1　　　　IN THE UNITED STATES DISTRICT COURT

2　　　　　　　　DISTRICT OF DELAWARE

3

4　VIDEOSHARE, LLC,

5

6　　　　Plaintiff/Counterclaim Defendant,

7

8　　　-vs-　　　　　　　Case No. 13-CV-990-GMS

9

10　GOOGLE, INC., and YOUTUBE, LLC,

11

12　　　　Defendants/Counterclaim Plaintiffs.

13　　　　　　　　　　　　　　　　/

14　　　　DEPOSITION OF MICHAEL KEEHAN

15　　　　　PALO ALTO, CALIFORNIA

16　　　　　TUESDAY, MAY 3, 2016

17

18

19　Reported by: LOUISE MARIE SOUSOURES, CSR NO. 3575

20　　　　Certified LiveNote Reporter

21

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23　JOB NO. 107094

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2   TUESDAY, MAY 3, 2016

3   9:07 A.M.

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7   Deposition of MICHAEL KEEHAN,

8   held at the offices of White & Case, Five Palo Alto

9   Square, Palo Alto, California, before Louise Marie

10   Sousoures, a Certified Shorthand Reporter and a

11   Certified LiveNote Reporter

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1   A P P E A R A N C E S

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3   FOR THE PLAINTIFF/COUNTERCLAIM DEFENDANT:

4   DOVEL & LUNER

5   201 SANTA MONICA BOULEVARD

6   SANTA MONICA, CALIFORNIA 90401

7   BY: SIMON FRANZINI,

8   ATTORNEY AT LAW

9

10

11

12   FOR THE DEFENDANTS/COUNTERCLAIM PLAINTIFFS:

13   WHITE & CASE

14   FIVE PALO ALTO SQUARE

15   PALO ALTO, CALIFORNIA 94306

16   BY: PAN LEE,

17   CALE TOLBERT,

18   ATTORNEYS AT LAW

19

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21   THE VIDEOGRAPHER:

22   DAN RANDALL, TSG REPORTING

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4   IT IS HEREBY STIPULATED AND AGREED

5   by and between the attorneys for the

6   respective parties herein, that filing and

7   sealing be and the same are hereby waived.

8   IT IS FURTHER STIPULATED AND AGREED

9   that all objections, except as to the form

10   of the question, shall be reserved to the

11   time of the trial.

12   IT IS FURTHER STIPULATED AND AGREED

13   that the within deposition may be sworn to

14   and signed before any officer authorized

15   to administer an oath, with the same

16   force and effect as if signed and sworn

17   to before the Court.

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21   - oOo -

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1   P R O C E E D I N G S

2   -oOo-

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5   THE VIDEOGRAPHER: This is the start of disk

6   labeled number 1 of the videotaped deposition of

7   Michael Keehan in the matter of VideoShare, LLC versus

8   Google, Inc., and YouTube LLC, in the United States

9   District Court, District of Delaware, 13-CV-990-GMS.

10   This deposition is being held at 3000 El

11   Camino Real on May 3rd, 2016 at approximately 9:07

12   a.m.

13   My name is Dan Randall from TSG Reporting,

14   Inc. and I am the legal video specialist.

15   The court reporter is Louise Sousoures in

16   association with TSG Reporting.

17   Will counsel please introduce yourself.

18   MR. FRANZINI: Simon Franzini of Dovel &

19   Luner for the plaintiff, VideoShare.

20   MR. LEE: Pan Lee from White & Case LLP on

21   behalf of Google, Inc. and YouTube LLC and the

22   witness.

23   MR. TOLBERT: Cale Tolbert of White & Case

24   LLP on behalf of Google and YouTube LLC.

25   THE VIDEOGRAPHER: Will the court reporter

1 please swear in the witness.

2   --oOo--

3   MICHAEL KEEHAN,

4   having been first duly sworn by the

5   Certified Shorthand Reporter to tell

6   the truth, the whole truth, and nothing

7   but the truth, testified as follows:

8

9   THE VIDEOGRAPHER: Proceed.

10   EXAMINATION

11 BY MR. FRANZINI:

12   Q. Good morning, sir.

13   A. Good morning.

14   Q. What is your name?

15   A. Michael Keehan.

16   Q. What do you do for a living?

17   A. I'm retired.

18   Q. Did Google hire you as an expert in this

19 case?

20   A. Yes.

21   MR. FRANZINI: May I have this marked as

22 Exhibit 1, please.

23   (Whereupon, Exhibit 1, report of Michael

24 Keehan, was marked for identification.)

25 BY MR. FRANZINI:

1   Q.   Showing you a document that's been marked as

2 Exhibit 1 says "Report of Michael T. Keehan" on the

3 front page.

4   Is this the expert report that you submitted

5 in this case?

6   A.   It is.

7   Q.   Do you expect to testify at trial?

8   A.   I will if asked.

9   Q.   Are you being paid for your work on this

10 case?

11   A.   I am.

12   Q.   How much are you being paid?

13   A. $500 an hour.

14   Q.   Is that your standard rate?

15   A.   It is.

16   Q.   When you say it's your standard rate, what do

17 you mean?

18   A.   I've done a lot of consulting and when I was

19 working for Participation Systems, we charged $10,000

20 for consulting, a consulting package in connection

21 with our software.

22   And that essentially consisted of my time and

23 I would spend two or three days with the client

24 working on issues about their particular application.

25   Q.   When was the last time you were paid $500 an

1 hour?

2   A.   The -- let me see.

3   I'm not sure if I can talk about the previous

4 legal case that I was an expert witness in.

5   Q.   You were --

6   A.   Or was hired to be a consultant on for that

7 rate.

8   Q.   You were an expert witness in a previous

9 case?

10   A.   I was not an expert witness in a previous

11 case, but because it was settled.

12   Q.   You were hired as an expert witness in a

13 prior case?

14   A.   To consult and to provide expert testimony,

15 but it never went to court and I never had a

16 deposition.

17   Q.   Did you tell Google that you had previously

18 been retained to participate in another case?

19   A.   Yes.

20   Q.   What was the name of the case?

21   A.   It was the case for Vimeo.

22   I hesitate because I'm not sure what is

23 privileged information.

24   Q.   Other than for cases involving my client

25 VideoShare, when was the last time you were paid $500

1   an hour?

2   A.   The Participation Systems was -- and that was

3   in the mid '80s.

4   Q.   So when you said your standard rate was $500

5   an hour, you were talking about how you were paid $500

6   an hour in the mid '80s?

7   A.   That's correct.

8   Q.   And you haven't been paid that since?

9   A.   No.   Except for the case that we've

10 mentioned.

11   Q.   How much have you been paid so far for your

12 work on the VideoShare V Google case and VideoShare V

13 Vimeo case?

14   A.   Nothing.

15   Q.   How much do you expect to be paid for your

16 work so far on those cases?

17   A.   I haven't actually tallied it up, the number

18 of hours that I put in.

19   Q.   What's your best guess of how many hours

20 you've put insofar?

21   A.   I would say 30.

22   Q.   So you'll be paid about $15,000 for your work

23 on this case so far?

24   A.   That's -- I haven't done the math, but yes,

25 uh-huh.

1   Q.   What percent of your income is that for this

2   year?

3   A.   For this year, it's almost all of it.

4   As I say, I expect to be paid for what I did

5   in the Vimeo case.

6   Q.   Does -- withdrawn.

7   Was it your understanding that you would only

8   be retained if you provided certain opinions that

9   favored Google?

10   A.   No.

11   Q.   Does your testimony depend on the opinions

12   you reach?

13   A.   Does my testimony depend on the opinions --

14   Q.   Withdrawn.

15   Does being retained depend on reaching

16   certain opinions?

17   A.   No.

18   Q.   Do you think that Google would have hired you

19   if you had concluded that the VideoShare patents were

20   novel and nonobvious?

21   A.   I don't know. I think they would -- it's

22   difficult to imagine that they would hire me to

23   support that opinion.

24   Q.   So in that sense, being retained by Google

25   depends on you reaching certain opinions, right?

1   MR. LEE: Objection, form.

2   THE WITNESS: Well, it's an interesting

3 suggestion, but it's -- I think it was clear to all

4 when I talked to them about being involved in this

5 case what I had to offer in terms of my patent

6 application previously that was already on the table

7 and known.

8   So they knew where I was coming from and I

9 was hired to support that evidence.

10 BY MR. FRANZINI:

11   Q. You were also hired to provide expert

12 opinions, right?

13   A. Correct.

14   Q. When were you first approached by Google and

15 Vimeo?

16   A. I'm not sure. Last year, I'm guessing.

17   Q. In 2015?

18   A. I think so.

19   Q. Do you know approximately what month?

20   A. It would be toward the very end of the year,

21 conceivably it was in January.

22   It was a firm in DC that called me.

23   Q. I'm sorry, withdrawn.

24   Was the firm Akin Gump?

25   A. Yes.

1   Q.   So Google -- withdrawn.

2   When were you retained by Google and Vimeo?

3   A.   About five or six weeks ago.

4   Q.   Did you have any written communications with

5   Google's lawyers before you were retained?

6   A.   No.

7   Q.   You mentioned that they first reached out to

8   you in the end of 2015.

9   Was that over the phone?

10   A.   That was over the phone.

11   Q.   Was there any follow-up to that conversation?

12   A.   Let me see. You mean the call from Akin

13   Gump?

14   Q.   Withdrawn.

15   I'd like to understand all of your

16   communications with Google from the moment they first

17   reached out to you until the moment you were retained

18   by them and that includes any communication with any

19   of their lawyers including the ones that are here

20   today and the ones at Akin Gump.

21   MR. LEE: I caution the witness you may

22   answer the question to the extent you don't reveal any

23   privileged communication.

24   THE WITNESS: Okay.

25   BY MR. FRANZINI:

1   Q.   Withdrawn.

2   Please describe all communications you've had

3   with Google or Google's counsel from the moment they

4   reached out to you until the moment you were retained.

5   MR. LEE: Same instruction.

6   THE WITNESS: And Akin Gump was at the time

7   representing both Vimeo and Google, correct?

8   BY MR. FRANZINI:

9   Q.   Yes.

10   A.   I had very little communication with Akin

11   Gump.

12   They were interested in what I had to say

13   about the -- they had read the preliminary application

14   and they were just clarifying I was the correct

15   person.

16   They soon were out of the picture and let me

17   know that the case was moved, at least the Vimeo case,

18   was moved to Durie Tangri.

19   I had communications with Durie Tangri

20   about --

21   MR. LEE: Again, caution the witness not to

22   reveal any privileged communication.

23   If you can answer the question without

24   revealing any privileged communications, you may do

25   so, if you can.

1   THE WITNESS: Okay. So I first had

2 communications after Akin Gump with Durie Tangri and

3 let me see -- I think that we all know that I had an

4 arrangement with them to support their case regarding

5 Vimeo.

6   And then once they -- once Vimeo was settled,

7 I got a call from them that it was saying --

8   MR. LEE: Again, instruct you do not reveal

9 any privileged communications.

10   THE WITNESS: Right, okay.

11   So -- so I subsequently got a call from

12 Google or, rather, from White & Case.

13 BY MR. FRANZINI:

14   Q. When you spoke to Google's lawyers at Akin

15 Gump in December of 2015, did you tell them you had

16 information regarding the patent application that you

17 submitted -- withdrawn, let me get a better question,

18 withdrawn.

19   When you spoke to Google's lawyers at Akin

20 Gump in around December of 2015, did you tell them

21 that you had information about the Keehan patent

22 applications and VideoForum system?

23   MR. LEE: Objection, calls for privileged

24 communication.

25   I instruct the witness not to answer.

1   BY MR. FRANZINI:

2   Q.   Were you -- withdrawn.

3   Had you been retained by Google in December

4   of 2015?

5   A.   No.

6   Q.   When you spoke to counsel for Google in

7   December of 2015, did you tell them you had

8   information to provide about the patent application or

9   about the VideoForum system?

10   MR. LEE: Objection, calls for privileged

11   communication, I instruct the witness not to answer.

12   BY MR. FRANZINI:

13   Q.   Are you going to follow your counsel's

14   instruction?

15   A.   Yes.

16   Q.   Does White & Case represent you or are you

17   just a witness -- withdrawn.

18   Does White & Case represent you?

19   A.   I'm not sure what "represent" means in this

20   case.

21   Q.   Did you retain White & Case to represent you

22   in connection with this lawsuit?

23   A.   I don't know if that's privileged

24   information, but I did not approach them with any need

25   for representation.

1   MR. FRANZINI: Pan, what's the basis for your

2   privilege instruction?

3   MR. LEE: Akin Gump represented both Google

4   and Vimeo at the time of contact and Mr. Keehan was

5   retained as an expert.

6   And so that falls under at least the expert

7   privilege -- communications privilege with an expert

8   and also common interest privilege to the extent it

9   involved Vimeo.

10   BY MR. FRANZINI:

11   Q. At the time when you were -- withdrawn.

12   When Akin Gump first reached out to you in

13   December of 2015, had you been retained by Vimeo as an

14   expert at that time?

15   A. No.

16   Q. Okay. When you spoke to counsel for Google

17   at Akin Gump in December of 2015, did you tell them

18   you had information to provide about the Knowledge

19   Assembly system or about your patent application?

20   MR. LEE: Objection, calls for privileged

21   testimony and instruct the witness not to answer.

22   MR. FRANZINI: Now we've established he

23   wasn't retained by Vimeo or Google at the time.

24   So what's the basis for the privilege

25   instruction?

1   MR. LEE: He was retained and so that covers

2   the interactions with our expert.

3   BY MR. FRANZINI:

4   Q. Are you withholding information based on your

5   counsel's instruction?

6   A. Withholding information? I'm following my

7   counsel's instruction.

8   Q. So you have information to provide and you're

9   not providing it as a result of counsel's instruction?

10   MR. LEE: Look, Simon, can we go off the

11   record for a second?

12   MR. FRANZINI: I have a question pending.

13   THE WITNESS: Pardon me?

14   BY MR. FRANZINI:

15   Q. I have a question pending. You have to

16   answer my question.

17   A. I'm following my counsel's instruction.

18   Q. So you know the answer to my question, but

19   you're not giving it because of Mr. Lee's instruction?

20   A. That's correct.

21   MR. LEE: Simon, can we go off the record to

22   clarify something?

23   MR. FRANZINI: Sure.

24   THE VIDEOGRAPHER: The time is 9:24 and we're

25   off the record.

1   (Recess taken.).

2   THE VIDEOGRAPHER: 9:25 and we're on the

3   record.

4   BY MR. FRANZINI:

5   Q.   When you spoke to counsel for Google at Akin

6   Gump in December of 2015, did you tell them that you

7   had information to provide about the Knowledge

8   Assembly system and about your patent application?

9   A.   Without objection, I will say that I

10   identified myself as the Michael Keehan who had

11   submitted that application.

12   Q.   Did you tell them that you had information

13   about that application?

14   A.   I said that I, as the author of it, knew the

15   context within which that application was made.

16   Q.   Did you tell them you had documents about

17   that application at the time?

18   A.   I think -- I said I wasn't sure what

19   documents I had at the time and I said that.

20   Q.   What else did you talk about?

21   A.   The person I was talking to was simply

22   interested in identifying me as the author of that

23   application and intended to pass me along to another

24   attorney once she had established that.

25   Q.   Who was the person you spoke with?

1   A.   Who was the person I spoke with then, I don't

2   remember.

3   Q.   Did you have -- withdrawn.

4   I'm sorry, I didn't mean to interrupt.

5   A.   Just the name, I don't remember the name.

6   Q.   Did you have any other conversations with

7   attorneys at Akin Gump around that time?

8   A.   Let me think.

9   The reason I'm hesitating is that she set up

10 a conversation, but I don't think it actually

11 happened. I can't remember it actually happening

12 because they soon thereafter switched to Durie Tangri.

13   And I believe that -- I'm remembering now

14 that when I talked to them, I did not have the

15 conversation that originally was proposed, but they

16 used that opportunity to tell me that they were

17 stepping out of the picture and that Durie Tangri

18 might contact me.

19   Q.   When you first spoke to Akin Gump, did you

20 say you were going to go look for documents?

21   A.   No.

22   Q.   After that conversation, did you actually go

23 look for documents?

24   A.   No.

25   Q.   What documents do you still have about the

1 Knowledge Assembly system and about the Knowledge

2 Assembly patent application?

3   A. I bundled everything up that I could -- still

4 have now, not talking about in that time frame.

5   I did a search of documents, found very

6 little and sent them -- I mean, let me see.

7   So the next step in this whole process is

8 that I had a conversation with Durie Tangri.

9   MR. LEE: I caution the witness not to reveal

10 any privileged information.

11   THE WITNESS: Right. So that's why I'm

12 hesitating to answer the question.

13   Could you reframe it?

14 BY MR. FRANZINI:

15   Q. When were you retained by Durie Tangri?

16   A. Sometime after the first of the year. It

17 was -- must have been, I would think, late January.

18   Q. You mentioned that you found some documents

19 related to the Knowledge Assembly system.

20   What documents did you find?

21   A. Those -- let me see. This question of

22 privileged information -- because I wasn't asked by

23 Akin Gump to look for documents nor did I send

24 documents to Akin Gump.

25   Q. I'm not asking you about what documents you

1 sent to Akin Gump or anyone else.

2   I'm asking you what documents did you still

3 have about the Knowledge Assembly system.

4   A. Okay. And without objection, I will say that

5 I had very few documents. I had kept what I called a

6 process file which consisted of the -- some of the

7 comments that I had gotten from colleagues who were

8 helping me test out the system and approve it.

9   And so those I found I still had.

10   A few other odds and ends, but nothing of

11 much consequence, some screen shots. The file was

12 intended, I don't know, to remind me of what I would

13 need to take into consideration if I ever reproduced

14 the system.

15   Q. So -- withdrawn.

16   As of January of 2016, you had in your

17 possession a process file with documents describing

18 the Knowledge Assembly system?

19   A. That's -- well, yes, to the extent of a few

20 screen shots, yes.

21   Q. You had some comments from your colleagues in

22 that file?

23   A. I did.

24   Q. Were those e-mails?

25   A. Yes.

1   Q.   How many of those e-mails did you have?

2   A.   At least three and not much more than that,

3 if any.

4   Q.   Was it just three or more than three?

5   A.   I can't remember more than three. I can't

6 remember who else might have provided me with such

7 feedback.

8   Q.   Well, in January of 2016 when you were

9 looking at these documents, were there just three

10 e-mails or were there more than three?

11   A.   I think there were three e-mails.

12   Q.   You also mentioned there were some screen

13 shots?

14   A.   Correct.

15   Q.   Were those screen shots even created at the

16 time of the Knowledge Assembly system?

17   MR. LEE: Objection, form.

18   THE WITNESS: Pardon me?

19 BY MR. FRANZINI:

20   Q.   Were those screen shots screen shots you had

21 in your files since the early 2000s?

22   A.   Yes, there were screen shots of that system

23 that existed then.

24   Q.   In addition to the screen shots of the system

25 and the comments from your colleagues, what else was

1 in the process file you kept?

2   A.   I had some notes from -- to myself from work

3 with groups in a beta test of the system regarding the

4 process and notes from meetings that I had with people

5 regarding their possible application.

6   Q.   What else was in the process file?

7   A.   That's pretty much it.

8   Q.   Other than the process file, did you have any

9 other documents from or describing the Knowledge

10 Assembly system?

11   A.   Surprisingly no.

12   Q.   Did you have any source code?

13   A.   No.

14   Q.   Any backups or saved versions of the system?

15   A.   No.

16   Q.   Did you provide all the documents that we

17 just talked about to counsel for Google?

18   A.   No.

19   Q.   Why not?

20   A.   I provided them to Durie.

21   Q.   So you provided the process file including

22 everything we just talked about to Durie Tangri?

23   A.   Correct.

24   MR. FRANZINI: Can I have this marked as

25 Exhibit 2.

1   (Whereupon, Exhibit 2, document entitled

2   "Federal Rules of Civil Procedure Rule 26," was marked

3   for identification.)

4   BY MR. FRANZINI:

5   Q.   Showing you a document I marked as Exhibit 2,

6   it's a copy Federal Rule of Civil Procedure 26 which

7   governs required disclosures.

8   If you take a look at page 2, towards the

9   bottom of the page it says "Disclosure of expert

10   testimony." That's the portion discussing things that

11   you have to disclose about experts.

12   And in subsection B, it talks about witnesses

13   who must provide a written report and on the top of

14   page 3 it says "The report must contain a complete

15   statement of all opinions the witness will express and

16   the basis and reasons for them."

17   Is the report we marked as Exhibit A a report

18   that contains a complete statement of all opinions

19   that you're going to express and the basis and reasons

20   for them?

21   MR. LEE: Objection, form, calls for legal

22   opinion -- calls for a legal conclusion.

23   THE WITNESS: I don't -- I'm not sure what

24   the objection is.

25   I didn't hear the objection.

1   MR. LEE: My objection was it calls for a

2 legal conclusion, but you can answer.

3   THE WITNESS: So I -- let me see, a complete

4 statement of all opinions the witness will express and

5 the basis and reasons for them.

6   I think there are other things that I might

7 be asked regarding the industry, for instance, and

8 just more detail than exists in the statement itself.

9 BY MR. FRANZINI:

10   Q. So your report does not contain a complete

11 statement of all your opinions and all of the bases

12 and reasons for them?

13   A. No, I think -- my statement includes all of

14 same, but I'm open to being asked other questions that

15 are contextual for those statements.

16   Q. Well, sir, does your report contain a

17 complete statement of all the opinions that you will

18 express at trial?

19   A. Opinions, yes.

20   Q. Does it also include a complete statement of

21 the basis and reasons for them?

22   A. Yes.

23   Q. Please turn to -- withdrawn.

24   Please turn to Exhibit 1, your report.

25   Did you write this report?

1   A.   Yes.

2   Q.   Did you write the first draft of this report?

3   A.   Yes.

4   Q.   What percent of the words typed into this

5   report are written by you?

6   MR. LEE: Objection, form.

7   THE WITNESS: I'm sorry, objection --

8   MR. LEE: To the form of the question.

9   THE WITNESS: I should answer the question.

10   What percentage of the words typed in this

11   report were typed by me?

12   BY MR. FRANZINI:

13   Q.   Yes.

14   A.   I would say that two-thirds.

15   Q.   Did you rely on anything other people told

16   you or wrote for any part of the report?

17   A.   It was a learning experience for me what the

18   form was and what was being -- what was needed from me

19   in terms of the statement.

20   So I had certain knowledge and certain

21   experience and the form in which that was expressed in

22   my statement was something that I worked with counsel

23   on.

24   Q.   Did you rely on anything anyone else told you

25   or wrote for any part of your report?

1   MR. LEE: Objection, asked and answered.

2   THE WITNESS: So I think I answered that.

3   BY MR. FRANZINI:

4   Q. He objects, but you still have to answer my

5   question until he tells you not to answer.

6   Withdrawn.

7   Did you rely on anything anyone told you or

8   wrote in preparing your report?

9   MR. LEE: Same objection.

10   THE WITNESS: Yes, I was influenced by

11 suggestions regarding form and legal requirements.

12 BY MR. FRANZINI:

13   Q. Did you rely on those suggestions?

14   A. Yes.

15   Q. Were they provided to you in writing?

16   MR. LEE: Now, I caution the witness not to

17 reveal any privileged communication.

18   MR. FRANZINI: Except if he relied on it,

19 it's not privileged.

20   THE WITNESS: If I relied on it, it's not

21 privileged?

22 BY MR. FRANZINI:

23   Q. Did you rely on -- withdrawn.

24   You mentioned that you relied on information

25 in preparing your report.

1   Was that information provided to you in

2   writing?

3   A.   Some of it.

4   Q.   What information was provided to you?

5   MR. LEE: I caution the witness not to reveal

6   any privileged information including to the extent it

7   calls for any information within any drafts of your

8   report.

9   MR. FRANZINI: Are you instructing him not to

10 reveal any information he relied upon?

11   MR. LEE: Counsel, as far as I understand it,

12 drafts are not discoverable here.

13   So what is in his draft report, that remains

14 privileged.

15   MR. FRANZINI: So yes?

16   MR. LEE: I mean I can't speak for the

17 witness.

18   I'm just instructing --

19   MR. FRANZINI: I don't understand if your

20 instruction is limited to things he did not rely upon

21 or also including things he did rely upon.

22   MR. LEE: To the extent that you're asking

23 him to reveal any of the information in the drafts of

24 his report, between him and counsel, I'm calling that

25 privileged and to that extent instructing him not to

1   answer.

2   MR. FRANZINI: Does your instruction include

3   information he relied upon in forming his opinions?

4   MR. LEE: No.

5   BY MR. FRANZINI:

6   Q. What information was provided to you that you

7   relied upon in forming your opinions?

8   A. Well, I had the copies of the patents from

9   VideoShare and the -- it was made clear to me what the

10   process was that needed to be addressed, that is to

11   take a look at what the -- to understand what the

12   claims are in those patents and to have my statement

13   respond to those claims in the context of what I had

14   done and my patent application.

15   Q. Did you rely on anyone's interpretation of

16   the claims in forming your opinions regarding the

17   validity of the '608 and '302 patents?

18   A. I take responsibility for what is in my

19   report.

20   Q. Well, my question was a little different.

21   It was did you rely on anything -- withdrawn.

22   Did you rely on someone else's interpretation

23   of the claims of the VideoShare patents in forming

24   your validity opinions?

25   MR. LEE: Objection, asked and answered.

1   THE WITNESS: I felt the need to have the

2   claims -- the meaning of the claims explained to me.

3   BY MR. FRANZINI:

4   Q. Did you rely on that explanation in reaching

5   your opinions about the validity of the '608 patent?

6   A. I feel as though I came to my own conclusions

7   about the -- about the validity of the claims and --

8   Q. I'm sorry, go ahead.

9   A. But I did have counsel explaining to me --

10   MR. LEE: Caution you not to reveal any

11 privileged communications.

12 BY MR. FRANZINI:

13   Q. Are you finished answering?

14   A. I think so.

15   Q. I understand you reached your own opinions,

16 but in reaching those opinions, did you rely on an

17 interpretation of the claims that was provided to you

18 by someone else?

19   A. I'm confused about what the meaning is in

20 this context of privileged information and what I can

21 talk about and what I can't in this regard.

22   Q. Well, it's a yes or no question.

23   Did you rely on an interpretation of the

24 claims that was provided to you by someone else in

25 reaching your opinions about the '608 or '302 patents?

1   A.   Rely on it? I had my own opinions. I didn't

2 rely on somebody else's opinion, but I relied on

3 others' instructions about how to understand what the

4 claims -- what the significance of the claims were and

5 then formed my own opinion.

6   Q. So I understand you formed your own opinion

7 on the validity of the claims, but did you rely on

8 someone else's explanation about what the claims meant

9 in reaching that opinion?

10   MR. LEE: Objection, asked and answered.

11   THE WITNESS: I'm not sure what you're asking

12 now that's different than what you've asked me before

13 and I've answered.

14 BY MR. FRANZINI:

15   Q. Well, I don't think you answered my question

16 so I'm going to ask it again, withdrawn.

17   I understand you reached your own conclusions

18 regarding the validity of the '608 and '302 patents.

19   A. Right.

20   Q. But did you rely on someone else's

21 explanation of what the claims meant in reaching those

22 conclusions?

23   MR. LEE: Objection, asked and answered.

24   THE WITNESS: I feel like I've -- I have

25 answered that because I did not take their advice

1 about how to -- what to put in the statement, but I

2 did have interpretation of how to read a patent and

3 how to understand what the meaning is of various

4 claims.

5 BY MR. FRANZINI:

6   Q. Did someone else provide you information

7 about what the claims meant?

8   MR. LEE: Objection, form.

9   I also caution the witness not to disclose

10 any privileged communications.

11   THE WITNESS: So it feels to me as though

12 that's a privileged communication, then.

13 BY MR. FRANZINI:

14   Q. Did you rely on someone else's explanation of

15 what the claims meant in forming your opinion that the

16 patents' claims -- withdrawn.

17   Did you rely on someone else's explanation of

18 what the claims of the '608 and '302 patents meant in

19 reaching your opinion that the patents are invalid?

20   MR. LEE: Objection, asked and answered.

21   THE WITNESS: I feel like I've answered it.

22 BY MR. FRANZINI:

23   Q. I'm still entitled to an answer to my

24 question.

25   Are you refusing to answer my question?

1   A.   I don't know the -- what more you're looking

2 for and it concerns me that I may be missing something

3 in the question.

4   Q.   Let me try it again.

5   Yes or no, did you rely on someone else's

6 explanation of what the claims of the '608 and '302

7 patent meant in reaching your opinion that they are

8 invalid?

9   MR. LEE: Objection, asked and answered.

10   THE WITNESS: And I have said that I did

11 depend on counsel to interpret the meaning of this

12 patent as a legal document and specifically of the

13 claims.

14   And that that was necessary for me to be able

15 to construct my statement.

16 BY MR. FRANZINI:

17   Q.   So you relied on counsel's interpretation of

18 the meaning of the claims of the '608 and '302 patent?

19   A.   No, I wouldn't say interpretation, but the --

20 it -- I guess that's the distinction I'm trying to

21 make, I formed my own opinion about -- about the

22 relevance of my patent to those claims, but in

23 understanding the nature of the claims, I needed to

24 understand what the nature was of the claims before I

25 could determine whether -- and the extent to which my

1 patent application was relevant to those claims.

2   Q. So you formed your own opinions about whether

3 your patent application rendered the claims of the

4 '608 and '302 patent invalid, but in doing so, you

5 needed to understand what the claims of the '608 and

6 '302 patent meant?

7   A. That's -- yes.

8   Q. And for that part, for understanding what the

9 claims of the '302 patent and '608 patent meant, you

10 relied on counsel's explanation?

11   MR. LEE: Objection, form.

12   THE WITNESS: Yes.

13 BY MR. FRANZINI:

14   Q. Was that explanation provided to you in

15 writing?

16   A. That feels like privileged information.

17   Q. Yes or no, was it provided to you in writing?

18   A. It was in -- I mean it feels like privileged

19 information, but in a meeting.

20   Q. Were any written materials provided to you

21 during that meeting?

22   A. None other than the patents themselves.

23   Q. What were you told about the meaning of the

24 claims in that meeting?

25   A. I was --

1   MR. LEE: I caution the witness not to reveal

2   any privileged information.

3   THE WITNESS: I'm not sure how the

4   instruction from counsel affects whether I and how I

5   answer the question.

