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understand your opinion.
You did not say in your report that it was possible or known in 2009 how you could determine what was visible on a user's screen. That's not in your report, correct?
A. That's correct, yes.
Q. And you're expressing today an opinion for the first time that in 2009, it was known how you could determine what was visible on a user's screen?
MR. GREENLEAF: Objection, vague.
A. So when you say how you can determine what is visible on a person's screen, I'm not totally clear on what you mean.
Q. In the petition, Ground 1, Claim 1A says you determine whether a predefined area of an ad content display page that is used to display an advertisement is in view within a visible area of a browser window of a browser. I'll stop there. You do not say in the petition that that step was known outside of what you're now claiming is taught in Krassner, right?
MR. GREENLEAF: Objection,

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mischaracterizes testimony.
A. So that's not the question I understood you to be asking earlier. I understood you to be asking about how a programmer would go about figuring out, go about implementing this.
Q. Well, I have multiple questions about this, and let's just try and break it down. Let's first make sure we know the step of Claim 1 that we're talking about, and I'm going to call it the visibility test, and by that I mean determining whether a predefined area of an ad content display page that is used to display an advertisement is in view within a visible area of the browser window of a browser. Is it okay if I use the phrase "visibility test" to mean what I just read?
A. Sure, yeah.
Q. And you say that Krassner teaches a visibility test because of the part of the specification in Column 3, Lines 7 to 10?
MR. GREENLEAF: Objection, vague.
A. That's the portion that I cited. It continues on a little bit from there, provides additional support.

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Q. You didn't cite anything except Column 3, Lines 7 to 10.
MR. GREENLEAF: Objection, vague.
A. The citation after the, within a visible area refers to Column 3, Lines 7 to 10.
Q. You agree with me that that part dropped the phrase "is in view," correct?
A. I don't know what you mean.
Q. The actual visibility test that you described includes the phrase that the advertisement has to be in view within a visible area of the browser window, but the part of the citation to Krassner does not include the three words, "is in view," does it?
A. That citation, Column 3, Lines 7 to 10 do not include the phrase "is in view."
Q. And why not? Was that just a typo? Did you mean to include "is in view" or something else?
MR. GREENLEAF: Objection, vague.
A. I didn't write Column 3, Lines 7 to 10. I'm not sure what you're -- I don't know what you're asking, I guess.
Q. I'm asking why on the last line of Page 19 of the petition going over to the first four

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words on Page 20 the three words, "is in view," have been dropped from the limitation that you're explaining?
MR. GREENLEAF: Objection, vague.
A. So I had not noticed that before, and it looks to me like it's one of those Word -- it was not intentional and I know that Word, which was used to do this, sometimes loses bits of lines at the bottom of pages. That would be my explanation for that. It certainly ought to be in there, given it's meant to be a quote from the claim.
Q. So it's a typo?
A. I think it's probably a bug word, but the effect is the same.
Q. So you would amend the petition to add those three words and it's your opinion that Krassner teaches the visibility test?
A. Yes.
Q. Now, you would agree with me that Krassner does not have the code that the '329 patent has for carrying out a visibility test, correct?
MR. GREENLEAF: Objection, vague.
A. So the Badros patent doesn't have any code

at all.
Q. My question wasn't about Badros, it was about Krasner. Krassner does have code. The '329 patent has more code?
A. Yes, they both have code.
Q. And my question is, does Krassner have the code for carrying out the visibility test that's in the '329 patent?
MR. GREENLEAF: Objection, vague.
A. You're asking me two questions. Is there code within Krassner for carrying out the visibility test and is there code in the '329 for carrying out the visibility test, am I correct? Is that what you're asking?
Q. Yes.
A. I don't think I specified that in my opinion, so I have to go and check my notes and take a look to determine the answer to that question.
Q. I want to go back to what you testified to earlier that at the time of the invention, you could determine what was visible on a user's screen. You didn't say that in your declaration or the petition, right?
MR. GREENLEAF: Objection,

mischaracterizes testimony.
A. If I said exactly that, it's awfully non-specific and I probably should have worded it differently, but even worded differently to be more specific, I haven't given that opinion, no.
Q. As you sit here today, is it your opinion that you could determine what was visible on the user's screen at the time of the invention?
A. As I said, that's very non-specific, needs some clarification as to what you mean by "determine what is visible on the user's screen."
Q. Add the specificity you need to add to that. What's too general?
A. Well, say determining what's on a user's screen could mean is there a picture of a tree or a house, for example.
Q. I'll ask the question differently. Are you expressing an opinion today that at the time of the invention, it was known how to determine whether an ad had come into view on the visible portion of a user's browser?
A. I haven't analyzed that question specifically

as to whether at the time of the invention that was known or not.
Q. So you're not expressing that opinion today?
A. No.
Q. Let me give you what I previously marked as Rich Media Club Exhibit 2010. I suppose you haven't seen this before, is that correct?
A. It doesn't look familiar.
Q. If you look at the inventors of Exhibit 2010, do you recognize one of the names?
A. I see the name Badros. Looks like he moved between Mountain View and Palo Alto, but it's very likely the same person.
Q. Very likely the same person working at Google in March of 2005, about three months before the Badros reference that's Exhibit 1003 goes in, the same inventors, one of the inventors on another patent related to Internet advertising. Is that fair to say?
A. There's got to be at least five or six questions in there starting with the fact that he worked at Google. And as soon as you said that, I started trying to look for that and so I didn't hear the rest of the

question you were asking.
Q. Badros worked at Google when he put in the patent that's Exhibit 1003, right?
A. Yes.
Q. And Google's headquartered in Mountain View, California?
A. That sounds right.
Q. And, in fact, it's not just Gregory Joseph Badros that's listed on Exhibit 2010 as an inventor, it's also Rama Ranganath as an inventor, it's the same person listed on the Badros patent in May of '20 that's Exhibit 1003?
A. Rama Ranganath is listed as an inventor on both Exhibit 2010 and 1003.
Q. And there's no assignment of the 2010 application mainly because it was an application, but let's take a look at a couple of parts of 2010.
A. Sure.
Q. So why don't you look at Paragraph 9, please. Actually, just read to yourself Paragraphs 8 and 9.
A. Sure. (Witness examines document) Okay. I have read that.

