

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARENDI S.A.R.L.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

C.A. No. 13-919-JLH

REDACTED VERSION
(Filed August 21, 2023)

**NON-PARTIES SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG
ELECTRONICS AMERICA, INC.’S
UNOPPOSED MOTION TO SEAL PORTIONS OF
THE TRIAL TRANSCRIPTS AND EXHIBITS**

Non-parties Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”), by and through its attorneys, hereby move to seal limited portions of the trial transcript and certain exhibits containing Samsung’s highly confidential business information relating to its settlement and licensing agreements. Pursuant to D. Del. L.R. 7.1.1, Samsung has conferred with Arendi S.A.R.L. (“Arendi”) and Google LLC (“Google”) to determine whether they opposed this request to seal, and both parties have indicated that they did not oppose. Samsung’s proposed redactions are set forth in the attached sealed Exhibits.¹

I. FACTUAL BACKGROUND

At a jury trial from April 24, 2023, to May 2, 2023, this Court elicited testimony and admitted an exhibit related to Samsung’s settlement and licensing agreement with Arendi. During the trial, the Court heard testimony related to a Settlement and Patent License Agreement

¹ As Samsung received trial transcripts that have been previously redacted for confidential information related to third parties (D.I. 572), its proposed redactions are shown as highlighted, rather than redacted.

between Samsung and Arendi (the “Samsung-Arendi Agreement”), admitted into evidence as PX-77 (also referenced at trial as DTX-283). For example, the damages experts for both Arendi and Google discussed the Samsung-Arendi Agreement, including confidential terms such as the amount paid by Samsung in the agreement. *See* Apr. 26 Tr., *infra* Section III(2); May 1 Tr., *infra* Section III(3). Attorneys for the parties also engaged in discussions of the Samsung-Arendi Agreement and its terms in arguments to the Court. *See e.g.*, Apr. 24 Tr., *infra* Section III(1).

On June 8, 2023, Samsung filed a notice of intent to redact and/or seal limited portions of the trial transcripts. D.I. 564. On June 20, 2023, Samsung filed a stipulation and proposed order by which Arendi and Google agreed to allow Samsung’s outside counsel access to portions of the trial transcript with third-party confidential information unrelated to Samsung or its agreements with Arendi redacted. D.I. 572. The Court ordered that stipulation on June 22, 2023. D.I. 573. Samsung received the redacted transcripts from Arendi’s counsel on July 28, 2023, and the Samsung-Arendi Agreement (Exhibit PX-77 (also referenced at trial as DTX-283)) on July 31, 2023.

Samsung notes that non-parties Apple, Inc. (“Apple”) and Microsoft Corp. (“Microsoft”) filed motions to seal similar portions of the trial transcripts and exhibits on May 3, 2023, and July 21, 2023, respectively. D.I. 537, 587. Apple’s motion was granted on June 6, 2023, while Microsoft’s motion was granted on July 24, 2023. D.I. 562, 591.

II. LEGAL STANDARD

There is “a ‘strong presumption’ that the public and the media [are] entitled to access” judicial records. *Bank of Am. Nat. Tr. & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 343 (3d Cir. 1986). That presumption, however, is “not absolute,” and may be rebutted if a party can show “that the interest in secrecy outweighs the presumption.” *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (quoting *Bank of Am.*, 800 F.2d at

344). A party seeking to seal portions of a judicial record “must articulate ‘the compelling, countervailing interests to be protected,’ make ‘specific findings on the record concerning the effects of disclosure,’ and ‘provide[] an opportunity for interested third parties to be heard.’” *Id.* at 672-73 (quoting *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001)). The Third Circuit has found that “if a case involves private litigants, and concerns matters of little legitimate public interest, that should be a factor weighing in favor of granting or maintaining an order of confidentiality.” *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 788 (3d Cir. 1994).

Discussions of settlement and licensing agreements in judicial records are commonly found to rebut the presumption of access and are thus protected from disclosure by the courts. *See Amgen Inc. v. Amneal Pharms. LLC*, No. 16-853-MSG, 2021 WL 4133516, at *6 (D. Del. Sept. 10, 2021) (quoting *Littlejohn v. Bic Corp.*, 851 F.2d 673, 678 (3d Cir. 1988)) (stating that the “disclosure of...settlement agreements is not necessary to provide the public with a ‘complete understanding of the judicial system and a better perception of its fairness.’”); *Kaleo, Inc. v. Adamis Pharms. Corp.*, No. 19-917-RGA, 2019 WL 11680196, at *2 (D. Del. July 16, 2019) (finding good cause to seal “details of, discussion of, and/or reference surrounding licensing negotiations.”); *Delaware Display Grp. LLC v. LG Elecs. Inc.*, 221 F. Supp. 3d 495, 497 (D. Del. 2016) (finding it appropriate to seal details such as “the pricing terms in license agreements, some other non-public financial information, trade secrets, and other proprietary technology.”)

III. INFORMATION TO BE SEALED

Samsung respectfully requests that limited portions of the trial transcripts and Exhibit PX-77 (also referenced at trial as DTX-283) be sealed, consistent with the Rules and the law of this Court and the Third Circuit. With regard to the non-redacted parts of the transcripts to

which it received access,² Samsung requests sealing of the confidential information located on the following pages and lines:

- 1) April 24 Transcript (Ex. A):
 - a. Pg. 105, ll. 19-21
 - b. Pg. 106, ll. 2-4, 7-8, 12-19, 21-22
 - c. Pg. 159, ll. 10-21, 24
 - d. Pg. 160, ll. 4-25
 - e. Pg. 161, ll. 1-2, 7-25
 - f. Pg. 162, ll. 1-8, 15-19
 - g. Pg. 232, ll. 15-25
 - h. Pg. 233, l. 1 – pg. 240, l. 6
 - i. Pg. 246, l. 5 – pg. 250, l. 7
 - j. Pg. 266, ll. 4-9, 24-25
 - k. Pg. 267, ll. 1-5
 - l. Corresponding portions of the index related to these redactions

- 2) April 26 Transcript (Ex. B):
 - a. Pg. 578, ll. 20-24
 - b. Pg. 581, ll. 16-23
 - c. Pg. 592, l. 11 – pg. 593, l. 4
 - d. Pg. 627, l. 11 – pg. 628, l. 18
 - e. Pg. 664, ll. 12-24
 - f. Corresponding portions of the index related to these redactions

- 3) April 27 Transcript (Ex. C):
 - a. Pg. 819, ll. 21-25
 - b. Pg. 820, ll. 1-24
 - c. Pg. 934, ll. 1-2
 - d. Corresponding portions of the index related to these redactions

- 4) April 28 Transcript (Ex. D):
 - a. Pg. 1122, l. 20
 - b. Corresponding portions of the index related to these redactions

- 5) May 1 Transcript (Ex. E):
 - a. Pg. 1250, ll. 14, 20
 - b. Pg. 1291, l. 6
 - c. Pg. 1295, l. 9
 - d. Pg. 1297, ll. 18-19

² Samsung has received versions of trial transcripts that contained third-party redactions from Arendi's counsel, in accordance with the Court's order. D.I. 573. To the extent that those transcripts differ from the sealed transcripts filed as D.I. 577-585, Samsung requests that the confidential information highlighted in Exs. A-F control.

- e. Pg. 1299, ll. 17-18
 - f. Pg. 1300, ll. 12, 21
 - g. Pg. 1301, ll. 11-12
 - h. Pg. 1303, l. 2
 - i. Pg. 1435, l. 19
 - j. Pg. 1438, ll. 11, 18, 25
 - k. Pg. 1439, l. 1
 - l. Pg. 1451, l. 6,
 - m. Pg. 1452, ll. 22-25
 - n. Pg. 1453, l. 1 – pg. 1459, l. 25
 - o. Pg. 1460, ll. 15 – pg. 1463, l. 4
 - p. Pg. 1463, ll. 13-25
 - q. Pg. 1464, l. 11 – pg. 1465, l. 1
 - r. Pg. 1467, ll. 3-15, 19-23
 - s. Pg. 1468, ll. 1-9, 25
 - t. Pg. 1469, l. 1
 - u. Corresponding portions of the index related to these redactions
- 6) May 2 Transcript (Ex. F):
- a. Pg. 1474, ll. 23-24
 - b. Pg. 1484, ll. 13, 15
 - c. Pg. 1531, ll. 14-25
 - d. Pg. 1532, l. 1
 - e. Pg. 1562, ll. 13-15, 16-18, 23
 - f. Pg. 1563, ll. 5-8, 10-15
 - g. Pg. 1612, ll. 19-21
 - h. Pg. 1613, ll. 13-22
 - i. Pg. 1614, ll. 15-16, 18-19
 - j. Pg. 1618, l. 24
 - k. Pg. 1619, ll. 1-2, 5-17
 - l. Pg. 1620, ll. 13-14
 - m. Pg. 1621, ll. 11-16
 - n. Corresponding portions of the index related to these redactions
- 7) Exhibits PX-77 (also referenced at trial as DTX-283) (Samsung-Arendi Settlement and Patent License Agreement) (Ex. G) in their entirety

IV. ARGUMENT

The confidential information that Samsung seeks to seal relates to the Samsung-Arendi Agreement, which was introduced at trial as Exhibit PX-77 (also referenced at trial as DTX-283). The redactions that Samsung requests all relate to discussions of the terms and/or details of the

Samsung-Arendi Agreement and are narrowly tailored to redact confidential information related to that agreement.

As explained in the Declaration of Cheolwoo Ahn (the “Ahn Decl.”), filed concurrently herewith, the Samsung-Arendi Agreement contains highly confidential information related to Samsung’s settlement and licensing activities, including financial terms and other competitive materials. Ahn Decl. ¶ 6. Samsung expends significant resources to maintain the security and confidentiality of documents such as the Samsung-Arendi Agreement. *Id.* ¶ 7. The disclosure of information from such documents would cause Samsung serious harm, in that litigants and/or licensors would become aware of the terms on which it has licensed patents and settled litigation, thereby undermining Samsung’s ability to negotiate commercially favorable agreements in the future. *Id.* ¶ 8.

The Third Circuit and courts in this District have consistently recognized the need to seal confidential information such as the “details of, discussion of, and/or reference surrounding licensing negotiations.” *Kaleo, Inc. v. Adamis Pharms. Corp.*, No. 19-917-RGA, 2019 WL 11680196, at *2 (D. Del. July 16, 2019). Indeed, where non-parties are involved, this District has given greater weight to their risk of injury in the absence of a protective order, because they did not choose to litigate and risk disclosure. *United States v. Dentsply Int’l, Inc.*, 187 F.R.D. 152, 160 n.7 (D. Del. 1999). As explained above, Samsung faces serious, irreversible harm if the details of its licensing and settlement agreement with Arendi are made public. And as a non-party, Samsung had no choice in disclosing its confidential information. As a result, the Samsung-Arendi Agreement and related discussions in the trial transcripts fall squarely within the scope of information that should be sealed because “the interest in secrecy outweighs the presumption.” *In re Avandia Mktg.*, 924 F.3d at 672 (quoting *Bank of Am.*, 800 F.2d at 344).

V. **CONCLUSION**

For the foregoing reasons, Samsung respectfully requests that the Court seal its confidential information related to Samsung's settlement and license agreement with Arendi, as identified in Section III(1)-(7) above.

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EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF DELAWARE
 3 ARENDI S.A.R.L.,)
 4)
 5 Plaintiff,) C.A. No. 13-919-JLH
 6 v.)
 7 GOOGLE LLC,)
 8 Defendant.)

10 Monday, April 24, 2023
 11 9:00 a.m.
 12 Jury Trial
 13 Volume I
 14 Sealed
 15 * * *

16 844 King Street
 17 Wilmington, Delaware
 18 BEFORE: THE HONORABLE JENNIFER L. HALL
 19 United States Magistrate Judge

21 APPEARANCES:
 22 SMITH, KATZENSTEIN & JENKINS LLP
 23 BY: NEAL C. BELGAM, ESQ.
 24 -and-
 25

1 APPEARANCES CONTINUED:
 2
 3 SUSMAN GODFREY, LLP
 4 BY: JOHN LAHAD, ESQ.
 5 BY: KEMPER DIEHL, ESQ,
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 9 Counsel for the Plaintiff

9 POTTER ANDERSON & CORROON
 10 BY: DAVID ELLIS MOORE, ESQ.
 11 -and-
 12 PAUL HASTINGS
 13 BY: ROBERT W. UNIKEL, ESQ.
 14 BY: CHAD J. PETERMAN, ESQ.
 15 BY: MATTHIAS A. KAMBER, ESQ.
 16 BY: ANDREA ROBERTS, ESQ.
 17 Counsel for the Defendant

1 P R O C E E D I N G S
 2
 3
 4 (Proceedings commenced in the courtroom beginning at
 5 9:00 a.m.)

7 **THE COURT:** Please be seated.
 8 Okay. The first day of trial, we're getting
 9 off to a rocky start here. Let's have appearances for the
 10 record.

11 **MS. SRINIVASAN:** Kalpana Srinivasan of Susman
 12 Godfrey on behalf of Arendi.

13 **MR. ARD:** Seth Ard, Susman Godfrey, on behalf
 14 of Arendi. Good morning, Your Honor.

15 **MR. LAHAD:** John Lahad, Susman Godfrey, on
 16 behalf of Arendi. Good morning, Your Honor.

17 **MR. BELGAM:** Neal Belgam for Arendi, Your
 18 Honor.

19 **MR. DIEHL:** Kemper Diehl from Susman Godfrey,
 20 on behalf of Arendi, Your Honor.

21 **THE COURT:** Okay.

22 **MR. UNIKEL:** Robert Unikel on behalf of Google.

23 **MS. ROBERTS:** Andrea Roberts on behalf of
 24 Google.

25 **MR. KAMBER:** Matthias Kamber on behalf of

1 Google.
 2 **MR. PETERMAN:** Chad Peterman on behalf of
 3 Google.

4 **THE COURT:** Okay.

5 **MR. BELGAM:** Your Honor, we have Max Straus,
 6 also for Arendi.

7 **THE COURT:** All right. Very good. So for the
 8 record, I've got a big stack of papers, much of which has
 9 come in over the weekend, in the last 48 hours. So let's
 10 start working through this.

11 It's 9:02. We'll get started. I had intended
 12 to take the bench at 8:30, but we didn't have everyone
 13 here. I won't dock the time today, but I'm frustrated by
 14 the situation, that we didn't have everybody here so we
 15 could get started.

16 So we have the jurors waiting in the jury room.
 17 We're going to have them sit here while we go through some
 18 of this stuff. So let's get started.

19 So first up on my list -- all right -- has to
 20 do with IPR estoppel. So I have letters from the parties
 21 that 456, 457, 463, and 464 on this issue. So the record
 22 is clear, here's my understanding of how we got to where
 23 we are today. This case has been pending since 2013, well
 24 before I took the bench.

25 Back in 2013, Apple, Google, and Motorola

1 petitioned for IPR of the '843 patent on a number of
2 grounds. The PTAB only instituted review on one ground,
3 obviousness over a reference called Pandit. After the IPR
4 concluded and litigation resumed, Arendi moved for partial
5 summary judgment that Google was prevented from asserting
6 certain invalidity grounds as a result of IPR estoppel.

7 Judge Stark assessed Arendi's motion in his
8 memorandum opinion at docket Number 391. As Judge Stark's
9 opinion explained, Arendi's motion argued that Google was
10 estopped from raising a number of different pieces of
11 prior art, including a piece of prior art that the parties
12 refer to as the CyberDesk system.

13 There appears to have been no dispute that
14 Google could have presented in the IPR certain patents and
15 printed publications that describe aspects of the
16 CyberDesk system. However, Google contends that the
17 CyberDesk system itself qualifies as prior art because it
18 was publicly used prior to the relevant date.

19 In his opinion, Judge Stark held that Google
20 was not estopped from asserting a ground of
21 unpatentability that included combinations of references
22 that consisted of estopped art with non-estopped art.

23 In other words, he included that even if Google
24 were estopped from raising the public use of the CyberDesk
25 system as a reference alone or in combination with other

1 estopped references, Google was not estopped from raising
2 the public use of the CyberDesk system as part of an
3 obviousness combination with other non-estopped
4 references.

5 However, Judge Stark's memorandum opinion did
6 not resolve the issue of whether Google was estopped from
7 raising the public use of the CyberDesk system as a
8 reference alone or in combination with other estopped
9 references. He pointed out that the public use of the
10 system is prior art that cannot be raised in an IPR.

11 However, he also stated the following: "In
12 invalidity grounds, based on a physical product which
13 could not have been raised during an IPR, see 35 U.S. Code
14 311(b), may be subject to IPR estoppel if the publication
15 described in the physical product could have been raised
16 as an invalidity ground during the IPR."

17 And he pointed to one of his previous opinions
18 for the proposition that an invalidity ground involving a
19 physical product is barred in litigation if a publication
20 reasonably could have been raised in the IPR that is
21 materially identical to the physical product. In that
22 circumstance, the physical product is entirely cumulative
23 on the estopped prior art publication.

24 Regarding Google's assertion that the public
25 use of the CyberDesk system was non-estopped prior art,

1 Judge Stark observed that Google's invalidity expert,
2 Dr. Fox, expressly relied on the deposition transcript of
3 the developer of the CyberDesk system, Dr. Dey; and that
4 Google contended that Dr. Dey explained certain CyberDesk
5 features that are not disclosed in publications that
6 describe the CyberDesk system.

7 Judge Stark concluded that there was at least a
8 genuine issue of material fact as to whether the CyberDesk
9 system is cumulative of the prior art publications that
10 could have been raised during the IPR of the '843 patent.
11 And he said that the dispute creates a fact issue that was
12 not amenable to resolution on a motion for summary
13 judgment.

14 That was back in March of 2022. Arendi did not
15 request reargument, nor did Arendi at that time request a
16 bench trial on the issue of IPR estoppel, or a
17 determination from the Court based on the record.

18 Fast forward to 2023, prior to the pretrial
19 conference, the parties filed a proposed pretrial order.
20 Arendi did not ask for a bench trial prior to the jury
21 trial and the proposed pretrial order, nor did it
22 otherwise flag for the Court prior to the trial conference
23 that the issue of IPR estoppel needed to be decided before
24 the jury trial.

25 One of Arendi's motions in limine asked the

1 Court to preclude Google from taking any position contrary
2 to the Court's prior orders or its stipulations. But, of
3 course, that motion could not possibly have covered
4 Google's introduction of evidence relating to the
5 CyberDesk system because, as I just explained, Judge Stark
6 denied Arendi's motion to estop Google from asserting the
7 CyberDesk system.

8 At the pretrial conference, Arendi made what I
9 can only describe as a stealth motion regarding IPR
10 estoppel.

11 In the context of discussing its motion in
12 limine to preclude Google from taking any position to
13 contrary to the Court's prior orders or its own
14 stipulations, Arendi said that Google should not be able
15 to introduce combinations of art that Judge Stark had
16 previously held were estopped.

17 Then it said -- and this is the stealth part --
18 also the Court will need to rule on other prior art that
19 should be estopped based on inter partes review estoppel
20 before trial, and any -- those should also be excluded.

21 At that point in time, I had no idea what
22 Arendi was talking about because this hadn't previously
23 been flagged as an issue that needed resolution before
24 trial. We then engaged in a discussion about when Google
25 would disclose the final obviousness combinations that it

1 intended to raise at trial.

2 And I said that Arendi could raise whatever

3 remaining dispute it had about prior art references in a

4 letter after it received those combinations. But, again,

5 I had no idea at that time, and I certainly wasn't made

6 aware that Arendi's concern actually had to do with prior

7 art references that Judge Stark had already addressed in

8 his prior opinion.

9 Then on April 11, five days after the pretrial

10 conference, and over a year after Judge Stark addressed

11 the same issue, I got a letter from Arendi that said --

12 DI 256, again asking the Court to preclude Google from

13 presenting at trial any combinations of prior art that

14 used CyberDesk.

15 Arendi's request is denied for several

16 independent reasons.

17 First, the timing. This request is just too

18 late. If Arendi thought there were open issues that

19 needed resolution prior to trial, Arendi had multiple

20 chances to bring them to the Court. A motion for

21 reargument before Judge Stark, a request in the pretrial

22 order for a bench trial prior to the jury trial, or an

23 express request in the pretrial order that the Court

24 decide the issue before trial on the written record, or

25 even a motion in limine.

1 art because it was in public use prior to the relevant

2 date. Public use is a separate category of art from

3 patents in publications. The record before the Court

4 suggests that Google intends to show that the CyberDesk

5 system anticipates and was in public use prior to the

6 relevant date.

7 The evidence Google seeks to present to prove

8 anticipation comes from testimony of a developer who

9 demonstrated the system in public and various printed

10 publications that describe aspects of the system,

11 including nine printed publications, one conference

12 poster, the developer's thesis notes, and some other

13 materials like source code and slides.

14 I'm not persuaded that Google could have raised

15 that anticipation argument in the IPR, at least for the

16 reasons that involves combining evidence from multiple

17 sources to show that a single prior art system had all the

18 limitations, and it relies on the public use of the

19 invention which could not have been raised in the IPR.

20 Likewise, I'm not persuaded that Google could

21 have raised public use of the CyberDesk system as part of

22 obviousness combination in the IPR.

23 Arendi points out that Google could have raised

24 in the IPR patents and printed publications that describe

25 CyberDesk. And it contends that those patents and printed

1 The motion in limine that Arendi did file for

2 the pretrial order asked for a ruling that defendant

3 couldn't violate Court prior orders. However, there was

4 never any ruling out of this Court saying that Google was

5 estopped from asserting the CyberDesk system; thus, the

6 arguments it now brings are wholly unrelated to the motion

7 in limine that Arendi did file.

8 Second, Arendi's request to exclude all

9 combinations of prior art that include CyberDesk is denied

10 to the extent that it is inconsistent with Judge Stark's

11 prior ruling that IPR estoppel does not prevent Google

12 from presenting obviousness combinations that consist of

13 estopped references in combination with non-estopped

14 references.

15 Third, Arendi says that an evidentiary hearing

16 is not required for the Court to rule on the issue of

17 estoppel. That's that document 463. And on the record

18 presently before the Court, I find that Arendi has failed

19 to meet its burden to prove estoppel.

20 The law says that: "A petitioner in an

21 inter partes review may request to cancel as unpatentable

22 one or more claims of a patent only on a ground that could

23 be raised under Section 102 or 103 only on the basis of

24 prior art consisting of patents and printed publications."

25 Google says that the CyberDesk system is prior

1 publications are cumulative to the evidence that Google

2 intends to present at trial.

3 Judge Stark seemed receptive to that argument,

4 but he didn't decide it. I'm less receptive.

5 Instead, I agree with the approach and analysis

6 laid out by Judge Noreika in her opinion in Chemours vs.

7 Daikin. That's at 2022 Westlaw 2643517.

8 And I conclude that as a matter of statutory

9 interpretation, estoppel does not apply to Google's

10 invalidity arguments that rely on a prior public use of

11 the CyberDesk system whether or not its testimonial and

12 written evidence of that system is cumulative to the art

13 that Google could have raised in the IPR.

14 Arendi says that the CyberDesk system is

15 nonexistent; however, Google intends to present testimony

16 that it did exist and that it was publicly demonstrated

17 even though there was no working system fully presented at

18 trial.

19 Arendi also says that pursuant to the

20 corroboration rule, Dr. Dey, a developer of the CyberDesk

21 system, can only testify about aspects of the system that

22 are also described in the printed publications.

23 Arendi argues that because Dey can't testify

24 about additional aspects, the publications are, by

25 definition, cumulative to what he can testify about.

1 I reject that argument, at least for the reason
2 that I disagree that the corroboration rule prevents
3 Dr. Dey from testifying about aspects of a prior art
4 system that are not described in patents and printed
5 publications.

6 To be clear, this is not a case where the only
7 evidence of a prior art public use is a reference that a
8 patentee could have raised in an IPR. I could imagine a
9 hypothetical case where there is an advertisement of a
10 prior art device that an IPR challenger could have
11 presented in an IPR as a printed publication.

12 If the advertisement were the only evidence of
13 a prior public use of an invention, I might be receptive
14 to the argument that defendant cannot escape IPR estoppel
15 by saying that the same reference is also evidence of a
16 prior public use. But the record reflects that is not the
17 case here.

18 Google says that it intends to prove prior use
19 of the CyberDesk system through a combination of testimony
20 and multiple public and nonpublic documents. Thus, even
21 if there were a narrow exception that precluded evidence
22 of prior public use when the only such evidence is
23 materially identical to a single printed publication it
24 could have been raised in the IPR, that exception would
25 not apply here.

1 469, and Arendi's response at 472.

2 Google has, again, reraised the issue of
3 Samsung license defense. Google recently raised this
4 issue in its motion to strike. That was that document
5 Number 419. There, Google asked the Court to strike a
6 portion of Arendi's expert report providing a damages
7 figure that factored in apps on Samsung devices.

8 At the pretrial conference, I declined to do so
9 stating that essentially Google was seeking a pretrial
10 ruling that infringement is licensed when the accused apps
11 are on Samsung devices. And that's an issue that, in my
12 view, should have been appropriately raised for a motion
13 for partial summary judgment. And, of course, the
14 deadline for filing those motions has long passed.

15 In its present letter, Google once again asked
16 the Court to preclude Mr. Weinstein's damages testimony to
17 the extent it includes apps on Samsung devices, because
18 according to Google, apps on those devices are licensed.

19 Google says it will be prejudiced in multiple
20 ways if Arendi is allowed to present evidence of damages
21 that include damages for apps on Samsung devices, but
22 Google's claims of prejudice are all grounded in its
23 assertion that the testimony is improper because those
24 uses are licensed.

25 Google's request for a pretrial determination

1 But, of course, we don't know what will happen
2 at the trial. Accordingly, my ruling is that Google is
3 not estopped from raising the public use of the CyberDesk
4 system as prior art.

5 My ruling is without prejudice for Arendi to
6 reraise it should it appear that Google's only evidence of
7 a prior public use is a publication that could have been
8 raised in the IPR.

9 And that concludes my ruling on that issue.
10 Hopefully that takes care of letters 456, 457, 463, and
11 464.

12 I realized, after I started, that it's possible
13 that Google has furthered limited its combinations to
14 render this issue moot.

15 Is Google still intending to rely on the
16 CyberDesk system?

17 **MR. UNIKEL:** We are, Your Honor.

18 **THE COURT:** All right. Okay. Good.

19 All right. Let's move on to the next issue I
20 have on my list. That is issue is the Samsung license
21 defense. I have letters that 469 and 472.

22 By the way, the first -- it took me about
23 12 minutes to read that first ruling. That time will be
24 charged to Arendi.

25 Okay. Next, we have Google's letter filed at

1 that its apps on Samsung devices are licensed is denied.

2 Here, again, Google has essentially requested
3 summary judgment on a defense of license. The request is
4 denied for the same reasons I denied it at the pretrial
5 conference.

6 To the extent Google believes that it has a
7 valid license defense and that the license at issue needs
8 to be construed by the Court prior to that defense going
9 to the jury, that is something that could be taken care of
10 with jury instructions.

11 Google's letter also asks the Court to clarify
12 what evidence and arguments regarding the agreement the
13 parties may present to the jury by deciding as a matter of
14 law whether or not the agreement is ambiguous.

15 To the extent I understand Google's request, it
16 apparently does not want to present certain evidence at
17 trial relevant to its license defense. And it might
18 either win or lose that defense as a matter of law post
19 trial, but that's the point of the summary judgment
20 motion.

21 Google thought the license defense was
22 dispositive of an issue and had the opportunity to ask for
23 summary judgment on that issue. It's too late to raise
24 that now.

25 Google says that it wants a ruling from the

1 Court as to whether or not the agreement is unambiguous or
2 ambiguous so that it can determine what jury instructions
3 are appropriate. That, in my view, has it backwards.

4 If there is a triable defense that's properly
5 part of the case that's not been disposed of on summary
6 judgment, it's going to get tried.

7 If Google thinks that the jury needs to be
8 instructed on the meaning of a written contract as part of
9 that defense, it is incumbent upon Google to propose a
10 jury instruction, and it has not proposed any jury
11 instructions on this issue.

12 I say again, I don't have a proposed jury
13 instruction from Google construing the license. If Google
14 had proposed an instruction on the meaning of the license,
15 and Arendi had proposed a competing instruction, the Court
16 might be in a position to make a pretrial ruling in the
17 context of jury instructions that the agreement was
18 unambiguous in favor of Google, that it was unambiguous in
19 favor of Arendi, or that it was ambiguous. But I don't
20 have proposed instructions on this issue.

21 To the extent the license defense is not
22 raised, the parties can present their proposals at the
23 charging conference.

24 So that takes care of the second issue that I
25 have.

1 resolved, that the Federal Circuit has spoken definitively
2 on the issue, even though none of the grounds that we are
3 presenting here were presented in the IPR.

4 So we would like just there to be no reference
5 by either side to the IPR proceedings. But if reference
6 is made, then it's going to become a much bigger deal to
7 try and explain to the jury what happened, what does it
8 mean for this case, why are the grounds here different
9 than what could be considered in front on the PTAB, and
10 the different burdens of proof, different claim
11 constructions. And it becomes a very big moras.

12 So we tried to avoid that by eliminating Pandit
13 from the case altogether.

14 **THE COURT:** So can you tell me what
15 combinations? I have the list of eight. I don't think I
16 know what's getting raised. Just out of curiosity --

17 **MR. UNIKEL:** Correct. So we're proceeding with
18 anticipation based on CyberDesk, CyberDesk plus Microsoft
19 Word 97, CyberDesk plus Apple data detectors, and Apple
20 data detectors plus Microsoft Word 97.

21 That's all, Your Honor.

22 **THE COURT:** Okay. The fact that -- I guess I'm
23 struggling. I think what I'm going to hear from the other
24 side is -- and I'll let them talk in a minute -- is that
25 up until this weekend, you wanted to introduce evidence of

1 The third issue has to do with the scope of
2 evidence that could be presented on -- that has to do with
3 the IPR proceedings. So this, I think it's fair to say
4 that the parties' positions on this issue have been
5 evolving over time, including since last Thursday.

6 So I've got letters that were filed late last
7 night, including, at least, one after midnight. So let's
8 hear from Google on where things stand now.

9 **MR. UNIKEL:** Thank you, Your Honor.

10 After the hearing on Friday when this issue
11 came up, we had had discussions over the weekend in an
12 attempt to try and at least narrow the dispute, if not get
13 rid of the dispute. Google has withdrawn all of its
14 references to Pandit, which is the one ground that was
15 actually included in the IPR.

16 We have no obviousness combinations. We are
17 not going to raise Pandit. As a result, our proposal
18 was -- and I think it's the appropriate proposal -- that
19 IPR proceedings should just not come in at all, because at
20 this point, since Pandit is not in the case, those
21 reference to any of the proceedings in the Federal Circuit
22 or the PTAB are going to be confusing to the jury.

23 And, frankly, I think that what we've seen from
24 Arendi is that they would like to use those proceedings to
25 suggest to the jury that all validity issues have been

1 the IPR proceedings, and it wasn't because -- were you
2 going to say that you thought it was invalidity based on
3 Pandit?

4 **MR. UNIKEL:** No, Your Honor. The only reason
5 that this was coming up at all is because there's a
6 willfulness charge post complaint. The case was stayed
7 for five years based on IPR proceedings. And we felt that
8 it was important, if there was going to be an aggressive
9 willfulness case, to explain there were proceedings going
10 on in the Patent Office, and that's why we reasonably
11 acted as we did.

12 We do not believe that even that discussion
13 that we were proposing had any relevance to the jury's
14 determination about validity. And we were not planning to
15 use it to suggest validity or invalidity of the patent.

16 We simply -- frankly, we still need to explain
17 why we didn't -- why there was no action for five years as
18 this case was going on, which is why we've asked, in light
19 of the new developments in the case and withdrawal of
20 certain claims, that there not be a willfulness charge as
21 part of the case.

22 But even if there is, we'll just have to
23 explain without reference to the IPR proceedings, because
24 it's become clear that introducing a discussion of the IPR
25 proceedings will become vastly more confusing than it

1 helps on any point.
2 And so we'll basically just have to explain
3 that we were defending the case for 2013 through 2018 when
4 it resumed, and we would not reference what was happening
5 in the Patent Office during that time.

6 That was the only reason we were going to
7 reference the proceedings at all.

8 **THE COURT:** All right. Thanks very much.
9 All right. Let's hear from Arendi.

10 **MR. ARD:** Thank you, Your Honor. Seth Ard from
11 Susman Godfrey.

12 First, we think this issue has been raised.
13 They could have raised this long ago in motions in limine.
14 They've been telling us ever since -- you know, up to
15 three days ago, they're going to raise these invalid --
16 this IPR, and that was their intent to do so. And we
17 think it's too late now. We have our opening prepared.
18 We have our witnesses prepared. It's too late to do it
19 now.

20 Second, it does go to willfulness. He just --
21 Mr. Unikel just said that they reasonably acted the way
22 they did with respect to their belief in invalidity.
23 Their own cases that we've cited back to the Court say
24 that for our willfulness affirmative case, we can show
25 that they took their best shot in trying to invalidate the

1 patent if it was fully disclosed in publications. And
2 that's something that the jury just has to do know,
3 otherwise it can be misapplying the jury. And juries are
4 instructed all the time on what the law is.

5 But I think, you know -- and the first two
6 points, I think, here today anyway, that, you know,
7 they've been bringing this, I think invalidity -- or this
8 IPR in this case from the beginning, they've done so all
9 the way up to yesterday. And we think it's too late to
10 raise now. And it's relevant to our affirmative case on
11 willfulness, and the cases that we cited all say that.

12 **THE COURT:** So slow it down and explain it to
13 me in as plain English as you can. Why don't you tell me
14 a piece of evidence that you would like to have the jury
15 know about how the IPR and the chain of inferences that
16 leads to that conclusion, that somehow this has something
17 to do with their willfulness.

18 So you want to introduce -- they don't want to
19 introduce it anymore, so now you're going to introduce it.
20 What are you going to ask --

21 **MR. ARD:** Correct.

22 **THE COURT:** What are you going to tell the jury
23 about what happened in the IPR, and what does that have to
24 do with willfulness?

25 **MR. ARD:** Just the basic facts that I think --

1 patent, and they failed to do so. And that shows they
2 didn't have a reasonable belief in the invalidity of the
3 patent. In cases, you know, that we cite say that.

4 And the third point, Your Honor, is, I think,
5 as Your Honor just explained, they can't show invalidity
6 based solely on the features that were exposed in the
7 written publications of CyberDesk, for example, their
8 anticipation defense. And the jury needs to understand
9 that. Otherwise, the jury could make a finding of
10 invalidity that is contrary to the law of estoppel.

11 **THE COURT:** There's no way that they could have
12 raised CyberDesk public use as an anticipating reference
13 in the IPR; isn't that right?

14 **MR. ARD:** Well, Your Honor, we agree with what
15 you -- I mean, we accept what you just said about the fact
16 that Dr. Dey is testifying to CyberDesk features that were
17 not disclosed in the publications, but that doesn't mean
18 that those -- what he disclosed -- what he testified that
19 was not disclosed is material to this case in any way. He
20 may have testified to something that wasn't disclosed.

21 But I think, as Your Honor said at the end of
22 your ruling, you know, if what they're really doing and
23 what really ends up happening, is that the publications
24 themselves expose features that invalidate the patent,
25 then that's something that can't be used to invalidate the

1 if you actually look at their proposed stipulation that
2 they submitted last week, and I think they submitted a
3 version of it today, there's two basic facts that are
4 relevant. One is that they sought to cancel the patent in
5 2013, and that they failed.

6 The Federal Circuit -- they took their best
7 shot, and the Federal Circuit held that they were not able
8 to cancel the patent. And that goes to whether they
9 reasonably believed that they -- the patent was invalid.
10 And that's something the courts have found. And we
11 cited -- I can't remember the case we cited again this
12 morning and we cited last week -- that Google's own cases
13 that recognize that their affirmative case of willfulness,
14 that's relevant to reasonable belief in invalidity.

15 **THE COURT:** All right. Thank you.

16 **MR. UNIKEL:** Your Honor, may I be heard on two
17 points?

18 **THE COURT:** Yes.

19 **MR. UNIKEL:** First, on the issue of was it too
20 late, I just want to point out that after we had submitted
21 all of the pretrial materials, they added the Federal
22 Circuit decision and the IPR to their exhibit list late.
23 We pointed that out to them. We objected to it. We could
24 not have filed the motion in limine on it because there
25 was no indication before we filed motions in limine that

1 they had any desire to introduce it to the case.

2 Second, as to the notion that we took our best

3 shot, we are restricted in IPRs as to what we can present

4 and what we cannot present. We could not present

5 CyberDesk. We could not present Apple data detectors.

6 And those are the grounds that we are presenting here.

7 So to give the jury the impression that we

8 presented the things that we thought were best in the IPR

9 and are now sort of bringing up the dregs at trial, it

10 gives not only the wrong, but a false impression because

11 we couldn't have raised these things in the IPR

12 proceedings. So there's going to be tremendous confusion

13 on the part of the jury, well, didn't the Federal Circuit

14 and the Patent Office already decide this.

15 And last, when they say we brought this and

16 then lost, the Patent Office found the patent

17 unpatentable. The Federal Circuit reversed it on a

18 procedural ground as to whether they could use common

19 sense to fill in a missing element or not. To try to

20 explain to the jury what the impact of the Federal

21 Circuit's ruling on a procedural matter as -- such as what

22 could common sense be used or not used for in an

23 obviousness combination, I think, is beyond the jury

24 capability and will grossly prejudice the case. We think

25 this should come out -- and by the way, it comes out to

1 didn't invalidate the patent at issue. And then in 2017,

2 is the release of feature that's accused in the

3 applications of infringing. And in the multi-factor test

4 that both sides agree to goes to the jury on willfulness,

5 there is a question about whether the defendant had basis

6 to believe the patent was invalid at the time that it

7 engaged in infringement.

8 And that is why they wanted to be able to use

9 the IPR to say we had a good faith belief that the patent

10 was invalid, and so we didn't engage in willful

11 infringement. But that's not just a defense position.

12 It's not that one side gets to argue about that evidence

13 for willfulness purposes; it is bilateral. And it's fine

14 if they don't want to raise that argument, but we are also

15 entitled to show that at the time they were engaging in

16 infringing activity, they didn't have a basis to believe

17 the patent was invalid because their issue had been

18 resolved in the Federal Circuit.

19 It doesn't mean they can't come, of course, to

20 court and seek, you know, to invalidate the patent now,

21 but it's about their temporal belief. And what we've

22 tried to do over the past two days is come up with a

23 simple stipulation. So we're not trying to show pleadings

24 and asking the jury to figure out the details of the

25 proceeding, and really to whittle it down to, I think, two

1 our detriment because now we have to just explain that

2 there's this long period of time where nothing was

3 happening in the case and we were defending ourselves, but

4 we will not reference the IPR proceedings in an effort to

5 do that.

6 So, Your Honor, I think that, basically, 403

7 would suggest that when something is unduly prejudicial

8 relative to its probative value, it's the kind of thing

9 that should not be included in the case. These decisions

10 certainly fall into that category.

11 **THE COURT:** Okay. Thank you.

12 **MS. SRINIVASAN:** Your Honor, may I?

13 **THE COURT:** Yes.

14 **MS. SRINIVASAN:** Just to be clear, there are --

15 there is a timeline of events, and counsel just referenced

16 it. Not being able to explain what happened in that

17 timeline is prejudicial to us because we brought a

18 complaint and nothing got litigated for many, many years.

19 And you'll see later in argument about their defense to

20 willfulness and what they knew. That's going to turn on

21 the fact that this case, this proceeding was stayed for

22 many years.

23 But the timeline is such that when they sought

24 IPR review in 2013, this case was stayed. That process

25 ended in 2016 with no determination or -- you know, they

1 fairly simple propositions.

2 There was an effort to seek review in the

3 Patent Office in 2013. It did not ultimately result in

4 the patent being invalidated in 2016 before the infringing

5 conduct took place. And I think that the stipulations are

6 not really that far apart. Our view is this should be

7 factual, and maybe it could be narrower. Google has

8 offered one that we felt was a little more about argument.

9 But at the end of day, I think that those are

10 two points that, in the absence of understanding what

11 happened, one, it's to our detriment because it doesn't

12 explain what happened with the case. And, two, it does

13 bear on willfulness. That goes both ways. So for Google

14 to say, well, we were going to rely on an adverse final

15 written decision to show that we had a good faith belief,

16 we weren't actually willfully -- and they don't want to do

17 that anymore. I understand that's their election. But we

18 are also entitled to use it to show that they didn't have

19 a basis to believe the patent was invalid at that time

20 that they released their infringing product.

21 And I think that is really the crux of what the

22 IPR proceedings should be used for. It can be whittled

23 down, frankly, to those two propositions. We've really

24 tried to make it factual, but even the stipulation could

25 be shortened to just say that.

1 I think in the absence of doing that, we are
2 put in this position that is prejudicial to us. And
3 Google has intended to use this. They have the IPR
4 petition and the final written decision on their exhibit
5 list, and they intended to rely on it. And now they've
6 effectively brought a motion in limine to say we were
7 going to rely on it; you can't. We may or may not rely on
8 it. And yesterday they said they didn't. It's a
9 concession that is relevant.

10 But I just want to be clear, we're not talking
11 about spiraling into some rehash of what happened in the
12 petition for institution. I think that we should be able
13 to advise the jury of the basic premise that Google sought
14 review of the patent, that that resulted in a stay of this
15 case, and that, ultimately, the patent was not invalidated
16 in 2016 before the launch of the functionality that's
17 accused in this case. Those bear directly on the issue of
18 willfulness.

19 **THE COURT:** Couldn't we tell the jury -- can
20 everybody agree that we can tell the jury that the case
21 was stayed and that it's not your fault that the case was
22 stayed.

23 **MS. SRINIVASAN:** We can. But I think that it's
24 critical, frankly, to understand how we got here. I mean,
25 Google's going to make an argument about how our patent is

1 expired and how much time has elapsed. And these are
2 things that are being placed as prejudicial to us. And it
3 is relevant to the question of willfulness and what Google
4 knew at the time that it began its infringing conduct.
5 Surely, they are going context that.

6 **THE COURT:** But if we didn't say anything about
7 the IPR, the jury's going to sit here and think that there
8 was a valid patent during this time period. I mean, how
9 is that different? You want to be able to tell them that
10 their challenge was rejected.

11 **MS. SRINIVASAN:** That's it. That their
12 challenge was rejected, and I -- and that, you know, that
13 was part of the reason this matter was not told. To go
14 back to the Patent Office and to seek a review, and that
15 was rejected, and that is relevant to their state of mind
16 at the time that the infringing conduct began.

17 And then I don't think that we need to turn
18 into some, you know, side proceeding about what was in,
19 what was out. We can keep it that simple. But it is
20 relevant, and there are many themes in Google's
21 presentation of its defense that are aimed at, you know,
22 making it look like these patents are expired, so much
23 time has elapsed, we couldn't know, we didn't know.

24 The fact that they -- that the case was brought
25 and then they were able to understand the patents

1 sufficiently to go seek review in the Patent Office also
2 bears on willfulness because they are going to make an
3 argument about notice and what they knew and didn't know
4 was at issue.

5 So those two propositions: That they went to
6 the Patent Office and sought review, and that ultimately
7 that that failed before the launching of their product, we
8 think that's clearly relevant.

9 **THE COURT:** But if I tell the jury a curative
10 instruction that says that they couldn't have raised the
11 grounds before the Patent Office that they're raising here
12 in Court, how does -- where does that get you to tell them
13 that their challenge was rejected.

14 **MS. SRINIVASAN:** It affects their state of mind
15 at the time, and it also explains what they knew. They're
16 going to say, they're already saying in their papers we
17 didn't have notice of what, you know, what was at issue.
18 We didn't have notice of infringement so, therefore, we
19 could not have willfully infringed. They studied the
20 patent after the complaint was filed for purposes of being
21 able to bring an inter partes proceeding, and that is
22 the -- a factor that's considered as part of willfulness.

23 **THE COURT:** Well, we could tell the jury you
24 didn't have the opportunity to add your new claim charts
25 on the later accused stuff because the case was stayed.

1 And we can do that with instructions; right?

2 **MS. SRINIVASAN:** We could. But I -- you know,
3 ultimately, and we could also come back to an instruction
4 about whether it's appropriate in a limiting instruction
5 to say that Google couldn't raise the systems they raised
6 at that time. And then I think that's something that we
7 could work on for the purposes of the charge conference.

8 But I think we are now trying to patchwork
9 something that is very clearly part of the time line of
10 what has evolved here. And I don't think -- I know we're
11 going to hear from Google about what they knew and the
12 extent to which they knew it and why it was appropriate
13 for them to not, you know, that they didn't engage in
14 willful conduct. And I don't think we should be limited
15 in at least being able to explain those facts.

16 We don't have to say that there were -- you
17 know, can certainly advise the jury that there were things
18 that they couldn't bring to the Patent Office. But the
19 things that they -- but they did pursue further review.
20 And they did it knowing the content of our patents. So to
21 say now, well, we didn't know, we didn't know what you
22 were accusing, or we lacked notice. We should be able to
23 contest that for that purpose and to show their state of
24 mind.

25 And I understand. They're going to be able to

1 say, look, we still had a good faith belief in invalidity
2 because we had these systems in 2017. They're going to
3 have that defense. And that's going to be a fact issue
4 for the jury to resolve. But I don't think that we should
5 be deprived of being able to tell the jury that they had
6 at least attempted to invalidate the patent on certain
7 grounds and that that was not successful.

8 They're going to say, we couldn't have brought
9 the system stuff to the Patent Office, and that's okay
10 too. But I think, again, all of these relevance grounds
11 are the reason that Google intended to rely on the IPR
12 proceedings up until yesterday. And they apply in both
13 directions, and if it was Google's intent that they would
14 be able to and we wouldn't, that should have been teed up
15 in a motion.

16 But we're not asking to -- what we're trying to
17 do is avoid putting before the jury pleadings and having a
18 debate about the interpretation of that. We think, again,
19 if you look at the parties proposed stipulations, they
20 agree on the basic facts. This happened in 2013. This
21 happened in 2016. And we'd like to be able to tell the
22 jury that. If the Court deems that the parties should
23 then come with limiting instruction of what they couldn't
24 do in 2013 when they went to the IPR, we can do that too.
25 But I don't think it's right for Google to have assumed

1 they would put this into play for their benefit and made a
2 decision not to -- which is their choice, trial
3 strategy -- but then tell us that we're not allowed to use
4 it in any capacity.

5 **THE COURT:** Okay. Stand by.

6 Mr. Unikel, do you -- I'm hearing now a
7 proposal that you've got a stipulation that you want to
8 introduce those facts about the IPR?

9 **MR. UNIKEL:** No.

10 **THE COURT:** You want it out.

11 **MR. UNIKEL:** We want it out. We offered, if it
12 has to come in, if the Court rules that it's coming in,
13 then we do believe the only way it should come in through
14 a stipulation from the Court and a limiting instruction
15 from the Court. But we don't think that would solve the
16 problem.

17 **THE COURT:** All right.

18 **MR. UNIKEL:** So, no, I don't think that's the
19 right approach, Your Honor.

20 **MS. SRINIVASAN:** To be clear, the letter
21 Wednesday.

22 **THE COURT:** Understood.

23 **MS. SRINIVASAN:** And we, the parties, have been
24 trying to reach agreement on that stipulation or a form of
25 a stipulation. The objection of -- the wholesale

1 objection to using it only came yesterday. So on
2 Wednesday -- I think it was Wednesday, whenever the last
3 letter brief was submitted by Google, they said, we want
4 to use it for this purpose and we've attached a proposed
5 stipulation and instruction to accomplish that.

6 And we had a different view about what that
7 stipulation should include. It isn't -- it is not right
8 to say up until 24 hours ago that they didn't have a view
9 this should be --

10 **THE COURT:** I agree. I agree. Yep, have a
11 seat.

12 **MR. UNIKEL:** May I make one final point, Your
13 Honor, very quickly?

14 **THE COURT:** That's fine.

15 **MR. UNIKEL:** The reason this became a dispute
16 is when we were originally going to use it just to explain
17 why the case was stayed and what was happening without
18 trying to create validity issues about it, when we started
19 going back and forth about what a proposed stipulation or
20 instruction would look like, it became immediately
21 apparent that what this was going to be used for by Arendi
22 was to suggest to the jury that we took our best shot, the
23 Federal Circuit rejected it, and now, basically, we're
24 going back for third, fourth, or fifth try, even on art
25 that we could not have raised to the IPR.

1 The concern at this point is, again, whatever
2 probative value it would be to say this is what was
3 happening during the stay period is vastly outweighed by
4 the confusion in trying to explain to the jury how they're
5 supposed to process this proceeding that is in a different
6 forum, had a different ground than we're presenting,
7 different standards, different constructions, and what
8 should they do with that.

9 **THE COURT:** Okay.

10 **MR. UNIKEL:** I don't think it's necessary --

11 **THE COURT:** How is it fair to them that this is
12 coming up last night when they've already had their
13 opening demonstrative? I mean, what are they supposed to
14 do with their opening slide?

15 **MR. UNIKEL:** Well, I had suggested we met and
16 conferred on it last night. I had no problem with their
17 opening slide. I suggested to them just put: Stay
18 begins, stay ends. They wanted to include in that, that
19 we had gone to the Patent Office for a review, as I
20 actually told them, please create an alternative version
21 of the slide that says the stay started and the stay
22 ended.

23 You could still describe the timeline. You
24 could still say Google knew about the patent in 2013 and
25 they still launched their product in 2017.

1 All of that would be true. All that we just
2 don't want to now introduce is the side show of what
3 happened during the stay. And we're willing to say there
4 was a stay pending and we were always defending ourselves,
5 but that's it and not mention anything about the Patent
6 Office at all. Because it just -- it goes on a spiral.

7 **THE COURT:** Originally, you wanted to use this
8 as part of your defense to the willfulness defense, true?

9 **MR. UNIKEL:** True. Because we needed to
10 explain, we felt, what was happening, why was this case
11 stayed, because we didn't want the jury to think that
12 nothing was happening. But when it became clear that if
13 this got introduced, it was going to become a free for all
14 about how should the jury basically -- what should they do
15 with that information?

16 Frankly, sometimes you have to realize that a
17 position that you're going to take is not tenable in the
18 case. And so as it became clear back and forth how this
19 was going to be used and how the confusion was -- we were
20 going to all have to keep doing explanation on explanation
21 about why the jury should or shouldn't listen to what the
22 Federal Circuit did, it became clear that the best course
23 was to keep it out.

24 **THE COURT:** Okay. All right. Thank you. All
25 right. This is challenging for me, but I can tell you

39

1 it some thought and having reviewed these arguments, the
2 IPR rulings. I agree with Arendi that it is possible that
3 the IPR has some probative value to the issue of
4 willfulness; however, I think it has minimum probative
5 value, and I think that the value, if any, is far
6 outweighed by the potential for juror confusion and
7 prejudicial to Google, that the jury is going to use the
8 IPR proceedings improperly on the substantive issue of
9 invalidity. So for that reason, we are not going to
10 introduce evidence of the IPR.

11 **MS. SRINIVASAN:** Your Honor, could I --

12 **THE COURT:** Yes.

13 **MS. SRINIVASAN:** I understand the Court's
14 ruling about not wanting to use the substantive evidence.
15 I understand the concern about the probative value
16 outweighing the potential prejudice. But is there a way
17 for it to be described to tell the jury there are things
18 that they were not allowed to put before the Patent Office
19 to consider. The things that they were, they went through
20 a period of review.

21 Because I don't -- just telling them that there
22 was a stay makes it seem like we sat on it. And it is
23 relevant. I mean, it's not that it's not relevant, it's
24 not dispositive, of course. But if we said, yes, they
25 went to the Patent Office and sought a review on things

1 that I'm well aware of all the cases that were cited. We
2 spent the weekend reviewing them. We've got letters from
3 the parties that 473, 476, 484, and 485, Google's position
4 on this has changed. And so the time we've spent arguing
5 this is going to get charged to Google, including the time
6 actually for license defense. So we started charging time
7 to Google at 9:17.

8 So in light of that, on this issue we are going
9 to keep out all of the IPR evidence. I think we all agree
10 that evidence of the IPR is not relevant to the ultimate
11 issue of invalidity. The only possible relevance this
12 evidence could have goes to willfulness.

13 On the issue of willfulness, I understand that
14 Google is going to make an argument that Google believed
15 the patent was invalid based on prior art that it couldn't
16 have raised in the IPR. As I mentioned earlier, I agreed
17 with Google that the references having to do with at least
18 the CyberDesk could have been in the IPR. I take Arendi's
19 point that it wants to say that Google couldn't have
20 believed that these prior art systems were invalidating as
21 it had similar art that it did raise in the IPR or could
22 have raised in the IPR, and that the IPR was ultimately
23 unsuccessful.

24 The jury can decide for themselves if certain
25 elements are met by these prior art systems. I've given

40

1 that they could, and there were things that they could not
2 bring at that time. Doesn't that address the concern that
3 the relevance is being outweighed by prejudice? Because I
4 don't think we can contest that it's relevant. I mean,
5 they conceded it's relevant, and they've said it's
6 relevant to willfulness.

7 So now we've been -- you know, I just, what I
8 heard from counsel is that we thought we were going to use
9 it for willfulness, then we decided it could be used to
10 argue the opposite about willfulness. And so when we
11 realized that, we took it out of contention. I -- that's
12 not right. I mean, it is plainly relevant. But is there
13 a way where we can agree that it can be raised, but
14 with -- expressly in the context of saying that what they
15 did when they went back to the Patent Office, there were
16 things they weren't allowed to raise.

17 **THE COURT:** You can work with them on a
18 proposed instruction that we can tell the jury. As of
19 right now, that's the ruling that it should stay out. If
20 they open the door in any way, my ruling is subject to be
21 revisited. But that's what we're going to do for now.
22 And I'm open to an instruction if you have a proposal you
23 want to make in light of today's ruling, that's fine.

24 **MS. SRINIVASAN:** All right. Thank you, Your
25 Honor.

1 THE COURT: All right. It's 9:49. Do we need
2 to deal with these deposition designations before we begin
3 opening statements?

4 MR. UNIKEL: No, Your Honor.

5 MS. SRINIVASAN: No, we don't, Your Honor.

6 THE COURT: Okay. All right. Do we need to
7 address this damages issue before opening statements?

8 MR. UNIKEL: It's possible, Your Honor. Do you
9 want me to address it briefly and you can decide if we
10 need to?

11 THE COURT: I've skimmed the letters again. We
12 got up real early this morning, but we still had a stack
13 from you. Let's hear what you want the Court to do.

14 MR. UNIKEL: After the jury was impaneled on
15 Friday, we got -- at the end of the meet and confer that
16 we had asked, they notified us at the end that they were
17 dropping half of the case that related to Content
18 Detectors and Quick Actions in Chrome. They then said --
19 I asked them what the new damages number that they were
20 going to be offering. They said they'd get back to me.
21 Two hours later, about 11:00 at night on Friday, they sent
22 me a marked up exhibit to one of the experts' reports that
23 cobbled together numbers to create a new damages model for
24 the new case, which only includes Smart Text Selection.

25 THE COURT: They didn't have a spreadsheet with

1 line items for these once before in the report that you
2 had?

3 MR. UNIKEL: No. Part of the problem is this:
4 For the period from 2012 until 2017, the only accused
5 product was Google Chrome using Content Detectors and
6 Quick Actions. Once they dropped those out of the case,
7 their only infringement now in the case starts in December
8 of 2017 and goes to the expiration of the patent in 2018.

9 There were units, but the problem is the
10 hypothetical negotiation from their expert perspective
11 started 2012, not in 2017. All of their analysis of the
12 Chrome downloads, for example, made sense from 2012 to
13 2018 when there was Content Detectors and Quick Actions
14 involved.

15 When you take it out, the problem is this:
16 Upon the launch in 2017, downloaded Chrome apps in
17 particular are not going to be infringing on certain
18 versions of Android. They're only infringing on other
19 versions of Android. So you would need to have to delve
20 into how many of the downloads were to which versions of
21 Android. That wasn't relevant while Content Detectors and
22 Quick Actions were still in the case for that relevant
23 time period.

24 There is no ability to apportion what their
25 expert said for the relevant time period. The

1 hypothetical negotiation date is five years off. It
2 doesn't account for the fact, for example, that there's
3 only 11-month license that we would be talking about in
4 the hypothetical negotiation.

5 Our expert did account for that and did offer
6 an opinion, because his model is not as variable based on
7 some of these things. It's based on just a single license
8 purchasing a single comparable technology. But to use
9 their model doesn't work when you change the date of the
10 hypothetical negotiation and when you eliminate the
11 infringing allegation from 2013 to 2017.

12 So the problem is, we now have cobbled together
13 expert theory from them, no ability to know how it was
14 based, and, frankly, it's fundamentally flawed based on
15 the absence now of one of the accused functionalities.
16 That's our concern with letting them put on a damage
17 theory based on an expert opinion that doesn't appear
18 anywhere in the expert's actual --

19 THE COURT: Okay. So there are two issues.
20 There's one hypothetical negotiation for the wrong date.

21 MR. UNIKEL: Correct.

22 THE COURT: And the second issue is they've had
23 to rejigger the damages numbers, and you say it doesn't
24 make sense because they weren't --

25 MR. UNIKEL: They can't apportion it properly.

1 THE COURT: -- before.

2 MR. UNIKEL: Correct.

3 THE COURT: Okay. Let me hear from the other
4 side.

5 MS. SRINIVASAN: So on the first issue of the
6 hypothetical negotiation date, of course, this isn't -- I
7 don't want to say it's -- Google clearly contemplated that
8 this was going to happen. The damage expert offered an
9 alternative scenario that's just what we have right now.
10 And he did so, and he said that he opined on a
11 hypothetical negotiation date.

12 Likewise, our expert testified that there it
13 didn't really matter whether that date was 2013 or 2017
14 for his analysis. And, in fact, all that's happened is
15 that the experts are now closer aligned on the
16 hypothetical negotiation.

17 THE COURT: And your expert can be crossed on
18 the issue of --

19 MS. SRINIVASAN: Correct.

20 THE COURT: Okay. So let me hear back. I'm
21 going to have to see the exhibits so I can --

22 MS. SRINIVASAN: Sure.

23 THE COURT: -- understand the second part of
24 it. Or can you tell me where they are.

25 MS. SRINIVASAN: Are they attached to the

1 letter?

2 **MR. ARD:** Yeah. It's docket 482.

3 **MS. SRINIVASAN:** Okay. 482, Exhibit A, and I

4 can hand these up to you if you prefer, Your Honor.

5 **THE COURT:** Sure. That's great.

6 **MS. SRINIVASAN:** So may I approach?

7 **THE COURT:** Yes.

8 **MS. SRINIVASAN:** When the supplemental report

9 of our expert was served, he did bring it out app by app,

10 year by year. So that is how the report is prepared. The

11 exhibit gives an amount per app over various year periods.

12 And so when we removed certain apps containing the CDD

13 functionality, it's just a question of taking out those

14 line items.

15 The only thing that is -- one of the -- for one

16 of the applications, it went from being the full year of

17 2017 to August to December of 2017. That's straight

18 12-month apportionment.

19 So everything is in there in the exhibit. It's

20 application by application, and the applications that are

21 impacted by the removal of this functionality, we just

22 showed them. We sent them the same schedule that had been

23 disclosed to them before highlighting what was out and

24 what was in.

25 **THE COURT:** So what they're saying in your view

1 is that it's not -- so you're just saying we're just going

2 to -- we're taking -- no. We're just going to present the

3 blue stuff, or we're just going to take out the blue

4 stuff.

5 **MS. SRINIVASAN:** Blue is out. Pre2017 blue

6 stuff is out.

7 **THE COURT:** So you're just subtracting all the

8 blue stuff, and they're saying there's a problem with

9 that.

10 **MS. SRINIVASAN:** Yes. I guess -- yes.

11 Nothing has changed in the methodology, the

12 manner in which what remains is calculated on a per unit

13 rate is exactly the same as it was. The units which are

14 provided to us from Google are the same. It's just that

15 the pre2017 applications are removed. And the devices

16 that use that pre2017 functionality are removed. So that

17 is what we sent them.

18 And again, if you look at their expert rebuttal

19 report, he did a calculation and offered a rebuttal number

20 based on what we have now narrowed the case to. So he

21 understands what units are in play, their expert, because

22 he did the work to offer an alternative rebuttal scenario.

23 **THE COURT:** And every number that appears in

24 your supplemental exhibit, that was a number that your

25 expert could have been cross-examined or examined on

1 during deposition?

2 **MS. SRINIVASAN:** Yes. The numbers in terms of

3 application downloads, that comes from Google. And then

4 the rate, the ten cents for the applications and the

5 48 cents from the phones, that's not changed at all and he

6 was extensively cross-examined on the bases for his rate.

7 So there's nothing knew here that they didn't

8 have the opportunity to cross-examine him on. Exactly

9 that. The number of downloaded applications, installed

10 applications, and the rate are the subject of extensive

11 examination of Mr. Weinstein over several different

12 depositions.

13 So it is the same thing. It is just taking out

14 the units.

15 **THE COURT:** Okay. Thank you.

16 Let me hear from Google.

17 **MR. UNIKEL:** Your Honor, quickly, on the

18 exhibit where you see the blue going across the line for

19 Google Chrome. Google Chrome is by far the biggest

20 downloaded app and its biggest part of their damages. The

21 problem is when you have both of the functionalities being

22 accused, we didn't have to worry about apportioning those

23 downloads in 2017 and 2018 to different versions of

24 Android because the Content Detectors and Quick Actions

25 essentially filled the gap. They would walk on all

1 versions of Android.

2 Once they told us on Friday night that they are

3 eliminating Content Detectors and Quick Actions, now

4 there's a question whether those downloads, what operating

5 system version did those downloads go to. They would have

6 to prove that. There was no discovery on that in the case

7 because it wasn't an issue while Content Detectors and

8 Quick Actions was there. I don't even have the ability to

9 quantify and then cross-examination on the fly their

10 expert to say: How do you know which operating system of

11 the devices these apps were made to because there are some

12 that are non-infringing and others that are infringing.

13 The problem is now, by throwing in this theory that

14 basically just tries to blue-out the numbers for the

15 periods that they no longer are accusing, it creates new

16 apportionment issues that we can't cross-examine him on,

17 we never did cross-examine him on because they weren't

18 even apportionment issues while the whole time period was

19 at play.

20 That's the concern, Your Honor. It's their

21 burden to prove the damages. They would have had to have

22 an expert do that apportionment if they were going to ask

23 for damages for all of it. Now they're just saying, well,

24 we don't have that so we're going to ask for all of the

25 downloads in 2017 from December on and all of the

1 downloads in 2018. But the reality is that probably less
2 than half of those downloads would have been to devices
3 that actually have the operating system that could have
4 infringed. But we can't address that because we never
5 knew this was going to be a model they were going to
6 pursue.

7 **THE COURT:** Okay. Counsel --

8 **MS. SRINIVASAN:** May I respond to that?

9 **THE COURT:** Yes.

10 **MS. SRINIVASAN:** Except for Google Chrome, all
11 of the other applications were from 2017 forward. So if
12 Google wanted to argue, we don't know what Android
13 operating system those applications apply to, that issue
14 it could have raised at any time. It is not impacted by
15 the narrowing of the applications that are from pre2017.

16 There's -- all the other applications that are
17 in there from post 2017, if Google wanted to take
18 discovery on it or wanted to raise in a motion, it didn't
19 raise this in *Daubert*, could have raised it and said,
20 well, we can't identify for these other applications what
21 operating system, whether it relates to Android 8 or not.
22 That issue is one that, as Google has framed, could have
23 been raised at any time. It is not specific to the fact
24 that the pre 2017 units are not -- no longer being
25 asserted.

1 So I think there's a little bit of confusion
2 created that is not clear here. All of the things from
3 post 2017 that are in the case today, that were in the
4 case before, that's the argument that counsel is talking
5 about. He wants to say, I don't know which one
6 corresponds to the 2018 -- or to the Android 8. But that
7 was true a week ago, two weeks ago, six months ago.

8 So that's not a new argument. That has nothing
9 to do with the fact that the pre2017 units are out. It
10 is -- all of those other applications that are unmodified
11 besides Google Chrome. They are exactly as they were
12 post2017.

13 If Google wanted to argue that they can't
14 figure out what operating system they connect to, that
15 should have been raised before.

16 **THE COURT:** All right. We are not going to
17 exclude any evidence at this point. That said, that
18 doesn't say anything about the merits. So if the evidence
19 gets presented and plaintiff failed to meet its burden of
20 proof that these numbers correspond to infringing
21 products, that's what it is. Google can move for JMOL or
22 we can deal with it in post-trial briefing, but the
23 evidence is going to go forward.

24 All right. An issue about closing the
25 courtroom.

1 **MS. SRINIVASAN:** Your Honor, we understand that
2 some information that might be raised in opening Google
3 has asked that the courtroom be sealed for, and there are
4 some third-party licenses that are referenced in opening,
5 and at least one of those third parties has made a request
6 for sealing. And so we obviously want to understand how
7 the Court would like to best handle that. Those are
8 definitely going to be presented in opening argument.

9 There are probably two discrete sections where
10 that happens, but they are not together in the opening, so
11 it would require sealing in the middle. And the Court can
12 also consider whether -- in our view, is that when Google
13 has asked us to seal in terms of number of downloads or
14 the number of installed applications, doesn't provide a
15 basis for sealing the courtroom.

16 We understand if we're talking about source
17 code we may need to seal the courtroom. But these are
18 unit numbers, and we don't see that as a basis for sealing
19 the courtroom at this --

20 **THE COURT:** Can we get -- are we talking about
21 information that's on an opening slide that's going to be
22 up on the screen?

23 **MS. SRINIVASAN:** Yes.

24 **THE COURT:** Is there a way we can deal with
25 this where we can give the jury a copy of the slides?

1 **MS. SRINIVASAN:** We could do that and not
2 publish it.

3 **THE COURT:** Counsel?

4 **MR. UNIKEL:** That would be fine, Your Honor, if
5 we just not publish the information to the whole
6 courtroom, but the jury gets the slides in hard copy, we
7 wouldn't object to that.

8 **THE COURT:** I just want to make sure -- I just
9 want to make sure -- I don't want to hear any arguments of
10 counsel later about certain slides being given undue
11 weight because we handed up copies of these slides but not
12 other slides.

13 So I guess we could explain to the jury that
14 we're going to give them a copy of all of the slides with
15 the idea being that the -- that's not a great solution as
16 I'm thinking about it. We could give them a copy of just
17 the slides that have the confidential information and
18 explain to them that we are giving it to them because it's
19 got confidential information we don't want published to
20 the Court.

21 Anybody have any ideas about what the best
22 approach is going to be?

23 **MS. SRINIVASAN:** I think that would work fine,
24 at least for my purposes because the two major things we'd
25 be talking about these third-party licenses, I could

1 certainly say there's an agreement by this party, which,
 2 you know, that can be shared publicly, and the number and
 3 the amount of that I can't say out loud, but you can look
 4 at it on your slide.

5 **THE COURT:** Okay. Counsel?

6 **MR. UNIKEL:** That would make sense as long
 7 as -- the only thing I would ask that if those slides are
 8 given, they be given at the time that it would normally
 9 show up in the presentation.

10 **THE COURT:** So they're not sitting there
 11 looking at them?

12 **MR. UNIKEL:** Right. The whole time. And then
 13 obviously they shouldn't be evidence that they're taking
 14 back, and so we can collect those at the end as well.

15 **THE COURT:** Everybody agree?

16 **MS. SRINIVASAN:** That's fine.

17 **THE COURT:** How quickly do you think you can
 18 get all of that prepared so that we can hand it out?

19 **MS. SRINIVASAN:** Just need to print probably
 20 about four slides.

21 Okay. We have a printer here, so I think we
 22 can do that in 10, 15 minutes.

23 **THE COURT:** Okay. All right. Is there
 24 anything else? Have a seat. Anything else we need to
 25 deal with?

1 Is there anything else we need to address
 2 before we get started?

3 **MR. UNIKEL:** I don't believe so, Your Honor.

4 **MS. SRINIVASAN:** No, Your Honor.

5 **THE COURT:** Okay. All right. Let's take a
 6 ten-minute break, and we will be back at 10:15 and we will
 7 start with opening statements.

8 (Whereupon, a recess is taken.)

9 **MS. SRINIVASAN:** We've got our printouts made.
 10 I've shared those with the other side. They are fine with
 11 having them handed out to the jurors. There are only four
 12 or five of them. There's a stapled copy. And I can
 13 reference that without publishing it on the screen.

14 **THE COURT:** Okay.

15 **MR. UNIKEL:** Thank you, Your Honor.

16 **THE COURT:** Fantastic. All right. Is everyone
 17 ready to begin? May I have those as well? Thank you.

18 **MS. SRINIVASAN:** And, Your Honor, I just had
 19 one question. I know we are limited to the podium. Do
 20 you object to us being in front of the podium if we're
 21 facing the jury?

22 **THE COURT:** That's fine. I just like everyone
 23 to be within arm's reach of the podium during opening
 24 statements.

25 **MS. SRINIVASAN:** Sure.

1 So we are going to be able to do openings
 2 without closing the courtroom?

3 **MS. SRINIVASAN:** With that, for Arendi, yes.

4 **THE COURT:** Yes?

5 **MR. UNIKEL:** I believe yes, Your Honor.

6 **THE COURT:** Okay.

7 **MS. SRINIVASAN:** And I believe in the
 8 examination of our first witness, Mr. Hedloy, we'll have a
 9 similar issue where there will be some discussion. Now,
 10 in that case, because he's offering evidence and
 11 testifying about it, we probably will need to seal the
 12 courtroom so he can talk about the terms of those
 13 agreements.

14 **THE COURT:** Can we cabin it to one module of
 15 the direct examination?

16 **MS. SRINIVASAN:** I believe so, yes.

17 **MR. UNIKEL:** And we can cabin the cross
 18 similarly. I have it in one module.

19 **THE COURT:** So the idea is that we're going to
 20 kick everybody out, leave the jury where they're seated,
 21 do it, bring everybody back in. That's going to happen
 22 twice during the course of the examination?

23 **MS. SRINIVASAN:** Yes.

24 **MR. UNIKEL:** Yes.

25 **THE COURT:** Okay. All right.

1 **THE COURT:** Just out of curiosity, do you have
 2 a sense of how long your opening will be?

3 **MS. SRINIVASAN:** It will be under an hour,
 4 45 minutes to an hour.

5 **THE COURT:** Forty-five minutes to an hour.
 6 Counsel?

7 **MR. UNIKEL:** I would guess about 40 minutes,
 8 Your Honor.

9 **THE COURT:** Okay. So I think what we'll try to
 10 do is do the openings, and then we'll take lunch after
 11 that.

12 **MR. UNIKEL:** Great. Thank you, Your Honor.

13 **THE COURT:** All right. Let's bring the jury
 14 in.

15 **THE CLERK:** Yes, Your Honor.
 16 (The jury enters the courtroom at 10:21 a.m.)

17 **THE COURT:** Please be seated. Good morning,
 18 ladies and gentlemen of the jury. I want to apologize to
 19 you for the late start we had this morning. There were
 20 some matters that I needed to discuss with the attorneys
 21 before we began the trial, but we are now ready to go. We
 22 thank you very much for your patience. The trial is now
 23 going to begin. First we're going to hear opening
 24 statements from each side.

25 Counsel.

1 MS. SRINIVASAN: Good morning, ladies and
2 gentlemen of the jury. My name is Kalpana Srinivasan.
3 I'm a lawyer for Arendi. I have the great privilege to
4 represent this company and to represent its principal and
5 the inventor of this patent, Mr. Atle Hedloy. And he's
6 here with us today at counsel's table, and I wanted to
7 introduce him to you.

8 You know, when we're in grade school, we learn
9 some basic lessons about sharing, and sharing fairly. You
10 learn that you don't go and take something from your
11 classmate or, if you take something, you give it back or
12 you find a way to make it right. You don't let your
13 classmates do all the work when you have a school project.
14 You do your fair share.

15 We're here today because Google did not pay its
16 fair share for using Arendi's technology. And we're going
17 to need your help to resolve that and to hold Google
18 accountable.

19 Now, Mr. Hedloy, he invented something that
20 truly helped benefit consumers, a software invention of
21 great value. You all were here on Friday. You saw the
22 video from the Patent Office that explains how a patent is
23 granted. And over the course of this trial, you're going
24 to hear a lot about the hard work that went into
25 Mr. Hedloy's invention that he will present to you here.

1 He came up with this invention in 1997, more
2 than 25 years ago. And he came up with a way for
3 consumers to seamlessly use information while they were
4 working in different programs.

5 For example, if you're in an e-mail and you're
6 typing up an address, that you'd be able to see that in a
7 map without having to cut and paste information into a map
8 program. Some of that might sound common to you today,
9 but keep in mind, we're talking about an invention from
10 25 years ago. And at that time, when Mr. Hedloy came up
11 with his invention, he brought it to the Patent Office.
12 The Patent Office carefully reviewed it, and they decided
13 that he was entitled to have a patent on his invention
14 because it was useful and it was new.

15 You saw during your video on Friday the way
16 that a patent is laid out. The patent at issue in this
17 case is the 7,917,843 patent. You are going to hear it
18 referred to as the '843 patent in this case.

19 The invention that Mr. Hedloy came up with was
20 important to him and to his company, Arendi. But as
21 you'll hear, Google used this patented technology. And to
22 this day, Arendi is still trying to pursue payment for it.
23 And Google is unusual in this respect because other
24 technology companies paid for the right to use or because
25 they had used the Arendi patent.

1 You will hear that Apple and Samsung and
2 Microsoft all paid because they had used or wanted the
3 right to use the Arendi patent. It's only Google here
4 that didn't learn the lesson that we all did in grade
5 school about playing fair and sharing fairly. And so
6 we're going to ask you at the end of this case to hold
7 Google accountable for that.

8 Now, I know you got a very good preview about
9 the patent system during the video. I want to talk a
10 little bit more about what it means to have a patent and a
11 patent right. The U.S. Constitution provides for this
12 right. It was so important to our founding fathers that
13 it is in our constitution. United States Constitution,
14 Article I, Section 8, Congress shall have the power to
15 promote the progress of science and useful arts by
16 securing for limited times to authors and inventors the
17 exclusive right to their respective writings and
18 discoveries. The right, exclusive right to the things
19 that they discover as inventors.

20 And there's a reason for this. The U.S. patent
21 system is meant to attract people from all over the world
22 and in this country to disclose their inventions. You
23 could come up with something and keep it secret, but the
24 Government wants to give you a reason to share it so
25 others can learn from it. May be they can build on it.

1 And in exchange for that, you get the right to a patent.

2 You saw in the video on Friday the description
3 of a patent is like a deed, a deed to property. And it is
4 true we think of patents as property. It's a form of
5 property like we call intellectual property. But in the
6 same way that you get a deed to a piece of land, a patent
7 gives you the ability and right to exclude others from a
8 certain type of property.

9 You can see here that the patent grants the
10 right to the person having title to this patent the right
11 to exclude others from making, using, offering for sale or
12 selling the invention throughout the United States of
13 America. That's what the Government gives you and that's
14 what Mr. Hedloy received when the '843 patent issued.

15 Now, I want to talk a little bit about
16 Mr. Hedloy. He is the center of our story here over the
17 next few days. He grew up in northern Europe, in Norway,
18 in a small town. And even as a young man, he had a strong
19 interest in computers and technology. After high school,
20 he served in the Norwegian Army, and he wanted to decide
21 what to do next to build on this interest he had in
22 computers.

23 Nobody in his family had been to college and so
24 he asked people, if I want to learn more, if I want to
25 become better at this, what should I do? And people urged

1 him, encouraged him to look, to come to the United States
2 where learning about computer science and math was a
3 critical part of university education here. So he applied
4 to schools here and he got in. He was accepted to a
5 number of places, and he chose to attend Harvard. He was
6 able to pay for that because the Norwegian Government
7 helped support his education. And he received
8 scholarships from Harvard.

9 At Harvard, he had to do a whole array of jobs
10 to be able to stay there -- washing dishes, working in the
11 cafeteria, and then eventually being able to serve as a
12 teaching assistant in the computer science department.

13 You will see today, and you're going to hear
14 from Mr. Hedloy when he gives his testimony about the time
15 he spent at Harvard. And you'll see some pictures of him
16 on campus as he was studying as a student here, left his
17 family because he believed that he could learn the subject
18 matter that he was interested in better in this country.

19 His degree -- in four years, he earned a degree
20 in applied math and computer science. After that,
21 Mr. Hedloy took another journey from the East Coast to the
22 West Coast. He came to California because that's where
23 computers were being developed, the center of software and
24 personal computer development. And that's really where he
25 wanted to be to help improve and refine his skills.

1 He worked for computer companies, Convergent
2 Technologies, NCR, and there he worked on software
3 programming and personal computers. And he learned his
4 craft and he improved his skills.

5 After that time where he was working in
6 California, in 1986, he decided to get a business degree
7 because he had this interest in computers and software,
8 but he wanted to combine that with his own entrepreneurial
9 nature, a desire to work on businesses and to develop
10 companies around software.

11 He got his business degree, and then not long
12 after, he launched a company called Arendi. Now,
13 Arendi -- and I asked him myself what that meant -- it was
14 kind of a play on words, RND, research and development,
15 and he called it Arendi.

16 How did he start this company? He and his
17 wife, they used their own money to start this business.
18 And they wanted to develop software products that would
19 make it easier for people to use computers. Of course,
20 Mr. Hedloy had been using computers his whole life, so
21 that came second nature to him. But what he wanted to do
22 was figure out how people who were starting to use
23 computers, how it could become more accessible to them.

24 So his company, Arendi, one of the first
25 products it launched was called OneButton. And the idea

1 behind that was that you might be working or typing a name
2 and you wanted the address for that. You might be typing
3 a letter. And instead of having to go into your Contacts
4 and cut and paste the address or type the address into the
5 letter, you could get that address automatically at the
6 touch of OneButton. So that was the software that Arendi
7 first introduced as one of its products.

8 This product attracted a lot of attention at
9 the time. Again, we're talking about the late 1990s.
10 Mr. Hedloy took his invention and he took his product to a
11 very well-known computer convention in Las Vegas called
12 Comdex. Big companies go there, small companies go there,
13 and it's a great opportunity to have your product seen.

14 He demonstrated OneButton. And as you'll hear,
15 even big flagship companies like Microsoft talked to him
16 about his product, expressed interest in it, and talked to
17 him about potentially using it or developing a
18 collaboration. You are going to hear about that from him
19 later today.

20 He then entered into arrangements and business
21 dealings with companies like Compaq, well-known computer
22 company. And he worked with other businesses like
23 Scandinavia Online. You can guess that Scandinavia Online
24 is like the Scandinavian version of America Online, AOL.
25 He came up with a way in which his product could be used

1 with an address database to populate information and
2 addresses at the touch of a button.

3 A lot of interest in his product and a great
4 horizon on the way for his company. But Arendi and its
5 product as a business fell victim to what was happening at
6 the time in the economic market. You all may remember in
7 the early 2000s when the dot.com bubble burst, impacting a
8 lot of startup companies and technology companies and
9 many, many people and consumers all over the country.

10 So what did that mean for his business? Well,
11 Mr. Hedloy and his wife had been financing their company
12 and they -- as I said, had launched a great success. They
13 had been building deals and starting relationships. But
14 at a time when he would be getting investment or looking
15 to people to fund it, that investment had dried up because
16 of what was going on in the economy generally. So his
17 operating business, Arendi, as a company could no longer
18 continue. But Mr. Hedloy still had his most important
19 asset, and that is his patent.

20 During the time when he was working on
21 OneButton and the company, he was doing all of that, but
22 at the same time, he was working on drafting and preparing
23 a patent, his invention. The OneButton product that we
24 talked about, that was a starting point.

25 But his patent disclosed much more

1 functionality, the same concept: Software that could make
2 things easier for consumers by allowing them to get
3 information while they're working on an application.

4 You can see here, the '843 patent that he
5 continued to have even after the Arendi company itself and
6 business stopped operating.

7 Now, the '843 patent, as you've heard, went
8 through -- and as you'll hear over the course of this
9 proceeding, went through extensive review. And it gave
10 him rights to be able to control who could and could not
11 use his technology. And as you'll hear over the course of
12 the proceeding, Google is one of the parties that took
13 advantage of the technology contained in the art.

14 Now, I expect you're going to hear Google say
15 "What exactly did Arendi invent?" And they're going to
16 make it sound like you can't figure out what Mr. Hedloy
17 came up with and what it's value was.

18 What he invented is contained in his patent,
19 which was issued in 2011. And most importantly, it's
20 contained in the claims of the patent. For purposes of
21 deciding whether somebody entered your property in a
22 patent, the most important thing are the patents.

23 In this case, you will hear about two claims:
24 Claim 23 of the '843 patent, and Claim 30 of the '843
25 patent.

1 Now, you're going to hear about these in depth
2 over the course of the case. We're going to spend a lot
3 of time on it. As you can see, the claims are extremely
4 detailed. But they define the scope of Mr. Hedloy's
5 invention that Arendi had in the patent. And although you
6 may hear Google ask, "Well, what it is that Arendi
7 invented," that's why the government gives you a patent,
8 and the patent makes clear what belongs to you.

9 There are some examples in the back of
10 Mr. Hedloy's patent showing a very early version of an
11 example of a way in which his technology could be used.
12 And you can see there, reference to OneButton that allowed
13 the information associated with a person's name, like
14 their address, to be populated by the touch of a button.

15 This isn't the full scope of Mr. Hedloy's
16 invention. It's an example. And when Google tells you
17 that everything he invented is just in this one picture,
18 that's not the case. You're going to hear that what he
19 invented is defined by those claims I showed you at first,
20 not by any individual example you will see in the patent.

21 These examples are illustrations.

22 Now -- and we'll show you a demonstrative --
23 thanks, Mr. Boles -- that shows exactly one of the ways of
24 the examples that Mr. Hedloy provided, that you could use
25 a button to enable information to be brought into what you

1 were working on.

2 Mr. Hedloy received his patent in 2011. In
3 2013, he filed this action against Google. Shortly after
4 that, the action was stayed. It was put on pause for a
5 period of time.

6 And as you'll hear over the course of this
7 case, in 2017, Google released a feature that it put into
8 its application that did just what was claimed by the
9 Arendi patent claims. It did that knowing already about
10 what was in the Arendi patents, many years after knowing
11 that.

12 I told you earlier that Google is a little
13 different from other players in the industry because it
14 has brought us to this point here where we have sought to
15 compensate Arendi for its rights. Other companies did
16 that when Arendi approached them after litigation to try
17 to get a license from them for use of the Arendi patent.

18 And I'm going to talk you through it because
19 some of that information is confidential. We are not
20 going to have it up on the screen. The Court is going to
21 provide you with a copy of the slides for you to see as I
22 talk through them, but you will notice that I am going to
23 avoid saying the numbers out loud in open court because
24 those numbers have been treated as confidential.

25 **THE COURT:** Ms. Garfinkel?

1 **THE CLERK:** Yes, Your Honor.

2 **MS. SRINIVASAN:** I told you before, and I
3 showed you a picture when Mr. Hedloy was at this
4 convention called Comdex. And one of the things that
5 happened there was that Microsoft came to talk with him
6 about his products. Not long after that, Arendi saw that
7 Microsoft had released a product functionality that used
8 its patents. And Arendi pursued and asserted its rights
9 under its patent with Microsoft.

10 Microsoft paid Arendi for its use of the Arendi
11 technology. And you can see the date of that agreement,
12 November 28, 2011. You can see the amount of that, which
13 is what I am not going to say in open court, that
14 Microsoft paid to Arendi twelve years ago for using its
15 technology.

16 Microsoft was not the only one. Samsung, in
17 2019, also paid for its use of Arendi's patent. And you
18 can see there in your slides the amount that Samsung paid
19 to Arendi for being able to use the Arendi patent.

20 And last but not least, Apple paid Arendi for
21 the use and the right to use the technology in its patent
22 license. That happened a couple of years ago in 2021.
23 And in your slides, you can see the amount that Apple
24 paid.

25 Each of these companies reached a deal with

1 Arendi. And I'll tell you, those were deals that were
2 meant to avoid this, coming to a trial, having to go
3 through this. So those companies got a discount for that.

4 They enabled Arendi to receive money for the
5 use of its invention without having to spend as much time,
6 without having to have as much delay, and without coming
7 to this point in time. Google did not.

8 **THE COURT:** Ms. Garfinkel, please collect the
9 hard copy demonstratives from the jurors at this point.

10 **MS. SRINIVASAN:** And, Your Honor, there will be
11 a few more.

12 **THE COURT:** There will be one more?

13 **MS. SRINIVASAN:** Yeah. Towards the end.

14 **THE COURT:** Okay. My apologies.

15 **MS. SRINIVASAN:** Samsung, Apple, and Microsoft,
16 they used Arendi's property and they paid for that.

17 Google is using Arendi's property without
18 paying to do so. And let me be clear, they are making and
19 made great use of Arendi's technology.

20 I talked to you a little bit about this feature
21 called the Smart Text Selection feature. Google released
22 that feature in 2017. And when it did, it announced it
23 with great fanfare. And you can see here -- and you're
24 going to see this whole video when our expert testifies
25 probably later today or early tomorrow.

1 them. And that's why Google incorporates it in their
2 technology.

3 You'll hear that Google incorporated this
4 function, this Smart Text Selection, into its key
5 applications. Okay. Google Docs, Gmail, Google Calendar,
6 Google Chrome. They all contain this Smart Text Selection
7 feature because Google thought it was so important, it
8 wanted to integrate it into all of its applications.

9 Google's Pixel phones, Pixel 2 and Pixel 3,
10 they use this Smart Text Selection functionality. Again,
11 an important feature for Google. But the problem for
12 Google is that Smart Text Selection feature uses the
13 Arendi patent. It practices the claims in the Arendi
14 patent.

15 You will hear, over the course of this case,
16 exactly how it does that. Step by step, claim by claim,
17 limitation by limitation. We have Google videos,
18 documents, material that show exactly what they're doing
19 and how they do it.

20 And beyond that, we went and we had an expert
21 come in and take a look. You're going to hear from him,
22 Dr. Trevor Smedley.

23 You can see here a little bit about
24 Mr. Smedley, including that he was a professor here at the
25 University of Delaware. He went in, he looked at all

1 And in 2017, Google's vice president for
2 engineering for Android, Dave Burke, did -- to a crowd of
3 thousands, unveiled this new technology that Google said
4 it had come up with, when, in fact, it practiced the
5 Arendi patents.

6 But Google was very excited about it. Why?
7 Because it felt it made the lives of consumers easier. It
8 was something that it wanted its customers to know about.
9 And it was showing them exactly how they could use it.

10 You see the example right here. Mr. Burke will
11 do this on video when you watch it later today with our
12 expert.

13 He has a Gmail, a message open that has an
14 address in it, and by clicking on the address, he can get
15 access to Google Maps directly. Doesn't have to cut and
16 paste and then go into the Google Maps. Doesn't have to
17 go type the address into another program. That's
18 something that Google views as extremely valuable. It's a
19 benefit to their customers.

20 And you're even going to hear some of the
21 customer feedback they got. Customers felt that this was
22 a wonderful feature that made things easier, that it was
23 very intuitive for them. They could go to a map or go to
24 a phone without having to go between different
25 applications. They found it to be extremely valuable to

1 kinds of materials. He looked at Google source code,
2 Google's internal technical documents. He did his own
3 testing of their devices and their applications. And he
4 confirms that every step called for in the patents was
5 performed by Google's applications.

6 I'll tell you now that Dr. Smedley's testimony
7 will be the longest part of the presentation of our case.
8 We will spend a lot of time with his testimony going
9 through the evidence, piece by piece, bit by bit, because
10 we want to show that Google used these patents. It
11 practiced these claims. And we are going to do that
12 element by element, step by step with his testimony.

13 On Friday, the Court instructed you about what
14 our burden is, to show that Google infringed the Arendi
15 patent. You received a preliminary instruction on that.
16 For Plaintiff Arendi to prevail on its claims, it must
17 prove to you, in light of all the evidence, that what it
18 claims is more likely so than not so.

19 To say it differently, if you were to put the
20 evidence favorable to Plaintiff Arendi and the evidence
21 favorable to Google on opposite sides, Arendi would have
22 to make the scales tip somewhat on Arendi's side. That is
23 our burden to prove that Google does what's in the patent.
24 And the evidence will show that we will meet that burden
25 to show that that is what has been done.

1 I want to be clear, because sometimes it can be
2 confusing when we talk about patents, Google did not have
3 to know about or intend to use our property for us to find
4 that they infringed our patents.

5 It's kind of like if you have a piece of
6 property and somebody uses it, steps on it, maybe they
7 didn't even know it was your property -- that's still
8 infringement. They didn't need to know in order to be
9 using Arendi's property to find infringement.

10 But in this case, we will also ask you to find
11 that their infringement was willful, that it was
12 intentional, because in this case they did know. They
13 knew about Arendi's patent. They knew because we had
14 brought suit against them in 2013 with the complaint
15 there. And at the time that they released the Smart Text
16 Selection feature in all of their applications in 2017,
17 four years later, they were well aware of our patent and
18 they did it anyway.

19 Just like for infringement, you'll be asked to
20 find whether the infringement was willful, whether it was
21 intentional by the same standard, more likely than not.
22 And after you hear the evidence, we believe you will find
23 that Arendi has shown that it is more likely than not that
24 Google infringed and that its infringement was willful,
25 knowing about the Arendi patent and the Arendi technology.

1 They went through all of that material and they
2 decided that this patent still could issue because it was
3 valid.

4 You will see that there are an extensive number
5 of references. And you may recall Friday, may have passed
6 you by quickly, but there was a reference to the term
7 "prior art." What was out in the field at the time of the
8 invention.

9 The Patent Office, I submit to you, looked at a
10 lot. They looked at a lot of material. And Mr. Hedloy
11 participated in an extensive process before they made the
12 decision that his patent was valid and it should issue.

13 In order to overcome that presumption, Google
14 has a high bar. You heard on Friday that their burden for
15 trying to tell you this patent should be taken away,
16 shouldn't even exist, is by clear and convincing evidence.

17 What does that mean? Clear and convincing
18 evidence is evidence that produces in your mind a firm
19 belief or conviction that the allegations sought to be
20 proved by the evidence are true. Clear and convincing
21 evidence involves a higher degree of persuasion than is
22 necessary to meet the preponderance of the evidence
23 standard.

24 So our burden, to show that it's more likely
25 than not that they infringe, that's the preponderance

1 Google will ask you to find that the patent's
2 not valid.

3 Now, when a patent has been issued by the
4 Patent Office, it carries with it a presumption of
5 validity. A patent shall be presumed valid.

6 And in this case, the patent when through
7 extensive review before it was issued.

8 I mentioned to you on that timeline, that
9 Mr. Hedloy had come up with his invention in 1997. He got
10 his patent in 2011. He spent years going back and forth
11 with the Patent Office to make sure he was entitled to get
12 his patent, that it was new and novel and useful. So you
13 will hear about all the things the Patent Office looked
14 at.

15 You'll remember from the video you watched
16 Friday that there are patent examiners. People who are
17 special -- specialized, technical, trained in the field,
18 who sit there to make sure that a patent should issue.
19 They go through a very detailed review.

20 And in this case, how do we know that they did
21 that? Well, in the patent itself, you will see pages and
22 pages and pages -- in each of these, there are different
23 references of documents and materials that they looked at,
24 the Patent Office looked at before they decided to give
25 Arendi its patent.

1 standard.

2 Google trying to say this Arendi patent should
3 never have been issued in the first place; that, they must
4 do by clear and convincing evidence. That is their
5 burden.

6 And as you've heard, this patent already went
7 through close examination to even come out of the Patent
8 Office when it was issued.

9 Some of the things they'll talk to you about,
10 over the course of the proceeding, will show that aspects
11 of those were considered even before the patent was
12 issued. They're going to talk to you about something
13 called Apple Data Detectors, a system, a product from
14 Apple. And they're going to say that this is a basis for
15 invalidating Mr. Hedloy's patent. But you'll see
16 references to Apple Data Detectors right on the face of
17 the patent. Things that the Patent Office already looked
18 at.

19 And one of the things you heard on Friday, was
20 that in weighing the evidence, you should use your common
21 sense.

22 And in this case, I would urge you to consider
23 this: As you have before you -- and I am not going to say
24 it out loud -- Apple paid Arendi for its technology and to
25 use its patent. If Apple Data Detectors really did what

1 Google claims, if it's -- that system really was a basis
2 to get rid of Mr. Hedloy's patent, you might ask
3 yourself -- common sense -- would Apple have paid that
4 money?

5 Google is also going to talk to you about a
6 system called CyberDesk. And you'll see, again, examples
7 where references to CyberDesk are on the face of the
8 patent in the materials the patent examiner looks at,
9 aspects of CyberDesk materials. Again, extensive review
10 of this patent before it came out of the Patent Office.

11 And Google is here asking to you undo that.

12 We submit it will not be able to meet its very
13 high burden to show you this patent that has been around
14 has -- from its invention in '97, all the way through
15 2023, that Google's not going to be the one to invalidate
16 this patent.

17 Finally, you're going to be asked what should
18 Arendi be compensated for Google's use of its technology.

19 I want to know that -- as I mentioned to you,
20 Mr. Hedloy's invention dates back 25, 26 years. He got
21 his patent in 2011.

22 One of the deals the inventors make with the
23 government when they get a patent, is that it's for a
24 limited time. So the government gives it the right to
25 exclude people, but that doesn't last forever. It's a

1 limited time. And Mr. Hedloy's patent expired in 2018
2 because his invention was so early.

3 Mr. Hedloy is not here asking to be paid or
4 compensated for use of his technology after his patent
5 expired. That's the deal he made with the government.
6 It's available for use today.

7 What he is doing is asking Google to compensate
8 him for the amount that they used his invention back in
9 2017. And we're still here trying to get that.

10 You may hear Google say, well, you know, the
11 patent is expired now. That was a long time ago. That's
12 not a defense to having to pay for using somebody's
13 patent.

14 If somebody was on your property and you sent
15 them a bill, and five years later you're still pursuing
16 them from that, they don't get to say, well, it's too long
17 ago. That's not how it works.

18 But I want to be clear that Mr. Hedloy is only
19 pursuing what he's entitled to. After his patent expired,
20 it was available for use. But while he had the exclusive
21 right to that invention, Google did not have the authority
22 to use it. And that's what he is seeking compensation for
23 today.

24 Arendi has an expert, Mr. Roy Weinstein, who
25 has calculated the value of damages in this case. And one

1 of the things he did, is he went back and he looked at
2 those license agreements that others took from Arendi.
3 Samsung, Microsoft, Apple. And I'm not going to show you
4 the numbers, but you have them there with you.

5 Now, those companies, they settle litigation.
6 And so, of course, they said, well, we're not admitting
7 that we used it, but we're still going to resolve this.
8 And they paid substantial sums to do that, as you can see.

9 In this case for purposes of his analysis,
10 Mr. Weinstein, and even Google's own damages expert, they
11 have to assume the patent is valid and it has been used.
12 That's part of the analysis they must follow.

13 And so the value of those agreements, they
14 don't reflect the true and full value that you will be
15 asked to compensate Arendi for today. Those settlement
16 agreements, those are discounted. When you settle
17 something, when you resolve it without forcing a party to
18 take you to trial, there's a discount. And Mr. Weinstein
19 is going to explain to you how you take that discount to
20 come up with a number that Google owes Arendi today.

21 So what did he arrive at? Mr. Weinstein
22 calculated that for each Google application that infringes
23 Arendi's patent, that it should -- the amount owed to
24 Arendi should be 10 cents, a dime per application.

25 But as you'll see, there were a lot of

1 downloaded applications. Why? Because Google wants its
2 consumers to use this technology.

3 And if you look at the very last slide you have
4 printed out for you, the second-to-last slide, it has a
5 number PDX-1-52 at the bottom. You're going to see there
6 all of the different applications that Google used
7 Arendi's patent with. They're all listed out there.
8 Accused applications.

9 And then you're going to see the number of
10 installations of those applications, and they're
11 significant.

12 What does that mean? Users are installing the
13 applications that have the Arendi technology in it.
14 That's what Google wants. It wants its users to be
15 installing applications like Gmail and Google Docs.
16 That's a lot of use.

17 But the rate that Mr. Weinstein came up with
18 was just 10 cents an app, a dime, for the time period in
19 which Google was infringing on and using Arendi's
20 technology.

21 The slide after that, shows you the devices I
22 talked about, the Pixel phones in which Google also made
23 use of Arendi's technology.

24 Mr. Weinstein calculated the royalty rate of
25 48 cents per phone. And so he looked at the number of

1 phones that Google sold during that period using Arendi's
2 technology, and he calculated that a royalty of 48 cents
3 was owed back to Arendi. Taking all of that together
4 leads to the final damages number of \$45.5 million.

5 And one of the reasons we didn't show all of
6 the slides in open court is that they show Google
7 information. Google will tell -- is the one that told us
8 how many of its users was installing these applications,
9 these valuable applications containing our technology.
10 They just weren't paying for that.

11 Ladies and gentlemen of the jury, we are here
12 because, as I said, we are seeking for Google to pay its
13 fair share. Not more, not through today, because the
14 patent's expired, but for what it owed when it used the
15 patented invention. The time has come due. This has been
16 a long road for Arendi to get here today. Years of
17 pursuing Google for this.

18 And just as others in the industry have
19 recognized the value of the technology and their need to
20 pay for it, it is time for Google to also do the same.
21 And that is what we are asking for your help to make
22 happen.

23 I want to end by thanking you all for your
24 service on a jury. It is critically important work, and
25 we are grateful for the time that you will spend with us.

1 personal and professional obligations, and for many of you
2 to have to drive long distances in order to be here. We
3 don't underestimate the impact of that. And we very much
4 appreciate your service. And we appreciate you listening
5 to all the evidence before you make up your minds about
6 what this case is about.

7 You're now aware that this case is about one
8 patent. What everybody is going to be calling, quite a
9 bit, the '843 patent. And that's because it's the last
10 three numbers of patent number itself.

11 The patent is titled "Method System and
12 Computer Readable Medium for Addressing Handling from a
13 Computer Program." You can see in the highlighted, that
14 the patent was issued on March 29, 2011. Interestingly,
15 this particular patent application, you'll see, was filed
16 on July 29, 2008.

17 Now, you will also see -- and that's why I'm
18 trying to get the dates in order for you -- that this
19 patent claims to be what's called a continuation of a
20 patent that was earlier filed in the United States.

21 A continuation just means that there was an
22 original application filed with the same disclosure, but
23 then later, the inventor decided to file a follow-on
24 patent to add additional claims to what they were saying
25 they invented.

1 I say that on behalf of myself, Mr. Hedloy, and the rest
2 of our litigation team. And you're going to see them over
3 the course of the case.

4 I will have an opportunity to speak with you
5 again at the close of case, directly like this, after the
6 evidence is in. And I thank you for the time and
7 attention you're going to pay to this important case on
8 behalf of my client who seeks to make sure that Google
9 pays its fair share at last.

10 Thank you very much.

11 **THE COURT:** Ms. Garfinkel, can I ask you to
12 collect the demonstratives.

13 Now we will hear the opening statement from the
14 other side.

15 **MR. UNIKEL:** Forgive me. I'm just making sure
16 my slide show is working.

17 Good morning, ladies and gentlemen. My name is
18 Rob Unikel. I represent Google. I'm here today with my
19 colleagues Andrea Roberts, Chad Peterman, Matthias Kamber.

20 And on behalf of Google, we have here Mr. Ted
21 Choc, who is the director of engineering for Google
22 Chrome. You'll be hearing from him later in the case.

23 First, we'd all like to thank you very much for
24 your service on the jury. I know it's extremely difficult
25 to give up more than a week of your life, to give up

1 Now, you'll see -- and it's in the bottom left
2 corner -- that this patent claims priority to the first
3 U.S. application that was filed on November 10, 1998.
4 This is a very important date for you to keep in mind as
5 you go through the trial, because this defines the date
6 when Mr. Hedloy and Arendi first applied for a patent in
7 the U.S., first claimed to have a patent in the U.S. And
8 that's a legally important date.

9 As you heard from the Federal Judicial Center
10 video the other day, to get a patent, Arendi was required
11 to have come up with something new and not obvious over
12 what came before those are the requirements of the patent
13 laws. That's what gives you an invention.

14 So the November 10, 1998 date is an extremely
15 important date, because you'll have to look and see what
16 was known before that date, and what did Mr. Hedloy add,
17 what did he do that was new.

18 Over the next few days, we're going to look
19 really closely at what did exist before that, before
20 November 10, 1998. We're going to see some of the systems
21 that existed. And you're going to see what Arendi itself
22 admitted to the Patent Office did exist. And you'll see
23 what Arendi itself said it added to that, what did it say
24 was new.

25 And one more important fact that Arendi's

1 counsel pointed out, you'll see on the bottom right of the
2 slide, the patent expired November 10 of 2018. Now, we
3 are not casting aspersions. The patent runs out when the
4 patent runs out. What we're going to talk about is all
5 the things that happened before that date. The product
6 that they are accusing, which is called Smart Text
7 Selection, as you saw, was launched in December of 2017.
8 That's when users could first use the Smart Text
9 Selection. It was 11 months before the patent expired,
10 and you will see, Google took a very different approach
11 than Arendi did.

12 So there's one core question, and Arendi's
13 counsel also agreed on this question, that I want you to
14 focus on for the next week. It's really the most
15 important question of the case. What exactly did Arendi
16 invent? What was new about what they invented in November
17 of 1998? And that's important because the only thing you
18 can claim rights on, the only thing you can ask for money
19 on is what you actually added. Not everything that came
20 before, but what you added. And that's what we're asking
21 you to think about is, what, if anything, did Mr. Hedloy
22 add to what came before?

23 You are going to see when you answer this
24 question, that what Arendi says it invented is an approach
25 that is opposite from the approach that Google took.

1 There are a variety of technological approaches that you
2 can take; Arendi went one way, and Google went another
3 way. And we're going to show you that. We're going to
4 document it for you. To be frank, they went left, we went
5 right.

6 And to understand how and why this is the case,
7 what did they invent, you first need to know where to
8 look. What is it that you're going to be focused on?
9 Well, Arendi's lawyers and their expert during the case
10 are going to ask you to look mostly at, what does a user
11 see on their phone? They want you to believe, and I think
12 it was part of the presentation, that Mr. Hedloy invented
13 the idea of creating shortcuts that would allow you to
14 take a name, look up a name, and use information. Or take
15 a phone number, dial that phone number. Or take an e-mail
16 address and send an e-mail.

17 But that is undeniably not true, and Arendi
18 itself will show you that it agreed when it applied for
19 its patent that wasn't true. You'll see that there were
20 many well-known systems in 1996 and 1997, long before
21 Mr. Hedloy filed his application, that actually already
22 identified names in texts and acted on them. That
23 identified e-mail addresses in texts and acted on them.
24 That identified phone numbers and street addresses. All
25 of these things existed before Mr. Hedloy filed for a

1 patent application.

2 For example, you've already heard the name
3 CyberDesk. You're going to hear about a system called
4 CyberDesk. This was publicly displayed in 1996 and 1997,
5 months before Mr. Hedloy filed a patent application. This
6 was a system that was developed at Georgia Tech, and was
7 done purely for research and development purposes so
8 anybody in the world could use it. They published all
9 their materials. They gave presentations. They gave
10 speeches about it. And anybody was free to use it.

11 You will see -- we'll show you screenshots from
12 it. It analyzed text in any document, from a word
13 processing document to an e-mail, and presented the user
14 with a whole host of shortcut options. Some of those
15 shortcut options were as easy as dial a phone number when
16 you detect a phone number, send an e-mail when you see
17 e-mail address. And some of them were more complicated
18 like look up an e-mail address for a name in your contact
19 manager, or show a map for a particular street address on
20 a map program.

21 And you will hear from the very person who
22 created CyberDesk, Dr. Anind Dey, who is a dean at
23 University of Washington, and you'll hear from him about
24 what that system could do, how he displayed that system
25 publicly throughout 1996 and 1997, and how it did all of

1 the same things of what Arendi is saying it put into its
2 patent.

3 You will learn about another system that's
4 called Apple Data Detectors. This was very publicly
5 displayed in 1996 and 1997. You're actually going to see
6 some very outdated videos of presentations from 1996 and
7 1997 by Apple Computer at their annual conference called
8 Macworld where Apple Data Detectors were publicly
9 displayed and shown as doing all of the same things that
10 Arendi says is in his patent. It took a document. It
11 identified it, picked out phone numbers, e-mail addresses,
12 names. It then would look those up to find additional
13 information. It would give the user options of what they
14 could do with those phone numbers and e-mail addresses.

15 In fact, you're going to see in the video that
16 there was actually something called a write-a-letter
17 shortcut where Apple Data Detectors would find a name, and
18 then if he you pressed the menu item, it would go to a
19 contact database, look up the address for the name, and
20 then it would create a letter in your word processing
21 document that would be prepopulated with the name and the
22 address put in. You will see it's going to look an awful
23 lot like what's in the '843 patent.

24 And you will see not just the videos, but
25 you'll hear from the person who actually led the team at

1 Apple to create the Apple Data Detectors, and his name was
2 Jim -- James Miller. You'll hear from him.

3 So given the existence of all these preexisting
4 shortcut systems, the question will come back to what
5 exactly did Arendi invent? What did they add?

6 To answer the question, you're going to have to
7 look under the hood so to speak. And what do I mean by
8 that? Well, to use a car analogy, if you were to sit in
9 the driver's seat of a gas powered Ford Mustang or an
10 electric powered Tesla, you might think they work the
11 same. There's a speedometer. There's a steering wheel.
12 There's an accelerator pedal. If you press it, they both
13 go. But if you pop the hoods, you see that the way those
14 cars work is completely different from one another.

15 In this case, you need to look under the hood.
16 Because the patent claims, those long groups of text that
17 were shown to you, what they require is that under the
18 hood these computer systems work in a very particular way.
19 And so under the hood is where all the difference lies.
20 Because if all you looked at was what a user sees, you
21 would see that what a user sees using something that
22 Arendi said was in this patent, is identical to what
23 existed with Apple Data Detectors and CyberDesk and other
24 things. What makes anything different is what's under the
25 hood in this system.

1 text as a name or a phone number or an e-mail address and
2 then automatically looking up information to find
3 something to do with it.

4 That was being done by CyberDesk, Apple Data
5 Detectors, and others. And you'll see that; you don't
6 have to take my word on. You will see that write-a-letter
7 demo which results in a letter that looks almost identical
8 to the letter that's shown here in the patent figures.

9 So how did Arendi get its patent issued? So as
10 you heard yesterday in that Federal judicial center video,
11 the patent examiners have to rely on what the applicants
12 are saying to them when they apply for a patent. Other
13 than the applicant and the examiner, nobody else is
14 involved in the process of getting a patent.

15 And as you heard from Arendi's counsel,
16 Mr. Hedloy participated in what they said was this very
17 extensive process of getting the patent, and that's true.
18 It's this reason that you heard in the video that there's
19 a duty of candor. The applicant has to say what it
20 believes its invention is and clearly express it to the
21 Patent Office. The Patent Office wants to rely on those
22 statements. And then on the basis of that exchange, a
23 patent can issue or not issue.

24 So what did Arendi tell the Patent Office was
25 different about its invention from what came before? What

1 And Arendi doesn't want you to look under the
2 hood too hard because under the hood, Google does a very
3 different thing than what theirs does. Google took a very
4 different path.

5 So you just heard a little bit -- I want to get
6 into one of those paths. You just heard a little bit from
7 Arendi's lawyer about how this all came about from Arendi.
8 Mr. Hedloy made his own version of a shortcut tool that he
9 called OneButton contact manager. And this is the picture
10 that appears in the patent itself, and as you can see,
11 this OneButton program allowed a person working in a
12 Microsoft Word document -- you can see this is a Microsoft
13 Word document -- to type in a name, push that OneButton,
14 and that would invoke instructions that Mr. Hedloy had
15 programmed into Microsoft Word to get the address and
16 insert the address back into the document.

17 Essentially, OneButton was like a spell checker
18 for names. Where a spell checker looks in your document
19 for words that are not spelled correctly, goes looks up
20 the possible spellings that you might want, gives you the
21 option to put them back into the document, OneButton took
22 a name, allowed you to look for the address that might go
23 with that name, and then put it back into the document.

24 But as you have seen a little bit of and you'll
25 learn more about, there was nothing new about identifying

1 did it write into its patent claims?

2 You will hear that working from the OneButton
3 program, which we just saw the example of, Arendi told the
4 Patent Office that its claimed invention was different
5 than CyberDesk and different than Apple Data Detectors.
6 It required the document editing program, what they called
7 first computer program in the claims that we'll look at,
8 to be directly involved in the setting up the button, to
9 be directly involved in searching for that information.

10 Essentially, what you're going to see is that
11 Arendi's idea was put the shortcut tool inside of a single
12 word processing program or a single spreadsheet program.

13 And this is important because you're going to
14 learn from Google's engineers, you're going to learn from
15 experts in the field that there were essentially two basic
16 ways that you can create a shortcut tool, whether it's a
17 spell checker or a way to look up a phone number.

18 The first approach is place the instructions,
19 the code for that tool entirely into a single program so
20 that that single program and only that single program gets
21 the benefit of the tool. You can customize it that way.

22 The other way to do it is place the
23 instructions outside of any single program so it can be
24 used by multiple different programs at the same time. Or
25 different times.

1 These were basic and well-known approaches for
2 anybody practicing in computer design or software design
3 in the 1990s. There was nothing unique or new or
4 revolutionary about either of these. They were just basic
5 choices that you had to make when you were designing a
6 tool. Do I make them separate? Do I put it all in one?
7 Arendi didn't invent either of these approaches; these
8 were just basic computer science knowledge.

9 But you are going to see that Arendi very
10 clearly told the Patent Office what made its invention
11 different than CyberDesk or different than Apple Data
12 Detectors was that Arendi used the first approach. They
13 put the instructions inside of a single program. As you
14 saw in the figure, in the particular example, OneButton,
15 it was inside of Microsoft Word.

16 And to make this clear, Arendi wrote into its
17 patent claims requirements that the first computer program
18 had to do three very specific things. The first, as you
19 can see here with the Number 1, the first computer program
20 had to display the document electronically. The second,
21 is that it had to provide an input device that was
22 configured by the first computer program. And the third
23 was that, in consequence of receipt by the first computer
24 program of the user command from the input device -- and
25 we'll show you what those are -- you had to cause a search

1 for the search term. The first computer program had to be
2 intimately involved.

3 You're going to learn that the Court in this
4 case has given a very explicit definition of what a
5 computer program means in this patent claim. So when we
6 talk about first computer program, what does that mean?
7 Lots of people, lots of different context might define a
8 computer program a different way. But in this patent, the
9 Court has already ruled what does mean.

10 It means a self-contained set of instructions,
11 as opposed to a routine or library, intended to be
12 performed, executed on a computer so as to perform some
13 task.

14 And in particular, I want you to pay attention
15 to the fact that it has to be a self-contained set of
16 instructions; one container, self-contained. So for the
17 first computer program to do what is required by those
18 claims, those three things that are required, there has to
19 be one self-contained set of instructions that does those
20 three things.

21 Arendi told the Patent Office that CyberDesk
22 and Apple Data Detectors were different because they
23 followed the second approach. They made their
24 instructions separate from the computer programs that used
25 them. Arendi told the Patent Office that what made

1 their's different, what was supposedly new, was that they
2 put the instructions inside the first computer program.
3 And based on those arguments, that reliance on Arendi's
4 arguments, the patent issued.

5 But you will hear in the next week that it now
6 appears that Arendi has changed its position for purposes
7 of this litigation. In this case Arendi, is now saying
8 that the patent covers use of instructions in Google's
9 products that are separate from the first computer
10 program.

11 So let's start by understanding what the
12 products are. The highest level, they're accusing certain
13 Google devices: The Pixel 2 family of phones, the Pixel 3
14 family of phones. But obviously, it's not everything
15 about the phone that they're accused. They're accusing
16 specific things on the phone. Within that, they're
17 accusing 12 different Google apps of infringing. But
18 again, it's not all the features of those apps; there are
19 millions of features of those apps. There's just one
20 thing in particular they are pointing to. And that is
21 Smart Text Selection -- which you're going to start
22 hearing abbreviated as STS because it saves words -- with
23 TextClassifier.

24 And this is available with all the accused
25 apps, but it was launched in 2017. In December 2017 is

1 when users could actually begin to use it on their
2 devices, but as you'll hear, it took a while to actually
3 ramp up so that users could, on a regular basis, actually
4 use that functionality on their phone.

5 And remember the patent expired in November of
6 2018. So when we're talking about what is the period that
7 Arendi is accusing of infringement, it's about an 11-month
8 period. You're going to hear a lot about STS and how it
9 works from Google and Google's engineers over the next
10 week.

11 This product was developed from scratch within
12 Google entirely by Google engineers. You're going to meet
13 three of those engineers over the next few days. For
14 example, Mr. Toki, who you see on the right here,
15 personally developed and created and wrote most of STS.
16 He will be here in the courtroom to show you and explain
17 to you why Google took the second approach. They made the
18 instructions separate from any individual application so
19 that it could be used by many different applications.

20 You're going to learn that the instructions for
21 STS, Smart Text Selection, are actually part of the
22 Android operating system. And that is done precisely so
23 that it is available to all the different apps, not just
24 one particular program.

25 So the menu, what's called the input device,

1 that you're going to hear about, it looks like that. It
2 looks like what's up on the top of the screen. When a
3 user long presses on text using Smart Text Selection, you
4 get that menu bar. And that menu bar is created by the
5 instructions. It's set up by the instructions that are in
6 the operating system, not in any particular application.

7 And when a user presses on one of those
8 buttons, which is the user command you're going to hear
9 about in the claims, you're going to learn that that
10 command goes to the operating system to something called
11 intents handling instructions. Those instructions handle
12 the intents that come from all the different apps, not any
13 one particular program. And then those intents handling
14 instructions send it out to other apps, other programs so
15 that it could be used. There is no set of instructions
16 that is self-contained that does everything that Arendi is
17 saying their invention requires.

18 And you're going to hear not just from Google's
19 engineers who actually made the products, but you're also
20 going to hear from a world renowned expert in computer
21 science and engineering, Dr. Martin Rinard. He studied
22 the Google systems. He studied all the code that they
23 said their experts studied. He reviewed all of the
24 pleadings in this case, and he looked really deeply under
25 the hood of both Arendi's claimed invention and Google's

1 claimed invention.

2 And he and the Google engineers are going to
3 show you that Google took Approach Number 2. In our
4 products, there simply is not a single set of
5 self-contained instructions that contains all the code you
6 need to do the shortcut functionality that Mr. Hedloy says
7 is required.

8 As you think of this, as you go and listen to
9 the evidence, you might think of this as the difference
10 between two kind of restaurants: The kind of restaurant
11 that has a central kitchen where the kitchen prepares the
12 food for all of the different tables, or one of those
13 Japanese Hibachi restaurants like Benihana where the
14 cooktop is part of the table, and the chef can cook at the
15 table and deliver the food to the patrons who are sitting
16 there. But while all the patrons in both kinds of
17 restaurants get their food in front of them, it's an
18 extremely different way of approaching restaurants. It's
19 an extremely different way of setting up and delivering
20 the food.

21 You'll hear that Google's system is like the
22 restaurant with the central kitchen. All these different
23 tables, all these different apps, can place their orders,
24 but it's all filled by the central kitchen, by Smart Text
25 Selection and Intents Handling. Arendi's is more like the

1 Benihana where you've got -- the specific program has the
2 cooktop, has the instructions right there that are part of
3 it.

4 And you'll learn that these are fundamentally
5 incompatible approaches. Either the instructions are
6 outside, or they're inside. They can't be both.

7 And you'll learn from Google engineers and from
8 Dr. Rinard that there are practical reasons why Google
9 chose to go with Approach 2 instead of Approach 1. For
10 example, Approach 2 gives users a consistent experience
11 from app to app when they want to use the functionality.
12 Approach 2 makes it much easier for developers of apps to
13 incorporate this feature from Google, because, otherwise,
14 they would have to write it all themselves and put it in
15 their own programs at great expense, great trouble, and in
16 it's much easier if there's just a central service that's
17 offered that they can use.

18 And the third is to update. It makes a lot
19 more sense to update it once in the central location than
20 if you had to update every time there was a change in
21 every single program that had this built into it
22 separately. You're going to hear this is why Google took
23 this approach.

24 Now, Arendi's lawyer just suggested to you that
25 the Patent Office already considered CyberDesk, right,

1 showed you the highlighted references to CyberDesk and
2 Apple Data Detectors when -- that are on the cover of the
3 patent. But what Arendi's lawyer did not tell you is that
4 when Arendi presented CyberDesk and presented Apple Data
5 Detectors, they disclosed only some of the capabilities of
6 those systems, not all, and more importantly, they made a
7 very express argument to the Patent Office about why they
8 were different than those systems.

9 They were different, they said, because they
10 covered Approach 1, and they did -- the others were
11 Approach 2.

12 So when the Patent Office considered the
13 references, they relied on Arendi's arguments, as they
14 were entitled to do because of the duty of candor, and the
15 patent issued because there was a difference in their
16 mind. But again, it now appears that Arendi has changed
17 its mind for purposes of the claim against Google. Now
18 they're saying that the patent does cover the use of
19 separate instructions. So they're saying, essentially,
20 they now cover both kinds of restaurants; the restaurant
21 that has the cooktops at the table, and the restaurants
22 that have a central kitchen, both.

23 But if that's the case, then the patent is
24 invalid as you'll hear. In fact, you're going to hear
25 from Professor Edward Fox, who is a long-time professor in

1 the industry at Virginia Tech, extremely accomplished.
2 He's studied the invention. He has studied the patent.
3 He has studied what was said to the Patent Office, and he
4 has studied the prior art systems: CyberDesk, Apple Data
5 Detectors, Microsoft Word.

6 And what he's going to tell you and explain to
7 you is that if Arendi is correct that its patent covers
8 Approach 2, it covers the use of separate instructions
9 from the apps, then it covers CyberDesk and Apple Data
10 Detectors, because those did all the same shortcuts, they
11 presented users with all the same options, but they did it
12 with separate instructions rather than the self-contained
13 instructions that are required by the claims.

14 And if at the end of case, you really believe
15 that the patent is broad enough to cover Google's
16 products, which use separate instructions from the apps,
17 then you're going, I think, have to see that it also
18 covers systems that existed well before Mr. Hedloy ever
19 filed for his patent application.

20 So by the end of the trial, I think you're
21 going to see that Google's accused products do not perform
22 two critical elements of the '843 patent. Those that
23 specifically require actions from the first computer
24 program. They don't provide an input device that's
25 configured by the first computer program, and they do not

1 satisfy the inconsequence of receipt by the first computer
2 program of the user command from the user device causing a
3 search element.

4 And as you just heard, it's Arendi's burden to
5 prove infringement. If -- the evidence will show you that
6 Google went a different approach. They went right; Arendi
7 went left. And Arendi will not, we believe, be able to
8 show that there's infringement of these elements by
9 Google's use of an opposite technological approach.

10 When you look under the hood, when you really
11 consider how Arendi's patent invention needs to work and
12 how Google's products actually do work, I think you're
13 going to see they're very different approaches, even if
14 the user might see food on their table at the end of the
15 day.

16 Now, we get back to the question, what exactly
17 did Arendi invent? Because it's only what they actually
18 added that's new that they can ask for money based on.

19 So the question you're going to be asked is, is
20 there infringement? Is the patent valid? If you find
21 there's no infringement, if you find the patent is not
22 valid because it should not have issued in light of
23 CyberDesk or Apple Data Detectors, then you'll never have
24 to consider damages in this case.

25 Only if you find that we have infringed and

1 only if you find that the patent is valid will you have to
2 consider the question: If Google used Arendi's approach,
3 how much was it really worth to Google?

4 Once again, you're going to hear that their
5 invention was to put all of the instructions inside a
6 single computer program. Google went a different way and
7 put the instructions outside of any specific computer
8 program.

9 So it raises the question of how much would
10 Google pay for a technology that was the opposite of what
11 it wanted, that did the exact opposite thing of how it
12 wanted to construct its systems. And Arendi, as you've
13 seen, wants more than \$40 million from Google for the
14 period from December 2017 to November 10, 2018, 11 months,
15 for Google's use of a technology that it didn't want, that
16 it didn't need, and, frankly, that it wanted the opposite
17 of.

18 But if you ultimately get to consider damages,
19 despite the fact that we went one way and they went the
20 other, you're going to hear from an expert by the name of
21 Douglas Kidder. He is a gentleman who has 30-plus years
22 in the area of patent damages and financial damages
23 analysis. And you're going to hear from him about what
24 the appropriate way to consider the possible value to
25 Google of this would have been.

1 There's a little context, though, that I would
2 like you to consider. Before Arendi filed this suit, it
3 did not contact Google in any way about the patent. It
4 didn't send us a letter. It didn't call us on the phone.
5 Not a single contact to say: I have this patent. I think
6 you might be interested in it, or I think you might be
7 using the technology.

8 Now, remember, when they filed suit in 2013,
9 there's not a single product that's being accused of
10 infringement from that period of time. There's not a
11 single product right now, from 2013 to 2017, that's being
12 accused of infringement in this case, and yet they didn't
13 reach out to us before they filed suit to say: We think
14 you're infringing or we think you're using our patent; you
15 might want a license.

16 As you will hear, since the year 2000, Arendi's
17 company's only business is getting patents and enforcing
18 patents. Since the year 2000, they do not make any
19 products, they do not sell any products, they have not
20 tried to develop any products.

21 And as you will see, from the moment that they
22 filed suit against Google, Google has defended itself at
23 all times on the basis that it doesn't use the technology,
24 it does not want the technology, and it wants to go in a
25 different direction. It has defended itself by pointing

1 out the prior art CyberDesk systems and Apple Data
2 Detectors systems, and it has defended itself throughout
3 the case.

4 Now, Arendi pointed multiple times to
5 settlement agreements with Apple, Samsung, and Microsoft.
6 And the strong suggestion was made that these companies
7 took a license because they somehow valued and wanted the
8 '843 patent. First thing I'll note is that two of those
9 agreements, the Apple agreement and the Samsung agreement,
10 were signed after the patent had expired. After
11 litigation. They did not come to Arendi before the patent
12 expired and say, hey, we really want your technology;
13 please let us introduce it. They signed the agreement
14 after they were sued to settle litigation and did this
15 after the patent was expired.

16 And there are some more critical things about
17 these agreements that Arendi doesn't really want you to
18 focus on.

19 First, these companies expressly stated [REDACTED]
20 [REDACTED]
21 [REDACTED] You will see that on the face of the
22 agreements themselves. So when they say that these were
23 agreements that were because the patent -- these companies
24 really valued this technology or thought Arendi was a
25 pioneer, you will see that's not true from the face of the

1 agreements.
2 Second, [REDACTED]
3 [REDACTED]
4 [REDACTED] So when
5 they suggest that it was because there was such great
6 value to the '843 patent that these companies licensed it,
7 [REDACTED]
8 [REDACTED] But Arendi is going to ask you to
9 attribute all of the payments that you just saw to just
10 the '843 patent, which doesn't make any sense.

11 Next, what you will hear is that the total
12 amounts paid under those agreements, [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 If Google were to pay the same percentage of
21 revenues roughly, Google would owe between [REDACTED]
22 [REDACTED] And Mr. Kidder is going to take you
23 through all the specific numbers so that you can see for
24 yourselves how the license agreements would result in
25 these numbers if Google was to pay even close to a similar

1 amount.
2 But of course, you don't have to consider any
3 of this if you realize that Google went one direction and
4 Arendi went the other, so there cannot be infringement.

5 As you listen to all the evidence and the
6 arguments over the next few days, please keep this one
7 question firmly in mind: What exactly did Arendi invent?
8 What was new on November 10, 1998?

9 I'm confident that when you hear all the
10 evidence, you will realize that Google went a different
11 direction than what Google [sic] is claiming in its patent
12 claims. And I'm confident that what you will realize is
13 that if the patent claims really are broad enough to cover
14 both sides of the restaurant, to cover the way Google did
15 it and the way Arendi did it, that the patent also covers
16 the prior art systems CyberDesk and Apple Data Detectors
17 and would be invalid.

18 Please keep this one fundamental question in
19 your mind. If you do, I think all the rest is going to
20 fall into place over the next week.

21 Thank you very much.
22 **THE COURT:** Thank you, Counsel.

23 Can I briefly see counsel at sidebar.
24 - - -
25 (Whereupon, the following discussion is held at

1 sidebar.)
2 **THE COURT:** This will be quick. I am looking
3 at the time. We were quicker than I thought we were going
4 to be. I mentioned we would probably take lunch after
5 openings. At this point, I think we could get at least 35
6 to 45 minutes of time in before lunch. I didn't want to
7 catch anyone unaware. I didn't know what you told
8 witnesses. Are you prepared to --

9 **MS. SRINIVASAN:** We are prepared to call our
10 first witness.

11 **THE COURT:** Okay. That's what we will do.

12 **MR. UNIKEL:** Thank you, Your Honor.
13 (Whereupon, sidebar concludes.)

14 **THE COURT:** Counsel?

15 **MS. SRINIVASAN:** Arendi calls its first
16 witness, Mr. Atle Hedloy. And my partner, Mr. Kemper
17 Diehl, will be handling the examination.

18 **THE COURT:** Thank you. Please approach.

19 **THE WITNESS:** Can I get my glasses?

20 **THE CLERK:** Please state and spell your name
21 for the record.

22 **THE WITNESS:** Atle Hedloy, A-T-L-E,
23 H-E-D-L-O-Y.

24 **THE COURT:** Please raise your right hand.
25 ATLE HEDLOY, having been called as a witness, being

1 first duly sworn under oath or affirmed, testified as
2 follows:

3 THE COURT: Please proceed.

4 DIRECT EXAMINATION

5 BY MR. DIEHL:

6 Q. Good morning, sir. Could you please introduce
7 yourself to the jury?

8 A. Can I move the chair a little bit so -- I can hardly
9 see you.

10 Q. Oh, yeah. Let's get it set up right.

11 A. It's stuck. Okay. Sorry. Say that again, please.

12 Q. No problem. Are you all set?

13 A. I'll look over.

14 Q. I will try to lean this way a little bit, too.
15 Can you please introduce yourself to the jury?

16 A. Yes. My name is Atle Hedloy. I am the inventor, as
17 you heard, and also the owner, together with my wife, of
18 Arendi, the plaintiff in this case.

19 Q. Where are you from, sir?

20 A. I live in Luxembourg.

21 Q. Are you originally from Luxembourg?

22 A. No. I am originally from Norway.

23 Q. Where in Norway are you from?

24 A. I was born in a town called Fredrikstad. It's a
25 small town of about 20,000 people a little bit south of

1 Oslo, the capital. But I lived mostly, about ten years,
2 from fourth grade on through high school in another town
3 called Trondheim, which is about eight hours, I think,
4 north of Oslo, with about 150,000 people.

5 Q. When you were growing up in Norway, Mr. Hedloy, did
6 you speak English at home?

7 A. No, I did not.

8 Q. How did you learn English?

9 A. I started learning English in school in fourth grade,
10 and I'm still working on it, so bear with me.

11 Q. No problem. We'll go slowly, too, so the court
12 reporter can get everything down.

13 Where did you go to school in Norway, Mr. Hedloy?

14 A. I went to public school from first grade up through
15 high school.

16 Q. What did you then do after graduating from high
17 school in Norway?

18 A. I did the military service.

19 Q. What did you do for your military service?

20 A. Well, after basic training, there was selection, and
21 I played the trumpet. So I auditioned to try to become a
22 member of what was called the Majesty, the King's Guard
23 Band. And I was lucky I was selected. So I played in His
24 Majesty The King's Guard Band.

25 Q. What did you play?

1 A. I played the bugle. The trumpet without the valves.

2 Q. Did you have plans when you were in the military for
3 what you wanted to do afterward?

4 A. Yes. I wanted to go the U.S. and study, yes.

5 Q. Have your parents gone to college?

6 A. My dad had done one year in Leeds, the UK. I'm not
7 sure if it was college or trade school. But at that point
8 after high school. My mother finished after high school.

9 Q. What led you to want to apply to colleges in the
10 U.S.?

11 A. Well, the alternative would have been to study at the
12 business school in Norway, but two reasons. One is the
13 U.S. was exciting. That's where things were happening.
14 And the universities in the U.S. are well known to be
15 good. But the other thing is also more practical because
16 in Europe, you can -- after high school, you have to
17 decide what you want to become. If you want to become a
18 hairdresser or a carpenter or an engineer or lawyer. So
19 you cannot -- then once you start university or special
20 school, vocational school, you cannot change or you have
21 to start again if you change.

22 In the U.S., it's called "liberal arts" in the UK --
23 in colleges. So then you can explore different subjects
24 and you can combine things. I wanted to combine things.
25 So that was one of the advantages.

1 Q. With that broader range of possible study in the
2 U.S., what were you interested in studying?

3 A. I have always been interested in technology. I
4 wanted to do some engineering-type, more technical stuff
5 and combine that with a business degree.

6 Q. Mr. Hedloy, I realized you didn't get a water when
7 you first came up. Would you like one?

8 THE COURT: You may approach.

9 THE WITNESS: Thank you. Sorry.

10 BY MR. DIEHL:

11 Q. Where did you go to college, Mr. Hedloy?

12 A. I went to Harvard in Massachusetts.

13 Q. What year was that that you flew from Norway to
14 Boston to go to Harvard?

15 A. I started in 1979.

16 Q. And how did you happen to go to Harvard?

17 A. Well, it was -- I applied to several schools. In
18 fact, I was in the summertime in the U.S. and then told
19 them I wanted to study in the U.S. And someone gave me a
20 list of the best schools. I think they got it out of USA
21 today or something similar, hardest ones to get into. I
22 applied to them all. I got into a few of them, including
23 Harvard. And the choice was so easy. Harvard is Harvard,
24 I suppose.

25 Q. Everyone knows Harvard is expensive. How were you

1 able to pay for that, Mr. Hedloy?

2 **A.** Well, in Norway, university is free. All school is

3 free. But the state will still give you -- the government

4 will still give you loan and scholarships to pay for food

5 and cost of living and books and things. They will also

6 do that if you study abroad at certain colleges, including

7 Harvard.

8 So I got scholarship from Norway. And then Harvard

9 covered the rest, including giving me the opportunity to

10 work on campus.

11 **Q.** What were your jobs on campus?

12 **A.** Many, many things. One of the things I did was I did

13 the dishes. It was actually sort of nice because I got to

14 know the kitchen personnel very well. So when I came to

15 pick up my dinner, they gave me the best pieces. So that

16 was nice.

17 And after a while, I was -- when I got to be older

18 and more senior in school, I became a teaching fellow, it

19 was called. I helped the professor teach the younger

20 students.

21 **Q.** I want to put the photos on the screen of you in

22 college. What are these photos, Mr. Hedloy?

23 **A.** Well, that was shown before, I think so. In the

24 left, I'm sitting, studying in my dorm room. I think it's

25 sophomore year. And -- in my bed. And on the right, I'm

1 walking on a sunny day through Harvard yard.

2 **Q.** Looks like a nice day.

3 Mr. Hedloy, how many other Norwegians were there with

4 you on campus?

5 **A.** In college, no. No other Norwegians. In fact, I

6 think the rooms -- I think there had been 15 years after

7 or five year before or between five and ten years before.

8 And then I don't know, you know, how soon after. But

9 while I was there, I was the only one.

10 **Q.** Fair to say no one else was named Atle in your

11 classes?

12 **A.** No. And then probably -- to this day, probably no

13 one.

14 **Q.** What did you study at Harvard?

15 **A.** I took several courses, wide range of things. Used

16 this opportunity to explore different subjects. But one

17 of my first courses was a computer science course and

18 programming course called Applied Math 110. It was a

19 very, very busy course. It was a very intensive course,

20 almost like a boot camp. So I think I spent, on this

21 course alone, I spent about 40 hours a week just on the

22 computer. So I had allnighters and things. In addition

23 to the course, there was lectures and homework and other

24 things to do that was part of the computer. But, yes --

25 did I answer the question?

1 **Q.** Yes. And what about that course sparked your

2 interest in becoming a computer science major?

3 **A.** Well, I liked it. It was -- you get -- computers,

4 you get a lot of feedback. When you program computers,

5 you get feedback. I thought of it almost like a computer

6 game. I'm actually not a big computer gamer, but similar

7 when you do things on the computer game, you get feedback

8 as things happen as a result of what you do. Same thing

9 happens when you program. Takes a little bit longer

10 before you get the feedback, but still, same kind of

11 feeling.

12 Also, I think -- I always liked to do technical

13 stuff. So I could then find solutions to problems. And

14 it was very easy way to do that on the computer

15 programming. Your whole job is to find solutions to solve

16 the problem.

17 **Q.** After you got out of that computer science 110 boot

18 camp, what kind of things did you study as part of the

19 computer science major at Harvard?

20 **A.** It was a broad set of studies. Everything from the

21 history of the computer to theoretical computer science to

22 algorithms to programming operating systems, applications,

23 networking, databases. A lot of stuff. Large area would

24 I say.

25 **Q.** And so this is 1979 that you got there. Did you have

1 a computer yourself that you were able to work on?

2 **A.** In 1979, no. But IBM came up with their first

3 computer in 1982-ish, and I bought it as soon as I could.

4 So I had one in my dorm room at the end of the last year,

5 I think.

6 **Q.** Was that common in 1982 to have a computer in your

7 dorm room?

8 **A.** I don't know of anyone else at Harvard who had it at

9 the time. So that doesn't mean I knew them all, but I

10 don't think it was very common, no.

11 **Q.** How were you able to afford that, to buy a computer

12 while you were in college?

13 **A.** Well, it was much more expensive relatively than it

14 is now, but I used my savings and what I was able to get

15 with part of scholarship and part of when I worked. I

16 guess I had a few dinners or something outside of college.

17 **Q.** Did you write any computer programs while you were at

18 college?

19 **A.** Of course. Lot of coursework was programming. But I

20 also did some programs on my home computer.

21 **Q.** What kinds of programs were those that you wrote

22 while you were in college?

23 **A.** Well, one was for my roommates to learn Norwegian.

24 They were super interested in learning Norwegian. But --

25 so it was basically a program where you type in the word

1 and it would -- in English or Norwegian -- it would show
2 you the translation of it. Or you can type in the word in
3 Norwegian and they had to say what it meant.

4 Another program was -- that one was more fun, I was
5 more proud of. I don't know if anyone -- if you have seen
6 it, but there was a worm program where you have a worm
7 working around the screen and you had to make -- it grows
8 bigger and bigger as you move. And you have to make sure
9 it doesn't eat itself and fall into holes and dying. So I
10 made a program like that. As time went by, I kept
11 tinkering with it. I'm sure it had a hundred different
12 versions with more difficulty, his head is coming off,
13 starting the worm holes it could fall into. Other worms,
14 you know, didn't have to crash into those kinds of things.
15 So fair time programming that and also playing it.

16 Q. And you were still able to graduate?

17 A. I was.

18 Q. What year was that?

19 A. '83.

20 Q. What degree did you graduate with?

21 A. I got a bachelor of arts in computer science.
22 Actually called applied math combo computer science at the
23 time. I also did a master's because of my high school
24 coursework, Harvard gave -- tied into some of the work
25 there. That would count towards my degree. So I could

1 also do master's at the same time. In the four years, I
2 did bachelor's and a master's. Most people just did
3 bachelor's because I got it right.

4 Q. What was the subject for your master's degree?

5 A. Computer science. The same thing.

6 Q. And how many people graduated from Harvard with a
7 master's in computer science at that time in the early
8 '80s?

9 A. I don't know, but not a whole lot.

10 Q. And what did you do after you graduated? What was
11 your next move?

12 A. I went to work in Silicon Valley.

13 Q. So you moved even further from Norway, from Boston to
14 California?

15 A. I suppose, yeah.

16 Q. What brought you out to California?

17 A. It was Silicon Valley. It was the hub of everything
18 computer. It was -- I think it was more the hub of
19 everything computers then than it is now. Now you have
20 Silicon Valley, or Washington or Amsterdam or London or,
21 you know, in India. But it was really where things were
22 happening so, of course, that was the place to go.

23 Q. Where did you move within Silicon Valley?

24 A. Palo Alto.

25 Q. What did you do once you got there?

1 A. It was a company called Convergent Technologies that
2 I worked for.

3 Q. What was Convergent?

4 A. It's a relatively young company started a few years
5 earlier. They made personal computers also. And
6 originally, by this time, they started to make bigger
7 computers. Yeah.

8 Q. What did you work on when were you were at
9 Convergent?

10 A. I made -- I was part of a team that made a word
11 processor for one of the bigger computers, called mini
12 computer, which is one computer that has terminals so
13 maybe 10 to 20 people can work on the same computer. So I
14 made -- I helped make a word processing program for that
15 computer.

16 Q. Why did you choose, of all things, to join Convergent
17 after college?

18 A. It was an exciting company. And it had been
19 depressed a little bit. There were -- people knew what it
20 was doing. But I think the main reason was that one of
21 the founders was a former Ph.D. student of -- doctorate
22 student of my main professor at Harvard. So my professor
23 suggested I called -- I think his name was Ben Isaacs --
24 at least Ben. So I got in touch with him, and they gave
25 me an offer.

1 Q. So how long did you spend working on the word
2 processing software at Convergent?

3 A. I was there for one year.

4 Q. What did you do next or what led you to move on?

5 A. Well, I was there on a -- did my student visa to go
6 to the U.S. to study it included an option for me to work
7 for one year after school. So I told -- by the end of
8 that year, I had to decide what to do. And I actually got
9 an offer from a company called NCR to go back to Norway.

10 Q. What was NCR?

11 A. It's short for National Cash Register. It's an old
12 company. I think it was started in the 1800s probably.
13 They made old-fashioned cash registers, that kind of
14 stuff, mechanical originally. And I think they had that
15 market almost -- or at least they were very big in that
16 market.

17 By this time, they were moving that into
18 computer-based systems.

19 What was the question? Did I answer your question?

20 Q. Yes. You got it.

21 What opportunity did NCR have for you to take in
22 Norway?

23 A. It was sort of funny because in conversion
24 technology, where I work in Silicon Valley, they didn't
25 sell computers under their own name. It's called OEM,

1 original equipment manufacturer. So they sold it to other
 2 companies like NCR and -- so I sold computers to companies
 3 or people, individuals, with their label on it.
 4 So NCR had a contract with Norwegian Savings Banks, a
 5 huge contract actually to -- which included those
 6 computers.
 7 I forgot to mention NCR was also very big in ATMs. I
 8 think they still are. They were also very big then. This
 9 was part of the contract with Norwegian Savings Banks.
 10 But I worked with them on the computer side.
 11 Q. What kinds of work did you do as part of the computer
 12 side at NCR?
 13 A. I was a product leader. So I was helping coordinate
 14 what the customer needed, what the Savings Banks needed,
 15 what NCR had to develop. So NCR had to, you know, a
 16 development -- lab or facility with hundreds of people
 17 working on software development in Columbia, South
 18 Carolina. So I spent a lot of my time in Norway between
 19 Norway and Columbia, sort of coordinating, making sure
 20 that that happened.
 21 Q. How long did you stay with NCR?
 22 A. Two years.
 23 Q. What came next?
 24 A. I went back to university to do a master's in
 25 computer science in business, an MBA.

1 types -- of course, when you have a company, you have to
 2 communicate to the customers or partners. So I had ad
 3 need to write letters. And so I was sitting there on my
 4 computer writing a letter, typing the name. And I
 5 discovered that I need the address. So I had to then go
 6 to my -- not physical -- but in my physical notes or the
 7 book with addresses or on my computer where we also had
 8 the addresses, and then get out of the word processing
 9 program, go into the Contacts program on the computer, and
 10 then cut and paste back and forth. It was cumbersome.
 11 I thought that was just plain stupid, actually,
 12 because the computer can do that much better than I can.
 13 In fact, one of the programs that our company had was an
 14 address database with names and addresses. So I was
 15 trying to write the letter. I needed to get the address
 16 in from our own product. Could also be from out -- I'm
 17 going to have some water.
 18 Q. Yes. Go ahead. Have a sip of water.
 19 A. So the sort of idea was, basically, that -- or the
 20 discovery was that I'm sitting here in the letter, the
 21 name is there. The computer has all the information it
 22 needs. So how can I simplify that process. And that was
 23 the beginning.
 24 Q. How did you go about simplifying that process?
 25 A. Well, the smallest amount of work a user can do is to

1 Q. Where did you go for business school?
 2 A. I went back to Harvard.
 3 Q. What year was that?
 4 A. Started in '86 and finished in '88.
 5 Q. Okay. Why did you want to go to business -- you were
 6 developing this computer experience. Why did you then
 7 want to go to business school?
 8 A. I guess there's always been a small entrepreneur
 9 inside of me so I wanted to take the technology that I had
 10 gotten a good grip on, from project leading, and seeing
 11 what customer needed. I wanted to create a company as an
 12 entrepreneur, and then I needed a business background. So
 13 to complement my education in that field.
 14 Q. After graduating from business school in '88, what
 15 did you do next?
 16 A. I worked for a number of small technology companies,
 17 some in software, some in other types of technologies,
 18 mostly in Norway, and a stint for about a year in London
 19 also, in various positions.
 20 Q. As you heard during openings, we are here today
 21 because you are an inventor. So I want to go to that next
 22 and ask you, what were the circumstances that led to the
 23 invention that brings us here today?
 24 A. Well, by then, I started the company and -- Arendi --
 25 together with my wife. And I had this need to write some

1 click a button or just do one command. So that's -- that
 2 was -- that's what the invention does. It lets you use
 3 one command, get access to the information that's in the
 4 document. In this case, it was a name. Get access to get
 5 the -- get the address. You click a button, the computer,
 6 right, does analysis of the document, finds that there is
 7 a name. If there is a name, it goes into the database and
 8 searches the database. If it finds an address with the
 9 name, just puts it into the document.
 10 So the computer is doing the work in the background.
 11 All the user needs to do is click a button or some command
 12 and what you see is the address is in the document.
 13 Q. Now, you mentioned you had a company, Arendi, at this
 14 point.
 15 Did your company create a product to address that
 16 problem and fix it?
 17 A. Yes. We developed that product, yes.
 18 Q. What was that product?
 19 A. We called it the OneButton. It was a button. It
 20 wasn't very inventive, maybe, but it was descriptive, I
 21 thought.
 22 Q. What did OneButton do at a high level?
 23 A. Again, it let the user, with few hands as possible,
 24 get access to -- the OneButton, just put the address into
 25 the letter, that all they had the name in it. That's one

1 of things it did. It also did -- if it didn't find an
 2 address, there were other things, also. But that was the
 3 main thing it did.
 4 Q. Mr. Hedloy, I want to show you an image that we saw
 5 during the openings, if we can go to the next slide.
 6 Now, what is this image? Let's start on the left.
 7 What does this show?
 8 A. That's one of the figures from the patent.
 9 Q. And what is it showing? I see a Microsoft Word
 10 document.
 11 Can you describe what this shows?
 12 A. It is basically the starting point. The user has the
 13 Word document on the screen and it has a name in it. You
 14 can also see the OneButton highlighted there. It was
 15 yellow in real life, but I guess it's highlighted so it's
 16 easy to see.
 17 Q. Exactly right.
 18 And what would happen if the user has a name in the
 19 document then clicks on the OneButton?
 20 A. You get to the second, the Figure 4 on the right. So
 21 the address is then in the document.
 22 Q. Now, what if a user already had the address in the
 23 document, like you see on the right, and then hit the
 24 OneButton when the address was already there?
 25 A. The system would try to guess what the user was

1 Q. Another permeation. What would happen if you have a
 2 name in the document, you click the OneButton, it does
 3 the -- finds the name, it does the search, but it finds
 4 two addresses in the database with the same name?
 5 A. It would give the user the option. So it would show
 6 the user the two addresses and it can say we need the home
 7 address and the office address originally. So the user
 8 would then say use the home address and it gets put in.
 9 Q. Mr. Hedloy, when did you first come up with the idea
 10 for -- the idea that underlies OneButton and underlies the
 11 patent? When did you first come up with that?
 12 A. I found some documents dated July '97. So I know it
 13 was at least then, or before, yes.
 14 Q. Mr. Hedloy, I'm going to hand you a binder of
 15 exhibits.
 16 MR. DIEHL: And I'll hand a copy to the -- two
 17 copies to the Court as well, if I may approach.
 18 THE COURT: Please approach.
 19 MR. UNIKEL: May I get a copy as well, please?
 20 MR. DIEHL: Yes. Do we have one more?
 21 BY MR. DIEHL:
 22 Q. Mr. Hedloy, if you could turn to Exhibit PX-393 in
 23 the binder. It's toward the back.
 24 A. Okay.
 25 Q. Do you recognize that document?

1 doing. So it would analyze the document and discover that
 2 it's just a name. It's both the name and an address
 3 there. So it would go into the database, see if it can
 4 find the name and the address. Then if it's on both and
 5 they were the same, then it would assume that the user
 6 wanted just to check whether the address was correct or
 7 not, and do nothing.
 8 Q. And what if the user clicked the OneButton and, you
 9 know, it didn't have the address in there yet, but there
 10 was no address in the database, then what would happen?
 11 A. So then it would -- you're starting on the left side?
 12 Q. On the left side, yes.
 13 A. So you just have a name. And so it didn't -- program
 14 would search for the name, discover the name in the
 15 document, analyze the document and find the name. It --
 16 going to the database and find no address, is what you
 17 said, right?
 18 Q. Right.
 19 A. So then it would assume that the user needed an
 20 address. So it would basically put a little screen up on
 21 the little window up on the screen where the user could
 22 type in the address. And then it would put it -- after
 23 when the user clicked okay or something, it would put
 24 address into the document and also save it in the
 25 database.

1 A. That's the document I just described that I found
 2 that describes the invention.
 3 MR. DIEHL: Your Honor, I offer PX-393 into
 4 evidence.
 5 MR. UNIKEL: No objection.
 6 THE COURT: All right. It's admitted.
 7 (Exhibit PX-393 is admitted into evidence.)
 8 BY MR. DIEHL:
 9 Q. Mr. Hedloy, now that this document is up on the
 10 screen, can you describe what the jury is seeing?
 11 A. First of all, I apologize, it's in Norwegian. It was
 12 a note to myself in preparation to go to the patent agent
 13 to see if I could patent it. So it describes on the top.
 14 In fact, my mother-in-law worked for a patent agent.
 15 And -- sorry. The -- so when I had this idea, of course,
 16 I talked to my friends and my family about it. And
 17 especially my wife, she was very eager that I patent it.
 18 So since I was going to the Patent Office of my
 19 mother-in-law, she wasn't a patent agent. She was just --
 20 not just, but she was an administrative person in that
 21 company. I just -- her name was Ruth. So that's why it
 22 says Ruth, you know, patent it, it basically says.
 23 But the document describes what I wanted to tell them
 24 about the invention.
 25 Q. And you mentioned you went back in your files and

1 found this.

2 What was the date on this document?

3 A. I don't remember the exact date, but July '97

4 sometime.

5 Q. Once you had the idea --

6 MR. UNIKEL: Objection, Your Honor. Is it

7 possible to get a translation of this so I can see what

8 this document actually says? Do you have an English

9 translation?

10 MR. DIEHL: I don't have that.

11 THE COURT: Let me see counsel at sidebar.

12 - - -

13 (Whereupon, the following discussion is held at

14 sidebar.)

15 THE COURT: Was this document on your list?

16 MR. DIEHL: Yes.

17 MR. UNIKEL: The only purpose that I thought it

18 was, is to establish the date that he first wrote notes.

19 To the extent we are getting into the substance of the

20 document, I don't know what the document says. If this

21 was his inquiries, writing down of something, we are not

22 getting into the substance, it's fine for that purpose.

23 MR. DIEHL: I'm done asking questions about the

24 document. We can go on from here. There are no more

25 questions about it.

1 had the idea for OneButton, how do you go about building

2 it into a product or prototype?

3 A. Well, I program myself, so I sat down and tried to

4 program it. I did try to program the prototype, yes.

5 Q. How long did that take?

6 A. Well, it took some time. I did it mostly through --

7 after work or next to other things I was doing in the

8 company. But at some point, I decided I would need to get

9 this finished. So I went inside and I sort of sat down

10 for about three weeks or something, and made a prototype

11 finished, at least enough to demonstrate that it worked.

12 Q. Did the programming yourself?

13 A. Yes.

14 Q. What did you do with OneButton after you had done the

15 programming and had a working prototype?

16 A. We decided to make the product in our company, made

17 the product out of it.

18 Q. And how did you first bring the product to market or

19 launch it?

20 A. We launched it in -- I think it was mentioned before,

21 Comdex. The computer fair or technology fair in

22 Las Vegas. That was November '98.

23 MR. DIEHL: I want to put a photo of Comdex up

24 on the screen.

25

1 MS. SRINIVASAN: Just to be clear, this

2 document has been on our exhibit list forever, and there

3 was no -- this particular objection has never been raised.

4 MR. UNIKEL: We did talk about it last night.

5 MR. DIEHL: We didn't talk about it.

6 THE COURT: Address comments you have to the

7 Court.

8 Could I have the court reporter read back to me

9 the last question that was asked before the objection.

10 (The reporter read back the record as requested.)

11 THE COURT: So the objection is overruled. Do

12 you have another question about this that you were going

13 to ask?

14 MR. DIEHL: I am happy to move on. I will ask

15 about building. I will go forward from here.

16 THE COURT: All right. Thank you very much.

17 Thank you.

18 (Whereupon, the discussion at sidebar

19 concludes.)

20 - - -

21 THE COURT: Ladies and gentlemen, the objection

22 is overruled.

23 MR. DIEHL: Thank you, Your Honor.

24 BY MR. DIEHL:

25 Q. And, Mr. Hedloy, to pick up where we were, once you

1 BY MR. DIEHL:

2 Q. Mr. Hedloy, can you describe what this photo is

3 showing?

4 A. Yes. It is a younger me at Comdex. I'm the person

5 with the -- standing with the number, half turned away

6 with the number on the back. That's a number of our

7 stand. I'm demonstrating -- and there's a computer behind

8 me. You can't see it. I'm demonstrating the OneButton to

9 a couple of gentleman. I don't know who they are.

10 MR. DIEHL: And if we go to the next photo.

11 BY MR. DIEHL:

12 Q. What was this one, Mr. Hedloy?

13 A. This is a poster we had at Comdex. It says "The

14 simplest, yet most useful product presented at Comdex

15 '98." So we were very proud of it.

16 Q. Yeah. And that was simply about OneButton?

17 A. Yes. Yes.

18 Q. Okay. And I want to point for the jurors -- there's

19 a picture of Comdex '98. This photo is giving us a little

20 bit of a hint.

21 But could you just describe what it was like to be

22 there?

23 A. Comdex is a huge fair. It's -- I think it's the

24 biggest computer fair, technology fair in the world. It

25 is still going on. It's an annual event. Now I think it

1 happens in January or February. But it was then, at least
 2 that year, in November.

3 So it was big, huge companies, Microsoft -- big
 4 companies from all over the world, and also small
 5 companies like ours.

6 Q. And what did Arendi do? How do you spend your time
 7 at Comdex?

8 A. Demonstrated the product. So we tried to get people
 9 to want to see and show it to them. It was not so easy --
 10 difficult, actually, to get them to want to see it.
 11 Because as they pass by, I would say, "Do you have time
 12 for a 30-second demonstration?" And most couldn't say no,
 13 so I showed them the demonstration. It took about
 14 30 seconds to click on the button. And, of course, I got
 15 them a little bit interested, so they spent some more time
 16 with -- to show them more of the features and technology
 17 we had.

18 Q. Did Arendi have any meetings with those passersby at
 19 Comdex that stick out in your mind?

20 A. There were lots of people, but one that I remember
 21 particularly is, of course, Microsoft.

22 Q. Why does that stick out in your mind?

23 A. Well, they came with a group of people first. And
 24 then they seemed very interested. So they came back a
 25 couple of days later with a bigger group, and then showed

1 quite a bit of interest.

2 Q. And did Arendi demonstrate the OneButton program at
 3 those times that Microsoft dropped by?

4 A. Of course. That was what we demonstrated, yes.

5 Q. Now, what happened with Arendi after Comdex '98?

6 A. Well, we continued developing products. And -- yes.

7 Q. That's a good answer.

8 And did Arendi have any odd sales? We talked about
 9 the product development.

10 Did it get to the point of selling?

11 A. Yes.

12 Q. Can you describe that? Did Arendi have any major
 13 product sales that stick out in your mind?

14 A. Well, there was -- the products were for individual
 15 users, right? So there was the individual sales, but we
 16 had a couple of big ones. One was 50,000 copies to a
 17 company called Click. So then that -- yes.

18 Q. Did you have any other bulk orders like that
 19 50,000-copy order?

20 A. There was a computer magazine called HomePC.
 21 Actually, it was called HomePC translated in English. It
 22 was called HjemPC, which means HomePC.

23 It was a monthly magazine that came out. And they
 24 included in their magazine, a CD, our program on it. So
 25 that was distributed to about 35,000.

1 Q. Was that a common way of distributing a computer
 2 program at that time, put it on a CD and mail it?

3 A. The Internet wasn't a -- that up and going. So CD
 4 were the way to distribute mostly, yes.

5 Q. And what was Arendi's next product after OneButton?

6 A. Well, we really liked OneButton. So we thought it
 7 had a lot of potential, and actually refocused the company
 8 to focus on OneButton. And we introduced what we call the
 9 service. We call it "Everybody.net," because it was cool
 10 and great to have the OneButton. You can see in the
 11 letter or the document, and it would look like a local
 12 database.

13 But you remember the white pages and the yellow pages
 14 that phone companies gave out? At the time, they were
 15 starting to give those out on CDs also. So people can buy
 16 them on CDs and also on the Internet.

17 So the idea was to have OneButton not look up -- just
 18 on your PC, but look on the CD or the Internet.

19 So we wanted to create that as a service and people
 20 subscribed to the service and use the OneButton to have
 21 the power of all those addresses in the entire world, you
 22 know, eventually.

23 Q. How did that new access to the phone book information
 24 factor into the product development Arendi was doing?

25 A. So we -- like I mentioned, I think we refocused the

1 company. So we -- instead of -- or we developed OneButton
 2 further, as far as everybody.net concept or service. So
 3 we made the prototype of that first, which covered about
 4 35 countries, several European countries, the U.S.,
 5 Mexico, South American countries, African countries, even
 6 some Asian countries. And then it was quite cool. We
 7 also actually put Everybody.net on the cell phone at the
 8 time.

9 Q. And what steps did Arendi take to bring the
 10 Everybody.net product to market so that people could use
 11 it?

12 A. We contacted -- we contacted some potential partners,
 13 and one of them was Compaq.

14 Q. Mr. Hedloy, if you go to Exhibit PX-439 in your
 15 binder, should be the next one.

16 Do you recognize that document?

17 A. That is a contract we signed with Compaq.

18 MR. DIEHL: Your Honor, I move Exhibit PX-439
 19 into evidence.

20 MR. UNIKEL: No objection, Your Honor.

21 THE COURT: It's admitted.
 22 (Exhibit PX-439 is admitted into evidence.)

23 MR. DIEHL: If we can put that on the screen.

24 BY MR. DIEHL:

25 Q. Mr. Hedloy, what does the jury see here on the

1 screen?

2 **A.** To the left is a cover letter which includes the

3 contact. On the right is the first paragraph of the

4 contract itself, yes.

5 **Q.** This is the contract you referenced between Arendi

6 and Compaq?

7 **A.** Correct.

8 **Q.** What was the sort of general purpose and scope of

9 this contract?

10 **A.** It was -- it's quite big. Compaq was the biggest

11 computer manufacturer in the world at the time. So this

12 was a contract between Arendi. And it says there -- you

13 can see at the bottom, it says "Compaq EMEA," it says on

14 the second line. EMEA stands for Europe, Middle East, and

15 Africa. So this was a contract between Arendi and Compaq

16 for that area.

17 And the idea was -- or the contacts, that they would

18 put the OneButton on all their PCs as they sold them to

19 users or to companies, so all their PCs would have the

20 OneButton installed.

21 And then if people -- there was a free version that

22 would last for a certain amount of time or would have a

23 limited functionality. And if users that wanted to get

24 more functionality or extend the use of it, then you would

25 have to buy a subscription.

1 useful news maybe, and other tools available.

2 In Scandinavia, the vast majority of people would

3 open it on Scandinavia Online, SOL. I know SOL, but...

4 **Q.** What was the deal between Arendi and Scandinavian

5 Online?

6 **A.** They would put it on their front page. So if -- like

7 I mentioned, they had a -- the front page would have

8 the -- the major part of the screen would have news and

9 other things that were useful, but on the left-hand side

10 of the screen in the margin, there would be different

11 tools that they could use and maybe advertisement also.

12 And they would -- they would put Everybody.net

13 service on the side there. And we were actually very

14 proud of that, because until we had the contract with

15 them, the contract said that they would take away the

16 national telephone companies -- which all they had

17 their -- their search bar there. But our search bar --

18 our service was better. So they would take out,

19 basically, taking out AT&T, putting in little Arendi. We

20 thought that was pretty nice.

21 **Q.** How was Arendi, at the time, funding all of this

22 product development and growth going into OneButton and

23 Everybody.net?

24 **A.** In the beginning, it was funded by my wife and I, who

25 started it. And we hired people and things. And we

1 **Q.** And what year did Arendi and Compaq reach this deal?

2 **A.** 2000.

3 **Q.** This is right about, you can see on there,

4 March 2000?

5 **A.** 31st of March, it says, yes.

6 **Q.** And what were the financial terms of this deal?

7 **A.** So it was a profit-sharing deal. They would put it

8 on their PCs without us paying anything for it. And if

9 users wanted to buy an upgrade, then they would share.

10 And I think for the first 500,000 users, it would be

11 40 percent to them and 60 percent to us. It had different

12 percentage, a little more units.

13 **Q.** Did Arendi reach distribution deals along these lines

14 with anyone else besides Compaq?

15 **A.** Yes. Also with Scandinavia Online.

16 **Q.** And what's that? What's Scandinavia Online?

17 **A.** It's sort of like AOL, America Online, except for

18 Scandinavia. That's Norway, Sweden, and Denmark.

19 And at the time, when people opened their browser to

20 go on the Internet, you would normally not open it with

21 the search page like Google, like many people do today,

22 but you would open with a -- it's called homepage or --

23 that's not the correct word.

24 But, basically, you would go to -- in the U.S., you

25 would open it and get to AOL's front page, which had some

1 didn't take any income, but the -- from our savings and

2 mortgage on the house and that kind of thing. And we also

3 had some Norwegian investors, yes.

4 **Q.** How long did that initial money last?

5 **A.** It lasted into the year 2000. And then we needed to

6 get more money.

7 **Q.** Did Arendi reach out to try to do some fundraising to

8 keep going with the product development?

9 **A.** Yes, we did.

10 **Q.** And what year was that?

11 **A.** We started, I think, seriously at the end of 1999,

12 and into 2000.

13 **Q.** End of '99 into 2000. What was the result of that

14 outreach to potential investors?

15 **A.** We were not successful. We had -- basically, our

16 timing was super bad. It was -- the dot.com crisis -- I

17 don't know if you remember that. But everything stopped.

18 I think it was March of 2000 -- the year 2000. We were

19 close to signing deals and people were lining up, and then

20 everything stopped and no one gave anyone any money,

21 including not us.

22 **Q.** Without accomplishing the fundraising, what happened

23 to Arendi?

24 **A.** Well, we couldn't go on. We couldn't pay our

25 employees and things, so we had to close the company.

1 Q. What year was that?

2 A. 2000, end of 2000.

3 Q. And did Arendi have any intellectual property at that

4 point, when the company closed down?

5 A. We had a patent application, yes, or two.

6 Q. And why had Arendi filed patent applications?

7 A. I mentioned that my wife urged me to do it. That's

8 one reason. And I think she gave good advise. But it

9 was, basically, as a small company, to protect your

10 intellectual property, to protect our product ideas, that

11 was one way to do it. It was made -- almost the only way

12 to do it.

13 Q. And did you subsequently receive patents for your

14 inventions at Arendi?

15 A. Yes.

16 THE COURT: Counsel, is this a good time to

17 take a break? Go to lunch?

18 MR. DIEHL: Yes, absolutely.

19 THE COURT: All right. Very good.

20 All right. Ladies and gentlemen of the jury,

21 at this point in time, we're about to take our first

22 recess in the case. And I just want to remind you of the

23 instruction that I gave you on Friday, which is during

24 this recess, and any other recess, you must not discuss

25 this case with anyone, including your fellow jurors.

1 side and just come up with a list of what's left so we can

2 efficiently get through them? And then if I could have a

3 hard copy, at least, you know, maybe highlighting what's

4 left, we can run through those.

5 Should we do it after the close of evidence

6 today? Would that work?

7 MR. UNIKEL: Yeah. There's quite a few

8 designations, about an hour of video. So we want to make

9 sure we can get you full transcript.

10 THE COURT: Understood.

11 MS. SRINIVASAN: I believe that should work.

12 The person who had been working on that with counsel,

13 Mr. Diehl, and it's his examination. So --

14 THE COURT: Understood.

15 MS. SRINIVASAN: -- I'm definitely sure we

16 should confer about it. And I do agree some objections

17 are going to fall out.

18 THE COURT: Is it something we could raise

19 tomorrow morning before we start?

20 MS. SRINIVASAN: I think that would be best.

21 THE COURT: I think that's probably better

22 idea, that way you all can have a clean thing and we don't

23 interrupt counsel preparation for witness examination.

24 One other question that I had was -- and I just

25 want to make sure -- please have a seat.

1 Also remember to keep an open mind until all of

2 the evidence has been presented and you get the chance to

3 hear the views of your fellows jurors.

4 Okay. Ms. Garfinkel, let's take the jury out.

5 THE CLERK: Yes, ma'am.

6 (Whereupon, the prospective juror exits

7 conference room.)

8 (The jury exits the courtroom at 12:26 p.m.)

9 THE COURT: Mr. Hedloy, you may step down.

10 Okay. Please be seated.

11 Okay. We will take our first lunch break. Do

12 we need to straighten out the deposition designations

13 before we resume after lunch, or is that something that

14 can wait until later?

15 MS. SRINIVASAN: That's going to be played in

16 Google's case, so we have a little time.

17 MR. UNIKEL: At some point -- it's not urgent

18 that it be played at lunch. We do need to get rulings out

19 so we know how to create the video and the exhibits for

20 it. That's the only hangup on it.

21 THE COURT: It seems to me that at least some

22 of the objections, if not most of them, will resolve by at

23 least one of my rulings earlier; is that right?

24 MR. UNIKEL: That's correct.

25 THE COURT: Do you want to get with the other

1 I just want to make sure everyone

2 understands -- and I recognize that some of the exhibits

3 that were presented today were in counsel's openings. I

4 want to make sure that anything that's published to the

5 jury has been admitted before we put it up on the screen.

6 So let's just ensure that that happens going forward.

7 Anything else we need to address before we

8 break?

9 MR. UNIKEL: I don't think so, Your Honor.

10 MS. SRINIVASAN: No, Your Honor.

11 THE COURT: All right. We'll see everybody

12 back here by 1:30.

13 (Whereupon, a recess was taken.)

14 THE COURT: Please be seated. I understand

15 you've got a matter to address before we bring the jury

16 back in.

17 MS. SRINIVASAN: Yes, Your Honor. This morning

18 of course, we talked about the issue of IPR proceedings.

19 During opening today, we heard at least three things that

20 we believe opens the door or raises the very concerns that

21 we expressed this morning.

22 First, counsel said a few times that, other

23 than the applicant and the examiner, nobody else is

24 involved in the process of getting a patent. And then he

25 said that the applicant has to say what it believes its

1 invention is and clearly express it to the Patent Office.
2 The Patent Office wants to rely on those statements, and
3 then on the basis of that exchange, a patent can issue or
4 not issue.

5 That's true for the patent prosecution process,
6 but it ignores the fact that there was a contested
7 proceeding on the validity of the patents in which Google
8 participated. So if they're going to say to the jury,
9 well, part of the reason things didn't get before the
10 examiner is because the examiner had to rely solely on
11 what Arendi said, that is, frankly, opening the door, and
12 is a sword and shield to the fact that there was a
13 contested inter partes review proceeding.

14 Second -- and they said it again. When the
15 Patent Office considered the CyberDesk and Apple Data
16 Detector references, they relied on Arendi's arguments, as
17 they were entitled to do because of the duty of candor,
18 and the patent issue because there was a difference in
19 their mind.

20 And counsel said they disclosed only some of
21 the capability of those systems, not all. Again, when
22 there's a subsequent proceeding in which a party, the
23 party that is the defendant here, has the ability to raise
24 art but is then saying that the plaintiff, the patent
25 holder failed -- and implying that we failed to disclose

1 the examiners, the Patent Office only had whatever Arendi
2 put before it, is wrong, and you can't take advantage of a
3 contested proceeding and then leave the jury with the
4 impression that all the Patent Office ever saw was what
5 Arendi put before it. And so, you know, the implication
6 is if they didn't put everything properly before the
7 office or they didn't meet their duty of candor, that the
8 patent might have issued even though it was not valid.

9 **THE COURT:** Thank you.

10 Counsel?

11 **MR. UNIKEL:** Your Honor, first, everything that
12 was just said about proceedings to prosecute a patent was
13 100 percent accurate and came right from the Federal
14 Judicial Center video.

15 Second, they put up slides in their opening
16 that showed CyberDesk and Apple Data Detectors highlighted
17 in the references cited in the patent. The Court has
18 already ruled that those systems could not have been
19 presented as part of the IPR. All we argued to the jury
20 was that the Patent Office did not have all the features
21 of those systems in front of it, and, therefore, that it's
22 going to be a matter of validity for the jury to decide.

23 I don't know if you have a questions.

24 **THE COURT:** No questions.

25 All right. I just -- it's all right, counsel.

1 some capability in the references we put before the
2 examiner, and they are then part of inter partes review
3 proceeding where they have every opportunity to put every
4 capability before the IPR, before the Patent Office, that
5 leaves an improper implication in the mind of the jury.

6 And finally, there was quite a bit of reference
7 to, from the moment that they filed suit against Google,
8 Google has defended it at all times on the basis that it
9 doesn't use the technology, it doesn't want the
10 technology, and it wants to go in a different direction.

11 Arendi should be entitled to say that that
12 position is inconsistent with running to the Patent Office
13 within months of the suit being filed to ask to invalidate
14 the patent. Their position now is, we don't practice
15 what's in the patent; we are going in a different
16 direction. But the fact that they went and sought -- they
17 put the case on hold, they didn't defend themselves
18 against noninfringement, and they sought to invalidate the
19 patent for that period of time is responsive to this
20 assertion they've made.

21 And there was a discussion about how they
22 weren't given notice and nobody came to them to ask for a
23 license, and they're exploiting the timeline in exactly
24 the way I feared.

25 But these statements that imply that, you know,

1 So I've heard counsel raise three points from
2 Google's opening statement that she believed were
3 inconsistent with the Court's ruling regarding the IPR
4 and/or opened the door to raise IPR proceedings.

5 With respect to the second and third issues
6 that counsel raised, I don't think that Google's opening
7 statement opened the door. And I watched that portion of
8 the opening statement, and I do believe it was consistent
9 with the video that was played for the jury.

10 With respect to the first statement, that's a
11 little bit closer of an issue; however, Arendi's objection
12 is overruled for two reasons. One is that this was an
13 opening statement, and I can put an instruction to the
14 jury to the extent that Arendi believes that there was
15 prejudice. Second, in context, I understood counsel to be
16 saying that the patent examiner didn't have the system art
17 that Google was going to present at trial before it, and I
18 think to that extent, the opening statement was accurate.
19 So that's my ruling.

20 All right. Can we bring the jury back in,
21 Ms. Garfinkel.

22 **THE CLERK:** Yes, Your Honor.

23 (The jury enters the courtroom at 1:39 PM.)

24 **THE COURT:** Please be seated. Shall we
25 continue with the examination?

1 **MR. DIEHL:** Yes, Your Honor.

2 **THE COURT:** Mr. Hedloy, I will remind you that

3 you are still under oath.

4 **THE WITNESS:** Yes, Your Honor.

5 **MR. DIEHL:** Thank you, Your Honor. May I

6 proceed. Thank you, Your Honor. May I proceed?

7 **THE COURT:** Yes.

8 **BY MR. DIEHL:**

9 **Q.** Are you ready to go, Mr. Hedloy?

10 Mr. Hedloy, was OneButton, Arendi's product, an

11 inventive product?

12 **A.** Yes, it was, of course.

13 **Q.** And is OneButton different from the patent?

14 **A.** Yes. OneButton is just one thing you can do with the

15 patent. The patent can do many more things. It is much

16 broader than OneButton.

17 **Q.** Mr. Hedloy, if you go to your binder and look at

18 Exhibit PX-1. It should be the first document in your

19 binder.

20 **A.** What was the number, just 1?

21 **Q.** Yes.

22 **A.** Okay.

23 **Q.** Do you recognize that document?

24 **A.** I do; it is the patent.

25 **MR. DIEHL:** Your Honor, I offer Exhibit PX-1

1 into evidence.

2 **MR. UNIKEL:** No objection.

3 **THE COURT:** It's admitted.

4 (Exhibit PX-1 is admitted into evidence.)

5

6 **Q.** Mr. Hedloy, what are the jurors looking at on the

7 screen?

8 **A.** It is -- to the left is the front page of the patent,

9 and to the right is the top part of the front page of the

10 patent.

11 **Q.** And is this the '843 patent that jurors heard about

12 during opening statements?

13 **A.** That is correct.

14 **Q.** Who owns the '843 patent?

15 **A.** A company called Arendi S.A.R.L.

16 **Q.** And who owns Arendi S.A.R.L.?

17 **A.** My wife and I.

18 **Q.** At a high level, what does the '843 cover?

19 **A.** I can't hear you very well.

20 **Q.** I'm sorry. At a high level, what does the '843

21 patent cover?

22 **A.** It covers users working in one application, one

23 program, and then can access very easily information

24 that's related to information in that document, in that

25 program, from a different source. Was that clear?

1 **Q.** Yes. And what kinds of devices can include the

2 patented functionality?

3 **A.** The patent talks about a computer, so it can be small

4 computers, big computers, personal computers, cell phones,

5 any type of computer.

6 **Q.** Mr. Hedloy, what are the advantages of the invention

7 that's described in the '843 patent?

8 **A.** All of -- I think the first benefit or advantage is

9 that the user can do exactly that, access very easily

10 information related to the document you are working on

11 without having to exit that document.

12 **Q.** Are there any other advantages that come to mind for

13 you?

14 **A.** It's super easy.

15 **Q.** That's the one click?

16 **A.** That's one click. It is difficult to make it easier,

17 I think.

18 **Q.** What other advantages are there? Are there any

19 others that come to mind for you?

20 **A.** Well, the user does not have to know about the

21 database. The database doesn't have to be on the local

22 PC. It could be on the network somewhere. It could be on

23 the Internet somewhere. The user doesn't have to learn

24 how to use the database. He or she doesn't have to have a

25 license to it.

1 **Q.** I want to step back and talk about the process of

2 getting the patent. So what process did Arendi go through

3 to obtain the '843 patent?

4 **A.** We submit an application to the Patent Office. And

5 there is a lot of back and forth between the Patent Office

6 and the applicant -- that's us -- to make sure the

7 patent -- where the patent is double checking that the

8 patent should be granted or not or whether it should be

9 granted.

10 **Q.** What's your understanding of what the Patent Office

11 examined as part of that process?

12 **A.** It looks at the -- I guess, a couple things. It

13 looks at the description, the first part of the patent and

14 sees that what's actually in the claims is described in

15 the description, so what the claims are saying. And then

16 it's double checking that what are the claims did not

17 exist before. When they did exist before, then you don't

18 get a patent.

19 **Q.** What was Arendi's role in providing information to

20 the Patent Office in order to help with that examination

21 process?

22 **A.** It's the Patent Office requires that we send them

23 everything we know. So every document, everything we know

24 about something that could be related, have to do with the

25 patent, whether or not is or similar or not, we have to

Hedloy - Direct

1 send to the Patent Office.

2 Q. As far as things that existed before the application,
 3 what kinds of references -- or you've heard the term
 4 "prior art" -- did Arendi find and submit to the Patent
 5 Office?

6 A. We found there were several patents that were sort of
 7 in the vicinity. There were some manuals, documents,
 8 academic papers, everything. So everything we had, we
 9 sent everything.

10 Q. And if you go to the next slide, Mr. Hedloy, can you
 11 describe for the jury what's shown on this slide.

12 A. That is the beginning of the section which lists all
 13 the things that the patent examiner knew about, and,
 14 therefore, looked at. I think it's actually from the
 15 left-hand part of the first page.

16 Q. So it starts on the first page of the patent, and
 17 then if we go to the next slide, Mr. Hedloy, could you
 18 describe what these subsequent eight pages of the patent
 19 are showing?

20 A. Those are showing the names of all the references, of
 21 all the documents and patents and other things we had that
 22 we submitted to the Patent Office and that the Patent
 23 Office found themselves. I think that what the Patent
 24 Office found is marked with a star, and the rest we
 25 submitted to them.

Hedloy - Direct

1 MR. UNIKEL: Thank you, Your Honor.

2 THE COURT: Okay. Can I see counsel at
 3 sidebar.

4 - - -

5 (Whereupon, the following discussion is held at
 6 sidebar.)

7 THE COURT: I can tell all of you that the
 8 gentleman sitting in the back of the courtroom is my law
 9 clerk.

10 Is there anyone else that either side doesn't
 11 recognize that we need to address?

12 MR. UNIKEL: I think everybody else is covered.

13 MS. SRINIVASAN: The only issue is there was an
 14 Apple lawyer here. They exited the room. I don't know if
 15 they maintain an option for Google corporate people being
 16 here. She went outside. She came here for the express
 17 purpose of making sure sealing was done right for their
 18 confidential information. She left just before the issue
 19 being Google in-house corporate people. They are not
 20 expressly here for protective order.

21 MR. UNIKEL: In-house counsel is okay.

22 MS. SRINIVASAN: Yes.

23 MR. UNIKEL: If it's going to hold things up
 24 because we are not sure, I'm happy to ask our corporate
 25 business rep to be excused and keep corporate in-house.

Hedloy - Direct

1 Q. We heard about things like CyberDesk and Apple Data
 2 Detectors during the opening statements. Did Arendi
 3 happen to find any references related to those?

4 A. Yes, we did. And we sent it to the Patent Office.

5 Q. Mr. Hedloy, how did you feel when you got the patent?

6 A. Great, of course. It was a patent, a U.S. patent.
 7 It was verification that it was new, and I felt great.

8 Q. Is this case the first time that Arendi has sought to
 9 protect the '843 patent from infringement?

10 A. No.

11 MR. DIEHL: Your Honor, at this point I do need
 12 to seal the courtroom to begin talking about some of the
 13 confidential documents.

14 THE COURT: Okay. Ladies and gentlemen of the
 15 jury, at this point we're going to have people who are not
 16 authorized to view certain confidential information that's
 17 been exchanged in this case to leave the courtroom. So
 18 please stay seated.

19 Ms. Garfinkel, can we seal the courtroom.

20 MR. UNIKEL: Can I ask a quick question?

21 THE COURT: Yes.
 22 (A discussion was held off the record.)

23 MR. UNIKEL: We are just making sure that the
 24 corporate representatives can stay for this.

25 MR. DIEHL: On behalf of Arendi, that's okay.

Hedloy - Direct

1 MS. SRINIVASAN: That's fine. It is not our
 2 objection. I know the Apple lawyer came here for that
 3 purpose.

4 THE COURT: If what we are concerned about is
 5 somebody coming in to court and raising objection in the
 6 middle of testimony. I rather we take the easy path
 7 forward if everybody agrees.

8 MR. UNIKEL: Yes.

9 MS. SRINIVASAN: Yes.
 10 (Whereupon, the discussion at sidebar concludes.)

11 - - -

12 THE COURT: The courtroom has been sealed.

13 * * *

14 (The following discussion is held under seal:

15 MR. DIEHL: Thank you, Your Honor.

16 BY MR. DIEHL:

17 Q. Mr. Hedloy, what was the first time Arendi had to
 18 bring a lawsuit to protect the '843 patent?

19 A. When we had to file suit against Microsoft.

20 Q. What happened with that lawsuit?

21 A. Well, they took a license.
 22 ████████████████████
 23 ████████████████████
 24 ████████████████████
 25 ████████████████████

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. Mr. Hedloy, if you could turn to Exhibit PX-75 in

8 your binder. When you get there, let me know if you

9 recognize that document.

10 A. Yes.

11 MR. DIEHL: Your Honor, I move for admission of

12 PX-75 into evidence.

13 MR. UNIKEL: No objection.

14 THE COURT: It's admitted.

15 (Exhibit PX-75 is admitted into evidence.)

16 MR. DIEHL: Mr. Boles, can we put that on the

17 screen.

18 BY MR. DIEHL:

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MR. DIEHL: And, Mr. Boles, could you pull up

25 PX-75 itself. And just pull up the recitals A through C.

1 Thank you.

2 BY MR. DIEHL:

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Q. Have there been other lawsuits in which Arendi has

1 also sought to protect the '843 patent?

2 A. Yes.

3 Q. Have any of those lawsuits resulted in other

4 companies taking licenses to Arendi's patented technology?

5 A. Yes.

6 Q. What were those other companies?

7 A. [REDACTED]

8 [REDACTED] And we sued Samsung and Apple. All three of

9 them resulted in license agreements.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 MR. UNIKEL: No objection.

23 THE COURT: It's admitted.

24 [REDACTED]

25 MR. DIEHL: Mr. Boles, can we put that on the

1 screen.

2 Thank you.

3 BY MR. DIEHL:

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 THE COURT: May I see counsel at sidebar.

4 - - -

5 (Whereupon, the following occurred at sidebar:

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 (Whereupon, the discussion at sidebar concludes.)

10 - - -

11 THE COURT: Ladies and gentlemen of the jury,

12 the objection is overruled.

13 MR. DIEHL: Thank you, Your Honor.

14 BY MR. DIEHL:

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 Q. Now, Mr. Hedloy, at the time Arendi entered these
 13 agreements with Samsung, the second one with Microsoft and
 14 with Apple, had Arendi also brought suit against Google to
 15 protect the '842 patent?
 16 A. We had.
 17 Q. Thank you, Mr. Hedloy.
 18 MR. DIEHL: Your Honor, I will pass the witness
 19 to opposing counsel.
 20 THE COURT: Are you finished with your
 21 examination or are we just unsealing the courtroom?
 22 MR. DIEHL: I'm finished with my examination,
 23 yes.
 24 THE COURT: Very good. Thank you.
 25 Counsel, can we unseal the courtroom?

1 MR. UNIKEL: We can unseal the courtroom, yes.
 2 THE COURT: All right. Unseal the courtroom.
 3 MR. UNIKEL: While we are doing that, can I
 4 pass a binder up to the witness?
 5 THE COURT: You may approach.
 6 * * *
 7 (Whereupon, the sealed discussion concludes.)
 8 - - -
 9 CROSS EXAMINATION
 10 BY MR. UNIKEL:
 11 Q. Good afternoon, Mr. Hedloy.
 12 A. Good afternoon.
 13 Q. Would you please go to the binder that I have given
 14 you. There's an Exhibit PX-1, which is the first document
 15 in.
 16 A. Yes.
 17 Q. Am I correct that is the patent that you just looked
 18 at with your counsel, correct?
 19 A. Correct.
 20 MR. UNIKEL: Can we put PX-1 up, please. Thank
 21 you.
 22 BY MR. UNIKEL:
 23 Q. Sir, you filed for this particular application on
 24 July 29, 2008, correct?
 25 A. Correct.

1 Q. And that was ten years after you filed the original
 2 application on which this is based, correct?
 3 A. That is correct.
 4 Q. And this patent actually claims the benefit in a
 5 section called "Related U.S. Application Data" to an
 6 earlier application filed on November 10, 1998; is that
 7 right?
 8 A. That is right.
 9 Q. And this particular patent, the '843 patent, then
 10 issued on March 29, 2011, correct?
 11 A. Correct.
 12 Q. Just so we can all keep some things in mind, do you
 13 see there's a section called "Foreign Application Priority
 14 Data Section" that's on the front of the patent?
 15 A. I see that.
 16 Q. And it lists a date of September 3, 1998, correct?
 17 A. Yes.
 18 Q. And that is the date on which you filed a Norwegian
 19 patent application that's related to this patent
 20 application, correct?
 21 A. Correct.
 22 Q. And there's a application number right above the file
 23 date. Do you see that? APP.
 24 A. I see that.
 25 Q. And I'm correct that the application number is the

1 file number that's given in the Patent Office as the
 2 prosecution is occurring; is that your understanding?
 3 A. That's my understanding.
 4 Q. The number here is 12/182,048, correct?
 5 A. Yes.
 6 Q. Sir, you don't remember whether you personally wrote
 7 any part of this patent application, correct?
 8 A. I think that's right, yeah.
 9 Q. And -- but you do know you drafted the figures of the
 10 patent, which are screenshots of your computer running a
 11 product called OneButton Contact Manager; is that right?
 12 A. Yes.
 13 Q. Sir, if we might look into some of the text of the
 14 patent that you filed. If we could look at the first
 15 column of the patent, please. The first paragraph under
 16 "Field of the Invention." Do you see it says, "This
 17 invention relates to a method, system, and computer
 18 readable medium for name and address handling (hereinafter
 19 called 'address handling'), and more particularly to a
 20 touch screen, keyboard button, icon, menu, voice command
 21 device, etc. (hereinafter called 'button') provided in a
 22 computer program, such as word processing program,
 23 spreadsheet program, etc., and coupled to an information
 24 management source for providing address handling within a
 25 document created by the computer program."

1 Do you see that language?

2 **A.** I saw that, yes.

3 **Q.** I assume that you agree with that statement since

4 it's the first paragraph in the text of your patent; is

5 that right?

6 **A.** I do.

7 **Q.** Before you filed your patent application, you

8 understood that people were able to search for contact

9 information in a contact database by entering information

10 manually or cutting and pasting information; is that

11 right?

12 **A.** Yes.

13 **Q.** And cutting, copying, and pasting information, those

14 were features that existed before you filed your patent

15 application, correct?

16 **A.** Of course.

17 **Q.** One purpose of your invention was to allow users to

18 perform searches without having to cut, copy, or paste

19 into a contact database; is that correct?

20 **A.** One of the purposes, yes.

21 **Q.** If we might look at Figure 3 of your patent, please,

22 in PX-1, this is the description of Figure 3 in the patent

23 itself, correct?

24 **A.** Yes.

25 **Q.** And Figure 3 is a screenshot illustrating the

1 inputting of a name to be searched and an address handling

2 button within a word processor according to an exemplary

3 embodiment of the present invention. That's how you

4 described it, correct?

5 **A.** Correct.

6 **Q.** So let's look at Figure 3 itself, please.

7 Am I correct this is one of the screenshots of your

8 program called OneButton Contact Manager; is that right?

9 **A.** It's one of the screenshots showing the OneButton I

10 don't know if you can see the program in the screen shot

11 but it's I can say yes, sure.

12 **Q.** Okay. And this shows a Microsoft Word document

13 correct?

14 **A.** That is correct.

15 **Q.** And you have typed information into the Microsoft

16 Word document as you've shown here Atle Hedloy, correct?

17 **A.** Correct.

18 **Q.** And your claims in this patent require there to be a

19 first computer program; is that right?

20 **A.** That is correct.

21 **Q.** And in this particular illustration, the first

22 computer program is Microsoft Word, correct?

23 **A.** I think that's right.

24 **Q.** And the figure shows an input device that is

25 configured by Microsoft Word and that's the OneButton; is

1 that right?

2 **A.** That is correct.

3 **MR. UNIKEL:** If we can look at the next figure

4 in the patent, Figure 4, please. We will just look at the

5 figure, please.

6 **BY MR. UNIKEL:**

7 **Q.** Correct, sir, this is Figure 4 from your patent?

8 **A.** Correct.

9 **Q.** And am I correct that if the user clicks on the

10 OneButton, as shown here, that the name is searched for

11 and address is found and the address is inserted back into

12 this document?

13 **A.** Correct.

14 **Q.** And the user command would be, in your view, clicking

15 the OneButton, Number 42 in this picture; is that right?

16 **A.** Yes.

17 **Q.** And in Figure 4, because street address was found,

18 the OneButton instructions caused that information to be

19 inserted back into a word processing document; is that

20 right?

21 **A.** I think that's right.

22 **Q.** And this could be useful, I think you said, in

23 writing a letter; is that right?

24 **A.** Yes.

25 **Q.** The only screenshots in the patent are from your

1 OneButton Contact Manager product; is that right?

2 **A.** Yes.

3 **Q.** And you then included some claims in the patent that

4 defined the specific requirements of your invention,

5 correct?

6 **A.** Correct.

7 **Q.** And in this case you are asserting two claims, Claim

8 Number 23 and Claim Number 30 against Google; is that

9 right?

10 **A.** That is correct.

11 **MR. UNIKEL:** If we can please pull up Claim 23

12 from the '843 patent.

13 **BY MR. UNIKEL:**

14 **Q.** Sir, this is Claim 23 of your patent; is that right?

15 **A.** Yes.

16 **Q.** And this is one of the claims you are asserting

17 against Google in this litigation, correct?

18 **A.** Correct.

19 **Q.** You understood and believed that all of the elements

20 in this patent claim need to be looked at as a totality

21 and must be present for someone to be practicing this

22 invention, correct?

23 **A.** That's my understanding.

24 **Q.** If any one of these elements is missing, even if all

25 of the others are present, you understand that someone

1 would not be practicing your invention?

2 **A.** That's my understanding.

3 **Q.** In this claim, you specify a number of things that

4 have to be done by the first computer program; is that

5 right?

6 **A.** Yes.

7 **Q.** And again, in the OneButton Contact Manager

8 screenshots that you included, that first computer program

9 would be Microsoft Word; is that right?

10 **A.** Yes.

11 **Q.** The first thing that a first computer program must do

12 is display the document electronically; is that right?

13 **A.** Yes. That's the first thing that's mentioned here.

14 **Q.** So the specific requirement in the claim is

15 displaying the document electronically, using the first

16 computer program, right?

17 **A.** Right. Say that question again. I'm unsure if I got

18 it right.

19 **Q.** Yes. So this element specifically requires, quote,

20 "Displaying the document electronically, using the first

21 computer program."

22 Is that right?

23 **A.** Absolutely.

24 **Q.** And the second requirement for the first computer

25 program starts with the words, "Providing an input

1 device."

2 Do you see that language?

3 **A.** I see that.

4 **Q.** And that requires, quote, "Providing an input device

5 configured by the first computer program" and continues on

6 "that allows a user to enter a user command to initiate an

7 operation."

8 Do you see that?

9 **A.** I do.

10 **Q.** Am I correct that is a second requirement for the

11 first computer program; it must configure the input device

12 that is provided to a user?

13 **A.** You are right.

14 **Q.** Then there's a third requirement for the first

15 computer program that begins with the language

16 "Inconsequence of receipt."

17 Do you see that, sir?

18 **A.** I do.

19 **Q.** Am I correct this element says, quote, "In

20 consequence of receipt by the first computer program of

21 the user command from the input device causing a search

22 for the search term in the information source." Unquote.

23 Do you see that?

24 **A.** I do.

25 **Q.** Again, this is a third requirement, then, for the

1 first computer program; is that right?

2 **A.** That is correct.

3 **Q.** And so, to summarize, there are three requirements

4 for the first computer program: must display a document,

5 must provide an input device that is configured by the

6 first computer program, and in consequence of receipt by

7 the first computer program of the user command, must cause

8 a search, correct?

9 **A.** Yes.

10 **Q.** And let's look, in particular at that second element,

11 "providing an input device configured by the first

12 computer program."

13 Like all the requirements of the claim, in your view

14 this is an important requirement, correct?

15 **A.** Yes.

16 **Q.** In fact, it is your view that this claim is focused

17 on the invention where the first computer program is

18 configuring the input device; is that right?

19 **A.** I wouldn't put it that way actually.

20 **Q.** You wouldn't?

21 **A.** No.

22 **Q.** Do you recall being deposed in this case, sir?

23 **A.** I do.

24 **Q.** And you recall when you were deposed you were

25 testifying under oath; is that right?

1 **A.** I did.

2 **Q.** You were asked the following question and gave the

3 following answer:

4 **A.** Okay.

5 **MR. UNIKEL:** Would you play clip four.

6 (Video clip plays as follows:

7 **Q.** And is it important to you, then, that the first

8 computer program configure the input device as opposed to

9 the operating system configuring the input device?

10 **A.** This claim is focused on the invention where the

11 first computer program is configuring it.

12 (Clip ends.)

13 **Q.** Sir, am I correct that according to you, this claim

14 is focused on the invention where the first computer

15 program is configuring the input device?

16 **MR. DIEHL:** Objection.

17 Your Honor, I think that's improper

18 impeachment.

19 **THE COURT:** Let me see counsel at sidebar.

20 - - -

21 (Whereupon, the following discussion is held at

22 sidebar.)

23 **THE COURT:** What actually are you objecting to

24 about the impeachment?

25 **MR. DIEHL:** I don't think it's corresponding to

1 the question. I don't know what the basis was. It was
 2 not inconsistent.

3 **MR. UNIKEL:** I asked him the exact words from
 4 this. He said he didn't think so. I asked him to
 5 confirm. He didn't think so. I confirmed it; I played
 6 his video deposition.

7 **MS. SRINIVASAN:** In his video, he didn't say
 8 "yes."

9 **THE COURT:** Here's how I want to do this going
 10 forward. I want to confirm with the other side the
 11 question that was asked before the deposition is played.
 12 That way we can resolve any objections.

13 The issue I had here is that we didn't get the
 14 objection from you until after it was played. We are in a
 15 situation where we need to untangle -- let me have the
 16 court reporter read back, starting with the question
 17 before the deposition clip was played.

18 (Discussion off the record wherein the
 19 transcript was reread.)

20 **MR. UNIKEL:** I do have one question, when it's
 21 the appropriate time.

22 **THE COURT:** Okay. What was the deposition
 23 question?

24 **MR. UNIKEL:** Here is the deposition question
 25 and answer right here.

1 that. You don't have to show.

2 **MR. UNIKEL:** I just mean if I have to impeach
 3 him.

4 **THE COURT:** Then you need to show it to them,
 5 yes.

6 (Whereupon, the discussion at sidebar
 7 concludes.)

8 - - -

9 **THE COURT:** Ladies and gentlemen, that
 10 objection is overruled.

11 **BY MR. UNIKEL:**

12 **Q.** Sir, am I correct that there's a particular advantage
 13 to having the configuring of the input device be done by
 14 the first computer program as opposed to having the input
 15 device configured by the operating system?

16 **A.** Yes.

17 **Q.** And one of those advantages is that a programmer does
 18 not have to rely on something that is in the operating
 19 system which might not be there, correct?

20 **A.** Yes.

21 **Q.** And so you deliberately called out in this claim that
 22 the input device must be configured by the first computer
 23 program; is that correct?

24 **A.** That is correct.

25 **Q.** And later in the claim you specify another thing that

1 **THE COURT:** With respect to this particular
 2 impeachment, I agree with counsel for Google that it was
 3 inconsistent with his prior response. However, in the
 4 future, when we are going to impeach by a prior statement
 5 under oath, I would like counsel to ask for leave to show
 6 the other side the inconsistent statement. If we have a
 7 disagreement about whether or not it's inconsistent, that
 8 can get resolved before video clip is played to the jury.

9 **MR. UNIKEL:** What about if I'm going to ask --
 10 read a question and answer if there's --

11 **THE COURT:** My view is if you are going to read
 12 verbatim a question from the deposition, no one needs to
 13 know it's coming from the deposition. So you can read
 14 that question. We can get an answer. If it's
 15 inconsistent with the exact same question and answer that
 16 happened at the deposition, we deal with it then.

17 **MR. UNIKEL:** My only question is should I be
 18 showing them the question and answer I am going to read
 19 from the deposition to opposing counsel before?

20 **THE COURT:** No.

21 **MR. UNIKEL:** Okay.

22 **MS. SRINIVASAN:** For impeachment purposes,
 23 though.

24 **THE COURT:** If you are going to ask a question
 25 that you asked at a deposition, you are allowed to ask

1 the first computer program must do, and that's the in
 2 consequence of receipt by the first computer program
 3 language, correct?

4 **A.** Correct.

5 **Q.** And it's important to you that the search be
 6 performed in consequence of receipt by the first computer
 7 program because that is what you wanted to claim in this
 8 claim, correct?

9 **A.** It is what we wanted to claim in that claim. That is
 10 correct.

11 **Q.** And in your view, the first computer program needs to
 12 receive the command as opposed to the second computer
 13 program receiving the command because that is the specific
 14 invention that you wanted to claim in this claim; is that
 15 right?

16 **A.** Correct.

17 **Q.** You believed that there were some advantages to
 18 having the first computer program receive the user
 19 command; is that right?

20 **A.** Yes.

21 **Q.** And in particular, some advantages, in your view, to
 22 having the first computer program receive the user command
 23 could be similar to the fact that the input device was
 24 configured by the first computer program; is that correct?

25 **A.** That is correct.

1 Q. And in your view, if you had a second program after
 2 "receive the user command," that would be disadvantageous
 3 because the other program would have to be running at the
 4 time to receive the user command; is that correct?
 5 A. That's one reason, yes.
 6 Q. And you recognize that it's possible to construct a
 7 system where the operating system receives a user command
 8 rather than the first computer program receiving the user
 9 command, correct?
 10 A. Of course operating system can receive previous
 11 commands, yes.
 12 Q. But in your particular claim, which we're looking at,
 13 Claim 23, you deliberately specified that the input device
 14 must be configured by the first computer program and must
 15 receive the command from the input device; is that
 16 correct?
 17 A. Yes.
 18 Q. And in your view, there is an advantage to having the
 19 first computer program receive the input device from the
 20 input -- receive the command from the input device as
 21 opposed to having the operating system receive the command
 22 from the input device; is that right?
 23 A. Yes.
 24 Q. Again, you felt that one of the advantages of having
 25 the first computer program receive the user command was

1 A. Because I think everything that comes into the system
 2 goes through the operating system. So the operating
 3 system sees everything that happens. So there isn't an
 4 either/or. It's both.
 5 Q. In your view, having the first computer program
 6 receive the input from the input device as opposed to
 7 having the operating system receive the command is
 8 advantageous, correct?
 9 A. That is what I do not agree with. Okay? I would not
 10 put it that way.
 11 Q. Have you ever put it that way in a deposition in this
 12 case?
 13 A. I tend to agree with the answer in the depositions.
 14 Q. Sir, do you recall being deposed in this case?
 15 A. I do.
 16 Q. And you were testifying under oath, correct?
 17 A. I was.
 18 Q. You were asked the following question and gave the
 19 following answer:
 20 Question: Is there any advantage in your view to
 21 having the first computer program receive the input from
 22 the input device as opposed to having the operating system
 23 receive the command from the input device.
 24 Answer: Yes.
 25 That was your testimony, correct?

1 that the programmer of the first computer program would
 2 have control in that instance; is that right?
 3 A. That's one advantage.
 4 Q. And that may not be the case if the operating system
 5 receives the user command, correct?
 6 A. Depends on circumstances, correct.
 7 Q. And so you deliberately claimed and wanted to claim
 8 the invention where, in consequence of receipt by the
 9 first computer program of the user command from the input
 10 device, causing a search for the search term; is that
 11 right?
 12 A. Can you please repeat that question.
 13 Q. Yes. And you made a deliberate choice to claim in
 14 this claim that in consequence of receipt by the first
 15 computer program of the user command from the input device
 16 causing a search for the search term; is that correct?
 17 A. That's why it's there. I want to correct something I
 18 said before because I think you made -- you said the first
 19 computer program as opposed to the operating system.
 20 It's --
 21 Q. Sir, there's no question pending.
 22 A. But I want to correct my answer.
 23 Q. Okay.
 24 A. If I may.
 25 Q. Sure.

1 A. If you say so, sure.
 2 Q. And one of the advantages, in your view, of having
 3 the user command received by the first computer program is
 4 allowing the programmer to have control that is not
 5 dependent on something that may be in the operating
 6 system, correct?
 7 A. Yes.
 8 Q. So once again, you deliberately included in your
 9 patent claim the requirement that, in consequence of
 10 receipt by the first computer program of the user command
 11 from the input device causing the search, correct?
 12 A. I put those words in deliberately.
 13 Q. The claim later requires a separate element. It
 14 says, "If searching finds any second information related
 15 to the search term, performing the action using at least
 16 part of the second information."
 17 Do you see that?
 18 A. I do.
 19 Q. Just so we're orienting the jury, am I correct:
 20 First information can be something like a name; is that
 21 right?
 22 A. Correct.
 23 Q. Or it can be a phone number, right?
 24 A. Correct.
 25 Q. Or it could be an E-mail address, correct?

1 A. Correct.

2 Q. And it could be a street address; is that right?

3 A. Yes.

4 Q. And second information -- when we see "second

5 information" is information that is associated in some way

6 with that first information, correct?

7 A. Yes. It's found by the search.

8 Q. And so if the first information is a name, the second

9 information might be something like an address, correct?

10 A. Correct.

11 Q. Or if the first information is an e-mail address, the

12 second information might be a name that goes along with

13 the e-mail address, correct?

14 A. For example.

15 Q. And you believe that performing an action using at

16 least part of the second information includes simply

17 displaying the second information on the computer screen,

18 correct?

19 A. I do.

20 Q. So, in particular, for example, displaying a map that

21 is associated with the street address would be performing

22 an action using part of the second information?

23 A. That action would be displaying a map, yes.

24 Q. Before you filed your patent, you were not sure

25 whether there were any systems that would identify pieces

1 sure, when you filed your original patent application,

2 whether there were any systems that existed that would

3 identify text as a street address, correct?

4 A. Correct.

5 Q. There might have been such systems, you're just not

6 sure?

7 A. Correct.

8 Q. Now, once again, OneButton Contact Manager was an

9 actual product that you made that you believed practiced

10 the claims of the '843 patent; is that right?

11 A. Right.

12 Q. And the OneButton product worked only with Microsoft

13 Word, correct?

14 A. I think that's correct.

15 Q. And you programmed OneButton to work with Microsoft

16 Word using a language called "Visual Basic for

17 Applications"; is that right?

18 A. That is correct.

19 Q. And Visual Basic for Applications is a programming

20 language provided by Microsoft for developers that allows

21 them to create features for applications like Microsoft

22 Word; is that right?

23 A. That's right.

24 Q. And it is your view that Visual Basic for

25 Applications allows an application to live inside of

1 of text as a name, correct?

2 A. That's probably correct.

3 Q. There might have been such a system; you are just not

4 sure?

5 A. Correct.

6 Q. Before you filed your patent, you were not sure if

7 there were any systems that would identify pieces of text

8 as being phone numbers; is that right?

9 A. Correct.

10 Q. Those systems might have existed, you're just not

11 sure?

12 A. Correct.

13 Q. Before you filed for your patent, you were not sure

14 if there were any systems that could identify pieces of

15 text as being e-mail addresses; is that right?

16 A. No. I -- you're referring to before filing the first

17 patent --

18 Q. Yes.

19 A. -- not this patent?

20 Q. Correct.

21 A. Yes.

22 Q. There might have been such systems that identified

23 text as e-mail messages, but you're just not sure?

24 A. Correct.

25 Q. And to finish off the group, you don't -- you're not

1 Microsoft Word; is that right?

2 A. Yes.

3 Q. And your patent does not describe the details of how

4 to create the specific functionality that you described

5 for OneButton in Microsoft Word, correct?

6 A. Not until the last appointment -- not until the last

7 period, no.

8 Q. And you did not describe the details because it's

9 your view that a person of skill in the art would

10 understand how to create OneButton functionality in

11 Microsoft Word in 1998; is that correct?

12 A. Yes, that's correct.

13 Q. You created OneButton, your OneButton product on top

14 of Microsoft Word because it saved you a lot of time in

15 the development process, correct?

16 A. Correct.

17 Q. And more specifically, creating your OneButton

18 product on top of the existing Microsoft Word product,

19 allowed you to save a lot of time in developing, because

20 Word already had a lot of the much needed functionality

21 already built in; is that right?

22 A. Right.

23 Q. In your view, the appeal of the invention was that it

24 was so easy and obvious, correct?

25 A. To use, yes.

1 Q. Let me show you a document, sir. If you might turn
 2 to DT -- what I've marked as DTX-71 in your book, please.
 3 Please let me know when you have that open in front
 4 of you, sir.
 5 A. I have it.
 6 Q. Am I correct, sir, that this is a memorandum from
 7 you; is that right?
 8 A. Yes.
 9 Q. And this was on Arendi memorandum stationery,
 10 correct?
 11 A. Correct.
 12 Q. And the date of this is September 2, 1998, correct?
 13 A. Also correct.
 14 Q. And this -- that is a date one day before you filed
 15 the Norwegian patent application, correct?
 16 A. Yes.
 17 Q. And, sir, am I correct that you were the author of
 18 this document?
 19 A. Yes.
 20 MR. UNIKEL: I'd like to move DTX-71 into
 21 evidence.
 22 MR. DIEHL: No objection, Your Honor.
 23 THE COURT: It's admitted.
 24 (Exhibit DTX-71 is admitted into evidence.)
 25

1 that's an unfair characterization of the document.
 2 MR. UNIKEL: I am not characterizing the
 3 document. I'm asking the witness --
 4 THE COURT: Overruled.
 5 BY MR. UNIKEL:
 6 Q. Sir, the invention being described in the memo is the
 7 invention of the '843 patent; is that correct?
 8 A. This was -- I have to study it more carefully,
 9 because this was written, you know, ten years before we
 10 applied for that patent. So -- but it was described
 11 partial what was described. I guess the answer is yes.
 12 Sorry.
 13 Q. Okay. You then describe -- you have a section here
 14 in this memorandum entitled "OneButton In The Word
 15 Processor."
 16 Do you see that?
 17 A. Yes.
 18 Q. And the text you wrote says, quote, "The invention
 19 lets the user from OneButton in a word processor get
 20 access to person and address-related information. E.g.,
 21 in Microsoft Word. We make a button available (e.g., on
 22 the toolbar), or a menu item, that intelligently
 23 interprets what the user wishes to do, related to
 24 maintenance and use of data from one or more databases
 25 with person and address-related data," unquote.

1 MR. UNIKEL: Can we please display DTX-71,
 2 please.
 3 BY MR. UNIKEL:
 4 Q. Now, this memorandum is from you to someone named
 5 Dag Tellefsen at Vision Capital, correct?
 6 A. Yes.
 7 Q. And when you sent this memorandum, you were looking
 8 for Mr. Tellefsen to give an investment to Arendi; is that
 9 right?
 10 A. I think Vision Capital was a venture capital firm,
 11 yes.
 12 Q. And the subject of this particular memo is
 13 "Arendi/'OneButton in Word,'" correct?
 14 A. That is correct.
 15 Q. And the first line -- well, the second line of this
 16 memorandum says, quote, "This is a short description of a
 17 potential patent, according to our conversation earlier
 18 today," unquote.
 19 Do you see that?
 20 A. I see that.
 21 Q. And in this invention you are describing the -- I'm
 22 sorry -- in the memorandum, the invention that you're
 23 describing is the invention claimed in the '843 patent,
 24 correct?
 25 MR. DIEHL: Objection, Your Honor. I think

1 You wrote that, correct?
 2 A. Yes.
 3 Q. And it says, next, quote, "One might say that almost
 4 the entire power from a contact management system becomes
 5 available to the user through a single button in the
 6 program they all use most frequently, the word processor,"
 7 unquote.
 8 Correct?
 9 A. Correct.
 10 Q. And if I may, if you turn to the second page of your
 11 memorandum, just before your conclusion to Mr. Tellefsen,
 12 do you see you wrote, quote, "The invention is exactly
 13 that it is so easy and obvious," unquote.
 14 Do you see that?
 15 A. Yes.
 16 Q. Am I correct that Mr. Tellefsen ultimately did not
 17 invest in Arendi?
 18 A. Correct.
 19 Q. Sir, am I correct, the OneButton product that you
 20 created and sold could not detect or act on phone numbers;
 21 right?
 22 A. Correct.
 23 Q. And the OneButton product that you created and sold
 24 could not detect or act on e-mail addresses?
 25 A. Correct.

1 Q. And the OneButton product that you created and sold
 2 could not pull up a map for a street address, correct?
 3 A. That is correct.
 4 Q. The one product your OneButton product could do was,
 5 detect a name and insert an address back into a document
 6 after a search for that address; is that correct?
 7 A. That's not correct.
 8 Q. It could also insert the information into the contact
 9 database?
 10 A. For example.
 11 Q. Arendi tried selling the OneButton contact manager
 12 product, correct?
 13 A. Correct.
 14 Q. You do not personally consider the OneButton contact
 15 manager to have been a commercial success, do you?
 16 A. Not particularly.
 17 Q. In fact, while you can't remember how much you
 18 actually made in sales of OneButton, you know for sure
 19 that it sold less than a million dollars' worth of product
 20 over its entire lifetime, correct?
 21 A. That is correct.
 22 Q. You currently do not have a single working version of
 23 the OneButton Contact Manager product, correct?
 24 A. Correct.
 25 Q. You looked for it in the course of the case in

1 response to our questions, but you could not find one
 2 single working version of OneButton Contact Manager?
 3 A. That would work on the computers I had, that's
 4 correct.
 5 Q. So the jury can't see the -- a working example of the
 6 OneButton Contact Manager product, sitting here today,
 7 correct?
 8 A. Correct.
 9 Q. And in the course of this case, you could not
 10 remember exactly how the OneButton Contact Manager
 11 actually worked, correct?
 12 A. In detail, no.
 13 Q. Sir, earlier today, in your testimony, you talked
 14 about an agreement you had with Compaq Computers.
 15 Do you recall that?
 16 A. I do.
 17 Q. And your agreement with Compaq related to a product
 18 called "Everybody.net"; is that right?
 19 A. We called it a service, yes.
 20 Q. A service called "Everybody.net"?
 21 A. Yes.
 22 Q. And in your agreement with Compaq, you promised to
 23 pay Compaq a share of the revenues of any product that you
 24 actually sold, correct?
 25 A. Of course, yes.

1 Q. And Compaq did not actually agree to pay you anything
 2 for their use of Arendi's software if they used it; is
 3 that right?
 4 A. They could -- they didn't pay us anything, no, that's
 5 correct.
 6 Q. You never paid Compaq any part of your revenues
 7 because you never actually realized any revenues
 8 Everybody.net; is that right?
 9 A. We never got to implement the -- to execute -- we --
 10 we signed the contract. We weren't able to implement the
 11 system.
 12 Q. So the system that you had an agreement with Compaq
 13 about was never implemented, right?
 14 A. This agreement was never implemented, correct.
 15 Q. And know Arendi software was ever actually placed on
 16 a single Compaq computer, correct?
 17 A. Not according to this agreement.
 18 Q. To your knowledge, no Arendi software was ever put on
 19 any Compaq computer that you're aware of, correct?
 20 A. I am not aware specifically of that, that's correct.
 21 Q. Eventually, in 2000, Arendi AS -- and am I correct,
 22 Arendi AS was the name of the first Arendi company; is
 23 that right?
 24 A. That is correct.
 25 Q. And in 2000, Arendi AS declared bankruptcy, correct?

1 A. Correct.
 2 Q. And at that time, Arendi AS stopped selling any
 3 products in two -- this is in 2000, right?
 4 A. Yes.
 5 Q. And as part of the bankruptcy, you and your wife
 6 purchased all of Arendi's patents and patent applications
 7 that existed at the time; is that correct?
 8 A. That's correct.
 9 Q. And for all of Arendi's patents and patent
 10 applications, you paid a grand total of somewhere between
 11 \$4,000 and \$8,000, but you can't remember the exact price
 12 within that range; is that right?
 13 A. Correct.
 14 Q. And that payment amount represented the best price
 15 that the bankruptcy trustee could get for Arendi's patents
 16 because nobody else was willing to bid more than \$8,000,
 17 to your knowledge; is that right?
 18 A. That is correct, except we didn't have any patents.
 19 We just had a patent application.
 20 Q. And so nobody else was willing to bid more than
 21 \$8,000 for that patent application at the time; is that
 22 right?
 23 A. We were able to pay that money for it. I don't know
 24 what happened to the trustee. But that's reasonable to
 25 assume, I think.

1 Q. And following the bankruptcy, you did not develop any
 2 product or services on behalf of any Arendi company,
 3 correct?
 4 A. Correct.
 5 Q. And after Arendi AS went bankrupt, no Arendi entity
 6 continued selling Arendi's OneButton products or services
 7 ever again, correct?
 8 A. Correct.
 9 Q. And after you purchased the intellectual property
 10 portfolio of Arendi AS, you and your wife then transferred
 11 that portfolio to a company called Arendi Holding Limited,
 12 right?
 13 MR. DIEHL: Objection, Your Honor. This goes
 14 beyond the scope of the agreement.
 15 THE COURT: Let me see counsel at sidebar.
 16 - - -
 17 (Whereupon, the following discussion is held at
 18 sidebar.)
 19 THE COURT: Let me understand the basis for
 20 counsel's objection.
 21 MR. DIEHL: Yes, Your Honor. We have an agreed
 22 motion in limine, Number 4, that precludes prejudicial
 23 references to Arendi and its corporate history, including
 24 corporate transactions involving current or prior Arendi
 25 entities that -- Hedloys and/or their investors.

1 Arendi Holdings.
 2 THE COURT: The question that's been posed,
 3 talking about the chain of title of the patent, I think
 4 it's not precluded by this MIL. I will remind counsel to
 5 stay within the bounds of the agreed upon MIL.
 6 MR. UNIKEL: I will.
 7 (Whereupon, the discussion at sidebar
 8 concludes.)
 9 - - -
 10 THE COURT: Ladies and gentlemen of the jury,
 11 the objection is overruled.
 12 BY MR. UNIKEL:
 13 Q. Sir, the question was: After you and your wife
 14 bought Arendi's patent portfolio, Arendi AS's, you then
 15 transferred that portfolio to a company called Arendi
 16 Holding Limited, correct?
 17 A. Correct.
 18 Q. And Arendi Holding Limited did not develop any
 19 products of its own at any time, right?
 20 A. Right.
 21 Q. Arendi Holding Limited's only business was to hold,
 22 manage, and exploit patents, correct?
 23 A. Correct.
 24 Q. And the transfer from Arendi AS to Arendi Holding
 25 Limited occurred in the early 2000s, correct?

1 MR. UNIKEL: If I may, the same MIL says the
 2 agreed to MIL does not extend to evidence or argument
 3 concerning whether Arendi AS product were not a commercial
 4 success Arendi AS declared bankruptcy in 2000, neither
 5 Arendi Holding or Arendi S.A.R.L. sold further products
 6 focused their business on fate licensing.
 7 THE COURT: Can I see counsel's --
 8 MR. DIEHL: The next question was because a
 9 transfer between two Arendi entities that's a corporate
 10 transaction between Arendi entities.
 11 THE COURT: Stand by.
 12 The question that was objected to, as I
 13 understood it, had to do with a -- a corporate transfer.
 14 And I guess I'm not understanding the scope of the MIL
 15 requires preclusion of prejudicial references to Arendi
 16 and its corporate history. So your view is, you can't
 17 have any more questions about corporate transfers.
 18 MR. DIEHL: We think transactions between the
 19 Arendi entities are clearly prohibited by this MIL that
 20 talks about corporate transactions between current or
 21 prior Arendi entities.
 22 MR. UNIKEL: We specifically carved out that
 23 neither Arendi Holdings sold for the products, instead
 24 focused their business on patent licensing. I can't do
 25 that unless I say how the patents got into the hands of

1 A. Yes.
 2 Q. Now, the '843 patent application was filed in July of
 3 2008; is that right?
 4 A. That's right.
 5 Q. And that is while Arendi Holding Limited was
 6 conducting its business of managing and exploiting
 7 patents, correct?
 8 A. Yes.
 9 Q. And that was eight years after Arendi stopped
 10 developing and selling any products, including the
 11 OneButton Contact Manager; is that right?
 12 A. Except for the bankruptcy, correct.
 13 Q. In 2010, Arendi's patents were transferred to an
 14 entity called Arendi S.A.R.L.; is that right?
 15 A. Right.
 16 Q. And Arendi S.A.R.L. is the company that filed this
 17 lawsuit against Google, correct?
 18 A. Correct.
 19 Q. And that is the current existing Arendi company that
 20 you are the CEO of; is that correct?
 21 A. Yes.
 22 Q. And both Arendi S.A.R.L. and Arendi Holding Limited
 23 were owned exclusively by you and your wife; is that
 24 right?
 25 A. That is right.

1 Q. And Arendi S.A.R.L.'s entire business is to own,
 2 manage, enforce, and license patents, correct?
 3 A. Yes.
 4 Q. And the patents that Arendi S.A.R.L. manages,
 5 enforces, and licenses are only the patents that are
 6 related to your original applications, which you filed in
 7 1998 and 1999; is that correct?
 8 A. That is correct.
 9 Q. Arendi S.A.R.L. did not attempt to develop any
 10 technology beyond what was claimed in the patents that
 11 came from those original 1998 and 1999 applications; is
 12 that correct?
 13 A. Correct.
 14 Q. And Arendi S.A.R.L. has never sold any products of
 15 any kind, right?
 16 A. Beyond the licenses.
 17 Q. Beyond the licenses to the patents, right?
 18 A. Correct.
 19 Q. And your entire role as CEO of Arendi S.A.R.L. is to
 20 oversee litigation at this point in Arendi S.A.R.L.'s
 21 life; is that correct?
 22 A. It is to protect our property, correct.
 23 Q. And that includes through litigation like this one?
 24 A. Yes.
 25 Q. Before you filed your original patent application in

1 November 1998, you did nothing to determine whether others
 2 had already addressed the problem you were trying to
 3 solve, did you?
 4 A. Nope.
 5 Q. No, you didn't do anything?
 6 A. Correct.
 7 Q. Similarly, when were you working on your products,
 8 OneButton Contact Manager, in 1997 and 1998, you did
 9 nothing to find out how others in the industry had
 10 approached the same problem that you were trying to solve
 11 in their various solutions; is that correct?
 12 A. That's correct.
 13 Q. Sir, in your discussion with counsel on your direct
 14 examination, you described the extensive process that the
 15 patent went through in order to be issued; is that right?
 16 A. I did.
 17 Q. And you stated that you were personally involved in
 18 that back and forth with the Patent Office, correct?
 19 A. Yes.
 20 Q. And your -- Arendi's role was to help by providing
 21 everything we -- Arendi knew at the time; is that correct?
 22 A. Yes.
 23 Q. And you, then, quoted to some pages from the front of
 24 the patent, showing the different references that were
 25 cited as part of the prosecution; is that correct?

1 A. That's correct.
 2 Q. Sir, if I could ask you to look in your binder, it's
 3 a very big document, DTX-2, please.
 4 MR. UNIKEL: And please don't display it just
 5 yet.
 6 THE WITNESS: Okay.
 7 BY MR. UNIKEL:
 8 Q. Sir, this is the prosecution history of the '843
 9 patent. And, again, you were personally involved in the
 10 back and forth with the Patent Office, correct?
 11 A. Yes.
 12 Q. And you were the applicant who was applying for this
 13 particular patent, correct?
 14 A. Yes.
 15 MR. UNIKEL: I move to admit DTX-2, which is
 16 the prosecution history of the '843?
 17 MR. DIEHL: No objection, Your Honor.
 18 THE COURT: It's admitted.
 19 (Exhibit DTX-2 is admitted into evidence.)
 20 MR. UNIKEL: To make things go a little faster,
 21 in the binder, I have put a green tab on everybody who's
 22 got the binders for a particular page.
 23 THE WITNESS: This one?
 24 BY MR. UNIKEL:
 25 Q. Yes, please. And if you could go to that; that is

1 page DTX-2.168. You can see that in the bottom middle.
 2 A. I see it.
 3 MR. UNIKEL: Can you we put up that page,
 4 please.
 5 BY MR. UNIKEL:
 6 Q. Sir, am I correct, this is a page that has got the
 7 title of "Response A"?
 8 Do you see that?
 9 A. I do.
 10 Q. And at the top left, we see that the applicant for --
 11 this is Hedloy. That's you, correct?
 12 A. That is me.
 13 Q. And this was -- this shows the filing date of
 14 July 29, 2008, which is the filing date of the '843 patent
 15 application, correct?
 16 A. Yes.
 17 Q. And here, the very first line of the document you
 18 say, "Dear, Sir/Madam: In response to the Office Action
 19 dated October 28, 2010, the Applicant submits the
 20 following amendment and remarks."
 21 Do you see that?
 22 A. I do.
 23 Q. And you're aware that an "Office Action" is a
 24 communication from the Patent Office potentially about a
 25 rejection or a question concerning the patent; is that

1 right?

2 **A.** Yes.

3 **Q.** And here, you are responding to an Office Action from

4 the Patent Office that was dated October 28, 2010,

5 correct?

6 **A.** That's what it says, yes.

7 **Q.** If I can ask you to look in the same response at the

8 Page 180. So it's on the bottom you'll see that it has

9 DTX-2.0180.

10 **A.** 180?

11 **Q.** One-eight-zero, please, sir.

12 **A.** Okay.

13 **Q.** Sir, in this communication between you and the Patent

14 Office, do you see there's a section entitled

15 "Objections"?

16 **A.** Yes.

17 **Q.** And in the second paragraph, it begins, "The

18 Applicant files with this response a corrected information

19 disclosure statement, relisting those references that the

20 Examiner did not consider in the previous IDS of

21 January 26, 2009 and also listing new references," end

22 quote.

23 Do you see that?

24 **A.** Okay. Yes.

25 **Q.** And an IDS, an Information Disclosure Statement, that

1 **A.** That's what it says.

2 **Q.** Why don't we take a look at that AESD document

3 please. If you could look at DTX-925, which is in your

4 binder. Please let me know when you've got it up in front

5 of you, sir.

6 **A.** I do.

7 **Q.** Do you see that this document is entitled:

8 "Accelerated Examination Support Document"?

9 **A.** Yes, I see.

10 **Q.** And I see you've looked back and forth. Would you

11 confirm that the July 22, 2010, date on this document

12 corresponds with the AESD you directed the examiner to in

13 Response A.

14 **A.** I am sure that's right; I can't remember.

15 **Q.** Am I correct, sir, that you -- and you understand

16 that an AESD is submitted in order to get a faster answer

17 from the patent examiner as to whether or not an

18 application is patentable, correct?

19 **A.** Correct.

20 **Q.** And you personally reviewed all of the AESDs

21 submitted by Arendi, correct?

22 **A.** I personally, I'm not sure that's correct. I can't

23 remember that specifically today. It was we had help also

24 from the lawyers. I think I looked at it all, but, yes,

25 go ahead.

1 was something by which you alerted the Patent Office to

2 certain prior art references that they should be aware of,

3 in your view; is that correct?

4 **A.** Correct.

5 **Q.** Two sentences down, you say, quote, "Applicant notes

6 that Application Serial No. 12/841,302 (also before the

7 Examiner) and the prior art references analyzed in the

8 Accelerated Examination Support Document (AESD) of

9 July 22, 2010 are of particular interest in relation to

10 the present application," unquote.

11 Do you see that?

12 **A.** I do.

13 **Q.** "The present application," this is the application

14 for the '843 patent, right?

15 **A.** Right.

16 **Q.** And there "Applicant" is you, correct?

17 **A.** Yes.

18 **Q.** You are telling the examiner that he should look at

19 something called the Accelerated Examination Support

20 Document in another case that's in front of the examiner,

21 correct?

22 **A.** Yes.

23 **Q.** And you say that the prior art references analyzed in

24 that AESD are of particular interest in relation to the

25 '843 application; is that right?

1 **Q.** And as part of creating this document, you recall

2 being asked by Arendi's lawyers to evaluate the references

3 deemed most relevant to the subject matter of the claims;

4 is that correct?

5 **A.** Sure.

6 **Q.** And the text included in this document was drafted by

7 Arendi, you, or its counsel, correct?

8 **A.** Correct.

9 **MR. UNIKEL:** I move for admission of DTX-925.

10 **MR. DIEHL:** No objection, Your Honor.

11 **THE COURT:** It's admitted.

12 (Exhibit DTX-925 is admitted into evidence.)

13 **BY MR. UNIKEL:**

14 **Q.** So, sir, just so now that the jury has the benefit of

15 seeing the document, this is the accelerated examination

16 support document that you directed the examiner

17 considering the '843 patent application to; is that

18 correct?

19 **A.** Yes.

20 **Q.** And this was dated July 22, 2010; is that right?

21 **A.** Correct.

22 **Q.** Sir, if you could please find Page 10. I'm just

23 going to use the numbers of the actual document, so

24 Page 10 of this document.

25 **A.** I have it.

1 Q. And do you see that there is a section here entitled:
 2 "9(A), References Deemed Most Closely Related."
 3 Do you see that?
 4 A. I see that.
 5 Q. And in this, you have a listing of various pieces of
 6 prior art that you are going to -- that you have disclosed
 7 that are the references deemed most closely related?
 8 A. To this --
 9 Q. Is that right?
 10 A. To this application.
 11 Q. Yes. And this AESD document, you directed the '843
 12 examiner to look at, correct?
 13 A. Yes.
 14 Q. And in this list, do you see that there is a bullet
 15 point "Apple Data Detectors User's Manual, Apple Computer,
 16 1997."
 17 Do you see that, sir?
 18 A. Yes.
 19 Q. And one more down, there's an entry for "Anind Dey,
 20 Gregory D. Abowd, Andrew Wood, CyberDesk: A Framework for
 21 Providing Self-Integrating Context-Aware Services,
 22 Knowledge-Based Systems, Volume 11, 1998", correct?
 23 A. Correct.
 24 Q. And one below that is a bullet point that reads
 25 "Getting Results with Microsoft Office 97, Microsoft

1 Corporation, copyright 1995 to 1997," correct?
 2 A. Correct.
 3 Q. So these are prior art references that you deemed
 4 most closely related to this application that you filed
 5 the AESD on; is that correct?
 6 A. Yes.
 7 Q. And then these are prior art references that you told
 8 the '843 examiner would be of particular interest to
 9 consider in connection with the '843 patent?
 10 A. That's correct.
 11 Q. Sir, if I could ask to you turn to Page 101 of this
 12 AESD, 101.
 13 A. I'm there.
 14 Q. Do you see that here you have a section that's called
 15 "Detailed Explanation of Patentability."
 16 Do you see that?
 17 A. I see that.
 18 Q. In this section, you are providing Arendi's narrative
 19 description of each of the prior art references that you
 20 cited; is that right?
 21 A. Yes.
 22 Q. And you also, then, identify elements of patent
 23 claims in this application that you were seeking that you
 24 believe were missing from the identified prior art
 25 references, correct?

1 A. Correct.
 2 Q. So let's look at what you said about CyberDesk
 3 publication. If we could look at Page 114, please.
 4 Am I correct here we see that article from 1998
 5 relating to CyberDesk: A Framework for Providing
 6 Self-Integrating Context-Aware Services, correct?
 7 A. Yes.
 8 Q. And you wrote in the following paragraph: "The Dey
 9 reference describes a tool called CyberDesk. CyberDesk is
 10 a framework that supports the automatic integration of
 11 versus software applications. In one user -- "in one
 12 example, a user highlights a URL in an e-mail message, and
 13 CyberDesk offers the user the following options: 1,
 14 search for the URL using a search engine, 2, find pages
 15 that reference the URL using a search engine, or, 3,
 16 display the URL using a web browser," unquote.
 17 Do you see that?
 18 A. Yes.
 19 Q. And a URL is an Internet address, correct?
 20 A. Correct.
 21 Q. In the last sentence here, Arendi writes, quote, "In
 22 another example, the user highlights a name in the e-mail
 23 message and CyberDesk offers various options that are
 24 specific to the name, (e.g., look up the name in a contact
 25 manager)."

1 And then there is a citation; is that correct?
 2 A. That's correct.
 3 Q. And in this description, you are recognizing that
 4 CyberDesk offered various options that are specific to a
 5 name; is that correct?
 6 A. Yes, that's what it says.
 7 Q. And one of the options for a name was look up the
 8 name in a contact manager; is that right?
 9 A. Yes.
 10 Q. Now, in this description, you don't say anything
 11 about CyberDesk's ability to find a related phone number,
 12 correct?
 13 A. Correct.
 14 Q. And in this description, you don't say anything about
 15 CyberDesk's ability to use the e-mail address to actually
 16 send an e-mail, correct?
 17 A. Correct.
 18 Q. And you don't say anything in this description about
 19 CyberDesk's ability to search for a map and display a
 20 street address on a map, correct?
 21 A. Correct.
 22 Q. In the course of this case, you stated that you have
 23 no recollection as to how CyberDesk actually worked; is
 24 that right?
 25 A. You have to repeat the question; I didn't hear that.

