

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ALMONDNET, INC.

*

June 12, 2024

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VS.

*CIVIL ACTION NO. 6:21-CV-898

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AMAZON.COM, INC., ET AL.*

BEFORE THE HONORABLE ALAN D ALBRIGHT
JURY TRIAL PROCEEDINGS
Volume 3 of 5

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10:17

03:17 1 sit there and hear nothing but you're not here to talk
03:17 2 about X, you're not here to talk about Y, you're not
03:17 3 here to talk about Z, it just -- it's driving me
03:17 4 insane, and if it's driving me insane, I promise you,
03:17 5 it is killing the jury.

03:17 6 But it's your time. You all do what you
03:17 7 want with it, but I'm going to make -- to start moving
03:17 8 things along if this continues.

03:17 9 MS. SHAMILOV: Thank you, Your Honor.

03:17 10 THE BAILIFF: All rise.

03:17 11 (Recess taken.)

03:28 12 THE BAILIFF: All rise.

03:28 13 THE COURT: Please remain standing for
03:28 14 the jury.

03:28 15 (Jury entered the courtroom.)

03:28 16 THE COURT: Thank you. You may be
03:28 17 seated.

03:28 18 You may call your next witness.

03:28 19 MS. SHAMILOV: Thank you, Your Honor.

03:28 20 Amazon's next witness is Mr. Kevin
03:28 21 O'Connor.

03:28 22 (The witness was sworn.)

03:28 23 DIRECT EXAMINATION

03:28 24 BY MS. SHAMILOV:

03:29 25 Q. Good afternoon.

03:29 1 A. Good afternoon.

03:29 2 Q. Could you please introduce yourself to the
03:29 3 jury?

03:29 4 A. Yes. My name's Kevin O'Connor.

03:29 5 Q. And what are you here to tell the jury, sir?

03:29 6 A. I'm here to talk about DoubleClick and
03:29 7 creation of the Internet Advertising Network.

03:29 8 Q. And what was DoubleClick, the company?

03:29 9 A. We pioneered Internet advertising back in the
03:29 10 early days, back in 1995, and we created a concept
03:29 11 called the Advertising Network that became very
03:29 12 popular.

03:29 13 Q. And when you say "we," what -- who are you
03:30 14 referring to?

03:30 15 A. I had a cofounder, Dwight Merriman.

03:30 16 Q. And when was that that -- when you created
03:30 17 DoubleClick, the company, what year was that?

03:30 18 A. Well, the original company name was Internet
03:30 19 Advertising Network. That was 1995.

03:30 20 Q. And before we dive in and talk about
03:30 21 DoubleClick and its technology, could you please
03:30 22 explain to the jury your education?

03:30 23 A. Yes. I have a bachelor of science, electrical
03:30 24 engineering, from Michigan. Yes.

03:30 25 Q. And do you have any experience in computer

03:30 1 programming or technical product design?

03:30 2 A. Extensive. So I've -- I had two internships,
03:30 3 Texas Instruments down here in Houston and then worked
03:30 4 for IBM in Austin, and then I started a company in
03:30 5 college and programmed for ten years. And then product
03:30 6 design, technical product design, I've been doing
03:30 7 for -- since I was 13 until today. So 50 years.

03:30 8 Q. Can you please explain to the jury how it is
03:31 9 that you founded DoubleClick?

03:31 10 A. In 1995, Dwight and I wanted to start a
03:31 11 company, another company, and so we were brainstorming
03:31 12 ideas. We thought the Internet was going to be big,
03:31 13 and it turned out we were right, and we were very
03:31 14 excited about sort of what -- what problems could we
03:31 15 solve. And we thought that one of the --

03:31 16 (Clarification by Reporter.)

03:31 17 A. Oh, sorry.

03:31 18 One of the biggest problems, it was moving
03:31 19 from a sort of educational to a -- becoming
03:31 20 commercialized as -- how were people going to make
03:31 21 money? Websites needed to make money to pay the bills.

03:31 22 So we really focused on advertising. Every
03:31 23 other medium, television, radio, print, were -- were --
03:31 24 the money came from advertising, so we felt that was
03:31 25 going to be the biggest financial model on the

03:31 1 Internet.

03:31 2 Q. And what was your Internet advertising idea?

03:31 3 A. The basic idea is we thought that there would
03:31 4 be thousands of websites -- we underestimated a bit --
03:31 5 and there would be thousands of advertisers and
03:32 6 millions of users, and trying to come up with a system,
03:32 7 an efficient market, it just wouldn't work. It would
03:32 8 be a highly fragmented market, and you needed
03:32 9 technology and a business concept to sort of unify and
03:32 10 bring it all together, sort of like eBay for, you know,
03:32 11 buyers and sellers.

03:32 12 Q. And what was that technology? What is that
03:32 13 technology concept that you came up with?

03:32 14 A. So the brains behind the DoubleClick network
03:32 15 was a technology called DART.

03:32 16 Q. And was DART an advertising -- was it -- you
03:32 17 mentioned an advertising network. Maybe you can
03:32 18 explain first what you meant there.

03:32 19 A. So the -- sorry. What was the advertising?

03:32 20 Q. Yeah. What was the advertising? You
03:32 21 mentioned earlier an advertising network. What did you
03:32 22 mean by that? What was it?

03:32 23 A. So the advertising network is you have
03:32 24 thousands of advertisers that want to target their ads
03:32 25 towards users. Those users go to websites, which are

03:33 1 called website publishers, and they're taking --
03:33 2 receiving ads to generate money to keep their websites
03:33 3 in business.

03:33 4 So what our technology did was it sat between
03:33 5 everybody, including the users, and we were able to
03:33 6 dynamically deliver and report and target ads for the
03:33 7 consumers.

03:33 8 So everyone won. The advertisers were able to
03:33 9 save money through efficiencies and through targeting.
03:33 10 The website publishers made more money because it was a
03:33 11 much more efficient market, and users even won because
03:33 12 they got access -- free access to websites as well as
03:33 13 the ads were targeted more relevant to their interests
03:33 14 rather than just sort of random ads.

03:33 15 Q. Now, going back to 1995 when you and
03:33 16 Mr. Merriman, who you referred to by "Dwight," focused
03:33 17 on this Internet advertising idea, when did you start
03:33 18 building this advertising network that you were just
03:33 19 describing to us?

03:33 20 A. We came up with a hundred different product
03:34 21 ideas in the summer of 1995, and in September we
03:34 22 decided -- early September we decided -- I remember it
03:34 23 was nighttime. We decided to create the Internet
03:34 24 Advertising Network, and I remember going up and
03:34 25 telling my family we've settled on an idea. We start

03:34 1 the business tomorrow.

03:34 2 And then we spent the next three months
03:34 3 working seven days a week, 14-hour days, to actually
03:34 4 create the base technology. I was designing the
03:34 5 product and Dwight was building the product.

03:34 6 Q. Now, during that time as you were building
03:34 7 this advertising network, did you also do some
03:34 8 research?

03:34 9 A. Yeah. I was constantly going to the library.
03:34 10 There wasn't much on the Internet those days, was dark
03:34 11 days of the Internet, but -- so I had to keep going to
03:34 12 the library to read magazines like Ad Age and Ad Week
03:34 13 to really keep track like what was going on with
03:34 14 Internet advertising. It was just beginning to pop up.

03:34 15 And I was really surprised to find another
03:34 16 company, it was called DoubleClick, that had announced
03:34 17 the DoubleClick network, and it was virtually identical
03:35 18 to our concept.

03:35 19 Q. So what did you do next?

03:35 20 A. So I reached out, the person in the article
03:35 21 was Dave Carlick, and again, the name of our company
03:35 22 was Internet Advertising Network. So I reached out to
03:35 23 Dave, I said, Dave, we have identical ideas.

03:35 24 And Dave was so happy that I called him
03:35 25 because he said, we don't have any technology. I just

03:35 1 announced this concept, and we don't -- we don't
03:35 2 actually have -- we have four salespeople who are
03:35 3 selling Internet ads, but we have zero technology.

03:35 4 And I said, well, that's -- you're -- we're in
03:35 5 good shape because we have the technology, and we don't
03:35 6 have any ad salespeople.

03:35 7 Q. And so what happened next?

03:35 8 A. So early January, it was January 6th, it
03:35 9 was -- 1996, it was the biggest storm that hit the
03:35 10 Northeast, and we developed all this in my basement in
03:35 11 Georgia, and Atlanta got hit by a giant ice storm as
03:35 12 well.

03:35 13 So I was supposed to fly up to New York -- or
03:35 14 Connecticut to ink a deal. We decided we would sit in
03:36 15 a hotel room and we'd either merge the companies or we
03:36 16 wouldn't.

03:36 17 So the only flight that left that day was
03:36 18 ValuJet, the company that couldn't spell properly. It
03:36 19 was the only flight to Hartford, Connecticut. So I
03:36 20 jumped on and met Dale Zammit in a hotel room, and we
03:36 21 hammered out a deal to join the forces. They had a
03:36 22 better name. I'm terrible with names. So we kept the
03:36 23 name DoubleClick.

03:36 24 Q. And what was your role in this new DoubleClick
03:36 25 entity?

03:36 1 A. So we were still -- this was a joining of
03:36 2 forces of four -- eight people. I remained CEO and
03:36 3 then Dwight remained chief technology officer.

03:36 4 Q. Now, do you know why Mr. Merriman is not here
03:36 5 to talk to the jury about DoubleClick?

03:36 6 A. Unfortunately, Dwight --

03:36 7 MR. LEDAHL: Your Honor, speculation.

03:36 8 THE COURT: She said does he know.

03:36 9 Do you know why he's not here?

03:36 10 THE WITNESS: I do know. Yes.

03:36 11 THE COURT: Then you can answer.

03:36 12 A. Dwight, unfortunately, suffers from a chronic
03:36 13 disease, and it's very difficult. He doesn't leave his
03:36 14 house very often.

03:36 15 BY MS. SHAMILOV:

03:36 16 Q. Now, when did you deploy DoubleClick's
03:37 17 advertising network to the public?

03:37 18 A. We deployed it in October of 1996.

03:37 19 Q. And did you have a business plan for the
03:37 20 company?

03:37 21 A. Yes.

03:37 22 Q. And did you write the business plan for the
03:37 23 company?

03:37 24 A. I did.

03:37 25 Q. And did the -- did you write the business

03:37 1 plans for the company in the regular course of
03:37 2 business?

03:37 3 A. Yes.

03:37 4 Q. You have a binder in front of you. If I could
03:37 5 ask you, please, to turn to Tab D-418.

03:37 6 A. Okay.

03:37 7 Q. And do you recognize this document, sir?

03:37 8 A. This is the book I wrote: The Map of
03:37 9 Innovation: Creating Something Out of Nothing. I
03:37 10 published, I think, 2003.

03:37 11 Q. And is the business plan that you've created
03:37 12 in the regular course of business included in that
03:37 13 book?

03:37 14 A. It is.

03:37 15 Q. Okay.

03:37 16 A. It's a book about -- it's a book about how do
03:37 17 you start from -- it's pretty much my whole career --
03:37 18 how do you start with nothing, come up with ideas,
03:37 19 ideas that are cheap, and you just come up with a lot
03:38 20 of really bad ideas, come up with a good one, and then
03:38 21 it was a step-by-step guide of how to develop a
03:38 22 company.

03:38 23 The probability of building a successful tech
03:38 24 company is very small. So I was trying to kind of
03:38 25 focus on the fundamentals of what makes a -- how to get

03:38 1 a company from that idea stage to a -- to a real
03:38 2 company.

03:38 3 MS. SHAMILOV: Your Honor, at this time,
03:38 4 I move D-418 into evidence. Please.