Q. Okay. So do you remember this morning when I asked you if you knew what Run of Site meant and you didn't know what it meant?
A. I recall that, yes.
Q. Reading Paragraph 8, do you have an understanding now of how at least two of the inventors of the Badros reference were using the phrase "Run of Site"?
A. I mean, they discuss that here. I understand what they're saying, yes.
Q. And Run of Site is in distinction with Above the Fold?
A. They're splitting it, Above the Fold and Run of Site.
Q. And the idea there is that in this parlance, Above the Fold means the ad is expected to be visible to the user?
A. Well, it's based on the dimensions of typical screens and where it is within those, so you would expect an ad that's basically in the top part of a long webpage to be more likely to be visible than one that's in the bottom.
Q. In fact, if you look at Paragraph 12, the two inventors say that three months before

the Badros reference, determining viewability was basically a probability. There was not a test for viewability to know whether that ad actually, actually was viewed?
A. They're talking about computing a probability. In this disclosure they're talking about computing a probability that it would be viewed in this paragraph, and they don't seem to be talking about an actual test.
Q. And the probability, when you read Paragraphs 8, 9 and 12, is based on whether the ad is going to appear Above the Fold or Run of Site, right?
A. That would be one of the factors I would imagine in computing the probability. It's got to be viewed.
Q. That's when advertisers were able to charge -- I'm sorry. Websites were able to charge more for inventory that was thought to be good, meaning Above the Fold, as opposed to Run of Site, which was inventory that was thought to be okay. Isn't that what they're explaining?
A. That would be part of the price negotiations,

and I would imagine that you would negotiate higher for one that's more likely to be viewed and is above the fold, yes.
Q. Just a couple of points from this patent application. They're describing a viewed impression as one that is more likely to be viewed if it's above the fold as opposed to Run of Site, is that fair?
A. I'm not completely clear on your question.
Q. Well, the whole reason I brought this out is that you say that when Krassner uses the word "view," that that implied a viewability, test of actual viewability. Is that a fair characterization of your testimony?
A. No.
Q. Well, you cited that section of Krassner with regard to the visibility test element of Claim 1, right?
A. Yes.
Q. In your opinion, use of the word "view" in Krassner has to mean a visibility test as opposed to something like the way Exhibit 2010 is talking about, likelihood of viewability?
MR. GREENLEAF: Objection,

mischaracterizes testimony.
A. That's not what I said.
Q. What did you say?
A. So I don't remember precisely what I said, but I do remember specifically that I mentioned having a view inventory and not just the existence of the word "view."
Q. So just the phrase "view inventory" to you means that one of skill in the art would understand you had to run a test for viewability?
MR. GREENLEAF: Objection, mischaracterizes testimony.
A. Sorry. What was the question?
Q. Am I understanding your testimony correctly that Krassner's use of the word, phrase, "view inventory" implies a test for viewability?
A. I wouldn't characterize it that way, no.
Q. Well, when you read Exhibit 2010, Paragraph 8, there's a sentence that says, "often when advertisers buy ad placement from large publishers, they are shown the places their ads will run and a direct sales force negotiates a price based on the inventory

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viewed." Do you see that?
A. Yes, I see that.
Q. Does the use of the phrase "inventory viewed" in Exhibit 2010 have the same meaning as "view inventory" in Krassner?
A. No.
Q. What does "inventory viewed" in Exhibit 2010 mean to you?
A. It's inventory viewed. I mean, it's different than a view inventory. In terms of those two words, inventory view, they're different things and they're also in different contexts and the meaning is informed by the context.
Q. And what about the context in Krassner leads you to conclude that there's a viewability test implied in Krassner?
A. I'm not really sure how to answer that question. The context of the whole patent informs my opinion.
Q. You don't cite to the entire patent in Ground 1 of the petition. You only cite to Column 3, Lines 7 to 10, and I'm just going to read it again because I don't understand how you're taking away from this a test for

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viewability. The sentence says, "additionally, advertisers and ad publishers" --
A. I'm sorry. Can you tell me where you're reading from so I can follow along?
Q. The column and lines you cited in the petition.
A. All right. Sorry.
Q. Column 3, Lines 7 through 10, "additionally, advertisers and ad publishers would benefit greatly from having an ad space exchange system where publishers can make available their ad space/impression/view inventory, the exchange not only for revenues from ad placements, but alternatively or also in exchange for ad space on their own ads placed in a third-party network location," et cetera.
Isn't the the phrase "ad space/impression/view inventory" referring to the space that the ad publishers have to sell?
A. It's referring to the ad space, yes.
Q. And I guess I'll just ask the question this way. Is it your opinion that that sentence

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discloses the visibility test the same way that Badros discloses the visibility test?
A. It's not the same way, no. They're different references.
Q. There's nothing in Krassner that says, for example, what Badros says, that impression module 38 may determine whether the browser is in a minimized status on the user's desktop or may determine whether an ad on a webpage of a user's browser is actually visible to the user. There's nothing like that in Krassner, right?
A. I'm pretty sure I can say without checking that that statement from Badros is not in Krassner.
Q. But that concept of running the visibility test is in the '329 patent, correct?
A. What do you mean when you say the "concept of running the visibility test"?
Q. It's the first step of what's claimed in the '329 claims, correct?
A. Yes. What we've decided to refer to as the visibility test is in the first part of Claim 1 of the '329.