6   BY MR. FRANZINI:

7   Q. Well, I would like to know what information

8   was provided to you that you relied upon regarding the

9   meaning of the claims of the '608 and '302 patent.

10   MR. LEE: Again, I caution the witness not to

11   reveal any privileged information.

12   THE WITNESS: So I think that the nature of

13   that communication is covered under privileged

14   information.

15   MR. FRANZINI: Pan, are you instructing him

16   not to answer regarding the information that was

17   provided to him about the meaning of the claims of the

18   '608 and '302 patent that he relied upon in forming

19   his opinions regarding the validity of the patents?

20   MR. LEE: I am -- to the extent there are

21   facts or assumptions that he relied on, he can, you

22   know, answer, but otherwise, you know, communications

23   with counsel are privileged.

24   MR. FRANZINI: How about an explanation what

25   the claims meant?

1   MR. LEE: Only to the extent they're -- if he

2   was provided with facts or assumptions that he relied

3   on.

4   BY MR. FRANZINI:

5   Q. What information was provided to you during

6   your meeting with counsel regarding the meaning of the

7   claims that you relied upon in terms of what the

8   claims meant?

9   MR. LEE: Again, caution the witness not to

10   reveal any privileged information.

11   THE WITNESS: I think that everything that

12   occurred in that meeting, my assumption is that

13   everything that occurred in that meeting is considered

14   privileged information.

15   BY MR. FRANZINI:

16   Q. Typically you relied on the explanation --

17   withdrawn.

18   Do you expect to provide testimony about not

19   just expert opinions but also factual information

20   regarding the -- your patent application and the --

21   withdrawn.

22   Can we call your embodiment the VideoForum

23   system or what's a good word for it?

24   A. Knowledge Assembly system.

25   Q. Withdrawn.

1   Do you expect to provide factual testimony

2 regarding your patent application and regarding the

3 operation of the Knowledge Assembly system at trial?

4   A. Yes, if asked.

5   Q. Now, your -- withdrawn.

6   You mentioned the embodiment of your patent

7 application that you had created by October 5, 1998 in

8 your report.

9   Was that also called a VideoForum system?

10   A. Also called, yes.

11   Q. Now, some of the documents that were provided

12 in this case talk about the KnowledgeCapture and

13 KnowledgeServer.

14   What is KnowledgeCapture?

15   A. We had different names for different elements

16 of that system.

17   That was the name at the time of the

18 interface with the knowledge provider for creating the

19 video clip and potentially multiple video clips and

20 selecting one and uploading it.

21   Q. So that was the client side software?

22   A. Correct.

23   Q. Was it an application program that was

24 installed on the knowledge provider's computer?

25   A. It was.

1   Ultimately, it was. The initial version of

2   the system and, in fact, the system as described in

3   the patent did not incorporate that software.

4   Q. Move to strike as nonresponsive.

5   What is the KnowledgeServer?

6   A. I think that that's the name -- yes, the name

7   of the -- that we came up with for the server side

8   software for managing the Knowledge Assembly process.

9   Q. You also mentioned two patent applications in

10   your report, one of them is a provisional application

11   and the other one is a PCT application?

12   A. Right.

13   Q. Did those applications ever result in issued

14   patents?

15   A. No.

16   Q. Were those applications both abandoned?

17   A. Yes. I'm not sure the legal definition of

18   abandon, but I did not pursue them.

19   MR. LEE: Simon, it's been about an hour.

20   MR. FRANZINI: Yes, let me finish this one

21   thing and we can take a break.

22   Have this marked as Exhibit 3, please.

23   (Whereupon, Exhibit 3, document entitled

24   "Extract from the register of European patents," was

25   marked for identification.)

1   BY MR. FRANZINI:

2   Q.   Showing you a document that we marked as

3   Exhibit 3, it's an extract from the register of

4   European patents, it describes your patent

5   application, if you take a look at applicants, it has

6   Michael Keehan.

7   A.   Right.

8   Q.   If you look at examination procedure at the

9   bottom it says "the application is deemed to be

10   withdrawn, reason, filing fee/search fee not paid in

11   time."

12   A.   Right.

13   Q.   Does that refresh your recollection about

14   what happened to your patent application?

15   A.   I'm not sure the mechanism for abandoning a

16   patent, but I simply told my patent attorney that I

17   was not interested in pursuing it any further.

18   And I think he let it run out, which is what

19   I think you've shown evidence of here.

20   Q.   It didn't issue into an actual patent, right?

21   A.   That's correct.

22   MR. FRANZINI: Let's take a break.

23   THE VIDEOGRAPHER: Time is 10:05 and we're

24   off the record.

25   (Recess taken.)

1   THE VIDEOGRAPHER: The time is 10:16 and we

2   are on the record.

3   BY MR. FRANZINI:

4   Q. Please turn to paragraph 37 of your report.

5   Paragraph 37 of your expert report, you say

6   "it is my opinion that Knowledge Assembly, led by me

7   supervising George Reinhart, conceived of and actually

8   practiced the subject matter described in our patent

9   application by no later than October 5, 1998."

10   Then, you have a colon and you list certain

11   claims of the '608 patent and specifically you say "a

12   method as described in claim 1 of the '608 patent,

13   except insofar as our identification tags for the

14   streaming videos did not use a video frame image from

15   the streaming video file."

16   Do you see that?

17   A. Correct.

18   Q. Now, I want to make sure I understand what

19   your opinion is.

20   Is it your opinion that your patent

21   application discloses each of the limitations of claim

22   1 of the '608 patent with that exception or is it your

23   opinion that the Knowledge Assembly system that you

24   developed by October 5th of 1998 actually practiced

25   each limitation?

1   A.   I'm not aware of those being different.

2   I think that we had the -- that the system

3 represented what was in the patent at the time that we

4 put in the application.

5   Q.   So it's your sworn testimony that the

6 Knowledge Assembly system as it existed -- withdrawn.

7   It's your sworn testimony that the Knowledge

8 Assembly system as it existed on October 5th of 1998

9 actually practiced each limitation of the '608 patent

10 except that you used -- you didn't use video frame

11 images from the video streaming file?

12   MR. LEE: Objection, form.

13   THE WITNESS: I'm not sure exactly what we

14 had up and running on that date, but I believe so. I

15 can't -- I can't swear to the fact that the system was

16 fulfilling all of that, but I believe it was.

17 BY MR. FRANZINI:

18   Q.   So you're not sure whether the system that

19 you developed as of October 5, 1998 practiced each

20 limitation of the '608 patent, right?

21   MR. LEE: Objection, form, mischaracterizes

22 testimony.

23   THE WITNESS: Would you repeat the question?

24 BY MR. FRANZINI:

25   Q.   Sure. You're not certain that the Knowledge

1 Assembly system as it existed on October 5th of 1998

2 actually practiced each limitation of the '608 patent

3 except insofar as the identification tags for the

4 streaming video did not use a video frame image?

5   MR. LEE: Same objection.

6   THE WITNESS: I believe it did.

7 BY MR. FRANZINI:

8   Q. Sir, you just testified you weren't sure,

9 right?

10   A. Well, I hadn't thought about it, but I

11 feel -- let me see some background.

12   The patent application came well after we

13 developed the system because George was -- George

14 Reinhart was involved in the creation of the system

15 and also in the description in the patent application.

16   And I did not want to take him off of

17 developing code in order to develop the patent. That

18 was my priority.

19   So I believe that, now that I think about it,

20 it's clear to me that the system came first and we

21 were describing what we had actually up and running,

22 that as I mentioned before didn't include what we

23 called the Knowledge Producer software running on the

24 client system.

25   Q. I want to make sure I understand what your

1   testimony is.

2   Sir, is it your sworn testimony that the

3   Knowledge Assembly system as of October 5th, 1998,

4   actually practiced a method as described in claim 1 of

5   the '608 patent except insofar as the identification

6   tags did not use a video frame image?

7   MR. LEE: Objection, form, asked and

8   answered.

9   THE WITNESS: I believe that that's the case.

10   I think that we had it up and running and we

11   were proud of having it in operation when we actually

12   went for the patent.

13   BY MR. FRANZINI:

14   Q. So there's two slightly different things and

15   I want to make sure I'm understanding which one you're

16   saying.

17   My question isn't did you have an embodiment

18   of the Knowledge Assembly system running as of October

19   5th, 1998.

20   A. Absolutely.

21   Q. My question is: Did you have an embodiment

22   of the Knowledge Assembly system that was running as

23   of October 5th of 1998 that actually practiced each

24   limitation of claim 1 of the '608 patent except that

25   the identification tags did not use a video frame

1   image?

2   MR. LEE: Objection, form, asked and

3   answered.

4   THE WITNESS: I believe that we did.

5   BY MR. FRANZINI:

6   Q.   You keep saying you believe.

7   Why are you using that word?

8   A.   Because there's some uncertainty in my mind

9   what would be -- the more I think about it, the more I

10   feel certain that we had that -- such embodiment at

11   that time because it -- the kinds of claims, the kinds

12   of processes that we're talking about here are

13   absolutely fundamental to having any version of our

14   software running.

15   So what's in claim 1, except for the

16   thumbnail, is everything in that claim is essential

17   for running the Participation Systems -- I mean the

18   Knowledge Assembly system and that being the case, I

19   know we had the system up.

20   So in the process of our discussion, it's

21   clear to me that we did have it up and the uncertainty

22   I felt about it was -- is diminished.

23   Q.   You're confident enough that the Knowledge

24   Assembly system practiced each limitation of the '608

25   patent except for thumbnails that you're willing to

1 attest under oath that the Knowledge Assembly system

2 practiced each limitation of the '608 patent except

3 for the thumbnails?

4   A. Yes.

5   Q. And that's based on your understanding that

6 each limitation is necessary for running the Knowledge

7 Assembly system?

8   MR. LEE: Objection, form, mischaracterizes

9 testimony.

10   THE WITNESS: I want to review the patent --

11 the claims in the --

12 BY MR. FRANZINI:

13   Q. What document are you looking at right now?

14   A. I'm --

15   Q. Withdrawn.

16   A. I'm interested in looking at '302.

17   Q. What binder do you have there?

18   A. I have a binder -- the '302 patent -- that

19 includes the patents and the other documents that I

20 think have been provided to you, it includes my patent

21 application, both of your patents and some of the

22 things that were found in -- in my files.

23   Q. Okay.

24   MR. FRANZINI: Let's go ahead and mark that

25 as Exhibit 4.

1   (Whereupon, Exhibit 4, bound documents, was

2   marked for identification.)

3   BY MR. FRANZINI:

4   Q. You're looking at the '302 patent, but my

5   question was about the '608 patent.

6   A. Okay.

7   Yes, I think that the Knowledge Assembly

8   system would embody those functions and since it

9   existed when I put the patent in place, I think that

10   we had an embodiment in the patent application and in

11   the system itself at that time.

12   Q. Okay. So my question is a little bit more

13   specific than that.

14   So -- withdrawn.

15   Is it your sworn testimony that as of October

16   5th of 1998 the actual embodiment of the Knowledge

17   Assembly system that was in operation actually

18   practiced each claim -- each element of claim 1 of the

19   '608 patent except thumbnails?

20   MR. LEE: Objection, form, asked and

21   answered.

22   THE WITNESS: Yes.

23   BY MR. FRANZINI:

24   Q. And that testimony is based on your

25   understanding that everything in the '608 patent is

1 necessary to practice the Knowledge Assembly system?

2   MR. LEE: Objection, form, mischaracterizes

3 testimony.

4   THE WITNESS: Yes. I don't think you could

5 have a running Knowledge Assembly system without

6 performing those functions.

7 BY MR. FRANZINI:

8   Q. It's your testimony it is impossible to have

9 a running Knowledge Assembly system without practicing

10 each of the limitations of claim 1 of the '608 patent

11 except for thumbnails?

12   MR. LEE: Objection, form, mischaracterizes

13 testimony.

14   THE WITNESS: Right.

15   MR. FRANZINI: Have this marked as Exhibit 5,

16 please.

17   (Whereupon, Exhibit 5, document entitled

18 "Exhibit A" containing U.S. patent 8,438,608, was

19 marked for identification.)

20 BY MR. FRANZINI:

21   Q. I'm showing you a document that is marked as

22 Exhibit A, but is a copy of the '608 patent, I think

23 it's the same as the one you have in your binder, but

24 I don't have a copy of your binder so I'm giving you a

25 new one.

1   Please turn to the second to last page.

2   A.   Okay.

3   Page 38, correct?

4   Q.   Yes. At the bottom of the page is claim 1?

5   A.   Yes.

6   Q.   See where it says "a method of streaming a

7 video to users over a network, the method comprising

8 the steps of"?

9   A.   Yes.

10   Q.   Now, the first step says "receiving, by a

11 receiving computer via a web page, a video file sent

12 by a user on a second computer on a network"?

13   A.   Right.

14   Q.   Is it your sworn testimony that as of October

15 5th of 1998 the Knowledge Assembly system actually

16 practiced that limitation of the '608 patent?

17   A.   Yes.

18   Q.   Now, please take a look at element (b1).

19   It says "converting the video file into a

20 streaming video file comprising a streaming video

21 format"?

22   A.   Yes.

23   Q.   And do you see above that it says "executing

24 by the receiving computer"?

25   A.   Yes.

1   Q.   So the receiving computer has to perform

2 element (b1)?

3   A.   That's correct.

4   Q.   And the receiving computer is a server side

5 computer?

6   A.   Correct.

7   Q.   So it's your sworn testimony that as of

8 October 5th of 1998 the server side component of the

9 Knowledge Assembly system performed converting the

10 video file into a streaming video file comprising a

11 streaming video format?

12   A.   That's correct.

13   Q.   Please turn back to your report. Sorry, one

14 more question -- withdrawn.

15   That testimony you just gave, that's based on

16 your understanding that practicing those elements is a

17 necessary component of practicing the Knowledge

18 Assembly system?

19   MR. LEE: Objection, form.

20   THE WITNESS: Correct.

21 BY MR. FRANZINI:

22   Q.   Please turn back to paragraph 37 of your

23 report.

24   A.   Okay.

25   Q.   After subparagraph A there's subparagraphs B,

1 C, D, so forth through subparagraph J, talk about

2 other claims?

3   A. Yes.

4   Q. So in this portion of your report, you were

5 saying that the Knowledge Assembly embodiment, not the

6 Knowledge Assembly patent application, but the

7 Knowledge Assembly embodiment practiced each one of

8 these limitations?

9   A. Let me see. I hadn't made the distinction

10 between the two before so I need to go through these

11 to see if that's -- if I believe that's the case.

12   Q. You say before, you meant before today,

13 right?

14   A. Yes.

15   Q. So your testimony about claim 1, that was

16 about the Knowledge Assembly system, not the patent,

17 right?

18   A. I'm sorry, my --

19   Q. You just gave testimony about claim 1 of the

20 '608 patent. We were talking about the Knowledge

21 Assembly system, not the patent application, right?

22   A. Right, that's what we're focusing on.

23   And the patent application -- I'm trying to

24 get a sense of where you're going with this.

25   The patent application is -- I'm trying to

1 determine why you're making the distinction. I guess

2 that's for you to know.

3   Q. I'm going to ask you about the patent

4 application, too, but right now I'm going to focus on

5 the embodiment that was in existence as of October 5th

6 of 1998.

7   A. Right.

8   MR. LEE: Is there a question pending?

9   THE WITNESS: I think so, but --

10 BY MR. FRANZINI:

11   Q. Sir, is it your testimony the Knowledge

12 Assembly system as it existed on October 5th of 1998

13 practiced each of the limitations of claims 3, 4, 8,

14 9, 12, 13, 14, 16, 22 of the '608 patent?

15   A. And as I said, I need to look at this to see

16 whether, in fact, it actually was a working embodiment

17 that responded to all of these claims.

18   Q. Take your time.

19   A. So let me see. I'm looking at claim 9 and I

20 have a question about it, the interpretation of it.

21   So it's saying in claim 9 that a method as in

22 claim 1 wherein step (b1) further comprises converting

23 video file into a second video format and I'm

24 realizing that I'm not clear because in (b1), you're

25 converting a video file into a streaming video file

1 and a streaming video format and does 7 say that in

2 addition, it converts it into a second video format,

3 that is you would have three versions of the video

4 file at this point?

5   Q.   Well, sir, are you qualified to interpret the

6 claims of the '608 patent?

7   A.   The meaning of it is not clear to me.

8   Q.   So you're not qualified to interpret the

9 meaning of the claims of the '608 patent?

10   MR. LEE: Objection, form.

11   THE WITNESS: Well, I feel a need to work it

12 out.

13   So as in claim 1 means the conversion into

14 one video format and 9 says that beyond (b1), further

15 comprises converting a video file into a second video

16 format.

17   So beyond the converting into a one streaming

18 video file -- I mean streaming video format, I'm now

19 interpreting 9 as further converting it into a second

20 video format.

21   So I'm -- I'm questioning whether E was

22 embodied in the Knowledge Assembly software at that

23 time. We certainly had talked about this and it was

24 in the patent application as a possible and desirable

25 function, but it was -- that function was not

1   embodied.

2   BY MR. FRANZINI:

3   Q.   Okay.

4   A.   Number 1, claim 1 was embodied, but as I'm

5   finding, claim 9 appears not to have been.

6   Q.   Now, let's talk about claim 9 for a second.

7   You just did an analysis of what claim 9

8   meant?

9   A.   Right.

10   Q.   Is that the first time you've done that

11   analysis?

12   A.   No, I have thought about this before, but I

13   hadn't thought about it in connection with your

14   question about whether it was embodied in the PSI

15   system.

16   Q.   Okay. So let's go through these one at a

17   time.

18   Is it your testimony that the additional

19   limitations of claim 3 of the '608 patent --

20   withdrawn.

21   Is it your testimony that the Knowledge

22   Assembly system as of October 5th of 1998 actually

23   practiced the additional features of claim 3 of the

24   '608 patent?

25   A.   Yes.

1   Q. Is it your testimony that the additional

2 features of claim 4 -- withdrawn.

3   Is it your testimony that the Knowledge

4 Assembly system as it existed on October 5th of 1998

5 actually practiced the additional features of claim 4

6 of the '608 patent?

7   A. Not 3, but 4 you're saying?

8   Q. Now, I'm asking about 4.

9   A. Right.

10   Yes.

11   Q. Is it your testimony that the Knowledge

12 Assembly system as of October 5th of 1998 actually

13 practiced the additional features of claim 8 of the

14 '608 patent?

15   A. Yes.

16   Q. Did the Knowledge Assembly system as of

17 October 5th of 1998 practice the additional

18 limitations of claim 9 of the '608 patent?

19   A. The -- I guess I have to say to the extent

20 that the meaning of claim 9 is that it would convert

21 into two different video streaming formats, we were

22 not doing that in the embodiment at that time.

23   Q. Okay. So applying your understanding of

24 claim 9, as Google's technical expert regarding the

25 '608 patent, did the Knowledge Assembly system as of

1 October 5th of 1998 practice claim 9?

2   A.   No.

3   Q.   Did the Knowledge Assembly system as of

4 October 5th of 1998 practice the additional

5 limitations of claim 12 of the '608 patent?

6   A.   My interpretation is that the meaning of 12

7 is that the video file that's submitted to the system

8 and subsequently streamed or converted into a

9 streaming format, that that is a streaming video file

10 on uploading to the system.

11   And that is not a function that we were --

12 that we were supporting at that time. There weren't

13 many streaming -- streaming video files at that time

14 and we were not anticipating receiving any streaming

15 video files, although I think in the -- our patent

16 application, we did suggest that this function could

17 be part of an ideal application -- implementation.

18   Q.   To be clear, the Knowledge Assembly system as

19 of October 5th of 1998 did not practice the additional

20 limitations of claim 12 of the '608 patent?

21   A.   That's correct, but I believe that they were

22 part of the patent application.

23   Q.   Did the Knowledge Assembly system as of

24 October 5th of 1998 actually practice the additional

25 limitations of claim 13 of the '608 patent?

1   A. Yes.

2   Q. Now, you don't have any opinions in here

3 about the '302 patent.

4   Is it your testimony that the Knowledge

5 Assembly system actually practiced the claims of the

6 '302 patent?

7   A. Yes, but not all of them, certainly not the

8 claims relating to the advertising, managing of

9 advertising.

10   Q. Knowledge Assembly system as of October 5th

11 of 1998 did not practice any claim of the '302 patent

12 that involves advertisements?

13   A. That's correct.

14   Q. And your patent application doesn't make any

15 mention of advertisements either, right?

16   A. That's correct.

17   Q. Please turn back to page 18, paragraph 37.

18   A. Right.

19   Q. Here it says "it is my opinion that Knowledge

20 Assembly, conceived of and actually practiced the

21 subject matter described in our patent applications by

22 no later than October 5th of 1998" and it lists a

23 number of claims including claims 9 and 12, right?

24   A. Correct.

25   Q. Now, that statement in this report is false,

1   right?

2   MR. LEE: Objection, form.

3   THE WITNESS: Given my interpretation of

4   this -- at this sitting, I feel that these -- if my

5   interpretation is correct about the meaning of these

6   claims now, then I would have to say that, as

7   reflected in the embodiment as opposed to the

8   application, I'm sorry, the -- our application, the

9   embodiment did not include these.

10 BY MR. FRANZINI:

11   Q. Go ahead.

12   A. But they are part, as I say, of the

13 application.

14   Q. Here you say Knowledge Assembly conceived of

15 and actually practiced the subject matter of certain

16 claims including claims 9 and 12, right?

17   A. Correct.

18   Q. That's what your report says?

19   A. That's correct.

20   Q. And that statement is false?

21   A. It's -- it's false in terms of the embodiment

22 at that time.

23   Q. Well, but your report said the embodiment did

24 it and that's not true, right?

25   A. I -- yes, I think that's true.

1   Q. Your report contains false statements at

2 least in that regard, right?

3   A. In that regard, yes.

4   Q. Okay. So when you signed this report on

5 April 8, 2016, you signed a report with false

6 statements, right?

7   MR. LEE: Objection, form, argumentative.

8 BY MR. FRANZINI:

9   Q. Sir, when you signed this report on April 8,

10 you signed a report that contained false statements,

11 right?

12   MR. LEE: Objection, argumentative.

13   THE WITNESS: Given my understanding of

14 the -- I think that I made a mistake in including the

15 implementation, the embodiment including all of the

16 claims.

17 BY MR. FRANZINI:

18   Q. So when you wrote that Knowledge Assembly

19 conceived of and actually practiced the subject matter

20 of claims 9 and 12, that was a false statement, right?

21   MR. LEE: Objection, form, argumentative.

22   THE WITNESS: It feels strongly worded as

23 though it were intentional, but I would make a

24 distinction if I were to write this again between the

25 embodiment and the application.

1   BY MR. FRANZINI:

2   Q. My question is a little bit different.

3   My question is: When you wrote Knowledge

4   Assembly conceived of and actually practiced the

5   subject matter described in claims 9 and 12, you wrote

6   a false statement, right?

7   MR. LEE: Objection, form, argumentative.

8   THE WITNESS: I did not intend to write a

9   false statement.

10   I think that when you say it's a false

11 statement -- that I wrote a false statement, it sounds

12 intentional, as though I intended to mislead anyone,

13 but as you pointed out, there's an implication that I

14 had missed.

15 BY MR. FRANZINI:

16   Q. Well, sir, you understand that it benefits

17 Google who hired you if Knowledge Assembly actually

18 practiced claims 9 and 12 of the '608 patent by

19 October 5th of 1998, right?

20   MR. LEE: Objection, form.

21   THE WITNESS: It was included in the patent

22 application and so I think that that still carries

23 some weight.

24   I don't think that -- I wish I had made the

25 distinction, but I don't think the fact that the

1 embodiment did not include a couple of those subclaims

2 should invalidate the argument because it's clearly

3 stated in the -- in the patent application.

4 BY MR. FRANZINI:

5   Q. I'm asking you about whether or not it

6 benefitted Google and you're providing me some

7 different information.

8   I'm going to ask my question again --

9 withdrawn.

10   You understand it benefits Google for you to

11 provide the opinion that Knowledge Assembly conceived

12 of and actually practiced claims 9 and 12 of the '608

13 patent, right?

14   MR. LEE: Objection, form, calls for

15 speculation.

16   THE WITNESS: So yes, I understand that it

17 would strengthen a case.

18   Again, I -- well, the -- I think that the

19 patent application should carry the day, but it's true

20 that the embodiment did not include those features and

21 I missed that in crafting the report.

22 BY MR. FRANZINI:

23   Q. Again, you're providing me some information

24 about the patent application.

25   My question is about something else.

1   I'm going to ask it again -- withdrawn.

2   Sir, you understand that -- withdrawn.

3   You understand that it benefits Google for

4 you to provide the opinion that Knowledge Assembly,

5 the embodiment, actually practiced claims 9 and 12,

6 right?

7   MR. LEE: Objection, form, calls for

8 speculation.

9   THE WITNESS: But I still need to answer the

10 question; is that correct?

11   MR. LEE: You can answer the question.

12   THE WITNESS: So I do understand that this

13 would benefit Google in this contest.

14 BY MR. FRANZINI:

15   Q. I'm going to ask it again because there was

16 an exchange on the record -- withdrawn.

17   Sir, you understand that it benefits Google

18 for you to provide the opinion that the Knowledge

19 Assembly system actually practiced claims 9 and 12 of

20 the '608 patent, right?

21   MR. LEE: Objection, form, calls for

22 speculation.

23   THE WITNESS: Yes.

24 BY MR. FRANZINI:

25   Q. And you provided that opinion in the report

1   that you signed on April 8th of this year, right?

2   A.   Yes.

3   Q.   But that statement is false, right?

4   A.   Unintentionally, I signed a statement that

5   turned out to that extent to have a false statement in

6   it.

7   Q.   Sir, you mentioned there were some things

8   that were described in your patent application that

9   were not actually reduced to practice in the Knowledge

10   Assembly system, right?

11   A.   Correct.

12   Q.   So the Knowledge Assembly system is only

13   one -- withdrawn.

14   The Knowledge Assembly system as it existed

15   on October 5th of 1998 is just one embodiment of the

16   ideas in your patent application?

17   A.   Correct.

18   Q.   Just because something is in your patent

19   application doesn't mean that the actual system

20   practiced it, right?

21   A.   That's correct.

22   Q.   The patent application describes a number of

23   different embodiments?

24   A.   Right.

25   Q.   And as of October 5th of 1998, the Knowledge

1 Assembly system was just one of those embodiments,

2 right?

3   A. Uh-huh.

4   Q. Yes?

5   A. Yes.

6   Q. I need an oral answer for the record.

7   A. I understand.

8   Q. Withdrawn.

9   Please turn to paragraph 19 of your report,

10 on page 7.

11   So paragraphs 19 through 21 contained a

12 statement of your opinions that Knowledge Assembly

13 practiced a method of streaming a video over a

14 network?

15   A. Yes.

16   Q. Now, in this section -- withdrawn.

17   Is this section of your report talking about

18 the patent application or is it talking about the

19 embodiment that existed on October 5th of 1998?

20   A. It's not limited to the current embodiment.

21   Q. It's talking about the patent application?

22   A. It's talking about the patent application

23 primarily, but -- yes.

24   Q. Withdrawn, I didn't mean to interrupt.

25   A. Most of the basic functions herein described

1 were in the embodiment at that time, but as we pointed

2 out -- as you pointed out, there was a difference

3 between the embodiment and the description in the

4 patent application.

5   Q.   So in paragraphs 19 through 21, which discuss

6 the fact that Knowledge Assembly practiced a method of

7 streaming a video over a network, all the evidence you

8 cite is all from the patent application, right?

9   A.   I believe that's the case.

10   I don't -- through -- yeah, through 21,

11 right?

12   Yes, this is not referring to the embodiment.

13   Q.   There's nothing in paragraphs 19 through 21

14 that would corroborate the idea that the Knowledge

15 Assembly system actually practiced a method of

16 streaming a video over a network, right?

17   MR. LEE: Objection, form.

18   THE WITNESS: It's -- that is not stated in

19 here, that is that the embodiment is -- that I recall.

20 BY MR. FRANZINI:

21   Q.   Let's break that down.

22   In paragraphs 19 through 21 you don't state

23 that the Knowledge Assembly embodiment as of October

24 5th of 1998 actually practiced a method of streaming a

25 video over a network, right?

1   A.   In these paragraphs, to my recollection, that

2 is not stated.

3   Q.   And these paragraphs don't provide any

4 evidence to corroborate that the actual system, the

5 Knowledge Assembly system practiced a method of

6 streaming a video over a network, right?

7   A.   That it was actually in practice, I don't

8 believe that this says that it was in practice at that

9 time.

10   Q.   All it's doing is describing your patent

11 application, right?

12   A.   Correct.

13   Q.   And that patent application was abandoned?

14   A.   Eventually, correct.

15   Q.   In fact, you don't cite any evidence in your

16 report that would corroborate the fact that the

17 Knowledge Assembly system itself as of October 5th of

18 1998 practiced a method of streaming a video over a

19 network, right?

20   A.   So no, I don't believe there's any evidence

21 here that it was operating as of that date.

22   Q.   It's just your testimony, right?

23   A.   I believe so, yes. I don't think that the --

24 that the e-mails, the documents from people who were

25 trying out the system date back to '98.

1   Q.   The only thing that suggests that the

2   Knowledge Assembly system actually practiced a method

3   of streaming a video file over a network as of October

4   5th of 1998 is your own uncorroborated testimony?

5   A.   I think that's true, yes.

6   There's evidence of it shortly thereafter.

7   Q.   Are you talking about the Internet archive

8   materials cited in paragraph 30?

9   A.   Yes, but also the e-mails that were submitted

10   into evidence.

11   Q.   Now, the only information -- withdrawn.

12   The only information that's cited in your

13   report that would corroborate any of the things you

14   say are the three e-mails that are cited, the Internet

15   archive snapshots and the patent application, right?

16   A.   That's correct.

17   Q.   And sir, you mentioned that there's --

18   withdrawn.

19   In paragraphs 19 through 21, you don't

20   provide any evidence that the Knowledge Assembly

21   system itself ever practiced a method of streaming a

22   video over a network, right?

23   A.   In those paragraphs, I don't believe there's

24   any evidence it was actually reduced to practice.

25   Q.   And you understand that whether or not

1 Knowledge Assembly practiced a method of streaming a

2 video over a network is an important issue in this

3 case?