1 Q. In this case, you stated that you have no
 2 recollection as to CyberDesk actually worked; is that
 3 correct?
 4 A. Correct.
 5 Q. And you don't remember when you became aware of
 6 CyberDesk; is that right?
 7 A. That's also correct.
 8 Q. After becoming aware of CyberDesk, you don't remember
 9 doing anything to acquire more information about that
 10 system, do you?
 11 A. That's correct.
 12 Q. And you don't even remember whether you looked for
 13 any information on CyberDesk through a basic Internet
 14 search, correct?
 15 A. Correct.
 16 Q. And you don't remember whether you looked at any
 17 materials about the CyberDesk system other than this one
 18 1998 article that you discussed in this AESD; is that
 19 right?
 20 A. I know we submitted more CyberDesk documentation to
 21 the Patent Office, so I assume he looked at those.
 22 Q. But you personally don't recall if you ever saw any
 23 of those other materials; is that correct?
 24 A. Today, I don't remember.
 25 Q. And you don't remember whether you ever went to the

1 Georgia Tech website concerning CyberDesk and tried to use
 2 the actual sample version of CyberDesk that was provided
 3 on that website, do you?
 4 A. I don't remember.
 5 Q. Let's look back at your description of CyberDesk to
 6 the Patent Office in the AESD, please. If you could look
 7 at the next page, please, 115.
 8 Do you see that you write, quote, "The Dey reference
 9 does not meet several elements and limitations of the
 10 claims. Among other things, the Dey reference does not
 11 disclose contact information handling implemented by a
 12 document editing program. For example, Dey does not
 13 disclose analyzing selected textual information by the
 14 document editing program as required by the claims.
 15 CyberDesk itself analyzes text highlighted by the user,
 16 and CyberDesk is separate from any document editing
 17 programs."
 18 That's what Arendi said to the Patent Office about
 19 this reference, correct?
 20 A. Yes.
 21 Q. And you felt it was an important distinction in this
 22 AESD that CyberDesk was separate from the document editing
 23 program, correct?
 24 A. Yes.
 25 Q. And you told the '843 patent examiner that he would

1 find your descriptions of the prior art in this AESD of
 2 particular interest, correct?
 3 A. Yes.
 4 Q. Next, you state -- if we could please go to the next
 5 paragraph. "CyberDesk also does not disclose 'identifying
 6 at least part of the selected textual information to use
 7 as a search term,' as required by the claims. To the
 8 contrary, it appears that CyberDesk merely searches for
 9 what the user has highlighted and, for this reason,
 10 CyberDesk does not identify search terms, as required by
 11 the claims."
 12 Do you see that?
 13 A. I can see that.
 14 Q. And so for you, it was important whether or not
 15 CyberDesk taught to search for -- to identify at least
 16 part of the selected textual information to use as a
 17 search term, correct?
 18 A. For this application, yes.
 19 Q. For this application. And this application was the
 20 one you directed the '843 patent examiner to look at your
 21 descriptions of?
 22 A. Correct.
 23 Q. And finally, last Paragraph here, you say,
 24 "Furthermore, CyberDesk does not disclose 'causing
 25 insertion of at least part of the second information into

1 the document,' as required by the claims. CyberDesk
 2 simply does not disclose, teach, or suggest inserting
 3 second information into documents," unquote.
 4 Do you see that?
 5 A. I see that.
 6 Q. Were you aware that CyberDesk did allow for insertion
 7 of text into documents at the time you wrote this?
 8 A. Apparently not.
 9 Q. And, sir, is there any limitation in the actual
 10 claims of the '843 patent that require causing insertion
 11 of at least part of the second information into the
 12 document?
 13 A. '843, no.
 14 Q. But these are all statements that Arendi himself wrote
 15 to the Patent Office in this AESD, correct?
 16 A. Correct.
 17 Q. And these are the statements that Arendi directed the
 18 examiner considering the '843 patent to because they were
 19 of particular interest in regard to that application?
 20 A. That's what you said, yes.
 21 THE COURT: Counsel, is now a good time to take
 22 the afternoon break?
 23 MR. UNIKEL: I think it's a great time. Thank
 24 you, Your Honor.
 25 THE COURT: Ladies and gentlemen, we will take

1 you out for your 15-minute afternoon break.
 2 (The jury exits the courtroom at 3:09 PM.)
 3 **THE COURT:** Please be seated, Mr. Hedloy. You
 4 can step down.
 5 All right. We will be in recess for 15.
 6 (Whereupon, a recess was taken.)
 7 **THE COURT:** Okay. Please be seated everyone.
 8 **MS. SRINIVASAN:** Your Honor, I have one issue
 9 to raise before we resume, if I may.
 10 **THE COURT:** Sure. That's fine.
 11 **MS. SRINIVASAN:** As I understood the discussion
 12 during the prior break when we talked about concerns about
 13 opening the door, I understand the Court to say, well,
 14 because they were talking -- or in the opening, the
 15 discussion was about the systems that could not be before
 16 the Patent Office, that that was permissible and did not
 17 open the door.
 18 Well, we just saw for the last 20 minutes was
 19 walking through the prosecution history itself and talking
 20 about whether the references were properly disclosed or
 21 whether the examiner was directed in the right way to look
 22 at the right thing about those references. That was not
 23 what I understood the Court's ruling to be, but in any
 24 event, now the implication is, these references --
 25 CyberDesk so far, maybe there are others -- were not, you

1 process.
 2 And, you know, we've admitted the prosecution
 3 history, counsel did that. He's walking through it. The
 4 IPR proceedings are part of that prosecution history. It
 5 is extremely prejudicial to suggest -- again, we're beyond
 6 the systems now; we're talking about the references that
 7 were submitted to the Patent Office, and the kind of
 8 cross-examination we just heard is to say, well, yes,
 9 CyberDesk was there, but you described CyberDesk as X, or
 10 you said it had to do with Y, as though there was some
 11 effort by Arendi not to properly disclose what that art
 12 was about or direct the examiner away.
 13 Google, of course, had the opportunity to put
 14 forth those exact same references and put them before the
 15 patent examiner if it thought that there was something
 16 that was not properly conveyed. And so now we're in a
 17 different realm because we are explicitly talking about
 18 references that were presented to the examiner and what
 19 was done with them.
 20 And, again, the impression that, well, Arendi
 21 did this, and when Google came in after the fact and had
 22 an opportunity to be before the Patent Office, we should
 23 be able to at least reference that because I think it's
 24 extremely misleading, again.
 25 **THE COURT:** Counsel, I want to make sure I

1 know, they were put before the examiner, but the examiner
 2 wasn't led in the right direction as to the contents of
 3 those.
 4 And, again, the IPRs are part of the
 5 prosecution history, and Google itself if it's position is
 6 somehow Arendi didn't direct the examiners properly,
 7 Google itself had the opportunity to do that. I think we
 8 have gone beyond what we even talked about in the last
 9 break in terms of creating this impression that, yes,
 10 CyberDesk was in the original prosecution, that Arendi
 11 somehow didn't point out to the examiner or describe the
 12 reference in a way that wouldn't have allowed the examiner
 13 to look at it carefully. And, of course, we know that
 14 there was a subsequent proceeding in which Google itself
 15 had the opportunity to create any misimpression it thought
 16 or direct the examiners as to the references.
 17 He's not asking him about systems. He spent
 18 quite a bit of time just now talking about the references
 19 in the prosecution of the patent related to CyberDesk.
 20 And the implication that is left there, we should be able
 21 to rebut that with the fact that Google itself could have
 22 raised -- if it really thought, looking at the prosecution
 23 history, that the examiner wasn't properly shown or
 24 properly directed on those references, Google could have
 25 done that. It had every opportunity during its own

1 understand. So the Court doesn't rule on impressions; it
 2 rules on evidence admitted.
 3 **MS. SRINIVASAN:** Yes.
 4 **THE COURT:** So I want to make sure I
 5 understand, are you saying -- before I heard what you were
 6 saying was that evidence of the IPR proceedings was
 7 potentially relevant to willfulness. Are you now saying
 8 something differently, that there's something new that's
 9 been opened up --
 10 **MS. SRINIVASAN:** Yes.
 11 **THE COURT:** -- that the IPR proceedings are
 12 relevant to?
 13 **MS. SRINIVASAN:** Yes.
 14 **THE COURT:** I didn't hear you object to this
 15 evidence being admitted when counsel was asking him about
 16 it.
 17 **MS. SRINIVASAN:** Well, Your Honor's instruction
 18 at the last break when we raised the concern about making
 19 the argument that something had happened in the patent
 20 prosecution process, Your Honor said, well, you know, if
 21 they're talking about the system which couldn't have been
 22 before the Patent Office and the process of getting the
 23 patent, then that was not -- you know, that's not a basis
 24 for opening the door.
 25 Now we're talking about something else. We're

1 talking about the actual references. Those have been put
2 into evidence, the full prosecution history, and the
3 questions to Mr. Hedloy are, well, here's how you
4 described CyberDesk. You didn't describe it as X. You
5 didn't describe it as Y. Yes, you -- you know, it was
6 before the patent examiner, but the implication is that
7 somehow there was a failure of candor to the Patent
8 Office. And this is what I raised before, but now it is
9 directly about references that are in the prosecution
10 history.

11 **THE COURT:** All right. Thank you, counsel.
12 Why don't you have the seat.

13 **MR. UNIKEL:** May I be heard, Your Honor?

14 **THE COURT:** Yes.

15 **MR. UNIKEL:** We are not actually going to say
16 at all that there was any breach of the duty of candor.
17 We believe that the duty of candor was followed and that
18 they said exactly what they meant about the articles. The
19 problem is the system has many more features than the
20 articles reveal. The systems were displayed publicly.
21 You're going to hear from the inventor of Apple Data
22 Detectors and from CyberDesk that's going to talk about
23 features of system that were not available in the
24 publications.

25 We're not disputing that what he said was

1 accurate based on what was available in those materials.
2 What we're saying is, the systems, which could not be
3 presented as part of the IPR, they could not be presented
4 as part of the prosecution history because Google doesn't
5 participate in the prosecution history of the original
6 patent, could not be presented and was not considered by
7 the Patent Office.

8 So we are not saying that there's anything
9 about those disclosures that was incorrect. What we're
10 saying is the system shows more than what was shown to the
11 Patent Office.

12 **THE COURT:** Okay. Have a seat.

13 Here's what we are going to do for right now.

14 The objection is going to be overruled at this point, with
15 leave to bring up -- quite frankly I'm not hundred percent
16 sure what it is you're saying the IPR is relevant to at
17 this point. Before, I understood counsel to be arguing it
18 was relevant to willfulness. That's not what we are
19 talking about right now. So why don't we all take a look
20 at the transcript. If plaintiff thinks defense counsel
21 has opened the door to something, I'll hear two-page
22 letters from each side on that by tomorrow morning and we
23 can discuss it before we start tomorrow, but that's going
24 to be my ruling.

25 Counsel?

1 **MR. UNIKEL:** May I just get their letter first
2 since I don't know what the actual problem is.

3 **MS. SRINIVASAN:** Sure.

4 **THE COURT:** Why don't you get him the letter by
5 9:00 p.m. tonight, and I'll take counsel's by seven in the
6 morning. Sorry.

7 **MS. SRINIVASAN:** Thank you, Your Honor.

8 **MR. BELGAM:** Can I have one moment with
9 cocounsel to discuss how we are going to go forward?

10 **THE COURT:** Sure.

11 **BELGAM:** Thank you, Your Honor.

12 **THE COURT:** Are we ready to proceed?

13 **MR. UNIKEL:** Yes, Your Honor.

14 **THE COURT:** All right. Ms. Garfinkel, please
15 bring the jury in.

16 **THE CLERK:** Yes, Your Honor.

17 (The jury enters the courtroom at 3:36 p.m.)

18 **THE COURT:** Please be seated.

19 Let's continue with the cross-examination.

20 **BY MR. UNIKEL:**

21 **Q.** Hello again, sir.

22 **A.** Hello.

23 **Q.** When we broke, we were looking at DTX-925, which is
24 the accelerated examination support document.

25 Do you recall that?

1 **A.** I do.

2 **Q.** Excuse me. Sorry.

3 If we could please put up Page 111 of that document,
4 please.

5 **A.** 111.

6 **Q.** Thank you, sir. Let me know when you're there.

7 **A.** Okay.

8 **Q.** Do you see here you are describing Apple Data
9 Detectors User's Manual, copyright 1997, correct?

10 **A.** Yes.

11 **Q.** And in the first paragraph, Arendi writes the Apple
12 Data Detectors User's Manual discloses a method or finding
13 (recognizing) and acting on certain types of information.
14 ADD starts when a user highlights text in a word
15 processing document. ADD then analyzes the text to
16 determine whether it recognizes some portion of that text
17 as, for example, an e-mail address or web address," end
18 quote.

19 Do you see that language?

20 **A.** I do.

21 **Q.** Again, this is Arendi's submission to the Patent
22 Office in this AESD, correct?

23 **A.** Yes.

24 **Q.** Do you need some water, sir?

25 **A.** I have it.

1 Q. Okay.
2 A. I will drink some.
3 Q. Please.
4 A. Thank you.
5 Q. Are you ready, sir?
6 A. Go ahead.
7 Q. You then continue, quote, "The user can use a
8 contextual menu to initiate an action that is related to
9 the recognized data. For example, if ADD recognizes a web
10 address, the user may use the contextual menu to initiate
11 viewing the website associated with the web address,"
12 unquote.
13 Do you see that?
14 A. I do.
15 Q. So would you agree from this description that Arendi
16 was not the first to come up with the idea of analyzing
17 text to determine whether it recognizes some portion of
18 the text as an e-mail address or web address?
19 A. I think, yes.
20 Q. And you also agree that Arendi was not the first to
21 come up with the idea of using a contextual menu to
22 initial an action that is related to the recognized data,
23 correct?
24 A. Correct.
25 Q. You don't recall when you first learned about Apple

1 it analyzes the selected textual information and
2 configures any input device," unquote.
3 Do you see that, sir?
4 A. I do.
5 Q. Do you regard that as an accurate statement that ADD
6 is a part of the operating system and analyzes the
7 selected textual information and configures any input
8 device?
9 A. I think that's true.
10 Q. You then write, quote, "As ADD is a part of the
11 operating system, which is separate from the document
12 editing program, ADD does not meet the limitations of the
13 claims," unquote.
14 Arendi wrote that, correct?
15 A. Arendi wrote that on the application.
16 Q. And this is the AESD that Arendi directed the '843
17 patent examiner to look at because it was of particular
18 interest, correct?
19 A. Correct.
20 MR. UNIKEL: Your Honor, I think this will be a
21 module where I probably have to close the courtroom in
22 order to ask the questions of the witness.
23 THE COURT: Okay. I'll ask Ms. Garfinkel to
24 please close the courtroom.
25 * * *

1 Data Detectors technology, correct?
2 A. Correct.
3 Q. Specifically, you don't recall whether were you aware
4 of Apple Data Detectors technology before you filed your
5 first patent application in 1998; is that right?
6 A. That's correct.
7 Q. If we could look at the last paragraph on this page,
8 it goes into the next page. You see you say, quote,
9 "Apple Data Detectors does not meet several elements and
10 limitations of the claims."
11 Do you see that?
12 A. Yes.
13 Q. And Arendi then writes, "Among other things, ADD does
14 not disclose analyzing selected textual information by the
15 document editing program, as required by the claims."
16 MR. DIEHL: Objection, Your Honor. This goes
17 to a different patent. This goes to a different patent;
18 it's not about the '843 patent. This is not relevant.
19 THE COURT: Okay. We will have you address
20 that on cross-examination.
21 BY MR. UNIKEL:
22 Q. Sir, you then continue, quote, "Also, ADD does not
23 disclose providing an input device configured by the
24 document editing program as required by the claims.
25 Instead, ADD itself is a part of the operating system, and

1 (The following discussion is held under seal:
2 - - -
3 THE COURT: Courtroom has been sealed. Please
4 proceed.
5 MR. UNIKEL: Thank you, Your Honor.
6 BY MR. UNIKEL:
7 Q. Sir, if I could ask you to look in your binder at
8 what has been marked as DTX-633.
9 DTX-633 is identical to what has already been
10 identified as Plaintiff's Exhibit 66, as the Apple
11 agreement. I spoke with counsel about that before. I'm
12 just going to refer to it by the plaintiff's number, if
13 that's all right.
14 Sir, am I correct that Plaintiff's Exhibit 66 is a
15 copy of the agreement that was signed between Arendi and
16 Apple?
17 A. Yes.
18 MR. UNIKEL: If we could please put up a copy
19 of this exhibit.
20 BY MR. UNIKEL:
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22 [REDACTED]
23 [REDACTED]
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25 [REDACTED]

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 10 Q. Let's look at another agreement, please. This one is
 11 in your book marked as DTX-283.
 12 Do you have that in front of you, sir?
 13 A. 283, yes.
 14 Q. 283 is an identical copy to what was already admitted
 15 as Plaintiff's Exhibit 77. [REDACTED]
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7 Q. If I can ask you to look, sir, at the Microsoft agreement, which is in your book as DTX-971. Tell me when you are there, please, sir.

8

9

10 A. I'm there.

11 Q. Thank you.

12 And again, DTX-971 is identical to what has been admitted as Plaintiff's Exhibit 75. And I'll just refer to it by the Plaintiff's exhibit number, since that's already admitted? All right?

13

14

15

16 A. All right.

17 [REDACTED]

18 [REDACTED]

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 8 Q. There was a lot of litigation that happened between
 9 those two things, correct?
 10 A. Yes.
 11 Q. There was at least one trial that went on, correct?
 12 A. I didn't hear you.
 13 Q. There was at least one trial that went on between you
 14 and Microsoft?
 15 A. We had one trial against Microsoft, correct.
 16 Q. And you had filed -- you had -- how long was the
 17 litigation going on before you signed an agreed --
 18 settlement agreement with Microsoft?
 19 A. This agreement is -- was based on -- was after suit
 20 against -- filing against Microsoft 2009.
 21 Q. So, approximately two years of litigation had been
 22 going on when you signed this agreement with Microsoft; is
 23 that correct?
 24 A. Yes. No trial in that litigation.
 25 [REDACTED]

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 21 MR. UNIKEL: I have only a few questions left,
 22 but we can unseal the courtroom if you would like,
 23 Your Honor.
 24 THE COURT: Thank you very much.
 25 Ms. Garfinkel, unseal the courtroom.

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1 MR. DIEHL: Your Honor, just as a note on that,
 2 on redirect, I can go right back into his licenses and we
 3 can unseal after that. I am happy to have it unsealed now
 4 and I can talk about other things and then go into
 5 licenses, but if we are going to redirect soon, it could
 6 make sense just to keep it sealed.
 7 THE COURT: Let's unseal the courtroom. Thank
 8 you, Counsel.
 9 MR. DIEHL: Yes.
 10 * * *
 11 (Whereupon, the sealed discussion concludes.)
 12 THE COURT: The courtroom is unsealed.
 13 Please proceed.
 14 BY MR. UNIKEL:
 15 Q. Sir, am I correct that at no time before filing this
 16 lawsuit in 2013 did you ever tell Google that they were
 17 infringing any patents of Arendi's?
 18 A. That's correct.
 19 Q. The first time that you would have alerted Google to
 20 the fact that you thought they were infringing any patents
 21 was when you filed the lawsuit in 2013; is that right?
 22 A. Correct.
 23 Q. And you made a conscious decision not to reach out to
 24 Google; is that right?
 25 A. Yes.

1 Q. And you made that conscious decision together with
 2 your lawyers not to alert Google; is that right?
 3 A. Yes.
 4 MR. UNIKEL: Your Honor, that's all I have.
 5 THE COURT: Thank you very much.
 6 Redirect.
 7 MR. DIEHL: Your Honor, I will start with the
 8 licenses, since that was the last thing I did.
 9 THE COURT: Okay.
 10 MR. DIEHL: I'm sorry to do it.
 11 THE COURT: I'm going to ask Ms. Garfinkel to
 12 seal the courtroom.
 13 The courtroom has been sealed.
 14 * * *
 15 (The following discussion is held under seal:
 16 MR. DIEHL: Thank you, Your Honor.
 17 REDIRECT EXAMINATION
 18 BY MR. DIEHL:
 19 [REDACTED]
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 16 [REDACTED]
 17 Q. And Google's counsel also asked the question about
 18 whether Arendi made a conscious decision with its counsel
 19 not to alert Google that it suspected Google was
 20 infringing the '843 patent.
 21 Do you recall that question?
 22 A. I do.
 23 Q. Did you have concerns about what Google would do if
 24 Arendi came to Google and brought that allegation to it
 25 outside of the context of a lawsuit?

1 A. Yes.
 2 Q. And did you have concerns about Google taking legal
 3 action of its own in response to that kind of allegation?
 4 A. Yes.
 5 MR. DIEHL: Now, Your Honor, I think we can
 6 unseal the courtroom at this point.
 7 THE COURT: All right.
 8 Ms. Garfinkel, please unseal the courtroom.
 9 (Courtroom unsealed.)
 10 THE COURT: The courtroom has been unsealed.
 11 Please proceed.
 12 MR. DIEHL: Thank you, Your Honor.
 13 BY MR. DIEHL:
 14 Q. Okay. Next subject. I want to get -- just go back
 15 into the issue of the efforts that Arendi made to provide
 16 information to the Patent Office.
 17 A. Yes.
 18 Q. And do you recall that Google asked you a number of
 19 questions about that process?
 20 A. I do.
 21 Q. And I'd like to look back at what was Exhibit DTX-2,
 22 which is a record of things that happened before the
 23 Patent Office.
 24 Do you recall talking about this exhibit with
 25 Google's counsel?

1 A. Yes.
 2 Q. Okay. In particular, we looked at Page 180 of this
 3 document. Do you recall -- look at Pages 180 and 181, if
 4 we can look at both of those on the screen.
 5 And here, Google's counsel pointed to a particular
 6 sentence that begins at the end of Page 180,
 7 "Applicant" -- Arendi -- "notes that application Serial
 8 No. 12,841,302 n(also before the Examiner) and the prior
 9 art references analyzed in the Accelerated Examination
 10 Support Document (AESD) of July 22, 2010 are of particular
 11 interest in relation to the present application."
 12 Do you recall questions about this?
 13 A. I do.
 14 Q. So what was the reason for alerting the Patent Office
 15 about this?
 16 A. Well, it was that the -- we wanted to make sure that
 17 he -- we didn't withhold anything. So that's why we
 18 alerted him to it. So we said those references should
 19 also be looked at.
 20 Q. Now, those references, you were pointing up to the --
 21 specifically to the prior art references analyzed in the
 22 Accelerated Examination Support Document; is that fair?
 23 A. Yes. We should look at those prior art references.
 24 Q. Those prior art references.
 25 And then the Accelerated Examination Support

1 Document, this actually related to a different patent
 2 application; is that fair?
 3 **A.** That is correct.
 4 **Q.** Okay. Now, if we go then -- Google's counsel then
 5 brought you from this page to the Accelerated Examination
 6 Support Document.
 7 Do you recall that?
 8 **A.** I do.
 9 **Q.** Okay. And that was -- I'm missing the exhibit number
 10 to that one. I believe that was DTX-925.
 11 **MR. DIEHL:** Mr. Boles, can you pull up 925.
 12 **BY MR. DIEHL:**
 13 **Q.** Okay. Right. And this is the Accelerated
 14 Examination Support Document that was referenced. And
 15 now, we've just left the '843 application; is that fair?
 16 **A.** Repeat, please.
 17 **Q.** We've just left the '843 patent application. This is
 18 a document that related to something else, right?
 19 **A.** That is correct.
 20 **Q.** And in the '843 patent application, which is the
 21 patent at issue in this case, you had just referenced this
 22 document as something that listed some prior art that
 23 could be of particular interest?
 24 **A.** That's exactly what it said, yes.
 25 **Q.** And do you recall what patent this Accelerated

1 Examination Support Document related to?
 2 **A.** I actually don't, no.
 3 **Q.** It was a different one from the '843 patent?
 4 **A.** It was.
 5 **Q.** Okay. And if we go to Page 114 of this document, we
 6 see here a reference to CyberDesk.
 7 So what Arendi did here, was it pointed out CyberDesk
 8 to the Patent Office for the '843 application; is that
 9 fair?
 10 **A.** Yes.
 11 **Q.** Okay. Now, the discussion here which Google walked
 12 through, in particular --
 13 **MR. DIEHL:** And, Mr. Boles, if we can get the
 14 next page on the screen as well.
 15 **BY MR. DIEHL:**
 16 **Q.** -- this relates to the patent application for a
 17 different patent; is that right?
 18 **A.** That is correct.
 19 **Q.** Okay. And if we look at Page 115 here, it says, at
 20 the top -- I believe Google's counsel went through this in
 21 detail -- "The Dey reference" -- meaning CyberDesk, as the
 22 author is Dey -- "does not meet several elements and
 23 limitations of the claim."
 24 What claims was it talking about here?
 25 **A.** The claims of the other patent.

1 **Q.** Not the '843?
 2 **A.** Not the '843, yes.
 3 **Q.** Okay. And then Google's counsel focused in
 4 particular on the third sentence here that begins, "For
 5 example, Dey does not disclose analyzing selected textual
 6 information by the document editing program, as required
 7 by the claims."
 8 Do you see that?
 9 **A.** I do.
 10 **Q.** Do you recall Google asking about that?
 11 **A.** Yes.
 12 **Q.** This discussion of what CyberDesk did or didn't do
 13 was not related to the claims of the '843 patent?
 14 **A.** That's correct. The claims for the '843 patent has
 15 nothing -- it says nothing about when the analyzing should
 16 happen. So it is not relevant.
 17 **Q.** This isn't irrelevant to the '843 patent, because
 18 this is -- actually isn't a requirement of the '843 patent
 19 claims?
 20 **A.** Exactly.
 21 **Q.** Okay. And when Arendi -- if we go back to the actual
 22 patent application for the '843 patent -- when it
 23 referenced this AESD document, all it said was, "the prior
 24 art cited in this AESD would be of particular interest";
 25 is that right fair?

1 **A.** That's what it said.
 2 **Q.** Okay. And if you go to Page 10 of this AESD document
 3 that Google walked through with you, this lists a bunch of
 4 interesting prior art; is that fair?
 5 **A.** Yes. It does, yes, correct.
 6 **Q.** And we've got Apple Data Detectors on here, we've got
 7 CyberDesk on here, we've got Microsoft Office 97. Those
 8 are all things we heard Google mention in the opening
 9 statement.
 10 Do you recall that?
 11 **A.** I do.
 12 **Q.** Now, after Arendi identified these specific things to
 13 the Patent Office, the Patent Office had a decision to
 14 make; is that right?
 15 **A.** Yes.
 16 **Q.** And it had the '843 patent application before it?
 17 **A.** Yes.
 18 **Q.** And it knew about CyberDesk?
 19 **A.** Yes.
 20 **Q.** And it knew about Apple Data Detectors?
 21 **A.** Yes.
 22 **Q.** And then what did the Patent Office decide to do with
 23 the application that you had submitted?
 24 **A.** It allowed it. Which means it allowed it to become a
 25 patent.

1 Q. And we only see one reference to CyberDesk on this
 2 list; is that fair?
 3 A. That is fair.
 4 Q. But did Arendi provide additional references to
 5 CyberDesk to the Patent Office as part of the application
 6 process?
 7 A. Yes. Everything we had. So I think there were six
 8 or seven total, maybe more.
 9 Q. And if the jury were to look in their jury binder and
 10 look at the -- look through the patent's first ten pages,
 11 they would probably see those seven or eight references to
 12 the CyberDesk right there in the patent itself?
 13 MR. UNIKEL: Objection. Leading.
 14 THE COURT: Can you rephrase?
 15 MR. DIEHL: Yes.
 16 BY MR. DIEHL:
 17 Q. Would those six or seven references to CyberDesk,
 18 that you mentioned, be found in the first ten pages of the
 19 patent?
 20 A. Yes.
 21 Q. And the Patent Office, the Patent Examiner is able to
 22 review those references themselves; is that your
 23 understanding of how it works?
 24 A. I think that's their job.
 25 Q. They don't have to rely on Arendi to provide

1 THE COURT: Overruled. But let's just make
 2 sure we are asking --
 3 MR. DIEHL: Yes.
 4 THE COURT: -- questions appropriately of this
 5 witness. Yes. Absolutely, Your Honor.
 6 BY MR. DIEHL:
 7 Q. Should I re-ask the question?
 8 A. Yes, please.
 9 Q. Okay. Mr. Hedloy, do you recall that the video we
 10 watched on Friday talked about a section at the end of the
 11 patent called "The Claims"?
 12 A. I do.
 13 Q. In the '843 patent, is there a section at the end
 14 called "The Claims"?
 15 A. Yes.
 16 Q. And do those claims mention OneButton?
 17 A. No.
 18 Q. Are the claims limited to OneButton in any way?
 19 A. No. OneButton was -- is one of things you can do
 20 with technology, but you can do many other things also.
 21 Q. And your claims in this case, do you claim that
 22 Google copied OneButton?
 23 A. No.
 24 Q. Now, Google's questions about what OneButton did or
 25 didn't do, are those relevant to determining whether

1 information about their references?
 2 A. No. Correct.
 3 Q. And so Google asked you question about whether you
 4 personally had inspected all of the references about
 5 CyberDesk.
 6 Do you recall those questions?
 7 A. I do.
 8 Q. Whether or not you personally inspected all of them,
 9 Arendi had provided six or seven references related to
 10 CyberDesk to the Patent Office?
 11 A. Yes.
 12 Q. Now, there were a number of questions about OneButton
 13 that Google asked.
 14 Do you recall that?
 15 A. I do.
 16 Q. Mr. Hedloy, were you in the courtroom on Friday when
 17 we all watched the video about patents from the Federal
 18 Judicial Center?
 19 A. I do.
 20 Q. Do you recall that it talked about a question at the
 21 end of the patent -- about a section at the end of the
 22 patent that defines the scope of the patent?
 23 MR. UNIKEL: Objection, Your Honor. Foundation
 24 to the extent this witness is going to testify about what
 25 the law of patents is.

1 Google infringed the patent?
 2 A. I don't think so.
 3 MR. UNIKEL: Objection. Calls for a legal
 4 conclusion.
 5 THE COURT: That objection is sustained.
 6 Ladies and gentlemen of the jury, please ignore
 7 the question.
 8 BY MR. DIEHL:
 9 Q. Okay. I want to pull back up one of the exhibits
 10 that Google's counsel used. It was DTX-71.
 11 Mr. Hedloy, do you recall Google's counsel asking you
 12 about this document?
 13 A. I do.
 14 Q. Can you describe again what this document was at a
 15 high level?
 16 A. It was a memorandum to a guy called Dag Tellefsen,
 17 who was a -- worked for or was the head of the
 18 Vision Capital. And we were presenting our project or
 19 company to him.
 20 Q. Is this document the patent?
 21 A. No.
 22 Q. This document is describing OneButton for Word?
 23 A. Yes.
 24 Q. Now, as between a memo that you wrote to Dag
 25 Tellefsen at Vision Capital about OneButton in Word and

1 the '843 patent, which one is relevant to whether Google
 2 infringes the '843 patent?
 3 **A.** The patent.
 4 **Q.** Now, using this document, Google's counsel asked you
 5 about a statement that OneButton was easy and obvious.
 6 Do you recall that question?
 7 **A.** Yes.
 8 **Q.** Now, who would OneButton have been easy and obvious
 9 to?
 10 **A.** It's easy and obvious for a user to use.
 11 **Q.** And that was the -- was that part of the purpose of
 12 OneButton?
 13 **A.** Of course.
 14 **Q.** That the user could click on OneButton and it would
 15 be easy for them?
 16 **A.** Yes.
 17 **Q.** Did you mean by this statement that the invention
 18 would be easy or obvious?
 19 **A.** No.
 20 **Q.** Now, do you recall questions about whether OneButton,
 21 the program that Arendi created, recognized phone numbers
 22 or things other than names and addresses?
 23 **A.** I do.
 24 **Q.** And do you recall your answer to that question as to
 25 whether OneButton recognized phone numbers?

1 at the patent with Google's counsel, and Google's asked --
 2 Google asked you whether Arendi had helped drafting the
 3 patent.
 4 Is it your understanding that patent themselves are
 5 normally drafted with input from patent agents?
 6 **A.** Yes.
 7 **Q.** Okay. And Google's counsel showed you the "Field of
 8 the Invention" section on the patent.
 9 Do you recall that?
 10 **A.** I do.
 11 **MR. DIEHL:** Mr. Boles, could we go to the Field
 12 of the Invention? It's the -- there it is. Thank you.
 13 **BY MR. DIEHL:**
 14 **Q.** This is a section of patent that is different from
 15 the claims; is that fair?
 16 **A.** That is fair.
 17 **Q.** And Google's counsel also pointed out some of the
 18 figures in the patent, like Figures 3 and 4.
 19 Do you recall that?
 20 **A.** I do.
 21 **Q.** And Figures 3 and 4, I believe you testified, related
 22 to the OneButton prototype, right?
 23 **A.** Yes.
 24 **Q.** Do those figures define the scope of the claims that
 25 come later in the patent?

1 **A.** I remember I said no, it did not.
 2 **Q.** Now, the patent is not limited to recognizing names
 3 or addresses?
 4 **A.** That's correct.
 5 **MR. DIEHL:** Mr. Boles, if we can put up PX-1,
 6 and look at Column 4.
 7 Sorry. The Column 4 comes a little bit later
 8 in the document. There it is. Yep.
 9 **BY MR. DIEHL:**
 10 **Q.** And then the first full paragraph here in Column 4,
 11 if we highlight down here, there's a sentence in here that
 12 says, "The program may be extended to also store and
 13 retrieve other information, such as telephone numbers, fax
 14 numbers, e-mail addresses, et cetera."
 15 **MR. DIEHL:** Would you mind highlighting that,
 16 Mr. Boles. It's the beginning of that paragraph. There
 17 it is. Thank you.
 18 **BY MR. DIEHL:**
 19 **Q.** Mr. Hedloy, do you recall this being part of the
 20 patent?
 21 **A.** Yes, I do.
 22 **Q.** So although OneButton may not have recognized these
 23 other items, the patent talks about them; is that fair?
 24 **A.** That's fair.
 25 **Q.** Now, while we're here on the patent, you also looked

1 **A.** No.
 2 **Q.** Now, Mr. Hedloy, when did Arendi file the application
 3 for the '843 patent?
 4 **A.** 2008.
 5 **Q.** And what invention did that patent application relate
 6 to?
 7 **A.** Invention from 1997, so I believe -- yeah.
 8 **Q.** And what happened as a result of that application
 9 that Arendi put in to the Patent Office in 2008?
 10 **A.** It became a patent.
 11 **Q.** And that was despite the Patent Office's awareness of
 12 CyberDesk and Apple Data Detectors?
 13 **A.** Yes.
 14 **Q.** And when did Arendi file its complaint against
 15 Google?
 16 **A.** 2013.
 17 **Q.** Thank you, Mr. Hedloy.
 18 **MR. DIEHL:** I have no further questions, Your
 19 Honor, subject to possible re-redirect.
 20 **THE COURT:** Thank you very much.
 21 **MR. DIEHL:** Thank you.
 22 **MR. UNIKEL:** May I ask a few more questions,
 23 Your Honor?
 24 **THE COURT:** Let me see counsel at sidebar.
 25 - - -

1 (Whereupon, the following discussion is held at
 2 sidebar.)
 3 (Whereupon, the following occurred at sidebar:
 4 **MR. UNIKEL:** I only have two questions. I can
 5 tell you what they are.
 6 **THE COURT:** Let's see if he has an objection,
 7 then. Normally, we wouldn't allow re-redirect if he
 8 didn't go outside of the cross.
 9 **MR. UNIKEL:** The last question was outside of
 10 the cross, and I asked what happened to the original
 11 application that was filed. And the answer was that it
 12 was granted. That patent was ultimately invalidated in
 13 this case.
 14 **MR. DIEHL:** Your Honor, if I may respond. The
 15 last question is clearly about the '843 patent
 16 application. I asked when it was filed. He said 2008.
 17 **MR. UNIKEL:** Maybe I misunderstood. If I did,
 18 I'd like to hear what the last question was, because I
 19 thought it related to the original application that was
 20 filed.
 21 **THE COURT:** Let me ask the court reporter to
 22 read back the last question that was asked on redirect,
 23 and the last answer.
 24 - - -
 25 (The court reporter read back the record as

1 requested.)
 2 - - -
 3 **THE COURT:** So it sounds like --
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 **MS. SRINIVASAN:** Seems like that could have
 11 been raised on cross.
 12 **MR. UNIKEL:** I raised it on cross.
 13 **THE COURT:** I think that's fair given the scope
 14 of the redirect. I will allow one question.
 15 **MR. UNIKEL:** Okay. Thank you.
 16 (Whereupon, the discussion at sidebar
 17 concludes.)
 18 - - -
 19 **THE COURT:** Counsel?
 20 **MR. UNIKEL:** May I proceed, Your Honor?
 21 **THE COURT:** Yes.
 22 RECCROSS EXAMINATION
 23 **BY MR. UNIKEL:**
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 **THE COURT:** Okay.
 7 **MR. DIEHL:** No further questions for this
 8 witness, Your Honor.
 9 **THE COURT:** All right.
 10 Mr. Hedloy, you may step.
 11 **THE WITNESS:** Thank you. And you need me to
 12 take the papers or leave them there?
 13 **THE COURT:** Yes. Leave them there.
 14 **THE WITNESS:** Okay.
 15 **THE COURT:** Ladies and gentlemen of the jury,
 16 we've come to the end of our first day of trial. We're
 17 right on the dot at 4:30, so we're going to let you go for
 18 today. If you have any questions about reporting back
 19 tomorrow, Ms. Garfinkel will be available to answer those.
 20 I'm going to remind you not to discuss the case
 21 with anyone, including each other until all of the
 22 evidence is in and closing arguments.
 23 Ms. Garfinkel, please bring the jury out.
 24 (The jury exits the courtroom at 4:31 p.m.)
 25 **THE COURT:** Okay. Please be seated.

1 Do we have a sense of what the witnesses are
 2 going to look like tomorrow? If you don't right now,
 3 that's okay. If you do, that might be helpful.
 4 **MS. SRINIVASAN:** We do, Your Honor. We'll
 5 begin with Dr. Trevor Smedley, who's the infringement
 6 expert. And I expect his testimony to be relatively
 7 lengthy. I don't know, obviously, how long the cross will
 8 take. After Dr. Smedley, we'll have Roy Weinstein, the
 9 damages expert.
 10 **THE COURT:** So it's possible we might not get
 11 through both, or even one?
 12 **MS. SRINIVASAN:** I would expect we may get to
 13 starting Mr. Weinstein, just depending on the length of
 14 cross. We certainly won't conclude him, I don't think, at
 15 the -- given the number of hours for the jury day.
 16 So I would anticipate we will probably finish
 17 Dr. Smedley, and either just begin some of Mr. Weinstein,
 18 or maybe not get to him at all.
 19 **THE COURT:** Okay. Please have a seat.
 20 So in light of that, do we want to take up
 21 these deposition designation tomorrow? I guess I was
 22 hearing that it was going to take some time to prepare the
 23 video, so it might make sense. But if you decide -- if
 24 you all decide you don't want to do them tomorrow, if you
 25 agree, that's fine.

1 **MR. UNIKEL:** I think it would be better if we
2 could do them to tomorrow so that we can make sure that
3 there's no waiting on the deposition clips coming into --
4 as a video. If we could deal with them in the morning,
5 they will be done.

6 **THE COURT:** Okay. Great. In light of that --
7 please have a seat -- we'll all get here bright and early
8 tomorrow so we can get started on that sometime between
9 8:00 and 8:30, so we can have everybody here so we can get
10 moving.

11 I wish I could promise you an exact time, but
12 we've got issues with lots of folks coming in, in line.
13 And I've also have a family member at home who's not well.
14 So I'm going to -- I endeavor to take the bench no later
15 than 8:30, but if we're all here ahead of time, I might
16 try to get it done.

17 Anything else we need to address right now?

18 **MR. MOORE:** Your Honor, we did have one
19 question about Your Honor's preferences for Rule 50
20 motions for the logistics in that regard.

21 **THE COURT:** Sure. So you're welcome to file a
22 paper if you want to, but it's certainly not required.
23 I'll ask that after one side finishes presenting its case,
24 if you'd like to make it orally on the next break
25 following when the -- when that side finishes closing

1 were particularly lengthy, so hopefully that's not going
2 to make that big of a difference, and maybe it will come
3 out in the wash. But I'll let you all meet and confer on
4 it first.

5 **MS. SRINIVASAN:** Okay.

6 **THE COURT:** All right.

7 **MS. SRINIVASAN:** Thank you, Your Honor.

8 **THE COURT:** Great. Thanks very much. We will
9 be in recess.

10 (The proceedings concluded at 4:34 p.m.)
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1 their case, that's fine as well. You won't be waiving it
2 by waiting until a break, as opposed to making it right
3 away.

4 Anybody have any further questions about that?

5 **MS. SRINIVASAN:** No, Your Honor.

6 **THE COURT:** Okay.

7 **MR. UNIKEL:** No, Your Honor.

8 **THE COURT:** All right. So we will look forward
9 to --

10 **MS. SRINIVASAN:** I had one other question, Your
11 Honor.

12 **THE COURT:** Yes, of course.

13 **MS. SRINIVASAN:** As to time used by each party,
14 I know some of that was attributed this morning in the
15 motions, and obviously the parties are tracking their
16 testimonial time.

17 How do you prefer handling that? Do you want
18 us to --

19 **THE COURT:** Do you want to meet and confer with
20 each other, and to the extent there are disputes, we'll
21 get them resolved.

22 **MS. SRINIVASAN:** Sure.

23 **THE COURT:** I know I stated on the record
24 explicitly certain time this morning. Hopefully we can
25 figure out the rest of it. I don't think the sidebars

1
2 CERTIFICATE OF COURT REPORTER
3
4 I hereby certify that the foregoing is a true and
5 accurate transcript from my stenographic notes in the
6 proceeding.

7 /s/ Bonnie R. Archer
8 Bonnie R. Archer
9 Official Court Reporter
U.S. District Court

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BELGAM: [1] 223/11
BY MR. DIEHL: [30] 109/5
112/10 127/21 128/8 130/24
131/25 132/11 136/24 149/8
156/16 157/18 158/2 160/3
162/14 163/21 165/8 245/18
246/9 247/19 249/4 249/21
251/13 253/12 254/15 257/16
259/6 260/8 262/9 262/18
263/13
BY MR. UNIKEL: [25] 166/10
166/22 171/6 172/13 179/11
190/3 191/5 199/12 203/7
203/24 204/5 208/13 223/20
226/21 228/6 228/20 230/12
230/25 235/24 237/14 237/19
238/2 242/17 244/14 266/23
MR. ARD: [6] 3/13 21/10
22/14 23/21 23/25 45/2
MR. BELGAM: [3] 3/17 4/5
223/8
MR. DIEHL: [63] 3/19 127/16
127/20 128/3 129/10 129/16
129/23 130/5 130/14 130/23
131/23 132/10 136/18 136/23
141/18 149/1 149/5 149/25
154/11 154/25 156/15 157/11
157/16 157/24 159/20 159/25
162/13 163/16 165/3 165/18
165/22 176/16 176/25 189/22
190/25 197/13 197/21 198/8
198/18 203/17 208/10 226/16
237/8 244/1 244/9 245/7
245/10 245/16 246/5 247/18
251/5 251/12 253/11 254/13
257/15 259/3 262/5 262/15
263/11 264/18 264/21 265/14
267/7
MR. KAMBER: [1] 3/25
MR. LAHAD: [1] 3/15
MR. MOORE: [1] 269/18
MR. PETERMAN: [1] 4/2
MR. UNIKEL: [114] 3/22
14/17 18/9 19/17 20/4 24/16
24/19 34/9 34/11 34/18 35/12
35/15 36/10 36/15 37/9 41/4
41/8 41/14 42/3 43/21 43/25
44/2 47/17 52/4 53/6 53/12
54/5 54/17 54/24 55/3 55/15
56/7 56/12 82/15 108/12
127/19 128/5 129/6 129/17
130/4 136/20 142/17 142/24
143/7 144/9 147/11 150/2
154/20 154/23 155/1 155/12
155/21 155/23 156/8 157/13
159/22 160/25 161/7 163/18
165/5 166/1 166/3 166/20
171/3 172/11 176/5 177/3
177/20 177/24 178/9 178/17
178/21 179/2 189/20 189/25
191/2 198/1 198/22 199/6
203/4 203/15 203/20 204/3
208/9 216/23 221/13 221/15
223/1 223/13 227/20 228/5
228/18 230/11 230/23 235/22
237/17 238/1 242/15 243/21
245/4 249/1 257/13 258/23
260/3 264/22 265/4 265/9
265/17 266/4 266/12 266/15

266/20 269/1 270/7
MS. ROBERTS: [1] 3/23
MS. SRINIVASAN: [78] 3/11
26/12 26/14 29/23 30/11
31/14 32/2 34/20 34/23 39/11
39/13 40/24 41/5 44/5 44/19
44/22 44/25 45/3 45/6 45/8
46/5 46/10 47/2 49/8 49/10
51/1 51/23 52/1 52/23 53/16
53/19 54/3 54/7 54/16 54/23
55/4 55/9 55/18 55/25 56/3
57/1 68/2 69/10 69/13 69/15
108/9 108/15 130/1 142/15
143/11 143/15 143/20 144/10
144/17 155/13 155/22 156/1
156/9 161/15 177/7 178/22
217/8 217/11 220/3 220/10
220/13 220/17 223/3 223/7
266/10 268/4 268/12 270/5
270/10 270/13 270/22 271/5
271/7
THE CLERK: [6] 56/15 68/1
108/20 142/5 148/22 223/16
THE COURT: [209] 3/7 3/21
4/4 4/7 14/18 19/14 19/22
21/8 22/11 23/12 23/22 24/15
24/18 26/11 26/13 29/19 30/6
31/9 31/23 34/5 34/10 34/17
34/22 35/10 35/14 36/9 36/11
37/7 37/24 39/12 40/17 41/1
41/6 41/11 41/25 43/19 43/22
44/1 44/3 44/17 44/20 44/23
45/5 45/7 45/25 46/7 46/23
47/15 49/7 49/9 50/16 51/20
51/24 52/3 52/8 53/5 53/10
53/15 53/17 53/23 54/4 54/6
54/14 54/19 54/25 55/5 55/14
55/16 55/22 56/1 56/5 56/9
56/13 56/17 67/25 69/8 69/12
69/14 82/11 107/22 108/2
108/11 108/14 108/18 108/24
109/3 112/8 127/18 128/6
129/11 129/15 130/6 130/11
130/16 130/21 136/21 141/16
141/19 142/9 142/21 142/25
143/10 143/14 143/18 143/21
144/11 144/14 147/9 147/24
148/24 149/2 149/7 150/3
154/14 154/21 155/2 155/7
156/4 156/12 157/14 159/23
161/3 162/5 162/11 163/19
165/6 165/20 165/24 166/2
166/5 176/19 176/23 177/9
177/22 178/1 178/11 178/20
178/24 179/4 179/9 189/23
191/4 197/15 197/19 198/7
198/11 199/2 199/10 203/18
208/11 216/21 216/25 217/3
217/7 217/10 219/25 220/4
220/11 220/14 221/11 221/14
222/12 223/4 223/10 223/12
223/14 223/18 226/19 227/23
228/3 237/10 243/24 244/7
244/12 245/5 245/9 245/11
249/2 249/18 251/7 251/10
257/14 259/1 259/4 260/5
264/20 264/24 265/6 265/21
266/3 266/13 266/19 266/21
267/6 267/9 267/13 267/15
267/25 268/10 268/19 269/6

269/21 270/6 270/8 270/12
270/19 270/23 270/6 271/8
THE WITNESS: [11] 108/19
108/22 112/9 149/4 203/6
203/23 237/11 249/3 249/19
267/11 267/14
\$
\$4,000 [1] 196/11
\$40 [1] 103/13
\$40 million [1] 103/13
\$45 [1] 239/25
\$45 million [1] 239/25
\$45.5 [1] 81/4
\$45.5 million [1] 81/4
\$450,000 [1] 164/6
\$8,000 [3] 196/11 196/16
196/21
'80s [1] 118/8
'83 [1] 117/19
'842 [1] 165/15
'843 [78] 5/1 7/10 58/18 60/14
65/4 65/7 65/24 65/24 83/9
88/23 101/22 105/8 105/20
106/3 106/6 106/10 150/11
150/14 150/18 150/20 151/7
152/3 154/9 156/18 159/1
167/9 172/12 187/10 190/23
191/7 200/2 203/8 203/16
204/14 206/14 206/25 208/17
209/11 210/8 210/9 214/25
215/20 216/10 216/13 216/18
226/18 227/16 229/3 229/17
230/15 230/21 231/18 232/7
233/1 233/15 233/18 242/21
245/24 245/25 250/20 253/15
253/17 253/20 254/3 254/8
255/1 255/2 255/13 255/14
255/17 255/18 255/22 256/16
259/13 261/1 261/2 264/3
265/15
'854 [1] 243/14
'86 [1] 122/4
'88 [2] 122/4 122/14
'97 [3] 77/14 127/12 129/3
'98 [4] 131/22 132/15 132/19
134/5
'99 [1] 140/13
'address [1] 168/19
'button' [1] 168/21
'causing [1] 215/24
'identifying [1] 215/5
'Licensed [2] 235/3 237/20
'OneButton [1] 190/13

-and [2] 1/24 2/10
/
/s [1] 272/7
1
1.5 [3] 233/3 233/7 237/16
1.6 [2] 234/23 237/18
10 [12] 53/22 84/3 84/14
84/20 85/2 103/14 107/8
119/13 167/6 208/22 208/24
256/2
10 cents [2] 79/24 80/18
100 percent [1] 147/13
101 [2] 210/11 210/12
102 [1] 10/23
103 [1] 10/23
10:15 and [1] 55/6
10:21 [1] 56/16
11 [4] 9/9 85/9 209/22 232/22
11 months [1] 103/14
11-month [2] 43/3 96/7
110 [2] 114/18 115/17
111 [2] 224/3 224/5
114 [2] 211/3 254/5
115 [2] 214/7 254/19
11:00 [1] 41/21
12 [1] 95/17
12 minutes [1] 14/23
12,841,302 [1] 252/8
12-month [1] 45/18
12/182,048 [1] 168/4
12:26 [1] 142/8
13-919-JLH [1] 1/5
14 [1] 228/25
15-minute [1] 217/1
150,000 [1] 110/4
180 [5] 205/8 205/10 252/2
252/3 252/6
1800s [1] 120/12
181 [1] 252/3
182,048 [1] 168/4
1979 [3] 112/15 115/25 116/2
1982 [1] 116/6
1982-ish [1] 116/3
1986 [1] 62/6
1990s [2] 63/9 93/3
1995 [1] 210/1
1996 [5] 86/20 87/4 87/25
88/5 88/6
1997 [12] 58/1 74/9 86/20
87/4 87/25 88/5 88/7 202/8
209/16 210/1 224/9 264/7
1998 [17] 84/3 84/14 84/20
85/17 107/8 167/6 167/16
188/11 189/12 201/7 201/11
202/1 202/8 209/22 211/4
213/18 226/5
1999 [3] 140/11 201/7 201/11
1:30 [1] 144/12
1:39 [1] 148/23
2
2.0180 [1] 205/9
2.1 [5] 235/21 236/3 238/1
238/3 247/12
2.168 [1] 204/1

20 [2] 119/13 217/18
20,000 [1] 109/25
2000 [15] 104/16 104/18
138/2 138/4 140/5 140/12
140/13 140/18 140/18 141/2
141/2 195/21 195/25 196/3
198/4
2000s [2] 64/7 199/25
2006 [1] 242/7
2008 [7] 83/16 166/24 200/3
204/14 264/4 264/9 265/16
2009 [2] 205/21 241/20
2010 [7] 200/13 204/19 205/4
206/9 207/11 208/20 252/10
2011 [8] 65/19 67/2 68/12
74/10 77/21 83/14 157/1
167/10
2012 [3] 42/4 42/11 42/12
2013 [18] 4/23 4/25 21/3 24/5
26/24 28/3 33/20 33/24 36/24
43/11 44/13 67/3 73/14 104/8
104/11 244/16 244/21 264/16
2016 [4] 26/25 28/4 29/16
33/21
2017 [27] 27/1 33/2 36/25
42/4 42/8 42/11 42/16 43/11
44/13 45/17 45/17 47/23
48/25 49/11 49/17 49/24 50/3
67/7 69/22 70/1 73/16 78/9
85/7 95/25 95/25 103/14
104/11
2018 [10] 21/3 42/8 42/13
47/23 49/1 50/6 78/1 85/2
96/6 103/14
2019 [3] 68/17 159/12 232/23
2021 [3] 68/22 164/17 228/25
2022 [2] 7/14 12/7
2023 [3] 1/10 7/18 77/15
22 [4] 206/9 207/11 208/20
252/10
23 [5] 65/24 172/8 172/11
172/14 181/13
24 [2] 1/10 35/8
25 [2] 58/2 77/20
25 years [1] 58/10
256 [1] 9/12
26 [2] 205/21 242/6
26 years [1] 77/20
2643517 [1] 12/7
28 [3] 68/12 204/19 205/4
283 [3] 232/11 232/13 232/14
29 [5] 83/14 83/16 166/24
167/10 204/14

3

3.1 [2] 238/22 248/13
30 seconds [1] 133/14
30-plus [1] 103/21
30-second [1] 133/12
311 [1] 6/14
31st of [1] 138/5
35 [3] 6/13 108/5 136/4
35,000 [1] 134/25
350,000 [1] 106/22
391 [1] 5/8
393 [3] 127/22 128/3 128/7
3:09 [1] 217/2
3:36 [1] 223/17

40 [2] 56/7 114/21
40 percent [1] 138/11
40,000 [1] 106/21
403 [1] 26/6
419 [1] 15/5
42 [1] 171/15
439 [3] 136/14 136/18 136/22
45 [1] 108/6
45 minutes [1] 56/4
456 [2] 4/21 14/10
457 [2] 4/21 14/10
463 [3] 4/21 10/17 14/10
464 [2] 4/21 14/11
469 [2] 14/21 15/1
472 [2] 14/21 15/1
473 [1] 38/3
476 [1] 38/3
48 cents [3] 47/5 80/25 81/2
48 hours [1] 4/9
482 [2] 45/2 45/3
484 [1] 38/3
485 [1] 38/3
4:30 [1] 267/17
4:31 p.m [1] 267/24
4:34 [1] 271/10

5

50 [1] 269/19
50,000 [1] 134/16
50,000-copy [1] 134/19
500,000 [1] 138/10
52 [1] 80/5

6

60 percent [1] 138/11
633 [2] 228/8 228/9
66 [5] 164/21 165/3 165/7
228/10 228/14

7

7,917,843 [1] 58/17
71 [5] 189/2 189/20 189/24
190/1 260/10
75 [5] 157/7 157/12 157/15
157/25 240/13
76 [2] 246/6 246/7
77 [8] 159/16 159/20 159/24
232/15 246/7 246/8 247/13
247/13
78 [3] 163/12 163/17 163/20

8

8.3 [1] 161/8
841,302 [1] 206/6
844 [1] 1/16
8:00 [1] 269/9
8:30 [3] 4/12 269/9 269/15

9

925 [6] 207/3 208/9 208/12
223/23 253/10 253/11
97 [4] 19/19 19/20 209/25
256/7
971 [2] 240/8 240/12
9:00 [2] 1/10 3/5
9:00 p.m [1] 223/5
9:02 [1] 4/11
9:17 [1] 38/7
9:49 [1] 41/1

a.m [3] 1/10 3/5 56/16
abbreviated [1] 95/22
ability [8] 42/24 43/13 48/8
60/7 145/23 212/11 212/15
212/19
able [34] 8/14 24/7 26/16 27/8
29/12 30/9 30/25 31/21 32/15
32/22 32/25 33/5 33/14 33/21
54/1 58/6 61/6 61/10 61/11
65/10 68/19 77/12 102/7
113/1 116/1 116/11 116/14
117/16 169/8 195/10 196/23
218/20 219/23 257/21
about [238] 8/22 8/24 9/3
12/21 12/24 12/25 13/3 14/22
20/14 22/15 23/15 23/23
26/19 27/5 27/12 27/21 28/8
29/11 29/25 30/6 30/18 31/3
32/4 32/11 33/18 34/8 35/6
35/18 35/19 36/24 37/5 37/14
37/21 39/14 39/15 40/10
41/21 43/3 47/22 50/5 50/18
50/24 51/16 51/20 52/10
52/16 52/21 52/25 53/20
54/11 54/12 56/7 57/9 57/24
58/9 59/5 59/8 59/10 60/15
61/2 61/14 63/9 63/16 63/17
63/18 64/24 65/23 66/1 67/9
68/6 69/20 70/6 70/8 71/23
72/13 73/2 73/3 73/13 73/25
74/13 76/9 76/12 77/5 80/22
83/5 83/6 83/7 85/4 85/16
85/21 87/3 87/10 87/23 88/3
90/7 90/7 90/25 90/25 91/25
93/4 94/6 95/15 96/6 96/7
96/8 97/1 97/9 100/7 103/23
104/3 105/16 109/25 110/1
110/3 110/4 114/21 115/1
122/18 123/24 128/16 128/24
129/23 129/25 130/4 130/5
130/12 130/15 131/1 131/10
132/16 133/13 134/8 134/25
136/3 138/3 141/21 143/8
143/16 144/18 146/21 147/12
150/11 151/3 151/20 152/1
152/24 153/13 154/1 154/12
156/4 160/19 160/21 161/12
161/16 161/19 162/3 164/1
176/24 178/7 178/9 194/14
195/13 198/17 198/20 199/3
204/24 211/2 212/11 212/14
212/18 213/9 213/17 214/18
217/12 217/12 217/15 217/20
217/22 218/8 218/17 218/18
219/6 219/12 219/17 220/15
220/18 220/21 220/25 221/1
221/9 221/18 221/22 222/9
222/19 225/25 226/18 228/11
240/23 243/7 244/4 245/19
247/16 249/6 249/12 250/17
250/23 251/2 251/19 251/24
252/12 252/15 254/24 255/10
255/15 256/18 256/20 258/1
258/3 258/4 258/12 258/17
258/20 258/21 258/24 259/10
259/24 260/12 260/25 261/5
261/20 262/23 265/15 266/5
266/5 267/1 267/18 269/19
270/4

above [1] 167/22
Abroad [1] 209/20
abroad [1] 113/6
absence [3] 28/10 29/1 43/15
absolute [1] 162/3
absolutely [5] 141/18 162/19
173/23 238/12 259/5
academic [1] 153/8
accelerated [11] 206/8 206/19
207/8 208/15 223/24 252/9
252/22 252/25 253/5 253/13
253/25
accelerator [1] 89/12
accept [2] 22/15 157/2
accepted [1] 61/4
access [8] 70/15 124/3 124/4
124/24 135/23 150/23 151/9
191/20
accessible [1] 62/23
accomplish [1] 35/5
accomplished [1] 101/1
accomplishing [1] 140/22
according [5] 15/18 170/2
176/13 190/17 195/17
Accordingly [1] 14/2
account [2] 43/2 43/5
accountable [2] 57/18 59/7
accurate [6] 147/13 148/18
222/1 227/5 246/22 272/5
accuse [1] 249/25
accused [14] 15/10 27/2
29/17 31/25 42/4 43/15 47/22
80/8 95/15 95/24 101/21
104/9 104/12 249/23
accusing [7] 32/22 48/15 85/6
95/12 95/15 95/17 96/7
acquire [1] 213/9
acquired [1] 163/7
across [1] 47/18
act [2] 192/20 192/24
acted [4] 20/11 21/21 86/22
86/23
acting [1] 224/13
action [13] 20/17 67/3 67/4
184/15 185/15 185/22 185/23
204/18 204/23 205/3 225/8
225/22 251/3
actions [8] 41/18 42/6 42/13
42/22 47/24 48/3 48/8 101/23
activity [1] 27/16
actual [8] 43/18 187/9 208/23
214/2 216/9 221/1 223/2
255/21
actually [53] 9/6 18/15 24/1
28/16 36/20 38/6 49/3 85/19
86/21 88/5 88/16 88/25 96/1
96/2 96/3 96/21 97/19 102/12
102/17 106/7 106/19 113/13
115/6 117/22 120/8 121/5
123/11 129/8 133/10 134/21
135/7 136/7 139/13 152/14
153/14 163/2 167/4 175/19
176/23 193/18 194/11 194/24
195/1 195/7 195/15 212/15
212/23 213/2 221/15 246/19
253/1 254/2 255/18
ad [1] 123/2
add [14] 31/24 83/24 84/16
85/22 89/5 224/14 224/15
225/9 226/13 226/22 226/25

A Case 1:13-cv-00919-JL Document 501 Filed 08/31/23 Page 78 of 775 PageID #: 60658	236/5 236/13 236/15 236/18 236/19 236/24 236/25 247/22 247/24 247/25 248/17	159/8 159/11 159/19 160/7 160/9 160/11 160/19 160/22 161/1 161/7 161/9 161/9 161/12 161/13 161/14 161/16 161/17 161/18 161/20 162/1 162/7 162/16 162/24 163/15 163/24 163/25 164/12 164/15 164/25 165/11 194/14 194/17 194/22 195/12 195/14 195/17 197/14 228/11 228/15 228/24 229/4 229/7 229/20 229/25 230/8 231/18 231/22 231/24 232/10 232/15 232/17 232/19 232/22 233/3 233/5 233/13 233/23 234/3 234/16 234/17 234/21 234/23 235/1 235/21 238/11 240/8 240/17 240/20 241/18 241/19 241/22 241/25 242/11 243/2 243/3 243/8 243/11 246/6 247/8 247/13 248/9 248/13 248/23 250/4	161/10 166/2 167/12 172/19 172/24 175/13 192/6 196/6 196/9 207/20 207/24 216/14 217/5 221/11 221/16 222/19 223/14 228/13 232/4 233/3 233/11 233/12 239/3 240/15 240/16 245/4 246/18 248/20 251/7 255/23 256/8 258/4 258/8 258/17 267/9 267/21 268/18 268/24 269/7 269/15 270/8 271/3 271/6
<p>add... [3] 227/5 227/10 227/12 added [5] 24/21 84/23 85/19 85/20 102/18 addition [4] 114/22 233/10 233/18 233/21 additional [6] 12/24 83/24 88/12 161/11 164/9 257/4 address [82] 40/2 41/7 41/9 49/4 55/1 58/6 63/2 63/4 63/4 63/5 64/1 66/14 70/14 70/14 70/17 86/16 87/17 87/18 87/19 88/19 88/22 90/15 90/16 90/22 91/1 123/5 123/14 123/15 124/5 124/8 124/12 124/15 124/24 125/2 125/21 125/22 125/24 126/2 126/4 126/6 126/9 126/10 126/16 126/20 126/22 126/24 127/7 127/7 127/8 130/6 144/7 144/15 155/11 168/18 168/24 170/1 171/11 171/11 171/17 184/25 185/2 185/9 185/11 185/13 185/21 187/3 191/20 191/25 193/2 193/5 193/6 211/19 212/15 212/20 224/17 224/17 225/10 225/11 225/18 225/18 226/19 269/17 address-related [2] 191/20 191/25 addressed [3] 9/7 9/10 202/2 addresses [16] 64/2 86/23 86/24 88/11 88/14 123/7 123/8 123/14 127/4 127/6 135/21 186/15 192/24 261/22 262/3 262/14 Addressing [1] 83/12 administrative [1] 128/20 admission [3] 157/11 163/16 208/9 admit [1] 203/15 admitted [28] 84/22 128/6 128/7 136/21 136/22 144/5 150/3 150/4 157/14 157/15 159/23 159/24 163/19 163/20 165/6 165/7 189/23 189/24 203/18 203/19 208/11 208/12 219/2 220/2 220/15 232/14 240/13 240/15 admitting [1] 79/6 advantage [7] 65/13 147/2 151/8 179/12 181/18 182/3 183/20 advantageous [1] 183/8 advantages [9] 111/25 151/6 151/12 151/18 179/17 180/17 180/21 181/24 184/2 adverse [1] 28/14 advertisement [3] 13/9 13/12 139/11 advise [3] 29/13 32/17 141/8 AESD [19] 206/8 206/24 207/2 207/12 207/16 209/11 210/5 210/12 213/18 214/6 214/22 215/1 216/15 224/22 227/16 252/10 255/23 255/24 256/2 AESDs [1] 207/20 affects [1] 31/14 affiliates [13] 235/7 236/5</p>	<p>236/5 236/13 236/15 236/18 236/19 236/24 236/25 247/22 247/24 247/25 248/17 affirmative [3] 21/24 23/10 24/13 affirmed [1] 109/1 afford [1] 116/11 aforementioned [1] 239/6 Africa [1] 137/15 African [1] 136/5 after [71] 5/3 9/4 9/9 9/10 14/12 18/7 18/10 24/20 31/20 41/14 56/10 60/19 61/20 62/5 62/12 65/5 67/3 67/10 67/16 68/6 73/22 78/4 78/19 80/21 82/5 105/10 105/10 105/14 105/15 108/4 110/16 110/20 111/8 111/8 111/16 113/17 114/6 114/8 115/17 118/10 119/17 120/7 122/14 126/22 131/7 131/14 134/5 135/5 142/13 143/5 160/20 160/23 162/17 167/1 177/14 181/1 193/6 197/5 197/9 199/13 200/9 213/8 219/21 232/25 233/24 241/19 244/3 250/5 256/12 268/8 269/23 afternoon [4] 166/11 166/12 216/22 217/1 afterward [1] 111/3 afterwards [1] 250/2 again [48] 9/4 9/12 15/2 15/15 16/2 17/12 24/11 33/10 33/18 36/1 41/11 46/18 63/9 71/10 77/6 77/9 82/5 95/18 100/16 103/4 109/11 111/21 124/23 145/14 145/21 162/15 163/5 163/24 173/7 173/17 174/25 181/24 184/8 187/8 197/7 203/9 218/4 219/5 219/20 219/24 223/21 224/21 238/19 240/12 247/13 248/22 250/10 260/14 against [20] 67/3 73/14 100/17 104/22 146/7 146/18 156/19 163/9 165/14 172/8 172/17 200/17 239/5 241/3 241/15 241/20 241/20 249/7 249/8 264/14 agent [3] 128/12 128/14 128/19 agents [1] 263/5 aggressive [1] 20/8 ago [12] 21/13 21/15 35/8 50/7 50/7 50/7 58/2 58/10 68/14 68/22 78/11 78/17 agree [23] 12/5 22/14 27/4 29/20 33/20 35/10 35/10 38/9 39/2 40/13 53/15 143/16 158/14 169/3 178/2 183/9 183/13 195/1 225/15 225/20 238/6 242/14 268/25 agreed [11] 38/16 85/13 86/18 197/21 198/2 199/5 235/9 236/25 238/10 238/19 241/17 agreeing [1] 163/8 agreement [95] 16/12 16/14 17/1 17/17 34/24 53/1 68/11 105/9 105/9 105/13 157/22</p>	<p>159/8 159/11 159/19 160/7 160/9 160/11 160/19 160/22 161/1 161/7 161/9 161/9 161/12 161/13 161/14 161/16 161/17 161/18 161/20 162/1 162/7 162/16 162/24 163/15 163/24 163/25 164/12 164/15 164/25 165/11 194/14 194/17 194/22 195/12 195/14 195/17 197/14 228/11 228/15 228/24 229/4 229/7 229/20 229/25 230/8 231/18 231/22 231/24 232/10 232/15 232/17 232/19 232/22 233/3 233/5 233/13 233/23 234/3 234/16 234/17 234/21 234/23 235/1 235/21 238/11 240/8 240/17 240/20 241/18 241/19 241/22 241/25 242/11 243/2 243/3 243/8 243/11 246/6 247/8 247/13 248/9 248/13 248/23 250/4 agreements [17] 54/13 79/2 79/13 79/16 105/5 105/9 105/17 105/22 105/23 106/1 106/2 106/3 106/12 106/24 159/9 165/13 245/20 agrees [3] 156/7 236/13 247/23 ahead [5] 123/18 207/25 225/6 239/15 269/15 aimed [1] 30/21 alert [2] 245/2 250/19 alerted [3] 206/1 244/19 252/18 alerting [1] 252/14 algorithms [1] 115/22 aligned [1] 44/15 all [192] 4/7 4/19 10/8 11/17 14/18 14/19 15/22 18/13 18/19 18/25 19/21 20/5 21/7 21/8 21/9 23/4 23/8 23/11 24/15 24/21 33/10 34/17 37/1 37/1 37/6 37/13 37/20 37/24 37/24 38/1 38/9 38/9 40/24 41/1 41/6 42/11 44/14 46/7 47/5 47/25 48/23 48/24 48/25 49/10 49/16 50/2 50/10 50/16 50/24 52/14 53/18 53/23 54/25 55/5 55/16 56/13 57/13 57/21 59/2 59/4 59/21 64/6 64/9 64/21 71/6 71/8 71/25 72/17 73/16 74/13 75/1 77/14 80/6 80/7 81/3 81/5 81/23 82/23 83/5 85/4 86/24 87/8 87/25 88/9 89/3 89/19 89/20 90/7 93/6 95/18 95/24 96/23 97/12 97/22 97/23 98/5 98/12 98/16 98/22 98/23 98/24 99/14 100/6 101/10 101/11 103/5 104/23 106/9 106/23 107/5 107/9 107/19 109/12 112/22 113/2 116/9 119/16 123/21 124/11 124/25 128/6 128/11 130/16 133/4 135/21 137/18 137/19 139/16 139/21 141/19 141/20 142/1 143/22 144/11 145/21 146/8 147/4 147/19 147/20 147/25 147/25 148/20 151/8 153/12 153/20 153/21 155/7 158/10 159/8</p>	<p>161/10 166/2 167/12 172/19 172/24 175/13 192/6 196/6 196/9 207/20 207/24 216/14 217/5 221/11 221/16 222/19 223/14 228/13 232/4 233/3 233/11 233/12 239/3 240/15 240/16 245/4 246/18 248/20 251/7 255/23 256/8 258/4 258/8 258/17 267/9 267/21 268/18 268/24 269/7 269/15 270/8 271/3 271/6 allegation [3] 43/11 250/24 251/3 allegations [1] 75/19 allnighters [1] 114/22 allow [5] 86/13 169/17 216/6 265/7 266/14 allowed [12] 15/20 34/3 39/18 40/16 66/12 90/11 90/22 178/25 188/19 218/12 256/24 256/24 allowing [2] 65/2 184/4 allows [3] 174/6 187/20 187/25 almost [6] 91/7 114/20 115/5 120/15 141/11 192/3 alone [3] 5/25 6/8 114/21 along [2] 138/13 185/12 already [22] 9/7 25/14 31/16 36/12 67/9 76/6 76/17 86/21 87/2 94/9 99/25 125/22 125/24 147/18 188/20 188/21 202/2 228/9 229/3 232/14 240/15 248/10 also [78] 4/6 6/11 8/18 8/20 12/19 12/22 13/15 16/11 27/14 28/18 31/1 31/15 32/3 51/12 68/17 73/10 77/5 80/22 81/20 83/17 85/13 97/19 101/17 107/15 109/17 111/15 113/5 115/12 116/20 117/15 117/23 118/1 119/5 121/7 121/8 122/19 123/7 123/16 125/1 125/2 125/14 126/24 133/4 135/15 135/16 136/7 138/15 139/11 140/2 142/1 158/19 159/1 164/12 165/14 189/13 193/8 205/21 206/6 207/23 210/22 213/7 215/5 225/20 226/22 233/12 234/17 239/9 242/5 242/6 242/23 250/17 252/8 252/19 259/20 262/12 262/25 263/17 269/13 alternative [4] 36/20 44/9 46/22 111/11 although [2] 66/5 262/22 Alto [1] 118/24 altogether [1] 19/13 always [4] 37/4 112/3 115/12 122/8 am [40] 67/22 68/13 76/23 108/2 109/16 109/22 130/14 166/17 170/7 171/9 174/10 174/19 176/13 178/18 179/12 184/19 189/6 189/17 191/2 192/16 192/19 195/20 195/21 204/6 207/14 207/15 211/4 228/14 228/21 231/20 231/24 233/5 237/25 240/17 242/11 242/18 244/3 244/15 266/7</p>

Case 1:13-cv-00919-JL Document 601 Filed 08/21/23 Page 80 of 775 PageID #: 60659			
A	213/16 213/22 214/16 216/9	168/7 169/7 169/15 187/1	28/9 28/18 29/1 30/1 30/2
am...	217/23 218/13 221/16 227/2	187/25 189/15 190/19 190/21	30/5 30/20 30/21 30/22 31/2
ambiguous [3]	227/7 235/3 235/5 236/9	200/2 201/25 204/15 206/6	32/8 33/11 36/13 38/8 38/25
17/19	236/20 237/3 237/20 237/22	206/10 206/13 206/13 206/25	39/9 39/17 42/17 43/19 44/15
amenable [1]	238/4 239/3 239/4 239/5	207/18 208/17 209/10 210/4	44/24 44/25 45/20 46/13
amendment [1]	244/17 244/20 246/11 246/14	210/23 215/18 215/19 215/19	46/14 46/15 46/16 46/21
America [3]	248/1 248/20 248/21 259/18	216/19 226/5 227/15 252/7	47/10 48/2 48/11 48/12 48/12
138/17	267/18 270/4	252/11 253/2 253/15 253/17	48/15 49/15 49/16 49/24 50/3
American [1]	anybody [6]	253/20 254/8 254/16 255/22	50/9 50/10 50/11 50/16 51/3
136/5	93/2 164/10 270/4	256/16 256/23 257/5 264/2	51/4 51/7 51/9 51/10 51/17
Among [2]	anymore [2]	264/5 264/8 265/11 265/16	51/20 52/18 53/7 54/1 55/10
214/10 226/13	23/19 28/17	265/19	55/11 55/19 56/21 58/17
amount [17]	anyone [8]	applications [47]	63/18 65/22 66/3 66/9 66/21
45/11 53/3 68/12	108/7 116/8 117/5	27/3 45/16	67/19 69/18 72/11 74/16
68/18 68/23 78/8 79/23	138/14 140/20 141/25 155/10	45/20 46/15 47/4 47/9 47/10	74/16 74/22 75/4 75/20 77/7
106/16 106/16 106/18 107/1	267/21	49/11 49/13 49/15 49/16	79/16 80/12 81/11 81/12
123/25 137/22 157/2 158/3	anything [24]	49/20 50/10 51/14 70/25 71/5	81/21 81/25 84/12 85/3 85/6
158/5 196/14	30/6 37/5 50/18	71/8 72/3 72/5 73/16 80/1	85/23 86/1 86/10 90/19 91/12
amounts [2]	53/24 53/24 55/1 85/21 89/24	80/6 80/8 80/10 80/13 80/15	93/9 93/25 94/18 95/9 95/12
106/12 240/3	138/8 144/4 144/7 195/1	81/8 81/9 96/19 115/22 141/6	95/18 95/20 96/21 97/5 98/2
Amsterdam [1]	195/4 202/5 212/10 212/14	187/17 187/19 187/21 187/25	98/15 99/2 99/4 99/5 99/8
118/20	212/18 213/9 222/8 233/25	196/6 196/10 201/6 201/11	100/2 101/13 105/16 107/13
analogy [1]	249/6 250/1 252/17 269/17	211/11 233/11 233/21 249/12	108/8 108/9 109/12 109/19
89/8	anyway [2]	249/13 249/25 266/6 267/1	109/21 109/23 111/14 113/22
analysis [7]	23/6 73/18	268/18 112/17 112/22 114/18	121/8 122/20 122/21 129/19
12/5 42/11 44/14	anywhere [3]	117/22 191/10 247/9	129/21 129/24 132/9 143/17
79/9 79/12 103/23 124/6	238/4	apply [6]	146/2 146/15 149/3 149/9
analyze [2]	AOL [2]	12/9 13/25 33/12	150/6 151/6 151/10 151/12
126/1 126/15	63/24 138/17	49/13 91/12 111/9	151/18 151/18 152/15 152/16
analyzed [5]	AOL's [1]	203/12	153/19 153/20 154/15 154/23
87/12 206/7	138/25	appointment [1]	155/19 155/24 156/4 161/16
206/23 252/9 252/21	apart [1]	42/24 43/25	161/22 163/23 164/24 165/20
analyzes [4]	28/6	apportionment [1]	165/21 166/3 168/10 171/25
214/15 224/15	apologies [1]	45/18 48/16	172/7 172/16 172/25 174/13
227/1 227/6	69/14	48/18 48/22	175/3 176/23 177/14 178/4
analyzing [5]	apologize [3]	appreciate [2]	178/11 178/24 178/25 186/3
214/13 225/16	56/18 128/11	12/5 34/19 45/6	190/21 198/19 200/20 201/5
226/14 255/5 255/15	237/18	52/22 85/10 85/24 85/25	201/5 205/3 206/9 206/18
ANDERSON [1]	app [8]	92/18 93/12 94/23 96/17 98/3	206/24 209/6 209/7 210/3
2/9	45/9 45/9 45/11 47/20	99/9 99/9 99/10 99/12 99/23	210/7 210/18 211/23 212/3
ANDREA [3]	80/18 99/11 99/11 167/23	100/10 100/11 101/8 102/6	212/4 216/14 216/17 217/25
2/13 3/23 82/19	apparent [1]	102/9 103/2 108/18 112/8	218/4 219/4 219/17 220/5
Andrew [1]	35/21	127/17 127/18 166/5	220/7 220/11 221/3 221/9
209/20	apparently [2]	Approach 1 [2]	221/15 222/8 222/13 222/18
Android [13]	16/16 216/8	99/9 99/10	223/9 223/12 224/8 225/5
42/18 42/19	appeal [1]	100/11 101/8	229/21 229/24 233/12 233/17
42/21 47/24 48/1 49/12 49/21	188/23	approached [2]	233/18 233/22 234/17 234/20
50/6 70/2 96/22 235/14	appear [2]	99/5 102/13	235/19 235/21 237/6 239/9
239/17 239/22	14/6 43/17	approaching [1]	240/3 240/4 240/9 240/19
Anind [2]	appearances [3]	appropriate [6]	244/5 252/10 256/8 259/2
87/22 209/19	1/21 1/25 3/9	32/4 32/12 103/24 177/21	259/18 259/25 263/4 265/5
announced [1]	appears [6]	appropriately [2]	266/7 267/2 267/3 268/1
69/22	5/13 46/23 90/10	approximately [1]	270/15 270/20
annual [2]	95/6 100/16 215/8	apps [28]	area [3]
88/7 132/25	appendix [1]	15/7 15/10 15/17	103/22 115/23
another [13]	243/4	15/18 15/21 16/1 42/16 45/12	137/16
61/21 70/17 86/2	[REDACTED]	48/11 95/17 95/18 95/19	ARENDI [281]
88/3 89/14 110/2 117/4 127/1	[REDACTED]	95/25 96/23 97/12 97/14	Arendi's [68]
130/12 179/25 206/20 211/22	[REDACTED]	98/23 99/12 101/9 101/16	5/7 5/9 7/25 8/6
232/10	[REDACTED]	160/19 160/23 162/17 235/19	9/6 9/15 10/8 15/1 15/6 38/18
answer [21]	[REDACTED]	239/18 239/22 240/4 250/4	57/16 68/17 69/16 69/17
85/23 89/6	[REDACTED]	April [3]	69/19 72/22 73/9 73/13 79/23
114/25 120/19 134/7 176/3	[REDACTED]	1/10 9/9 232/22	80/7 80/19 80/23 81/1 84/25
177/25 178/10 178/14 178/15	[REDACTED]	April 11 [1]	85/12 86/9 90/7 91/15 92/11
178/18 182/22 183/13 183/19	[REDACTED]	232/22	95/3 97/25 98/25 99/24 100/3
183/24 191/11 207/16 261/24	[REDACTED]	Archer [2]	100/13 102/4 102/11 103/2
265/11 265/23 267/19	[REDACTED]	272/7 272/8	104/16 135/5 145/16 148/11
answering [1]	[REDACTED]	ARD [3]	149/10 152/19 156/22 158/6
249/10	[REDACTED]	2/5 3/13 21/10	159/4 159/13 160/22 162/16
anticipate [1]	[REDACTED]	are [255]	164/18 195/2 196/6 196/9
268/16	[REDACTED]	4/23 7/5 10/6 12/1	196/15 197/6 199/14 200/13
anticipates [1]	[REDACTED]	12/22 12/24 13/4 14/17 15/11	202/20 208/2 210/18 224/21
11/5	[REDACTED]	15/18 15/22 15/24 16/1 17/3	
anticipating [1]	[REDACTED]	18/16 18/22 19/2 19/8 23/3	
22/12	[REDACTED]	23/20 23/22 24/3 25/3 25/6	
anticipation [4]	[REDACTED]	25/6 25/9 26/14 27/14 28/5	
11/8 11/15	[REDACTED]		
19/18 22/8	[REDACTED]		
any [102]	[REDACTED]		
8/1 8/12 8/20 9/13	applicant [12]		
10/4 17/10 18/21 20/13 21/1	91/13 91/19		
22/19 25/1 34/4 39/5 40/20	144/23 144/25 152/6 203/12		
49/14 49/23 50/17 52/9 52/21	204/10 204/19 205/18 206/5		
66/20 87/12 92/23 96/18 97/6	206/16 252/7		
97/12 103/7 104/3 104/18	applicants [1]		
104/19 104/20 106/10 107/2	91/11		
116/17 133/18 134/8 134/12	45/20 45/20		
134/18 140/1 140/20 141/3	47/3 65/3 67/8 79/22 79/24		
141/24 151/5 151/12 151/18	83/15 83/22 84/3 86/21 87/1		
154/3 159/3 161/12 168/7	87/5 96/18 97/6 101/19 141/5		
172/24 177/12 183/20 184/14	150/22 152/4 153/2 166/23		
185/25 186/7 186/14 187/2	167/2 167/5 167/6 167/13		
194/23 195/6 195/7 195/19	167/19 167/20 167/22 167/25		
196/2 196/18 197/1 197/2			
198/17 199/18 199/19 200/10			
201/9 201/14 201/15 213/13			

A	B	C	D
<p>Arendi's... [6] 230/9 230/19 240/24 244/17 249/6 250/11 Arendi/OneButton [1] 190/13 argue [4] 27/12 40/10 49/12 50/13 argued [2] 5/9 147/19 argues [1] 12/23 arguing [2] 38/4 222/17 argument [16] 11/15 12/3 13/1 13/14 26/19 27/14 28/8 29/25 31/3 38/14 50/4 50/8 51/8 100/7 198/2 220/19 arguments [12] 10/6 12/10 16/12 39/1 52/9 95/3 95/4 100/13 107/6 145/16 230/4 267/22 arm's [1] 55/23 Army [1] 60/20 around [3] 62/10 77/13 117/7 arrangements [1] 63/20 array [1] 61/9 arrive [1] 79/21 art [55] 5/11 5/11 5/17 5/22 5/22 6/10 6/23 6/25 7/9 8/15 8/18 9/3 9/7 9/13 10/9 10/24 11/1 11/2 11/17 12/12 13/3 13/7 13/10 14/4 35/24 38/15 38/20 38/21 38/25 65/13 75/7 101/4 105/1 107/16 145/24 148/16 153/4 188/9 206/2 206/7 206/23 209/6 210/3 210/7 210/19 210/24 215/1 219/11 252/9 252/21 252/23 252/24 253/22 255/24 256/4 article [3] 59/14 211/4 213/18 articles [2] 221/18 221/20 arts [3] 59/15 111/22 117/21 as [225] 5/6 5/8 5/12 5/17 5/25 6/2 6/7 6/16 7/8 8/5 8/9 8/23 10/21 11/21 12/8 13/11 14/4 16/13 16/18 17/1 17/8 18/17 20/11 20/17 20/20 22/5 22/12 22/21 23/13 23/13 25/2 25/3 25/18 25/21 25/21 30/2 31/22 36/19 37/8 37/18 38/16 38/20 40/18 43/6 46/13 49/22 50/11 51/18 52/15 53/6 53/7 53/14 55/17 58/18 58/20 59/19 60/4 60/18 61/11 61/16 61/16 63/7 63/14 64/5 64/12 64/17 65/7 65/8 65/11 66/3 67/6 67/21 67/24 69/5 69/6 70/18 76/6 76/23 77/19 79/8 79/25 81/12 81/18 84/4 84/9 85/7 87/15 87/15 88/9 90/10 90/24 91/1 91/9 91/15 93/13 93/18 94/11 94/12 95/22 96/2 98/8 98/8 98/9 100/13 100/24 102/4 103/12 104/16 104/21 107/5 108/25 109/1 109/16 115/8 115/8 115/18 116/3 116/3 117/8 117/10 121/11 122/11 122/20 124/23 127/17 127/19 130/10 133/11 135/19 136/2 136/2 137/18 141/9 145/16 147/19 152/11 153/2 153/2 161/11 163/8 168/1 168/22 170/16 171/10 172/20 176/6 176/8 179/14 180/12</p>	<p>181/20 182/19 183/6 183/22 186/1 186/8 186/15 186/23 187/3 189/2 195/21 195/22 195/25 196/2 196/5 197/5 197/10 198/3 198/4 198/12 199/24 201/19 202/25 207/17 208/1 212/23 213/2 214/14 215/7 215/7 215/10 215/16 216/1 217/11 218/2 218/16 219/9 219/10 221/4 221/5 222/3 222/4 224/17 225/18 226/15 226/24 227/5 227/10 228/8 228/10 228/10 231/18 232/11 232/15 233/4 240/8 240/13 243/2 244/1 246/23 248/4 248/24 253/22 254/14 254/21 255/6 257/5 260/24 261/24 262/13 264/8 265/25 269/4 270/1 270/2 270/13 AS's [1] 199/14 Asian [1] 136/6 ask [41] 7/20 16/22 23/20 48/22 48/24 53/7 59/6 66/6 73/10 74/1 77/2 82/11 85/18 86/10 102/18 106/8 122/22 130/13 130/14 146/13 146/22 154/20 155/24 178/5 178/9 178/24 178/25 203/2 205/7 210/11 227/22 227/23 228/7 238/14 240/7 245/11 259/7 264/22 265/21 266/7 269/23 asked [37] 7/25 10/2 15/5 15/15 20/18 41/16 41/19 51/3 51/13 60/24 62/13 73/19 77/17 79/15 102/19 130/9 176/2 177/3 177/4 177/11 178/25 183/18 208/2 240/23 249/11 250/17 251/18 258/3 258/13 261/4 263/1 263/2 265/10 265/16 265/22 266/4 266/5 asking [17] 9/12 27/24 33/16 77/11 78/3 78/7 81/21 85/20 129/23 191/3 218/17 220/15 239/25 247/16 255/10 259/2 260/11 asks [1] 16/11 aspects [7] 5/15 11/10 12/21 12/24 13/3 76/10 77/9 aspersions [1] 85/3 assert [1] 161/21 asserted [3] 49/25 68/8 242/4 asserting [7] 5/5 5/20 8/6 10/5 161/17 172/7 172/16 assertion [3] 6/24 15/23 146/20 assessed [1] 5/7 asset [1] 64/19 assigned [1] 234/21 assistant [1] 61/12 associated [4] 66/13 185/5 185/21 225/11 assume [7] 79/11 126/5 126/19 169/3 196/25 213/21 231/8 assumed [1] 33/25 Atle [7] 57/5 108/16 108/22 108/25 109/16 114/10 170/16 ATMs [1] 121/7 attached [2] 35/4 44/25</p>	<p>attempt [2] 18/12 201/9 attempted [1] 53/6 attempting [1] 161/23 attend [1] 61/5 attention [3] 63/8 82/7 94/14 attorneys [3] 56/20 239/1 248/18 attract [1] 59/21 attracted [1] 63/8 attributable [3] 240/3 243/14 243/18 attribute [1] 106/9 attributed [1] 270/14 auditioned [1] 110/21 August [1] 45/17 author [2] 189/17 254/22 authority [1] 78/21 authorized [1] 154/16 authors [1] 59/16 automatic [1] 211/10 automatically [2] 63/5 91/2 available [10] 78/6 78/20 95/24 96/23 139/1 191/21 192/5 221/23 222/1 267/19 avoid [5] 19/12 33/17 67/23 69/2 249/19 aware [15] 9/6 38/1 73/17 83/7 195/19 195/20 204/23 206/2 209/21 211/6 213/5 213/8 216/6 226/3 235/11 awareness [1] 264/11 away [5] 75/15 132/5 139/15 219/12 270/3 awful [1] 88/22</p> <hr/> <p>B</p> <p>bachelor [1] 117/21 bachelor's [2] 118/2 118/3 back [60] 4/25 7/14 21/23 30/14 32/3 35/19 35/24 37/18 40/15 41/20 44/20 53/14 54/21 55/6 57/11 66/9 74/10 77/20 78/8 79/1 81/3 89/4 90/16 90/21 90/23 102/16 120/9 121/24 122/2 123/10 127/23 128/25 130/8 130/10 132/6 133/24 144/12 144/16 148/20 152/1 152/5 155/8 171/11 171/19 177/16 193/5 202/18 203/10 207/10 214/5 237/15 238/1 244/2 251/14 251/21 255/21 260/9 265/22 265/25 267/18 background [2] 122/12 124/10 backwards [1] 17/3 bad [1] 140/16 Band [2] 110/23 110/24 bankrupt [1] 197/5 bankruptcy [6] 195/25 196/5 196/15 197/1 198/4 200/12 Banks [3] 121/4 121/9 121/14 bar [5] 75/14 97/4 97/4 139/17 139/17 barred [1] 6/19 based [21] 6/12 7/17 8/19 19/18 20/2 20/7 22/6 38/15 43/6 43/7 43/14 43/14 43/17 46/20 95/3 102/18 120/18 167/2 209/22 222/1 241/19 bases [1] 47/6</p>	<p>basic [14] 23/25 24/3 29/13 33/20 97/9 92/15 93/1 93/4 93/8 110/20 187/16 187/19 187/24 213/13 basically [15] 21/2 26/6 35/23 37/14 48/14 116/25 123/19 125/12 126/20 128/22 138/24 139/19 140/15 141/9 160/12 basis [16] 10/23 27/5 27/16 28/19 51/15 51/18 76/14 77/1 91/22 96/3 104/23 145/3 146/8 177/1 197/19 220/23 be [233] 3/7 6/10 6/14 7/23 8/14 8/19 8/20 10/23 13/6 13/13 14/23 15/19 16/8 16/9 17/7 17/16 18/2 18/22 19/4 19/9 20/8 20/20 22/25 23/3 24/16 25/12 25/22 26/9 26/14 27/8 28/6 28/7 28/22 28/22 28/25 29/10 29/12 30/9 32/14 32/22 32/25 33/3 33/5 33/14 33/21 34/20 35/9 35/21 36/2 37/1 37/19 39/17 40/9 40/13 40/20 41/20 42/17 43/3 44/17 49/5 51/2 51/3 51/8 51/21 52/4 52/22 52/25 53/2 53/8 53/13 54/1 54/9 55/6 55/23 56/2 56/3 56/17 58/6 59/25 61/10 61/25 63/1 63/2 63/25 64/14 65/10 66/11 66/14 66/25 69/10 69/12 69/18 70/25 72/7 73/1 73/1 73/8 73/19 74/5 75/15 75/19 77/12 77/15 77/17 77/18 78/3 78/18 79/14 79/24 80/14 82/22 83/2 83/8 83/19 86/4 86/8 88/21 92/8 92/9 92/23 94/1 94/11 94/15 94/19 96/16 96/19 97/15 99/6 102/7 102/19 104/6 104/6 107/4 107/17 108/2 108/4 108/17 111/14 113/17 123/16 130/1 132/21 136/15 138/10 139/10 142/10 142/15 142/18 143/20 144/14 146/11 147/22 148/15 148/24 149/18 151/3 151/21 151/22 151/22 152/8 152/8 152/24 155/25 158/19 158/22 159/17 162/7 170/1 170/18 171/14 171/18 171/22 172/20 172/21 172/21 173/1 173/4 173/9 178/17 179/13 179/19 179/22 180/5 180/23 181/2 181/3 181/14 182/4 184/5 184/20 184/23 184/25 185/2 185/9 185/12 185/21 185/23 202/15 206/2 210/8 217/3 217/5 217/7 217/15 217/23 218/20 219/22 219/23 221/13 222/2 222/3 222/6 222/14 222/17 222/24 223/18 227/20 249/16 252/19 253/23 255/24 257/18 261/15 261/18 262/12 267/19 267/25 268/3 268/6 269/1 269/5 270/1 271/9 bear [3] 28/13 29/17 110/10 bears [1] 31/2 became [8] 35/15 35/20 37/12 37/18 37/22 113/18 213/5 264/10</p>

because [120] 5/17 8/5 8/22
11/1 12/23 15/17 15/23 18/19
20/1 20/5 20/23 24/24 25/10
26/1 26/17 27/17 28/11 31/2
31/25 33/2 37/6 37/9 37/11
39/21 40/3 43/6 43/24 46/21
47/24 48/7 48/11 48/17 49/4
52/11 52/18 52/24 54/10
57/15 58/14 58/23 58/24 59/2
61/6 61/17 61/22 62/7 64/15
67/13 67/18 67/23 70/7 71/7
72/9 73/1 73/12 73/13 75/2
78/2 80/1 81/12 81/13 83/9
84/5 84/15 85/17 89/16 89/20
90/2 92/13 94/22 95/22 99/13
100/9 100/14 100/15 101/10
102/17 102/22 105/7 105/23
106/5 111/15 113/13 117/23
118/3 120/23 122/21 123/12
133/11 135/9 139/14 145/10
145/17 145/18 155/24 161/12
171/17 180/7 180/13 181/3
182/18 183/1 188/8 188/14
188/19 191/9 195/7 196/16
198/8 216/18 217/14 219/17
219/23 222/4 227/17 228/24
232/19 249/15 255/17 265/18
become [10] 19/6 20/24 20/25
37/13 60/25 62/23 110/21
111/17 111/17 256/24
becomes [2] 19/11 192/4
becoming [2] 115/2 213/8
bed [1] 113/25
been [75] 4/23 5/13 6/13 6/15
6/20 7/10 8/23 11/19 13/24
14/7 15/12 17/5 18/4 18/25
21/12 21/14 23/7 27/17 33/14
34/23 38/18 40/7 45/22 46/25
49/2 49/23 50/15 60/23 62/20
64/11 64/13 67/24 72/25 74/3
76/3 77/13 79/11 81/15
103/25 108/25 111/11 112/3
114/6 119/18 122/8 130/2
130/3 142/2 143/12 144/5
147/18 154/17 156/12 158/25
162/5 186/3 186/22 187/5
193/15 199/2 220/9 220/21
221/1 228/3 228/8 228/9
229/3 239/5 239/5 240/12
241/21 245/13 251/10 261/8
266/11
before [111] 1/18 4/24 7/23
8/20 8/23 9/21 9/24 10/18
11/3 24/25 28/4 29/16 31/7
31/11 33/17 39/18 41/2 41/7
42/1 44/1 45/23 50/4 50/15
55/2 56/21 68/2 74/7 74/24
75/11 76/11 76/23 77/10 83/5
84/12 84/16 84/19 84/19 85/5
85/9 85/20 85/22 86/20 86/25
87/5 91/25 101/18 104/2
104/13 105/11 108/6 113/23
114/7 114/7 115/10 127/13
130/9 131/20 142/13 143/19
144/5 144/7 144/15 145/9
146/1 146/4 146/4 147/2
147/5 147/6 148/17 152/17
152/17 153/2 155/18 158/22
169/7 169/14 177/11 177/17

178/8 178/19 182/18 185/24
186/6 186/15 186/16 189/14
191/9 192/11 201/25 206/6
217/9 217/15 218/1 219/14
219/22 220/5 220/22 221/6
221/8 222/17 222/23 226/4
228/11 237/16 239/12 241/17
244/15 251/22 252/8 256/16
began [3] 30/4 30/16 56/21
begin [8] 41/2 55/17 56/23
96/1 154/12 229/21 268/5
268/17
beginning [7] 3/4 23/8 123/23
139/24 153/12 229/25 262/16
begins [6] 36/18 174/15
205/17 247/21 252/6 255/4
behalf [22] 3/12 3/13 3/16
3/20 3/22 3/23 3/25 4/2 82/1
82/8 82/20 154/25 197/2
228/25 232/20 236/4 236/13
236/25 238/19 238/23 240/20
247/22
behind [2] 63/1 132/7
being [32] 26/16 28/4 30/2
31/20 32/15 33/5 40/3 45/16
47/21 49/24 52/10 52/15
55/20 61/11 61/23 68/19 91/4
104/9 104/11 108/25 146/13
155/15 155/19 175/22 183/14
186/8 186/15 191/6 208/2
220/15 231/8 262/19
BELGAM [2] 1/23 3/17
belief [8] 21/22 22/2 24/14
27/9 27/21 28/15 33/1 75/19
believe [26] 20/12 27/6 27/16
28/19 34/13 54/5 54/7 54/16
55/3 73/22 86/11 101/14
102/7 143/11 144/20 148/8
185/15 210/24 221/17 234/1
249/10 250/8 253/10 254/20
263/21 264/7
believed [8] 24/9 38/14 38/20
61/17 148/2 172/19 180/17
187/9
believes [4] 16/6 91/20
144/25 148/14
belongs [1] 66/8
below [1] 209/24
Ben [2] 119/23 119/24
bench [6] 4/12 4/24 7/16 7/20
9/22 269/14
benefit [7] 34/1 57/20 70/19
92/21 151/8 167/4 208/14
Benihana [2] 98/13 99/1
besides [2] 50/11 138/14
best [12] 21/25 24/6 25/2 25/8
35/22 37/22 51/7 52/21
112/20 113/15 143/20 196/14
better [7] 60/25 61/18 123/12
139/18 143/21 158/23 269/1
between [25] 70/24 98/10
106/21 114/7 121/18 137/5
137/12 137/15 139/4 152/5
161/10 196/10 198/9 198/10
198/18 198/20 205/13 228/15
231/21 232/15 234/20 241/8
241/13 260/24 269/8
beyond [8] 25/23 71/20
197/14 201/10 201/16 201/17
218/8 219/5

bid [2] 196/16 196/20
big [15] 4/8 19/11 63/12 63/15
115/6 120/15 121/7 121/8
133/3 133/3 134/16 137/10
151/4 203/3 271/2
bigger [6] 19/6 117/8 117/8
119/6 119/11 133/25
biggest [4] 47/19 47/20
132/24 137/10
bilateral [1] 27/13
bill [1] 78/15
binder [16] 127/14 127/23
136/15 149/17 149/19 157/8
159/17 163/13 164/22 166/4
166/13 203/2 203/21 207/4
228/7 257/9
binders [1] 203/22
bit [23] 50/1 59/10 60/15
69/20 71/23 72/9 72/9 83/9
90/5 90/6 90/24 109/8 109/14
109/25 115/9 119/19 132/20
133/15 134/1 146/6 148/11
218/18 262/7
blue [7] 46/3 46/3 46/5 46/5
46/8 47/18 48/14
blue-out [1] 48/14
Boles [10] 66/23 157/16
157/24 159/25 247/18 253/11
254/13 262/5 262/16 263/11
Bonnie [2] 272/7 272/8
book [5] 123/7 135/23 189/2
232/11 240/8
books [1] 113/5
boot [2] 114/20 115/17
born [1] 109/24
Boston [2] 112/14 118/13
both [18] 27/4 28/13 33/12
47/21 89/12 97/25 98/16 99/6
100/20 100/22 107/14 126/2
126/4 183/4 200/22 242/12
252/4 268/11
bottom [7] 80/5 84/1 85/1
137/13 204/1 205/8 228/22
bought [3] 116/3 163/3 199/14
bounds [1] 199/5
breach [2] 161/16 221/16
break [11] 55/6 141/17 142/11
144/8 216/22 217/1 217/12
218/9 220/18 269/24 270/2
brief [1] 35/3
briefing [1] 50/22
briefly [2] 41/9 107/23
bright [1] 269/7
bring [15] 9/20 31/21 32/18
40/2 45/9 54/21 56/13 131/18
136/9 144/15 148/20 156/18
222/15 223/15 267/23
bringing [2] 23/7 25/9
brings [2] 10/6 122/23
broad [3] 101/15 107/13
115/20
broader [2] 112/1 149/16
broke [1] 223/23
brought [16] 25/15 26/17 29/6
30/24 33/8 58/11 66/25 67/14
73/14 118/16 165/14 230/15
230/20 239/5 250/24 253/5
browser [2] 138/19 211/16
bubble [1] 64/7
bugle [1] 111/1

build [2] 59/25 60/21
building [3] 64/13 130/15
131/1
built [2] 99/21 188/21
bulk [1] 134/18
bullet [2] 209/14 209/24
bunch [1] 256/3
burden [11] 10/19 48/21
50/19 72/14 72/23 72/24
75/14 75/24 76/5 77/13 102/4
burdens [1] 19/10
Burke [2] 70/2 70/10
burst [1] 64/7
business [25] 62/6 62/11
62/17 63/20 64/5 64/10 64/17
65/6 104/17 111/12 112/5
121/25 122/1 122/5 122/7
122/12 122/14 155/25 157/5
158/16 198/6 198/24 199/21
200/6 201/1
businesses [2] 62/9 63/22
busy [1] 114/19
button [13] 64/2 66/14 66/25
92/8 124/1 124/5 124/11
124/19 133/14 168/20 170/2
191/21 192/5
buttons [1] 97/8
buy [4] 116/11 135/15 137/25
138/9
buying [3] 106/19 160/20
250/5

C

C.A [1] 1/5
cabin [2] 54/14 54/17
cafeteria [1] 61/11
calculated [5] 46/12 78/25
79/22 80/24 81/2
calculation [1] 46/19
Calendar [1] 71/5
California [4] 61/22 62/6
118/14 118/16
call [5] 60/5 104/4 108/9
135/8 135/9
called [61] 5/3 62/12 62/15
62/25 63/11 68/4 69/21 72/4
76/13 77/6 83/19 85/6 87/3
88/4 88/7 88/16 90/9 92/6
96/25 97/10 108/25 109/24
110/3 110/22 111/22 113/19
114/18 117/22 119/1 119/11
119/23 120/9 120/25 124/19
134/17 134/20 134/21 134/22
138/22 150/15 163/10 167/5
167/13 168/11 168/19 168/21
170/8 179/21 187/16 194/18
194/19 194/20 197/11 199/15
200/14 206/19 210/14 211/9
259/11 259/14 260/16
calling [1] 83/8
calls [3] 108/15 237/8 260/3
came [33] 18/11 35/1 58/1
58/2 58/10 58/19 61/22 62/21
63/25 65/17 68/5 77/10 80/17
84/12 85/19 85/22 90/7 91/25
112/7 113/14 116/2 121/23
133/23 133/24 134/23 146/22
147/13 155/16 156/2 162/20
201/11 219/21 250/24
camp [2] 114/20 115/18

<p>Campus [4] 61/16 113/10 113/11 114/4 can [195] 8/9 12/21 12/25 17/2 17/22 19/14 21/24 23/3 23/13 25/3 28/22 29/19 29/20 29/23 30/19 32/1 32/17 33/24 37/25 38/24 40/4 40/13 40/13 40/17 40/18 41/9 44/17 44/21 44/24 45/4 50/21 50/22 51/11 51/20 51/24 51/25 53/2 53/3 53/14 53/17 53/18 53/22 54/12 54/14 54/17 55/12 59/25 59/25 60/9 63/23 65/4 66/3 66/12 68/11 68/12 68/18 68/23 69/23 70/14 71/23 73/1 79/8 82/11 83/13 85/18 85/18 86/2 90/10 90/12 91/23 92/16 92/21 92/23 93/19 98/14 98/23 99/17 102/18 106/23 107/23 108/19 109/8 109/8 109/15 110/12 111/16 111/23 111/24 117/2 119/13 123/12 123/12 123/22 123/25 125/5 125/11 125/14 126/3 127/6 128/10 129/7 129/24 132/2 134/12 135/10 135/15 136/23 137/13 138/3 142/14 143/1 143/4 143/9 143/22 145/3 148/13 148/20 149/14 149/15 150/23 151/1 151/3 151/9 153/10 154/19 154/20 154/24 155/2 155/7 157/16 157/19 158/18 158/19 159/25 162/23 164/21 165/25 166/1 166/3 166/20 167/12 170/10 170/11 171/3 172/11 177/12 178/8 178/13 178/14 181/10 182/12 184/20 184/23 189/25 198/7 204/1 204/3 205/7 215/13 217/4 222/23 223/8 225/7 230/23 234/23 235/22 237/17 238/1 238/14 240/7 242/15 243/22 244/2 244/3 244/4 246/6 246/16 247/14 249/14 249/17 251/5 252/4 253/11 254/13 257/14 259/19 259/20 260/14 262/5 265/4 269/2 269/8 269/9 269/9 270/24 can't [24] 12/23 22/5 22/25 24/11 27/19 29/7 43/25 48/16 49/4 49/20 50/13 53/3 65/16 99/6 132/8 147/2 150/19 193/17 194/5 196/11 198/16 198/24 207/14 207/22 cancel [3] 10/21 24/4 24/8 candor [7] 91/19 100/14 145/17 147/7 221/7 221/16 221/17 cannot [6] 6/10 13/14 25/4 107/4 111/19 111/20 capabilities [1] 100/5 capability [4] 25/24 145/21 146/1 146/4 capacity [1] 34/4 capital [8] 110/1 190/5 190/10 190/10 237/12 237/12 260/18 260/25 car [1] 89/8 care [3] 14/10 16/9 17/24</p>	<p>carefully [3] 58/12 191/8 218/13 Carolina [1] 121/18 carpenter [1] 111/18 carries [1] 74/4 cars [1] 89/14 carved [1] 198/22 case [105] 4/23 13/6 13/9 13/17 17/5 18/20 19/8 19/13 20/6 20/9 20/18 20/19 20/21 21/3 21/24 22/19 23/8 23/10 24/11 24/13 25/1 25/24 26/3 26/9 26/21 26/24 28/12 29/15 29/17 29/20 29/21 30/24 31/25 35/17 37/10 37/18 41/17 41/24 42/6 42/7 42/22 46/20 48/6 50/3 50/4 54/10 58/17 58/18 59/6 65/23 66/2 66/18 67/7 71/15 72/7 73/10 73/12 74/6 74/20 76/22 78/25 79/9 82/3 82/5 82/7 82/22 83/6 83/7 85/15 86/6 86/9 89/15 94/4 95/7 97/24 100/23 101/14 102/24 104/12 105/3 109/18 124/4 141/22 141/25 142/16 146/17 154/8 154/17 161/17 172/7 175/22 182/4 183/12 183/14 193/25 194/9 206/20 212/22 213/1 253/21 259/21 265/13 267/20 269/23 270/1 cases [5] 21/23 22/3 23/11 24/12 38/1 cash [2] 120/11 120/13 casting [1] 85/3 catch [1] 108/7 category [2] 11/2 26/10 cause [2] 93/25 175/7 caused [1] 171/18 causing [6] 102/2 174/21 182/10 182/16 184/11 216/10 CD [4] 134/24 135/2 135/3 135/18 CDD [1] 45/12 CDs [2] 135/15 135/16 cell [4] 136/7 151/4 160/16 249/24 center [6] 60/16 61/23 84/9 91/10 147/14 258/18 central [6] 98/11 98/22 98/24 99/16 99/19 100/22 cents [6] 47/4 47/5 79/24 80/18 80/25 81/2 CEO [2] 200/20 201/19 certain [20] 5/6 5/14 7/4 16/16 20/20 33/6 38/24 42/17 45/12 52/10 60/8 95/12 106/16 106/16 113/6 137/22 154/16 206/2 224/13 270/24 certainly [6] 9/5 26/10 32/17 53/1 268/14 269/22 CERTIFICATE [1] 272/2 certify [1] 272/4 cetera [1] 262/14 CHAD [3] 2/12 4/2 82/19 chain [2] 23/15 199/3 chair [1] 109/8 challenge [3] 30/10 30/12 31/13 challenged [1] 242/5</p>	<p>challenger [1] 13/10 challenging [2] 3/25 242/13 chance [1] 142/2 chances [1] 9/20 change [4] 43/9 99/20 111/20 111/21 changed [5] 38/4 46/11 47/5 95/6 100/16 characterization [1] 191/1 characterizing [1] 191/2 charge [3] 20/6 20/20 32/7 charged [2] 14/24 38/5 charging [2] 17/23 38/6 charts [1] 31/24 check [1] 126/6 checker [3] 90/17 90/18 92/17 checking [2] 152/7 152/16 chef [1] 98/14 Chemours [1] 12/6 Choc [1] 82/21 choice [3] 34/2 112/23 182/13 choices [1] 93/5 choose [1] 119/16 chose [2] 61/5 99/9 Chrome [10] 41/18 42/5 42/12 42/16 47/19 47/19 49/10 50/11 71/6 82/22 Circuit [10] 18/21 19/1 24/6 24/7 24/22 25/13 25/17 27/18 35/23 37/22 Circuit's [1] 25/21 circumstance [1] 6/22 circumstances [2] 122/22 182/6 citation [1] 212/1 cite [1] 22/3 cited [10] 21/23 23/11 24/11 24/11 24/12 38/1 147/17 202/25 210/20 255/24 claim [38] 19/10 31/24 65/24 65/24 71/16 71/16 85/18 94/5 100/17 172/7 172/8 172/11 172/14 172/20 173/3 173/14 175/13 175/16 176/10 176/13 179/21 179/25 180/7 180/8 180/9 180/9 180/14 180/14 181/12 181/13 182/7 182/13 182/14 184/9 184/13 233/11 254/23 259/21 Claim 23 [4] 65/24 172/11 172/14 181/13 Claim 30 [1] 65/24 claimed [8] 67/8 84/7 92/4 97/25 98/1 182/7 190/23 201/10 claiming [1] 107/11 claims [62] 10/22 15/22 20/20 65/20 65/23 66/3 66/19 67/9 71/13 72/11 72/16 72/18 77/1 83/19 83/24 84/2 89/16 92/1 92/7 93/17 94/18 97/9 101/13 107/12 107/13 152/14 152/15 152/16 167/4 170/18 172/3 172/7 172/16 187/10 208/3 210/23 214/10 214/14 215/7 215/11 216/1 216/10 226/10 226/15 226/24 227/13 239/4 248/20 249/6 254/24 254/25 255/7 255/13 255/14 255/19 259/11 259/14 259/16 259/18</p>	<p>259/21 263/15 263/24 263/24 263/24 clarify [1] 16/11 classes [1] 114/11 classmate [1] 57/11 classmates [1] 57/13 clause [7] 161/8 230/2 230/11 230/24 230/24 234/19 245/23 clauses [3] 231/17 234/17 245/23 clean [1] 143/22 clear [23] 4/22 13/6 20/24 26/14 29/10 34/20 37/12 37/18 37/22 50/2 66/8 69/18 73/1 75/16 75/17 75/20 76/4 78/18 93/16 130/1 150/25 233/3 237/20 clearly [8] 31/8 32/9 44/7 91/20 93/10 145/1 198/19 265/15 clerk [1] 155/9 click [9] 124/1 124/5 124/11 127/2 133/14 134/17 151/15 151/16 261/14 clicked [2] 126/8 126/23 clicking [2] 70/14 171/14 clicks [2] 125/19 171/9 client [1] 82/8 clip [5] 176/5 176/6 176/12 177/17 178/8 clips [1] 269/3 close [8] 76/7 82/5 106/25 140/19 140/25 143/5 227/21 227/24 closed [1] 141/4 closely [4] 84/19 209/2 209/7 210/4 closer [2] 44/15 148/11 closing [4] 50/24 54/2 267/22 269/25 Coast [2] 61/21 61/22 cobble [2] 41/23 43/12 cocounsel [1] 223/9 code [7] 6/13 11/13 51/17 72/1 92/19 97/22 98/5 collaboration [1] 63/18 colleagues [1] 82/19 collect [3] 53/14 69/8 82/12 college [11] 60/23 111/5 111/7 112/11 113/22 114/5 116/12 116/16 116/18 116/22 119/17 colleges [3] 111/9 111/23 113/6 Columbia [2] 121/17 121/19 column [4] 168/15 262/6 262/7 262/10 Column 4 [3] 262/6 262/7 262/10 combination [7] 5/25 6/3 6/8 10/13 11/22 13/19 25/23 combinations [10] 5/21 8/15 8/25 9/4 9/13 10/9 10/12 14/13 18/16 19/15 combine [4] 62/8 111/24 111/24 112/5 combining [1] 11/16 combo [1] 117/22 Comdex [12] 63/12 68/4 131/21 131/23 132/4 132/13 132/14 132/19 132/23 133/7</p>
---	--	--	--

Case 1:13-cv-00919-JL	Document 601	Filed 08/21/23	Page 84 of 773 PageID# 60663
<p>Comdex... [2] 133/19 134/5 come [32] 4/9 18/19 25/25 27/19 27/22 32/3 33/23 34/12 34/13 59/23 61/1 70/4 71/21 74/9 76/7 79/20 81/15 84/11 89/4 97/12 105/11 127/9 127/11 143/1 151/12 151/19 225/16 225/21 247/8 263/25 267/16 271/2 comes [5] 11/8 25/25 47/3 183/1 262/7 coming [10] 20/5 34/12 36/12 69/2 69/6 117/12 156/5 178/13 269/3 269/12 command [31] 93/24 97/8 97/10 102/2 124/1 124/3 124/11 168/20 171/14 174/6 174/21 175/7 180/12 180/13 180/19 180/22 181/2 181/4 181/7 181/9 181/15 181/20 181/21 181/25 182/5 182/9 182/15 183/7 183/23 184/3 184/10 commands [1] 181/11 commenced [1] 3/4 comments [1] 130/6 commercial [2] 193/15 198/3 common [8] 25/18 25/22 58/8 76/20 77/3 116/6 116/10 135/1 communicate [1] 123/2 communication [2] 204/24 205/13 companies [30] 58/24 62/1 62/10 63/12 63/12 63/15 63/21 64/8 64/8 67/15 68/25 69/3 79/5 105/6 105/19 105/23 106/6 106/14 121/2 121/2 122/16 133/3 133/4 133/5 135/14 137/19 139/16 159/4 159/6 247/7 company [39] 57/4 58/20 62/12 62/16 62/24 63/22 64/4 64/11 64/17 64/21 65/5 119/1 119/4 119/18 120/9 120/12 122/11 122/24 123/1 123/13 124/13 124/15 128/21 131/8 131/16 134/17 135/7 136/1 140/25 141/4 141/9 150/15 195/22 197/2 197/11 199/15 200/16 200/19 260/19 company's [1] 104/17 Compaq [18] 63/21 136/13 136/17 137/6 137/10 137/13 137/15 138/1 138/14 194/14 194/17 194/22 194/23 195/1 195/6 195/12 195/16 195/19 comparable [1] 43/8 compared [1] 106/13 compensate [3] 67/15 78/7 79/15 compensated [2] 77/18 78/4 compensation [1] 78/22 competing [1] 17/15 complaint [5] 20/6 26/18 31/20 73/14 264/14 complement [1] 122/13 completely [1] 89/14 complicated [1] 87/17</p>	<p>computer [131] 61/2 61/12 61/20 61/24 62/1 63/11 63/21 83/12 83/13 88/7 89/18 92/7 93/2 93/8 93/17 93/19 93/22 93/23 94/1 94/5 94/6 94/8 94/12 94/17 94/24 95/2 95/9 97/20 101/23 101/25 102/1 103/6 103/7 114/17 114/22 114/24 115/2 115/5 115/6 115/7 115/14 115/17 115/19 115/21 115/21 116/1 116/3 116/6 116/11 116/17 116/20 117/21 117/22 118/5 118/7 118/18 119/12 119/12 119/13 119/15 120/18 121/10 121/11 121/25 122/6 123/4 123/7 123/9 123/12 123/21 124/5 124/10 131/21 132/7 132/24 134/20 135/1 137/11 151/3 151/5 168/10 168/17 168/22 168/25 170/19 170/22 173/4 173/8 173/11 173/16 173/21 173/24 174/5 174/11 174/15 174/20 175/1 175/4 175/6 175/7 175/12 175/17 176/8 176/11 176/14 179/14 179/22 180/1 180/2 180/6 180/11 180/12 180/18 180/22 180/24 181/8 181/14 181/19 181/25 182/1 182/9 182/15 182/19 183/5 183/21 184/3 184/10 185/17 195/16 195/19 209/15 computer-based [1] 120/18 computers [22] 60/19 60/22 61/23 62/3 62/7 62/19 62/20 62/23 115/3 115/4 118/19 119/5 119/7 119/11 120/25 121/2 121/6 151/4 151/4 151/4 194/3 194/14 conceded [1] 40/5 concept [2] 65/1 136/2 concern [7] 9/6 36/1 39/15 40/2 43/16 48/20 220/18 concerned [2] 156/4 243/7 concerning [3] 198/3 204/25 214/1 concerns [4] 144/20 217/12 250/23 251/2 concession [1] 29/9 conclude [2] 12/8 268/14 concluded [3] 5/4 7/7 271/10 concludes [10] 14/9 108/13 130/19 156/10 162/9 166/7 179/7 199/8 244/11 266/17 conclusion [4] 23/16 192/11 237/9 260/4 conduct [4] 28/5 30/4 30/16 32/14 conducting [1] 200/6 confer [4] 41/15 143/16 270/19 271/3 conference [11] 7/19 7/22 8/8 9/10 11/11 15/8 16/5 17/23 32/7 88/7 142/7 conferred [1] 36/16 confident [2] 107/9 107/12 confidential [7] 52/17 52/19 67/19 67/24 154/13 154/16 155/18 configure [2] 174/11 176/8</p>	<p>configured [11] 93/22 101/25 170/25 174/5 175/5 175/11 179/15 179/22 180/24 181/14 226/23 configures [2] 227/2 227/7 configuring [5] 175/18 176/9 176/11 176/15 179/13 confirm [3] 177/5 177/10 207/11 confirmed [1] 177/5 confirms [1] 72/4 confusing [3] 18/22 20/25 73/2 confusion [5] 25/12 36/4 37/19 39/6 50/1 Congress [1] 59/14 connect [1] 50/14 connection [3] 210/9 239/4 248/21 conscious [3] 244/23 245/1 250/18 consequence [8] 93/23 174/20 175/6 180/2 180/6 182/8 182/14 184/9 consider [13] 39/19 51/12 76/22 102/11 102/24 103/2 103/18 103/24 104/2 107/2 193/14 205/20 210/9 consideration [2] 236/3 238/22 considered [8] 19/9 31/22 76/11 99/25 100/12 145/15 157/4 222/6 considering [2] 208/17 216/18 consist [1] 10/12 consisted [1] 5/22 consistent [2] 99/10 148/8 consisting [1] 10/24 conspicuously [1] 246/10 constitution [3] 59/11 59/13 59/13 construct [2] 103/12 181/6 constructions [2] 19/11 36/7 construed [1] 16/8 construing [1] 17/13 consumers [6] 57/20 58/3 64/9 65/2 70/7 80/2 contact [27] 87/18 88/19 90/9 104/3 104/5 137/3 168/11 169/8 169/9 169/19 170/8 172/1 173/7 187/8 192/4 193/8 193/11 193/14 193/23 194/2 194/6 194/10 200/11 202/8 211/24 212/8 214/11 contacted [2] 136/12 136/12 contacts [3] 63/3 123/9 137/17 contain [1] 71/6 contained [10] 65/13 65/18 65/20 94/10 94/15 94/16 94/19 97/16 98/5 101/12 container [1] 94/16 containing [2] 45/12 81/9 contains [1] 98/5 contemplated [1] 44/7 contended [1] 7/4 contends [2] 5/16 11/25 content [8] 32/20 41/17 42/5 42/13 42/21 47/24 48/3 48/7 contention [1] 40/11</p>	<p>contents [1] 218/2 Contest [2] 32/23 40/4 contested [3] 145/6 145/13 147/3 context [12] 8/11 17/17 30/5 40/14 94/7 104/1 148/15 164/7 164/9 209/21 211/6 250/25 Context-Aware [2] 209/21 211/6 contextual [3] 225/8 225/10 225/21 continuation [2] 83/19 83/21 continue [5] 64/18 148/25 223/19 225/7 226/22 continued [4] 2/1 65/5 134/6 197/6 continues [1] 174/5 contract [15] 17/8 121/4 121/5 121/9 136/17 137/4 137/5 137/9 137/12 137/15 139/14 139/15 161/16 161/21 195/10 contrary [4] 8/1 8/13 22/10 215/8 control [3] 65/10 182/2 184/4 convention [2] 63/11 68/4 Convergent [6] 62/1 119/1 119/3 119/9 119/16 120/2 conversation [1] 190/17 conversion [1] 120/23 conveyed [1] 219/16 conviction [1] 75/19 convincing [4] 75/16 75/17 75/20 76/4 cook [1] 98/14 cooktop [2] 98/14 99/2 cooktops [1] 100/21 cool [2] 135/9 136/6 coordinate [1] 121/13 coordinating [1] 121/19 copied [1] 259/22 copies [3] 52/11 127/17 134/16 copy [15] 51/25 52/6 52/14 52/16 55/12 67/21 69/9 127/16 127/19 134/19 143/3 169/18 228/15 228/18 232/14 copying [1] 169/13 copyright [2] 210/1 224/9 core [1] 85/12 corner [2] 84/2 228/22 corporate [12] 154/24 155/15 155/19 155/24 155/25 197/23 197/24 198/9 198/13 198/16 198/17 198/20 Corporation [2] 210/1 240/18 correct [339] corrected [1] 205/18 correcting [1] 160/17 correctly [1] 90/19 correspond [1] 50/20 corresponding [1] 176/25 corresponds [2] 50/6 207/12 corroboration [2] 12/20 13/2 CORROON [1] 2/9 cost [1] 113/5 coughing [1] 249/19 could [148] 4/15 5/14 6/13 6/15 6/20 7/10 8/3 9/2 10/22 11/14 11/19 11/20 11/23</p>

<p>could... [135] 12/13 13/8 13/8 13/10 13/24 14/7 16/9 18/2 19/9 21/13 22/9 22/11 24/23 25/4 25/5 25/18 25/22 28/7 28/24 31/19 31/23 32/2 32/3 32/7 35/25 36/23 36/24 38/12 38/18 38/21 39/11 40/1 40/1 40/9 46/25 49/3 49/14 49/19 49/22 52/1 52/13 52/16 52/25 59/23 61/17 62/23 63/5 63/25 64/17 65/1 65/10 65/10 66/11 66/24 70/9 70/23 75/2 85/8 87/8 87/24 88/14 96/1 96/3 96/19 97/15 108/5 109/6 115/13 116/3 117/13 117/25 123/16 126/21 127/22 128/13 130/8 132/21 136/10 139/11 143/2 143/18 147/18 151/22 151/22 152/24 153/17 157/7 157/24 158/19 159/16 160/4 163/13 163/22 168/14 171/22 180/23 184/25 185/2 186/14 192/20 192/24 193/2 193/4 193/8 194/1 194/9 195/4 196/15 203/2 203/25 207/3 208/22 210/11 211/3 214/6 215/4 217/15 218/21 218/24 222/2 222/3 222/6 224/3 226/7 228/7 228/18 239/5 244/5 253/23 261/14 263/11 266/10 269/2 269/4 269/11 couldn't [15] 10/3 25/11 29/19 30/23 31/10 32/5 32/18 33/8 33/23 38/15 38/19 133/12 140/24 140/24 220/21 counsel [74] 2/6 2/14 26/15 40/8 49/7 50/4 52/3 52/10 53/5 56/6 56/25 85/1 85/13 91/15 107/22 107/23 108/14 129/11 141/16 143/12 143/23 144/22 145/20 147/10 147/25 148/1 148/6 148/15 155/2 155/21 161/3 165/19 165/25 166/18 176/19 178/2 178/5 178/19 197/15 199/4 202/13 208/7 216/21 219/3 219/25 220/15 221/11 222/17 222/20 222/25 228/11 240/24 244/8 245/20 245/22 249/11 250/9 250/10 250/17 250/18 251/25 252/5 253/4 254/20 255/3 260/10 260/11 261/4 263/1 263/7 263/17 264/24 266/19 266/25 counsel's [5] 57/6 144/3 197/20 198/7 223/5 count [1] 117/25 counterparts [1] 233/12 countries [5] 136/4 136/4 136/5 136/5 136/6 country [3] 59/22 61/18 64/9 couple [5] 68/22 132/9 133/25 134/16 152/12 coupled [1] 168/23 course [49] 8/3 14/1 15/13 27/19 37/22 39/24 44/6 54/22 57/23 62/19 65/8 65/11 66/2 67/6 71/15 76/10 79/6 82/3 107/2 114/17 114/18 114/19</p>	<p>114/19 114/21 114/23 115/1 116/19 116/22 123/1 128/15 133/14 133/21 134/4 144/18 149/12 154/6 158/17 158/21 169/16 181/10 193/25 194/9 194/25 212/22 218/13 219/13 248/10 261/13 270/12 courses [2] 114/15 114/17 coursework [2] 116/19 117/24 court [51] 1/1 7/17 7/22 8/1 8/18 9/12 9/20 9/23 10/3 10/4 10/16 10/18 11/3 15/5 15/16 16/8 16/11 17/1 17/15 21/23 27/20 31/12 33/22 34/12 34/14 34/15 41/13 51/7 51/11 52/20 67/20 67/23 68/13 72/13 81/6 94/3 94/9 110/11 127/17 130/7 130/8 147/17 156/5 177/16 217/13 220/1 265/21 265/25 272/2 272/8 272/9 Court's [5] 8/2 8/13 39/13 148/3 217/23 courtroom [39] 3/4 50/25 51/3 51/15 51/17 51/19 52/6 54/2 54/12 56/16 96/16 142/8 148/23 154/12 154/17 154/19 155/8 156/12 165/21 165/25 166/1 166/2 217/2 223/17 227/21 227/24 228/3 243/22 243/25 244/7 244/12 245/12 245/13 251/6 251/8 251/9 251/10 258/16 267/24 courts [1] 24/10 cover [12] 100/2 100/18 100/20 101/15 107/13 107/14 137/2 150/18 150/21 160/11 160/23 162/17 covered [10] 8/3 100/10 106/14 113/9 136/3 155/12 160/12 163/6 234/2 266/6 covers [7] 95/8 101/7 101/8 101/9 101/18 107/15 150/22 craft [1] 62/4 crash [1] 117/14 create [14] 35/18 36/20 41/23 88/20 89/1 92/16 122/11 124/15 135/19 142/19 187/21 188/4 188/10 218/15 created [10] 50/2 87/22 96/15 97/4 168/25 188/13 192/20 192/23 193/1 261/21 creates [2] 7/11 48/15 creating [4] 86/13 188/17 208/1 218/9 crisis [1] 140/16 critical [4] 29/24 61/3 101/22 105/16 critically [1] 81/24 cross [17] 46/25 47/6 47/8 48/9 48/16 48/17 54/17 166/9 219/8 223/19 226/20 265/8 265/10 266/11 266/12 268/7 268/14 cross-examination [4] 48/9 219/8 223/19 226/20 cross-examine [3] 47/8 48/16 48/17 cross-examined [2] 46/25 47/6</p>	<p>crossed [1] 44/17 crowd [1] 70/2 crux [1] 28/21 cumbersome [1] 123/10 cumulative [5] 6/22 7/9 12/1 12/12 12/25 curative [1] 31/9 curiosity [2] 19/16 56/1 current [3] 197/24 198/20 200/19 currently [1] 193/22 customer [5] 70/21 121/14 122/11 237/5 248/5 customers [13] 70/8 70/19 70/21 123/2 236/20 237/3 238/4 239/3 248/1 248/20 266/7 266/8 267/2 customize [1] 92/21 cut [5] 58/7 63/4 70/15 123/10 169/18 cutting [2] 169/10 169/13 CyberDesk [104] 5/12 5/16 5/17 5/24 6/2 6/7 6/25 7/3 7/4 7/6 7/8 8/5 8/7 9/14 10/5 10/9 10/25 11/4 11/21 11/25 12/11 12/14 12/20 13/19 14/3 14/16 19/18 19/18 19/19 22/7 22/12 22/16 25/5 38/18 77/6 77/7 77/9 87/3 87/4 87/22 89/23 91/4 92/5 93/11 94/21 99/25 100/1 100/4 101/4 101/9 102/23 105/1 107/16 145/15 147/16 154/1 209/20 211/2 211/5 211/9 211/9 211/13 211/23 212/4 212/23 213/2 213/6 213/8 213/13 213/17 213/20 214/1 214/2 214/5 214/15 214/16 214/22 215/5 215/8 215/10 215/15 215/24 216/1 216/6 217/25 218/10 218/19 219/9 219/9 221/4 221/22 254/6 254/7 254/21 255/12 256/7 256/18 257/1 257/5 257/12 257/17 258/5 258/10 264/12 CyberDesk's [3] 212/11 212/15 212/19</p>	<p>226/9 256/6 256/20 264/12 database [17] 64/1 88/19 123/14 124/7 124/8 126/3 126/10 126/16 126/25 127/4 135/12 151/21 151/21 151/24 169/9 169/19 193/9 databases [2] 115/23 191/24 date [30] 5/18 11/2 11/6 43/1 43/9 43/20 44/6 44/11 44/13 68/11 84/4 84/5 84/8 84/14 84/15 84/16 85/5 129/2 129/3 129/18 167/16 167/18 167/23 189/12 189/14 204/13 204/14 207/11 232/22 239/6 dated [4] 127/12 204/19 205/4 208/20 dates [2] 77/20 83/18 Daubert [1] 49/19 Dave [1] 70/2 DAVID [1] 2/9 day [11] 3/8 28/9 58/22 84/10 102/15 114/1 114/2 114/12 189/14 267/16 268/15 days [8] 9/9 21/15 27/22 60/17 84/18 96/13 107/6 133/25 deadline [1] 15/14 deal [14] 19/6 41/2 50/22 51/24 53/25 68/25 78/5 138/1 138/6 138/7 139/4 162/4 178/16 269/4 dealings [1] 63/21 deals [5] 64/13 69/1 77/22 138/13 140/19 dealt [1] 106/3 dean [1] 87/22 Dear [1] 204/18 debate [1] 33/18 December [6] 42/7 45/17 48/25 85/7 95/25 103/14 December 2017 [2] 95/25 103/14 decide [12] 9/24 12/4 25/14 38/24 41/9 60/20 111/17 120/8 147/22 256/22 268/23 268/24 decided [12] 7/23 40/9 58/12 62/6 74/24 75/2 83/23 131/8 131/16 157/4 158/23 231/3 deciding [3] 16/13 65/21 162/4 decision [11] 24/22 28/15 29/4 34/2 75/12 157/5 158/16 244/23 245/1 250/18 256/13 decisions [1] 26/9 declared [2] 195/25 198/4 declined [1] 15/8 deed [3] 60/3 60/3 60/6 deemed [4] 208/3 209/2 209/7 210/3 deems [1] 33/22 deeply [1] 97/24 defend [1] 146/17 defendant [6] 1/7 2/14 10/2 13/14 27/5 145/23 defended [4] 104/22 104/25 105/2 146/8 defending [3] 21/3 26/3 37/4 defense [21] 14/21 15/3 16/3 16/7 16/8 16/17 16/18 16/21</p>
--	---	---	--

<p>Case 1:13-cv-00919-JL Document 601 Filed 08/21/23 Page 86 of 775 PageID #: 69665</p> <p>defense... [13] 17/4 17/9 17/21 22/8 26/19 27/11 30/21 33/3 37/8 37/8 38/6 78/12 222/20 define [3] 66/4 94/7 263/24 defined [2] 66/19 172/4 defines [4] 84/5 234/25 235/25 258/22 definitely [2] 51/8 143/15 definition [4] 12/25 94/4 238/7 238/8 definitively [1] 19/1 degree [9] 61/19 61/19 62/6 62/11 75/21 112/5 117/20 117/25 118/4 DELAWARE [3] 1/2 1/16 71/25 delay [1] 69/6 deliberate [1] 182/13 deliberately [5] 179/21 181/13 182/7 184/8 184/12 deliver [1] 98/15 delivering [1] 98/19 delve [1] 42/19 demo [1] 91/7 demonstrate [2] 131/11 134/2 demonstrated [5] 11/9 12/16 63/14 133/8 134/4 demonstrating [2] 132/7 132/8 demonstration [2] 133/12 133/13 demonstrative [2] 36/13 66/22 demonstratives [2] 69/9 82/12 denial [3] 246/12 246/14 250/15 denied [14] 8/6 9/15 10/9 16/1 16/4 16/4 230/3 230/14 231/17 242/4 245/24 245/24 246/23 246/24 denies [3] 230/3 230/14 230/19 Denmark [1] 138/18 deny [2] 246/19 250/11 denying [5] 230/9 232/4 232/7 242/12 246/2 department [1] 61/12 dependent [1] 184/5 depending [1] 268/13 Depends [1] 182/6 deposed [3] 175/22 175/24 183/14 deposition [17] 7/2 41/2 47/1 142/12 177/6 177/11 177/17 177/22 177/24 178/12 178/13 178/16 178/19 178/25 183/11 268/21 269/3 depositions [2] 47/12 183/13 depressed [1] 119/19 deprived [1] 33/5 depth [1] 66/1 describe [23] 5/15 7/6 8/9 11/10 11/24 36/23 125/11 128/10 132/2 132/21 134/12 153/11 153/18 157/19 162/23 163/22 188/3 188/8 191/13 218/11 221/4 221/5 260/14 described [16] 6/15 12/22 13/4 39/17 128/1 151/7 152/14 170/4 188/4 191/6</p>	<p>191/10 191/11 202/14 219/9 221/4 240/25 describes [4] 128/2 128/13 128/23 211/9 describing [4] 190/21 190/23 224/8 260/22 description [12] 60/2 152/13 152/15 169/22 190/16 210/19 212/3 212/10 212/14 212/18 214/5 225/15 descriptions [2] 215/1 215/21 descriptive [1] 124/20 design [2] 93/2 93/2 designation [1] 268/21 designations [3] 41/2 142/12 143/8 designing [1] 93/5 desire [2] 25/1 62/9 despite [4] 103/19 246/2 250/14 264/11 detail [2] 194/12 254/21 detailed [3] 66/4 74/19 210/15 details [3] 27/24 188/3 188/8 detect [4] 87/16 192/20 192/24 193/5 Detector [1] 145/16 detectors [41] 19/19 19/20 25/5 41/18 42/5 42/13 42/21 47/24 48/3 48/7 76/13 76/16 76/25 88/4 88/8 88/17 89/1 89/23 91/5 92/5 93/12 94/22 100/2 100/5 101/5 101/10 102/23 105/2 107/16 147/16 154/2 209/15 221/22 224/9 224/12 226/1 226/4 226/9 256/6 256/20 264/12 determination [4] 7/17 15/25 20/14 26/25 determine [4] 17/2 202/1 224/16 225/17 determining [1] 259/25 detriment [2] 26/1 28/11 develop [7] 62/9 62/18 104/20 121/15 197/1 199/18 201/9 developed [6] 61/23 87/6 96/11 96/15 124/17 136/1 developer [3] 7/3 11/8 12/20 developer's [1] 11/12 developers [2] 99/12 187/20 developing [5] 63/17 122/6 134/6 188/19 200/10 development [10] 61/24 62/14 87/7 121/16 121/17 134/9 135/24 139/22 140/8 188/15 developments [1] 20/19 device [37] 13/10 93/21 93/24 96/25 101/24 102/2 168/21 170/24 174/1 174/4 174/11 174/21 175/5 175/11 175/18 176/8 176/9 176/15 179/13 179/15 179/22 180/23 181/13 181/15 181/19 181/20 181/22 182/10 182/15 183/6 183/22 183/23 184/11 226/23 227/2 227/8 237/6 devices [18] 15/7 15/11 15/17 15/18 15/21 16/1 46/15 48/11 49/2 72/3 80/21 95/13 96/2 151/1 235/11 235/15 240/4 267/3</p>	<p>Dey [15] 7/3 7/4 12/20 12/23 13/5 22/16 87/22 209/19 211/8 214/8 214/10 214/12 254/21 254/22 255/5 DI [1] 9/12 DI 256 [1] 9/12 dial [2] 86/15 87/15 did [211] 6/5 7/14 7/15 7/20 7/21 10/1 10/7 12/16 20/11 21/22 28/3 32/19 32/20 37/22 38/21 40/15 43/5 43/5 44/10 45/9 46/19 46/22 48/5 48/17 57/15 59/4 62/16 64/10 65/15 67/8 67/9 67/15 69/7 69/22 70/2 72/2 73/2 73/12 73/18 74/20 76/25 78/21 79/1 79/21 84/16 84/17 84/19 84/22 84/23 85/11 85/15 85/21 86/7 87/25 89/5 89/5 91/9 91/24 92/1 100/3 100/10 101/10 101/11 102/17 103/11 104/3 105/11 105/14 107/7 107/14 107/15 110/5 110/7 110/8 110/13 110/16 110/18 110/19 110/25 111/2 112/11 112/16 113/12 113/12 114/14 114/25 115/18 115/25 116/17 116/20 117/20 117/23 118/2 118/2 118/10 118/23 118/25 119/8 119/16 120/1 120/4 120/5 120/19 120/21 121/11 121/21 122/1 122/5 122/6 122/15 123/24 124/15 124/22 125/1 125/1 125/3 127/9 127/11 130/4 131/4 131/5 131/6 131/12 131/14 131/18 133/6 133/18 134/2 134/8 134/10 134/12 134/18 135/23 136/9 138/1 138/13 140/4 140/7 140/9 141/3 141/13 147/20 152/2 152/16 152/17 153/4 154/2 154/4 154/5 156/22 157/2 158/5 158/8 158/14 159/10 159/13 160/11 162/20 162/22 163/7 164/3 164/14 164/15 164/18 176/1 188/8 192/16 195/1 197/1 199/18 201/9 202/1 202/3 202/8 202/16 205/20 216/6 217/16 219/3 219/21 237/1 239/13 239/15 241/5 241/7 244/16 245/8 246/11 246/14 246/19 248/3 248/22 249/5 249/25 250/3 250/11 250/14 250/23 251/2 254/7 255/12 256/22 257/4 259/24 261/17 262/1 264/2 264/5 264/14 265/17 269/18 didn't [72] 4/12 4/14 12/4 20/17 22/2 25/13 27/1 27/10 27/16 28/18 29/8 30/6 30/23 31/3 31/17 31/18 31/24 32/13 32/21 32/21 35/8 37/11 41/25 44/13 47/7 47/22 49/18 59/4 73/7 73/8 81/5 93/7 103/15 103/16 104/4 104/4 104/12 108/6 108/7 112/6 117/14 120/24 125/1 126/9 126/13 130/5 140/1 145/9 146/17 147/6 147/7 148/16 177/4</p>	<p>177/5 177/7 177/13 195/4 196/18 220/5 212/25 218/6 218/11 220/14 221/4 221/5 234/12 241/12 250/1 252/17 255/12 259/25 265/8 DIEHL [4] 2/4 3/19 108/17 143/13 difference [6] 89/19 98/9 100/15 145/18 249/15 271/2 different [66] 5/10 19/8 19/10 19/10 30/9 35/6 36/5 36/6 36/7 36/7 47/11 47/23 58/4 67/13 70/24 74/22 80/6 85/10 89/14 89/24 90/3 90/4 91/25 92/4 92/5 92/24 92/25 93/11 93/11 94/7 94/8 94/22 95/1 95/17 96/19 96/23 97/12 98/12 98/18 98/19 98/22 98/23 100/8 100/9 102/6 102/13 103/6 104/25 107/10 111/23 114/16 117/11 138/11 139/10 146/10 146/15 149/13 150/25 202/24 219/17 226/17 226/17 253/1 254/3 254/17 263/14 differently [2] 72/19 220/8 difficult [3] 82/24 133/10 151/16 difficulty [1] 117/12 dime [2] 79/24 80/18 dinner [1] 113/15 dinners [1] 116/16 direct [8] 54/15 109/4 162/2 202/13 218/6 218/16 219/12 240/24 directed [8] 207/12 208/16 209/11 215/20 216/17 217/21 218/24 227/16 direction [6] 104/25 107/3 107/11 146/10 146/16 218/2 directions [1] 33/13 directly [6] 29/17 70/15 82/5 92/8 92/9 221/9 director [1] 82/21 directors [2] 239/1 248/18 disadvantageous [1] 181/2 disagree [2] 13/2 229/15 disagreement [1] 178/7 discharges [2] 238/25 248/17 disclose [12] 8/25 59/22 145/25 214/11 214/13 215/5 215/24 216/2 219/11 226/14 226/23 255/5 disclosed [12] 7/5 22/17 22/18 22/19 22/20 23/1 45/23 64/25 100/5 145/20 209/6 217/20 discloses [1] 224/12 disclosure [3] 83/22 205/19 205/25 disclosures [1] 222/9 discount [3] 69/3 79/18 79/19 discounted [1] 79/16 discover [3] 59/19 126/1 126/14 discovered [1] 123/5 discoveries [1] 59/18 discovery [3] 48/6 49/18 123/20 discrete [1] 51/9 discuss [6] 56/20 141/24</p>
--	---	---	---

D
 discuss... [4] 222/23 223/9
 234/12 267/20
 discussed [3] 213/18 234/7
 243/9
 discussing [2] 8/11 266/25
 discussion [29] 8/24 20/12
 20/24 54/9 107/25 129/13
 130/18 146/21 154/22 155/5
 156/10 156/14 162/9 166/7
 176/21 177/18 179/6 197/17
 199/7 202/13 217/11 217/15
 228/1 244/11 245/15 254/11
 255/12 265/1 266/16
 discussions [2] 18/11 161/10
 dishes [2] 61/10 113/13
 Dismissal [1] 238/16
 dismissed [1] 239/10
 display [7] 93/20 173/12 175/4
 190/1 203/4 211/16 212/19
 displayed [5] 87/4 87/24 88/5
 88/9 221/20
 displaying [5] 173/15 173/20
 185/17 185/20 185/23
 dispose [1] 236/9
 disposed [1] 17/5
 dispositive [2] 16/22 39/24
 dispute [7] 5/13 7/11 9/3
 18/12 18/13 35/15 231/4
 disputes [2] 234/20 270/20
 disputing [1] 221/25
 distances [1] 83/2
 distinction [1] 214/21
 distribute [1] 135/4
 distributed [1] 134/25
 distributor [1] 248/6
 distributors [2] 247/25 248/19
 distributing [1] 135/1
 distribution [1] 138/13
 distributors [2] 236/19 239/2
 DISTRICT [3] 1/1 1/2 272/9
 do [313]
 dock [1] 4/13
 docket [2] 5/8 45/2
 Docs [2] 71/5 80/15
 doctorate [1] 119/21
 document [114] 10/17 15/4
 86/4 87/12 87/13 88/10 88/21
 90/12 90/13 90/16 90/18
 90/21 90/23 92/6 93/20 124/4
 124/6 124/9 124/12 125/10
 125/13 125/19 125/21 125/23
 126/1 126/15 126/15 126/24
 127/2 127/25 128/1 128/9
 128/23 129/2 129/8 129/15
 129/20 129/20 129/24 130/2
 135/11 136/16 149/18 149/23
 150/24 151/10 151/11 152/23
 157/9 159/18 164/23 166/14
 168/25 170/12 170/16 171/12
 171/19 173/12 173/15 173/20
 175/4 189/1 189/18 191/1
 191/3 193/5 203/3 204/17
 206/8 206/20 207/2 207/7
 207/8 207/11 208/1 208/6
 208/15 208/16 208/23 208/24
 209/11 214/12 214/14 214/16
 214/22 216/12 223/24 224/3
 224/15 226/15 226/24 227/11
 228/22 246/11 247/14 252/3

252/10 252/22 253/1 253/6
 253/14 253/18 253/22 254/1
 254/5 255/6 255/23 256/2
 260/12 260/14 260/20 260/22
 261/4 262/8
 document,' [1] 216/1
 documentation [1] 213/20
 documents [11] 13/20 71/18
 72/2 74/23 127/12 153/7
 153/21 154/13 164/24 216/3
 216/7
 does [50] 10/11 12/9 16/16
 19/7 21/20 23/23 28/12 31/12
 31/12 71/16 72/23 75/17
 80/12 86/10 90/2 90/3 94/6
 94/9 94/19 97/16 100/18
 104/24 124/2 124/6 125/7
 127/2 127/3 133/22 136/25
 150/18 150/20 151/20 158/3
 179/17 188/3 198/2 214/9
 214/10 214/12 215/5 215/10
 215/24 216/2 226/9 226/13
 226/22 227/12 254/22 255/5
 256/5
 doesn't [27] 22/17 27/19
 28/11 40/2 43/2 43/9 43/17
 43/23 50/18 51/14 70/15
 70/16 77/25 90/1 104/23
 105/17 106/10 116/9 117/9
 146/9 146/9 151/21 151/23
 151/24 155/10 220/1 222/4
 doing [15] 22/22 29/1 37/20
 64/21 71/18 78/7 88/9 119/20
 124/10 126/1 131/7 135/24
 166/3 213/9 248/23
 dollars' [1] 193/19
 don't [100] 14/1 17/12 17/19
 19/15 23/13 23/18 27/14
 28/16 30/17 32/10 32/14
 32/16 33/4 33/25 34/15 34/18
 36/10 37/2 39/21 40/4 41/5
 44/7 48/8 48/24 49/12 50/5
 51/18 52/9 52/19 55/3 57/10
 57/12 78/16 79/14 83/3 91/5
 101/24 107/2 114/8 116/8
 116/10 117/5 118/9 129/3
 129/10 129/20 132/9 140/17
 143/22 144/9 146/14 147/23
 148/6 152/17 155/14 168/6
 170/10 176/25 177/1 179/1
 186/25 196/23 203/4 207/2
 212/10 212/14 212/18 213/5
 213/8 213/12 213/16 213/22
 213/24 213/25 214/4 221/12
 222/19 223/2 223/4 225/25
 226/3 229/10 229/16 233/24
 234/5 234/7 234/13 239/20
 243/4 243/5 243/13 243/17
 254/2 257/25 260/2 268/2
 268/7 268/14 268/24 270/25
 done [15] 23/8 72/25 87/7
 91/4 96/22 111/6 129/23
 131/14 155/17 173/4 179/13
 218/25 219/19 269/5 269/16
 door [9] 40/20 144/20 145/11
 148/4 148/7 217/13 217/17
 220/24 222/21
 dorm [3] 113/24 116/4 116/7
 dot [1] 267/17
 dot.com [2] 64/7 140/16

double [2] 152/7 152/16
 Douglas [1] 103/24
 down [14] 23/12 27/25 28/23
 110/12 129/21 131/3 131/9
 141/4 142/9 206/5 209/19
 217/4 246/7 262/11
 download [2] 160/19 250/5
 downloaded [9] 42/16 47/9
 47/20 80/1 160/23 162/17
 239/12 240/4 250/2
 downloads [10] 42/12 42/20
 47/3 47/23 48/4 48/5 48/25
 49/1 49/2 51/13
 Dr. [14] 7/2 7/3 7/4 12/20 13/3
 22/16 71/22 72/6 87/22 97/21
 99/8 268/5 268/8 268/17
 Dr. Anind [1] 87/22
 Dr. Day [5] 7/3 7/4 12/20 13/3
 22/16
 Dr. Fox [1] 7/2
 Dr. Martin [1] 97/21
 Dr. Rinard [1] 99/8
 Dr. Smedley [2] 268/8 268/17
 Dr. Smedley's [1] 72/6
 Dr. Trevor [1] 71/22
 Dr. Trevor Smedley [1] 268/5
 drafted [3] 168/9 208/6 263/5
 drafting [3] 64/22 162/2 263/2
 dregs [1] 25/9
 dried [1] 64/15
 drink [1] 225/2
 drive [1] 83/2
 driver's [1] 89/9
 dropped [2] 42/6 134/3
 dropping [1] 41/17
 DT [1] 189/2
 DTX [21] 189/2 189/20
 189/24 190/1 203/3 203/15
 203/19 204/1 205/9 207/3
 208/9 208/12 223/23 228/8
 228/9 232/11 240/8 240/12
 251/21 253/10 260/10
 DTX-2 [4] 203/3 203/15
 203/19 251/21
 DTX-2.0180 [1] 205/9
 DTX-2.168 [1] 204/1
 DTX-283 [1] 232/11
 DTX-633 [2] 228/8 228/9
 DTX-71 [5] 189/2 189/20
 189/24 190/1 260/10
 DTX-925 [5] 207/3 208/9
 208/12 223/23 253/10
 DTX-971 [2] 240/8 240/12
 due [2] 81/15 247/15
 duly [1] 109/1
 during [26] 6/13 6/16 7/10
 21/5 30/8 36/3 37/3 47/1
 54/22 55/23 58/15 59/9 64/20
 81/1 86/9 122/20 125/5
 141/23 144/19 150/12 154/2
 158/18 217/12 218/25 246/17
 249/5
 duty [6] 91/19 100/14 145/17
 147/7 221/16 221/17
 dying [1] 117/9

E

e-mail [24] 58/5 86/15 86/16
 86/23 87/13 87/16 87/17
 87/18 88/11 88/14 91/1

184/25 185/11 185/13 186/15
 186/23 192/24 211/12 211/22
 212/15 212/16 224/17 225/18
 262/14
 e.g [3] 191/20 191/21 211/24
 each [9] 56/24 68/25 74/22
 79/22 210/19 222/22 267/21
 270/13 270/20
 eager [1] 128/17
 earlier [8] 38/16 67/12 83/20
 119/5 142/23 167/6 190/17
 194/13
 early [8] 41/12 64/7 66/10
 69/25 78/2 118/7 199/25
 269/7
 earned [1] 61/19
 easier [7] 62/19 65/2 70/7
 70/22 99/12 99/16 151/16
 easily [2] 150/23 151/9
 East [2] 61/21 137/14
 easy [14] 87/15 112/23
 115/14 125/16 133/9 151/14
 156/6 188/24 192/13 261/5
 261/8 261/10 261/15 261/18
 eat [1] 117/9
 economic [1] 64/6
 economy [1] 64/16
 editing [9] 92/6 214/12 214/14
 214/16 214/22 226/15 226/24
 227/12 255/6
 education [3] 61/3 61/7
 122/13
 Edward [1] 100/25
 effective [2] 232/22 239/6
 effectively [1] 29/6
 efficiently [1] 143/2
 effort [3] 26/4 28/2 219/11
 efforts [1] 251/15
 eight [8] 19/15 110/3 153/18
 200/9 205/11 233/22 234/1
 257/11
 eight years [1] 200/9
 either [9] 16/18 19/5 93/4 93/7
 99/5 155/10 183/4 248/4
 268/17
 either/or [1] 183/4
 elapsed [2] 30/1 30/23
 election [1] 28/17
 electric [1] 89/10
 electronically [4] 93/20 173/12
 173/15 173/20
 element [8] 25/19 72/12 72/12
 102/3 173/19 174/19 175/10
 184/13
 elements [9] 38/25 101/22
 102/8 172/19 172/24 210/22
 214/9 226/9 254/22
 eliminate [1] 43/10
 eliminating [2] 19/12 48/3
 ELLIS [1] 2/9
 else [18] 53/24 53/24 55/1
 91/13 114/10 116/8 138/14
 144/7 144/23 155/10 155/12
 164/11 196/16 196/20 220/25
 233/25 253/18 269/17
 embodiment [1] 170/3
 EMEA [2] 137/13 137/14
 emphasized [1] 248/14
 employees [3] 140/25 239/1
 248/18

<p>enable [1] 66/25 enabled [1] 69/4 encouraged [1] 61/1 end [28] 22/21 28/9 41/15 41/16 53/14 59/6 69/13 81/23 101/14 101/20 102/14 116/4 120/7 140/11 140/13 141/2 163/7 205/21 224/17 230/5 241/5 247/21 252/6 258/21 258/21 259/10 259/13 267/16 endeavor [1] 269/14 ended [2] 26/25 36/22 ends [3] 22/23 36/18 176/12 enforce [1] 201/2 enforces [1] 201/5 enforcing [1] 104/17 engage [2] 27/10 32/13 engaged [2] 8/24 27/7 engaging [1] 27/15 engine [2] 211/14 211/15 engineer [1] 111/18 engineering [4] 70/2 82/21 97/21 112/4 engineering-type [1] 112/4 engineers [7] 92/14 96/9 96/12 96/13 97/19 98/2 99/7 English [7] 23/13 110/6 110/8 110/9 117/1 129/8 134/21 enough [3] 101/15 107/13 131/11 ensure [1] 144/6 enter [3] 159/10 164/15 174/6 entered [4] 63/20 65/21 165/12 248/4 entering [4] 161/13 162/6 169/9 248/8 enters [3] 56/16 148/23 223/17 entire [7] 106/7 135/21 161/9 192/4 193/20 201/1 201/19 entirely [3] 6/22 92/19 96/12 entities [5] 197/25 198/9 198/10 198/19 198/21 entitled [12] 27/15 28/18 58/13 74/11 78/19 100/14 145/17 146/11 191/14 205/14 207/7 209/1 entity [3] 197/5 200/14 247/10 entrepreneur [2] 122/8 122/12 entrepreneurial [1] 62/8 entry [1] 209/19 EPO [2] 242/7 242/8 equipment [1] 121/1 escape [1] 13/14 especially [1] 128/17 ESQ [11] 1/23 2/3 2/4 2/4 2/5 2/5 2/9 2/12 2/12 2/13 2/13 essentially [7] 15/9 16/2 47/25 90/17 92/10 92/15 100/19 establish [1] 129/18 estop [1] 8/6 estopped [18] 5/10 5/20 5/22 5/22 5/24 6/1 6/1 6/3 6/6 6/8 6/23 6/25 8/16 8/19 10/5 10/13 10/13 14/3 estoppel [13] 4/20 5/6 6/14 7/16 7/23 8/10 8/19 10/11 10/17 10/19 12/9 13/14 22/10 et [1] 262/14</p>	<p>etc [2] 168/21 168/23 Europe [3] 66/17 111/16 137/14 European [11] 106/4 136/4 233/8 233/17 234/2 234/9 242/5 242/7 242/23 242/25 243/18 evaluate [1] 208/2 even [30] 5/23 9/25 12/17 13/20 19/2 20/12 20/22 28/24 35/24 48/8 48/18 60/18 63/15 65/5 70/20 73/7 75/16 76/7 76/11 79/10 102/13 106/25 118/13 136/5 147/8 158/20 172/24 213/12 218/8 268/11 event [2] 132/25 217/24 events [1] 26/15 eventually [3] 61/11 135/22 195/21 ever [10] 21/14 101/18 147/4 183/11 195/15 195/18 197/7 213/22 213/25 244/16 every [9] 46/23 72/4 99/20 99/21 146/3 146/3 152/23 218/25 229/8 everybody [11] 4/14 29/20 53/15 54/20 54/21 83/8 144/11 155/12 156/7 203/21 269/9 everybody.net [9] 135/9 136/2 136/7 136/10 139/12 139/23 194/18 194/20 195/8 everyone [6] 4/12 55/16 55/22 112/25 144/1 217/7 everything [23] 45/19 66/17 85/19 95/14 97/16 110/12 115/20 118/17 118/19 140/17 140/20 147/6 147/11 152/23 152/23 153/8 153/8 153/9 183/1 183/3 202/21 243/3 257/7 evidence [75] 8/4 11/7 11/16 12/1 12/12 13/7 13/12 13/15 13/21 13/22 14/6 15/20 16/12 16/16 18/2 19/25 23/14 27/12 38/9 38/10 38/12 39/10 39/14 50/17 50/18 50/23 53/13 54/10 72/9 72/17 72/20 72/20 72/24 73/22 75/16 75/18 75/18 75/20 75/21 75/22 76/4 76/20 82/6 83/5 98/9 102/5 107/5 107/10 128/4 128/7 136/19 136/22 142/2 143/5 150/1 150/4 157/12 157/15 159/21 159/24 160/25 161/11 163/20 165/4 165/7 189/21 189/24 198/2 203/19 208/12 220/2 220/6 220/15 221/2 267/22 evidentiary [1] 10/15 evolved [1] 32/10 evolving [1] 18/5 exact [7] 103/11 129/3 177/3 178/15 196/11 219/14 269/11 exactly [21] 46/13 47/8 50/11 65/15 66/23 70/9 71/16 71/18 85/15 89/5 102/16 107/7 125/17 146/23 151/9 192/12 194/10 221/18 229/10 253/24 255/20</p>	<p>examination [32] 47/11 48/9 54/6 54/15 54/22 56/7 100/1 109/4 143/13 143/23 148/25 152/20 165/21 165/22 166/9 202/14 206/8 206/19 207/8 208/15 219/8 223/19 223/24 226/20 245/17 252/9 252/22 252/25 253/5 253/14 254/1 266/22 examine [3] 47/8 48/16 48/17 examined [4] 46/25 46/25 47/6 152/11 examiner [33] 77/8 91/13 144/23 145/10 145/10 146/2 148/16 153/13 205/20 206/7 206/18 206/20 207/12 207/17 208/16 209/12 210/8 214/25 215/20 216/18 217/21 218/1 218/1 218/11 218/12 218/23 219/12 219/15 219/18 221/6 227/17 252/8 257/21 examiners [5] 74/16 91/11 147/1 218/6 218/16 example [24] 22/7 42/12 43/2 58/5 66/11 66/16 66/20 70/10 87/2 92/3 93/14 96/14 99/10 185/14 185/20 193/10 194/5 211/12 211/22 214/12 224/17 225/9 234/9 255/5 examples [4] 66/9 66/21 66/24 77/6 except [4] 49/10 138/17 196/18 200/12 exception [2] 13/21 13/24 exchange [3] 60/1 91/22 145/3 exchanged [1] 154/17 excited [1] 70/6 exciting [2] 111/13 119/18 exclude [5] 10/8 50/17 60/7 60/11 77/25 excluded [1] 8/20 exclusive [3] 59/17 59/18 78/20 exclusively [1] 200/23 Excuse [1] 224/2 excused [1] 155/25 execute [2] 162/4 195/9 executed [2] 94/12 240/18 exemplary [1] 170/2 exhibit [39] 24/22 29/4 41/22 45/3 45/11 45/19 46/24 47/18 127/22 128/7 130/2 136/14 136/18 136/22 149/18 149/25 150/4 157/7 157/15 159/16 159/24 163/17 163/20 164/21 165/7 166/14 189/24 203/19 208/12 228/10 228/14 228/19 229/11 232/15 240/13 240/14 251/21 251/24 253/9 Exhibit PX-439 [1] 136/18 Exhibit PX-66 [1] 164/21 exhibits [5] 44/21 127/15 142/19 144/2 260/9 exist [6] 12/16 75/16 84/19 84/22 152/17 152/17 existed [9] 84/21 86/25 89/23 101/18 153/2 169/14 186/10 187/2 196/7 existence [1] 89/3</p>	<p>existing [2] 188/18 200/19 exit [1] 151/11 exited [1] 155/14 exits [4] 142/6 142/8 217/2 267/24 expect [3] 65/14 268/6 268/12 expense [4] 99/15 231/2 231/9 231/12 expensive [4] 112/25 116/13 experience [2] 99/10 122/6 247/3 247/7 expert [26] 7/1 15/6 42/10 42/25 43/5 43/13 43/17 44/8 44/12 44/17 45/9 46/18 46/21 46/25 48/10 48/22 69/24 70/12 71/20 78/24 79/10 86/9 97/20 103/20 268/6 268/9 expert's [1] 43/18 experts [3] 44/15 92/15 97/23 experts' [1] 41/22 expiration [2] 42/8 232/25 expired [15] 30/1 30/22 78/1 78/5 78/11 78/19 81/14 85/2 85/9 96/5 105/10 105/12 105/15 229/3 233/24 explain [22] 19/7 20/9 20/16 20/23 21/2 23/12 25/20 26/1 26/16 28/12 32/15 35/16 36/4 37/10 52/13 52/18 79/19 96/16 101/6 160/4 229/25 249/14 explained [4] 5/9 7/4 8/5 22/5 explains [2] 31/15 57/22 explanation [3] 37/20 37/20 210/15 explicit [1] 94/4 explicitly [2] 219/17 270/24 exploit [2] 199/22 236/9 exploiting [2] 146/23 200/6 explore [2] 111/23 114/16 expose [1] 22/24 exposed [1] 22/6 express [5] 9/23 91/20 100/7 145/1 155/16 expressed [2] 63/16 144/21 expressly [4] 7/2 40/14 105/19 155/20 extend [3] 137/24 198/2 248/3 extended [1] 262/12 extends [1] 237/2 extensive [8] 47/10 65/9 74/7 75/4 75/11 77/9 91/17 202/14 extensively [1] 47/6 extent [11] 10/10 15/17 16/6 16/15 17/21 32/12 129/19 148/14 148/18 258/24 270/20 extremely [10] 66/3 70/18 70/25 82/24 84/14 98/18 98/19 101/1 219/5 219/24</p> <hr/> <p>F</p> <p>face [4] 76/16 77/7 105/21 105/25 facility [1] 121/16 facing [1] 55/21 fact [32] 7/8 7/11 19/22 22/15 26/21 30/24 33/3 43/2 44/14 49/23 50/9 70/4 84/25 88/15 94/15 100/24 103/19 112/18 114/5 123/13 128/14 145/6</p>
--	--	--	---

fact... [10] 145/12 146/16
161/25 175/16 180/23 193/17
218/21 219/21 230/18 244/20
factor [3] 27/3 31/22 135/24
factored [1] 15/7
facts [5] 23/25 24/3 32/15
33/20 34/8
factual [2] 28/7 28/24
failed [7] 10/18 22/1 24/5 31/7
50/19 145/25 145/25
failure [1] 221/7
fair [28] 18/3 36/11 57/14
57/16 59/5 81/13 82/9 114/10
117/15 131/21 131/21 132/23
132/24 132/24 158/6 252/22
253/2 253/15 254/9 255/25
256/4 257/2 257/3 262/23
262/24 263/15 263/16 266/13
fairly [3] 28/1 57/9 59/5
faith [3] 27/9 28/15 33/1
fall [5] 26/10 107/20 117/9
117/13 143/17
false [1] 25/10
familiar [2] 228/24 232/19
family [6] 60/23 61/17 95/13
95/14 128/16 269/13
fanfare [1] 69/23
Fantastic [1] 55/16
far [6] 28/6 39/5 47/19 136/2
153/2 217/25
fashioned [1] 120/13
Fast [1] 7/18
faster [2] 203/20 207/16
fate [1] 198/6
fathers [1] 59/12
fault [2] 29/21 160/17
favor [2] 17/18 17/19
favorable [2] 72/20 72/21
fax [1] 262/13
feared [1] 146/24
feature [11] 27/2 67/7 69/20
69/21 69/22 70/22 71/7 71/11
71/12 73/16 99/13
features [12] 7/5 22/6 22/16
22/24 95/18 95/19 133/16
147/20 169/14 187/21 221/19
221/23
February [1] 133/1
Federal [15] 18/21 19/1 24/6
24/7 24/21 25/13 25/17 25/20
27/18 35/23 37/22 84/9 91/10
147/13 258/17
fee [3] 106/15 236/4 238/23
feedback [5] 70/21 115/4
115/5 115/7 115/10
feel [1] 154/5
feeling [1] 115/11
feels [1] 106/13
fell [1] 64/5
fellow [2] 113/18 141/25
fellows [1] 142/3
felt [9] 20/7 28/8 37/10 70/7
70/21 154/7 181/24 214/21
234/13
few [13] 60/17 69/11 84/18
96/13 107/6 112/22 116/16
119/4 124/23 143/7 144/22
243/21 264/22
fewer [1] 164/10

field [7] 74/17 75/7 92/15
122/13 166/16 263/7 263/11
fifth [1] 35/24
figure [18] 15/7 27/24 50/14
62/22 65/16 93/14 125/20
169/21 169/22 169/25 170/6
170/24 171/3 171/4 171/5
171/7 171/17 270/25
Figure 4 [1] 125/20
figures [7] 91/8 125/8 168/9
263/18 263/18 263/21 263/24
Figures 3 [2] 263/18 263/21
file [9] 10/1 10/7 83/23 156/19
167/22 168/1 264/2 264/14
269/21
filed [48] 7/19 14/25 18/6
24/24 24/25 31/20 67/3 83/15
83/20 83/22 84/3 86/21 86/25
87/5 101/19 104/2 104/8
104/13 104/22 141/6 146/7
146/13 166/23 167/1 167/6
167/18 168/14 169/7 169/14
185/24 186/6 186/13 187/1
189/14 200/2 200/16 201/6
201/25 210/4 226/4 234/21
241/2 241/16 242/6 244/21
265/11 265/16 265/20
files [2] 128/25 205/18
filing [6] 15/14 186/16 204/13
204/14 241/20 244/15
fill [1] 25/19
filled [2] 47/25 98/24
final [5] 8/25 28/14 29/4 35/12
81/4
finally [3] 77/17 146/6 215/23
financial [2] 103/22 138/6
financing [1] 64/11
find [29] 10/18 57/12 73/3
73/9 73/10 73/20 73/22 74/1
88/12 88/17 91/2 102/20
102/21 102/25 103/1 115/13
115/15 125/1 126/4 126/15
126/16 153/4 154/3 194/1
202/9 208/22 211/14 212/11
215/1
finding [2] 22/9 224/12
finds [5] 124/6 124/8 127/3
127/3 184/14
fine [13] 27/13 35/14 40/23
52/4 52/23 53/16 55/10 55/22
129/22 156/1 217/10 268/25
270/1
finish [3] 186/25 239/14
268/16
finished [6] 111/8 122/4 131/9
131/11 165/20 165/22
finishes [2] 269/23 269/25
firm [2] 75/18 190/10
firmly [1] 107/7
first [143] 3/8 4/19 9/17 14/22
14/23 21/12 23/5 24/19 44/5
54/8 56/23 62/24 63/7 66/19
76/3 82/23 84/2 84/6 84/7
85/8 86/7 92/7 92/18 93/12
93/17 93/18 93/19 93/22
93/23 94/1 94/6 94/17 95/2
95/9 101/23 101/25 102/1
105/8 105/19 108/10 108/15
109/1 110/14 112/7 114/17
116/2 127/9 127/11 128/11

129/18 131/18 133/23 136/3
137/5 138/10 141/21 142/11
144/22 147/11 148/10 149/18
151/8 152/13 153/15 153/16
154/8 156/17 157/21 158/10
160/6 163/24 164/25 165/11
166/14 168/14 168/15 169/4
170/19 170/21 173/4 173/8
173/11 173/11 173/13 173/15
173/20 173/24 174/5 174/11
174/14 174/20 175/1 175/4
175/6 175/7 175/11 175/17
176/7 176/11 176/14 179/14
179/22 180/1 180/2 180/6
180/11 180/18 180/22 180/24
181/8 181/14 181/19 181/25
182/1 182/9 182/14 182/18
183/5 183/21 184/3 184/10
184/20 185/6 185/8 185/11
186/16 190/15 195/22 204/17
223/1 224/11 225/16 225/20
225/25 226/5 234/19 235/23
244/19 257/10 257/18 262/10
267/16 271/4
five [9] 9/9 20/7 20/17 43/1
55/12 56/5 78/15 114/7 114/7
five days [1] 9/9
five years [3] 20/7 20/17
78/15
fix [1] 124/16
flag [1] 7/22
flagged [1] 8/23
flagship [1] 63/15
flawed [1] 43/14
flew [1] 112/13
fly [1] 48/9
focus [3] 85/14 105/18 135/8
focused [7] 86/8 175/16
176/10 176/14 198/6 198/24
255/3
folks [1] 269/12
follow [2] 79/12 83/23
follow-on [1] 83/23
followed [2] 94/23 221/17
following [21] 6/11 107/25
129/13 155/5 156/14 161/5
176/2 176/3 176/21 183/18
183/19 197/1 197/17 204/20
211/8 211/13 228/1 245/15
265/1 265/3 269/25
follows [2] 109/2 176/6
food [6] 98/12 98/15 98/17
98/20 102/14 113/4
forcing [1] 79/17
Ford [1] 89/9
foregoing [1] 272/4
foreign [2] 167/13 233/12
forever [4] 77/25 130/2
238/24 248/16
Forgive [1] 82/15
forgot [1] 121/7
form [2] 34/24 60/4
former [1] 119/21
forth [10] 35/19 37/18 74/10
123/10 152/5 161/9 202/18
203/10 207/10 219/14
Forty [1] 56/5
Forty-five [1] 56/5
forum [1] 36/6
forward [9] 7/18 49/11 50/23

130/15 144/6 156/7 177/10
223/9 270/8
found [13] 24/10 25/16 70/25
127/12 128/1 129/1 153/6
153/23 153/24 171/11 171/17
185/7 257/18
foundation [2] 162/3 258/23
founders [1] 119/21
founding [1] 59/12
four [6] 53/20 55/11 61/19
73/17 118/1 176/5
four years [1] 73/17
fourth [5] 35/24 110/2 110/9
247/21 247/21
Fox [2] 7/2 100/25
framed [1] 49/22
framework [3] 209/20 211/5
211/10
frank [1] 86/4
frankly [9] 18/23 20/16 28/23
29/24 37/16 43/14 103/16
145/11 222/15
Fredrikstad [1] 109/24
free [5] 37/13 87/10 113/2
113/3 137/21
frequently [1] 192/6
Friday [15] 18/10 41/15 41/21
48/2 57/21 58/15 60/2 72/13
74/16 75/5 75/14 76/19
141/23 258/16 259/10
friends [1] 128/16
front [20] 19/9 55/20 98/17
138/25 139/6 139/7 147/21
150/8 150/9 167/14 189/3
202/23 206/20 207/4 229/20
230/18 232/12 234/16 234/16
241/25
frustrated [1] 4/13
full [7] 45/16 66/15 79/14
143/9 221/2 247/9 262/10
fully [3] 12/17 23/1 236/6
fun [1] 117/4
function [1] 71/4
functionalities [2] 43/15 47/21
functionality [16] 29/16 45/13
45/21 46/16 65/1 68/7 71/10
96/4 98/6 99/11 137/23
137/24 151/2 188/4 188/10
188/20
fund [1] 64/15
fundamental [1] 107/18
fundamentally [2] 43/14 99/4
funded [1] 139/24
funding [1] 139/21
fundraising [2] 140/7 140/22
funny [1] 120/23
further [8] 32/19 118/13 136/2
198/5 249/14 264/18 267/7
270/4
furthered [1] 14/13
Furthermore [1] 215/24
future [3] 178/4 235/4 237/21

G
game [2] 115/6 115/7
gamer [1] 115/6
gap [1] 47/25
Garfinkel [13] 67/25 69/8
82/11 142/4 148/21 154/19
223/14 227/23 243/25 245/11

Garfinkel... [3] 251/8 267/19 267/23
gas [1] 89/9
gave [14] 65/9 87/9 87/9
112/19 113/15 117/24 119/24
135/14 140/20 141/8 141/23
176/2 183/18 246/18
general [1] 137/8
generally [1] 64/16
gentleman [3] 103/21 132/9
155/8
gentlemen [13] 56/18 57/2
81/11 82/17 130/21 141/20
154/14 162/11 179/9 199/10
216/25 260/6 267/15
genuine [1] 7/8
Georgia [2] 87/6 214/1
get [89] 4/11 4/15 4/18 17/6
18/12 31/12 38/5 41/20 51/20
53/18 55/2 60/1 60/6 62/6
63/5 65/2 67/17 70/14 74/11
77/2 77/23 78/9 78/16 81/16
83/18 84/10 90/5 90/15 91/9
97/4 98/17 102/16 103/18
106/19 108/5 108/19 109/10
110/12 112/6 112/21 115/3
115/4 115/5 115/7 115/10
116/14 123/8 123/15 124/3
124/4 124/4 124/5 124/24
125/20 127/19 129/7 131/8
133/8 133/10 134/10 137/23
138/25 140/6 142/2 142/18
142/25 143/2 143/9 145/9
152/18 157/8 177/13 178/8
178/14 191/19 196/15 207/16
223/1 223/4 251/14 254/13
268/10 268/12 268/18 269/7
269/8 269/9 269/16 270/21
gets [5] 27/12 50/19 52/6
92/20 127/8
getting [14] 3/8 19/16 64/14
91/14 91/17 104/17 106/7
106/14 129/19 129/22 144/24
152/2 209/25 220/22
give [15] 25/7 51/25 52/14
52/16 57/11 59/24 74/24
82/25 82/25 88/13 113/3
113/4 127/5 135/15 190/8
given [11] 38/25 52/10 53/8
53/8 89/3 94/4 146/22 166/13
168/1 266/13 268/15
gives [10] 25/10 45/11 60/7
60/13 61/14 66/7 77/24 84/13
90/20 99/10
giving [4] 52/18 113/9 132/19
235/25
glasses [1] 108/19
Gmail [4] 70/13 71/5 80/15
237/5
go [83] 4/17 21/20 30/13 31/1
48/5 50/23 56/21 57/10 63/3
63/12 63/12 69/2 70/16 70/17
70/23 70/23 70/24 74/19 84/5
88/18 89/13 90/22 98/8 99/9
104/24 110/11 110/13 111/4
112/11 112/14 112/16 118/22
120/5 120/9 122/1 122/5
122/7 122/21 123/5 123/9
123/18 123/24 125/5 126/3

128/12 129/24 130/15 131/1
132/10 136/14 138/20 138/24
140/24 141/17 146/10 149/9
149/17 152/2 153/10 153/17
158/18 166/13 203/20 203/25
207/25 215/4 223/9 225/6
230/23 234/23 237/15 238/1
239/15 244/2 244/4 251/14
253/4 254/5 255/21 256/2
263/11 265/8 267/17
GODFREY [6] 2/3 3/12 3/13
3/15 3/19 21/11
goes [15] 24/8 27/4 28/13
37/6 38/12 42/8 90/19 97/10
124/7 183/2 185/12 197/13
226/8 226/16 226/17
going [194] 4/17 16/8 17/6
18/17 18/22 19/6 19/23 20/2
20/8 20/9 20/18 21/6 21/15
23/19 23/20 23/22 25/12
26/20 28/14 29/7 29/25 30/5
30/7 31/2 31/16 32/11 32/25
33/2 33/3 33/8 35/16 35/19
35/21 35/24 37/13 37/17
37/19 37/20 38/5 38/8 38/14
39/7 39/9 40/8 40/21 41/20
42/17 44/8 44/21 46/1 46/2
46/3 47/18 48/22 48/24 49/5
49/5 50/16 50/23 51/8 51/21
52/14 52/22 54/1 54/19 54/21
56/23 56/23 57/16 57/23
58/17 59/6 61/13 63/18 64/16
65/14 65/15 66/1 66/2 66/18
67/18 67/20 67/20 67/22
68/13 69/24 70/20 71/21 72/8
72/11 74/10 76/12 76/14
76/23 77/5 77/15 77/17 79/3
79/7 79/19 80/5 80/9 82/2
82/7 83/8 84/18 84/20 84/21
85/4 85/23 86/3 86/3 86/8
86/10 87/3 88/5 88/15 88/22
89/6 92/10 92/13 92/14 93/9
94/3 95/21 96/8 96/12 96/20
97/1 97/8 97/9 97/18 97/20
98/2 99/22 100/24 101/6
101/17 101/21 102/13 102/19
103/4 103/20 103/23 106/8
106/22 107/19 108/3 123/17
126/16 127/14 128/18 130/12
132/25 135/3 139/22 140/8
142/15 143/17 144/6 145/8
146/15 147/22 148/17 154/15
155/23 177/9 178/4 178/9
178/11 178/18 178/24 208/23
209/6 221/15 221/21 221/22
222/13 222/14 222/23 223/9
228/12 241/17 241/22 244/5
245/11 249/17 258/24 267/17
267/20 268/2 268/22 269/14
271/1
gone [3] 36/19 111/5 218/8
good [22] 3/14 3/16 4/7 14/18
27/9 28/15 33/1 56/17 57/1
59/8 82/17 109/6 111/15
122/10 134/7 141/8 141/16
141/19 165/24 166/11 166/12
216/21
GOOGLE [260] 1/6 3/22 3/24
4/1 4/3 4/25 5/5 5/9 5/14 5/16
5/19 5/23 6/1 6/6 7/4 8/1 8/6

8/12 8/14 8/24 9/12 10/4
10/11 10/25 11/4 11/7 11/14
11/20 11/23 12/1 12/13 12/15
13/18 14/2 14/13 14/15 15/2
15/3 15/5 15/9 15/15 15/18
15/19 16/2 16/6 16/21 16/25
17/7 17/9 17/13 17/13 17/18
18/8 18/13 28/7 28/13 29/3
29/13 30/3 32/5 32/11 33/11
33/25 35/3 36/24 38/5 38/7
38/14 38/14 38/17 38/19 39/7
42/5 44/7 46/14 47/3 47/16
47/19 47/19 49/10 49/12
49/17 49/22 50/11 50/13
50/21 51/2 51/12 57/15 57/17
58/21 58/23 59/3 59/7 65/12
65/14 66/6 66/16 67/3 67/7
67/12 69/7 69/17 69/21 70/3
70/6 70/15 70/16 70/18 71/1
71/3 71/5 71/5 71/6 71/7
71/11 71/12 71/17 72/1 72/10
72/14 72/21 72/23 73/2 73/24
74/1 75/13 76/2 77/1 77/5
77/11 78/7 78/10 78/21 79/20
79/22 80/1 80/6 80/14 80/15
80/19 80/22 81/1 81/6 81/7
81/12 81/17 81/20 82/8 82/18
82/20 82/21 85/10 85/25 86/2
90/2 90/3 95/13 95/17 96/9
96/12 96/12 96/17 97/22 98/2
98/3 99/7 99/8 99/13 99/22
100/17 102/6 103/2 103/3
103/6 103/10 103/13 103/25
104/3 104/22 104/22 106/20
106/21 106/25 107/3 107/10
107/11 107/14 138/21 145/7
146/7 146/8 148/17 155/15
155/19 160/19 160/23 161/15
161/19 161/21 162/17 165/14
172/8 172/17 178/2 200/17
218/5 218/7 218/14 218/21
218/24 219/13 219/21 222/4
235/19 239/16 239/17 239/21
239/22 240/1 240/4 244/16
244/19 244/24 245/2 245/20
245/22 246/10 246/11 246/14
246/18 246/22 247/3 247/16
247/20 248/4 248/10 248/12
248/14 248/23 249/7 249/8
250/4 250/19 250/19 250/23
250/24 251/2 251/18 254/11
255/10 256/3 256/8 258/3
258/13 259/22 260/1 261/1
263/2 264/15
Google's [53] 6/24 7/1 8/4
12/9 14/6 14/25 15/22 15/25
16/11 16/15 24/12 29/25
30/20 33/13 38/3 70/1 71/9
72/2 72/5 77/15 77/18 79/10
92/14 95/8 96/9 97/18 97/25
98/21 101/15 101/21 102/9
102/12 103/15 142/16 148/2
148/6 249/11 250/8 250/10
250/17 251/25 252/5 253/4
254/20 255/3 259/24 260/10
260/11 261/4 263/1 263/1
263/7 263/17
got [49] 4/8 4/22 9/11 18/6
26/18 29/24 34/7 37/13 38/2
41/12 41/15 52/19 55/9 59/8

61/4 62/11 69/3 70/21 74/9
77/20 99/1 106/13 112/20
112/22 113/8 113/13 113/17
115/17 115/25 117/21 118/3
118/25 119/24 120/8 120/20
133/14 144/15 154/5 158/22
173/17 195/9 198/25 203/22
204/6 207/4 256/6 256/6
256/7 269/12
gotten [1] 122/10
government [8] 59/24 60/13
61/6 66/7 77/23 77/24 78/5
113/3
grade [5] 57/8 59/4 110/2
110/9 110/14
graduate [2] 117/16 117/20
graduated [2] 118/6 118/10
graduating [2] 110/16 122/14
rainy [1] 247/14
grand [1] 196/10
granted [7] 57/23 152/8 152/9
236/14 236/17 247/23 265/12
grants [2] 60/9 236/5
grateful [1] 81/25
great [19] 45/5 52/15 56/12
57/3 57/21 63/13 64/3 64/12
69/19 69/23 99/15 99/15
106/5 135/10 154/6 154/7
216/23 269/6 271/8
green [1] 203/21
Gregory [1] 209/20
grew [1] 60/17
grip [1] 122/10
grossly [1] 25/24
ground [8] 5/2 5/20 6/16 6/18
10/22 18/14 25/18 36/6
grounded [1] 15/22
grounds [9] 5/2 5/6 6/12 19/2
19/8 25/6 31/11 33/7 33/10
group [3] 133/23 133/25
186/25
groups [1] 89/16
growing [1] 110/5
grows [1] 117/7
growth [1] 139/22
Guard [2] 110/22 110/24
guess [13] 19/22 46/10 52/13
56/7 63/23 116/16 122/8
125/15 125/25 152/12 191/11
198/14 268/21
guy [1] 260/16

H
H-E-D-L-O-Y [1] 108/23
had [161] 4/11 8/15 8/21 9/3
9/5 9/6 9/7 9/19 11/17 16/22
17/14 17/15 18/11 18/11
20/13 24/20 25/1 27/5 27/9
27/17 28/15 33/1 33/2 33/5
35/6 36/6 36/12 36/15 36/16
36/19 38/21 41/12 41/16 42/2
43/22 45/22 48/21 55/18
56/19 58/25 59/2 60/18 60/21
60/23 61/9 62/7 62/20 64/11
64/12 64/13 64/15 64/18 66/5
68/7 70/4 71/20 73/13 74/9
78/20 90/14 93/5 93/18 93/20
93/21 93/25 94/1 99/20 99/21
105/10 111/6 114/6 114/22
116/4 116/8 116/16 117/3

H	Case 1:13-cv-00919-JL	Document 301	Filed 08/21/23 Page 91 of 75 PageID #: 60670
<p>had... [85] 117/7 117/11 119/18 120/8 120/14 121/4 121/15 121/15 122/9 122/25 123/2 123/5 123/7 123/13 124/13 124/25 125/22 128/15 129/5 131/1 131/14 131/15 132/13 133/17 134/16 135/7 138/11 138/25 139/7 139/14 139/16 140/3 140/15 140/25 141/5 141/6 143/12 143/24 145/10 147/1 153/8 153/21 156/17 156/19 160/13 163/2 163/7 165/14 165/16 177/13 181/1 188/20 194/3 194/14 195/12 196/19 198/13 202/2 202/9 207/23 218/7 218/15 218/25 219/10 219/13 219/21 220/19 229/3 229/8 231/17 241/15 241/16 241/16 241/21 248/10 249/15 253/21 256/13 256/16 256/23 257/7 258/4 258/9 263/2 270/10 hadn't [1] 8/22 hairdresser [1] 111/18 half [4] 41/17 49/2 132/5 238/8 HALL [1] 1/18 hand [7] 45/4 53/18 108/24 127/14 127/16 139/9 153/15 handed [2] 52/11 55/11 handle [2] 51/7 97/11 handling [10] 83/12 97/11 97/13 98/25 108/17 168/18 168/24 170/1 214/11 270/17 handling' [1] 168/19 hands [2] 124/23 198/25 hangup [1] 142/20 happen [14] 14/1 44/8 54/21 81/22 112/16 115/8 125/18 126/10 127/1 154/3 243/6 246/11 246/14 255/16 happened [24] 19/7 23/23 26/16 28/11 28/12 29/11 33/20 33/21 37/3 44/14 68/5 68/22 85/5 121/20 134/5 140/22 156/20 178/16 196/24 220/19 241/8 251/22 264/8 265/10 happening [10] 21/4 22/23 26/3 35/17 36/3 37/10 37/12 64/5 111/13 118/22 happens [5] 51/10 115/9 133/1 144/6 183/3 happy [3] 130/14 155/24 244/3 hard [5] 52/6 57/24 69/9 90/2 143/3 hardest [1] 112/21 hardly [1] 109/8 hardware [2] 235/4 237/21 Harvard [21] 61/5 61/8 61/9 61/15 112/12 112/14 112/16 112/23 112/23 112/23 112/25 113/7 113/8 114/1 114/14 115/19 116/8 117/24 118/6 119/22 122/2 has [104] 4/8 4/19 4/23 10/18 14/13 15/2 15/14 16/2 16/6 17/3 17/10 18/1 18/2 18/13</p>	<p>19/1 21/12 23/2 23/16 28/7 29/5 30/1 30/23 32/10 34/12 38/4 39/3 39/4 46/11 49/22 50/8 51/3 51/5 51/13 67/14 70/13 70/13 72/25 73/23 74/3 75/14 77/13 77/14 78/24 78/25 79/11 80/4 81/15 81/15 91/19 94/4 94/9 94/15 94/18 95/6 98/11 99/1 99/2 100/16 100/21 101/2 101/3 101/4 103/21 104/22 104/25 105/2 119/12 123/21 125/12 125/13 125/18 130/2 130/3 142/2 144/5 144/25 145/23 146/8 147/17 154/8 156/12 158/25 162/6 201/14 204/6 205/8 208/14 215/9 221/19 222/21 228/3 228/8 228/9 230/3 230/13 232/22 240/12 242/4 242/5 242/6 245/13 251/10 255/14 265/6 HASTINGS [1] 2/11 have [299] having [27] 33/17 38/17 39/1 55/11 58/7 60/10 63/3 69/2 69/5 69/6 70/24 78/12 108/25 151/11 169/18 179/13 179/14 180/18 180/22 181/18 181/21 181/24 183/5 183/7 183/21 183/22 184/2 he [136] 5/23 6/9 6/11 6/17 7/11 12/4 12/25 21/20 22/18 22/18 22/19 44/10 44/10 44/10 45/9 46/19 46/20 46/22 47/5 50/5 54/12 57/19 57/25 58/1 58/2 58/11 58/13 60/16 60/17 60/18 60/20 60/20 60/21 60/24 61/3 61/4 61/4 61/5 61/5 61/7 61/9 61/14 61/15 61/16 61/17 61/17 61/18 61/19 61/22 61/24 62/1 62/2 62/3 62/4 62/5 62/6 62/7 62/8 62/11 62/12 62/15 62/16 62/16 62/21 63/10 63/14 63/20 63/22 63/25 64/14 64/20 64/21 64/22 65/4 65/18 66/17 66/18 67/3 70/13 70/14 71/24 71/25 71/25 72/1 72/2 72/3 74/9 74/10 74/11 77/20 78/5 78/7 78/20 78/22 79/1 79/1 79/1 79/21 80/25 81/2 84/17 87/24 88/18 90/8 96/16 97/21 97/22 97/23 97/24 98/2 101/2 101/3 101/3 103/21 129/18 144/24 151/24 161/17 161/19 162/1 162/2 177/4 177/4 177/5 177/7 206/18 213/21 214/25 218/17 221/25 252/17 265/6 265/7 265/16 266/4 266/5 he's [7] 54/10 57/5 78/19 101/2 101/6 218/17 219/3 head [2] 117/12 260/17 hear [65] 18/8 19/23 21/9 32/11 41/13 44/3 44/20 47/16 52/9 56/23 57/24 58/17 58/21 59/1 61/13 63/14 63/18 65/8 65/11 65/14 65/23 66/1 66/6 66/18 67/6 70/20 71/3 71/15 71/21 73/22 74/13 78/10</p>	<p>82/13 87/3 87/21 87/23 88/25 89/2 92/2 95/5 96/2 96/8 97/1 97/8 97/18 97/20 98/21 99/22 100/24 100/24 103/4 103/20 103/23 104/16 106/11 106/17 107/9 142/3 150/19 212/25 220/14 221/21 222/21 241/12 265/18 heard [25] 24/16 40/8 65/7 75/14 76/6 76/19 84/9 87/2 90/5 90/6 91/10 91/15 91/18 102/4 109/17 122/20 144/19 148/1 150/11 153/3 154/1 219/8 220/5 221/13 256/8 hearing [6] 10/15 18/10 34/6 82/22 95/22 268/22 Hedloy [96] 54/8 57/5 57/19 58/10 58/19 60/14 60/16 61/14 61/21 62/20 63/10 64/11 64/18 65/16 66/24 67/2 68/3 74/9 75/10 78/3 78/18 82/1 84/6 84/16 85/21 86/12 86/21 86/25 87/5 90/8 90/14 91/16 98/6 101/18 108/16 108/22 108/25 109/16 110/5 110/13 112/6 112/11 113/1 113/22 114/3 125/4 127/9 127/14 127/22 128/9 130/25 132/2 132/12 136/14 136/25 142/9 149/2 149/9 149/10 149/17 150/6 151/6 153/10 153/17 154/5 156/17 157/7 157/19 158/3 158/5 159/16 160/4 161/25 162/15 162/20 163/12 163/22 164/21 165/9 165/12 165/17 166/11 170/16 204/11 217/3 221/3 245/19 247/13 249/10 258/16 259/9 260/11 262/19 264/2 264/17 267/10 Hedloy's [9] 57/25 66/4 66/10 66/15 76/15 77/2 77/20 78/1 162/6 Hedloys [1] 197/25 held [13] 5/19 8/16 24/7 107/25 129/13 154/22 155/5 156/14 176/21 197/17 228/1 245/15 265/1 Hello [2] 223/21 223/22 help [6] 57/17 61/25 81/21 152/20 202/20 207/23 helped [5] 57/20 61/7 113/19 119/14 263/2 helpful [1] 268/3 helping [1] 121/13 helps [1] 21/1 her [2] 12/6 128/21 here [101] 3/9 4/13 4/14 4/17 13/17 13/25 16/2 19/3 19/8 23/6 25/6 29/24 30/7 31/11 32/10 47/7 50/2 53/21 57/6 57/15 57/21 57/25 59/3 60/9 60/16 61/3 61/4 61/16 65/4 67/14 69/23 70/10 71/23 71/24 77/11 78/3 78/9 81/11 81/16 82/18 82/20 83/2 91/8 93/19 96/14 96/16 122/20 122/23 123/20 129/24 130/15 136/25 144/12 145/23 155/14 155/16 155/16 155/20 156/2</p>	<p>161/23 163/23 164/24 168/4 170/16 171/10 173/13 177/13 177/24 177/25 191/13 194/6 204/17 205/3 209/1 210/14 211/4 211/21 215/23 224/8 233/20 234/4 247/20 248/14 248/15 248/22 252/5 254/6 254/7 254/11 254/19 254/24 255/4 256/6 256/7 262/10 262/11 262/11 262/25 269/7 269/9 269/15 here's [4] 4/22 177/9 221/3 222/13 hereby [4] 236/5 238/24 248/16 272/4 hereinafter [2] 168/18 168/21 hey [1] 105/12 Hibachi [1] 98/13 high [14] 60/19 75/14 77/13 110/2 110/15 110/16 111/8 111/8 111/16 117/23 124/22 150/18 150/20 260/15 higher [1] 75/21 highest [1] 95/12 highlight [1] 262/11 highlighted [7] 83/13 100/1 125/14 125/15 147/16 214/15 215/9 highlighting [3] 45/23 143/3 262/15 highlights [3] 211/12 211/22 224/14 him [33] 47/8 48/16 48/17 57/7 58/20 61/1 61/1 61/15 62/13 62/21 63/15 63/17 63/18 65/10 68/5 71/21 78/8 82/22 87/23 89/2 103/23 119/24 162/3 177/3 177/4 179/3 218/17 220/15 223/4 252/18 260/19 268/14 268/18 hint [1] 132/20 hired [1] 139/25 his [72] 5/7 5/19 6/17 9/8 43/6 44/14 47/6 58/11 58/13 58/20 60/23 61/7 61/14 61/16 61/19 61/25 62/3 62/4 62/8 62/11 62/16 62/20 62/24 63/10 63/10 63/16 63/25 64/3 64/4 64/10 64/11 64/16 64/18 64/19 64/23 64/25 65/11 65/18 66/11 67/2 68/6 72/2 72/8 72/12 74/9 74/10 74/12 75/12 77/21 78/2 78/4 78/4 78/8 78/19 79/9 86/21 88/10 89/1 90/8 101/19 110/23 117/12 119/23 129/21 143/13 161/19 162/3 177/6 177/7 178/3 244/2 268/6 history [14] 115/21 197/23 198/16 203/8 203/16 217/19 218/5 218/23 219/3 219/4 221/2 221/10 222/4 222/5 hit [1] 125/23 HjemPC [1] 134/22 hold [5] 57/17 59/6 146/17 155/23 199/21 holder [1] 145/25 Holding [8] 197/11 198/5 199/16 199/18 199/21 199/24 200/5 200/22</p>

H	I	implication [5] 146/5 147/5 217/24 218/20 224/6	215/6 215/16 215/25 216/3 216/11 224/13 226/14 227/1 227/7 251/16 255/6 258/1 262/13
<p>Holdings [2] 198/23 199/1 holes [2] 117/9 117/13 home [5] 110/6 116/20 127/6 127/8 269/13 homepage [1] 138/22 HomePC [3] 134/20 134/21 134/22 homework [1] 114/23 Honor [104] 3/14 3/16 3/18 3/20 4/5 14/17 18/9 19/21 20/4 21/10 22/4 22/5 22/14 22/21 24/16 26/6 26/12 34/19 35/13 39/11 40/25 41/4 41/5 41/8 45/4 47/17 48/20 51/1 52/4 54/5 55/3 55/4 55/15 55/18 56/8 56/12 56/15 68/1 69/10 108/12 128/3 129/6 130/23 136/18 136/20 144/9 144/10 144/17 147/11 148/22 149/1 149/4 149/5 149/6 149/25 154/11 155/1 156/15 157/11 159/20 161/7 162/13 163/16 165/3 165/18 176/17 189/22 190/25 197/13 197/21 203/17 208/10 216/24 217/8 220/20 221/13 223/7 223/11 223/13 223/16 226/16 227/20 228/5 243/23 244/1 245/4 245/7 245/16 249/1 251/5 251/12 258/23 259/5 264/19 264/23 265/14 266/20 267/8 268/4 269/18 270/5 270/7 270/11 271/7 Honor's [2] 220/17 269/19 HONORABLE [1] 1/18 hood [9] 89/7 89/15 89/18 89/19 89/25 90/2 90/2 97/25 102/10 hoods [1] 89/13 hopefully [3] 14/10 270/24 271/1 horizon [1] 64/4 host [1] 87/14 hour [4] 56/3 56/4 56/5 143/8 hours [6] 4/9 35/8 41/21 110/3 114/21 268/15 house [4] 140/2 155/19 155/21 155/25 how [91] 4/22 23/15 29/24 29/25 30/1 30/8 31/12 36/4 36/11 37/14 37/18 37/19 42/20 43/13 45/10 48/10 51/6 53/17 56/2 57/22 62/16 62/22 62/23 70/9 71/16 71/19 74/20 78/17 79/19 81/8 86/6 87/24 87/25 90/7 91/9 96/8 102/11 102/12 103/3 103/9 103/11 106/24 110/8 112/16 112/25 114/3 114/8 116/11 118/6 120/1 121/21 123/22 123/24 131/1 131/5 131/18 133/6 135/23 139/21 140/4 142/19 146/21 151/24 154/5 159/13 164/3 164/18 170/3 177/9 188/3 188/10 193/17 194/10 198/25 202/9 212/23 221/3 223/9 229/6 229/9 229/10 233/20 234/9 241/5 241/16 243/1 243/13 243/17 257/23</p>	<p>268/7 270/17 however [6] 5/16 6/5 6/11 10/3 12/15 39/4 148/11 178/3 hub [2] 118/17 118/18 huge [3] 121/5 132/23 133/3 hundred [2] 117/11 222/15 hundreds [2] 121/16 158/11 hypothetical [9] 13/9 42/10 43/1 43/4 43/10 43/20 44/6 44/11 44/16</p> <hr/> <p>I</p> <p>I'd [3] 189/20 251/21 265/18 I'll [13] 19/24 69/1 72/6 105/8 109/13 127/16 222/21 223/5 227/23 240/13 245/21 269/23 271/3 I'm [62] 4/13 11/14 11/20 12/4 19/22 19/23 34/6 38/1 40/22 44/20 52/16 57/3 67/18 79/3 82/15 82/18 83/17 107/9 107/12 110/10 111/6 113/24 113/25 115/6 117/11 123/16 123/20 127/14 129/23 132/4 132/7 132/8 143/15 150/20 155/24 165/22 167/25 173/17 178/9 190/21 191/3 198/14 207/22 208/22 210/13 222/15 228/11 230/24 236/11 237/18 238/7 239/13 239/19 240/10 245/10 245/11 246/7 249/17 249/17 253/9 267/20 269/14 I've [8] 4/8 18/6 38/25 41/11 55/10 148/1 189/2 269/13 IBM [1] 116/2 icon [1] 168/20 idea [19] 8/21 9/5 52/15 54/19 62/25 86/13 92/11 123/19 127/9 127/10 128/15 129/5 131/1 135/17 137/17 143/22 225/16 225/21 234/9 ideas [2] 52/21 141/10 identical [7] 6/21 13/23 89/22 91/7 228/9 232/14 240/12 identified [8] 86/22 86/23 86/24 88/11 186/22 210/24 228/10 256/12 identify [8] 49/20 185/25 186/7 186/14 187/3 210/22 215/10 215/15 identifying [1] 90/25 IDS [2] 205/20 205/25 ignore [1] 260/6 ignores [1] 145/6 illustrating [1] 169/25 illustration [1] 170/21 illustrations [1] 66/21 image [2] 125/4 125/6 imagine [1] 13/8 immediately [1] 35/20 impact [2] 25/20 83/3 impacted [2] 45/21 49/14 impacting [1] 64/7 impaneled [1] 41/14 impeach [2] 178/4 179/2 impeachment [4] 176/18 176/24 178/2 178/22 implement [2] 195/9 195/10 implemented [3] 195/13 195/14 214/11</p>	<p>imply [1] 146/25 implying [1] 145/25 import [1] 236/8 important [23] 20/8 58/20 59/12 64/18 65/22 71/7 71/11 81/24 82/7 84/4 84/8 84/15 84/25 85/15 85/17 92/13 175/14 176/7 180/5 214/21 215/14 234/14 234/14 importantly [2] 65/19 100/6 impression [5] 25/7 25/10 147/4 218/9 219/20 impressions [1] 220/1 improper [3] 15/23 146/5 176/17 improperly [1] 39/8 improve [1] 61/25 improved [1] 62/4 Inc [1] 163/11 include [5] 10/9 15/21 35/7 36/18 151/1 included [14] 5/21 5/23 18/15 26/9 120/6 121/5 134/24 172/3 173/8 184/8 208/6 229/24 233/12 233/21 includes [6] 15/17 41/24 137/2 185/16 201/23 240/3 including [18] 5/11 11/11 18/5 18/7 38/5 71/24 112/22 113/6 113/9 140/21 141/25 197/23 200/10 235/4 237/21 238/25 248/17 267/21 income [1] 140/1 incompatible [1] 99/5 inconsequence [2] 102/1 174/16 inconsistent [8] 10/10 146/12 148/3 177/2 178/3 178/6 178/7 178/15 incorporate [1] 99/13 incorporated [1] 71/3 incorporates [1] 71/1 incorrect [4] 160/16 222/9 247/1 247/2 incumbent [1] 17/9 independent [1] 9/16 India [1] 118/21 indication [1] 24/25 individual [4] 66/20 96/18 134/14 134/15 individuals [1] 121/3 industry [4] 67/13 81/18 101/1 202/9 inferences [1] 23/15 information [70] 37/15 51/2 51/21 52/5 52/17 52/19 58/3 58/7 64/1 65/3 66/13 66/25 67/19 81/7 86/14 88/13 91/2 92/9 123/21 124/3 135/23 150/23 150/24 151/10 152/19 154/16 155/18 168/23 169/9 169/9 169/10 169/13 170/15 171/18 174/22 184/14 184/16 184/20 185/4 185/5 185/5 185/6 185/8 185/9 185/11 185/12 185/16 185/17 185/22 191/20 193/8 205/18 205/25 213/9 213/13 214/11 214/13</p>	<p>215/6 215/16 215/25 216/3 216/11 224/13 226/14 227/1 227/7 251/16 255/6 258/1 262/13 infringe [1] 75/25 infringed [8] 31/19 49/4 72/14 73/4 73/24 102/25 105/21 260/1 infringement [30] 15/10 27/7 27/11 31/18 42/7 73/8 73/9 73/11 73/19 73/20 73/24 96/7 102/5 102/8 102/20 102/21 104/10 104/12 107/4 154/9 230/3 230/4 232/5 242/4 242/12 246/2 246/12 246/19 246/23 268/5 infringes [2] 79/22 261/2 infringing [22] 27/3 27/16 28/4 28/20 30/4 30/16 42/17 42/18 43/11 48/12 48/12 50/20 80/19 95/17 104/14 160/13 244/17 244/20 245/24 249/25 250/11 250/20 initial [4] 140/4 160/6 163/8 225/22 initials [2] 228/21 228/23 initiate [3] 174/6 225/8 225/10 input [37] 93/21 93/24 96/25 101/24 170/24 173/25 174/4 174/11 174/21 175/5 175/11 175/18 176/8 176/9 176/15 179/13 179/14 179/22 180/23 181/13 181/15 181/19 181/20 181/20 181/22 182/9 182/15 183/6 183/6 183/21 183/22 183/23 184/11 226/23 227/2 227/7 263/5 inputting [1] 170/1 inquiries [1] 129/21 insert [3] 90/16 193/5 193/8 inserted [2] 171/11 171/19 inserting [1] 216/2 insertion [3] 215/25 216/6 216/10 inside [9] 92/11 93/13 93/15 95/2 99/6 103/5 122/9 131/9 187/25 inspected [2] 258/4 258/8 installations [1] 80/10 installed [9] 47/9 51/14 137/20 239/12 249/12 249/13 249/24 266/6 267/1 installing [3] 80/12 80/15 81/8 instance [1] 182/2 instead [6] 12/5 63/3 99/9 136/1 198/23 226/25 instituted [1] 5/2 institution [1] 29/12 instructed [3] 17/8 23/4 72/13 instruction [17] 17/10 17/13 17/14 17/15 31/10 32/3 32/4 33/23 34/14 35/5 35/20 40/18 40/22 72/15 141/23 148/13 220/17 instructions [35] 16/10 17/2 17/11 17/17 17/20 32/1 90/14 92/18 92/23 93/13 94/10 94/16 94/19 94/24 95/2 95/8 96/18 96/20 97/5 97/5 97/11 97/11 97/14 97/15 98/5 99/2</p>

instructions... [9] 99/5 100/19
 101/8 101/12 101/13 101/16
 103/5 103/7 171/18
 integrate [1] 71/8
 Integrating [2] 209/21 211/6
 integration [2] 161/8 211/10
 intellectual [5] 60/5 141/3
 141/10 197/9 247/9
 intelligently [1] 191/22
 intend [4] 73/3 248/3 248/22
 250/3
 intended [6] 4/11 9/1 29/3
 29/5 33/11 94/11
 intending [1] 14/15
 intends [4] 11/4 12/2 12/15
 13/18
 intensive [1] 114/19
 intent [7] 21/16 33/13 160/22
 161/13 162/6 162/16 248/8
 intention [1] 162/4
 intentional [2] 73/12 73/21
 intents [4] 97/11 97/12 97/13
 98/25
 inter [5] 8/19 10/21 31/21
 145/13 146/2
 inter partes [1] 10/21
 interest [16] 60/19 60/21 62/7
 63/16 64/3 115/2 134/1 206/9
 206/24 210/8 215/2 216/19
 227/18 252/11 253/23 255/24
 interested [8] 61/18 104/6
 112/2 112/3 116/24 133/15
 133/24 243/7
 interesting [1] 256/4
 Interestingly [1] 83/14
 internal [1] 72/2
 Internet [7] 135/3 135/16
 135/18 138/20 151/23 211/19
 213/13
 interpretation [2] 12/9 33/18
 interprets [1] 191/23
 interrupt [1] 143/23
 intimately [1] 94/2
 introduce [13] 8/15 19/25
 23/18 23/19 23/19 25/1 34/8
 37/2 39/10 57/7 105/13 109/6
 109/15
 introduced [3] 37/13 63/7
 135/8
 introducing [1] 20/24
 introduction [1] 8/4
 intuitive [1] 70/23
 invalid [10] 21/15 24/9 27/6
 27/10 27/17 28/19 38/15
 100/24 105/20 107/17
 invalidate [11] 21/25 22/24
 22/25 27/1 27/20 33/6 77/15
 146/13 146/18 230/15 230/20
 invalidated [3] 28/4 29/15
 265/12
 invalidating [2] 38/20 76/15
 invalidity [18] 5/6 6/12 6/16
 6/18 7/1 12/10 20/2 20/15
 21/22 22/2 22/5 22/10 23/7
 24/14 33/1 38/11 39/9 246/2
 invent [7] 65/15 85/16 86/7
 89/5 93/7 102/17 107/7
 invented [9] 57/19 65/18 66/7
 66/17 66/19 83/25 85/16

85/24 86/12
 invention [65] 11/19 13/13
 57/20 57/25 58/1 58/9 58/11
 58/13 58/19 60/12 63/10
 64/23 66/5 66/16 69/5 74/9
 75/8 77/14 77/20 78/2 78/8
 78/21 81/15 84/13 91/20
 91/25 92/4 93/10 97/17 97/25
 98/1 101/2 102/11 103/5
 122/23 124/2 128/2 128/24
 145/1 151/6 168/16 168/17
 169/17 170/3 172/4 172/22
 173/1 175/17 176/10 176/14
 180/14 182/8 188/23 190/21
 190/22 190/23 191/6 191/7
 191/18 192/12 261/17 263/8
 263/12 264/5 264/7
 inventions [2] 59/22 141/14
 inventive [2] 124/20 149/11
 inventor [5] 57/5 83/23 109/16
 122/21 221/21
 inventors [3] 59/16 59/19
 77/22
 invest [1] 192/17
 investment [3] 64/14 64/15
 190/8
 investors [3] 140/3 140/14
 197/25
 invoke [1] 90/14
 involved [9] 42/14 91/14 92/8
 92/9 94/2 144/24 162/1
 202/17 203/9
 involves [2] 11/16 75/21
 involving [2] 6/18 197/24
 iOS [1] 230/5
 IP [1] 250/11
 iPhones [2] 160/12 160/15
 IPR [74] 4/20 5/1 5/3 5/6 5/14
 6/10 6/13 6/14 6/16 6/20 7/10
 7/16 7/23 8/9 10/11 11/15
 11/19 11/22 11/24 12/13 13/8
 13/10 13/11 13/14 13/24 14/8
 18/3 18/15 18/19 19/3 19/5
 20/1 20/7 20/23 20/24 21/16
 22/13 23/8 23/15 23/23 24/22
 25/8 25/11 26/4 26/24 27/9
 28/22 29/3 30/7 33/11 33/24
 34/8 35/25 38/9 38/10 38/16
 38/18 38/21 38/22 38/22 39/2
 39/3 39/8 39/10 144/18 146/4
 147/19 148/3 148/4 219/4
 220/6 220/11 222/3 222/16
 IPRs [2] 25/3 218/4
 irrelevant [2] 161/13 255/17
 irrevocable [1] 236/6
 irrevocably [1] 238/24
 is [737]
 Isaacs [1] 119/23
 ish [1] 116/3
 isn't [7] 22/13 35/7 44/6 66/15
 183/3 255/17 255/18
 issue [68] 4/21 6/6 7/8 7/11
 7/16 7/23 8/23 9/11 9/24
 10/16 14/9 14/14 14/19 14/20
 15/2 15/4 15/11 16/7 16/22
 16/23 17/11 17/20 17/24 18/1
 18/4 18/10 19/2 21/12 24/19
 27/1 27/17 29/17 31/4 31/17
 33/3 38/8 38/11 38/13 39/3
 39/8 41/7 43/22 44/5 44/18

48/7 49/13 49/22 50/24 54/9
 58/16 74/18 75/2 75/12 91/23
 91/23 144/18 145/3 145/4
 145/18 148/11 155/13 155/18
 161/24 164/5 177/13 217/8
 251/15 253/21
 issued [15] 60/14 65/19 74/3
 74/7 76/3 76/8 76/12 83/14
 91/9 95/4 100/15 102/22
 147/8 167/10 202/15
 issues [8] 9/18 18/25 35/18
 43/19 48/16 48/18 148/5
 269/12
 it [748]
 it's [149] 4/11 14/12 16/23
 17/6 18/3 18/18 19/6 20/24
 21/17 21/18 23/9 23/10 26/8
 27/12 27/13 27/21 28/11 29/8
 29/21 29/23 32/4 33/25 34/12
 36/10 39/23 39/23 39/23 40/4
 40/5 40/5 41/1 41/8 43/7
 43/14 44/7 45/2 45/13 45/19
 46/1 46/14 48/20 52/18 59/3
 60/4 63/13 65/17 65/19 66/16
 70/18 73/5 75/24 77/1 77/23
 77/25 78/6 78/16 82/24 83/9
 84/1 85/14 88/22 91/18 92/16
 95/14 95/18 96/7 97/5 98/17
 98/18 98/24 99/16 102/4
 102/17 109/11 109/24 111/22
 113/24 119/4 120/11 120/11
 120/25 125/15 125/15 126/2
 126/2 126/4 127/23 128/6
 128/11 129/22 132/23 132/23
 132/25 136/21 137/10 138/17
 138/22 142/17 143/13 147/21
 147/25 150/3 151/14 152/16
 152/22 153/14 155/23 157/14
 158/23 158/24 159/23 163/19
 165/6 169/4 170/9 170/11
 176/25 177/20 178/7 178/13
 178/14 180/5 181/6 182/17
 182/20 183/4 185/7 188/8
 189/23 199/4 203/2 203/18
 205/8 208/11 216/23 218/5
 219/23 226/18 233/24 236/11
 236/18 239/13 239/16 239/19
 261/10 262/16 263/12 268/10
 269/22
 item [2] 88/18 191/22
 items [3] 42/1 45/14 262/23
 its [89] 8/2 8/11 8/13 10/19
 12/11 14/13 15/4 15/15 15/22
 16/1 16/17 18/13 26/8 30/4
 30/21 47/20 50/19 57/4 57/15
 63/7 64/4 67/8 67/15 68/8
 68/8 68/9 68/10 68/14 68/17
 68/21 69/5 70/8 71/4 71/8
 72/16 73/24 74/25 76/24
 76/25 77/12 77/14 77/18 80/1
 80/14 81/8 81/12 82/9 86/19
 88/1 91/9 91/20 91/25 92/1
 92/4 93/10 93/16 95/6 100/17
 101/7 103/12 107/11 108/15
 144/25 156/22 164/18 193/20
 197/23 198/16 199/19 200/6
 208/7 218/25 230/5 235/6
 236/4 236/5 236/13 236/14
 236/17 238/23 238/25 247/22
 247/23 247/24 248/17 250/18

251/3 264/14 269/23
 itself [32] 3/17 65/5 94/21
 83/10 84/21 84/23 86/18
 90/10 104/22 104/25 105/2
 117/9 137/4 157/25 161/1
 161/12 161/14 169/23 170/6
 214/15 216/14 217/19 218/5
 218/7 218/14 218/21 226/25
 236/4 236/13 238/23 247/22
 257/12

J

James [1] 89/2
 January [2] 133/1 205/21
 January 26 [1] 205/21
 Japanese [1] 98/13
 JENKINS [1] 1/22
 JENNIFER [1] 1/18
 Jim [1] 89/2
 JLH [1] 1/5
 JMOL [1] 50/21
 job [2] 115/15 257/24
 jobs [2] 61/9 113/11
 JOHN [2] 2/3 3/15
 join [1] 119/16
 journey [1] 61/21
 Judge [15] 1/18 5/7 5/8 5/19
 6/5 7/1 7/7 8/5 8/15 9/7 9/10
 9/21 10/10 12/3 12/6
 Judge Noreika [1] 12/6
 Judge Stark [10] 5/7 5/19 7/1
 7/7 8/5 8/15 9/7 9/10 9/21
 12/3
 Judge Stark's [3] 5/8 6/5
 10/10
 judgment [7] 5/5 7/13 15/13
 16/3 16/19 16/23 17/6
 judicial [4] 84/9 91/10 147/14
 258/18
 July [11] 83/16 127/12 129/3
 166/24 200/2 204/14 206/9
 207/11 208/20 242/7 252/10
 July 2006 [1] 242/7
 July 22 [4] 206/9 207/11
 208/20 252/10
 July 29 [3] 83/16 166/24
 204/14
 juries [1] 23/3
 juror [2] 39/6 142/6
 jurors [8] 4/16 55/11 69/9
 132/18 141/25 142/3 150/6
 150/11
 jury [101] 1/11 4/16 7/20 7/24
 9/22 16/9 16/10 16/13 17/2
 17/7 17/10 17/10 17/12 17/17
 18/22 18/25 19/7 22/8 22/9
 23/2 23/3 23/14 23/22 25/7
 25/13 25/20 25/23 27/4 27/24
 29/13 29/19 29/20 31/9 31/23
 32/17 33/4 33/5 33/17 33/22
 35/22 36/4 37/11 37/14 37/21
 38/24 39/7 39/17 40/18 41/14
 51/25 52/6 52/13 54/20 55/21
 56/13 56/16 56/18 57/2 81/11
 81/24 82/24 109/7 109/15
 128/10 136/25 141/20 142/4
 142/8 144/5 144/15 145/8
 146/5 147/3 147/19 147/22
 148/9 148/14 148/20 148/23
 153/11 154/15 157/19 160/4

jury... [18] 162/11 163/22
 165/10 178/8 184/19 194/5
 199/10 208/14 217/2 223/15
 223/17 257/9 257/9 260/6
 267/15 267/23 267/24 268/15
 jury's [2] 20/13 30/7
 just [133] 8/5 9/17 18/19 19/4
 19/16 20/22 21/2 21/20 21/21
 22/5 22/15 23/2 23/25 24/20
 26/1 26/14 26/15 27/11 28/25
 29/10 35/16 36/17 37/1 37/6
 39/21 40/7 43/7 44/9 45/13
 45/21 46/1 46/1 46/2 46/3
 46/7 46/14 47/13 48/14 48/23
 52/5 52/8 52/8 52/16 53/19
 55/18 55/22 56/1 66/17 67/8
 73/19 80/18 81/10 81/18
 82/15 83/21 88/24 90/5 90/6
 92/3 93/4 93/8 95/19 96/23
 97/18 99/16 99/24 102/4
 106/2 106/9 106/9 114/21
 118/2 123/11 124/1 124/9
 124/24 126/2 126/6 126/13
 128/1 128/19 128/20 128/21
 130/1 132/21 135/17 141/22
 143/1 143/24 144/1 144/6
 147/12 147/25 149/14 149/20
 154/23 155/18 157/25 164/10
 165/21 166/17 167/12 171/4
 179/2 184/19 186/3 186/10
 186/23 187/5 192/11 196/19
 203/4 208/14 208/22 217/18
 218/18 219/8 223/1 228/12
 237/20 240/13 244/1 244/6
 245/20 251/14 253/15 253/17
 253/21 259/1 266/6 266/24
 268/13 268/17

K
 KALPANA [3] 2/5 3/11 57/2
 KAMBER [3] 2/13 3/25 82/19
 KATZENSTEIN [1] 1/22
 keep [14] 30/19 37/20 37/23
 38/9 58/9 59/23 84/4 107/6
 107/18 140/8 142/1 155/25
 167/12 244/6
 KEMPER [3] 2/4 3/19 108/16
 kept [1] 117/10
 key [1] 71/4
 keyboard [1] 168/20
 kick [1] 54/20
 Kidder [2] 103/21 106/22
 kind [12] 26/8 62/14 73/5
 98/10 98/10 115/10 115/18
 120/13 140/2 201/15 219/7
 251/3
 kinds [8] 72/1 98/16 100/20
 116/21 117/14 121/11 151/1
 153/3
 King [1] 1/16
 King's [2] 110/22 110/24
 kitchen [6] 98/11 98/11 98/22
 98/24 100/22 113/14
 knew [17] 26/20 30/4 31/3
 31/15 32/11 32/12 36/24 47/7
 49/5 73/13 73/13 116/9
 119/19 153/13 202/21 256/18
 256/20
 know [106] 14/1 19/16 21/14

22/3 22/22 23/2 23/5 23/6
 23/15 26/23 27/20 30/12
 30/18 30/21 30/23 30/23 31/3
 31/17 32/2 32/10 32/13 32/17
 32/21 32/21 40/7 43/13 48/10
 49/12 50/5 53/2 55/19 57/8
 59/8 70/8 73/3 73/7 73/8
 73/12 74/20 77/19 78/10
 82/24 86/7 108/7 113/14
 114/8 114/8 116/8 117/5
 117/14 118/9 118/21 121/15
 126/9 127/12 128/22 129/20
 132/9 135/22 139/3 140/17
 142/19 143/3 146/25 147/5
 147/23 151/20 152/23 152/23
 155/14 156/2 157/8 163/13
 168/9 170/10 177/1 178/13
 189/3 191/9 193/18 195/15
 196/23 207/4 213/20 218/1
 218/13 219/2 220/20 220/23
 221/5 223/2 224/6 233/20
 234/5 234/8 234/13 238/8
 239/20 243/4 243/5 243/6
 243/13 243/17 268/7 270/14
 270/23
 knowing [4] 32/20 67/9 67/10
 73/25
 knowledge [4] 93/8 195/18
 196/17 209/22
 Knowledge-Based [1] 209/22
 known [6] 63/11 63/21 84/16
 86/20 93/1 111/14
 knows [1] 112/25

L
 lab [1] 121/16
 label [1] 121/3
 lacked [1] 32/22
 ladies [13] 56/18 57/1 81/11
 82/17 130/21 141/20 154/14
 162/11 179/9 199/10 216/25
 260/6 267/15
 LAHAD [2] 2/3 3/15
 laid [2] 12/6 58/16
 land [1] 60/6
 language [7] 169/1 174/2
 174/15 180/3 187/16 187/20
 224/19
 large [2] 115/23 234/19
 Las [2] 63/11 131/22
 Las Vegas [1] 131/22
 last [35] 4/9 18/5 18/6 24/2
 24/12 25/15 35/2 36/12 36/16
 68/20 77/25 80/3 80/4 82/9
 83/9 116/4 130/4 130/9
 137/22 140/4 188/6 188/6
 211/21 215/23 217/18 218/8
 220/18 226/7 245/8 250/8
 265/9 265/15 265/18 265/22
 265/23
 lasted [1] 140/5
 late [10] 9/18 16/23 18/6
 21/17 21/18 23/9 24/20 24/22
 56/19 63/9
 later [18] 26/19 31/25 41/21
 52/10 63/19 69/25 70/11
 73/17 78/15 82/22 83/23
 133/25 142/14 179/25 184/13
 262/7 263/25 269/14
 launch [3] 29/16 42/16 131/19

launched [7] 36/25 62/12
 62/25 64/12 85/7 93/25
 131/20
 launching [1] 31/7
 law [9] 10/20 16/14 16/18
 22/10 23/4 128/14 128/19
 155/8 258/25
 laws [1] 84/13
 lawsuit [11] 156/18 156/20
 163/8 200/17 231/3 231/10
 231/13 244/16 244/21 249/8
 250/25
 lawsuits [2] 158/25 159/3
 lawyer [8] 57/3 90/7 99/24
 100/3 111/18 155/14 156/2
 238/7
 lawyers [4] 86/9 207/24 208/2
 245/2
 lay [1] 161/20
 leader [1] 121/13
 leading [2] 122/10 257/13
 leads [2] 23/16 81/4
 lean [1] 109/14
 learn [18] 57/8 57/10 59/4
 59/25 60/24 61/17 88/3 90/25
 92/14 92/14 94/3 96/20 97/9
 99/4 99/7 110/8 116/23
 151/23
 learned [2] 62/3 225/25
 learning [3] 61/2 110/9 116/24
 least [33] 7/7 11/15 13/1 18/7
 18/12 32/15 33/6 38/17 51/5
 52/24 68/20 108/5 119/24
 120/15 127/13 131/11 133/1
 142/21 142/23 143/3 144/19
 164/25 184/15 185/16 215/6
 215/15 215/25 216/11 219/23
 234/14 241/11 241/13 242/23
 leave [8] 54/20 147/3 154/17
 157/3 178/5 222/15 267/12
 267/13
 leaves [1] 146/5
 lectures [1] 114/23
 led [5] 88/25 111/9 120/4
 122/22 218/2
 Leeds [1] 111/6
 left [21] 61/16 84/1 86/4 102/7
 113/24 125/6 126/11 126/12
 137/2 139/9 143/1 143/4
 150/8 153/15 155/18 157/21
 204/10 218/20 243/21 253/15
 253/17
 left-hand [2] 139/9 153/15
 legal [4] 237/8 239/19 251/2
 260/3
 legalese [1] 236/12
 legally [1] 84/8
 length [1] 268/13
 lengthy [2] 268/7 271/1
 less [3] 12/4 49/1 193/19
 lesson [1] 59/4
 lessons [1] 57/9
 let [23] 19/24 44/3 44/20
 47/16 57/12 69/18 105/13
 124/23 129/11 157/8 163/13
 176/19 177/15 189/1 189/3
 197/15 197/19 207/4 224/6
 264/24 265/21 267/17 271/3
 let's [29] 3/9 4/9 4/18 14/19
 18/7 21/9 41/13 55/5 56/13

95/11 109/10 125/6 142/4
 144/6 159/10 162/25 170/6
 175/10 211/2 214/5 223/19
 232/10 237/15 242/3 244/7
 246/7 248/12 259/1 265/6
 lets [2] 124/2 191/19
 letter [25] 9/4 9/11 14/25
 15/15 16/11 34/20 35/3 45/1
 63/3 63/5 88/16 88/20 91/6
 91/7 91/8 104/4 123/4 123/15
 123/20 124/25 135/11 137/2
 171/23 223/1 223/4
 letters [8] 4/20 14/10 14/21
 18/6 38/2 41/11 123/3 222/22
 letting [1] 43/16
 level [5] 95/12 124/22 150/18
 150/20 260/15
 liberal [1] 111/22
 library [1] 94/11
 license [65] 14/20 15/3 16/3
 16/7 16/7 16/17 16/21 17/13
 17/14 17/21 38/6 43/3 43/7
 67/17 68/22 79/2 104/15
 105/7 106/24 146/23 151/25
 156/21 156/22 157/22 159/7
 159/9 159/11 159/13 159/19
 160/7 161/18 162/20 163/25
 164/4 164/15 164/18 201/2
 231/15 233/13 234/3 235/25
 236/3 236/7 236/14 236/17
 237/2 238/3 238/22 241/6
 245/19 245/21 246/19 247/8
 247/9 247/23 248/4 248/11
 248/23 250/3 250/8 250/9
 266/5 266/8 266/9 266/25
 licensed [29] 15/10 15/18
 15/24 16/1 106/4 106/6 229/6
 229/12 233/4 234/5 234/10
 234/25 236/7 236/9 236/20
 236/21 237/3 237/11 237/18
 238/4 238/5 238/6 238/8
 239/4 239/11 243/1 248/1
 248/21 267/3
 licensee [10] 235/6 236/5
 236/14 236/15 236/17 236/18
 238/25 247/23 247/24 248/17
 licensees [2] 246/18 246/23
 licenses [10] 51/4 52/25 159/4
 201/5 201/16 201/17 244/2
 244/5 245/8 247/4
 licensing [4] 163/4 198/6
 198/24 247/10
 licensor [4] 236/4 236/13
 238/23 247/22
 lies [1] 89/19
 life [4] 62/20 82/25 125/15
 201/21
 lifetime [1] 193/20
 light [7] 20/18 38/8 40/23
 72/17 102/22 268/20 269/6
 like [66] 11/13 18/24 19/4
 23/14 30/22 33/21 35/20
 39/22 51/7 55/22 60/3 60/5
 63/15 63/21 63/22 63/24
 65/16 66/13 73/5 73/19 80/15
 82/5 82/23 87/18 88/23 90/17
 97/1 97/2 98/13 98/21 98/25
 104/2 112/7 114/2 114/20
 115/5 117/10 121/2 125/23
 132/21 133/5 134/18 135/11

like... [23] 135/25 138/17
 138/21 138/21 139/6 154/1
 158/16 161/19 175/13 178/5
 184/20 185/9 187/21 189/20
 201/23 243/22 251/21 263/18
 265/18 266/3 266/10 268/2
 269/24
 liked [3] 115/3 115/12 135/6
 likely [4] 72/18 73/21 73/23
 75/24
 Likewise [2] 11/20 44/12
 limine [10] 7/25 8/12 9/25
 10/1 10/7 21/13 24/24 24/25
 29/6 197/22
 limitation [3] 71/17 71/17
 216/9
 limitations [5] 11/18 214/9
 226/10 227/12 254/23
 limited [15] 14/13 32/14 55/19
 59/16 77/24 78/1 137/23
 197/11 199/16 199/18 199/25
 200/5 200/22 259/18 262/2
 Limited's [1] 199/21
 limiting [3] 32/4 33/23 34/14
 line [12] 32/9 42/1 45/14
 47/18 137/14 190/15 190/15
 204/17 247/21 247/22 248/16
 269/12
 lines [1] 138/13
 lining [1] 140/19
 list [11] 4/19 14/20 19/15
 24/22 29/5 112/20 129/15
 130/2 143/1 209/14 257/2
 listed [11] 80/7 229/11 233/11
 233/15 233/18 233/22 233/25
 242/19 243/14 243/18 253/22
 listen [3] 37/21 98/8 107/5
 listening [1] 83/4
 listing [2] 205/21 209/5
 lists [5] 153/12 167/16 233/7
 234/19 256/3
 litigated [1] 26/18
 litigating [3] 231/3 231/10
 231/13
 litigation [21] 5/4 6/19 67/16
 79/5 82/2 95/7 105/11 105/14
 106/19 158/18 158/19 158/20
 172/17 201/20 201/23 231/20
 241/3 241/8 241/17 241/21
 241/24
 little [26] 28/8 50/1 59/10
 60/15 67/12 69/20 71/23 90/5
 90/6 90/24 104/1 109/8
 109/14 109/25 115/9 119/19
 126/20 126/21 132/19 133/15
 138/12 139/19 142/16 148/11
 203/20 262/7
 live [2] 109/20 187/25
 lived [1] 110/1
 lives [1] 70/7
 living [1] 113/5
 LLC [1] 1/6
 LLP [2] 1/22 2/3
 loan [1] 113/4
 local [2] 135/11 151/21
 location [1] 99/19
 logistics [1] 269/20
 London [2] 118/20 122/18
 long [23] 15/14 21/13 26/2

53/6 56/2 62/11 68/6 78/11
 78/16 81/16 85/2 86/20 89/16
 97/3 100/25 120/1 121/21
 131/5 140/4 158/19 158/22
 241/16 268/7
 long-time [1] 100/25
 longer [4] 48/15 49/24 64/17
 115/9
 longest [1] 72/7
 look [78] 24/1 30/22 33/1
 33/19 35/20 46/18 53/3 61/1
 71/21 80/3 84/15 84/18 86/8
 86/10 86/14 87/18 88/12
 88/19 88/22 89/7 89/15 90/1
 90/22 92/7 92/17 102/10
 109/13 135/11 135/17 135/18
 149/17 163/12 164/21 165/9
 168/13 168/14 169/21 170/6
 171/3 171/4 175/10 203/2
 205/7 206/18 207/2 207/3
 209/12 211/2 211/3 211/24
 212/7 214/5 214/6 215/20
 217/21 218/13 222/19 226/7
 227/17 228/7 232/10 237/12
 238/14 240/7 242/3 242/15
 247/12 251/21 252/3 252/4
 252/23 254/19 257/9 257/10
 257/10 262/6 268/2 270/8
 looked [27] 71/25 72/1 74/13
 74/23 74/24 75/9 75/10 76/17
 79/1 80/25 89/20 97/24
 153/14 166/17 172/20 193/25
 207/10 207/24 213/12 213/16
 213/21 237/15 248/12 250/9
 252/2 252/19 262/25
 looking [10] 53/11 64/14 91/2
 108/2 150/6 163/23 181/12
 190/7 218/22 223/23
 looks [9] 77/8 90/18 90/19
 91/7 97/1 97/2 114/2 152/12
 152/13
 lose [1] 16/18
 lost [1] 25/16
 lot [27] 57/24 63/8 64/3 64/8
 66/2 72/8 75/10 75/10 79/25
 80/16 88/23 96/8 99/18 115/4
 115/23 116/19 118/9 121/18
 135/7 152/5 158/11 158/24
 164/10 188/14 188/19 188/20
 241/8
 lots [4] 94/7 94/7 133/20
 269/12
 loud [3] 53/3 67/23 76/24
 lucky [1] 110/23
 lunch [7] 56/10 108/4 108/6
 141/17 142/11 142/13 142/18
 Luxembourg [2] 109/20
 109/21