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Q. And you're not making an argument that there's a lack of support in the specification of the '329 patent to support that element of Claim 1 of the '329 patent?
A. I'm pretty sure I haven't made that argument, no.
Q. Now, I've got one final series of questions, I hope.
A. I'm going to go take another bathroom break preemptively.
(Break taken)
BY MR. BERTEN:
Q. Do you have your report, Exhibit 1009, and then the other declaration from the Bumble v. Match IPR?
THE WITNESS: Kevin, do I have those?
MR. GREENLEAF: Yes.
A. When you said my declaration and Exhibit 1009, you were referring to the same one.
Q. No. There's Exhibit 1009, which is your declaration in this case.
A. Right.
Q. And then there's the exhibit --
A. Oh, from Bumble.

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Q. From Bumble, which is -- what's the exhibit number there, first page?
A. No clue. I thought you were referring to three documents.
(Pause)
Q. Exhibit 2012, looks like this --
A. I think I see it there. Yes, all right. I have those.
Q. I'd like you to compare a couple of different things on the level of ordinary skill in the art. So in your report in this case, it's on Pages 6 to 7, and in the Bumble case it's on Pages 16 through 19. So first, if you compare Paragraph 11 of your report in this case, Exhibit 1009, with Paragraph 35 in the Bumble report, both of them have the factors that you're supposed to consider. They're worded a little bit differently, but they're basically the same, would you agree?
A. I have no reason to disagree. I can read them through to confirm, if you like.
Q. Yeah, if you will, I just want to make sure we're talking about the same factors.
A. This is Paragraph 11 and Paragraph 35?

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Q. Yes.
A. (Witness examines document) They're generally the same, yeah.
Q. Then if you compare your conclusion about the level of ordinary skill in the art in the Bumble case in Paragraph 37 with the conclusion about the level of ordinary skill in the art in this case, which is Paragraph 12, you'll see that they're different.
A. They're not the same. I'll give you that, sure.
Q. So in the Match.com case, you concluded that the level of skill in the art was somebody with a Bachelor's degree or five years of practical experience?
A. Bachelor's degree or equivalent and at least five years experience.
Q. Well, it's not "and" at least five years experience.
A. Sorry. Yes, you're correct.
Q. It's or, right?
A. Yup, yup.
Q. So when you were representing the patent owner, your conclusion about the level of ordinary skill in the art was lower than the

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level of ordinary skill in the art in this case?
A. They're certainly different, but there's no -- the difference is not a dramatic one, I guess.
Q. Well, let's first establish that they are different. In this case you say that the level of ordinary skill is somebody with a Bachelor's degree and about three years of experience in computer science, computer engineering or electrical engineering, right?
A. Yes.
Q. And in the Match.com case you said it's somebody with a Bachelor's degree or about five years of practical experience in those similar fields?
A. That's correct.
Q. And the opposing expert in the Match.com case had their level of ordinary skill in the art closer to what you opine to in this case, which is a Bachelor's degree and about two years of experience in building applications, employing client/server communication architecture, right?
A. If you say so.

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MR. GREENLEAF: Objection, vague.
Q. You can read Paragraph 39 of your Bumble report where you talk about the opposing expert.
A. As I read this now, there's more than that to what he provided, he or she.
Q. He goes on, basically says you can have more formal education, less experience, or more experience, less formal education. I guess my question is, why are you of the opinion in this case that a person of ordinary skill has to have the three years of additional experience in computer science or computer engineering or electrical engineering that you didn't think a person of ordinary skill needed in the Match.com case?
A. In the Bumble case, their expert included that it would be, that a person of ordinary skill in the art could have less formal education and more technical and professional experience that meet their definition, which is what mine is. So in that respect, I think that we're in agreement.
Q. My question is not about what the opposing

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expert thought. My question is about your own opinion. What is different about this case that requires an additional three years of practical experience to establish one of ordinary skill in the art as opposed to your opinion in the Match.com case that practical experience was not needed?
A. So if I were to be asked in this case would it be possible for a POSA to have less education and more experience, yeah, that's possible. As to why --
Q. That's not my question, so I'll repeat it again. It's actually reflecting on a comment you made earlier.
Do you remember when we were talking about doing the programming of the server for the viewability test that's disclosed or discussed in Badros? Do you remember that?
A. Yes.
Q. And you said a graduate student could do it?
A. No. I would have said an undergraduate student.
Q. You think an undergraduate student could do it?
A. Yeah.

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Q. But that undergraduate student would not qualify as a person of ordinary skill in the art under your own definition?
A. That's correct.
Q. So what is it about this patent that makes your definition of a person of ordinary skill in the art require both an undergraduate degree and three years of practical experience in order to qualify as a person of ordinary skill in the art?
A. So when I was talking about an undergrad student being able to implement that test, I was not suggesting that they would be a POSA. I just wanted to be clear on that. When I said that an undergraduate student would be able to implement the test, I wasn't suggesting that that person would qualify as a POSA, and I just wanted to clarify that because I'm not sure if there was any confusion about that. They would work with a POSA in order to do their job which, again, is not answering the question that you had which I've now forgotten. Sorry.
Q. So I'll ask the question again.
A. Please.

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Q. And what is it about the technology of the '329 patent that caused you to require, in addition to an undergraduate degree, at least three years of practical experience to qualify as a person of ordinary skill in the art?
A. I don't recall. I don't recall the specific -- I don't know -- basis for this. This is generally considering all these things, considering all of the factors that I described, this is what I came up with as a POSA, but it's not a sort of, as was in the Bumble case, someone with more or less education traded off against experience could also qualify as a POSA.
Q. You keep saying that from the Bumble case, but that was the other guy's opinion, not yours, right?
A. Yes.
Q. Your opinion in the Match.com case was that just an undergraduate degree was sufficient to qualify as a person of ordinary skill in the art, and I'm asking you to identify which of the factors that you considered made you conclude in this case that a person of

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ordinary skill in this case had to have three years of practical experience?
A. I considered all of those factors when I came up with my opinion regarding the POSA.
Q. Let's just go through them. What educational level of the inventor did you consider?
A. I don't recall.
Q. Do you know what the educational level of any of the inventors of the '329 patent is?
A. I don't recall.
Q. As you sit here today, do you have an understanding of what the educational level of any of the inventors of the '329 patent is?
A. In order to do that, I would have to recall that information, which I don't.
Q. What is different about the educational level of active workers in the field of the '329 patent as opposed to the Match.com patent?
A. So maybe I'm misunderstanding something, but you keep going back and forth between telling me not to talk about the Match.com patent and comparing the POSA in our patent versus the Match.com, and I'm really not

