

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Transcript of Alan Edwards

Date: January 31, 2024
Case: Duration Media, LLC -v- Rich Media Club, LLC (PTAB)

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DURATION MEDIA, LLC,

Petitioner,

vs.

RICH MEDIA CLUB, LLC,

Patent Owner.

IPR2023-00953
US PATENT NO. 11,443,329

CONFIDENTIAL - ATTORNEYS' EYES ONLY

DEPOSITION OF ALAN EDWARDS

CONDUCTED VIRTUALLY

WEDNESDAY, JANUARY 31, 2024

4:03 a.m.

REPORTED BY: TANYA L. VERHOVEN-PAGE,
CCR-B-1790 (GA), CSR-12254 (TX),
LCR-991 (TN)

FILE NO. 523977

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January 31, 2024

4:03 a.m.

Stenographic deposition of ALAN EDWARDS, held in Taipei, Taiwan before Tanya L. Verhoven-Page, Certified Court Reporter (GA), Licensed Court Reporter (TN) and Certified Shorthand Reporter (TX).

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I N D E X

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TAIPEI, TAIWAN; WEDNESDAY, JANUARY 31, 2024
4:03 A.M.

Thereupon --
ALAN EDWARDS,
called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GREENLEAF:

Q Good evening, Mr. Edwards. How are you?
A Very well. Thank you.
Q Have you done any depositions before?
A Yes, I've done one before.
Q And what case was that?
A That was a case between Brad and Nikolai.
Q And what did you get deposed on?
A Just -- you know, I was one of the founding partners, so it was just general -- I think my general experience of what happened at that time.
Q Okay. So when was Rich Media Club founded?

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A 2002.
Q And when was Rich Media Club's viewability test invented?
A The viewability test, somewhere in around 2008.
Q Do you recall whether it was early 2008, mid 2008, late 2008?
A Somewhere around -- not really, I don't recall exactly, but it was -- do you mean invented or first used?
Q When you conceived of the invention.
A Conceived of the invention?
Q Yes.
A I don't remember exactly. I remember there was -- and it also depends on what you think the invention is. I remember there was a phone call between me and Nikolai and I said, can we also determine if this ad is in view -- in the window, with geometry. But I don't recall exactly when that happened. Sometime in early 2008, I assume.
Q Okay. Yeah, I believe --
A I mean, it can be --

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Q Sorry. Go ahead.
A Yeah, that's my recollection. It's a long time ago. So –
Q Yes. Igor testified that it was, I think, around February. Is that – is that consistent with your recollection, as well?
A As far as like that first concept phone call? Like, when the first thing started to be talked about and worked on.
Q Okay.
A Yeah, that's about right. I mean, it took a little while to develop, but –
Q I think Igor also said he had some prototypes in early 2008; is that your recollection as well?
A Yeah, that sounds about right.
Q Okay. What was RealVu's business prior to 2008?
A We – we were always involved with marketing – marketing tools, on-line marketing tools. So at that time we had a system for selling products which was similar to eBay. It was kind of

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like an eBay combined with Craigslist idea. And the premise of that was it would help newspapers compete with the on-line classifieds. And it had an advertising model within it.
So that's what we were working on at the time, but, you know, our focus had always been in digital tools for marketers.
Q When did RealVu first use its viewability test?
A Again, it's hard to pin the exact time, but somewhere around mid 2008.
Q You mentioned earlier something about it depends on what you consider the invention of the '329 patent to be.
What do you consider the invention of the '329 patent to be?
A Well, I didn't say '329 patent. I don't remember saying that.
Q Okay. Well, yeah, you did not say '329 patent. I apologize.
A Yeah.
Q So -- but -- what do you consider the

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invention of the '329 patent to be?
A The '329 patent combines the viewability test with an on-line auction. But if you're talking about viewability specifically, viewability entails understanding what's going on on the user side in the browser and gathering enough information to -- to determine that that ad was actually visible to the user, in the user's browser, and then being able to measure that in a report.
Q What was your contribution to the invention in the '329 patent?
A My contribution was the specific idea of using the geometry fired by the browser to actually determine if the ad space was in the viewable window. So that – yeah, I mean, that basically is what happened.
So what happens is -- just so you understand the -- prior to us arriving on the scene, ad impressions or exposures were measured on the server. And the server would interact with the database or the log file and say how many times these ads were called. But when you're living on the

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server, you have no visibility into what the user is doing on the user side, because that's your computer where you are. Right?
So we had moved the counting to the computer. And once you get there, the world changes. You can see a lot more things because -- and we started to discover what the browser would fire. And at that point I realized that you could probably tell if this was in the window or not based on geometry, and that's -- that's -- that was my contribution.
Q Okay. What do you mean by the viewable window?
A The viewable window is the browser window. That's it.
Q Okay. It's the currently viewable portion of the web page that's in the browser window, as opposed to the web page that is not viewable in the browser window, correct?
A Yeah, I mean, unlike traditional -- because -- from traditional media, a television is a television. Right? Whatever is on the screen is on the screen. Or a billboard is a billboard, whatever

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is on the screen is on the screen -- or on the billboard. And we -- in newspapers there was an issue, they called it the fold, where somebody could fold the paper and actually not see what's underneath. That's why, with internet advertising, they call pages that are below the visible area below the fold. That's taken from the newspaper analogy.