03:38 5 THE COURT: I couldn't hear you.

03:38 6 MS. SHAMILOV: Move -- move D-418 into
03:38 7 evidence.

03:38 8 MR. LEDAHL: No objection.

03:38 9 THE COURT: Admitted.

03:38 10 BY MS. SHAMILOV:

03:38 11 Q. And you have a book in front of you.

03:38 12 Is that the book -- a copy of the book you
03:38 13 wrote?

03:38 14 A. I do.

03:38 15 Q. Okay. And then did you describe DoubleClick
03:38 16 in that book?

03:38 17 A. I do. I describe -- I use a lot of anecdotes
03:38 18 from DoubleClick as other companies, and then I -- I
03:38 19 included the business plan as a -- sort of as an
03:38 20 example. One of -- a big part of it was how do you
03:38 21 write a business plan.

03:38 22 (Clarification by Reporter.)

03:38 23 A. Sorry. I speak very quickly.

03:38 24 It was -- it was to give a real-life example
03:38 25 of a business plan that turned into a successful

03:39 1 company.

03:39 2 MS. SHAMILOV: Could you, please,
03:39 3 Mr. Patterson, go to Page 194 in this document?

03:39 4 BY MS. SHAMILOV:

03:39 5 Q. Mr. O'Connor, is this a copy of the business
03:39 6 plan that you wrote?

03:39 7 A. It is. With one exception. There's
03:39 8 annotations that I -- just kind of callouts of
03:39 9 explaining, you know, what does this mean within the
03:39 10 business plan.

03:39 11 Q. And is this the business plan -- did you write
03:39 12 this business plan in 1996?

03:39 13 A. Yeah. The first draft I did in 1995, and this
03:39 14 was -- this was the one from 1996.

03:39 15 Q. Okay.

03:39 16 MS. SHAMILOV: And if we could,
03:39 17 Mr. Patterson, move to Page 200.

03:39 18 BY MS. SHAMILOV:

03:39 19 Q. And there's a figure in your business plan
03:39 20 from 1996 that we have here up on the screen.

03:39 21 Mr. O'Connor, could you please explain to the
03:39 22 jury what this figure was depicting back then?

03:39 23 A. Yeah, I think a lot of people make the mistake
03:39 24 of innovation, you try to come up with an idea. What
03:39 25 we like to do is start with the problem, like what was

03:39 1 the fundamental problem.

03:39 2 And -- and here in our business plan, we just
03:39 3 show, look, it's a highly fragmented inefficient
03:39 4 market. You've got thousands of websites, thousands of
03:40 5 advertisers, millions of users. It was an inefficient
03:40 6 market. It just would not work unless you had
03:40 7 something that we call the advertising network and
03:40 8 technology to actually deploy the ads and measure the
03:40 9 ads.

03:40 10 Q. So how did DoubleClick solve this problem?

03:40 11 A. We solved this problem through the DART
03:40 12 technology --

13 Q. Before we --

03:40 14 A. -- and the advertising network, DoubleClick
03:40 15 network.

03:40 16 MS. SHAMILOV: Mr. Patterson, could you
03:40 17 please turn to Page 203 of this business plan? And if
03:40 18 we can -- if it would be possible to blow up that
03:40 19 figure so it's bigger? Thank you.

03:40 20 BY MS. SHAMILOV:

03:40 21 Q. You've included this diagram in your business
03:40 22 plan in 1996.

03:40 23 Can you please tell us what this diagram
03:40 24 shows?

03:40 25 A. Yes. The basic concept is -- is pretty

03:40 1 simple. You -- you may not recognize this browser.
03:41 2 This is the Netscape browser, one of the first
03:41 3 browsers.

03:41 4 So as a user, the user goes to Acme
03:41 5 Entertainment, a made-up website. You go to the -- you
03:41 6 go to the website. It downloads the page to the
03:41 7 browser. And the publisher there allocated a piece of
03:41 8 real estate.

03:41 9 You can see the AT&T ad. That's a -- that's
03:41 10 an allocated piece of real estate for an advertisement.

03:41 11 But the advertisement didn't come from Acme;
03:41 12 it redirected the request to DoubleClick. And so then
03:41 13 we had a direct communications with the user itself.

03:41 14 And then we would -- we would -- we had
03:41 15 thousands of ads running. We would pick which ad was
03:41 16 targeted for that particular user.

03:41 17 And then if the user -- we knew the user saw
03:41 18 the ad, we knew if the user clicked through -- clicked
03:41 19 on the ad and purchased things.

03:41 20 Q. Now, on the left, in the box on the top left,
03:41 21 it says "user profiles" in this diagram.

03:41 22 What is that?

03:41 23 A. So an advertiser wants to reach a target
03:42 24 audience. So they have a user profile, the type of --
03:42 25 type of person they want to reach.

03:42 1 And then we have a bunch of information that
03:42 2 we collected from everything, from the web browser,
03:42 3 from the IP address, as well as from the user -- user
03:42 4 themselves. So we had a -- we identified users with
03:42 5 a -- called a cookie.

03:42 6 You've probably heard of a cookie already.

03:42 7 The -- we would assign a unique ID to that
03:42 8 user so we could identify the unique user.

03:42 9 Q. Now, did DoubleClick, the company, have a
03:42 10 website?

03:42 11 A. Yes.

03:42 12 Q. And was that website maintained in the regular
03:42 13 course of business in the late '90s, sir?

03:42 14 A. It was our primary way of communicating with
03:42 15 customers.

03:42 16 Q. And was the content on that website created by
03:42 17 people who knew what the company was working on and
03:42 18 doing?

03:42 19 A. Yes. All the content was created by -- by
03:42 20 employees of the company.

03:42 21 Q. And did you review information on that website
03:42 22 in the regular course of business?

03:42 23 A. Yes. I did.

03:42 24 Q. And if I could ask you, please, to turn in
03:43 25 your binder to Tab D-335.

03:43 1 And what is that document, sir?

03:43 2 A. This explains how DART -- DART works in its
03:43 3 sort of simplest manner. Very similar to what we --
03:43 4 what I discussed before, which is a user goes to a
03:43 5 website --

03:43 6 Q. Before we --

03:43 7 MS. SHAMILOV: I'm sorry to interrupt.
03:43 8 Before we get there, I need to admit it into evidence.
03:43 9 BY MS. SHAMILOV:

03:43 10 Q. And is that the document that was on
03:43 11 DoubleClick's website in the -- in the late '90s?

03:43 12 A. Yes.

03:43 13 MS. SHAMILOV: Your Honor, at this time,
03:43 14 I move D-335 into evidence.

03:43 15 MR. LEDAHL: Subject to our prior
03:43 16 objection, Your Honor.

03:43 17 THE COURT: It'll be admitted.

03:43 18 MS. SHAMILOV: Thank you.

03:43 19 BY MS. SHAMILOV:

03:43 20 Q. Now, let's talk about this document now that
03:43 21 the jury can see it.

03:43 22 A. All right.

03:43 23 Q. So it says how DART works.

03:43 24 And again, remind us, what was DART?

03:43 25 A. DART was the brains. It was the -- it was the

03:43 1 system that delivered and measured all the ads. It
03:43 2 stood for Dynamic Advertising, Reporting, and
03:44 3 Targeting.

03:44 4 Q. And how did you come up with that name?

03:44 5 A. We did it backwards. DART was like a
03:44 6 dartboard. You -- hitting exactly the bull's-eye, and
03:44 7 then we actually made up the acronym after.

03:44 8 Q. And this document has a figure right here in
03:44 9 the middle.

03:44 10 Can you please walk us through what's
03:44 11 happening in here, what you were trying to depict back
03:44 12 in the '90s?

03:44 13 A. It was just showing the basic way the system
03:44 14 worked. So a user would go to a website. Ad request
03:44 15 would come to the DART server, the ad server. We would
03:44 16 take a look at all the advertisements, that we could
03:44 17 have thousands of advertisements where people had
03:44 18 targeted specific users they're trying to reach.

03:44 19 We would decide which ads actually fit that
03:44 20 user profile, and then the highest paying ad would
03:44 21 typically be delivered to the user.

03:44 22 Q. And what information did you use to decide
03:44 23 whether an ad hit a user profile? Was there any
03:44 24 information from the advertiser that you used in that
03:45 25 process?

03:45 1 A. Well, the advertiser told us who -- who they
03:45 2 wanted to target. We had a list of targeting criteria,
03:45 3 of information that we knew that the advertiser could
03:45 4 use to target the user.

03:45 5 Q. And could you give us an example of an
03:45 6 advertiser's targeting criteria that was used in the
03:45 7 late 1990s?

03:45 8 A. It could be anything from geography. If
03:45 9 someone want to reach just people in the United States,
03:45 10 we had IP information that we mapped out. We licensed
03:45 11 data from Dun & Bradstreet that mapped out all the
03:45 12 businesses and what type of businesses. So if you were
03:45 13 coming in from ibm.com, we knew it was International
03:45 14 Business Machine, we knew how many employees and where
03:45 15 you're located.

03:45 16 We could also target user activity.

03:45 17 Q. Now, once you released DART, were you -- did
03:45 18 you keep improving it?

03:45 19 A. Yes. We had a lot of engineers that were
03:45 20 constantly adding features. And even though I was CEO
03:45 21 of the company, you know, we started out very small,
03:45 22 but as the company got bigger, Kevin Ryan was the
03:46 23 president. He did a lot of the operational work. I
03:46 24 was directly responsible for producing sort of new
03:46 25 products and new features.

03:46 1 Q. And now during this trial, we've heard this
03:46 2 name Boomerang.

03:46 3 What was Boomerang in DoubleClick's world?

03:46 4 A. Boomerang was a unique application of our
03:46 5 technology that allowed -- allowed a website to record
03:46 6 activity of that user.

03:46 7 So I'll give you an example.

03:46 8 So you go to nike.com. This happens to all of
03:46 9 us. You put a pair of shoes in your shopping cart, you
03:46 10 get distracted from kids, and you forget about it, you
03:46 11 leave.

03:46 12 When that user -- and they can be tagged as --
03:46 13 as they saw this -- they put this pair of shoes in
03:46 14 their shopping cart but did not buy. And that would go
03:46 15 into our database, the user profile.

03:46 16 And then when the user went to the DoubleClick
03:46 17 network site, one of our many, many sites, we would see
03:46 18 that user and be able to deliver that ad, a Nike ad, to
03:46 19 that user and hopefully bring them back.

03:46 20 So the user would be there -- like a
03:47 21 boomerang, it would go out and then bring them back.

03:47 22 Q. Why did you call it Boomerang?

03:47 23 A. It seemed to describe the system -- as a kid,
03:47 24 my favorite toy was a boomerang. It wasn't
03:47 25 particularly safe. And when you're good at it, the

03:47 1 boomerang goes out and it comes back. And if you're
03:47 2 really good, you catch it.

03:47 3 Q. If you could turn to D-329 in your binder,
03:47 4 sir.

03:47 5 And what is that document, sir?

03:47 6 A. This was the annual report. We had gone
03:47 7 public in 1998, and this was the annual report.

03:47 8 Q. And was this an annual report on DoubleClick's
03:47 9 website in the '90s?

03:47 10 A. Yes. It was.

03:47 11 Q. And is that the same website that was
03:47 12 maintained in the regular course of business that we've
03:47 13 just discussed?

03:47 14 A. Yes.

03:47 15 MS. SHAMILOV: Your Honor, I move D-329
03:47 16 into evidence, please.

03:47 17 MR. LEDAHL: Subject to the same
03:47 18 objection.

03:47 19 THE COURT: It'll be admitted.

