Transcript of David B. Lett

Date: December 19, 2024
Case: FreeWheel Media, Inc. -v- AlmondNet, Inc. (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

FREEWHEEL MEDIA, INC.,
Petitioner,

v.

ALMONDNET, INC.,
Patent Owner.

_____

Case IPR2024-00421
Case IPR2024-00422
Patent No. 7,861,220

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ZOOM DEPOSITION OF DAVID B. LETT,

(Reported Remotely via Web videoconference)

Washington, DC (Deponent's location)

Thursday, December 19, 2024

Volume 1

STENOGRAPHICALLY REPORTED BY:
REBECCA L. ROMANO, RPR, CSR, CCR
California CSR No. 12546
Nevada CCR No. 827
Oregon CSR No. 20-0466
Washington CCR No. 3491

JOB NO. 565041

PAGES 1 - 45

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 _____
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 _____
5 FREEWHEEL MEDIA, INC.,
Petitioner,
6
v.
7
ALMONDNET, INC.,
8 Patent Owner.
9 _____
Case IPR2024-00421
10 Case IPR2024-00422
Patent No. 7,861,220
11 _____
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16 DEPOSITION OF DAVID B. LETT, taken on
17 behalf of the Petitioner, with the deponent located
18 in Washington, DC, commencing at
19 12: p.m., Thursday, December 19, 2024, remotely
20 reported via Web videoconference before
21 REBECCA L. ROMANO, a Certified Shorthand Reporter,
22 Certified Court Reporter, Registered Professional
23 Reporter.
24
25

1 APPEARANCES OF COUNSEL
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21 Gary Garcia, Planet Depo Technician
22
23
24
25 /////

1 I N D E X

2 DEPONENT EXAMINATION

3 DAVID B. LETT PAGE
VOLUME 1

4

5 BY MR. MILKEY 7

6

7 EXHIBITS(premarked)

8 Exhibit 1002 Inter Partes Review

9 No.: IPR2024-00421

10 Declaration of David B. Lett

11 in Support of Petition for

12 Inter Partes Review of

13 U.S. Paten No. 7,861,260;

14

15 Exhibit 1002 Inter Partes Review

16 No.: IPR2024-00422

17 Declaration of David B. Lett

18 in Support of Petition for

19 Inter Partes Review of

20 U.S. Paten No. 7,861,260;

21

22 Exhibit 1007 United States Patent

23 Application Publication

24 Pub No. US 2008/0113674 A1;

25 /////

1 EXHIBITS(premarked)
2
3 Exhibit 1011 United States Patent
4 Application Publication
5 Pub No. US 2006/0128364 A1;
6
7 Exhibit 1016 United States Patent
8 Application Publication
9 Pub No. US 2008/0201731 A1.
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1 Washington, DC; Thursday, December 19, 2024
2 12:03 p.m.
3 ---o0o---
4
5 THE COURT REPORTER: If you could raise
6 your right hand for me, please.
7 THE DEPONENT: (Complies.)
8 THE COURT REPORTER: You do solemnly
9 state, under penalty of perjury, that the testimony
10 you are about to give in this deposition shall be
11 the truth, the whole truth and nothing but the
12 truth?
13 THE DEPONENT: I do.
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1 DAVID B. LETT,
2 having been first duly sworn, was examined and
3 testified as follows:
4 EXAMINATION
5 BY MR. MILKEY:
6 Q. So hello, Dr. Lett, and thank you for
7 your time today. I know that this is not exactly
8 how you necessarily wanted to be spending your
9 Thursday, but I appreciate your time.
10 A. Thank you.
11 Just a quick correction, I am not a
12 doctor. I appreciate the title.
13 Q. Oh.
14 A. I am not doctor, just for your
15 clarification.
16 Q. Thank you for correcting that. I
17 appreciate that, Mr. Lett.
18 So, Mr. Lett, I understand that -- strike
19 that.
20 You understand that your testimony today
21 is with regard to two separate IPR proceedings; is
22 that correct?
23 A. Yes, I do.
24 Q. Okay. And you submitted a declaration in
25 both of those IPR proceedings?

