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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1589/5/7/23(T),
1424/5/7/21(T), 1596/5/7/23

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

22nd June-31st July 2026

Before:

The Honourable Mr Justice Roth
Dinah Rose KC
Alasdair Smith

(Sitting as a Tribunal in England and Wales)

BETWEEN:

**INFEDERATION LIMITED (“Foundem”)
KELKOO.COM (UK) LTD & OTHERS (“Kelkoo”)
WHITEWATER CAPITAL LIMITED (“Ciao”)**

Claimants

- and -

GOOGLE LLC & OTHERS

Defendants

A P P E A R A N C E S

Colin West KC (instructed by Hausfeld & Co LLP) on behalf of Foundem

Daniel Jowell KC, Sarah Love KC, Hugh Whelan & Gianna Seglias (Instructed by Linklaters LLP)
on behalf of Kelkoo and Ciao

Meredith Pickford KC, Brendan McGurk KC, Julianne Kerr-Morrison, David Gregory & Alistair Holder Ross (Instructed by Herbert Smith Freehills Kramer LLP and Bristows LLP) on behalf of
Google LLC & Others

Thursday, 2 July 2026

1
2 (9.33 am)
3 THE CHAIRMAN: Yes.
4 MR GREGORY: I am David Gregory acting for Google. Google's
5 next witness is Mr Jeremiah Ginsberg. He is giving
6 evidence remotely from Auckland in New Zealand, where it
7 is currently 8.30 pm. He is attended by an independent
8 lawyer from the firm Webb Henderson in Auckland, she is
9 called Victoria Fowler and she will be helping with
10 the display of documents via Opus.
11 If the Tribunal is content, please can he be
12 affirmed?
13 THE CHAIRMAN: Yes, first of all, Mr Ginsberg, can you hear
14 me?
15 A. Yes, I can hear you, thank you.
16 THE CHAIRMAN: Ms Fowler, can you hear us?
17 MS FOWLER: Yes, we can hear you. Thank you.
18 THE CHAIRMAN: You are giving your evidence or about to,
19 Mr Ginsberg, via video—link, but I think you appreciate
20 it is as much evidence as if you were here in
21 the courtroom in London and stands on the same
22 obligations and restrictions. You appreciate that?
23 A. Yes, sir.
24 THE CHAIRMAN: Just to orient you, I am Peter Roth,
25 the chair of the Tribunal hearing this case. To my

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1 left, your right, is Ms Rose, you will see her, my
2 fellow judge, and to my right, your left, is
3 Professor Smith, fellow judge, the three of us
4 constitute the panel, and as you know, your image is
5 beamed into the courtroom.
6 If you could — please, Ms Fowler, are you able to
7 administer — I think Mr Gregory [sic] wants to affirm,
8 is that right?
9 MS FOWLER: Yes, that is right — (feedback — inaudible).
10 THE CHAIRMAN: I am so sorry, Mr Ginsberg.
11 Can you administer the affirmation, please,
12 Ms Fowler.
13 MR JEREMIAH GINSBERG (affirmed)
14 (Via video—link)
15 THE CHAIRMAN: Yes, Mr Gregory.
16 Examination—in—chief MR GREGORY
17 MR GREGORY: I understand that you have a hard copy of your
18 first statement. For Opus, it is {H3A/4}.
19 Do you have it, Mr Ginsberg?
20 A. Yes, I do, thank you.
21 Q. Please could you turn to {H3A/4/29}.
22 Do you see the signature there?
23 A. Yes, I do.
24 Q. Is that your signature?
25 A. It is.

2

1 Q. Do the facts set out in your first statement remain true
2 to the best of your knowledge and belief?
3 A. Yes, they do.
4 Q. Please could you open up your second statement. For
5 Opus, that is {H3A/9}.
6 Let me know when you have it.
7 A. I have it, yes.
8 Q. Could you turn to page {H3A/9/5}, please.
9 Do you see the signature there?
10 A. I do.
11 Q. Is that your signature?
12 A. It is.
13 Q. Do the facts set out in your second statement remain
14 true to the best of your knowledge and belief?
15 A. Yes, they do.
16 MR GREGORY: That is all from me for now, so I will hand
17 over to Mr West, who may have some questions for you.
18 THE CHAIRMAN: Just before you start, Mr West, we are not
19 getting the web presenter.
20 (Pause)
21 Yes, Mr West. Sorry about that.
22 Cross—examination by MR WEST
23 MR WEST: Good morning, Mr Ginsberg.
24 A. Good morning.
25 Q. Can I start by identifying the kinds of algorithms that

3

1 were relevant to the OneBoxes. Can I suggest that
2 the first kind of algorithms were those that decided
3 which kind of OneBox, if any, to show in response to
4 a particular search query. That is one kind of
5 algorithm that was relevant to the OneBoxes, is it not?
6 A. Yes, that's correct.
7 Q. An example would be the Seti algorithms that you talk
8 about after the launch of the Seti OneBox project?
9 A. Seti is a machine learning system that can be used for
10 a variety of purposes and was used to help develop
11 a trigger for multiple OneBoxes, yes.
12 Q. The Seti OneBox project began in around late 2004 or
13 thereabouts?
14 A. Yes, that's correct.
15 Q. Those kinds of algorithms were the responsibility of
16 the OneBox team, including yourself?
17 A. Yes, we had a team called the Seti OneBox team, which
18 was three engineers including myself.
19 Q. The second kind of algorithms which are relevant,
20 I would suggest to you, are those which selected
21 the contents of the OneBoxes. Would you agree with
22 that?
23 A. Can you clarify the question or say it a different way,
24 please?
25 Q. So, by way of example, if it was a Product OneBox, then

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1 there would be a set of algorithms that identified which
 2 results from Froogle went into the OneBox.
 3 A. For OneBoxes that return results from different search
 4 verticals, each search vertical would make
 5 the determination of which results to include using
 6 a variety of algorithms, yes.
 7 Q. Yes.
 8 So can we look at each of those in turn. The aim of
 9 the Seti OneBox project was to ensure that each kind of
 10 OneBox was displayed when it was likely to be most
 11 relevant to the particular query?
 12 A. Yes, that is correct.
 13 Q. So a Product OneBox, for example — and I keep using
 14 that as an example because that is what this case is
 15 about — would be displayed in response to queries where
 16 users were looking for products, for example?
 17 A. Yes, it would be displayed in queries where users were
 18 looking for products and tended to click on the results
 19 of the OneBox or the sorts of results that the OneBox
 20 surfaced.
 21 Q. Yes, so as you explain in your evidence, the way
 22 the Seti algorithm decided which type of OneBox to
 23 display was by looking at historical traffic data; that
 24 is right, is it not? Historical click data?
 25 A. Yes, it was partly based on historic search data and

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1 click data and patterns in that data.
 2 Q. So looking at what users tended to click on, having made
 3 certain types of search?
 4 A. Yes.
 5 Q. If they tended to click on a Product OneBox,
 6 the algorithm would therefore know to show that type of
 7 OneBox in response to a future query of that kind?
 8 A. Yes, that was one of the signals, the clicks on
 9 the OneBox, yes.
 10 Q. Then looking at the contents of the OneBoxes, for
 11 Product OneBoxes, that would be the responsibility of
 12 the Froogle team, would it?
 13 A. The individual product results shown in the OneBox would
 14 have been determined and provided by the Froogle team,
 15 yes.
 16 Q. So the division of responsibility is that your team
 17 decided which kind of box to show, and then the team
 18 responsible for the relevant vertical would populate
 19 that box with results?
 20 A. Yes, that was generally the case.
 21 Q. Your team, the OneBox team, had no control over which
 22 results were shown in the box?
 23 A. Yes, that's correct.
 24 Q. Now, the Commission Decision talks about certain Google
 25 algorithms which have the effect of demoting particular

6

1 kinds of results within the general search results.
 2 I do not know if you are familiar — have you ever seen
 3 the Commission Decision or has it been explained to you?
 4 A. I believe I've been shown excerpts of it that discuss
 5 a particular algorithm in preparation of my second
 6 statement.
 7 Q. Could we look at it very briefly. It need not take
 8 long. It is {BA/2/86}, Recital 349. You will see it
 9 says:
 10 "Competing comparison shopping services in
 11 the EEA ..."
 12 That just means Europe:
 13 "... are prone to being demoted by at least two
 14 dedicated algorithms ..."
 15 Now, the first one is in yellow because its name is
 16 confidential and we refer to it by
 17 a codename "Algorithm A", but you will see what it is
 18 called there in yellow. Then Panda, that was the second
 19 one of them. Do you see it says that there?
 20 A. Yes, I see them at the top of the page.
 21 Q. Those demoted comparison shopping services in
 22 the organic results. Do you know what I mean
 23 by "organic results"?
 24 A. I believe you mean the web search results, the main web
 25 search results on a Google.com search, yes?

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1 Q. Now, those algorithms had no application to
 2 the OneBoxes, did they?
 3 A. Yes, as far as I'm aware, from my work on the project,
 4 these algorithms were not things I had heard of at the
 5 time or were familiar with, nor would they have been
 6 relevant to determining which OneBox to show.
 7 Q. If we then look down on the same page to — we call it
 8 recitals, the number in brackets, 353, you effectively
 9 start at 352:
 10 "Comparison shopping services are prone to being
 11 demoted by [Algorithm A] due to the characteristics of
 12 those services.
 13 "First, because comparison shopping services enable
 14 users to compare product offers across the internet,
 15 they contain a significant amount of 'non—original'
 16 content from third party sites ..."
 17 What that is saying is that those algorithms demote
 18 within the organic results sites which have little
 19 original content; do you see that?
 20 A. Yes, I see 353 and 352, yes.
 21 Q. Again, there was no equivalent of that in relation to
 22 the OneBoxes, was there?
 23 A. Well, as regards to triggering the OneBox or making
 24 a determination to show the Product OneBox, these
 25 algorithms were not relevant or involved in any way that

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1 I'm aware. As you mentioned, the Froogle team would
 2 have been responsible for providing the individual
 3 results within the OneBox and I am not aware of
 4 the algorithms that used or didn't use that process.
 5 Q. Yes, but what I am asking you is whether there was any
 6 equivalent. So there was nothing within the OneBox
 7 algorithms which, if a particular result within
 8 the OneBox lacked original content, would withhold
 9 the display of that box?
 10 A. That's correct. The trigger was agnostic to which
 11 results were shown in the box and any properties or
 12 attributes of those results.
 13 Q. Then if we can —
 14 THE CHAIRMAN: I think, if I have understood it, Mr Ginsberg
 15 is saying the determination of whether to have a OneBox,
 16 these algorithms played no part, it was the Froogle
 17 team, or through Froogle, that the contents of
 18 the OneBox were determined. He was not involved with
 19 the Froogle team, and if I understood you rightly, you
 20 do not know how the Froogle team did the determination
 21 and what algorithms they used. Is that a fair summary?
 22 A. Yes, that's correct. We were experts at
 23 the determination of which OneBox to show and to ensure
 24 we were doing the best job at that task and the Froogle
 25 team was responsible for providing, given

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1 the opportunity to show results for a particular
 2 impression the choice of results to show that.
 3 MR WEST: If we can again focus on the Product OneBox.
 4 Where a user clicked on a Product OneBox after it was
 5 displayed, it follows that they would be using Froogle
 6 and not any rival comparison shopping service; that is
 7 right, is it not?
 8 A. Not necessarily. The user could have clicked on any
 9 number of links contained in the OneBox. Many of
 10 the links take the user directly to a product landing
 11 page, that's not part of Froogle. The title link would
 12 be the link that they would click that would take them
 13 to Froogle.
 14 Q. Perhaps I can be clear. They would be clicking on
 15 a result from Froogle's comparison shopping service and
 16 not from any other comparison shopping service?
 17 A. The result would have been provided by Froogle and if
 18 the user clicks on it they go directly to that merchant
 19 or product site, yes.
 20 Q. Could we look at a document in {J3K/2/2}. It may be
 21 fairer for you just to look at page {J3K/2/1} so we see
 22 what this is. An email about the launches of various
 23 Seti OneBoxes. I think this is — the email starting
 24 about a third of the way down was from you; do you see
 25 that?

10

1 A. Yes, I can see that. Thank you.
 2 Q. The Product OneBox I think is over the page {J3K/2/2}:
 3 "We launched the first Froogle OneBox triggers for
 4 UK and DE, increasing each property's daily page views
 5 to 300% (UK) and 250% (DE) of the previous levels. Our
 6 19% CTR is the highest of all 'content oneboxes' in
 7 these countries."
 8 What you are saying is that the Froogle OneBoxes
 9 have a 19% click-through rate in these countries; that
 10 is right, is it not?
 11 A. Yes, that's what that means.
 12 Q. Meaning that when the Product OneBox is displayed, it is
 13 clicked on nearly 20% of the time?
 14 A. Roughly speaking, yes.
 15 Q. That must have compared well to the click-through rate
 16 of the top web results, because otherwise the Seti
 17 algorithm would not have displayed the Product OneBox in
 18 the first place?
 19 A. It would have generally compared favourably to
 20 the click-through rate of the top web search results,
 21 yes, not on a click-for-click basis but in the ballpark
 22 of those results.
 23 Q. So there was a reasonably high chance that whenever
 24 a Product OneBox appeared, the user would click on that
 25 box rather than any rival comparison shopping service in

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1 the organic links?
 2 A. I'm not sure I draw that conclusion, because the users
 3 tended to have a habit of clicking on multiple things,
 4 not just one thing, in the search result page, and so
 5 it's not a zero sum click game, the impact of showing
 6 the OneBox could have produced clicks on web results or
 7 it might not have. It would have just depended,
 8 I think.
 9 Q. Could we look at {J3K/3/12} at slide 12. Sorry, it may
 10 again be fair to you to look at the first page so we can
 11 see what this is, {J3K/3/1}, Google, OneBox strategy
 12 document, March 7, 2006. We see your name as one of
 13 the contributors. Do you see that?
 14 A. Yes, I see it.
 15 Q. If we look at {J3K/3/12}, at the bottom:
 16 "Impact on Froogle traffic: +35%."
 17 So the introduction of the Seti algorithm has been
 18 successful in increasing traffic to that Froogle OneBox
 19 by 35%; do you see that?
 20 A. It appears that compared on the old OneBox, according to
 21 this graph, the Seti OneBox averaged higher visits to
 22 the Froogle property, yes.
 23 Q. So, from that perspective, the introduction of the Seti
 24 algorithm appears to have been a success?
 25 A. I wouldn't characterise it that way. I think the main

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1 goal of the Seti OneBox project and the algorithms
 2 deployed was to show users the most relevant results
 3 that we could show them for the query that they had sent
 4 Google. Our primary measures of success, as you put it,
 5 were the click-through rate of the OneBox, showing them
 6 something that they wanted, and the corresponding level
 7 of coverage, meaning how often we showed them the box.
 8 But the impact on traffic to Froogle was not a primary
 9 objective or a success criteria for the project.
 10 Q. In any event, there has been such an increase.
 11 Now, we have heard that the content of the box —
 12 the content of the Product OneBox was a matter for
 13 Froogle and therefore the quality of that content was
 14 also a matter for Froogle, was it not?
 15 A. Partially I would agree with that, in the sense that
 16 they were responsible for providing the results.
 17 However, in the event that bad results or irrelevant
 18 results were provided in another sense, it would have
 19 been the Seti OneBox team's job and the algorithm's job
 20 to stop showing users impressions of products that were
 21 either irrelevant or uninteresting and that didn't earn
 22 their click. So were the Froogle team to, say, return
 23 bad results for the query, I don't know, "glass
 24 pitcher", users would be effectively voting with their
 25 clicks by not clicking on those bad results and we would

13

1 eventually stop showing impressions for that particular
 2 result in the OneBox context.
 3 Q. Can we have a look at {J3K/4/1}.
 4 So this appears to be a discussion document
 5 concerning the Seti OneBox, it is not clear who
 6 the author is. Perhaps "NathanaelS". Is this — are
 7 you familiar with it? It was a long time ago, but is
 8 this the kind of document that you would have seen?
 9 A. Yes, I saw this document in preparing my statement. It
 10 appears to be an internal wiki or documentation site
 11 within Google.
 12 Q. If you look at the final sentence, right at the bottom:
 13 "We do not currently look at the actual quality of
 14 the onebox results when deciding which repository to
 15 keep; this will be explored soon."
 16 So it is right, is it not, that the OneBox team did
 17 not actually look at the quality of the results, that is
 18 the contents of the box?
 19 A. What I interpret this statement to mean is that when
 20 making the decision of whether to show or not show
 21 a OneBox, whatever scores or ranking signals that may
 22 exist at the result level within the OneBox were not
 23 considered at the time of the instructions(?) being
 24 shown to users, that would have been a development that
 25 occurred later in Universal Search.

14

1 Q. Were you aware that there were concerns within Google at
 2 this time, around 2005/2006, about the quality of
 3 Froogle's results?
 4 A. I don't recall any specific concerns or unique quality
 5 questions that were raised or discussed at the time
 6 beyond the odd, "Why is this OneBox showing for this
 7 particular query" type of discussion we have a few
 8 examples of in the emails provided for this case.
 9 Q. Were you aware that there were specific concerns about
 10 the quality of the Product OneBoxes?
 11 THE CHAIRMAN: Do you mean all the Product OneBoxes or are
 12 you especially talking about Product OneBox?
 13 MR WEST: Product OneBoxes, or Froogle OneBoxes I think you
 14 call them.
 15 THE CHAIRMAN: Yes.
 16 A. To clarify, do you mean concerns about the triggering
 17 algorithm or the quality of the results in the OneBox
 18 itself?
 19 MR WEST: Not the triggering, the other elements of
 20 the contents.
 21 A. No, I don't recall hearing any such concerns, as far as
 22 I'm aware.
 23 Q. Can I show you a document. I do not think you saw this
 24 at the time, but can we just look at it briefly at
 25 {K3/7}.