4   MR. LEE: Objection, form.

5   THE WITNESS: Yes.

6 BY MR. FRANZINI:

7   Q. To show validity, Google has to show that

8 Knowledge Assembly practiced a method of streaming a

9 video over a network?

10   MR. LEE: Objection, form, calls for a legal

11 conclusion.

12   THE WITNESS: I don't think that Google has

13 to prove it was actually reduced to practice, that our

14 system was in operation.

15 BY MR. FRANZINI:

16   Q. Sir, you mentioned that you understood that

17 whether or not Knowledge Assembly practiced a method

18 of streaming a video over a network is an important

19 issue in this case?

20   A. Yes.

21   Q. The paragraphs in your report that discuss

22 that issue are paragraphs 21 -- excuse me --

23 withdrawn.

24   The paragraphs in your report that discuss

25 that issue are paragraphs 19 through 21?

1   A.   Correct.

2   Q.   And in those paragraphs, you only cite your

3 patent application, right?

4   A.   Correct.

5   Q.   You don't cite any evidence that would

6 corroborate the idea that the Knowledge Assembly

7 system itself ever practiced a method of streaming a

8 video over a network, right?

9   A.   Other than my testimony.

10   Q.   The only thing that would support the idea

11 that the Knowledge Assembly system ever practiced a

12 method of streaming a video file over a network is

13 your own testimony, right?

14   A.   I don't think that's true.

15   I think that the -- that the screen shots and

16 those -- those e-mails and clearly there are other

17 people who were aware of the system at the time.

18   So it was clearly in operation.

19   Q.   Sir, you mentioned there's other people who

20 were aware of the system at the time?

21   A.   Yes.

22   Q.   Who are those people?

23   A.   Well, at least the people who wrote those

24 e-mails.

25   Q.   You're -- withdrawn.

1   Mr. Reinhart would also be knowledgeable

2   about the system at that time?

3   A.   Correct.

4   Q.   You also -- withdrawn.

5   You state in your report you demonstrated the

6   system at a forum?

7   A.   Yes, I demonstrated it many times.

8   Q.   There were people present at that forum who

9   saw how it worked?

10   A.   Yes. I demonstrated it on a number of

11 occasions.

12   Q.   Please turn to paragraph 22.

13   Paragraphs 22, 23 discuss receiving a video

14 file via a web page.

15   Do you see that?

16   A.   Yes.

17   Q.   So the portion of your report that discusses

18 how the Knowledge Assembly system received a video

19 file via a web page is paragraphs 22 and 23?

20   A.   Uh-huh.

21   Q.   Can I get a verbal yes?

22   A.   Yes.

23   Q.   In paragraphs 22 and 23, you only cite the

24 patent application, right?

25   A.   No, there's actually the script.

1   As you recall, the scripts are written in the

2 patent application.

3   So you're saying that we -- that -- yeah, so

4 that would be accurate, that since the scripts are

5 part of the patent application, that's what's

6 indicated in here that relates to the operating

7 system, the system that was in operation at that time.

8   Q. Well, sir, paragraphs 22 and 23 only cite

9 materials from your patent application, right?

10   A. I believe that's true, yes.

11   Q. The only evidence in paragraphs 22 and 23

12 that would corroborate your testimony that the

13 Knowledge Assembly system performed receiving a video

14 file via a web page is the patent application itself,

15 right?

16   A. Yes, but I need to point out that the scripts

17 which actually represented the system are a part of

18 the patent application and those scripts were simply

19 taken off of an operating system, that is a system

20 that was in operation at that time.

21   Q. You just stated the scripts in the patent

22 application were taken off an operative system.

23   Do you have any evidence of that?

24   A. I do not.

25   Q. Just your testimony?

1   A.   That's correct, yeah.

2   Q.   There's no corroboration in your report or

3 anywhere else you're aware of for your testimony that

4 the scripts that were attached to your report are

5 actually in operation, right?

6   A.   There's no evidence of them actually being

7 used other -- well, it's -- my view is that you

8 wouldn't have the scripts without using them, but they

9 were in operation at the time, indeed, long before the

10 patent application.

11   Q.   Sir, there's no evidence that the scripts

12 were in operation before the patent application --

13 withdrawn.

14   There's no evidence that the scripts were

15 ever in operation except for your own uncorroborated

16 testimony, right?

17   A.   That's correct. Corroboration is it seems

18 possible. I haven't addressed that.

19   Q.   You don't have anything that could

20 corroborate that statement that the scripts in your

21 patent application were actually ever used, right?

22   A.   Other than screen shots.

23   Q.   Well, the screen shots don't demonstrate that

24 the scripts in your patent application were actually

25 used, right?

1   A.   I think that the creation of the scripts was

2   a function that was -- creation of the screen shots

3   were -- represent a function that was in the scripts.

4   Q.   Well, sir, but the screen shots themselves

5   don't demonstrate that the scripts in your patent

6   application were actually used in the system, right?

7   A.   Oh, I see what you mean. It takes the

8   scripts to create the web pages, but you're saying the

9   actual scripts in the patent application, you're

10   questioning whether those were the ones that were used

11   to generate the screen shots?

12   Q.   Well, the screen shots themselves don't tell

13   us anything about how those -- how the -- withdrawn.

14   The screen shots themselves don't tell us

15   anything about how the web site was generated, right?

16   A.   That's correct.

17   Q.   And they certainly don't tell us that it was

18   generated using the scripts that were attached to your

19   patent application, right?

20   A.   That's correct.

21   MR. FRANZINI: I think we're out of tape so

22   let's take a break.

23   THE VIDEOGRAPHER: This marks the end of

24   volume 1, disk 1 in the deposition of Michael Keehan.

25   The time is 11:11 and we are off the record.

1   (Recess taken.)

2   THE VIDEOGRAPHER: This marks the beginning

3   of volume 1, disk 2 in the deposition of Michael

4   Keehan.

5   The time is 11:22 and we are on the record.

6   BY MR. FRANZINI:

7   Q. Please turn to paragraph 24 of your report.

8   Paragraph 24 discusses automatically

9   converting a received video file in a streaming format

10   without a command from the user to do the conversion?

11   A. Uh-huh.

12   Q. Is your analysis -- withdrawn.

13   You understand that whether the Knowledge

14   Assembly system practiced automatically converting a

15   received video file in a streaming format without a

16   command from the user to do the conversion is an

17   important issue in this case?

18   MR. LEE: Objection, form, calls for a legal

19   conclusion.

20   THE WITNESS: Yes.

21   BY MR. FRANZINI:

22   Q. And your analysis of whether or not the

23   Knowledge Assembly system performs that limitation is

24   set forth in paragraph 24?

25   A. Correct.

1   Q.   Now, in paragraph 24, you only cite the

2 disclosures of the patent application, right?

3   A.   Correct.

4   Q.   You don't cite to any evidence about the

5 operation of the Knowledge Assembly system itself?

6   A.   Correct.

7   Q.   Paragraph 24, you don't offer any evidence to

8 corroborate your statement that the Knowledge Assembly

9 system itself actually practiced automatically

10 converting a received video file in a streaming format

11 without a command from the user to do the conversion?

12   A.   That's correct.

13   Q.   Please turn to paragraph -- withdrawn.

14   Please turn to paragraph 25.

15   Paragraphs 25, 26, 27, 28 and 29 are the

16 section of your report that discusses generating an

17 identification tag representing the subject matter of

18 the streaming video and identifying the streaming

19 video and embedding the tag in a web page?

20   A.   Right.

21   Q.   You understand that whether or not the

22 Knowledge Assembly system performs generating an

23 identification tag representing the subject matter of

24 a streaming video is an important issue in this case?

25   MR. LEE: Objection, form, calls for

1 speculation, calls for a legal conclusion.

2   THE WITNESS: Yes.

3 BY MR. FRANZINI:

4   Q. You also understand that whether the

5 Knowledge Assembly system performs embedding the

6 identification tag in a web page is an important issue

7 in this case?

8   MR. LEE: Same objection.

9   THE WITNESS: Yes.

10 BY MR. FRANZINI:

11   Q. Now, in your analysis in paragraphs 25, 26,

12 27 and 28, you only cite the disclosures of your

13 patent application, right?

14   A. That's correct.

15   Q. None of the paragraphs 25 through 28 provide

16 any corroboration for your statement that the

17 Knowledge Assembly system performs either of these

18 limitations?

19   A. That's correct, but as we -- as I said

20 before, I feel -- these scripts were in operation and

21 I think the scripts reflect that function and

22 that's -- the scripts were in operation this very day.

23   Q. Again, there's no evidence of that, right?

24   A. I have not attempted to collect corroborating

25 evidence of that fact.

1   I'm not convinced that such evidence could

2   not be presented.

3   Q.   Well, you're not aware of any evidence that

4   would corroborate the fact that the scripts in your

5   patent application were actually ever used, right?

6   A.   I'm sorry, I do have --

7   Q.   Give it to you again -- withdrawn.

8   You're not aware of any evidence that

9   corroborates your statement that those scripts were

10 actually used in the Knowledge Assembly system, right?

11   A.   I can think of ways in which that could be

12 corroborated.

13   Q.   You certainly don't include any of that

14 information in your report, right?

15   A.   It's not in the report.

16   Q.   You also haven't provided any corroborating

17 evidence to Google in this case?

18   A.   Regarding the operating -- the system -- the

19 embodiment being in operation at that time, no, other

20 than what we've discussed before, the e-mails and the

21 screen shots.

22   Q.   And the --

23   A.   And I think I thought that would be

24 sufficient.

25   Q.   But the e-mails and the screen shots, they

1 don't state or even suggest that the scripts

2 themselves in your patent application were used in the

3 Knowledge Assembly system, right?

4   MR. LEE: Objection, form.

5   THE WITNESS: As we've discussed, I can't

6 prove that those screen shots were made using the

7 scripts that are in the patent application.

8 BY MR. FRANZINI:

9   Q. Okay. So going back to my original question

10 in paragraphs 25, 26, 27 and 28, you don't provide any

11 evidence that corroborates your statement that the

12 Knowledge Assembly system performs generating an

13 identification tag or embedding the tag in a web page,

14 right?

15   A. That's correct.

16   Q. Now, in paragraph 29, you discuss an example

17 of how the identification tags were included in a web

18 site.

19   Do you see that?

20   A. Yes.

21   Q. That's GOOG-VS-PA 00016543?

22   A. Uh-huh.

23   MR. FRANZINI: Have this marked as Exhibit 6,

24 please.

25   (Whereupon, Exhibit 6, document entitled

1 "Knowledge Assembly, Inc. demonstration channel" Bates

2 stamps GOOG-VS-PA 00016543 to 544, was marked for

3 identification.)

4 BY MR. FRANZINI:

5   Q. I'm showing you a document that was marked as

6 Exhibit 6, has Bates number, which are the numbers in

7 the bottom right-hand corner of the document,

8 GOOG-VS-PA 16543.

9   That's the document you cite in paragraph 29

10 of your report?

11   A. Yes.

12   Q. Now, can we call it the Knowledge Assembly

13 demonstration channel document?

14   A. Uh-huh.

15   Q. The Knowledge Assembly demonstration channel

16 document that you cite in paragraph 29 of your report

17 doesn't provide any information about how the web site

18 snapshot that's shown in this document was created,

19 right?

20   MR. LEE: Objection, form.

21   THE WITNESS: That's correct.

22 BY MR. FRANZINI:

23   Q. Looking at this document, we have no idea

24 whether the process of creating this -- what's shown

25 in this document included automatically converting --

1 withdrawn.

2   Looking at just this document, we have no

3 idea whether the Knowledge Assembly system performed

4 generating an identification tag representing the

5 subject matter of the streaming video, right?

6   MR. LEE: Objection, form.

7   THE WITNESS: It does not prove it.

8 BY MR. FRANZINI:

9   Q. Looking at just this document, we have no

10 idea whether the Knowledge Assembly system performed

11 the step of automatically embedding an identification

12 tag into a web page, right?

13   MR. LEE: Objection, form.

14   THE WITNESS: Correct.

15 BY MR. FRANZINI:

16   Q. So in paragraphs 25 through 29 of your

17 report, which discuss generating an identification tag

18 representing the subject matter of the streaming video

19 and identifying the streaming video and embedding the

20 tag in a web page, you don't provide any evidence to

21 corroborate your statement that the Knowledge Assembly

22 system actually performed these steps, right?

23   A. The evidence here refers only to either the

24 application -- the patent application or to the screen

25 shots and if you're saying that the screen shots,

1 which is accurate, the screen shots could be faked,

2 then that's true, they're not -- they're not proof

3 that the Knowledge Assembly system was working at that

4 time.

5   Q. Now, the screen shots could be fake, but they

6 also could have been actually created in a way other

7 than by generating an identification tag and embedding

8 that tag into a web page automatically, right?

9   MR. LEE: Objection, form.

10   THE WITNESS: That's what I mean by faked.

11 BY MR. FRANZINI:

12   Q. For example, it's possible this web site

13 shown on Exhibit 6 was generated manually by a coder

14 coding in HTML, right?

15   A. It's possible.

16   Q. You don't have any corroboration in

17 paragraphs 25 through 29 for your statement that the

18 Knowledge Assembly system itself practiced generating

19 an identification tag representing the subject matter

20 of the streaming video or your statement that the

21 Knowledge Assembly system actually performed embedding

22 the tag in a web page, right?

23   A. That's correct.

24   Q. Please turn to paragraph 30.

25   In paragraph 30 you discuss the materials

1 from the Internet archive?

2   A. Yes.

3   Q. Did you yourself create the materials from

4 the Internet archive that Google produced?

5   A. I did not.

6   Q. So you have no idea whether the Internet

7 archive materials are actually materials from the

8 Internet archive?

9   A. I cannot -- I can't prove that.

10   Q. Well, you have no idea one way or the other

11 whether they're actually what they say they are,

12 right?

13   A. I certainly have an idea.

14   Q. Withdrawn.

15   A. I certainly have an opinion, but does what we

16 see in front of us represent proof, no.

17   Q. You're not able to show these are authentic

18 documents that represent the Knowledge Assembly web

19 site at the time, right?

20   A. Other than my memory of it, which is very

21 clear.

22   Q. Okay. So your memory -- withdrawn.

23   You say that the -- withdrawn.

24   Please take a look at the bottom of paragraph

25 30, it says "While these snapshots do not represent

1   the entirety of our web site, they are consistent with

2   my recollection of our Knowledge Assembly web site at

3   those times."

4   Is that a true statement?

5   A.   That's correct, yes, it's beyond being --

6   actually being consistent with my recollection.

7   I'm convinced that these are the screen shots

8   from the system as it existed at that time.

9   Q.   Now, some of the documents that you cite

10 include a discussion of how the Knowledge Assembly

11 system worked?

12   A.   Right.

13   Q.   Is that discussion of how the system worked

14 at the time accurate in your recollection?

15   A.   Yes.

16   Q.   You wouldn't put up on your web site --

17 withdrawn.

18   At the time that you were working on

19 Knowledge Assembly, would you have put up a

20 description of the product that was inaccurate?

21   A.   No.

22   Q.   So if the snapshots that are cited in

23 Exhibit 30 describe the operation of the system, it's

24 your testimony that description is an accurate

25 description of the system at the time?

1   MR. LEE: Objection, form.

2   THE WITNESS: Yeah, as -- to the extent that

3   I understood it at the time or it existed at the time,

4   it was accurate.

5   BY MR. FRANZINI:

6   Q. For example, some of the documents include a

7   product description. That product description is an

8   accurate description of the product, the Knowledge

9   Assembly system at the time that description was

10   written?

11   A. At the time, and we were -- I was

12   experimenting with different ways of describing the

13   system.

14   Descriptions of how the product worked were

15   not intended to be technical -- technically accurate,

16   but intriguing and explanatory to people who might

17   have interest in an application of the software.

18   Q. They provided an accurate high-level

19   description of the service?

20   A. I think so.

21   Q. You're not aware of any misstatements in any

22   of those documents?

23   A. I did not pore over them looking for same,

24   but I'm not aware of misstatements.

25   Q. After paragraph 30 where you list the

1 documents, you provide a description of several

2 documents, one from January 16, 1999, one from April

3 24 and one from October 2nd.

4   Do you see that?

5   A.   Yes.

6   Q.   In paragraph 30-A you describe what you call

7 the January 16, 1999 archive, that's on page 14?

8   A.   Right.

9   Q.   That has Bates number GOOG-VS-PA 00016537?

10   A.   Yes.

11   MR. FRANZINI: May I have this marked as

12 Exhibit 7, please.

13   (Whereupon, Exhibit 7, document entitled

14 "Knowledge Assembly, Inc. product description" Bates

15 stamps GOOG-VS-PA 00016537 to 538, was marked for

16 identification.)

17 BY MR. FRANZINI:

18   Q.   I'm showing you a document that's been marked

19 as Exhibit 7, Bates number GOOG-VS-PA 00016537 titled

20 "Knowledge Assembly, Inc. product description."

21   A.   Right.

22   Q.   Is this the document that you cite in

23 paragraph 30-A of your report?

24   A.   Yes.

25   Q.   Did you review this document before writing

1   your report?

2   A. I looked at it. I did not pore over the

3   meaning of every sentence.

4   It seems to me that I saw it because I had

5   written it, that it was my product description at

6   least at that time and so I didn't spend a lot of time

7   reviewing it, but it was a marketing document.

8   Q. Well, in paragraph 30-A you provided a

9   description of the January 16, 1999 archive, right?

10   A. Right. Where is that now?

11   Q. Page 14, paragraph 13-A.

12   As we mentioned before, you understand it's

13 an important issue in this case whether the Knowledge

14 Assembly system received -- withdrawn.

15   You understand that an important issue in

16 this case is whether the Knowledge Assembly system

17 received a video file via a web page, right?

18   MR. LEE: Objection, form, calls for

19 speculation, calls for a legal conclusion.

20   THE WITNESS: Yes.

21 BY MR. FRANZINI:

22   Q. In paragraph 30-A, you don't state that the

23 Knowledge Assembly product description document

24 provides any support for the idea that the Knowledge

25 Assembly embodiment performs receiving a video file

1 via a web page, right?

2   A. Let me see. I'm going to read this. 30-A

3 you're saying?

4   Q. Yes.

5   A. Okay.

6   Your question again, please?

7   Q. In paragraph 30-A you provide a description

8 of the January 16, 1999 archive?

9   A. Right.

10   Q. But in that paragraph, you don't say that

11 this document provides any support for the idea that

12 the Knowledge Assembly system as of the time of this

13 document actually performed receiving a video file via

14 a web page, right?

15   A. In 30-A, there's not proof.

16   Q. It doesn't state it at all, right?

17   A. I'm sorry, I'm confusing myself. You're

18 going to have to repeat the question.

19   Q. In your description of the January 16, 1999

20 archive, you don't say hey, this document shows that

21 the Knowledge Assembly service as of the date on this

22 document performed receiving a video file via a web

23 page, right?

24   A. Let me see. The question is whether there's

25 proof we were doing it at that time?

1   Q. My question is: In your description of this

2 document you provided, with the understanding that

3 receiving via a web page was an important issue in

4 this case, you didn't say anything about this document

5 providing support for the fact that the Knowledge

6 Assembly system actually performed that limitation,

7 right?

8   A. I'm -- let me see. I'm feeling -- can you

9 restate the question? I'm blanking on this.

10   Q. Now, on January 16 -- withdrawn.

11   You provided a --

12   A. Are we trying to foot this to this or are you

13 asking me a question simply about this?

14   Q. I'm asking about your description of the

15 January 16, 1999 archive in paragraph 30-A.

16   A. Right.

17   Q. We established that the January 16, 1999

18 archive is a document we marked as Exhibit 7?

19   A. Right.

20   Q. In your description of that document that you

21 provide in your report, you don't say that this

22 document provides any evidence that the Knowledge

23 Assembly system as of January 16, 1999 performed

24 receiving via a web page, right?

25   A. This is not evidence that the system was in

1 operation at that time.

2   Is that what you're getting at?

3   Q. Not evidence that the system at the time

4 performed receiving a video file via a web page,

5 right?

6   A. It is -- it's not proof.

7   Q. It doesn't even suggest that, right?

8   A. So it describes the essential functions of

9 the Knowledge Assembly system.

10   I'm missing your point.

11   Q. Exhibit 7 describes the essential functions

12 of the Knowledge Assembly system?

13   A. Correct.

14   Q. But it doesn't describe receiving a video

15 file via a web page, does it?

16   A. Okay. I need to read this to see whether it

17 refers to a web page, receiving it on a web page.

18   Q. There's two parts to my question.

19   The first part is in your description of this

20 document, you didn't say anything about this document

21 demonstrating that the Knowledge Assembly system

22 received a video file via a web page, right?

23   A. That's correct, I didn't include that in this

24 description.

25   Q. In your description of the January 16th, 1999

1 archive, you don't make any mention of the requirement

2 that the receiving be done via a web page, right?

3   A.   That's correct.

4   Q.   Now, the document that you cite in that

5 section, the January 16, 1999 archive, that document

6 doesn't state or even suggest that the Knowledge

7 Assembly system performs receiving via a web page,

8 right?

9   A.   It -- let's see.

10   You're talking about uploading through a web

11 page, it does not talk about uploading through a web

12 page.

13   Q.   Doesn't talk about receiving via a web page

14 either, right?

15   A.   Well, it doesn't specifically say that.

16   Q.   What it actually says is that uploading

17 happened through the KnowledgeCapture software, right?

18   A.   That's correct.

19   Q.   And you testified before that the

20 KnowledgeCapture software was an application program

21 on the knowledge provider's computer, right?

22   A.   That's right.

23   Q.   So the description of uploading on Exhibit 7,

24 the Knowledge Assembly product description shows that

25 as of January of 1999, the Knowledge Assembly

1 service -- withdrawn.

2   The Knowledge Assembly product description we

3 marked as Exhibit 7 shows that as of January of 1999,

4 the Knowledge Assembly system received video files via

5 an application program on the knowledge provider's

6 computer not via a web page, correct?

7   MR. LEE: Objection, form, mischaracterizes

8 the document.

9   THE WITNESS: Yeah, it -- a video clip could

10 be uploaded through a web page or KnowledgeCapture.

11   We felt that KnowledgeCapture was a market

12 advantage. That's why we developed it, the original

13 implementation of the Knowledge Assembly system

14 involved uploading through a web page.

15 BY MR. FRANZINI:

16   Q. This product --

17   A. It's not in this description, that's correct.

18   Q. This product description you testified

19 provides an overview of the Knowledge Assembly system,

20 right?

21   A. As it existed at that time, yes.

22   Q. And as of that time, what you chose --

23 withdrawn.

24   The product description describes how

25 knowledge providers could upload video files, correct?

1   A.   Correct.

2   Q.   What it says is they could do it using an

3 application program on their computer known as

4 KnowledgeCapture, right?

5   A.   Uh-huh.

6   Q.   It doesn't say and also they could use a web

7 page, right?

8   A.   That's correct, it does not say that.

9   Q.   This document, Exhibit 7, provides no support

10 for your testimony that the Knowledge Assembly service

11 received video files via a web page, right?

12   A.   That's correct.   I'm not sure that's the

13 purpose of 30-A.

14   Q.   Sir, is it your testimony that the Knowledge

15 Assembly service as of January of 1999 could receive

16 video files via a web page?

17   A.   Yes, they could receive it either way.

18   Q.   But that's not described in your --

19   A.   It's not described because this is a

20 marketing document and we felt that KnowledgeCapture

21 would make the product more saleable.

22   Uploading through a web page was not an easy

23 process and it would have gotten in the way of

24 marketing the product, in our opinion.

25   Q.   You could have said hey, knowledge providers,

1 you have the opportunity to upload in two ways, one

2 via a web page and two, via the application program

3 KnowledgeCapture, right?

4   A. Correct.

5   Q. You could have written that in your product

6 description?

7   A. Yes.

8   Q. You didn't?

9   A. I did not.

10   Q. Did a knowledge provider ever actually upload

11 a video file via a web page?

12   A. Yes.

13   Q. You don't have any evidence of that, right?

14   A. I don't have evidence of that.

15   Q. Just your uncorroborated testimony?

16   A. Correct.

17   Q. If the jury is looking at Exhibit 7, the

18 product description of the Knowledge Assembly service,

19 it would be reasonable for them to conclude that

20 uploading took place via the KnowledgeCapture

21 application program and not via a web page, right?

22   A. Right.

23   MR. LEE: Objection, form, calls for

24 speculation.

25 BY MR. FRANZINI:

1   Q. I'm going to ask that again because he

2 interjected.

3   Sir, a jury looking at Exhibit 7, Knowledge

4 Assembly product description, could reasonably

5 conclude that the Knowledge Assembly service received

6 video files via the KnowledgeCapture application

7 program on the knowledge provider's computer, not via

8 a web page, right?

9   MR. LEE: Objection, form, calls for

10 speculation.

11   THE WITNESS: That's correct.

12 BY MR. FRANZINI:

13   Q. Now, please turn back to paragraph 30-A of

14 your report.

15   A. Right.

16   Q. Now, we talked about it before, you

17 understand that converting a video file to a streaming

18 video file at the server is an important issue in this

19 case?

20   A. Yes.

21   MR. LEE: Objection, form, calls for

22 speculation, calls for a legal conclusion.

23 BY MR. FRANZINI:

24   Q. Now, in your description of the January 16,

25 1999 archive, you don't say the Knowledge Assembly

1 product description document shows that the Knowledge

2 Assembly system performed converting a video file into

3 a streaming video file at the server, right?

4   A.   That's correct. It was a high-level

5 description of the functions.

6   Q.   Now, the Knowledge Assembly product

7 description document does discuss conversion, right?

8   A.   I believe so, yeah.

9   Q.   What it says is that conversion takes place

10 on the knowledge provider's computer, right?

11   A.   Yes, at this point, we were actually doing

12 the -- let me see.

13   I think that this is actually compression.

14   I don't believe this was putting it in a --

15 in streaming format.

16   I think that it compressed the video which

17 was then uploaded and then it was actually converted

18 to a streaming format on the server.

19   The files took a while to upload and so

20 compressing for transmission to the server would be

21 facilitated or would facilitate the process.

22   Q.   Is another word for converting to streaming

23 video format encoding?

24   A.   Yes.

25   Q.   So if you're describing encoding a video

1   file, that refers to converting it?

2   A.   It's a means of converting.

3   Q.   Now, you understand that -- what a patent

4   claim is?

5   A.   I think so.

6   Q.   You had -- withdrawn.

7   In your PCT application you included certain

8   claims, right?

9   A.   Uh-huh.

10   Q.   Did those claims describe the operation of

11   your system at the time you filed that application?

12   A.   Yes.

13   Well, the -- let me see.

14   I think that, as we've already demonstrated

15   today, there were differences at different points in

16   time between the current implementation and the

17   description in the applications, both of them.

18   So I can't say without exploring it further

19   what the -- what the -- how well the current

20   implementation corresponded to the description in the

21   patent application.

22   Q.   Well, when you submitted claims in your

23   patent application, were you trying to capture what

24   your system actually did?

25   A.   Yes, of course.

1   MR. FRANZINI: Have this marked as Exhibit 8,

2   please.

3   (Whereupon, Exhibit 8, PCT application, Bates

4   stamps GOOG-VS-PA 00015690 to 737, was marked for

5   identification.)

6   BY MR. FRANZINI:

7   Q.   Showing you a document marked as Exhibit 8,

8   is this your PCT application?

9   A.   Yes.

10   Q.   Please turn to page 36.

11   Please take a moment to review claim 1.

12   Sir, in claim 1-C, it talks about a knowledge

13   provider operating a first computer to capture clip

14   information, encode clip information and upload an

15   appropriately formatted clip from a first computer to

16   said second computer.

17   Do you see that?

18   A.   Yes.

19   Q.   The second computer is talking about the

20   Knowledge Assembly server, right?

21   A.   Yes.

22   Q.   And the first computer is the computer of the

23   knowledge provider?

24   A.   That's correct, as it's described here.

25   Q.   And the knowledge provider's computer is not

1 the same computer as the Knowledge Assembly server

2 computer?

3   A. That's correct.

4   Q. So in claim 1 it's describing a system where

5 the encoding takes place on the knowledge provider's

6 computer, right?

7   A. That's correct.

8   Q. And the information it provides in claim --

9 withdrawn.

10   The language in element 1-C actually matches

11 up with the description provided on your web site,

12 right?

13   A. It does.

14   Q. So based on that, does this refresh your

15 memory that when you wrote on your web site

16 KnowledgeCapture is a software used by knowledge

17 providers on their own machines to create, approve

18 compress and upload a video clip, you're talking about

19 encoding there?

20   A. I am not sure whether we were compressing for

21 transmission or actually encoding it into an ASF file

22 on the user's machine.

23   The concern in this is how much power there

24 was in the -- that we could count on, the knowledge

25 provider's system to be able to actually encode.

1   So there was a point after which we were

2   promoting the use of the user's -- the knowledge

3   provider's computer for at least compressing and I

4   just don't remember whether we were actually encoding

5   into ASF on their computer or not.

6   Q. You don't recall whether the encoding into

7   ASF format took place on the knowledge provider's

8   computer or on the Knowledge Assembly server computer?

9   A. Initially it took place on the server and the

10 video was uploaded from a web page.

11   We migrated to a system where the -- via

12 client software that would allow the knowledge

13 provider to compress it.

14   I'm just not sure about whether it was

15 actually encoded at that point, but I believe

16 throughout it was possible to upload from a web site,

17 it's just that we weren't -- we weren't promoting that

18 because we felt that knowledge providers would find it

19 easier to use their own local software.

20   Q. All this took place 18 years ago about?

21   A. Yeah.

22   Q. Is it hard to recall the details of when

23 specific events took place?

24   A. It is.

25   Q. And you don't have any corroboration for your

1 recollection that it could take place over a web page,

2 right?

3   A.   I don't have the corroboration.

4   Q.   And, in fact, all the documents that you have

5 that describe the system talk about uploading via an

6 application program on the user's computer and

7 encoding at the user's computer, right?

8   A.   That's right. That's the marketing face that

9 we were presenting to the world.

10   Q.   And it's certainly possible to implement the

11 Knowledge Assembly system as it existed using encoding

12 at the client side -- withdrawn.

13   It was possible to implement the Knowledge

14 Assembly system using encoding that took place on the

15 client side and uploading via an application program

16 rather than a web page?

17   MR. LEE: Objection, form, calls for

18 speculation.

19   THE WITNESS: It was possible to implement

20 that way.