1 A. I did.
2 Q. Okay. And do you have copies of your
3 declarations available to you today?
4 A. I do.
5 Q. Okay. And the first declaration is
6 regarding IPR 2024-00421; is that correct?
7 A. I think so, yes.
8 Q. Okay.
9 A. That's right.
10 Q. And then the second IPR declaration that
11 you submitted is just one number higher. It's
12 IPR 2024-00422; is that correct?
13 A. That's right.
14 Q. Okay. Approximately how long did you
15 spend in preparing these declarations?
16 A. I don't recall.
17 You know, there was a -- I worked on the
18 '015 and the '260. And so I'm having trouble
19 remembering how much time I spent on -- on them.
20 Q. Yeah, understood.
21 I think you submitted something like six
22 declarations total between the '260 and '015 patent
23 cases?
24 A. Let me think.
25 Well, the A and B part confused me a

1 little bit. So I don't know if it was six or five
2 or four.
3 I'm sorry, yeah.
4 I'm sorry, I don't know exactly the
5 number.
6 Q. No, that's fine.
7 Do you have a sense of, between the
8 declarations that you submitted in the '015 and
9 '260 patents, how long you spent preparing all of
10 those declarations cumulatively?
11 A. I'm sorry, I don't recall.
12 Q. Do you know if it was more or less than
13 100 hours?
14 A. I'm sorry, I just don't recall.
15 Q. Do you know if it was more or less than
16 20 hours?
17 A. It was more than 20 hours for sure.
18 Q. Okay. Do you know if it was more or less
19 than 200 hours?
20 A. I don't know for sure, but I think it was
21 less than 200 hours.
22 Q. Okay. So since we are -- we are dealing
23 with two different proceedings, I will ask about
24 the first one first, the 421 proceeding first.
25 And you have that declaration -- that

1 declaration available, Exhibit 1002 in the 421
2 proceeding?
3 A. Yes.
4 You know, my understanding is that the
5 421 and the 422 declarations are identical except
6 for the cover page.
7 Q. Okay.
8 A. Because I -- yeah.
9 We had to submit two for some reason, and
10 I don't remember why.
11 Q. Okay. That's helpful.
12 So how -- strike that.
13 Did you do anything to prepare for
14 today's deposition?
15 A. Yes.
16 I spent some time studying the documents
17 and materials considered as identified in the
18 appendix and also of my declaration, and also had
19 some preparation sessions with the attorneys from
20 Banner Witcoff.
21 Q. Okay. Do you have any corrections to
22 make to your declaration at this time?
23 A. I noticed a couple of typos. And if we
24 go through them and I happen to notice them, I
25 might mention them.

1 But other than that, no, my declaration
2 stands as written.
3 Q. Okay. All right. So let's start with
4 your declaration at grounds A through B. And this
5 starts at page 81 of your declaration, or
6 paragraph 153.
7 A. Okay. I'm there.
8 Q. Okay. And you see that this is the --
9 this has the section heading "Grounds A through B:
10 Baig in View of Costa and Zwicky and/or Baig in
11 View of Costa and Banga690."
12 Do you see that?
13 A. Yes.
14 Q. Okay. So I understand that this involves
15 sort of two different alternative combinations.
16 There's Baig plus Costa, and then there's either
17 Zwicky or Banga690.
18 Just for context, I want to ask primarily
19 about what you are proposing the combination in
20 terms of Baig plus Costa. I am not so much focused
21 on the Zwicky or Banga690 portions of this
22 combination, just for the context of these
23 questions.
24 So in your proposed combination of Baig
25 with Costa, what changes are you proposing be made

1 to Baig's system?
2 A. So as I stated at the bottom of paragraph
3 155 or at the top of 156, "A POSA would have
4 modified Baig to include Costa's Set-Top Box."
5 Q. Okay. And what specifically does this
6 modification entail?
7 A. So I'm not sure I understand what you
8 mean by what would it entail.
9 Would you mind specifying a little more
10 what you mean?
11 Q. Yeah.
12 So how would -- how would Baig have been
13 modified to include Costa's set-top box?
14 A. So as I am talking about in 159, Costa's
15 techniques of connecting a set-top box to the
16 wireless hotspot involves well-known wireless
17 network technologies to couple devices 112 to the
18 network including 802.11," [as read] and so on and
19 so forth.
20 And then further in that paragraph,
21 "Costa discloses such an environment in which
22 mobile devices share an access point with the
23 public access hotspot for Internet access with
24 other competing devices." [as read]
25 So in other words, one of Baig's

1 devices 102 could be a set-top box, as taught by
2 Costa.
3 Q. Okay. So other than hooking up a set-top
4 box to Baig's access point, are there any other
5 modifications that you are proposing to be made to
6 Baig in view of Costa?
7 MS. SAUER: Objection to form.
8 THE DEPONENT: Well, Costa's technique
9 would have improved Baig's similar wireless hotspot
10 system by providing access to television content at
11 the hotspot via set-top box.
12 And so as I state in the bottom of
13 paragraph 163, so it enables being able to "reach a
14 larger audience that might not have had their own
15 devices (or might not be viewing their own device)
16 when an advertisement is to be displayed."
17 [as read]
18 Q. (By Mr. Milkey) Okay. So is this
19 essentially a set-top box that would be viewable by
20 numerous visitors to the location, for example, a
21 public coffee shop?
22 Strike that; that was poorly formed.
23 So is your idea that at the location
24 where Baig's access point is located, the set-top
25 box would be implemented by the owner of that

