

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,)
)
Plaintiff,)
)
vs.) No. 2:10-cv-01385-MJP
)
AOL, INC., et al.,)
)
Defendants.)
)
)

VIDEOTAPED DEPOSITION OF WILLIAM H. MANGIONE-SMITH, Ph.D.

October 4, 2012

Seattle, Washington

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1 display images in an unobtrusive manner that does not
2 distract a user of the apparatus from primary
3 interaction?
4 MR. WILSON: Objection. Form.
5 THE WITNESS: I don't believe I've
6 taken a position that such information exists.
7 MR. HEIT: All right. Let's break for
8 lunch.
9 THE VIDEOGRAPHER: We are going off
10 the record. The time is 12:37.
11 (Recess.)
12 THE VIDEOGRAPHER: We are back on
13 record. The time is 1:28.
14 EXAMINATION (Continuing)
15 BY MR. HEIT:
16 Q Good afternoon, Mr. Mangione-Smith. I'll just remind you
17 you're still under oath.
18 A Yes, sir.
19 Q Let's go back to your declaration marked as Exhibit 1.
20 A Yes.
21 Q Let's go back to Page 7 of your exhibit.
22 A All right. I'm there.
23 Q You would agree, Dr. Mangione-Smith, that when you
24 identified the corresponding structure to the function of
25 "Selectively displaying an image or images generated from

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1 a set of contact data on the display device, in an
2 unobtrusive manner that does not distract a user of the
3 apparatus from a primary interaction with the apparatus,"
4 you understood what that function meant, correct?
5 A I believe so, yes.
6 Q What does it mean, Dr. Mangione-Smith, to display an
7 image in an unobtrusive manner?
8 MR. WILSON: Objection. Form.
9 THE WITNESS: I think the words speak
10 for themselves. It means to display the image in a
11 manner that is not obtrusive to the person to which it is
12 being displayed.
13 Q (By Mr. Heit) Well, you've defined unobtrus- -- "display
14 in an unobtrusive manner" with the word "obtrusive."
15 A Yes, sir.
16 Q Can you explain to the Court what it means to display an
17 image in an unobtrusive manner?
18 A In the context of the '652?
19 Q Correct.
20 A I'm not prepared to that. I have not formed an opinion
21 with regards to the proper construction of the word
22 "unobtrusive."
23 Q But you had an understanding of what it meant to display
24 an image in an unobtrusive manner when you rendered your
25 opinions set forth in the declaration marked as

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1 Exhibit 7, correct -- Exhibit 1, correct? Let me
2 withdraw the question.
3 But you had an understanding of what it meant to
4 display an image in an unobtrusive manner when you
5 rendered your opinions set forth in the declaration
6 marked as Exhibit 1, correct?
7 A That is correct.
8 Q Can you please explain, when you rendered your opinions
9 in the declaration marked as Exhibit 1, what you
10 understood the term "display an image in an unobtrusive
11 manner" meant?
12 A I think it meant to display an image to a user in a
13 manner that didn't intrude upon them to a significant
14 degree.
15 Q And explain "intrude upon a user to a significant
16 degree." What do you mean by that?
17 MR. WILSON: Objection. Form.
18 THE WITNESS: That would be an
19 obtrusive manner.
20 Q (By Mr. Heit) So what -- you would agree that there are
21 many factors that affect whether an image intrudes upon a
22 user, correct?
23 A I do agree that there are many factors that would have to
24 be considered when taking into consideration -- when
25 coming up with a conclusion in the con- -- a firm