21 BY MR. FRANZINI:

22   Q.   It wasn't necessary to upload via a web page

23 in order for the Knowledge Assembly service to work?

24   A.   That's correct.

25   Q.   It also wasn't necessary to do conversion on

1 the server side in order for the Knowledge Assembly

2 service to work, right?

3   A.   No, but we always had that capability.

4   Q.   It wasn't necessary, right?

5   A.   It wasn't necessary.

6   Q.   When did you start developing the Knowledge

7 Assembly service?

8   A.   The service --

9   Q.   Withdrawn.

10   When did you start developing the Knowledge

11 Assembly system?

12   A.   I do have -- let me see.

13   I started in -- in '96, '97 thinking about it

14 and talking to people who could help me to create it.

15   In '98 we had a working prototype that we

16 could test and then in, I guess, early '99, we had a

17 system that was ready for beta.

18   Q.   Do you -- withdrawn.

19   You drew a distinction between a prototype

20 and a system that was ready for beta.

21   Is the prototype something that you and your

22 co-inventor tested internally?

23   A.   Yes.

24   Q.   And what was the other word you used, beta?

25   A.   A beta system.

1   Q. And the beta system was the one that you used

2 publicly?

3   A. Yes.

4   Q. When you were -- withdrawn.

5   When you said -- withdrawn.

6   When you said you actually reduced to

7 practice a working embodiment, you were talking about

8 the beta, right?

9   A. Yes.

10   Q. So your statements about the Knowledge

11 Assembly system as of October 5th of 1998, those were

12 talking about the beta system, right?

13   A. I think it's -- I think that's true, yeah, in

14 '88, we were still testing and we were trying to get

15 feedback as evidenced by those process e-mails, get

16 feedback on the design and, in fact, of the web page

17 and capabilities to make the process smooth.

18   Q. So the October 5, 1998 embodiment wasn't your

19 internal prototype, it was the beta you shared with

20 others to get feedback?

21   A. The implementation at that time?

22   Q. Correct.

23   A. I'm -- let me see.

24   I don't have a recollection of which system

25 at that time was specifically in operation.

1   I think that we had a system that we were

2 testing in early '99 and that must have been the beta

3 at that point.

4   And there was not a clear distinction in

5 terms of versions, there were improvements that are

6 being made all the time and so what was being used at

7 that moment in October, I'm uncertain about.

8   I know that it was in -- it was developed and

9 in operation at that time because, as I mentioned

10 before, that was the focus of our attention, getting a

11 working system, not so much on getting it patented.

12   Q. So you mentioned that there were several

13 different versions and iterations of the system?

14   A. Not cleanly defined, but there were

15 improvements being made as we tested the system and

16 found things that we could do.

17   Also at that time we were beginning to

18 develop the web site which would be the public face of

19 the system.

20   Q. So I think you mentioned in your report it

21 took about ten months to develop the working

22 prototype?

23   A. I think so.

24   Q. Did you start development in late '97?

25   A. I would think so.

1   Q.   So the system was in operation through 2001?

2   A.   Yes.

3   Q.   Do you know what month in 2001?

4   A.   No.

5   Q.   Was it the end of the year, the beginning of

6 the year?

7   A.   I think that the system may have still been

8 in operation in early '02.

9   I just -- I haven't spent a lot of time

10 trying to figure when we took the system down.

11   Q.   So from the moment you began developing the

12 system in late 1997 through the end of 2001 or

13 beginning of 2002, there were a number of different

14 versions with different features that were in

15 production, right?

16   A.   Correct, but they all involved creation of

17 video and the transmission of that to a server and the

18 management of those clips into a form that where they

19 could be played and sequenced to create the

20 asynchronous form.

21   Q.   Now, in some versions of the system encoding

22 or compression took place on the knowledge provider's

23 computer, right?

24   A.   Some, correct.

25   Q.   And in other versions of your system, the

1 encoding or converting into a streaming video format

2 took place on the Knowledge Assembly server, right?

3   A. Right.

4   Q. You don't recall which version had conversion

5 on the user's computer versus the server computer,

6 right?

7   A. Do I recall when that occurred?

8   Q. You don't recall which versions of the

9 Knowledge Assembly system involved conversion on the

10 user's computer and which versions involved conversion

11 at the server, right?

12   A. I can't place that in time.

13   The description of the application didn't

14 talk about the KnowledgeCapture because it had not

15 occurred to us at that time.

16   Q. Well, we just looked at claim 1 and that

17 described conversion at the user computer, right?

18   A. That's correct, but it's -- that's in the PCT

19 application.

20   The preliminary application is what occurred

21 in '98.

22   And at that point, we were -- we didn't have

23 the KnowledgeCapture or what we later termed Knowledge

24 Producer software.

25   Q. So is it your testimony that your patent

1 application that you filed in 1998 didn't discuss

2 conversion at the user computer?

3   A.   I don't think it did.

4   Q.   Please turn back to Exhibit 7, the product

5 description.

6   At the bottom of the page, the product

7 description talks about the KnowledgeServer.

8   Do you see that?

9   A.   Uh-huh.

10   Q.   It says that the host --

11   A.   Yes.

12   Q.   Withdrawn.

13   The product description says that the

14 KnowledgeServer is the host-based software component.

15   Do you see that?

16   A.   Yes.

17   Q.   That's the component of the Knowledge

18 Assembly server -- withdrawn.

19   That's the component of the Knowledge

20 Assembly system that was running on the Knowledge

21 Assembly server?

22   A.   At that time, correct.

23   What is the date? How does one figure the

24 date on this?

25   Q.   Well, in your report you stated that the date

1 is January 16, 1999.

2   A. Yeah.

3   Q. Does that sound right?

4   A. Well, that's what it says up at the top, but

5 there's a range given and I find it confusing, but

6 that's the first date in the range.

7   Go ahead.

8   Q. You're not sure when this document was

9 created?

10   A. Well, I'm questioning that at this point, but

11 the fact that it talks so clearly about

12 KnowledgeCapture makes me think that it was -- it

13 might well have been later than January of -- January

14 16.

15   Q. If, in fact, it was January 16, is it

16 possible that KnowledgeCapture was actually

17 implemented earlier than you recalled?

18   A. If I'm describing KnowledgeCapture in mid

19 January, then that's earlier than I recall, but it

20 might well be.

21   Q. It's possible that KnowledgeCapture existed

22 as of October of 1998, right?

23   A. I don't think so because it's -- because it's

24 not described in the patent application.

25   Q. So if the patent application describes

1 conversion on the user computer, then it's possible

2 that KnowledgeCapture existed as of October of 1998?

3   A. Yeah.

4   Q. Just to be clear, if there's a description on

5 your web site as of October 2nd of 1999 that describes

6 the knowledge -- is it producer -- withdrawn.

7   If there's a description on your web site as

8 of October of 1999 that discussed the knowledge

9 providers using software on their own machines to

10 create, approve, compress and upload video clips, that

11 would suggest that the KnowledgeCapture actually came

12 out earlier than you recall?

13   A. Yes, as some of that may be anticipatory, but

14 it certainly would indicate that we had decided to

15 create server software -- I mean a client software

16 earlier than I recalled, yes.

17   Q. So if you had created client software earlier

18 than you recalled, then it's certainly possible that

19 as of October 5th of 1998, the Knowledge Assembly

20 system performed converting to streaming video format

21 on the knowledge provider's computer and uploaded

22 using an application program not a web site, right?

23   MR. LEE: Objection, form, calls for

24 speculation.

25   THE WITNESS: It's possible.

1 BY MR. FRANZINI:

2   Q.   Please turn back to Exhibit 7.   The

3 KnowledgeServer is the software running on the

4 Knowledge Assembly server?

5   A.   Right.

6   Q.   Now, the Knowledge Assembly product

7 description from January of 1996, it didn't say

8 anything about the KnowledgeServer performing

9 conversion to streaming video format, right?

10   A.   Which description are you talking about in

11 1996?

12   Q.   Withdrawn, I'm sorry.

13   The Knowledge Assembly product description

14 from January 16 of 1999 that we marked as Exhibit 7,

15 that doesn't say anything about the Knowledge Assembly

16 server performing converting a video file into a

17 streaming video file, right?

18   A.   That's correct.

19   Q.   It also doesn't say anything about the

20 Knowledge Assembly server automatically embedding an

21 identification tag into a web page, right?

22   A.   No, it doesn't specifically state that.

23   Q.   Now, the Knowledge Assembly product

24 description does describe the operations of the

25 KnowledgeServer, right?

1   A.   Yes, this is a marketing document and so how

2   it performed these tasks is not significant.

3   It doesn't -- it doesn't describe and I

4   notice that there's another page that's missing, but

5   it doesn't describe the -- let me see.

6   It describes the organizing -- uploading

7   clips into VideoForums, managing -- manages the

8   interaction in the system -- so it doesn't describe

9   all of the functions of the server side software, and,

10   as I say, it was a marketing document and intended to

11   give people a sense of how much it worked from a

12   user's perspective.

13   Q.   Did you author the product description on the

14   Knowledge Assembly web site?

15   A.   I did.

16   Q.   When you chose to describe the

17   KnowledgeServer, you talked about how it organizes the

18   uploaded clips and manages viewer interaction, right?

19   A.   Right.

20   Q.   You didn't mention anything about the

21   KnowledgeServer converting a video file into a

22   streaming video format, right?

23   A.   That's correct.

24   Q.   You also didn't mention anything about the

25   video server automatically generating an

1 identification tag, right?

2 A. No. This is not a technical description is

3 the -- is the reason.

4 I mean who would know what an identification

5 tag is in a marketing document.

6 Q. Here it's talking about organizing the

7 uploaded clips, right?

8 A. Right.

9 Q. Those are those same clips that were uploaded

10 by the knowledge provider?

11 A. Right.

12 Q. So it doesn't talk about conversion at all,

13 right?

14 A. No, it doesn't.

15 Q. In fact, what it says is those same clips are

16 the ones that are organized by the KnowledgeServer,

17 right?

18 A. It doesn't -- the user is not going to be

19 interested in whether the video is encoded and where.

20 So it's not intended to be a description of

21 what technical steps were taken at what point in the

22 process.

23 Q. Well, when you describe the KnowledgeCapture

24 software you said that the KnowledgeCapture compressed

25 video files, right?

1   A.   That's right.

2   Q.   Do you think the user was interested in that?

3   A.   I think so and compression is something

4 that's more easily understood because people were

5 concerned about how long video files took to transmit.

6   Q.   Now, if a video file is encoded into ASF

7 format, that makes it smaller, right?

8   A.   It does.

9   Q.   So converting on the knowledge provider's

10 computer would result in shorter upload times, right?

11   A.   Correct.

12   Q.   Did you think it was obviously a good idea at

13 the time that you were -- withdrawn.

14   At the time that you were working on the

15 Knowledge Assembly system, did you think it was an

16 obviously good idea to do conversion at the server

17 rather than the knowledge provider's computer?

18   A.   Yes.

19   Q.   Well, if you did it at the knowledge

20 provider's computer, it would result in the video file

21 being uploaded being smaller, right?

22   A.   Correct, but I'm making a distinction between

23 compressing it for transmission and encoding it for

24 streaming.

25   And the encoding for streaming is something

1 that we wanted to control on the server side because

2 there were new versions coming out all the time and we

3 wanted to be able to manage the load and call for --

4 and have the program automatically encode things as

5 they came.

6   The other reason to do it on the server is

7 because we couldn't predict what kind of power was

8 available on the knowledge provider's computer.

9   Some of them were using old equipment on

10 which it wouldn't run.

11   So I don't believe that we ever implemented a

12 version of the software that did the conversion to a

13 streaming file, that is to ASF before transmitting it

14 to the software.

15   I think that was always a server side

16 function.

17   Q. Sir, didn't you testify before in certain

18 versions it did it at the client side?

19   A. We talked about it, but I don't believe that

20 we implemented it as -- as a -- I don't think I ever

21 said that Knowledge Producer or KnowledgeCapture

22 software actually performed that.

23   We certainly considered it, but I don't --

24 and we may have implemented it in that way, but I

25 don't believe that we were talking about that here.

1   Q.   Well, before we were talking about your PCT

2 application and we looked at claim 1 and we saw that

3 claim 1 claims encoding on the computer of the

4 knowledge provider, right?

5   A.   Right.

6   Q.   You testified before that when you were

7 drafting the claims of claim 1 you were trying to

8 capture what your system actually did at the time.

9   Do you remember that?

10   MR. LEE: Objection, form, mischaracterizes

11 testimony.

12   THE WITNESS: I'm lost.   So you're going back

13 to the PCT application?

14 BY MR. FRANZINI:

15   Q.   Before we were talking about the PCT

16 application?

17   A.   Right.

18   Q.   And I think your testimony before was that at

19 the beginning, you did conversion at the server side

20 and then you moved it to conversion at the computer of

21 the knowledge provider and that was reflected in your

22 PCT application?

23   MR. LEE: Objection, form, mischaracterizes

24 testimony.

25 BY MR. FRANZINI:

1   Q. Do you recall giving that testimony?

2   A. Well, I don't -- I've been confused about

3 this matter from the beginning, whether we actually

4 implemented it with the encoding on the server or on

5 the -- or on the client computer.

6   I think that we thought it was ideal to do it

7 on the client side because our interest in doing that

8 was that we would be able to distribute the processing

9 power and load balance better on the server, but I

10 don't think that that was the ideal application and

11 for the reason I described earlier, I don't think we

12 ever really implemented that as the primary version of

13 the product.

14   Q. Well, sir, before -- withdrawn.

15   Before you testified it was ideal to have the

16 encoding on the server side because you wanted to

17 control the encoding.

18   Now you're telling me it's ideal to have it

19 on the client side because you want to distribute the

20 processing power?

21   MR. LEE: Objection.

22 BY MR. FRANZINI:

23   Q. Do you recall which of the two you actually

24 did?

25   MR. LEE: Objection, form, mischaracterizes

1   testimony.

2   THE WITNESS: I think that we experimented

3   with both and I, frankly, don't remember which won

4   out.

5   I just don't have a recollection of which

6   of -- which we actually delivered to the clients and

7   it would have to depend on their machine.

8   So, you know, I've given you both the logic

9   for both sides and I think you've pointed out that in

10   the PCT application we put it down as doing it on the

11   client side, as doing the encoding on the client side,

12   that's where we came on.

13   I don't -- I don't know where we ended up.

14   BY MR. FRANZINI:

15   Q. Sir, is it fair to say that you don't recall

16   one way or the other whether conversion of a video

17   file to streaming video format was done at the client

18   computer or at the Knowledge Assembly server computer

19   in your beta embodiment?

20   A. It's entirely possible to do both, but -- in

21   the beta, I'm -- seeing it in the PCT application

22   gives me some -- gives me the impression that we were

23   implementing it that way.

24   We were certainly seeing that as the way of

25   the future and so we were looking in that direction

1 and perhaps the description in the PCT application

2 anticipated movement in that direction and didn't

3 reflect the current state of the software, but there

4 is an inconsistency and I don't think I can say where

5 we were on this matter at the time of the beta.

6   Q. So you don't recall one way or the other

7 whether at the time of the beta -- withdrawn.

8   You don't recall one way or the other whether

9 at the time of the beta your Knowledge Assembly system

10 actually practiced converting a video file into

11 streaming video format at the Knowledge Assembly

12 server as opposed to on the computer of the knowledge

13 provider, right?

14   A. Let me just see what -- take a look at the

15 e-mails that were sent --

16   Q. Sir, as you sit here today, you don't recall

17 one way or the other whether at the time of your beta,

18 your Knowledge Assembly system performed converting a

19 video file to streaming video format at the server as

20 opposed to on the computer of the knowledge provider,

21 right?

22   A. That's why I wanted to take a look at the

23 e-mails because they would reflect -- they might

24 reflect which version of the system they were using.

25   Q. We will take a look at the e-mails in a

1 second, but I want to get a clear question on the

2 record -- withdrawn.

3   As you sit here today, you don't know one way

4 or the other whether the Knowledge Assembly system

5 performed converting a video file into streaming video

6 format at the Knowledge Assembly server or at the

7 computer of the knowledge provider, right?

8   A. At the time of the beta, I think that's true.

9   MR. FRANZINI: It's 12:30, happy to take a

10 break.

11   THE VIDEOGRAPHER: Time is 12:31 and we are

12 off the record.

13   (Whereupon a lunch recess was taken.)

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1   AFTERNOON PROCEEDINGS

2   THE VIDEOGRAPHER: The time is 1:20 and we

3   are on the record.

4   BY MR. FRANZINI:

5   Q. Before lunch, you mentioned that you weren't

6   sure whether the actual implementation of the

7   Knowledge Assembly -- withdrawn.

8   Before lunch you mentioned you weren't sure

9   whether the actual embodiment of the Knowledge

10   Assembly system performed converting a video file into

11   a streaming video file at the server or at the client

12   and you wanted to look at some documents to refresh

13   your recollection.

14   Do you remember that?

15   A. Yes.

16   MR. LEE: Objection, form, mischaracterizes

17   testimony.

18   BY MR. FRANZINI:

19   Q. The reason you wanted to look at documents is

20   because human memory fades and you wanted to --

21   withdrawn.

22   The reason you wanted to look at documents is

23   because human memories fade, but documents stay the

24   same?

25   MR. LEE: Objection, form, argumentative.

1   THE WITNESS: Is there a question there?

2 BY MR. FRANZINI:

3   Q. Yes.

4   A. Okay. I was not looking for -- withdraw.

5   I am -- I was looking for a clue as to what

6 version of the system we were using at that time and

7 it -- I don't have a memory of when specific --

8 whether we were using that system specifically and, in

9 fact, the documents might not suggest whether people

10 who were giving feedback were using the client

11 software -- yeah, the client software or not.

12   And there is the question -- actually I don't

13 think those documents would shed light on whether, in

14 fact, the server or the client software was doing the

15 encoding.

16   Q. Well, you understand that, in general, human

17 memories fade, right?

18   MR. LEE: Objection, form.

19   THE WITNESS: I do.

20 BY MR. FRANZINI:

21   Q. It's possible that events that happened a

22 long time ago like 18 years ago are ones that

23 aren't -- withdrawn.

24   It's possible for people to misremember how

25 events happened in the past, right?

1   MR. LEE: Objection, form.

2   THE WITNESS: It's possible.

3   BY MR. FRANZINI:

4   Q. One of the ways to confirm one's memory is to

5   look at documents, right?

6   A. Right.

7   Q. Now, you understand that the law requires

8   that the -- withdrawn.

9   You understand that the testimony of a single

10   witness is not enough to invalidate a patent; you need

11   corroboration, right?

12   MR. LEE: Objection, form, calls for a legal

13   conclusion.

14   THE WITNESS: I hear you saying that.

15   BY MR. FRANZINI:

16   Q. Is that your understanding of the law?

17   A. I don't actually have an understanding of

18   that law.

19   Q. Well, does -- withdrawn.

20   One way to make sure that a person's memory

21   is accurate is by showing documents from the time that

22   corroborate what that person thinks, right?

23   A. Correct.

24   MR. LEE: Objection, form.

25   BY MR. FRANZINI:

1 Q. So one of the ways -- withdrawn.

2   If you wanted to find out whether in the

3 Knowledge Assembly system the conversion took place at

4 the server or at the computer of the knowledge

5 provider, one way to try to remember is to look at

6 documents from the time, right?

7 A. Right, if there are documents that shed light

8 on it.

9 Q. Showing you a document -- withdrawn.

10   MR. FRANZINI: Mark this as Exhibit 9.

11   (Whereupon, Exhibit 9, document entitled

12 "Knowledge Assembly description," was marked for

13 identification.)

14 BY MR. FRANZINI:

15 Q. I'm showing you a document that was marked as

16 Exhibit 9, it's a WayBack machine snapshot from

17 October 2nd, 1999 of the Knowledge Assembly

18 description web page.

19 A. Okay.

20 Q. Does this appear to be a printout of the

21 Knowledge Assembly web page from October 2nd of 1999?

22 A. It does, although I have the same question

23 about the -- about the range of dates that are

24 indicated at the top.

25   My question before was -- let me see.

1   Yeah, so I'm not sure what the date is of

2   this capture.

3   Do you know how to interpret that?

4   Q.   Well, I mean -- withdrawn.

5   In your report, for example, in paragraph

6   30-A, you represent that the GOOG-VS-PA 00016537

7   document is from January 16 of 1999?

8   A.   Right.

9   Q.   And that's based on the date January 16, 1999

10   being highlighted in black in the top right-hand

11   corner, correct?

12   A.   Left, correct?

13   Oh, I see over there, okay.

14   Q.   Let me ask it differently -- withdrawn.

15   Please take a look at Exhibit 7.

16   In your report, you state that this is a --

17   withdrawn.

18   In your report you state that this shows the

19   Knowledge Assembly web site as of January 16, 1999,

20   right?

21   A.   Right.

22   Q.   And that's based on the date in the top

23   right-hand corner January 16, 1999?

24   A.   I see that.

25   Q.   Is that what you based your representation in

1 your report this is a snapshot from January 16 of 1999

2 on?

3   A. Well, I actually was looking at the -- on the

4 left side where it shows the ranges and that's what

5 today I questioned the wisdom of doing.

6   So it's over here on the right, but I was

7 using this date.

8   Q. Well, the date on the left shows the number

9 of captures of that web site, right?

10   A. Well, and the range of dates from which those

11 captures are taken, but --

12   Q. And the date on the right is what shows it's

13 from January 16, 1999?

14   A. Presumably so, yes.

15   Q. Using that same methodology for Exhibit 9,

16 does this appear to be snapshot from October 2nd,

17 1999?

18   A. Correct.

19   Q. That's three days before you submitted your

20 provisional application?

21   A. Okay.

22   Q. Is that correct?

23   MR. LEE: Objection, mischaracterizes

24 testimony -- that's it.

25   THE WITNESS: I -- my only question is

1 whether that's the specific date now, but I did use

2 that date and so let me see.

3   It appears to be so, yes.

4 BY MR. FRANZINI:

5   Q. Okay.

6   A. It's seeming warm in here to me.

7   MR. FRANZINI: I agree for what it's worth.

8   MR. LEE: Go off the record.

9   MR. FRANZINI: Take a break.

10   THE VIDEOGRAPHER: The time is 1:28 and we

11 are off the record.

12   (Recess taken.)

13   THE VIDEOGRAPHER: The time is 1:30 and we

14 are on the record.

15   MR. LEE: Simon, I wanted to go back. You

16 were saying -- I don't know if you were mistaking 1998

17 for 1999 earlier when you were saying in your line of

18 questioning, just pointing that out.

19   MR. FRANZINI: I don't know if there's a

20 question pending, so withdrawn if there is.

21 BY MR. FRANZINI:

22   Q. I'm showing you a document -- withdrawn.

23   Please take a look at the Knowledge Assembly

24 description from October 2nd of 1999.

25   A. Right.

1   Q.   That's two days before you filed your October

2   1999 PCT application?

3   A.   That's correct.

4   Q.   Please take a look at the second page, the

5   last paragraph says "Knowledge Producer is the

6   software used by discussants on their own machines to

7   create, approve, compress and upload their video

8   clips"?

9   A.   Let's see, the second page. You mean on the

10 flip side, yes.

11   Q.   Now, if you take a look at your PCT

12 application which is Exhibit 8, turn to page 36, claim

13 1.

14   A.   Right.

15   Q.   Element C says -- describes a knowledge

16 provider operating a first computer to capture clip

17 information, encode clip information and upload an

18 appropriately formatted clip to said second computer?

19   A.   Right.

20   Q.   The description in claim 1 of the PCT

21 application you filed two days later matches the

22 description on your web site?

23   MR. LEE: Objection, form.

24   THE WITNESS: They were not written at the

25 same time, but that -- they're at approximately the

1 same time, yes.

2 BY MR. FRANZINI:

3   Q.   The process that's being described in claim 1

4 of your PCT application is -- mirrors the process

5 being described on your web page, right?

6   A.   It does.   It doesn't necessarily say we were

7 actually encoding on the knowledge provider's computer

8 in an ASF format, but it's -- it may say that.

9   Q.   It certainly suggests when you say on

10 Exhibit 9 "Knowledge Producer is the software used by

11 discussants on their own machines to create, approve,

12 compress and upload their video clips," compress

13 refers to encoding cited in claim 1?

14   A.   It may.

15   Q.   It does suggest that?

16   A.   Yeah, it does suggest.   It's in approximately

17 the same time frame.

18   Q.   It suggests that as of October -- withdrawn.

19   That suggests that as of October of 1999, the

20 Knowledge Assembly system converted a video file to

21 streaming video format on the computer of the

22 knowledge provider, not on the server, right?

23   A.   It suggests that and it's entirely possible

24 that the server was available for encoding as well,

25 having received the file from a web page.

1   Q.   It's possible, but what this document

2   suggests is that the compression or encoding was done

3   on the computer of the knowledge provider, right?

4   A.   That's what we were selling.

5   Q.   If you look at Exhibit 7, which is your

6   product description from January of 1999, that has the

7   same description, right?

8   A.   Right.

9   Q.   So that suggests as of January 1999 as well,

10   the encoding took place on the computer of the

11   knowledge provider, right?

12   A.   It suggests that, yes.

13   Q.   So Knowledge Assembly product description

14   document from January of 1998 suggests that the

15   Knowledge Assembly system at that time performed

16   converting the video file to streaming video format on

17   the computer of the knowledge provider, not the

18   server, right?

19   MR. LEE: Objection, form, mischaracterizes

20   the document.

21   THE WITNESS: Yeah, it's January 1999.   I

22   think you said January 1998.

23   BY MR. FRANZINI:

24   Q.   I'll give you a new question, then --

25   withdrawn.

1   The Knowledge Assembly product description

2   document suggests that as of January of 1999 the

3   Knowledge Assembly system performed converting the

4   video file to streaming video format at the computer

5   of the knowledge provider, not the Knowledge Assembly

6   server, right?

7   MR. LEE: Objection, form, mischaracterizes

8   the document.

9   THE WITNESS: It suggests that because that

10   transition, obviously, was made, anticipated, made at

11   some point and it might well have been in place at

12   that time.

13   BY MR. FRANZINI:

14   Q. And the PCT application, that also suggests

15   that as of January -- withdrawn.

16   The PCT application, that also suggests that

17   as of October of 1999, the Knowledge Assembly system

18   performed converting the video file to streaming video

19   format at the computer of the knowledge provider, not

20   the Knowledge Assembly server, right?

21   MR. LEE: Objection, form.

22   THE WITNESS: That's what the PCT application

23   says.

24   BY MR. FRANZINI:

25   Q. Before we talked about receiving via a web

1   page?

2   A.   Uh-huh.

3   Q.   The Knowledge Assembly product description

4   web page, that suggests that as of January of 1999,

5   the receiving of the video file was done via an

6   application program installed on a user's computer,

7   not a web page, right?

8   MR. LEE: Objection, form, mischaracterizes

9   the document.

10   THE WITNESS: I'm sorry, on the computer and

11   not on a web page.

12   You might as well repeat the question.

13   BY MR. FRANZINI:

14   Q.   Give you a new question, withdrawn.

15   If we wanted to figure out whether as of

16   January 16 of 1999 the Knowledge Assembly system

17   received video files via a web page or via an

18   application program installed on the knowledge

19   provider's computer, one of the things we might look

20   at is the documents from the time describing the

21   service, right?

22   A.   Right.

23   Q.   And if we looked at the printout from the

24   Knowledge Assembly web site from January of 1999, that

25   document would suggest that the Knowledge Assembly

1 system received video files via an application program

2 on the user's computer, not via a web page, right?

3   MR. LEE: Objection, form.

4   THE WITNESS: I think that's correct.

5 BY MR. FRANZINI:

6   Q. Please turn to paragraph 30 of your report.

7   A. All right.

8   Q. Here you cite a number of documents WayBack

9 machine?

10   A. Uh-huh.

11   Q. Do any of these documents corroborate --

12 withdrawn.

13   Do any of the documents in paragraph 30 of

14 your report -- withdrawn.

15   Do any of the documents cited in paragraph 30

16 of your report suggest that the Knowledge Assembly

17 system received video files via a web page at any

18 time?

19   A. No.

20   Q. Do the materials cited in paragraph 30 of

21 your report suggest that the Knowledge Assembly system

22 performed converting of a video file into a streaming

23 video file at the Knowledge Assembly server rather

24 than the computer of the application provider?

25   A. No, I don't think they do.

1   Q.   Now, before we talked about generating an

2 identification tag representing a subject matter of

3 the streaming video file and identifying the streaming

4 video file?

5   A.   Uh-huh.

6   Q.   That was discussed in paragraphs 25 through

7 29?

8   A.   Uh-huh.

9   Q.   Do any of the materials that you cite in

10 paragraph 30 of your report provide any evidence that

11 the Knowledge Assembly system performed generating an

12 identification tag representing a subject matter of

13 the streaming video file and identifying the streaming

14 video file?

15   A.   I need you to repeat the question.

16   Q.   Do any of the documents that you cite in

17 paragraph 30 of your report --

18   A.   Right.

19   Q.   -- provide any evidence that the Knowledge

20 Assembly system performed generating an identification

21 tag representing a subject matter of the streaming

22 video file and identifying the streaming video file?

23   A.   I'm mindful of your comments about these

24 might have been produced by a method other than from

25 the computer because the assumption has been that my

1 knowledge and the assumption behind the assertions

2 here are that the computer used the scripts to convert

3 inputs into a -- into an identifying tag and that that

4 is what was used to generate the web site -- I mean

5 the web page, indeed, the one pictured here.

6 But given your suggestion there's uncertainty

7 about the source of these pages from the WayBack

8 machine, I have to say it doesn't -- it doesn't prove

9 that the tag was generated and used by the system to

10 operate in that manner.

11 Q. Well, it's not just my suggestion, right, you

12 testified that the snapshots of the web site didn't

13 provide any information about how that web site was

14 generated, right?

15 MR. LEE: Objection, form, mischaracterizes

16 testimony.

17 THE WITNESS: That's correct, I know

18 otherwise, but it doesn't prove that we were not

19 putting up a demo and creating this to give the

20 appearance.

21 BY MR. FRANZINI:

22 Q. Well, it doesn't provide any information at

23 all about how that web site was generated, right?

24 A. No information.

25 Q. So based on your own testimony, there's

1 nothing cited in paragraph 30 of your report that

2 suggests that the Knowledge Assembly system performed

3 generating an identification tag representing a

4 subject matter of the streaming video file and

5 identifying the streaming video file, correct?