15

1 This is a discussion, we do not need to go into
 2 the details of it now, between Mr Truher of Froogle and
 3 various people from Google Search about integrating
 4 the results from Froogle into the Google Search results.
 5 As I say, the discussion in general does not matter.
 6 But if we could look at {K3/7/2}, there is an email,
 7 about halfway down the page, from — we have been told
 8 his name is pronounced "Bill Brougher", and the second
 9 paragraph of that email, do you see it begins:
 10 "The bigger problem ..."
 11 He says:
 12 "The bigger problem these projects have is to
 13 improve their own result quality. For example, with
 14 Froogle, the onebox trigger is now very good and
 15 relevant ..."
 16 That is the bit that you were responsible for, or
 17 your team, is it not, the OneBox trigger?
 18 A. Yes, the trigger would have been my team's job.
 19 Q. But he goes on:
 20 "... but the three results we show from Froogle in
 21 that onebox generally rate very low in our
 22 search quality evaluation tests."
 23 So the quality of the actual contents is low; do you
 24 see that concern being expressed?
 25 A. I see it.

16

1 Q. Then at the top of the page, this is now Mr Joel Truher
2 from Froogle; he says:

3 "Yes, you're right that the Onebox result items
4 often stink. We're looking into why that is. We also
5 have a few almost-deployed things that will help (eg
6 demoting accessories, better merchant reputation
7 signals)."

8 Can I just look at those two specific concerns in
9 turn.

10 What he may mean by "demoting accessories" is that
11 where someone puts in a search for a product, instead of
12 getting results which are the product itself, they are
13 getting results which are accessories for that product;
14 do you see that?

15 A. I see the phrase "demoting accessories", but I don't —
16 it's not self-evident to me what that means. It could
17 mean that, I suppose, I'm not sure.

18 Q. To give you an example, it might be if you are searching
19 for a camera, the result it gives you is a camera case,
20 something like that.

21 A. Possibly. I forget. I don't know what it meant in this
22 context. It's possible. I'm not familiar with this
23 email or that idea.

24 Q. Could we look at the example Product OneBox screenshot
25 you show at page 10 of your statement, {H3A/4/10}.

17

1 This is in your statement, this is an example that
2 you provide of a Product OneBox, is it not?

3 A. Yes, this is one of many example renderings of
4 a Product OneBox that were shown to me in preparing my
5 statement.

6 Q. We see the three links provided by Froogle, yes?

7 A. Yes.

8 Q. The two lower ones, a "Canon Powershot A95 Digital
9 Camera Kit" for about \$300, a "Canon PowerShot A95
10 Digital Camera" for \$349, but the top result is
11 something called "Iconcepts Digital Camera — \$24.99".
12 That is probably an accessory, is it not?

13 A. I honestly have no idea.

14 THE CHAIRMAN: I am not sure we necessarily expect
15 Mr Ginsberg to know that.

16 MR WEST: I am just looking at the prices and trying to use
17 common sense, but —

18 THE CHAIRMAN: Well, I do not think Mr Ginsberg is any
19 better positioned than any of us on that.

20 MR WEST: Can we then look at {H3A/4/36}, screenshot 13:
21 "Product search results for microwave."

22 The first one:

23 "Black Sharp ... Over the Range Microwave ...
24 \$179.95."

25 The second result:

18

1 "... Microwave Built-In Trim Kit ... \$30.89."

2 Again, maybe you do not feel able to answer that,
3 but it seems unlikely that that is a microwave? In fact
4 it says it is a "trim kit".

5 THE CHAIRMAN: Mr West, sorry, what is the point?

6 Mr Ginsberg is well able to answer questions, I am sure,
7 about what triggered the OneBox, how that was set up,
8 but it is made very clear that contents was not within
9 his remit. You have fairly asked him did he know about
10 the concerns about the quality of results coming from
11 Froogle and you have shown Mr Ginsberg that email
12 exchange. It rather speaks for itself. He says he was
13 not aware of that at the time.

14 MR WEST: So is it your position that your team did not —

15 I think you may have told us already — exercise any
16 quality control over the contents of the boxes?

17 A. I would say that when a search vertical returned results
18 to us that we had already scored, we did not do anything
19 to alter or change the results that were returned, so
20 whatever came back, assuming it came back on time and
21 was the highest scoring OneBox that would have been
22 displayed to the user at that point, it wouldn't have
23 been receded in any way.

24 Q. Could we perhaps then just look at Google's skeleton
25 argument, {A2/176}, paragraph 175. I am sorry,

19

1 {A2/1/76}.

2 If you look at the final two lines, it says:

3 "... the OneBox had its own quality and anti-spam
4 controls, including Seti which determined whether to
5 show a box based on ... click behaviour."

6 I think what you are saying is, as far as
7 the contents of the boxes are concerned and as far as
8 your OneBox team are concerned, there were no quality
9 and anti-spam controls?

10 A. Let me just read that paragraph, please.

11 (Pause)

12 The way I would put it is that the quality control
13 was baked into the design of the trigger itself in
14 the sense that the decision was based on user click
15 behaviour and predictions of future clicks. As
16 I mentioned, I don't recall any anti-spam controls other
17 than in some sense, I suppose — yeah, I'm sorry,
18 I don't recall any anti-spam controls. The only
19 mechanism that I recall was just predicting clicks based
20 on likelihood of being relevant and answering the user's
21 question.

22 Q. Okay, I will not press you any further on the matters
23 I was exploring a moment ago.

24 Now the Commission —

25 THE CHAIRMAN: Just before we leave that, so this is

20

1 controls about whether to show a box.
 2 MR WEST: Yes.
 3 THE CHAIRMAN: That is what I think you explained you were
 4 concerned with.
 5 Then it goes on to say, the next sentence
 6 {A2/1/76-77}:
 7 "Google observed these were working; as it did not
 8 receive reports of 'spammy Froogle Onebox results'.
 9 Is that not — "a spammy Froogle Onebox result",
 10 would that not be what is actually shown in the OneBox?
 11 MR WEST: Yes, that is why I was exploring —
 12 THE CHAIRMAN: Well, I am just asking Mr Ginsberg how he
 13 understands the phrase "spammy Froogle Onebox result".
 14 That is the result in the OneBox, is it not, that
 15 the user sees?
 16 A. Yes, that would be my interpretation. I don't have
 17 the full context of this phrase, but I would guess this
 18 refers to the results within the OneBox being of low
 19 quality in some manner, perhaps being, you know,
 20 undesirable results in some way or form. Typically, if
 21 someone was — disagreed with a decision to show
 22 a OneBox, they wouldn't have referred to it as "spammy",
 23 but rather "poorly targeted" perhaps, or "irrelevant".
 24 THE CHAIRMAN: Yes. So the controls about — such as Seti,
 25 about whether to show a OneBox, would have no relevance

21

1 to the contents of the box?
 2 A. Yes, that's correct. Yes, that's correct. In fact,
 3 the prediction of whether to show a Froogle OneBox or
 4 not, the score given to that box is calculated before
 5 the results are even known at that moment in time, and
 6 thus the results have no bearing once the decision has
 7 been made to show Froogle OneBox for a particular query,
 8 whatever results come back are shown.
 9 THE CHAIRMAN: So the determination of whether to show
 10 a OneBox could work very well and that is quite separate
 11 from whether the contents that are then put up in
 12 the OneBox are good or bad, because that was done by
 13 the relevant verticals team; is that right?
 14 A. I partly agree. From an implementation standpoint there
 15 were fully separate controls and algorithms.
 16 The feedback would exist in the sense that if
 17 consistently bad results were to be displayed for
 18 a particular query, I believe in my statement I used
 19 the example of a "red spikey plastic ball", should we —
 20 should Froogle return bad or irrelevant results for that
 21 particular query, it's true, those results would not
 22 have any bearing on whether to show the OneBox, but
 23 ultimately users not clicking on those results would
 24 feed back into the model, which was continually
 25 adapting, and it would learn that for that particular

22

1 query, let's say, the results tend not to be clicked on
 2 and thus the OneBox would be suppressed due to
 3 the irrelevance of the results, if that makes sense.
 4 THE CHAIRMAN: Yes, it does. Thank you.
 5 MR WEST: In light of that answer I do not propose to ask
 6 you any further questions about the contents of the box,
 7 unless the Tribunal would like me to.
 8 Now, very quickly, the Commission found that after
 9 2008, I do not think you were involved with this, Google
 10 displayed results in the Product Universal, which took
 11 over from the OneBox, with richer graphical features,
 12 including pictures and dynamic information, but as we
 13 have seen in the OneBox era, the contents of the box
 14 just consisted of text links; that is right, is it not?
 15 We looked at one a second ago.
 16 A. Yes, that's my recollection of the OneBox results style.
 17 Q. Could we, finally, look at Recital 379 of the Decision,
 18 which is in {BA/2/1}. I do not know the page number but
 19 it will be round about 110 or thereabouts, {BA/2/111}.
 20 So the Commission says this:
 21 "There are two main differences in the way Google's
 22 own comparison shopping service and competing comparison
 23 shopping services are positioned in Google's general
 24 search results pages, despite Google's comparison
 25 shopping service having similar characteristics to

23

1 competing comparison shopping services: (i) Google's own
 2 comparison shopping service is not subject to the same
 3 ranking mechanisms as its competitors, including
 4 adjustment algorithms such as [Algorithm A] and Panda;
 5 and (ii) when triggered, Google positions results from
 6 its own comparison shopping service on its first general
 7 results page in a highly visible place (i.e. either
 8 above all generic search results or, in the majority of
 9 cases, within or at the level of the first generic few
 10 search results)."
 11 Now, the Commission is there addressing the position
 12 from 2008 onwards, but I put to you that the position in
 13 the OneBox era was the same, was it not?
 14 I can go through it individually, if you would
 15 prefer.
 16 A. Could we flip back, please, to the first part of that
 17 statement you read, just so I can take them one at
 18 a time?
 19 Okay, and next page, please? {BA/2/112}.
 20 Well, I don't know the context of the 2008 Universal
 21 Search system, which I was not involved with and
 22 I haven't seen this before. I would agree that,
 23 you know, as is relatively self-evident, the OneBox
 24 appears at the top of the search results page and that
 25 adjustment algorithms, such as Algorithm A and Panda,

24

1 were not relevant to a determination to show the OneBox.
 2 But again, I reiterate that I don't know how the Froogle
 3 team ranked product search results. I can't comment on
 4 whether they used it or not. But at a high level, yes,
 5 it appears at the top and the triggering did not rely on
 6 these sorts of algorithmic adjustments, that's what both
 7 those statements say.

8 MR WEST: Thank you very much, Mr Ginsberg.

9 THE CHAIRMAN: Yes, Ms Love.

10 Cross-examination by MS LOVE

11 MS LOVE: Mr Ginsberg, good evening.

12 A. Good morning.

13 Q. Can I take it you can see and hear me reasonably
 14 clearly?

15 A. Yes, just fine. Thank you.

16 Q. Mr Ginsberg, for the whole of the period from late
 17 2004/early 2005 through to early 2007, you were involved
 18 in OneBoxes, yes?

19 A. As I recall, it was some time around May 2004 that
 20 I began working on it and some time around late 2006
 21 that I moved on to another project. I don't recall
 22 the exact month.

23 Q. Okay. Well, you have said this in paragraph 17 of your
 24 witness statement {H3A/4/6}. We do not need to go there
 25 for now, I am rather pressed for time.

25

1 Can I check, please, you were part of
 2 the Search Quality team, were you not?

3 A. Yes, that's correct.

4 Q. Did you ultimately report to Amit Singhal?

5 A. He was not my direct manager, but my managers would have
 6 reported to people who ultimately reported to him, yes.

7 Q. Now, you have listed in paragraphs 18 to 20 of your
 8 first witness statement — we do not need to go there
 9 for now — some examples of the OneBoxes that existed
 10 while you were working in this area. What I would ask
 11 if we could go to is some screenshots of them in
 12 Annex 2, and that is {H3A/4/33}. I think we can also go
 13 over the page to {H3A/4/34}.

14 Now, Mr Ginsberg, some of these OneBoxes would have
 15 used data coming from third parties, would they not?

16 A. Yes. Yes, I believe that's true.

17 Q. The stocks one, for example, which has in very small
 18 grey writing a reference to "Nasdaq data"?

19 A. I didn't work on these, but typically, yes, I believe
 20 there was a data provider for things like weather and
 21 stock floats. I think that was pretty common at the
 22 time.

23 Q. For example, you referred in your witness statement to
 24 your Pixar colleague's movie showtimes OneBox.
 25 Presumably that is another example?

26

1 A. Yes, I believe, yes, there would have been a third party
 2 data provider for that one as well.

3 Q. Now, I would like to show you in relation to third party
 4 OneBoxes an email that you sent in November 2005.

5 Could we go to {M2/99}, please.

6 Just to orientate ourselves, we can see from
 7 the first page that there seems to have been a OneBox
 8 brainstorming session and it looks as though you are
 9 interspersing your comments with notes from
 10 Mr Ambar Pansari; is that correct? I will give you
 11 a minute to have a look at it.

12 A. I am not sure who wrote the comments to which I appear
 13 to be replying in this email, but, yes, I've
 14 interspersed my comments in response to somebody or
 15 something. I can't make out exactly.

16 Q. "... interspersed with Ambar's 1st draft notes ..."; do
 17 you see that, just below the forwarded part?

18 A. Yes. Yes, perhaps these are his notes then, yes, sure.

19 Q. Mr Pansari, in turn, is forwarding this to Jason Lohn.
 20 Who is Jason Lohn, may I ask?

21 A. Honestly, I don't recall. Yeah, I would have to take
 22 a guess. I don't recall his role or what team he was
 23 on.

24 Q. Mr Brougner is also being copied in.

25 Now, while we are on this first page, I just wanted

27

1 to pick up, in the bottom half, a comment that
 2 Mr Pansari has made — or a comment that reflects
 3 Mr Pansari's notes from the meeting about latency and
 4 your response to it.

5 The note is:

6 "... users are hugely affected by latency. Some of
 7 our oneboxes take significantly longer than web search."

8 Your response is:

9 "Really? I don't think so. I don't think many
 10 queries are slower because of onebox: it typically is
 11 faster than indexserver + docserver RPCs, the longer of
 12 which is the bottleneck.

13 "This isn't a big problem. We can pretty easily
 14 adjust timeouts and show fewer oneboxes from slow
 15 properties."

16 Do you see that, Mr Ginsberg?

17 A. Yes, I see that.

18 Q. Then if we continue over the page {M2/99/2}, you respond
 19 similarly to another comment from Carla:

20 "... the more oneboxes ... we have, the slower this
 21 gets."

22 You say:

23 "The slower what gets? Latency is not the biggest
 24 issue on the table here. We can set timeouts and give
 25 up on pending onebox requests more aggressively."

28

1 So, Mr Ginsberg, just to check I have understood
 2 this, from your perspective, you are saying latency is
 3 not a reason to avoid showing OneBoxes, including
 4 OneBoxes that use third party data, if they are useful;
 5 is that correct?
 6 A. Well, I don't remember writing this email, based on what
 7 I'm seeing here, I wouldn't put it that way. What
 8 I believe I'm articulating here is that when a Google
 9 Search results page is being prepared, a number of
 10 different services are employed to provide aspects of
 11 the search results, and I appear to be responding to
 12 some colleagues' concerns about latency by reminding
 13 them that it doesn't appear to be the biggest problem,
 14 I suppose, from my point of view, at that point in time,
 15 and that for internal services, you know,
 16 the differences that we're talking about here, as
 17 I recall, would have been tens of milliseconds, perhaps
 18 100 milliseconds at the most, so this is — I believe
 19 I'm indicating this is more of an internal serving
 20 optimisation problem for results within — you know,
 21 services within a Google data centre. I don't believe
 22 I'm saying that latency doesn't matter and it's not
 23 about third party results, as I read it.
 24 Q. That is fair, Mr Ginsberg. It is not the biggest
 25 problem. I will not ask you further about a comment

29

1 from over 20 years ago.
 2 Can I turn over to the third page {M2/99/3} and see
 3 what appear to be your additional comments.
 4 Do you see?:
 5 "My additional comments, for what they're worth."
 6 A. Yes, I see that.
 7 Q. You say:
 8 "3rd party oneboxes make me VERY nervous. They're
 9 hard enough to get right when we design the triggers and
 10 provide the content internally!"
 11 Now, again, with apologies for asking about more
 12 than two decades ago, do you recall what in particular
 13 made you nervous?
 14 A. As best I can recall, this would have been about an
 15 idea, when I saw it in another document from the trial
 16 packet, about third parties providing search results via
 17 OneBox as opposed to weather data feeds or stock data
 18 feeds. The comment, as I interpret it here, is that
 19 the degree of precision and challenge of correct logging
 20 the calculation and inference of the correct OneBox to
 21 show between, say, products, news, images and books was
 22 a challenging problem, even among only our own data with
 23 our own logs and our own data centres. There had been,
 24 apparently, floated an idea to allow third parties to
 25 supply OneBox results and I believe I was arguing

30

1 against that idea.
 2 Q. Well, it was more than an idea, Mr Ginsberg, as we will
 3 see. But just so I understand it, your concern is
 4 around the difficulties of triggering appropriately when
 5 you have that third party content; is that an accurate
 6 summary?
 7 A. As best I can recall, my concern is that
 8 the complexities of third parties range from serving to
 9 latency to logging accuracy to manipulation of results
 10 to any number of issues you can imagine if third parties
 11 were feeding results directly into the search results
 12 page. That's — but that's as best I can recall.
 13 Q. Well, let us see what happens for the Search Quality
 14 team. Can I ask you to go next — so we are skipping
 15 forward, I think, three months to February 2006, and
 16 {M1/21}:
 17 "OneBox Update, Processes, Vision, Strategy,
 18 Execution."
 19 This is Mr Lohn, who I believe is the individual
 20 your email was being forwarded to.
 21 Now, do you remember this presentation, Mr Ginsberg?
 22 A. I don't recall it, no. I don't recall it at least
 23 today.
 24 Q. That is fair enough.
 25 In that case, I will show — I am going to have to

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1 show you some selected slides, because I am very pressed
 2 for time, but if at any point you would like to see
 3 other slides to orientate yourself within it, please do
 4 say.
 5 We are going to start on {M1/21/4}, where we see
 6 the growing "OneBox Inventory". Can I understand,
 7 the property OneBoxes, and those include Froogle, those
 8 are the OneBoxes where there is a Google specialised
 9 vertical, a specialised search corpus; is that correct?
 10 A. Yes, so Google — I believe Google has search corpora
 11 for each of those services, yes, that sounds right.
 12 Q. (Overspeaking — inaudible) — their own specialised
 13 services.
 14 If we go over to {M1/21/8}, the:
 15 "New Onebox Team Structure."
 16 "Jeremy: TL", is that you, Mr Ginsberg?
 17 A. I presume so, yes.
 18 Q. What does "TL" mean?
 19 A. Technical lead.
 20 Q. Right. There are going to be six engineers, three by
 21 end of Q2 and three by end of Q3, and there are going to
 22 be two to four Nooglers.
 23 For the benefit of those of us who are not familiar
 24 with the jargon, what are the Nooglers?
 25 A. A Noogler was a new engineer at Google or a new employee

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1 at Google, so hence new — it's a portmanteau I suppose
 2 of "new" and "Googler".
 3 Q. So there are going to be a fairly substantial number of
 4 new engineers, so presumably this is quite an important
 5 search quality project?
 6 A. I don't have perfect recollection of this, but I don't
 7 recall the team growing substantially and I don't recall
 8 any Nooglers rotating through the team, so I'm not sure
 9 what this proposal was about or to whom it was proposed.
 10 I don't recall that happening on my time — during my
 11 time on the team at least.
 12 Q. Well, can we go forward to {M1/21/12} within this and
 13 can I ask you just to take a minute to read that.
 14 (Pause)
 15 A. Yeah, I've read it.
 16 Q. So this seems to be a suggestion, Mr Ginsberg, of not
 17 just data feeds from third parties or links from third
 18 parties but third parties providing their content and
 19 branding in OneBoxes, yes? That is what seems to be —
 20 A. Yeah, it is a suggestion for that, yes.
 21 Q. There is a recognition that this is starting to look
 22 a bit more like ads and sponsored links, is there not?
 23 We see that.
 24 A. We see that, the line about, "Advertisers may
 25 complain ...", yes.