So when ads are delivered on a web page, there's -- the ones that are below the fold are not necessarily viewable, or not necessarily exposed to the viewer, but if you're counting at the server, then they're counted.

Q You mentioned geometric viewability a few times in that.

A Yes.

Q What would non-geometric viewability be?

A I know of one other possibility of -- I mean, if you can figure out a way to tell if something is on the screen without geometry, then that would be non-geometric viewability.

Q I think you said you're aware of one such --

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A Well, something with -- I -- yeah, there is -- there is a way to do it with a pixel, I believe, and it was done before. I don't know, but it's -- not a pixel. Honestly, I can't really answer to it. I just know that there is a non-geometric method, and its efficacy is debatable. But I think that during -- I think it has been explored. I think a Google search will turn it up. But it's so long, I can't remember exactly how it works, but there's some other method.

Q Okay. You're not a computer scientist, right?

A I am not. I'm at the level where I understand how computers work. I understand how networking works. So on a high level, I understand systems and methods and sometimes I can figure out things that actual -- if you know programming you might miss, because I'm kind of seeing it at a very high -- higher level, I guess, you can say. Or, you know, like a child-like fascination level.

But I know the basics of programming. In school I learned BASIC and Pascal and networking, so

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I understand how everything works, but I don't actually write code.

Q So in your declaration, you stated something about other so-called solutions did not work as reliably as RealVu's. Do you recall that?

A Yes.

Q And these so-called solutions, did they pre-date RealVu's viewability invention?

A No.

Q Have you ever heard of a company called Olenti?

A Yes.

Q What do you know about them?

A I remember that -- what I know about them is they are a French company, and at some point around the same time they -- they created some on-line demo of something registering if it's in the window or not. That's what I recall.

(Edwards Deposition Exhibit No. 1 was marked for the record.)

MR. GREENLEAF: Okay. I'm going to drop an exhibit into the Chat for your --

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for you to take a look at. Give me a second.

Same exhibit as yesterday, for David's edification, which I expect the same objection.

THE WITNESS: In the Chat here?

MR. GREENLEAF: Yeah. And we'll call this Exhibit 1 for Tanya's purposes.

THE WITNESS: Okay.

MR. GREENLEAF: It's a Himmel patent, U.S. Patent No. 6,317,782.

THE WITNESS: Okay.

MR. GREENLEAF: Let me know when you have it.

THE WITNESS: Okay. I have it.

MR. BERTEN: And while the witness is looking at it, I will make my objections for the record, the same ones that were made yesterday. This exhibit is not one of the references that was relied upon in the petition, and I'm not 100 percent sure of the relevance of it,

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but I will give you the same leeway I did yesterday, Kevin.

MR. GREENLEAF: All right.

BY MR. GREENLEAF:

Q Alan, do you have the exhibit?

A Yeah, I do.

Q Okay. Have you seen this before?

A I may -- I don't recall. I've seen so many thing -- I don't recall seeing this.

Q But David hasn't shown it to you --

A No, no.

Q -- in preparation for this?

A No, no.

Q All right.

MR. BERTEN: I'll impose a late objection that there was a question that might have called for attorney-client privileged information. But you have the answer.

THE WITNESS: Yes. So -- okay.

BY MR. GREENLEAF:

Q All right. Let me share my screen. All

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right.

Do you see this patent is titled Method and Apparatus for Detecting Actual Viewing of Electronic Advertisement and Transmitting the Detected Information?

Do you see that?

A Yes.

Q Are you familiar with the Badros patent, Exhibit 1003?

A Yeah, I'm familiar with the Badros patent.

But let me interrupt here, because my experience with patent analysis -- and this is basically what I've been doing for years -- is you need time with the patent. You can't -- the way you're doing this now and just showing me this and trying to combine it with a patent I've already reviewed is not customary to how patent -- patent discussions are done.

So -- so I would need time to review Himmel and prepare for this.

Q Okay.

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A I'd be happy to talk about Himmel, but I don't feel comfortable without having time. I hope you understand. Because these patents are -- you know, at first glance they can seem like one thing, and then as you dig into it, it's something else. So it's really not -- it's not good practice.

Q Okay. But you said you could answer a couple of questions, potentially. I understand it --

A I don't remember saying that.

Q Okay.

A I'm sorry. I just don't remember saying that.