6   MR. LEE: Objection, form, mischaracterizes

7 testimony.

8   THE WITNESS: That's correct.

9 BY MR. FRANZINI:

10   Q. We also talked about embedding the

11 identification tag into a web page for serving the

12 streaming video file.

13   Do you remember that?

14   A. Uh-huh.

15   Q. You talk about that limitation in paragraphs

16 25 through 29, right?

17   A. Right.

18   Q. Now, do any of the materials you cite in

19 paragraph 30 of your report provide any evidence that

20 the Knowledge Assembly system performed embedding the

21 identification tag into a web page for serving the

22 streaming video file?

23   A. It does not prove that.

24   Q. Doesn't provide any evidence of that, right?

25   A. It doesn't provide --

1   Q. I'll do it again.

2   The materials cited in paragraph 30 of your

3   report do not provide any evidence that the Knowledge

4   Assembly system performed embedding the identification

5   tag into a web page for serving the streaming video

6   file, correct?

7   A. Yes.

8   MR. LEE: Simon, I think that's the facility

9   person.

10   Do you mind if we take a quick break off the

11 record?

12   THE VIDEOGRAPHER: Should we switch the disk?

13   MR. FRANZINI: How much time?

14   THE VIDEOGRAPHER: 25 minutes.

15   MR. FRANZINI: Yes.

16   THE VIDEOGRAPHER: This marks the end of disk

17 2 in the deposition of Michael Keehan. The time is

18 1:46 and we are off the record.

19   (Recess taken.)

20   THE VIDEOGRAPHER: This marks the beginning

21 of volume 1 disk 3 in the deposition of Michael

22 Keehan.

23   The time is 1:52 and we are on the record.

24 BY MR. FRANZINI:

25   Q. In your report, you also cite three e-mails

1 from colleagues?

2   A. Correct.

3   Q. Do the three e-mails from your colleagues

4 provide any evidence that the Knowledge Assembly

5 system actually practiced any of the limitations of

6 claim 1 of the '608 patent?

7   A. Let me see. I would need to review them. It

8 would have to be in the form of them commenting on

9 some function.

10   They are certainly responding to the system

11 as it existed at that time, but the e-mails

12 themselves, the transmission of the e-mails wouldn't

13 indicate anything.

14   Q. Do the e-mails provide any information about

15 how the system operated?

16   A. I need to review them.

17   MR. FRANZINI: Can I have this marked as

18 Exhibit 10.

19   (Whereupon, Exhibit 10, e-mail string dated

20 Wednesday, February 24, 1999, Bates stamps GOOG-VS-PA

21 00018481 to 482, was marked for identification.)

22 BY MR. FRANZINI:

23   Q. Showing you a document that was marked as

24 Exhibit 10 --

25   A. Right.

1   Q. -- is this one of the e-mails you cite in

2   your report?

3   A. Yes.

4   Q. Does this e-mail provide any evidence that

5   the Knowledge Assembly system actually practiced any

6   of the limitations of claim 1 of the '608 patent?

7   A. No. Obviously, Ben had used the system and

8   was commenting on it, but it doesn't -- other than

9   that, other than his reflected use, it doesn't

10 indicate the use of the system.

11   Q. It reflects that someone had used the

12 Knowledge Assembly system, but doesn't tell us

13 anything about what that system did?

14   A. Correct.

15   MR. FRANZINI: Have this marked as

16 Exhibit 11, please.

17   (Whereupon, Exhibit 11, e-mail dated

18 Wednesday, February 16, 2000, Bates stamps GOOG-VS-PA

19 00018483, was marked for identification.)

20 BY MR. FRANZINI:

21   Q. Showing you a document I marked as

22 Exhibit 11, has Bates numbers GOOG-VS-PA 00018483.

23   For the record, Exhibit 10 had Bates numbers

24 GOOG-VS-PA 00018481.

25   Does Exhibit 11 provide any evidence that the

1 Knowledge Assembly system actually practiced any

2 limitation of claim 1 of the '608 patent?

3   A.   So it -- this reflects that Michael Cooperman

4 has looked at the system and is providing feedback on

5 its function and appearance and the process, but other

6 than reflecting that he's actually used the system to

7 give feedback on it, it doesn't talk specifically

8 about some of the functions.

9   So I don't think it's presented as something

10 that is evidence of the system's functioning in a way

11 relevant to claim 1.

12   Q.   So Exhibit 11 provides no evidence that the

13 Knowledge Assembly system actually practiced any

14 limitation of claim 1 of the '608 patent?

15   A.   He's talking about how the system worked, but

16 I don't -- how the system that he's using was designed

17 is not -- is not clear from this. It's not intended

18 for that.

19   Q.   Right. None of the things he says suggests

20 that the Knowledge Assembly system actually practiced

21 any of the limitations of claim 1 of the '608 patent,

22 right?

23   A.   I think that's -- I think that's true.

24   MR. FRANZINI: Have this marked as

25 Exhibit 12, please.

1   (Whereupon, Exhibit 12, e-mail dated

2   Wednesday, December 30, 1998, Bates stamps GOOG-VS-PA

3   00018480, was marked for identification.)

4   BY MR. FRANZINI:

5   Q.   Showing you a document that we marked as

6   Exhibit 12, it has Bates number GOOG-VS-PA 00018480,

7   is this one of the e-mails you cite in your report?

8   A.   Yes.

9   Q.   Does this e-mail provide any evidence that

10   the Knowledge Assembly system practiced any limitation

11   of claim 1 of the '608 patent?

12   A.   Well, it -- obviously, she's referring to the

13   system and the clips being played.

14   How it is described in claim 1 is more of a

15   technical description. This is a functional

16   description and so it's -- it has limited value in

17   determining how this was actually accomplished.

18   Q.   So this -- withdrawn.

19   Document 12 doesn't provide any evidence that

20   the Knowledge Assembly system actually received a

21   video file via a web page, right?

22   A.   She doesn't say that in this document, but

23   obviously, that's what she's responding to, but she

24   doesn't say that she's received it through a web page.

25   Q.   Well, this document is consistent with the

1 sender having uploaded the video file via an

2 application program on her computer, right?

3   A. I'm sorry, that she uploaded to Knowledge

4 Assembly with a -- with a client software on her

5 computer; is that what you're asking?

6   Q. Withdrawn.

7   Exhibit 12 gives us no indication of how

8 Knowledge Assembly received the video file from the

9 sender, right?

10   A. That's correct.

11   Q. Exhibit 12 doesn't say anything about whether

12 a video file was converted to streaming video format

13 on the VideoForum server, right?

14   A. That's correct.

15   Q. Didn't say anything about generating an

16 identification tag?

17   A. No.

18   Q. And it doesn't say anything about embedding

19 an identification tag into a web page?

20   A. It does not.

21   Q. This document provides no evidence that the

22 Knowledge Assembly system actually practiced any of

23 the limitations of claim 1 of the '608 patent, right?

24   A. I guess that's correct.

25   Q. So in your report you cite the patent

1 application, some e-mails and snapshots from the

2 WayBack machine, right?

3   A. Right.

4   Q. None of that evidence -- withdrawn.

5   None of those documents provide any evidence

6 that the Knowledge Assembly system actually practiced

7 any of the limitations of claim 1 of the '608 patent,

8 right?

9   A. I have to agree with that logic.

10   Q. So there's absolutely no corroboration for

11 your statements that the Knowledge Assembly system

12 actually practiced any of the limitations of the '608

13 patent, right?

14   A. Not from these documents.

15   Q. Well, those are the only documents you cite,

16 right?

17   A. That's correct.

18   Q. You don't provide any corroboration for your

19 statements that the Knowledge Assembly system actually

20 practiced any of the limitations of claim 1 of the

21 '608 patent, correct?

22   A. Obviously, I have felt that these documents

23 indicated that we had an up and working system and

24 that we were getting feedback on.

25   Clearly that's the case, but I follow your

1 logic in calling the reality of that assertion into

2 question.

3   Q. So the documents indicate that there was a

4 system called the Knowledge Assembly system that was

5 used, right?

6   A. Uh-huh.

7   Q. But it doesn't provide any information or any

8 evidence about how that system actually operated,

9 right?

10   A. Well, I obviously have believed it does.

11   Q. Well, you don't cite any documents in your

12 report that corroborate your statements that the

13 Knowledge Assembly system performs any of the

14 limitations of claim 1 of the '608 patent, correct?

15   A. I think we're getting repetitive here.

16   Q. If you could answer my question.

17   A. So ask it again.

18   Q. The documents that you cite in your report

19 don't provide any corroboration for your statements

20 that the Knowledge Assembly system actually practiced

21 any of the limitations of claim 1 of the '608 patent,

22 correct?

23   MR. LEE: Objection, form.

24   THE WITNESS: Pardon me?

25   MR. LEE: I said objection, form.

1   You can answer.

2   THE WITNESS: Correct.

3   BY MR. FRANZINI:

4   Q. In fact, the only documents we have provide

5   evidence that the Knowledge Assembly system did not

6   perform converting a video file to streaming video

7   format at the server, correct?

8   MR. LEE: Objection, form, mischaracterizes

9   documents.

10   THE WITNESS: Let me see.

11   So let me see -- so repeat the statement.

12   BY MR. FRANZINI:

13   Q. The only evidence that we have actually

14   suggests that the Knowledge Assembly system performed

15   converting the video file into streaming video format

16   at the computer of the knowledge provider, not the

17   Knowledge Assembly server, right?

18   MR. LEE: Same objection.

19   THE WITNESS: I still feel that the patent

20   application, the way that the process is described is

21   clearly a server encoding system and that's how we

22   initially implemented it and -- and later, we -- so

23   it's not as though there's no evidence. The evidence

24   is that it's what was described in our patent.

25   BY MR. FRANZINI:

1   Q. Well, the patent application on -- withdrawn.

2   We established before that the patent

3   application doesn't actually show that your system did

4   anything, it's just a description of ideas, right?

5   MR. LEE: Objection, mischaracterizes

6   testimony.

7   THE WITNESS: However, that's true as far as

8   it goes, but there was a working system at that time

9   performing just as described in the patent.

10   BY MR. FRANZINI:

11   Q. Well, the patent describes multiple

12   embodiments, right?

13   A. That's correct.

14   Q. We established before that your actual system

15   didn't perform each one of the embodiments, right?

16   A. Not all of them, but yes, it was a working --

17   a working model of the system in one embodiment.

18   Q. Just because something is in your patent

19   application, that doesn't provide any evidence that

20   the actual system worked that way, right?

21   MR. LEE: Objection, form.

22   THE WITNESS: That's correct.

23   BY MR. FRANZINI:

24   Q. So the documents you cite in your report

25   don't provide any corroboration for -- withdrawn.

1   The documents in your report don't provide

2   any corroboration for your statement that the

3   Knowledge Assembly system meets any of the limitations

4   of claim 1 of the '608 patent, correct?

5   MR. LEE: Objection, form, asked and

6   answered.

7   THE WITNESS: I have to say that's correct.

8   BY MR. FRANZINI:

9   Q. And the only evidence we have is the

10   snapshots from the web page, right?

11   MR. LEE: Objection, form, mischaracterizes

12   documents.

13   THE WITNESS: The only -- give me that again.

14   BY MR. FRANZINI:

15   Q. Withdrawn.

16   The only evidence about how the system

17   actually worked is the snapshots from the WayBack

18   machine that Google produced in this case, right?

19   MR. LEE: Same objection.

20   THE WITNESS: Given -- given the definition

21   of proof here, yes, I think that's true.

22   BY MR. FRANZINI:

23   Q. The only evidence of how that system worked,

24   right?

25   A. That's correct.

1   Q. And what --

2   A. It's more descriptive than proving.

3   Q. And you testified before you believe the

4 description to be accurate, right?

5   MR. LEE: Objection, mischaracterizes

6 testimony.

7   THE WITNESS: Yes, I think that the

8 description is accurate as far as it went.

9   I also said it was a marketing description

10 and so didn't get into the technical details.

11 BY MR. FRANZINI:

12   Q. So all of the evidence we have is --

13 withdrawn.

14   The only evidence we have suggests that the

15 converting from a video file to a streaming video file

16 took place on the computer of the knowledge provider,

17 not the Knowledge Assembly server, correct?

18   MR. LEE: Objection, form, misstates the

19 evidence.

20   THE WITNESS: I still accept the existence of

21 the scripts as an indication of what went on in the

22 server.

23 BY MR. FRANZINI:

24   Q. We discussed before we don't have any

25 evidence that the scripts were actually used, though,

1 right?

2   MR. LEE: Objection, mischaracterizes

3 testimony.

4   THE WITNESS: I hear what you're saying, but

5 I know they were and that's the truth from me, but

6 it's not proof to you.

7 BY MR. FRANZINI:

8   Q. We don't have any evidence that the scripts

9 were actually used except for your testimony, right?

10   A. That's correct.

11   Q. So the only evidence we have is the

12 description that you authored on the Knowledge

13 Assembly product description web page, right?

14   MR. LEE: Objection, mischaracterizes the

15 evidence.

16   THE WITNESS: That's -- is that the only

17 evidence that we have? No, I don't think that's the

18 only evidence we have.

19 BY MR. FRANZINI:

20   Q. In your report you cite the patent

21 applications, you cite snapshots of the Knowledge

22 Assembly web site and you cite three e-mails, right?

23   A. Right.

24   Q. And that's the only evidence you cite,

25 correct?

1   A.   Yes.

2   Q.   The patent application doesn't show that --

3 withdrawn.

4   The patent application doesn't tell us

5 anything about how the Knowledge Assembly system

6 actually worked, correct?

7   A.   I understand the logic that you're using

8 here, but clearly the patent application included the

9 scripts.

10   If you don't accept that, clearly you're not,

11 then there isn't -- there isn't proof.

12   Q.   Well, sir, you can't show me any proof those

13 scripts actually were used, right?

14   A.   I can't.

15   Q.   The only evidence -- withdrawn.

16   We established before that the e-mails don't

17 provide any evidence about the operation of the

18 Knowledge Assembly system, right?

19   MR. LEE: Objection, mischaracterizes

20 testimony.

21   THE WITNESS: That's correct.

22 BY MR. FRANZINI:

23   Q.   And the -- the only evidence we have about

24 how the system actually worked is the snapshots from

25 the WayBack machine, right?

1   MR. LEE: Objection, mischaracterizes the

2 evidence.

3   THE WITNESS: Yes, given your logic, it's --

4 that's correct.

5 BY MR. FRANZINI:

6   Q. And that evidence suggests that the

7 converting from a video file to streaming video format

8 was done at the computer of the knowledge provider,

9 not the Knowledge Assembly server, correct?

10   MR. LEE: Objection, mischaracterizes the

11 evidence.

12   THE WITNESS: That -- this description

13 describes it that way, yes.

14 BY MR. FRANZINI:

15   Q. And --

16   A. But there were other embodiments of the

17 application.

18   Q. None that were produced in this case, though,

19 right?

20   A. None that are produced other than I believe

21 in the scripts.

22   Q. Which we don't have evidence were actually

23 used, right?

24   A. Correct.

25   Q. Okay. So on top of that -- withdrawn.

1   In addition, you don't have any independent

2   recollection about whether -- withdrawn.

3   As you testified before, you don't have any

4   independent recollection about whether the conversion

5   took place at the computer of the knowledge provider

6   or the computer of the Knowledge Assembly server,

7   correct?

8   MR. LEE: Objection, form, mischaracterizes

9   testimony.

10   THE WITNESS: We had it in both -- operating

11 in both modes at different times.

12 BY MR. FRANZINI:

13   Q. You don't recall whether the -- -- withdrawn.

14   You don't recall whether the beta of the

15 Knowledge Assembly system that was tested by your

16 colleagues performed conversion at the server or at

17 the computer of the user, correct?

18   A. I can't recall where the encoding was done.

19   Q. In addition --

20   A. For the beta.

21   Q. In addition, you can't recall whether for the

22 beta the uploading was done via a web page or whether

23 it was done via the KnowledgeCapture software on the

24 knowledge provider's computer, correct?

25   A. For the beta, that's correct.

1   Q. When you were talking about the embodiment of

2 the Knowledge Assembly system that performed each of

3 the limitations of the '608 patent, you were talking

4 about the beta, right?

5   A. I was talking primarily about the description

6 in the patent application.

7   Q. Well, at the beginning of the day, we went

8 through that and you testified that it was your

9 opinion that the actual embodiment of the Knowledge

10 Assembly system practiced each of the limitations of

11 claim 1.

12   Do you remember that?

13   A. Yes.

14   MR. LEE: Objection, form, mischaracterizes

15 testimony.

16 BY MR. FRANZINI:

17   Q. That testimony was based on the beta, right?

18   A. No.

19   Q. That testimony was based on the embodiment of

20 the Knowledge Assembly system that existed as of

21 October 5th of 1998, correct?

22   A. The -- the patent application existed before,

23 it was done months before the beta.

24   Q. Well, earlier today you testified you wanted

25 to develop a working system before you filed your

1 patent application, right?

2   A. Correct.

3   Q. So is that inconsistent with what you just

4 said now?

5   A. No, but I know that when we submitted the

6 patent application, it took some time for it to get

7 filed.

8   Q. By December 30th of 1998, there was a beta,

9 right?

10   A. Or close to.

11   Q. You started getting feedback at least as

12 early as December 30 of 1998?

13   A. Yes.

14   Q. And when you were talking about the

15 embodiment of the Knowledge Assembly system in your

16 report, you were talking about the one that existed as

17 of October 5th of 1998?

18   A. I think that the embodiment that's described

19 in the application is a description -- represents a

20 description that existed early on and we created the

21 initial system with that -- with that -- with those

22 scripts.

23   Q. The patent application describes many

24 different embodiments, right?

25   A. It does.

1   Q.   And only some of them were actually used in

2   the Knowledge Assembly server, right?

3   A.   That's correct.

4   Q.   Just because something is included in the

5   patent application doesn't mean that the Knowledge

6   Assembly system performed that step, right?

7   A.   That's correct, but there are certain

8   functions without which you wouldn't have our system

9   working, one of which is transmitting to a server and

10   having identification tags and transmitting to an

11   affinity group and so forth.

12   Q.   You don't -- withdrawn.

13   In order for the Knowledge Assembly system to

14   work it's not necessary to receive a video file via a

15   web page, right?

16   A.   For the server to receive via a web page?

17   Q.   Correct.

18   A.   No.

19   Q.   For the Knowledge Assembly system to work,

20   it's not necessary for a video file to be converted to

21   streaming video format at the server, right?

22   A.   That's correct.

23   Q.   When you testified this morning that the

24   Knowledge Assembly system performed each of the

25   limitations of claim 1 of the '608 patent, because

1 each of those limitations were necessary for the

2 Knowledge Assembly system to work, that testimony was

3 false, right?

4   MR. LEE: Objection, argumentative.

5   THE WITNESS: To repeat that.

6 BY MR. FRANZINI:

7   Q. When you testified this morning that you knew

8 that the Knowledge Assembly system performed each of

9 the limitations of claim 1 of the '608 patent because

10 each of those limitations were necessary for the

11 Knowledge Assembly system to work, that testimony was

12 false, right?

13   MR. LEE: Objection, mischaracterizes

14 testimony, argumentative.

15   THE WITNESS: I wasn't giving false

16 testimony.

17   Let me ask you to repeat it.

18 BY MR. FRANZINI:

19   Q. This morning you stated that in your opinion

20 claim 1 -- withdrawn.

21   This morning you stated that in your opinion

22 the Knowledge Assembly system actually performed each

23 of the limitations of claim 1 of the '608 patent

24 except thumbnails because each of those limitations

25 were necessary for the Knowledge Assembly system to

1   work.

2   Do you recall giving that testimony?

3   A. I do.

4   MR. LEE: Same objection.

5   BY MR. FRANZINI:

6   Q. When you gave that testimony, the statements

7   you made were not true, correct?

8   MR. LEE: Same objection.

9   THE WITNESS: Let me just review the -- I

10   have felt that that was true.

11   So you interpret this to mean that the

12   encoding needs to occur on the receiving -- the

13   server; is that your contention?

14   BY MR. FRANZINI:

15   Q. Well, sir, we talked about this this morning,

16   we went through the claim and we talked about how the

17   claim says executing by the receiving computer and you

18   told me this morning that the receiving computer was

19   the server side component.

20   Do you recall that?

21   A. Right, as described in the patent

22   application, correct, as originally conceived.

23   Q. Sir, this morning, we went through claim 1 of

24   the '608 patent.

25   You testified that the step of converting the

1 video file in a streaming video format -- withdrawn.

2   You testified that converting the video file

3 into a streaming video file comprising a streaming

4 video format had to take place at the receiving

5 computer which is the server, correct?

6   MR. LEE: Objection, form, mischaracterizes

7 testimony.

8   THE WITNESS: Yeah, I don't think I said

9 that.

10 BY MR. FRANZINI:

11   Q. Well, sir --

12   A. Well, I'm a little unclear on what we went

13 through, but the issue of converting -- first of all,

14 I'm not sure that this says that the conversion needs

15 to occur on the computer server -- I'm sorry, yes, the

16 encoding needs to occur on the server.

17   Does it say that?

18   Q. Well, the claim says "executing, by the

19 receiving computer server, in response to receiving

20 the video file, an automated function automatically

21 performing each of," and lists three limitations,

22 (b1), (b2) and (b3).

23   Do you see that?

24   A. Yes.

25   Q. This morning you agreed with me that means

1   that the executing of the automated function needs to

2   be done by the receiving computer server, correct?

3   MR. LEE: Objection, mischaracterizes

4   testimony.

5   THE WITNESS: Yes, well, clearly, I felt that

6   in one embodiment or another of what was described of

7   the Knowledge Assembly system in our application would

8   require the employment of each of these functions.

9   BY MR. FRANZINI:

10   Q. Sir, do you remember this morning when I

11 asked you if it was your testimony that the actual

12 embodiment of the Knowledge Assembly server practiced

13 each limitation of claim 1 except for the thumbnails?

14   A. Yes.

15   Q. And you said that your opinion was that it

16 did practice each limitation, correct?

17   A. Right.

18   MR. LEE: Objection, mischaracterizes

19 testimony.

20 BY MR. FRANZINI:

21   Q. You also said the reason for that was that

22 each limitation of claim 1 of the '608 patent was

23 necessary for the knowledge provider system to work.

24   Do you recall that?

25   MR. LEE: Same objection.

1   THE WITNESS: I do.

2   BY MR. FRANZINI:

3   Q. That testimony was false, right?

4   MR. LEE: Objection, argumentative.

5   THE WITNESS: You have pointed out ways in

6   which those functions are not essential for the -- for

7   Knowledge Assembly system.

8   BY MR. FRANZINI:

9   Q. Sir, when you testified this morning that the

10   Knowledge Assembly system embodiment actually

11   practiced each limitation of claim 1 of the '608

12   patent except for thumbnails because each limitation

13   was necessary to practice in the system, that

14   testimony was false, correct?

15   MR. LEE: Objection, mischaracterizes

16   testimony, argumentative.

17   THE WITNESS: I think that it was -- it was

18   incorrect as you've pointed out in -- in some way or

19   another.

20   BY MR. FRANZINI:

21   Q. Well, the statements you made this morning

22   were false, right?

23   MR. LEE: Objection, argumentative.

24   THE WITNESS: I think that false implies that

25   I was intending to mislead.

1 BY MR. FRANZINI:

2   Q. The statements were not true, were they?

3   A. They were incorrect from the standpoint --

4 from the perspective that you have promoted.

5   Q. Well, you made the statements, right?

6   A. I believed the statements at the time. You

7 have pointed out some inconsistencies that have caused

8 me to consider otherwise.

9   Q. Now you know them to be false, right?

10   MR. LEE: Objection, argumentative.

11   Also asked and answered.

12   THE WITNESS: I responded to this question

13 several times.

14 BY MR. FRANZINI:

15   Q. I'd still like an answer.

16   A. I've given you answers.

17   Q. Sir, when you testified this morning that the

18 Knowledge Assembly system embodiment actually

19 practiced each limitation of claim 1 of the '608

20 patent except for thumbnails, the statements you made

21 were not true, correct?

22   MR. LEE: Objection, mischaracterizes

23 testimony, argumentative, asked and answered multiple

24 times.

25 BY MR. FRANZINI:

1   Q.   Are you refusing to answer my question, sir?

2   A.   I feel I've already answered your question.

3   Q.   Sir, when you --

4   A.   I don't want to answer your question again

5 with the same answer.

6   Q.   Sir, when you testified this morning that the

7 Knowledge Assembly system embodiment actually

8 practiced each limitation of claim 1 of the '608

9 patent except thumbnails, that testimony was false,

10 correct?

11   MR. LEE: Objection, mischaracterizes

12 testimony, argumentative.

13   Counsel, he has answered this question

14 multiple times already today.

15   Can we just move on?

16   MR. FRANZINI: Keep your commentary off the

17 record.

18   THE WITNESS: Go over it again.

19 BY MR. FRANZINI:

20   Q.   When you --

21   A.   No, I mean let's look at claim 1.

22   Q.   No, sir, I'm talking about your testimony

23 this morning.

24   When you testified this morning that the

25 Knowledge Assembly system practiced each limitation of

1   claim 1 of the '608 patent except thumbnails, that

2   testimony was false, correct?

3   MR. LEE: Objection, mischaracterizes

4   testimony, argumentative, asked and answered again and

5   again.

6   THE WITNESS: Why don't you go ahead and

7   explain to me why -- we will go through claim 1 again

8   and you can explain to me where it's -- where the

9   Knowledge Assembly system has failed to meet the --

10 to, what is it, cover the claim 1.

11 BY MR. FRANZINI:

12   Q. Just five minutes ago, sir, do you remember

13 testifying that the Knowledge Assembly server --

14 withdrawn.

15   This morning you testified that the Knowledge

16 Assembly system practiced each limitation of claim 1

17 of the '608 patent except thumbnails because doing so

18 was necessary for the Knowledge Assembly system to

19 work.

20   Do you remember testifying to that five

21 minutes ago?

22   MR. LEE: Objection, mischaracterizes

23 testimony, argumentative.

24 BY MR. FRANZINI:

25   Q. Do you remember saying that, sir?

1   A.   I felt and feel that the embodiment of the --

2 an embodiment of the Knowledge Assembly system as

3 described in the application, the preliminary

4 application, requires the uploading of a video file to

5 a server, conversion of that video file into a

6 streaming format, the attaching of certain identifying

7 information and streaming that -- those video files

8 according to a certain algorithm and that is -- that

9 is why I felt that the Knowledge Assembly system

10 embodied or, what is the term -- the term covered the

11 claim that comes to me, I'm not sure, but -- so that's

12 the basis for my saying that it covered claim 1.

13   Q.   Sir, are you trying to evade my questions?

14   MR. LEE: Objection, argumentative.

15   THE WITNESS: I'm trying to avoid

16 mischaracterization of what I said this morning.

17 BY MR. FRANZINI:

18   Q.   This morning, I drew a distinction between

19 the Knowledge Assembly system embodiment and the

20 patent application and I asked you questions about the

21 Knowledge Assembly embodiment, not the patent

22 application.

23   And the court reporter was writing down

24 everything you said at the time.

25   Do you recall that conversation we had this

1 morning?

2   MR. LEE: Objection, argumentative.

3 BY MR. FRANZINI:

4   Q. I need an answer to my question.

5   A. Repeat the question.

6   Q. Do you recall this morning when you testified

7 that the Knowledge Assembly system embodiment, not the

8 patent application, performed each limitation of claim

9 1 of the '608 patent except thumbnails and that doing

10 so was necessary for the Knowledge Assembly system to

11 work, do you remember saying that?

12   MR. LEE: Objection, form, mischaracterizes

13 testimony, asked and answered.

14 BY MR. FRANZINI:

15   Q. Are you going to answer my question, sir?

16   A. Ask it again.

17   Q. Do you remember this morning you testified

18 that the Knowledge Assembly system embodiment, not the

19 patent application, the system embodiment performed

20 each limitation of claim 1 of the '608 patent except

21 for thumbnails and that doing so was necessary for the

22 Knowledge Assembly system to work, do you remember

23 saying that?

24   MR. LEE: Objection, form, mischaracterizes

25 testimony, asked and answered.

1   BY MR. FRANZINI:

2   Q.   Sir, I'm not asking about the patent.

3   I'm asking about what you said this morning.

4   Are you going to answer my question?

5   A.   I think I already have.

6   Q.   This morning, you testified that the

7   Knowledge Assembly system, the embodiment, not the

8   patent application, performed each limitation of claim

9   1 of the '608 patent except thumbnails and that doing

10   so was necessary for the system to work, correct?

11   MR. LEE: Objection, form, mischaracterizes

12   testimony, asked and answered.

13   BY MR. FRANZINI:

14   Q.   I need an answer to my question.

15   I'm going to get more time on the record if

16   you keep wasting my time by taking long pauses.

17   Withdrawn.

18   Sir, this morning, you testified that the

19   Knowledge Assembly system, the embodiment, not the

20   patent application, performed each limitation of claim

21   1 of the '608 patent except thumbnails and that doing

22   so was necessary for the Knowledge Assembly system to

23   work, correct?

24   MR. LEE: Objection, form, mischaracterizes

25   testimony, asked and answered.

1   THE WITNESS: Yes, I remember saying that.

2   BY MR. FRANZINI:

3   Q. And that statement was a false statement,

4   right?

5   MR. LEE: Objection, argumentative,

6   mischaracterizes testimony.

7   THE WITNESS: And I have responded to that

8   question before.

9   BY MR. FRANZINI:

10   Q. Still need an answer.

11   A. I feel like I've answered it.

12   Q. Still need an answer.

13   Sir, the statements you made were false,

14   right?

15   MR. LEE: Objection, argumentative,

16   mischaracterizes testimony.

17   THE WITNESS: I don't feel as though I gave

18   false testimony.

19   BY MR. FRANZINI:

20   Q. But the statements you made were untrue,

21   right?

22   A. Incorrect.

23   Q. Untrue?

24   A. From this -- from a perspective.

25   Q. They were untrue, right?

1   A.   Pardon me?

2   Q.   They were untrue, right?

3   MR. LEE: Objection, argumentative.

4   THE WITNESS: I don't know that I need to

5   respond to the way that you're casting it.

6   BY MR. FRANZINI:

7   Q.   I'm entitled to an answer to my question.

8   The statements you made this morning were

9   untrue, correct?

