UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE ALEX KOZINSKI

UNITED STATES DISTRICT JUDGE PRESIDING

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VEDERI, LLC, PLAINTIFF,	)	
VS.	)	NO. CV 10-7747 AK
GOOGLE, INC., DEFENDANT,	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PASADENA, CALIFORNIA

TUESDAY, NOVEMBER 22, 2011

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LOS ANGELES, CALIFORNIA; TUESDAY, NOVEMBER 22, 2011

10:44 A.M.

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THE CLERK: In the matter of Calendar Item Number 1, Case Number CV 10-7747, Vederi, LLC versus Google, Inc., counsel, please state your appearances for the record.

MR. DILLARD: Good morning, your Honor. David Dillard of Christie, Parker and Hale on behalf of plaintiff Vederi. With me at counsel table is Steven Lauridsen of our firm. Also with us today are the principles of Vederi and the inventors of the patents in suit, Enrico Di Bernardo and Dr. Luis Goncalves.

THE COURT: Okay.

MR. BOSTWICK: Good morning, your Honor. Gary Bostwick of Bostwick and Jassy representing Google, Inc. Here today arguing will be Sasha Rao and Chris Harnett from Ropes and Gray. Todd Simpson is joining them at the table, and we also have from Google's corporate counsel, Jennifer Polse.

Your Honor, the parties have agreed if it is agreeable to the court to have the following order of presentation which would be in eight different parts: The introduction, and, then, as you can see there from

the slide, where preambles are a limitation and then the various terms. Vederi would go first, and then Google would follow. And it would happen then in a very rigorous fashion for each of the eight steps.

However, if the court has any other desires with respect to the order of argument or anything else, we are happy to try to adjust that.

THE COURT: That is fine.

MR. BOSTWICK: Thank you, your Honor.

MR. DILLARD: Your Honor, when we received the list from Google as to the sequence of events that we would propose to the court, I don't recall anything about a technology tutorial or legal principles, but, nevertheless, we can discuss that.

THE COURT: It is your presentation. So you have -- so you say whatever you think will help your clients.

MR. DILLARD: Thank you, your Honor.

The patents in suit are claimed methods for enabling the visual nagivation of a geographical area, and they require that the method be practiced in a environment set forth in the preamble which is a system --

THE COURT: Maybe it would be helpful to start by explaining to me what these patents do just in plain

English. They don't involve taking a picture. So I guess that is not patentable. So what is it specifically the two patents -- what technology, what is the invention?

MR. DILLARD: Well, the invention is a -- you have seen the product Street View where a user at a user terminal can plug in an address.

THE COURT: I do understand the process. I am just wondering what part of the process are you claiming is an invention. You are not claiming taking a photograph on the street is the invention. You are not claiming a PC terminal is an invention.

MR. DILLARD: Correct.

THE COURT: So tell me what it is that this invention does. There are two patents and they could have two inventions. And what part of the process, what exactly is it that is claimed to be the invention?

MR. DILLARD: Your Honor, there are two patents, but they are not necessarily separate inventions.

THE COURT: Understand.

MR. DILLARD: Each of the patents has numerous claims.

THE COURT: Together, what is it that they are?

MR. DILLARD: Well, they claim a method, and the method is gathering -- the method is, as claimed, which

is, of course, the invention relates to a system where you have a user terminal and a remote processor and an image source, database, and the method claims steps in receiving a request or user input for an image of a location. The processor will then retrieve the image of the location, send it back for display on the user terminal. And then there are a variety of things that could happen. There could also be displayed an icon on the image or associated with an image. One can press or click on the icon.

THE COURT: I am not sure you understand my question. I do know how the process works. Okay. I do know. I am trying to figure out what is the invention here. I take it that putting an image and uploading it so somebody can access it from a computer terminal is not the invention. Right? Anybody can do that.

MR. DILLARD: Yes.

THE COURT: So what is it that -- what was it that was claimed by the plaintiffs?

MR. DILLARD: In the broadest claims, it would be --

THE COURT: Try not to be technical. Let's see if we can use just plain English so I can understand what it is.

MR. DILLARD: It is an economical way of providing

images and particularly composite images to a viewer that can then visually navigate through a geographical area.

THE COURT: Economic, you mean so in terms of amount of storage, so the storage of these images?

MR. DILLARD: Yes. In the -- actually, some of the more specific claims. But there is a process by which instead of recording and storing the video frames, the one to one correspondence to an exact location, the frames are stored with respect to a street segment, and then when a user makes a request for a particular address, the processor is programmed to use the street segment and then that the address would be on and calculate where that particular address would lie on that street segment, pull up the image from that and be able to give that to the user. It is a much more economical way than having a one to one correspondence with every video frame that could be requested.

THE COURT: Okay.

MR. DILLARD: And so that is -- and, then, particularly useful, is the use of composite images in our, I think the provisional application for which all the patents claim priority, there is a discussion about the, basically, the sacrifice of location information so that you are not getting an exact location but by having a composite image, you don't need the accuracy in order

to fulfill the purpose of this which is to enable somebody to navigate through an area. In other words, it doesn't have to be surveyor-quality type location information.

Is this answering your question?

THE COURT: I think so. Go ahead.

MR. DILLARD: All right. The claims have been written from the standpoint of trying to capture those steps that are performed by the processor and the image source or database, and we have disputes over the issues of whether or not the preamble adds a limitation to the invention. I may be getting ahead of myself.

We agreed that a portion of the preamble does, to the extent that it sets the environment in which the method is practiced, but, beyond that, it doesn't add any specific steps or doesn't modify the steps. Another portion of the preamble --

THE COURT: That is your position. That is not Google's position?

MR. DILLARD: That's correct.

THE COURT: Google thinks it is a limitation; right?

MR. DILLARD: We both agree that it is a limitation as to the environment in which the method must be practiced. I don't want to put words in their mouth.

I feel confident that we agree with that much. They go beyond that and claim that it is a further limitation on the steps. I don't see how that could be, but that is what I understand their position to be. The second part of the preamble is a statement of purpose, you know, a method for enabling the visual nagivation of a geographical area.

And the issue there is Google has characterized that that portion of the preamble as saying a method for visual nagivation as opposed to for enabling visual nagivation, and there is a significant difference there because if you are talking about visual nagivation, it is hard to think of a claim that wouldn't involve the user. But if you have a claim for enabling visual nagivation, you can separately claim just those steps that are performed by the processor.

And so that is what we believe has happened. I am getting into the actual claim constructions. If the court would like me to continue, I would be more than happy to.

THE COURT: Sure. Why don't you go ahead.

You have got the preamble issue; right?

MR. DILLARD: Yes.

THE COURT: And then --

MR. DILLARD: Then we have who performs the actual

steps, and there is two groups of steps.

THE COURT: Who performs or it has to be formed by the user?

MR. DILLARD: There is two groups. One is what we might refer to as a receiving step. The first step in the claims is receiving a first user input and --

THE COURT: Specifying first location?

MR. DILLARD: Yes. I didn't quite understand what those two first -- what work those two first do in that phrase.

MR. DILLARD: In the claims, there is a first user input and the second user input, and the first one specifies the first location and the second specifies the second location.

THE COURT: How does that work?

MR. DILLARD: The effect of that is if a user say puts in an address, then that address or that request will go to the processor, an image associated with that address will then be retrieved and sent back for display on the user's display.

So as far as receiving a request, it is our position that the processor which is in this case under the control of Google has to be receiving a request. Otherwise, you would never be able to retrieve an image and send it back for display.

The -- for this receiving step, Google seems to take the position that, well, it is a user terminal that receives not the processor.

THE COURT: Are you still answering my question?

MR. DILLARD: I may have lost track of the question.

THE COURT: My question was what first -- don't get lost. If I am going to ask a question, I really sort of expect an answer.

MR. DILLARD: Yes, your Honor.

THE COURT: If you meander off on other things, I get really confused. So my question had to do with what work those two first do in that phrase, and you said -- let me just tell you how far I got before you lost me.

MR. DILLARD: Yes, sir.

THE COURT: The user puts in initial location, okay, and everything you said after that, I didn't track. So let's go back to my question and to your explanation starting with the first, first user input. Okay.

MR. DILLARD: So receiving a first user input would be a request by the user that specifies a first location within the geographical area.

THE COURT: Okay. So the user says Colorado and Orange Grove or something like that?

MR. DILLARD: Or 350 Colorado. That is our

address..

THE COURT: I mean that is first.

THE COURT: East or west?

MR. DILLARD: West, your Honor. It is about two blocks.

THE COURT: Okay. Just trying to actually visualize, I am pretty familiar with Pasadena.

MR. DILLARD: Yes.

THE COURT: So they put that in, and what is the -- you said the first. There must be a second or third?

MR. DILLARD: Right. And a second user input would simply be a request for another location. So a second location --

THE COURT: Okay. So what if they put in a second location in San Francisco, Seventh and Mission? I am just trying to understand what --

MR. DILLARD: All right. That would -- we suddenly jump over to San Francisco.

THE COURT: Let's make it simple. Let's say they put in 350 Colorado, and then they put in 375 Colorado.

MR. DILLARD: It would the image would jump to something on 375.

Now, the second input could be clicking on an arrow pointing up and down the street or -- well, if that

was the case, then the image would move a certain distance.

THE COURT: Okay. This is part of your -- this phrase, receiving the first user input specifying a first location, that is part of your claim; right?

MR. DILLARD: Yes, your Honor.

THE COURT: Okay. So I am now asking what limitation does that -- what work does that do in terms of the patent. I mean saying you can do this in many locations and you can get different locations, what exactly does this do in terms of the claim?

MR. DILLARD: Well, it enables the processor to pull up the image of that first location, for display at the user terminal.

THE COURT: Let's say we change it to "a" instead of "first." So where it says "receiving a first user input specifying first location," let's just say we remove the word "first."

THE COURT: You still get the image; right?

MR. DILLARD: You would still get an image. The use of "first" also designated the initial. In other words, when you pull up the program, the initial request for an image of a location would be the first.

THE COURT: What I am trying to understand is, is there something about the claims of the patent where

moving from the first location to some place else is part of your claim? There is a first location, and then there is something that --

MR. DILLARD: Your Honor, in looking at -- I suspect you are looking at Claim 1 of the 760 patent. The third step is receiving a second user input specifying a nagivation direction relative to the first direction. That would be, for example --

THE COURT: That would be like the arrow?

MR. DILLARD: An arrow or a button with an arrow so you can move down the street.

THE COURT: So putting in a second address would be just like putting a first location. So if you then move to Seventh and Mission?

MR. DILLARD: Yes.

THE COURT: So this is a first location, and then you would have arrows or something that would move it, and where is that provided in the patent, the thing about the arrow nagivation to a different location?

MR. DILLARD: In the claim or in the specification?

THE COURT: Either.

MR. DILLARD: In the claims, if you are looking at -- why don't we make sure we are looking at the same page. What document are you reading from?

MR. DILLARD: I am looking at Vederi's opening claim construction brief.

THE COURT: Okay. Hold on a second. This is Document 49?

MR. DILLARD: Document 51, your Honor.

THE COURT: 51. The opening construction brief -- right -- October 5th, 2011?

MR. DILLARD: Yes.

THE COURT: So I got it.

MR. DILLARD: And there is a Joint Appendix A which is a full text of the asserted claims.

THE COURT: Okay.

MR. DILLARD: This would be at Page 31 of 54.

THE COURT: Excuse me.

MR. DILLARD: Page 31 of 54, at least that is the little --

THE COURT: Is this the handwritten numbers.

MR. DILLARD: Oh. The handwritten numbers at the bottom would be -- I'm sorry. Page 26.

THE COURT: Okay. So that is Page 1 of the exhibit.

MR. DILLARD: Yes.

THE COURT: So what was that about 26 of 54?

MR. DILLARD: Down at the bottom.

THE COURT: No. I see 26, but you said something

like 31 of 54.

MR. DILLARD: When we receive it from the court, a copy, it has a designation at the very top that indicated 31 of 54.

THE COURT: Well, let's -- I don't care, but this is the chambers copy which doesn't have that on it. That is okay. Just so we are on the same page here. This is Page 1 of the exhibit.

MR. DILLARD: Yes.

THE COURT: Okay. Go ahead.

MR. DILLARD: So as far as the moving around, the third step is receiving a second user input specifying a nagivation direction relative to the first location in the geographical area. It goes on to the next step is determining the second location based on the user specified nagivation direction. And then retrieving from the image source the second image associated with the second location. So that is basically the part where you can move up and down the streets.

THE COURT: Okay.

MR. DILLARD: I believe also on Page 3 of that brief --

THE COURT: Of the brief not of the appendix?

MR. DILLARD: Yes. Of the brief.

THE COURT: Okay.

MR. DILLARD: -- there is an image of something called Scout Tool.

THE COURT: Yes.

MR. DILLARD: This is Figure 16 of the provisional application or -- excuse me. I'm sorry. I think it is Figure 16 of the patents, but there, above the image down at the bottom, there are some buttons that can be pressed to move the images up the street, down the street, little bit over to the opposite side.

THE COURT: I'm sorry. When you are talking about the image, you are talking about the photograph?

MR. DILLARD: Yes, your Honor. This one.

THE COURT: You got a graphic, something called Scout Tool?

MR. DILLARD: Yes.

THE COURT: And then there is a color, street browser. We are just looking at Scout Tool right now?

MR. DILLARD: Yes.

THE COURT: Then at the very bottom of Scout Tool, that is what you are referring to the image.

MR. DILLARD: Correct, your Honor.

THE COURT: Then I don't see any buttons.

LEFT1: Above on the right-hand side, there is a little what appears almost to be a cross, north, south, east, west buttons.

THE COURT: Oh, yes. I see that. Those are buttons?

MR. DILLARD: Right. And in that embodiment, those would have been used to move directionally.

