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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91180471
Party	Plaintiff Marc Vianello
Correspondence Address	Arthur K. Shaffer Intellectual Property Center, LLC 9233 Ward ParkwaySuite 100 Kansas City, MO 64114 UNITED STATES ashaffer@theIPCenter.com
Submission	Motion to Compel Discovery
Filer's Name	Arthur K. Shaffer
Filer's e-mail	ashafer@theipcenter.com
Signature	/s/Arthur K. Shaffer
Date	10/09/2008
Attachments	Exhibit A.pdf (7 pages)(22058 bytes) Exhibit B.pdf (3 pages)(24575 bytes) Exhibit C.pdf (2 pages)(188242 bytes) Second Motion to Compel Discovery.pdf (4 pages)(88980 bytes) Exhibit D.pdf (14 pages)(2132458 bytes) Exhibit E.pdf (110 pages)(152045 bytes) Exhibit F.pdf (4 pages)(59691 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

Marc Vianello	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.:91180471
	)	
Sandra Nudelman	)	
	)	
Applicant.	)	

OPPOSER'S COMBINED MOTION TO COMPEL
AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Marc Vianello ("Opposer") respectfully moves the Board for an order compelling Applicant Sandra Nudelman. ("Applicant") to make herself available to Opposer's Depostion Request without objections.

In addition, Opposer requests an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to consider Applicant's deposition testimony as ordered by the Board, and to pursue follow-up discovery if necessary.

Such an order is appropriate because Applicant failed entirely to respond to Opposer's Interrogatories and Document Requests prior to the Discovery cut-off date and Applicant failed to make herself available for the scheduled Depostion and has since stated that she will not comply with Opposer's deposition request. Counsel for Opposer has made good faith efforts to resolve the issues with Applicant but, to date, such efforts have been unsuccessful.

I. BACKGROUND

On October 31, 2007, Opposer filed a Notice of Opposition against Application Serial No. 77/110,266 for Ms. Nudelman's mark for "background investigation and research services" and "legal services." Opposer asserts, among other things, that it owns the distinctive marks shown in Serial Nos. 77/031,981, 77/212,172, ("the Vianello Marks") for various electronic and print publication needs[1]. Opposer also asserts that he has extensively used and promoted the Vianello marks in the United States since at least as early as September 1, 2007 (Not. of Opp. ¶ 2-5), well prior to the date of Applicant's use of Applicant's mark which was filed as an Intent to Use and no Statement of Use has been entered. As grounds for the opposition, Opposer alleges priority of use and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C § 1052(d) and dilution under Section 43(c) of the Trademark Act 15 U.S.C. § 1125(c). (Not. of Opp. ¶¶6-8).

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[1] THE JUDICIAL VIEW, U.S. Application Serial No. 77/031,981, filed October 30, 2006, in international class 041 for "publication of an online legal newspaper," and THE JUDICIAL VIEW, U.S. Application Serial No, 77/212,172, filed June 21, 2007, in international class 038 for "providing e-mail notification alerts of recent court decisions to others" and in international class 041 for "providing on-line publications in the nature of newspapers, newsletters, magazines, and articles in the field of law, classified advertising, display and text advertising, law review, legal case summaries, feature articles, current events, civil rights, finance and banking, communications, immigration, education, politics, administrative law, agriculture, intellectual property, antitrust, bankruptcy, civil procedure, civil remedies, commercial contracts, computer and technology, conflicts at law, constitutional law, criminal justice, corporate and shareholder law, employment law, energy and utilities, environmental law, expert witness, family law, health, immigration, international law, lost profits, maritime and marine, military, products liability, professional malpractice, real and personal property, securities law, federal, state and local taxation, torts and personal injury, veterans, wills, trusts and estates, sports, entertainment, art, government, insurance, transportation, business valuation, alternative dispute resolution and legal matters; on-line journals, namely, blogs featuring information on recent court decisions, current events, civil rights, finance and banking, communications, immigration, education, politics, administrative law, agriculture, intellectual property, antitrust, bankruptcy, civil procedure, civil remedies, commercial contracts, computer and technology, conflicts at law, constitutional law, criminal justice, corporate and shareholder law, employment law, energy and utilities, environmental law, expert witness, family law, health, immigration, international law, lost profits, maritime and marine, military, products liability, professional malpractice, real and personal property, securities law, federal, state and local taxation, torts and personal injury, veterans, wills, trusts and estates, sports, entertainment, art, government, insurance, transportation, business valuation, alternative dispute resolution and legal matters."

On October 31, 2007, the Board instituted this proceeding and set discovery to open on November 20, 2007, and to close on May 18, 2008. Applicant's Answer to the Notice of Opposition was due December 10, 2007.

On December 10, 2007, Applicant filed an answer denying the essential allegations in the Notice of Opposition. On April 14, 2008, Opposer served the Applicant with Opposer's First Request for the Production of Documents and Opposer's First Set of Interrogatories to Applicant. (Copies of these Requests are attached as Exhibit A.) Responses to Opposer's discovery requests were due May 14, 2008. On April 19, 2008 Opposer served Applicant with Opposer's Request for Deposition (copy of which is attached as Exhibit B). This deposition was scheduled to be conducted in Brooklyn, NY on May 15, 2008 near Applicant's address in the city of Applicant's residence as listed with the TTAB.

Opposer's requests were all served on Applicant within the time permitted by 37 CFR § 2.120(a) and were in compliance with all applicable discovery rules. The deposition was noticed in compliance with Fed. R. Civ. P. 30(b) and 37 CFR § 2.120(a). The deposition was scheduled to be completed at an appropriate venue in accordance with 37 CFR § 2.120(b) based on Applicant's residential address contained in the record.

On May 7, 2008, after a phone call by Opposer on May 6 confirming receipt of said notices, Applicant sent Opposer notice via fax (attached as Exhibit C) indicating that Applicant needed to reschedule the deposition because she was unavailable. In addition, she notified Applicant that it would be more convenient if Opposer would send future communications to Applicant's home address, which was different from that listed with the TTAB.

More than ten days after a response was due, On May 27, 2008, Applicant sent Opposer's attorney a letter refusing to provide discovery (attached as Exhibit D). In the letter, Applicant stated that Opposer's discovery demands were premature and improper because "Opposer never attempted, in good faith, to hold required Discovery Plan Conference or work out a Discovery schedule with the Applicant…prior to initiating Discovery demands…." In addition, Applicant stated that because leave of court was not obtained prior to Opposer's "unilateral discovery demands" and because Opposer made no attempt to schedule or hold a Discovery Plan Conference, Opposer had waived any right to further Discovery.

Opposer then responded via First Class Mail on May 27, 2008 (attached as Exhibit E) to Applicant's May 27, 2008 letter demanding compliance with Opposer's Discovery Requests, referring Applicant to the relevant rules and suggesting she obtain counsel. Specifically, Opposer requested compliance by (1) producing documents responsive to Opposer's request for production, (2) providing written responses to Opposer's interrogatories, and (3) rescheduling her deposition.

On June 2, 2008, via facsimile, Applicant provided written responses to Opposer's First Set of Document Requests and Interrogatories. However, Applicant has still refused to comply with Opposer's Deposition request as stated in her June 2, 2008 transmittal letter (attached as Exhibit F).

II. MOTION TO COMPEL

A. Opposer Has Made a Good Faith Effort to Work with Applicant

In accordance with Trademark Rule 2.120(e), Opposer submits that it has made a good faith effort to resolve with Applicant the issues presented in the motion. Specifically, Opposer has contacted Applicant and requested that she comply with Discovery Demands and that she obtain competent counsel, but Applicant has not responded timely to Opposer's Requests and has made it abundantly clear that she will not. As detailed above, Applicant has not responded timely to Opposer's discovery requests, and has informed Opposer that such testimony will not be forthcoming in the foreseeable future.

B. Applicant Forfeited its Right to Object

The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that a party that fails to comply with discovery requests and deposition requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to discovery on the merits. See TBMP §§ 403.03 and 407.01, citing Bison Corp. V. Perfecta Chemie B.V., 4 U.S.P.Q.2d 1718 (TTAB 1987); Luehrmann v. Kwik Kopy Corp., 2 U.S.P.Q.2d 1303 (TTAB 1987).

Notice was sent on April 19, 2008 scheduling Applicant's deposition for May 15, 2008, prior to the close of discovery. Applicant failed to appear or make herself available pursuant to the notice. Applicant's discovery responses were due on or before May 14, 2008. Applicant's belated responses were received on June 2, 2008, more than ten days after discovery had closed and more than three weeks after they were due. As we are now more than three weeks beyond the close of discovery and into the testimony period without receiving the requested discovery, Opposer is placed at a disadvantage in determining what testimony to seek in order to bolster its claims and rebut Applicant's assertions. Accordingly, Opposer respectfully requests that the Board order Applicant to fully respond to Opposer's Notice of Deposition without objections within the first twenty days from the mailing date of the Board's order on this motion.

III. MOTION TO EXTEND

In accordance with Fed. R. Civ. P. 6(b), Opposer hereby moves the Board for a thirty (30) days extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's deposition responses as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer also requests an extension of its testimony periods.

As detailed above, Opposer has been diligent during the discovery period. Opposer served discovery prior to the discovery cut-off and after receipt of Applicant's Answer to the Notice of Opposition. Opposer has also expended considerable expense in obtaining local counsel and making counsel available for the Scheduled Deposition.

Opposer also made a good faith effort to resolve this matter before filing a motion to compel. Applicant, on the other hand, has not proceeded in good faith, denying all of Opposer's discovery requests and failing to review the rules governing this proceeding.

Opposer does not seek an extension of time for purposes of delay. It is requested that the limited thirty (30) day extension run from the date of service of Applicant's discovery responses as ordered by the Board, and that the discovery period be otherwise closed.

IV. CONCLUSION

For the reasons stated above, Opposer respectfully requests that the Board grant Opposer's motion to compel and order Applicant to respond to Opposer's Notice of Deposition without objections within twenty days from the mailing date of the Board's ruling on the motion. Opposer also respectfully requests that the Board grant Opposer's motion for an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer requests that the extension run from the date of service of Applicant's discovery responses as ordered by the Board, and that the discovery period be otherwise closed. Opposer requests that its testimony period be re-set to follow close of its discovery.

Dated:_____

Respectfully submitted,

_____

Attorney for Opposer,
Marc Vianello

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: August 6, 2008

Opposition No. 91180471

Marc Vianello

v.

Sandra L. Nudelman

George C. Pologeorgis, Interlocutory Attorney:

This case now comes up on opposer's motion, filed June 19, 2008, to compel the discovery deposition of applicant, Sandra L. Nudelman, as well as to reopen discovery and reset trial dates. Applicant has failed to file a brief in response to opposer's motion. Accordingly, opposer's motion to compel the discovery deposition of Sandra L. Nudelman, reopen discovery and reset trial dates is hereby granted as conceded.[1] *See* Trademark Rule 2.127(a).

In view thereof, applicant is required to make herself available and to attend the discovery deposition which must

[1] Trademark Rule 2.127(a) reads, in relevant part, as follows: "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded." Moreover, the Board finds that opposer has made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention, as required by Trademark Rule 2.120(e)(1).

be re-noticed and completed by opposer within **thirty days** from the mailing date of this order. Should applicant fail to appear or make herself available for the discovery deposition ordered herein, then opposer's remedy will lie in a motion for entry of sanctions, in the form of entry of judgment sustaining the opposition. *See* Trademark Rule 2.120(g)(1).

Proceedings are hereby resumed. Although discovery was already closed when proceedings were suspended pending disposition of opposer's motion to compel, the discovery period is reset as indicated below for the limited purpose of allowing opposer to take follow-up discovery, if necessary. Applicant is precluded from propounding any discovery at this juncture. Trial dates are also reset as follows:

DISCOVERY TO CLOSE (limited to opposer's follow-up discovery and to notice and take the discovery deposition of Sandra L. Nudelman)	**October 10, 2008**
Thirty-day testimony period for party in position of plaintiff to close:	**January 8, 2009**
Thirty-day testimony period for party in position of defendant to close:	**March 9, 2009**
Fifteen-day rebuttal testimony period for plaintiff to close:	**April 23, 2009**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No.: 77/110,266 Filed: August 21, 2008 Applicant: Sandra L. Nudelman Mark: JUDICIAL REVIEW Published: August 14, 2007	)	
MARC VIANELLO, Opposer, v. SANDRA L. NUDELMAN, Applicant.	)	Opposition No. 91180471

OPPOSER'S SECOND NOTICE OF DEPOSITION TO APPLICANT

Pursuant to Section 2.120 of the Rules of Practice in Trademark Cases, Rule 33 of the Federal Rules of Civil Procedure, and in accordance with the August 6, 2008 Order of the TTAB, Opposer, Marc Vianello, through its undersigned attorneys, will take the deposition upon oral examination of Sandra L. Nudelman, residing at 131 Sewall Ave. #46, Brookline, MA 02446. The deposition will occur at 30 Rowes Wharf, Boston, Massachusetts, the Boston Harbor Hotel, on the 3rd of September, 2008 at 11:00 am or otherwise by agreement of the parties. The deposition will be recorded by stenographic means before a qualified notary public.

MARC VIANELLO

Respectfully submitted,

ARTHUR K. SHAFFER
Patent Office Reg. No. 50,257
INTELLECTUAL PROPERTY CENTER, LLC
9233 Ward Parkway, Suite 100
Kansas City, Missouri 64114
Telephone: (816) 363-1555
Facsimile: (816) 363-1201

Attorney for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Marc Vianello	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.:91180471
	)	
Sandra Nudelman	)	
	)	
Applicant.	)	

OPPOSER'S MOTION TO COMPEL

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Marc Vianello ("Opposer") respectfully moves the Board for an order compelling Applicant Sandra Nudelman ("Applicant") to comply with Opposer's Second Request to produce documents without objections.

Applicant has failed to respond and provide any requested documents prior to the Extended Discovery cut-off date. Counsel for Opposer has made good faith efforts to resolve the issues with Applicant, but, to date, such efforts have been unsuccessful, including sending email and letters to Applicant requesting the same.

Opposer incorporates by reference Opposer's Motion to Compel and to Extend Discovery and Trial Dates and is attached as Exhibit A.

I. BACKGROUND

As stated in Exhibit A, the present matter was initiated on October 31, 2007 when Opposer filed an opposition with the United States Patent and Trademark Office. Without reciting in detail all the facts associated with this case, Applicant will simply

rely upon the previously stated facts in the attached Exhibit A. However, background information related to the present dispute includes the filing of Opposer's Motion to Compel and Extend Discovery and Trial Dates filed by Opposer on June 19, 2008. This was filed after several attempts to resolve failures and refusal of Applicant to provide the requested Discovery.

As a result, on August 6, 2008, the Trademark Trial and Appeals Board ("TTAB") granted Opposer's Motion to Compel the Discovery Deposition of Applicant (attached as Exhibit B). Trial dates were also reset at the same time, reflecting Applicant's lack of cooperation.

Opposer's Second Notice of Deposition was served on Applicant on August 21, 2008 (attached as Exhibit C). On August 29, 2008, Applicant made herself available pursuant to the August 6, 2008 Order of the TTAB, and was deposed.

Applicant's June 2, 2008 Answer in Response to Opposer's Interrogatories and Applicant's Answer in response to Opposer's Document Requests stated that no documents were available for production (attached as Exhibit D). However, during the August 29, 2008 Discovery Deposition, Applicant stated on the record that there were documents available for production, but she did not produce them (attached as Exhibit E).

As a result, a formal request was made during the deposition for production of such documents. On September 24, 2008, Applicant was served a Second Notice of Document Request (attached as Exhibit F). To date, merely one day from the expiration of discovery, Applicant has still not produced any documents as requested in the Notice of Document Request dated April 18, 2008, on the record during the discovery deposition, and as contained in Opposer's Second Notice of Document Request.

Pursuant to F.R.C.P. 34(b)(2)(A), Ms. Nudelman has thirty days to respond and has failed to do so. Because of Applicants failure to produce the required documents, Opposer is unable to conduct follow-up discovery and is therefor being prejudiced in its attempt to effectively oppose Applicant's registration.