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1 conclusion for claim construction purposes in the context
2 of the patent for that word, "unobtrusive." But I have
3 not conducted such an experiment to consider all of the
4 many factors that you're thinking of, as well as the
5 remainder of the intrinsic evidence, in order to reach an
6 opinion as to what the proper construction of
7 "unobtrusive" would be.
8 Q Well, can you give me examples of factors that would
9 affect whether an image that is displayed is displayed in
10 an unobtrusive manner?
11 A Certainly. If the user felt that they were able to
12 continue doing whatever their primary function was with
13 the computer system. If the -- if -- well, I guess
14 that's probably the best definition to start with.
15 Q You would agree that the color of the image displayed
16 would impact whether an image displayed is displayed in
17 an unobtrusive manner, correct?
18 A It may or it may not. It certainly depends on other
19 factors.
20 Q What other factors would that depend on?
21 A Well, if the image was very, very tiny, that would be
22 taken into consideration, or very large, or if -- well,
23 that's a good place to start.
24 Q But you'd agree, sir, that the relationship between the
25 color of the displayed image and the color of the

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1 that it's possible that they have defined it, clearly.
2 That's an issue that I'm sure the judge will struggle
3 with eventually, but as I sit here today, I'm not
4 prepared to conduct the exercise of trying to form an
5 opinion on the spot or provide -- discover evidence upon
6 which I could form an opinion.
7 Q Well, if the patent would have provided a definition for
8 unobtrusive, would you have identified that in your
9 declaration set forth as Exhibit 1?
10 A I don't believe so. I didn't find -- that was not
11 something I was asked to do. It -- forming an opinion
12 regarding unobtrusive was not something I endeavored to
13 do. And if in my work I came across something that I
14 thought was a sufficient definition, I came across many
15 other facts as well that I also didn't include in my
16 report because I didn't feel that they were necessary for
17 satisfying the task that I was asked to conduct.
18 Q So you're refusing to look through the '652 patent and
19 identify where the '652 patent provides a definition for
20 displaying images in an unobtrusive manner, correct?
21 A No. I'm prepared to do that, just I'm not prepared to do
22 that as we sit here today.
23 Q Well, when would you be prepared to do that?
24 A I don't know. I'd have to discuss that with Counsel.
25 Q So you're refusing to do that now; is that correct?

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1 A I don't think it would be in the best interests of
2 reaching a deeper understanding of these matters and
3 conducting my responsibility to the Court for me to sit
4 here and try to review all of the intrinsic evidence
5 after having been on tape and under the hot lights for
6 several hours. So yes, I'm refusing to do that today.
7 Q You would agree, Dr. Mangione-Smith, that an image that
8 is displayed on a display screen may be displayed in an
9 unobtrusive manner with respect to one user and be
10 displayed in an obtrusive manner with respect to a
11 different user, correct?
12 MR. WILSON: Objection. Form.
13 THE WITNESS: I think in the context
14 of the '652, I don't have an opinion with regards to that
15 because I haven't tried to ascertain what the proper
16 construction of unobtrusive is in the context of the
17 '652. So I have no opinion on that question as I sit
18 here today.
19 Q (By Mr. Heit) Outside the context of the '652 patent,
20 would you agree, sir, that an image that is displayed on
21 a display screen may be displayed in an unobtrusive
22 manner with respect to one user and be displayed in an
23 obtrusive manner relative to a different user?
24 MR. WILSON: Counsel, how many
25 questions do you want to ask that don't pertain to his

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1 declaration? How much time do we need to spend here
2 today asking questions that are outside the scope of his
3 declaration?
4 THE WITNESS: It's possible. It would
5 depend on the precise circumstances.
6 Q (By Mr. Heit) Can you explain the circumstances in which
7 an image that is displayed would be displayed in an
8 unobtrusive manner with -- relative to one user and
9 displayed in an obtrusive manner with respect to a
10 different user?
11 A Not as we sit here today. I'm not prepared to try to
12 construct a hypothetical situation that may satisfy those
13 constraints related to a word that I haven't voiced a
14 claim construction opinion on.
15 Q But you'd agree, Dr. Mangione-Smith, that images
16 displayed on a display screen may or may not be displayed
17 in an unobtrusive manner depending on the user, correct?
18 A I think that that's possible. It may be the case and it
19 may not be the case.
20 Q When would that be the case?
21 MR. WILSON: Objection. Form.
22 THE WITNESS: I haven't formed an
23 opinion on that.
24 Q (By Mr. Heit) You agree, Dr. Mangione-Smith, that the
25 issue of whether an image is displayed in an unobtrusive