THE COURT: So you could move west which would be, assuming this is Colorado Boulevard, this would have been moving towards -- well, if it was west, if it was Orange Grove, I guess, then -- well, what happens if you want to move northwest or something or if you know the street doesn't align northwest. It isn't aligned north and south.

MR. DILLARD: Well, you could have forward, backward, left and right.

THE COURT: I don't see it here.

MR. DILLARD: Not in this. That was not the way Scout Tool was prepared. This was the very initial embodiment that was created in the year 2000.

THE COURT: And these pictures that you have given me here, are these part of the patent application?

MR. DILLARD: The Scout Tool is.

THE COURT: But not the --

MR. DILLARD: Not the street browser. That was an embodiment of the invention that was up on the Pasadena website in 2001.

THE COURT: And this, just so I understand, this

Scout, this was a image that was attached that was included in the patent application?

MR. DILLARD: I believe this would be called a screen shot.

THE COURT: Well, is it a screen shot, whatever it is, but it was an image.

MR. DILLARD: Yes. But when operative, what could you do? You could click on something on that map and get the image?

MR. DILLARD: Yes. You could -- you could enter an address in the small boxes up in the right-hand portion.

THE COURT: 220?

MR. DILLARD: Yes. There we go.

THE COURT: You could pick a location and click on it?

MR. DILLARD: Yes.

THE COURT: That would give you a image of the street?

MR. DILLARD: Yes.

THE COURT: How does it know which side of the street?

MR. DILLARD: There was --

THE COURT: Well, what happens if I am here, and I want to see the other side of the street?

MR. DILLARD: There is a direction identifier which is, I believe, the vehicle in the map is on one side of the street versus the other.

THE COURT: I'm sorry. The vehicle on which map?

MR. DILLARD: In the map above the image.

THE COURT: There is a vehicle there?

MR. DILLARD: I'm sorry.

THE COURT: I'm sorry. There is a vehicle on that map?

MR. DILLARD: I believe that is a vehicle at the intersection.

THE COURT: Of Colorado and --

MR. DILLARD: And is it Fair Oaks maybe?

THE COURT: Whatever that street is. Yes. Something avenue. Oh. Fair Oaks. Yes, sure. Fair Oaks. So that is a little car there at the intersection. I see. And I am not sure I understood what you said. I said what if you want to see the opposite side of the street.

MR. DILLARD: I believe you would hit the center button of those four east, west.

MR. DILLARD: Yes.

THE COURT: And the invention, here, was a way of retrieving these images that was particularly economical. Is that what it was?

MR. DILLARD: Yes, your Honor. That Scout Tool?

THE COURT: Yes.

MR. DILLARD: The picture is Figure 16 in all of the patents. It is a little bit bigger in the patents, and that center button says switch view. So that would be if you were -- if your view was to the north, it would flip you over to the south. Now, the embodiment whether it be Scout Tool or even the street browser in Pasadena did take side-looking images of the streets, the buildings on the streets. However, the patents do discuss some alternate embodiments, and, in particular, the provisional application includes a disclosure of -- well, I will just read this portion to you.

It says, "also sufficient cameras to cover all directions used so as to provide 360 degrees of view, images and synthetic panoramas for the direction of views. A user control can be provided."

Now, that is not something that was done in the street view, not street view, sorry, Scout Tool. However the provisional application has a disclosure of that. The provisional application is incorporated in its entirety by reference in all of the patents so they contain a disclosure of synthetic 360-degree views as a potential embodiment.

THE COURT: Okay. Do you want to go ahead hear

from opposing counsel. Do you have anything further to say on that? I thought we would go down some steps so I wasn't sure.

MR. DILLARD: Well, I think perhaps if we let Ms. Rao catch up where we are. Then, we can make it a little bit more --

THE COURT: Okay.

MS. RAO: Good morning, your Honor.

I would like to start by answering your question about what is the claimed invention as described in the patent. So, before, I would like to hand over with your permission a slide presentation.

May I approach the bench, your Honor? May I approach?

THE COURT: Sure.

Thank you. Opposing counsel have this?

MS. RAO: Yes.

THE COURT: These are the slides.

MS. RAO: Yes.

THE COURT: So we are looking at Slide 3 now. Do we need the slides -- do we really need the slides?

MS. RAO: I think it would be helpful, your Honor, to understand what the claimed invention is.

THE COURT: But everything is in these folders.

MS. RAO: Whatever works better for you, your

Honor.

THE COURT: Usually, that is for the jury, you know, and we all look at pictures. But if you think -- I guess we have an audience. I have no problem with that, but I must tell you I am too vain to get bifocals so if I can see this, I can't see that.

MS. RAO: Right. Let's use the paper copy.

THE COURT: You can go ahead and do that, and then the audience can follow along because we do have the inventors here and others who might be interested. But I will be looking at the close-up.

MS. RAO: That is why we got those, your Honor.

THE COURT: Okay. I am with you. So if I don't look at you, it is because I am looking.

MS. RAO: That is perfectly fine, your Honor.

THE COURT: Okay. Go ahead.

MS. RAO: So the abstract of the patent gives a broad summary of the invention, and if you look at the abstract, you can think of the invention.

THE COURT: Excuse me. The abstracts are these things in color that you have here?

MS. RAO: Right. We took the snippet from the patent, and if you want to look at the snippet we took, it is attached at Rao Exhibit D. Rao Exhibit D is a copy of the 760 patent, and so we just took the abstract from

that.

THE COURT: Let me see, Rao Exhibit D. You are Rao?

MS. RAO: Yes.

It was attached to Google's claim construction brief, opening brief. It is docket item --

THE COURT: Well, I have the claim construction brief. Oh. There we go. Rao declaration.

MS. RAO: Right.

THE COURT: Okay. And it was exhibit what?

MS. RAO: D as in David.

THE COURT: Mine only goes to C. Oh. It continues. There we go. Okay. No. That is Lauridsen.

Rao only has A, B, C. This is Document 57-2.

MS. RAO: I will just give you a copy of the patent, your Honor, with your permission.

THE COURT: Okay. Thank you.

MS. RAO: So we are looking at the abstract of this patent.

THE COURT: Okay.

MS. RAO: And we took the abstract and we color-coded it because it shows the three concepts that are claimed as Vederi's invention. So there are three pieces to this claimed invention. The first piece is capturing images along the street, and that is

indicated by the text highlighted in yellow in the abstract. And it talks about a video camera moving along a street recording images of objects along the street, and then the second piece of the claimed invention is forming a vertical flat panorama.

THE COURT: Wait a minute. There is a little bit more to the yellow part. It is a camera that moves along.

MS. RAO: Right.

THE COURT: And then there is a GPS receiver that tells the camera where it is?

MS. RAO: That's right.

THE COURT: And then the images are indexed to the GPS location. I take it the GPS gives you a precise longitude and latitude position?

MS. RAO: Right.

THE COURT: Which I guess, presumably, at some point, is called a street address?

MS. RAO: I am just using the abstract to illustrate the three big concepts that are combined.

THE COURT: So the yellow, the first part is the capturing of images and indexing them.

MS. RAO: Right.

THE COURT: To a specific location.

MS. RAO: Right.

THE COURT: Okay. Now, we are onto the second one which is the green portion.

MS. RAO: Right.

THE COURT: Okay. And what is that.

MS. RAO: That is creating the vertical flat panorama, the panoramic image.

Now, I have slides to illustrate each of these concepts in greater detail as we move through with more pieces of the specification just to give you the sense of the invention as a whole.

So the second piece about creating a vertical flat panorama is described in the abstract, for example, in the language highlighted in green which is the composite images created on a column by column basis by determining which of the acquired images contains the desired pixel column, and extracting pixels associated with the column and stacking the column side-by-side.

Now, we will look at that in greater detail with reference to the figures of the patent, but, generally, that describes creating a vertical flat panorama. And then the third concept that is encompassed in Vederi's invention is the notion of a user nagivation from a user terminal.

THE COURT: Well, that is the part that is totally unreadable. Black and blue. Why don't you go ahead and

read it to me because I can hardly make it out.

MS. RAO: Perhaps you could use your white copy, your Honor, of the patent I just handed you. It is on the cover page of that. It is the first page of the patent, and it is the line.

THE COURT: I see. So this is -- what you have got here, multi-color, is the same paragraph on the abstract?

MS. RAO: Exactly. And the abstract is the broad summary of the invention that Vederi drafted, and it is part of the fully integrated written instrument that is the patent that you have been asked to construe. And at the end of this abstract paragraph, it talks about the composite images being stored in a database with a street name and a range and having, allowing a user to visually navigate the area from a user terminal.

And the Scout Tool picture on the side is Figure 16 of the patent which we put on Slide 3 to indicate the graphic user interface that the patent uses to exemplify this user nagivation from a user terminal, and that is the graphic interface that a user would use to enter addresses and navigate the images that you have captured and the panoramas that you have created.

Now, we can look at this step by step in more detail. On Slide 4, we go back to the first element

which is the video camera moving along the street recording images of objects along the street and, you know, having a GPS receiver to capture the position of the camera as the image was taken.

And in the Vederi patent, in the background section, and that is at Column 1, Lines 38 through 42, it says that the prior art taught --

THE COURT: Excuse me. Column 1 of what?

MS. RAO: Of the 760 patent I just handed you.

THE COURT: Which is on what page?

MS. RAO: It is the -- it is usually the page right after all the pictures are done.

THE COURT: Okay. So it is Column 1.

MS. RAO: Right. And Lines 38 where it starts with "for example." We have made a snippet of that and put it on the slide.

THE COURT: 38 to 42?

MS. RAO: Right. So the citations in this slide are to the patent column and figures.

THE COURT: Okay.

MS. RAO: So we can just use the slide because it is easier to find information. The patent says that the prior art teaches the use of a vehicle equipped with a video camera and a GPS to collect image and position data by driving through the location.

So what this is saying is the patent admits that this concept of taking images and putting them, you know, capturing images with a GPS location, that concept was known before. Then, we look at the next concept. So this is Slide 5. Looking at Slide 5, it is an example of how the prior art disclosed capturing images along a street. We have a company called GeoPan that did the same thing. There are other examples, but we just picked one to show that it was, in fact, out there back in '95.

So then we take the second concept which is forming of the vertical flat panorama. Now, I am at Slide 6.

THE COURT: Okay.

MS. RAO: So, here, what we have is Figure 2 of the patent. It explains -- it shows how the vertical flat panorama that Vederi described in the patent is arrived at. If you look at the line in the middle of Figure 2, it is the X axis. That line represents the point, the path along which images are taken from a moving vehicle or or a moving device of sorts.

And at each point, X or Y, a different image is captured of the side of the street. So the images at the top are the images that are captured from each point X1, X2 and so on as the vehicle is moving along the street.

At the bottom of Figure 2, you have a .44. .44 is an imaginary point at which Vederi looks at these images and creates, stitches together this vertical panorama of these individual frames so the imaginary point is off the path from which the pictures were taken. And then you look at the pictures and you figure out which pixel column to use to stitch the individual image frames together.

And what the end result would be a panoramic picture like Figure 40 shown there which is the stitching together of the individual image frames by looking at them, off an imaginary point, off the path at which the pictures were taken.

THE COURT: Okay.

MS. RAO: So the concept of taking individual frames and stitching them together into a panorama was also known in the prior art. Here, on Slide 7, we have an examplar reference which is an article by Dykes from March of 2000 where he takes pictures and shows how they can be stitched together to create a panorama.

Then the final concept about -- turning to Slide 9, sorry, Slide 8 -- the final concept about user nagivation from a user terminal and having a graphical user interface to do it, it is important that the patent describes this interface as being something that the end

user interacts with, that the end user places requests into this database and receives information from this interface.

And if you look at Slide 9, there is the prior art also had graphical user interfaces to navigate geographical areas. For example, there is a company called GeoPan that had a city tour software that allowed you to view different locations in Minneapolis with a graphical user interface.

And there is also other references. One is at Slide 10. And these are just examplars to illustrate how these concepts were individually known before Vederi's claim mentions it.

Now, I would like to address the preamble issue unless the court has any questions on the slides we just saw.

THE COURT: You have explained all the things that the invention is not because it is kind of a prior art, but you didn't tell me what the invention does cover.

MS. RAO: Actually, your Honor.

THE COURT: Or you think it covers nothing?

MS. RAO: We have a defense of invalidity which is to say that the invention is obvious.

THE COURT: But we are not here to decide that today.

MS. RAO: Right. We are not here to decide that. So what the invention covers is what I have shown you which is these three concepts combined together, put together in these claims.

THE COURT: Okay.

MS. RAO: Now, that is just to clarify one thing. There are four asserted patents in this case by Vederi, and there are 30 asserted claims. And all of them are method claims. So they all require a series of actions that must be performed, and these actions relate to the three concepts we discussed. So the disputes about claim construction go to these asserted claims that cover various permutations and combinations of the concepts, the broad concepts we discussed. So that is where -- that is the broad context for the dispute.

Now, with your permission, I would like to turn to the preambles.

THE COURT: Okay.

MS. RAO: So can we have Slide 18, please.

So the dispute between the parties on the preambles is that, as Mr. Dillard indicated, Vederi believes that the preambles define the environment in which an accused infringer can act but needn't be performed by the accused infringer.

And it is Google's position that the preambles

are limitations on the claim in two ways. And let's turn to Slide 20. So of all these 30 asserted claims, there are only two unique preambles, and those are set forth at Slide 20 of our presentation.

THE COURT: And they appear where?

MS. RAO: They appear everywhere in the claims in the four patents.

THE COURT: Well, in the subsection of 760 patent, where do you find it?

MS. RAO: In the 760 patent you can find it in the first claim. So if you go to the end of the patent at Column 15. At the bottom, it says "what is claimed is."

THE COURT: Okay.

MS. RAO: And then "Number 1."

THE COURT: Okay.

MS. RAO: That says "in a system including an image source and a user terminal having a screen and an input device, a method for enabling visual nagivation of a geographical area from a user terminal, a method comprising."