The extended Discovery closing date had been previously reset to October 10, 2008 by Order of the TTAB on August 6, 2008. At this time it is unforeseeable that any response will be received from Applicant, and even if prior to such date the requested discovery is produced, Opposer will still be placed at a disadvantage in determining what follow-up discovery or testimony to seek in order to bolster its claims and rebut Applicant's assertions. Accordingly, Opposer respectfully requests that the Board order Applicant to fully respond to Opposer's Notice of Document Request without objections or any further delay within ten days from the mailing date of the Board's order on this motion.

II. MOTION TO COMPEL

A. Opposer Has Made a Good Faith Effort to Work with Applicant

In accordance with Trademark Rule 2.120(e), Opposer submits that it has made a good faith effort to resolve with Applicant the issues presented in the motion. Specifically, Opposer has contacted Applicant to request that she comply with its discovery demands and that she obtain competent counsel to advise her regarding her compliance. Not only has Applicant not responded timely to Opposer's Requests, but she has also made it abundantly clear that she will not. Despite the numerous requests and attempts to obtain discovery, Applicant has repeatedly refused and obstructed Opposer's discovery requests.

B. Applicant Forfeited its Right to Object

TBMP §§ 403.03 and 407.01 provide that a party who fails to comply with discovery requests and deposition requests during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel to have forfeited its right to object to discovery on the merits. See Bison Corp. V. Perfecta Chemie B.V., 4 U.S.P.Q.2d 1718 (TTAB 1987); Luehrmann v. Kwik Kopy Corp., 2 U.S.P.Q.2d 1303 (TTAB 1987). Therefore we respectfully request that the Applicant be compelled to respond fully to Opposer's discovery request without any further delay or any objections thereto.

III. CONCLUSION

For the reasons stated above, Opposer respectfully requests that the Board grant Opposer's motion to compel and order Applicant to respond to Opposer's Second Request to Produce Documents without objections within ten days from the mailing date of the Board's ruling on the present motion.

Dated: October 9, 2008

Respectfully submitted,

/s/Arthur K. Shaffer
Attorney for Opposer,
Marc Vianello

Sandra L. Nudelman
131 Sewall Ave. #46
Brookline, MA 02446

June 2, 2008

Via Priority Mail and Facsimile

Marc Vianello
c/o Arthur K. Shaffer
Intellectual Property Center, LLC
9233 Ward Parkway, Suite 100
Kansas City, MO 64114

Re: Marc Vianello v. Sandra L. Nudelman
91/180471

Dear Mr. Vianello:

Enclosed please find Applicant's notarized, signed response to Opposer's First Set of Document Requests and Interrogatories.

Sincerely,

Sandra Nudelman

Sandra Nudelman

EXHIBIT
Wallman
no. 3
8-29-08 DL

Sandra L. Nudelman
131 Sewall Ave. #46
Brookline, MA 02446
June 2, 2008

Via Priority Mail and Facsimile
Marc Vianello
c/o Arthur K. Shaffer
Intellectual Property Center, LLC
9233 Ward Parkway, Suite 100
Kansas City, MO 64114

Re: Marc Vianello v. Sandra L. Nudelman
91/180471

Dear Mr. Vianello:

I would first like to correct some of the misstatements in the letter of your counsel dated May 27, 2008:

1. **I did not unilaterally cancel my deposition.** As noted in my fax to your counsel on May 7, 2008, which I referenced in my letter dated May 27, and which you did not deny receiving thereafter, I was willing at that time to re-schedule the deposition that your counsel had unilaterally scheduled for May 15. However, neither you nor your counsel responded to that request for re-scheduling by the close of the discovery period on May 18, 2008. As such, I hold that you have

waived the right to conduct a deposition. As a show of good faith, however, I am willing to provide answers to your requested written interrogatories and to provide the requested documentation.

2. **I have not refused to obtain counsel.** Again, as stated in my fax to your counsel dated May 7, 2008, between my move to Massachusetts and the fact that my job requires me to be out of town ~75% of the time, and nearly the entire work week, it has been difficult for me to find appropriate representation at my new location.

Furthermore, I would like to stipulate that all future service to me be conducted via e-mail in addition to traditional mail service, as this will significantly expedite my ability to respond to your requests in a timely fashion. Also, please do not use facsimile as a means of communication with me again, as I do not have a regular facsimile number.

Sincerely,

Sandra Nudelman

sandranudelman@gmail.com

131 Sewall Ave. #46

Brookline, MA 02446

Applicant

Certificate of Service

I hereby certify that a copy of the foregoing letter has been served by Priority Mail, postage prepaid, to Arthur K. Shaffer, Intellectual Property Center, LLC, 9233 Ward Parkway Suite 100, Kansas City, MO 64114 and by facsimile to Arthur K. Shaffer, Intellectual Property Center, LLC at (816) 363-1201 on this 2nd day of June, 2008.

Sandra L. Nudelman

131 Sewall Ave. #46

Brookline, MA 02446

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No.: 77/110,266 Filed: February 18, 2007 Applicant: Sandra L. Nudelman Mark: JUDICIAL REVIEW Published: August 14, 2007	Opposition No. 91180471
MARC VIANELLO, Opposer, v. SANDRA NUDELMAN, Applicant.	

SANDRA L. NUDELMAN'S ANSWER TO OPPOSER'S INTERROGATORIES

Sandra L. Nudelman ("Nudelman" or "Applicant") hereby responds to the interrogatories filed by Marc Vianello ("Opposer") on February 18, 2007 as follows:

1. A. Legal services, specifically involving background research on judges and their opinions.

B. (i) – (vii). Not applicable. The mark was filed under Section 1(b) on February 17, 2007, and will be used once official registration has been received.

viii. The end-use of the product is to help attorneys and their clients better understand the judges handling their cases

ix. The intended end-users for this product are attorneys and their clients; however, we will concentrate our marketing efforts on attorneys.

2. With respect to providing facts for the Applicant's Affirmative Defenses:

A. With respect to Applicant's Affirmative Defense #1, that Opposer's Notice of Opposition fails to state a claim for which relief can be granted, and fails to state legally sufficient grounds for sustaining the opposition:

(a) While Opposer registered THE JUDICIAL VIEW under U.S. Serial #77031981 on March 25, 2008, the scope of this registration is limited to International Class 041 for "Publication of an online legal newspaper" which is unrelated to the class under which the Applicant filed JUDICIAL REVIEW, namely Class 045 for "Legal services, and Background investigative research and services."

(b) Opposer's second application concerning THE JUDICIAL VIEW, U.S. Serial #77212172, was filed on June 21, 2007, ***four months after Applicant's filing date*** for JUDICIAL REVIEW.

(c) Opposer's second application concerning THE JUDICIAL VIEW, U.S. Serial #77212172, filed on June 21, 2007, is of uncertain status, as an ex parte appeal of a final refusal to register the applied for mark is pending before the Trademark Trial and Appeal Board.

(d) Even given the uncertain status of Opposer's second application concerning THE JUDICIAL VIEW, U.S. Serial #77212172, the scope of said application is limited to International Class 038 for "providing ***e-mail notification alerts*** of recent court decisions to others," and International Class 041 for "Providing ***on-line publications in the nature of newspapers, newsletters, magazines, and articles in the field of law***, classified advertising, display and text advertising, law review, legal case summaries, feature articles, current events, civil rights, finance and banking, communications, immigration, education, politics, administrative law, agriculture, intellectual property, antitrust, bankruptcy, civil procedure, civil remedies, commercial contracts, computer and technology, conflicts at law, constitutional law, criminal justice, corporate and shareholder law, employment law, energy and utilities, environmental law, expert witness, family law, health, immigration, international law, lost profits, maritime and marine, military, products liability, professional malpractice, real and personal property, securities law, federal, state and local taxation, torts and personal injury, veterans, wills, trusts and estates, sports, entertainment, art, government, insurance, transportation, business valuation, alternative dispute resolution and legal matters; on-line journals, namely, blogs featuring information on recent court decisions, current events, civil rights, finance and banking, communications, immigration, education, politics, administrative law, agriculture, intellectual property, antitrust, bankruptcy, civil procedure, civil remedies, commercial contracts, computer and technology, conflicts at law, constitutional law, criminal justice, corporate and shareholder law, employment law, energy and utilities, environmental law, expert witness, family law, health, immigration, international

law, lost profits, maritime and marine, military, products liability, professional malpractice, real and personal property, securities law, federal, state and local taxation, torts and personal injury, veterans, wills, trusts and estates, sports, entertainment, art, government, insurance, transportation, business valuation, alternative dispute resolution and legal matters" [emphasis added]. Again, this is very different from Applicant's application for JUDICIAL REVIEW under International Class 045 for "Legal services, and Background investigative research and services."

(e) Finally, as Applicant filed for the mark JUDICIAL REVIEW under Section 1(b), and asserts that she has not yet used the mark in commerce yet, and has not yet received a notice of allowance, there is no basis for which the Opposer to assert past customer confusion, or damages to which he might claim potential relief.

B. With respect to Applicant's Affirmative Defenses #2-4, that Applicant's use of the mark JUDICIAL REVIEW is not likely to cause confusion with THE JUDICIAL VIEW name for three reasons:

(1) Opposer's applications for THE JUDICIAL VIEW, U.S. Serial #77031981 and #77212172, are both filed under International Class 041 for "newspaper publications." Applicant does not intend to use the mark JUDICIAL REVIEW for newspaper publications. In order to provide online content, Applicant properly registered under the International Class pertaining to that content, Class 045 for "Background investigation and research services" and "Legal services." Given that Opposer's services primarily pertain to newspaper publications, and Applicant's services primarily pertain to legal services and research, customers are unlikely to be confused by the two offerings, unless Opposer seeks to encroach upon International Class 045 in his offerings.

(2) Further, unlike THE JUDICIAL VIEW, the term JUDICIAL REVIEW carries a specific definition, separate and apart from the definitions of its component terms. JUDICIAL REVIEW is defined in the Oxford English Dictionary (for the U.S.) as "review by the Supreme Court of the constitutional validity of a legislative act." Therefore, the primary connotation of JUDICIAL REVIEW is a reference to the power granted to the judiciary that enforces a balance of power between the three branches of government. Applicant wanted to imply the ability to create such a "balance of power" between judges and the attorneys before them through the use of Applicant's services. THE JUDICIAL VIEW does not have a specific definition in the Oxford English Dictionary apart from definitions that could be implied by its component terms (e.g., the perspective of the judiciary), which is very different from the literal definition of JUDICIAL REVIEW.

(3) Even if the components of the term JUDICIAL REVIEW are abstracted and taken to mean a "review" of the "judiciary," this is still substantively different from the meaning implied by THE JUDICIAL VIEW because this would mean JUDICIAL REVIEW implies a third-party perspective **ON** the judiciary, whereas THE JUDICIAL

VIEW implies the perspective OF the judiciary. End-users would expect entirely different services based on these meanings.

3. A. Applicant and the corporation in which she holds a majority stake, Judicial Intelligence, Inc., are expected to sell services bearing the Judicial Review mark. All end-users, as identified in B(7-9) above, are expected to buy or intend to buy services bearing the Judicial Review mark.

B. As stated in 1.B.(vii-viii) above, attorneys are intended to use the services described in 1(A), above.

4. Applicant was solely involved in the origination, clearance, selection and adoption of the Judicial Review mark to identify the services outlined in 1(A) above. Applicant initially applied for a trademark for the term on February 18, 2007 (U.S. Serial #77110266). The term JUDICIAL REVIEW was selected for two reasons:

(1) it contained the word "judicial," which was indicative of the underlying judicial research facilitated by her services, and

(2) as stated in 2.B.(2), the term JUDICIAL REVIEW carries a specific definition, separate and apart from the definitions of its component terms. JUDICIAL REVIEW is defined in the Oxford English Dictionary (for the U.S.) as "review by the Supreme Court of the constitutional validity of a legislative act." Therefore, the primary connotation of JUDICIAL REVIEW is a reference to the power granted to the judiciary that enforces a balance of power between the three branches of government. Applicant wanted to imply the ability to create such a "balance of power" between judges and the attorneys before them through the use of Applicant's services.

Applicant conducted two searches when applying for her mark on February 18, 2007--one for the exact term "Judicial Review," and a second for the exact term "Judicial Intelligence." The second of these resulted in application U.S. Serial # 77110263, which was given a Notice of Allowance on November 6, 2007. No other searches were conducted, and no records were retained of those searches, as no active applications appeared in the Trademark Electronic Search System (TESS) at the time under class 045.

5. Applicant first became aware of Opposer's use of THE JUDICIAL VIEW mark on September 13, 2007 after the opposition papers against Applicant's application. Applicant received a phone call (to the number listed in the Applicant's trademark application) on September 12, 2007, asking suspicious questions regarding Applicant's business and the names of the services rendered. At the time, the Applicant was only in the process of fundraising for her company, and presentations regarding the nature of the services rendered had been exceedingly limited, leading her to question whether the inquiry had been prompted by a competitor who may have noticed her trademark application. This prompted Applicant to check on the status of her trademark application on the Trademark Applications and Registrations Retrieval (TARR) website on September 12, 2007, and found that Opposer had filed an opposition to the application.

Applicant denies having any prior or additional knowledge of, or interest in Opposer's use or offering of services under THE JUDICIAL VIEW mark.

6. Applicant has no knowledge of any occurrences of actual confusion resulting from contemporaneous use or offering of the JUDICIAL REVIEW mark by the Applicant and THE JUDICIAL VIEW mark by Opposer.

7. A. Neither Applicant, nor the corporation in which she holds a majority stake, Judicial Intelligence, Inc., has advertised services under the JUDICIAL REVIEW mark in a magazine or trade journal, but reserves the right to do so in the future.

B. Neither Applicant, nor the corporation in which she holds a majority stake, Judicial Intelligence, Inc., has made trade presentations, seminar or meetings under the JUDICIAL REVIEW mark, but reserves the right to do so in the future.

C. Neither Applicant, nor the corporation in which she holds a majority stake, Judicial Intelligence, Inc., has used the JUDICIAL REVIEW mark to promote itself or it services using any other media, but reserves the right to do so in the future.

8. Applicant is primarily responsible for marketing, advertising, sales and distribution of all services made or intended for sale.

9. Neither Applicant, nor the corporation in which she holds a majority stake, Judicial Intelligence, Inc., has engaged any advertising agencies, marketing agencies or other business entities to advertise or promote Applicant's services bearing the JUDICIAL REVIEW mark.

10. Applicant has no knowledge of any agreements entered into relating to the JUDICIAL REVIEW mark.

11. Applicant has no knowledge of any interview, surveys or public opinion polls pertaining to the JUDICIAL REVIEW mark.

12. A. Applicant has only registered JUDICIAL REVIEW through the current trademark application (U.S. Serial #77110266) to the United States Patent and Trademark Office. Application was filed under Section 1(b) on an intent to use basis on February 18, 2007, pertaining to International Class 045 for background investigation and research services and legal services.

B. No applications listed in subpart "A" above were abandoned.

13. Applicant has not made any objections or instituted legal proceeding against any third parties' use of trade names, trademarks, service marks or other designations based on Applicant's rights to the JUDICIAL REVIEW mark.

14. Applicant has no knowledge of any objections made by third parties or legal proceedings instituted by third parties against the Applicant, aside from Opposer's

current opposition to the JUDICIAL REVIEW trademark (Opposition # 91180471, mailed October 31, 2007).

15. The Applicant had sole responsibility in preparing the answers to these interrogatories and the responses to the contemporaneously served first requests for production of documents.

16. Applicant has no knowledge of such documents.

17. None identified so far, but Applicant reserves the right to retain expert witnesses going forward.

Sandra Nudelman
131 Sewall Ave #46
Brookline, MA 02446
Applicant

BARBARA S. KARLIN
Notary Public
Commonwealth of Massachusetts
My Commission Expires Jul 6, 2010

Certificate of Service

I hereby certify that a copy of the foregoing answer to the Opposer's First Set of Interrogatories to Applicant has been served by priority mail, postage prepeid, and facsimile to Arthur K. Shaffer, Intellectual Property Center, LLC, 9233 Ward Parkway Suite 100, Kansas City, MO 64114, this 2nd day of June, 2008.