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1 manner depends on a number of factors, including the
2 subjective view of the user, correct?
3 MR. WILSON: Objection. Form. Asked
4 and answered.
5 THE WITNESS: I haven't formed an
6 opinion on that.
7 Q (By Mr. Heit) And in fact, two users may have -- may
8 find the same image -- strike that.
9 And you would agree, sir, that two users may reach
10 different conclusions as to whether an image displayed is
11 displayed in an unobtrusive manner, correct?
12 MR. WILSON: Objection. Form. Asked
13 and answered, and outside the scope of today's
14 deposition.
15 THE WITNESS: Possibly, possibly not.
16 I think it depends a great deal on the context, and I
17 have not formed an opinion regarding that subject matter.
18 Q (By Mr. Heit) What do you mean, it depends on the
19 context?
20 A I think we've been over this a couple of times. The
21 context involves the entire environmental context as well
22 as the information that's displayed, and -- includes at
23 least the environmental context, the information that's
24 displayed, and the users.
25 Q But you'd agree, Dr. Mangione-Smith, that holding all

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1 over environmental conditions constant, two users viewing
2 a display screen may reach a different conclusion as to
3 whether a displayed image is displayed in an unobtrusive
4 manner or not, correct?
5 MR. WILSON: Objection. Form. Asked
6 and answered, and outside the scope of today's
7 deposition.
8 THE WITNESS: I haven't reached an
9 opinion on that.
10 Q (By Mr. Heit) As an expert in the field in which -- that
11 has provided testimony to support Interval's construction
12 of the claims, you would agree that holding all other
13 environmental conditions the same, two users may reach
14 different conclusions as to whether a displayed image is
15 displayed in an unobtrusive manner, correct?
16 MR. WILSON: Objection. Form. Asked
17 and answered, and outside the scope of today's
18 deposition.
19 THE WITNESS: I believe that's the
20 same question that you asked previously, with a
21 separation of "as an expert," but it's my expectation
22 that all the answers I give are in that context while
23 under oath here today. So with that preface, I must say
24 that I have not been previously charged with forming an
25 opinion with regards to that question, I don't know that

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1 it's addressed in my report, and I don't have an opinion
2 on the subject as a consequence of that.
3 Q (By Mr. Heit) Well, what about your -- as a technical
4 person, outside the context of this case, as a technical
5 person would you answer that question?
6 MR. WILSON: Objection. Form. Asked
7 and answered, and outside the scope of today's
8 deposition.
9 THE WITNESS: Well, I feel
10 uncomfortable answering that question for a number of
11 reasons, many of which we've discussed. It's a
12 hypothetical -- well, it would require perhaps
13 constructing one or more hypothetical environments and
14 situations, filling in the details, and then attempting
15 to answer that question. I doubt that I would be able to
16 accurately reflect all of the assumptions of the
17 hypotheticals as they would exist in my mind in a way to
18 make the record useful to the Court as we go forward.
19 And at the end of the day it would be one or more
20 hypotheticals constructed on the fly, speculatively, one
21 might say, with regards to a claim term that appears to
22 me to be of great interest -- significance in this trial
23 as we go forward, so I'm cautious that in my role as an
24 expert, speculating on such a -- such an area where I
25 currently have no opinion would only serve to muddy the

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1 waters going forward. So I have no opinion with regards
2 to that. I haven't expressed an opinion in my
3 declaration, and I'm not comfortable doing a thought
4 experiment to construct a set of hypotheticals in an
5 attempt to answer the question as I sit here today.
6 Q (By Mr. Heit) Going back to the definition you provided
7 for displaying images in an unobtrusive manner, you said
8 images that do not intrude upon the user to a significant
9 degree. What do you mean by the phrase "to a significant
10 degree"?
11 A To a degree that the user would find it to be obtrusive.
12 Q What criteria does the patent provide to determine
13 whether a user would find a displayed image obtrusive?
14 MR. WILSON: Objection. Form. Asked
15 and answered, and outside the scope of today's
16 deposition.
17 THE WITNESS: I don't believe that
18 I've expressed such an opinion in my declaration, and as
19 I sit here I have no opinion that I'm prepared to
20 proffer.
21 Q (By Mr. Heit) And again, you're refusing today to go
22 through the patent and to identify the criteria of the
23 patent? Identify as to the extent it does, to determine
24 whether a user finds an image displayed in an unobtrusive
25 manner, correct?

