragraph 116?

3 A. I believe I'm at 116. It starts with:

4 "The owner ID is a three-tuple." Is that the --

5 Q. It sounds right, yep.

6 A. All right.

7 Q. Did you want to take a minute and review
8 that paragraph?

9 A. I read the paragraph.

10 Q. Okay. I'm looking at the sentence about
11 midway down that starts with, "An agent can use."
12 Do you see that?

13 A. Yes.

14 Q. Okay. So this says, "An agent can use a
15 different public key for each alias that it
16 maintains within SDI. The SDI identity code is a
17 unique code generated by SDI for each agent alias
18 and provided to an agent to allow the agent to
19 access the eBank and other ancillary SDI services,
20 for example, to collect payments received for
21 access to the data."

22 You see that, right?

23 A. Yes.

24 Q. Okay. So this paragraph describes that
25 agents use aliases; right?

1 A. The SDI identity code is a unique code
2 generated by SDI for each agent alias. So if an
3 agent had more than one alias, then there would be,
4 as I read that, a -- a unique code for each alias.

5 Q. Okay. And the alias can be used to
6 collect payments received for access to data;
7 right?

8 A. An example, let's see, each alias and
9 product agent to allow the agent to access the
10 eBank and other SDI services, for example, to
11 collect payments received for access to the data.
12 Yeah, I see that.

13 Q. Okay. And so here the alias is
14 associated with the provider of that data; right?

15 A. I don't know if I -- I don't know if it
16 says that or not. I mean, I -- I'm not going to
17 interpret a specification that's, in my opinion,
18 you know, beyond the scope of my report and what I
19 was engaged to do. So I have to stick with the
20 actual language here. And I don't see that
21 specific language that you're quoting in 116.

22 Q. Okay. Can we move to paragraph 40 of
23 Herz?

24 A. I'm sorry, paragraph 40 of -- of this
25 document?

1 Q. Yes.

2 A. All right. Just a second here.

3 Q. Just let me know when you're there.

4 A. I'm at paragraph 40.

5 Q. Okay. So this first sentence says,

6 "Collaborative filtering based on profiling

7 information from multiple users is supported within

8 the central SDI data warehouse, but within a system

9 of economic incentives where users provide profile

10 information in return for receiving payment from

11 vendors for that information."

12 You see that, right?

13 A. Yes.

14 Q. All right. So this states that users

15 provide profile information in return for receiving

16 payments from vendors; right?

17 A. Well, let's read it carefully. It says,

18 collaborative filtering -- "collaborative filtering

19 based on profile information from multiple users is

20 supported within the central SDI data warehouse,

21 but within a system of economic incentives where

22 users provide profile information in return for

23 receiving payments from vendors for that

24 information." Yes, that's -- that's what it says.

25 Q. Okay. So this says profile information

1 is provided in exchange for payments from vendors,
2 right?

3 A. Profile information in return for
4 receiving payments from vendors for that
5 information, yes.

6 Q. Okay. So Herz shows that payment for
7 profile information was known; right?

8 MR. MILKEY: I object to form.

9 A. Well, if the -- if the -- if the
10 situation is of a POSITA in 1999, was aware of this
11 prior art, these provisionals and the other
12 patents, then he would be aware that -- that
13 payments were made. He may not know how they were
14 done or a lot of the details, but he'd be aware of
15 a patent that covers it. But whether or not he was
16 aware of payments actually being made would be a
17 different issue.

18 In other words, it says, collaborative
19 filtering based on profiling information from
20 multiple users. List goes on -- he goes on to say,
21 but within a system of economic incentives where
22 users provide profile information.

23 So a POSITA, if -- if he had this patent
24 in front of him would be aware of that particular
25 statement, but would he be aware of actually being

1 implemented in 1999? I would say that's another
2 question.

3 Q. So the question wasn't whether it was
4 implemented; it was whether it was known?

5 A. Well, the way I would -- the way I would
6 respond that is if -- if in 1999 that a POSITA,
7 hypothetically, is aware of all the priority, he
8 would be aware of this particular patent in this
9 hypothetical POSITA situation. So he would be --
10 he would be aware that this particular language was
11 available.

12 But, to me, known means, would he be
13 aware that it was being used or being implemented,
14 being deployed, and I think that's -- that's likely
15 that he would not have been aware of that.

16 Q. So is it your opinion that for something
17 to be known, it has to be implemented or used?

18 MR. MILKEY: I object to form.

19 A. I don't know that my opinion is -- is
20 that narrow, but I'm thinking about 1999, what a
21 POSITA would know, not ten years later, in
22 hindsight, but what he would know at that point.
23 And known, to me at this point means he has to have
24 some awareness that it's -- that it's in the
25 industry, as opposed to just being aware of

1 language in a patent.