SANDRA NUDELMAN

131 Sewall Ave. #46

Brookline, MA 02446

Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No.: 77/110,266 Filed: February 18, 2007 Applicant: Sandra L. Nudelman Mark: JUDICIAL REVIEW Published: August 14, 2007	Opposition No. 91180471
MARC VIANELLO, Opposer, v. SANDRA NUDELMAN, Applicant.	

SANDRA L. NUDELMAN'S ANSWER TO OPPOSER'S DOCUMENT REQUESTS

Sandra L. Nudelman ("Nudelman" or "Applicant") hereby responds to the document requests filed by Marc Vianello ("Opposer") on February 18, 2007 as follows:

1. No such documents were identified in the First Set of Applicant Interrogatories.

2. No such documents were identified in the First Set of Applicant Interrogatories.

3. No such documents were identified in the First Set of Applicant Interrogatories.

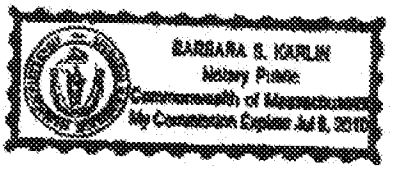
4. No such documents were identified in the First Set of Applicant Interrogatories.

DATE: June 2, 2008

Respectfully submitted,

SANDRA NUDELMAN
sandranudelman@gmail.com
131 Sewall Ave. #46
Brookline, MA 02446

Applicant



Certificate of Service

I hereby certify that a copy of the foregoing answer to the Opposer's First Set of Document Requests to Applicant has been served by priority mail, postage prepaid, and facsimile to Arthur K. Shaffer, Intellectual Property Center, LLC, 9233 Ward Parkway Suite 100, Kansas City, MO 64114, this 2nd day of June, 2008.

SANDRA NUDELMAN

131 Sewall Ave. #46

Brookline, MA 02446

Applicant

1 Volume: I
2 Pages: 1 - 110
3 Exhibits: 1 - 8
4
5 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
6 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
7 In the matter of application)
8 Serial No.: 77/110,266)
9 Filed: February 18, 2007)
10 Applicant: Sandra L. Nudelman)
11 Mark: JUDICIAL REVIEW)
12 ----------) Opposition No.
13 MARC VIANELLO,) 91180471
14 Opposer,)
15 v.)
16)
17 SANDRA L. NUDELMAN,)
18 Applicant.)
19
20 DEPOSITION OF SANDRA L. NUDELMAN
21 FRIDAY, AUGUST 29, 2008 - 11:00 A.M. TO 1:30 P.M.
22 THE McCORMACK FIRM, ONE INTERNATIONAL PLACE
23 BOSTON, MASSACHUSETTS
24 Reporter: Donna J. Whitcomb, CSR/RPR/RMR

1 A P P E A R A N C E S:
2
3 SONNABEND LAW
4 By Jeffrey Sonnabend, Esquire
5 600 Prospect Avenue
6 Brooklyn, New York 11215
7 (718) 832-8810 JSonnabend@SonnabendLaw.com
8 On behalf of the Opposer.
9
10 SANDRA L. NUDELMAN, PRO SE
11 131 Sewall Avenue, #46
12 Brookline, Massachusetts 02446
13 sandranudelman@gmail.com
14 On behalf of the Applicant.
15
16
17
18
19
20
21
22
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24

1 I N D E X

2 EXAMINATION OF: DIRECT CROSS REDIRECT RECROSS
3 SANDRA NUDELMAN
4 By Mr. Sonnnabend 4

5

6

7 E X H I B I T S

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10 Re: TEAS Plus Application
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13 4 Examiner's Amendment 81
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15 5 Opposer's First Set of Document Requests 95
16 6 Washington University Newsletter Article 101
17 7 Document, Re: Judicial Intelligence 102
18 "About Us"
19 8-1 DVD, Copy 1, Re: Contest Presentation 104
20 8-2 DVD, Copy 2, Re: Contest Presentation 104

21

22 *Original exhibits returned to Attorney Sonnabend
23 and Exhibit No. 8-2 retained by the witness.

24

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

2 SANDRA L. NUDELMAN, having been
3 satisfactorily identified was duly sworn by the
4 Notary Public that her testimony will be the truth,
5 the whole truth and nothing but the truth testified
6 as follows in answer to direct interrogatories by
7 Mr. Sonnabend:
8 Q. Thank you for coming, Ms. Nudelman. Today
9 this is the deposition of Sandra Nudelman in the
10 matter of application Serial No. 77/110,266,
11 Proceeding No. 91180471 before the Trademark Trial
12 And Appeal Board. Ms. Nudelman, have you ever been
13 deposed before?
14 A. No.
15 Q. Let me tell you real quickly what this is
16 all about and how it works and why it's not really
17 as scary as people make it out to be. You've just
18 been sworn in and I'm going to now ask you a series
19 of questions. You're going to be answering them
20 pursuant to the oath you just took. The swearing,
21 the oath, you've sworn to tell the truth. I don't
22 want you to answer things you don't know. I don't
23 want you to offer conjecture or guesses. If you
24 don't know the answer to something, that's what you

1 should tell me. If there are any questions I ask
2 that aren't clear, which there's a possibility,
3 please let me know, I will do everything I can to
4 clarify them. And also being a New Yorker, I tend
5 to speak too fast so if you don't understand
6 something I say because I've spoken too fast, please
7 let me know and I will try to slow down.
8 A. Uh-hum.
9 Q. Do you have any questions before we start
10 about how this works or anything?
11 A. Nope.
12 Q. Then let's just jump in. I'd like to
13 start with just some background, some easy stuff.
14 Can you tell me about your education post high
15 school?
16 A. Harvard College, Harvard Business School.
17 Q. And Harvard College, you got a degree from
18 Harvard College?
19 A. Yes.
20 Q. What degree was that?
21 A. A Bachelor of Arts.
22 Q. Bachelor of Arts in what field?
23 A. Behavioral Economics.
24 Q. What is Behavioral Economics?

1 A. It's the study of the intersection of
2 psychology and economics.
3 Q. Things like consumer behavior and the
4 like?
5 A. Sort of.
6 Q. Did you get a master's from Harvard
7 Business School?
8 A. Master's in Business Administration.
9 Q. An MBA. What year did you get your MBA?
10 A. 2007.
11 Q. What about your BA?
12 A. 2003.
13 Q. 2003. And you graduated high school in
14 '99?
15 A. Yes.
16 Q. Were you from the Boston area?
17 A. Long Island, New York.
18 Q. I think I saw Dix Hills somewhere?
19 A. Uh-hum.
20 Q. I have an old college roommate from Dix
21 Hills. You graduated from the high school in Dix
22 Hills?
23 A. Home Ec. high school.
24 Q. Where are you living currently?

1 A. 131 Sewall Ave., Apartment 46, Brookline,
2 Mass.
3 Q. S-E-W--
4 A. S-E-W-A-L-L.
5 Q. Sewall?
6 A. Ave.
7 Q. Brookline?
8 A. Yeah, Apartment 46.
9 Q. Are you currently employed?
10 A. Yes.
11 Q. Where are you employed?
12 A. McKenzie & Company.
13 Q. What does McKenzie & Company do?
14 A. Management consulting firm
15 Q. They're a rather large firm?
16 A. Yes.
17 Q. What's your position there?
18 A. Associate, consultant.
19 Q. What kind of things do you consult on?
20 A. How I do explain that -- strategy
21 questions.
22 Q. Things like product positioning, market
23 evaluation?
24 A. Growth strategy --

1 Q. The areas I mentioned are they --
2 A. Not as much. Growth strategy, some back
3 office operations.
4 Q. What is growth strategy?
5 A. Determining how to pursue a new market.
6 Q. A new market for products and services?
7 A. Uh-hum
8 Q. You have to answer verbally.
9 A. Yes, yes. And I do this for financial
10 services companies.
11 Q. What kind of products and services do
12 these financial services companies have that you
13 work with?
14 A. I concentrate mostly in the payment
15 sector. So things like unscoured and secured loans,
16 sometimes deposits.
17 Q. When you're helping one of your clients
18 with their growth strategy, does that help include
19 looking for new market for their products and
20 services?
21 A. In the cases I've been involved, they have
22 generally identified the market they want to look at
23 and I help them size it and assess it. But it
24 could.

1 Q. In connection with that market assessment
2 do you explore what demands there might be for the
3 products and services of the clients?
4 A. Yes.
5 Q. The trademark at issue which we will --
6 market issue, application market issue which we'll
7 get into in a little more detail a bit later is
8 Judicial Review; is that correct?
9 A. Yes.
10 Q. Okay, I have the right case then.
11 Judicial Review covers -- is going to
12 be used in connection with certain services. I'm
13 correct?
14 A. Uh-hum
15 Q. That was a, "yes"?
16 A. Yes.
17 Q. It's all right, depositions are very
18 different from normal conversation. It takes some
19 time. Are you currently developing a business in
20 connection with the services that will be branded
21 with the Judicial Review mark?
22 A. Yes.
23 Q. Let's start kind of at the beginning then.
24 Well, let's -- maybe let's do this first. Can you

1 give me a brief explanation as to what the services
2 are?
3 A. Yes, I can.
4 Q. Okay.
5 A. *I'm trying to think of the best way to
6 describe it. It is a database of judicial decisions
7 that allows you to track and trend and find patterns
8 in judicial decision making. So it renders
9 statistical data in the forms of graphs and charts
10 in an online, on demand format for the user.
11 MR. SONNABEND: Can you just reread
12 the answer? I want to make sure that I got the
13 right buzz words there.
14 (*Record read as requested)
15 MR. SONNABEND: Thank you.
16 Q. When did you first have the idea for this
17 business?
18 A. Some time around October and November of
19 2006.
20 Q. How did you come to this idea?
21 A. I was attending a oral argument on
22 behalf -- that my mother was making in Appellate
23 Court and I asked her some questions about her
24 preparation and realized that her preparation was

1 inadequate and there was a potential market for
2 something.
3 Q. Your mother's an attorney?
4 A. Yes.
5 Q. Do you remember where the oral argument
6 was?
7 A. Brooklyn.
8 Q. Is it federal court or state court, do you
9 know?
10 A. I don't remember.
11 Q. After you had this genesis of an idea in
12 October or November of 2006, what was your next
13 step, what did you do next in connection with
14 developing this service?
15 A. I applied to the business plan contest at
16 Harvard Business School.
17 Q. Can you explain to me what this business
18 plan contest was, what it involved, what was it
19 about?
20 A. So the business plan contest is an
21 academic exercise where everyone submits a business
22 plan and presentation to a closed group of judges
23 who are ostensibly under confidentiality. And
24 they're rated by those judges and someone wins.

1 Q. What do you win, what does the winner win?
2 A. Cash prize.
3 Q. So in connection with the Harvard Business
4 Plan Contest you submitted a business plan?
5 A. Uh-hum
6 Q. At the time you submitted the business
7 plan had you already come up with the mark, Judicial
8 Review?
9 A. At that time I had, yes.
10 Q. Do you remember when you came up with the
11 mark, Judicial Review?
12 A. I believe I first thought of them when I
13 was coming up with the business idea, but I didn't
14 bother to file because I wasn't sure whether it was
15 something I was going to pursue. So in terms of
16 actual filing date, that was sometime in February of
17 2007.
18 Q. I want to understand about the business
19 plan, the actual document -- well, let me ask that
20 question. The business plan is a document, correct?
21 A. Yes.
22 Q. And you created one yourself for the
23 contest?
24 A. Uh-hum

1 Q. That was a, "yes"?
2 A. Yes.
3 Q. In the business plan does it talk in part
4 about the mark, Judicial Review?
5 A. It doesn't talk about it as a mark. I
6 brought up different names for the product.
7 Q. Names of the product. In your
8 understanding how does a name of a product differ
9 from a mark if at all?
10 A. At that point I was purely doing an
11 academic exercise and I was filing more for the
12 purposes -- I wasn't sure that I was taking the
13 business idea seriously. I didn't know how it would
14 be perceived and I was using the business plan
15 contest as a way to gauge whether there was a market
16 and there was interest in this idea. And so I filed
17 the mark simultaneously with filing the business
18 plan, so that I could be able to say that I had
19 filed some sort of intellectual property.
20 Q. Okay, let me make sure I understand the
21 answer. In your view is the name of a product
22 different from a mark?
23 A. I'm guessing that's a legal definition
24 that I don't know.

1 Q. Is it fair to call your offering under the
2 name "Judicial Review" a product?
3 A. You could call it a tool and I would guess
4 a tool could be construed as either a product or
5 service.
6 Q. So it has aspects of both product and
7 service.
8 A. Uh-hum.
9 Q. Okay, in the business plan though, to get
10 back to the actual document, you do mention the name
11 "Judicial Review," correct?
12 A. I believe I did.
13 Q. Do you still have a copy of the business
14 plan?
15 A. The one I submitted to the business plan
16 contest?
17 Q. Correct.
18 A. I believe I do.
19 Q. As far as I understand that was not
20 produced in response to the document requests and I
21 believe it falls under the request. So I'm going to
22 request here on the record that we get a copy of
23 that.
24 A. Portions of that are confidential and have

1 trade secrets and so that would have to be redacted.
2 Q. Well, we can talk about that. Certainly I
3 don't want to turn over any confidential or
4 sensitive information to the other side. Generally
5 speaking, we can enter into a confidentiality
6 agreement. We can tailor it so that things are
7 protected when documents are very sensitive, which
8 as I mentioned you deem this to be. That's fine, we
9 can make those portions or the whole document
10 "Attorneys' Eyes Only," so I'd be able to see it and
11 counsel in Missouri would be able to see it, but the
12 client would not see it.
13 And to the extent it was entered into
14 the proceedings it's done so under all kinds of
15 rules to make sure that only judges see it and no
16 one else basically. We can get that set up. Just
17 to be clear I'm going to request that business plan.
18 I do request that business plan.
19 I take it from your answer, if I
20 understood correctly, that there might have been
21 some business plans later -- there was a business
22 plan for the contest, correct?
23 A. Uh-hum.
24 Q. And then were there subsequent revisions

1 of the business plan?
2 A. Yes.
3 Q. Those also discussed the product and the
4 mark, Judicial Review?
5 A. Those do not include the name "Judicial
6 Review." So I did not use the name "Judicial
7 Review" after the business plan contest.
8 Q. Understood. So the subsequent revision
9 they talk about the product that you intend to brand
10 with the name "Judicial Review"?
11 A. Yes.
12 Q. So I'm going to request those as well.
13 And, again, you can get in touch with either me or
14 the counsel for -- or Mr. Shaffer, I should call him
15 by name, to work out a confidentiality agreement
16 that you're comfortable with before this closes.
17 But we should get that going as soon as possible.
18 We have some limits time wise that the Board has put
19 in place.
20 A. I would assume that the confidentiality
21 agreement would include some sort of noncompete as
22 well?
23 Q. Yes, we can hit all those terms, but it
24 never gets into his hands. But, yes, both Shaffer

1 and -- all counsel involved will be ethically banned
2 to otherwise not compete, yes, absolutely.
3 In connection with the contest, did
4 you do any kind of market study?
5 A. What do you mean by "market study"?
6 Q. Well, let me throw that back at you. The
7 term "market study" is generally a term that I think
8 a business consultant might come across, yes?
9 A. There are multiple definitions for what
10 you would mean.
11 Q. Okay, under any of the definitions that
12 you commonly use -- strike it, let me ask it this
13 way. Did you do anything in connection with the
14 business plan under the contest that you considered
15 a market study?
16 A. I researched other competitors who offered
17 similar types of products. I tried to understand in
18 general who the major players were in legal
19 services. I tried to understand the major
20 customers' needs.
21 Q. What competitors did you research during
22 this time?
23 A. The major ones. So Wolters Kluwer, Reed
24 Elsevier, Thomson.