1 location, and it would be viewable by numerous
2 visitors to that location?
3 MS. SAUER: Object to form.
4 THE DEPONENT: Well, so I think that may
5 be one example. So, you know, it may not have been
6 installed by the owner of the system, and there may
7 only be one person there at the coffee shop, in
8 your example.
9 So -- but in general, you know, it
10 enables, at least the example you described,
11 including a set-top box at a coffee shop to provide
12 television content, that is, television
13 advertisements and television programming or in
14 websites displayed on the television, to
15 individuals at the hotspot, and using Baig's system
16 to provide targeted advertising -- targeted
17 television content based on the profile information
18 associated with that coffee shop access point.
19 Q. (By Mr. Milkey) Okay. So who is
20 responsible for making this modification to Baig's
21 system?
22 Is it the vicinity -- or, sorry, is it
23 the VCSP or is it the coffee shop owner in the
24 example that you provided?
25 A. I don't think I provided an opinion on

1 that. I really haven't thought about who -- who
2 installed -- you are asking who installed the
3 set-top box?
4 Q. Correct.
5 A. I'm sorry, I -- I don't know.
6 I haven't really thought about that.
7 Q. Okay.
8 A. Sounds like a new opinion.
9 If I rendered an opinion on that, please
10 let me know, and I will answer a question about it.
11 Q. Yeah, I don't recall seeing that. I was
12 just wondering if you could provide some clarity.
13 Thank you.
14 Okay. If we could go to page 91 of your
15 declaration.
16 A. Okay.
17 Q. And this is on paragraph 164, but it's
18 the first full sentence on page 91.
19 Do you see that this -- there's a
20 sentence that says, "Adding a well-known device
21 such as a set-top box to Baig's computer system
22 (content servers) and associating the set-top box
23 with other devices at an access point would require
24 only minimal changes if any, and would have been
25 well within the skill of a POSA." [as read]

1 Do you see that?
2 A. Yes.
3 Q. Okay. You mentioned that it "would
4 require only minimal changes if any."
5 What are you referring to by "minimal
6 changes if any"?
7 A. So I didn't really, I don't think, go
8 into the details of that in my declaration. You
9 know, I think that I really haven't spent much time
10 thinking about all of the minimal changes, if any.
11 You know, it's just a simple thing to
12 take a device and add it to the hotspot that's a
13 different type of device.
14 So, for example, you know, Baig already,
15 you know, describes computers and mobile phones
16 and -- I think it's a tablet, if you look at 102,
17 subscript 3.
18 So all I'm saying is a set-top box is
19 another device like those that -- it would be added
20 to the system.
21 So, you know, it would need, just like
22 the other devices, device identifiers. And we
23 would -- we would send and receive traffic from
24 those devices.
25 Q. Okay.

1 A. That device, all of --
2 Q. Okay.
3 A. Just like any other device.
4 Q. Okay. That's helpful.
5 In your proposed combination of Baig with
6 Costa, who would be controlling the set-top box?
7 Would it be the coffee shop owner in the
8 coffee shop example, or would it be a user of
9 the -- like a visitor to the coffee shop?
10 MS. SAUER: Objection to form.
11 THE DEPONENT: Can you describe what you
12 mean by "controlling."
13 Q. (By Mr. Milkey) Yeah.
14 Who would be, for example, deciding what
15 TV channel the set-top box is tuned in to?
16 A. Well, I didn't really render an opinion
17 on that, but the TV channel could be controlled by
18 a number of entities. Like it could be controlled
19 by the system, for example. I suppose that a user
20 could maybe grab a remote control and change the
21 channel themselves at -- at the -- like a customer
22 of the coffee shop.
23 I mean, I'm just speculating, right,
24 because there's probably a lot more. But, I mean,
25 I suppose the owner of the coffee shop could change

1 the channel if he wanted to.
2 Again, I haven't really contemplated that
3 in my declaration.
4 Q. You said that the -- the -- "the system"
5 could control that.
6 What do you mean by "the system"
7 controlling the set-top box?
8 A. Well, you asked me who would change the
9 channel on the set-top box, right?
10 Q. Yeah.
11 By "the system," do you mean Baig's
12 content server, or do you mean something else?
13 A. Well, I'm not -- I can't remember if Baig
14 discloses that. But, again, I'm just speculating
15 based on what a POSA would know, that putting
16 functionality could be in a number of places in a
17 design, like changing the channel.
18 Q. Okay.
19 A. You know, to correct my answer, Baig
20 might disclose that. I just don't, at the present
21 time, recall that.
22 Q. Okay. Also, I don't want to keep the
23 references from you. I will upload both the Baig
24 reference and the Costa reference just so you have
25 access to them.