THE COURT: Right.

MS. RAO: Okay. That is quoted in the top half of Slide 20 as one of the unique preambles of the Vederi asserted claims.

THE COURT: Okay.

MS. RAO: There is a slightly different variation of it in other claims, and that is included also in Slide 20 which is a method for enabling visual nagivation for geographic area via computer system and so on and so forth.

THE COURT: Okay.

MS. RAO: So if you look at the preambles, it is Google's position that they provide two limitations to these claims: One, that there must be a user terminal or a computer having a screen, and the second limitation is there must be visual navigation of a geographic area from the user terminal. That is that an accused infringer must actually perform the method for visual nagivation and from a user terminal and that there must be a user terminal and a display screen that is read in as part of the claimed invention.

THE COURT: Well, you have this phrase, "in a system including."

How do you deal with that?

MS. RAO: Well, your Honor --

THE COURT: You are entitled at that point?

MS. RAO: That's right, your Honor, because the claim is to a claimed method. So there is a system that the claimed method is performed in. All we are saying is the claims are user centric, not host computer centric

meaning that whatever -- we are not disputing that the host computer performs some part of these method steps.

All we are saying is the user terminal also must perform something because otherwise the fact that the user terminal and display screen are mentioned is odd whereas the host computer is not even mentioned in the preamble.

THE COURT: Okay. Well, let me make sure I understand your argument. Let's look at the 760 patent.

MS. RAO: Right.

THE COURT: If we deleted the part of the sentence before the comma including the comma and capitalized the "a", would your argument disappear?

MS. RAO: Yes, your Honor. I think what you are saying is if you read these claims --

THE COURT: I am not saying anything. I am asking a question. And the answer is yes?

MS. RAO: Yes.

THE COURT: So your argument hinges on having this phrase which starts off "in a system including an image source" be a part of the claim rather than having it simply -- and to do that, it seems to me you have to delete the phrase "in a system," you know, which does not seem to be the most natural reading of the language.

MS. RAO: Well, your Honor, the claims for --

THE COURT: I mean, if you wanted to do that, if you drop the end, that argument is pretty good.

MS. RAO: But, your Honor, claims are written in a broader context. There are many claims here, and what this is saying is that piece may be setting forth the environment that you are in a system, but there has to be somebody that is performing the method. And all we are saying is the user terminal which is specifically called out in the display screen, the rest of the claim doesn't make sense without those words.

THE COURT: Yeah. I don't buy it. Okay.

MS. RAO: Okay.

THE COURT: I -- to me, the method starts after the comma. This sets a -- it says it has to include -- it gives a setting, but the claim starts with "a method for enabling visual nagivation."

MS. RAO: Well, I think, your Honor, if that is what you are saying, then, there is no mention of the body of the method claim. If you look at, for example, Slide 23.

THE COURT: Okay.

MS. RAO: Which uses -- it shows the claim in the context of the body.

THE COURT: Okay.

MS. RAO: Okay. So you have got receiving a first

user input specifying a first location in the geographical area.

If under your reasoning, you could eliminate the preamble and just go with the method steps and you would say that is a complete invention. And it is our position that you can't do that because when you put your hand on the preamble, none of the rest of it makes any sense. The whole claim is one unified, intimately meshed piece that describes the claimed invention as a whole with the preamble breathes life and meaning into this claim.

If I put my hand on that preamble, I don't know what the geographical area they are talking about is. I don't know what they are talking about when they say displaying an icon. Who or what, where? Where is that happening?

THE COURT: That is why they provide context. But you can provide the context so the rest of the claim makes sense without having actually claims in the context. So it makes sense to provide the context so you know the starting point. And probably would have been wise of them to put the outside of what is claimed, probably not the best --

MS. RAO: Right. Your Honor is relying on cases such as Advanced Software which I have illustrated on

Slide 28.

THE COURT: I was actually relying on my common sense reading of it. I did look at the case. This is a federal circuit case. I can never understand federal circuit cases, too complicated.

MS. RAO: Well, your Honor, that case talked about the context.

THE COURT: I mean, they are good. But I -- I always find them very complicated to follow.

MS. RAO: So, your Honor, in the Advanced Software case where they talk about the context and they talk about parts of the preamble providing context, they are saying that steps that have nothing to do with the claimed invention which is the process for validating a negotiable financial instrument are not part of the claimed invention.

They are not saying that the process of validating a negotiable financial instrument is not a limitation on the claims. So we are saying you can take that, compare that to our claim, and we are not saying that image source is not context of the claim. All we are saying is the method for navigating and the display screen and user terminal is part of the claim whereas the system piece is the context.

So that is exactly what happened in Advanced

Software. They took one piece and said this piece goes to the claimed invention, and, in fact, that is the purpose of the claimed invention. And that -- I would like to point the court to one particular portion of Advanced Software's reasoning that is particularly pertinent here.

And this is at 641 F.3d, 1368 at Page 1375, and, in that case, they explain that although it is true that the preamble language stating the purpose is generally not a limitation -- right -- but they do say that we have to look at the statement of purpose to distinguish between what limitations are essential to the claims invention and what just provide the environment.

So what we are saying is the system piece provides the environment, but you have to also look and parse the preamble and pick portions that are part of their claimed invention. The whole purpose, the whole essence of this Vederi claimed invention is navigating from a user interface. So if you say that is not a limitation, then it takes out one whole concept they claimed as their invention.

THE COURT: Well, that is what I asked earlier on as to what it is they were actually claiming, and what I understood they are claiming is a way of capturing, storing, retrieving the images that is in a pretty

economical way.

MS. RAO: But it is not just that. It is also displaying, displaying the icon associated with an object. It is also receiving a user selection of the icon. It is also receiving a first user input. That is also part of the claim.

THE COURT: You know, I think it is debatable. You might be right. I don't see it, but you might be right.

MS. RAO: Now, I just want to point to one more case that is particularly appropriate here. It is the Pitney Bowes case at Slide 24.

THE COURT: 24. Okay.

MS. RAO: So the claim at issue in Pitney Bowes was a method of producing on a photo receptor an image of generated shapes made up of spots comprising and then talked about directing plurality of beams of light and so on and so forth. And for that claim, the federal circuit held that the statement in the preamble, the method of producing a photo receptor image was intimately meshed with the ensuing language in the claim and essential.

THE COURT: But you are missing the word "in." And I think I have already given you if the word "in" were missing, it would be quite a different case, but the word "in" is there. And so if Pitney Bowes had said "in

a method of producing." And I did look at this when I was reading your briefs.

MS. RAO: I see what you are saying, but this is not a claimed system in Vederi's patent. 316, Claim 1 says "in a system," but the claimed invention is a method, not the system. So the system cannot be part of the invention. That is a fundamental concept of patent law. You have method claims, and you have system claims. In order to use a method claim, you have to perform each and every step of the method. Whereas for a system claim, the use of a system claim analysis is completely different. You can use a system claim without having all the parts of the system be part of the claimed invention, and that is the difference, your Honor. Because you are pointing to "in a system" including an image source and a user terminal, and you are saying that whole first clause is simply telling you the rest of the preamble doesn't matter.

I respectfully submit that that clause about a system has no applicability for a method claim. It is two different animals in patent law. So we are trying to construe all the asserted claims or method claims. So these are action steps in the body of the claim. I don't know who or what is performing each of the action steps unless I look at the preamble.

So going back to the preamble language which is what we have, the system piece, I submit, is a red herring because we are talking about method claims, and we have to focus on what is the method, and the method is the method for enabling visual nagivation of a geographic area from a user terminal. And that is common to all the asserted method claims, and we submit that the who or what performs the method has to be a user terminal and a display screen has to be a part of it. We are not saying the host computer is not also part of it. We are simply saying it must also include the user terminal.

THE COURT: I'm sorry. And why must it?

MS. RAO: Because if you look at the language of the claims, the only device -- so let's skip ahead to Slide 33. There it is. There is a bunch of displaying steps that are in each of the asserted claims. We just compiled them because there are too many claims so we put them all on one slide displaying the map on the screen of the user terminal, displaying an icon outputting the first image onto an image display device. These are part of the bodies of the asserted claims. So this wouldn't make any sense unless you also had a display screen and that the user was using. And just as a matter of computer science, we know --

THE COURT: I'm sorry. Why can't you have a

display? Obviously, they didn't invent display screens? I mean, they were terminals. So you have to use prior art. They didn't --

MS. RAO: Right.

THE COURT: So they have to sort of use stuff that is used before.

MS. RAO: What they are saying is the displaying is occurring by the host computer, by the remote server, and what we are saying is the displaying is occurring by the end user's device, your Honor's laptop or my laptop. And that is because the only device that is controlling the display screen is the end user's computer.

THE COURT: Well, let me ask you this: If you take the logic of what you say, why doesn't it also claim a terminal screen, a terminal having a screen? So why wouldn't you read this claim as also including basically a personal computer?

MS. RAO: We are, your Honor. We are saying the personal computer is the user terminal.

THE COURT: And that is claiming that as part of the invention, a user terminal?

MS. RAO: Right. And so we are saying, and the end user's computer where you sit down and enter the address and then you get the image back and it shows up on your screen, that is part of the claimed method. That

terminal is performing the displaying step of the claimed method.

The only thing that is controlling the display screen is the computer sitting on the -- it is not the host computer. And maybe I would use an everyday example to illustrate this point. We all surf the Internet, and we have gone on websites where we want to, you know, enter a website and there is a video or something and the screen shows up with a black box. I don't know if you have experienced that, but sometimes you don't get any data on the screen.

THE COURT: Okay.

MS. RAO: The reason for that is because -- and the computer might say you need Adobe Flash Player to view this content, and then the user has to download that software. So what that is telling you is the host terminal is sending data to the user's computer, and it is the user's computer, then, with the browser and the operating system that has to then take that data and display it on the screen, that the host computer can't control the displaying function and that the displaying function is only performed by the end user.

And this makes sense in the context of the claims because like I said displaying -- they talk about displaying an icon on the screen, and the screen is at

the user's computer at the user terminal. That is just a user computer, and we know that from the patent. I will show you where the patent talks about what is a user terminal. And that is at Column 12.

THE COURT: Okay.

MS. RAO: At the top, Line 3. It says the remote user terminals may include personal computers -- so personal computers are what they are talking about, set top boxes and so on and so forth. And then they say the visual component of each user terminal preferably includes all sorts of screens. So what they are talking about is the end user's computer and the screen they are talking about is the screen attached to that computer. That is right there in the patent.

THE COURT: I don't see this as being anymore than describing the context in which the claimed invention or the invention can be useful, and you have to set the invention in context to understand utility. They have to show utility -- right -- to get a patent without explaining what it is that the patent does.

MS. RAO: Right. My only point in showing you Column 12 was to show you what the patent means by user terminal. Our basis for saying that the user terminal and the screen are limitations is because they appear in the preamble of the claim.

THE COURT: Well, you make a good argument. Nevertheless, that is my ruling on the preamble.

Do you want to move on to another issue?

MS. RAO: Well, I don't know if you have addressed the display steps and the receiving step?

MR. DILLARD: Not yet.

MS. RAO: So I will address them after.

THE COURT: Okay. Okay. Go back to Mr. Dillard.

MR. DILLARD: Yes, your Honor.

THE COURT: Okay. What is the next issue?

MR. DILLARD: We talked a little bit about it. Yes.

THE COURT: This is a question of whether or not the steps have been performed by the user.

MR. DILLARD: Yes, your Honor.

THE COURT: This seems a little bit more of the same in the preamble issue, doesn't it?

MR. DILLARD: It does follow on pretty directly with the preamble. If I could make a couple of very brief comments regarding the discussion about the abstract and so forth. The abstract is different than the claims. You don't infringe an abstract. You don't infringe the specification, you infringe the claims. In this case, there is a lot of different ways that one could claim aspects of the invention. Certainly, one

could claim it as an interactive process, but, of course, that has problems for the claiming entity because you immediately get into a situation of joint infringement and so, you know, the federal circuit has provided at least some guidance in, you know, basically telling claim drafters to try and draft claims so that only a single entity would infringe like in this case Scimetic claims, and that is what the claim drafters have attempted to do here.

With respect to receiving first user input, we talked about that, and certainly the processor has to receive an input in order to find and retrieve the image and send it back. And there is no question that the processor sends it back, the image for display on a user terminal. The real question is who is responsible or who caused that or which entity causes that display, and it would be the entity that controls the processor.

When you use a system like this, a user that wants to see images would type in an address or do something, that would be sent to the processor, the host computer, and at that point the user does nothing. All of a sudden on his screen pops up an image, perhaps an image of a map also, perhaps icons. He does nothing to do that. So who is responsible for displaying that image? It would be the processor.

And so it is our view that whether the language is displaying an icon or invoking the display of an icon which is basically causing the display of an icon or outputting an image for display. All of those are a group of steps that Ms. Rao had listed in the Power Point are all the responsibility and caused by the processor. The user just sits back and gets that information displayed for him or her and then can, you know, click on an icon or do something else to provide another request or signal that goes back to the processor.

So the claims are -- have been drafted not to be an interactive process as claimed, but to be those steps taken by the entity that controls the processor, and I think that is where we differ from Google's position. They say that it is the user that is controlling the display. I don't see how that argument flies. Again, the user just inputs a request and then sits back waiting for the display.

And that is -- that would be our second group of issues for claim construction, so if we want to go back to taking one issue at a time, I think that is our thoughts.

THE COURT: Where in the patent is this language? Part of the process is having to read this stuff in context. The case law says you are supposed to use

common sense and so on, and then it is tougher to see it in context.

Let's take the phrase "receiving a user specified first input location." Where is that exactly.

MR. DILLARD: Do you have the --

THE COURT: I have the actual patent here.

MR. DILLARD: All right. So this would be the 760 patent?

THE COURT: That is the one we are looking at.

MR. DILLARD: At Column 15.

THE COURT: Okay.