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sure what you're asking.
Q. This is when Mr. Greenleaf objects and says you're mischaracterizing the question.
A. Well --
Q. Because --
A. I'm misunderstanding your question.
Q. What I don't want you to do is compare the level of ordinary skill in the art set forth by the other guy in the Bumble v. Match case. I want you to compare how you concluded yourself, your own opinion that a person of ordinary skill in the art in the Match.com case would not have to have any practical experience compared to your conclusion in this case that a person of ordinary skill had to have three years of practical experience in order to qualify. And we have talked about the educational level of the inventor, and you don't recall that here.
I just asked you about the educational level of active workers in the field. Is there a difference between that educational level in our '329 patent and the Match.com patent?
A. I don't recall what it would have been in

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the Match.com patent at all.
Q. Let's talk about the other two elements. Is there a difference between the types of problems encountered by those working in the field and the prior art solutions in the '329 patent as opposed to the Match.com patent?
A. I don't recall what my analysis was in the Match.com patent so I can't compare those.
Q. Is there a difference between the sophistication of the technology in question and the rapidity in which the innovations occur in the field?
A. I don't recall my analysis in the Match.com patent.
Q. You can't identify a single difference between the factors you considered in the Match.com case and the factors you considered in this case despite the fact that you reached a different conclusion?
A. The Match.com case, this declaration is more than four years ago and I don't recall the analysis that I did in that.
Q. You don't recall the analysis you did as it

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relates to the person of ordinary skill in the art?
A. That's what your question was about. Yes, that's what I was saying.
Q. You have some general recollection of what you testified to in the Match.com case, don't you?
A. I certainly would have more if I refreshed my memory by reading it, but I do have a general recollection.
Q. That was a swipe left, swipe right case?
A. I remember this one because I had to explain to my wife why I was looking at dating apps.
Q. I suspected that you remembered at least some portion of your work in the Bumble v. Match case, but as it relates to a person of ordinary skill in the art, as you sit here today, you can't recall any reason why you concluded that the level of ordinary skill in the Match.com case did not require practical experience and in this case it required three years?
A. Is that the right way around? I've already once again forgotten what I did in the Match case even though we talked about it a couple

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of minutes ago. Where is that? I'm sorry, I closed it.
Q. In the Match case it's Paragraph 37.
A. Right.
Q. And in this case it's Paragraph 12.
A. And the question again?
Q. You cannot recall any reason why you require an additional three years experience to qualify as a person of ordinary skill in the art in this case when you did not require that in the Match.com case?
A. That's correct.
Q. All right. Now, is it also fair to say that a person of ordinary skill in the art who has three years of practical experience is going to be more likely to find something is obvious than somebody who doesn't have that three years of practical experience?
A. It would depend on the specific person.
Q. Well, the person of ordinary skill in the art is artificial construct, isn't it?
A. Yes, but I didn't know if you were talking about the artificial construct or specifically two people, one who had this and one who had that.

Q. I'm talking here about the artificial construct of a person of ordinary skill in the art. Do you agree with me that it would be more likely for somebody who has an additional three years of experience to find a combination obvious as opposed to somebody who didn't have that additional three years experience?
A. That would depend on what it was you were combining.
Q. Well, as you move up the level of experience and education and you're exposed to more research and programming and just general experience, isn't it always going to be the case that the higher you get, the more likely it is that you're going to find something obvious?
A. It depends on what it is, but as you have more experience, I would agree that there will be things that you will find obvious that you might not have found obvious the previous year.
MR. BERTEN: Let's go off the record.
(Break taken)

MR. BERTEN: Back on the record. Dr. Smedley, I have no further questions.
THE WITNESS: Thank you.
CROSS EXAMINATION
BY MR. GREENLEAF:
Q. Dr. Smedley, will you please pull up on the Badros exhibit the '502 patent, please.
A. I have it here.
Q. Can you go to Column 14, Line 20, please.
A. Right.
Q. Will you read that paragraph to yourself and let me know when you're done, please.
A. (Witness examines document) I've read that. Oh, I'm sorry. You said Line 20?
Q. Yes.
A. I read the previous paragraph because it started out similar. (Witness examines document) I've read that.
Q. Would you also go to Column 11, Line 22, that paragraph starting with "some embodiments," so Column 11, Line 22.
A. (Witness examines document) I've read that as well.
Q. Okay. Is it your opinion that Badros discloses a viewability test?

A. Yes.
Q. What year was Badros -- what year was that version of Badros published? Actually, I should say what year was Badros filed?
A. So the filing date is June 15, 2005.
Q. Earlier you testified in response to a question from Mr. Berten, "putting clicks aside, I guess my first question is, I want to make sure I understand your opinion. You did not say in your report that it was possible or known in 2009 how you could determine what was visible on a user's screen. That's not in your report, correct?" "That's correct, yes."
So I want to direct you to Paragraph 62 of your report. I'm sorry. Let's go to Paragraph 52, Paragraph 49.
A. Okay.
Q. So read that and let me know when you're done.
A. How far do you want me to read?
Q. Just Paragraph 49.
A. Right.
Q. What is Badros' method for time-multiplexing? What does that mean?

A. Time-multiplexing refers to doing things in sequence over a period of time.
Q. And in the context of Badros, what does it mean?
A. It's displaying electronic documents, multiple electronic documents over a period of time.
Q. And so was it correct when you answered Mr. Berten's question, "you did not say in your report that it was possible or known in 2009 how you could determine what was visible on a user's screen, that's not in your report, correct?" "Yes, that's correct."
Do you still agree with that answer? And to clarify, it was in response to "it was not possible to be known in 2009 how you could determine what was visible in a user's screen," and you answered "correct."
A. So I remember that later on the question wasn't specific enough as to what was meant by "determine what's visible on a user's screen," and so Column 14, the paragraph starting on Line 20 and wherever the other one was.