1 And you don't necessarily need to refer
2 to them, but I -- just in the interest of full
3 disclosure, I don't want you to have to try to
4 answer these questions from memory. This isn't
5 necessarily a memory test.
6 A. Okay.
7 Q. Let me upload that real quick.
8 And do you have to the access to the Baig
9 and Costa references?
10 A. I do.
11 Q. Okay. I will upload them for the benefit
12 of the reporter. But please feel free to refer to
13 those references at any time.
14 A. Okay. Okay.
15 Q. So does Costa disclose any benefits to
16 providing a set-top box at a public Wi-Fi access
17 point?
18 MS. SAUER: Objection to form.
19 THE DEPONENT: I think I answered that
20 earlier.
21 Q. (By Mr. Milkey) I think, if I'm
22 remembering correctly, you may have said that you
23 believe there would be benefits to doing so.
24 I'm asking if Costa discloses any
25 benefits to providing a set-top box at a public

1 Wi-Fi access point.
2 MS. SAUER: Objection to form.
3 THE DEPONENT: So Costa, as shown in
4 Figure 1 of Costa, shows a number of what he calls
5 in the abstract "consumer electronics devices."
6 So you've got them numbered, like 114,
7 116, 118, 120, 122, 124, 128, 126, of which the 122
8 is the set-top box.
9 And so the mobile -- as it says in the
10 abstract, "The mobile device subscribes to the
11 mobile-specific service via the local area network
12 in response to advertising of the mobile-specific
13 service. The mobile device utilizes the
14 mobile-specific service via the local area
15 network."
16 In other words, all the services that are
17 described can be done on the set-top box.
18 Q. (By Mr. Milkey) Okay. So Costa says
19 that this can be done, that you can put a set-top
20 box in a public Wi-Fi network.
21 Does Costa teach any advantages to doing
22 so?
23 A. Well, a POSA would certainly understand
24 and been motivated to combine Baig and Costa in
25 this way, because the combination provides the

1 additional benefit of having a wider range of
2 device types available at a particular access
3 point.
4 Which is exactly the point that I was
5 trying to make that Costa discloses, is that
6 there's a wide range of device types available at a
7 particular access point by listing all the
8 different ones that he showed, for example, in
9 Figure 1.
10 Q. Okay. And is Figure 1 disclosing -- so I
11 think there's a box 110 around Figure 1. And
12 that's -- that's the network, right, the local
13 network?
14 A. He calls it the "local environment,"
15 yeah.
16 Q. Okay. So would the -- there's an
17 element 104 called "UPnP Network."
18 Do you see that?
19 A. Yes.
20 Q. And what is the UPnP network?
21 MS. SAUER: Objection to form.
22 THE DEPONENT: The "UPnP network enables
23 users to control UPnP devices and their associated
24 services." [as read]
25 That's in Costa paragraph 30.

1 Q. (By Mr. Milkey) Okay. Would the UPnP
2 network be provided, for example, by a public Wi-Fi
3 access point?
4 MS. SAUER: Object to form.
5 THE DEPONENT: I don't think I rendered
6 an opinion on that.
7 I use Costa -- Costa's teaching of a
8 set-top box to -- added to the Baig architecture,
9 let's call it, at the Wi-Fi access point as another
10 example of device 102.
11 Q. (By Mr. Milkey) Okay. So where's the
12 public Wi-Fi access point in Figure 1 of Baig --
13 sorry, in Figure 1 of Costa.
14 And I will reask that for the record.
15 In Figure 1 of Costa, where is the public
16 Wi-Fi access point?
17 MS. SAUER: Objection to form.
18 THE DEPONENT: Well, as Costa states in
19 paragraph 36, "The UPnP network 104 (or similar
20 networking technology) allows devices to exchange
21 data in a local environment 110."
22 Q. (By Mr. Milkey) So where is the public
23 Wi-Fi access point?
24 A. I'm using the word "or similar networking
25 technology" from Costa to indicate that it can

1 operate in the public Wi-Fi access point
2 environment of the -- the access point environment
3 of Baig.
4 Q. Okay. So would the -- in Figure 1 of
5 Costa, would the public Wi-Fi access point be where
6 element 104, the UPnP network, is in Figure 1?
7 A. It could be, although I didn't render an
8 opinion on that.
9 I was using the fact that he described,
10 as I mentioned, "similar networking technology" so
11 that it could be used in Baig's architecture.
12 Q. Okay. And paragraph 36 of Costa says
13 that "The local environment 110 typically includes
14 a home or office."
15 Do you see that?
16 A. I do see that, yes.
17 Q. Okay. But you are relying on the
18 teaching of Costa that local environment 110 may
19 provide public wireless hotspots, correct?
20 MS. SAUER: Objection to form.
21 THE DEPONENT: Well, it says "wireless
22 hotspots" in paragraph 36.
23 Q. (By Mr. Milkey) Understood.
24 So you are relying on -- the teaching of
25 Baig -- sorry.