33

1 Q. It seems, Mr Ginsberg, that the thinking is that any
 2 concerns can be addressed by applying Google's
 3 search quality and user interface processes to these
 4 OneBoxes; that is at the bottom, we see that?
 5 A. I see it, but I don't know if I would agree with it, nor
 6 do I recall this proposal actually materialising during
 7 my time on the project. So I — I sort of read this as
 8 a speculative idea —
 9 Q. We will see — Mr Ginsberg, time permitting, we will see
 10 how it turned out.
 11 Let us go over to page {M1/21/13} now.
 12 There is actually a plan, or a proposal, you would
 13 say, to ensure quality for all of these different types
 14 of OneBoxes, yes? There is no suggestion that there is
 15 some quality roadblock, is there?
 16 A. Again, not knowing the person who wrote it, or their
 17 expertise in what they were doing, it's hard to say what
 18 they were saying here. I think it's self-evident there
 19 would be likely quality concerns, but I — again, it's
 20 difficult to read this slide. It doesn't strike
 21 a memory for me as anything that the team worked on
 22 actively or that we saw as part of the Seti OneBox
 23 triggering project.
 24 Q. Well, concerns, but a plan — a process to address them,
 25 yes?

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1 A. It's a bit generous. It looks like something perhaps
 2 that a business person or a product person might put on
 3 a slide. Again, I — it's possible this happened after
 4 my time on the project, but I would hesitate to call
 5 this a plan.
 6 Q. Well then let us go forward in that case to {J3K/3}.
 7 Here we have a OneBox strategy, and here you are,
 8 you are a named contributor here, Mr Ginsberg.
 9 Now, there are quite a lot of other names here on
 10 the "Contributors" list, there is Mr Brougner, there is
 11 a Marissa Mayer, there is Mr Pansari again, so this does
 12 seem to be a pretty big project, relatively high
 13 profile; would you agree?
 14 A. I wouldn't read it that way. As I recall, GPS was —
 15 I forget what it stood for, "Google Product Summit(?)"
 16 perhaps, where product people might present ideas or
 17 proposals for consideration, and I note that some of
 18 the people on the contributors list I believe were
 19 executives rather than members of the team, like this —
 20 the list of contributors here was I think largely
 21 the executive and/or product contributors to this
 22 document, rather than the members of the OneBox team.
 23 Q. Well, senior executives, surely?
 24 A. Marissa was very much a senior executive, yes.
 25 Q. Now, let us go to {J3K/3/2} of this.

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1 "Today" and the "Future". Now, I take it from
 2 the use of red for "Today" and the green for
 3 the "Future", that there are issues facing this OneBox
 4 strategy and the green is what the plan is to resolve
 5 them, and "3rd Party oneboxes" actually seem to be quite
 6 an important part of the green, do they not,
 7 Mr Ginsberg?
 8 A. I wouldn't agree. I don't see this as a plan, I see it
 9 as a high-level sketch of one person's idea. I also
 10 don't believe the left column matches the other
 11 documents we've seen in this case that describe the as
 12 of then current state of OneBox triggering, which,
 13 unless this document predates Seti, I think a number of
 14 the trigger issues and quality issues had been improved
 15 as a part of the Seti OneBox project. So, again,
 16 I neither take this as authoritative nor a reflection of
 17 an actual plan, it looks like an idea or a proposal at
 18 a very high sketched level.
 19 Q. Mr Ginsberg, we have just seen the list of contributors;
 20 this is clearly, if I may say so, more than just one
 21 person coming up with the first moon shot idea?
 22 A. I wouldn't call it a "moon shot", I would call it
 23 a sketch of a proposal. Again, having worked on this
 24 for more a year, possibly two years, I don't recall any
 25 of these things coming to fruition, so I — regardless

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1 of how many people contributed to the slide deck, it
 2 doesn't appear that these plans ever landed, as best
 3 I can recall.
 4 Q. We will see in due course, Mr Ginsberg.
 5 Now, let us go forward to page {J3K/3/17} within
 6 this document. There is going to be a:
 7 "Dedicated team to oversee onebox development,
 8 launch [and] quality."
 9 You and your Seti team are part of that, yes?
 10 A. That's the proposal described here. Again, I don't
 11 recall that happening, but, yes, I see myself on that
 12 list, yes.
 13 Q. Okay.
 14 Then if we go forward to {J3K/3/18}. We see
 15 the different types of OneBox that are being
 16 contemplated. So there is going to be a move away from
 17 these:
 18 "No more 'in collaboration with' oneboxes ..."
 19 These, I assume, are the OneBoxes with content from
 20 business partners that we saw in the previous deck.
 21 There are going to be the:
 22 "3rd Party oneboxes."
 23 There is going to be a transition of the quicklinks
 24 to a third party framework.
 25 Is any of this ringing bells, Mr Ginsberg?

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1 A. I vaguely remember the Olympics OneBox. I think the —
 2 again, I don't recall any of these being a major or
 3 a significant feature of the team's work, or something
 4 that we invested our energy and time in, as — as
 5 mentioned in my previous statement, the main goal and
 6 focus of the OneBox triggering project was to determine
 7 which of the various search corpora had the most
 8 relevant results for the query, and, as I recall, that's
 9 where we spent most of our time and attention. There's
 10 a bit of confusion because the word "OneBox" is perhaps
 11 slightly too broad in that it encompasses a wide variety
 12 of different things that can be called "a OneBox", but
 13 which fundamentally had very different character. So
 14 I possibly — I can't quite remember, but maybe there
 15 was a limited time Olympics collaboration. I don't
 16 recall being involved with it —
 17 Q. (Overspeaking — inaudible).
 18 A. It wouldn't have been relevant to the team's work —
 19 Q. Let us move from the Olympics, Mr Ginsberg, to the more
 20 general point about a third party framework for
 21 the OneBoxes.
 22 A. I don't recall seeing or reviewing or contributing to
 23 any such framework, as best I can recall.
 24 Q. Well, let us see one more slide, in case this assists in
 25 jogging your memory in this deck to which you

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1 contributed, on {J3K/3/30}:
 2 "Allow anyone to contribute simple oneboxes ..."
 3 So this is a suggestion in March 2006, using API
 4 modules.
 5 A. Yeah, again, I don't recall the suggestion. I — my
 6 best memory from this time period is the one that you
 7 read I believe earlier about my concerns about third
 8 party OneBoxes. I don't recall anyone moving forward
 9 with a plan or even building a technical design for
 10 them. Again, the slide deck strikes me as a — again,
 11 I think it was GPS was the format in which this was
 12 discussed. It was really a product brainstorming
 13 session and forum rather than a shovel-ready plan
 14 execution forum is my recollection.
 15 Q. Do you recall who Mr Lohn would have presented this
 16 OneBox strategy to?
 17 A. Again, since I don't remember Mr Lohn, it's hard to say
 18 who he would have been presenting to, but my
 19 recollection is that GPS was a product managers forum,
 20 so perhaps he was a product manager, and ... Yeah, it's
 21 difficult to say. I am not sure who he would have been
 22 presenting to.
 23 Q. Okay, well, can we go forward then in time. We are
 24 going to go forward about six months to {K3/5}.
 25 This is an email from October 2006, so I believe, in

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1 fairness to you, Mr Ginsberg, this is shortly after you
 2 have moved from the Seti team and you are now working in
 3 Universal Search, is that not the case?
 4 A. It sounds like that would be roughly around the time
 5 that I was working at universal, yeah.
 6 Q. It is an email from Pandu Nayak and it is signed off,
 7 "David and Pandu".
 8 David, I guess that was David Bailey, right?
 9 A. Could have been, yeah. Yeah, possibly.
 10 Q. They are telling the quality team that there are going
 11 to be two talks, and I would like you, please, to have
 12 a look at the abstract of the first talk by
 13 Nick Weininger.
 14 (Pause)
 15 A. Yes, I see that.
 16 Q. So Mr Weininger is outlining the number of ways in which
 17 third parties are involved in OneBoxes and he is in fact
 18 saying that since May, so since a couple of months after
 19 the presentation we saw, there has already been in place
 20 a public API that allows third parties to create their
 21 own simple OneBox.
 22 So, Mr Ginsberg, I fully appreciate that your focus
 23 was on triggering, but I have to suggest that what we
 24 saw in February and March was clearly not just
 25 a suggestion or a strategy brainstorming, it was clearly

40

1 something that has already been rolled out, it is
 2 something that looks to have been a pretty fast-paced,
 3 priority .
 4 A. I'm not sure I would agree that it was a fast-paced,
 5 priority . I guess what I read in this is that, yes,
 6 there must have been, according to this, a way for third
 7 parties to create in links or quicklinks style OneBoxes.
 8 As I mentioned, OneBoxes are a very unfortunately broad
 9 term that encompass everything from, you know, the daily
 10 weather to embedded search results from other verticals.
 11 It's possible, and indeed I would say now probable, that
 12 Google must have created some way for users to volunteer
 13 to see third party quicklinks or very simple
 14 shortcut-style links that third parties provided, but,
 15 again, as I recall , I don't — I don't recall being
 16 involved with this . That doesn't mean it didn't happen,
 17 but I am fairly certain that there were no plans to
 18 include third party search results because that would
 19 have been a very different beast or kettle of fish .
 20 Q. But this is of course in May 2006?
 21 A. Sorry, this email is from —
 22 Q. Sorry.
 23 A. Sorry, you mean this email — did you say May?
 24 Q. I am sorry, Ms Rose has asked what an "API" is and I am
 25 tempted to attempt to clarify, but I will leave that to

41

1 you, Mr Ginsberg.
 2 A. Yes, an API is a programmatic end point that software
 3 engineers can use to talk to another company's software.
 4 That's one definition of it . So in this context, there
 5 would have been an API where some third party had said,
 6 let's say, UPS is a third party, they could have said,
 7 "Hey, Google, if someone searches for 'UPS tracking',
 8 please offer them the chance to share a link to UPS'
 9 tracking results system". That would be an example of
 10 a third party using an API to make a request to Google.
 11 Q. Now, Mr Ginsberg, I am mindful of the time and I am also
 12 mindful of the time in Auckland. I was going to take
 13 you to some documents about the process for selecting
 14 which third parties would be used in OneBoxes, but they
 15 postdate your involvement in Universal Search.
 16 I do want, very briefly , to take you to another
 17 example from January 2007, about what happens when there
 18 is a combination of links in a OneBox to a Google
 19 special search property and a third party with their own
 20 specialised result .
 21 Can I ask you to look at {M3/504}.
 22 Now, I think we can start about two-thirds of
 23 the way down page 1, and this is an email from
 24 Ron Chakrabarti, and he is saying that a new maps —:
 25 "Keeping with its mission of making local and maps

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1 information more easily accessible , the Local—Universal
 2 team has launched a new, more prominent UI for the maps
 3 onebox for the United States."
 4 He goes on.
 5 Now, unfortunately, the date of Mr Chakrabarti's
 6 original message is not visible on this thread.
 7 I believe it is 11 January 2007, but whether it was
 8 the 11th or 12th does not matter for now. What we seem
 9 to have here is a reply from Peter McKenzie on
 10 12 January, to which Keith Ito has responded on
 11 the 13th, interspersing his own comments.
 12 Do you see that up near the top? The Peter and
 13 the Keith?
 14 A. Yeah, I'm trying to piece together who said what in this
 15 thread, but, yes.
 16 Q. These are all an exercise in archaeology, Mr Ginsberg.
 17 I will tell you my reading of it, but I do not think
 18 that who said what is really what we need to look at
 19 here.
 20 So:
 21 "This is very cool! Congrats, guys."
 22 Says Peter.
 23 "Yes, congrats. Very cool."
 24 Responds Keith.
 25 Peter then says:

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1 "One minor issue is that the onebox no longer links
 2 to Mapquest and other mapping sites. I have a friend
 3 who prefers Mapquest, but uses Google to input addresses
 4 because of the one—box interface. Would it be possible
 5 to bring the links back?"
 6 To which Keith replies:
 7 "I'm in favour of bringing them back too.
 8 "It is tempting to try to keep the user on a Google
 9 property but to me this seems like dangerous thinking
 10 that can lead us away from putting the user first ."
 11 Chipping in at the top, we have Giri — or "Jiri" —
 12 Rao, saying:
 13 "I agree with Peter and Keith. We should bring back
 14 the links ."
 15 Now, Mr Ginsberg, I just want to explore with you
 16 very briefly this point about linking to a third party
 17 service . I am not going to ask you about what is
 18 dangerous thinking in the Search Quality team.
 19 Can I ask that we show you page 33 of your first
 20 witness statement {H3A/4/33}. Can we zoom in please on
 21 OneBox 4, which is the "Maps OneBox".
 22 Are those the links that we can assume that Keith
 23 and Peter and Giri are talking about, Google Maps,
 24 Yahoo! Maps, MapQuest?
 25 A. Possibly. I think the email also mentioned some sort of

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1 address input box, which I don't see, so it's hard to
 2 say if this is exactly what they're referring to.
 3 Q. We are told that there have been improvements but the
 4 links have gone, so it seems, this being an example in
 5 2005, reasonable to think that these are the sort of
 6 links they are talking about.
 7 So this looks like a situation in which Google has
 8 its own specialised search service, Google Maps, and it
 9 also, even in 2005, is putting in links to other third
 10 party specialised providers of the same service; is that
 11 correct?
 12 A. Yeah, this OneBox shows links to three mapping
 13 providers, that's right.
 14 Q. So clearly, from a technical and quality perspective,
 15 this has been doable?
 16 A. Well, there's not a technical consideration in putting
 17 a link to Mapquest or Yahoo! Maps. That's not really
 18 a technical question. My understanding of this
 19 particular OneBox that we're looking at in roughly
 20 the 2005 era is that this is a quicklinks style OneBox
 21 that detected an address or a place name with high
 22 confidence and precision and then did whatever
 23 the quicklink OneBox was programmed to do, which in this
 24 case you can see included three links. Again, my
 25 first —hand involvement with this OneBox was, as

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1 I recall, close to zero. This wasn't something that was
 2 part of the Seti or the search vertical related OneBox
 3 work that we were doing at the time. This might have
 4 pre-dated that by some — some time.
 5 Q. In principle, would that sort of hybrid of having
 6 results from the Google vertical and also links to other
 7 verticals, do you think that would have been possible
 8 for other services?
 9 A. For a quicklinks OneBox, like package tracking, you can
 10 imagine weather, the same thing, takes you to three
 11 different weather sites or just ten different weather
 12 sites. Again, for search vertical OneBoxes, I would not
 13 say it would have been easily possible at the time to do
 14 that.
 15 Q. Can we go forward then to {M3/506}.
 16 So we have now moved from 13 January 2007 and
 17 the conversation between Keith and Peter, and we are now
 18 on 18 January. We can see from the subject that we are
 19 still looking at the new maps OneBox for the US, but we
 20 have clearly moved on.
 21 Now, I imagine this is not something you will have
 22 seen before, Mr Ginsberg, so in fairness, I am just
 23 going to give you a minute to read it. It appears to be
 24 a response from Dan Egnor to a two—line comment by
 25 Jim Muller, in which Mr Manber and Marissa Mayer and

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1 indeed the OneBox Quality Team are cc'd.
 2 (Pause)
 3 A. Okay, I've read it.
 4 Q. Thank you, Mr Ginsberg.
 5 Now, I infer from the first two lines, which are
 6 Jim Muller's email, that there may have been some mixed
 7 or negative press feedback to the Decision to remove
 8 the link to the rival maps providers, and Mr Egnor, in
 9 his response, is saying that he understands
 10 the philosophy to be that Google links to competitors —
 11 quoting here:
 12 " ... mainly when we don't have our own product or
 13 don't think it's an equal match for the competition ..."
 14 He says:
 15 " ... We could link to bizrate and nextag from
 16 the Froogle onebox ..."
 17 So Mr Egnor, at least, thinks, in 2007, that that
 18 sort of blend of verticals is possible for
 19 the Froogle OneBox; would you agree?
 20 A. I would not agree with quite that characterisation.
 21 First, I don't quite recall who Dan Egnor was, but my
 22 best recollection is that he was a software engineer,
 23 I am not sure in Search or Quality, but weighing in, as
 24 engineers at Google often did, it was famously
 25 an "anyone can chime in on anything" culture at the

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1 time —
 2 Q. (Overspeaking — inaudible).
 3 A. — as perhaps you might have come across. So, again,
 4 I don't know from what position he's speaking, other
 5 than his own personal opinion. I think the key
 6 distinction to make here is that a Decision to put
 7 a link — he's asking the question of how do you decide
 8 when to put a link in a OneBox or simply show results.
 9 So in the case of a search result OneBox, the results
 10 are provided by a search vertical that Google owns and
 11 operates, and the quicklinks style OneBoxes that you've
 12 been highlighting in your recent questions are
 13 a different sort of OneBox, like links to showtimes,
 14 weather, stocks, and whatnot, and maps in the earlier
 15 example, before what I guess this is discussing. So I'd
 16 sort of take this as a debate around the quicklinks
 17 style OneBoxes and the maps OneBox, which it seems this
 18 is implying evolved from a link to various mapping
 19 providers' approach to a link to Google's in—house
 20 mapping approach at the time of this announcement. So
 21 I don't — I don't take the Froogle sort of aside
 22 comment he is making here as him weighing in on
 23 the matter that you're proposing here.
 24 Q. Well, Mr Ginsberg, I am going to set aside the debate
 25 about exactly what type of OneBox he is talking about.