03:47 20 MS. SHAMILOV: Thank you.

03:47 21 BY MS. SHAMILOV:

03:47 22 Q. Now, you -- before we -- the jury could see
03:48 23 this document, you said October 1998. What was that
03:48 24 date? What is that date? Why did you say
03:48 25 October 1998?

03:48 1 A. October 1998 was when we announced
03:48 2 Boomerang -- or released Boomerang.

03:48 3 Q. Now, on the right we have this kind of
03:48 4 circular figure, and it has Boomerang and DART.

03:48 5 Did DART and Boomerang work together?

03:48 6 A. They're both in the same system, the DART
03:48 7 system, as a feature.

03:48 8 Q. So in the late '90s, before the year 2000, the
03:48 9 DoubleClick system had the DART and Boomerang, and they
03:48 10 were part of the same system, sir?

03:48 11 A. Same system.

03:48 12 Q. Okay. Now, if we --

03:48 13 MS. SHAMILOV: Mr. Patterson, go to the
03:48 14 next page, Page 2 of this document, and blow up the --
03:48 15 maybe so the jury can see better the last paragraph,
03:48 16 the third Closed-Loop. Thank you.

03:48 17 BY MS. SHAMILOV:

03:48 18 Q. Can you -- Mr. O'Connor, can you walk us a
03:48 19 little bit through how Boomerang worked with reference
03:49 20 to this document?

03:49 21 A. Should I just read this last paragraph?

03:49 22 Q. Just explain it.

03:49 23 A. Okay. So it allows -- it allows any website,
03:49 24 in this case it was advertisers, where they could tag
03:49 25 anonymously activities of that user. It could be

03:49 1 anything. It could be -- you put a -- shoes in the
03:49 2 cart, you downloaded a brochure or the fact that you
03:49 3 just visited the site or you searched on certain terms.

03:49 4 All that activity could be -- could be
03:49 5 recorded by us. There's something called a spotlight
03:49 6 tag. That went into our system.

03:49 7 Then the advertiser could -- could direct an
03:49 8 ad based on that criteria. I want to reach all people
03:49 9 who put the Nike shoes in their cart but didn't buy.

03:49 10 When those users went to one of our sites,
03:49 11 DoubleClick network sites, they would receive that ad.
03:49 12 We'd recognize them and that specific activity.

03:50 13 MS. SHAMILOV: We can take that down,
03:50 14 Mr. Patterson.

03:50 15 BY MS. SHAMILOV:

03:50 16 Q. Now, Mr. O'Connor, did you test the Boomerang
03:50 17 feature in the late '90s before you launched it?

03:50 18 A. Well, we test all our products. We want to
03:50 19 make sure that as we design them and how they're
03:50 20 implemented, they work -- they work to spec.

03:50 21 But the other one -- the more important test
03:50 22 is does the market want it. So does it actually
03:50 23 perform. Everything is a hypothesis. You have a
03:50 24 theory of what it's going to do, and then you go out
03:50 25 and you test it. Does it do what you think it's going

03:50 1 to do.

03:50 2 In this case, it ended up way outperforming
03:50 3 anything that we ever imagined. It was -- it was so
03:50 4 insanely good that I had them retest it and retest it
03:50 5 two or three times more just to make sure that we
03:50 6 didn't have bad data.

03:50 7 We saw a 1400 percent increase in response
03:50 8 rates which supported a hypothesis that when someone
03:50 9 goes to your websites and look at your shoes, they have
03:50 10 very high intent. They're very interested. They just
03:50 11 forgot. And so we had a 1400 percent, and just put
03:50 12 that as 14 times more effective than just sort of
03:51 13 untargeted advertising.

03:51 14 So we felt like we had -- we felt like it was
03:51 15 the greatest invention. And we were like we really hit
03:51 16 that signal -- signal to the noise.

03:51 17 Q. And what was the first website on which you
03:51 18 tested the Boomerang feature?

03:51 19 A. We tested it on Victoria's Secret.

03:51 20 Q. Okay.

03:51 21 MS. SHAMILOV: Mr. Patterson, can we
03:51 22 please pull PDX-3-12? And -- wait, I'll do the --
23 BY MS. SHAMILOV:

03:51 24 Q. Mr. O'Connor, this is what -- I'm going to
03:51 25 show you an animation that AlmondNet showed to the jury

03:51 1 earlier this week. And what happens here --

03:51 2 MS. SHAMILOV: And if we can,

03:51 3 Mr. Patterson, play it.

4 BY MS. SHAMILOV:

03:51 5 Q. -- the user, it's a Barnes & Noble website,

03:51 6 and the user searches for John Grisham. Are you with

03:51 7 me, sir?

03:51 8 A. Yes.

03:51 9 Q. And then once they click "please search," the

03:51 10 website returns John Grisham's books, and then in

03:51 11 AlmondNet's presentation of this video, the user goes

03:51 12 to espn.com, and right there on the top is an ad for

03:52 13 John Grisham's book.

03:52 14 Now, is this what Boomerang did in the late

03:52 15 '90s?

03:52 16 A. That's a very good annotation of Boomerang.

03:52 17 Q. Now, you said that you thought you -- the

03:52 18 Boomerang was a good feature.

03:52 19 Did you decide to patent it?

03:52 20 A. Yes. We did.

03:52 21 Q. Could you please turn to D-120 in your binder?

03:52 22 MS. SHAMILOV: Please take that down.

03:52 23 A. Okay.

03:52 24 BY MS. SHAMILOV:

03:52 25 Q. Is -- what is this, sir?

03:52 1 A. This is the Boomerang patent.

03:52 2 MS. SHAMILOV: Your Honor, I move D-120
03:52 3 into the -- evidence, please.

03:52 4 MR. LEDAHL: No objection.

03:52 5 THE COURT: Admitted.

03:52 6 MS. SHAMILOV: Thank you.

03:52 7 We can publish it now. Thank you.

03:52 8 BY MS. SHAMILOV:

03:52 9 Q. Who are the inventors on this patent, sir?

03:52 10 A. Dwight Merriman and myself.

03:52 11 Q. Okay. And if we look a little bit further
03:53 12 down, Mr. Patterson, where the assignee is, it says the
03:53 13 patent was assigned to Google. Why is that?

03:53 14 A. Google ultimately acquired DoubleClick.

03:53 15 MS. SHAMILOV: Now, if we go to Figure 2,
03:53 16 Mr. Patterson, please. And if we can make it bigger so
03:53 17 it's easier to see, please.

03:53 18 BY MS. SHAMILOV:

03:53 19 Q. Now, Mr. O'Connor, you talked -- you already
03:53 20 told us that this patent is for the Boomerang feature.
03:53 21 Can you please walk us through this figure? What does
03:53 22 this figure show?

03:53 23 A. So it shows a user, User 123, visits a
03:53 24 website. In this case, an advertiser website. And it
03:53 25 shows examples of the type of activities that person

made. It could be a product description page or a registration page, confirmation of a purchase.

Then we would compile this information as passed back to DoubleClick servers through what's called a spotlight tag, virtually identical to an ad tag, use the same technology, just different encoding.

We would compile this activity list, and we would store it and associate it with the user, in this case User 123.

MS. SHAMILOV: And, Mr. Patterson, can we please go to Figure 3 of this patent? And blow it up just a little bit so it's easier to see.

BY MS. SHAMILOV:

Q. And now, Mr. O'Connor, this Figure 3 on the left, the box labeled "Browser," it says: User 123 visits affiliate website.

So a different website than the website in Figure 2. And what does this figure show? Can you please explain to us?

A. So this is, again, User 123. 123 is the cookie. The user goes to an affiliate website, in this case the DoubleClick network. We have a lot of ads targeted for that user which would also include Boomerang ads.

So it takes a look at User 123. Is there an

03:55 1 ad, a Boomerang ad, targeted at that user? And usually
03:55 2 that was the highest priced ad so it would be delivered
03:55 3 to the user.

03:55 4 Q. And right -- there's also a table here on the
03:55 5 right. What was that table and how was that used when
03:55 6 the user was being targeted with an ad?

03:55 7 A. So the table on the right was contained in the
03:55 8 ad serving system DART, and this was a list of the
03:55 9 users and all their activity that they -- that was
03:55 10 communicated to us through spotlight. The patent
03:55 11 didn't limit it to just through spotlight, but that was
03:55 12 the main use case.

03:55 13 Q. Now, the -- this -- these two figures on the
03:55 14 patent, generally, does it describe the Boomerang
03:55 15 feature as it existed in 1998?

03:55 16 A. Yes. It did.

03:55 17 Q. Now, I want to --

03:55 18 MS. SHAMILOV: We can take that down,
03:55 19 Mr. Patterson.

03:55 20 BY MS. SHAMILOV:

03:55 21 Q. I'd like to talk a little bit about -- you
03:56 22 talked that the Internet was free but there would need
03:56 23 to be a way to make money on the Internet. How did
03:56 24 DoubleClick make money?

03:56 25 A. So our system, we felt, would benefit

03:56 1 everybody, including DoubleClick. I mean, we were
03:56 2 the -- we were the middleman that made this efficient
03:56 3 market.

03:56 4 So we had relationships with publishers where
03:56 5 we would have a revenue share, a commission. So
03:56 6 oftentimes it was like 50/50. All the -- and we would
03:56 7 represent them. We would then go to the advertiser and
03:56 8 we would have a contract with the advertiser, and the
03:56 9 advertiser would tell us the users they want to --
03:56 10 their target criteria.

03:56 11 The more -- the more valuable the content was,
03:56 12 let's say Kelley Blue Book where people are buying
03:56 13 cars, that's really valuable content knowing if
03:56 14 someone's going to buy a car, they would charge a
03:56 15 higher CPM. And then by using our targeting
03:56 16 technology, we would charge higher CPMs as well.

03:56 17 So from the advertising perspective, they were
03:57 18 less waste -- you know, waste is people you don't want
03:57 19 to target -- so the advertising was more efficient for
03:57 20 them.

03:57 21 And it was better for the publisher because
03:57 22 they got higher CPMs, and they didn't have to have a
03:57 23 sales team.

03:57 24 And then we like to think we help the user as
03:57 25 well by giving them targeted ads. I know ads aren't

03:57 1 all that popular, but we gave them targeted relevant
03:57 2 ads and free access to information.

03:57 3 Q. You mentioned CPMs. I'm not sure we've heard
03:57 4 this yet. What is that?

03:57 5 A. Yeah. It was a new term to us when we started
03:57 6 the company. CPM is how all advertising is bought, is
03:57 7 cost per thousand ad -- ad impressions.

03:57 8 Q. And so just to be clear, did DoubleClick pay
03:57 9 the websites that showed the ads?

03:57 10 A. Yes. So a website -- one advertiser could --
03:57 11 their advertising campaign may go across 20 different
03:57 12 websites and we would allocate that money to the
03:57 13 publisher depending upon what percentage of ads went to
03:57 14 those websites.

03:57 15 Q. And how -- and the advertiser bought ad
03:58 16 impressions? Is that -- from DoubleClick?

03:58 17 A. They bought ad impressions. They would tell
03:58 18 us we want a million ad impressions over the next
03:58 19 30 days at this targeting criteria.

03:58 20 Q. Now, you mentioned user profile data and that
03:58 21 it was used to target advertisements using the
03:58 22 targeting criteria of the advertisers. Could -- in the
03:58 23 DoubleClick's network in -- in -- advertising network,
03:58 24 could website owners monetize their profile data?

03:58 25 A. Yes. They could.

03:58 1 Q. And how could they do that?

03:58 2 A. Well, they could use the same Boomerang
03:58 3 technology. I remember pitching it to a few companies.
03:58 4 I mean, there wasn't a lot of -- there really wasn't --
03:58 5 there was too much supply of advertising on the
03:58 6 Internet. There was only a very few sites that had
03:58 7 constrained inventory.

03:58 8 So the supply -- Internet was growing very,
03:58 9 very quickly, and advertising dollars were not keeping
03:58 10 up. So this wasn't really that -- that big of a
03:58 11 product. There was nothing stopping them from doing
03:59 12 that.

03:59 13 Q. Now, you've -- we looked at a couple of
03:59 14 documents and in your patent.

03:59 15 I assume you had source code for the Boomerang
03:59 16 and DART systems?

03:59 17 A. Yes.

03:59 18 Q. You did.

03:59 19 And would that source code be helpful for the
03:59 20 jury to understand how the system worked?

03:59 21 A. I can't imagine why it would be.

03:59 22 Q. Why do you say that?

03:59 23 A. I mean, it's just I -- I spent ten years
03:59 24 explaining how the industry worked and explaining to
03:59 25 customers, and it was never through source code. It

03:59 1 was always through -- through things like this, through
03:59 2 examples.

03:59 3 And we educated people within the company
03:59 4 through documentation and internal documents. It's
03:59 5 just -- and product design. You know, it's --
03:59 6 technology's not the hard part. It's designing the
03:59 7 product that customer wants.

03:59 8 Q. Now, when you -- when you think of your
03:59 9 experience in DoubleClick, what are the thoughts?

03:59 10 A. It was a wild time. We started two people in
04:00 11 the basement in Georgia. Would have been a garage, but
04:00 12 it was way too hot. So we were in the basement. And
04:00 13 in four years, it grew to 2,500 employees in 25
04:00 14 countries.

04:00 15 You know, we -- we pioneered a new industry,
04:00 16 the Internet -- Internet advertising within -- within
04:00 17 one of the most important industries, the Internet. It
04:00 18 was -- it was great. Not all great times, but it -- it
04:00 19 was good.

04:00 20 MS. SHAMILOV: Thank you, sir.

04:00 21 I pass the witness, Your Honor.

04:00 22 CROSS-EXAMINATION

04:00 23 BY MR. LEDAHL:

04:01 24 Q. Good afternoon, Mr. O'Connor.

04:01 25 A. Good afternoon.

04:01 1 Q. You and I have not met before, right?

04:01 2 A. We have not.

04:01 3 Q. And you've never had any communications with
04:01 4 anyone at AlmondNet, except for a couple e-mails with
04:01 5 Mr. Shkedi a few years ago, right?

04:01 6 A. That's it.

04:01 7 Q. But you did have communications with Amazon's
04:01 8 lawyers in this case before you gave any testimony,
04:01 9 correct?

04:01 10 A. Correct.

04:01 11 Q. You -- you spoke with Amazon's lawyers
04:01 12 multiple times before you gave any testimony in this
04:01 13 case, correct?

04:01 14 A. Correct.

04:01 15 Q. No one from AlmondNet was present in any of
04:01 16 those meetings you had with Amazon's lawyers before you
04:01 17 testified in this case, right?

04:01 18 A. I don't know if they were at that deposition.

04:01 19 Q. Okay. But you had private meetings with
04:01 20 Amazon's lawyers that --

04:01 21 A. Yeah.

04:01 22 Q. Nobody from AlmondNet was at those?

04:01 23 A. Yes.

04:01 24 Q. Did you meet with Amazon's lawyers to prepare
04:01 25 to testify here today?

04:01 1 A. Yes.

04:01 2 Q. Amazon's lawyers in this case are, in fact,
04:02 3 acting as your lawyers in this case; is that right?

04:02 4 A. I signed an engagement letter with them. Yes.

04:02 5 Q. Are you paying those lawyers or the people
04:02 6 here representing Amazon to be your lawyers in this
04:02 7 case?

04:02 8 A. I'm not being paid, and I'm not paying them.

04:02 9 Q. You're not paying them anything to be your
04:02 10 lawyers?

04:02 11 A. No.

04:02 12 Q. Is Amazon paying them?

04:02 13 A. I would imagine.

04:02 14 Q. Now, you understand that there's a process in
04:02 15 court for someone who's not a party to be brought in to
04:02 16 give testimony in the case called a subpoena.

04:02 17 You've heard of that, right?

04:02 18 A. Yes.

04:02 19 Q. You didn't have to come here under a subpoena,
04:02 20 did you? You're not here today because you got any
04:02 21 subpoena; is that right?

04:02 22 A. I actually don't know. I don't believe I
04:02 23 received a subpoena.

04:02 24 Q. You voluntarily came at Amazon's request to
04:02 25 come here and testify; is that right?

04:02 1 A. Yes.

04:02 2 Q. Now, you've talked a bit about DoubleClick.

04:03 3 DoubleClick was a for-profit company; is that
04:03 4 right?

04:03 5 A. Yes.

04:03 6 Q. In fact, DoubleClick made many, many millions
04:03 7 of dollars in revenue by the time you left the company;
04:03 8 is that right?

04:03 9 A. Yes.

04:03 10 Q. In your view, the primary drive of a startup
04:03 11 company should be to dominate their market; is that
04:03 12 fair?

04:03 13 A. No.

04:03 14 Q. Okay. Well, let's take a look at the book you
04:03 15 were looking at. I believe that's at DX-418 that we
04:03 16 had up.

04:03 17 And this is -- this is your book, right? This
04:03 18 is the same book I'm holding?

04:03 19 A. Yes. That's my book.

04:03 20 Q. Okay. And if you could turn to -- I think in
04:03 21 your binder it should be at Page 148.

04:04 22 A. All right.

04:04 23 Q. And if you would, please, sir, the second
04:04 24 paragraph, I think it is -- oh, you know what? I'm
04:04 25 sorry. I have the wrong page for you.

04:04 1 Yes. It's up on the screen. You see that?

04:04 2 A. Yes. I do.

04:04 3 Q. The primary drive of most startups should be
04:04 4 to dominate their market.

04:04 5 A. An aggressive line, yes.

04:04 6 Q. And that's what you wrote in your book?

04:04 7 A. Yes.

04:04 8 Q. DoubleClick priced its products in the market
04:04 9 for the long run; is that fair?

04:04 10 A. No.

04:04 11 Q. Well, let's take a look at Page 117 of your
04:04 12 book. The same exhibit we were looking at. You wrote:
04:05 13 At both ISS and DoubleClick, we priced our products for
04:05 14 the long run.

04:05 15 So you did price your products for the long
04:05 16 run, right?

04:05 17 A. I can give further explanation, but we priced
04:05 18 our products to -- to stay in business and what people
04:05 19 were willing to pay.

04:05 20 Q. And that meant not lowering your prices to
04:05 21 compete with low-priced competitors. That's what you
04:05 22 say in the rest -- another part of this -- the same
04:05 23 paragraph, right?

04:05 24 A. People were giving products away for free on
04:05 25 the Internet, which is not a successful business model.

04:05 1 Q. But you didn't follow that price, and, as you
04:05 2 write in the last sentence of this paragraph: Years
04:05 3 later, those low-priced competitors are out of business
04:05 4 and their clients are ours.

04:05 5 Right? That's what you said in your book?

04:05 6 A. Yes.

04:05 7 Q. Would it be fair to say that following that
04:05 8 strategy, ultimately DoubleClick dominated the Internet
04:06 9 advertising market?

04:06 10 A. I'd say we were the most successful company.

04:06 11 Q. Now, you talked a little bit about the
04:06 12 DoubleClick system and how it worked. And you
04:06 13 mentioned that publisher sites, websites that had ad
04:06 14 space to sell, they would join the DoubleClick network.

04:06 15 That was what you said in your direct
04:06 16 testimony; is that right?

04:06 17 A. Yes.

04:06 18 Q. Okay. And when they joined the DoubleClick
04:06 19 network, they had to agree to put some kind of tag on
04:06 20 their site so DoubleClick could collect information
04:06 21 about all the people who visited all the web -- the
04:06 22 users who visited their website, right?

04:06 23 A. Yes. That's how we delivered ads.

04:06 24 Q. And so you collected their data, and that was
04:06 25 how you targeted ads, right?

04:06 1 A. If it was their data, we only used that data
04:06 2 for -- for their benefit.

04:07 3 Q. Well, when I say "their data," you collected
04:07 4 the data about who visited their website, correct?

04:07 5 A. Well, that wouldn't be their data. That would
04:07 6 be like the IP address that didn't belong to the
04:07 7 publisher. The data we collected from publishers were
04:07 8 more about like what was the content. If they're on
04:07 9 Kelley Blue Book looking to compare trucks, we would
04:07 10 use that data only on Kelley Blue Book --

04:07 11 Q. So --

04:07 12 A. -- unless they chose -- unless they chose for
04:07 13 us to use it.

04:07 14 Q. So -- so -- but you collected the data from
04:07 15 these member websites of -- when users visited their
04:07 16 website, right?

04:07 17 A. We collected it for reporting reasons. Yes.

04:07 18 Q. And you used the cookies you mentioned to do
04:07 19 that collection?

04:07 20 A. We used cookies to record the -- to -- to
04:07 21 identify the -- the browser that data was associated
04:07 22 with. Yes.

04:07 23 Q. And giving -- letting you have that cookie
04:08 24 information from those websites, you wouldn't be able
04:08 25 to have that unless they allowed you to get it, right?

04:08 1 They had to put something on their website so you could
04:08 2 collect all those cookies?

04:08 3 A. I mean, no. We had a common -- when we first
04:08 4 saw a user that did not have the DoubleClick cookie, we
04:08 5 assigned a cookie. It could be on any website. That
04:08 6 cookie remained the same across all websites.

04:08 7 Q. Right.

04:08 8 But you couldn't collect cookies from a
04:08 9 website that wasn't a part of the DoubleClick network,
04:08 10 right?

04:08 11 A. No. We could. We had many people using the
04:08 12 DART system that were not in the DoubleClick network.
04:08 13 Like, we had more people using it outside the
04:08 14 DoubleClick network.

04:08 15 Q. And DoubleClick used the information that it
04:08 16 collected from these users to target advertisements? I
04:08 17 think that's what you said?

04:08 18 A. Yes.

04:08 19 Q. Now, you talked a bit about the Boomerang
04:09 20 system, and I think you mentioned -- you showed a
04:09 21 little one- or two-page document that you referred to
04:09 22 as the annual report. And then we also looked at the
04:09 23 patent.

04:09 24 Would it be fair to say that the patent was
04:09 25 the more fulsome description of the Boomerang system?

04:09 1 A. The more complete description? Yes.

04:09 2 Q. Okay. Now, you -- you described this
04:09 3 Boomerang feature as retargeting, right?

04:09 4 A. That was a generic term. Yes.

04:09 5 Q. And I think the example you gave, if I heard
04:09 6 you correctly, was someone would go to Nike and maybe
04:09 7 they put some shoes in their shopping cart. Then
04:09 8 they'd go off to another site, and you would recognize
04:09 9 them, and you would sell them an ad for Nike shoes or
04:09 10 for some Nike product; is that right?

04:09 11 Or show them an ad, not sell them.

04:09 12 A. That was the example I gave. Yes.

04:09 13 Q. And that's -- Nike's the advertiser and the
04:09 14 first website they visited, right?

04:09 15 A. Yes.

04:09 16 Q. Okay. So they're not visiting -- they're
04:09 17 not -- they're not being served an ad from some other
04:10 18 advertiser; it's a -- it's a Nike ad.

04:10 19 That's how Boomerang worked, right?

04:10 20 A. I lost you on that last one.

04:10 21 Q. Sure.