MR. DILLARD: Down at the bottom, there is numbered paragraphs and Claim 1, after the preamble, where it finishes "a method comprising" and then the first step is receiving a first user input specifying a first location in a geographical area. It is Google's contention that that is something that the user terminal does, not the processor.

THE COURT: So their view is that the user input is part of the claim whereas your view is the user input is external to the claim, that you start with the user inputs and then the claim is everything that processes after that?

MR. DILLARD: Yes. So the claim itself does not require, for example, the step of a user inputting a

signal or inputting a first user input. The claim starts with receiving that. And the -- whether it is received and forwarded by the user terminal is really irrelevant as long as, according to the claim, the processor, the -- the thing that will be retrieving the images receives that signal.

THE COURT: Well, I think what opposing counsel would be saying is but that is the first step of the process and the method. You have to start with a user input.

MR. DILLARD: Well, okay. For the interactive process, that would be true, but you are allowed to claim only those steps that one entity performs. See, that is kind of the tricky thing. If you are actually navigating down the street, it would be interactive between a user and the host computer processor, asking to move down the street, asking for new images and so forth. That would include actions by both the user as well as the host computer.

But, here, we are isolating those steps that are performed by the host computer, and that is the claimed method. Otherwise, no entity, no single entity could ever be held to infringe. This is -- it is a problem with interactive processes, but this is the mechanism that the federal circuit has told us that we

need to use in order to claim those steps that are performed by just a single entity.

THE COURT: Okay.

MR. DILLARD: Your Honor, if I may, just a quick passage from Google's responsive brief. At Page 10, Line 17, Google states "if Vederi wished to claim an action by the host computer instead of," quote, "receiving a first user input, Vederi could have claimed receiving from the user terminal a first user input."

Okay. Now, the claimed language doesn't actually say who the first user input has to come from. So forwarding first user input is still being received by the host computer. Moreover, what is significant here is that the signal that is being sent by the user terminal is still -- and Google acknowledged it -- is still the first user input.

I mean, in a system like this, the processor can only receive a signal and a user input from the user terminal. Just, I don't see how you can get around that.

THE COURT: Okay.

MS. RAO: I would like to start with Slide 37, your Honor.

THE COURT: 37. Okay.

MS. RAO: I would like to address two points that Mr. Dillard just made. It says the patents did not claim

an interactive process. Well, if we look at the 316 patent, Claim 1, at the bottom, it says, after we are talking about receiving a user input and retrieving the images, it goes on to say displaying an icon associated with an object in the geographic area and then receiving a user selection of the icon and then identifying a second location based on the user selection.

Your Honor, every claim is like this. There is an interaction with the user. When your Honor was asking questions earlier about the embodiment disclosed in the patent about how you look on one side of the street or the other, the user has to provide the input of which side of the street to look at. The user is the one providing that input, and that concept is embodied in the claims.

THE COURT: Well, but you don't have to claim that is part of the process. I mean, they might have done it anyway, but you could say, look, you have got a process where you have user input, we don't claim that part of it, but we claim the storage and retrieval system.

MS. RAO: We are not disputing that, in theory, they could have written their claims to be performed entirely on a host computer, but that is not what they actually did. And what we are saying is the claim language that we are dealing with here and this

displaying steps and the receiving steps shows you that it is interactive with the user.

THE COURT: Okay. Well, I heard you say something more than that. I may have misunderstood. But what I thought you were saying was that it has to, there is something inherent about the process that requires interaction with the user. It is not. You know, you could describe the process and not claim that part of the process.

MS. RAO: In theory, yes, but not in reality.

THE COURT: Well, that is the question we have to decide. There is nothing improbable or inherently impossible about, say, we only claim --

RIGHT1: I agree with your Honor that it is possible, and, in fact, that is what the federal circuit says you can draft claims any way, and they should know because their firm drafted these claims.

But I want to illustrate that in these patents we are dealing with they did have claims that aren't, for example, 316, Claim 2, that talks about the host computer. And when they are claiming actions by the host computer, they talk about the image source residing at a remote site and receiving a request via communications network and then talk about transmitting the corresponding image to the user terminal via the

communications network.

So when they were trying to talk about actions taken by the host computer, they were very specific in requiring a communication between the host computer and the user terminal. And this language, there is no mention of the host computer in the claims but there is in other claims. So, logically, in light of also the fact that the only device that is controlling the display screen and the only device that is receiving the user input is the end user computer, one might infer that that is certainly part of the claimed process.

THE COURT: Well, I am not sure how you phrase this. You said this is theoretically possible, but they didn't do it.

MS. RAO: They showed you how they could do it.

THE COURT: I listened to you talk. I didn't interrupt you.

MS. RAO: I am so sorry.

THE COURT: So cutting in while I am talking is not just rude it is not helpful because I am still trying to get my thought out, and, first of all, you are not going to hear what I am concerned about because you are talking. You stopped me from talking. All right. So you are never going to hear what it is that I really want to hear. So if you want to talk pointlessly, you can go

ahead, interrupt me as much as you want, but you are not going to serve your client. We understand each other?

MS. RAO: I apologize, your Honor.

THE COURT: Okay. One at a time, if for no other reason, we have a court reporter present who can't type when two people speak at the same time. Okay. Aside from just ordinary manners.

MS. RAO: I apologize, your Honor.

THE COURT: Okay. Now, I had a thought, and I lost it when you talked. So I will try to retrieve it. So if you can just be silent for a second so I can gather my thoughts and try to find my place. Okay. And then listen. Okay. Listen. You are not going to help your client by trying to outsmart me, trying to guess what I am going to say before I finish what I am saying. That is not going to help you. It is not going to help your client okay. Silence.

Yes?

(Pause in proceedings.)

THE COURT: Now, you said that theoretically it would be possible to draft these claims so as to limit the claims to what happened in the server, but I am looking at this language having a hard time imagining how this could be done without making some reference to the -- how could this be done? How would you redraft

these claims to avoid this problem?

MS. RAO: So may I?

THE COURT: Yes.

MS. RAO: So you might put in the preamble that you have a system where the processor resides remotely on a remote site. Okay.

THE COURT: Okay.

MS. RAO: And then you might say receiving at the remote server a first user input specifying a location of a geographic area. Second element is fine.

THE COURT: Excuse me. I am lost. So you would take this phrase that receiving a first user input specifying a first location of a geographic area, and you would move that to the preamble?

MS. RAO: No, your Honor. I would just add to that receiving at the remote computer a first user input.

THE COURT: I just want to make sure I understand what you are saying. So we are now redrafting this claim to avoid what you are saying is the problem here. And what you would do is actually add language to what is there.

MS. RAO: Right. Receiving at the remote site, and in the displaying, I would say --

THE COURT: Hold on. Let me just process that. Okay. So you would have receiving at the server. I

don't want to change your words. I just want to make sure I understand what you are saying at the processor. I have a problem talking about the processor because there are processors in the terminal as well as at the server; right? There is a processor in both places. So you would say receiving at the server processor.

MS. RAO: You don't have to use the word processor. You just have to use words that the patent uses to describe the remote site. So you could use remote site. You could say host computer, words that are used in the patent.

THE COURT: That is fine. Just hold on. So you would add receiving at the host computer first user input.

MS. RAO: Right.

THE COURT: Specifying a first location geographic area. You think that would solve the problem?

MS. RAO: Well, that would be part of the solution.

THE COURT: As far as that language is concerned.

MS. RAO: As far as that limitation is concerned.

THE COURT: Why isn't that implicit it, and how does that really help? It says receiving, you have to -- there is no such thing as receiving in the abstract. Receiving connotes a location, and I can't imagine where

else you would be receiving. So why isn't the language already there?

MS. RAO: Because you are receiving at the user's computer. That is where you are receiving the address where you want to go to.

THE COURT: I have a hard time with that. Receiving suggests something has been sent, and I don't know if you are talking about the user's terminal. Where would something be sent from?

MS. RAO: It is sent from the user's keyboard or the mouse click to the user's device.

THE COURT: That is pretty strained.

MS. RAO: That is actually the words that the patent uses to describe the invention when it talks about receiving. It is talking about receiving, for example, if you turn to Slide 32.

THE COURT: Okay.

MS. RAO: So when the patent describes actions that are performed providing the location, it is the user who is entering the address and entering the -- placing the inquiry essentially for the location for the image that is being requested.

THE COURT: It uses place and enter which is not the converse of receive. I would think that the converse of receive is send. And when I think of send, I think of

hitting the enter button to return, actually sending.

MS. RAO: Right. But that is also done at the user's computer.

THE COURT: Right. But if you go back to the language, we are talking about receiving.

MS. RAO: Right.

THE COURT: So I say, okay, receiving, you said well, so long as it is receiving at the server, it is fine, but this must have been receiving at the terminal. But I don't see it. It seems to me that receiving connotes receiving at the server because it has to have been sent from somewhere, and the sending as opposed to entering, send or what was the other phrase used here, placed and inquiries or entering. Certainly, entering is what you think about to key in, and I would see entering as being done with the keyboard. But, sending, I don't think -- I think sending is done by the user terminal of the PC or whatever it is, the terminal. So I think receiving here implicitly means receiving at the server.

Now, let's go down to the next thing you have, the displaying an icon. What do you make of that?

MS. RAO: I would say that the remote computer, the host server, whatever you call it, cannot control the end user's computer and make that display happen. The display is under control of the processor as you pointed

out that resides on the computer, the operating system of the computer has to act to cause something to display. There has to be the right -- the user has to have the right software and has to -- and the user's computer controls the display function on the user's computer display screen.

THE COURT: So your view is the display has to happen on the user's terminal?

MS. RAO: That's right.

THE COURT: Okay. I understand that. I follow that.

Okay. Anything else here on this page?

MS. RAO: Not on this, your Honor.

THE COURT: Okay. Mr. Dillard, what do you say about display?

MR. DILLARD: Yes. Thank you, your Honor. I would agree that the display has to occur at the user terminal, but the entity or the thing that causes the display is the server. It sends a signal for display. The user does nothing -- this is the user, not the user terminal. The user does nothing to cause the display other than to make the request that goes to the server. The server picks out the appropriate images, sends them back for display. And so I think the real inquiry should be, you know, what entity is responsible for the display,

not what piece of equipment actually displays. We were displaying as an action item.

THE COURT: I see.

MR. DILLARD: Or causing the display of. I think that is consistent with the language of other claims that talk about invoking a display.

THE COURT: Language is such difficult stuff, isn't it.

MR. DILLARD: It is. Especially when you get lawyers involved.

THE COURT: Okay.

MR. DILLARD: Your Honor, I also think that that is very consistent with the description portion of the patent. There is a -- well, it is just what I said in the 760 patent, looks like Column 12, it says the retrieved data is then transmitted to requesting remote user terminal for display thereon.

So there is no description of anything controlling the display other than the server or a host computer.

THE COURT: Okay.

MR. DILLARD: Thank you.

THE COURT: Well, I am persuaded that the claims ought to be construed as Vederi suggests, that work is done by the server and the user's input is necessary by

way of initiating the process, but it is not part of the claim process. So I don't know where that gets us. I think this gets us down to arbitrary address.

Why don't we take a break now for lunch, and you can all digest what I said. And we will see where we go from there. Okay. So, essentially, the first three issues that I have seen laid out, I have ruled in favor of the plaintiff.

MR. DILLARD: Thank you, your Honor.

THE COURT: Okay. We will take an hour for lunch. Be back at 1:30.

MR. DILLARD: Yes, your Honor.

(Luncheon recess from 12:24 to 1:30.)

THE COURT: Okay. Counsel ready to proceed?

MR. DILLARD: Thank you, your Honor. Before we broke, I believe you indicated the next issue up was arbitrary address.

THE COURT: I think that was next in line; right?

MR. DILLARD: That's right.

THE COURT: Okay. I must say I focused less on these remaining issues so maybe you can --

MR. DILLARD: This, we are proposing a construction that will read, any potential address in the geographic area not preselected or constrained by the system. Google's is an address chosen by the user.

We believe that the difference is really that an address chosen by the user could be an address from a list of addresses that are available. Could be, say, you only have 10 addresses, and you can select one of those 10 addresses. And that is a possibility under their construction. Under our construction, it would cover the situation where you have or you can access addresses that are or that have not been assigned.

So, in other words, if you take, like, my office at 350 Colorado, my office, if there was another office down at the other end of the block, there would only be two addresses for that list or for that block, but under the system that is described in the patent, one could plug in an address that does not actually exist in the post office database, and pull up an image that would correspond to the location of that address if it had been assigned. Does that make sense?

THE COURT: Where does this appear in the patent?

MR. DILLARD: This is, for example, in the 316 patent, Claim 20.

THE COURT: I have 760 patent.

MR. DILLARD: It does not appear in the 760 patent.

THE COURT: It does not. Okay.

MR. DILLARD: If you want to take our opening

brief.

THE COURT: Yes. I have your copy here.

MR. DILLARD: Again, if we look at Exhibit A which has all of the asserted claims.

THE COURT: Okay.

MR. DILLARD: And we turn to -- it would be Page 29, down at the lower right-hand.

THE COURT: Okay.

MR. DILLARD: And so we are looking at Claim 20.

THE COURT: Okay.

MR. DILLARD: Where the first location specified by the first user input is an arbitrary address entered by the first user input.

And, then, this is to capture this ability to store and retrieve images that don't have assigned addresses. In other words, not a one-to-one correspondence in the database.

THE COURT: So by arbitrary address, you mean an address that is not actually assigned by the post office.

MR. DILLARD: It would include addresses, that is any of addresses including those that are not assigned.

THE COURT: And what difference does this make in terms of the breadth of the patent?

MR. DILLARD: The importance of this is that there are -- there is prior art that has, for example, like a

drop-down list of addresses that a user can select. That would be whatever is assigned, for example, by the post office or whoever assigns addresses. This claim captures the fact that under the Vederi system you could have a larger database including unassigned addresses that one could request.