M

ma'am [1] 142/5
 Mac [1] 230/5
 Macworld [1] 88/8
 Madam [1] 204/18
 made [44] 8/8 9/5 19/6 34/1
 42/12 48/11 51/5 55/9 69/19
 70/7 70/22 75/11 78/5 80/22
 90/8 93/10 94/23 94/25 96/17
 97/19 100/6 105/6 117/10
 119/5 119/10 119/10 119/14

120/13 131/10 131/16 136/3
 141/11 146/20 162/13 182/18
 187/9 193/18 231/5 235/5
 236/8 244/23 245/1 250/18
 251/15
 magazine [3] 134/20 134/23
 134/24
 Magistrate [1] 1/18
 mail [25] 58/5 86/15 86/16
 86/23 87/13 87/16 87/17
 87/18 88/11 88/14 91/1 135/2
 184/25 185/11 185/13 186/15
 186/23 192/24 211/12 211/22
 212/15 212/16 224/17 225/18
 262/14
 main [3] 119/20 119/22 125/3
 maintain [1] 155/15
 maintenance [1] 191/24
 Majesty [2] 110/22 110/24
 major [5] 52/24 115/2 115/19
 134/12 139/8
 majority [1] 139/2
 make [53] 17/16 22/9 28/24
 29/25 31/2 35/12 38/14 40/23
 43/24 52/8 52/9 53/6 57/12
 62/19 65/1 65/16 72/22 74/11
 74/18 77/22 81/21 82/8 83/5
 93/5 93/6 93/16 104/18
 106/10 117/7 117/8 119/6
 119/14 131/16 143/8 143/25
 144/1 144/4 151/16 152/6
 191/21 203/20 219/25 220/4
 236/7 244/6 247/15 252/16
 256/14 259/1 268/23 269/2
 269/24 271/2
 makes [6] 39/22 66/8 89/24
 99/12 99/18 233/3
 making [9] 30/22 60/11 69/18
 82/15 121/19 154/23 155/17
 220/18 270/2
 man [1] 60/18
 manage [2] 199/22 201/2
 management [2] 168/24 192/4
 manager [17] 87/19 90/9
 168/11 170/8 172/1 173/7
 187/8 193/11 193/15 193/23
 194/2 194/6 194/10 200/11
 202/8 211/25 212/8
 manages [1] 201/4
 managing [1] 200/6
 manner [1] 46/12
 Manual [3] 209/15 224/9
 224/12
 manually [1] 169/10
 manuals [1] 153/7
 manufacturer [2] 121/1
 137/11
 many [28] 26/18 26/18 26/22
 30/20 42/20 64/9 64/9 67/10
 81/8 83/1 86/20 96/19 106/4
 113/12 113/12 114/3 118/6
 138/21 149/15 164/24 221/19
 229/6 229/9 229/10 233/20
 235/14 243/1 259/20
 map [10] 58/7 58/7 70/23
 87/19 87/20 185/20 185/23
 193/2 212/19 212/20
 Maps [2] 70/15 70/16
 March [6] 7/14 83/14 138/4
 138/5 140/18 167/10

March 2000 [1] 138/4
 March 2012 [2] 83/14 167/10
 margin [1] 139/10
 marked [5] 41/22 153/24
 189/2 228/8 232/11
 market [5] 64/6 120/15 120/16
 131/18 136/10
 Martin [1] 97/21
 Massachusetts [1] 112/12
 master's [6] 117/23 118/1
 118/2 118/4 118/7 121/24
 material [5] 7/8 22/19 71/18
 75/1 75/10
 materially [2] 6/21 13/23
 materials [10] 11/13 24/21
 72/1 74/23 77/8 77/9 87/9
 213/17 213/23 222/1
 math [4] 61/2 61/20 114/18
 117/22
 matter [10] 12/8 16/13 16/18
 25/21 30/13 44/13 61/18
 144/15 147/22 208/3
 matters [1] 56/20
 MATTHIAS [3] 2/13 3/25
 82/19
 MAX [2] 2/4 4/5
 may [44] 6/14 10/21 16/13
 22/20 24/16 26/12 29/7 29/7
 35/12 45/6 49/8 51/17 55/17
 59/25 64/6 66/6 75/5 75/5
 78/10 112/8 127/17 127/19
 142/9 149/5 149/6 161/1
 161/3 166/5 182/4 182/24
 184/5 192/10 198/1 217/9
 221/13 223/1 225/10 262/12
 262/22 264/22 265/14 266/20
 267/10 268/12
 maybe [12] 28/7 73/6 119/13
 124/20 139/1 139/11 143/3
 217/25 257/8 265/17 268/18
 271/2
 MBA [1] 121/25
 me [44] 14/22 19/14 23/13
 23/13 37/25 41/9 41/20 41/22
 44/3 44/20 44/24 47/16 69/18
 82/15 110/10 112/19 113/9
 113/15 119/25 120/6 122/9
 129/11 130/8 132/4 132/8
 141/7 142/21 157/8 160/17
 163/13 176/19 177/15 189/1
 189/3 197/15 197/19 204/12
 207/4 224/2 224/6 240/8
 264/24 265/21 267/11
 mean [20] 19/8 22/15 22/17
 27/19 29/24 30/8 36/13 39/23
 40/4 40/12 64/10 75/17 80/12
 89/7 94/6 94/9 116/9 165/1
 179/2 261/17
 meaning [3] 17/8 17/14
 254/21
 means [10] 59/10 83/21 94/5
 94/10 134/22 235/3 237/13
 237/20 239/20 256/24
 meant [6] 59/21 62/13 69/2
 117/3 160/16 221/18
 mechanical [1] 120/14
 medium [2] 83/12 168/18
 meet [14] 10/19 41/15 50/19
 72/24 75/22 77/12 96/12
 147/7 214/9 226/9 227/12

M	250/16	131/6 135/4	150/6 151/6 153/10 153/17
<p>meet... [3] 254/22 270/19 271/3</p> <p>meetings [1] 133/18</p> <p>member [2] 110/22 269/13</p> <p>memo [3] 190/12 191/6 260/24</p> <p>memorandum [11] 5/8 6/5 189/6 189/9 190/4 190/7 190/16 190/22 191/14 192/11 260/16</p> <p>mention [4] 37/5 121/7 256/8 259/16</p> <p>mentioned [14] 38/16 74/8 77/19 108/4 124/13 128/25 131/20 135/25 139/7 141/7 164/12 173/13 242/24 257/18</p> <p>menu [9] 88/18 96/25 97/4 97/4 168/20 191/22 225/8 225/10 225/21</p> <p>merely [1] 215/8</p> <p>merits [1] 50/18</p> <p>message [3] 70/13 211/12 211/23</p> <p>messages [1] 186/23</p> <p>met [2] 36/15 38/25</p> <p>method [3] 83/11 168/17 224/12</p> <p>methodology [1] 46/11</p> <p>Mexico [1] 136/5</p>	<p>millions [5] 95/19 136/11 158/12</p> <p>mind [21] 30/15 31/14 32/24 58/9 75/18 84/4 100/16 100/17 107/7 107/19 133/19 133/22 134/13 142/1 145/19 146/5 151/12 151/19 158/5 167/12 262/15</p> <p>minds [1] 83/5</p> <p>mini [1] 119/11</p> <p>minimum [1] 39/4</p> <p>minute [3] 19/24 55/6 217/1</p> <p>minutes [7] 14/23 53/22 56/4 56/5 56/7 108/6 217/18</p> <p>misapplying [1] 23/3</p> <p>misimpression [1] 218/15</p> <p>misleading [1] 219/24</p> <p>missing [4] 25/19 172/24 210/24 253/9</p> <p>mistake [1] 160/16</p> <p>misunderstood [1] 265/17</p> <p>mobile [2] 164/2 164/2</p> <p>Modality [1] 163/11</p> <p>model [4] 41/23 43/6 43/9 49/5</p> <p>module [3] 54/14 54/18 227/21</p> <p>moment [3] 104/21 146/7 223/8</p> <p>Monday [1] 1/10</p> <p>money [12] 62/17 69/4 77/4 85/18 102/18 140/4 140/6 140/20 158/22 158/24 196/23 231/16</p> <p>month [3] 43/3 45/18 96/7</p> <p>monthly [1] 134/23</p> <p>months [6] 50/7 85/9 87/5 103/14 146/13 232/25</p> <p>MOORE [1] 2/9</p> <p>moot [1] 14/14</p> <p>moras [1] 19/11</p> <p>more [59] 10/22 20/25 28/8 58/1 59/10 60/24 62/23 64/25 69/11 69/12 72/18 73/21 73/23 75/24 81/13 82/25 84/25 87/17 90/25 98/25 99/19 100/6 103/13 105/16 111/15 112/4 113/18 116/13 117/4 117/5 117/12 118/18 127/20 129/24 133/15 133/16 137/24 138/12 140/6 149/15 158/12 158/15 168/19 188/17 191/8 191/24 196/16 196/20 198/17 209/19 213/9 213/20 221/19 222/10 238/14 239/25 243/4 257/8 264/22</p> <p>morning [17] 3/14 3/16 24/12 41/12 56/17 56/19 57/1 82/17 109/6 143/19 144/17 144/21 222/22 223/6 269/4 270/14 270/24</p> <p>mortgage [1] 140/2</p> <p>most [17] 64/18 65/19 65/22 85/14 96/15 118/2 132/14 133/12 142/22 192/6 208/3 209/2 209/7 210/4 234/6 234/13 243/7</p> <p>mostly [5] 86/10 110/1 122/18</p>	<p>mother [3] 111/8 128/14 128/19</p> <p>motion [21] 5/7 5/9 7/12 8/3 8/6 8/9 8/11 9/20 9/25 10/1 10/6 15/4 15/12 16/20 24/24 29/6 33/15 49/18 161/25 197/22 230/20</p> <p>motions [7] 7/25 15/14 21/13 24/25 230/15 269/20 270/15</p> <p>motivation [1] 161/19</p> <p>Motorola [1] 4/25</p> <p>move [18] 14/19 50/21 109/8 117/8 118/11 118/23 120/4 130/14 136/18 157/11 159/20 162/23 163/16 189/20 203/15 208/9 246/5 248/12</p> <p>moved [2] 5/4 118/13</p> <p>moving [2] 120/17 269/10</p> <p>Mr [2] 113/1 165/9</p> <p>Mr. [130] 15/16 21/21 34/6 47/11 54/8 57/5 57/19 57/25 58/10 58/19 60/14 60/16 61/14 61/21 62/20 63/10 64/11 64/18 65/16 66/4 66/10 66/15 66/23 66/24 67/2 68/3 70/10 71/24 74/9 75/10 76/15 77/2 77/20 78/1 78/3 78/18 78/24 79/10 79/18 79/21 80/17 80/24 82/1 82/20 84/6 84/16 85/21 86/12 86/21 86/25 87/5 90/8 90/14 91/16 96/14 98/6 101/18 106/22 108/16 108/16 110/5 110/13 112/6 112/11 113/22 114/3 125/4 127/9 127/14 127/22 128/9 130/25 132/2 132/12 136/14 136/25 142/9 143/13 149/2 149/9 149/10 149/17 150/6 151/6 153/10 153/17 154/5 156/17 157/7 157/16 157/19 157/24 158/3 158/5 159/16 159/25 160/4 161/25 162/6 162/15 162/20 163/12 163/22 164/21 165/12 165/17 166/11 190/8 192/11 192/16 217/3 221/3 245/19 247/13 247/18 249/10 253/11 254/13 258/16 259/9 260/11 262/5 262/16 262/19 263/11 264/2 264/17 267/10 268/13 268/17</p> <p>Mr. Atle [2] 57/5 108/16</p> <p>Mr. Boles [10] 66/23 157/16 157/24 159/25 247/18 253/11 254/13 262/5 262/16 263/11</p> <p>Mr. Burke [1] 70/10</p> <p>Mr. Diehl [1] 143/13</p> <p>Mr. Hedloy [87] 54/8 57/19 58/10 58/19 60/14 60/16 61/14 61/21 62/20 63/10 64/11 64/18 65/16 66/24 67/2 68/3 74/9 75/10 78/3 78/18 82/1 84/6 84/16 85/21 86/12 86/21 86/25 87/5 90/8 90/14 91/16 98/6 101/18 110/5 110/13 112/6 112/11 113/22 114/3 125/4 127/9 127/14 127/22 128/9 130/25 132/2 132/12 136/14 136/25 142/9 149/2 149/9 149/10 149/17</p>	<p>158/3 158/5 159/16 160/4 161/25 162/15 162/20 163/12 163/22 164/21 165/12 165/17 166/11 217/3 221/3 245/19 247/13 249/10 258/16 259/9 260/11 262/19 264/2 264/17 267/10</p> <p>Mr. Hedloy's [9] 57/25 66/4 66/10 66/15 76/15 77/2 77/20 78/1 162/6</p> <p>Mr. Kemper [1] 108/16</p> <p>Mr. Kidder [1] 106/22</p> <p>Mr. Roy [1] 78/24</p> <p>Mr. Smedley [1] 71/24</p> <p>Mr. Ted [1] 82/20</p> <p>Mr. Tellefsen [3] 190/8 192/11 192/16</p> <p>Mr. Toki [1] 96/14</p> <p>Mr. Unikel [2] 21/21 34/6</p> <p>Mr. Weinstein [8] 47/11 79/10 79/18 79/21 80/17 80/24 268/13 268/17</p> <p>Mr. Weinstein's [1] 15/16</p> <p>Ms. [13] 67/25 69/8 82/11 142/4 148/21 154/19 223/14 227/23 243/25 245/11 251/8 267/19 267/23</p> <p>Ms. Garfinkel [13] 67/25 69/8 82/11 142/4 148/21 154/19 223/14 227/23 243/25 245/11 251/8 267/19 267/23</p> <p>much [34] 4/8 19/6 21/8 30/1 30/22 56/22 64/25 69/5 69/6 82/10 82/23 83/3 99/12 99/16 103/3 103/9 107/21 116/13 123/12 130/16 149/15 159/13 164/3 164/18 188/20 193/17 234/9 243/13 243/17 243/24 245/5 249/20 264/20 271/8</p> <p>multi [2] 27/3 163/11</p> <p>multi-factor [1] 27/3</p> <p>Multi-Modality [1] 163/11</p> <p>multiple [7] 9/19 11/16 13/20 15/19 92/24 105/4 247/4</p> <p>must [14] 72/16 76/3 79/12 141/24 172/21 173/11 174/11 175/4 175/5 175/7 179/22 180/1 181/14 181/14</p> <p>Mustang [1] 89/9</p> <p>my [68] 4/19 4/22 14/2 14/5 14/9 14/20 15/11 17/3 40/20 52/24 57/2 69/14 82/8 82/16 82/17 82/18 91/6 108/16 108/19 109/16 109/17 111/6 111/8 113/15 113/24 113/25 114/17 116/4 116/14 116/20 116/23 117/23 117/25 119/22 119/22 120/5 121/18 122/13 122/25 123/3 123/6 123/6 123/7 128/14 128/16 128/16 128/17 128/18 139/24 141/7 142/23 148/19 150/17 155/8 160/16 160/17 165/22 168/3 172/23 173/2 178/11 178/17 182/22 222/24 228/23 248/3 248/22 272/5</p> <p>myself [4] 62/13 82/1 128/12 131/3</p>

N	Norwegians [2]	Number 419 [1]	Number 419 [1]
<p>name [56] 57/2 63/1 66/13 82/17 86/14 86/14 87/2 87/18 88/17 88/19 88/21 89/1 90/13 90/22 90/23 91/1 103/20 108/20 109/16 119/23 120/25 123/4 123/21 124/4 124/7 124/7 124/9 124/25 125/13 125/18 126/2 126/2 126/4 126/13 126/14 126/14 126/15 127/2 127/3 127/4 128/21 168/18 170/1 171/10 184/20 185/8 185/12 186/1 193/5 195/22 211/22 211/24 211/24 212/5 212/7 212/8 named [2] 114/10 190/4 names [7] 86/22 88/12 90/18 123/14 153/20 261/22 262/2 narrative [1] 210/18 narrow [2] 13/21 18/12 narrowed [1] 46/20 narrower [1] 28/7 narrowing [1] 49/15 national [2] 120/11 139/16 nature [2] 62/9 62/21 NCR [11] 62/2 120/9 120/10 120/21 121/2 121/4 121/7 121/12 121/15 121/15 121/21 NEAL [2] 1/23 3/17 necessary [2] 36/10 75/22 need [37] 8/18 20/16 30/17 41/1 41/6 41/10 42/19 51/17 53/19 53/24 54/11 55/1 57/17 73/8 81/19 86/7 89/15 98/6 103/16 122/25 123/3 123/5 127/6 131/8 142/12 142/18 144/7 154/11 155/11 172/20 177/15 179/4 224/24 236/12 237/12 267/11 269/17 needed [13] 7/23 8/23 9/19 37/9 56/20 121/14 121/14 122/11 122/12 123/15 126/19 140/5 188/20 needs [8] 16/7 17/7 22/8 102/11 123/22 124/11 178/12 180/11 negotiation [9] 42/10 43/1 43/4 43/10 43/20 44/6 44/11 44/16 162/2 negotiations [1] 249/5 neither [2] 198/4 198/23 network [1] 151/22 networking [1] 115/23 never [12] 10/4 48/17 49/4 76/3 102/23 130/3 195/6 195/7 195/9 195/13 195/14 201/14 new [23] 20/19 31/24 41/19 41/23 41/24 48/15 50/8 58/14 70/3 74/12 84/11 84/17 84/24 85/16 90/25 93/3 95/1 102/18 107/8 135/23 154/7 205/21 220/8 news [2] 139/1 139/8 next [39] 14/19 14/25 60/17 60/21 84/18 85/14 95/5 96/9 96/13 106/11 107/6 107/20 118/11 120/4 121/23 122/15 122/21 125/5 131/7 132/10 135/5 136/15 153/10 153/17</p>	<p>159/17 162/23 171/3 192/3 198/8 214/7 215/4 215/4 226/8 230/11 230/23 236/11 251/14 254/14 269/24 nice [4] 113/13 113/16 114/2 139/20 night [6] 18/7 36/12 36/16 41/21 48/2 130/4 nine [1] 11/11 no [102] 1/5 5/13 8/21 9/5 12/17 18/16 19/4 20/4 20/17 22/11 24/25 26/25 34/9 34/18 36/16 41/4 41/5 42/3 42/24 43/13 46/2 48/6 48/15 49/24 55/4 64/17 97/15 102/21 109/12 109/22 110/7 110/11 114/5 114/5 114/10 114/12 114/12 116/2 116/10 126/10 126/16 128/5 129/24 130/3 133/12 136/20 140/20 144/10 147/24 150/2 154/10 157/13 158/8 159/22 161/11 161/22 163/18 165/5 175/21 178/12 178/20 182/21 186/16 188/7 189/22 194/12 195/4 195/18 197/5 202/5 203/17 208/10 212/23 213/1 216/13 229/16 234/9 241/24 244/15 246/25 248/7 248/10 248/25 249/3 249/9 249/22 250/7 254/2 258/2 259/17 259/19 259/23 260/21 261/19 262/1 264/1 264/18 267/7 269/3 269/14 270/5 270/7 No. [2] 206/6 252/8 No. 12,841,302 [1] 252/8 No. 12/841,302 [1] 206/6 nobody [6] 60/23 91/13 144/23 146/22 196/16 196/20 Nokia [12] 159/7 162/21 163/2 163/2 163/3 163/5 163/7 163/9 163/25 164/1 164/2 164/4 non [6] 5/22 6/3 6/25 10/13 48/12 230/4 non-estopped [4] 5/22 6/3 6/25 10/13 non-infringement [1] 230/4 non-infringing [1] 48/12 none [1] 19/2 nonexclusive [1] 236/7 nonexistent [1] 12/15 noninfringement [1] 146/18 nonpublic [1] 13/20 Nope [1] 202/4 Noreika [1] 12/6 normal [1] 247/7 normally [4] 53/8 138/20 263/5 265/7 north [1] 110/4 northern [1] 60/17 Norway [17] 60/17 109/22 109/23 110/5 110/13 110/17 111/12 112/13 113/2 113/8 118/13 120/9 120/22 121/18 121/19 122/18 138/18 Norwegian [12] 60/20 61/6 116/23 116/24 117/1 117/3 121/4 121/9 128/11 140/3 167/18 189/15</p>	<p>note [3] 105/8 128/12 244/1 notes [7] 11/12 123/6 129/18 206/5 239/9 252/7 272/5 nothing [15] 26/2 26/18 37/12 46/11 47/7 50/8 90/25 93/3 126/7 160/21 202/1 202/9 243/9 255/15 255/15 notice [6] 31/3 31/17 31/18 32/22 67/22 146/22 notified [1] 41/16 notion [1] 25/2 novel [1] 74/12 November [13] 68/12 84/3 84/14 84/20 85/2 85/16 96/5 103/14 107/8 131/22 133/2 167/6 202/1 November 10 [6] 84/3 84/14 84/20 85/2 103/14 167/6 November 1998 [1] 202/1 November 28 [1] 68/12 now [117] 10/6 16/24 18/8 21/17 21/19 23/10 23/19 25/9 26/1 27/20 29/5 32/8 32/21 34/6 35/23 37/2 40/7 40/19 40/21 42/7 43/12 43/15 44/9 44/15 46/20 48/3 48/13 48/23 54/9 56/21 56/22 57/19 59/8 60/15 62/12 65/7 65/14 66/1 66/22 72/6 74/3 78/11 79/5 82/13 83/7 83/17 84/1 85/2 95/5 95/7 99/24 100/16 100/17 100/20 102/16 104/8 104/11 105/4 116/14 118/19 118/19 124/13 125/6 125/22 128/9 132/25 134/5 146/14 160/5 165/10 165/12 187/8 190/4 200/2 208/14 212/10 216/21 217/24 218/18 219/6 219/16 220/7 220/25 221/8 222/13 222/19 233/3 233/15 234/23 238/1 238/19 240/23 244/3 246/5 246/10 246/17 247/3 247/12 248/14 249/5 251/5 252/20 253/4 253/15 254/11 256/12 258/12 259/24 260/24 261/4 261/8 261/20 262/2 262/25 264/2 268/2 269/17 number [59] 5/1 5/8 5/10 15/5 41/19 46/19 46/23 46/24 47/9 51/13 51/14 53/2 61/5 75/4 79/20 80/5 80/9 80/25 81/4 83/10 86/15 86/15 87/15 87/16 91/1 92/17 93/19 98/3 122/16 132/5 132/6 132/6 149/20 160/8 164/7 164/9 164/11 167/22 167/25 168/1 168/4 171/15 172/8 172/8 173/3 184/23 197/22 212/11 228/12 229/15 229/21 233/17 234/19 240/14 242/1 251/18 253/9 258/12 268/15 Number 1 [1] 93/19 Number 2 [1] 98/3 Number 23 [1] 172/8 Number 30 [1] 172/8 Number 391 [1] 5/8 Number 4 [1] 197/22</p>	<p>Number 419 [1] 15/5 Number 42 [1] 171/15 numbers [24] 41/23 43/23 47/2 48/14 50/20 51/18 67/23 67/24 79/4 83/10 86/24 88/11 88/14 106/12 106/23 106/25 186/8 192/20 208/23 242/18 261/21 261/25 262/13 262/14 O oath [5] 109/1 149/3 175/25 178/5 183/16 object [3] 52/7 55/20 220/14 objected [3] 24/23 162/6 198/12 objecting [1] 176/23 objection [39] 34/25 35/1 128/5 129/6 130/3 130/9 130/11 130/21 136/20 148/11 150/2 156/2 156/5 157/13 159/22 160/25 162/7 162/12 163/18 165/5 176/16 177/14 179/10 189/22 190/25 197/13 197/20 199/11 203/17 208/10 222/14 226/16 237/8 249/1 257/13 258/23 260/3 260/5 265/6 objections [4] 142/22 143/16 177/12 205/15 obligations [1] 83/1 observed [1] 7/1 obtain [2] 152/3 164/4 obvious [7] 84/11 188/24 192/13 261/5 261/8 261/10 261/18 obviously [5] 51/6 53/13 95/14 268/7 270/15 obviousness [7] 5/3 6/3 8/25 10/12 11/22 18/16 25/23 occurred [3] 161/5 199/25 265/3 occurring [1] 168/2 October [2] 204/19 205/4 October 28 [2] 204/19 205/4 odd [1] 134/8 OEM [1] 120/25 off [6] 3/9 43/1 117/12 154/22 177/18 186/25 offer [9] 43/5 46/22 119/25 120/9 128/3 149/25 157/3 165/3 236/8 offered [8] 28/8 34/11 44/8 46/19 99/17 212/4 231/5 235/6 offering [3] 41/20 54/10 60/11 offers [2] 211/13 211/23 office [96] 20/10 21/5 25/14 25/16 28/3 30/14 31/1 31/6 31/11 32/18 33/9 36/19 37/6 39/18 39/25 40/15 57/22 58/11 58/12 74/4 74/11 74/13 74/24 75/9 76/8 76/17 77/10 84/22 91/21 91/21 91/24 92/4 93/10 94/21 94/25 99/25 100/7 100/12 101/3 127/7 128/18 145/1 145/2 145/15 146/4 146/12 147/1 147/4 147/7 147/20 152/4 152/5 152/10 152/20 152/22 153/1 153/5 153/22 153/23 153/24</p>

<p>Case 1:13-cv-00919-JL office... [36] 154/4 168/1 202/18 203/10 204/18 204/23 204/24 205/3 205/4 205/14 206/1 209/25 213/21 214/6 214/18 216/15 217/16 219/7 219/22 220/22 221/8 222/7 222/11 224/22 251/16 251/23 252/14 254/8 256/7 256/13 256/13 256/22 257/5 257/21 258/10 264/9 Office's [1] 264/11 officers [2] 239/1 248/18 Official [1] 272/8 Oh [2] 109/10 230/24 okay [87] 3/8 3/21 4/4 14/18 14/25 19/22 26/11 33/9 34/5 36/9 37/24 41/6 43/19 44/3 44/20 45/3 47/15 49/7 53/5 53/21 53/23 54/6 54/25 55/5 55/14 56/9 69/14 71/5 108/11 109/11 122/5 126/23 127/24 132/18 142/4 142/10 142/11 149/22 154/14 154/25 155/2 155/21 162/23 163/2 164/12 170/12 176/4 177/22 178/21 182/23 183/9 191/13 203/6 205/12 205/24 217/7 222/12 224/7 225/1 226/19 227/23 229/14 236/2 245/9 251/14 252/2 253/4 253/9 253/13 254/5 254/11 254/19 255/3 255/21 256/2 259/9 260/9 263/7 266/15 267/6 267/14 267/25 268/3 268/19 269/6 270/6 271/5 old [2] 120/11 120/13 old-fashioned [1] 120/13 older [1] 113/17 once [13] 15/15 42/1 42/6 48/2 99/19 103/4 111/19 118/25 129/5 130/25 184/8 187/8 237/16 one [157] 5/2 6/17 7/25 10/22 11/11 18/7 18/14 24/4 27/12 28/8 28/11 35/12 41/22 43/15 43/20 45/15 45/15 49/22 50/5 51/5 54/14 54/18 55/19 62/24 63/7 65/12 66/17 66/23 68/4 68/16 69/12 76/19 77/15 77/22 78/25 81/5 81/7 83/7 84/25 85/12 86/2 89/14 90/6 93/6 94/16 94/19 95/19 96/24 97/7 97/13 98/12 103/19 107/3 107/6 107/18 111/6 111/12 111/25 112/7 113/12 114/9 114/10 114/13 114/16 116/4 116/23 117/4 119/11 119/12 119/20 120/3 120/7 123/13 124/1 124/3 124/25 125/8 127/20 132/12 133/20 134/16 136/13 136/15 140/20 141/8 141/11 142/23 143/24 148/12 149/14 150/22 150/22 151/15 151/16 159/17 161/25 162/15 162/23 165/13 169/17 169/20 170/7 170/9 172/16 172/24 177/20 178/12 179/17 181/5 181/24 182/3 184/2 189/14 191/24 192/3 193/4</p>	<p>194/1 201/23 203/23 205/11 209/19 209/24 211/11 211/11 212/7 213/17 215/20 217/8 223/8 229/17 232/10 233/7 233/15 234/2 238/14 241/11 241/13 241/15 242/21 242/23 242/25 246/23 248/12 249/11 253/10 254/3 257/1 259/19 260/9 261/1 266/4 266/14 266/24 268/11 269/18 269/23 270/10 One-eight-zero [1] 205/11 OneButton [90] 62/25 63/6 63/14 64/21 64/23 66/12 90/9 90/11 90/13 90/17 90/21 92/2 93/14 124/19 124/22 124/24 125/14 125/19 125/24 126/8 127/2 127/10 131/1 131/14 132/8 132/16 134/2 135/5 135/6 135/8 135/10 135/17 135/20 136/1 137/18 137/20 139/22 149/10 149/13 149/14 149/16 168/11 170/8 170/9 170/25 171/10 171/15 171/18 172/1 173/7 187/8 187/12 187/15 188/5 188/10 188/13 188/13 188/17 191/14 191/19 192/19 192/23 193/1 193/4 193/11 193/14 193/18 193/23 194/2 194/6 194/10 197/6 200/11 202/8 258/12 259/16 259/18 259/19 259/22 259/24 260/22 260/25 261/5 261/8 261/12 261/14 261/20 261/25 262/22 263/22 ones [2] 112/21 134/16 Online [8] 63/23 63/23 63/24 138/15 138/16 138/17 139/3 139/5 only [50] 5/2 8/9 10/22 10/23 12/21 13/6 13/12 13/22 14/6 20/4 21/6 25/10 34/13 35/1 38/11 41/24 42/4 42/7 42/18 43/3 45/15 53/7 55/11 59/3 68/16 78/18 85/17 85/18 92/20 100/5 102/17 102/25 103/1 104/17 114/9 129/17 141/11 142/20 145/20 147/1 155/13 171/25 178/17 187/12 199/21 201/5 238/8 243/21 257/1 265/4 open [14] 9/18 40/20 40/22 67/23 68/13 70/13 81/6 138/20 138/22 138/25 139/3 142/1 189/3 217/17 opened [5] 138/19 148/4 148/7 220/9 222/21 opening [31] 21/17 36/13 36/14 36/17 41/3 41/7 51/2 51/4 51/8 51/10 51/21 55/7 55/23 56/2 56/23 82/13 144/19 145/11 147/15 148/2 148/6 148/8 148/13 148/18 150/12 154/2 217/13 217/14 220/24 246/17 256/8 openings [6] 54/1 56/10 108/5 122/20 125/5 144/3 opens [1] 144/20 operating [33] 48/4 48/10 49/3 49/13 49/21 50/14 64/17 65/6</p>	<p>96/22 97/6 97/10 115/22 176/5 179/15 179/18 181/7 181/10 181/21 182/4 182/19 183/2 183/2 183/7 183/22 184/5 226/25 227/6 227/11 235/12 235/14 235/17 239/17 239/22 operation [1] 174/7 opined [1] 44/10 opinion [8] 5/8 5/9 5/19 6/5 9/8 12/6 43/6 43/17 opinions [1] 6/17 opportunity [14] 16/22 31/24 47/8 63/13 82/4 113/9 114/16 120/21 146/3 218/7 218/15 218/25 219/13 219/22 opposed [9] 94/11 176/8 179/14 180/12 181/21 182/19 183/6 183/22 270/2 opposing [2] 165/19 178/19 opposite [7] 40/10 72/21 85/25 102/9 103/10 103/11 103/16 opposition [1] 242/7 option [4] 90/21 120/6 127/5 155/15 options [8] 87/14 87/15 88/13 101/11 211/13 211/23 212/4 212/7 oral [1] 161/10 orally [1] 269/24 order [17] 7/19 7/21 9/22 9/23 10/2 73/8 75/13 83/2 83/18 134/19 152/20 155/20 164/4 202/15 207/16 227/22 231/12 orders [5] 8/2 8/13 10/3 98/23 134/18 orienting [1] 184/19 original [11] 83/22 121/1 167/1 187/1 201/6 201/11 201/25 218/10 222/5 265/10 265/19 originally [7] 35/16 37/7 109/21 109/22 119/6 120/14 127/7 OS [1] 230/5 Oslo [2] 110/1 110/4 other [69] 5/23 5/25 6/3 6/8 8/18 11/12 19/23 42/18 44/3 49/11 49/16 49/20 50/10 52/12 55/10 58/23 63/22 67/13 67/15 82/14 84/10 89/23 91/12 92/22 97/14 97/14 103/20 107/4 111/15 114/3 114/5 114/23 117/13 121/1 122/17 125/2 131/7 134/18 139/1 139/9 141/24 142/25 143/24 144/22 151/12 151/18 153/21 158/25 159/3 159/6 177/10 178/6 181/3 213/17 213/23 214/10 226/13 233/17 244/4 248/12 254/25 259/20 261/22 262/13 262/23 266/4 267/21 270/10 270/20 others [13] 48/12 59/25 60/7 60/11 79/2 81/18 91/5 100/10 151/19 172/25 202/1 202/9 217/25 otherwise [5] 7/22 22/9 23/3 99/13 236/8</p>	<p>pur [57] 18/17 21/17 21/18 21/24 25/10 25/2 26/1 28/6 28/11 29/25 32/20 35/22 43/5 43/16 44/12 45/9 51/12 54/8 55/9 59/12 59/13 60/16 69/24 70/11 72/7 72/14 72/23 73/3 73/4 73/17 75/24 81/9 82/2 98/3 104/14 108/9 123/13 123/16 130/2 131/16 132/6 134/24 139/17 139/18 140/1 140/15 140/24 141/10 141/21 142/11 155/24 156/1 190/17 194/1 201/22 260/18 267/16 ours [1] 133/5 ourselves [2] 26/3 37/4 out [88] 6/9 10/4 11/23 12/6 19/16 24/20 24/23 25/25 25/25 27/24 30/19 34/10 34/11 37/23 38/9 40/11 40/19 42/6 42/15 45/9 45/13 45/23 46/3 46/5 46/6 47/13 48/14 50/9 50/14 53/3 53/18 54/20 55/11 56/1 58/16 62/22 65/16 67/23 75/7 76/7 76/24 77/10 80/4 80/7 85/1 85/3 85/4 88/11 97/14 104/13 105/1 112/20 115/17 118/16 123/8 123/16 131/17 133/19 133/22 134/13 134/23 135/14 135/15 139/18 139/19 140/7 142/4 142/12 142/18 143/17 162/21 179/21 198/22 202/9 217/1 218/11 244/23 245/22 246/11 246/14 247/3 247/20 250/10 254/7 263/17 267/23 270/25 271/3 outdated [1] 88/6 outreach [1] 140/14 outside [8] 92/23 99/6 103/7 116/16 155/16 250/25 265/8 265/9 outweighed [3] 36/3 39/6 40/3 outweighing [1] 39/16 over [29] 4/9 5/3 9/10 18/5 18/11 27/22 45/11 47/11 57/23 59/21 60/16 64/9 65/8 65/11 66/2 67/6 71/15 76/10 82/2 84/11 84/18 96/9 96/13 107/6 107/20 109/13 133/4 163/4 193/20 overcome [1] 75/13 overruled [12] 130/11 130/22 148/12 162/8 162/12 179/10 191/4 199/11 222/14 237/10 249/2 259/1 oversee [1] 201/20 owe [1] 106/21 owed [3] 79/23 81/3 81/14 owes [1] 79/20 own [15] 8/13 21/23 24/12 62/8 62/17 72/2 79/10 90/8 99/15 120/25 123/16 199/19 201/1 218/25 251/3 owned [1] 200/23 owner [1] 109/17 owns [3] 150/14 150/16 247/10</p> <hr/> <p>P p.m [5] 142/8 223/5 223/17</p>
---	--	---	---

Case 1:13-cv-00919-JL	Document 691	Filed 09/21/23	Page 99 of 775 PageID #: 60678
<p>p.m... [2] 267/24 271/10 page [38] 138/21 138/25 139/6 139/7 150/8 150/9 153/15 153/16 157/21 160/6 163/24 165/11 192/10 203/22 204/1 204/3 204/6 205/8 208/22 208/24 210/11 211/3 214/7 222/21 224/3 226/7 226/8 229/20 234/16 234/24 241/25 252/2 252/6 253/5 254/5 254/14 254/19 256/2 Page 10 [3] 208/22 208/24 256/2 Page 101 [1] 210/11 Page 111 [1] 224/3 Page 114 [2] 211/3 254/5 Page 115 [1] 254/19 Page 180 [3] 205/8 252/2 252/6 Page 2 [1] 234/24 pages [11] 74/21 74/22 74/22 135/13 135/13 153/18 202/23 211/14 252/3 257/10 257/18 Pages 180 [1] 252/3 paid [23] 58/24 59/2 68/10 68/14 68/17 68/18 68/20 68/24 69/16 76/24 77/3 78/3 79/8 106/12 106/15 106/18 158/13 195/6 196/10 231/13 236/6 243/10 246/3 paid-up [1] 236/6 paint [1] 132/18 Palo [1] 118/24 Pandit [6] 5/3 18/14 18/17 18/20 19/12 20/3 paper [1] 269/22 papers [4] 4/8 31/16 153/8 267/12 paragraph [13] 137/3 168/15 169/4 205/17 211/8 215/5 215/23 224/11 226/7 237/6 242/24 262/10 262/16 parents [1] 111/5 parol [1] 161/11 part [69] 6/2 8/17 11/21 17/5 17/8 20/21 25/13 30/13 31/22 32/9 37/8 42/3 44/23 47/20 61/3 72/7 79/12 86/12 96/21 98/14 99/2 114/24 115/18 116/15 116/15 119/10 121/9 121/11 139/8 145/9 146/2 147/19 150/9 152/11 152/13 153/15 157/23 160/6 163/3 163/5 163/25 164/1 164/25 165/11 168/7 184/16 185/16 185/22 195/6 196/5 202/25 208/1 215/6 215/16 215/25 216/11 218/4 219/4 222/3 222/4 226/25 227/6 227/10 231/18 233/4 243/2 257/5 261/11 262/19 partes [5] 8/19 10/21 31/21 145/13 146/2 partial [3] 5/4 15/13 191/11 participant [1] 161/18 participate [1] 222/5 participated [3] 75/11 91/16 145/8 particular [40] 42/17 83/15</p>	<p>87/19 89/18 93/14 94/14 95/20 96/24 97/6 97/13 130/3 166/23 167/9 170/21 175/10 178/1 179/12 180/21 181/12 185/20 190/12 203/13 203/22 206/9 206/24 210/8 215/2 216/19 227/17 234/11 242/3 247/20 248/14 252/2 252/5 252/10 253/23 254/12 255/4 255/24 particularly [4] 133/21 168/19 193/16 271/1 parties [13] 4/20 5/11 7/19 16/13 17/22 33/19 33/22 34/23 38/3 51/5 65/12 229/24 270/15 parties' [1] 18/4 partner [1] 108/16 partners [2] 123/2 136/12 party [9] 51/4 52/25 53/1 79/17 145/22 145/23 161/15 162/2 270/13 pass [3] 133/11 165/18 166/4 passed [2] 15/14 75/5 passersby [1] 133/18 past [4] 27/22 231/4 235/3 237/21 paste [5] 58/7 63/4 70/16 123/10 169/18 pasting [2] 169/10 169/13 patchwork [1] 32/8 patent [468] patent's [3] 74/1 81/14 257/10 Patentability [1] 210/15 patentable [1] 207/18 patented [6] 58/21 81/15 151/2 156/23 159/4 164/19 patentee [1] 13/8 patents [67] 5/14 10/24 11/3 11/24 11/25 13/4 30/22 30/25 32/20 60/4 65/22 67/10 68/8 70/5 72/4 72/10 73/2 73/4 104/17 104/18 106/4 106/8 141/13 145/7 153/6 153/21 196/6 196/9 196/15 196/18 198/25 199/22 200/7 200/13 201/2 201/4 201/5 201/10 201/17 229/6 229/12 229/17 230/4 230/14 230/19 232/5 233/4 233/7 233/15 233/18 233/21 234/1 234/5 236/7 236/22 238/5 242/4 242/13 242/13 243/1 243/4 243/6 244/17 244/20 247/4 258/17 258/25 path [2] 90/4 156/6 paths [1] 90/6 patience [1] 56/22 patrons [2] 98/15 98/16 PAUL [1] 2/11 pause [1] 67/4 pay [22] 57/15 61/6 78/12 81/12 81/20 82/7 94/14 103/10 106/20 106/25 113/1 113/4 140/24 156/22 159/13 164/3 164/18 194/23 195/1 195/4 196/23 250/14 paying [4] 69/18 81/10 138/8 231/16 payment [4] 58/22 158/3</p>	<p>158/14 196/14 payments [1] 108/9 pays [1] 82/9 PC [2] 135/18 151/22 PCs [3] 137/18 137/19 138/8 PDX [1] 80/5 PDX-1-52 [1] 80/5 pedal [1] 89/12 pending [6] 4/23 37/4 182/21 231/20 234/20 249/7 people [35] 59/21 60/24 60/25 62/19 62/22 64/9 64/15 74/16 77/25 94/7 109/25 110/4 118/2 118/6 119/13 119/19 121/3 121/16 133/8 133/20 133/23 135/15 135/19 136/10 137/21 138/19 138/21 139/2 139/25 140/19 154/15 155/15 155/19 160/19 169/8 per [5] 45/11 46/12 79/24 80/25 158/13 percent [4] 138/11 138/11 147/13 222/15 percentage [2] 106/20 138/12 perform [3] 94/12 101/21 169/18 performed [3] 72/5 94/12 180/6 performing [3] 184/15 185/15 185/21 period [17] 26/2 30/8 36/3 39/20 42/4 42/23 42/25 48/18 67/5 80/18 81/1 96/6 96/8 103/14 104/10 146/19 188/7 periods [2] 45/11 48/15 permeation [1] 127/1 permissible [2] 161/20 217/16 permits [3] 236/18 238/3 247/24 permitted [3] 161/11 237/6 266/8 perpetual [1] 236/6 person [10] 60/10 87/21 88/25 90/11 128/20 132/4 143/12 188/9 191/20 191/25 person's [1] 66/13 personal [5] 61/24 62/3 83/1 119/5 151/4 personally [10] 96/15 168/6 193/14 202/17 203/9 207/20 207/22 213/22 258/4 258/8 personnel [1] 113/14 perspective [1] 42/10 persuaded [2] 11/14 11/20 persuasion [1] 75/21 PETERMAN [3] 2/12 4/2 82/19 petition [2] 29/4 29/12 petitioned [1] 5/1 petitioner [1] 10/20 Ph.D [1] 119/21 phone [31] 70/24 80/25 86/11 86/15 86/15 86/24 87/15 87/16 88/11 88/14 91/1 92/17 95/15 95/16 96/4 104/4 135/14 135/23 136/7 160/20 160/24 162/18 184/23 186/8 192/20 212/11 250/4 250/5 250/6 261/21 261/25 phones [11] 47/5 71/9 80/22</p>	<p>81/1 95/13 95/14 151/4 160/17 160/20 164/4 249/24 photo [4] 131/23 132/2 132/10 132/19 photos [2] 113/21 113/22 physical [7] 6/12 6/15 6/19 6/21 6/22 123/6 123/6 pick [2] 113/15 130/25 picked [1] 88/11 picture [5] 66/17 68/3 90/9 132/19 171/15 pictures [1] 61/15 piece [6] 5/11 23/14 60/6 72/9 72/9 73/5 pieces [6] 5/10 113/15 185/25 186/7 186/14 209/5 pioneer [1] 105/25 Pixel [6] 71/9 71/9 71/9 80/22 95/13 95/13 Pixel 2 [2] 71/9 95/13 Pixel 3 [2] 71/9 95/13 place [7] 28/5 76/3 92/18 92/22 98/23 107/20 118/22 placed [2] 30/2 195/15 places [1] 61/5 plain [2] 23/13 123/11 plainly [1] 40/12 plaintiff [8] 1/4 2/6 50/19 72/16 72/20 109/18 145/24 222/20 plaintiff's [6] 228/10 228/12 228/14 232/15 240/13 240/14 planning [1] 20/14 plans [1] 111/2 play [6] 34/1 46/21 48/19 62/14 110/25 176/5 played [11] 110/21 110/23 111/1 142/15 142/18 148/9 177/5 177/11 177/14 177/17 178/8 players [1] 67/13 playing [2] 59/5 117/15 plays [1] 176/6 pleadings [3] 27/23 33/17 97/24 please [77] 3/7 36/20 56/17 69/8 105/13 107/6 107/18 108/18 108/20 108/24 109/3 109/6 109/11 109/15 127/18 127/19 142/10 143/25 144/14 148/24 154/18 166/13 166/20 168/15 169/21 170/6 171/4 171/5 172/11 182/12 189/2 189/3 190/1 190/2 203/3 203/4 203/25 204/4 205/11 207/3 207/4 208/22 211/3 214/6 214/7 215/4 217/3 217/7 223/14 223/18 224/3 224/4 225/3 227/24 228/3 228/18 230/11 230/24 232/10 234/24 235/23 237/17 237/18 238/1 238/14 240/9 242/16 244/13 251/8 251/11 253/16 259/8 260/6 267/23 267/25 268/19 269/7 plus [4] 19/18 19/19 19/20 103/21 PM [2] 148/23 217/2 podium [3] 55/19 55/20 55/23 point [34] 8/21 16/19 18/20</p>

P
point... [31] 21/1 22/4 24/20
35/12 36/1 38/19 50/17 64/24
67/14 69/7 69/9 108/5 111/7
124/14 125/12 131/8 134/10
141/4 141/21 142/17 154/11
154/15 201/20 209/15 209/24
218/11 222/14 222/17 246/11
246/14 251/6
pointed [12] 6/9 6/17 24/23
85/1 105/4 245/22 247/3
247/20 250/10 252/5 254/7
263/17
pointing [3] 95/20 104/25
252/20
points [5] 11/23 23/6 24/17
28/10 148/1
pop [1] 89/13
populate [1] 64/1
populated [1] 66/14
portfolio [6] 106/8 197/10
197/11 199/14 199/15 247/9
portion [4] 15/6 148/7 224/16
225/17
posed [1] 199/2
position [11] 8/1 8/12 17/16
27/11 29/2 37/17 38/3 95/6
146/12 146/14 218/5
positions [2] 18/4 122/19
possible [12] 14/12 38/11
39/2 41/8 90/20 103/24 112/1
124/23 129/7 181/6 264/19
268/10
possibly [1] 8/3
post [5] 16/18 20/6 49/17 50/3
50/22
post-trial [1] 50/22
post2017 [1] 50/12
poster [2] 11/12 132/13
potential [6] 39/6 39/16 135/7
136/12 140/14 190/17
potentially [3] 63/17 204/24
220/7
POTTER [1] 2/9
power [3] 59/14 135/21 192/4
powered [2] 89/9 89/10
practical [2] 99/8 111/15
practice [1] 146/14
practiced [3] 70/4 72/11 187/9
practices [1] 71/13
practicing [3] 93/2 172/21
173/1
pre [3] 49/24 249/12 249/24
pre-installed [2] 249/12
249/24
pre2017 [5] 46/5 46/15 46/16
49/15 50/9
precisely [1] 96/22
preclude [4] 8/1 8/12 9/12
15/16
precluded [2] 13/21 199/4
precludes [1] 197/22
preclusion [1] 198/15
preexisting [1] 89/3
prefer [2] 45/4 270/17
preferences [1] 269/19
prejudice [6] 14/5 15/22 25/24
39/16 40/3 148/15
prejudiced [1] 15/19
prejudicial [8] 26/7 26/17 29/2

30/2 39/7 197/22 198/15
219/3
preliminary [1] 72/15
premise [1] 29/13
preparation [2] 128/12 143/23
prepare [1] 268/22
prepared [6] 21/17 21/18
45/10 53/18 108/8 108/9
prepares [1] 98/11
preparing [1] 64/22
preponderance [2] 75/22
75/25
prepopulated [1] 88/21
present [24] 11/7 12/2 12/15
15/15 15/20 16/13 16/16
17/22 25/3 25/4 25/4 25/5
46/2 57/25 148/17 162/5
170/3 172/21 172/25 206/10
206/13 235/4 237/21 252/11
presentation [4] 30/21 53/9
72/7 86/12
presentations [2] 87/9 88/6
presented [20] 5/14 12/17
13/11 18/2 19/3 25/8 50/19
51/8 87/13 100/4 100/4
101/11 132/14 142/2 144/3
147/19 219/18 222/3 222/3
222/6
presenting [7] 9/13 10/12 19/3
25/6 36/6 260/18 269/23
presently [1] 10/18
president [1] 70/1
press [1] 89/12
pressed [1] 88/18
presses [2] 97/3 97/7
presumed [1] 74/5
presumption [2] 74/4 75/13
pretrial [14] 7/18 7/19 7/21 8/8
9/9 9/21 9/23 10/2 15/8 15/9
15/25 16/4 17/16 24/21
pretty [1] 139/20
prevail [1] 72/16
prevent [1] 10/11
prevented [1] 5/5
prevents [1] 13/2
preview [1] 59/8
previous [3] 6/17 181/10
205/20
previously [2] 8/16 8/22
price [2] 196/11 196/14
principal [1] 57/4
print [1] 53/19
printed [11] 5/15 10/24 11/9
11/11 11/24 11/25 12/22 13/4
13/11 13/23 80/4
printer [1] 53/21
printouts [1] 55/9
prior [70] 5/11 5/11 5/17 5/18
6/10 6/23 6/25 7/9 7/18 7/20
7/22 8/2 8/13 8/18 9/3 9/6 9/8
9/13 9/19 9/22 10/3 10/9
10/11 10/24 10/25 11/1 11/5
11/17 12/10 13/3 13/7 13/10
13/13 13/16 13/18 13/22 14/4
14/7 16/8 38/15 38/20 38/25
75/7 101/4 105/1 107/16
153/4 161/10 178/3 178/4
197/24 198/21 206/2 206/7
206/23 209/6 210/3 210/7
210/19 210/24 215/1 217/12

239/6 252/8 252/21 252/23
252/24 253/22 253/23 256/4
priority [3] 84/2 167/13 233/11
privilege [2] 57/3 161/17
probably [14] 49/1 51/9 53/19
54/11 69/25 108/4 114/12
114/12 120/12 143/21 186/2
227/21 257/11 268/16
probative [5] 26/8 36/2 39/3
39/4 39/15
problem [19] 34/16 36/16 42/3
42/9 42/15 43/12 46/8 47/21
48/13 71/11 109/12 110/11
115/16 124/16 202/2 202/10
221/19 223/2 249/22
problems [1] 115/13
procedural [2] 25/18 25/21
proceed [7] 109/3 149/6
223/12 228/4 244/13 251/11
266/20
proceed.Thank [1] 149/6
proceeding [17] 19/17 26/21
27/25 30/18 31/21 36/5 65/9
65/12 76/10 145/7 145/13
145/22 146/3 147/3 218/14
242/8 272/6
proceedings [24] 3/4 18/3
18/19 18/21 18/24 19/5 20/1
20/7 20/9 20/23 20/25 21/7
25/12 26/4 28/22 33/12 39/8
144/18 147/12 148/4 219/4
220/6 220/11 271/10
process [20] 26/24 36/5 75/11
91/14 91/17 123/22 123/24
144/24 145/5 152/1 152/2
152/11 152/21 188/15 202/14
219/1 220/20 220/22 251/19
257/6
processing [9] 87/13 88/20
92/12 119/14 120/2 123/8
168/22 171/19 224/15
processor [5] 119/11 170/2
191/15 191/19 192/6
produces [1] 75/18
product [75] 6/12 6/15 6/19
6/21 6/22 28/20 31/7 36/25
42/5 63/8 63/10 63/13 63/16
63/25 64/3 64/5 64/23 68/7
76/13 85/5 96/11 104/9
104/11 106/16 121/13 123/16
124/15 124/17 124/18 131/2
131/16 131/17 131/18 132/14
133/8 134/9 134/13 135/5
135/24 136/10 139/22 140/8
141/10 149/10 149/11 168/11
172/1 187/9 187/12 188/13
188/18 188/18 192/19 192/23
193/1 193/4 193/4 193/12
193/19 193/23 194/6 194/17
194/23 197/2 198/3 235/4
236/9 236/21 237/18 237/21
238/4 238/6 239/4 248/2
248/21
products [35] 50/21 62/18
62/25 63/7 68/6 95/9 95/12
97/19 98/4 101/16 101/21
102/12 104/19 104/19 104/20
106/14 134/6 134/14 158/11
160/11 196/3 197/6 198/5
198/23 199/19 200/10 201/14

202/7 230/5 231/4 234/25
237/3 237/11 238/9 239/11
Products' [2] 235/3 237/20
professional [1] 83/1
professor [6] 71/24 100/25
100/25 113/19 119/22 119/22
profit [1] 138/7
profit-sharing [1] 138/7
program [114] 58/8 70/17
83/13 87/20 90/11 92/3 92/6
92/7 92/12 92/12 92/19 92/20
92/20 92/23 93/13 93/17
93/19 93/22 93/24 94/1 94/5
94/6 94/8 94/17 95/2 95/10
96/24 97/13 99/1 99/21
101/24 101/25 102/2 103/6
103/8 115/4 115/9 116/25
117/4 117/6 117/10 119/14
123/9 123/9 126/13 131/3
131/4 131/4 134/2 134/24
135/2 150/23 150/25 168/22
168/22 168/23 168/25 170/8
170/10 170/19 170/22 173/4
173/8 173/11 173/16 173/21
173/25 174/5 174/11 174/15
174/20 175/1 175/4 175/6
175/7 175/12 175/17 176/8
176/11 176/15 179/14 179/23
180/1 180/2 180/7 180/11
180/13 180/18 180/22 180/24
181/1 181/3 181/8 181/14
181/19 181/25 182/1 182/9
182/15 182/19 183/5 183/21
184/3 184/10 192/6 214/12
214/14 214/23 226/15 226/24
227/12 255/6 261/21 262/12
programmed [2] 90/15 187/15
programmer [3] 179/17 182/1
184/4
programming [9] 62/3 114/18
115/15 115/22 116/19 117/15
131/12 131/15 187/19
programs [10] 58/4 92/24
94/24 97/14 99/15 116/17
116/20 116/21 123/13 214/17
progress [1] 59/15
prohibited [1] 198/19
project [3] 57/13 122/10
260/18
promise [1] 269/11
promised [1] 194/22
promote [1] 59/15
proof [2] 19/10 50/20
proper [1] 161/21
properly [9] 17/4 43/25 147/6
217/20 218/6 218/23 218/24
219/11 219/16
property [18] 60/3 60/4 60/5
60/5 60/8 65/21 69/16 69/17
73/3 73/6 73/7 73/9 78/14
141/3 141/10 197/9 201/22
247/10
proposal [4] 18/17 18/18 34/7
40/22
proposals [1] 17/22
propose [1] 17/9
proposed [12] 7/19 7/21 17/10
17/12 17/14 17/15 17/20 24/1
33/19 35/4 35/19 40/18
proposing [1] 20/13

<p>P</p> <p>proposition [1] 6/18</p> <p>propositions [3] 28/1 28/23 31/5</p> <p>prosecute [1] 147/12</p> <p>prosecution [17] 145/5 168/2 202/25 203/8 203/16 217/19 218/5 218/10 218/19 218/22 219/2 219/4 220/20 221/2 221/9 222/4 222/5</p> <p>prospective [1] 142/6</p> <p>protect [7] 141/9 141/10 154/9 156/18 159/1 165/15 201/22</p> <p>protected [1] 161/1</p> <p>protective [1] 155/20</p> <p>prototype [6] 131/2 131/4 131/10 131/15 136/3 263/22</p> <p>proud [3] 117/5 132/15 139/14</p> <p>prove [8] 10/19 11/7 13/18 48/6 48/21 72/17 72/23 102/5</p> <p>proved [1] 75/20</p> <p>provide [8] 51/14 67/21 93/21 101/24 175/5 251/15 257/4 257/25</p> <p>provided [7] 46/14 66/24 168/21 174/12 187/20 214/2 258/9</p> <p>provides [1] 59/11</p> <p>providing [11] 15/6 152/19 168/24 173/25 174/4 175/11 202/20 209/21 210/18 211/5 226/23</p> <p>provision [3] 161/21 238/10 247/16</p> <p>PTAB [3] 5/2 18/22 19/9</p> <p>public [21] 5/24 6/2 6/7 6/9 6/24 11/1 11/2 11/5 11/9 11/18 11/21 12/10 13/7 13/13 13/16 13/20 13/22 14/3 14/7 22/12 110/14</p> <p>publication [7] 6/14 6/19 6/23 13/11 13/23 14/7 211/3</p> <p>publications [17] 5/15 7/5 7/9 10/24 11/3 11/10 11/11 11/24 12/1 12/22 12/24 13/5 22/7 22/17 22/23 23/1 221/24</p> <p>publicly [8] 5/18 12/16 53/2 87/4 87/25 88/4 88/8 221/20</p> <p>publish [2] 52/2 52/5</p> <p>published [3] 52/19 87/8 144/4</p> <p>publishing [1] 55/13</p> <p>pull [7] 157/24 157/25 172/11 193/2 237/17 253/11 260/9</p> <p>purchase [1] 160/23</p> <p>purchased [2] 196/6 197/9</p> <p>purchasing [2] 43/8 162/17</p> <p>purely [1] 87/7</p> <p>purpose [9] 32/23 35/4 129/17 129/22 137/8 155/17 156/3 169/17 261/11</p> <p>purposes [11] 27/13 31/20 32/7 52/24 65/20 79/9 87/7 95/6 100/17 169/20 178/22</p> <p>pursuant [1] 12/19</p> <p>pursue [3] 32/19 49/6 58/22</p> <p>pursued [1] 68/8</p> <p>pursuing [3] 78/15 78/19 81/17</p>	<p>push [1] 90/13</p> <p>put [6] 29/2 34/1 36/17 39/18 43/16 67/4 67/7 72/19 88/1 88/22 90/21 90/23 92/11 93/6 93/13 95/2 99/14 103/5 103/7 113/21 124/24 126/20 126/22 126/23 127/8 131/23 135/2 136/7 136/23 137/18 138/7 139/6 139/12 144/5 146/1 146/3 146/17 147/2 147/5 147/6 147/15 148/13 157/16 159/25 166/20 175/19 183/10 183/11 184/12 195/18 203/21 204/3 218/1 219/13 219/14 221/1 224/3 228/18 246/6 262/5 264/9</p> <p>puts [1] 124/9</p> <p>putting [2] 33/17 139/19</p> <p>PX [30] 127/22 128/3 128/7 136/14 136/18 136/22 149/18 149/25 150/4 157/7 157/12 157/15 157/25 159/16 159/20 159/24 163/12 163/17 163/20 164/21 165/3 165/7 166/14 166/20 169/22 246/6 246/7 246/8 247/13 262/5</p> <p>PX-1 [7] 149/18 149/25 150/4 166/14 166/20 169/22 262/5</p> <p>PX-393 [3] 127/22 128/3 128/7</p> <p>PX-439 [2] 136/14 136/22</p> <p>PX-66 [2] 165/3 165/7</p> <p>PX-75 [4] 157/7 157/12 157/15 157/25</p> <p>PX-76 [1] 246/6</p> <p>PX-77 [6] 159/16 159/20 159/24 246/7 246/8 247/13</p> <p>PX-78 [3] 163/12 163/17 163/20</p> <p>Q</p> <p>qualifies [1] 5/17</p> <p>quantify [1] 48/9</p> <p>question [71] 27/5 30/3 45/13 48/4 55/19 85/12 85/13 85/15 85/24 89/4 89/6 102/16 102/19 103/2 103/9 107/7 107/18 114/25 120/19 120/19 130/9 130/12 143/24 154/20 162/5 162/7 173/17 176/2 177/1 177/11 177/16 177/20 177/23 177/24 178/10 178/12 178/14 178/15 178/17 178/18 178/24 182/12 182/21 183/18 183/20 198/8 198/12 199/2 199/13 204/25 212/25 241/5 248/3 248/22 250/17 250/21 258/3 258/20 259/7 260/7 261/6 261/24 265/9 265/15 265/18 265/22 266/4 266/14 266/24 269/19 270/10</p> <p>questions [25] 129/23 129/25 147/23 147/24 161/12 194/1 198/17 221/3 227/22 241/2 243/21 249/11 251/19 252/12 258/6 258/12 259/4 259/24 261/20 264/18 264/22 265/4 267/7 267/18 270/4</p> <p>quick [9] 41/18 42/6 42/13 42/22 47/24 48/3 48/8 108/2</p>	<p>154/20</p> <p>quicker [1] 108/3</p> <p>quickly [4] 35/13 47/17 53/17 75/6</p> <p>quite [10] 83/8 134/1 136/6 137/10 143/7 146/6 163/1 218/18 222/15 239/19</p> <p>quote [20] 173/19 174/4 174/19 190/16 191/18 192/3 192/12 205/22 206/5 211/21 214/8 224/18 225/7 226/8 226/22 227/10 230/2 230/5 230/13 236/12</p> <p>quoted [1] 202/23</p> <p>R</p> <p>raise [18] 9/1 9/2 16/23 18/17 21/15 23/10 27/14 32/5 38/21 40/16 49/18 49/19 108/24 143/18 145/23 148/1 148/4 217/9</p> <p>raised [41] 6/10 6/13 6/15 6/20 7/10 10/23 11/14 11/19 11/21 11/23 12/13 13/8 13/24 14/8 15/3 15/12 17/22 19/16 21/12 21/13 22/12 25/11 31/10 32/5 35/25 38/16 38/22 40/13 49/14 49/19 49/23 50/15 51/2 130/3 148/6 218/22 220/18 221/8 230/4 266/11 266/12</p> <p>raises [2] 103/9 144/20</p> <p>raising [7] 5/10 5/24 6/1 6/7 14/3 31/11 156/5</p> <p>ramp [1] 96/3</p> <p>range [3] 112/1 114/15 196/12</p> <p>rate [6] 46/13 47/4 47/6 47/10 80/17 80/24</p> <p>rather [3] 101/12 156/6 181/8</p> <p>re [3] 259/7 264/19 265/7</p> <p>re-ask [1] 259/7</p> <p>re-redirect [2] 264/19 265/7</p> <p>reach [7] 34/24 55/23 104/13 138/1 138/13 140/7 244/23</p> <p>reached [1] 68/25</p> <p>read [11] 14/23 130/8 130/10 177/16 178/10 178/11 178/13 178/18 236/12 265/22 265/25</p> <p>readable [2] 83/12 168/18</p> <p>reads [1] 209/24</p> <p>ready [5] 55/17 56/21 149/9 223/12 225/5</p> <p>real [2] 41/12 125/15</p> <p>reality [1] 49/1</p> <p>realize [4] 37/16 107/3 107/10 107/12</p> <p>realized [4] 14/12 40/11 112/6 195/7</p> <p>really [23] 22/22 22/23 27/25 28/6 28/21 28/23 44/13 61/24 76/25 77/1 84/19 85/14 97/24 101/14 102/10 103/3 105/12 105/17 105/24 107/13 118/21 135/6 218/22</p> <p>realm [1] 219/17</p> <p>reargument [2] 7/15 9/21</p> <p>reason [16] 13/1 20/4 21/6 30/13 33/11 35/15 39/9 59/20 59/24 91/18 119/20 141/8</p>	<p>145/9 181/5 215/9 252/14</p> <p>reasonable [3] 22/2 24/14 196/24</p> <p>reasonably [4] 6/20 20/10 21/21 24/9</p> <p>reasons [7] 9/16 11/16 16/4 81/5 99/8 111/12 148/12</p> <p>rebut [1] 218/21</p> <p>rebuttal [3] 46/18 46/19 46/22</p> <p>recall [41] 75/5 175/22 175/24 183/14 194/15 208/1 213/22 223/25 225/25 226/3 229/6 229/9 229/11 240/25 243/1 245/22 246/13 246/17 247/5 247/16 250/12 250/21 251/18 251/24 252/3 252/12 253/7 253/25 255/10 256/10 258/6 258/14 258/20 259/9 260/11 261/6 261/20 261/24 262/19 263/9 263/19</p> <p>receipt [10] 93/23 102/1 174/16 174/20 175/6 180/2 180/6 182/8 182/14 184/10</p> <p>receive [17] 69/4 141/13 180/12 180/18 180/22 181/2 181/4 181/10 181/15 181/19 181/20 181/21 181/25 183/6 183/7 183/21 183/23</p> <p>received [6] 9/4 60/14 61/7 67/2 72/15 184/3</p> <p>receives [2] 181/7 182/5</p> <p>receiving [2] 180/13 181/8</p> <p>recently [1] 15/3</p> <p>receptive [3] 12/3 12/4 13/13</p> <p>recess [8] 55/8 141/22 141/24 141/24 144/13 217/5 217/6 271/9</p> <p>Recital [1] 242/3</p> <p>recitals [4] 157/25 229/24 242/1 242/16</p> <p>recognize [12] 24/13 127/25 136/16 144/2 149/23 155/11 157/9 159/18 163/14 164/23 181/6 232/17</p> <p>recognized [6] 81/19 225/9 225/22 261/21 261/25 262/22</p> <p>recognizes [3] 224/16 225/9 225/17</p> <p>recognizing [3] 212/3 224/13 262/2</p> <p>recollection [2] 212/23 213/2</p> <p>record [15] 3/10 4/8 4/21 7/17 9/24 10/17 11/3 13/16 108/21 130/10 154/22 177/18 251/22 265/25 270/23</p> <p>RECROSS [1] 266/22</p> <p>redirect [8] 244/2 244/5 245/6 245/17 264/19 265/7 265/22 266/14</p> <p>reduce [3] 231/2 231/9 231/12</p> <p>refer [3] 5/12 228/12 240/13</p> <p>reference [27] 5/3 5/25 6/8 13/7 13/15 18/21 19/4 19/5 20/23 21/4 21/7 22/12 26/4 55/13 66/12 75/6 146/6 211/9 211/15 214/8 214/10 214/19 218/12 219/23 254/6 254/21 257/1</p> <p>referenced [6] 26/15 51/4 137/5 253/14 253/21 255/23</p>
--	---	---	---

<p>Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 102 of 775 PageID #: 60681</p> <p>references [61] 5/21 6/1 6/4 6/9 9/3 9/7 10/13 10/14 18/14 38/17 74/23 75/5 76/16 77/7 100/1 100/13 145/16 146/1 147/17 153/3 153/20 154/3 197/23 198/15 202/24 205/19 205/21 206/2 206/7 206/23 208/2 209/2 209/7 210/3 210/7 210/19 210/25 217/20 217/22 217/24 218/16 218/18 218/24 219/6 219/14 219/18 221/1 221/9 252/9 252/18 252/20 252/21 252/23 252/24 257/4 257/11 257/17 257/22 258/1 258/4 258/9 referred [1] 58/18 referring [1] 186/16 refine [1] 61/25 reflect [2] 79/14 158/3 reflected [1] 160/8 reflects [1] 13/16 refocused [2] 135/7 135/25 regard [3] 216/19 227/5 269/20 regarding [4] 6/24 8/9 16/12 148/3 Register [1] 120/11 registers [1] 120/13 regular [1] 96/3 rehash [1] 29/11 reject [1] 13/1 rejected [5] 30/10 30/12 30/15 31/13 35/23 rejection [1] 204/25 rejigger [1] 43/23 relate [1] 264/5 related [29] 41/17 150/24 151/10 152/24 154/3 162/21 167/5 167/19 184/14 191/20 191/23 191/25 194/17 201/6 209/2 209/7 210/4 212/11 218/19 225/8 225/22 247/4 253/1 253/18 254/1 255/13 258/9 263/21 265/19 relates [3] 49/21 168/17 254/16 relating [4] 8/4 211/5 235/5 237/22 relation [3] 206/9 206/24 252/11 relationships [1] 64/13 relative [2] 26/8 106/18 relatively [3] 116/13 119/4 268/6 release [2] 27/2 238/15 released [6] 28/20 67/7 68/7 69/21 73/15 239/9 releases [2] 238/24 248/16 releasing [1] 249/6 relevance [4] 20/13 33/10 38/11 40/3 relevant [31] 5/18 11/1 11/6 16/17 23/10 24/4 24/14 29/9 30/3 30/15 30/20 31/8 38/10 39/23 39/23 40/4 40/5 40/6 40/12 42/21 42/22 42/25 208/3 220/7 220/12 222/16 222/18 226/18 255/16 259/25 261/1</p>	<p>reliance [1] 95/3 relied [5] 7/2 100/13 145/16 relies [1] 11/18 relying [1] 205/19 rely [13] 12/10 14/15 28/14 29/5 29/7 29/7 33/11 91/11 91/21 145/2 145/10 179/18 257/25 remaining [1] 9/3 remains [1] 46/12 remarks [1] 204/20 remember [26] 24/11 64/6 74/15 96/5 104/8 129/3 133/20 135/13 140/17 142/1 168/6 193/17 194/10 196/11 207/14 207/23 213/5 213/8 213/12 213/16 213/24 213/25 214/4 229/10 246/16 262/1 remind [4] 141/22 149/2 199/4 267/20 removal [1] 45/21 removed [3] 45/12 46/15 46/16 render [1] 14/14 renowned [1] 97/20 rep [1] 155/25 repeat [3] 182/12 212/25 253/16 rephrase [1] 257/14 report [5] 15/6 42/1 45/8 45/10 46/19 reporter [8] 110/12 130/8 130/10 177/16 265/21 265/25 272/2 272/8 reporting [1] 267/18 reports [1] 41/22 represent [4] 57/4 57/4 82/18 158/6 representatives [1] 154/24 represented [1] 196/14 request [12] 7/15 7/15 9/15 9/17 9/21 9/23 10/8 10/21 15/25 16/3 16/15 51/5 requested [3] 16/2 130/10 266/1 require [5] 51/11 89/17 101/23 170/18 216/10 required [15] 10/16 84/10 92/6 94/17 94/18 98/7 101/13 214/14 215/7 215/10 216/1 226/15 226/24 255/6 269/22 requirement [8] 173/14 173/24 174/10 174/14 174/25 175/14 184/9 255/18 requirements [5] 84/12 93/17 172/4 175/3 175/13 requires [6] 97/17 152/22 173/19 174/4 184/13 198/15 reraise [1] 14/6 reraised [1] 15/2 reread [1] 177/19 research [2] 62/14 87/7 reseller [1] 248/5 resellers [3] 236/19 247/25 248/20 resolution [3] 7/12 8/23 9/19 resolve [8] 6/6 33/4 57/17 79/7 79/17 142/22 177/12 231/4 resolved [4] 19/1 27/18 178/8</p>	<p>270/21 respect [6] 21/22 38/23 146/5 148/10 178/1 231/4 respective [1] 59/17 respond [2] 49/8 265/14 responding [1] 205/3 response [9] 15/1 178/3 194/1 204/7 204/18 205/7 205/18 207/13 251/3 Response A [1] 207/13 responsive [1] 146/19 rest [5] 82/1 107/19 113/9 153/24 270/25 restaurant [4] 98/10 98/22 100/20 107/14 restaurants [6] 98/10 98/13 98/17 98/18 100/20 100/21 restricted [1] 25/3 result [8] 5/6 18/17 28/3 106/24 115/8 140/13 163/8 264/8 resulted [3] 29/14 159/3 159/9 results [2] 91/7 209/25 resume [2] 142/13 217/9 resumed [2] 5/4 21/4 retailer [1] 248/5 retailers [4] 236/20 239/3 248/1 248/20 retellers [1] 239/3 retrieve [1] 262/13 return [1] 106/15 reveal [1] 221/20 revenue [2] 106/17 106/18 revenues [5] 106/13 106/21 194/23 195/6 195/7 reversed [1] 25/17 review [20] 5/2 8/19 10/21 26/24 28/2 29/14 30/14 31/1 31/6 32/19 36/19 39/20 39/25 65/9 74/7 74/19 77/9 145/13 146/2 257/22 reviewed [4] 39/1 58/12 97/23 207/20 reviewing [1] 38/2 revisited [1] 40/21 revolutionary [1] 93/4 rid [2] 18/13 77/2 right [221] 4/7 4/19 14/18 14/19 21/8 21/9 22/13 24/15 32/1 33/25 34/17 34/19 35/7 37/24 37/25 40/12 40/19 40/24 41/1 41/6 44/9 50/16 50/24 53/12 53/23 54/25 55/5 55/16 56/13 57/12 58/24 59/3 59/11 59/12 59/17 59/18 59/18 60/1 60/7 60/10 60/10 68/21 70/10 76/16 77/24 78/21 85/1 86/5 96/14 99/2 99/25 102/6 104/11 106/15 106/19 108/24 109/10 113/25 118/3 124/6 125/17 125/20 125/23 126/17 126/18 128/6 130/16 134/15 137/3 138/3 141/19 141/20 142/23 144/11 147/13 147/25 147/25 148/20 150/9 155/17 157/4 157/22 160/5 164/13 165/10 166/2 167/7 167/8 167/22 168/8 168/11 169/5 169/11 170/8 170/19 170/23 171/1 171/15</p>	<p>171/20 171/21 171/23 172/1 172/9 172/14 173/3 173/9 173/12 173/16 173/17 173/18 173/22 174/13 175/1 175/18 175/25 177/25 180/15 180/19 181/22 182/2 182/11 184/21 184/23 185/2 186/8 186/15 187/10 187/11 187/17 187/22 187/23 188/1 188/21 188/22 189/7 190/9 192/21 194/18 195/3 195/8 195/13 195/23 196/3 196/12 196/17 196/22 197/12 199/19 199/20 200/3 200/4 200/11 200/14 200/15 200/24 200/25 201/15 201/17 202/15 205/1 206/14 206/15 206/25 207/14 208/20 209/9 210/20 212/8 212/24 213/6 213/19 217/5 217/21 217/22 218/2 221/11 222/13 222/19 223/14 226/5 228/13 228/22 229/4 229/25 230/18 231/22 232/23 234/6 235/15 236/1 238/5 238/20 238/21 239/24 240/15 240/16 240/21 241/6 242/21 242/25 243/15 244/2 244/21 244/24 245/2 251/7 253/13 253/18 254/17 255/25 256/14 257/12 263/22 267/4 267/9 267/17 268/2 269/17 270/2 270/8 271/6 rights [6] 65/10 67/15 68/8 85/18 161/22 161/22 Rinard [2] 97/21 99/8 risk [1] 158/21 risks [1] 158/18 RND [1] 62/14 road [1] 81/16 Rob [1] 82/18 Rob Unikel [1] 82/18 ROBERT [2] 2/12 3/22 ROBERTS [3] 2/13 3/23 82/19 rocky [1] 3/9 role [3] 152/19 201/19 202/20 room [6] 4/16 113/24 116/4 116/7 142/7 155/14 roommates [1] 116/23 rooms [1] 114/6 roughly [2] 106/21 232/25 routine [1] 94/11 Roy [2] 78/24 268/8 royalty [2] 80/24 81/2 rule [6] 8/18 10/16 12/20 13/2 220/1 269/19 Rule 50 [1] 269/19 ruled [2] 94/9 147/18 rules [2] 34/12 220/2 ruling [20] 10/2 10/4 10/11 14/2 14/5 14/9 14/23 15/10 16/25 17/16 22/22 25/21 39/14 40/19 40/20 40/23 148/3 148/19 217/23 222/24 rulings [3] 39/2 142/18 142/23 run [1] 143/4 running [3] 146/12 168/10 181/3 runs [2] 85/3 85/4 Ruth [2] 128/21 128/22</p>
--	---	--	--

<p>S September [3] 167/16 189/12 228/25 September 14 [1] 228/25 September 2 [1] 189/12 September 3 [1] 167/16 Serial [2] 206/6 252/7 seriously [1] 140/11 serve [1] 61/11 served [2] 45/9 60/20 service [16] 81/24 82/24 83/4 99/16 110/18 110/19 135/9 135/19 135/20 136/2 139/13 139/18 194/19 194/20 235/5 237/22 services [4] 197/2 197/6 209/21 211/6 set [9] 94/10 94/15 94/19 97/5 97/15 98/4 109/10 109/12 115/20 SETH [3] 2/5 3/13 21/10 sets [1] 161/9 setting [2] 92/8 98/19 settle [3] 79/5 79/16 105/14 settled [1] 232/2 settlement [6] 79/15 105/5 164/25 236/4 238/23 241/18 seven [7] 223/5 229/11 233/7 257/8 257/11 257/17 258/9 several [10] 9/15 47/11 112/17 114/15 136/4 153/6 158/18 214/9 226/9 254/22 shall [3] 59/14 74/5 148/24 share [7] 57/14 57/16 59/24 81/13 82/9 138/9 194/23 shared [2] 53/2 55/10 sharing [4] 57/9 57/9 59/5 138/7 she [10] 128/17 128/19 128/19 128/20 141/8 148/2 151/24 155/16 155/16 155/18 shield [1] 145/12 short [2] 120/11 190/16 shortcut [8] 87/14 87/15 88/17 89/4 90/8 92/11 92/16 98/6 shortcuts [2] 86/13 101/10 shortened [1] 28/25 Shortly [1] 67/3 shot [5] 21/25 24/7 25/3 35/22 170/10 should [53] 8/14 8/19 8/20 14/6 15/12 18/19 25/25 26/9 28/6 28/22 29/12 32/14 32/22 33/4 33/14 33/22 34/13 35/7 35/9 36/8 37/14 37/14 37/21 40/19 50/15 60/25 74/18 75/12 75/15 76/2 76/20 77/17 79/23 79/24 102/22 136/15 143/5 143/11 143/16 146/11 149/18 152/8 152/8 159/17 178/17 206/2 206/18 218/20 219/22 252/18 252/23 255/15 259/7 shouldn't [3] 37/21 53/13 75/16 show [43] 11/4 11/17 21/24 22/5 27/15 27/23 28/15 28/18 32/23 37/2 53/9 66/22 71/18 72/10 72/14 72/24 72/25 75/24 76/10 77/13 79/3 81/5</p>	<p>81/6 82/16 86/3 86/18 87/11 87/19 93/25 96/16 98/3 102/5 102/8 117/1 125/4 125/7 127/5 133/9 133/16 178/5 179/1 179/4 189/1 showed [8] 45/22 66/19 68/3 100/1 133/13 133/25 147/16 263/7 showing [9] 66/10 70/9 125/9 132/3 153/19 153/20 170/9 178/18 202/24 shown [10] 73/23 88/9 89/17 91/8 113/23 153/11 170/16 171/10 218/23 222/10 shows [8] 22/1 66/23 80/21 125/11 170/12 170/24 204/13 222/10 sic [1] 107/11 side [23] 19/5 19/24 27/12 30/18 37/2 44/4 55/10 56/24 72/22 82/14 121/10 121/12 126/11 126/12 139/9 139/13 143/1 155/10 177/10 178/6 222/22 269/23 269/25 sidebar [23] 107/23 108/1 108/13 129/11 129/14 130/18 155/3 155/6 156/10 161/2 161/3 161/5 162/9 176/19 176/22 179/6 197/15 197/18 199/7 264/24 265/2 265/3 266/16 sidebars [1] 270/25 sides [3] 27/4 72/21 107/14 signatories [1] 162/1 signature [3] 157/22 163/25 165/11 signed [16] 105/10 105/13 136/17 195/10 228/15 228/25 229/4 230/8 231/21 232/20 238/11 240/20 241/17 241/22 242/12 243/8 significant [1] 80/11 signing [1] 140/19 Silicon [5] 118/12 118/17 118/20 118/23 120/24 similar [7] 38/21 54/9 106/25 112/21 115/6 152/25 180/23 similarly [2] 54/18 202/7 simple [3] 27/23 28/1 30/19 simplest [1] 132/14 simplify [1] 123/22 simplifying [1] 123/24 simply [5] 20/16 98/4 132/16 185/16 216/2 since [11] 4/23 18/5 18/20 21/14 104/16 104/18 128/18 169/3 223/2 240/14 245/8 single [21] 11/17 13/23 43/7 43/8 92/11 92/12 92/19 92/20 92/20 92/23 93/13 98/4 99/21 103/6 104/5 104/9 104/11 192/5 193/22 194/2 195/16 sip [1] 123/18 sir [57] 109/6 109/19 166/23 168/6 168/13 171/7 172/14 174/17 175/22 176/13 179/12 182/21 183/14 189/1 189/4 189/6 189/17 191/6 192/19 194/13 199/13 202/13 203/2 203/8 204/6 204/18 205/11</p>	<p>205/13 207/5 207/15 208/14 208/22 209/17 210/11 210/9 223/21 224/6 224/24 225/5 226/22 227/3 228/7 228/14 228/21 232/12 232/17 236/1 236/15 238/17 239/13 240/7 240/9 240/17 243/10 244/15 266/24 267/5 Sir/Madam [1] 204/18 sit [4] 4/17 30/7 74/18 89/8 sitting [9] 53/10 98/15 113/24 123/3 123/20 155/8 194/6 233/20 234/4 situation [2] 4/14 177/15 six [5] 50/7 232/25 257/7 257/17 258/9 skill [1] 188/9 skills [2] 61/25 62/4 skimmed [1] 41/11 slide [14] 36/14 36/17 36/21 51/21 53/4 80/3 80/4 80/21 82/16 85/2 125/5 153/10 153/11 153/17 slides [15] 11/13 51/25 52/6 52/10 52/11 52/12 52/14 52/17 53/7 53/20 67/21 68/18 68/23 81/6 147/15 slow [1] 23/12 slowly [1] 110/11 small [8] 60/18 63/12 109/25 122/8 122/16 133/4 141/9 151/3 smaller [1] 164/11 smallest [1] 123/25 Smart [13] 41/24 69/21 71/4 71/6 71/10 71/12 73/15 85/6 85/8 95/21 96/21 97/3 98/24 Smedley [5] 71/22 71/24 268/5 268/8 268/17 Smedley's [1] 72/6 SMITH [1] 1/22 so [336] software [21] 57/20 61/23 62/2 62/7 62/10 62/18 63/6 65/1 93/2 120/2 121/17 122/17 160/13 195/2 195/15 195/18 211/11 235/5 235/17 235/19 237/22 SOL [2] 139/3 139/3 sold [21] 81/1 121/1 121/2 137/18 158/10 159/7 160/12 160/14 164/10 192/20 192/23 193/1 193/19 194/24 198/5 198/23 201/14 231/5 235/6 249/16 249/23 solely [2] 22/6 145/10 solution [1] 52/15 solutions [3] 115/13 115/15 202/11 solve [4] 34/15 115/15 202/3 202/10 some [72] 4/17 11/12 29/11 30/18 39/1 39/3 43/7 48/11 51/2 51/4 54/9 56/20 57/9 58/8 61/15 66/9 67/19 70/20 76/9 84/20 87/14 87/17 88/6 94/12 100/5 105/16 112/4 116/20 117/24 122/17 122/17 122/25 123/17 124/11 127/12 131/6 131/8 133/15 136/6</p>	<p>136/12 138/25 140/3 140/7 142/17 142/21 143/16 144/2 145/20 146/1 153/7 154/12 161/21 164/1 167/12 168/13 172/3 180/17 180/21 185/5 202/23 219/10 224/16 224/24 225/2 225/17 234/17 247/3 253/22 263/17 268/17 268/22 270/14 somebody [4] 65/21 73/6 78/14 156/5 somebody's [1] 78/12 somehow [5] 23/16 105/7 218/6 218/11 221/7 someone [4] 112/19 172/21 172/25 190/4 something [47] 16/9 22/20 22/25 23/2 23/16 24/10 26/7 32/6 32/9 57/10 57/11 57/19 59/23 70/8 70/18 76/12 79/17 84/11 88/16 89/21 91/3 97/10 112/21 116/16 126/23 129/21 131/10 142/13 143/18 152/24 179/18 182/17 184/5 184/20 185/9 206/1 206/19 219/15 220/8 220/8 220/19 220/25 222/21 234/7 249/12 253/18 253/22 sometime [2] 129/4 269/8 sometimes [2] 37/16 73/1 somewhat [1] 72/22 somewhere [3] 151/22 151/23 196/10 soon [3] 114/8 116/3 244/5 sophomore [1] 113/25 sorry [17] 109/11 112/9 128/15 150/20 165/1 190/22 191/12 223/6 224/2 230/24 236/11 237/18 239/13 245/10 246/7 249/17 262/7 sort [10] 25/9 113/13 120/23 121/19 123/19 131/9 137/8 138/17 153/6 157/5 sought [11] 24/4 26/23 29/13 31/6 39/25 67/14 75/19 146/16 146/18 154/8 159/1 sound [2] 58/8 65/16 sounds [1] 266/3 source [6] 11/13 51/16 72/1 150/25 168/24 174/22 sources [1] 11/17 south [3] 109/25 121/17 136/5 South American [1] 136/5 sparked [1] 115/1 speak [3] 82/4 89/7 110/6 special [2] 74/17 111/19 specialized [1] 74/17 specific [14] 49/23 93/18 95/16 99/1 103/7 106/23 172/4 173/14 180/13 188/4 211/24 212/4 230/5 256/12 specifically [12] 101/23 173/19 188/17 195/20 198/22 207/23 226/3 230/19 231/17 233/22 237/2 252/21 specified [1] 181/13 specify [2] 173/3 179/25 speeches [1] 87/10 speedometer [1] 89/11 spell [4] 90/17 90/18 92/17</p>
--	--	---	---

S	stealth [2] 8/9 8/17	218/14	11/9 11/10 11/17 11/21 12/11
<p>spell... [1] 108/20 spelled [1] 90/19 spellings [1] 90/20 spend [6] 66/2 69/5 72/8 81/25 120/1 133/6 spent [9] 38/2 38/4 61/15 74/10 114/20 114/21 121/18 133/15 218/17 spiral [1] 37/6 spiraling [1] 29/11 spoke [1] 228/11 spoken [1] 19/1 spreadsheet [3] 41/25 92/12 168/23 SRINIVASAN [3] 2/5 3/11 57/2 stack [2] 4/8 41/12 stand [4] 18/8 34/5 132/7 198/11 standard [3] 73/21 75/23 76/1 standards [1] 36/7 standing [1] 132/5 stands [1] 137/14 stapled [1] 55/12 star [1] 153/24 Stark [10] 5/7 5/19 7/1 7/7 8/5 8/15 9/7 9/10 9/21 12/3 Stark's [3] 5/8 6/5 10/10 start [19] 3/9 4/10 55/7 56/19 62/16 62/17 95/11 95/21 111/19 111/21 125/6 143/19 159/10 162/15 222/23 245/7 245/19 245/21 248/15 started [20] 4/11 4/15 4/18 14/12 35/18 36/21 38/6 42/11 55/2 110/9 112/15 119/4 119/6 120/12 122/4 122/24 139/25 140/11 249/11 269/8 starting [9] 62/22 64/13 64/24 117/13 125/12 126/11 135/15 177/16 268/13 starts [4] 42/7 153/16 173/25 224/14 startup [1] 64/8 state [7] 30/15 31/14 32/23 108/20 113/3 215/4 235/21 stated [6] 6/11 105/19 202/17 212/22 213/1 270/23 statement [17] 82/13 148/2 148/7 148/8 148/10 148/13 148/18 169/3 178/4 178/6 205/19 205/25 227/5 246/17 256/9 261/5 261/17 statements [12] 41/3 41/7 55/7 55/24 56/24 91/22 145/2 146/25 150/12 154/2 216/14 216/17 STATES [6] 1/1 1/18 59/13 60/12 61/1 83/20 stating [2] 15/9 238/3 stationery [1] 189/9 statutory [1] 12/8 stay [15] 29/14 36/3 36/17 36/18 36/21 36/21 37/3 37/4 39/22 40/19 61/10 121/21 154/18 154/24 199/5 stayed [9] 20/6 26/21 26/24 29/21 29/22 31/25 35/17 37/11 67/4</p>	<p>steering [1] 89/11 steno-graphic [1] 272/5 step [9] 71/16 71/16 72/4 72/12 72/12 142/9 152/1 217/4 267/10 steps [2] 73/6 136/9 stick [3] 133/19 133/22 134/13 still [24] 14/15 20/16 33/1 36/23 36/24 36/25 41/12 42/22 58/22 64/18 73/7 75/2 78/9 78/15 79/7 110/10 113/3 113/4 115/10 117/16 121/8 132/25 149/3 246/3 stint [1] 122/18 stipulation [10] 24/1 27/23 28/24 34/7 34/14 34/24 34/25 35/5 35/7 35/19 stipulations [4] 8/2 8/14 28/5 33/19 stopped [5] 65/6 140/17 140/20 196/2 200/9 store [1] 262/12 story [1] 60/16 straight [1] 45/17 straighten [1] 142/12 strategy [1] 34/3 STRAUS [2] 2/4 4/5 street [9] 1/16 86/24 87/19 171/17 185/2 185/21 187/3 193/2 212/20 strike [2] 15/4 15/5 strong [2] 60/18 105/6 struggling [1] 19/23 STS [4] 95/22 96/8 96/15 96/21 stuck [1] 109/11 student [4] 61/16 119/21 119/22 120/5 students [1] 113/20 studied [8] 31/19 97/21 97/22 97/23 101/2 101/2 101/3 101/4 studies [1] 115/20 study [9] 111/4 111/11 112/1 112/19 113/6 114/14 115/18 120/6 191/8 studying [3] 61/16 112/2 113/24 stuff [11] 4/18 31/25 33/9 46/3 46/4 46/6 46/8 112/4 115/13 115/23 120/14 stupid [1] 123/11 subject [9] 6/14 40/20 47/10 61/17 118/4 190/12 208/3 251/14 264/19 subjects [2] 111/23 114/16 submission [1] 224/21 submit [4] 75/9 77/12 152/4 153/4 submits [1] 204/19 submitted [11] 24/2 24/2 24/20 35/3 153/22 153/25 207/16 207/21 213/20 219/7 256/23 Subpart [1] 242/15 subscribed [1] 135/20 subscription [1] 137/25 subsequent [3] 145/22 153/18</p>	<p>subsequently [2] 141/13 163/3 subsidiary [2] 163/10 164/3 substance [2] 129/19 129/22 substantial [1] 79/8 substantive [2] 39/8 39/14 subtracting [1] 46/7 success [3] 64/12 193/15 198/4 successful [2] 33/7 140/15 such [9] 13/22 25/21 26/23 106/5 168/22 186/3 186/22 187/5 262/13 sued [7] 105/14 158/17 159/7 159/8 163/2 248/10 249/15 sufficiently [1] 31/1 suggest [7] 18/25 20/15 26/7 35/22 106/5 216/2 219/5 suggested [4] 36/15 36/17 99/24 119/23 suggestion [1] 105/6 suggests [2] 11/4 161/10 suit [11] 73/14 104/2 104/8 104/13 104/22 146/7 146/13 156/19 165/14 240/1 241/19 summarize [1] 175/3 summary [7] 5/5 7/12 15/13 16/3 16/19 16/23 17/5 summertime [1] 112/18 sums [1] 79/8 sunny [1] 114/1 super [3] 116/24 140/16 151/14 supersedes [1] 161/9 supplemental [2] 45/8 46/24 supplier [4] 239/16 239/21 248/15 248/24 suppliers [3] 239/2 239/9 248/19 support [12] 61/7 206/8 206/19 207/8 208/16 223/24 252/10 252/22 252/25 253/6 253/14 254/1 supports [1] 211/10 suppose [2] 112/24 118/15 supposed [2] 36/5 36/13 supposedly [1] 95/1 sure [49] 44/22 45/5 52/8 52/9 55/25 74/11 74/18 82/8 82/15 111/7 117/8 117/11 121/19 143/9 143/15 143/25 144/1 144/4 152/6 154/23 155/17 155/24 170/11 182/25 184/1 185/24 186/4 186/6 186/11 186/13 186/23 187/1 187/6 193/18 207/14 207/22 208/5 217/10 219/25 220/4 222/16 223/3 223/10 239/19 252/16 259/2 269/2 269/21 270/22 Surely [1] 30/5 SUSMAN [6] 2/3 3/11 3/13 3/15 3/19 21/11 suspected [1] 250/19 sustained [1] 260/5 Sweden [1] 138/18 sword [1] 145/12 sworn [1] 109/1 system [89] 5/12 5/16 5/17 5/25 6/2 6/7 6/10 6/25 7/3 7/6 7/9 8/5 8/7 10/5 10/25 11/5</p>	<p>12/12 12/14 12/17 12/21 12/21 13/4 13/19 14/4 14/16 33/9 48/5 48/10 49/3 49/13 49/21 50/14 59/9 59/21 76/13 77/1 77/6 83/11 87/3 87/6 87/24 87/24 88/3 89/25 96/22 97/6 97/10 98/21 125/25 148/16 168/17 176/9 179/15 179/19 181/7 181/7 181/10 181/21 182/4 182/19 183/1 183/2 183/3 183/7 183/22 184/6 186/3 192/4 195/11 195/12 213/10 213/17 220/21 221/19 221/23 222/10 226/25 227/6 227/11 235/12 235/14 235/17 239/17 239/22 systems [35] 32/5 33/2 38/20 38/25 84/20 86/20 89/4 89/18 97/22 100/6 100/8 101/4 101/18 103/12 105/1 105/2 107/16 115/22 120/18 145/21 147/18 147/21 185/25 186/7 186/10 186/14 186/22 187/2 187/5 209/22 217/15 218/17 219/6 221/20 222/2</p> <hr/> <p>T</p> <p>tab [1] 203/21 table [5] 57/6 98/14 98/15 100/21 102/14 tables [2] 98/12 98/23 tablets [2] 160/13 249/24 take [47] 4/12 37/17 38/18 42/15 46/3 49/17 55/5 56/10 57/10 57/11 71/21 79/18 79/19 86/2 86/14 86/14 86/15 91/6 106/22 108/4 120/21 122/9 131/5 136/9 139/15 139/18 140/1 141/17 141/21 142/4 142/11 147/2 156/6 157/3 158/19 207/2 216/21 216/25 222/19 223/5 246/7 249/17 267/12 268/8 268/20 268/22 269/14 take-it-or-leave-it [1] 157/3 taken [6] 16/9 55/8 75/15 144/13 163/4 217/6 takes [3] 14/10 17/24 115/9 taking [10] 8/1 8/12 45/13 46/2 47/13 53/13 81/3 139/19 159/4 251/2 talk [19] 19/24 54/12 59/9 60/15 67/18 67/22 68/5 73/2 76/9 76/12 77/5 85/4 94/6 130/4 130/5 152/1 162/3 221/22 244/4 talked [13] 63/15 63/16 64/24 69/20 80/22 128/16 134/8 144/18 194/13 217/12 218/8 258/20 259/10 talking [27] 8/22 29/10 43/3 50/4 51/16 51/20 52/25 58/9 63/9 96/6 154/12 161/16 161/19 199/3 217/14 217/19 218/18 219/6 219/17 220/21 220/25 221/1 222/19 245/19 251/24 254/24 267/1 talks [4] 151/3 164/1 198/20 262/23</p>

<p>T task [1] 94/13 taught [1] 215/15 teach [2] 113/19 216/2 teaching [2] 61/12 113/18 team [3] 82/2 88/25 119/10 Tech [3] 87/6 101/1 214/1 technical [4] 72/2 74/17 112/4 115/12 technological [2] 86/1 102/9 technologies [3] 62/2 119/1 122/17 technology [53] 43/8 57/16 58/21 58/24 60/19 64/8 65/11 65/13 66/11 68/11 68/15 68/21 69/19 70/3 71/2 73/25 76/24 77/18 78/4 80/2 80/13 80/20 80/23 81/2 81/9 81/19 103/10 103/15 104/7 104/23 104/24 105/12 105/24 112/3 120/24 122/9 122/16 131/21 132/24 133/16 146/9 146/10 156/23 158/6 158/15 159/4 159/14 164/19 201/10 226/1 226/4 230/9 259/20 Ted [1] 82/20 tee [1] 161/24 teed [1] 33/14 telephone [2] 139/16 262/13 tell [28] 19/14 23/13 23/22 29/19 29/20 30/9 31/9 31/12 31/23 33/5 33/21 34/3 37/25 39/17 40/18 44/24 69/1 72/6 75/15 81/7 91/24 100/3 101/6 128/23 155/7 240/8 244/16 265/5 Tellefsen [6] 190/5 190/8 192/11 192/16 260/16 260/25 telling [3] 21/14 39/21 206/18 tells [1] 66/16 temporal [1] 27/21 ten [8] 47/4 55/6 110/1 114/7 167/1 191/9 257/10 257/18 ten years [1] 191/9 ten-minute [1] 55/6 tenable [1] 37/17 tend [1] 183/13 tens [1] 158/11 term [8] 75/6 94/1 153/3 174/22 182/10 182/16 184/15 215/17 term,' [1] 215/7 terminals [1] 119/12 terms [6] 47/2 51/13 54/12 138/6 215/10 218/9 Tesla [1] 89/10 test [1] 27/3 testified [5] 22/18 22/20 44/12 109/1 263/21 testifies [1] 69/24 testify [4] 12/21 12/23 12/25 258/24 testifying [5] 13/3 22/16 54/11 175/25 183/16 testimonial [2] 12/11 270/16 testimony [15] 11/8 12/15 13/19 15/16 15/23 61/14 72/6 72/8 72/12 156/6 161/20 183/25 194/13 240/24 268/6 testing [1] 72/3</p>	<p>text [33] 41/24 69/21 71/4 71/6 71/10 71/12 73/15 83/6 85/8 87/12 89/16 91/1 95/21 96/21 97/3 97/3 98/24 168/13 169/4 186/1 186/7 186/15 186/23 187/3 191/18 208/6 214/15 216/7 224/14 224/15 224/16 225/17 225/18 TextClassifier [1] 95/23 texts [2] 86/22 86/23 textual [7] 214/13 215/6 215/16 226/14 227/1 227/7 255/5 than [41] 19/9 20/25 36/6 49/2 58/2 72/18 73/21 73/23 75/21 75/25 82/25 85/11 90/3 91/13 92/5 92/5 93/11 93/11 99/19 100/8 101/12 103/13 107/11 108/3 116/13 118/19 123/12 144/23 149/16 158/13 164/10 181/8 193/19 196/16 196/20 213/17 221/19 222/10 239/25 261/22 269/15 thank [57] 18/9 21/10 24/15 26/11 37/24 40/24 47/15 55/15 55/17 56/12 56/22 82/6 82/10 82/23 107/21 107/22 108/12 108/18 112/9 130/16 130/17 130/23 147/9 149/5 155/1 156/15 158/1 160/2 160/17 162/13 165/2 165/17 165/24 166/20 216/23 221/11 223/7 223/11 224/6 225/4 228/5 240/11 243/24 244/7 245/5 245/16 247/18 251/12 262/17 263/12 264/17 264/20 264/21 266/15 267/5 267/11 271/7 thanking [1] 81/23 thanks [3] 21/8 66/23 271/8 that [1697] that's [198] 10/17 12/7 15/11 16/19 17/4 17/5 19/21 20/10 22/25 23/2 24/10 24/14 26/20 27/2 27/11 28/17 29/16 30/11 31/8 31/22 32/6 33/3 33/9 34/18 35/14 37/5 40/11 40/19 40/21 40/23 43/16 44/9 44/14 45/5 45/17 47/5 48/20 50/4 50/8 50/21 51/21 51/21 52/15 53/16 54/21 55/22 60/13 60/13 61/22 61/24 66/7 66/18 70/17 71/1 73/7 75/25 78/5 78/11 78/17 78/22 79/12 80/14 80/16 83/9 83/17 84/8 84/13 85/8 85/17 85/20 88/3 91/8 91/17 99/16 100/23 101/24 102/18 104/9 104/11 105/25 108/11 111/13 124/1 124/2 124/3 124/25 125/8 128/1 128/21 132/6 134/7 138/18 138/23 141/7 142/15 142/20 142/24 143/21 144/4 145/5 148/10 148/19 150/24 151/7 151/15 151/16 152/6 154/16 154/25 156/1 161/22 162/5 163/24 164/11 167/14 167/19 168/1 168/3 168/8 170/3 170/23 170/25 171/21 172/23 173/2 173/13 173/13</p>	<p>176/17 180/1 181/5 182/3 182/17 186/2 187/14 187/23 188/12 191/1 193/7 194/3 195/4 195/20 196/8 196/24 198/9 199/2 200/4 202/12 203/1 204/11 205/6 206/20 207/1 207/14 207/22 210/10 210/14 212/2 212/6 213/7 213/11 214/18 216/20 217/10 220/8 220/23 221/22 222/18 222/23 226/6 227/9 228/13 228/23 229/5 230/22 232/3 233/2 234/7 235/9 235/10 239/24 240/14 242/24 243/3 244/18 245/4 252/17 253/24 255/14 256/1 257/24 262/4 262/24 266/13 267/4 268/3 268/25 270/1 271/1 their [109] 17/22 21/16 21/22 21/23 21/25 22/7 23/17 24/1 24/6 24/13 24/22 26/19 27/17 27/21 28/17 28/20 29/4 30/10 30/11 30/15 31/7 31/13 31/14 31/16 32/23 34/1 34/2 36/12 36/14 36/16 36/25 42/7 42/10 42/11 42/24 43/9 46/18 46/21 47/20 48/9 48/20 59/17 59/22 62/17 64/11 66/14 70/19 71/1 72/3 72/3 73/11 73/16 75/14 76/4 81/19 86/9 86/11 87/9 88/7 94/23 96/1 96/4 97/17 97/23 98/17 98/23 99/15 100/15 102/14 103/4 105/20 116/2 120/25 121/3 134/24 137/18 137/19 138/8 138/19 139/6 139/17 139/17 145/19 146/14 147/7 147/15 155/17 160/20 161/25 195/2 197/25 198/6 198/24 202/11 223/1 231/4 236/19 238/25 239/2 247/25 248/17 248/19 249/16 249/24 257/9 257/24 258/1 270/1 270/15 their's [1] 95/1 theirs [1] 90/3 them [86] 4/17 9/20 19/24 24/23 30/9 31/12 32/13 36/11 36/17 36/20 38/2 39/21 40/17 41/19 43/13 43/16 45/22 45/22 45/23 46/17 52/14 52/16 52/18 52/18 53/11 55/11 55/12 62/23 65/2 67/16 67/17 67/22 70/9 70/23 71/1 73/14 78/15 78/16 79/4 82/2 86/22 86/23 87/17 90/21 91/12 93/6 94/25 98/17 112/19 112/22 112/22 116/9 121/10 128/23 133/9 133/10 133/13 133/15 133/16 135/16 136/13 137/18 138/11 139/15 142/22 143/2 146/22 152/22 153/25 159/7 159/9 178/18 179/4 187/21 219/14 219/19 249/25 258/8 261/15 262/23 267/12 267/13 268/24 269/2 269/4 270/21 themes [1] 30/20 themselves [8] 22/24 38/24 99/14 105/22 146/17 153/23 257/22 263/4</p>	<p>then [119] 8/17 8/24 9/9 19/6 22/25 23/16 27/1 30/17 30/25 32/6 33/23 34/3 34/13 40/9 41/18 47/3 48/9 53/12 56/10 61/11 62/11 63/20 70/16 80/9 83/23 88/12 88/18 88/20 90/23 91/2 91/22 97/13 100/23 101/9 101/17 102/23 110/16 111/19 111/23 112/18 113/8 114/8 114/12 115/13 118/19 121/8 122/6 122/12 122/24 123/5 123/8 123/10 125/19 125/21 125/23 126/4 126/5 126/10 126/11 126/19 126/22 127/8 127/13 133/1 133/24 133/25 134/17 136/6 137/21 137/24 138/9 140/5 140/19 143/2 144/24 145/3 145/24 146/2 147/3 150/23 152/15 152/17 153/17 157/22 158/23 159/7 167/9 172/3 174/14 174/25 176/7 178/16 179/4 191/13 197/10 199/14 202/23 210/7 210/22 212/1 220/23 224/15 225/7 226/13 226/22 227/10 233/10 236/11 241/5 242/23 244/4 250/8 252/25 253/4 253/4 255/3 256/22 262/10 265/7 theoretical [1] 115/21 theory [3] 43/13 43/17 48/13 there [203] 5/13 7/7 9/18 10/3 12/17 13/9 13/21 15/5 17/4 19/4 20/8 20/9 20/17 20/20 20/22 24/24 26/14 26/15 27/5 28/2 30/7 30/20 32/16 32/17 37/3 39/16 39/17 39/21 40/1 40/12 40/15 42/9 42/13 42/24 43/19 44/12 45/19 48/6 48/8 48/11 49/17 51/3 51/9 51/24 53/10 53/23 54/9 55/1 55/11 56/19 61/10 62/2 63/12 63/12 66/9 66/12 68/5 68/18 69/10 69/12 73/15 74/16 74/18 74/22 75/4 75/6 79/4 79/25 80/5 80/7 83/21 86/1 86/19 88/16 90/25 92/15 93/3 94/18 95/18 97/15 98/4 98/16 99/2 99/8 99/20 100/15 102/20 105/16 106/5 107/4 110/20 114/3 114/6 114/9 114/23 115/25 117/6 117/25 118/25 119/19 120/3 120/5 123/3 123/21 124/6 124/7 125/2 125/14 125/24 126/3 126/9 126/9 129/24 130/2 132/22 133/20 134/14 134/15 134/20 137/12 137/21 138/3 139/10 139/13 139/17 145/6 145/12 145/18 146/6 146/21 148/14 151/12 151/18 151/18 152/5 153/6 153/7 155/10 155/13 157/8 158/21 158/25 162/20 164/1 164/24 170/18 175/3 179/19 180/17 181/18 182/17 183/3 183/20 185/25 186/3 186/7 186/14 186/22 187/2 187/5 206/16 209/1 209/14 210/13 212/1 216/9 217/25 218/14 218/20 219/9 219/10</p>
---	--	---	---

T
there... [32] 219/15 221/7
221/16 224/6 229/20 231/20
233/17 233/25 234/17 240/9
240/10 241/8 241/11 241/13
242/14 242/18 243/14 243/19
245/23 249/7 249/15 250/10
257/7 257/12 258/12 259/13
262/8 262/16 263/12 267/12
267/13 270/20
there's [51] 20/5 22/11 24/3
25/12 26/2 43/2 43/20 46/8
47/7 48/4 49/16 50/1 53/1
55/12 59/20 79/18 85/12
89/11 89/11 89/12 91/18
95/19 99/16 102/8 102/21
104/1 104/9 104/10 122/8
132/7 132/18 143/7 145/22
166/14 167/13 167/22 174/14
178/10 179/12 182/21 205/14
209/19 220/8 222/8 233/10
238/15 242/23 242/25 243/4
262/11 269/3
therefore [3] 31/18 147/21
153/14
thereof [1] 242/6
thereto [2] 235/5 237/22
these [64] 21/15 25/11 26/9
30/1 30/22 33/2 33/10 38/20
38/25 39/1 41/2 42/1 43/7
45/4 48/11 49/20 50/20 51/17
52/11 52/25 66/1 66/21 68/25
72/10 72/11 74/22 81/8 81/9
86/25 89/3 89/18 93/1 93/4
93/7 93/7 98/22 98/23 99/4
102/8 105/6 105/17 105/19
105/22 105/23 106/3 106/6
106/25 113/22 138/13 146/25
153/18 165/12 172/24 210/3
210/7 216/14 216/17 217/24
229/24 234/1 247/4 256/12
262/22 268/21
thesis [1] 11/12
they [318]
they'd [1] 41/20
they'll [1] 76/9
they're [34] 21/15 22/22 31/11
31/15 31/16 32/25 33/2 33/8
36/4 42/18 45/25 46/8 48/23
53/10 53/13 54/20 65/3 65/15
71/18 76/12 76/14 80/7 80/10
95/12 95/15 95/15 95/16 99/6
100/18 100/19 102/13 145/8
146/23 220/21
they've [8] 21/14 23/7 23/8
29/5 36/12 40/5 43/22 146/20
thing [25] 26/8 45/15 47/13
53/7 65/22 85/17 85/18 90/3
95/20 103/11 105/8 111/15
115/8 118/5 125/3 140/2
143/22 149/14 157/4 173/11
173/13 179/25 217/22 239/19
245/8
things [77] 18/8 25/8 25/11
30/2 32/17 32/19 39/17 39/19
39/25 40/1 40/16 43/7 50/2
52/24 59/18 65/2 68/4 70/22
74/13 76/9 76/17 76/19 79/1
85/5 86/25 88/1 88/9 89/24
93/18 94/18 94/20 95/16

105/16 111/13 111/24 111/24
115/3 113/12 113/12 114/15
114/22 114/24 115/7 115/8
115/18 117/14 118/21 119/16
125/1 125/2 131/7 139/9
139/25 140/25 144/19 145/9
149/15 152/12 153/2 153/13
153/21 154/1 155/23 158/18
167/12 173/3 203/20 214/10
226/13 241/9 244/4 251/22
256/8 256/12 259/19 259/20
261/22
think [142] 18/3 18/18 18/23
19/15 19/23 21/12 21/17 22/4
22/21 23/5 23/6 23/7 23/9
23/25 24/2 25/23 25/24 26/6
27/25 28/5 28/9 28/21 29/1
29/12 29/23 30/7 30/17 31/8
32/6 32/8 32/10 32/14 33/4
33/10 33/18 33/25 34/15
34/18 35/2 36/10 37/11 38/9
39/4 39/5 40/4 50/1 52/23
53/17 53/21 56/9 60/4 85/21
86/11 89/10 98/8 98/9 101/17
101/20 102/12 104/5 104/6
104/13 104/14 107/19 108/5
110/3 112/20 113/23 113/24
114/6 114/6 114/20 115/12
116/5 116/10 118/18 119/20
119/23 120/12 120/14 121/8
131/20 132/23 132/25 135/25
138/10 140/11 140/18 141/8
143/20 143/21 144/9 148/6
148/18 151/8 151/17 153/14
153/23 155/12 157/1 158/12
159/12 163/11 168/8 170/23
171/21 171/22 176/17 176/25
177/4 177/5 182/18 183/1
187/14 190/10 190/25 196/25
198/18 199/3 207/24 216/23
218/7 219/23 225/19 227/9
227/20 233/24 239/15 239/19
239/24 241/2 245/23 247/14
251/5 257/7 257/24 260/2
266/13 267/4 268/14 269/1
270/25
thinking [1] 52/16
thinks [2] 17/7 222/20
third [14] 10/15 18/1 22/4
35/24 51/4 51/5 52/25 93/22
99/18 148/5 174/14 174/25
230/2 255/4
third-party [2] 51/4 52/25
this [473]
those [120] 8/20 9/4 11/25
15/14 15/18 15/23 18/20
18/24 22/18 25/6 28/9 28/23
29/17 31/5 32/15 34/8 42/6
45/13 47/22 48/4 48/5 49/2
49/13 50/10 51/5 51/7 53/7
53/14 54/12 55/10 55/17
66/19 67/24 69/1 69/3 76/11
79/2 79/5 79/13 79/15 79/16
80/10 84/12 87/14 88/12
88/14 89/13 89/16 90/6 91/21
93/25 94/17 94/18 94/19 95/3
95/18 95/19 96/13 97/7 97/11
97/13 98/12 100/6 100/8
101/10 101/22 105/8 106/12
106/14 116/21 117/14 121/5

133/18 134/3 135/15 135/21
143/4 143/2 143/21 147/18
147/21 153/20 154/3 159/3
159/6 169/13 179/17 184/12
186/10 201/11 205/19 213/21
213/23 217/22 218/3 218/24
219/14 221/1 222/1 222/9
229/17 233/11 238/6 241/9
242/21 243/3 252/4 252/18
252/20 252/23 252/24 256/7
257/11 257/17 257/22 258/6
259/16 259/25 263/24 267/19
though [6] 12/17 19/2 104/1
147/8 178/23 219/10
thought [23] 9/18 16/21 20/2
25/8 39/1 40/8 71/7 105/24
108/3 115/5 123/11 124/21
129/17 135/6 139/20 158/10
158/12 158/21 218/15 218/22
219/15 244/20 265/19
thousands [1] 70/3
three [12] 21/15 83/10 93/18
94/18 94/20 96/13 131/10
144/19 148/1 159/8 175/3
242/18
three days [1] 21/15
three weeks [1] 131/10
through [43] 4/10 4/17 13/19
21/3 34/13 39/19 65/8 65/9
67/18 67/22 69/3 72/9 74/6
74/19 75/1 76/7 77/14 81/13
84/5 106/23 110/2 110/14
114/1 131/6 143/2 143/4
152/2 157/25 158/20 183/2
192/5 201/23 202/15 213/13
217/19 219/3 245/21 246/11
254/12 254/20 256/3 257/10
268/11
throughout [3] 60/12 87/25
105/2
throwing [1] 48/13
Thursday [1] 18/5
thus [2] 10/5 13/20
tied [1] 117/24
time [117] 4/13 7/15 8/21 9/5
14/23 18/5 21/5 23/4 26/2
27/6 27/15 28/19 30/1 30/4
30/8 30/16 30/23 31/15 32/6
32/9 38/4 38/5 38/6 40/2
42/23 42/25 48/18 49/14
49/23 53/8 53/12 58/10 61/14
62/5 63/9 64/6 64/14 64/20
64/22 66/3 67/5 69/5 69/7
72/8 73/15 75/7 77/24 78/1
78/11 80/18 81/15 81/20
81/25 82/6 92/24 99/20
100/25 104/10 108/3 108/6
116/9 117/10 117/15 117/23
118/1 118/7 119/6 120/17
121/18 131/6 133/6 133/11
133/15 135/2 135/14 136/8
137/11 137/22 138/19 139/21
141/16 141/21 142/16 146/19
154/8 156/17 158/7 158/17
158/19 158/22 160/14 165/12
177/21 181/4 188/14 188/19
196/2 196/7 196/21 199/19
202/21 216/7 216/21 216/23
218/18 231/21 234/21 242/11
244/15 244/19 248/8 268/22

269/11 269/15 270/13 270/16
270/24
timeline [6] 26/15 26/17 26/23
36/23 74/8 146/23
times [7] 59/16 92/25 104/23
105/4 134/3 144/22 146/8
timing [2] 9/17 140/16
tinkering [1] 117/11
tiny [3] 106/13 106/17 106/17
tip [1] 72/22
title [4] 60/10 199/3 204/7
235/22
titled [1] 83/11
today [34] 4/13 4/23 23/6 24/3
50/3 57/6 57/15 58/8 61/13
63/19 69/25 70/11 78/6 78/23
79/15 79/20 81/13 81/16
82/18 112/21 122/20 122/23
138/21 143/6 144/3 144/19
190/18 194/6 194/13 207/23
213/24 233/20 234/4 267/18
today's [1] 40/23
together [10] 41/23 43/12
51/10 81/3 109/17 122/25
239/1 245/1 247/8 248/18
Toki [1] 96/14
told [15] 30/13 36/20 48/2
67/12 68/2 81/7 92/3 93/10
94/21 94/25 108/7 112/18
120/7 210/7 214/25
tomorrow [10] 69/25 143/19
222/22 222/23 267/19 268/2
268/21 268/24 269/2 269/8
tonight [1] 223/5
too [12] 9/17 16/23 21/17
21/18 23/9 24/19 33/10 33/24
78/16 90/2 109/14 110/11
took [29] 4/24 14/22 21/25
24/6 25/2 28/5 35/22 40/11
61/21 63/10 63/10 65/12 79/2
85/10 85/25 88/10 90/3 90/21
96/2 96/17 98/3 99/22 105/7
114/15 131/6 133/13 156/21
241/6 246/18
tool [7] 90/8 92/11 92/16
92/19 92/21 93/6 211/9
toolbar [1] 191/22
tools [2] 139/1 139/11
top [8] 97/2 128/13 150/9
164/1 188/13 188/18 204/10
254/20
total [6] 106/11 106/22 196/10
233/20 243/1 257/8
totality [1] 172/20
touch [5] 63/6 64/2 66/14
119/24 168/20
toward [2] 127/23 247/21
towards [2] 69/13 117/25
town [4] 60/18 109/24 109/25
110/2
tracking [1] 270/15
trade [1] 111/7
trained [1] 74/17
training [1] 110/20
transaction [1] 198/10
transactions [3] 197/24
198/18 198/20
transcript [5] 7/2 143/9 177/19
222/20 272/5
transfer [3] 198/9 198/13

T
transfer... [1] 199/24
transferred [3] 197/10 199/15
200/13
transfers [1] 198/17
translated [1] 134/21
translation [3] 117/2 129/7
129/9
treated [1] 67/24
tremendous [1] 25/12
Trevor [2] 71/22 268/5
triable [1] 17/4
trial [36] 1/11 3/8 7/16 7/20
7/21 7/22 7/24 8/20 8/24 9/1
9/13 9/19 9/22 9/22 9/24 12/2
12/18 14/2 16/17 16/19 25/9
34/2 50/22 56/21 56/22 57/23
69/2 79/18 84/5 101/20
148/17 241/11 241/13 241/15
241/24 267/16
tried [10] 17/6 19/12 27/22
28/24 104/20 131/3 133/8
161/24 193/11 214/1
tries [1] 48/14
Trondheim [1] 110/3
trouble [1] 99/15
true [14] 37/1 37/8 37/9 50/7
60/4 75/20 79/14 86/17 86/19
91/17 105/25 145/5 227/9
272/4
truly [1] 57/20
trumpet [2] 110/21 111/1
trustee [2] 196/15 196/24
truthful [1] 231/8
try [12] 18/12 19/7 25/19
35/24 56/9 67/16 109/14
110/21 125/25 131/4 140/7
269/16
trying [16] 21/25 27/23 32/8
33/16 34/24 35/18 36/4 58/22
75/15 76/2 78/9 83/18 123/15
202/2 202/10 249/19
turn [9] 26/20 30/17 127/22
157/7 159/16 163/13 189/1
192/10 210/11
turned [1] 132/5
twelve [1] 68/14
twelve years [1] 68/14
twice [1] 54/22
two [37] 23/5 24/3 24/16
27/22 27/25 28/10 28/12
28/23 31/5 41/21 43/19 50/7
51/9 52/24 65/23 92/15 98/10
101/22 105/8 111/12 121/22
127/4 127/6 127/16 141/5
148/12 172/7 196/3 198/9
206/5 222/21 229/3 241/9
241/21 245/23 247/7 265/4
two-page [1] 222/21
type [9] 60/8 63/4 70/17 90/13
112/4 116/25 117/2 126/22
151/5
typed [1] 170/15
types [3] 122/17 123/1 224/13
typing [4] 58/6 63/1 63/2
123/4

U
U.S [28] 6/13 59/11 59/20
84/3 84/7 84/7 106/4 111/4

111/10 111/13 111/14 111/22
112/2 112/18 112/19 120/6
136/4 138/24 154/6 167/5
229/6 229/12 233/7 233/15
233/17 234/1 242/18 272/9
UK [2] 111/6 111/22
ultimate [1] 38/10
ultimately [9] 28/3 29/15 31/6
32/3 38/22 103/18 192/16
250/14 265/12
unambiguous [3] 17/1 17/18
17/18
unaware [1] 108/7
uncertainty [3] 231/3 231/9
231/12
undeniably [1] 86/17
under [34] 10/23 56/3 68/9
89/7 89/15 89/17 89/19 89/24
90/1 90/2 97/24 102/10
106/12 109/1 120/25 149/3
156/14 161/17 168/15 175/25
178/5 183/16 228/1 229/7
234/25 236/7 236/18 236/21
237/6 238/5 243/10 245/15
247/24 266/8
underestimate [1] 83/3
underlies [2] 127/10 127/10
understand [22] 16/15 22/8
28/17 29/24 30/25 32/25
38/13 39/13 39/15 44/23 51/1
51/6 51/16 86/6 144/14
172/25 188/10 197/19 207/15
217/13 220/1 220/5
understanding [14] 4/22 28/10
95/11 152/10 160/18 168/2
168/3 172/23 173/2 198/14
239/13 239/16 257/23 263/4
understands [2] 46/21 144/2
understood [10] 34/22 143/10
143/14 148/15 169/8 172/19
198/13 217/11 217/23 222/17
undo [1] 77/11
undue [1] 52/10
unduly [1] 26/7
unfair [1] 191/1
UNIKEL [5] 2/12 3/22 21/21
34/6 82/18
unique [1] 93/3
unit [3] 46/12 51/18 158/13
UNITED [6] 1/1 1/18 59/13
60/12 61/1 83/20
units [8] 42/9 46/13 46/21
47/14 49/24 50/9 138/12
164/10
universities [1] 111/14
university [6] 61/3 71/25
87/23 111/19 113/2 121/24
unless [1] 198/25
unmodified [1] 50/10
unpatentability [1] 5/21
unpatentable [2] 10/21 25/17
unquote [14] 174/22 190/18
191/25 192/7 192/13 206/10
211/16 216/3 225/12 227/2
227/13 230/15 231/5 242/8
unrelated [1] 10/6
unseal [9] 165/25 166/1 166/2
243/22 243/25 244/3 244/7
251/6 251/8
unsealed [4] 244/3 244/12

251/9 251/10
unsealing [1] 165/21
unsuccessful [1] 38/23
unsure [1] 173/17
untangle [1] 177/15
until [12] 19/25 33/12 35/8
42/4 139/14 142/1 142/14
177/14 188/6 188/6 267/21
270/2
unusual [1] 58/23
unveiled [1] 70/3
up [97] 4/19 18/11 19/25 20/5
21/14 22/23 23/9 25/9 27/22
33/12 33/14 35/8 36/12 41/12
41/22 45/4 51/22 52/11 53/9
58/1 58/2 58/6 58/10 58/19
59/23 60/17 63/25 64/15
65/17 67/20 70/4 74/9 79/20
80/17 82/25 82/25 83/5 84/11
86/14 87/18 88/12 88/19
90/19 91/2 92/8 92/17 96/3
97/2 97/5 98/19 109/10 110/5
110/14 112/7 113/15 116/2
126/20 126/21 127/9 127/11
128/9 130/25 131/23 135/3
135/17 140/19 143/1 144/5
147/15 155/23 157/24 157/25
161/24 163/8 166/4 166/20
172/11 193/2 204/3 207/4
211/24 212/7 220/9 222/15
224/3 225/16 225/21 228/18
236/6 237/17 243/14 243/18
252/20 253/11 260/9 262/5
268/20
update [3] 99/18 99/19 99/20
upgrade [1] 138/9
upon [3] 17/9 42/16 199/5
urge [1] 76/22
urged [2] 60/25 141/7
urgent [1] 142/17
URL [5] 211/12 211/14
211/15 211/16 211/19
us [27] 21/14 26/17 29/2 30/2
34/3 41/16 46/14 48/2 51/13
55/20 57/6 67/14 73/3 81/7
81/25 104/4 104/4 104/13
105/13 122/23 132/19 138/8
138/11 140/21 152/6 195/4
270/18
USA [1] 112/20
use [106] 5/24 6/2 6/7 6/9
6/25 11/1 11/2 11/5 11/18
11/21 12/10 13/7 13/13 13/16
13/18 13/22 14/3 14/7 18/24
20/15 22/12 25/18 27/8 28/18
29/3 34/3 35/4 35/16 37/7
39/7 39/14 40/8 43/8 46/16
58/3 58/24 59/3 62/19 62/22
65/11 66/24 67/17 68/10
68/17 68/19 68/21 68/21 69/5
69/19 70/9 71/10 73/3 76/20
76/25 77/18 78/4 78/6 78/20
78/22 80/2 80/16 80/23 85/8
86/14 87/8 87/10 89/8 95/8
96/1 96/4 99/11 99/17 100/18
101/8 101/16 102/9 103/15
104/23 124/2 127/8 135/20
136/10 137/24 139/11 146/9
151/24 188/25 191/24 192/6
195/2 208/23 212/15 214/1

215/6 215/16 225/7 225/10
235/11 236/8 236/20 237/3
237/5 238/4 248/1 261/10
266/8
used [36] 5/18 9/14 22/25
25/22 25/22 28/22 35/21
37/19 40/9 58/21 58/25 59/2
62/17 63/25 66/11 68/7 69/16
72/10 78/8 79/7 79/11 80/6
81/14 92/24 93/12 94/24
96/19 97/15 103/2 114/15
116/14 195/2 231/5 235/6
260/10 270/13
useful [7] 58/14 59/15 74/12
132/14 139/1 139/9 171/22
user [67] 86/10 87/13 88/13
89/20 89/21 93/24 97/3 97/7
97/8 102/2 102/2 102/14
123/25 124/11 124/23 125/12
125/18 125/22 125/25 126/5
126/8 126/19 126/21 126/23
127/5 127/6 127/7 151/9
151/20 151/23 171/9 171/14
174/6 174/6 174/12 174/21
175/7 180/18 180/22 181/2
181/4 181/7 181/8 181/25
182/5 182/9 182/15 184/3
184/10 191/19 191/23 192/5
211/11 211/12 211/13 211/22
214/15 215/9 224/14 225/7
225/10 249/13 250/4 261/10
261/14 266/5 267/1
User's [3] 209/15 224/9
224/12
user-installed [2] 249/13
267/1
users [19] 80/12 80/14 81/8
85/8 96/1 96/3 99/10 101/11
134/15 137/19 137/23 138/9
138/10 150/22 160/23 162/17
169/17 266/7 267/2
uses [3] 15/24 71/12 73/6
using [30] 35/1 42/5 57/16
60/11 62/20 63/17 68/14
69/17 73/9 78/12 80/19 81/1
89/21 97/3 104/7 104/14
163/6 173/15 173/20 184/15
185/15 185/22 187/16 211/14
211/15 211/16 225/21 230/9
261/4 267/3

V
valid [11] 16/7 30/8 74/2 74/5
75/3 75/12 79/11 102/20
102/22 103/1 147/8
validity [17] 18/25 20/14 20/15
35/18 74/5 145/7 147/22
230/14 230/19 231/17 232/7
242/6 242/13 245/25 246/14
246/20 246/24
Valley [5] 118/12 118/17
118/20 118/23 120/24
valuable [4] 70/18 70/25 81/9
234/6
value [15] 26/8 36/2 39/3 39/5
39/5 39/15 57/21 65/17 78/25
79/13 79/14 81/19 103/24
106/6 158/6
valued [2] 105/7 105/24
valves [1] 111/1

V
variable [1] 43/6
variety [1] 86/1
various [7] 11/9 45/11 122/19
202/11 209/5 211/23 212/4
vast [1] 139/2
vastly [2] 20/25 36/3
Vegas [2] 63/11 131/22
venture [1] 190/10
verbatim [1] 178/12
verification [1] 154/7
version [11] 24/3 36/20 48/5
63/24 66/10 90/8 137/21
193/22 194/2 214/2 247/14
versions [6] 42/18 42/19
42/20 47/23 48/1 117/12
versus [2] 211/11 249/12
very [60] 4/7 19/11 21/8 32/9
35/13 56/22 59/8 63/11 66/10
70/6 70/23 74/19 77/12 80/3
82/10 82/23 83/3 84/4 85/10
87/21 88/4 88/6 89/18 90/2
90/3 91/16 93/9 93/18 94/4
100/7 102/13 107/21 113/14
114/19 114/19 114/19 115/14
116/10 120/15 121/7 121/8
124/20 128/17 130/16 132/15
133/24 139/13 141/19 144/20
150/19 150/23 151/9 165/24
203/3 204/17 236/12 243/24
245/5 264/20 271/8
vice [1] 70/1
vicinity [1] 153/7
victim [1] 64/5
video [23] 57/22 58/15 59/9
60/2 69/24 70/11 74/15 84/10
88/15 91/10 91/18 142/19
143/8 147/14 148/9 176/6
177/6 177/7 178/8 258/17
259/9 268/23 269/4
videos [3] 71/17 88/6 88/24
view [26] 15/12 17/3 28/6
35/6 35/8 45/25 51/12 105/20
154/16 171/14 175/13 175/16
178/11 180/11 180/21 181/1
181/18 183/5 183/20 184/2
187/24 188/9 188/23 198/16
206/3 239/21
viewing [1] 225/11
views [2] 70/18 142/3
violate [1] 10/3
Virginia [1] 101/1
visa [1] 120/5
Vision [4] 190/5 190/10
260/18 260/25
Vision Capital [3] 190/10
260/18 260/25
Visual [3] 187/16 187/19
187/24
vocational [1] 111/20
voice [1] 168/20
Volume [2] 1/12 209/22
vs [1] 12/6

W
wait [1] 142/14
waiting [3] 4/16 269/3 270/2
waiving [1] 270/1
walk [1] 47/25
walked [3] 245/20 254/11

256/3
walking [4] 114/1 217/19
219/3 246/10
want [86] 16/16 23/18 23/18
24/20 27/14 28/16 29/10 30/9
34/7 34/10 34/11 35/3 37/2
37/11 40/23 41/9 41/13 44/7
51/6 52/8 52/9 52/9 52/19
56/18 59/9 60/15 60/24 60/24
72/10 73/1 77/19 78/18 81/23
85/13 86/11 90/1 90/5 90/20
94/14 99/11 103/15 104/15
104/24 105/12 105/17 108/6
111/9 111/17 111/17 113/21
122/5 122/7 122/21 125/4
131/23 132/18 133/9 133/10
141/22 142/25 143/8 143/25
144/1 144/4 146/9 152/1
162/25 177/9 177/10 182/17
182/22 219/25 220/4 239/14
245/19 246/5 247/12 248/11
251/14 260/9 266/6 268/20
268/24 269/22 270/17 270/19
wanted [40] 19/25 27/8 36/18
37/7 49/12 49/17 49/18 50/13
57/6 59/2 60/20 61/25 62/8
62/18 62/21 63/2 70/8 71/8
103/11 103/12 103/16 105/7
111/3 111/4 111/24 112/4
112/19 122/9 122/11 126/6
128/23 135/19 137/23 138/9
180/7 180/9 180/14 182/7
231/24 252/16
wanting [1] 39/14
wants [13] 16/25 38/19 50/5
59/24 80/1 80/14 80/14 91/21
103/13 104/24 145/2 146/10
237/5
was [603]
wash [1] 271/3
washing [1] 61/10
Washington [2] 87/23 118/20
wasn't [11] 9/5 20/1 22/20
42/21 48/7 86/19 124/20
128/19 135/3 218/2 218/23
watch [1] 70/11
watched [4] 74/15 148/7
258/17 259/10
water [4] 112/6 123/17 123/18
224/24
way [51] 14/22 21/21 22/11
22/19 23/9 25/25 34/13 39/16
40/13 40/20 51/24 57/12 58/2
58/15 60/6 63/25 64/4 66/11
77/14 86/2 86/3 89/13 89/18
92/17 92/21 92/22 94/8 98/18
98/19 103/6 103/19 103/24
104/3 107/14 107/15 109/14
115/14 135/1 135/4 141/11
141/11 143/22 146/24 175/19
177/12 183/10 183/11 185/5
217/21 218/12 259/18
ways [4] 15/20 28/13 66/23
92/16
we [522]
we'd [3] 33/21 52/24 82/23
we'll [17] 4/11 20/22 21/2 54/8
56/9 56/10 66/22 87/11 92/7
93/25 110/11 144/11 248/15
268/4 268/8 269/7 270/20

we're [57] 3/8 4/17 19/17
27/23 29/10 32/10 33/16
33/16 34/3 35/23 36/6 37/3
40/21 46/1 46/2 46/2 46/3
48/24 51/16 52/14 54/19
55/20 56/23 57/8 57/15 57/16
58/9 59/6 63/9 66/2 78/9 79/6
79/7 84/18 84/20 85/4 85/20
86/3 86/3 96/6 141/21 154/15
181/12 184/19 219/5 219/6
219/16 220/25 220/25 221/25
222/2 222/9 237/20 262/25
267/16 267/17 269/15
we've [18] 18/23 20/18 21/23
27/21 28/23 35/4 38/2 38/4
40/7 55/9 219/2 253/15
253/17 256/6 256/6 256/7
267/16 269/12
web [5] 211/16 224/17 225/9
225/11 225/18
website [3] 214/1 214/3
225/11
Wednesday [3] 34/21 35/2
35/2
week [9] 24/2 24/12 50/7
82/25 85/14 95/5 96/10
107/20 114/21
weekend [4] 4/9 18/11 19/25
38/2
weeks [2] 50/7 131/10
weighing [1] 76/20
weight [1] 52/11
Weinstein [10] 47/11 78/24
79/10 79/18 79/21 80/17
80/24 268/8 268/13 268/17
Weinstein's [1] 15/16
welcome [1] 269/21
well [65] 4/23 22/14 25/13
28/14 31/23 32/21 36/15 38/1
48/23 49/20 53/14 55/17
63/11 63/21 64/10 66/6 73/17
74/21 78/10 78/16 79/6 86/9
86/20 89/8 93/1 101/18
110/20 111/11 111/14 112/17
113/2 113/14 113/23 115/3
116/13 116/23 120/5 122/24
123/25 127/17 127/19 131/3
131/6 133/23 134/6 134/14
135/6 140/24 145/9 150/19
151/20 156/21 190/15 217/13
217/18 219/8 219/20 220/17
220/20 221/3 249/15 252/16
254/14 269/13 270/1
well-known [4] 63/11 63/21
86/20 93/1
went [40] 31/5 33/24 39/19
39/25 44/15 45/16 57/24 65/7
65/9 71/20 71/25 75/1 76/6
79/1 86/2 86/2 86/4 86/4
102/6 102/6 102/7 103/6
103/19 103/19 107/3 107/4
107/10 110/14 112/12 117/10
118/12 121/24 122/2 128/25
131/9 146/16 155/16 158/20
197/5 202/15 213/25 241/11
241/13 254/20
were [201] 5/24 8/16 9/18
13/12 13/21 18/6 19/3 20/1
20/9 20/13 20/14 21/3 21/6
22/6 22/16 24/7 25/8 26/3

27/15 28/14 29/6 30/25 32/16
32/17 32/22 33/16 37/4 37/19
38/1 38/20 39/18 39/19 40/1
40/8 40/15 41/16 41/19 42/9
42/20 42/22 48/11 48/22 49/5
49/11 50/3 50/11 56/19 57/21
58/3 61/23 62/22 67/1 69/1
69/1 72/19 73/17 76/11 79/25
83/24 86/19 87/15 87/17 88/8
89/8 89/17 92/15 93/1 93/4
93/5 93/8 94/22 100/8 100/9
100/10 100/14 105/10 105/14
105/22 105/23 106/2 106/7
106/13 106/14 106/19 106/20
108/3 108/3 110/5 111/2
111/13 112/2 112/25 113/11
114/3 116/1 116/11 116/12
116/17 116/21 116/22 116/24
117/16 118/21 119/8 119/8
119/19 120/15 120/17 121/8
122/5 122/22 125/2 126/5
130/12 130/25 132/15 133/20
134/14 135/4 135/14 138/6
139/9 139/13 140/15 140/18
140/19 144/3 144/3 145/17
148/2 153/6 153/6 153/7
159/6 164/4 169/8 169/14
175/24 175/24 176/2 180/17
183/16 183/18 185/24 185/25
186/6 186/7 186/13 186/14
187/2 189/17 190/7 196/23
198/3 200/13 200/23 202/2
202/7 202/10 202/17 202/24
203/9 203/12 210/23 210/24
216/6 216/18 217/14 217/20
217/25 218/1 219/7 219/18
220/5 221/20 221/23 223/23
226/3 229/6 229/12 231/8
233/4 233/21 234/2 240/23
241/2 243/1 244/16 244/20
249/7 249/10 252/20 257/7
257/9 258/12 258/16 260/18
266/6 266/8 267/1 271/1
weren't [7] 28/16 40/16 43/24
48/17 81/10 146/22 195/10
West [1] 61/22
Westlaw [1] 12/7
what [376]
what's [15] 19/16 72/23 83/19
88/23 89/24 96/25 97/2
138/16 138/16 143/1 143/3
146/15 152/10 152/14 153/11
whatever [3] 9/2 36/1 147/1
wheel [1] 89/11
when [138] 8/24 13/22 15/10
18/10 21/3 25/15 26/7 26/23
33/24 35/16 35/18 36/12
37/12 40/10 40/15 42/13
42/15 43/9 43/10 45/8 45/12
47/21 51/12 57/8 57/13 58/10
60/14 61/14 64/7 64/14 64/20
66/16 67/16 68/3 69/22 69/24
70/4 70/11 73/2 74/3 74/6
76/8 77/23 79/16 79/17 81/14
84/6 85/3 85/8 85/23 86/18
87/15 87/16 91/12 93/5 94/5
96/1 96/6 97/2 97/7 99/11
100/2 100/4 100/12 102/10
102/10 104/8 105/22 106/4
107/9 110/5 111/2 112/6

W when... [65] 113/14 113/17 115/4 115/7 115/9 116/15 119/8 123/1 125/24 126/23 127/9 127/11 128/15 138/19 141/4 145/14 145/21 152/17 154/5 156/19 156/25 157/8 158/17 159/10 164/15 175/24 177/20 178/4 185/4 187/1 189/3 190/7 202/7 207/4 213/5 217/12 219/21 220/15 220/18 223/23 224/6 224/14 225/25 229/4 230/8 231/8 240/8 240/23 241/22 243/7 244/21 246/10 246/22 247/7 248/23 249/10 255/15 255/21 255/22 258/16 264/2 264/14 265/16 269/25 269/25 whenever [1] 35/2 where [51] 4/22 13/6 13/9 18/8 26/2 31/12 40/13 44/24 47/18 51/9 51/25 54/9 54/20 61/2 61/22 61/24 62/5 67/14 77/7 86/7 88/8 88/17 89/19 90/18 98/11 98/13 99/1 109/19 109/23 110/13 111/13 112/11 116/25 117/6 118/21 118/23 120/24 122/1 123/7 126/21 130/25 146/3 152/7 175/17 176/10 176/14 177/15 181/7 182/8 227/21 245/23 whereas [11] 229/22 230/2 230/3 230/11 230/13 230/23 230/24 231/2 231/16 234/17 234/19 wherein [1] 177/18 Whereupon [21] 55/8 107/25 108/13 129/13 130/18 142/6 144/13 155/5 156/10 161/5 162/9 166/7 176/21 179/6 197/17 199/7 217/6 244/11 265/1 265/3 266/16 whether [46] 6/6 7/8 12/11 16/14 17/1 24/8 25/18 27/5 32/4 44/13 48/4 49/21 51/12 65/21 73/20 73/20 92/16 126/6 152/8 152/25 163/14 168/6 178/7 185/25 187/2 198/3 202/1 207/17 213/12 213/16 213/25 215/14 217/20 217/21 224/16 225/17 226/3 250/18 258/3 258/8 259/25 261/1 261/20 261/25 263/2 266/5 which [74] 4/8 6/12 11/19 18/14 20/18 32/12 34/2 41/24 42/20 46/12 46/13 48/10 50/5 53/1 63/25 65/19 66/11 68/12 80/19 80/22 85/6 91/7 92/3 95/21 97/8 101/16 106/10 110/3 119/12 121/5 134/22 136/3 137/2 138/25 139/16 141/23 145/7 145/22 153/12 158/20 158/25 164/1 166/14 167/2 167/18 168/10 179/19 181/12 201/6 203/15 204/14 206/1 207/3 218/14 220/21 222/2 223/23 227/11 229/21 233/10 234/5 239/11 240/8 243/6 243/14 248/13 249/16

249/24 250/1 251/22 253/20 254/11 250/24 261/1 while [19] 4/17 42/21 48/7 48/18 58/3 65/3 78/20 96/2 98/16 113/17 114/9 116/12 116/17 116/22 166/3 193/17 200/5 232/4 262/25 white [1] 135/13 whittle [1] 27/25 whittled [1] 28/22 who [30] 11/8 62/22 65/10 74/16 74/18 78/24 82/8 82/21 87/21 87/22 88/25 96/14 97/19 98/15 100/25 103/21 116/8 132/9 139/24 143/12 150/14 150/16 154/15 161/18 163/7 203/12 246/18 260/17 261/8 267/3 who's [3] 203/21 268/5 269/13 whole [9] 48/18 52/5 53/12 61/9 62/20 69/24 87/14 115/15 118/9 wholesale [1] 34/25 wholesaler [1] 248/5 wholesalers [4] 236/19 239/2 247/25 248/19 wholly [1] 10/6 why [38] 19/8 20/10 20/17 20/17 20/18 23/13 27/8 32/12 35/17 37/10 37/21 66/7 70/6 71/1 80/1 83/17 86/6 96/17 99/8 99/22 100/7 119/16 122/5 122/6 128/21 133/22 141/6 157/2 158/9 158/14 164/11 182/17 207/2 221/12 222/19 223/4 248/10 252/17 wide [1] 114/15 wife [12] 62/17 64/11 109/17 122/25 128/17 139/24 141/7 150/17 196/5 197/10 199/13 200/23 will [101] 8/18 14/1 14/23 15/19 20/25 25/24 26/4 54/9 54/11 55/6 55/6 56/2 56/3 57/25 59/1 61/13 65/23 66/20 67/22 69/10 69/12 70/10 71/15 72/7 72/8 72/24 72/24 73/10 73/22 74/1 74/13 74/21 75/4 76/10 77/12 79/14 81/7 81/25 82/4 82/13 83/17 85/10 86/18 87/11 87/21 88/3 88/22 88/24 89/4 91/6 92/2 95/5 96/16 102/5 102/7 103/1 104/16 104/21 105/21 105/25 106/3 106/7 106/11 106/17 107/10 107/12 108/2 108/11 108/17 109/14 113/3 113/4 113/5 130/14 130/15 142/11 142/22 149/2 157/6 158/13 162/7 162/15 163/12 165/18 171/4 199/4 199/6 216/25 217/5 225/2 226/19 227/20 245/7 266/14 267/19 268/7 268/16 269/5 270/8 271/2 271/8 willful [5] 27/10 32/14 73/11 73/20 73/24 willfully [2] 28/16 31/19 willfulness [26] 20/6 20/9

20/20 21/20 21/24 23/11 23/17 23/24 24/18 26/20 27/4 27/13 28/13 29/18 30/3 31/2 31/22 37/8 38/12 38/13 39/4 40/6 40/9 40/10 220/7 222/18 willing [3] 37/3 196/16 196/20 Wilmington [1] 1/16 win [1] 16/18 window [1] 126/21 wish [4] 231/2 231/9 237/15 269/11 wishes [1] 191/23 withdrawal [1] 20/19 withdrawn [1] 18/13 withhold [1] 252/17 within [10] 55/23 95/16 96/11 118/23 146/13 160/8 168/24 170/2 196/12 199/5 without [17] 14/5 20/23 35/17 54/2 55/13 58/7 69/5 69/6 69/6 69/17 70/24 79/17 111/1 138/8 140/22 151/11 169/18 witness [13] 54/8 108/10 108/16 108/25 143/23 161/18 165/18 166/4 191/3 227/22 258/24 259/5 267/8 witnesses [3] 21/18 108/8 268/1 won [1] 158/20 won't [3] 4/13 268/14 270/1 wonderful [1] 70/22 Wood [1] 209/20 word [45] 19/19 19/20 87/12 88/20 90/12 90/13 90/15 91/6 92/12 93/15 101/5 116/25 117/2 119/10 119/14 120/1 123/8 125/9 125/13 138/23 168/22 170/2 170/12 170/16 170/22 170/25 171/19 173/9 187/13 187/16 187/22 188/1 188/5 188/11 188/14 188/18 188/20 191/14 191/19 191/21 192/6 224/14 229/21 260/22 260/25 Word,' [1] 190/13 wording [1] 248/14 words [8] 5/23 62/14 90/19 95/22 173/25 177/3 184/12 238/6 work [30] 32/7 40/17 43/9 46/22 52/23 57/13 57/24 62/9 81/24 89/10 89/14 89/18 102/11 102/12 113/10 116/1 117/24 118/12 119/8 119/13 120/6 120/24 121/11 123/25 124/10 131/7 143/6 143/11 187/15 194/3 worked [14] 62/1 62/2 63/22 116/15 119/2 121/10 122/16 128/14 131/11 187/12 194/11 212/23 213/2 260/17 working [25] 4/10 12/17 58/4 61/10 62/5 63/1 64/20 64/22 65/3 67/1 82/16 90/11 92/2 110/10 117/7 120/1 121/17 131/15 143/12 150/22 151/10 193/22 194/2 194/5 202/7 works [3] 78/17 96/9 257/23 world [9] 59/21 87/8 97/20 132/24 133/4 135/21 137/11

236/21 238/5 worldwide [1] 236/6 worm [3] 117/6 117/6 117/13 worms [1] 117/13 worry [1] 47/22 worth [6] 103/3 106/16 158/12 158/15 193/19 234/10 would [135] 8/25 13/24 18/24 19/4 21/4 23/14 26/7 33/13 34/1 34/15 35/20 36/2 37/1 42/19 43/3 47/25 48/5 48/21 49/2 51/7 51/11 52/4 52/23 53/6 53/7 53/8 56/7 62/18 64/14 72/21 76/22 77/3 86/13 88/12 88/13 88/17 88/18 88/20 88/21 89/21 90/14 99/14 103/9 103/25 104/1 106/21 106/24 107/17 108/4 111/11 112/7 115/23 117/1 117/1 117/25 125/18 125/25 126/1 126/3 126/5 126/10 126/11 126/14 126/19 126/20 126/22 126/23 127/1 127/5 127/5 127/8 131/8 133/11 135/11 137/17 137/19 137/22 137/22 137/24 138/7 138/9 138/10 138/20 138/22 138/24 138/25 139/2 139/6 139/7 139/8 139/10 139/12 139/12 139/15 139/18 143/6 143/20 158/21 158/22 166/13 171/14 173/1 173/9 176/5 178/5 181/2 181/3 182/1 183/9 185/21 185/23 185/25 186/7 187/2 188/9 194/3 207/10 210/8 214/25 225/15 243/22 244/19 248/11 249/16 250/23 255/24 257/11 257/17 261/8 261/14 261/18 262/15 268/12 268/16 269/1 wouldn't [6] 33/14 52/7 175/19 175/20 218/12 265/7 write [10] 88/16 91/6 92/1 99/14 116/17 122/25 123/3 123/15 214/8 227/10 writes [3] 211/21 224/11 226/13 writing [3] 123/4 129/21 171/23 writings [1] 59/17 written [8] 9/24 12/12 17/8 22/7 28/15 29/4 161/10 191/9 wrong [4] 25/10 43/20 147/2 158/18 wrote [14] 93/16 96/15 116/21 129/18 168/6 191/18 192/1 192/12 211/8 216/7 216/14 227/14 227/15 260/24

Y yard [1] 114/1 yeah [10] 45/2 69/13 109/10 118/15 119/7 132/16 143/7 168/8 236/10 264/7 year [24] 9/10 45/10 45/10 45/11 45/16 104/16 104/18 111/6 112/13 113/25 114/7 116/4 117/18 120/3 120/7 120/8 122/3 122/18 133/2 138/1 140/5 140/10 140/18

v
year... [1] 141/1
years [28] 20/7 20/17 26/18
26/22 43/1 58/2 58/10 61/19
67/10 68/14 68/22 73/17
74/10 77/20 78/15 81/16
103/21 110/1 114/6 114/7
118/1 119/4 121/22 167/1
191/9 200/9 229/4 241/21
yellow [2] 125/15 135/13
Yep [2] 35/10 262/8
yes [247] 24/18 26/13 39/12
39/24 45/7 46/10 46/10 47/2
49/9 51/23 54/3 54/4 54/5
54/16 54/23 54/24 56/15 68/1
109/16 111/4 111/4 114/24
115/1 120/20 123/18 124/17
124/17 126/12 127/13 127/20
129/16 131/4 131/13 132/4
132/17 132/17 134/4 134/6
134/11 134/17 135/4 137/4
138/5 138/15 140/3 140/9
141/5 141/15 141/18 142/5
144/17 148/22 149/1 149/4
149/7 149/12 149/14 149/21
151/1 154/4 154/21 155/22
156/8 156/9 157/5 157/10
157/21 158/4 158/23 159/2
159/5 159/19 162/22 163/15
165/23 166/1 166/16 167/17
168/5 168/12 169/2 169/12
169/20 169/24 170/11 171/16
171/24 172/2 172/15 173/6
173/10 173/13 173/19 175/9
175/15 177/8 179/5 179/16
179/20 180/20 181/5 181/11
181/17 181/23 182/13 183/24
184/7 185/3 185/7 185/23
186/18 186/21 188/2 188/12
188/25 189/8 189/16 189/19
190/6 190/11 191/11 191/17
192/2 192/15 194/19 194/21
194/25 196/4 197/21 200/1
200/8 200/21 201/3 201/24
202/19 202/22 203/11 203/14
203/25 204/16 205/2 205/6
205/16 205/24 206/17 206/22
207/9 207/24 208/19 209/11
209/13 209/18 210/6 210/21
211/7 211/18 212/6 212/9
214/20 214/24 215/3 215/18
216/20 218/9 219/8 220/3
220/10 220/13 221/5 221/14
223/13 223/16 224/10 224/23
225/19 226/12 228/17 229/2
230/1 230/7 230/10 231/15
231/23 232/1 232/13 232/24
233/6 233/14 233/15 233/19
234/18 234/22 235/2 235/13
235/16 236/16 237/4 238/18
240/22 241/1 241/4 241/7
241/10 241/24 242/14 242/20
244/9 244/25 245/3 246/1
246/8 247/11 247/17 249/18
251/1 251/4 251/17 252/1
252/23 253/24 254/10 255/2
255/11 256/5 256/5 256/15
256/17 256/19 256/21 257/7
257/15 257/20 258/11 259/3
259/5 259/8 259/15 260/23

261/7 261/16 262/21 263/6
263/23 264/13 266/21 267/13
270/12
yesterday [5] 23/9 29/8 33/12
35/1 91/10
yet [5] 104/12 126/9 132/14
163/1 203/5
you [1052]
you'd [2] 58/6 269/24
you'll [32] 26/19 58/21 61/15
63/14 65/8 65/11 67/6 71/3
73/19 74/15 76/15 77/6 79/25
82/22 83/15 84/1 84/15 84/22
85/1 86/19 87/23 88/25 89/2
90/24 91/5 96/2 98/21 99/4
99/7 100/24 102/23 205/8
you're [69] 23/19 37/17 46/1
46/7 57/23 58/5 58/5 61/13
65/14 66/1 66/18 69/23 70/20
71/21 77/17 78/15 80/5 80/9
82/2 82/7 83/7 84/21 86/8
87/3 88/5 88/15 89/6 92/10
92/13 92/14 94/3 95/21 96/8
96/12 96/20 97/1 97/8 97/9
97/18 97/19 99/22 100/24
101/17 101/20 102/12 102/19
103/4 103/20 103/23 104/14
104/14 126/11 186/10 186/16
186/23 186/25 187/5 190/22
195/19 204/23 221/21 222/16
224/6 228/24 232/19 235/11
235/25 238/3 269/21
you've [11] 34/7 65/7 76/6
87/2 99/1 103/12 144/15
153/3 170/16 207/4 207/10
young [2] 60/18 119/4
younger [2] 113/19 132/4
your [261] 3/14 3/16 3/17 3/20
4/5 14/17 18/9 19/21 20/4
21/10 22/4 22/5 22/14 22/21
22/22 24/16 26/6 26/12 29/21
31/24 34/19 35/12 37/8 39/11
40/24 41/4 41/5 41/8 44/17
45/4 45/25 46/24 46/24 47/17
48/20 51/1 52/4 53/4 54/5
55/3 55/4 55/15 55/18 56/2
56/8 56/12 56/15 56/22 57/10
57/12 57/14 57/17 58/15 63/3
63/13 65/21 68/1 68/18 68/23
69/10 73/7 75/18 76/20 78/14
81/21 81/23 82/24 82/25 83/4
83/5 87/18 88/20 90/18
105/12 107/19 108/12 108/20
108/24 110/19 111/5 113/11
114/10 115/1 115/15 116/6
118/4 118/11 120/19 124/15
128/3 128/25 129/6 129/15
130/23 133/6 133/19 133/22
134/13 135/18 136/14 136/18
136/20 141/9 141/13 141/25
142/3 144/9 144/10 144/17
147/11 148/22 149/1 149/4
149/5 149/6 149/17 149/18
149/25 152/10 154/11 155/1
156/15 157/8 157/11 158/5
159/17 159/20 160/18 161/7
162/13 163/13 163/16 164/21
165/3 165/18 165/20 166/18
168/2 168/10 169/4 169/7
169/14 169/17 169/21 170/7

170/18 171/7 171/14 171/25
172/4 172/14 173/1 175/13
175/16 176/17 180/11 180/21
181/1 181/12 181/18 183/5
183/20 183/25 184/2 184/8
185/24 186/6 186/13 187/1
187/24 188/3 188/9 188/13
188/17 188/23 189/2 189/22
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216/24 217/1 217/8 220/17
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232/11 239/13 239/16 239/21
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARENDI S.A.R.L.,)
)
)
Plaintiff,)
) C.A. No. 13-919-JLH
v.)
)
GOOGLE LLC,)
)
Defendant.)

Wednesday, April 26, 2023
9:00 a.m.
Jury Trial

Volume III

Sealed

* * *

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States Magistrate Judge

APPEARANCES:

SMITH, KATZENSTEIN & JENKINS LLP
BY: NEAL C. BELGAM, ESQ.

-and-

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APPEARANCES CONTINUED:

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BY: JOHN LAHAD, ESQ.
BY: KEMPER DIEHL, ESQ,
BY: MAX STRAUS, ESQ.
BY: SETH ARD, ESQ.
BY: KALPANA SRINIVASAN, ESQ.
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POTTER ANDERSON & CORROON
BY: DAVID ELLIS MOORE, ESQ.

-and-

PAUL HASTINGS
BY: ROBERT W. UNIKEL, ESQ.
BY: CHAD J. PETERMAN, ESQ.
BY: MATTHIAS A. KAMBER, ESQ.
BY: ANDREA ROBERTS, ESQ.
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P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at 9:00 a.m.)

THE COURT: Good morning, everyone. Please be seated.

All right. So we're here for the third day of trial. At the outset, I just wanted to put on the record our current time calculations. For April 24, we charged two hours 22 minutes to Arendi and two hours 28 minutes to Google. For April 25, yesterday, we charged five hours and five minutes to Arendi and two minutes to Google.

I also wanted to hear from everyone how we are proceeding with the source code portion of the testimony today. And we can have a seat for a second. And just as a preview, the reason why I'm asking is I have been giving some thought to making sure that we're making a record that will comply with the Third Circuit's Avandia opinion on the common law right of access and the First Amendment right of access.

And so my understanding of the law as set forth in that opinion is that any side seeking to seal the courtroom or keep the proceedings under seal needs to demonstrate to the Court and the Court needs to make an

1 explicit finding for each portion that's under seal, that
2 any proposed redaction or closure would, quote, work a
3 clearly defined and serious injury to the parties seeking
4 closure. And that's the common law right of access.

5 With respect to the First Amendment right of
6 access that applies to jury trials, there is a presumption
7 that the proceedings will be open to the public. The
8 parties seeking closure may rebut the presumption of
9 openness only if able to demonstrate, quote, an overriding
10 interest in excluding the public based on findings that
11 the closure is essential to preserve higher values and is
12 narrowly tailored to serve an interest. And the Court
13 needs to make sure that the proceeding is open unless the
14 denial of access serves an important Government interest
15 and that there is no less restrictive way to serve that
16 Government interest.

17 So based on what I've seen so far here, we've
18 had no one from the public that is not associated with
19 this case in some way that's been excluded from the
20 courtroom. So I don't think we have any issue right now,
21 and we've also had no one that's made an objection to the
22 sealing of the courtroom. So I don't think we have an
23 issue right now. But I'll put on the record that when
24 we've sealed the courtroom, my understanding is that there
25 were only a couple of people excluded that were related to

1 in-house people who weren't permitted to see confidential
2 information under the terms of the Court's protective
3 order.

4 So I don't think we have had an issue about the
5 live proceedings. But we do have a transcript, and we
6 need to figure out what portions of it should be redacted.

7 So that's what I'm thinking about right now.
8 So let's hear how we intend to proceed today. And we can
9 talk about what the least restrictive means is to doing
10 whatever we need to do to preserve the confidentiality of
11 settlement agreements and source code material.

12 **MS. SRINIVASAN:** Your Honor --

13 **THE COURT:** Sure. You can go ahead and
14 approach.

15 **MS. SRINIVASAN:** So last night we were able to
16 identify files that we wanted printed, and Google printed
17 and delivered them. So we are -- today, we are going to
18 be proceeding without the laptop, with the printed
19 material. Because it is source code and it's one printed
20 copy, we're going to have them moved into evidence.
21 There's not going to be an objection to that by the
22 witness. And then we will -- once that he have -- they've
23 been moved into evidence, we will put them on the Elmo
24 unless there is an objection to that. But I leave it to
25 Google. There may be at that point a request to seal if

1 it's going to be up on the Elmo.

2 **THE COURT:** Is there -- I'm wondering and I'm
3 open to suggestions. Under the law as set forth by the
4 Third Circuit, is there a less restrictive means to
5 preserve the confidentiality besides putting it on the
6 Elmo and sealing the courtroom? For example, could we
7 have handouts that could be shown and then collected, or
8 do we need to put it on the screen?

9 **MS. SRINIVASAN:** Well, then that's a question
10 probably for Google. Normally, we're not allowed to make
11 copies of source code pursuant to the protective order, so
12 we certainly did not do that. We got one set and that's
13 the set we're working with. So I defer whether making
14 copies is a possibility. He's on the stand, so one
15 possibility would be to show the jury from up there and
16 not publish it on the Elmo. But, you know, again, I think
17 Google can better speak to whether having it on the Elmo
18 presents a concern for them. But we have one copy set, so
19 we're just working with that because that's -- and that
20 would be normally what we would get for source code
21 productions, though.

22 **THE COURT:** And is it important to the
23 presentation of your case that the jury walk through the
24 copy?

25 **MS. SRINIVASAN:** I think it would be important

1 for them to see it. And it doesn't mean that we're going
2 to go through it line by line page by page such that it
3 necessarily has to be on the Elmo. But I do think it's
4 important for them to see the type of code that
5 Dr. Smedley was reviewing.

6 Could he do that from the stand holding it up
7 for them? We could try to do that. If I can talk to
8 counsel about whether there's a way to direct the
9 examination that way. But to me, that would be the
10 alternative. And, again --

11 **THE COURT:** Do you expect his testimony to
12 include certain variable or subroutine names that Google
13 might consider to be confidential?

14 **MS. SRINIVASAN:** That is not -- I think it's
15 one layer above that in terms of specificity. So I expect
16 that he's going to talk about some things that he has
17 observed in the printouts, but I don't think he is going
18 to be reading file names into the record, although my
19 colleague can correct me if I am wrong about that.

20 **MR. STRAUS:** The intention was to ask about
21 some method and file names, but not to get into the levels
22 of detail beyond that.

23 **THE COURT:** Okay. Thank you very much.
24 Let me hear from Google on this issue.

25 **MR. KAMBER:** Your Honor, may I have one moment

1 to confer with my client? I have an idea.

2 **THE COURT:** Of course. Yes.

3 **MR. KAMBER:** Your Honor, I think what we can do
4 is have it shown on the Elmo, that way the witness and the
5 questioning attorney can see it at the same time. I don't
6 think that should be a problem so long as we're not
7 showing all of the code. Some of these are longer files,
8 but if we're just showing a few pages and talking about it
9 at that high level that Mr. Straus just represented to the
10 Court, then we would have no objection to that procedure.

11 **THE COURT:** Okay. And what you're thinking
12 that it be shown on the Elmo while the courtroom was
13 sealed, or are you okay with not sealing the courtroom at
14 that point?

15 **MR. KAMBER:** Yeah. If it's that limited, we
16 don't need to seal the courtroom.

17 **THE COURT:** Okay. In light of that, please
18 have a seat.

19 **MR. KAMBER:** Thank you.

20 **THE COURT:** Is there any other testimony today,
21 I guess, that we would -- besides the source code?

22 **MS. SRINIVASAN:** Your Honor, we do expect the
23 testimony of our damages expert after Dr. Smedley, and
24 then we have the issue, again, with respect to the license
25 agreements.

1 The primary objection has been from third
2 parties who are counter-parties to those agreements, and
3 that's the reason we haven't been -- well, at least in the
4 opening, we didn't publish the number to the jury for
5 Mr. Hedloy's testimony. We did seal the courtroom so he
6 could talk about that in more depth. So that's one issue
7 for Mr. Weinstein's testimony.

8 The other is he would be talking about the user
9 installations and Google internal information that he
10 relied on for his calculations. I don't know if there's
11 going to be a request to seal on that basis still. There
12 was in the opening, or at least we circumvented that by
13 having the slides for them. But those are the two primary
14 things that I can think of, and that would be in our
15 damages testimony today.

16 **THE COURT:** Okay. Thank you very much.

17 **MR. UNIKEL:** Your Honor, if I may.

18 **THE COURT:** Of course.

19 **MR. UNIKEL:** Aside from the third party
20 agreements, it's hard to foresee exactly, but I believe
21 some very confidential Google financial information will
22 be disclosed as part of Mr. Weinstein's direct and cross,
23 as well as some very confidential information about user
24 download information, metrics, things of that sort. So
25 that would be the only other thing I could envision that

1 we will need to address the sealing issue.

2 **THE COURT:** Okay. Why don't you have a seat,
3 Mr. Unikel.

4 Here's how I think -- oh, Mr. Kamber, did you
5 have something else?

6 **MR. KAMBER:** Just one thing, Your Honor. I
7 don't know if counsel -- it occurs to me, I don't know if
8 counsel intends to move all of the source code into
9 evidence. That is we have, I think, five source code
10 printouts. Some of them are longer. That's where things
11 get a little more complicated.

12 **THE COURT:** Right. So why don't you have a
13 seat and let me tell you what I'm thinking about doing in
14 terms of how we can proceed.

15 So we have transcripts from the first two days
16 of trial already. And so what I would ask is for the
17 parties to go back to those transcripts and find out what
18 their proposed redactions are and make a joint set of
19 proposed redactions.

20 And then what the Court needs to do is,
21 pursuant to the law of the Third Circuit, the Court needs
22 to make a specific finding about why any proposed redacted
23 material being disclosed to the public would work a
24 clearly defined and serious injury to the party seeking
25 closure.

1 So the Court is going to need information from
2 whoever wants that redaction such that the Court can make
3 that finding on the record. And so I'll ask you with
4 respect to the first two days of trial, if you can get me
5 a proposed redacted version by tomorrow before we begin
6 trial. And then with respect to today, we'll give it, you
7 know, 24 hours. So we'll work on that one the next day.

8 And if there are third parties that need to be
9 heard, you can put that in the letter and we can give some
10 extra time. I want to be in a position just so we can
11 unseal the Court proceedings.

12 And it sounds like today that how we are going
13 to proceed really is the least restrictive way of
14 preserving that confidential information. And so I
15 appreciate counsel's willingness to be flexible about
16 that.

17 With respect to the exhibits, I don't think we
18 need to deal with those right away today, but if we want
19 to continue to maintain exhibits under seal in the Court
20 record, at some point we need to make a finding on the
21 record about why those exhibits should be sealed. I don't
22 think it's going to be challenging to make a finding about
23 why Google's source code should be sealed, but if there
24 are third party license agreements, it may get to the
25 point where I need a declaration from the third parties

1 who want to maintain those under seal. And I understand
2 that those were produced pursuant to the Court's
3 protective order, but now that they've been put into
4 evidence at a civil trial, a different standard applies.

5 Counsel?

6 **MS. SRINIVASAN:** Your Honor. I just want to
7 make sure we're on the same page, because our intention
8 had been to move the five exhibits that the witness -- or
9 the four I think we're going to use -- into evidence, and
10 then -- so I understood there wasn't an objection to that,
11 but we will have to figure out the protocol for what is
12 going to go back or the manner in which -- I just want to
13 be clear because I don't want an objection --

14 **THE COURT:** That's right. And I understand.
15 So I think the understanding would be you would move them
16 into evidence and then someone from Google would request
17 that they be placed under seal at this time, and the Court
18 would grant that conditionally on a later finding that
19 I've described.

20 **MR. KAMBER:** That works with us, Your Honor.

21 **THE COURT:** Okay. Fantastic.

22 And I will check with Ms. Garfinkel to see if
23 all of the jurors are here. Okay. We are going to take a
24 brief recess to make sure we've got everybody.

25 (Whereupon, a recess was taken.)

Smedley - Direct

1 **THE COURT:** Please be seated. It's my
2 understanding we have all jurors here. Are we ready to
3 get started?

4 **MS. SRINIVASAN:** We are, Your Honor.

5 **MR. KAMBER:** Yes, Your Honor.

6 **THE COURT:** Ms. Garfinkel, please bring the
7 jury in.

8 **THE CLERK:** Yes, Your Honor.

9 Your Honor, the jury.

10 (The jury enters the courtroom at 9:24 a.m.)

11 **THE COURT:** Please be seated. Good morning,
12 ladies and gentlemen of the jury.

13 Counsel, shall we continue?

14 **MR. STRAUS:** Yes, Your Honor.

15 **THE COURT:** Dr. Smedley.

16 Dr. Smedley, I'll remind you that you are still
17 under oath.

18 **THE WITNESS:** Thank you.

19 **BY MR. STRAUS:**

20 **Q.** Welcome back, Dr. Smedley. Do you remember yesterday
21 during your testimony when we were looking at the source
22 code computer?

23 **A.** Yes, I do.

24 **Q.** So to make things easier for today, Google has
25 printed last night certain files from that computer rather

Smedley - Direct

1 than use the actual source code computer during your
2 continued testimony.

3 Did you have an opportunity to review those files?

4 **A.** Yes, I did. Yeah.

5 **MR. STRAUS:** Your Honor, may I please approach
6 the witness?

7 **THE COURT:** Yes.

8 **MR. STRAUS:** Thank you.

9 **BY MR. STRAUS:**

10 **Q.** And, Dr. Smedley, because this is Google's
11 confidential code, we only have one printout, so I'll ask
12 you to review those documents there, and then after we've
13 admitted them, we will put them up on the overhead for
14 others to view.

15 **A.** Sure.

16 **Q.** Are these printed versions of some of the files that
17 you reviewed on Google's source code computer?

18 **A.** Yes, they are.

19 **Q.** And where did you do that review?

20 **A.** It was in Wallingford, Connecticut, the location
21 selected by Google's counsel, and my review there was
22 observed, I guess, by Google's counsel.

23 **Q.** And during that review, were you able to print any
24 materials from the source code computer?

25 **A.** No, I was not.

Smedley - Direct

1 **Q.** If you could please start, we'll take the exhibits on
2 your desk in order.

3 What are each of these files?

4 **A.** So the first one Exhibit DTX-1141.0001. And this is
5 the file TextView.java from the Android 8 framework.

6 **Q.** And if I could stop you, just for the record, is that
7 DTX-1141.001 through 0235?

8 **A.** Yes, that's correct.

9 **Q.** And what is the second exhibit that you have,
10 DTX-1141.0258 through 0271?

11 **A.** So that is the file TextClassifierImpl.java from the
12 Android 8 framework.

13 **Q.** What is the third file that you have, DTX-1141.0236
14 through 253?

15 **A.** This is also the file TextClassifierImpl.java, but
16 this is from the Android 9 framework.

17 **Q.** And then finally, if you could please turn to
18 Exhibit DTX-1141.0254 through 57 --

19 What is that file?

20 **A.** So this is the file SmartSelectionClient.java, and
21 this is from the Chromium_r65 source code.

22 **Q.** And yesterday, you testified that you also looked at
23 some nonconfidential source code as part of your review.

24 How did these four files, these four exhibits relate to
25 the material functionality that you observed in that

Smedley - Direct

1 nonconfidential code?

2 **A.** None of these had material differences from the
3 public code that I reviewed.

4 **MR. STRAUS:** Your Honor, at this time I'd move
5 to admit into evidence DTX-1141.0001 through 235,
6 DTX-1141.025A through 271, DTX-1141.0236 through 253, and
7 DTX-1,141.0254 through 57.

8 **MR. KAMBER:** No objections, Your Honor, pending
9 a forthcoming sealing motion with respect to these
10 exhibits.

11 **THE COURT:** These documents will be admitted
12 and they are conditionally placed under seal.

13 May I please see counsel very briefly at
14 sidebar.

15 - - -

16 (Whereupon, the following discussion is held at
17 sidebar.)

18 **THE COURT:** So I wanted to see if counsel had
19 any objection with the Court saying to the jury along the
20 lines of these are the only portions of Exhibit 1141 that
21 have been admitted into evidence. That way, the jury
22 won't wonder what happened to the laptop that was brought
23 out in front of them yesterday?

24 **MR. STRAUS:** We're fine with that. I think the
25 one request I would make the Court make clear that's for

Smedley - Direct

1 confidentiality reasons, not that there's something wrong
2 with the laptop.

3 **MS. SRINIVASAN:** We wouldn't want them to think
4 we offer the testimony. We understand the reason to
5 sending it back. It was on their list.

6 **THE COURT:** Understood. I was trying to make
7 things easier, not make it more complicated. What if I
8 said something like because of the Court's -- the Court
9 has determined that only these portions of Exhibit 1141
10 should be admitted into evidence, and the parties have
11 agreed.

12 **MS. SRINIVASAN:** Your Honor, could we say
13 something along the lines of due to confidentiality
14 limitations, the Court and the parties have agreed that
15 these portions will be admitted and sent back to the jury
16 rather than the entire computer?

17 I don't want them to think there was an
18 evidentiary objection to the computer, and that's the
19 reason it's not going back.

20 **THE COURT:** Okay.

21 **MR. KAMBER:** We don't have an objection to
22 that, Your Honor.

23 **THE COURT:** Okay. All right. Very good.
24 Thank you.

25 (Whereupon, the discussion at sidebar concludes.)

Smedley - Direct

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THE COURT: Ladies and gentlemen of the jury, due to confidentiality concerns, the Court has determined that only those portions of Exhibit 1141 that been printed out and admitted into evidence should be the portions of Exhibit 1141 that should be admitted into evidence.

MR. STRAUS: Your Honor, may I please approach the witness to retrieve the exhibits?

THE COURT: Yes.

MR. STRAUS: Thank you.
Thank you, Dr. Smedley.

THE WITNESS: You're welcome.

BY MR. STRAUS:

Q. So I'm going to start with the first exhibit that we admitted, DTX-1141.001 and following. This was the TextView.java file. I'd like us to look together at Line 9649.

Dr. Smedley, are you able to see that line at the top? Would you like me to make it bigger that?

A. No, that's fine. I can see that.

Q. What code do you see starting at Line 9649 of TextView.java?

A. This is onTouchEvent. That's a method that gets called when the user taps the screen.

Q. And is this a method that you discussed during your

Smedley - Direct

1 testimony yesterday?

2 **A.** Yes, it is.

3 **Q.** So what Google apps use this method?

4 **A.** All of them except for Chrome.

5 **Q.** And could you remind us what this method is used for?

6 **A.** So this was mentioned just a second ago. This is the
7 method that gets called when you -- the user taps the
8 screen, and that's what leads in to everything that we see
9 happening next.

10 **Q.** Could you explain what you mean by "everything that
11 we see happening next"?

12 **A.** Sure, yes.

13 So this is the method that gets called in response to
14 the user tapping on the screen, and it will, after that,
15 you see the text gets selected, gets classified, and a
16 menu popped up with the option to do the appropriate thing
17 with the type of information that they've tapped.

18 **Q.** And how does this onTouchEvent method that's on the
19 screen now compare to the onTouchEvent method that you
20 reviewed in the nonconfidential version of the code?

21 **A.** So there were no material differences.

22 **Q.** Let's turn now to our second exhibit, which was
23 DTX-1141.0258 and following.

24 Dr. Smedley, this was that second file
25 TextClassifierImpl.java; is that right?

Smedley - Direct

1 **A.** Yes, that's right.

2 **Q.** Here, I'd like us to look together at Line 330 of the
3 code.

4 Are you able to see that up there, 330?

5 **A.** Yes.

6 **Q.** What code begins at Line 330?

7 **A.** So this is the method called "create classification
8 results." You see where it says, "private text
9 classification," and then the name of this method comes
10 after that, "create classification result"?

11 **Q.** And what Google apps utilize this method, create
12 classification result?

13 **A.** I can't remember if it's all of them or all of them
14 except Chrome. Sorry, sometimes it's -- but.

15 **Q.** In any case, what is this method, create
16 classification result, used for?

17 **A.** So this is -- if you look a little further down, you
18 see the -- on Line 343, that's where the intent is getting
19 created. So this is preparing the input device, so the
20 thing that comes up after you do the long press and has
21 the button that you -- or the menu item that you tap on,
22 and you can tell it. Because this is where it's creating
23 the intent that will get sent to the second computer
24 program, and that's with the input device.

25 **Q.** And the intent, was that the message you were talking

Smedley - Direct

1 about yesterday that gets sent to the second computer
2 program?

3 **A.** Yes. That's exactly what it is.

4 **Q.** And have we seen this method before, this create
5 classification result method?

6 **A.** Yes, we have. We were looking at it yesterday.

7 **Q.** And how does this create classification result method
8 in Google's confidential source code compare to the
9 nonconfidential version that we looked at together?

10 **A.** There were no material differences.

11 **Q.** So let's turn to the third source code file, which is
12 DTX-1141.0236 and following.

13 And, Dr. Smedley, this was the copy of the
14 TextClassifierImpl.java that you identified as belonging
15 to Version 9 of the Android framework; is that right?

16 **A.** Yes, that's correct.

17 **Q.** So here, I would like us to turn to Line 399.

18 What are we seeing at Line 399?

19 **A.** At Line 399, we're seeing the "create classification
20 result method." This is from Android 9, so they may have
21 made some changes, improvements to this method, but its
22 purpose is the same.

23 **Q.** And did we look at a nonconfidential version of this
24 method yesterday?

25 **A.** Yes. Yes, we did.

Smedley - Direct

1 **Q.** And how does this confidential version of create
2 classification result compare to the nonconfidential code
3 you walked us through?

4 **A.** So there's a difference in that this includes flight
5 numbers.

6 **Q.** The flight numbers, is that a difference of Android
7 version number?

8 **A.** Yeah. Yes. If you recall, Android Version 8, the
9 STS didn't support flight numbers, but Android Version 9,
10 it does. I think some of that code is in here.

11 **Q.** And comparing, though, this code to the
12 nonconfidential code that we looked at, are there any
13 material differences that you identified?

14 **A.** I'm sorry. I didn't listen carefully to your
15 previous question. No, there were no material
16 differences.

17 **Q.** Let's turn to our final bit of source code. And this
18 is the exhibit that begins DTX-1141.0254 which you
19 identified as the smart selection client.java file for
20 Chrome.

21 **A.** Yes.

22 **Q.** Could you remember what this file is used for in
23 Chrome?

24 **A.** Yes, but I don't really have to because this is the
25 one where the programmer put in the comments describing

Smedley - Cross

1 what it's used for. So there on Line 23, it says it's a
2 class that controls Smart Text Selection. We looked at
3 those comments yesterday, if you recall.

4 **Q.** And having reviewed both this confidential code and
5 the nonconfidential code that we discussed yesterday, have
6 you identified any material differences between them?

7 **A.** No. No, there were no material differences.

8 **Q.** Is this all of the confidential code that you
9 reviewed?

10 **A.** Not by any means, no.

11 **Q.** And how did all of the confidential code that you
12 reviewed on the source code computer affect your opinions
13 in this case?

14 **A.** Well, I mean, it confirmed them in that there were no
15 material differences.

16 **MR. STRAUS:** I pass the witness.

17 **THE COURT:** Thank you very much.

18 **MR. KAMBER:** Thank you, Your Honor.

19 Cross-examination.

20 CROSS EXAMINATION

21 **BY MR. KAMBER:**

22 **Q.** Good morning, Dr. Smedley.

23 **A.** Good morning.

24 **Q.** My name is Matthias Kamber. I don't think we've had
25 the pleasure of meeting before.

Smedley - Cross

1 **A.** Not that I recall, no.

2 **Q.** Nice to meet you.

3 **A.** You too.

4 **Q.** So Claim 23 of the '843 patent is what your
5 infringement opinion relates to, correct?

6 **A.** Twenty-three and 30, yes.

7 **Q.** Twenty-three and 30, but 23 is the independent claim
8 that you analyzed, right?

9 **A.** Yes.

10 **Q.** And that relates to a first computer program running
11 on a computer, correct?

12 **A.** Yes.

13 **MR. KAMBER:** So let's just show the claim
14 language, if we could, please, Mr. Spence.

15 **BY MR. KAMBER:**

16 **Q.** We have the claim language here. It's a little
17 squished on the screen, you might say.

18 It requires the first computer program to do three
19 specific things, correct?

20 **A.** Yes, that's right.

21 **Q.** It must display the document electronically. That's
22 that first claim element that we see, correct?

23 **A.** Yes.

24 **Q.** Let me just go back. The first computer program is
25 introduced in the preamble of the claim, correct?

Smedley - Cross

1 It's in the fourth line, "A document using a first
2 computer program"?

3 **A.** Yes. Yep.

4 **Q.** All right. And that first computer program has to
5 display the document electronically?

6 **A.** Yes.

7 **Q.** The computer program must also configure the input
8 device, correct?

9 **A.** Yes, that's right.

10 **Q.** Providing an input device configured by the first
11 computer program is where that is, correct?

12 **A.** Yes.

13 **Q.** I believe that's the fourth limitation of the claim
14 there, Dr. Smedley.

15 **A.** Yes.

16 **Q.** And third, the first computer program must receive
17 the user command causing a search, right? In consequence
18 of receipt -- well, let me let you answer that question
19 before I ask my next one.

20 **A.** So I think I might have worded it slightly
21 differently myself, but that reflects what's in that
22 claim, yes.

23 **Q.** Well, let me just read the claim language.

24 **A.** Sure.

25 **Q.** The first -- the claim requires, in consequence of

Smedley - Cross

1 receipt by the first computer program the user command
2 from the input device causing a search, correct?

3 **A.** Yes.

4 **Q.** So in your opinion, the 12 Google apps that you
5 accused of infringement are the first computer program,
6 right?

7 **A.** Yes, that's right.

8 **Q.** Those are -- I think you mentioned them -- Google
9 Docs, Calendar, Contacts -- you went through the list
10 yesterday, right?

11 **A.** Yes, yes.

12 **Q.** And for any one of those 12 applications, 12 Google
13 apps to infringe, they have to meet all of the limitations
14 of Claim 23 correct?

15 **A.** Yes. That's correct.

16 **Q.** If the jury were to find that even a single one of
17 these limitations was missing, then there could be no
18 infringement, right?

19 **A.** It has to practice all of the limitations in order to
20 infringe.

21 **Q.** That's the legal test that you applied?

22 **A.** Exactly.

23 **Q.** So Claim 23 also requires two kinds of information to
24 be used in some way, right?

25 **A.** What do you mean by "two kinds of information"?

Smedley - Cross

1 Q. Claim 23 refers to first information and second
2 information, correct?

3 A. Yes.

4 Q. So going back to the claim language, using a first
5 information alone is not enough to infringe?

6 A. Right. There are several places where second
7 information comes into play. That has to be there.

8 Q. Right. So then, in one of the places is that
9 Romanette 2 "performing an action using at least part of
10 the second information," right?

11 A. Yes. That's one of the places where the second
12 information is used, yes.

13 Q. Right. Claim 23 requires that the first computer
14 program also has to perform an action using at least part
15 of the second information, right? Actually, let me
16 withdraw that question and ask a cleaner one.

17 In your infringement analysis, you looked for whether
18 or not there were actions performed within these -- part
19 of the second information, right?

20 A. Well, I looked for this being practiced, so that an
21 action was performed using at least part of the second
22 information.

23 Q. Right.

24 **MR. KAMBER:** Mr. Spence, if we could put up
25 PDX-3-83 for just a moment please.

Smedley - Cross

1 **BY MR. KAMBER:**

2 **Q.** This was one of the slides that you walked the jury
3 through yesterday, right?

4 **A.** Yes.

5 **Q.** You were talking about this input device step that we
6 just saw on the screen beforehand, right?

7 **A.** Yes.

8 **Q.** And you noted that it had this requirement of
9 performing an action using at least part of the second
10 information, right?

11 **A.** So this limitation includes performing an action
12 using at least part of the second information, yes.

13 **MR. STRAUS:** Your Honor, I don't mean to
14 interrupt, but I just wanted to apprise the Court that I
15 believe the courtroom is still sealed.

16 **THE COURT:** I don't think we did seal the
17 courtroom.

18 **MR. STRAUS:** My apologies.

19 **MR. KAMBER:** No problem.

20 **BY MR. KAMBER:**

21 **Q.** So you also walked through at least one slide related
22 to where you were trying to identify where second
23 information was being used to perform an action for
24 purposes of your infringement analysis, right?

25 **A.** Yes.

Smedley - Cross

1 Q. That was PDX-3-102, right?

2 A. I am afraid I don't have the exhibit numbers
3 memorized.

4 Q. We have it up on the screen for you, Dr. Smedley.

5 A. So what was the question again? Sorry.

6 Q. So the question is, the reason you walked through
7 this slide was to try to identify an action that was being
8 performed with at least part of the second information.

9 A. I think that's at least part of why I was using this
10 slide, yes.

11 Q. That's the rightmost column of this demonstrative
12 slide where you have to put what the action is, right?

13 A. Yes. The action is provided in the rightmost column.

14 Q. So -- and a user, if their phone -- if you could just
15 perform the step of placing a telephone call to a
16 telephone number, that would not meet the claim element
17 "performing an action using at least part of the second
18 information standing alone," correct?

19 A. I don't -- I'm not clear on what you're asking.

20 Q. So performing only the step of placing a telephone
21 call to the telephone number that's selected would not
22 meet the claim element "performing an action using at
23 least part of the second information," correct?

24 A. So placing a telephone call without using any of the
25 second information would not practice that element of

Smedley - Cross

1 performing the action using at least some of the second
2 information.

3 **Q.** So as an example -- we saw a variety of your videos
4 yesterday. If a user was navigating the web and they
5 found a phone number and did a long press on it, the whole
6 number would be selected, and then that menu bar for Smart
7 Text Selection would come up if it was working correctly,
8 right?

9 **A.** So you are navigating the web and what -- sorry.
10 Because if you're looking at a document that's not
11 editable -- I'm not sure of the context that you are
12 describing. Sorry.

13 **Q.** Let me give you a different example. If you were --
14 well, Smart Text Selection works on both editable and
15 noneditable text, correct?

16 **A.** The Court has clarified a construction that the
17 document has to be editable -- let me make sure I get it
18 right -- while it's being analyzed.

19 **Q.** Right. My question is slightly different,
20 Dr. Smedley. Smart Text Selection works on both editable
21 and noneditable text, correct?

22 **A.** You are asking me to recall something that -- so I
23 think you're probably correct, but I would need to go and
24 check and reconfirm.

25 **Q.** Let me ask you about an example that I think you did

Smedley - Cross

1 show, which is a user is composing an e-mail. So they are
2 editing that, right?

3 **A.** Yes.

4 **Q.** So they're composing an em mail and they say: Her
5 number is, and then do ten digits for a phone number,
6 right?

7 **A.** Okay.

8 **Q.** And in that particular scenario, if they then long
9 press on those ten digits, if Smart Text Selection is
10 working correctly, it will expand the selection and
11 present a menu bar, correct?

12 **A.** That's what I observed in my testing, yes.

13 **Q.** Right. And at that point, you can select "call" on
14 that number, among other options, right?

15 **A.** Yes.

16 **Q.** And it would go, maybe launch the dialer, I think is
17 the example that you gave yesterday?

18 **A.** Yes, I think so.

19 **Q.** And if that phone number wasn't in -- pardon me --
20 wasn't in the Contacts, there would be no action performed
21 with -- with that number. There would be no display of a
22 name or a photo, like the sloth photo I think that you
23 had, showed up on the screen yesterday, right?

24 **A.** So if that number isn't in the Contacts database, it
25 won't find any second information.

Smedley - Cross

1 Q. Right. It wouldn't perform an action with any second
2 information in that instance, right?

3 A. No, but it doesn't matter.

4 Q. Well, it's part of the claim requirement that there
5 be -- that it perform an action with at least part of the
6 second information, right?

7 A. If the second information is found when it performed
8 the action if any second information is found.

9 MR. KAMBER: If we could just have PDX-3-3 up
10 on the screen. Actually, excuse me, PDX-3-83 up on the
11 screen again.

12 BY MR. KAMBER:

13 Q. One of the requirements is "performing an action
14 using at least part of the second information, correct?

15 A. Yes.

16 Q. So let's turn to Smart Text Selection. Smart Text
17 Selection is a tool, right?

18 A. It's reasonable to describe it that way, sure.

19 Q. It's a functionality?

20 A. It's more like a group of functionalities, I suppose,
21 but don't mean to quibble about the words.

22 Q. Sure. So the functionality gives users a variety of
23 different options, including cut, copy, sometimes share,
24 among other things, right?

25 A. I haven't analyzed those particular functionalities

Smedley - Cross

1 with Smart Text Selection, but I have seen them there in
2 my testing, yes.

3 **Q.** Okay.

4 **MR. KAMBER:** If we can display PDX-3-64 for
5 just a moment.

6 **BY MR. KAMBER:**

7 **Q.** This was one of your slides yesterday, right,
8 Dr. Smedley?

9 **A.** Yes. Yep.

10 **Q.** And you point out different examples here in -- of an
11 e-mail address, physical address, street address, phone
12 number, flight number here, right?

13 **A.** Yes.

14 **Q.** And for each of these different examples, the menu
15 bar that's set up by the Smart Text Selection is -- has
16 options like cut and copy, correct?

17 **A.** Yes. Probably all of them do, I think.

18 **Q.** So as part of your analysis for a Smart Text
19 Selection, you downloaded and reviewed code for several
20 versions of Android, right?

21 **A.** Yes, I did. Yep.

22 **Q.** And you downloaded that from the Internet?

23 **A.** Yep. That's where I got it.

24 **Q.** Publicly available?

25 **A.** It is publicly available, yes.

Smedley - Cross

1 Q. And you downloaded specifically, I think, Versions 8
2 and 9 of the Android operating system, right?

3 A. Yes. There's multiple versions within each of those.
4 I downloaded a specific one.

5 Q. Okay. You also -- and actually, some of those --
6 those are in evidence at this point, right?

7 A. I believe so, yes.

8 Q. PDX 125 and 123.

9 MR. KAMBER: Let's pull up 125.

10 BY MR. KAMBER:

11 Q. That's the source code for Android/platform/framework
12 8.0.0_r1, right?

13 A. Yes.

14 Q. And the next one is PX-0123. And that's the
15 framework code for Version 9 of the Android operating
16 system, right?

17 A. Yes.

18 Q. In addition to the framework code, you downloaded
19 some code for different applications, correct?

20 A. Yes. That's right.

21 Q. Some of the 12 Google apps that you accuse have
22 source code that's made publicly available as open source
23 code, correct?

24 A. Yes. That's also right.

25 Q. And among the code that you reviewed in the framework

Smedley - Cross

1 code is the code for Smart Text Selection functionality,
2 right?

3 **A.** Yes.

4 **Q.** That is, the computer code for Smart Text Selection
5 is in the Android operating system code?

6 **A.** So the source code for Smart Text Selection is within
7 this framework code that I downloaded. I disagree with
8 the characterization of that as operating system code.

9 **Q.** You called it operating system code in your report,
10 right?

11 **A.** Not that I recall. Well, operating system, the term
12 "operating system" is used very imprecisely within
13 computer science. So I may have said that that might be
14 that it could be considered part of that, but it's not
15 very meaningful.

16 **Q.** Did you use it imprecisely in your report,
17 Dr. Smedley?

18 **A.** Not intentionally, no.

19 **Q.** Let me show you, if we could, please, Page 6 of your
20 report just to remind you of this.

21 At the top, this is a page from your report, correct?

22 **A.** Yes.

23 **Q.** You're talking about different computer programs here
24 that you have listed on the left?

25 **A.** Yes.

Smedley - Cross

1 Q. And then you're talking about the operating system on
2 the right, correct?

3 A. Yes.

4 Q. And for certain apps, you're only accusing Android
5 Version 8 and higher, correct?

6 A. Yes, that's correct.

7 Q. And that's the framework code that we were just
8 looking at that you're referring to as being the operating
9 system?

10 A. That's not what this slide says, no.

11 Q. You're using the term "operating system" in your
12 report, correct?

13 A. Yes.

14 Q. You're referring to Versions 8 and 9 of Android,
15 correct?

16 A. In the right-hand column there, yes.

17 Q. So your opinion related to whether the accused apps
18 infringe is -- when they are used in connection with
19 certain code in Android 8, depends on that code being in
20 the framework, correct, in the operating system?

21 A. Sorry. What's your question?

22 Q. Sure. Your opinion regarding whether the 12 Google
23 apps infringe depends on certain code being in the Android
24 operating system, either Version 8 or Version 9, right?

25 A. Well, it depends on certain code being there in

Smedley - Cross

1 that -- I mean, the operating system has to be there to
2 work. Are you asking me about specific code or certain
3 specific code or just that there has to be something
4 there?

5 **Q.** Well, let's start with there has to be something
6 there, right?

7 **A.** Yes.

8 **Q.** Okay. So the source code file that contains the
9 instructions for TextClassifierImpl is in that code for
10 Android Versions 8 and 9, correct?

11 **A.** It is in the code for -- it's in the Android
12 framework code for Android Versions 8 or 9.

13 **Q.** We looked at some of that code this morning, correct?

14 **A.** Yes, we did.

15 **Q.** You identified TextClassifierImpl in your code trace
16 yesterday as you walked through the slides, right?

17 **A.** Yes, I did.

18 **MR. KAMBER:** Let's display PDX-3-108 please.

19 **BY MR. KAMBER:**

20 **Q.** You're pointing here to code for Android 8, correct?

21 **A.** Yes.

22 **Q.** Right? That's the title that you have at the top.

23 **A.** Yes.

24 **Q.** And we just saw -- and at the bottom left, it's
25 referring to PX-125, right?

Smedley - Cross

1 **A.** Yes.

2 **Q.** That was the code we just saw. That's the code base
3 for Android 8 that you downloaded.

4 **A.** It's -- I'm trying to remember.

5 **Q.** I'm happy to have it redisplayed so you can confirm,
6 Dr. Smedley.

7 **A.** Yeah. Yeah.

8 **Q.** Sure.

9 **MR. KAMBER:** If we could just show again PX-125
10 on the screen.

11 **THE WITNESS:** Yes. So in the path there, it
12 specifically says "platform/frameworks/base." So it's the
13 framework code, yes.

14 **BY MR. KAMBER:**

15 **Q.** Fair enough. It's in the framework code.

16 **A.** Yes.

17 **MR. KAMBER:** So let's go back to PDX-3-108 for
18 a moment.

19 **BY MR. KAMBER:**

20 **Q.** Your opinion regarding infringement depends on this
21 code being in the Android 8 framework, right?

22 **A.** Well, the -- so is your question that if that code
23 were somewhere else, would my opinion be the same?

24 **Q.** My question is, if the code TextClassifierImpl wasn't
25 in Android -- in the Android framework, then under your

Smedley - Cross

1 theory, if I understand it, the input device step at least
2 would not be satisfied.

3 **A.** So what I'm trying to get straight is if you're
4 asking me -- there are two questions that I'm not sure
5 which one, or if you're asking something different. One
6 is that if this code just didn't exist or if this code was
7 somewhere else other than in the Android framework.

8 **Q.** The first one, Dr. Smedley. If this code didn't
9 exist in Android 8, then the 12 apps would not infringe?

10 **A.** If this code didn't exist, then STS wouldn't work, so
11 no.

12 **Q.** Right.

13 **A.** They wouldn't infringe.

14 **Q.** Right. So you showed a diagram yesterday, PDX-3-183.
15 I will have that pulled up for you and the jury.

16 Remember discussing this, Dr. Smedley?

17 **A.** Yes.

18 **Q.** Where did you get this figure?

19 **A.** This is from the Google -- documentation for Google
20 developers describing the architecture of the Android
21 system as a whole.

22 **Q.** Right. You accused 12 Google apps of infringement,
23 correct?

24 **A.** Yes, that's right.

25 **Q.** Apps are depicted on the screen in, looks like

Smedley - Cross

1 orange, right?

2 **A.** Yes. Yeah. I call that -- there are various shades
3 of orange there, but I think we can all...

4 **Q.** At the very top, the orange at the very top, perhaps,
5 so the record is clear. Right, Dr. Smedley?

6 **A.** Yes.

7 **Q.** So and then there's Android framework code there
8 that's shown in a green, perhaps turquoise, depending on
9 your field of vision -- field of view, right?

10 **A.** Yes. It's identifying that Android framework as
11 that.

12 **Q.** And as we just saw, the Android -- excuse me.

13 Things like TextClassifierImpl -- or let me be
14 specific TextClassifierImpl that is required for Smart
15 Text Selection to work is in that Android framework in the
16 green, correct?

17 **A.** Yes. Absolutely.

18 **Q.** And that TextClassifierImpl code that's in the
19 Android framework, that's shared by all 12 of the apps
20 that you accused of infringement.

21 **A.** I'm just trying to remember that particular -- Chrome
22 uses STS but uses it in a slightly different way. I think
23 that its different way still includes that, yes.

24 **Q.** Right.

25 You also analyzed TextClassifierImpl for Android 9,

Smedley - Cross

1 right?

2 **A.** Yes, I did.

3 **Q.** That was, I think, on --

4 **MR. KAMBER:** Let's pull up PDX-3-110, please.

5 **BY MR. KAMBER:**

6 **Q.** And here you were looking at the TextClassifierImpl
7 for Version 9, correct?

8 **A.** Yes, that's correct.

9 **Q.** And these instructions are also in the framework,
10 right?

11 **A.** Yes.

12 **Q.** And again, these instructions are in that -- they
13 would be in that green area of the Android framework on
14 the diagram that we just saw?

15 **A.** Yes. That's what they are describing with that
16 document.

17 **Q.** And your opinion regarding infringement of the 12
18 apps on an Android 9 device depends on TextClassifierImpl
19 being in the framework?

20 **A.** It depends on the existence of TextClassifierImpl and
21 it is in the framework. So...

22 **Q.** For your analysis of the Chrome app, specifically --

23 **MR. KAMBER:** If we could pull up PDX-3-104.

24 **BY MR. KAMBER:**

25 **Q.** So the title of this slide, Dr. Smedley, is "Google's

Smedley - Cross

1 Public Source Code for Chromium," right?

2 **A.** Yes.

3 **Q.** Chromium is an open source version of a Chrome
4 browser, correct?

5 **A.** That's one way to describe it, yes.

6 **Q.** And on this particular slide, the code you are
7 showing, the public source code, this is not Chromium
8 code, right?

9 **A.** I'm not sure what you mean.

10 **Q.** Well, this code that you're displaying here is from
11 PX-125, correct?

12 **A.** Yes. No, I'm --

13 **Q.** You point to TextClassifierImpl.java, right?

14 **A.** Yes, I haven't yet found where the file name was.
15 This is TextClassifierImpl.java, which is in the
16 framework.

17 **Q.** This is not source code for Chromium?

18 **A.** This is source code that Chromium uses, yes.

19 **Q.** The code that you are displaying here is code that is
20 in the Android 8 framework, right?

21 **A.** I assume it's 8. Yeah, this source code is located
22 in the Android 8 framework.

23 **Q.** This is also the code that creates the intents that
24 you referred to in your testimony yesterday. And I
25 believe you referenced it this morning as well, right?

Smedley - Cross

1 **A.** Yes. The lower box there has part of the code to
2 create the intents that I talked about.

3 **Q.** Right. And it says "public static intent" and then
4 "create," that line there, is that what you're referring
5 to?

6 **A.** Yes.

7 **Q.** That is code that's in TextClassifierImpl.java in the
8 Android 8 framework, right?

9 **A.** Yes.

10 **Q.** So let me just show you a few others. For the
11 retrieving step that you discussed yesterday, you also
12 identified code in the Android framework, right?

13 **A.** I think that's right, yes.

14 **Q.** If we could show you PDX-3-76, please.

15 Here, again, in order to meet the retrieving step,
16 you are analyzing code in the Android 8 framework, right?

17 **A.** Well, I'm analyzing a lot of code, including this
18 which is in the Android 8 framework source code.

19 **Q.** Right. And the same is true for your analysis of the
20 retrieving step for Android 9, which is, I think,
21 displayed on the next slide of your demonstratives.

22 **A.** Yes.

23 **Q.** Right. This is talking about instructions that are
24 in the Android 9 framework that you point to in order
25 to -- as your code trace for the retrieving step, right?

Smedley - Cross

1 **A.** It's code that's in the Android 9 framework source
2 code, yes.

3 **Q.** What's the difference between putting instructions
4 for the functionality of setting up an input device in the
5 code for an app as opposed to putting it in the framework
6 or the operating system?

7 **A.** So I want to make sure we are really clear on what
8 you mean by "putting it in code for an app."

9 **Q.** Well, what I mean is writing the code into -- let me
10 back up.

11 A computer programmer writes instructions in
12 different computer programming languages, I think you
13 explained yesterday, correct?

14 **A.** Yes.

15 **Q.** And an app developer will write computer instructions
16 for a particular app, correct?

17 **A.** They'll write code for a particular app, yes.

18 **Q.** They can write code for an app, and when those apps
19 are downloaded onto a device, the code will be in a
20 compiled version of that -- the code will be a compiled
21 version of what was written by that source code
22 programmer, correct?

23 **A.** Generally speaking yes.

24 **Q.** Right. So what I'm asking is, what's the difference
25 between putting instructions for particular functionality

Smedley - Cross

1 as a programmer into an individual program versus writing
2 instructions into an operating system?

3 **A.** So what exactly do you mean by "operating system"
4 here, because it's -- that term is not used. It's often
5 used in different ways.

6 **Q.** Dr. Smedley, did you give a deposition in this case?

7 **A.** Yes, I did.

8 **Q.** Okay. And at the time that you gave your deposition,
9 were you testifying -- you were testifying under oath,
10 correct?

11 **A.** I was, yes.

12 **Q.** And -- thank you.

13 **MR. KAMBER:** Let me show something to counsel,
14 Your Honor?

15 **THE COURT:** Yes.

16 (Video plays.)

17 **Q.** Well, what's the difference between putting
18 instructions -- setting up an input device in the code for
19 a program as opposed to putting it into the operating
20 system.

21 **A.** One -- one difference would be that code, let's say I
22 decided -- I don't know, that it was me doing this and I
23 decided I was going to put some code in the operating
24 system. I would expect it to be a fairly general use
25 across a wide range of applications. At the same time, I

Smedley - Cross

1 might put some code in my application, also keeping in
2 mind that I might want to use it in other applications as
3 well. So it's not -- it's certainly not a clear
4 distinction, but, it's -- I don't know, it's one of the
5 factors.

6 (Video ends.)

7 **BY MR. KAMBER:**

8 **Q.** Your answer to that question, Dr. Smedley, you were
9 distinguishing between two different approaches, right?

10 **A.** Yes.

11 **Q.** So we talked about the intents handling, and that is
12 part of the Android framework, correct?

13 **A.** Yes, yes.

14 **Q.** So as you noted in your direct testimony, I think,
15 the two asserted claims are directed to something called a
16 "computer readable medium"?

17 **A.** Right, yes.

18 **Q.** Let's pull up PDX-3-3.

19 That requirement is at the very top of Claim 23,
20 correct?

21 **A.** Yes, that's right.

22 **Q.** And I think you had a slide that maybe makes this
23 easier to read. It was PDX-3-159.

24 This is the preamble to Claim 23 blown up on one of
25 your demonstrative slides, right?

Smedley - Cross

1 **A.** Yes.

2 **Q.** And I just kind of want to explain this to the jury
3 for their benefit, what's required here. The computer
4 readable medium is, I think, you described it yesterday as
5 "memory," correct?

6 **A.** That's one thing that could be computer readable
7 medium, yes.

8 **Q.** Right. In this particular case, it's nonvolatile
9 memory on a phone that has the 12 accused apps that you
10 think -- that you say satisfies this part of the claim,
11 correct?

12 **A.** That's one CRM that satisfies this claim.

13 **Q.** What is the other, Dr. Smedley?

14 **A.** When the apps are on the Google Play servers, they
15 are also on the non-transitory -- stored on non-transitory
16 computer readable medium.

17 **Q.** Right. When the apps are on the Google Play Store,
18 they can't be run in connection with Android 8 or
19 Android 9, right?

20 **A.** I don't know of any way to do -- I don't know how the
21 back end of the Google Play Store works. Maybe you can,
22 maybe you can't. But as far as I know, you can't.

23 **Q.** That app code on the Google store, when it's
24 downloaded onto a device, let's say it's an Android 7
25 device. That doesn't infringe, right?

Smedley - Cross

1 **A.** Well, I haven't presented any analysis with respect
2 to Android 7 so.

3 **Q.** Android 7 doesn't have the code for Smart Text
4 Selection built into the framework, right?

5 **A.** No, that was introduced with Android 8.

6 **Q.** So the same app downloaded onto a phone with
7 Android 7, wouldn't be able to use Smart Text Selection?

8 **A.** I'm not sure that it would even be possible, because
9 I believe the Google Play Store ensures that the device is
10 capable. But that -- I mean, if you are telling me that
11 that can happen, then I'll take your word for it.

12 **Q.** You didn't do analysis of that question, though, in
13 your evaluating infringement in this case, right?

14 **A.** No, I didn't look at -- I'm not presenting here
15 anything in relation to Android Version 7 or earlier.

16 **Q.** So yesterday -- if we could pull up PDX-3-6 for a
17 moment, please.

18 So you were talking about Google apps and then Google
19 phones, right?

20 **A.** Yes.

21 **Q.** Two different categories that you accuse of
22 infringement?

23 **A.** Well, I believe it's Arendi that accuses them of
24 infringement; I'm supplying my opinion.

25 **Q.** Fair enough.

Smedley - Cross

1 So you supplied an opinion that Google apps infringe
2 and that certain Google phones infringe?

3 **A.** Yes, that's right.

4 **Q.** Okay. You -- and you say that the Google Pixel 2 and
5 the Google Pixel 3 devices come with certain applications
6 preinstalled, right?

7 **A.** Yes.

8 **Q.** And you -- and the first computer program that you
9 accused is each of those preinstalled applications, right?

10 **A.** Yes. In that specific scenario, yes.

11 **Q.** So in the second category, you are accusing apps that
12 you say are downloaded from the Google Play Store, right?

13 **A.** I would prefer you didn't use the word "accuse"
14 because that's not my role here.

15 **Q.** Sure.

16 The 12 Google apps that you opine infringe come from
17 the Google Play Store, correct?

18 **A.** If they're not preinstalled, then they would be
19 downloaded from the Google Play Store, yes.

20 **Q.** You accuse the instructions for those 12 apps of
21 being the code that is the first computer program that's
22 in the computer readable medium, correct?

23 **A.** I've given my opinion, in that; I haven't accused
24 that.

25 **Q.** For those 12 apps to use Smart Text Selection,

Smedley - Cross

1 though, they have to be loaded onto phones with Android 8
2 and 9, right?

3 **A.** In order to run those apps, you have to load them
4 onto a device with Android 8 or 9.

5 **Q.** Before -- well, you haven't analyzed how many of the
6 accused applications were actually installed on phones
7 with Android 8 or 9, correct?

8 **A.** That's not part of my role here, no.

9 **Q.** You haven't analyzed that question at all, right?

10 **A.** No.

11 **Q.** So you also haven't analyzed how many of the 12
12 Google apps were installed on Samsung devices, correct?

13 **A.** No, definitely not.

14 **Q.** You understand from Dr. Hedloy that Samsung devices
15 are licensed, correct?

16 **MR. STRAUS:** Objection, Your Honor.

17 **THE COURT:** Sustained.

18 **BY MR. KAMBER:**

19 **Q.** Dr. Smedley, you didn't try to make any determination
20 as to the extent to which the 12 apps that you accused of
21 infringing were downloaded and installed onto Samsung
22 devices running Android 8 or 9, correct?

23 **A.** As I said, that wasn't my role here -- isn't my role
24 here so, no, I did not.

25 **MR. KAMBER:** Pass the witness, Your Honor.

Weinstein - Direct

1 **THE COURT:** Thank you.

2 Redirect.

3 **MR. STRAUS:** Your Honor, I have no further
4 questions.

5 **THE COURT:** All right. You may step down.

6 **THE WITNESS:** Thank you very much.

7 **MR. STRAUS:** Your Honor, two questions for Your
8 Honor, first, may Dr. Smedley be excused?

9 **THE COURT:** He may be excused.

10 **MR. STRAUS:** And, second, would Your Honor like
11 these exhibits now, or should we hold onto them for the
12 duration of trial? These were the source code exhibits.

13 **THE COURT:** Why don't we hold onto them and we
14 will deal with them on the next break.

15 Let's have the plaintiff call its next witness.

16 **MS. SRINIVASAN:** Arendi calls Mr. Weinstein.
17 The examination will be conducted by my partner, Seth Ard.

18 **THE CLERK:** Please state and spell your name
19 for the record.

20 **THE WITNESS:** My name is Roy Weinstein,
21 W-E-I-N-S-T-E-I-N.

22 ROY WEINSTEIN, having been called as a witness, being
23 first duly sworn under oath or affirmed, testified as
24 follows:

25

Weinstein - Direct

1 DIRECT EXAMINATION

2 **THE COURT:** Please proceed.

3 **MR. ARD:** Thank you, Your Honor.

4 **BY MR. ARD:**

5 **Q.** Good morning, Mr. Weinstein.

6 Could you please state your full name for the jury.

7 **A.** My name Roy Weinstein.

8 **Q.** Can you please tell the jury a little bit about
9 yourself?

10 **A.** I'm an economist. I live and work in Los Angeles,
11 California. I'm a managing director at an economic
12 research and consulting firm known as Micronomics. I'm
13 married with two grown children and two grandchildren.

14 **Q.** And why are you here today, Mr. Weinstein?

15 **A.** I'm here today to provide my opinion as to a fair
16 amount that should be paid by Google to Arendi for use of
17 the '843 patent.

18 **Q.** And have you prepared a presentation for us today,
19 Mr. Weinstein?

20 **A.** Yes, sir, I have.

21 **Q.** Is that the one that's on the screen right now?

22 **A.** It is.

23 **Q.** It may be easier to look up here.

24 **A.** Okay.

25 **Q.** We'll go over your analysis with the jury today, but

Weinstein - Direct

1 before we do that, can you first provide the jury with the
2 conclusion you reached?

3 **A.** Yes. I have calculated that fair compensation from
4 Google to Arendi for use of the '843 patent is
5 \$45,504,836.

6 **Q.** What training do you have that enables to you to
7 reach that conclusion?

8 **A.** Well, I'm an economist, so I had academic training in
9 economics, finance, statistics, and econometrics, things
10 of that sort. One of the things that we do as economists
11 is we try to become knowledgeable as to valuation issues
12 and how prices in the market are determined. Sometimes we
13 use benchmarks; sometimes we use complex economic models.

14 **Q.** And, Mr. Weinstein, is your firm being compensated
15 for your work in this case?

16 **A.** It is. Micronomics is compensated for time that I
17 spend in this case at a rate at \$750 per hour.

18 **Q.** And will outcome of this trial have any impact on
19 your compensation?

20 **A.** The outcome of this trial will not impact my
21 compensation; however, it will impact the compensation
22 that Micronomics receives.

23 **Q.** Is it fair to sale that all of the expert witnesses
24 in this case will be compensated for their time?

25 **A.** I believe so, yes.

Weinstein - Direct

1 **Q.** Please tell the jury about your educational
2 background.

3 **A.** I attended City College of New York and graduated
4 with honors in economics with a Bachelor of Business
5 Administration degree. And from there I went to the
6 University of Chicago and received a master of science
7 degree. Excuse me, a master of arts degree, also in
8 economics.

9 **Q.** And did you receive any honors and awards in
10 connection with your education?

11 **A.** I did. At City College I received some awards for
12 economic performance, and at University of Chicago I
13 received fellowships from the United States Public Health
14 Service and the Walgreen Foundation.

15 **Q.** And have you been honored since leaving school for
16 your work as a professional economist?

17 **A.** I have. In 2005, the Business and Economics Society
18 at City College awarded me what was called the Career
19 Achievement Award, and that was for work I did since
20 leaving school during the course of my career. I was the
21 first recipient of that award, and since then, there's
22 been one other as far as I know.

23 **Q.** And can you please identify some of the consulting
24 clients you've had over your career?

25 **A.** Sure. Over the course of my career, I've been

Weinstein - Direct

1 engaged by Dish Network, Dunkin Donuts, Farmers Insurance,
2 back in the Oakland Raiders. Back in California, you
3 know, we've had the Oscars, the Emmys, awards like that,
4 and I've been engaged by each of those entities to conduct
5 economic impact study because they were interested in
6 knowing the impact of those events on the community.

7 So I've had a number of fairly interesting
8 engagements. I've also been engaged by State Attorneys
9 General for the states of California, Oregon, Washington,
10 Texas, New York, Illinois, a number of other states as
11 well.

12 **Q.** And have you calculated damages in patent
13 infringement cases before?

14 **A.** Yes, sir, I have.

15 **Q.** On behalf of which clients?

16 **A.** In patent cases, I've been engaged by Ericsson, eBay,
17 Intel, Halliburton, Southern California Edison, a number
18 of others as well.

19 **Q.** And have you written about some of the work you've
20 done on patent infringement damages?

21 **A.** I have. The first article that I published with
22 respect to the calculation of patent damages was in 1988,
23 and it was published in the Journal of the Patent and
24 Trademark Office Society, which is the U.S. Patent Office.
25 It dealt with some work I had done on patent damage

Weinstein - Direct

1 calculation. And I've since done a couple of other
2 publications, Journal of Law and Technology, Federal
3 Circuit Bar Journal. They all deal with the calculation
4 of patent damages.

5 **Q.** Have you ever given any lectures about your work on
6 the amount that should be paid for patent infringement?

7 **A.** Yes, sir, I have. There's an annual conference in
8 Plano, Texas every year that deals with intellectual
9 property issues, and I've been invited speakers to speak
10 there several years and talk about patent damage
11 calculations.

12 I also gave a talk in Washington, D.C. before a group
13 of technologists on patent damages, and City College
14 invited me back once to speak about patent damages to a
15 group of students and faculty.

16 **MR. ARD:** Your Honor, I move to qualify
17 Mr. Weinstein as an expert on the valuation of
18 intellectual property and the calculation of patent
19 damages.

20 **MR. PETERMAN:** No objection, Your Honor.

21 **THE COURT:** All right. He is so qualified.

22 **BY MR. ARD:**

23 **Q.** What materials did you consider in reaching your
24 conclusions in this case, Mr. Weinstein?

25 **A.** I considered three sets of materials. I had access

Weinstein - Direct

1 to information that was made available by Arendi. License
2 agreements, the patent. I also had conversations with
3 Mr. Hedloy and Dr. Smedley. Google provided me with
4 financial information, its license agreements, and a fair
5 number of marketing materials as well.

6 And then at Micronomics, whenever we're engaged in
7 this kind of matter, or really any matter, we have a
8 research librarian. And so we collect some information on
9 our own. That's the other column on the right-hand side,
10 industry reports, and, of course, from time to time, we
11 review academic literature as well.

12 **Q.** And so with that information in hand, where do you
13 start in determining the proper compensation for patent
14 infringement?

15 **A.** Well, I start with what I call the Patent Damages
16 Statute. That's a law that says the patent holder is
17 entitled to compensation for an infringement that is in no
18 event less than a reasonable royalty for use made of the
19 invention by the infringer. So that's where I start. I
20 start with that statute.

21 **Q.** And how does that statute relate to the role of
22 patent rights in the United States?

23 **A.** Well, patent rights are essentially a right to
24 exclude others from using an invention without permission.
25 And so as the statute contemplates, if an invention is

Weinstein - Direct

1 used without permission, the inventor, the patent holder
2 is entitled to compensation that is not to be less than a
3 reasonable royalty.

4 **Q.** And what's your understanding of why patent rights
5 are important in the United States?

6 **A.** They are tremendously important because the way this
7 works is so as to encourage innovation by making it
8 impossible to use an invention without permission. It
9 encourages inventions. It encourages innovation so that
10 the innovator can receive compensation for whatever that
11 invention is. And the patent laws, thereby, benefit not
12 just the inventor, but they benefit all of us as consumers
13 because, ultimately, those inventions make their way to
14 the marketplace, at least those that are good.

15 If you look around the courtroom here, there's patent
16 protection associated with much of what we see, all of
17 this technology. And the inventors were compensated for
18 those inventions. But as consumers, we all benefit from
19 having access now to those inventions. That's the idea
20 behind patent rights. That's the reason. It's to
21 encourage innovation that benefits both the inventor and
22 the rest of us.

23 **Q.** Is there a name for agreements that are reached
24 between patent holders and entities that wish to use their
25 patents?

Weinstein - Direct

1 **A.** Yes, sir, there is.

2 **Q.** And what are they called?

3 **A.** They are called license agreements.

4 **Q.** Do license agreements typically include payment
5 terms?

6 **A.** They do. Some license agreements are called lump sum
7 agreements, and that's where there's one payment term that
8 reflects permission to use the invention. Typically, that
9 payment is made at the beginning, or several payments.

10 And sometimes they are what are called running royalty
11 agreements, and those are agreements where payment is made
12 over time. But they are payments from the licensee, the
13 entity that wishes to use the invention, to the licensor,
14 the inventor, the patent holder.

15 **Q.** And how do license agreements come into existence?

16 **A.** They're negotiated. They're a negotiated deal in the
17 real world. If someone becomes aware of an invention that
18 they would like to use, they approach the inventor, and
19 they try and negotiate payment for use of that invention.

20 **Q.** In a specific lawsuit like this one, how does someone
21 figure out the proper amount of damages that are adequate
22 to compensate someone for patent infringement?

23 **A.** Well, there's a negotiation that covers the answer to
24 that question as well. But it's different from a
25 real-world negotiation, and for that reason, it's called a

Weinstein - Direct

1 "hypothetical negotiation."

2 **Q.** So how does a hypothetical negotiation work?

3 **A.** A hypothetical negotiation puts the two parties
4 across from one another. That's why they're depicted here
5 across a negotiating table; Google on one side, Arendi on
6 the other. The date that's shown on this slide is
7 August 17, which, in my understanding, is the date
8 associated with when infringement occurred here.

9 And what you see is the parties negotiating. Google
10 would like permission to use the '843 patent, and that's
11 why the patent is shown going to Google. And in exchange,
12 it's going to compensate Arendi for use of that patent.
13 And that's the hypothetical negotiation framework that
14 governs how one gets an answer as to what should fair
15 compensation be for use of the patent in this context.

16 **Q.** Are any assumptions made about the hypothetical
17 negotiation?

18 **A.** Yes. There are three assumptions that are part and
19 parcel to this process. And they're different from what
20 kinds of assumptions typically are associated with
21 real-world negotiations, but these are the assumptions.
22 They're up on the board. There are three of them there.

23 **Q.** Okay. Well, let's walk through each of these
24 assumptions.

25 Can you explain the first one?

Weinstein - Direct

1 **A.** Yes. The first one is that at the hypothetical
2 negotiation, the parties are aware of information that
3 would not exist in a real-world negotiation. That is,
4 they have information about future use of the patent.
5 When you're in a real-world negotiation, you use your best
6 judgment based on the facts you have at the time. That's
7 a real-world negotiation.

8 In a hypothetical negotiation, you have that
9 information, but you also have information about the
10 future. The future value, the future use of the patent.
11 And that's an assumption that's part of the hypothetical
12 negotiation framework. So as Google and Arendi sit across
13 the table from one another, they both have that
14 information at hand.

15 **Q.** And what's the second assumption. Can you explain
16 that?

17 **A.** The second assumption is that Google and Arendi, at
18 the hypothetical negotiation, understand the patents to be
19 valid and infringed. And once again, that's very
20 different from what typically characterizes the real-world
21 negotiation for intellectual property. In the real world,
22 typically, the potential licensor takes issue with the
23 question of whether the patent is valid or infringed.
24 There's disagreement about that in a real-world
25 negotiation. In the hypothetical negotiation, there's no

Weinstein - Direct

1 disagreement about that. There is agreement that the
2 patent is valid and infringed.

3 **Q.** And what's the third for hypothetical negotiation?

4 **A.** So the third assumption also is different from
5 real-world negotiations. In a real-world negotiation,
6 sometimes there are other terms that people talk about.
7 If you are renting an apartment, for instance, sometimes
8 the deal might be \$1,500 a month, but you get the first
9 six months free or the first three months free if you take
10 a three-year lease or something like that.

11 That could be a real world term where the \$1,500 a
12 month, that is the rent payment, doesn't cover everything
13 that's part of the deal. There could be other terms in a
14 real-world deal.

15 But in a hypothetical negotiation, there are no other
16 terms other than how much should be paid. That's all they
17 talk about.

18 And the other thing that's true of that hypothetical
19 negotiation, is that they have to reach agreement. They
20 can't walk away. They have to sit at that table until
21 they reach a deal. And that's also different from a real
22 world. Real world, sometimes if you are negotiating for
23 something, part of the strategy is to walk away for a
24 while in order to get a better offer. But the
25 hypothetical negotiation, you can't do that. You sit

Weinstein - Direct

1 there until you get to the finish line and you have fair
2 payment and the parties agree.

3 **Q.** So you mentioned some differences between real-world
4 negotiations and hypothetical negotiations.

5 Did you prepare a slide summarizing those
6 differences?

7 **A.** I did.

8 **Q.** And can you just walk through, again, for the jury
9 what you think the key differences are that's worth
10 highlighting?

11 **A.** Yeah. And I sort of previewed what those differences
12 are in my last answer.

13 **Q.** But with the real-world negotiation, you don't know
14 the future. If you're buying a house, you can look at the
15 house. You can make sure that everything works. You can
16 test the windows, the electricity, the water. You can
17 walk around the neighborhood, et cetera, talk to the
18 seller. That's all you know.

19 In a hypothetical negotiation, if you're buying a
20 house, you know everything I just talked about, but you
21 also know everything that happened since you lived in that
22 house. You know about the future. You know whether it
23 turned out to be a great house or not so good. You know
24 if everything worked or everything broke down.

25 That's the difference between a real-world

Weinstein - Direct

1 negotiations where you know what's available at the time
2 in terms of information, and a hypothetical negotiation
3 where you know what's available at the time, but you have
4 access to additional information about the future, you
5 have much more information.

6 **Q.** And with the second assumption?

7 **A.** Yeah. The second is fundamental to the hypothetical
8 negotiation concept. In the real world, the parties
9 typically disagree about whether a patent is valid or
10 infringed. That's fairly standard if there is a
11 negotiation of value. At the hypothetical, that's off the
12 table. They agree the patent is valid and it's infringed.

13 **Q.** Okay. And what impact do these three differences
14 have on licensing fees in the real world versus the
15 hypothetical world?

16 **A.** Well, if you think about the differences that I've
17 just described in those three areas, the outcome of
18 real-world negotiations will tend to produce a discount in
19 the answer relative to a hypothetical negotiation. That's
20 in part because there can be other terms of compensation
21 included in a real-world outcome that aren't part of the
22 hypothetical negotiation. It's in part because of
23 disagreement about validity and infringement. And as a
24 consequence, real-world negotiations will produce lower
25 outcomes than the hypothetical negotiation as you think

Weinstein - Direct

1 through each of those differences.

2 **Q.** And with respect to the hypothetical negotiation in
3 this case, is the payment going from Google to Arendi the
4 only benefit that Arendi gets?

5 **A.** Yes. There are no other payments that go back such
6 as what I described in the rent example where you might
7 get free rent or something else at the beginning. Here,
8 you only get payment for use of the patent.

9 **Q.** Beyond the hypothetical negotiation, is there
10 anything else you considered in forming your opinions
11 about patent damages in this case?

12 **A.** Yes. I relied on my experience in this area, but
13 there's one other concept here that's tied into the
14 hypothetical negotiation that I considered. And that
15 concept is referred to as the "*Georgia-Pacific* factors."

16 **Q.** Is that what we are looking at on the screen here?

17 **A.** Yes, sir, it is.

18 **Q.** What are the *Georgia-Pacific* factors? And I won't
19 ask you to read all 15 to the jury.

20 **A.** The *Georgia-Pacific* factors can be thought of as a
21 checklist of things that the two negotiators in this case,
22 Google and Arendi, would think about as they sit at that
23 negotiating table. And the concept of this
24 *Georgia-Pacific* factor checklist dates back to a prior
25 patent infringement case where the Court in that case

Weinstein - Direct

1 included this list of factors as a checklist for getting
2 to the answer. *Georgia-Pacific* was one of the entities
3 that was involved in that case, and so since then, this
4 checklist has become known as the *Georgia-Pacific* factors.
5 And because it was a Court case, that's why
6 *Georgia-Pacific* is in italics up there.

7 It's a checklist of 15 things that are to be
8 considered by the parties at the hypothetical negotiation.

9 **Q.** Is this *Georgia-Pacific* framework used by other
10 patent damages experts?

11 **A.** It is. As I testified, I've been working in this
12 area at least since the late 1980s when I first wrote
13 about it. And in my experience, we use a *Georgia-Pacific*
14 checklist, basically, one hundred percent of the time.

15 **Q.** And I think you were here during opening when Google
16 mentioned it has retained a damages expert.

17 Does he use the same *Georgia-Pacific* framework that
18 you're using?

19 **A.** Yes. I mean, he'll be here to speak for himself, but
20 he does, in fact, use the same starting points that I do.
21 Namely, the patent statute as a starting point, the
22 hypothetical negotiation as a starting point, and a
23 *Georgia-Pacific* analysis for purposes of thinking through
24 how the negotiation would work.

25 I mean, he gets a different answer from me, but we

Weinstein - Direct

1 have the same framework.

2 **Q.** Did you consider all 15 of these factors in
3 conducting your analysis?

4 **A.** Yes, sir, I did.

5 **Q.** Where did you begin.

6 **A.** Actually, I began with what turns out to be
7 *Georgia-Pacific* Factor Number 1. And that factor on the
8 checklist says, "Consider rates received by the patentee
9 for licensing the patent-in-suit."

10 In other words, if, in this case Arendi, has been
11 able to license the '843 patent in the past, consider that
12 information. Consider that information. It's a
13 benchmark, just as we consider comparable properties if
14 we're buying a house or we consider comparable cars if
15 we're buying a car. *Georgia-Pacific* Factor 1 says,
16 Consider agreements that may be comparable that involve
17 the patent-in-suit." And so that happens to be a good
18 starting point here.

19 **Q.** And did you find any actual licenses that were for
20 the '843 patent?

21 **A.** I did. I found four such licenses.

22 **MR. ARD:** And, Your Honor, at this point we'd
23 like to go through those licenses, and I believe we will
24 need to seal the courtroom.

25 **THE COURT:** Okay.

Weinstein - Direct

1 Ms. Garfinkel, let's seal the courtroom.

2 * * *

3 (The following discussion is held under seal:

4 **THE COURT:** Any objections to how the courtroom
5 has been sealed? I'm hearing no objections.

6 **MR. UNIKEL:** No, Your Honor.

7 **THE COURT:** All right. Please proceed.

8 **MR. ARD:** Thank you, Your Honor.

9 **BY MR. ARD:**

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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Weinstein - Direct

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[REDACTED]

Q. And do all four of these licenses include a license to the '843 patent as well as other patents?

A. Yes, sir, they do.

Q. And can you explain your understanding of what role the '843 patent played in those licenses?

A. Well, I understand from my conversations with

Weinstein - Direct

1 Mr. Hedloy, that the '843 patent drove the negotiations --
2 that's his term -- but it was very important in terms of
3 the negotiations to achieve these licenses.

4 **Q.** Okay. Beyond the payment terms that you've
5 discussed, do these agreements contain any terms that are
6 important to your analysis?

7 **A.** Yes, they do.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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24 Q. And is it your understanding that these terms were
25 important to Arendi?

Weinstein - Direct

1 **A.** Yes, it is.

2 **Q.** Please summarize for the jury your analysis of
3 *Georgia-Pacific* Factor --

4 **MR. ARD:** Oh, Your Honor, actually, I think we
5 can unseal the courtroom now.

6 **THE COURT:** Okay. Let's unseal the courtroom.

7 * * *

8 (Whereupon, the sealed discussion concludes.)

9 - - -

10 **THE COURT:** The courtroom has been unsealed.

11 **MR. ARD:** Thank you, Your Honor.

12 **BY MR. ARD:**

13 **Q.** Mr. Weinstein, can you please summarize your analysis
14 of *Georgia-Pacific* Factor 1.

15 **A.** *Georgia-Pacific* Factor 1 asks that we look for
16 agreements that included the patent-in-suit. In this case
17 I believe there are four such agreements, prior licenses
18 by Arendi that did just that. And I've gone through
19 payment terms and some other aspects of those agreements.

20 **Q.** What's the next *Georgia-Pacific* Factor that you
21 considered?

22 **A.** Well, coincidentally, it happens to be Number 2 on
23 the list. This would be rates paid by the licensee, in
24 this case Google, for use of any patents that are
25 comparable to the patents-in-suit. So it's another kind

Weinstein - Direct

1 of benchmark test, but in this case it deals with past
2 licenses that involve Google rather than licenses that
3 involve Arendi.

4 **Q.** And did you find any past licenses that you found to
5 be relevant under *Georgia-Pacific* Factor 2?

6 **A.** I did not.

7 **Q.** What's the next factor that you looked at?

8 **A.** So the next factors that I looked at are 9 and 10,
9 which I believe are relevant here, and I combined them
10 because they are similar. And they relate to the
11 advantages of the patented property over other means of
12 doing it. They relate to the contribution that the
13 patented property makes, and other things equal, the
14 greater the advantages, the more that an entity would be
15 willing to pay to take a license.

16 **Q.** And I know we've heard a lot of testimony about the
17 technology, but can you summarize at a high level what
18 some of those advantages are?

19 **A.** Well, at the highest level, and this is a quote from
20 a Google deposition that I referenced in my report which
21 was done prior to today. But at the highest level, the
22 advantages involve quick access to additional information.

23 Dr. Smedley explained at some length what that really
24 means in terms of an app allowing you by pressing on
25 editable text, obtaining a button that can immediately

Weinstein - Direct

1 take you to more information. So we've heard about that
2 from Dr. Smedley over the last day.

3 But, you know, the highest level, what that means is
4 it saves -- for the user it saves time, and it is
5 efficient. And in addition, I believe I heard Dr. Smedley
6 testify about certain technological benefits that Google
7 obtains as well. From the user standpoint, it is just
8 quick and easy access to additional information.

9 **Q.** And are those user benefits and technological
10 benefits both relevant under *Georgia-Pacific* Factors 9 and
11 10?

12 **A.** Yes, that is what *Georgia-Pacific* Factors 9 and 10
13 address, other benefits associated with the invention, and
14 if so, consider those benefits.

15 **Q.** Which *Georgia-Pacific* factor did you consider next?

16 **THE COURT:** Counsel, might this be a good time
17 to take our morning break.

18 **MR. ARD:** It would be a great time, Your Honor.

19 **THE COURT:** All right. Ms. Garfinkel, can you
20 take the jury out for our morning break, please.

21 (The jury exits the courtroom at 10:59 a.m.)

22 **THE COURT:** We will be in recess.

23 **MR. ARD:** Thank you, Your Honor.

24 (Whereupon, a recess was taken.)

25 **THE COURT:** Please be seated. Before we bring

Weinstein - Direct

1 the jury back in, I was just doing a little
2 back-of-the-envelope calculations, and it looks like we
3 are going to be a little bit crunched to get everything in
4 on Monday because we lost -- it looks like we've lost a
5 couple of hours so far. So does anyone have an issue if
6 we just take half an hour for lunch today?

7 **MS. SRINIVASAN:** Not here, Your Honor.

8 **MR. UNIKEL:** That's fine, Your Honor.

9 **THE COURT:** All right. That's fine. All
10 right. Let's bring the jury back in, Ms. Garfinkel.
11 (The jury enters the courtroom at 11:18 a.m.)

12 **THE CLERK:** Your Honor, the jury.

13 **THE COURT:** Please be seated. We will continue
14 with the direct examination. Proceed.

15 **BY MR. ARD:**

16 **Q.** Thank you, Your Honor.

17 Mr. Weinstein, which *Georgia-Pacific* factors did you
18 consider next?

19 **A.** So next I grouped two factors together again because
20 they are similar. These are *Georgia-Pacific* Factors 8 and
21 11, and essentially they relate to the popularity or the
22 success of the products that are covered.

23 **Q.** And why are Factors 8 and 11 important?

24 **A.** Well, they are important because the more successful
25 the products are, the more the licensee will be willing to

Weinstein - Direct

1 pay.

2 **MR. ARD:** Your Honor, we are about to discuss
3 some Google-accused product installations. I don't know
4 if Google wants to make an application?

5 **THE COURT:** Can I see counsel at sidebar
6 briefly.

7 - - -

8 (Whereupon, the following discussion is held at
9 sidebar.)

10 **THE COURT:** Just want to make sure I understand
11 what the issue is here with Google's confidential
12 information.

13 **MR. ARD:** They have our slides. The next slide
14 we are going through is the list numbers of app
15 installations for each of the 12 apps.

16 **MR. PETERMAN:** Google doesn't have a problem
17 with the metrics. The number of app installations is
18 fine.

19 **THE COURT:** Seal the courtroom if you are going
20 to go into any financial information.

21 **MR. ARD:** Just what's on the slides.

22 **MR. PETERMAN:** We don't need to seal the
23 courtroom.

24 **THE COURT:** See, if we could resolve disputes.
25 Do we have later slides that might need to be under seal?

Weinstein - Direct

1 **MR. PETERMAN:** I don't believe there's
2 anything. You're not putting anything on lost profits?

3 **MR. ARD:** Correct.

4 **THE COURT:** All right.

5 **MR. PETERMAN:** That will be the case.

6 (Whereupon, the discussion at sidebar concludes.)

7 - - -

8 **THE COURT:** Let's proceed.

9 **BY MR. ARD:**

10 **Q.** Thank you, Your Honor.

11 Were the Google-accused products successful?

12 **A.** Yes, sir, they were.

13 **Q.** Did you prepare a slide showing that?

14 **A.** Yes. This next slide depicts the number of accused
15 Google app installations for the damage period, which is
16 August 2017 through November 2018. And the tabulation is
17 set forth by app, the total number of accused app
18 installations. These are -- consumers downloads are
19 approximately 443.4 million during that period.

20 **Q.** And beyond these app installations, are there other
21 Google-accused products in this case?

22 **A.** Yes, sir, there are. There are also Google
23 smartphones, Pixel phones. And on the screen now is a
24 summary of the number of accused device sales during that
25 same period. Approximately 2.4 million.

Weinstein - Direct

1 Q. And why did you only analyze sales between
2 August 2017 and November 2018?

3 A. Arendi is only entitled to payment during the period
4 of alleged infringement, and so that begins, in my view,
5 in August of 2017 and ends with the expiration of the '843
6 patent in November 2018. So just that period.

7 Q. Did you consider any other *Georgia-Pacific* factors?

8 A. I did. I considered all of them, all 15, but the
9 ones that I've testified about are the most important in
10 terms of the details of how I get to the ultimate answer.

11 Q. Mr. Weinstein, the final *Georgia-Pacific* Factor is
12 Number 15?

13 A. Correct.

14 Q. How did you consider *Georgia-Pacific* Factor 15 in
15 your analysis?

16 A. Well, you can see that *Georgia-Pacific* Factor 15 is a
17 summary factor. It says the amount that they would wind
18 up agreeing upon. And so when you get to *Georgia-Pacific*
19 Factor 15, you've thought about the other factors, and now
20 you are ready to decide on what the answer is. That is
21 where Arendi and Google would have wound up at the outcome
22 of the hypothetical negotiation. That's Factor 15.

23 Q. And what information did you rely on in making your
24 calculation under *Georgia-Pacific* Factor 15?

25 A. I relied on the *Georgia-Pacific* analysis in the

Weinstein - Direct

1 context of the hypothetical negotiation. But
2 specifically, in order to get to the details of how much I
3 believe fair payment would be, I relied on those four
4 license agreements as a starting point because they
5 reflect amounts that other entities were willing to pay
6 for access to the '843 and other patents.

7 **Q.** And on a broad level, how did you go about using
8 those four licensing agreements to make your calculation?

9 **A.** On a broad level, I looked at the amounts that were
10 paid under those licenses, and I described what those
11 amounts were when we looked at each of those licenses.
12 And then I divided those amounts by the units that I
13 believe were covered by those agreements in order to
14 calculate what's called an effective royalty rate. And
15 the effective royalty rate is the amount paid per covered
16 unit, like a price per unit. And that's how I went about
17 this next phase of the analysis.

18 **Q.** Okay. Can you show us how you calculated the
19 effective royalty rate? Well, strike that. Can you move
20 back? Take that slide off.

21 **MR. ARD:** I apologize, Your Honor. I neglected
22 to recall that we are going to show licensing information
23 again here. So I do think we need to seal the courtroom
24 again to walk through the effective royalty rate
25 calculation because it uses the monetary value of the four

Weinstein - Direct

1 license agreements.

2 **THE COURT:** Okay. Any objections to sealing
3 the courtroom?

4 **MR. PETERMAN:** No objection.

5 **THE COURT:** All right. Let's seal the
6 courtroom please.

7 * * *

8 (The following discussion is held under seal:

9 **THE COURT:** Courtroom has been sealed. Please
10 proceed.

11 **BY MR. ARD:**

12 **Q.** Thank you, Your Honor.

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Weinstein - Direct

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Weinstein - Direct

1 [REDACTED]

2 **Q.** And do we know whether these real-world effective
3 royalty rates reflect the minimum value of the Arendi
4 technology?

5 **A.** I believe they do because they reflect actual amounts
6 that were paid by various entities for access to the
7 patent portfolio.

8 **Q.** Okay. And what was the next step of your analysis?

9 **A.** The next step involved considering the fact that a
10 real-world negotiation, as I testified earlier today, is
11 different from a hypothetical negotiation given the
12 different assumptions about validity and infringement and
13 given the possibility that real-world agreements include
14 terms that cannot be part of the hypothetical negotiation
15 agreement.

16 And so the final step in this set of calculations
17 involved finding a way to translate the real-world
18 effective royalty rates into the royalty rate that I
19 believe would govern the hypothetical negotiation outcome.

20 **Q.** Okay. Well, let's talk about it in the context first
21 of the Microsoft agreement.

22 Did you make an adjustment for these discounts with
23 respect to the discounts in the real-world negotiation
24 with respect to the Microsoft agreement?

25 **A.** I did. I had, I believe, four or five conversations

Weinstein - Direct

1 with Mr. Hedloy in connection with my work on this case.
2 And in deciding how to translate the real-world effective
3 royalty rate to the rate that would govern a hypothetical
4 negotiation, I was interested in his perception of various
5 risks associated with litigation with Microsoft. And he
6 had had a fair amount of experience. That might be an
7 understatement. He has had a lot of experience with
8 Microsoft in terms of prior litigation.

9 And one of the things that he explained to me is that
10 with respect to litigation generally and Microsoft
11 specifically, he saw at least three types of risk. One is
12 what he characterizes as risk before the trial associated
13 with claim construction. All right. And that was one
14 area of risk.

15 The second area of risk was risk associated with the
16 trial itself. You can win or you can lose if you are a
17 plaintiff or if you are a defendant.

18 And the third area that he addressed is risks
19 associated with an outcome on appeal where once again you
20 can win or lose.

21 So he characterized three levels of risk associated
22 with litigation that ultimately produced these real-world
23 agreements because there was litigation in each case. And
24 he assessed those risks as, basically, 50/50 each step of
25 the way. That is a 50 percent chance of surviving

Weinstein - Direct

1 pretrial, 50 percent chance of prevailing at trial, and
2 50 percent chance of prevailing on appeal. All right.

3 So with each of those three sets of risk, what it
4 means is that the hypothetical negotiation has to be
5 adjusted for them in order to get from the real world to
6 the hypothetical negotiation.

7 So what I did, and it's shown in Column 4, and 5, is
8 I took the real-world effective royalty rates that are
9 depicted in Column 4, and those were calculated, as I
10 described, on a per unit basis. And I multiplied those
11 times four to capture the risks that Mr. Hedloy described
12 to me.

13 Actually since he described three kinds of 50/50
14 risks, I could have multiplied it times eight. But to be
15 conservative I said, no, I'm only going to multiply these
16 real-world outcomes times four.

17 And so by doing that, what I did is I translated the
18 real-world hypothetical -- real-world negotiation
19 outcomes, all right, to a hypothetical negotiation outcome
20 by adjusting for differences in the real-world environment
21 and assumptions to do so.

22 **Q.** Did you make similar adjustments with respect to the
23 Samsung MMI and Apple agreements?

24 **A.** I did. I made the same adjustments for each of those
25 since I understood that Mr. Hedloy believed he faced those

Weinstein - Direct

1 kinds of risks at a minimum in each of those cases. And
2 so again, I could have multiplied times eight, but I
3 multiplied times four in order to be conservative.

4 **Q.** And in your experience, is it common to make these
5 kinds of adjustments from real-world effective royalty
6 rates to royalty rates of a hypothetical negotiation?

7 **A.** It is. It's very common to provide discounts in
8 real-world agreements that are not available with a
9 hypothetical negotiation.

10 **Q.** So what did you do after you made these adjustments?

11 **A.** So the hypothetical negotiation outcomes are shown in
12 Column 5 on the slide, and I took the average of those.
13 So 48 cents is the average of those four effective royalty
14 rates after having been adjusted for the hypothetical
15 negotiation. That's 48 cents is the average of those
16 four.

17 **Q.** And did you make any other adjustments to the royalty
18 rate?

19 **A.** I didn't. And if you recall my testimony was that
20 *Georgia-Pacific* Factors 8, 9, 10, and 11 pointed upward,
21 and so I could have adjusted the 48 cents upward to
22 reflect that aspect or those aspects of the
23 *Georgia-Pacific* analysis. But again to be conservative, I
24 didn't make any further adjustments. I stuck with the
25 48 cents.

Weinstein - Direct

1 **Q.** Now, you said that you calculated a 48-cent average.

2 Does that apply -- does that rate apply to all the
3 accused products in this case?

4 **A.** That rate applies to the smartphones, to those
5 devices, but that rate doesn't yet apply to the apps which
6 are accused. We saw that list of apps that are also
7 accused. And so I have to do something with 48 cents to
8 come up with an app rate.

9 **Q.** And can you explain what you did to make that
10 calculation?

11 **A.** Yeah, 48 cents is the rate that I just described.
12 For the Pixel 2 and Pixel 3 phones that are accused in
13 this case, what I found is that there are five Google apps
14 that are preinstalled on those devices.

15 And so I divided 48 cents by five, and that reduced
16 the reasonable royalty per app installation of 10 cents.
17 And that's the rate based on the entire analysis thus far
18 on a per-app basis.

19 **Q.** And do the accused apps include apps on non-Google
20 devices?

21 **A.** They do. They include downloads on non-Google
22 devices that use the Android operating system, the
23 Android 8.0.0 or 9.0.0 operating system.

24 **Q.** Did you calculate damages adequate to compensate
25 Arendi for patent infringement in this case?

Weinstein - Direct

1 **A.** Yes, sir, I did.

2 **Q.** And what was your calculation?

3 **A.** So on the screen now is the calculation of reasonable
4 royalty damages with respect to the accused apps. The
5 figures in Columns 1 and 2 are the same figures that we
6 saw before --

7 **THE COURT:** Counsel, apologies. Can we unseal
8 the courtroom at this point?

9 **MR. ARD:** Yes, Your Honor. Yes.

10 **MR. PETERMAN:** No objection.

11 **THE COURT:** All right. Let's unseal the
12 courtroom.

13 * * *

14 (Whereupon, the sealed discussion concludes.)

15 - - -

16 **THE COURT:** I apologize for interrupting you,
17 Mr. Weinstein. I thought you were finished. Please
18 proceed.

19 **MR. ARD:** Thank you, Your Honor.

20 **BY MR. ARD:**

21 **Q.** So I think you were explaining the calculation you
22 did for damages relating to the apps?

23 **A.** Yes, sir. The figures that are shown in Column 2 of
24 the figures that we looked at before with respect to the
25 number of accused apps during the period August 2017 to

Weinstein - Direct

1 November 2018, that's the 443.4 million.

2 I multiplied each of those accused apps by the
3 royalty rate I just described, 10 cents per app, and the
4 total associated with that calculation equals what I've
5 called reasonable royalty damages with respect to the
6 accused app installations. And that number is
7 approximately \$44.3 million.

8 **Q.** And did you also calculate damages adequate to
9 compensate Arendi for infringement relating to the accused
10 Google devices?

11 **A.** Yes, sir, I did. So on the screen now are the
12 calculations with respect to the accused devices. Those
13 are Pixel 2 and Pixel 3 devices sold between the period of
14 August 2017 to November 2018. I took the 48-cent royalty
15 rate, the effective royalty rate that I calculated that I
16 believe would reflect the outcome of the hypothetical
17 negotiation and multiplied that times the number of
18 accused devices. And so reasonable royalty damages on
19 these devices, these phones, is approximately
20 \$1.1 million.

21 **Q.** And putting those together, can you repeat for the
22 jury your conclusion as to the damages owed by Google to
23 Arendi in this case?

24 **A.** Yes. If you add the damages I calculated for apps
25 and devices, total damages owed by Google for use of the

Weinstein - Cross

1 '843 patent are \$45,504,836.

2 **Q.** Thank you. No further questions, Your Honor.

3 **THE COURT:** All right. Let's proceed with
4 cross-examination.

5 CROSS EXAMINATION

6 **BY MR. PETERMAN:**

7 **Q.** Good morning, Mr. Weinstein. My name is Chad
8 Peterman.

9 How are you this morning?

10 **A.** I'm fine. Thank you, sir.

11 **Q.** Now, you were first hired by Arendi in 2019 to serve
12 as a damages expert in this kind of case, correct?

13 **A.** I was hired as a consultant. Yes, that's correct.

14 **Q.** And you have a team that works to support you?

15 **A.** Excuse me?

16 **Q.** You have a team that works to support you, correct?

17 **A.** I do.

18 **Q.** And it's fair to say that over the course of the past
19 several years, you spent hundreds of hours working alone
20 and with your team in preparation for trial today
21 ultimately, correct?

22 **A.** My team certainly spent hundreds of hours assisting.
23 I'm not sure that I spent hundreds of hours, but I spent
24 quite a fair amount of time, yes, sir.

25 **Q.** And you've worked as an expert on behalf of Arendi in

Weinstein - Cross

1 other patent litigations concerning these patents,
2 correct?

3 **A.** I have, sir.

4 **Q.** And over the past couple of years, you submitted
5 various expert reports outlining all of your opinions in
6 this case?

7 **A.** I did.

8 **Q.** So I think we can agree that the measure of damages
9 in this case is what the parties would have agreed to as a
10 reasonable royalty for a license to the '843 patent only,
11 correct?

12 **A.** I agree with that.

13 **Q.** And the hypothetical negotiation consists of the
14 expectations of both Arendi and Google, correct?

15 **A.** I agree with that as well.

16 **Q.** It just doesn't look at what Arendi would like to
17 get, correct?

18 **A.** That's true.

19 **Q.** And hypothetical negotiation would have occurred
20 sometime around the time of first alleged infringement,
21 correct?

22 **A.** Yes, sir.

23 **Q.** Okay. And you believe that's August 17, 2017,
24 correct?

25 **A.** Correct.

Weinstein - Cross

1 Q. And you understand that Google disputes that and
2 believes that the proper date would be around December 5,
3 2017, correct?

4 A. I do. I understand that, yes.

5 Q. For the purposes of the examination, the difference
6 between those dates doesn't matter for the negotiation
7 right?

8 A. That's fair.

9 Q. And I think as you testified, the result of
10 hypothetical negotiation could be a one-time payment based
11 on a effective royalty rate, right?

12 A. True.

13 Q. And effective royalty rate could be based on
14 different types of measurements, right?

15 A. Yes, sir, it could.

16 Q. Could be percentage of sales and revenue? That's one
17 option?

18 A. It could be, certainly.

19 Q. And it could be on a number of units sold, that's
20 right?

21 A. Yes, sir.

22 Q. And in this case, you chose an effective royalty
23 based on the number of units sold?

24 A. I did.

25 Q. So what that means is that you calculate damages by

Weinstein - Cross

1 multiplying the number of units sold times the royalty
2 rate to come up with a total?

3 **A.** That's correct. That's what I did.

4 **Q.** Okay. And if either of those variables are wrong
5 because of math, then the total would be wrong, correct?

6 **A.** I agree.

7 **Q.** Mr. Weinstein, \$44.3 million of your \$45.5 million
8 damages comes from apps, correct?

9 **A.** Yes, sir.

10 **Q.** And Arendi is accusing 12 Google apps of infringing?

11 **A.** Correct.

12 **Q.** And you understand that those apps are only being
13 accused of infringing to the extent they are installed on
14 devices using Android 8 or 9, right?

15 **A.** That is correct.

16 **Q.** So it's very important that you accurately count only
17 those apps that are actually installed on devices with
18 Android 8 or 9; is that correct?

19 **A.** That's fair.

20 **Q.** And if an app is installed on a device with an
21 operating system that's earlier than Android 8 or 9, that
22 would not be accused of infringement here, correct?

23 **A.** I agree with that.

24 **Q.** And it would be a mistake to include such installed
25 applications in your damages analysis, right?

Weinstein - Cross

1 **A.** I agree with that.

2 **Q.** And, for example, if there are apps installed on
3 versions of Android 6 or 7, those should not be included?

4 **A.** That's right.

5 **Q.** Now, as I understand it, the period of time that you
6 are claiming damages from is August 17, 2017, through the
7 expiration of the patent in November 10, 2018; is that
8 correct?

9 **A.** That's fair.

10 **Q.** And you calculated that during that period, there's a
11 total of 443.5 million apps, approximately?

12 **A.** Yes, sir.

13 **Q.** And you made this calculation by looking at data
14 provided that includes a total number of downloads to all
15 Android devices, correct?

16 **A.** Right. Data provided by Google; that's correct.

17 **Q.** And you are aware that data does not identify what
18 version of Android those devices were running?

19 **A.** I'm aware of that.

20 **Q.** And you did nothing to ensure that you were only
21 counting installations on devices that were running
22 Android 8 or 9; is that right?

23 **A.** That's not right.

24 **Q.** What steps did you take in order to ensure that you
25 were only counting applications that were on Android 8 or

Weinstein - Cross

1 Android 9?

2 **A.** I compared the numbers that I was using in connection
3 with apps with the numbers that Google's expert,
4 Mr. Kidder, was using, and we were using the same numbers.

5 **Q.** But, sir, you are the damages expert on behalf of
6 Arendi, correct?

7 **A.** I am.

8 **Q.** And you were the person who put an expert report
9 first saying how many apps were being accused, correct?

10 **A.** That's true.

11 **Q.** And Mr. Kidder just used your numbers in response to
12 your damages analysis; is that correct?

13 **A.** Actually, that's not correct, no, sir.

14 **Q.** So you're saying that, other than just seeing that
15 Mr. Kidder used the same numbers, you did nothing on your
16 own behalf or with Arendi to ensure that the applications
17 that you're counting were for Android 8 or 9 and not for
18 any other products?

19 **A.** Well, I did consider the numbers that Mr. Kidder used
20 for his depiction of the volume of accused apps, and his
21 numbers agreed with mine.

22 **Q.** But if his numbers were wrong, then your numbers
23 would be wrong too?

24 **A.** That's fair.

25 **Q.** So did you look at the underlying data that Google

Weinstein - Cross

1 provided with respect to the downloads?

2 **A.** I did.

3 **Q.** And your initial calculation for the downloads that
4 are accused, you took from the numbers that Google
5 provided?

6 **A.** I did.

7 **Q.** And you assumed that all of the applications that you
8 used to calculate were for Android 8 or 9, correct?

9 **A.** I did.

10 **Q.** Was there any indication in the data that you
11 reviewed that those downloads were for Android 8 or 9?

12 **A.** It was a response to an Interrogatory, and so I used
13 the information provided by Google.

14 **Q.** So did you use the response to an Interrogatory or
15 did you use actual data that was provided by Google?

16 **A.** Well, it's actually -- it's -- it's both.

17 **Q.** I have some documents that I will give you. I will
18 bring them up.

19 **MR. PETERMAN:** May I approach, Your Honor?

20 **THE COURT:** Yes.

21 **BY MR. PETERMAN:**

22 **Q.** Mr. Weinstein, towards the back of the book I gave
23 you, there is a tab that says, "Weinstein Sup Reply
24 Exhibits."

25 Do you see that?

Weinstein - Cross

1 **A.** What does it say?

2 **Q.** It's second-to-last tab.

3 **A.** I see it.

4 **Q.** And in the second to last tab, there's a exhibit that
5 you included in expert reports, correct?

6 **A.** Correct.

7 **Q.** And this is a calculation of the number of apps that
8 you were accusing of infringement, correct?

9 On the second page of the document.

10 **A.** Well, it's a -- I mean, it's an earlier version.
11 It's not my final verge. It's not what I talked about
12 today to the jury. But it is an earlier version from one
13 of my reports of accused apps, yes, sir.

14 **Q.** And the final version you presented to the jury was
15 actually calculations that you did this past Friday; is
16 that right?

17 **A.** I think I did the calculation perhaps a little bit
18 before then, but it's a recent calculation, that's true.

19 **Q.** All right. But the calculation you presented to the
20 jury was found within the calculations that you have in
21 this exhibit that's in front of you, correct?

22 **A.** Well, it's a subset because there's a shorter time
23 period, but with that understanding yes.

24 **Q.** And the calculations that you presented are based on
25 the same sources that you used to present the calculations

Weinstein - Cross

1 that are in the exhibit in front of you, right?

2 **A.** That's true, yes, sir.

3 **Q.** And at the bottom of the exhibit in front of you,
4 there's two source that are referenced.

5 Do you see that?

6 **A.** I do.

7 **Q.** It's in very small text. And they are both Google
8 documents?

9 **A.** Yes, sir, they are.

10 **Q.** So in coming up with exhibit that's in front of you,
11 you used Google documents, Google data, in order to come
12 up with the numbers here, correct?

13 **A.** That is correct.

14 **Q.** And that's the only sources that are referenced here
15 on this page?

16 **A.** That's correct.

17 **Q.** Now, I'd like to have you take a look earlier in the
18 binder, there's a tab DTX-0581.

19 **A.** I have it.

20 **Q.** Take a second to look at it, please.

21 **A.** Yes, sir. I'm familiar with it.

22 **Q.** And this is the raw data that you used to calculate
23 the number of apps, correct?

24 **A.** That's accurate.

25 **MR. PETERMAN:** Your Honor, we would move for

Weinstein - Cross

1 DTX-0581 to be admitted into evidence.

2 **MR. ARD:** No objection, Your Honor.

3 **THE COURT:** It's admitted.

4 (Exhibit DTX-581 is admitted into evidence.)

5 **BY MR. PETERMAN:**

6 **Q.** So, Mr. Weinstein, if you look at the third and
7 fourth page of DTX-0581, it reflects downloads per year
8 per app, correct?

9 **A.** It does.

10 **Q.** And on this page, the downloads per year per app is
11 not broken down via the version of Android that was
12 running, correct?

13 **A.** That is true.

14 **Q.** So the source that you used to calculate the number
15 of apps that were downloaded did not identify which apps
16 went to Android 6, Android 7, Android 8, or Android 9,
17 correct?

18 **A.** That's correct. This source does not do that.

19 **Q.** And this is the only source that you identify on the
20 page that we looked at where it talked about the number of
21 apps that you were accusing at one point, correct?

22 **A.** It's not important, but actually, I think there are
23 two sources that are identified there. But in any event,
24 this is the source for that -- for that exhibit.

25 **Q.** So how did you ensure that all the apps that are

Weinstein - Cross

1 listed on this page that you then accuse of infringement
2 were for Android 8 or 9?

3 **A.** Well, for all the apps except Google Chrome, only
4 Version 8 or 9 were accused. And so there's nothing about
5 the numbers that I used for all of the apps, other than
6 Google Chrome, that was impacted in any way by changes in
7 the time period that -- that's now been used for purposes
8 of calculating damages, that is moving from an earlier
9 period to the period that we're now using.

10 And so that's true for all of the apps except Google
11 Chrome. For Google Chrome, I used the information that
12 was provided on the documents you've been showing me to
13 reflect the number of accused apps. And as I testified
14 previously, that number agrees with the same numbers for
15 accused apps that Google's expert, Mr. Kidder, used, not
16 only for all of the apps other than Google Chrome, but for
17 Google Chrome as well.

18 **Q.** So, Mr. Weinstein, just to be very specific, if we
19 look at the last row, here.

20 **MR. PETERMAN:** Mr. Spence, if you wouldn't mind
21 going down to the last row.

22 **BY MR. PETERMAN:**

23 **Q.** If you look at 2018, let's look at the line third
24 from the bottom, 2018/com.Google.Android.GM.

25 Do you see that?

Weinstein - Cross

1 **A.** I do.

2 **Q.** And do you understand that that's a Google Gmail?

3 **A.** I do.

4 **Q.** And do you understand that this -- the calculations,
5 the numbers here represent all downloads to any platform
6 with respect to Google Gmail, correct?

7 **A.** Yes, sir, I do.

8 **Q.** And you understand that this includes versions of
9 Android earlier than Android 8, correct?

10 **A.** I don't understand that, no, sir.

11 **Q.** Okay. So, if, in fact, this includes downloads to
12 all versions of Android, including versions earlier than
13 Android 8, then your calculations of the number of accused
14 products is incorrect, correct?

15 **A.** It would be too high; that's true.

16 **Q.** And you did nothing to try to understand the
17 conversion curve of how users were upgrading their
18 products from Android 7 to Android 8 to other versions of
19 Android, correct?

20 **A.** I didn't do that; that's true.

21 **Q.** And let's take another example. If you look another
22 couple lines up, there's Google Calendar --

23 **A.** Correct.

24 **Q.** -- for 2018.

25 Do you see that?

Weinstein - Cross

1 **A.** I do.

2 **Q.** And as I'm learning now, it was your understanding
3 that this number of downloads only represented downloads
4 to Android 8 or Android 9, correct?

5 **A.** Agreed.

6 **Q.** But if the number of downloads here was not to
7 Android 8 or Android 9, but included Android 6, 7, and
8 earlier versions, your calculation of the number of
9 accused apps would be incorrect?

10 **A.** It would be too high. I agree.

11 **Q.** And sitting here today, you don't know how
12 overinflated your calculations of any of the apps would be
13 if your understanding of the underlying data was
14 incorrect?

15 **A.** Well, that's not true. I don't agree with that.

16 **Q.** Well, then what app do you say would not be
17 overinflated or you don't understand?

18 **A.** My calculations are not overinflated, to use your
19 term, with respect to any of the apps with the possibility
20 of Google Chrome, possible exception of Google Chrome.

21 **Q.** But we just established that, for example, Calendar,
22 if the numbers here are not for just 8 or 9, and included
23 6, 7, and other versions, you would be counting too much,
24 correct?

25 **A.** I agree.

Weinstein - Cross

1 **Q.** And did you do anything to try to ascertain whether
2 the numbers that we are viewing here in DTX-0581 were just
3 for Android 8 or 9?

4 **A.** I understood them to be specifically for Android 8 or
5 9, because they were produced in response to a request by
6 counsel for Arendi for that information. And this is what
7 Google responded to that request, and so they had to be
8 for Android 8.0 or 9.0.

9 **Q.** But do you understand that at the time the request
10 was made, there were other products that did not rely on
11 the distinction between Android 8 or 9 and earlier Android
12 versions that are at play in this litigation?

13 **A.** I do. But those other products are not Google
14 Calendar or Gmail.

15 **Q.** Now, Mr. Weinstein, you don't know what percentage of
16 the Android-based phones in the U.S. were using Android 8
17 or 9 as of August 17, 2017, correct?

18 **A.** That's true.

19 **Q.** And you don't know what percentage of U.S.-based
20 Android phones were using Android 8 or 9 as of
21 November 10, 2018, correct?

22 **A.** Also true.

23 **Q.** You didn't look at any third party sources looking at
24 conversion rates between early versions of Android and
25 Android 8 or 9?

Weinstein - Cross

1 **A.** That's true.

2 **Q.** You didn't conduct any surveys or some type of other
3 statistical sampling to find out how many phones had been
4 converted to Android 8 or 9 by November 10, 2018?

5 **A.** Also correct.

6 **Q.** And you understand that Google contends that it
7 released Android 8 with the accused functionality on
8 December 5th, 2017, correct?

9 **A.** I do sir, yes.

10 **Q.** And if Google is correct, any downloads that happened
11 before that date couldn't possibly be infringing, right?

12 **A.** I agree. If Google is correct the date is later than
13 August, which is the date I used, then the period between
14 August and December would not include infringing devices
15 or apps.

16 **Q.** And even with downloads from December 5, 2017, to
17 November 10, 2018, you would have no way of knowing if the
18 person downloading that app had Android 8 or 9, correct?

19 **A.** Could you just repeat it? I have to think about that
20 one.

21 **Q.** Sure.

22 With respect to the downloads that occur from the
23 period of December 5th, 2017, to November 10, 2018, you
24 have no way of knowing if the person downloading that app
25 was using Android 8 or 9?

Weinstein - Cross

1 **A.** No, that's not true. Again, for all of the apps
2 except Google Chrome, Google has represented that those
3 downloads are for Android 8.0 or 9.0.

4 **Q.** And what is this representation that you are
5 referring to?

6 **A.** The representation is that information that Google
7 provided on downloads was in connection with a request
8 that contemplated that that information be provided with
9 respect to accused products, and the accused products with
10 respect to all of the apps other than Google Chrome are
11 the -- are associated with Android version 8.0. or 9.0.

12 **Q.** Is there a specific document you are referring to
13 that supposedly includes this representation?

14 **A.** As I sit here, I can't identify a specific document,
15 but the information that I'm relying on was produced by
16 Google in response to discovery requests.

17 **Q.** Is there a document that's referenced in your expert
18 reports that specifically talks about the representation
19 that you're testifying about today?

20 **A.** I can't say.

21 **Q.** Now, you're seeking another \$1.5 million in damages
22 from the sales of 2.4 million Pixel devices, right?

23 **A.** Yes, sir.

24 **Q.** And what percentage of those devices had Android 8 or
25 9 on them by November 10, 2018?

Weinstein - Cross

1 **A.** My understanding is that they are all accused.

2 **Q.** That wasn't my question. My question was, what
3 percentage of those devices had Android 8 or Android 9 on
4 them by November 10, 2018?

5 **A.** As far as I know, hundred percent.

6 **Q.** Did you do anything to confirm that?

7 **A.** Nothing other than review the materials that were
8 produced by Google in this case.

9 **Q.** So if those phones all didn't have Android 8 or 9,
10 your count for those phones would be overinflated,
11 correct?

12 **A.** That's fair.

13 **Q.** Now, the other part of your damage calculation is the
14 royalty rate. You opined that Google and Arendi would
15 have entered into a hypothetical negotiation and would
16 have agreed on a license, correct?

17 **A.** Yes, sir.

18 **Q.** And that license would be for the '843 patent only,
19 correct?

20 **A.** True.

21 **Q.** And per unit royalty would be 48 cents per Pixel
22 device?

23 **A.** Yes, sir.

24 **Q.** And 10 cents per app?

25 **A.** Yes, sir.

Weinstein - Cross

1 Q. And this would result in the \$45 million payment that
2 you are requesting, correct?

3 A. That's the payment that I've concluded would reflect
4 the outcome of that hypothetical negotiation.

5 Q. Mr. Weinstein, you're aware that Google actually
6 loses money on the accused products?

7 A. I'm not aware of that.

8 Q. You understand profitability is something that should
9 be considered in commercial with a hypothetical
10 negotiation?

11 A. Sure.

12 Q. And if Google was losing money with respect to those
13 products, is that something that would be considered in a
14 hypothetical negotiation?

15 A. I would think so, yes, sir.

16 Q. So the hypothetical negotiation would be for the '843
17 patent only?

18 A. I agree.

19 Q. Would be for the term of about one year, ending
20 November 10, 2018?

21 A. Also agree.

22 Q. It would not include rights to foreign patents?

23 A. True.

24 Q. It would not include the settlement of any
25 litigation?

Weinstein - Cross

1 **A.** No, that -- that's right. It doesn't include
2 anything else other than the license to the '843 patent.

3 **MR. PETERMAN:** Your Honor, at this point, I am
4 going to go into some of the other licenses and request we
5 seal the courtroom.

6 **THE COURT:** Okay. Let's seal the courtroom.

7 * * *

8 (The following discussion is held under seal:

9 **THE COURT:** Courtroom has been sealed.

10 **MR. PETERMAN:** Okay. Mr. Spence would you put
11 up PDX-4.29.

12 **BY MR. PETERMAN:**

13 **Q.** Mr. Weinstein, this is from your direct testimony,
14 correct?

15 **A.** It is.

16 **Q.** So I think, as you explained, you took the royalties
17 paid. You did a calculation or estimate of unit sales,
18 and then what you did is you divided the unit sales by the
19 royalties paid, correct?

20 **A.** I think it's the other way around. You divide the
21 royalties paid by unit sales to get a rate per unit.

22 **Q.** That's right. My mistake.

23 **A.** We're together.

24 **Q.** Okay. And that came up with a -- what do you call
25 it -- a the real-world effective royalty rate?

Weinstein - Cross

1 **A.** Yes, sir.

2 **Q.** And then you multiply it by four to get to the rate
3 that you're using in connection with this case?

4 **A.** I agree.

5 **MR. PETERMAN:** Mr. Spence, if you could
6 highlight the last row, please, last column.

7 **BY MR. PETERMAN:**

8 ■ [REDACTED]

9 [REDACTED]

10 ■ [REDACTED]

11 ■ [REDACTED]

12 [REDACTED]

13 ■ [REDACTED]

14 ■ [REDACTED]

15 ■ [REDACTED]

16 ■ [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 ■ [REDACTED] [REDACTED]

21 [REDACTED]

22 ■ [REDACTED]

23 ■ [REDACTED]

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Weinstein - Cross

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Weinstein - Cross

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Weinstein - Cross

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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 **Q.** Now, I want to walk through a little bit more of the
17 process of determining the royalty rate?

18 **MR. PETERMAN:** And, Mr. Spence, if you could
19 put that slide back up, please.

20 **BY MR. PETERMAN:**

21 **Q.** Now, as you and Mr. Hedloy both testified, each of
22 these settlement agreements covers multiple patents,
23 correct, not just the '843?

24 **A.** I agree, yes, sir.

25 [REDACTED]

Weinstein - Cross

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 **Q.** Now, the second step is that you took the four
5 agreements and calculated a per unit royalty; is that
6 right?

7 **A.** Yes, sir.

8 **Q.** So that means you determined that each agreement
9 covered a certain amount of units as we discussed?

10 **A.** That's true.

11 **Q.** Right?

12 And then you took the settlement amount and you used
13 that in connection with the units to find the royalty
14 rate?

15 **A.** Yes, sir.

16 **Q.** Did you use the full settlement amount for each of
17 the agreements in order to find the royalty rate?

18 **A.** I believe so.

19 **Q.** You didn't try to adjust the settlement amount
20 downward at all to account for the fact that those
21 agreements related to a whole patent portfolio, and the
22 agreement with Google would only be a single patent?

23 **A.** I did not.

24 **Q.** If you had done -- done that, just mathematically
25 speaking, the damages amount would have gone down,

Weinstein - Cross

1 correct?

2 **A.** As a matter of math, yes, for sure.

3 **Q.** Now, in your calculation you multiplied the effective
4 royalty rate by four to adjust for a risk factor or
5 discounts as you said, correct?

6 **A.** I think the way I said it is to adjust for
7 differences between real-world outcomes and hypothetical
8 negotiation.

9 **Q.** And mathematically speaking, if you had used a lower
10 multiplier, the royalty rate calculated for Google would
11 go down as well, correct?

12 **A.** I agree.

13 **Q.** And then you took the average of the adjusted
14 royalties and that gave you the royalty rates you are
15 using?

16 **A.** Yes, sir.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 **Q.** And those devices that cost hundreds, if not
24 thousands, of dollars?

25 **A.** Yes.

Weinstein - Cross

1 Q. And you believe that Apple generates significant
2 revenue and profit from those products, correct?

3 A. I do.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q. So you're asking for Google to pay damages in this
14 case for each of its apps that exceeds the damages that
15 Apple paid for each of its thousand-dollar or
16 several-hundred dollar devices, correct?

17 A. Yes, sir.

18 Q. Mr. Weinstein, you were the expert in connection with
19 the Apple litigation versus Google, right?

20 A. I was.

21 Q. And you submitted an expert report outlining what you
22 believe the appropriate measure of damages in that case
23 was?

24 A. I submitted a report in which I set forth what I
25 believed to be the outcome of a hypothetical negotiation

Weinstein - Cross

1 between Apple and Arendi, yes.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

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18 [REDACTED]

19 [REDACTED]

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Weinstein - Cross

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11 [REDACTED]

12 **Q.** One thing I wanted to ask you about is how you
13 calculated units. I understand that for Apple and
14 Samsung, you researched publicly available information and
15 found the number of units, correct?

16 **A.** Yes, sir.

17 **Q.** And for Microsoft, you relied upon a conversation
18 that you had with Mr. Hedloy?

19 **A.** I did.

20 **Q.** And he told you what his state of mind was in 2011,
21 right?

22 **A.** He did.

23 **Q.** And this conversation happened in 2020?

24 **A.** My conversation with Mr. Hedloy?

25 **Q.** Yes, your conversation with him.

Weinstein - Cross

1 **A.** I believe it was 2019, actually. I think it was
2 2019.

3 **Q.** So it was about eight years after he entered into the
4 Microsoft agreement, right?

5 **A.** Yes, sir.

6 **Q.** Did you do anything to verify how reasonable his
7 estimate was?

8 **A.** I didn't. So the answer to your question is, no. I
9 was interested in his perception at the time he entered
10 into the license. And so there was nothing that I could
11 do to go beyond that.

12 **Q.** Did you ask him for any documents from that time?

13 **A.** I did not.

14 **Q.** If Mr. Hedloy had a moment where he didn't remember
15 what happened eight years earlier, your underlying
16 assumptions would be incorrect, right?

17 **A.** If the numbers were incorrect, then my use of them
18 would be incorrect. That much is true. But again, they
19 reflect his perception at the time.

20 **Q.** But if he understated the units, that would mean that
21 the actual true royalty rate should be lower than what you
22 calculated, right?

23 **A.** Yes. With the understanding we're not talking about
24 actual units between 2011 and 2018. We are talking about
25 his perception of the units.

Weinstein - Cross

1 Q. Understood.

2 A. Okay.

3 Q. Now, the units that he told you were Microsoft
4 Office, correct?

5 A. Yes, sir.

6 Q. And Microsoft Office is made of several different
7 applications, correct?

8 A. It is.

9 Q. Word, Excel, PowerPoint; is that right?

10 A. Agreed.

11 Q. In the calculation that you did for this case, you
12 used Microsoft Office as a single unit, right?

13 A. I did.

14 Q. If you had calculated Microsoft Office as three units
15 for Word, Excel, PowerPoint, your royalty number would
16 have come out lower than what it did, right?

17 A. I agree.

18 Q. And the ultimate damage number for Google would be
19 lower?

20 A. True.

21 **MR. PETERMAN:** We can unseal the courtroom?

22 **THE COURT:** All right. Let's unseal the
23 courtroom. Thank you.

24

25

Weinstein - Cross

* * *

(Whereupon, the sealed discussion concludes.)

- - -

BY MR. PETERMAN:

Q. Now I would like to address the 4X multiplier that you used. You stated you multiplied each royalty rate by four.

A. Yes, sir.

Q. And on direct, you said you could have multiplied it by eight, but you took a conservative approach; is that correct?

A. Yes, sir.

Q. And when you say that you could multiply it by eight, what that means is that Mr. Hedloy believed he only had a one in eight chance of winning the underlying litigations; is that right?

A. That's another way of looking at the same information, so I agree with that.

Q. So those are pretty slim odds to actually prevail on the litigations that Mr. Hedloy had with the different companies, correct?

A. Well, one in eight is slim odds, and that's part of the reason why companies reach agreement in advance. That's true.

Q. So I just want to understand the practical effect of

Weinstein - Cross

1 your multiplier here.

2 **MR. PETERMAN:** Mr. Spence, if you would bring
3 up Slide 4.

4 **BY MR. PETERMAN:**

5 **Q.** Now, you're asking for \$45.5 million. You're saying
6 that's the appropriate measure of damages. You would
7 agree that the bulk of it is based on the 4X multiplier?

8 **A.** That's fair.

9 **Q.** Without the 4X multiplier, the damages you would be
10 asking for would be 11.37 million?

11 **A.** If you divide 45 million by four, that's correct.

12 **Q.** So in this case, the multiplier increased damages by
13 over \$34 million, right?

14 **A.** Well, that's the math.

15 **Q.** And you were here for Mr. Hedloy's testimony
16 yesterday?

17 **A.** I was.

18 **Q.** You are aware that he gave those parties a discount?

19 **A.** I am.

20 **Q.** Are you aware that he never testified that the
21 undiscounted value of those agreements was actually
22 four times more?

23 **A.** That's true.

24 **Q.** Now, Mr. Weinstein, one of the *Georgia-Pacific*
25 factors is duration of the patent, correct?

Weinstein - Cross

1 **A.** Also true.

2 **Q.** And factor -- this is Factor 7; is that right?

3 **A.** Yes, sir.

4 **Q.** And Factor 7 is relevant because the length of the
5 license might impact the parties' negotiating positions,
6 correct?

7 **A.** That's true.

8 **Q.** The parties might have a different set of
9 expectations if the length of the license was one year
10 versus seven years, right?

11 **A.** I agree.

12 **Q.** There might be different options available to the
13 party taking the license at one-year point versus, you
14 know, seven years?

15 **A.** I agree.

16 **Q.** So for example, Google might have been less willing
17 to pay \$45.5 million and would have just kept on using
18 other technology that it had for the next year, correct?

19 **A.** That's a possibility, if it had alternatives that
20 were equally valuable.

21 **Q.** So you never analyzed whether Google would have paid
22 Arendi \$45.5 million for a one-year license or just used
23 another technology, such as Smart Linkify or Linkify?

24 **A.** Well, my understanding is that, according to
25 Dr. Smedley, there were no viable non-infringing

Weinstein - Cross

1 alternatives to the accused functionality.

2 **Q.** Did you do any analysis on your own with respect to
3 Smart Linkify or Linkify in particular?

4 **A.** Well, I thought about both, but ultimately I relied
5 on Dr. Smedley.

6 **Q.** Just a couple of more questions, Mr. Weinstein. You
7 didn't look at Google's revenue as a starting point for
8 your royalty analysis, correct?

9 **A.** That's true.

10 **Q.** Did you look at actual usage statistics of the
11 downloaded apps to determine if the users were actually
12 using the downloaded apps?

13 **A.** I did not.

14 **Q.** Did you look at any statistics for the downloaded
15 apps to determine if the users were actually using the
16 accused functionality in this case of -- on those apps?

17 **A.** I'm not sure I understand your question, but the
18 answer is, I think I did not.

19 **Q.** And I can re-ask it. Did you look at any data to
20 understand if, at all, users used STS on any of those
21 downloaded apps?

22 **A.** Well, I looked at the volume of downloaded apps as
23 we've seen, but I didn't look at usage data, if that's
24 your question.

25 **Q.** That's my question. Thank you.

Weinstein - Redirect

1 **THE COURT:** Any redirect?

2 **MR. ARD:** Yes, Your Honor. Thank you.

3 REDIRECT EXAMINATION

4 **BY MR. ARD:**

5 **Q.** Mr. Weinstein, let's start with the -- with the
6 accused units issue.

7 You were asked about whether the units you used were
8 for Android 8 and Android 9 apps. Do you recall that?

9 **A.** I do.

10 **Q.** Why did you conclude these units were for Android 8
11 and Android 9 apps?

12 **A.** Basically, two reasons, maybe even three. First,
13 that was the information provided by Google, and so I
14 relied on Google's information.

15 Second, it turns out that the numbers that I used for
16 accused apps are the same numbers that Google's expert
17 used for the number of accused apps. We both used the
18 same numbers.

19 And third, with respect to all of the apps with the
20 exception of -- possible exception of Chrome, only
21 Versions 8 and 9 were ever accused. And so the numbers
22 that Google produced with respect to those apps would have
23 to be the right numbers to use.

24 **Q.** Did you prepare a slide to explain this to the jury?

25 **A.** I did prepare that slide. Yes, sir.

Weinstein - Redirect

1 Q. All right. Let's walk through the slide. Who is
2 Douglas Kidder?

3 A. Douglas Kidder is Google's damages expert in this
4 case.

5 Q. Okay. And did he prepare an expert report in this
6 case or several expert reports in this case?

7 A. Yes. He prepared two reports in this case.

8 Q. And if you look at the header up there, "Accused App
9 Downloads," is that his -- the language from his report?

10 A. It is.

11 Q. And if you look at all the apps on this page, is it
12 your understanding that at the time he wrote this report,
13 all of these apps were only being accused for Android
14 versions, running on Android Versions 8 and 9?

15 A. Yes. That's my understanding. That's what I tried
16 to explain in my testimony.

17 Q. Okay. And did he agree with you on what the number
18 of accused units were?

19 A. Yes. I compared the numbers that he used as accused
20 app downloads for each of these apps with mine, and each
21 one is identical to mine. And if you look at the bottom
22 source, he used the same source that I used. Those are
23 both Google spreadsheets that contain this information
24 that Google made available to us in this case.

25 So he and I used the same source from Google, and we

Weinstein - Redirect

1 have the same answer for 2018.

2 **Q.** So let's look at a few of these.

3 Well, first, when you say "the same source," you're
4 at that long set of numbers at the bottom, GOOG00157, 158,
5 for example?

6 **A.** Yes.

7 **Q.** And do you believe that one of those is one of the
8 documents, maybe, that counsel just showed you?

9 **A.** Yes. Actually, the source for this particular year
10 is the second document there that ends 349, because that
11 covers the 2018 period.

12 But we both looked at both of those documents. It's
13 just the first source that ends 158 covers an earlier time
14 period. Both of these spreadsheet were produced by
15 Google, made available to Mr. Kidder and to me. We both
16 used them. It's the same source that ends 359 that
17 contains the figures that we took for accused app
18 downloads for 2018.

19 **Q.** Okay. And so you were both looking at the same
20 document, correct?

21 **A.** Yes.

22 **Q.** And was that -- who produced that document?

23 **A.** Google.

24 **Q.** Google. And did his interpretation of that document
25 agree with yours?

Weinstein - Redirect

1 **A.** It did. He treated the entries on that document as
2 accused app downloads for 2018, just as I did.

3 **Q.** Okay. And was it your understanding that when he's
4 talking about accused downloads, that for these apps the
5 only thing that was accused were apps running on Android 8
6 and 9?

7 **A.** Well, that's my understanding. Since he has the same
8 answer, I assume that was his understanding as well.

9 **Q.** I see that Chrome is on the chart. Did he also have
10 the same units as you for Chrome?

11 **A.** He did. It's not on this chart for 2018, but he and
12 I had the exact same units for Google Chrome for 2018 as
13 the number of accused apps for that year as well.

14 **Q.** So is it fair to say that Dr. Kidder here is
15 interpreting the data produced for 2018 as reflecting the
16 apps that Arendi is accusing Google of infringing in this
17 case?

18 **A.** It is.

19 **Q.** So it's fair to say that Dr. Kidder here is
20 interpreting the document the same way as you in the sense
21 that he is concluding that the data that Google produced
22 is showing which -- say the top line, Docs, what the
23 number of units of Docs are that are running on Android 8
24 and 9; is that fair?

25 **A.** Correct.

Weinstein - Redirect

1 Q. Okay. So he's interpreting the same document the
2 same way you are; is that your testimony?

3 A. I agree.

4 Q. Okay. Now, you mentioned that there's also
5 Interrogatory that --

6 MR. ARD: Can you put that on the screen,
7 please.

8 BY MR. ARD:

9 Q. What do you mean by "Interrogatory"?

10 A. Well, in cases such as this one, the parties request
11 information from one another and they provide information
12 to one another during the pretrial phase so that each side
13 has the information it needs to prepare its case. And
14 interrogatories, in my view, is a fancy word for
15 questions. They ask questions of one another and provide
16 answers to the questions.

17 Q. And that's something that Google provided a response
18 to here?

19 A. Yes, sir.

20 Q. And Google also produced these documents, I think you
21 mentioned; is that right?

22 A. It did. It made these documents that are cited at
23 the bottom of the slide available both to Mr. Kidder and
24 to me.

25 Q. Did you feel you were entitled to rely on Google's

Weinstein - Redirect

1 data and documents?

2 **A.** I did.

3 **Q.** Who has the best information about how many users are
4 installing Google applications on which version of
5 Android?

6 **A.** As far as I know, Google does.

7 **Q.** Did Google ever give you an updated number and say
8 "use this instead" for which apps are being run on
9 Android 8 and 9?

10 **A.** No.

11 **Q.** So based on the documents that were provided to you
12 in this case, what is the best way to determine the number
13 of accused units for the various apps?

14 **A.** Well, I believe it's to do what I did, which is to
15 rely on the information that Google provided.

16 **Q.** And by the way, is there any difference between the
17 way Google produces data for Chrome and non-Chrome
18 devices -- or sorry, Chrome and non-Chrome apps?

19 **A.** I don't really understand the question.

20 **Q.** Was there any difference between how you determined
21 the Chrome apps that are running on Android 8 versus
22 non-Chrome apps that are running on Android 8?

23 **A.** I relied on the data provided by Google.

24 **Q.** And was there a difference in the way Google produced
25 it?

Weinstein - Redirect

1 **A.** No.

2 **Q.** You were asked some questions about the fact you
3 didn't adjust the rate --

4 **MR. ARD:** You can take that down.

5 **BY MR. ARD:**

6 **Q.** -- why you didn't adjust the effective royalty rate
7 downward to account for the fact that the licenses
8 included other patents.

9 Do you recall that?

10 **A.** I do.

11 **Q.** So why? Why didn't you account for or adjust the
12 rate to account for that, the licenses on the Google
13 patents?

14 **A.** Mr. Hedloy indicated that it was the '843 patent,
15 which is the patent-in-suit in this case, drove those
16 license negotiations, so I rely on that fact.

17 My understanding also from Mr. Hedloy is that the
18 rate would not change if there were fewer patents in some
19 of those prior licenses. And in fact, those prior
20 licenses had different numbers of patents in them.
21 basically, I rely on Mr. Hedloy with respect to that
22 question.

23 **Q.** Is it common for licenses to include a portfolio of
24 patents?

25 **A.** It is very common, yes.

Weinstein - Redirect

1 Q. And is it common when one of the licenses -- sorry --
2 one of the patents is in litigation like in the Apple
3 case, for you to attribute the value of the license to
4 that patent that's in litigation?

5 A. It's very common, yes, sir.

6 Q. All right. And that's what happened here, correct?

7 A. It is.

8 Q. You were asked several questions about the difference
9 between the actual license rates that were agreed to with
10 Samsung and Apple and hypothetical rates you are opining
11 on.

12 Do you recall that?

13 A. I do.

14 Q. Do the differences between the real-world rates that
15 were agreed to and the hypothetical rates impact your
16 assessment of whether your multiplier was conservative?

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Weinstein - Redirect

1 [REDACTED]

2 [REDACTED]

3 **Q.** And after the Apple license was reached, did you take
4 that license into account in your analysis?

5 **A.** I did. The Apple license was taken into account in
6 the sense that I used it to calculate the effective
7 royalty rate associated with real-world agreements, and I
8 included it in that calculation. And then it made its way
9 to the calculation of an effective royalty rate for the
10 hypothetical negotiation. So I took it fully into
11 account.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 **Q.** And as parties approach trial, is it common in your
22 experience for the damages numbers to be reduced in the
23 reports as they streamline the case?

24 **A.** Yes. That's happened in this case, and it could have
25 happened in the Apple case had the Apple case continued to

Weinstein - Redirect

1 proceed. But it's happened in this case as well.

2 **MR. PETERMAN:** Your Honor, could we have a
3 sidebar?

4 **THE COURT:** Yes.

5 (Whereupon, the following occurred at sidebar:

6 **MR. PETERMAN:** There was testimony where the
7 questions were blaming Google for I think created the
8 impression Google was not -- Google complying with orders
9 of the Court or discovery leaving the jury with the
10 misimpression somehow Google was deceptive in the way it
11 was conducting discovery in this case. And we'd just
12 appreciate an instruction with respect to -- with respect
13 to that, so the jury is not left with misimpression here.

14 **THE COURT:** Counsel.

15 **MS. SRINIVASAN:** No, Your Honor, they very
16 expressly raised on cross-examination the notion that
17 Mr. Weinstein should have done something differently or
18 gave the impression that there might have been unit
19 missing. They said: You understand or if there could
20 have been other apps that weren't included here, you
21 didn't take that into account.

22 That gives the impression that he wasn't
23 entitled to rely on what was produced to him. The
24 question did Google say to you, you shouldn't use certain
25 units that were in the list that Google provided to you

Weinstein - Redirect

1 and given what was done on cross-examination, that's a
2 fair question. There was no suggests about their
3 discovery conduct at all.

4 **THE COURT:** I tend to agree with plaintiff on
5 this issue. I don't think there's been an inference or
6 suggestion that Google hasn't complied with discovery.
7 There is a factual dispute about what was produced in the
8 litigation and the parties are free to explore that with
9 their fact witnesses how they like.

10 **MR. PETERMAN:** There is also a reference to
11 supposed Interrogatory answer that has not been -- doesn't
12 exist, frankly, has been referred to, and I know I asked
13 him about it. He said, you know, he couldn't identify
14 that Interrogatory, but he has repeated a couple times.

15 **THE COURT:** I agree that happened.

16 **MR. PETERMAN:** Okay.

17 **THE COURT:** Is there anything you propose we do
18 about it?

19 **MR. PETERMAN:** I would ask for a curative
20 instruction with respect to any suggestion that there's a
21 Interrogatory response that is somehow misleading.

22 **MS. SRINIVASAN:** There is an Interrogatory
23 response that identifies the data produced by Google. We
24 can walk the witness through it. I don't understand the
25 objection. Google produced data. It was asked to produce

Weinstein - Redirect

1 data relevant to the accused products. It did so. It
2 referenced Bates number for what it produced in an
3 Interrogatory response. That's what he's talking about.

4 I'm not really sure what the instruction would
5 be, but Google -- everything that he's relying on came
6 from Google. But there's an Interrogatory response that
7 lists the Bates numbers for the files that he used, were
8 shown by counsel. So I'm not sure what we are curing.

9 **THE COURT:** We had testimony from the witness
10 about an Interrogatory response, but it wasn't shown. My
11 understanding that testimony happened during the redirect.

12 **MS. SRINIVASAN:** It was on cross-examination.
13 For the benefit of the jury, we asked what is an
14 Interrogatory response because the question was: What did
15 you rely on? He said: I looked at the numbers, and I
16 looked at an Interrogatory response, wasn't sure if the
17 jury would know what an Interrogatory response was.

18 **THE COURT:** We could show it to them if that
19 would help.

20 Do we have a proposal on the table to show the
21 Interrogatory response?

22 **MR. UNIKEL:** We would have to find out which
23 Interrogatory response it is. It is not listed in the
24 report that exhibit. We don't know which Interrogatory
25 response it is. That's part of the difficulty.

Weinstein - Redirect

1 **THE COURT:** Let's do this, I was hoping we
2 could finish the redirect before the lunch hour. Let's
3 send the jury out. We can consult the transcript about
4 what was said. We can figure out how to clean this up if
5 it needs to be cleaned up. I'm not sure that it does.

6 **MR. BELGAM:** My issue now, consistent with the
7 local rule of depositions, once he's on the redirect, we
8 can't consult with him.

9 **THE COURT:** Counsel, do you have an agreement
10 on this?

11 **MR. UNIKEL:** Since I was part of the agreement
12 on this, and since I thought the agreement was they were
13 supposed to be doing the talking for this, by the way.

14 We did not have an agreement. The agreement
15 was once the witness is passed, the bubble applies. We
16 did not have anything except redirect from that.

17 **THE COURT:** I agree on this issue with
18 defendant. We are not going to pass. We are not going to
19 allow the witness to consult while he's remaining up on
20 redirect.

21 **MR. BELGAM:** If I may, Your Honor, the local
22 rule, which regards depositions, which I know that judges
23 in Delaware have applied to trial testimony, says from the
24 commencement until the conclusion of the deposition
25 questioning by the opposing party, including any recesses

Weinstein - Redirect

1 or continuance, counsel for the deponent is not to consult
2 or confer.

3 My practice in this court has generally been
4 once the witness is passed on cross-examination if you get
5 a break, you prep your witness.

6 **THE COURT:** Are you referring to local
7 Rule 43.1?

8 **MR. BELGAM:** No, 30.6.

9 **THE COURT:** Can we consult local -- let's stop
10 for a second. Can you pull up local Rule 43.1?

11 **MR. BELGAM:** I had a screen shot.

12 **THE COURT:** What we are going to do is send the
13 jury to their lunch. We will sort the rest of this out.

14 **MR. BELGAM:** Okay.

15 (Whereupon, the discussion at sidebar concludes.)

16 - - -

17 **THE COURT:** Ladies and gentlemen of the jury, I
18 happen to know that your lunches have arrived. So what
19 we're going to do is we're going to let you take your
20 lunch break at this time, so we are going to recess for
21 lunch.

22 We have lost a little bit of time with some
23 discussions I've had with the attorneys in the prior two
24 days, so we'd like to see if we can get lunch done in half
25 an hour. I know your lunches are already here. If that's

Weinstein - Redirect

1 an issue, you can raise it with Ms. Garfinkel. Okay?

2 (The jury exits the courtroom at 12:43 pm.)

3 **THE COURT:** All right. Counsel, I'm going to
4 take a brief recess myself. Hopefully, you-all can get
5 some of this worked out. In the meantime, I'm going to
6 ask that counsel not consult with the witness about the
7 subject of his testimony.

8 **MR. ARD:** Thank you, Your Honor.

9 (Whereupon, a recess was taken.)

10 **THE COURT:** All right. Please have a seat,
11 everyone.

12 I had a busy lunch hour, and I'm sure you did
13 too. So we had a request on the table from Google for a
14 curative instruction regarding discovery. That request is
15 going to be denied. I would need the relevant portions of
16 the transcript, and I didn't think there was any
17 implication that Google hadn't been fulfilling its
18 discovery obligations.

19 There was also a question about procedure and
20 whether or not counsel was permitted to consult with the
21 witness after they had been turned over for redirect, and
22 I ordered before I left the bench that there shouldn't be
23 any consultation. That was for a number of reasons,
24 including that I thought we were going to be finished with
25 the witness before the lunch hour anyway. So it was just

Weinstein - Redirect

1 because of happenstance that we weren't.

2 And there was a dispute as to what the
3 agreement of the parties had been. We got halfway there
4 yesterday when we talked about consulting with the witness
5 before cross-examination, but I guess we didn't finish it
6 off, and then we ended up in this situation today.

7 So the rule going forward is going to be the
8 rule that I set forth before we left for lunch, which is,
9 after the witness is turned over for cross, there's no
10 consultation with the witness about the subject matter of
11 their testimony until the witness leaves the stand.

12 Anything else that we need to address before we
13 bring the jury out?

14 **MR. PETERMAN:** Your Honor, may I be heard
15 briefly on the issue, please?

16 **THE COURT:** Yes.

17 **MR. PETERMAN:** Your Honor, during cross --

18 **THE COURT:** I thought you wanted a sidebar.

19 **MR. PETERMAN:** Would you prefer a sidebar?

20 **THE COURT:** Let's do that.

21 (Whereupon, the following occurred at sidebar:

22 **THE COURT:** Okay. And we are imposing the rule
23 that we have attorneys for each side who are handling this
24 witness if the objection has to do with the witness'
25 testimony, Counsel.

Weinstein - Redirect

1 **MR. PETERMAN:** Your Honor, on cross,
2 Mr. Weinstein said he relied on an Interrogatory. I asked
3 him what the Interrogatory was. He couldn't identify it.
4 On redirect, counsel asked him about the Interrogatory
5 again. Mr. Weinstein explained what an Interrogatory was,
6 then counsel said -- and that's something that Google
7 provided a response to here. And then Mr. Weinstein
8 responded, yes, sir.

9 So counsel on redirect posed, you know,
10 mysterious Interrogatory that Google provided a response
11 to. As far as we can tell, this Interrogatory doesn't
12 exist. We looked through all the Interrogatories in this
13 case. There is not an Interrogatory that asks for
14 downloads by version of the Android system.

15 Over lunch, we expected counsel for Arendi
16 would actually look for the Interrogatory. They have not
17 identified an Interrogatory to us. So what's occurring
18 now, there's a phantom Interrogatory that's hanging out
19 there that supposedly Google responded to, gave
20 Mr. Weinstein information relying on that data. Now,
21 Google is trying to disavow itself from that Interrogatory
22 that is just demonstrably untrue, you know, speculation or
23 implication.

24 So we feel that without a curative instruction
25 that specifically says that there's no evidence of an

Weinstein - Redirect

1 Interrogatory, there's no evidence that Arendi actually
2 asked for downloads by versions of Android, Arendi could
3 have asked for such data and Mr. Weinstein's testimony
4 should be stricken from the record.

5 **THE COURT:** Counsel.

6 **MR. ARD:** This was already explored on cross.
7 He asked the questions about it. He asked questions about
8 this issue. Nothing new came up on redirect. The only
9 question asked on the redirect was the what's. That's
10 something that Google provided a response to here then the
11 question was: And Google also produced these documents, I
12 think you mentioned; is that right?

13 It did. It made these documents that are cited
14 in the bottom of the slide available to Mr. Kidder.

15 The question was: Did you feel you were
16 entitled to rely on Google's data and documents?

17 I did.

18 You know, the questions went from there there's
19 no question asking him to say on redirect, there was
20 nothing new about asking: Did you rely on the
21 Interrogatory in any way? The only thing asked: Did you
22 rely on the data and the documents produced. That's --

23 **THE COURT:** All right. Counsel.

24 **MR. PETERMAN:** He skips over very quickly the
25 question he asked: That's something that Google provided

Weinstein - Redirect

1 a response to here?

2 The answer was: Yes, sir.

3 That's the Interrogatory. So that's hanging.

4 There was a response to an Interrogatory that asks
5 specifically for the data that he's relying upon. You
6 might want to go over the question, but the question --

7 **MR. ARD:** I read the question.

8 **THE COURT:** I will ask you direct your comments
9 to the Court.

10 Is there an Interrogatory?

11 **MR. ARD:** We weren't able to come --

12 **THE COURT:** You know in the case what
13 Interrogatories. You asked, was there an Interrogatory
14 that has to do with this issue?

15 **MR. ARD:** We don't know, Your Honor. We
16 haven't consulted with the witness about what
17 Interrogatory he's referring to, but my point is that on
18 the redirect he was not asked anything about whether he
19 relied on the Interrogatory response. All he was asked:
20 Google also produced these documents, I think you
21 mentioned; is that right?

22 I did. It made these documents that are cited
23 at the bottom of the slide available both to Mr. Kidder
24 and to me.

25 Did you feel you were entitled to rely on

Weinstein - Redirect

1 Google's data and document?

2 I did.

3 The only time he said anything about the sound
4 of it was the cross. It's been crossed.

5 **THE COURT:** Here's my ruling on this. A
6 request for a curative is going to be denied, but Google
7 has the ability to bring up the effect there's a phantom
8 Interrogatory that nobody has seen. If it gets to be
9 later in the case and that evidence hasn't come in or some
10 objection from their side about the fact there is no
11 Interrogatory response, you can renew your request at that
12 time.

13 **MR. PETERMAN:** May I have a three or
14 four-question recross on this issue?

15 **THE COURT:** Yes. Then you get to have the
16 final word.

17 **MR. ARD:** Okay. You want him to go first?

18 **THE COURT:** You get to go. He gets to go then
19 you get to go.

20 **MS. SRINIVASAN:** Just since the Court said the
21 rule that was going to be going forward as to witnesses
22 when they are tendered, just for the Court's education as
23 I explained to counsel before the break, I had been
24 proceeding under the assumption that was the rule as well.

25 Our witnesses, once they have been tendered, we

Weinstein - Redirect

1 have not been communicating for purposes of redirect. I
2 wanted that to be clear for the record. We have been
3 following that rule.

4 **THE COURT:** Very good.

5 **MS. SRINIVASAN:** The Delaware rule may be
6 different. That was my perception as well. That is what
7 we have done in our case in chief. It will be an evenly
8 applied rule.

9 **THE COURT:** Very good. I appreciate you
10 putting that on the record. Thank you.

11 (Whereupon, the discussion at sidebar concludes.)

12 - - -

13 **THE COURT:** All right. Ms. Garfinkel, bring
14 the jury back in.

15 **MS. KANNOM:** Excuse me, Your Honor. Before we
16 bring the jury back in --

17 **THE COURT:** Please approach.

18 **MS. KANNOM:** Thank you. Apologies, Your Honor.
19 My name is Hannah Kannom. I'm here on behalf of Apple,
20 Inc.

21 During the last examination, there was some
22 disclosure of Apple's confidential information in both the
23 agreement between Apple and Arendi, as well as information
24 produced in the previous litigation. So we will be filing
25 something, this evening, to seal that portion of the

Weinstein - Redirect

1 transcript.

2 But if we could make sure that we're protecting
3 that information and sealing the courtroom when it's
4 presented, so that that doesn't happen again.

5 **THE COURT:** Any objection from the plaintiff?

6 **MR. ARD:** No objection.

7 **THE COURT:** Any objection from the defendant?

8 **MR. PETERMAN:** No, Your Honor.

9 **THE COURT:** All right. That portion is
10 conditionally sealed. We'll have you file your motion,
11 and then you'll have an opportunity to make your
12 application for redacting the transcript.

13 **MS. KANNOM:** Thank you.

14 **THE COURT:** All right. Let's bring the jury
15 in.

16 (The jury enters the courtroom at 2:00 p.m.)

17 **THE COURT:** Please be seated, ladies and
18 gentlemen of the jury. I apologize for the delay. The
19 lawyers and I had more issues to discuss.

20 We will continue with the redirect examination
21 of Mr. Weinstein.

22 Mr. Weinstein, you are still under oath.

23 **THE WITNESS:** Yes, Your Honor. Thank you.

24 **BY MR. ARD:**

25 **Q.** Good afternoon, Mr. Weinstein.

Weinstein - Redirect

1 **A.** Good afternoon.

2 **Q.** Google also made a big deal about the fact that Apple
3 had a much higher damages number in your report from 2019.

4 Do you recall that?

5 **A.** I do.

6 **Q.** And I think you testified that parties commonly
7 streamline the case before bringing it to a jury; is that
8 correct?

9 **A.** That happens often, yes.

10 **Q.** Do you think that the much higher number that was in
11 the damages report from 2019 would have been a number you
12 presented to a jury at trial against Apple four years
13 later?

14 **A.** You know, it's hard for me to answer beyond repeating
15 something we just agreed about, which is often, as the
16 case proceeds toward trial, the parties streamline things,
17 and when that happens, the damages number goes down.

18 **Q.** And given that, do you think it's appropriate to
19 compare a damages number from four years ago in another
20 case that was not brought to trial to the damages number
21 presented here at trial four years later?

22 **A.** Well, I've described sort of how I feel about that.
23 Typically, my experience over the years is that damage
24 numbers do decline as one gets closer to trial, and
25 inevitably, things are streamlined a little bit. And the

Weinstein - Redirect

1 impact of that is to typically reduce the size of the
2 damage claim. So here, instead, we've actually gone all
3 the way to trial.

4 **Q.** And has your number in this case changed since 2019?

5 **A.** Actually, it has. It's changed significantly. It's
6 gone down significantly since the first time I did a
7 report in this case. And that reflects this same effect,
8 which is that, over time for one reason or another, the
9 parties in this case have streamlined things to some
10 extent. And as a consequence, the damage number that I
11 calculated early on in my work here and in my first report
12 has since been significantly reduced.

13 **Q.** And we don't know what number Apple would have
14 brought to the jury, because Apple, unlike Google, didn't
15 force Arendi to go to trial; is that right?

16 **A.** Correct. Apple and Arendi settled.

17 **Q.** I'm showing you the slide that you showed earlier.
18 This is the reasonable royalty damages for the apps,
19 correct?

20 **A.** Yes, sir.

21 **Q.** Do you recall if Google asked you questions about
22 whether Google benefited from these downloads? Do you
23 recall that?

24 **A.** Actually, I don't recall that specifically, but it
25 wouldn't surprise me if I was so asked.

Weinstein - Redirect

1 Q. Okay. And there are hundreds of millions of apps
2 installations here, correct?

3 A. There are.

4 Q. In your opinion as an economist, does it make any
5 economic sense to suggest that Google wouldn't benefit
6 from hundreds of millions of downloads of an app?

7 MR. PETERMAN: Objection. Leading.

8 THE COURT: Can you rephrase the question.

9 MR. ARD: Sure.

10 BY MR. ARD:

11 Q. As an economist, do you think that Google would
12 benefit from hundreds of millions of app installations and
13 downloads?

14 MR. PETERMAN: Objection. Leading.

15 THE COURT: Overruled.

16 THE WITNESS: Yes, my expectation is that
17 Google, with its products, endeavors to provide consumers
18 with functionality that consumers like, and that,
19 ultimately, by so doing, benefits were down to Google. I
20 mean, that's how the system works.

21 BY MR. ARD:

22 Q. And what type of revenue does Google make from these
23 downloads?

24 A. Well, there are two types.

25 MR. PETERMAN: Your Honor, objection. There's

Weinstein - Redirect

1 a MIL that's -- can we have a sidebar on this?

2 **THE COURT:** Yes.

3 (Whereupon, the following occurred at sidebar:

4 **THE COURT:** I think I know what the basis for
5 your objection is. Why don't you put it on the record.

6 **MR. PETERMAN:** There are two bases. There is a
7 MIL that's been ruled on by the Court that doesn't allow
8 Arendi to go into questions regarding monetization or
9 advertising. So we don't know exactly where counsel is
10 planning to go here.

11 Number 2, it is also beyond the scope of my
12 cross. I actually didn't ask him about benefits that
13 Google was receiving. In fact, Mr. Weinstein didn't
14 recall me asking that question because I didn't. So
15 counsel sort of set that up as a strawman to go into the
16 line of questioning he is going into now.

17 **MR. ARD:** First, on the MIL. The MIL, all it
18 said there's two parts to it. One, you can't -- he can't
19 testify that Google is making money from the monetization
20 of user data. He's not going to say that. We are allowed
21 to ask questions about the making advertising revenue. We
22 are now allowed to do is put a dollar number on it. He is
23 not going to be doing that.

24 **THE COURT:** Okay. So he started to answer that
25 there were two types. Do you happen to know what the two

Weinstein - Redirect

1 types are that he's going to say?

2 **MR. ARD:** We rehearsed this. I am sure he is
3 going to subscriptions services that you pay money to
4 subscribe to, you know, Gmail corporate Gmail versions.
5 The second advertise revenue. He knows not to talk about
6 monetization of user data.

7 Second point is he has opened the door. The
8 question that was asked during cross is whether he was
9 aware that Google is losing money from these apps.

10 **THE COURT:** So I agree that he has opened the
11 door to the question about, generally, that Google does
12 make money as a business, and if counsel is reasonably
13 confident he is not going to say monetization of user
14 data, we can move forward.

15 I take it Google wouldn't want him to lead a
16 little more and say "you mentioned there were two types."
17 was one of them advertising? Is the other one
18 subscription service.

19 Is that something you would be okay with?
20 Would you rather see what happens?

21 **MR. PETERMAN:** I think if those are literally
22 the questions, that is the safest course to proceed on.

23 **MR. ARD:** That's fine. I would also be fine
24 with it if the Court wants to truncate mentioning
25 monetization of consumer data.

Weinstein - Redirect

1 **THE COURT:** Let's proceed how we discussed.
2 You can make a slight modification in your outline. We
3 can go from there.

4 **MR. ARD:** I know advertising revenue is what
5 he's going to say. Second one, I am 90 percent sure he
6 will talk about subscription.

7 **THE COURT:** Is there another way Google makes
8 money besides monetization of user data?

9 **MR. ARD:** I think the door has been opened. We
10 don't need to make that argument now.

11 **THE COURT:** Okay. Fine. Let's proceed.
12 (Whereupon, the discussion at sidebar concludes.)

13 - - -

14 **THE COURT:** Can you re-ask the question,
15 Counsel.

16 **MR. ARD:** Yes, Your Honor.

17 **BY MR. ARD:**

18 **Q.** Does Google generate advertising revenue from
19 hundreds of millions of downloaded apps?

20 **A.** Yes, sir.

21 **Q.** And do you expect that that advertising revenue would
22 be significant?

23 **A.** Is what? Significant?

24 **Q.** Significant.

25 **A.** Yes, I would think so.

Weinstein - Redirect

1 Q. Mr. Weinstein, you are an expert in license
2 agreements, correct?

3 A. I've certainly have been able to see dozens, probably
4 hundreds of license agreements over the course of my
5 career, so if that makes me an expert, I am.

6 Q. In your experience, would you expect a licensee to
7 release claims asserted against a different company in
8 separate litigation without mentioning that separate
9 company in the agreement?

10 A. No. If that was the case, I would expect it to be
11 specifically incorporated in the agreement itself.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25

Weinstein - Redirect

1 **BY MR. ARD:**

2 **Q.** Mr. Weinstein, you were asked some questions about
3 the MMI license.

4 Do you recall that?

5 **A.** The which license?

6 **Q.** The MMI license?

7 **A.** Yes, sir, I was.

8 ■ [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 ■ [REDACTED]

12 [REDACTED]

13 **Q.** And so why did you take a straight average of the
14 four royalty rates in your analysis?

15 **A.** Well, there were four agreements, and each reflects a
16 real-world outcome associated with a licensing effort that
17 ultimately was successful, and as a consequence, it's
18 necessary to consider all four rather than some smaller
19 set of the four agreements.

20 ■ [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 ■ [REDACTED]

25 ■ [REDACTED]

Weinstein - Redirect

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 **Q.** And what effect does that have the 4X multiplier that
24 you did in this case?

25 **A.** Well, it needs to be part of the analysis that I do.

Weinstein - Recross

1 Q. And does it make your 4X multiplier conservative?

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 MR. ARD: No further question.

8 THE COURT: Thank you. We'll have a short
9 recross.

10 RECCROSS EXAMINATION

11 BY MR. PETERMAN:

12 Q. Mr. Weinstein, during my cross-examination of you,
13 you mentioned an Interrogatory that you couldn't identify,
14 correct?

15 A. I mentioned the Interrogatories in discovery, yes,
16 sir.

17 Q. You don't know if there are any Interrogatory
18 questions that were posed by Arendi in this case that
19 asked for downloads based on specific operating systems,
20 correct?

21 A. That's true.

22 Q. You don't know if Arendi ever asked Google in any
23 other manner for downloads based on specific operating
24 systems, correct?

25 A. That's correct.

Weinstein - Recross

1 **Q.** But you're aware that Arendi could have asked Google
2 for such information if it was important to it, correct?

3 **MR. ARD:** Objection, Your Honor.

4 **THE COURT:** Overruled.

5 **THE WITNESS:** That's true.

6 **BY MR. PETERMAN:**

7 **Q.** And you never saw any information that actually
8 indicated on the document which downloads went to which
9 operating system, correct?

10 **A.** That's true with the one caveat that I did understand
11 that the downloads with respect to those apps that we've
12 had up on the screen several times during my testimony
13 pertain to Android versions eight 8.0. or 9.0. And I
14 understood that throughout.

15 **Q.** And that understanding you had is actually not
16 reflected on the document that you reviewed, correct?

17 **A.** It's not reflected specifically on the document from
18 which I created that exhibit, that's true.

19 **Q.** And your expert report, you don't cite any specific
20 document that confirms your understanding that you just
21 told the jury about?

22 **A.** Well, I'd have to go back and look at that. But
23 certainly, the intent, especially with respect to those
24 apps that we've seen listed, was to be consistent with the
25 discovery in this case with respect to products that were

Weinstein - Recross

1 accused because of Google Versions 8.0 and 9.0 in Android.

2 **Q.** But you're not aware, sir, of any discovery requests
3 in this case which ask specifically for downloads based on
4 the specific version of the operating system, correct?

5 **A.** That's fair.

6 **MR. PETERMAN:** Nothing further, Your Honor.

7 **MR. ARD:** No further questions, Your Honor.

8 **THE COURT:** Mr. Weinstein, you may step down.

9 **THE WITNESS:** Thank you, Your Honor.

10 **THE COURT:** Plaintiff may call its next
11 witness.

12 **MS. SRINIVASAN:** Your Honor, the plaintiff will
13 not be resting its case until the examination. We
14 agreed -- the parties agreed that there would be an
15 unbridled cross-examination of their corporate
16 representative in lieu of calling him adverse in our case
17 in chief. So we are not resting, subject to that. He's
18 not going to be their first witness, but Google will be
19 calling the next witness.

20 **THE COURT:** Okay.
21 Counsel.

22 **MS. ROBERTS:** Google calls Brahim Elbouchikhi.

23 **THE CLERK:** Please state and spell your name
24 for the record.

25 **THE WITNESS:** Brahim Elbouchikhi.

Elbouchikhi - Direct

1 **THE CLERK:** Can you spell it for the record.

2 **THE WITNESS:** Sure. It is B-R-A-H-I-M, last
3 name is E-L-B-O-U-C-H-I-K-H-I.

4 BRAHIM ELBOUCHIKHI, having been called as a witness,
5 being first duly sworn under oath or affirmed, testified
6 as follows:

7

8 DIRECT EXAMINATION

9 **BY MS. ROBERTS:**

10 **Q.** Would you please introduce yourself to the jury.

11 **A.** Hi. Yes, I'm Brahim Elbouchikhi. I am the director
12 of product management at Google.

13 **Q.** Where do you live?

14 **A.** I live in small town in California called Belmont
15 with my two kids, who are four and seven, and our dog, who
16 is ten.

17 **Q.** And where are you from originally?

18 **A.** So I grew up in Morocco. And I came out here for
19 college, ultimately went to UCLA and graduated with a
20 degree in computer science and engineering.

21 **Q.** And did you continue your studies after graduating
22 from UCLA?

23 **A.** Not right away. I worked for five years in
24 technology consulting, and then ultimately went back to
25 school after those five years to get my business degree.

Elbouchikhi - Direct

1 Q. And you said that you are currently a director of
2 product management at Google?

3 A. That's correct.

4 Q. How long have you worked at Google?

5 A. I have been there for eleven and a half years.

6 Q. How long have you had your current position?

7 A. About four years.

8 Q. Can you explain to the jury what is product
9 management?

10 A. Yes, it is a thankless job. Effectively, we work
11 with engineers, designers, marketers, public relations to
12 define the right product, work to build that product until
13 well-defined, and ultimately make sure it's successful in
14 the market, and then continue to improve it over time as
15 needed.

16 Q. In your current position, is there a particular
17 product at Google you are responsible for?

18 A. Yes, I work on the Google Store today.

19 Q. What is the Google Store?

20 A. The Google Store is the e-commerce and retail
21 platform that Google uses to sell our hardware. So if you
22 think of Pixel phones; Nest cameras, thermostats; or
23 Fitbit products, we can distribute all of these. We also
24 have two actual physical stores in New York.

25 Q. When you started at Google, what was your first role?

Elbouchikhi - Direct

1 **A.** Yes. So I was a product manager on Android for
2 commerce. So this meant that, you know, my job was making
3 sure that developers could earn a living on Android.

4 **Q.** And how long did you have that role?

5 **A.** About four years in total. During that time, I took
6 on some additional responsibilities. I was working on
7 personal integration and search for Google Play, which
8 ultimately is, you know, if you are an iPhone user, it's
9 the App Store. The equivalent for Android is Google Play.
10 So I led our first integration and search products.

11 **Q.** After your role in Google Commerce, what was your
12 next role at Google?

13 **A.** I went to a small team. In 2015, I went to a small
14 team called Cardboard. I don't know if you've seen it.
15 We had these cute little headsets that you can put your
16 phone in on Google and get virtual reality. And so you
17 can look around. And it was a very fun, small team. And
18 I spent two years on that team.

19 **Q.** After working on that virtual reality team, what was
20 your next role at Google?

21 **A.** From there, I went back to Android to start working
22 on machine learning for Android. This was 2017. And as
23 part of that, I also started working on our camera
24 products for Android as well and did that for about four
25 years.

Elbouchikhi - Direct

1 **MS. ROBERTS:** Your Honor, may I approach with
2 some binders?

3 **THE COURT:** Yes.

4 **BY MS. ROBERTS:**

5 **Q.** All right. Mr. Elbouchikhi, you've mentioned
6 Android.

7 Can you explain to the jury what is Android?

8 **A.** Yeah. Android is initially an operating system.
9 It's the software that runs on your phone and makes sure
10 that your phone can do all the things it can do.

11 So it can, like, take photos by talking to the camera
12 on the device and manage that. It can make phone calls.
13 It can obviously install apps and let you use those apps.
14 So Android is at the core of your smartphone.

15 **Q.** Can you turn, please, to DTX-1068 in your binder?

16 **A.** Sure.

17 **Q.** What is that document?

18 **A.** This is a document from the Android developer website
19 that describes the architecture of Android. Think of it
20 as the blueprint. Much like a building, you have a
21 blueprint.

22 **Q.** What is the Android developer web page?

23 **A.** It's developers.android.com.

24 **Q.** And what is the purpose of the Android developer web
25 page?

Elbouchikhi - Direct

1 **A.** Yea. So we have hundreds of thousands of people who
2 build apps for Android. This is a website where we try to
3 put information that helps them do their job. So we
4 describe how Android works. We describe different
5 capabilities that the operating system has. And we also
6 give them effectively hints and tips for how to use the
7 product as best as they can.

8 **MS. ROBERTS:** Your Honor, we move admit to
9 DTX-1068.

10 **MR. LAHAD:** No objection, Your Honor.

11 **THE COURT:** It's admitted.

12 (Exhibit DTX-1068 is admitted into evidence.)

13 **BY MS. ROBERTS:**

14 **Q.** Can you please turn to Page 2 of DTX-1068.

15 **MS. ROBERTS:** And, Mr. Spence, can you put that
16 on the screen.

17 **BY MS. ROBERTS:**

18 **Q.** Can you please explain to the jury what this figure
19 is?

20 **A.** Yes. So this is commonly referred to as a
21 layered-cake description of the operating system. These
22 are the various layers that ultimately are part of the
23 operating system.

24 Again, it's the architecture, but think of it as just
25 a layer cake. And if you look at the very top layer, that

Elbouchikhi - Direct

1 is the app layer, so where there is the system app or any
2 average app that you install, you know, Bank of America,
3 Yelp app. That is the very top layer.

4 The next layer is a green layer, which is the Android
5 Framework. And developers mostly interface with that
6 particular layer. That's how they get all the services
7 they need. That's how they get all the capabilities they
8 need to build the apps.

9 And then it goes on from there to many more layers
10 below. They are much more technical and deep in detail,
11 all the way to the kernel, the red layer at the bottom,
12 which is composed of very low-level software that is
13 called drivers and firmware that run literally inside of
14 the hardware.

15 **Q.** Thank you. Could you turn now, please, to PX-0169 in
16 your binder?

17 **A.** Sure.

18 **Q.** What is that document?

19 **A.** So this is another document from the same website,
20 from, developers.android.com. And this one is effectively
21 doing the same thing but for the application. So it
22 describes what is the composition of an application, what
23 it's made of all the way from what we call a manifest,
24 which kind of shows what's -- what are the various
25 compositions of the app. And it gives us more details

Elbouchikhi - Direct

1 about what's inside of an app in Android.

2 **MS. ROBERTS:** Your Honor, we move to admit
3 PX-0169?

4 **MR. LAHAD:** No objection, Your Honor.

5 **THE COURT:** It's admitted.

6 (Exhibit PX-0169 is admitted into evidence.)

7 **BY MS. ROBERTS:**

8 **Q.** Mr. Elbouchikhi, what does it mean to say that
9 something is open sourced?

10 **A.** Yeah. So Android is an open-source operating system.
11 And what that means is that anybody really can go on the
12 web. You can go to a repository and read the source code
13 of Android. You can also download it, and, you know,
14 modify it in your computer system or in any way you want.
15 And then there are others who contribute to it.

16 So you can see it. You can play around with it. You
17 can modify it. You can even contribute to it. So those
18 are roughly the various parts of open source.

19 **Q.** Do you have an understanding of the Google products
20 and services that Arendi is accusing of infringement in
21 this lawsuit?

22 **A.** I do.

23 **Q.** Can you please explain what that understanding is?

24 **A.** Yes. So my understanding is the Pixel 2 and 3
25 devices, the Google phones. In addition to that, there's

Elbouchikhi - Direct

1 about 12 apps ranging from Gmail, Chrome, Docs, Sheets,
2 Keep, and a few others that are accused.

3 **Q.** Do you have an understanding of whether there are
4 specific features that are accused of infringement?

5 **A.** Yes, I do.

6 **Q.** And what is that understanding?

7 **A.** It's a feature we call Smart Text Selection.

8 **Q.** And are you familiar with Smart Text Selection?

9 **A.** Absolutely.

10 **Q.** Can you give the jury a high-level description of how
11 it works?

12 **A.** Yes. So Smart Text Selection solves a really kind of
13 pain point for users where, you know, if you are in --
14 looking at some text on your smartphone and you want to
15 select it, you will long press on a text, and then usually
16 you have to kind of play around with those things on the
17 edge until you get exactly what you are looking to select.

18 And what Smart Text Selection did is that we would
19 automatically expand to include the entirety of whatever
20 it is that we think you were meant to select.

21 So, for example, if it is an address, and you select
22 the street number, it would automatically expand to select
23 the entire address so you don't have to play around with
24 it in any way.

25 And on top of that, we also add some default actions

Elbouchikhi - Direct

1 to that selection. The more common ones are to copy, cut,
2 and share obviously. And we also have what's called smart
3 actions. And smart actions were, basically, things that
4 were relevant to the specific text you selected.

5 So let's say it's an address. We are going to have a
6 shortcut like a little button to take you to Maps directly
7 so you can start navigating to that address. If it is a
8 phone number, we are going to have a dialer button so you
9 can start a phone call with that particular phone number
10 right away. So those are the various aspects.

11 **Q.** In your experience, which actions are most commonly
12 taken by users that are using Smart Text Selection?

13 **A.** You know, most text is just text. So the most common
14 one is effectively copy, cut, and share. But the smart
15 actions are also helpful at times.

16 **Q.** How was Smart Text Selection developed?

17 **A.** Like most things at Google, it was a collaboration
18 with a few divisions in the company. The first was a
19 research team, a Google Research team in Zurich that
20 developed the machine learning model that would
21 automatically figure out how to expand and select the
22 entire selection.

23 Then, there was a team in London that we call the
24 Android Framework team. And they turned that into a
25 product. And what they do is they look at it, and they

Elbouchikhi - Direct

1 say, Okay, you know, how slow is this technology? Is it
2 fast enough for it to work for user to long press and have
3 it work. Does it consume too many resources? What is the
4 API? What is the way that the developer would access this
5 feature in practice? And so they spent a lot of time
6 thinking about that and turning it into a product,
7 ultimately.

8 **Q.** Were you involved in the development of STS?

9 **A.** Yes. So during my kind of like timeline at Google,
10 we talked about how I joined in 2017. I joined Android to
11 lead Android Machine Learning from a product perspective.
12 So that's when STS had been in development.

13 But one of my first tasks was to figure out whether
14 we should launch it or not, whether it was ready to launch
15 or not. And then from then on until it became actually
16 available to users in December of 2017, I had been really
17 heavily involved with the feature.

18 **Q.** Now, you discussed earlier the distinction between
19 the Android Framework and hardware and apps.

20 Where is the source code for STS located?

21 **A.** The source code is in the Android Framework.

22 **Q.** Is there any STS source code in the apps?

23 **A.** No, there is not.

24 **Q.** Why did Google place the code for STS in the Android
25 Framework and not in individual apps?

Elbouchikhi - Direct

1 **A.** Yeah, so this is a really important point. There are
2 two reasons roughly why we do it this way. One is the
3 user experience. Now, imagine if whenever you wanted to
4 select text, in one app it would work one way, and in a
5 different app, it would work a different way.

6 You know, so some app would make you long press.
7 Another one would say, swipe left, swipe right. The
8 inconsistency will literally drive users kind of bananas.
9 So we don't do that.

10 The other reasons is maintainability of the software.
11 Imagine this was built into apps. And now we've got
12 100,000, 200,000 apps that each have this software. Well,
13 let's say you find an issue. It is broken in some way.
14 And you want to fix that issue. How would you do it? You
15 would have to literally get 100,000 apps to go on and each
16 fix the issue and then push that issue to their users.
17 And so it just -- this is not how it works in practice.
18 This is not how software works.

19 And so because of that, whenever we have something
20 that we wanted to be common behavior across all apps where
21 user experience is really important, we build it this way
22 into the Framework. So every user has the same
23 experience. Every app has an easy way to access that
24 feature.

25 **Q.** What are Intents handling instructions?

Elbouchikhi - Direct

1 **A.** So Intent handling instructions are, you know, we
2 talked about the smart actions, which is a Maps action or
3 phone number. You press that button, and it kind of
4 calls. It calls a dialer, and it starts calling a phone
5 number.

6 The way that works in practice is that button has we
7 call it a URL, just like a website URL, but it's specific
8 to Android. And that URL, it goes to the Framework. It
9 goes to the Android Framework.

10 And the Framework says, "Okay, so you're trying to
11 initiate a phone call. Okay. Let me look for an app that
12 can do that."

13 So every app can raise its hand and say, "I can
14 handle phone calls. I can handle phone calls." And
15 because Android is an open-ended system, you can actually
16 do that. So you can have multiple dialers, for example.
17 And every app will say, I can handle phone calls. And
18 then the Framework will then route that URL to the right
19 app.

20 So it starts from the initiating app, whichever it
21 is. It goes through the Framework where the Framework
22 then looks for somebody who can handle this particular
23 action. And then from then on, that request is forwarded
24 to that app.

25 **Q.** And where are the Intents handling instructions

Elbouchikhi - Direct

1 located?

2 **A.** They are in the Framework. They are in the Android
3 Framework.

4 **Q.** Why did Google put the Intents handling instructions
5 in the Android framework?

6 **A.** Similar to the action earlier, if there wasn't a
7 pattern for how to make these requests through the
8 Framework, then every app who wants to initiate a phone
9 call will now have to have a slightly different way to do
10 it.

11 And so the best way to do this is to have a -- you
12 have a pattern. You have a specific way of doing things.
13 And then every app just has to just do the same thing over
14 and over and over, which means there has to be a common
15 place where this information resides. And in Android,
16 that's in the Android Framework.

17 **Q.** Do you users need to install STS or the Intents
18 handling code to be able to use STS?

19 **A.** No. That's one of the beauties of this is that you
20 don't have to install it. It's just there.

21 **Q.** When did Google launch STS?

22 **A.** So here we have to talk about a couple of time lines.
23 Like I said, when I joined in July of 2017, one of my
24 first tasks was to figure out whether we can launch this
25 feature or not.

Elbouchikhi - Direct

1 So we decided it was not ready. It was not ready to
2 launch from a quality perspective. However, the software
3 was in Android O, which is the one that launched in August
4 of 2017. So the software was in, but it was not
5 accessible to any user. So if you had an Android phone
6 that was running Android O at the time, and you long
7 pressed, you are not going to get the experience that I
8 described to you. You are not going to get that. You are
9 going to get the Legacy older experience.

10 In December of 2017 is the first time when we
11 actually activated this feature for users who had O MR1.
12 And sorry. It is a little bit of lingo. But MR1 is
13 called a maintenance release. So it means there's a few
14 bug fixes in that release.

15 **Q.** How could it be that the source code was in
16 Android O, but users couldn't use it yet?

17 **A.** Yeah, it is confusing but, basically, what happened,
18 think of it as you had a cable box. You had a cable box
19 at home. The box is there. You can plug into the wall.
20 You can connect the cable to it. But it's not going to
21 actually show you any programming unless the cable company
22 turns it on and turns on service.

23 So effectively think of it as in December of 2017 is
24 when Google turned on that service and made it available
25 to end users. So you had the box with you in August, you

Elbouchikhi - Direct

1 know, September, October, November, but the box was not
2 transmitting anything. It was just white noise.

3 **Q.** Now, once Google enabled STS, could all users of
4 Android O with MR1 use it right away?

5 **A.** Well, I wish they could, but they couldn't. And I
6 think to talk about this, we should kind of step back and
7 understand how Android works in a way.

8 And so when Android -- when Google makes a release
9 available, let's say in this case 8 Android O with a
10 maintenance release. A phone manufacturer, for example,
11 Samsung or Motorola, will have to take that release. They
12 then have to modify it in the way that they want it to be.

13 Because if you pick up a Samsung phone and a Motorola
14 phone, they look very different because each phone
15 manufacturer, you know, adds their own little secret sauce
16 and, like, things on it. And so they have to modify that
17 release again to make it theirs, quote-unquote.

18 Then you have to test it really, really well.
19 Because imagine, they are going to push it to millions of
20 phones. And if there's an issue, it is an absolute
21 disaster for them.

22 Then, they have to take it to carrier certification
23 because the carrier also has a requirement. So, like, it
24 can't drain the battery. You got to be able to make phone
25 calls. Quality of the network has to be good. So then

Elbouchikhi - Direct

1 the carriers do their own testing.

2 Only after those three steps can they start rolling
3 it out to users to actually use. In my experience, I've
4 worked on, I think, nine or ten releases of Android, and
5 this process takes three to six months.

6 **Q.** And what about users with Google devices, do they
7 need to go through that process?

8 **A.** So just, you know, the Google Store does various
9 things, and we market it and say that, "Hey, if you have
10 the Google Pixel phone, you will get these updates
11 faster." So for Google users, Google phone users, they
12 would get it much faster.

13 **Q.** So practically, given the process that you just
14 described, when would users of non-Google Android phones
15 have been able to use STS?

16 **MR. LAHAD:** Objection. Calls for speculation.

17 I'm sorry, Your Honor.

18 Calls for speculation. Lacks foundation.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** Could you repeat the question.

21 **BY MS. ROBERTS:**

22 **Q.** Yes. So given the process you just described for
23 these non-Google devices, practically when would users of
24 non-Google Android phones have been able to use STS?

25 **A.** So my experience would have been somewhere three to

Elbouchikhi - Direct

1 six months after December. So we're thinking, you know,
2 sometime around April, May, maybe as late as June is when
3 we rolled it out.

4 Now, and I think this brings in to one other
5 important point, and it's this is a lot of work. It is
6 very resource intensive for a phone manufacturer to do all
7 this testing and the rollout. And so a lot of them just
8 don't. And maintenance release is effectively just a few
9 bug fixes usually, a few issue fixes. And so lot of them
10 just skip and just launch the main releases, and that was
11 the case for this release as well.

12 **Q.** And just to clarify jury, when we have been saying
13 Android O, is that interchangeable with Android version 8?

14 **A.** Yes. I'm sorry. But it is interchangeable; 8 is
15 technically Android O. It's the same. They have moved to
16 numbers now. So we are good.

17 **Q.** What was the first Android release with wide adoption
18 that included STS?

19 **A.** So that would have been Android 9 or P. So it would
20 have been Android 9 is the first one that launched in
21 August of 2018. So that's the first one that came out
22 right out the door with STS built into it.

23 And just to make another point, we talked about the
24 rollout of the maintenance release going all the way to
25 May, let's just say April even. That's only four months

Elbouchikhi - Direct

1 before we have to start releasing the next Android
2 release. So this is, again, why most phone manufacturers
3 who just finished a marathon, they have to start a new
4 one. So they -- most of them decide to skip these
5 maintenance releases. And that was definitely the case
6 for O-MR1.

7 **Q.** How do you know that was definitely the case for
8 O-MR1?

9 **A.** It was my job. I mean, I was monitoring the release
10 of this feature and looking for adoption as a good product
11 manager would. And it was very, very challenging at the
12 time to convince phone manufacturers to take up this
13 release.

14 **Q.** When STS was launched, did Google market that feature
15 at all?

16 **A.** Yes, we did.

17 **Q.** How did Google do that?

18 **A.** We included it in the developer conference that we
19 have every year.

20 **Q.** What is the name of that conference?

21 **A.** Google I/O.

22 **Q.** Was STS the only feature announced at that conference
23 that year?

24 **A.** No. You know, we launched hundreds of things at the
25 time. Even only Android launches hundreds of features in

Elbouchikhi - Direct

1 any one I/O release.

2 **Q.** Was STS a particularly important feature to Google?

3 **A.** You know, as a product manager, everything we do is
4 helpful, and we want it to be successful. But at the end
5 of the day, like I said, it's one of hundreds of features
6 that we launched that year.

7 **Q.** In your role as a product manager, do you personally
8 have responsibility for patent issues?

9 **A.** No, I don't.

10 **Q.** Do you review patents as part of your job at Google?

11 **A.** No, I don't.

12 **Q.** Why don't you review patents as part of your job at
13 Google?

14 **A.** As a product manager, like I wake up every day, and I
15 go and try to build something. That's my job. That's
16 what I know how to do. We have a legal team that knows
17 how to deal with legal issues.

18 **Q.** Why didn't Google change how STS worked given that
19 Arendi had sued Google in 2013 for allegedly infringing
20 the '843 patent?

21 **A.** Yeah. So going back to that timeline, you know, in
22 2017 when I was working on this feature, I had no idea
23 about Arendi. I was not aware of any of this. I've only
24 come to know of this when I was deposed for this trial in
25 2019. And that's when I learned that Google had been

Elbouchikhi - Cross

1 defending themselves in court.

2 **MS. ROBERTS:** I'll pass the witness.

3 **THE COURT:** Thank you, Counsel.

4 **MR. LAHAD:** May I, Your Honor?

5 **THE COURT:** Please proceed.

6 CROSS EXAMINATION

7 **BY MR. LAHAD:**

8 **Q.** Thank you. Good afternoon, sir. My name is John
9 Lahad. I recall we met at your deposition.

10 **A.** Yes. Good to see you again.

11 **Q.** Likewise. I have got a few questions for you.

12 You've said you have been at Google for about 11 and
13 a half years, correct?

14 **A.** Yes, sir.

15 **Q.** So you have been at Google for the entirety of this
16 lawsuit, correct?

17 **A.** Yes.

18 **Q.** Yes. And you said you had familiarity with STS, but
19 to be clear, you did not write the source code for STS,
20 correct?

21 **A.** As a product manager, I work with engineers very
22 closely but --

23 **MR. LAHAD:** Your Honor, objection.

24 Nonresponsive.

25 **THE COURT:** Overruled.

Elbouchikhi - Cross

1 **BY MR. LAHAD:**

2 **Q.** You did not write the source code for STS, correct?

3 **A.** No. As a product manager, I don't write source code,
4 but I do work closely with engineers.

5 **Q.** And writing source code has never been part of your
6 responsibility with respect to STS, correct?

7 **A.** Not with respect to STS.

8 **Q.** So with respect to STS, which is what we're here for
9 at this trial, you are not the source code guy, correct?

10 **A.** I will not call myself the source code guy, no.

11 **Q.** You would say you are more of the commerce guy,
12 right?

13 **A.** If you could define that better, maybe I can comment
14 on it.

15 **Q.** Well, you have an MBA; is that right?

16 **A.** That's right.

17 **Q.** Okay. And day to day, your responsibilities at
18 Google are more directed towards e-commerce and the
19 commerce side of things than they are working with, for
20 example, the products and the apps at the source code
21 level; is that fair?

22 **A.** No, it's not, actually. I mean, in 2017, I was
23 deeply involved in the technical development of this
24 feature. I have taken different roles. My current role
25 is much more commerce-centric, but I've done very

Elbouchikhi - Cross

1 technical work and at the time in 2017.

2 **Q.** And a lot of Google's attempt at making money
3 involves the user experience, correct?

4 **A.** Could you clarify that question, please.

5 **Q.** Well, you are familiar with the user experience,
6 right?

7 **A.** Of any particular feature or...

8 **Q.** Well, you would say, and you have said, haven't you,
9 Focus on the user experience, and the money will follow?

10 **A.** I said that?

11 **Q.** Yeah. You would say that right?

12 **A.** Did I say it? Is there a record of me saying that?

13 **Q.** Well, you don't remember saying that?

14 **A.** I don't remember.

15 **Q.** You don't remember saying that, you know, on a stage
16 in front of a bunch of people, gray jacket, blue T-shirt,
17 jeans?

18 **A.** Blue T-shirt...

19 **Q.** Let me show you a video, if I can, Mr. Elbouchikhi.

20 **MR. LAHAD:** Mr. Boles, can we play that video.

21 **THE WITNESS:** Let's do it.

22 (Video plays as follows:)

23 **THE WITNESS:** And that is about getting the
24 user to enjoy the application, to really get immersed into
25 it before getting to monetization. We've heard this a lot

Elbouchikhi - Cross

1 in all sorts of settings where, you know, focus on the
2 user experience and the money will follow. And that's
3 exactly what an app represents.)

4 **BY MR. LAHAD:**

5 **Q.** That's you, right?

6 **A.** That was 2012, I think.

7 **Q.** Yeah, maybe a younger version of you, but that's you,
8 right?

9 **A.** Definitely a younger version, yes.

10 **Q.** I hear that. And Google's parent, Alphabet, is a
11 publicly traded company, correct?

12 **A.** Absolutely.

13 **Q.** And, listen, I'm not saying there's anything wrong
14 with trying to turn a profit, but Google is a for-profit
15 entity, correct?

16 **A.** Yeah, Google is a for-profit entity.

17 **Q.** Yeah, it's not like Google is giving away these apps
18 as some kind of public service like, you know, the library
19 or, you know, fire station or something like that?

20 **A.** I mean, again, as a product manager my job is to
21 focus on building the experience. I don't spend a lot of
22 time thinking about that.

23 **Q.** Well, you build the user experience, and according to
24 you, focus on the user experience and the money will
25 follow, correct?

Elbouchikhi - Cross

1 **A.** I mean, I think the context of that talk was I was
2 talking to developers who were building apps for users.
3 And the idea was, hey, build high quality apps, focus on
4 the user, and don't try to, you know, sometimes some apps
5 will try to put a pay wall, like, right away onto an app
6 when you start it. And it just doesn't work very well.

7 So the idea is, try to build a great experience, and
8 then if you do something great, you should be paid for it.

9 **Q.** And google does generate revenue from advertising
10 based on downloads of these apps, correct?

11 **A.** Yeah. I'm not the advertising guy. So I think I
12 would love to focus on -- I'm happy to describe how STS
13 works and how we think about it, but I'm not the
14 advertising guy.

15 **Q.** But you've worked at Google for 11 and a half years,
16 right?

17 **A.** Yes, but never in ads.

18 **Q.** But you understand that Google makes money from
19 advertising, correct?

20 **A.** Of course.

21 **Q.** Yeah. Okay. So I'm not surprising you with anything
22 right now, am I?

23 **A.** No.

24 **Q.** Okay, good. And so one of the things that Google,
25 because it's for-profit entity, because it is interested,

Elbouchikhi - Cross

1 at least in part, on making money, one of the things that
2 Google looks at when making decisions about what features
3 to include in phones, in operating systems, in whatever,
4 is the value proposition, the business case for it,
5 correct?

6 **A.** So in this case for STS, the success metric that I've
7 defined is literally how often does the user have to
8 override the automatic expansion. That was the literal
9 success metric that I defined for a team when I started
10 working with them in July of 2017. When we said, look --

11 **MR. LAHAD:** Your Honor.

12 **THE WITNESS:** -- if the user has to go in and
13 automatically expand or adjust, that means the feature did
14 not work as intended. So that was the metric in that
15 case.

16 **MR. LAHAD:** I would object as nonresponsive,
17 Your Honor.

18 **THE COURT:** Overruled.

19 **BY MR. LAHAD:**

20 **Q.** Well, Google has kept the functionality of STS in the
21 applications that use it -- in the applications and
22 devices that use it since its launch, correct?

23 **A.** Could you repeat that question?

24 **Q.** Sure.

25 Google has kept the functionality, the STS

Elbouchikhi - Cross

1 functionality, in the applications and devices that use it
2 since its launch, right?

3 **A.** STS is not in the applications; it is in the
4 framework.

5 **Q.** Well, STS has been a feature of a Google product or
6 program since 2017. It's not like Google has turned it
7 off or taken it out, right?

8 **A.** I think that's a different question. I think your
9 first question implied that STS is in the app, but it's
10 not. It's in the framework.

11 So then the second question is maybe different, if
12 you don't mind repeating it.

13 **Q.** Well, listen, STS has been around since 2017,
14 correct?

15 **A.** "Around." I want you to define that. STS has been
16 in the Android framework as part of Android 8 and onward.

17 **Q.** Yeah. I know you want to say that STS is in the
18 framework because that's good for your case, but my
19 question to you is, STS has been around --

20 **MS. ROBERTS:** Objection. Argumentative.

21 **THE COURT:** Overruled.

22 **BY MR. LAHAD:**

23 **Q.** STS has been around -- you know what "around"
24 means -- it's been around since 2017, correct?

25 **A.** The word "around," I mean, it's been around where? I

Elbouchikhi - Cross

1 mean, it's in the framework, sure, but it's too vague.

2 **Q.** The STS functionality has been a part of the Google
3 code at some level since 2017, correct?

4 **A.** I think the point to be specific here, right. STS
5 has been part of the Android framework as of Android 8 and
6 onward. That is a correct statement.

7 **Q.** Okay.

8 **A.** What I just said.

9 **Q.** So it's not like Google ever fired STS or got rid of
10 STS or said, hey, you know what, it's not part of the
11 framework anymore, right? It's been there since 2017?

12 **A.** I actually stopped working on it at some point, so I
13 don't know if it's still there today. But I know that as
14 of 2017 all the way to its launch, that it was actually
15 available in the framework.

16 **Q.** So when did you stop working on STS?

17 **A.** I left the team to go to the Google store in 2021.

18 **Q.** So you can answer your counsel's questions about STS,
19 but you can't answer my questions about STS because you
20 don't work on it anymore?

21 **A.** No. I really want to. I'm trying to be helpful.

22 Just ask me a question; I'm happy to answer.

23 **Q.** Well, I asked you a question that STS has been there
24 since 2017, and you said, well, I don't know, I don't work
25 on it anymore.

Elbouchikhi - Cross

1 **A.** Well --

2 **Q.** That happened a minute ago, right?

3 **A.** Like they may have removed it from Android since I
4 left. It's hard for me to say, "until now," but I can
5 tell you, yes, it was. It was there when I was around,
6 for sure.

7 **Q.** You were asked to come into this courtroom and
8 testify about STS, right?

9 **A.** Yeah.

10 **Q.** And you didn't ask them, like, hey, is this thing
11 still around?

12 **A.** I didn't have any reason to do that.

13 **Q.** Other than you were coming to this courtroom to
14 testify about STS, right?

15 **A.** And the time frame of the fact that when we launched
16 in 2017, and, yes. I don't think it's relevant whether
17 it's still there or not. I mean, this is -- I'm not aware
18 of that.

19 **Q.** But what is relevant is the extent of your knowledge
20 about STS, correct?

21 **A.** Yeah, which is very extensive --

22 **Q.** Up until you stopped working on it.

23 **A.** -- until I stopped --

24 **Q.** Up until you stopped working on it two years ago?

25 **A.** Yeah.

Elbouchikhi - Cross

1 **Q.** You walked through a little bit this representation
2 with your counsel.

3 Do you recall that?

4 **A.** Yes.

5 **Q.** And this is the -- labeled as the Android software
6 stack, right?

7 **A.** That's right.

8 **Q.** I'm going to show you another diagram we've seen in
9 this trial.

10 Seen that before, sir?

11 **A.** I can't attest hundred percent; I don't know.

12 **Q.** Well, this is a diagram that I pulled off the Google
13 website called "Architecture Overview."

14 **MS. ROBERTS:** Can we get exhibit number.

15 **THE COURT:** Could you, for the record, let us
16 know what exhibit number that is?

17 **MR. LAHAD:** It's not labeled. I pulled it off
18 Google's website. It's not on a list.

19 **THE COURT:** I will see counsel at sidebar
20 please.

21 (Whereupon, the following occurred at sidebar:

22 **THE COURT:** We have an objection on the record.

23 **MS. ROBERTS:** So Your Honor gave instructions
24 documents should not be published to the jury, they must
25 be admitted into evidence through a witness. This one has

Elbouchikhi - Cross

1 not been admitted into evidence and not in the trial
2 exhibit list either.

3 **MR. LAHAD:** This is cross. I understood that
4 the requirement was for exhibits during direct. That's
5 what the pretrial order speaks in terms of. If I need to
6 admit it, I'm happy to, Your Honor.

7 **THE COURT:** You wouldn't be admitting anything
8 that's not on the exhibit list. You free to cross-examine
9 him with it. You shouldn't be publishing it to the jury
10 without getting it admitted or at least laying a
11 foundation for it, which you haven't done yet.

12 **MR. LAHAD:** Understood.

13 **THE COURT:** Okay. Do you have an objection to
14 him publishing it for purposes of cross-examination if he
15 lays a foundation?

16 **MR. UNIKEL:** It won't be an exhibit. Your
17 Honor, how can it be published?

18 **THE COURT:** Well, we admit demonstratives
19 publish demonstratives without admitting them.

20 Does the pretrial order speak to this?

21 **MR. LAHAD:** We publish cross-examination
22 materials all the time as well.

23 **MR. UNIKEL:** The demonstrative is clearly a
24 demonstrative. It is not meant as purporting to evidence
25 that's used as a demonstrative this is an actual document

Elbouchikhi - Cross

1 that purporting to use as an exhibit even though it's.

2 **THE COURT:** I'm once he lays a foundation, I
3 will let him publish to the jury. It won't be admitted
4 into evidence.

5 (Whereupon, the discussion at sidebar concludes.)

6 - - -

7 **MR. LAHAD:** May I approach, Your Honor?

8 **THE COURT:** Sure. Yes.

9 **MR. LAHAD:** Judge, just for recordkeeping

10 purposes, I have mark this is PX-795.

11 **BY MR. LAHAD:**

12 **Q.** Mr. Elbouchikhi, there's a little URL at the bottom
13 of this document.

14 You see that, sir?

15 **A.** Yes, I do.

16 **Q.** And that URL is similar to the URL at the bottom of
17 DTX-1068, correct?

18 **A.** Yes, they are both on the Android domain.

19 **Q.** They're both on the Android domain, and the one from
20 DTX-1068 is developer.Android.com/guide/platform, correct?

21 **A.** That's correct.

22 **Q.** The one on Plaintiff's 795, is
23 source.Android.com|docs|pour|architecture, correct?

24 **A.** That's correct.

25 **Q.** And this document is from the domain or website,

Elbouchikhi - Cross

1 correct?

2 **A.** Yes.

3 **Q.** And this document describes the Android Open System
4 Platform architecture, correct?

5 **A.** It's the first time I am seeing it, but based on the
6 title, it seems like that's what it does. But I've never
7 read this document.

8 **Q.** All right. But you agree that it's from the Google
9 domain, from the Android domain, and describes the AOSP
10 architecture overview, correct?

11 **A.** Yeah, that's what --

12 **MS. ROBERTS:** He said he's not familiar with
13 the document.

14 **MR. LAHAD:** Well, the witness --

15 **THE COURT:** The objection is sustained.

16 Please ask another question.

17 **BY MR. LAHAD:**

18 **Q.** Well, you would agree it is from the Android domain,
19 correct?

20 **A.** It appears to be, yes.

21 **Q.** Yes. And this Android domain provides information on
22 Android, correct?

23 **A.** Typically, yes.

24 **Q.** And the intended audience, among others, are
25 developers of Android, correct?

Elbouchikhi - Cross

1 **A.** That's correct.

2 **Q.** And if you would like, take a minute to review this
3 document. Let me know if there's anything inaccurate that
4 jumps out at you?

5 **MS. ROBERTS:** Objection. Lacks foundation.

6 **THE COURT:** That objection is also sustained.
7 Please ask another question.

8 **MR. LAHAD:** Your Honor, I think I laid the
9 appropriate foundation for at least publishing this
10 document to the jury.

11 **THE COURT:** You can publish it to the jury.

12 **MR. LAHAD:** Thank you.

13 **BY MR. LAHAD:**

14 **Q.** So this is the stack -- well, this is a figure in
15 this document, and this is another way of representing the
16 Android software stack architecture, correct?

17 **A.** Like I said, it's the first time I am seeing this
18 document. So I'd consider --

19 **Q.** I'll make it easy for you. I'll make it easy.

20 Figure 1 is labeled "AOSP Software Stack
21 Architecture," correct?

22 **A.** I can read it, yes.

23 **Q.** And in this representation of the Android software
24 stack architecture, it's shown as layers with Linux kernel
25 and the Native Daemons and libraries, and the Hardware

Elbouchikhi - Cross

1 Abstraction Layer, much the same way the figure at
2 DTX-1068 shows, correct?

3 **A.** For those layers, yes.

4 **Q.** It has Android apps here, too, doesn't it?

5 **A.** It does it appears to, yes.

6 **Q.** Yeah, those are apps like Gmail, Docs, Keep, right?

7 **A.** Bank of America, like any app, yes.

8 **Q.** Yeah, but we're not here on the Bank of America app;
9 we're here on Gmail, right?

10 **A.** Yes.

11 **Q.** Apps like Gmail, Docs, Keeps, Sheets, those types of
12 things, right?

13 **A.** Yeah. It appears to show that.

14 **Q.** Yeah. And what we see in this slide or this
15 representation created by Google, it shows the apps on top
16 of this Android API, right? See that here? I'm going to
17 switch colors if I can. See that?

18 **A.** So I think it's important we should look at the CAD
19 file or the three dimensional file for this document.

20 **MR. LAHAD:** Your Honor --

21 **THE WITNESS:** I believe it will show the true,
22 like, layering, but it is -- it's showing it on top of it.
23 But I don't think it's what you think it is.

24 **BY MR. LAHAD:**

25 **Q.** Well, Google didn't draw it like that. Google didn't

Elbouchikhi - Cross

1 draw the apps, the Android API separate from the other
2 layers, did it?

3 **A.** No, it did, actually. I think you're marking kind of
4 covers up the three dimensional aspects of that layer. If
5 the jury can look closer, it actually is a step above the
6 other ones. So I think it's --

7 **Q.** Let's look at the --

8 **A.** Yeah. So you see there's a three dimensional edge
9 around that layer.

10 **Q.** Around this layer right here?

11 **A.** That's right. That is a three dimensional --
12 yes.The.

13 **Q.** The layer called "Android API"?

14 **A.** That's right.

15 **Q.** Right? But those Android apps are within this layer,
16 right? There's no three dimensional layer around the
17 Android apps and the other apps, right?

18 **A.** Without looking at source file and the CAD file
19 behind this document, it really is hard to argue that that
20 is the case, but...

21 **Q.** Well, you would agree with me, for purposes of this
22 diagram, that Google did not draw the APIs here in this
23 same manner as it drew the kernel and Daemons and hardware
24 abstraction layer here, correct?

25 **A.** No. I don't think I agree with you.

Elbouchikhi - Cross

1 **Q.** You're saying that this part of the drawing looks
2 like this part of the drawing?

3 **A.** In its three dimensionality, yes. It really is three
4 dimensional. It's the first time I'm seeing it, but it is
5 three dimensional.

6 **Q.** In the text of this document, there's a description
7 of the Android framework.

8 Do you see that?

9 **A.** Which page is that, if you don't mind?

10 **Q.** It's on 3 out of 4.

11 **A.** Okay. The Android framework. That's right.

12 **Q.** Right? And it says that "The Android framework is a
13 group of Java classes, interfaces, and other precompiled
14 code upon which apps are built."

15 Google's words, correct?

16 **A.** That's right.

17 **Q.** It also says, "Portions of framework are publicly
18 accessible through the use of the Android API."

19 Google's words, correct?

20 **A.** It appears to be, yeah.

21 **Q.** "Other portions of the framework are available only
22 to OEMs through the use of the system APIs."

23 Google's words, correct?

24 **A.** That is correct.

25 **Q.** The last sentence is, "Android framework code runs

Elbouchikhi - Cross

1 inside an app's process."

2 Do you see that?

3 **A.** I do see that sentence, that's right.

4 **Q.** All right. Google's words, correct?

5 **A.** It appears to be, yes.

6 **Q.** You recall seeing this slide -- actually, have you
7 seen this slide before?

8 **A.** No.

9 **Q.** This slide says, "Place instructions entirely inside
10 the program," correct?

11 **A.** I have no idea what this -- I can't just say words
12 after you tell me to say them.

13 **Q.** I'm just saying this slide says what it says, right?

14 **A.** We can all read it, yes.

15 **Q.** Yeah. And it says, "Place instructions entirely
16 inside a program," right?

17 **A.** Yes.

18 **Q.** Yeah. This slide uses the word "inside." And Google
19 used the word "inside" as well, correct?

20 **A.** So I think there is an important thing to consider
21 here. This is referring to the apps process. And this is
22 going to get technical, and so I think a future witness
23 will testify --

24 **MR. LAHAD:** Your Honor, if he doesn't have the
25 foundation to talk about this --

Elbouchikhi - Cross

1 **THE WITNESS:** The process --

2 **THE COURT:** Stop.

3 Counsel, let him answer.

4 **THE WITNESS:** The process of an app is
5 effectively how it runs on the system. It is different
6 from its source code. The fact that it runs inside
7 another app's process, it just means that when it's
8 literally running in your smartphone, they cannot join
9 together. But it doesn't mean the source code is inside
10 of the app's source code. It doesn't mean that at all.

11 It's purely a temporary state when the app is
12 running, it's in a temporary state. The processes are
13 running together. There's a lot of reasons why we do this
14 on Android. We don't have to get into that. But it is a
15 temporary state. It does not mean that the source code is
16 in the same place in any way.

17 **BY MR. LAHAD:**

18 **Q.** You used the turn of phrase, they are joined
19 together; is that right?

20 **A.** Temporarily.

21 **MR. LAHAD:** Your Honor, I would like to admit
22 PX-795 into evidence. I think it's also -- the joint
23 pretrial order permits such introduction. It would be
24 at -- or subject to Paragraph 53.

25 **MS. ROBERTS:** Your Honor, Google objects. This

Elbouchikhi - Cross

1 document is not on the exhibit list.

2 **THE COURT:** The objection is sustained. This
3 document won't be admitted.

4 **MR. LAHAD:** No further questions, Your Honor.

5 **MS. ROBERTS:** No questions, Your Honor.

6 **THE COURT:** You may step down, sir.

7 **THE WITNESS:** Thank you.

8 **MS. ROBERTS:** Your Honor, may the witness be
9 excused?

10 **THE COURT:** Yes.

11 Is Arendi ready to call its next witness?

12 **MS. SRINIVASAN:** Your Honor, we're not calling
13 further witnesses at this time until our rebuttal case.
14 We're not resting subject to being able to examine
15 Google's corporate representative, who I understand will
16 be the witness after this one. And at that point, we will
17 rest, but we are not calling any other witnesses until our
18 rebuttal case.

19 **THE COURT:** Thank you, counsel.

20 Google, call your next witness.

21 **MR. KAMBER:** Thank you, Your Honor. Google
22 calls Mr. Abodunrinwa Toki.

23 **THE CLERK:** Please state and spell your name
24 for the record.

25 **THE WITNESS:** My name is Abodunrinwa Toki,

Toki - Direct

1 A-B-O-D-U-N-R-I-N-W-A, T-O-K-I.

2 ABODUNRINWA TOKI, having been called as a witness,
3 being first duly sworn under oath or affirmed, testified
4 as follows:

5

6 DIRECT EXAMINATION

7 **BY MR. KAMBER:**

8 **Q.** Good afternoon, Mr. Toki.

9 **A.** Good afternoon.

10 **Q.** Could you please introduce yourself to the jury.

11 **A.** Hi, my name is Abodunrinwa Toki.

12 **Q.** And where do you work, Mr. Toki?

13 **A.** I work at Google in the UK.

14 **Q.** How long have you been worked at Google?

15 **A.** About 11 years now.

16 **Q.** What did you do before joining Google?

17 **A.** Before Google, I worked at Yahoo.

18 **Q.** Yahoo, the search engine company?

19 **A.** Yes.

20 **Q.** And what did you do before joining Yahoo?

21 **A.** I was at university in London, University College
22 London.

23 **Q.** What did you study at University College London?

24 **A.** Software systems engineering.

25 **Q.** Can you describe, please, for the jury the roles that

Toki - Direct

1 you have had at Google since you started there?

2 **A.** Yes. My initial project at Google was a project
3 called Google Offers, and after that, I worked on the
4 Android team on Google Docs. It's the document app that
5 Google had on the Android phone. And then after that, I
6 started working on the Android framework, which is,
7 basically, the code for the operating system. And worked
8 on user interface features, particularly TextView text
9 rendering.

10 **Q.** Text rendering, did you say, Mr. Toki?

11 **A.** Yes, text in general. Basically interactions with
12 text on your phone.

13 **Q.** What is your role at Google today?

14 **A.** I'm a software engineer. I also manage a team of
15 engineers.

16 **Q.** How big is the team that you manage, Mr. Toki?

17 **A.** I have six reports.

18 **Q.** What kinds of things is your team working on?

19 **A.** We basically work on artificial intelligence
20 features, on, particularly, mobile phones.

21 **Q.** So, Mr. Toki, in your time at Google, did you ever
22 work on any shortcut tools for the user interface?

23 **A.** Yes, I did.

24 **Q.** What types of tools did you work on, or which tools
25 did you work on, I should ask?

Toki - Direct

1 **A.** I worked on Linkify, smart Linkify, and a feature
2 called Smart Text Selection.

3 **Q.** What is Linkify?

4 **A.** So Linkify is a feature on your phone that,
5 basically, when you -- if there's a type of thing, there
6 will be a line, like a link that you could click. And
7 when you click in it, then, depending on what it was, then
8 it would do, it would open something else to do.

9 So if it was a URL, for example, and you clicked on
10 it, then it would open a browser to that website. And if
11 it was a phone number and you clicked on it, then you
12 would go to the dialer on your app to dial that phone
13 number.

14 **Q.** When was Linkify implemented in Android?

15 **A.** I believe Linkify was implemented before I joined
16 Google. If I look at the source code, I think the initial
17 version was implemented maybe about the first version of
18 Android. It's been quite a while, yeah.

19 **Q.** You then mentioned something called Smart Text
20 Selection, right?

21 **A.** Yes.

22 **Q.** What is that, described generally?

23 **A.** So Smart Text Selection was a feature that we built.
24 Basically, it helped users select text on your phone. So
25 when a user wanted to select something from the long press

Toki - Direct

1 on the phone, what we realized -- what we guessed was that
2 sometimes people were trying to select things on the
3 phone. So, for example, if you had an address on your
4 phone that said something like 100 Fifth street, for
5 example, and you long pressed on maybe Fifth, for example,
6 then you realize you're trying to select the entire
7 address, so we will make a full selection of the entire
8 address 100 Fifth Street.

9 **Q.** In addition to that Smart Text Selection feature, was
10 there something associated with it called Smart Text
11 Share?

12 **A.** Yes.

13 **Q.** What is that?

14 **A.** So typically, whenever you select a text, you will
15 get toolbars that allow you to either copy, cut, paste,
16 what you've copied, right? But then if you think about
17 the situation I just described where we now know that the
18 selection is an address, then we know that the user might
19 also want to share that with, like, a map app, if it was
20 an address. We then we will put a shortcut to a map app.
21 And if it was a phone number, we would put a shortcut --
22 include a shortcut or an action to a dialer, for example.

23 **Q.** What led you to working on Smart Text Selection?

24 **A.** Typically, the job was, basically, how to improve the
25 user experience every time they are using a phone. So we

Toki - Direct

1 identified, like, if we could help people do whatever they
2 were trying to do better on the phone, then that would be
3 a better experience for them. The selection could be
4 tricky sometimes. We can make that easier on them. And
5 sharing could be a little more difficult sometimes. We
6 could make that easier and faster.

7 **Q.** What's the difference, if any, between the way that
8 Smart Text Selection and Smart Text Share work and the way
9 that that prior Linkify functionality worked?

10 **A.** So Linkify, first off, was basically -- in terms of
11 the features, I think the features -- Linkify would
12 involve a link that you click. Smart Text Selection, you
13 have to select the text first. Right? But in terms of,
14 like, the technology, Linkify was based on something we
15 call regular expressions. So you write these rules about
16 what a phone number is, what an address is, what an URL
17 is. That's basically how it worked.

18 But it might be easier to write an address and to
19 write a phone number, a rule for what a phone number looks
20 like. But it could be quite difficult to do the same
21 thing for an address. Addresses are usually in different
22 formats.

23 But at the time, we were now starting to have AI,
24 artificial intelligence started to get to a state where
25 you could train machine-learning models to be small and

Toki - Direct

1 run on a device and be able to recognize street addresses
2 or phone numbers better than those rules that the original
3 Linkify could do.

4 **Q.** There's been some discussion here, Mr. Toki, about
5 machine learning. Can you briefly describe for the jury
6 how machine learning works, generally?

7 **A.** I think the simple way that I can quickly describe
8 how that works is rather than write the rules for what
9 makes -- if you wanted to identify, for example, pictures
10 of a cat, for example, right? Rather than write the rules
11 of what makes up a picture of a cat, you could just train
12 a model by providing so many different examples of cat
13 pictures and say, "Here are cat pictures."

14 And then on the other hand, you can also provide
15 pictures of things that are not cats, maybe dogs, and say
16 "These are not cats." Eventually, the model will be able
17 to figure out that -- what the definition of a cat is so
18 that when you show it a different -- when you show it a
19 new picture that it has not seen before of a cat, it would
20 be able to tell it's a high probability that this is a
21 picture of a cat.

22 **Q.** So how did the Smart Text Selection project that you
23 were working on start using machine learning models?

24 **A.** So we did something similar, too. You take a lot of
25 text that were maybe phone numbers, a lot of numbers, and

Toki - Direct

1 say "Here are phone numbers," and then "These are not
2 phone numbers, these are just regular numbers." And
3 eventually you end up with a model that can figure out how
4 to distinguish a phone number from something that's not a
5 phone number.

6 And we did the same thing for addresses. We showed
7 it text that were addresses said "these are addresses,"
8 and then you showed it, like, text that was just random
9 text. And then we were able to successfully build models
10 that would recognize street addresses.

11 **Q.** Coming back to the development, how did the Smart
12 Text Selection project get underway?

13 **A.** I believe what happened -- at the time, I was focused
14 on improving the user experience when delivering text.
15 And one of the things that I recognized was, like,
16 selections were difficult, recognizing things like
17 addresses were a little bit difficult. And also, we had a
18 feature that was, like, a share, general share feature.
19 But then the problem with that was, like, what -- to what
20 app do you share that thing to.

21 The, like, thinking was if you could recognize better
22 what that thing was, then you could make a better
23 suggestion, you know. It's a phone number, you just need
24 a dial on it, right. And so that was, basically, what I
25 was trying to do. I started talking to different people,

Toki - Direct

1 you know, different people about the project.

2 Eventually I did come across a team, which is a team
3 that I now manage, that we're working on these machine
4 learning models to sort of recognize -- annotate things in
5 text, basically recognize that this is a phone number,
6 this is an address, this is an URL.

7 And so I tasked them to sort of build something that
8 was small enough to run on the phone. And when we had a
9 model, I started working on trying to integrate it on the
10 framework, Android framework, and that's the Android
11 preferred system code, to basically see if we can build
12 that feature. And that's how the project started.

13 **Q.** What was the name of that team?

14 **A.** So the team is a team called Cerebra.

15 (Reporter requested clarification.)

16 **THE WITNESS:** Cerebra.

17 **BY MR. KAMBER:**

18 **Q.** How do you spell that, Mr. Toki?

19 **A.** C-E-R-E-B-R-A.

20 **Q.** Where was that team based when you came across their
21 work?

22 **A.** The team was based in Zurich. Zurich, Switzerland.

23 **Q.** And to what extent, if at all, were there any machine
24 learning models in the Android operating system before
25 Smart Text Selection was developed?

Toki - Direct

1 **A.** There wasn't a lot of -- there wasn't a lot of
2 machine learning models integrated into the operating
3 system at this time, to the Android framework at the time.

4 **Q.** Were -- to what extent were people questioning
5 whether this was a smart decision to put these machine
6 learning models on the devices?

7 **A.** If I remember correctly, it was something that was
8 sort of not like -- it wasn't very common. We wanted to
9 do it. We hadn't done it. So there were a lot of doubts
10 about whether it could work or not. We weren't sure,
11 right, but we wanted to try.

12 **Q.** Did you build a prototype of Smart Text Selection?

13 **A.** Yes, I did.

14 **Q.** Can you explain to the jury how you did that, please?

15 **A.** So I had the model, and I was -- I will typically
16 take a trip to the U.S. from London. And so -- and
17 whenever I go to London, I try to pitch ideas to
18 stakeholders they had. And so I took the model and I
19 started writing the code while I was on the flight to
20 Mountain View, and just kept trying, you know, trying
21 different things on how it would work. And eventually I
22 was able to get something that worked.

23 **Q.** You mentioned Mountain View. That's where Google's
24 headquarters are, right?

25 **A.** Correct.

Toki - Direct

1 Q. So when you presented the idea, what were people's
2 reactions?

3 A. There was mix of excitement and skepticism, right?
4 Like, we weren't sure if it would work, right? And it was
5 not just like whether it would work. There were also
6 questions like, you know, if it worked, then how did it
7 mean for you to be running, you know, a statistic -- you
8 know, it's a model, right? It's not always hundred
9 percent correct. There was that.

10 There was also, yes, this could help. Let's try.
11 Let's get the project going.

12 Q. Approximately how many people ultimately worked on --
13 or how many people worked on the development of the first
14 iteration of Smart Text Selection?

15 A. For the first iteration of Smart Text Selection,
16 there was three of us.

17 Q. Did the team grow to be bigger later on?

18 A. Yes. And after the first version, then the team
19 started to grow. And I would say maybe grew to about ten
20 people or more. And some other teams were also helping
21 out with some other things.

22 Q. How long did it take you and that team to develop
23 Smart Text Selection?

24 A. What team?

25 Q. The initial team that you mentioned of, I think you

Toki - Direct

1 said, two or three people.

2 **A.** Yeah. The initial team, there was about -- it took
3 us about three to six months to build the initial version
4 of it.

5 **Q.** So you've given a bit of a description of how Smart
6 Text Selection works. Can you just walk the users,
7 please, through the steps, from a user perspective, of how
8 you interact with the STS functionality?

9 **A.** Yes. I sort of hinted at it before, but if you were
10 reading some text on your phone and you had -- you had an
11 address, maybe 100 Fifth Street, right, and you wanted to
12 select, you would press something around that text, right?

13 So when you press that text, what that did was, we
14 took all of the text around it, ran it against the model
15 to say, hey, is there anything interesting here. And then
16 the result to come back would be, oh, yes there's an
17 address here. And this is the selection for the address.

18 And we then selected not just Fifth -- so, for
19 example, your finger was pressed on Fifth, 100 Fifth
20 Street, we would expand the whole selection to 100 Fifth
21 Street. You can do the same thing with just street,
22 right? It would recognize that that's the whole address,
23 so you get 100 Fifth Street.

24 **Q.** What types of things did STS recognize?

25 **A.** The initial version of Smart Text Selection

Toki - Direct

1 recognized e-mail addresses, phone numbers, website
2 addresses, URLs, and street addresses.

3 **Q.** What if a user pressed on something that didn't fall
4 into those four categories?

5 **A.** It would just do -- it would just select a word. So
6 typically, whenever you selected just one thing, without
7 Smart Text Selection, then you would just get -- so, for
8 example, you have 100 Fifth Street. And you selected
9 Fifth and only Fifth would have been selected, you
10 wouldn't get the entire selection. But with Smart Text
11 Selection running on the phone, then you will be able to
12 get the entire selection of that.

13 **Q.** Are you familiar with a code that's called
14 TextClassifier?

15 **A.** Yes.

16 **Q.** Can you explain what TextClassifier is, please?

17 **A.** So again, the core technology was this machine
18 learning model we built. And so what I did was I built a
19 component basically around that to be the core component
20 that supported this sort of text recognition.

21 **Q.** Where is the source code for Smart Text Selection?

22 **A.** It's in the Android framework, basically, the code
23 that makes up the Android operating system.

24 **Q.** Does that include the code for TextClassifier?

25 **A.** Yes, it does.

Toki - Direct

1 **Q.** To what extent, if at all, are the computer
2 instructions for Smart Text Selection in the code for any
3 particular applications running on an Android phone?

4 **A.** It's not in the app. It's in the Android framework.

5 **Q.** How then does an app even use the code for Smart Text
6 Selection?

7 **A.** Yeah. I will explain. So an app, which is -- the
8 idea is, basically, if an app was running on the phone, it
9 was using just standard components. Then if there was a
10 TextClassifier on the phone, like a text -- the Text
11 Classifier component was on the phone in the framework,
12 then those features would -- you will get those features.

13 If that app, the app developed, that same app was
14 running a different environment that did not have that
15 feature, then nothing would happen. So, essentially,
16 developers just build the app. And if they built the app
17 and say, hey, I want to run the text, I want TextView,
18 then if they were running on a phone that had that
19 feature, then it would do that.

20 **Q.** If the Gmail app, for example, were running on an
21 Android 7 device, would a user get the Smart Text
22 Selection functionality?

23 **A.** No, they wouldn't get it. But if that same app was
24 running on maybe like a new Android phone today, then that
25 would happen.

Toki - Direct

1 Q. And just so it's clear, the instructions that set up
2 that menu bar that you see, that you mentioned with the
3 action and the cut and copy and paste, where are the --
4 where's the computer code that creates that menu bar?

5 A. It is Android framework.

6 Q. Again, the Android framework, that's the operating
7 system, I believe you said?

8 A. Yes, correct.

9 Q. So let's talk about the Android framework for a
10 moment.

11 MR. KAMBER: And if I could have, please,
12 DTX-1068, Mr. Spence.

13 Let's get these out of your way so we don't get
14 confused.

15 BY MR. KAMBER:

16 Q. So DTX-1068 -- I think it's about halfway through the
17 binder. If you want to take a look at the document, we'll
18 also be publishing it on the screen. It's already been
19 admitted into evidence, Mr. Toki.

20 A. DTX -- what was it?

21 Q. 1068.

22 MR. KAMBER: Mr. Spence, if we could pull up
23 the second page, the Platform Architecture Diagram,
24 please. Pull that up.

25

Toki - Direct

1 **BY MR. KAMBER:**

2 **Q.** Are you familiar with this illustration, Mr. Toki?

3 **A.** Yes, I am.

4 **Q.** Can you explain what it's illustrating for the jury's
5 purposes?

6 **A.** This is sort of like a depiction of the Android
7 operating system and all the different components that
8 come together on the framework. And so the top section
9 here is the system apps in blue. You have the Java API
10 framework in green. The native libraries are in purple.
11 And the runtime is in orange. And then further down, you
12 get the hardware abstraction layer and the Linux Kernel.

13 **MR. KAMBER:** Let's focus in on the very top,
14 the System Apps and the Java API framework, if we could.

15 Thank you, Mr. Spence.

16 **BY MR. KAMBER:**

17 **Q.** So where are -- in the Android framework, where are
18 applications like Chrome or Docs or Sheets?

19 **A.** Yeah. I would imagine that they would be in the blue
20 section, right, next to Dialer, E-mail, Calendar, and
21 Camera.

22 **Q.** Where that dot, dot, dot is on the system apps layer?

23 **A.** Yeah. Yes.

24 **Q.** All right. And you mentioned -- and then the Java
25 API framework, can you generally describe what types of

Toki - Direct

1 functionality are here.

2 **A.** Yes. So the Android operating system would provide a
3 set of components that kind of like run the operating
4 system, part of the operating system. They do different
5 things. And so, for example, you can see there's a few
6 system, so developers would be building apps. They don't
7 have to build all new widgets for the user interface to
8 exist by themselves.

9 And then you have things like the managers, which is
10 quite common, and they all do different things. So, for
11 example, if you look in that section to the extreme right,
12 you have the notification manager. And that's, basically,
13 a thing that's responsible for showing notifications on
14 your phone. Something was happening. It would
15 basically -- that's the notification manager doing that.

16 You have things like the Package Manager that tells
17 you about what apps are installed on the phone, and other
18 things like the Location Manager that can tell about where
19 the phone might be at the time or help you with, like,
20 things, like, if you are using an app like Google Maps.

21 **Q.** Thank you. And I want to come back to something you
22 said before. I think you said the Smart Text Selection
23 code is in the Android framework, correct?

24 **A.** Correct.

25 **Q.** And can you explain to the jury where the Smart Text

Toki - Direct

1 Selection code is at least in relation to this diagram?

2 **A.** Yes. So, in general, the Smart Text Selection code
3 will be in the green part, in the Java API framework.

4 **Q.** Do any of the applications in the top layer, the blue
5 layer, contain the code for Smart Text Selection?

6 **A.** No, they don't. Like I explained before, if you ran
7 the same app on an Android phone that did not have this
8 component, then nothing would happen.

9 **Q.** Why was the Smart Text functionality put into the
10 framework for Android?

11 **A.** Because we didn't want apps to have to do anything,
12 you know. We wanted it to be an operating system feature
13 that the user could recognize when they were using the
14 phone rather than something that apps needed to do.

15 **Q.** Is there any benefit with respect to updating the
16 feature based on putting it into the framework?

17 **A.** I'm sorry. I don't understand the question.

18 **Q.** Sure. If you put something into the framework, is it
19 easier to update than if you put it in the apps level of
20 the framework?

21 **A.** I wouldn't necessarily say so. You can update a
22 phone. You can update an app, right? You can also update
23 the operating system also. So if something was in the
24 app, and using an applicability app, then it would happen.

25 If a new thing was hap- -- then it happened when you

Toki - Direct

1 updated the app. But if you were -- if you -- if it was
2 in the operating system, you update the operating system,
3 which people also do then you will get the new operating
4 system features.

5 **Q.** Thank you, Mr. Toki.

6 If you could turn to the first tab in your binder.

7 **THE COURT:** Mr. Kamber, is this a good time to
8 take our afternoon break?

9 **MR. KAMBER:** Yes, Your Honor.

10 **THE COURT:** All right. Let's take our
11 afternoon break.

12 Ms. Garfinkel, will you take the jury out.

13 (The jury exits the courtroom at 3:37 p.m.)

14 **THE COURT:** Please be seated. I think we will
15 try to take as quick of a break as we can, so we can try
16 to make up some time to make sure that the case gets to
17 the jury as I promised. So we will be in a short recess.
18 Let's try to keep it under ten minutes.

19 (Whereupon, a recess was taken.)

20 **THE COURT:** Please be seated.

21 **MR. KAMBER:** Should we have Mr. Toki retake the
22 stand?

23 **THE COURT:** Yes.

24 **MR. UNIKEL:** I apologize, Your Honor.

25 **THE COURT:** Do we have everybody?

Toki - Direct

1 **MR. KAMBER:** Yes, Your Honor.

2 **THE COURT:** All right. Are we ready to
3 proceed?

4 All right. Ms. Garfinkel, let's bring the jury
5 back in.

6 **THE CLERK:** Yes, Your Honor.

7 (The jury enters the courtroom at 3:50 p.m.)

8 **THE COURT:** Welcome back, ladies and gentlemen.
9 Please be seated.

10 Counsel, please proceed when you are ready.

11 **MR. KAMBER:** Thank you, Your Honor.

12 **BY MR. KAMBER:**

13 **Q.** Mr. Toki, right before the break I was trying to turn
14 to DTX-166C, which is the first tab of your binder.
15 Please take a look at that document.

16 What is this document?

17 **A.** This is a presentation about the Android
18 TextClassifier component we were working on.

19 **Q.** Who created this document?

20 **A.** I believe my manager at the time and I worked on this
21 document.

22 **Q.** Why did you and your manager create this document?

23 **A.** Typically, whenever we are working on a project,
24 sometimes you want to explain it to stakeholders, you
25 know, people that might be interested in the project. So

Toki - Direct

1 you put together a document and you put together a
2 presentation and then you show it to them and ask some
3 questions. Yes.

4 **MR. KAMBER:** Your Honor, Google moves DTX-166C
5 into evidence.

6 **MR. DIEHL:** No objection, Your Honor.

7 **THE COURT:** It's admitted.

8 (Exhibit DTX-166C is admitted into evidence.)

9 **MR. KAMBER:** Thank you.

10 May we publish that, please, Mr. Spence.

11 **BY MR. KAMBER:**

12 **Q.** And let's go to the seventh page of this document.
13 First of all, actually, let me start with the cover page.
14 Android TextClassifier, can you again explain what
15 TextClassifier is referring to here?

16 **A.** TextClassifier is the component that we built to
17 support text understanding features like Smart Linkify,
18 Smart Text Selection, and other things. It also included
19 things like Macro Detection.

20 **MR. KAMBER:** So let's turn to the seventh page
21 of this document, please Mr. Spence. And enlarge that.
22 Thank you.

23 **BY MR. KAMBER:**

24 **Q.** Mr. Toki, can you -- this is titled "The many paths
25 to TextClassifier." Right?

Toki - Direct

1 **A.** Yes.

2 **Q.** Can you explain to the jury what's being illustrated
3 here on the screen.

4 **A.** So this is a different -- this is, like, the
5 different ways that we thought that we could evolve the
6 TextClassifier architecture.

7 **Q.** What's being displayed on the right-hand side under
8 the area that says "Using Support Library API"?

9 **A.** Yes. So on the right-hand side, we were thinking
10 about ways that maybe we could make the TextClassifier
11 feature component available to all the devices. So those
12 are kind of like the ideas of the ways that we could make
13 that happen.

14 **Q.** Was that ever implemented?

15 **A.** No, we did not. We didn't end up doing that.

16 **Q.** Then on the left side, it says "Using Framework API."
17 Was this implemented?

18 **A.** Yes. So this was basically the way that we
19 implemented the first time.

20 **MR. KAMBER:** And, Mr. Spence, if we could,
21 please, just blow up the leftmost column there at the
22 bottom, the two boxes. Perfect. Thank you.

23 **BY MR. KAMBER:**

24 **Q.** Can you explain what's being illustrated here,
25 Mr. Toki?

Toki - Direct

1 **A.** Essentially it's just, basically, a description of
2 all the components involved in a feature like Smart Text
3 Selection. And so you have the -- you have the framework,
4 Android framework, and then in the next box is
5 AOSP TC impl. And AOSP stands for the Android Open Source
6 Project. TC here is TextClassifier. And impl here is
7 implementation. So that's the Android open source
8 TextClassifier implementation.

9 And then the box, the TC service there is the
10 TextClassifier service and TextView is the standard
11 component for entering text.

12 **Q.** So why are the TC impl and TC Service boxes here
13 illustrated as being in the framework rather than in the
14 application?

15 **A.** Because this framework code, it's part of the
16 framework.

17 **Q.** Why is the TextView being illustrated as being in the
18 app?

19 **A.** We're basically trying to say, like, basically try to
20 refer to the framework component that the app might be
21 interested for rendering text -- the technology is all
22 around TextViews, right? For example, these features like
23 Smart Text Selection and Smart Linkify. So we are sort of
24 like showing the connection of, you know, what part of the
25 framework is in the app at that time.

Toki - Direct

1 **Q.** Where is the code for TextView in the Android -- in
2 Android?

3 **A.** TextView code is part of the framework. So if you
4 remember the green section in that architecture, that is
5 in the green section, something called the widget
6 framework, the UI, user interface framework component.

7 **Q.** And because TextView is also in the framework, is
8 that why it's also drawn here in blue, like the framework
9 code?

10 **A.** Yes. So in the diagram, I'm trying to depict, you
11 know, the TextView server app, for example. So I put that
12 TextView there. But TextView is really part of the
13 framework. And so it's kind of like in the same color of
14 the framework for the rest of the framework code.

15 **Q.** Thank you, Mr. Toki.

16 Could you please turn to DTX-1054. I believe it's
17 the second tab in your binder.

18 **A.** DTX-

19 **Q.** Yes. 1054. Do you recognize this document,
20 Mr. Toki?

21 **A.** Yes, I do.

22 **Q.** What is this document?

23 **A.** This is a document that I wrote to describe this --
24 this new component that we built, the TextClassifier. And
25 all the features that were associated with it initially.

Toki - Direct

1 And so those were features like the Smart Text Selection,
2 changing the selection depending on if it was a thing.

3 Smart Text Share, after we know what it is, maybe
4 it's a phone number we suggest a dialer, for example.

5 Language detection, part of the technology that the
6 TextClassifier had was to be able to recognize whether
7 that text was in English, it was in Spanish, it was
8 German, whatever it is.

9 And the last part here was talking about the Google
10 TextClassifier, which was the idea of a component that
11 could, basically, use more information for, like, Google
12 technology to improve the capability of the stuff.

13 **Q.** When was this document created?

14 **A.** The document is dated 2017; I believe that that's
15 when I wrote it.

16 **MR. KAMBER:** Your Honor, we would move to admit
17 DTX-1054 into evidence.

18 **MR. DIEHL:** No objection, Your Honor.

19 **THE COURT:** It's admitted.

20 (Exhibit DTX-1054 is admitted into evidence.)

21 **MR. KAMBER:** Mr. Spence, can you please focus
22 in on the title and the first paragraph, please. Thank
23 you.

24 **BY MR. KAMBER:**

25 **Q.** So Smart Selection, Smart Text Share, Linkify,

Toki - Direct

1 Language Detection, and the Google TextClassifier.

2 Those are the things you just kind of listed off,
3 right?

4 **A.** Yes.

5 **Q.** And this is this your name here, Toki@?

6 **A.** Yes.

7 **Q.** What does that signify?

8 **A.** That I am the author of the document.

9 **Q.** And it's dated February 2017, correct?

10 **A.** Yes.

11 **Q.** What were you trying to communicate with this
12 document?

13 **A.** Like I explained, whenever we work on a project, you
14 might have people interested in it. And so you write
15 documents about it. And what I was trying to explain to
16 people was, here's this new technology that we have. And
17 here are the features that it can power. That was
18 essentially...

19 **Q.** And it says, starts with, "This group of projects use
20 machine learning techniques to classify text and use that
21 information," right? That's the machine learning models
22 that you were describing to the jury before the break,
23 right?

24 **A.** Yes, correct.

25 **MR. KAMBER:** Let's turn to very bottom of this

Toki - Direct

1 page, Mr. Spence, the section titled "Smart Selection."

2 **BY MR. KAMBER:**

3 **Q.** Do you see that, Mr. Toki?

4 **A.** Yes, I do.

5 **Q.** And so can you, again, explain what is Smart
6 Selection as distinct from Smart Text Share?

7 **A.** So I gave a similar example earlier about this. So
8 if you were -- if you had, like -- if you had text on your
9 phone, for example, Barack Obama visits New York City, and
10 you were trying to select, and you selected "York," right?
11 Typically, that's the selection you'd make. However, if
12 it was running on the phone with this technology, then we
13 will know that New York City is a thing. And so then,
14 we'll expand the selection to New York City, guessing that
15 that's really the selection that is useful to the person.

16 So that would be what I would call Smart Text
17 Selection. We know New York City is an address, right?
18 And the user would usually get a tool bar that would say
19 something like "copy," you know, or "share." And so now
20 that we know that it is an address, then we can then
21 figure out if there are any apps on the phone that can
22 support addresses. For example, a map app, right? Or
23 maybe like a restaurant app or something. And then we can
24 suggest those as also an action included with "copy" and
25 "paste," and so that the user can easily shortcut to that

Toki - Direct

1 action.

2 So that would be what I would call the Smart Text
3 Share. And they go together.

4 **Q.** On the next page, at the very top, Mr. Toki, there's
5 a discussion of how it works. And it starts by saying,
6 "We use the Smart Selection Library, written by the
7 Cerebra team."

8 Do you see that?

9 **A.** Yes.

10 **Q.** What is the Smart Selection Library?

11 **A.** So the Cerebra team, that was the team that was
12 working on the models, basically, had, you know, they
13 built the models, and they lacked some native code around
14 accessing the models. So that's what I would call the
15 Smart Selection, Text Selection -- I mean, the Smart
16 Selection Library. So basically, some code and models
17 that, basically, can recognize different things.

18 **MR. KAMBER:** So let's go further down, Smart
19 Text Share. This is about halfway down the page,
20 Mr. Spence. And focus in on that.

21 **BY MR. KAMBER:**

22 **Q.** So I think you were just explaining this, Mr. Toki.
23 It says, "Given a text selection, recognize what kind of
24 entity it represents and provide a shortcut to an app that
25 the user may use to act on that selection."

Toki - Direct

1 Do you see that?

2 **A.** Yes, I do.

3 **Q.** And can you explain again for the jury what that
4 means?

5 **A.** So, for example, we now know it's an address, so it
6 would include an action for map share to the Maps. If it
7 was a phone number, it would include an action like dial
8 or message this address. And if it was a URL, you might
9 get a browse button on your phone.

10 **Q.** Where is the code that implements Smart Text Share?

11 **A.** It's in the Android framework.

12 **Q.** Where is the code that implements that Smart
13 Selection Library that you mentioned in the context of
14 this Smart Text Selection feature?

15 **A.** It's in the Android framework.

16 **Q.** At the very bottom of this second page, there is a
17 reference to Linkify.

18 Do you see that Mr. Toki?

19 **A.** Yes, I do.

20 **Q.** What is this referring to in the document?

21 **A.** So Android already had this implementation for
22 Linkify that was based on regular expressions, basically
23 like rules that you write and say this is what a phone
24 number is. This is what a URL is, right?

25 You can see how that -- it might be easy to write a

Toki - Direct

1 rule for something like a phone number. That might just
2 be, hey, maybe six numbers, seven numbers for the -- you
3 know, with an iPhone brackets or something. But how do
4 you describe stuff like a street address? There's
5 different versions, you know. Is it a U.S. street
6 address? Is it a UK street address? Is it a post code?
7 Things like that.

8 So that didn't work very well. But like with the
9 technology that was starting to emerge where we could
10 train machine-learning models that could be small enough
11 to fit on a phone, then we thought that we could use the
12 same machine-learning models to improve the performance of
13 that feature.

14 **Q.** Mr. Toki, I want to show you another document that's
15 already been admitted into evidence. It's DTX-1057. If
16 you would like to look at it in your binder, it's the -- I
17 think it's the very next exhibit.

18 **MR. KAMBER:** Mr. Spence, if we could just
19 highlight the background in the first two or three lines
20 of the document, please.

21 **BY MR. KAMBER:**

22 **Q.** Just a couple of questions related to this document,
23 Mr. Toki. It says here, "In Android O, we introduced
24 TextClassifier API."

25 Do you see that?

Toki - Direct

1 **A.** Yes, I do.

2 **Q.** What's that referring to?

3 **A.** So the -- if you think about there's the component,
4 the TextClassifier component, so we wrote that component,
5 the TextClassifier. But we also made the API public also.

6 **Q.** And what does that mean, making the API public?

7 **A.** Basically, it just means that the API is available
8 for developers to use.

9 **Q.** And then it says, "That backs the Smart Selection and
10 Smart Share features, right?"

11 **A.** Yes. So like, for example, you think about the
12 TextView, for example. When you're looking at text. When
13 you do that selection and everything, the TextView is not
14 like doing it -- it's not doing it by itself, it's
15 basically talking to the TextClassifier to help it know
16 what are the boundaries of the selection or what is this
17 thing. That's -- that's, basically, how the TextView also
18 communicates with this TextClassifier component.

19 **Q.** And then it goes on to explain that, "These features
20 are implemented in Android framework using two small
21 neural network classifiers."

22 Do you see that?

23 **A.** Yes, I do.

24 **Q.** Is it accurate that the features of Smart Selection
25 and Smart Sharing are implemented in the Android

Toki - Direct

1 framework?

2 **A.** Yes, they are implemented in the Android framework.

3 **Q.** What does that mean regarding where the code is
4 located?

5 **A.** It's code for the Android framework, in the Android
6 source code.

7 **Q.** Is that code in any applications?

8 **A.** No. The code is not in any application. Like I
9 explained, if you ran that same app on a different device
10 that did not have this feature, nothing would happen.

11 **Q.** Mr. Toki, please turn to Exhibit PX-94 in your
12 binder.

13 Do you recognize PX-94?

14 **A.** Yes, I do.

15 **Q.** What is PX-94?

16 **A.** So this is a page from the TextClassifier website.
17 So internally, we would have a website for the projects,
18 based on the projects that we are working on. So I would
19 say this is a page from that website.

20 **Q.** Why was a page like this created?

21 **A.** It's normal. Whenever you're working on a project,
22 you have a set of projects or whatever, you create a
23 website that people can go in to and see what technology
24 is available for them to use or how it works.

25 **Q.** Were you involved in creating this web page?

Toki - Direct

1 **A.** Yes, I would have been involved in writing some of
2 the pages here. Not all of it, but some of it.

3 **MR. KAMBER:** Your Honor, we move to admit
4 PX-94.

5 **MR. DIEHL:** No objection, Your Honor.

6 **THE COURT:** It's admitted.

7 (Exhibit PX-94 is admitted into evidence.)

8 **MR. KAMBER:** Thank you.

9 **BY MR. KAMBER:**

10 **Q.** There's discussion here, the second full paragraph
11 that starts, "Version 1."

12 **MR. KAMBER:** Mr. Spence?

13 Thank you.

14 **BY MR. KAMBER:**

15 **Q.** It says, "Version 1 of Smart Text Selection shipped
16 with Android O."

17 Do you see that?

18 **A.** Yes, I do.

19 **Q.** And then it explains, "The automatic selection
20 expansion is disabled and planned to be reenabled in O-MR1
21 time frame."

22 Do you see that?

23 **A.** Yes, I do.

24 **Q.** What does that -- what is this referring to?

25 **A.** So when we saw the project, because it was sort of

Toki - Direct

1 like a new idea to be running certain things with -- to be
2 running this kind of device models for these features, we
3 weren't really sure how well they would work. And so
4 after we had intended to build it for Android O, at the
5 time. Android O at the time, but getting closer to the
6 time, we were not a hundred percent sure if it was working
7 as we needed. And we needed to, you know, gather more
8 data and understand exactly how it works.

9 So what we then did was, we then decided to pull the
10 models from the device -- you know, the code was already
11 there -- so that when people got the phones, those
12 features were not working until we could established that
13 they were, that the feature was working properly.

14 **Q.** At what point could users start using the features
15 for Smart Text Selection and Smart Text Share?

16 **A.** Yeah. So the document refers to O-MR1. That would
17 have been a release that happened after the, you know,
18 after the Android O. And so in that version, we then --
19 we were satisfied about how this stuff was working, and so
20 we then enabled -- we then included the model in that
21 build. And we enabled for all the devices that had the
22 code for Smart Text Selection and TextClassifier.

23 **Q.** And when you say "you included the model," you are
24 referring to that on-device machine learning model,
25 correct?

Toki - Direct

1 **A.** Yes, correct.

2 **Q.** And approximately when was the Smart Text Selection
3 and Smart Text Share functionality reenabled in O
4 Maintenance Release 1?

5 **A.** I believe that O Maintenance Release -- I think
6 Android O-MR1 would be -- would have been released
7 around -- the source code would be have been published
8 around December 2017, and then phone manufacturers can
9 start taking that build and include it in the next set of
10 phones they were going to start building.

11 **Q.** Mr. Toki, I think we have the last exhibit to show
12 you. And that is towards the end of your binder. It is
13 PX-208.

14 Can you take a look at that in your binder.

15 Actually, before you look at that, let me ask you a
16 few questions. How does an application that might be
17 using -- well, how does an application go about launching
18 an application in another application -- strike that. One
19 more time.

20 How does an application go about launching another
21 application in Android?

22 **A.** The standard way that Android -- the standard method
23 for one application to request another application is
24 started, is through something that Android called the
25 "Intents Framework," right.

Toki - Direct

1 **Q.** What is that Intents Framework?

2 **A.** So, basically, I can give an example. If app A says,
3 "I want to dial a number," for example, using these
4 examples that we've been using. It will say, "Here is a
5 phone number, and I want to do an action of dial." And
6 it's -- so then, the application then triggers that intent
7 to the operating system, saying, "Here's what I want to
8 do."

9 Now, the operating system will look at it say, Okay,
10 I've got a Dialer app. I'm going to start the Dialer app,
11 and I'm going to pass that phone number to the Dialer app
12 to dial."

13 So this is how, like, apps get sort of -- this is a
14 way a user can be doing using two apps to do things,
15 right? You might have an app that can dial, and another
16 one that can chat or something like that. And you might
17 want to be using the two apps to do things. And so this
18 is sort of like the way Android -- this is the way Android
19 sort of allows such to happen.

20 **Q.** So now I'd like you to turn that last tab of your
21 binder, which is PX-208.

22 Do you recognize that document?

23 **A.** Yes. It's a page from the Android developer website.

24 **Q.** Who is the audience for this document?

25 **A.** The Android develop -- Android developer website, the

Toki - Direct

1 audience would be Android developers or anybody interested
2 in how Android works. So by "Android developers," I mean
3 people building Android apps, for example.

4 **Q.** Where is this document maintained?

5 **A.** It's on the Android developer website, I believe
6 developer.android.com.

7 **MR. KAMBER:** Your Honor, we move for the
8 admission of PX-208.

9 **MR. DIEHL:** No objection, Your Honor.

10 **THE COURT:** It's admitted.

11 (Exhibit PX-208 is admitted into evidence.)

12 **BY MR. KAMBER:**

13 **Q.** Mr. Toki, this is a document titled "Intents and
14 Intent Filters."

15 Do you see that?

16 **A.** Yes, I do.

17 **Q.** And it describes an intent as being "a messaging
18 object you can use to request an action from another app
19 component," right?

20 **A.** Yes, it does.

21 **Q.** So that can be a little hard to understand. Let's go
22 to the picture, Figure 1, at the top of Page 3, please.
23 And Figure 1 explains how an implicit intent is delivered,
24 and it has an explanation.

25 But can you kind of walk the jury through an

Toki - Direct

1 explanation of this figure?

2 **A.** I can try with an example, if you don't mind.

3 **Q.** Please.

4 **A.** So imagine that activity A is something -- is
5 creating from an app like WhatsApp, for example, or maybe
6 Gmail or something. And then you have a phone number, and
7 there was a link on that phone number, and the user goes,
8 "Oh, actually I want to dial this number." If the user
9 clicked that, then what would happen is the intention,
10 now, is -- the thought of the user is, "I want to dial
11 this number." So what happens is an intent gets packaged.

12 You can think of an intent as like an envelope, says,
13 "Here's the phone number. What I really want to do is to
14 dial this phone number," right? So then startActivity,
15 basically, is a command that says, "I want you to show the
16 user screen from an app that can dial." Okay.

17 So that intent goes to the Android system. There's
18 this intent framework that handles all these intents. It
19 then uses some information like is this app, is Gmail
20 allowed to dial? Is he allowed to request a dial? Or is
21 there a dialer, is there a Phone app on the -- in this
22 phone, right?

23 If there is one, then it will then start the Dialer
24 app, and then pass that phone number, message to it that
25 included the phone number the user wanted to dial. So

Toki - Direct

1 then Activity B in this case, would be a phone can then
2 dial the number.

3 **Q.** Where are the instructions for this Intents Handling
4 System in Android?

5 **A.** So the Intent Handling Framework is part of the
6 Android framework. It's in the Android system. What apps
7 need to do to get involved with that is they will define
8 the action they are interested in, and the -- maybe, for
9 example, the phone number data they want to pass. And
10 then that then goes to the intent framework that handles
11 that and knows what applications might be able to handle
12 that.

13 And if there were multiple apps that could dial --
14 for example, if you had WhatsApp in your phone -- then the
15 user -- the system would ask the user, what application
16 would you use to dial -- do you want to use to dial this?
17 And the user can select and say, oh, actually, I want to
18 use WhatsApp, for example, to do that.

19 **Q.** For this Intents Handling System, how is it that
20 Smart Text Selection uses it?

21 **A.** So in the TextView code, we didn't have that part
22 where you had the menu that allowed you to, when you
23 selected text, that you can copy or paste or share. And
24 so if the user clicked a dial action, for example, then
25 this is what would have happened. An intent would have

Toki - Direct

1 been forwarded to the system. The system would have then
2 started a phone app with that phone number.

3 **Q.** Does the -- so the menu bar -- just to go into it in
4 some detail -- the menu bar showed a Dial action like you
5 just gave in that example, a user pressed it, what would
6 happen in terms of an intent being passed to the system?

7 **A.** So in that case, because we have the text now, right?
8 Either the text is selected or it's a link. So we have
9 the text. So we then package the intent. In the text
10 code you have something, a package with the intents in the
11 envelope, that say, "Here's the phone number, and we're
12 interested in dialing it."

13 That then goes to another component in the Android
14 framework that then handles that and says, "Oh, there are
15 Phone apps on this device. I'm going to -- if the user
16 has selected one, I'm going to pass that phone number to
17 that app."

18 **Q.** Mr. Toki, why does Google separate the applications
19 from Smart Text Selection?

20 **A.** Because we wanted to be an operating system feature.
21 We didn't want apps to have -- app developers or apps to
22 have to do anything to enable this feature. We didn't
23 even want them to need to have to rebuild the app for this
24 to work.

25 So we just -- we thought, if you had an operating

Toki - Direct

1 system, then it's a feature for the owner of the phone,
2 user of the phone, rather than an app developer who is
3 building an app.

4 **Q.** So in that explanation, does -- let me just ask.

5 When Android 8 was released, did developers have to
6 write any additional code for their apps in order to
7 implement Smart Text Selection functionality for users.

8 **A.** They didn't have to write anything. They didn't even
9 have to rebuild the app. Right. They could just use the
10 same app that they had before. And if the user was using
11 a newer -- a newer Android operating system, then the user
12 will get that feature.

13 **Q.** And, Mr. Toki, why does Google separate the intents
14 handling process from applications?

15 **A.** I'm not the -- I didn't -- you know, I didn't design
16 Android from the beginning. You know, I work in Android;
17 I've done things. But it sounds logical to me that, you
18 know, you don't need to have apps sort of invoking other
19 apps, you know. You can have apps are going to run in
20 the -- they're going to run in a sand box anyway, they're
21 going to run in an operating system.

22 And if you really want to design something, a
23 framework that allows one app to talk to the other, then
24 you can build something general that allows apps, you
25 know, to talk to each other or to get users to use two

Toki - Cross

1 apps at the same time in the same use case.

2 **MR. KAMBER:** Thank you, Your Honor. We pass
3 the witness.

4 **THE COURT:** Thank you very much.

5 Let's have cross-examination.

6 CROSS EXAMINATION

7 **BY MR. DIEHL:**

8 **Q.** Hi, Mr. Toki. I am Kemper Diehl. It's good to meet
9 you.

10 **A.** Hi.

11 **Q.** I want to start by just seeing if there are some
12 things we can agree on. And the first one is, you know,
13 you testified a lot about code that you worked on. I want
14 to clarify, you're not giving any expert testimony in this
15 case, right?

16 **A.** I don't know what expert -- what do you mean by
17 expert testimony?

18 **Q.** You're not testifying here as an expert on source
19 code, right?

20 **A.** I'm here to testify about the project I worked on,
21 which was Smart Text Selection and TextClassifier.

22 **Q.** And you're not telling the jury that you're qualified
23 as an expert to testify about source code, are you?

24 **A.** I've wrote the component, so that's what I'm here to
25 talk about. I'm not talking about source code. I'm

Toki - Cross

1 talking about the thing that I built.

2 **Q.** And you're not an expert in patents, right? Can we
3 agree on that?

4 **A.** I know next to nothing about patents.

5 **Q.** Very nice. Sounds like we agree.

6 And you're not offering any opinion about whether the
7 Google apps at issue in this case infringed Arendi's '843
8 patent, right? You're not opining on that?

9 **A.** I'm here to talk what about what we built and how we
10 built it.

11 **Q.** And you're not giving any opinion about whether
12 Arendi's '843 patent is a valid patent, right?

13 **A.** I don't know much about the patent or, you know,
14 what -- I'm just going to testify about what I know about
15 the technology and how we built it.

16 **Q.** Right. So if I think we can agree you're just here
17 to testify about the facts that you were personally
18 involved in, in your work at Google; is that right?

19 **A.** I'm here to testify about how we built the
20 technology.

21 **Q.** Just the facts, right?

22 **A.** Yes.

23 **Q.** And you don't know the details of the code for
24 specific Google apps, right?

25 **A.** No. I don't know the details for all of the Google

Toki - Cross

1 apps.

2 **Q.** And when it comes to what's happening in the code of
3 a given Google app, you're not the right person to testify
4 about that, right?

5 **A.** I don't know. If you're talking about the
6 TextClassifier and how it works. I wrote it. I
7 understand how it works. I know how, you know, the
8 feature would appear on other apps. But if you're asking
9 me about the details of, like, specific apps on what the
10 whole code and how they've written it, I wouldn't know
11 everything about how they've done it.

12 **Q.** You're not the app developer, right?

13 **A.** I am not the app developer.

14 **Q.** And you're not the guy who knows exactly what's
15 happening in the app's code and what it's doing, right?

16 **A.** What app?

17 **Q.** Any app?

18 **A.** Yes, in general. If it's not an app that I built,
19 then I don't know all the details about everything in it.

20 **Q.** And you didn't build any of the apps at issue in this
21 case, did you?

22 **A.** What apps?

23 **Q.** Do you know what apps are at issue in this case?

24 **A.** So for all the apps, I know about the Android
25 framework, so I could talk about the Android framework and

Toki - Cross

1 what it is. The other apps, I've worked in Google Docs
2 before, so I know some of the code with Google Docs.

3 So if you'd more specific about some apps, I can tell
4 you. But mainly I worked on this as an operating system
5 component, the framework, that was it.

6 **Q.** You worked on the framework, right?

7 **A.** Yes.

8 **Q.** And you don't have insight into what apps are doing
9 when they call a particular API, right?

10 **A.** I wouldn't necessarily know all the things the apps
11 are doing, yes.

12 **Q.** And all Smart Text Selection code is publicly
13 available; is that right?

14 **A.** Do you mean on the Android framework code?

15 **Q.** Yes.

16 **A.** Yes. So in the AOSP and you can see the code.

17 **Q.** The same thing is true for the TextClassifier code.
18 That's all publicly available, right?

19 **A.** Oh, yes. The textClassifier code is publicly
20 available.

21 **Q.** And smart Text Selection, that's an Android API,
22 right?

23 **A.** Smart Text Selection is not an Android API. Smart
24 Text Selection is an Android feature.

25 **Q.** Do you recall giving a deposition in this case a

Toki - Cross

1 couple years ago?

2 **A.** Yes.

3 **Q.** You were under oath to tell the truth, right?

4 **A.** That's correct.

5 **Q.** Did you?

6 **A.** Yes, I did.

7 **MR. DIEHL:** Your Honor, can we have a brief
8 sidebar?

9 **THE COURT:** Yes.

10 - - -

11 (Whereupon, the following discussion is held at
12 sidebar:

13 **MR. DIEHL:** I asked the question: Smart Text
14 Selection is an API, right?

15 His depo he said, Smart Selection is also an
16 API, so I was quoting him. I want to impeach him with
17 this.

18 **THE COURT:** Okay. That's not the exact
19 question that was asked. Can we hear back the question
20 that was asked before the objection.

21 (The court reporter read back the record as
22 requested.)

23 **THE COURT:** You asked if it was an Android API.
24 That's not the question.

25 **MR. DIEHL:** I can rephrase.

Toki - Cross

1 **MR. KAMBER:** This line of questioning relates
2 to Linkify functionality, which is not in the case.

3 **MR. DIEHL:** It says, "Smart Text Selection"
4 right up there.

5 **MR. KAMBER:** Sorry. I was reading from -- I
6 have 19 to 21. My apologies, Your Honor.

7 So is Smart Linkify not a standard platform
8 feature?

9 Yes, it is.

10 This is about Smart Linkify, which is yet
11 another functionality that's no longer in the case.

12 **THE COURT:** Okay. So this is where you are
13 talking about?

14 **MR. DIEHL:** Exactly. I'm asking about this.

15 **THE COURT:** "So is Smart Linkify not a standard
16 platform feature?"

17 Yes, it is. So just to clarify...

18 Please.

19 You -- the question is, you know: It is an API,
20 right?

21 I said Smart Linkify is an API. Smart
22 selection is also an API, but the way we've built it is
23 basically just based on the user experience like it's
24 turned on all the time.

25 And you are referring to Smart Text Selection

Toki - Cross

1 is turned on all the time?

2 Yes."

3 **THE COURT:** Mr. Kamber.

4 **MR. KAMBER:** This line of questioning I don't
5 think is proper impeachment. He hasn't asked the same
6 question and gotten a different answer specifically, that
7 this relates to different functionality that the witness
8 was being asked about at his deposition in the context of
9 this question and answer.

10 **THE COURT:** I think it is a reasonable
11 interpretation. It is inconsistent.

12 I ask Mr. Diehl to rephrase the question to
13 more closely align. If we get an inconsistent answer, I
14 will allow the impeachment. We will have the opportunity
15 to address it on redirect.

16 **MR. UNIKEL:** May I ask that the full answer be
17 read, not just the one sentence?

18 **THE COURT:** Counsel?

19 **MR. DIEHL:** That's fine.

20 **MR. UNIKEL:** Thank you.

21 (Whereupon, the discussion at sidebar
22 concludes.)

23 - - -

24 **MR. DIEHL:** Thank you, Your Honor.

25

Toki - Cross

1 **BY MR. DIEHL:**

2 **Q.** Mr. Toki, I will just re-ask the question.

3 Is Smart Text Selection an API?

4 **A.** Smart Text Selection is an Android feature.

5 **Q.** Is it an API?

6 **A.** No. So the TextClassifier has an API. The Smart
7 Text Selection isn't API.

8 **MR. DIEHL:** Your Honor, I would like to show...

9 **BY MR. DIEHL:**

10 **Q.** Sir, can you recall you were deposed a few years ago?

11 **A.** Yes, I do.

12 **Q.** And you told the truth at that deposition?

13 **A.** Yes, I did.

14 **MR. DIEHL:** Okay. Mr. Boles, can we put
15 Page 21 from Mr. Toki's deposition on the screen, Lines 3
16 through 11.

17 **BY MR. DIEHL:**

18 **Q.** And here on Line 3, you -- the question is:

19 "You know, is it an API, right?

20 I said Smart Linkify is an API. Smart Selection is
21 also an API. But the way we built it is basically just
22 based on the user experience, like it's turned on all the
23 time."

24 **A.** Yeah, I'm not sure what that refers to. But, like,
25 if you ask me about Smart Text Selection, it's a feature.

Toki - Cross

1 Smart Text Selection is a feature. When you select a
2 text, then you have it. The TextClassifier has an API
3 called Suggest Selection, and, in fact --

4 **MR. DIEHL:** Objection. Nonresponsive.

5 **THE COURT:** Overruled.

6 You may continue.

7 **THE WITNESS:** Okay. Yes. So you have the
8 smart -- the TextClassifier has an API called smart
9 selection. And essentially what that API does, if you
10 give it text, it can tell you: Here is what I think the
11 selection in Spanish should be.

12 So if you're talking about Smart Text Selection
13 as a feature, Smart Text Selection, that is, I would call
14 it, a feature. If you are talking about the smart
15 selection, the suggest selection API of the
16 TextClassifier, then, yes, you can call that an API.

17 **BY MR. DIEHL:**

18 **Q.** Fair enough. You called Smart Selection an API in
19 your deposition, right?

20 **A.** I did not say -- you asked about Smart Text
21 Selection.

22 **Q.** You called Smart Selection an API in your deposition,
23 right?

24 **A.** You asked me about Smart Text Selection. Do you mean
25 Smart Selection? So here, when I was referring to Smart

Toki - Cross

1 Linkify and Smart Selection, I was referring to the
2 TextClassifier API for suggest selection in this.

3 **Q.** At your deposition, you said Smart Selection is also
4 an API; is that right?

5 **A.** That's what it says. I believe that's what I said,
6 if that's what's written there.

7 **Q.** Okay. And you talked in your answer to questions
8 from Google's counsel about standard components that
9 Android apps can use, right?

10 **A.** Sorry. Can you repeat.

11 **Q.** Yes. You talked about, quote, "standard components
12 that Android apps can use." Is that right?

13 **A.** Yes. Standard components they use, yeah.

14 **Q.** And you mentioned that if an Android app includes
15 standard components, then Smart Text Selection would work
16 on that app; is that right?

17 **A.** I'm not sure exactly what I said. But, like, yes, if
18 you were building an app, you wouldn't build everything by
19 yourself. You would refer to some of the things in the
20 framework so that when that app runs on the phone, then
21 those components can work.

22 So an example is if you had -- it's like for
23 TextView. For example, if you had text -- something to
24 render text, you can build an app and say, "Hey, I would
25 like the TextView to render the text." If you ran the

Toki - Cross

1 phone, that TextView, depending on the implementation of
2 the operating system could behave slightly differently
3 depending on what you had, yes.

4 **Q.** And TextView is run as part of an individual Google
5 app, right?

6 **A.** You have to clarify that question. If you wanted to
7 render text, you could say, "I want to textView," but you
8 don't have to render using TextView. You can render by
9 yourself. But if you do refer to TextView, then depending
10 on the phone that you were running on, you will get the
11 TextView from the operating system.

12 **Q.** If an app wanted to render text, it could call
13 TextView, and that would run as part of the app's process?

14 **A.** Yes, if an app wants to render text, it can say, "I
15 would like it to be rendered with TextView."

16 **Q.** And if the app decides to use TextView as running as
17 part of its process, then that would cause Smart Text
18 Selection to work in the app, right?

19 **A.** Yes, so if an app was -- if an app was running on an
20 operating system that had the feature, and it was -- the
21 text said, "I would like to use TextView," the Android
22 Framework TextView, then that feature will be there if it
23 was existing on that version of the operating system.

24 **Q.** So the apps code would call TextView, right?

25 **A.** The apps code doesn't necessarily call for TextView.

Toki - Cross

1 How can I explain this? So if you wanted to render text,
2 you have the text, and you can say, "I want to render it
3 in a TextView component."

4 And so that TextView component -- you could have
5 built the TextView component to your app, or you could
6 have included it using a library that had implementation
7 of TextView. But in this case, you know, an app doesn't
8 have to do. It just says, "Hey, I believe there will be a
9 TextView component on the operating system" and use that
10 if that's available.

11 **Q.** If we can pull up DTX-166 and look at Page 7 in the
12 lower left-hand side.

13 You looked at this page with Google's counsel, right?
14 On the screen here?

15 **MR. DIEHL:** Mr. Boles, can you pull up -- yeah,
16 there we go.

17 **THE WITNESS:** Yes.

18 **BY MR. DIEHL:**

19 **Q.** On the lower left, the app includes the TextView,
20 right?

21 **A.** The app doesn't include the TextView. Like I showed
22 when it was in color, the TextView was part of the
23 framework, and they were in the same color. But I was
24 trying to refer that its TextView was serving the app in
25 that use case.

Toki - Cross

1 Q. And as it's drawn here, the TextView is inside the
2 app, right?

3 A. Yes. But you show it in black and white. It is not
4 very clear what my intention is with what it is.

5 Q. Okay.

6 A. My intention is to say that the TextView was -- is
7 serving the app.

8 Q. And there is an arrow -- once you have TextView,
9 inside the app there is an arrow to the TC service, right?

10 A. Yes. So once you have the TextView in the app, then
11 TextView will talk to all those different components that
12 eventually lead to this set of features like Smart Text
13 Selection.

14 Q. And if the app developer didn't put TextView in the
15 app, then TextView would never talk to those services,
16 right?

17 A. Correct. TextView wouldn't -- if the app didn't
18 include the TextView, then it wouldn't have that feature.
19 But the user -- the app has not necessarily included in
20 TextView for that feature. The app has included in
21 TextView to render text.

22 So if you ran that same app that wanted TextView on
23 an older version of Android, then it will get what it
24 wanted, which was text to be rendered, but then it
25 wouldn't have the feature. So the app is not explicitly

Toki - Cross

1 saying, I want the Smart Text Selection feature. It is
2 just saying, Use the standard operating system's text to
3 cover it.

4 **Q.** The answer to my question was correct, right?

5 **A.** Your question was how does -- if the app -- can you
6 repeat your question.

7 **Q.** My question was, if the app calls TextView, then
8 TextView will call the TC service, and that will run as
9 part of the app's process, correct?

10 **A.** No, there are so many -- so many processes are going
11 on here, right? So there will be so many processes that
12 are going on. Everything is not just the app's process.
13 Whenever you are running a code, there could be multiple
14 processes running, right? And, yeah, there will be
15 multiple processes running. I can't really explain it.
16 But like there is a lot of coordination of what is really
17 happening at any time on the screen, right?

18 **Q.** Okay. I would like to look at PX-94 with you. If we
19 can go to PX-94. And I want to look at the paragraph you
20 looked at with Google's counsel. It says here, "Version 1
21 of Smart Text Selection shipped with Android O."

22 That was Android 8.0, right?

23 **A.** Yes.

24 **Q.** Okay. I want to finish the sentence Google's counsel
25 highlighted: "The automatic selection expansion is

Toki - Cross

1 disabled and planned to be re-enabled in O-MR1 time
2 frame."

3 But Google's counsel, they didn't finish this
4 sentence, did they?

5 **A.** I can't remember. What was the rest of the...

6 **Q.** Let's finish it. And then it says: "And the sharing
7 part of the model is enabled."

8 Do you see that?

9 **A.** Yes.

10 **Q.** So when Android O launched the sharing part of Smart
11 Text Selection, that was enabled, right?

12 That's what it says here?

13 **A.** That's what it says there.

14 **Q.** Okay.

15 **A.** That's what it says there. But I can't remember.

16 **Q.** And I want to ask another question: You were working
17 on Smart Text Selection before Android 8 came out in 2017,
18 right?

19 **A.** So yes, the process will be you build a feature, and
20 then when it is ready, it ships. So, yes, I did work on
21 it before.

22 **Q.** And you don't contest that the '843 patent issued in
23 2011, right?

24 **A.** I don't know. You said the eight what?

25 **Q.** The '843 patent, the patent at issue in this case.

Toki - Cross

1 **A.** And what was your question?

2 **Q.** You don't contest that that issued back in 2011,
3 right?

4 **A.** I don't really know when the patent was issued or --
5 the first time I heard about this was when I was asked
6 for, you know, asked questions about it. And when I knew
7 about it was when I was deposed. I can't remember maybe
8 2018, 2019 was when I was deposed that I knew more about
9 like this -- that this lawsuit was going on.

10 **Q.** No one told you about the patent while you were
11 working on Smart Text Selection, right?

12 **A.** No.

13 **Q.** Do you disagree that Google knew about the '843
14 patent and Google knew that Arendi was protecting itself
15 against the '843 patent and already filed suit against
16 Google someone should have told you?

17 **A.** I don't know. I think Google can answer that
18 question. My job is to think about experiences and build,
19 you know, user experiences. Things about like, you know,
20 there's a legal team that would probably be handling
21 things like that, but I basically just focus on developing
22 technology and building user experiences.

23 **MR. DIEHL:** I pass the witness, Your Honor.

24 **THE COURT:** Thank you. Any redirect?

25 **MR. KAMBER:** No, thank you, Your Honor.

Toki - Cross

1 **THE COURT:** All right. Sir, you may step down.
2 Thank you.

3 **MR. KAMBER:** Your Honor, may Mr. Toki be
4 excused?

5 **THE COURT:** He may. Thank you, sir.

6 Ladies and gentlemen of the jury, it has come
7 to the end of our day three of trial. We will be
8 recessing for the evening. Remember, don't talk about the
9 case with each other or anyone else. Thank you.

10 (The jury exits the courtroom at 4:43 p.m.)

11 **THE COURT:** Please have a seat. I hesitate to
12 ask this question. Is there anything we need to address
13 before we recess for the evening?

14 **MS. SRINIVASAN:** Not for Arendi, Your Honor.

15 **MR. UNIKEL:** Not for Google, Your Honor.

16 **MR. ARD:** One thing, Your Honor. I forgot to
17 ask earlier. May Mr. Weinstein be excused as well?

18 **THE COURT:** Yes.

19 **MR. ARD:** Thank you.

20 **MS. SRINIVASAN:** Easy one.

21 **THE COURT:** That's an easy one. Correct. All
22 right. Thanks everybody. I want to try as best we can to
23 get started on time tomorrow as soon as all the jurors are
24 here. So we'll try to get started as soon as we can once
25 everybody is here. So depending on what issues come up,

1 we will take the bench between 8:00 and 8:30 so we can
2 bring the jury in on time.

3 **MR. STRAUS:** Your Honor, one final matter.
4 Would the Court like the exhibits, or would you like us to
5 hold onto those?

6 **THE COURT:** The sealed exhibits, I think we
7 need to take them at this point, unless anyone disagrees
8 about that.

9 **MR. KAMBER:** That's fine, Your Honor.

10 **THE COURT:** Okay. All right. Please approach.

11 **THE COURT:** And we will be in recess.

12

13 (The proceedings concluded at 4:45 p.m.)

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CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer
Bonnie R. Archer
Official Court Reporter
U.S. District Court

BY MR. ARD: [16] 562/4
566/22 578/9 583/12 586/15
588/9 591/11 599/20 636/4
640/8 642/5 657/24 660/10
660/21 663/17 664/25
BY MR. DIEHL: [6] 749/7
755/25 756/9 756/17 757/17
760/18
BY MR. KAMBER: [30]
533/21 534/15 538/1 538/20
542/12 543/6 544/10 547/19
548/14 548/19 551/5 551/24
556/7 560/18 709/7 716/17
722/15 722/25 723/16 727/12
728/11 728/23 729/23 732/24
734/2 735/21 737/21 740/9
740/14 744/12
BY MR. LAHAD: [10] 689/7
690/1 692/4 694/19 695/22
700/11 701/17 702/13 703/24
707/17
BY MR. PETERMAN: [14]
601/6 607/21 610/5 611/22
619/12 620/7 621/20 622/15
622/23 623/20 632/4 633/4
667/11 668/6
BY MR. STRAUS: [3] 523/19
524/9 528/13
BY MS. ROBERTS: [6] 670/9
673/4 674/13 674/17 676/7
685/21
MR. ARD: [39] 562/3 566/16
577/22 578/8 583/4 583/11
585/18 585/23 587/2 587/13
587/21 588/3 590/21 599/9
599/19 610/2 636/2 640/6
642/4 650/8 653/6 654/7
654/11 654/15 655/17 657/6
660/9 661/17 662/2 662/23
663/4 663/9 663/16 664/20
667/7 668/3 669/7 765/16
765/19
MR. BELGAM: [5] 648/6
648/21 649/8 649/11 649/14
MR. DIEHL: [16] 728/6
732/18 740/5 744/9 753/7
753/13 753/25 754/3 754/14
755/19 755/24 756/8 756/14
757/4 760/15 764/23
MR. KAMBER: [51] 517/25
518/3 518/15 518/19 520/6
522/20 523/5 526/8 527/21
533/18 534/13 537/24 538/19
542/9 543/4 544/9 547/18
548/9 548/17 551/4 551/23
555/13 560/25 708/21 722/11
722/22 723/13 726/9 726/21
727/1 727/11 728/4 728/9
728/20 729/20 732/16 732/21
733/25 735/18 737/18 740/3
740/8 740/12 744/7 749/2
754/1 754/5 755/4 764/25
765/3 766/9
MR. LAHAD: [21] 674/10
676/4 685/16 689/4 689/23
691/20 694/11 694/16 698/17
699/3 699/12 699/21 700/7
700/9 701/14 702/8 702/12

703/20 706/24 707/21 708/4
MR. PETERMAN: [39]
566/20 587/16 587/22 588/1
588/5 591/4 599/10 607/19
609/25 611/20 619/3 619/10
620/5 621/18 622/13 622/21
623/18 631/21 633/2 645/2
645/6 646/10 646/16 646/19
651/14 651/17 651/19 652/1
653/24 655/13 657/8 660/7
660/14 660/25 661/6 662/21
664/16 664/18 669/6
MR. STRAUS: [16] 517/20
523/14 524/5 524/8 526/4
526/24 528/7 528/10 533/16
538/13 538/18 560/16 561/3
561/7 561/10 766/3
MR. UNIKEL: [12] 519/17
519/19 578/6 586/8 647/22
648/11 699/16 699/23 726/24
755/16 755/20 765/15
MS. KANNOM: [3] 656/15
656/18 657/13
MS. ROBERTS: [14] 669/22
673/1 674/8 674/15 676/2
689/2 695/20 698/14 698/23
701/12 702/5 707/25 708/5
708/8
MS. SRINIVASAN: [21]
515/12 515/15 516/9 516/25
517/14 518/22 522/6 523/4
527/3 527/12 561/16 586/7
645/15 646/22 647/12 655/20
656/5 669/12 708/12 765/14
765/20
THE CLERK: [7] 523/8
561/18 586/12 669/23 670/1
708/23 727/6
THE COURT: [176] 513/6
515/13 516/2 516/22 517/11
517/23 518/2 518/11 518/17
518/20 519/16 519/18 520/2
520/12 522/14 522/21 523/1
523/6 523/11 523/15 524/7
526/11 526/18 527/6 527/20
527/23 528/2 528/9 533/17
538/16 555/15 560/17 561/1
561/5 561/9 561/13 562/2
566/21 577/25 578/4 578/7
583/6 583/10 585/16 585/19
585/22 585/25 586/9 586/13
587/5 587/10 587/19 587/24
588/4 588/8 591/2 591/5
591/9 599/7 599/11 599/16
601/3 607/20 610/3 619/6
619/9 631/22 636/1 645/4
645/14 646/4 646/15 646/17
647/9 647/18 648/1 648/9
648/17 649/6 649/9 649/12
649/17 650/3 650/10 651/16
651/18 651/20 651/22 653/5
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674/11 676/5 685/19 689/3

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696/15 698/19 699/22 699/7
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726/7 726/10 726/14 726/20
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728/7 732/19 740/6 744/10
749/4 753/9 753/18 753/23
754/12 754/15 755/3 755/10
755/18 757/5 764/24 765/1
765/5 765/11 765/18 765/21
766/6 766/10 766/11
THE WITNESS: [24] 523/18
528/12 548/11 561/6 561/20
657/23 660/16 664/17 664/23
668/5 669/9 669/25 670/2
685/20 691/21 694/12 703/21
707/1 707/4 708/7 708/25
716/16 757/7 760/17
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634/17 634/22 644/16
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633/5 644/16
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570/10 577/11 577/20 578/16
578/23 579/17 579/21 579/24
580/1 581/3 582/18 589/5
590/6 601/1 602/10 617/18
618/16 619/2 623/23 627/25
642/14 688/20 750/7 750/12
763/22 763/25 764/13 764/15

-and [2] 511/24 512/10
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0123 [1] 544/14
0169 [3] 675/15 676/3 676/6
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614/2
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1.475 million [1] 593/9
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597/20 598/16 600/3 605/7
614/21 615/4 615/17 615/23
616/25 617/4 618/20
10 cents [1] 617/24
100 [6] 712/4 712/8 719/11
719/19 719/23 720/8
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100,000 [2] 680/12 680/15
102 [1] 539/1
104 [1] 551/23
1054 [4] 731/16 731/19
732/17 732/20
1057 [1] 737/15
1068 [10] 673/15 674/9
674/12 674/14 700/17 700/20
703/2 722/12 722/16 722/21
108 [2] 547/18 548/17
10:59 [1] 585/21
10K [1] 593/22
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689/12 693/15 709/15 756/16
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528/6
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1141.001 [2] 525/7 528/15
1141.0236 [3] 525/13 526/6
531/12
1141.0254 [2] 525/18 532/18
1141.0258 [2] 525/10 529/23
1141.025A [1] 526/6
11:18 [1] 586/11
12 [18] 536/4 536/12 536/12
544/21 546/22 549/9 549/22
550/19 551/17 557/9 559/16
559/20 559/25 560/11 560/20
587/15 604/10 677/1
123 [1] 544/8
125 [5] 544/8 544/9 547/25
548/9 552/11
12:43 [1] 650/2
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13-919-JLH [1] 511/5
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1
166 [1] 760/11
166C [3] 727/14 728/4 728/8
17 [4] 570/7 602/23 605/6
614/17
183 [1] 549/14
19 [1] 754/6
1980s [1] 576/12
1988 [1] 565/22

2
2.4 million [2] 588/25 616/22
200,000 [1] 680/12
2005 [1] 564/17
2011 [9] 578/13 580/23 592/2
628/20 629/20 630/24 666/15
763/23 764/2
2012 [1] 692/6
2013 [2] 579/7 688/19
2015 [1] 672/13
2017 [35] 588/16 589/2 589/5
599/25 600/14 602/23 603/3
605/6 614/17 615/8 615/16
615/23 672/22 679/10 679/16
682/23 683/4 683/10 683/23
688/22 690/22 691/1 694/10
695/6 695/13 695/24 696/3
696/11 696/14 696/24 697/16
732/14 733/9 742/8 763/17
2018 [26] 588/16 589/2 589/6
592/2 600/1 600/14 605/7
611/23 612/24 614/21 615/4
615/17 615/23 616/25 617/4
618/20 630/24 638/1 638/11
638/18 639/2 639/11 639/12
639/15 686/21 764/8
2018/com.Google.Android.GM
[1] 611/24
2019 [10] 578/22 592/14
601/11 630/1 630/2 658/3
658/11 659/4 688/25 764/8
2020 [2] 579/4 629/23
2021 [3] 579/18 593/19
696/17
2023 [1] 511/10
208 [4] 742/13 743/21 744/8
744/11
21 [2] 754/6 756/15
22 [1] 513/11
22.75 million [1] 623/14
23 [9] 533/1 534/4 534/7
536/14 536/23 537/1 537/13
556/19 556/24
235 [1] 526/5
24 [2] 513/10 521/7
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24 times [1] 626/8
25 [1] 513/12
253 [2] 525/14 526/6
26 [1] 511/10
271 [1] 526/6
28 [1] 513/11
2:00 [1] 657/16

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330 [3] 530/2 530/4 530/6

343 [1] 530/18
349 [1] 638/10
359 [1] 638/16
399 [3] 531/17 531/18 531/19
3:37 [1] 726/13
3:50 [1] 727/7

4
4 percent [1] 627/8
4.29 [1] 619/11
43 percent [1] 628/15
43.1 [2] 649/7 649/10
443.4 million [2] 588/19 600/1
443.5 million [1] 605/11
45 million [1] 633/11
48 [7] 597/13 597/15 597/21
598/7 598/11 617/21 628/2
48 cents [3] 597/25 598/15
621/4
48-cent [2] 598/1 600/14
4:43 [1] 765/10
4:45 [1] 766/13
4X [5] 632/5 633/7 633/9
666/23 667/1

5
50 [2] 595/24 596/13
50 percent [3] 595/25 596/1
596/2
50/50 [2] 595/24 596/13
53 [1] 707/24
57 [2] 525/18 526/7
581 [1] 610/4
5th [2] 615/8 615/23

6
64 [1] 543/4
669 million [1] 593/24

7
76 [1] 553/14
795 [3] 700/10 700/22 707/22

8
8.0 [6] 614/8 616/3 616/11
668/13 669/1 762/22
8.0.0 [2] 544/12 598/23
83 [2] 537/25 542/10
837 million [1] 592/22
844 [1] 511/16
8:00 [1] 766/1
8:30 so [1] 766/1

9
9.0 [5] 614/8 616/3 616/11
668/13 669/1
9.0.0 [1] 598/23
90 percent [1] 663/5
94 [7] 739/11 739/13 739/15
740/4 740/7 762/18 762/19
9649 [2] 528/17 528/21
9:00 [2] 511/10 513/5
9:24 [1] 523/10

A
a.m [5] 511/10 513/5 523/10
585/21 586/11
ability [1] 655/7
able [25] 514/9 515/15 524/23
528/18 530/4 558/7 577/11

592/6 592/11 593/5 654/11
664/3 662/18 664/24 665/15
685/24 708/14 714/1 714/16
714/20 715/9 717/22 720/11
732/6 746/11

Abodunrinwa [4] 708/22
708/25 709/2 709/11
about [215] 515/4 515/7 515/9
517/8 517/16 517/19 517/20
518/8 519/6 519/8 519/23
520/13 520/22 521/15 521/21
521/22 531/1 538/5 540/25
542/21 545/23 546/1 547/2
553/2 553/23 556/11 558/18
562/8 564/1 565/19 566/5
566/10 566/14 570/16 571/4
571/9 571/24 572/1 572/6
572/17 573/20 573/22 574/4
574/9 574/16 574/23 575/11
575/22 576/13 578/14 578/20
581/9 581/24 582/16 584/16
585/1 585/6 587/2 589/9
589/19 590/7 590/16 594/12
594/20 608/11 610/20 611/4
615/19 616/18 616/19 618/19
627/8 628/2 628/5 629/12
630/3 630/23 630/24 635/4
636/7 639/4 641/3 642/2
643/8 644/1 646/2 646/7
646/13 646/18 647/3 647/10
648/3 650/6 650/19 651/4
651/10 652/4 653/7 653/7
653/20 654/16 654/18 655/3
655/10 658/2 658/15 658/22
659/21 661/12 661/21 662/5
662/11 663/6 664/20 665/2
665/20 665/25 666/6 666/9
666/11 666/12 668/21 671/7
672/5 672/24 676/1 677/1
679/6 679/10 681/2 682/22
684/6 685/6 686/23 688/23
689/12 691/23 692/22 693/13
694/2 696/18 696/19 697/8
697/14 697/20 706/25 709/15
711/17 712/16 713/15 714/4
716/1 717/10 718/19 719/2
719/3 722/9 722/16 724/17
724/18 727/17 729/10 732/9
733/15 734/7 735/19 738/3
738/11 741/19 742/17 742/20
749/13 749/20 749/23 749/25
749/25 750/1 750/4 750/6
750/9 750/11 750/13 750/14
750/14 750/17 750/19 751/4
751/5 751/9 751/11 751/19
751/24 751/25 752/3 754/10
754/13 754/14 755/8 756/25
757/12 757/14 757/20 757/24
758/8 758/11 764/5 764/6
764/7 764/8 764/10 764/13
764/18 764/19 765/8 766/8
above [2] 517/15 704/5

absolute [1] 684/20
Absolutely [3] 550/17 677/9
692/12
abstraction [3] 703/1 704/24
723/12
academic [2] 563/8 567/11
access [15] 513/20 513/21
514/4 514/6 514/14 566/25

568/19 574/4 581/3 584/22
585/8 590/6 594/8 679/4
680/23
accessible [2] 683/5 705/18
accessing [1] 735/14
according [2] 634/24 692/23
account [8] 624/20 642/7
642/11 642/12 644/4 644/5
644/11 645/21
accounts [2] 621/2 621/13
accurate [4] 609/24 627/4
738/24 767/5
accurately [1] 604/16
accuse [5] 544/21 558/21
559/13 559/20 611/1
accused [64] 536/5 546/17
549/22 550/20 557/9 559/9
559/23 560/6 560/20 587/3
588/11 588/14 588/17 588/21
588/24 593/14 598/3 598/6
598/7 598/12 598/19 599/4
599/25 600/2 600/6 600/9
600/12 600/18 604/13 604/22
606/9 606/20 607/4 608/13
611/4 611/13 611/15 612/13
613/9 615/7 616/9 616/9
617/1 618/6 635/1 635/16
636/6 636/16 636/17 636/21
637/8 637/13 637/18 637/19
638/17 639/2 639/4 639/5
639/13 641/13 647/1 669/1
677/2 677/4
accuses [1] 558/23
accusing [7] 546/4 559/11
604/10 608/8 610/21 639/16
676/20
achieve [1] 580/3
Achievement [1] 564/19
acknowledged [2] 621/15
622/25
acknowledges [1] 622/5
acknowledging [2] 622/9
622/11
acquired [1] 666/21
across [7] 555/25 570/4 570/5
571/12 680/20 716/2 716/20
act [1] 735/25
action [31] 537/9 537/14
537/21 538/9 538/11 538/23
539/7 539/12 539/13 539/17
539/22 540/1 541/20 542/1
542/5 542/8 542/13 681/2
681/23 682/6 712/22 722/3
734/24 735/1 736/6 736/7
743/5 744/18 746/8 746/24
747/4
actions [7] 537/18 677/25
678/3 678/3 678/11 678/15
681/2
activated [1] 683/11
activity [2] 745/4 746/1
Activity B [1] 746/1
actual [10] 524/1 577/19
594/5 607/15 630/21 630/24
635/10 643/9 671/24 699/25
actually [47] 537/15 542/10
544/5 560/6 577/6 578/19
583/4 593/7 596/13 604/17
606/13 607/16 608/15 610/22
618/5 620/17 621/2 630/1

A	Document 601	Page 372 of 775	PageID #: 60951
<p>actually... [29] 632/19 633/21 635/11 635/15 638/9 643/17 652/16 653/1 659/2 659/5 659/24 661/12 668/7 668/15 679/15 681/15 683/11 683/21 685/3 690/22 696/12 696/14 704/3 704/5 706/6 728/13 742/15 745/8 746/17 add [2] 600/24 677/25 addiction [1] 629/5 addition [5] 544/18 580/17 585/5 676/25 712/9 additional [7] 574/4 581/24 584/22 585/8 592/15 672/6 748/6 address [33] 520/1 543/11 543/11 543/11 585/13 632/5 651/12 677/21 677/23 678/5 678/7 712/3 712/7 712/8 712/18 712/20 713/16 713/18 713/21 716/6 719/11 719/17 719/17 719/22 734/17 734/20 736/5 736/8 737/4 737/6 737/6 755/15 765/12 addressed [1] 595/18 addresses [11] 713/21 714/1 715/6 715/7 715/7 715/10 715/17 720/1 720/2 720/2 734/22 adds [1] 684/15 adequate [3] 569/21 598/24 600/8 adjust [7] 624/19 625/4 625/6 642/3 642/6 642/11 694/13 adjusted [4] 596/5 597/14 597/21 625/13 adjusting [1] 596/20 adjustment [1] 594/22 adjustments [6] 596/22 596/24 597/5 597/10 597/17 597/24 Administration [1] 564/5 admission [3] 582/7 582/18 744/8 admit [8] 526/5 674/8 676/2 699/6 699/18 707/21 732/16 740/3 admitted [30] 524/13 526/11 526/21 527/10 527/15 528/5 528/6 528/15 610/1 610/3 610/4 674/11 674/12 676/5 676/6 698/25 699/1 699/10 700/3 708/3 722/19 728/7 728/8 732/19 732/20 737/15 740/6 740/7 744/10 744/11 admitting [2] 699/7 699/19 adoption [2] 686/17 687/10 ads [1] 693/17 advance [1] 632/23 advantages [4] 584/11 584/14 584/18 584/22 adverse [1] 669/16 advertise [1] 662/5 advertising [10] 661/9 661/21 662/17 663/4 663/18 663/21 693/9 693/11 693/14 693/19 affect [1] 533/12 affirmed [3] 561/23 670/5</p>	<p>709/3 afraid [1] 559/2 after [26] 518/23 524/12 529/14 530/10 530/20 597/10 597/14 630/3 644/3 650/21 651/9 670/21 670/25 672/11 672/19 685/2 686/1 706/12 708/16 710/3 710/5 718/18 732/3 741/4 741/17 741/18 afternoon [7] 657/25 658/1 689/8 709/8 709/9 726/8 726/11 again [31] 516/16 517/10 518/24 539/5 542/11 548/9 551/12 553/15 571/19 573/8 582/20 586/19 590/23 590/24 595/19 597/2 597/23 616/1 630/18 652/5 657/4 674/24 684/17 687/2 689/10 692/20 720/17 722/6 728/14 734/5 736/3 against [5] 658/12 664/7 719/14 764/15 764/15 ago [8] 529/6 579/18 644/13 658/19 697/2 697/24 753/1 756/10 agree [44] 573/2 574/12 602/8 602/12 602/15 604/6 604/23 605/1 613/10 613/15 613/25 615/12 618/18 618/21 620/4 620/13 621/3 623/15 623/24 624/3 625/12 627/10 628/14 628/18 631/17 632/18 633/7 634/11 634/15 637/17 638/25 640/3 646/4 646/15 648/17 662/10 701/8 701/18 704/21 704/25 749/12 750/3 750/5 750/16 agreed [18] 527/11 527/14 578/24 579/19 580/18 602/9 606/21 613/5 617/16 623/8 627/6 631/10 643/9 643/15 658/15 666/1 669/14 669/14 agreeing [1] 589/18 agreement [91] 572/1 572/19 578/12 578/15 578/18 578/21 578/22 579/1 579/2 579/3 579/4 580/9 580/15 580/19 580/21 580/24 581/1 581/4 581/22 581/24 581/25 582/2 582/3 582/9 582/13 582/20 582/22 591/13 591/15 591/16 591/20 591/23 591/25 592/1 592/4 592/7 592/12 592/13 592/16 593/6 593/7 593/9 593/11 593/12 593/18 594/15 594/21 594/24 620/8 620/14 620/17 620/25 621/1 621/6 621/13 621/17 621/25 622/8 622/14 622/16 622/17 622/25 623/6 623/9 623/11 623/13 623/25 624/8 624/22 628/19 628/24 630/4 632/23 648/9 648/11 648/12 648/14 648/14 651/3 656/23 664/9 664/11 664/12 664/13 664/15 664/21 664/23 664/24 665/21 666/14 666/17 agreements [44] 515/11 518/25 519/2 519/20 521/24</p>	<p>567/2 567/4 568/23 569/3 569/4 569/6 569/7 569/11 569/11 569/15 577/16 578/10 579/11 580/5 580/13 580/14 583/16 583/17 583/19 590/4 590/8 590/13 591/1 594/13 595/23 596/23 597/8 620/12 623/22 624/5 624/17 624/21 633/21 644/7 664/2 664/4 665/10 665/15 665/19 agrees [1] 611/14 ahead [1] 515/13 AI [1] 713/23 align [1] 755/13 all [133] 513/8 518/7 520/8 522/23 523/2 527/23 529/4 530/13 530/13 533/8 533/11 535/4 536/13 536/19 543/17 550/3 550/19 560/9 561/5 563/23 566/3 566/21 568/12 568/16 568/18 572/16 573/18 575/19 577/2 578/7 579/20 581/15 585/19 586/9 586/9 588/4 589/8 589/8 591/5 595/13 596/2 596/19 598/2 599/11 601/3 602/5 605/14 607/7 608/19 610/25 611/3 611/5 611/10 611/16 612/5 612/12 616/1 616/10 617/1 617/9 624/20 627/22 631/22 635/20 636/19 637/1 637/11 637/13 643/6 646/3 650/3 650/4 650/10 652/12 653/23 654/19 656/13 657/9 657/14 659/2 661/17 665/18 671/23 673/5 673/10 675/6 675/7 675/11 675/23 680/20 684/3 686/6 686/24 687/15 692/1 696/14 699/22 701/8 706/4 706/14 707/10 716/23 719/14 721/1 723/7 723/24 724/7 724/10 726/10 727/2 727/4 728/13 729/11 730/2 730/21 731/25 740/2 741/21 745/18 750/25 751/19 751/24 752/10 752/12 752/18 754/24 755/1 756/22 761/11 765/1 765/21 765/23 766/10 alleged [2] 589/4 602/20 allegedly [1] 688/19 allow [5] 580/18 648/19 661/7 712/15 755/14 allowed [6] 516/10 661/20 661/22 745/20 745/20 746/22 allowing [1] 584/24 allows [3] 743/19 748/23 748/24 alone [3] 537/5 539/18 601/19 along [2] 526/19 527/13 Alphabet [1] 692/10 already [11] 520/16 621/25 649/25 653/6 666/13 666/20 722/18 736/21 737/15 741/10 764/15 also [81] 513/14 514/21 525/15 525/22 535/7 536/23 537/14 538/21 544/5 544/24 550/25 551/9 552/23 553/11 556/1 557/15 560/11 564/7 565/8 566/12 567/2 571/9</p>	<p>572/4 572/21 573/21 578/22 581/8 581/17 582/5 588/22 593/18 598/6 600/8 614/22 615/5 618/21 634/1 639/9 640/4 640/20 642/17 646/10 650/19 653/11 654/20 658/2 661/11 662/23 671/23 672/23 674/5 676/13 677/25 678/2 678/15 684/23 702/6 705/17 707/22 710/14 712/19 714/14 715/17 718/5 718/10 718/20 722/18 725/22 725/23 726/3 728/18 731/7 731/8 734/24 738/5 738/5 738/17 753/15 754/22 756/21 758/3 alternative [1] 517/10 alternatives [2] 634/19 635/1 although [1] 517/18 always [1] 718/8 am [19] 517/19 539/2 606/7 619/3 621/16 623/4 628/12 633/19 662/2 663/5 664/5 670/11 693/22 701/5 702/17 723/3 733/8 749/8 751/13 Amendment [2] 513/20 514/5 America [3] 675/2 703/7 703/8 among [5] 541/14 542/24 544/25 580/15 701/24 amount [20] 562/16 566/6 569/21 579/10 589/17 590/15 593/20 595/6 601/24 621/6 624/9 624/12 624/16 624/19 624/25 628/3 628/6 644/14 665/11 667/3 amounts [5] 590/5 590/9 590/11 590/12 594/5 analysis [30] 537/17 538/24 543/18 551/22 553/19 558/1 558/12 562/25 576/23 577/3 580/6 580/10 582/11 583/2 583/13 589/15 589/25 590/17 594/8 597/23 598/17 604/25 606/12 623/4 635/2 635/8 643/18 644/4 665/14 666/25 analyze [1] 589/1 analyzed [8] 534/8 540/18 542/25 550/25 560/5 560/9 560/11 634/21 analyzing [2] 553/16 553/17 ANDERSON [1] 512/9 ANDREA [1] 512/13 Android [293] Android 6 [2] 610/16 613/7 Android 7 [7] 557/24 558/2 558/3 558/7 610/16 612/18 721/21 Android 8 [57] 525/5 525/12 546/19 547/20 548/3 548/21 549/9 552/20 552/22 553/8 553/16 553/18 557/18 558/5 560/1 560/4 560/7 560/22 604/14 604/18 604/21 605/22 605/25 606/17 607/8 607/11 610/16 611/2 612/9 612/13 612/18 613/4 613/7 614/3 614/4 614/11 614/16 614/20 614/25 615/4 615/7 615/18 615/25 616/24 617/3 617/9 636/8 636/10 639/5 639/23</p>

<p>Android 8... [7] 641/9 641/21 641/22 695/16 696/5 748/5 763/17 Android 8.0 [2] 614/8 762/22 Android 8.0.0 [1] 598/23 Android 9 [17] 525/16 531/20 550/25 551/18 553/20 553/24 554/1 557/19 606/1 610/16 613/4 613/7 617/3 636/8 636/11 686/19 686/20 Android O [1] 683/16 Android version [1] 686/13 Android Versions [1] 637/14 Android-based [1] 614/16 Android/platform/framework [1] 544/11 Angeles [1] 562/10 annotate [1] 716/4 announced [1] 687/22 annual [2] 566/7 593/23 another [33] 570/4 571/13 583/25 612/21 612/21 616/21 622/16 627/14 632/17 634/23 640/11 640/12 640/15 658/19 659/8 663/7 675/19 680/7 686/23 698/8 701/16 702/7 702/15 707/7 737/14 742/18 742/20 742/23 743/15 744/18 747/13 754/11 763/16 answer [29] 535/18 556/8 569/23 570/14 573/12 574/19 576/2 576/25 589/10 589/20 630/8 635/18 638/1 639/8 646/11 654/2 658/14 661/24 696/18 696/19 696/22 707/3 755/6 755/9 755/13 755/16 758/7 762/4 764/17 answers [1] 640/16 any [98] 513/23 514/2 514/20 518/20 520/22 524/23 526/19 530/15 532/12 533/6 533/10 536/12 539/24 541/25 542/1 542/8 557/20 558/1 560/19 563/18 564/9 566/5 567/7 570/16 577/19 578/4 580/5 583/24 584/4 587/20 589/7 591/2 592/21 597/17 597/24 606/18 607/10 610/23 611/6 612/5 613/12 613/19 614/23 615/2 615/10 618/24 620/11 630/12 635/2 635/14 635/19 635/20 636/1 641/16 641/20 646/20 648/25 650/16 650/23 653/21 657/5 657/7 660/4 667/17 667/22 668/7 668/19 669/2 675/1 676/14 677/24 679/22 683/5 683/21 688/1 688/23 691/7 697/12 703/7 707/16 708/17 710/22 713/7 716/23 721/2 725/4 725/15 734/21 739/7 739/8 748/6 749/14 750/6 750/11 751/17 751/20 762/17 764/24 anybody [2] 676/11 744/1 anymore [3] 696/11 696/20 696/25 anyone [3] 586/5 765/9 766/7 anyplace [1] 664/24</p>	<p>anything [23] 558/15 575/10 586/2 588/2 614/1 617/6 619/2 630/6 646/17 648/16 651/12 654/18 655/3 684/2 692/13 693/21 699/7 702/3 719/15 725/11 747/22 748/8 765/12 anyway [2] 650/25 748/20 anywhere [1] 593/10 AOSP [5] 701/9 702/20 730/5 730/5 752/16 AOSP TC impl [1] 730/5 apartment [1] 572/7 API [40] 679/4 703/16 704/1 704/13 705/18 723/9 723/14 723/25 725/3 729/8 729/16 737/24 738/5 738/6 738/7 752/9 752/21 752/23 753/14 753/16 753/23 754/19 754/21 754/22 756/3 756/5 756/6 756/7 756/19 756/20 756/21 757/2 757/8 757/9 757/15 757/16 757/18 757/22 758/2 758/4 APIs [2] 704/22 705/22 apologies [4] 538/18 599/7 656/18 754/6 apologize [4] 590/21 599/16 657/18 726/24 app [148] 551/22 554/5 554/8 554/15 554/16 554/17 554/18 557/23 558/6 584/24 587/14 587/17 588/15 588/17 588/17 588/20 598/8 598/16 598/18 600/3 600/6 604/20 610/8 610/10 613/16 615/18 615/24 617/24 628/5 628/15 637/8 637/20 638/17 639/2 660/6 660/12 672/9 675/1 675/1 675/2 675/3 675/25 676/1 680/4 680/5 680/6 680/23 681/11 681/13 681/17 681/19 681/20 681/24 682/8 682/13 692/3 693/5 695/9 703/7 703/8 707/4 707/11 710/4 711/12 712/19 712/20 715/20 721/4 721/5 721/7 721/8 721/13 721/13 721/13 721/16 721/16 721/20 721/23 724/20 725/7 725/22 725/24 725/24 726/1 730/18 730/20 730/25 731/11 734/22 734/23 735/24 739/9 743/2 743/10 743/10 743/11 743/15 744/18 745/5 745/16 745/19 745/21 745/24 747/2 747/17 747/21 747/23 748/2 748/3 748/9 748/10 748/23 751/3 751/12 751/13 751/16 751/17 751/18 758/14 758/16 758/18 758/20 758/24 759/5 759/12 759/14 759/16 759/18 759/19 759/19 760/5 760/7 760/19 760/21 760/24 761/2 761/7 761/9 761/10 761/14 761/15 761/17 761/19 761/20 761/22 761/25 762/5 762/7 app's [7] 706/1 707/7 707/10 751/15 759/13 762/9 762/12 appeal [2] 595/19 596/2</p>	<p>appear [1] 751/8 APPEARANCES [2] 311/21 511/25 appears [5] 701/20 703/5 703/13 705/20 706/5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] apples [2] 644/15 644/15 applicability [1] 725/24 applicable [3] 592/4 592/8 593/8 application [18] 556/1 587/4 657/12 675/21 675/22 691/24 730/14 739/8 742/16 742/17 742/18 742/18 742/20 742/21 742/23 742/23 743/6 746/15 applications [24] 536/12 544/19 555/25 556/2 559/5 559/9 560/6 604/25 605/25 606/16 607/7 631/7 641/4 694/21 694/21 695/1 695/3 721/3 723/18 725/4 739/7 746/11 747/18 748/14 applied [3] 536/21 648/23 656/8 applies [4] 514/6 522/4 598/4 648/15 apply [3] 598/2 598/2 598/5 appreciate [3] 521/15 645/12 656/9 apprise [1] 538/14 approach [11] 515/14 524/5 528/7 569/18 607/19 632/10 644/21 656/17 673/1 700/7 766/10 approaches [1] 556/9 appropriate [6] 529/16 626/22 633/6 644/16 658/18 702/9 approximately [9] 588/19 588/25 593/24 600/7 600/19 605/11 628/15 718/12 742/2 apps [168] 529/3 530/11 536/4 536/13 544/21 546/4 546/17 546/23 549/9 549/22 549/25 550/19 551/18 554/18 557/9 557/14 557/17 558/18 559/1 559/11 559/16 559/20 559/25 560/3 560/12 560/20 587/15 598/5 598/6 598/13 598/19 598/19 599/4 599/22 599/25 600/2 600/24 604/8 604/10 604/12 604/17 605/2 605/11 606/3 606/9 606/20 608/7 608/13 609/23 610/15 610/15 610/21 610/25 611/3 611/5 611/10 611/13 611/15 611/16 613/9 613/12 613/19 615/15 616/1 616/10 626/11 626/14 628/10 635/11 635/12 635/15 635/16 635/21 635/22</p>	<p>636/8 636/11 636/16 636/17 637/19 636/22 637/11 637/13 637/20 639/4 639/5 639/13 639/16 641/8 641/13 641/18 641/21 641/22 645/20 659/18 660/1 662/9 663/19 668/11 668/24 673/13 673/13 674/2 675/8 677/1 679/19 679/22 679/25 680/11 680/12 680/15 680/20 690/20 692/17 693/2 693/3 693/4 693/10 703/4 703/6 703/11 703/15 704/1 704/15 704/17 704/17 705/14 706/21 723/9 723/14 723/22 724/6 724/17 725/11 725/14 725/19 734/21 743/13 743/14 743/17 744/3 746/6 746/13 747/15 747/21 747/21 748/6 748/18 748/19 748/19 748/24 749/1 750/7 750/24 751/1 751/8 751/9 751/20 751/22 751/23 751/24 752/1 752/3 752/8 752/10 758/9 758/12 759/24 759/25 April [5] 511/10 513/10 513/12 686/2 686/25 April 24 [1] 513/10 April 25 [1] 513/12 Archer [2] 767/7 767/8 architecture [13] 549/20 673/19 674/24 698/13 700/23 701/4 701/10 702/16 702/21 702/24 722/23 729/6 731/4 ARD [2] 512/5 561/17 are [316] area [7] 551/13 575/12 576/12 595/14 595/15 595/18 729/8 areas [1] 574/17 aren't [1] 574/21 ARENDI [79] 511/3 513/11 513/13 558/23 561/16 562/16 563/4 567/1 570/5 570/12 571/12 571/17 575/3 575/4 575/22 577/10 578/13 578/17 578/18 578/21 578/24 579/2 579/3 579/15 579/17 579/19 580/18 580/22 580/24 581/1 581/2 581/5 581/8 582/5 582/25 583/18 584/3 589/3 589/21 594/3 598/25 600/9 600/23 601/11 601/25 602/14 602/16 604/10 606/6 606/16 614/6 617/14 621/14 622/4 622/8 622/25 626/5 627/1 627/5 628/25 629/6 634/22 639/16 652/15 653/1 653/2 656/23 659/15 659/16 661/8 667/18 667/22 668/1 676/20 688/19 688/23 708/11 764/14 765/14 Arend's [6] 581/3 581/6 581/6 627/22 750/7 750/12 argue [1] 704/19 argument [1] 663/10 Argumentative [1] 695/20 arguments [1] 582/16 around [30] 568/15 573/17 602/20 603/2 619/20 672/17 676/16 677/16 677/23 686/2</p>
--	---	--	---

around... [20] 695/13 695/15
695/19 695/23 695/23 695/24
695/25 695/25 697/5 697/11
704/9 704/10 704/16 719/12
719/14 720/19 730/22 735/13
742/7 742/8
arrived [1] 649/18
arrow [2] 761/8 761/9
article [1] 565/21
artificial [2] 710/19 713/24
arts [1] 564/7
as [224] 513/16 513/22 516/3
518/6 519/22 519/23 519/23
525/23 531/14 532/19 540/3
543/18 544/22 545/8 546/8
547/16 549/21 550/10 550/12
552/25 553/25 554/5 555/1
555/19 556/2 556/14 557/4
557/22 557/22 560/20 560/23
561/22 561/23 562/12 562/15
563/10 563/11 564/16 564/22
564/22 565/10 565/18 566/17
567/5 567/11 567/25 568/7
568/12 568/18 569/24 570/14
571/12 574/23 574/25 575/6
575/15 575/20 575/22 576/1
576/4 576/11 576/21 576/22
577/13 578/16 578/16 579/21
579/21 580/12 581/4 582/5
582/18 585/7 590/4 591/16
592/19 592/19 594/10 595/12
595/24 596/9 600/22 601/12
601/13 601/25 602/9 602/15
603/9 605/5 611/13 611/17
613/2 614/17 614/20 616/14
617/5 617/5 619/16 623/5
623/21 624/1 624/2 624/9
625/2 625/5 625/11 626/8
626/10 627/19 627/19 628/22
629/8 631/12 631/14 634/23
635/7 635/22 637/19 639/1
639/2 639/8 639/10 639/12
639/13 639/15 639/20 640/10
641/6 641/6 643/20 644/20
644/21 644/23 645/1 651/2
652/11 652/11 655/21 655/22
655/24 656/6 656/23 656/23
658/15 658/24 659/10 660/4
660/11 661/15 662/12 665/12
665/17 666/12 666/13 667/6
667/6 670/4 670/6 671/14
672/22 672/24 673/20 674/7
674/7 674/20 674/24 683/18
683/23 686/2 686/2 686/11
687/10 688/3 688/7 688/10
688/12 688/14 689/21 690/3
691/22 692/18 692/20 694/14
694/16 695/16 696/5 696/13
698/5 699/22 699/24 699/25
700/1 702/24 704/23 706/19
709/2 709/4 726/15 726/15
726/17 730/13 730/17 734/6
734/24 741/7 744/17 745/12
749/18 749/23 752/4 753/21
757/13 759/4 759/13 759/16
759/16 761/1 762/8 765/17
765/22 765/23 765/23 765/24
765/24

ascertain [1] 614/1
Aside [1] 519/19
ask [36] 517/20 520/16 521/3
524/11 535/19 537/16 540/25
575/19 629/12 630/12 635/19
640/15 646/19 650/6 654/8
661/12 661/21 663/14 666/5
669/3 696/22 697/10 701/16
702/7 710/25 728/2 742/15
746/15 748/4 755/12 755/16
756/2 756/25 763/16 765/12
765/17
asked [39] 636/7 642/2 643/8
646/12 646/25 647/13 652/2
652/4 653/2 653/3 653/7
653/7 653/9 653/21 653/25
654/13 654/18 654/19 659/21
659/25 662/8 664/20 665/2
665/20 667/19 667/22 668/1
696/23 697/7 753/13 753/19
753/20 753/23 755/5 755/8
757/20 757/24 764/5 764/6
asking [18] 513/17 539/19
540/22 547/2 549/4 549/5
554/24 621/7 626/7 626/10
626/13 633/5 633/10 653/19
653/20 661/14 751/8 754/14
asks [3] 583/15 652/13 654/4
aspect [1] 597/22
aspects [4] 583/19 597/22
678/10 704/4
asserted [3] 556/15 582/4
664/7
assessed [1] 595/24
assessment [1] 643/16
assisting [1] 601/22
associated [18] 514/18
568/16 570/8 570/20 585/13
592/7 592/22 595/5 595/12
595/15 595/19 595/21 600/4
616/11 644/7 665/16 712/10
731/25
assume [2] 552/21 639/8
assumed [2] 607/7 644/1
assumption [6] 571/11 571/15
571/17 572/4 574/6 655/24
assumptions [9] 570/16
570/18 570/20 570/21 570/24
594/12 596/21 630/16 643/25
attempt [1] 691/2
attended [1] 564/3
attest [1] 698/11
attorney [1] 518/5
attorneys [3] 565/8 649/23
651/23
attribute [1] 643/3
attributed [1] 623/6
audience [3] 701/24 743/24
744/1
August [14] 570/7 588/16
589/2 589/5 599/25 600/14
602/23 605/6 614/17 615/13
615/14 683/3 683/25 686/21
August 17 [4] 570/7 602/23
605/6 614/17
August 2017 [4] 588/16 589/2
599/25 600/14
author [1] 733/8
automatic [3] 694/8 740/19
762/25

automatically [4] 677/19
677/22 678/21 694/13
available [27] 543/24 543/25
544/22 567/1 574/1 574/3
597/8 629/14 634/12 637/24
638/15 640/23 644/2 653/14
654/23 679/16 683/24 684/9
696/15 705/21 729/11 738/7
739/24 752/13 752/18 752/20
760/10
Avandia [1] 513/19
average [11] 597/12 597/13
597/15 598/1 620/16 620/18
620/22 621/2 625/13 665/13
675/2
award [2] 564/19 564/21
awarded [1] 564/18
awards [3] 564/9 564/11
565/3
aware [16] 569/17 571/2
605/17 605/19 618/5 618/7
621/12 628/9 628/12 633/18
633/20 662/9 668/1 669/2
688/23 697/17
away [8] 521/18 572/20
572/23 670/23 678/10 684/4
692/17 693/5

B

B-R-A-H-I-M [1] 670/2
Bachelor [1] 564/4
back [41] 520/17 522/12
523/20 527/5 527/15 527/19
534/24 537/4 548/17 554/10
557/21 565/2 565/2 566/14
575/5 575/24 578/13 579/7
580/23 586/1 586/2 586/10
590/20 607/22 623/19 656/14
656/16 666/15 668/22 670/24
672/21 684/6 688/21 715/11
719/16 724/21 727/5 727/8
753/19 753/21 764/2
background [2] 564/2 737/19
backs [1] 738/9
backward [2] 592/14 593/18
bananas [1] 680/8
Bank [3] 675/2 703/7 703/8
bar [9] 540/6 541/11 543/15
566/3 722/2 722/4 734/18
747/3 747/4
Barack [1] 734/9
base [2] 548/2 548/12
based [28] 514/10 514/17
571/6 598/17 603/10 603/13
603/23 608/24 614/16 614/19
621/9 623/4 627/12 633/7
641/11 667/19 667/23 669/3
693/10 701/5 713/14 716/20
716/22 725/16 736/22 739/18
754/23 756/22
bases [1] 661/6
basically [40] 576/14 592/19
595/24 636/12 642/21 678/3
683/17 710/7 710/11 710/19
711/5 711/24 712/24 713/10
713/17 715/24 716/5 716/11
720/19 720/22 721/8 724/12
724/15 729/18 730/1 730/19
730/19 732/11 735/12 735/16
735/17 736/22 738/7 738/15

738/17 743/2 745/15 754/23
756/21 764/21
basis [4] 519/11 596/10
598/18 661/4
Bates [2] 647/2 647/7
battery [1] 684/24
be [280]
beauties [1] 682/19
became [2] 579/8 679/15
because [58] 515/19 516/19
522/7 522/13 524/10 527/8
530/22 532/24 540/10 555/4
558/8 559/14 565/5 568/6
568/13 574/20 574/22 576/5
579/12 581/5 584/10 586/4
586/19 586/24 590/4 590/25
591/24 593/11 594/5 595/23
604/5 608/22 614/5 621/24
634/4 638/10 647/14 651/1
659/14 661/14 667/2 669/1
680/19 681/15 684/13 684/14
684/19 684/23 693/25 693/25
695/18 696/19 725/11 730/15
731/7 740/25 747/7 747/20
become [2] 563/11 576/4
becomes [1] 569/17
been [88] 513/17 514/19
515/23 519/1 519/3 522/3
522/8 526/21 528/4 561/22
564/15 564/22 564/25 565/4
565/8 565/16 566/9 576/11
577/10 578/5 583/10 591/9
597/14 611/7 611/12 615/3
619/9 634/16 645/18 645/20
646/5 646/11 646/12 649/3
650/17 650/21 651/3 655/4
655/23 655/25 656/1 656/2
658/11 659/12 661/7 663/9
664/3 666/15 666/21 670/4
671/5 679/12 679/16 685/15
685/24 685/25 686/12 686/19
686/20 688/25 689/12 689/15
690/5 695/5 695/13 695/15
695/19 695/23 695/24 695/25
696/2 696/5 696/11 696/23
699/1 709/2 709/14 711/18
714/4 720/9 722/18 737/15
740/1 741/17 742/6 742/7
743/4 747/1
before [48] 511/18 521/5
531/4 533/25 535/19 560/5
563/1 565/13 566/12 585/25
595/12 599/6 599/24 608/18
615/11 621/24 628/9 648/2
650/22 650/25 651/5 651/8
651/12 655/23 656/15 658/7
687/1 691/25 698/10 706/7
709/16 709/17 709/20 711/15
714/19 716/24 719/9 724/22
725/6 727/13 733/22 742/15
748/10 752/2 753/20 763/17
763/21 765/13
beforehand [1] 538/6
began [1] 577/6
begin [2] 521/5 577/5
beginning [4] 513/4 569/9
575/7 748/16
begins [3] 530/6 532/18 589/4
behalf [5] 565/15 601/25
606/5 606/16 656/19

Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 375 of 739 PageID #: 60854	683/12 698/1 715/17 719/5 black [1] 761/3	760/5 bulk [1] 633/7	calls [13] 561/16 669/22 673/12 681/4 681/4 681/14
<p>behave [1] 759/2 behavior [1] 680/20 behind [2] 568/20 704/19 being [32] 520/23 537/20 538/23 539/7 540/18 546/8 546/19 546/23 546/25 548/21 551/19 559/21 561/22 563/14 604/12 606/9 620/21 637/13 641/8 666/17 670/5 708/14 709/3 729/2 729/7 729/24 730/13 730/17 730/17 744/17 747/6 755/8 BELGAM [1] 511/23 believe [41] 519/20 535/13 538/15 544/7 552/25 558/9 558/23 563/25 577/23 583/17 584/9 585/5 588/1 590/3 590/13 594/5 594/19 594/25 600/16 602/23 623/7 623/10 624/18 625/22 626/1 626/22 630/1 638/7 641/14 666/10 703/21 711/15 715/13 722/7 727/20 731/16 732/14 742/5 744/5 758/5 760/8 believed [4] 596/25 626/25 627/8 632/14 believes [3] 603/2 622/4 622/12 Belmont [1] 670/14 belonging [1] 531/14 below [1] 675/10 bench [2] 650/22 766/1 benchmark [2] 577/13 584/1 benchmarks [1] 563/13 benefit [9] 557/3 568/11 568/12 568/18 575/4 647/13 660/5 660/12 725/15 benefited [1] 659/22 benefits [8] 568/21 585/6 585/9 585/10 585/13 585/14 660/19 661/12 besides [4] 516/5 518/21 582/10 663/8 best [6] 571/5 641/3 641/12 674/7 682/11 765/22 better [8] 516/17 572/24 690/13 713/2 713/3 714/2 715/21 715/22 between [30] 533/6 554/3 554/25 555/17 556/9 568/24 573/3 573/25 578/13 578/21 579/2 580/24 589/1 600/13 603/6 614/11 614/24 615/13 625/7 627/1 628/25 630/24 641/16 641/20 643/9 643/14 656/23 679/18 713/7 766/1 beyond [9] 517/22 575/9 580/4 580/9 580/10 588/20 630/11 658/14 661/11 big [2] 658/2 710/16 bigger [2] 528/19 718/17 binder [12] 609/18 673/15 675/16 722/17 726/6 727/14 731/17 737/16 739/12 742/12 742/14 743/21 binders [1] 673/2 bit [11] 532/17 562/8 586/3 608/17 623/16 649/22 658/25</p>	<p>blaming [1] 645/7 blow [1] 729/21 blown [1] 556/24 blue [6] 691/16 691/18 723/9 723/19 725/4 731/8 blueprint [2] 673/20 673/21 board [1] 570/22 Boles [3] 691/20 756/14 760/15 Bonnie [2] 767/7 767/8 book [1] 607/22 both [27] 533/4 540/14 540/20 568/21 571/13 585/10 593/7 593/11 602/14 607/16 609/7 623/21 629/3 635/4 636/17 637/23 638/12 638/12 638/14 638/15 638/19 640/23 644/19 654/23 656/22 700/18 700/19 bottom [15] 547/24 580/17 609/3 611/24 637/21 638/4 640/23 653/14 654/23 675/11 700/12 700/16 729/22 733/25 736/16 boundaries [1] 738/16 box [9] 553/1 683/18 683/18 683/19 683/25 684/1 730/4 730/9 748/20 boxes [2] 729/22 730/12 brackets [1] 737/3 Brahim [4] 669/22 669/25 670/4 670/11 break [11] 561/14 585/17 585/20 649/5 649/20 655/23 726/8 726/11 726/15 727/13 733/22 brief [3] 522/24 650/4 753/7 briefly [4] 526/13 587/6 651/15 714/5 bring [13] 523/6 585/25 586/10 607/18 621/18 633/2 651/13 655/7 656/13 656/16 657/14 727/4 766/2 bringing [1] 658/7 brings [1] 686/4 broad [2] 590/7 590/9 broke [1] 573/24 broken [2] 610/11 680/13 brought [4] 526/22 582/17 658/20 659/14 browse [1] 736/9 browser [2] 552/4 711/10 bubble [1] 648/15 bug [2] 683/14 686/9 build [24] 671/12 674/2 675/8 680/21 688/15 692/23 693/3 693/7 715/9 716/7 716/11 717/12 719/3 721/16 724/7 741/4 741/21 742/9 748/24 751/20 758/18 758/24 763/19 764/18 building [9] 673/20 692/21 693/2 724/6 742/10 744/3 748/3 758/18 764/22 built [20] 558/4 680/11 686/22 705/14 711/23 720/18 720/18 721/16 728/16 731/24 735/13 750/1 750/9 750/10 750/15 750/19 751/18 754/22 756/21</p>	<p>business [6] 564/4 564/17 592/20 662/12 670/25 694/4 busy [1] 650/12 button [7] 530/21 584/25 678/6 678/8 681/3 681/6 736/9 buying [4] 573/14 573/19 577/14 577/15 <hr/>C C-E-R-E-B-R-A [1] 716/19 C.A [1] 511/5 cable [4] 683/18 683/18 683/20 683/21 CAD [2] 703/18 704/18 cake [2] 674/21 674/25 calculate [12] 590/14 591/17 591/20 592/11 593/5 598/24 600/8 603/25 607/8 609/22 610/14 644/6 calculated [17] 563/3 565/12 590/18 591/14 596/9 598/1 600/15 600/24 605/10 620/24 624/5 625/10 629/9 629/13 630/22 631/14 659/11 calculating [1] 611/8 calculation [33] 565/22 566/1 566/3 566/18 589/24 590/8 590/25 592/23 593/11 593/17 598/10 599/2 599/3 599/21 600/4 605/13 607/3 608/7 608/17 608/18 608/19 613/8 617/13 619/17 621/6 621/10 623/12 625/3 625/18 627/12 631/11 644/8 644/9 calculations [14] 513/10 519/10 566/11 586/2 594/16 600/12 608/15 608/20 608/24 608/25 612/4 612/13 613/12 613/18 Calendar [5] 536/9 612/22 613/21 614/14 723/20 California [5] 562/11 565/2 565/9 565/17 670/14 call [34] 539/15 539/21 539/24 541/13 550/2 561/15 567/15 578/12 580/18 582/12 582/13 619/24 669/10 675/23 677/7 678/9 678/23 681/7 681/11 682/9 690/10 708/11 708/20 713/15 734/16 735/2 735/14 752/9 757/13 757/16 759/12 759/24 759/25 762/8 call-out [1] 580/18 call-outs [2] 578/12 582/13 called [38] 528/24 529/7 529/13 530/7 545/9 556/15 561/22 564/18 569/2 569/3 569/6 569/10 569/25 590/14 592/18 593/22 600/5 670/4 670/14 672/14 675/13 678/2 683/13 698/13 704/13 709/2 710/3 711/2 711/19 712/10 716/14 720/13 731/5 742/24 757/3 757/8 757/18 757/22 calling [5] 669/16 669/19 681/4 708/12 708/17</p>	<p>681/14 681/17 684/25 685/16 685/18 708/22 762/7 came [7] 619/24 647/5 653/8 670/18 686/21 716/20 763/17 camera [3] 672/23 673/11 723/21 cameras [1] 671/22 can [216] 513/16 515/8 515/13 516/17 517/7 517/19 518/3 518/5 519/14 520/14 521/2 521/4 521/9 521/9 521/10 528/20 530/22 541/13 543/4 548/5 550/3 554/18 557/21 558/11 562/8 563/1 564/23 568/10 570/25 571/15 573/8 573/14 573/15 573/15 573/16 574/20 575/20 578/14 579/14 579/23 580/13 583/5 583/13 584/17 584/25 585/19 587/5 589/16 590/18 590/19 591/14 593/16 595/16 595/16 595/20 598/9 599/7 600/21 602/8 620/25 621/18 622/21 623/6 631/21 635/19 640/6 642/4 646/24 648/3 648/4 649/9 649/10 649/24 650/1 650/4 652/11 655/11 660/8 661/1 662/14 663/2 663/3 663/14 670/1 671/8 671/23 672/15 672/17 673/7 673/10 673/10 673/11 673/12 673/13 673/15 674/7 674/14 674/15 674/18 676/11 676/12 676/13 676/16 676/16 676/17 676/17 676/23 677/10 678/7 678/9 681/12 681/13 681/13 681/14 681/15 681/16 681/17 681/22 682/24 683/19 683/20 685/2 690/13 691/19 691/20 696/18 697/4 698/14 699/17 702/11 702/22 703/17 704/5 706/14 709/25 713/4 714/5 714/7 714/14 715/3 716/11 717/14 719/6 719/21 720/16 723/4 723/25 724/5 724/18 724/25 725/21 725/22 725/22 726/15 726/15 728/14 728/24 729/2 729/24 732/21 733/17 734/5 734/20 734/21 734/23 734/25 735/17 736/3 736/25 739/23 742/8 742/14 743/2 743/14 743/15 743/16 744/18 744/21 744/25 745/2 745/12 745/16 746/1 746/17 746/23 748/19 748/24 749/12 750/2 750/16 752/3 752/16 753/7 753/19 753/25 756/10 756/14 757/10 757/16 758/9 758/10 758/12 758/21 758/24 759/8 759/14 760/1 760/2 760/11 760/15 762/5 762/19 764/17 765/22 765/24 766/1 can't [20] 530/13 557/18 557/22 557/22 572/20 572/25 581/12 616/14 616/20 648/8 661/18 661/18 684/24 696/19 698/11 706/11 762/15 763/5 763/15 764/7</p>

Case 1:13-cv-00919-JLH	Document 601	Filed 08/27/13	Page 376 of 775 PageID # 60953
<p>cannot [2] 594/14 707/8 capabilities [2] 674/5 675/7 capability [1] 732/12 capable [1] 558/10 capture [1] 596/11 car [1] 577/15 Cardboard [1] 672/14 career [5] 564/18 564/20 564/24 564/25 664/5 carefully [1] 532/14 carrier [2] 684/22 684/23 carriers [1] 685/1 cars [1] 577/14 case [107] 514/19 516/23 530/15 533/13 555/6 557/8 558/13 563/15 563/17 563/24 566/24 575/3 575/11 575/21 575/25 575/25 576/3 576/5 577/10 583/16 583/24 584/1 588/5 588/21 595/1 595/23 598/3 598/13 598/25 600/23 601/12 602/6 602/9 603/22 617/8 620/3 621/24 622/10 622/25 626/14 626/22 631/11 633/12 635/16 637/4 637/6 637/6 637/7 637/24 639/17 640/13 641/12 642/15 643/3 644/13 644/23 644/24 644/25 644/25 645/1 645/11 652/13 654/12 655/9 656/7 658/7 658/16 658/20 659/4 659/7 659/9 664/10 664/13 666/1 666/19 666/24 667/18 668/25 669/3 669/13 669/16 684/9 686/11 687/5 687/7 694/4 694/6 694/15 695/18 704/20 708/13 708/18 726/16 746/1 747/7 749/1 749/15 750/7 751/21 751/23 752/25 754/2 754/11 760/7 760/25 763/25 765/9 cases [4] 565/13 565/16 597/1 640/10 cat [7] 714/10 714/11 714/12 714/13 714/17 714/19 714/21 categories [2] 558/21 720/4 category [1] 559/11 cats [2] 714/15 714/16 cause [1] 759/17 causing [2] 535/17 536/2 caveat [1] 668/10 cent [3] 598/1 600/14 629/9 centric [1] 690/25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>668/23 certainty [1] 582/15 CERTIFICATE [1] 767/2 certification [1] 684/22 certify [1] 767/4 cetera [2] 573/17 593/4 CHAD [2] 512/12 601/7 challenged [1] 580/16 challenging [3] 521/22 582/4 687/11 chance [4] 595/25 596/1 596/2 632/15 change [2] 642/18 688/18 changed [2] 659/4 659/5 changes [2] 531/21 611/6 changing [1] 732/2 characterization [1] 545/8 characterized [1] 595/21 characterizes [2] 571/20 595/12 charged [2] 513/10 513/12 chart [2] 639/9 639/11 chat [1] 743/16 check [2] 522/22 540/24 checklist [7] 575/21 575/24 576/1 576/4 576/7 576/14 577/8 Chicago [2] 564/6 564/12 chief [2] 656/7 669/17 children [1] 562/13 chose [1] 603/22 Chrome [29] 529/4 530/14 532/20 532/23 550/21 551/22 552/3 611/3 611/6 611/11 611/11 611/16 611/17 613/20 613/20 616/2 616/10 636/20 639/9 639/10 639/12 641/17 641/17 641/18 641/18 641/21 641/22 677/1 723/18 Chromium [6] 525/21 552/1 552/3 552/7 552/17 552/18 Circuit [3] 516/4 520/21 566/3 Circuit's [1] 513/19 circumstance [1] 666/19 circumstances [1] 666/16 circumvented [1] 519/12 cite [1] 668/19 cited [3] 640/22 653/13 654/22 City [8] 564/3 564/11 564/18 566/13 734/9 734/13 734/14 734/17 civil [1] 522/4 claim [24] 534/4 534/7 534/13 534/16 534/22 534/25 535/13 535/22 535/23 535/25 536/14 536/23 537/1 537/4 537/13 539/16 539/22 542/4 556/19 556/24 557/10 557/12 595/13 659/2 Claim 23 [6] 534/4 536/14 536/23 537/13 556/19 556/24 claiming [1] 605/6 claims [2] 556/15 664/7 clarification [1] 716/15 clarified [1] 540/16 clarify [5] 686/12 691/4 749/14 754/17 759/6 class [1] 533/2 classes [1] 705/13</p>	<p>classification [9] 530/7 530/9 530/10 530/12 530/16 531/3 531/7 531/19 532/2 classified [1] 529/15 Classifier [1] 721/11 classifiers [1] 738/21 classify [1] 733/20 clause [2] 622/3 666/16 clauses [2] 621/19 621/21 clean [1] 648/4 cleaned [1] 648/5 cleaner [1] 537/16 clear [10] 522/13 526/25 539/19 550/5 554/7 556/3 656/2 689/19 722/1 761/4 clearly [3] 514/3 520/24 699/23 click [3] 711/6 711/7 713/12 clicked [4] 711/9 711/11 745/9 746/24 client [1] 518/1 client.java [1] 532/19 clients [2] 564/24 565/15 closely [3] 689/22 690/4 755/13 closure [3] 658/24 704/5 741/5 closure [5] 514/2 514/4 514/8 514/11 520/25 code [189] 513/15 515/11 515/19 516/11 516/20 517/4 518/7 518/21 520/8 520/9 521/23 523/22 524/1 524/11 524/17 524/24 525/21 525/23 526/1 526/3 528/21 529/20 530/3 530/6 531/8 531/11 532/2 532/10 532/11 532/12 532/17 533/4 533/5 533/8 533/11 533/12 543/19 544/11 544/15 544/18 544/19 544/22 544/23 544/25 545/1 545/1 545/4 545/5 545/6 545/7 545/8 545/9 546/7 546/19 546/19 546/23 546/25 547/2 547/3 547/8 547/9 547/11 547/12 547/13 547/15 547/20 548/2 548/2 548/13 548/15 548/21 548/22 548/24 549/6 549/6 549/8 549/10 550/7 550/18 552/1 552/6 552/7 552/8 552/10 552/17 552/18 552/19 552/19 552/21 552/23 553/1 553/7 553/12 553/16 553/17 553/18 553/25 554/1 554/2 554/5 554/8 554/9 554/17 554/18 554/19 554/20 554/21 555/18 555/21 555/23 556/1 557/23 558/3 559/21 561/12 676/12 679/20 679/21 679/22 679/24 682/18 683/15 689/19 690/2 690/3 690/5 690/9 690/10 690/20 696/3 705/14 705/25 707/6 707/9 707/10 707/15 710/7 711/16 716/11 717/19 720/13 720/21 720/22 720/24 721/2 721/5 722/4 724/23 725/1 725/2 725/5 730/15 731/1 731/3 731/9 731/14 735/13 735/16 736/10 736/12 737/6 739/3 739/5 739/6 739/7 739/8</p>	<p>741/10 741/22 742/7 746/21 747/10 748/6 749/13 749/19 749/23 749/25 750/23 751/2 751/10 751/15 752/2 752/12 752/14 752/16 752/17 752/19 759/24 759/25 762/13 coincidentally [1] 583/22 collaboration [1] 678/17 colleague [1] 517/19 collect [1] 567/8 collected [1] 516/7 college [7] 564/3 564/11 564/18 566/13 670/19 709/21 709/23 color [3] 731/13 760/22 760/23 colors [1] 703/17 column [14] 539/11 539/13 546/16 567/9 591/18 592/7 592/8 592/10 596/7 596/9 597/12 599/23 620/6 729/21 Column 2 [2] 592/7 599/23 Column 3 [1] 592/8 Column 4 [4] 591/18 592/10 596/7 596/9 Column 5 [1] 597/12 Columns [1] 599/5 com.Google.Android.GM [1] 611/24 combined [1] 584/9 come [18] 540/7 559/5 559/16 569/15 598/8 604/2 609/11 631/16 654/11 655/9 688/24 697/7 716/2 719/16 723/8 724/21 765/6 765/25 comes [6] 530/9 530/20 537/7 604/8 622/25 751/2 coming [3] 609/10 697/13 715/11 command [3] 535/17 536/1 745/15 commenced [1] 513/4 commencement [1] 648/24 comment [1] 690/13 comments [3] 532/25 533/3 654/8 commerce [7] 671/20 672/2 672/11 690/11 690/18 690/19 690/25 commerce-centric [1] 690/25 commercial [1] 618/9 Commission [1] 593/22 common [15] 513/20 514/4 597/4 597/7 642/23 642/25 643/1 643/5 644/21 678/1 678/13 680/20 682/14 717/8 724/10 commonly [3] 658/6 674/20 678/11 communicate [1] 733/11 communicates [1] 738/18 communicating [1] 656/1 community [1] 565/6 companies [2] 632/21 632/23 company [9] 580/24 581/7 627/15 664/7 664/9 678/18 683/21 692/11 709/18 comparable [4] 577/13 577/14 577/16 583/25 compare [4] 529/19 531/8</p>

Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 377 of 776 PageID #: 60956	519/21 519/23 521/14 524/11 531/8 532/1 533/4 533/8 533/11 587/11 656/22	644/25 contribute [2] 676/15 676/17 contribution [1] 584/12 controls [1] 533/2 conversation [4] 629/17 629/23 629/24 629/25 conversations [3] 567/2 579/25 594/25 conversion [2] 612/17 614/24 converted [1] 615/4 convince [1] 687/12 coordination [1] 762/16 copied [1] 712/16 copies [2] 516/11 516/14 copy [13] 515/20 516/18 516/24 531/13 542/23 543/16 678/1 678/14 712/15 722/3 734/19 734/24 746/23	700/17 700/20 700/21 700/23 700/24 701/1 701/4 701/10 701/19 701/22 701/25 702/1 702/16 702/21 703/2 704/24 705/15 705/19 705/23 705/24 706/4 706/10 706/19 717/25 718/9 722/8 724/23 724/24 733/9 733/24 741/25 742/1 753/4 761/17 762/4 762/9 765/21 correctly [3] 540/7 541/10 717/7 CORROON [1] 512/9 cost [1] 625/23 could [104] 516/6 516/7 517/6 517/7 519/6 519/25 525/1 525/6 525/17 527/12 529/5 529/10 532/22 534/14 536/17 537/24 539/14 542/9 545/14 545/19 548/9 551/23 553/14 557/6 558/16 562/6 572/11 572/13 581/1 581/8 587/24 596/14 597/2 597/21 603/10 603/13 603/15 603/16 603/18 603/19 615/19 620/5 623/18 630/10 632/9 632/13 644/24 645/2 645/19 647/18 648/2 653/2 657/2 668/1 672/3 675/15 683/15 684/3 684/5 685/20 690/13 691/4 694/23 698/15 709/10 711/6 713/1 713/3 713/5 713/6 713/20 713/25 714/3 714/11 715/21 715/22 717/10 718/10 722/11 722/22 723/14 725/13 726/6 729/5 729/10 729/12 729/20 731/16 732/11 737/9 737/10 737/11 737/18 741/12 741/14 746/13 748/9 751/25 759/2 759/7 759/12 760/4 760/5 762/13
<p>compare... [2] 532/2 658/19 compared [2] 606/2 637/19 comparing [1] 532/11 comparison [1] 644/15 compensate [4] 569/22 570/12 598/24 600/9 compensated [4] 563/14 563/16 563/24 568/17 compensation [10] 563/3 563/19 563/21 563/21 567/13 567/17 568/2 568/10 570/15 574/20 compiled [2] 554/20 554/20 complex [1] 563/13 complicated [2] 520/11 527/7 complied [1] 646/6 comply [1] 513/19 complying [1] 645/8 component [24] 720/19 720/19 721/11 725/8 727/18 728/16 729/11 730/11 730/20 731/6 731/24 732/10 738/3 738/4 738/4 738/18 744/19 747/13 749/24 752/5 760/3 760/4 760/5 760/9 components [10] 721/9 723/7 724/3 730/2 758/8 758/11 758/13 758/15 758/21 761/11 composed [1] 675/12 composing [2] 541/1 541/4 composition [1] 675/22 compositions [1] 675/25 compromise [1] 622/18 computer [39] 523/22 523/25 524/1 524/17 524/24 527/16 527/18 530/23 531/1 533/12 534/10 534/11 534/18 534/24 535/2 535/4 535/7 535/11 535/16 536/1 536/5 537/13 545/4 545/13 545/23 554/11 554/12 554/15 556/16 557/3 557/6 557/16 559/8 559/21 559/22 670/20 676/14 721/1 722/4 concept [4] 574/8 575/13 575/15 575/23 concern [1] 516/18 concerning [1] 602/1 concerns [1] 528/3 conclude [1] 636/10 concluded [2] 618/3 766/13 concludes [10] 527/25 583/8 588/6 599/14 632/2 649/15 656/11 663/12 700/5 755/22 concluding [1] 639/21 conclusion [4] 563/2 563/7 600/22 648/24 conclusions [1] 566/24 conditionally [3] 522/18 526/12 657/10 conduct [3] 565/4 615/2 646/3 conducted [1] 561/17 conducting [2] 577/3 645/11 confer [2] 518/1 649/2 conference [4] 566/7 687/18 687/20 687/22 confident [1] 662/13 confidential [13] 515/1 517/13</p>	<p>519/21 519/23 521/14 524/11 531/8 532/1 533/4 533/8 533/11 587/11 656/22 confidentiality [5] 515/10 516/5 527/1 527/13 528/3 configure [1] 535/7 configured [1] 535/10 confirm [2] 548/5 617/6 confirmed [1] 533/14 confirms [1] 668/20 confused [1] 722/14 confusing [1] 683/17 connect [1] 683/20 Connecticut [1] 524/20 connection [12] 546/18 557/18 564/10 582/13 595/1 606/2 616/7 620/3 624/13 626/18 643/19 730/24 consequence [6] 535/17 535/25 574/24 581/4 659/10 665/17 conservative [7] 596/15 597/3 597/23 632/10 643/16 643/18 667/1 consider [18] 517/13 566/23 577/2 577/8 577/11 577/12 577/13 577/14 577/16 585/14 585/15 586/18 589/7 589/14 606/19 665/18 702/18 706/20 consideration [1] 581/15 considered [9] 545/14 566/25 575/10 575/14 576/8 583/21 589/8 618/9 618/13 considering [1] 594/9 consistent [2] 648/6 668/24 consists [1] 602/13 construction [2] 540/16 595/13 consult [7] 648/3 648/8 648/19 649/1 649/9 650/6 650/20 consultant [1] 601/13 consultation [2] 650/23 651/10 consulted [1] 654/16 consulting [4] 562/12 564/23 651/4 670/24 consume [1] 679/3 consumer [2] 627/14 662/25 consumers [5] 568/12 568/18 588/18 660/17 660/18 Contacts [3] 536/9 541/20 541/24 contain [5] 580/5 581/17 582/10 637/23 725/5 contained [1] 593/9 contains [3] 547/8 582/20 638/17 contemplated [1] 616/8 contemplates [1] 567/25 contends [2] 615/6 628/10 contest [2] 763/22 764/2 context [8] 540/11 570/15 580/12 590/1 594/20 693/1 736/13 755/8 continuance [1] 649/1 continue [7] 521/19 523/13 586/13 657/20 670/21 671/14 757/6 continued [3] 512/1 524/2</p>	<p>644/25 contribute [2] 676/15 676/17 contribution [1] 584/12 controls [1] 533/2 conversation [4] 629/17 629/23 629/24 629/25 conversations [3] 567/2 579/25 594/25 conversion [2] 612/17 614/24 converted [1] 615/4 convince [1] 687/12 coordination [1] 762/16 copied [1] 712/16 copies [2] 516/11 516/14 copy [13] 515/20 516/18 516/24 531/13 542/23 543/16 678/1 678/14 712/15 722/3 734/19 734/24 746/23 core [3] 673/14 720/17 720/19 corporate [3] 662/4 669/15 708/15 correct [231] 517/19 525/8 531/16 534/5 534/11 534/19 534/22 534/25 535/8 535/11 536/2 536/14 536/15 537/2 539/18 539/23 540/15 540/21 540/23 541/11 542/14 543/16 544/19 544/23 545/21 546/2 546/5 546/6 546/12 546/15 546/20 547/10 547/13 547/20 549/23 550/16 551/7 551/8 552/4 552/11 554/13 554/16 554/22 555/10 556/12 556/20 557/5 557/11 559/17 559/22 560/7 560/12 560/15 560/22 588/3 589/13 601/12 601/13 601/16 601/21 602/2 602/11 602/14 602/17 602/21 602/24 602/25 603/3 604/3 604/5 604/8 604/11 604/15 604/18 604/22 605/8 605/15 605/16 606/6 606/9 606/12 606/13 607/8 608/5 608/6 608/8 608/21 609/12 609/13 609/16 609/23 610/8 610/12 610/17 610/18 610/21 612/6 612/9 612/14 612/19 612/23 613/4 613/24 614/17 614/21 615/5 615/8 615/10 615/12 615/18 617/11 617/16 617/19 618/2 619/14 619/19 620/19 620/22 621/7 621/8 622/1 622/2 622/6 622/7 622/10 623/2 623/14 623/23 625/1 625/5 625/11 626/2 626/5 626/8 626/9 626/11 626/16 627/23 628/1 628/14 628/17 628/25 629/4 629/7 629/10 629/11 629/15 631/4 631/7 632/11 632/21 633/11 633/25 634/6 634/18 635/8 638/20 639/25 643/6 658/8 659/16 659/19 660/2 664/2 665/10 667/5 667/14 667/20 667/24 667/25 668/2 668/9 668/16 669/4 671/3 689/13 689/16 689/20 690/2 690/6 690/9 691/3 692/11 692/15 692/25 693/10 693/19 694/5 694/22 695/14 695/24 696/3 696/6 697/20</p>	<p>700/17 700/20 700/21 700/23 700/24 701/1 701/4 701/10 701/19 701/22 701/25 702/1 702/16 702/21 703/2 704/24 705/15 705/19 705/23 705/24 706/4 706/10 706/19 717/25 718/9 722/8 724/23 724/24 733/9 733/24 741/25 742/1 753/4 761/17 762/4 762/9 765/21 correctly [3] 540/7 541/10 717/7 CORROON [1] 512/9 cost [1] 625/23 could [104] 516/6 516/7 517/6 517/7 519/6 519/25 525/1 525/6 525/17 527/12 529/5 529/10 532/22 534/14 536/17 537/24 539/14 542/9 545/14 545/19 548/9 551/23 553/14 557/6 558/16 562/6 572/11 572/13 581/1 581/8 587/24 596/14 597/2 597/21 603/10 603/13 603/15 603/16 603/18 603/19 615/19 620/5 623/18 630/10 632/9 632/13 644/24 645/2 645/19 647/18 648/2 653/2 657/2 668/1 672/3 675/15 683/15 684/3 684/5 685/20 690/13 691/4 694/23 698/15 709/10 711/6 713/1 713/3 713/5 713/6 713/20 713/25 714/3 714/11 715/21 715/22 717/10 718/10 722/11 722/22 723/14 725/13 726/6 729/5 729/10 729/12 729/20 731/16 732/11 737/9 737/10 737/11 737/18 741/12 741/14 746/13 748/9 751/25 759/2 759/7 759/12 760/4 760/5 762/13 couldn't [6] 615/11 646/13 652/3 667/13 683/16 684/5 counsel [53] 512/6 512/14 517/8 520/7 520/8 522/5 523/13 524/21 524/22 526/13 526/18 555/13 585/16 587/5 599/7 614/6 638/8 644/12 645/14 647/8 648/9 649/1 650/3 650/6 650/20 651/25 652/4 652/6 652/9 652/15 653/5 653/23 655/23 661/9 661/15 662/12 663/15 665/20 666/5 667/4 669/21 689/3 698/2 698/19 707/3 708/19 727/10 755/18 758/8 760/13 762/20 762/24 763/3 counsel's [2] 521/15 696/18 count [2] 604/16 617/10 counter [1] 519/2 counter-parties [1] 519/2 counting [4] 605/21 605/25 606/17 613/23 couple [10] 514/25 566/1 586/5 602/4 612/22 635/6 646/14 682/22 737/22 753/1 course [10] 518/2 519/18 564/20 564/25 567/10 582/18 601/18 662/22 664/4 693/20 court [35] 511/1 513/25</p>

Case 1:13-cv-00919-JLH	Document 60	Filed 08/21/23	Page 378 of 775 PageID #: 60957
<p>court... [33] 513/25 514/12 518/10 520/20 520/21 521/1 521/2 521/11 521/19 522/17 526/19 526/25 527/8 527/14 528/3 538/14 540/16 575/25 576/5 622/3 622/5 645/9 649/3 654/9 655/20 661/7 662/24 689/1 753/21 766/4 767/2 767/8 767/9 Court's [4] 515/2 522/2 527/8 655/22 courtroom [43] 513/4 513/24 514/20 514/22 514/24 516/6 518/12 518/13 518/16 519/5 523/10 538/15 538/17 568/15 577/24 578/1 578/4 583/5 583/6 583/10 585/21 586/11 587/19 587/23 590/23 591/3 591/6 591/9 599/8 599/12 619/5 619/6 619/9 631/21 631/23 650/2 657/3 657/16 697/7 697/13 726/13 727/7 765/10 cover [3] 572/12 728/13 762/3 covered [7] 586/22 590/13 590/15 591/20 591/24 592/4 624/9 covers [5] 569/23 623/22 638/11 638/13 704/4 create [12] 530/7 530/10 530/11 530/15 531/4 531/7 531/19 532/1 553/2 553/4 727/22 739/22 created [7] 530/19 645/7 668/18 703/15 727/19 732/13 739/20 creates [2] 552/23 722/4 creating [3] 530/22 739/25 745/5 CRM [1] 557/12 cross [26] 519/22 533/19 533/20 601/4 601/5 645/16 646/1 647/12 649/4 651/5 651/9 651/17 652/1 653/6 655/4 661/12 662/8 667/12 669/15 689/6 699/3 699/8 699/14 699/21 749/5 749/6 cross-examination [12] 533/19 601/4 645/16 646/1 647/12 649/4 651/5 667/12 669/15 699/14 699/21 749/5 cross-examine [1] 699/8 crossed [1] 655/4 crunched [1] 586/3 curative [4] 646/19 650/14 652/24 655/6 curing [1] 647/8 current [4] 513/10 671/6 671/16 690/24 currently [1] 671/1 curve [1] 612/17 cut [6] 542/23 543/16 678/1 678/14 712/15 722/3 cute [1] 672/15</p>	<p>damage [8] 565/25 566/10 567/15 617/13 631/18 658/23 659/2 659/10 damages [58] 518/23 519/15 565/12 565/20 565/22 566/4 566/13 566/14 566/19 567/15 569/21 575/11 576/10 576/16 598/24 599/4 599/22 600/5 600/8 600/18 600/22 600/24 600/25 601/12 602/8 603/25 604/8 604/25 605/6 606/5 606/12 611/8 616/21 620/24 621/6 621/13 622/24 623/3 623/9 623/12 623/14 624/25 626/13 626/14 626/22 628/16 633/6 633/9 633/12 637/3 644/14 644/22 658/3 658/11 658/17 658/19 658/20 659/18 data [33] 592/21 605/13 605/16 605/17 606/25 607/10 607/15 609/11 609/22 613/13 635/19 635/23 639/15 639/21 641/1 641/17 641/23 646/23 646/25 647/1 652/20 653/3 653/16 653/22 654/5 655/1 661/20 662/6 662/14 662/25 663/8 741/8 746/9 database [1] 541/24 date [6] 570/6 570/7 603/2 615/11 615/12 615/13 dated [2] 732/14 733/9 dates [2] 575/24 603/6 DAVID [1] 512/9 day [8] 513/8 521/7 585/2 688/5 688/14 690/17 690/17 765/7 days [3] 520/15 521/4 649/24 deal [10] 521/18 561/14 566/3 569/16 572/8 572/13 572/14 572/21 658/2 688/17 deals [2] 566/8 584/1 dealt [1] 565/25 December [10] 603/2 615/8 615/14 615/16 615/23 679/16 683/10 683/23 686/1 742/8 December 2017 [1] 742/8 December 5 [2] 603/2 615/16 December 5th [2] 615/8 615/23 December of [1] 683/23 deceptive [1] 645/10 decide [2] 589/20 687/4 decided [4] 555/22 555/23 683/1 741/9 decides [1] 759/16 deciding [1] 595/2 decision [1] 717/5 decisions [1] 694/2 declaration [1] 521/25 decline [1] 658/24 deep [1] 675/10 deeply [1] 690/23 default [1] 677/25 defendant [5] 511/7 512/14 595/17 648/18 657/7 defending [1] 689/1 defer [1] 516/13 define [4] 671/12 690/13 695/15 746/7 defined [5] 514/3 520/24</p>	<p>671/13 694/7 694/9 definitely [4] 560/15 687/5 687/7 692/9 definition [1] 714/17 degree [5] 564/5 564/7 564/7 670/20 670/25 DELAWARE [4] 511/2 511/16 648/23 656/5 delay [1] 657/18 delivered [2] 515/17 744/23 delivering [1] 715/14 demand [2] 622/24 623/3 demands [1] 621/14 demonstrably [1] 652/22 demonstrate [2] 513/25 514/9 demonstrates [1] 643/22 demonstrative [5] 539/11 556/25 699/23 699/24 699/25 demonstratives [3] 553/21 699/18 699/19 denial [1] 514/14 denied [3] 580/15 650/15 655/6 denies [1] 582/16 denying [1] 582/5 depending [7] 550/8 711/7 732/2 759/1 759/3 759/9 765/25 depends [6] 546/19 546/23 546/25 548/20 551/18 551/20 depict [1] 731/10 depicted [3] 549/25 570/4 596/9 depiction [2] 606/20 723/6 depicts [1] 588/14 depo [1] 753/15 deponent [1] 649/1 deposed [4] 688/24 756/10 764/7 764/8 deposition [12] 555/6 555/8 584/20 648/24 689/9 752/25 755/8 756/12 756/15 757/19 757/22 758/3 depositions [2] 648/7 648/22 depth [1] 519/6 describe [11] 542/18 552/5 674/4 674/4 693/12 709/25 714/5 714/7 723/25 731/23 737/4 described [16] 522/19 557/4 574/17 575/6 590/10 596/10 596/11 596/13 598/11 600/3 658/22 683/8 685/14 685/22 711/22 712/17 describes [5] 673/19 675/22 701/3 701/9 744/17 describing [5] 532/25 540/12 549/20 551/15 733/22 description [5] 674/21 677/10 705/6 719/5 730/1 design [2] 748/15 748/22 designers [1] 671/11 desire [1] 582/14 desk [1] 525/2 despite [1] 667/2 detail [3] 517/22 675/10 747/4 details [7] 589/10 590/2 675/25 750/23 750/25 751/9 751/19 detection [3] 728/19 732/5</p>	<p>733/1 determination [1] 560/19 determine [3] 635/11 635/15 641/12 determined [5] 527/9 528/3 563/12 624/8 641/20 determining [2] 567/13 623/17 develop [2] 718/22 743/25 developed [4] 678/16 678/20 716/25 721/13 developer [13] 554/15 673/18 673/22 673/24 679/4 687/18 743/23 743/25 744/5 748/2 751/12 751/13 761/14 developer.android.com [2] 700/20 744/6 developer.Android.com/guide/ platform [1] 700/20 developers [12] 549/20 672/3 675/5 693/2 701/25 721/16 724/6 738/8 744/1 744/2 747/21 748/5 developers.android.com [2] 673/23 675/20 developing [1] 764/21 development [5] 679/8 679/12 690/23 715/11 718/13 device [31] 530/19 530/24 535/8 535/10 536/2 538/5 549/1 551/18 554/4 554/19 555/18 557/24 557/25 558/9 560/4 588/24 604/20 617/22 625/18 625/20 626/4 627/12 628/2 673/12 714/1 721/21 739/9 741/2 741/10 741/24 747/15 devices [36] 559/5 560/12 560/14 560/22 598/5 598/14 598/20 598/22 600/10 600/12 600/13 600/18 600/19 600/25 604/14 604/17 605/15 605/18 605/21 615/14 616/22 616/24 617/3 625/23 626/8 626/16 627/19 641/18 676/25 685/6 685/23 694/22 695/1 717/6 729/11 741/21 diagram [8] 549/14 551/14 698/8 698/12 704/22 722/23 725/1 731/10 dial [20] 711/12 715/24 736/7 743/3 743/5 743/12 743/15 745/8 745/10 745/14 745/16 745/20 745/20 745/25 746/2 746/13 746/16 746/16 746/24 747/4 dialers [12] 541/16 678/8 681/4 711/12 712/22 723/20 732/4 743/10 743/10 743/11 745/21 745/23 dialers [1] 681/16 dialing [1] 747/12 did [197] 516/12 519/5 520/4 524/3 524/4 524/19 525/24 531/23 531/25 533/11 538/16 540/5 540/25 543/21 545/16 547/14 547/17 549/18 551/2 555/6 555/7 560/24 564/9 564/11 564/19 566/23 573/5 573/7 577/2 577/4 577/5 577/19 577/21 581/17 583/18</p>
<p>D D.C [1] 566/12 Daemons [2] 702/25 704/23</p>			

did... [162] 584/4 584/6
585/15 586/17 588/13 589/1
589/7 589/8 589/14 589/23
590/7 593/17 594/22 594/25
596/7 596/17 596/22 596/24
597/10 597/17 598/9 598/24
599/1 599/22 600/8 600/11
602/7 603/24 604/3 605/20
605/24 606/15 606/19 606/25
607/2 607/6 607/9 607/14
607/15 608/15 608/17 610/15
610/25 612/16 614/1 614/10
617/6 619/17 619/18 624/16
624/23 626/6 627/7 627/24
628/23 629/1 629/19 629/22
630/6 630/12 630/13 631/11
631/13 631/16 635/2 635/10
635/13 635/14 635/18 635/19
636/10 636/24 636/25 637/5
637/17 638/24 639/1 639/2
639/9 639/11 640/22 640/25
641/2 641/7 641/14 643/18
644/3 644/5 645/24 647/1
647/14 648/14 648/16 650/12
653/13 653/15 653/17 653/20
653/21 654/22 654/25 655/2
659/6 665/13 666/6 666/24
667/6 668/10 670/21 672/4
672/24 677/18 679/24 682/4
682/21 687/14 687/16 687/17
689/19 690/2 691/12 694/13
696/16 704/2 704/3 704/22
709/16 709/20 709/23 710/10
710/21 710/23 710/24 710/25
714/22 714/24 715/6 715/11
716/2 717/12 717/13 717/14
718/6 718/17 718/22 719/13
719/24 720/18 721/14 725/7
727/22 729/15 739/10 741/9
748/5 751/21 753/5 753/6
756/13 757/20 763/4 763/20
didn't [54] 519/4 532/9 532/14
549/6 549/8 549/10 558/12
558/14 559/13 560/19 593/10
597/19 597/24 612/20 614/23
615/2 617/9 624/19 630/8
630/14 635/7 635/23 642/3
642/6 642/11 645/21 650/16
651/5 659/14 661/12 661/13
661/14 666/5 666/7 688/18
697/10 697/12 703/25 703/25
720/3 725/11 729/15 737/8
746/21 747/21 747/22 748/8
748/8 748/15 748/15 751/20
761/14 761/17 763/3
DIEHL [3] 512/4 749/8 755/12
difference [13] 532/4 532/6
554/3 554/24 555/17 555/21
573/25 603/5 641/16 641/20
641/24 643/8 713/7
differences [19] 526/2 529/21
531/10 532/13 532/16 533/6
533/7 533/15 573/3 573/6
573/9 573/11 574/13 574/16
575/1 596/20 625/7 643/14
643/23
different [62] 522/4 540/13
540/19 542/23 543/10 543/14

544/19 545/23 549/5 550/22
550/23 554/12 555/5 556/9
558/21 569/24 570/19 571/20
572/4 572/21 576/25 582/8
592/16 594/11 594/12 603/14
631/6 632/20 634/8 634/12
642/20 644/18 644/18 656/6
664/7 674/4 680/5 680/5
682/9 684/14 690/24 695/8
695/11 707/5 713/21 714/12
714/18 715/25 716/1 717/21
721/14 723/7 724/4 724/10
729/4 729/5 735/17 737/5
739/9 755/6 755/7 761/11
differently [3] 535/21 645/17
759/2
difficult [4] 713/5 713/20
715/16 715/17
difficulty [1] 647/25
digits [2] 541/5 541/9
dimensional [7] 703/19 704/4
704/8 704/11 704/16 705/4
705/5
dimensionality [1] 705/3
direct [11] 517/8 519/22
556/14 562/1 586/14 619/13
632/9 654/8 670/8 699/4
709/6
directed [2] 556/15 690/18
directly [1] 678/6
director [3] 562/11 670/11
671/1
disabled [2] 740/20 763/1
disagree [3] 545/7 574/9
764/13
disagreement [3] 571/24
572/1 574/23
disagrees [1] 766/7
disaster [1] 684/21
disavow [1] 652/21
disclose [2] 580/18 580/21
disclosed [2] 519/22 520/23
disclosure [1] 656/22
discount [2] 574/18 633/18
discounts [4] 594/22 594/23
597/7 625/5
discovery [10] 616/16 645/9
645/11 646/3 646/6 650/14
650/18 667/15 668/25 669/2
discuss [2] 587/2 657/19
discussed [7] 528/25 533/5
553/11 580/5 624/9 663/1
679/18
discussing [1] 549/16
discussion [19] 526/16 527/25
578/3 583/8 587/8 588/6
591/8 599/14 619/8 632/2
649/15 656/11 663/12 700/5
714/4 735/5 740/10 753/11
755/21
discussions [1] 649/23
Dish [1] 565/1
dismissed [1] 621/24
display [5] 534/21 535/5
541/21 543/4 547/18
displayed [2] 553/21 729/7
displaying [2] 552/10 552/19
disposed [1] 666/2
dispute [2] 646/7 651/2
disputes [2] 587/24 603/1

distinct [1] 734/6
distinction [3] 558/4 614/11
679/18
distinguish [1] 715/4
distinguishing [1] 556/9
distribute [1] 671/23
DISTRICT [3] 511/1 511/2
767/9
divide [3] 592/6 619/20
633/11
divided [3] 590/12 598/15
619/18
divisions [1] 678/18
do [223] 515/5 515/10 516/8
516/12 517/3 517/6 517/7
517/11 518/3 518/22 520/20
523/20 523/23 524/19 528/21
529/16 530/20 534/18 536/25
541/5 543/17 555/3 557/20
558/12 563/1 563/6 563/10
567/12 569/4 569/6 569/15
572/25 574/13 576/20 579/20
579/22 580/5 580/7 587/25
590/23 594/2 594/5 596/21
597/10 598/7 598/19 598/21
601/17 603/4 607/25 609/5
609/6 610/18 611/25 612/1
612/2 612/3 612/4 612/7
612/20 612/25 613/1 613/16
614/1 614/9 614/13 615/9
617/6 619/24 620/8 620/10
620/25 622/19 622/20 623/10
626/3 627/18 630/6 630/11
635/2 636/8 636/9 638/7
640/9 641/14 642/9 642/10
643/12 643/13 643/14 646/17
647/20 648/1 648/9 649/12
649/19 651/20 651/24 654/14
658/4 658/5 658/10 658/18
658/24 659/21 659/22 660/11
661/22 661/25 663/21 665/4
665/23 665/24 666/3 666/8
666/10 666/18 666/25 667/5
670/13 673/10 673/10 674/3
676/19 676/22 677/3 677/5
678/25 680/2 680/9 680/14
681/12 681/16 682/9 682/11
682/13 682/17 685/1 685/6
686/6 687/7 687/17 688/3
688/7 688/10 688/16 690/4
691/21 693/8 697/12 698/3
699/13 700/15 705/8 706/2
706/3 707/13 709/12 709/16
709/20 711/8 711/8 713/1
713/2 713/20 714/3 715/20
715/25 716/18 717/9 719/21
720/5 721/19 724/4 724/10
725/4 725/11 725/14 726/3
726/25 731/19 731/21 734/3
734/4 735/8 736/1 736/2
736/18 736/19 737/3 737/25
738/1 738/13 738/22 738/23
739/13 739/14 740/17 740/18
740/22 740/23 743/5 743/8
743/14 743/17 743/22 744/15
744/16 745/13 746/7 746/16
746/18 747/22 749/16 751/23
752/14 752/25 756/11 757/24
759/9 760/8 763/8 764/13
docs [11] 536/9 639/22

639/23 677/1 700/23 703/6
703/11 710/4 723/18 732/1
752/2
document [68] 534/21 535/1
535/5 540/10 540/17 551/16
578/25 608/9 616/12 616/14
616/17 638/10 638/20 638/22
638/24 639/1 639/20 640/1
655/1 668/8 668/16 668/17
668/20 673/17 673/18 675/18
675/19 699/25 700/13 700/25
701/3 701/7 701/13 702/3
702/10 702/15 702/18 703/19
704/19 705/6 708/1 708/3
710/4 722/17 727/15 727/16
727/19 727/21 727/22 728/1
728/12 728/21 731/19 731/22
731/23 732/13 732/14 733/8
733/12 736/20 737/14 737/20
737/22 741/16 743/22 743/24
744/4 744/13
documentation [1] 549/19
documents [21] 524/12
526/11 607/17 609/8 609/11
611/12 630/12 638/8 638/12
640/20 640/22 641/1 641/11
653/11 653/13 653/16 653/22
654/20 654/22 698/24 733/15
does [57] 529/18 531/7 532/1
532/10 567/21 569/20 570/2
576/17 576/20 582/9 582/12
586/5 598/2 598/2 605/17
608/1 610/9 610/18 620/23
623/11 641/6 648/5 660/4
660/22 662/11 663/18 664/15
664/23 666/23 667/1 667/2
676/8 679/3 685/8 693/9
694/7 699/20 701/6 703/5
707/15 720/24 720/25 721/5
733/7 738/6 739/3 740/24
742/16 742/17 742/20 744/20
747/3 747/18 748/4 748/13
757/9 762/5
doesn't [23] 517/1 542/3
557/25 558/3 572/12 587/16
598/5 602/16 603/6 619/1
620/20 646/11 652/11 657/4
661/7 693/6 703/4 706/24
707/9 707/10 759/25 760/7
760/21
dog [1] 670/15
dogs [1] 714/15
doing [19] 515/9 520/13
555/22 584/12 586/1 596/17
648/13 660/19 661/23 675/21
682/12 724/15 729/15 738/14
738/14 743/14 751/15 752/8
752/11
dollar [3] 626/15 626/16
661/22
dollars [1] 625/24
domain [7] 700/18 700/19
700/25 701/9 701/9 701/18
701/21
don't [99] 514/20 514/22
515/4 517/17 518/5 518/16
519/10 520/2 520/7 520/7
520/12 521/17 521/21 522/13
527/17 527/21 532/24 533/24
538/13 538/16 539/2 539/19

don't... [77] 542/21 555/22
556/4 557/20 557/20 561/13
573/13 587/3 587/22 588/1
612/10 613/11 613/15 613/17
614/15 614/19 620/25 623/10
628/13 641/19 646/5 646/24
647/24 654/15 659/13 659/24
661/5 661/9 663/10 667/17
667/22 668/19 672/14 677/23
680/9 682/20 686/8 688/9
688/11 688/12 690/3 691/13
691/14 691/15 692/21 693/4
695/12 696/13 696/20 696/24
696/24 697/16 698/11 703/23
704/25 705/9 707/14 724/6
725/6 725/17 745/2 748/18
749/16 750/13 750/23 750/25
751/5 751/19 752/8 755/4
759/8 763/22 763/24 764/2
764/4 764/17 765/8
done [16] 565/20 565/25
566/1 584/21 624/24 624/24
645/17 646/1 649/24 656/7
690/25 699/11 717/9 722/13
748/17 751/11
Donuts [1] 565/1
door [4] 662/7 662/11 663/9
686/22
dot [3] 723/22 723/22 723/22
double [1] 623/9
doubled [1] 621/7
doubts [1] 717/9
Douglas [2] 637/2 637/3
down [19] 530/17 561/5
573/24 610/11 611/21 622/21
624/25 625/11 627/5 642/4
658/17 659/6 660/19 669/8
708/6 723/11 735/18 735/19
765/1
download [2] 519/24 676/13
downloaded [20] 543/19
543/22 544/1 544/4 544/18
545/7 548/3 554/19 557/24
558/6 559/12 559/19 560/21
610/15 635/11 635/12 635/14
635/21 635/22 663/19
downloading [2] 615/18
615/24
downloads [35] 588/18
598/21 605/14 607/1 607/3
607/11 610/7 610/10 612/5
612/11 613/3 613/3 613/6
615/10 615/16 615/22 616/3
616/7 637/9 637/20 638/18
639/2 639/4 652/14 653/2
659/22 660/6 660/13 660/23
667/19 667/23 668/8 668/11
669/3 693/10
downward [2] 624/20 642/7
dozens [1] 664/3
Dr [1] 639/14
Dr. [34] 517/5 518/23 523/15
523/16 523/20 524/10 528/11
528/18 529/24 531/13 533/22
535/14 539/4 540/20 543/8
545/17 548/6 549/8 549/16
550/5 551/25 555/6 556/8
557/13 560/14 560/19 561/8

567/3 584/23 585/2 585/5
634/25 635/5 639/19
Dr. Hedloy [1] 560/14
Dr. Kidder [1] 639/19
Dr. Smedley [32] 517/5
518/23 523/15 523/16 523/20
524/10 528/11 528/18 529/24
531/13 533/22 535/14 539/4
540/20 543/8 545/17 548/6
549/8 549/16 550/5 551/25
555/6 556/8 557/13 560/19
561/8 567/3 584/23 585/2
585/5 634/25 635/5
drain [1] 684/24
draw [3] 703/25 704/1 704/22
drawing [2] 705/1 705/2
drawn [2] 731/8 761/1
drew [1] 704/23
drive [1] 680/8
drivers [1] 675/13
drove [2] 580/1 642/15
DTX [37] 525/4 525/7 525/10
525/13 525/18 526/5 526/6
526/6 526/7 528/15 529/23
531/12 532/18 609/18 610/1
610/4 610/7 614/2 673/15
674/9 674/12 674/14 700/17
700/20 703/2 722/12 722/16
722/20 727/14 728/4 728/8
731/16 731/18 732/17 732/20
737/15 760/11
DTX-0581 [4] 609/18 610/1
610/7 614/2
DTX-1,141.0254 [1] 526/7
DTX-1054 [3] 731/16 732/17
732/20
DTX-1057 [1] 737/15
DTX-1068 [9] 673/15 674/9
674/12 674/14 700/17 700/20
703/2 722/12 722/16
DTX-1141.0001 [2] 525/4
526/5
DTX-1141.001 [2] 525/7
528/15
DTX-1141.0236 [3] 525/13
526/6 531/12
DTX-1141.0254 [1] 532/18
DTX-1141.0258 [2] 525/10
529/23
DTX-1141.025A [1] 526/6
DTX-166 [1] 760/11
DTX-166C [3] 727/14 728/4
728/8
DTX-581 [1] 610/4
due [2] 527/13 528/3
duly [3] 561/23 670/5 709/3
Dunkin [1] 565/1
duration [2] 561/12 633/25
during [21] 523/21 524/1
524/23 528/25 564/20 576/15
588/19 588/24 589/3 599/25
605/10 640/12 647/11 651/17
656/21 662/8 667/12 668/12
672/5 679/9 699/4

E
e-commerce [2] 671/20
690/18
E-L-B-O-U-C-H-I-K-H-I [1]
670/3

e-mail [4] 541/1 543/11 720/1
723/20
each [34] 514/1 525/3 543/14
544/3 559/9 565/4 570/23
575/1 587/15 590/11 593/22
595/23 595/24 596/3 596/24
597/1 600/2 623/21 624/8
624/16 626/14 626/15 628/6
632/6 637/20 637/20 640/12
651/23 665/15 680/12 680/15
684/14 748/25 765/9
earlier [19] 558/15 594/10
604/21 608/10 608/12 609/17
611/8 612/9 612/12 613/8
614/11 621/25 630/15 638/13
659/17 679/18 682/6 734/7
765/17
early [2] 614/24 659/11
earn [1] 672/3
easier [8] 523/24 527/7
556/23 562/23 713/4 713/6
713/18 725/19
easily [1] 734/25
easy [7] 585/8 680/23 702/19
702/19 736/25 765/20 765/21
eBay [1] 565/16
econometrics [1] 563/9
economic [5] 562/11 563/13
564/12 565/5 660/5
economics [4] 563/9 564/4
564/8 564/17
economist [5] 562/10 563/8
564/16 660/4 660/11
economists [1] 563/10
edge [2] 677/17 704/8
Edison [1] 565/17
editable [5] 540/11 540/14
540/17 540/20 584/25
editing [1] 541/2
education [2] 564/10 655/22
educational [1] 564/1
effect [6] 620/18 620/20
632/25 655/7 659/7 666/23
effective [28] 590/14 590/15
590/19 590/24 591/15 591/18
592/9 592/11 592/24 593/5
593/13 593/16 594/1 594/2
594/18 595/2 596/8 597/5
597/13 600/15 603/11 603/13
603/22 619/25 625/3 642/6
644/6 644/9
effectively [7] 671/10 674/6
675/20 678/14 683/23 686/8
707/5
efficient [1] 585/5
effort [1] 665/16
eight [10] 596/14 597/2 630/3
630/15 632/10 632/13 632/15
632/22 668/13 763/24
either [6] 546/24 604/4 667/5
699/2 712/15 747/8
Elbouchikhi [8] 669/22 669/25
670/4 670/11 673/5 676/8
691/19 700/12
electricity [1] 573/16
electronically [2] 534/21 535/5
electronics [1] 627/15
element [4] 534/22 539/16
539/22 539/25
eleven [1] 671/5

eliminating [1] 582/14
ELLIS [1] 512/9
Elmo [8] 515/23 516/1 516/6
516/16 516/17 517/3 518/4
518/12
else [9] 520/5 548/23 549/7
575/7 575/10 619/2 651/12
711/8 765/9
em [1] 541/4
emerge [1] 737/9
Emmys [1] 565/3
enable [1] 747/22
enabled [6] 684/3 741/20
741/21 763/1 763/7 763/11
enables [1] 563/6
encourage [2] 568/7 568/21
encourages [2] 568/9 568/9
end [7] 557/21 683/25 688/4
715/3 729/15 742/12 765/7
endeavors [1] 660/17
ended [3] 628/24 651/6
681/15
ending [1] 618/19
ends [5] 556/6 589/5 638/10
638/13 638/16
engaged [5] 565/1 565/4
565/8 565/16 567/6
engagements [1] 565/8
engine [1] 709/18
engineer [1] 710/14
engineering [2] 670/20 709/24
engineers [4] 671/11 689/21
690/4 710/15
English [1] 732/7
enjoy [1] 691/24
enlarge [1] 728/21
enough [7] 537/5 548/15
558/25 679/2 716/8 737/10
757/18
ensure [4] 605/20 605/24
606/16 610/25
ensures [1] 558/9
entered [7] 592/1 593/19
617/15 622/17 628/19 630/3
630/9
entering [1] 730/11
enters [4] 523/10 586/11
657/16 727/7
entire [8] 527/16 598/17
677/23 678/22 712/6 712/7
720/10 720/12
entirely [2] 706/9 706/15
entirety [2] 677/19 689/15
entities [9] 565/4 568/24
576/2 580/19 581/8 581/9
590/5 594/6 644/18
entitled [7] 567/17 568/2
589/3 640/25 645/23 653/16
654/25
entity [9] 569/13 579/14
579/16 584/14 592/20 692/15
692/16 693/25 735/24
entries [1] 639/1
envelope [3] 586/2 745/12
747/11
environment [2] 596/20
721/14
envision [1] 519/25
equal [1] 584/13
equally [1] 634/20

E	F	G	H
<p>equals [1] 600/4 equivalent [1] 672/9 Ericsson [1] 565/16 especially [1] 668/23 ESQ [11] 511/23 512/3 512/4 512/4 512/5 512/5 512/9 512/12 512/12 512/13 512/13 essential [1] 514/11 essentially [8] 567/23 586/21 621/23 623/9 721/15 730/1 733/18 757/9 established [2] 613/21 741/12 estimate [7] 591/19 591/22 591/23 592/3 619/17 630/7 643/20 et [2] 573/17 593/4 Europe [1] 629/3 European [1] 580/17 evaluating [1] 558/13 even [11] 536/16 558/8 615/16 636/12 676/17 686/25 687/25 700/1 721/5 747/23 748/8 evening [3] 656/25 765/8 765/13 evenly [1] 656/7 event [3] 567/18 592/21 610/23 events [1] 565/6 eventually [5] 714/16 715/3 716/2 717/21 761/12 ever [7] 566/5 636/21 641/7 667/22 696/9 710/21 729/14 every [11] 566/8 592/19 680/22 680/23 681/13 681/17 682/8 682/13 687/19 688/14 712/25 everybody [4] 522/24 726/25 765/22 765/25 everyone [3] 513/6 513/14 650/11 everything [16] 529/8 529/10 572/12 573/15 573/20 573/21 573/24 573/24 586/3 647/5 688/3 738/13 751/11 751/19 758/18 762/12 evidence [33] 515/20 515/23 520/9 522/4 522/9 522/16 526/5 526/21 527/10 528/5 528/6 544/6 610/1 610/4 621/17 652/25 653/1 655/9 674/12 676/6 698/25 699/1 699/24 700/4 707/22 722/19 728/5 728/8 732/17 732/20 737/15 740/7 744/11 evidentiary [1] 527/18 evolve [1] 729/5 exact [2] 639/12 753/18 exactly [11] 519/20 531/3 536/22 555/3 661/9 677/17 692/3 741/8 751/14 754/14 758/17 examination [28] 517/9 533/19 533/20 561/17 562/1 586/14 601/4 601/5 603/5 636/3 645/16 646/1 647/12 649/4 651/5 656/21 657/20 667/10 667/12 669/13 669/15</p>	<p>670/8 689/6 699/14 699/21 709/6 749/5 749/6 examine [2] 699/8 708/14 example [49] 516/6 540/3 540/13 540/25 541/17 575/6 605/2 612/21 613/21 623/25 634/16 638/5 677/21 681/16 684/10 690/20 711/9 712/3 712/5 712/5 712/22 714/9 714/10 719/19 720/8 721/20 724/5 724/11 730/22 731/11 732/4 734/7 734/9 734/22 736/5 738/11 738/12 743/2 743/3 744/3 745/2 745/5 746/9 746/14 746/18 746/24 747/5 758/22 758/23 examples [4] 543/10 543/14 714/12 743/4 exceeds [1] 626/14 Excel [2] 631/9 631/15 except [6] 529/4 530/14 611/3 611/10 616/2 648/16 exception [3] 613/20 636/20 636/20 exchange [2] 570/11 593/22 excitement [1] 718/3 exclude [1] 567/24 excluded [2] 514/19 514/25 excluding [1] 514/10 excuse [5] 542/10 550/12 564/7 601/15 656/15 excused [5] 561/8 561/9 708/9 765/4 765/17 executed [1] 592/13 exhibit [36] 525/4 525/9 525/18 526/20 527/9 528/4 528/6 528/14 529/22 532/18 539/2 608/4 608/21 609/1 609/3 609/10 610/4 610/24 647/24 668/18 674/12 676/6 698/14 698/16 699/2 699/8 699/16 700/1 708/1 728/8 732/20 737/17 739/11 740/7 742/11 744/11 Exhibit 1141 [4] 526/20 527/9 528/4 528/6 Exhibit DTX-1141.0254 [1] 525/18 exhibits [14] 521/17 521/19 521/21 522/8 525/1 525/24 526/10 528/8 561/11 561/12 607/24 699/4 766/4 766/6 exist [11] 549/6 549/9 549/10 571/3 581/10 581/18 582/1 643/23 646/12 652/12 724/8 existed [1] 629/8 existence [2] 551/20 569/15 existing [1] 759/23 exits [4] 585/21 650/2 726/13 765/10 expand [7] 541/10 677/19 677/22 678/21 694/13 719/20 734/14 expansion [3] 694/8 740/20 762/25 expect [7] 517/11 517/15 518/22 555/24 663/21 664/6 664/10 expectation [2] 660/16 667/3 expectations [2] 602/14 634/9</p>	<p>expected [1] 652/15 expense [1] 582/43 expensive [2] 581/21 628/6 experience [29] 575/12 576/13 595/6 595/7 597/4 644/22 658/23 664/6 678/11 680/3 680/21 680/23 683/7 683/9 685/3 685/25 691/3 691/5 691/9 692/2 692/21 692/23 692/24 693/7 712/25 713/3 715/14 754/23 756/22 experiences [3] 764/18 764/19 764/22 expert [29] 518/23 563/23 566/17 576/16 601/12 601/25 602/5 606/3 606/5 606/8 608/5 611/15 616/17 626/18 626/21 636/16 637/3 637/5 637/6 664/1 664/5 664/19 668/19 749/14 749/16 749/17 749/18 749/23 750/2 experts [1] 576/10 expiration [2] 589/5 605/7 expired [1] 592/2 explain [28] 529/10 557/2 570/25 571/15 579/23 593/16 598/9 636/24 637/16 671/8 673/7 674/18 676/23 717/14 720/16 721/7 723/4 724/25 727/24 728/14 729/2 729/24 733/15 734/5 736/3 738/19 760/1 762/15 explained [9] 554/13 584/23 595/9 619/16 652/5 655/23 725/6 733/13 739/9 explaining [2] 599/21 735/22 explains [2] 740/19 744/23 explanation [3] 744/24 745/1 748/4 explicit [1] 514/1 explicitly [1] 761/25 explore [1] 646/8 explored [1] 653/6 expressions [2] 713/15 736/22 expressly [1] 645/16 extensive [1] 697/21 extent [7] 560/20 604/13 659/10 697/19 716/23 717/4 721/1 extra [1] 521/10 extreme [1] 724/11</p>	<p>575/18 575/20 576/1 576/4 577/2 584/6 585/10 585/12 586/17 586/19 586/20 586/23 589/7 589/19 597/20 633/25 Factors 9 [2] 585/10 585/12 facts [3] 571/6 750/17 750/21 factual [1] 646/7 faculty [1] 566/15 fair [30] 548/15 558/25 562/15 563/3 563/23 567/4 570/14 573/1 582/12 590/3 595/6 601/18 601/24 603/8 604/19 605/9 606/24 617/12 621/11 622/12 623/3 633/8 639/14 639/19 639/24 646/2 667/3 669/5 690/21 757/18 fairly [4] 555/24 565/7 574/10 666/15 fall [1] 720/3 familiar [6] 609/21 677/8 691/5 701/12 720/13 723/2 familiarity [1] 689/18 fancy [1] 640/14 Fantastic [1] 522/21 far [11] 514/17 557/22 564/22 586/5 592/19 598/17 617/5 627/19 641/6 652/11 667/6 Farmers [1] 565/1 fast [1] 679/2 faster [3] 685/11 685/12 713/6 feature [52] 677/7 679/5 679/17 680/24 682/25 683/11 687/10 687/14 687/22 688/2 688/22 690/24 691/7 694/13 695/5 711/1 711/4 711/23 712/9 715/18 715/18 716/12 721/15 721/19 725/12 725/16 729/11 730/2 736/14 737/13 739/10 741/13 747/20 747/22 748/1 748/12 751/8 752/24 754/8 754/16 756/4 756/25 757/1 757/13 757/14 759/20 759/22 761/18 761/20 761/25 762/1 763/19 features [23] 677/4 687/25 688/5 694/2 710/8 710/20 713/11 713/11 721/12 721/12 726/4 728/17 730/22 731/25 732/1 733/17 738/10 738/19 738/24 741/2 741/12 741/14 761/12 February [1] 733/9 February 2017 [1] 733/9 Federal [1] 566/2 fee [2] 665/8 665/12 feel [5] 640/25 652/24 653/15 654/25 658/22 fees [1] 574/14 fellowships [1] 564/13 felt [1] 592/3 few [13] 518/8 553/10 625/17 638/2 677/2 678/18 683/13 686/8 686/9 689/11 724/5 742/16 756/10 fewer [1] 642/18 field [2] 550/9 550/9 Fifth [12] 712/4 712/5 712/8 719/11 719/18 719/19 719/19 719/20 719/23 720/8 720/9 720/9</p>

F
figure [19] 515/6 522/11
549/18 569/21 592/21 648/4
674/18 678/21 679/13 682/24
702/14 702/20 703/1 714/17
715/3 734/21 744/22 744/23
745/1
Figure 1 [3] 702/20 744/22
744/23
figures [6] 593/11 599/5 599/5
599/23 599/24 638/17
file [20] 517/18 517/21 525/5
525/11 525/13 525/15 525/19
525/20 528/16 529/24 531/11
532/19 532/22 547/8 552/14
657/10 703/19 703/19 704/18
704/18
filed [2] 644/13 764/15
files [8] 515/16 518/7 523/25
524/3 524/16 525/3 525/24
647/7
filing [1] 656/24
filings [3] 593/21 593/22
593/23
Filters [1] 744/14
final [7] 532/17 589/11 594/16
608/11 608/14 655/16 766/3
finally [3] 525/17 582/9 593/16
finance [1] 563/9
financial [3] 519/21 567/4
587/20
find [10] 520/17 536/16
541/25 577/19 584/4 615/3
624/13 624/17 647/22 680/13
finding [7] 514/1 520/22 521/3
521/20 521/22 522/18 594/17
findings [1] 514/10
fine [11] 526/24 528/20 586/8
586/9 587/18 601/10 662/23
662/23 663/11 755/19 766/9
finger [1] 719/19
finish [7] 573/1 581/13 648/2
651/5 762/24 763/3 763/6
finished [3] 599/17 650/24
687/3
fire [1] 692/19
fired [1] 696/9
firm [2] 562/12 563/14
firmware [1] 675/13
first [78] 513/20 514/5 520/15
521/4 525/4 528/14 534/10
534/18 534/22 534/24 535/1
535/4 535/10 535/16 535/25
536/1 536/5 537/1 537/4
537/13 549/8 559/8 559/21
561/8 561/23 563/1 564/21
565/21 570/25 571/1 572/8
572/9 576/12 578/10 580/8
591/13 594/20 601/11 602/20
606/9 622/17 636/12 638/3
638/13 655/17 659/6 659/11
661/17 669/18 670/5 671/25
672/10 678/18 679/13 682/24
683/10 686/17 686/20 686/21
695/9 701/5 702/17 705/4
709/3 711/17 713/10 713/13
718/13 718/15 718/18 726/6
727/14 728/13 729/19 732/22
737/19 749/12 764/5

fit [1] 737/11
Fitbit [1] 671/23
five [10] 513/12 513/13 520/9
522/8 594/25 598/13 598/15
626/10 670/23 670/25
fix [2] 680/14 680/16
fixes [3] 683/14 686/9 686/9
flexible [1] 521/15
flight [5] 532/4 532/6 532/9
543/12 717/19
focus [10] 691/9 692/1 692/21
692/24 693/3 693/12 723/13
732/21 735/20 764/21
focused [1] 715/13
follow [3] 691/9 692/2 692/25
following [14] 526/16 528/15
529/23 531/12 578/3 587/8
591/8 619/8 645/5 651/21
656/3 661/3 698/21 753/11
follows [4] 561/24 670/6
691/22 709/4
force [1] 659/15
foregoing [1] 767/4
foreign [1] 618/22
foresee [1] 519/20
forgot [1] 765/16
formats [1] 713/22
forming [1] 575/10
forth [5] 513/22 516/3 588/17
626/24 651/8
forthcoming [1] 526/9
forward [3] 651/7 655/21
662/14
forwarded [2] 681/23 747/1
found [9] 540/5 542/7 542/8
552/14 577/21 584/4 598/13
608/20 629/15
foundation [8] 564/14 685/18
699/11 699/15 700/2 702/5
702/9 706/25
four [37] 522/9 525/24 525/24
577/21 579/20 583/17 590/3
590/8 590/25 593/10 594/25
596/11 596/16 597/3 597/13
597/16 620/2 620/21 624/4
625/4 632/7 633/11 633/22
655/14 658/12 658/19 658/21
665/14 665/15 665/18 665/19
670/15 671/7 672/5 672/24
686/25 720/4
four times [1] 633/22
four-question [1] 655/14
fourth [5] 535/1 535/13
579/14 579/16 610/7
frame [3] 697/15 740/21
763/2
framework [132] 525/5 525/12
525/16 531/15 544/11 544/15
544/18 544/25 545/7 546/7
546/20 547/12 548/13 548/15
548/21 548/25 549/7 550/7
550/10 550/15 550/19 551/9
551/13 551/19 551/21 552/16
552/20 552/22 553/8 553/12
553/16 553/18 553/24 554/1
554/5 556/12 558/4 570/13
571/12 576/9 576/17 577/1
675/5 678/24 679/19 679/21
679/25 680/22 681/8 681/9
681/10 681/18 681/21 681/21

682/2 682/3 682/5 682/8
682/16 695/4 699/10 699/16
695/18 696/1 696/5 696/11
696/15 705/7 705/11 705/12
705/17 705/21 705/25 710/6
716/10 716/10 717/3 720/22
721/4 721/11 722/5 722/6
722/9 723/8 723/10 723/14
723/17 723/25 724/23 725/3
725/10 725/16 725/18 725/20
729/16 730/3 730/4 730/13
730/15 730/16 730/20 730/25
731/3 731/6 731/6 731/7
731/8 731/13 731/14 731/14
736/11 736/15 738/20 739/1
739/2 739/5 742/25 743/1
745/18 746/5 746/6 746/10
747/14 748/23 751/25 751/25
752/5 752/6 752/14 758/20
759/22 760/23
frameworks [1] 548/12
frankly [1] 646/12
free [5] 572/9 572/9 575/7
646/8 699/8
Friday [1] 608/15
front [6] 526/23 608/21 609/1
609/3 609/10 691/16
fulfilling [1] 650/17
full [5] 562/6 624/16 712/7
740/10 755/16
fully [1] 644/10
fun [1] 672/17
functionalities [2] 542/20
542/25
functionality [24] 525/25
542/19 542/22 545/1 554/4
554/25 615/7 635/1 635/16
660/18 694/20 694/25 695/1
696/2 713/9 719/8 721/22
724/1 725/9 742/3 748/7
754/2 754/11 755/7
fundamental [1] 574/7
fundamentally [1] 582/8
further [11] 530/17 561/3
597/24 601/2 667/7 669/6
669/7 708/4 708/13 723/11
735/18
future [9] 571/4 571/10
571/10 571/10 573/14 573/22
574/4 591/25 706/22

G
Galaxy [1] 593/4
Garfinkel [9] 522/22 523/6
578/1 585/19 586/10 650/1
656/13 726/12 727/4
gather [1] 741/7
gave [11] 541/17 555/8
566/12 607/22 625/14 633/18
645/18 652/19 698/23 734/7
747/5
general [7] 555/24 565/9
710/11 715/18 725/2 748/24
751/18
generally [7] 554/23 595/10
649/3 662/11 711/22 714/6
723/25
generate [2] 663/18 693/9
generates [1] 626/1
gentlemen [6] 523/12 528/2

649/17 657/18 727/8 765/6
Georgia [33] 575/15 575/18
575/20 575/24 576/2 576/4
576/6 576/9 576/13 576/17
576/23 577/7 577/15 583/3
583/14 583/15 583/20 584/5
585/10 585/12 585/15 586/17
586/20 589/7 589/11 589/14
589/16 589/18 589/24 589/25
597/20 597/23 633/24
Georgia-Pacific [32] 575/15
575/18 575/20 575/24 576/2
576/4 576/6 576/9 576/13
576/17 576/23 577/7 577/15
583/3 583/15 583/20 584/5
585/10 585/12 585/15 586/17
586/20 589/7 589/11 589/14
597/20 597/23 633/24
Georgia-Pacific Factor 1 [1]
583/14
German [1] 732/8
get [75] 516/20 517/21 520/11
521/4 521/24 523/3 530/23
540/17 549/3 549/18 572/8
572/24 573/1 575/7 575/8
586/3 589/10 589/18 590/2
592/8 592/17 593/20 596/5
602/17 619/21 620/2 621/23
649/4 649/24 650/4 655/15
655/18 655/19 670/25 672/16
675/6 675/7 677/17 680/15
683/7 683/8 683/9 685/10
685/12 691/24 698/14 706/22
707/14 712/15 713/24 715/12
717/22 718/11 719/23 720/7
720/10 720/12 721/12 721/21
721/23 722/13 722/13 723/12
726/3 734/18 736/9 743/13
746/7 748/12 748/25 755/13
759/10 761/23 765/23 765/24
gets [15] 528/23 529/7 529/13
529/15 529/15 531/1 570/14
575/4 576/25 581/13 655/8
655/18 658/24 726/16 745/11
getting [6] 530/18 576/1
691/23 691/25 699/10 741/5
give [10] 521/6 521/9 540/13
555/6 607/17 641/7 674/6
677/10 743/2 757/10
given [13] 559/23 566/5
594/11 594/13 629/6 646/1
658/18 685/13 685/22 688/18
719/5 735/23 751/3
gives [3] 542/22 645/22
675/25
giving [5] 513/17 692/17
749/14 750/11 752/25
Gmail [12] 612/2 612/6
614/14 662/4 662/4 677/1
703/6 703/9 703/11 721/20
745/6 745/19
go [48] 515/13 517/2 520/17
522/12 534/24 540/23 541/16
548/17 562/25 575/5 577/23
587/20 590/7 593/10 619/4
622/13 625/11 630/11 654/6
655/17 655/18 655/18 655/19
659/15 661/8 661/10 661/15
663/3 668/22 676/11 676/12

go... [17] 680/15 685/7 688/15
694/12 696/17 711/12 717/17
728/12 735/3 735/18 739/23
742/17 742/20 744/21 747/3
760/16 762/19
GODFREY [1] 512/3
goes [10] 658/17 675/9 681/8
681/9 681/21 738/19 745/7
745/17 746/10 747/13
going [81] 515/17 515/20
515/21 516/1 517/1 517/16
517/17 519/11 521/1 521/12
521/22 522/9 522/12 522/23
527/19 528/14 537/4 555/23
570/11 570/12 575/3 586/3
587/14 587/19 590/22 591/25
592/3 592/14 596/15 611/21
619/4 621/15 623/1 648/18
648/18 649/12 649/19 649/19
649/20 650/3 650/5 650/15
650/24 651/7 651/7 655/6
655/21 655/21 661/16 661/20
661/23 662/1 662/3 662/13
663/5 669/18 678/5 678/8
683/7 683/8 683/9 683/20
684/19 686/24 688/21 698/8
703/16 706/22 718/11 742/10
743/10 743/11 747/15 747/16
748/19 748/20 748/21 750/14
762/10 762/12 764/9
gone [5] 583/18 624/25 629/2
659/2 659/6
good [26] 513/6 523/11
527/23 533/22 533/23 562/5
568/14 573/23 577/17 585/16
601/7 656/4 656/9 657/25
658/1 684/25 686/16 687/10
689/8 689/10 693/24 695/18
709/8 709/9 726/7 749/8
GOOG00157 [1] 638/4
google [291]
Google's [31] 521/23 524/10
524/17 524/21 524/22 531/8
551/25 587/11 606/3 611/15
635/7 636/14 636/16 637/3
640/25 653/16 655/1 691/2
692/10 698/18 705/15 705/19
705/23 706/4 708/15 717/23
758/8 760/13 762/20 762/24
763/3
Google-accused [3] 587/3
588/11 588/21
got [14] 516/12 522/24 543/23
592/4 593/23 626/4 627/22
651/3 680/11 684/24 689/11
696/9 741/11 743/10
gotten [1] 755/6
govern [2] 594/19 595/3
Government [2] 514/14
514/16
governs [1] 570/14
graduated [2] 564/3 670/19
graduating [1] 670/21
grandchildren [1] 562/13
grant [2] 522/18 622/6
gray [1] 691/16
great [4] 573/23 585/18 693/7
693/8

greater [1] 584/14
green [8] 350/6 350/16
551/13 675/4 723/10 725/3
731/4 731/5
grew [2] 670/18 718/19
group [5] 542/20 566/12
566/15 705/13 733/19
grouped [1] 586/19
grow [2] 718/17 718/19
grown [1] 562/13
guess [3] 518/21 524/22
651/5
guessed [1] 712/1
guessing [1] 734/14
guide [1] 700/20
guy [6] 690/9 690/10 690/11
693/11 693/14 751/14

H

had [99] 514/18 514/21 515/4
522/8 526/2 526/18 533/24
538/8 541/23 556/22 563/8
564/24 565/3 565/7 565/25
566/25 567/2 581/2 591/23
593/7 594/25 595/6 595/6
595/7 614/7 615/3 615/18
616/24 617/3 624/24 625/9
629/2 629/18 630/14 631/14
632/14 632/20 634/18 634/19
639/12 642/20 644/14 644/25
647/9 649/11 649/23 650/12
650/13 650/21 651/3 655/23
657/19 658/3 665/25 666/15
666/18 666/21 667/4 668/12
668/15 671/6 672/15 679/12
679/16 683/5 683/11 683/18
683/18 683/25 688/19 688/22
688/25 689/18 710/1 710/5
712/3 715/17 716/8 717/15
717/18 719/10 719/10 721/18
732/6 734/8 734/8 735/12
736/21 741/4 741/21 746/14
746/22 747/25 748/10 758/22
758/23 759/3 759/20 760/6
hadn't [2] 650/17 717/9
half [9] 586/6 621/2 621/13
622/24 623/4 649/24 671/5
689/13 693/15
halfway [3] 651/3 722/16
735/19
HALL [1] 511/18
Halliburton [1] 565/17
hand [9] 546/16 567/9 567/12
571/14 681/13 714/14 729/7
729/9 760/12
handle [5] 681/14 681/14
681/17 681/22 746/11
handles [3] 745/18 746/10
747/14
handling [12] 556/11 651/23
680/25 681/1 681/25 682/4
682/18 746/3 746/5 746/19
748/14 764/20
handouts [1] 516/7
hanging [2] 652/18 654/3
Hannah [1] 656/19
hap [1] 725/25
happen [13] 558/11 649/18
657/4 661/25 721/15 721/25
725/8 725/24 729/13 739/10

743/19 745/9 747/6
happened [17] 326/22 373/21
615/10 629/23 630/15 643/6
644/24 644/25 645/1 646/15
647/11 683/17 697/2 715/13
725/25 741/17 746/25
happening [6] 529/9 529/11
724/14 751/2 751/15 762/17
happens [6] 577/17 583/22
658/9 658/17 662/20 745/11
happenstance [1] 651/1
happy [4] 548/5 693/12
696/22 699/6
hard [5] 519/20 658/14 697/4
704/19 744/21
hardware [6] 671/21 675/14
679/19 702/25 704/23 723/12
has [86] 517/3 517/16 519/1
523/24 527/9 528/3 530/20
535/4 536/19 537/7 537/14
540/16 540/17 543/15 547/1
547/3 547/5 553/1 557/9
576/4 576/16 577/10 578/5
582/16 582/17 583/10 591/9
595/7 596/4 616/2 619/9
620/9 620/17 620/18 620/20
621/7 622/3 639/7 640/13
641/3 646/11 646/12 646/14
649/3 651/24 654/14 655/7
655/8 659/4 659/5 659/12
662/7 662/10 663/9 674/5
680/22 680/23 681/6 682/13
682/14 684/23 684/25 690/5
694/12 694/20 694/25 695/5
695/6 695/13 695/15 695/19
695/23 696/2 696/5 696/23
698/25 703/4 714/19 744/24
747/16 756/6 757/2 757/8
761/19 761/20 765/6
hasn't [3] 646/6 655/9 755/5
HASTINGS [1] 512/11
have [281]
haven't [11] 519/3 542/25
552/14 558/1 559/23 560/5
560/9 560/11 654/16 691/8
699/11
having [8] 516/17 519/13
533/4 561/22 568/19 597/14
670/4 709/2
he [85] 515/22 517/6 517/16
517/17 519/5 519/8 519/9
561/9 566/21 576/17 576/20
576/25 595/5 595/7 595/9
595/11 595/12 595/18 595/21
595/24 596/13 596/25 629/20
629/22 630/3 630/9 630/14
630/20 631/3 632/14 633/18
633/20 637/5 637/7 637/12
637/17 637/19 637/22 637/25
639/1 639/7 639/9 639/11
639/11 639/21 645/22 646/13
646/13 646/14 647/7 647/15
652/2 652/3 653/7 653/7
653/24 653/25 654/18 654/18
654/19 655/3 655/18 661/16
661/18 661/22 661/24 662/2
662/5 662/7 662/8 662/10
662/13 663/5 664/20 666/6
666/7 699/14 700/2 701/12
706/24 745/20 753/15 755/5

764/20 765/5
hell [1] 376/19
he's [15] 516/14 517/16 639/3
640/1 647/3 647/5 648/7
648/19 654/5 654/17 661/20
662/1 663/5 669/17 701/12
head [1] 621/1
header [1] 637/8
headquarters [1] 717/24
headsets [1] 672/15
Health [1] 564/13
hear [5] 513/14 515/8 517/24
692/10 753/19
heard [7] 521/9 584/16 585/1
585/5 651/14 691/25 764/5
hearing [2] 578/5 622/4
heavily [1] 679/17
Hedloy [18] 560/14 567/3
580/1 591/22 592/3 592/5
595/1 596/11 596/25 623/21
629/18 629/24 630/14 632/14
632/20 642/14 642/17 642/21
Hedloy's [2] 519/5 633/15
held [6] 526/16 578/3 587/8
591/8 619/8 753/11
help [5] 647/19 713/1 718/10
724/19 738/15
helped [2] 581/5 711/24
helpful [3] 678/15 688/4
696/21
helping [1] 718/20
helps [1] 674/3
Her [1] 541/4
here [122] 513/8 514/17
522/23 523/2 530/2 531/17
532/10 534/16 543/10 543/12
545/23 547/20 551/6 552/10
552/19 553/15 555/4 557/3
558/14 559/14 560/8 560/23
560/24 562/14 562/15 562/23
568/15 570/4 570/8 575/7
575/13 575/16 576/15 576/19
577/18 579/10 581/10 581/19
584/9 586/7 587/11 590/23
604/22 609/12 609/14 611/19
612/5 613/6 613/11 613/22
614/2 616/14 625/17 628/14
633/1 633/15 639/14 639/19
640/18 643/6 644/17 645/13
645/20 649/25 652/7 653/10
654/1 656/19 658/21 659/2
659/11 660/2 661/10 670/18
682/22 690/8 696/4 703/4
703/8 703/9 703/16 704/10
704/22 704/24 706/21 714/4
714/13 715/1 719/15 719/17
723/9 724/1 728/15 729/3
729/24 730/6 730/6 730/12
731/8 732/9 733/5 733/17
737/23 740/2 740/10 743/4
749/18 749/20 749/24 750/9
750/16 750/19 756/18 757/10
757/25 760/14 761/1 762/11
762/20 763/12 765/24 765/25
here's [6] 520/4 655/5 733/16
743/7 745/13 747/11
hereby [1] 767/4
hesitate [1] 765/11
hey [9] 685/9 693/3 696/10
697/10 719/15 721/17 737/2

H	H	H	H
<p>hey... [2] 758/24 760/8 Hi [4] 670/11 709/11 749/8 749/10 high [7] 518/9 584/17 612/15 613/10 677/10 693/3 714/20 high-level [1] 677/10 higher [5] 514/11 546/5 620/11 658/3 658/10 highest [3] 584/19 584/21 585/3 highlight [3] 620/6 621/19 737/19 highlighted [1] 762/25 highlighting [1] 573/10 highly [4] 621/15 622/5 623/1 665/22 him [18] 629/25 630/12 645/23 646/13 648/8 652/3 652/4 653/19 655/17 661/12 662/15 669/16 699/9 699/14 700/3 707/3 753/16 753/16 himself [1] 576/19 hinted [1] 719/9 hints [1] 674/6 hired [2] 601/11 601/13 his [20] 517/11 519/10 580/2 595/4 606/20 606/20 606/22 629/20 630/6 630/9 630/19 630/25 637/9 637/9 638/24 639/8 650/7 664/18 753/15 755/8 hold [3] 561/11 561/13 766/5 holder [3] 567/16 568/1 569/14 holders [1] 568/24 holding [1] 517/6 home [1] 683/19 Honor [124] 515/12 517/25 518/3 518/22 519/17 520/6 522/6 522/20 523/4 523/5 523/8 523/9 523/14 524/5 526/4 526/8 527/12 527/22 528/7 533/18 538/13 555/14 560/16 560/25 561/3 561/7 561/8 561/10 562/3 566/16 566/20 577/22 578/6 578/8 583/4 583/11 585/18 585/23 586/7 586/8 586/12 586/16 587/2 588/10 590/21 591/12 599/9 599/19 601/2 607/19 609/25 610/2 619/3 636/2 645/2 645/15 648/21 650/8 651/14 651/17 652/1 654/15 656/15 656/18 657/8 657/23 660/25 663/16 664/21 668/3 669/6 669/7 669/9 669/12 673/1 674/8 674/10 676/2 676/4 685/17 689/4 689/23 694/11 694/17 698/23 699/6 699/17 700/7 702/8 703/20 706/24 707/21 707/25 708/4 708/5 708/8 708/12 708/21 726/9 726/24 727/1 727/6 727/11 728/4 728/6 732/16 732/18 740/3 740/5 744/7 744/9 749/2 753/7 754/6 755/24 756/8 764/23 764/25 765/3 765/14 765/15 765/16</p>	<p>766/3 766/9 HONORABLE [1] 511/18 honored [1] 564/15 honors [2] 564/4 564/9 Hopefully [1] 650/4 hoping [1] 648/1 hour [6] 563/17 586/6 648/2 649/25 650/12 650/25 hours [8] 513/11 513/11 513/12 521/7 586/5 601/19 601/22 601/23 house [7] 515/1 573/14 573/15 573/20 573/22 573/23 577/14 how [121] 513/14 515/8 520/4 520/14 521/12 525/24 529/18 531/7 532/1 533/11 557/20 560/5 560/11 563/12 567/21 569/15 569/20 570/2 570/14 572/16 576/24 578/4 581/14 581/24 589/10 589/14 590/2 590/7 590/16 590/18 591/14 592/3 595/2 601/9 606/9 610/25 612/17 613/11 615/3 629/12 630/6 641/3 641/20 646/9 648/4 658/22 660/20 663/1 671/4 671/6 672/4 674/4 674/6 675/6 675/7 677/10 678/16 678/21 679/1 679/10 680/14 680/17 680/18 682/7 683/15 684/7 687/7 687/17 688/16 688/17 688/18 693/12 693/13 694/7 699/17 707/5 709/14 710/16 712/24 713/17 714/6 714/8 714/22 715/3 715/11 716/12 716/18 717/14 717/21 718/6 718/12 718/13 718/22 719/5 719/7 721/5 735/5 736/25 737/3 738/17 739/24 741/3 741/8 741/19 742/16 742/17 742/20 743/13 744/2 744/23 746/19 750/9 750/15 750/19 751/6 751/7 751/7 751/10 751/11 760/1 762/5 however [3] 563/21 683/2 734/11 hundred [6] 576/14 617/5 626/16 698/11 718/8 741/6 hundreds [13] 601/19 601/22 601/23 625/23 660/1 660/6 660/12 663/19 664/4 674/1 687/24 687/25 688/5 hypothetical [69] 570/1 570/2 570/3 570/13 570/16 571/1 571/8 571/11 571/18 571/25 572/3 572/15 572/18 572/25 573/4 573/19 574/2 574/7 574/11 574/15 574/19 574/22 574/25 575/2 575/9 575/14 576/8 576/22 581/11 581/12 581/18 582/1 582/6 582/22 582/23 589/22 590/1 594/11 594/14 594/19 595/3 596/4 596/6 596/18 596/19 597/6 597/9 597/11 597/14 600/16 602/13 602/19 603/10 617/15 618/4 618/9 618/14 618/16 623/5 623/7 625/7 626/25 627/9 643/10 643/15 643/21</p>	<p>643/25 644/10 644/20 I'd [7] 526/4 528/16 530/2 609/17 668/22 702/18 743/20 I'll [8] 514/23 521/3 523/16 524/11 558/11 689/2 702/19 702/19 I'm [80] 513/17 515/7 516/2 516/2 520/13 528/14 532/14 539/19 540/11 548/4 548/5 549/3 549/4 550/21 552/9 552/12 553/17 554/24 558/8 558/14 558/24 562/10 562/11 562/12 562/15 563/8 578/5 596/15 601/10 601/23 605/19 609/21 613/2 616/15 618/7 623/3 635/17 647/4 647/8 648/5 650/3 650/5 650/12 656/19 659/17 670/11 685/17 686/14 692/13 693/11 693/12 693/13 693/21 696/21 696/22 697/17 698/8 699/6 700/2 703/16 705/4 706/13 710/14 725/17 731/10 743/10 743/11 747/15 747/16 748/15 749/20 749/24 749/25 749/25 750/9 750/14 750/19 754/14 756/24 758/17 I've [28] 514/17 522/19 559/23 564/25 565/4 565/7 565/8 565/16 566/1 566/9 574/16 576/11 583/18 589/9 600/4 618/3 649/23 658/22 664/3 685/3 688/23 690/25 694/6 701/6 743/10 748/17 749/24 752/1 I/O [2] 687/21 688/1 iconic [2] 580/24 581/8 IDC [2] 592/18 592/21 idea [10] 518/1 568/19 688/22 693/3 693/7 706/11 718/1 721/8 732/10 741/1 ideas [2] 717/17 729/12 identical [1] 637/21 identified [9] 531/14 532/13 532/19 533/6 547/15 553/12 610/23 652/17 713/1 identifies [1] 646/23 identify [13] 515/16 538/22 539/7 564/23 579/14 605/17 610/15 610/19 616/14 646/13 652/3 667/13 714/9 identifying [1] 550/10 Ill [1] 511/12 Illinois [1] 565/10 illustrated [4] 729/2 729/24 730/13 730/17 illustrating [1] 723/4 illustration [1] 723/2 imagine [5] 680/3 680/11 684/19 723/19 745/4 immediately [1] 584/25 immersed [1] 691/24 impact [9] 563/18 563/20 563/21 565/5 565/6 574/13 634/5 643/15 659/1 impacted [1] 611/6 impeach [1] 753/16 impeachment [2] 755/5</p>	<p>755/14 impl [3] 730/5 730/6 730/12 implemented [1] 748/7 implementation [5] 730/7 730/8 736/21 759/1 760/6 implemented [9] 711/14 711/15 711/17 729/14 729/17 729/19 738/20 738/25 739/2 implementations [2] 736/10 736/12 implication [2] 650/17 652/23 implicit [1] 744/23 implied [1] 695/9 important [25] 514/14 516/22 516/25 517/4 568/5 568/6 580/2 580/6 580/10 580/22 581/25 582/11 582/25 586/23 586/24 589/9 604/16 610/22 668/2 680/1 680/21 686/5 688/2 703/18 706/20 imposing [1] 651/22 impossible [1] 568/8 imprecisely [2] 545/12 545/16 impression [3] 645/8 645/18 645/22 improve [4] 671/14 712/24 732/12 737/12 improvements [1] 531/21 improving [1] 715/14 inaccurate [1] 702/3 Inc [1] 656/20 include [22] 517/12 569/4 579/20 594/13 598/19 598/21 604/24 615/14 618/22 618/24 619/1 623/8 642/23 677/19 694/3 712/22 720/24 736/6 736/7 742/9 760/21 761/18 included [26] 574/21 576/1 578/16 578/23 579/17 583/16 591/16 605/3 608/5 613/7 613/22 623/11 642/8 644/8 645/20 666/17 686/18 687/18 728/18 734/24 741/20 741/23 745/25 760/6 761/19 761/20 includes [9] 532/4 538/11 550/23 605/14 612/8 612/11 616/13 758/14 760/19 including [8] 542/23 553/17 580/19 581/3 612/12 621/5 648/25 650/24 inconsistency [1] 680/8 inconsistent [2] 755/11 755/13 incorporated [1] 664/11 incorrect [6] 612/14 613/9 613/14 630/16 630/17 630/18 increased [1] 633/12 independent [1] 534/7 indicated [2] 642/14 668/8 indication [1] 607/10 individual [3] 555/1 679/25 759/4 industry [3] 567/10 592/18 592/19 inevitably [1] 658/25 inference [1] 646/5 inform [1] 581/8 information [87] 515/2 519/9 519/21 519/23 519/24 521/1 521/14 529/17 536/23 536/25 537/1 537/2 537/5 537/7 537/10 537/12 537/15 537/19</p>

information... [69] 537/22
538/10 538/12 538/23 539/8
539/18 539/23 539/25 540/2
541/25 542/2 542/6 542/7
542/8 542/14 567/1 567/4
567/8 567/12 571/2 571/4
571/9 571/9 571/14 574/2
574/4 574/5 577/12 577/12
581/25 582/10 584/22 585/1
585/8 587/12 587/20 589/23
590/22 592/5 592/6 607/13
611/11 614/6 616/6 616/8
616/15 629/14 632/18 636/13
636/14 637/23 640/11 640/11
640/13 641/3 641/15 644/2
652/20 656/22 656/23 657/3
668/2 668/7 674/3 682/15
701/21 732/11 733/21 745/19
infringe [12] 536/13 536/20
537/5 546/18 546/23 549/9
549/13 557/25 559/1 559/2
559/16 582/7
infringed [6] 571/19 571/23
572/2 574/10 574/12 750/7
infringement [37] 534/5 536/5
536/18 537/17 538/24 548/20
549/22 550/20 551/17 558/13
558/22 558/24 565/13 565/20
566/6 567/14 567/17 569/22
570/8 574/23 575/25 580/16
582/5 582/16 582/17 582/19
589/4 594/12 598/25 600/9
602/20 604/22 608/8 611/1
666/18 676/20 677/4
infringer [1] 567/19
infringing [8] 560/21 604/10
604/13 615/11 615/14 634/25
639/16 688/19
initial [7] 607/3 710/2 711/16
718/25 719/2 719/3 719/25
initially [2] 673/8 731/25
initiate [2] 681/11 682/8
initiating [1] 681/20
injury [2] 514/3 520/24
innovation [3] 568/7 568/9
568/21
innovator [1] 568/10
input [9] 530/19 530/24 535/7
535/10 536/2 538/5 549/1
554/4 555/18
inside [11] 675/13 676/1
706/1 706/9 706/16 706/18
706/19 707/6 707/9 761/1
761/9
insight [1] 752/8
install [4] 673/13 675/2
682/17 682/20
installation [1] 598/16
installations [12] 519/9 587/3
587/15 587/17 588/15 588/18
588/20 600/6 605/21 628/16
660/2 660/12
installed [9] 560/6 560/12
560/21 604/13 604/17 604/20
604/24 605/2 724/17
installing [1] 641/4
instance [2] 542/2 572/7
instead [3] 621/3 641/8 659/2

instruction [5] 645/12 646/20
647/4 650/14 652/24
instructions [21] 547/9 551/9
551/12 553/23 554/3 554/11
554/15 554/25 555/2 555/18
559/20 680/25 681/1 681/25
682/4 698/23 706/9 706/15
721/2 722/1 746/3
Insurance [1] 565/1
integrate [1] 716/9
integrated [1] 717/2
integration [2] 672/7 672/10
Intel [1] 565/17
intellectual [3] 566/8 566/18
571/21
intelligence [2] 710/19 713/24
intend [1] 515/8
intended [3] 694/14 701/24
741/4
intends [1] 520/8
intensive [1] 686/6
intent [19] 530/18 530/23
530/25 553/3 668/23 681/1
743/6 744/14 744/17 744/23
745/11 745/12 745/17 745/18
746/5 746/10 746/25 747/6
747/9
intention [5] 517/20 522/7
745/9 761/4 761/6
intentionally [1] 545/18
intents [15] 552/23 553/2
556/11 680/25 681/25 682/4
682/17 742/25 743/1 744/13
745/18 746/3 746/19 747/10
748/13
interact [1] 719/8
interactions [1] 710/11
interchangeable [2] 686/13
686/14
interest [4] 514/10 514/12
514/14 514/16
interested [10] 565/5 595/4
630/9 693/25 727/25 730/21
733/14 744/1 746/8 747/12
interesting [2] 565/7 719/15
interface [5] 675/5 710/8
710/22 724/7 731/6
interfaces [1] 705/13
internal [1] 519/9
internally [1] 739/17
Internet [1] 543/22
interpretation [3] 622/12
638/24 755/11
interpreting [3] 639/15 639/20
640/1
interrogatories [4] 640/14
652/12 654/13 667/15
Interrogatory [40] 607/12
607/14 640/5 640/9 646/11
646/14 646/21 646/22 647/3
647/6 647/10 647/14 647/16
647/17 647/21 647/23 647/24
652/2 652/3 652/4 652/5
652/10 652/11 652/13 652/16
652/17 652/18 652/21 653/1
653/21 654/3 654/4 654/10
654/13 654/17 654/19 655/8
655/11 667/13 667/17
interrupt [1] 538/14
interrupting [1] 599/16

introduce [2] 670/10 709/10
introduced [3] 534/25 558/3
737/23
introduction [1] 707/23
invalidate [1] 582/17
invention [10] 567/19 567/24
567/25 568/8 568/11 569/8
569/13 569/17 569/19 585/13
inventions [5] 568/9 568/13
568/18 568/19 581/3
inventor [5] 568/1 568/12
568/21 569/14 569/18
inventors [1] 568/17
invited [2] 566/9 566/14
invoking [1] 748/18
involve [5] 577/16 584/2
584/3 584/22 713/12
involved [12] 576/3 579/13
594/9 594/17 679/8 679/17
690/23 730/2 739/25 740/1
746/7 750/18
involves [1] 691/3
iPads [1] 625/20
iPhone [2] 672/8 737/3
iPhones [1] 625/20
is [781]
isn't [3] 541/24 560/23 756/7
issue [30] 514/20 514/23
515/4 517/24 518/24 519/6
520/1 571/22 586/5 587/11
636/6 646/5 648/6 648/17
650/1 651/15 653/8 654/14
655/14 666/20 680/13 680/14
680/16 680/16 684/20 686/9
750/7 751/20 751/23 763/25
issued [3] 763/22 764/2 764/4
issues [6] 563/11 566/9
657/19 688/8 688/17 765/25
it [616]
it's [191] 515/19 516/1 517/3
517/14 518/15 519/20 521/22
523/1 527/19 530/13 530/14
530/22 533/1 533/1 534/16
535/1 540/18 542/4 542/18
542/19 542/20 545/14 547/11
547/24 548/4 548/12 548/15
550/10 552/21 554/1 555/4
555/4 556/3 556/3 556/4
556/4 557/8 557/23 557/24
558/23 568/20 569/24 569/25
570/12 574/12 574/22 576/7
577/12 578/18 579/12 581/15
583/25 592/15 592/18 596/7
597/7 601/18 604/16 607/16
607/16 607/16 608/2 608/10
608/10 608/11 608/11 608/18
608/22 609/7 610/3 610/22
619/20 620/14 621/23 622/5
622/11 622/11 638/12 638/16
639/11 639/19 641/14 643/5
645/1 655/4 657/3 658/14
658/18 659/5 659/5 664/18
665/17 668/17 671/13 672/8
673/9 673/23 674/11 674/24
675/23 676/5 677/7 678/5
681/7 682/20 683/20 686/5
686/15 688/5 690/22 692/17
693/25 695/6 695/9 695/10
695/24 695/25 696/1 696/1
696/9 696/10 696/11 696/13

697/4 697/16 697/17 698/17
698/18 700/1 701/5 701/8
702/17 702/24 703/18 703/22
703/23 704/6 705/4 705/10
707/7 707/11 707/12 707/22
710/4 711/18 714/20 715/23
718/8 718/8 720/22 721/4
721/4 722/1 722/16 722/18
723/4 728/7 730/1 730/15
731/8 731/13 731/16 732/4
732/19 733/9 736/5 736/11
736/15 737/15 737/16 737/17
738/14 738/14 739/5 739/21
740/6 743/6 743/23 744/5
744/10 746/6 747/8 748/1
749/8 751/15 751/18 754/23
756/22 756/25 758/22 761/1
italics [1] 576/6
item [1] 530/21
iteration [2] 718/14 718/15
its [25] 531/21 550/23 561/15
567/4 626/8 626/11 626/14
626/15 628/6 640/13 643/17
644/8 650/17 660/17 669/10
669/13 681/13 694/22 695/2
696/14 705/3 707/6 708/11
759/17 760/24
itself [7] 581/23 593/12
595/16 652/21 664/11 738/14
764/14

J

jacket [1] 691/16
Java [5] 705/13 723/9 723/14
723/24 725/3
jeans [1] 691/17
JENKINS [1] 511/22
JENNIFER [1] 511/18
JLH [1] 511/5
job [10] 671/10 672/2 674/3
687/9 688/10 688/12 688/15
692/20 712/24 764/18
JOHN [2] 512/3 689/8
join [1] 707/8
joined [5] 679/10 679/10
682/23 707/18 711/15
joining [2] 709/16 709/20
joint [2] 520/18 707/22
Journal [3] 565/23 566/2
566/3
Judge [2] 511/18 700/9
judges [1] 648/22
judgment [6] 571/6 621/22
622/6 665/21 666/5 666/8
July [2] 682/23 694/10
jumps [1] 702/4
June [1] 686/2
jurors [3] 522/23 523/2 765/23
jury [84] 511/11 514/6 516/15
516/23 519/4 523/7 523/9
523/10 523/12 526/19 526/21
527/15 528/2 536/16 538/2
549/15 557/2 562/6 562/8
562/25 563/1 564/1 573/8
575/19 583/2 585/20 585/21
586/1 586/10 586/11 586/12
600/22 608/12 608/14 608/20
636/24 645/9 645/13 647/13
647/17 648/3 649/13 649/17
650/2 651/13 656/14 656/16

J
jury... [37] 657/14 657/16
657/18 658/7 658/12 659/14
668/21 670/10 671/8 673/7
674/18 677/10 686/12 698/24
699/9 700/3 702/10 702/11
704/5 709/10 709/25 714/5
717/14 724/25 726/12 726/13
726/17 727/4 727/7 729/2
733/22 736/3 744/25 749/22
765/6 765/10 766/2
jury's [1] 723/4
just [146] 513/9 513/16
516/19 518/8 518/9 520/6
521/10 522/6 522/12 525/6
529/6 534/13 534/24 535/23
537/25 538/6 538/14 539/14
542/9 543/5 545/20 546/7
547/3 547/24 548/2 548/9
549/6 550/12 550/21 551/14
553/10 557/2 568/12 573/8
573/20 574/17 577/13 580/12
580/13 581/15 583/18 585/7
586/1 586/6 587/10 587/21
589/6 598/11 600/3 602/16
606/11 606/14 611/18 613/21
613/22 614/2 615/19 620/17
621/5 623/23 624/24 627/11
627/25 632/25 634/17 634/22
635/6 638/8 638/13 639/2
645/11 650/25 652/22 655/20
655/22 658/15 668/20 674/24
678/13 680/17 681/7 682/13
682/13 682/20 684/2 685/8
685/13 685/22 686/7 686/8
686/10 686/10 686/12 686/23
686/25 687/3 693/6 696/8
696/22 700/9 706/11 706/13
707/7 712/17 714/11 715/2
715/8 715/23 717/20 718/5
719/6 719/18 719/21 720/5
720/5 720/6 720/7 721/9
721/16 722/1 729/21 730/1
733/2 735/22 737/1 737/18
737/22 738/7 747/3 747/5
747/25 748/4 748/9 749/11
750/14 750/16 750/21 754/17
754/23 755/17 756/2 756/21
760/8 762/2 762/12 764/21

K
KALPANA [1] 512/5
KAMBER [5] 512/13 520/4
533/24 726/7 755/3
Kannom [1] 656/19
KATZENSTEIN [1] 511/22
keep [4] 513/24 677/2 703/6
726/18
keeping [1] 556/1
Keeps [1] 703/11
KEMPER [2] 512/4 749/8
kept [4] 634/17 694/20 694/25
717/20
kernel [4] 675/11 702/24
704/23 723/12
key [1] 573/9
Kidder [13] 606/4 606/11
606/15 606/19 611/15 637/2
637/3 638/15 639/14 639/19

640/23 653/14 654/23
kids [1] 670/13
kind [20] 557/2 567/7 583/25
601/12 675/24 677/12 677/16
679/9 680/8 681/3 684/6
692/18 704/3 724/3 729/12
731/13 733/2 735/23 741/2
744/25
kinds [8] 536/23 536/25
570/20 596/13 597/1 597/5
644/18 710/18
King [1] 511/16
knew [4] 764/6 764/8 764/13
764/14
know [149] 516/16 519/10
520/7 520/7 521/7 555/22
556/4 557/20 557/20 557/22
564/22 565/3 573/13 573/18
573/20 573/21 573/22 573/22
573/23 574/1 574/3 584/16
585/3 587/3 592/19 594/2
613/11 614/15 614/19 617/5
620/25 627/19 628/13 634/14
641/6 646/12 646/13 647/17
647/24 648/22 649/18 649/25
652/9 652/22 653/18 654/12
654/15 658/14 659/13 661/4
661/9 661/25 662/4 663/4
666/8 666/14 667/6 667/17
667/22 672/2 672/8 672/14
675/2 676/13 677/13 678/13
679/1 680/6 681/1 684/1
684/15 685/8 686/1 687/7
687/24 688/3 688/16 688/21
688/24 691/15 692/1 692/18
692/19 693/4 695/17 695/23
696/10 696/13 696/13 696/24
698/11 698/16 702/3 712/17
712/18 715/23 716/1 717/20
718/6 718/7 718/8 725/12
727/25 730/24 731/11 732/3
734/13 734/17 734/19 734/20
735/12 736/5 737/3 737/5
738/15 741/7 741/10 741/17
748/15 748/16 748/18 748/19
748/25 749/12 749/16 750/4
750/13 750/13 750/14 750/23
750/25 751/5 751/7 751/7
751/10 751/19 751/23 751/24
752/2 752/10 754/19 756/19
760/7 763/24 764/4 764/6
764/17 764/19 764/19
knowing [3] 565/6 615/17
615/24
knowledge [1] 697/19
knowledgeable [1] 563/11
known [2] 562/12 576/4
knows [4] 662/5 688/16
746/11 751/14

L
labeled [3] 698/5 698/17
702/20
lacked [1] 735/13
Lacks [2] 685/18 702/5
ladies [6] 523/12 528/2
649/17 657/17 727/8 765/6
LAHAD [2] 512/3 689/9
laid [1] 702/8
language [7] 534/14 534/16

535/23 537/4 637/9 732/5
733/1
languages [1] 554/12
laptop [3] 515/18 526/22
527/2
last [18] 515/15 523/25
573/12 585/2 593/16 608/2
608/4 611/19 611/21 620/6
620/6 621/19 656/21 670/2
705/25 732/9 742/11 743/20
late [2] 576/12 686/2
later [7] 522/18 587/25 615/12
655/9 658/13 658/21 718/17
launch [10] 541/16 679/14
679/14 682/21 682/24 683/2
686/10 694/22 695/2 696/14
launched [7] 683/3 686/20
687/14 687/24 688/6 697/15
763/10
launches [1] 687/25
launching [2] 742/17 742/20
law [7] 513/20 513/22 514/4
516/3 520/21 566/2 567/16
laws [1] 568/11
lawsuit [4] 569/20 676/21
689/16 764/9
lawyers [1] 657/19
layer [21] 517/15 674/25
674/25 675/1 675/3 675/4
675/4 675/6 675/11 703/1
704/4 704/9 704/10 704/13
704/15 704/16 704/24 723/12
723/22 725/4 725/5
layered [1] 674/21
layered-cake [1] 674/21
layering [1] 703/22
layers [5] 674/22 675/9
702/24 703/3 704/2
laying [1] 699/10
lays [2] 699/15 700/2
lead [3] 662/15 679/11 761/12
Leading [2] 660/7 660/14
leads [1] 529/8
learned [1] 688/25
learning [18] 613/2 672/22
678/20 679/11 713/25 714/5
714/6 714/23 716/4 716/24
717/2 717/6 720/18 733/20
733/21 737/10 737/12 741/24
lease [1] 572/10
least [26] 515/9 519/3 519/12
521/13 537/9 537/14 537/21
538/9 538/12 538/21 539/8
539/9 539/17 539/23 540/1
542/5 542/14 549/1 568/14
576/12 595/11 624/1 694/1
699/10 702/9 725/1
leave [2] 515/24 628/9
leaves [1] 651/11
leaving [3] 564/15 564/20
645/9
lectures [1] 566/5
led [3] 666/16 672/10 712/23
left [11] 545/24 547/24 645/13
650/22 651/8 680/7 696/17
697/4 729/16 760/12 760/19
left-hand [1] 760/12
leftmost [1] 729/21
Legacy [1] 683/9
legal [5] 536/21 628/13

688/16 688/17 764/20
length [3] 584/23 634/4 634/9
less [5] 514/15 516/4 567/18
568/2 634/16
let [27] 517/24 520/13 534/24
535/18 535/18 535/23 537/15
540/13 540/17 540/25 545/19
550/13 553/10 554/9 555/13
578/10 649/19 673/13 681/11
691/19 698/15 700/3 702/3
707/3 728/13 742/15 748/4
let's [61] 515/8 529/22 531/11
532/17 534/13 542/16 544/9
547/5 547/18 548/17 551/4
555/21 556/18 557/24 561/15
570/23 578/1 580/8 583/6
586/10 588/8 591/5 591/13
594/20 599/11 601/3 611/23
612/21 619/6 631/22 636/5
637/1 638/2 648/1 648/2
649/9 651/20 657/14 663/1
663/11 678/5 680/13 684/9
686/25 691/21 704/7 718/10
718/11 722/9 722/13 723/13
726/10 726/18 727/4 728/12
728/20 733/25 735/18 744/21
749/5 763/6
letter [1] 521/9
level [12] 518/9 584/17
584/19 584/21 585/3 590/7
590/9 675/12 677/10 690/21
696/3 725/19
levels [2] 517/21 595/21
librarian [1] 567/8
libraries [2] 702/25 723/10
library [7] 692/18 729/8 735/6
735/10 735/16 736/13 760/6
license [52] 518/24 521/24
567/1 567/4 569/3 569/4
569/6 569/15 577/11 578/15
578/20 578/25 579/15 579/16
579/19 579/20 580/11 580/23
581/9 581/16 581/17 581/19
581/20 584/15 590/4 591/1
592/22 602/10 617/16 617/18
619/2 622/8 626/4 627/22
630/10 634/5 634/9 634/13
634/22 642/16 643/3 643/9
643/19 643/21 644/3 644/4
644/5 664/1 664/4 665/3
665/5 665/6
licensed [7] 560/15 593/1
621/25 628/11 666/13 666/15
666/21
licensee [4] 569/12 583/23
586/25 664/6
licenses [19] 577/19 577/21
577/23 579/20 579/24 580/3
583/17 584/2 584/2 584/4
590/10 590/11 619/4 642/7
642/12 642/19 642/20 642/23
643/1
licensing [7] 574/14 577/9
590/8 590/22 665/8 665/12
665/16
licensor [2] 569/13 571/22
lieu [1] 669/16
light [1] 518/17
like [145] 521/12 527/8
528/16 528/19 530/2 531/17

like... [139] 541/22 542/20
543/16 549/25 550/13 561/10
565/3 569/18 569/20 570/10
572/10 577/23 578/20 581/7
586/2 586/4 590/16 593/3
602/16 609/17 627/22 632/5
643/2 646/9 649/24 660/18
673/11 673/20 678/6 678/17
679/9 681/7 682/23 684/16
684/23 688/5 688/14 692/17
692/18 692/19 693/5 695/6
696/9 697/3 697/10 701/6
702/2 702/17 703/6 703/7
703/11 703/22 703/25 705/2
707/21 711/6 712/4 712/19
713/1 713/14 713/20 715/8
715/15 715/16 715/18 715/19
715/21 717/8 718/4 718/5
718/6 721/10 721/24 723/6
723/18 724/3 724/9 724/16
724/18 724/19 724/20 724/20
725/6 728/17 728/19 729/4
729/12 730/2 730/19 730/22
730/24 731/8 731/13 732/1
732/11 733/13 734/8 734/19
734/23 736/7 736/23 737/1
737/4 737/7 737/8 737/16
738/11 738/14 739/8 739/20
741/1 743/13 743/16 743/18
743/20 745/5 745/12 745/19
747/4 750/5 751/9 754/23
756/8 756/22 756/24 758/17
758/22 758/25 759/15 759/21
760/21 761/12 762/16 762/18
764/9 764/19 764/21 766/4
766/4
likely [3] 622/9 665/22 666/1
Likewise [1] 689/11
limitation [2] 535/13 538/11
limitations [4] 527/14 536/13
536/17 536/19
limited [1] 518/15
line [23] 517/2 517/2 528/17
528/18 528/21 530/2 530/6
530/18 531/17 531/18 531/19
533/1 535/1 553/4 573/1
581/13 611/23 639/22 661/16
711/6 754/1 755/4 756/18
Line 23 [1] 533/1
Line 330 [2] 530/2 530/6
Line 343 [1] 530/18
Line 399 [3] 531/17 531/18
531/19
Line 9649 [2] 528/17 528/21
lines [6] 526/20 527/13
612/22 682/22 737/19 756/15
Lines 3 [1] 756/15
lingo [1] 683/12
link [4] 711/6 713/12 745/7
747/8
Linkify [27] 634/23 634/23
635/3 635/3 711/1 711/1
711/3 711/4 711/14 711/15
713/9 713/10 713/11 713/14
714/3 728/17 730/23 732/25
736/17 736/22 754/2 754/7
754/10 754/15 754/21 756/20
758/1

Linux [2] 702/24 723/12
list [11] 527/5 536/9 576/1
583/23 587/14 598/6 645/25
698/18 699/2 699/8 708/1
listed [5] 545/24 611/1 647/23
668/24 733/2
listen [3] 532/14 692/13
695/13
lists [1] 647/7
literal [1] 694/8
literally [6] 662/21 675/13
680/8 680/15 694/7 707/8
literature [1] 567/11
litigation [23] 581/20 581/21
582/15 595/5 595/8 595/10
595/22 595/23 614/12 618/25
621/14 624/2 626/5 626/7
626/19 628/24 629/2 629/5
643/2 643/4 646/8 656/24
664/8
litigations [3] 602/1 632/15
632/20
little [20] 520/11 530/17
534/16 562/8 586/1 586/3
608/17 623/16 649/22 658/25
662/16 672/15 678/6 683/12
684/15 698/1 700/12 713/5
715/17 744/21
live [4] 515/5 562/10 670/13
670/14
lived [1] 573/21
living [1] 672/3
LLC [1] 511/6
LLP [2] 511/22 512/3
load [1] 560/3
loaded [1] 560/1
local [5] 648/7 648/21 649/6
649/9 649/10
located [4] 552/21 679/20
682/1 739/4
location [2] 524/20 724/18
logical [1] 748/17
London [6] 678/23 709/21
709/22 709/23 717/16 717/17
long [16] 518/6 530/20 540/5
541/8 638/4 671/4 671/6
672/4 677/15 679/2 680/6
683/6 709/14 711/25 712/5
718/22
longer [4] 518/7 520/10
628/16 754/11
look [51] 528/16 530/2 530/17
531/23 558/14 562/23 568/15
573/14 580/17 583/15 602/16
606/25 609/17 609/20 610/6
611/19 611/23 611/23 612/21
614/23 635/7 635/10 635/14
635/19 635/23 637/8 637/11
637/21 638/2 652/16 668/22
672/17 674/25 678/25 681/11
684/14 694/10 703/18 704/5
704/7 711/16 722/17 724/11
727/15 737/16 742/14 742/15
743/9 760/11 762/18 762/19
looked [20] 525/22 531/9
532/12 533/2 537/17 537/20
547/13 584/7 584/8 590/9
590/11 599/24 610/20 635/22
638/12 647/15 647/16 652/12
760/13 762/20

looking [17] 523/21 531/6
540/10 546/8 554/6 575/16
592/15 593/18 605/13 614/23
632/17 638/19 677/14 677/17
687/10 704/18 738/12
looks [7] 549/25 586/2 586/4
681/22 694/2 705/1 713/19
Los [1] 562/10
lose [5] 595/16 595/20 621/15
622/9 623/1
loses [1] 618/6
losing [2] 618/12 662/9
lost [4] 586/4 586/4 588/2
649/22
lot [20] 553/17 584/16 592/20
595/7 627/17 679/5 686/5
686/7 686/9 691/2 691/25
692/21 707/13 714/24 714/25
717/1 717/1 717/9 749/13
762/16
love [1] 693/12
low [1] 675/12
low-level [1] 675/12
lower [14] 553/1 574/24
579/11 579/12 579/13 625/9
630/21 631/16 631/19 665/9
665/11 665/12 760/12 760/19
lump [1] 569/6
lunch [10] 586/6 648/2 649/13
649/20 649/21 649/24 650/12
650/25 651/8 652/15
lunches [2] 649/18 649/25

M

machine [17] 672/22 678/20
679/11 713/25 714/5 714/6
714/23 716/3 716/23 717/2
717/5 720/17 733/20 733/21
737/10 737/12 741/24
machine-learning [3] 713/25
737/10 737/12
Macro [1] 728/19
Macs [1] 625/21
made [23] 514/21 531/21
544/22 567/1 567/18 569/9
569/11 570/16 596/24 597/10
605/13 614/10 631/6 637/24
638/15 640/22 644/8 653/13
654/22 658/2 675/23 683/24
738/5
Magistrate [1] 511/18
mail [5] 541/1 541/4 543/11
720/1 723/20
main [1] 686/10
mainly [1] 752/4
maintain [2] 521/19 522/1
maintainability [1] 680/10
maintained [1] 744/4
maintenance [7] 683/13
684/10 686/8 686/24 687/5
742/4 742/5
make [58] 513/25 514/13
516/10 520/18 520/22 521/2
521/20 521/22 522/7 522/24
523/24 526/25 526/25 527/6
527/7 528/19 540/17 554/7
560/19 568/13 573/15 587/4
587/10 590/8 593/11 594/22
596/22 597/4 597/17 597/24
598/9 627/17 657/2 657/11

660/4 660/22 662/12 663/2
663/10 667/1 671/15 675/12
680/6 682/7 684/17 684/24
686/23 702/19 702/19 712/7
713/4 713/6 715/22 726/16
726/16 729/10 729/12 734/11
makes [11] 556/22 582/18
584/13 663/7 664/5 673/9
684/8 693/18 714/9 714/11
720/23
making [15] 513/18 513/18
516/13 568/7 589/23 592/23
622/24 623/3 661/19 661/21
672/2 691/2 694/1 694/2
738/6
manage [4] 673/12 710/14
710/16 716/3
management [3] 670/12 671/2
671/9
manager [14] 672/1 687/11
688/3 688/7 688/14 689/21
690/3 692/20 724/12 724/15
724/16 724/18 727/20 727/22
managers [1] 724/9
managing [1] 562/11
manifest [1] 675/23
manner [3] 522/12 667/23
704/23
manufacturer [3] 684/10
684/15 686/6
manufacturers [3] 687/2
687/12 742/8
many [17] 560/5 560/11 592/3
606/9 615/3 626/5 629/6
641/3 675/9 679/3 714/12
718/12 718/13 728/24 762/10
762/10 762/11
map [4] 712/19 712/20 734/22
736/6
Maps [4] 678/6 681/2 724/20
736/6
marathon [1] 687/3
mark [1] 700/10
market [4] 563/12 671/14
685/9 687/14
marketers [1] 671/11
marketing [1] 567/5
marketplace [1] 568/14
marking [1] 704/3
married [1] 562/13
master [2] 564/6 564/7
material [12] 515/11 515/19
520/23 525/25 526/2 529/21
531/10 532/13 532/15 533/6
533/7 533/15
materials [6] 524/24 566/23
566/25 567/5 617/7 699/22
math [5] 604/5 620/18 621/1
625/2 633/14
mathematically [2] 624/24
625/9
matter [7] 542/3 567/7 567/7
603/6 625/2 651/10 766/3
MATTHIAS [2] 512/13 533/24
Matthias Kamber [1] 533/24
MAX [1] 512/4
may [39] 514/8 515/25 517/25
519/17 521/24 524/5 526/13
528/7 531/20 545/13 560/8
561/5 561/8 561/9 562/23

M
may... [24] 577/16 607/19
648/21 651/14 655/13 656/5
669/8 669/10 673/1 686/2
686/25 689/4 697/3 700/7
708/6 708/8 728/10 735/25
755/16 757/6 765/1 765/3
765/5 765/17
maybe [24] 541/16 556/22
557/21 557/22 636/12 638/8
686/2 690/13 692/7 695/11
711/17 712/5 714/15 714/25
718/19 719/11 721/24 729/10
732/3 734/23 737/2 745/5
746/8 764/7
MBA [1] 690/15
me [61] 517/9 517/19 517/24
520/7 520/13 521/4 528/19
534/24 535/18 535/23 537/15
540/13 540/17 540/22 540/25
541/19 542/10 545/19 547/2
549/4 550/12 550/13 553/10
554/9 555/13 555/22 558/10
564/7 564/18 566/14 567/3
576/25 578/10 595/9 596/12
601/15 611/12 638/15 640/24
643/23 654/24 656/15 658/14
659/25 661/14 664/5 681/11
691/12 691/19 696/22 697/4
702/3 704/21 706/12 728/13
742/15 748/4 748/17 751/9
756/25 757/24
mean [38] 517/1 529/10
533/14 536/25 538/13 542/21
547/1 552/9 554/8 554/9
555/3 558/10 576/19 576/25
608/10 628/15 630/20 640/9
660/20 676/8 687/9 690/22
692/20 693/1 695/25 696/1
697/17 707/9 707/10 707/15
718/7 735/15 738/6 739/3
744/2 749/16 752/14 757/24
meaningful [1] 545/15
means [18] 515/9 516/4
533/10 584/11 584/24 585/3
596/4 603/25 624/8 632/14
676/11 682/14 683/13 694/13
695/24 707/7 736/4 738/7
meant [3] 672/2 677/20
699/24
meantime [1] 650/5
measure [3] 602/8 626/22
633/6
measurements [1] 603/14
medium [5] 556/16 557/4
557/7 557/16 559/22
meet [6] 534/2 536/13 539/16
539/22 553/15 749/8
meeting [1] 533/25
memorized [1] 539/3
memory [2] 557/5 557/9
mention [2] 664/15 664/24
mentioned [22] 529/6 536/8
573/3 576/16 581/16 582/9
640/4 640/21 644/12 653/12
654/21 662/16 667/13 667/15
673/5 711/19 717/23 718/25
722/2 723/24 736/13 758/14
mentioning [2] 662/24 664/8

menu [10] 529/16 530/21
540/6 541/11 543/14 722/2
722/4 746/22 747/3 747/4
message [3] 530/25 736/8
745/24
messaging [1] 744/17
met [1] 689/9
method [20] 517/21 528/23
528/25 529/3 529/5 529/7
529/13 529/18 529/19 530/7
530/9 530/11 530/15 531/4
531/5 531/7 531/20 531/21
531/24 742/22
metric [3] 694/6 694/9 694/14
metrics [2] 519/24 587/17
Micronomics [4] 562/12
563/16 563/22 567/6
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
might [30] 517/13 534/17
535/20 545/13 556/1 556/2
572/8 575/6 585/16 587/25
595/6 634/5 634/8 634/12
634/16 645/18 654/6 712/18
713/18 724/19 727/25 730/20
733/14 736/8 736/25 737/1
742/16 743/15 743/16 746/11
MIL [4] 661/1 661/7 661/17
661/17
million [41] 578/18 578/19
578/19 578/24 579/19 580/9
580/10 580/25 582/10 588/19
588/25 591/17 592/22 593/9
593/20 593/24 600/1 600/7
600/20 604/7 604/7 605/11
616/21 616/22 618/1 621/9
621/10 623/14 624/1 627/3
627/6 633/5 633/10 633/11
633/13 634/17 634/22 643/20
643/21 644/14 644/16
millions [5] 660/1 660/6
660/12 663/19 684/19
mind [6] 556/2 611/20 629/20
695/12 705/9 745/2
mine [3] 606/21 637/20
637/21
minimum [2] 594/3 597/1
minute [2] 697/2 702/2
minutes [5] 513/11 513/11
513/13 513/13 726/18
misimpression [2] 645/10
645/13
misleading [1] 646/21
missing [2] 536/17 645/19
mistake [2] 604/24 619/22
mix [1] 718/3
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

665/3 665/6 666/12 666/20
666/23 667/11 667/14 667/19
mobile [9] 620/8 620/17
620/25 621/1 621/5 621/12
623/8 623/13 710/20
model [15] 628/17 678/20
714/12 714/16 715/3 716/9
717/15 717/18 718/8 719/14
720/18 741/20 741/23 741/24
763/7
models [17] 563/13 713/25
714/23 715/9 716/4 716/24
717/2 717/6 733/21 735/12
735/13 735/14 735/16 737/10
737/12 741/2 741/10
modification [1] 663/2
modify [4] 676/14 676/17
684/12 684/16
moment [7] 517/25 537/25
543/5 548/18 558/17 630/14
722/10
Monday [1] 586/4
monetary [1] 590/25
monetization [7] 661/8 661/19
662/6 662/13 662/25 663/8
691/25
money [15] 581/7 618/6
618/12 661/19 662/3 662/9
662/12 663/8 667/3 691/2
691/9 692/2 692/24 693/18
694/1
monitoring [1] 687/9
month [2] 572/8 572/12
months [6] 572/9 572/9 685/5
686/1 686/25 719/3
MOORE [1] 512/9
more [29] 519/6 520/11 527/7
542/20 574/5 584/14 585/1
586/24 586/25 623/16 633/22
635/6 657/19 662/16 675/9
675/10 675/25 678/1 690/11
690/18 690/25 713/5 718/20
732/11 741/7 742/19 752/3
755/13 764/8
morning [11] 513/6 523/11
533/22 533/23 547/13 552/25
562/5 585/17 585/20 601/7
601/9
Morocco [1] 670/18
most [9] 589/9 591/24 644/19
678/11 678/13 678/13 678/17
687/2 687/4
mostly [1] 675/5
motion [7] 526/9 621/22 622/6
657/10 666/5 666/8 667/4
motions [1] 582/17
Motorola [2] 684/11 684/13
Mountain [2] 717/20 717/23
move [13] 520/8 522/8 522/15
526/4 566/16 590/19 609/25
662/14 674/8 676/2 732/16
740/3 744/7
moved [3] 515/20 515/23
686/15
moves [1] 728/4
moving [1] 611/8
Mr [9] 562/5 676/8 691/19
716/18 723/15 726/21 727/13
756/2 760/15
Mr. [126] 518/9 519/5 519/7

519/22 520/3 520/4 534/14
557/24 561/16 562/14 562/19
563/14 566/17 566/24 567/3
580/1 583/13 586/17 589/11
591/22 592/3 592/5 595/1
596/11 596/25 599/17 601/7
604/7 606/4 606/11 606/15
606/19 607/22 610/6 611/15
611/18 611/20 614/15 618/5
619/10 619/13 620/5 621/18
622/13 622/22 623/18 623/21
626/18 629/18 629/24 630/14
632/14 632/20 633/2 633/15
633/24 635/6 636/5 638/15
640/23 642/14 642/17 642/21
645/17 652/2 652/5 652/7
652/20 653/3 653/14 654/23
657/21 657/22 657/25 661/13
664/1 665/2 667/12 669/8
673/5 674/15 691/20 700/12
708/22 709/8 709/12 710/10
710/16 710/21 714/4 722/12
722/19 722/22 723/2 726/5
726/7 728/10 728/21 728/24
729/20 729/25 731/15 731/20
732/21 734/1 734/3 735/4
735/20 735/22 736/18 737/14
737/18 737/23 739/11 740/12
742/11 744/13 747/18 748/13
749/8 755/3 755/12 756/14
756/15 765/3 765/17
Mr. Abodunrinwa [1] 708/22
Mr. Boles [2] 691/20 756/14
Mr. Diehl [1] 755/12
Mr. Elbouchikhi [2] 673/5
700/12
Mr. Hedloy [17] 567/3 580/1
591/22 592/3 592/5 595/1
596/11 596/25 623/21 629/18
629/24 630/14 632/14 632/20
642/14 642/17 642/21
Mr. Hedloy's [2] 519/5 633/15
Mr. Kamber [3] 520/4 726/7
755/3
Mr. Kidder [9] 606/4 606/11
606/15 606/19 611/15 638/15
640/23 653/14 654/23
Mr. Spence [21] 534/14
537/24 611/20 619/10 620/5
621/18 622/13 622/22 623/18
633/2 674/15 722/12 722/22
728/10 728/21 729/20 732/21
734/1 735/20 737/18 740/12
Mr. Straus [1] 518/9
Mr. Toki [26] 709/8 709/12
710/10 710/16 710/21 714/4
722/19 723/2 726/5 728/24
729/25 731/15 731/20 734/3
735/4 735/22 736/18 737/14
737/23 739/11 742/11 744/13
747/18 748/13 749/8 765/3
Mr. Toki's [1] 756/15
Mr. Unikel [1] 520/3
Mr. Wein [1] 653/3
Mr. Weinstein [36] 561/16
562/14 562/19 563/14 566/17
566/24 583/13 586/17 589/11
599/17 601/7 604/7 607/22
610/6 611/18 614/15 618/5
619/13 626/18 633/24 635/6

M
 Mr. Weinstein... [15] 636/5
 645/17 652/2 652/5 652/7
 652/20 657/21 657/22 657/25
 661/13 664/1 665/2 667/12
 669/8 765/17
 Mr. Weinstein's [2] 519/7
 519/22
 MR1 [9] 683/11 683/12 684/4
 687/6 687/8 740/20 741/16
 742/6 763/1
 Ms. [9] 522/22 523/6 578/1
 585/19 586/10 650/1 656/13
 726/12 727/4
 Ms. Garfinkel [9] 522/22
 523/6 578/1 585/19 586/10
 650/1 656/13 726/12 727/4
 much [26] 517/23 519/16
 533/17 561/6 568/16 572/16
 574/5 579/12 579/13 581/7
 581/14 590/2 613/23 620/11
 626/8 626/10 630/18 658/3
 658/10 673/20 675/10 685/12
 690/25 703/1 749/4 750/13
 multiple [6] 544/3 623/22
 681/16 746/13 762/13 762/15
 multiplied [9] 596/10 596/14
 597/2 597/3 600/2 600/17
 625/3 632/6 632/9
 multiplier [10] 625/10 632/5
 633/1 633/7 633/9 633/12
 643/16 643/18 666/23 667/1
 multiply [3] 596/15 620/2
 632/13
 multiplying [1] 604/1
 must [4] 534/21 535/7 535/16
 698/24
 my [100] 513/22 514/24
 517/18 518/1 523/1 524/21
 533/24 535/19 538/18 540/19
 541/12 543/2 548/23 548/24
 556/1 558/24 559/14 559/23
 560/23 560/23 561/17 561/20
 562/7 562/15 563/20 564/20
 564/25 570/7 573/12 575/12
 576/13 579/25 584/20 589/4
 595/1 597/19 601/7 601/22
 608/11 608/13 613/18 617/1
 617/2 617/2 619/22 623/4
 629/24 630/17 634/24 635/25
 637/15 637/16 639/7 640/14
 642/17 643/17 643/20 644/19
 647/10 648/6 649/3 654/17
 655/5 656/6 656/19 658/23
 659/11 659/11 660/16 661/11
 664/4 667/12 668/12 670/15
 670/25 672/2 676/24 679/9
 679/13 682/23 685/3 685/25
 687/9 688/15 689/8 690/24
 692/20 695/18 696/19 708/25
 709/11 710/2 727/20 754/6
 761/4 761/6 762/4 762/7
 764/18 767/5
 myself [3] 535/21 650/4
 690/10
 mysterious [1] 652/10

N
 name [20] 530/9 533/24

541/22 552/14 561/18 561/20
 562/6 562/7 568/23 601/7
 656/19 669/23 670/3 687/20
 689/8 708/23 708/25 709/11
 716/13 733/5
 Namely [1] 576/21
 names [3] 517/12 517/18
 517/21
 narrowly [1] 514/12
 native [3] 702/25 723/10
 735/13
 navigating [3] 540/4 540/9
 678/7
 NEAL [1] 511/23
 necessarily [5] 517/3 725/21
 752/10 759/25 761/19
 necessary [1] 665/18
 need [30] 515/6 515/10 516/8
 518/16 520/1 521/1 521/8
 521/18 521/20 521/25 540/23
 577/24 587/22 587/25 590/23
 623/11 650/15 651/12 663/10
 675/7 675/8 682/17 685/7
 699/5 715/23 746/7 747/23
 748/18 765/12 766/7
 needed [6] 591/19 592/2
 671/15 725/14 741/7 741/7
 needs [8] 513/24 513/25
 514/13 520/20 520/21 640/13
 648/5 666/25
 neglected [1] 590/21
 negotiate [1] 569/19
 negotiated [4] 569/16 569/16
 582/22 591/23
 negotiating [5] 570/5 570/9
 572/22 575/23 634/5
 negotiation [79] 569/23
 569/25 570/1 570/2 570/3
 570/13 570/17 571/2 571/3
 571/5 571/7 571/8 571/12
 571/18 571/21 571/25 571/25
 572/3 572/5 572/15 572/19
 572/25 573/13 573/19 574/2
 574/8 574/11 574/19 574/22
 574/25 575/2 575/9 575/14
 576/8 576/22 576/24 581/11
 581/13 581/18 582/1 582/6
 582/23 589/22 590/1 594/10
 594/11 594/14 594/19 594/23
 595/4 596/4 596/6 596/18
 596/19 597/6 597/9 597/11
 597/15 600/17 602/13 602/19
 603/6 603/10 617/15 618/4
 618/10 618/14 618/16 623/6
 623/7 625/8 626/25 627/9
 643/21 643/22 643/24 643/25
 644/10 644/20
 negotiations [10] 570/21
 572/5 573/4 573/4 574/1
 574/18 574/24 580/1 580/3
 642/16
 negotiators [1] 575/21
 neighborhood [1] 573/17
 Nest [1] 671/22
 network [3] 565/1 684/25
 738/21
 neural [1] 738/21
 never [7] 633/20 634/21 668/7
 690/5 693/17 701/6 761/15
 new [18] 564/3 565/10 653/8

653/20 671/24 687/3 714/19
 721/24 724/7 729/25 729/3
 731/24 733/16 734/9 734/13
 734/14 734/17 741/1
 newer [2] 748/11 748/11
 next [40] 521/7 529/9 529/11
 535/19 544/14 553/21 561/14
 561/15 578/20 578/21 578/25
 578/25 581/16 583/20 584/7
 584/8 585/15 586/18 586/19
 587/13 588/14 590/17 594/8
 594/9 622/3 634/18 669/10
 669/19 672/12 672/20 675/4
 687/1 708/11 708/20 723/20
 730/4 735/4 737/17 742/9
 750/4
 nice [2] 534/2 750/5
 night [2] 515/15 523/25
 nine [1] 685/4
 no [115] 511/5 514/15 514/18
 514/21 518/10 524/25 526/8
 528/20 529/21 531/10 532/15
 532/15 533/7 533/7 533/7
 533/10 533/14 534/1 536/17
 538/19 541/20 541/21 542/3
 545/18 546/10 549/11 552/12
 558/5 558/14 560/8 560/10
 560/13 560/24 561/3 566/20
 567/17 571/25 572/15 575/5
 578/5 578/6 581/12 581/14
 581/14 582/18 591/4 592/15
 596/15 599/10 601/2 606/13
 610/2 612/10 615/17 615/24
 616/1 619/1 620/20 628/16
 630/8 634/25 641/10 642/1
 645/15 646/2 649/8 651/9
 652/25 653/1 653/19 655/10
 657/6 657/8 664/10 664/17
 664/23 666/7 666/19 667/7
 669/7 674/10 676/4 679/23
 682/19 687/24 688/9 688/11
 688/22 690/3 690/10 690/22
 693/23 696/21 704/3 704/16
 704/25 706/8 706/11 708/4
 708/5 721/23 725/6 728/6
 729/15 732/18 739/8 740/5
 744/9 750/25 754/11 756/6
 762/10 764/10 764/12 764/25
 nobody [1] 655/8
 noise [1] 684/2
 Nokia [4] 579/7 579/8 579/8
 593/15
 non [12] 557/15 557/15
 582/17 598/19 598/21 634/25
 641/17 641/18 641/22 685/14
 685/23 685/24
 non-Chrome [3] 641/17
 641/18 641/22
 non-Google [5] 598/19 598/21
 685/14 685/23 685/24
 non-infringement [1] 582/17
 non-infringing [1] 634/25
 non-transitory [2] 557/15
 557/15
 nonconfidential [8] 525/23
 526/1 529/20 531/9 531/23
 532/2 532/12 533/5
 None [1] 526/2
 noneditable [2] 540/15 540/21
 nonresponsive [3] 689/24

694/16 757/4
 nonvolatile [1] 557/8
 normal [1] 739/21
 normally [2] 516/10 516/20
 not [225] 514/18 515/21
 516/10 516/12 516/16 517/14
 517/21 518/6 518/13 524/25
 527/1 527/7 527/19 533/10
 534/1 537/5 537/18 539/16
 539/19 539/21 539/25 540/10
 540/11 545/11 545/14 545/18
 546/10 549/2 549/4 549/9
 552/7 552/9 552/17 555/4
 556/3 556/3 558/8 558/14
 559/14 559/18 560/8 560/13
 560/24 563/20 568/2 568/11
 571/3 573/23 582/21 584/6
 586/7 588/2 597/8 601/23
 604/22 605/3 605/17 605/23
 606/13 606/17 608/11 608/11
 610/11 610/15 610/18 610/22
 611/15 613/6 613/15 613/16
 613/18 613/22 614/10 614/13
 615/14 616/1 618/7 618/22
 618/24 623/3 623/23 624/23
 625/23 627/25 630/13 630/23
 635/13 635/17 635/18 639/11
 642/18 645/8 645/13 646/11
 647/4 647/8 647/23 648/5
 648/14 648/16 648/18 648/18
 649/1 650/6 650/20 652/13
 652/16 654/18 656/1 658/20
 661/20 661/23 662/5 662/13
 664/24 666/19 666/20 667/6
 668/15 668/17 669/2 669/13
 669/17 669/18 670/23 679/14
 679/15 679/23 679/25 680/17
 680/18 682/25 683/1 683/1
 683/4 683/7 683/8 683/20
 684/1 688/23 689/19 690/2
 690/7 690/9 690/10 690/22
 692/13 692/17 693/11 693/13
 693/21 694/14 695/3 695/6
 695/10 696/9 696/10 697/17
 697/17 698/17 698/18 698/24
 699/1 699/1 699/8 699/24
 701/12 703/8 704/22 707/15
 708/1 708/12 708/14 708/17
 714/15 714/16 714/19 715/1
 715/4 717/8 717/10 718/5
 718/8 719/18 721/4 721/14
 725/7 729/15 738/13 738/14
 739/8 739/10 740/2 741/6
 741/12 748/15 749/14 749/18
 749/22 749/25 750/2 750/6
 750/8 750/11 751/3 751/12
 751/13 751/14 751/18 752/23
 753/18 753/24 754/2 754/7
 754/15 755/17 756/24 757/20
 758/17 761/3 761/19 761/25
 762/12 765/14 765/15
 noted [3] 538/8 556/14 628/22
 notes [1] 767/5
 nothing [15] 605/20 606/15
 611/4 612/16 617/7 630/10
 653/8 653/20 666/18 667/4
 669/6 721/15 725/8 739/10
 750/4
 Notice [1] 582/2
 noticed [1] 625/17

N
notification [2] 724/12 724/15
notifications [1] 724/13
notion [1] 645/16
November [14] 588/16 589/2
589/6 600/1 600/14 605/7
614/21 615/4 615/17 615/23
616/25 617/4 618/20 684/1
November 10 [8] 605/7
614/21 615/4 615/17 615/23
616/25 617/4 618/20
November 2018 [5] 588/16
589/2 589/6 600/1 600/14
now [67] 514/20 514/23 515/7
522/3 529/19 529/22 561/11
562/21 568/19 578/11 578/12
583/5 588/23 589/19 592/14
598/1 599/3 600/11 601/11
605/5 609/17 611/7 611/9
613/2 614/15 616/21 617/13
620/8 623/16 623/21 624/4
625/3 625/17 626/7 628/9
628/19 631/3 632/5 633/5
633/24 640/4 648/6 652/18
652/20 661/16 661/22 663/10
675/15 679/18 680/3 680/11
682/9 684/3 686/4 686/16
693/22 697/4 709/15 712/17
713/23 716/3 734/19 736/5
743/9 743/20 745/10 747/7
number [107] 519/4 532/7
539/16 539/21 540/5 540/6
541/5 541/5 541/14 541/19
541/21 541/24 543/12 543/12
565/7 565/10 565/17 567/5
577/7 578/23 579/12 582/12
583/22 587/17 588/14 588/17
588/24 589/12 591/19 599/25
600/6 600/17 603/19 603/23
604/1 605/14 608/7 609/23
610/14 610/20 611/13 611/14
612/13 613/3 613/6 613/8
629/15 631/15 631/18 636/17
637/17 639/13 639/23 641/7
641/12 644/16 644/17 647/2
650/23 658/3 658/10 658/11
658/17 658/19 658/20 659/4
659/10 659/13 661/11 661/22
677/22 678/8 678/9 681/3
681/5 698/14 698/16 711/11
711/13 712/21 713/16 713/19
713/19 715/4 715/5 715/23
716/5 732/4 736/7 736/24
737/1 743/3 743/5 743/11
745/6 745/7 745/8 745/11
745/13 745/14 745/24 745/25
746/2 746/9 747/2 747/11
747/16
Number 1 [1] 577/7
Number 15 [1] 589/12
Number 2 [2] 583/22 661/11
numbers [45] 532/5 532/6
532/9 539/2 587/14 606/2
606/3 606/4 606/11 606/15
606/19 606/21 606/22 606/22
607/4 609/12 611/5 611/14
612/5 613/22 614/2 620/16
630/17 636/15 636/16 636/18
636/21 636/23 637/19 638/4

642/20 644/22 647/7 647/15
656/24 680/16 714/2 714/23
714/25 715/1 715/2 715/2
720/1 737/2 737/2
O
O MR1 [1] 683/11
O-MR1 [6] 687/6 687/8
740/20 741/16 742/6 763/1
Oakland [1] 565/2
oath [7] 523/17 555/9 561/23
657/22 670/5 709/3 753/3
Obama [1] 734/9
object [2] 694/16 744/18
objection [45] 514/21 515/21
515/24 518/10 519/1 522/10
522/13 526/19 527/18 527/21
560/16 566/20 591/4 599/10
610/2 646/25 651/24 655/10
657/5 657/6 657/7 660/7
660/14 660/25 661/5 664/16
664/22 668/3 674/10 676/4
685/16 689/23 695/20 698/22
699/13 701/15 702/5 702/6
708/2 728/6 732/18 740/5
744/9 753/20 757/4
objections [4] 526/8 578/4
578/5 591/2
objects [1] 707/25
obligations [1] 650/18
observation [1] 620/21
observed [4] 517/17 524/22
525/25 541/12
obtained [2] 591/22 592/21
obtaining [1] 584/25
obtains [1] 585/7
obviously [3] 581/21 673/13
678/2
occur [1] 615/22
occurred [6] 570/8 602/19
645/5 651/21 661/3 698/21
occurring [1] 652/17
occurs [1] 520/7
October [1] 684/1
odds [2] 632/19 632/22
OEMs [1] 705/22
off [9] 574/11 590/20 621/9
651/6 695/7 698/12 698/17
713/10 733/2
offer [2] 527/4 572/24
offering [1] 750/6
Offers [1] 710/3
Office [6] 565/24 565/24
631/4 631/6 631/12 631/14
Official [1] 767/8
often [5] 555/4 592/20 658/9
658/15 694/7
oh [7] 520/4 583/4 719/16
745/8 746/17 747/14 752/19
okay [72] 517/23 518/11
518/13 518/17 519/16 520/2
522/21 522/23 527/20 527/23
541/7 543/3 544/5 547/8
555/8 559/4 562/24 570/23
574/13 577/25 579/14 580/4
583/6 590/18 591/2 594/8
594/20 602/23 604/4 612/11
619/6 619/10 619/24 631/2
637/5 637/17 638/19 639/3
640/1 640/4 646/16 649/14

650/1 651/22 655/17 660/1
661/24 662/19 667/11 666/18
669/20 679/1 681/10 681/11
690/17 693/21 693/24 696/7
699/13 705/11 743/9 745/16
753/18 754/12 756/14 757/7
758/7 761/5 762/18 762/24
763/14 766/10
older [2] 683/9 761/23
once [14] 515/22 566/14
571/19 595/19 648/7 648/15
649/4 655/25 664/15 684/3
700/2 761/8 761/10 765/24
one [123] 514/18 514/21
515/19 516/12 516/14 516/18
517/15 517/25 519/6 520/6
521/7 524/11 525/4 526/25
532/25 535/19 536/12 536/16
537/8 537/11 537/16 538/2
538/21 542/13 543/7 544/4
544/14 549/5 549/5 549/8
552/5 555/21 555/21 556/4
556/24 557/6 557/12 562/21
563/10 564/22 569/7 569/20
570/4 570/5 570/14 570/25
571/1 571/13 575/13 576/2
576/14 595/9 595/11 595/13
603/10 603/16 608/12 610/21
615/20 618/19 620/21 621/3
621/5 629/12 632/15 632/22
633/24 634/9 634/13 634/22
637/21 638/7 638/7 640/10
640/11 640/12 640/15 643/1
643/2 658/24 659/8 661/18
662/17 662/17 663/5 668/10
675/20 678/14 679/13 680/2
680/4 680/4 680/7 682/19
682/23 683/3 686/4 686/20
686/21 687/4 688/1 688/5
693/24 694/1 698/25 700/19
700/22 708/16 715/15 720/6
742/18 742/23 743/16 745/23
747/16 748/23 749/12 755/17
764/10 765/16 765/20 765/21
766/3
one-time [1] 603/10
one-year [2] 634/13 634/22
ones [3] 589/9 678/1 704/6
only [43] 514/9 514/25 519/25
524/11 526/20 527/9 528/4
539/20 546/4 575/4 575/8
581/13 589/1 589/3 596/15
602/10 604/12 604/16 605/20
605/25 609/14 610/19 611/3
611/16 613/3 617/18 618/17
622/18 624/22 632/14 636/20
637/13 639/5 653/8 653/21
655/3 685/2 686/25 687/22
687/25 688/23 705/21 720/9
onTouchEvent [3] 528/23
529/18 529/19
onward [2] 695/16 696/6
open [14] 514/7 514/13 516/3
544/22 552/3 676/9 676/10
676/18 681/15 701/3 711/8
711/10 730/5 730/7
open-ended [1] 681/15
open-source [1] 676/10
opened [3] 662/7 662/10
663/9

opening [3] 519/4 519/12
576/15
openness [1] 514/9
operating [58] 544/2 544/15
545/5 545/8 545/9 545/11
545/12 546/1 546/8 546/11
546/20 546/24 547/1 554/6
555/2 555/3 555/19 555/23
598/22 598/23 604/21 667/19
667/23 668/9 669/4 673/8
674/5 674/21 674/23 676/10
694/3 710/7 716/24 717/2
720/23 722/6 723/7 724/2
724/3 724/4 725/12 725/23
726/2 726/2 726/3 743/7
743/9 747/20 747/25 748/11
748/21 752/4 759/2 759/11
759/20 759/23 760/9 762/2
operation [1] 620/18
opine [1] 559/16
opined [2] 617/14 644/14
opining [3] 643/10 644/16
750/8
opinion [18] 513/19 513/23
534/5 536/4 546/17 546/22
548/20 548/23 551/17 558/24
559/1 559/23 562/15 623/4
660/4 664/19 750/6 750/11
opinions [3] 533/12 575/10
602/5
opportunity [3] 524/3 657/11
755/14
opposed [2] 554/5 555/19
opposing [1] 648/25
option [2] 529/16 603/17
options [4] 541/14 542/23
543/16 634/12
orange [4] 550/1 550/3 550/4
723/11
order [22] 515/3 516/11 522/3
525/2 536/19 553/15 553/24
560/3 572/24 590/2 590/13
592/8 596/5 597/3 605/24
609/11 623/9 624/17 699/5
699/20 707/23 748/6
ordered [1] 650/22
orders [1] 645/8
Oregon [1] 565/9
original [1] 714/2
originally [2] 644/12 670/17
Oscars [1] 565/3
other [89] 518/20 519/8
519/25 541/14 542/24 549/7
556/2 557/13 564/22 565/10
566/1 567/9 570/6 572/6
572/13 572/15 572/16 572/18
574/20 575/5 575/13 576/9
577/10 578/16 578/23 579/11
579/17 579/21 580/13 580/19
581/8 581/14 581/14 583/19
584/11 584/13 585/13 588/20
589/7 589/19 590/5 590/6
592/1 597/17 602/1 606/14
606/18 611/5 611/16 612/18
613/23 614/10 614/13 615/2
616/10 617/7 617/13 619/2
619/4 619/20 620/12 634/18
642/8 643/24 643/25 645/20
662/17 665/9 667/23 680/10
686/4 697/13 704/1 704/6

other... [15] 704/17 705/13
705/21 708/17 714/14 718/20
718/21 724/17 728/18 748/18
748/23 748/25 751/8 752/1
765/9
others [9] 524/14 553/10
565/18 567/24 579/12 580/15
676/15 677/2 701/24
our [22] 513/10 518/23
519/14 522/7 529/22 532/17
567/9 585/17 585/20 587/13
655/25 656/7 669/16 670/15
671/21 672/10 672/23 708/13
708/17 726/8 726/10 765/7
out [43] 515/6 520/17 522/11
526/23 528/5 543/10 569/21
573/23 577/6 580/18 585/20
615/3 620/18 620/21 621/3
623/13 631/16 636/15 647/22
648/3 648/4 649/13 650/5
651/13 652/18 670/18 678/21
679/13 682/24 685/3 686/3
686/21 686/22 695/7 702/4
705/10 714/17 715/3 718/21
722/13 726/12 734/21 763/17
out-size [1] 620/18
outcome [16] 563/18 563/20
574/17 574/21 582/15 589/21
594/19 595/19 596/19 600/16
618/4 623/5 626/25 627/2
644/20 665/16
outcomes [6] 574/25 581/22
596/16 596/19 597/11 625/7
outline [1] 663/2
outlining [2] 602/5 626/21
outs [2] 578/12 582/13
outset [1] 513/9
outside [2] 593/10 664/18
over [21] 562/25 564/24
564/25 569/12 584/11 585/2
601/18 602/4 633/13 650/21
651/9 652/15 653/24 654/6
658/23 659/8 664/4 671/14
682/13 682/14 682/14
overhead [1] 524/13
overinflated [4] 613/12 613/17
613/18 617/10
override [1] 694/8
overriding [1] 514/9
overruled [8] 660/15 664/22
668/4 685/19 689/25 694/18
695/21 757/5
overview [2] 698/13 701/10
owed [2] 600/22 600/25
own [5] 567/9 606/16 635/2
684/15 685/1
owned [1] 578/17
owner [1] 748/1

P

p.m [5] 657/16 726/13 727/7
765/10 766/13
Pacific [33] 575/15 575/18
575/20 575/24 576/2 576/4
576/6 576/9 576/13 576/17
576/23 577/7 577/15 583/3
583/14 583/15 583/20 584/5
585/10 585/12 585/15 586/17

586/20 589/7 589/11 589/14
589/16 589/18 589/24 589/25
597/20 597/23 633/24
package [3] 724/16 747/9
747/10
packaged [1] 745/11
page [34] 517/2 517/2 522/7
545/19 545/21 608/9 609/15
610/7 610/10 610/20 611/1
622/14 637/11 673/22 673/25
674/14 705/9 722/23 728/12
728/13 728/20 734/1 735/4
735/19 736/16 739/16 739/19
739/20 739/25 743/23 744/22
756/15 760/11 760/13
Page 2 [1] 674/14
Page 21 [1] 756/15
Page 3 [2] 622/14 744/22
Page 6 [1] 545/19
Page 7 [1] 760/11
pages [2] 518/8 740/2
paid [25] 562/16 566/6 572/16
578/18 579/3 581/2 581/14
583/23 590/10 590/15 593/19
594/6 619/17 619/19 619/21
624/1 625/17 626/15 627/11
628/3 628/6 628/22 634/21
667/2 693/8
pain [1] 677/13
paragraph [4] 707/24 732/22
740/10 762/19
Paragraph 53 [1] 707/24
parcel [1] 570/19
pardon [1] 541/19
parent [1] 692/10
part [66] 519/22 525/23 537/9
537/14 537/18 537/21 538/9
538/12 539/8 539/9 539/17
539/23 542/4 542/5 542/14
543/18 545/14 553/1 556/12
557/10 560/8 570/18 571/11
572/13 572/23 574/20 574/21
574/22 594/14 617/13 628/16
632/22 643/20 644/19 647/25
648/11 666/25 672/23 674/22
688/10 688/12 690/5 694/1
695/16 696/2 696/5 696/10
705/1 705/2 724/4 725/3
730/15 730/24 731/3 731/12
732/5 732/9 746/5 746/21
759/4 759/13 759/17 760/22
762/9 763/7 763/10
particular [17] 541/8 542/25
550/21 552/6 554/16 554/17
554/25 557/8 635/3 638/9
671/16 675/6 678/9 681/22
691/7 721/3 752/9
particularly [3] 688/2 710/8
710/20
parties [28] 514/3 514/8 519/2
519/2 520/17 521/8 521/25
527/10 527/14 570/3 570/9
571/2 573/2 574/8 576/8
602/9 633/18 634/8 640/10
644/2 644/21 646/8 651/3
658/6 658/16 659/9 665/25
669/14
parties' [1] 634/5
partner [1] 561/17
parts [2] 661/18 676/18

party [6] 519/19 520/24
521/24 614/23 634/13 648/25
pass [10] 533/16 560/25
648/18 689/2 743/11 745/24
746/9 747/16 749/2 764/23
passed [3] 648/15 649/4
747/6
past [6] 577/11 584/1 584/4
601/18 602/4 608/15
paste [4] 712/15 722/3 734/25
746/23
patent [89] 534/4 562/17
563/4 565/12 565/16 565/20
565/22 565/23 565/24 565/25
566/4 566/6 566/10 566/13
566/14 566/18 567/2 567/13
567/15 567/16 567/22 567/23
568/1 568/4 568/11 568/15
568/20 568/24 569/14 569/22
570/10 570/11 570/12 570/15
571/4 571/10 571/23 572/2
574/9 574/12 575/8 575/11
575/25 576/10 576/21 577/9
577/11 577/17 577/20 578/16
579/17 579/21 579/24 580/1
581/3 582/18 583/16 589/6
592/2 594/7 598/25 601/1
602/1 602/10 605/7 617/18
618/17 619/2 624/21 624/22
627/25 628/24 633/25 642/14
642/15 643/4 688/8 688/20
750/8 750/12 750/12 750/13
763/22 763/25 763/25 764/4
764/10 764/14 764/15
patented [2] 584/11 584/13
patentee [1] 577/8
patents [31] 568/25 571/18
578/16 578/23 579/18 579/21
580/16 580/17 581/6 582/4
582/7 583/24 583/25 590/6
602/1 618/22 623/22 624/1
626/5 627/23 629/6 642/8
642/13 642/18 642/20 642/24
643/2 688/10 688/12 750/2
750/4
path [1] 548/11
paths [1] 728/24
pattern [2] 682/7 682/12
PAUL [1] 512/11
pay [10] 578/24 579/19 581/7
584/15 587/1 590/5 626/13
634/17 662/3 693/5
payment [23] 569/4 569/7
569/9 569/11 569/19 572/12
573/2 575/3 575/8 580/4
580/10 580/14 580/25 581/15
582/10 583/19 589/3 590/3
591/17 593/8 603/10 618/1
618/3
payments [3] 569/9 569/12
575/5
PDX [16] 537/25 539/1 542/9
542/10 543/4 544/8 547/18
548/17 549/14 551/4 551/23
553/14 556/18 556/23 558/16
619/11
PDX-3-102 [1] 539/1
PDX-3-104 [1] 551/23
PDX-3-108 [2] 547/18 548/17
PDX-3-110 [1] 551/4

PDX-3-159 [1] 556/23
PDX-3-163 [1] 549/14
PDX-3-3 [2] 542/9 556/18
PDX-3-6 [1] 558/16
PDX-3-64 [1] 543/4
PDX-3-76 [1] 553/14
PDX-3-83 [2] 537/25 542/10
PDX-4.29 [1] 619/11
pending [2] 526/8 621/22
penny [1] 578/19
people [21] 514/25 515/1
572/6 674/1 691/16 712/2
713/1 715/25 716/1 717/4
718/12 718/13 718/20 719/1
726/3 727/25 733/14 733/16
739/23 741/11 744/3
people's [1] 718/1
per [22] 563/17 590/15
590/16 591/20 592/10 592/24
593/13 596/10 598/16 598/18
600/3 610/7 610/8 610/10
610/10 617/21 617/21 617/24
619/21 624/5 628/5 629/9
per-app [1] 598/18
perceive [1] 523/5
percent [11] 576/14 595/25
596/1 596/2 617/5 627/8
628/15 663/5 698/11 718/9
741/6
percentage [5] 603/16 614/15
614/19 616/24 617/3
perception [5] 595/4 630/9
630/19 630/25 656/6
Perfect [1] 729/22
perform [5] 537/14 538/23
539/15 542/1 542/5
performance [2] 564/12
737/12
performed [5] 537/18 537/21
539/8 541/20 542/7
performing [8] 537/9 538/9
538/11 539/17 539/20 539/22
540/1 542/13
perhaps [3] 550/4 550/8
608/17
period [17] 588/15 588/19
588/25 589/3 589/6 599/25
600/13 605/5 605/10 608/23
611/7 611/9 611/9 615/13
615/23 638/11 638/14
permission [5] 567/24 568/1
568/8 569/8 570/10
permits [1] 707/23
permitted [2] 515/1 650/20
person [5] 606/8 615/18
615/24 734/15 751/3
personal [1] 672/7
personally [2] 688/7 750/17
perspective [3] 679/11 683/2
719/7
pertain [1] 668/13
PETERMAN [2] 512/12 601/8
phantom [2] 652/18 655/7
phase [2] 590/17 640/12
phone [104] 539/14 540/5
541/5 541/19 543/11 557/9
558/6 672/16 673/9 673/10
673/12 678/8 678/9 678/9
681/3 681/4 681/11 681/14
681/14 681/17 682/8 683/5

<p>P phone... [82] 684/10 684/13 684/14 684/14 684/24 685/10 685/11 686/6 687/2 687/12 710/5 710/12 711/4 711/11 711/12 711/24 712/1 712/3 712/4 712/21 712/25 713/2 713/16 713/19 713/19 714/2 714/25 715/1 715/2 715/4 715/5 715/23 716/5 716/8 719/10 720/1 720/11 721/3 721/8 721/10 721/11 721/18 721/24 724/14 724/17 724/19 725/7 725/14 725/22 732/4 734/9 734/12 734/21 736/7 736/9 736/23 737/1 737/11 742/8 743/5 743/11 745/6 745/7 745/13 745/14 745/21 745/22 745/24 745/25 746/1 746/9 746/14 747/2 747/2 747/11 747/15 747/16 748/1 748/2 758/20 759/1 759/10 phones [25] 558/19 559/2 560/1 560/6 579/9 588/23 598/12 600/19 614/16 614/20 615/3 617/9 617/10 627/17 628/7 628/10 671/22 676/25 684/20 685/14 685/24 694/3 710/20 741/11 742/10 photo [2] 541/22 541/22 photos [1] 673/11 phrase [1] 707/18 physical [2] 543/11 671/24 pick [1] 684/13 picture [4] 714/11 714/19 714/21 744/22 pictures [4] 714/9 714/13 714/13 714/15 pitch [1] 717/17 Pixel [12] 559/4 559/5 588/23 598/12 598/12 600/13 600/13 616/22 617/21 671/22 676/24 685/10 Pixel 2 [4] 559/4 598/12 600/13 676/24 Pixel 3 [3] 559/5 598/12 600/13 place [6] 579/4 679/24 682/15 706/9 706/15 707/16 placed [2] 522/17 526/12 places [3] 537/6 537/8 537/11 placing [3] 539/15 539/20 539/24 plaintiff [8] 511/4 512/6 561/15 595/17 646/4 657/5 669/10 669/12 Plaintiff's [1] 700/22 planned [2] 740/20 763/1 planning [1] 661/10 Plano [1] 566/8 platform [9] 544/11 548/12 612/5 671/21 700/20 701/4 722/23 754/7 754/16 platform/frameworks/base [1] 548/12 play [15] 537/7 557/14 557/17 557/21 558/9 559/12 559/17 559/19 614/12 672/7 672/9 676/16 677/16 677/23 691/20</p>	<p>played [1] 579/24 plays [2] 535/16 691/22 please [78] 513/6 518/17 523/1 523/6 523/11 524/5 525/1 525/17 526/13 528/7 534/14 537/25 545/19 547/18 551/4 553/14 558/17 561/18 562/2 562/6 562/8 564/1 564/23 578/7 583/2 583/13 585/20 585/25 586/13 591/6 591/9 599/17 609/20 620/6 623/19 640/7 650/10 651/15 656/17 657/17 669/23 670/10 673/15 674/14 674/18 675/15 676/23 689/5 691/4 698/20 701/16 702/7 708/23 709/10 709/25 717/14 719/7 720/16 722/11 722/24 726/14 726/20 727/9 727/10 727/15 728/10 728/21 729/21 731/16 732/21 732/22 737/20 739/11 744/22 745/3 754/18 765/11 766/10 pleasure [1] 533/25 plug [1] 683/19 plus [1] 578/23 pm [1] 650/2 point [30] 515/25 518/14 521/20 521/25 541/13 543/10 544/6 552/13 553/24 576/21 576/22 577/18 577/22 590/4 599/8 610/21 619/3 634/13 635/7 654/17 662/7 677/13 680/1 686/5 686/23 696/4 696/12 708/16 741/14 766/7 pointed [1] 597/20 pointing [1] 547/20 points [1] 576/20 popped [1] 529/16 popularity [1] 586/21 portfolio [5] 594/7 624/21 629/7 629/8 642/23 portion [4] 513/15 514/1 656/25 657/9 portions [9] 515/6 526/20 527/9 527/15 528/4 528/5 650/15 705/17 705/21 posed [2] 652/9 667/18 position [5] 521/10 628/13 643/17 671/6 671/16 positions [1] 634/5 possibility [5] 516/14 516/15 594/13 613/19 634/19 possible [3] 558/8 613/20 636/20 possibly [1] 615/11 post [1] 737/6 potential [1] 571/22 POTTER [1] 512/9 pour [1] 700/23 power [1] 733/17 PowerPoint [2] 631/9 631/15 practical [1] 632/25 practically [2] 685/13 685/23 practice [6] 536/19 539/25 649/3 679/5 680/17 681/6 practiced [1] 537/20 preamble [2] 534/25 556/24 precompiled [1] 705/13 prefer [2] 559/13 651/19 preferred [1] 716/11</p>	<p>preinstalled [4] 559/6 559/9 559/16 598/14 prep [1] 649/5 preparation [1] 601/20 prepare [6] 573/5 588/13 636/24 636/25 637/5 640/13 prepared [2] 562/18 637/7 preparing [1] 530/19 presence [1] 592/5 present [3] 541/11 582/21 608/25 presentation [4] 516/23 562/18 727/17 728/2 presented [8] 558/1 608/14 608/19 608/24 657/4 658/12 658/21 718/1 presenting [1] 558/14 presents [1] 516/18 preserve [3] 514/11 515/10 516/5 preserving [1] 521/14 press [10] 530/20 540/5 541/9 677/15 679/2 680/6 681/3 711/25 719/12 719/13 pressed [5] 683/7 712/5 719/19 720/3 747/5 pressing [1] 584/24 presumption [2] 514/6 514/8 pretrial [5] 596/1 640/12 699/5 699/20 707/23 pretty [1] 632/19 prevail [1] 632/19 prevailing [2] 596/1 596/2 preview [1] 513/17 reviewed [1] 573/11 previous [2] 532/15 656/24 previously [1] 611/14 price [1] 590/16 prices [1] 563/12 primary [2] 519/1 519/13 print [1] 524/23 printed [7] 515/16 515/16 515/18 515/19 523/25 524/16 528/4 printout [1] 524/11 printouts [2] 517/17 520/10 prior [8] 575/24 583/17 584/21 595/8 642/19 642/19 649/23 713/9 private [1] 530/8 probability [1] 714/20 probable [2] 622/5 623/1 probably [6] 516/10 540/23 543/17 621/15 664/3 764/20 problem [4] 518/6 538/19 587/16 715/19 procedure [2] 518/10 650/19 proceed [17] 515/8 520/14 521/13 562/2 578/7 586/14 588/8 591/10 599/18 601/3 645/1 662/22 663/1 663/11 689/5 727/3 727/10 proceeding [5] 513/15 514/13 515/18 655/24 767/6 proceedings [6] 513/4 513/24 514/7 515/5 521/11 766/13 proceeds [1] 658/16 process [18] 570/19 582/23 623/17 685/5 685/7 685/13 685/22 706/1 706/21 707/1</p>	<p>707/4 707/7 748/14 759/13 759/17 762/9 762/12 763/19 processes [5] 707/12 762/10 762/11 762/14 762/15 produce [3] 574/18 574/24 646/25 produced [23] 522/2 593/12 595/22 614/5 616/15 617/8 636/22 638/14 638/22 639/15 639/21 640/20 641/24 643/19 645/23 646/7 646/23 646/25 647/2 653/11 653/22 654/20 656/24 produces [3] 581/21 593/25 641/17 product [20] 587/3 670/12 671/2 671/8 671/12 671/12 671/17 672/1 674/7 678/25 679/6 679/11 687/10 688/3 688/7 688/14 689/21 690/3 692/20 695/5 productions [1] 516/21 products [27] 586/22 586/25 588/11 588/21 593/1 593/14 598/3 606/18 612/14 612/18 614/10 614/13 616/9 616/9 618/6 618/13 621/24 626/2 644/19 647/1 660/17 668/25 671/23 672/10 672/24 676/19 690/20 professional [1] 564/16 profit [5] 626/2 692/14 692/14 692/16 693/25 profitability [1] 618/8 profitable [1] 627/19 profits [1] 588/2 program [20] 530/24 531/2 534/10 534/18 534/24 535/2 535/4 535/7 535/11 535/16 536/1 536/5 537/14 555/1 555/19 559/8 559/21 695/6 706/10 706/16 programmer [4] 532/25 554/11 554/22 555/1 programming [2] 554/12 683/21 programs [1] 545/23 project [13] 710/2 710/2 714/22 715/12 716/1 716/12 718/11 727/23 727/25 733/13 739/21 740/25 749/20 projects [4] 733/19 739/17 739/18 739/22 Projet [1] 730/6 promised [1] 726/17 proper [4] 567/13 569/21 603/2 755/5 properly [1] 741/13 properties [1] 577/13 property [5] 566/9 566/18 571/21 584/11 584/13 proposal [1] 647/20 propose [1] 646/17 proposed [5] 514/2 520/18 520/19 520/22 521/5 proposition [1] 694/4 protecting [2] 657/2 764/14 protection [1] 568/16 protective [3] 515/2 516/11 522/3</p>
--	---	--	---

P
protocol [1] 522/11
prototype [1] 717/12
provide [10] 562/15 563/1
580/12 597/7 640/11 640/15
660/17 714/14 724/2 735/24
provided [21] 539/13 567/3
605/14 605/16 607/1 607/5
607/13 607/15 611/12 616/7
616/8 636/13 640/17 641/11
641/15 641/23 645/25 652/7
652/10 653/10 653/25
provides [1] 701/21
providing [3] 535/10 623/4
714/12
public [13] 514/7 514/10
514/18 520/23 526/3 552/1
552/7 553/3 564/13 671/11
692/18 738/5 738/6
publications [1] 566/2
publicly [9] 543/24 543/25
544/22 629/14 692/11 705/17
752/12 752/18 752/19
publish [7] 516/16 519/4
699/19 699/21 700/3 702/11
728/10
published [5] 565/21 565/23
698/24 699/17 742/7
publishing [4] 699/9 699/14
702/9 722/18
pull [11] 544/9 551/4 551/23
556/18 558/16 649/10 722/22
722/24 741/9 760/11 760/15
pulled [3] 549/15 698/12
698/17
purchased [1] 579/7
purely [1] 707/11
purple [1] 723/10
purporting [2] 699/24 700/1
purpose [2] 531/22 673/24
purposes [10] 538/24 576/23
603/5 611/7 622/18 656/1
699/14 700/10 704/21 723/5
pursuant [4] 516/11 520/21
522/2 582/22
push [2] 680/16 684/19
put [35] 513/9 514/23 515/23
516/8 521/9 522/3 524/13
532/25 537/24 539/12 555/23
556/1 606/8 619/10 623/10
623/19 640/6 661/5 661/22
672/15 674/3 674/15 682/4
693/5 712/20 712/21 717/5
725/9 725/18 725/19 728/1
728/1 731/11 756/14 761/14
puts [1] 570/3
putting [11] 516/5 554/3 554/5
554/8 554/25 555/17 555/19
588/2 600/21 656/10 725/16
PX [21] 544/14 547/25 548/9
552/11 621/17 675/15 676/3
676/6 700/10 707/22 739/11
739/13 739/15 740/4 740/7
742/13 743/21 744/8 744/11
762/18 762/19
PX-0078 [1] 621/17
PX-0123 [1] 544/14
PX-0169 [3] 675/15 676/3
676/6

PX-125 [3] 547/25 548/9
552/11
PX-208 [4] 742/13 743/21
744/8 744/11
PX-795 [2] 700/10 707/22
PX-94 [7] 739/11 739/13
739/15 740/4 740/7 762/18
762/19
Q
qualified [2] 566/21 749/22
qualify [1] 566/16
quality [3] 683/2 684/25 693/3
question [75] 516/9 532/15
535/18 537/16 539/5 539/6
540/19 546/21 548/22 548/24
556/8 558/12 560/9 569/24
571/23 617/2 617/2 630/8
635/17 635/24 635/25 641/19
642/22 645/24 646/2 647/14
650/19 653/9 653/11 653/15
653/19 653/25 654/6 654/6
654/7 655/14 660/8 661/14
662/8 662/11 663/14 665/25
666/12 667/7 685/20 691/4
694/23 695/8 695/9 695/11
695/19 696/22 696/23 701/16
702/7 725/17 753/13 753/19
753/19 753/24 754/19 755/6
755/9 755/12 756/2 756/18
759/6 762/4 762/5 762/6
762/7 763/16 764/1 764/18
765/12
questioning [7] 518/5 648/25
661/16 666/4 717/4 754/1
755/4
questions [32] 549/4 561/4
561/7 601/2 635/6 640/15
640/15 640/16 642/2 643/8
645/7 653/7 653/7 653/18
659/21 661/8 661/21 662/22
665/2 667/18 669/7 689/11
696/18 696/19 708/4 708/5
718/6 728/3 737/22 742/16
758/7 764/6
quibble [1] 542/21
quick [3] 584/22 585/8 726/15
quickly [2] 653/24 714/7
quite [4] 601/24 711/18
713/20 724/10
quote [5] 514/2 514/9 584/19
684/17 758/11
quote-unquote [1] 684/17
quoting [1] 753/16
R
r1 [1] 544/12
r65 [1] 525/21
Raiders [1] 565/2
raise [2] 650/1 681/13
raised [2] 582/16 645/16
raises [1] 620/22
ran [5] 719/14 725/6 739/9
758/25 761/22
random [1] 715/8
range [1] 555/25
ranging [1] 677/1
rate [52] 563/17 590/14
590/15 590/19 590/24 591/15
591/18 591/21 592/9 592/12

592/23 592/24 593/6 593/13
593/17 593/25 594/1 594/18
595/3 595/3 597/18 598/2
598/4 598/5 598/8 598/11
598/17 600/3 600/15 600/15
603/11 603/13 604/2 617/14
619/21 619/25 620/2 620/9
620/11 623/17 624/14 624/17
625/4 625/10 630/21 632/6
642/3 642/6 642/12 642/18
644/7 644/9
rates [15] 577/8 583/23 594/3
594/18 596/8 597/6 597/6
597/14 614/24 625/14 643/9
643/10 643/14 643/15 665/14
rather [10] 523/25 527/16
584/2 662/20 665/18 714/8
714/10 725/14 730/13 748/2
raw [1] 609/22
re [4] 635/19 663/14 756/2
763/1
re-ask [3] 635/19 663/14
756/2
re-enabled [1] 763/1
reach [4] 563/7 572/19 572/21
632/23
reached [3] 563/2 568/23
644/3
reaching [1] 566/23
reactions [1] 718/2
read [10] 535/23 556/23
575/19 654/7 676/12 701/7
702/22 706/14 753/21 755/17
readable [5] 556/16 557/4
557/6 557/16 559/22
reading [3] 517/18 719/10
754/5
ready [9] 523/2 589/20 679/14
683/1 683/1 708/11 727/2
727/10 763/20
real [54] 569/17 569/25
570/21 571/3 571/5 571/7
571/20 571/21 571/24 572/5
572/5 572/11 572/14 572/21
572/22 573/3 573/13 573/25
574/8 574/14 574/18 574/21
574/24 580/13 580/14 582/20
591/14 591/17 592/9 592/24
593/13 593/25 594/2 594/10
594/13 594/17 594/23 595/2
595/22 596/5 596/8 596/16
596/18 596/18 596/20 597/5
597/8 619/25 625/7 643/14
643/22 643/24 644/7 665/16
real-world [46] 569/25 570/21
571/3 571/5 571/7 571/20
571/24 572/5 572/5 572/14
573/3 573/13 573/25 574/18
574/21 574/24 580/13 580/14
582/20 591/14 591/17 592/9
592/24 593/13 593/25 594/2
594/10 594/13 594/17 594/23
595/2 595/22 596/8 596/16
596/18 596/18 596/20 597/5
597/8 619/25 625/7 643/14
643/22 643/24 644/7 665/16
reality [2] 672/16 672/19
realize [1] 712/6
realized [1] 712/1
really [26] 521/13 532/24

554/7 567/7 584/23 641/19
647/4 676/11 677/12 679/16
680/1 680/21 684/18 684/18
691/24 696/21 704/19 705/3
731/12 734/15 741/3 745/13
748/22 762/15 762/16 764/4
reason [10] 513/17 519/3
527/4 527/19 539/6 568/20
569/25 632/23 659/8 697/12
reasonable [11] 542/18
567/18 568/3 598/16 599/3
600/5 600/18 602/10 630/6
659/18 755/10
reasonably [1] 662/12
reasons [6] 527/1 636/12
650/23 680/2 680/10 707/13
rebuild [2] 747/23 748/9
rebut [1] 514/8
rebuttal [2] 708/13 708/18
recall [24] 532/8 533/3 534/1
540/22 545/11 590/22 597/19
636/8 642/9 643/12 658/4
659/21 659/23 659/24 661/14
665/4 665/23 666/3 666/4
689/9 698/3 706/6 752/25
756/10
receipt [2] 535/18 536/1
receive [3] 535/16 564/9
568/10
received [4] 564/6 564/11
564/13 577/8
receives [1] 563/22
receiving [1] 661/13
recent [1] 608/18
recess [11] 522/24 522/25
585/22 585/24 649/20 650/4
650/9 726/17 726/19 765/13
766/11
recesses [1] 648/25
recessing [1] 765/8
recipient [1] 564/21
recognition [3] 581/20 582/3
720/20
recognize [14] 714/1 715/10
715/21 716/4 716/5 719/22
719/24 725/13 731/19 732/6
735/17 735/23 739/13 743/22
recognized [2] 715/15 720/1
recognizing [1] 715/16
reconfirm [1] 540/24
record [21] 513/9 513/18
514/23 517/18 521/3 521/20
521/21 525/6 550/5 561/19
653/4 656/2 656/10 661/5
669/24 670/1 691/12 698/15
698/22 708/24 753/21
recordkeeping [1] 700/9
recross [3] 655/14 667/9
667/10
red [1] 675/11
redacted [3] 515/6 520/22
521/5
redacting [1] 657/12
redaction [2] 514/2 521/2
redactions [2] 520/18 520/19
redirect [19] 561/2 636/1
636/3 647/11 648/2 648/7
648/16 648/20 650/21 652/4
652/9 653/8 653/9 653/19
654/18 656/1 657/20 755/15

redirect... [1] 764/24
redisplayed [1] 548/5
reduce [2] 582/14 659/1
reduced [3] 598/15 644/22 659/12
reenabled [2] 740/20 742/3
refer [4] 730/20 758/19 759/9 760/24
reference [3] 646/10 665/20 736/17
referenced [7] 552/25 584/20 609/4 609/14 616/17 647/2 667/4
referred [4] 552/24 575/15 646/12 674/20
referring [17] 546/8 546/14 547/25 553/4 616/5 616/12 649/6 654/17 706/21 728/15 736/20 738/2 740/24 741/24 754/25 757/25 758/1
refers [3] 537/1 741/16 756/24
reflect [9] 590/5 594/3 594/5 597/22 600/16 611/13 618/3 630/19 644/19
reflected [2] 668/16 668/17
reflecting [2] 582/14 639/15
reflects [5] 535/21 569/8 610/7 659/7 665/15
regarding [6] 546/22 548/20 551/17 650/14 661/8 739/3
regards [1] 648/22
regular [3] 713/15 715/2 736/22
rehearsed [1] 662/2
relate [5] 525/24 567/21 584/10 584/12 586/21
related [5] 514/25 538/21 546/17 624/21 737/22
relates [4] 534/5 534/10 754/1 755/7
relating [3] 599/22 600/9 666/20
relation [2] 558/15 725/1
relations [1] 671/11
relative [1] 574/19
release [18] 664/7 683/13 683/14 684/8 684/10 684/11 684/17 686/8 686/11 686/17 686/24 687/2 687/9 687/13 688/1 741/17 742/4 742/5
Release 1 [1] 742/4
released [3] 615/7 742/6 748/5
releases [3] 685/4 686/10 687/5
releasing [1] 687/1
relevant [9] 584/5 584/9 585/10 634/4 647/1 650/15 678/4 697/16 697/19
relied [10] 519/10 575/12 589/25 590/3 629/17 635/4 636/14 641/23 652/2 654/19
rely [12] 589/23 614/10 640/25 641/15 642/16 642/21 645/23 647/15 653/16 653/20 653/22 654/25
relying [4] 616/15 647/5

652/20 654/5
remaining [1] 648/19
remember [17] 523/20 530/13 532/22 548/4 549/16 550/21 581/12 630/14 691/13 691/14 691/15 717/7 731/4 763/5 763/15 764/7 765/8
remind [3] 523/16 529/5 545/20
removed [1] 697/3
render [10] 758/24 758/25 759/7 759/8 759/8 759/12 759/14 760/1 760/2 761/21
rendered [2] 759/15 761/24
rendering [3] 710/9 710/10 730/21
renew [1] 655/11
rent [3] 572/12 575/6 575/7
renting [1] 572/7
repeat [6] 600/21 615/19 685/20 694/23 758/10 762/6
repeated [1] 646/14
repeating [2] 658/14 695/12
rephrase [3] 660/8 753/25 755/12
Reply [1] 607/23
report [20] 545/9 545/16 545/20 545/21 546/12 584/20 606/8 626/21 626/24 627/2 637/5 637/9 637/12 644/13 647/24 658/3 658/11 659/7 659/11 668/19
reporter [4] 716/15 753/21 767/2 767/8
reports [9] 567/10 602/5 608/5 608/13 616/18 637/6 637/7 644/23 710/17
repository [1] 676/12
represent [1] 612/5
representation [7] 616/4 616/6 616/13 616/18 698/1 702/23 703/15
representative [2] 669/16 708/15
represented [3] 518/9 613/3 616/2
representing [1] 702/15
represents [2] 692/3 735/24
request [18] 515/25 519/11 522/16 526/25 614/5 614/7 614/9 616/7 619/4 640/10 650/13 650/14 655/6 655/11 681/23 742/23 744/18 745/20
requested [2] 716/15 753/22
requesting [1] 618/2
requests [3] 616/16 669/2 682/7
required [2] 550/14 557/3
requirement [5] 538/8 542/4 556/19 684/23 699/4
requirements [1] 542/13
requires [4] 534/18 535/25 536/23 537/13
research [4] 562/12 567/8 678/19 678/19
researched [1] 629/14
resides [1] 682/15
resolve [1] 587/24
resource [1] 686/6
resources [1] 679/3

respect [40] 514/5 518/24 521/4 521/6 521/7 526/9 558/1 565/22 575/2 580/11 594/23 594/24 595/10 596/22 599/4 599/24 600/5 600/12 607/1 612/6 613/19 615/22 616/9 616/10 618/12 635/2 636/19 636/22 642/21 645/12 645/12 646/20 664/12 668/11 668/23 668/25 690/6 690/7 690/8 725/15
responded [3] 614/7 652/8 652/19
response [25] 529/13 606/11 607/12 607/14 614/5 616/16 640/17 646/21 646/23 647/3 647/6 647/10 647/14 647/16 647/17 647/21 647/23 647/25 652/7 652/10 653/10 654/1 654/4 654/19 655/11
responsibilities [2] 672/6 690/17
responsibility [2] 688/8 690/6
responsible [2] 671/17 724/13
rest [5] 568/22 649/13 708/17 731/14 763/5
restaurant [1] 734/23
resting [3] 669/13 669/17 708/14
restrictive [4] 514/15 515/9 516/4 521/13
result [13] 530/10 530/12 530/16 531/5 531/7 531/20 532/2 603/9 618/1 627/9 643/20 665/21 719/16
resulted [1] 643/22
results [1] 530/8
retail [1] 671/20
retained [1] 576/16
retake [1] 726/21
retrieve [1] 528/8
retrieving [4] 553/11 553/15 553/20 553/25
revenue [10] 603/16 626/2 635/7 660/22 661/21 662/5 663/4 663/18 663/21 693/9
review [11] 524/3 524/12 524/19 524/21 524/23 525/23 567/11 617/7 688/10 688/12 702/2
reviewed [11] 524/17 526/3 529/20 533/4 533/9 533/12 543/19 544/25 607/11 664/13 668/16
reviewing [1] 517/5
rid [1] 696/9
right [320]
right-hand [4] 546/16 567/9 729/7 729/9
rightmost [2] 539/11 539/13
rights [6] 567/22 567/23 568/4 568/20 618/22 629/6
risk [8] 595/11 595/12 595/14 595/15 595/15 595/21 596/3 625/4
risks [6] 595/5 595/18 595/24 596/11 596/14 597/1
ROBERT [1] 512/12
ROBERTS [1] 512/13
role [14] 559/14 560/8 560/23

560/23 567/21 579/23 671/25 672/4 672/11 672/12 672/20 688/7 690/24 710/13
roles [2] 690/24 709/25
rolled [1] 686/3
rolling [1] 685/2
rollout [2] 686/7 686/24
Romanette [1] 537/9
roughly [3] 579/7 676/18 680/2
route [1] 681/18
row [3] 611/19 611/21 620/6
Roy [3] 561/20 561/22 562/7
royalties [5] 592/6 619/16 619/19 619/21 625/14
royalty [64] 567/18 568/3 569/10 579/10 590/14 590/15 590/19 590/24 591/15 591/18 592/9 592/11 592/24 593/5 593/8 593/13 593/17 593/20 593/25 594/1 594/3 594/18 594/18 595/3 596/8 597/5 597/6 597/13 597/17 598/16 599/4 600/3 600/5 600/14 600/15 600/18 602/10 603/11 603/13 603/22 604/1 617/14 617/21 619/25 620/9 620/11 623/17 624/5 624/13 624/17 625/4 625/10 625/14 629/9 630/21 631/15 632/6 635/8 642/6 644/7 644/9 659/18 665/8 665/14
rule [14] 648/7 648/22 649/7 649/10 651/7 651/8 651/22 655/21 655/24 656/3 656/5 656/8 713/19 737/1
Rule 43.1 [2] 649/7 649/10
ruled [1] 661/7
rules [6] 644/1 713/15 714/2 714/8 714/10 736/23
ruling [1] 655/5
run [14] 557/18 560/3 641/8 675/13 714/1 716/8 721/17 724/3 748/19 748/20 748/21 759/4 759/13 762/8
running [32] 534/10 560/22 569/10 605/18 605/21 610/12 637/14 639/5 639/23 641/21 641/22 683/6 707/8 707/12 707/13 718/7 720/11 721/3 721/8 721/14 721/18 721/20 721/24 734/12 741/1 741/2 759/10 759/16 759/19 762/13 762/14 762/15
runs [5] 673/9 705/25 707/5 707/6 758/20
runtime [1] 723/11

S
S.A.R.L [1] 511/3
safest [1] 662/22
said [44] 527/8 545/13 560/23 596/15 598/1 625/5 625/6 632/9 645/19 646/13 647/15 648/4 652/2 652/6 655/3 655/20 661/18 671/1 682/23 688/5 689/12 689/18 691/8 691/10 694/10 696/8 696/10 696/24 701/12 702/17 712/4 715/7 719/1 722/7 724/22

S
should... [9] 679/14 684/6
693/8 698/24 703/18 710/25
726/21 757/11 764/16
shouldn't [3] 645/24 650/22
699/9
show [27] 516/15 534/13
541/1 545/19 548/9 553/10
553/14 555/13 578/10 590/18
590/22 591/14 647/18 647/20
683/21 691/19 698/8 703/13
703/21 714/18 714/18 728/2
737/14 742/11 745/15 756/8
761/3
showed [8] 541/23 549/14
638/8 659/17 715/6 715/8
747/4 760/21
showing [10] 518/7 518/8
552/7 588/13 611/12 639/22
659/17 703/22 724/13 730/24
shown [14] 516/7 518/4
518/12 550/8 570/6 570/11
591/18 592/9 596/7 597/11
599/23 647/8 647/10 702/24
shows [3] 675/24 703/2
703/15
side [11] 513/23 567/9 570/5
640/12 651/23 655/10 690/19
729/7 729/9 729/16 760/12
sidebar [22] 526/14 526/17
527/25 587/5 587/9 588/6
645/3 645/5 649/15 651/18
651/19 651/21 656/11 661/1
661/3 663/12 698/19 698/21
700/5 753/8 753/12 755/21
significant [5] 626/1 643/23
663/22 663/23 663/24
significantly [3] 659/5 659/6
659/12
signify [1] 733/7
similar [7] 584/10 586/20
596/22 682/6 700/16 714/24
734/7
simple [1] 714/7
since [26] 564/15 564/19
564/21 566/1 573/21 576/3
576/12 596/13 596/25 639/7
648/11 648/12 655/20 659/4
659/6 659/12 694/22 695/2
695/6 695/13 695/24 696/3
696/11 696/24 697/3 710/1
single [3] 536/16 624/22
631/12
sir [73] 562/20 565/14 566/7
569/1 575/17 577/4 579/22
588/12 588/22 599/1 599/23
600/11 601/10 601/24 602/3
602/22 603/15 603/21 604/9
605/12 606/5 606/13 608/13
609/2 609/9 609/21 612/7
612/10 615/9 616/23 617/17
617/23 617/25 618/15 620/1
620/10 623/24 624/7 624/15
625/16 625/19 626/17 627/21
628/4 628/14 628/21 629/8
629/16 630/5 631/5 632/8
632/12 634/3 636/25 640/19
643/5 652/8 654/2 659/20
663/20 665/7 665/12 666/4

667/16 669/2 689/8 689/14
696/10 700/14 708/6 756/10
765/1 765/5
sit [5] 571/12 572/20 572/25
575/22 616/14
sitting [1] 613/11
situation [2] 651/6 712/17
six [6] 572/9 685/5 686/1
710/17 719/3 737/2
size [2] 620/18 659/1
skepticism [1] 718/3
skip [2] 686/10 687/4
skips [1] 653/24
slide [31] 538/21 539/7
539/10 539/12 546/10 551/25
552/6 553/21 556/22 570/6
573/5 587/13 588/13 588/14
590/20 597/12 623/19 633/3
636/24 636/25 637/1 640/23
653/14 654/23 659/17 703/14
706/6 706/7 706/9 706/13
706/18
slides [8] 519/13 538/2 543/7
547/16 556/25 587/13 587/21
587/25
slight [1] 663/2
slightly [5] 535/20 540/19
550/22 682/9 759/2
slim [2] 632/19 632/22
sloth [1] 541/22
slow [1] 679/1
small [9] 609/7 670/14 672/13
672/13 672/17 713/25 716/8
737/10 738/20
smaller [1] 665/18
smart [138] 532/19 533/2
540/6 540/14 540/20 541/9
542/16 542/16 543/1 543/15
543/18 545/1 545/4 545/6
550/14 558/3 558/7 559/25
634/23 635/3 677/7 677/8
677/12 677/18 678/2 678/3
678/12 678/14 678/16 681/2
711/1 711/2 711/19 711/23
712/9 712/10 712/23 713/8
713/8 713/12 714/22 715/11
716/25 717/5 717/12 718/14
718/15 718/23 719/5 719/25
720/7 720/10 720/21 721/2
721/5 721/21 724/22 724/25
725/2 725/5 725/9 728/17
728/18 730/2 730/23 730/23
732/1 732/3 732/25 732/25
734/1 734/5 734/6 734/16
735/2 735/6 735/10 735/15
735/15 735/18 736/10 736/12
736/14 738/9 738/10 738/24
738/25 740/15 741/15 741/15
741/22 742/2 742/3 746/20
747/19 748/7 749/21 752/12
752/21 752/23 752/23 753/13
753/15 754/3 754/7 754/10
754/15 754/21 754/21 754/25
756/3 756/4 756/6 756/20
756/20 756/25 757/1 757/8
757/8 757/12 757/13 757/14
757/18 757/20 757/22 757/24
757/25 757/25 758/1 758/3
758/15 759/17 761/12 762/1
762/21 763/10 763/17 764/11

smartphone [3] 673/14 677/14
707/6
smartphones [5] 588/23 593/3
593/3 593/15 598/4
SmartSelectionClient.java [1]
525/20
Smedley [32] 517/5 518/23
523/15 523/16 523/20 524/10
528/11 528/18 529/24 531/13
533/22 535/14 539/4 540/20
543/8 545/17 548/6 549/8
549/16 550/5 551/25 555/6
556/8 557/13 560/19 561/8
567/3 584/23 585/2 585/5
634/25 635/5
SMITH [1] 511/22
so [489]
so-called [1] 593/22
Society [2] 564/17 565/24
software [13] 673/9 675/12
680/10 680/12 680/18 683/2
683/4 698/5 702/16 702/20
702/23 709/24 710/14
sold [6] 579/8 591/25 600/13
603/19 603/23 604/1
solves [1] 677/12
some [72] 513/18 514/19
517/16 517/21 518/7 519/21
519/23 520/10 521/9 521/20
524/16 525/23 531/21 532/10
536/24 540/1 544/5 544/19
544/21 547/13 555/23 556/1
564/11 564/23 565/19 565/25
567/8 569/6 573/3 578/16
583/19 584/18 584/23 587/3
607/17 615/2 619/4 642/2
642/18 649/22 650/5 655/9
656/21 659/9 665/2 665/18
672/6 673/2 677/14 677/25
680/6 680/13 692/18 693/4
696/3 696/12 714/4 718/20
718/21 719/10 726/16 728/2
735/13 735/16 740/1 740/2
745/19 747/4 749/11 752/2
752/3 758/19
somebody [1] 681/22
somehow [2] 645/10 646/21
someone [5] 522/16 569/17
569/20 569/22 764/16
something [60] 520/5 527/1
527/8 527/13 540/22 547/3
547/5 549/5 555/13 556/15
572/10 572/23 575/7 598/7
618/8 618/13 640/17 645/17
652/6 653/10 653/25 656/25
658/15 662/19 676/9 680/19
688/15 692/19 693/8 711/8
711/19 711/25 712/4 712/10
713/14 714/24 715/4 716/7
717/7 717/22 719/12 720/3
724/14 724/21 725/14 725/18
725/23 731/5 734/19 734/23
737/1 737/3 742/24 743/16
745/4 745/6 747/10 748/22
748/24 758/23
sometime [2] 602/20 686/2
sometimes [13] 530/14
542/23 563/12 563/13 569/10
572/6 572/7 572/22 693/4
712/2 713/4 713/5 727/24

somewhere [3] 548/23 549/7
685/25
soon [2] 765/23 765/24
sorry [16] 530/14 532/14
539/5 540/9 540/12 546/21
580/9 641/18 643/1 665/8
683/12 685/17 686/14 725/17
754/5 758/10
sort [18] 519/24 563/10
573/11 649/13 658/22 661/15
716/4 716/7 717/8 719/9
720/20 723/6 730/23 740/25
743/13 743/18 743/19 748/18
sorts [1] 692/1
sound [1] 655/3
sounds [3] 521/12 748/17
750/5
source [76] 513/15 515/11
515/19 516/11 516/20 518/21
520/8 520/9 521/23 523/21
524/1 524/17 524/24 525/21
525/23 531/8 531/11 532/17
533/12 544/11 544/22 544/22
545/6 547/8 552/1 552/3
552/7 552/17 552/18 552/21
553/18 554/1 554/21 561/12
592/18 592/19 609/4 610/14
610/18 610/19 610/24 637/22
637/22 637/25 638/3 638/9
638/13 638/16 676/10 676/12
676/18 679/20 679/21 679/22
683/15 689/19 690/2 690/3
690/5 690/9 690/10 690/20
704/18 707/6 707/9 707/10
707/15 711/16 720/21 730/5
730/7 739/6 742/7 749/18
749/23 749/25
source.Android.com [1]
700/23
sourced [1] 676/9
sources [4] 608/25 609/14
610/23 614/23
Southern [1] 565/17
Spanish [2] 732/7 757/11
speak [5] 516/17 566/9
566/14 576/19 699/20
speakers [1] 566/9
speaking [3] 554/23 624/25
625/9
speaks [1] 699/5
specific [24] 520/22 534/19
544/4 547/2 547/3 550/14
559/10 569/20 582/2 611/18
616/12 616/14 667/19 667/23
668/19 669/4 677/4 678/4
681/7 682/12 696/4 750/24
751/9 752/3
specifically [15] 544/1 548/12
551/22 590/2 593/9 595/11
614/4 616/18 652/25 654/5
659/24 664/11 668/17 669/3
755/6
specificity [1] 517/15
speculation [3] 652/22 685/16
685/18
spell [5] 561/18 669/23 670/1
708/23 716/18
Spence [22] 534/14 537/24
611/20 619/10 620/5 621/18
622/13 622/22 623/18 633/2

S	T	T	
<p>Spence... [12] 674/15 722/12 722/22 723/15 728/10 728/21 729/20 732/21 734/1 735/20 737/18 740/12 spend [2] 563/17 692/21 spent [6] 601/19 601/22 601/23 601/23 672/18 679/5 spreadsheet [1] 638/14 spreadsheets [1] 637/23 squished [1] 534/17 SRINIVASAN [1] 512/5 stack [5] 698/6 702/14 702/16 702/20 702/24 stage [1] 691/15 stakeholders [2] 717/18 727/24 stand [4] 516/14 517/6 651/11 726/22 standard [14] 522/4 574/10 592/18 721/9 730/10 742/22 742/22 754/7 754/15 758/8 758/11 758/13 758/15 762/2 standing [1] 539/18 standpoint [1] 585/7 stands [1] 730/5 start [23] 525/1 528/14 547/5 567/13 567/15 567/19 567/20 636/5 672/21 678/7 678/9 685/2 687/1 687/3 693/6 714/23 728/13 741/14 742/9 742/10 743/10 745/23 749/11 startActivity [1] 745/14 started [17] 523/3 661/24 671/25 672/23 694/9 710/1 710/6 713/24 715/25 716/9 716/12 717/19 718/19 742/24 747/2 765/23 765/24 starting [9] 528/21 576/20 576/21 576/22 577/18 590/4 635/7 713/23 737/9 starts [5] 681/4 681/20 733/19 735/5 740/11 state [10] 561/18 562/6 565/8 629/20 669/23 707/11 707/12 707/15 708/23 713/24 stated [2] 627/2 632/6 statement [1] 696/6 states [8] 511/1 511/18 564/13 565/9 565/10 567/22 568/5 593/21 static [1] 553/3 station [1] 692/19 statistic [1] 718/7 statistical [1] 615/3 statistics [3] 563/9 635/10 635/14 statute [5] 567/16 567/20 567/21 567/25 576/21 stein's [1] 653/3 stenographic [1] 767/5 step [19] 538/5 539/15 539/20 549/1 553/11 553/15 553/20 553/25 561/5 594/8 594/9 594/16 595/24 624/4 669/8 684/6 704/5 708/6 765/1 steps [3] 605/24 685/2 719/7 still [8] 519/11 523/16 538/15 550/23 657/22 696/13 697/11</p>	<p>697/17 stop [4] 525/6 649/9 696/16 707/2 stopped [4] 696/12 697/22 697/23 697/24 store [13] 557/17 557/21 557/23 558/9 559/12 559/17 559/19 671/18 671/19 671/20 672/9 685/8 696/17 stored [1] 557/15 stores [1] 671/24 straight [2] 549/3 665/13 strategy [1] 572/23 STRAUS [2] 512/4 518/9 strawman [1] 661/15 streamline [3] 644/23 658/7 658/16 streamlined [2] 658/25 659/9 street [17] 511/16 543/11 677/22 712/4 712/8 714/1 715/10 719/11 719/20 719/21 719/21 719/23 720/2 720/8 737/4 737/5 737/6 stricken [1] 653/4 strict [1] 644/1 strike [2] 590/19 742/18 STS [52] 532/9 549/10 550/22 635/20 679/8 679/12 679/20 679/22 679/24 682/17 682/18 682/21 684/3 685/15 685/24 686/18 686/22 687/14 687/22 688/2 688/18 689/18 689/19 690/2 690/6 690/7 690/8 693/12 694/6 694/20 694/25 695/3 695/5 695/9 695/13 695/15 695/17 695/19 695/23 696/2 696/4 696/9 696/10 696/16 696/18 696/19 696/23 697/8 697/14 697/20 719/8 719/24 stuck [1] 597/24 students [1] 566/15 studies [1] 670/21 study [2] 565/5 709/23 stuff [3] 732/12 737/4 741/19 subject [5] 650/7 651/10 669/17 707/24 708/14 submitted [3] 602/4 626/21 626/24 subroutine [1] 517/12 subscribe [1] 662/4 subscription [2] 662/18 663/6 subscriptions [1] 662/3 subset [1] 608/22 subsidiary [3] 579/6 579/8 666/13 success [3] 586/22 694/6 694/9 successful [6] 586/24 588/11 627/14 665/17 671/13 688/4 successfully [1] 715/9 such [12] 517/2 521/2 575/5 577/21 583/17 604/24 634/23 640/10 653/3 668/2 707/23 743/19 sued [1] 688/19 suggest [6] 660/5 732/4 734/24 757/3 757/15 758/2 suggestion [3] 646/6 646/20 715/23</p>	<p>suggestions [1] 516/3 suggests [1] 646/2 suit [6] 577/9 577/17 583/16 583/25 642/15 764/15 sum [2] 569/6 581/2 summarize [3] 583/2 583/13 584/17 summarizing [1] 573/5 summary [9] 578/15 588/24 589/17 621/21 621/22 622/6 665/21 666/5 666/8 Sup [1] 607/23 supplied [1] 559/1 supplying [1] 558/24 support [6] 532/9 601/14 601/16 728/17 729/8 734/22 supported [1] 720/20 supports [1] 643/17 suppose [1] 542/20 supposed [2] 646/11 648/13 supposedly [2] 616/13 652/19 sure [54] 513/18 514/13 515/13 522/7 522/24 524/15 529/12 535/24 540/11 540/17 542/18 542/22 546/22 548/8 549/4 552/9 554/7 558/8 559/15 564/25 573/15 587/10 601/23 615/21 618/11 625/2 635/17 647/4 647/8 647/16 648/5 650/12 657/2 660/9 662/2 663/5 670/2 671/13 672/3 673/9 673/16 675/17 694/24 696/1 697/6 700/8 717/10 718/4 725/18 726/16 741/3 741/6 756/24 758/17 surprise [1] 659/25 surprising [1] 693/21 surveys [1] 615/2 surviving [1] 595/25 SUSMAN [1] 512/3 sustained [4] 560/17 701/15 702/6 708/2 swipe [2] 680/7 680/7 switch [1] 703/17 Switzerland [1] 716/22 sworn [3] 561/23 670/5 709/3 system [76] 544/2 544/16 545/5 545/8 545/9 545/11 545/12 546/1 546/9 546/11 546/20 546/24 547/1 549/21 554/6 555/2 555/3 555/20 555/24 598/22 598/23 604/21 652/14 660/20 668/9 669/4 673/8 674/5 674/21 674/23 675/1 676/10 676/14 681/15 701/3 705/22 707/5 710/7 716/11 716/24 717/3 720/23 722/7 723/7 723/9 723/14 723/22 724/2 724/4 724/4 724/6 725/12 725/23 726/2 726/2 726/4 743/7 743/9 745/17 746/4 746/6 746/15 746/19 747/1 747/1 747/6 747/20 748/1 748/11 748/21 752/4 759/2 759/11 759/20 759/23 760/9 system's [1] 762/2 systems [4] 667/19 667/24 694/3 709/24</p>	<p>T T-O-K-I [1] 709/1 T-shirt [2] 691/16 691/18 tab [8] 607/23 608/2 608/4 609/18 726/6 727/14 731/17 743/20 table [8] 570/5 571/13 572/20 574/12 575/23 627/5 647/20 650/13 tabulation [1] 588/16 tailored [1] 514/12 take [42] 522/23 525/1 558/11 572/9 584/15 585/1 585/17 585/20 586/6 590/20 605/24 609/17 609/20 612/21 622/21 628/13 642/4 644/3 645/21 649/19 650/4 662/15 665/13 667/5 673/11 678/6 684/11 684/22 687/12 702/2 714/24 717/16 718/22 722/17 726/8 726/10 726/12 726/15 727/15 742/14 766/1 766/7 taken [9] 522/25 579/15 585/24 644/5 650/9 678/12 690/24 695/7 726/19 takes [2] 571/22 685/5 taking [2] 634/13 742/9 talk [26] 515/9 517/7 517/16 519/6 566/10 566/12 572/6 572/17 573/17 578/20 594/20 662/5 663/6 682/22 684/6 693/1 706/25 722/9 748/23 748/25 749/25 750/9 751/25 761/11 761/15 765/8 talked [11] 553/2 556/11 573/20 608/11 610/20 651/4 679/10 681/2 686/23 758/7 758/11 talking [24] 518/8 519/8 530/25 538/5 545/23 546/1 553/23 558/18 630/23 630/24 639/4 647/3 648/13 673/11 693/2 715/25 732/9 738/15 749/25 750/1 751/5 754/13 757/12 757/14 talks [1] 616/18 tap [1] 530/21 tapped [1] 529/17 tapping [1] 529/14 taps [2] 528/24 529/7 tasked [1] 716/7 tasks [2] 679/13 682/24 TC [7] 730/5 730/6 730/9 730/12 730/12 761/9 762/8 team [37] 601/14 601/16 601/20 601/22 672/13 672/14 672/17 672/18 672/19 678/19 678/19 678/23 678/24 688/16 694/9 696/17 710/4 710/14 710/16 710/18 716/2 716/2 716/13 716/14 716/14 716/20 716/22 718/17 718/18 718/22 718/24 718/25 719/2 735/7 735/11 735/11 764/20 teams [1] 718/20 tech [1] 592/20 technical [4] 675/10 690/23 691/1 706/22 technically [1] 686/15</p>

T	Document 601	Page 398 of 775	PageID #: 60977
techniques [1] 733/20	677/7 677/8 677/12 677/14 677/15 677/16 678/4 678/12	567/18 568/2 572/16 574/25 579/11 579/12 580/13 584/2	711/7 711/7 711/10 711/11 711/19 712/6 712/16 712/18
technological [2] 585/6 585/9	678/13 678/13 678/16 680/4 705/6 710/8 710/10 710/11	604/21 606/14 611/5 611/16 612/9 612/12 615/12 616/10	712/20 713/2 714/14 715/1 715/8 715/9 715/19 715/22
technologists [1] 566/13	710/12 711/2 711/19 711/23	617/7 619/2 620/11 630/21	718/6 718/18 719/15 719/18
technology [21] 566/2 568/17	711/24 712/9 712/10 712/14	631/16 665/9 665/18 690/19	720/7 720/11 721/5 721/9
581/6 584/17 594/4 634/18	712/23 713/8 713/8 713/12	697/13 714/2 714/8 714/10	721/12 721/15 721/18 721/19
634/23 670/24 679/1 713/14	713/13 714/22 714/25 715/7	725/14 725/19 730/13 748/2	721/24 723/11 723/24 724/9
720/17 730/21 732/5 732/12	715/8 715/9 715/12 715/14	thank [61] 517/23 518/19	725/8 725/24 725/25 726/3
733/16 734/12 737/9 739/23	716/5 716/25 717/12 718/14	519/16 523/18 524/8 527/24	728/2 729/16 730/4 730/9
750/15 750/20 764/22	718/15 718/23 719/6 719/10	528/10 528/11 533/17 533/18	734/12 734/13 734/20 734/20
telephone [5] 539/15 539/16	719/12 719/13 719/14 719/25	555/12 561/1 561/6 562/3	734/23 737/11 738/9 738/19
539/20 539/21 539/24	720/7 720/10 720/20 720/21	578/8 583/11 585/23 586/16	740/19 741/9 741/9 741/18
tell [14] 520/13 530/22 562/8	721/2 721/5 721/10 721/10	588/10 591/12 599/19 601/2	741/20 741/20 742/8 743/6
564/1 578/14 581/1 652/11	721/17 721/21 724/22 724/25	601/10 631/23 635/25 636/2	743/6 745/6 745/9 745/14
697/5 706/12 714/20 724/18	725/2 725/5 725/9 728/17	650/8 656/10 656/18 657/13	745/19 745/23 745/23 745/24
752/3 753/3 757/10	728/18 730/2 730/11 730/21	657/23 667/8 669/9 675/15	746/1 746/1 746/10 746/10
telling [2] 558/10 749/22	730/23 732/1 732/3 732/7	689/3 689/8 702/12 708/7	746/14 746/24 747/1 747/9
tells [1] 724/16	732/25 733/20 734/6 734/8	708/19 708/21 723/15 724/21	747/13 747/14 748/1 748/11
Temporarily [1] 707/20	734/16 735/2 735/15 735/19	726/5 727/11 728/9 728/22	748/23 751/19 757/2 757/16
temporary [3] 707/11 707/12	735/23 736/10 736/14 738/12	729/22 731/15 732/22 740/8	758/15 758/20 759/9 759/17
707/15	740/15 741/15 741/15 741/22	740/13 749/2 749/4 755/20	759/22 761/10 761/15 761/18
ten [8] 541/5 541/9 620/14	742/2 742/3 746/20 746/23	755/24 764/24 764/25 765/2	761/23 761/24 762/7 763/6
628/5 670/16 685/4 718/19	747/7 747/8 747/9 747/9	765/5 765/9 765/19	763/20
726/18	747/19 748/7 749/21 752/12	thankless [1] 671/10	theory [1] 549/1
tend [2] 574/18 646/4	752/21 752/23 752/24 753/13	Thanks [1] 765/22	there [196] 514/6 514/15
tendered [2] 655/22 655/25	754/3 754/25 756/3 756/4	that [1443]	514/24 515/24 515/25 516/2
term [10] 545/11 546/11	756/7 756/25 757/1 757/2	that's [266]	516/4 516/15 518/20 519/11
555/4 569/7 572/11 580/2	757/10 757/12 757/13 757/20	their [22] 520/18 527/5 539/14	521/8 521/23 522/10 524/12
581/4 581/13 613/19 618/19	757/24 758/15 758/23 758/24	557/3 563/24 568/13 568/24	524/21 527/17 529/21 530/4
terms [36] 515/2 517/15	758/25 759/7 759/12 759/14	593/22 612/17 646/2 646/9	531/10 532/12 532/15 533/1
520/14 569/5 572/6 572/13	759/17 759/21 760/1 760/2	649/13 651/11 655/10 669/15	533/7 533/14 535/14 536/17
572/16 574/2 574/20 578/17	761/12 761/21 761/24 762/1	669/18 674/3 680/16 684/15	537/6 537/7 537/18 541/20
578/22 579/3 579/18 580/2	762/2 762/21 763/11 763/17	685/1 716/20 748/6	541/21 542/4 543/1 546/16
580/4 580/5 580/9 580/13	764/11	theirs [1] 684/17	546/25 547/1 547/3 547/4
580/25 581/10 581/10 581/14	textClassifier [34] 720/14	them [58] 515/17 515/20	547/5 547/6 548/11 549/4
581/17 581/25 582/21 582/24	720/16 720/24 721/10 727/18	515/23 516/18 517/1 517/4	550/2 550/3 550/7 553/1
583/19 584/24 589/10 594/14	728/14 728/15 728/16 728/25	517/7 519/13 520/10 522/15	553/4 564/5 566/10 568/23
595/8 643/24 699/5 713/10	729/6 729/10 730/6 730/8	524/13 524/13 526/23 527/3	569/1 570/18 570/22 570/22
713/13 747/6	730/10 731/24 732/6 732/10	527/17 529/4 530/13 530/13	572/1 572/6 572/13 572/15
test [4] 536/21 573/16 584/1	733/1 737/24 738/4 738/5	533/6 533/14 536/8 543/1	573/1 574/10 574/20 575/5
684/18	738/15 738/18 739/16 741/22	543/17 558/23 560/3 561/11	575/9 576/6 581/14 581/24
testified [15] 525/22 561/23	749/21 751/6 752/17 752/19	561/13 561/14 570/22 584/9	582/6 582/12 583/17 588/20
576/11 580/12 582/6 589/9	756/6 757/2 757/8 757/16	589/8 596/5 607/18 614/4	588/22 588/22 592/15 595/23
594/10 603/9 611/13 623/21	758/2	616/25 617/4 630/17 638/16	598/13 605/2 607/10 607/23
633/20 658/6 670/5 709/3	TextClassifierImpl [10] 547/9	642/20 647/18 662/17 674/3	610/22 610/23 614/10 616/12
749/13	547/15 548/24 550/13 550/14	674/6 684/21 686/7 686/9	616/17 620/8 630/10 634/12
testify [11] 585/6 661/19	550/18 550/25 551/6 551/18	687/4 694/10 697/10 699/19	634/25 637/8 638/10 641/16
697/8 697/14 706/23 749/20	551/20	706/12 713/3 713/4 716/7	641/20 641/24 642/18 643/24
749/23 750/14 750/17 750/19	TextClassifierImpl.java [7]	728/2 739/24 747/23 766/7	644/1 645/6 645/18 645/19
751/3	525/11 525/15 529/25 531/14	themselves [2] 689/1 724/8	646/2 646/7 646/10 646/17
testifying [4] 555/9 555/9	552/13 552/15 553/7	then [168] 515/22 516/7 516/9	646/22 650/16 650/19 650/22
616/19 749/18	textView [52] 710/8 721/17	518/10 518/24 520/20 521/6	651/2 651/3 652/13 652/19
testimony [30] 513/15 517/11	730/10 730/17 731/1 731/3	522/10 522/16 524/12 525/17	653/18 653/19 654/4 654/10
518/20 518/23 519/5 519/7	731/7 731/11 731/12 731/12	530/9 536/17 537/8 540/6	654/13 655/10 656/21 660/1
519/15 523/21 524/2 527/4	738/12 738/13 738/17 746/21	541/5 541/8 546/1 548/25	660/3 660/24 661/6 661/6
529/1 552/24 556/14 584/16	758/23 758/25 759/1 759/4	549/9 549/10 550/7 553/3	661/25 662/16 663/3 663/7
597/19 619/13 633/15 637/16	759/7 759/8 759/9 759/11	558/11 558/18 559/18 564/21	665/9 665/15 667/17 669/14
640/2 645/6 647/9 647/11	759/13 759/15 759/16 759/21	567/6 576/3 590/12 592/5	671/5 671/16 672/21 675/1
648/23 650/7 651/11 651/25	759/22 759/24 759/25 760/3	604/5 606/22 608/18 611/1	675/9 676/15 677/3 678/23
653/3 668/12 749/14 749/17	760/4 760/5 760/7 760/9	612/13 613/16 615/13 619/18	679/22 679/23 680/1 682/6
testing [4] 541/12 543/2 685/1	760/19 760/21 760/22 760/24	620/2 622/4 624/12 625/13	682/14 682/20 683/19 691/12
686/7	761/1 761/6 761/8 761/10	630/17 644/8 651/6 652/6	696/11 696/13 696/23 697/5
Texas [2] 565/10 566/8	761/11 761/14 761/15 761/17	652/7 653/10 655/15 655/18	697/17 706/20 710/1 711/5
text [160] 529/15 530/8 533/2	761/18 761/20 761/21 761/22	657/11 670/24 671/14 675/9	712/10 716/23 717/1 717/1
540/7 540/14 540/15 540/20	762/7 762/8	676/15 677/15 678/23 679/15	717/9 718/3 718/5 718/9
540/21 541/9 542/16 542/16	TextView.java [3] 525/5	679/15 680/16 681/18 681/18	718/10 718/16 719/2 719/15
543/1 543/15 543/18 545/1	528/16 528/22	681/22 681/23 681/23 682/8	721/9 725/15 729/21 730/9
545/4 545/6 550/15 558/3	TextViews [1] 730/22	682/13 684/12 684/18 684/22	731/12 734/21 736/16 741/11
558/7 559/25 584/25 609/7	than [35] 524/1 527/16 549/7	684/25 693/8 695/11 710/5	745/7 745/21 745/21 745/23

T there... [18] 746/13 747/14 749/11 754/4 758/6 759/22 760/8 760/16 761/8 761/9 762/10 762/11 762/13 762/14 762/16 763/13 763/15 765/12 there's [57] 515/21 517/8 519/10 527/1 532/4 544/3 550/7 564/21 566/7 568/15 569/7 569/23 571/24 571/25 575/13 588/1 605/10 608/4 608/22 609/4 609/18 611/4 612/22 621/22 622/16 640/4 646/5 646/20 647/6 651/9 652/18 652/25 653/1 653/18 655/7 660/25 661/18 676/25 683/13 684/20 692/13 700/12 702/3 704/8 704/16 705/6 707/13 711/5 714/4 719/16 724/5 735/4 737/4 738/3 740/10 745/17 764/20 thereby [1] 568/11 thermostats [1] 671/22 these [81] 518/7 524/16 525/3 525/24 525/24 526/2 526/9 526/11 526/20 527/9 527/15 536/17 537/18 543/14 551/9 551/12 561/11 561/12 570/21 570/23 574/13 577/2 578/10 579/20 580/3 580/5 580/14 581/10 581/10 582/24 586/20 588/18 588/20 594/2 594/22 595/22 596/15 597/4 597/10 600/19 600/19 602/1 621/21 623/22 636/10 637/13 637/20 638/2 638/14 639/4 640/20 640/22 653/11 653/13 654/20 654/22 659/22 660/22 662/9 671/23 672/15 674/21 682/7 685/10 685/23 687/4 692/17 693/10 713/15 714/16 715/1 715/2 715/7 716/3 717/5 722/13 730/22 738/19 741/2 743/3 745/18 they [145] 522/17 524/18 526/12 531/20 536/13 540/4 541/1 541/4 541/8 546/18 549/13 551/12 551/15 554/18 557/14 557/18 559/18 560/1 565/5 566/3 568/6 568/12 569/2 569/3 569/6 569/10 569/12 569/18 569/18 569/19 571/4 571/13 572/16 572/19 572/19 572/20 572/21 574/12 575/22 579/22 580/7 580/13 581/12 584/10 584/10 584/12 586/20 586/21 586/24 587/13 588/12 589/17 590/4 594/5 594/5 598/21 598/21 604/13 609/7 609/9 614/5 614/7 617/1 627/7 627/17 627/18 627/24 630/18 640/11 640/15 644/19 644/23 645/15 645/19 646/9 648/12 650/21 652/16 655/22 655/25 667/2 674/7 675/6 675/7 675/7 675/7 675/10 678/24 678/25 678/25 678/25 679/5 682/2 682/2 684/5 684/5 684/11 684/12

684/14 684/16 684/19 684/22 685/2 685/6 685/11 686/15 687/3 687/4 690/19 697/3 698/24 700/18 707/8 707/18 712/25 713/1 717/18 721/16 721/18 721/23 723/19 724/4 724/6 724/10 725/6 725/13 735/3 735/12 735/13 739/2 741/3 741/13 742/10 746/7 746/8 746/9 748/8 748/8 748/9 748/10 752/9 758/13 760/23 763/3 763/4 They'll [1] 554/17 they're [11] 541/4 559/18 569/16 569/16 570/4 570/19 570/22 644/18 700/19 748/20 748/20 they've [5] 515/22 522/3 529/17 751/10 751/11 thing [28] 519/25 520/6 529/16 530/20 557/6 572/18 629/12 639/5 653/21 675/21 682/13 697/10 706/20 711/5 713/21 715/6 715/20 715/22 719/21 720/6 724/13 725/25 732/2 734/13 738/17 750/1 752/17 765/16 things [61] 517/16 519/14 519/24 520/10 523/24 527/7 534/19 542/24 550/13 563/9 563/10 575/21 576/7 580/15 584/13 595/9 625/17 658/16 658/25 659/9 673/10 677/16 678/3 678/17 682/12 684/16 685/9 687/24 690/19 693/24 694/1 703/12 710/18 712/2 714/15 715/15 715/16 716/4 717/21 718/21 719/24 724/5 724/9 724/10 724/16 724/18 724/20 728/18 728/19 733/2 735/17 737/7 741/1 743/14 743/17 748/17 749/12 752/10 758/19 764/19 764/21 think [131] 514/20 514/22 515/4 516/16 516/25 517/3 517/14 517/17 518/3 518/6 519/14 520/4 520/9 521/17 521/22 522/9 522/15 526/24 527/3 527/17 532/10 533/24 535/20 536/8 538/16 539/9 540/23 540/25 541/16 541/18 541/22 543/17 544/1 550/3 550/22 551/3 553/13 553/20 554/12 556/14 556/22 557/4 557/10 573/9 574/16 574/25 575/22 576/15 579/7 581/16 583/4 590/23 599/21 602/8 603/9 608/17 610/22 615/19 618/15 619/16 619/20 622/11 622/12 625/6 630/1 635/18 640/20 643/17 644/12 645/7 646/5 650/16 653/12 654/20 658/6 658/10 658/18 660/11 661/4 662/21 663/9 663/25 671/22 673/19 674/24 677/20 683/18 683/23 684/6 685/4 686/4 692/6 693/1 693/11 693/13 695/8 695/8 696/4 697/16 702/8 703/18 703/23 703/23 704/3 704/6 704/25

706/20 706/22 707/22 711/16 712/16 713/11 714/7 718/23 722/16 724/22 726/14 735/22 737/17 738/3 738/11 742/5 742/11 745/12 750/16 755/5 755/10 757/10 764/17 764/18 766/6 thinking [9] 515/7 518/11 520/13 576/23 679/6 686/1 692/22 715/21 729/9 third [19] 513/8 513/19 516/4 519/1 519/19 520/21 521/8 521/24 521/25 525/13 531/11 535/16 572/3 572/4 595/18 610/6 611/23 614/23 636/19 this [441] those [122] 519/2 519/13 520/17 521/18 521/21 522/1 522/2 524/3 524/12 528/4 533/3 536/8 536/12 541/9 542/25 544/3 544/5 544/6 554/18 559/9 559/20 559/25 560/3 565/4 565/6 568/13 568/14 568/18 568/19 569/11 573/5 573/11 574/17 575/1 577/23 579/24 583/19 584/18 585/9 585/14 590/3 590/8 590/10 590/10 590/11 590/12 590/13 593/3 593/15 593/23 595/24 596/3 596/9 596/10 596/24 596/25 597/1 597/12 597/13 597/15 597/22 598/4 598/14 600/2 600/12 600/21 603/6 604/4 604/12 604/17 605/3 605/18 607/11 614/13 616/2 616/24 617/3 617/9 617/10 618/12 624/20 625/23 626/2 627/19 632/19 633/18 633/21 635/16 635/20 636/22 637/22 638/7 638/12 642/15 642/19 642/19 662/21 668/11 668/23 670/25 673/13 676/17 677/16 678/10 685/2 703/3 703/6 703/11 704/15 714/2 720/4 721/12 721/12 729/11 732/1 733/2 734/24 741/11 758/21 761/11 761/15 766/5 though [5] 516/21 532/11 558/12 560/1 700/1 thought [12] 513/18 575/20 589/19 599/17 635/4 648/12 650/24 651/18 729/5 737/11 745/10 747/25 thousand [1] 626/15 thousand-dollar [1] 626/15 thousands [2] 625/24 674/1 three [37] 534/6 534/7 534/18 566/25 570/18 570/22 572/9 572/10 574/13 574/17 592/24 595/11 595/21 596/3 596/13 620/12 627/12 628/5 631/14 636/12 655/13 685/2 685/5 685/25 703/19 704/4 704/8 704/11 704/16 705/3 705/3 705/5 718/16 719/1 719/3 737/19 765/7 three cents [1] 627/12 three-year [1] 572/10 through [44] 516/23 517/2 525/7 525/10 525/14 525/18

526/5 526/6 526/6 526/7 532/3 536/9 538/3 538/21 539/6 547/16 570/23 573/8 575/1 576/23 577/23 580/8 583/18 587/14 588/16 590/24 591/13 605/6 623/16 637/1 646/24 652/12 681/21 682/7 685/7 698/1 698/25 705/18 705/22 719/7 722/16 742/24 744/25 756/16 throughout [1] 668/14 thus [1] 598/17 tied [1] 575/13 time [83] 513/10 518/5 521/10 522/17 526/4 555/8 555/25 563/16 563/24 567/10 567/10 569/12 571/6 574/1 574/3 576/14 579/6 582/3 585/4 585/16 585/18 601/24 602/20 603/10 605/5 608/22 611/7 614/9 629/8 630/9 630/12 630/19 637/12 638/13 649/20 649/22 655/3 655/12 659/6 659/8 666/14 671/14 672/5 679/5 682/22 683/6 683/10 687/12 687/25 691/1 692/22 697/15 699/22 701/5 702/17 705/4 708/13 710/21 712/25 713/23 715/13 717/3 717/3 724/19 726/7 726/16 727/20 729/19 730/25 740/21 741/5 741/5 741/6 742/19 749/1 754/24 755/1 756/23 762/17 763/1 764/5 765/23 766/2 timeline [2] 679/9 688/21 times [16] 596/11 596/14 596/16 597/2 597/3 600/17 604/1 620/14 626/8 626/10 628/2 628/5 633/22 646/14 668/12 678/15 tips [1] 674/6 title [4] 547/22 551/25 701/6 732/22 titled [3] 728/24 734/1 744/13 today [25] 513/16 515/8 515/17 518/20 519/15 521/6 521/12 521/18 523/24 562/14 562/15 562/18 562/25 584/21 586/6 594/10 601/20 608/12 613/11 616/19 651/6 671/18 696/13 710/13 721/24 together [14] 528/16 530/2 531/9 586/19 600/21 619/23 620/16 707/9 707/13 707/19 723/8 728/1 728/1 735/3 Toki [35] 708/22 708/25 709/2 709/8 709/11 709/12 710/10 710/16 710/21 714/4 716/18 722/19 723/2 726/5 726/21 727/13 728/24 729/25 731/15 731/20 733/5 734/3 735/4 735/22 736/18 737/14 737/23 739/11 742/11 744/13 747/18 748/13 749/8 756/2 765/3 Toki's [1] 756/15 told [6] 629/20 631/3 668/21 756/12 764/10 764/16 tomorrow [2] 521/5 765/23 too [10] 534/3 606/23 612/15 613/10 613/23 650/13 679/3

U
user... [41] 692/2 692/23
692/24 693/4 694/7 694/12
710/8 710/22 711/25 712/18
712/25 715/14 719/7 720/3
721/21 724/7 725/13 731/6
734/18 734/25 735/25 743/14
745/7 745/8 745/10 745/16
745/25 746/15 746/15 746/17
746/24 747/5 747/15 748/2
748/10 748/11 754/23 756/22
761/19 764/19 764/22
users [28] 542/22 612/17
635/11 635/15 635/20 641/3
677/13 678/12 679/16 680/8
680/16 682/17 683/11 683/16
683/25 684/3 685/3 685/6
685/11 685/11 685/14 685/23
693/2 711/24 719/6 741/14
748/7 748/25
uses [10] 550/22 550/22
552/18 590/25 592/20 592/20
671/21 706/18 745/19 746/20
using [49] 535/1 537/4 537/9
537/14 537/21 538/9 538/12
539/9 539/17 539/22 539/24
540/1 542/14 546/11 567/24
576/18 590/7 604/14 606/2
606/4 606/4 611/9 614/16
614/20 615/25 620/3 625/15
634/17 635/12 635/15 678/12
712/25 714/23 721/9 724/20
725/13 725/24 729/8 729/16
738/20 741/14 742/17 743/3
743/4 743/14 743/17 748/10
759/8 760/6
usually [4] 677/15 686/9
713/21 734/18
utilize [1] 530/11

V

vague [1] 696/1
valid [7] 571/19 571/23 572/2
574/9 574/12 582/7 750/12
validate [1] 581/6
validity [5] 574/23 582/4
582/19 594/12 667/5
valuable [1] 634/20
valuation [2] 563/11 566/17
value [8] 571/10 574/11 581/5
590/25 594/3 633/21 643/3
694/4
values [1] 514/11
variable [1] 517/12
variables [1] 604/4
variety [2] 540/3 542/22
various [10] 550/2 594/6
595/4 602/5 641/13 674/22
675/24 676/18 678/10 685/8
verge [1] 608/11
verify [1] 630/6
version [42] 521/5 529/20
531/9 531/15 531/23 532/1
532/7 532/8 532/9 544/15
546/5 546/24 546/24 551/7
552/3 554/20 554/21 558/15
605/18 608/10 608/12 608/14
610/11 611/4 616/11 641/4
652/14 669/4 686/13 692/7

692/9 711/17 711/17 718/18
719/3 719/23 740/11 740/15
741/18 759/23 761/23 762/20
Version 1 [3] 740/11 740/15
762/20
Version 7 [1] 558/15
Version 8 [4] 532/8 546/5
546/24 611/4
Version 9 [3] 531/15 532/9
551/7
versions [24] 524/16 543/20
544/1 544/3 546/14 547/10
547/12 605/3 612/8 612/12
612/12 612/18 613/8 613/23
614/12 614/24 636/21 637/14
637/14 653/2 662/4 668/13
669/1 737/5
Versions 8 [1] 544/1
versus [7] 555/1 574/14
626/19 634/10 634/13 641/21
643/21
very [50] 517/23 519/16
519/21 519/23 526/13 527/23
533/17 545/12 545/15 550/4
550/4 556/19 561/6 571/19
580/2 597/7 604/16 609/7
611/18 627/14 642/25 643/5
643/23 644/1 645/15 653/24
656/4 656/9 672/17 674/25
675/3 675/12 684/14 686/6
687/11 687/11 689/21 690/25
693/6 697/21 717/8 723/13
733/25 735/4 736/16 737/8
737/17 749/4 750/5 761/4
via [1] 610/11
viable [1] 634/25
video [5] 555/16 556/6 691/19
691/20 691/22
videos [1] 540/3
view [7] 524/14 550/9 589/4
640/14 644/19 717/20 717/23
viewing [1] 614/2
virtual [2] 672/16 672/19
virtue [1] 666/21
vision [1] 550/9
visits [1] 734/9
volume [3] 511/12 606/20
635/22

W

W-E-I-N-S-T-E-I-N [1] 561/21
wake [1] 688/14
Walgreen [1] 564/14
walk [14] 516/23 570/23
572/20 572/23 573/8 573/17
580/8 590/24 591/13 623/16
637/1 646/24 719/6 744/25
walked [6] 532/3 538/2
538/21 539/6 547/16 698/1
wall [2] 683/19 693/5
Wallingford [1] 524/20
walls [1] 593/10
want [57] 521/10 521/18
522/1 522/6 522/12 522/13
527/3 527/17 554/7 556/2
557/2 587/10 623/16 632/25
654/6 655/17 662/15 676/14
677/14 680/14 684/12 688/4
695/15 695/17 696/21 712/19
721/17 721/17 722/17 724/21

725/11 727/24 737/14 743/3
743/5 743/7 743/7 745/8
745/10 745/13 745/15 746/9
746/16 746/17 747/21 747/23
748/22 749/11 749/13 753/16
759/7 760/2 762/1 762/19
762/24 763/16 765/22
wanted [23] 513/9 513/14
515/16 526/18 538/14 629/12
651/18 656/2 680/3 680/20
711/25 714/9 717/8 717/11
719/11 725/12 745/25 747/20
759/6 759/12 760/1 761/22
761/24
wants [5] 521/2 587/4 662/24
682/8 759/14
was [372]
Washington [2] 565/9 566/12
wasn't [13] 522/10 541/19
541/20 548/24 560/23 617/2
645/22 647/10 647/16 682/6
717/1 717/1 717/8
water [1] 573/16
way [70] 514/15 514/19 517/8
517/9 518/4 521/13 526/21
536/24 542/18 550/22 550/23
552/5 557/20 568/6 568/13
594/17 595/25 611/6 615/17
615/24 619/20 620/24 623/10
625/6 632/17 639/20 640/2
641/12 641/16 641/17 641/24
644/8 645/10 648/13 653/21
659/3 663/7 675/11 675/23
676/14 677/24 679/4 680/2
680/4 680/5 680/13 680/21
680/23 681/6 682/9 682/11
682/12 684/7 684/12 686/24
696/14 702/15 703/1 707/16
713/7 713/8 714/7 722/13
729/18 742/22 743/14 743/18
743/18 754/22 756/21
ways [4] 555/5 729/5 729/10
729/12
we [418]
we'd [3] 577/22 645/11
649/24
we'll [9] 521/6 521/7 525/1
562/25 657/10 667/8 722/17
734/14 765/24
we're [31] 513/8 513/18
515/20 516/10 516/13 516/19
517/1 518/6 518/8 522/7
522/9 526/24 531/19 567/6
577/14 577/15 611/9 619/23
630/23 649/19 649/19 657/2
686/1 690/8 703/8 703/9
708/12 708/14 716/3 730/19
747/11
we've [19] 514/17 514/21
514/24 522/24 524/12 533/24
565/3 584/16 585/1 586/4
635/23 659/2 668/11 668/24
680/11 691/25 698/8 743/4
754/22
web [6] 540/4 540/9 673/22
673/24 676/12 739/25
website [16] 673/18 674/2
675/19 681/7 698/13 698/18
700/25 711/10 720/1 739/16
739/17 739/19 739/23 743/23

743/25 744/5
Wednesday [1] 511/10
Wein [1] 653/3
Weinstein [41] 561/16 561/20
561/22 562/5 562/7 562/14
562/19 563/14 566/17 566/24
583/13 586/17 589/11 599/17
601/7 604/7 607/22 607/23
610/6 611/18 614/15 618/5
619/13 626/18 633/24 635/6
636/5 645/17 652/2 652/5
652/7 652/20 657/21 657/22
657/25 661/13 664/1 665/2
667/12 669/8 765/17
Weinstein's [2] 519/7 519/22
welcome [3] 523/20 528/12
727/8
well [112] 516/9 519/3 519/23
533/14 535/18 535/23 537/20
540/14 542/4 545/11 546/25
547/5 548/22 552/10 552/25
553/17 554/9 555/17 556/3
558/1 558/23 560/5 563/8
565/11 565/18 567/5 567/11
567/15 567/23 569/23 569/24
570/23 574/16 578/15 578/16
579/21 579/25 583/22 584/19
585/7 586/24 589/16 590/19
594/20 602/15 606/19 607/16
608/10 608/22 611/3 611/17
613/15 613/16 622/11 623/10
624/2 625/11 632/22 633/14
634/24 635/4 635/22 638/3
639/7 639/8 639/13 640/10
641/14 644/18 645/1 655/24
656/6 656/23 658/22 660/24
665/12 665/15 666/12 666/25
667/2 668/22 671/13 672/24
680/12 684/5 684/18 686/11
690/15 691/5 691/8 691/13
692/23 693/6 694/20 695/5
695/13 696/23 696/24 697/1
698/12 699/18 699/22 701/14
701/18 702/14 703/25 704/21
706/19 737/8 741/3 742/17
765/17
well-defined [1] 671/13
went [13] 536/9 564/5 590/16
592/17 593/20 610/16 653/18
668/8 670/19 670/24 672/13
672/13 672/21
were [174] 514/25 514/25
515/15 522/2 523/21 524/23
529/21 530/25 531/6 531/10
532/15 533/7 533/14 536/16
537/18 538/5 538/22 540/13
546/7 548/23 551/6 555/9
555/9 556/8 558/18 560/6
560/12 560/21 561/12 565/5
568/17 576/15 577/19 578/17
582/4 582/24 588/11 588/12
590/5 590/9 590/11 590/13
591/24 591/25 592/3 592/11
592/14 592/15 593/1 593/5
593/12 593/14 594/6 596/9
599/17 599/21 601/11 605/18
605/20 605/21 605/25 605/25
606/4 606/8 606/9 606/17
606/22 607/8 607/11 608/8
610/15 610/21 611/2 611/4

W
were... [100] 612/17 614/2
614/5 614/10 614/16 614/20
617/7 621/24 626/18 630/17
631/3 633/15 634/20 634/25
635/11 635/15 636/7 636/7
636/10 636/21 637/13 637/18
638/14 638/19 639/5 640/25
641/11 642/2 642/18 643/8
643/9 643/15 645/7 645/25
647/7 648/12 650/24 653/15
654/25 660/19 661/25 662/16
665/2 665/9 665/11 665/15
667/18 668/25 677/20 678/3
678/4 679/8 693/2 697/7
697/13 712/2 713/2 713/23
714/23 714/25 715/7 715/9
715/16 715/17 716/23 717/4
717/4 717/9 718/1 718/5
718/20 719/9 721/18 721/20
725/13 726/1 727/18 729/9
731/25 732/1 733/11 733/22
734/8 734/10 735/22 739/25
741/6 741/12 741/13 741/19
742/10 746/13 750/17 753/3
756/10 758/18 759/10 760/23
763/16 764/10
weren't [7] 515/1 645/20
651/1 654/11 717/10 718/4
741/3
what [312]
what's [32] 535/21 546/21
554/3 554/24 555/17 557/3
568/4 571/15 572/3 574/1
574/3 578/11 578/20 578/25
583/20 584/7 587/21 590/14
644/1 652/17 653/9 675/24
676/1 678/2 713/7 729/2
729/7 729/24 738/2 751/2
751/14 758/6
whatever [7] 515/10 568/10
677/19 694/3 713/1 732/8
739/22
WhatsApp [3] 745/5 746/14
746/18
when [87] 514/23 523/21
528/24 529/7 542/7 546/18
554/18 557/14 557/17 557/23
570/8 571/5 576/12 576/15
589/18 590/11 620/16 632/13
638/3 639/3 643/1 651/4
655/22 657/3 658/17 671/25
679/12 682/21 682/23 683/10
683/24 684/8 684/8 685/14
685/23 686/2 686/12 687/14
688/22 688/24 688/25 693/6
694/2 694/9 694/10 696/16
697/5 697/15 707/7 707/11
711/5 711/7 711/14 711/25
714/18 714/18 715/14 716/8
716/20 718/1 719/13 725/13
725/25 727/10 732/13 732/15
738/12 738/12 740/25 741/11
741/23 742/2 746/22 748/5
751/2 752/9 757/1 757/25
758/20 760/22 763/10 763/20
764/4 764/5 764/6 764/7
764/8
whenever [10] 567/6 680/3

680/19 712/14 717/17 720/6
727/23 733/13 739/21 762/13
where [69] 520/10 521/25
524/19 530/8 530/18 530/22
532/25 535/11 537/6 537/11
538/22 538/22 539/12 543/23
549/18 552/14 567/12 567/19
569/7 569/11 572/11 574/1
574/3 575/6 575/25 577/5
589/21 595/19 610/20 621/23
622/25 630/14 643/24 643/25
645/6 661/9 670/13 670/17
674/2 675/1 677/13 679/20
680/20 681/21 681/25 682/15
692/1 695/25 709/12 712/17
713/24 716/20 717/23 720/21
722/3 723/17 723/17 723/22
724/18 724/25 731/1 736/10
736/12 737/9 739/3 744/4
746/3 746/22 754/12
where's [1] 722/4
whereas [3] 621/19 621/21
622/3
Whereupon [21] 522/25
526/16 527/25 583/8 585/24
587/8 588/6 599/14 632/2
645/5 649/15 650/9 651/21
656/11 661/3 663/12 698/21
700/5 726/19 753/11 755/21
whether [32] 516/13 516/17
517/8 537/17 546/17 546/22
571/23 573/22 574/9 594/2
614/1 634/21 636/7 643/16
650/20 654/18 659/22 662/8
665/25 666/12 666/20 677/3
679/13 679/14 682/24 697/16
717/5 717/10 718/5 732/6
750/6 750/11
which [73] 522/12 529/22
531/11 532/18 541/1 549/5
552/15 553/18 553/20 560/20
565/15 565/24 570/7 578/22
581/21 584/9 584/20 585/15
586/17 588/15 591/18 593/24
598/5 610/15 615/13 621/13
621/17 621/21 626/24 639/22
641/4 641/8 641/14 642/15
643/22 647/22 647/24 648/22
648/22 651/8 658/15 659/8
665/5 668/8 668/8 668/18
669/3 672/7 675/4 675/12
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683/3 690/8 697/21 699/11
705/9 705/14 710/6 710/24
716/2 721/7 724/9 726/3
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754/2 754/10 761/24
whichever [1] 681/20
while [7] 518/12 540/18
572/24 648/19 711/18 717/19
764/10
white [2] 684/2 761/3
who [23] 515/1 519/2 522/1
591/22 606/8 637/1 638/22
641/3 651/23 670/15 670/15
674/1 676/15 681/22 682/8
683/11 687/3 693/2 708/15
727/19 743/24 748/2 751/14
whoever [1] 521/2
whole [8] 540/5 549/21 621/9

624/21 629/6 719/20 719/22
731/10
why [38] 513/17 520/2 520/12
520/22 521/21 521/23 539/9
561/13 562/14 568/4 570/4
570/11 576/5 579/11 586/23
589/1 632/23 636/10 642/6
642/11 642/11 661/5 665/13
679/24 680/2 682/4 687/2
688/12 688/18 707/13 725/9
727/22 730/12 730/17 731/8
739/20 747/18 748/13
wide [2] 555/25 686/17
widget [1] 731/5
widgets [1] 724/7
will [96] 513/19 514/7 515/22
515/23 519/21 520/1 522/11
522/22 524/13 526/11 527/15
529/14 530/23 541/10 549/15
554/15 554/19 554/20 561/14
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563/24 574/18 574/24 577/23
585/22 586/13 586/25 588/5
607/17 607/17 622/5 649/13
654/8 656/7 656/24 657/20
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700/3 703/21 706/23 708/15
708/16 711/6 712/7 712/14
712/20 714/16 717/15 720/11
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743/4 743/9 745/23 746/7
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761/23 762/8 762/8 762/11
762/14 763/19 765/7 766/1
766/11
willing [4] 584/15 586/25
590/5 634/16
willingness [1] 521/15
Wilmington [1] 511/16
win [2] 595/16 595/20
wind [1] 589/17
windows [1] 573/16
winning [1] 632/15
wish [2] 568/24 684/5
wishes [1] 569/13
withdraw [1] 537/16
within [7] 537/18 544/3 545/6
545/12 608/20 622/8 704/15
without [12] 515/18 539/24
567/24 568/1 568/8 633/9
652/24 664/8 699/10 699/19
704/18 720/6
witness [41] 515/22 518/4
522/8 524/6 528/8 533/16
560/25 561/15 561/22 646/24
647/9 648/15 648/19 649/4
649/5 650/6 650/21 650/25
651/4 651/9 651/10 651/11
651/24 654/16 669/11 669/18
669/19 670/4 689/2 691/23
698/25 701/14 706/22 708/8
708/11 708/16 708/20 709/2
749/3 755/7 764/23
witness' [1] 651/24
witnesses [6] 563/23 646/9

655/21 655/25 708/13 708/17
won't [6] 526/22 541/25
575/18 699/16 700/3 708/3
wonder [1] 526/22
wondering [1] 516/2
word [10] 558/11 559/13
631/9 631/15 640/14 655/16
695/25 706/18 706/19 720/5
worded [1] 535/20
words [8] 542/21 577/10
592/1 705/15 705/19 705/23
706/4 706/11
work [54] 514/2 520/23 521/7
547/2 549/10 550/15 562/10
563/15 564/16 564/19 565/19
565/25 566/5 570/2 576/24
595/1 659/11 671/10 671/12
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680/5 686/5 689/21 690/4
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696/24 709/12 709/13 710/19
710/22 710/24 710/25 713/8
716/21 717/10 717/21 718/4
718/5 733/13 737/8 741/3
747/24 748/16 750/18 758/15
758/21 759/18 763/20
worked [25] 573/24 601/25
650/5 670/23 671/4 685/4
688/18 693/15 709/14 709/17
710/3 710/7 711/1 713/9
713/17 717/22 718/6 718/12
718/13 727/20 749/13 749/20
752/1 752/4 752/6
working [34] 516/13 516/19
540/7 541/10 576/11 601/19
672/6 672/19 672/21 672/23
688/22 690/19 694/10 696/12
696/16 697/22 697/24 710/6
710/18 712/23 714/23 716/3
716/9 727/18 727/23 735/12
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741/13 741/19 763/16 764/11
works [25] 522/20 540/14
540/20 557/21 568/7 573/15
601/14 601/16 660/20 674/4
677/11 680/17 680/18 681/6
684/7 693/13 714/6 714/8
719/6 735/5 739/24 741/8
744/2 751/6 751/7
world [55] 569/17 569/25
570/21 571/3 571/5 571/7
571/20 571/21 571/24 572/5
572/5 572/11 572/14 572/22
572/22 573/3 573/13 573/25
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574/21 574/24 580/13 580/14
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592/24 593/13 593/25 594/2
594/10 594/13 594/17 594/23
595/2 595/22 596/5 596/8
596/16 596/18 596/18 596/20
597/5 597/8 619/25 625/7
643/14 643/22 643/24 644/7
665/16
worth [1] 573/9
would [241] 514/2 516/15
516/20 516/20 516/25 517/9
518/10 518/21 519/8 519/14
519/25 520/16 520/23 522/15
522/15 522/16 522/18 526/25

W
would... [223] 528/19 531/17
539/16 539/21 539/25 540/6
540/7 540/23 541/16 541/20
541/21 548/23 549/2 549/9
551/13 555/21 555/24 558/8
559/13 559/18 561/10 569/18
570/10 571/3 575/22 576/24
578/20 581/7 581/10 582/21
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618/13 618/15 618/16 618/19
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625/10 627/8 628/14 628/14
628/16 630/16 630/18 630/20
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647/4 647/17 647/19 647/22
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693/12 694/16 701/18 702/2
704/21 707/21 707/23 711/8
711/8 711/10 711/12 712/21
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720/5 720/5 720/7 720/9
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732/16 734/16 734/16 734/18
734/18 735/2 735/2 735/14
736/6 736/7 737/16 739/10
739/17 739/18 740/1 741/3
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744/1 745/9 746/1 746/15
746/16 746/25 746/25 747/1
747/5 751/8 756/8 757/13
758/15 758/19 758/24 759/13
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761/15 762/18 764/20 766/4
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wouldn't [21] 527/3 542/1
549/10 549/13 558/7 581/18
582/1 611/20 659/25 660/5
662/15 699/7 720/10 721/23
725/21 751/10 752/10 758/18
761/17 761/18 761/25
wound [1] 589/21
write [16] 554/15 554/17
554/18 689/19 690/2 690/3
713/15 713/18 713/19 714/8
714/10 733/14 736/23 736/25

748/6 748/8
writes [1] 554/11
writing [5] 554/9 555/1 690/5
717/19 740/1
written [8] 554/21 565/19
580/25 581/19 581/22 735/6
751/10 758/6
wrong [7] 517/19 527/1 604/4
604/5 606/22 606/23 692/13
wrote [7] 576/12 637/12
731/23 732/15 738/4 749/24
751/6
Y
Yahoo [3] 709/17 709/18
709/20
Yea [1] 674/1
yeah [44] 518/15 524/4 532/8
548/7 548/7 550/2 552/21
573/11 574/7 598/11 673/8
676/10 680/1 683/17 688/21
691/11 692/7 692/16 692/17
693/11 693/21 695/17 697/9
697/21 697/25 701/11 703/6
703/8 703/13 703/14 704/8
705/20 706/15 706/18 711/18
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741/16 756/24 758/13 760/15
762/14
year [15] 566/8 572/10 593/23
610/7 610/10 618/19 634/9
634/13 634/18 634/22 638/9
639/13 687/19 687/23 688/6
years [27] 566/10 579/18
601/19 602/4 629/2 630/3
630/15 634/10 634/14 644/13
658/12 658/19 658/21 658/23
670/23 670/25 671/5 671/7
672/5 672/18 672/25 689/13
693/15 697/24 709/15 753/1
756/10
Yelp [1] 675/3
Yep [4] 535/3 543/9 543/21
543/23
yes [346]
yes.The [1] 704/12
yesterday [25] 513/12 523/20
525/22 526/23 529/1 531/1
531/6 531/24 533/3 533/5
536/10 538/3 540/4 541/17
541/23 543/7 547/16 549/14
552/24 553/11 554/13 557/4
558/16 633/16 651/4
yet [5] 552/14 598/5 683/16
699/11 754/10
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you'll [1] 657/11
you're [59] 518/11 528/12
539/19 540/10 540/23 545/23
546/1 546/4 546/8 546/11
546/14 547/20 549/3 549/5
552/10 553/4 571/5 573/14
573/19 576/18 588/2 606/14
606/17 616/19 616/21 618/5
620/3 621/7 622/24 626/7
626/13 628/9 633/5 633/5

638/3 644/16 668/1 669/2
681/10 704/3 709/1 712/6
738/12 739/21 749/14 749/18
749/22 749/22 750/2 750/6
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751/5 751/8 751/12 751/14
757/12
you've [12] 564/24 565/19
580/4 589/19 601/25 611/12
672/14 673/5 689/12 693/15
712/16 719/5
you-all [1] 650/4
younger [2] 692/7 692/9
your [322]
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Zurich [3] 678/19 716/22
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EXHIBIT C

1
 2 IN THE UNITED STATES DISTRICT COURT
 3 FOR THE DISTRICT OF DELAWARE
 4 ARENDI S.A.R.L.,)
 5)
 6 Plaintiff,) C.A. No. 13-919-JLH
 7 v.)
 8 GOOGLE LLC,)
 9 Defendant.)