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Q. 1122.
A. 1122 talks about the time-multiplexing and basing it on when the document is viewable on the user's screen, so that discloses determining that something is visible on the screen.
Q. And did you discuss time-multiplexing, Badros' method of time-multiplexing in your report?
A. Yes, I did.
Q. Did you also discuss combining Badros' time-multiplexing method with Krassner in your report?
A. I believe so.
Q. Paragraph 52?
A. Yes, yes, I did.
Q. And what was your argument in Paragraph 52, your opinion?
A. My opinion is that a POSA would have found it obvious to combine, to incorporate Badros' time-multiplexing in a predetermined sequence with the methods of Krassner.
Q. I want to direct you to –
MR. GREANLEAF: What paper did we determine the request for rehearing was?

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MR. BERTEN: 25.
Q. Paper 25 in the IPR.
A. Yup.
Q. I'd like to direct your attention to Pages 6 and 7, so read that paragraph extending from the bottom of Page 6 to the top of Page 7, please.
A. The one that starts with "the decision"?
Q. Yes.
A. (Witness examines document) I've read that.
Q. Okay. So this is going to be a unique exhibit. I'll call it Exhibit 1, which is the Krassner publication, pre-grant publication. Have you seen this document?
MR. BERTEN: Hang on. Before you answer, let me state for the record that Exhibit 1 has been previously identified as Exhibit 2015 -- I'm sorry, 1015, which was a duplicate exhibit number as pointed out by the Board and also expressly expunged from the record.
So, first of all, I would ask if you're going to make this an exhibit, please make it conform with the IPR requirements and give it a number like 1017 or 1016. I

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don't know which one you're going to use, but, obviously, we would object to introducing as an exhibit an exhibit that was expressly expunged from the record in this case.
MR. GREENLEAF: Okay. We can give it an exhibit number, Exhibit No. 1017, and it will not go in the record at this time, not in the IPR record, but it's obviously in the record of this deposition. Is that sufficient, David?
MR. BERTEN: Well, obviously I'm going to object to you using an exhibit that was expressly expunged from being able to be used in this IPR with this witness. So I made my objection. You can ask your questions.
MR. GREENLEAF: Okay. Just briefly, I just want to respond to the objection. Mr. Berten entered into the record Paper 25 which discusses Exhibit 1017 and, therefore, opened the door to this testimony which I'm about to take.
MR. BERTEN: I obviously disagree with that characterization. That's not the

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reason why I asked the questions about Paper 25, but the record has been made.
MR. GREENLEAF: All right.
(Exhibit 1017 marked for identification.)
BY MR. GREENLEAF:
Q. So, Dr. Smedley, do you recognize this document?
A. Yes, I do.
Q. What is this document?
A. This is a patent application from Krassner.
Q. Do you have the Krassner patent in front of you?
A. Yes. That's Exhibit 1001, is that correct?
Q. Yes. Do you see any indication of the Krassner pre-grant publication on the Krassner patent?
A. I'm sorry. Which one -- this is -- I have 1001, which is the '329. I think you're asking me about the other Krassner.
Q. Yes, yes, yes.
A. Which is 1002.
Q. Okay. Does that indicate -- does 1002 give any indication of the existence of 1017?
A. So on 1002 under Prior Publication Data, it

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gives the publication number that is on 1017.
Q. Have you done a comparison between 1002 and 1017?
A. Yes, I've compared the text of the specification and the figures as well.
Q. What did you find?
A. Well, the text I could compare with a compare tool and found that the text of the specification was the same, and with the figures I did a visual comparison and I didn't notice any differences as I went through them. I want to make sure it's the same number in case...
Yes, yes, I compared them side by side on my screen and I didn't notice any differences in the figures.
MR. GREENLEAF: So here we'll call this Exhibit 1018.
(Exhibit 1018 marked for identification.)
MR. BERTEN: Again, for the record, I'll object to the use of Exhibit 1018 in this deposition. This was another document that was expressly expunged from the record

in this IPR and meaning it shouldn't be used in this deposition.
MR. GREENLEAF: And, again, for the same reasons that I explained earlier regarding entering the request for rehearing, another discussion during the deposition, Mr. Berten opened the door to this discussion we're having now. So the issues are very similar between these two exhibits, and if there's nothing more, I'll ask my question.
MR. BERTEN: Obviously, same objection. The record has been made.
MR. GREENLEAF: Okay.
BY MR. GREENLEAF:
Q. Have you seen this Exhibit 1018, Dr. Smedley?
A. Yes.
Q. What is it?
A. This is an international publication number that is a patent from Badros.
Q. And what's its international publication date?
A. The publication date is the 28th of December 2006.
Q. And do you see No. 30 below, Priority Data?
A. I do, yes.

Q. What does this WIPO publication claim priority to?
A. It lists 11/152,781 with the date of the 15th of June 2005.
Q. Would you look at the Badros patent, please, the '602, I believe it is, '502?
A. '502, yup.
Q. What's the application number for that patent?
A. So that application number is the same number that I just read out on the WIPO patent.
Q. So what does that mean?
A. That means that they're referring to the same thing. When the WIPO patent refers to the priority data, it's referring to the same application as is listed on the Badros patent.
Q. Have you compared Exhibit 1018 to Exhibit 1003, which is the Badros patent?
A. Yes, I did.
Q. What did you find?
A. I found that the specification was the same.
Q. Okay.
MR. GREENLEAF: Take a quick break. I'm going to make a phone call and then I'll

probably -- so we'll go off the record.
MR. BERTEN: Okay. I will have a bunch of follow-up questions.
MR. GREENLEAF: Okay.
(Break taken)
BY MR. GREENLEAF:
Q. Dr. Smedley, do you have your report in front of you, your declaration?
A. Yes. Here it is.
Q. Do you see your quotation on the top of Page 25 to Badros Columns 11, 22 to 24?
A. Yes.
Q. Can you read that to yourself for a second, please.
A. I read that.
Q. Okay. I believe earlier in your deposition today you testified that viewability testing was not known prior to 2009, and we talked about this a minute ago. I just wanted to again ask a similar question, which is does this statement in your report in Paragraph 70 change your opinion as to whether viewability testing was known prior to 2009?
A. Let me look at the whole thing for context. Yes, it does. This discloses determining