2 So, yeah, I think I would say that -- as
3 I said earlier, that -- that to me known being he's
4 aware that it's -- that it's a part of the
5 industry.

6 At that particular point in time I do not
7 see payments being a part of the industry. They
8 may have come later in hindsight, but that
9 particular point in time I don't think that's the
10 case.

11 Q. So is it your position that for something
12 to be known it has to be used in the industry?

13 MR. MILKEY: Objection to form.

14 A. Again, I think that's a little narrower
15 than I -- than I replied. I -- I don't -- I don't
16 know if I can get into a really good definition of
17 being known. But if the issue is, was he aware of
18 this patent, well, in the hypothetical situation
19 for a POSITA, he would have this information
20 available to him. So he would know the language of
21 the patent.

22 Now -- now, he, then, has to look at what
23 is he -- knows within the industry, so he may see
24 the language of the patent and, then, recognize
25 that that's not being used at that particular point

1 in time. That's -- that's foresight. In hindsight
2 it would be different, but in foresight I think he
3 has to be aware of more than just the sentence of
4 the patent, yes.

5 Q. Is it your position that for something to
6 be known it has to be used in industry?

7 MR. MILKEY: Objection to form.

8 A. Well, again, I don't think I -- I've
9 specified the definition of being known, but I
10 tried to explain it in the context of what a POSITA
11 might know in 1999.

12 Q. Okay. For something to be known, can it
13 be simply explained in a patent?

14 MR. MILKEY: Objection to form.

15 A. Well, I think the way I -- the way I
16 would interpret that issue is that the POSITA in
17 1999, if they had the patent in front of him would
18 certainly see the language, right, he could see
19 this language of the patent.

20 But when he's looking at the industry,
21 other than knowing the language of the patent,
22 would he be aware of it being used or deployed or
23 in the industry? I think he would be aware if it
24 had been, but, in my view at that particular point
25 in time, it wasn't being used. And only in

1 hindsight can we come back and say, oh, yeah,
2 that's obvious.

3 (Sherwood Deposition Exhibit No. 1043
4 was marked for identification.)

5 Q. (By Ms. Sauer) Okay. I'm going to turn
6 to the Gardner reference next. And that's
7 Exhibit 1043.

8 A. That one is already up somewhere. Yeah,
9 here we go. All right.

10 Okay. I have the Gardner reference in
11 front of me.

12 Q. All right. If you could go to Column 7
13 of the Gardner reference.

14 A. I'm at Column 7.

15 Q. If you could review lines 48 through 60
16 of Column 7.

17 A. This is the '694 --

18 Q. Correct.

19 A. -- just to be clear; right?

20 Q. That's right.

21 A. And what -- what lines numbers were they
22 again?

23 Q. 48 through 60.

24 A. Okay. I apologize for asking, but my
25 mouse is so sensitive that I just go up one

1 fraction, and it goes to another page; so --

2 Q. Oh, yeah.

3 A. 48 through 60. Okay. I -- I've scanned
4 them.

5 Q. Okay. So this discusses relatively --
6 I'm sorry, reliability ratings in association with
7 databases; correct?

8 A. Discusses remote databases and relative
9 reliability ratings may also be maintained, yes.

10 Q. Okay. So this describes maintaining a
11 database of profile information, along with
12 reliability ratings of that profile information;
13 right?

14 A. Which sentence are you reading from?

15 Q. I'm not reading -- I'm not quoting a
16 sentence. I'm summarizing those 12 lines in
17 Column 7.

18 A. I -- I'm just reluctant to summarize it.
19 I can read the whole paragraph out loud, but I -- I
20 didn't study this enough to actually summarize it
21 like you just did.

22 Q. Okay. But you, at least agree, that this
23 discusses databases and relative reliability
24 ratings; right?

25 A. It -- it mentions reliability ratings. I

1 don't -- it probably says the word database. I see
2 database, so, yes, it discusses databases. It has
3 that term that's used. And it -- and it mentions
4 relative reliability ratings, yes.

5 Q. Okay. Do you see the sentence that
6 starts: "If a more reliable source of data
7 exists"?

8 A. What's the line number? Oh, I see it.
9 Never mind.

10 Q. Just to read that sentence, it says: "If
11 a more reliable source of data exists for a
12 particular information field, the more reliable
13 information may be retrieved from the appropriate
14 database."