1 Q. Thomson is -- you have to wait. Thomson
2 is Westlaw?
3 A. Westlaw.
4 Q. Reed Elsevier is Lexis.
5 A. Westlaw is Loislaw -- no, sorry, Wolters
6 Kluwer is -- yes, Wolters Kluwer is Loislaw.
7 Q. Right. I'm not even familiar with
8 Loislaw. It must be a state law thing.
9 A. It's federal.
10 Q. Is it?
11 A. It's a similar service to Westlaw, Lexis.
12 Q. I'm very brand loyal. I'm a Westlaw guy.
13 You call them competitors, these
14 are -- Westlaw's a publisher, Lexis is a publisher?
15 A. They have multiple products, so portions
16 of their platforms could be construed for uses
17 similar to what my product would be used for.
18 Q. Which portions of their platforms would
19 that be?
20 A. Specifically I -- I don't remember the
21 exact names but the portions that are tailored for
22 litigators to research judicial backgrounds.
23 Q. So Westlaw has a product, if I understand
24 your testimony correctly, Westlaw has a product that

1 allows its customers to research judicial
2 backgrounds?
3 A. Well, in theory you could go and search a
4 judge's name and bring up all of their cases and
5 read through all of their cases.
6 Q. Okay, understood. So their case law
7 database competes at some level with your product,
8 if I understand correctly?
9 A. It's a very poor competitor, but it is a
10 competing offer.
11 Q. Okay, understood, understood. And Lexis,
12 I guess, is the same thing; they have a case law
13 database as well, so the same applies for Lexis?
14 A. Yes, and a biography of the judge.
15 Q. Okay, understood. So let me see -- so by
16 publishing this database of judges' biographies, the
17 database of decisions, etc., Westlaw is a
18 competitor, albeit a poor one, with your product
19 branded under the Judicial Review name?
20 A. Yes.
21 Q. When you did these studies of these
22 competitors, did you produce any written work
23 product? Were there market study reports or
24 competitor reports or anything you did?

1 A. It's all part of the business plan.
2 Q. It's all in the business plan.
3 Is a market analysis different from a
4 market study or am I totally mangling terms of art
5 here?
6 A. I would consider a market analysis to be
7 more quantitative, so in terms of sizing demand.
8 Q. Okay, did you do a market analysis in
9 connection with your business plan?
10 A. Yes.
11 Q. Was there a written product for that?
12 A. It's in the business plan.
13 Q. So there were never separate documents
14 prepared for the market study or the market
15 analysis?
16 A. No.
17 Q. I'm correct that there were no other
18 documents?
19 A. There were no other documents.
20 Q. In performing your market study and your
21 market analysis, did you generate any working
22 documents, notes, spreadsheets or the like?
23 A. Probably, but I never really kept interim
24 work product. Everything -- I tried to keep

1 everything in a version of the business plan.
2 Q. Understood. Have you kept multiple
3 versions of the business plan?
4 A. I used to but I had a hard drive that died
5 and so a lot of those have been discarded.
6 Q. Okay, to the extent that you have multiple
7 revisions I request the revisions as well. You used
8 the term before, if I understood correctly, the term
9 "legal services" to refer to the field in which
10 Westlaw and Lexis operated; am I correct?
11 A. Yes.
12 Q. Is it the legal services industry, what is
13 legal services?
14 A. So "legal services" is a broad industry
15 definition for all those companies.
16 Q. Does your product fall in the legal
17 services industry rubric as well?
18 A. Yes.
19 Q. What's the current state of development of
20 your product?
21 A. We have a prototype that is operational
22 and development is continuing.
23 Q. And development is continuing?
24 A. Development is continuing.

1 Q. You have software developers writing the
2 software for you?
3 A. I had one who was working for me but she's
4 going back to school soon so...
5 Q. Who is that?
6 A. Elli Lobach.
7 Q. Do you have the spelling of her name?
8 A. E-L-L-I, Lobach, L-O-B-A-C-H.
9 Q. And she's located in the U.S.?
10 A. Yes.
11 Q. Have you filed any patent applications to
12 cover the product?
13 A. No.
14 Q. Have you filed any provisional
15 applications to cover the product?
16 A. No.
17 Q. Have you spoken to any attorneys about
18 filing an application?
19 A. Yes.
20 Q. When did you speak to an attorney about
21 that?
22 A. As part of the business plan contest there
23 was an attorney who came to campus. I don't even
24 recall his name.

1 Q. But you never actually filed an
2 application?
3 A. No.
4 Q. Did you ever tell anyone you filed an
5 application?
6 A. No.
7 Q. You had a Delaware corporation?
8 A. I had one.
9 Q. And it's no longer --
10 A. I had to dissolve it because of my current
11 employment at McKenzie. They do not allow me to
12 have a permanent position on a board of directors.
13 Q. Are you on the business side as opposed to
14 the product development side? Are you still
15 actively developing your business?
16 A. I am self funded so I am attempting to
17 develop my business at this point.
18 Q. How active would you say you are right now
19 in this business?
20 A. Getting more active. So the more I -- my
21 savings account grows the more active I become.
22 Q. I know that feeling. I take it then for a
23 while things were developing -- development of the
24 business was slow?

1 A. It goes on and off depending on my
2 finances.
3 Q. Understood. Did you at any time have a
4 board in connection with the Delaware corporation?
5 A. Yes.
6 Q. Who was on the board?
7 A. Me.
8 Q. Small board.
9 A. Yes, I think Elli may have been on the
10 board. I don't remember.
11 Q. I imagine there was very little infighting
12 on the board?
13 A. Well, there was but it was just between
14 myself and I.
15 Q. Did you ever have -- I don't know if the
16 right word is a board of advisers or group of
17 advisers?
18 A. Not official.
19 Q. Did you have an unofficial group of
20 advisers?
21 A. I had people I consulted on a one op.
22 basis.
23 Q. Are you presently seeking private funding?
24 A. Today? No, in the next few months, yes, I

1 am going to try again. The market environment is
2 not very good.
3 Q. Yes, I agree with that. Up until now have
4 you made any pushes to get funding for the product?
5 A. I did make a push after the business plan
6 contest, yes.
7 Q. Did you contact people in connection with
8 this push for funding?
9 A. Yes, there was a contest at a local
10 venture capital firm called Highland Capital
11 Partners.
12 Q. Highland Capital Partners?
13 A. Yes.
14 Q. And they had a contest?
15 A. Yes.
16 Q. They're a VC firm and they had a contest?
17 A. Yes. And I incubated there for a few
18 months.
19 Q. I always thought that was a strange
20 phrase. When you say you intubated there for a few
21 months, can you explain what you mean by that?
22 A. They gave me office space, advice as
23 needed. Just -- and they gave me money in order --
24 not directly to the company but just to me to fund

1 me in developing the idea.
2 Q. Understood. Did you have a particular
3 mentor there or mentors?
4 A. I had someone who was assigned to me I met
5 with twice.
6 Q. Do you remember who that was?
7 A. Peter Bell.
8 Q. Peter Bell?
9 A. Yeah.
10 Q. B-E-L-L?
11 A. Yeah.
12 Q. Is Highland Capital Partners still in
13 existence?
14 A. I believe so.
15 Q. Where are they located?
16 A. I should know that. I don't remember the
17 exact town. It's near Waltham or it might be in
18 Waltham
19 Q. Up here, though?
20 A. Yeah.
21 Q. So says the New Yorker.
22 You incubated Highland Capital
23 Partners after the Harvard Business Plan contest,
24 yes?

1 A. Yes.
2 Q. Do you know roughly month and year that
3 you started incubating there?
4 A. Roughly it would have been June '07 to --
5 through August '07.
6 Q. And why did you leave?
7 A. It was a summer program.
8 Q. Did you ever prepare any prospectus or
9 similar documents in connection with the funding
10 drive?
11 A. The business plan, same plan. Everything
12 is in one document. I try to keep organized.
13 Q. Let's dive into the product a little more,
14 the product -- the Judicial Review product. And let
15 meet start by asking a question, and make sure I'm
16 using the right terminology. If I say the "Judicial
17 Review product," do you understand that to mean the
18 product, slash, service that you described earlier
19 in connection with the -- let me get the right
20 wording here -- connection with the tracking and the
21 trending, the finding of patterns in judicial
22 decision making?
23 A. Yes, that's fine.
24 Q. So the Judicial Review product, was there

1 a problem, was there something lacking in what
2 Westlaw, for instance, or Lexis provided that the
3 Judicial Review product does? Was there a shortfall
4 that it solves, a problem that it solves?
5 A. Yes.
6 Q. What is that?
7 A. They don't provide statistical
8 quantitative analyses of these patterns. The
9 attorney has to find them themselves.
10 Q. You're using some kind of statistical
11 analysis on data pulled from a review of the
12 judicial record?
13 A. So it's data created by reviewing the
14 judicial record that is then statistically analyzed.
15 Q. Okay, so you start with the review of the
16 judicial record, yes?
17 A. Yes.
18 Q. You pull out certain data points?
19 A. Uh-hum
20 Q. "Yes"?
21 A. Yes.
22 Q. And then you perform statistical analyses
23 on these data points?
24 A. Yes.

1 Q. In order to determine whether there are
2 trends in the judicial decision making on a
3 judge-by-judge basis?
4 A. Yes. Or jurisdiction by jurisdiction
5 basis.
6 Q. I take it that, from your earlier
7 testimony, that an attorney if he were so inclined,
8 so motivated, could review the judicial record that
9 exists in the Westlaw database; is that correct?
10 A. They could.
11 Q. And an attorney could perform a judicial
12 review of the database that Lexis has; is that
13 correct?
14 A. Yes.
15 Q. And there was a third company?
16 A. Wolters Kluwer.
17 Q. Walter?
18 A. Wolters Kluwer.
19 Q. So an attorney could do a judicial review
20 of the database that Wolters Kluwer has if they were
21 motivated?
22 A. If they were motivated and had the time
23 and their client had the money.
24 Q. Understood. Do you think there's a lot of

1 demand for the product, the Judicial Review product?
2 A. I believe there is, yes.
3 Q. Can you describe, can you characterize for
4 us and for the Board what that demand is?
5 A. The demand is for -- in high value
6 litigation.
7 Q. Who would be the demanders?
8 A. Most likely corporate clients and then
9 because of that their attorneys.
10 Q. It's basically a litigators' tool,
11 correct?
12 A. Yes.
13 Q. Did your business plan discuss any
14 specifics about rolling out the product and where
15 you would -- who you would target first or
16 subsectors of the market you would target first;
17 that kind of thing?
18 A. Yes.
19 Q. What did it talk about in that regard?
20 A. We would target lawyers at corporations
21 first to generate demand at larger corporate firms
22 that do litigation second.
23 Q. So in house counsel first?
24 A. Uh-hum.

1 Q. And then large law --
2 A. Large external counsel as pull-through
3 demand.
4 Q. Pull-through demand?
5 A. (Nods head)
6 Q. Sometimes I think the MBA vernacular is as
7 foreign to a patent attorney as patent vernacular
8 must be to an MBA student. "Pull-through demand,"
9 okay. Large external counsel as a pull-through
10 demand market.
11 A. Uh-hum.
12 Q. Do you have a characterization or
13 quantization of what a large external firm is as to
14 a large firm, is there a cutoff that you have, for
15 instance?
16 A. I went back and forth on this a lot. I
17 think -- I don't remember where I ended up in the
18 most current version of the business plan but my
19 intuition now says something around -- you know,
20 more than 250 attorneys is a large firm.
21 Q. And at any time did you have a different
22 definition?
23 A. It may have gone down as low as 50 but
24 that would be in secondary and tertiary phases of

1 roll out.
2 Q. Did you ever analyze or did you ever come
3 to a conclusion as to what the total market would be
4 for, say, law firms, 50 or more attorneys?
5 A. So in that inter-- so 50 or more total?
6 Q. Right.
7 A. Yes, probably in several hundred million
8 dollars if done appropriately.
9 Q. Okay, that sounds like a reasonable size
10 market.
11 A. Yeah.
12 Q. Did you do the same thing for in-house
13 general counsel?
14 A. I assumed that the in-house counsel would
15 be receiving their reports through their external
16 counsel. So it's a single -- single payment.
17 Q. Does the Judicial Review product publish
18 information to attorneys?
19 A. No.
20 Q. It provides information to attorneys?
21 A. Yes, in an on-demand fashion. So in the
22 same way that in Westlaw you type in a word to
23 search and based on the word you search different
24 information comes up; that is how it works.

1 Q. Is the Judicial Review product -- strike
2 that, let me ask it this way. Let's back up. The
3 company that you had formed, was that Judicial
4 Intelligence?
5 A. Yes.
6 Q. Sounds like a nazi want to be, but I
7 shouldn't say that on the record. All right,
8 Judicial Intelligence was the business or the -- was
9 the intended business of Judicial Intelligence a
10 consulting business?
11 A. No.
12 Q. How would you characterize the intended
13 business of Judicial Intelligence?
14 A. It's the holding company for the product
15 that we have previously defined as Judicial Review.
16 Q. Is it unfair to characterize it as
17 judicial consulting?
18 A. It is unfair in the sense that we would
19 not be doing any specific consulting work. We would
20 provide information that an attorney could interpret
21 for themselves.
22 Q. Okay, I see. I see. So it differs from,
23 say, trial consulting?
24 A. Yes.

1 Q. And I take it that you're familiar with
2 trial consulting at least in a general sense?
3 A. Yes.
4 Q. What's your understanding, just so I'm
5 sure we're on the same page, as to what trial
6 consulting comprises?
7 A. So my understanding of trial consulting is
8 that there's really two forms: You have jury
9 consultants who can come in and can give
10 psychographic profiling, in other words, to select
11 specific jurors generally, I guess, for criminal
12 cases. And you also have sometimes expert witnesses
13 that are pulled in for these companies that are
14 called "trial consulting firms" and so providing
15 expert witness testimony.
16 Q. What is -- you said "psychographic"?
17 A. And I guess demographic profiling.
18 Q. What is psychographic profiling?
19 A. So trying to -- using the demographics and
20 the information you have about that juror, potential
21 juror, trying to ascertain how you think that person
22 would decide and potentially get them thrown out if
23 you don't think that they would be fair for your
24 client.

1 Q. Okay.
2 A. At least that's my understanding of how it
3 works.
4 Q. Okay, fair enough. The Judicial Review
5 product would provide information to attorneys to
6 help them start forming the psychographic profile of
7 a judge, for instance; is that fair to say?
8 A. It's different. Jury consulting relies
9 purely on a couple of pieces of data about ZIP codes
10 and income and education level and then tries to
11 ascertain what that person will decide. This is
12 based purely on the judge's previous decision
13 history and cases.
14 Q. Okay, but you provide that information
15 that you just mentioned to attorneys; that's what
16 the Judicial Review product does?
17 A. Yes.
18 Q. Okay, and in your opinion is there a
19 difference between providing information and
20 publishing information?
21 A. Yes, because publishing information is
22 inherently static. So, for example, the New York
23 Times publishes an article, it goes on line; that is
24 the article. Whereas providing information -- the

1 information is different for any user that tries to
2 pull it. It's completely customized.
3 Q. So the difference is a level of
4 customization of the information given; am I
5 understanding correctly?
6 A. So, for example, would you consider Google
7 a publisher?
8 Q. Well, let me ask you that question. Would
9 you consider Google a publisher?
10 A. No, not unless -- no.
11 Q. If Google created custom reports and
12 provided those to its customers, would you consider
13 it a publisher?
14 A. If the reports are static and provided to
15 more than one customer, yes, they would be a
16 publisher. So if I'm creating an article and
17 handing it out to five people; that's a publisher.
18 Q. You if you create an article and hand it
19 out to one person, in your opinion are you not a
20 publisher?
21 A. I suppose you would be.
22 Q. What makes a report static versus, I
23 suppose, dynamic? Let me just ask this, strike
24 that. What makes a report in your opinion static?