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whether a document is actually visible to the user on the screen.
Q. And then I want to direct your attention to Paragraph 37 of your report.
A. Yes.
Q. Can you read that to yourself, please.
A. (Witness examines document) Right.
Q. And at the end it says, "Krassner is prior art under pre-AIA 102(b)." Was the disclosure in Krassner published more than a year prior to the filing date -- sorry, the effective filing date of the '329 patent?
A. When you say the disclosure, you mean what I'm discussing here?
Q. Yeah, so let me step you through that for a second. So here's Krassner '329, and what did we determine its effective filing date was? We might have it in your report. So Paragraph 10 of your report says the earliest priority date that can be claimed is April 3rd, 2009, in Paragraph 10 and in various other places in your report.
A. Right, yes.
Q. Okay. And let's look at the Krassner patent which is, I think, Exhibit 1002.

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A. Right, that's here.
Q. What was the earliest publication date of that disclosure?
A. So that's the, I believe, the prior publication date.
Q. What is that date?
A. November 15th, 2007.
Q. Okay. No further questions.

REDIRECT EXAMINATION
BY MR. BERTEN:

Q. What did you discuss with counsel during the two breaks before you came back in the first time?
A. Like the very first two breaks we had?
Q. No. After I completed my questioning, you were gone with your counsel for about a half hour. What did you guys talk about?
A. Nothing. He led me out of the room and I did Sudoku puzzles in a closet, so...
Q. You didn't discuss any of the redirect testimony that you just supplied?
A. We did not.
Q. I asked you earlier about your report in connection with Paper 25, which is the request for rehearing, and I asked you when

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you first saw what has now been marked as Exhibits 1017 and 1018 over objection for this deposition. Do you recall telling me when you first saw either one of -- we weren't actually talking about Krassner at the time -- that you first saw Exhibit 1017?
A. I remember saying that I couldn't recall specifically when I first saw Exhibit 1017.
Q. Having seen now Exhibit 1017, does it refresh your recollection when you first saw it?
A. No, I'm afraid it doesn't.
Q. So you still don't know whether it was before or after you filed your -- or signed your declaration in this case?
A. I can't say for sure, no.
Q. When did you do the comparison that you testified to regarding comparing the content of 1017 with Krassner?
A. I did the comparison within the last week or so.
Q. Is that answer the same for when you did the comparison for Exhibit, what's been marked Exhibit 1018?
A. Yes, that's correct.
Q. And you did that comparison at the direction

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of counsel?
A. I did that comparison in response to discussions with counsel, yes.
Q. They asked you to do that comparison in preparation for this deposition today?
A. I don't recall if they gave that specific instruction, but that was what I decided to do after our conversation, so...
Q. Are you telling me you decided to do that on your own or was it something that counsel requested you to do?
A. I don't remember the specific words of the conversation, but after we had the conversation, I did the comparison.
Q. You did note that there were differences between, in doing the comparison between Krasner and Exhibit 1017, correct?
A. Yes, there were some differences, yes.
Q. There were differences between Exhibit 1018 and Badros, were there not?
A. Yes. The documents are not identical.
Q. We went back to your report in the questioning by Mr. Greenleaf. Did you write your report, your declaration?
A. Yes.

Q. Did you write the petition?
A. No.
Q. Obviously, the petition had to be prepared first in order for you to write your report, correct?
A. Well, when you say "prepared first," like do you mean that it was started first or that it finished before I started my declaration? What specifically do you mean?
Q. Well, there's actually a chicken-and-egg problem because you indicate in your declaration that it's your opinion that the references support Grounds 1 and 2 as set forth in the petition.
A. Right.
Q. Doesn't that mean the petition had to be finished first in order for you to agree that the discussion in the petition was your opinion as well?
A. That means that the grounds in the petition were finished before I signed my report, I guess, if that's -- I'm still kind of hazy on your specific question here.
Q. What you essentially do in Paragraph 62 of your declaration is set forth that it is

your opinion that the references support Grounds 1 and 2 as set forth in the petition, and we spent a fair amount of time today reviewing statements made in the petition and you agreeing that they, in fact, were your opinion based on Paragraph 62.
A. Right.
Q. So am I correct that the petition, which you didn't write, was completed before you signed your report agreeing that the Grounds 1 and 2 as set forth in the petition reflect your opinion?
A. At least -- the reason I'm having trouble answering this is because they may have -- I don't know -- changed a number on the front cover or something that didn't affect this statement whatsoever and that could have happened after, but if there were any changes, I would have gone back and verified that they didn't change this opinion, so this opinion is based on the completed grounds.
Q. And if you look at both your report and the petition, is there anywhere on that report -- I'm sorry, declaration or petition that you

or the people who drafted the petition cite to Column 14, Line 20 of Badros?
A. I'd have to go through the whole thing to...
Q. I'll represent to you that I've been through it and I didn't see it, and I'm just wondering if I missed it. And Mr. Greenleaf or Mr. Bock can jump in and correct the record if I'm wrong. But as you sit here today, are you aware of any discussion or citation to Column 14, Line 20, that paragraph in the petition or in your declaration?
A. I have no reason to doubt that you've done a search and didn't find anything. I can't imagine that if you didn't find it that way that I would find it sitting here going through the papers.
Q. As we sit here today, neither Mr. Greenleaf or Mr. Bock is offering help in pointing out where in the petition or your declaration there's a citation to that column and line number?
A. Correct, that seems to be the case.
Q. In fact, in your declaration and the petition, there's no reliance on user module

40 determining whether a particular document is currently viewable on a user's screen. Instead, as we went over this morning, the petition and your declaration refer primarily to the impression module 38, is that correct?
A. You'll have to walk me through the sections in order to confirm that.
Q. We can go to the section that you were asked about on redirect. If you go to Page 25 of your report --
A. Sorry. Page 25 or Paragraph 25?
Q. It's Page 25.
A. I'm there.
Q. Put aside Column 11. We'll come back to that in a minute. But the other three citations all refer to Column 12, Lines 36 to 37, 38 to 39 and 48 to 66, and all of those are referring to the impression module when you read them in the context of Paragraph -- sorry, Column 12 of the petition. I'm sorry, Column 12 of Badros.
A. Sorry. You were asking about the user module or --
Q. I was asking about the impression module.