15 So based on that sentence, the
16 reliability may be based on a source of the data;
17 right?

18 A. If a more reliable source of data exists
19 for a particular information field, the more
20 reliable information may be retrieved. I'd have to
21 really kind of study this, this whole patent to
22 kind of understand what they mean by reliable
23 source. All I can do is read -- read it again. I
24 mean, I don't know how to reinterpret what they've
25 said.

1 Q. Okay. So do you agree that tracking a
2 source of data can give some insight as to the
3 reliability of that data?

4 A. Well, that -- that's -- again, that's a
5 pretty complex question. It sounds like you're
6 asking me if tracking the source of the data can
7 contribute to the reliability of the data. Of
8 course, it's possible. If there was a bad source,
9 I would say the data would be somewhat unreliable.
10 Not -- now, that's not withstanding defining what
11 source means and what reliability means. But on
12 the surface, it would seem that that would be true.

13 Q. Okay. Do you agree Gardner's description
14 of a more reliable source indicates that some
15 sources are more reliable than others; right?

16 A. Well, again, I didn't -- without reading
17 the entire specification again and the patent, he
18 just says, if a more reliable source of the data
19 exists. He doesn't describe, specifically, what
20 that is. If a more reliable source of data exists
21 for a particular information field, the more
22 reliable information may be retrieved, doesn't have
23 to be according to that. May be retrieved from the
24 appropriate databases. And the current user data
25 may be replaced with retrieved information. So

1 that makes sense to me.

2 Q. All right. So in this instance, it
3 discusses replacing information based on getting it
4 from a more reliable source; right?

5 A. Yeah, may be replaced with the retrieved
6 information. Yes.

7 Q. Okay. So this shows that more reliable
8 information is better than less reliable
9 information; right?

10 A. Well, it's such a truism because, you
11 know, it -- I don't want to -- it's, like, the
12 highest level if we -- if we had a -- a metric for
13 reliability, then the most reliable data would be
14 better than less reliable data.

15 It sounds like a simple yes-or-no answer,
16 but I think there's a lot of context resolves
17 around what's reliable, for example, and -- and how
18 do we get that, how do we measure that reliability?
19 So that's the context for me that makes it a little
20 difficult to just simply say yes or no to what
21 seems like an easy yes-or-no question.

22 Q. Okay. I'm going to refer back to your
23 declaration briefly, so that's Exhibit 2001 again.

24 A. All right. I'm at that exhibit.

25 Q. All right. So I'm looking at

1 Paragraph 69 of your declaration. Do you see that?

2 A. Just a minute. Yes, I see 69.

3 Q. All right. So in Paragraph 69, you
4 incorporate your analysis of Merriman, Jaye to the
5 Merriman, Minor grounds; correct?

6 A. Yes.

7 Q. All right. And you didn't apply any new
8 or additional arguments for the Merriman, Minor
9 grounds; right?

10 A. Well, I've said in that paragraph is "I
11 incorporate by reference my analysis with respect
12 to Merriman in view of Jaye above, and do not
13 believe that Dr. Ranka's proposed modifications to
14 Merriman would have been obvious to arrive at the
15 additional requirements of claim 5."

16 So as I read that, I'm simply referencing
17 an earlier analysis and not adding any additional
18 analysis.

19 Q. Okay. Next, we're looking at
20 Paragraph 70 of your declaration. And here, you're
21 discussing the Roth, Jaye grounds. Do you see
22 that?

23 A. Yes.

24 Q. All right. And, then, in Paragraph 71,
25 you say Dr. Ranka incorporates the same analysis

1 from Merriman, Jaye; right?

2 A. "However, Dr. Ranka merely incorporates
3 the same analysis as to why Merriman in view of
4 Jaye would have rendered this limitation obvious,
5 providing no new analysis as to why tracking this
6 information would have obvious for use in either,"
7 and he goes on to state additional language. Yes.

8 Q. Okay. So based on this characterization
9 of Dr. Ranka's analysis, you did not apply any new
10 or additional arguments against Roth, Jaye; right?

11 A. Other than the one I have in my report,
12 there's no other additional arguments that -- that
13 I have made or would be prepared to make, just the
14 ones that are in my report now.

15 Q. Okay. And next, I'm looking at
16 Paragraph 72 of your declaration. And in this
17 paragraph, you incorporate your analysis of Roth,
18 Jaye to the Roth, Minor grounds; right?

19 A. Yes.

20 Q. And you say that your arguments against
21 the Roth, Jaye grounds are the same as the Roth,
22 Minor grounds; right?

23 A. "I incorporate by reference my analysis
24 from Section VII.C above regarding Roth in view of
25 Jaye and believe that Dr. Ranka has failed to show

1 the obviousness of Claim 5 based on Roth in view of
2 Minor for the same reason."