Q That's fine. That's fine. I -- I'm expecting --

A I would love to answer questions.

Q Just let me ask the questions and you can answer them or not as you feel that --

But you are familiar with Badros, correct?

A Yes.

Q Have you read Badros?

A Yes.

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Q And one of the arguments about Badros is that it's discussing served impressions as opposed to viewable impressions. Do you agree with that?

A Yeah, I mean, it's not discussion -- it's not discussing viewable impressions, no. Viewable impressions weren't even around at this time.

Q So I'm highlighting a portion of Badros, Column 15, Lines 3 to 8.

Do you see that, Mr. Edwards?

A Yes.

Q And it says: The impression database may store a number of impressions of a particular document. The number of actual, e.g. verified, impressions may be distinguished from the number of times a document was output to client terminal.

A Right, right.

Q Also, the actual time which the document was visible on a monitor may be stored.

Is it your opinion that that is discussing served impressions and not viewable impressions?

A Yes, this is served impressions.

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Q Why?
A Because, here's the thing. At this time, the concept was everything is measured at the server. Right? So if you look at -- if you look at, for example, there are -- how they talk about their modules -- it's Page 11, Paragraph 25 -- they say their modules are on the server. Right? And then -- and then a certain module determines visibility, but that's also on the server. But if you're on the server, you can only determine what is on the server. You can't really tell for sure. Right?
So at this time, these -- these words were used -- they would call impressions views. Even though they might -- you might not know for sure if they were views. And they would call things visible even though you're not sure if they're visible. So this is basically visible to the best of the ability that you can determine from the server.
They were not -- they weren't -- they weren't on -- they weren't in the user's browser. They weren't there. So the way -- the way that we were determining if this ad was actually visible is

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not technically possible; but through different methods you could say, oh, it's visible, you know, but it's not -- all right. Let me put it this way.
The way the measurement is determined is to the best that's technologically available at the time. Right? So if -- if the best technological ability -- if you can say visible to the best of what's available, then you say visible. We brought it to another level, basically.
Q Yeah. That's fine. Thank you.
A Yeah.
Q The -- what do you think Badros means when he says: The number of actual, e.g. verified, impressions may be distinguished from the number of times a document was output to client terminal?
A Well, I don't know, because the patent doesn't tell you. It would be nice to know, wouldn't it? If it doesn't tell you.
Q I think we know.
A Well, okay, then tell me.
(Edwards Deposition Exhibit No. 2 was marked for the record.)

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BY MR. GREENLEAF:
Q I'm going to upload another -- this is the Koeppel patent, U.S. Patent No. 7,567,916.
A Uh-huh.
MR. BERTEN: Same objections.
THE WITNESS: Yeah, I mean what's going on? I'm just getting patents thrown at me.
BY MR. GREENLEAF:
Q Well, that's what happens in patent litigation.
A Okay. But I'm just saying, if I had them before, then I would be prepared.
Q Yeah, I understand. I understand.
A I -- I thought --
Q So -- so just quickly, Koeppel is -- was filed in 2000. It's Capital One.
Have you seen this patent before?
A It looks familiar. The name sounds familiar. Again, I've looked at so many over the years.
Q It's titled System and Method for

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Performing Web Based In-View Monitoring. Can you see that?
A Uh-huh.
Q What do you think it means by performing web based in-view monitoring?
A I have no idea.
Q Give me a second here.
You testified earlier about whether -- determining whether an advertisement is in the window. What did you mean by that?
A Well, you asked me what the browser window was. So in the window means the browser window.
To be clear, there's a computer monitor, which is your display. Right? And then there's the browser, which is the program that displays the web page. So the browser can be different sizes. It could cover the whole display or part of the display. So -- so you -- so you have to determine -- if you really want to tell if an ad would reach somebody, you have to determine that it's in the visible window, the primary window of the browser.

Duration Media LLC Ex-1021
Duration Media Ex-1055

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Q Are you familiar with Google Patents?
A Google Patents? What do you mean?
Q Yes. It's a website that Google provides for people –
A Oh, yeah, yeah. The database of patents to look for patents?
Q Yeah.
A Yes, I am.
Q So here I have this Koeppel patent up on Google Patents. It's the same U.S. patent number. So I'm just trying to be efficient here with everybody's time.
And I have Figure 6B or -- sorry -- 9B of Koeppel up on the screen. And you were speaking about the display and the browser and I think potentially components of the web page. And it says in Koeppel, describing Figure 6B: As shown in Figure -- sorry -- 9B, portion 982 of component 978 – I'm sorry.
As shown in Figure 9D, portion 982 of Component 978 is not viewable in Web page 978. User activities such as resizing windows and scrolling