1 The teaching of Costa that you are
2 relying is not about the local environment 110
3 including a home or office. It's instead about
4 the -- the local environment 110 including a public
5 wireless hotspot, correct?
6 MS. SAUER: Objection to form.
7 THE DEPONENT: So, again, I modified
8 Baig -- Baig to include Costa's set-top box.
9 Costa shows that his set-top box --
10 discloses, I should say, that his set-top box can
11 work in a wireless hotspot.
12 Baig's environment, as shown in Baig's
13 Figure 1, is a wireless hotspot. And he uses the
14 example "like a coffee shop" several times.
15 Q. (By Mr. Milkey) As of 2007, are you
16 aware of any public wireless hotspots that included
17 a set-top box?
18 A. I don't remember.
19 Q. So if you are making the modifications to
20 grounds A and B that you are proposing, what
21 changes need to be made to Baig's VSCP [sic] site?
22 MS. SAUER: Objection to form.
23 THE DEPONENT: Can you break that
24 question down for me a little bit so I understand
25 it better.

1 Q. (By Mr. Milkey) Yeah.
2 I am wondering, for example, in your
3 ground A modification, what changes are you
4 proposing being made to Baig's VCSP content server?
5 MS. SAUER: Objection to form.
6 THE DEPONENT: Are we talking about Costa
7 still, or are we talking about something else?
8 Q. (By Mr. Milkey) Yeah, I'm still talking
9 about Costa.
10 If you are modifying Baig in view of
11 Costa, for example, in your ground A modification,
12 what changes are you proposing being made to Baig's
13 content server?
14 MS. SAUER: Objection to form.
15 THE DEPONENT: I don't think I rendered
16 an opinion on any changes that were needed in the
17 content server. If I did, please point me to it,
18 and I'll answer a question about it.
19 Q. (By Mr. Milkey) Okay. Yeah, I don't
20 recall any either.
21 If you could please go to page 334 of
22 your declaration. And this is starting on
23 paragraph 590.
24 A. Okay.
25 Q. And this is a combination involving,

1 among other things, Baig and Howcroft.
2 Do you see that?
3 A. Yes.
4 Q. And for the benefit of the reporter, I am
5 uploading Exhibit 1016, which is the Howcroft
6 reference, to the chat. But please feel free to
7 refer to this, to Howcroft or any other references
8 you need, in answering these questions.
9 So in your grounds L through M, which
10 involve Baig in view of Costa and Howcroft -- and,
11 again, I'm -- I'm specifically asking about the --
12 the modifications that would be required just in
13 view of Howcroft. We have already discussed
14 what -- what's involved in view of Costa.
15 But in your grounds L through M
16 combinations, which involve Baig combined with
17 Howcroft, how are you proposing that the Baig
18 system would be modified in view of Howcroft?
19 MS. SAUER: Object to the form.
20 THE DEPONENT: Well, just to be clear,
21 the combination includes Zwicky also in ground L,
22 and also Banga690 in ground M.
23 So the search information of how Howcroft
24 from -- within the online user activity is the
25 modification.

1 Q. (By Mr. Milkey) Okay. And how would
2 Baig's content server need to be modified in order
3 to incorporate using search information to target
4 ads?
5 MS. SAUER: Objection to form.
6 THE DEPONENT: So as I state in
7 paragraph 590, "Howcroft describes that 'recent
8 portal search information is added into the end
9 user's advertising insertion database and SSO end
10 user profile (based on my monitoring and
11 characterization -- characterizing, rather, data
12 communications in the triple network) to be used
13 for updating the SSO and user profile useful for
14 targeted advertising selection.'" [as read]
15 And he further describes that the "search
16 information may be used for targeting
17 advertisements to the end user's television/set-top
18 box as well as other end user screens such as
19 personal computers, mobile IP devices and cell
20 phones." [as read]
21 Q. (By Mr. Milkey) Okay. So I understand
22 what Howcroft describes.
23 What I am trying to understand is what
24 changes you are proposing would be made to Baig's
25 content server in this proposed combination.