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1 MR. WILSON: Objection. Form.
2 THE WITNESS: I suspect that it may,
3 in fact, be physically impossible to accomplish that
4 today.
5 Q (By Mr. Heit) Why?
6 A Because there are, I think, 13- or 1700 pages in the
7 re-exam, and then there are potentially -- well, I would
8 have to consider the patent itself, the file history, the
9 file history of the re-exams and the related patents in
10 the family, and I don't know that there's enough time
11 left in the time allocated for the deposition for me to
12 complete that task. I suspect there isn't.
13 Q My question was limited to the patent. If you want to
14 say, I haven't reviewed the prosecution history or the
15 re-exam, that's fine. I'm only asking about the patent,
16 whether the patent provides criteria for -- to determine
17 whether an image displayed to a user would be displayed
18 in an unobtrusive manner?
19 A It may.
20 Q Will you look at the patent and do that for me, please?
21 MR. WILSON: Objection. Form. Asked
22 and answered, and outside the scope of today's
23 deposition.
24 Counsel, you're asking him to read the patent and
25 form an opinion that's not expressed in his declaration.

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1 record. The time is 4:23.
2 (Recess.)
3 THE VIDEOGRAPHER: We're back on
4 record. The time is 4:40.
5 MR. HEIT: Madam Court Reporter, can
6 we identify exhibits as Exhibit 6A, B, C, D and E? Is
7 that possible?
8 THE COURT REPORTER: Yeah.
9 MR. HEIT: So let's mark this as
10 Exhibit 6A.
11 (Exhibit No. 6A marked for
12 identification.)
13 EXAMINATION (Continuing)
14 BY MR. HEIT:
15 Q I've put in front of you, Dr. Mangione-Smith, an exhibit
16 that's been marked 6A.
17 Do you have that in front of you?
18 A Yes, sir, I do.
19 Q According to your understanding of the term "displaying
20 images in an unobtrusive manner," as that is set forth in
21 your report at Page 7 of Exhibit 1, is the -- I'm sorry.
22 I have to get a little bit more organized. I'm not as
23 organized as I should be, so my apologies.
24 Okay. Let's start this again. Withdraw that -- the
25 prior question.

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1 Dr. Mangione-Smith, you have in front of you what
2 has been marked 6A; is that right?
3 A Yes, sir.
4 Q And 6A has a blue background and a -- one window open --
5 no, actually, two windows open. There is one window in
6 the background and one window in the foreground; is that
7 right?
8 A Yes. There are two windows visible as being open.
9 Q Okay. And the background, what is the window that's in
10 the background?
11 A It says, "Document1 - Microsoft Word."
12 Q And Microsoft Word is a word processing program?
13 A Yes, sir.
14 Q And the '652 patent describes a word processing program
15 as one example of a primary interaction?
16 A I think they use -- using the Word word processing
17 program was one example of a primary user interaction.
18 Q And the image that is displayed in the window in the
19 foreground, according to your understanding of the term
20 "display in an unobtrusive manner," would you agree with
21 me, Dr. Mangione-Smith, that the image displayed in the
22 foreground is not displayed in an unobtrusive manner?
23 MR. WILSON: Objection. Form.
24 THE WITNESS: I'm not prepared to
25 express an opinion upon that.

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1 Q (By Mr. Heit) You can't tell me, sir, based on your
2 understanding of the term "displaying an image in an
3 unobtrusive manner," as that term is written on Page 7 of
4 your declaration that's been marked as Exhibit 1, you
5 can't tell me whether the window in the foreground is
6 displayed in an unobtrusive manner, sir?
7 MR. WILSON: Objection. Form.
8 THE WITNESS: I don't have an opinion
9 on that.
10 Q (By Mr. Heit) What would you need to know to form your
11 opinion?
12 A Well, I'd need to know the proper construction for the
13 term -- for the word "unobtrusive, I would think.
14 Furthermore, I'd need to know much more about the context
15 that resulted in this screen being captured -- this
16 screen image. I apologize, I meant screen image.
17 Q What would you need to know about the context?
18 A Well, at a minimum what the person was doing when the
19 screen was captured, when this screen image was captured.
20 Q Anything else?
21 A Perhaps. As I sit here today, I haven't previously
22 thought of an exhaustive list that I would need to answer
23 such a question.
24 Q I don't need an exhaustive list. Anything else you can
25 think of that you need to know to know the context to

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1 answer the question?
2 A So let me -- let me review. I said the proper
3 construction for the term, and the context of how the
4 screen image was captured.
5 Q Just so my question's clear, I asked you about the
6 context previously. You said you needed to know what the
7 person was doing. I'm saying what else do you need to
8 know about the context?
9 A About the context. Sorry. Well, presumably, as we've
10 discussed earlier, environmental issues, issues related
11 to the display technology, issues related to -- well,
12 we've already said what the person was doing. As well,
13 presumably other personal factors related to the person
14 may or may not be significant in reaching such a
15 determination.
16 Q And if you use the construction that you understood in
17 writing your declaration, would those contextual issues
18 still prevent you from rendering an opinion as to whether
19 the image displayed in the foreground of Exhibit 6A is
20 displayed in an unobtrusive manner?
21 A As I understand the word "construction," I don't believe
22 I had a construction in mind clearly formed when I
23 answered the questions that I was asked to address in my
24 declaration for that particular term.
25 Q Does the window that appears in the foreground of

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1 **A I agree that it's possible. It would depend on exactly**
2 **the blinking properties, and we'd have to look at other**
3 **contextual information and -- to reach a final**
4 **determination, I suspect.**
5 Q So I'm going to give you -- I'm going to mark as
6 Exhibits -- let's mark as Exhibit 6H a one-page exhibit.
7 (Exhibit No. 6H marked for
8 identification.)
9 Q (By Mr. Heit) Do you have Exhibit 6H in front of you,
10 sir?
11 **A I do.**
12 **Q And in your opinion, sir, or according to your**
13 **understanding of the term, "displaying images in an**
14 **unobtrusive manner," is the image displayed in the lower**
15 **right-hand corner of Exhibit 6H displayed in an**
16 **unobtrusive manner?**
17 **A It appears to me that the only salient differences**
18 **between 6H and 6I are the vertical size of the box that**
19 **displays the message, "New mail from user@mail.com," and**
20 **thus this appears to me to be a sequence of experiments**
21 **to get me to define the bounds of what forms something --**
22 **what would satisfy obtrusive and -- what would separate**
23 **an obtrusive message from an unobtrusive message. And so**
24 **at this point I'm going to say I'm not prepared to voice**
25 **an opinion upon that because I'm not prepared, I have no**
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1 **opinion at this point regarding what such bounds would**
2 **be, and I think it would be inappropriate for me to**
3 **speculatively, accidentally voice an opinion that was ill**
4 **considered, or perhaps actually not held, as a result of**
5 **a sequence of hypothetical artifacts placed in front of**
6 **me.**
7 Q Just so the record's clear, with respect to Exhibit 6H,
8 is it your testimony that the box in the lower right-hand
9 corner, the image that is displayed in the box in the
10 lower right-hand corner is displayed in an unobtrusive
11 manner?
12 MR. WILSON: Objection. Form, and
13 asked and answered.
14 THE WITNESS: I'm going to rest on my
15 previous answer. I have formed no opinion with regards
16 to that question, and I am not comfortable forming an
17 opinion on the spot because I don't feel that it would
18 serve the end goals of the Court.
19 Q (By Mr. Heit) Let's mark the rest of the series of
20 images 6B, C, D, E, F, and G.
21 (Exhibit Nos. 6B-6G marked
22 for identification.)
23 Q (By Mr. Heit) So you have in front of you now Exhibit 6A
24 through 6I. Is that correct?
25 **A I believe so, yes, sir.**
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1 Q Will you tell me, based on your understanding of the term
2 "displaying images in an unobtrusive manner," when the
3 image that reads, "New mail from user@mail.com," that
4 window, becomes unobtrusive?
5 MR. WILSON: Objection. Form.
6 THE WITNESS: No, sir.
7 Q (By Mr. Heit) Does it remain your opinion that the image
8 displayed on 6I is displayed in an unobtrusive manner?
9 **A I don't believe that I've changed my opinion compared to**
10 **what I testified earlier.**
11 Q So it's still your opinion that the image in the lower
12 right-hand corner is displayed in an unobtrusive manner,
13 correct?
14 **A We would have to go back and review exactly what I**
15 **testified to earlier.**
16 Q I think you testified that in your opinion the image in
17 the lower right-hand corner of Exhibit 6I is displayed in
18 an unobtrusive manner.
19 **A If I testified to that, then I stand by that testimony.**
20 MR. WILSON: Object to the form.
21 Q (By Mr. Heit) Do you still believe that?
22 MR. WILSON: Objection. Form.
23 THE WITNESS: I would like to go back
24 and be certain that that's --
25 Q (By Mr. Heit) Well, I'll just ask it again. I'll take
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1 your Counsel's instruction -- objection of asked and
2 answered.
3 Sir, with respect to the image displayed in the
4 lower right-hand corner of Exhibit 6I, in your opinion is
5 that displayed in an unobtrusive manner?
6 MR. WILSON: Objection. Form, and
7 asked and answered.
8 THE WITNESS: I believe I answered
9 that previously, and I am happy to stand by my previous
10 testimony. We can review it if you wish.
11 Q (By Mr. Heit) No, I'd like you to answer the question.
12 **A Okay.**
13 THE WITNESS: Could you read back my
14 previous answer?
15 Q (By Mr. Heit) No, I've asked it again. I'd like you to
16 answer my question now.
17 **A Yes. But --**
18 Q Dr. Mangione-Smith, please, with respect to Exhibit 6I,
19 the image in the lower right-hand corner, in your opinion
20 is that displayed in an unobtrusive manner?
21 MR. WILSON: So just so the record's
22 clear, are you telling him he can't hear his prior
23 testimony?
24 MR. HEIT: He can refer to it, and --
25 but I'd like to know, upon reflection currently, what his
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1 opinion is.
2 MR. WILSON: Okay.
3 THE WITNESS: Well, out of, you know,
4 prudent concern for caution, to get the record as
5 accurate as I can, I would ask if the court reporter
6 would read back my previous answer with regards to
7 Exhibit 6I.
8 (Transcript on Page 159,
9 Line 25, through Page 160,
10 Line 9 read by the reporter.)
11 THE WITNESS: Yes, I have not
12 reconsidered my answer, and I still believe that to be
13 true.
14 Q (By Mr. Heit) Okay. Let's look at 6H, Exhibit 6H. Is
15 the image displayed in the lower right-hand corner, based
16 on your understanding of the term, "displayed in an
17 unobtrusive manner," is that image on 6H displayed in an
18 unobtrusive manner?
19 MR. WILSON: Objection. Form. Asked
20 and answered.
21 THE WITNESS: I stand by my answer to
22 that question when you asked it previously. If I
23 remember, it was a somewhat long-winded answer, but I was
24 fairly satisfied with it when you asked the question the
25 first time, so we could have the court reporter read it