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affect in the view portion of the Web page 976 and component 978. Accordingly, to determine what are the actual in-view portions of page 976 and component 978, the client script executes known Web-based programming language commands to collect known current height, H, subscript browser, and width, W, subscript browser, of browser window 974.
So does Koeppel teach a method of determining whether a component is the window as you described?
A Not as I described from what I can see here. It's not enough information.
MR. BERTEN: Also, give me a chance to make an objection.
Same objection. Asking him questions about a document that the witness is seeing for the first time during this deposition.
THE WITNESS: It also sounds like you're relating it to another diagram from another patent. But the thing to understand is that if you take small

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portions of patents like this, and without understanding depth and breadth of what the invention is, I -- I don't think the answer is credible. I wouldn't feel comfortable making that answer, with all due respect.
BY MR. GREENLEAF:
Q Okay. So here's another portion of Koeppel. It says: A disadvantage to this conventional process is that advertisement servers may be billed for banners that are never seen by a user browsing a rendered Web page that includes the banner.
So it says that the banner may never be seen, and that's something that your solution solves, correct?
A Yes.
Q And then it goes on: This may occur when the banners are located in positions on a Web page that rarely get used by users, such as the bottom half of the web page. Users may leave a Web page without ever viewing the banner provided by an

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advertisement server, while the Web server serving the Web page may still charge the advertisement server for a banner being displayed on a rendered Web page.
Again, that's the same problem that your invention is seeking to solve, correct?
A Okay.
Q Is that a yes?
A Users may leave a web page without ever viewing the banner provided by an advertisement. Yes.
Q And further on down the line, it says: Furthermore, although conventional on-line advertising techniques enable providers to advertise their products and services on third party Web sites, they lack the ability to efficiently perform detailed billing based on whether an advertisement was actually in-view when a Web site, including the advertisement, is rendered.
Again, that's discussing the problem that your geometric viewability solution solves, correct?
A Yeah, I mean, I guess this is a summary

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or some background in a patent you're reading. But reading the background of a patent doesn't determine anything. It's just they're telling the story. We would have to know what -- go into depth of what they're doing. I mean, what's your point?

Q I just wanted to get your basic understanding of what this patent is talking about. We're not going into it in-depth. We realize we don't have enough time to review it and you would need lots of time. You've made that clear. But I appreciate this sort of initial analysis of it.

But just going back, the Koeppel patent is from -- you know, it was filed in 2000, correct?

A Uh-huh.

Q So this problem of ads being in view was known at least as early as 2000, correct?

A I mean, if that's when this is filed. So -- yeah, it's been -- it's a problem that has been around. It's just there was no solution that came up that was actually viable and usable in the actual world. So, yeah, it was a problem.

(Previously marked Exhibit No. 1001

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was identified for the record.)

BY MR. GREENLEAF:

Q Give me a second here. So we're going to look at Exhibit 1001, which is the '329 patent.

How -- so you are familiar with Claim 1 of the '329 patent, correct?

A Yeah.

Q How does Claim 1 of the '329 patent solve this viewability problem?

A Thank you for cleaning it up there for me.

Q I'm trying to make everything easy for us. Yeah, sorry. I think this is more readable. So hopefully this is better.

A Okay. Okay. Can you scroll down, just so I can see the complete --

Q Yeah. There's a period there, so that's the end of the claim.

A That's the end of it?

Q Yeah.

A Yeah, so, I mean, this is -- it's cool. I love it. No, I mean, it uses the view of the

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viewability technology to -- to call and render an advertisement, knowing that the predefined area is in view. So the measurement of the viewable impression is not included in this, but the technology is used for the purpose of displaying an ad.

Q Okay. So when you said the measurement of the viewable impression is not included, you're referring to the fact that the claim did not require geometric viewability?

A No, not at all. It requires geometric viewability to know if the ad is in view.

Q Why is that?

A To know if the space is in view. You netted the viewability technology to know if the predefined area is in a portion of the display.

Q So the claim requires geometric viewability?

A Yes, as per --

Q Which limitation is that, that requires geometric viewability?

A I don't know what you mean by limitation. But if you're defining a predefined area in a portion

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of a web page, then you need geometric viewability. You need to know the dimensions of the page and the pixels on the page.

Q So the very first limitation here -- sorry for my patent speak, but that's --

A Determining whether a predefined area of an ad content display play that is used to display an advertisement is in view. Yeah, you need geometry there.

Q Okay.

A A viewable impression is the ad is in view for one -- 50 percent of the ad or more is in view for one second. So that's that. That's a different thing. This uses the technology to determine when an ad should be delivered to that space.

Q So the claim requires determining whether a predefined area of an ad content display page is in view. Is that different from determining whether an ad is in view?