10   MR. LEE: Objection, mischaracterizes

11   testimony, argumentative, asked and answered and if

12   the witness wants to stand by his answer, he can.

13   MR. FRANZINI: But you can't make comments on

14   the record anymore.

15   BY MR. FRANZINI:

16   Q.   Sir, the statements you made this morning

17   were untrue, right?

18   MR. LEE: Objection, mischaracterizes

19   testimony, argumentative, asked and answered.

20   THE WITNESS: Okay. So let's go back.

21   What's untrue about it?

22   BY MR. FRANZINI:

23   Q.   Sir, you just testified they were incorrect,

24   right?

25   MR. LEE: Objection, mischaracterizes

1 testimony.

2   THE WITNESS: Let's go back over the whole

3 thing.

4 BY MR. FRANZINI:

5   Q. Let's not.

6   A. Then, I'm not --

7   Q. Sir, you just testified that the statements

8 you made this morning were incorrect.

9   What did you mean by that?

10   MR. LEE: Objection, mischaracterizes

11 testimony, argumentative.

12   THE WITNESS: In the context that you've --

13 that you've created, it -- it recasts one's thinking,

14 certainly my thinking about claim 1.

15 BY MR. FRANZINI:

16   Q. In the context of the truth, the Knowledge

17 Assembly system does not have to provide -- to perform

18 each limitation of claim 1 of the '608 patent in order

19 to work, right?

20   MR. LEE: Objection, form, argumentative.

21   THE WITNESS: Let's go over it again.

22   I mean explain to me the ways in which

23 it's -- it does not -- these functions are not

24 required by Knowledge Assembly.

25 BY MR. FRANZINI:

1   Q.   Sir, are you trying to evade my question and

2   waste my time?

3   A.   No, I feel as though I answered your

4   question.

5   Q.   So you just testified five minutes ago that

6   this morning you said that the embodiment of Knowledge

7   Assembly system performed each limitation of claim 1

8   except thumbnails and that you knew that to be true

9   because it was necessary for the Knowledge Assembly

10 system to work?

11   MR. LEE: Objection, form, mischaracterizes

12 testimony, argumentative, asked and answered.

13 BY MR. FRANZINI:

14   Q.   You also testified that that's not the case,

15 right?

16   MR. LEE: Same objection.

17   THE WITNESS: There are ways to -- I'm not

18 sure how to phrase this, but it feels to me that there

19 are ways in which you could have an embodiment of the

20 Knowledge Assembly software that does not respond to

21 all of the limitations in claim 1.

22 BY MR. FRANZINI:

23   Q.   In fact, you yourself created an embodiment

24 of the Knowledge Assembly system that did not perform

25 the limitations of claim 1, right?

1   MR. LEE: Objection, form.

2   THE WITNESS: Let me see.

3   So which embodiment and what elements of the

4   claim?

5   BY MR. FRANZINI:

6   Q. Sir, it's possible for the Knowledge Assembly

7   system to work by receiving a video file via the

8   KnowledgeCapture software on the knowledge provider's

9   device, not via a web page, right?

10   A. It's possible to receive a video file from

11   the KnowledgeCapture in the embodiment of the

12   KnowledgeCapture software, not from a web page but

13   from that computer.

14   So --

15   Q. It's also possible for the Knowledge Assembly

16   system to work in an embodiment where the converting

17   of a video file into streaming video format took place

18   on the computer of the knowledge provider, not the

19   Knowledge Assembly server, correct?

20   MR. LEE: Objection, form, calls for

21   speculation.

22   THE WITNESS: That's correct.

23   BY MR. FRANZINI:

24   Q. So when you testified that performing each of

25   the limitations of claim 1 of the '608 patent except

1 thumbnails was necessary for the knowledge provider

2 system to work -- withdrawn.

3   When you testified that performing each

4 limitation of claim 1 of the '608 patent except

5 thumbnails was necessary for the Knowledge Assembly

6 system to work, that testimony was false, right?

7   MR. LEE: Objection, form, mischaracterizes

8 testimony, argumentative, asked and answered.

9   THE WITNESS: Yeah, so I didn't feel as

10 though -- well, I think that that testimony was

11 inaccurate, that there are embodiments that would not

12 require all the elements of claim 1.

13   My -- so I believed at the time it was the

14 case that we had covered by our description of the

15 application since we had uncovered -- we had covered

16 and described embodiments that required all of this,

17 that I could respond yes to that statement, yes, that

18 it required all the items in claim 1.

19 BY MR. FRANZINI:

20   Q. But, in fact, it didn't require all of the

21 limitations of claim 1, right?

22   MR. LEE: Objection, argumentative.

23   THE WITNESS: There is an embodiment of the

24 Knowledge Assembly system that does not require all of

25 the -- all of claim 1.

1 BY MR. FRANZINI:

2   Q. When you said that you knew the Knowledge

3 Assembly system performed each limitation of claim 1

4 except thumbnails because each limitation was

5 necessary for the Knowledge Assembly system to work,

6 that statement was not true, right?

7   MR. LEE: Objection, form, mischaracterizes

8 testimony, argumentative and asked and answered.

9   THE WITNESS: It was not accurate to the

10 extent that there are embodiments of the Knowledge

11 Assembly system that do not require all of the items

12 in claim 1.

13 BY MR. FRANZINI:

14   Q. Now, you understand that in evaluating an

15 expert's testimony the jury has to consider that

16 expert's credibility?

17   MR. LEE: Objection, form, calls for a legal

18 conclusion.

19   THE WITNESS: That makes sense to me.

20 BY MR. FRANZINI:

21   Q. In looking -- withdrawn.

22   It would be reasonable for the jury to

23 conclude they shouldn't listen to anything you say

24 given you gave false testimony this morning, right?

25   MR. LEE: Objection, calls for speculation,

1 calls for a legal conclusion, argumentative.

2   THE WITNESS: I am not -- I'm not saying I

3 gave false testimony this morning.

4   I think -- is false testimony not a legal

5 definition?

6 BY MR. FRANZINI:

7   Q. No, it just means false testimony. You

8 understand what false testimony is?

9   A. I don't.

10   Q. Did you make a statement that wasn't true on

11 the record today?

12   A. I was mistaken in my -- in my understanding

13 of the implications of claim 1 and we weren't really

14 dealing with the Knowledge Producer software.

15   Q. We were expressly dealing with the Knowledge

16 Assembly embodiment and not the patent application,

17 right?

18   A. As the embodiment of -- from the patent

19 application.

20   Q. No, sir, we were talking about the exact

21 opposite, right? That's what the record is going to

22 show.

23   A. I'm not following you.

24   Q. Sir, you think it would be reasonable for the

25 jury to conclude since you were wrong about some of

1 your sworn testimony earlier today you might be wrong

2 about other things you say as well?

3   MR. LEE: Objection, calls for speculation,

4 calls for a legal conclusion, argumentative.

5   THE WITNESS: I can't say.

6 BY MR. FRANZINI:

7   Q. Well, it certainly would be reasonable if the

8 jury finds out you were wrong about the sworn

9 testimony you gave this morning you might be wrong

10 about other testimony you give at trial, too, right?

11   MR. LEE: Objection, calls for speculation,

12 calls for a legal conclusion, argumentative.

13   THE WITNESS: Now, so when there's an

14 objection to the question, I still have to answer it?

15 BY MR. FRANZINI:

16   Q. Yes. Sir, would it be reasonable for the

17 jury to conclude that because you gave sworn testimony

18 this morning that turned out to be incorrect that your

19 testimony on other topics might be incorrect as well?

20   MR. LEE: Objection, mischaracterizes

21 testimony, calls for speculation, calls for a legal

22 conclusion, argumentative.

23   THE WITNESS: Being inaccurate on one element

24 of the testimony would call into -- tend to call into

25 question other elements of testimony.

1   BY MR. FRANZINI:

2   Q. It would be reasonable for the jury to decide

3   that they should completely disregard your testimony,

4   right?

5   MR. LEE: Objection, calls for speculation,

6   calls for a legal conclusion, argumentative.

7   THE WITNESS: I don't think so.

8   BY MR. FRANZINI:

9   Q. Certainly reasonable, right?

10   MR. LEE: Same objection.

11   THE WITNESS: I don't think so.

12   BY MR. FRANZINI:

13   Q. Well, they -- withdrawn.

14   MR. LEE: Simon, I think we've been going for

15   over an hour now.

16   BY MR. FRANZINI:

17   Q. Well, it would be reasonable for the jury to

18   think if a witness gave incorrect testimony in one

19   instance, he might give incorrect testimony again,

20   right?

21   MR. LEE: Objection, calls for speculation,

22   calls for a legal conclusion, argumentative.

23   THE WITNESS: I've said that I thought that

24   was -- that was the case, that being inaccurate in one

25   case would call into question other testimony.

1   BY MR. FRANZINI:

2   Q. So it would be reasonable for the jury to

3   call into question your testimony at trial, right?

4   MR. LEE: Objection, calls for speculation,

5   calls for a legal conclusion, argumentative.

6   THE WITNESS: I don't think so.

7   BY MR. FRANZINI:

8   Q. Well, if the jury is thinking about which

9   expert should I believe, one expert always gives

10 accurate testimony, the other one sometimes gives

11 inaccurate testimony, it would be reasonable for the

12 jury to believe the expert that always gives accurate

13 testimony, right?

14   MR. LEE: Objection, calls for speculation,

15 calls for a legal conclusion, argumentative.

16   THE WITNESS: I don't feel as though what

17 you've done here today so far is -- undermines my

18 testimony or should undermine my testimony before the

19 jury.

20 BY MR. FRANZINI:

21   Q. Sir, it would be reasonable for the jury to

22 conclude that an expert who always gives accurate

23 testimony is more believable than one who sometimes

24 gives inaccurate testimony, right?

25   MR. LEE: Objection, calls for speculation,

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1 calls for a legal conclusion, argumentative, asked and

2 answered.

3   THE WITNESS: That's reasonable in general,

4 yes.

5   MR. FRANZINI: Take a break.

6   THE VIDEOGRAPHER: Time is 3:01 and we are

7 off the record.

8   (Recess taken.)

9   THE VIDEOGRAPHER: The time is 3:11 and we

10 are on the record.

11 BY MR. FRANZINI:

12   Q. Sir, please turn to paragraph 25 of your

13 report.

14   Paragraphs 25 through 29 are the paragraphs

15 that talk about generating an identification tag

16 representing the subject matter of the streaming video

17 and identifying the streaming video and embedding the

18 tag in a web page?

19   A. Right.

20   Q. Now, please take out Exhibit 5, the '608

21 patent, and please turn to claim 1.

22   So the limitations you're talking about in

23 paragraphs 25 to 29 of your report are subelements

24 (b2) and (b3)?

25   A. Yes.

1   Q.   See how above the patent says executing by

2 the receiving computer in response to receiving the

3 video file and automated function automatically

4 performing each of and lists elements (b1), (b2),

5 (b3)?

6   A.   Right.

7   Q.   The '608 patent requires the receiving

8 computer, the server side computer, executes an

9 automated function automatically performing each of

10 elements (b1), (b2), (b3)?

11   A.   Right.

12   Q.   In your opinion, the Knowledge Assembly

13 patent application disclosed the receiving computer

14 automatically generating an identification tag

15 representing the subject matter of the streaming

16 video?

17   A.   Right.

18   Q.   What are you identifying as the

19 identification tag?

20   A.   Well, if you look at my report and 29 on page

21 14, the clips are identified and the information

22 that's provided for each clip is -- difficult to read,

23 but it -- the information there is the identifying

24 information for a particular clip, who it's from and

25 what the general subject matter is and the time.

1   Q.   So in your opinion, the identification tag

2   cited in claim 1 of the '608 patent is met by the

3   information shown in paragraph 29 such as the name,

4   the video title, subject and the date?

5   A.   No, I think that in the script are other

6   identifiers identifying the clip itself to the system.

7   Q.   Where in your report are you providing that

8   opinion?

9   A.   Which opinion, that it's --

10   Q.   You just said in your opinion the

11 identification tag is an identifier in the script?

12   A.   I believe that certainly a discrete

13 identification is what's achieved by associating the

14 name and the time and the subject with a particular

15 clip, but then, in addition to that, my understanding

16 is that there are ways of identifying a particular

17 clip in the script for the purpose of moving it about

18 and performing certain functions on it on an automatic

19 basis.

20   Q.   Claim 1 of the '608 patent recites an

21 identification tag -- withdrawn.

22   Claim 1 of the '608 patent recites --

23 withdrawn.

24   Claim 1 of the '608 patent recites an

25 identification tag, right?

1   A.   Yes, generating an identification tag.

2   Q.   Okay.   Now, in your opinion, an

3   identification tag is disclosed in the -- in your

4   patent application?

5   A.   I believe it is.

6   Q.   What exactly in your patent application are

7   you saying meets the requirements of an identification

8   tag?

9   A.   Well, I'm reading -- just read paragraph 5

10   which introduces the subject and then paragraph 26.

11   So in the patent application, let's see -- so

12   this is from the patent application, in 26, the quote,

13   "The resulting ASF file is placed in a directory

14   appropriate to the asynchronous video form.   A file

15   called DATA.TXT in that same directory is updated with

16   the original information from the original form," and

17   so forth.

18   So that's from the script.

19   Q.   Let's take a step back.

20   Is it your opinion that the Knowledge

21   Assembly patent application discloses each limitation

22   of claim 1 of the '608 patent except for thumbnails?

23   A.   It discloses it in one embodiment or another.

24   Q.   So in the -- withdrawn.

25   Is it your testimony that in the -- in your

1 patent application, there is a disclosure of each

2 limitation of claim 1 of the '608 patent except for an

3 identification tag that includes a video frame image

4 representing the subject matter of the video file?

5   A. I'm sorry, I'm confused. You need to repeat

6 that.

7   Q. Well, you acknowledge that your patent

8 application does not include -- withdrawn.

9   You acknowledge that your patent application

10 does not disclose generating an identification tag

11 comprising a video frame image representing a subject

12 matter of the video file, correct?

13   A. Right.

14   MR. LEE: Objection, mischaracterizes

15 testimony.

16 BY MR. FRANZINI:

17   Q. The -- but you do think that your patent

18 application -- withdrawn.

19   It is your opinion that the patent

20 application discloses generating an identification tag

21 representing the subject matter of the video file,

22 right?

23   A. Right.

24   Q. And it's also your opinion that the patent

25 application discloses each one of the other elements

1   of claim 1, right?

2   A.   This is what we've been discussing, yes, the

3   patent application, one embodiment or another, covers

4   all of the elements in claim 1.

5   Q.   In your opinion, there's a disclosure in the

6   patent application of an identification tag

7   representing a subject matter of the streaming video

8   file and identifying the streaming video file?

9   A.   Correct.

10   Q.   Please tell me what it is in the patent

11 application that you believe meets that requirement.

12   A.   Let me see.

13   The -- in the '042 application, page 14, 17

14 through 21.

15   Q.   So what within that paragraph cited in your

16 report is the identification tag, in your opinion?

17   A.   The tag I see as a name for the -- a

18 collective name for the information regarding the

19 particular video, identifying the particular video.

20   Q.   What information is that?

21   A.   I think that it includes, as I was saying

22 before, the information that goes to describing the

23 clip to the end user.

24   Q.   Okay. Anything else?

25   A.   Let me see. There is, I believe, also a

1 technical component which identifies the clip for the

2 purpose of moving about the system and performing

3 operations on it.

4   Q. Is that described in this paragraph you cite?

5   A. Not in that paragraph.

6   Q. Okay. Does it describe it anywhere else in

7 your report?

8   A. Let me just take a look here. The getvid

9 application.

10   Q. Is it your testimony that the getvid

11 application meets the requirements of an

12 identification tag?

13   A. I'm seeing the identification tag as

14 including the information regarding the -- as any

15 descriptor of an individual video clip and that would

16 include information about who the user is that's

17 created it and the time and the subject matter, right.

18   Q. I want to understand what exactly it is that

19 you think is the identification tag and what you've

20 said is the information about the user name, video

21 title, subject and date?

22   A. Right.

23   Q. Is there anything else?

24   A. I believe that it's given a unique tag or

25 descriptor for purposes of it moving about the system.

1   Let me review getvid.

2   Can I review this?

3   Q.   Where are you looking?

4   A.   23, the getvid, description of the getvid.pl.

5   Q.   That's talking about automatically converting

6 or not -- receiving a video file, right?

7   A.   That's correct. I think it's at that point

8 the unique descriptor is given.

9   Q.   Okay.

10   A.   So it determines the local name it will use

11 for the file as a character stream -- string, which is

12 the current date and time and a hex string, produces

13 an HTML form with the asynchronous video form

14 identifier and file identifier, has hidden inputs and

15 fields for the user, the provider's name, the title

16 and other identifying information on the video clip

17 and the name of the file on the sender's system to be

18 transferred.

19   Q.   In your opinion, the hex string described in

20 paragraph 23 of your report meets the requirements of

21 an identification tag?

22   A.   I think that the description information --

23 let's see.

24   Well, let's see, it appears that this is --

25 the getvid.pl is a script for use on the web site.

1   Q.   Sir, is the hex string you identify in

2 paragraph 23 of your report what you say is the

3 identification tag in the patent application?

4   A.   It's part of the unique information that's

5 associated with the -- with the particular video.

6   Q.   Is it part of the identification tag?

7   A.   Yes.

8   Q.   Is there anything else that's part of the

9 identification tag?

10   A.   Well, the information regarding the user and

11 the time and the description of the content.

12   Q.   Anything else?

13   A.   That's it as far as I know.

14   Q.   So in your opinion, an identification tag

15 limitation of claim 1 of the '608 patent is disclosed

16 in your patent application -- withdrawn.

17   You identify the combination of the hex

18 string discussed in paragraph 23 of your report and

19 the information regarding the user and the time and

20 the description of the content shown in paragraph 29

21 of your report as meeting the an identification tag

22 limitation of claim 1 of the '608 patent?

23   A.   I -- yes, my assumption is that those unique

24 identifiers and the unique descriptive content of a

25 particular video clip represents the video -- I mean

1 the identification tag.

2   Q. Is it your assumption or your opinion as an

3 expert that was hired in this case by Google to

4 provide opinions about the meaning of the patent?

5   A. It's my opinion.

6   Q. Okay. So your opinion as an expert in this

7 case is that the identification tag of claim 1 of the

8 '608 patent is met by the combination of the hex

9 string that's described in paragraph 23 of your report

10 and the information regarding the user and the time

11 and the description of the content shown in paragraph

12 29 of your report, correct?

13   A. So I was focused on the wrong paragraph and

14 focused on the receiving of the video file as the

15 point of which identifying information would be

16 gathered and it does refer to that information, but --

17 I would refer you to paragraph 25.

18   Q. Sir, did you -- is the analysis in paragraphs

19 22 through 29 of your report your analysis or is it

20 analysis that was provided to you by Google's lawyers?

21   MR. LEE: Objection, form.

22   THE WITNESS: It was not provided to me.

23 They certainly assisted in my -- in my creation of it.

24 BY MR. FRANZINI:

25   Q. Is it someone else's analysis that you just

1   adopted or is it your own analysis?

2   A.   Parts of it were more my analysis than

3   others.

4   Q.   What parts were your analysis?

5   A.   Well, certainly -- let me see.

6   Where I needed their help more was in,

7   obviously, the summary of facts and opinions.

8   Q.   I'm talking specifically about paragraphs 22

9   through 29.

10   Was any of that your analysis?

11   A.   Some of it, but this is the area where I

12   needed more help.

13   Q.   Is it fair to say it's Google's lawyers'

14   analysis that you just adopted?

15   MR. LEE: Objection, form, argumentative.

16   THE WITNESS: I think that's fair to say.

17   BY MR. FRANZINI:

18   Q.   Do you even understand what paragraphs 22

19   through 29 say?

20   A.   Parts of it certainly more than others.

21   Q.   Can you tell me what you identify as the

22   identification tag in your report?

23   A.   Can I tell --

24   Q.   Well, your report -- I can't tell based on

25   this report what you're saying is the identification

1 tag and it seems like you can't either; is that

2 correct?

3   A. Well, let's look. Well, I have, as I

4 mentioned to you, thought of the identification tag as

5 the information, the unique information describing a

6 video clip.

7   Q. So let's talk about that. What information

8 do you identify in your report as meeting the

9 identification tag?

10   A. Let's see. Seems like I've -- so the 25,

11 paragraph 25 it addresses this issue, the

12 identification tag and runs on --

13   Q. Sir, do you know what you identify as the

14 identification tag in your own expert report?

15   A. I can't point to one -- I have understood it

16 to mean the unique identifiers for a particular video.

17   Q. And you're not sure whether or not that's

18 what your report says?

19   A. I think that the report covers it by

20 describing the -- the managing of a particular clip

21 and the assignment of identifiers for being able to

22 manage that clip through the processes in the server.

23   Q. So what specific information are you --

24 withdrawn.

25   What specific information, in your opinion,

1 meets the requirements of an identification tag in

2 claim 1 of the '608 patent?

3   A.   Well, I can't -- I can't tell you.

4   Q.   So you provided testimony under oath saying

5 that your patent application discloses an

6 identification tag and you can't tell me what it is?

7   A.   That's -- I can't find it in my report here.

8 I just -- I understood it to be the -- what I've

9 described.

10   Q.   What you've described is a unique identifier,

11 but you haven't told me what that identifier is.

12   Do you know whether or not that's even

13 included in your patent application?

14   MR. FRANZINI: I'll note for the record all

15 these pauses are eating into my time and I'll ask for

16 more time with this witness.

17   MR. LEE: I'll note the witness is looking at

18 his report which he is entitled to do.

19   THE WITNESS: So I'm reading the report here

20 in 26.

21   Let me see, after receiving video, I'm

22 looking at 25, "After the received video is converted,

23 the Knowledge Assembly server generates an

24 identification tag representing the subject matter of

25 the streaming video and embeds the identification tag

1 into a web page for streaming the file to one or more

2 users. This is described in our provisional

3 application and several places. For example, the

4 streaming file (.ASF file) is placed in a directory

5 and a file called DATA.TXT is generated based on

6 information provided by the knowledge provider when

7 the video file was uploaded and the local name for the

8 file."

9 BY MR. FRANZINI:

10   Q. Well, sir, I asked you to tell me what in the

11 provisional application you believe meets the

12 requirements of an identification tag and what you've

13 done is read a portion of your report that doesn't

14 include that information.

15   Are you able to tell me -- withdrawn.

16   Are you able to tell me what in your patent

17 application meets the requirements of an

18 identification tag?

19   A. I don't -- I don't know what would be

20 considered specifically the identification tag in the

21 Knowledge Assembly system.

22   Q. Okay. You can't identify for me any

23 disclosure of an identification tag in your Knowledge

24 Assembly patent application, right?

25   A. So this describes the various ways in which

1 the application describes how information that's

2 unique to a video is managed by the system.

3   Q. Sir, can you show me a disclosure in the

4 patent application -- in your patent application of

5 something that meets the requirements of an

6 identification tag in claim 1 of the '608 patent?

7   A. I'm out of my depth and I can't identify a

8 specific identification tag.

9   Q. So you don't know whether there's anything in

10 the patent application --

11   MR. LEE: Sorry, I'm just curious if the

12 witness is getting tired or something right now.

13   MR. FRANZINI: I'm curious whether or not I

14 can finish my question, please.

15   MR. LEE: Sorry.

16 BY MR. FRANZINI:

17   Q. Sir, you don't know one way or the other

18 whether the Knowledge Assembly -- withdrawn.

19   You don't know one way or the other whether

20 the Knowledge Assembly patent applications include an

21 identification tag within the meaning of claim 1 of

22 the '608 patent?

23   MR. LEE: Objection, form, argumentative.

24   THE WITNESS: I cannot -- I can't identify it

25 in my report, a specific identification tag.

1 BY MR. FRANZINI:

2   Q. Sir, you don't know one way or the other

3 whether the patent application, your patent

4 application discloses an identification tag within the

5 meaning of claim 1 of the '608 patent, true?

6   MR. LEE: Objection, form, mischaracterizes

7 testimony, argumentative.

8 BY MR. FRANZINI:

9   Q. Sir, how many times have you read paragraphs

10 25 through 29 while we were sitting on the record?

11   MR. LEE: Objection, form.

12   THE WITNESS: So I -- I can't respond to your

13 question. I wish I knew more about it.

14 BY MR. FRANZINI:

15   Q. So you don't know one way or the other

16 whether the Knowledge Assembly patent application

17 discloses an identification tag within the meaning of

18 claim 1 of the '608 patent, right?

19   MR. LEE: Objection, mischaracterizes

20 testimony, argumentative.

21   THE WITNESS: I have thought of the

22 identification tag as the combined information that's

23 unique to a video.

24 BY MR. FRANZINI:

25   Q. Okay. You can't identify anything for me --

1 withdrawn.

2   You can't identify for me anything in your

3 patent application that discloses an identification

4 tag within the meaning of claim 1 of the '608 patent,

5 correct?

6   MR. LEE: Objection, asked and answered.

7   THE WITNESS: So perhaps I should go back to

8 the patent application.

9 BY MR. FRANZINI:

10   Q. Well, sir you didn't identify anything in

11 your report in paragraphs 25 through 29 that you can

12 show me to be an identification tag, right?

13   A. I could not.

14   MR. LEE: Are you needing a break?

15   THE WITNESS: I could use a break, yeah.

16   MR. FRANZINI: Okay. Let's take a break.

17   THE VIDEOGRAPHER: This marks the end of

18 volume 1 disk 3 in the deposition of Michael Keehan.

19   The time is 3:55 and we are off the record.

20   (Recess taken.)

21   THE VIDEOGRAPHER: This marks the beginning

22 of volume 1 disk 4 in the deposition of Michael

23 Keehan.

24   The time is 4:16 and we are on the record.

25 BY MR. FRANZINI:

1   Q.   Sir, did you have any conversations with

2   anyone during this break?

3   A.   Not of any substance, the conversation we

4   had.

5   Q.   Who did you speak with?

6   A.   I spoke with Pan -- he has consistently told

7   me to go slowly and tell the truth and that -- and

8   that's pretty much it.

9   Q.   Did you talk about any of the subject matter

10   of the testimony you gave today?

11   A.   No.

12   Q.   Did you talk about any testimony that you

13   might be giving going forward?

14   A.   No.

15   Q.   Anything about the case?

16   A.   No.

17   Q.   Before the break, you were not able to point

18   me to any disclosure of an identification tag meeting

19   the requirements of claim 1 of the '608 patent,

20   correct?

21   MR. LEE: Objection, form, mischaracterizes

22   testimony.

23   THE WITNESS: That's correct, I described to

24   you what I had interpreted as the unique information

25   for a video clip.

1 BY MR. FRANZINI:

2   Q. As far as you can tell, paragraphs 25 through

3 29 of your report don't identify any disclosure of an

4 identification tag meeting the requirements of claim 1

5 of the '608 patent except for the thumbnail, right?

6   A. I think it's in here. I just -- as I've said

7 before, I understood it to be something other than

8 what it is, apparently.

9   Q. Okay. So you mentioned in your opinion the

10 unique identifiers for video meet the requirements of

11 an identification tag, right?

12   A. Yes.

13   Q. Now, that would include the information shown

14 on paragraph 29 of your report such as the user name,

15 the video --

16   A. Right.

17   Q. -- and so forth?

18   A. Yes.

19   Q. Would it also include the clip ID described

20 at the top of page 13 of your report?

21   A. Yes.

22   Q. Okay. Is the clip ID the same as that hex

23 string we talked about earlier today?

24   A. I don't believe so.

25   Q. When we're looking at paragraph 23, you said

1 that the getvid script is what created a hex string?

2   A. Yes.

3   Q. The hex string is the thing that identifies

4 the video file in the system?

5   A. I don't believe that's the part of the tag,

6 the identification tag.

7   Q. So in your opinion, the hex ID described in

8 paragraph 23 of your report, that does not meet the

9 requirements of an identification tag within the

10 meaning of claim 1 of the '608 patent, right?

11   A. That's correct.

12   Q. Okay. However, the clip ID as well as the

13 information on paragraph 29 of your report, those meet

14 the requirements of an identification tag?

15   A. I believe so.

16   Q. Now, if it turns out that the clip ID is

17 actually the hex string, does that mean that the clip

18 ID does not meet the requirements of an identification

19 tag?

20   A. Give me that again.

21   Q. You testified that the hex string described

22 in paragraph 23, that does not meet the requirements

23 of an identification tag?

24   A. I'm not -- I don't -- I'm not a technical

25 person, as you may have figured out. So I don't know

1 what a hex string is.

2   Q. So you don't know whether it meets the

3 requirements of an identification tag within the

4 meaning of claim 1 of the '608 patent?

5   A. That's correct.

6   Q. Okay. You also don't know -- withdrawn.

7   What's a clip ID?

8   A. It is a unique identifier for a clip.

9   Q. Okay. And how do you know that?

10   A. It's obvious, as I've been saying, each clip

11 has to have a unique identifier.

12   Q. Okay. So the clip ID, the data and time,

13 title and subject and optionally a topic meet the

14 requirements of an identification tag in your opinion?

15   A. I -- yes, I have thought so.

16   Q. Okay. So is that the basis for your opinion

17 that you provided that the Knowledge Assembly patent

18 application discloses generating an identification

19 tag?

20   A. Yes.

21   Q. Now, before we looked at claim 1 of the '608

22 patent and we saw that the generating of the

23 identification tag has to be performed by the

24 receiving computer, right?

25   A. Uh-huh.

1   Q.   That's the server?

2   A.   Right.

3   Q.   Now, in your report, you say -- in paragraph

4   28, you say that the identification tag information

5   was based on information entered by the knowledge

6   provider when uploading the video file.

7   Do you see that?

8   A.   Yes.

9   Q.   And the paragraph you cite shows the user on

10 the user's computer is the one that provides or

11 generates the user name, video title, subject and the

12 date, right?

13   A.   Yes.

14   Q.   So the video title, subject, date and user

15 name, that's information that's generated at the

16 user's computer, not the Knowledge Assembly server,

17 right?

18   MR. LEE: Objection, form.

19   THE WITNESS: I think it depends on whether

20 they have the server -- I'm sorry, the knowledge

21 provider software or whether they're using a form

22 through a web page.

23 BY MR. FRANZINI:

24   Q.   Well, in either case, the information such as

25 the date and time, the title, subject and the user

1 name, that's information that's generated by the

2 knowledge provider on the knowledge provider's

3 computer whether in a web page or in an application

4 program, right?