04:10 22 Your visitor -- your web user, they go to Nike
04:10 23 first, right?

04:10 24 A. Yes.

04:10 25 Q. Okay. And then they go to some other site,

04:10 1 and you show them an ad that's targeted?

04:10 2 A. Yes.

04:10 3 Q. And that's a Nike ad, the same as the first
04:10 4 site that they visited. It's an ad from the proprietor
04:10 5 or the owner, whatever you want to call it, of the
04:10 6 first website?

04:10 7 A. Yes. They get -- didn't come from Nike, but
04:10 8 they gave the ad and the rights to target the Boomerang
04:10 9 user.

04:10 10 Q. Right.

04:10 11 And when that ad was shown, did Nike receive
04:10 12 money from DoubleClick or pay money to DoubleClick?

04:10 13 A. They paid money.

04:10 14 Q. You were also the CEO of -- excuse me. Sorry.
04:10 15 Let me shift a little bit there.

04:10 16 Now, I think you told me a moment ago that --
04:11 17 that that patent that we looked at, DX-120, the patent
04:11 18 was the best description of the documents you showed
04:11 19 about how the Boomerang system worked, fair?

04:11 20 A. Yes.

04:11 21 Q. Okay. Now, that same description of the
04:11 22 Boomerang system, is it correct, it's your
04:11 23 understanding, in fact, that that -- that patent was
04:11 24 shown to the Patent Office by Mr. Shkedi before either
04:11 25 of his two patents in this case were issued?

04:11 1 Do you understand that?

04:11 2 A. I have no idea.

04:11 3 Q. Okay. Well, let's --

04:11 4 A. I don't know his patents.

04:11 5 Q. Okay. Well, let's take a look and make sure
04:11 6 I'm not misunderstanding. Let's look, first, at the
04:11 7 exhibit you looked at, DX-120. This is the -- the
04:11 8 patent that you and Mr. Merriman are on; is that right?

04:11 9 A. Yes.

04:11 10 Q. Okay. And this is that Boomerang patent we
04:12 11 talked about just a moment ago?

04:12 12 A. Yes.

04:12 13 Q. Okay. Now, do you see here on the left-hand
04:12 14 side under prior publication data, there's a number
04:12 15 US 2002/0082923?

04:12 16 Do you see all that?

04:12 17 A. Okay.

04:12 18 Q. Now, you, as someone who's applied for and
04:12 19 gotten patents, you understand that's a number that's
04:12 20 associated with this patent. That's when it's
04:12 21 published as an application so that people can read it
04:12 22 sometime after it's filed, right?

04:12 23 A. Actually, I didn't know that, but I know
04:12 24 there's a patent number. I didn't know that was the
04:12 25 format for it, but...

04:12 1 Q. Okay. Well, let's take --

04:12 2 A. I thought it was -- the number at the top was
04:12 3 the patent number, but --

04:12 4 Q. Right.

04:12 5 That number at the top, that's the one the
04:12 6 Patent Office gives after the patent is issued, but
04:12 7 sometimes patent applications are published even before
04:12 8 that and they have a publication number. That's what
04:12 9 we're looking at here.

04:12 10 Do you see that?

04:12 11 A. Okay.

04:12 12 Q. All right. So let's take a look at JX-3,
04:12 13 Mr. Shkedi's '639 patent. Now, let's turn to the
04:13 14 second page.

04:13 15 MS. SHAMILOV: Objection, Your Honor.

16

04:13 17 (Clarification by Reporter.)

04:13 18 THE COURT: Why are you talking to this
04:13 19 man about the patent? Has he seen the patent?

04:13 20 THE WITNESS: I've not seen any of these.

04:13 21 THE COURT: Move on.

04:13 22 MR. LEDAHL: Very well, Your Honor.

04:13 23 BY MR. LEDAHL:

04:13 24 Q. Mr. O'Connor, you -- after DoubleClick, you've
04:13 25 continued to be involved in various different startups,

04:13 1 technology companies; is that fair?

04:13 2 A. Yes. I've been involved in 40 companies.

04:13 3 Q. Okay. And one of those companies was a
04:13 4 company called, I hope I say it right, Graphiq, with a
04:13 5 Q at the end?

04:13 6 A. Yes.

04:13 7 Q. Is that how you pronounced it?

04:13 8 A. Most of us say -- mispronounce it, but that's
04:13 9 good.

04:13 10 Q. Okay. So you just called it Graphiq. Great.
04:13 11 Now, in 2018, Graphiq was sold to Amazon,
04:14 12 right?

04:14 13 A. I thought it was 2017, but yes.

04:14 14 Q. Okay. So a few years ago, you sold Graphiq to
04:14 15 Amazon?

04:14 16 A. Yes.

04:14 17 Q. How much did you sell it for?

04:14 18 A. It was roughly 60-million plus -- I think this
04:14 19 was under a nondisclosure, but...

04:14 20 Q. So tens of millions of dollars; is that right?

04:14 21 A. Yes.

04:14 22 Q. More than 50 million, something around there?

04:14 23 A. Yes.

04:14 24 Q. Okay.

04:14 25 A. A lot of it was for employee retention.

04:14 1 Q. Did you receive -- you, Mr. O'Connor, did you
04:14 2 receive any Amazon stock in connection with that sale?

04:14 3 A. I don't think I did. I think it was cash.

04:14 4 Q. Okay. So you just got cash for that.

04:14 5 Now --

04:14 6 A. Or not -- sorry. Sorry. Let me -- there was
04:14 7 an earnout as well for me.

04:15 8 Q. And was that in the form of Amazon stock or --

04:15 9 A. It was. There was restricted, yeah, sorry.
04:15 10 It was a form of stock. As long as you stay, you
04:15 11 received it. I had a three-year program, but I stayed
04:15 12 one year.

04:15 13 Q. I see. So you didn't end up receiving the
04:15 14 stock. Is that what you're saying?

04:15 15 A. I did not. I forfeited it.

04:15 16 Q. Okay. But you did get the money from the
04:15 17 transaction that was coming?

04:15 18 A. Yes.

19 Q. Okay. Now --

04:15 20 A. A lot of it was my own -- I got a lot of my
04:15 21 investment back. All my investment back.

04:15 22 Q. You're still working with startup companies
04:15 23 today. Is that -- in fact; is that right?

04:15 24 A. Yes.

04:15 25 Q. And it'd be nice if Amazon paid tens of

04:15 1 millions of dollars for another one soon, wouldn't it?

04:15 2 A. We're not having any conversations with Amazon
04:15 3 about buying or selling companies.

04:15 4 Q. Wouldn't want to burn any bridges, though,
04:15 5 would you?

04:15 6 A. I burn bridges all the time.

04:15 7 (Laughter.)

04:15 8 BY MR. LEDAHL:

04:15 9 Q. Haven't burned any bridges with Amazon here
04:15 10 coming to this trial; is that fair?

04:16 11 A. I was very outspoken when I worked for Amazon
04:16 12 for a year. I speak my mind.

04:16 13 Q. Now, you've talked a little bit about your
04:16 14 book today. Showed it to you on direct, we talked a
04:16 15 little bit about it here. And you specifically talked
04:16 16 about some of the things about DoubleClick in your
04:16 17 book.

04:16 18 I presume you'd like the members of the jury
04:16 19 to rely on the things that you say in your book; is
04:16 20 that fair?

04:16 21 A. I think more people have read this book this
04:16 22 week than have read before.

04:16 23 (Laughter.)

04:16 24 A. It was written 20 years ago. Might have some
04:16 25 changed views of things, but let's hear what you've got

1 to say.

04:16 2 BY MR. LEDAHL:

04:16 3 Q. Now, the business plan you talked about that's
04:16 4 in this book, that was a business plan that you used to
04:16 5 try to raise money at DoubleClick; is that fair?

04:16 6 A. Yes. Yes.

7 Q. Okay. And --

04:16 8 A. It was also to help employees understand like
04:17 9 what we did.

04:17 10 Q. Okay. But that wasn't some published document
04:17 11 you put out in the world. Is that -- is that a fair
04:17 12 statement, at that time?

04:17 13 A. A lot -- I mean, a lot of venture capital and
04:17 14 other companies saw the document, but it wasn't
04:17 15 published.

04:17 16 Q. Okay. And your book wasn't published until, I
04:17 17 think it was, 2003.

04:17 18 Does that sound about right?

04:17 19 A. Yes, that's correct.

04:17 20 Q. Okay. And that's after Mr. Shkedi applied for
04:17 21 the '639 patent in 2000 certainly. You understand
04:17 22 that?

04:17 23 MS. SHAMILOV: Objection, Your Honor.

04:17 24 A. I don't know anything about the patents.

04:17 25 MS. SHAMILOV: He doesn't know anything

04:17 1 about the patents and we keep asking.

04:17 2 THE COURT: Sustained.

04:17 3 BY MR. LEDAHL:

04:17 4 Q. Now, there are obviously things in the book
04:17 5 that you didn't tell the jury about today, of course,
04:17 6 right?

04:17 7 A. Of course.

04:17 8 Q. And one of those was what you wrote in the
04:17 9 first two sentences of the book; is that right?

04:17 10 A. I haven't read the book to the jury. So I
04:17 11 don't think you've heard most of my book. So...

04:17 12 Q. Sure.

04:17 13 So let's take a look at those first two
04:17 14 sentences in the introduction. You wrote this, right:
04:18 15 Al Gore did not invent the Internet. I did.

04:18 16 A. That was a joke.

04:18 17 Q. Well, those are your words, though, right?

04:18 18 A. It's a joke. If you read the rest of it,
04:18 19 you'll understand the joke. And by -- Al Gore didn't
04:18 20 invent the Internet -- yeah.

04:18 21 Q. And neither did you, did you?

04:18 22 A. Of course not.

04:18 23 MR. LEDAHL: Pass the witness,
04:18 24 Your Honor.

04:18 25 REDIRECT EXAMINATION

04:18 1 BY MS. SHAMILOV:

04:18 2 Q. Just one very quick question about your book.

04:18 3 MS. SHAMILOV: And, Mr. Patterson, can we
04:18 4 please go to D-418 at Page 161? And that second full
04:18 5 paragraph that counsel put up on the screen.

04:18 6 Page 161. No. I think it was 161.

7 BY MS. SHAMILOV:

04:18 8 Q. And that second paragraph, I'm just going to
04:19 9 ask you one question, sir.

04:19 10 Now, counsel for AlmondNet put on the screen
04:19 11 this last sentence and he highlighted: The primary
04:19 12 drive of most startups should be to dominate their
04:19 13 market.

04:19 14 Do you recall that?

04:19 15 A. I do.

04:19 16 Q. And he stopped highlighting and reading right
04:19 17 there. What did you say after that, sir?

04:19 18 A. By solving their customers' problems rather
04:19 19 than to get to profitability quickly.

04:19 20 At -- a very simple approach to starting
04:19 21 companies is you have to actually -- number one reason
04:19 22 companies fail is they don't actually solve a problem.
04:19 23 So we focused on solving the customer problem better
04:19 24 than anyone else.

04:19 25 Q. And was DoubleClick successful because it

04:19 1 solved customers' problems?

04:19 2 A. That was our -- that is -- our mantra was to
04:19 3 always focus on what the customer needed.

04:19 4 MS. SHAMILOV: Thank you, sir.

04:19 5 No further questions, Your Honor.

04:19 6 MR. LEDAHL: No questions, Your Honor.

04:19 7 THE COURT: Thank you for being here,
04:19 8 sir. You're welcome to stay in the courtroom and
04:19 9 attend the trial or to go home.

04:20 10 THE WITNESS: Thank you.

04:20 11 THE COURT: Next witness, please?