A Determining whether a predefined area of ad content display page. Well, the ad isn't

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delivered yet. The space is there.
Q Okay. So it's different from determining --
A So --
Q Sorry. Go ahead.
A Yeah. So there's points in the process. So you determine if the ad space is visible, you deliver the ad. Then you can continue to measure and if the ad is there more than one second, then you can measure a viewable impression or you continue to measure at that point. If that makes sense.
Q So you said in this limitation of Claim 1 the ad is not in the predefined area yet; is that correct?
A Well, there could be another ad in there, if it's a second -- if it's a second ad. So, you know, there could be an ad in there that's being measured. But -- but the concept here is that, hey, we're not going to deliver an ad until we know this ad is -- this ad space is -- is viewable. We're not going to -- we're not going to do it otherwise.
Q Yeah. So I -- go ahead.

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A No. I mean, if the word is replacement, if there's a replacement advertisement, then obviously there's another ad in there originally, because it's replacing it.
Q But you're measuring the space on the screen as opposed to the advertisement, correct?
A Well, yes, until there's an ad in it, then you could use this to -- because if the space has an ad in it, then you're measuring the ad, and you can determine if the ad is in the space or not. Right? So this -- this doesn't exclude the possibility of measuring the ad. Because once the ad is delivered, then you know it's there and you can measure it. Does that make sense?
Q I think so. But there's a distinction between the ad and a space?
A Correct.
Q And the claim requires measuring the space, which, you know --
A Pre-defined area of an ad content display page that is used to display an advertisement in-view within the visible area.

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Q And if you need a break at any point, let me know. Let me -- let me just bring up the display one more time.
You sounded exhausted there for a second?
A It's -- I want to answer the questions, but I just -- it's just -- you understand.
Q Yeah, it's not fun.
A No, it's not. It's not fun.
Q All right. You can see my screen again here with the claim?
A Yeah.
Q Where does the claim explain how the geometry is used to make the determination that an ad is in view?
A Well, I would -- I would consider predefined area as geometry, I mean, on a basic level. So if you say a predefined area -- like if I say predefined area of your kitchen, what is it? It's 5-feet from, you know, from the door, and it's 5-foot square, however I describe it. Once I describe a predefined area of, say, a basketball court, I have to get into geometry. So -- because

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you can't predefine an are area without geometry, as far as I'm concerned.
Visible area is a reference to geometry. What is the visible area? You need geometry.
So I would say, on a basic level, any -- any reference to predefined area, visible area, any area is inherently geometry.
Q But the claim is not measuring the ad itself, correct?
A It can measure the ad itself, if the ad is in the area. This is -- this is -- what you're touching on -- to get into it a little bit, what you're touching on is something that is -- has been discussed a lot during the guidelines discussions. And, you know, the ad space is considered a container and the ad itself, when it's delivered, is considered the ad. Right?
So you have to -- do you measure the container? Do you measure the ad? So our technology can measure the container and it can also measure the ad because it knows when the ad is in the container. So, basically, what I'm saying here is that it's

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both.

If -- if the ad space does not contain an ad, then it's the space; but once the ad is delivered and rendered in the space, then you start to measure the ad. Does that make sense? It's kind of like you're in a -- there's a car. Right? And the car is self-driving and there's nobody in it, and you can measure where the car is going. Then a driver gets in it and you're measuring the same, but you know the driver is in it, so now you're measuring the driver, too. In an analogy. Right?

So because if you can measure where the car is going and you can measure if there's a guy in the car or not, then you're measuring the guy.

Q Well, why was there so much discussion about measuring the ad space versus the advertisement itself?

A Oh, because there was just lots of discussions about a lot of -- everything. You know, it was -- these guideline discussions were -- you know, there was a lot going on. But -- but it was just one of the things, one of the things to

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consider.

Q What if an ad space is larger than the advertisement? Is that an issue in this type of technology?

A Well, that would be human error in most cases. That would be considered human error, that somebody trafficked -- that somebody trafficked an ad of the wrong size into an ad space.

Q You do understand that ads come in different shapes and sizes, correct?

A Yes. Sorry.

Q Well, I --

A Yes, I do understand. Yes, I do. They come in different sizes. Correct.

Q And so, for example, one ad could be quite large and then the winner of an auction may have a smaller ad that. Sometimes happens, correct?

A Correct.

Q And so the replacement ad would be smaller than the prior ad, correct?

A Well, I mean, if that happens, then there's -- then it was trafficked wrong. That's more

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of an administrative problem, not a technical problem. So if you have 300 by 250s available to you, you have to traffic 300 by 250s there. Right? And if you're trafficking 600 by 600s into the wrong ad space, you know, probably the exchange or -- will have a control in place to make you not be able to do that. But basically that's -- you're just talking about kind of like administrative problems.

Q So --

A And you can put controls in place, for example. I'm not sure what your question is. If your question is -- what's the question? I'm sorry.

Q If the ad is smaller than the ad space, is the ad measured or the -- is the ad space measured?

A Oh, that's your question. It totally -- it totally depends. It depends on how the system is set up. In other words, it depends -- it's -- that doesn't relate to this claim. That depends on how the system is set up. In other words, how much communication is there between the container and the ad itself.