1 MS. SAUER: Objection to form.
2 THE DEPONENT: I think I just described
3 what Howcroft functionality would be added to
4 Baig's system.
5 I think I answered the question.
6 Q. (By Mr. Milkey) In your proposed
7 combination, how does Baig's system get access to
8 the user's search history?
9 MS. SAUER: Objection to form.
10 THE DEPONENT: I don't think I rendered
11 an opinion on the details of the implementation,
12 other than using the teachings from Howcroft as I
13 described.
14 And, you know, as I say in paragraph 594,
15 "deriving user interests and preference information
16 from Baig's online activity including user search
17 information, as taught in Howcroft, would have
18 involved the mere use of a known technique to
19 improve similar systems in the same way. For
20 example, Howcroft describes the known technique of
21 updating a user's preferences based on user search
22 information, which may, that is, improve -- for
23 example, improve an effectiveness of advertising by
24 increasing their relevance." [as read]
25 So I'm talking about applying the

1 techniques of Howcroft in the Baig system.
2 Q. (By Mr. Milkey) Okay. So if you're to
3 apply the techniques of Howcroft in the Baig
4 system, how does Baig's system actually get
5 information about what a user searched for?
6 MS. SAUER: Objection to form.
7 THE DEPONENT: So including the user
8 search information "within the user profile
9 information used to select advertisements in Baig
10 would have increased the relevance of such
11 advertisements."
12 So in other words, we're including the
13 search information within the user profile
14 information of Baig's system.
15 Q. (By Mr. Milkey) Right, right.
16 So my question is, how does Baig's system
17 actually receive the user's search information so
18 that it can include that information within the
19 user's profile.
20 MS. SAUER: Objection to form.
21 THE DEPONENT: So any of the devices 102
22 online activity is derived by Baig's system as they
23 exercise various online activity.
24 Q. (By Mr. Milkey) So is it your opinion
25 that the Baig system is tracking everything that

1 online devices 102 do while they are on the
2 Internet?
3 MS. SAUER: Objection to form.
4 THE DEPONENT: I don't know if it tracks
5 everything, but I made a lot of descriptions about
6 the tracking capabilities as described by Baig and
7 as modify by Howcroft.
8 Q. (By Mr. Milkey) Okay. How does Baig's
9 system track the -- the user activity on
10 devices 102 when those devices are not accessing
11 Baig's content server?
12 MS. SAUER: Objection to form.
13 THE DEPONENT: I don't understand the
14 question. I'm sorry.
15 Q. (By Mr. Milkey) Okay. So I think it's
16 relatively straightforward that Baig's content
17 server can track the activity of devices 102 while
18 those devices are accessing Baig's content server.
19 Are we in agreement on that?
20 A. I'm sorry, I didn't hear the last part.
21 Based on what?
22 Q. Yeah.
23 So I think it's relatively
24 straightforward that Baig's content server is able
25 to track the activity of user devices 102 while

1 those devices are accessing Baig's content server.
2 Are we in agreement on that?
3 A. Yes, and it also tracks historical
4 information.
5 Q. Okay. And what historical information
6 are you referring to?
7 A. So at least one example I describe in
8 paragraph 257 of my declaration. And it's
9 referring to Figure 14, for example.
10 The "VSCP [sic] servers 224 can build a
11 database that associates the IP addresses of each
12 hotspot ('first online access IP address') with
13 physical locations of each spot, and that includes
14 monitoring activity at each spot -- hotspot,
15 including the number of individuals logging in to a
16 hotspot during hourly time slots on an hourly,
17 daily, weekly, monthly or yearly basis ('time and
18 date of online activity')." [as read]
19 In other words, a POSA would understand
20 that if I'm, for example, tracking a number of
21 individuals logging in to a hotspot on a yearly
22 basis that I would have to keep track of, during
23 that year, any time any particular mobile
24 devices 102 log in to the hotspot during that year.
25 It's generate aggregate statistics,

1 basically.
2 Q. Okay. And what -- what paragraph of Baig
3 are you referring to here?
4 A. Well, I referred to Figure 14, but let me
5 check the paragraph numbers.
6 Q. Okay. That's helpful.
7 I'll withdraw the question.
8 A. Okay.
9 Q. So is it your understanding that
10 Figure 14, then, is referring to tracking user
11 behavior even if that user behavior is not
12 happening on the Baig website itself?
13 MS. SAUER: Objection to form.
14 THE DEPONENT: As I state again in
15 paragraph 257, "To generate these aggregate
16 statistics, a POSA would have understood that at
17 least one computer component of the V" -- well,
18 talking about the servers.
19 That's not your question, right?
20 What was your question again?
21 Q. (By Mr. Milkey) Yeah.
22 I'm wondering if -- if Baig is tracking
23 user information about user behavior that is,
24 you know, not on the Baig website itself.
25 A. Well, I think I explained an example of

