Page 1

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 1   UNITED STATES PATENT AND TRADEMARK OFFICE
 2                 ------------
 3      BEFORE THE PATENT TRIAL AND APPEAL BOARD
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 5
 6   AMERICAN EXPRESS COMPANY, AMERICAN EXPRESS TRAVEL
 7     RELATED SERVICES COMPANY, INC., EXPEDIA, INC.,
 8   HOTELS.COM LP, HOTELS.COM GP, LLC, HOTWIRE, INC.,
 9     ORBITZ WORLDWIDE, INC., PRICELINE.COM, INC.,
10       TRAVELOCITY.COM LP, and YAHOO! INC.,
11                  Petitioner,
12                      v.
13            METASEARCH SYSTEMS, LLC
14                 Patent Owner
15                 ------------
16             Case CBM2014-00001
17             Patent 8,326,924
18                 ------------
19
20        DEPOSITION OF DR. KEVIN ALMEROTH
21        Taken Tuesday, August 26, 2014
22           Scheduled for 9:00 a.m.
23
24
25   REPORTED BY:  Dana S. Anderson-Linnell
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Page 3

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 2
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 1   DEPOSITION OF DR. KEVIN ALMEROTH taken on Tuesday,
 2   August 26, 2014, commencing at 8:49 a.m. at Robins,
 3   Kaplan, Miller and Ciresi, 2800 LaSalle Plaza, 800
 4   LaSalle Plaza, Minneapolis, Minnesota before
 5   Dana S. Anderson-Linnell, a Notary Public in and of
 6   the State of Minnesota.
 7             **********************
 8
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10
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23   (Appearances continued on the next page.)
24
25
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 1   INDEX
 2
 3   WITNESS:  Dr. Kevin Almeroth              PAGE
 4   EXAMINATION BY:
 5   Ms. Reichenbach                             6
 6
 7   INSTRUCTIONS NOT TO ANSWER:  (None.)
 8
 9   PRODUCTION REQUESTS:  (None.)
10
11   INDEX OF EXHIBITS REFERRED TO:
12
13   Exhibit 1001 - U.S. Patent Number 8,326,924    6
14
15   Exhibit 2001 - U.S. Patent Number 6,789,073    7
16
17   Exhibit 2018 - Substitute Claim 13             8
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19   Exhibit 2019 - Substitute Claim 14             8
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21   Exhibit 2023 - U.S. Patent Number 6,185,598   27
22
23   Exhibit 2024 - U.S. Patent Number 6,108,703   30
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1   DR. KEVIN ALMEROTH,

2 called as a witness, being first duly sworn, was

3   examined and testified as follows:

4

5   EXAMINATION

6

7   BY MS. REICHENBACH:

8   Q.   Good morning, Dr. Almeroth. My name is

9 Kristen Reichenbach, and I'm going to ask you

10 some questions this morning about your

11 declaration that was submitted in this

12 proceeding. First I'm going to start off with

13 a couple exhibits. I'm placing before you an

14 exhibit marked Exhibit 1001.

15   Do you see the Patent Number 8,326,924 in

16 the upper right-hand corner?

17 A.   (Reviews document.) Yes.

18 Q.   And have you seen this document before?

19 A.   Yes.

20 Q.   I'm going to refer to this as the

21 '924 Patent, okay?

22 A.   Okay.

23 Q.   Have you read the '924 Patent?

24 A.   Yes, I have.

25 Q.   Have you read all of it?

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1 A.   Yes.

2 Q.   How carefully did you read it?

3 A.   Carefully enough to understand it.

4 Q.   Did you skim it or how much time

5 approximately spending on each page?

6 A.   Oh, I don't think I could tell you how

7 much time on each page. I've looked at it

8 multiple times, sometimes searching for

9 specific words or phrases.

10 Q.   So would you say you read it -- excuse

11 me.

12 A.   I mean, to answer your question, I think

13 I've spent hours reading it.

14 Q.   Okay. Placing before you an exhibit

15 marked Exhibit 2001.

16   Do you see the patent number 6,789,073 in

17 the upper right-hand corner?