10
 11 Thursday, April 27, 2023
 12 8:35 a.m.
 13 Jury Trial

14 Volume IV

15 Sealed

16 * * *

17
 18 844 King Street
 19 Wilmington, Delaware

20 BEFORE: THE HONORABLE JENNIFER L. HALL
 21 United States Magistrate Judge

22 APPEARANCES:

23
 24 SMITH, KATZENSTEIN & JENKINS LLP
 25 BY: NEAL C. BELGAM, ESQ.

1 -and-

1 APPEARANCES CONTINUED:

2
 3 SUSMAN GODFREY, LLP
 4 BY: JOHN LAHAD, ESQ.
 5 BY: KEMPER DIEHL, ESQ.,
 6 BY: MAX STRAUS, ESQ.
 7 BY: SETH ARD, ESQ.
 8 BY: KALPANA SRINIVASAN, ESQ.
 9 Counsel for the Plaintiff

10 POTTER ANDERSON & CORROON
 11 BY: DAVID ELLIS MOORE, ESQ.

12 -and-

13 PAUL HASTINGS
 14 BY: ROBERT W. UNIKEL, ESQ.
 15 BY: CHAD J. PETERMAN, ESQ.
 16 BY: MATTHIAS A. KAMBER, ESQ.
 17 BY: ANDREA ROBERTS, ESQ.
 18 Counsel for the Defendant

19 -----

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

2
 3
 4 (Proceedings commenced in the courtroom beginning at
 5 8:35 a.m.)

6 **THE COURT:** Good morning, everyone. Please be
 7 seated. We're here for the fourth day of trial. I don't
 8 know about the rest of you, but I'm sure glad we are doing
 9 the four-day trial week this week.

10 So there's a couple of things I wanted to bring
 11 up. The first is that I understand that there was an
 12 issue with one of the bridges getting over the canal south
 13 of here, and so we've got one bridge that was closed for
 14 an accident and another one that is closed for repairs.
 15 So we've got jurors that are having a hard time getting
 16 into Wilmington. So we may have to get started a little
 17 late because of that. So we are monitoring. We are
 18 missing two right now, and I think they're going to be
 19 stuck for a little while. I think it's a mess down there.
 20 That's the first thing I wanted to bring up.

21 The other thing I wanted to bring up was -- had
 22 to do with jury instructions. And so I know that we had
 23 put in our order following the pretrial conference that we
 24 would do a charge conference after the close of the
 25 evidence. I think we need to get a jump on that. So what

1 I was thinking is that we could reconvene with counsel
2 tomorrow morning. I don't want to do it at 8:30 tomorrow
3 morning. The problem is that I have matters from 10:00 to
4 noon, from 12:30 to 1:30, from 1:30 to 2:30, and from 3:00
5 through the rest of the afternoon. So I think the only
6 choice we have is to do it at 8:30 tomorrow morning.

7 So I was looking over the proposals, which came
8 in, at this point, a few weeks ago, and it seems to me
9 that some of these are going to be easy changes because
10 we've had claims drop out. I don't know if we're also
11 going to have defenses drop out as well. But once we make
12 those changes, it seemed to me that most, if not all, of
13 the rest of the disputed proposals were semantic
14 differences. I didn't know if there were actually any
15 disputes as to what the law was as opposed to just how the
16 law should be presented in the jury instructions.

17 So I think what might make sense is for the
18 parties to get together and give me an updated joint
19 proposal by tomorrow morning at 7:00 and then we can just
20 sit through and see how far we can get. And if by
21 10:00 a.m. I'm not able to make a decision on all of this
22 or if we don't get through it all, then we can work in
23 chambers to get an updated Court proposal and then have
24 objections filed on that.

25 Does anybody have a better idea about how we

1 should proceed?
2 **MS. SRINIVASAN:** No, that sounds fine, Your
3 Honor. We will see, obviously, how much we can narrow
4 things. If for some reason there are outstanding disputes
5 after our conference tomorrow, perhaps we can submit
6 competing proposals on just those few things that remain
7 for the Court to resolve on the papers and have a
8 conference on Monday morning, if we need to, before the
9 jury comes in about what's still outstanding.

10 **THE COURT:** Yes. I understand. By the way, I
11 don't need it in any sort of different form than I have it
12 here. I think this was very helpful to me to see where
13 the proposals came from.

14 Mr. Unikel, any ideas?

15 **MR. UNIKEL:** No, that's fine. The only other
16 thing, though, Your Honor, is I assume we're going to roll
17 the verdict form into that as well because we're going to
18 have to do a whole new verdict form based on what we
19 submitted the first time.

20 **THE COURT:** Yes. That's a great idea and I'm
21 glad you brought that up. So proposals regarding the
22 verdict form should be filed at the same time.

23 The next thing I wanted to ask was how we are
24 intending to proceed today in terms of witnesses.

25 **MS. SRINIVASAN:** Your Honor, Google is going to

1 call their corporate representative to start. And then --
2 we had had a discussion earlier. We had the corporate
3 representative on our witness list. We agreed with
4 counsel that they could call their corporate
5 representative in their case and we would be allowed to do
6 a full and bounded cross-examination, and then we would
7 rest after that point.

8 **THE COURT:** Okay.

9 **MS. SRINIVASAN:** So that's our intention today
10 after the first witness.

11 **THE COURT:** Got it.

12 **MR. UNIKEL:** Yes. So the order of witnesses
13 for today is going to be Mr. Choc, who is our corporate
14 representative, then the Anind Dey deposition
15 designations, then our expert, Dr. Martin Rinard, then the
16 James Miller deposition designations. And if we have
17 time, beginning expert on validity at Fox. We are
18 prepared to move through those efficiently because I know
19 time is an issue.

20 **THE COURT:** Okay. So we're not hearing from
21 your non-infringement expert?

22 **MR. UNIKEL:** Yeah, that's Dr. Rinard.

23 **THE COURT:** Right. Understood.

24 **MR. UNIKEL:** And one question, Your Honor. So
25 at the close of evidence, obviously we do have 50(a)

1 motions that we're planning to present. We're planning to
2 present them based on your suggestion by writing at the
3 end of the day.

4 The question was whether you wanted me to make
5 any sort of oral statement about that on break?

6 **THE COURT:** Yes. I think that would be
7 helpful. Why don't you make an oral statement about it on
8 break and then you can put it in writing.

9 Any objection to that procedure? That's
10 consistent.

11 **MS. SRINIVASAN:** No, Your Honor.

12 **THE COURT:** Okay. Please have a seat. So for
13 the deposition designations, have the parties had a chance
14 to look at the Third Circuit's model jury instruction on
15 depositions? I was -- I would usually read that. It's
16 very basic. I can pull it up right now. If you all want
17 to take a second, you might pull it up as well.

18 **MR. UNIKEL:** I have my phone off. I'm sorry,
19 Your Honor.

20 **THE COURT:** That's fine.

21 **MR. UNIKEL:** I believe you had delivered an
22 instruction similar to that in the preliminary
23 instructions on deposition designations.

24 **THE COURT:** I think you are accurate in your
25 recollection.

1 MS. SRINIVASAN: You did.
 2 THE COURT: So I would propose that I read it
 3 again before we present the deposition.
 4 MR. UNIKEL: That's great.
 5 THE COURT: Is that fine?
 6 MS. SRINIVASAN: No objection, Your Honor.
 7 THE COURT: Okay. So what I will just have
 8 counsel do is the party proffering the deposition just
 9 say, Your Honor, at this time we'd ask the Court read the
 10 instruction on the deposition testimony.
 11 MR. UNIKEL: Right. One thing -- again, I'm
 12 trying to make things as fast as possible for the jury.
 13 There are a list of exhibits that there are no
 14 objections to that have been put into the video, as you're
 15 aware. We were going to preadmit those. I can either
 16 make the motion before the video is played or we can
 17 preadmit them now, I suppose, depending on how Your Honor
 18 wants to handle it.
 19 THE COURT: So the exhibits will be used with
 20 the witness; we're going to see the exhibits. The witness
 21 is going to describe what the exhibits are while they are
 22 on the stand?
 23 MR. UNIKEL: Correct. And as I had asked the
 24 other day, it's going to be side by side. So you're going
 25 to have the witness's testimony -- this has been shown.

1 THE COURT: All right. We will get an update
 2 on where the jurors are, and we will hit the bench when
 3 they all get here.
 4 MR. UNIKEL: Thank you very much.
 5 (Whereupon, a recess was taken.)
 6 THE COURT: All right. Please be seated.
 7 We've got all the jurors here. Are we ready to bring them
 8 in?
 9 MS. SRINIVASAN: Yes, Your Honor.
 10 MR. UNIKEL: Can we wait one moment?
 11 THE COURT: Yes.
 12 MR. UNIKEL: Our corporate representative was
 13 just using the restroom.
 14 THE COURT: Understood.
 15 Ready?
 16 MR. UNIKEL: We are. Thank you, Your Honor.
 17 THE COURT: All right. Let's bring in the
 18 jury.
 19 (The jury enters the courtroom at 9:17 a.m.).
 20 THE CLERK: Your Honor, the jury.
 21 THE COURT: Welcome back, ladies and gentlemen.
 22 Please have a seat. We are here for the fourth today of
 23 trial. Let's have Google call its next witness.
 24 MR. UNIKEL: Good morning, Your Honor. Google
 25 calls Mr. Ted Choc.

1 THE COURT: This is for the depositions, okay.
 2 MR. UNIKEL: Right. For the depositions.
 3 Because otherwise the testimony won't make sense if they
 4 can't see the exhibit that he's testifying about.
 5 THE COURT: Understood. Any objection?
 6 MS. SRINIVASAN: We don't have any objection to
 7 that. The video does need to be played for purposes of
 8 laying the foundation, but we won't object if they want to
 9 preadmit so they're not interrupting the video.
 10 THE COURT: Okay. That's fine. So we will ask
 11 for admission of those in advance. And if there's no
 12 objection, they will be admitted.
 13 MR. UNIKEL: So should I just give that list at
 14 the time it's played or should I provide the list for you
 15 now and then I can just say preadmit the exhibits?
 16 THE COURT: I think it would be better just for
 17 what the jury has seen so far, if they hear you ask to
 18 have the exhibits admitted and then I'll admit them so
 19 they understand clearly that they're in evidence.
 20 MR. UNIKEL: Great. Thank you, Your Honor.
 21 MS. SRINIVASAN: That sounds fine, Your Honor.
 22 THE COURT: Okay. All right. Anything else we
 23 need to address?
 24 MS. SRINIVASAN: Not for Arendi, Your Honor.
 25 MR. UNIKEL: Not for Google, Your Honor.

Choc - Direct

1 THE CLERK: Please state and spell your name
 2 for the record.
 3 THE WITNESS: My name is Ted Choc. It's T-E-D
 4 C-H-O-C.
 5 TED CHOC, having been called as a witness, being
 6 first duly sworn under oath or affirmed, testified as
 7 follows:
 8
 9 THE CLERK: Thank you. Please be seated.
 10 DIRECT EXAMINATION
 11 BY MR. UNIKEL:
 12 Q. Good morning, sir.
 13 A. Good morning.
 14 Q. Would you please introduce yourself to the jury.
 15 A. My name is Ted Choc, and I work for Google.
 16 Q. Sir, where do you live?
 17 A. I live in Menlo Park, California.
 18 Q. Is that where you grew up, sir?
 19 A. It is not. I grew up in -- I was born in Wichita,
 20 Kansas and I moved to Georgia when I was six, and that's
 21 where I grew up.
 22 Q. Sir, where did you go to college?
 23 A. I went to Georgia Tech.
 24 Q. And what did you study there?
 25 A. Computer science.

1 Q. When did you graduate?

2 A. 2004.

3 Q. After graduating from Georgia Tech, what did you do

4 for your first job?

5 A. When I graduated from Georgia Tech, I worked at Cisco

6 Systems in California.

7 Q. What did you do for Cisco Systems?

8 A. When I worked for Cisco -- I was a software engineer.

9 I worked on configuration software, basically setting

10 up -- if you've got a lot of firewalls, protecting your

11 network from bad people. I worked on the software that

12 helped manage it, like -- often like Walmart would buy,

13 like all your units for all your stores at once, instead

14 of doing one at the time.

15 Q. And about how long did you work at Cisco?

16 A. I worked there three years.

17 Q. And after Cisco, did you go to Google?

18 A. Yes.

19 Q. What year did you begin at Google?

20 A. I joined Google in 2008.

21 Q. And can you please describe for the jury your roles

22 at Google?

23 A. Sure. So when I joined in 2008, I joined as the most

24 junior level software engineering. You call them ICs,

25 which is individual contributor. And I worked on -- my

1 beginning, the menu. If you wanted to bookmark something,

2 I built the first version of bookmarks. I collaborated on

3 the first tablet version. I did kind of all the visual

4 updates. And this is also -- I guess when I started, we

5 were doing -- working on Android Gingerbread. You've

6 heard about Oreo. They were all were dessert releases

7 until we got to Q because we couldn't come up with one.

8 And I worked on Chrome Gingerbread up through that. But I

9 also did, like, the core Android iterations.

10 Q. Sir, how long have you been a part of the Chrome for

11 Android team?

12 A. It is going on 12 years now.

13 Q. What is your current role at Google?

14 A. I'm director of engineering for Chrome for Android

15 and the Chrome shopping team.

16 Q. And what are your responsibilities, generally, as the

17 director of engineering for Chrome for Android?

18 A. As the director of engineering, I don't get to write

19 as much code as I used to. Now I'm managing a team --

20 managing teams of teams. And I'm making sure that we are

21 building the right things, make sure that we're building

22 them on time. I make sure that we don't have bugs. And I

23 make sure -- again, my goal is -- I own the platform. I

24 want to make sure that we're building a product people

25 like and people use.

1 first team was Google Analytics, and that's the way -- as

2 a website author, you try to make a better website. So

3 that's what we built it for, and I did that for three

4 years.

5 Q. And then what did you do after that?

6 A. After Google Analytics, I joined Chrome for Android.

7 I joined in April 2011. I was still an individual

8 contributor, and I worked on that team for the last

9 12 years.

10 Q. What is Chrome for Android?

11 A. Chrome for Android is an Internet browser. It helps

12 you navigate the web. If you're not familiar with Google

13 Chrome, this would be equivalent to Internet Explorer on

14 Windows of old, or you're talking about Safari on a Mac

15 book or an iPhone.

16 Q. And what sorts of things did you do for Chrome for

17 Android when you joined that team?

18 A. Sure. When I joined, we actually had not launched

19 anything yet. So we had zero users starting around from

20 the very beginning. If you're familiar with Chrome, like

21 you could do menu, new tab, like I built the first version

22 that shows you, like, your favorite websites.

23 In Chrome, there's the bar at the top that you search

24 or navigate. We call it the Omni Box. I built that. As

25 you're typing in suggestions, like I built that from the

1 Q. Approximately how many people are on your current

2 team at Chrome?

3 A. There are, I think, 55 or 56. I have to check.

4 Q. Sir, are you familiar with Smart Text Selection?

5 A. Yes. Yes I am.

6 Q. How are you familiar with Smart Text Selection as a

7 functionality?

8 A. As I mentioned, I've dealt with kind of the Android

9 releases for a very long time. And one -- as a Google

10 app, we worked with the Android team very early on to

11 understand if there's anything we need to do. So I

12 remember when we started talking about Smart Text

13 Selection. And trying to figure out what, if anything, we

14 need to do with Chrome and by when.

15 Q. Can you please describe, from a user's perspective

16 who's using Chrome for Android, how Smart Text Selection

17 would appear and would be used?

18 A. I apologize for my hiccup now being contagious.

19 It would look just like you've seen it kind of in

20 other apps. It's -- you see some text on a web page and

21 you can long press on it and it would -- if it is a phone

22 number, you press on one part of the phone number and it

23 would expand, and you make it an option to call that

24 number.

25 Q. And, sir, are the instructions for Smart Text

1 Selection located inside of the Chrome for Android app?
 2 **A.** No. No, they're not.
 3 **Q.** Where are the instructions for Smart Text Selection
 4 located?
 5 **A.** The instructions are in the Android framework.
 6 **Q.** And how do you know that, sir?
 7 **A.** I looked at the code. And as I also was familiar
 8 with, as it being built in the technical discussions, but
 9 I also reviewed the code.
 10 **Q.** And, sir, why did Google make the instructions for
 11 Smart Text Selection in the framework as opposed to
 12 putting them into the individual Chrome for Android app?
 13 **A.** As you've heard before, the goal was that an app
 14 developer shouldn't need to do anything to get this
 15 feature. And by putting it in the framework, most app
 16 developers had to do nothing.
 17 **Q.** Sir, you you've been sitting through the whole trial,
 18 correct?
 19 **A.** That's correct.
 20 **Q.** And did you hear the testimony of Dr. Smedley the
 21 other day?
 22 **A.** Yes, I did.
 23 **Q.** And Dr. Smedley suggested that Smart Text Selection
 24 becomes part of and included in the app when it runs.
 25 Do you recall hearing that?

1 **A.** Something to that accord, yes.
 2 **Q.** Is that accurate?
 3 **A.** Not from my standpoint, no.
 4 **Q.** Why not?
 5 **A.** The code is, again, in the Android framework. If it
 6 were included in the app, again, Chrome would work on
 7 older versions of Android. So, to me it's a different
 8 component that is unrelated to the --
 9 As the app developer, I can't change that code. I
 10 look at the code that I can change as the things that are
 11 part of the Chrome.
 12 **Q.** Sir, let me pull up a slide that was used by
 13 Dr. Smedley.
 14 **MR. UNIKEL:** Sir, if we could please pick up
 15 PDX-3-69.
 16 **BY MR. UNIKEL:**
 17 **Q.** Do you recall seeing this slide presented by
 18 Dr. Smedley?
 19 **A.** Yes, I do.
 20 **Q.** Sir, what do you call the parts that were highlighted
 21 by Dr. Smedley?
 22 **A.** Those are comments. That's just a hint that we write
 23 as a developer.
 24 **Q.** So why are comments put into code?
 25 **A.** The reason you write a comment is that when you are

1 authoring code, the next time that you might look at it
 2 might be a week, a month, a year later. So it's basically
 3 enough hints for you to figure out kind of what you were
 4 doing back in the day. So it's just a reminder that -- I
 5 guess importantly, you might not be the one touching it
 6 next. So it's trying to leave, basically, breadcrumbs for
 7 the next person.
 8 **Q.** Sir, are comments actual instructions that the
 9 computer will follow?
 10 **A.** No, not at all.
 11 **Q.** Do the comments on this page indicate that Smart Text
 12 Selection is actually part of the Chrome code base?
 13 **A.** No. I think the first sentence is a bit misleading,
 14 but this is really just managing Chrome's interaction with
 15 the framework code.
 16 **Q.** And what actually dictates how Chrome runs, the
 17 comments or the code?
 18 **A.** The code. The code is the truth. Comments are --
 19 they are hints, but the code is the truth.
 20 **Q.** When Smart Text Selection is operational for Chrome
 21 for Android, what group of instructions actually sets up
 22 the menu bar that a user will see on their screen after
 23 long pressing?
 24 **A.** That would come from Smart Text Selection from the
 25 framework code.

1 **Q.** How does Chrome interact with that framework code for
 2 Smart Text Selection? How do they communicate with one
 3 another?
 4 **A.** That would be through the TextClassifier API.
 5 **Q.** And can you explain how that would work?
 6 **A.** Certainly. As we've heard throughout the trial, an
 7 API is basically a contract for code, which says that if I
 8 call this thing, I should expect this result. And in the
 9 case for Chrome, we actually did have to do a little bit
 10 of work, which is Android doesn't know about the text that
 11 we are rendering in a web page because we don't use, as
 12 you have heard before, TextView.
 13 So Chrome's got to get the text out of the web page
 14 and then pass it along to the Android framework. So
 15 that's the way we use those APIs.
 16 **Q.** Sir, as a result of that interaction that you just
 17 described, is it ever true that the instructions for Smart
 18 Text Selection actually become a part of the Chrome app?
 19 **A.** No, no. We don't do anything smart, in this
 20 instance.
 21 **Q.** Is it ever true that the instructions for Smart Text
 22 Selection somehow join together with the instructions for
 23 the Chrome app?
 24 **A.** No. No, they don't.
 25 **Q.** Is there ever a single container that contains both

1 the code for the app and the code for Smart Text
 2 Selection?
 3 **A.** No. Smart Text Selection is a multi-process feature,
 4 so no, there's never one.
 5 **Q.** Sir, if I can show you one of the demonstratives used
 6 by Dr. Smedley.
 7 **MR. UNIKEL:** If we please pull up PDX-3-107.
 8 **BY MR. UNIKEL:**
 9 **Q.** Sir, do you see that the title of this slide from
 10 Dr. Smedley was "Android 8.0.0_r1 Input Device Step"?
 11 Do you see that?
 12 **A.** Yes. Yes, I do.
 13 **Q.** Where is this code that is shown on this slide, where
 14 is that located?
 15 **A.** So this code is -- from the title, it says
 16 "TextView.java," and that's in the Android framework.
 17 **Q.** Let me show you the next slide, PDX-3-108.
 18 Do you see that the title of this slide also refers
 19 to Android 8.0.0_r1 and says "Input Device Step"?
 20 Do you see that?
 21 **A.** Yes. Yes, I see that.
 22 **Q.** And where is this code that's shown on this slide?
 23 Where is that located?
 24 **A.** This would also -- this is TextClassifier and that's
 25 also in the Android framework.

1 **Q.** Thank you.
 2 **MR. UNIKEL:** You can pull down the slide,
 3 please.
 4 **BY MR. UNIKEL:**
 5 **Q.** Sir, are you familiar with something called Android
 6 Intents?
 7 **A.** I'm very familiar with that, yes.
 8 **Q.** How are you familiar with Android Intents?
 9 **A.** In my time on Chrome in the last decade, I've been
 10 the primary owner or reviewer of our interactions with the
 11 Intent framework.
 12 **Q.** And can you describe for the jury, what is the
 13 Android Intents system?
 14 **A.** The Android Intents system is the way for Androids to
 15 be able to pass information to another application, but it
 16 always goes through the Android OS. There's many reasons
 17 for that.
 18 **Q.** Well, can you describe the reasons why the Android
 19 Intents system is part of the Android framework as opposed
 20 to an individual app?
 21 **A.** Sure. The main -- I see two main reasons. One,
 22 there's security. And then there's -- one is actually
 23 user choice. So one of the core tenets of Android was its
 24 openness. So we were trying not to say, if you're using a
 25 Google app, that it needs to launch another Google app.

1 **Q.** And how do you know that?
 2 **A.** I looked it up.
 3 **Q.** Sir --
 4 **MR. UNIKEL:** Next slide, please.
 5 **BY MR. UNIKEL:**
 6 **Q.** PDX-3-109. Again, do you see that this is now
 7 "Android 9.0.0_r1 Input Device Step"? Do you see that in
 8 the title?
 9 **A.** Yes.
 10 **Q.** Where is this code located?
 11 **A.** This is the updated version of TextClassifierimpl
 12 from Android 9.
 13 **Q.** From where --
 14 **A.** -- also in the Android framework. Sorry.
 15 **Q.** Okay. Sir, do you -- when you said --
 16 **MR. UNIKEL:** The next slide, please.
 17 PDX-3-110.
 18 **BY MR. UNIKEL:**
 19 **Q.** This is another slide from Dr. Smedley that refers to
 20 the input device step. Do you see that?
 21 **A.** Yes, I see that.
 22 **Q.** Where is this code located?
 23 **A.** Similar to the last slide, this is
 24 TextClassifierimpl, which is also in the Android
 25 framework.

1 So if you happen to be in Google Chrome but your default
 2 e-mail client was Outlook, that should work. The user
 3 should be in charge.
 4 So when you define an intent, you're not defining
 5 where it's going. You are actually letting the Android
 6 framework figure that out based on the user choice. And
 7 the fact as if -- as an app developer, you could be in
 8 charge of that. It could be malicious. And it's so core
 9 to how things communicate. It can't be part of an app.
 10 It would be fundamental security flaw of the operating
 11 system.
 12 **Q.** Sir, just to be clear, where are the instructions for
 13 the Intents handling system located?
 14 **A.** Those are also in the Android framework.
 15 **MR. UNIKEL:** Mr. Spence, if we could please
 16 pull up PDX-3-104.
 17 **BY MR. UNIKEL:**
 18 **Q.** Sir, do you recall seeing this slide during
 19 Dr. Smedley's testimony?
 20 **A.** Yes. Yes I do.
 21 **Q.** And, sir, there's some highlighted text there. Do
 22 you know what this, these code instructions relate to, in
 23 general?
 24 **A.** This is part of the Smart Text Selection feature.
 25 **Q.** And when it refers to "final intent, intent

1 factory.create," what is that generally referring to?

2 **A.** This is saying: For this particular type of selected

3 text, tell me the type of intent that would be used there.

4 So for a phone number, it would be "Dial." For an

5 e-mail, it would be a "Mail to" link. So it's sent to the

6 right e-mail client. Or for an URL, it would be opened in

7 a browser.

8 **Q.** Sir, do you see the title given by Dr. Smedley, which

9 is "Google's Public Source Code for Chromium"?

10 Do you see that?

11 **A.** Yes, I do.

12 **Q.** Is this part of the public source code for Chromium?

13 **A.** No. No, this is not.

14 **Q.** How do you know that?

15 **A.** This is referencing TextClassifierimpl, which we

16 actually showed in the previous slides. It's from the

17 Android framework. So that's a false claim.

18 **Q.** To what extent can Chrome for Android, by itself,

19 launch another application, like a phone dialer or an

20 e-mail program?

21 **A.** That's impossible.

22 **Q.** Why does -- and what does Google need -- what does

23 Chrome need in order to launch another application, like a

24 phone dialer or an e-mail program?

25 **A.** Chrome is not any different. It realizes that on the

1 Android O?

2 **A.** Yes, or Oreo.

3 **Q.** Is there any difference between when we talk about

4 Android 8 and when we talk about Android O?

5 **A.** No. They're the same.

6 **Q.** When Android 8 was first released in August of 2017,

7 did that release contain the code for Smart Text

8 Selection?

9 **A.** Yes. The API for Smart Text Selection was in the

10 original launch.

11 **Q.** Could users use Smart Text Selection as part of the

12 release with Android O?

13 **A.** No. No, they couldn't.

14 **Q.** Why not?

15 **A.** It wasn't -- the quality was not where we wanted, so

16 it was disabled until Android MR1. Android O-MR1.

17 **Q.** When you say it was disabled, what does that mean?

18 How was it disabled?

19 **A.** They disabled the models that would do the

20 classification. So they would never classify anything.

21 It didn't know -- it could never figure out if it is a

22 phone number or an e-mail address.

23 **Q.** And when did Google actually first make it possible

24 for users to use Smart Text Selection in Android 8?

25 **A.** It would have started working in Android O-MR1.

1 intent system in the Android framework.

2 **Q.** When Chrome sends an intent to the intents handling

3 system, does Chrome know what other applications

4 eventually are going to get used?

5 **A.** No. No. That's the -- that's the intent of the

6 intent system, is that one app should know what the other

7 app will -- well, other half will be launched.

8 **Q.** Does Chrome for Android know when it sends an intent

9 what all of the behaviors of the eventual application

10 that's going to get opened will do?

11 **A.** No. No. That's, again, not the purpose of the

12 intent system.

13 **Q.** If you eliminated the intents handling framework code

14 from the operating system, would an intent from Chrome

15 ever cause another program to open?

16 **A.** If you could get Chrome to work without it, it's --

17 you'd never leave Chrome. It'd be, if you clicked on a

18 link to Maps, it would never open. So you'd always be

19 left in the browser.

20 **Q.** Sir, when did Android 8 first release?

21 **A.** That was August 2017.

22 **Q.** And how do you know that?

23 **A.** I was working on Chrome for Android at the time. And

24 it's been mentioned here, and I believe. That's correct.

25 **Q.** And, sir, am I correct, Android 8 is also known as

1 **Q.** And so what is -- when you say "O-MR1," what does

2 that mean?

3 **A.** MR1 -- MR means maintenance release. We heard, I

4 think it was Toki, and Brahim mentioned that it's -- it's

5 basically -- it was bug fixes, bug fixes we couldn't get

6 in time for the original release.

7 **Q.** When did O-MR1 actually release?

8 **A.** December 2017.

9 **Q.** And how do you know that?

10 **A.** As part of the -- I refreshed my memory as part of

11 reviewing for this trial.

12 **Q.** And, sir, from August 2017 until December 2018, were

13 any actual device users able to use their apps with Smart

14 Text Selection -- sorry, from August 2017 to

15 December 2017?

16 **A.** From -- the original from Android O to Android O-MR1,

17 no. No users could use Smart Text Selection.

18 **Q.** When Google enabled Smart Text Selection for

19 potential use by users in December of 2017, did it

20 immediately become available for all users to actually use

21 Smart Text Selection?

22 **A.** No. It would only be available to users whose phone

23 was on O-MR1.

24 **Q.** And why was there a delay? Why -- why wasn't it

25 immediately available to all users?

1 A. Because this relied on O-MR1 being on the device, it
 2 just takes quite a long time, potentially never happening
 3 to users' phones.
 4 Q. And how does O-MR1, for example, get downloaded to
 5 non-Google devices?
 6 A. It would have to be first approved through a few
 7 different channels before it can go to the device. Happy
 8 to elaborate.
 9 Q. Yeah. Can you describe that, please?
 10 A. Sure. So when -- this is not specific to O-MR1 or O.
 11 This is actually the process for all Android releases, is
 12 that Google is going to build this version of Android, and
 13 they're going to make the code publicly available on a
 14 particular date. And then you're going to have -- the
 15 first thing that will happen, is the manufacturers are
 16 going to pick it up. This is the Samsungs, the Motorolas,
 17 the Lenovos, the OnePlus.
 18 And they're going to first add on top of their
 19 additional requirements. They've added things on top of
 20 Android over the years. So they've got to make that work
 21 on the new version. And then they just actually have to
 22 figure out, does it work, does it crash, are there
 23 problems, and fix those bugs.
 24 Then they have to look at their device portfolio,
 25 figure out which, if any, will get the release at all.

1 It's actually quite expensive to do this. So they've got
 2 to see, like, okay, which one should get in.
 3 So you kind of go through this whittling process to
 4 figure out which devices get it, and it takes a long time
 5 to make sure for the devices that get it, are there bugs
 6 or is it ready to go.
 7 So that's the first process. That's the manufacturer
 8 validation time.
 9 Then, because we live in America, we deal with
 10 carriers. Then you've got your ATTs, your Verizons, your
 11 T-Mobiles. And they will take that version from the
 12 manufacturer, and they're going to run their own set of
 13 validation on it. They want to make sure that the phone
 14 that they sold you or made part of your plan is going to
 15 keep working. And therefore, they're going to do a lot of
 16 rehearsed testing.
 17 I've dealt with a lot of this personally, a lot of
 18 back and forths. It's a very long, lengthy contract. And
 19 they want to make sure that by the time you get it, your
 20 phone's great, it works exactly the way you want, and it
 21 works still.
 22 So that somewhat lengthy process is what it takes
 23 from one Android -- from when Google says, hey, you can't
 24 start using this, to when it gets on phones.
 25 Q. And approximately how long does that whole process

1 that you just described take?
 2 A. In my expertise, it is six months, I think is about
 3 an average. And there's a lot of phones that will never
 4 get it. I think that's the thing that -- also. Again,
 5 there are some that have been faster. Google Pixels
 6 typically -- because Google approved the software, it only
 7 needs to go through the carrier step. So if you bought
 8 your Pixel from ATT, then ATT will still want to validate
 9 it, but it will shorten it a little bit.
 10 Q. Thank you, sir. That's all I have.
 11 A. Thank you.
 12 THE COURT: Cross-examination.
 13 MR. LAHAD: Yes. Thank you, Your Honor. May I
 14 approach, please?
 15 THE COURT: Yes.
 16 CROSS EXAMINATION
 17 BY MR. LAHAD:
 18 Q. Sir, I'm going to hand. A copy of your deposition
 19 transcript --
 20 A. Sure.
 21 Q. -- just in case.
 22 A. For a light reading.
 23 Q. Good morning, sir. My name is John --
 24 MR. LAHAD: Sorry, Your Honor. May I proceed?
 25 THE COURT: Yes.

1 BY MR. LAHAD:
 2 Q. Good morning, Mr. Choc. My name is John Lahad.
 3 We've not met.
 4 A. Good morning.
 5 Q. Thanks for coming.
 6 You are here as Google's corporate representative,
 7 correct?
 8 A. That is correct.
 9 Q. And that means you're not just testifying on behalf
 10 of yourself, but also on behalf of the corporate entity
 11 Google, right?
 12 A. That is my understanding.
 13 Q. You're kind of like the mouthpiece of the company
 14 this morning, correct? At least for this trial?
 15 A. For where I can provide expertise. Again, I think
 16 Google is much larger than me, so I think there will be
 17 areas where I'm not the expert. But I will try to provide
 18 my opinion where appropriate.
 19 Q. So the accused STS functionality has been part of
 20 Google's products since 2017, correct?
 21 A. It was launched in -- as part of the Android O -- the
 22 API was Android O.
 23 Q. And since its release, Google has not ceased
 24 providing that STS functionality in its apps and products,
 25 correct?

1 A. Since -- once -- again, the caveat O-MR1? Yeah,
 2 Smart Text Selection still works today.
 3 Q. You don't know whether Google has developed any
 4 alternatives to STS that would operate in a different way
 5 in order to avoid infringing the '843 patent, correct?
 6 MR. UNIKEL: Objection, Your Honor. Calls for
 7 a legal conclusion.
 8 THE COURT: Overruled.
 9 THE WITNESS: Can you repeat the question?
 10 Sorry.
 11 BY MR. LAHAD:
 12 Q. You don't know whether Google has developed any
 13 alternatives to STS that would operate in a different way
 14 to avoid infringing the '843 patent, correct?
 15 A. I don't believe I can, again, provide patent guidance
 16 on the full breadth of the '843 patent. There was
 17 actually a feature in Chrome that did something similar to
 18 STS, but nothing at the level where STS makes it available
 19 for all apps.
 20 Q. So upon learning that STS might infringe, Google did
 21 not undertake any effort to cease that allegedly
 22 infringing activity, correct?
 23 A. When STS was developed -- again, I think this is
 24 where Toki is certainly more the expert than I -- that was
 25 2017, and I didn't know about this patent until 2019 when

1 I was deposed.
 2 Q. Well, you understand that Arendi sued Google in 2013
 3 on this patent, correct?
 4 A. As a part of this trial, I learned that, yes.
 5 Q. So if Arendi sued Google in 2013, then clearly Google
 6 knew about the '843 patent in 2017, right?
 7 A. There was -- someone on the Google legal side was
 8 aware of this.
 9 Q. And you understand the accused technology in this
 10 case, of course, was released in 2017, right?
 11 A. Yes, that's correct.
 12 Q. So at the time that Google initiated its infringing
 13 conduct in 2000 -- strike that.
 14 At the time that Google initiated its allegedly
 15 infringing conduct in 2017, Google had knowledge of the
 16 '843 patent, correct?
 17 A. That's right. Google legal would have known.
 18 Q. Does Google think it is appropriate to infringe
 19 intellectual property?
 20 A. No.
 21 Q. Does Google make any effort to avoid infringing
 22 intellectual property?
 23 A. Yes.
 24 Q. Sorry. What was that?
 25 A. Yes, yeah. Yeah, we -- I'm sure we do. I know -- I

1 mean like, I think this is -- the legal team ensures that
 2 we are being appropriate.
 3 Q. Yeah. But you're here as the corporate rep, right?
 4 A. I am, yes, that's right.
 5 Q. You're here speaking on behalf of Google, the
 6 company, right?
 7 A. That's correct.
 8 Q. Okay. So --
 9 A. With my limitations on expertise, yes.
 10 Q. All right. Great.
 11 So what does Google do to avoid infringing
 12 intellectual property?
 13 A. I don't actually know. That's -- again, our legal
 14 team would be a much better answer for that.
 15 Q. I mean, I'm not trying to be cute, but you knew this
 16 was a patent case, coming into it, right?
 17 A. That is correct, yeah.
 18 Q. Yeah. You got on a plane, probably in SFO, flew out
 19 here with the intent of testifying in a patent case,
 20 right?
 21 A. That's right.
 22 Q. And, of course, one of the issues in a patent case is
 23 whether or not there's an infringement, correct?
 24 A. That's right.
 25 Q. And you understand that Arendi has asserted that

1 Google has willfully infringed; that means kind of like
 2 intentionally infringed the Arendi patent, right?
 3 A. I don't know if I've heard willfulness. I don't know
 4 if that's a particular legal term or not.
 5 Q. Does Google have any policies or procedures that it
 6 implements to avoid infringing intellectual property?
 7 A. They might, but I think that is a question for the
 8 legal team.
 9 Q. You didn't ask anybody on the legal team in advance
 10 of appearing today?
 11 A. I did not.
 12 Q. So you don't know either way if Google has
 13 policies -- let me strike that.
 14 You don't know -- if there are policies, you don't
 15 know whether or not Google undertook them in this case
 16 with respect to the '843 patent?
 17 A. While -- I mean, I know that Google was aware of
 18 this. But, again, I don't know what the policies are, so
 19 I think I -- I don't want to speculate.
 20 Q. Does it make a difference to Google -- with respect
 21 to representing intellectual property, does it make a
 22 difference if the owner of the patent is making a product?
 23 A. I don't see why it would.
 24 Q. Does Google feel that if someone doesn't make a
 25 product, that gives Google permission to infringe that

1 person's IP?
 2 **A.** Again, while that is better answered by the legal
 3 team, but I don't see why that would be the case.
 4 **Q.** Well, you were in the courtroom on Monday when your
 5 lawyer was casting aspersions against Mr. Hedloy for not
 6 making a product?
 7 **A.** I think it's still making a product.
 8 **Q.** You think Arendi is making a product?
 9 **A.** No, no. I think there was the OneButton thing. It's
 10 whether it's still making a product, was the line of
 11 questioning, if I recall.
 12 **Q.** Oh. But do you recall the line of questioning from
 13 Mr. Unikel with -- to Mr. Hedloy saying, you know, Arendi
 14 hasn't made a product in 20 years, Arendi hasn't been
 15 doing -- remember that?
 16 **A.** Yes. Yeah, that's the line of questioning I recall.
 17 **Q.** Okay. So -- but the absence of a product doesn't
 18 mean that person's IP can be trespassed, correct?
 19 **A.** That is fair. But that is my understanding -- my
 20 limited understanding of the patent law. And you are
 21 patent law experts, not I.
 22 **Q.** Okay. So just to put a bow on it, whether someone
 23 makes a product is irrelevant to whether Google has
 24 infringed that person's IP, correct?
 25 **A.** That is my understanding, yes.

1 **Q.** And you recall Arendi gave Google claim charts in
 2 this litigation that mapped out how Google's products
 3 infringed Mr. Hedloy's '843 patent all the way back in
 4 2013, correct?
 5 **A.** No. I -- it -- I did not see them.
 6 **Q.** So you don't know either way?
 7 **A.** Yeah. I can't provide a definitive answer.
 8 **MR. LAHAD:** Your Honor, may I approach?
 9 **THE COURT:** Yes.
 10 **BY MR. LAHAD:**
 11 **Q.** Mr. Choc, I've handed you two documents. Please take
 12 a second and let me know if these documents refresh your
 13 recollection as to whether or not Arendi provided Google
 14 with claim charts in the 2013 time frame explaining the
 15 infringement by Google.
 16 **A.** I have never seen these documents before.
 17 **Q.** You've never seen them before today?
 18 **A.** To my recollection, I don't believe I've ever seen
 19 this.
 20 **Q.** Okay. And you have no reason to believe that Google
 21 didn't get these documents through the litigation, right?
 22 **A.** I would have to assume you're telling me the truth,
 23 so yes.
 24 **Q.** At the time of Google's infringement in 2017 --
 25 sorry. Strike that.

1 **Q.** Now, of course, Google has its own intellectual
 2 property, right?
 3 **A.** That's right.
 4 **Q.** But to be fair, patents aren't just for technology
 5 companies, right?
 6 **A.** That's right.
 7 **Q.** They can come from big companies, right?
 8 **A.** Yeah. Yes.
 9 **Q.** They can come from little companies?
 10 **A.** Yes.
 11 **Q.** They can come from individual inventors, right?
 12 **A.** Yes.
 13 **Q.** And just as between Google's patents and IP and
 14 Mr. Hedloy's patents and IP, Google's aren't more
 15 important or more valuable just because they belong to
 16 Google, correct?
 17 **A.** That's my understanding, yes.
 18 **Q.** Google released the accused STS technology in 2017
 19 with the understanding that that technology might infringe
 20 one or more claims of the '843 patent, correct?
 21 **A.** That one, I don't know. I don't know when STS was
 22 accused.
 23 **Q.** Well, Arendi's complaint in this case referred to
 24 Gmail and other Google products, correct?
 25 **A.** Yes, that's correct.

1 At the time of Google's alleged infringement -- like
 2 one of the guys on CNN or MSNBC, right?
 3 **A.** Yeah.
 4 **Q.** At the time of Google's alleged infringement, 2017,
 5 Google did not have a good faith belief of the '843
 6 patent's invalidity, correct?
 7 **MR. UNIKEL:** Objection, Your Honor. Calls for
 8 a legal conclusion and an ultimate conclusion for the
 9 jury.
 10 **MR. LAHAD:** Can I be heard at sidebar, Your
 11 Honor?
 12 Never mind, Your Honor. I --
 13 **THE COURT:** That objection --
 14 **MR. LAHAD:** Go ahead. Sorry.
 15 **THE COURT:** That objection is overruled.
 16 **BY MR. LAHAD:**
 17 **Q.** Do you need the question again?
 18 **A.** Yes, please.
 19 **Q.** Sure.
 20 At the time of Google's alleged infringement, 2017,
 21 Google did not have a good faith belief of the '843
 22 patent's invalidity, correct?
 23 **A.** There are several words that I'm not sure what they
 24 mean.
 25 **Q.** Sure. Let's break it down.

1 A. What's "invalidity" in this case?

2 Q. Well, invalidity that the patent was --

3 A. Yeah. I don't know what that implies for a patent

4 litigation. I guess, I'm not a patent lawyer. I didn't

5 go to law school like you guys did. So I think that's why

6 we're here, aren't we? I mean, isn't this trial to

7 determine the validity of the patent?

8 Q. Right. That's why we're here. That's why you're

9 here, right?

10 A. Well, I mean, I think we're defending that Google --

11 I think ours is that Google didn't. I believe that is our

12 position.

13 Q. But Google has also taken the position that the

14 patent -- the '843 patent is invalid, right?

15 A. I -- that one -- that's the legal team's

16 responsibility. I don't know their arguments. I'm a

17 technical witness.

18 Q. Well, you're also the corporate rep, right?

19 A. Yes. And I will defer to the legal team when

20 appropriate.

21 Q. And you're speaking on behalf of Google LLC as the

22 company, right?

23 A. That is my understanding of my role.

24 Q. Okay. And part of the company is -- rephrase that.

25 The legal team to which you keep referring is part of

1 itself, sue Arendi, right?

2 A. I guess. Can't you sue anybody?

3 Q. Well, you're aware of something called -- maybe you

4 aren't -- are you aware of something called a "declaratory

5 judgment"?

6 A. No, I'm not. Sorry.

7 Q. It's not wrong for a company to protect its IP,

8 right?

9 A. That's correct.

10 Q. Let's go back to why you think you're here. Let's

11 talk about some technical aspects.

12 A. Sure. Yeah.

13 Q. So while at Google, you worked on the Chrome app for

14 Android devices, right?

15 A. That's correct.

16 Q. You were working on it in 2017, right?

17 A. That's right.

18 Q. And your team installed the code necessary to make

19 Smart Text Selection work in the Chrome app for Android,

20 correct?

21 A. Installed? No. I don't think that -- that does not

22 sound like what we did.

23 Q. Well, in the context of O Android, you integrated the

24 APIs necessary for Smart Text Selection, correct?

25 A. We added the -- again, a bit of code in Chrome to be

1 the company, correct?

2 A. It is.

3 Q. Okay. So sitting here as Google's corporate

4 representative for the company, including the legal team,

5 can you explain to me any kind of factual basis for

6 Google's good faith belief, at the time of the alleged

7 infringement, that the '843 patent was invalid?

8 A. I think that's, again, a legal argument for the legal

9 team. I think Google has hundred-thousand people, so I

10 can't speak for us all.

11 Q. Did Google think the '843 patent was invalid in 2017?

12 A. I don't know.

13 Q. During Mr. Unikel's examination of Mr. Hedloy, also

14 in his opening, he referred to the idea that Arendi didn't

15 reach out to Google before initiating litigation.

16 Do you recall that?

17 A. I do recall that, yes.

18 Q. What would Google have done had Arendi reached out to

19 Google before the lawsuit?

20 A. I'm not sure.

21 Q. Would Google have taken the license?

22 A. I have no idea.

23 Q. Would you have ceased the alleged infringement?

24 A. I have no idea.

25 Q. One of the things that Google could have done was to,

1 able to call those APIs, that's right.

2 Q. I'm sorry?

3 A. We added a bit of code to call those APIs, yes. We

4 had to do that text extraction that I mentioned.

5 Q. So you had to add the bit of code to call the APIs?

6 A. That's right.

7 Q. That bit of code was added to Chrome?

8 A. That's right.

9 Q. So you had to modify the Chrome code?

10 A. Yes, that's correct.

11 Q. And so as we stand here today, the code for Chrome

12 for Android calls the APIs for Smart Text Selection,

13 correct?

14 A. The code in Chrome for Android calls the -- yeah,

15 that's right.

16 Q. You would agree that Smart Text Selection in Chrome

17 for Android is a nice utility for the user, correct?

18 A. Yes. Nice utility.

19 Q. And STS provides for a consistent user experience,

20 correct?

21 A. That is correct.

22 Q. You were in the courtroom when we saw that video,

23 PX-314, during Dr. Smedley's examination? That's the

24 video with David Burke.

25 Do you recall that?

1 A. That was Google I/O one, right?

2 Q. Yes.

3 A. Yes. Yes, I recall that.

4 Q. You recall the audience cheering when Mr. Burke was

5 demonstrating the accused functionality?

6 A. Yes. That's manufactured, I'm sure, yes.

7 Q. You think it was fake cheering? Is that what you're

8 saying?

9 A. No. It's a developer conference. I mean, they cheer

10 for everything.

11 Q. Well, they're cheering for this technology, right?

12 A. Yeah, I mean -- yes. That doesn't mean a whole lot.

13 Q. The cheering doesn't mean a whole lot?

14 A. No. I mean, it's more -- it's not -- they do it for,

15 basically, everything that is announced. So I don't think

16 it's indicative of anything, although than that human

17 beings were present.

18 Q. The human beings were present?

19 A. Yes. I think that's the best we can say. It was not

20 robots.

21 Q. Programmed to cheer on everything?

22 A. Yeah. We are developers; we are excitable.

23 MR. LAHAD: May I approach, Your Honor?

24 THE COURT: Yes.

25

1 (Whereupon, the following occurred at sidebar:

2 THE COURT: Is this document on the exhibit

3 list?

4 MR. LAHAD: On Defendant's exhibit list.

5 MR. UNIKEL: It was disclosed for us with use

6 with this witness. It wasn't like they provided a list of

7 topics he was going to cover as the corporate

8 representative. He doesn't know all the documents on the

9 exhibit list.

10 THE COURT: I am not going to allow this

11 witness to admit this document. He said he hasn't seen it

12 before. So you are welcome to ask him questions about it.

13 It is not going to be admitted unless I hear more

14 foundation that suggests he knows what this is or some

15 topic about what it is. It's not going to be published to

16 the jury at this time.

17 MR. LAHAD: Thank you, Your Honor.

18 MR. UNIKEL: Thank you, Your Honor.

19 (Whereupon, the discussion at sidebar

20 concludes.)

21 - - -

22 THE COURT: That objection is sustained. The

23 document is not admitted at this time.

24 BY MR. LAHAD:

25 Q. Mr. Choc, does Google undertake study --

1 BY MR. LAHAD:

2 Q. Mr. Choc, I've handed you DTX-765.

3 A. I see this.

4 Q. Do you recognize DTX-765?

5 A. No, I do not.

6 Q. This is an "Assistant Label for Smart Text Selection

7 & Shortcuts Study Findings." Do you see that?

8 A. I do see that title, yes.

9 Q. This is a Google document, correct?

10 A. Likely, yes.

11 Q. This is a study that -- this is a document that

12 purports to describe the results of a study regarding

13 assistant label and Smart Text Selection and shortcuts,

14 correct?

15 A. I've never seen this document, so I don't know what

16 it is asserting. Based on the title, that says "Assistant

17 Label for Smart Text Selection & Shortcuts Study

18 Findings," so I assert that that is probably what it is

19 doing.

20 MR. LAHAD: Your Honor, I'd offer DTX-765.

21 MR. UNIKEL: Objection, Your Honor. There was

22 no foundation with this witness.

23 MR. LAHAD: He is the corporate rep, Your

24 Honor.

25 THE COURT: Let me see counsel at sidebar.

1 A. I'm sorry to interrupt.

2 Do I keep the document up here.

3 THE COURT: Yes.

4 THE WITNESS: Sorry.

5 BY MR. LAHAD:

6 Q. Mr. Choc, Google does undertake studies and surveys

7 regarding features it offers in its products, correct?

8 A. Not always; but, yes. We do it for certain features,

9 yes.

10 Q. And one of the reasons you do that is to see how

11 useful the feature is for user's, right?

12 A. It can be one of the reasons we do it, yes.

13 Q. And one of the reasons you do that is to determine

14 whether or not the feature should remain as a feature in a

15 product or a OS, right?

16 A. It can be one of the reasons, yes.

17 Q. And as we agreed earlier, STS has been a part of the

18 accused products since its launch in 2017, right?

19 A. By "launch," MRI when it can be usable, yes.

20 Q. So despite, you know, it being around for six years,

21 despite, you know, the cheering going on at the

22 conference, Google's position is that this technology is

23 worth about 35K; is that right?

24 A. Oh. I don't know that.

25 Q. Well, you were in the courtroom during opening,

1 right?

2 **A.** Yes. I don't know if I was excluded -- I have been

3 excluded from certain things, so I don't -- maybe I was

4 there.

5 **Q.** Fair enough, sir. Fair enough.

6 Do you recall the slide from Google's lawyer about,

7 you know, if Google does infringe and if the patent is

8 valid and Arendi is entitled to, like, 35K or maybe even

9 400K on its best day? Do you recall that slide?

10 **A.** If I can see it again, it probably would refresh my

11 memory.

12 **Q.** And did you understand that as part of reaching

13 damages calculations in this case, the experts had to

14 assume infringement and invalidity -- excuse me --

15 validity of the claims, right?

16 **A.** I think based on the damage expert yesterday. I am

17 not a damage expert.

18 **Q.** Yeah. But you heard yesterday Mr. Weinstein talk

19 about that's one of the assumptions that damages experts

20 in patent cases have to undertake, right?

21 **A.** I don't recall if that was when I was excused from

22 the courtroom again.

23 **Q.** What is Google's view -- putting aside this lawsuit,

24 what is Google's view of how much the STS technology is

25 worth?

1 apps have been downloaded, right?

2 **A.** No.

3 **Q.** And Google doesn't disclose that information to its

4 competitors, right?

5 **A.** Again, I don't work on the Play Store, so I -- I know

6 that the information is public, but I don't know of

7 anything else about disclosure or anything like that.

8 I know we that have our own Play Store that says

9 roughly the number of users.

10 **Q.** And you were in the courtroom when -- during the

11 cross-examination of Mr. Weinstein, right?

12 **A.** I think there was also a part I was excluded from.

13 **Q.** Were you in the courtroom when he was asked questions

14 about -- well, the insinuation was made that his number

15 was inflated or overinflated based on an incorrect number

16 of downloads? Do you recall that?

17 **A.** I do recall that.

18 **Q.** Okay. So how many -- how far off is he?

19 **A.** I think this would be -- one, I don't know what the

20 number is included, so I don't know what -- if it was all

21 of them, massively.

22 **Q.** Well, you know, Mr. Weinstein was challenged. The

23 insinuation was that he missed the mark when it came to

24 download numbers, so I just want to know how far off he

25 was.

1 **A.** I am not aware of any dollar figure.

2 **Q.** So outside of this lawsuit, Google didn't do any kind

3 of valuation of the STS technology?

4 **A.** If they did, I'm not aware of it.

5 **Q.** You understand that as part of this case, Arendi and

6 Google exchanged information, right?

7 **A.** I'm not -- I am aware of that general process in

8 legal proceedings, so I assume it happened here, yes,

9 based on the discovery effort.

10 **Q.** Yeah. It's called a -- process called discovery,

11 right?

12 **A.** Yes.

13 **Q.** You've heard that?

14 **A.** I have heard of discovery.

15 **Q.** All right. We are halfway to your law degree.

16 **A.** After this week, no, I'm good.

17 **Q.** So you understand that as part of discovery in this

18 case, Arendi asked for information related to downloads

19 and installs of the accused applications, correct?

20 **A.** I am not aware of what was requested.

21 **Q.** But you were aware -- well, let me ask you this.

22 Google does not share that download information publicly,

23 right?

24 **A.** That is correct.

25 **Q.** Okay. So I can't go "Google" how many times Google

1 **A.** If the numbers were for all Android versions --

2 again, this is rough calculations in my mind and not

3 knowing what this is, it would be probably 95 percent

4 wrong.

5 **Q.** So he's off by pretty much the whole thing; is that

6 what you're saying?

7 **A.** Yes. This is my understanding of the slow ramp-up

8 process for Android, which takes a long time, years,

9 before it actually becomes a meaningful amount.

10 **Q.** So your testimony is that based on what you know,

11 Mr. Weinstein is off by -- he pretty much missed it

12 completely?

13 **A.** If it is all the downloads for all -- every version.

14 Again, he didn't know either. So I think until we know

15 what that data represented.

16 **Q.** So you don't have that data?

17 **A.** I do not. I'm not part of the discovery team.

18 **Q.** You weren't asked to provide that data?

19 **A.** I was not. That comes from the Play Store.

20 **Q.** You came to this trial and your legal team came to

21 this trial ready to challenge Mr. Weinstein and you didn't

22 look at the data yourself so you could have, like, a

23 counter for us?

24 **A.** I did not.

25 **Q.** That information is knowable, correct?

1 A. I don't know.
 2 Q. Okay. So we don't even know if it's knowable?
 3 A. I don't -- that would come from the Play Store, so
 4 you would want someone who has Play Store access.
 5 Q. Okay. So you don't know if it's knowable, right?
 6 A. It should be, but again, one -- there's two things.
 7 There's limitation of data we store -- we don't try to
 8 store old data, so that's the reason why it might not be.
 9 But as a non -- I don't have Play Store log access, so I
 10 can't be a source of...
 11 Q. Yeah, and you didn't -- you weren't asked to go get
 12 that information from somebody else as the corporate rep?
 13 A. I was not.
 14 Q. We've heard reference and testimony to a license
 15 between Samsung and Arendi. Do you recall generally
 16 hearing about that?
 17 A. I think I've been excluded from all of that.
 18 Q. Yes. I'm not going to get into the terms of the
 19 license, so you don't have to go anywhere.
 20 A. I don't -- yeah, Samsung was mentioned.
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
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 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 MR. LAHAD: Mr. Boles, can you put on the

1 slide -- that slide from the opening. I think it's
 2 Page 7. Thank you.
 3 BY MR. LAHAD:
 4 Q. You were in the courtroom when we saw this slide,
 5 right? This is during opening.
 6 A. Yeah, I recall.
 7 Q. And this is a reference to the CyberDesk art,
 8 correct?
 9 A. Yes.
 10 Q. And we're going to be hearing from Dr. Dey, his
 11 mugshot is right there in the lower right corner.
 12 Do you see that?
 13 A. If you say so, yes.
 14 Q. Well, you understand that we're going to be hearing
 15 from Dr. Dey in this case, or is that news to you?
 16 A. I believe he was deposed. I think -- I don't know
 17 how that's going to be presented.
 18 Q. Yeah. Google subpoenaed Dr. Dey in this case, right?
 19 A. I have no idea. That is a legal term.
 20 Q. You know what a subpoena is, right, generally?
 21 A. I've heard it in the news. Doesn't seem like this
 22 would be an appropriate case, but again, that's a legal
 23 question.
 24 Q. Google was aware of this CyberDesk art pretty early
 25 on in this case, correct?

1 A. I was only brought in 2019, and only to give my
 2 opinion. I have no idea.
 3 Q. There's a Georgia Tech logo in the corner, right?
 4 A. Yes.
 5 Q. But today, Dr. Dey is not working at Georgia Tech,
 6 right?
 7 A. I do not know.
 8 Q. He is a professor at the University of Washington,
 9 correct?
 10 A. I do not know.
 11 MR. LAHAD: May I approach, Your Honor?
 12 THE COURT: Yes.
 13 BY MR. LAHAD:
 14 Q. I'm going to hand you what's been marked as
 15 Defendant's Exhibit 5. Does this refresh your
 16 recollection as to where Dr. Dey works?
 17 A. I've never seen this before.
 18 Q. Well, this says -- this is the "My School Directory"
 19 from the Information School at the University of
 20 Washington. Do you see that?
 21 A. Yes.
 22 Q. This was -- you understand this was an exhibit to
 23 Dr. Dey's deposition in this case, correct?
 24 A. I do not know. I've never seen this before.
 25 Q. So you are here as a corporate representative -- I'm

1 just trying to figure out where the bounds of your
 2 knowledge are.
 3 **A.** Sure.
 4 **Q.** You are here at Google's corporate representative for
 5 this trial, and you don't know which witnesses are on
 6 deck?
 7 **A.** I know that we were doing two videos, but that was
 8 legal proceeding questions, so I'm here for mine, and to
 9 listen.
 10 **Q.** You are here to -- strike that.
 11 **A.** I'm here for my expertise, where appropriate.
 12 Make sure Google is accurately represented in this
 13 trial.
 14 **Q.** In 2017, Google donated \$10 million to the University
 15 of Washington computer science program, correct?
 16 **A.** I don't know. If you say so.

17 **THE COURT:** Counsel, can I see everyone at
 18 sidebar, please.

19 (Whereupon, the following occurred at sidebar:

20 **THE COURT:** So, Counsel, I just want to make
 21 sure I understand what's going on here. This is not a
 22 30(b)(6) deposition. We have a trial witness on the
 23 stand. They have to have personal knowledge. We have a
 24 lot of questioning you are free to explore what he is
 25 knowledgeable about. When he says he doesn't know, that's

1 appropriate way to use that at trial that binds Google. I
 2 am not hearing that so far.
 3 **MR. LAHAD:** Well, I'd like to be able to lay a
 4 foundation, if I could. I asked the question. He hasn't
 5 answered.
 6 **THE COURT:** Did you ask him some of this at
 7 deposition? Are you ready to --
 8 **MR. LAHAD:** No, it wasn't asked at deposition.
 9 He is here in his personal capacity. Correct? We are
 10 having --
 11 **THE COURT:** Those questions are fair game. If
 12 you can ask him questions what he has personal knowledge
 13 of, he can testify about things he has personal knowledge.
 14 **MR. LAHAD:** May I be permitted to see if I can
 15 refresh his recollection on things?
 16 **THE COURT:** That's fine. Once he says he
 17 doesn't know, that's where it needs to end.
 18 **MR. UNIKEL:** The notion of unbounded cross was
 19 only -- they wanted to put him on in their case in chief.
 20 We said they could have unbounded cross as to matters
 21 related to his personal knowledge, not as to everything
 22 for Google generally.
 23 Second of all, they are going to prejudice --
 24 it's very clear the next thing they are going to ask is
 25 did Google make donations the university where Dr. Dey

1 where it needs to end.
 2 Do you have disagreement about that?
 3 **MR. LAHAD:** Yes, Your Honor, I do. He's the
 4 corporate representative for Google. There's no
 5 difference between 30(b)(6) corporate rep and a corporate
 6 representative at trial.
 7 **THE COURT:** What Federal Rule of Evidence are
 8 you talking about?
 9 **MR. LAHAD:** With respect to a 30(b)(6) notice,
 10 that's a 30(b)(6) notice for discovery. At trial, he is
 11 Google. I can't call Google as a witness. I have to call
 12 their corporate representative.
 13 **MR. UNIKEL:** 30(b)(6) procedure is so he can
 14 ask the questions of Google with knowledge and advanced
 15 knowledge at a deposition, that could then be used at
 16 trial for the appropriate purposes.
 17 **MR. DIEHL:** Just because somebody shows up
 18 because they have an interest in the litigation from a
 19 technical standpoint doesn't mean they are on the hook for
 20 any knowledge of Google.
 21 **THE COURT:** Counsel, so I agree with defendants
 22 on this point. You are welcome to ask him if he has
 23 personal knowledge of these things. If he doesn't have
 24 knowledge, that's where the questioning needs to end. If
 25 you have particular 30(b)(6) testimony, there is an

1 was -- that was not explored of Dr. Dey. To ask the
 2 questions when he clearly is not going to know is
 3 intending -- by asking the questions, they are trying to
 4 imply bias.
 5 **THE COURT:** He is free to ask if he knew Google
 6 made the donation. He is free to ask Dr. Dey if the
 7 donation was made. They are fair game. Once the answer
 8 is he doesn't have knowledge, that's where it ends.
 9 **MR. LAHAD:** Am I permitted to refresh his
 10 recollection?
 11 **THE COURT:** You may be permitted to refresh if
 12 you have some reason to think he has knowledge. But I
 13 will take another sidebar if it looks like we are getting
 14 beyond that.
 15 **MR. UNIKEL:** He does not have knowledge, as he
 16 said. When the circus comes and they hand him something
 17 to say: Does this refresh your recollection of a donation
 18 to the University of Washington, which he said he doesn't
 19 know anything about, it is increasing prejudice by asking
 20 the questions.
 21 This was never asked of any witness in the
 22 case, not just of him. No 30(b)(6) witness, not even
 23 Dr. Dey, so the notion he would be expected to be
 24 refreshing his recollection when no such recollection
 25 exists doesn't seem to hold water, just as meant to be a

1 side show.

2 **THE COURT:** Right. So I don't have the

3 testimony in front of me. I think he didn't testify that

4 he didn't recall. He testified that he didn't know; is

5 that correct?

6 **MR. LAHAD:** Correct. He didn't know.

7 **THE COURT:** Okay. So if there's a reason to

8 think his recollection needs to be refreshed, you can ask

9 the follow-up question. Let's see how this goes, Counsel.

10 If there's an appropriate objection made to whatever

11 question is asked, we will deal with it at that time.

12 **MR. UNIKEL:** Thank you, Your Honor.

13 (Whereupon, the discussion at sidebar

14 concludes.)

15 - - -

16 **THE COURT:** May I see counsel at sidebar again.

17 - - -

18 (Whereupon, the following discussion is held at

19 sidebar.)

20 **THE COURT:** My courtroom deputy -- has

21 Defendants Exhibit 5 been admitted?

22 **MR. UNIKEL:** It has not.

23 **THE COURT:** So we shouldn't be putting it up on

24 the screen?

25 **MR. UNIKEL:** Correct.

1 **MR. LAHAD:** I don't think it was, Your Honor.

2 **THE COURT:** Pretty sure I saw it up there a few

3 minutes ago.

4 **MR. UNIKEL:** We didn't put it up.

5 **MR. LAHAD:** I apologize, Your Honor. I didn't

6 ask for it to be put up. I apologize.

7 **THE COURT:** That's fine.

8 (Whereupon, the discussion at sidebar

9 concludes.)

10 - - -

11 **THE COURT:** Let's proceed.

12 **MR. LAHAD:** Thank you, Your Honor.

13 **BY MR. LAHAD:**

14 **Q.** Let me ask it this way, Mr. Choc. Are you aware of a

15 \$10 million donation by Google to the University of

16 Washington Computer Science Program for which Dr. Dey is

17 the dean?

18 **A.** I'm not.

19 **MR. LAHAD:** No further questions.

20 **THE COURT:** Thank you.

21 Redirect?

22 **MR. UNIKEL:** No, Your Honor.

23 **THE COURT:** Thank you, sir. You may step down.

24 **THE WITNESS:** Do I leave all of this here?

25 **THE COURT:** Yes. That's fine.

1 All right. We'll have Google call its next

2 witness.

3 **MR. UNIKEL:** Your Honor, for our next witness,

4 we will be calling Dr. Anind Dey by deposition testimony.

5 In advance of that, I would like to make a

6 motion to admit the exhibits that will be discussed so

7 that the jury can see those during the course of the

8 deposition.

9 **THE COURT:** Okay. Can we put on the record

10 what exhibits those are?

11 **MR. UNIKEL:** Yes, Your Honor. It's Exhibits

12 DTX-4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20,

13 28, and 34, Your Honor.

14 **THE COURT:** Any objections?

15 **MR. LAHAD:** No objection, Your Honor, provided

16 that the deposition testimony is played in full.

17 **THE COURT:** Those are admitted conditionally on

18 the deposition testimony being played.

19 **MR. UNIKEL:** And, Your Honor, if I may ask for

20 the instruction regarding deposition testimony, please.

21 **THE COURT:** Yes. Ladies and gentlemen of the

22 jury, a deposition is the sworn testimony of a witness

23 taken before trial. The witness is placed under oath and

24 swears to tell the truth, and lawyers for each party may

25 ask questions. A court reporter is present and records

1 the questions and answers.

2 The deposition of Anind Dey, which was taken on

3 November 12, 2019, is about to be presented to you by

4 video. The deposition testimony is entitled to the same

5 consideration and is to be judged, insofar as possible, in

6 the same way as if the witness had been present to

7 testify.

8 You may proceed.

9 **MR. UNIKEL:** Thank you, Your Honor.

10 (The deposition designation of Anind Dey plays as

11 follows:

12 **BY MR. UNIKEL:**

13 **Q.** Good morning, sir. Can you please state your name

14 for the record.

15 **A.** Anind Dey.

16 **Q.** Also, I want to be clear, you are not involved in

17 this lawsuit in any way.

18 You understand that?

19 **A.** I do.

20 **Q.** And Dey Exhibit Number 1 is a subpoena to testify in

21 a deposition, and this is issued by Google LLC.

22 Do you see that?

23 **A.** I do.

24 **Q.** And am I correct, sir, you received a copy of this?

25 **A.** I do -- I did, yeah.

1 Q. And in fact, this is the reason you're appearing here
 2 for the deposition today, because you received a
 3 subpoena --
 4 A. Several.
 5 Q. And you have no financial interest in the outcome of
 6 this litigation whatsoever, do you?
 7 A. No, I do not.
 8 Q. Okay. Sir, as part of the subpoena, you will recall
 9 that you were asked to look for some documents in -- in
 10 the event that you might have any of those in your
 11 possession.
 12 Did you do that, sir?
 13 A. I did look.
 14 Q. And did you find anything?
 15 A. I could only find what was available on the public
 16 website.
 17 Q. Okay. And when you say "the public website," what is
 18 the public website that you're referring to?
 19 A. There's a website called the "Future Computing
 20 Environment CyberDesk" page hosted at Georgia Tech in the
 21 College of Computing, where I did my Ph.D. That was a
 22 site I put together probably in 1997 through 1999. And
 23 that has the documentation of all the papers that I
 24 published and some source code, as well as some additional
 25 descriptions of -- additional descriptions of services

1 said, was for FCE, and what -- what is FCE?
 2 A. Future Computer Environments. It was the name of my
 3 researcher -- my -- my Ph.D. advisor was Gregory Abowd's
 4 research group at the time.
 5 Q. Let me show you a document that I'm marking as
 6 Exhibit Number 3.
 7 Sir, is exhibit number -- what is Exhibit Number 3?
 8 A. Exhibit Number 3 is the main homepage for the Future
 9 Computing Environments website that we just discussed.
 10 Q. And this -- the Future Computing Environments, is
 11 that a group that is part of the Georgia Tech?
 12 A. It was.
 13 Q. The website in the Future Computing Environments
 14 website, that was up and available during the time that
 15 you were at Georgia Tech?
 16 A. Absolutely.
 17 Q. Was there restricted access to the website, or could
 18 anybody access it?
 19 A. Anybody could access it.
 20 Q. And what sorts of things were put on the Future
 21 Computing Environments website?
 22 A. It was a typical research homepage for fact in
 23 academia. So it was a list of people associated who were
 24 with the Future Computing Environments group, the project
 25 that were undertaken by the people involved in the group,

1 involved in the CyberDesk system that didn't show up in a
 2 publication.
 3 Q. Am I correct you currently live here in Washington?
 4 A. I do.
 5 Q. And what is your current job?
 6 A. I'm a dean of the Information School and a professor
 7 within the Information School at the University of
 8 Washington.
 9 Q. And when you say "the Information School," what is
 10 the Information School in particular?
 11 A. It's a college that comes from -- used to be an old
 12 library school, as library schools transitioned what they
 13 focused on, being much more about technology. It covers
 14 basically the interaction between human centered and
 15 humanities, as well as more of a STEM focus, so really
 16 looking at how to apply technology for the greater good.
 17 Q. And then you received a master's of science in
 18 aerospace engineering from Georgia Tech in 1995; is that
 19 right?
 20 A. That's correct.
 21 Q. And then you -- you received both a master's of
 22 science in computer science and a Ph.D. in computer
 23 science from Georgia Tech in 2000; is that right?
 24 A. That's correct.
 25 Q. Sir, you had mentioned a website that, I think you

1 access to equipment, and as well as a list of projects
 2 that undergrads could get engaged in to be part of the
 3 research group.
 4 Q. And did you -- let me show you, on this page of
 5 Exhibit 3 --
 6 A. Yeah.
 7 Q. -- which is the homepage, so to speak, of the Future
 8 Computing Environments website, you see there's a -- a tag
 9 called "projects"?
 10 A. Yes.
 11 Q. And am I correct that that was a link which would
 12 take you to a subsequent Web page?
 13 A. That's right. All of these were links, yeah.
 14 Q. Let me show you a document that I'm marking as Dey
 15 Exhibit 4.
 16 Sir, am I correct that Exhibit 4 appears to be the
 17 Projects page from the Future Computing Environments
 18 website?
 19 A. That's correct.
 20 Q. Do you see on Page 2 of this "projects" tab, there's
 21 a section for "past projects"?
 22 A. Yes.
 23 Q. And one of those past projects is CyberDesk, correct?
 24 A. Correct.
 25 Q. Now, CyberDesk, what was -- are you familiar with

1 CyberDesk?

2 **A.** Yeah, I was one of inventors of it.

3 **Q.** So can you give me, at least at a high level, a

4 description of what CyberDesk was?

5 **A.** CyberDesk was a -- both an infrastructure and a

6 platform that allowed you to select information in some

7 application, have that information be -- have the selected

8 information be processed in a number of different ways,

9 and to cause a number of services to be made available

10 to -- in the user interface to somebody who's trying to

11 get more information about the information they had

12 selected.

13 The information could either be completely

14 highlighted with a mouse or if it -- a whole e-mail could

15 be considered as a selection. The whole -- all the

16 information -- content in a browser could be considered

17 the selected information.

18 **Q.** And what was your role in creating CyberDesk?

19 **A.** So at the very beginning, I worked with a visiting

20 Ph.D. student from University of Birmingham, Andy Wood,

21 Andrew Wood. He had built an infrastructure called

22 "Cameo" something. I don't remember exactly the name of

23 it, Cameo. And it was a system that allowed you to plug

24 different software components together. Together, we had

25 this idea that we could build a system that could do what

1 CyberDesk did, and so building off of his Cameo work, we

2 put the first -- first version of CyberDesk together that

3 allowed these different components to work together, one

4 where you were able to select information from one

5 application and have it be represented in some way in

6 another application.

7 **Q.** And when did you start working on CyberDesk to the

8 best of your recollection?

9 **A.** Yes. So that would have been fall of 1996.

10 **Q.** -- on CyberDesk, and when did you have your first

11 prototype version of CyberDesk?

12 **A.** We submitted the paper in September of '90 -- sorry.

13 We submitted the paper -- the paper was published in -- at

14 CHI 1997. The conference is in April, I'm just trying to

15 make sure I get my calendar years right. So it means we

16 submitted the work in the fall of '96. Sorry, which means

17 we did the work in the -- in the summer of '96.

18 **Q.** Okay. When you say you "submitted the paper," what

19 do you mean?

20 **A.** We wrote up a paper that is -- if you went to the --

21 the link on CyberDesk, it would come to a list of

22 publications, there's one paper that's listed, it's a

23 short paper, like three or four pages long -- actually, it

24 might -- in those days, it might only be two pages -- that

25 was a description of the first instantiation of it, but

1 the first -- but the work was -- the first working version

2 of it was in summer of '96.

3 **Q.** Okay.

4 **A.** Because we had to have gotten it done before we could

5 submit the paper, update.

6 **Q.** Sir, am I correct that Exhibit Number 5 is the -- is

7 the Web page for the CyberDesk project that we just saw

8 the linking to on the Future Computer Environments Web

9 page?

10 **A.** That's correct.

11 **Q.** And did you have some role in creating this index and

12 this Web page?

13 **A.** I created the whole thing.

14 **Q.** And when would you have -- sir, when did you first

15 post any information relating to CyberDesk?

16 **A.** It would have been in the spring of 1997 when we got

17 the paper published -- when we found out the paper was

18 getting published, and then it was updated for a couple of

19 years while the project was still active.

20 **Q.** But all of the material that's on this particular Web

21 page, would you personally have put it onto the Web page?

22 **A.** Why yes.

23 **Q.** And would that include, for example, the linking to

24 any articles or publications that are included here?

25 **A.** That's correct.

1 **Q.** I see at the top, under Version 2.0, there is your

2 name, correct?

3 **A.** Uh-huh, correct.

4 **Q.** As well as Gregory Abowd?

5 **A.** Correct.

6 **Q.** Who was Gregory Abowd?

7 **A.** My Ph.D. advisor.

8 **Q.** And he was on the faculty of Georgia Tech?

9 **A.** That's right.

10 **Q.** And then Chris Atkeson is also listed, correct?

11 **A.** Correct.

12 **Q.** Who is Chris Atkeson?

13 **A.** Chris Atkeson was another faculty member of Georgia

14 Tech and he was the co-founder on the Future Computing

15 Environments group, but he didn't have anything to do with

16 this particular project.

17 **Q.** And you said the first paper that you would have

18 uploaded onto the Web page and linked on the Web page was,

19 I think, a -- a -- is a CHI or CHI?

20 **A.** CHI.

21 **Q.** CHI '97?

22 **A.** That's correct.

23 **Q.** Can you find that for me in this listing of CyberDesk

24 and related papers, please?

25 **A.** Yes. It's the -- it's called "CyberDesk: Automated

1 Integration of Desktop and Network Services. Andy Wood,
 2 Anind K. Dey, Gregory D. Abowd. Technical note in the
 3 proceedings of the 1997 conference on Human Factors in
 4 Computing Systems."
 5 Q. And approximately, when did you link to that article
 6 on this Web page to the best of your recollection?
 7 A. It would be -- have been in February or March of
 8 1997.
 9 Q. And why do you think February or March of 1997?
 10 A. The camera-readies would have been due for that
 11 conference at that time in order to be published in time
 12 for publication in roughly April or May of 1997.
 13 Q. And just because I'm not as familiar, when you say
 14 the "camera-readies," what does that mean?
 15 A. You submit a -- a version of your paper, you get
 16 reviews on that. So if the paper was submitted for review
 17 in September of '96, by December of '97, we'd get feedback
 18 and saying whether the paper was accepted or not, with
 19 some reviews request for changes, if necessary. And the
 20 camera-ready is the -- the very final version that will
 21 then get published.
 22 Q. Okay. And the other papers that are listed here on
 23 the CyberDesk website, am I correct, you also personally
 24 loaded these onto the Web page along with their links?
 25 A. Yes, I did.

1 going back to Exhibit 4, The Context Toolkit, and then
 2 below that probably would be the CyberDesk project.
 3 And so it was just a way for the brand of -- of the
 4 Future Computing Environments to grow and my own personal
 5 brand to grow.
 6 Q. In starting to work on the CyberDesk problem, were
 7 there particular problems you were trying to solve or
 8 goals that you were trying to achieve?
 9 A. One of the challenges in -- yes. The goal that --
 10 the challenge that we were trying to overcome is the fact
 11 that it was very hard for information sources to interact
 12 with each other. I would argue it still is today to some
 13 degree. Much of the information we have is very siloed
 14 and certainly was at that time. So the idea that when
 15 I'm -- in the early days of the Web and the early days of
 16 the connected tools, like visual e-mail browsers, GUI
 17 based -- graphical-based e-mail browsers, it was often the
 18 case that you would be looking at some content and then
 19 you'd switch to another tool to be able to -- and you'd
 20 manually take that information from one tool to the next,
 21 to the next, to the next.
 22 And so the goal really was how can we eliminate the
 23 manual steps of switching between all of these different
 24 tools, and instead, if you can just pick the text that you
 25 want more information about or pick the contents that you

1 Q. And while you were at Georgia tech, were -- were all
 2 of these links live, were they accessible to anybody in
 3 the public who was interested in the project?
 4 A. That's correct.
 5 Sorry, there's one exception. There are two little
 6 dots at the very, very bottom, right above the FCE logo.
 7 Q. Yes.
 8 A. Those were internal links, where I did some -- it was
 9 just a quick shortcut for me to get to some internal
 10 testing I was doing.
 11 Q. But everything else that is linked on this page, was
 12 that accessible to a visitor to the Web page at the time?
 13 A. Yes, it was.
 14 Q. And is that true in 1997?
 15 A. Yes.
 16 Q. In 1998?
 17 A. Yes.
 18 Q. Why did you post all these papers and all these
 19 related materials on the CyberDesk Web page during this
 20 time period, 1997, 1998?
 21 A. Part of this is in building your brand as an
 22 academic, that show what the work that you've done is. So
 23 link to Exhibit 3, there's a "people" link off of that
 24 page, I would have been listed there on that page, and
 25 then it would have had my list of projects, which was,

1 want more information about and then have the system guess
 2 to some degree, but suggest things that you might want to
 3 do with that information and then populate a list of -- an
 4 interface that shows you all of those suggestions, you
 5 pick what you want, and then you get the result rather
 6 than you having to carry this information through multiple
 7 tools.
 8 Q. So we'll go from the end of the section, the -- the
 9 third to last paper in this section is entitled
 10 "CyberDesk: Automated Integration of Desktop and Network
 11 Services," correct?
 12 A. Correct.
 13 Q. And that is a technical note in the proceedings of
 14 the 1997 Conference on Human Factors in Computing Systems,
 15 CHI '97, correct?
 16 A. Correct.
 17 Q. And was this the first publication that you recall
 18 making about the CyberDesk system?
 19 A. It was.
 20 Q. And what -- what actually was -- can you give me some
 21 context for what you meant by the presentation that you
 22 made here?
 23 A. Yes. So at the conference, every paper that is
 24 accepted for publication gets a presentation slot at the
 25 venue. So there are multiple sessions going on

1 simultaneously. At that time at CHI, there were probably
 2 like four or five sessions going on. And in my session,
 3 there would be -- have been papers that were very similar
 4 to mine in content, and I was given a speaking slot of
 5 somewhere between 10 and 15 minutes.
 6 Q. And what CHI?
 7 A. CHI is the premier venue, publication venue,
 8 conference venue for the field of human-computer
 9 interaction. Well, in industry, it's called "user
 10 experience."
 11 Q. And that's what C-H-I stands for, correct?
 12 A. That's correct.
 13 Q. Computer-human interaction?
 14 A. That's correct.
 15 Q. And approximately, how many people do you think would
 16 attend a conference like CHI '97? Hundreds?
 17 A. It would have been over a thousand, but I couldn't
 18 give you a closer number.
 19 Q. And do you recall actually presenting at CHI '97?
 20 A. I do.
 21 Q. And approximately, how many people were there to --
 22 would you say -- I -- understanding it's a long time ago,
 23 how many people were there to hear your presentation?
 24 A. A couple of hundred.
 25 Q. And were there -- was there a Q and A session at all?

Deposition Designation - Dey

1 I presented that, which was essentially a summary of
 2 the -- of the technical note that was published
 3 separately.
 4 Q. So Exhibit 8, sir, are the -- the blow-ups of the
 5 slides that were available from CHI '97 on the Future
 6 Computer Environments Web page.
 7 A. Right.
 8 Q. And so, for example, do you see that the first page
 9 of this Exhibit 8 appears to be a blow-up of the slide
 10 that was we see in the CHI technical note Exhibit 7?
 11 A. I do.
 12 Q. And would you have been using these slides that
 13 appeared in the actual technical note as part of your
 14 presentation?
 15 A. I would have probably used a modified version, where
 16 the As, Bs and Cs were not immediately visible. So I
 17 could show almost an animation, a physical animation.
 18 Q. Got it.
 19 A. But something very, very similar.
 20 Q. Now, if you look at the technical note itself from
 21 CHI '97, do you see that there is -- we see Figure 1,
 22 which includes the slide that we're looking at as the
 23 first page of Exhibit 8 correct?
 24 A. Correct.
 25 Q. And just underneath, there's text that reads, "For

1 A. There was. Right after my talk, there was a Q and A
 2 session.
 3 Q. And did you actually present on CyberDesk during
 4 that?
 5 A. I did.
 6 Q. Sir, am I correct, Exhibit 7 is a copy of the
 7 technical note that was published for CHI '97?
 8 A. It was.
 9 Q. And did you author this?
 10 A. I did, coauthor.
 11 Q. Coauthored with Greg Abowd and Andrew Wood, correct?
 12 A. That's correct.
 13 Q. And this particular technical note shows a date, on
 14 the top right corner, of March 22nd to 27th, 1997,
 15 correct?
 16 A. Correct.
 17 Q. Is that approximately when CHI '97 happened, to your
 18 recollection?
 19 A. Yes.
 20 Q. So this particular technical note, did you actually
 21 present the technical note itself, or did you give a
 22 presentation and then the technical note was simply
 23 published as part of the proceedings?
 24 A. The latter. So I produced a presentation, it was
 25 actually a physical presentation with physical slides, and

Deposition Designation - Dey

1 example, at the top left in Figure 1 is an e-mail message
 2 informing Anind about the great work going on in the
 3 Future Computer Environments group at Georgia Tech. Anind
 4 is intrigued and decides to investigate further.
 5 Highlighting 'Gregory Abowd' causes the ActOn Button Bar
 6 to suggest some actions. A."
 7 Do you see that?
 8 A. I do.
 9 Q. Again, are you describing the operation of the
 10 CyberDesk system here?
 11 A. I am.
 12 Q. And so let's start with that -- that first step --
 13 A. Yeah.
 14 Q. -- that was shown in A. Can you describe -- maybe
 15 there's -- it's just as easy to rely on the words of the
 16 paper?
 17 A. It is. It would be, but referring to the Exhibit 8
 18 figure, an e-mail comes in, so what you -- what's a little
 19 hard to see from the figure is that there are four
 20 different windows on the screen here. So there's the top
 21 window, which is the -- an e-mail client; a -- in the
 22 bottom left, we have a contact manager; in the top right,
 23 we have an ActOn, the core part of the CyberDesk system,
 24 essentially the user interface for the CyberDesk system;
 25 and then you have a Web browser in the right side, the

1 bottom right.
2 And so what happened is, in this scenario, an e-mail
3 was received, the user selected with a mouse the name
4 Gregory Abowd. That went into the -- a CyberDesk
5 infrastructure, which -- do you want me to go into the
6 details of that?

7 Q. Yes, please. That would be helpful.

8 A. So what happens with any contact was -- when any
9 content is selected is that it was published to any of the
10 other components that could be listening. And so when
11 everything first gets started, when these were all written
12 originally as Java applets, which -- I don't even know if
13 I can describe what an applet is any more -- essentially,
14 a very lightweight application that we don't have today,
15 just doesn't exist.

16 So all of these -- all of these applications would be
17 launched, except for the Web browser, that didn't have to
18 be launched, but the contact manager was an application,
19 an applet, the mail tool was an applet, and the CyberDesk
20 system had an applet, which was the -- the visual
21 interface at the top right.

22 So when the -- when any -- when content was selected
23 in any of the windows, it would publish to the rest of the
24 listeners, to anybody that was interested in the
25 information, that had registered itself for the CyberDesk

1 system, and they didn't -- those listeners did not have to
2 be visible on the screen, they could be hidden, they
3 didn't need visual interface.

4 But then you selected the content, that information
5 was available to all the listeners, not all the listeners
6 could leverage that content, so you could have something
7 that maybe converted phone numbers to, I don't know, an
8 address, and since Gregory Abowd is clearly not a phone
9 number, it would get ignored, but it would go to all of
10 the components that could use text or could use
11 information on a name. There was some integration work
12 that happened behind the scenes while -- after the person
13 has selected it, which was to determine that this text,
14 Gregory Abowd, was a name. And it was pretty trivial, it
15 used some regular expression matching to figure out
16 capitalized first word, capitalized second word, therefore
17 it's a name.

18 And so the interface in -- that we see in the top
19 right, got dramatically generated with buttons or
20 interactions that could occur based on the highlighted
21 text being selected. -- being seen as both a string and
22 as a name. And the three that got picked in this case
23 were: You could search for that string using the
24 AltaVista Web -- Web search tool, which is what you see in
25 the bottom right; you could look up a phone number

1 using -- oh, no, sorry, that's not true. It's look up the
2 phone number for name using the Switchboard.

3 So that was a tool that converted names to phone
4 numbers, which I can't imagine you could have today, but
5 it existed then. So that converted a name to a phone
6 number and that's what you see in a Web browser on the
7 bottom right.

8 And then looking up the name in the content -- sorry,
9 contact manager tool, another one of the running applets
10 occurred in the lower left.

11 Q. But in the technical note from CHI '97, Exhibit 7,
12 right above the graphic, the text says, "The user
13 highlights some text in the window of the one service and
14 CyberDesk determines the type of the text to suggest how
15 the user can invoke behavior in the other services using
16 that text."

17 A. Correct.

18 Q. When -- when it said that the "CyberDesk determines
19 the type of text," how would it do that?

20 A. So there were a number of -- mostly it would do it by
21 regular expression matching, which is essentially
22 comparing it to a template. So a phone number, think of
23 it as a three digits followed by three digits followed by
24 four digits, a name, first name capitalized -- or first
25 word capitalized, second word capitalized, a URL, it had a

1 number of these types that were built into the system just
2 that were sort of common at this point in time.

3 Q. When you say in the description here that "once the
4 text is determined to be of a particular type, it would
5 invoke" -- "it would allow the user to invoke particular
6 behaviors that were suggested."

7 So if the type -- a type was determined, how would
8 the system then know what behaviors to suggest?

9 A. So there were a number of services that were
10 registered with the CyberDesk infrastructure on -- on
11 start up, and each of those could either -- in this
12 instantiation, those could do one of two things. They
13 could either just consume the information, which means use
14 it and then perform a service, or it could convert it to
15 another type of information. And that's where you see
16 a -- a string being converted to a name.

17 Q. And would there then -- I notice that some of these,
18 for example, it says "lookup name."

19 A. Correct.

20 Q. I assume, then, there had to be an identification by
21 CyberDesk of the information as being a name?

22 A. That's correct.

23 Q. And if information was determined to be a name, were
24 there certain suggestions that would be different if, for
25 example, the information was a phone number?

1 A. Correct.

2 Q. How would it determine which actions to suggest?

3 Would there be some predefined actions that would go along

4 with a particular kind of information?

5 A. It was not predefined, but it was determined

6 dynamically depending on which services were running at

7 the time. So at any time a new service could get added

8 and it would just connect to the CyberDesk system. And if

9 that -- when it connected, it would say, "I have the

10 ability to produce this kind of information or I have the

11 ability to use this kind of information."

12 So if that kind of information was seen and it was a

13 consumer, it would be pushed that information in which

14 case it would tell the ActOn button, "Hey, pop up an

15 interface so that the user can select me."

16 Q. Okay. And so I noticed that the second -- the second

17 button in the ActOn-button screen says "Lookup Phone

18 Number For Name Using Switchboard" --

19 A. Correct.

20 Q. -- do you see that?

21 So when it says "name," am I correct, it has

22 identified Gregory Abowd as being a name?

23 A. Correct.

24 Q. And then how would it look up the phone number for --

25 that would be associated with that name?

1 Q. And it also includes a phone number?

2 A. Correct.

3 Q. There's another button in the ActOn-button screen

4 that says "Lookup Name Using Contact Manager," correct?

5 A. Correct.

6 Q. So, first, let me ask: "Contact manager," what is

7 that referring to?

8 A. This was our very simple representation of a

9 traditional contact almost like a phone book, so it

10 allowed us to store some very trivial information about

11 you. You can see the information here, you can put

12 somebody's name in, their URL Web page that represented

13 them, a phone number, an e-mail. And then below this,

14 you'd be able to see an address and some other kinds of

15 traditional personal information management system tools.

16 This was not a commercial application by any stretch, this

17 is an application we built for this purpose.

18 Q. Was the contact manager maintained on a user's

19 device?

20 A. That's correct for this one, yes.

21 Q. Whereas, Switchboard, for example, was that

22 maintained off a user's device on a website?

23 A. That's correct.

24 Q. And am I correct that a user of this contact book

25 actually could separately access the contact book?

1 A. So I don't remember exactly how the Switchboard

2 worked, but my recollection is that there was a fairly

3 trivial URL that could be created. So you would put in

4 www. -- or http://www.Switchboard.com, then some form

5 information, and then you'd pass in as a parameter -- an

6 input to the -- to that form the name Gregory Abowd, and

7 then it would -- it would know to produce this Web page.

8 Q. And this may be a silly question, but how would a

9 user actually interact with that button that says "Lookup

10 Phone Number For Name Using Switchboard"?

11 A. They would simply click on it with a mouse.

12 Q. And so when they clicked on that button, what would

13 happen?

14 A. A Web browser would be launched and that's what this

15 Web page is showing on the bottom right of this page.

16 Q. And so on the bottom right of this page on this --

17 it's designated with the letter C, am I correct, we are

18 seeing the display of information from the Switchboard

19 website?

20 A. Correct.

21 Q. And the information that's being displayed includes

22 the name Gregory D. Abowd, correct?

23 Q. And it also includes a mailing address that's in

24 Atlanta, Georgia, correct?

25 A. Correct.

1 A. Correct.

2 Q. And they could input this information directly if

3 they wanted to?

4 A. That's right.

5 Q. Here, the button that says "Lookup Name Using Contact

6 Manager," what -- what would happen if a button -- if a

7 user clicked on that button?

8 A. It would take the name, Gregory Abowd, that it got

9 from the e-mail window, so -- sorry, the e-mail -- so once

10 the user selected Gregory Abowd, it would go into the

11 CyberDesk system, get converted to a name. When the user

12 clicked on "Lookup Name Using Contact Manager," that name

13 would be put into the search window of the contact book.

14 Q. And then what would happen? Would it -- would the

15 contact manager actually do that search?

16 A. We had it done in two different ways, where you

17 could -- we sometimes -- one instantiation we had it so

18 that you would automatically do the search. And then the

19 first instantiation here or in this -- the graphic we're

20 showing here, it didn't do the search automatically.

21 Q. It would just populate the screen?

22 A. Yes, with Gregory Abowd. It was more of a issue with

23 users just being a little uncomfortable with the system

24 doing too much on -- on their part. They wanted some --

25 some agency and click on the button.

1 Q. And then -- so now looking back at Exhibit 7, which
 2 is the technical note from CHI.
 3 A. Yes, absolutely.
 4 Q. Am I correct that what's described here, you intended
 5 to be an accurate description of the way the system worked
 6 at the time?
 7 A. Yes.
 8 Q. And did you present the features that are prescribed
 9 here in Exhibit 7 as part of your presentation at CHI '97?
 10 A. I did.
 11 Q. Looking at -- in the CHI '97 technical note, I see
 12 that there's a Figure 3.
 13 A. Yes.
 14 Q. And in Exhibit 8, if you look at the third page, do
 15 you see that Figure 3, then, is blown up there on that
 16 third page of Exhibit 8?
 17 A. Yes.
 18 Q. And can you just give me a general description of
 19 what's being shown here in this diagram of Figure 3? And
 20 I can tell you Figure 3 is -- is tagged as the "Runtime
 21 Architecture of cyberDesk" in the article itself.
 22 A. Right. So within the -- within the mail tool that's
 23 on the first page of Exhibit 8, you can have multiple
 24 different -- the user can select multiple different pieces
 25 of information.

1 CHI '97 entry.
 2 A. Yes.
 3 Q. So that would have been describing the first
 4 instantiation, correct?
 5 A. That's correct.
 6 Q. Right above that, we see a presentation called
 7 "CyberDesk: A Framework for Providing Self-Integrating
 8 Ubiquitous Software Services." Do you see that?
 9 A. I do.
 10 Q. And that says "Demo in the Proceedings of the ACM
 11 Symposium on User Interface Software and Technology
 12 UIST '97," correct?
 13 A. Correct.
 14 Q. Can you -- what was the -- was that presentation,
 15 UIST?
 16 A. We submitted this paper for publication as a full
 17 paper for presentation within the conference. It was not
 18 accepted as a full paper, but it was -- we later submitted
 19 a two-page version of that publication, which is the
 20 second instantiation, described the second instantiation
 21 in limited detail because it was only two pages long of
 22 the CyberDesk system.
 23 And it was accepted as a demo, which meant, in the
 24 evening, one of the conference nights, there was a
 25 three-hour session at which time I demoed the CyberDesk

1 They can select someone's name, they can select text,
 2 they can select an e-mail address. And so first under the
 3 display portion of this figure, that's just information
 4 that's displayed in the personal information management
 5 tool. In this case, the mail reader.
 6 Once the user selects one of those, the CyberDesk
 7 system consumes that information, consumes what was
 8 selected and determines whether it can convert the chosen
 9 information to any other different type.
 10 So the two examples given here are: If an e-mail was
 11 selected, that e-mail address could be changed to a piece
 12 of text. And if a text was -- piece of text was created,
 13 it had the opportunity to be converted to a name.
 14 Based on the conversions that occurred, the ActOn
 15 button would suggest -- so now we're in the suggest
 16 portion of this image -- it would suggest, via the buttons
 17 that were -- that it was populated with, the kinds of
 18 actions that a user could perform. And then they would
 19 select one of those actions. And depending on the action
 20 that was selected, it would send the appropriate
 21 information to the appropriate service which was -- is
 22 delineated quite well on -- on the buttons themselves.
 23 Q. So if I could ask you to look at your CV for me,
 24 please, in particular at the "Conference and Workshop
 25 Publication" section. And if you could find on Page 5 the

1 system to whoever -- all the attendees for -- for that
 2 period of time.
 3 Q. And this -- this particular UIST demo, which
 4 instantiation of CyberDesk was that, the first or the
 5 second?
 6 A. The second.
 7 Q. And in the second, I think one of the things you said
 8 was it could actually analyze the entire contents of an
 9 e-mail?
 10 A. That's correct.
 11 Q. And Exhibit 10 is actually what appears at the HTML
 12 link for that same CHI '97 paper?
 13 A. Okay.
 14 Q. Did you -- when you would publish the HTML or PDF and
 15 provide both links, were they the same paper?
 16 A. Yes, absolutely.
 17 Q. So, once again, in 1997, after CHI '97, if -- if I
 18 was a user of the website, would I have been able to
 19 access both this HTML version as well as the PDF version
 20 off of the -- the website for CyberDesk?
 21 A. That is correct.
 22 Q. Sir, do you see that Exhibit 11 is entitled
 23 "CyberDesk: A Framework for Providing Self-Integrating
 24 Ubiquitous Software Services," and it is authored by you,
 25 Gregory Abowd, Mike Pinkerton and Andrew Wood?

1 A. Yes.

2 Q. You've mentioned the other three, but who is Mike
3 Pinkerton?

4 A. Pink was a -- Mike Pinkerton, sorry. Pink was his
5 nickname. Mike Pinkerton was a master student working
6 with my -- in the College of Computing at Georgia Tech
7 working with my Ph.D. advisor, Gregory Abowd.

8 Q. Now, this particular -- this appears to be a
9 technical report, correct?

10 A. That's correct.

11 Q. So what is the difference between a technical report
12 and a -- a journal article?

13 A. Success in publication versus not success in
14 publication. So we -- we submitted this originally to the
15 UIST Conference when it was not -- when it was not
16 accepted, we created a technical report which meant that
17 we could still share it with the -- with the world.

18 Q. Okay. So now, again, I'm going to cross-reference
19 here. If we can go back to Exhibit 5, which is the
20 website page for the CyberDesk project, please.

21 A. Yes.

22 Q. If you could please find the entry that corresponds
23 with this Exhibit 11, UIST technical report.

24 A. Yes. It's the "CyberDesk: A Framework for Providing
25 Self-Integrating Ubiquitous Software Services."

1 A. I do.

2 Q. And why did you permit users actually to click on the
3 figures in the published reports on the website so they
4 could actually get these kinds of blow-ups of the figures?

5 A. It was really for transparency of how --
6 understanding the system and how it worked. It just made
7 the -- oftentimes a text is not sufficient to understand
8 what was happening, and small versions of the images were
9 not helpful either. So having -- being able to see the
10 images blown up and really seeing sort of that flow of
11 information we found was very helpful.

12 Q. Am I correct in your technical report you attempted
13 to accurately convey the operation of the CyberDesk
14 system?

15 A. Correct.

16 Q. And in Figure 1, which is also the first page of this
17 Exhibit 12, do you see there's -- in the technical report,
18 it says "Mock screenshot of above user scenario"?

19 A. Yes.

20 Q. And in this particular screenshot of Exhibit 12, the
21 first -- we see in the top-left corner, is that an e-mail?

22 A. That's correct.

23 Q. And what is shown in that e-mail, what is -- what
24 action is being shown there?

25 A. The user selecting an e-mail address.

1 Q. Now, I see the technical report itself is identified
2 as having been authored in April of 1997; is that correct?

3 A. That seems right. That's when we would have -- April
4 1997? Yes, that's correct.

5 Q. And then it was submitted to UIST '97, according to
6 the Web page, correct?

7 A. That's right.

8 Q. So can you give me the timeline of that, when it came
9 to this technical report, to the best of your
10 recollection? In particular, what I'm trying to get a
11 sense of is: When would this technical paper have been put
12 up on the CyberDesk website?

13 A. My assumption is that we would have put it up on
14 the -- on the website around June of 1997.

15 Q. And why is that your assumption?

16 A. The conference -- the program committee that I
17 referred to usually met in June of the conference, the
18 year -- well, the same year that the conference is being
19 held.

20 Q. Yes. For this particular technical report, which
21 sub- -- instantiation of CyberDesk?

22 A. The second one.

23 Q. Sir, Exhibit 12 is -- are the blow-ups that are
24 contained on the HTML version on the website of this
25 particular technical report. Do you see that?

1 Q. And then it appears that certain ActOn buttons have
2 been created; is that right?

3 A. That's correct.

4 Q. And, again, can you describe in this instantiation of
5 CyberDesk that's being described how that -- how that
6 analysis occurred from the highlighted information in the
7 e-mail to the ActOn buttons?

8 A. So one of the innovations between the first
9 instantiation and the second instantiation was the ability
10 to, what we call, chain -- chaining information. So in
11 the first instantiation, we show how you could take text
12 and convert it to a name. And what we realized is that,
13 well, there's something else that cannot only consume a
14 name like the Switchboard demonstration we saw on the
15 bottom-right of -- sorry, lost it -- Exhibit 8.

16 So in addition to that, we realized that there -- in
17 addition to services being able to consume that
18 information, there were other services that could take
19 that information and convert it.

20 So you could have some -- a name that could go to --
21 sorry, a text that could be converted to a name, that name
22 to a phone number, that phone number to an address, that
23 address to and da-da-da-da, ad finitum. Not
24 ad infinite --

25 Q. Right.

1 A. -- there was something -- there was something to
2 check to make sure it did not go in a -- in a -- in a
3 vicious setup, perpetual loop, infinite loop. And so in
4 this case what we're seeing is that an e-mail address was
5 converted -- first to -- not first. It was converted to a
6 string, it was converted to a phone number, it was
7 converted to -- well, it was -- it was consumed by
8 something that could launch or send -- interact with an
9 e-mail tool to create a new e-mail.

10 And then the last -- the second one that I skipped
11 over, "Save Contact Info Using Contact," is it could take
12 the collection, technically called combining at that
13 point.

14 It could take all of the content that was created, so
15 you have an e-mail address, you have a name, you have a
16 phone number, you have potentially whatever else that was
17 chained together to get the -- everything that was
18 collected, and then populate all that information into the
19 contact manager.

20 Q. So in the top-left corner, we see an e-mail that's
21 displayed there, correct?

22 A. Correct.

23 Q. And am I correct that, in this instantiation of
24 CyberDesk, CyberDesk could either consume the particular
25 text that a user selected or the entire text of the

1 and timestamp will be picked up as a date, and then John
2 Doe would be picked up as a name, the URL, newbooks.com/
3 DOE would get picked up as a URL, the e-mail address
4 DOE@newbooks.com would get picked up. And then all of the
5 rest of the content would just be picked up as text.

6 Q. And then am I correct, then, it would generate ActOn
7 buttons for every one of those identified pieces of
8 information?

9 A. That's correct.

10 Q. Now, the ActOn buttons that were generated for
11 DOE@newbooks.com, am I correct, are shown in the screen on
12 the top right?

13 A. That's correct.

14 Q. And the first button that was created is "Search For
15 String Using AltaVista," correct?

16 A. Correct.

17 Q. The second button that is shown is "Save Contact Info
18 Using Contact"?

19 A. Correct.

20 Q. So can you take me through -- first of all, how would
21 that button have been created from this particular
22 information in the text?

23 A. So the e-mail address was selected in this case. For
24 that first one, there are two things that could have
25 happened here -- the second thing is what happened, but

1 e-mail?
2 A. That's correct.
3 Q. And how would it determine as it went through the
4 entire text of an e-mail whether something was a name or
5 something was a phone number?

6 A. Same as it did before when it was -- was manually
7 selected, the -- it's just a little bit more complex. So
8 it would go through each word and each collection of
9 words.

10 So it would start with the "Hello there" at the --
11 actually at the top in the window frame itself, and it
12 would say, okay, that's text, subject "hello there,"
13 that's text. Although, because of the colon -- if there
14 were no colon between "subject" and "hello," it would have
15 converted that to somebody's name, subject, first name,
16 hello, second -- last name.

17 It does know some structure about e-mail. So when it
18 sees "from," "to," and "date," it can assume it -- it knew
19 that that first part was -- somewhere in there would be a
20 name and somewhere in there would be an e-mail address, so
21 it would parse those out.

22 So the e-mail address abowd@cc.gatech.edu and the
23 name Gregory D. Abowd, would get picked up, the name
24 CyberDesk would get picked and the e-mail address
25 cyberdesk@cc.gatech.edu would get picked up. This date

1 the first thing that happened was that -- is that that
2 would just be taken as a textual string and then AltaVista
3 could search for that string DOE@newbooks.com.

4 The second thing that happens is that
5 DOE@newbooks.com was converted to a name using some
6 internal -- some service that as registered with
7 CyberDesk. That produced this name, John Doe, and
8 that's -- that -- when that got produced as a name,
9 CyberDesk then consumed that and said, well, I can also
10 search for that using AltaVista. And that's what you see
11 in the bottom left.

12 The system we made -- I won't say an arbitrary design
13 decision, but we made a design decision that always go for
14 the higher level of type. So rather -- if you have text,
15 if you only have text, then use -- do use the text. But
16 if you're able to convert that text to something else,
17 perform your services with that something else.

18 Q. So here, the second button that was created says
19 "Save Contact Info Using Contact," correct?

20 A. Correct.

21 Q. If a user clicked on that button, what would happen?

22 A. It would take all of the information that it was able
23 to collect after it -- the user selected the e-mail
24 address and all the conversions occurred and then try and
25 populate this window in the bottom right.

1 Q. And so what do we see in the -- in the bottom right,
 2 has that happened because the user has clicked -- clicked
 3 on the "Save Contact Info Using Contact" button?
 4 A. That is correct. So the information in the find John
 5 Doe -- sorry, find Doe, John -- text box was incorporated,
 6 and the -- the URL was added and the e-mail address was
 7 added.
 8 I don't know about the phone and the fax, because
 9 what you can see also here is that John Doe already
 10 existed in this -- existed in this person's contact
 11 manager. And so what CyberDesk would have done is it
 12 would have added all the fields that were missing or that
 13 were left blank.
 14 Q. So that if there was an existing contact --
 15 A. It would add to it.
 16 Q. And in this particular contact book, it appears that
 17 John Doe has been inserted into the find button; is that
 18 right?
 19 A. That's correct.
 20 Q. And that was done by CyberDesk?
 21 A. CyberDesk.
 22 Q. And as you understood it --
 23 (Video stopped.)
 24 THE COURT: At this point in time it is time
 25 for our morning break, so I've made the motion to counsel

1 THE COURT: Okay. All right. No objection.
 2 Then let's bring the jury in.
 3 (The jury enters the courtroom at 11:27 a.m.)
 4 THE COURT: Welcome back, ladies and gentlemen.
 5 Please be seated.
 6 Let's proceed with the deposition testimony of
 7 Dr. Dey.
 8 (Video continues.)
 9 BY MR. LAHAD:
 10 Q. As you understood it, once John Doe was put into the
 11 find bar, what would the contact book do?
 12 A. It would automatically -- if John Doe existed in the
 13 contact book, it would populate the rest of the interface
 14 with information about John Doe and then it would add to
 15 it the information that CyberDesk had found.
 16 Q. When you say "it would add to it," first -- first it
 17 had to find it, correct?
 18 A. That's correct.
 19 Q. And so how would it find it using the -- the name
 20 John Doe?
 21 A. So it would find it actually using the e-mail address
 22 doe@newbooks.com and then it would do that using the
 23 conversion tools that I mentioned earlier. So the e-mail
 24 address would get converted to a name, the name would get
 25 converted to a URL and -- and then a phone number or

1 to hit the pause button, and we've got it paused. So we
 2 will take you out for your morning break.
 3 (The jury exits the courtroom at 11:12 a.m.)
 4 THE COURT: All right, everyone. Let's take
 5 our morning break. We'll be back at 11:23.
 6 (Whereupon, a recess is taken.)
 7 THE COURT: Are we missing someone? All right.
 8 We will just hang tight. Have a seat.
 9 MR. ARD: If we are just playing the video,
 10 Your Honor, we can start without her.
 11 MR. UNIKEL: I think the case is closed for
 12 plaintiffs now. It hasn't been stated that way on the
 13 record. I have to at least let you know that we have
 14 50(a) motions.
 15 THE COURT: Why don't we wait for her to come
 16 back for that then, then. Feel free to have a seat. Feel
 17 free to talk amongst yourselves.
 18 MR. ARD: We are also happy to defer that to
 19 the next break, if you want to proceed that way.
 20 THE COURT: Any objection?
 21 MR. UNIKEL: No, Your Honor.
 22 THE COURT: All right. Let's bring -- is it
 23 going to be a problem for plaintiff's side if she comes in
 24 while the video is being played?
 25 MR. ARD: No.

1 whatever else was available -- I'd have to look at the
 2 paper to be exactly sure what happened here.
 3 But the way the system worked is whatever information
 4 it could get converted to would then get populated here if
 5 it wasn't already populated.
 6 Q. And to be clear, the name John Doe could be searched
 7 for in the contact book, correct?
 8 A. That's correct.
 9 Q. And if it's -- if that information was in the find
 10 button, that would be the information that was searched
 11 for?
 12 A. That's correct.
 13 Q. And here am I also correct the user could, in fact,
 14 edit any of the fields that are shown?
 15 A. That's correct.
 16 Q. Okay. Now, going back to the ActOn buttons, the
 17 third ActOn button says "Call Phone Number Using Dialer."
 18 Do you see that?
 19 A. I do.
 20 Q. If a user were to click that "Call Phone Number Using
 21 Dialer Button," what would happen in CyberDesk?
 22 A. I don't remember -- recall what the dialer
 23 application did, but it probably put up a fake phone
 24 interface and allowed -- would have populated it with a
 25 phone number that it found after it converted the e-mail

1 to a phone number either directly or through a number of
 2 conversions.
 3 Q. And when you say "a fake," is that because this was a
 4 demo?
 5 A. That was because this was a demo.
 6 Q. In the CyberDesk system that you were describing, was
 7 the intent to have the ability for the user actually to
 8 make a phone call?
 9 A. Yes.
 10 Q. And other than clicking this one button that said
 11 "Call Phone Numb Using Dialer" -- was there anything else
 12 that was required for the user to actually initiate the
 13 phone call?
 14 A. No, in this case, other than selecting the text, the
 15 e-mail address and clicking on "Call Phone Number Using
 16 Dialer."
 17 Q. The last button on ActOn button says "Send mail to
 18 this e-mail address using Netscape."
 19 Do you see that?
 20 A. I do.
 21 Q. Again, what would happen if a user clicked on that
 22 button?
 23 A. It would launch a Web browser going to the mail
 24 client inside of the Netscape browser, again, using a well
 25 formatted URL and it would tag that -- the parameter that

1 Q. Second is "Lookup Phone Number For Name Using
 2 Switchboard," correct?
 3 A. Correct.
 4 Q. And third is "Lookup Name Using Contact Manager"; is
 5 that right?
 6 A. That's correct.
 7 Q. So once again, I -- I know it's very similar, but if
 8 a user were to click on the button "Lookup Phone Number
 9 For Name Using Switchboard," what would happen?
 10 A. It would launch Netscape Web browser and would --
 11 sending in the parameter Andy Wood and that would launch a
 12 Web page that you see in the bottom left.
 13 Q. In the bottom left, am I correct, we're seeing
 14 display or a particular Web page from Switchboard?
 15 A. Yes, that's correct.
 16 Q. And along with the name Andy Wood, what other
 17 information are we seeing displayed there?
 18 A. A mailing address and phone number, as well as more
 19 listings beyond that that's not -- that are hidden.
 20 Q. And then this -- the third button under the ActOn
 21 buttons for this particular figure, Figure 3, says "Lookup
 22 Name Using Contact Manager"; correct?
 23 A. Correct.
 24 Q. Again, can you describe for me what would happen if a
 25 user were to actually click that button?

1 would be sent to that URL would be this DOE@newbooks.com
 2 and it would create a window, a semi -- partially
 3 populated by the CyberDesk system.
 4 Q. And then I assume a user could go ahead and send the
 5 e-mail?
 6 A. Fill out the e-mail -- fill out the details and send
 7 it, yes.
 8 Q. Am I correct that we see blow-up of Figure 3 on -- on
 9 the third page of Exhibit 12?
 10 A. Yes.
 11 Q. And, again, on the top left, can you take me, again,
 12 through what's happening on this screenshot that we see as
 13 Figure 3 of the UIST technical report?
 14 A. Yes. So this is the -- this actually demonstrates
 15 the -- the first instantiation or the -- the simple
 16 instantiation of CyberDesk where, in this case, you select
 17 a name and it does no combinations and it does no multiple
 18 conversions, but only does single conversions. So it
 19 takes the text "Andy Wood," realizes that it's a name and
 20 offers solution -- offers interactions only for strings
 21 and names.
 22 Q. And so, for example, the -- the three buttons that
 23 were produced here are: "Search For String Using
 24 AltaVista" is the first one, yes?
 25 A. Yes.

1 A. Yeah. So in this case, it would populate the -- it
 2 would populate the -- the contact manager was already
 3 launched. It would populate that -- the "find" text box
 4 with "Wood, Andy," because it went last name, first name.
 5 And then it would automatically search and then it
 6 populated the bottom-half or bottom two-thirds of the
 7 screen with information that you had about Andy Wood.
 8 Q. And on this screen, for example, a user could still
 9 edit any of the fields that are shown?
 10 A. That's correct.
 11 Q. And a user could add a new contact, as well?
 12 A. Correct.
 13 Q. And again, I think you testified that this -- this
 14 screen, Figure 3 of the UIST technical report, that's
 15 displaying the first -- the original instantiation of
 16 CyberDesk; is that right?
 17 A. It's displaying the -- the abilities that the first
 18 instantiation had, but as they were developed in the
 19 second instantiation.
 20 Q. So here in this UIST technical report, this one is --
 21 is describing the second instantiation of CyberDesk?
 22 A. That's correct.
 23 Q. But the second instantiation included the
 24 functionality from the first?
 25 A. Absolutely, plus more.

1 Q. And again, when do you recall, to the best of your
 2 recollection, that this was actually published onto the
 3 website?
 4 A. Spring of '97.
 5 Q. And did you personally load this technical report
 6 onto the website?
 7 A. I did.
 8 Q. Sir, do you see Exhibit 13 is an article entitled
 9 "CyberDesk: A Framework for Providing Self-Integrating
 10 Ubiquitous Software Services"; do you see that?
 11 A. I do.
 12 Q. And this has -- says on the bottom left UIST '97
 13 Banff, Alberta, Canada?
 14 A. Correct.
 15 Q. And it has a copyright date of 1997, correct?
 16 A. Correct.
 17 Q. Is this -- what is this?
 18 A. This is the two-page abstract for the demo that I
 19 published at the UIST Conference.
 20 Q. And so when you say that "this was the" -- "the
 21 abstract," what -- what did do you with this particular
 22 piece? Did you hand this out at the conference? Was it
 23 just published in a journal?
 24 A. It was published in the proceedings that were
 25 distributed at the conference and that, then, shows up on

1 A. I do.
 2 Q. And do you see that Exhibit 14 is entitled "UIST '97
 3 Preliminary Program"?
 4 A. I do.
 5 Q. And this is for the October 14th-17th, 1997, at Banff
 6 Park Lodge in Banff, Alberta, Canada, correct?
 7 A. Correct.
 8 Q. And if I can ask you to look at Page 2 of 5, do you
 9 see that under the 8:00 p.m. to 10:00 p.m. slot is "Demos:
 10 Banff Center for the Arts"?
 11 A. I do.
 12 Q. And am I correct that the first demo listed there is
 13 "CyberDesk: A Framework for Providing Self-Integrating
 14 Ubiquitous Software Services," again, with you, Gregory
 15 Abowd, Mike Pinkerton, and Andrew Wood listed?
 16 A. Yes.
 17 Q. And again, would you have then presented your demo in
 18 the same hall, basically where these other demos were
 19 being presented?
 20 A. That's correct.
 21 Q. Do you recall, were there -- was there ability to
 22 sort of talk with people and have a Q and A session with
 23 them?
 24 A. Very much so.
 25 Q. Do you recall people asking you questions about your

1 the Association for Computing Machinery, their digital
 2 library.
 3 Q. And what would you have actually, then, presented
 4 during the demo at UIST?
 5 A. So I had access to a machine in Banff, and I would
 6 walk through many of the scenarios that you -- we've
 7 discussed in the past. So I'd show, you know, the
 8 first -- the first version of -- sort of simpler
 9 instantiation of CyberDesk where it -- it didn't involve
 10 any chaining or combining. And then I would get more
 11 sophisticated. I would then show a chaining example and
 12 then a chaining and combining example, and then I would
 13 show what's referred to sort of at the end -- closer to
 14 the end here, but other forms of context which was faked
 15 because it was at a -- in a site I didn't have any control
 16 over, but it would take information. I had another window
 17 that could -- another window like what we're seeing on
 18 Exhibit 12, the first page, where you could specify the
 19 location of the user at any time.
 20 So to demonstrate how it -- the ActOn system, the
 21 CyberDesk system, could leverage location information as
 22 well as it could take into account strings and contact
 23 information, et cetera.
 24 Q. And do you happen to recall -- do you recall that
 25 particular presentation UIST?

1 demo?
 2 A. I do.
 3 Q. Before we take a quick break, if I can ask you to
 4 find Exhibit 5 which is the Web page of -- for CyberDesk
 5 on the Georgia Tech website, please.
 6 A. Yes. Sorry.
 7 Q. Yeah, I guess what I -- well, maybe it's this: Are
 8 all of these papers and articles describing the same
 9 CyberDesk system?
 10 A. Yes. They are all the same CyberDesk system. The
 11 last one on the page that was published at the CHI
 12 Conference was a -- the first instantiation. The
 13 remain -- the papers above that are, I would call, all of
 14 the second instantiation.
 15 Q. And do you recall ever meeting a man named James
 16 Miller?
 17 A. At Apple, yes. I couldn't tell you when I met him.
 18 I do remember meeting him on a number of occasions,
 19 though. I think the first time was -- we had almost
 20 monthly Demo Days in the Graphics, Visualization and
 21 Usability Center.
 22 And on one of those occasions James -- Jim came and
 23 visited, and that was my first occasion to meet him. And
 24 then we ran into each other several times during these
 25 conference events.

1 Q. Do you recall when that would have been, roughly,
 2 when Jim Miller might have come and seen one of your
 3 demos?
 4 A. I'm guessing it was 1997.
 5 Q. And when you said you had these near "monthly Demo
 6 Days," can you describe what those were about?
 7 A. Yeah. They're kind of tortious. I appreciate them
 8 in retrospect. The entire Graphics, Visualization and
 9 Usability Center, which was a lot of people, would set up
 10 various rooms and demo for people that were invited from
 11 around the country and sometimes visitors from around the
 12 world.
 13 Q. And was this at Georgia Tech?
 14 A. This was at Georgia Tech in the Graphics,
 15 Visualization and Usability Center.
 16 Q. And so do you recall actually presenting CyberDesk at
 17 any of these Demo Days?
 18 A. On several occasions.
 19 Q. And would this occurred -- have occurred around 1997?
 20 A. '97 through probably early 1999.
 21 Q. Did you start demoing the -- the CyberDesk system
 22 before you submitted the CHI paper?
 23 A. I don't believe so.
 24 Q. So if the CHI -- if CHI was 1997, you would have
 25 submitted the CHI paper for consideration by the fall of

1 Q. And again, can you find for me that -- this
 2 particular technical report on Exhibit 5, the website,
 3 please.
 4 A. It's the second to last -- wait, sorry.
 5 Q. Is it the last one in the section?
 6 A. Yes, that's right, it is the last one in the section,
 7 the buttons are -- yes, it is. The bullets are a little
 8 off.
 9 Q. And this one has the date of May 1997, correct?
 10 A. That's correct.
 11 Q. And so when you do you believe you would have
 12 published this on the website for CyberDesk?
 13 A. In May or June.
 14 Q. And then it says "The abbreviated version is
 15 presented as a poster," and that's in October of 1997,
 16 correct?
 17 A. That's correct.
 18 Q. So when do you believe you would have loaded the --
 19 the -- that abbreviated version onto the website?
 20 A. Sometime in the summer.
 21 Q. And then on the next page, the third page of this
 22 technical report, you see there's a section on
 23 "CyberDesk"?
 24 A. Yeah.
 25 Q. And, for example, you have a section called

1 '96?
 2 A. September of '96, yeah.
 3 Q. And so as soon as you would have submitted it for
 4 publication, then you would have begun Demo Days?
 5 A. That's correct.
 6 Q. And approximately how many Demo Days do you think you
 7 had in '96 and early '97 until CHI of '97?
 8 A. Approximately five.
 9 Q. And how many people on average would you say would
 10 attend Demo Days at Georgia Tech?
 11 A. Approximately -- it varied depending on the time of
 12 year. So it varied between, I'd say, 60 to 75 to as high
 13 as 150 to 200 people.
 14 Q. And were there -- did any of the attendees at Demo
 15 Days who would have seen CyberDesk, did they have to sign,
 16 for example, nondisclosure agreements?
 17 A. No, not at all.
 18 Q. Was there any restriction on what they could do with
 19 the information that they learned as part of the review of
 20 your demos?
 21 A. There was none, at least not for my demo.
 22 Q. And, sir, do you see Exhibit 15 is a technical report
 23 entitled "Context-Awareness in Wearable and Ubiquitous
 24 Computing"?
 25 A. I do.

1 "Describing the Application"?
 2 A. Yes.
 3 Q. And you have a Figure 2 that's shown in that,
 4 correct?
 5 A. Correct.
 6 Q. Let me show you what I'm marking as Exhibit 16.
 7 Sir, am I correct that Exhibit 16 is a blow-up of
 8 Figure 2 from this technical report, Exhibit 15?
 9 A. Yes.
 10 Q. And then looking at this, do you recall what
 11 instantiation of the CyberDesk system this would have been
 12 showing?
 13 A. The second version.
 14 Q. And why did you include screenshots in your published
 15 technical reports and articles?
 16 A. Again, because the textual description of the systems
 17 are not always the clearest and sometimes a visual aid is
 18 helpful at conveying the ideas that we're trying to get
 19 across.
 20 Q. And then am I correct, in this particular figure from
 21 the technical report of May 1997, you, once again, are
 22 showing certain screens that are presented to the user as
 23 part of the -- using the CyberDesk system?
 24 A. That's correct.
 25 Q. And in the top left corner, what is that that's being

1 displayed?

2 **A.** This is the same example, the exact same screenshot

3 we went through earlier. So the user has selected with

4 the mouse cursor the e-mail address, DOE@newbooks.com,

5 that -- that e-mail address is getting converted to a

6 string, a name, a phone number. It's being combined

7 together to create a whole contact chunk of information --

8 information.

9 And then that information is being consumed by the --

10 by the CyberDesk system after it's been converted and

11 these are the four options that come up as the list of

12 suggestions of what CyberDesk can now do with it.

13 **Q.** And just so I'm clear, the first option presented to

14 a user is -- I'm sorry, the first option presented to a

15 user is "Search For a String Using AltaVista," correct?

16 **A.** Correct.

17 **Q.** The second option presented to the user is "Save

18 Contact Info Using Contact"?

19 **A.** Correct.

20 **Q.** And if a user clicks onto -- that button, what we see

21 in the bottom right-hand corner occurs?

22 **A.** Correct.

23 **Q.** And am I correct that that includes searching for the

24 name that goes along with the e-mail address from the

25 document?

1 would bring a mock interface that would simulate a phone

2 call being made.

3 **Q.** And if -- if it were connected to an actual dialer

4 with a phone connected to it?

5 **A.** That's correct.

6 **Q.** And third -- fourth option presented to the user here

7 is "Send Mail to This E-Mail Address Using Netscape,"

8 correct?

9 **A.** Correct.

10 **Q.** So here we have the e-mail address itself, which is

11 taken directly from the document?

12 **A.** Correct.

13 **Q.** And then -- and the user has the option, by clicking

14 this button, to send an e-mail to that e-mail address?

15 **A.** That is correct.

16 **Q.** And in this particular button, it allows them to send

17 that e-mail using Netscape; is that right?

18 **A.** That is correct.

19 **Q.** And again, these are all features of the second

20 instantiation of the CyberDesk system that's being

21 described?

22 **A.** Correct?

23 **Q.** And this Exhibit 15, the technical report, this would

24 have been -- you yourself loaded this -- the link to this

25 in the CyberDesk Web page?

1 **A.** Correct.

2 **Q.** And that name is John Doe, shown here, correct?

3 **A.** Correct.

4 **Q.** And as a result of that search, we see the contact

5 information in this contact book that's displayed?

6 **A.** That's correct.

7 **Q.** And that includes, for example, not just the name

8 John Doe, but also a primary e-mail, a primary phone, and

9 a primary fax number, correct?

10 **A.** Yes. Some of that information would have been --

11 already existed before the -- the person selected the

12 e-mail address in the top left, and some of it was

13 populated as a result of selecting the e-mail in the top

14 left and clicking on the button "Save Contact Info Using

15 Contact."

16 **Q.** And in that came contact book screen, we -- I think

17 you just said, some of this information has been

18 automatically populated into the text fields by CyberDesk?

19 **A.** Correct.

20 **Q.** Also in the ActOn Button Bars, the next option given

21 to the user is "Call Phone Number Using Dialer," correct?

22 **A.** Correct.

23 **Q.** So for example, CyberDesk would allow the user to

24 click that button and actually make a phone call?

25 **A.** It wouldn't actually place the phone call, but it

1 **A.** That is correct.

2 **Q.** And you would have loaded it approximately when?

3 **A.** May or June of 1997.

4 **Q.** And again, was there any restriction on who could

5 access this from the website?

6 **A.** None.

7 **Q.** Do you see that Exhibit 17 is a printout from a Web

8 page entitled "Applying Dynamic Integration as a Software

9 Infrastructure for Context-Aware Computing"; do you see

10 that?

11 **A.** I do.

12 **Q.** And again, the authors are listed as Gregory Abowd,

13 yourself, and Andrew Wood, correct?

14 **A.** Correct.

15 **Q.** And am I correct that on -- going back to the Web

16 page for CyberDesk, Exhibit 5, this is actually the second

17 article that's listed in the section on related papers?

18 **A.** That's correct.

19 **Q.** And according to the CyberDesk website, this

20 technical -- this was submitted to ICSE '98?

21 **A.** Correct.

22 **Q.** What is that?

23 **A.** The International Conference on Software Engineering.

24 **Q.** And this -- what we see in Exhibit 17, this was

25 actually a technical report, correct?

1 A. That's correct.

2 Q. And it shows a date on the website of September 1997?

3 A. Correct.

4 Q. What does that mean?

5 A. That is the date at which I received a -- a technical

6 report number from our administration at the GVV Center at

7 Georgia Tech and the day the -- the approximate date that

8 the work was completed and the paper -- this paper was

9 written.

10 Q. And then you submitted this for consideration by

11 ICSE?

12 A. Correct.

13 Q. And again, was this -- was this one accepted for

14 publication?

15 A. No, it was not.

16 Q. So when do you believe you would have posted this

17 technical report, Exhibit 17, to the website?

18 A. September or October of 1997.

19 Q. And which -- which version or instantiation of the

20 CyberDesk system was this technical report describing?

21 A. It's describing the second instantiation. The image,

22 the second -- Figure 2 on the third page of Exhibit 17,

23 makes it clear that chaining was involved in the system.

24 Q. And I notice in this particular technical report, you

25 have a -- a bibliography, which is included at the end?

1 Q. And have you ever -- so have you ever heard of a

2 product called "OneButton Contact Manager" that would have

3 come out sometime around November of 1998?

4 A. I don't recall.

5 Q. That's not something that you were familiar with at

6 part of your review of the literature?

7 A. I don't believe so.

8 Q. Am I correct that the second instantiation of the

9 CyberDesk system, that's what you have described in all

10 the articles that we've looked at thus far except for CHI

11 '97?

12 A. That's correct.

13 Q. And in CHI '97, you were describing the first

14 instantiation of CyberDesk?

15 A. That's correct.

16 Q. Now, after the list of related papers, there's a

17 section called "CyberDesk Services," do you see that?

18 A. I do.

19 Q. And it says "Click here for a list of all the

20 services available for use with CyberDesk" --

21 A. Right.

22 Q. -- do you see that?

23 A. I do.

24 Q. And Exhibit 25 is, I'll represent to you, what

25 happens when you click on the "Click Here" button.

1 A. Correct.

2 Q. And I assume these are sources that you were aware of

3 and consulted in some way?

4 A. That is correct.

5 Q. And so, for example, I see that the Number 5 entry in

6 the bibliography is for "Apple Research Labs, Apple Data

7 Detectors homepage. Available at," and then you provided

8 a Web address with a 1997 date, correct?

9 A. That is correct.

10 Q. And what were the Apple Data Detectors that you were

11 referring to here?

12 A. While we were doing this work, we discovered that

13 Apple was doing a similar project, and I actually think it

14 was Jim Miller who introduced this -- the concept of Apple

15 Data Detectors, we did not find this on our own.

16 The idea was on -- on a Mac, on the early Apple

17 computers, built into the operating system was kind of a

18 something very similar to CyberDesk, but a little bit

19 more -- very similar to the first instantiation of

20 CyberDesk, where you could select text in -- in one of

21 their applications, and then based on what you selected,

22 it would -- it would give you -- I think that you right

23 clicked or you had to hit some kind of modifier key, and

24 it would show you the list of services that you could run

25 based on the information that you had selected.

1 A. Right.

2 Q. What is being shown here as far as desktop services

3 and network services?

4 A. So the desktop services were the applications that we

5 had access to that were built -- I believe these were all

6 applications that were built at Georgia Tech where I had

7 access to the source code.

8 So these were fully -- full-fledged, real

9 applications built in Java. So that's a Calendaring

10 system, an e-mail system, a second e-mail system, and a

11 contact manager. And so those were applications where I

12 was able to modify the source code to essentially speak

13 the CyberDesk internal language, and so that they could

14 tell CyberDesk, "This is the kind of information I can

15 consume and run services on." I don't believe any of

16 these could -- I apologize. These could also do

17 conversions, as well. So they could both convert

18 information as well as perform a service for the user.

19 Q. And just so I'm clear, when you say "they could

20 convert information" --

21 A. Yes.

22 Q. -- can you describe one more time what you mean by

23 that?

24 A. Sure. So if someone selected an e-mail address, it

25 could -- the contact manager could convert that to a

1 mailing address or a name or a phone number.

2 Q. And then you were going to say about network service?

3 A. Network services were -- it looks like really a whole

4 list of -- a whole list of Web-based services that could

5 either do something with text, could produce something

6 with recognized text, like phone numbers or e-mail

7 addresses and one of the things we did in the second

8 version, because I'm not sure if I made this clear, is

9 that you could search -- let me find a good example here.

10 "Lookup phone number for a name using Bigfoot," so

11 that's the one, two, three, four -- fifth one down. That'

12 service could be used not just as something that would

13 show up in the ActOn button, but we could automatically

14 run that service, scrape the Web page -- so each one of

15 those populate a -- launched a Web page. Each one of

16 these network services, if the user clicked on it, it

17 would automatically launch a Web page, we could do that in

18 the background. So each one of these services could also

19 be a converter.

20 So it would launch the Web page, that Bigfoot Web

21 page, in a hidden way, sort of off -- off the screen so

22 you couldn't see it, scrape the information on the page

23 and could grab a phone number, in this case, discard the

24 Web page, and then say, "Now I've got a phone number, what

25 can I do with that."

1 CyberDesk on -- in connection with a Newton device as part

2 of any your demos?

3 A. I did.

4 Q. If you look at the second page of this particular --

5 "How to Set Up the CyberDesk Demo," you see it says the --

6 "This page written by Mike Pinkerton, last updated 6/4,

7 June 4, 1997"?

8 A. Yes.

9 Q. And again, is -- is that around the time that you

10 recall the effort to integrate CyberDesk with the Apple

11 Newton?

12 A. Yes, that's correct.

13 Q. And by June of 1997, had you successfully been able

14 to use CyberDesk in connection with an Apple Newton device

15 using LLamaShare?

16 A. That's correct. In fact, it was earlier than this.

17 This was just when we got around to writing up the demo

18 instructions so other people could run the demo.

19 Q. And seeing does -- this, does this refresh your

20 recollection at all as to when you might have demoed the

21 use of CyberDesk in connection with a Newton publicly at

22 any of your conferences?

23 A. The first time we would likely -- would likely be not

24 at a conference but a Demo Day. I don't know if I ever

25 demoed this at a conference. Certainly mock-ups of this,

1 Q. Okay. And these were all network services that were

2 available in the CyberDesk system, the second

3 instantiation of the CyberDesk system that you described?

4 A. The first and second instantiation. There was a mix.

5 Q. And in fact, you looked back at the Web page index,

6 Exhibit 5, do you see that the second to last section of

7 the Web page is entitled "Mini-projects Integrated (or to

8 be integrated) into CyberDesk"?

9 A. Yes.

10 Q. Now, I notice on the Web page for CyberDesk,

11 Exhibit 5, you actually have a section entitled "Sample

12 CyberDesk Code Segments (for the adventurous)," do you see

13 that?

14 A. Yes, I do.

15 Q. And it says under that, "The following code samples

16 were described in the paper submitted UIST '97"?

17 A. Right.

18 Q. And then when would you have actually loaded these

19 codes segments onto the CyberDesk Web page?

20 A. Sometime between March and June.

21 Q. And so in the work that you did on CyberDesk, was

22 CyberDesk able to access information from mobile devices

23 like a Newton device?

24 A. Yes, it was.

25 Q. And did you ever actually demonstrate the use of

1 but not the actual system. The actual system was done at

2 Demo Days, would have been sort of late -- I was going to

3 say winter, like February, March of 1997.

4 Q. So last, but not least, on the Web page for

5 CyberDesk, Exhibit 5, are -- there's a section on "Related

6 Work," do you see that?

7 A. Yes, I do.

8 Q. And when you posted these things, did you expect that

9 people who are looking at the CyberDesk website might

10 actually go and look at some of these on other resource?

11 A. If they were interested in it, yes.

12 Q. And in fact, the second bullet point under Related

13 Work is for "Apple's AppleScript Site for Data Detectors

14 or the original site for Apple Data Detectors," correct?

15 A. Correct.

16 Q. Is and the underlying there suggests you've actually

17 linked to other materials, correct?

18 A. That's correct.

19 Q. So you weren't just identifying these, you were

20 actually providing links for users to go and see these

21 materials?

22 A. Correct.

23 Q. Could -- were there multiple different types of text

24 that CyberDesk could work with, or was it only workable

25 with e-mails?

1 A. There were multiple different kinds of information
 2 content it could work with. I remember we had a text
 3 editor, we could pull from the calendar, we could pull
 4 from the contact manager, and we could pull from e-mail.
 5 Those are the ones I remember.
 6 Q. So, for example, when you were talking about an
 7 e-mail, when it could pull text from an e-mail, was it
 8 possible that a user could be working in an e-mail when
 9 the text was selected for the CyberDesk to work?
 10 A. Absolutely. Yes, it could.
 11 Q. And for example, then, if a user was working in an
 12 e-mail and they highlighted an e-mail address, CyberDesk
 13 would generate the ActOn buttons?
 14 A. That's correct.
 15 Q. And one of ActOn button might be "Find Phone Number
 16 For E-mail Using Contact Manager"?
 17 A. That's correct.
 18 Q. And if the user clicked on that button, am I correct,
 19 they would get a display of a contact book entry much like
 20 we've seen in many of the demos?
 21 A. That is correct.
 22 Q. And so for example, the information that was in that
 23 contact book entry, the user, if they wanted to, could cut
 24 and paste that into the e-mail that they were writing,
 25 correct?

1 and as I'm typing it, it could give me other suggestions
 2 on papers that I may not have read and give me some ideas.
 3 So we basically took that idea and said, "All right, as
 4 you're typing into the text editor, have it start pushing
 5 information automatically or by physically clicking on the
 6 ActOn button directly to the text editor."
 7 Q. And was that something you actually implemented in
 8 the second instantiation of the CyberDesk system?
 9 A. It was, yes.
 10 Q. And is that something that you ever demoed as part of
 11 any of your Demo Days of the CyberDesk system?
 12 A. The text editor, definitely.
 13 Q. Lastly, if I could ask you to go back to Exhibit 5,
 14 which is the Web page --
 15 A. Yes.
 16 Q. -- for CyberDesk.
 17 Am I correct that you personally are the person
 18 who -- who put all of this information into the Web page
 19 and created the links and published all the information on
 20 this Web page?
 21 A. That is correct.
 22 Q. And am I correct, you did this as part of your
 23 ordinary work as a Ph.D. student at Georgia Tech?
 24 A. That's correct.
 25 Q. And am I correct, you had personal knowledge of all

1 A. That is correct.
 2 Q. Did you ever come with a version of CyberDesk that
 3 allowed the user actually to automatically insert any of
 4 the text that was found by CyberDesk?
 5 A. Into e-mail address you're asking me?
 6 Q. Yes, into a working document.
 7 A. Oh, sorry. Into a working document.
 8 Absolutely. Absolutely. The -- the example that
 9 comes to my mind is a text editor.
 10 So you are writing with a text editor, this actually
 11 came from -- the idea for this came from an existing
 12 system called the "Remembrance Agent" from the MIT Media
 13 Lab. By Bradley Rhodes and Thad Starner, I think were the
 14 authors of that system, probably predated CyberDesk by
 15 six months or so.
 16 Q. Okay.
 17 A. The idea in their system, which I put -- we just
 18 stole, borrowed, but re-implemented within CyberDesk is
 19 that as you're working in Emacs, which is a technical
 20 editor, an editor that techies use. As you are working in
 21 that, the content that you are producing, as you were
 22 typing it in, was automatically getting thrown out to this
 23 larger knowledge base. And then it would give you
 24 suggestions on, "Hey, you might be interested."
 25 So the idea is I'm writing this paper on CyberDesk,

1 of these items which are included on the Web page as a
 2 result of your own work on the CyberDesk system?
 3 A. That's correct.
 4 Q. And am I correct that this Future Computing
 5 Environments Web page was maintained by Georgia Tech as
 6 part of its ongoing Future Computing Environments project?
 7 A. That's correct.
 8 Q. And in fact, this Future Computing Environments Web
 9 page for CyberDesk has been up and running for the last
 10 22 years, correct?
 11 A. Correct, with the exception of that many of these
 12 links don't actually work anymore. Don't do anything.
 13 Q. But at one time, am I correct all of these links
 14 actually worked?
 15 A. That is correct.
 16 Q. And, again, for the articles and the papers that are
 17 recited here, am I correct that it was your practice to
 18 publish them on the website shortly after they became
 19 eligible for publishing?
 20 A. That's correct.
 21 Q. So, for example, if a paper was submitted but was
 22 ultimately not -- like a technical report, was ultimately
 23 not accepted for publication, you shortly thereafter would
 24 actually publish it on the website?
 25 A. That is correct.

1 Q. Okay. And same thing with the code segment, when do
 2 you first recall posting code segment to the website?
 3 A. It would have been at the same time that we posted
 4 the UIST '97 paper on the website, which -- or the UIST
 5 submission, sorry, to the website. So around April of
 6 1997.
 7 Q. Okay. Did you speak with defendants' counsel?
 8 A. In preparation for this, no.
 9 Q. Did you speak with them before -- before today?
 10 A. Yes. I was contacted by your office -- it feels like
 11 months ago. I don't remember when it was, yes, and they
 12 asked me about the CyberDesk system at that point.
 13 Q. Okay. What questions did they ask you, just
 14 generally, at a high level?
 15 A. I think as soon as we converted to I could not be an
 16 expert witness for this case, I kind of just put it out of
 17 my head completely until the subpoenas came. The general
 18 kinds of questions they were asking, I think they -- we --
 19 we went through a lot of what we talked about today, which
 20 was the general process by which CyberDesk worked. I
 21 think we did talk about Apple Data Detectors and the Intel
 22 Selection Recognition Agent, but I don't have much more of
 23 a recall about that conversation.
 24 Q. Was it just one conversation?
 25 A. It was just one conversation.

1 A. I wouldn't call it an interview. I was answering
 2 their questions.
 3 Q. Okay. I mean, you were interested in getting that
 4 role as an expert witness for defendants?
 5 A. Yes.
 6 Q. Okay. And did the defendants provide you with the
 7 Court's claim construction order?
 8 A. No.
 9 Q. So in addition to the pre- -- to the papers and
 10 technical reports themselves, how many times, do you
 11 think, in 1997 and the first part of 1998 do you believe
 12 that you would have demonstrated the CyberDesk system
 13 to -- to people without restriction on what they could do
 14 with the information?
 15 A. To how many people or how many times did --
 16 Q. How many times.
 17 A. It would be dozens of times and in any given Demo Day
 18 because each person I interact with is essentially a new
 19 demo, from my perspective. If you take it from that
 20 perspective, it would be hundreds of times.
 21 Q. And during the demos, am I correct that there was an
 22 opportunity for questions and answers?
 23 A. Yes, there was.
 24 Q. And so is it possible that people would have asked to
 25 seen -- to see certain features of CyberDesk ask what it

1 Q. Okay. And who was this with? Was it with
 2 Mr. Unikel?
 3 A. Yes, and there was another woman on the line, which I
 4 don't remember her name.
 5 Q. Okay. Was she from Mr. Unikel's law firm?
 6 A. I believe so.
 7 Q. Okay. And did Mr. Unikel ask whether you would be
 8 interested in being an expert witness in this case?
 9 A. I think that was the original reason that his team
 10 reach out to me.
 11 Q. Okay. And then why were you not able to take that
 12 role?
 13 A. I don't know the technicalities behind it, but
 14 apparently I'm too expert for that -- for this case.
 15 Because I'm a -- I don't remember the term that he used.
 16 He used some term that basically said because I am a
 17 material -- not a material witness, but something like
 18 that to -- I could not serve as an expert witness.
 19 Q. Was that based on your background having worked in
 20 this space and published these publications?
 21 A. That was my understanding.
 22 Q. Okay. And you thought you were interviewing or
 23 trying to get an expert-witness job?
 24 A. Yes, I think that's the right answer.
 25 Q. Okay.

1 could do that were not necessarily exactly described in
 2 any of the papers themselves?
 3 A. Yes, yes, yes, that was the case.
 4 Q. And how often, you know, in the various demos -- how
 5 many times would you say on average people would be asking
 6 you to see some aspect of the system that wasn't exactly
 7 described in the papers?
 8 A. They would often ask for things that both existed in
 9 CyberDesk and things that did not. I would say that
 10 independent of them asking, I also chose to show things
 11 that were not in the papers because I had a vested
 12 interest in showing off different features of CyberDesk.
 13 Q. You mentioned that you personally had tried in
 14 CyberDesk the implementation where it would analyze an
 15 entire e-mail or an entire document, correct?
 16 A. Yes, that's correct.
 17 Q. And I think you said that in some of the versions of
 18 CyberDesk there was a flag that allowed you to turn that
 19 functionality on or off, the functionality of looking at a
 20 whole document?
 21 A. That's correct.
 22 Q. And in what version of the CyberDesk system was that?
 23 A. That was the second instantiation that we've
 24 discussed today.
 25 Q. And is that one of the instantiations that you then

1 showed as part of your various demos?

2 **A.** That was the one that I demonstrated the most often

3 as part of my demos.

4 **Q.** Okay. And if -- if somebody wanted to see that

5 particular functionality, even though you felt it wasn't

6 useful, could you have turned that flag on in the code?

7 **A.** I -- I could have and I did often. And, again,

8 without them asking, I wanted to show that version of it

9 because it showed a functionality that they -- somebody

10 might not have assumed existed in the system.

11 **Q.** So just as a -- I know it's a bit of a guesswork, but

12 if you were going to guess as to how many times you showed

13 that functionality as part of your various presentations

14 and demos, how many times?

15 **A.** Hundreds.

16 (Video clip ends.)

17 **MR. UNIKEL:** That's the conclusion of the clip,

18 Your Honor.

19 **THE COURT:** All right. Very good.

20 Should we have Google call its next witness?

21 **MR. UNIKEL:** Yes, Your Honor.

22 **MR. KAMBER:** Your Honor, Google would call

23 Dr. Martin Rinard as its next witness. And if you can

24 just give us a minute to play musical chairs here.

25 **THE COURT:** That's fine.

Rinard - Direct

1 **A.** \$975 an hour.

2 **Q.** And is that your standard consulting rate,

3 Dr. Rinard?

4 **A.** Yes, it is.

5 **Q.** And is your compensation impacted in any way by the

6 outcome of this litigation?

7 **A.** No, it's not.

8 **Q.** Have you prepared anything to deliver your testimony

9 here today?

10 **A.** Yes, I have. It's the slide deck here.

11 **Q.** So Dr. Rinard, if you could please walk the jury

12 through your educational background.

13 **A.** Sure.

14 So I got my bachelor's degree in computer science

15 from Brown University. And I also hold a Ph.D. in

16 computer science from Stanford University.

17 **Q.** When did you get your Ph.D. from Stanford?

18 **A.** 1994.

19 **Q.** And do you have any -- 1994, you said.

20 And do you have any professional work experience as

21 well?

22 **A.** Yes. In between my undergraduate degree and going

23 back to graduate school, I worked at two small tech

24 start-ups.

25 **Q.** Where were those, Dr. Rinard?

1 Mr. Rinard, why don't you approach the witness

2 stand -- Dr. Rinard.

3 **MR. KAMBER:** Thank you, Your Honor. Please

4 state and spell your name for the record.

5 **THE WITNESS:** Martin Rinard. M-A-R-T-I-N,

6 R-I-N-A-R-D.

7 **THE CLERK:** Please raise your right hand.

8 MARTIN RINARD, having been called as a witness, being

9 first duly sworn under oath or affirmed, testified as

10 follows:

11

12 DIRECT EXAMINATION.

13 **BY MR. KAMBER:**

14 **Q.** Good afternoon, sir.

15 **A.** Every witness stand has its problem.

16 **Q.** Can you please introduce yourself to the jury.

17 **A.** Sure. My name is Martin Rinard.

18 **Q.** And what is your role in this case, Dr. Rinard?

19 **A.** My role in this case is to evaluate the analysis, the

20 infringement analysis of Dr. Smedley, and see if I agree

21 with it.

22 **Q.** And are you being compensated for your time in this

23 case?

24 **A.** Yes, I am.

25 **Q.** And at what rate are you being compensated?

Rinard - Direct

1 **A.** One was in Providence, Rhode Island. It was a

2 start-up that I joined immediately after leaving --

3 graduating from Brown; and the other was in Waltham,

4 Massachusetts, outside Boston.

5 **Q.** So what did you do after you finished at Stanford in

6 1994?

7 **A.** I started as an assistant professor at the University

8 of California, at Santa Barbara.

9 **Q.** How long were you at UCSB?

10 **A.** Approximately three years.

11 **Q.** And what did you do once you finished -- or what did

12 you do next?

13 **A.** After, I left the University of California Santa

14 Barbara and went to the Massachusetts Institute of

15 Technology, otherwise known as MIT.

16 **Q.** It says here on the slide that you're a tenured

17 professor. When did you receive tenure?

18 **A.** Around 2003.

19 **Q.** So as a professor at MIT, what are some of the things

20 that you do?

21 **A.** My two primary responsibilities are teaching

22 undergraduates and graduate students, and doing research.

23 **Q.** So with respect to your research, what do you do with

24 your research findings?

25 **A.** Well, when we find something or develop a system that

1 we're proud of, we will try to publish our findings. And
 2 we will choose a publication venue that we like; could be
 3 a journal, could be a conference, sometimes it's a
 4 workshop. We'll submit it for publication. It will be
 5 reviewed. And sometimes it gets accepted.
 6 Q. Do you review papers from other academics?
 7 A. Yes, I do. As part of my service responsibilities to
 8 the field, one of my responsibilities is serving on
 9 program committees and evaluating other people's research.
 10 Q. Can you please give some examples of who has
 11 supported your research over the years?
 12 A. Sure.
 13 So on the left here we see the National Science
 14 Foundation. This is the peer research arm of the United
 15 States Government. This is the kind of blue sky curiosity
 16 driven research.
 17 Next to that, you see the United States Department of
 18 Defense. I've done a lot of research for DARPA, which is
 19 the Defense Advanced Research Projects Agency. It's the
 20 advanced research arm of the United States Department of
 21 Defense.
 22 I've done research for NASA through the Jet
 23 Propulsion Laboratory.
 24 Q. And who else has supported your research besides
 25 those government entities?

1 Q. What benefits does a code library like that offer to
 2 developers?
 3 A. One benefit is, it's a very attractive feature
 4 because it lets developer -- reduces the amount of work
 5 that a developer has to do to develop an app.
 6 So what is in the library is common features of the
 7 functionality that many app developers might want to use.
 8 And instead of having to implement it themselves, they can
 9 just use it from the library, and then that reduces the
 10 amount of work required to build their app.
 11 Q. So I want to turn to some projects that you've done
 12 with Android over the years. And if you could explain to
 13 the jury, Professor Rinard, what this Clear Scope Project
 14 and Research was about.
 15 A. Yes. So this was a project where we wrote code that
 16 executed on the Android device and monitored the flow of
 17 information through the device.
 18 The goal here was to detect attempts to take
 19 sensitive information -- things like photographs, instant
 20 messages, maybe personal data -- and move it off the
 21 device to maybe remote service someplace where it will be.
 22 So the goal of this project was to develop this
 23 monitoring software that would help detect these kind of
 24 events and ideally block them.
 25 Q. What about the Provably Safe Android Apps project?

1 A. Some examples of companies that have supported my
 2 research are Boeing, IBM, Microsoft, and Samsung.
 3 Q. Have you ever received research funding from Google?
 4 A. No, I have not.
 5 Q. So Dr. Rinard, what, if any, experience do you have
 6 with mobile applications, apps?
 7 A. So some of our major research projects involved
 8 mobile applications and, more generally, mobile platforms.
 9 Q. Are you familiar with the Android mobile platform, or
 10 operating system?
 11 A. Yes, I am.
 12 Q. And first of all, what is Android? How would you
 13 characterize it?
 14 A. So Android is an open-source operating system. It's
 15 been supported by Google for use on mobile phones, and
 16 also mobile devices like tablets, since around 2007. One
 17 of the prominent features of Android is the Android
 18 framework. This is a large library of code that all apps
 19 can use.
 20 Q. What do you mean by "a code library that apps can
 21 use"?
 22 A. So it has instructions, code, that provides
 23 functionality for app developers who want to develop their
 24 apps and need this functionality, and they can go to the
 25 library and get it there.

1 Can you explain what that was about?
 2 A. Right. So this project was a bit different because
 3 it analyzed code before it ran, as opposed to monitoring
 4 code when it ran.
 5 Here, the goal is to analyze the code before it runs
 6 to see if there's any security vulnerabilities in the
 7 code, and then, you know, ideally, do something about them
 8 before that code is actually deployed.
 9 MR. KAMBER: Your Honor, at this point, Google
 10 moves to qualify Dr. Martin Rinard as an expert in
 11 computer science.
 12 THE COURT: Any objection?
 13 MR. LAHAD: No objection, Your Honor.
 14 THE COURT: He is so qualified.
 15 BY MR. KAMBER:
 16 Q. Professor Rinard, what were you asked to do in
 17 connection with this case?
 18 A. I was asked to evaluate Dr. Smedley's analysis. And
 19 to do this, I went off and read Dr. Smedley's -- started
 20 with Dr. Smedley's report and videos.
 21 Q. What other materials did you consider in connection
 22 with this case, and then responding to Dr. Smedley?
 23 A. I looked at Google documents, Google source code,
 24 something called "Application Package Files."
 25 Q. And what are application package files, or APKs?

1 A. So application package files are how Google apps are
 2 packaged onto the Google Play Store so that people can
 3 download them onto their devices.
 4 Q. And what did you do to analyze those?
 5 A. We have -- there's a tool that you can use to go in
 6 examine contents of the app and see what's there. And I
 7 used that tool.
 8 Q. So this also lists the deposition testimony of
 9 Google's engineers. What did you do with that
 10 information?
 11 A. I read the deposition testimony, and then took it
 12 into account in my analysis.
 13 Q. What, if anything else, did you do in terms of the
 14 materials considered?
 15 A. Sure.
 16 So I was provided with two, they're called
 17 "representative devices." The devices that have software
 18 on them that everybody agrees is representative of the
 19 products at issue in this case, the apps and the devices.
 20 And I used those devices.
 21 Q. Were you able to use all of the functionality that
 22 Dr. Smedley opined on in this case?
 23 A. No, I was not.
 24 Q. Why not?
 25 A. Because I was informed, when I was given the devices,

1 that I should not connect the devices either to Wi-Fi or
 2 to the cellular network.
 3 Q. What's your understanding as to why you shouldn't do
 4 that?
 5 A. Because there's a possibility that the representative
 6 devices could be automatically updated and then the apps
 7 would be updated, and then all of a sudden the devices
 8 would not be representative anymore and the analysis
 9 wouldn't be valid.
 10 Q. For purposes of conducting the analysis that you did,
 11 how important was it that you be able to test that
 12 functionality while connected to a network?
 13 A. It wasn't that important at all. I was able to test
 14 much of the functionality while it was not connected to
 15 the network. But I think more importantly, in this case,
 16 you can't tell whether a product infringes the claim just
 17 by using the device.
 18 You may, per the term, look under the hood. You have
 19 to look under the hood, see how the software is built. So
 20 the majority of my analysis focused on that aspect of this
 21 case.
 22 Q. I think you heard Dr. Smedley explain there was a
 23 distinction between how Chrome worked one time on a phone
 24 and then how the source code suggested it would work, and
 25 he deferred to the source code in that. Do you remember

1 that?
 2 A. I do remember that.
 3 Q. And do you agree with Dr. Smedley's approach in terms
 4 of deferring to the code as opposed to the use or the
 5 functionality from a user's perspective?
 6 A. Absolutely, I do. That's the right way to do it.
 7 Q. Dr. Rinard, what claims did you analyze in terms of
 8 responding to Dr. Smedley?
 9 A. Claims 23 and 30. I think we have those two claims
 10 up on the display.
 11 Q. What's the difference between Claims 23 and 30?
 12 A. Okay. So Claim 23 is something called an
 13 "independent" claim. If you look at Claim 23, you will
 14 see all these long rows of text there. And those rows of
 15 text are the, quote/unquote limitations or elements of the
 16 claim. To infringe this claim, a product has to do
 17 everything, each limitation, all of them. Even if one is
 18 missing, then there's no infringement.
 19 Q. What about Claim 30 on the right-hand side? What
 20 kind of claim is that?
 21 A. So Claim 30 is something called a "dependent" claim.
 22 So Claim 30 has only one limitation in it, but if you
 23 look, it says according to Claim 23. So now, what that
 24 does, is it brings in all of the limitations from Claim 23
 25 into Claim 30.

1 So now Claim 30 has every element of Claim 23 plus
 2 that one additional element that it has. And to infringe
 3 Claim 30, you have to infringe -- to infringe Claim 30,
 4 you to have do every element of Claim 23 plus the
 5 additional element of Claim 30.
 6 Q. So there's a lot of language in Claim 23,
 7 specifically. And could you please explain to the jury
 8 what this claim requires as a general matter?
 9 A. So what we're going to focus here on today is this
 10 element or this component of the claim that is called a
 11 "first computer program." If you look at the claim, you
 12 will see this shows up in four places. First, the
 13 preamble, where it's all highlighted in red. Then down in
 14 the element where you see the highlighting in yellow,
 15 where it says "displaying the document electronically
 16 using the first computer program."
 17 Then again down in the element where the first part
 18 of that element is highlighted in green where it says
 19 "Providing an input device configured by the first
 20 computer program."
 21 And then, finally, in the element where we see the
 22 highlighting in blue, where it says, "In consequence of
 23 receipt by the first computer program of the user command
 24 from the input device causing a search for the search
 25 term."

1 So those are the four places that this first computer
2 program shows up in the claim, and we will be focusing on
3 the first computer program element.

4 Q. And did you apply the Court's construction of the
5 computer program in formulating your opinions?

6 A. Yes, I did. It turns out that people can use the
7 term "computer program" in a variety of ways, depending on
8 the context and perspective of the person using the term.

9 In this case, however, the Court has provided all of
10 us with the definition of the term "computer program."
11 And here you see the definition of the term "computer
12 program."

13 I will just read it out, and then I will tell you
14 where we will focus. So it says: A self-contained set of
15 instructions as opposed to a routine or library, intended
16 to be executed on a computer so as to perform some task.

17 First thing I'd like to focus on is a set of
18 instructions. According to this definition, a computer
19 program has to be a set of instructions. These are
20 instructions that presumably tell the computer what to do
21 one at a time.

22 Next thing I would like to focus on is -- see the
23 term "a self-contained set of instructions"? So to be a
24 computer program according to the Court's construction for
25 this term in this claim, this computer program has to be a

1 self-contained set of instructions. And, of course, the
2 rest of Court's definition as well.

3 Q. What other ways are there to organize software,
4 Dr. Rinard?

5 A. Okay. So what I've done here is illustrated two
6 approaches to using software. And you will see one
7 approach on the left, what we call Approach 1, one
8 approach on the right we call Approach 2.

9 In Approach 1, the software developer is writing up
10 the program only -- he's writing up the code and using it
11 only for that app. No intention that it could be used
12 elsewhere. Maybe this is very specialized code. Maybe
13 the programmer is only interested in this one app.

14 So in this case, the programmer would write the code,
15 the code would be located inside the app. And this is the
16 self-contained approach. This is the approach that the
17 claim requires.

18 Q. What is Approach 2? Can you please explain what
19 Approach 2 is for the jury?

20 A. So approach 2, there's some functionality and perhaps
21 this functionality is functionality that would be useful
22 for multiple apps. So what you would do, what the
23 developer would do is write this functionality in a way
24 where multiple apps could use it. So you have one
25 implementation of this functionality. And then instead of

1 putting the functionality into each app, each app would
2 simply use that functionality. So the functionality, that
3 tool would be shared between all of the apps. This is the
4 not-self-contained approach or Approach 2.

5 Q. Is one approach better than the other?

6 A. That depends on the context.

7 Q. When would Approach 1 be better?

8 A. Approach 1 is better if it's code that you want to
9 get out, the developer is interested in it for one app.
10 Maybe specialized code. And it's not worth going to the
11 trouble of making it usable by multiple different apps.
12 That typically requires some form of generalization. So
13 there they just write it and put it in.

14 Q. What about Approach 2, when might that be better?

15 A. So this is better because it went with context where
16 there's multiple apps that may want to use this
17 functionality and instead of having every app reimplement
18 that functionality, instead, you implement it once and
19 then every app can use the functionality. They share that
20 functionality.

21 There's also been -- you know, I think you've also
22 heard other advantages of this approach in the case so
23 far, one of them is maintenance. Let's say someone finds
24 a bug or a software defect in this tool. You want to
25 change it in one place. If you put it in all the apps,

1 you have to change every app, and it's a problem.

2 The other advantage or another advantage, I should
3 say, is you get a consistent user experience if the tool
4 is part of the user interface. So everything looks the
5 same across all apps because they are all using the same
6 common functionality.

7 Q. For purposes of responding to Dr. Smedley's opinions,
8 did you focus on any particular claim limitations from
9 that long recitation of Claim 23?

10 A. Yes, I did.

11 Q. I think we have that up here on the screen. Can you
12 explain which claim elements you focused on?

13 A. The first one is the claim element that says
14 "providing input device, configured by the first computer
15 program," then it goes on. So that's one element I
16 focused on.

17 And the second element I focused on is the claim
18 element that starts -- and that first one was highlighted
19 in green on the slide.

20 The second claim element is the one that starts "In
21 consequence of receipt by the first computer program of
22 the user command from the input device causing a search
23 for the search term."

24 And then the element goes on from there.

25 Q. Why did you focus on only these two claim elements

1 for purposes of your analysis?

2 **A.** Well, these are the ones that drew my attention --

3 these are the ones where I thought they were particularly

4 relevant claim elements that -- where I thought, quite

5 frankly, analysis was incorrect about these claim

6 elements.

7 **Q.** So let's walk through those one by one, starting with

8 the first one. That's the "providing an input device

9 configured by the first computer program limitation."

10 Again, here we have it on the screen.

11 So what does this claim element require?

12 **A.** So there are two claim constructions that are

13 relevant here. Both of them were provided by the Court,

14 and we have to follow both of those as we apply -- as we

15 analyze this claim.

16 **Q.** Let me show you the first one, Dr. Rinard. Can you

17 explain this or recite this definition from the Court for

18 the jury?

19 **A.** Sure. This is the definition of "Providing an input

20 device configured by the first computer program."

21 **Q.** And what is required?

22 **A.** The Court's definition is: Providing an input device

23 set up by the first computer program for use by the user.

24 **Q.** Let me show you again the second definition that's

25 required for this claim. This is the computer program

1 **A.** That is correct.

2 **Q.** Which versions of the Android framework is that code

3 in?

4 **A.** I analyzed two versions, Android 8 and Android 9,

5 it's in both versions. Slightly different variants of

6 codes, but that does this in this both versions.

7 **Q.** When you say "the Android framework," can you explain

8 to the jury, please, what you mean?

9 **A.** Sure. So you've seen this Android architecture

10 document before. Here it is again. And here we are. So

11 at the very top, you've got in blue, the system apps, and

12 blow that up. And there, you will find things like

13 Dialer, E-mail, Calendar. Things that someone using the

14 device would use an app and all of the apps we're talking

15 about are located, basically, in this blue layer.

16 **Q.** What's in the layer below this, doctor?

17 **A.** The layer below that is the green layer. This is

18 the -- it says Java API framework. We know this here as

19 the Android framework. And this contains all those pieces

20 of functionality that I talked about before where you can

21 have all the apps, use all the apps, and share them. And

22 this reduces the developer app effort, provides the

23 benefits that we were talking about like better

24 maintenance and that sort of thing.

25 **Q.** Where are the code instructions that are written for

1 instruction that you discussed a few moments ago, correct?

2 **A.** That's right. I don't think I need to read it out

3 again. I will say a set of instructions -- a computer

4 program has to be a set of instructions and has to be

5 self-contained set of instructions.

6 **Q.** And what do you understand Dr. Smedley to be

7 contending with respect to what meets this particular

8 claim element of providing an input device?

9 **A.** So he's identified the input device here as this

10 floating menu bar. So I've shown the floating menu bar up

11 on the screen with the claim kind of grayed out behind it.

12 You may have seen a menu bar that looks like this before.

13 This happens when someone does a long touch on some text

14 and it comes up. You will see you get options like cut,

15 copy, share. None of those are accused. Select all, and

16 then dot, dot, dot, which gives you more options.

17 Here I've shown the call option, and that's the input

18 device that we're talking about here when you select that

19 call button.

20 **Q.** In Android, what is it that sets up this menu bar?

21 **A.** That is code in the Android framework.

22 **Q.** What code specifically?

23 **A.** There's code in the file called

24 TextClassifierimpl.java.

25 **Q.** And, again, that's in the Android framework?

1 Smart Text Selection as between the system apps and the

2 framework?

3 **A.** They are located in the framework.

4 **Q.** So they are in that green portion?

5 **A.** That is correct.

6 **Q.** So besides just knowing that, the overall Android

7 architecture, did you look anywhere specifically in

8 formulating your opinion?

9 **A.** So sure. So source code was an important part of

10 this. And what we have here are, on the left, you've got

11 the Android architecture again. On the right, we have web

12 pages from publicly available source code repositories,

13 places where people store source code. And you'll see

14 down at the bottom is a web page for, I believe it's

15 the -- is that 8 or 9?

16 **Q.** This is 8.

17 **A.** Yeah.

18 **Q.** Sorry. About that.

19 **A.** This happens to be code from the Android 8 platform,

20 and you will see that on the right there, there's a

21 TextClassifier circled, and this is the code that

22 Dr. Smedley analyzes for the step of providing the input

23 device configured by the first computer program, some of

24 it.

25 On the top, you see code from the code repository for

1 the publicly available Calendar app. And you'll see that
 2 there's different code repositories, different source code
 3 for these two different -- for the framework in all
 4 different apps.

5 Q. What do you derive from that in terms of seeing
 6 these, the code for the Calendar app and the code for the
 7 TextClassifier functionality are in these different parts
 8 of the source code repository?

9 A. Oh, the source code is separate. You know, the
 10 Calendar source code isn't in the TextClassifier
 11 functionality code. And vice versa. The framework isn't
 12 contained in the Calendar source code.

13 Q. Do you agree with Dr. Smedley that the code for Smart
 14 Text Selection effectively becomes part of the code for an
 15 application?

16 A. No, I do not.

17 Q. Why not?

18 A. Well, let's go ahead and take a look at some of the
 19 analysis that I did on the next slide. So this is an
 20 excerpt from a document called "Android Developer
 21 Application Fundamentals." And one of the things it says
 22 is -- and I've highlighted this in yellow here -- one APK
 23 file contains all the contents of an Android app. And is
 24 the file that Android powered devices use to install the
 25 app.

1 A. In this case, they all came with the representative
 2 devices. But, yes, these are examples of things that you
 3 could find on Google Play Store to download.

4 Q. What -- so I'll show you this DDX-0821.
 5 Can you explain to the jury what shows?

6 A. Sure. So there's a developer tool called "Android
 7 Studio." It's things that Android developers use. It's a
 8 software tool. One of things you can do with this tool is
 9 you can use it to explore what's in the APK file.

10 So now let me go through and try to talk through
 11 what's here. Let's look at the top half. You see the
 12 gray bar across classes.DEX. That is -- classes.DEX is
 13 the place where the Java -- I'm sorry. The JAVA compiled
 14 code, the Java code, the instructions from the Java code
 15 resides in this APK.

16 Now, if you look down below where you see the blue
 17 bar going across, this is where someone using this tool
 18 can go through and see what code is there.

19 Q. And what does this show, at least this particular
 20 example show as to whether or not code is there, for
 21 example, for the InfoBarControllerLayout code?

22 A. Okay. So let's take a look at that column of text on
 23 the left. And you'll see that all the text there is
 24 straight up and down, looks like normal text. Okay. And
 25 what that means is -- and it turns out that the

1 Q. So Dr. Smedley accuses -- excuse me. Dr. Smedley
 2 opines that 12 Google apps infringe Claim 23 and Claim 30,
 3 right?

4 A. Yes.

5 Q. And did those apps -- well, to what extent do those
 6 apps have APK files?

7 A. All of the apps have APK files. So what this is
 8 saying here is, what you do is, you take an app, all the
 9 source code, build it -- complicated things -- pack it
 10 into this APK file, and then this is the file that goes,
 11 for example, on the Google Play Store.

12 And then you can download this file and install the
 13 app, use this file to install the app on the Android -- on
 14 Android devices, smartphones, that kind of thing.

15 Q. And given that Dr. Smedley opined about the
 16 applications themselves, did you look to see what was
 17 inside of these application files?

18 A. Yes, I did. So what I did was, I used a software
 19 tool called the "Android Debugging Bridge," and I tapped
 20 the cable from the representative devices to my computer
 21 and extracted the APK files for these apps off of
 22 representative devices.

23 Q. Those are the -- again, the APK files that the user
 24 would get from the Google Play Store and download onto
 25 their device?

1 InfoBarControllerLayout is highlighted. You can highlight any
 2 of these.

3 If the text looks like this, what that says is the
 4 code for, for example InfoBarControllerLayout, is present in
 5 this APK. That's what this shows.

6 Q. Is there anything else that shows that, Dr. Rinard?

7 A. If you look to the next column over where you see
 8 "Define Methods" at the top of the column and a bunch of
 9 numbers going down, if there's numbers there, that means
 10 that there's some code there. For example, in this case,
 11 InfoBarControllerLayout. And the important thing here isn't
 12 that we're talking about InfoBarControllerLayout. This is
 13 just some example of code that's there. And this is code
 14 for info bar that pops up. When you run the browser, this
 15 is the analysis of the Chrome APK. The important thing is
 16 you look at the text, you look at the defined methods
 17 column, and those two things tell you whether the code for
 18 what's listed in the left-hand side here on the code
 19 column is present in there or not. And it looks like this
 20 was present.

21 Q. So can you compare and contrast that to the next
 22 slide that we have here, which is showing the application
 23 packages analysis that includes that TextClassifier class
 24 and some of the code files there?

25 A. Sure. So again, this is the APK file for the Chrome

1 browser. If you look, immediately you can see -- well, I
 2 hope you see it -- that the text here is not straight up
 3 and down. It's slanted. It's in italics. Everybody see
 4 that?

5 So what that means is, that means that the code for
 6 this APK file, this app, may use this functionality, may
 7 use this TextClassifier functionality, but it doesn't
 8 contain the code for it. That's contained -- that code is
 9 elsewhere. In this case, that code is in the Android
 10 framework. That's what that shows.

11 Q. Is there anything else that shows that here, Dr.
 12 Rinard?

13 A. You see where the defined method column is blank?
 14 That means code is not there.

15 Q. So this is for the Chrome file or the Chrome APK,
 16 correct?

17 A. That's correct.

18 Q. And what was your conclusion based on, whether or not
 19 Chrome had -- the Chrome APK included this TextClassifier
 20 code in the package?

21 A. The APK file does not contain this code.

22 Q. I want to show you the next, and I think last
 23 example, at least of this. Can you explain what's being
 24 shown here, Dr. Rinard? This is an application packages
 25 analysis where it seems to be showing TextView.

1 italicized, so the code for TextView isn't there.

2 For some of the apps, you'll find TextClassifier
 3 listed; some of the apps it isn't. If you can't find in
 4 the place where it's supposed to be, that means the app
 5 doesn't even know about it and it's not present. So
 6 neither the TextClassifier code, nor the TextView code, or
 7 for that matter, the edit text code you may have heard
 8 about. In this case, the code for none of those
 9 components is present in any of these APK files, in any of
 10 these application package files that contain the contents
 11 of all the applications.

12 Q. Were you here for the testimony of Mr. Toki?

13 A. Yes, I was.

14 Q. And let me show you a document that he was asked
 15 about.

16 MR. KAMBER: Mr. Spence, if we could please
 17 have DTX-166C displayed, please. Specifically, the
 18 seventh page, please, Mr. Spence, zooming in on the very
 19 far left side here.

20 BY MR. KAMBER:

21 Q. I think Mr. Toki talked about how TextClassifier is
 22 implemented in Google Android.

23 Do you recall that?

24 A. I do recall that, yes.

25 Q. And there's a depiction here in terms of TextView

1 Do you see that?

2 A. Right. So this is the Calendar APK. You may have
 3 heard of -- I think TextView has come up in the case
 4 before. And you can see here that TextView is slanted, so
 5 the code for TextView isn't, you know, isn't here.

6 Q. And did you use this analysis for all 12 application
 7 files?

8 A. Yes, I did.

9 Q. And what did --

10 A. All 12 -- I'm sorry.

11 Q. Pardon me.

12 A. Yeah. All 12 application files on both devices.

13 Q. What did you conclude from that analysis?

14 A. Well, this Android framework code, none of it's
 15 present in these APK files.

16 Q. And when you were going through, Dr. Rinard, for --
 17 we saw the example of Chrome on this slide. And then
 18 we're seeing the example from Calendar on this -- on
 19 DDX-08023. For your analysis of the other for the other
 20 ten, I guess, remaining accused Google apps, what did it
 21 look like?

22 A. It looks -- you know, there's various differences,
 23 but if you navigate to, for example, TextView, sometimes
 24 it's not there at all. Actually, I think for almost all
 25 the apps it's there. It's never -- it's always

1 being in blue, but inside of the app. Can you explain --
 2 well, what's the significance of that to you in terms of
 3 your analysis?

4 A. So what I heard Mr. Toki say was that the reason the
 5 TextView is in blue is to denote it's part of the Android
 6 framework, just like the AOSP TC, here in the app. And
 7 what he said was, the reason that the TextView box was
 8 inside the app was because he was trying to indicate that
 9 the TextView was serving the app.

10 Q. Does this align with the APK analysis that you did on
 11 the packages for the 12 accused apps?

12 A. It does, because I looked there, and the code for
 13 TextView is not in any of these packages. It's in the
 14 framework.

15 Q. Dr. Rinard, let me move on to the next slide?

16 MR. KAMBER: If we could get that back,
 17 Mr. Spence.

18 BY MR. KAMBER:

19 Q. And I believe you said you did this analysis for all
 20 12 apps, correct?

21 A. Yes, I did the analysis.

22 Q. So what does your analysis and that APK analysis
 23 tell you about which approach Google is using with respect
 24 to -- in comparison to the patent?

25 A. So Google is using the not self-contained approach.

1 Code for classes that we've heard about here like the
2 Smart Text Selection classes and TextView and EditText
3 classes, it is shared in the framework. None of the apps
4 actually have any of that code, and they all share that in
5 the framework.

6 Q. Can code that is shared across different applications
7 be self-contained in your understanding?

8 A. No, it cannot. If it's shared, it's not
9 self-contained.

10 Q. So based on the various different things that you
11 looked at, Dr. Rinard, what is your conclusion with
12 respect to whether or not the accused Google apps and the
13 devices that they come preloaded on meet this element
14 providing an input device configured by the first computer
15 program?

16 A. My conclusion is they don't meet it because they
17 don't do this.

18 Q. Can you please summarize why?

19 A. Yeah. Because the accused Google apps use
20 Approach 2, the not self-contained approach. The patent
21 requires Approach 1, the self-contained approach. The
22 apps that are in question in this case do not contain any
23 of the code that sets up the input device, and, therefore,
24 cannot be the first -- any first computer program that
25 provide the input device that's configured by the first

1 computer program.

2 MR. KAMBER: Your Honor, if I may be so bold as
3 to suggest that now might be a good time for a break.

4 THE COURT: Perfect. It sounds like counsel
5 has gotten to a good stopping point in the examination.
6 Ladies and gentlemen of the jury, I understand that your
7 lunches have been delivered, so we'll take you out for
8 lunch break. We're going to try to make up a little time,
9 so we'll try to take a half-hour lunch break today. All
10 right?

11 Ms. Garfinkel, take the jury out.

12 (The jury exits the courtroom at 12:50 PM .)

13 THE COURT: All right. It's 12:51. Let's try
14 to get back and ready to go at 1:20.

15 Counsel?

16 MR. UNIKEL: Quick housekeeping matter. I
17 think plaintiff has to officially closed their case, and
18 at least I have to put on the record that we have
19 50(a)motions.

20 THE COURT: All right. That's fine.

21 MS. SRINIVASAN: Arendi rests its case in
22 chief. Arendi rests its case in chief. And following the
23 testimony of Mr. Choc, and we would like to do that in
24 front of the jury. We neglected to do that following his
25 testimony, but we can do it quickly.

1 THE COURT: I understand. And I wasn't sure if
2 I wanted to make a scene of it while we had the
3 non-infringement expert on. So we'll have you make that
4 application after we bring the jury back in after lunch.
5 I would like to hear about the specific bases for your
6 motion, but I also would like everybody a chance to get
7 some food. So...

8 MR. UNIKEL: So we will be prepared to submit
9 the motions in writing this evening. I can give you the
10 five that we are going to be indicating just by sort of
11 the issue if that's enough for Your Honor.

12 THE COURT: Let's hear what they are, and we'll
13 see if they are specific enough.

14 MR. UNIKEL: Okay. We'll be making a
15 Rule 50(a)motion of no direct infringement based on the
16 lack of the first computer program elements that have been
17 specified.

18 We will be making a Rule 50(a) motion for no
19 indirect infringement, no inducement or contributory
20 infringement.

21 We will be making a notion under 50(a) for no
22 willfulness infringement or enhanced damages. We will be
23 making a motion under 50(a) for no support for Arendi's
24 damages inquiry and demand generally. And lastly, we'll
25 be making a motion under Rule 50 for no damages

1 attributable to apps [REDACTED]
2 [REDACTED]

3 THE COURT: Can you tell me more about
4 Number 4?

5 MR. UNIKEL: Yes, Your Honor. For Number 4, we
6 will be requesting, basically, a JMOL of no damages, or in
7 the alternative, nominal damages, because the basis for
8 the demand put forth during the plaintiffs case was
9 legally insufficient to support a reasonable royalty
10 calculation. As to royalty base, there was improper
11 apportionment both of the Google apps by operating system
12 and by downloads. As to the royalty rate, there was
13 improper apportionment as to portfolio of the agreements
14 and individual patents attributable to the settlement
15 payment, the license duration, the specific considerations
16 for each agreement, and an inconsistent unit count
17 methodology.

18 And lastly, that there was insufficient support
19 for a times multiplier based purely on conversations with
20 the inventor and plaintiff.

21 Also, there would be no damages due to waiver
22 because, to the extent that there was abandonment of
23 certain claims on the eve of trial and the remaining
24 damages theories could not support the existing theories
25 that were presented, that there is no ability to sort of

1 fill that gap after the fact.

2 **THE COURT:** Okay. With respect to item

3 Number 4 and with respect to the base, does your argument

4 apply to both the Chrome downloads as well as the other

5 app downloads?

6 **MR. UNIKEL:** It does, Your Honor. Just for the

7 honors -- Your Honor's awareness, the download numbers for

8 all of the apps, including Chrome, do not specify Android

9 operating systems. That's because, during the majority of

10 the case, and certainly during fact discovery, there were

11 older functionalities that were still involved in the

12 case. It was Linkify, which was then eliminated by

13 summary judgment. And then on Friday, they eliminated

14 Content Detectors and Quick Actions from Chrome. Because

15 those were present in the case during fact discovery, for

16 whatever reason, plaintiff did not ask for any information

17 that would correlate downloads to app operating systems on

18 the devices.

19 At the time, it was true that all the operating

20 systems were accused, but as Linkify was eliminated from

21 the case, no further effort was made to try and identify

22 downloads by operating system. Then when Content

23 Detectors and Quick Actions was eliminated from Chrome,

24 that same issue infected the download numbers for Chrome

25 as well.

1 So right now, all that has been presented are

2 total download numbers. It's established that not all of

3 those downloads could be potentially infringing, because

4 some are going to be devices that have older operating

5 system or, in fact, Android 8 before the MRL release. And

6 there's absolutely no basis to know which downloads

7 actually went to devices that had operating systems that

8 could support the infringing functionality.

9 **THE COURT:** All right. That sounds specific

10 enough for me. I understand the bases for your motion,

11 and I will reserve judgment. We will await getting a

12 paper from you tonight. Thank you very much.

13 **MR. UNIKEL:** Thank you, Your Honor.

14 **THE COURT:** We will be in recess.

15 (Whereupon, a recess was taken.)

16 **THE COURT:** All right. Please be seated. Have

17 the witness retake the stand.

18 **MR. UNIKEL:** There's one 30-second thing. I

19 need to say if it's okay.

20 **THE COURT:** Okay. Sure.

21 **MR. UNIKEL:** Your Honor, I apologize. I was

22 made aware that there was one ground for a no direct

23 infringement Rule 50(a) motion that I failed to mention.

24 **THE COURT:** Okay.

25 **MR. UNIKEL:** And that is four apps that Google

1 does not make, use, sell, or offer for sale the

2 computer-readable media aspect of the claims.

3 **THE COURT:** Understood.

4 **MR. UNIKEL:** Thank you, Your Honor.

5 **THE COURT:** Okay. We ready to proceed?

6 **MR. LAHAD:** Yes.

7 **MR. UNIKEL:** Yes, Your Honor.

8 **MR. LAHAD:** Yes, Your Honor.

9 **THE COURT:** All right. Let's bring the jury

10 back in.

11 (The jury enters the courtroom at 1:26 PM .)

12 **THE CLERK:** Your Honor, the jury.

13 **THE COURT:** Please be seated welcome back

14 ladies and gentlemen I hope you enjoyed your lunch. We

15 will continue with the direct examination of the witness.

16 Please proceed.

17 **MR. KAMBER:** Thank you, Your Honor.

18 **BY MR. KAMBER:**

19 **Q.** So I believe we were done with your opinion as to the

20 first -- this claim element. And let's move on to the

21 second opinion regarding non-infringement, Dr. Rinard.

22 This is your analysis of the in consequence of receipt

23 causing a search claim limitation?

24 **A.** Yes. This is the next limitation that we are going

25 to talk about here today.

1 **Q.** Okay. And just to reorient the jury now after lunch,

2 what claim limitation are we talking about? Where is it?

3 **A.** So we've shifted from the claim limitation that we

4 were talking about, the providing an input device. That

5 limitation was highlighted before.

6 And now we are moving down, and we are going to talk

7 about the in consequence of receipt by the first computer

8 program of the user command from the input device, causing

9 a search for the search term. We are going to talk now

10 about that particular claim element.

11 **Q.** What does this claim element require generally?

12 **A.** So we have a claim construction here that is, I

13 believe, relevant, and that is the computer program claim

14 construction. I think we've all seen it. Just as a

15 reminder, computer programs have a set of instructions,

16 and it has to be self-contained.

17 **Q.** So what does Dr. Smedley identify in terms of meeting

18 this claim limitation so far as you understand?

19 **A.** So what he talks about -- let's go to the next slide.

20 **Q.** Sure.

21 **A.** Sure. So this is -- what I'm showing here is two

22 screenshots from videos that Dr. Smedley made. You saw

23 some of those earlier. These are some of his videos.

24 And what you see on the left is we've frozen the

25 video at a certain time where someone has long pressed on

1 that wjackson@arendi.net e-mail address. You can see the
2 floating menu bar show up. It has various options: Cut,
3 copy. Nobody is saying those infringe.

4 And then, there is the Gmail button on the left. And
5 there is a command that's associated with tapping that
6 Gmail command. And -- tapping that Gmail icon.

7 And when somebody uses -- using this machine, using
8 this device taps Gmail, the screen on the left will
9 disappear, will go off the device, and the screen on the
10 right with the compose screen will show up. And that's
11 the user experience that we're talking about here and that
12 Dr. Smedley was talking about.

13 Q. And Dr. Smedley referred to Intents being the thing
14 that goes from the screen on the left to the screen on the
15 right, correct?

16 A. Yes, that's right. In all of the apps, what's going
17 on here is we have something called the intent
18 mechanism -- I think you've heard about that before --
19 that is generating this -- what you see on the screen
20 here. So go to the next slide.

21 Q. And what is the Intents mechanism, Dr. Rinard?

22 A. So this is a mechanism that's been built into
23 Android, essentially ever since it began. And the idea
24 here is an intent carries basically what are commands
25 between things called activities. Activities are screens

1 like the two screens you saw on the previous slides.

2 And so one of the mechanisms you can use or that an
3 Activity can use is something called startActivity. And
4 what this will do is it will take an intent. It will go
5 through the Android Framework, into other parts of the
6 Android system, back out of the Android Framework. And
7 then it will cause another intent -- sorry -- cause
8 another Activity to happen, another screen to happen.

9 So in this case, what we're looking at here is,
10 again, what's under the hood and what you saw on the
11 previous slide where you have the intent going through the
12 framework and then starting another Activity.

13 Q. By the way, where did this illustration come from,
14 Dr. Rinard?

15 A. It comes from the document on the left.

16 Q. Is this something that you reviewed in formulating
17 your opinions?

18 A. Yes.

19 Q. And so where is the code for the Intents handling and
20 Intents objects in Android?

21 A. It's in the Android Framework, and also it's in some
22 of the lower-level layers of the system below it.

23 Q. Did you find any code for the Intents handling system
24 in the 12 accused apps?

25 A. No, I did not.

1 Q. Did you find them in any preloaded apps?

2 A. No, I did not.

3 Q. So what, if anything, causes the search to be
4 performed based on your analysis?

5 A. So this limitation also requires that the search be
6 caused by the reception of a command by the first computer
7 program. Okay? So then, if you look at what causes the
8 search, it's actually instructions in what is, basically,
9 the second computer program, the Activity feature. Those
10 are the instructions that cause the search.

11 What this says is that the command is being received
12 by the second computer program, not the first computer
13 program as the claim requires. So we can go back and take
14 a real quick look at the claim maybe?

15 Q. Sure.

16 A. Okay. In consequence of receipt by the first
17 computer program of the user command from the input
18 device -- so the first computer program. This is what we
19 are saying, basically, the Activity associated with that
20 on the screen on the left you saw earlier.

21 Okay. That has to receive, according to this claim
22 limitation, the user command from the input device.
23 That's the floating menu. That reception has to cause a
24 search. Okay?

25 Now, using a second computer program -- in this case

1 the second computer program that we are talking about is
2 the Activity on the right, the compose. Okay?

3 So it turns out that the instructions that decide to
4 do a search, cause a search to happen are on the Activity
5 on the right the second computer program, not the first.
6 Okay? That's another reason why this claim wasn't met.

7 Q. To what extent is it automatic that a search will be
8 performed in consequence of a user pressing that Gmail
9 button on the left?

10 A. It's not automatic until it receives the Gmail
11 Activity. Okay. So that's what decides whether a search
12 happens or not. It's not a first computer program.

13 Q. So, Dr. Rinard, can you please explain to the jury
14 what your conclusions were with respect to this particular
15 claim limitation, the in consequence of receipt by the
16 first computer program of the user command from the input
17 device causing a search for the search term?

18 A. This limitation is not met by the accused apps and
19 devices.

20 Q. Can you please explain to the jury why?

21 A. Sure. So this is -- they use an Approach 2 approach,
22 not self-contained approach, because they use the Intents
23 mechanism which is in the Android Framework. The
24 accused -- the Intents handling code is in the framework,
25 not in the apps.

1 So if the apps -- the first computer program doesn't
 2 have the code that does this. And because the user
 3 command is received by the wrong entity, namely the second
 4 computer program instead of the first.
 5 **Q.** Thank you, Dr. Rinard.
 6 So were you asked to do anything else in connection
 7 with this case?
 8 **A.** Yes, I was.
 9 **Q.** What was that?
 10 **A.** It's my -- I was asked to do several things relating
 11 to damages.
 12 **Q.** What specifically were you asked to do relating to
 13 damages?
 14 **A.** First thing I was asked to do was look at
 15 non-infringing alternatives.
 16 **Q.** And what is a non-infringing alternative, so the jury
 17 understands?
 18 **A.** Non-infringing alternative is something that provides
 19 much of the benefit of an infringing alternative but
 20 doesn't infringe.
 21 **Q.** So what, if any, non-infringing alternatives have you
 22 identified for the '843 patent and specifically claims 23
 23 and 30?
 24 **A.** Those would be Linkify and Smart Linkify.
 25 **Q.** The jury has heard a little bit about those two

1 **A.** That's the TextClassifier code. It's the code that
 2 determines where the boundaries of the text are,
 3 recognizes elements like phone numbers and e-mail
 4 addresses in text.
 5 **Q.** So why is it your opinion that Linkify and Smart
 6 Linkify are non-infringing alternatives to the accused
 7 Smart Text Selection functionality?
 8 **A.** It turns out that to infringe this claim, any product
 9 has to work on editable text. If it's not working on
 10 editable text, it doesn't infringe. And because Linkify
 11 and Smart Linkify work only on text that's not editable,
 12 they don't infringe.
 13 **Q.** Were you asked to do anything else in connection with
 14 damages, Dr. Rinard?
 15 **A.** Yes. One last thing.
 16 **Q.** What was that?
 17 **A.** It was to evaluate a patent called the '761 patent.
 18 **Q.** What is the '761 patent?
 19 **A.** The '761 patent is a patent about e-mail handling
 20 technology. It basically handles information about when
 21 an e-mail comes in.
 22 **Q.** And did you hear Dr. Smedley's testimony about the
 23 '761 patent?
 24 **A.** Yes, I did.
 25 **Q.** Okay. And that's been admitted into evidence, I

1 functionalities.
 2 Can you please explain what Linkify is?
 3 **A.** Sure. So here we see, again, two screenshots from
 4 Dr. Smedley's videos. On the left, you see the text. You
 5 can you e-mail him at wjackson@arendi.net.
 6 And you'll see that that text is underlined and in
 7 blue. Okay? So what's happened is something called
 8 linkification has happened to that text. And when a user
 9 taps on that text, the compose Activity comes up. So you
 10 tap on it. You get the compose Activity. That's
 11 basically what Linkify does.
 12 **Q.** Does it use the same Intents handling framework that
 13 we were just looking at a moment ago?
 14 **A.** Yes, it does.
 15 **Q.** And what is Smart Linkify?
 16 **A.** So Smart Linkify is sort of a better version of
 17 Linkify. It uses the same code as the Smart Text
 18 Selection code. And -- but it delivers the same kind of
 19 thing where you see these underlined blue-out pieces of
 20 text that correspond to things like e-mail addresses and
 21 telephone numbers. And you can tap the link, and it will
 22 do the next thing.
 23 **Q.** When you say that Smart Linkify uses the same
 24 underlying code as Smart Text Selection, what do you mean?
 25 What are you referring to?

1 think, at this point as DTX-0224, correct?
 2 **A.** Sure. I'm willing to believe it.
 3 **Q.** So, Dr. Rinard, what did you do to analyze whether or
 4 not the '761 patent was technically comparable to the '843
 5 patent?
 6 **A.** I read the patent, and I compared various aspects of
 7 the patent.
 8 **Q.** What did you find based on that comparison?
 9 **A.** The field of inventions were technically comparable
 10 in both the information handling for computer system. And
 11 what the '761 patent does is when an e-mail arrives, it
 12 scans the e-mail. It's looking for something called a
 13 reference. So it's scanned the header part of the e-mail
 14 for a reference to at least one feature in the context.
 15 So you have got an e-mail address. You are looking
 16 for a reference to the context that might be something
 17 like a business name or a state. And if you find it, you
 18 go obtain such reference from a location external to the
 19 message, and you put it in. That's basically what it is.
 20 So you can see that it's technically comparable to
 21 what's going on at some level in the '843 patent where
 22 it's analyzing information to find second information and
 23 then performing a search associated with that first
 24 information and gathering the information back.
 25 **Q.** Did you ultimately find that or conclude that the

1 '761 patent is technically comparable to the '843 patent?
 2 **A.** Yes, I did.
 3 **Q.** Dr. Rinard, because we've had a little bit of
 4 separation between your first opinion and your second
 5 opinion with lunch in between, could you please summarize
 6 your opinions regarding whether or not the accused apps,
 7 including those on the accused Pixel devices, set up the
 8 input device in a manner that's required by this claim and
 9 the Court's claim constructions?
 10 **A.** They do not.
 11 **Q.** Why not?
 12 **A.** Because they use Approach 2, the not self-contained
 13 approach, where they share the code and framework instead
 14 of having a code be within the app. The accused apps
 15 don't contain the code that sets up the device. That code
 16 is in the framework.
 17 **Q.** What about with respect to the second limitation that
 18 received the user command causing a search that we just
 19 discussed when we came back from lunch, Dr. Rinard, can
 20 you summarize, please, your opinions with respect to that
 21 particular limitation and whether it's met?
 22 **A.** Sure. So it's not met. And the reason is, is that,
 23 again, because of the Intents handling mechanism,
 24 Approach 2, the not self-contained approach, where all of
 25 the code in -- that implements the Intents handling

1 mechanism was shared between all the apps. And the code
 2 that does that is in the framework, not in the individual
 3 apps, and because the wrong entity receives the command.
 4 It is the second computer program instead of the first
 5 computer program that causes the search.
 6 **Q.** Thank you, Dr. Rinard. Pass the witness.
 7 **THE COURT:** We will have cross-examination.
 8 **MR. LAHAD:** Thank you, Your Honor. May I?
 9 **THE COURT:** You may proceed.
 10 **MR. LAHAD:** Thank you, Your Honor.
 11 CROSS EXAMINATION
 12 **BY MR. LAHAD:**
 13 **Q.** Good afternoon, Dr. Rinard. How are you?
 14 **A.** I'm fine. How are you?
 15 **Q.** Nice to meet you. I'm John Lahad. I have a lot of
 16 questions for you. Let's get started. For purposes of
 17 today, we're just going to talk about two claim
 18 limitations, correct?
 19 **MR. LAHAD:** Mr. Boles if I could get slide 11
 20 from Dr. Rinard's slides, please.
 21 **BY MR. LAHAD:**
 22 **Q.** All right. So we are going to talk about just these
 23 two claim limitations, correct?
 24 **A.** You are asking the questions. But yeah, that's fine
 25 for me.

1 **Q.** And for purposes of today, you would agree that the
 2 other claim limitations are met by the accused products
 3 and devices, correct?
 4 **A.** I don't dispute that, no.
 5 **Q.** Okay. And you would agree that the accused
 6 applications, at least at a high level, make available the
 7 STS functionality to the user, correct?
 8 **A.** Sure. Because they go off and they use the framework
 9 to do so.
 10 **Q.** Right. Google Docs makes the STS functionality
 11 available to the framework, correct -- excuse me -- it's a
 12 lot of framework.
 13 Google Docs makes available the STS functionality to
 14 the user, correct?
 15 **A.** Sure. It uses TextView. And via TextView, you get
 16 the STS functionality, for example.
 17 **Q.** Google Sheets provide STS functionality to the user,
 18 correct?
 19 **A.** In the same way or similar way as Google Docs does,
 20 yes.
 21 **Q.** Same thing for Gmail and Google Slides and the rest
 22 of the accused applications, correct?
 23 **A.** There's a difference between the way Chrome, as you
 24 say, provides the STS functionality, delivers it, but --
 25 and the rest of the apps. But in general, they all use

1 the framework, and they all allow the user to access the
 2 framework through various mechanisms.
 3 **Q.** And same for the devices right, the Pixel 2, Pixel 3,
 4 they also make the STS functionality available to the
 5 user, right?
 6 **A.** I think we're talking about the apps installed in the
 7 devices; is that what you mean?
 8 **Q.** Yes, sir.
 9 **A.** Yes.
 10 **Q.** So the answer is yes?
 11 **A.** Oh, yes.
 12 **Q.** Thank you. And you reviewed the expert reports that
 13 Dr. Smedley produced in this case, correct?
 14 **A.** Yes, I did.
 15 **Q.** And as part of performing your opinions -- as part of
 16 forming your opinions in this case, you examined the
 17 representative products and devices produced in this case,
 18 right?
 19 **A.** The ones that were produced to me, yes. The ones
 20 that were given to me.
 21 **Q.** And you observed -- you did not observe a specific
 22 behavior that contradicted any of the behavior presented
 23 in Dr. Smedley's report, correct?
 24 **A.** Yeah, I think that's accurate. In the videos
 25 associated with Dr. Smedley's report, that's correct.

1 Q. Google Docs is a computer program, correct?

2 A. Not as -- okay. So I don't -- so are you referring

3 here to Google Docs as construed in this litigation?

4 Q. Let's -- I'm sorry.

5 A. I'm sorry. Computer program -- let me get this down.

6 Computer program as in this litigation, right?

7 Q. Yes. Well, you understand that in this litigation,

8 this lawsuit, this trial, the Court's construction of

9 terms from the patent control, right?

10 A. Yes. That's right. Absolutely.

11 Q. So if the Court construed this to mean "wine," it

12 would be wine even though it looks like water, right?

13 A. For the purposes of the appropriate litigation, yes.

14 Q. Correct. And so when I say "computer program," can

15 we agree that I'm using that word as the Court has

16 construed it?

17 A. I'll try to keep that in mind, yes.

18 Q. Thank you. Google Docs is a computer program,

19 correct?

20 A. I believe my opinion is it's not a computer program

21 that satisfies the first computer program limitations in

22 the claims.

23 Q. Okay. I hear you. I'm asking you about whether

24 Google Docs is a computer program. I haven't included

25 first or second yet.

1 **BY MR. LAHAD:**

2 Q. Okay. You have a Ph.D. in computer science, correct,

3 sir?

4 A. That is correct.

5 Q. You have an ScB in computer science as well, correct?

6 A. Yes.

7 Q. All right. You are a tenured professor at the

8 Massachusetts Institute of Technology, correct, sir?

9 A. That is correct.

10 Q. Okay. And you read the patent in this case, right?

11 A. Yep.

12 Q. And you read the Court's construction, right, which

13 is at Slide 9.

14 **MR. LAHAD:** If we could go to Slide 9,

15 Mr. Boles. Thank you.

16 **BY MR. LAHAD:**

17 Q. You read the Court's construction, and of course you

18 reviewed lots of information about the apps and products,

19 right?

20 A. Sure.

21 Q. And you reviewed source code?

22 A. Yes.

23 Q. You reviewed lots of technical documentation, right?

24 A. Sure.

25 Q. Despite your credentials and all the work that you

1 But you would agree that Google Docs is a computer

2 program, right?

3 A. So based on the -- I don't think I've put forth that

4 opinion one way or the other here yet. My opinion is it's

5 not a first computer program that satisfies the

6 limitations of the claim.

7 Q. Right. But the Court construed the term "computer

8 program," right?

9 A. Yes, it did.

10 Q. And you're familiar with Google Docs and the rest of

11 the accused applications, correct?

12 A. Absolutely, yes.

13 Q. Okay. So is it your opinion Google Docs is a

14 computer program as construed?

15 A. So I don't really have an opinion one way or the

16 other because that wasn't the analysis I was asked to do.

17 Q. So you are able to opine on whether or not Google

18 Docs is a first computer program, but you can't opine on

19 whether Google Docs is a computer program?

20 A. The analysis I was asked to do was to respond to

21 Dr. Smedley's analysis. So, yes, I am opining, my opinion

22 is related to whether it is a first computer program that

23 satisfies the claim limitations.

24 **MR. LAHAD:** Can we get Slide 2 from

25 Dr. Rinard's --

1 did, your familiarity with the patent, the Court's

2 construction -- let me step back.

3 The Court construed "computer program," didn't it?

4 A. Yes.

5 Q. It didn't construe "first computer program," right?

6 A. That is correct.

7 Q. It didn't construe "second computer program," right?

8 A. That is correct.

9 Q. So you've got the Court's construction. You've got

10 an understanding of the accused applications. You've got

11 the Ph.D. You have got the bachelor's.

12 And you can't tell me and this jury whether or not

13 Google Docs is a computer program because -- that's your

14 testimony?

15 A. So that's not the analysis I was asked to do here.

16 Q. But you can tell me whether or not Google Docs is a

17 first computer program, right?

18 A. I can tell you whether Google Docs is a computer

19 program that satisfies the limitations of the claim

20 because that's the analysis I was asked to do.

21 Q. Is "computer program" not a part of the claim?

22 A. It's a part of the claim for sure, yeah.

23 Q. Okay. So you were asked to do -- you were asked to

24 analyze the claim, which you purport to have done, right?

25 A. Yes.

1 Q. And this computer program is in the claim, we agreed
 2 on that front, right?
 3 A. Yes, it is.
 4 Q. All right. And you understand the words in this
 5 construction, right?
 6 A. Sure.
 7 Q. And you understand the words in the patent?
 8 A. Uh-huh.
 9 Q. Right?
 10 A. Yes.
 11 Q. You were able to give an opinion on whether or not
 12 something is a first computer program, correct?
 13 A. You are referring here to some of the claim
 14 limitations, I am assuming, yes?
 15 Q. Yes.
 16 A. Yeah, yeah, that's right.
 17 Q. Okay. But you will not give me an answer to the
 18 question of whether or not Google Docs is a computer
 19 program, as construed by the Court, because you weren't
 20 asked to do that analysis?
 21 A. I was asked to respond to Dr. Smedley's analysis.
 22 Q. Well, can you do it for me right now?
 23 A. I would prefer not to. I prefer to do my analysis
 24 and take the time I need.
 25 Q. What else do you need to know to tell me whether

1 Google Docs is a computer program under the Court's
 2 construction?
 3 A. So the problematic thing here is whether it is a
 4 self-contained set of instructions. It is definitely a
 5 set of instructions.
 6 Q. I'm sorry. Could you repeat that, please.
 7 A. Yeah. So I don't dispute that -- you are talking
 8 about Google docs?
 9 Q. Yeah, let's start there.
 10 A. Yeah, okay. I don't dispute that Google Docs is a
 11 set of instructions.
 12 Q. Well, do you dispute that Google Docs is a
 13 self-contained set of instructions as opposed to a routine
 14 or library intended to be executed on a computer so as to
 15 perform some task?
 16 A. So the analysis was whether -- the analysis I was
 17 asked to do was whether it is a self-contained set of
 18 instructions and the rest of it that satisfies the claim
 19 limitations.
 20 Q. No, I get that, but computer program is in the claim
 21 limitations, right?
 22 A. Yes.
 23 Q. And you can't tell me whether or not Google Docs is a
 24 computer program which is in the claim limitations?
 25 A. It's in the claim limitations required to do certain

1 Tasks, and it's those Tasks that the analysis focuses on.
 2 Q. Okay. Dr. Smedley testified that these 12 apps were
 3 computer programs.
 4 Do you agree or disagree?
 5 A. I think he said they were computer program that
 6 satisfy all limitations of the claims.
 7 Q. So you would disagree?
 8 A. No, I'm just pointing out what I thought I heard from
 9 Dr. Smedley.
 10 Q. Right. So my question is, do you agree or disagree?
 11 A. So in that sense -- so, yeah, so if it's -- I agree
 12 that he said there are computer programs that satisfied
 13 all the claim limitations.
 14 Q. As we agreed earlier, the Court's construction of
 15 computer program controls in this trial, correct?
 16 A. That's my understanding.
 17 Q. And you had to apply this construction in your
 18 analysis of non-infringement, right?
 19 A. That's correct.
 20 Q. And you can't replace your understanding of computer
 21 program for the Court's construction of the term, right?
 22 A. I think -- yeah, we are working with the Court's
 23 construction here, all of us, sure.
 24 Q. Yeah. And you have to use and apply the entirety of
 25 Court's construction, correct?

1 A. Yes.
 2 Q. You cannot cherry-pick a portion of the Court's
 3 construction and ignore or disregard other parts of the
 4 Court's construction, correct?
 5 A. That's correct. But if it's not self-contained, then
 6 it's not a computer program.
 7 Q. You want to focus on self-contained set of
 8 instructions, but there's -- that's not the extent of the
 9 Court's construction, correct?
 10 A. That is correct.
 11 Q. Right. The Court's construction reads: "A
 12 self-contained set of instructions, as opposed to a
 13 routine or library, intended to be executed on a computer
 14 so as to perform some task."
 15 Correct?
 16 A. Yes.
 17 Q. And that intended to be executed on a computer so as
 18 to perform some task, that is -- that is entitled, that
 19 portion of the construction is entitled to as just as much
 20 weight as a self-contained set of instructions that you're
 21 relying on, correct?
 22 A. When you're looking to make this determination, sure,
 23 everything is important here in this construction, I
 24 agree.
 25 Q. There's nothing in this construction about storage,

1 correct?

2 **A.** Not directly. Are you referring to some aspect of

3 the claim that is?

4 **Q.** There's nothing in this construction about storage of

5 the instructions or anything else, correct?

6 **A.** There's -- yeah, I don't see anything about storage

7 in this claim construction, no.

8 **Q.** Likewise, there is nothing in this claim about source

9 code, correct?

10 **A.** That is correct.

11 **Q.** It speaks in terms of instructions, correct?

12 **A.** That's correct.

13 **Q.** By "it," I mean the construction speaks in terms

14 of -- I think I said it wrong. Let me strike that and

15 rephrase.

16 This construction speaks in terms of instructions,

17 correct?

18 **A.** I think you got it right that time, yes.

19 **Q.** Thank you.

20 **A.** I think you got it right the first time, but, hey.

21 **Q.** We'll check the transcript.

22 **A.** Okay.

23 **Q.** Computer instructions are not limited to source code,

24 correct?

25 **A.** Absolutely.

1 separate from the Java framework so there's no first

2 computer program, correct?

3 **A.** The apps don't include the framework. And the code

4 that Dr. Smedley identifies as performing some limitation

5 that's present in the framework not in the app code.

6 **Q.** Okay. And when you say the code that Dr. Smedley

7 identifies, when you say the "app code," you're referring

8 to the source code?

9 **A.** No.

10 **Q.** What code are you referring to?

11 **A.** Any code in the app. In particular, the code in the

12 APK.

13 **Q.** But you would agree that there is communication

14 between the apps and the framework, correct?

15 **A.** Oh, sure, yeah. If you use some framework code, it

16 very often will use that code. And to do that, there's

17 some communication -- there's some configuration of how

18 that framework code works, because it's got to meet

19 general code that can be used by many different apps. And

20 Apple uses it slightly differently. So of course, the app

21 would be have to be able to configure it.

22 **Q.** Sure.

23 **A.** The communication, yeah, I'm agreeing. With you.

24 **Q.** Yeah.

25 **A.** I don't know if you want an answer that long, but I'm

1 **Q.** So you could have executed code, right?

2 **A.** For example, you could have code in the APKs, for

3 example.

4 **Q.** So folks call it "executable code," some folks call

5 it "object code." You can have all different types of

6 code other than source code?

7 **A.** Absolutely. Sure.

8 **Q.** All right. So given that the instruction says

9 nothing about storage, given that the construction says

10 nothing -- or it's not limited to source code, it would be

11 improper to focus or limit this instruction to simply

12 about where the source code is stored, correct?

13 **A.** I think that's largely true. But, of course, that --

14 where the source code is stored could be relevant if

15 you're looking for something self-contained. But I don't

16 think that's what you're talking about, right? We're

17 just...

18 **Q.** Yeah. I'm just saying that by looking at this

19 construction, it's not limited to storage, it's not

20 limited to source code, correct?

21 **A.** It's definitely not limited to source code, and it

22 doesn't say anything about storage either in the

23 instruction.

24 **Q.** Thank you.

25 And so as I understand your opinion, the apps are

1 happy to talk.

2 **Q.** No, I liked it. Thank you. It's helpful.

3 So we're on the same page that these apps can use the

4 functionality provided in the framework, right?

5 **A.** That is precisely the reason the framework exists.

6 **Q.** Correct.

7 Because what you want to do is be able to create an

8 app and have these tools in the toolbox so you don't have

9 to reinvent the wheel every time, correct?

10 **A.** We can get as technical as you want, but that's a

11 great summary.

12 **Q.** I'm picking this stuff up. Thank you.

13 **A.** Hey.

14 **MR. LAHAD:** So if I could have Slide 18 from

15 Dr. Rinard's slides. Yes. Thank you.

16 **BY MR. LAHAD:**

17 **Q.** So we have these -- this abstraction right here.

18 There's communication and cross-talk going on between the

19 system apps and the components of the Java APK framework,

20 right?

21 **A.** Yeah, yeah. Yeah.

22 **Q.** It's not like there's some kind of wall in the

23 instructions or cut off such that the e-mail app doesn't

24 communicate with the view system or content providers'

25 functionality and the framework, right?

1 A. Well, there's a mechanism that has to be in place to
 2 support that communication. But, yes, there is
 3 communication between, for example, the dialer and maybe
 4 the view system, e-mail and view system. These APK
 5 frameworks are shared across all the apps, and the apps
 6 are communicating with the code there, yes.

7 Q. Right. And you mentioned a mechanism that has to be
 8 in place. And that's in place in all of the accused apps,
 9 right?

10 A. Well, that's -- I wouldn't say it's there. It's
 11 present in the Java system -- I'm sorry, in the Android
 12 system.

13 Q. In fact, in order to perform pretty much all of the
 14 tasks that these applications do, they have to use
 15 functionality provided by the framework, correct?

16 A. I believe that's true. For example, many of these
 17 apps use TextView. They share -- they share the use of
 18 TextView extensively.

19 Q. Yeah. Like, for example, Gmail uses TextView, right?

20 A. Yeah. I believe that's true.

21 Q. So you can't identify any kind of task that Gmail can
 22 do solely with the code in the APK, correct?

23 A. I'm sorry. I didn't hear the second word of your
 24 questioning.

25 Q. Sure.

1 Can you give me a task that Gmail can perform solely
 2 within the code in the APK?

3 A. No. In fact, it relies on the APK for much of its
 4 functionality.

5 Q. And functionality includes displaying the text,
 6 right?

7 A. For example.

8 Q. Yeah. So when I open a Gmail e-mail, the display
 9 that I'm seeing -- the e-mail that I'm seeing, that's
 10 being rendered, if you will, by TextView, right?

11 A. Oh, for Gmail? I'm not exactly sure if it's that or
 12 TextView, but there is something in the framework involved
 13 causing that text to appear.

14 Q. Yeah. We wouldn't be able to see the e-mail without
 15 functionality provided by the framework, right?

16 A. That is correct.

17 Q. And we've been talking about Gmail, but that's true
 18 for all of the apps accused?

19 A. Oh, yeah. I mean, well, let's be sure what you mean
 20 by that here just to keep everything straight. If you
 21 mean doing a task like displaying text or something like
 22 that, for all the apps, that's going to go through the
 23 framework in one way or the other.

24 Which, I mean -- just to add, that's because that's
 25 the point of the framework, is to make doing things like

1 displaying text easily available and -- so the apps don't
 2 have to develop it all themselves. And the way it works
 3 is they all share that functionality.

4 Q. I believe you testified during direct --

5 MR. LAHAD: If I could go to, Mr. Boles,
 6 please, Slide 21 of Dr. Rinard's.

7 BY MR. LAHAD:

8 Q. I think you walked us through this.

9 A. Uh-huh.

10 Q. And -- so this is the APK analysis, correct, that you
 11 walked us through, right?

12 A. Yes, it is.

13 Q. Okay. Now, if I understood you,
 14 infoBarControllerLayout, that's one of the -- that's some
 15 functionality provided by the framework; is that correct?

16 A. No, that's present in Chrome.

17 Q. Oh, that's right.

18 You testified that --

19 MR. LAHAD: If you go to the next slide, this
 20 is what I wanted to look at.

21 BY MR. LAHAD:

22 Q. -- as I understand it, your opinion is that this text
 23 classification code is not in the APK, correct?

24 A. That's what this screenshot shows.

25 Q. Okay. But you don't dispute that the Android app, or

1 in this case, I guess it's Chrome running on Android --
 2 you don't dispute that Chrome may use this TextClassifier
 3 code, right?

4 A. I believe that's correct. I think, in fact, it does
 5 use the functionality from the framework by executing this
 6 code from the framework.

7 Q. Okay. So your opinion is, these apps, the accused
 8 apps, aren't first computer programs because the code --
 9 strike that.

10 Your opinion is that these accused applications are
 11 not first computer programs -- even though they use this
 12 code, they're not first computer programs because the code
 13 is not stored in the APK; is that your opinion?

14 A. No, I don't think that's my opinion.

15 Q. Well, the APK defines the code for the application,
 16 correct?

17 A. Yes.

18 Q. The APK -- excuse me, can use this code from the
 19 framework, correct?

20 A. Let's get a little bit technical. When the code from
 21 the APK is installed on the Android device, then that code
 22 can call into the framework or interact with the framework
 23 in a variety of other ways to, you know, implement various
 24 functionality --

25 Q. Yeah.

1 A. -- from the framework.

2 Q. Yeah. These apps can implement the functionality

3 from the framework even though the code is not stored in

4 the APK, correct?

5 A. They can use functionality from the framework to

6 accomplish various things the app may want to accomplish.

7 Q. Even though that code is not stored in the APK,

8 correct?

9 A. If it's installed on an Android device with the right

10 framework present.

11 Q. Even if that code is not stored in the APK, correct?

12 A. Again, with the additional caveat it has to be

13 installed on the right Android device with the right

14 framework for it to use the functionality. Obviously, if

15 it's installed on an Android device where that

16 functionality is present. I think this has come up in the

17 case previously. But it can't use the functionality

18 because the functionality isn't there.

19 Q. Well, we're talking about Android 8 and 9, right?

20 A. If you say so. I mean, is that what you want to talk

21 about.

22 Q. That's why I'm here.

23 A. Okay, cool.

24 Q. I do understand we're accusing --

25 A. I mean, I --

1 Q. Yeah. Remember that abstraction with the green and

2 red?

3 A. Yeah.

4 Q. Take the green out.

5 A. That's a completely -- well, okay. I mean, yeah, I'm

6 not going to say that you can use Gmail on that device.

7 Q. It would be largely inoperable, if not completely

8 inoperable?

9 A. Yeah.

10 Q. So if in that context where there's no Java

11 framework, Google can't --

12 A. Android framework? I mean, I've called it Java

13 framework myself; I'm sure that you all as well. If we

14 try to work with each other and call it Android framework,

15 maybe that would be -- keeps everybody happy.

16 Q. I am talking about the green box --

17 A. Yeah, yeah. Okay, good. Gotcha.

18 Q. What do you want to call that?

19 A. I try to call it Android framework. I'm sure I'm

20 going...

21 Q. Well, can we call it what Google called it, Java API

22 framework? Can we call it that?

23 A. If you want to, that's okay, as long as we understand

24 each other.

25 Q. Excellent.

1 Q. I'm sorry. Go ahead, sir.

2 A. No, I'm sorry. Why don't you ask your question. I

3 don't want to keep this thing going.

4 Q. Do we agree that if an app wanted to render text, it

5 would call TextView, correct?

6 A. That's one way to do it.

7 Q. And that's --

8 A. I'm sorry. Let's -- it would have to -- at a high

9 level, you're right, there's a lower, more technical level

10 that I can get into if you want to; but, in general, one

11 way of rendering text is through that app, to use

12 TextView.

13 Q. If I've got Gmail, I've just got -- this goes back to

14 your point, I think, you were trying to make earlier.

15 If I've got Gmail, and there's no Java framework at

16 all --

17 A. Yes.

18 Q. -- Gmail can't do anything, right?

19 A. You mean it's just sitting there with no framework

20 that it uses to do what it needs to do?

21 Q. Correct.

22 A. Okay, cool. And presumably it's installed on some

23 Android device that has no framework on it?

24 Q. Yeah.

25 A. I mean, I am trying to get a hypothetical in place.

1 So in this world where there's no Java API framework,

2 we agree that Gmail is largely inoperable, if not

3 completely inoperable, correct?

4 A. Yes.

5 Q. Okay. And so if that's the case, then in this --

6 going back to this world, back into real life --

7 A. You mean going with the green?

8 Q. Green's back in business.

9 A. The Java API framework is here.

10 Q. All right.

11 A. And we're talking Java 8 or Java 9 -- I'm sorry, Java

12 API, Android 8, Android 9.

13 Q. All right. Java API framework back in business.

14 A. Uh-huh.

15 Q. Right. We agree it's on the bench, Google is a dud,

16 doesn't do anything -- excuse me, Gmail is a dud. Right?

17 A. If it's not there, Gmail doesn't work, it's got to be

18 there at least -- and some of the things have to be true

19 for Gmail to work, sure.

20 Q. Right. So if I put it back in there, right, if it's

21 back in play, I haven't done anything that -- to change

22 Gmail, right?

23 A. Yeah, sure.

24 Q. Yeah. And so in your view, then, Gmail doesn't do

25 anything; everything is in the Java API framework, right?

1 A. No, that's not true at all.

2 Q. I mean, without the Java API framework, we agreed

3 Gmail is largely inoperable?

4 A. Yeah, sure.

5 Q. Right. So I put the framework back in, Gmail hasn't

6 changed. Gmail doesn't do anything. It's all in the Java

7 API framework, isn't it?

8 A. No. Gmail has to do things like specify which parts

9 of the framework it wants to use. That sort of thing.

10 The framework sitting there doesn't do anything by itself

11 it needs an app to, you know, use the functionality of the

12 framework.

13 Q. Well, you said Gmail has to identify which portions

14 of the framework are going to get used?

15 A. Sure. Look, the Java -- look, whatever happens

16 there, that app has to specify which parts of the

17 framework it wants to use and execute instructions that

18 cause those parts of the framework to execute.

19 Q. Right. But the action like displaying the text,

20 sending the e-mail, all that action, that's provided by

21 the Java API framework, correct?

22 A. Yeah. And -- yeah, shared between all the apps and

23 provided by the API framework makes Android app

24 development easier, that sort of thing.

25 Q. Right.

1 A. In that way, sure. The TextView is helping the app

2 provide some functionality because it's executing out of

3 the framework, and the framework functionality for the app

4 to use -- I'm sorry. Should I slow down?

5 Okay.

6 Q. I would say yes.

7 A. Say what?

8 Q. Go ahead.

9 A. Okay. So in that case, the TextView is operating out

10 of the Java API framework, and that is what is delivering

11 the functionality.

12 Q. Yeah. To use another term, TextView is serving the

13 app in that case, right?

14 A. Yeah. I think that's what Mr. Toki, the way he put

15 it.

16 Q. Yeah. That's where I borrowed it from.

17 A. Yeah.

18 Q. Excellent. We're on the same page.

19 A. Yeah.

20 Q. And once you have TextView in the app, then TextView

21 will talk to different components, and eventually lead to

22 the set of features, including Smart Text Selection,

23 correct?

24 A. Not correct.

25 Q. I'm sorry, what?

1 Okay. So any app that wanted to render text could

2 call TextView, and that would run as part of the apps

3 process, correct?

4 A. I think that's correct, yeah.

5 Q. And if the app decides to use TextView as running as

6 part of its process, that would cause Smart Text Selection

7 to work in the app, correct?

8 A. Depends on how that TextView was configured and which

9 version of Android we're running on.

10 Q. All right. Can we agree we're running on versions 8

11 and 9?

12 A. If we talk about 9, it might be easier because I

13 understand there's some controversy here about which size

14 and which version of 8 works, which it does and which it

15 doesn't.

16 Q. Fine. Let's do 9.

17 A. Okay. Works for me.

18 Q. Excellent.

19 If the app decides to use TextView as running as part

20 of its process, that would cause Smart Text Selection to

21 work in the app, correct?

22 A. Assuming that the app didn't do something to disable

23 that piece of functionality in TextView, sure.

24 Q. And in that situation, TextView is serving the app in

25 that case, correct?

1 A. I said no.

2 Q. You disagree with that?

3 A. Yes. Because the TextView isn't in the app.

4 Q. If the app developer were -- you know, the developer

5 of Gmail or Google Docs or whatever, if that person didn't

6 put that mechanism to call TextView or invoke that

7 functionality of the Java framework, then TextView

8 wouldn't get initiated, correct? TextView wouldn't be

9 invoked, right?

10 A. Yeah. I mean, you have to invoke -- yeah. You need

11 to use the TextView from the framework if you want

12 TextView to operate.

13 Q. Yeah. And -- but also, like in the app, you have to

14 tell the app, go and get stuff from Java framework, right?

15 A. You have to say, though -- well, I mean, who's

16 telling -- the app developer is writing code.

17 Q. Right.

18 A. And that code will go off and it will, you know,

19 interact with the framework to do various things.

20 Q. Yeah. It needs to interaction with the framework to

21 do various things, right?

22 A. Yes.

23 Q. The process of an app is how it runs on the system,

24 right?

25 A. I think with the right caveat, I'd agree with that

1 statement. It's, I mean -- yeah. There's some technical
 2 details there, but I -- why don't we move forward. I
 3 think we will be okay.
 4 Q. And the process of an app, you agree that's different
 5 than the source code, right?
 6 A. Yes.
 7 Q. And when the Java framework is running inside the
 8 app's process, it means that the two are joined together,
 9 albeit temporarily, correct?
 10 A. Now, you're referring to some testimony we heard
 11 yesterday?
 12 Q. I am.
 13 A. Yeah. I bet you are.
 14 So I don't agree with that description. I would say
 15 there's transfer in and a transfer out.
 16 Q. Yeah. You recall the context in which
 17 Mr. Elbouchikhi was making that testimony?
 18 A. Broadly, yes.
 19 Q. Yeah. I mean, I was going through that document and
 20 the document said something to the effect of, the
 21 application processes are happening inside the APK, or
 22 inside the application.
 23 Do you recall that?
 24 A. No, I don't.
 25 Q. And then he was trying to run away from that, explain

1 that away.
 2 Do you recall that?
 3 A. Well, I mean, I'll let you characterize it the way --
 4 whatever way he was doing and why.
 5 Q. Well, that's what it looked like to me.
 6 A. Yeah, okay.
 7 Q. And he said, When the Java framework is running
 8 inside the apps process, it means the two are joined
 9 together.
 10 Do you recall that?
 11 A. I think I recall --
 12 Q. Wait. I'm sorry. I'm sorry to interrupt you. I
 13 should be accurate.
 14 He said, When the Java is running inside the apps
 15 process, it means that the two are joined together
 16 temporarily.
 17 Do you disagree with that?
 18 A. I don't know that he said exactly those words, but I
 19 do disagree with that characterization of what's going on.
 20 There is a transfer in and a transfer out.
 21 Q. So as between you and Mr. Elbouchikhi, you feel that
 22 you know more about STS functionality than he?
 23 A. I prefer my description and characterization of this
 24 app.
 25 MR. LAHAD: Mr. Boles, can we please have

1 Slide -- why don't you go ahead and give me Slide 8 of
 2 Dr. Rinard's.
 3 BY MR. LAHAD:
 4 Q. So you disagree that -- I'm using this slide, and I
 5 like it. I appreciate you creating it because it focuses
 6 on first computer program.
 7 A. Uh-huh.
 8 Q. It's in here four times, as you noted. And the first
 9 time, it's in the preamble, right? Which is the first
 10 part of the claim before comprising, right?
 11 A. Yes.
 12 Q. That's the preamble, right?
 13 A. Yes.
 14 Q. And there's been no determination by the Court that
 15 the preamble is limiting, right?
 16 A. That's my understanding.
 17 Q. But in any event, you don't dispute that if it were
 18 limiting, that the accused apps and devices meet the
 19 preamble, right? You are good on that?
 20 A. I don't dispute that aspect.
 21 Q. Okay. You also don't dispute that the accused apps
 22 and devices meet this -- displaying the document
 23 electronically using the first computer program, right?
 24 A. That's correct.
 25 Q. Earlier, we agreed that the computer program or the

1 functionality that's doing the displaying in Gmail, that's
 2 the Java API framework, right?
 3 A. No. I don't think we said that.
 4 Q. Well, we talked about Gmail and rendering text. The
 5 rendering text is provided by the framework, correct?
 6 A. Sure, yeah. I think that's what we agreed on.
 7 Q. Right. So the framework is displaying the document
 8 electronically using the first computer program, right,
 9 under your view?
 10 A. I don't have any real opinion. Sure. I think if you
 11 have a TextView -- so the TextView is one way of
 12 displaying text, sure.
 13 Q. Yeah. In that method, in that way, the first
 14 computer program would be displaying -- well, sorry,
 15 TextView -- strike that.
 16 In that way, the text -- when we're talking about
 17 TextView, it's the Java API platform -- it's the Java API
 18 framework doing the displaying, right?
 19 A. Actually, no, I don't agree with that.
 20 Q. When we talked earlier about Google using TextView to
 21 render the text, right?
 22 A. Yes.
 23 Q. And, again, that TextView is part of the framework,
 24 right?
 25 A. Uh-huh.

1 Q. So in that context, the framework is displaying the
 2 text, right?
 3 A. But it doesn't happen without the app.
 4 Q. I'm sorry. It doesn't what?
 5 A. It doesn't happen without the app. You need both.
 6 Q. Well, so your view is, the app is doing the
 7 displaying?
 8 A. No.
 9 Q. You have to have both?
 10 A. Yes.
 11 Q. Providing an input device configured by the first
 12 computer program, your view is the Java API framework
 13 gives you those little buttons on the screen, right?
 14 A. That's what the code does. That's one of the things
 15 the code does.
 16 Q. Right.
 17 A. Again, nothing happens here without the app around.
 18 Q. Nothing happens without the app around, right?
 19 A. Yeah.
 20 Q. So in order to provide an input device configured
 21 by -- strike that.
 22 In order to provide those little buttons that show up
 23 on the screen, you have to both the app and the framework,
 24 correct?
 25 A. I think -- yeah, I would agree with that.

1 Q. You can't have one without the other, right?
 2 A. You can, but, you know, I'm not thinking that's what
 3 you want.
 4 Q. Well, you can't have one with the other and have like
 5 a decently workable product, right?
 6 A. I agree with that. Not with the way the current
 7 Android platform works.
 8 Q. And so you would agree that at least one task of
 9 Gmail is to write an e-mail, right?
 10 A. Sure.
 11 Q. Yeah. In order to write that e-mail, I guess Google
 12 uses the "Compose" button. In order to compose an e-mail,
 13 you need Gmail, the app, and the framework, correct?
 14 A. If it's running on an Android device, yes, they both
 15 have to be present, otherwise you're not going to write
 16 any e-mails.
 17 Q. And so the app, plus the framework, are needed to
 18 perform the task of composing an e-mail, correct?
 19 A. Sure. I think that's -- yeah. I don't disagree with
 20 that.
 21 Q. And for Google Sheets, the task is, you know,
 22 crunching numbers.
 23 Sheets is like Excel, right?
 24 A. Yeah. Well, I mean, at some level.
 25 Q. It's a knock off, right?

1 In order to perform the task of crunching numbers in
 2 Google Sheets, you have to have both the Google Sheets app
 3 and framework, correct?
 4 A. Yes.
 5 MR. LAHAD: Can we go to the next slide,
 6 please.
 7 BY MR. LAHAD:
 8 Q. Quick question for you. Somewhat shifting gears.
 9 If you combine the code from the APK with the code
 10 from the framework that's servicing the app, you would
 11 agree that is not a routine or a library, correct?
 12 A. The whole thing?
 13 Q. Yeah. If I combine -- let's take, again, Gmail. If
 14 I have the Gmail APK --
 15 A. Sure.
 16 Q. -- that code, plus the code from the framework that
 17 is servicing that APK, that glob --
 18 A. How do you combine it?
 19 Q. Well, I've got the code together, right? There's --
 20 there is some mechanism between the two, correct? We
 21 discussed that earlier.
 22 A. But -- okay. So you understand there's a variety of
 23 ways of packaging and combining code together. Let's -- I
 24 mean, we've got to talk about something about --
 25 Q. What's your favorite of combining code?

1 A. I don't know of any way to easily combine those two
 2 using -- in any meaningful way, using any mechanisms that
 3 I'm aware of, given what we're talking about here.
 4 Q. Yeah. But I can -- I'm sorry. Were you done?
 5 A. I think so, yeah.
 6 Q. I can take a program, I could take Gmail, right?
 7 A. Uh-huh, yeah.
 8 Q. And I could go into Gmail and take a whole chunk of
 9 functionality I need from the framework, right -- I could
 10 just like take that code and incorporate it into Gmail,
 11 right?
 12 It wouldn't be efficient. It wouldn't be elegant.
 13 It may not make -- you know, the best way to do it, but I
 14 could do that, right?
 15 A. How would you do it? Can you give me a mechanism?
 16 Q. Well, can't I just write the source code in? Can I
 17 just take the source code from here and put it into --
 18 into Gmail?
 19 A. Oh, you're going to make a copy of the source code?
 20 Q. Yeah. Let's do that.
 21 A. Okay. You're going to make copy of the source code.
 22 So I've got -- which source code are you copying?
 23 Q. Whatever source code is necessary in the Java
 24 framework to service Gmail?
 25 A. So you are going to copy all that code, and where are

1 you going to put it?

2 Q. We're just going to slap it on the back of Gmail.

3 A. I'm not seeing that as a combination mechanism.

4 Q. I can't cut and paste the code from the framework

5 into the Gmail code?

6 A. These are large, complicated source code

7 repositories. If you want -- I mean, you are going to

8 have to be more specific about what you are trying to

9 accomplish here.

10 Q. Well, I mean, it's -- I'm just trying to accomplish

11 combining the two pieces of code.

12 I mean, you have done that before, right? You are

13 the computer scientist.

14 A. Yes.

15 Q. You know, if I asked you, "Hey, I would like to take

16 the code from Gmail" --

17 A. Yep.

18 Q. -- "and the code from the framework that services

19 Gmail" --

20 A. Uh-huh.

21 Q. -- "I want you to put it in one program."

22 How would you do that?

23 A. Oh, okay. So what you are saying is, you are going

24 to copy all the code. You're going to make a copy of all

25 of, I guess, what would be the framework, right?

1 Q. Yes, sir.

2 A. So now this framework code is no longer shared like

3 it is in Android.

4 Q. Yes.

5 A. Okay. So code no longer shared. Private copy. If

6 you change one version, the other version doesn't change.

7 If, you know, if the two diverge, common user experience,

8 all this kind of stuff. But then, you are going to copy

9 it all together, right? You're going to have a big source

10 code repository; is that what you have in mind?

11 Q. Yes.

12 A. Okay. Now, I don't know how you build that in a way

13 to get it actually to install.

14 Q. Let's pause right there.

15 A. Yeah.

16 Q. What you just described, this combination --

17 A. Yeah.

18 Q. -- you would agree, it is not a routine or library,

19 right?

20 A. Depends on what you did with it.

21 Q. Well, we're going to run it; correct? I'm going to

22 run it on Gmail.

23 Let me ask it this way: Gmail is not a routine or

24 library, correct?

25 A. I wouldn't call it such, no.

1 Q. Okay. That made it a lot easier for us. Thank you.

2 MR. LAHAD: Mr. Boles, if I could go to

3 Dr. Rinard Slide 19, please.

4 BY MR. LAHAD:

5 Q. This is one of your slides, correct, sir?

6 A. Yes.

7 Q. You mentioned there was a question about how do you

8 know whether or not this code is a different repositories.

9 Do you recall that? Do you recall that question,

10 sir?

11 A. I recall talking about repositories, yes.

12 Q. Yeah. A repository is a place where things are

13 stored, right?

14 A. In this case it is a -- a code repository is a place

15 where you store a bunch of code. Sure.

16 Q. Yeah. And as we agreed earlier, the Court's claim

17 construction doesn't say anything about storage, right?

18 A. That's right.

19 MR. LAHAD: If I could get, Mr. Boles, please,

20 Slide 28 from Dr. Rinard's presentation.

21 BY MR. LAHAD:

22 Q. I want to shift gears to the second reason why you

23 think there's no infringement.

24 You say, that the limitation in consequence of

25 receipt by the first computer program of the user command

1 from the input device causing a search for the search

2 term, right?

3 A. Yes, yes.

4 Q. The claim does not state that the first computer

5 program must do the search, right?

6 A. That's correct.

7 Q. And the claim says after -- or consequence of receipt

8 by the first computer program of the user command from the

9 input device, causing a search for the search term,

10 correct?

11 A. That's what the claim says, yes.

12 Q. All right. And so all that needs to happen under the

13 claim term is causing a search for the search term --

14 well, all that needs to happen with respect to the

15 highlighted portion.

16 All that needs to happen is causing a search for the

17 search term in consequence of receipt by the first

18 computer program of the user command from the input

19 device, correct?

20 A. So I believe you just read the claim language in two

21 different orders, but I think you are right, yeah.

22 Q. And your opinion is -- I've got --

23 MR. LAHAD: If I can go to Slide 30, please,

24 Mr. Boles.

25

1 **BY MR. LAHAD:**

2 **Q.** So you have got this, and you press on the e-mail

3 address, and that leads to the compose functionality that

4 we see on the right, correct?

5 **A.** Via the intent mechanism that I discussed, I think,

6 on the next slide.

7 **Q.** Yeah. And what causes the Intents to activate to

8 actually do anything, it's the user tapping the Gmail

9 button, right?

10 **A.** That fires the first intent, yes.

11 **Q.** Yeah, that's the first domino, right?

12 **A.** The first domino -- okay. So --

13 **Q.** You know what dominoes are, right?

14 **A.** Yes, I played with them when I was a kid.

15 **Q.** Me too. Right?

16 **A.** Yeah.

17 **Q.** You can have 100,000 dominoes, right?

18 **A.** Uh-huh. Yep.

19 **Q.** And if I tap the first one down --

20 **A.** Uh-huh.

21 **Q.** -- the hundred-thousandth domino falls because I

22 tapped the first one down, right? It is a chain, correct?

23 **A.** Not if you have to do something in the middle to make

24 the second chain of dominoes happen.

25 **MR. LAHAD:** If we can go back to Slide 28.

1 **BY MR. LAHAD:**

2 **Q.** The claim language says, in consequence of receipt by

3 the first computer program of the user command from the

4 input device, causing a search for the search term,

5 correct?

6 **A.** Yes.

7 **Q.** Doesn't say directly causing a search term, does it?

8 **A.** No, it doesn't.

9 **Q.** It doesn't say immediately causing a -- doesn't say

10 immediately causing a search for the search term, does it?

11 **A.** It does not say immediately.

12 **Q.** It doesn't say causing a search for the search term

13 without doing anything else in the middle, does it?

14 **A.** Doesn't say that either.

15 **Q.** In fact, this claim limitation doesn't even state

16 that the first computer program has to cause the search,

17 does it?

18 **A.** It says the search has to happen in consequence of

19 receipt by the first computer program.

20 **Q.** Yeah. But it doesn't say that the first computer

21 program has to cause the search, does it?

22 **A.** No.

23 **Q.** Thank you. You discussed non-infringing alternatives

24 with counsel.

25 You would agree that Linkify was generally considered

1 to have fairly limited utility, correct?

2 **A.** Sorry. Linkify?

3 **Q.** Yes. Linkify.

4 **A.** I don't know that I necessarily agree with that

5 depending on the context, but in general, I can imagine

6 that would be true.

7 **Q.** Let me ask it again.

8 **A.** Uh-huh.

9 **Q.** You would agree that Linkify was generally considered

10 to have fairly limited utility, correct?

11 **A.** Linkify?

12 **Q.** Yes, Linkify.

13 **A.** I don't know one way or the other on that.

14 **MR. LAHAD:** May I approach, Your Honor.

15 **THE COURT:** Yes.

16 **BY MR. LAHAD:**

17 **Q.** Dr. Rinard, I am handing you a copy of your report.

18 **A.** Okay.

19 **Q.** If I could have -- Dr. Rinard, if I could have you

20 join me at Paragraph 123 of your report.

21 **A.** Sure.

22 **Q.** It's on Page 47, if that helps.

23 **A.** Okay. Let's see. There it is. Yep.

24 **Q.** Yeah. So you said in your report on Paragraph 123,

25 Linkify is generally considered to have had fairly limited

1 utility, correct?

2 **A.** That's absolutely right.

3 **MR. LAHAD:** Your Honor -- sorry -- am I

4 permitted to publish this?

5 **THE COURT:** Yes.

6 **MR. LAHAD:** Thank you.

7 **BY MR. LAHAD:**

8 **Q.** And you would agree --

9 **MR. LAHAD:** You can take that down, Mr. Boles.

10 **BY MR. LAHAD:**

11 **Q.** You would agree that Linkify's success rate at

12 identifying entities was a relatively low 30 percent,

13 correct?

14 **A.** Absolutely.

15 **Q.** And in fact, Linkify only identified addresses

16 correctly 21 percent of the time, correct?

17 **A.** That's right.

18 **Q.** And Linkify had so much difficulty identifying street

19 addresses that functionality was eventually deprecated,

20 correct?

21 **A.** Yes, that's right.

22 **Q.** In fact, Google told developers to avoid using

23 Linkify to identify addresses when no alternative is

24 available, correct?

25 **A.** So that's -- yes, that's what being deprecated means,

1 yes.

2 Q. You also talked about Smart Linkify with your counsel

3 as a potentially non-infringing alternative.

4 Do you recall that?

5 A. Yes, I do.

6 Q. Smart Linkify wasn't available as an alternative at

7 the time that STS launched in 2017, correct?

8 A. I don't recall one way or the other. I mean, it's

9 probably in the report someplace, but I don't recall,

10 sitting here today.

11 Q. I'm sorry, sir?

12 A. I said it's probably in the report someplace, but I

13 don't recall the release date of Smart Linkify. But I

14 don't recall, sitting here today, precisely when the

15 release date was.

16 MR. LAHAD: Mr. Boles, if I could have

17 Slide 35.

18 BY MR. LAHAD:

19 Q. Okay. The InNova license. You were asked questions

20 about the comparability of the technology licensed here,

21 the '761 patent, right?

22 A. Yes, I was.

23 Q. This is not one of Mr. Hedloy's patents, correct?

24 A. That's correct.

25 Q. This is not any of the patents at issue in this case,

1 correct?

2 A. Yeah, this is the so-called Uombi patent, which I

3 think is --

4 Q. Right.

5 A. It's come up before, I think.

6 Q. With respect to technical comparability, there is

7 nothing more technically comparable to the '843 patent

8 than the '843 patent itself, correct?

9 A. It sounds reasonable. I'm not sure of what you are

10 trying to say. Sure. Yeah, sure, it's technically

11 comparable to itself.

12 Q. Exactly --

13 A. Okay.

14 Q. -- there's nothing more technically comparable --

15 A. Well, you know, all right --

16 Q. I'm sorry. Go ahead.

17 A. Yeah, no, it sounds good to me.

18 Q. Yeah, nothing more technically comparable to the '843

19 patent than the '843 patent itself, correct?

20 A. It's technically comparable, I think, yeah, sure.

21 Q. And so clearly any license to the '843 patent is more

22 relevant to damages than this InNova license, correct?

23 A. I have expressed no opinions on any damages-related

24 issues except for these two.

25 MR. LAHAD: Thank you very much. No further

1 questions, Your Honor.

2 THE COURT: All right. Thank you. Any

3 redirect?

4 MR. KAMBER: Very briefly, Your Honor.

5 Can I get -- well, we'll pull it up in a just a

6 minute.

7 Dr. Rinard, just a few questions.

8 REDIRECT EXAMINATION

9 BY MR. KAMBER:

10 Q. Counsel was just asking you towards the end about the

11 Smart Linkify.

12 A. Uh-huh.

13 Q. I think you said before that Smart Linkify used the

14 same TextClassifier code as Smart Text Selection, correct?

15 A. Yes, that's correct.

16 Q. So that Smart Linkify could have used that same

17 functionality whenever Smart Text Selection came out,

18 correct?

19 A. That's right.

20 Q. So now, turning back to this discussion about code

21 and merging, how code gets used together --

22 A. Yeah.

23 Q. -- you understand that Dr. Smedley's opinions in this

24 case are that the 12 Google apps are the things that

25 infringe the computer-readable medium claims, correct?

1 A. That's my understanding.

2 Q. Okay. So just to be clear, why is it that you

3 believe that the accused apps do not provide an input

4 device configured by the first computer program? We will

5 pull the language up on the screen from I think it might

6 be your second or third slide.

7 A. Sure.

8 Q. Just so the jury has it. In front of them.

9 MR. KAMBER: Sorry, Mr. Spence. Probably the

10 claim language is -- there we go. Thank you.

11 BY MR. KAMBER:

12 Q. So again, can you explain to the jury why it is that

13 you believe that the accused first computer program, that

14 is the 12 accused apps --

15 A. Yes.

16 Q. -- do not, quote, provide an input device configured

17 by the first computer program?

18 A. Sure. So this patent claim requires Approach 1. The

19 apps use Approach 2, the not -- not self-contained

20 approach. The code for setting up the input device is

21 present in the framework, which is shared across all apps

22 and not present in the apps themselves.

23 Q. What does that mean about whether or not it meets the

24 Court's construction of "computer program"?

25 A. It does not meet the Court's construction of

1 "computer program" with respect to this issue.
 2 **Q.** So let's turn to the other element that you talked
 3 about.
 4 Why is it that you believe that the accused apps do
 5 not meet the claim element that starts in consequence of
 6 receipt by the first computer program?
 7 **A.** Because here we have the Intents mechanism involved.
 8 And that means that the accused apps used an Approach 2 --
 9 I'm sorry -- yeah, Approach 2, the not self-contained
 10 approach as opposed to Approach 1, the self-contained
 11 approach, that the claim requires.
 12 And the code for doing the Intents mechanism is not
 13 present in the apps. It's present in the framework which
 14 is shared across all of the apps. In addition, the entity
 15 is -- receives a demand to cause it to search. That is
 16 the second computer program, not the first computer
 17 program.
 18 **Q.** Dr. Rinard, what causes the search, in your opinion?
 19 **A.** The code and the second computer program where the
 20 decision is made to actually perform the search.
 21 **Q.** Is it automatic that that search happened once that
 22 domino of the user selecting the button occurs?
 23 **A.** No, it is not.
 24 **Q.** No further questions, Your Honor.
 25 **THE COURT:** Thank you very much. You may step

1 down.
 2 **THE WITNESS:** Thank you.
 3 **MR. KAMBER:** Your Honor, may Dr. Rinard be
 4 released?
 5 **THE COURT:** Yes, he may be excused.
 6 **MR. KAMBER:** Thank you.
 7 **THE COURT:** Let's have Google call it's next
 8 witness.
 9 **MR. UNIKEL:** Your Honor, the next witness we'll
 10 be calling will be a videotape testimony of James Miller
 11 from Apple Computer. I'm not sure if this is an
 12 appropriate time to start or if you want to take a break
 13 first.
 14 **THE COURT:** That's what I was going to ask you.
 15 Approximately how long is the video?
 16 **MR. UNIKEL:** It is about an hour long, Your
 17 Honor. I apologize.
 18 **THE COURT:** Okay. At this point in time,
 19 ladies and gentlemen of the jury, we will take our
 20 afternoon break, and we will be back in ten minutes.
 21 (The jury exits the courtroom at 2:48 p.m.)
 22 **THE COURT:** All right. We will be in a
 23 ten-minute recess.
 24 (Whereupon, a recess was taken.)
 25 **THE COURT:** Okay. We're back from the break.

1 Have a seat. I understand we've got a housekeeping
 2 matter.
 3 **MR. UNIKEL:** One quick question before the
 4 Miller deposition.
 5 These are two PowerBooks that he refers to in
 6 the testimony that I prefer not to introduce as evidence
 7 unless you feel it is necessary. He just sort of talks
 8 about what's on these, these computers. They are
 9 technically Apple's, but these are the actual ones.
 10 They are marked with an exhibit sticker. They
 11 are on the exhibit list. So we can treat them as
 12 demonstratives, or I can introduce them into evidence.
 13 **THE COURT:** Okay. Have you talked to the other
 14 side? Is there any objection from the other side?
 15 **MR. UNIKEL:** They are aware of them and of them
 16 in the video.
 17 **MS. SRINIVASAN:** Yeah. We don't object to not
 18 treating them as evidence and that we assume that they are
 19 just for demonstrative purposes. They will not going to
 20 go back.
 21 **THE COURT:** Okay.
 22 **MR. UNIKEL:** Sure.
 23 **THE COURT:** I think we are all in agreement.
 24 **MS. SRINIVASAN:** And, Your Honor, I didn't rest
 25 before, but I am going to rest when the jury comes back,

1 if I may.
 2 **THE COURT:** Okay. All right. Absolutely. We
 3 will bring the jury in. I will look at you and ask you if
 4 you intend to make any applications. All right. That's
 5 fine.
 6 (The jury enters the courtroom at 3:03 p.m.)
 7 **THE CLERK:** Your Honor, the jury.
 8 **THE COURT:** Please be seated. Counsel.
 9 **MS. SRINIVASAN:** Thank you. Plaintiff Arendi
 10 rests its case in chief at this time. Thank you.
 11 **THE COURT:** Thank you. Let's have Google call
 12 its next witness.
 13 **MR. UNIKEL:** Your Honor, the next witness will
 14 be James Miller presented by videotape deposition
 15 testimony. The parties have agreed that the following
 16 should be introduced as exhibits in advance so the jury
 17 can follow along. That is DTX-179, 180, 182, 186, 187,
 18 188, 189, 190, 191, 777, 880, 881, 882, and 883.
 19 And the parties have also agreed, Your Honor,
 20 that these two very large PowerBook computers that are
 21 referred to in the video can be treated as demonstrative
 22 as opposed to evidence to enter into the record.
 23 **THE COURT:** Any objections?
 24 **MR. LAHAD:** No objection, Your Honor,
 25 provided --

1 THE COURT: Those exhibits are -- sorry. Go
 2 ahead.
 3 MR. LAHAD: No objection provided that the
 4 testimony is played in its entirety.
 5 THE COURT: All right. Those exhibits are
 6 admitted, and we will now play the testimony.
 7 (DIX Exhibits 179, 180, 182, 186, 187, 188, 189, 190,
 8 191, 777, 880, 881, 882, and 883 are admitted into
 9 evidence.)
 10 Ladies and gentlemen of the jury, the
 11 deposition of James Miller is about to be presented to you
 12 by video.
 13 As we stated before, deposition testimony is
 14 entitled to the same consideration and is to be judged
 15 insofar as possible in the same way as if the witness had
 16 been present to testify.
 17 Counsel, you may proceed.
 18 MR. UNIKEL: Thank you, Your Honor.
 19 (Deposition designation of James Miller plays
 20 as follows:
 21 BY MR. KAMBER:
 22 Q. Can you please state your name for the record?
 23 A. James Miller.
 24 Q. Do you understand that you are appearing today
 25

1 personally to subpoenas that were issued by Google,
 2 Motorola, and some other defendants in the Arendi
 3 litigation?
 4 A. Yes.
 5 Q. And, sir, am I correct that you were aware that as
 6 part of this subpoena, you were asked to do a search for
 7 some documents and some materials related to work that you
 8 had done in the past?
 9 A. Yes.
 10 Q. And did you, in fact, look for such materials?
 11 A. Yes.
 12 Q. And am I correct that you actually produced a number
 13 of materials in response to the subpoena request?
 14 A. Yes.
 15 Q. You and I have never spoken on the phone before?
 16 A. Correct.
 17 Q. You and I have never corresponded in any way before,
 18 correct?
 19 A. Correct.
 20 Q. And today, Google, LLC, is not paying you a dime for
 21 your appearance here today, correct?
 22 A. Correct.
 23 Q. And, sir, you have no interest in the outcome of this
 24 litigation one way or the other as I understand it; is
 25 that correct?

1 A. No.
 2 Q. "No," it's not correct, or "no," you don't have an
 3 interest?
 4 A. I own a few shares of Apple stock and a few shares of
 5 Google stock, possibly some of the others from the other
 6 defendants. But beyond that, I have no interest in the
 7 outcome.
 8 Q. Okay. So beyond the fact that you own some stock in
 9 the companies, there's nothing related to this specific
 10 piece of litigation that you have any interest in the
 11 outcome of?
 12 A. That's correct.
 13 Q. Sir, let me show you a document that I am marking
 14 Miller Exhibit 4.
 15 Sir, do you see that Miller Exhibit 4 is a printout
 16 from the website for a company called Miramontes
 17 Interactive?
 18 A. Yes.
 19 Q. What is Miramontes Interactive?
 20 A. That is my consulting company.
 21 Q. And how long have you been affiliated with Miramontes
 22 Interactive?
 23 A. Since 1997.
 24 Q. And am I correct that this particular web page from
 25 the Miramontes Interactive website is your personal

1 biography?
 2 A. Yes.
 3 Q. And, sir, I see that you have described your
 4 educational history.
 5 Can you briefly give us an indication, just explain
 6 today what your educational background is?
 7 A. Yes. It's -- well, it's as stated. I have a
 8 bachelor in science in computer science/social science
 9 from Michigan State University in 1972; a Master's in
 10 cognitive psychology from UCLA, I guess, in 1973; and a
 11 Ph.D. in cognitive science from UCLA in 1978.
 12 Q. After you obtained your Ph.D. in cognitive psychology
 13 from UCLA, did you then go to work somewhere?
 14 A. I did a postdoctoral fellowship at the University of
 15 Colorado until -- or from 1978 to 1981. And I then went
 16 to two jobs that are not listed on here prior to the last
 17 one shown. In 1981, I went to Texas Instruments in
 18 Dallas, and in 1983, I went to Computer Thought
 19 Corporation in Plano, Texas. And then in 1984, I went to
 20 MCC.
 21 Q. Your work at Texas Instruments, for example, what
 22 sorts of work were you doing for them?
 23 A. Research into intelligent tutoring systems.
 24 Q. And what does that mean, "intelligent tutoring
 25 systems," at a high level?

1 A. Yeah, computer programs that could help teach people,
 2 you know, one topic or another using artificial
 3 intelligence techniques to do so.
 4 Q. And then I see in 1984 to 1988, you went to work for
 5 Microelectronics and Computing Technology Corporation,
 6 MCC; is that correct?
 7 A. Yes.
 8 Q. And what did you do for MCC?
 9 A. Research into the use of artificial intelligence for
 10 user interfaces.
 11 Q. And after MCC, it appears that you went to work for
 12 Hewlett Packard Laboratories in Palo Alto, California; is
 13 that right?
 14 A. Yes.
 15 Q. And how long were you at HP Labs for?
 16 A. About five years, maybe a little less.
 17 Q. And can you generally describe what sorts of work you
 18 did at HP Labs?
 19 A. Research into user interfaces.
 20 Q. When you say "research into user interfaces," what do
 21 you mean by "user interfaces"?
 22 A. The parts of a computer system that allow people to
 23 interact with a computer.
 24 Q. And I notice that after -- it appears that you left
 25 Hewlett Packard Labs sometime around 1993; is that right?

1 A. Yes.
 2 Q. And you after you left Apple, where did you go to?
 3 A. At that point, I began consulting. And so that's
 4 when Miramontes Computing or Miramontes Interactive came
 5 into existence.
 6 Q. Great. Thank you.
 7 Sir, in your biography from the Miramontes
 8 Interactive website, under the Apple Computer entry, the
 9 last sentence says, quote, "I led the transfer of one of
 10 these projects, Apple Data Detectors, from our team to
 11 Apple System Software Group, where it was released as a
 12 product," unquote.
 13 Do you see that?
 14 A. Yes.
 15 Q. What is Apple Data Detectors?
 16 A. Well, at the time, Apple Data Detectors was a project
 17 that we conceived of within ATG.
 18 Q. Can you give me a general description of what it is
 19 that Apple Data Detectors did?
 20 A. The idea at the time was to identify bits of
 21 information in -- in user documents. For instance, phone
 22 numbers or e-mail addresses or, you know, other sorts of
 23 things that could be easily identified, and make it very
 24 easy for people to carry out actions on them.
 25 Q. And when did you start work on what became known as

1 A. Yes.
 2 Q. And then it appears that you went to work for Apple
 3 Computer in Cupertino, California?
 4 A. Yes.
 5 Q. And what did you do at Apple Computer?
 6 A. I was the head of the intelligence systems program.
 7 Q. Can you describe for me what that program is?
 8 A. We did a number of research projects into the use of
 9 artificial intelligence techniques for user interfaces.
 10 Q. And I see here on your biography page that there's
 11 something called ATG Intelligence Systems.
 12 What is ATG?
 13 A. ATG was the advanced technology group that was the
 14 group inside of Apple that was responsible for longer-term
 15 research. We were not directly tied to any products, so
 16 we had the flexibility to look at ideas as they came about
 17 without immediate concern for getting them into a product.
 18 Q. And what was your position -- were you actually
 19 working, then, for ATG, the Apple Technology Group?
 20 A. Yes.
 21 Q. And what was your position at ATG?
 22 A. I was the program manager for intelligence systems.
 23 Q. And you started at Apple Computer in around January
 24 of 1993, and according to your bio, you left in about
 25 November of 1997; is that correct?

1 Apple Data Detectors?
 2 A. I would say the middle of 1994.
 3 Q. And what was your particular role in developing Apple
 4 Data Detectors?
 5 A. Well, I was the leader of both the program and of
 6 that project. I -- so I was coordinating the work of the
 7 team. I was making some contributions of my own. And as
 8 the work progressed, I was also responsible for guiding
 9 the project out of the research lab into the product group
 10 that would ultimately productize and ship it.
 11 Q. So would you say you were actively involved with the
 12 development of Apple Data Detectors?
 13 A. Yes.
 14 Q. So now, if we turn back to the exhibit that I'm going
 15 to hand you right now, which is Miller Exhibit Number 5.
 16 It has the title "Apple Data Detectors," and it says --
 17 the first bullet point is "Introduction: Jim Miller."
 18 Do you see that?
 19 A. Yes.
 20 Q. Am I correct on the bottom left of the first page,
 21 there is some text that says, "BN: WWDC. May 1996."
 22 Do you see that?
 23 A. Yes.
 24 Q. Does that indicate to you that this presentation was
 25 from about May of 1996?

1 A. Yes.

2 Q. Do you know what the BN:WWDC stands for?

3 A. The WWDC is -- especially, judging from the content

4 of the document, refers to the Worldwide Developers

5 Conference.

6 Q. What is that?

7 A. That's an annual conference that Apple holds for its

8 developers to expose them to new and soon-to-be-coming

9 technology.

10 Q. And when you say, "developers," for those people who

11 might not know what developers refers to, developers of

12 what?

13 A. It's the people and the companies who write

14 applications and other related products for -- or that

15 work with Apple products.

16 Q. And are these people who are -- who work for Apple,

17 or are these developers that can be outside of Apple as

18 well?

19 A. Some Apple employees will attend WWDC for a variety

20 of reasons. The intent of the conference is for -- is to

21 provide information to external developers.

22 Q. And as you understood it, what was the reason that

23 you wanted to present ideas to external developers?

24 A. We wanted to show them what we were doing and

25 encourage them to build these technologies into their own

1 products.

2 Q. And this particular presentation called "Apple Data

3 Detectors," do you recognize this?

4 A. Let's see how to answer that. I recognize it as

5 something that my team and I put together.

6 Q. And it appears that the introduction was given by

7 you; is that correct?

8 A. Yes.

9 Q. And would that be the introduction that was given to

10 the developers at the conference?

11 A. Yes. These were -- it appears that these were the

12 slides that we used to give our presentation at the

13 session where this was being discussed.

14 Q. Looking at the second page of Miller Exhibit 5, do

15 you see there is a slide that's entitled "Data

16 Detectives"?

17 A. Yes.

18 Q. And the first bullet point says, quote, "Find

19 inherently structured data. Let user take action on

20 data," unquote.

21 Do you see that?

22 A. Yes.

23 Q. What is that referring to?

24 A. That was perhaps the key idea in the project that --

25 what we meant by "inherently structured data" were things

1 like an e-mail address. And if you just look at it as a

2 stream of characters, an e-mail address can be thought of

3 as a bunch of characters followed an "at" sign, followed

4 by a bunch of characters, followed by a period, and then

5 com, net, EDU, things like that.

6 And so we were looking for ways to find those things

7 in user documents and then make it easy for people to

8 carry out actions on them, to do things with those, let's

9 say e-mail addresses that were found.

10 Q. And here, I notice on this slide, Page 2 of Miller

11 Exhibit 5, you list out a number of bullet points of type

12 of inherently structured data, I believe; is that correct?

13 A. Yes.

14 Q. So for example, the first bullet point says,

15 "Addresses and meetings." Are those two of the items that

16 the data detectives were geared for identifying?

17 A. Yes.

18 Q. And then there are things like web FTP addresses; is

19 that right?

20 A. Yes.

21 Q. What is an FTP address?

22 A. That was something -- I guess you could think of it

23 as something like a URL, or in some cases it is a URL.

24 But it refers to a particular way to transfer a file from

25 one computer to another. And FTP stands for file transfer

1 protocol.

2 Q. Thank you.

3 And then I notice the last bullet point on this data

4 detectives slide says, "Find any structured text or

5 graphics. Take action."

6 Did you anticipate that data detectives would be

7 usable with any type of structured text or graphics?

8 A. That was the intent of the project, yes.

9 Q. And then on Page 3 of Miller Exhibit 5, which is this

10 slide show, do you see there's a slide called "user

11 benefit"?

12 A. Yes.

13 Q. And the second bullet point on this user benefit

14 slide says, quote, "Make contents of everyday documents

15 more directly useful, get to your application faster,

16 input data more easily," unquote.

17 Do you see that?

18 A. Yes.

19 Q. And can you describe for me what you meant with that

20 bullet point?

21 A. The phrase "your application" refers to the

22 applications that the attendees of WWDC were building.

23 And the points that we wanted to make was that what we

24 were building could provide a way for users to be able to

25 very easily interact with those applications without

1 having to go through many of the details of pulling down
2 menus off of the menu bar and clicking on things and
3 repositioning the cursor and typing stuff into text fields
4 and clicking submit buttons and all of that.

5 They could just interact directly with the content,
6 and then let the software go through all of the tedious
7 parts of actually carrying out actions on that
8 information.

9 Q. And when you say, "Input data more easily," do you
10 recall what that was referring to in your presentation?

11 A. Well, that if we could identify, say, a very long
12 e-mail address and provide a way for someone to act
13 directly on it, then a user would not have to open up a
14 text box and remember and type in that e-mail address,
15 possibly making mistakes along the way.

16 Q. So what sorts of things could be done with the e-mail
17 address like that using the Apple Data Detectives that
18 you're describing in this presentation?

19 A. In particular, you could create a new outgoing e-mail
20 message to that e-mail address. You could also put it
21 into an address book so that you could easily use it
22 later.

23 Q. How would that work? Using the Apple Data Detectors
24 or detectives, as their called in this presentation, how
25 would you actually take an e-mail address in a document

1 "Copland" or "Copland"?

2 A. It's Copland.

3 Q. Contextual menus in Copland. What does that refer
4 to?

5 A. Copland was the code name, I guess, for what
6 ultimately became MAC OS 8. And that was the version of
7 the operating system that we were targeting our work for.

8 Q. And what is being shown, then, on this Slide 4, the
9 Technical Overview with Contextual Menus in Copland?

10 A. Well, it's a description of how the functionality of
11 what we were building fits into various system components
12 in the operating system.

13 Q. And again, this would have been presented to
14 developers as part of the WWDC?

15 A. Yes.

16 Q. Out of curiosity, from a technical perspective, once
17 the structure of an e-mail address had been identified in
18 a document, how did that information then get passed to
19 the program that would actually create an e-mail message?

20 A. That's what those little applications like "Send Mail
21 To" do. Those were written -- those were often written in
22 a language called AppleScript, which made it very easy to
23 open connections to these other applications and tell them
24 to do things.

25 Q. If I can ask you to look at Page 6 of the

1 and put it into an address book?

2 A. There were application programmatic interfaces, APIs,
3 that would receive requests from outside parts of the
4 computer system. And so the way that this would
5 ultimately work is that our part of the system would
6 identify this and then send a message through this API
7 channel over to the application and say, "Make a new
8 e-mail message addressed to this person."

9 Q. And how about to save it in your address book? How
10 would that work?

11 A. There would be another kind of message that could be
12 sent to the application. This one would be "Save this
13 e-mail address inside of your address book."

14 Q. And did you actually build that kind of functionality
15 into the Apple Data Detectors?

16 A. Yes. We would work with applications that could
17 accept those messages, and then we would write the bits of
18 code that would take the discovered pieces of information
19 and send them to the application.

20 Q. And if you could look at Miller Exhibit 5, the next
21 page, Page 4, please.

22 Do you see there's a slide entitled "Technical
23 Overview With Contextual Menus In Copland"?

24 A. Yes.

25 Q. First of all, what is contextual menus in -- is it

1 presentation Miller Exhibit 5.

2 A. Yes.

3 Q. Do you see you have a slide on "developer
4 opportunities."

5 Do you see that?

6 A. Yes.

7 Q. And the first bullet point says, "Opportunities:
8 Easy user access to your application. Your app, a mouse
9 click away."

10 Do you see that?

11 A. Yes.

12 Q. Again, what were you trying to accomplish with this
13 presentation to developers?

14 A. Well, this would point out to developers that their
15 applications could be accessed directly from user
16 information, as opposed to the user having to go back into
17 the system finder and open up a sequence of folders until
18 they finally got to the user's application, and then
19 launch that and then do activities inside the application.

20 Q. And why emphasize "Your app, a mouse click away!"

21 A. That would make it easier for people to make use of
22 user's applications.

23 Q. Okay. And then the last slide of this Miller
24 Exhibit 5 says, "August plans." And I assume we're
25 talking about August 1996?

1 A. Yes.

2 Q. And the first bullet point says, "Announce Data
3 Detectives at Macworld Boston."
4 Do you see that?

5 A. Yes.

6 Q. What is Macworld Boston?

7 A. Macworld was a large trade show around the mid-90s.
8 There were generally two of those; one in January, and one
9 in August. One typically on the east coast, and one
10 typically on the west coast. And these were big trade
11 shows where, you know, all parts of the Apple -- Apple
12 ecosystem, I guess, would come and, you know, show what
13 they were selling and encourage people to make use of
14 their products. Apple would also use that as a forum for
15 making product announcements.

16 Q. And do you recall that there were plans to announce
17 the Apple Data Detectives at the 1996 Macworld Boston?

18 A. Yes.

19 Q. I notice the second bullet point for "August plan"
20 says, "Internet release."
21 Do you know what that is referring to?

22 A. Yes. The product resulting from all of this for
23 Apple Data -- Apple Data Detectors was not -- was not a
24 shipping part of Mac OS 8. It was not on the CD that came
25 in the box. And that in order to get it, you would have

1 to download it from the Internet and then install it on
2 your computer.

3 Q. Sir, to the best of your recollection, am I correct
4 the Apple Data Detective name eventually was changed?

5 A. Yes.

6 Q. What did it eventually become?

7 A. Well, the obvious translation was to Apple Data
8 Detectors. And as we approached the shipping of the
9 product, the marketing group began thinking about exactly
10 what to call it. And what they settled on was that the
11 initial product release would be called Internet Address
12 Detectors. And that the contents of that would be focused
13 on structures having something to do with the Internet --
14 e-mail addresses, URLs, FTP sites, things like that.

15 Q. So if I understand correctly, am I correct that Apple
16 Data Detectives, which you referred to in the May 1996
17 presentation, is the same thing as Apple Data Detectors?

18 A. Yes.

19 Q. And then eventually when that became part of the MAC
20 OS 8, am I correct that the marketing people got involved
21 and added another name, Internet Address Detectors, to the
22 system?

23 A. Well, that referred to the specific product release.
24 There was also a sense of -- of -- I'm not sure if this is
25 explicitly written down anywhere, but a sense of

1 Internet -- Internet Address Detectors using Apple Data
2 Detectors technology or something like that.

3 Q. Okay.

4 A. They envisioned that there might be any number of
5 products that would be released that would all use that
6 core Data Detectors technology. So the point that they
7 were trying to make was to distinguish the underlying
8 technology from the specific capabilities of a particular
9 product.

10 Q. Understood.

11 So when you at the developer conference in May of
12 1996, for example, were giving this presentation, did you
13 also give any demonstrations of the Apple Data Detectives
14 in process?

15 A. Yes.

16 Q. How did you do that? What is that you would have
17 shown as part of that presentation?

18 A. I don't recall the exact contents of the
19 presentation, but we would likely have shown a text
20 document that had different kinds of contents and that we
21 could recognize, and then show how you could carry out
22 actions on them.

23 Q. Was a version of Apple Data Detectors then shown at
24 Macworld Boston 1996.

25 A. Yes.

1 Q. And how do you know that?

2 A. I was there.

3 Q. And who delivered the presentation about the Apple
4 Data Detectors at that Macworld Boston 1996 conference?

5 A. Frank Casanova.

6 Q. Who was Frank Casanova?

7 A. He was -- he had multiple roles at -- I believe at
8 that time he was a marketing representative focused on
9 work going on in ATG, and he very frequently did public
10 demos of work coming out of ATG.

11 Q. And you said you were at the Macworld Boston
12 presentation in 1996.

13 Do you have any sense of how many people were there?

14 A. It was a large filled hall. It's easy to believe it
15 was a couple thousand.

16 Q. Okay. And sir, to your recollection, when
17 Mr. Casanova made the presentation of Apple Data
18 Detectives at Macworld 1996, did he use any demonstration
19 of Apple Data Detectors?

20 A. Yes.

21 Q. And the demonstration materials that he used, did you
22 have any role in preparing those?

23 A. Yes.

24 Q. So I think we have a copy of a snippet of a video
25 that I would like to show you and just make sure that I

1 know what it is.

2 **A.** Okay.

3 **Q.** If that's all right?

4 **A.** Yes.

5 **Q.** And for the record this is Arendi DEFS defendants, I

6 think it's 0000001.

7 (Video plays as follows:)

8 **MR. CASANOVA:** Also our research labs. We are

9 working upon the whole concept of knowledge systems. You

10 know, what is knowledge? Knowledge is kind of bits of

11 information that actually matters to me. We're

12 surrounding with information. It comes from all places.

13 So we've taken this general model -- we look at e-mail,

14 ClarisWorks, Microsoft Works documents. It doesn't

15 matter.

16 We have this new technology -- you're going to

17 hear a lot more about it I'm sure -- called Apple Data

18 Detectives. And what I'm going to do is write in this,

19 you know, summarization window, another bit of pre-op

20 code. I'm going to launch some other pre-op code. And

21 really watch what it does. I'll select everything in this

22 document. And watch the screen. Watch what happens when

23 I hold down the magic keys.

24 You see that little flash? Well, Data

25 Detectives has just scanned the entire document and has

1 pulled up the bits of information that are actually

2 relevant for what I want to find. And in this document,

3 it found some pretty cool things. I clicked the mouse

4 down on it, and it says, "Oh, look, in this document --

5 somewhere in this massive document, there is the website

6 Wall Street Journal.com. Would you like to browse it?"

7 No.

8 You know, Jim Manzi, Cambridge, would I like

9 place that in contact? Well, perhaps, because normally

10 I'm cutting and pasting in all my email. Would I like to

11 send a letter to Jim Manzi? Send mail? Write a letter?

12 Or have my computer dial him?

13 What this system will do is automatically

14 invoke these applications. So, for example, if I say

15 "write a letter to Jim Manzi," or "release on this," the

16 system goes in, pulls out the information, launches now

17 contact. It goes into the contact database, finds the

18 apps -- the Jim Manzi location. If it's not there, it

19 adds in, hold onto it for a second, and then it launches

20 and inserts the document -- that information in the right

21 place.

22 So we agree, Jim. So the thing here is --

23 (Video ends.)

24 **BY MR. UNIKEL:**

25 **Q.** Sir, am I correct -- do you recognize that

1 presentation?

2 **A.** Yes.

3 **Q.** And was that, in fact, the presentation given at

4 Macworld Boston 1996 that you attended?

5 **A.** Yes.

6 **Q.** And is that a fair and accurate videotape reflecting

7 the presentation that was actually given on Apple Data

8 Detectives in 1996 at Macworld Boston?

9 **A.** Yes.

10 **Q.** And am I correct, sir, that you actually participated

11 in creating the demonstration that the gentleman in that

12 video gave?

13 **A.** Yes.

14 **Q.** And who is the gentleman who actually gave the

15 demonstration at the Macworld Boston 1996 presentation

16 that we saw on the video?

17 **A.** That was Frank Casanova.

18 **Q.** And the other gentleman who was in the video, who was

19 that?

20 **A.** That was Gil Amelio, the CEO of Apple at the time.

21 **Q.** Sir, in fact, and you said that there potentially

22 more than a thousand people in the auditorium to listen to

23 this presentation?

24 **A.** I believe so, yes.

25 **Q.** And to your understanding, did the people who

1 attended that presentation of Macworld Boston 1996 have to

2 sign any kind of confidentiality agreement?

3 **A.** No. That was a completely public presentation.

4 **Q.** Let me show you a document that I'm marking as Miller

5 Exhibit 7, sir.

6 Sir, do you recognize Miller Exhibit 7?

7 **A.** Let me look through this. This is a printout of some

8 web pages from the public Apple website describing the

9 Data Detectives project.

10 **Q.** And, sir, can I ask you to look at the last page of

11 this Miller Exhibit 7, please. Do you see that at the

12 very last text it says, "This page last updated on

13 December 30, 1996 by JRM, Version 3.0," unquote.

14 Do you see that?

15 **A.** Yes.

16 **Q.** Are you JRM?

17 **A.** Yes.

18 **Q.** And does this indicate that this page was last

19 updated on December 30th, 1996?

20 **A.** Yes.

21 **Q.** And does this indicate that you would have been the

22 person who did the last updating?

23 **A.** Yes.

24 **Q.** And it bears that a copyright date of 1997 from Apple

25 Computer, correct?

1 A. Yes.

2 Q. Do you recall actually editing this web page which

3 appeared on Apple's public website?

4 A. To some level, yes. I know that I did put this web

5 page together.

6 Q. And when you were editing the page, were you

7 attempting to make sure that the description of Apple Data

8 Detectors was accurate?

9 A. Yes.

10 Q. Do you recall ever including anything that was

11 inaccurate in any of the web page descriptions of Apple

12 Data Detectors?

13 A. No.

14 Q. Looking at the first page of Miller Exhibit 7, right

15 under the title "Apple Data Detectors," do you see there

16 it's written, quote, "Apple Data Detectors intelligently

17 find meaningful pieces of information in your documents

18 and let you carry out otherwise time-consuming actions on

19 them with a single click of your mouse. It's easily

20 extendible to new kinds of information and to new actions

21 that are important to you," unquote.

22 Do you see that?

23 A. Yes.

24 Q. At a high level, is that a high level description of

25 what Apple Data Detectors are and can do?

1 A. Yes.

2 Q. If I can ask you to look at Page 2 of Miller

3 Exhibit 7, about the middle of the -- about a third of the

4 page down, it says, quote, "Apple Data Detectors make all

5 of this possible with the selection and a click of the

6 mouse. More specifically, you simply..."

7 And do you see that text, sir?

8 A. Yes.

9 Q. And then am I correct what follows is, again, a

10 general description of how Apple Data Detectors actually

11 worked at the time?

12 A. Yes.

13 Q. So the first item listed says, "Select the region of

14 text around the phone number, not worrying about whether

15 you accidentally select a few extra characters on either

16 end," unquote.

17 Do you see that?

18 A. Yes.

19 Q. Am I correct that as we saw on the demo, you could,

20 in fact, select the entire document to have Data Detectors

21 review it?

22 A. Yes.

23 Q. And am I correct that Data Detectors would work even

24 if a user did not specifically designate, for example, the

25 particular phone number that they were interested in

1 acting on?

2 A. Yes.

3 Q. Why is it that you wanted to allow users to be able

4 to analyze as much as all of the text in a document?

5 A. Well, it's much easier to just very quickly select a

6 region of text on the screen and let the computer figure

7 out what things can be acted on in it, as opposed to

8 having to go in, in this case, with a mouse, and very

9 carefully only select the characters that you're

10 interested in. It just requires less precise action on

11 the part of the user.

12 Q. What happens if there were multiple different data

13 objects within the text of the letter, let's say, e-mail

14 address and a phone number and a map address? Could the

15 data detectors detect all of those things?

16 A. Yes. That's what is shown in figure -- at the bottom

17 of, I guess, Page 2 of Miller 7. There is a highlighted

18 region of text in the window, and the hierarchical menus

19 showing up on the page are showing a phone number and an

20 e-mail address and a URL.

21 Q. And so am I correct that the user did not have to

22 specifically designate any part of the phone number in

23 order for it to be detected?

24 A. That's correct.

25 Q. And the user didn't have to specifically designate

1 any part of the e-mail address in order for the e-mail

2 address to be detected?

3 A. That's correct.

4 Q. Now, in the figure you pointed me to, I see an e-mail

5 there. Am I correct that the Data Detector could work in

6 conjunction with an e-mail program?

7 A. Yes.

8 Q. And would it work on an e-mail that somebody was

9 actually in the process of drafting?

10 A. Yes.

11 Q. Would it work on an e-mail that a user had actually

12 received?

13 A. Yes.

14 Q. What sorts of applications or programs could the data

15 detectors actually be used in conjunction with at this

16 time?

17 A. There wasn't really any limitation to that. The

18 applications needed to support AppleEvents, which is the

19 technology that allows other applications to talk to that

20 application, and it needed to provide AppleEvents support

21 for the actions you wanted to carry out. So an e-mail

22 program very likely would offer an AppleEvent to create a

23 new e-mail message. Other applications would offer events

24 that would support other kinds of actions.

25 Q. What about a word processing program? Could Apple

1 Data Detectors be used in conjunction with a word
 2 processing program at the time?
 3 **A.** Yes.
 4 **Q.** What is an example of a word processing program
 5 available on Macintosh that Apple Data Detectors could
 6 work in conjunction with?
 7 **A.** ClarisWorks was one.
 8 **Q.** Looking again at Miller Exhibit 7, the next portion
 9 of Page 2 says, quote, "Use the new contextual menu
 10 feature on the Mac OS. Hold down the control key, and
 11 press the mouse button. Behind the scenes, Apple Data
 12 Detectors analyze the text you've selected and find
 13 meaningful bits of information in the selection, like
 14 e-mail addresses, URLs, phone numbers, and other useful
 15 things," unquote.
 16 Do you see that?
 17 **A.** Yes.
 18 **Q.** When it says that "Apple Data Detectors analyze the
 19 text you've selected," what do you mean by that?
 20 **A.** The system receives the text that the user has
 21 selected and then analyzes it with the various kinds of
 22 detectors that are installed in system looking for the
 23 kinds of information they are designed to identify --
 24 e-mail addresses or phone numbers or what have you.
 25 **Q.** It then goes on to say in this document, Miller 7,

1 quote, "You are then presented with a menu of the things
 2 found by Apple Data Detectors. Point at one, and you'll
 3 see a hierarchical menu of the actions that you can carry
 4 out on that thing. For a phone number, one of these
 5 things would surely be to call that number," unquote.
 6 Do you see that?
 7 **A.** Yes.
 8 **Q.** When you say that "you're presented" with a menu of
 9 the things, who is the "you're"?
 10 **A.** The user.
 11 **Q.** And why was -- what was the point of presenting the
 12 user with a menu that would allow them to choose
 13 particular actions?
 14 **A.** Well, that was how we were allowing the user to
 15 operate on the contents of their document.
 16 **Q.** And so, for example, for a phone number here, it
 17 identifies that one of the actions that could be carried
 18 out would be to call that number?
 19 **A.** Yes.
 20 **Q.** How would that work with Apple Data Detectors? If a
 21 phone number was detected, how would a user be given the
 22 option to call that number?
 23 **A.** At the time, there was third party product called
 24 "Megaphone" that was a combination of a software
 25 application and a physical box that would plug into your

1 Mac and then also allow your phone to plug into it.
 2 You could then have that application do simple
 3 voicemail responses to phone calls. And it could also
 4 place outgoing phone calls from an address book. That
 5 application supported AppleEvents, and so we were able to
 6 send that AppleEvents message to the Megaphone application
 7 saying, "dial this phone number," and it would do it.
 8 **Q.** And am I correct that you actually described that in
 9 this document, Miller Exhibit 7, in the next paragraph
 10 where it says, quote, "Apple Data Detectors then launches
 11 a small action program that passes the phone number to the
 12 telephony application and tells it to place the call.
 13 You've done what you wanted to do with much less effort
 14 and without disturbing the applications you've been
 15 working on," unquote.
 16 Do you see that?
 17 **A.** Yes.
 18 **Q.** Am I correct that that's what you were just
 19 describing for me with regard to placing a phone call?
 20 **A.** Yes.
 21 **Q.** When you say that "you've done what you wanted to
 22 do" -- again, I am assuming the "you" is the user?
 23 **A.** Yes.
 24 **Q.** And what do you mean by saying "without disturbing
 25 the applications you've been working on"?

1 **A.** Well, you are -- you are sitting in this e-mail
 2 program, and you find that, while you are working with the
 3 e-mail program, you want to make a phone call. So here,
 4 you can make that phone call, and you've never left the
 5 e-mail program. You're still in it, as opposed to having
 6 to leave the program, go out into the finder, search
 7 through folders trying to find your telephone number
 8 application, finally find it, launch it, find the part of
 9 the application that allows you to specify where you can
 10 enter a phone number, and finally end up making your phone
 11 call.
 12 **Q.** And this particular web page, where was this posted?
 13 **A.** This was on the public Apple website.
 14 **Q.** And who could access the public Apple website that
 15 had this description of Apple Data Detectors?
 16 **A.** Anyone.
 17 **Q.** If you look at the next page, the third page of
 18 Miller Exhibit 7, do you see there is a section called
 19 "Key Features of Apple Data Detectors"?
 20 **A.** Yes.
 21 **Q.** You then say in the Key Features of Apple Data
 22 Detectors, two more down it says, "Open to new
 23 structures."
 24 Do you see that?
 25 **A.** Yes.

1 Q. It says, quote, "The recognition engine in Apple Data
2 Detectors can be extended to find new structures by
3 writing a simple bit of code that describes the pattern to
4 be found. This can be added into the collection of Apple
5 Data Detector recognizers and the new pattern will be
6 found along with the others," unquote.

7 Do you see that?

8 A. Yes.

9 Q. Why were you allowing developers or users to actually
10 write their own code to describe patterns?

11 A. We wanted the technology to be broadly useful to as
12 many people and as many different working situations as
13 possible. And we knew that we could not build them all.
14 It would take more resources than we had, and probably was
15 not our responsibility to do them for developers who
16 understood what their users need better than we did.

17 So the solution was to create an open system where
18 other people, other developers, could extend it in ways
19 that they found useful.

20 Q. And that included the ability to detect new kinds of
21 data that were in documents?

22 A. Yes.

23 Q. So when you were describing the Apple Data Detectors
24 that were available at this time in 1996, what, for
25 example, could Apple Data Detectors do with an e-mail

1 address? What were some of the actions they could take?

2 A. We put together some actions, primarily creating new
3 e-mail message. And we did this for a number of current
4 e-mail programs at the time that were either shipped with
5 the MAC or that were available for free. So Eudora was
6 one that was commonly used. Cyberdog was an internal
7 Apple project that could send e-mail. If we were to run
8 one of the demos, we could easily come up with a final
9 list of things that were put together. It would also save
10 an e-mail address in an e-mail program's address book.

11 Q. So there's two Apple PowerBooks that you've brought
12 here today; is that correct?

13 A. Yes.

14 Q. What is loaded on the Apple PowerBooks that are here
15 today?

16 A. The original version of Apple Data Detectors, some
17 other supporting applications. Claris e-mailer is on it.
18 A few others. One of them has a research project called
19 "LiveDoc." I think the other one has a subsequent product
20 released by Apple called "Geographic Detectors."

21 Q. Okay. And, sir, did you -- were you personally
22 responsible in any way for the -- for writing any part of
23 the code that is actually on these computer?

24 A. I wrote many of the actions scripts, like the thing
25 shown here on Bates 573. And I wrote some, but not all of

1 the Detectors.

2 Q. The computer that I'm marking as Miller 8, do you
3 happen to know which programs this had on it? That's very
4 heavy, I know.

5 A. I believe this is running -- well, the Internet
6 Address Detectors Product. It seems to have Claris
7 E-mailer and LiveDoc.

8 Q. And, sir, have you personally booted up this computer
9 and examined the operation of the code that's on that
10 computer of the products you just mentioned?

11 A. Yes.

12 Q. And when did you do that?

13 A. Maybe six months to a year. Ago. I'm not sure of
14 the exact time.

15 Q. And can you confirm here today your understanding
16 that the programs that are on that computer operate as
17 they operated at the time that they were launched?

18 A. Yes.

19 Q. And how did you confirm that?

20 A. By observing the behavior of the system.

21 Q. Okay. And so I'm just going to mark Miller Exhibit 8
22 as that PowerBook with the programs that you've just
23 identified on that PowerBook.

24 I'm now marking as Miller Exhibit 9 another
25 PowerBook.

1 Can you tell me what programs you understand to be on
2 that particular PowerBook?

3 A. Again, I would --

4 Q. Without degrading the computer?

5 A. Yes, I would need to confirm it, but it is running
6 the Internet Address Detectors product, the Geographic
7 Detectors product, and as with Miller 8, other supporting
8 applications. Both of them are probably running Eudora
9 and Netscape and now Contact, Claris E-mailer, and
10 probably ClarisWorks.

11 Q. Okay. And, sir, did do you anything to confirm that
12 the programs that are on this computer worked in accord
13 with how they would have worked back in the time period of
14 1996, 1997 that we're discussing?

15 A. Yes. I tested the machine yesterday, and the
16 software is there and working as you've described.

17 Q. Sir, let me show you a document that I'm marking as
18 Miller Exhibit 11. And, again, was -- when did Apple Data
19 Detectors first get incorporated into a publicly
20 distributed Apple product to your recollection?

21 A. It was made available in September 1997 as a download
22 off of the Apple website.

23 Q. Okay. At Macworld Boston 1996 --

24 A. Yes.

25 Q. -- when we saw the Apple Data Detectors disclosed --

1 A. Yes.

2 Q. -- were the people who attended that under any kind

3 of nondisclosure agreement?

4 A. No. That was a completely -- completely public,

5 completely open meeting; anyone could go to that.

6 Q. And we looked at the web page that was posted on

7 Apple's public website from December 1996, correct?

8 A. Yes.

9 Q. Was there any nondisclosure agreement that was

10 required for users to sign in order to access that web

11 page?

12 A. No.

13 Q. So what is it exactly that launched in connection

14 with Apple Data Detectors as part of OS 8?

15 A. It was the software package that was made available

16 in September of 1997 on the public Apple website anyone

17 could get to, no nondisclosure of any sort. They could

18 take that and install it on a computer running OS 8 and

19 get the functionality of Apple Data Detectors.

20 Q. Looking at the -- do you see there is a next section

21 called "ADG tactics"? Do you see that, sir.

22 A. Yes.

23 Q. And it says, quote, "Apple Data Detectors have been

24 publicly demonstrated at the keynote speeches of Macworld

25 Boston August 96 and Macworld San Francisco January 97,"

1 as seed request to be?

2 A. People asking for information on how they incorporate

3 the technology into their products.

4 Q. If I can show you a document that has been marked as

5 Miller Exhibit 12. Do you see that this is a web page

6 entitled "Apple Data Detectors"?

7 A. Yes.

8 Q. And do you see there's a date on the bottom

9 right-hand corner of this?

10 A. Ummm.

11 Q. What is that date?

12 A. April 8, 1997.

13 Q. And, again, what is this -- I'm sorry.

14 If you look at the last page of this particular

15 document, Miller Exhibit 12, please.

16 A. Yes.

17 Q. Do you see there's an indication "last modified JRM,

18 4 March, 1997"?

19 A. Yes.

20 Q. Again, are you JRM?

21 A. Yes.

22 Q. So am I correct you modified this page last on

23 March 4, 1997, according to this?

24 A. Yes.

25 Q. What is this particular document, Miller Exhibit 12?

1 unquote.

2 Do you see that?

3 A. Yes.

4 Q. Again, is that accurate?

5 A. Yes.

6 Q. How do you know that's accurate?

7 A. I was at both of those keynote speeches.

8 Q. And you actually saw a disclosure and discussion of

9 Apple Data Detectors at those MAC World conferences?

10 A. Yes.

11 Q. You then say, quote -- I'm sorry. This document then

12 says, quote, "Web pages discussing Apple Data Detectors

13 went live on Apple web site in December 1996. To date,

14 this has generated over 150 seed requests," unquote.

15 Do you see that?

16 A. Yes.

17 Q. And, again, am I correct that we had looked at the

18 web page from December 1996 which was Miller Exhibit 7?

19 A. Yes.

20 Q. And what was the purpose for Apple putting that web

21 page on its publicly available website?

22 A. To provide information to users and developers about

23 the soon-to-be-released technology.

24 Q. And when this document refers to that page having

25 generated over 150 seed requests, what do you understand

1 A. I'm not certain. I believe it is a newer version of

2 the public web page that we looked at previously as

3 Miller 7.

4 Q. And this would have been the web page that was live

5 as of April 8, 1997?

6 A. I believe so, yes.

7 Q. And again, was there any restriction on who could

8 access Apple's public web pages such as Miller Exhibit 12?

9 A. No.

10 Q. Let me show you a document that I am marking as

11 Miller Exhibit 13. To your recollection, were there

12 publicly available website -- I'm sorry. Bless you -- web

13 pages available on Apple's website with regard to Apple

14 Data Detectors in April of 1997?

15 A. Yes.

16 Q. And how do you know that?

17 A. From this document.

18 Q. And do you personally recollect that there was web

19 pages in 1997 available for anybody who signed on to

20 Apple's public website concerning Apple Data Detectors?

21 A. Yes.

22 Q. And did you personally have a hand in writing and

23 editing the web pages that actually were posted on Apple's

24 website?

25 A. Yes.

1 Q. Sir, earlier today, you told me that you were at the
 2 Macworld 1997 presentation of Apple Data Detectors as
 3 well; is that right?
 4 A. Which one?
 5 Q. Macworld 1997?
 6 A. In January?
 7 Q. Yes.
 8 A. Yes.
 9 Q. And where did that take place, what city?
 10 A. San Francisco.
 11 Q. Sir, I'm going show you a document -- it's actually
 12 not a document. I'm going to show you a video clip from
 13 what has previously been produced in this case as Arendi
 14 DEFS, defendants, 00021315.
 15 If you could play that please, sir, I think you
 16 hit --
 17 (Video plays as follows:)
 18 MR. CASANOVA: Wouldn't it be really nice to be
 19 able to have some software help you while you're remote,
 20 or even locally, manage the information on the knowledge
 21 that's in these documents. So we've come up with a
 22 technology in the research labs called Apple Data
 23 Detectors, which does just that.
 24 So what I'm going to do is go back to this
 25 large document that we compressed earlier, and let's

1 we think is relevant, looks for his information, it
 2 launches ClarisWorks, it brings it into the PC's
 3 stationery, inserts the date, titles it, and you're ready
 4 to go.
 5 We're using it the performance of these
 6 computers to help us. This Apple Data Detectors doesn't
 7 just work on ClarisWorks and other things. It works on
 8 any type of document you have, anywhere, and you scan for
 9 things that matter to you, not just URLs and Internet
 10 addresses and such. If you're a doctor or a lawyer or
 11 something else, scan for -- for information that matters
 12 to you.
 13 (Video ends.)
 14 Q. Is that, in fact, the presentation that was made at
 15 Macworld 1997 in San Francisco that you attended?
 16 A. Yes.
 17 Q. And is that video a fair and accurate representation
 18 of the presentation that was actually delivered at that
 19 conference?
 20 A. Yes.
 21 Q. Who is it that was delivering that demonstration?
 22 A. Frank Casanova.
 23 Q. And the demonstration materials that he was using,
 24 the screenshots and the program that he was using, did you
 25 have any hand in developing those?

1 select the entire document.
 2 Now, watch the screen and the flash. That
 3 little flash means we just scanned the entire document
 4 once again, but this time we've looked for data
 5 structures, things that matter to us. So what I can do
 6 is -- watch it at the cursor, Your Honor, I'll click the
 7 mouse down and up pops some information. It says, "I've
 8 found a URL called WallStreetJournal.com. Would you like
 9 me launch that?" Well, over the phone, that might be less
 10 than good experience, so we won't do that here in this
 11 example.
 12 But imagine, instead, I found, you know,
 13 somebody's address, "Would you like me to place that in
 14 your Contact Data Manager?" Yeah, if you're in the
 15 airport. I mean, it's updating your information on the
 16 fly. Do you want to send some mail to them? Do you want
 17 to call them?
 18 I mean, could you actually initiate a phone
 19 call from a piece of e-mail that was read to you after
 20 being condensed over a phone? Yes, you should be able to
 21 do that.
 22 But since we do have the benefit of these
 23 screens, what I'd like to do is actually -- let's use
 24 Apple Data Detectors to write a letter. So it goes into
 25 "Now Contact Database," it pulls up the information that

1 A. Yes, I helped him put together the script to run the
 2 "write a letter" demo. And I don't know that I had
 3 anything to do with the content of the document we were
 4 operating on.
 5 Q. And, sir, am I correct that the Macworld 1997
 6 presentation that we just looked at, that occurred in
 7 January of 1997? Is that right?
 8 A. Yes.
 9 Q. And approximately how many attendees do you think
 10 were there to hear that demonstration?
 11 A. Certainly a thousand, probably more.
 12 Q. And were the people who were there for that
 13 demonstration under any kind of confidentiality agreement
 14 or nondisclosure agreement obligation?
 15 A. No.
 16 Q. Sir, to help go a little deeper into that, I have
 17 made some screenshots of the video that we just looked at,
 18 which I'm marking as Miller Exhibit 14.
 19 Miller Exhibit 14 consists of four screenshots from
 20 that video. And though they are small, you can see the
 21 timestamps where they appeared in that video in the left
 22 next to the toolbar with the play button and the like.
 23 Sir, the first page, am I correct that that's showing
 24 a document -- a screenshot of a document?
 25 A. An application contained in a document, yes.

1 Q. What is the application that contains the document
 2 that was used in the demonstration to your knowledge?
 3 A. That is another ATG project. I don't recall the name
 4 of it, but it had to do with text summarization.
 5 Q. Okay. And so Data Detectors in that demonstration,
 6 were they being applied to only particular text or to the
 7 entire document?
 8 A. They were being applied to whatever part of the
 9 document had been selected. The yellow color here shows
 10 the text that has been selected by the user. I don't know
 11 exactly what selection took place, but it's certainly all
 12 of the text that is visible on the screen.
 13 Q. So everything that would be selected, if it was the
 14 entire document that was selected, the entire document
 15 would be analyzed?
 16 A. Yes.
 17 Q. And did the -- does the user have to particularly
 18 designate somehow a particular piece of information like a
 19 telephone number that it wants to have detected?
 20 A. Well, Data Detectors will come back with that pop-up
 21 menu showing all of the structures that it found in the
 22 selected text.
 23 Q. So in order to do that, does the user have to
 24 actually sort of prompt the system by somehow clicking or
 25 somehow selecting the phone number that it wants to pick?

1 A. No.
 2 Q. Could the user select the entire document and have
 3 the Data Detectors analyze the entire document?
 4 A. Yes.
 5 Q. If the user selected the entire document and then the
 6 Data Detectors were to analyze the entire document, would
 7 the Data Detectors be able to pick out all of the various
 8 structures that it was capable of detecting?
 9 A. Yes.
 10 Q. So if there ten different structures, phone numbers,
 11 e-mail addresses, addresses, the Data Detectors could pick
 12 out all ten?
 13 A. Yes.
 14 Q. Without the user specifying any particular phone
 15 number to be identified?
 16 A. Yes.
 17 Q. Or any particular e-mail address to be identified?
 18 A. Yes.
 19 Q. So looking at Page 2 of Miller 14, which are the
 20 screenshots from the Macworld '97 video, what are shown in
 21 the pop-up window?
 22 A. Those are the structures that were found and the
 23 actions that can be carried out on them.
 24 Q. So looking at that window, what structures did the
 25 Data Detectors find in the document that was analyzed?

1 A. It found a web URL, http://wsj.com. It found a person
 2 identification, Jim Manzi, One Lotus Way, Cambridge
 3 Massachusetts 02138, I guess.
 4 It found an e-mail address, manzi@lotus.com, and it
 5 found a phone number, (617)555-1212.
 6 Q. Now, if a user had clicked on the first option
 7 presented, browse http://wsj.com, what would have
 8 happened?
 9 A. A web browser would have opened. I don't know which
 10 one. But a web browser would have been opened and it
 11 would have shown the contents of the page http://wsj.com,
 12 which I believe is the Wall Street Journal website.
 13 Q. The second menu item which is shown, place, quote,
 14 "Jim Manzi, One Lotus Way, Cambridge, Massachusetts 02138
 15 in new contact."
 16 Do you see that?
 17 A. Yes, Now Contact.
 18 Q. I'm sorry, Now Contact.
 19 A. Yes.
 20 Q. "Now Contact" is the name of a contact database
 21 program?
 22 A. Yes.
 23 Q. What the structure that actually had been detected?
 24 A. I'm not sure of the structure that is firing here.
 25 We were certainly able to identify city, state, zip code.

1 So it could at least do that. It may also have been able
 2 to identify some aspects of people's names or addresses.
 3 Q. And this particular -- when it says "place," quote,
 4 it's identifying the name Jim Manzi and a mailing address
 5 that presumably goes along with Jim Manzi?
 6 A. Yes.
 7 Q. And when it says "place in" new contact -- "in Now
 8 Contact," sorry, what does that mean?
 9 A. It's going to make a new entry in the Now Contact
 10 database for that person.
 11 Q. So if the user clicks on that option, "place Jim
 12 Manzi" with his mailing address "in Now Contact," what
 13 would happen?
 14 A. Now Contact would open and a new entry would be
 15 created in the database for that person.
 16 Q. And would there be a display of the database with
 17 that entry?
 18 A. You might have to select the address book section of
 19 that application to see it. But yes.
 20 Q. But it would be there?
 21 A. It would be there.
 22 Q. The next in the menu says, "Send mail to
 23 manzi@lotus.com."
 24 Do you see that?
 25 A. Yes.

1 Q. What would happen if a user clicked on that option?
 2 A. It would launch an e-mail program. The e-mail
 3 program would open up a new message form, put
 4 "manzi@lotus.com" into the to field and turn control back
 5 to the user.
 6 Q. The next option -- sorry, the last option before I
 7 get to the next one which is highlighted, the last option
 8 says, "Dial (617)555-1212."
 9 Do you see that?
 10 A. Yes.
 11 Q. What would happen if a user clicked on that option?
 12 A. That would launch a third-party telephony
 13 application, probably the Megaphone application I referred
 14 to previously, and dial that number and actually place a
 15 call to that phone number.
 16 Q. Now, the fourth option in this menu says, "Write
 17 letter to manzi@lotus.com."
 18 Correct?
 19 A. Yes.
 20 Q. What is that function used for?
 21 A. That was primarily an action that we put together to
 22 demonstrate the capabilities of the system.
 23 Q. And, in fact, I believe in the video Mr. Casanova
 24 actually clicks on this and then we see certain steps
 25 happening quite fast on the video.

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1 Q. So tell me how it is that clicking on "write a letter
 2 to manzi@lotus.com" results in the finding of a mailing
 3 address.
 4 A. Right. That mailing address is in the user's Now
 5 Contact address book. So the first thing that the Data
 6 Detector script does is to ask Now Contact for the mailing
 7 address of the person whose email address is
 8 manzi@lotus.com and --
 9 Q. So I assume you do that, it has to search for
 10 manzi@lotus.com?
 11 A. Yes.
 12 Q. How does it find out whether or not there is a
 13 contact with manzi@lotus.com in the Now Contact database?
 14 A. That's an internal service that Now Contact provides
 15 through AppleEvent support.
 16 Q. What is that service?
 17 A. You can give it search parameters, in this case an
 18 e-mail address, and say, give me back the information that
 19 you have about this person. We happened to use e-mail
 20 address. I believe it would also operate off of a phone
 21 number.
 22 Q. Okay. So in this case, the search parameter was
 23 what?
 24 A. The e-mail address, manzi@lotus.com.
 25 Q. And so Now Contact was given that search parameter,

1 A. Yes.
 2 Q. So I've taken some screenshots of what was shown in
 3 the video. So Mr. Casanova clicked on "write letter to
 4 manzi@lotus.com." Correct?
 5 A. Yes.
 6 Q. And then what we see is in Page 3 of this exhibit,
 7 Miller 14?
 8 A. Yes.
 9 Q. And what is shown happening in that screenshot?
 10 A. This is -- well, Now Contact, this contact manager
 11 program has been opened. And it has been opened so that
 12 the Data Detector action can receive information about Jim
 13 Manzi or about the person who's -- let's see.
 14 Q. Let's do it this way. Let's take me through the
 15 steps. So we start with manzi@lotus.com.
 16 A. Yes.
 17 Q. Correct?
 18 A. Yes.
 19 Q. The user clicks "write a letter to manzi@lotus.com"?
 20 A. Yes.
 21 Q. But manzi@lotus.com is not a mailing address, it's an
 22 e-mail address?
 23 A. Yes.
 24 Q. So to write a letter, I need a mailing address?
 25 A. Yes.

Deposition Designation - Miller

1 and what would happen next?
 2 A. And it would -- Now Contact would look for an entry
 3 whose e-mail address is manzi@lotus.com. If it found it,
 4 it would gather up mailing address information and return
 5 it to the calling bit of code.
 6 Q. And then would it do anything with that
 7 information -- that address information that was returned?
 8 A. Now Contact would not. Now Contact's work is done.
 9 But the script would now receive that information and then
 10 start to talk to ClarisWorks, which is a word processor.
 11 It would open up a new document -- or the script would
 12 then open a new document in ClarisWorks and paste the
 13 information it had gotten from Now Contact into that new
 14 document.
 15 Q. Is that what we see then in the screenshot that is
 16 Page 4 of Miller Exhibit 14, the pasted information?
 17 A. Yes.
 18 Q. So am I correct what's shown in the screenshot of
 19 Page 4 is an open ClarisWorks word processing document; is
 20 that right?
 21 A. Yes.
 22 Q. And you put inserted into that document is now a
 23 name, Jim Manzi; correct?
 24 A. Yes.
 25 Q. And then a mailing address, Lotus Corporation, One

1 Charles Park, Cambridge, Massachusetts 02142; correct?

2 **A.** Yes.

3 **Q.** But what we started with was manzi@lotus.com?

4 **A.** Yes.

5 **Q.** And am I correct that this is information that is

6 somehow associated in the Now Contact database with

7 manzi@lotus.com?

8 **A.** Yes. If you look back to Page 3, about two-thirds of

9 the way down, you can see in sort of a reddish tone that

10 there is an entry there for Jim Manzi.

11 There are more columns to this table that are not

12 visible in the way this window is configured. But if you

13 were to further inspect that entry one way or another, you

14 would find that there is the address information for that

15 person.

16 **Q.** And so looking back at the screenshot that is

17 Number 2 in this Miller Exhibit 14, am I correct that when

18 Lotus -- I'm sorry, when Apple Data Detectors are invoked

19 on this document, the user is given, for this particular

20 document, five different options of things that he or she

21 can do?

22 **A.** Yes.

23 **Q.** One of them is open a web pages; correct?

24 **A.** Yes.

25 **Q.** One of them is to add a mailing address to a contact

1 database?

2 **A.** Yes.

3 **Q.** One of them is to send an e-mail to a particular

4 e-mail address?

5 **A.** Yes.

6 **Q.** One of them is to write a letter by using the e-mail

7 address to find mailing address and insert the mailing

8 address into a document?

9 **A.** Yes.

10 **Q.** And one of them is to actually dial a phone number

11 using the telephony program?

12 **A.** Yes.

13 **Q.** And the user can click any of these with a single

14 click of the mouse?

15 **A.** Yes.

16 **Q.** Sir, if I can show you a document that I'm marking as

17 Miller Exhibit 15.

18 Sir, do you see that Miller Exhibit 15 has at the top

19 the words "write a letter W.emailADDR, A-D-D-R."

20 Do you see this?

21 **A.** At the very top, yes.

22 **Q.** Very top.

23 **A.** Yes.

24 **Q.** Underneath that it says, "Apple, colon, colon, e-mail

25 address. Write a letter, get the mailing address of the

1 person with this e-mail address and prepare a piece of

2 ClarisWorks stationery as a letter to them," unquote.

3 Do you see that?

4 **A.** Yes.

5 **Q.** And it says "JRM28, 28 January, '97."

6 Correct?

7 **A.** Yes.

8 **Q.** Am I correct that this -- are you JRM?

9 **A.** Yes.

10 **Q.** Am I correct that this is a piece of code that you

11 yourself wrote?

12 **A.** Yes.

13 **Q.** And did you write it in or around January 28th, 1997?

14 **A.** Yes.

15 **Q.** And was this the code that was used to -- as part of

16 the demonstration that we saw at the Macworld video

17 presentation?

18 **A.** I believe so, yes.

19 **Q.** Is this code that you helped to write that executed

20 the steps that you just described for the "write a letter"

21 feature?

22 **A.** Yes.

23 **Q.** This was the code used then to actually demonstrate

24 how the "write a letter" feature would work to everybody

25 in the attendance at the Macworld 1997 conference?

1 **A.** Yes.

2 **Q.** Sir, let me show you a document that I am marking as

3 Miller Exhibit 16.

4 Sir, do you see that Miller Exhibit 16 is a press

5 release from Apple?

6 **A.** Yes.

7 **Q.** And the press release is entitled "Apple Introduces

8 Internet Address Detectors, technology makes it easier to

9 manage and perform actions with internet addresses,

10 extends innovative internet capabilities delivered with

11 MAC OS 8," unquote.

12 Do you see that?

13 **A.** Yes.

14 **Q.** Am I correct that "Internet Address Detectors" was

15 the name of a product that Apple actually released?

16 **A.** Yes.

17 **Q.** Am I correct -- is there a relationship between

18 Internet Address Detectors and Apple Data Detectors?

19 **A.** Yes.

20 **Q.** What is that relationship?

21 **A.** It's a little difficult to refer to "Apple Data

22 Detectors" because that term can refer to different

23 things. It certainly referred to the project that we were

24 running in ATG.

25 In the context of this press release, as it says down

1 at the bottom of the page, "IAD is the first product to
2 use Apple Data Detector's technology." So I guess I would
3 say what we're seeing here is a marketing attempt to
4 distinguish the core Data Detector technology from the
5 capabilities of this particular product which were focused
6 on the handling internet related information, e-mail
7 addresses and web pages and such. There's discussion of
8 them further on in this release.

9 In that way, Apple would be able to release other
10 products with other names, but still be able to point back
11 and say, these are also based on Apple Data Detector's
12 technology.

13 Q. This particular press release was issued on
14 September 8th, 1997; correct? We can see it at the top of
15 the first page.

16 A. Oh, yes. Sorry.

17 Q. And after that date, September 8th, 1997, the press
18 release states, quote, "Extending the innovative internet
19 technologies delivered with MAC OS 8, the highly
20 successful operating system software released for
21 Macintosh and MAC OS based computers, Apple Computer Inc.
22 today announced the availability of Internet Address
23 Detectors, IAD," unquote.

24 Do you see that?

25 A. Yes.

1 to user's Claris EMailer address book," unquote.

2 Do you see that?

3 A. Yes.

4 Q. Is that another action that could be taken with a
5 detected e-mail address?

6 A. Yes.

7 Q. And again, can you please describe how in IAD would
8 an e-mail address be added to a user's Claris EMailer
9 address book?

10 A. The overall process would be the same as adding it to
11 Now Contact, the Claris EMailer was able to receive an
12 AppleEvent saying, add this entry to the address book.
13 And so we would have script that would open communication
14 with Claris EMailer and send it -- the information with
15 the instruction to add this information to the address
16 book.

17 Q. And I wanted to clarify a few things that you
18 discussed with Google's counsel earlier today. In
19 particular, relating to these two devices that we see in
20 front of us marked Miller 8 and Miller 9.

21 What types of devices are Miller 8 and Miller 9?

22 A. These are Macintosh PowerBooks of original vintage.

23 Miller 8 is a PowerBook 3400c and Miller 9 is a Power
24 Book 1400cs.

25 Q. Do you happen to know where these PowerBooks came

1 Q. Did you have any role personally in helping to create
2 Internet Addresses Detectors as part of MAC OS 8?

3 A. Yes.

4 Q. What was your role in that process?

5 A. I had written a number of the action scripts and some
6 of the detectors that were ultimately in the shipping
7 product. I had also been working in a project management
8 capability along with people in the product group.

9 Q. I notice -- if you look at Page 2 of this press
10 release, do you see that there's -- it says, "IAD
11 detectors and actions include," and then there is a bullet
12 point list?

13 A. Yes.

14 Q. The first bullet point says, "E-mail," quote, "Send
15 an e-mail message to the selected address using America
16 Online, Claris EMailer, Cyberdog, Qualcomm's Eudora,
17 Microsoft Internet Explorer, Netscape Navigator or
18 Internet Config default."

19 Do you see that?

20 A. Yes.

21 Q. So one of things that the IAD in OS 8 could do is
22 detect an e-mail address and then send an e-mail using
23 that address; is that right?

24 A. Yes.

25 Q. This then says, quote, "The address may also be added

1 from?

2 A. I believe I found and purchased them.

3 Q. I believe you also testified in response to Google's
4 attorney's questions that there are certain software
5 loaded on each of these PowerBook devices.

6 Did I get that right?

7 A. Yes.

8 Q. Do you know where that software came from?

9 A. I had copies of that -- both the Apple system
10 software and some of the applications just in my personal
11 records.

12 Q. Let me ask a more specific question.

13 Who loaded the software that you testified about
14 earlier on to the PowerBook devices, Miller 8 and
15 Miller 9?

16 A. I did.

17 Q. Do you recall when you did that?

18 A. Sometime in probably the past five years.

19 MR. UNIKEL: That's all of the testimony,
20 Your Honor.

21 THE COURT: All right. Thank you very much.
22 Ladies and gentlemen of the jury, it is exactly
23 4:29 p.m. It's time to recess. For the evening because I
24 understand that at least one of you needs to get out of
25 here exactly at 4:30. So we are going to recess.

1 We will be resuming on Monday morning. We've
2 lost a little bit of time dealing with certain of the
3 legal matters that the attorneys and I had to deal with,
4 so I would request that you are here and ready to finish
5 the last day of trial, which we hope will be Monday, at
6 8:30 on the Monday morning. That will enable us to get
7 through the evidence as soon as possible.

8 It's my great hope that we don't have to keep
9 you into Tuesday to present evidence. But, of course,
10 even if we finish Monday, your deliberations could take
11 you into Tuesday. So you should expect that being here
12 Tuesday is a possibility as well.

13 Okay. Remember, don't talk about the case.
14 Don't try to do any research on the case. And have a
15 great weekend.

16 (The jury exits the courtroom at 4:30 p.m.)

17 **THE COURT:** Please have a seat.

18 I thought, Counsel, we'd be able to make up a
19 little time tonight. We do have a juror that indicated to
20 my courtroom deputy, as I stated, that they have a child
21 care issue and needed to leave exactly at 4:30. So we
22 need to recess for this evening pursuant to the schedule,
23 like I gave the jurors at the beginning of the case.

24 Is there anything we need to address tonight
25 before we reconvene tomorrow at 8:30?

1 **MR. UNIKEL:** I am happy to report, no, Your
2 Honor.

3 **THE COURT:** All right.

4 **MS. SRINIVASAN:** Not for Arendi.

5 **THE COURT:** Okay. And we can let the record
6 reflect that the expression on my face suggested to
7 counsel that there should not be anything we needed to
8 address tonight before we reconvene tomorrow morning.

9 So everyone, we'll see you tonight. We'll
10 expect to get the updated version of the joint proposed
11 jury instructions and the competing versions of the
12 verdict forms. We'll take up what we can take up tomorrow
13 and get as far as we can get. All right?

14 We'll be in recess.

15 (The proceedings concluded at 4:31 p.m.)

1 CERTIFICATE OF COURT REPORTER

2
3
4 I hereby certify that the foregoing is a true and
5 accurate transcript from my stenographic notes in the
6 proceeding.

7 /s/ Bonnie R. Archer
8 Bonnie R. Archer
9 Official Court Reporter
U.S. District Court

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BY MR. KAMBER: [8] 904/13
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993/9 994/11 999/22
BY MR. LAHAD: [29] 797/17
798/1 799/11 805/10 806/16
811/25 813/24 814/5 821/3
822/13 828/13 869/9 948/12
948/21 953/1 953/16 962/16
965/7 965/21 977/3 981/7
985/4 985/21 986/25 988/1
989/16 990/7 990/10 991/18
BY MR. UNIKEL: [9] 778/11
784/16 787/8 788/5 788/18
789/4 790/17 830/12 1020/24
MR. ARD: [3] 868/9 868/18
868/25
MR. CASANOVA: [2] 1019/8
1039/18
MR. DIEHL: [1] 824/17
MR. KAMBER: [11] 903/22
904/3 910/9 929/16 930/16
932/2 937/17 993/4 994/9
996/3 996/6
MR. LAHAD: [49] 797/13
797/24 805/8 806/10 806/14
811/23 812/20 812/23 813/4
813/17 820/25 822/11 824/3
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MR. UNIKEL: [65] 772/15
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806/7 812/21 813/5 813/18
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935/6 936/13 936/18 936/21
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MS. SRINIVASAN: [15]
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997/24 998/9 1060/4
THE CLERK: [6] 777/20
778/1 778/9 904/7 937/12
998/7
THE COURT: [117] 770/6
772/10 772/20 773/8 773/11
773/20 773/23 774/6 774/12
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805/14
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1053/5
28th [1] 1053/13
2:30 [1] 771/4
2:48 [1] 996/21

Case 1:13-cv-00919-JLH	Document 601	Filed 08/21/13	Page 486 of 715	PageID #: 61059
<p>30 [21] 823/22 824/5 824/9 824/10 824/13 824/25 826/22 913/9 913/11 913/19 913/21 913/22 913/25 914/1 914/3 914/3 914/5 924/2 943/23 986/23 1022/13 30 percent [1] 990/12 30-second [1] 936/18 30th [1] 1022/19 314 [1] 810/23 34 [1] 829/13 3400c [1] 1057/23 35 [1] 991/17 35K [2] 814/23 815/8 3:00 [1] 771/4 3:03 [1] 998/6</p>	<p>a.m [6] 767/11 770/5 771/21 777/19 868/3 869/3 abandonment [1] 934/22 abbreviated [2] 881/14 881/19 abilities [1] 874/17 ability [7] 851/10 851/11 862/9 871/7 877/21 934/25 1031/20 able [37] 771/21 789/15 794/13 810/1 825/3 836/4 841/19 853/14 858/18 861/9 862/17 866/16 866/22 890/12 892/22 893/13 900/11 911/21 912/11 912/13 952/17 955/11 961/21 962/7 964/14 1010/24 1025/3 1029/5 1039/19 1040/20 1044/7 1045/25 1046/1 1055/9 1055/10 1057/11 1059/18 about [152] 770/8 771/25 772/9 774/5 774/7 776/4 779/15 780/14 781/6 782/12 786/10 793/3 793/4 797/2 799/25 800/6 809/11 813/12 813/15 814/23 815/6 815/19 817/7 817/14 819/16 819/25 820/7 820/10 820/11 820/17 823/25 824/2 824/8 825/13 826/19 830/3 832/13 835/11 841/25 842/1 842/18 846/2 853/10 864/17 867/8 869/14 874/7 877/25 879/6 891/2 895/6 899/12 899/19 899/21 899/23 909/14 909/25 910/1 910/7 913/19 917/14 919/5 920/18 921/15 921/20 921/23 922/18 924/15 926/12 929/5 929/8 929/15 929/21 930/23 931/1 933/5 934/3 937/25 938/2 938/4 938/7 938/10 938/19 939/11 939/12 939/18 942/1 943/25 945/19 945/20 945/22 947/17 948/17 948/22 950/6 951/23 953/18 956/8 958/25 959/4 959/6 959/8 960/9 960/12 960/16 960/22 964/17 967/19 967/21 969/16 972/12 972/13 976/22 978/4 978/16 978/20 981/24 981/24 982/3 983/8 985/7 985/11 985/17 991/2 991/20 993/10 993/20 994/23 995/3 996/16 997/8 999/12 1003/16 1004/16 1004/24 1006/25 1012/9 1014/25 1016/9 1018/3 1019/17 1024/3 1024/3 1024/14 1026/25 1036/22 1048/12 1048/13 1049/19 1051/8 1058/13 1059/13 above [5] 840/6 849/12 857/6 861/18 878/13 abowd [19] 838/4 838/6 839/2 844/11 847/4 848/8 848/14 851/22 852/6 852/22 854/8 854/10 854/22 858/25 859/7 864/22 864/23 877/15 886/12 Abowd' [1] 846/5 Abowd's [1] 833/3 absence [1] 803/17</p>	<p>absolutely [16] 833/16 855/3 856/16 874/25 897/10 896/8 896/8 913/6 936/6 951/10 952/12 959/25 960/7 990/2 990/14 998/2 abstract [2] 875/18 875/21 abstraction [2] 962/17 969/1 academia [1] 833/23 academic [1] 840/22 academics [1] 907/6 accept [1] 1012/17 accepted [8] 839/18 842/24 857/18 857/23 859/16 887/13 898/23 907/5 access [18] 819/4 819/9 833/17 833/18 833/19 834/1 853/25 858/19 876/5 886/5 890/5 890/7 892/22 950/1 1014/8 1030/14 1035/10 1038/8 accessed [1] 1014/15 accessible [2] 840/2 840/12 accident [1] 770/14 accidentally [1] 1024/15 accomplish [5] 967/6 967/6 983/9 983/10 1014/12 accord [2] 784/1 1034/12 according [8] 860/5 886/19 913/23 915/18 915/24 941/21 1004/24 1037/23 account [2] 876/22 911/12 accurate [11] 774/24 784/2 855/5 950/24 976/13 1021/6 1023/8 1036/4 1036/6 1041/17 1061/5 accurately [2] 823/12 861/13 accused [36] 798/19 800/9 804/18 804/22 811/5 814/18 816/19 920/15 928/20 930/11 931/12 931/19 935/20 940/24 942/18 942/24 945/6 947/6 947/7 947/14 949/2 949/5 949/22 952/11 954/10 963/8 964/18 966/7 966/10 977/18 977/21 994/3 994/13 994/14 995/4 995/8 accuses [1] 924/1 accusing [1] 967/24 achieve [1] 841/8 ACM [1] 857/10 across [8] 882/19 918/5 925/12 925/17 931/6 963/5 994/21 995/14 act [1] 1011/12 acted [1] 1025/7 acting [1] 1025/1 action [12] 856/19 861/24 971/19 971/20 1008/19 1010/5 1025/10 1029/11 1047/21 1048/12 1056/5 1057/4 actions [24] 846/6 851/2 851/3 856/18 856/19 935/14 935/23 1005/24 1009/8 1011/7 1017/22 1023/18 1023/20 1026/21 1026/24 1028/3 1028/13 1028/17 1032/1 1032/2 1032/24 1044/23 1054/9 1056/11 activate [1] 987/7</p>	<p>active [1] 837/19 actively [1] 1006/11 activities [3] 939/25 939/25 1014/19 activity [11] 799/22 940/3 940/8 940/12 941/9 941/19 942/2 942/4 942/11 944/9 944/10 ActOn [20] 846/5 846/23 851/14 851/17 853/3 856/14 862/1 862/7 865/6 865/10 870/16 870/17 871/17 873/20 876/20 884/20 891/13 895/13 895/15 897/6 ActOn-button [2] 851/17 853/3 actual [7] 785/8 794/13 845/13 885/3 894/1 894/1 997/9 actually [99] 771/14 780/18 785/12 785/16 785/21 786/9 786/18 789/22 790/5 791/16 793/23 794/7 794/20 795/11 795/21 796/1 799/17 801/13 818/9 836/23 842/20 843/19 844/3 844/20 844/25 852/9 853/25 854/15 858/8 858/11 861/2 861/4 864/11 869/21 871/7 871/12 872/14 873/25 875/2 876/3 879/16 884/24 884/25 886/16 886/25 888/13 892/11 892/18 892/25 894/10 894/16 894/20 896/3 896/10 897/7 898/12 898/14 898/24 910/8 928/24 931/4 936/7 941/8 978/19 984/13 987/8 995/20 1000/12 1004/18 1011/7 1011/25 1012/14 1013/19 1019/11 1020/1 1021/7 1021/10 1021/14 1023/2 1024/10 1026/9 1026/11 1026/15 1029/8 1031/9 1032/23 1036/8 1038/23 1039/11 1040/18 1040/23 1041/18 1043/24 1045/23 1047/14 1047/24 1052/10 1053/23 1054/15 ad [2] 862/23 862/24 ad infinite [1] 862/24 add [10] 795/18 810/5 867/15 869/14 869/16 874/11 964/24 1051/25 1057/12 1057/15 added [12] 795/19 809/25 810/3 810/7 851/7 867/6 867/7 867/12 1016/21 1031/4 1056/25 1057/8 addiction [3] 862/16 862/17 901/9 adding [1] 1057/10 addition [1] 995/14 additional [6] 795/19 831/24 831/25 914/2 914/5 967/12 address [113] 776/23 793/22 848/8 852/23 853/14 856/2 856/11 861/25 862/22 862/23 863/4 863/15 864/20 864/22 864/24 865/3 865/23 866/24 867/6 869/21 869/24 871/15 871/18 873/18 883/4 883/5 883/24 884/12 885/7 885/10</p>	
4				
<p>4 March [1] 1037/18 400K [1] 815/9 47 [1] 989/22 4:29 p.m [1] 1058/23 4:30 [3] 1058/25 1059/16 1059/21 4:31 [1] 1060/15</p>				
5				
<p>50 [9] 773/25 868/14 932/19 933/15 933/18 933/21 933/23 933/25 936/23 55 [1] 782/3 555-1212 [2] 1045/5 1047/8 56 [1] 782/3 573 [1] 1032/25</p>				
6				
<p>6/4 [1] 893/6 60 [1] 880/12 617 [2] 1045/5 1047/8 69 [1] 784/15</p>				
7				
<p>75 [1] 880/12 765 [3] 812/2 812/4 812/20 777 [2] 998/18 999/8 7:00 [1] 771/19</p>				
8				
<p>8.0.0 [2] 787/10 787/19 844 [1] 767/18 880 [2] 998/18 999/8 881 [2] 998/18 999/8 882 [2] 998/18 999/8 883 [2] 998/18 999/8 8:00 p.m [1] 877/9 8:30 [1] 1059/25 8:30 on [1] 1059/6 8:30 tomorrow [2] 771/2 771/6 8:35 [2] 767/11 770/5 8th [2] 1055/14 1055/17</p>				
9				
<p>9.0.0 [1] 788/7 90s [1] 1015/7 95 percent [1] 818/3 96 [1] 1035/25 97 [1] 1035/25 9:17 [1] 777/19</p>				

A	B	C	D
<p>address... [83] 885/14 888/8 890/24 891/1 895/12 896/5 939/1 946/15 987/3 1009/1 1009/2 1009/21 1011/12 1011/14 1011/17 1011/20 1011/21 1011/25 1012/1 1012/9 1012/13 1012/13 1013/17 1016/11 1016/21 1017/1 1025/14 1025/14 1025/20 1026/1 1026/2 1029/4 1032/1 1032/10 1032/10 1033/6 1034/6 1040/13 1044/17 1045/4 1046/4 1046/12 1046/18 1048/21 1048/22 1048/24 1049/3 1049/4 1049/5 1049/7 1049/7 1049/18 1049/20 1049/24 1050/3 1050/4 1050/7 1050/25 1051/14 1051/25 1052/4 1052/7 1052/7 1052/8 1052/25 1052/25 1053/1 1054/8 1054/14 1054/18 1055/22 1056/15 1056/22 1056/23 1056/25 1057/1 1057/5 1057/8 1057/9 1057/12 1057/15 1059/24 1060/8 addressed [1] 1012/8 addresses [20] 891/7 944/20 945/4 990/15 990/19 990/23 1005/22 1009/9 1009/15 1009/18 1016/14 1027/14 1027/24 1041/10 1044/11 1044/11 1046/2 1054/9 1055/7 1056/2 adds [1] 1020/19 ADG [1] 1035/21 administration [1] 887/6 admission [1] 776/11 admit [3] 776/18 813/11 829/6 admitted [9] 776/12 776/18 813/13 813/23 827/21 829/17 945/25 999/6 999/8 advance [4] 776/11 802/9 829/5 998/16 advanced [4] 824/14 907/19 907/20 1004/13 advantage [2] 918/2 918/2 advantages [1] 917/22 adventurous [1] 892/12 advisor [3] 833/3 838/7 859/7 aerospace [1] 832/18 affected [1] 820/8 affiliated [1] 1001/21 affirmed [2] 778/6 904/9 after [33] 770/24 772/5 773/7 773/10 779/3 779/17 780/5 780/6 785/22 816/16 820/1 844/1 848/12 858/17 866/23 870/25 883/10 889/16 898/18 906/2 906/5 906/13 933/4 933/4 935/1 938/1 986/7 1002/12 1003/11 1003/24 1005/2 1040/19 1055/17 afternoon [4] 771/5 904/14 948/13 996/20 again [82] 775/3 775/11 781/23 784/5 784/6 788/6 792/11 797/4 798/15 799/1</p>	<p>799/15 799/23 801/13 802/18 805/2 806/17 808/6 809/25 815/10 815/22 817/5 818/2 818/14 819/6 821/22 827/16 846/9 858/17 859/18 862/4 871/21 871/24 872/11 872/11 873/7 873/24 874/13 875/1 877/14 877/17 881/1 882/16 882/21 885/19 886/4 886/12 887/13 893/9 898/16 903/7 914/17 919/10 919/24 920/3 920/25 921/10 922/11 924/23 926/25 940/10 944/3 947/23 967/12 978/23 979/17 981/13 989/7 994/12 1013/13 1014/12 1024/9 1027/8 1029/22 1034/3 1034/18 1036/4 1036/17 1037/13 1037/20 1038/7 1040/4 1057/7 against [1] 803/5 agency [2] 854/25 907/19 Agent [2] 896/12 899/22 ago [7] 771/8 828/3 843/22 899/11 920/1 944/13 1033/13 agree [33] 810/16 824/21 904/20 913/3 923/13 949/1 949/5 951/15 952/1 957/4 957/10 957/11 958/24 961/13 968/4 970/2 970/15 972/10 974/25 975/4 975/14 978/19 979/25 980/6 980/8 981/11 984/18 988/25 989/4 989/9 990/8 990/11 1020/22 agreed [10] 773/3 814/17 955/1 957/14 971/2 977/25 978/6 985/16 998/15 998/19 agreeing [1] 961/23 agreement [7] 934/16 997/23 1022/2 1035/3 1035/9 1042/13 1042/14 agreements [2] 880/16 934/13 agrees [1] 911/18 ahead [8] 806/14 872/4 923/18 968/1 973/8 977/1 992/16 999/2 aid [1] 882/17 airport [1] 1040/15 albeit [1] 975/9 Alberta [2] 875/13 877/6 align [1] 930/10 all [193] 771/12 771/21 771/22 774/16 776/22 777/1 777/3 777/6 777/7 777/17 779/13 779/13 781/3 781/6 785/10 792/9 794/20 794/25 795/11 795/25 797/10 799/19 801/10 805/3 808/10 813/8 816/15 817/20 818/1 818/13 818/13 819/17 825/23 828/24 829/1 831/23 834/13 835/15 837/20 840/1 840/18 840/18 841/23 842/4 843/25 847/11 847/16 847/16 848/5 848/5 848/9 858/1 863/14 863/18 865/4 865/20 866/22 866/24 867/12 868/4 868/7 868/22 869/1 878/8 878/10 878/13 880/17 885/19 889/9 889/19 890/5 892/1 893/20 897/3</p>	<p>897/18 897/19 897/25 898/13 903/19 908/12 908/18 911/21 912/7 912/13 913/14 913/17 913/24 914/13 915/9 917/3 917/25 918/5 918/5 920/15 921/14 921/19 921/21 921/21 923/3 923/23 924/7 924/8 925/1 925/23 928/6 928/10 928/12 928/24 928/24 929/11 930/19 931/4 932/9 932/13 932/20 935/8 935/19 936/1 936/2 936/9 936/16 937/9 938/14 939/16 947/24 948/1 948/22 949/25 950/1 953/7 953/25 955/4 957/6 957/13 957/23 960/5 960/8 963/5 963/8 963/13 964/18 964/22 965/2 965/3 968/16 969/13 970/10 970/13 971/1 971/6 971/20 971/22 972/10 982/25 983/24 983/24 984/8 984/9 986/12 986/12 986/14 986/16 992/15 993/2 994/21 995/14 996/22 997/23 998/2 998/4 999/5 1011/4 1011/6 1012/25 1015/11 1015/22 1017/5 1019/3 1019/12 1020/10 1024/4 1025/4 1025/15 1031/13 1032/25 1043/11 1043/21 1044/7 1044/12 1058/19 1058/21 1060/3 1060/13 alleged [5] 806/1 806/4 806/20 808/6 808/23 allegedly [2] 799/21 800/14 allow [8] 813/10 850/5 884/23 950/1 1003/22 1025/3 1028/12 1029/1 allowed [8] 773/5 835/6 835/23 836/3 853/10 870/24 896/3 902/18 allowing [2] 1028/14 1031/9 allows [3] 885/16 1026/19 1030/9 almost [4] 845/17 853/9 878/19 928/24 along [10] 786/14 839/24 851/3 873/16 883/24 998/17 1011/15 1031/6 1046/5 1056/8 already [4] 867/9 870/5 874/2 884/11 also [62] 771/10 781/4 781/9 783/7 783/9 787/18 787/24 787/25 788/14 788/24 790/14 792/25 797/4 798/10 807/13 807/18 808/13 817/12 830/16 838/10 839/23 852/23 853/1 861/16 866/9 867/9 868/18 870/13 884/8 884/20 890/16 891/18 902/10 905/15 908/16 911/8 917/21 917/21 933/6 934/21 940/21 941/5 950/4 974/13 977/21 991/2 998/19 1006/8 1011/20 1015/14 1016/24 1017/13 1019/8 1029/1 1029/3 1032/9 1046/1 1049/20 1055/11 1056/7 1056/25 1058/3 AltaVista [6] 848/24 865/15</p>	<p>866/2 866/10 872/24 883/15 alternative [7] 934/7 943/16 943/18 943/19 990/23 991/3 991/6 alternatives [6] 799/4 799/13 943/15 943/21 945/6 988/23 although [2] 811/16 864/13 Alto [1] 1003/12 always [6] 789/16 792/18 814/8 866/13 882/17 928/25 am [86] 782/5 792/25 801/4 813/10 815/16 816/1 816/7 816/20 825/2 826/9 830/24 832/3 834/11 834/16 837/6 839/23 844/6 846/11 851/21 852/17 853/24 855/4 861/12 863/23 865/6 865/11 870/13 872/8 873/13 877/12 882/7 882/20 883/23 886/15 889/8 895/18 897/17 897/22 897/25 898/4 898/13 898/17 900/16 901/21 904/24 908/11 952/21 955/14 968/25 969/16 975/12 989/17 990/3 997/25 1000/5 1000/12 1001/13 1001/24 1006/20 1016/3 1016/15 1016/20 1020/25 1021/10 1024/9 1024/19 1024/23 1025/21 1026/5 1029/8 1029/18 1029/22 1036/17 1037/22 1038/10 1042/5 1042/23 1050/18 1051/5 1051/17 1053/8 1053/10 1054/2 1054/14 1054/17 1060/1 Amelio [1] 1021/20 America [2] 796/9 1056/15 amongst [1] 868/17 amount [3] 818/9 909/4 909/10 analysis [38] 862/6 904/19 904/20 910/18 911/12 912/8 912/10 912/20 919/1 919/5 923/19 926/15 926/23 927/25 928/6 928/13 928/19 930/3 930/10 930/19 930/21 930/22 930/22 937/22 941/4 952/16 952/20 952/21 954/15 954/20 955/20 955/21 955/23 956/16 956/16 957/1 957/18 965/10 Analytics [2] 780/1 780/6 analyze [13] 858/8 902/14 910/5 911/4 913/7 919/15 946/3 954/24 1025/4 1027/12 1027/18 1044/3 1044/6 analyzed [4] 910/3 921/4 1043/15 1044/25 analyzes [2] 922/22 1027/21 analyzing [1] 946/22 ANDERSON [1] 769/9 ANDREA [1] 769/13 Andrew [5] 835/21 844/11 858/25 877/15 886/13 Android [131] 780/6 780/10 780/11 780/17 781/5 781/9 781/11 781/14 781/17 782/8 782/10 782/16 783/1 783/5 783/12 784/5 784/7 785/21 786/10 786/14 787/10 787/16 787/19 787/25 788/7 788/12</p>

Android... [105] 788/14
788/24 789/5 789/8 789/13
789/14 789/16 789/18 789/19
789/23 790/5 790/14 791/17
791/18 792/1 792/8 792/20
792/23 792/25 793/1 793/4
793/4 793/6 793/12 793/16
793/16 793/24 793/25 794/16
794/16 795/11 795/12 795/20
796/23 798/21 798/22 809/14
809/19 809/23 810/12 810/14
810/17 818/1 818/8 820/7
908/9 908/12 908/14 908/17
908/17 909/12 909/16 909/25
920/20 920/21 920/25 921/2
921/4 921/4 921/7 921/9
921/19 922/6 922/11 922/19
923/20 923/23 923/24 924/13
924/14 924/19 925/6 925/7
927/9 928/14 929/22 930/5
935/8 936/5 939/23 940/5
940/6 940/6 940/20 940/21
942/23 963/11 965/25 966/1
966/21 967/9 967/13 967/15
967/19 968/23 969/12 969/14
969/19 970/12 970/12 971/23
972/9 980/7 980/14 984/3
Android 8 [10] 792/20 792/25
793/4 793/6 793/24 921/4
922/19 936/5 967/19 970/12
Android 9 [2] 921/4 970/12
Androids [1] 789/14
Andy [7] 835/20 839/1 872/19
873/11 873/16 874/4 874/7
animation [2] 845/17 845/17
Anind [8] 773/14 829/4 830/2
830/10 830/15 839/2 846/2
846/3
announce [2] 1015/2 1015/16
announced [2] 811/15
1055/22
announcements [1] 1015/15
annual [1] 1007/7
another [35] 770/14 786/3
788/19 789/15 789/25 791/19
791/23 792/15 820/22 826/13
836/6 838/13 841/19 849/9
850/15 853/3 876/16 876/17
900/3 918/2 940/7 940/8
940/8 940/12 942/6 973/12
1003/2 1009/25 1012/11
1016/21 1019/19 1033/24
1043/3 1051/13 1057/4
answer [9] 801/14 805/7
820/5 826/7 900/24 950/10
955/17 961/25 1008/4
answered [2] 803/2 825/5
answering [1] 901/1
answers [2] 830/1 901/22
anticipate [1] 1010/6
any [124] 771/14 772/11
772/14 774/5 774/9 776/5
776/6 791/25 793/3 794/13
795/25 799/3 799/12 799/21
800/21 802/5 808/5 816/1
816/2 820/3 820/6 820/7
820/10 820/12 820/19 820/21
824/20 826/21 829/14 830/17
831/10 837/15 837/24 847/8

847/8 847/9 847/13 847/22
847/23 851/7 855/16 856/9
868/20 870/14 874/9 876/10
876/15 876/19 879/17 880/14
880/18 886/4 890/15 893/2
893/22 896/3 897/11 901/17
902/2 905/5 905/19 905/20
908/5 910/6 910/12 918/8
926/1 929/9 929/9 930/13
931/4 931/22 931/24 935/16
940/23 941/1 943/21 945/8
950/22 961/11 963/21 972/1
977/17 978/10 980/16 982/1
982/2 982/2 991/25 992/21
992/23 993/2 997/14 998/4
998/23 1000/17 1001/10
1004/15 1010/4 1010/7
1017/4 1017/13 1018/13
1018/18 1018/22 1022/2
1023/11 1025/22 1026/1
1026/17 1032/22 1032/22
1035/2 1035/9 1035/17
1038/7 1041/8 1041/25
1042/13 1044/14 1044/17
1052/13 1056/1 1059/14
anybody [8] 771/25 802/9
809/2 833/18 833/19 840/2
847/24 1038/19
anymore [2] 898/12 912/8
anyone [3] 1030/16 1035/5
1035/16
anything [40] 776/22 780/19
782/11 782/13 783/14 786/19
793/20 811/16 817/7 817/7
826/19 831/14 838/15 871/11
898/12 905/8 911/13 926/6
927/11 941/3 943/6 945/13
959/5 959/6 960/22 968/18
970/16 970/21 970/25 971/6
971/10 985/17 987/8 988/13
1023/10 1034/11 1042/3
1050/6 1059/24 1060/7
anywhere [4] 819/19 922/7
1016/25 1041/8
AOSP [1] 930/6
API [21] 786/4 786/7 793/9
798/22 921/18 969/21 970/1
970/9 970/12 970/13 970/25
971/2 971/7 971/21 971/23
973/10 978/2 978/17 978/17
979/12 1012/6
APIs [7] 786/15 809/24 810/1
810/3 810/5 810/12 1012/2
APK [39] 923/22 924/6 924/7
924/10 924/21 924/23 925/9
925/15 926/5 926/15 926/25
927/6 927/15 927/19 927/21
928/2 928/15 929/9 930/10
930/22 961/12 962/19 963/4
963/22 964/2 964/3 965/10
965/23 966/13 966/15 966/18
966/21 967/4 967/7 967/11
975/21 981/9 981/14 981/17
APKs [2] 910/25 960/2
apologize [6] 782/18 828/5
828/6 890/16 936/21 996/17
app [96] 782/10 783/1 783/12
783/13 783/15 783/24 784/6
784/9 786/18 786/23 787/1
789/20 789/25 789/25 790/7

790/9 792/6 792/7 809/13
809/19 808/23 909/5 909/7
909/10 911/6 916/11 916/13
916/15 917/1 917/1 917/9
917/17 917/19 918/1 921/14
921/22 923/1 923/6 923/23
923/25 924/8 924/13 924/13
927/6 929/4 930/1 930/6
930/8 930/9 935/5 935/17
947/14 961/5 961/7 961/11
961/20 962/8 962/23 965/25
967/6 968/4 968/11 971/11
971/16 971/23 972/1 972/5
972/7 972/19 972/21 972/22
972/24 973/1 973/3 973/13
973/20 974/3 974/4 974/13
974/14 974/16 974/23 975/4
976/24 979/3 979/5 979/6
979/17 979/18 979/23 980/13
980/17 981/2 981/10 1014/8
1014/20
app's [1] 975/8
apparently [1] 900/14
appear [2] 782/17 964/13
appearance [1] 1000/21
APPEARANCES [2] 767/23
768/2
appeared [3] 845/13 1023/3
1042/21
appearing [3] 802/10 831/1
999/25
appears [11] 834/16 845/9
858/11 859/8 862/1 867/16
1003/11 1003/24 1004/2
1008/6 1008/11
Apple [119] 878/17 888/6
888/6 888/10 888/13 888/14
888/16 893/10 893/14 894/14
899/21 961/20 996/11 1001/4
1004/2 1004/5 1004/14
1004/19 1004/23 1005/2
1005/8 1005/10 1005/11
1005/15 1005/16 1005/19
1006/1 1006/3 1006/12
1006/16 1007/7 1007/15
1007/16 1007/17 1007/19
1008/2 1011/17 1011/23
1012/15 1015/11 1015/11
1015/14 1015/17 1015/23
1015/23 1016/4 1016/7
1016/15 1016/17 1017/1
1017/13 1017/23 1018/3
1018/17 1018/19 1019/17
1021/7 1021/20 1022/8
1022/24 1023/7 1023/11
1023/15 1023/16 1023/25
1024/4 1024/10 1026/25
1027/5 1027/11 1027/18
1028/2 1028/20 1029/10
1030/13 1030/14 1030/15
1030/19 1030/21 1031/1
1031/4 1031/23 1031/25
1032/7 1032/11 1032/14
1032/16 1032/20 1034/18
1034/20 1034/22 1034/25
1035/14 1035/16 1035/19
1035/23 1036/9 1036/12
1036/13 1036/20 1037/6
1038/13 1038/20 1039/2
1039/22 1040/24 1041/6

1051/18 1052/24 1054/5
1054/7 1054/15 1054/18
1054/21 1055/2 1055/9
1055/11 1055/21 1058/9
Apple's [8] 894/13 997/9
1023/3 1035/7 1038/8
1038/13 1038/20 1038/23
AppleEvent [3] 1026/22
1049/15 1057/12
AppleEvents [4] 1026/18
1026/20 1029/5 1029/6
AppleScript [2] 894/13
1013/22
applet [4] 847/13 847/19
847/19 847/20
applets [2] 847/12 849/9
application [50] 789/15
791/19 791/23 792/9 835/7
836/5 836/6 847/14 847/18
853/16 853/17 870/23 882/1
910/24 910/25 911/1 923/15
923/21 924/17 926/22 927/24
928/6 928/12 929/10 933/4
966/15 975/21 975/22
1010/15 1010/21 1012/2
1012/7 1012/12 1012/19
1014/8 1014/18 1014/19
1026/20 1028/25 1029/2
1029/5 1029/6 1029/12
1030/8 1030/9 1042/25
1043/1 1046/19 1047/13
1047/13
applications [39] 792/3 816/19
820/8 847/16 888/21 890/4
890/6 890/9 890/11 908/6
908/8 924/16 929/11 931/6
949/6 949/22 952/11 954/10
963/14 966/10 998/4 1007/14
1010/22 1010/25 1012/16
1013/20 1013/23 1014/15
1014/22 1020/14 1026/14
1026/18 1026/19 1026/23
1029/14 1029/25 1032/17
1034/8 1058/10
applied [2] 1043/6 1043/8
apply [6] 832/16 915/4 919/14
935/4 957/17 957/24
Applying [1] 886/8
apportionment [2] 934/11
934/13
appreciate [2] 879/7 977/5
approach [45] 797/14 805/8
811/23 822/11 904/1 913/3
916/7 916/7 916/8 916/8
916/9 916/16 916/16 916/18
916/19 916/20 917/4 917/4
917/5 917/7 917/8 917/14
917/22 930/23 930/25 931/20
931/20 931/21 931/21 942/21
942/21 942/22 947/12 947/13
947/24 947/24 989/14 994/18
994/19 994/20 995/8 995/9
995/10 995/10 995/11
Approach 1 [6] 916/7 916/9
917/7 917/8 931/21 994/18
approach 2 [10] 916/8 916/18
916/19 916/20 917/4 917/14
931/20 947/12 947/24 994/19
approached [1] 1016/8
approaches [1] 916/6

A	B	C	D
<p>appropriate [13] 798/18 800/18 801/2 807/20 821/22 823/11 824/16 825/1 827/10 856/20 856/21 951/13 996/12 approved [2] 795/6 797/6 approximate [1] 887/7 approximately [13] 782/1 796/25 839/5 843/15 843/21 844/17 880/6 880/8 880/11 886/2 906/10 996/15 1042/9 apps [92] 782/20 794/13 798/24 799/19 817/1 908/6 908/18 908/20 908/24 909/25 911/1 911/19 912/6 916/22 916/24 917/3 917/11 917/16 917/25 918/5 921/11 921/14 921/21 921/21 922/1 923/4 924/2 924/5 924/6 924/7 924/21 928/20 928/25 929/2 929/3 930/11 930/20 931/3 931/12 931/19 931/22 934/1 934/11 935/8 936/25 939/16 940/24 941/1 942/18 942/25 943/1 947/6 947/14 948/1 948/3 949/25 950/6 953/18 957/2 960/25 961/3 961/14 961/19 962/3 962/19 963/5 963/5 963/8 963/17 964/18 964/22 965/1 966/7 966/8 967/2 971/22 972/2 976/8 976/14 977/18 977/21 993/24 994/3 994/14 994/19 994/21 994/22 995/4 995/8 995/13 995/14 1020/18 April [10] 767/11 780/7 836/14 839/12 860/2 860/3 899/5 1037/12 1038/5 1038/14 April 2011 [1] 780/7 April 8 [2] 1037/12 1038/5 arbitrary [1] 866/12 Archer [2] 1061/7 1061/8 architecture [4] 855/21 921/9 922/7 922/11 ARD [1] 769/5 are [265] 770/8 770/15 770/17 770/17 771/9 772/4 772/23 773/17 774/24 775/13 775/13 775/21 775/21 777/2 777/7 777/16 777/22 781/16 781/20 782/1 782/3 782/4 782/6 782/25 783/3 783/5 784/10 784/22 784/24 784/25 785/8 785/18 785/19 786/11 789/5 789/8 790/5 790/12 790/14 792/4 795/15 795/22 796/5 797/5 798/6 801/2 802/14 802/18 803/20 806/23 809/4 811/22 811/22 813/12 816/15 820/6 822/25 823/2 823/4 823/5 823/10 823/24 824/7 824/19 824/22 825/7 825/9 825/11 825/23 825/24 826/3 826/7 826/13 828/14 829/10 829/17 830/16 834/25 837/24 839/22 840/5 842/25 845/4 846/9 846/19 852/17 855/8 856/10 860/23 860/23 865/11 865/24 868/7 868/9</p>	<p>868/18 870/14 872/23 873/17 875/19 874/9 876/7 878/10 878/13 881/7 881/7 882/17 882/21 882/22 883/11 885/19 886/12 888/2 894/5 894/9 895/5 896/10 896/20 896/21 897/17 898/1 898/16 904/22 904/25 906/19 906/21 908/2 908/9 910/25 911/1 911/1 913/15 915/1 915/19 916/3 918/5 919/2 919/3 919/12 919/12 920/15 921/10 921/15 921/25 921/25 922/3 922/4 922/10 923/7 924/23 925/2 931/22 933/10 933/12 933/13 936/1 936/4 937/24 938/2 938/6 938/6 938/9 938/23 939/24 939/25 941/10 941/19 942/1 942/4 944/25 945/2 945/6 946/15 948/13 948/14 948/22 948/24 949/2 951/2 952/17 953/7 955/13 956/7 957/12 957/22 959/2 959/23 960/25 961/10 963/5 963/6 966/10 971/14 975/8 975/13 975/21 976/8 976/15 977/19 980/17 982/22 982/25 982/25 983/6 983/7 983/8 983/12 983/23 983/23 984/8 985/12 986/21 987/13 992/9 993/24 993/24 997/5 997/8 997/9 997/10 997/11 997/15 997/18 997/23 998/20 999/1 999/5 999/8 999/25 1002/16 1007/16 1007/16 1007/17 1009/15 1009/18 1019/8 1020/1 1022/16 1023/21 1023/25 1025/19 1027/22 1027/23 1028/1 1030/1 1030/1 1030/2 1032/14 1033/16 1034/8 1034/12 1037/20 1042/20 1044/19 1044/20 1044/22 1051/11 1051/11 1051/18 1053/8 1055/11 1057/21 1057/22 1058/4 1058/25 1059/4 areas [1] 798/17 aren't [5] 804/4 804/14 807/6 809/4 966/8 ARENDI [27] 767/4 776/24 800/2 800/5 801/25 802/2 803/8 803/13 803/14 805/1 805/13 808/14 808/18 809/1 815/8 816/5 816/18 819/15 819/22 820/9 932/21 932/22 998/9 1000/2 1019/5 1039/13 1060/4 Arendi's [2] 804/23 933/23 arendi.net [2] 939/1 944/5 argue [1] 841/12 argument [2] 808/8 935/3 arguments [1] 807/16 arm [2] 907/14 907/20 around [19] 780/19 814/20 860/14 879/11 879/11 879/19 889/3 893/9 893/17 899/5 906/18 908/16 979/17 979/18 1003/25 1004/23 1015/7 1024/14 1053/13 around 1993 [1] 1003/25</p>	<p>arrives [1] 946/11 art [2] 821/7 821/24 article [5] 839/5 855/21 859/12 875/8 886/17 articles [5] 837/24 878/8 882/15 889/10 898/16 artificial [3] 1003/2 1003/9 1004/9 Arts [1] 877/10 as [309] aside [1] 815/23 ask [40] 772/23 775/9 776/10 776/17 802/9 813/12 816/21 824/14 824/22 825/6 825/12 825/24 826/1 826/5 826/6 827/8 828/6 828/14 829/19 829/25 853/6 856/23 877/8 878/3 897/13 899/13 900/7 901/25 902/8 935/16 968/2 984/23 989/7 996/14 998/3 1013/25 1022/10 1024/2 1049/6 1058/12 asked [32] 775/23 816/18 817/13 818/18 819/11 825/4 825/8 826/21 827/11 831/9 899/12 901/24 910/16 910/18 929/14 943/6 943/10 943/12 943/14 945/13 952/16 952/20 954/15 954/20 954/23 954/23 955/20 955/21 956/17 983/15 991/19 1000/6 asking [12] 826/3 826/19 877/25 896/5 899/18 902/5 902/10 903/8 948/24 951/23 993/10 1037/2 aspect [5] 902/6 912/20 937/2 959/2 977/20 aspects [3] 809/11 946/6 1046/2 aspersions [1] 803/5 assert [1] 812/18 asserted [1] 801/25 asserting [1] 812/16 assistant [4] 812/6 812/13 812/16 906/7 associated [7] 833/23 851/25 939/5 941/19 946/23 950/25 1051/6 Association [1] 876/1 assume [12] 772/16 805/22 815/14 816/8 820/19 850/20 864/18 872/4 888/2 997/18 1014/24 1049/9 assumed [1] 903/10 assuming [3] 955/14 972/22 1029/22 assumption [2] 860/13 860/15 assumptions [1] 815/19 ATG [10] 1004/11 1004/12 1004/13 1004/19 1004/21 1005/17 1018/9 1018/10 1043/3 1054/24 Atkeson [3] 838/10 838/12 838/13 Atlanta [1] 852/24 ATT [2] 797/8 797/8 attempt [2] 820/21 1055/3 attempted [1] 861/12 attempting [1] 1023/7 attempts [1] 909/18</p>	<p>attend [3] 843/16 880/10 1007/19 attendance [1] 1053/25 attended [4] 1021/4 1022/1 1035/2 1041/15 attendees [4] 858/1 880/14 1010/22 1042/9 attention [1] 919/2 attorney's [1] 1058/4 attorneys [1] 1059/3 attractive [1] 909/3 attributable [2] 934/1 934/14 ATTs [1] 796/10 audience [1] 811/4 auditorium [1] 1021/22 August [9] 792/21 793/6 794/12 794/14 1014/24 1014/25 1015/9 1015/19 1035/25 August 1996 [1] 1014/25 August 2017 [3] 792/21 794/12 794/14 August 96 [1] 1035/25 author [2] 780/2 844/9 authored [2] 858/24 860/2 authoring [1] 785/1 authors [2] 886/12 896/14 Automated [2] 838/25 842/10 automatic [3] 942/7 942/10 995/21 automatically [12] 854/18 854/20 869/12 874/5 884/18 891/13 891/17 896/3 896/22 897/5 912/6 1020/13 availability [1] 1055/22 available [32] 794/20 794/22 794/25 795/13 799/18 831/15 833/14 835/9 845/5 848/5 870/1 888/7 889/20 892/2 922/12 923/1 949/6 949/11 949/13 950/4 965/1 990/24 991/6 1027/5 1031/24 1032/5 1034/21 1035/15 1036/21 1038/12 1038/13 1038/19 average [3] 797/3 880/9 902/5 avoid [7] 799/5 799/14 800/21 801/11 802/6 820/22 990/22 await [1] 936/11 aware [21] 775/15 800/8 802/17 809/3 809/4 816/1 816/4 816/7 816/20 816/21 820/6 820/10 820/19 821/24 828/14 886/9 888/2 936/22 982/3 997/15 1000/5 awareness [2] 880/23 935/7 away [4] 975/25 976/1 1014/9 1014/20</p>
B			<p>bachelor [1] 1002/8 bachelor's [2] 905/14 954/11 back [51] 777/21 785/4 796/18 805/3 809/10 841/1 855/1 859/19 868/5 868/16 869/4 870/16 886/15 892/5 897/13 905/23 930/16 932/14 933/4 937/10 937/13 940/6 941/13 946/24 947/19 954/2 968/13 970/6 970/6 970/8 970/13 970/20 970/21 971/5</p>

Case 1:13-cv-00919-JLH	Document 601	Filed 08/21/23	Page 434 of 776	PageID# 61063
<p>back... [17] 983/2 987/25 993/20 996/20 996/25 997/20 997/25 1006/14 1014/16 1034/13 1039/24 1043/20 1047/4 1049/18 1051/8 1051/16 1055/10 background [4] 891/18 900/19 905/12 1002/6 bad [1] 779/11 Banff [5] 875/13 876/5 877/5 877/6 877/10 bar [13] 780/23 785/22 846/5 869/11 920/10 920/10 920/12 920/20 925/12 925/17 926/14 939/2 1011/2 Barbara [2] 906/8 906/14 Bars [1] 884/20 base [4] 785/12 896/23 934/10 935/3 based [25] 772/18 774/2 790/6 812/16 815/16 816/9 817/15 818/10 841/17 841/17 848/20 856/14 888/21 888/25 891/4 900/19 927/18 931/10 933/15 934/19 941/4 946/8 952/3 1055/11 1055/21 bases [2] 933/5 936/10 basic [1] 774/16 basically [18] 779/9 785/2 785/6 786/7 794/5 811/15 832/14 877/18 897/3 900/16 921/15 934/6 939/24 941/8 941/19 944/11 945/20 946/19 basis [3] 808/5 934/7 936/6 Bates [1] 1032/25 Bates 573 [1] 1032/25 be [300] bears [1] 1022/24 became [4] 898/18 1005/25 1013/6 1016/19 because [73] 770/17 771/9 772/17 773/18 776/3 781/7 786/11 795/1 796/9 797/6 804/15 824/17 824/18 831/2 837/4 839/13 857/21 864/13 867/2 867/8 871/3 871/5 874/4 876/15 882/16 891/8 900/15 900/16 901/18 902/11 903/9 909/4 910/2 911/25 912/5 917/15 918/5 930/8 930/12 931/16 931/19 934/7 934/22 935/9 935/14 936/3 942/22 943/2 945/10 947/3 947/12 947/23 948/3 949/8 952/16 954/13 954/20 955/19 961/18 962/7 964/24 966/8 966/12 967/18 972/12 973/2 974/3 977/5 987/21 995/7 1020/9 1054/22 1058/23 become [3] 786/18 794/20 1016/6 becomes [3] 783/24 818/9 923/14 been [72] 775/14 775/25 778/5 781/10 783/17 789/9 792/24 797/5 798/19 803/14 814/17 815/2 817/1 819/17 822/14 827/21 830/6 836/9 837/16 839/7 839/10 840/24</p>	<p>843/3 843/17 845/12 857/3 857/18 860/2 860/11 862/2 865/21 867/17 868/12 879/1 882/11 883/10 884/10 884/17 885/24 893/13 894/2 898/9 899/3 904/8 908/15 917/21 932/7 933/16 936/1 939/22 945/25 964/17 977/14 999/17 1001/21 1013/13 1013/17 1022/21 1029/14 1029/25 1035/23 1037/4 1038/4 1039/13 1043/9 1043/10 1045/10 1045/23 1046/1 1048/11 1048/11 1056/7 before [45] 767/20 772/8 775/3 775/16 783/13 786/12 795/7 805/16 805/17 808/15 808/19 813/12 818/9 822/17 822/24 829/23 837/4 864/6 878/3 879/22 884/11 899/9 899/9 910/3 910/5 910/8 920/12 921/10 921/20 928/4 936/5 938/5 939/18 977/10 983/12 992/5 993/13 997/3 997/25 999/14 1000/15 1000/17 1047/6 1059/25 1060/8 began [3] 939/23 1005/3 1016/9 begin [1] 779/19 beginning [6] 770/4 773/17 780/20 781/1 835/19 1059/23 begun [1] 880/4 behalf [4] 798/9 798/10 801/5 807/21 behavior [4] 849/15 950/22 950/22 1033/20 behaviors [3] 792/9 850/6 850/8 behind [4] 848/12 900/13 920/11 1027/11 being [45] 778/5 782/18 783/8 795/1 801/2 814/20 829/18 832/13 848/21 848/21 850/16 850/21 851/22 852/21 854/23 855/19 860/18 861/9 861/24 862/5 862/17 868/24 877/19 882/25 883/6 883/9 885/2 885/20 890/2 900/8 904/8 904/22 904/25 927/23 930/1 939/13 941/11 964/10 990/25 1008/13 1013/8 1040/20 1043/6 1043/8 1059/11 beings [2] 811/17 811/18 BELGAM [1] 767/25 belief [3] 806/5 806/21 808/6 believe [43] 774/21 792/24 799/15 805/18 805/20 807/11 821/16 879/23 881/11 881/18 887/16 889/7 890/5 890/15 900/6 901/11 922/14 930/19 937/19 938/13 946/2 951/20 963/16 963/20 965/4 966/4 986/20 994/3 994/13 995/4 1009/12 1018/7 1018/14 1021/24 1033/5 1038/1 1038/6 1045/12 1047/23 1049/20 1053/18 1058/2 1058/3 belong [1] 804/15</p>	<p>below [6] 841/2 853/13 921/16 921/17 925/16 940/22 bench [2] 777/2 970/15 benefit [5] 909/3 943/19 1010/11 1010/13 1040/22 benefits [2] 909/1 921/23 besides [2] 907/24 922/6 best [8] 811/19 815/9 836/8 839/6 860/9 875/1 982/13 1016/3 bet [1] 975/13 better [13] 771/25 776/16 780/2 801/14 803/2 917/5 917/7 917/8 917/14 917/15 921/23 944/16 1031/16 between [34] 793/3 804/13 819/15 819/21 820/6 820/9 820/11 820/16 824/5 832/14 841/23 843/5 859/11 862/8 864/14 880/12 892/20 905/22 912/23 913/11 917/3 922/1 939/25 947/4 947/5 948/1 949/23 961/14 962/18 963/3 971/22 976/21 981/20 1054/17 beyond [4] 826/14 873/19 1001/6 1001/8 bias [1] 826/4 bibliography [2] 887/25 888/6 big [3] 804/7 984/9 1015/10 Bigfoot [2] 891/10 891/20 binds [1] 825/1 bio [1] 1004/24 biography [3] 1002/1 1004/10 1005/7 Birmingham [1] 835/20 bit [18] 785/13 786/9 797/9 809/25 810/3 810/5 810/7 864/7 888/18 903/11 910/2 943/25 947/3 966/20 1019/19 1031/3 1050/5 1059/2 bits [5] 1005/20 1012/17 1019/10 1020/1 1027/13 blank [2] 867/13 927/13 Bless [1] 1038/12 block [1] 909/24 blow [7] 845/4 845/9 860/23 861/4 872/8 882/7 921/12 blow-up [3] 845/9 872/8 882/7 blow-ups [3] 845/4 860/23 861/4 blown [2] 855/15 861/10 blue [8] 907/15 914/22 921/11 921/15 925/16 930/1 930/5 944/7 blued [1] 944/19 blued-out [1] 944/19 BN [1] 1006/21 BN:WWDC [1] 1007/2 Boeing [1] 908/2 bold [1] 932/2 Boles [10] 820/25 948/19 953/15 965/5 976/25 985/2 985/19 986/24 990/9 991/16 Bonnie [2] 1061/7 1061/8 book [26] 780/15 853/9 853/24 853/25 854/13 867/16 869/11 869/13 870/7 884/5 884/16 895/19 895/23 1011/21 1012/1 1012/9</p>	<p>1012/13 1029/4 1032/10 1046/18 1049/5 1057/1 1057/9 1057/12 1057/16 1057/24 bookmark [1] 781/1 bookmarks [1] 781/2 booted [1] 1033/8 born [1] 778/19 borrowed [2] 896/18 973/16 Boston [13] 906/4 1015/3 1015/6 1015/17 1017/24 1018/4 1018/11 1021/4 1021/8 1021/15 1022/1 1034/23 1035/25 both [25] 786/25 832/21 835/5 848/21 858/15 858/19 890/17 902/8 919/13 919/14 921/5 921/6 928/12 934/11 935/4 946/10 979/5 979/9 979/23 980/14 981/2 1006/5 1034/8 1036/7 1058/9 bottom [21] 840/6 846/22 847/1 848/25 849/7 852/15 852/16 862/15 866/11 866/25 867/1 873/12 873/13 874/6 875/12 883/21 922/14 1006/20 1025/16 1037/8 1055/1 bottom-half [1] 874/6 bottom-right [1] 862/15 bought [1] 797/7 boundaries [1] 945/2 bounded [1] 773/6 bounds [1] 823/1 bow [1] 803/22 box [8] 780/24 867/5 874/3 930/7 969/16 1011/14 1015/25 1028/25 Bradley [1] 896/13 Brahim [1] 794/4 brand [3] 840/21 841/3 841/5 breadcrumbs [1] 785/6 breadth [1] 799/16 break [14] 774/5 774/8 806/25 867/25 868/2 868/5 868/19 878/3 932/3 932/8 932/9 996/12 996/20 996/25 bridge [2] 770/13 924/19 bridges [1] 770/12 briefly [2] 993/4 1002/5 bring [11] 770/10 770/20 770/21 777/7 777/17 868/22 869/2 885/1 933/4 937/9 998/3 brings [2] 913/24 1041/2 broadly [2] 975/18 1031/11 brought [3] 772/21 822/1 1032/11 Brown [2] 905/15 906/3 browse [2] 1020/6 1045/7 browser [15] 780/11 791/7 792/19 835/16 846/25 847/17 849/6 852/14 871/23 871/24 873/10 926/14 927/1 1045/9 1045/10 browsers [2] 841/16 841/17 Bs [1] 845/16 bug [3] 794/5 794/5 917/24 bugs [3] 781/22 795/23 796/5 build [8] 795/12 835/25</p>	

B
 build... [6] 909/10 924/9
 984/12 1007/25 1012/14
 1031/13
 building [8] 781/21 781/21
 781/24 836/1 840/21 1010/22
 1010/24 1013/11
 built [15] 780/3 780/21 780/24
 780/25 781/2 783/8 835/21
 850/1 853/17 888/17 890/5
 890/6 890/9 912/19 939/22
 bullet [13] 894/12 1006/17
 1008/18 1009/11 1009/14
 1010/3 1010/13 1010/20
 1014/7 1015/2 1015/19
 1056/11 1056/14
 bullets [1] 881/7
 bunch [4] 926/8 985/15
 1009/3 1009/4
 Burke [2] 810/24 811/4
 business [3] 946/17 970/8
 970/13
 button [1] 874/6
 button [50] 846/5 851/14
 851/17 851/17 852/9 852/12
 853/3 853/3 854/5 854/6
 854/7 854/25 856/15 865/14
 865/17 865/21 866/18 866/21
 867/3 867/17 868/1 870/10
 870/17 870/21 871/10 871/17
 871/17 871/22 873/8 873/20
 873/25 883/20 884/14 884/20
 884/24 885/14 885/16 889/25
 891/13 895/15 895/18 897/6
 920/19 939/4 942/9 980/12
 987/9 995/22 1027/11
 1042/22
 buttons [15] 848/19 856/16
 856/22 862/1 862/7 865/7
 865/10 870/16 872/22 873/21
 881/7 895/13 979/13 979/22
 1011/4
 buy [1] 779/12

C
 C-H-I [1] 843/11
 C-H-O-C [1] 778/4
 C.A [1] 767/6
 cable [1] 924/20
 calculation [1] 934/10
 calculations [2] 815/13 818/2
 calendar [9] 836/15 895/3
 921/13 923/1 923/6 923/10
 923/12 928/2 928/18
 Calendaring [1] 890/9
 California [6] 778/17 779/6
 906/8 906/13 1003/12 1004/3
 call [59] 773/1 773/4 777/23
 779/24 780/24 782/23 784/20
 786/8 810/1 810/3 810/5
 824/11 824/11 829/1 862/10
 870/17 870/20 871/8 871/11
 871/13 871/15 878/13 884/21
 884/24 884/25 885/2 901/1
 903/20 903/22 916/7 916/8
 920/17 920/19 960/4 960/4
 966/22 968/5 969/14 969/18
 969/19 969/21 969/22 972/2
 974/6 984/25 996/7 998/11
 1016/10 1028/5 1028/18

1028/22 1029/12 1029/19
 1030/3 1030/4 1030/11
 1040/17 1040/19 1047/15
 called [51] 778/5 789/5 809/3
 809/4 816/10 816/10 831/19
 834/9 835/21 838/25 843/9
 857/6 863/12 881/25 889/2
 889/17 896/12 904/8 910/24
 911/16 913/12 913/21 914/10
 920/23 923/20 924/19 925/6
 939/17 939/25 940/3 944/7
 945/17 946/12 969/12 969/21
 992/2 1001/16 1004/11
 1008/2 1010/10 1011/24
 1013/22 1016/11 1019/17
 1028/23 1030/18 1032/18
 1032/20 1035/21 1039/22
 1040/8
 calling [3] 829/4 996/10
 1050/5
 calls [7] 777/25 799/6 806/7
 810/12 810/14 1029/3 1029/4
 Cambridge [4] 1020/8 1045/2
 1045/14 1051/1
 came [19] 771/7 772/13
 817/23 818/20 818/20 860/8
 878/22 884/16 896/11 896/11
 899/17 925/1 947/19 993/17
 1004/16 1005/4 1015/24
 1057/25 1058/8
 Cameo [3] 835/22 835/23
 836/1
 camera [3] 839/10 839/14
 839/20
 camera-readies [2] 839/10
 839/14
 camera-ready [1] 839/20
 can [204] 771/19 771/20
 771/22 772/3 772/5 774/8
 774/16 775/15 775/16 776/15
 777/10 779/21 782/15 782/21
 784/10 786/5 787/5 789/2
 789/12 789/18 791/18 795/7
 795/9 798/15 799/9 799/15
 803/18 804/7 804/9 804/11
 806/10 808/5 811/19 814/12
 814/16 814/19 815/10 820/25
 823/17 824/13 825/12 825/13
 825/14 827/8 829/7 829/9
 830/13 835/3 838/23 841/22
 841/24 842/20 846/14 847/13
 849/15 851/15 853/11 853/11
 855/18 855/20 855/23 855/24
 856/1 856/1 856/2 856/8
 857/14 859/19 860/8 862/4
 864/18 865/20 866/9 867/9
 868/10 872/11 873/24 877/8
 878/3 879/6 881/1 883/12
 890/14 890/22 891/25 903/23
 904/16 907/10 908/19 908/20
 908/24 909/8 910/1 911/2
 911/5 915/6 916/18 917/19
 918/11 919/16 921/7 921/20
 924/12 925/5 925/8 925/9
 925/18 926/1 926/21 927/1
 927/23 928/4 930/1 931/6
 931/18 932/25 933/9 934/3
 939/1 940/2 940/3 941/13
 942/13 942/20 944/2 944/5
 944/21 946/20 947/19 951/14

952/24 954/16 954/18 955/22
 960/5 961/19 962/5 962/10
 963/21 964/1 964/1 966/18
 966/22 967/2 967/5 968/10
 969/6 969/21 969/22 972/10
 976/25 980/2 981/5 982/4
 982/6 982/15 982/16 986/23
 987/17 987/25 989/5 990/9
 993/5 994/12 997/11 997/12
 998/17 998/21 999/23 1002/5
 1003/17 1004/7 1005/18
 1007/17 1009/2 1010/19
 1013/25 1022/10 1023/25
 1024/2 1025/7 1028/3 1030/4
 1030/9 1031/2 1031/4
 1033/15 1034/1 1037/4
 1040/5 1042/20 1044/23
 1048/12 1049/17 1051/9
 1051/21 1052/13 1052/16
 1054/22 1055/14 1057/7
 1060/5 1060/12 1060/13
 can't [25] 776/4 784/9 790/9
 796/23 805/7 808/10 809/2
 816/25 819/10 824/11 849/4
 912/16 929/3 952/18 954/12
 956/23 957/20 963/21 967/17
 968/18 969/11 980/1 980/4
 982/16 983/4
 Canada [2] 875/13 877/6
 canal [1] 770/12
 cannot [5] 820/5 862/13 931/8
 931/24 958/2
 capabilities [4] 1017/8
 1047/22 1054/10 1055/5
 capability [1] 1056/8
 capable [1] 1044/8
 capacity [1] 825/9
 capitalized [5] 848/16 848/16
 849/24 849/25 849/25
 care [1] 1059/21
 carefully [1] 1025/9
 carried [2] 1028/17 1044/23
 carrier [1] 797/7
 carriers [1] 796/10
 carries [1] 939/24
 carry [7] 842/6 1005/24
 1009/8 1017/21 1023/18
 1026/21 1028/3
 carrying [1] 1011/7
 Casanova [7] 1018/5 1018/6
 1018/17 1021/17 1041/22
 1047/23 1048/3
 case [87] 773/5 786/9 797/21
 800/10 801/16 801/19 801/22
 802/15 803/3 804/23 807/1
 815/13 816/5 816/18 820/12
 821/15 821/18 821/22 821/25
 822/23 825/19 826/22 841/18
 848/22 851/14 856/5 863/4
 865/23 868/11 871/14 872/16
 874/1 891/23 899/16 900/8
 900/14 902/3 904/18 904/19
 904/23 910/17 910/22 911/19
 911/22 912/15 912/21 915/9
 916/14 917/22 925/1 926/10
 927/9 928/3 929/8 931/22
 932/17 932/21 932/22 934/8
 935/10 935/12 935/15 935/21
 940/9 941/25 943/7 950/13
 950/16 950/17 953/10 966/1

967/17 970/5 972/25 973/9
 973/15 985/14 991/25 993/24
 998/10 1025/8 1039/13
 1049/17 1049/22 1059/13
 1059/14 1059/23
 cases [2] 815/20 1009/23
 cash [1] 820/3
 casting [1] 803/5
 cause [13] 792/15 835/9
 940/7 940/7 941/10 941/23
 942/4 971/18 972/6 972/20
 988/16 988/21 995/15
 caused [1] 941/6
 causes [6] 846/5 941/3 941/7
 948/5 987/7 995/18
 causing [16] 914/24 918/22
 937/23 938/8 942/17 947/18
 964/13 986/1 986/9 986/13
 986/16 988/4 988/7 988/9
 988/10 988/12
 caveat [3] 799/1 967/12
 974/25
 cc.gatech.edu [2] 864/22
 864/25
 CD [1] 1015/24
 cease [1] 799/21
 ceased [2] 798/23 808/23
 cellular [1] 912/2
 Center [5] 877/10 878/21
 879/9 879/15 887/6
 centered [1] 832/14
 CEO [1] 1021/20
 certain [13] 814/8 815/3
 850/24 862/1 882/22 901/25
 934/23 938/25 956/25 1038/1
 1047/24 1058/4 1059/2
 certainly [10] 786/6 799/24
 820/3 841/14 893/25 935/10
 1042/11 1043/11 1045/25
 1054/23
 CERTIFICATE [1] 1061/2
 certify [1] 1061/4
 cetera [1] 876/23
 CHAD [1] 769/12
 chain [3] 862/10 987/22
 987/24
 chained [1] 863/17
 chaining [5] 862/10 876/10
 876/11 876/12 887/23
 chairs [1] 903/24
 challenge [2] 818/21 841/10
 challenged [1] 817/22
 challenges [1] 841/9
 chambers [1] 771/23
 chance [2] 774/13 933/6
 change [7] 784/9 784/10
 917/25 918/1 970/21 984/6
 984/6
 changed [3] 856/11 971/6
 1016/4
 changes [3] 771/9 771/12
 839/19
 channel [1] 1012/7
 channels [1] 795/7
 characterization [2] 976/19
 976/23
 characterize [2] 908/13 976/3
 characters [5] 1009/2 1009/3
 1009/4 1024/15 1025/9
 charge [3] 770/24 790/3 790/8

Charles [1] 1051/1
charts [2] 805/1 805/14
check [3] 782/3 863/2 959/21
cheer [2] 811/9 811/21
cheering [5] 811/4 811/7
811/11 811/13 814/21
cherrypick [1] 958/2
CHI [31] 836/14 838/19
838/19 838/20 838/21 842/15
843/1 843/6 843/7 843/16
843/19 844/7 844/17 845/5
845/10 845/21 849/11 855/2
855/9 855/11 857/1 858/12
858/17 878/11 879/22 879/24
879/24 879/25 880/7 889/10
889/13
CHI '97 [2] 855/9 857/1
chief [4] 825/19 932/22
932/22 998/10
child [1] 1059/20
Choc [12] 773/13 777/25
778/3 778/5 778/15 798/2
805/11 812/2 813/25 814/6
828/14 932/23
choice [3] 771/6 789/23 790/6
choose [2] 907/2 1028/12
chose [1] 902/10
chosen [1] 856/8
Chris [3] 838/10 838/12
838/13
Chris Atkeson [1] 838/10
Chrome [64] 780/6 780/10
780/11 780/13 780/16 780/20
780/23 781/8 781/10 781/14
781/15 781/17 782/2 782/14
782/16 783/1 783/12 784/6
784/11 785/12 785/16 785/20
786/1 786/9 786/18 786/23
789/9 790/1 791/18 791/23
791/25 792/2 792/3 792/8
792/14 792/16 792/17 792/23
799/17 809/13 809/19 809/25
810/7 810/9 810/11 810/14
810/16 912/23 926/15 926/25
927/15 927/15 927/19 927/19
928/17 935/4 935/8 935/14
935/23 935/24 949/23 965/16
966/1 966/2
Chrome's [2] 785/14 786/13
Chromium [2] 791/9 791/12
chunk [2] 883/7 982/8
circled [1] 922/21
Circuit's [1] 774/14
circus [1] 826/16
Cisco [5] 779/5 779/7 779/8
779/15 779/17
city [2] 1039/9 1045/25
claim [97] 791/17 805/1
805/14 901/7 912/16 913/12
913/13 913/13 913/16 913/16
913/19 913/20 913/21 913/21
913/22 913/23 913/24 913/25
914/1 914/1 914/3 914/3
914/4 914/5 914/6 914/8
914/10 914/11 915/2 915/25
916/17 918/8 918/9 918/12
918/13 918/17 918/20 918/25
919/4 919/5 919/11 919/12
919/15 919/25 920/8 920/11

924/2 924/2 937/20 937/23
938/12 938/13 938/18 941/13
941/14 941/21 942/6 942/15
945/8 947/8 947/9 948/17
948/23 949/2 952/6 952/23
954/19 954/21 954/22 954/24
955/1 955/13 956/18 956/20
956/24 956/25 957/13 959/3
959/7 959/8 977/10 985/16
986/4 986/7 986/11 986/13
986/20 988/2 988/15 994/10
994/18 995/5 995/11
Claim 23 [9] 913/12 913/13
913/23 913/24 914/1 914/4
914/6 918/9 924/2
Claim 30 [9] 913/19 913/21
913/22 913/25 914/1 914/3
914/3 914/5 924/2
claims [13] 771/10 804/20
815/15 913/7 913/9 913/9
913/11 934/23 937/2 943/22
951/22 957/6 993/25
clarify [1] 1057/17
Claris [8] 1032/17 1033/6
1034/9 1056/16 1057/1
1057/8 1057/11 1057/14
ClarisWorks [9] 1019/14
1027/7 1034/10 1041/2
1041/7 1050/10 1050/12
1050/19 1053/2
class [1] 926/23
classes [3] 931/1 931/2 931/3
classes.DEX [2] 925/12
925/12
classification [2] 793/20
965/23
classify [1] 793/20
clear [10] 790/12 825/24
830/16 870/6 883/13 887/23
890/19 891/8 909/13 994/2
clearest [1] 882/17
clearly [5] 776/19 800/5 826/2
848/8 992/21
click [17] 852/11 854/25 861/2
870/20 873/8 873/25 884/24
889/19 889/25 889/25 1014/9
1014/20 1023/19 1024/5
1040/6 1052/13 1052/14
clicked [16] 792/17 852/12
854/7 854/12 866/21 867/2
867/2 871/21 888/23 891/16
895/18 1020/3 1045/6 1047/1
1047/11 1048/3
clicking [9] 871/10 871/15
884/14 885/13 897/5 1011/2
1011/4 1043/24 1049/1
clicks [4] 883/20 1046/11
1047/24 1048/19
client [4] 790/2 791/6 846/21
871/24
clip [3] 903/16 903/17
1039/12
close [2] 770/24 773/25
closed [4] 770/13 770/14
868/11 932/17
closer [2] 843/18 876/13
CNN [1] 806/2
co [1] 838/14
co-founder [1] 838/14

coast [2] 1015/9 1015/10
Coauthor [1] 844/10
Coauthored [1] 844/11
code [233] 781/19 783/7
783/9 784/5 784/9 784/10
784/24 785/1 785/12 785/15
785/17 785/18 785/18 785/19
785/25 786/1 786/7 787/1
787/1 787/13 787/15 787/22
788/10 788/22 790/22 791/9
791/12 792/13 793/7 795/13
809/18 809/25 810/3 810/5
810/7 810/9 810/11 810/14
831/24 890/7 890/12 892/12
892/15 899/1 899/2 903/6
908/18 908/20 908/22 909/1
909/15 910/3 910/4 910/5
910/7 910/8 910/23 912/24
912/25 913/4 916/10 916/12
916/14 916/15 917/8 917/10
920/21 920/22 920/23 921/2
921/25 922/9 922/12 922/13
922/19 922/21 922/25 922/25
923/2 923/2 923/6 923/6
923/8 923/9 923/10 923/11
923/12 923/13 923/14 924/9
925/14 925/14 925/14 925/18
925/20 925/21 926/4 926/10
926/13 926/13 926/17 926/18
926/24 927/5 927/8 927/8
927/9 927/14 927/20 927/21
928/5 928/14 929/1 929/6
929/6 929/7 929/8 930/12
930/22 931/1 931/4 931/6
931/23 940/19 940/23 942/24
943/2 944/17 944/18 944/24
945/1 945/1 947/13 947/14
947/15 947/15 947/25 948/1
953/21 959/9 959/23 960/1
960/2 960/4 960/5 960/6
960/6 960/10 960/12 960/14
960/20 960/21 961/3 961/5
961/6 961/7 961/8 961/10
961/11 961/11 961/15 961/16
961/18 961/19 963/6 963/22
964/2 965/23 966/3 966/6
966/8 966/12 966/12 966/15
966/18 966/20 966/21 967/3
967/7 967/11 974/16 974/18
975/5 979/14 979/15 981/9
981/9 981/16 981/16 981/19
981/23 981/25 982/10 982/16
982/17 982/19 982/21 982/22
982/23 982/25 983/4 983/5
983/6 983/11 983/16 983/18
983/24 984/2 984/5 984/10
985/8 985/14 985/15 993/14
993/20 993/21 994/20 995/12
995/19 1012/18 1013/5
1019/20 1019/20 1031/3
1031/10 1032/23 1033/9
1045/25 1050/5 1053/10
1053/15 1053/19 1053/23
codes [2] 892/19 921/6
cognitive [3] 1002/10 1002/11
1002/12
collaborated [1] 781/2
collect [1] 866/23
collected [1] 863/18
collection [3] 863/12 864/8

1031/4
College [4] 778/22 831/21
832/11 859/6
colon [4] 864/13 864/14
1052/24 1052/24
color [1] 1043/9
Colorado [1] 1002/15
column [6] 925/22 926/7
926/8 926/17 926/19 927/13
columns [1] 1051/11
com [1] 1009/5
combination [3] 983/3 984/16
1028/24
combinations [1] 872/17
combine [4] 981/9 981/13
981/18 982/1
combined [1] 883/6
combining [6] 863/12 876/10
876/12 981/23 981/25 983/11
come [22] 781/7 785/24 804/7
804/9 804/11 819/3 820/20
836/21 868/15 879/2 883/11
889/3 896/2 928/3 931/13
940/13 967/16 992/5 1015/12
1032/8 1039/21 1043/20
comes [13] 772/9 818/19
826/16 832/11 846/18 868/23
896/9 920/14 940/15 944/9
945/21 997/25 1019/12
coming [4] 798/5 801/16
1007/8 1018/10
command [17] 914/23 918/22
938/8 939/5 939/6 941/6
941/11 941/17 941/22 942/16
943/3 947/18 948/3 985/25
986/8 986/18 988/3
commands [1] 939/24
commenced [1] 770/4
comment [1] 784/25
comments [6] 784/22 784/24
785/8 785/11 785/17 785/18
commercial [1] 853/16
committee [1] 860/16
committees [1] 907/9
common [4] 850/2 909/6
918/6 984/7
commonly [1] 1032/6
communicate [3] 786/2 790/9
962/24
communicating [1] 963/6
communication [7] 961/13
961/17 961/23 962/18 963/2
963/3 1057/13
communications [2] 820/6
820/10
companies [6] 804/5 804/7
804/9 908/1 1001/9 1007/13
company [9] 798/13 801/6
807/22 807/24 808/1 808/4
809/7 1001/16 1001/20
comparability [2] 991/20 992/6
comparable [9] 946/4 946/9
946/20 947/1 992/7 992/11
992/14 992/18 992/20
compare [1] 926/21
compared [1] 946/6
comparing [1] 849/22
comparison [2] 930/24 946/8
compensated [2] 904/22
904/25

Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 457 of 776 PageID# 61066	831/21 833/9 833/10 833/13 835/21 835/24 834/6 834/17 838/14 839/4 841/4 842/14 859/6 876/1 880/24 886/9 898/4 898/6 898/8 1003/5 1005/4	953/12 953/17 954/2 954/9 955/5 956/2 957/14 957/17 957/21 957/23 957/25 958/3 958/4 958/9 958/11 958/19 958/23 958/25 959/4 959/7 959/13 959/16 960/9 960/19 985/17 994/24 994/25	1016/12 1017/18 1017/20 1028/19 1045/11
<p>compensation [1] 905/5 competing [2] 772/6 1060/11 competitors [1] 817/4 compiled [1] 925/13 complaint [1] 804/23 completed [1] 887/8 completely [10] 818/12 835/13 899/17 969/5 969/7 970/3 1022/3 1035/4 1035/4 1035/5 complex [1] 864/7 complicated [2] 924/9 983/6 component [2] 784/8 914/10 components [8] 835/24 836/3 847/10 848/10 929/9 962/19 973/21 1013/11 compose [7] 939/10 942/2 944/9 944/10 980/12 980/12 987/3 composing [1] 980/18 compressed [1] 1039/25 comprising [1] 977/10 computer [157] 778/25 785/9 823/15 828/16 832/22 832/22 833/2 837/8 843/8 843/13 845/6 846/3 905/14 905/16 910/11 914/11 914/16 914/20 914/23 915/1 915/3 915/5 915/7 915/10 915/11 915/16 915/18 915/20 915/24 915/25 918/14 918/21 919/9 919/20 919/23 919/25 920/3 922/23 924/20 931/14 931/24 932/1 933/16 937/2 938/7 938/13 938/15 941/6 941/9 941/12 941/12 941/17 941/18 941/25 942/1 942/5 942/12 942/16 943/1 943/4 946/10 948/4 948/5 951/1 951/5 951/6 951/14 951/18 951/20 951/21 951/24 952/1 952/5 952/7 952/14 952/18 952/19 952/22 953/2 953/5 954/3 954/5 954/7 954/13 954/17 954/18 954/21 955/1 955/12 955/18 956/1 956/14 956/20 956/24 957/3 957/5 957/12 957/15 957/20 958/6 958/13 958/17 959/23 961/2 966/8 966/11 966/12 977/6 977/23 977/25 978/8 978/14 979/12 983/13 985/25 986/4 986/8 986/18 988/3 988/16 988/19 988/20 993/25 994/4 994/13 994/17 994/24 995/1 995/6 995/16 995/16 995/19 996/11 1002/8 1002/18 1003/1 1003/22 1003/23 1004/3 1004/5 1004/23 1005/8 1009/25 1012/4 1016/2 1020/12 1022/25 1025/6 1032/23 1033/2 1033/8 1033/10 1033/16 1034/4 1034/12 1035/18 1055/21 Computer-human [1] 843/13 computer-readable [2] 937/2 993/25 computers [5] 888/17 997/8 998/20 1041/6 1055/21 Computing [22] 831/19</p>	<p>conceived [1] 1005/17 concept [2] 888/14 1019/9 concern [1] 1004/17 concerning [1] 1038/20 conclude [2] 928/13 946/25 concluded [1] 1060/15 concludes [3] 813/20 827/14 828/9 conclusion [7] 799/7 806/8 806/8 903/17 927/18 931/11 931/16 conclusions [1] 942/14 condensed [1] 1040/20 conditionally [1] 829/17 conduct [2] 800/13 800/15 conducting [1] 912/10 conference [37] 770/23 770/24 772/5 772/8 811/9 814/22 836/14 839/3 839/11 842/14 842/23 843/8 843/16 856/24 857/17 857/24 859/15 860/16 860/17 860/18 875/19 875/22 875/25 878/12 878/25 886/23 893/24 893/25 907/3 1007/5 1007/7 1007/20 1008/10 1017/11 1018/4 1041/19 1053/25 conferences [2] 893/22 1036/9 confidentiality [2] 1022/2 1042/13 Config [1] 1056/18 configuration [2] 779/9 961/17 configure [1] 961/21 figured [13] 914/19 918/14 919/9 919/20 922/23 931/14 931/25 972/8 979/11 979/20 994/4 994/16 1051/12 confirm [4] 1033/15 1033/19 1034/5 1034/11 conjunction [4] 1026/6 1026/15 1027/1 1027/6 connect [2] 851/8 912/1 connected [6] 841/16 851/9 885/3 885/4 912/12 912/14 connection [8] 893/1 893/14 893/21 910/17 910/21 943/6 945/13 1035/13 connections [1] 1013/23 consequence [13] 914/22 918/21 937/22 938/7 941/16 942/8 942/15 985/24 986/7 986/17 988/2 988/18 995/5 consider [1] 910/21 consideration [4] 830/5 879/25 887/10 999/15 considerations [1] 934/15 considered [6] 835/15 835/16 911/14 988/25 989/9 989/25 consistent [3] 774/10 810/19 918/3 consists [1] 1042/19 construction [33] 901/7 915/4 915/24 938/12 938/14 951/8</p>	<p>953/12 953/17 954/2 954/9 955/5 956/2 957/14 957/17 957/21 957/23 957/25 958/3 958/4 958/9 958/11 958/19 958/23 958/25 959/4 959/7 959/13 959/16 960/9 960/19 985/17 994/24 994/25 constructions [2] 919/12 947/9 construe [2] 954/5 954/7 construed [7] 951/3 951/11 951/16 952/7 952/14 954/3 955/19 consulted [1] 888/3 consulting [3] 905/2 1001/20 1005/3 consume [5] 850/13 862/13 862/17 863/24 890/15 consumed [3] 863/7 866/9 883/9 consumer [1] 851/13 consumes [2] 856/7 856/7 consuming [1] 1023/18 contact [79] 846/22 847/8 847/18 849/9 853/4 853/6 853/9 853/18 853/24 853/25 854/5 854/12 854/13 854/15 863/11 863/11 863/19 865/17 865/18 866/19 866/19 867/3 867/3 867/10 867/14 867/16 869/11 869/13 870/7 873/4 873/22 874/2 874/11 876/22 883/7 883/18 883/18 884/4 884/5 884/14 884/15 884/16 889/2 890/11 890/25 895/4 895/16 895/19 895/23 1020/9 1020/17 1020/17 1034/9 1040/14 1040/25 1045/15 1045/17 1045/18 1045/20 1045/20 1046/7 1046/8 1046/9 1046/12 1046/14 1048/10 1048/10 1049/5 1049/6 1049/13 1049/13 1049/14 1049/25 1050/2 1050/8 1050/13 1051/6 1051/25 1057/11 Contact's [1] 1050/8 contacted [1] 899/10 contagious [1] 782/18 contain [6] 793/7 927/8 927/21 929/10 931/22 947/15 contained [30] 860/24 915/14 915/23 916/1 916/16 917/4 920/5 923/12 927/8 930/25 931/7 931/9 931/20 931/21 938/16 942/22 947/12 947/24 956/4 956/13 956/17 958/5 958/7 958/12 958/20 960/15 994/19 995/9 995/10 1042/25 container [1] 786/25 contains [4] 786/25 921/19 923/23 1043/1 contending [1] 920/7 content [18] 835/16 841/18 843/4 847/9 847/22 848/4 848/6 849/8 863/14 865/5 895/2 896/21 935/14 935/22 962/24 1007/3 1011/5 1042/3 contents [11] 841/25 858/8 911/6 923/23 929/10 1010/14</p>	<p>1016/12 1017/18 1017/20 1028/19 1045/11 context [16] 809/23 841/1 842/21 876/14 880/23 886/9 915/8 917/6 917/15 946/14 946/16 969/10 975/16 979/1 989/5 1054/25 Context-Aware [1] 886/9 Context-Awareness [1] 880/23 contextual [5] 1012/23 1012/25 1013/3 1013/9 1027/9 continue [1] 937/15 CONTINUED [1] 769/1 continues [1] 869/8 contract [2] 786/7 796/18 contradicted [1] 950/22 contrast [1] 926/21 contribute [1] 820/3 contributions [1] 1006/7 contributor [2] 779/25 780/8 contributory [1] 933/19 control [4] 876/15 951/9 1027/10 1047/4 controls [1] 957/15 controversy [1] 972/13 conversation [3] 899/23 899/24 899/25 conversations [1] 934/19 conversion [1] 869/23 conversions [6] 856/14 866/24 871/2 872/18 872/18 890/17 convert [8] 850/14 856/8 862/12 862/19 866/16 890/17 890/20 890/25 converted [20] 848/7 849/3 849/5 850/16 854/11 856/13 862/21 863/5 863/5 863/6 863/7 864/15 866/5 869/24 869/25 870/4 870/25 883/5 883/10 899/15 converter [1] 891/19 convey [1] 861/13 conveying [1] 882/18 cool [3] 967/23 968/22 1020/3 coordinating [1] 1006/6 copies [1] 1058/9 Copland [7] 1012/23 1013/1 1013/1 1013/2 1013/3 1013/5 1013/9 copy [14] 797/18 830/24 844/6 920/15 939/3 982/19 982/21 982/25 983/24 983/24 984/5 984/8 989/17 1018/24 copying [1] 982/22 copyright [2] 875/15 1022/24 core [6] 781/9 789/23 790/8 846/23 1017/6 1055/4 corner [8] 821/11 822/3 844/14 861/21 863/20 882/25 883/21 1037/9 corporate [19] 773/1 773/2 773/4 773/13 777/12 798/6 798/10 801/3 807/18 808/3 812/23 813/7 819/12 822/25 823/4 824/4 824/5 824/5 824/12 Corporation [3] 1002/19</p>

Corporation... [2] 1003/5
1050/25
correct [411]
correctly [2] 990/16 1016/15
correlate [1] 935/17
correspond [1] 944/20
corresponded [1] 1000/17
corresponds [1] 859/22
CORROON [1] 769/9
could [191] 771/1 773/4
780/21 784/14 790/7 790/8
790/15 792/16 793/11 793/21
794/17 808/25 818/22 824/15
825/4 825/20 831/15 833/17
833/19 834/2 835/13 835/14
835/16 835/25 835/25 837/4
845/17 847/10 848/2 848/6
848/6 848/10 848/10 848/20
848/23 848/25 849/4 850/11
850/12 850/13 850/14 851/7
852/3 853/25 854/2 854/17
856/11 856/18 856/23 856/25
858/8 859/17 859/22 861/4
862/11 862/18 862/20 862/20
862/21 863/8 863/11 863/14
863/24 865/24 866/3 870/4
870/6 870/13 872/4 874/8
874/11 876/17 876/18 876/21
876/22 880/18 886/4 888/20
888/24 890/13 890/16 890/16
890/17 890/19 890/25 890/25
891/4 891/5 891/9 891/12
891/13 891/17 891/18 891/23
893/18 894/23 894/24 895/2
895/3 895/3 895/4 895/7
895/8 895/10 895/23 897/1
897/13 899/15 900/18 901/13
902/1 903/6 903/7 905/11
907/2 907/3 909/12 912/6
914/7 916/11 916/24 925/3
929/16 930/16 934/24 936/3
936/8 947/5 948/19 953/14
956/6 960/1 960/2 960/14
962/14 965/5 972/1 982/6
982/8 982/9 982/14 985/2
985/19 989/19 989/19 991/16
993/16 1003/1 1005/23
1009/22 1010/24 1011/5
1011/11 1011/16 1011/19
1011/20 1011/21 1012/11
1012/16 1012/20 1014/15
1017/21 1017/21 1024/19
1025/14 1026/5 1026/14
1026/25 1027/5 1028/17
1029/2 1029/3 1030/14
1031/13 1031/18 1031/25
1032/1 1032/7 1032/8 1035/5
1035/17 1035/17 1038/7
1039/15 1040/18 1044/2
1044/11 1046/1 1056/21
1057/4 1059/10
couldn't [6] 781/7 793/13
794/5 843/17 878/17 891/22
counsel [23] 769/6 769/14
771/1 773/4 775/8 812/25
823/17 823/20 824/21 827/9
827/16 867/25 899/7 932/4
932/15 988/24 991/2 993/10
998/8 999/18 1057/18

1059/18 1060/7
count [1] 934/16
counter [1] 818/23
country [1] 879/11
couple [4] 770/10 837/18
843/24 1018/15
course [9] 800/10 801/22
804/1 829/7 916/1 953/17
960/13 961/20 1059/9
court [17] 767/2 771/23 772/7
775/9 829/25 915/9 919/13
919/17 951/11 951/15 952/7
954/3 955/19 977/14 1061/2
1061/8 1061/9
Court's [23] 901/7 915/4
915/24 916/2 919/22 947/9
951/8 953/12 953/17 954/1
954/9 956/1 957/14 957/21
957/22 957/25 958/2 958/4
958/9 958/11 985/16 994/24
994/25
courtroom [18] 770/4 777/19
803/4 810/22 814/25 815/22
817/10 817/13 821/4 827/20
868/3 869/3 932/12 937/11
996/21 998/6 1059/16
1059/20
cover [1] 813/7
covers [1] 832/13
crash [1] 795/22
create [9] 863/9 872/2 883/7
962/7 1011/19 1013/19
1026/22 1031/17 1056/1
created [11] 837/13 852/3
856/12 859/16 862/2 863/14
865/14 865/21 866/18 897/19
1046/15
creating [5] 835/18 837/11
977/5 1021/11 1032/2
credentials [1] 953/25
cross [10] 773/6 797/12
797/16 817/11 825/18 825/20
859/18 948/7 948/11 962/18
cross-examination [4] 773/6
797/12 817/11 948/7
cross-reference [1] 859/18
cross-talk [1] 962/18
crunching [2] 980/22 981/1
Cs [1] 845/16
Cupertino [1] 1004/3
curiosity [2] 907/15 1013/16
current [5] 781/13 782/1
832/5 980/6 1032/3
currently [1] 832/3
cursor [3] 883/4 1011/3
1040/6
cut [5] 895/23 920/14 939/2
962/23 983/4
cute [1] 801/15
cutting [1] 1020/10
CV [1] 856/23
cyberdesk [137] 821/7 821/24
831/20 832/1 834/23 834/25
835/1 835/4 835/5 835/18
836/1 836/2 836/7 836/10
836/11 836/21 837/7 837/15
838/23 838/25 839/23 840/19
841/2 841/6 842/10 842/18
844/3 846/10 846/23 846/24
847/4 847/19 847/25 849/14

849/18 850/10 850/21 851/8
854/11 855/21 856/6 857/7
857/22 857/25 858/4 858/20
858/23 859/20 859/24 860/12
860/21 861/13 862/5 863/24
863/24 864/24 864/25 866/7
866/9 867/11 867/20 867/21
869/15 870/21 871/6 872/3
872/16 874/16 874/21 875/9
876/9 876/21 877/13 878/4
878/9 878/10 879/16 879/21
880/15 881/12 881/23 882/11
882/23 883/10 883/12 884/18
884/23 885/20 885/25 886/16
886/19 887/20 888/18 888/20
889/9 889/14 889/17 889/20
890/13 890/14 892/2 892/3
892/8 892/10 892/12 892/19
892/21 892/22 893/1 893/5
893/10 893/14 893/21 894/5
894/9 894/24 895/9 895/12
896/2 896/4 896/14 896/18
896/25 897/8 897/11 897/16
898/2 898/9 899/12 899/20
901/12 901/25 902/9 902/12
902/14 902/18 902/22
Cyberdog [2] 1032/6 1056/16

D

da [4] 862/23 862/23 862/23
862/23
da-da-da-da [1] 862/23
Dallas [1] 1002/18
damage [2] 815/16 815/17
damages [14] 815/13 815/19
933/22 933/24 933/25 934/6
934/7 934/21 934/24 943/11
943/13 945/14 992/22 992/23
damages-related [1] 992/23
DARPA [1] 907/18
data [114] 818/15 818/16
818/18 818/22 819/7 819/8
888/6 888/10 888/15 894/13
894/14 899/21 909/20
1005/10 1005/15 1005/16
1005/19 1006/1 1006/4
1006/12 1006/16 1008/2
1008/15 1008/19 1008/20
1008/25 1009/12 1009/16
1010/3 1010/6 1010/16
1011/9 1011/17 1011/23
1012/15 1015/2 1015/17
1015/23 1015/23 1016/4
1016/7 1016/16 1016/17
1017/1 1017/6 1017/13
1017/23 1018/4 1018/17
1018/19 1019/17 1019/24
1021/7 1022/9 1023/7
1023/12 1023/15 1023/16
1023/25 1024/4 1024/10
1024/20 1024/23 1025/12
1025/15 1026/5 1026/14
1027/1 1027/5 1027/11
1027/18 1028/2 1028/20
1029/10 1030/15 1030/19
1030/21 1031/1 1031/5
1031/21 1031/23 1031/25
1032/16 1034/18 1034/25
1035/14 1035/19 1035/23
1036/9 1036/12 1037/6

1038/14 1038/20 1039/2
1039/22 1040/4 1040/14
1040/24 1041/6 1043/5
1043/20 1044/3 1044/6
1044/7 1044/11 1044/25
1048/12 1049/5 1051/18
1054/18 1054/21 1055/2
1055/4 1055/11
database [9] 1020/17 1040/25
1045/20 1046/10 1046/15
1046/16 1049/13 1051/6
1052/1
date [19] 795/14 844/13
864/18 864/25 865/1 875/15
881/9 887/2 887/5 887/7
888/8 991/13 991/15 1022/24
1036/13 1037/8 1037/11
1041/3 1055/17
DAVID [2] 769/9 810/24
day [11] 770/7 770/9 774/3
775/24 783/21 785/4 815/9
887/7 893/24 901/17 1059/5
days [12] 836/24 841/15
841/15 878/20 879/6 879/17
880/4 880/6 880/10 880/15
894/2 897/11
DDX [2] 925/4 928/19
DDX-08023 [1] 928/19
DDX-0821 [1] 925/4
deal [3] 796/9 827/11 1059/3
dealing [1] 1059/2
dealt [2] 782/8 796/17
dean [2] 828/17 832/6
Debugging [1] 924/19
decade [1] 789/9
December [10] 794/8 794/12
794/15 794/19 839/17
1022/13 1022/19 1035/7
1036/13 1036/18
December 1996 [3] 1035/7
1036/13 1036/18
December 2017 [2] 794/8
794/15
December 2018 [1] 794/12
December 30 [1] 1022/13
December 30th [1] 1022/19
decently [1] 980/5
decide [1] 942/3
decides [4] 846/4 942/11
972/5 972/19
decision [4] 771/21 866/13
866/13 995/20
deck [2] 823/6 905/10
declaratory [1] 809/4
deeper [1] 1042/16
default [2] 790/1 1056/18
defect [1] 917/24
Defendant [2] 767/8 769/14
Defendant's [2] 813/4 822/15
defendants [8] 824/21 827/21
901/4 901/6 1000/2 1001/6
1019/5 1039/14
defendants' [1] 899/7
defending [1] 807/10
Defense [3] 907/18 907/19
907/21
defenses [1] 771/11
defer [2] 807/19 868/18
deferred [1] 912/25
deferring [1] 913/4

D	E	F	G
<p>define [2] 790/4 926/8 defined [2] 926/16 927/13 defines [1] 966/15 defining [1] 790/4 definitely [3] 897/12 956/4 960/21 definition [8] 915/10 915/11 915/18 916/2 919/17 919/19 919/22 919/24 definitive [1] 805/7 DEFS [2] 1019/5 1039/14 degrading [1] 1034/4 degree [5] 816/15 841/13 842/2 905/14 905/22 DELAWARE [2] 767/3 767/18 delay [1] 794/24 deliberations [1] 1059/10 delineated [1] 856/22 deliver [1] 905/8 delivered [6] 774/21 932/7 1018/3 1041/18 1054/10 1055/19 delivering [2] 973/10 1041/21 delivers [2] 944/18 949/24 demand [3] 933/24 934/8 995/15 demo [29] 857/10 857/23 858/3 871/4 871/5 875/18 876/4 877/12 877/17 878/1 878/20 879/5 879/10 879/17 880/4 880/6 880/10 880/14 880/21 893/5 893/17 893/18 893/24 894/2 897/11 901/17 901/19 1024/19 1042/2 demoed [4] 857/25 893/20 893/25 897/10 demoing [1] 879/21 demonstrate [4] 876/20 892/25 1047/22 1053/23 demonstrated [3] 901/12 903/2 1035/24 demonstrates [1] 872/14 demonstrating [1] 811/5 demonstration [12] 862/14 1018/18 1018/21 1021/11 1021/15 1041/21 1041/23 1042/10 1042/13 1043/2 1043/5 1053/16 demonstrations [1] 1017/13 demonstrative [2] 997/19 998/21 demonstratives [2] 787/5 997/12 demos [13] 877/9 877/18 879/3 880/20 893/2 895/20 901/21 902/4 903/1 903/3 903/14 1018/10 1032/8 denote [1] 930/5 Department [2] 907/17 907/20 dependent [1] 913/21 depending [6] 775/17 851/6 856/19 880/11 915/7 989/5 depends [3] 917/6 972/8 984/20 depiction [1] 929/25 deployed [1] 910/8 deposed [2] 800/1 821/16 deposition [32] 773/14 773/16 774/13 774/23 775/3 775/8</p>	<p>775/10 797/18 822/23 823/22 824/15 825/7 825/8 829/4 829/8 829/16 829/18 829/20 829/22 830/2 830/4 830/10 830/21 831/2 869/6 911/8 911/11 997/4 998/14 999/12 999/14 999/20 depositions [3] 774/15 776/1 776/2 deprecated [2] 990/19 990/25 deputy [2] 827/20 1059/20 derive [1] 923/5 describe [18] 775/21 779/21 782/15 789/12 789/18 795/9 812/12 846/14 847/13 862/4 873/24 879/6 890/22 1003/17 1004/7 1010/19 1031/10 1057/7 described [16] 786/17 797/1 855/4 857/20 862/5 885/21 889/9 892/3 892/16 902/1 902/7 984/16 1002/3 1029/8 1034/16 1053/20 describes [1] 1031/3 describing [13] 846/9 857/3 871/6 874/21 878/8 882/1 887/20 887/21 889/13 1011/18 1022/8 1029/19 1031/23 description [14] 835/4 836/25 850/3 855/5 855/18 882/16 975/14 976/23 1005/18 1013/10 1023/7 1023/24 1024/10 1030/15 descriptions [3] 831/25 831/25 1023/11 design [2] 866/12 866/13 designate [4] 1024/24 1025/22 1025/25 1043/18 designated [1] 852/17 designation [2] 830/10 999/20 designations [4] 773/15 773/16 774/13 774/23 designed [1] 1027/23 desktop [4] 839/1 842/10 890/2 890/4 despite [3] 814/20 814/21 953/25 dessert [1] 781/6 detail [1] 857/21 details [4] 847/6 872/6 975/2 1011/1 detect [5] 909/18 909/23 1025/15 1031/20 1056/22 detected [6] 1025/23 1026/2 1028/21 1043/19 1045/23 1057/5 Detectors [2] 1034/6 1034/7 detecting [1] 1044/8 Detective [1] 1016/4 detectives [14] 1008/16 1009/16 1010/4 1010/6 1011/17 1011/24 1015/3 1015/17 1016/16 1017/13 1018/18 1019/18 1019/25 1022/9 Detector [5] 1026/5 1031/5 1048/12 1049/6 1055/4 Detector's [2] 1055/2 1055/11 detectors [91] 888/7 888/10</p>	<p>888/15 894/13 894/14 899/21 935/14 935/23 1005/10 1005/15 1005/16 1005/19 1006/1 1006/4 1006/12 1006/16 1008/3 1011/23 1012/15 1015/23 1016/8 1016/12 1016/17 1016/21 1017/1 1017/2 1017/6 1017/23 1018/4 1018/19 1021/8 1023/8 1023/12 1023/15 1023/16 1023/25 1024/4 1024/10 1024/20 1024/23 1025/15 1026/15 1027/1 1027/5 1027/12 1027/18 1027/22 1028/2 1028/20 1029/10 1030/15 1030/19 1030/22 1031/2 1031/23 1031/25 1032/16 1032/20 1033/1 1033/6 1034/19 1034/25 1035/14 1035/19 1035/23 1036/9 1036/12 1037/6 1038/14 1038/20 1039/2 1039/23 1040/24 1041/6 1043/5 1043/20 1044/3 1044/6 1044/7 1044/11 1044/25 1051/18 1054/8 1054/14 1054/18 1054/18 1054/22 1055/23 1056/2 1056/6 1056/11 determination [2] 958/22 977/14 determine [5] 807/7 814/13 848/13 851/2 864/3 determined [4] 850/4 850/7 850/23 851/5 determines [4] 849/14 849/18 856/8 945/2 develop [5] 906/25 908/23 909/5 909/22 965/2 developed [4] 799/3 799/12 799/23 874/18 developer [18] 783/14 784/9 784/23 790/7 811/9 909/4 909/5 916/9 916/23 917/9 921/22 923/20 925/6 974/4 974/4 974/16 1014/3 1017/11 developers [23] 783/16 811/22 908/23 909/2 909/7 925/7 990/22 1007/4 1007/8 1007/10 1007/11 1007/11 1007/17 1007/21 1007/23 1008/10 1013/14 1014/13 1014/14 1031/9 1031/15 1031/18 1036/22 developing [2] 1006/3 1041/25 development [2] 971/24 1006/12 device [58] 787/10 787/19 788/7 788/20 794/13 795/1 795/7 795/24 853/19 853/22 892/23 893/1 893/14 909/16 909/17 909/21 912/17 914/19 914/24 918/14 918/22 919/8 919/20 919/22 920/8 920/9 920/18 921/14 922/23 924/25 931/14 931/23 931/25 938/4 938/8 939/8 939/9 941/18 941/22 942/17 947/8 947/15</p>	<p>966/21 967/9 967/13 967/15 968/25 969/6 979/11 979/20 980/14 986/1 986/9 986/19 988/4 994/4 994/16 994/20 devices [38] 795/5 796/4 796/5 809/14 892/22 908/16 911/3 911/17 911/17 911/19 911/20 911/25 912/1 912/6 912/7 923/24 924/14 924/20 924/22 925/2 928/12 931/13 934/2 935/18 936/4 936/7 942/19 947/7 949/3 950/3 950/7 950/17 977/18 977/22 1057/19 1057/21 1058/5 1058/14 Dey [19] 773/14 821/10 821/15 821/18 822/5 822/16 825/25 826/1 826/6 826/23 828/16 829/4 830/2 830/10 830/15 830/20 834/14 839/2 869/7 Dey's [1] 822/23 diagram [1] 855/19 dial [6] 791/4 1020/12 1029/7 1047/8 1047/14 1052/10 dialer [11] 791/19 791/24 870/17 870/21 870/22 871/11 871/16 884/21 885/3 921/13 963/3 dictates [1] 785/16 did [182] 775/1 778/22 778/24 779/1 779/3 779/7 779/15 779/17 779/19 780/3 780/5 780/16 781/3 781/9 783/10 783/20 783/22 786/9 792/20 793/7 793/23 794/7 794/19 799/17 799/20 802/11 805/5 806/5 806/21 807/5 808/11 809/22 815/12 816/4 818/24 820/3 820/4 825/6 825/25 830/25 831/12 831/13 831/14 831/21 834/4 836/1 836/7 836/10 836/17 837/11 837/14 839/5 839/25 840/8 840/18 844/3 844/5 844/9 844/10 844/20 844/21 848/1 855/8 855/10 858/14 861/2 863/2 864/6 870/23 875/5 875/7 875/21 875/22 879/21 880/14 880/15 882/14 888/15 891/7 892/21 892/25 893/3 894/8 896/2 897/22 899/7 899/9 899/13 899/21 900/7 901/6 901/15 902/9 903/7 905/17 906/5 906/11 906/11 906/17 910/21 911/4 911/9 911/13 912/10 913/7 915/4 915/6 918/8 918/10 918/25 922/7 923/19 924/5 924/16 924/18 924/18 928/6 928/8 928/9 928/13 928/20 930/10 930/19 930/21 935/16 940/13 940/23 940/25 941/1 941/2 945/22 945/24 946/3 946/8 946/25 947/2 950/14 950/21 952/9 954/1 984/20 1000/10 1002/13 1002/14 1003/8 1003/18 1004/5 1004/8 1005/2 1005/19 1005/25 1010/6 1012/14 1013/18</p>

D	E	F	G
<p>did... [28] 1016/6 1017/12 1017/16 1018/9 1018/18 1018/21 1021/25 1022/22 1023/4 1024/24 1025/21 1031/16 1032/3 1032/21 1033/12 1033/19 1034/11 1034/18 1038/22 1039/9 1041/24 1043/17 1044/24 1053/13 1056/1 1058/6 1058/16 1058/17 didn't [35] 771/14 793/21 799/25 802/9 805/21 807/4 807/11 808/14 816/2 818/14 818/21 819/11 819/25 827/3 827/4 827/4 827/6 828/4 828/5 832/1 838/15 847/17 848/1 848/3 854/20 876/9 876/15 954/3 954/5 954/7 963/23 972/22 974/5 997/24 1025/25 DIEHL [1] 769/4 difference [7] 793/3 802/20 802/22 824/5 859/11 913/11 949/23 differences [2] 771/14 928/22 different [41] 772/11 784/7 791/25 795/7 799/4 799/13 835/8 835/24 836/3 841/23 846/20 850/24 854/16 855/24 855/24 856/9 894/23 895/1 902/12 910/2 917/11 921/5 923/2 923/2 923/3 923/4 923/7 931/6 931/10 960/5 961/19 973/21 975/4 985/8 986/21 1017/20 1025/12 1031/12 1044/10 1051/20 1054/22 differently [1] 961/20 difficult [1] 1054/21 difficulty [1] 990/18 digital [1] 876/1 digits [3] 849/23 849/23 849/24 dime [1] 1000/20 direct [6] 778/10 904/12 933/15 936/22 937/15 965/4 directly [11] 854/2 871/1 885/11 897/6 959/2 988/7 1004/15 1010/15 1011/5 1011/13 1014/15 director [3] 781/14 781/17 781/18 Directory [1] 822/18 disable [1] 972/22 disabled [4] 793/16 793/17 793/18 793/19 disagree [8] 957/4 957/7 957/10 974/2 976/17 976/19 977/4 980/19 disagreement [1] 824/2 disappear [1] 939/9 discard [1] 891/23 disclose [1] 817/3 disclosed [2] 813/5 1034/25 disclosure [2] 817/7 1036/8 discovered [2] 888/12 1012/18 discovery [9] 816/9 816/10 816/14 816/17 818/17 820/20</p>	<p>824/10 935/10 935/15 discussed [11] 829/6 833/9 876/7 902/24 920/1 947/19 981/21 987/5 988/23 1008/13 1057/18 discussing [2] 1034/14 1036/12 discussion [8] 773/2 813/19 827/13 827/18 828/8 993/20 1036/8 1055/7 discussions [1] 783/8 display [7] 852/18 856/3 873/14 895/19 913/10 964/8 1046/16 displayed [7] 852/21 856/4 863/21 873/17 883/1 884/5 929/17 displaying [15] 874/15 874/17 914/15 964/5 964/21 965/1 971/19 977/22 978/1 978/7 978/12 978/14 978/18 979/1 979/7 dispute [9] 949/4 956/7 956/10 956/12 965/25 966/2 977/17 977/20 977/21 disputed [1] 771/13 disputes [2] 771/15 772/4 disregard [1] 958/3 distinction [1] 912/23 distinguish [2] 1017/7 1055/4 distributed [2] 875/25 1034/20 DISTRICT [3] 767/2 767/3 1061/9 disturbing [2] 1029/14 1029/24 diverge [1] 984/7 do [404] docs [22] 949/10 949/13 949/19 951/1 951/3 951/18 951/24 952/1 952/10 952/13 952/18 952/19 954/13 954/16 954/18 955/18 956/1 956/8 956/10 956/12 956/23 974/5 doctor [2] 921/16 1041/10 document [79] 812/9 812/11 812/15 813/2 813/11 813/23 814/2 833/5 834/14 883/25 885/11 896/6 896/7 902/15 902/20 914/15 921/10 923/20 929/14 940/15 975/19 975/20 977/22 978/7 1001/13 1007/4 1011/25 1013/18 1017/20 1019/22 1019/25 1020/2 1020/4 1020/5 1020/20 1022/4 1024/20 1025/4 1027/25 1028/15 1029/9 1034/17 1036/11 1036/24 1037/4 1037/15 1037/25 1038/10 1038/17 1039/11 1039/12 1039/25 1040/1 1040/3 1041/8 1042/3 1042/24 1042/24 1042/25 1043/1 1043/7 1043/9 1043/14 1043/14 1044/2 1044/3 1044/5 1044/6 1044/25 1050/11 1050/12 1050/14 1050/19 1050/22 1051/19 1051/20 1052/8 1052/16 1054/2 documentation [2] 831/23</p>	<p>953/23 documents [15] 805/11 805/12 805/16 805/21 813/8 831/9 910/23 1000/7 1005/21 1009/7 1010/14 1019/14 1023/17 1031/21 1039/21 doe [21] 865/2 865/3 865/4 865/11 866/3 866/5 866/7 867/5 867/5 867/9 867/17 869/10 869/12 869/14 869/20 869/22 870/6 872/1 883/4 884/2 884/8 does [84] 771/25 776/7 786/1 791/22 791/22 791/22 792/3 792/8 793/17 794/1 795/4 795/22 795/22 796/25 800/18 800/21 801/11 802/5 802/20 802/21 802/24 809/21 813/25 814/6 815/7 816/22 822/15 826/15 826/17 839/14 864/17 872/17 872/17 872/18 887/4 893/19 893/19 909/1 913/24 919/11 920/13 921/6 925/19 927/21 930/10 930/12 930/22 935/3 935/6 937/1 938/11 938/17 943/2 944/11 944/12 944/14 946/11 948/2 949/19 966/4 972/14 979/14 979/15 986/4 988/7 988/10 988/11 988/13 988/17 988/21 994/23 994/25 1002/24 1006/24 1013/3 1019/21 1022/18 1022/21 1039/23 1043/17 1043/23 1046/8 1049/6 1049/12 doesn't [44] 786/10 802/24 803/17 811/12 811/13 813/8 817/3 821/21 823/25 824/19 824/23 825/17 826/8 826/18 826/25 847/15 927/7 929/5 943/1 943/20 945/10 960/22 962/23 970/16 970/17 970/24 971/6 971/10 972/15 979/3 979/4 979/5 984/6 985/17 988/7 988/8 988/9 988/9 988/12 988/14 988/15 988/20 1019/14 1041/6 doing [22] 770/8 779/14 781/5 785/4 803/15 812/19 823/7 840/10 854/24 888/12 888/13 906/22 964/21 964/25 976/4 978/1 978/18 979/6 988/13 995/12 1002/22 1007/24 dollar [1] 816/1 domino [4] 987/11 987/12 987/21 995/22 dominoes [3] 987/13 987/17 987/24 don't [131] 770/7 771/2 771/10 771/22 772/11 774/7 776/6 781/18 781/22 786/11 786/19 786/24 799/3 799/12 799/15 801/13 802/3 802/3 802/12 802/14 802/14 802/18 802/19 802/23 803/3 804/21 804/21 805/6 805/18 807/3 807/16 808/12 809/21 811/15 812/15 814/24 815/2 815/3 815/21 817/5 817/6 817/19 817/20 818/16 819/1 819/2</p>	<p>819/3 819/5 819/7 819/9 819/19 819/20 819/25 821/16 823/5 823/16 827/2 828/1 835/22 847/12 847/14 848/7 852/1 867/8 868/15 870/22 879/23 889/4 889/7 890/15 893/24 898/12 898/12 899/11 899/22 900/4 900/13 900/15 904/1 920/2 931/16 931/17 945/12 947/15 949/4 951/2 952/3 952/15 956/7 956/10 959/6 960/15 961/3 961/25 962/8 965/1 965/25 966/2 966/14 968/2 968/3 975/2 975/14 975/24 976/18 977/1 977/17 977/20 977/21 978/3 978/10 978/19 980/19 982/1 984/12 989/4 989/13 991/8 991/9 991/13 991/14 997/17 1001/2 1017/18 1042/2 1043/3 1043/10 1045/9 1059/8 1059/13 1059/14 donated [1] 823/14 donation [4] 826/6 826/7 826/17 828/15 donations [1] 825/25 done [22] 808/18 808/25 837/4 840/22 854/16 867/11 867/20 894/1 907/18 907/22 909/11 916/5 937/19 954/24 970/21 982/4 983/12 1000/8 1011/16 1029/13 1029/21 1050/8 dot [3] 920/16 920/16 920/16 dots [1] 840/6 down [29] 770/19 789/2 806/25 828/23 891/11 914/13 914/17 922/14 925/16 925/24 926/9 927/3 938/6 951/5 973/4 987/19 987/22 990/9 996/1 1011/1 1016/25 1019/23 1020/4 1024/4 1027/10 1030/22 1040/7 1051/9 1054/25 download [11] 816/22 817/24 911/3 924/12 924/24 925/3 935/7 935/24 936/2 1016/1 1034/21 downloaded [3] 795/4 817/1 934/1 downloads [10] 816/18 817/16 818/13 934/12 935/4 935/5 935/17 935/22 936/3 936/6 dozens [1] 901/17 Dr [31] 773/15 773/22 825/25 826/1 826/6 829/4 913/7 919/16 926/6 927/11 927/24 928/16 930/15 931/11 937/21 939/21 942/13 943/5 945/14 946/3 947/3 947/19 948/6 948/13 985/20 989/17 989/19 993/7 993/23 995/18 996/3 Dr. [67] 783/20 783/23 784/13 784/18 784/21 787/6 787/10 788/19 790/19 791/8 810/23 821/10 821/15 821/18 822/5 822/16 822/23 826/23 828/16 869/7 903/23 904/2 904/18 904/20 905/3 905/11 905/25</p>

Dr.... [40] 908/5 910/10
910/18 910/19 910/20 910/22
911/22 912/22 913/3 913/8
916/4 918/7 920/6 922/22
923/13 924/1 924/1 924/15
938/17 938/22 939/12 939/13
940/14 944/4 945/22 948/20
950/13 950/23 950/25 952/21
952/25 955/21 957/2 957/9
961/4 961/6 962/15 965/6
977/2 985/3
Dr. Dey [8] 821/10 821/15
821/18 822/5 822/16 826/23
828/16 869/7
Dr. Dey's [1] 822/23
Dr. Martin Rinard [2] 903/23
910/10
Dr. Rinard [9] 904/2 904/18
905/3 905/11 905/25 908/5
916/4 940/14 985/3
Dr. Rinard's [5] 948/20 952/25
962/15 965/6 977/2
Dr. Smedley [29] 783/20
783/23 784/13 784/18 784/21
787/6 787/10 788/19 791/8
904/20 910/22 911/22 912/22
913/8 920/6 922/22 923/13
924/1 924/1 924/15 938/17
938/22 939/12 939/13 950/13
957/2 957/9 961/4 961/6
Dr. Smedley's [13] 790/19
810/23 910/18 910/19 910/20
913/3 918/7 944/4 945/22
950/23 950/25 952/21 955/21
drafting [1] 1026/9
dramatically [1] 848/19
drew [1] 919/2
driven [1] 907/16
drop [2] 771/10 771/11
DTX [8] 812/2 812/4 812/20
829/12 929/17 946/1 998/17
999/7
DTX-0224 [1] 946/1
DTX-166C [1] 929/17
DTX-179 [1] 998/17
DTX-4 [1] 829/12
DTX-765 [3] 812/2 812/4
812/20
dud [2] 970/15 970/16
due [2] 839/10 934/21
duly [2] 778/6 904/9
duration [1] 934/15
during [18] 790/18 808/13
810/23 814/25 817/10 821/5
829/7 833/14 840/19 844/3
876/4 878/24 901/21 934/8
935/9 935/10 935/15 965/4
Dynamic [1] 886/8
dynamically [1] 851/6

E
e-mail [153] 790/2 791/5
791/6 791/20 791/24 793/22
835/14 841/16 841/17 846/1
846/18 846/21 847/2 853/13
854/9 854/9 856/2 856/10
856/11 858/9 861/21 861/23
861/25 862/7 863/4 863/9
863/9 863/15 863/20 864/1

864/4 864/17 864/20 864/22
864/24 865/3 865/23 866/23
867/6 869/21 869/23 870/25
871/15 871/18 872/5 872/6
883/4 883/5 883/24 884/8
884/12 884/13 885/7 885/10
885/14 885/14 885/17 890/10
890/10 890/24 891/6 895/4
895/7 895/7 895/8 895/12
895/12 895/16 895/24 896/5
902/15 921/13 939/1 944/5
944/20 945/3 945/19 945/21
946/11 946/12 946/13 946/15
962/23 963/4 964/8 964/9
964/14 971/20 980/9 980/11
980/12 980/18 987/2 1005/22
1009/1 1009/2 1009/9
1011/12 1011/14 1011/16
1011/19 1011/20 1011/25
1012/8 1012/13 1013/17
1013/19 1016/14 1019/13
1025/13 1025/20 1026/1
1026/1 1026/4 1026/6 1026/8
1026/11 1026/21 1026/23
1027/14 1027/24 1030/1
1030/3 1030/5 1031/25
1032/3 1032/4 1032/7
1032/10 1032/10 1040/19
1044/11 1044/17 1045/4
1047/2 1047/2 1048/22
1049/18 1049/19 1049/24
1050/3 1052/3 1052/4 1052/6
1052/24 1053/1 1055/6
1056/14 1056/15 1056/22
1056/22 1057/5 1057/8
e-mailer [3] 1032/17 1033/7
1034/9
e-mails [3] 820/12 894/25
980/16
each [17] 829/24 841/12
850/11 864/8 864/8 878/24
891/14 891/15 891/18 901/18
913/17 917/1 917/1 934/16
969/14 969/24 1058/5
earlier [17] 773/2 814/17
869/23 883/3 893/16 938/23
941/20 957/14 968/14 977/25
978/20 981/21 985/16 1039/1
1039/25 1057/18 1058/14
early [7] 782/10 821/24
841/15 841/15 879/20 880/7
888/16
easier [6] 971/24 972/12
985/1 1014/21 1025/5 1054/8
easily [9] 965/1 982/1 1005/23
1010/16 1010/25 1011/9
1011/21 1023/19 1032/8
east [1] 1015/9
easy [7] 771/9 846/15
1005/24 1009/7 1013/22
1014/8 1018/14
ecosystem [1] 1015/12
edit [3] 870/14 874/9 929/7
editable [3] 945/9 945/10
945/11
editing [3] 1023/2 1023/6
1038/23
editor [8] 895/3 896/9 896/10
896/20 896/20 897/4 897/6
897/12

EditView [1] 931/2
EDU [1] 1009/5
educational [3] 905/12 1002/4
1002/6
effect [1] 975/20
effectively [1] 923/14
efficient [1] 982/12
efficiently [1] 773/18
effort [7] 799/21 800/21 816/9
893/10 921/22 935/21
1029/13
either [16] 775/15 802/12
805/6 818/14 835/13 850/11
850/13 861/9 863/24 871/1
891/5 912/1 960/22 988/14
1024/15 1032/4
elaborate [1] 795/8
Elbouchikhi [2] 975/17 976/21
electronically [3] 914/15
977/23 978/8
elegant [1] 982/12
element [24] 914/1 914/2
914/4 914/5 914/10 914/14
914/17 914/18 914/21 915/3
918/13 918/15 918/17 918/18
918/20 918/24 919/11 920/8
931/13 937/20 938/10 938/11
995/2 995/5
elements [7] 913/15 918/12
918/25 919/4 919/6 933/16
945/3
eligible [1] 898/19
eliminate [1] 841/22
eliminated [5] 792/13 935/12
935/13 935/20 935/23
ELLIS [1] 769/9
else [20] 776/22 817/7 819/12
840/11 862/13 863/16 866/16
866/17 870/1 871/11 907/24
911/13 926/6 927/11 943/6
945/13 955/25 959/5 988/13
1041/11
elsewhere [2] 916/12 927/9
Emacs [1] 896/19
email [2] 1020/10 1049/7
Emailer [5] 1056/16 1057/1
1057/8 1057/11 1057/14
emphasize [1] 1014/20
employees [1] 1007/19
enable [1] 1059/6
enabled [1] 794/18
encourage [2] 1007/25
1015/13
end [11] 774/3 824/1 824/24
825/17 842/8 876/13 876/14
887/25 993/10 1024/16
1030/10
ends [4] 826/8 903/16
1020/23 1041/13
engaged [1] 834/2
engine [1] 1031/1
engineer [1] 779/8
engineering [6] 779/24 781/14
781/17 781/18 832/18 886/23
engineers [1] 911/9
enhanced [1] 933/22
enjoyed [1] 937/14
enough [6] 785/3 815/5 815/5
933/11 933/13 936/10
ensures [1] 801/1

enter [2] 998/22 1030/10
enters [4] 1777/19 869/3
937/11 998/6
entire [17] 858/8 863/25 864/4
879/8 902/15 902/15 1019/25
1024/20 1040/1 1040/3
1043/7 1043/14 1043/14
1044/2 1044/3 1044/5 1044/6
entirety [2] 957/24 999/4
entities [2] 907/25 990/12
entitled [17] 815/8 830/4
842/9 858/22 875/8 877/2
880/23 886/8 892/7 892/11
958/18 958/19 999/15
1008/15 1012/22 1037/6
1054/7
entity [4] 798/10 943/3 948/3
995/14
entry [13] 857/1 859/22 888/5
895/19 895/23 1005/8 1046/9
1046/14 1046/17 1050/2
1051/10 1051/13 1057/12
Environment [1] 831/20
Environments [16] 833/2
833/9 833/10 833/13 833/21
833/24 834/8 834/17 837/8
838/15 841/4 845/6 846/3
898/5 898/6 898/8
envisioned [1] 1017/4
equipment [1] 834/1
equivalent [1] 780/13
especially [1] 1007/3
ESQ [11] 767/25 769/3 769/4
769/4 769/5 769/5 769/9
769/12 769/12 769/13 769/13
essentially [7] 845/1 846/24
847/13 849/21 890/12 901/18
939/23
established [1] 936/2
et [1] 876/23
Eudora [3] 1032/5 1034/8
1056/16
evaluate [3] 904/19 910/18
945/17
evaluating [1] 907/9
eve [1] 934/23
even [16] 815/8 819/2 826/22
847/12 903/5 913/17 929/5
951/12 966/11 967/3 967/7
967/11 988/15 1024/23
1039/20 1059/10
evening [4] 857/24 933/9
1058/23 1059/22
event [2] 831/10 977/17
events [3] 878/25 909/24
1026/23
eventual [1] 792/9
eventually [6] 792/4 973/21
990/19 1016/4 1016/6
1016/19
ever [15] 786/17 786/21
786/25 792/15 805/18 878/15
889/1 889/1 892/25 893/24
896/2 897/10 908/3 939/23
1023/10
every [10] 818/13 842/23
865/7 904/15 914/1 914/4
917/17 917/19 918/1 962/9
everybody [5] 911/18 927/3
933/6 969/15 1053/24

<p>everyday [1] 1010/14 everyone [4] 770/6 823/17 868/4 1060/9 everything [14] 811/10 811/15 811/21 825/21 840/11 847/11 863/17 913/17 918/4 958/23 964/20 970/25 1019/21 1043/13 evidence [12] 770/25 773/25 776/19 824/7 945/25 997/6 997/12 997/18 998/22 999/9 1059/7 1059/9 exact [3] 883/2 1017/18 1033/14 exactly [15] 796/20 835/22 852/1 870/2 902/1 902/6 964/11 976/18 992/12 1016/9 1035/13 1043/11 1058/22 1058/25 1059/21 examination [13] 773/6 778/10 797/12 797/16 808/13 810/23 817/11 904/12 932/5 937/15 948/7 948/11 993/8 examine [1] 911/6 examined [2] 950/16 1033/9 example [49] 795/4 837/23 845/8 846/1 850/18 850/25 853/21 872/22 874/8 876/11 876/12 880/16 881/25 883/2 884/7 884/23 888/5 891/9 895/6 895/11 895/22 896/8 898/21 924/11 925/20 925/21 926/4 926/10 926/13 927/23 928/17 928/18 928/23 949/16 960/2 960/3 963/3 963/16 963/19 964/7 1002/21 1009/14 1017/12 1020/14 1024/24 1027/4 1028/16 1031/25 1040/11 examples [4] 856/10 907/10 908/1 925/2 Excel [1] 980/23 Excellent [3] 969/25 972/18 973/18 except [3] 847/17 889/10 992/24 exception [2] 840/5 898/11 excerpt [1] 923/20 exchanged [1] 816/6 excitable [1] 811/22 excluded [4] 815/2 815/3 817/12 819/17 excuse [5] 815/14 924/1 949/11 966/18 970/16 excused [2] 815/21 996/5 executable [1] 960/4 execute [2] 971/17 971/18 executed [7] 909/16 915/16 956/14 958/13 958/17 960/1 1053/19 executing [2] 966/5 973/2 exhibit [97] 776/4 813/2 813/4 813/9 822/15 822/22 827/21 830/20 833/6 833/7 833/7 833/8 834/5 834/15 834/16 837/6 840/23 841/1 844/6 845/4 845/9 845/10 845/23 846/17 849/11 855/1 855/9 855/14 855/16 855/23 858/11</p>	<p>858/22 859/19 859/23 860/23 861/17 861/20 862/15 872/9 875/8 876/18 877/2 878/4 880/22 881/2 882/6 882/7 882/8 885/23 886/7 886/16 886/24 887/17 887/22 889/24 892/6 892/11 894/5 897/13 997/10 997/11 1001/14 1001/15 1006/14 1006/15 1008/14 1009/11 1010/9 1012/20 1014/1 1014/24 1022/5 1022/6 1022/11 1023/14 1024/3 1027/8 1029/9 1030/18 1033/21 1033/24 1034/18 1036/18 1037/5 1037/15 1037/25 1038/8 1038/11 1042/18 1042/19 1048/6 1050/16 1051/17 1052/17 1052/18 1054/3 1054/4 Exhibit 10 [1] 858/11 Exhibit 11 [2] 859/23 1034/18 Exhibit 12 [9] 860/23 861/17 861/20 872/9 876/18 1037/5 1037/15 1037/25 1038/8 Exhibit 13 [2] 875/8 1038/11 Exhibit 14 [5] 877/2 1042/18 1042/19 1050/16 1051/17 Exhibit 15 [5] 880/22 882/8 885/23 1052/17 1052/18 Exhibit 16 [4] 882/6 882/7 1054/3 1054/4 Exhibit 17 [4] 886/7 886/24 887/17 887/22 Exhibit 25 [1] 889/24 Exhibit 3 [2] 834/5 840/23 Exhibit 4 [5] 834/15 834/16 841/1 1001/14 1001/15 Exhibit 5 [16] 822/15 827/21 859/19 878/4 881/2 886/16 892/6 892/11 894/5 897/13 1008/14 1009/11 1010/9 1012/20 1014/1 1014/24 Exhibit 7 [14] 844/6 845/10 849/11 855/1 855/9 1022/5 1022/6 1022/11 1023/14 1024/3 1027/8 1029/9 1030/18 1036/18 Exhibit 8 [7] 845/4 845/9 845/23 846/17 855/14 862/15 1033/21 exhibits [13] 775/13 775/19 775/20 775/21 776/15 776/18 829/6 829/10 829/11 998/16 999/1 999/5 999/7 exist [1] 847/15 existed [7] 849/5 867/10 867/10 869/12 884/11 902/8 903/10 existence [1] 1005/5 existing [3] 867/14 896/11 934/24 exists [2] 826/25 962/5 exits [4] 868/3 932/12 996/21 1059/16 expand [1] 782/23 expect [4] 786/8 894/8 1059/11 1060/10 expected [1] 826/23 expensive [1] 796/1</p>	<p>experience [8] 810/19 843/10 905/20 908/5 919/3 939/1 984/7 1040/10 expert [16] 773/15 773/17 773/21 798/17 799/24 815/16 815/17 899/16 900/8 900/14 900/18 900/23 901/4 910/10 933/3 950/12 expert-witness [1] 900/23 expertise [4] 797/2 798/15 801/9 823/11 experts [3] 803/21 815/13 815/19 explain [19] 786/5 808/5 909/12 910/1 912/22 914/7 916/18 918/12 919/17 921/7 925/5 927/23 930/1 942/13 942/20 944/2 975/25 994/12 1002/5 explaining [1] 805/14 explicitly [1] 1016/25 explore [2] 823/24 925/9 explored [1] 826/1 Explorer [2] 780/13 1056/17 expose [1] 1007/8 expressed [1] 992/23 expression [3] 848/15 849/21 1060/6 extend [1] 1031/18 extended [1] 1031/2 extendible [1] 1023/20 Extending [1] 1055/18 extends [1] 1054/10 extensively [1] 963/18 extent [5] 791/18 924/5 934/22 942/7 958/8 external [3] 946/18 1007/21 1007/23 extra [1] 1024/15 extracted [1] 924/21 extraction [1] 810/4</p> <hr/> <p>F</p> <p>face [1] 1060/6 Facebook [1] 820/16 fact [28] 790/7 819/25 820/1 831/1 833/22 841/10 870/13 892/5 893/16 894/12 898/8 935/1 935/10 935/15 936/5 963/13 964/3 966/4 988/15 990/15 990/22 1000/10 1001/8 1021/3 1021/21 1024/20 1041/14 1047/23 Factors [2] 839/3 842/14 factory.create [1] 791/1 factual [1] 808/5 faculty [2] 838/8 838/13 failed [1] 936/23 fair [9] 803/19 804/4 815/5 815/5 820/23 825/11 826/7 1021/6 1041/17 fairly [4] 852/2 989/1 989/10 989/25 faith [3] 806/5 806/21 808/6 fake [3] 811/7 870/23 871/3 faked [1] 876/14 fall [3] 836/9 836/16 879/25 falls [1] 987/21 false [1] 791/17 familiar [13] 780/12 780/20</p>	<p>782/4 782/6 783/7 789/5 789/7 789/8 834/25 839/13 889/5 908/9 952/10 familiarity [1] 954/1 far [11] 771/20 776/17 817/18 817/24 825/2 889/10 890/2 917/23 929/19 938/18 1060/13 fast [2] 775/12 1047/25 faster [2] 797/5 1010/15 favorite [2] 780/22 981/25 fax [2] 867/8 884/9 faxes [1] 820/13 FCE [3] 833/1 833/1 840/6 feature [13] 783/15 787/3 790/24 799/17 814/11 814/14 814/14 909/3 941/9 946/14 1027/10 1053/21 1053/24 features [11] 814/7 814/8 855/8 885/19 901/25 902/12 908/17 909/6 973/22 1030/19 1030/21 February [3] 839/7 839/9 894/3 Federal [1] 824/7 fee [1] 820/4 feedback [1] 839/17 feel [5] 802/24 868/16 868/16 976/21 997/7 feels [1] 899/10 fellowship [1] 1002/14 felt [1] 903/5 few [11] 771/8 772/6 795/6 828/2 920/1 993/7 1001/4 1001/4 1024/15 1032/18 1057/17 Fi [1] 912/1 field [4] 843/8 907/8 946/9 1047/4 fields [5] 867/12 870/14 874/9 884/18 1011/3 fifth [1] 891/11 figure [32] 782/13 785/3 790/6 793/21 795/22 795/25 796/4 816/1 823/1 845/21 846/1 846/18 846/19 848/15 855/12 855/15 855/19 855/20 856/3 861/16 872/8 872/13 873/21 873/21 874/14 882/3 882/8 882/20 887/22 1025/6 1025/16 1026/4 Figure 1 [2] 845/21 861/16 Figure 2 [3] 882/3 882/8 887/22 Figure 3 [4] 872/8 872/13 873/21 874/14 figures [2] 861/3 861/4 file [14] 920/23 923/23 923/24 924/10 924/10 924/12 924/13 925/9 926/25 927/6 927/15 927/21 1009/24 1009/25 filed [2] 771/24 772/22 files [14] 910/24 910/25 911/1 924/6 924/7 924/17 924/21 924/23 926/24 928/7 928/12 928/15 929/9 929/10 fill [3] 872/6 872/6 935/1 filled [1] 1018/14 final [3] 790/25 839/20 1032/8 finally [4] 914/21 1014/18</p>
---	--	---	---