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1 Can I ask, as you say, as you rightly say, he is
2 talking about the philosophy of when you link out to
3 third parties, did you understand it to be the case that
4 Google was generally willing to include links to third
5 parties in OneBoxes when it did not think its own
6 specialised search property was an equal match for
7 the competition?

8 A. I don't recall any particular stated or unstated
9 philosophy in this regard. My recollection is from
10 the time that our goal was to get users to where they
11 wanted to go as quickly as possible and in some cases
12 that would be best facilitated by directly linking them
13 to somewhere that we inferred that they wanted to go,
14 whether, you know, seeing the exact stock quote in—line
15 or seeing the weather in—line provided in the webpage.
16 In the case of search verticals, my recollection is that
17 we saw the search protocols as part of our joint effort
18 to organise the world's information and make it
19 accessible, in that if a search vertical had
20 a specialised or more refined view of the most relevant
21 results for a query in that those results were scored
22 differently and presented differently and if users
23 clicked on those results, that we took the approach of
24 including them as a OneBox. That is the — I believe
25 the origin of that system. I don't remember any

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1 discussions about the question of links to other search
2 providers or not at the time.
3 Q. The competition, whether or not they are an equal match.
4 Mr —
5 MR GREGORY: Can we just check on the time? Because there
6 was a one—hour estimate for the whole cross—examination,
7 it is now almost 10 pm in New Zealand.
8 MS LOVE: Mr Ginsberg, can I ask, as Mr Gregory has rightly
9 pointed out it is now 10 pm Auckland time. Are you —
10 I have one final question for you.
11 A. (Inaudible).
12 Q. In paragraph 78 of your first witness statement
13 {H3A/4/25} — and we do not need to turn it up — what
14 you say is {H3A/4/26}:
15 "There was somewhat of a 'church and state'
16 separation between Search and Ads at Google, and we did
17 not consider ads when deciding whether a Seti OneBox
18 should be displayed. The overall goal of the Search
19 team was to show things that users love and that they
20 find relevant and to incentivize users to come back
21 later because they love the Google Search results."
22 Now, Mr Ginsberg, I appreciate you stopped working
23 on Universal Search in 2007. I want to ask you
24 something about what might have happened from
25 January 2008.

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1 Now, one of the questions that we need — well, that
2 the Tribunal needs to answer in these proceedings is
3 what Google would have done if it had complied from
4 January 2008 with the requirements of European
5 competition law, and one of the parties to this
6 litigation has suggested that the way in which Google
7 would have complied with European competition law would
8 be to grant non—discriminatory access to the shopping
9 OneBox to the competitor CSSs' shopping services, and
10 specifically that Google would have let the competitor
11 CSSs be able to place ads, place listings within
12 the OneBox on behalf of merchants and charged for
13 the placement of those ads. That would have meant that
14 the choice of products shown in the shopping OneBox and
15 the placement of the products in the box would have been
16 heavily influenced by how much was bid on behalf of
17 the merchant.

18 Do you follow that, Mr Ginsberg?

19 A. I believe so. Of course, I'm not familiar with
20 the Decision or European law in this regard. I think
21 I follow so far. Continue, please.

22 Q. Well, given your knowledge of how Google thought about
23 OneBoxes in 2007, I just want to ask whether that kind
24 of charging for access to a OneBox is something that you
25 could realistically imagine happening from January 2008?

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1 A. I don't think I could reasonably speculate about what
2 the state of OneBox was in 2008, but based on the work
3 that we did in 2004 through 2006, we saw OneBoxes as
4 a — an effort to improve search quality and provide
5 relevant results and not an effort to make money and
6 there was no discussion or consideration of how to make
7 money directly or indirectly from that project or that
8 particular part of the results page. I don't know if
9 that helps clarify, but we did not consider or — or
10 even sketch out a thought of what that might look like.
11 As I stated, it was — it had a very specific goal of
12 showing relevant results, not generating revenue or
13 selling ads.

14 MS LOVE: Thank you, Mr Ginsberg.

15 I have no further questions. I apologise for
16 the lateness of the hour. Mr Gregory may have some
17 further questions for you.

18 Re—examination by MR GREGORY

19 MR GREGORY: Thank you.

20 So you will recall that you were shown a snippet
21 from Google's legal argument in these proceedings
22 referring to "spammy Froogle Onebox results" and Google
23 observing that it did not receive reports of those, and
24 you said you did not really know the context of that, so
25 it is fair to go to the context, which is {M2/69}.

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1 So this is an email chain, the top email is from
 2 you, but to get the context we have to go on to
 3 {M2/69/2}.

4 So page 2, do you see there is an email from you,
 5 starting about a fifth of the way down the page?

6 A. Yes. Yes, I see it.

7 Q. So could you briefly just read that and explain what
 8 that email seems to be doing.

9 (Pause)

10 A. As best I can tell, this appears to be an email which is
 11 soliciting feedback on a concept, a sketch, a mock for
 12 a revised user interface for the Froogle OneBox that
 13 I suppose might include sortable columns, although
 14 I can't say that I recall ever seeing sortable columns
 15 in that OneBox.

16 Q. Thank you.

17 If we go back to {M2/69/1}, there is an email from
 18 Tania Bedrax-Weiss which provides some feedback on your
 19 proposal. We do not really need to look at that.

20 Then there's one from Urs Hoelzle. Who was he?

21 A. Urs was and might still be a Vice President of
 22 Engineering at Google.

23 Q. He says:

24 "My primary worry about these is the quality of
 25 the direct merchant links we'll display. Two issues:

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1 "The quality isn't great today ..."

2 He gives an example.

3 He says:

4 "We're going to be spammed to death once this is
 5 launched — a free link in a 'premium' spot."

6 Then he says:

7 "So we shouldn't launch this without (a) quality
 8 metrics for the Froogle results and ... a story on how
 9 to measure and manage spam."

10 The top email then is your response to that
 11 challenge. So you say:

12 "So we already offer 3 free links in a premium spot
 13 with the current Froogle onebox. The new UI may draw
 14 more attention to Froogle Onebox, but it's only an
 15 incremental change, not a new idea.

16 "What's most new is that we're drawing attention to
 17 merchant and product rankings, which were previously
 18 inconspicuous in the old Froogle UI. The new Froogle
 19 UI makes these more obvious as well, so we may see
 20 attempts to spam the ratings from untrustworthy
 21 merchants. But I don't think that's a good argument for
 22 keeping our rankings out of the limelight.

23 "The Froogle onebox as a whole performs well: we
 24 achieve a 19% CTR ..."

25 Which I think is click-through rate:

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1 "... in US/UK/[Germany]. We haven't seen reports of
 2 spammy Froogle onebox results yet ... sometimes they
 3 seem a bit off—topic, but really poor results tend to
 4 get disabled by Seti."

5 Then you ask if he can provide any examples, if he
 6 has them.

7 So when you say that "really poor results tend to
 8 get disabled by Seti", what did you mean by that?

9 A. I believe it is the same idea that I shared earlier in
 10 the session, which is that if a particular query were to
 11 consistently display low quality OneBox results that
 12 the design of the Seti OneBox trigger would notice
 13 the users don't seem to like those results and amend its
 14 triggering rules so that future users who have sent
 15 the same query would no longer see the OneBox for that
 16 result. So it's a bit of a self-correcting system and
 17 that's, in a sense, a built-in quality feedback loop.

18 Q. Thank you.

19 The other question I wanted to ask about was in
 20 relation to {M2/99}, which we will just bring up.

21 On the bottom page of this document, I think it is
 22 {M2/99/3}, you were asked about why you were very
 23 nervous about third party OneBoxes, and you said that
 24 this related to third parties providing search results
 25 via OneBoxes as opposed to feeds.

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1 Could we go to {M1/21/12}.

2 You see there are examples of some proposed OneBoxes
 3 with content from business partners. You have got:

4 "Celebrity Onebox with AOL content.

5 "Olympics Onebox with NBC.

6 "[I think that is Mission impossible] 3 movie
 7 promotion game."

8 To the best of your recollection, would any of those
 9 have been about third parties providing search results
 10 as opposed to feeds via a OneBox?

11 A. I can't imagine that any of these would have included
 12 search results. They appear to be data feeds, for
 13 example, in the case of Olympics results, not ranked
 14 documents.

15 Q. My final question. You were asked about latency and
 16 that was in relation to {M2/99}, the email we were just
 17 looking at, and you gave evidence that you did not think
 18 latency was a big problem.

19 Hypothetically, if Google had thought at this time
 20 about sending search queries to other vertical search
 21 results providers, such as other comparison shopping
 22 services, asking them for their results and then
 23 determining which of the results fed back from other
 24 comparison shopping providers to put at the top of
 25 the box — do you understand the idea I am getting at?

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1 A. Mm—hm, yes.
 2 Q. Hypothetically, what impact might that have had on
 3 latency?
 4 A. So a key aspect of the OneBox system in this era was
 5 that the search results page required talking to
 6 a number of different back end systems to get components
 7 of the page, and those systems typically were co—located
 8 in a single data centre or warehouse full of computers,
 9 where, within the warehouse, the latency between any
 10 pair of computers might be just a few milliseconds, and
 11 the system that Google built in that era did not allow
 12 for long hops between warehouses across data centres as
 13 those might take 100 milliseconds, or could, at that
 14 point, I think across an ocean, it might have been
 15 a couple hundred milliseconds or a second. So a system
 16 that tried to reach services located not in the same
 17 warehouse would, with the timeouts that were mentioned
 18 in the email we looked at, what would likely happen,
 19 I imagine, is that the request to go fetch those results
 20 from outside the data centre would not return in time
 21 and the cutoff or the deadline would have been applied
 22 and no results would have been rendered. So the latency
 23 wouldn't — would effectively have cut off every result
 24 from being rendered and were Google to delay the final
 25 delivery of search results to allow for the extra

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1 latency, it would have been extremely damaging to
 2 the user experience and in fact our — I believe
 3 the emails suggest that site speed was a reason to delay
 4 the launch of even internal OneBoxes if the OneBox back
 5 ends could not respond with sufficient time. So most
 6 likely third party results would be too slow to be
 7 rendered, by the time the results were ready,
 8 the deadline was applied.
 9 MR GREGORY: Thank you. Just give me one second.
 10 Thank you, I do not have any questions for you.
 11 Questions from THE TRIBUNAL
 12 THE CHAIRMAN: Mr Ginsberg, just a couple of short things
 13 before you can be released and finally get to bed.
 14 I think, just on the period you were involved,
 15 I think you say in your witness statement — I do not
 16 think we need to turn it up — you say you began working
 17 on the OneBox project in around late 2004/early 2005,
 18 you moved to Zurich in the summer of 2005 and you
 19 continued on the project, and some time in mid—to—late
 20 2006, your work evolved into Universal Search and you
 21 worked on that until around early 2007; do you remember
 22 that?
 23 A. Yes.
 24 THE CHAIRMAN: Can you look in your witness statement at
 25 paragraph 22, which is on page 7, {H3A/4/7}.

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1 You say at the bottom of that page, having looked at
 2 a document, that:
 3 " ... the 'coverage' of the Froogle Onebox in
 4 March 2006 was 1.5% which means that the Froogle Onebox
 5 appeared for 1.5% of all queries."
 6 You go on over the page {H3A/4/8}:
 7 "I recall that this was far less than the proportion
 8 of user queries that had commercial intent, which
 9 I would guess was probably more than 10% ..."
 10 Can you just explain, I did not quite understand,
 11 what do you mean by "user queries that had commercial
 12 intent"?
 13 A. So, at the time, we would have considered a query with
 14 commercial intent to be one where the user was exploring
 15 the intention of shopping for a product or making
 16 a purchase, and so this might include queries like iPod
 17 or Canon S95 or queries for a specific product name or
 18 queries with the word "price" in them. So roughly — by
 19 this I meant queries where one might conceivably imagine
 20 that product search results could theoretically be
 21 relevant for the query.
 22 THE CHAIRMAN: Yes, I understand.
 23 Can you remember — perhaps you cannot, because it
 24 is a long time ago — did that proportion, the 1.5%, did
 25 that go up before the time you ceased to be involved?

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1 A. We'd need to look at the documents to try to piece it
 2 together, but I don't recall, without looking at
 3 the documents, where the coverage went up and down over
 4 time. I believe one of the emails from it might have
 5 been January 2005 talked about the coverage initially
 6 being higher in the US for Product OneBox and then
 7 lowering over time as the model learned to refine its
 8 trigger and removed the impressions that were
 9 incorrectly predicted to be high quality. So at least
 10 between, as I recall, January and March 2005 in the US
 11 context, I believe the emails indicate that coverage
 12 went down initially as the model learned where
 13 the OneBox would be most likely to be clicked. But
 14 I couldn't tell you over the whole arc, from memory, how
 15 it changed.
 16 THE CHAIRMAN: Yes. No, I understand.
 17 Then if we go on to paragraph 47, which is — starts
 18 on {H3A/4/15} of this document, you talk about doing
 19 a — using the Seti for triggering and you say:
 20 "We used the Seti technology to develop a set of
 21 models for each Onebox which, when combined, would
 22 create a prediction of how likely it was that that
 23 particular Onebox would lead to a long click from
 24 a user, as our proxy for user happiness and relevance.
 25 Long clicks are clicks of a certain duration, where

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1 duration means how long between when a user clicked and
2 when Google next saw the user again."

3 Is the — when you say "clicks of a certain
4 duration", is there a sort of rule of thumb or kind of
5 time involved that makes something a long click?

6 A. I don't recall the specific number that we used at the
7 time, but if I had to estimate I would guess it was ten,
8 fifteen seconds, maybe thirty seconds, the idea being
9 that — oh, sorry.

10 MR GREGORY: Sorry, this might be a confidential answer.

11 THE CHAIRMAN: I see. Right, well, we will treat that
12 answer as confidential and it will be erased from
13 the transcript.

14 So you say it is a "proxy for user happiness and
15 relevance". So just so I understand it, is a long click
16 a good outcome, is that a sign of happiness? Is that
17 what —

18 A. Yes, that's — yes, that's correct. The idea is that,
19 often when browsing the web, users may click on
20 something out of curiosity, and then, if disappointed,
21 they would hit the back button fairly quickly or after
22 realising it wasn't what they wanted, and so a key
23 insight from this era was that a click which resulted in
24 them not coming back was associated with a happier user
25 and a click that resulted in them coming back straight

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1 away indicated a dissatisfaction with what they saw and
2 they — then they would click on something else or
3 disappear entirely after giving up.

4 THE CHAIRMAN: I think it is the same point, as I understand
5 it, you are making, is that right, in paragraph 70 on
6 page {H3A/4/23}? In the second sentence on the fourth
7 line:

8 "In particular ..."

9 A. Yes, that's right. That's another way of me trying to
10 explain this, that in a sense, Google's goal is to get
11 users where they wanted to go and hopefully not see them
12 again for a little while, and so the lack of a return
13 was a proxy for having gotten them to where they wanted
14 to be.

15 THE CHAIRMAN: I think we know that if the Froogle OneBox or
16 the Product OneBox did not appear in response to
17 a user's search, then there would be no link to
18 the Froogle vertical site in the organic links page at
19 all. That is how Froogle vertical search operated. It
20 was not included in the blue links at the time. I think
21 you know that, do you?

22 A. My memory is a little fuzzy in this regard, but
23 I believe, at the time, somewhere in the search results
24 page at the top, I believe, there might have been links
25 to all the different verticals, so that if you click —

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1 it's similar I think still today, that if you click on
2 "images" at the top of your search results, it reruns
3 your search on image search, if you click on "news", it
4 reruns your search on news. But my memory on that point
5 is a little bit fuzzy, it would have been at the top of
6 the search results page, if it was there.

7 THE CHAIRMAN: I am just trying to understand paragraph 60
8 on {H3A/4/20}. You explain in the second sentence:

9 "... in the case of the Froogle Seti Onebox,

10 the Seti Onebox team did not have oversight on where
11 Froogle got its results from or how it ranked them;
12 the job of the Seti Onebox team was not to evaluate or
13 judge those results individually."