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1 back so I get it accurately right, or we could just agree
2 that I wish to stand by my previous answer to that
3 question.
4 Q (By Mr. Heit) That's fine. What about -- let's look at
5 6G.
6 **A The answer -- I'm sorry. You --**
7 Q The question is, based on your answer -- based on your
8 understanding of the term "displayed in an unobtrusive
9 manner," is the image on the lower right-hand corner of
10 Exhibit 6G displayed in an unobtrusive manner?
11 MR. WILSON: Objection. Form. Asked
12 and answered.
13 THE WITNESS: I will stand by the same
14 answer that I provided with regards to 6H. The content
15 and form of my response is the same, simply replacing any
16 reference to 6H to 6G.
17 **Q (By Mr. Heit) You're not answering my question. I don't**
18 **want to hear referencing, referencing. I'm entitled to a**
19 **record. I've not asked you about 6G. I'd like an answer**
20 **to my question, sir. Please answer my question.**
21 **MR. WILSON: Objection. Form.**
22 **THE WITNESS: Well, out of an**
23 **abundance of caution, to set the record as accurately and**
24 **usefully to the Court as possible, I am going to decline**
25 **to answer that question because it is clear to me now, as**

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1 it -- as it -- as I supposed when 6H was first presented,
2 that this sequence -- this sequence of slides presents an
3 experimental attempt to have me certainly accidentally
4 define an empirical basis for the boundaries of
5 unobtrusiveness, which I feel would be a mistake and a
6 disservice to the Court. I don't have an opinion that I
7 have expressed or not expressed regarding the definition
8 of unobtrusive. I'm not prepared to explicitly establish
9 a boundary test because -- because I'm not prepared to.
10 I have not conducted the research to answer that
11 question, and I think it would be a disservice to the
12 Court for me to accidentally suggest that I have such a
13 definition by looking through a sequence of such slides.
14 Q (By Mr. Heit) You used the term "boundary test." What
15 do you mean by "boundary test"?
16 **A What I meant there was a test that would eventually say,**
17 **at this point something on one side is obtrusive and**
18 **something on the other side is unobtrusive, or to**
19 **establish the limits of what is unobtrusive.**
20 Q Does the '652 patent provide you the criteria in which a
21 skilled artisan could determine that boundary test?
22 MR. WILSON: Objection. Form. Asked
23 and answered.
24 THE WITNESS: I believe I've answered
25 that question previously when the question came up of

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1 whether there was an objective test -- objective evidence
2 that would allow a skilled artisan to determine whether
3 or not they were practicing the claim elements, and
4 specifically this issue of an unobtrusive manner. And I
5 believe the answer that I gave then was that there was
6 the capability for such a person to reach such a
7 determination, and I stand by my testimony previously
8 with regards to this specific line of questioning.
9 **Q (By Mr. Heit) What criteria does the '652 patent provide**
10 **to establish a boundary test --**
11 **MR. WILSON: Objection. Form.**
12 **Q (By Mr. Heit) -- for when an image is displayed in an**
13 **unobtrusive manner versus when an image is displayed in**
14 **an obtrusive manner?**
15 **MR. WILSON: Objection. Form. Asked**
16 **and answered.**
17 **THE WITNESS: I don't have an opinion**
18 **upon that question. I was not asked to form an opinion**
19 **on that question, and I'm not prepared to elaborate on**
20 **that question beyond the answers that I've already given.**
21 **Q (By Mr. Heit) And if I asked you, Dr. Mangione-Smith, to**
22 **review the 65 -- '652 patent to determine the criteria**
23 **for establishing a boundary test between when an image is**
24 **displayed in an unobtrusive manner versus when an image**
25 **is displayed in an obtrusive manner, you'd refuse to do**

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1 so; is that correct?
2 MR. WILSON: Objection. Form. Asked
3 and answered.
4 THE WITNESS: I would refuse to do
5 that for multiple reasons that have been cited previously
6 in my testimony.
7 Q (By Mr. Heit) Referring to Exhibit 6A, would you agree,
8 sir, that the image displayed in the foreground would
9 distract the user from primary interaction?
10 MR. WILSON: Objection. Form.
11 THE WITNESS: I don't feel that I'm in
12 a position to answer that question. I don't have an
13 opinion. It's possible that it would, it's possible that
14 it would not.
15 Q (By Mr. Heit) And same contextual issues you referred to
16 before prevent you from answering that question?
17 A **At least those issues, yes, sir.**
18 Q Any other issues that -- above and beyond the contextual
19 issues?
20 A **Not that occur to me as I sit here today.**
21 Q And referring to 6I, in the lower -- 6I.
22 A **Yes, sir.**
23 Q Does the image in the lower right-hand corner of
24 element -- of Exhibit 6I, would you -- in your opinion,
25 would that distract a user from primary interaction of

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1 looking at the Word document?
2 MR. WILSON: Objection. Form.
3 THE WITNESS: It seems to me unlikely
4 that that would distract the user from a primary function
5 of looking at the Word document.
6 Q (By Mr. Heit) What about 6H? Let's go to 6H. Based on
7 your understanding of the words "distract the user from a
8 primary interaction," would the image displayed in the
9 lower right-hand corner of Exhibit 6H, would that
10 distract a user from primary interaction of working on
11 the Word document?
12 MR. WILSON: Objection. Form.
13 THE WITNESS: It may, and it may not.
14 Q (By Mr. Heit) Are you willing to --
15 A **It depends, and I am not willing or able at this point to**
16 **express an opinion for a number of reasons.**
17 Q And are those the contextual issues you referred to
18 before?
19 A **It's at least the contextual issues, as well as the**
20 **possibility that the term -- some of the terms in the**
21 **phrase you mentioned, I believe, "primary interaction,"**
22 **for example, may be open for claim construction. So I'll**
23 **leave my answer there.**
24 Q Well, let's assume the primary interaction is a user
25 working on the Word document. Let's assume that as part

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1 of the hypothetical, okay? Would it be your opinion,
2 sir, that the image displayed in the lower right-hand
3 corner of Exhibit 6H, would that distract the user from
4 that primary interaction?
5 A **It may, and it may not.**
6 Q Do you have an opinion?
7 A **Yes.**
8 MR. WILSON: Objection. Form. Asked
9 and answered.
10 THE WITNESS: I do.
11 Q (By Mr. Heit) What is the opinion?
12 A **It's my opinion that it may distract the user, and it may**
13 **not distract the user.**
14 Q What would you -- what else would you need to know to
15 determine whether the image in the lower right-hand
16 corner of 6H would distract the user from the primary
17 action of working on the Word document?
18 A **Well, there are a number of factors. I'll rely on what**
19 **we've covered by saying the context, including**
20 **environmental factors, the user, the technology of the**
21 **display, etc., as well as my concern that this seems to**
22 **be an effort to establish the bounds, or a test that**
23 **would determine whether or not something was distracting**
24 **a user, and I have not voiced an opinion with regards to**
25 **the proper construction for what it means to distract a**

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1 **user, and it seems to me to be imprudent to intentionally**
2 **or unintentionally develop an opinion and express it here**
3 **without careful consideration.**
4 Q And I assume that's the same answer -- you'd give the
5 same answer with respect to Exhibits 6B through 6G?
6 A **Yes, sir.**
7 Q I want to turn to -- just briefly back to Figure 1 of the
8 '652 patent.
9 A **Yes.**
10 Q And again, this is the structure that you referred to as
11 corresponding to the function set forth in Paragraph 30
12 of your report, correct?
13 MR. WILSON: Objection. Form.
14 Mischaracterizes the testimony.
15 THE WITNESS: I believe in
16 Paragraph 30 I identified 105 as being related to the
17 language relating to display in the means element on
18 page -- on that page.
19 Q (By Mr. Heit) What is the term "in the schedule," what's
20 being referred to when you use -- when the term "in the
21 schedule" is being referred to in element 105?
22 MR. WILSON: Objection. Form. Asked
23 and answered.
24 THE WITNESS: That's determining -- so
25 "in the schedule" is a schedule for displaying content

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