18 A.   (Reviews document.) Yes.

19 Q.   Okay. Have you seen this before?

20 A.   Yes.

21 Q.   Do you see that this application for

22 patent was filed in February 2000? It's on

23 the left column there?

24 A.   I do.

25 Q.   And I'm going to refer to this as the

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1 2000 patent application.

2 A.   Okay.

3 Q.   Have you read the 2000 patent

4 application?

5 A.   I have.

6 Q.   All of it?

7 A.   Yes.

8 Q.   And as thoroughly as you state you read

9 the '924 Patent?

10 A.   Generally I think I have. I mean,

11 there's a lot of overlap between the two.

12 Obviously the '924 has more material. But I

13 think I've read it as much as the '924.

14 Q.   Okay. I'm handing you two documents.

15 One is labeled Exhibit Number 2018, which is

16 the text of claim 13, substitute claim 13 that

17 has been submitted in this proceeding. And

18 the second document is Exhibit Number 2019,

19 which is the text of substitute claim 14

20 submitted in this proceeding.

21   Have you seen both of these documents

22 before?

23 A.   (Reviews documents.) Yes.

24 Q.   And have you read claims 13 and 14?

25 A.   Yes.

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1 Q.   Have you tried to understand them from
2 the perspective of someone in 2000 who had
3 ordinary skill in the art of metasearching?
4 A.   Yes.
5 Q.   Okay. Please look at step A of claim 13.
6 Do you see where the claim states that the
7 request from the client device is associated
8 with at least one travel-related item that may
9 be ordered? Do you see that?
10 A.   Yes.
11 Q.   Does this term "travel-related" have any
12 special meaning that you are aware of?
13 A.   Not that I'm aware of. I think the task
14 that I was given was largely to focus on the
15 amendments.
16 Q.   Okay.
17 A.   So --
18 Q.   But you stated --
19 A.   Sorry. I'm not finished.
20 Q.   Okay.
21 A.   So part of what I was trying to do in my
22 declarations was to use the assumption that
23 all of the limitations other than what's been
24 proposed were found in the knowledge broker in
25 the Mamma.com references, and so I primarily

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1 focused on the distinctions in the amended
2 portions of the claims.
3 Q.   Okay. But you did state that you read
4 the entirety of the claim and considered it
5 from the perspective of someone in 2000 who
6 had ordinary skill in the art, correct?
7 A.   That's correct.
8 Q.   Okay. So the term "travel-related item"
9 doesn't to you have a special meaning in the
10 field of computer science, for example?
11 A.   Again, generally I don't believe so. But
12 I wasn't really focused on defining the scope
13 of the claims or attributing any special
14 meaning or looking at claim construction
15 issues in particular in the limitations where
16 I had assumed were already present in prior
17 art references.
18 Q.   Well, let's just think about the term
19 from the perspective of your background in
20 computer science. Do you see the word
21 "travel-related" as having some special
22 definition in the field of computer science so
23 that when that word is used in computer
24 science, it has a meaning that's different
25 from an ordinary conversational meaning?

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1 A.   Well, to be clear, if we're -- just so
2 that I understand your question, if you're
3 removing that term from the claim and then
4 asking about it generally, I don't think it
5 has any special meaning. But certainly there
6 are instances where the context of how that
7 term is used might have special meaning.
8 Q.   Do you think there's a particular context
9 in this -- in the claim or any language in the
10 claim that gives it a special particular
11 meaning?
12 A.   As I said, I really haven't looked to do
13 claim construction issues or attribute meaning
14 or special meaning or really analyze the terms
15 beyond what I've identified or what I've
16 considered as part of the amendment.
17 Q.   Well, so just looking at the term today,
18 I realize that you haven't discussed this
19 specifically before, but from your perspective
20 as how the claim is -- or how the term
21 "travel-related" is used in the claim, do you
22 see a particular definition of that word in
23 the claim?
24   MR. SCHULTZ: Objection, outside
25 the scope of his declaration.