14 Then you go on to say:

15 "Instead, we considered whether Froogle generally
16 had the best results for a particular query compared to
17 the web offering."

18 Well, if the particular query was, say, the red
19 spikey plastic ball, the example you use, how would you
20 do this? There would not be any result from Froogle in
21 general search.

22 A. There were three sources of information that gave us
23 an insight into whether Froogle had good results for
24 queries like "red spikey plastic ball". The first model
25 estimated how likely it was that Froogle would see that

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1 query as compared to other search verticals, so, for
2 example, the maps one — the maps property or the local
3 search property would probably see few queries for "iPod
4 shuffle", Google would see more queries for iPod
5 shuffle, news would rarely see queries for iPod shuffle
6 unless there was a new announcement that week.

7 The second source was, when people did search for
8 that on each vertical, did they tend to find a result
9 that they liked. So given a search for iPod shuffle on
10 Froogle, did it tend to result in a long click, meaning
11 did users tend to find happy results there, and all of
12 this — both of those two data sources had nothing to do
13 with the OneBox, they're just studying the behaviour of
14 the users on those search verticals absent a OneBox.

15 Then the third data source is, when we do show
16 the OneBox evaluating whether, in the context of that
17 OneBox, did our previous two models, did our prediction
18 hold up to be true? In other words, the first two
19 models attempt to estimate how good the Froogle results
20 were for a particular query and did users like them and
21 click on them, and then the third model sort of
22 corrected any mistakes that those first two models made
23 when shown in a OneBox context. So that third model
24 could only exist after the launch of the OneBox for that
25 particular vertical. So those are the three data

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1 sources.
 2 THE CHAIRMAN: So you would look at users' clicks within
 3 the Froogle vertical in your — the first?
 4 A. Yes, that's correct, their searches and their clicks.
 5 THE CHAIRMAN: The user would only get to the search
 6 vertical if they had selected it specifically as
 7 a search term, because it would not appear in
 8 the general results?
 9 A. I believe, at the time —
 10 THE CHAIRMAN: (Overspeaking — inaudible) — red spikey
 11 ball, you would not get Froogle anywhere in your
 12 results?
 13 A. That's correct, yes. The first — the training on
 14 Froogle queries and clicks was training on users who
 15 chose to go to Froogle for some other reason; they might
 16 have bookmarked it, they might have searched for
 17 the word "Froogle" and clicked on the site. Google
 18 News, for example, had many loyal users, as I recall, at
 19 the time, who, perhaps every morning, might navigate to
 20 news.google.com, do a couple of searches, click on
 21 a couple of news stories, all independent of the OneBox.
 22 In other words, there are many ways one can navigate to
 23 news.google.com that have nothing to do with the OneBox,
 24 and many users who habitually search there just as
 25 a choice they made from where to get their news results

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1 that day.
 2 THE CHAIRMAN: Yes.
 3 MS ROSE: We were looking, Mr Ginsberg, at the Maps OneBox.
 4 Now, if somebody types in an address into the Google
 5 general search, what the OneBox is showing, as
 6 I understand it, is a search result from three different
 7 services; is that right?
 8 A. That's not how I'd characterise it. Addresses were
 9 handled differently than search results because
 10 addresses were detected using Google's effectively
 11 address or place name detector that had a very high
 12 precision, meaning it only occasionally saw an address
 13 where none was intended to be written. So, in that
 14 case, the Maps OneBox would be triggered somewhat
 15 deterministically based on the address detector having
 16 said, "Yes, I found an address in this query", and
 17 the three links that were discussed previously were not
 18 search results, but rather hard-coded links of the form,
 19 let's say, "mapquest.com/search [equals]" whatever
 20 address Google detected, and that was not a relevance
 21 question or a ranking question, it was simply a matter
 22 of fill in the blanks where the link led to
 23 Mapquest.com.
 24 MS ROSE: So it is a search request that may have only one
 25 right answer but it is still a search request?

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1 A. Yes. I think quicklinks and other similar searches, for
 2 example the current stock price for Apple today, there's
 3 only one correct answer for today's stock price for
 4 Apple. Well, at any given minute, I suppose, it might
 5 change, but at this moment, there's one price for Apple
 6 theoretically, let's say, and simply showing it to
 7 a user suffices if I've correctly — I don't know,
 8 10 Downing Street I believe is a famous address, and if
 9 you were to search for that, almost certainly you would
 10 like, you know, directions to it or a map of it and, in
 11 that sense, it's less of a relevance determination and
 12 more of a getting you where you want to go to a fairly
 13 obvious conclusion.
 14 MS ROSE: Your OneBox is showing three alternative services
 15 for that, right, including Mapquest as well as Google
 16 Maps, as we saw?
 17 A. I believe in that screenshot that we saw, yeah, it was
 18 effectively hard-coded —
 19 MS ROSE: (Overspeaking) Because —
 20 A. — ranking — (inaudible) — search engine.
 21 MS ROSE: — even where there is only one right answer, some
 22 people prefer a different mapping service, maybe because
 23 of the way it displays, right, or its other features?
 24 A. Yeah —
 25 MS ROSE: We saw that.

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1 A. Yes, I can imagine people might prefer it for a variety
 2 of reasons. If I recall from the emails that we saw —
 3 again, I do not have the dates perfect — I don't
 4 believe Google had a native maps offering at the time —
 5 MS ROSE: I think we did see Google Maps on the OneBox
 6 display.
 7 A. Oh, yes, that's true, you're right. Yes, that's true,
 8 it did show along with other two providers.
 9 MS ROSE: You were not charging Mapquest for that placing in
 10 the OneBox; is that right?
 11 A. As far as I'm aware, again, my team wasn't involved with
 12 maps because it wasn't a search vertical and it wasn't
 13 a search corpus, but my understanding is that that was
 14 not the case — no money had traded hands, but that's
 15 not my area of focus, so I can't be 100% sure.
 16 MS ROSE: There is no technical reason, is there, why you
 17 could not have done something similar for comparison
 18 shopping services?
 19 A. No, from a technology standpoint, you can link to
 20 anything you like, deterministically, you could link to
 21 Bing search, Yahoo! search, MSN search, you could link
 22 to any number of other search engines if you chose to do
 23 so.
 24 MS ROSE: Thank you.
 25 THE CHAIRMAN: Are there any questions arising out of that?

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1 Further re—examination by MR GREGORY
 2 MR GREGORY: One question arising, sir.
 3 Can we go to {N/181}. This document is marked LEO
 4 confidential. We can just look at the numbers and not
 5 say them out loud and then we do not need to go into
 6 closed session.
 7 So, you see this is from 5 May 2008, so it is
 8 a little bit after your time working on OneBoxes.
 9 Can we look at {N/181/23}, please.
 10 This relates to the question you were asked about
 11 what defines a long click and a short click. Can you
 12 see "Onebox metrics ..." and then it says:
 13 "Long CTR ..."
 14 Then:
 15 "Duration of click ..."
 16 Then it provides a number, and short click and then
 17 provides a number?
 18 A. Yes, I see that.
 19 Q. Okay. So my question is, and without saying any numbers
 20 out loud, how similar are those numbers to what you
 21 recall at the time you were involved in OneBoxes?
 22 If you feel you need to say a number privately, then
 23 we can ask the court to go into closed session.
 24 A. I think I can manage.
 25 I didn't — this document seems to imply, I suppose,

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1 three categories, one greater than a certain number, one
 2 less than a certain number, and I suppose by implication
 3 between those two numbers. At the time of my
 4 involvement, as best I can recall, we only had — we
 5 only paid attention to durations that we called long
 6 click durations and the number given here is perhaps
 7 slightly higher than I recall, but it wouldn't surprise
 8 me if that was also the number that we used. Again, my
 9 recollection on the specific value is fuzzy, but
 10 the concept is clear. As explained here and in my
 11 statement as well, that seems consistent.
 12 MR GREGORY: Thank you.
 13 THE CHAIRMAN: Well, Mr Ginsberg, thank you very much for
 14 staying up late to accommodate the hearing in London and
 15 we appreciate that. That concludes your evidence and
 16 you are discharged as a witness.
 17 A. Thank you very much.
 18 (The witness withdrew)
 19 THE CHAIRMAN: We will take a ten—minute break.
 20 (11.30 am)
 21 (A short break)
 22 (11.42 am)
 23 MR MCGURK: I rise very briefly just to note two things.
 24 First of all, we think we are about an hour behind, and
 25 secondly to note, we are due to hear and finish Mr Kim's

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1 evidence today, which we need to do so, not least
 2 because he is booked on a flight to San Francisco
 3 (inaudible) tomorrow. I just wanted to raise ...
 4 THE CHAIRMAN: Right, we will see how we get on.
 5 MR MATTHEW CUTTS (continued)
 6 Cross—examination by MR JOWELL (continued)
 7 MR JOWELL: Morning, Mr Cutts.
 8 A. Good morning.
 9 Q. Could I ask you to be shown, please, {M3/533}. Sorry,
 10 {M3/553}.
 11 This is what Google said to the European Commission
 12 in response to Foundem's complaint, and you can see it
 13 is dated 3 May 2010.
 14 If we could go, please, to {M3/533/46}, and if you
 15 could read with me paragraph 99, and you will see,
 16 particularly in the last sentence, it says:
 17 "Other comparison shopping sites, such as Kelkoo,
 18 Shopping.com, Pricegrabber, PriceRunner, Ciao, Nextag,
 19 and others that Foundem mentions rank higher because
 20 they offer original content, such as product reviews or
 21 merchant rankings, and therefore are not mere thin
 22 affiliates."
 23 So Google told the Commission in terms that in
 24 contrast to Foundem, or alleged contrast to Foundem,
 25 Kelkoo was not a thin affiliate; correct?

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1 A. I believe "mere thin affiliate".
 2 Q. Not a mere thin affiliate.
 3 Now, could I take you next — I do not think I need
 4 to take you to this, but on other occasions, you also
 5 told the European Commission that Kelkoo.co.uk was
 6 a leading aggregator in the United Kingdom, and you are
 7 aware of that, I am sure?
 8 A. I don't know if you mean by "you" Google or me
 9 personally?
 10 Q. Google.
 11 So if we could go, please, to {K3/1}, please. This
 12 is an exchange of emails.
 13 If you could go to {K3/1/5}. At the bottom of
 14 the page, you see — one can see an email of complaint
 15 from Mr Jean—Fabrice of Kelkoo, and you can see
 16 the nature of the complaint if you look about a third of
 17 the way down, there is an email to you:
 18 "Hi Matt,
 19 "Our old friend Jean—Fabrice (see his email below)
 20 is claiming there has been a 'clear diversion of
 21 traffic' from kelkoo.co.uk ... to dealtime.co.uk ...
 22 Could you kindly look into it and let me know?"
 23 Yes?
 24 A. I see that.
 25 Q. If we could go, please, to {K3/1/2}, we see an email

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1 from — if we could go to the bottom of the page, if we
2 look at the bottom of the page. I do not think that
3 is ...

4 No, it is {K3/1/2}. Forgive me, {K3/1}. If we go
5 to page 1. Yes, you see an email from Mr Brougher to
6 Jonathan Rosenberg, Omid Kordestani and yourself on
7 3 June.

8 If we could just read it, it says:

9 "Matt, Cody and I spent time on this today and
10 understand what is going on. Essentially our
11 [Algorithm A] change on [20 May] worked as planned on
12 kelkoo.com, kelkoo.co.uk, dealtime.com, but not on
13 dealtime.co.uk, which is presumably what our friends at
14 Yahoo! noticed."

15 It goes on to say:

16 "The toolbar data ... was flawed in a way that
17 coincidentally benefited dealtime.co.uk but not
18 the other sites."

19 So just — if we could just focus on those
20 words "worked as planned on kelkoo.com, kelkoo.co.uk,
21 dealtime.com". It seems that Mr Brougher's
22 understanding was that he was not just expecting, but he
23 was actually planning for Algorithm A to work on those
24 sites, kelkoo.co.uk and kelkoo.com, by demoting them?

25 A. No, that's not my interpretation.

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1 Q. Well, it seems to be what he is saying, is it not,
2 because it "worked as planned"?
3 A. I believe earlier we saw a bug report where it was
4 closed out and Cody had said "working as intended".
5 I believe the sense of the word that was meant in that
6 case was that Algorithm A is working as intended, it
7 worked on these three hosts, based on toolbar data, it
8 did not work on this fourth host because there was an
9 issue regarding how they logged certain events and
10 they're trying to correct that.

11 I absolutely disagree with any characterisation that
12 would say it was planning on what would it trigger for
13 Algorithm A. The whole idea of Algorithm A is that you
14 write the algorithm, you iterate, you refresh the data,
15 but you're not planning to say "we want this host to be
16 covered" or not.

17 Q. Okay, well, let us see who the email is copied to. It
18 is copied to Sergey Brin, Larry Page and Marissa Mayer.
19 Now, those are all the most senior executives within
20 Google, are they not?

21 A. I believe if you go back to the very end of this thread,
22 I don't know how many pages there are, but if you go to
23 page 7 or 6 or whatever, if we read from the bottom.

24 Q. Well, just answer the question, first of all. Those are
25 the most senior executives within Google, are they not?

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1 A. Those are the founders of the company and the most
2 senior executives, yes.

3 Q. So they are all being told that the plan of Algorithm A
4 was to demote those types of sites, kelkoo.co.uk and
5 kelkoo.com; correct?

6 A. No, again, I disagree with your characterisation.

7 I think if you read this thread, which anyone is free to
8 do, there were people who were pulling in on the sales
9 side. Omid was the Head of Global Sales, Omid wanted
10 more explanations. He escalated it in front of
11 the founders of the company, and I worked with
12 Bill Brougher and we wrote an explanation.
13 Jonathan Rosenberg, his boss, said: great explanation,
14 thank you for digging into what was going on.

15 Q. Mr Cutts, I am afraid I am just not getting something
16 here, because you accept I think that, and you want to
17 reinterpret "planned" to mean "intended". But either
18 way, I am just very, very confused, because you have
19 told us that the intention of Algorithm A was to affect
20 affiliate spam, as you put it, but we have seen — or
21 thin affiliates, and yet we have seen that Google told
22 its own raters that kelkoo.co.uk was an example of
23 a site that was not, specifically not a thin affiliate.
24 We have seen that Kelkoo is, we were told — Google
25 tells the European Commission that Kelkoo is an example

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1 of something that is not a mere thin affiliate, and yet
2 here we are being told that, whether one puts it as
3 the plan or the intention, was specifically to catch
4 kelkoo.co.uk, so I am afraid I just cannot reconcile
5 these things.

6 It must be the case, surely, that you are telling
7 these senior executives that this was precisely
8 the purpose of Algorithm A, it was to demote affiliates
9 like kelkoo.co.uk, not just thin affiliates. That is
10 the truth, is it not?

11 A. No, the statement that you made earlier was pretty long,
12 but if I can try to break out the parts of it, you were
13 referring to documentation that went to external raters.
14 Again, the goal was to give those raters an intuition,
15 but the rating guidelines were not to force an
16 interpretation or a change —

17 THE CHAIRMAN: You made a statement which presumably was an
18 honest statement.

19 A. Sure.

20 THE CHAIRMAN: Yes.

21 A. Absolutely. But I think I testified earlier that
22 the goal of the ratings was to inform/re-educate
23 the choices, not to force the choices that we made.

24 This thread, I believe I talked about another thread
25 that was this is what a polite no looks like within

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1 Google. This is what a polite difference of opinions
 2 looks like within Google. The sales team was contacted
 3 by Kelkoo; they escalated the issue toward
 4 the engineering side, including in front of the entire
 5 founders of the company, and we wrote back and we pushed
 6 back and we said: "We looked into what was going on,
 7 we've written a write up, here's what's going on, there
 8 was one host that had incorrect data, we're going to
 9 refine things with the toolbar team".

10 MR JOWELL: Okay, Mr Cutts.
 11 Let us look at another document {M1/15}, please. If
 12 we go to {M1/15/3}, we see there is a reference to
 13 a number of international queries being affected by
 14 something mysterious besides the new language demotion.
 15 One site that you can see is being affected is — in
 16 there is Kelkoo Italia. You can see the heading:
 17 "Something weird — Kelkoo Italia, something weird
 18 is going on."
 19 Can you see that? Do you see the Italian Kelkoo —
 20 A. I haven't seen this — this document before —
 21 Q. (Overspeaking — inaudible).
 22 A. — so I'm trying to orient myself.
 23 THE CHAIRMAN: You are on page 3, are you?
 24 MR JOWELL: Yes.
 25 You can see:

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1 "Hi all,
 2 "I don't know what else has been pushed this week,
 3 but a few international queries are being affected by
 4 some mysterious thing beside the new language demotion."
 5 You see — a few lines down, you see a reference to
 6 "it.kelkoo.com", yes? This is just the context.
 7 A. I'm still trying to orient myself. This is not an email
 8 I was party to and —
 9 Q. Sure.
 10 A. I think I am starting to get some of the context.
 11 Q. Okay.
 12 If we could go to {M1/15/1}, and I want to show you
 13 Mr Brougher's comment in an email on 22 December 2005.
 14 He says:
 15 "Given the nature of the pages (mostly commercial
 16 directories with outlinks) this looks a lot like
 17 [Algorithm A], especially when I see Kelkoo getting hit.
 18 It launched yesterday I believe. Cody ..."
 19 You see that is to Cody Kwok, who worked for you,
 20 who wrote the algorithm:
 21 "... can you take a look at the sites in Fabio's
 22 list at the bottom and let us know if you caught these?"
 23 So, again, it is clear that Mr Brougher's
 24 understanding is that the purpose of Algorithm A was to
 25 demote affiliate sites like Kelkoo; correct?