THE COURT: Okay. All right. Shall we hear from Google?

MR. HARNETT: Good afternoon, your Honor. Chris Harnett. I will be arguing this limitation.

THE COURT: Yes, Mr. Harnett. Yes.

MR. HARNETT: Yes, your Honor. The problem we submit with Vederi's construction of arbitrary address comes from a fundamental principle of claim construction, and that is that a patent claim is in the nature of a contract between the inventor and the patent office, as part of the right to exclude, the patentee has to tell the public exactly what the metes and bounds of the invention are.

In the first place, a judge such as yourself has to look to determine what the meaning of a claim is, the claim language itself. It serves a public notice function. So a member of the public deciding whether or not I can invest in a product, I can bring something to market, whether I am constrained by an existing property

right to build something, to sell something, I look first to the language of the claims and say am I free to do this.

And often times when one finds himself in a patent infringement litigation, a patentee will attempt to rewrite the claims effectively. They are dissatisfied with the words of the claims that actually were prosecuted with the patent office and actually issued and attempt to rewrite them in such a way to include extraneous limitations in some instances and rewrite them in some instances to eliminate limitations that are really there.

It is a game of if I want to make this, I want to make it broader for purposes of infringement, and I want to make it narrower for purposes of validity. And I think what we see right here is an example of trying to include extraneous verbiage within the claim language specifically almost by admission right here to exclude some prior art. These words "not preselected or constrained by the system" are not in the patent.

THE COURT: Excuse me. We were looking at arbitrary.

MR. HARNETT: Arbitrary address.

THE COURT: And when you say these words.

MR. HARNETT: The words of Vederi's proposed

construction. Vederi's proposed construction is any potential address in the geographic area, not --

THE COURT: I'm sorry. You may go ahead. I just wanted to know where you got those words.

MR. HARNETT: Yes.

THE COURT: I got it now.

MR. HARNETT: Not preselected or constrained by the system. Those words aren't in the claim. That is something Vederi is now, after the fact, adding to the claim in an effort to avoid prior art. These words existed in the English language at the time the prosecution was being done. If Vederi wanted to claim this as their invention, they were free to present this to the patent office. But they didn't.

And when you look at Google's proposed construction, address chosen by the user, it is consistent with the public notice of the claims, it is consistent with the plain language that the words of the inventor chose to define the metes and bounds of his invention. And it is also completely consistent with the teaching of the specification.

If your Honor looks at Slide 86.

THE COURT: This is in your book here.

MR. HARNETT: This is the claim language itself. The method -- I will wait until you catch up, but it is

Slide 86 in our binder, your Honor.

THE COURT: All right. This is the same language up here as in Exhibit A, Page 29. I'm sorry. Yes, Exhibit A, to Vederi's brief.

MR. HARNETT: It is the claim, part of the claim language.

THE COURT: Okay.

MR. HARNETT: And that is the first stop on the intrinsic evidence that a court looks at when construing the claims, and we look at the language itself, the first user input. That is what the user of the computer sitting in his or her house inputs via the keyboard or the mouse, is an arbitrary address entered by the first user input which is the PC sitting on their desk and the arbitrary address specified in the information it selects from a group, for example, street name, city, state, zip code.

So the user, by the plain words of the claim, sits there at his or her computer, mouse, keyboard, however they do it, types in 31 Main Street or hits the drop-down menu and selects Main Street, 31, now, zip code, or however they do it, it doesn't matter. It is not limited in the claim language how the user does it. All that matters is that it is an arbitrary address chosen by the user. It is an address chosen by the user.

It does not exclude drop downs. It does not mandate any particular way of doing it. Just simple. Choose any one of these street names, city, whatever. It is the plain language of the claim.

THE COURT: What work do you think the word arbitrary does there under your construction? It seems to me we get to your construction if we delete the word arbitrary; right?

MR. HARNETT: Yes.

THE COURT: And so the question is what do I do with the word arbitrary? What work does it do? It may not do the work that they --

MR. HARNETT: No.

THE COURT: You must have gotten it from Ms. Rao. Listen. Don't talk.

It may not do the work that they claim, but it has got to do something. It may or may not, but it has got to do some work. I mean it is a word. It is a limitation. So what do you think it does?

MR. HARNETT: The word "arbitrary address" in the context of the entire claim says arbitrary address specifying information from a group consisting of the following: It is not like you are limited to one address. It is not like you are limited only to zip codes. It is not like you are limited only to a handful

of preselected addresses necessarily. It means that the user can pick what the user wants to pick.

That is what arbitrary means.

THE COURT: I thought that is what they were arguing.

MR. HARNETT: No.

THE COURT: I thought that was what Vederi was arguing.

MR. HARNETT: No. Vederi is arguing that, necessarily, and it is -- they are arguing that it necessarily excludes drop-down menus, and it does not. There is nothing in the specification that says it excludes drop-down menus. There is nothing in the plain language of the claim that says it excludes drop-down menus.

It just says pick an address. Now, our proposed "an address chosen by the user" doesn't exclude what Vederi says it excludes. Vederi says somehow their construction is important because it allows them to select an address that doesn't exist. Nothing would preclude us from that construction either. Drop-down menu, you could pick, you know, tens, ones, Main Street, Oak Street, whatever, city, state. You could pick a number of a street that does not exist, and the same thing would happen. You would get whatever the system

would show.

There is nothing in the words of the claim or anywhere else in the intrinsic evidence that necessarily excludes drop-down menus. It is a simple goal directed construction, I would submit, of Vederi's point. They are trying to avoid a piece of prior art that teaches drop-down menus. That is not the point of claim construction.

THE COURT: I don't think I made myself clear. So let me ask the question one more time, and let me see if I can get you to answer the question I am asking, not something else. Okay. Okay. What -- and the way I would like you to answer is by giving me an A and a B. Okay. What construction is possible with the word arbitrary or without the word arbitrary, that it is possible with the word arbitrary? What work does the word arbitrary do on the construction? Give me a case that would be covered with or without arbitrary or vice versa. Okay. So that is what I want to hear. I don't want to hear any of that stuff. If you have an answer. If you don't, you want to think about it, that is okay.

MR. HARNETT: Give me a second.

THE COURT: Absolutely. Silence is great.

(Pause in proceedings.)

MR. HARNETT: I would submit, your Honor, that the

word arbitrary allows for the possibility of the entry of any numbers, any set of letters, any set of street addresses, whatever.

If it was not arbitrary, it would have a necessarily limited universe of things you could enter. A drop-down menu does not do that. You could still type in any 10 digit, any single digit, any thousand digit. It is not -- the word arbitrary means that you, the user are free to choose what the user wants.

Not arbitrary means the user is not free to chose what the user wants. That is how I would answer your Honor's question. And I think under our construction --

THE COURT: So in terms of the A and B that I asked for, let me see if I can understand correctly. Mr. Dillard gave as an example, I forgot what his address was, 350 Colorado, and then he said there is another building 370 Colorado but maybe 360 is not assigned, may or may not be, but let's assume it is not assigned by the post office and does not exist.

And, under your construction, I take it you are saying if the word arbitrary were absent, you could only get a positive response by typing in 350 or 370 whereas if you add the word arbitrary you could get a response by typing 350, 351, 352, 360.

Is that what you are saying?

MR. HARNETT: No. That is not what I am saying.

THE COURT: Because that is what he was saying. So how is your answer different?

MR. HARNETT: My answer is different in that, under my construction, a user can type in by any way he or she wants, any address that he or she wants. Whether it exists or not, it will come up.

THE COURT: Can we exclude the he or she?

MR. HARNETT: The user can type in whatever address, number, click anything, and if it corresponds to a post office address, the post office address will come up. If it corresponds to an empty lot, the empty lot will come up. That is what we submit arbitrary means. The user has the freedom to enter in by whatever way, mouse click, keyboard, anything, drop-down menu, an address. That is what arbitrary means.

THE COURT: You know, I am not understanding how your construction differs from Vederi's. I am just completely baffled at this point. I am at a total loss.

MR. HARNETT: If I may try one more time to explain.

THE COURT: What he said is if there is no address between 350 and 370 and you type in the address, it will come up with a picture of something in between. And you

say the answer to that is?

MR. HARNETT: Under my construction, that works as well, but my construction does not include the extraneous verbage in the claim that would eliminate something like a drop-down menu simply for the purpose of avoiding a prior art defense.

I submit that the extraneous language that Mr. Dillard is trying to put in the claim doesn't belong there. We don't reach a different end result about the empty lot. That is what I am trying to say. We don't reach a different result. That is a nonissue. We both get to that result.

The difference is the extraneous language here is simply an effort to exclude drop-down menus, and there is no justification for that. We both get to the same result about empty lots. We get to a different result is whether or not the user has to type in or click in by way of an empty field or a drop down menu. That is where we differ. Everything else, I think we agree on except perhaps principles of claim construction where you are not supposed to add extraneous verbiage to a claim.

THE COURT: Okay, but let's leave drop-down menus out of the discussion for the time being. Let's just not talk about them. We will get to them in a minute. But let me just deal with the filling in the address

question. Filling in the address question, you and he are in agreement?

MR. HARNETT: I believe so.

THE COURT: I don't want to put words in your mouth. If according to what I assume him to say is you type in 360 and there is no 360 number there because it is an empty lot or because it is a big building, 350, and just takes up half a block or something, if you type it in, it will come up with a picture of where 360 would be or something of that sort. That is what I think he said and what I think you are saying.

MR. HARNETT: I don't dispute that.

THE COURT: So on that much, you agree.

Now, let's not talk about the drop-down menus. He did mention something about the drop-down menus, but I thought it was just sort of by way of example. Give me your view of what difference there is as far as drop-down menus are concerned. How would it work? I mean, drop-down menus have certain number of defined choices. It doesn't have 350 and three quarters. So talk to me about that.

MR. HARNETT: You have a drop-down menu. Let's just assume we --

THE COURT: Excuse me.

MR. HARNETT: Let's just assume that we don't go

to the thousands place. Let assume we go hundreds, tens units in terms of a number for an address. All right?

THE COURT: Yeah. That is fine. Right. So on that side of the street, it will be all even numbers so it will go from zero in two's until whatever the last is.

MR. HARNETT: I could conceivably have a drop-down menu that says thousands digits, one to nine, I click nine. Hundreds digits, one to zero, I click seven. Single digits, three. It is an address that doesn't exist. We get to the same place.

The words that I am taking issue with are "not preselected or constrained by the system." That is just being put there to try to exclude drop-down menus because they don't like -- they don't want to face a prior art challenge based on previous systems that did have drop-down menus. We get to the same functional place in terms of what the claim says what the invention does. Doesn't matter to me, under my construction, whether there is a building there. We are in agreement on that.

I just don't think it is proper under the canons of claim construction to add extraneous limitations to a claim simply to avoid prior art. That is not what -- that is not the contract between the patentee and the public. The patentee and the public have a contract. The words of the claims tell you what

is in the claims. You don't get to rewrite them specifically to avoid prior art years later.

THE COURT: Let me tell you what I think was -- I will give you a chance to talk about it, but just to save steps, what I thought you meant when you talked about drop-down menus is that you had a drop-down menu that has a list of all addresses assigned by the post office, and you would be forced to choose one of the post office addresses and he said no, no, no, that is not what we are doing because ours has the ability to hit those in-between addresses. I didn't think he was saying anything about drop-down menus as such.

MR. HARNETT: I understood him differently, and I understood the briefing differently because of the prior art issue.

I would submit that Mr. Dillard is trying to have excluded -- if you adopt those words, those words exclude drop-down menus. That is what he is trying to do.

THE COURT: Excuse me. Which slide is that? 43?

MR. HARNETT: Slide 85, your Honor.

THE COURT: Okay. This is not their -- this is not what they are proposing, but let me try out this language for you and see whether you -- just so I understand your position.

So if, instead of where it says not preselected or constrained by the system, we said whether or not it is a valid post office address, would that be objectionable to you?

MR. HARNETT: No. That would not be objectionable.

THE COURT: Or if it said whether or not this is an actual address in the physical world. I am just sort of making up terms here.

MR. HARNETT: Sure. The concept is simply the user enters it.

THE COURT: Okay. Because that is what I think the thing is.

Why don't we hear from Mr. Dillard and see whether that would be problematic for him.

MR. HARNETT: Thank you, your Honor.

THE COURT: Were you following that?

MR. DILLARD: Yes, your Honor.

THE COURT: So instead of saying not preselected or constrained by the system, it would be those phrases like whether it is an address assigned by the post office or whether or not it is an address that actually exists in the physical world.

MR. DILLARD: I think that would work because it would include --

THE COURT: I don't need a because. If we have agreement on that, why don't we settle on that as my construction.

MR. DILLARD: All right, your Honor.

THE COURT: I am not -- I am free to do that. I am not required to adopt that. So if I get both sides to think it is okay, I am free to select that construction. So why don't we go with that and move on to the next issue.

MR. DILLARD: Thank you, your Honor.

THE COURT: Okay. So you can have either of those, either assigned by the post office, whether or not assigned by the post office or whether or not it corresponds to an actual address in the physical world, either of those constructions.

MR. HARNETT: May I be heard with a suggestion? We could take Mr. Dillard's claim construction and just cross everything out after the comma.

THE COURT: Does that work for you? Because the word potential suggests it might not be an actual address. Do you want to think about it for a second, talk to your client?

MR. DILLARD: If I could please.

THE COURT: This is not the court of appeals. I don't have colleagues or anything. It is very different

than the appeals. Take your time. We can even take a recess if you need it.

(Pause in proceedings.)

MR. DILLARD: Your Honor, that would also be acceptable.

THE COURT: Okay. Victory. Okay. Okay. Image source. Who wants to speak to that first? Go ahead, Mr. Dillard.

MR. DILLARD: Image source is the source of the images. The issue -- Vederi's construction is a computer-accessible storage of images linked to a geographic locations, and Google's construction is a source of recorded images.