1 A. That there are no dynam-- that there's no
2 flexibility to it, there's no dynamicism. So, for
3 example, we're using an online format that, you
4 know, basically displays statistical information.
5 It has tic marks and the user can customize the way
6 that chart looks and the information that's being
7 pulled right then and there. So the chart is very
8 unlikely to ever look the same way twice to that
9 user or to anyone else unless they do the exact same
10 search pattern.
11 Q. Okay. I take it, based on your testimony,
12 you're fairly well familiar with Westlaw's services
13 and Lexis' services; is that correct?
14 A. Yes.
15 Q. In your opinion does Westlaw publish any
16 static content?
17 A. Well, their bound books are certainly
18 static.
19 Q. Fair enough.
20 A. Their bound copies are certainly static.
21 Q. How about in their online offerings?
22 A. Yes, because the case law you're pulling
23 is always the same. So if I'm searching for a
24 specific decision from a specific date, whether I

1 pull it today or you pull it today or I pull it a
2 week from now or you pull it a week from now it's
3 going to look exactly the same. It's not updated
4 continuously and it's something that is very likely
5 to look the same to everyone.
6 Q. In your understanding of the market, is
7 demand driven by the static versus dynamic
8 differential?
9 A. Yes.
10 Q. Can you explain how?
11 A. People want to know that their decision --
12 or their -- the decision criteria they're using is
13 completely up to date.
14 Q. Running a search on Westlaw on a topic
15 will provide that, correct?
16 A. In theory, yes. But the amount of time it
17 would take to absorb all of that information maybe
18 is not feasible from a usability perspective.
19 Q. In the absence of your product being on
20 the market, the Judicial Review product, if an
21 attorney has the resources, I take it that he can go
22 to Westlaw and run a search on the Westlaw database,
23 pull the information from the Westlaw database, and
24 crunch the numbers, again, if he has the resources;

1 am I correct, is that accurate?
2 A. He could and would be doing a great
3 disservice to his client because it would take
4 thousands of hours.
5 Q. Fair enough. Fair enough.
6 MR. SONNABEND: Let's mark as Exhibit
7 1 a TEAS Plus application for Serial #77110266,
8 filing date February 18, 2007.
9 (Document marked as Exhibit No. 1
10 for identification.)
11 Q. I'm going to hand you what's been marked
12 as Exhibit No. 1. Take as much time as you need
13 just to familiarize yourself just generally with the
14 document. And when you've done that the first
15 question I'm going to ask you is: Does this
16 document look familiar to you, do you recognize it?
17 A. Yes.
18 Q. What is Exhibit No. 1?
19 A. This is the trademark application I
20 submitted for the mark Judicial Review.
21 Q. Who prepared the application?
22 A. I did.
23 Q. Did anyone help you prepare the
24 application?

1 A. No.
2 Q. Do you remember when you prepared the
3 application?
4 A. Must have been the same day that I filed
5 it. So February 18th.
6 Q. Are you familiar with the phrase "I.D." as
7 it's used in connection with a trademark
8 application?
9 A. No.
10 Q. Are you familiar with the phrase "Goods
11 and Services" as it's used in connection with a
12 trademark application?
13 A. It sounds vaguely familiar.
14 Q. Do you see about two-thirds of the way
15 down the first page a heading, "Goods And/Or
16 Services And Basis Information"?
17 A. Yes.
18 Q. Under that do you see an entry that says,
19 "Description"?
20 A. Yes.
21 Q. What is your understanding of what that
22 field is, what information do you understand that to
23 be asking for?
24 A. I'm guessing that that was what you

1 mentioned is goods and services.
2 Q. Do you know substantively what is being
3 requested of you for that field?
4 A. I believe so, yes.
5 Q. What's your understanding?
6 A. A description of the goods and services
7 that the mark is intended to provide.
8 Q. Did you fill in the information that
9 appears next to, "Description"?
10 A. Yes.
11 Q. Just for the record I'll read it:
12 "Background investigation and research services;
13 Legal services." Did I read that correctly?
14 A. Yes.
15 Q. What is background investigation -- strike
16 that. Let me ask this. I'm not clear about the
17 conjunction "and," is it background investigation
18 services and research services or is it research
19 background and investigation services; is it two
20 separate services or is it one service there?
21 A. You might want to ask the Trademark Board
22 because that was one of the prefabricated items in
23 the application.
24 Q. It was. So this you took from the I.D.

1 manual --
2 A. Yes.
3 Q. -- from the list of approved --
4 A. Yes.
5 Q. What did you understand that to mean when
6 you picked that from the list?
7 A. That it was any service that allowed you
8 to better understand someone's background.
9 Q. Did you disclose to the Trademark Office
10 anywhere in this application that the background
11 that you would be searching was background for the
12 judiciary?
13 A. (Witness perusing document.)
14 Q. Take as much time as you need to look
15 through it.
16 A. I don't believe that was requested in the
17 application.
18 Q. So if I understand correctly you did not
19 disclose to the Trademark Office in this application
20 that you will be doing judicial background review
21 under the mark; is that correct?
22 A. I don't know if there was -- I don't
23 remember if there's anything else that I submitted
24 in addition to this application.

1 Q. Sitting here today do you recall
2 disclosing that information to the Trademark Office?
3 A. I don't remember.
4 Q. Do you think that information is relevant
5 to the Trademark Office's review of your
6 application?
7 A. I don't know.
8 Q. Let's look at the second of the two
9 descriptions. You have, "legal services." What is
10 your understanding of what that means as used in the
11 description field?
12 A. Services provided to lawyers or services
13 provided by lawyers to their clients.
14 Q. So it's not legal services as in providing
15 legal counsel?
16 A. Under the broadest definition you could
17 construe it that way but it also incorporates any
18 services to lawyers.
19 Q. So as you used it in this application you
20 didn't intend it to mean being a lawyer?
21 A. No.
22 Q. Correct?
23 A. You are correct.
24 Q. Do you see under "Description" it says,

1 "Filing Basis"?
2 A. Yes.
3 Q. Do you have an understanding of what that
4 is?
5 A. That is the basis under which I filed.
6 Q. And what basis did you file under?
7 A. Under Section 1(b).
8 Q. Which means what to you?
9 A. According to the page in the exhibit, it
10 says: If the applicant is filing under Section
11 1(b), intent to use, the applicant declares that it
12 has a bona fide intention to use or use through the
13 applicant's related company or licensee the mark in
14 commerce or in connection with the identified goods
15 and services.
16 Q. And that was your understanding of what it
17 meant to file this as a 1(b) application?
18 A. Yes.
19 Q. At the time you filed this back in
20 February of '07 when did you intend to start using
21 the mark?
22 A. After graduation.
23 Q. Okay, let me make sure I'm clear, because
24 "after graduation" I suppose could mean any time

1 between now and the time my grandchildren graduate.
2 Let's narrow it down. When you say "after
3 graduation" I take it you mean shortly after
4 graduation?
5 A. Once I began working on it full time.
6 Q. After you graduated from Harvard with your
7 MBA?
8 A. Uh-hum.
9 Q. Which was what 2007, you said, right?
10 A. Uh-hum.
11 Q. Let me ask just to clear up dates, you
12 graduated -- you got your MBA from Harvard Business
13 School in the spring of '07?
14 A. June of '07.
15 Q. So after you graduated with your MBA from
16 Harvard Business School in June of 2007 did you --
17 we know you went that summer to the venture
18 capitalist, right?
19 A. Uh-hum.
20 Q. After you left the venture capitalist in
21 August of '07, did you continue working actively on
22 the Judicial Review product?
23 A. Yes.
24 Q. In August of '07 -- strike that, let me

1 ask this: At what point did you go to work, and I
2 apologize if I asked this before, at what point did
3 you start working at McKenzie?
4 A. January of '08.
5 Q. From August of '07 to January of '08 did
6 you have any other employment?
7 A. No, I was working full time on Judicial
8 Intelligence and Judicial Review.
9 Q. So from graduation or before your
10 graduation from Harvard Business School through the
11 time you started at McKenzie you were actively
12 working on Judicial Review?
13 A. Well, at the time we were calling it
14 "Judicial Intelligence" but, yes.
15 Q. At that time you were working on the
16 Judicial Review product?
17 A. But we were just calling the company
18 "Judicial Intelligence" and we weren't referring to
19 the product.
20 Q. Okay, understood. I take it from your
21 testimony that at some point you pulled back the
22 active development of the Judicial Review product;
23 is that correct?
24 A. Yes.

1 Q. Did you ever completely cease your
2 activities, your development activities of Judicial
3 Review?
4 A. No.
5 Q. What was the nadir, the low point, in
6 terms of amount of activity in connection with the
7 Judicial Review product?
8 A. Do you mean the time or a description?
9 Q. You tell me. Was there a point, looking
10 back now, that you would say for X amount of time I
11 was doing almost nothing on this or very little
12 or --
13 A. It's kind of a consistent buzz since
14 January.
15 Q. Since January of '08?
16 A. Right.
17 Q. You've been working on it consistently
18 although levels of how much you were working on it
19 changed?
20 A. It's not full time anymore. Can't be.
21 Q. Understood, we have to eat.
22 A. Yeah.
23 Q. Do you still intend to bring this to
24 market?

1 A. Yes.
2 Q. Do you still intend to use the Judicial
3 Review mark?
4 A. Yes, as long as this goes away.
5 Q. Let me ask you this question. In your
6 understanding does a federal trademark registration
7 give you the right to use the mark and register it?
8 A. That sounds like a legal question so I
9 don't know.
10 Q. You have no understanding?
11 A. My understanding is you probably could use
12 any word you want and any mark you want as long as
13 you don't get sued.
14 Q. The reason I ask is if you still intend to
15 use the Judicial Review mark depending on the
16 outcome of this proceeding?
17 A. Yes.
18 Q. In your understanding if this proceeding
19 ends favorably to you, do you understand that that
20 gives you the right to use the mark?
21 A. I assume so.
22 Q. Let me ask you some questions about the
23 mark itself. How did you come up with the name
24 "Judicial Review"?

1 A. *I envisioned the use of my product be
2 something that could be used to be a check and
3 balance against the judiciary and judicial review;
4 that is the definition of it.
5 MR. SONNABEND: Can I have that
6 answer back again, please?
7 (*Record read as requested)
8 Q. So Judicial Review is the definition of
9 the process of --
10 A. Judicial Review is the ability of the
11 judiciary to have checks and balances on the other
12 branches of the government. So inherently it brings
13 about the sensitive checks and balances in the
14 system.
15 Q. The definition of judicial review in
16 connection with your product, that's a sort of
17 judicial review of the judiciary?
18 A. I didn't understand that.
19 Q. I'm not sure I did either. So let's
20 strike that.
21 I'm trying to understand -- you chose
22 the name "Judicial Review" because the definition of
23 "judicial review" is a sort of checks and balances
24 that the judicial branch asserts over the other

1 branches; is that correct?
2 A. Uh-hum.
3 Q. How does that relate to your product I
4 guess is the simpler question?
5 A. I view my product as also creating a check
6 and balance on the judiciary.
7 Q. So it's sort of a judicial review, in
8 quotes, of the judiciary?
9 A. I guess you could say that.
10 Q. Your product, the Judicial Review product,
11 reviews judicial records; you testified to that
12 earlier, is that correct?
13 A. Yes.
14 Q. Let's take each of the two words
15 separately. Starting with the word "judicial," does
16 that describe an aspect of your product?
17 A. It -- having to do with the judiciary.
18 Q. I just want to be clear, so the answer is,
19 "yes"?
20 A. Yes.
21 Q. Okay. How about the word "review," your
22 process includes or your product under the hood, so
23 to speak, reviews the judicial record; that's
24 correct, yes?

1 A. It aggregates a judicial record and
2 creates a statistical analysis.
3 Q. And that's done through a review of the
4 record as you testified to earlier, correct?
5 A. It's done by a machine, so I don't know if
6 you'd call it -- yes, sure.
7 Q. Is it fair to say then that the Judicial
8 Review product is a product that undertakes a review
9 of sorts?
10 A. It depends how you define "review."
11 Q. Okay.
12 A. I don't think so because, you know, a
13 review of a show tries to pass judgment on a show.
14 Q. I see.
15 A. *We're not passing judgment on a judge.
16 I'm not taking a perspective on a particular judge.
17 I'm just aggregating information and publish -- I
18 guess I'm publishing the information statistically.
19 Q. Understood, okay.
20 MR. SONNABEND: Can I ask you to read
21 back the last answer? I was talking over her and I
22 want to make sure I got it.
23 (*Record read as requested)
24 Q. I understand the issue you had with the

1 word "review," certainly I didn't mean it as a
2 critique in that sense as in review of a Broadway
3 play. I jotted down a definition for "review" --
4 why I did that, I'm not sure, but I did -- from the
5 American Heritage Dictionary: To look at or to
6 watch, verb. Examination or an inspection as a
7 noun. Would you agree that those are fairly common
8 definitions for "review"?
9 A. I'll have to rely on the fact that that's
10 the definition, yes.
11 Q. Yes, and I'm not asking you to confirm
12 that's what the American Heritage Dictionary says,
13 but would you agree just in your understanding of
14 English that if I said that a "view" is an
15 examination and inspection, that that's at least one
16 definition for word "view" as a noun?
17 A. "Review" you mean.
18 Q. No -- right, so let's strike that. Let's
19 back up. "Review," a reexamination or
20 reconsideration. Would you agree that that's a fair
21 definition at least of one context of the word
22 "review"?
23 A. Yes.
24 Q. And as far as a verb it's fair to say that

1 "review" is to look over or study or examine again?
2 A. Yes.
3 Q. Under that definition that we just talked
4 about, I don't know if I totally clouded things up,
5 under those common definitions would you say that
6 the Judicial Review product undertakes a review of
7 the judicial record?
8 A. So you have to differentiate between the
9 engine of what is done prior to giving the product
10 to the customer. So in the background we are
11 reviewing the judicial record, but the product
12 itself -- what is given to customers is not a
13 review.
14 Q. It's a report based on a statistical
15 analysis that's based on data pulled from the
16 review?
17 A. Was one of the words there you used
18 something like examination.
19 Q. Yes.
20 A. Actually, can you just read it again?
21 Q. Sure, and you and I maybe can agree on a
22 definition that we agree, leaving the American
23 Heritage aside.
24 A. Yeah.

1 Q. Review: To look over, study or examine
2 again.
3 A. Yeah, see, my issue with the definition as
4 to describe our process is that in reality the data
5 being pulled it's automated. So you have these
6 decisions and records and it's not as though a
7 person is going in and looking at anything or
8 examining anything. There's specific fields that
9 are pulled into a database which is then
10 statistically analyzed.
11 Q. So let's start with a definition. If I
12 handed you, and I may have done this already with
13 Exhibit 1, if I handed you a document and said take
14 a moment and review this, what would you understand
15 me to be instructing you to do?
16 A. To read through it and comprehend it.
17 Q. And is it safe to say, is it fair to say
18 that in some sense your computer algorithm, your
19 computer program does that with the judicial record?
20 A. I don't know.
21 Q. Does "judicial review," the phrase, does
22 it describe, do you think, the Judicial Review
23 product?
24 A. I think it has interesting connotations

1 that makes it good for marketing the product. I
2 don't think it's a definite description of it. It
3 would be a better description of a newspaper
4 publication, like the National Review.
5 Q. Do you think that your customers will
6 understand that the results they get, work product
7 that they get from the Judicial Review product is
8 the result of a review of the judicial record or
9 results from a review of the judicial record?
10 A. I don't know; that's for them to figure
11 out for themselves.
12 Q. Well, when you market it to them -- in
13 your plans to market it to them will you explain to
14 them that you have an algorithm that goes through
15 and reviews the judicial record?
16 A. I think I just have a problem with the
17 word "review" because it's the algorithm pulls down
18 data into a database, then runs statistical analyses
19 on it. It's not a review, it's a statistical
20 analysis.
21 Q. Do you think it's important for customers
22 to know, your potential customers, to know that your
23 product bases the work product on substance of the
24 judicial record?

1 A. Of course.
2 Q. You testified earlier that the -- an
3 attorney if he had the resources and wanted to waste
4 his client's money could do the same thing through
5 the Westlaw database through brute force; am I
6 characterizing your testimony fairly?
7 A. In some cases he could do it. In some
8 cases it would be humanly impossible.
9 Q. And in the cases that he could do it, even
10 though it's a monumental task, he would be required
11 to review the judicial records that he pulls down;
12 is that correct?
13 A. He could or if he was smart enough he
14 could also figure out a way to download the data the
15 way we do and parse it.
16 Q. But he could do the same thing by
17 reviewing the judicial record; is that correct?
18 A. (Pause)
19 Q. Through brute force, perhaps?
20 A. By reading through all of the documents,
21 creating quantitative coding of those documents,
22 inputting those codes into a database and then
23 running an analysis he could do it.
24 Q. We've been going for a little over an

1 hour. I don't know if you want to take a break?
2 A. No, I'm fine.
3 Q. Are you familiar with the term "trade
4 channel" or "channel of trade"?
5 A. Not the precise definition.
6 Q. Have you heard the phrase before, either
7 of those two phrases?
8 A. Possibly but I don't have a clear sense of
9 the definition.
10 Q. How about "field of a product"; does that
11 mean anything to you?
12 A. Not beyond a layperson definition.
13 Q. In the business consulting world, in the
14 vernacular you're familiar with, comfortable with
15 professionally, is there a term that is used to
16 describe the boundaries of a market for a product?
17 A. "Scope," the scope of a product.
18 Q. In that context does the scope of a
19 product include how the product makes its way to
20 market?
21 A. No, that's something different.
22 Q. Does scope of the product cover how the
23 consumer obtains the product?
24 A. No.