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1 A. The purpose of Algorithm A was to demote affiliate spam.
 2 My reading of this thread is someone's trying to debug
 3 or diagnose an Italian—related query about iPod—related
 4 stuff. Bill is chiming in asking whether it's
 5 a possibility. I don't see whether there's closure,
 6 I don't know whether it was actually affecting Kelkoo in
 7 this case.
 8 Q. Okay, but we see this repeatedly. If we go to — if we
 9 go back to — could we go back to an email we have seen
 10 already {J30/1/1}.
 11 You have seen this exchange before. You remember,
 12 this is the one with Mr Truher in which he wanted to get
 13 Froogle ranked, yes?
 14 A. Correct.
 15 Q. You see at the top of the page, from Mr Brougher to you
 16 and Mr Kwok and Mr White, and you see he says — you
 17 will recall that Mr Truher mentioned that Kelkoo managed
 18 to get into the results at position seven on that
 19 occasion, and he says:
 20 "See the examples below. On this kelkoo page."
 21 Then he refers to a Kelkoo page.
 22 He says:
 23 "What's up with the so called 'related searches' at
 24 the bottom of the page."
 25 Then he says:

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1 "In general bizrate, nextag, and kelkoo must get
 2 nuked by [Algorithm A] a lot."
 3 So, again, he is saying, once again, that
 4 Algorithm A is affecting sites like Kelkoo and NexTag.
 5 These are the leading price comparison shopping
 6 services, they are not thin affiliates, Mr Cutts, are
 7 they?
 8 A. I'm — I'm not trying to deny that Algorithm A might
 9 have triggered on Kelkoo or parts of Kelkoo or
 10 sub-domains or sub-directories of Kelkoo. At some times
 11 that might have happened. In this particular email,
 12 Bill is pointing out what appears to be a bad quality
 13 result on Kelkoo and asking why are there related
 14 searches at the bottom of the page. We talked about
 15 search results within search results and how sites would
 16 often have lots of queries where people would click to
 17 be able to do searches.
 18 THE CHAIRMAN: The fact is he is not just talking about
 19 a particular bad quality result, is he? If you read
 20 what he says in the second paragraph.
 21 A. To address the second paragraph, I'm not denying that
 22 Algorithm A could have or might have triggered at times
 23 on parts of Kelkoo.
 24 THE CHAIRMAN: "A lot".
 25 A. That's — that's —

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1 THE CHAIRMAN: (Inaudible). Are you saying he is wrong?
 2 A. His perception was those kinds of sites might get
 3 affected by —
 4 THE CHAIRMAN: A lot.
 5 A. — a lot.
 6 THE CHAIRMAN: Are you saying he is wrong?
 7 A. I ... —
 8 THE CHAIRMAN: You are here to give your evidence.
 9 MR JOWELL: Mr Cutts —
 10 THE CHAIRMAN: So what are you saying?
 11 A. I believe I saw another email that said something
 12 like —
 13 THE CHAIRMAN: No, no, sorry, Mr Cutts.
 14 A. Yes.
 15 THE CHAIRMAN: You are under some time pressure, we are
 16 under some time pressure. If you do not answer simple
 17 questions —
 18 A. Sorry.
 19 THE CHAIRMAN: — you will not catch your plane, all right?
 20 A. Apologies.
 21 THE CHAIRMAN: I just asked you, quite simply: he says, that
 22 is his view, they will get nuked by Algorithm A a lot.
 23 Do you agree?
 24 A. Kelkoo could have been affected a lot by Algorithm A.
 25 THE CHAIRMAN: You agree. Thank you.

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1 MR JOWELL: The fact is that these were pages — these
 2 sites, Pricegrabber, BizRate, Kelkoo, these were pages
 3 that Google did not like and you used algorithmic
 4 methods to demote them for business purposes; correct?
 5 A. No, not for business purposes. Google was trying to
 6 channel what users liked versus what users were annoyed
 7 by. I've mentioned sites like "Give me back my Google"
 8 that launched in the 2005/2006 timeframe. We often
 9 received complaints about people getting too much spam,
 10 too many selling sites. I remember an article that came
 11 out in German that had Google's logo with the two Os as
 12 sewer pipes, showing how much trash and spam and
 13 aggressively commercial results were in there.
 14 Q. Okay, let us just put it this way. These were pages,
 15 Pricegrabber, BizRate, Kelkoo, that you did not like and
 16 you used algorithmic methods to demote them; correct?
 17 A. No, pages that we thought users wouldn't like and
 18 wouldn't respond well to.
 19 Q. Okay, let us go to {N/268}, please. Part of the same
 20 exchange with Mr Truher.
 21 Look at the second paragraph at the bottom of
 22 the page:
 23 "On the pricegrabber, bizrate, kelkoo question, yes
 24 these are the types of pages we don't like. We have
 25 algorithmic methods to demote pages like these ..."

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1 That is the truth? Yes?
 2 A. Google was acting as a proxy for our users and we
 3 thought users didn't like those sorts of pages.
 4 Q. Okay, so let us be honest now then. Algorithm A was
 5 designed to demote comparison shopping sites like
 6 Kelkoo; correct?
 7 A. Incorrect —
 8 Q. Because you thought users did not like them —
 9 A. If you go to the first sentence of the design doc it
 10 says what its intent was for, it was an internal
 11 document and it lists eight different kinds of spam:
 12 porn, pills, casinos, travel ... Selling is mentioned,
 13 but so is spam directories. The intent was to catch low
 14 quality affiliate spam.
 15 Q. And the leading price comparison shopping sites in
 16 the world as well; correct?
 17 A. Incorrect, in my opinion.
 18 Q. Okay.
 19 THE CHAIRMAN: So the fact that it did catch leading shop
 20 comparison sites a lot was an unfortunate consequence of
 21 the way it was designed; is that what ...?
 22 A. In my opinion, we saw many, many comparison shopping
 23 sites and selling sites improve their quality over time.
 24 Initially they would do things like show search results
 25 for anything, any query that they could find: business

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1 degrees. After we took out search results in search
 2 results, they started to move towards higher value.
 3 I believe things such as Algorithm A were actually
 4 a forcing function to improve the quality of many sites
 5 across the web, including comparison shopping sites.
 6 MR JOWELL: Let me turn to a different topic. I think we
 7 have taken this as far as we can go.
 8 We went yesterday to paragraph 84 of your witness
 9 statement, where you said that it was unlikely that
 10 Algorithm A would have affected Froogle because, as you
 11 claimed, it was a high quality site, and you mentioned
 12 there that there would not have been things like
 13 multiple pages containing copies of the same product
 14 description on Froogle. You also mentioned to Mr West
 15 that you thought it unlikely [redacted — confidential
 16 information]. Do you remember that?
 17 A. Yes.
 18 Q. Okay.
 19 Now could we go, please, to {N/287}.
 20 A. You talked about paragraph 84 of my original statement?
 21 Q. Yes. Your second statement.
 22 A. Oh, second statement, okay.
 23 Q. I took you to it yesterday.
 24 Now, if we go to — you see the email in front of
 25 you, this is an email from Peter Epstein to

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1 Mr Kandalgaonkar from March 2006; do you see it?
 2 A. I see the correspondence that you're referring to.
 3 Q. He says:
 4 "In my opinion, Froogle isn't really a serious
 5 contender today. PriceGrabber is the leader in this
 6 space. There are two main reasons:
 7 "The biggest problem with Froogle today is that it
 8 shows duplicate products in the list. Search for
 9 something unique like 'Canon 17-40 ', and instead of one
 10 hit, you see, six hits on the first page alone for this
 11 product. Which should you select? Presumably not all
 12 stores are listed under any one of these six. Not good.
 13 Try that same query on PriceGrabber, and you'll go
 14 straight to the list of stores that carry it, with
 15 prices. Much better!"
 16 So that is one example. Let me take you to another
 17 one.
 18 A. Did you want me to comment on that?
 19 Q. I am going to ask you to comment in a moment.
 20 {K1/6}, please. If we could —
 21 You see an email from Mr Korte at Google on
 22 9 February 2006:
 23 "Hi Froogle Team —
 24 "I want to let you know about my recent experience
 25 with Froogle:

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1 "I am searching for a camera, and after sorting by
 2 price (low to high), I end up with 5 Amazon affiliate or
 3 adsense partners. All of the top ... results! See link
 4 below.
 5 " ...
 6 "This has happened several times to me and it is
 7 a really poor experience, not only b/c it is all Amazon,
 8 but also b/c the process are usually not right.
 9 "I hate to say it, but it drives me to
 10 the competition for price comparison.
 11 "I am sure you have heard this before. No need to
 12 respond/explain; just my 5 cents.
 13 "Thomas."
 14 So I suggest to you that your evidence is incorrect
 15 in both respects. First of all, it is clear that
 16 Froogle did have a lot of links to Amazon, is it not?
 17 A. No, that's not true. This was a user report, I don't
 18 know which user it's from, and the reply from Mr Truher
 19 is:
 20 "Thanks for the heads—up. We will eliminate this
 21 kind of crap."
 22 They didn't want affiliate stuff within Froogle and
 23 they were reducing it whenever people brought it to
 24 their attention.
 25 Q. Well, they did clearly have a lot of links to Amazon;

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1 correct?
 2 A. This person is reporting an experience that they had,
 3 which was remarkable enough that they wanted to send
 4 feedback, and the feedback — the response was: thank
 5 you for this, we will take action.
 6 Q. Not that they will eliminate links to Amazon?
 7 A. It says:
 8 "Thanks for heads—up. We will eliminate this kind
 9 of crap".
 10 They didn't want it. I have testified that Froogle
 11 was organic and made money from the ads on the side.
 12 Q. It is also clear that there were a lot of duplicates; it
 13 was not a good site, Froogle, was it?
 14 A. If you're asking me to comment on the previous thing, if
 15 you want to go back to the previous exhibit, I can give
 16 context.
 17 MS ROSE: Can I be a bit clear about the dates you are
 18 talking about, because this is February 2006.
 19 MR JOWELL: Yes.
 20 MS ROSE: Is it your case that it never improved?
 21 MR JOWELL: It certainly did not improve until late 2007 in
 22 terms of (inaudible). It was — whilst it was Froogle,
 23 it was — there is enormous — I think it is common
 24 ground that Froogle itself was an unsuccessful site.
 25 Now —

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1 A. Did you want me to close out the question that you asked
 2 by going to the first exhibit you showed me?
 3 Q. Certainly, if you would like to. Let us go back to it,
 4 {N/287}.
 5 A. Again, I'm a Search engineer, but I can give context on
 6 the company as a whole. The "ideas" thread was where
 7 random people within Google could send feedback, so this
 8 was idea number 3,978. The ideas could be anything,
 9 about what Google should do differently. So much like
 10 the random person named Andy who had sent some feedback,
 11 I don't know who Peter Epstein is, this is essentially
 12 someone in Google who said here's something that I don't
 13 like about Froogle. So it's not an internal
 14 Search Quality discussion, it's not a search manager or
 15 anything like that, it's a random Googler, and if you
 16 have enough discovery information, you might find
 17 comments like this to make your point one way or
 18 the other.
 19 Q. Very well, Mr Cutts. We will have to agree to disagree
 20 about the quality of Froogle.
 21 Could I ask you next, please, to — can I take you
 22 back to something that you mentioned to Mr West. You
 23 suggested that the exchange with Mr Truher might be
 24 about demoting search results within search results; do
 25 you recall that?

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1 A. I remember parts of the discussion, but we might need to
 2 bring the threads back up.
 3 Q. Now, what I suggest to you is that that did not happen
 4 until rather later, and I can show you that. The first
 5 inkling we get about the notion of demoting search
 6 results in search results we see in — let us have
 7 a look at it, it is in {M1/36}.
 8 You see there is an email, in the middle of
 9 the page, from Mr Brougher, and it is sent, I believe,
 10 to Mr Kwok, and he says:
 11 "Naive question — can we tweak cody's [Algorithm A]
 12 to target these pages? Search pages have similar
 13 characteristics to kelkoo—style shopping pages ..."
 14 Then you see what it says in brackets:
 15 "... don't they? The main difference is the links
 16 on search pages don't go to known ..."
 17 Then a confidential word:
 18 "... but otherwise I'd suggest in both cases we
 19 prefer the content—full destination page over
 20 the content—sparse intermediate page."
 21 So this is the first — this is the origins, it
 22 seems, of demoting search pages within search pages, and
 23 it is — you can see the date, it is June 2006.
 24 I just would again draw your attention to the fact
 25 that he sees Algorithm A as precisely being aimed at

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1 "kelkoo—style shopping pages"; correct?
 2 A. I disagree. This is a conversation — and I think
 3 I might have mentioned the name Paul Haahr. Paul was an
 4 engineer within the Search Quality group who was
 5 especially annoyed by search results within search
 6 results. So you see the very first email, Paul is
 7 saying:
 8 "If you have UrlMatcher—style patterns ..."
 9 That is sites or things that are doing search
 10 results, send them to a confidential list and we will
 11 take an action on them.
 12 Then you see a follow-up question from Bill, our
 13 Search product manager, who's like: well, isn't there
 14 sort of overlap between Algorithm A and search results?
 15 Which is a fair question. Cody, trying to be a helpful
 16 engineer, said in theory we could try to find a way to
 17 target or address that with Algorithm A.
 18 My recollection and belief is that Paul continued to
 19 take action on search results outside of Algorithm A.
 20 It was — Algorithm A was never tuned or tweaked or
 21 modified to address search results specifically.
 22 Q. So what he did was he went through manually; is that
 23 correct?
 24 A. For quite some time, Paul Haahr would be the manual
 25 maintainer of the list of removals for search results.

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1 Q. Let us see a bit more about that. If we go to
 2 {M3/21/2}. Just to see, if we go to {M3/21/3}, I think
 3 we see you appear. Maybe not. Yes. Yes, that is
 4 right.
 5 You see there is an email from you there in this
 6 string, just about a quarter of way down? Yes?
 7 So if we go back to — if we go to {M3/21/2}, you
 8 can see here an email from Mr Brougher, dated
 9 8 March 2007, to Jeff Bartelma. Now, Jeff Bartelma, he
 10 was a product manager in Product Search; do you remember
 11 that now?
 12 A. I don't know Jeff Bartelma.
 13 Q. So that is — effectively, he is at Froogle. You can
 14 see what he asked at the bottom of the page:
 15 "Jeff — can you give us a list of shopping sites?
 16 We are culling search engine result pages from our index
 17 so want to check all the usual suspects especially in
 18 the shopping category.
 19 "Cody — anyone from [Algorithm A] land that we
 20 should note?"
 21 Then if we go to {M3/21/1}, we see a response from
 22 Mr Haahr, and he gives a list of sites, and if you go on
 23 to {M3/21/2}, you can see that the list includes
 24 a number of Kelkoo sites.
 25 Underneath he says he will send:

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1 "... Matt and Evan the code review shortly; atypical
 2 for usual badurls practice ..."
 3 So just so we all understand, Mr Haahr is manually
 4 demoting these comparison shopping search results pages,
 5 is he not?
 6 A. That's an imprecise statement. We received complaints
 7 from the German country manager. Paul Haahr was
 8 removing search results from search results. We
 9 gathered up patterns that we knew matched search
 10 results.
 11 If we go to the first page of this email, you can
 12 see, for example, Cody was asking for an additional
 13 pattern on NexTag because NexTag was including search
 14 results for — I think I might have mentioned this
 15 example earlier — www.89.com.tr, that meant NexTag was
 16 auto-generating a search result page for that query,
 17 which of course is not a product. It was also
 18 generating search result pages for small business
 19 degree, business course degree, things that weren't
 20 products. So Paul was gathering a list of patterns to
 21 remove search results from search results, which I then
 22 documented as policy on my blog and on the Webmaster
 23 Guidelines.
 24 Q. Yes, you did. You then justified it publicly.
 25 But what is going on here is that someone is

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1 contacting the Froogle product manager, Jeff Bartelma,
 2 and he is saying, "Could you please give us a list of
 3 all your competitors, so that we can demote them".
 4 A. I don't interpret Bill's email that way. A country
 5 manager from Germany said: there's so much spam, so many
 6 search results that it's really affecting the quality of
 7 Google's search results. Paul Haahr is gathering data
 8 to remove search results from search results.
 9 Q. You are getting the names of all of your competitors, or
 10 competitors of Froogle, so that you can then demote
 11 them; correct?
 12 A. I would not characterise them as competitors, I would
 13 characterise them as sites that were showing search
 14 results of extremely low quality like www.89.com.tr,
 15 which is Turkey.
 16 Q. Also the pages of the leading comparison shopping sites;
 17 correct? Including Kelkoo?
 18 A. Google was trying to remove low quality search results,
 19 like small business degree and business course degree.
 20 I think I've referred to, we saw over time as we removed
 21 search results, eventually sites started to generate
 22 higher things, taxonomies, product descriptions. But
 23 for a while there, many sites would gather as many
 24 different random queries as they could and generate
 25 pages which they tried to monetise, and users hated it,

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1 as we saw the spark from this thread was a complaint
 2 from our German country manager.
 3 THE CHAIRMAN: Why is he including Pricegrabber?
 4 A. Many of these sites were auto-generating things.
 5 The examples that Cody gave are from NexTag, but we were
 6 seeing those sorts of search results across the board
 7 from many different sites.
 8 MR JOWELL: Let us have a look at your blog a couple
 9 of years later, because you said something rather
 10 different there. Let us have a look at {M3/146.1}.
 11 This is now 2009.
 12 You say:
 13 "Google sometimes turns off features. One such
 14 feature that I remember fondly is that at the bottom of
 15 Google's search results, we offered nine other
 16 search engine suggestions. The idea was if you didn't
 17 find what you were searching for on Google, you could
 18 click on the other links and easily run the same search
 19 somewhere else."
 20 Then you go on to describe an unofficial version of
 21 this feature that someone had made, and you instruct
 22 readers on how to install it and configure it so that it
 23 can be used on Google.
 24 So clearly, from your own user perspective, you like
 25 to have alternative search results, do you not?