One of the issues that has come up is whether or not image source can be an image database, and I think it is a very easy issue to resolve. Claim 18 of the 760 patent is a dependent claim, and it depends from Claim 1. And it states the method of Claim 1 wherein the image source is an image database.

Well, if you have a dependent claim, that says that the --

THE COURT: Excuse me?

MR. DILLARD: I'm sorry?

THE COURT: You said claim, what?

MR. DILLARD: 18.

THE COURT: It is not in the joint appendix; right?

MR. DILLARD: It is not an asserted claim.

Do you have a copy of the 760 patent?

THE COURT: I have a copy of the 760 patent.

MR. DILLARD: The appendix only has the claims which would be necessary.

THE COURT: Okay. So where is this?

MR. DILLARD: Again, towards the end, in this case Column 17.

THE COURT: Yes. Line 17.

MR. DILLARD: Yes.

THE COURT: The method of Claim 1 wherein the image source is an image database.

You are using this as a -- in support of using database, image database?

MR. DILLARD: Yes, your Honor.

THE COURT: I am not understanding what is at stake here. I am not following.

MR. DILLARD: Okay. From Vederi's view, what is at stake here is that Google's construction is a source of recorded images, and recorded images would be single frames, in other words, whatever was being recorded by the video cameras. What is actually being stored are composite images in the preferred embodiment of the

Vederi patents, and we do not want to see a claim construction that would exclude the storage of composite images which is the preferred embodiment. So that is the real crux of the difference between these two constructions in Vederi's view.

THE COURT: Okay. Let me try to translate in my own words what I think you just said to make sure I understand what you just said. So you want the claim to include not just the individual images but the stitched together panorama.

MR. DILLARD: Correct.

THE COURT: Okay. So I understand what you are trying to achieve, but I am not understanding next is how the two different constructions affect that result.

MR. DILLARD: In Google's arguments, they argue that the image source must be something different than an image database.

Actually, the basis for that argument is that during prosecution of the claim, the claim was rejected. This would be apparently Claim 1 of the patent was rejected, and a number of amendments were made. One of the amendments was that the term image database was changed to image source.

Now, it turns out that that particular change had nothing to do with the reasons for the rejection,

but, in any event, Google is arguing that there is a -- prosecution history, prosecution disclaimer that would prevent the image source from including an image database.

THE COURT: Do we -- I assume the prosecutor history is available. Must be somewhere in the record. I can't say I have it.

I mean it is not secret; right? Everybody has that.

MR. DILLARD: It is absolutely available.

THE COURT: And what exactly do you recall what the objections were? I mean, what the objection was based on.

MR. DILLARD: Yes. It was based on a patent to a gentleman named Levine, and Levine described a sort of like what cars have in their nagivation system now where you have a map that comes on the display, this could be either in the car or a hand-held device, but as you are driving through an area, it would constantly update the maps. And it described some of the -- or the map images as exactly that, images, and there would be looking down aerial images.

At the same time that the claims were rejected on the basis of these images, it was explained what Levine did, but the claims were also modified in several

ways. And one of the ways was the inclusion of this language, substantial elevations, that we will get to shortly I am sure. But the issue of the database being converted to an image source had nothing to do with it.

In fact, Levine was not involved with photographic images at all. This is just a matter of updating the map as you went through an area, presumably he wasn't concerned about images because you were right there looking at the images.

So with respect to there being any kind of a prosecution disclaimer where Vederi supposedly said, oh, image source. We are changing it to image source because image database has been rejected and we have to do something different, that is not the case.

Image source is just a much more understandable to, at least the lay public, than an image database. But the key thing is that the same claim, what became dependent claim 18 was added and a dependent claim adds a limitation to your independent claim where it said the image source is an image database. So image source has got to be construed to be at least an image database. Could be commensurate in scope. Could be broader. But it wouldn't be narrower because that would make the claims totally inconsistent.

THE COURT: Okay. Why don't we hear from Google.

MS. RAO: So why don't we look at Slide 67. Sorry. 68.

THE COURT: Okay.

MS. RAO: So I just want to begin by looking at the two different proposals, and we say we propose that image source means source of recorded images, and Vederi's construction is a computer-accessible storage of images linked to geographic locations.

And as Mr. Dillard alluded to, computer-accessible storage of images linked to geographic locations simply is another way of saying image database.

Now, if you turn to Slide 69. This is an excerpt from the file history amendment where we can see how Vederi changed its claims in order to, when they were prosecuting them, to remove the word "database" and replace it with the word "source."

THE COURT: Are you claiming that this was done in response to specific objection from the patent examiner?

MS. RAO: Yes, your Honor. In Exhibit K to our declaration, we attached in support of our claim construction brief is the office action where the examiner issued a rejection.

THE COURT: Right. And can you point to where it is?

MS. RAO: Yes. I can certainly do that. It is Exhibit K, and it is Page 3 of the office action.

THE COURT: Okay.

MS. RAO: And if you look at the top of Page 3, it says Claims 1 through 9, 11 through 34, 36 through 38 are rejected.

THE COURT: Hold on a second. This is Exhibit K.

MS. RAO: Yes. So maybe the fourth page, your Honor.

THE COURT: Sorry?

MS. RAO: Maybe the fourth page of the exhibit, but it is on the top right. It says Page 3.

THE COURT: I see page 3 at the top right, and it starts with E.

MS. RAO: Yes. And then right below it, that is just quoting the statute.

THE COURT: Okay. I am with you. Okay.

MS. RAO: So right after the examiner quoted the statute, he says they are rejected under 35 U.S.C., Section 102(e) as being anticipated by Levine.

THE COURT: Right.

MS. RAO: And what he is saying is Levine discloses all these elements of the then pending claim. And, then, if you look further down that page, it says so Levine discloses a system including an image database.

The first sentence at the top.

Do you see that, your Honor?

THE COURT: Yes.

MS. RAO: Okay. And he goes on to point out where the image database is disclosed in Levine. And, then, further down, he talks about Levine also disclosing storing of plurality of images in the image database representing objects within the geographic area and then images providing a non aerial view of objects.

THE COURT: Okay.

MS. RAO: All right. So those are the pertinent pieces of it. I mean, there is a lot more.

THE COURT: How does changing database source change any of that?

MS. RAO: Right, your Honor. We say that whatever image source means, it can't mean exactly what it meant before which is image database because typically when the patent office issues a rejection saying this feature is disclosed in the prior art and you amend your claims, you are typically saying, okay, I am going to give up something and get less than or something different. So our position is whatever image source means, it can't mean the same thing as image database. There must have been some meaning.

THE COURT: What does it mean?

MS. RAO: In our view, it means source of recorded images, and I don't believe that it violates the doctrine of claim differentiation. If we look at Slide 72. We are not excluding composite images in our construction. In other words, you could still have an image source that is an image database.

So if we think of it as supposing you have a claim of transportation apparatus with motor and wheels, and then you have a dependent claim which says the apparatus of Claim 1 is a transportation apparatus which is an aircraft. Now, you could have aircrafts that are not a transportation apparatus with motor and wheels, and you could have an aircraft that is within. So we say that the image database is the aircraft here.

And so you could -- and there is an embodiment in the patent that is discussed where, for example, in the 760 patent at Column 4, Line 44, it talks about an alternative embodiment where images are recorded and composite images are created on the fly and they are stored. So you could have an image database that is storing images as they are being recorded in real time in a database, and that would still be within the scope of the invention and what they claim.

THE COURT: And how are they different from image database?

MS. RAO: Well, it is different that it has a different quality. They are focusing on the storage aspect, and they are saying it has to have composite images. We are saying, well, not only does it not have to have composite images, it can have composite images, but it must also be a recorded image.

So we are saying something different from what Vederi is saying, and the way that is different is we are saying whatever it means, it means it has to include recorded images.

And as long as a composite image is also a recorded image, it is included within the definition.

THE COURT: I'm sorry. If it is not a recorded image, what else would it be? I don't get it. Are there non-recorded images? I am completely lost.

MS. RAO: Okay. So recorded images are images that are taken as they are captured like Vederi's Figure 2 shows, you know, each image frame that is recorded. That is a recorded image.

THE COURT: Right.

MS. RAO: And you could have completely synthesized images that have no relation to what was recorded.

THE COURT: I have no idea what you are saying. What does completely synthesized mean?

MS. RAO: Well, you can take recorded images, and there is a lot of image processing that happens. And 20 steps later, you could create a synthetic image that had nothing to do with where you started from. And we are saying that their claims are talking about the images that you --

THE COURT: You mean like pixelated, distorted or something like that?

MS. RAO: Right. Image processing techniques that are applied later on well after an image is recorded.

THE COURT: Okay. So now I know what you mean by those terms so again.

MS. RAO: So our proposal is image source means source of reported images because every time the patent talks about it, it talks about, you know, going down the street, taking, recording images, acquiring images, recording them. It talks about an embodiment where you record images and create and save them on the fly, and create composite images on the fly.

We think that one possible explanation for Vederi's amendment and the change of scope is that it gave up the broad invention and was trying to claim something narrow because Levine also had images that were indexed to GPS locations. So if you look at Vederi's proposed construction, the images of Levine and database

of Levine would fit that definition because they had map images, and the user was driving and would get images transmitted to their GPS.

Now, obviously, the image would have to be linked to a location in order for the image to get transmitted, the right image to get transmitted to a user. So Levine had processed images that were linked to geographical locations. Levine had them stored in an image database. So what we have here is a situation where Vederi is essentially saying that that amendment didn't change anything and may, in fact, have broadened the claims.

We don't think -- we respectfully submit that it couldn't have been a broadening amendment. It had to have narrowed the claims in some way, and the only alternative embodiment disclosed in the patents is where images are recorded on the fly and composite images are created on the fly.

THE COURT: And what do you mean by on the fly?

MS. RAO: Meaning in real time as they are being recorded. The image is captured during the capture process. It is being processed, and a composite pixel by pixel panorama is getting created right there.

THE COURT: As opposed to doing it later on the server of a computer. Okay. Now, what difference does

that make in terms of this patent whether it is done on the fly or it is done on --

MS. RAO: Well, Google doesn't do it on the fly. Google's accused product is very different from the way the patent works, and, you know, I think fundamentally the patent is about efficient images using these flat vertical panoramas that are created on a column by column basis taking a snapshot of street segments and then combining them together, and Google uses a very computationally intensive approach where you can -- can I have Slide 53, please.

Just to illustrate. So what we have in Figure 2, we looked at this earlier and Mr. Dillard alluded to it, talked about street segment panoramas being combined from different locations along a path to create a panorama. And that is the technique taught by Vederi. When you asked him what the invention was, he talked about street segments and taking these signals, these pictures along the path and combining them into a panorama.

What Google does is at each point along the path, it takes multiple pictures and creates a spherical panorama around the whole point right from where the picture was taken not at an imaginary point off the path and very computationally intensive.

So they talk about efficiency. We are not worried about efficiency. We are doing a completely different technique to get a better user experience where a user can stand in one space and look around them, all around them and see the whole panorama like a sphere.

Can you turn to the next slide, the spherical panorama unfolded.

So we have a picture showing the unfolding of the panorama. If your Honor wants to go see the picture of the Versailles Palace in Paris on the street, you get a sense of how the things go up all around the picture, and that is nowhere disclosed in the patent.

THE COURT: Okay. So let me just make sure I follow all this. I mean, I understand this issue, but this issue now before us, now I am trying to understand how the two -- I mean, that is a question of whether there is infringement if I understand correctly.

MS. RAO: Well, that has to do with the substantial elevations term.

THE COURT: Right. But the way, the way Google does it was the way Vederi does it, has to do with the question of whether there is infringement. Different technologies might not be infringing; right? So I understand that is down the road, that is not something I decide right now, and I am trying to come back to the

question we have here and understand how it is that this issue, the image source issue bears on --

MS. RAO: On the recorded images issue.

THE COURT: Because this just seems to deal with source, source of -- I mean, your construction is source of recorded images which seems to actually be broader than their term.

MS. RAO: Right, your Honor. It is broader in some ways. That is why I showed the Venn diagram showing that you could have image sources that are not image databases.

THE COURT: So this is a situation where you want their claim to be broad.

MS. RAO: No, your Honor. They narrowed it in the way that it doesn't --

THE COURT: But I am looking at the two proposed constructions, Google's claim construction and Vederi's claim construction, and your construction seems to be broader, include more things.

MS. RAO: Except that it says recorded images, and theirs says images linked to geographic locations, and so recorded images are actually narrower than what they have.

THE COURT: I see. Because in your view, when you say recorded, you are talking about images as snapped by

the camera and without further processing?

MS. RAO: There can be further processing as long as it is happening during the recording process which is discussed in the alternative embodiment of the patent.

THE COURT: Now, I am confused again.

MS. RAO: Right.

THE COURT: Start with the real world, right, and light comes from the sun. Light bounces off an object, enters a lens; right? It goes through an aperture and then hits some medium that records it. Used to be silver. Before that, used to be egg whites; right? Long time ago, but it is no longer film. It is some sort of medium that is electronic; right? And that is where I get lost.

I don't know exactly happens at that point. At which time does the recording stop and the processing begin? In your view, it seems to me once it hits whatever the recording is everything that happens after that is processing. Whether it happens right there in the car or if it happens a little bit later or it happens a split second later. Seems to me once the light hits the recordable medium, that recording ends, and at that point everything that happens afterwards is processing; no?

MS. RAO: It is my understanding that when --

actually, and forgive me if I get this wrong, but my understanding is --

THE COURT: It is your client who is going to have to forgive you.

MS. RAO: So my understanding is when you take a picture on a digital camera, the picture hits the image sensor, and then from the point at which it hits the image sensor to the point at which it is stored on some sort of a storage medium as a recorded image of what was captured, the image frame, there is a lot of processing that happens.