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1   THE WITNESS: As I sit here now, I
2 don't. But it's a question that I would spend
3 more time on analyzing before I would give you
4 a definitive answer. I haven't really looked
5 at the claim to see if it defines
6 travel-related items within the claim, so
7 it's -- it would be hard for me to give you my
8 expert opinion on that topic.
9 BY MS. REICHENBACH:
10 Q.   If you want, you can take time to look
11 through the claim again right now if that
12 would help.
13 A.   I'm not sure that it would. I think if I
14 were asked my expert opinion as to whether or
15 not the claim provided a definition, it's
16 something I would want to think carefully
17 about. I don't think I really, you know, can
18 sit here now -- I certainly can read the
19 claims. I don't see anything in here that
20 gives it a specific definition, but that
21 really is just giving a very superficial look.
22 Q.   Okay. So based on your experience just
23 in the field of computer science and
24 considering the phrase "travel-related" and
25 "travel-related item," you would say that you

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1 do not know of any technology-based test for
2 determining whether or not an item is
3 travel-related or not?
4   MR. SCHULTZ: Objection.
5   THE WITNESS: I'm not sure what you
6 mean by "technology-based test." I think
7 outside of the scope of claim 13 there
8 certainly might be a test. It really depends
9 on the system or how it's used or what I'm
10 looking at or how it's defined or what the
11 characteristics are. So I don't really think
12 I have enough information to answer that
13 question.
14 BY MS. REICHENBACH:
15 Q.   Okay. Let's look again at the -- you
16 have claim 13, which is Exhibit 2018, in front
17 of you, correct?
18 A.   Yes.
19 Q.   Okay. Let's look at step C of the claim.
20 A.   Okay.
21 Q.   Do you see the requirement where it says:
22 The database comprises at least one previously
23 stored search result comprising price
24 information received in response to at least
25 one previous search query sent by the

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1 metasearch engine?
2 A.   I see those words.
3 Q.   Do you see the phrase "previous search
4 query sent by the metasearch engine" that's in
5 the last two lines of step C?
6 A.   Yes.
7 Q.   So I want you to consider this phrase
8 from the perspective of the skilled artisan in
9 2000 in the area of metasearching. Might this
10 phrase "previous search query sent by the
11 metasearch engine" mean that the metasearch
12 engine sent the query previous to step C?
13 A.   I haven't really looked to answer that
14 question before. The best I can say in
15 answering your question is it might. It
16 certainly seems like looking at the claim that
17 it would be possible to have sent that search
18 query previously.
19 Q.   So there's nothing in your view in the
20 claim that rules out that reading?
21 A.   I haven't really looked at it to answer
22 the question of ordering of parts of the
23 limitation with respect to the limitation as a
24 whole. I would have to think about it more
25 carefully. I just haven't looked at that

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1 particular aspect of the claim.
2 Q.   So do you agree, though, that the claim
3 would make sense with that understanding, that
4 previous search queries sent by the metasearch
5 engine means previous to step C?
6 A.   As I said, as I look at it right now, I
7 don't see anything that jumps out of the page
8 to me as to why that wouldn't be a reasonable
9 reading. But as I said, I haven't really gone
10 through to try and establish the ordering of
11 steps. I understand in a method claim there's
12 no presumption of ordering unless it's
13 dictated by the claim, but I haven't had to go
14 into that level of detail in forming my
15 opinions as to whether or not that previous
16 search query could happen or must happen or
17 might happen before step C.
18 Q.   So as you look at the claim now, do you
19 see any order dictated by the language of that
20 phrase, "previous search query sent by the
21 metasearch engine"?
22 A.   Nothing definitive with respect to --
23 maybe the better way to say it is I just
24 haven't looked. It seems a reasonable
25 interpretation, but I really haven't looked to

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1 answer that question and sort of trace out
2 where I think the boundaries are of the timing
3 relationships even within limitation C.
4 Q.   Okay. Well, let's consider might that
5 phrase "previous search query" mean that the
6 metasearch engine sent the search query
7 previous to step B?
8 A.   I have not even really tried to answer
9 that question.
10 Q.   Does that seem like the claim would make
11 sense with that reading to you?
12 A.   I haven't looked to answer that question
13 or sit down with the claim and try and assess
14 the requirements of ordering. I just haven't
15 tried to answer that question as part of
16 offering my opinions in the declaration.
17 Q.   Okay. But you don't see anything today
18 in your review of the claim that would rule
19 out that reading of the claim?
20   MR. SCHULTZ: Objection, outside
21 the scope of his declaration.
22   THE WITNESS: As I sit here right
23 now, I don't see anything that requires or
24 precludes the possibility that that previous
25 search query couldn't have happened before