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1 A. I enjoyed the fact that Google felt so confident in its
 2 quality that we were more than happy for people to do
 3 comparisons on other search engines and we believed
 4 people would find Google better and come back to Google.
 5 Q. But if we go to {M1/17} — forgive me, that must be
 6 a bad reference.
 7 Let me move to another subject. In any event, we
 8 can agree that Paul Haahr was effectively nuking
 9 manually search results within search results, including
 10 those of Kelkoo; correct?
 11 A. I would say remove, rather than "nuking", but yes.
 12 Q. Some people did use that term, did they not?
 13 A. Some people did use that term.
 14 Q. I want to ask you next about the diversity algorithm.
 15 So in late 2006, work started within your team on
 16 the diversity algorithm; correct?
 17 A. I don't know what time it would have started.
 18 Q. Okay.
 19 Now, that was just aimed directly at reducing
 20 the number of comparison shopping results in the general
 21 search results, was it not?
 22 A. I don't really recollect the specifics of the diversity
 23 algorithm.
 24 Q. Now, Mr Kalyanpur was the engineer tasked with creating
 25 that algorithm?

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1 A. Bharat, yes.
 2 Q. Yes.
 3 Do you recall that Eric Schmidt of Google was very
 4 keen for you in Search Quality to get rid of commercial
 5 results in the SERP, what he called "aggressive
 6 commercialism"; do you recall that?
 7 A. I do recall that.
 8 Q. That is what lay behind the diversity algorithm, is it
 9 not?
 10 A. We certainly saw a lot of spam and got a lot of
 11 complaints. Eric Schmidt prioritised finding those
 12 sorts of results and improving search quality in those
 13 kinds of areas.
 14 Q. Well, it was coming from Mr Schmidt, was it not? This
 15 was a strong initiative of his, right?
 16 A. I think it was coming from grass roots reactions, but it
 17 was also coming from Mr Schmidt.
 18 Q. Now, if we — now, I do not know how much you recall
 19 about Mr Kalyanpur's experiments? Not very much —
 20 A. Not very much, I'm sorry.
 21 Q. Well, let me — if I put this to you, it may be this
 22 will come back to you.
 23 Mr Kalyanpur tried, as he had been instructed, to
 24 remove comparison shopping sites from the results pages,
 25 but when he did experiments with raters, he found that

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1 they tended to like the appearance of
 2 comparison shopping results, at least some
 3 comparison shopping results in the organic results; do
 4 you recall that?
 5 A. I wouldn't say I recall anything about this particular
 6 project until I was reviewing documents for the lawsuit.
 7 Q. Well — but you do recall that he — perhaps you do not.
 8 You do recall that he could not manage to get a — for
 9 a long time, he could not get positive ratings?
 10 A. I don't really recall the specifics of how it launched
 11 and ...
 12 Q. You do — and I think you have confirmed that it was, at
 13 least in significant part, the motivation for that
 14 project was the desire of Eric Schmidt to tackle what he
 15 called aggressive commercialism within the results; is
 16 that right?
 17 A. I think Eric Schmidt's guidance was definitely a factor,
 18 but I think we also felt from feedback from the public
 19 that they were also quite unhappy about this aspect of
 20 Google's search quality.
 21 Q. Well —
 22 MS ROSE: What do you understand by "aggressive
 23 commercialism"?
 24 A. Selling sites. You're trying to do a search, you want
 25 to get information about high-level things and there's

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1 just a lot of sites that want to show up and have you
 2 click and buy and those sorts of things.
 3 MR JOWELL: Let me show you a little bit. Maybe this will
 4 trigger your recollection. If we just go to {M1/48},
 5 for example.
 6 You see an email thread here dated 22 November 2006,
 7 between Mr Kalyanpur and Mr Singhal, and yourself,
 8 Cody Kwok, and Vineet Gupta. You see there was an
 9 experiment, the results of the comparison shopping
 10 experiment.
 11 You see towards the bottom the page, you see there
 12 is an email dated 22 November 2006, from Mr Kalyanpur,
 13 and he gives a quick summary of the results of these
 14 experiments, and he notes that the raters tend to rate
 15 quite highly the shopping comparison results.
 16 A. Where —
 17 Q. If we go over the page {M1/48/2}. You see he gives —
 18 you see the paragraph that starts:
 19 "My overall impression is that the raters feel
 20 the bizrate/nextag/epinions pages are moderately good
 21 results. They are usually well-formatted, rarely
 22 broken, load quickly and on-topic. We win if we are
 23 able to replace those pages with especially good pages."
 24 Then further down, you see, just the penultimate
 25 paragraph, he says:

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1 "The biggest concern is that the raters (and perhaps
 2 our users) seem to like the meta-[comparison] shopping
 3 site more than a page from an actual retailer."
 4 A. I'm afraid I don't really have any recollection of this
 5 conversation. I'm happy to try to answer things based
 6 on my —
 7 Q. Well, we will ask Mr Kalyanpur, but it does seem as
 8 though you got positive feedback about comparison
 9 shopping sites based on your own raters, and eventually
 10 Mr Kalyanpur, when he implemented and finally got
 11 positive results, he had to leave at least two
 12 comparison shopping sites in the organic results. Were
 13 you aware of that?
 14 A. I don't really remember this part of the search space.
 15 Q. If we could go please to {M1/502}. I do not know if you
 16 remember this.
 17 If we could go to {M1/502/2}. We see an email from
 18 you, dated 4 April 2007.
 19 What you seem to be saying is that instead of
 20 a 280-long list of affected sites, as in comparison
 21 shopping sites, you instead opted for a list of around
 22 15 sites that were algorithmically generated and then
 23 you made three changes: adding ciao.co.uk and
 24 alibaba.com and leaving off eBay.
 25 Then if we go back to the previous page {M1/502/1},

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1 we see an email in response from Mr Brougner, who says
 2 he is nervous:
 3 "... because with 15 there will be many examples
 4 that affected sites can identify and say 'look, they
 5 weren't demoted, this must be a manual penalty on us
 6 because that site has the same characteristics as
 7 ours'. "
 8 Then he asks how you decided to add Ciao, Alibaba
 9 and remove eBay.
 10 So do you recall this? This seems to be an initial
 11 version of the demoting diversity algorithm that took
 12 place in the United States?
 13 A. I don't recall this. I — it's — reading this email
 14 thread, I think it's an earnest discussion about someone
 15 who's trying to launch something, Bharat. I think Bill
 16 is asking the right questions: well, even if the list is
 17 algorithmic, the fact that it's a small list seems
 18 problematic, and then why tweak anything at all. So
 19 I think this is the sort of back and forth on the policy
 20 for when and whether to launch something that you'd see
 21 discussed internally. So it seems like Bill — Bharat
 22 is trying to convince Bill, and then Bill is saying: no,
 23 I really want to revisit this, I don't want to just
 24 launch this without getting good answers on that.
 25 Q. If we could go, please, to {M3/555}, other email

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1 exchanges which you were involved in with Mr Brougher.
 2 If we go to {M3/555/2}, you can see an email from
 3 Mr Brougher saying — do you see, in the middle of
 4 the page?:
 5 "I've requested to discuss this at launch calendar
 6 again so it would be great if you and Bharat can
 7 join ...
 8 "I think the test question should be 'will Eric like
 9 this?' because I am getting pressure to send him mail
 10 about it. There is a lot of sensitivity now after
 11 Nextag."
 12 That would be Eric Schmidt?
 13 A. That would be Eric Schmidt, and I can provide more
 14 context on this, but I don't want to take up time if —
 15 Q. Well, very briefly .
 16 A. Okay. Brief is not always my speciality, I apologise.
 17 You saw in another email thread where NexTag was
 18 generating search results for random things like website
 19 URLs. Paul took action on NexTag and removed search
 20 results, and in his opinion, he later thought that that
 21 was too strong, to remove all of the search results .
 22 I think there was a follow—on discussion with NexTag.
 23 I will try to be brief .
 24 The example I remember from Paul was "dark and
 25 stormy night light". Google required all of those words

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1 to match on a page. So if someone typed "dark and
 2 stormy night light", we would only return web pages that
 3 matched all of those words. Comparison shopping engines
 4 or shopping engines or selling sites, or whatever you
 5 want to call them, did not have that same philosophy;
 6 they would show anything that matched any of those
 7 words. So on a long—tail query, that is a query with
 8 very few results, if someone types in "dark and stormy
 9 night light", Google would tend to show nothing because
 10 no page matched all of those words. But there were
 11 pages on NexTag that had night lights and so he
 12 considered it a quality loss. After he had removed
 13 NexTag search results, oh, well, instead of showing some
 14 results for night lights, we weren't showing any results
 15 at all, and so I think the NexTag sensitivity that's
 16 being referred to from I think April of 2007 is where
 17 Paul Haahr thought he had gone too far in removing those
 18 search results and then they needed to modulate that and
 19 figure out ways to launch it such that it was entirely
 20 positive or as positive as possible for users.
 21 Sorry that's such a long explanation.
 22 Q. No, that is fine. So effectively — so we have
 23 the manual nuking of all the search pages of
 24 the shopping comparison sites, and then NexTag
 25 complained potentially, and there was a big fuss and you

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1 had to reverse some of that?
 2 A. Manual removal of a lot of search results, not just
 3 shopping comparison sites; NexTag complained and I think
 4 there was a follow—on discussion, where NexTag explained
 5 their philosophy and Paul Haahr ultimately agreed.
 6 Q. Okay. So now you are considering this
 7 comparison shopping demotion algorithm and essentially
 8 he wants Eric to like it .
 9 If you go up the page on this page, you see —
 10 I think this is an email — I think this is your reply .
 11 It is. If we could just go up a tiny bit, you can see
 12 that it is a reply from you, I think. Well, we can see
 13 at the end "Matt", it says "Matt".
 14 You see the long paragraph, and right at the end,
 15 you say what you are trying to — you see in the long
 16 paragraph, you are trying to avoid a position where
 17 something is implemented and then suddenly there is
 18 a change disapproved just before the launch.
 19 You say:
 20 "I'd understand if Cody/Bharat wanted to work on
 21 straight web spam projects rather than tackle aggressive
 22 commercialism going forward, even though that's a top
 23 priority from Eric."
 24 So you are drawing a distinction there between
 25 simple web spam projects that are trying to get rid of

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1 spam and then tackling aggressive commercialism;
 2 correct?
 3 A. Yes.
 4 Q. That aggressive commercialism objective, that is coming
 5 from senior — the most senior management?
 6 A. I think I've said, it was mentioned by Eric, but also we
 7 felt that there were too many selling sites within
 8 Google, so ...
 9 Q. Okay.
 10 I want to try to understand where the senior
 11 management are coming from. Now, I do not know if you
 12 remember, yesterday, you gave some evidence where you
 13 said in response — you were giving opinions about
 14 Froogle and Mr West challenged you and you said, well —
 15 he said you are speculating, effectively, or
 16 supposition, I think he said, and you said, well, you
 17 said, you know it from being a Google employee, hearing
 18 presentations, reading about the product at the time,
 19 yes?
 20 A. Yes.
 21 Q. Do you recall that?
 22 So I want to show you a presentation that was made
 23 in relation to Froogle from November 2007, because
 24 I assume you might have seen it. It is at {M3/552}, and
 25 this is "Commerce EMEA GPS".

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1 If you go to {M3/552/2}, we can see the objectives,
 2 which is to:
 3 "Present the business case for Product Search and
 4 Checkout in EMEA ..."
 5 A. If it's helpful to stop and save time, I don't think
 6 I saw this presentation.
 7 Q. You do not think? Well, let me just — maybe you — so
 8 you understand some of the commercial imperatives and
 9 try to understand what aggressive commercialism is all
 10 about.
 11 If you go to {M3/552/4}, you see "Business Case":
 12 "Traffic
 13 "Our product search offering is not currently
 14 competitive."
 15 We are in November 2007:
 16 "Other players have stepped in to fill the void in
 17 our offering.
 18 "These players are dependent on Google for traffic.
 19 "Monetization
 20 "Comparison sites are effectively monetizing
 21 traffic.
 22 "Checkout can enhance product search monetisation."
 23 Then you see the small wording below:
 24 "9% of our search queries representing 20–30% of our
 25 ad word spend is ecommerce related.

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1 "The majority of customers looking for comparison
 2 engines first come to Google and then are sent
 3 elsewhere.
 4 "These comparison engines are able to monetize
 5 the traffic for millions of dollars.
 6 "The traffic is ours for the taking.
 7 "The business case for enhanced [Product Search]
 8 across EMEA.
 9 "Searchers for products generate billions of dollars
 10 for Google in EMEA. The Retail and Tech verticals will
 11 financial credit for c.30% of Direct revenue in 2007.
 12 "At the moment, these searchers have a relatively
 13 poor experience on Google.
 14 "Google supplies 30–70% of traffic for leading
 15 comparison engines in Europe.
 16 "These comparison sites are experiencing strong
 17 growth and healthy monetization."
 18 If you go over to {M3/552/5}, we see again:
 19 "Business Case for Enhanced [Product Search] ...
 20 "Google provides 30%–70% of the traffic to leading
 21 comparison sites in UK ..."
 22 You see there "Ciao" and "Kelkoo"; do you see that?
 23 If we go to {M3/5512/6}, specific emphasis on Ciao.
 24 Google supplies "77% of Ciao's traffic".
 25 If you go to {M3/552/7}, we see:

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1 "Product Search Monetization
 2 "Product search will add additional traffic, so
 3 monetisation will bring non—cannibalized revenue.
 4 "Google's product search monetization can be
 5 improved."
 6 If we go to {M3/552/8}, we see the "Current Status".
 7 In fact, if we just focus a bit on the diagram, you see
 8 "Web Search", with the arrow going to the "Comparison
 9 Sites". Then product — the "Current Status":
 10 "Sending traffic to 3rd parties."
 11 If we — it says:
 12 "Lose product search traffic and not monetizing
 13 traffic that we have to the full extent possible."
 14 Over the page {M3/552/9}, please, we see the "Goal":
 15 "Take back our traffic and monetize effectively."
 16 So much less of the traffic going to comparison
 17 sites, much more of the traffic going to Google Product
 18 Search, and that is what aggressive commercialisation
 19 was all about, was it not? That was the —
 20 A. I disagree. I never saw this slide deck. I have no
 21 special insight into this slide deck. I remember our
 22 VP of Engineering, Urs Hoelzle, talking about some
 23 relative or in—law of his who complained about
 24 the quality of search. I believe I talked about the
 25 Google logo on a German article that had the sewer with

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1 the two Os. Those were the sorts of things that were
 2 motivating me. I was motivated by search quality,
 3 whether users were happy, whether they were annoyed.
 4 Q. But we have seen that Mr Schmidt's motivation might have
 5 been rather different; correct?
 6 A. I had no problem standing up to Larry or Sergey or
 7 anyone else if I thought the company was wrong, and
 8 I had to do that in the early days of web spam, and
 9 I think the thread where Omid was pulling in Larry,
 10 Sergey and Marissa, and we wrote up our defence to say
 11 we thought we were doing the right thing shows that
 12 Google was able to defend its position regarding doing
 13 the right thing, and I think you saw the email thread
 14 from Bill Brougher, where there was a launch approved by
 15 Bharat, and Bill Brougher put his hand down on the red
 16 button and said, "I'm not sure this is ready to
 17 launch ..." —
 18 Q. What Mr Brougher said was the key question is, will Eric
 19 like this?
 20 A. I am interpreting that to mean after the brouhaha with
 21 NexTag, whether Eric will be —
 22 Q. Well, I do not interpret it like that. I think he is
 23 saying I will lose my job, is he not, if I do not get
 24 rid of this —
 25 A. No, I don't think Bill Brougher was ever concerned about

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1 losing his job.
 2 Q. Oh, really? Okay. Well, we will see that, that is in
 3 his emails as well.
 4 THE CHAIRMAN: Can I just ask, what was his job?
 5 A. He was — he was our product manager, so I think I've
 6 referred to him as the interface in between the search
 7 engineers and the rest of the world. So a little bit of
 8 Switzerland. He would take outside feedback, modulate
 9 it, pass on the stuff that he thought was worthwhile,
 10 and likewise, whenever you had, you know, the action
 11 oriented or the brusque engineers or, you know, there
 12 was a thread where I think Omid was like, we need
 13 a better explanation for why there was, you know,
 14 Algorithm A was triggering, Bill would be the person who
 15 would write up a fuller explanation and interface with
 16 the sales side and that sort of thing.
 17 MR JOWELL: Now, I think you said that you were not
 18 responsible for the Panda algorithm; correct?
 19 A. The Panda — that's correct.
 20 Q. If we can just go back to {M3/555}, and if you look at
 21 this. This is from Mr Brougher to you, second
 22 paragraph:
 23 "I wanted the team to hear my arguments and revisit
 24 the Decision, because I'll be completely honest here, we
 25 cannot afford another Nextag right now. Marissa has

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1 already asked me to tell Eric about this specific change
 2 and I told her I don't think that's necessary. If
 3 I don't say something and something goes wrong then I'm
 4 out of a job (maybe that's just collateral damage) ..."
 5 A. Yeah, I think he's joking about whether he'll be out of
 6 the job. Going to the first sentence:
 7 "I wanted the team to hear my arguments ..."
 8 So he's saying, please don't launch this change
 9 because I'm worried there are hand-coded elements and
 10 "we cannot afford another Nextag right now", but I think
 11 what had just happened in early April of 2007 is that is
 12 when Paul Haahr had removed all of these search results
 13 and we had the kerfuffle where NexTag said, well, for
 14 dark and stormy night light we're a great result, and
 15 Paul Haahr changed his mind and then they sort of
 16 figured out how they could do things more automatically.
 17 Q. Panda. I want to ask you just a few things about Panda.
 18 I know you say you are not involved, but you were aware
 19 that Ciao was one of the most successful price
 20 comparison businesses in Europe?
 21 A. I was aware of Ciao as a website and that it was
 22 popular.
 23 Q. You were — we have seen how dependent Ciao was on
 24 Google's traffic.
 25 A. I don't know. I had no direct knowledge of how

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1 dependent Ciao was.
 2 Q. I think did you have some because can I show you
 3 a letter that you received — you could have received
 4 {M3/560}, a letter addressed to you, it is from Ciao,
 5 dated 20 April 2011. Perhaps you can just read
 6 the first — just read the letter to yourself, Mr Cutts.
 7 (Pause).
 8 A. I don't think this letter ever made its way to me.
 9 Q. Is that your email address?
 10 A. That is my email address, but it looks like, judging
 11 from the sidebar on the right, that was a piece of
 12 physical paper.
 13 Q. I imagine they would have sent it to you by email as
 14 well.
 15 A. I don't recollect receiving this email.
 16 Q. You have no recollection?
 17 A. No, sorry.
 18 Q. You never responded to this letter?
 19 A. I doubt it. I don't remember receiving this.
 20 Q. You see that it is — if you go to the bottom of
 21 the page, page 2 {M3/560/2}, you see that it was copied
 22 to Larry Page? That is his email, I take it?
 23 MS ROSE: Was this document disclosed by Ciao or Google?
 24 MR JOWELL: It was Ciao.
 25 MS ROSE: Was it in Google's disclosure?