There is a computer in there in these digital cameras, and so there is an embodiment discussed in the patent which is even more complex than that. So you could have a system --

THE COURT: Let me just stop you because I want to understand that thought that you just put out before I get to the next thought. So in your interpretation of the technology, the recording happens at what point? At the point it is stored in a medium?

MS. RAO: At a point where it can be retrieved again as the recorded image. So it could be on a card in the camera.

THE COURT: So the stuff that happens between the aperture and the actual recording to essentially a hard

drive -- right -- card, whatever you have on your camera, some sort of permanent storage medium, they are steps that involve processing. Okay. And in your view, all of that stuff would not be included in the idea of recorded images. So recorded images is this thing that happens after all that processing happens?

MS. RAO: Well, we are talking about the images. Right. So I am saying whatever the end result of the image capture process is, that is the recorded image.

THE COURT: Okay. And so, in your view, the source involved those things, the things that are actually stored, captured, whereas you believe in their construction, it covers, what?

MS. RAO: That they are just focused on composite images and processed images.

THE COURT: Well, they said talk about storage of images linked to geographic location, so since they are focusing on storage, I am not understanding how that is different from your --

MS. RAO: Right.

THE COURT: I haven't finished talking. You can't give an answer until I have finished talking.

You used the word recorded. They use the word storage. And you must, as I understand it, you must think those two things are different animals. Am I not

understanding you?

Now, you can talk.

MS. RAO: So when you -- you are just comparing the word storage. The rest of their construction is linked to geographic locations.

THE COURT: Let's not talk about the rest of it. Let's just talk about those two words. We can then talk about why the rest of the words may change everything, but let's just focus on those two words because they are different in the two constructions and I want to know if they, in fact, mean different things.

If you want to talk to somebody here, that is fine, take all the time you want, but this is important. Are you following?

MS. RAO: I didn't follow your question.

THE COURT: Okay. You have got the two constructions next to each other; right? One of them used the word recorded; one of them uses the word storage. They are different words. Do they have different meanings?

MS. RAO: Yes.

THE COURT: Explain to me how.

MS. RAO: Recorded image was the original captured image. Stored image doesn't have to be the originally captured image.

THE COURT: You know, I always work better with, for examples. Why don't you give me a for example?

MS. RAO: For example, if you look at Figure 2 of their patent, a recorded image would be the image frames that are captured, and the stored image would be the panorama that was synthetically created, two different things.

THE COURT: What about that whole discussion we had about all the processing that happens before the thing gets fixed or captured?

MS. RAO: Well, there is a lot of processing that happens in order to get that individual image frame. As you know, there is white balance, color correction, et cetera, but the kind of processing they are talking about which creates a panorama is completely different. It is about now taking individual frames and stitching them together.

THE COURT: You build all of that into the word storage as opposed to recorded?

MS. RAO: Well, storage is -- I built it into the word recorded, but the word storage doesn't say anything about what kind of image is stored.

THE COURT: I have no idea what you are talking about. I am just completely lost.

MS. RAO: I apologize, your Honor.

THE COURT: Remember we had the whole discussion about what happens, the lens, the light, the processing that happens, and it eventually gets captured on a permanent storage media; right?

MS. RAO: Right.

THE COURT: And you said that is what you think is recorded in your construction; right?

MS. RAO: Right.

THE COURT: It is that image, this thing that actually first gets captured.

MS. RAO: Right.

THE COURT: How is the word storage any different from that?

MS. RAO: Because storage is not limited to recorded image or originally captured image or acquired image. It is simply storage. It is a function of, you know, it is a computer drive is what they are saying. So they are taking image storage and making it about the database that is storing something, and we are focused on the image.

THE COURT: Let me try one more time. You say according to what I understand, what you say is source of recorded images. This is now the Google construction. You are talking about, I believe, as it first gets captured in a permanent media; right? You are nodding,

but the reporter.

MS. RAO: Yes, sir. Yes, your Honor.

THE COURT: Okay. Fine. I got that. I understand that. And you said this processing, that happens before that, yes?

MS. RAO: Yes.

THE COURT: And that gets included in whatever. So all the processing that happens before it gets captured is included in the recorded images, and then there could be processing that happens afterwards, stitching, whatever. Yes?

MS. RAO: Yes.

THE COURT: Okay. So when you talk about storage here, and you say the two things are different because the Google construction includes the image as captured, includes all the processing that happens this side of the medium. So it has the aperture, has the length but not after it as been recorded. Storage includes something else?

MS. RAO: Yes, your Honor. It includes the linking to the GPS coordinates.

THE COURT: But, no, that is the rest of the description. I am trying to focus on those two words. As I said we will get to the rest of the words as soon as I understand what the difference is between these

two terms. If you want to now talk about linked to geographic locations, we can talk about that. I am trying to understand the difference between storage and recorded. And so far you have succeeded not at all in explaining it to me.

MS. RAO: A stored image can be a recorded, I believe, but it does not necessarily have to be a recorded image.

THE COURT: Give me an example of something that is a stored image but not a recorded image.

MS. RAO: Right. A stored image could be an image that is captured with the camera, and that is a stored image and that is a recorded image, but -- if you take that same image and add to it information about where you got that image from and now put it in a database saying, okay, this image goes to this street address and belongs here, that is a stored image but not a recorded image because there is a lot of processing that happens after recording to alter the image.

THE COURT: Let me just make sure for purposes of your argument here, does anything else matter except the addition of those words linking it to a specific geographic location? You don't care about the white balance.

MS. RAO: No, we don't.

THE COURT: You don't care about brightness or any of that stuff. Right? What you care about is the fact that it gets -- it involves linkage to a particular location.

MS. RAO: Well, may I have a moment, your Honor.

THE COURT: Sure.

(Counsel confer.)

THE COURT: I'm sorry. You are back.

MS. RAO: Sorry. So the modifier we have a dispute with, we need the word recorded in Vederi's proposed construction. So we would have a dispute with simply just storage without any modifier.

THE COURT: You would not?

MS. RAO: We would.

THE COURT: Okay. That is the part I am trying to understand.

MS. RAO: So we believe the storage is a very broad term, broad enough to encompass any way to store any kind of image, and we believe that in light of what happened in the prosecution history and in light of what is disclosed, that it has to have something to do with the image that was originally captured.

THE COURT: Okay. I don't get it, but why don't you go ahead and talk about the linked to geographic locations. What about that language?

MS. RAO: So in terms of linked to geographic locations, we think that is just something that was already in the prior art in the Levine patent. They added this phrase to overcome Levine, and their proposal would make no difference than between image database and what is proposed. It means the same thing.

THE COURT: Okay. Mr. Dillard, why do you need this linked to geographic locations?

MR. DILLARD: In the context of the invention in the claims, it seemed to make perfect sense. We can withdraw it. The construction would be broader with just computer accessible storage of images. As long as it is understood that the images are both recorded images and processed images, for example, composite images as shown in the --

THE COURT: Yes. I don't see anything that suggests they have to be linked to the geographic location. I don't see anything about the images that suggest that, but I don't have any problem with the rest of it. So computer-accessible storage of images is fine.

MR. DILLARD: Thank you, your Honor.

THE COURT: We will go with that construction. Okay. Next item.

Depicting views, the views being substantial elevations. I know this is a biggy, although I have no

idea what it means. But I am sure you will enlighten me.

Well, I have some idea what it means. I am sure I will first be more confused before I am enlightened.

What is at stake here?

First of all -- excuse me -- can you help me find it in context in Joint Appendix A or some anywhere. I would like to see the language in context.

MR. DILLARD: If we have the 760 patent.

THE COURT: 760 patent. That is fine. That works for me.

MR. DILLARD: And, again, going to Column 15.

THE COURT: I am with you. Page? I'm sorry. Line?

MR. DILLARD: The claim element in Claim 1 starts around 63.

THE COURT: Right. I do have them at home, but, never mind, go ahead.

MR. DILLARD: Well, so this element reads receiving from the image source a first image associated with the first location. The image source providing a plurality of images depicting views of objects in the geographic area, the views being substantially elevations of the objects in the geographic area wherein the images are associated with image frames acquired by an image

recording device moving along a trajectory.

THE COURT: Okay.

MR. DILLARD: So we have this phrase, the views being substantially elevations of the objects in the geographic area.

And the different constructions, we propose front back or side views. And, actually, in preparing for the hearing, it occurs to me that if you are taking a picture from a camera, you will certainly get the front of whatever object you are looking at. You may get some of the side, but you would never get the back of that. So I think our claim construction ought to be modified to remove back views just from a practical standpoint.

THE COURT: That makes sense, but the operative difference between your construction and Google's construction is you agree on the front. Back, you now say, the front -- I'm sorry -- the front and side. That is all the front and side views, but they say, our pictures actually go up, and you can actually sort of see up whereas this is a flat picture.

MR. DILLARD: In the embodiments, they are very long, certainly need to be that long.

What is agreed upon is both the composites shown in the patent as well as Google's images are both composites. In other words, you are stitching together

photographs.

Now, in the Vederi preferred way, they will stitch together splices of various recorded images in order to get a nice wide angle, but as shown in, for example, that Figure 16 of the Scout Tool, you do get angles, so you can see sides of buildings and so forth.

The Vederi composites are stored as rectangular composites. Google's, they do have 360-degree composites, and they are apparently mapped on the sphere and then stored on a flat plain, sort of like if you had a globe, you made it flat. So the question is should the views being substantially elevations be limited to flat vertical orientations.

And we know that both the Vederi system and their composites and Google's composites if you look at them, if you pull up the street view, it is an elevational view of a building if you are looking out from the side camera, but it is an elevational view of whatever the camera is pointed at.

Now, the basis for the claim that the Google style 360-degree panoramas is that there is a prosecution disclaimer, and, basically, they are saying that because of something said in the background of the invention section of the patent, that the spherical-type mapping that Google does is something that has been excluded from

the scope of the claims. And we couldn't disagree more.

THE COURT: Well, but there is really no claim to anything other than it says substantially elevations, and I haven't looked up the term elevations, but my understanding from the days when I was doing construction on my house is that and here in the building, that they are just flat images. There are some perspective images of other locations.

MR. DILLARD: Well, the fact that if you pull up street view, you might be able to pan up or down doesn't alter the fact that when you pull it up for an address, you are getting an elevational view of whatever is right in front of or the address.

Now, so what Google said has happened that in the background section, the inventors were discussing prior art and they made this disavowal. The problem is that the Google expert has misread the language and came to a conclusion that it just does not follow.

If I could call the court's attention to Column 1 of the 760 patent.

THE COURT: Column 1?

MR. DILLARD: Yes.

THE COURT: Okay.

MR. DILLARD: There is two prior art methods that the inventors are distinguishing. One is not as critical

to us, but it is this three dimensional rendering where you create a virtual -- what do they call it -- electronically piecing photographs on a polygonal mesh that provides the framework of a three dimensional rendering. That is shown and described in Dr. Goncalves' declaration. But the more important one and the one that Google claims provides a disclaimer is the paragraph that starts at Line 63.

It reads, "the prior art further teaches the dense sampling of images of an object scene to provide different views of the object, slash, scene. The sampling is either done in two dimensions either within a plain or on the surface of an imaginary sphere surrounding the object, slash, scene.

Now, Google's expert appears to have read that as not a imaginary sphere surrounding the object or scene but an imaginary sphere surrounding the camera and this is quite a different situation. If you have an object in the scene whether it is a tree or building, you can imagine a giant bubble around it. And what the inventors are talking about is there would be cameras all around this object and taking enough photographs so that you could go to any other view, any other location on this sphere and be able to see that object from that view.

So it is -- there was an example of a piece of

art that had images taken all around it, and it was museum art. And people were able to basically look all the way around, spin it on the computer based on all these different camera angles. And it would be just, you know, like being able to turn it and look up and down and so forth if you had enough cameras.

This is a technique referred to as light rendering. That particular language is not used in the patent but this dense sampling is. And that is a whole lot different than having six or eight cameras all looking out in different directions and just taking photographs.

And so the inventors describe this sampling of looking toward an object from different view points as such sampling, however, is computationally intensive and hence cumbersome and inefficient in terms of time and cost. You can just imagine if you were trying to, you know, do this spherical looking in on every object in a scene, it would be incredibly expensive as opposed to just taking photographs.

So that is what the inventors were talking about when they said computationally intensive as opposed to what Ms. Rao indicated that the Google system is computationally intensive. There are worlds of difference.

Now, did the inventors have in mind 360-degree panoramas when they filed their application? And the answer to that is yes. And they actually disclose the possibility of 360-degree panoramas in addition to their long panoramas.

THE COURT: Where is that?

MR. DILLARD: That is in the provisional patent application which was filed in August of 2000 -- a few months before the regular application, but it is incorporated by reference in all of the patents. So it is as though the disclosure there is part of all the patent.

And this is -- the quote that we have been looking at is in our responsive brief it is at Page 21, describes -- see, that would be Document 56, your Honor.

THE COURT: What does it say?

MR. DILLARD: The paragraph of interest is future embodiments of the invention could produce video, slash, image data in different formats, for example, rather than using a camera facing.

THE COURT: I got it. What page?

MR. DILLARD: I'm sorry. 21.

THE COURT: Okay. What line are you reading from.

MR. DILLARD: I started at 13. Where I was getting to --

THE COURT: Future embodiments?

MR. DILLARD: Yes. And, in particular, the second sentence in that paragraph, also, if sufficient cameras to cover all viewing directions are used so as to provide 360 degrees of view, images and synthetic panoramas where the direction of view is user controllable can be provided.

So clearly they had in mind 360 degrees panoramic views, but, of course, that was far more expensive at the time, but they certainly had, you know, synthetic 360-degree panoramas in view which is what Google is saying. You can spin 360 degrees.

There is no question that they are composites. It is admitted in their papers that those are composite images, and there is, really, we see no reason other than Google finding a noninfringement argument to restrict the language, substantially elevations to being flat vertical.

THE COURT: Okay. Why don't we hear from Google?

MR. DILLARD: I'm sorry?