1 that with -- with knowing that I have tracked a
2 particular individual logging on to the hotspot at
3 any time during the year in order to produce these
4 aggregate statistics, in that example.
5 Q. Okay. And so by -- by logging in to the
6 hotspot, you -- your understanding is that's
7 referring to something other than logging in to the
8 VCSP website itself; is that correct?
9 A. I think -- I think they are one and the
10 same. So for the sake of the example I just used,
11 I was referring to logging in to VCSP service.
12 Q. Okay. So you agree that I can connect
13 to, for example, a Starbucks hotspot without
14 logging in to the VCSP website, correct?
15 MS. SAUER: Objection to form.
16 THE DEPONENT: Are you referring to a
17 particular claim element?
18 Q. (By Mr. Milkey) No, I'm just asking in
19 general.
20 So I understand that, you know, Baig is
21 talking about vicinity-based services provided by a
22 website. And in general, Baig is directed to
23 grouping users, visitors to that website into
24 vicinity-based communities based on what hotspot
25 they have connected to.

1 And my question is, is it possible for a
2 user to connect to the Internet via a Wi-Fi hotspot
3 but not be connecting to Baig's content server?
4 MS. SAUER: Objection to form.
5 THE DEPONENT: Would you mind reading
6 that question back to me. That's a very long
7 question.
8 Q. (By Mr. Milkey) Yeah, so I'll just --
9 I'll reask the most relevant part, given that I've
10 already provided the background context.
11 Is it possible for a user device to
12 access the Internet via a Wi-Fi hotspot without
13 accessing Baig's content server?
14 MS. SAUER: Objection to form.
15 THE DEPONENT: I'm sorry, there's
16 something you said earlier which I don't think was
17 correct in the previous statement of your question.
18 I was going to, perhaps, correct one of your
19 background statements.
20 If you -- if you want to just ignore that
21 question, that's -- I'm fine with that also.
22 But I think there was something that was
23 not correct as stated.
24 Q. (By Mr. Milkey) Okay. I think rather
25 than read everything we've discussed back into the

1 record, we'll just go forward with the latest
2 question, which is --
3 A. Okay. Thank you.
4 Q. -- is it -- yeah.
5 Is it possible for a user device 102 to
6 access the Internet via a public Wi-Fi hotspot
7 without accessing Baig's content server?
8 MS. SAUER: Objection to form.
9 THE DEPONENT: I'm sorry, I did not
10 render an opinion on that, as far as I know.
11 If I did in my declaration, please let me
12 know, and I'll be glad to address it.
13 Q. (By Mr. Milkey) Okay. So sitting here
14 today, you don't know whether it's possible for a
15 user device 102 to access the Internet via a public
16 Wi-Fi hotspot without accessing Baig's content
17 server?
18 MS. SAUER: Objection to form.
19 THE DEPONENT: I said I have not rendered
20 an opinion on that.
21 Q. (By Mr. Milkey) If a user device
22 accesses the Internet via a public Wi-Fi hotspot
23 without accessing Baig's content server, how would
24 Baig's content server track what that user device
25 is doing on the Internet?

1 MS. SAUER: Objection to form.
2 THE DEPONENT: I don't think I rendered
3 an opinion on that.
4 I haven't thought about it much.
5 Q. (By Mr. Milkey) Okay.
6 MR. MILKEY: We have been going a little
7 over an hour. If we could take a ten-minute break.
8 THE DEPONENT: Okay.
9 MR. MILKEY: Off the record.
10 (Recess taken.)
11 MR. MILKEY: Back on the record.
12 Q. (By Mr. Milkey) Mr. Lett, could you
13 please turn to page 232 of your declaration.
14 A. Okay. I'm there.
15 Q. Okay. And do you see that this is the
16 beginning of your analysis for Dependent Claim 40?
17 Do you see that?
18 A. Yes.
19 Q. Okay. And then part of claim 40 says
20 that "the selection of a television advertisement
21 is based on user profile information that is not
22 delivered to the computer system."
23 Do you see that?
24 A. Yes.
25 Q. In your proposed combination for

1 claim 40, why -- or what motivation do you provide
2 that some of the user profile information used to
3 select the television advertisement is not
4 delivered to the computer system?
5 MS. SAUER: Objection to form.
6 THE DEPONENT: Can you repeat that
7 question, please, or read it back, either one.
8 Q. (By Mr. Milkey) Yeah.
9 In your proposed combination for
10 claim 40, what motivation do you provide for the
11 idea that some of the user profile information used
12 to select the television advertisement is not
13 delivered to the computer system?
14 MS. SAUER: Same objection.
15 THE DEPONENT: So as I state in
16 paragraph 391, "providing less profile information
17 would be beneficial."
18 And that is, in order to maximize
19 privacy, to abstract out the profile information.
20 And he gives a good example of, you know,
21 providing weather, as I describe in that section,
22 without the -- without the maintaining -- without
23 the user relationship aspect of it.
24 I'm sorry, I should read the claim
25 element. But that -- I'm talking about the claim