5   A. Well, if you have the knowledge provider --

6 if you didn't have knowledge provider and you were

7 relating to the system through a web page, then you

8 wouldn't -- then you wouldn't have -- obviously

9 wouldn't have knowledge provider.

10   Q. Well --

11   A. You would be filling in the information on

12 the web page.

13   Q. And you would be generating that information

14 at your computer, right?

15   A. At your computer, right.

16   Q. That's the computer of the knowledge

17 provider, not the Knowledge Assembly server?

18   A. Correct.

19   Q. So generating that information cannot meet

20 the requirements of generating an identification tag

21 within the meaning of claim 1 of the '608 patent,

22 right?

23   A. I see what you mean.

24   Q. You agree with me?

25   A. Well, it's -- I have thought of the tag being

1 this -- all the unique identifiers and all of that

2 being transmitted to the server.

3   Q. So the disclosure that you point to as the

4 identification tag is actually information that's

5 generated at the knowledge provider's computer and

6 then sent to the server?

7   A. No. I see the server as identifying -- as

8 assigning unique identifier to the video clip once it

9 arrives at the server.

10   Q. The user name, the video title, subject and

11 the date, that's information that's generated by

12 the -- at the knowledge provider's computer, right?

13   A. It is.

14   Q. So generating that information cannot meet

15 the requirements of generating an identification tag,

16 right?

17   MR. LEE: Objection, form.

18   THE WITNESS: Do you mean by the server?

19 BY MR. FRANZINI:

20   Q. Generating the user name, the video title,

21 subject and the date, that doesn't meet the

22 requirements of generating an identification tag

23 within the meaning of claim 1 of the '608 patent,

24 right?

25   A. Because it's on the server.

1   Q.   Right.

2   A.   It would be on the server.

3   Yes, I think that's true, but if you were

4   loading through a web site, then you would be, in

5   effect, on the server.

6   Q.   If you're loading through a web site, you're

7   generating that information on your computer and your

8   computer is transmitting that information that's

9   already been generated to the server, right?

10   A.   Right.

11   Q.   Okay. So the act of generating the user

12   name, the video title, subject and the date, that's a

13   step that's performed at the computer of the knowledge

14   provider, not the computer of Knowledge Assembly

15   server, right?

16   A.   Okay.

17   Q.   Do you agree with that statement?

18   A.   I do.

19   Q.   So generating the user name, the video title,

20   subject and the date as is described in your patent

21   application cannot meet the requirements of generating

22   an identification tag within the meaning of claim 1 of

23   the '608 patent, correct?

24   MR. LEE: Objection, form.

25   THE WITNESS: That sounds correct to me.

1 BY MR. FRANZINI:

2   Q. What you point to as generating an

3 identification tag doesn't meet the requirements of

4 claim 1 of the '608 patent, right?

5   A. That -- that appears to be correct.

6   Q. So the statement in your report that says on

7 paragraph 25 after the receiving -- the received video

8 file is converted, the Knowledge Assembly server

9 generates an identification tag, that statement is

10 incorrect?

11   A. I feel out of my depth in this whole

12 consideration of identification of the information tag

13 and where it's generated, what form it takes, its

14 purpose specifically and even where it's generated are

15 all matters that I'm not clear on at this point.

16   Q. So would it be fair to say that the sentence

17 "After the received video file is converted, the

18 Knowledge Assembly server generates an identification

19 tag representing the subject matter of the streaming

20 video and embeds the identification tag into a web

21 page for streaming the video file to one or more

22 users" in paragraph 25 of your report, you're not sure

23 if that statement is true or not, right?

24   MR. LEE: Objection, form.

25   THE WITNESS: Before I said that, I would

1 feel the need to reread this and to study it and to

2 understand it better than I do now.

3 BY MR. FRANZINI:

4   Q. Well, sir, how many times have you read

5 paragraphs 25 through 29 today during this deposition

6 on the record?

7   MR. LEE: Objection, form.

8   THE WITNESS: I have looked at parts of it

9 several times. I haven't read it through in its

10 entirety and studied it to the extent that I

11 apparently need to in order to identify how it might

12 be interpreted as meeting the requirements of a tag.

13 BY MR. FRANZINI:

14   Q. Now, that study that you just mentioned you

15 would have to do, that's not something you did before

16 signing your report, right?

17   MR. LEE: Objection, form.

18   THE WITNESS: I was -- I was -- I have told

19 you what I interpret as the information tag and in my

20 understanding, it was covered by this report.

21   If there's something more specific regarding

22 the meaning of an information tag, then I need to find

23 it.

24   And I think it's in here, I think it's -- but

25 I need to -- I would need to study it in order to feel

1 comfortable stating that it doesn't -- this doesn't

2 meet the requirements of claim 1.

3 BY MR. FRANZINI:

4   Q. Now, your understanding of claim 1 and of

5 what's written in paragraphs 25 through 29 today,

6 that's the same as the understanding you had when you

7 signed this report on April 8th, right?

8   MR. LEE: Objection, form.

9   THE WITNESS: That my understanding today is

10 the same as it was when I signed this report, I

11 understood that an information tag is something I'm

12 convinced by you other than what it is.

13   So I had a different way of interpreting

14 these paragraphs.

15 BY MR. FRANZINI:

16   Q. Now, the reason that you believed the

17 statement in paragraph 25 to be true when you signed

18 your report was that -- withdrawn.

19   When you said that after the received video

20 file -- withdrawn.

21   When you signed a report that said "after the

22 received video file is converted, the Knowledge

23 Assembly server generates an identification tag," your

24 understanding of what an identification tag was --

25 withdrawn.

1   The information that you believe to meet the

2   identification tag requirement at the moment you

3   signed your report included the user name, video

4   title, subject and date, correct?

5   A.   I'm sorry.

6   Q.   The information that you believed to meet the

7   requirements of an identification tag when you signed

8   your report included the user name, video title,

9   subject and date?

10   A.   Included.

11   Q.   Okay.   Also included a clip ID?

12   A.   Correct.

13   Q.   But the user name, the video title, subject

14 and date is information that is generated at the

15 knowledge provider's computer, not the Knowledge

16 Assembly server, correct?

17   A.   Right.

18   Q.   And the clip ID is never embedded in a web

19 page, right?

20   MR. LEE: Objection, form.

21   THE WITNESS: Okay.

22 BY MR. FRANZINI:

23   Q.   Do you agree with me?

24   A.   Yes.

25   Q.   So none of the information you believe to

1   meet the requirements of an identification tag at the

2   time you signed your report actually meets those

3   requirements in your opinion today, correct?

4   MR. LEE: Objection, form, argumentative.

5   THE WITNESS: This is -- so as I said, I feel

6   the need to study this and to read what's in my report

7   with a new understanding of what it is I'm looking

8   for.

9   BY MR. FRANZINI:

10   Q. I want to talk about your understanding at

11   the time you signed your report and your understanding

12   today.

13   So at the time you signed your report, your

14   understanding was that the identification tag

15   requirement was met by the clip ID, the user name, the

16   video title, subject and the date, correct?

17   MR. LEE: Objection, form.

18   THE WITNESS: All of the unique information

19   for the video clip.

20   BY MR. FRANZINI:

21   Q. Were you aware of any other unique

22   information at the time?

23   A. Well, this -- the DATA.TXT file.

24   Q. Okay. Now, you're talking about the DATA.TXT

25   file in paragraph 26 of your report?

1   A. Yes, I am.

2   Q. In the disclosure from the patent application

3 that you quote in your report in paragraph 26, it

4 doesn't say that the DATA.TXT file is generated by the

5 server in response to receiving a video file, does it?

6   A. Yeah, it says "is generated based on

7 information provided by the knowledge provider when

8 the video file was uploaded and the local name for the

9 file."

10   Q. That's what your report that Google's lawyers

11 drafted says, right?

12   MR. LEE: Objection, form.

13   THE WITNESS: So "The resulting ASF file is

14 placed in a directory appropriate to the asynchronous

15 forum. A file called the DATA.TXT in that same

16 directory is uploaded with information" --

17 BY MR. FRANZINI:

18   Q. It says is updated.

19   A. Well, it was generated when the file was

20 uploaded.

21   Q. That's not what this says, does it?

22   A. In 26?

23   Q. The body of your report that Google's lawyers

24 drafted says that, but if you read the thing you're

25 quoting it actually says the DATA.TXT in that same

1 directory is updated, right?

2   MR. LEE: Objection, form, argumentative,

3 mischaracterizes the document.

4   THE WITNESS: Is updated with information

5 from the original form, so yes, it does say that in

6 that same directory is updated with information from

7 the original form.

8 BY MR. FRANZINI:

9   Q. To be updated a file has to exist already?

10   A. Pardon me?

11   Q. In order for a file to be updated it has to

12 already be in existence, right?

13   MR. LEE: Objection, form.

14   THE WITNESS: Yes, I'm assuming that data --

15 let me see. Yeah, so I don't know enough to respond

16 to that.

17   I read this originally that DATA.TXT file

18 is -- is updated when the file was uploaded, that

19 there are multiple files in the DATA.TXT file, there

20 are multiple thumbnails.

21 BY MR. FRANZINI:

22   Q. That's not at all what this says, though,

23 right?

24   A. I don't -- that's not what it says.

25   Q. So this -- withdrawn.

1   Page 14, lines 17 through 21 of the

2 provisional patent application that you cite in

3 paragraph 26 of your report, that doesn't provide any

4 evidence or any disclosure of generating a DATA.TXT

5 file, right?

6   MR. LEE: Objection, form.

7   THE WITNESS: Not of generating it, yeah,

8 it's the previous section is -- the previous

9 paragraph.

10 BY MR. FRANZINI:

11   Q. Well, it actually suggests the exact

12 opposite, right, it suggests the DATA.TXT file was

13 already generated?

14   MR. LEE: Objection, form.

15   THE WITNESS: Yes, it indicates it's updated

16 with information from the original form.

17 BY MR. FRANZINI:

18   Q. So this disclosure paragraph -- withdrawn.

19   The disclosure on page 14, lines 17 through

20 21 of your provisional application that's cited on

21 paragraph 26 of your report does not provide any

22 evidence of generating an identification tag, correct?

23   MR. LEE: Objection, form.

24   THE WITNESS: I guess I'm thinking that the

25 DATA.TXT file -- I read this as indicating that was a

1 file that was -- that was part of a display.pl that

2 contained the various tags for at least a particular

3 asynchronous video forum.

4 BY MR. FRANZINI:

5   Q. So the -- withdrawn.

6   You agree with me, as Google's expert and as

7 the inventor on the knowledge provider application,

8 that the DATA.TXT file does not meet the requirements

9 of an identification tag as that term is used in claim

10 1 of the '608 patent, correct?

11   MR. LEE: Objection, form.

12   THE WITNESS: I believe that the DATA.TXT --

13 I don't know. I have seen it as a file where the tag

14 information is stored.

15 BY MR. FRANZINI:

16   Q. Sir, we will get to the tag information.

17   I want to talk about the DATA.TXT file.

18   As Google's expert and as the inventor on the

19 Keehan application, you agree with me that the

20 DATA.TXT disclosure in the Keehan application does not

21 meet the requirements of an identification tag as that

22 term is used in claim 1 of the '608 patent, correct?

23   MR. LEE: Objection, form.

24   THE WITNESS: I don't know whether it does or

25 not.

1 BY MR. FRANZINI:

2   Q. You don't have the opinion that the DATA.TXT

3 file meets the requirements of an identification tag,

4 right?

5   A. It's not clear to me from reading this.

6   Q. Is it your opinion that the DATA.TXT file

7 meets the requirements of an identification tag or

8 not?

9   A. I don't have an opinion about that.

10   Q. Okay. You don't know one way or the other?

11   A. I don't know. I'm not a technical person. I

12 don't know anything about coding, basically.

13   Q. You have no idea -- withdrawn.

14   You're not aware of anything in the Keehan

15 application that suggests that the DATA.TXT file meets

16 the requirements of an identification tag, correct?

17   MR. LEE: Objection, form.

18   THE WITNESS: I can't -- I can't comment on

19 whether it -- whether it meets the requirements for it

20 or not.

21   I don't know.

22 BY MR. FRANZINI:

23   Q. That's because you're not a technical expert,

24 right?

25   A. That's correct.

1   MR. LEE: Objection, form.

2   BY MR. FRANZINI:

3   Q. You don't understand how coding works?

4   A. Just in general enough terms, but not with

5   respect to a particular language or, for instance,

6   scripting.

7   Q. You don't understand what some of the things

8   that are written in your patent application mean,

9   right?

10   A. That's correct.

11   Q. You don't understand what's written in some

12   of the portions of your expert report you submitted in

13   this case, correct?

14   MR. LEE: Objection, form.

15   THE WITNESS: There are obviously things in

16   here that I don't understand.

17   As I said, I felt that my understanding of an

18   tag -- I knew that the server generated a tag as a

19   unique identifier for a clip, and I felt that that was

20   sufficient understanding for being able to sign the

21   report.

22   BY MR. FRANZINI:

23   Q. Now, there's things in your expert report you

24   don't understand?

25   MR. LEE: Objection, form.

1   THE WITNESS: It's apparent that there are

2   technical things in this report that I don't

3   understand.

4   BY MR. FRANZINI:

5   Q.   Those are things that Google's lawyers

6   drafted that you signed onto?

7   MR. LEE: Objection, form.

8   THE WITNESS: This is one of the areas where

9   I needed assistance in putting together the report.

10   BY MR. FRANZINI:

11   Q.   There's things in your report that you don't

12   understand that Google's lawyers drafted and you

13   signed onto, correct?

14   MR. LEE: Objection, form.

15   THE WITNESS: It's evident that there are

16   some.

17   BY MR. FRANZINI:

18   Q.   Now, sir, let's turn back to paragraph 37 of

19   your report.

20   A.   Okay.

21   Q.   It says "As shown at least by our patent

22   application and the other materials referenced here,

23   it is my opinion that Knowledge Assembly, led by me

24   supervising George Reinhart, conceived of and actually

25   practiced the subject matter described in our patent

1 application by no later than October 5th, 1998," and

2 you cite a number of claims of VideoShare patents?

3   A. Right.

4   Q. Based on our conversation today, do you have

5 any confidence this opinion is true anymore?

6   MR. LEE: Objection, form.

7   THE WITNESS: Practiced the subject matter

8 described in the patent application.

9   Well, my understanding has certainly changed,

10 but I still feel that the -- particularly the

11 description of the -- as described in the patent

12 application, I -- that I would stand by it based on

13 what's in the patent application.

14 BY MR. FRANZINI:

15   Q. Sir, we just talked about the patent

16 application and you weren't able to identify any

17 disclosure meeting the requirements of generating an

18 identification tag, right?

19   MR. LEE: Objection, form, mischaracterizes

20 testimony.

21   THE WITNESS: That's right.

22 BY MR. FRANZINI:

23   Q. You also weren't able to identify any

24 disclosure of embedding the identification tag into a

25 web page, right?

1   A.   Right.

2   MR. LEE: Objection, form, mischaracterizes

3   testimony.

4   BY MR. FRANZINI:

5   Q.   Sir, do you have any confidence that the

6   opinions set forth in paragraph 37 of your report are

7   true?

8   MR. LEE: Objection, form, argumentative.

9   THE WITNESS: I do.

10   BY MR. FRANZINI:

11   Q.   Even though you're not able to identify any

12   disclosure in the patent application of two of the

13   steps of claim 1 of the '608 patent, you're still

14   confident in your opinion that the Knowledge Assembly

15   led by you supervising George Reinhart conceived of

16   and actually practiced the subject matter described in

17   your patent application and that that included every

18   step of claim 1 of the '608 patent?

19   MR. LEE: Objection, form, mischaracterizes

20   testimony, argumentative.

21   THE WITNESS: I stand by that statement.

22   BY MR. FRANZINI:

23   Q.   So even though -- withdrawn.

24   Even though you can't identify any disclosure

25   in your patent application that meets two of the

1 requirements of claim 1 of the '608 patent, you are

2 confident that your patent application discloses those

3 elements?

4   MR. LEE: Objection, form, mischaracterizes

5 testimony, argumentative, asked and answered.

6   THE WITNESS: I -- I can't respond to some of

7 the technical questions, but I feel as though we were

8 accomplishing this and --

9 BY MR. FRANZINI:

10   Q. Sir, do you feel comfortable testifying under

11 oath that your patent application disclosed each

12 element of claim 1 of the '608 patent except for

13 thumbnails?

14   MR. LEE: Objection, form, argumentative.

15   THE WITNESS: I think that in some embodiment

16 of the patent application, they're disclosed.

17 BY MR. FRANZINI:

18   Q. Even though you can't identify where it is in

19 your patent application?

20   MR. LEE: Objection, form, mischaracterizes

21 testimony.

22   THE WITNESS: That's a -- that would be a

23 different project, yeah.

24 BY MR. FRANZINI:

25   Q. So it's fair to say you don't know one way or

1 the other whether your patent application discloses

2 generating an identification tag, correct?

3   MR. LEE: Objection, form, mischaracterizes

4 testimony, asked and answered.

5   THE WITNESS: I'm sorry, say it again.

6 BY MR. FRANZINI:

7   Q. It's fair to say that, as you sit here today,

8 you can't tell me with confidence one way or the other

9 whether your patent application discloses generating

10 an identification tag?

11   MR. LEE: Same objection.

12   THE WITNESS: I know that it -- that it did

13 generate an identification tag.

14 BY MR. FRANZINI:

15   Q. What is that knowledge based on?

16   A. The functional description of the system.

17   Q. The one cited in your report?

18   A. In the report and in the patent application.

19   Q. Sir, you can't show me anything that

20 discloses an identification tag within the meaning of

21 claim 1 of the '608 patent, right?

22   MR. LEE: Objection, form, mischaracterizes

23 testimony.

24   THE WITNESS: I think that that doesn't mean

25 that it's not there. I feel as though I'm missing

1   what's there.

2   BY MR. FRANZINI:

3   Q. Do you think you're qualified to be a

4   technical expert in this case?

5   MR. LEE: Objection, form, argumentative.

6   THE WITNESS: Not a technical expert.

7   BY MR. FRANZINI:

8   Q. Are you qualified to provide opinions about

9   the technical operation of the Knowledge Assembly

10   system?

11   A. I don't have enough understanding of

12   technical matters to be able to do so.

13   Q. So you would agree with me you're not

14   qualified to offer technical opinions in this case?

15   MR. LEE: Objection, form.

16   THE WITNESS: I'm not a -- I don't have

17   technical expertise.

18   BY MR. FRANZINI:

19   Q. You would agree with me you're not qualified

20   to provide technical opinions in this case?

21   MR. LEE: Objection, form.

22   THE WITNESS: I wouldn't make that as a

23   blanket statement. There are different levels of

24   technical opinions.

25   BY MR. FRANZINI:

1   Q.   Do you think you're qualified to offer

2   opinions about the meaning of the claims in the '608

3   patent?

4   A.   I have thought so.

5   Q.   Let's talk about embedding an identification

6   tag into a web page.

7   In your report, you identify a process by

8   which a web page is dynamically generated when a user

9   visits the Knowledge Assembly web site, right?

10   A.   I was looking at my report.

11   So ask me again.

12   Q.   In your report, what you identify as meeting

13   the requirement of generating -- withdrawn.

14   What you -- withdrawn.

15   In your report what you identify as meeting

16   the step of embedding the identification tag into a

17   web page is a script that dynamically generates the

18   web page that includes information that you say is an

19   identification tag when the user visits the Knowledge

20   Assembly web site, correct?

21   A.   Tell me where this -- where it -- I'm missing

22   it in the report.

23   Q.   What do you identify as generating --

24   withdrawn.

25   What do you identify as performing element

1   (b3) -- withdrawn.

2   In your opinion, what within your patent

3   application meets the requirements of embedding the

4   identification tag into a web page?

5   A. I can't find the section in this copy which

6   addresses that.

7   Q. As you sit here today, you don't know whether

8   or not anything in the Knowledge Assembly patent

9   application meets the requirements of embedding an

10 identification tag into a web page, right?

11   MR. LEE: Objection, form.

12   THE WITNESS: So it's addressed in this same

13 section, paragraph 25 and identifying the streaming

14 video and embedding the tag in a web page.

15 BY MR. FRANZINI:

16   Q. Paragraph 27 is where you talk about

17 embedding, right?

18   A. Yes.

19   Q. You say that "The streaming video files and

20 their associated identifications that represented the

21 subject matter of the streaming video file were listed

22 on a web page with information that identified the

23 video, the date, the time and the title/subject and

24 included the presenters' name and topic."

25   Do you see that?

1   A.   Yes.

2   Q.   Is the process of including that information

3 in a web page what you identify as meeting the step of

4 embedding the identification tag come -- withdrawn.

5   Is the description in paragraph 27 what you

6 identify as meeting the requirement of embedding the

7 identification tag into a web page?

8   A.   Yes.

9   Q.   Now, if you turn to page 13, it talks about

10 displayed.pl, the script?

11   A.   Uh-huh.

12   Q.   It says "Tests to see if an HTTP cookie has

13 come from a user's web browser indicating which clip

14 in the asynchronous video forum's series she last

15 saw."

16   Do you see that?

17   A.   Right.

18   Q.   Then it says "Produces a welcome page to the

19 asynchronous video forum."

20   Do you see that?

21   A.   Yes.

22   Q.   Is that what you're identifying as meeting

23 the requirements of embedding an identification tag?

24   A.   Well, that plus the other two sections.

25   Q.   Well, in your opinion, the process of

1 producing a welcome page that's described on page 14

2 lines 22 to 28 of the Knowledge Assembly patent

3 application, that meets the requirements of embedding

4 an identification tag into a web page, correct?

5   A. Well, I don't -- I don't know -- I don't know

6 how to respond.

7   Q. Well, can you tell whether any of the

8 disclosures you cite in paragraph 27 of your report

9 disclose embedding an identification tag into a web

10 page?

11   A. Well, I don't know how this works.

12   Q. You don't know how what works?

13   A. The embedding process.

14   Q. You have no idea how embedding worked in the

15 Knowledge Assembly patent application?

16   A. That's correct.

17   Q. Is it fair to say that you're not qualified

18 to -- withdrawn.

19   Is it fair to say that you're not qualified

20 to test [sic] about what your patent applications are

21 describing from a technical standpoint?

22   MR. LEE: Objection, form.

23   THE WITNESS: That's evident, yeah.

24 BY MR. FRANZINI:

25   Q. And you don't know one way or the other

1 whether your patent applications disclose embedding an

2 identification tag into a web page?

3   A. Well, clearly they needed to in order to

4 function as described here.

5   Q. Okay. Do you have any idea whether they

6 describe it as being done automatically by a receiving

7 computer?

8   A. I know that they had to have it

9 automatically.

10   Q. They could have manually coded it, right?

11   MR. LEE: Objection, form.

12   THE WITNESS: That wouldn't meet the

13 requirements of the system, the functioning of the

14 system.

15 BY MR. FRANZINI:

16   Q. Well, here in your report on page 13 you're

17 identifying the function of the display.pl script as

18 meeting the requirements of embedding an

19 identification tag into a web page, right?

20   A. Right.

21   Q. Okay. And the display.pl performed its

22 operations in part -- withdrawn.

23   The display.pl script performed its

24 operations in part based on information about whether

25 or not the user has an HTTP cookie on their computer,

1 right?

2   A.   Right.

3   Q.   So, in your opinion, the step of executing by

4 the receiving computer in response to receiving the

5 video file an automated function automatically

6 performing each of elements (b1), (b2) and (b3)

7 including embedding the identification tag into a web

8 page, that can be met by a function that performs

9 operations in response to information that comes from

10 the user's browser, correct?

11   A.   That appears to be the case.

12   Q.   So as Google's expert regarding the '608

13 patent, you agree with me that the step of executing

14 by the receiving computer in response to receiving the

15 video file an automated function automatically

16 performing each of elements (b1), (b2), (b3) including

17 embedding the identification tag into a web page, that

18 can be done by a process that is initiated by a user

19 visiting a web site and relies on information from

20 that user's computer, correct?

21   A.   That's right.

22   Q.   Your Knowledge Assembly system embodiment

23 never used thumbnails, right?

24   A.   Correct.

25   Q.   And your patent application never used

1 thumbnails -- withdrawn.

2   A. Correct.

3   Q. Your patent application never described

4 thumbnails, right? Correct?

5   A. That's correct.

6   Q. There's nothing in your patent application

7 that says hey, it's a good idea to identify video

8 files by thumbnails, right?

9   A. That's right.

10   Q. There's no teaching whatsoever in your patent

11 application that would lead somebody to include

12 thumbnails on the Knowledge Assembly system, correct?

13   A. Correct.

14   Q. Now, is the reason that you didn't include

15 any mention of thumbnails in your patent application

16 that you didn't think of it or that you thought of it

17 and decided against it because it was a bad idea?

18   A. The latter.

19   Q. Why did you think it was a bad idea to

20 include thumbnails on your Knowledge Assembly system?

21   A. Because what we were encouraging users to do

22 is to select a series of clips that are separated by

23 no more than a couple of seconds to give the illusion

24 of a realtime discussion and to create a system that

25 encourages people to select from among the -- among

1 thumbnails is to put too much emphasis on the

2 personality.

3   We wanted the emphasis to be on the exchange

4 of knowledge.

5   Q. So you agree with me that a person of

6 ordinary skill in the art at the time of the

7 VideoShare patent applications looking at your

8 Knowledge Assembly patent would not conclude it's

9 obviously a good idea to add thumbnails to your patent

10 application, right?

11   MR. LEE: Objection, form, calls for

12 speculation.

13   THE WITNESS: Yeah, I don't know what other

14 people would say, but that's my opinion.

15 BY MR. FRANZINI:

16   Q. Well, as an inventor on a patent

17 application -- withdrawn.

18   As the inventor on the Knowledge Assembly

19 patent application, you personally didn't think that

20 it was obviously a good idea to add thumbnails to the

21 system described in your patent application, right?

22   A. Furthermore, I thought it was a bad idea to

23 add them.

24   Q. Do you think a person looking at your system

25 and your patent application would be discouraged from

1 adding thumbnails to that system?

2 A. No, because they're not -- they're not

3 mentioned.

4 Is that what you mean?

5 Q. Other people would come to the same

6 conclusion you did, right, that thumbnails wouldn't

7 make sense in the context of your system, right?

8 A. I would hope so.

9 Q. So in other -- withdrawn.

10 Your co-inventor -- withdrawn.

11 Your co-worker, Mr. Reinhart, also didn't

12 think it was obviously a good idea to add thumbnails

13 to the Keehan application or the Keehan system, right?

14 MR. LEE: Objection, form, calls for

15 speculation.

16 THE WITNESS: I don't remember having a

17 conversation with him about it.

18 BY MR. FRANZINI:

19 Q. But you thought it through and you concluded

20 it was a bad idea to add thumbnails?

21 A. Right.

22 Q. Do you think other people in the art would

23 have come to the same conclusion at the time?

24 A. As I say, I think so. I think the emphasis

25 wanted to be on the subject matter rather than on

1 personalities which would inevitably be forwarded by

2 the focus on thumbnails.

3   Q. Do you think providing thumbnails --

4 withdrawn.

5   Did you need thumbnails on your system to be

6 able to identify the subject matter of the video

7 clips?

8   A. No.

9   Q. Do you think anyone would have thought it was

10 obviously a good idea to add thumbnails to your system

11 to identify the subject matter of the video clips?

12   A. No, because they would see a talking head, a

13 picture of a talking head and the emphasis here that I

14 was trying to forward was on the exchange, the nature

15 of the exchange.

16   Q. In fact, people of ordinary skill in the art

17 would conclude it was obviously a bad idea to add

18 thumbnails -- I'll reask it, withdraw.

19   Sir, a person of ordinary skill in the art at

20 the time of the VideoShare inventions would conclude

21 that it was obviously a bad idea to add thumbnails to

22 the system described in your Keehan patent

23 applications, correct?

24   MR. LEE: Objection, form, calls for

25 speculation.

1   THE WITNESS: I believe that's the case.

2   BY MR. FRANZINI:

3   Q. Withdrawn.

4   Sir, a person of ordinary skill in the art at

5   the time of the VideoShare patents would conclude that

6   it's obviously a bad idea to add thumbnails to the

7   system described in your patent application, correct?

8   MR. LEE: Objection, form, calls for

9   speculation.

10   THE WITNESS: I would think so.

11   MR. LEE: Pause, let me object and then you

12   can answer.

13   THE WITNESS: Gotcha.

14   BY MR. FRANZINI:

15   Q. Withdrawn.

16   Sir, a person of ordinary skill in the art at

17   the time of the VideoShare patent applications would

18   have concluded that it's obviously a bad idea to add

19   thumbnails to the system described in your patent

20   application, correct?

21   MR. LEE: Objection, form, calls for

22   speculation.

23   THE WITNESS: I would hope so.

24   BY MR. FRANZINI:

25   Q. So yes?

1   A.   Yes.

2   Q.   Sir, your patent application doesn't make any

3 mention of advertisements, correct?

4   A.   Correct.

5   Q.   Is that because you didn't think of adding

6 advertisements to your system or because you thought

7 of it and concluded it was a bad idea?

8   A.   I thought of it and concluded that it would

9 be a bad idea for inclusion of advertisements at this

10 point.

11   It has to do with our target market. We were

12 going after communities of interest on the Internet

13 and finding a community of interest that would be

14 large enough to make advertising profitable would take

15 some time.

16   So I was certainly interested in the

17 development of advertising as a revenue stream.

18   It's either have at the time the cost of

19 streaming meant that you had to either have a

20 subscription model or an advertising model and the

21 advertising model hadn't been developed yet.

22   So I was certainly open to it, but the nature

23 of our business was that we were not going for the

24 known world, we weren't going for a Google, a YouTube

25 that would have many thousands of users, but rather

1 usually hundreds, maybe a few thousands, but not a

2 large enough community to support advertising.

3   Q. Well, in your patent application there's

4 nothing that says hey, one possible future application

5 is to monetize the system with advertisements, right?

6   MR. LEE: Objection, form.

7   THE WITNESS: That's correct.

8 BY MR. FRANZINI:

9   Q. There's nothing that would lead a person of

10 ordinary skill in the art to want to add

11 advertisements to the system you described in the --

12 in your patent application, right?

13   MR. LEE: Objection, form, calls for

14 speculation.