THE COURT: We will hear from Google.

MS. RAO: Before I begin, the substance of the technical merits of the arguments and the terms, I would like to say that the disclaimer we are relying on is a disclaimer in the specification and that the law for a

specification disclaimer is that when the inventor dictates the correct claims code in their specification that that should govern the claim construction process.

And so I will get to that. That is from the Phillips case, Phillips v. AWH, and so we are relying an a specification disclaimer not a prosecution disclaimer. So looking at the two constructions.

THE COURT: And what packet exactly does the disclaimer say?

MS. RAO: So I will -- can I have Slide 41, please. So what we are saying is the background is talking about a method of visual nagivation going down the street. So it is saying it is discussing different prior art approaches to get a wider field of view or images, and in that sense, it talks about using a shorter focal length of a video camera to get a wider angle, and then it talks about dense sampling of images right after discussing the visual nagivation and going to shorter focal length to get a wider range of view.

And, then, it says, the prior art teaches dense sampling, and the sampling can be done in two dimensions in a plane or on the surface of an imaginary sphere surrounding the object or scene. And such a sampling is computationally intensive and, hence, cumbersome and inefficient in terms of time and cost.

And so this language explicitly disclaims circle projections on an imaginary sphere.

It doesn't say light field rendering here. It doesn't say light field rendering anywhere in the patent. Vederi agrees that there was a disclaimer. They are disputing the scope of the disclaimer. They are saying it was limited to inward looking views because it is about light field rendering.

Now, we took a look at the evidence they cited to us, and I would like to direct the court to Slide 59. Here, Vederi's inventor says that our expert confused a spherical reference frame around a camera that is inward looking with an outward looking view, and the inward looking view is used for light field rendering, and that is the method we were distinguishing.

And if you then skip ahead to Slide 62, Vederi cites to a Levoy article and talks about a Levoy patent they submitted to the patent office saying this is about light field rendering and that is different from what we are doing.

THE COURT: Let me say this. Why is this an infringement issue? Why isn't this a claims construction issue?

MS. RAO: Because there is a specification disclaimer and so they are trying to say substantially

elevations.

THE COURT: I mean, what you are trying to do is add an exclusion to the claim.

MS. RAO: That's correct, your Honor. And we believe, in this instance, it is proper to do that because it is a specification disclaimer, and it is permissible under Phillips. In fact, where the specification says an intentional when the specification reveals an intentional disclaimer which this is not what my patent is about. I don't do this. This is not covered by my invention. It is entirely proper to put that as a limitation on the claim. So we believe that it is a proper issue for claim construction.

THE COURT: And you say this is --

MS. RAO: I'm sorry.

THE COURT: You are saying this supersedes the provisional application which opposing counsel was citing me?

MS. RAO: The provisional application is not relevant to this issue. The provisional application is talking about looking up the street, looking down the street and then talking about panning 360 degrees along an equator, not along a sphere.

So if we look at that disclosure in the provisional, Slide 50, it is talking about going up the

street, down the street, all round the street.

THE COURT: It doesn't say that.

MS. RAO: Well --

THE COURT: I mean, you tell me that is what it says, but, in fact, it just says 360 degrees.

MS. RAO: 360 degrees doesn't make a spherical projection. While this says 360 degrees, the disclaimer says we disclaim spherical projections that that is computationally intensive, and that is not what we do.

THE COURT: I guess I am having trouble understanding. So what you are saying is so this was meant to say you could do a 360-degree view on a horizontal plane?

MS. RAO: That's right.

THE COURT: And how is that different from stitching together images? Does that mean that you can look up the street and down the street?

THE WITNESS: Well, it is simply saying take the segments of the images and you can stitch them together. Our position --

THE COURT: Right. We are talking about stitching them together. And I understand that is what they are doing. They are stitching together the image. How is that different from this 360-degree view that you talk about here? You say, oh, no, here, it talks about if you

have enough cameras, you could get a 360-degree view. You are saying, well, that means a rotational view. What does that have to do with stitching?

MS. RAO: All that adds is a slice of a sphere. It doesn't add the sphere. So if I stand in one spot and I turn around and take pictures all around, 360 degrees, I stitch them together using the Vederi claim method of the column by column approach.

THE COURT: See, that is what comes from not listening to the question. I understand the difference between 360-degrees and a horizontal plane. I understand that so telling me that distinction again is not going to help. What I am saying is if I accept your view that this is a 360-degree image on a horizontal plane, how is that different than just stitching together a bunch of images? What does that add? You say you can also do this other thing, but you have already agreed that they are talking about stitching images together. So what does this other thing they are saying they could do add?

MS. RAO: I am not following your question. I'm sorry.

THE COURT: What is it they are saying here they could do in addition to what they claim otherwise? See, this where they are saying if you have sufficient cameras, you could provide 360-degree views. What is the

additional? What is the incremental thing we are talking about there?

MS. RAO: All they are talking about is having more pictures and more viewing directions. You would still have the panorama along the flat vertical. So it wouldn't look like a sphere. It wouldn't look like a spherical projection. So they are simply talking about having a user be able to view different viewing directions.

THE COURT: Okay. Try column A. Column B, again, what could you do without this that you could do with this? Give me an example of something that would fit into this that wouldn't fit into that?

MS. RAO: What is the that?

THE COURT: You are saying this is an addition, they claim here they can do this if they have more cameras. You are saying that is all in one. You are talking, again, always one angle. Right. Okay. And so what are they adding? What is it more than the -- they said if you had more cameras, you could do more. What is that more you are talking about here?

MS. RAO: I don't believe they are claiming more than what is already in the spec.

THE COURT: Well, on the other hand, if I read it to mean 360 degrees up and down, then it does mean more,

and then this makes sense. To say, oh, it doesn't really claim anything more, that sort of defeats your construction. It means you are wrong about what it must mean because it must mean something. It must mean you could do something here more if you have more cameras. So what is that more as you see it?

MS. RAO: More as I see it, it is more images to put into the database so that if a viewer says I want to look in that direction, it can pull up an image from that view.

THE COURT: You just pointed at a particular direction, but I don't know what direction you are talking about.

MS. RAO: If we are talking about a horizontal plane, I am saying that the side views are the ones that are stitched together into the panorama. The front, the back or the angular views may simply be views that are stored in the database for retrieval, not necessarily stitched into one panorama.

THE COURT: Okay.

MS. RAO: The technique they disclosed was about taking flat images and stitching them together, and they said --

THE COURT: Give me one thing you could see under this addition that you couldn't see without this

addition. Give me one thing.

MS. RAO: One thing here is that --

THE COURT: Just one thing.

MS. RAO: Pictures of the front and back of the road.

THE COURT: So up the street, down the street. Okay.

MS. RAO: Now, getting back to their point about the Levoy patent, and they said that that was distinguished. I would like to turn to Slide 63.

THE COURT: Okay.

MS. RAO: And this field of light field rendering talks about both inward looking and outward looking views, that is said right in the abstract of the Levoy patent. They say is an example of the light field rendering that we are distinguishing. So it is not simply inward looking views, it is also outward looking views.

If you look at the next slide, Slide 64, they focus on a picture of a lion being photographed from multiple directions, but, here, in the Levoy patent, there is a picture of a hallway showing that you could use --

THE COURT: Well, that is fine. Thank you.

I don't think the patent disclosed anything

about spherical views. So I will go with Google's construction on this one. Okay. Except take out the backs. Okay.

Next item.

MR. DILLARD: That is the "associated with," your Honor.

THE COURT: I think that is what I have on my list.

MR. DILLARD: Your Honor, Vederi doesn't believe that "associated with" actually needs construction. "Associated with" is a broader term than what Google proposed which is "corresponding to." One of the uses of "associated with" is in Claim 1 of the 316 patent which just says displaying an icon associated with an object in a geographic area.

An icon wouldn't correspond to the geographic area, it is just associated with it. So this is something where I think associated with is adequately understood by anyone reviewing the patents.

THE COURT: Okay. Well, let me hear from Google as to why they think it needs construction.

MR. HARNETT: Afternoon, your Honor.

THE COURT: Mr. Harnett again.

MR. HARNETT: Yes, your Honor. I will be brief on this. It is simply a matter of getting the appropriate

claim scope and making the words mean what we think they should be in view of the specification. It is very simple. If you look at Page 76 of our presentation, we look at the claim language.

THE COURT: Wait. Which one?

MR. HARNETT: I am focusing on our presentation.

THE COURT: The slide. We are talking about slides here. 76. Okay.

MR. HARNETT: Going to very quickly go through the sources of intrinsic evidence when you look at the way the words are written, "first image associated with the first location."

THE COURT: I'm sorry. Let me just step back. Where do we find this? This is Claim 1 of the 316 patent?

MR. HARNETT: Claim 1 of the 760 patent.

THE COURT: Of the 760 patent?

MR. HARNETT: Yes, your Honor.

THE COURT: Okay. Maybe you can help me find it. There is a lot of words there.

MR. HARNETT: Well, the entirety of the claim, if it is easier for your Honor, the entirety of the claim is on Slide 76.

THE COURT: That is the claim. Okay.

MR. HARNETT: It is the entirety of the claim.

THE COURT: Okay.

MR. HARNETT: And we have highlighted the relevant language where the word "associated with" appears. We just think when you look at the words of the claim, it means more than somehow related to. There is a correspondence in the syntax of the claim. "Associated with" in our mind is a nonlimitation. I mean, I'm sorry, related to Vederi's construction is a nonlimitation. One can imagine any relationship between any two things.

I am related to this podium because we are composed primarily of carbon. This is linguistically a correspondence not simply some relation. And I can -- in terms of additional intrinsic evidence, if we flip to Slide 77, the specification which informs the construction of the claims also shows linguistically correspondence rather than simple or ambiguous relations. These all linguistically talk about correspondence, and we have a simple example on Slide 80 to illustrate the point.

We look at -- if you put up Slide 80, looking at a table identifying all the In-N-Out Burger restaurants around here.

Okay. I will say when you come out west, you always try to get one. These, if you put two images in a table, they are related to each other, but this

photograph down here in the left corresponds only to the mountain view.

You can relate anything you want in terms of any characteristic, but when you read this in the context of the patent, the words "associated with" imply a correspondence, just a matter of linguistics.

THE COURT: But what I understand Mr. Dillard to be saying is I think he was saying the "related to" construction just doesn't need any construction. "Associated with" is good enough. So you are sort of arguing against a, I mean, I think he moved on in the language and says just go with "associated with". And how is "corresponding to" different from or superior to "associated with."

MR. HARNETT: As long as the associated with is -- any words, you can dig out dictionaries, and Vederi did it. There is different definitions for every word. But when you look at the intrinsic evidence, the "associated with" always includes a correspondence. That is what this is about. You have got an image.

THE COURT: You should be happy with "associated with."

MR. HARNETT: Provided that we don't, later on, when we are talking about infringement, turn it back into "related to."

THE COURT: I think you have what is called a file-wrapper estoppel.

MR. HARNETT: I will take it, your Honor. Judicial estoppel.

THE COURT: Do they still call it that?

MR. HARNETT: Prosecution estoppel?

THE COURT: They always change all the terms.

MR. HARNETT: Yes, your Honor. Thank you.

THE COURT: We will just go with "associated with", and you will have a transcript of this hearing because I am sure you are going to order a transcript. So if there is any doubt about it, there it will be. Okay. Associated with.

MR. HARNETT: Thank you, your Honor.

THE COURT: Well, the final item, first display area, second display area. As I said as we got closer to the end of the claims, I got less and less familiar with them, but I am catching up.

MR. DILLARD: Your Honor, this is the language is first display area on the screen and second display area on the screen. We suggest that the use of these terms indicates that you have got a map in one display area, and an image in another, and they are shown at the same time. In other words, it would be different if you toggled between two different -- well, it would be

two different screens.

So that is what I understand Google is advocating, and I think, you know, it hardly needs further construction, but to the extent that we would not have simultaneous images on the screen.

THE COURT: Well, they think it doesn't need construction. You say it doesn't need construction. Why don't we just leave it at that?

MR. DILLARD: Let me withdraw the I don't think it needs construction because they have indicated that toggling between two different screens would meet the limitation. I do think that simultaneous presence of the two displays is warranted.

THE COURT: Okay. Why don't we hear from the other side?

MR. HARNETT: Okay. Your Honor, I will be brief again. The problem with --

THE COURT: Okay. What are we now looking at?

MR. HARNETT: We are looking at Slide 89, the parties' respective constructions.

THE COURT: Okay. I am with you. 89.

MR. HARNETT: Right. We said there should be no construction. First display area and second display area are self explanatory. The problem we have is Vederi is proposing to include rewrite the claim to include a

temporal limitation, a limitation about at the same time. It is just not there. It is not in the intrinsic evidence.

THE COURT: I agree. It is not there.

MR. HARNETT: Thank you.

THE COURT: Okay. Are we done?

MR. HARNETT: I believe we are, your Honor.

THE COURT: You have my rulings. What is normally done in this case? Does somebody prepare an order? Do I prepare an order?

MR. HARNETT: It depends on the court's preference. Ordinarily, the court will issue a formal Markman ruling. Other times the court will say look at the transcript.

THE COURT: I have made my rulings. I am not inclined to cite any authority. As I said, I don't think there is any directly on point. So it will just go into minute order referencing the transcript which I think is abundantly clear.

MR. HARNETT: Okay. And if there is any issue, we could properly notify you?

THE COURT: Of course. If the two of you want to get together and embody what I said to something in writing that you can all agree on and you would rather have something like that to hold onto, that is fine too.

MR. HARNETT: We will confer.

MR. DILLARD: Thank you, your Honor.

THE COURT: Okay. Thank you. Very long hearing. I'm sorry I am so slow on this, but this is complicated stuff and I try to get it right.

Thank you very much. Very good argument by counsel.

MR. HARNETT: Thank you, your Honor.

(Proceedings concluded.)

CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: December 7, 2011

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR.