EXHIBIT C

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January 5, 2021
VIA ELECTRONIC MAIL

Shahar Harel, Esq.
Commercial Litigation Branch
Civil Division
Department of Justice
Washington, DC 20530

Re: e-Numerate Solutions, Inc. et al. v United States, Case No. 19-859-RTH

Dear Shahar:

We write to follow up on our discussions about the United States Government's ("the Government") infringement of patents asserted by Plaintiffs e-Numerate Solutions, Inc., and e-Numerate, LLC, (collectively "e-Numerate") in the above-referenced litigation.

I.   Procedural Background

e-Numerate served its preliminary infringement contentions on December 15, 2020, pursuant to Court of Federal Claims Patent Rules ("CFCPR") 4 and 5 and D.I. 36 and 38. The Government's invalidity contentions are due on February 17, 2021 and the accompanying document production is due on February 19, 2021. *See* D.I. 36 and 38. With regard to that document production, CFCPR 7(a) requires the Government to produce:

> (a) documents that evidence the operation of any aspects or elements of the accused product, process, or method identified by the plaintiff as allegedly infringing.

Id. The scope of the documents that e-Numerate believes should be produced by the Government is addressed below

II.   Identification of Accused Products

e-Numerate accused the Government of infringing at least United States Patent 9,600,842 ("the '842 patent") in its preliminary infringement contentions. Specifically, e-Numerate has accused the Securities and Exchange Commission ("SEC"), the Federal Deposit Insurance

Corporation ("FDIC") and the Federal Financial Institutions Examination Council ("FFIEC") of infringing at least the '842 patent.[1]

With regard to the SEC, e-Numerate has accused of infringement certain publicly known systems run by the SEC. In addition, e-Numerate has alleged that the SEC has internal programs that validate SEC filings, review SEC filings for compliance, and/or review filings for possible fraud ("anti-fraud detector").

With regard to the FDIC and the FFIEC, e-Numerate has accused these entities of infringing the '842 patent by internal activities/systems/software that validate call reports and summary of deposits and, potentially, other filings made in XBRL format. *See* Preliminary Infringement Contentions at page 4.

It is e-Numerate's position that all systems and/or software used by the Government to validate XBRL filings likely infringe the '842 patent. Pursuant to CFCPR 7(a), the Government should produce documents relating to all such systems and/or software regardless of whether said systems and/or software are known to the general public.

III.   Additional Infringing Government Systems

In addition to the SEC and the FDIC, e-Numerate believes that there are additional systems either in use or in development at multiple agencies of the Government that may infringe at least the '842 patent. e-Numerate believes that the US Federal Register and the Digital Accountability And Transparency Act of 2014 demonstrate the existence of additional infringement by the Government. We address each in turn.

A. The US Federal Register

Agencies proposing that outside entities file reports in XBRL format generally announce their intentions in the Federal Register, and solicit comments from industry.   These announcements are evidence that the relevant agency may have developed software for collecting, aggregating, analyzing, and reporting data. A search of the term "XBRL" on the Federal Register obtains 215 results. Summarized by agency, they involve the following:

Agency	# FR Entries	Subject Matter
Securities Exchange Commission (SEC)	193	Presently accused of infringement.
Department of Energy (DOE)	14	Requesting public comment on use of XBRL for FERC Forms. Mention is made of migrating internal software to XBRL.

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[1] e-Numerate reserves the right to assert that the Government infringes the other patents-in-suit of infringement as discovery proceeds in this matter.

Federal Energy Regulatory Commission (FERC)	14	Same subject matter as Department of Energy.
Department of the Treasury ("Treasury")	7	Discusses moving data reports by financial institutions to structured format, such as XBRL. Mention is made of processing and analyzing FDIC Call Report XBRL in supervision. Other actions include requesting public comment on use of structured data for other industries.
Commodity Futures Trading Commission (CFTC)	4	Requesting public comment on potential processing and analysis of structured data for Swap Reporting.
Office of the Comptroller of the Currency (OCC)	3	Participated with other bank regulators in processing and analysis of FDIC Call Report XBRL.
Federal Deposit Insurance Corporation (FDIC)	3	Already accused of infringement.
Federal Reserve System (FRS)	3	Participated with other bank regulators in processing and analysis of FDIC Call Report XBRL.
Federal Financial Institutions Examining Council (FFIEC)	1	Already accused of infringement.
Office of Thrift Supervision (OTS)	1	Participated with other bank regulators in processing and analysis of FDIC Call Report XBRL.

The activities of these Government agencies regarding validating XBRL filings are not public. Nevertheless, they may still constitute infringement under the controlling law as set forth below.

B. Digital Accountability And Transparency Act Of 2014 ("Data Act")

While the Federal Register deals with the use of XBRL by the private sector, there are other initiatives aimed at XBRL use by US federal agencies themselves.   The Data Act requires federal agencies to submit data on their spending to a central point, where it may be converted into structured form, analyzed, and reported to the public.   There appear to be software applications at the United States Treasury and possibly other agencies that aggregate raw data from the originating agencies, format that data into a structured form, and analyze it. There appear to be two significant efforts at requiring agencies to submit data for use in structured form which potentially includes XBRL.

One source of information on these efforts is found on the US Treasury's website for a Data Act Information Model Schema ("DAIMS") Initiative:

https://fiscal.treasury.gov/data-transparency/DAIMS-current.html

A second source of information is the "DATA Act Broker" software application:

https://broker.usaspending.gov/#/login?redirect=/&_k=1uawus

Again, all activities of Government agencies validating XBRL documents potentially infringe the '842 patent whether these activities are publicly disclosed or not.

> IV.   Relevant Legal Principles

During our call on this issue, you requested that we send you authority for your consideration. We address the following: (1) 28 U.S.C. § 2501; (2) the Government's additional infringement constituting an additional taking; and (3) the Government's testing constituting infringement.

First, e-Numerate's claims under at least the '842 patent cannot be time barred as a matter of law pursuant to 28 U.S.C. § 2501. The '842 patent issued on March 21, 2017. The current action against the Government was filed on June 11, 2019. All claims made against all infringing Government activities accrued for the '842 patent only as of the date the '842 patent issued (at the latest). *See, e.g., Ross-Himes Designs, Inc. v. United States*, 139 Fed. Cl. 444, 459 (C.F.C. 2018); *Starobin v. United States*, 662 F.2d 747, 750 (Ct. Cl. 1981) (per curiam) ("Thus, it is only when procurement of an item precedes the issuance of the patent rights, that the first use of the item subsequent to the issuance of the patent becomes the time of the taking for the purpose of 28 U.S.C. § 2501.").

Second, each additional infringement by the Government constitutes an additional taking of e-Numerate's patent rights. In *Decca Ltd v. United States*, 640 F.2d 1156 (Ct. Cl. 1980), the Court of Claims described the nature of the Government's takings vis-a-vis new infringements as follows:

> The Government takes a license to use or to manufacture a patented invention as of the instant the invention is first used or manufactured by the Government. The license taken at that instant covers only what the Government is using or has manufactured as of that instant. If, after this first taking, the Government expands the scope of its use of the invention or manufactures additional units of the invention, the Government engages thereby in incremental takings. Each incremental taking vests the patentee with a new cause of action.

Id. at 1166. Thus each new system/software introduced at each Government agency that is used, for example, to validate XBRL documents constitutes a new act of infringement.

Third, the Government's testing of XBRL validation software/systems can infringe the '842 patent. In *Unitrac, LLC v. United Sates,* 113 Fed. Cl. 156 (Ct. Cl. 2013), the Court of Claims noted that:

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