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1 step B. But again, I haven't really looked at
2 it in detail and it wasn't really a necessary
3 question I needed to answer in order to
4 perform the analysis in my declaration.
5 BY MS. REICHENBACH:
6 Q. Okay. So I will have you consider just
7 one more meaning here as that might the phrase
8 "previous search query" mean prior to step A?
9   MR. SCHULTZ: Objection.
10   THE WITNESS: I think like the
11 previous questions, I haven't really looked at
12 the ordering requirements of claim 13 to see
13 whether or not the previous search query term
14 in limitation C has any temporal relation to
15 happening before or after step B. I just --
16 sorry, step A. I just haven't looked.
17 BY MS. REICHENBACH:
18 Q. But is your answer again the same, that
19 you don't see anything today in the claims
20 that would rule out that meaning?
21   MR. SCHULTZ: Objection.
22   THE WITNESS: Well, that's not
23 quite what I said earlier with respect to the
24 claims. Taking a very cursory examination of
25 the claim as I sit here right now, I don't see

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1 anything. But I don't think that's
2 representative of my expert opinion, because I
3 really haven't had a chance to look at it in
4 detail.
5 BY MS. REICHENBACH:
6 Q. You stated previously, though, that your
7 focus was on the added portions of the claim,
8 which step C is part of the added portion of
9 the claim, is it not?
10 A. Absolutely. But as part of my analysis I
11 didn't need to consider the ordering of the
12 steps, because from the perspective of the
13 prior art and the assumptions I needed to make
14 it wasn't really a question that created a
15 distinctiveness over the prior art. There
16 wasn't prior art that did everything here but
17 in a different order and so I had to analyze
18 what I thought the order was. That level of
19 detail really never needed to be addressed in
20 the analysis that I did.
21 Q. Do you recall reading anything in the
22 '924 Patent that addressed this issue and
23 would rule out any of these three alternative
24 meanings?
25 A. I don't recall anything from reading the

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1 '924 specification that would rule out any of
2 those meanings. But again, as the line of
3 questioning has hopefully communicated, it
4 wasn't a level of detail I needed to get into
5 as part of my analysis.
6 Q. Does your answer change for the 2000
7 patent application?
8 A. It does not.
9 Q. Okay. Let's talk about caching. In
10 2000, caching was a well-known technique,
11 wasn't it?
12 A. It's a fairly broad question. There's
13 different kinds of caching. Certainly at
14 least some of the types of caching were fairly
15 well known in -- more specifically, I think
16 known to persons of skill in the art at the
17 time.
18 Q. Okay. Did a person of ordinary skill in
19 the art in metasearching in 2000 have a
20 well-accepted understanding of the word
21 "caching"?
22 A. From that particular perspective, I think
23 such a person would need some context on what
24 caching was. There's memory caching. There's
25 caching of the kind I've talked about in my

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1 declaration, web object caching, file caching.
2 It exists in lots of different contexts. Even
3 a person of skill in the art, and you've
4 mentioned a person of skill in the art of
5 metasearching which I mean I have my
6 definition I'm not sure I would call that a
7 person of skill in the art in metasearching a
8 person of skill in the art as it relates to
9 the patents in suit I think would be aware of
10 many kinds of caching.
11 Q. Well let's use that term as you
12 understand it in your declaration. So what
13 definition of caching would the person as you
14 understand it of ordinary skill in the art
15 have for the term caching?
16 A. I think caching generally and I don't
17 know that I can give you sort of a textbook
18 definition I can probably give you some
19 examples of caching but generally caching was
20 of the type where objections in particular
21 static objects were stored in places other
22 than what I will call the origin server such
23 that that content could be more easily
24 retrieved from somebody who was trying to get
25 it.

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