1 Q. Is there a term for that?
2 A. I guess it would be channel, "channel to
3 market."
4 Q. Okay, "channel to market." So that we're
5 clear or that the record's clear, how would you
6 define "channel to market"?
7 A. Are you asking how would I market this?
8 Q. No, I want to make sure that when we say
9 "channel to market," because I have some questions
10 about that, but I want to make sure that we're
11 talking about the same thing.
12 A. Okay.
13 Q. So as you're using it can you kind of give
14 me a definition back as to what a "channel to
15 market" is?
16 A. It is the mechanism by which you're
17 selling the product to the customer.
18 Q. So one channel to market might be through
19 big box retailers, another channel to market might
20 be direct sales via the internet?
21 A. Yeah.
22 Q. Another channel to market might be door to
23 door?
24 A. Yes.

1 Q. So when we talk about that, those are all
2 different channels to market?
3 A. Yes.
4 Q. What is the channel to market that you see
5 for your Judicial Review product; what do you
6 anticipate the channel to market to be?
7 A. Direct sales, door to door.
8 Q. So speaking kind of colloquially knocking
9 on a law firm's door and saying: I've got this
10 great tool, check it out?
11 A. Yes.
12 Q. Is that the same channel to market, do you
13 believe, as the channel to market for Westlaw's
14 services?
15 A. That is a difficult question because
16 Westlaw's penetration in the market is already
17 something like 85 to 90 percent, so they don't rely
18 on direct sales. They have relationship managers
19 who manage relationships as opposed to engage in
20 active sales at this point.
21 Q. Do you believe that Westlaw is still
22 developing new accounts?
23 A. Not many.
24 Q. Okay, do you have any understanding based

1 on your market research or any other basis as to how
2 Westlaw, for instance, develops new accounts?
3 A. They would most likely rely on a direct
4 sales model, door to door.
5 Q. Knocking on a door, picking up the
6 telephone, sending an email; that kind of thing?
7 A. I assume that's how they do it.
8 Q. The same would hold true, I imagine, both
9 the Westlaw's online offerings as well as to their
10 hard copy, old fashioned book products; am I
11 correct?
12 A. I don't know.
13 Q. Do you see, sitting here today, do you
14 have any reason to believe that the channels of
15 trade for their on line would be different from
16 their books?
17 A. No.
18 Q. In your business plan did you assess the
19 channel to market for your product?
20 A. Yes.
21 Q. And the channel to market that you
22 identified as being the best opportunity was a
23 direct sales channel to market, correct?
24 A. Yes.

1 Q. Does that mean contacting lawyers
2 directly?
3 A. It's a bit more nuanced than that.
4 Q. Okay.
5 A. In a large law firm you wouldn't contact
6 an individual lawyer, you're more likely to contact
7 the law librarian.
8 Q. The law librarian. That's interesting.
9 Well, let me explore that; why the law librarian?
10 A. Because they control the contracts for the
11 tools.
12 Q. Have you ever been in a law library of a
13 large law firm, say a 50 attorney or more law firm?
14 A. Directly in the library? No.
15 Q. Do you have any understanding of what a
16 law library comprises in a larger law firm?
17 A. Physically?
18 Q. Yes.
19 A. There's -- it's very unlikely to have a
20 physical location at this point.
21 Q. You testified just a moment ago that law
22 librarians, I'm going to paraphrase, they hold the
23 keys or -- the "purse strings" maybe is a better
24 expression -- law librarians hold the purse strings

1 for new research tools for law firms; is that
2 correct?
3 A. They're the first ones to look at them.
4 Q. Do you have an understanding as to whether
5 the law librarians also make decisions or are
6 involved -- strike that, let me make sure the
7 question's clear. Do you have an understanding as
8 to whether law librarians are also involved in
9 decision making regarding hard copy publications
10 that a law firm subscribes to?
11 A. It depends on the firm.
12 Q. How did you come to determine that law
13 librarians were a good point of contact as far as
14 channel to market?
15 A. In speaking to friends who were attorneys.
16 Law librarians are the only ones who know all the
17 different types of tools that are out there.
18 They're supposed to be the experts.
19 Q. In your discussions about the role of the
20 law librarians in law firms, did anyone ever talk to
21 you about paper periodicals, paper publications that
22 law librarians manage?
23 A. No.
24 Q. If law librarians do, in fact, also manage

1 paper periodical subscriptions for the law firms,
2 would that mean that the channel of trade is the
3 same for the periodical as it is for the Judicial
4 Review product?
5 A. It depends on whether the librarian sees
6 the two items as being -- what's the right word --
7 it depends on whether the law librarian sees two
8 different items as being able to replace one
9 another.
10 Q. Okay. If you were to add to the offerings
11 of Judicial Intelligence a monthly newsletter, would
12 you think that a law librarian is still the best
13 first point of contact in your channel to market?
14 A. It depends on what type of subscription
15 I'm charging or what the plan is for it. So, for
16 example, if it's something that is free and I'm
17 making my money off advertising revenue, I wouldn't
18 bother. I'd mail it to every attorney I know.
19 Q. What if it's a pay for that subscription,
20 would that change the answer?
21 A. Yes, but only in so far as -- it depends
22 on how unique the data is. So if it's a very niche
23 market, for example, it's only geared towards very
24 specific types of attorneys who specialize in a very

1 tiny portion of the law, there's not a real reason
2 to contact the law librarian because that individual
3 attorney will have the budget to go after that
4 himself, you don't need to contact the librarian.
5 If it's something of mass interest, he'd probably go
6 through the law library.
7 MR. SONNABEND: Well, I think I'm
8 going to take a break.
9 (A brief recess was taken.)
10 Q. I wanted to follow up on the channel to
11 market a little bit. We have been talking some
12 about law librarians, it's a topic dear to my heart.
13 My best memory is with the law librarians, good
14 group of people.
15 A. Yeah.
16 Q. We're talking about channels to market.
17 If a -- well, I don't want to say "competitor" so
18 let's strike that. If another company started a
19 weekly newspaper for lawyers that talked about the
20 judiciary and they called it the "Judicial Review"?
21 A. Yeah.
22 Q. How would you feel about that in light of
23 your product, the Judicial Review?
24 A. I wouldn't care.

1 Q. You wouldn't care?
2 A. Nope.
3 Q. Do you think that law librarians might
4 think that this weekly periodical was put out by
5 your company?
6 A. I would make it clear that it wasn't.
7 Q. Do you think that they might have that
8 initial impression until you cleared it up?
9 A. I don't know. Possibly.
10 MR. SONNABEND: We're going to mark
11 now as Exhibit No. 2 a document marked as or titled
12 "Opposer's First Set Of Interrogatories To
13 Applicant."
14 (Document marked as Exhibit No. 2
15 for identification.)
16 MR. SONNABEND: And to save some time
17 let us mark at the same time Exhibit No. 3. Well,
18 we'll have to characterize it on the record to
19 figure out exactly what we'll call it.
20 (Document marked as Exhibit No. 3
21 for identification.)
22 Q. So I'm going to hand you now what's been
23 marked as Exhibit No. 2 which we have said is
24 entitled "Opposer's First Set Of Interrogatories To

1 Applicant." And I'm also going to hand you Exhibit
2 No. 3 which, at least appears on the first page,
3 appears to be a letter from you to Marc Vianello,
4 Care of Arthur Shaffer.
5 So if you'll take just a few moments
6 and review these two documents? The first question
7 I'm going to ask you once you're done with your
8 review is do you recognize one or both of these
9 documents?
10 A. Yes, both of these documents.
11 Q. Okay, let's start with No. 2. Exhibit No.
12 2, what is Exhibit No. 2?
13 A. This is the Opposer's First Set Of
14 Interrogatories.
15 Q. So these were the interrogatories served
16 on you by opposer in the present action; is that
17 correct?
18 A. Yes.
19 Q. And you remember receiving these?
20 A. Yes.
21 Q. And you remember preparing responses to
22 them, correct?
23 A. Yes.
24 Q. Okay, what is Exhibit No. 3?

1 A. Exhibit No. 3 is a cover letter and my
2 responses to the set of interrogatories listed in
3 Exhibit No. 2.
4 Q. If you could turn to Exhibit No. 3 --
5 well, before you do that I may ask just one more
6 foundational question. The Exhibit No. 3 contains
7 in part your responses to Exhibit No. 2; is that
8 correct?
9 A. Yes, but there's a random page stuck in
10 the middle.
11 Q. You're referring to the page that does not
12 have the fax across -- the fax banner across the
13 top?
14 A. Yes.
15 Q. I will represent to you, and you can
16 doublecheck this, that it is, in fact, the proper
17 page of the document in the proper order. It was
18 omitted from the fax that was originally sent to me.
19 And if you read through in context you'll see that
20 it is, I believe.
21 A. Okay.
22 Q. Do you want to take a minute and just look
23 through and confirm that so that you're comfortable
24 that everything is on the up and up here?

1 (Witness perusing document.)
2 A. That's correct.
3 Q. Turn to the fifth page of Exhibit No. 3.
4 Do you see in the upper right-hand corner there's a
5 fax banner that says P 5/13?
6 A. Yes.
7 Q. And you see on the upper left, it says,
8 2008-06-02 15:42?
9 A. Under the staple in --
10 Q. Yes.
11 A. Yes.
12 Q. In the middle of the page, it says, Sandra
13 L. Nudelman's Answer To Opposer's Interrogatories?
14 A. Yes.
15 Q. This is the first page of the actual
16 interrogatory responses you prepared in response to
17 opposer's first set of interrogatories, correct?
18 A. Yes.
19 Q. Let's look at Interrogatory Response No.
20 1. Do you see that on the page here?
21 A. Yes.
22 Q. Interrogatory No. 1 reads in pertinent
23 part, quote: Identify by common commercial
24 descriptive name each product and/or service which

1 has been or is intended to be sold, offered for
2 sale, manufactured, advertised, and/or rendered by
3 Applicant in the United States under the Judicial
4 Review mark. Do you see that in Exhibit No. 2?
5 A. Yes.
6 Q. So No. 1 on the page that we're looking on
7 right now of Exhibit 3 is answering in part the
8 passage I just read, correct?
9 A. Yes.
10 Q. Your answer reads, quote: 1. A. Legal
11 services, specifically involving background research
12 on judges and their opinions. Is that correct?
13 A. Yes.
14 Q. We looked earlier at Exhibit No. 1 which
15 I'll make sure you have available to you and under
16 the description there it doesn't mention anywhere
17 judges and their opinions; is that correct?
18 A. No, it does not.
19 Q. It is not correct?
20 A. No, it does not say anything about judges
21 on Exhibit 1.
22 Q. Okay. Why in answering Interrogatory No.
23 1 did you include the phrase, "On judge's and their
24 opinions" but not include it in the description of

1 your application for registration?
2 A. Because in the application that was
3 available here these were the common names that were
4 available and so I used the common names that were
5 available and the checkmarks for the application.
6 Q. Do you have any understanding as to the
7 difference between a TEAS, T-E-A-S, Plus application
8 and a TEAS application?
9 A. I vaguely remember looking into the
10 difference but right now I don't remember.
11 Q. Do you have an understanding as to whether
12 or not you are limited to the list of descriptions
13 provided by the Trademark Office?
14 A. I don't think you are.
15 Q. So it's your understanding that you're
16 allowed to formulate your own description if the
17 descriptions in the Trademark Office list are not
18 sufficiently specific; is that correct?
19 A. Yes.
20 Q. Is the answer you gave to 1.A. accurate?
21 A. Yes.
22 Q. Is it correct?
23 A. Those would be the common descriptive
24 names that I would use. It can go more detailed

1 than that. There are different levels of
2 specificity.
3 Q. Is there anything -- strike that. Let me
4 ask it this way. Is it under inclusive, the
5 description that you provided in the answer to
6 1.A.?
7 A. I would probably include the word
8 "statistical" in there.
9 Q. Statistical research on judges?
10 A. Uh-hum
11 Q. Is that a, "yes"?
12 A. Yes.
13 Q. So statistical research on judges is
14 actually narrower, though, than on research on
15 judges; is that correct?
16 A. Yes, but I also wanted to make sure that I
17 was being broad enough to include all the different
18 ideas that I had not yet developed.
19 Q. Fair enough. I just want to make sure
20 that it's broad enough to cover those and doesn't
21 leave anything out?
22 A. Yes.
23 Q. So it is broad enough to cover all the
24 ideas you had for products under the Judicial

1 Review?
2 A. So some of the things that I thought of
3 were not statistical, so in reality this is
4 inclusive of everything. The ones that are most
5 developed are statistical.
6 Q. Understood, but it's not under inclusive,
7 it doesn't leave anything out; am I correct?
8 A. No.
9 Q. I'm not correct?
10 A. No, you're correct. It doesn't exclude
11 anything.
12 Q. Okay. You understand that the examiner
13 has allowed your application for the Judicial Review
14 mark; is that correct?
15 A. I believe so.
16 Q. Do you think the examiner's decision to
17 allow your mark, your application, would have been
18 different if you had used the description in 1.A. in
19 your application?
20 A. I don't know.
21 Q. The services you describe in 1.A. --
22 A. Well, actually I'm just thinking.
23 Q. Okay.
24 A. 1.A. is actually slightly under inclusive.

1 Q. Okay, what does it exclude?
2 A. It should technically be judges,
3 jurisdictions, and also lawyers themselves.
4 Q. So background research on judges,
5 jurisdictions, and lawyers and their opinions?
6 A. Well, judges and their opinions as well as
7 jurisdictions and lawyers.
8 Q. Okay. What products do you foresee using
9 the Judicial Review mark on that involve background
10 research on lawyers?
11 A. It's the same product. It can be used
12 multiple ways. That is a much later stage of
13 development.
14 Q. Who do you think would be interested in
15 buying the product, the Judicial Review product,
16 that's described in 1.A.?
17 A. Lawyers.
18 Q. Lawyers in their professional capacity?
19 A. Yes.
20 Q. The same group of people who would be
21 interested in, for example, in buying a subscription
22 to the New York Law Journal; is that correct?
23 A. Well, I'm assuming that most of the people
24 who read the New York Law Journal are in New York so

1 it would be a broader group of attorneys than just
2 New York attorneys.
3 Q. Okay, same group of people who would be
4 interested in buying the National Law Journal weekly
5 publication, correct?
6 A. I can't answer that. I know in my
7 professional capacity I subscribe to certain
8 database products and I don't read the Wall Street
9 Journal. So some people read those things and use
10 database products and some people don't use database
11 products and read journals. So I can't comment on
12 what the overlap in the market is.
13 Q. Is your Judicial Review product
14 subscription based?
15 A. We're attempting to figure out what the
16 best model is but it most likely model would be a
17 subscription basis.
18 Q. Have you ever analyzed the exit potential
19 for your Judicial Review product or the business
20 pertaining to it?
21 A. What do you mean by "exit potential"?
22 Q. Is that a term you're familiar with?
23 A. Do you mean in terms of selling the
24 company? I'm trying to clarify what -- is that the

1 question?
2 Q. Well, let me ask you, "exit potential" is
3 a term I've heard bandied about but it is not
4 exactly my expertise. Is it a term that you know of
5 in your --
6 A. I would define it as somehow selling a
7 company either through a public offering or to a
8 private owner.
9 Q. Okay, so under that definition have you
10 ever analyzed the exit potential for the business of
11 Judicial Review?
12 A. Yes.
13 Q. What were the results of that analysis?
14 A. It was in several hundreds of millions of
15 dollars if you could actually get to the sales you
16 wanted.
17 Q. Who would be the potential buyers?
18 A. Westlaw, Lexis or Wolters Kluwer.
19 Q. Legal publishers?
20 A. They are -- they are conglomerates that
21 have publication arms, yes.
22 Q. You wouldn't call Westlaw or their parent
23 company Thomson West a legal publisher?
24 A. Yes, but they wouldn't -- this wouldn't go