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Q So in the context of this claim, let's say the predefined area is larger than the advertisement.

A Uh-huh. I don't know, that -- that's outside the field of this claim.

Q So this claim --

A I don't know.

Q -- doesn't cover the implementation of an ad space -- sorry -- the predefined area being larger than the advertisement?

A Doesn't cover the predefined area being larger than the advertisement? Again, that's -- in answer to your question, that's an administrative issue. That's an issue of how that is handled. Right? So I -- you know.

Q In your experience, are ad serves that are smaller than the -- than the ad space?

A No, I didn't experience that as a problem. Because the IAB -- the IAB defines -- the ad sizes are very defined. There are really only like three or four basic ad sizes that are -- that are approved by the IAB. So it's pretty

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standardized.
So when trafficking is set up, it's like you have 300 by 250s, 700 by 90s, and you have your 600 by 600s, and the twain don't meet. So this possibility that one is going to be trafficked into the wrong space is not a problem, you know, that occurs in any -- in any tangible way. In my experience back then.
I understand your question, though.
Q So the claim requires that the ad space be measured, not the ad size, correct?
MR. BERTEN: I'll object to the extent it's mischaracterizing the claim.
BY MR. GREENLEAF:
Q I'll show you the claim. So the question again was -- which I think will be the same objection -- whether the claim requires that the ad space be measured, not the ad size, correct?
MR. BERTEN: Same objection. Did we lose audio?
MR. GREENLEAF: I don't know. Alan, are you there?

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THE WITNESS: I'm here. Can you hear me?
BY MR. GREENLEAF:
Q Yeah, I'm just waiting for an answer to my question.
A Oh, I'm sorry. There's a question?
Q Yes.
A Please restate the question. I apologize.
Q The claim requires that the ad space be measured, not the ad size, correct?
A The ad size?
Q Yes.
A I'm sorry. I don't understand the question. What -- I just don't understand the question.
It's a predefined area and ad content is delivered into the predefined area. So the ad content would be the predefined size.
Q So you're saying that the claim requires that the ad be the same size as the predefined area?
A It doesn't require it, but that's -- that's the assumption, but it doesn't require it. Yeah, I don't really understand what -- I'm sorry.

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Q So what does MRC stand for?
A That's Media Rating Council.
Q What do they do?
A So it's an interesting story. So during the Nixon administration, there was a big scandal with a game show. I think they made a movie about it. But there was a lot of lying about audience numbers on television. And it kind of got out and there was a big uproar on the advertiser side that the audience measurements were being -- were not accurate, so people -- they were paying too much for advertising and they wanted regulation.
So, of course, the advertising industry kind of got together, and the publishers, and went to Congress and said, look, we don't need regulation kind of like the SEC. We don't need government regulation. We can regulate ourselves.
And they're like, okay, well, you can regulate yourselves. What are you going to do? And they said, well, we'll create this Media Rating

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Council and it will be a self-regulatory body and we -- we will all be on the board of members -- will be board members of this organization. And we will bring in third parties -- third party auditing firms to audit and accredit all advertising measurement of systems. And in that way we'll keep our integrity, but not necessarily be regulated directly by Congress, by the government. So Congress agreed to that, and the Media Rating Council was formed.
So prior to the internet, they were auditing Neilsen, Arbitron, television, radio, print. All of these different companies were -- anybody selling advertising and measuring it in the form of a currency or measuring it in the form of billing have to get accredited by the Media Rating Council, and audited, annual audits, by third party auditing -- third party auditing firms.
Q And what does MRC audit?
A They audit -- they audit, for example, Neilsen, all Neilsen ratings. They audit all Arbitron ratings.
Q What do they confirm during the audit?

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A They confirm any point of transaction, any currency is accurate. So anything something is billed on. So if Neilsen is billing on audience number, gross rating points, for example, then Nielsen will go through an audit with whatever auditing firm, EY or whichever one is chosen, to confirm that their sample boxes are accurate, that the -- that whatever -- whatever numbers they are generating are accurate.

Q So MRC confirms that, for example, Nielsen is doing what Nielsen says it's doing?

A Exactly; but, to be clear, it's specific to what they're billing on. So you only can get accredited by the Media Rating Council if you're sending bills to somebody and saying, pay on this number. Right? So it's very specific to that.

And it goes into how you -- you know, your control systems, your data, how you save data, security. You know, the audits are very extensive across the board. Not only testing your measurements, but also testing your -- your data retention, your security, your -- I mean, during our

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process they even tested like, you know, our emergency -- you know, you have -- your emergency procedures. It's very -- it's very extensive what the audits entail.

But the high level purpose of the Media Rating Council is to kind of give integrity -- give a stamp of integrity to any company billing for advertising. If that makes sense.