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1 MR JOWELL: No, it was disclosed by Google. We are told it
 2 was in Google's disclosure, yes.
 3 THE CHAIRMAN: It was in Google's disclosure?
 4 MR JOWELL: Yes.
 5 MS ROSE: Was there an email copy in Google's disclosure?
 6 MR JOWELL: We will check.
 7 You are not aware of whether any steps were taken in
 8 response to this letter?
 9 A. Just to go back to your question, that is Larry Page's
 10 email, but he also had other emails.
 11 Sorry, ask your question again?
 12 Q. So you have no idea whether this was ever responded to
 13 or anything was ever done in response to it?
 14 A. I don't have any recollection of this letter.
 15 Q. Mr Cutts, very briefly, finally, you say in paragraph 9
 16 of your statement that you are being reimbursed for your
 17 time and reasonable expenses. You also appeared,
 18 I think, in the PriceRunner proceedings; is that
 19 correct?
 20 A. The — in Sweden?
 21 Q. Yes.
 22 A. Yes.
 23 Q. On what basis are you being reimbursed for your time?
 24 Is it a daily rate, an hourly rate?
 25 A. Hourly rate.

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1 Q. May I ask what it is?
 2 A. Sure. I'm being paid \$1,100 an hour.
 3 Q. How many hours roughly have you spent in preparation for
 4 these proceedings?
 5 A. I can't give a fantastic answer to that offhand, I'm
 6 sorry. Let's see ...
 7 THE CHAIRMAN: Well, I think in days rather than hours.
 8 A. It's been a — it's been about ten hours a week for it
 9 feels like about a year.
 10 MR JOWELL: Ten hours a week for about a year.
 11 A. That's very ballpark. I could give you a more accurate
 12 estimate with some more time.
 13 Q. Did you work with American lawyers to rehearse your
 14 evidence in these proceedings?
 15 A. No. I did witness training about how the UK operates,
 16 but I would not say that I coordinate — I —
 17 Q. What about for the PriceRunner proceedings? Did you
 18 prepare with American lawyers and rehearse your evidence
 19 for those proceedings?
 20 A. No, I haven't rehearsed any sort of evidence, if I'm
 21 taking you at the way that you're implying.
 22 THE CHAIRMAN: When you say you did witness training, how
 23 recently have you done that?
 24 A. It was a company called Assurety, and it was about
 25 three weeks ago.

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1 THE CHAIRMAN: That was where?
 2 A. I did a remote training. I was based in Toronto.
 3 It was three or four hours.
 4 THE CHAIRMAN: Did you just have one session, or more than
 5 one session?
 6 A. One session, three or four hours.
 7 MR JOWELL: I have no further questions.
 8 THE CHAIRMAN: Yes, Mr McGurk.
 9 MR MCGURK: (Off microphone — inaudible) questions, if I
 10 may.
 11 Re-examination by MR MCGURK
 12 Perhaps, yesterday, you will recall being asked
 13 about whitelisting of other CSSs and Shopping.com was
 14 mentioned. Do you remember that exchange with Mr West?
 15 A. I might need a review.
 16 Q. Could I go to {K1/15/12}, please. This is a Google
 17 response to the European Commission, it is dated
 18 July 2010, and at question 38, you see the Commission
 19 ask Google to:
 20 "... provide a list of all comparison shopping
 21 sites, if any, for which Google has ever adjusted or
 22 manually overridden one of its demotion algorithms ...
 23 ('whitelisting'). Please also explain the reasons for
 24 this action and its effect on the subsequent ranking of
 25 such websites (including the duration)."

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1 The response is:
 2 "The exception log of Google's [Algorithm A]
 3 algorithm includes the following two comparison shopping
 4 sites."
 5 You will see, in the first bullet, mention is made
 6 of Foundem.
 7 A. Mm—hm.
 8 Q. If we go over the page, given that it is mostly
 9 highlighted in yellow, I will just ask you to read
 10 the first — or the second bullet at the top of
 11 the page.
 12 A. Yeah.
 13 Q. Do you recall this, and if so, can you say anything more
 14 about it?
 15 A. I don't recall this, but I do recall in the design
 16 document there are provisions to try to prevent sites
 17 that are all part of one entity or partnership from
 18 affecting each other in some way. So my best
 19 recollection might be — or best speculation might be
 20 that that Cody, or Algorithm A, did not somehow deal
 21 with that in a way that was the intent and so made
 22 a change.
 23 Q. So a corporate issue?
 24 A. Yes. Yes, like, [redacted — confidential information].
 25 MR MCGURK: Thank you very much, Mr Cutts. Excuse me one

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1 second.
 2 (Pause).
 3 No longer re-examination.
 4 There were three mentions made of confidential terms
 5 in the course of the exchange this morning between
 6 Mr Jowell and Mr Cutts. We can give the references.
 7 They are around about page 73.
 8 THE CHAIRMAN: Yes, I think it is — if you can give
 9 the references to our — (overspeaking — inaudible) —
 10 we can excise those from the transcript.
 11 MR MCGURK: Thank you, sir.
 12 Questions from THE TRIBUNAL
 13 THE CHAIRMAN: I just wanted to ask you, Mr Cutts, as Google
 14 got more and more successful in the time you were there,
 15 that clearly would have, would it not, significant
 16 commercial consequences for businesses as to where they
 17 appear in the search results? That would be the —
 18 A. Yes.
 19 THE CHAIRMAN: — consequence, would it not?
 20 Therefore businesses might want to complain if they
 21 were low down and wanted to be higher?
 22 A. Mm—hm. Absolutely.
 23 THE CHAIRMAN: There were thousands, if not tens or hundreds
 24 of thousands of businesses that had — might come up in
 25 search results?

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1 A. Everyone always wanted to rank higher on Google. No one
 2 ever came and said, "Please rank me lower".
 3 THE CHAIRMAN: Yes, and I imagine, if you had to deal with
 4 each potential complaint personally, you might be
 5 inundated with complaints?
 6 A. Yes.
 7 THE CHAIRMAN: You would hardly have time to do anything
 8 else, probably?
 9 A. Very much so.
 10 THE CHAIRMAN: So for an algorithmic demotion, we heard
 11 there is no system of reconsideration requests because,
 12 as I understood it, although there is no one absolutely
 13 correct way of doing things, Algorithm A, as you
 14 understood it, was designed in a way that it operated in
 15 a fair and objective way to demote spam and very
 16 low-quality sites; is that right?
 17 A. We thought that, yes.
 18 THE CHAIRMAN: Yes.
 19 The safety nets — and I will not go any further —
 20 were a crucial part of that —
 21 A. Yes.
 22 THE CHAIRMAN: — design?
 23 If there were no safety nets and there was just what
 24 you have described as stage 1 — we will not say what it
 25 was — that would not have been fair, would it?

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1 A. It would have generated excessive collateral damage, is
 2 the way that I would put it.
 3 THE CHAIRMAN: Well —
 4 A. Whether it would be fair or not, but it would have been
 5 unfortunate. It wouldn't have been what was right for
 6 users and best for users.
 7 THE CHAIRMAN: It would not have been fair to businesses
 8 either, because a lot of businesses that were not low
 9 quality would have been demoted?
 10 A. Yes. That's true.
 11 THE CHAIRMAN: So the role of the safety nets and the way
 12 they are designed was really important?
 13 A. Yes.
 14 THE CHAIRMAN: There is just one other thing, possibly, if
 15 you give me a moment.
 16 A. I guess the way I would put it is, in my experience,
 17 a search engine that can't do quality control, in my
 18 mind, is not really a search engine, it's a disaster
 19 waiting to happen, and so different businesses can have
 20 sincere different beliefs and philosophies about how to
 21 do quality control.
 22 THE CHAIRMAN: Yes, there is no doubt about that.
 23 I just wanted to understand the — and it is a very
 24 basic question — the Google toolbar, which has been
 25 referred to. There is, if it helps, in paragraph 100 of

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1 your witness statement, which is on page 35
 2 {H3A/5/35} — I will not read out what it says, because
 3 the detail there is not what I am asking about. I just
 4 wanted to understand the Google toolbar. That was
 5 something some users could upload, or can you just
 6 explain it?
 7 A. Yeah, there was a guy, Eric Fredrickson, and another
 8 guy, Fred Schneider; that's how small and scrappy Google
 9 was at the time. It was a piece of software that people
 10 could install that would add more, you know, powerful
 11 tools to Internet Explorer. It was an add-on, or
 12 extension, for Internet Explorer. So, for example, as
 13 you surfed around the web, it would show you
 14 the PageRank of individual pages such that you could
 15 see, oh, this is a very high PageRanked page, it's
 16 probably reputable, this is a very low PageRanked page,
 17 maybe I should be a little more suspicious or careful.
 18 THE CHAIRMAN: Some people installed it —
 19 A. That's correct.
 20 THE CHAIRMAN: — and others did not?
 21 A. That's correct.
 22 THE CHAIRMAN: It would be a minority that installed?
 23 A. Yes.
 24 MS ROSE: My first question is an open question and
 25 the second is confidential.

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1 So on the open question, as I understand your
 2 evidence, the purpose of Algorithm A was to demote
 3 affiliate spam?
 4 A. Correct.
 5 MS ROSE: In 2006, did you consider Kelkoo to be affiliate
 6 spam?
 7 A. I tended to view it as a spectrum, and Kelkoo would have
 8 been on the higher value—add of the spectrum compared to
 9 other sites, but more on the border.
 10 MS ROSE: Was it a site you wanted to demote using
 11 Algorithm A?
 12 A. I was not intending to, no.
 13 MS ROSE: Because at that time, the guidance that was being
 14 given to raters was specifically that Kelkoo was not
 15 the kind of site that should be demoted by Algorithm A.
 16 A. That's correct.
 17 MS ROSE: Do you disagree with that judgment?
 18 A. I think that I wrote instructions which —
 19 MS ROSE: Yes, but do you disagree with it?
 20 A. I don't disagree.
 21 MS ROSE: You do not disagree. So if Algorithm A was
 22 demoting Kelkoo, then its quality control was not
 23 working properly?
 24 A. For me, I would have gone to what the signals were
 25 saying to say whether it was working correctly or not.

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1 MS ROSE: But on the basis of what you have just said, it
 2 seems like it may have been casting its net too wide?
 3 A. Well, we certainly saw some sites, like the NexTag
 4 example, where they were promiscuously creating as many
 5 things as they could —
 6 MS ROSE: I am asking about Kelkoo.
 7 A. Yeah. I don't remember what the evolution of Kelkoo's
 8 quality was over time.
 9 MS ROSE: Yes, but we have just discussed that, in 2006,
 10 your raters were being told specifically that it was not
 11 an affiliate spam site.
 12 A. They were being told that as shorthand, in my opinion,
 13 to give them an intuition, but as the search engineers
 14 responsible for making the decisions, we would have
 15 looked at what the signal quality said.
 16 MS ROSE: Did you ever look at the signal quality for
 17 Kelkoo?
 18 A. I don't remember doing that.
 19 MS ROSE: There is no document that you can point to that
 20 shows that you ever did that?
 21 A. No.
 22 MS ROSE: My next question I think is confidential.
 23 THE CHAIRMAN: Take the non-confidential questions first —
 24 Can you just explain, you said, just now, the raters
 25 were being told that Kelkoo was not a thin affiliate as

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1 a shorthand to give them an intuition. What do you
 2 mean?
 3 A. When you're trying to get 12,000 people up to speed on
 4 how to rate things and you've got 45 pages or 160 pages
 5 of documentation for them to review, you want them to be
 6 a proxy for savvy users, you want them to be a proxy
 7 for, like, what a search engineer would say, but these
 8 are people who are working 20 to 30 hours a week in many
 9 different countries around the world, so you're trying
 10 to accelerate their insight on how to rate things, but
 11 you know it's going to be not completely perfect.
 12 THE CHAIRMAN: So you give them a few examples?
 13 A. Yes, and the nuance that I tried to describe, and
 14 I don't know whether it came up, was, eventually, we
 15 left it as a question to raters, you know: do you think
 16 this is spammy? If you think it is —
 17 THE CHAIRMAN: I think we have seen the evolution —
 18 A. Okay, great.
 19 THE CHAIRMAN: Because Ms Rose has a confidential question
 20 and Professor Smith has two questions which are not
 21 confidential, we will take those two questions first.
 22 PROFESSOR SMITH: My first question is just a brief
 23 follow-up to your exchange with the Chair about Google
 24 toolbar, where you said that the number of users who
 25 signed up to Google toolbar was a minority, it sounded

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1 like —
 2 A. Yes.
 3 PROFESSOR SMITH: Would it be unfair to think of them as
 4 nerds rather than typical users?
 5 A. It would not be unfair. Nerds were more likely to
 6 install the Google toolbar and savvy users, especially
 7 search engine optimisers, were more likely to install
 8 it, because they wanted to see what the page rank was
 9 for individual pages. That is a very insightful
 10 question.
 11 PROFESSOR SMITH: So — it might be an obvious comment —
 12 you might want to be careful about interpreting toolbar
 13 results as not being necessarily representative of
 14 the user population as a whole?
 15 A. That's true, and also probably the toolbar users were
 16 closer to what we wanted in terms of search engineer
 17 insight, as opposed to my mum, or something like that
 18 or — not that — you know, to criticise my mum, she is
 19 quite savvy, but — but someone who is not a savvy user.
 20 PROFESSOR SMITH: Like me.
 21 My second question is just a kind of technical
 22 question about the way Algorithm A worked, and I am
 23 asking it in the hope that you can provide information
 24 that will be helpful to the Tribunal in interpreting
 25 other evidence that is going to come to us at a later

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1 stage in the proceedings.
 2 I understand from some evidence we have already
 3 heard that Algorithm A demotions could apply to sites in
 4 different ways. It could be — if I have got
 5 the terminology right — a whole domain demotion?
 6 A. Correct.
 7 PROFESSOR SMITH: Or a sub-domain demotion?
 8 A. Yes.
 9 PROFESSOR SMITH: Or an individual URL demotion?
 10 A. I think it could go down to individual URLs, but I'm not
 11 positive.
 12 PROFESSOR SMITH: Do you have any sense of why one or other
 13 path would be the path to which the demotion would
 14 apply?
 15 A. Absolutely. If you take a hypothetical example,
 16 CompareStorePrices.co.uk, you might have one
 17 sub-directory that would have buying guides, you know,
 18 or general information about products that wouldn't
 19 trigger the algorithm; the sort of thing that would be
 20 great to show to give background or context about
 21 digital cameras. You might have a different sub-part of
 22 the site, a different sub-directory that, according to
 23 the signals of Algorithm A, looked like thin affiliate
 24 spam.
 25 PROFESSOR SMITH: So you are getting signals at a sub-domain

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1 level?
2 A. Mm—hm.
3 PROFESSOR SMITH: How does that translate into a whole
4 domain demotion, when all of the —
5 A. Exactly.
6 PROFESSOR SMITH: When all the sub domains are — so if you
7 have a site with nine sub—domains that are sending bad
8 signals, the demotion would apply only to the nine?
9 A. That's correct.
10 PROFESSOR SMITH: Okay.
11 You raised an eyebrow at the possibility of a single
12 URL giving rise to a demotion. Is that not a common
13 thing?
14 A. Well, I think the design doc mentioned data at
15 the individual URL level, but my suspicion is that
16 things went from single URLs and were aggregated into
17 sub—directories, sub—domains and possibly the whole
18 domain.
19 PROFESSOR SMITH: My last question in this area is, once
20 a demotion had been applied as a result of
21 the algorithm, how long did its effects last? I mean,
22 once it had been triggered, did it need to be
23 re—triggered every day, every week, every month?
24 A. That's a great question. My understanding from
25 reviewing the design doc is that Cody would regather

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1 the data every day, fresh data every day, and that data
2 would get aggregated, and about every maybe two or
3 three months, there would be a new push. So if suddenly
4 the signals became good for a site, two or three months
5 later, Algorithm A would no longer trigger.
6 PROFESSOR SMITH: So a demotion would typically last then
7 two or three months or longer?
8 A. Well, the refresh rate was two or three months, but in
9 general, what we tended to find is, you know, if people
10 were spamming, and the intent was to catch the spammers,
11 if people were spamming, they typically continued to.
12 But if they changed their behaviour, the algorithm and
13 the data could be — it would be updated over time.
14 PROFESSOR SMITH: But from the change of behaviour, it might
15 take a month or two before —
16 A. Probably more like two or three.
17 PROFESSOR SMITH: More like three?
18 A. More like two or three, yeah.
19 PROFESSOR SMITH: Thank you very much indeed.
20 THE CHAIRMAN: Before we go into closed session, are there
21 any questions arising from what Mr Cutts has said in
22 response to the Tribunal?
23 We will then go into LEO closed session. If we
24 could turn off the live stream.
25 If there is anyone in court who is not within

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1 the LEO ring, I know it is a very large ring.
2 (In private)
3 (4.38 pm)
4 (The Court adjourned until 10.30 on Monday, 6 July 2026)

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