1 under their publication unit. They have several
2 business units that would go in through their
3 on-line media unit.
4 Q. Okay, so turning back to Exhibit No. 3,
5 let's look at answer to No. 2. In particular on the
6 next page, the page that's marked page 6 of 13 in
7 the upper right, P 6/13? Under -- let me see if I
8 can get the numbering right here -- 2., capital A.,
9 lower case (a), your response reads -- let me just
10 read it into the record: While Opposer registered
11 THE JUDICIAL VIEW under U.S. Serial #77031981 on
12 March 25, 2008, the scope of this registration is
13 limited to International Class 041 for, quote,
14 Publication of an online legal newspaper, unquote,
15 which is unrelated to the class under which the
16 applicant filed Judicial Review, namely Class 045
17 for, quote, Legal Services, and Background
18 investigative research and services, unquote. Did I
19 read that correctly?
20 A. Yes.
21 Q. What did you mean in your answer that --
22 these two classes here Class 041 for publication of
23 an online legal newspaper and Class 045 for legal
24 services and background investigative research and

1 services are unrelated; what did you mean by that?
2 A. Obviously, this is something that a judge
3 would need to rule on but from my perspective, in
4 common perspective, an online legal newspaper has
5 nothing to do with what my product is doing.
6 Q. Is that because one is in Class 41 and one
7 is in Class 45?
8 A. Because one is a publication and one is an
9 online database that is used for legal services and
10 background research.
11 Q. So it has nothing to do with the classes
12 that they're in?
13 A. I don't know whether the Trademark Board
14 views different classes as being distinct from a
15 commoner's perspective. It would appear that they
16 would be.
17 Q. If the two descriptions were in the same
18 class would your answer change?
19 A. Probably not because they're still
20 different. The fact that they're so -- they're in
21 different classes and they are so different just
22 exacerbates it.
23 Q. Okay, moving to lower case (b), the next
24 paragraph, it reads: Opposer's second application

1 concerning THE JUDICIAL VIEW, U.S. Serial #77212172,
2 was filed on June 21, 2007, four months after
3 Applicant's filing date for Judicial Review. Did I
4 read that correctly?
5 A. Yes.
6 Q. The phrase "four months after Applicant's
7 filing date" is in italics; is that correct?
8 A. Yes.
9 Q. Why?
10 A. Just to draw attention to the fact that it
11 was after the filing date for Judicial Review.
12 Q. So opposer for his mark, "The Judicial
13 View," filed after you filed your application for
14 "Judicial Review"; is that correct?
15 A. For Serial #77212172, yes.
16 Q. Why is that relevant?
17 A. Again, this is something that a lawyer or
18 a judge would have to figure out as opposed to me.
19 Q. Why did you decide to include that there
20 in your response?
21 A. Just to draw attention to the facts.
22 Q. In your opinion does that fact have any
23 legal bearing on who has senior rights to their
24 mark?

1 A. That's for the judge to decide.
2 Q. Do you know under U.S. law whether the
3 first file or the first to use a mark has senior
4 rights?
5 A. I don't know. I'm guessing, it depends.
6 Q. Did anyone help you prepare these
7 responses?
8 A. Nope.
9 Q. Your sister's an attorney, correct?
10 A. No.
11 Q. She's not an attorney?
12 A. She's in law school.
13 Q. Is your sister, Michele?
14 A. Yes.
15 Q. Is she still in law school?
16 A. Yes.
17 Q. At Washington University?
18 A. Yes.
19 Q. When does she graduate?
20 A. This year.
21 Q. Did she help you at all with this
22 response?
23 A. No. I wish she had.
24 Q. Why do you wish she had?

1 A. It would have been helpful.
2 Q. Let's look at lower case (c) and I'll read
3 it again, and don't worry, I don't think I'm going
4 to be reading the whole exhibit. It's almost a page
5 long but let's read C: Opposer's second application
6 concerning THE JUDICIAL VIEW, U.S. Serial #77212172,
7 filed on June 21, 2007, is of uncertain status, as
8 an ex parte appeal of a final refusal to register
9 the applied for mark is pending before the Trademark
10 Trial and Appeal Board. Did I read that correctly?
11 A. Yes.
12 Q. Why did you include that as part of your
13 answer?
14 A. Again, drawing attention to the fact --
15 Q. The fact that --
16 A. That the mark had not been accepted as of
17 that time.
18 Q. Are you aware of the status of that mark
19 now -- of that application, I should say?
20 A. No.
21 Q. If I told you that it had been allowed,
22 would that change your answer to (c)?
23 A. (Pause)
24 Q. I should say would that change your answer

1 (c)?
2 A. Yes.
3 Q. Okay, how would it change it?
4 A. It had been allowed.
5 Q. Does that change your basis for stating
6 that opposer has failed to state a legally
7 sufficient ground for sustaining the opposition?
8 A. I don't know.
9 MR. SONNABEND: Let's mark as Exhibit
10 No. 4 a document first page of which is an
11 Examiner's Amendment dated July 7, 2008. And the
12 last page of which is a Notice of Publication under
13 Section 12(a) dated July 23rd, 2008.
14 (Document marked as Exhibit No. 4
15 for identification.)
16 Q. I just hand you Exhibit No. 5. Take a
17 moment to review that document.
18 A. (Witness perusing document.)
19 Q. Have you ever seen Exhibit No. 5 before?
20 A. No, this is No. 4.
21 MR. SONNABEND: I'm sorry, we're on
22 No. 4?
23 THE REPORTER: Yes.
24 MR. SONNABEND: Just so the record's

1 clear, Exhibit No. 4 is a three-page document, first
2 page of which is entitled, "Examiner's Amendment"
3 dated July 7, 2008. Third page of which is Notice
4 of Publication under Section 12(a) dated July 23rd,
5 2008. And as of yet there is no Exhibit 5.
6 Q. Do you have an understanding as to what
7 Exhibit 4 is?
8 A. I believe so.
9 Q. And what is that understanding?
10 A. That the mark "The Judicial View" was
11 allowed for publication on August 12th, 2008 -- or
12 was published on August 12th, 2008.
13 Q. Okay. Do you believe now that your
14 Affirmative Defense No. 1 in connection with Serial
15 No. 77212172 is no longer a tenable affirmative
16 defense?
17 A. I don't know.
18 Q. Do you intend to oppose Application
19 77212172?
20 A. I don't know.
21 Q. Turning to the next page of Exhibit 3, do
22 you see at the bottom a paragraph numbered 3?
23 A. Yes.
24 Q. That reads: Even if the components of the

1 term JUDICIAL REVIEW are abstracted and taken to
2 mean a, quote, review, unquote, of the, quote,
3 judiciary, unquote, this is still substantively
4 different from the meaning implied by the term
5 Judicial Review because this would mean JUDICIAL
6 REVIEW implies a third-party perspective ON the
7 judiciary, whereas THE JUDICIAL VIEW implies the
8 perspective of the judiciary. End-users would
9 expect entirely different services based on these
10 meanings. Did I read that correctly?
11 A. Yes.
12 Q. What do you mean by "abstracted and taken
13 to mean a review of the judiciary"?
14 A. In looking at each word in isolation and
15 then aggregating those definitions -- the
16 definitions of the two isolated words as opposed to
17 looking at Judicial Review giving the specific
18 definition of balances, checks -- checks and
19 balances of powers. Looking at judicial and then
20 review separately.
21 Q. And if you look at "judicial" and "review"
22 separately, that would mean a third-party
23 perspective on the judiciary; is that correct?
24 A. Yes.

1 Q. And that's what you said in Paragraph No.
2 3 on the page we're looking at; is that correct?
3 A. Yes.
4 Q. Is that what your product does?
5 A. (Pause)
6 Q. Provide a third-party perspective on the
7 judiciary?
8 A. Not really because the database provides
9 statistical information that a user can interpret
10 themselves.
11 Q. And it allows the user to get a
12 perspective on the judiciary?
13 A. Yes.
14 Q. Is it safe to say or is it fair to say
15 that your product allows an attorney to perform a
16 Judicial Review of the judiciary under the
17 definition of paragraph 3?
18 A. Under the definition in paragraph 2, not
19 3. So to perform a check and balance on the
20 judiciary, yes. But in terms of actually -- they
21 are not developing a third-party perspective; they
22 are developing their own perspective on that judge
23 based on data.
24 Q. They're a third party to the judiciary;

1 aren't they?
2 A. A third -- a third party is not the self.
3 Q. Does the Judicial Review product give an
4 attorney the ability to establish a perspective on
5 the judiciary?
6 A. It gives them data from which they can
7 create their own perspective.
8 Q. On the judiciary?
9 A. Yes.
10 Q. Let's look on the next page of Exhibit 3,
11 on the top right-hand corner, it says, page 7 of 13,
12 P 7/13?
13 A. Yeah.
14 Q. Interrogatory No. 4, your response to
15 Interrogatory No. 4. I'm just going to read the
16 first paragraph just so we're clear we're looking at
17 the same response. Paragraph 4 reads: Applicant
18 was solely involved in the origination, clearance,
19 selection and adoption of the Judicial Review mark
20 to identify the services outlined in 1.A. above.
21 Applicant initially applied for a trademark for the
22 term on February 18, 2007, open paren, U.S. Serial
23 #77110266, close paren. The term "Judicial Review"
24 was selected for two reasons. Did I read that

1 paragraph correctly?
2 A. Yes.
3 Q. When you say, "applicant," are you
4 referring to yourself there in Paragraph No. 4?
5 A. Yes.
6 Q. The second -- I don't know what part of
7 the sentence that is -- after "origination," it
8 says, "clearance"; so you were solely involved in
9 the clearance of the Judicial Review mark; is that
10 correct?
11 A. Yes.
12 Q. What does that mean, "clearance"?
13 A. In going on the U.S. P.T.O. web site and
14 typing in "Judicial Review" and making sure that
15 there wasn't an application out there for the same
16 term for the same services.
17 Q. And is that sufficient to clear a mark?
18 A. From a legal perspective, I don't know.
19 Q. Do you know what Lanham Act Section 2D
20 says?
21 A. No.
22 Q. Do you know what the Lanham Act is?
23 A. No.
24 Q. Are you familiar with the phrase, "Likely

1 to cause confusion," as it's used in connection with
2 the determination of whether a mark is registerable
3 or not?
4 A. I've heard of it.
5 Q. Do you have any understanding as to what
6 it means?
7 A. In a precise definition, no.
8 Q. In any definition at all?
9 A. From the common definition if it's likely
10 to cause confusion. Will it confuse people?
11 Q. And if it is likely to cause confusion
12 what does that mean about the registerability to
13 you, if anything?
14 A. It may or may not be approved depending
15 upon what the Trademark Board thinks.
16 Q. Are you familiar with the Dupont Factors?
17 A. No.
18 Q. In your opinion as a result of your
19 efforts to clear the mark "Judicial Review" --
20 strike that. Let me ask you this way. Did you
21 conclude from your efforts to clear the mark that
22 the mark was, in fact, clear to register?
23 A. It appears that you may be using a
24 different definition of what "clearance" means so I

1 don't know.
2 Q. Presently does Westlaw have a product
3 that's the same as yours?
4 A. No.
5 Q. If you called your product "West Judicial
6 Review," do you think they'd have a problem with
7 that?
8 A. Yes.
9 Q. Why?
10 A. Because "West" is a well-known publicly
11 traded company, and it would be confusing to people
12 to have a smaller, lesser known company using the
13 term "West" for a very specific legal online product
14 that might fit into their portfolio of products.
15 Q. Let's turn to the next page of Exhibit
16 3 -- I don't know why I can't remember this is
17 Exhibit 3 -- I keep turning to the first page. In
18 the upper right-hand corner of the page we're
19 looking at now you see it says, P 8/13?
20 A. Yeah.
21 Q. Do you see paragraph No. 7?
22 A. Yeah.
23 Q. I want to ask you specifically about one
24 of those subsections of your response. I just need

1 to figure out which one that is. You have 7. A.,
2 I'm going to read 7. A. It reads: 7. A. Neither
3 Applicant, nor the corporation in which she holds a
4 majority stake, Judicial Intelligence, Inc., has
5 advertised services under the JUDICIAL REVIEW mark
6 in a magazine or trade journal, but reserves the
7 right to do so in the future. You reserved the
8 right to do so in the future, why?
9 A. Because I see no reason to waive that
10 right.
11 Q. You believe that you might advertise the
12 Judicial Review product in a magazine or trade
13 journal in the future?
14 A. I don't know, maybe.
15 Q. Have you given any thought to doing that?
16 A. It is not high on my list.
17 Q. Why not?
18 A. It's not a very effective means of
19 advertising.
20 Q. Do you have in mind any magazines or trade
21 journals you would consider advertising in?
22 A. No.
23 Q. Any class?
24 A. No, as I mentioned before I want to rely

1 on direct sales. So marketing and advertising is
2 not really a huge component of the business plan.
3 Q. If you were to advertise your product in
4 Time Magazine, would that be a good use of your
5 resources, your financial resources?
6 A. Yes.
7 Q. Why is that?
8 A. Because the product is interesting and
9 compelling enough that doing that would generate a
10 lot of free advertising in other venues.
11 Q. How would it generate free advertising in
12 other venues?
13 A. News coverage.
14 Q. Of an advertisement placed in Time
15 Magazine?
16 A. It would generate interest in the product
17 in general.
18 Q. How about an advertisement in National Law
19 Journal, would that be a good use of your resources,
20 financial resources?
21 A. Possibly, but I haven't really thought
22 about law journals. I haven't really thought about
23 advertising and marketing. I really do want to rely
24 on direct sales.

1 Q. There is an expense associated with
2 creating a print advertisement, correct?
3 A. Yes.
4 Q. If Automotive Weekly, the magazine, said
5 they would give you free advertising and all you had
6 to pay for was the cost of preparing the
7 advertisement, would you take them up on the offer?
8 A. No.
9 Q. Why not?
10 A. Not a big enough circulation for me to
11 worry about.
12 Q. How about the profile of the average
13 reader of Automotive Weekly, would that affect your
14 decision?
15 A. No, I'd want to get as mass a distribution
16 as possible.
17 Q. If the publishers of the National Law
18 Journal made you the same offer, would you take them
19 up on it?
20 A. If they were doing it for free?
21 Q. You only have to pay the cost of preparing
22 the advertisement.
23 A. It would really depend on whether I could
24 have very specific control over what was said to

1 that audience.
2 Q. It's your advertisement.
3 A. I would rather it be covered in a news
4 article and not journal as opposed to an
5 advertisement.
6 Q. So you would not take them up on the offer
7 of free advertisement?
8 A. I don't think advertising for this is
9 going to make a huge difference one way or the
10 other. Direct sales is really the way to go.
11 Q. Okay, let me ask you this question. If
12 Field And Stream -- what did I use before,
13 Automotive Weekly?
14 A. Uh-hum.
15 Q. If Automotive Weekly invited you to submit
16 a 1,000 word article on your product that they would
17 publish, would you think that would be helpful to
18 the sales of your product?
19 A. I guess it depends on the demographics of
20 the readers.
21 Q. If Automotive Weekly was read primarily by
22 car manufacturers and people in the auto industry
23 and not by lawyers, would it be worth the effort?
24 A. No.