MR. GREENLEAF: So we've been going about an hour.

THE WITNESS: Yeah.

MR. GREENLEAF: Would you like a break?

THE WITNESS: Yeah, maybe that would be good.

MR. GREENLEAF: Okay.

(Brief pause.)

MR. GREENLEAF: Back on the record.

BY MR. GREENLEAF:

Q So I've got the Koeppel patent up again, which I guess is Exhibit 2 to this deposition.

And I just want to confirm with you,

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Mr. Edwards, that you would need to spend a substantial amount of time reviewing the patent to be able to understand this figure; is that correct?

A Yeah, I -- yes, I would prefer to review, have time to review this. Yes, that's correct.

Q And the '329 patent, you agree that it requires a script on the client side to determine whether an ad is in view, correct?

A A script on the client side?

Q Yes.

A I'm not sure what you mean by script. I mean, something has to be on the client side, yes.

Q Yeah. A script is a --

A Some code. Some code.

Q Yeah.

A I mean, Igor is better to refer to these for the technical stuff, but yeah, the code is delivered to the page.

Q Okay. So MRC accredited RealVu in 2010, correct?

A Correct.

Q What did they accredit RealVu for?

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A For the viewable impression.

Q What do you mean by the viewable impression?

A That's a great question. So when EY was auditing us, they -- they had just completed the last guidelines for the served -- for impression. They were called impressions, served impressions. Right? But they were just called impressions. So when -- after -- after we showed this to the MRC, they wanted to audit this. But the problem was, this was a new form of measurement. Right?

So they had to use the impression guidelines and sort of modify them in our process to start to create new guidelines. So they audited us under the served guidelines, but we created new guidelines for the new impression during that process.

Does that make sense? So --

Q Would -- go ahead.

A All right. So would the impression was already -- the impression already had guidelines, so they had to come up with something that would -- a

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phrase that would distinguish this new measurement from the old impression.

So what they came up with was viewable impression, which we thought was kind of funny because an impression is supposed to be viewable. That's what an impression is. It means an ad reached a person. So it was kind of like wet water to us, you know, the phrase. But anyway, so it became the viewable impression during that audit process.

Q How did they define the viewable impression at that time?

A So that went to committee, and there was back and forth. And it -- it kind of netted out to -- it netted out to basically 50 percent of the ad in view for one second. That was the threshold to count it.

Q Do you see my screen?

A Yes.

(Previously marked Exhibit No. 2039 was identified for the record.)

BY MR. GREENLEAF:

Q So this is Exhibit 2039 from the IPR.

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It's labeled MRC Accredited Viewability Verification Disclosure.

Are you familiar with this document?

A Yeah.

Q And what is this document?

A It looks -- this is --

Q I can upload it into the Chat if you --

A No, no, no. This just shows the different vendors and their methods and this kind of thing.

Q Why does Real -- why does RealVu say NA down here?

A I'm not sure. It might be -- it might be because this was at a later date that -- that we -- that we stopped being audited. That's the only thing I can think of. I don't know why.

Q Yeah. It's labeled --

A Because at some point we stopped -- we stopped being audited.

Q Why did you stop being audited?

A Because the primary business turned into something. Like it was -- we weren't in the measurement business. We were in the exchange business. So that's the only thing I can think of as to why, but I don't know.

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Q Why weren't you in the measurement business?

A I -- I don't -- I mean, I don't know the answer to that question.

Q What do you mean by the measurement business?

A The measurement business, meaning like delivering reports on -- on, you know -- I -- I don't -- I don't know. I don't know the answer to this question. I don't know. I honestly don't know.

Q Well, you used the term -- you said we weren't in the measurement business.

A Yeah, but I don't -- again, I don't know what time this is and I stopped -- I left the company a while back. Not left entirely, but I mean I don't really know the answer to the question. I don't know the answer to why this is NA. I was just speculating.

Q When did you leave the company?

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A Well, I work part-time with the company now. So I was -- I was more full-time three or four years ago.

Q What did you mean by the exchange business?

A The viewable exchange or second print auction or that kind of thing. It -- as opposed to like a verification company or something like that. If that makes sense.

Q What do you mean by a verification company?

A A verification company kind of like tags-up ads and gives reports as to, you know, how many were delivered or showed up, that kind of thing.

Q So the document says it's from -- it says a viewability verification disclosure from August 1, 2013. Were you full-time at RealVu at that time?

A I don't -- I don't recall. I don't recall exactly.

Q So in 2013, you said something to the effect of RealVu switched from a measurement business to an exchange business.

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When it made that switch, did RealVu need to provide viewability information to get paid?

A I -- first of all, I don't know about -- I mean, the switch, maybe I misstated. You know, I was trying to answer your question about why that report might not be there. Right? So -- so, you know, I -- I can't say there's an actual switch in any way. I just remember we were in a -- we had a viewable exchange business at that time. I was trying to be helpful, but I don't -- I don't know why it was NA on that sheet.