15   THE WITNESS: I think that's true.

16 BY MR. FRANZINI:

17   Q. You mentioned you weren't going for a

18 YouTube.

19   What did you mean by that?

20   A. Was not going for a single clip being viewed

21 by many thousands of people; in the case of YouTube,

22 hundreds of thousands.

23   Q. You would agree that your Knowledge Assembly

24 system wasn't intended to allow anybody to upload

25 video files and share them with others, right?

1   MR. LEE: Objection, mischaracterizes

2   testimony.

3   THE WITNESS: That's correct. We were trying

4   to encourage the formation and functioning of

5   communities of interest and so we would go to an

6   organization that had an interest in supporting their

7   community with access to name brand people in their

8   field.

9   BY MR. FRANZINI:

10   Q. So the problem that you were trying to

11   resolve with your patent application was that of being

12   able to create communities of interest, not allow

13   anyone to upload a video file and share it over the

14   Internet, right?

15   MR. LEE: Objection, form, mischaracterizes

16   testimony.

17   THE WITNESS: That's true.

18   BY MR. FRANZINI:

19   Q. Sir, would you agree with me one of ordinary

20   skill in the art would understand that a web page

21   refers to a document or a collection of documents and

22   associated files that is accessible over the World

23   Wide Web and available for display to a user in an

24   application program on a computing device?

25   MR. LEE: Objection, form.

1   THE WITNESS: That sounds like a good

2 definition to me.

3 BY MR. FRANZINI:

4   Q. Now, you would agree with me the phrase "a

5 web page" is not limited to HTML files displayed in a

6 browser but can include a collection of documents or

7 files in any format on the World Wide Web that can be

8 displayed to a user?

9   MR. LEE: Objection, form, relevance.

10   THE WITNESS: That sounds -- that sounds true

11 to me.

12 BY MR. FRANZINI:

13   Q. Now, you would agree with me that a web page

14 doesn't necessarily need to be displayed in a browser

15 but can be displayed in other application programs?

16   MR. LEE: Same objection.

17   THE WITNESS: I'm really just familiar with

18 these terms as a lay person.

19   A web page usually implies a browser.

20   I really am not familiar with web pages being

21 used otherwise.

22 BY MR. FRANZINI:

23   Q. You --

24   A. The term "web page" being used outside of a

25 browser context.

1   Q. You could display a web page within a

2 specific application, right?

3   A. You could display a screen.

4   I'm sure there are applications where you

5 could display material.

6   Q. You would agree with me it's possible to

7 display a web page in an application that's not a

8 browser?

9   MR. LEE: Objection, form, relevance.

10   THE WITNESS: I don't really -- I don't

11 really know. I think that's likely.

12 BY MR. FRANZINI:

13   Q. You think that's likely?

14   A. I think so, but I don't know.

15   Q. There's nothing about the definition of a web

16 page that would require it to be displayed in a

17 browser, right?

18   MR. LEE: Same objection.

19   THE WITNESS: I would actually think so.

20   I would be surprised if that were not the

21 case, but I think that a browser at this point

22 requires a -- I'm sorry, a web page requires a browser

23 to call it up.

24 BY MR. FRANZINI:

25   Q. Well, you could have a document on the World

1 Wide Web that's displayed within an app, for example,

2 on a mobile phone, right?

3   MR. LEE: Same objection.

4   THE WITNESS: Right. Whether you would call

5 that a web page, I don't know.

6 BY MR. FRANZINI:

7   Q. If it's a document on the World Wide Web

8 that's available for a user in an application program,

9 then it would be a web page, right?

10   MR. LEE: Objection, form.

11   THE WITNESS: You're defining it as a web

12 page and I'm saying that's fine.

13   I'm willing to have the definition of a web

14 page expanded to include that, but I have thought of

15 them in common popular parlance that requires a

16 browser.

17   MR. FRANZINI: Let's take a break.

18   THE VIDEOGRAPHER: Time is 5:27 and we're off

19 the record.

20   (Recess taken.)

21   THE VIDEOGRAPHER: The time is 5:36 and we're

22 on the record.

23 BY MR. FRANZINI:

24   Q. Sir, would you agree with me that a

25 fundamental aspect of the Knowledge Assembly patent

1 applications and the Knowledge Assembly system

2 embodiment was that only a small number of people,

3 knowledge providers, could upload videos?

4   A.   Yes.

5   Q.   Not everyone is a knowledge provider, right?

6   A.   That's correct.

7   Q.   It's very different from a system like

8 YouTube where anyone can go and upload whatever video

9 they like, right?

10   MR. LEE: Objection, form, calls for

11 speculation.

12   THE WITNESS: It is different.

13   On the other hand, the number of viewers

14 wants to be unlimited.

15 BY MR. FRANZINI:

16   Q.   There may be some similarities, but it's

17 fundamentally a very different system, right?

18   A.   Absolutely.

19   Q.   Another fundamental aspect of the Knowledge

20 Assembly patent applications and the Knowledge

21 Assembly system was that the videos that would be

22 uploaded would be on a focused topic, correct?

23   A.   Correct.

24   Q.   It was important for your invention that a

25 moderator keep control over the conversation, right?

1   A. Yes.

2   Q. And one of the things you say in your patent

3 application is the importance of the moderator's role

4 cannot be understated in this application?

5   A. Right.

6   Q. Do you agree with that?

7   A. I do.

8   Q. Why was the moderator so important?

9   A. Because there are certain process issues in

10 any meeting that are more important at a meeting which

11 is occurring asynchronously, that is when people are

12 not actually interacting with one another.

13   So the moderator needs to add -- the

14 conversation would be taking place likely over a

15 period of days, even weeks.

16   So people would tend to want to talk about

17 the latest development here or there, want to change

18 the subject.

19   The moderator needs to be in charge of the

20 subject matter and there needs to be agreement on

21 several things among the knowledge providers including

22 letting the moderator change the subject.

23   The other point is that the moderator is the

24 source of feedback from the viewing audience. There

25 might be questions that would be asked by the

1 moderator of the viewing audience and those would be

2 collected and tabulated and presented perhaps in a

3 slide show format by the moderator.

4   So there are a number of functions that are

5 really critical.

6   Q. Would you agree that it was important in the

7 system described in your patent application and its

8 embodiment for the moderator to keep close control

9 over what videos were posted?

10   MR. LEE: Objection, form.

11   THE WITNESS: No. I don't see -- I never saw

12 the moderator being one who eliminated a video, at

13 least not without considerable thought and getting in

14 touch with the person who put up the video.

15 BY MR. FRANZINI:

16   Q. It was still important for the moderator to

17 monitor what videos were being posted, right?

18   A. Yes, if only to make sure that when a

19 knowledge provider put up a clip, it got responded to

20 by the moderator or someone else so-called at the

21 table.

22   Q. Did the moderator make sure the video was

23 appropriate to be posted before it was posted?

24   A. No. That -- the control of the quality of

25 the videos was on the front end with the selection of

1 the knowledge provider and the definition of the

2 subject matter. Generally, a knowledge provider would

3 have a reputation to uphold and that would be a

4 control over quality.

5   Q. Now, sir, your patent applications taught to

6 use text-based identifiers like the name of the

7 knowledge provider, the subject matter and so forth to

8 identify videos on a web page, right?

9   A. Correct.

10   Q. If a person of ordinary skill in the art

11 wanted to follow the teachings of your patent

12 applications, they would be led to use alphanumeric

13 strings, not video frame images to identify video

14 files on a web page, right?

15   MR. LEE: Objection, form, calls for

16 speculation.

17   THE WITNESS: Right.

18 BY MR. FRANZINI:

19   Q. Now, we talked before about how the product

20 description on your web site talked about uploading a

21 video file via an application program that was

22 installed on the user's computer?

23   A. Yes.

24   Q. If a person of ordinary skill in the art

25 wanted to follow those teachings on those product

1 descriptions, they would be led to use application

2 software installed on a user's computer and not a web

3 page to upload video files, right?

4   MR. LEE: Objection, form, calls for

5 speculation.

6   THE WITNESS: We were encouraging the use of

7 the client software to make it easier for knowledge

8 providers.

9 BY MR. FRANZINI:

10   Q. If a person of ordinary skill in the art

11 wanted to follow the teachings that you placed on your

12 web site, they would be led to use application

13 software installed on their computer and not a web

14 page to upload video files?

15   A. No --

16   MR. LEE: Objection, form, calls for

17 speculation.

18   THE WITNESS: Actually, the -- to be clear,

19 the Knowledge Producer software, the server software,

20 was used only by knowledge providers.

21   The others -- anyone watching would be

22 accessing the discussion over a web page.

23 BY MR. FRANZINI:

24   Q. I want you to focus on my question, please --

25 withdrawn.

1   If a person of ordinary skill in the art

2 wanted to follow the teaching of the product

3 description of your web site, they would be led to use

4 the application software installed on the user's

5 computer and not a web page to upload video files,

6 correct?

7   MR. LEE: Objection, form, calls for

8 speculation.

9   THE WITNESS: If they were creating videos

10 and going to upload them, then we would encourage them

11 to use the server software to create the videos.

12 BY MR. FRANZINI:

13   Q. If they wanted to follow the teachings on

14 your web page --

15   A. Follow the teachings --

16   Q. Withdrawn.

17   If a person of ordinary skill in the art

18 wanted to do what you encouraged people to do on your

19 product description web page, they would be led to

20 upload video files via an application installed on a

21 computer and not via a web page, correct?

22   MR. LEE: Objection, form, calls for

23 speculation.

24   THE WITNESS: I think that's the case.

25 BY MR. FRANZINI:

1   Q. Now, please turn to paragraph 37 of your

2 report again.

3   If you look at the very last paragraph,

4 paragraph K on page 19 --

5   A. Yes.

6   Q. -- "It is my opinion that the '608 and '302

7 patents do not claim novel and nonobvious subject

8 matter"?

9   A. Right.

10   Q. That's the first time the '302 patent is

11 mentioned in your report, right?

12   A. Right.

13   Q. You don't provide any explanation in that

14 opinion with respect to the '302 patent, right?

15   A. That's correct.

16   Q. You don't provide any analysis of how the

17 disclosures in either your patent application or your

18 embodiment map onto the limitations of the '302

19 patent, right?

20   A. Correct.

21   Q. In that same paragraph you also say --

22 withdrawn.

23   In the very last page you say that the '302

24 patent and the -- withdrawn.

25   On the last page of your report you say that

1   the '608 patent's claims -- withdrawn.

2   On the last paragraph of your report you say

3   that the '608 patent's claims are directed only to

4   known and obvious methods of distributing video

5   content using already existing and readily available

6   software tools and components.

7   Do you see that?

8   A.   Yes.

9   MR. LEE: Objection, form.

10   BY MR. FRANZINI:

11   Q.   In your report you don't identify any reason

12   why a person of ordinary skill in the art would be

13   motivated to either modify the teachings of your

14   application or combine them with other teachings to

15   reach the claims of the '608 patent, right?

16   MR. LEE: Objection, form.

17   THE WITNESS: Would you repeat that?

18   BY MR. FRANZINI:

19   Q.   You don't articulate in your report any

20   reason why a person of ordinary skill in the art would

21   have -- would want to modify or combine the claims --

22   withdrawn.

23   In your report, you don't identify any reason

24   why a person of ordinary skill in the art would modify

25   or combine the teachings of your patent application or

1 your embodiment to reach the claims of the '608

2 patent, correct?

3   MR. LEE: Objection, form, mischaracterizes

4 the document.

5   THE WITNESS: That's -- if I understand you

6 correctly, I think that's true.

7 BY MR. FRANZINI:

8   Q. Now, in your opinions in paragraphs A through

9 J -- withdrawn.

10   In your opinions in paragraph 37, A through

11 J, you don't provide any analysis to show that any of

12 these statements are true beyond the paragraphs of

13 your report cited in each paragraph?

14   MR. LEE: Objection, form, mischaracterizes

15 the document.

16 BY MR. FRANZINI:

17   Q. True?

18   A. I don't cite anything beyond the paragraphs

19 in the report, that's correct.

20   Q. You don't provide an analysis of how each

21 limitation of the '608 patent maps onto particular

22 disclosures in your patent application or in your

23 embodiment?

24   MR. LEE: Objection, form, mischaracterizes

25 document.

1   THE WITNESS: You need to repeat that.

2   BY MR. FRANZINI:

3   Q. In your report, you don't provide a

4   limitation-by-limitation analysis showing where each

5   limitation of each claim of the '608 patent is found

6   in your patent applications or in your embodiment,

7   correct?

8   MR. LEE: Same objection.

9   THE WITNESS: We don't do it item by item in

10 this, yes.

11 BY MR. FRANZINI:

12   Q. You don't go through and show each limitation

13 is met by a disclosure in your patent application,

14 right?

15   MR. LEE: Objection, form.

16   THE WITNESS: Repeat that. I'm not sure I

17 understand it.

18 BY MR. FRANZINI:

19   Q. You don't go through each limitation of the

20 claims --

21   A. Limitation of the claims, okay.

22   Q. Sir, do you know what a limitation is?

23   A. Yeah.

24   Q. Do you go through and show that each

25 limitation of claim 1 of the '608 patent is found in

1   your patent application?

2   MR. LEE: Objection, form.

3   THE WITNESS: Well, I think that's part of

4   what we were doing in this -- in this report.

5   BY MR. FRANZINI:

6   Q. You don't go through each limitation, though,

7   right?

8   A. That's correct.

9   Q. Do you know what a claim construction order

10 is?

11   A. Yes.

12   Q. Do you understand that the Court gave

13 definitions for certain claims?

14   A. I do.

15   Q. You didn't mention any of those definitions

16 in your report, true?

17   A. That's correct.

18   Q. You didn't try to apply any of the Court's

19 constructions of any of the claims of the '608 patent

20 to the disclosures in your patent application, true?

21   A. That's correct.

22   Q. Are you still in touch with Mr. Reinhart?

23   A. Yes.

24   Q. Does Mr. Reinhart have any additional

25 information about the Knowledge Assembly system?

1   MR. LEE: Objection, form.

2   THE WITNESS: He does not.

3   BY MR. FRANZINI:

4   Q. You asked him?

5   A. I asked him if he had any materials that he

6   had saved or any source code or anything that would

7   help to validate what we did and he actually did a

8   search and found that he did not.

9   Q. Mr. Reinhart has knowledge of how the system

10 worked, right?

11   A. Yes.

12   Q. He has better knowledge of the technical

13 operation of the system than you do, right?

14   A. Correct.

15   Q. If I had the opportunity to take

16 Mr. Reinhart's deposition, I would have been able to

17 find additional information about the Knowledge

18 Assembly embodiment, right?

19   MR. LEE: Objection, form, calls for

20 speculation.

21   THE WITNESS: I think that's true.

22 BY MR. FRANZINI:

23   Q. I would have also had the opportunity to find

24 out more about the meaning of disclosures in your

25 patent application, right?

1   MR. LEE: Same objection.

2   THE WITNESS: Yes.

3   BY MR. FRANZINI:

4   Q. Did you tell Google or Vimeo's lawyers that

5   Mr. Reinhart had information about the Knowledge

6   Assembly system?

7   MR. LEE: I instruct the witness to answer if

8   you can answer without revealing any privileged

9   information.

10   THE WITNESS: I had -- I made -- they were

11   aware of George Reinhart's existence and what his role

12   was and, of course, that he participated in the

13   initial patent.

14   BY MR. FRANZINI:

15   Q. Now, in addition to Mr. Reinhart, there's

16   other people who have knowledge of the Knowledge

17   Assembly system, right?

18   A. Correct.

19   Q. Were there any other employees who worked on

20   it?

21   A. Yes.

22   Q. Who else worked on it?

23   A. Paul Wacek.

24   Q. Anyone else?

25   A. On the technical side, we had a -- basically

1 a high school student who was kind of managing the

2 hardware.

3   Q. What was his name?

4   A. I can't remember his name.

5   Q. Also there was beta testers, right?

6   A. Correct.

7   Q. They would have had knowledge of how the

8 system worked?

9   A. That's correct.

10   Q. There's at least three of them, right?

11   A. Correct.

12   Q. Probably more?

13   A. Probably more.

14   Q. There are also -- withdrawn.

15   You showed an embodiment of the Knowledge

16 Assembly system at the Multimedia Comm Conference,

17 correct?

18   A. Yes.

19   Q. There were people there, right?

20   A. Yes.

21   Q. Was it open to the public?

22   A. It's an industry forum, it's not for public.

23   So you needed to be in the industry really to

24 know about it and be interested in the results of it.

25   Q. The Multimedia Comm Conference was not open

1 to the public, right?

2   A. As far as I know.

3   I think if you knew it was there and you

4 wanted to go, then you could go.

5   It wasn't limited.

6   Q. So as of December or January -- withdrawn.

7   As of December 2015 or January of 2016,

8 Google knew that you existed and had your contact

9 information, correct?

10   A. That's -- I believe so, yes. I'm not sure

11 about those dates.

12   Q. You were first approached by Google

13 approximately in December of 2015 or January of 2016,

14 right?

15   A. Or I believe -- well, it was after the Durie

16 and --

17   Q. Withdrawn, I'll give you a better question.

18   You were approached by Akin Gump before

19 December of 2015?

20   A. Or in December, I'm not sure.

21   Q. By December of 2015, Akin Gump who

22 represented Google had your contact information,

23 correct?

24   A. Correct.

25   Q. They also knew you were knowledgeable about

1   the Knowledge Assembly system?

2   A.   Yes.

3   Q.   And that you were willing to testify?

4   A.   That hadn't been discussed in detail. They

5   wanted to know what I had in the way of information.

6   Q.   Did they know you were willing to provide

7   information for this case?

8   A.   I said that I would be willing to talk about

9   what I did.

10   Q.   Why did you decide to participate in this

11 case?

12   A.   Because I feel as though what we did -- I

13 still feel as though this is an important mission that

14 is creating this software.

15   And I was, frankly, flattered by the interest

16 in what we were doing and when and the fact that we

17 were early on in the industry to do such a thing.

18   Q.   Please turn to Exhibit 5, which is the

19 patent, the '608 patent.

20   I think it's right in front of you.

21   A.   Right in front of me, yes, okay.

22   Q.   Turn to claim 1.

23   A.   Pardon me?

24   Q.   Please turn to claim 1.

25   A.   Okay.

1   Q.   Claim 1 says "receiving, by a receiving

2 computer, via a web page."

3   Do you see that?

4   A.   Wait a minute. This is not the '608.

5   Q.   I didn't give you the '302, so it's the '608.

6   I believe that's the '608.

7   A.   You're reading from -- on page --

8   Q.   Beginning of --

9   A.   You're on the claims?

10   Q.   Beginning of column 30, claim 1.

11   A.   I see.

12   Q.   Says "receiving, by a receiving computer via

13 a web page."

14   Do you see that?

15   A.   Yes.

16   Q.   You agree that if a web page is used to set

17 up a connection that permits a file to be transferred,

18 the file transfer occurs via a web page?

19   MR. LEE: Objection, form.

20   THE WITNESS: Okay. So you're saying -- say

21 this again.

22 BY MR. FRANZINI:

23   Q.   Receiving a video file via a web page

24 requires a web page to be involved in some way in

25 order for the receiving to take place?

1   MR. LEE: Objection, form, relevance.

2   THE WITNESS: Yes, I think that a web page

3   needs to be involved.

4   BY MR. FRANZINI:

5   Q. If it's used to set up a connection that

6   permits a file to be uploaded, then the receiving

7   occurs via a web page, right?

8   MR. LEE: Same objection.

9   THE WITNESS: The receiving occurs via a web

10   page, correct.

11   BY MR. FRANZINI:

12   Q. Okay. Now, I'm showing you a document --

13   MR. FRANZINI: Have this marked as

14   Exhibit 13.

15   (Whereupon, Exhibit 13, Order construing the

16   terms of U.S. Nos. 8,438,608 and 8,646,302, was

17   marked for identification.)

18   BY MR. FRANZINI:

19   Q. I'm showing you the claim construction order

20   in this case.

21   Have you seen this document before?

22   A. Yes.

23   Q. Please turn to page 4, at the top it says

24   "The term 'executing in response to the video, an

25   automated function automatically performing each of'

1 is construed to mean in response to the receiving" --

2 withdrawn.

3   Did you apply the construction in paragraph 7

4 of the Court's Markman order in reaching your opinions

5 in this case?

6   A. I felt it was -- that we complied with this.

7   Q. The construction says that in response to the

8 receiving computer receiving the video file, the

9 receiving computer needs to carry out computer

10 instructions without the need for intervention by a

11 human operator.

12   Do you see that?

13   A. Yes.

14   Q. Now, in that construction, the human operator

15 is referring to an operator of the system, right?

16   A. Yes.

17   Q. It's not referring to the user who is

18 uploading the video, right?

19   A. I think that's my reading of it.

20   Q. The Court's construction allows for

21 intervention by the user in the process of executing

22 the automated function automatically performing,

23 right?

24   MR. LEE: Objection, form, calls for a legal

25 conclusion.

1   THE WITNESS: Okay.

2   BY MR. FRANZINI:

3   Q. Is that your understanding as a person of

4   ordinary skill in the art?

5   A. That's my -- that's my reading of this.

6   Q. See how it says -- go back to the claim,

7   claim 1 of the '608.

8   A. Okay.

9   Q. See how it says "executing by the receiving

10   computer in response to the" -- withdrawn.

11   See how it says "executing in response to

12   receiving the video file"?

13   A. Yes.

14   Q. And then it requires the receiving computer

15   to carry out three steps, (b1), (b2), (b3)?

16   A. Yes.

17   Q. Those steps can be carried out in response to

18   both receiving the video file and some other action,

19   right?

20   MR. LEE: Objection, form, calls for a legal

21   conclusion.

22   THE WITNESS: I don't understand the

23   question.

24   BY MR. FRANZINI:

25   Q. Let's take the example of embedding the

1 identification tag into the web page.

2   If the embedding takes place in response to

3 receiving a video file as well as something else, for

4 example, checking whether there is a cookie on the

5 user's computer, that would meet the requirements of

6 claim 1, right?

7   MR. LEE: Objection, form, calls for a legal

8 conclusion.

9 BY MR. FRANZINI:

10   Q. Correct?

11   A. It seems so.

12   Q. So in your opinion, as a person of ordinary

13 skill in the art, executing by the receiving computer

14 in response to receiving the video file can be met

15 even if it's also in response to something else?

16   MR. LEE: Same objection.

17   THE WITNESS: Well, I'm getting lost here.

18 BY MR. FRANZINI:

19   Q. Well, in your report you point to generating

20 a web page in response to both receiving a video file

21 and information from the user's computer, right?

22   MR. LEE: Objection, form, mischaracterizes

23 document.

24   THE WITNESS: Repeat that, please.

25 BY MR. FRANZINI:

1 　　　Q.　In your report what you identify as

2 disclosing embedding a video file -- -- withdrawn.

3 　　　　　In your report what you identify as meeting

4 the embedding limitation of claim 1 of the '608 patent

5 is something that's done in response to receiving a

6 video file and also in response to receiving

7 information from the user's computer, correct?

8 　　　　　MR. LEE:　Objection, form, mischaracterizes

9 document.

10 BY MR. FRANZINI:

11 　　　Q.　Is that true?

12 　　　A.　Yes.

13 　　　Q.　In your opinion, something that takes place

14 in response to receiving a video file and also

15 receiving information from the user will meet the

16 requirements of claim 1, right?

17 　　　　　MR. LEE:　Objection, form, calls for a legal

18 conclusion.

19 　　　　　THE WITNESS:　I'm lost.

20 BY MR. FRANZINI:

21 　　　Q.　Well, the claim doesn't say executing

22 exclusively in response to receiving the video file,

23 right?

24 　　　　　MR. LEE:　Objection, form.

25 　　　　　THE WITNESS:　In response to receiving the

1 video file an automated function automatically

2 performs each of and -- I don't understand where

3 you're going.

4 BY MR. FRANZINI:

5   Q. Sir, in your report, you point to

6 something -- withdrawn.

7   You point to a disclosure of embedding that's

8 done in response to receiving a video file and also

9 information received from a user's computer, the

10 cookie, right?

11   A. Yeah.

12   Q. In your opinion, you can meet the limitation

13 embedding the identification tag into a web page by an

14 action that's performed in response to receiving a

15 video file and also receiving information from the

16 user's computer, correct?

17   MR. LEE: Objection, form, mischaracterizes

18 document, calls for a legal conclusion.

19   THE WITNESS: I have thought that this was an

20 automated function that did not require human

21 intervention.

22   The fact that people have entered in their

23 information in their personal computer and then

24 uploaded it has felt to me as though it's part of the

25 automated process.

1   BY MR. FRANZINI:

2   Q.   And in your opinion, if a person visits the

3   Knowledge Assembly web site and as a result of that,

4   they -- the web page is generated and displayed to

5   them, that's still part of the automated process,

6   right?

7   MR. LEE: Objection, form, calls for

8   speculation, calls for a legal conclusion.

9   THE WITNESS: Again, if people go to the

10   Knowledge Assembly web site and there's a web page

11   that's provided to them, then what?

12   BY MR. FRANZINI:

13   Q.   Then that would meet the requirements of

14   embedding an identification tag into a web page even

15   though that happens both in response to receiving a

16   video file and in response to that user actually going

17   to the web page?

18   MR. LEE: Same objection.

19   THE WITNESS: That sounds accurate to me.

20   BY MR. FRANZINI:

21   Q.   Sir, step (b1) talks about converting the

22   video file into a streaming video file.

23   Do you see that?

24   A.   Yes.

25   Q.   Now, that can be done through a multi-step

1 process, right?

2   A. A multi-step process -- say more.

3   Q. So, for example, if a video file is converted

4 into one format and then converted into a second

5 format, the process of converting it from the original

6 format to the second format meets the requirements of

7 converting the video file into a streaming video file

8 format, right?

9   MR. LEE: Objection, form, calls for a legal

10 conclusion.

11   THE WITNESS: Yes, I believe so.

12 BY MR. FRANZINI:

13   Q. There's nothing about claim 1 that requires

14 the converting recited in step (b1) to happen in a

15 single step, right?

16   MR. LEE: Objection, form.

17   THE WITNESS: I don't know why -- yeah, it

18 doesn't seem to require a single step.

19   MR. LEE: Okay. Simon, I think seven hours

20 is up.

21   MR. FRANZINI: If you're cutting -- I still

22 have more questions and I think he wasted a bunch of

23 time, but if you're cutting me off, we will deal with

24 that later.

25   MR. LEE: We can agree to disagree.

1   Clearly, he has been answering questions,

2   been taking time to look through his report to

3   truthfully and accurately respond to the questions

4   you've been asking him.

5   MR. FRANZINI: We don't have to have a whole

6   conversation on the record, but for the record I want

7   more time with this witness.

8   MR. LEE: We can agree to disagree.

9   MR. FRANZINI: Are you shutting down the

10 depo?

11   MR. LEE: I'm sorry?

12   MR. FRANZINI: We're done?

13   MR. LEE: I have no questions.

14   MR. FRANZINI: You're shutting me off?

15 You're not going to allow me to keep asking questions?

16   MR. LEE: You used up the seven hours.

17   MR. FRANZINI: Not going to allow me to ask

18 any more questions?

19   MR. LEE: Correct.

20   THE VIDEOGRAPHER: This marks the end of

21 volume 1, disk 4 and concludes the deposition of

22 Michael Keehan.

23   The time is 6:08 and we are off the record.

24   (Time noted: 6:08 p.m.)

25

1   J U R A T

2

3   I,   , do hereby certify under

4   penalty of perjury that I have read the foregoing

5   transcript of my deposition taken on   ;

6   that I have made such corrections as appear noted

7   herein in ink, initialed by me; that my testimony as

8   contained herein, as corrected, is true and correct.

9

10   DATED this ____ day of _____, 20 ,

11   at _____,   .

12

13

14

15

16

17   _____

18   SIGNATURE OF WITNESS

19

20

21

22

23

24

25

1   I, LOUISE MARIE SOUSOURES, a Certified

2   Shorthand Reporter, hereby certify that the witness in

3   the foregoing deposition was by me duly sworn to tell

4   the truth, the whole truth, and nothing but the truth

5   in the within-entitled cause;

6   That said deposition was taken down in

7   shorthand by me, a disinterested person, at the time

8   and place therein stated, and was hereafter

9   transcribed, by computer, into typewriting, under my

10 direction and supervision;.

11   That before completion of the deposition

12 review of the transcript ( ) was requested (x) was

13 not requested. If requested, any changes made by the

14 deponent (and provided to the reporter) are appended

15 hereto.

16   I further certify that I am not of counsel,

17 nor attorney for any of the parties in the foregoing

18 deposition and caption named, nor in any way

19 interested in the outcome of the cause named in said

20 caption, and that I am not related to any of the

21 parties hereto.

22 DATE:5-5-2016

23   _____

24   LOUISE MARIE SOUSOURES, CSR. NO 3575

25

1

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14   Exhibit 2   Document entitled "Federal   24

15   Rules of Civil Procedure Rule 26"

16   Exhibit 3   Document entitled "Extract from   38

17   the register of European patents"

18   Exhibit 4   Bound documents   46

19   Exhibit 5   Document entitled "Exhibit A"   47

20   containing U.S. patent 8,438,608

21   Exhibit 6   Document entitled "Knowledge   78

22   Assembly, Inc. demonstration

23   channel" Bates stamps GOOG-VS-PA

24   00016543 to 544

25

1   INDEX OF EXHIBITS (CONTINUED)

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1   ERRATA SHEET FOR THE TRANSCRIPT OF:

2   Case Name: VIDEOSHARE VS GOOGLE, ET AL.

3   Dep. Date: TUESDAY, MAY 3, 2016

4   Deponent: MICHAEL KEEHAN

5   CORRECTIONS:

6   Pg. Ln. Now Reads   Should Read   Reason

7   ___ ___ _____ _____ _____

8   ___ ___ _____ _____ _____

9   ___ ___ _____ _____ _____

10   ___ ___ _____ _____ _____

11   ___ ___ _____ _____ _____

12   ___ ___ _____ _____ _____

13   ___ ___ _____ _____ _____

14   ___ ___ _____ _____ _____

15   ___ ___ _____ _____ _____

16   ___ ___ _____ _____ _____

17   ___ ___ _____ _____ _____

18   _____

19   Signature of Deponent

20   SUBSCRIBED AND SWORN BEFORE ME

     THIS____DAY OF_____, 2016.

21

     _____

22   (Notary Public) MY COMMISSION EXPIRES:_____

23

              MICHAEL KEEHAN

24

25