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It is correct, is it not, that Column 12 starting on Line 28 and going down to Line 64, at least, are concentrated and discussing the impression module 38, not the user module 40?
A. You left off where it talks about the user module which starts in 64.
Q. Yes, I did. So the section of the Badros disclosure that I was focused on is discussing the impression module 38, not the user module 40, that comes up on Lines 64 through 66 for the first time, correct?
MR. GREENLEAF: Objection, vague.
A. So in that line range, 28 to 63, I don't see a direct reference to the user module.
Q. It's discussing the impression module, not the user module, correct?
A. It's centered around the impression module, that discussion.
Q. Is it fair to say that the opinion that you expressed in this case before redirect did not rely upon any discussion of the user module determining viewability?
MR. GREENLEAF: Objection, mischaracterizes testimony.

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A. I'm not clear on what you're asking.
Q. Well, I think I know where Mr. Greenleaf is going with his objection, so let's talk about that for a second. On redirect do you recall discussing Paragraph 49 of your report?
A. On redirect, yes, yes.
Q. And there's a sentence in there that reads, "Badros teaches a system and method for time-multiplexing display of plurality of electronic documents."
A. That's correct.
Q. Is it your testimony that every time in your report where you use the phrase "time-multiplexing" from Badros, that includes the concept of a test for viewability?
A. I don't imagine I've given that opinion here.
Q. Well, I think that's what Mr. Greenleaf was implying in his question to you, that your statement in Paragraph 49 that Badros teaches a system and method for time-multiplexing meant to include a test for viewability with the time-multiplexing. Is that what you

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intended when you wrote your declaration?
A. So is what what I intended when I wrote my declaration?
Q. Did you intend the phrase "time-multiplexing" to mean time-multiplexing including a test for viewability?
A. When I'm discussing the Badros system, it includes the viewability test.
Q. It's also true, is it not, that the time-multiplexing discussed in Badros also happens without a test for viewability?
A. Badros Column 11, Line 3 starts off various criteria may be used in determining the time-multiplexing of documents, and so the viewability test is one of those possible criteria.
Q. There are other situations, however, that don't include a viewability test for time-multiplexing in Badros, correct?
A. Badros discloses other criteria for doing time-multiplexing.
Q. For example, time-multiplexing in Badros could include a simple timer on an ad getting replaced regardless of whether that ad was viewable?

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A. I don't recall that specifically, but I'm sure it was within the scope of what they disclosed.
Q. So I'll go back to my question. In Paragraph 49 of your report, it is not correct to say that use of the phrase "time multiplexing" in Paragraph 49 necessarily includes a viewability test?
A. Time-multiplexing can be done without a viewability test, with some other sort of test.
Q. So I want to be clear on one aspect of your testimony. Are you arguing to the Board that Badros teaches a viewability test in both the impression module 38 and the user module 40?
A. (Witness examines documents) I haven't given an opinion specifically as to limiting where, which module of the disclosure or which module of the Badros patent discloses the viewability test.
Q. So does that mean that your opinion now includes doing a user visibility test using the user module 40 as discussed in Column 14 of Badros?

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A. My opinion is that Badros discloses using a usability test. I haven't given an opinion as to a specific, a restriction of that disclosure to a specific module.
Q. Well, again, there was no citation in your declaration or in the petition to Column 14 of Badros, correct?
A. Yeah, that's what we've determined.
Q. And just as was the case with the impression module, there is no disclosure in Badros regarding the user module as to how the test for viewability is done, correct?
A. I wouldn't agree with that, no.
Q. Well, where in Badros does Badros disclose how the impression module conducts the test for viewability?
A. I'm not sure if I misheard your previous question.
Q. Well, my question was, just as with the case with the impression module, there's no disclosure in Badros regarding the user module as to how either module conducts the test for viewability?
A. The whole, in Column 12, 28 down to the bottom of the page or the next one, it

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includes disclosure of doing a viewability test.
Q. Have you ever seen Cool Hand Luke?
A. Probably, but I have a superpower forgetting movies I probably watched.
Q. There's a famous line in Cool Hand Luke where the warden says to a prisoner that what we're having here is a failure to communicate.
A. That sounds familiar.
Q. I'm going to try again.
MR. GREENLEAF: It was a Guns & Roses album.
Q. Let's stick with the impression module 38. It's correct to say that in Column 12, Badros says that the impression module -- and I'm quoting Line 39 to 40 here -- "may determine whether an ad on a webpage of a user's browser is actually visible to the user." Do you see that?
A. I see that, yes.
Q. So we can agree that Badros in that line says that the impression module may determine whether an ad on a webpage of a user's browser is actually visible to the user.

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That's what it says the impression module can do, correct?
A. Yes.
Q. My question is, there's no disclosure in Badros about how to do that?
A. I wouldn't agree with that, no.
Q. Where is the disclosure in Badros about how the impression module determines whether an ad on a webpage of a user's browser is actually visible to the user?
A. As an example, immediately after what you just read — so what is this? 41, Line 41 or so, it says, "for instance, the impression module may determine whether the browser is in a minimized status on the user's desktop." So that's one example of part of how you would do that.
Q. Other than the example of the browser being in a minimized status on the user's desktop, is there any other teaching about how the impression module would determine whether an ad on a webpage of a user's browser is actually visible to a user?
A. Yes is the answer to your question, there is.
Q. What is the other one?