1 element.
2 Q. (By Mr. Milkey) Okay. Understood.
3 Other than not transmitting weather
4 information, do you give any other examples of the
5 types of profile information that would not be
6 transmitted to the computer system in order to
7 maintain user privacy?
8 A. I don't think I gave any other examples
9 other than the one disclosed that I referred to
10 with weather information.
11 Perhaps if I did, you can point me to it.
12 But I'm not sure that I did give any other
13 examples.
14 Q. Okay. I don't recall any either.
15 Why would a POSITA -- or strike that.
16 Why would a person of ordinary skill in
17 the art believe weather information to pose privacy
18 concerns in the context of Baig's system?
19 MS. SAUER: Objection to form.
20 THE DEPONENT: I think what the
21 references are saying and disclosed is that
22 providing less profile information when possible is
23 a good thing to maximize privacy.
24 Q. (By Mr. Milkey) Okay. Is there any
25 teaching in Baig or any other reference that

1 weather information itself poses privacy concerns?
2 MS. SAUER: Objection to form.
3 THE DEPONENT: I'm not aware that it
4 discloses that weather information proposes privacy
5 concerns.
6 But it's discussing that -- well, a POSA
7 would -- would understand that the less information
8 you provide, if it's not necessary in order to get,
9 for this example, weather, a POSA would certainly
10 understand, Well, I don't want to give my privacy
11 information out in order to get a weather forecast.
12 It's just a natural obvious inclusion.
13 Q. (By Mr. Milkey) Okay. So it's obvious
14 that by not sending weather information to Baig's
15 content server, you would improve user privacy; is
16 that fair?
17 MS. SAUER: Objection to form.
18 THE DEPONENT: That's one example that is
19 disclosed, and that's the one that I used as
20 disclosed in the combination as an illustration of
21 the claim element.
22 Q. (By Mr. Milkey) Okay. Since this
23 deposition began, have you discussed any of your
24 testimony with your attorneys?
25 A. No.

1 MR. MILKEY: Okay. I have no further
2 questions.
3 MS. SAUER: I have no questions for the
4 witness.
5 MR. MILKEY: All right. We can go off
6 the record.
7 (TIME NOTED: 2:55 P.M.)
8 THE COURT REPORTER: Can I get the copy
9 orders for the record, please.
10 MR. MILKEY: So if we can get it
11 expedited, please.
12 MS. SAUER: We do not need an expedite,
13 but we'll take a rough draft.
14 MR. MILKEY: I'll take a rough draft
15 also.
16 THE COURT REPORTER: Okay. Thank you.
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25

1 I, DAVID B. LETT, do hereby declare under
2 penalty of perjury that I have read the foregoing
3 transcript; that I have made any corrections as
4 appear notes; that my testimony as contained
5 herein, as corrected, is true and correct.
6 Executed this ____ day of _____,
7 2024, at _____, _____.
8
9
10
11 _____
DAVID B. LETT
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1 I, Rebecca L. Romano, a Registered
2 Professional Reporter, Certified Shorthand
3 Reporter, Certified Court Reporter, do hereby
4 certify:
5 That the foregoing deposition testimony was
6 taken remotely before me at the time and place
7 therein set forth; that any deponent in the
8 foregoing deposition, prior to testifying, was
9 administered an oath; that a record of the
10 deposition was recorded stenographically by me and
11 which was thereafter transcribed under my
12 direction; that the foregoing transcript is a true
13 record of the testimony given.
14 Further, that if the foregoing pertains to the
15 original transcript of a deposition in a Federal
16 Case, before completion of the proceedings, review
17 of the transcript [ ] was [ ] was not requested.
18 I further certify I am neither financially
19 interested in the action nor a relative or employee
20 of any attorney or any party to this action.
21 IN WITNESS WHEREOF, I have subscribed my
22 name this 23rd day of December, 2024.
23
24 Rebecca L. Romano, RPR, CCR
25 CSR. No 12546

1 DEPOSITION ERRATA SHEET

2 Case Name: FreeWheel Media, Inc. vs. AlmondNet, Inc.
3 Name of Deponent: David B. Lett
Date of Deposition: December 19, 2024
4 Job No.: 565041
Reason Codes: 1. To clarify the record.
5 2. To conform to the facts.
3. To correct transcript errors.
6 Page _____ Line _____ Reason _____

7 From _____ to _____

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 Page _____ Line _____ Reason _____

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25 From _____ to _____

1 DEPOSITION ERRATA SHEET

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18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 _____ Subject to the above changes, I certify that the transcript is true and correct

23 _____ No changes have been made. I certify that the transcript is true and correct.

24

25 _____
DAVID B. LETT

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