04:20 12 MS. SHAMILOV: Your Honor, at this time,
04:20 13 Amazon calls Mr. Merriman -- Dwight Merriman by
04:20 14 deposition.

04:20 15 THE COURT: About how long is the
04:20 16 deposition?

04:20 17 MS. SHAMILOV: It's about 20 minutes,
04:20 18 sir.

04:20 19 THE COURT: Do you have another witness
04:20 20 after that?

04:20 21 MS. SHAMILOV: Yes.

04:20 22 THE COURT: I would do that witness, if
04:20 23 he has to leave.

04:20 24 MS. SHAMILOV: Okay, then we'll do that.
04:20 25 Then we'll call Mr. Daniel Jaye.

04:20 1 THE COURT: We'll be done after this
04:20 2 witness probably.

04:20 3 MS. SHAMILOV: Mr. Daniel Jaye,
04:20 4 Your Honor.

04:20 5 THE COURT: Okay.

04:20 6 (The witness was sworn.)

04:20 7 DIRECT EXAMINATION

04:20 8 BY MS. SHAMILOV:

04:21 9 Q. Good afternoon.

04:21 10 A. Hello.

04:21 11 Q. Can you please introduce yourself to the jury?

04:21 12 A. I'm Daniel Jaye.

04:21 13 Q. Why are you here today, sir?

04:21 14 A. I'm here to talk about a company I founded
04:21 15 called Engage and the Engage advertising system.

04:21 16 Q. And are you being paid for your time in court
04:21 17 today, sir?

04:21 18 A. No. I'm not. But I did take time away from
04:21 19 work, and I expect I'll be reimbursed for my time and
04:21 20 for my travel and preparation time at my consulting
04:21 21 rate of \$750 an hour.

04:22 22 Q. Now, before we talk about Engage, could you
04:22 23 please -- I would like to talk about your background.

04:22 24 What do you do currently professionally?

04:22 25 A. I'm CEO of a company called Aqfer that I

04:22 1 started in 2018.

04:22 2 Q. And what is Aqfer?

04:22 3 A. Aqfer is a company that provides technology to
04:22 4 handle massive amounts of marketing data. We serve the
04:22 5 largest online advertising and marketing companies
04:22 6 running today with those services.

04:22 7 Q. How many years of online marketing and
04:22 8 advertising experience do you have?

04:22 9 A. I guess I have 29 years, going back to 1995.

04:22 10 Q. And what is your education?

04:22 11 A. I graduated from college in 1987 with degrees
04:22 12 in astronomy and astrophysics from Harvard.

04:22 13 Q. How does someone with an astrophysics degree
04:22 14 get into online advertising?

04:22 15 A. Well, I spent most of my researches in
04:23 16 undergraduate processing large amounts of data coming
04:23 17 off of telescopes. And so I got good at processing
04:23 18 large amounts of data.

04:23 19 And then I went into consulting after
04:23 20 graduating to basically use my math and computer
04:23 21 science skills, generally ended up working on
04:23 22 processing large amounts of data. And in general, that
04:23 23 was marketing data.

04:23 24 Eventually I ended up at Fidelity Investments,
04:23 25 in their marketing division, running their database

04:23 1 marketing systems.

04:23 2 Q. And when did you found Engage in that time
04:23 3 frame?

04:23 4 A. I left Fidelity in 1995, in September, and
04:23 5 started Engage.

04:23 6 Q. And what was your role at Engage?

04:23 7 A. I was the founder and I was the chief
04:23 8 technology officer.

04:23 9 Q. And what did Engage do?

04:23 10 A. Well, to start with, we thought that the
04:23 11 Internet would be a fantastic source of information
04:23 12 about what people really were interested in, and so we
04:24 13 started off with technology to build profiles with
04:24 14 people's interests.

04:24 15 Eventually, we built -- sorry -- we integrated
04:24 16 that with an ad management software capability that we
04:24 17 acquired. And eventually, we launched our own ad
04:24 18 network to sell ads targeted to individuals with those
04:24 19 interests.

04:24 20 Q. And we've just heard about ad networks,
04:24 21 advertising networks, ad networks, for short, from
04:24 22 Mr. O'Connor.

04:24 23 Was DoubleClick Engage's competitor?

04:24 24 A. When we got into advertising, yes.

04:24 25 Q. Now, you mentioned Engage's profile

04:24 1 technology.

04:24 2 What was an Engage profile?

04:24 3 A. An Engage profile was a collection of
04:24 4 interests.

04:24 5 Q. And when you say "interests," what do you
04:24 6 mean?

04:24 7 A. For example, they could have an interest in
04:24 8 sports or automobiles or pets, and that actually would
04:24 9 be correlated to a score indicating their level of
04:24 10 interest.

04:24 11 Q. And that would be for the user website
04:25 12 visitors --

04:25 13 A. Right.

04:25 14 Q. -- with these profiles?

04:25 15 A. Yes.

04:25 16 Q. And what types of profiles did Engage
04:25 17 maintain?

04:25 18 A. So we had local profiles. These were
04:25 19 collected by individual websites and involve the
04:25 20 behavior from users visiting pages on that website.

04:25 21 And then we had global profiles. And that was
04:25 22 where we were able to associate profiles across
04:25 23 websites to build an overall profile, so that if they
04:25 24 went to different types of sites, we could have a more
04:25 25 complete view of their interests.

04:25 1 Q. And in the ordinary course of business, did
04:25 2 Engage create documentation describing its technology?

04:25 3 A. We did.

04:25 4 Q. And did it create manuals describing your
04:25 5 technology?

04:25 6 A. It did.

04:25 7 Q. And were there manuals describing this
04:25 8 profiling technology you just talked about?

04:25 9 A. Yes. There were.

04:25 10 Q. And would you -- were you involved in writing
04:25 11 those documents?

04:25 12 A. I may have done outlines, but I would
04:26 13 certainly supervise the people that actually wrote the
04:26 14 manuals and approve them.

04:26 15 Q. If I could please have you turn in your binder
04:26 16 in front of you there to Exhibit D-552.

04:26 17 And what is this document, sir?

04:26 18 A. This is a manual describing the profiling
04:26 19 components of the Engage system.

04:26 20 Q. And is this the manual that was created in the
04:26 21 ordinary course of business at Engage?

04:26 22 A. Yes. It is.

04:26 23 MS. SHAMILOV: Your Honor, I move D-552
04:26 24 into evidence, please.

04:26 25 MR. LEDAHL: Subject to our prior

04:26 1 objection, Judge.

04:26 2 THE COURT: It'll be admitted.

04:26 3 MS. SHAMILOV: Thank you.

04:26 4 BY MS. SHAMILOV:

04:26 5 Q. Now, who was the audience for this document?
04:26 6 Who are you writing for?

04:26 7 A. This is for customers of Engage.

04:26 8 MS. SHAMILOV: Mr. Patterson, can we
04:26 9 please jump to Figure 2-1. I think it should be on
04:26 10 Page 2-4.

04:26 11 And if we can make it bigger so we can
04:26 12 all see it. Thank you.

04:27 13 BY MS. SHAMILOV:

04:27 14 Q. Now, Mr. Jaye, can you please walk us
04:27 15 through -- what does this figure show? What is this?

04:27 16 A. This figure shows how the Engage Journal
04:27 17 component of the Engage system collected information
04:27 18 from an individual website, basically creating that
04:27 19 local profile, and then passing that profile back up to
04:27 20 our global profile server.

04:27 21 Q. And was Engage Journal a component of the
04:27 22 Engage system?

04:27 23 A. Yes.

04:27 24 Q. And where was -- where was this -- on the
04:27 25 bottom there it says "profile server."

04:27 1 Where was that profile server?

04:27 2 A. So that profile server was for the local
04:27 3 profiles at the website. And for our global profiles,
04:27 4 it was at our Engage Knowledge global profile server.

04:27 5 Q. And so would these local profiles be
04:27 6 transmitted to the Engage's server and used to create
04:28 7 global profiles for an individual --

04:28 8 A. That is correct.

04:28 9 Q. -- user?

04:28 10 A. Yes.

04:28 11 Q. And what is the date of this document, sir?

04:28 12 A. It says March of 2000.

04:28 13 Q. And does the document describe the operation
04:28 14 of the Engage system as it existed in March of 2000?

04:28 15 A. It does.

04:28 16 Q. You mentioned that Engage's profiles described
04:28 17 user interests.

04:28 18 How did the profile specify those interests?

04:28 19 A. So when a user visited a web page, that page
04:28 20 would be -- have a -- information about what kind of
04:28 21 content that page was about, would be associated with
04:28 22 the web page address.

04:28 23 And so if they went to a sports page, we'd
04:28 24 know that they had a sports interest. So that's how we
04:28 25 would collect that, and we would associate the -- that

04:28 1 set of interests. I think we had 800 different
04:28 2 interest categories that we could have for that web
04:29 3 profile.

04:29 4 Q. And could you please turn to D-407 in your
04:29 5 binder, sir?

04:29 6 Did Engage maintain a website in the ordinary
04:29 7 course of business?

04:29 8 A. Yes. It did.

04:29 9 Q. And did it publish documents on its website in
04:29 10 the ordinary course of business?

04:29 11 A. It did.

04:29 12 Q. And the folks who created that content, did
04:29 13 they know about what Engage was doing and its
04:29 14 technology?

04:29 15 A. Yes. They were employees in our marketing
04:29 16 department.

04:29 17 Q. Okay. And did you visit and review that
04:29 18 website in the regular course of business at your time
04:29 19 at Engage?

04:29 20 A. Yes. I did.

04:29 21 MS. SHAMILOV: Your Honor, I move D-407
04:29 22 into evidence, please.

04:29 23 MR. LEDAHL: Subject to our prior
04:29 24 objection.

04:29 25 THE COURT: It'll be admitted.

04:29 1 MS. SHAMILOV: Thank you.

04:29 2 Mr. Patterson, if we can please publish
04:29 3 the document to the jury. And if we can please move to
04:29 4 Page 2 of this document.

04:29 5 BY MS. SHAMILOV:

04:29 6 Q. Now, sir, what are we looking at here?

04:29 7 A. This is a list of the top level interest
04:30 8 categories in the Engage Knowledge system. And you can
04:30 9 see it's got some of the interests I mentioned:
04:30 10 automobiles, pets, sports.

04:30 11 Q. And so these are some of those 800 interest
04:30 12 categories you mentioned?

04:30 13 A. Yes. Then there would be more granular, more
04:30 14 detailed categories like football.

04:30 15 Q. And were these the interest categories that
04:30 16 the Engage system used around the year 2000 and before?

04:30 17 A. Yes. It is.

04:30 18 Q. Now, we've talked about --

04:30 19 MS. SHAMILOV: We can take that down,
04:30 20 Mr. Patterson.

04:30 21 BY MS. SHAMILOV:

04:30 22 Q. We talked about Engage's ad network that you
04:30 23 said you first started with the profiling technology
04:30 24 and then later launched the ad network, and that's when
04:30 25 you became a competitor of DoubleClick.

04:30 1 When did Engage launch its ad network?

04:30 2 A. It was the second week of October of 1999.

04:30 3 Q. That's very precise. How do you remember
04:31 4 that?

04:31 5 A. It was the week my wife and I adopted our
04:31 6 children.

04:31 7 Q. Now, once you launched the ad network in 1998,
04:31 8 how did the customers use Engage's network?

04:31 9 A. Actually, it was 1999.

04:31 10 Q. I'm sorry. 1999. Thank you for correcting
04:31 11 me.

04:31 12 How did the customers use the Engage's
04:31 13 network?