3 Q. Okay. So you didn't apply any new or
4 additional arguments against the Roth, Minor
5 grounds; right?

6 A. Other than the arguments in my report,
7 those are the arguments that I used.

8 Q. All right.

9 MR. SAUER: I have no further
10 questions.

11 MR. MILKEY: All right. I
12 don't have any questions either.

13 We can go off the record.

14 THE STENOGRAPHER: So I do need
15 the exhibits.

16 (Off-the-record discussion.)

17 THE STENOGRAPHER: Do you want
18 to read and sign?

19 MR. MILKEY: Yeah, well, we can
20 do the read and sign.

21 (Off-the-record discussion.)

22 THE STENOGRAPHER: So,
23 Ms. Sauer, this is Janiece again. Do you
24 have a standing order?

25 MR. KRONETHAL: We -- yeah,

1 I -- I think there was an order for the
2 final by this Friday, I believe?

3 THE STENOGRAPHER: Right. I
4 just didn't know, do they have what you
5 like as far as the format you like your
6 transcript in, like I'm assuming etran?

7 MR. KRONETHAL: Yeah, w
8 ell, can we go off the record?

9 THE STENOGRAPHER: I'm supposed
10 to put it on the record.

11 MR. KRONETHAL: Yeah, well, we
12 do want the final transcript.

13 THE STENOGRAPHER: Right, I
14 understand that. I understand he's going
15 to read and sign and that you want it by
16 Friday.

17 MR. KRONETHAL: Correct. And
18 this is Mr. Kronethal, not Mr. Milkey.

19 THE STENOGRAPHER: Oh, I'm so
20 sorry. But I assume Magna has like if
21 you like etran or usually I call it a
22 standing order?

23 It's hard for me to write and
24 talk at the same time, so this is going
25 to be rough.

1 MR. KRONETHAL: Yes, whatever,
2 I mean -- I'm not sure exactly the
3 format, but whatever the order was in the
4 initial setup is fine.

5 THE STENOGRAPHER: Okay. And
6 same for you, Ms. Sauer? I hope I said
7 that right.

8 MR. KRONETHAL: Ms. Sauer and
9 Mr. Kronethal are with Banner & Witcoff,
10 so I don't know, you might want to ask
11 Mr. Milkey what he wants on the record.

12 MR. MILKEY: Yeah, we don't
13 need anything beyond the read and sign.

14 THE STENOGRAPHER: But you did
15 get realtime; right?

16 MR. MILKEY: Yeah, so I mean,
17 whatever comes with that. That's fine.
18 But we don't need -- we don't need
19 anything additional.

20 THE STENOGRAPHER: Okay.
21 Ms. Sauer. You just have a standing
22 order?

23 MS. SAUER: Whatever Craig
24 orders is fine for us. We're at the same
25 firm.

1 THE STENOGRAPHER: Oh, okay.

2 I'm sorry. I got it. Okay. Thank you
3 all. I appreciate it.

4 MS. SAUER: Thank you.

5 MR. KRONETHAL: Thank you.

6 (The deposition concluded at 2:40 p.m.)

7 (Witness excused.)

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1 C E R T I F I C A T E

2 I, JANIECE Y. YOUNG, Certified Shorthand
3 Reporter within and for the State of Kansas, hereby
4 certify that the within-named witness was first
5 duly sworn to testify the truth, and that the
6 deposition by said witness was given in response to
7 the questions propounded, as herein set forth, was
8 first taken in machine shorthand by me and
9 afterwards reduced to writing under my direction
10 and supervision, and is a true and correct record
11 of the testimony given by the witness.

12 I further certify that I am not a relative
13 or employee or attorney or counsel of any of the
14 parties, or relative or employee of such attorneys
15 or counsel, or financially interested in the
16 action.

17 WITNESS my hand and official seal at
18 Overland Park, Johnson County, Kansas, this 14th
19 day of March, 2025.

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JANIECE Y. YOUNG, CSR, RPR, CCR

Certified Shorthand Reporter

1	ERRATA SHEET	
2	RE: FreeWheel Media, Inc. Vs. AlmondNeet, Inc.	
3	PG/LN	Correction and Reason for Change
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24		ROBERT J. SHERWOOD
25	JYY	

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SIGNATURE PAGE

RE: FreeWheel Media, Inc. Vs. AlmondNeet, Inc.

____ I certify that I have read my testimony and
request that NO changes be made.

____ I certify that I have read my testimony and
request that the above changes be made.

ROBERT J. SHERWOOD

Subscribed and sworn to before me this
____ day of _____, 20____

Notary Public

State of _____

County of _____

My commission expires _____

JYY



Magna

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