1 Q. And if the National Law Journal made you
2 the same offer, would you do it?
3 A. Sure.
4 Q. Why, yes, to National Law Journal and, no,
5 to Automotive Weekly?
6 A. Because based on the description you gave
7 I'd be reaching more attorneys in the second
8 publication as opposed to the first.
9 Q. 7. B. reads: Neither Applicant, nor the
10 corporation in which she holds a majority stake,
11 judicial Intelligence, Inc., has made trade
12 presentations, seminar or meetings under the
13 Judicial Review mark, but reserves the right to do
14 so in the future. Did I read that correctly?
15 A. Yes.
16 Q. Why do you reserve the right to make
17 presentation -- trade presentations, seminars or
18 meetings under the mark "Judicial Review" in the
19 future?
20 A. Because I see no reason to waive that
21 right.
22 Q. Is that an important right to retain?
23 A. Possibly.
24 Q. It sounds like that's much closer to

1 direct sales than the advertisements we were just
2 talking about; am I correct?
3 A. Yes, although my vision of direct sales
4 truly is door knocking. Direct sales participation
5 in events like this is table stakes. You have to do
6 more than that.
7 Q. Meetings, you say in 7. B. that you
8 reserve the right, among other rights, to have
9 meetings under the Judicial Review mark in the
10 future; is that correct?
11 A. Yes.
12 Q. Would that include meetings of the
13 door-to-door selling variety?
14 A. I suppose that would be a meeting.
15 Q. Okay.
16 A. "Meeting" is a very broad definition.
17 Q. Where would you look to have these
18 meetings in the future, the ones you're reserving
19 the rights to have?
20 A. In people's offices, lawyers' offices, law
21 librarians' offices, I suppose.
22 Q. How about in offices of engineers at
23 General Motors?
24 A. If it's a tool they want to use and

1 they're willing to buy it, sure.
2 Q. Do you think that the engineers at General
3 Motors would want this tool?
4 A. No, but there are uses for non-lawyers as
5 well. Side point.
6 Q. You said it's a side point?
7 A. Yeah.
8 Q. Your business plan doesn't call for
9 pushing this out to non-lawyers, correct?
10 A. It mentions the fact that there are
11 applications beyond lawyers.
12 MR. SONNABEND: Let's mark as Exhibit
13 No. 5 a document entitled, "Opposer's First Set Of
14 Document Requests To Applicant."
15 (Document marked as Exhibit No. 5
16 for identification.)
17 BY MR. SONNABEND:
18 Q. I'm going to hand you what's been marked
19 as Exhibit No. 5. I believe on the first page is
20 Opposer's First Set Of Document Requests To
21 Applicant; do you see that?
22 A. Yes.
23 Q. I want you to take a moment to review this
24 document.

1 (Witness complies)
2 A. Uh-hum.
3 Q. And first question I'm going to ask you
4 after you've finished your review is do you
5 recognize this document?
6 A. Yes.
7 Q. What is Exhibit No. 5?
8 A. This is the opposer's first set of
9 document requests to applicant.
10 Q. And you received this earlier in these
11 proceedings?
12 A. Yes.
13 Q. On the first page do you see -- I'm sorry,
14 on the second page do you see four enumerated
15 requests?
16 A. Yes.
17 Q. Did you personally search for documents
18 requested on this page?
19 A. Yes.
20 Q. Where did you search?
21 A. In my file.
22 Q. You maintain a file somewhere?
23 A. Yes.
24 Q. How big is the file?

1 A. About that big (indicating). About 2
2 inches wide.
3 Q. So it's like an accordion folder?
4 A. Pretty much, yes.
5 Q. Do you also maintain documents
6 electronically?
7 A. Yes.
8 Q. Do you have those collected in --
9 A. One file folder.
10 Q. One file folder?
11 A. Uh-hum.
12 Q. Okay. When you did your trademark search
13 did you generate any printed results either
14 electronic, printed, or printed in hard copy?
15 A. No.
16 Q. Would you say that Judicial Review is part
17 of the legal services industry?
18 A. (Pause)
19 Q. And I apologize if I've asked that before.
20 A. Yes.
21 Q. Would you say that the legal services
22 industry is comprised of the legal publishing
23 industry?
24 A. I think it's a different part of the

1 industry. But it's a service to lawyers in the same
2 way that a court reporter is a service and it's to
3 lawyers.
4 Q. It's fair to say that both legal
5 publishing and judicial consulting comprise the
6 legal services industry; is that correct?
7 A. They are subsegments. There are other
8 segments, too.
9 Q. And the services offered by the National
10 Law Journal is another segment, correct?
11 A. Uh-hum.
12 Q. That's a, "yes"?
13 A. Yes.
14 Q. What was the cash prize for the contest?
15 A. I'm trying to remember. Maybe $10,000.
16 Q. In connection with the contest you gave a
17 presentation, correct?
18 A. Yes.
19 Q. Do you remember how long it was?
20 A. 15 minutes.
21 Q. Is it possible it was, oh, 7 to 8 minutes?
22 A. It might have been shorter. I think I was
23 allowed 15 minutes.
24 Q. Do you remember if it was videotaped or

1 otherwise recorded?
2 A. The final presentation was.
3 Q. In the presentation did you use Power
4 Point slides or anything of that sort?
5 A. Yes, Power Point slides.
6 Q. Do you still have those?
7 A. I think so.
8 Q. I'd like to request those as well. I
9 think they were --
10 A. That's a portion of the business plan.
11 Q. The Power Point slides are in the business
12 plan?
13 A. Uh-hum.
14 Q. That's a, "yes"?
15 A. Yes.
16 Q. Did you have any notes with you when you
17 were giving the presentation, the final
18 presentation?
19 A. Yes, those were copies of the slides.
20 Q. Okay. Where was the final presentation
21 given?
22 A. It was given in the business school
23 auditorium.
24 Q. That's the Harvard Business School

1 auditorium, yes?
2 A. Yes.
3 Q. To whom was it given?
4 A. To students.
5 Q. Do you remember --
6 A. And faculty.
7 Q. I'm sorry, I didn't mean to interrupt you,
8 student and faculty?
9 A. Yes.
10 Q. And anyone else?
11 A. I guess the judges who were mostly
12 faculty.
13 Q. Do you remember roughly how many people
14 were there?
15 A. Maybe 30 to 40.
16 Q. And where is the Harvard Business School
17 auditorium, on the campus?
18 A. Yes.
19 Q. Do you remember approximately when it was
20 given?
21 A. No, I don't remember the exact date.
22 Q. Did your sister, Michele have any role in
23 developing the concept for the Judicial Review
24 product?

1 A. She helped validate certain things.
2 Q. Did she advise you in any way?
3 A. In terms of legal terminology, yes.
4 Q. Anything else?
5 A. No.
6 Q. All right, let me see -- before I move on
7 to the part I don't know how to do, let me just get
8 a couple more documents into the record.
9 MR. SONNABEND: First one, let's mark
10 as Exhibit 6, it's a one-page document with a
11 heading, "Law Student Wins Harvard Business Plan
12 Contest."
13 (Document marked as Exhibit No. 6
14 for identification.)
15 Q. I've handed you Exhibit No. 6. Take a
16 moment to review it and my first question is going
17 to be: Have you ever seen Exhibit No. 6 before?
18 A. Yes.
19 Q. What is Exhibit No. 6?
20 A. It was an article that was published in
21 WashU about the business plan contest at Harvard.
22 Q. And "WashU" is Washington University in
23 Saint Louis?
24 A. Yes.

1 Q. Where your sister is presently attending
2 law school?
3 A. Yes.
4 Q. Do you see where it says: Michele
5 Nudelman, JD/MBA '09 and her sister, Sandra, an MBA
6 student at Harvard, won the prestigious Harvard
7 Business School's Business Plan Contest for their
8 proposal for a Judicial Review opinion research
9 tool. Do you see that?
10 A. Yes.
11 Q. Was your sister a co-entrant with you?
12 A. Yes.
13 Q. So I guess she was also a corecipient of
14 the award that you won?
15 A. Yes.
16 Q. What qualified her to be a co-entrant?
17 A. She helped me by validating very specific
18 things that I needed to know.
19 MR. SONNABEND: Let's mark as Exhibit
20 7 a document that says, "Judicial Intelligence" in
21 the upper, left-hand corner and has a title, "About
22 Us."
23 (Document marked as Exhibit No. 7
24 for identification.)

1 Q. Okay, I hand you Exhibit 7. Have you ever
2 seen Exhibit 7 before?
3 A. Yes.
4 Q. What is Exhibit 7?
5 A. It is a screen shot of the "About Us" page
6 of the Judicial Intelligence web site.
7 Q. Www.judicialintelligence.com?
8 A. Yes.
9 Q. That's "judicial intelligence" all one
10 word with no punctuation, correct?
11 A. Yes.
12 Q. Do you still own that domain?
13 A. Yes.
14 Q. What are you presently doing with that
15 domain?
16 A. I have it down in order to continue to
17 develop it.
18 MR. SONNABEND: Okay, I have as the
19 next exhibit -- I guess it will be Exhibit No. 8,
20 two copies of a DVD, of a video on DVD. Each of the
21 two DVDs is labeled, "Judicial Intelligence Business
22 Plan Presentation," copy 1 -- I'm sorry. Each is
23 labeled "Judicial Intelligence Business Plan
24 Presentation." One is labeled "Copy 1" and one is

1 labeled "Copy 2." Let's go off the record for just
2 a second.
3 (Discussion off the record)
4 (DVDs marked as Exhibit Nos. 8-1 and
5 8-2 for identification.)
6 (Viewing DVD No. 8-1.)
7 Q. So I've shown you the first 40 seconds of
8 the video that we have marked as Exhibit 8; do you
9 recognize what this video is depicting?
10 A. Yes.
11 Q. What is it depicting?
12 A. This is my presentation -- final
13 presentation in the business plan contest.
14 Q. Okay. Right now we're looking at 43rd
15 second. I don't know if you can see that?
16 A. Uh-hum.
17 Q. There's a single person on the screen?
18 A. Yes.
19 Q. Is that you?
20 A. Yes.
21 Q. I would have not have recognized you, your
22 hair was curly back then?
23 A. Yes.
24 Q. Okay. What I'd like to do is the video is

1 7 minutes and 29 seconds in length I'm just going to
2 play it through. I want to make sure that you have
3 a chance to review it and make sure that you are
4 comfortable that this is accurately depicting what
5 it purports to show. And then I think that should
6 be it. I may have one or two quick questions on it
7 but that really should be it. Let me see if I can
8 get it playing again.
9 (Viewing Video DVD No. 8-1.)
10 Q. Okay, so you've just watched all 7 or so
11 minutes of Exhibit 8; was that your entire
12 presentation?
13 A. Yes, I've never actually seen it before.
14 Q. Sometimes it's hard, I think, to watch
15 yourself in that kind of situation. Was it, in your
16 recollection, is there anything missing, was there
17 any edits in there that you are aware of?
18 A. What do you mean by "edits"?
19 Q. Let me back up. I want to make sure that
20 you agree that this is -- that is an accurate
21 videoing of your presentation?
22 A. That seems like an accurate video of the
23 presentation.
24 Q. Towards the end, and I've watched that

1 several times now, I missed -- in the presentation
2 you said that you had an advisory board. I thought
3 you testified earlier you never had a formal
4 advisory forum?
5 A. Exactly because this was still when I was
6 in a very academic version. This is an academic
7 contest. The business plan is submitted to an
8 academic contest. Therefore, the advisers were
9 academic advisers. This plan at that point was not
10 yet a fully fleshed out plan for commerce. It was a
11 plan to within a contest.
12 Q. Understood. I thought that you had said
13 that your advisory board included judges. I'm
14 assuming that's judicial judges, not judges from the
15 contest?
16 A. Yes, there was a judge.
17 Q. I think you also said in your presentation
18 that you had retained a patent attorney?
19 A. Yes, so I had hired one. I had one
20 conversation which included a deposit and then had
21 the deposit refunded. So we never actually went
22 through with anything.
23 Q. Is this the same attorney that you
24 mentioned earlier?

1 A. It was at the same firm.
2 Q. It looked to me like you did not have in
3 the video a script you were reading from, it sounded
4 like you were speaking very naturally. Am I
5 correct, there was no script?
6 A. There was no script.
7 Q. Let me just doublecheck my notes. I think
8 that maybe it.
9 (Pause)
10 Who is Ivory Tower Associates?
11 A. Oh, that was me. I had a college
12 consulting business very briefly in college.
13 Q. Did you and your sister, Michele,
14 correspond at any time regarding this project, the
15 Judicial Review project, the Judicial Intelligence
16 project?
17 A. You mean on the phone?
18 Q. Other than on the phone. For instance, by
19 email or by written mail?
20 A. I don't think so. I mostly just asked her
21 questions around how to, you know, understand very
22 specific legal terms and put them into the business
23 plan.
24 Q. Okay, that's it. Normally there's an

1 opportunity for cross-examination. I don't know if
2 there's anything you want to cross-examine yourself
3 on. Is there anything you want to clarify?
4 A. No, I think I'm okay.
5 Q. Okay, that's it. We'll go off the record.
6 (Whereupon the proceedings concluded
7 at 1:55 p.m.)
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1 C E R T I F I C A T E

2 I, SANDRA L. NUDELMAN, do hereby certify that I
3 have read the foregoing transcript of my testimony,
4 and further certify that said transcript is a true
5 and accurate record of said testimony (with the
6 exception of the following corrections listed
7 below):

8 Page Line Correction

9 _____ _____ _____
10 _____ _____ _____
11 _____ _____ _____
12 _____ _____ _____
13 _____ _____ _____
14 _____ _____ _____
15 _____ _____ _____
16 _____ _____ _____
17 _____ _____ _____
18 _____ _____ _____
19 _____ _____ _____
20
21 _____
22 SANDRA L. NUDELMAN
23 Signed under the pains and penalties of perjury this
24 _____ day of _____, 2008.

1 C E R T I F I C A T E

2 Commonwealth of Massachusetts

3 Suffolk, ss.

4 I, Donna J. Whitcomb, Certified Shorthand

5 Reporter, CSR #135593, and Notary Public in and for

6 the Commonwealth of Massachusetts, do hereby certify

7 that SANDRA L. NUDELMAN, the witness whose

8 deposition is hereinbefore set forth, was duly sworn

9 by me and that such deposition is a true record of

10 the testimony given by the witness to the best of my

11 skill and ability.

12 I further certify that I am neither related to

13 or employed by any of the parties in or counsel to

14 this action, nor am I financially interested in the

15 outcome of this action.

16 Witness whereof, I have hereunto set my hand

17 this 5th day of September, 2008.

18

19

20

21 _____

22 Donna J. Whitcomb, CSR/RPR/RMR

23 My commission expires: 12/13/13

24

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No.: 77/110,266 Filed: February 18, 2007 Applicant: Sandra L. Nudelman Mark: JUDICIAL REVIEW Published: August 14, 2007	)	
MARC VIANELLO, Opposer, v. SANDRA L. NUDELMAN, Applicant,	)	Opposition No. 91180471

OPPOSER'S SECOND NOTICE OF DOCUMENT REQUESTS TO APPLICANT

Pursuant to Fed. R. Civ. P. 34 and 37 C.F.R. § 2.120(d)(2), Opposer, Marc Vianello, by its undersigned attorneys, hereby serves the following Motion to Compel Production of Documents on Applicant.

Instructions and Definitions

The definitions provided in Opposer's First Set of Interrogatories to Applicant are incorporated herein by reference.

Opposer reincorporates all requests provided in Opposer's First Set of Document Requests to Applicant and supplements requests.

Requests

Request No. 1

All documents identified by Applicant in her responses to Opposer's Deposition to Applicant.

Request No. 2

All documents relating to the use of the JUDICIAL REVIEW in commerce by Applicant.

Request No. 3

All documents concerning any trademark searches that Applicant or its representatives or agents (including without limitation its attorneys) performed in connection with the mark JUDICIAL REVIEW.

Request No. 4

All documents comprising, constituting, concerning or relating to advertising, promoting or marketing of any services under the mark JUDICIAL REVIEW by Applicant.

Request No. 5

All documents referenced by Applicant and/or requested by Opposer during the deposition of Sandra L. Nudelman on August 29, 2008, comprising, constituting, concerning or relating to the mark JUDICIAL REVIEW including, but not limited to: the Business Plan (Nudelman Dep. 14:18-22, 15:16-18, August 29, 2008) (including, but not limited to all Copies of the Business Plan, Market Study Reports, Competitor Reports, Marketing Analysis, Marking Plan, Development Plan, and Detail of Subscription Based Model, Exit Strategy), all Subsequent revisions of the Business Plan (Nudelman Dep. 16:12, 21:7, August 29, 2008), and PowerPoint slides of the Business Plan as used in the Presentation at the Harvard Business School Business Plan Contest (Nudelman Dep. 99:8, August 29, 2008).

MARC VIANELLO

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing Opposer's Second Set of Document Requests to Applicant has been served via electronic mail and first class mail, postage prepaid, on Sandra L. Nudelman 131 Sewall Ave. #46, Brookline, Massachusetts 02446, this 24 day of September, 2008.

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