04:31 14 A. So we would sell advertising campaigns that
04:31 15 would be delivered across sites in the Engage Audience
04:31 16 Net advertising network. Those ads would typically be
04:31 17 targeted to people who have interests that were
04:31 18 relevant to that advertising campaign.

04:31 19 So, for example, let's say you had Sports
04:31 20 Illustrated and Sports Illustrated wanted to send --
04:31 21 sell magazine subscriptions. So they might have an ad
04:31 22 that was targeted to people with a sports interest who
04:31 23 went to E! Online.

04:32 24 Now, that sports interest could be because
04:32 25 they visited Sports Illustrated or another site in our

04:32 1 network that had sports pages.

04:32 2 Q. And did the advertisers authorize the Engage
04:32 3 system to display ads or target users for their ads?

04:32 4 A. Yes. Because they would give us an order
04:32 5 telling us to target or deliver that campaign to the --
04:32 6 based on the targeting criteria they specified.

04:32 7 Q. And would sometimes those targeting criterias
04:32 8 include time components?

04:32 9 A. Yeah. They -- they -- so the way this works
04:32 10 is that you'll get an order to run a campaign. And
04:32 11 that campaign will have a start date and an end date,
04:32 12 it'll have targeting criteria, it had volumes, it'll
04:32 13 have maybe geographic restrictions or other
04:32 14 restrictions.

04:32 15 So you have to set up that campaign ahead of
04:33 16 time. We call it preflighting.

04:33 17 So when you do that, you set up the campaign,
04:33 18 and it is authorized to start automatically as of the
04:33 19 start date of the campaign. And then it automatically
04:33 20 applies those targeting criteria, you know, through the
04:33 21 duration of the campaign.

04:33 22 Q. And I think you've mentioned Audience Net a
04:33 23 couple of times in your answers there. Was Audience
04:33 24 Net the name of the ad network?

04:33 25 A. That's correct.

04:33 1 Q. And that Engage Journal component, the figure
04:33 2 for which we saw, did that component work with Audience
04:33 3 Net?

04:33 4 A. Yes. It was part of Audience Net.

04:33 5 Q. Now, how many websites were in the Audience
04:33 6 Net ad network at Engage in March of 2000?

04:33 7 A. I don't remember the exact number, but it was
04:33 8 at least dozens.

04:33 9 Q. And did these websites, these dozens of
04:33 10 websites, provide local profiles of users of their
04:34 11 websites to the Engage's servers?

04:34 12 A. Most of the sites that participated did
04:34 13 provide local profiles. There were some sites that
04:34 14 just received advertising.

04:34 15 Q. Now, those websites that did provide their
04:34 16 local profile information, were they compensated for
04:34 17 their data?

04:34 18 A. They were because they received discounted
04:34 19 access to the profiles at Engage Knowledge.

04:34 20 Q. Now, and could websites use the information
04:34 21 that they stored in their local profiles to place ads
04:34 22 on other websites?

04:34 23 A. Absolutely. We actually had customers who had
04:34 24 their own ad networks, and those ad networks had their
04:34 25 own sites that they owned, and they also -- in some

04:34 1 cases those ad networks had sites that they didn't own.

04:34 2 And so they would use our technology to target
04:34 3 ads on their own website, and then they would actually
04:35 4 use that to target ads on the sites they didn't own
04:35 5 based on the profiles from their own website.

04:35 6 So if I have an example like there was a site
04:35 7 called CMP, and that site -- about computers, and when
04:35 8 they had somebody come and visit, they would deliver
04:35 9 ads based on, let's say, an interest in desktop
04:35 10 computers, and then they had some other sites that they
04:35 11 didn't own and they had the ability of -- they actually
04:35 12 delivered ads on those other sites targeted to the
04:35 13 people who had that desktop interest from CMP.

04:35 14 Q. Now, if I could please have you turn to D-367
04:35 15 in your binder.

04:35 16 And what is this document, sir?

04:35 17 A. This document is the press release announcing
04:35 18 Audience Net.

04:35 19 Q. And was this document on Engage's website at
04:35 20 that time?

04:35 21 A. It was.

04:35 22 Q. And it was the same website that was
04:36 23 maintained in the ordinary course of business?

04:36 24 A. Yes.

04:36 25 MS. SHAMILOV: Your Honor, I move D-367

04:36 1 into evidence, please.

04:36 2 MR. LEDAHL: Subject to our objection.

04:36 3 THE COURT: It'll be admitted.

04:36 4 MS. SHAMILOV: Mr. Patterson, thank you.

04:36 5 BY MS. SHAMILOV:

04:36 6 Q. And you said this is the press release
04:36 7 announcing Audience Net? Is that what you --

04:36 8 A. Yes.

04:36 9 Q. Okay. And what's the date of this press
04:36 10 release?

04:36 11 A. October 12th, 1999.

04:36 12 Q. Now, at the time --

04:36 13 MS. SHAMILOV: We can take that down,
04:36 14 Mr. Patterson.

04:36 15 BY MS. SHAMILOV:

04:36 16 Q. At the time in October 1999 or at that time
04:36 17 frame, how many profiles did Engage's system have?

04:36 18 A. We had 35 million profiles at that time.

04:36 19 MS. SHAMILOV: And, Mr. Patterson, if we
04:36 20 go to Page 2 of Exhibit D-367. And -- there we go.

04:36 21 BY MS. SHAMILOV:

04:36 22 Q. And is this -- the press release, did that
04:36 23 press release confirm how many profiles the system had?

04:36 24 A. Yes. It says 35 million anonymous user
04:36 25 profiles and 800 interest categories.

04:37 1 Q. Now, this document right here in this
04:37 2 paragraph, it says: At the heart of Engage Audience
04:37 3 Net is Engage Knowledge.

04:37 4 Now, we've talked about Engage Journal, talked
04:37 5 about Audience Net. What's Engage Knowledge?

04:37 6 A. Engage Knowledge was our global profile
04:37 7 database.

04:37 8 Q. And did Engage Knowledge work with Engage
04:37 9 Journal and Audience Net?

04:37 10 A. Yes.

04:37 11 Q. Were they all part of the same system?

04:37 12 A. Yes.

04:37 13 Q. Is that how the Engage advertising network
04:37 14 worked?

04:37 15 A. Yes.

04:37 16 Q. Okay. And were there other components within
04:37 17 that big system?

04:37 18 A. There were. Most notably, there was something
04:37 19 called Engage Link, which is actually how you retrieved
04:37 20 profiles from Engage Knowledge, and then there was Ad
04:37 21 Manager, which is actually the advertising system that
04:37 22 targeted and delivered ads.

04:37 23 Q. And did the Engage Link and Ad Manager -- were
04:37 24 components of the same system with Engage Knowledge and
04:37 25 Engage Journal; is that right?

04:37 1 A. Yes.

04:37 2 Q. And all were part of this Audience Net
04:38 3 advertising network?

04:38 4 A. Yes.

04:38 5 Q. Okay. Now, I assume Engage's system being a
04:38 6 computer system was -- had a source code, right?

04:38 7 A. Yes.

04:38 8 Q. Would the source code of the Engage's
04:38 9 advertising system help the jury understand how the
04:38 10 system worked?

04:38 11 MR. LEDAHL: Objection. Calls for
04:38 12 speculation.

04:38 13 THE COURT: Why don't you lay a
04:38 14 foundation for it?

04:38 15 BY MS. SHAMILOV:

04:38 16 Q. When you were the chief technology officer at
04:38 17 Engage, were you familiar with the source code?

04:38 18 A. Yes. I was.

04:38 19 Q. Were you also familiar with the documents?

04:38 20 A. Yes.

04:38 21 Q. And so for someone like the jury in this case,
04:38 22 what would be more helpful to understand how the
04:38 23 Engage's system worked, the source code or the
04:38 24 documents?

04:38 25 A. The documents.

04:38 1 Q. How about you as the chief technology officer
04:38 2 of Engage describing how the system worked? Would that
04:38 3 be more helpful if you needed to understand how the
04:39 4 system worked than the source code?

04:39 5 A. Absolutely. We have hundreds of thousands of
04:39 6 lines of code. It would have taken a lot of time to
04:39 7 piece through it and actually try to figure out what it
04:39 8 was doing, and then, of course, that would have only
04:39 9 told me how each module worked.

04:39 10 How the system worked is actually based on the
04:39 11 specification, the requirements, how it was configured.

04:39 12 So the most useful thing is actually to see it
04:39 13 running and operating and targeting and delivering ads.

04:39 14 Q. But would it be also helpful, though, to talk
04:39 15 to someone like you as the chief technology officer to
04:39 16 explain it?

04:39 17 A. Absolutely.

04:39 18 Q. Now, Mr. Jaye, do you have any patents from
04:39 19 your time at Engage?

04:39 20 A. I do.

04:39 21 Q. Could I have you please turn to Exhibit 93,
04:39 22 D-93 in your binder?

04:39 23 Is this one of your patents?

04:39 24 A. It is.

04:39 25 MS. SHAMILOV: Your Honor, I move D-93

04:39 1 into evidence, please.

04:39 2 MR. LEDAHL: No objection.

04:39 3 THE COURT: Admitted.

04:39 4 MS. SHAMILOV: And, Mr. Patterson, if we
04:39 5 can just blow up the top portion.

04:40 6 BY MS. SHAMILOV:

04:40 7 Q. And is that -- as inventor, is that you, sir,
04:40 8 that it lists?

04:40 9 A. Yes.

04:40 10 Q. And the assignee, is that the Engage company
04:40 11 that we've been talking about?

04:40 12 A. Yes.

04:40 13 Q. And what does this patent describe?

04:40 14 A. It describes the profiling system that Engage
04:40 15 developed as well as how we built interest-based
04:40 16 profiles.

04:40 17 Q. And when you filed this patent, sir, did
04:40 18 Engage already launch its profiling technology?

04:40 19 A. Yes.

04:40 20 Q. Okay. Thank you.

04:40 21 MS. SHAMILOV: No further questions at
04:40 22 this time, Your Honor.

04:40 23 MR. LEDAHL: May I proceed, Your Honor?

24 THE COURT: Please.

04:40 25 CROSS-EXAMINATION

04:40 1 BY MR. LEDAHL:

04:41 2 Q. Good afternoon, Mr. Jaye.

04:41 3 A. Hello.

04:41 4 Q. You and I have also not met before; is that
04:41 5 right?

04:41 6 A. No. We haven't.

04:41 7 Q. Okay. Now, we've heard from a number of
04:41 8 witnesses in this case, some were fact witnesses, some
04:41 9 were expert witnesses. You're here today as a fact
04:41 10 witness, correct?

04:41 11 A. Yes.

04:41 12 Q. That was -- I wanted to make sure I understood
04:41 13 correctly.

04:41 14 Now, we've heard that expert witnesses are
04:41 15 paid for the work that they do in connection with
04:41 16 performing analyses in this case?

04:41 17 You understand that?

04:41 18 A. Yes.

04:41 19 Q. Okay. But you're here to testify supposedly
04:41 20 as a fact witness about things you already knew about
04:41 21 Engage before you ever heard of this lawsuit; is that
04:41 22 fair?

04:41 23 A. Yes.

04:41 24 Q. And we've heard at various times during this
04:41 25 trial that the jury might want to know if there are any

04:41 1 uninterested third parties who might come and tell us
04:42 2 about the prior art and how that might -- maybe worked.

04:42 3 And you understand that that's something that
04:42 4 might be of interest; is that fair?

04:42 5 A. Yes.

04:42 6 Q. And we were -- we were told that there would
04:42 7 be such uninterested third parties come in to testify
04:42 8 in this case.

04:42 9 Is that you?

04:42 10 A. Yes.