Q So in 2013, to get paid, didn't RealVu need to provide viewability information?

A I -- I don't recall exactly, but -- but I -- I don't recall exactly, to be honest with you, because -- because in an exchange there can be third parties that are -- that are doing the actual, you know, measurement. So I don't -- I don't recall. It's so long ago. I --

Q I understand. All right. I'm going to upload another document. This is Exhibit 3.

(Edwards Deposition Exhibit No. 3

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was marked for the record.)

BY MR. GREENLEAF:

Q And you're welcome to look at it, but I have it up here on the screen. It's a nunc pro tunc assignment, which you assigned -- which you signed in 2022.

Do you recognize this document?

A I don't see it yet.

Q I'm not sharing my screen. So -- and I also uploaded it. So could you please download it?

A Yeah, yeah. I remember this.

Q Okay. What is this document?

A It's an assignment of one of the -- one of the patents from the past.

Q Why did you assign this document?

A Because it's my duty to assign the inventions to the company.

Q This is your assignment of your rights to the invention to Rich Media Club; is that correct?

A Correct.

Q How does RealVu get paid today?

A My understanding is through licensing

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arrangements.

Q Licensing what?

A The technology itself.

Q What's the technology?

A What's the technology?

Q Yes.

A I don't know exactly what they're licensing. I'm not involved in the, like, day-to-day business or I have not seen, but my understanding, it's is this patent relates to.

Q Who does RealVu provide a license to?

A Again, I don't even have a list of the clients. I'm not involved on that level. I know there's this issue with Duration, but other than that, I don't really -- I don't know the details.

Q So prior to 2008 and viewability becoming in vogue, how were companies such as Google making money on advertising?

A Well, they were billing on -- on impressions or cost per thousand impressions, and they were billing on clicks, mostly. Right? So I think -- I think what happened was -- was clicks were

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so important to Google that they really didn't focus too much on the impression part of it; but then it turns out that the baseline measurement for all advertising in other mediums is the impression. Like, for example, if you buy a Super Bowl ad, the number is how many people you were exposed to Super Bowl and that's how you bill. Right?

So the impression became more and more important, and the only technology they really had to do it was the ad served. So they -- they -- they worked with the ad served. So when we -- when I first started doing media buys, it didn't make any sense. Like the numbers that were coming back were -- were so large. You know, because I'm originally from television. You know, I was a television AD. And it just didn't look right, you know?

But at the time, it was kind of -- the number were so big, it was exciting, but they -- they kind of got -- the industry got used to it. And the click-through rates were measured also against the impression. So the impression was kind of like the

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baseline. And it was a served impression, let's face it.

Q So companies like Google were making a lot of money on certain impressions at that time, correct?

A Yeah. Yeah. And I think -- I think there was an awareness that served impressions probably didn't show up. It's just the amount that didn't show up was the shock. I think it was a shock to all of us. Because -- because even -- even if you take the render, if you take just how many ads are served that actually load on a page, the number drops a huge amount. And then you add the other criteria, then it becomes even more.

But I think this whole 50 and 60 percent thing was just a shocker to everybody. Even us. I think if the number was a little smaller, it would have been more manageable. I think that was one of the problems, was that it was such a big number, the discrepancy.

Q Okay. Did RealVu ever provide a viewability service directly to customers?

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A What do you mean, viewability service?

Q The viewability test as described in the '329 patent.

A I mean, historically we've delivered viewability, yes.

Q To companies such as Duration, correct?

A Yeah, Duration was after my time, but --

MR. GREENLEAF: Okay. I'd like to take a five-minute break. I'm pretty close to wrapping up.

So let's come back at, say, 8:35.

(Brief pause.)

MR. GREENLEAF: Back on the record. We have no further questions right now. David can ask questions if he'd like.

MR. BERTEN: I have no questions.

MR. GREENLEAF: All right. Thank you, Mr. Edwards.

(Thereupon, the deposition was concluded at approximately 5:35 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Tanya L. Verhoven-Page, Reporter and Notary Public within and for the State of Georgia do hereby certify:

That ALAN EDWARDS, the witness whose deposition is hereinbefore set forth, was duly sworn by me before the commencement of such deposition and that such deposition was taken before me and is a true record of the testimony given by such witness.

I further certify that the adverse party, RICH MEDIA CLUB, LLC, was represented by counsel at the deposition.

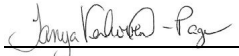
I further certify that the deposition of ALAN EDWARDS occurred via Zoom conference (Taipei, Taiwan), on Wednesday, January 31, 2024, commencing at 4:03 a.m. to 5:35 a.m.

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I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of February, 2024.

My commission expires:
April 31, 2024



NOTARY PUBLIC IN AND FOR THE STATE OF GEORGIA

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