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A. So it would be difficult to identify things within the range of what is here, from Line 28 to the bottom of the page that don't provide information to a POSA as to how to implement that, but all of this would inform a POSA as to how to implement that.
Q. Let's just start with Line 39, the one I just read. What in Line 39 discloses how the impression module determines whether an ad on a webpage of a user's browser is actually visible to the user, putting aside the minimized status on the user's desktop?
A. So that, that's like the one sentence that doesn't talk about how, but the rest of the paragraph --
Q. Let's go to the sentence immediately after the minimized status of the —
MR. GREENLEAF: I believe he was answering your question.
Q. "It may also determine when and if a particular document is actually visible on the user's desktop or other display interface." Do you see that?
A. Yes.
Q. Isn't that the same as Line 38, saying that

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it may do it, but not telling you how to do it?
A. That's informing a POSA as to how to do it. I wonder if our failure to communicate lies in what constitutes informing a POSA as to how to do something.
Q. I asked you this earlier about how you would instruct or actually follow the teaching in Badros to determine when and if a particular document is actually visible to the user on the user's desktop, and do you recall saying that you would get the undergraduate to program it?
A. I recall something to that effect, yes.
Q. And do you also recall not telling me a single part of what that program would look like based on Badros?
A. I can't tell you specifically what a program would look like without knowing a whole lot of other information, and I don't know the language I'm going to be using and the framework and APIs. It's not a question that's possible to answer, unless I'm misunderstanding what you mean by "a part of the program."

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Q. I'm asking you to explain how, upon reading that this module can do something with no explanation of how that is done, a person of ordinary skill in the art upon reading that would simply know how to do it?
A. Well, a person of ordinary skill in the art would have experience in programming in whatever system they're going to be using here and familiarity with the APIs and the frameworks that they're using and would be able to kind of put together the pieces to detect kind of what's in front on the screen and whether that's the thing we're talking about here.
Q. So what are those pieces is my question. What is Badros informing the person of ordinary skill in the art to do to create something that can determine whether a particular document is actually visible in the user's desktop?
MR. GREENLEAF: Objection, asked and answered.
A. It's telling a person of ordinary skill in the art to use the tools you're familiar with, the frameworks, the APIs, the

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libraries, the operating system that you know how to use and know how to program with and just put together the pieces that you need that will tell you what's in the front or whether this thing is visible on the screen.
Q. As you sit here today, can you identify a single one of what those, what you refer to as pieces are?
MR. GREENLEAF: Objection, asked and answered.
A. I don't think I understand your question because I don't know what you mean when you say "identify." Do you mean like a function name?
Q. Can you describe for me even at an algorithmic level what the computer program is going to do based on the statement in Badros that this module can do a viewability test?
MR. GREENLEAF: Objection, asked and answered.
A. Okay. So what I can do is explain in a general sense how a programmer at the time, one way they might figure out where, what

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is underneath a particular point on the screen, and then if you can do that, then you can figure out the rest. But that's the underlying thing that you need to do, is like give me a point on the screen and I can task it. A programmer would say, write some code that would, given a point on the screen, tell me the thing that's in front underneath that point, okay? Is that helpful? Would that be helpful?
Q. That's helpful. So it's your testimony that the person of ordinary skill in the art in 2005 would be able to write code that could determine what's happening in a point on the screen?
A. Well, what's happening is very vague. What I said is that at the point on the screen, the window or the piece of a window, the object that is visible at that point, it isn't covered up by anything else.
Q. Do you have an understanding of how much work would be involved for a person of ordinary skill in the art to create that sort of visibility test?
A. It would not be a difficult task.

Q. And I take it your statements would be the same if the module that's being used to conduct the viewability test is the user module as opposed to the impression module?
A. Yes. That's irrelevant to that opinion. Sorry. Not irrelevant in general. It would be irrelevant to that opinion.
Q. I think I'm done. I am done.
MR. GREENLEAF: We're done.
(Whereupon the deposition was concluded at 6:33 p.m.)

COMMONWEALTH OF MASSACHUSETTS)
SUFFOLK, SS)

I, Jeanette Maracas, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that there came before me on the 25th day of October, 2023, at 10:24 a m , the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon examined upon his oath, and his examination reduced to typewriting under my direction; and that the deposition is a true record of the testimony given by the witness

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action

In witness whereof, I have hereunto set my hand this 6th day of November, 2023



Notary Public
My commission expires 7/29/27

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November 7, 2023

To: Kevin Greenleaf, Esq

Case Name: Duration Media, LLC v Rich Media Club, LLC

Veritext Reference Number: 6134364

Witness: Trevor Smedley, Ph D Deposition Date: 10/25/2023

Dear Sir/Madam:

Enclosed please find a deposition transcript Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext com

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Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6134364
CASE NAME: Duration Media, LLC v Rich Media Club, LLC
DATE OF DEPOSITION: 10/25/2023
WITNESS' NAME: Trevor Smedley, Ph D

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me

I have made no changes to the testimony as transcribed by the court reporter

_____ _____
Date Trevor Smedley, Ph D

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed

I have affixed my name and official seal

this _____ day of_____, 20____

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Notary Public

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Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6134364
CASE NAME: Duration Media, LLC v Rich Media Club, LLC
DATE OF DEPOSITION: 10/25/2023
WITNESS' NAME: Trevor Smedley, Ph D
In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me
I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s)
I request that these changes be entered as part of the record of my testimony

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein

_____ _____
Date Trevor Smedley, Ph D

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:
They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed
I have affixed my name and official seal this _____ day of_____, 20____

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Notary Public

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Commission Expiration Date

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Date Trevor Smedley, Ph.D.

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DAY OF _____, 20_____ .

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