04:42 11 Q. Now, you're the only fact witness here
04:42 12 testifying about the Engage system. Is that your
04:42 13 understanding?

04:42 14 A. Yes.

04:42 15 Q. And you're not an expert witness, but Amazon
04:42 16 and its lawyers have been paying you a consulting fee
04:42 17 for this case; is that right?

04:42 18 A. For preparation and travel.

04:42 19 Q. And for meeting with them, any time you spent
04:42 20 talking to Amazon's lawyers, they paid you for that
04:42 21 time?

04:42 22 A. Yes, as part of the preparation.

04:42 23 Q. Now, you gave a deposition about -- just a
04:42 24 little over a year ago in this case.

04:42 25 Do you remember that?

04:42 1 A. Yes.

04:42 2 Q. Now, at your deposition you testified that --

04:42 3 THE COURT: He -- the deposition doesn't
04:43 4 exist until you ask him a question and he says
04:43 5 something inconsistent with it.

04:43 6 MR. LEDAHL: Fair enough, Your Honor.

04:43 7 BY MR. LEDAHL:

04:43 8 Q. At the time of your deposition, Mr. Jaye, your
04:43 9 consulting fee that you were charging Amazon for things
04:43 10 in this case was \$500 an hour; is that right?

04:43 11 A. Yes.

04:43 12 Q. And so now a year later, when you come here to
04:43 13 trial, it's \$750 an hour. Is that also correct?

04:43 14 A. Yes. Because my time running my company
04:43 15 turned out to be really important, and it's difficult
04:43 16 for me to be away.

04:43 17 Q. It's a good rate of inflation you got there.

04:43 18 THE COURT: Counsel.

04:43 19 MR. LEDAHL: Apologies, Your Honor.

04:43 20 Withdrawn.

04:43 21 BY MR. LEDAHL:

04:43 22 Q. You talked about a few documents during your
04:43 23 testimony.

04:43 24 Do you recall that?

04:43 25 A. Yes.

04:43 1 Q. I think it was three or four?

04:44 2 A. I think so.

04:44 3 Q. Okay. Now, one document you didn't explain
04:44 4 was something that's called an S-1 statement that
04:44 5 Engage filed with the Securities and Exchange
04:44 6 Commission.

04:44 7 Are you familiar with that document?

04:44 8 A. I am.

04:44 9 Q. That was -- that was a document that Engage
04:44 10 filed in 1999 when it was seeking to raise money in the
04:44 11 stock market for a public offering; is that right?

04:44 12 A. Yes.

04:44 13 Q. Okay. And if you look in the binder that I
04:44 14 believe was given to you just a moment ago, do you have
04:44 15 Exhibit DX-511 in there?

04:44 16 A. I have a tab. Yes.

04:44 17 Q. Okay. Take a look at that, please.

04:44 18 Is Exhibit DX-511, is that the S-1 statement
04:44 19 that Engage filed with the Securities and Exchange
04:44 20 Commission?

04:44 21 A. I don't think I've looked at this form, but I
04:44 22 have no reason to believe it isn't.

04:45 23 Q. Okay. And in filing this S-1 with the
04:45 24 Securities and Exchange Commission, you wanted to be as
04:45 25 complete and accurate and fair as possible in the

04:45 1 things that were described here?

04:45 2 MS. SHAMILOV: Objection, Your Honor.

04:45 3 Witness said he hasn't looked at this --

4 THE COURT: I can't hear you.

04:45 5 MS. SHAMILOV: The witness testified that
04:45 6 he hasn't looked at this form.

04:45 7 THE COURT: Would you like to lay a
04:45 8 foundation that he's seen it?

04:45 9 MR. LEDAHL: Is -- and, Your Honor, may I
04:45 10 move for admission since DX-511, the witness testified,
04:45 11 I believe, that he indicated this was the S-1, just in
04:45 12 a different form?

04:45 13 THE COURT: If you will just lay a
04:45 14 foundation.

04:45 15 MR. LEDAHL: Very well, Your Honor.

04:45 16 THE COURT: He knows what this is.

04:45 17 BY MR. LEDAHL:

04:45 18 Q. Mr. -- Mr. Jaye, I understand this may be in a
04:45 19 different form than you've seen before, but as far as
04:45 20 you can tell, this is the S-1 statement that Engage
04:45 21 filed with the Securities and Exchange Commission?

04:45 22 A. I'm just -- if it's okay, I'll just take a
04:45 23 look at it just to make sure. There were a lot of
04:46 24 filings that Engage had to make. And that wasn't in my
04:46 25 responsibility.

04:46 1 THE COURT: You don't need to -- if you
04:46 2 want to look at it, just look at it.

04:46 3 A. It appears to be.

04:46 4 MR. LEDAHL: Your Honor, at this time, we
04:46 5 move for admission of DX-511.

04:46 6 MS. SHAMILOV: No objection.

04:46 7 THE COURT: It's admitted.

04:46 8 BY MR. LEDAHL:

04:46 9 Q. And you can see on the first page there we put
04:46 10 up, it says S-1. And this is submitted to the
04:46 11 Securities and Exchange Commission. And it was in May
04:46 12 of 1999 that it was filed.

04:46 13 Is that about when you remember it being
04:46 14 filed?

04:46 15 A. Yes.

04:46 16 Q. Okay. And I think you said this, but this is
04:46 17 a document you were putting out there for investors who
04:47 18 might want to buy stock in a new company, Engage, to
04:47 19 raise money?

04:47 20 A. Yes.

04:47 21 Q. So it was important to be truthful and
04:47 22 accurate in all the things you put in here?

04:47 23 A. Yes.

04:47 24 Q. Now, we heard a suggestion about S-1s earlier
04:47 25 in the trial, that they're nothing but financial

04:47 1 information.

04:47 2 That's not quite true, is it?

04:47 3 A. No. There's more than financial information.

04:47 4 Q. In fact, you have a lot of information about
04:47 5 Engage and its business and its technology that you put
04:47 6 into this statement so investors could know what the
04:47 7 company did, how it worked, what kind of things you
04:47 8 were involved in; is that right?

04:47 9 A. Yes.

04:47 10 Q. Okay. Let's turn to Page 33 of this document.
04:47 11 And I'm looking at the exhibit page number.

12 A. Yes.

04:47 13 Q. Do you see down there near the bottom, there's
04:47 14 a heading that says Business and then it talks about
04:47 15 Engage?

04:47 16 A. Yes.

04:47 17 Q. And this section about Engage's business, this
04:48 18 goes on for something like 20 or 21 pages; is that
04:48 19 fair?

04:48 20 You can turn to Page -- about 54, it looks
04:48 21 like, where it's still -- maybe the end of this and
04:48 22 moving into things about the board of the company.

04:48 23 A. It looks like that's about right.

04:48 24 Q. Okay. Now, let's go to Page 36 of this
04:48 25 document, if you could, sir.

04:48 1 Do you see the heading The Engage Solution?

04:48 2 A. Yes.

04:48 3 Q. And this next section, this is describing
04:48 4 Engage's technology and how it works; is that fair?

04:48 5 A. Yes.

04:49 6 Q. Okay. And that's the technology that Engage
04:49 7 had as of May of 1999, fair?

04:49 8 A. Yes.

04:49 9 Q. Okay. And, for example, on the next page, you
04:49 10 list interest categories and the kind of profile data
04:49 11 that was collected by Engage, sort of like what you
04:49 12 talked about on your direct testimony, right?

04:49 13 A. I think this is an example of one profile.
04:49 14 Yes.

04:49 15 Q. Okay. And you also talk about targeted
04:49 16 delivery of advertising using these profiles in this
04:49 17 S-1 document?

04:49 18 A. Yes.

04:49 19 Q. Okay. And you talk about, on the next page,
04:49 20 Engage's business strategy; is that right? There's a
04:49 21 heading Strategy?

04:49 22 A. I see that. Yes.

04:49 23 Q. Okay. Now, let's turn to -- actually, turn to
04:49 24 Page 40 of this exhibit.

04:50 25 Now, at the very bottom of Page 40, do you see

04:50 1 that sentence that says: The following table shows the
04:50 2 products and services offered by Engage?

04:50 3 A. Yes.

04:50 4 Q. And then if we turn the page to the next page,
04:50 5 there's a list with the description of all of Engage's
04:50 6 products and what they are and the benefits of using
04:50 7 them.

04:50 8 Do you see that?

04:50 9 A. Yes.

04:50 10 Q. Okay. And you -- included in that was this
04:50 11 Engage Knowledge database that you talked about in your
04:50 12 testimony earlier today, right?

04:50 13 A. Yes.

04:50 14 Q. Okay. And one of the Engage products that was
04:50 15 part of the Engage system was a product called Ad
04:50 16 Manager; is that right?

04:50 17 A. Yes.

04:50 18 Q. Okay. And all these other products that you
04:50 19 mentioned today, these are also the products that are
04:50 20 discussed here?

04:50 21 A. Not all of them. No.

04:50 22 Q. Which --

04:50 23 A. Some of the ones on the bottom of the page
04:50 24 were not part of the Audience Net solution we were
04:50 25 talking about, but Audience Net hadn't been launched

04:50 1 when this S-1 was written. This predates Audience Net.

04:51 2 Q. Okay. Now, you discussed the Audience Net,
04:51 3 and I think you said that it was somehow -- I think you
04:51 4 said it was possible or theoretically possible that an
04:51 5 ad network would use Audience Net; is that right?

04:51 6 A. No. What I said is that we had customers who
04:51 7 were using the same technology we used in Audience Net
04:51 8 to run their own ad networks.

04:51 9 Q. Did any of the documents you showed today
04:51 10 refer to ad networks using Audience Net?

04:51 11 A. I think Image Networks was actually referred
04:51 12 to in the Audience Net announcement. I'm trying to
04:51 13 think about which other documents we had today.

04:51 14 We had the -- but I know that at the very
04:51 15 least, there's several references to the fact that some
04:51 16 of our -- of our customers were ad networks. But it
04:51 17 was well-known and documented.

04:51 18 We -- we had -- you know, I don't know the
04:52 19 exact number, but I can think off the top of my head of
04:52 20 seven or eight ad networks that were running our
04:52 21 technology.

04:52 22 Q. And is it fair to say that you don't know
04:52 23 exactly how those ad networks were using Engage's
04:52 24 technology?

04:52 25 A. No. That's not fair to say. We were very

04:52 1 involved in deploying them, we reviewed their status,
04:52 2 how they used it, their use cases, the business
04:52 3 problems they were solving. That's exactly what we
04:52 4 were doing.

04:52 5 Q. So did they control it or did you control it?

04:52 6 A. We provided when -- for -- when somebody had
04:52 7 their own ad network, they controlled it. But they
04:52 8 were configuring it, right? So they needed to know,
04:52 9 okay, how do I set up a campaign targeted to profiles.
04:52 10 And we would have our software manuals and training.

04:52 11 And so with any customer, you have to
04:52 12 understand how they're using the software to be able to
04:52 13 support them well.

04:52 14 Q. And you don't know one way or the other, is it
04:52 15 fair to say, whether the information that Engage
04:52 16 disclosed, like in its S-1, was disclosed to the Patent
04:53 17 Office in connection with anything in this case?

04:53 18 A. No.

04:53 19 MR. LEDAHL: Pass the witness,
04:53 20 Your Honor.

04:53 21 MS. SHAMILOV: No questions, Your Honor.

04:53 22 THE COURT: You are free to stay in the
04:53 23 courtroom or go back home.

04:53 24 THE WITNESS: Thank you.

04:53 25 THE COURT: Counsel, did you say the

1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
3
4

5 I, Kristie M. Davis, Official Court
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