F	E	G	H
finally... [2] 1030/8 1030/10	994/13 994/17 995/6 995/16	846/19 849/24 883/11 891/11	916/21 916/21 916/23 916/25
financial [1] 831/5	996/13 1006/17 1006/20	914/12 915/1 939/25 977/8	917/1 917/2 917/2 917/7
find [45] 831/14 831/15	1008/18 1009/14 1012/25	1042/19	917/18 917/19 917/20 918/6
838/23 856/25 859/22 867/4	1014/7 1015/2 1023/14	four-day [1] 770/9	921/20 923/7 923/11 927/6
867/5 867/17 869/11 869/17	1024/13 1034/19 1042/23	fourth [4] 770/7 777/22 885/6	927/7 936/8 945/7 949/7
869/19 869/21 870/9 874/3	1045/6 1049/5 1055/1	1047/16	949/10 949/13 949/16 949/17
878/4 881/1 888/15 891/9	1055/15 1056/14	Fox [1] 773/17	949/24 950/4 962/4 962/25
895/15 906/25 921/12 925/3	fits [1] 1013/11	frame [2] 805/14 864/11	963/15 964/4 964/5 964/15
929/2 929/3 940/23 941/1	five [6] 843/2 880/8 933/10	framework [137] 783/5 783/11	965/3 965/15 966/5 966/24
946/8 946/17 946/22 946/25	1003/16 1051/20 1058/18	783/15 784/5 785/15 785/25	967/2 967/5 967/14 967/16
1008/18 1009/6 1010/4	five years [1] 1058/18	786/1 786/14 787/16 787/25	967/17 967/18 971/11 972/23
1020/2 1023/17 1027/12	fix [1] 795/23	788/14 788/25 789/11 789/19	973/2 973/3 973/11 974/7
1030/2 1030/7 1030/8 1030/8	fixes [2] 794/5 794/5	790/6 790/14 791/17 792/1	976/22 978/1 982/9 987/3
1031/2 1044/25 1049/12	flag [2] 902/18 903/6	792/13 857/7 858/23 859/24	990/19 993/17 1012/14
1051/14 1052/7	flash [3] 1019/24 1040/2	875/9 877/13 908/18 920/21	1013/10 1035/19
finder [2] 1014/17 1030/6	1040/3	920/25 921/2 921/7 921/18	fund [1] 820/3
finding [1] 1049/2	flaw [1] 790/10	921/19 922/2 922/3 923/3	fundamental [1] 790/10
findings [4] 812/7 812/18	fledged [1] 890/8	923/11 927/10 928/14 930/6	Fundamentals [1] 923/21
906/24 907/1	flew [1] 801/18	930/14 931/3 931/5 940/5	funding [1] 908/3
finds [2] 917/23 1020/17	flexibility [1] 1004/16	940/6 940/12 940/21 942/23	further [7] 828/19 846/4
fine [15] 772/2 772/15 774/20	floating [4] 920/10 920/10	942/24 944/12 947/13 947/16	935/21 992/25 995/24
775/5 776/10 776/21 825/16	939/2 941/23	948/2 949/8 949/11 949/12	1051/13 1055/8
828/7 828/25 903/25 932/20	flow [2] 861/10 909/16	950/1 950/2 961/1 961/3	Future [17] 831/19 833/2
948/14 948/24 972/16 998/5	fly [1] 1040/16	961/5 961/14 961/15 961/18	833/8 833/10 833/13 833/20
finish [2] 1059/4 1059/10	focus [9] 832/15 914/9 915/14	962/4 962/5 962/19 962/25	833/24 834/7 834/17 837/8
finished [2] 906/5 906/11	915/17 915/22 918/8 918/25	963/15 964/12 964/15 964/23	838/14 841/4 845/5 846/3
finitum [1] 862/23	958/7 960/11	964/25 965/15 966/5 966/6	898/4 898/6 898/8
fires [1] 987/10	focused [8] 832/13 912/20	966/19 966/22 966/22 967/1	
firewalls [1] 779/10	918/12 918/16 918/17	967/3 967/5 967/10 967/14	G
firing [1] 1045/24	1016/12 1018/8 1055/5	968/15 968/19 968/23 969/11	game [2] 825/11 826/7
firm [1] 900/5	focuses [2] 957/1 977/5	969/12 969/13 969/14 969/19	gap [1] 935/1
first [171] 770/11 770/20	focusing [1] 915/2	969/22 970/1 970/9 970/13	Garfinkel [1] 932/11
772/19 773/10 778/6 779/4	folders [2] 1014/17 1030/7	970/25 971/2 971/5 971/7	gather [1] 1050/4
780/1 780/21 781/2 781/3	folks [2] 960/4 960/4	971/9 971/10 971/12 971/14	gathering [1] 946/24
785/13 792/20 793/6 793/23	follow [4] 785/9 827/9 919/14	971/17 971/18 971/21 971/23	gave [4] 805/1 1021/12
795/6 795/15 795/18 796/7	998/17	973/3 973/3 973/10 974/7	1021/14 1059/23
836/2 836/2 836/10 836/25	follow-up [1] 827/9	974/11 974/14 974/19 974/20	geared [1] 1009/16
837/1 837/1 837/14 838/17	followed [5] 849/23 849/23	975/7 976/7 978/2 978/5	gears [2] 981/8 985/22
842/17 845/8 845/23 846/12	1009/3 1009/3 1009/4	978/7 978/18 978/23 979/1	general [13] 790/23 816/7
847/11 848/16 849/24 849/24	following [8] 770/23 813/1	979/12 979/23 980/13 980/17	855/18 899/17 899/20 914/8
853/6 854/19 855/23 856/2	823/19 827/18 892/15 932/22	981/3 981/10 981/16 982/9	949/25 961/19 968/10 989/5
857/3 858/4 861/16 861/21	932/24 998/15	982/24 983/4 983/18 983/25	1005/18 1019/13 1024/10
862/8 862/11 863/5 863/5	follows [7] 778/7 830/11	984/2 994/21 995/13	generalization [1] 917/12
864/15 864/19 865/14 865/20	904/10 999/21 1019/7 1024/9	frameworks [1] 963/5	generally [14] 781/16 791/1
865/24 866/1 869/16 869/16	1039/17	Francisco [3] 1035/25	819/15 821/20 825/22 899/14
872/15 872/24 874/4 874/15	food [1] 933/7	1039/10 1041/15	908/8 933/24 938/11 988/25
874/17 874/24 876/8 876/8	foregoing [1] 1061/4	Frank [4] 1018/5 1018/6	989/9 989/25 1003/17 1015/8
876/18 877/12 878/12 878/19	form [8] 772/11 772/17	1021/17 1041/22	generate [2] 865/6 895/13
878/23 883/13 883/14 888/19	772/18 772/22 852/4 852/6	frankly [1] 919/5	generated [4] 848/19 865/10
889/13 892/4 893/23 899/2	917/12 1047/3	free [6] 823/24 826/5 826/6	1036/14 1036/25
901/11 904/9 908/12 914/11	formatted [1] 871/25	868/16 868/17 1032/5	generating [1] 939/19
914/12 914/16 914/17 914/19	forming [1] 950/16	frequently [1] 1018/9	gentleman [3] 1021/11
914/23 915/1 915/3 915/17	forms [2] 876/14 1060/12	Friday [1] 935/13	1021/14 1021/18
918/13 918/14 918/18 918/21	formulating [3] 915/5 922/8	front [5] 827/3 932/24 955/2	gentlemen [8] 777/21 829/21
919/8 919/9 919/16 919/20	940/16	994/8 1057/20	869/4 932/6 937/14 996/19
919/23 922/23 931/14 931/24	forth [2] 934/8 952/3	frozen [1] 938/24	999/11 1058/22
931/24 931/25 933/16 937/20	forths [1] 796/18	FTP [4] 1009/18 1009/21	Geographic [2] 1032/20
938/7 941/6 941/12 941/16	forum [1] 1015/14	1009/25 1016/14	1034/6
941/18 942/5 942/12 942/16	forward [1] 975/2	full [6] 773/6 799/16 829/16	Georgia [25] 778/20 778/23
943/1 943/4 943/14 946/23	found [22] 820/18 837/17	857/16 857/18 890/8	779/3 779/5 822/3 822/5
947/4 948/4 951/21 951/25	861/11 869/15 870/25 896/4	full-fledged [1] 890/8	831/20 832/18 832/23 833/11
952/5 952/18 952/22 954/5	1009/9 1020/3 1028/2 1031/4	fully [1] 890/8	833/15 838/8 838/13 840/1
954/17 955/12 959/20 961/1	1031/6 1031/19 1040/8	function [1] 1047/20	846/3 852/24 859/6 878/5
966/8 966/11 966/12 977/6	1040/12 1043/21 1044/22	functionalities [2] 935/11	879/13 879/14 880/10 887/7
977/8 977/9 977/23 978/8	1045/1 1045/1 1045/4 1045/5	944/1	890/6 897/23 898/5
978/13 979/11 985/25 986/4	1050/3 1058/2	functionality [75] 782/7 798/19	get [92] 770/16 770/25 771/18
986/8 986/17 987/10 987/11	foundation [5] 776/8 812/22	798/24 811/5 874/24 902/19	771/20 771/22 771/23 777/1
987/12 987/19 987/22 988/3	813/14 825/4 907/14	902/19 903/5 903/9 903/13	777/3 781/18 783/14 786/13
988/16 988/19 988/20 994/4	founder [1] 838/14	908/23 908/24 909/7 911/21	792/4 792/10 792/16 794/5
	four [12] 770/9 836/23 843/2	912/12 912/14 913/5 916/20	795/4 795/25 796/2 796/4

get... [73] 796/5 796/19 797/4
805/21 819/11 819/18 834/2
835/11 836/15 839/15 839/17
839/21 840/9 842/5 848/9
851/7 854/11 860/10 861/4
863/17 864/23 864/24 864/25
865/3 865/4 869/24 869/24
870/4 870/4 876/10 882/18
895/19 900/23 905/17 908/25
917/9 918/3 920/14 924/24
930/16 932/14 933/6 944/10
948/16 948/19 949/15 951/5
952/24 956/20 962/10 966/20
968/10 968/25 971/14 974/8
974/14 984/13 985/19 993/5
1010/15 1013/18 1015/25
1034/19 1035/17 1035/19
1047/7 1052/25 1058/6
1058/24 1059/6 1060/10
1060/13 1060/13
gets [5] 796/24 842/24 847/11
907/5 993/21
getting [9] 770/12 770/15
826/13 837/18 883/5 896/22
901/3 936/11 1004/17
getting thrown [1] 896/22
Gil [1] 1021/20
Gingerbread [2] 781/5 781/8
give [27] 771/18 776/13 822/1
835/3 842/20 843/18 844/21
855/18 860/8 888/22 896/23
897/1 897/2 903/24 907/10
933/9 955/11 955/17 964/1
977/1 982/15 1002/5 1005/18
1008/12 1017/13 1049/17
1049/18
given [18] 791/8 843/4 856/10
884/20 901/17 911/25 924/15
950/20 960/8 960/9 982/3
1008/6 1008/9 1021/3 1021/7
1028/21 1049/25 1051/19
gives [3] 802/25 920/16
979/13
giving [1] 1017/12
glad [2] 770/8 772/21
glob [1] 981/17
Gmail [48] 804/24 939/4
939/6 939/6 939/8 942/8
942/10 949/21 963/19 963/21
964/1 964/8 964/11 964/17
968/13 968/15 968/18 969/6
970/2 970/16 970/17 970/19
970/22 970/24 971/3 971/5
971/6 971/8 971/13 974/5
978/1 978/4 980/9 980/13
981/13 981/14 982/6 982/8
982/10 982/18 982/24 983/2
983/5 983/16 983/19 984/22
984/23 987/8
go [68] 778/22 779/17 795/7
796/3 796/6 797/7 806/14
807/5 809/10 816/25 819/11
819/19 842/8 847/5 848/9
851/3 854/10 859/19 862/20
863/2 864/8 866/13 872/4
894/10 894/20 897/13 908/24
911/5 923/18 925/10 925/18
932/14 938/19 939/9 939/20
940/4 941/13 946/18 949/8

953/14 964/22 965/5 965/19
966/1 973/8 974/14 974/18
977/1 981/5 982/8 985/2
986/23 987/25 992/16 994/10
997/20 999/1 1002/13 1005/2
1011/1 1011/6 1014/16
1025/8 1030/6 1035/5
1039/24 1041/4 1042/16
goal [7] 781/23 783/13 841/9
841/22 909/18 909/22 910/5
goals [1] 841/8
GODFREY [1] 769/3
goes [13] 789/16 827/9
883/24 918/15 918/24 924/10
939/14 968/13 1020/16
1020/17 1027/25 1040/24
1046/5
going [106] 770/18 771/9
771/11 772/16 772/17 772/25
773/13 775/15 775/20 775/21
775/24 775/24 781/12 790/5
792/4 792/10 795/12 795/13
795/14 795/16 795/18 796/12
796/14 796/15 797/18 813/7
813/10 813/13 813/15 814/21
819/18 820/12 821/10 821/14
821/17 822/14 823/21 825/23
825/24 826/2 841/1 842/25
843/2 846/2 859/18 868/23
870/16 871/23 886/15 891/2
894/2 903/12 905/22 914/9
917/10 925/17 926/9 928/16
932/8 933/10 936/4 937/24
938/6 938/9 939/16 940/11
946/21 948/17 948/22 962/18
964/22 968/3 969/6 969/20
970/6 970/7 971/14 975/19
976/19 980/15 982/19 982/21
982/25 983/1 983/2 983/7
983/23 983/24 984/8 984/9
984/21 984/21 996/14 997/19
997/25 1006/14 1018/9
1019/16 1019/18 1019/20
1033/21 1039/11 1039/12
1039/24 1046/9 1058/25
good [23] 770/6 777/24
778/12 778/13 797/23 798/2
798/4 806/5 806/21 808/6
816/16 830/13 832/16 891/9
903/19 904/14 932/3 932/5
948/13 969/17 977/19 992/17
1040/10
GOOGLE [170] 767/7 772/25
776/25 777/23 777/24 778/15
779/17 779/19 779/20 779/22
780/1 780/6 780/12 781/13
782/9 783/10 789/25 789/25
790/1 791/22 793/23 794/18
795/5 795/12 796/23 797/5
797/6 798/11 798/16 798/23
799/3 799/12 799/20 800/2
800/5 800/5 800/7 800/12
800/14 800/15 800/17 800/18
800/21 801/5 801/11 802/1
802/5 802/12 802/15 802/17
802/20 802/24 802/25 803/23
804/1 804/16 804/18 804/24
805/1 805/13 805/15 805/20
806/5 806/21 807/10 807/11
807/13 807/21 808/9 808/11

808/15 808/18 808/19 808/21
808/25 809/13 811/1 812/9
813/25 814/6 815/7 816/2
816/6 816/22 816/25 816/25
817/3 819/21 819/25 820/3
820/7 820/17 820/21 820/22
821/18 821/24 823/12 823/14
824/4 824/11 824/11 824/14
824/20 825/1 825/22 825/25
826/5 828/15 829/1 830/21
903/20 903/22 908/3 908/15
910/9 910/23 910/23 911/1
911/2 924/2 924/11 924/24
925/3 928/20 929/22 930/23
930/25 931/12 931/19 934/11
936/25 949/10 949/13 949/17
949/19 949/21 951/1 951/3
951/18 951/24 952/1 952/10
952/13 952/17 952/19 954/13
954/16 954/18 955/18 956/1
956/8 956/10 956/12 956/23
969/11 969/21 970/15 974/5
978/20 980/11 980/21 981/2
981/2 990/22 993/24 996/7
998/11 1000/1 1000/20
1001/5
Google's [20] 791/9 798/6
798/20 804/13 804/14 805/2
805/24 806/1 806/4 806/20
808/3 808/6 814/22 815/6
815/23 815/24 823/4 911/9
1057/18 1058/3
got [43] 770/13 770/15 773/11
777/7 779/10 781/7 786/13
795/20 796/1 796/10 801/18
837/16 845/18 848/19 848/22
854/8 866/8 868/1 891/24
893/17 905/14 921/11 922/10
946/15 954/9 954/9 954/10
954/11 959/18 959/20 961/18
968/13 968/13 968/15 970/17
981/19 981/24 982/22 986/22
987/2 997/1 1014/18 1016/20
Gotcha [1] 969/17
gotten [3] 837/4 932/5
1050/13
government [2] 907/15 907/25
grab [1] 891/23
graduate [3] 779/1 905/23
906/22
graduated [1] 779/5
graduating [2] 779/3 906/3
graphic [2] 849/12 854/19
graphical [1] 841/17
graphical-based [1] 841/17
graphics [5] 878/20 879/8
879/14 1010/5 1010/7
gray [1] 925/12
grayed [1] 920/11
great [10] 772/20 775/4
776/20 796/20 801/10 846/2
962/11 1005/6 1059/8
1059/15
greater [1] 832/16
green [8] 914/18 918/19
921/17 922/4 969/1 969/4
969/16 970/7
Green's [1] 970/8
Greg [1] 844/11
Gregory [18] 833/3 838/4

838/6 839/2 847/4 848/8
848/14 851/22 852/6 852/22
854/8 854/10 854/22 858/25
859/7 864/23 877/14 886/12
Gregory Abowd [2] 838/4
838/6
grew [3] 778/18 778/19
778/21
ground [1] 936/22
group [15] 785/21 833/4
833/11 833/24 833/25 834/3
838/15 846/3 1004/13
1004/14 1004/19 1005/11
1006/9 1016/9 1056/8
grow [2] 841/4 841/5
guess [18] 781/4 785/5 807/4
809/2 842/1 878/7 903/12
928/20 966/1 980/11 983/25
1002/10 1009/22 1013/5
1015/12 1025/17 1045/3
1055/2
guessing [1] 879/4
guesswork [1] 903/11
GUI [1] 841/16
guidance [1] 799/15
guiding [1] 1006/8
guys [2] 806/2 807/5
GVU [1] 887/6

H

had [78] 770/21 770/22
771/10 773/2 773/2 773/2
774/13 774/21 775/23 780/18
780/19 783/16 800/15 808/18
810/4 810/5 810/9 815/13
830/6 832/25 835/11 835/21
835/24 837/4 840/25 847/20
847/25 849/25 850/20 854/16
854/17 856/13 869/15 869/17
874/7 874/18 876/5 876/16
878/19 879/5 880/7 888/23
888/25 890/5 890/6 893/13
895/2 897/25 902/11 902/13
927/19 933/2 936/7 947/3
957/17 989/25 990/18 999/16
1000/8 1004/16 1013/17
1017/20 1018/7 1026/11
1030/15 1031/14 1033/3
1036/17 1042/2 1043/4
1043/9 1045/6 1045/23
1050/13 1056/5 1056/7
1058/9 1059/3
half [4] 792/7 874/6 925/11
932/9
half-hour [1] 932/9
halfway [1] 816/15
hall [3] 767/20 877/18
1018/14
hand [12] 797/18 822/14
826/16 875/22 883/21 904/7
913/19 926/18 1006/15
1037/9 1038/22 1041/25
handed [2] 805/11 812/2
handing [1] 989/17
handle [1] 775/18
handles [1] 945/20
handling [12] 790/13 792/2
792/13 940/19 940/23 942/24
944/12 945/19 946/10 947/23
947/25 1055/6

H
hang [1] 868/8
happen [27] 790/1 795/15
852/13 854/6 854/14 866/21
870/21 871/21 873/9 873/24
876/24 940/8 940/8 942/4
979/3 979/5 986/12 986/14
986/16 987/24 988/18 1033/3
1046/13 1047/1 1047/11
1050/1 1057/25
happened [14] 816/8 844/17
847/2 848/12 865/25 865/25
866/1 867/2 870/2 944/7
944/8 995/21 1045/8 1049/19
happening [6] 795/2 861/8
872/12 975/21 1047/25
1048/9
happens [11] 847/8 866/4
889/25 920/13 922/19 942/12
971/15 979/17 979/18
1019/22 1025/12
happy [5] 795/7 868/18 962/1
969/15 1060/1
hard [3] 770/15 841/11
846/19
has [87] 775/25 776/17
798/19 798/23 799/3 799/12
801/25 802/1 802/12 803/23
804/1 807/13 808/9 814/17
819/4 824/22 825/12 825/13
826/12 827/20 827/22 831/23
848/13 851/21 867/2 867/2
867/17 875/12 875/15 881/9
883/3 884/17 885/13 898/9
904/15 907/10 907/24 908/22
909/5 913/16 913/22 914/1
914/2 915/9 915/19 915/25
920/4 920/4 928/3 932/5
932/17 936/1 938/16 938/25
939/2 941/21 941/23 943/25
944/8 945/9 951/15 963/1
963/7 967/12 967/16 968/23
971/8 971/13 971/16 988/16
988/18 988/21 994/8 1006/16
1019/25 1019/25 1027/20
1032/18 1032/19 1036/14
1037/4 1039/13 1043/10
1048/11 1048/11 1049/9
1052/18
hasn't [6] 803/14 803/14
813/11 825/4 868/12 971/5
HASTINGS [1] 769/11
have [335]
have it be [1] 836/5
haven't [2] 951/24 970/21
having [17] 770/15 778/5
825/10 842/6 860/2 861/9
900/19 904/8 909/8 917/17
947/14 1011/1 1014/16
1016/13 1025/8 1030/5
1036/24
he [78] 808/14 812/23 813/7
813/8 813/11 813/11 813/14
817/13 817/18 817/23 817/24
818/11 818/14 821/16 822/8
823/24 823/25 823/25 824/10
824/13 824/22 824/23 825/4
825/9 825/12 825/13 825/13
825/16 825/16 826/2 826/5
826/5 826/6 826/8 826/12

826/15 826/15 826/18 826/18
826/23 827/3 827/4 827/4
827/4 827/6 835/21 838/8
838/14 838/15 900/15 900/16
910/14 912/25 929/14 930/7
930/8 938/19 957/5 957/12
973/14 975/25 976/4 976/7
976/14 976/18 976/22 996/5
997/5 997/7 1018/7 1018/7
1018/8 1018/9 1018/18
1018/21 1041/23 1041/24
1051/20
he's [5] 776/4 818/5 824/3
916/10 920/9
head [2] 899/17 1004/6
header [1] 946/13
hear [11] 776/17 783/20
813/13 843/23 933/5 933/12
945/22 951/23 963/23
1019/17 1042/10
heard [23] 781/6 783/13
786/6 786/12 794/3 802/3
806/10 815/18 816/13 816/14
819/14 821/21 889/1 912/22
917/22 928/3 929/7 930/4
931/1 939/18 943/25 957/8
975/10
hearing [6] 773/20 783/25
819/16 821/10 821/14 825/2
heavy [1] 1033/4
Hedloy [3] 803/5 803/13
808/13
Hedloy's [3] 804/14 805/3
991/23
held [2] 827/18 860/19
hello [4] 864/10 864/12
864/14 864/16
help [5] 909/23 1003/1
1039/19 1041/6 1042/16
helped [3] 779/12 1042/1
1053/19
helpful [7] 772/12 774/7 847/7
861/9 861/11 882/18 962/2
helping [2] 973/1 1056/1
helps [2] 780/11 989/22
her [3] 868/10 868/15 900/4
here [146] 770/7 770/13
772/12 777/3 777/7 777/22
792/24 798/6 801/3 801/5
801/19 807/6 807/8 807/9
808/3 809/10 810/11 814/2
816/8 822/25 823/4 823/8
823/10 823/11 823/21 825/9
828/24 831/1 832/3 837/24
839/22 842/22 846/10 846/20
850/3 853/11 854/5 854/19
854/20 855/4 855/9 855/19
856/10 859/19 865/25 866/18
867/9 870/2 870/4 870/13
872/23 874/20 876/14 884/2
885/6 885/10 888/11 889/19
889/25 890/2 891/9 898/17
903/24 905/9 905/10 906/16
907/13 909/18 910/5 914/9
915/11 916/5 918/11 919/10
919/13 920/9 920/17 920/18
921/10 921/10 921/18 922/10
923/22 924/8 925/11 926/11
926/18 926/22 927/2 927/11
927/24 928/4 928/5 929/12

929/19 929/25 930/6 931/1
937/25 938/12 939/21 939/11
939/17 939/20 939/24 940/9
944/3 951/3 952/4 954/15
955/13 956/3 957/23 958/23
962/17 964/20 967/22 970/9
972/13 977/8 979/17 982/3
982/17 983/9 991/10 991/14
991/20 995/7 1000/21
1002/16 1004/10 1009/10
1020/22 1028/16 1030/3
1032/12 1032/14 1032/25
1033/15 1040/10 1043/9
1045/24 1055/3 1058/25
1059/4 1059/11
hereby [1] 1061/4
Hewlett [2] 1003/12 1003/25
hey [6] 796/23 851/14 896/24
959/20 962/13 983/15
hiccup [1] 782/18
hidden [3] 848/2 873/19
891/21
hierarchical [2] 1025/18
1028/3
high [8] 835/3 880/12 899/14
949/6 968/8 1002/25 1023/24
1023/24
higher [1] 866/14
highlight [1] 926/1
highlighted [15] 784/20
790/21 835/14 848/20 862/6
895/12 914/13 914/18 918/18
923/22 926/1 938/5 986/15
1025/17 1047/7
highlighting [3] 846/5 914/14
914/22
highlights [1] 849/13
highly [1] 1055/19
him [13] 813/12 824/22 825/6
825/12 825/19 826/16 826/22
878/17 878/18 878/23 944/5
1020/12 1042/1
hint [1] 784/22
hints [2] 785/3 785/19
his [16] 808/14 817/14 821/10
825/9 825/15 825/21 826/9
826/24 827/8 836/1 859/4
900/9 932/24 938/23 1041/1
1046/12
history [1] 1002/4
hit [4] 777/2 868/1 888/23
1039/16
hold [5] 826/25 905/15
1019/23 1020/19 1027/10
holds [1] 1007/7
homepage [4] 833/8 833/22
834/7 888/7
Honor [81] 772/3 772/16
772/25 773/24 774/11 774/19
775/6 775/9 775/17 776/20
776/21 776/24 776/25 777/9
777/16 777/20 777/24 797/13
797/24 799/6 805/8 806/7
806/11 806/12 811/23 812/20
812/21 812/24 813/17 813/18
822/11 824/3 827/12 828/1
828/5 828/12 828/22 829/3
829/11 829/13 829/15 829/19
830/9 868/10 868/21 903/18
903/21 903/22 904/3 910/9

910/13 932/2 933/11 934/5
935/6 936/13 936/21 937/4
937/7 937/8 937/12 937/17
948/8 948/10 989/14 990/3
993/1 993/4 995/24 996/3
996/9 996/17 997/24 998/7
998/13 998/19 998/24 999/19
1040/6 1058/20 1060/2
Honor's [1] 935/7
HONORABLE [1] 767/20
honors [1] 935/7
hood [3] 912/18 912/19
940/10
hook [1] 824/19
hope [4] 927/2 937/14 1059/5
1059/8
hosted [1] 831/20
hour [4] 857/25 905/1 932/9
996/16
housekeeping [2] 932/16
997/1
how [113] 771/15 771/20
771/25 772/3 772/23 775/17
779/15 781/10 782/1 782/6
782/16 783/6 785/16 786/1
786/2 786/5 788/1 789/8
790/9 791/14 792/22 793/18
794/9 795/4 796/25 805/2
814/10 815/24 816/25 817/18
817/18 817/24 821/17 827/9
832/16 841/22 843/15 843/21
843/23 849/14 849/19 850/7
851/2 851/24 852/1 852/8
861/5 861/6 862/5 862/5
862/11 864/3 865/20 869/19
876/20 880/6 880/9 893/5
901/10 901/15 901/15 901/16
902/4 902/4 903/12 903/14
906/9 908/12 911/1 912/11
912/19 912/23 912/24 929/21
948/13 948/14 961/17 972/8
974/23 981/18 982/15 983/22
984/12 985/7 993/21 996/15
1001/21 1003/15 1008/4
1011/23 1011/24 1012/9
1012/9 1013/10 1013/18
1017/16 1017/21 1018/1
1018/13 1024/10 1028/14
1028/20 1028/21 1033/19
1034/13 1036/6 1037/2
1038/16 1042/9 1049/1
1049/12 1053/24 1057/7
however [1] 915/9
HP [2] 1003/15 1003/18
HTML [4] 858/11 858/14
858/19 860/24
http: [3] 852/4 1045/7 1045/11
http://wsj.com [2] 1045/7
1045/11
http://www.Switchboard.com
[1] 852/4
huh [12] 838/3 955/8 965/9
970/14 977/7 978/25 982/7
983/20 987/18 987/20 989/8
993/12
human [7] 811/16 811/18
832/14 839/3 842/14 843/8
843/13
human-computer [1] 843/8
humanities [1] 832/15

<p>H hundred [3] 808/9 843/24 987/21 hundred-thousand [1] 808/9 hundred-thousandth [1] 987/21 hundreds [3] 843/16 901/20 903/15 hypothetical [1] 968/25</p>	<p>ideas [5] 772/14 882/18 897/2 1004/16 1007/23 identification [2] 850/20 1045/2 identified [11] 851/22 860/1 865/7 920/9 943/22 990/15 1005/23 1013/17 1033/23 1044/15 1044/17 identifies [3] 961/4 961/7 1028/17 identify [11] 935/21 938/17 963/21 971/13 990/23 1005/20 1011/11 1012/6 1027/23 1045/25 1046/2 identifying [5] 894/19 990/12 990/18 1009/16 1046/4 ignore [1] 958/3 ignored [1] 848/9 illustrated [1] 916/5 illustration [1] 940/13 image [2] 856/16 887/21 images [2] 861/8 861/10 imagine [3] 849/4 989/5 1040/12 immediate [1] 1004/17 immediately [8] 794/20 794/25 845/16 906/2 927/1 988/9 988/10 988/11 impacted [1] 905/5 implement [4] 909/8 917/18 966/23 967/2 implementation [2] 902/14 916/25 implemented [3] 896/18 897/7 929/22 implements [2] 802/6 947/25 implies [1] 807/3 imply [1] 826/4 important [8] 804/15 912/11 912/13 922/9 926/11 926/15 958/23 1023/21 importantly [2] 785/5 912/15 impossible [1] 791/21 improper [3] 934/10 934/13 960/11 inaccurate [1] 1023/11 Inc [1] 1055/21 include [4] 837/23 882/14 961/3 1056/11 included [10] 783/24 784/6 817/20 837/24 874/23 887/25 898/1 927/19 951/24 1031/20 includes [8] 845/22 852/21 852/23 853/1 883/23 884/7 926/23 964/5 including [5] 808/4 935/8 947/7 973/22 1023/10 inconsistent [1] 934/16 incorporate [2] 982/10 1037/2 incorporated [2] 867/5 1034/19 incorrect [2] 817/15 919/5 increasing [1] 826/19 independent [2] 902/10 913/13 index [2] 837/11 892/5 indicate [5] 785/11 930/8 1006/24 1022/18 1022/21 indicated [1] 1059/19 indicating [1] 933/10</p>	<p>indication [2] 1002/5 1037/17 indicative [1] 811/16 indirect [1] 933/19 individual [7] 779/25 780/7 783/12 789/20 804/11 934/14 948/2 inducement [1] 933/19 industry [1] 843/9 infected [1] 935/24 infinite [2] 862/24 863/3 inflated [1] 817/15 info [7] 863/11 865/17 866/19 867/3 883/18 884/14 926/14 InfoBarControllerLayout [5] 925/21 926/1 926/4 926/11 926/12 infoBarControllerLayout [1] 965/14 information [143] 789/15 816/6 816/18 816/22 817/3 817/6 818/25 819/12 822/19 832/6 832/7 832/9 832/10 835/6 835/7 835/8 835/11 835/11 835/13 835/16 835/17 836/4 837/15 841/11 841/13 841/20 841/25 842/1 842/3 842/6 847/25 848/4 848/11 850/13 850/15 850/21 850/23 850/25 851/4 851/10 851/11 851/12 851/13 852/5 852/18 852/21 853/10 853/11 853/15 854/2 855/25 856/3 856/4 856/7 856/9 856/21 861/11 862/6 862/10 862/18 862/19 863/18 865/8 865/22 866/22 867/4 869/14 869/15 870/3 870/9 870/10 873/17 874/7 876/16 876/21 876/23 880/19 883/7 883/8 883/9 884/5 884/10 884/17 888/25 890/14 890/18 890/20 891/22 892/22 895/1 895/22 897/5 897/18 897/19 901/14 909/17 909/19 911/10 935/16 945/20 946/10 946/22 946/22 946/24 946/24 953/18 1005/21 1007/21 1011/8 1012/18 1013/18 1014/16 1019/11 1019/12 1020/1 1020/16 1020/20 1023/17 1023/20 1027/13 1027/23 1036/22 1037/2 1039/20 1040/7 1040/15 1040/25 1041/1 1041/11 1043/18 1048/12 1049/18 1050/4 1050/7 1050/7 1050/9 1050/13 1050/16 1051/5 1051/14 1055/6 1057/14 1057/15 informed [1] 911/25 informing [1] 846/2 infrastructure [5] 835/5 835/21 847/5 850/10 886/9 infringe [16] 799/20 800/18 802/25 804/19 815/7 913/16 914/2 914/3 914/3 924/2 939/3 943/20 945/8 945/10 945/12 993/25 infringed [4] 802/1 802/2 803/24 805/3 infringement [21] 773/21</p>	<p>801/23 805/15 805/24 806/1 806/4 806/20 808/7 808/23 815/14 904/20 913/18 933/3 933/15 933/19 933/20 933/22 936/23 937/21 957/18 985/23 infringes [1] 912/16 infringing [18] 799/5 799/14 799/22 800/12 800/15 800/21 801/11 802/6 936/3 936/8 943/15 943/16 943/18 943/19 943/21 945/6 988/23 991/3 inherently [3] 1008/19 1008/25 1009/12 initial [1] 1016/11 initiate [2] 871/12 1040/18 initiated [3] 800/12 800/14 974/8 initiating [1] 808/15 InNova [2] 991/19 992/22 innovations [1] 862/8 innovative [2] 1054/10 1055/18 inoperable [5] 969/7 969/8 970/2 970/3 971/3 input [37] 787/10 787/19 788/7 788/20 852/6 854/2 914/19 914/24 918/14 918/22 919/8 919/19 919/22 920/8 920/9 920/17 922/22 931/14 931/23 931/25 938/4 938/8 941/17 941/22 942/16 947/8 979/11 979/20 986/1 986/9 986/18 988/4 994/3 994/16 994/20 1010/16 1011/9 inquiry [1] 933/24 insert [2] 896/3 1052/7 inserted [2] 867/17 1050/22 inserts [2] 1020/20 1041/3 inside [14] 783/1 871/24 916/15 924/17 930/1 930/8 975/7 975/21 975/22 976/8 976/14 1004/14 1012/13 1014/19 insinuation [2] 817/14 817/23 insofar [2] 830/5 999/16 inspect [1] 1051/13 install [6] 923/24 924/12 924/13 984/13 1016/1 1035/18 installed [9] 809/18 809/21 950/6 966/21 967/9 967/13 967/15 968/22 1027/22 installs [1] 816/19 instance [2] 786/20 1005/21 instant [1] 909/19 instantiation [35] 836/25 850/12 854/17 854/19 857/4 857/20 857/20 858/4 860/21 862/4 862/9 862/9 862/11 863/23 872/15 872/16 874/15 874/18 874/19 874/21 874/23 876/9 878/12 878/14 882/11 885/20 887/19 887/21 888/19 889/8 889/14 892/3 892/4 897/8 902/23 instantiations [1] 902/25 instead [10] 779/13 841/24 909/8 916/25 917/17 917/18 943/4 947/13 948/4 1040/12 Institute [2] 906/14 953/8</p>
<p>I I'd [8] 812/20 825/3 870/1 876/7 880/12 915/17 974/25 1040/23 I'll [7] 776/18 889/24 925/4 951/17 976/3 1019/21 1040/6 I'm [122] 770/8 771/21 772/20 774/18 775/11 781/14 781/19 781/20 789/7 797/18 798/17 800/25 801/15 806/23 807/4 807/16 808/20 809/6 810/2 811/6 814/1 816/4 816/7 816/16 818/17 819/18 820/10 820/19 822/14 822/25 823/8 823/11 828/18 832/6 833/5 834/14 836/14 839/13 841/15 859/18 860/10 879/4 882/6 883/13 883/14 890/19 891/8 896/25 897/1 900/14 900/15 925/13 928/10 938/21 946/2 948/14 948/15 951/4 951/5 951/15 951/23 956/6 957/8 960/18 961/23 961/25 962/12 963/11 963/23 964/9 964/9 964/11 967/22 968/1 968/2 968/8 969/5 969/13 969/19 969/19 970/11 973/4 973/25 976/12 976/12 977/4 979/4 980/2 982/3 982/4 983/3 983/10 984/21 991/11 992/9 992/16 995/9 996/11 1006/14 1016/24 1019/17 1019/18 1019/20 1020/10 1022/4 1033/2 1033/13 1033/21 1033/24 1034/17 1036/11 1037/13 1038/1 1038/12 1039/11 1039/12 1039/24 1042/18 1045/18 1045/24 1051/18 1052/16 I've [30] 782/8 789/9 796/17 802/3 805/11 805/18 812/2 812/15 819/17 821/21 822/17 822/24 867/25 891/24 907/18 907/22 916/5 920/10 920/17 923/22 952/3 968/13 968/13 968/15 969/12 981/19 982/22 986/22 1040/7 1048/2 I/O [1] 811/1 IAD [5] 1055/1 1055/23 1056/10 1056/21 1057/7 IBM [1] 908/2 icon [1] 939/6 ICs [1] 779/24 ICSE [2] 886/20 887/11 idea [17] 771/25 772/20 808/14 808/22 808/24 821/19 822/2 835/25 841/14 888/16 896/11 896/17 896/25 897/3 939/23 1005/20 1008/24 ideally [2] 909/24 910/7</p>	<p>ideas [5] 772/14 882/18 897/2 1004/16 1007/23 identification [2] 850/20 1045/2 identified [11] 851/22 860/1 865/7 920/9 943/22 990/15 1005/23 1013/17 1033/23 1044/15 1044/17 identifies [3] 961/4 961/7 1028/17 identify [11] 935/21 938/17 963/21 971/13 990/23 1005/20 1011/11 1012/6 1027/23 1045/25 1046/2 identifying [5] 894/19 990/12 990/18 1009/16 1046/4 ignore [1] 958/3 ignored [1] 848/9 illustrated [1] 916/5 illustration [1] 940/13 image [2] 856/16 887/21 images [2] 861/8 861/10 imagine [3] 849/4 989/5 1040/12 immediate [1] 1004/17 immediately [8] 794/20 794/25 845/16 906/2 927/1 988/9 988/10 988/11 impacted [1] 905/5 implement [4] 909/8 917/18 966/23 967/2 implementation [2] 902/14 916/25 implemented [3] 896/18 897/7 929/22 implements [2] 802/6 947/25 implies [1] 807/3 imply [1] 826/4 important [8] 804/15 912/11 912/13 922/9 926/11 926/15 958/23 1023/21 importantly [2] 785/5 912/15 impossible [1] 791/21 improper [3] 934/10 934/13 960/11 inaccurate [1] 1023/11 Inc [1] 1055/21 include [4] 837/23 882/14 961/3 1056/11 included [10] 783/24 784/6 817/20 837/24 874/23 887/25 898/1 927/19 951/24 1031/20 includes [8] 845/22 852/21 852/23 853/1 883/23 884/7 926/23 964/5 including [5] 808/4 935/8 947/7 973/22 1023/10 inconsistent [1] 934/16 incorporate [2] 982/10 1037/2 incorporated [2] 867/5 1034/19 incorrect [2] 817/15 919/5 increasing [1] 826/19 independent [2] 902/10 913/13 index [2] 837/11 892/5 indicate [5] 785/11 930/8 1006/24 1022/18 1022/21 indicated [1] 1059/19 indicating [1] 933/10</p>	<p>indication [2] 1002/5 1037/17 indicative [1] 811/16 indirect [1] 933/19 individual [7] 779/25 780/7 783/12 789/20 804/11 934/14 948/2 inducement [1] 933/19 industry [1] 843/9 infected [1] 935/24 infinite [2] 862/24 863/3 inflated [1] 817/15 info [7] 863/11 865/17 866/19 867/3 883/18 884/14 926/14 InfoBarControllerLayout [5] 925/21 926/1 926/4 926/11 926/12 infoBarControllerLayout [1] 965/14 information [143] 789/15 816/6 816/18 816/22 817/3 817/6 818/25 819/12 822/19 832/6 832/7 832/9 832/10 835/6 835/7 835/8 835/11 835/11 835/13 835/16 835/17 836/4 837/15 841/11 841/13 841/20 841/25 842/1 842/3 842/6 847/25 848/4 848/11 850/13 850/15 850/21 850/23 850/25 851/4 851/10 851/11 851/12 851/13 852/5 852/18 852/21 853/10 853/11 853/15 854/2 855/25 856/3 856/4 856/7 856/9 856/21 861/11 862/6 862/10 862/18 862/19 863/18 865/8 865/22 866/22 867/4 869/14 869/15 870/3 870/9 870/10 873/17 874/7 876/16 876/21 876/23 880/19 883/7 883/8 883/9 884/5 884/10 884/17 888/25 890/14 890/18 890/20 891/22 892/22 895/1 895/22 897/5 897/18 897/19 901/14 909/17 909/19 911/10 935/16 945/20 946/10 946/22 946/22 946/24 946/24 953/18 1005/21 1007/21 1011/8 1012/18 1013/18 1014/16 1019/11 1019/12 1020/1 1020/16 1020/20 1023/17 1023/20 1027/13 1027/23 1036/22 1037/2 1039/20 1040/7 1040/15 1040/25 1041/1 1041/11 1043/18 1048/12 1049/18 1050/4 1050/7 1050/7 1050/9 1050/13 1050/16 1051/5 1051/14 1055/6 1057/14 1057/15 informed [1] 911/25 informing [1] 846/2 infrastructure [5] 835/5 835/21 847/5 850/10 886/9 infringe [16] 799/20 800/18 802/25 804/19 815/7 913/16 914/2 914/3 914/3 924/2 939/3 943/20 945/8 945/10 945/12 993/25 infringed [4] 802/1 802/2 803/24 805/3 infringement [21] 773/21</p>	<p>801/23 805/15 805/24 806/1 806/4 806/20 808/7 808/23 815/14 904/20 913/18 933/3 933/15 933/19 933/20 933/22 936/23 937/21 957/18 985/23 infringes [1] 912/16 infringing [18] 799/5 799/14 799/22 800/12 800/15 800/21 801/11 802/6 936/3 936/8 943/15 943/16 943/18 943/19 943/21 945/6 988/23 991/3 inherently [3] 1008/19 1008/25 1009/12 initial [1] 1016/11 initiate [2] 871/12 1040/18 initiated [3] 800/12 800/14 974/8 initiating [1] 808/15 InNova [2] 991/19 992/22 innovations [1] 862/8 innovative [2] 1054/10 1055/18 inoperable [5] 969/7 969/8 970/2 970/3 971/3 input [37] 787/10 787/19 788/7 788/20 852/6 854/2 914/19 914/24 918/14 918/22 919/8 919/19 919/22 920/8 920/9 920/17 922/22 931/14 931/23 931/25 938/4 938/8 941/17 941/22 942/16 947/8 979/11 979/20 986/1 986/9 986/18 988/4 994/3 994/16 994/20 1010/16 1011/9 inquiry [1] 933/24 insert [2] 896/3 1052/7 inserted [2] 867/17 1050/22 inserts [2] 1020/20 1041/3 inside [14] 783/1 871/24 916/15 924/17 930/1 930/8 975/7 975/21 975/22 976/8 976/14 1004/14 1012/13 1014/19 insinuation [2] 817/14 817/23 insofar [2] 830/5 999/16 inspect [1] 1051/13 install [6] 923/24 924/12 924/13 984/13 1016/1 1035/18 installed [9] 809/18 809/21 950/6 966/21 967/9 967/13 967/15 968/22 1027/22 installs [1] 816/19 instance [2] 786/20 1005/21 instant [1] 909/19 instantiation [35] 836/25 850/12 854/17 854/19 857/4 857/20 857/20 858/4 860/21 862/4 862/9 862/9 862/11 863/23 872/15 872/16 874/15 874/18 874/19 874/21 874/23 876/9 878/12 878/14 882/11 885/20 887/19 887/21 888/19 889/8 889/14 892/3 892/4 897/8 902/23 instantiations [1] 902/25 instead [10] 779/13 841/24 909/8 916/25 917/17 917/18 943/4 947/13 948/4 1040/12 Institute [2] 906/14 953/8</p>

instruction [9] 774/14 774/22
 775/10 829/20 920/1 960/8
 960/11 960/23 1057/15
 instructions [46] 770/22
 771/16 774/23 782/25 783/3
 783/5 783/10 785/8 785/21
 786/17 786/21 786/22 790/12
 790/22 893/18 908/22 915/15
 915/18 915/19 915/20 915/23
 916/1 920/3 920/4 920/5
 921/25 925/14 938/15 941/8
 941/10 942/3 956/4 956/5
 956/11 956/13 956/18 958/8
 958/12 958/20 959/5 959/11
 959/16 959/23 962/23 971/17
 1060/11
 Instruments [2] 1002/17
 1002/21
 insufficient [2] 934/9 934/18
 integrate [1] 893/10
 integrated [3] 809/23 892/7
 892/8
 Integrating [5] 857/7 858/23
 859/25 875/9 877/13
 integration [4] 839/1 842/10
 848/11 886/8
 Intel [1] 899/21
 intellectual [6] 800/19 800/22
 801/12 802/6 802/21 804/1
 intelligence [6] 1003/3 1003/9
 1004/6 1004/9 1004/11
 1004/22
 intelligent [2] 1002/23
 1002/24
 intelligently [1] 1023/16
 intend [1] 998/4
 intended [5] 855/4 915/15
 956/14 958/13 958/17
 intending [2] 772/24 826/3
 intent [23] 789/11 790/4
 790/25 790/25 791/3 792/1
 792/2 792/5 792/6 792/8
 792/12 792/14 801/19 871/7
 939/17 939/24 940/4 940/7
 940/11 987/5 987/10 1007/20
 1010/8
 intention [2] 773/9 916/11
 intentionally [1] 802/2
 intents [21] 789/6 789/8
 789/13 789/14 789/19 790/13
 792/2 792/13 939/13 939/21
 940/19 940/20 940/23 942/22
 942/24 944/12 947/23 947/25
 987/7 995/7 995/12
 interact [10] 786/1 841/11
 852/9 863/8 901/18 966/22
 974/19 1003/23 1010/25
 1011/5
 interaction [6] 785/14 786/16
 832/14 843/9 843/13 974/20
 interactions [3] 789/10 848/20
 872/20
 Interactive [6] 1001/17
 1001/19 1001/22 1001/25
 1005/4 1005/8
 interest [7] 824/18 831/5
 902/12 1000/23 1001/3
 1001/6 1001/10
 interested [10] 840/3 847/24

894/11 896/24 900/8 901/3
 916/13 917/9 1024/25
 1025/10
 interface [12] 835/10 842/4
 846/24 847/21 848/3 848/18
 851/15 857/11 869/13 870/24
 885/1 918/4
 interfaces [6] 1003/10
 1003/19 1003/20 1003/21
 1004/9 1012/2
 internal [6] 840/8 840/9 866/6
 890/13 1032/6 1049/14
 International [1] 886/23
 internet [23] 780/11 780/13
 1015/20 1016/1 1016/11
 1016/13 1016/21 1017/1
 1017/1 1033/5 1034/6 1041/9
 1054/8 1054/9 1054/10
 1054/14 1054/18 1055/6
 1055/18 1055/22 1056/2
 1056/17 1056/18
 interrupt [2] 814/1 976/12
 interrupting [1] 776/9
 interview [1] 901/1
 interviewing [1] 900/22
 intrigued [1] 846/4
 introduce [4] 778/14 904/16
 997/6 997/12
 introduced [2] 888/14 998/16
 Introduces [1] 1054/7
 introduction [3] 1006/17
 1008/6 1008/9
 invalid [3] 807/14 808/7
 808/11
 invalidity [5] 806/6 806/22
 807/1 807/2 815/14
 inventions [1] 946/9
 inventor [1] 934/20
 inventors [2] 804/11 835/2
 investigate [1] 846/4
 invited [1] 879/10
 invoke [6] 849/15 850/5 850/5
 974/6 974/10 1020/14
 invoked [2] 974/9 1051/18
 involve [1] 876/9
 involved [11] 819/21 830/16
 832/1 833/25 887/23 908/7
 935/11 964/12 995/7 1006/11
 1016/20
 IP [6] 803/1 803/18 803/24
 804/13 804/14 809/7
 iPhone [1] 780/15
 irrelevant [1] 803/23
 is [831]
 Island [1] 906/1
 isn't [11] 807/6 923/10 923/11
 926/11 928/5 928/5 929/1
 929/3 967/18 971/7 974/3
 issue [9] 770/12 773/19
 854/22 911/19 933/11 935/24
 991/25 995/1 1059/21
 issued [3] 830/21 1000/1
 1055/13
 issues [2] 801/22 992/24
 it [784]
 It'd [1] 792/17
 it's [169] 770/19 774/15
 775/24 776/14 778/3 782/20
 784/7 785/2 785/4 785/6
 790/5 790/8 791/5 791/16

792/16 792/24 794/4 794/4
 796/1 796/18 803/7 803/9
 803/10 809/7 811/9 811/14
 811/14 811/16 813/15 816/10
 819/2 819/5 821/1 825/24
 829/11 832/11 836/22 838/25
 838/25 843/9 843/22 846/15
 848/17 849/1 852/17 859/24
 864/7 870/9 872/19 873/7
 874/17 878/7 881/4 883/6
 883/10 887/21 903/11 905/7
 905/10 907/3 907/19 908/14
 909/3 914/13 917/8 917/10
 918/1 921/5 922/14 925/7
 925/7 927/3 927/3 928/14
 928/24 928/25 928/25 928/25
 929/4 929/5 930/5 930/13
 931/8 931/8 932/13 936/2
 936/19 940/21 940/21 941/8
 942/10 942/12 943/10 945/1
 945/9 946/12 946/13 946/20
 946/22 947/21 947/22 949/11
 951/20 952/4 954/22 956/25
 957/1 957/11 958/5 958/6
 960/10 960/19 960/19 960/21
 961/18 962/2 962/22 963/10
 963/10 964/11 966/1 967/9
 967/15 968/19 968/22 970/15
 970/17 970/17 970/20 971/6
 973/2 975/1 977/8 977/9
 978/17 978/17 980/14 980/25
 983/10 987/8 989/22 991/8
 991/12 992/5 992/10 992/20
 995/13 996/7 1001/2 1002/7
 1002/7 1007/13 1013/2
 1013/10 1018/14 1019/6
 1020/18 1023/16 1023/19
 1025/5 1039/11 1040/15
 1043/11 1046/4 1046/9
 1048/21 1054/21 1058/23
 1059/8
 italicized [1] 929/1
 italics [1] 927/3
 item [3] 935/2 1024/13
 1045/13
 items [2] 898/1 1009/15
 iterations [1] 781/9
 its [29] 777/23 789/23 798/23
 798/24 800/12 800/14 804/1
 809/7 814/7 814/18 815/9
 817/3 820/11 820/23 829/1
 898/6 903/20 903/23 904/15
 932/21 932/22 964/3 972/6
 972/20 998/10 998/12 999/4
 1007/7 1036/21
 its allegedly [1] 800/14
 itself [13] 791/18 809/1
 844/21 845/20 847/25 855/21
 860/1 864/11 885/10 971/10
 992/8 992/11 992/19
 IV [1] 767/13

J
 James [8] 773/16 878/15
 878/22 996/10 998/14 999/12
 999/20 999/24
 January [7] 1004/23 1015/8
 1035/25 1039/6 1042/7
 1053/5 1053/13
 January 28th [1] 1053/13

January 97 [1] 1035/25
 Java [36] 847/12 850/9
 921/18 925/13 925/13 925/14
 925/14 961/1 962/19 963/11
 968/15 969/10 969/12 969/21
 970/1 970/9 970/11 970/11
 970/11 970/13 970/25 971/2
 971/6 971/15 971/21 973/10
 974/7 974/14 975/7 976/7
 976/14 978/2 978/17 978/17
 979/12 982/23
 JENKINS [1] 767/24
 JENNIFER [1] 767/20
 Jet [1] 907/22
 Jim [17] 878/22 879/2 888/14
 1006/17 1020/8 1020/11
 1020/15 1020/18 1020/22
 1045/2 1045/14 1046/4
 1046/5 1046/11 1048/12
 1050/23 1051/10
 JLH [1] 767/6
 JMOL [1] 934/6
 job [3] 779/4 832/5 900/23
 jobs [1] 1002/16
 JOHN [17] 769/3 797/23
 798/2 865/1 866/7 867/4
 867/5 867/9 867/17 869/10
 869/12 869/14 869/20 870/6
 884/2 884/8 948/15
 join [2] 786/22 989/20
 joined [11] 779/20 779/23
 779/23 780/6 780/7 780/17
 780/18 906/2 975/8 976/8
 976/15
 joint [2] 771/18 1060/10
 journal [4] 859/12 875/23
 907/3 1045/12
 Journal.com [1] 1020/6
 JRM [5] 1022/13 1022/16
 1037/17 1037/20 1053/8
 JRM28 [1] 1053/5
 Judge [1] 767/20
 judged [2] 830/5 999/15
 judging [1] 1007/3
 judgment [3] 809/5 935/13
 936/11
 jump [1] 770/25
 June [7] 860/14 860/17
 881/13 886/3 892/20 893/7
 893/13
 June 4 [1] 893/7
 junior [1] 779/24
 juror [1] 1059/19
 jurors [4] 770/15 777/2 777/7
 1059/23
 jury [55] 767/12 770/22
 771/16 772/9 774/14 775/12
 776/17 777/18 777/19 777/20
 778/14 779/21 789/12 806/9
 813/16 829/7 829/22 868/3
 869/2 869/3 904/16 905/11
 909/13 914/7 916/19 919/18
 921/8 925/5 932/6 932/11
 932/12 932/24 933/4 937/9
 937/11 937/12 938/1 942/13
 942/20 943/16 943/25 954/12
 994/8 994/12 996/19 996/21
 997/25 998/3 998/6 998/7
 998/16 999/11 1058/22
 1059/16 1060/11

just [125] 771/15 771/19
772/6 775/7 775/8 776/13
776/15 776/16 777/13 782/19
784/22 785/4 785/14 786/16
790/12 795/2 795/21 797/1
797/21 798/9 803/22 804/4
804/13 804/15 817/24 820/22
823/1 823/20 824/17 826/22
826/25 833/9 836/14 837/7
839/13 840/9 841/3 841/24
845/25 846/15 847/15 850/1
850/13 851/8 854/21 854/23
855/18 856/3 861/6 864/7
865/5 866/2 868/8 868/9
875/23 883/13 884/7 884/17
890/19 891/12 893/17 894/19
896/17 899/13 899/16 899/24
899/25 903/11 903/24 909/9
912/16 915/13 917/13 922/6
926/13 930/6 933/10 935/6
938/1 938/14 944/13 947/18
948/17 948/22 957/8 958/19
960/17 960/18 964/20 964/24
968/13 968/19 982/10 982/16
982/17 983/2 983/10 984/16
986/20 993/5 993/7 993/10
994/2 994/8 997/7 997/19
1002/5 1009/1 1011/5
1018/25 1019/25 1025/5
1025/10 1029/18 1033/10
1033/21 1033/22 1039/23
1040/3 1041/7 1041/9 1042/6
1042/17 1053/20 1058/10

K

KALPANA [1] 769/5
KAMBER [1] 769/13
Kansas [1] 778/20
KATZENSTEIN [1] 767/24
keep [7] 796/15 807/25 814/2
951/17 964/20 968/3 1059/8
keeps [1] 969/15
KEMPER [1] 769/4
key [5] 888/23 1008/24
1027/10 1030/19 1030/21
keynote [2] 1035/24 1036/7
keys [1] 1019/23
kid [1] 987/14
kind [33] 781/3 782/8 782/19
785/3 796/3 798/13 802/1
808/5 816/2 851/4 851/10
851/11 851/12 879/7 888/17
888/23 890/14 899/16 907/15
909/23 913/20 920/11 924/14
944/18 962/22 963/21 984/8
1012/11 1012/14 1019/10
1022/2 1035/2 1042/13
kinds [11] 853/14 856/17
861/4 895/1 899/18 1017/20
1023/20 1026/24 1027/21
1027/23 1031/20
King [1] 767/18
knew [5] 800/6 801/15 826/5
864/18 1031/13
knock [1] 980/25
know [138] 770/8 770/22
771/10 771/14 773/18 783/6
786/10 788/1 790/22 791/14
792/3 792/6 792/8 792/22

793/21 794/9 799/3 799/12
799/25 800/25 801/13 802/5
802/3 802/12 802/14 802/15
802/17 802/18 803/13 804/21
804/21 805/6 805/12 807/3
807/16 808/12 812/15 813/8
814/20 814/21 814/24 815/2
815/7 817/5 817/6 817/8
817/19 817/20 817/22 817/24
818/10 818/14 818/14 819/1
819/2 819/5 819/23 819/25
820/2 820/24 821/16 821/20
822/7 822/10 822/24 823/5
823/7 823/16 823/25 825/17
826/2 826/19 827/4 827/6
847/12 848/7 850/8 852/7
864/17 867/8 868/13 873/7
876/7 893/24 900/13 902/4
903/11 910/7 917/21 921/18
923/9 928/5 928/22 929/5
936/6 955/25 961/25 966/23
971/11 974/4 974/18 976/18
976/22 980/2 980/21 982/1
982/13 983/15 984/7 984/12
985/8 987/13 989/4 989/13
992/15 1003/2 1005/22
1007/2 1007/11 1015/11
1015/12 1015/21 1018/1
1019/1 1019/10 1019/19
1020/8 1023/4 1033/3 1033/4
1036/6 1038/16 1040/12
1042/2 1043/10 1045/9
1057/25 1058/8
knowable [3] 818/25 819/2
819/5
knowing [2] 818/3 922/6
knowledge [21] 800/15 823/2
823/23 824/14 824/15 824/20
824/23 824/24 825/12 825/13
825/21 826/8 826/12 826/15
896/23 897/25 1019/9
1019/10 1019/10 1039/20
1043/2
knowledgeable [1] 823/25
known [4] 792/25 800/17
906/15 1005/25
knows [1] 813/14

L

lab [2] 896/13 1006/9
label [3] 812/6 812/13 812/17
Laboratories [1] 1003/12
Laboratory [1] 907/23
labs [6] 888/6 1003/15
1003/18 1003/25 1019/8
1039/22
lack [1] 933/16
ladies [8] 777/21 829/21
869/4 932/6 937/14 996/19
999/11 1058/22
LAHAD [3] 769/3 798/2
948/15
language [7] 890/13 914/6
986/20 988/2 994/5 994/10
1013/22
large [6] 908/18 983/6 998/20
1015/7 1018/14 1039/25
largely [4] 960/13 969/7 970/2
971/3
larger [2] 798/16 896/23

last [33] 780/8 788/23 789/9
842/9 863/10 864/16 871/17
874/4 878/11 881/4 881/5
881/6 892/6 893/6 894/4
898/9 927/22 945/15 1002/16
1005/9 1010/3 1014/23
1022/10 1022/12 1022/12
1022/18 1022/22 1037/14
1037/17 1037/22 1047/6
1047/7 1059/5
lastly [3] 897/13 933/24
934/18
late [2] 770/17 894/2
later [3] 785/2 857/18 1011/22
latter [1] 844/24
launch [18] 789/25 791/19
791/23 793/10 814/18 814/19
863/8 871/23 873/10 873/11
891/17 891/20 1014/19
1019/20 1030/8 1040/9
1047/2 1047/12
launched [11] 780/18 792/7
798/21 847/17 847/18 852/14
874/3 891/15 991/7 1033/17
1035/13
launches [4] 1020/16 1020/19
1029/10 1041/2
law [7] 771/15 771/16 803/20
803/21 807/5 816/15 900/5
lawsuit [5] 808/19 815/23
816/2 830/17 951/8
lawyer [4] 803/5 807/4 815/6
1041/10
lawyers [1] 829/24
lay [1] 825/3
layer [4] 921/15 921/16
921/17 921/17
layers [1] 940/22
laying [1] 776/8
lead [1] 973/21
leader [1] 1006/5
leads [1] 987/3
learned [2] 800/4 880/19
learning [1] 799/20
least [14] 798/14 835/3
868/13 880/21 894/4 925/19
927/23 932/18 946/14 949/6
970/18 980/8 1046/1 1058/24
leave [5] 785/6 792/17 828/24
1030/6 1059/21
leaving [1] 906/2
led [1] 1005/9
left [36] 792/19 846/1 846/22
849/10 861/21 863/20 866/11
867/13 872/11 873/12 873/13
875/12 882/25 884/12 884/14
906/13 907/13 916/7 922/10
925/23 926/18 929/19 938/24
939/4 939/8 939/14 940/15
941/20 942/9 944/4 1003/24
1004/24 1005/2 1006/20
1030/4 1042/21
left-hand [1] 926/18
legal [24] 799/7 800/7 800/17
801/1 801/13 802/4 802/8
802/9 803/2 806/8 807/15
807/19 807/25 808/4 808/8
808/8 816/8 818/20 819/24
820/24 821/19 821/22 823/8
1059/3

legally [1] 934/9
lengthy [2] 796/18 796/22
Lenovos [1] 795/17
less [4] 1003/16 1025/10
1029/13 1040/9
let [37] 784/12 787/17 802/13
805/12 812/25 816/21 828/14
833/5 834/4 834/14 853/6
868/13 882/6 891/9 919/16
919/24 925/10 929/14 930/15
951/5 954/2 959/14 976/3
984/23 989/7 1001/13
1008/19 1011/6 1022/4
1022/7 1023/18 1025/6
1034/17 1038/10 1054/2
1058/12 1060/5
let's [45] 777/17 777/23
806/25 809/10 809/10 827/9
828/11 846/12 868/4 868/22
869/2 869/6 917/23 919/7
923/18 925/11 925/22 932/13
933/12 937/9 937/20 938/19
948/16 951/4 956/9 964/19
966/20 968/8 972/16 981/13
981/23 982/20 984/14 989/23
995/2 996/7 998/11 1008/4
1009/8 1025/13 1039/25
1040/23 1048/13 1048/14
1048/14
lets [1] 909/4
letter [18] 852/17 1020/11
1020/11 1020/15 1025/13
1040/24 1042/2 1047/17
1048/3 1048/19 1048/24
1049/1 1052/6 1052/19
1052/25 1053/2 1053/20
1053/24
letters [1] 820/13
letting [1] 790/5
level [15] 779/24 799/18
835/3 866/14 899/14 940/22
946/21 949/6 968/9 968/9
980/24 1002/25 1023/4
1023/24 1023/24
leverage [2] 848/6 876/21
library [15] 832/12 832/12
876/2 908/18 908/20 908/25
909/1 909/6 909/9 915/15
956/14 958/13 981/11 984/18
984/24
license [13] 808/21 819/14
819/19 819/22 819/25 820/4
820/9 820/17 820/22 934/15
991/19 992/21 992/22
licensed [1] 991/20
life [1] 970/6
light [1] 797/22
lightweight [1] 847/14
like [102] 779/12 779/12
779/13 780/20 780/21 780/22
780/25 781/9 781/25 782/19
791/19 791/23 796/2 798/13
801/1 802/1 806/1 807/5
809/22 813/6 815/8 817/7
818/22 821/21 825/3 826/13
829/5 836/23 841/16 843/2
843/16 853/9 862/14 876/17
891/3 891/6 892/23 894/3
895/19 898/22 899/10 900/17
907/2 908/16 909/1 909/19

Case 1:13-cv-00919-JLH	Document 601	Filed 08/21/23	Page 499 of 775	PageID #: 61078
<p>like... [56] 915/17 915/22 920/12 920/14 921/12 921/23 925/24 926/3 926/19 928/21 930/6 931/1 932/4 932/23 933/5 933/6 940/1 944/20 945/3 946/17 951/12 962/22 963/19 964/21 964/21 964/25 971/8 971/19 974/13 976/5 977/5 980/4 980/23 982/10 983/15 984/2 1009/1 1009/5 1009/18 1009/23 1011/17 1013/20 1016/14 1017/2 1018/25 1020/6 1020/8 1020/10 1027/13 1032/24 1040/8 1040/13 1040/23 1042/22 1043/18 1059/23 liked [1] 962/2 likely [5] 812/10 893/23 893/23 1017/19 1026/22 Likewise [1] 959/8 limit [1] 960/11 limitation [20] 819/7 913/17 913/22 919/9 937/23 937/24 938/2 938/3 938/5 938/18 941/5 941/22 942/15 942/18 947/17 947/21 961/4 985/24 988/15 1026/17 limitations [18] 801/9 913/15 913/24 918/8 948/18 948/23 949/2 951/21 952/6 952/23 954/19 955/14 956/19 956/21 956/24 956/25 957/6 957/13 limited [10] 803/20 857/21 959/23 960/10 960/19 960/20 960/21 989/1 989/10 989/25 limiting [2] 977/15 977/18 line [4] 803/10 803/12 803/16 900/3 link [10] 791/5 792/18 834/11 836/21 839/5 840/23 840/23 858/12 885/24 944/21 linked [3] 838/18 840/11 894/17 linkification [1] 944/8 Linkify [30] 935/12 935/20 943/24 943/24 944/2 944/11 944/15 944/16 944/17 944/23 945/5 945/6 945/10 945/11 988/25 989/2 989/3 989/9 989/11 989/12 989/25 990/15 990/18 990/23 991/2 991/6 991/13 993/11 993/13 993/16 Linkify's [1] 990/11 linking [2] 837/8 837/23 links [9] 834/13 839/24 840/2 840/8 858/15 894/20 897/19 898/12 898/13 list [23] 773/3 775/13 776/13 776/14 813/3 813/4 813/6 813/9 833/23 834/1 836/21 840/25 842/3 883/11 888/24 889/16 889/19 891/4 891/4 997/11 1009/11 1032/9 1056/12 listed [12] 836/22 838/10 839/22 840/24 877/12 877/15 886/12 886/12 926/18 929/3 1002/16 1024/13 listen [2] 823/9 1021/22</p>	<p>listeners [4] 847/24 848/1 848/5 848/5 listening [1] 847/10 listing [1] 838/23 listings [1] 873/19 lists [1] 911/8 literature [1] 889/6 litigation [14] 805/2 805/21 807/4 808/15 824/18 831/6 905/6 951/3 951/6 951/7 951/13 1000/3 1000/24 1001/10 little [25] 770/16 770/19 786/9 797/9 804/9 840/5 846/18 854/23 864/7 881/7 888/18 932/8 943/25 947/3 966/20 979/13 979/22 1003/16 1013/20 1019/24 1040/3 1042/16 1054/21 1059/2 1059/19 live [7] 778/16 778/17 796/9 832/3 840/2 1036/13 1038/4 LiveDoc [2] 1032/19 1033/7 LLamaShare [1] 893/15 LLC [4] 767/7 807/21 830/21 1000/20 LLP [2] 767/24 769/3 load [1] 875/5 loaded [8] 839/24 881/18 885/24 886/2 892/18 1032/14 1058/5 1058/13 locally [1] 1039/20 located [10] 783/1 783/4 787/14 787/23 788/10 788/22 790/13 916/15 921/15 922/3 location [4] 876/19 876/21 946/18 1020/18 Lodge [1] 877/6 log [1] 819/9 logo [2] 822/3 840/6 long [25] 779/15 781/10 782/9 782/21 785/23 795/2 796/4 796/18 796/25 818/8 836/23 843/22 857/21 906/9 913/14 918/9 920/13 938/25 961/25 969/23 996/15 996/16 1001/21 1003/15 1011/11 longer [3] 984/2 984/5 1004/14 longer-term [1] 1004/14 look [56] 774/14 782/19 784/10 785/1 795/24 818/22 831/9 831/13 845/20 848/25 849/1 851/24 855/14 856/23 870/1 877/8 893/4 894/10 912/18 912/19 913/13 913/23 914/11 922/7 923/18 924/16 925/11 925/16 925/22 926/7 926/16 926/16 927/1 928/21 941/7 941/14 943/14 965/20 971/15 971/15 998/3 1000/10 1004/16 1009/1 1012/20 1013/25 1019/13 1020/4 1022/7 1022/10 1024/2 1030/17 1037/14 1050/2 1051/8 1056/9 looked [14] 783/7 788/2 889/10 892/5 910/23 930/12 931/11 976/5 1035/6 1036/17 1038/2 1040/4 1042/6</p>	<p>1042/17 looking [28] 771/7 832/16 841/18 845/22 849/8 855/1 855/11 882/10 894/9 902/19 940/9 944/13 946/12 946/15 958/22 960/15 960/18 1008/14 1009/6 1023/14 1027/8 1027/22 1035/20 1044/19 1044/24 1051/16 looks [10] 826/13 891/3 918/4 920/12 925/24 926/3 926/19 928/22 951/12 1041/1 lookup [11] 850/18 851/17 852/9 853/4 854/5 854/12 873/1 873/4 873/8 873/21 891/10 loop [2] 863/3 863/3 lost [2] 862/15 1059/2 lot [16] 779/10 796/15 796/17 796/17 797/3 811/12 811/13 823/24 879/9 899/19 907/18 914/6 948/15 949/12 985/1 1019/17 lots [2] 953/18 953/23 Lotus [4] 1045/2 1045/14 1050/25 1051/18 lotus.com [16] 1045/4 1046/23 1047/4 1047/17 1048/4 1048/15 1048/19 1048/21 1049/2 1049/8 1049/10 1049/13 1049/24 1050/3 1051/3 1051/7 low [1] 990/12 lower [4] 821/11 849/10 940/22 968/9 lower-level [1] 940/22 lunch [7] 932/8 932/9 933/4 937/14 938/1 947/5 947/19 lunches [1] 932/7</p> <hr/> <p>M M-A-R-T-I-N [1] 904/5 Mac [13] 780/14 888/16 1013/6 1015/24 1016/19 1027/10 1029/1 1032/5 1036/9 1054/11 1055/19 1055/21 1056/2 Mac OS [1] 1027/10 machine [3] 876/5 939/7 1034/15 Machinery [1] 876/1 Macintosh [3] 1027/5 1055/21 1057/22 Macworld [22] 1015/3 1015/6 1015/7 1015/17 1017/24 1018/4 1018/11 1018/18 1021/4 1021/8 1021/15 1022/1 1034/23 1035/24 1035/25 1039/2 1039/5 1041/15 1042/5 1044/20 1053/16 1053/25 made [25] 796/14 803/14 817/14 826/6 826/7 827/10 835/9 842/22 861/6 866/12 866/13 867/25 885/2 891/8 935/21 936/22 938/22 985/1 995/20 1013/22 1018/17 1034/21 1035/15 1041/14 1042/17 magic [1] 1019/23</p>	<p>Magistrate [1] 767/20 mail [164] 790/2 791/5 791/5 791/6 791/20 791/24 793/22 835/14 841/16 841/17 846/1 846/18 846/21 847/2 847/19 853/13 854/9 854/9 855/22 856/2 856/5 856/10 856/11 858/9 861/21 861/23 861/25 862/7 863/4 863/9 863/9 863/15 863/20 864/1 864/4 864/17 864/20 864/22 864/24 865/3 865/23 866/23 867/6 869/21 869/23 870/25 871/15 871/17 871/18 871/23 872/5 872/6 883/4 883/5 883/24 884/8 884/12 884/13 885/7 885/7 885/10 885/14 885/14 885/17 890/10 890/10 890/24 891/6 895/4 895/7 895/7 895/8 895/12 895/12 895/16 895/24 896/5 902/15 921/13 939/1 944/5 944/20 945/3 945/19 945/21 946/11 946/12 946/13 946/15 962/23 963/4 964/8 964/9 964/14 971/20 980/9 980/11 980/12 980/18 987/2 1005/22 1009/1 1009/2 1009/9 1011/12 1011/14 1011/16 1011/19 1011/20 1011/25 1012/8 1012/13 1013/17 1013/19 1013/20 1016/14 1019/13 1020/11 1025/13 1025/20 1026/1 1026/1 1026/4 1026/6 1026/8 1026/11 1026/21 1026/23 1027/14 1027/24 1030/1 1030/3 1030/5 1031/25 1032/3 1032/4 1032/7 1032/10 1032/10 1040/16 1040/19 1044/11 1044/17 1045/4 1046/22 1047/2 1047/2 1048/22 1049/18 1049/19 1049/24 1050/3 1052/3 1052/4 1052/6 1052/24 1053/1 1055/6 1056/14 1056/15 1056/22 1056/22 1057/5 1057/8 mailer [3] 1032/17 1033/7 1034/9 mailing [16] 852/23 873/18 891/1 1046/4 1046/12 1048/21 1048/24 1049/2 1049/4 1049/6 1050/4 1050/25 1051/25 1052/7 1052/7 1052/25 mails [3] 820/12 894/25 980/16 main [3] 789/21 789/21 833/8 maintained [3] 853/18 853/22 898/5 maintenance [3] 794/3 917/23 921/24 major [1] 908/7 majority [2] 912/20 935/9 make [65] 771/11 771/17 771/21 774/4 774/7 775/12 775/16 776/3 780/2 781/21 781/22 781/23 781/24 782/23 783/10 793/23 795/13 795/20 796/5 796/13 796/19 800/21</p>	

M	March 4 [1] 1037/23	954/16 955/17 955/22 955/25	1012/25 1013/3 1013/9
<p>make... [43] 802/20 802/21 802/24 809/18 823/12 823/20 825/25 829/5 836/15 863/2 871/8 884/24 932/8 933/2 933/3 937/1 949/6 950/4 958/22 964/25 968/14 982/13 982/19 982/21 983/24 987/23 998/4 1005/23 1009/7 1010/14 1010/23 1012/7 1014/21 1014/21 1015/13 1017/7 1018/25 1023/7 1024/4 1030/3 1030/4 1046/9 1059/18 makes [7] 799/18 803/23 887/23 949/10 949/13 971/23 1054/8 making [18] 781/20 802/22 803/6 803/7 803/8 803/10 842/18 917/11 933/14 933/18 933/21 933/23 933/25 975/17 1006/7 1011/15 1015/15 1030/10 malicious [1] 790/8 man [1] 878/15 manage [3] 779/12 1039/20 1054/9 management [3] 853/15 856/4 1056/7 manager [22] 846/22 847/18 849/9 853/4 853/6 853/18 854/6 854/12 854/15 863/19 867/11 873/4 873/22 874/2 889/2 890/11 890/25 895/4 895/16 1004/22 1040/14 1048/10 managing [3] 781/19 781/20 785/14 manner [1] 947/8 manual [1] 841/23 manually [2] 841/20 864/6 manufactured [1] 811/6 manufacturer [2] 796/7 796/12 manufacturers [1] 795/15 many [28] 782/1 789/16 816/25 817/18 843/15 843/21 843/23 876/6 880/6 880/9 895/20 898/11 901/10 901/15 901/15 901/16 902/5 903/12 903/14 909/7 961/19 963/16 1011/1 1018/13 1031/12 1031/12 1032/24 1042/9 manzi [28] 1020/8 1020/11 1020/15 1020/18 1045/2 1045/4 1045/14 1046/4 1046/5 1046/12 1046/23 1047/4 1047/17 1048/4 1048/13 1048/15 1048/19 1048/21 1049/2 1049/8 1049/10 1049/13 1049/24 1050/3 1050/23 1051/3 1051/7 1051/10 map [1] 1025/14 mapped [1] 805/2 Maps [1] 792/18 March [7] 839/7 839/9 844/14 892/20 894/3 1037/18 1037/23 March 22nd to [1] 844/14</p>	<p>mark [2] 817/23 1033/21 marked [4] 822/14 997/10 1037/4 1057/20 marketing [4] 1016/9 1016/20 1018/8 1055/3 marking [12] 833/5 834/14 882/6 1001/13 1022/4 1033/2 1033/24 1034/17 1038/10 1042/18 1052/16 1054/2 Martin [6] 773/15 903/23 904/5 904/8 904/17 910/10 Massachusetts [6] 906/4 906/14 953/8 1045/3 1045/14 1051/1 massive [1] 1020/5 massively [1] 817/21 master [1] 859/5 master's [3] 832/17 832/21 1002/9 matching [2] 848/15 849/21 material [3] 837/20 900/17 900/17 materials [10] 840/19 894/17 894/21 910/21 911/14 1000/7 1000/10 1000/13 1018/21 1041/23 matter [7] 914/8 929/7 932/16 997/2 1019/15 1040/5 1041/9 matters [5] 771/3 825/20 1019/11 1041/11 1059/3 MATTHIAS [1] 769/13 MAX [1] 769/4 may [46] 770/16 797/13 797/24 805/8 811/23 822/11 825/14 826/11 827/16 828/23 829/19 829/24 830/8 839/12 852/8 881/9 881/13 882/21 886/3 897/2 912/18 917/10 917/16 920/12 927/6 927/6 928/2 929/7 932/2 948/8 948/9 966/2 967/6 982/13 989/14 995/25 996/3 996/5 998/1 999/18 1006/21 1006/25 1016/16 1017/11 1046/1 1056/25 May 1996 [1] 1016/16 May 1997 [2] 881/9 882/21 maybe [15] 809/3 815/3 815/8 846/14 848/7 878/7 909/20 909/21 916/12 916/12 941/14 963/3 969/15 1003/16 1033/13 MCC [4] 1002/20 1003/6 1003/8 1003/11 me [97] 771/8 771/12 771/18 772/12 774/4 784/7 784/12 787/17 791/3 798/16 802/13 805/12 805/22 808/5 812/25 815/14 816/21 827/3 828/14 833/5 834/4 834/14 835/3 838/23 840/9 842/20 847/5 851/15 853/6 855/18 856/23 860/8 865/20 872/11 873/24 881/1 882/6 891/9 896/5 897/1 897/2 899/12 900/10 919/16 919/24 924/1 925/10 928/11 929/14 930/15 934/3 936/10 948/25 949/11 950/19 950/20 951/5 954/2 954/12</p>	<p>956/23 959/14 964/1 966/18 970/16 972/17 976/5 977/1 982/15 984/23 987/15 989/7 989/20 992/17 1001/13 1004/7 1005/18 1010/19 1019/11 1022/4 1022/7 1026/4 1029/19 1034/1 1034/17 1038/10 1039/1 1040/9 1040/13 1048/14 1049/1 1049/18 1054/2 1058/12 mean [57] 793/17 794/2 801/1 801/15 802/17 803/18 806/24 807/6 807/10 811/9 811/12 811/12 811/13 811/14 824/19 836/19 839/14 887/4 890/22 901/3 908/20 921/8 944/24 950/7 951/11 959/13 964/19 964/19 964/21 964/24 967/20 967/25 968/19 968/25 969/5 969/12 970/7 971/2 974/10 974/15 975/1 975/19 976/3 980/24 981/24 983/7 983/10 983/12 991/8 994/23 1002/24 1003/21 1027/19 1029/24 1040/15 1040/18 1046/8 meaningful [4] 818/9 982/2 1023/17 1027/13 means [18] 794/3 798/9 802/1 836/15 836/16 850/13 925/25 926/9 927/5 927/5 927/14 929/4 975/8 976/8 976/15 990/25 995/8 1040/3 meant [6] 826/25 842/21 857/23 859/16 1008/25 1010/19 mechanism [15] 939/18 939/21 939/22 942/23 947/23 948/1 963/1 963/7 974/6 981/20 982/15 983/3 987/5 995/7 995/12 mechanisms [3] 940/2 950/2 982/2 media [2] 896/12 937/2 medium [1] 993/25 meet [9] 878/23 931/13 931/16 948/15 961/18 977/18 977/22 994/25 995/5 meeting [4] 878/15 878/18 938/17 1035/5 meetings [1] 1009/15 meets [2] 920/7 994/23 Megaphone [3] 1028/24 1029/6 1047/13 member [1] 838/13 memory [2] 794/10 815/11 Menlo [1] 778/17 mention [1] 936/23 mentioned [12] 782/8 792/24 794/4 810/4 819/20 832/25 859/2 869/23 902/13 963/7 985/7 1033/10 menu [19] 780/21 781/1 785/22 920/10 920/10 920/12 920/20 939/2 941/23 1011/2 1027/9 1028/1 1028/3 1028/8 1028/12 1043/21 1045/13 1046/22 1047/16 menus [6] 1011/2 1012/23</p>	<p>1025/19 merging [1] 993/21 mess [1] 770/19 message [12] 846/1 946/19 1011/20 1012/6 1012/8 1012/11 1013/19 1026/23 1029/6 1032/3 1047/3 1056/15 messages [4] 820/13 820/16 909/20 1012/17 met [8] 798/3 860/17 878/17 942/6 942/18 947/21 947/22 949/2 method [2] 927/13 978/13 methodology [1] 934/17 methods [2] 926/8 926/16 Michigan [1] 1002/9 Microelectronics [1] 1003/5 Microsoft [3] 908/2 1019/14 1056/17 mid [1] 1015/7 mid-90s [1] 1015/7 middle [4] 987/23 988/13 1006/2 1024/3 might [29] 771/17 774/17 785/1 785/2 785/5 799/20 802/7 804/19 819/8 831/10 836/24 836/24 842/2 879/2 893/20 894/9 895/15 896/24 903/10 909/7 917/14 932/3 946/16 972/12 994/5 1007/11 1017/4 1040/9 1046/18 Mike [6] 858/25 859/2 859/4 859/5 877/15 893/6 Miller [60] 773/16 878/16 879/2 888/14 996/10 997/4 998/14 999/12 999/20 999/24 1001/14 1001/15 1006/15 1006/17 1008/14 1009/10 1010/9 1012/20 1014/1 1014/23 1022/4 1022/6 1022/11 1023/14 1024/2 1025/17 1027/8 1027/25 1029/9 1030/18 1033/2 1033/21 1033/24 1034/7 1034/18 1036/18 1037/5 1037/15 1037/25 1038/3 1038/8 1038/11 1042/18 1042/19 1044/19 1048/7 1050/16 1051/17 1052/17 1052/18 1054/3 1054/4 1057/20 1057/20 1057/21 1057/21 1057/23 1057/23 1058/14 1058/15 Miller 7 [3] 1025/17 1027/25 1038/3 Miller 8 [3] 1033/2 1034/7 1057/21 Miller 9 [2] 1057/21 1058/15 Miller Exhibit 9 [1] 1033/24 million [2] 823/14 828/15 mind [5] 806/12 818/2 896/9 951/17 984/10 mine [2] 823/8 843/4 Mini [1] 892/7 Mini-projects [1] 892/7 minute [3] 903/24 993/6 996/23 minutes [3] 828/3 843/5</p>

M	move	must	my
<p>minutes... [1] 996/20 Miramontes [7] 1001/16 1001/19 1001/21 1001/25 1005/4 1005/4 1005/7 misleading [1] 785/13 missed [2] 817/23 818/11 missing [4] 770/18 867/12 868/7 913/18 mistakes [1] 1011/15 MIT [3] 896/12 906/15 906/19 mix [1] 892/4 mobile [7] 892/22 908/6 908/8 908/8 908/9 908/15 908/16 Mobiles [1] 796/11 mock [3] 861/18 885/1 893/25 mock-ups [1] 893/25 model [2] 774/14 1019/13 models [1] 793/19 modified [3] 845/15 1037/17 1037/22 modifier [1] 888/23 modify [2] 810/9 890/12 moment [2] 777/10 944/13 moments [1] 920/1 Monday [6] 772/8 803/4 1059/1 1059/5 1059/6 1059/10 monitored [1] 909/16 monitoring [3] 770/17 909/23 910/3 month [1] 785/2 monthly [2] 878/20 879/5 months [4] 797/2 896/15 899/11 1033/13 MOORE [1] 769/9 more [42] 799/24 804/14 804/15 804/20 811/14 813/13 832/13 832/15 835/11 841/25 842/1 847/13 854/22 864/7 873/18 874/25 876/10 888/19 890/22 899/22 908/8 912/15 920/16 934/3 968/9 976/22 983/8 992/7 992/14 992/18 992/21 1010/15 1010/16 1011/9 1019/17 1021/22 1024/6 1030/22 1031/14 1042/11 1051/11 1058/12 morning [20] 770/6 771/2 771/3 771/6 771/19 772/8 777/24 778/12 778/13 797/23 798/2 798/4 798/14 830/13 867/25 868/2 868/5 1059/1 1059/6 1060/8 most [4] 771/12 779/23 783/15 903/2 mostly [1] 849/20 motion [10] 775/16 829/6 867/25 933/6 933/15 933/18 933/23 933/25 936/10 936/23 motions [4] 774/1 868/14 932/19 933/9 Motorola [1] 1000/2 Motorolas [1] 795/16 mouse [13] 835/14 847/3 852/11 883/4 1014/8 1014/20 1020/3 1023/19 1024/6 1025/8 1027/11 1040/7 1052/14 mouthpiece [1] 798/13</p>	<p>move [5] 773/18 909/20 930/15 937/20 975/2 moved [1] 778/20 moves [1] 910/10 moving [1] 938/6 MR [2] 794/3 986/24 Mr. [51] 772/14 773/13 777/25 790/15 798/2 803/5 803/13 803/13 804/14 805/3 805/11 808/13 808/13 811/4 812/2 813/25 814/6 815/18 817/11 817/22 818/11 818/21 820/25 828/14 900/2 900/5 900/7 904/1 929/12 929/16 929/18 929/21 930/4 930/17 932/23 948/19 953/15 965/5 973/14 975/17 976/21 976/25 985/2 985/19 990/9 991/16 991/23 994/9 1018/17 1047/23 1048/3 Mr. Boles [9] 820/25 948/19 953/15 965/5 976/25 985/2 985/19 990/9 991/16 Mr. Burke [1] 811/4 Mr. Casanova [3] 1018/17 1047/23 1048/3 Mr. Choc [8] 773/13 798/2 805/11 812/2 813/25 814/6 828/14 932/23 Mr. Elbouchikhi [2] 975/17 976/21 Mr. Hedloy [3] 803/5 803/13 808/13 Mr. Hedloy's [3] 804/14 805/3 991/23 Mr. Rinard [1] 904/1 Mr. Spence [5] 790/15 929/16 929/18 930/17 994/9 Mr. Ted [1] 777/25 Mr. Toki [4] 929/12 929/21 930/4 973/14 Mr. Unikel [4] 772/14 803/13 900/2 900/7 Mr. Unikel's [2] 808/13 900/5 Mr. Weinstein [5] 815/18 817/11 817/22 818/11 818/21 MR1 [14] 793/16 793/16 793/25 794/1 794/3 794/7 794/16 794/23 795/1 795/4 795/10 799/1 814/19 936/5 Ms. [1] 932/11 Ms. Garfinkel [1] 932/11 MSNBC [1] 806/2 much [27] 772/3 777/4 781/19 798/16 801/14 815/24 818/5 818/11 832/13 841/13 854/24 877/24 895/19 899/22 912/14 936/12 943/19 958/19 963/13 964/3 990/18 992/25 995/25 1025/4 1025/5 1029/13 1058/21 mugshot [1] 821/11 multi [1] 787/3 multi-process [1] 787/3 multiple [13] 842/6 842/25 855/23 855/24 872/17 894/23 895/1 916/22 916/24 917/11 917/16 1018/7 1025/12 multiplier [1] 934/19 musical [1] 903/24</p>	<p>my [64] 774/18 778/3 778/15 779/25 781/23 782/18 784/3 789/9 794/10 797/2 797/23 798/2 798/12 798/18 801/9 803/19 803/19 803/25 804/17 805/18 807/23 807/23 815/10 818/2 818/7 822/1 822/18 823/11 827/20 831/21 833/2 833/3 833/3 836/15 838/7 840/25 841/4 843/2 844/1 852/2 859/6 859/7 860/13 878/23 880/21 896/9 899/17 900/21 901/19 903/3 904/17 904/19 905/14 905/22 906/21 907/7 907/8 908/1 911/12 912/20 919/2 924/20 931/16 943/10 951/20 952/4 952/21 955/23 957/10 957/16 966/14 976/23 977/16 994/1 1001/20 1006/7 1008/5 1020/10 1020/12 1058/10 1059/8 1059/20 1060/6 1061/5 myself [1] 969/13</p> <hr/> <p>N</p> <p>name [88] 778/1 778/3 778/15 797/23 798/2 830/13 833/2 835/22 838/2 847/3 848/11 848/14 848/17 848/22 849/2 849/5 849/8 849/24 849/24 850/16 850/18 850/21 850/23 851/18 851/21 851/22 851/25 852/6 852/10 852/22 853/4 853/12 854/5 854/8 854/11 854/12 854/12 856/1 856/13 862/12 862/14 862/20 862/21 862/21 863/15 864/4 864/15 864/15 864/16 864/20 864/23 864/23 865/2 866/5 866/7 866/8 869/19 869/24 869/24 870/6 872/17 872/19 873/1 873/4 873/9 873/16 873/22 874/4 874/4 883/6 883/24 884/2 884/7 891/1 891/10 900/4 904/4 904/17 946/17 999/23 1013/5 1016/4 1016/21 1043/3 1045/20 1046/4 1050/23 1054/15 named [1] 878/15 namely [1] 943/3 names [4] 849/3 872/21 1046/2 1055/10 narrow [1] 772/3 NASA [1] 907/22 National [1] 907/13 navigate [3] 780/12 780/24 928/23 Navigator [1] 1056/17 NEAL [1] 767/25 near [1] 879/5 necessarily [2] 902/1 989/4 necessary [5] 809/18 809/24 839/19 982/23 997/7 need [26] 770/25 772/8 772/11 776/7 776/23 782/11 782/14 783/14 791/22 791/23 806/17 848/3 908/24 920/2 936/19 955/24 955/25 974/10 979/5 980/13 982/9 1031/16</p>	<p>1034/5 1048/24 1059/22 1059/24 needed [5] 980/17 1026/18 1026/20 1059/21 1060/7 needs [13] 789/25 797/7 824/1 824/24 825/17 827/8 968/20 971/11 974/20 986/12 986/14 986/16 1058/24 neglected [1] 932/24 negotiations [1] 819/21 neither [1] 929/6 net [1] 1009/5 Netscape [7] 871/18 871/24 873/10 885/7 885/17 1034/9 1056/17 network [11] 779/11 839/1 842/10 890/3 891/2 891/3 891/16 892/1 912/2 912/12 912/15 never [18] 787/4 792/17 792/18 793/20 793/21 795/2 797/3 805/16 805/17 806/12 812/15 822/17 822/24 826/21 928/25 1000/15 1000/17 1030/4 new [28] 772/18 780/21 795/21 851/7 863/9 874/11 901/18 1007/8 1011/19 1012/7 1019/16 1023/20 1023/20 1026/23 1027/9 1030/22 1031/2 1031/5 1031/20 1032/2 1045/15 1046/7 1046/9 1046/14 1047/3 1050/11 1050/12 1050/13 newbooks.com [8] 865/2 865/4 865/11 866/3 866/5 869/22 872/1 883/4 newer [1] 1038/1 news [2] 821/15 821/21 Newton [5] 892/23 893/1 893/11 893/14 893/21 next [48] 772/23 777/23 785/1 785/6 785/7 787/17 788/4 788/16 825/24 829/1 829/3 841/20 841/21 841/21 868/19 881/21 884/20 903/20 903/23 906/12 907/17 915/22 923/19 926/7 926/21 927/22 930/15 937/24 938/19 939/20 944/22 965/19 981/5 987/6 996/7 996/9 998/12 998/13 1012/20 1027/8 1029/9 1030/17 1035/20 1042/22 1046/22 1047/6 1047/7 1050/1 nice [4] 810/17 810/18 948/15 1039/18 nickname [1] 859/5 nights [1] 857/24 no [143] 767/6 772/2 772/15 774/11 775/6 775/13 776/11 783/2 783/2 784/3 785/10 785/13 786/19 786/19 786/24 786/24 787/3 787/4 791/13 791/13 792/5 792/5 792/11 792/11 793/5 793/13 793/13 794/17 794/17 794/22 800/20 803/9 803/9 805/5 805/20 808/22 808/24 809/6 809/21 811/9 811/14 812/5 812/22</p>

N
no... [100] 816/16 817/2
821/19 822/2 824/4 825/8
826/22 826/24 828/19 828/22
829/15 831/5 831/7 849/1
864/14 868/21 868/25 869/1
871/14 872/17 872/17 880/17
887/15 899/8 901/8 905/7
908/4 910/13 911/23 913/18
916/11 923/16 931/8 933/15
933/18 933/19 933/21 933/23
933/25 934/6 934/21 934/25
935/21 936/6 936/22 940/25
941/2 949/4 956/20 957/8
959/7 961/1 961/9 962/2
964/3 965/16 966/14 968/2
968/15 968/19 968/23 969/10
970/1 971/1 971/8 974/1
975/24 977/14 978/3 978/19
979/8 984/2 984/5 984/25
985/23 988/8 988/22 990/23
992/17 992/23 992/25 995/23
995/24 998/24 999/3 1000/23
1001/1 1001/2 1001/2 1001/6
1020/7 1022/3 1023/13
1035/4 1035/12 1035/17
1038/9 1042/15 1044/1
1060/1
Nobody [1] 939/3
nominal [1] 934/7
non [13] 773/21 795/5 819/9
933/3 937/21 943/15 943/16
943/18 943/21 945/6 957/18
988/23 991/3
non-Google [1] 795/5
non-infringement [4] 773/21
933/3 937/21 957/18
non-infringing [7] 943/15
943/16 943/18 943/21 945/6
988/23 991/3
nondisclosure [5] 880/16
1035/3 1035/9 1035/17
1042/14
none [6] 880/21 886/6 920/15
928/14 929/8 931/3
noon [1] 771/4
normal [1] 925/24
normally [1] 1020/9
not [282] 771/12 771/21
773/20 776/9 776/24 776/25
778/19 780/12 780/18 783/2
784/3 784/4 785/5 785/10
789/24 790/4 791/13 791/25
792/11 793/14 793/15 795/10
798/3 798/9 798/17 798/23
799/21 801/15 801/23 802/4
802/11 802/15 803/5 803/21
805/5 805/13 806/5 806/21
806/23 807/4 808/20 809/6
809/7 809/21 811/14 811/19
812/5 813/10 813/13 813/15
813/23 814/8 814/14 815/17
816/1 816/4 816/7 816/20
816/22 818/2 818/17 818/17
818/19 818/24 819/8 819/13
819/18 819/21 819/23 820/2
820/3 820/6 820/10 820/12
820/19 820/24 822/5 822/7
822/10 822/24 823/21 825/2
825/21 826/1 826/2 826/15

826/22 826/22 827/22 828/18
830/16 831/7 839/15 839/18
845/16 848/1 848/5 848/8
849/1 851/5 853/16 857/17
859/13 859/15 859/15 861/7
861/9 862/23 863/2 863/5
873/19 880/17 880/21 882/17
884/7 887/15 888/15 889/5
891/8 891/12 893/23 894/1
894/4 897/2 898/22 898/23
899/15 900/11 900/17 900/18
902/1 902/9 902/11 903/10
905/7 908/4 911/23 911/24
912/1 912/8 912/14 917/4
917/10 923/16 923/17 925/20
926/19 927/2 927/14 927/18
927/21 928/24 929/5 930/13
930/25 931/8 931/12 931/20
931/22 934/24 935/8 935/16
936/2 937/1 940/25 941/2
941/12 942/5 942/10 942/12
942/12 942/18 942/22 942/25
945/9 945/11 946/4 947/6
947/10 947/11 947/12 947/22
947/24 948/2 950/21 951/2
951/20 952/5 952/17 954/12
954/15 954/16 954/21 955/11
955/17 955/18 955/23 956/23
958/5 958/6 958/8 959/2
959/23 960/10 960/19 960/19
960/21 961/5 962/22 964/11
965/23 966/11 966/12 966/13
967/3 967/7 967/11 969/6
969/7 970/2 970/17 971/1
973/24 980/2 980/6 980/15
981/11 982/13 983/3 984/18
984/23 985/8 986/4 987/23
988/11 991/23 991/25 992/9
994/3 994/16 994/19 994/19
994/22 994/23 994/25 995/5
995/9 995/12 995/16 995/23
996/11 997/6 997/17 997/19
1000/20 1001/2 1002/16
1004/15 1007/11 1011/13
1015/23 1015/23 1015/24
1016/24 1020/18 1024/14
1024/24 1025/21 1031/13
1031/15 1032/25 1033/13
1038/1 1039/12 1041/9
1045/24 1048/21 1049/12
1050/8 1051/11 1060/4
1060/7
not-self-contained [1] 917/4
note [14] 839/2 842/13 844/7
844/13 844/20 844/21 844/22
845/2 845/10 845/13 845/20
849/11 855/2 855/11
noted [1] 977/8
notes [1] 1061/5
nothing [13] 783/16 799/18
958/25 959/4 959/8 960/9
960/10 979/17 979/18 992/7
992/14 992/18 1001/9
notice [10] 824/9 824/10
850/17 887/24 892/10
1003/24 1009/10 1010/3
1015/19 1056/9
noticed [1] 851/16
notion [3] 825/18 826/23
933/21

November [3] 830/3 889/3
1004/25
November 12 [1] 830/3
now [71] 770/18 774/16
775/17 776/15 781/12 781/19
782/18 788/6 804/1 834/25
845/20 855/1 856/15 859/8
859/18 860/1 865/10 868/12
870/16 883/12 889/16 891/24
892/10 913/23 914/1 925/10
925/16 932/3 936/1 938/1
938/6 938/9 941/25 955/22
965/13 975/10 984/2 984/12
993/20 999/6 1006/14
1006/15 1020/16 1026/4
1033/24 1034/9 1040/2
1040/25 1045/6 1045/17
1045/18 1045/20 1046/7
1046/9 1046/12 1046/14
1047/16 1048/10 1049/4
1049/6 1049/13 1049/14
1049/25 1050/2 1050/8
1050/8 1050/9 1050/13
1050/22 1051/6 1057/11
Numb [1] 871/11
number [92] 782/22 782/22
782/24 791/4 793/22 817/9
817/14 817/15 817/20 830/20
833/6 833/7 833/7 833/8
835/8 835/9 837/6 843/18
848/9 848/25 849/2 849/6
849/20 849/22 850/1 850/9
850/25 851/18 851/24 852/10
853/1 853/13 862/22 862/22
863/6 863/16 864/5 869/25
870/17 870/20 870/25 871/1
871/1 871/15 873/1 873/8
873/18 878/18 883/6 884/9
884/21 887/6 888/5 891/1
891/10 891/23 891/24 895/15
934/4 934/5 935/3 1000/12
1004/8 1006/15 1009/11
1017/4 1024/14 1024/25
1025/14 1025/19 1025/22
1028/4 1028/5 1028/16
1028/18 1028/21 1028/22
1029/7 1029/11 1030/7
1030/10 1032/3 1043/19
1043/25 1044/15 1045/5
1047/14 1047/15 1049/21
1051/17 1052/10 1056/5
Number 1 [1] 830/20
Number 2 [1] 1051/17
Number 3 [3] 833/6 833/7
833/8
Number 4 [3] 934/4 934/5
935/3
Number 5 [3] 837/6 888/5
1006/15
numbers [18] 817/24 818/1
848/7 849/4 891/6 926/9
926/9 935/7 935/24 936/2
944/21 945/3 980/22 981/1
1005/22 1027/14 1027/24
1044/10
O
O-MR1 [10] 793/16 793/25
794/1 794/7 794/16 794/23
795/1 795/4 795/10 799/1

oath [3] 778/6 829/23 904/9
object [3] 776/8 960/5 997/17
objection [20] 774/9 775/6
776/5 776/6 776/12 799/6
806/7 806/13 806/15 812/21
813/22 827/10 829/15 868/20
869/1 910/12 910/13 997/14
998/24 999/3
objections [5] 771/24 775/14
820/18 829/14 998/23
objects [2] 940/20 1025/13
obligation [1] 1042/14
observe [1] 950/21
observed [1] 950/21
observing [1] 1033/20
obtain [1] 946/18
obtained [1] 1002/12
obvious [1] 1016/7
obviously [3] 772/3 773/25
967/14
occasion [1] 878/23
occasions [3] 878/18 878/22
879/18
occur [1] 848/20
occurred [9] 813/1 823/19
849/10 856/14 862/6 866/24
879/19 879/19 1042/6
occurs [2] 883/21 995/22
October [3] 877/5 881/15
887/18
October 14th-17th [1] 877/5
off [25] 774/18 817/18 817/24
818/5 818/11 836/1 840/23
853/22 858/20 881/8 891/21
891/21 902/12 902/19 909/20
910/19 924/21 939/9 949/8
962/23 974/18 980/25 1011/2
1034/22 1049/20
offer [5] 812/20 909/1 937/1
1026/22 1026/23
offers [3] 814/7 872/20 872/20
office [1] 899/10
Official [1] 1061/8
officially [1] 932/17
often [8] 779/12 841/17 902/4
902/8 903/2 903/7 961/16
1013/21
oftentimes [1] 861/7
oh [14] 803/12 814/24 849/1
896/7 923/9 950/11 961/15
964/11 964/19 965/17 982/19
983/23 1020/4 1055/16
okay [124] 773/8 773/20
774/12 775/7 776/1 776/10
776/22 788/15 796/2 801/8
803/17 803/22 805/20 807/24
808/3 816/25 817/18 819/2
819/5 827/7 829/9 831/8
831/17 836/18 837/3 839/22
851/16 858/13 859/18 864/12
869/1 870/16 892/1 896/16
899/1 899/7 899/13 900/1
900/5 900/7 900/11 900/22
900/25 901/3 901/6 903/4
913/12 916/5 925/22 925/24
933/14 935/2 936/19 936/20
936/24 937/5 938/1 941/7
941/16 941/21 941/24 942/2
942/6 942/11 944/7 945/25
949/5 951/2 951/23 952/13

okay... [54] 953/2 953/10
954/23 955/17 956/10 957/2
959/22 961/6 965/13 965/25
966/7 967/23 968/22 969/5
969/17 969/23 970/5 972/1
972/17 973/5 973/9 975/3
976/6 977/21 981/22 982/21
983/23 984/5 984/12 985/1
987/12 989/18 989/23 991/19
992/13 994/2 996/18 996/25
997/13 997/21 998/2 1001/8
1014/23 1017/3 1018/16
1019/2 1032/21 1033/21
1034/11 1034/23 1043/5
1049/22 1059/13 1060/5
old [3] 780/14 819/8 832/11
older [3] 784/7 935/11 936/4
Omni [1] 780/24
once [18] 771/11 779/13
799/1 825/16 826/7 850/3
854/9 856/6 858/17 869/10
873/7 882/21 906/11 917/18
973/20 995/21 1013/16
1040/4
one [165] 770/12 770/13
770/14 773/24 775/11 777/10
779/14 781/7 782/9 782/22
785/5 786/2 787/4 787/5
789/21 789/22 789/23 792/6
796/2 796/23 801/22 804/20
804/21 806/2 807/15 808/25
811/1 814/10 814/12 814/13
814/16 815/19 817/19 819/6
834/23 835/2 836/3 836/4
836/22 840/5 841/9 841/20
849/9 849/13 850/12 853/20
854/17 856/6 856/19 857/24
858/7 860/22 862/8 863/10
865/7 865/24 871/10 872/24
874/20 878/11 878/22 879/2
881/5 881/6 881/9 887/13
888/20 890/22 891/7 891/11
891/11 891/14 891/15 891/18
895/15 898/13 899/24 899/25
902/25 903/2 906/1 907/8
908/16 909/3 912/23 913/17
913/22 914/2 915/21 916/6
916/7 916/13 916/24 917/5
917/9 917/23 917/25 918/13
918/15 918/18 918/20 919/7
919/7 919/8 919/16 923/21
923/22 925/8 936/18 936/22
940/2 945/15 946/14 952/4
952/15 964/23 965/14 968/6
968/10 978/11 979/14 980/1
980/4 980/8 983/21 984/6
985/5 987/19 987/22 989/13
991/8 991/23 997/3 1000/24
1002/17 1003/2 1005/9
1009/25 1012/12 1015/8
1015/8 1015/9 1015/9 1027/7
1028/2 1028/4 1028/17
1032/6 1032/8 1032/18
1032/19 1039/4 1045/2
1045/10 1045/14 1047/7
1050/25 1051/13 1051/23
1051/25 1052/3 1052/6
1052/10 1056/21 1058/24
OneButton [2] 803/9 889/2

OnePlus [1] 795/17
ones [6] 895/5 919/2 919/5
950/19 950/19 997/9
ongoing [1] 898/6
Online [1] 1056/16
only [24] 771/5 772/15 794/22
797/6 822/1 822/1 825/19
831/15 836/24 857/21 862/13
866/15 872/18 872/20 894/24
913/22 916/10 916/11 916/13
918/25 945/11 990/15 1025/9
1043/6
op [2] 1019/19 1019/20
open [17] 792/15 792/18
908/14 964/8 1011/13
1013/23 1014/17 1030/22
1031/17 1035/5 1046/14
1047/3 1050/11 1050/12
1050/19 1051/23 1057/13
open-source [1] 908/14
opened [6] 791/6 792/10
1045/9 1045/10 1048/11
1048/11
opening [4] 808/14 814/25
821/1 821/5
openness [1] 789/24
operate [6] 799/4 799/13
974/12 1028/15 1033/16
1049/20
operated [1] 1033/17
operating [17] 790/10 792/14
888/17 908/10 908/14 934/11
935/9 935/17 935/19 935/22
936/4 936/7 973/9 1013/7
1013/12 1042/4 1055/20
operation [3] 846/9 861/13
1033/9
operational [1] 785/20
opine [2] 952/17 952/18
opined [2] 911/22 924/15
opines [1] 924/2
opining [1] 952/21
opinion [24] 798/18 822/2
922/8 937/19 937/21 945/5
947/4 947/5 951/20 952/4
952/4 952/13 952/15 952/21
955/11 960/25 965/22 966/7
966/10 966/13 966/14 978/10
986/22 995/18
opinions [9] 915/5 918/7
940/17 947/6 947/20 950/15
950/16 992/23 993/23
opportunities [2] 1014/4
1014/7
opportunity [2] 856/13 901/22
opposed [13] 771/15 783/11
789/19 910/3 913/4 915/15
956/13 958/12 995/10 998/22
1014/16 1025/7 1030/5
option [17] 782/23 883/13
883/14 883/17 884/20 885/6
885/13 920/17 1028/22
1045/6 1046/11 1047/1
1047/6 1047/6 1047/7
1047/11 1047/16
options [5] 883/11 920/14
920/16 939/2 1051/20
oral [2] 774/5 774/7
order [17] 770/23 773/12
791/23 799/5 839/11 901/7

963/13 979/20 979/22 980/11
980/12 981/1 1010/25
1025/23 1026/1 1035/10
1043/23
orders [1] 986/21
ordinary [1] 897/23
Oreo [2] 781/6 793/2
organize [1] 916/3
original [8] 793/10 794/6
794/16 874/15 894/14 900/9
1032/16 1057/22
originally [2] 847/12 859/14
OS [13] 789/16 814/15
1013/6 1015/24 1016/20
1027/10 1035/14 1035/18
1054/11 1055/19 1055/21
1056/2 1056/21
OS 8 [2] 1035/14 1035/18
other [76] 770/21 772/15
775/24 782/20 783/21 792/3
792/6 792/7 804/24 839/22
841/12 847/10 849/15 853/14
856/9 859/2 862/18 871/10
871/14 873/16 876/14 877/18
878/24 893/18 894/10 894/17
897/1 906/3 907/6 907/9
910/21 916/3 917/5 917/22
918/2 928/19 928/19 935/4
940/5 949/2 952/4 952/16
958/3 960/6 964/23 966/23
969/14 969/24 980/1 980/4
984/6 989/13 991/8 995/2
997/13 997/14 1000/2
1000/24 1001/5 1005/22
1007/14 1013/23 1019/20
1021/18 1026/19 1026/23
1026/24 1027/14 1031/18
1031/18 1032/17 1032/19
1034/7 1041/7 1055/9
1055/10
others [3] 1001/5 1031/6
1032/18
otherwise [5] 776/3 820/8
906/15 980/15 1023/18
our [26] 770/23 772/5 773/3
773/9 773/13 773/15 777/12
789/10 801/13 807/11 817/8
829/3 853/8 867/25 868/5
887/6 888/15 907/1 908/7
996/19 1005/10 1008/12
1012/5 1013/7 1019/8
1031/15
ours [1] 807/11
out [67] 771/10 771/11 782/13
785/3 786/13 790/6 793/21
795/22 795/25 796/4 801/18
805/2 808/15 808/18 820/20
823/1 837/17 848/15 864/21
868/2 872/6 872/6 875/22
889/3 896/22 899/16 900/10
915/6 915/13 917/9 920/2
920/11 925/25 932/7 932/11
940/6 942/3 944/19 945/8
957/8 969/4 973/2 973/9
975/15 976/20 993/17
1005/24 1006/9 1009/8
1009/11 1011/7 1013/16
1014/14 1017/21 1018/10
1020/16 1023/18 1025/7
1026/21 1028/4 1028/18

1030/6 1044/7 1044/12
1044/29 1049/12 1058/24
outcome [5] 831/5 905/6
1000/23 1001/7 1001/11
outgoing [2] 1011/19 1029/4
Outlook [1] 790/2
outside [4] 816/2 906/4
1007/17 1012/3
outstanding [2] 772/4 772/9
over [14] 770/12 771/7 795/20
843/17 863/11 876/16 907/11
909/12 926/7 1012/7 1036/14
1036/25 1040/9 1040/20
overall [2] 922/6 1057/10
overcome [1] 841/10
overinflated [1] 817/15
overruled [2] 799/8 806/15
Overview [2] 1012/23 1013/9
own [12] 781/23 796/12 804/1
817/8 841/4 888/15 898/2
1001/4 1001/8 1006/7
1007/25 1031/10
owner [2] 789/10 802/22

P
p.m [7] 877/9 877/9 996/21
998/6 1058/23 1059/16
1060/15
pack [1] 924/9
package [6] 910/24 910/25
911/1 927/20 929/10 1035/15
packaged [1] 911/2
packages [4] 926/23 927/24
930/11 930/13
packaging [1] 981/23
Packard [2] 1003/12 1003/25
page [124] 782/20 785/11
786/11 786/13 821/2 831/20
834/4 834/12 834/17 834/20
837/7 837/9 837/12 837/21
837/21 838/18 838/18 839/6
839/24 840/11 840/12 840/19
840/24 840/24 845/6 845/8
845/23 852/7 852/15 852/15
852/16 853/12 855/14 855/16
855/23 856/25 857/19 859/20
860/6 861/16 872/9 873/12
873/14 875/18 876/18 877/8
878/4 878/11 881/21 881/21
885/25 886/8 886/16 887/22
891/14 891/15 891/17 891/20
891/21 891/22 891/24 892/5
892/7 892/10 892/19 893/4
893/6 894/4 897/14 897/18
897/20 898/1 898/5 898/9
922/14 929/18 962/3 973/18
989/22 1001/24 1004/10
1006/20 1008/14 1009/10
1010/9 1012/21 1012/21
1013/25 1022/10 1022/12
1022/18 1023/2 1023/5
1023/6 1023/11 1023/14
1024/2 1024/4 1025/17
1025/19 1027/9 1030/12
1030/17 1030/17 1035/6
1035/11 1036/18 1036/21
1036/24 1037/5 1037/14
1037/22 1038/2 1038/4
1042/23 1044/19 1045/11
1048/6 1050/16 1050/19

<p>P Case 1:13-cv-00919-JLH page... [4] 1051/8 1055/1 1055/15 1056/9 Page 2 [8] 834/20 877/8 1009/10 1024/2 1025/17 1027/9 1044/19 1056/9 Page 3 [3] 1010/9 1048/6 1051/8 Page 4 [3] 1012/21 1050/16 1050/19 Page 47 [1] 989/22 Page 5 [1] 856/25 Page 6 [1] 1013/25 Page 7 [1] 821/2 pages [12] 836/23 836/24 857/21 922/12 1022/8 1036/12 1038/8 1038/13 1038/19 1038/23 1051/23 1055/7 Palo [1] 1003/12 paper [33] 836/12 836/13 836/13 836/18 836/20 836/22 836/23 837/5 837/17 837/17 838/17 839/15 839/16 839/18 842/9 842/23 846/16 857/16 857/17 857/18 858/12 858/15 860/11 870/2 879/22 879/25 887/8 887/8 892/16 896/25 898/21 899/4 936/12 papers [17] 772/7 831/23 838/24 839/22 840/18 843/3 878/8 878/13 886/17 889/16 897/2 898/16 901/9 902/2 902/7 902/11 907/6 paragraph [3] 989/20 989/24 1029/9 Paragraph 123 [1] 989/20 parameter [5] 852/5 871/25 873/11 1049/22 1049/25 parameters [1] 1049/17 Pardon [1] 928/11 Park [3] 778/17 877/6 1051/1 parse [1] 864/21 part [77] 781/10 782/22 783/24 784/11 785/12 786/18 789/19 790/9 790/24 791/12 793/11 794/10 794/10 796/14 798/19 798/21 800/4 807/24 807/25 814/17 815/12 816/5 816/17 817/12 818/17 831/8 833/11 834/2 840/21 844/23 845/13 846/23 854/24 855/9 864/19 880/19 882/23 889/6 893/1 897/10 897/22 898/6 901/11 903/1 903/3 903/13 907/7 914/17 918/4 922/9 923/14 930/5 946/13 950/15 950/15 954/21 954/22 972/2 972/6 972/19 977/10 978/23 1000/6 1012/5 1013/14 1015/24 1016/19 1017/17 1025/11 1025/22 1026/1 1030/8 1032/22 1035/14 1043/8 1053/15 1056/2 partially [1] 872/2 participated [1] 1021/10 particular [62] 791/2 795/14 802/4 824/25 832/10 837/20 838/16 841/7 844/13 844/20 850/4 850/5 851/4 856/24</p>	<p>858/3 859/8 860/10 860/20 860/25 861/20 863/24 863/24 867/16 873/14 873/21 875/21 876/25 881/2 882/20 885/16 887/24 893/4 903/5 918/8 920/7 925/19 938/10 942/14 947/21 961/11 1001/24 1006/3 1008/2 1009/24 1011/19 1017/8 1024/25 1028/13 1030/12 1034/2 1037/14 1037/25 1043/6 1043/18 1044/14 1044/17 1046/3 1051/19 1052/3 1055/5 1055/13 1057/19 particularly [2] 919/3 1043/17 parties [4] 771/18 774/13 998/15 998/19 parts [11] 784/20 923/7 940/5 958/3 971/8 971/16 971/18 1003/22 1011/7 1012/3 1015/11 party [4] 775/8 829/24 1028/23 1047/12 pass [4] 786/14 789/15 852/5 948/6 passed [1] 1013/18 passes [1] 1029/11 past [5] 834/21 834/23 876/7 1000/8 1058/18 paste [3] 895/24 983/4 1050/12 pasted [1] 1050/16 pasting [1] 1020/10 patent [58] 799/5 799/14 799/15 799/16 799/25 800/3 800/6 800/16 801/16 801/19 801/22 802/2 802/16 802/22 803/20 803/21 804/20 805/3 807/2 807/3 807/4 807/7 807/14 807/14 808/7 808/11 815/7 815/20 820/11 930/24 931/20 943/22 945/17 945/17 945/18 945/19 945/19 945/23 946/4 946/5 946/6 946/7 946/11 946/21 947/1 947/1 951/9 953/10 954/1 955/7 991/21 992/2 992/7 992/8 992/19 992/19 992/21 994/18 patent's [2] 806/6 806/22 patents [6] 804/4 804/13 804/14 934/14 991/23 991/25 pattern [2] 1031/3 1031/5 patterns [1] 1031/10 PAUL [1] 769/11 pause [2] 868/1 984/14 paused [1] 868/1 paying [2] 820/23 1000/20 payment [1] 934/15 PC's [1] 1041/2 PDF [2] 858/14 858/19 PDX [6] 784/15 787/7 787/17 788/6 788/17 790/16 PDX-3-104 [1] 790/16 PDX-3-107 [1] 787/7 PDX-3-108 [1] 787/17 PDX-3-109 [1] 788/6 PDX-3-110 [1] 788/17 PDX-3-69 [1] 784/15 peer [1] 907/14 people [45] 779/11 781/24</p>	<p>781/25 782/1 808/9 833/23 843/23 877/22 877/25 879/9 879/10 880/9 880/13 893/18 894/9 901/13 901/15 901/24 902/5 911/2 915/6 922/13 1003/1 1003/22 1005/24 1007/10 1007/13 1007/16 1009/7 1014/21 1015/13 1016/20 1018/13 1021/22 1021/25 1031/12 1031/18 1035/2 1037/2 1042/12 1056/8 people's [2] 907/9 1046/2 per [1] 912/18 percent [3] 818/3 990/12 990/16 Perfect [1] 932/4 perform [14] 850/14 856/18 866/17 890/18 915/16 956/15 958/14 958/18 963/13 964/1 980/18 981/1 995/20 1054/9 performance [1] 1041/5 performance [2] 941/4 942/8 performing [3] 946/23 950/15 961/4 perhaps [4] 772/5 916/20 1008/24 1020/9 period [4] 840/20 858/2 1009/4 1034/13 permission [1] 802/25 permit [1] 861/2 permitted [4] 825/14 826/9 826/11 990/4 perpetual [1] 863/3 person [17] 785/7 848/12 884/11 897/17 901/18 915/8 974/5 1012/8 1022/22 1045/1 1046/10 1046/15 1048/13 1049/7 1049/19 1051/15 1053/1 person's [4] 803/1 803/18 803/24 867/10 personal [13] 823/23 824/23 825/9 825/12 825/13 825/21 841/4 853/15 856/4 897/25 909/20 1001/25 1058/10 personally [12] 796/17 837/21 839/23 875/5 897/17 902/13 1000/1 1032/21 1033/8 1038/18 1038/22 1056/1 perspective [6] 782/15 901/19 901/20 913/5 915/8 1013/16 PETERMAN [1] 769/12 Ph.D [13] 831/21 832/22 833/3 835/20 838/7 859/7 897/23 905/15 905/17 953/2 954/11 1002/11 1002/12 phone [89] 774/18 782/21 782/22 791/4 791/19 791/24 793/22 794/22 796/13 848/7 848/8 848/25 849/2 849/3 849/5 849/22 850/25 851/17 851/24 852/10 853/1 853/9 853/13 862/22 862/22 863/6 863/16 864/5 867/8 869/25 870/17 870/20 870/23 870/25 871/1 871/8 871/11 871/13 871/15 873/1 873/8 873/18 883/6 884/8 884/21 884/24</p>	<p>884/25 885/1 885/4 891/1 891/6 891/10 891/25 891/24 895/15 912/23 945/3 1000/15 1005/21 1024/14 1024/25 1025/14 1025/19 1025/22 1027/14 1027/24 1028/4 1028/16 1028/21 1029/1 1029/3 1029/4 1029/7 1029/11 1029/19 1030/3 1030/4 1030/10 1030/10 1040/9 1040/18 1040/20 1043/25 1044/10 1044/14 1045/5 1047/15 1049/20 1052/10 phone's [1] 796/20 phones [4] 795/3 796/24 797/3 908/15 photographs [1] 909/19 phrase [1] 1010/21 physical [4] 844/25 844/25 845/17 1028/25 physically [1] 897/5 pick [8] 784/14 795/16 841/24 841/25 842/5 1043/25 1044/7 1044/11 picked [9] 848/22 864/23 864/24 864/25 865/1 865/2 865/3 865/4 865/5 picking [1] 962/12 piece [9] 856/11 856/12 875/22 972/23 1001/10 1040/19 1043/18 1053/1 1053/10 pieces [7] 855/24 865/7 921/19 944/19 983/11 1012/18 1023/17 piggyback [1] 820/21 Pink [2] 859/4 859/4 Pinkerton [6] 858/25 859/3 859/4 859/5 877/15 893/6 Pixel [4] 797/8 947/7 950/3 950/3 Pixel 2 [1] 950/3 Pixel 3 [1] 950/3 Pixels [1] 797/5 place [22] 884/25 917/25 925/13 929/4 963/1 963/8 963/8 968/25 985/12 985/14 1020/9 1020/21 1029/4 1029/12 1039/9 1040/13 1043/11 1045/13 1046/3 1046/7 1046/11 1047/14 placed [1] 829/23 places [4] 914/12 915/1 922/13 1019/12 placing [1] 1029/19 plaintiff [6] 767/5 769/6 932/17 934/20 935/16 998/9 plaintiff's [1] 868/23 plaintiffs [2] 868/12 934/8 plan [2] 796/14 1015/19 plane [1] 801/18 planning [2] 774/1 774/1 Plano [1] 1002/19 plans [2] 1014/24 1015/16 platform [6] 781/23 835/6 908/9 922/19 978/17 980/7 platforms [1] 908/8 play [15] 817/5 817/8 818/19 819/3 819/4 819/9 903/24</p>
--	--	---	---

<p>play... [8] 911/2 924/11 924/24 925/3 970/21 999/6 1039/15 1042/22 played [8] 775/16 776/7 776/14 829/16 829/18 868/24 987/14 999/4 playing [1] 868/9 plays [4] 830/10 999/20 1019/7 1039/17 please [66] 770/6 774/12 777/6 777/22 778/1 778/9 778/14 779/21 782/15 784/14 787/7 788/4 788/16 789/3 790/15 795/9 797/14 805/11 806/18 823/18 829/20 830/13 838/24 847/7 856/24 859/20 859/22 869/5 878/5 881/3 904/3 904/7 904/16 905/11 907/10 914/7 916/18 921/8 929/16 929/17 929/18 931/18 936/16 937/13 937/16 942/13 942/20 944/2 947/5 947/20 948/20 956/6 965/6 976/25 981/6 985/3 985/19 986/23 998/8 999/23 1012/21 1022/11 1037/15 1039/15 1057/7 1059/17 plug [3] 835/23 1028/25 1029/1 plus [5] 874/25 914/1 914/4 980/17 981/16 PM [2] 932/12 937/11 point [31] 771/8 773/7 824/22 850/2 863/13 867/24 894/12 899/12 910/9 932/5 946/1 964/25 968/14 996/18 1005/3 1006/17 1008/18 1009/14 1010/3 1010/13 1010/20 1014/7 1014/14 1015/2 1015/19 1017/6 1028/2 1028/11 1055/10 1056/12 1056/14 pointed [1] 1026/4 pointing [1] 957/8 points [2] 1009/11 1010/23 policies [4] 802/5 802/13 802/14 802/18 pop [3] 851/14 1043/20 1044/21 pop-up [2] 1043/20 1044/21 pops [2] 926/14 1040/7 populate [9] 842/3 854/21 863/18 866/25 869/13 874/1 874/2 874/3 891/15 populated [8] 856/17 870/4 870/5 870/24 872/3 874/6 884/13 884/18 portfolio [2] 795/24 934/13 portion [7] 856/3 856/16 922/4 958/2 958/19 986/15 1027/8 portions [1] 971/13 position [5] 807/12 807/13 814/22 1004/18 1004/21 possession [1] 831/11 possibility [2] 912/5 1059/12 possible [9] 775/12 793/23 830/5 895/8 901/24 999/16 1024/5 1031/13 1059/7 possibly [2] 1001/5 1011/15</p>	<p>post [2] 837/15 840/18 postdoctoral [1] 1002/14 posted [6] 887/16 894/8 899/3 1030/12 1035/6 1038/23 poster [1] 881/15 posting [1] 899/2 potential [1] 794/19 potentially [5] 795/2 863/16 936/3 991/3 1021/21 POTTER [1] 769/9 Power [1] 1057/23 PowerBook [8] 998/20 1033/22 1033/23 1033/25 1034/2 1057/23 1058/5 1058/14 PowerBooks [5] 997/5 1032/11 1032/14 1057/22 1057/25 powered [1] 923/24 practice [1] 898/17 pre [3] 901/9 1019/19 1019/20 pre-op [2] 1019/19 1019/20 preadmit [4] 775/15 775/17 776/9 776/15 preamble [5] 914/13 977/9 977/12 977/15 977/19 precise [1] 1025/10 precisely [2] 962/5 991/14 predated [1] 896/14 predefined [2] 851/3 851/5 prefer [4] 955/23 955/23 976/23 997/6 prejudice [2] 825/23 826/19 preliminary [2] 774/22 877/3 preloaded [2] 931/13 941/1 premier [1] 843/7 preparation [1] 899/8 prepare [1] 1053/1 prepared [3] 773/18 905/8 933/8 preparing [1] 1018/22 prescribed [1] 855/8 present [30] 774/1 774/2 775/3 811/17 811/18 829/25 830/6 844/3 844/21 855/8 926/4 926/19 926/20 928/15 929/5 929/9 935/15 961/5 963/11 965/16 967/10 967/16 980/15 994/21 994/22 995/13 995/13 999/17 1007/23 1059/9 presentation [40] 842/21 842/24 843/23 844/22 844/24 844/25 845/14 855/9 857/6 857/14 857/17 876/25 985/20 1006/24 1008/2 1008/12 1011/10 1011/18 1011/24 1014/1 1014/13 1016/17 1017/12 1017/17 1017/19 1018/3 1018/12 1018/17 1021/1 1021/3 1021/7 1021/15 1021/23 1022/1 1022/3 1039/2 1041/14 1041/18 1042/6 1053/17 presentations [1] 903/13 presented [23] 771/16 784/17 821/17 830/3 845/1 876/3 877/17 877/19 881/15 882/22 883/13 883/14 883/17 885/6</p>	<p>934/25 936/1 950/22 998/14 999/12 1013/13 1028/1 1028/8 1045/7 presenting [3] 843/19 879/16 1028/11 press [10] 782/21 782/22 987/2 1027/11 1054/4 1054/7 1054/25 1055/13 1055/17 1056/9 pressed [1] 938/25 pressing [2] 785/23 942/8 presumably [3] 915/20 968/22 1046/5 pretrial [1] 770/23 pretty [7] 818/5 818/11 821/24 828/2 848/14 963/13 1020/3 previous [3] 791/16 940/1 940/11 previously [4] 967/17 1038/2 1039/13 1047/14 primarily [2] 1032/2 1047/21 primary [5] 789/10 884/8 884/8 884/9 906/21 printout [3] 886/7 1001/15 1022/7 prior [1] 1002/16 Private [1] 984/5 probably [20] 801/18 812/18 815/10 818/3 831/22 841/2 843/1 845/15 870/23 879/20 896/14 991/9 991/12 994/9 1031/14 1034/8 1034/10 1042/11 1047/13 1058/18 problem [5] 771/3 841/6 868/23 904/15 918/1 problematic [1] 956/3 problems [2] 795/23 841/7 procedure [2] 774/9 824/13 procedures [1] 802/5 proceed [11] 772/1 772/24 797/24 828/11 830/8 868/19 869/6 937/5 937/16 948/9 999/18 proceeding [2] 823/8 1061/6 proceedings [8] 770/4 816/8 839/3 842/13 844/23 857/10 875/24 1060/15 process [22] 787/3 795/11 796/3 796/7 796/22 796/25 816/7 816/10 818/8 899/20 972/3 972/6 972/20 974/23 975/4 975/8 976/8 976/15 1017/14 1026/9 1056/4 1057/10 processed [1] 835/8 processes [1] 975/21 processing [4] 1026/25 1027/2 1027/4 1050/19 processor [1] 1050/10 produce [3] 851/10 852/7 891/5 produced [9] 844/24 866/7 866/8 872/23 950/13 950/17 950/19 1000/12 1039/13 producing [1] 896/21 product [36] 781/24 802/22 802/25 803/6 803/7 803/8 803/10 803/14 803/17 803/23 814/15 889/2 912/16 913/16 945/8 980/5 1004/17 1005/12</p>	<p>1006/9 1015/15 1015/22 1016/9 1018/11 1018/23 1017/9 1028/23 1032/19 1033/6 1034/6 1034/7 1034/20 1054/15 1055/1 1055/5 1056/7 1056/8 productize [1] 1006/10 products [20] 798/20 798/24 804/24 805/2 814/7 814/18 820/7 911/19 949/2 950/17 953/18 1004/15 1007/14 1007/15 1008/1 1015/14 1017/5 1033/10 1037/3 1055/10 professional [1] 905/20 professor [8] 822/8 832/6 906/7 906/17 906/19 909/13 910/16 953/7 Professor Rinard [1] 910/16 proffering [1] 775/8 program [130] 791/20 791/24 792/15 823/15 828/16 860/16 877/3 907/9 914/11 914/16 914/20 914/23 915/2 915/3 915/5 915/7 915/10 915/12 915/19 915/24 915/25 916/10 918/15 918/21 919/9 919/20 919/23 919/25 920/4 922/23 931/15 931/24 932/1 933/16 938/8 938/13 941/7 941/9 941/12 941/13 941/17 941/18 941/25 942/1 942/5 942/12 942/16 943/1 943/4 948/4 948/5 951/1 951/5 951/6 951/14 951/18 951/20 951/21 951/24 952/2 952/5 952/8 952/14 952/18 952/19 952/22 954/3 954/5 954/7 954/13 954/17 954/19 954/21 955/1 955/12 955/19 956/1 956/20 956/24 957/5 957/15 957/21 958/6 961/2 977/6 977/23 977/25 978/8 978/14 979/12 982/6 983/21 985/25 986/5 986/8 986/18 988/3 988/16 988/19 988/21 994/4 994/13 994/17 994/24 995/1 995/6 995/16 995/17 995/19 1004/6 1004/7 1004/22 1006/5 1013/19 1026/6 1026/22 1026/25 1027/2 1027/4 1029/11 1030/2 1030/3 1030/5 1030/6 1041/24 1045/21 1047/2 1047/3 1048/11 1052/11 program's [1] 1032/10 programmatic [1] 1012/2 Programmed [1] 811/21 programmer [2] 916/13 916/14 programs [14] 938/15 957/3 957/12 966/8 966/11 966/12 1003/1 1026/14 1032/4 1033/3 1033/16 1033/22 1034/1 1034/12 progressed [1] 1006/8 project [25] 833/24 837/7 837/19 838/16 840/3 841/2 859/20 888/13 898/6 909/13 909/15 909/22 909/25 910/2</p>
---	---	--	--

P
 project... [11] 1005/16 1006/6
 1006/9 1008/24 1010/8
 1022/9 1032/7 1032/18
 1043/3 1054/23 1056/7
 projects [13] 834/1 834/9
 834/17 834/20 834/21 834/23
 840/25 892/7 907/19 908/7
 909/11 1004/8 1005/10
 prominent [1] 908/17
 prompt [1] 1043/24
 property [6] 800/19 800/22
 801/12 802/6 802/21 804/2
 proposal [2] 771/19 771/23
 proposals [5] 771/7 771/13
 772/6 772/13 772/21
 propose [1] 775/2
 proposed [1] 1060/10
 Propulsion [1] 907/23
 protect [1] 809/7
 protecting [1] 779/10
 protocol [1] 1010/1
 prototype [1] 836/11
 proud [1] 907/1
 Provably [1] 909/25
 provide [20] 776/14 798/15
 798/17 799/15 805/7 818/18
 858/15 901/6 931/25 949/17
 973/2 979/20 979/22 994/3
 994/16 1007/21 1010/24
 1011/12 1026/20 1036/22
 provided [16] 805/13 813/6
 829/15 888/7 911/16 915/9
 919/13 962/4 963/15 964/15
 965/15 971/20 971/23 978/5
 998/25 999/3
 Providence [1] 906/1
 providers' [1] 962/24
 provides [6] 810/19 908/22
 921/22 943/18 949/24
 1049/14
 providing [17] 798/24 857/7
 858/23 859/24 875/9 877/13
 894/20 914/19 918/14 919/8
 919/19 919/22 920/8 922/22
 931/14 938/4 979/11
 psychology [2] 1002/10
 1002/12
 public [19] 791/9 791/12
 817/6 831/15 831/17 831/18
 840/3 1018/9 1022/3 1022/8
 1023/3 1030/13 1030/14
 1035/4 1035/7 1035/16
 1038/2 1038/8 1038/20
 publication [15] 832/2 839/12
 842/17 842/24 843/7 856/25
 857/16 857/19 859/13 859/14
 880/4 887/14 898/23 907/2
 907/4
 publications [3] 836/22 837/24
 900/20
 publicly [9] 795/13 816/22
 893/21 922/12 923/1 1034/19
 1035/24 1036/21 1038/12
 publish [6] 847/23 858/14
 898/18 898/24 907/1 990/4
 published [21] 813/15 831/24
 836/13 837/17 837/18 839/11
 839/21 844/7 844/23 845/2
 847/9 861/3 875/2 875/19

875/23 875/24 878/11 881/12
 882/14 897/19 900/20
 publishing [1] 898/19
 pull [12] 774/16 774/17
 784/12 787/7 789/2 790/16
 895/3 895/3 895/4 895/7
 993/5 994/5
 pulled [1] 1020/1
 pulling [1] 1011/1
 pulls [2] 1020/16 1040/25
 purchased [1] 1058/2
 purely [1] 934/19
 purport [1] 954/24
 purports [1] 812/12
 purpose [3] 792/11 853/17
 1036/20
 purposes [9] 776/7 824/16
 912/10 918/7 919/1 948/16
 949/1 951/13 997/19
 pursuant [1] 1059/22
 pushed [1] 851/13
 pushing [1] 897/4
 put [47] 770/23 774/8 775/14
 784/24 803/22 820/25 825/19
 828/4 828/6 829/9 831/22
 833/20 836/2 837/21 852/3
 853/11 854/13 860/11 860/13
 869/10 870/23 896/17 897/18
 899/16 917/13 917/25 932/18
 934/8 946/19 952/3 970/20
 971/5 973/14 974/6 982/17
 983/1 983/21 1008/5 1011/20
 1012/1 1023/4 1032/2 1032/9
 1042/1 1047/3 1047/21
 1050/22
 putting [6] 783/12 783/15
 815/23 827/23 917/1 1036/20
 PX [1] 810/23
 PX-314 [1] 810/23

Q
 Qualcomm's [1] 1056/16
 qualified [1] 910/14
 qualify [1] 910/10
 quality [1] 793/15
 question [22] 773/24 774/4
 799/9 802/7 806/17 819/24
 820/5 820/24 821/23 825/4
 827/9 827/11 852/8 931/22
 955/18 957/10 968/2 981/8
 985/7 985/9 997/3 1058/12
 questioning [6] 803/11 803/12
 803/16 823/24 824/24 963/24
 questions [24] 813/12 817/13
 823/8 824/14 825/11 825/12
 826/2 826/3 826/20 828/19
 829/25 830/1 877/25 899/13
 899/18 901/2 901/22 948/16
 948/24 991/19 993/1 993/7
 995/24 1058/4
 quick [8] 840/9 878/3 932/16
 935/14 935/23 941/14 981/8
 997/3
 quickly [2] 932/25 1025/5
 quite [5] 795/2 796/1 856/22
 919/4 1047/25
 quote [19] 913/15 994/16
 1005/9 1008/18 1010/14
 1023/16 1024/4 1027/9
 1028/1 1029/10 1031/1

1035/23 1036/11 1036/12
 1045/13 1046/3 1055/18
 1056/14 1056/25
 quote/unquote [1] 913/15
 R
 R-I-N-A-R-D [1] 904/6
 r1 [2] 787/10 787/19
 raise [1] 904/7
 ramp [1] 818/7
 ramp-up [1] 818/7
 ran [3] 878/24 910/3 910/4
 rate [4] 904/25 905/2 934/12
 990/11
 rather [2] 842/5 866/14
 re [1] 896/18
 re-implemented [1] 896/18
 reach [2] 808/15 900/10
 reached [1] 808/18
 reaching [1] 815/12
 read [14] 774/15 775/2 775/9
 897/2 910/19 911/11 915/13
 920/2 946/6 953/10 953/12
 953/17 986/20 1040/19
 readable [2] 937/2 993/25
 reader [1] 856/5
 readies [2] 839/10 839/14
 reading [1] 797/22
 reads [2] 845/25 958/11
 ready [10] 777/7 777/15 796/6
 818/21 825/7 839/20 932/14
 937/5 1041/3 1059/4
 real [4] 890/8 941/14 970/6
 978/10
 realized [2] 862/12 862/16
 realizes [2] 791/25 872/19
 really [10] 785/14 832/15
 841/22 861/5 861/10 891/3
 952/15 1019/21 1026/17
 1039/18
 reason [16] 772/4 784/25
 805/20 819/8 826/12 827/7
 831/1 900/9 930/4 930/7
 935/16 942/6 947/22 962/5
 985/22 1007/22
 reasonable [2] 934/9 992/9
 reasons [8] 789/16 789/18
 789/21 814/10 814/12 814/13
 814/16 1007/20
 recall [59] 783/25 784/17
 790/18 803/11 803/12 803/16
 805/1 808/16 808/17 810/25
 811/3 811/4 815/6 815/9
 815/21 817/16 817/17 819/15
 821/6 827/4 831/8 842/17
 843/19 870/22 875/1 876/24
 876/24 877/21 877/25 878/15
 879/1 879/16 882/10 889/4
 893/10 899/2 899/23 929/23
 929/24 975/16 975/23 976/2
 976/10 976/11 985/9 985/9
 985/11 991/4 991/8 991/9
 991/13 991/14 1011/10
 1015/16 1017/18 1023/2
 1023/10 1043/3 1058/17
 receipt [12] 914/23 918/21
 937/22 938/7 941/16 942/15
 985/25 986/7 986/17 988/2
 988/19 995/6
 receive [6] 906/17 941/21

1012/3 1048/12 1050/9
 1057/11
 received [11] 830/24 831/2
 832/17 832/21 847/3 887/5
 908/3 941/11 943/3 947/18
 1026/12
 receives [4] 942/10 948/3
 995/15 1027/20
 reception [2] 941/6 941/23
 recess [10] 777/5 868/6
 936/14 936/15 996/23 996/24
 1058/23 1058/25 1059/22
 1060/14
 recitation [1] 918/9
 recite [1] 919/17
 recited [1] 898/17
 recognition [2] 899/22 1031/1
 recognize [6] 812/4 1008/3
 1008/4 1017/21 1020/25
 1022/6
 recognized [1] 891/6
 recognizers [1] 1031/5
 recognizes [1] 945/3
 recollect [1] 1038/18
 recollection [21] 774/25
 805/13 805/18 822/16 825/15
 826/10 826/17 826/24 826/24
 827/8 836/8 839/6 844/18
 852/2 860/10 875/2 893/20
 1016/3 1018/16 1034/20
 1038/11
 reconvene [3] 771/1 1059/25
 1060/8
 record [10] 778/2 829/9
 830/14 868/13 904/4 932/18
 998/22 999/23 1019/5 1060/5
 records [2] 829/25 1058/11
 red [2] 914/13 969/2
 reddish [1] 1051/9
 redirect [3] 828/21 993/3
 993/8
 reduces [3] 909/4 909/9
 921/22
 refer [3] 1013/3 1054/21
 1054/22
 reference [7] 819/14 821/7
 859/18 946/13 946/14 946/16
 946/18
 referencing [1] 791/15
 referred [10] 804/23 808/14
 860/17 876/13 939/13 998/21
 1016/16 1016/23 1047/13
 1054/23
 referring [16] 791/1 807/25
 831/18 846/17 853/7 888/11
 944/25 951/2 955/13 959/2
 961/7 961/10 975/10 1008/23
 1011/10 1015/21
 refers [9] 787/18 788/19
 790/25 997/5 1007/4 1007/11
 1009/24 1010/21 1036/24
 reflect [1] 1060/6
 reflecting [1] 1021/6
 refresh [8] 805/12 815/10
 822/15 825/15 826/9 826/11
 826/17 893/19
 refreshed [2] 794/10 827/8
 refreshing [1] 826/24
 regard [2] 1029/19 1038/13
 regarding [6] 772/21 812/12

<p>Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 507 of 773 PageID #: 61086</p> <p>regarding... [4] 814/7 829/20 937/21 947/6</p> <p>region [3] 1024/13 1025/6 1025/18</p> <p>registered [3] 847/25 850/10 866/6</p> <p>regular [2] 848/15 849/21</p> <p>rehearsed [1] 796/16</p> <p>reimplement [1] 917/17</p> <p>reinvent [1] 962/9</p> <p>relate [1] 790/22</p> <p>related [14] 816/18 825/21 838/24 840/19 886/17 889/16 894/5 894/12 952/22 992/23 1000/7 1001/9 1007/14 1055/6</p> <p>relating [4] 837/15 943/10 943/12 1057/19</p> <p>relationship [2] 1054/17 1054/20</p> <p>relatively [1] 990/12</p> <p>release [23] 792/20 793/7 793/12 794/3 794/6 794/7 795/25 798/23 936/5 991/13 991/15 1015/20 1016/11 1016/23 1020/15 1054/5 1054/7 1054/25 1055/8 1055/9 1055/13 1055/18 1056/10</p> <p>released [10] 793/6 800/10 804/18 996/4 1005/11 1017/5 1032/20 1036/23 1054/15 1055/20</p> <p>releases [3] 781/6 782/9 795/11</p> <p>relevant [7] 919/4 919/13 938/13 960/14 992/22 1020/2 1041/1</p> <p>relied [1] 795/1</p> <p>relies [1] 964/3</p> <p>rely [1] 846/15</p> <p>relying [1] 958/21</p> <p>remain [3] 772/6 814/14 878/13</p> <p>remaining [2] 928/20 934/23</p> <p>remember [17] 782/12 803/15 820/13 835/22 852/1 870/22 878/18 895/2 895/5 899/11 900/4 900/15 912/25 913/2 969/1 1011/14 1059/13</p> <p>Remembrance [1] 896/12</p> <p>reminder [2] 785/4 938/15</p> <p>remote [2] 909/21 1039/19</p> <p>render [3] 968/4 972/1 978/21</p> <p>rendered [1] 964/10</p> <p>rendering [4] 786/11 968/11 978/4 978/5</p> <p>reorient [1] 938/1</p> <p>rep [5] 801/3 807/18 812/23 819/12 824/5</p> <p>repairs [1] 770/14</p> <p>repeat [2] 799/9 956/6</p> <p>rephrase [2] 807/24 959/15</p> <p>replace [1] 957/20</p> <p>report [35] 859/9 859/11 859/16 859/23 860/1 860/9 860/20 860/25 861/12 861/17 872/13 874/14 874/20 875/5 880/22 881/2 881/22 882/8</p>	<p>882/21 885/23 886/25 887/6 887/17 887/20 887/24 898/22 910/20 950/23 950/25 989/17 989/20 989/24 991/9 991/12 1060/1</p> <p>reporter [3] 829/25 1061/2 1061/8</p> <p>reports [4] 861/3 882/15 901/10 950/12</p> <p>repositioning [1] 1011/3</p> <p>repositories [5] 922/12 923/2 983/7 985/8 985/11</p> <p>repository [5] 922/25 923/8 984/10 985/12 985/14</p> <p>represent [1] 889/24</p> <p>representation [2] 853/8 1041/17</p> <p>representative [22] 773/1 773/3 773/5 773/14 777/12 798/6 808/4 813/8 822/25 823/4 824/4 824/6 824/12 911/17 911/18 912/5 912/8 924/20 924/22 925/1 950/17 1018/8</p> <p>represented [4] 818/15 823/12 836/5 853/12</p> <p>representing [1] 802/21</p> <p>request [4] 839/19 1000/13 1037/1 1059/4</p> <p>requested [1] 816/20</p> <p>requesting [1] 934/6</p> <p>requests [3] 1012/3 1036/14 1036/25</p> <p>require [2] 919/11 938/11</p> <p>required [7] 871/12 909/10 919/21 919/25 947/8 956/25 1035/10</p> <p>requirements [1] 795/19</p> <p>requires [9] 914/8 916/17 917/12 931/21 941/5 941/13 994/18 995/11 1025/10</p> <p>research [31] 833/4 833/22 834/3 888/6 906/22 906/23 906/24 907/9 907/11 907/14 907/16 907/18 907/19 907/20 907/22 907/24 908/2 908/3 908/7 909/14 1002/23 1003/9 1003/19 1003/20 1004/8 1004/15 1006/9 1019/8 1032/18 1039/22 1059/14</p> <p>researcher [1] 833/3</p> <p>reserve [1] 936/11</p> <p>resides [1] 925/15</p> <p>resolve [1] 772/7</p> <p>resource [1] 894/10</p> <p>resources [1] 1031/14</p> <p>respect [15] 802/16 802/20 824/9 906/23 920/7 930/23 931/12 935/2 935/3 942/14 947/17 947/20 986/14 992/6 995/1</p> <p>respond [2] 952/20 955/21</p> <p>responding [3] 910/22 913/8 918/7</p> <p>response [2] 1000/13 1058/3</p> <p>responses [1] 1029/3</p> <p>responsibilities [4] 781/16 906/21 907/7 907/8</p> <p>responsibility [2] 807/16 1031/15</p>	<p>responsible [3] 1004/14 1006/8 1032/22</p> <p>rest [14] 770/8 771/5 771/13 773/7 847/23 865/5 869/13 916/2 949/21 949/25 952/10 956/18 997/24 997/25</p> <p>restricted [1] 833/17</p> <p>restriction [4] 880/18 886/4 901/13 1038/7</p> <p>restroom [1] 777/13</p> <p>rests [3] 932/21 932/22 998/10</p> <p>result [6] 786/8 786/16 842/5 884/4 884/13 898/2</p> <p>resulting [1] 1015/22</p> <p>results [2] 812/12 1049/2</p> <p>resuming [1] 1059/1</p> <p>retake [1] 936/17</p> <p>retrospect [1] 879/8</p> <p>return [1] 1050/4</p> <p>returned [1] 1050/7</p> <p>review [5] 839/16 880/19 889/6 907/6 1024/21</p> <p>reviewed [7] 783/9 907/5 940/16 950/12 953/18 953/21 953/23</p> <p>reviewer [1] 789/10</p> <p>reviewing [1] 794/11</p> <p>reviews [2] 839/16 839/19</p> <p>Rhode [1] 906/1</p> <p>Rhodes [1] 896/13</p> <p>right [292] 770/18 773/23 774/16 775/11 776/2 776/22 777/1 777/6 777/17 781/21 791/6 798/11 800/6 800/10 800/17 801/3 801/4 801/6 801/10 801/16 801/20 801/21 801/24 802/2 804/2 804/3 804/5 804/6 804/7 804/11 805/21 806/2 807/8 807/9 807/14 807/18 807/22 809/1 809/8 809/14 809/16 809/17 810/1 810/6 810/8 810/15 811/1 811/11 814/11 814/15 814/18 814/23 815/1 815/15 815/20 816/6 816/11 816/15 816/23 817/1 817/4 817/11 819/5 820/1 821/5 821/11 821/11 821/18 821/20 822/3 822/6 827/2 829/1 832/19 832/23 834/13 836/15 838/9 840/6 844/1 844/14 845/7 846/22 846/25 847/1 847/21 848/19 848/25 849/7 849/12 852/15 852/16 854/4 855/22 857/6 860/3 860/7 862/2 862/15 862/25 865/12 866/25 867/1 867/18 868/4 868/7 868/22 869/1 873/5 874/16 881/6 883/21 885/17 888/22 889/21 890/1 892/17 897/3 900/24 903/19 904/7 910/2 913/6 913/19 916/8 920/2 922/11 922/20 924/3 928/2 932/10 932/13 932/20 936/1 936/9 936/16 937/9 939/10 939/15 939/16 942/2 942/5 948/22 949/10 950/3 950/5 950/18 951/6 951/9 951/10 951/12 952/2 952/7 952/8</p>	<p>953/7 953/10 953/12 953/19 953/23 954/5 954/7 954/17 954/24 955/2 955/4 955/5 955/9 955/16 955/22 956/21 957/10 957/18 957/21 958/11 959/18 959/20 960/1 960/8 960/16 962/4 962/17 962/20 962/25 963/7 963/9 963/19 964/6 964/10 964/15 965/11 965/17 966/3 967/9 967/13 967/13 967/19 968/9 968/18 970/10 970/13 970/15 970/16 970/20 970/20 970/22 970/25 971/5 971/19 971/25 972/10 973/13 974/9 974/14 974/17 974/21 974/24 974/25 975/5 977/9 977/10 977/12 977/15 977/19 977/23 978/2 978/7 978/8 978/18 978/21 978/24 979/2 979/13 979/16 979/18 980/1 980/5 980/9 980/23 980/25 981/19 982/6 982/9 982/11 982/14 983/12 983/25 984/9 984/14 984/19 985/13 985/17 985/18 986/2 986/5 986/12 986/21 987/4 987/9 987/11 987/13 987/15 987/17 987/22 990/2 990/17 990/21 991/21 992/4 992/15 993/2 993/19 996/22 998/2 998/4 999/5 1003/13 1003/25 1006/15 1009/19 1019/3 1020/20 1023/14 1037/9 1039/3 1042/7 1049/4 1050/20 1056/23 1058/6 1058/21 1060/3 1060/13</p> <p>right-hand [3] 883/21 913/19 1037/9</p> <p>Rinard [42] 773/15 773/22 903/23 904/1 904/2 904/5 904/8 904/17 904/18 905/3 905/11 905/25 908/5 909/13 910/10 910/16 913/7 916/4 919/16 926/6 927/12 927/24 928/16 930/15 931/11 937/21 939/21 940/14 942/13 943/5 945/14 946/3 947/3 947/19 948/6 948/13 985/3 989/17 989/19 993/7 995/18 996/3</p> <p>Rinard's [6] 948/20 952/25 962/15 965/6 977/2 985/20</p> <p>rl [1] 788/7</p> <p>ROBERT [1] 769/12</p> <p>ROBERTS [1] 769/13</p> <p>robots [1] 811/20</p> <p>role [12] 781/13 807/23 835/18 837/11 900/12 901/4 904/18 904/19 1006/3 1018/22 1056/1 1056/4</p> <p>roles [2] 779/21 1018/7</p> <p>roll [1] 772/16</p> <p>rooms [1] 879/10</p> <p>rough [1] 818/2</p> <p>roughly [3] 817/9 839/12 879/1</p> <p>routine [6] 915/15 956/13 958/13 981/11 984/18 984/23</p> <p>rows [2] 913/14 913/14</p> <p>royalty [3] 934/9 934/10 934/12</p>
---	--	---	--

R
Rule [5] 824/7 933/15 933/18
933/25 936/23
Rule 50 [4] 933/15 933/18
933/25 936/23
run [12] 796/12 888/24
890/15 891/14 893/18 926/14
972/2 975/25 984/21 984/22
1032/7 1042/1
running [17] 849/9 851/6
898/9 966/1 972/5 972/9
972/10 972/19 975/7 976/7
976/14 980/14 1033/5 1034/5
1034/8 1035/18 1054/24
runs [4] 783/24 785/16 910/5
974/23
Runtime [1] 855/20

S
S.A.R.L [1] 767/4
Safari [1] 780/14
Safe [1] 909/25
said [34] 788/15 813/11
825/20 826/16 826/18 833/1
838/17 849/18 858/7 866/9
871/10 879/5 884/17 897/3
900/16 902/17 905/19 930/7
930/19 957/5 957/12 959/14
971/13 974/1 975/20 976/7
976/14 976/18 978/3 989/24
991/12 993/13 1018/11
1021/21
sale [1] 937/1
same [33] 772/22 793/5 830/4
830/6 858/12 858/15 860/18
864/6 877/18 878/8 878/10
883/2 883/2 899/1 899/3
918/5 918/5 935/24 944/12
944/17 944/18 944/23 949/19
949/21 950/3 962/3 973/18
993/14 993/16 999/15 999/16
1016/17 1057/10
Sample [1] 892/11
samples [1] 892/15
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Samsungs [1] 795/16
San [3] 1035/25 1039/10
1041/15
Santa [2] 906/8 906/13
satisfied [1] 957/12
satisfies [5] 951/21 952/5
952/23 954/19 956/18
satisfy [1] 957/6
save [9] 863/11 865/17
866/19 867/3 883/17 884/14
1012/9 1012/12 1032/9
saw [15] 810/22 821/4 828/2
837/7 862/14 928/17 938/22
940/1 940/10 941/20 1021/16
1024/19 1034/25 1036/8
1053/16
say [76] 775/9 776/15 789/24
793/17 794/1 811/19 821/13
823/16 826/17 831/17 832/9
836/18 839/13 843/22 850/3
851/9 864/12 866/12 869/16

871/3 875/20 880/9 880/12
890/19 891/2 891/24 894/3
902/5 902/9 917/23 918/3
920/3 921/7 930/4 936/19
944/23 949/24 951/14 960/22
961/6 961/7 963/10 967/20
969/6 973/6 973/7 974/15
975/14 985/17 985/24 988/7
988/9 988/9 988/11 988/12
988/14 988/20 992/10
1003/20 1006/2 1006/11
1007/10 1009/9 1011/9
1011/11 1012/7 1020/14
1025/13 1027/25 1028/8
1029/21 1030/21 1036/11
1049/18 1055/3 1055/11
saying [13] 791/2 803/13
811/8 818/6 839/18 924/8
939/3 941/19 960/18 983/23
1029/7 1029/24 1057/12
says [78] 786/7 787/15
787/19 796/23 812/16 817/8
822/18 823/25 825/16 849/12
850/18 851/17 851/21 852/9
853/4 854/5 857/10 861/18
866/18 870/17 871/17 873/21
875/12 881/14 889/19 892/15
893/5 906/16 913/23 914/15
914/18 914/22 915/14 918/13
921/18 923/21 926/3 941/11
960/8 960/9 986/7 986/11
988/2 988/18 1005/9 1006/16
1006/21 1008/18 1009/14
1010/4 1010/14 1014/7
1014/24 1015/2 1015/20
1020/4 1022/12 1024/4
1024/13 1027/9 1027/18
1029/10 1030/22 1031/1
1035/23 1036/12 1040/7
1046/3 1046/7 1046/22
1047/8 1047/16 1052/24
1053/5 1054/25 1056/10
1056/14 1056/25
scan [2] 1041/8 1041/11
scanned [3] 946/13 1019/25
1040/3
scans [1] 946/12
ScB [1] 953/5
scenario [2] 847/2 861/18
scenarios [1] 876/6
scene [1] 933/2
scenes [2] 848/12 1027/11
schedule [1] 1059/22
school [9] 807/5 822/18
822/19 832/6 832/7 832/9
832/10 832/12 905/23
schools [1] 832/12
science [17] 778/25 823/15
828/16 832/17 832/22 832/22
832/23 905/14 905/16 907/13
910/11 953/2 953/5 1002/8
1002/8 1002/8 1002/11
science/social [1] 1002/8
scientist [1] 983/13
Scope [1] 909/13
scrape [2] 891/14 891/22
screen [31] 785/22 827/24
846/20 848/2 851/17 853/3
854/21 865/11 874/7 874/8
874/14 884/16 891/21 918/11

919/10 920/11 939/8 939/9
939/10 939/14 939/14 939/19
940/8 941/20 979/13 979/23
994/5 1019/22 1025/6 1040/2
1043/12
screens [4] 882/22 939/25
940/1 1040/23
screenshot [10] 861/18
861/20 872/12 883/2 965/24
1042/24 1048/9 1050/15
1050/18 1051/16
screenshots [8] 882/14
938/22 944/3 1041/24
1042/17 1042/19 1044/20
1048/2
script [5] 1042/1 1049/6
1050/9 1050/11 1057/13
scripts [2] 1032/24 1056/5
Sealed [1] 767/14
search [65] 780/23 848/23
848/24 854/13 854/15 854/18
854/20 865/14 866/3 866/10
872/23 874/5 883/15 884/4
891/9 914/24 914/24 918/22
918/23 937/23 938/9 938/9
941/3 941/5 941/8 941/10
941/24 942/4 942/4 942/7
942/11 942/17 942/17 946/23
947/18 948/5 986/1 986/1
986/5 986/9 986/9 986/13
986/13 986/16 986/17 988/4
988/4 988/7 988/10 988/10
988/12 988/15 995/18 995/20
995/21 1000/6 1030/6 1049/9
1049/17 1049/22 1049/25
searched [2] 870/6 870/10
searching [1] 883/23
seat [6] 774/12 777/22 868/8
868/16 997/1 1059/17
seated [7] 770/7 777/6 778/9
869/5 936/16 937/13 998/8
second [70] 774/17 805/12
825/23 848/16 849/25 851/16
851/16 857/20 857/20 858/5
858/6 858/7 860/22 862/9
863/10 864/16 865/17 865/25
866/4 866/18 873/1 874/19
874/21 874/23 878/14 881/4
882/13 883/17 885/19 886/16
887/21 887/22 889/8 890/10
891/7 892/2 892/4 892/6
893/4 894/12 897/8 902/23
918/17 918/20 919/24 936/18
937/21 941/9 941/12 941/25
942/1 942/5 943/3 946/22
947/4 947/17 948/4 951/25
954/7 963/23 985/22 987/24
994/6 995/16 995/19 1008/14
1010/13 1015/19 1020/19
1045/13
section [16] 834/21 842/8
842/9 856/25 881/5 881/6
881/22 881/25 886/17 889/17
892/6 892/11 894/5 1030/18
1035/20 1046/18
security [3] 789/22 790/10
910/6
see [200] 771/20 772/3
772/12 775/20 776/4 782/20

785/22 787/9 787/11 787/18
788/20 788/21 789/21 791/8
791/10 796/2 802/23 803/3
805/5 812/3 812/7 812/8
812/25 814/10 815/10 820/12
821/12 822/20 823/17 825/14
827/9 827/16 829/7 830/22
834/8 834/20 838/1 845/8
845/10 845/21 845/21 846/7
846/19 848/18 848/24 849/6
850/15 851/20 853/11 853/14
855/11 855/15 857/6 857/8
858/22 860/1 860/25 861/9
861/17 861/21 863/20 866/10
867/1 867/9 870/18 871/19
872/8 872/12 873/12 875/8
875/10 877/2 877/9 880/22
881/22 883/20 884/4 886/7
886/9 886/24 888/5 889/17
889/22 891/22 892/6 892/12
893/5 894/6 894/20 901/25
902/6 903/4 904/20 907/13
907/17 910/6 911/6 912/19
913/14 914/12 914/14 914/21
915/11 915/22 916/6 920/14
922/13 922/20 922/25 923/1
924/16 925/11 925/16 925/18
925/23 926/7 927/1 927/2
927/3 927/13 928/1 928/4
933/13 938/24 939/1 939/19
944/3 944/4 944/6 944/19
946/20 959/6 964/14 987/4
989/23 1001/15 1002/3
1003/4 1004/10 1005/13
1006/18 1006/22 1008/4
1008/15 1008/21 1010/10
1010/17 1012/22 1014/3
1014/5 1014/10 1015/4
1019/24 1022/11 1022/14
1023/15 1023/22 1024/7
1024/17 1026/4 1027/16
1028/3 1028/6 1029/16
1030/18 1030/24 1031/7
1035/20 1035/21 1036/2
1036/15 1037/5 1037/8
1037/17 1042/20 1045/16
1046/19 1046/24 1047/9
1047/24 1048/6 1048/13
1050/15 1051/9 1052/18
1052/20 1053/3 1054/4
1054/12 1055/14 1055/24
1056/10 1056/19 1057/2
1057/19 1060/9
seed [3] 1036/14 1036/25
1037/1
seeing [15] 784/17 790/18
852/18 861/10 863/4 873/13
873/17 876/17 893/19 923/5
928/18 964/9 964/9 983/3
1055/3
seem [2] 821/21 826/25
seemed [1] 771/12
seems [4] 771/8 860/3 927/25
1033/6
seen [18] 776/17 782/19
805/16 805/17 805/18 812/15
813/11 822/17 822/24 848/21
851/12 879/2 880/15 895/20
901/25 920/12 921/9 938/14

<p>Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 509 of 735 PageID #: 61088</p> <p>sees [1] 864/18 segment [2] 899/1 899/2 segments [2] 892/12 892/19 select [21] 835/6 836/4 851/15 855/24 856/1 856/1 856/2 856/19 872/16 888/20 920/15 920/18 1019/21 1024/13 1024/15 1024/20 1025/5 1025/9 1040/1 1044/2 1046/18 selected [34] 791/2 835/7 835/12 835/17 847/3 847/9 847/22 848/4 848/13 848/21 854/10 856/8 856/11 856/20 863/25 864/7 865/23 866/23 883/3 884/11 888/21 888/25 890/24 895/9 1027/12 1027/19 1027/21 1043/9 1043/10 1043/13 1043/14 1043/22 1044/5 1056/15 selecting [5] 861/25 871/14 884/13 995/22 1043/25 selection [49] 782/4 782/6 782/13 782/16 783/1 783/3 783/11 783/23 785/12 785/20 785/24 786/2 786/18 786/22 787/2 787/3 790/24 793/8 793/9 793/11 793/24 794/14 794/17 794/18 794/21 799/2 809/19 809/24 810/12 810/16 812/6 812/13 812/17 835/15 899/22 922/1 923/14 931/2 944/18 944/24 945/7 972/6 972/20 973/22 993/14 993/17 1024/5 1027/13 1043/11 selects [1] 856/6 self [31] 857/7 858/23 859/25 875/9 877/13 915/14 915/23 916/1 916/16 917/4 920/5 930/25 931/7 931/9 931/20 931/21 938/16 942/22 947/12 947/24 956/4 956/13 956/17 958/5 958/7 958/12 958/20 960/15 994/19 995/9 995/10 self-contained [25] 915/14 915/23 916/1 916/16 920/5 930/25 931/7 931/9 931/20 931/21 938/16 942/22 947/12 947/24 956/4 956/13 956/17 958/5 958/7 958/12 958/20 960/15 994/19 995/9 995/10 Self-Integrating [5] 857/7 858/23 859/25 875/9 877/13 sell [1] 937/1 selling [1] 1015/13 semantic [1] 771/13 semi [1] 872/2 send [21] 856/20 863/8 871/17 872/4 872/6 885/7 885/14 885/16 1012/6 1012/19 1013/20 1020/11 1020/11 1029/6 1032/7 1040/16 1046/22 1052/3 1056/14 1056/22 1057/14 sending [2] 873/11 971/20 sends [2] 792/2 792/8 sense [7] 771/17 776/3 860/11 957/11 1016/24 1016/25 1018/13</p>	<p>sensitive [1] 909/19 sent [3] 791/5 872/1 1012/12 sentence [2] 785/13 1005/9 separate [2] 923/9 961/1 separately [2] 845/3 853/25 separation [1] 947/4 September [9] 836/12 839/17 880/2 887/2 887/18 1034/21 1035/16 1055/14 1055/17 September 1997 [2] 887/2 1034/21 September 8th [2] 1055/14 1055/17 sequence [1] 1014/17 serve [1] 900/18 service [14] 849/13 850/14 851/7 856/21 866/6 890/18 891/2 891/12 891/14 907/7 909/21 982/24 1049/14 1049/16 services [28] 831/25 835/9 839/1 842/11 849/15 850/9 851/6 857/8 858/24 859/25 862/17 862/18 866/17 875/10 877/14 888/24 889/17 889/20 890/2 890/3 890/4 890/15 891/3 891/4 891/16 891/18 892/1 983/18 servicing [2] 981/10 981/17 serving [4] 907/8 930/9 972/24 973/12 session [6] 843/2 843/25 844/2 857/25 877/22 1008/13 sessions [2] 842/25 843/2 set [23] 796/12 879/9 893/5 915/14 915/17 915/19 915/23 916/1 919/23 920/3 920/4 920/5 938/15 947/7 956/4 956/5 956/11 956/13 956/17 958/7 958/12 958/20 973/22 SETH [1] 769/5 sets [4] 785/21 920/20 931/23 947/15 setting [2] 779/9 994/20 settled [1] 1016/10 settlement [1] 934/14 setup [1] 863/3 seventh [1] 929/18 seventh page [1] 929/18 several [5] 806/23 831/4 878/24 879/18 943/10 SFO [1] 801/18 share [11] 816/22 820/23 859/17 917/19 920/15 921/21 931/4 947/13 963/17 963/17 965/3 shared [11] 917/3 931/3 931/6 931/8 948/1 963/5 971/22 984/2 984/5 994/21 995/14 shares [2] 1001/4 1001/4 she [3] 868/23 900/5 1051/20 Sheets [5] 949/17 980/21 980/23 981/2 981/2 shift [1] 985/22 shifted [1] 938/3 shifting [1] 981/8 ship [1] 1006/10 shipped [1] 1032/4 shipping [3] 1015/24 1016/8 1056/6</p>	<p>shopping [1] 781/15 short [1] 836/23 shortcut [1] 840/9 shortcuts [3] 812/7 812/13 812/17 shorten [1] 797/9 shortly [2] 898/18 898/23 should [21] 771/16 772/1 772/22 776/13 776/14 786/8 790/2 790/3 792/6 796/2 814/14 819/6 903/20 912/1 918/2 973/4 976/13 998/16 1040/20 1059/11 1060/7 shouldn't [3] 783/14 827/23 912/3 show [43] 787/5 787/17 827/1 832/1 833/5 834/4 834/14 840/22 845/17 862/11 876/7 876/11 876/13 882/6 888/24 891/13 902/10 903/8 919/16 919/24 925/4 925/19 925/20 927/22 929/14 939/2 939/10 979/22 1001/13 1007/24 1010/10 1015/7 1015/12 1017/21 1018/25 1022/4 1034/17 1037/4 1038/10 1039/11 1039/12 1052/16 1054/2 showed [4] 791/16 903/1 903/9 903/12 showing [12] 852/15 854/20 882/12 882/22 902/12 926/22 927/25 938/21 1025/19 1025/19 1042/23 1043/21 shown [30] 775/25 787/13 787/22 846/14 855/19 861/23 861/24 865/11 865/17 870/14 874/9 882/3 884/2 890/2 920/10 920/17 927/24 1002/17 1013/8 1017/17 1017/19 1017/23 1025/16 1032/25 1044/20 1045/11 1045/13 1048/2 1048/9 1050/18 shows [16] 780/22 824/17 842/4 844/13 875/25 887/2 914/12 915/2 925/5 926/5 926/6 927/10 927/11 965/24 1015/11 1043/9 side [11] 775/24 775/24 800/7 827/1 846/25 868/23 913/19 926/18 929/19 997/14 997/14 sidebar [11] 806/10 812/25 813/1 813/19 823/18 823/19 826/13 827/13 827/16 827/19 828/8 sign [4] 880/15 1009/3 1022/2 1035/10 signed [1] 1038/19 significance [1] 930/2 silly [1] 852/8 siloed [1] 841/13 similar [10] 774/22 788/23 799/17 843/3 845/19 873/7 888/13 888/18 888/19 949/19 simple [4] 853/8 872/15 1029/2 1031/3 simpler [1] 876/8 simply [5] 844/22 852/11 917/2 960/11 1024/6</p>	<p>simulate [1] 885/1 simultaneously [1] 843/1 since [9] 798/20 798/23 799/1 814/18 848/8 908/16 939/23 1001/23 1040/22 single [4] 786/25 872/18 1023/19 1052/13 sir [87] 778/12 778/16 778/18 778/22 781/10 782/4 782/25 783/6 783/10 783/17 784/12 784/14 784/20 785/8 786/16 787/5 787/9 788/3 788/15 789/5 790/12 790/18 790/21 791/8 792/20 792/25 794/12 797/10 797/18 797/23 815/5 828/23 830/13 830/24 831/8 831/12 832/25 833/7 834/16 837/6 837/14 844/6 845/4 858/22 860/23 875/8 880/22 882/7 904/14 950/8 953/3 953/8 968/1 984/1 985/5 985/10 991/11 1000/5 1000/23 1001/13 1001/15 1002/3 1005/7 1016/3 1018/16 1020/25 1021/10 1021/21 1022/5 1022/6 1022/10 1024/7 1032/21 1033/8 1034/11 1034/17 1035/21 1039/1 1039/11 1039/15 1042/5 1042/16 1042/23 1052/16 1052/18 1054/2 1054/4 sit [1] 771/20 site [5] 831/22 876/15 894/13 894/14 1036/13 sites [1] 1016/14 sitting [7] 783/17 808/3 968/19 971/10 991/10 991/14 1030/1 situation [1] 972/24 situations [1] 1031/12 six [5] 778/20 797/2 814/20 896/15 1033/13 six months [2] 797/2 896/15 size [1] 972/13 skipped [1] 863/10 sky [1] 907/15 slanted [2] 927/3 928/4 slap [1] 983/2 slide [58] 784/12 784/17 787/9 787/13 787/17 787/18 787/22 788/4 788/16 788/19 788/23 789/2 790/18 815/6 815/9 821/1 821/1 821/4 845/9 845/22 905/10 906/16 918/19 923/19 926/22 928/17 930/15 938/19 939/20 940/11 948/19 952/24 953/13 953/14 962/14 965/6 965/19 977/1 977/1 977/4 981/5 985/3 985/20 986/23 987/6 987/25 991/17 994/6 1008/15 1009/10 1010/4 1010/10 1010/10 1010/14 1012/22 1013/8 1014/3 1014/23 Slide 18 [1] 962/14 Slide 21 [1] 965/6 Slide 35 [1] 991/17 Slide 4 [1] 1013/8 Slide 8 [1] 977/1</p>
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S	Document 603	Page 519 of 775	PageID #: 61089
<p>Slide 9 [1] 953/13 slides [10] 791/16 844/25 845/5 845/12 940/1 948/20 949/21 962/15 985/5 1008/12 slightly [2] 921/5 961/20 slot [3] 842/24 843/4 877/9 slow [2] 818/7 973/4 small [4] 861/8 905/23 1029/11 1042/20 smart [57] 782/4 782/6 782/12 782/16 782/25 783/3 783/11 783/23 785/11 785/20 785/24 786/2 786/17 786/19 786/21 787/1 787/3 790/24 793/7 793/9 793/11 793/24 794/13 794/17 794/18 794/21 799/2 809/19 809/24 810/12 810/16 812/6 812/13 812/17 922/1 923/13 931/2 943/24 944/15 944/16 944/17 944/23 944/24 945/5 945/7 945/11 972/6 972/20 973/22 991/2 991/6 991/13 993/11 993/13 993/14 993/16 993/17 smartphones [1] 924/14 Smedley [29] 783/20 783/23 784/13 784/18 784/21 787/6 787/10 788/19 791/8 904/20 910/22 911/22 912/22 913/8 920/6 922/22 923/13 924/1 924/1 924/15 938/17 938/22 939/12 939/13 950/13 957/2 957/9 961/4 961/6 Smedley's [14] 790/19 810/23 910/18 910/19 910/20 913/3 918/7 944/4 945/22 950/23 950/25 952/21 955/21 993/23 SMITH [1] 767/24 snippet [1] 1018/24 so [531] so-called [1] 992/2 social [1] 1002/8 software [34] 779/8 779/9 779/11 779/24 797/6 835/24 857/8 857/11 858/24 859/25 875/10 877/14 886/8 886/23 909/23 911/17 912/19 916/3 916/6 916/9 917/24 924/18 925/8 1005/11 1011/6 1028/24 1034/16 1035/15 1039/19 1055/20 1058/4 1058/8 1058/10 1058/13 sold [1] 796/14 solely [2] 963/22 964/1 solution [2] 872/20 1031/17 solve [1] 841/7 some [114] 771/9 772/4 782/20 790/21 797/5 809/11 813/14 825/6 826/12 831/9 831/24 831/24 835/6 836/5 837/11 839/19 840/8 840/9 841/12 841/18 842/2 842/20 846/6 848/11 848/15 849/13 850/17 851/3 852/4 853/10 853/14 854/24 854/25 862/20 864/17 866/5 866/6 884/10 884/12 884/17 888/3 888/23 894/10 897/2 900/16 902/6 902/17 906/19 907/10 908/1</p>	<p>908/7 909/11 915/16 916/20 917/12 920/13 922/23 923/18 926/10 926/13 926/24 929/2 929/3 933/7 936/4 938/23 938/23 940/21 946/21 955/13 956/15 958/14 958/18 959/2 960/4 961/4 961/15 961/17 961/17 962/22 965/14 968/22 970/18 972/13 973/2 975/1 975/10 980/24 981/20 1000/2 1000/7 1000/7 1001/5 1001/8 1006/7 1006/21 1007/19 1009/23 1019/20 1020/3 1022/7 1023/4 1032/1 1032/2 1032/16 1032/25 1039/19 1040/7 1040/16 1042/17 1046/2 1048/2 1056/5 1058/10 somebody [7] 819/12 824/17 835/10 903/4 903/9 939/7 1026/8 somebody's [3] 853/12 864/15 1040/13 somehow [5] 786/22 1043/18 1043/24 1043/25 1051/6 someone [12] 800/7 802/24 803/22 819/4 868/7 890/24 917/23 920/13 921/13 925/17 938/25 1011/12 someone's [1] 856/1 someplace [3] 909/21 991/9 991/12 something [53] 781/1 784/1 789/5 799/17 809/3 809/4 826/16 835/22 845/19 848/6 862/13 863/1 863/1 863/8 864/4 864/5 866/16 866/17 888/18 889/5 891/5 891/5 891/12 897/7 897/10 900/17 906/25 910/7 910/24 913/12 913/21 939/17 940/3 940/16 943/18 944/7 946/12 946/16 955/12 960/15 964/12 964/21 972/22 975/20 981/24 987/23 1004/11 1008/5 1009/22 1009/23 1016/13 1017/2 1041/11 sometime [5] 881/20 889/3 892/20 1003/25 1058/18 sometimes [6] 854/17 879/11 882/17 907/3 907/5 928/23 somewhat [2] 796/22 981/8 somewhere [5] 843/5 864/19 864/20 1002/13 1020/5 soon [5] 880/3 899/15 1007/8 1036/23 1059/7 soon-to-be-coming [1] 1007/8 soon-to-be-released [1] 1036/23 sophisticated [1] 876/11 sorry [62] 774/18 788/14 794/14 797/24 799/10 800/24 805/25 806/14 809/6 810/2 814/1 814/4 836/12 836/16 840/5 849/1 849/8 854/9 859/4 862/15 862/21 867/5 878/6 881/4 883/14 896/7 899/5 922/18 925/13 928/10 940/7 951/4 951/5 956/6 963/11 963/23 968/1 968/2</p>	<p>968/8 970/11 973/4 973/25 976/12 976/12 976/14 979/4 982/4 989/2 990/3 991/11 992/16 994/9 995/9 999/1 1036/11 1037/13 1038/12 1045/18 1046/8 1047/6 1051/18 1055/16 sort [19] 772/11 774/5 850/2 861/10 876/8 876/13 877/22 891/21 894/2 921/24 933/10 934/25 944/16 971/9 971/24 997/7 1035/17 1043/24 1051/9 sorts [7] 780/16 833/20 1002/22 1003/17 1005/22 1011/16 1026/14 sound [1] 809/22 sounds [6] 772/2 776/21 932/4 936/9 992/9 992/17 source [38] 791/9 791/12 819/10 831/24 890/7 890/12 908/14 910/23 912/24 912/25 922/9 922/12 922/13 923/2 923/8 923/9 923/10 923/12 924/9 953/21 959/8 959/23 960/6 960/10 960/12 960/14 960/20 960/21 961/8 975/5 982/16 982/17 982/19 982/21 982/22 982/23 983/6 984/9 sources [2] 841/11 888/2 south [1] 770/12 space [1] 900/20 speak [5] 808/10 834/7 890/12 899/7 899/9 speaking [3] 801/5 807/21 843/4 speaks [3] 959/11 959/13 959/16 specialized [2] 916/12 917/10 specific [11] 795/10 933/5 933/13 934/15 936/9 950/21 983/8 1001/9 1016/23 1017/8 1058/12 specifically [10] 914/7 920/22 922/7 929/17 943/12 943/22 1024/6 1024/24 1025/22 1025/25 specified [1] 933/17 specify [5] 876/18 935/8 971/8 971/16 1030/9 specifying [1] 1044/14 speculate [1] 802/19 speeches [2] 1035/24 1036/7 spell [2] 778/1 904/4 Spence [5] 790/15 929/16 929/18 930/17 994/9 spoken [1] 1000/15 spring [2] 837/16 875/4 SRINIVASAN [1] 769/5 stand [6] 775/22 810/11 823/23 904/2 904/15 936/17 standard [1] 905/2 standpoint [2] 784/3 824/19 stands [3] 843/11 1007/2 1009/25 Stanford [3] 905/16 905/17 906/5 Starner [1] 896/13 start [16] 773/1 796/24 836/7 846/12 850/11 864/10 868/10</p>	<p>879/21 897/4 905/24 906/2 956/9 966/12 1005/25 1048/15 1050/10 start-up [1] 906/2 start-ups [1] 905/24 startActivity [1] 940/3 started [10] 770/16 781/4 782/12 793/25 847/11 906/7 910/19 948/16 1004/23 1051/3 starting [4] 780/19 841/6 919/7 940/12 starts [3] 918/18 918/20 995/5 state [9] 778/1 830/13 904/4 946/17 986/4 988/15 999/23 1002/9 1045/25 stated [4] 868/12 999/14 1002/7 1059/20 statement [3] 774/5 774/7 975/1 states [6] 767/2 767/20 907/15 907/17 907/20 1055/18 stationery [2] 1041/3 1053/2 STEM [1] 832/15 stenographic [1] 1061/5 step [10] 787/10 787/19 788/7 788/20 797/7 828/23 846/12 922/22 954/2 995/25 steps [4] 841/23 1047/24 1048/15 1053/20 sticker [1] 997/10 still [14] 772/9 780/7 796/21 797/8 799/2 803/7 803/10 837/19 841/12 859/17 874/8 935/11 1030/5 1055/10 stock [3] 1001/4 1001/5 1001/8 stole [1] 896/18 stopped [1] 867/23 stopping [1] 932/5 storage [7] 958/25 959/4 959/6 960/9 960/19 960/22 985/17 store [15] 817/5 817/8 818/19 819/3 819/4 819/7 819/8 819/9 853/10 911/2 922/13 924/11 924/24 925/3 985/15 stored [7] 960/12 960/14 966/13 967/3 967/7 967/11 985/13 stores [1] 779/13 straight [3] 925/24 927/2 964/20 STRAUS [1] 769/4 stream [1] 1009/2 street [4] 767/18 990/18 1020/6 1045/12 stretch [1] 853/16 strike [8] 800/13 802/13 805/25 823/10 959/14 966/9 978/15 979/21 string [10] 848/21 848/23 850/16 863/6 865/15 866/2 866/3 872/23 883/6 883/15 strings [2] 872/20 876/22 strong [1] 820/18 structure [4] 864/17 1013/17 1045/23 1045/24 structured [5] 1008/19</p>

S	Document 601	Page 512 of 775	PageID #: 61090
<p>structured... [4] 1008/25 1009/12 1010/4 1010/7 structures [9] 1016/13 1030/23 1031/2 1040/5 1043/21 1044/8 1044/10 1044/22 1044/24 STS [23] 798/19 798/24 799/4 799/13 799/18 799/18 799/20 799/23 804/18 804/21 810/19 814/17 815/24 816/3 949/7 949/10 949/13 949/16 949/17 949/24 950/4 976/22 991/7 stuck [1] 770/19 student [3] 835/20 859/5 897/23 students [1] 906/22 studies [1] 814/6 Studio [1] 925/7 study [6] 778/24 812/7 812/11 812/12 812/17 813/25 stuff [4] 962/12 974/14 984/8 1011/3 sub [1] 860/21 subject [3] 864/12 864/14 864/15 submission [1] 899/5 submit [6] 772/5 837/5 839/15 907/4 933/8 1011/4 submitted [17] 772/19 836/12 836/13 836/16 836/18 839/16 857/16 857/18 859/14 860/5 879/22 879/25 880/3 886/20 887/10 892/16 898/21 subpoena [6] 821/20 830/20 831/3 831/8 1000/6 1000/13 subpoenaed [1] 821/18 subpoenas [2] 899/17 1000/1 subsequent [2] 834/12 1032/19 success [3] 859/13 859/13 990/11 successful [1] 1055/20 successfully [1] 893/13 such [8] 826/24 946/18 962/23 984/25 1000/10 1038/8 1041/10 1055/7 sudden [1] 912/7 sue [2] 809/1 809/2 sued [2] 800/2 800/5 sufficient [1] 861/7 suggest [9] 842/2 846/6 849/14 850/8 851/2 856/15 856/15 856/16 932/3 suggested [4] 783/23 850/6 912/24 1060/6 suggestion [1] 774/2 suggestions [6] 780/25 842/4 850/24 883/12 896/24 897/1 suggests [2] 813/14 894/16 summarization [2] 1019/19 1043/4 summarize [3] 931/18 947/5 947/20 summary [3] 845/1 935/13 962/11 summer [3] 836/17 837/2 881/20 support [10] 933/23 934/9 934/18 934/24 936/8 963/2</p>	<p>1026/18 1026/20 1026/24 1049/15 supported [5] 907/11 907/24 908/1 908/15 1029/5 supporting [2] 1032/17 1034/7 suppose [1] 775/17 supposed [1] 929/4 sure [92] 770/8 779/23 780/18 781/20 781/21 781/22 781/23 781/24 789/21 795/10 796/5 796/13 796/19 797/20 800/25 806/19 806/23 806/25 808/20 809/12 811/6 823/3 823/12 823/21 828/2 836/15 863/2 870/2 890/24 891/8 904/17 905/13 907/12 911/15 919/19 921/9 922/9 925/6 926/25 933/1 936/20 938/20 938/21 941/15 942/21 944/3 946/2 947/22 949/8 949/15 953/20 953/24 954/22 955/6 957/23 958/22 960/7 961/15 961/22 963/25 964/11 964/19 969/13 969/19 970/19 970/23 971/4 971/15 972/23 973/1 978/6 978/10 978/12 980/10 980/19 981/15 985/15 989/21 992/9 992/10 992/10 992/20 994/7 994/18 996/11 997/22 1016/24 1018/25 1019/17 1023/7 1033/13 1045/24 surely [1] 1028/5 surrounding [1] 1019/12 surveys [1] 814/6 SUSMAN [1] 769/3 sustained [1] 813/22 swears [1] 829/24 switch [1] 841/19 Switchboard [10] 849/2 851/18 852/1 852/10 852/18 853/21 862/14 873/2 873/9 873/14 switching [1] 841/23 sworn [3] 778/6 829/22 904/9 Symposium [1] 857/11 system [105] 789/13 789/14 789/19 790/11 790/13 792/1 792/3 792/6 792/12 792/14 832/1 835/23 835/25 842/1 842/18 846/10 846/23 846/24 847/20 848/1 850/1 850/8 851/8 853/15 854/11 854/23 855/5 856/7 857/22 858/1 861/6 861/14 866/12 870/3 871/6 872/3 876/20 876/21 878/9 878/10 879/21 882/11 882/23 883/10 885/20 887/20 887/23 888/17 889/9 890/10 890/10 890/10 892/2 892/3 894/1 894/1 896/12 896/14 896/17 897/8 897/11 898/2 899/12 901/12 902/6 902/22 903/10 906/25 908/10 908/14 921/11 922/1 934/11 935/22 936/5 940/6 940/22 940/23 946/10 962/19 962/24 963/4 963/4 963/11 963/12 974/23 1003/22 1005/11 1012/4 1012/5 1013/7 1013/11 1013/12 1014/17 1016/22</p>	<p>1020/13 1020/16 1027/20 1027/22 1031/17 1033/20 1043/24 1047/22 1055/20 1058/9 systems [15] 779/6 779/7 839/4 842/14 882/16 935/9 935/17 935/20 936/7 1002/23 1002/25 1004/6 1004/11 1004/22 1019/9</p> <hr/> <p>T</p> <p>T-E-D [1] 778/3 T-Mobiles [1] 796/11 tab [2] 780/21 834/20 table [1] 1051/11 tablet [1] 781/3 tablets [1] 908/16 tactics [1] 1035/21 tag [2] 834/8 871/25 tagged [1] 855/20 take [55] 774/17 796/11 797/1 805/11 826/13 834/12 841/20 854/8 862/11 862/18 863/11 863/14 865/20 866/22 868/2 868/4 872/11 876/16 876/22 878/3 900/11 901/19 909/18 923/18 924/8 925/22 932/7 932/9 932/11 940/4 941/13 955/24 969/4 981/13 982/6 982/6 982/8 982/10 982/17 983/15 990/9 996/12 996/19 1008/19 1010/5 1011/25 1012/18 1031/14 1032/1 1035/18 1039/9 1048/14 1059/10 1060/12 1060/12 taken [13] 777/5 807/13 808/21 829/23 830/2 866/2 868/6 885/11 936/15 996/24 1019/13 1048/2 1057/4 takes [5] 795/2 796/4 796/22 818/8 872/19 talk [23] 793/3 793/4 809/11 815/18 844/1 868/17 877/22 899/21 925/10 937/25 938/6 938/9 948/17 948/22 962/1 962/18 967/20 972/12 973/21 981/24 1026/19 1050/10 1059/13 talked [8] 899/19 921/20 929/21 978/4 978/20 991/2 995/2 997/13 talking [24] 780/14 782/12 824/8 895/6 920/18 921/14 921/23 926/12 938/2 938/4 939/11 939/12 942/1 950/6 956/7 960/16 964/17 967/19 969/16 970/11 978/16 982/3 985/11 1014/25 talks [2] 938/19 997/7 tap [3] 944/10 944/21 987/19 tapped [2] 924/19 987/22 tapping [3] 939/5 939/6 987/8 taps [2] 939/8 944/9 targeting [1] 1013/7 task [11] 915/16 956/15 958/14 958/18 963/21 964/1 964/21 980/8 980/18 980/21 981/1 tasks [3] 957/1 957/1 963/14 TC [1] 930/6</p>	<p>teach [1] 1003/1 teaching [1] 906/21 team [25] 780/1 780/8 780/17 781/11 781/15 781/19 782/2 782/10 801/1 801/14 802/8 802/9 803/3 807/19 807/25 808/4 808/9 809/18 818/17 818/20 819/24 900/9 1005/10 1006/7 1008/5 team's [1] 807/15 teams [2] 781/20 781/20 tech [24] 778/23 779/3 779/5 822/3 822/5 831/20 832/18 832/23 833/11 833/15 838/8 838/14 840/1 846/3 859/6 878/5 879/13 879/14 880/10 887/7 890/6 897/23 898/5 905/23 techies [1] 896/20 technical [58] 783/8 807/17 809/11 824/19 839/2 842/13 844/7 844/13 844/20 844/21 844/22 845/2 845/10 845/13 845/20 849/11 855/2 855/11 859/9 859/11 859/16 859/23 860/1 860/9 860/11 860/20 860/25 861/12 861/17 872/13 874/14 874/20 875/5 880/22 881/2 881/22 882/8 882/15 882/21 885/23 886/20 886/25 887/5 887/17 887/20 887/24 896/19 898/22 901/10 953/23 962/10 966/20 968/9 975/1 992/6 1012/22 1013/9 1013/16 technicalities [1] 900/13 technically [11] 863/12 946/4 946/9 946/20 947/1 992/7 992/10 992/14 992/18 992/20 997/9 techniques [2] 1003/3 1004/9 technologies [2] 1007/25 1055/19 technology [32] 800/9 804/4 804/18 804/19 811/11 814/22 815/24 816/3 832/13 832/16 857/11 906/15 945/20 953/8 991/20 1003/5 1004/13 1004/19 1007/9 1017/2 1017/6 1017/8 1019/16 1026/19 1031/11 1036/23 1037/3 1039/22 1054/8 1055/2 1055/4 1055/12 Ted [4] 777/25 778/3 778/5 778/15 tedious [1] 1011/6 telephone [3] 944/21 1030/7 1043/19 telephony [3] 1029/12 1047/12 1052/11 tell [21] 791/3 829/24 851/14 855/20 878/17 890/14 912/16 915/13 915/20 926/17 930/23 934/3 954/12 954/16 954/18 955/25 956/23 974/14 1013/23 1034/1 1049/1 telling [2] 805/22 974/16 tells [1] 1029/12 template [1] 849/22 temporarily [2] 975/9 976/16</p>

<p>T ten [5] 928/20 996/20 996/23 1044/10 1044/12 ten-minute [1] 996/23 tenets [1] 789/23 tenure [1] 906/17 tenured [2] 906/16 953/7 term [29] 802/4 821/19 900/15 900/16 912/18 914/25 915/7 915/8 915/10 915/11 915/23 915/25 918/23 938/9 942/17 952/7 957/21 973/12 986/2 986/9 986/13 986/13 986/17 988/4 988/7 988/10 988/12 1004/14 1054/22 terms [13] 772/24 819/18 911/13 913/3 913/7 923/5 929/25 930/2 938/17 951/9 959/11 959/13 959/16 test [2] 912/11 912/13 tested [1] 1034/15 testified [9] 778/6 827/4 874/13 904/9 957/2 965/4 965/18 1058/3 1058/13 testify [5] 825/13 827/3 830/7 830/20 999/17 testifying [3] 776/4 798/9 801/19 testimony [33] 775/10 775/25 776/3 783/20 790/19 818/10 819/14 824/25 827/3 829/4 829/16 829/18 829/20 829/22 830/4 869/6 905/8 911/8 911/11 929/12 932/23 932/25 945/22 954/14 975/10 975/17 996/10 997/6 998/15 999/4 999/6 999/14 1058/19 testing [2] 796/16 840/10 Texas [3] 1002/17 1002/19 1002/21 text [154] 782/4 782/6 782/12 782/16 782/20 782/25 783/3 783/11 783/23 785/11 785/20 785/24 786/2 786/10 786/13 786/18 786/21 787/1 787/3 790/21 790/24 791/3 793/7 793/9 793/11 793/24 794/14 794/17 794/18 794/21 799/2 809/19 809/24 810/4 810/12 810/16 812/6 812/13 812/17 820/13 841/24 845/25 848/10 848/13 848/21 849/12 849/13 849/14 849/16 849/19 850/4 856/1 856/12 856/12 856/12 861/7 862/11 862/21 863/25 863/25 864/4 864/12 864/13 865/5 865/22 866/14 866/15 866/15 866/16 867/5 871/14 872/19 874/3 884/18 888/20 891/5 891/6 894/23 895/2 895/7 895/9 896/4 896/9 896/10 897/4 897/6 897/12 913/14 913/15 920/13 922/1 923/14 925/22 925/23 925/24 926/3 926/16 927/2 929/7 931/2 944/4 944/6 944/8 944/9 944/17 944/20 944/24 945/2 945/4 945/7 945/9 945/10 945/11 964/5 964/13 964/21 965/1 965/22 968/4</p>	<p>968/11 971/19 972/1 972/6 972/20 973/22 978/4 978/5 978/12 978/16 978/21 979/2 993/14 993/17 1006/21 1010/4 1010/7 1011/3 1011/14 1017/19 1022/12 1024/7 1024/14 1025/4 1025/6 1025/13 1025/18 1027/12 1027/19 1027/20 1043/4 1043/6 1043/10 1043/12 1043/22 TextClassifier [14] 786/4 787/24 922/21 923/7 923/10 926/23 927/7 927/19 929/2 929/6 929/21 945/1 966/2 993/14 TextClassifierimpl [3] 788/11 788/24 791/15 TextClassifierimpl.java [1] 920/24 textual [2] 866/2 882/16 TextView [46] 786/12 927/25 928/3 928/4 928/5 928/23 929/1 929/6 929/25 930/5 930/7 930/9 930/13 931/2 949/15 949/15 963/17 963/18 963/19 964/10 964/12 968/5 968/12 972/2 972/5 972/8 972/19 972/23 972/24 973/1 973/9 973/12 973/20 973/20 974/3 974/6 974/7 974/8 974/11 974/12 978/11 978/11 978/15 978/17 978/20 978/23 TextView.java [1] 787/16 Thad [1] 896/13 than [19] 772/11 798/16 799/24 811/16 842/6 871/10 871/14 893/16 917/5 960/6 975/5 976/22 992/8 992/19 992/22 1021/22 1031/14 1031/16 1040/10 Thank [49] 776/20 777/4 777/16 778/9 789/1 797/10 797/11 797/13 813/17 813/18 821/2 827/12 828/12 828/20 828/23 830/9 904/3 936/12 936/13 937/4 937/17 943/5 948/6 948/8 948/10 950/12 951/18 953/15 959/19 960/24 962/2 962/12 962/15 985/1 988/23 990/6 992/25 993/2 994/10 995/25 996/2 996/6 998/9 998/10 998/11 999/19 1005/6 1010/2 1058/21 Thanks [1] 798/5 that [1647] That' [1] 891/11 that's [280] 770/20 772/15 772/20 773/9 773/22 774/9 774/20 775/4 776/10 778/20 780/1 780/3 783/19 784/22 786/15 787/16 787/22 787/24 791/17 791/21 792/5 792/5 792/10 792/11 792/24 796/7 796/7 797/4 797/10 800/11 800/17 801/4 801/7 801/13 801/21 801/24 802/4 803/16 804/3 804/6 804/17 804/25 807/5 807/8 807/8 807/15 808/8 809/9 809/15 809/17</p>	<p>810/1 810/6 810/8 810/10 810/15 810/23 817/6 817/19 815/19 819/8 821/17 821/22 823/25 824/10 824/24 825/16 825/17 826/8 828/7 828/25 832/20 832/24 834/13 834/19 836/22 837/10 837/20 837/25 838/9 838/22 840/4 843/11 843/12 843/14 844/12 849/1 849/6 850/15 850/22 852/14 852/21 852/23 853/20 853/23 854/4 855/22 856/3 856/4 857/5 858/10 859/10 860/3 860/4 860/7 861/22 862/3 862/5 863/20 864/2 864/12 864/13 865/9 865/13 866/8 866/10 867/19 869/18 870/8 870/12 870/15 873/6 873/15 873/19 874/10 874/14 874/22 877/20 880/5 881/6 881/10 881/15 881/17 882/3 882/24 882/25 884/5 884/6 885/5 885/20 886/17 886/18 887/1 889/5 889/9 889/12 889/15 890/9 891/11 893/12 893/16 894/18 895/14 895/17 897/24 898/3 898/7 898/20 900/24 902/16 902/21 903/17 903/25 913/6 918/15 919/8 919/24 920/2 920/17 920/25 926/5 926/13 927/8 927/10 927/17 931/25 932/20 933/11 935/9 939/5 939/10 939/16 939/22 941/23 942/6 942/11 944/10 945/1 945/11 945/25 946/19 947/8 948/24 950/24 950/25 951/10 954/13 954/15 954/20 955/16 957/16 957/19 958/5 958/8 959/12 960/13 960/16 961/5 962/10 963/8 963/10 963/16 963/20 964/9 964/17 964/22 964/24 964/24 965/14 965/14 965/16 965/17 965/24 966/4 966/14 967/22 968/6 968/7 969/5 969/23 970/5 971/1 971/20 972/4 973/14 973/16 975/4 976/5 977/12 977/16 977/24 978/1 978/1 978/6 979/14 979/14 980/2 980/19 981/10 985/18 986/6 986/11 987/11 990/2 990/17 990/21 990/25 990/25 991/24 993/15 993/19 994/1 996/14 998/4 1001/12 1005/3 1007/7 1008/15 1013/20 1019/3 1025/16 1025/24 1026/3 1029/18 1033/3 1033/9 1036/6 1039/21 1042/23 1049/14 1058/19 their [31] 773/1 773/4 773/5 785/22 794/13 795/18 795/24 796/12 807/16 824/12 825/19 839/24 853/12 854/24 876/1 888/21 896/17 901/2 908/23 909/10 911/3 924/25 932/17 1007/25 1011/24 1014/14 1015/14 1028/15 1031/10 1031/16 1037/3 them [62] 774/2 775/17 776/18 777/7 779/24 781/22</p>	<p>783/12 802/15 805/5 805/17 817/21 853/13 877/23 879/7 885/16 898/18 899/9 902/10 903/8 909/24 910/7 911/3 911/18 913/17 917/23 919/13 921/21 941/1 987/14 994/8 997/11 997/12 997/15 997/15 997/18 1002/22 1004/17 1005/24 1007/8 1007/24 1007/25 1009/8 1012/19 1013/23 1017/22 1023/19 1028/12 1031/13 1031/15 1032/18 1034/8 1040/16 1040/17 1044/23 1051/23 1051/25 1052/3 1052/6 1052/10 1053/2 1055/8 1058/2 themselves [7] 856/22 901/10 902/2 909/8 924/16 965/2 994/22 then [183] 771/19 771/22 771/23 773/1 773/6 773/14 773/15 773/15 774/8 776/15 776/18 780/5 786/14 789/22 795/14 795/21 795/24 796/9 796/10 797/8 800/5 824/15 832/17 832/21 837/18 838/10 839/21 840/25 841/1 841/18 842/1 842/3 842/5 844/22 846/25 848/4 849/5 849/8 850/8 850/14 850/17 850/20 851/24 852/4 852/5 852/7 853/13 854/14 854/18 855/1 855/15 856/18 860/5 862/1 863/10 863/18 865/1 865/4 865/6 865/6 866/2 866/9 866/15 866/24 868/16 868/16 869/2 869/14 869/22 869/25 870/4 872/4 873/20 874/5 874/5 875/25 876/3 876/10 876/11 876/12 876/12 877/17 878/24 880/4 881/14 881/21 882/10 882/20 883/9 885/13 887/10 888/7 888/21 891/2 891/24 892/18 895/11 896/23 900/11 902/25 909/9 910/7 910/22 911/11 912/6 912/7 912/24 913/18 914/13 914/17 914/21 915/13 916/25 917/19 918/15 918/24 920/16 924/10 924/12 928/17 935/12 935/13 935/22 939/4 940/7 940/12 941/7 946/23 958/5 966/21 970/5 970/24 973/20 974/7 975/25 984/8 1002/13 1002/15 1002/19 1003/4 1004/2 1004/19 1009/4 1009/7 1009/18 1010/3 1010/9 1011/6 1011/13 1012/6 1012/17 1013/8 1013/18 1014/18 1014/19 1014/23 1016/1 1016/19 1017/21 1017/23 1020/19 1024/9 1027/21 1027/25 1028/1 1029/1 1029/2 1029/10 1030/21 1036/11 1036/11 1044/5 1047/24 1048/6 1050/6 1050/9 1050/12 1050/15 1050/25 1053/23 1056/11 1056/22</p>
--	---	--	---

T
then... [1] 1056/25
theories [2] 934/24 934/24
there [187] 770/11 770/19
771/14 772/4 775/13 775/13
778/24 779/16 782/3 786/25
790/21 791/3 793/3 794/24
795/22 796/5 797/5 798/16
799/16 800/7 802/14 803/9
806/23 812/21 815/4 817/12
821/11 824/25 828/2 833/17
838/1 840/5 840/24 841/7
842/25 843/1 843/3 843/21
843/23 843/25 843/25 844/1
844/1 845/21 846/19 848/11
849/20 850/9 850/17 850/20
850/24 851/3 852/2 855/15
857/24 861/24 862/16 862/18
863/1 863/1 863/21 864/10
864/12 864/13 864/19 864/20
865/24 867/14 871/11 873/17
877/12 877/21 877/21 880/14
880/18 880/21 886/4 892/4
894/16 894/23 895/1 900/3
901/21 901/23 902/18 908/25
911/6 912/22 913/14 916/3
917/13 918/24 919/12 921/12
922/20 925/18 925/20 925/23
926/6 926/9 926/10 926/13
926/19 926/24 927/11 927/14
928/24 928/25 929/1 930/12
934/10 934/12 934/18 934/21
934/22 934/25 935/10 936/22
939/4 939/5 956/9 957/12
959/8 961/13 963/2 963/6
963/10 964/12 967/18 968/19
970/17 970/18 970/20 971/10
971/16 975/2 976/20 981/20
984/14 985/7 989/23 992/6
994/10 997/14 1006/21
1008/15 1009/18 1012/2
1012/11 1015/8 1015/16
1016/24 1017/4 1018/2
1018/13 1020/5 1020/18
1021/21 1023/15 1025/12
1025/17 1026/5 1026/17
1028/23 1030/18 1034/16
1035/9 1035/20 1038/7
1038/11 1038/18 1042/10
1042/12 1044/10 1046/16
1046/20 1046/21 1049/12
1051/10 1051/10 1051/11
1051/14 1054/17 1056/11
1058/4 1059/24 1060/7
there's [83] 770/10 776/11
780/23 782/11 787/4 789/16
789/22 789/22 790/21 797/3
801/23 819/6 819/7 822/3
824/4 827/7 827/10 831/19
834/8 834/20 836/22 840/5
840/23 845/25 846/15 846/20
853/3 855/12 861/17 862/13
881/22 889/16 894/5 910/6
911/5 912/5 913/18 914/6
916/20 917/16 917/21 920/23
922/20 923/2 925/6 926/9
926/10 928/22 929/25 936/6
936/18 949/23 958/8 958/25
959/4 959/6 961/1 961/16
961/17 962/18 962/22 963/1

968/9 968/15 969/10 970/1
972/13 973/1 973/15 977/14
981/19 981/22 985/23 992/14
1001/9 1004/10 1010/10
1012/22 1032/11 1037/8
1037/17 1055/7 1056/10
thereafter [1] 898/23
therefore [3] 796/15 848/16
931/23
these [102] 771/9 790/22
805/12 805/16 805/21 824/23
834/13 836/3 839/24 840/2
840/18 840/18 841/23 845/12
847/11 847/16 847/16 850/1
850/17 861/4 877/18 878/8
878/24 879/5 879/17 883/11
885/19 888/2 890/5 890/8
890/16 890/16 891/16 891/18
892/1 892/18 894/8 894/10
894/19 894/20 898/1 898/11
898/13 900/20 909/23 913/14
915/19 918/25 919/2 919/3
919/5 923/3 923/6 923/7
924/17 924/21 925/2 926/2
928/15 929/9 929/10 930/13
938/23 944/19 948/22 957/2
962/3 962/8 962/17 963/4
963/14 963/16 966/7 966/10
967/2 983/6 992/24 997/5
997/8 997/8 997/9 998/20
1005/10 1007/16 1007/17
1007/25 1008/11 1008/11
1013/23 1015/10 1020/14
1028/4 1032/23 1039/21
1040/22 1041/5 1052/13
1055/11 1057/19 1057/22
1057/25 1058/5
they [143] 773/4 775/21 776/3
776/8 776/12 776/17 776/19
777/3 781/6 785/19 786/2
786/24 793/13 793/19 793/20
795/21 795/24 796/11 796/13
796/14 796/19 802/7 804/7
804/9 804/11 804/15 806/23
811/9 811/14 813/6 816/4
820/19 823/23 824/18 824/19
825/19 825/20 825/23 825/24
826/3 826/7 826/16 832/12
835/11 840/2 848/1 848/2
848/2 850/12 852/11 852/12
854/2 854/3 854/24 856/1
856/1 856/2 856/18 858/15
861/3 874/18 878/10 880/15
880/18 880/19 890/13 890/17
890/19 894/11 895/12 895/19
895/23 895/24 898/18 899/11
899/13 899/18 899/18 901/13
902/8 903/9 908/24 909/8
917/13 917/19 918/5 919/3
922/3 922/4 925/1 931/4
931/13 931/16 931/16 933/12
933/13 935/13 942/21 942/22
945/12 947/10 947/12 947/13
949/8 949/8 949/25 950/1
950/4 957/5 963/14 963/17
963/17 965/3 966/11 967/5
980/14 997/8 997/10 997/10
997/15 997/18 997/19
1004/16 1011/5 1014/18
1015/13 1016/10 1017/4

1017/6 1024/25 1027/23
1031/19 1032/1 1033/17
1033/17 1034/13 1035/17
1037/2 1042/20 1042/21
1043/6 1043/8 1059/20
they're [13] 770/18 776/9
776/19 783/2 793/5 795/13
795/18 796/12 796/15 811/11
879/7 911/16 966/12
they've [3] 795/19 795/20
796/1
thing [39] 770/20 770/21
772/16 772/23 775/11 786/8
795/15 797/4 803/9 818/5
825/24 837/13 865/25 866/1
866/4 899/1 915/17 915/22
921/24 924/14 926/11 926/15
936/18 939/13 943/14 944/19
944/22 945/15 949/21 956/3
968/3 971/9 971/24 981/12
1016/17 1020/22 1028/4
1032/24 1049/5
things [73] 770/10 772/4
772/6 775/12 780/16 781/21
784/10 790/9 795/19 808/25
815/3 819/6 824/23 825/13
825/15 833/20 842/2 850/12
858/7 865/24 891/7 894/8
902/8 902/9 902/10 906/19
909/19 921/12 921/13 923/21
924/9 925/2 925/7 925/8
926/17 931/10 939/25 943/10
944/20 964/25 967/6 970/18
971/8 974/19 974/21 979/14
985/12 993/24 1005/23
1008/25 1009/5 1009/6
1009/8 1009/18 1011/2
1011/16 1013/24 1016/14
1020/3 1025/7 1025/15
1027/15 1028/1 1028/5
1028/9 1032/9 1040/5 1041/7
1041/9 1051/20 1054/23
1056/21 1057/17
think [123] 770/18 770/19
770/25 771/5 771/17 772/12
774/6 774/24 776/16 782/3
785/13 794/4 797/2 797/4
798/15 798/16 799/23 800/18
801/1 802/7 802/19 803/7
803/8 803/9 807/5 807/10
807/11 808/8 808/9 808/11
809/10 809/21 811/7 811/15
811/19 815/16 817/12 817/19
818/14 819/17 821/1 821/16
826/12 827/3 827/8 828/1
832/25 838/19 839/9 843/15
849/22 858/7 868/11 874/13
878/19 880/6 884/16 888/13
888/22 896/13 899/15 899/18
899/21 900/9 900/24 901/11
902/17 912/15 912/22 913/9
917/21 918/11 920/2 927/22
928/3 928/24 929/21 932/17
938/14 939/18 946/1 950/6
950/24 952/3 957/5 957/22
959/14 959/18 959/20 960/13
960/16 965/8 966/4 966/14
967/16 968/14 972/4 973/14
974/25 975/3 976/11 978/3
978/6 978/10 979/25 980/19

982/5 985/23 986/21 987/5
992/3 992/5 992/20 993/13
994/5 997/23 1009/22
1018/24 1019/6 1032/19
1039/15 1041/1 1042/9
thinking [3] 771/1 980/2
1016/9
third [16] 774/14 842/9 855/14
855/16 870/17 872/9 873/4
873/20 881/21 885/6 887/22
994/6 1024/3 1028/23
1030/17 1047/12
third-party [1] 1047/12
thirds [2] 874/6 1051/8
this [620]
those [81] 771/12 772/6
773/18 775/15 776/11 784/22
786/15 790/14 795/23 810/1
810/3 820/14 825/11 829/7
829/10 829/17 831/10 834/23
836/24 840/8 842/4 848/1
850/11 850/12 856/6 856/19
864/21 865/7 878/22 879/6
890/11 891/15 895/5 905/25
907/25 911/4 911/20 913/9
913/14 915/1 919/7 919/14
920/15 921/19 924/5 924/5
924/23 926/17 929/8 935/15
936/3 938/23 939/3 941/9
943/24 943/25 947/7 957/1
971/18 976/18 979/13 979/22
982/1 999/1 999/5 1007/10
1009/6 1009/8 1009/15
1010/25 1012/17 1013/20
1013/21 1013/21 1015/8
1018/22 1025/15 1036/7
1036/9 1041/25 1044/22
though [9] 772/16 878/19
903/5 951/12 966/11 967/3
967/7 974/15 1042/20
thought [7] 900/22 919/3
919/4 957/8 1002/18 1009/2
1059/18
thousand [5] 808/9 843/17
1018/15 1021/22 1042/11
thousandth [1] 987/21
three [11] 779/16 780/3
836/23 848/22 849/23 849/23
857/25 859/2 872/22 891/11
906/10
three years [1] 906/10
three-hour [1] 857/25
through [47] 771/5 771/20
771/22 773/18 781/8 783/17
786/4 789/16 795/6 796/3
797/7 805/21 831/22 842/6
864/3 864/8 865/20 871/1
872/12 876/6 879/20 883/3
899/19 905/12 907/22 909/17
919/7 925/10 925/10 925/18
928/16 940/5 940/11 950/2
964/22 965/8 965/11 968/11
975/19 1011/1 1011/6 1012/6
1022/7 1030/7 1048/14
1049/15 1059/7
throughout [1] 786/6
thrown [1] 896/22
Thursday [1] 767/11
thus [1] 889/10
tied [1] 1004/15

T	Document 601	Page 514 of 775	Page 61093
<p>tight [1] 868/8 TikTok [2] 820/16 820/18 time [90] 770/15 772/19 772/22 773/17 773/19 775/9 776/14 779/14 781/22 782/9 785/1 789/9 792/23 794/6 795/2 796/4 796/8 796/19 800/12 800/14 805/14 805/24 806/1 806/4 806/20 808/6 813/16 813/23 818/8 827/11 833/4 833/14 839/11 839/11 840/12 840/20 841/14 843/1 843/22 850/2 851/7 851/7 855/6 857/25 858/2 867/24 867/24 876/19 878/19 880/11 890/22 893/9 893/23 898/13 899/3 904/22 912/23 915/21 932/3 932/8 935/19 938/25 955/24 959/18 959/20 962/9 977/9 990/16 991/7 996/12 996/18 998/10 1005/16 1005/20 1018/8 1021/20 1023/18 1024/11 1026/16 1027/2 1028/23 1031/24 1032/4 1033/14 1033/17 1034/13 1040/4 1058/23 1059/2 1059/19 time-consuming [1] 1023/18 timeline [1] 860/8 times [12] 816/25 878/24 901/10 901/15 901/16 901/17 901/20 902/5 903/12 903/14 934/19 977/8 timestamp [1] 865/1 timestamps [1] 1042/21 title [9] 787/9 787/15 787/18 788/8 791/8 812/8 812/16 1006/16 1023/15 titles [1] 1041/3 today [34] 772/24 773/9 773/13 777/22 799/2 802/10 805/17 810/11 822/5 831/2 841/12 847/14 849/4 899/9 899/19 902/24 905/9 914/9 932/9 937/25 948/17 949/1 991/10 991/14 999/25 1000/20 1000/21 1002/6 1032/12 1032/15 1033/15 1039/1 1055/22 1057/18 together [22] 771/18 786/22 831/22 835/24 835/24 836/2 836/3 863/17 883/7 975/8 976/9 976/15 981/19 981/23 984/9 993/21 1008/5 1023/5 1032/2 1032/9 1042/1 1047/21 Toki [6] 794/4 799/24 929/12 929/21 930/4 973/14 told [2] 990/22 1039/1 tomorrow [8] 771/2 771/2 771/6 771/19 772/5 1059/25 1060/8 1060/12 tone [1] 1051/9 tonight [5] 936/12 1059/19 1059/24 1060/8 1060/9 too [3] 854/24 900/14 987/15 took [3] 897/3 911/11 1043/11 tool [19] 841/19 841/20 847/19 848/24 849/3 849/9</p>	<p>855/22 856/5 863/9 911/5 911/7 917/3 917/24 918/3 924/19 925/6 925/8 925/8 925/17 toolbar [1] 1042/22 toolbox [1] 962/8 Toolkit [1] 841/1 tools [6] 841/16 841/24 842/7 853/15 869/23 962/8 top [26] 780/23 795/18 795/19 838/1 844/14 846/1 846/20 846/22 847/21 848/18 861/21 863/20 864/11 865/12 872/11 882/25 884/12 884/13 921/11 922/25 925/11 926/8 1052/18 1052/21 1052/22 1055/14 top-left [2] 861/21 863/20 topic [2] 813/15 1003/2 topics [1] 813/7 tortious [1] 879/7 total [1] 936/2 touch [1] 920/13 touching [1] 785/5 towards [1] 993/10 trade [2] 1015/7 1015/10 traditional [2] 853/9 853/15 transcript [3] 797/19 959/21 1061/5 transfer [7] 975/15 975/15 976/20 976/20 1005/9 1009/24 1009/25 transitioned [1] 832/12 translation [1] 1016/7 transparency [1] 861/5 treat [1] 997/11 treated [1] 998/21 treating [1] 997/18 trespassed [1] 803/18 trial [24] 767/12 770/7 770/9 777/23 783/17 786/6 794/11 798/14 800/4 807/6 818/20 818/21 823/5 823/13 823/22 824/6 824/10 824/16 825/1 829/23 934/23 951/8 957/15 1059/5 tried [1] 902/13 trivial [3] 848/14 852/3 853/10 trouble [1] 917/11 true [13] 786/17 786/21 840/14 849/1 935/19 960/13 963/16 963/20 964/17 970/18 971/1 989/6 1061/4 truth [4] 785/18 785/19 805/22 829/24 try [14] 780/2 798/17 819/7 866/24 907/1 925/10 932/8 932/9 932/13 935/21 951/17 969/14 969/19 1059/14 trying [26] 775/12 782/13 785/6 789/24 801/15 820/22 823/1 826/3 835/10 836/14 841/7 841/8 841/10 860/10 882/18 900/23 930/8 968/14 968/25 975/25 983/8 983/10 992/10 1014/12 1017/7 1030/7 Tuesday [3] 1059/9 1059/11 1059/12 turn [5] 902/18 909/11 995/2 1006/14 1047/4</p>	<p>turned [1] 903/6 turning [1] 993/29 turns [4] 915/6 925/25 942/3 945/8 tutoring [2] 1002/23 1002/24 two [50] 770/18 789/21 805/11 819/6 823/7 836/24 840/5 850/12 854/16 856/10 857/19 857/21 865/24 874/6 875/18 891/11 905/23 906/21 911/16 913/9 916/5 918/25 919/12 921/4 923/3 926/17 938/21 940/1 943/25 944/3 948/17 948/23 975/8 976/8 976/15 981/20 982/1 983/11 984/7 986/20 992/24 997/5 998/20 1002/16 1009/15 1015/8 1030/22 1032/11 1051/8 1057/19 two-page [2] 857/19 875/18 two-thirds [2] 874/6 1051/8 type [14] 791/2 791/3 849/14 849/19 850/4 850/7 850/7 850/15 856/9 866/14 1009/11 1010/7 1011/14 1041/8 types [4] 850/1 894/23 960/5 1057/21 typical [1] 833/22 typically [4] 797/6 917/12 1015/9 1015/10 typing [5] 780/25 896/22 897/1 897/4 1011/3</p> <hr/> <p>U</p> <p>U.S [1] 1061/9 Ubiquitous [6] 857/8 858/24 859/25 875/10 877/14 880/23 UCLA [3] 1002/10 1002/11 1002/13 UCSB [1] 906/9 Uh [12] 838/3 955/8 965/9 970/14 977/7 978/25 982/7 983/20 987/18 987/20 989/8 993/12 Uh-huh [12] 838/3 955/8 965/9 970/14 977/7 978/25 982/7 983/20 987/18 987/20 989/8 993/12 Uhhh [1] 1037/10 UIST [17] 857/12 857/15 858/3 859/15 859/23 860/5 872/13 874/14 874/20 875/12 875/19 876/4 876/25 877/2 892/16 899/4 899/4 UIST '97 [1] 857/12 ultimate [1] 806/8 ultimately [7] 898/22 898/22 946/25 1006/10 1012/5 1013/6 1056/6 unbounded [2] 825/18 825/20 uncomfortable [1] 854/23 under [22] 778/6 829/23 838/1 856/2 873/20 877/9 892/15 894/12 904/9 912/18 912/19 933/21 933/23 933/25 940/10 956/1 978/9 986/12 1005/8 1023/15 1035/2 1042/13 undergrads [1] 834/2 undergraduate [1] 905/22</p>	<p>undergraduates [1] 906/22 underlined [2] 944/6 944/19 underlying [3] 894/16 944/24 1017/7 underneath [2] 845/25 1052/24 understand [37] 770/11 772/10 776/19 782/11 800/2 800/9 801/25 815/12 816/5 816/17 821/14 822/22 823/21 830/18 861/7 920/6 932/6 933/1 936/10 938/18 951/7 955/4 955/7 960/25 965/22 967/24 969/23 972/13 981/22 993/23 997/1 999/25 1000/24 1016/15 1034/1 1036/25 1058/24 understanding [20] 798/12 803/19 803/20 803/25 804/17 804/19 807/23 818/7 843/22 861/6 900/21 912/3 931/7 954/10 957/16 957/20 977/16 994/1 1021/25 1033/15 understands [1] 943/17 understood [10] 773/23 776/5 777/14 867/22 869/10 937/3 965/13 1007/22 1017/10 1031/16 undertake [4] 799/21 813/25 814/6 815/20 undertaken [1] 833/25 undertook [1] 802/15 UNIKEL [5] 769/12 772/14 803/13 900/2 900/7 Unikel's [2] 808/13 900/5 unit [1] 934/16 UNITED [5] 767/2 767/20 907/14 907/17 907/20 units [1] 779/13 university [14] 822/8 822/19 823/14 825/25 826/18 828/15 832/7 835/20 905/15 905/16 906/7 906/13 1002/9 1002/14 unless [2] 813/13 997/7 unquote [17] 913/15 1005/12 1008/20 1010/16 1022/13 1023/21 1024/16 1027/15 1028/5 1029/15 1031/6 1036/1 1036/14 1053/2 1054/11 1055/23 1057/1 unrelated [1] 784/8 until [11] 781/7 793/16 794/12 799/25 818/14 819/25 880/7 899/17 942/10 1002/15 1014/17 Uombi [1] 992/2 up [106] 770/11 770/20 770/21 772/21 774/16 774/17 778/18 778/19 778/21 779/10 781/7 781/8 784/12 784/14 785/21 787/7 788/2 790/16 795/16 814/2 818/7 824/17 827/9 827/23 828/2 828/4 828/6 832/1 833/14 836/20 845/9 848/25 849/1 849/8 850/11 851/14 851/24 855/15 860/12 860/13 861/10 864/23 864/25 865/1 865/2 865/3 865/4 865/5 870/23 872/8 875/25 879/9 882/7 883/11</p>

U
up... [52] 891/13 893/5 893/17
898/9 906/2 913/10 914/12
915/2 916/9 916/10 918/11
919/23 920/10 920/14 920/20
921/12 925/24 926/14 927/2
928/3 931/23 932/8 939/2
939/10 944/9 947/7 947/15
962/12 967/16 979/22 992/5
993/5 994/5 994/20 1011/13
1014/17 1020/1 1025/19
1030/10 1032/8 1033/8
1039/21 1040/7 1040/25
1043/20 1044/21 1047/3
1050/4 1050/11 1059/18
1060/12 1060/12
update [2] 777/1 837/5
updated [10] 771/18 771/23
788/11 837/18 893/6 912/6
912/7 1022/12 1022/19
1060/10
updates [1] 781/4
updating [2] 1022/22 1040/15
uploaded [1] 838/18
upon [2] 799/20 1019/9
ups [5] 845/4 860/23 861/4
893/25 905/24
URL [14] 791/6 849/25 852/3
853/12 865/2 865/3 867/6
869/25 871/25 872/1 1009/23
1009/23 1025/20 1040/8
URL,http: [1] 1045/1
URL,http://wsj.com [1] 1045/1
URLs [3] 1016/14 1027/14
1041/9
us [15] 808/10 813/5 818/23
853/10 903/24 915/10 957/23
965/8 965/11 985/1 1002/5
1040/5 1041/6 1057/20
1059/6
Usability [3] 878/21 879/9
879/15
usable [3] 814/19 917/11
1010/7
use [92] 781/25 786/11
786/15 793/11 793/24 794/13
794/17 794/19 794/20 813/5
825/1 848/10 848/10 850/13
851/11 866/15 866/15 889/20
892/25 893/14 893/21 896/20
908/15 908/19 908/21 909/7
909/9 911/5 911/21 913/4
915/6 916/24 917/2 917/16
917/19 919/23 921/14 921/21
923/24 924/13 925/7 925/9
927/6 927/7 928/6 931/19
937/1 940/2 940/3 942/21
942/22 944/12 947/12 949/8
949/25 957/24 961/15 961/16
962/3 963/14 963/17 963/17
966/2 966/5 966/11 966/18
967/5 967/14 967/17 968/11
969/6 971/9 971/11 971/17
972/5 972/19 973/4 973/12
974/11 994/19 1003/9 1004/8
1011/21 1014/21 1015/13
1015/14 1017/5 1018/18
1027/9 1040/23 1049/19
1055/2
used [34] 775/19 781/19

782/17 784/12 787/5 791/3
792/4 824/15 832/11 845/15
848/15 891/12 900/15 900/16
911/7 911/20 916/11 924/18
934/1 961/19 971/14 993/13
993/16 993/21 995/8 1008/12
1018/21 1026/15 1027/1
1032/6 1043/2 1047/20
1053/15 1053/23
useful [7] 814/11 903/6
916/21 1010/15 1027/14
1031/11 1031/19
user [124] 785/22 789/23
790/2 790/6 810/17 810/19
835/10 843/9 846/24 847/3
849/12 849/15 850/5 851/15
852/9 853/24 854/7 854/10
854/11 855/24 856/6 856/18
857/11 858/18 861/18 861/25
863/25 866/21 866/23 867/2
870/13 870/20 871/7 871/12
871/21 872/4 873/8 873/25
874/8 874/11 876/19 882/22
883/3 883/14 883/15 883/17
883/20 884/21 884/23 885/6
885/13 890/18 891/16 895/8
895/11 895/18 895/23 896/3
914/23 918/3 918/4 918/22
919/23 924/23 938/8 939/11
941/17 941/22 942/8 942/16
943/2 944/8 947/18 949/7
949/14 949/17 950/1 950/5
984/7 985/25 986/8 986/18
987/8 988/3 995/22 1003/10
1003/19 1003/20 1003/21
1004/9 1005/21 1008/19
1009/7 1010/10 1010/13
1011/13 1014/8 1014/15
1014/16 1024/24 1025/11
1025/21 1025/25 1026/11
1027/20 1028/10 1028/12
1028/14 1028/21 1029/22
1043/10 1043/17 1043/23
1044/2 1044/5 1044/14
1045/6 1046/11 1047/1
1047/5 1047/11 1048/19
1051/19 1052/13
user's [10] 782/15 814/11
853/18 853/22 913/5 1014/18
1014/22 1049/4 1057/1
1057/8
users [19] 780/19 793/11
793/24 794/13 794/17 794/19
794/20 794/22 794/25 817/9
854/23 861/2 894/20 1010/24
1025/3 1031/9 1031/16
1035/10 1036/22
users' [1] 795/3
uses [8] 939/7 944/17 944/23
949/15 961/20 963/19 968/20
980/12
using [77] 777/13 782/16
789/24 796/24 845/12 848/23
849/1 849/2 849/15 851/18
852/10 853/4 854/5 854/12
863/11 865/15 865/18 866/5
866/10 866/19 867/3 869/19
869/21 869/22 870/17 870/20
871/11 871/15 871/18 871/24
872/23 873/1 873/4 873/9

873/22 882/23 883/15 883/18
884/14 884/21 885/7 885/17
891/10 893/15 895/16 912/17
914/16 915/8 916/6 916/10
918/5 921/13 925/17 930/23
930/25 939/7 939/7 941/25
951/15 977/4 977/23 978/8
978/20 982/2 982/2 990/22
1003/2 1011/17 1011/23
1017/1 1041/5 1041/23
1041/24 1052/6 1052/11
1056/15 1056/22
usually [2] 774/15 860/17
utility [5] 810/17 810/18 989/1
989/10 990/1

V

valid [2] 815/8 912/9
validate [1] 797/8
validation [2] 796/8 796/13
validity [3] 773/17 807/7
815/15
valuable [1] 804/15
valuation [1] 816/3
variants [1] 921/5
varied [2] 880/11 880/12
variety [4] 915/7 966/23
981/22 1007/19
various [16] 879/10 902/4
903/1 903/13 928/22 931/10
939/2 946/6 950/2 966/23
967/6 974/19 974/21 1013/11
1027/21 1044/7
venue [5] 842/25 843/7 843/7
843/8 907/2
verdict [4] 772/17 772/18
772/22 1060/12
Verizons [1] 796/10
versa [1] 923/11
version [39] 780/21 781/2
781/3 788/11 795/12 795/21
796/11 818/13 836/2 836/11
837/1 838/1 839/15 839/20
845/15 857/19 858/19 858/19
860/24 876/8 881/14 881/19
882/13 887/19 891/8 896/2
902/22 903/8 944/16 972/9
972/14 984/6 984/6 1013/6
1017/23 1022/13 1032/16
1038/1 1060/10
versions [10] 784/7 818/1
861/8 902/17 921/2 921/4
921/5 921/6 972/10 1060/11
versus [1] 859/13
very [50] 772/12 774/16 777/4
780/20 782/9 782/10 789/7
796/18 825/24 835/19 839/20
840/6 840/6 841/11 841/13
843/3 845/19 845/19 847/14
853/8 853/10 861/11 873/7
877/24 888/18 888/19 903/19
909/3 916/12 921/11 929/18
936/12 961/16 992/25 993/4
995/25 998/20 1005/23
1010/25 1011/11 1013/22
1018/9 1022/12 1025/5
1025/8 1026/22 1033/3
1052/21 1052/22 1058/21
vested [1] 902/11
via [3] 856/16 949/15 987/5

vicious [1] 863/3
video [35] 775/14 775/16
776/7 776/9 810/22 810/24
830/4 867/23 868/9 868/24
869/8 903/16 938/25 996/15
997/16 998/21 999/13
1018/24 1019/7 1020/23
1021/12 1021/16 1021/18
1039/12 1039/17 1041/13
1041/17 1042/17 1042/20
1042/21 1044/20 1047/23
1047/25 1048/3 1053/16
videos [8] 820/16 820/19
823/7 910/20 938/22 938/23
944/4 950/24
videotape [3] 996/10 998/14
1021/6
view [9] 815/23 815/24
962/24 963/4 963/4 970/24
978/9 979/6 979/12
vintage [1] 1057/22
visible [4] 845/16 848/2
1043/12 1051/12
visited [1] 878/23
visiting [1] 835/19
visitor [1] 840/12
visitors [1] 879/11
visual [5] 781/3 841/16
847/20 848/3 882/17
Visualization [3] 878/20 879/8
879/15
voicemail [1] 1029/3
Volume [1] 767/13
vulnerabilities [1] 910/6

W

W.emailADDR [1] 1052/19
wait [4] 777/10 868/15 881/4
976/12
waiver [1] 934/21
walk [3] 876/6 905/11 919/7
walked [2] 965/8 965/11
wall [3] 962/22 1020/6
1045/12
WallStreetJournal.com [1]
1040/8
Walmart [1] 779/12
Waltham [1] 906/3
want [46] 771/2 774/16 776/8
781/24 796/13 796/19 796/20
797/8 802/19 817/24 819/4
823/20 830/16 841/25 842/1
842/2 842/5 847/5 868/19
908/23 909/7 909/11 917/8
917/16 917/24 927/22 958/7
961/25 962/7 962/10 967/6
967/20 968/3 968/10 969/18
969/23 974/11 980/3 983/7
983/21 985/22 996/12 1020/2
1030/3 1040/16 1040/16
wanted [26] 770/10 770/20
770/21 772/23 774/4 781/1
793/15 825/19 854/3 854/24
895/23 903/4 903/8 933/2
965/20 968/4 972/1 1007/23
1007/24 1010/23 1025/3
1026/21 1029/13 1029/21
1031/11 1057/17
wants [5] 775/18 971/9

W	Document 601	Page 516 of 775	PageID #: 61095
wants... [3] 971/17 1043/19 1043/25 was [507] Washington [7] 822/8 822/20 823/15 826/18 828/16 832/3 832/8 wasn't [13] 793/15 794/24 813/6 825/8 870/5 902/6 903/5 912/13 933/1 942/6 952/16 991/6 1026/17 watch [5] 1019/21 1019/22 1019/22 1040/2 1040/6 water [2] 826/25 951/12 way [67] 772/10 780/1 786/15 789/14 796/20 799/4 799/13 802/12 805/3 805/6 820/22 825/1 828/14 830/6 830/17 836/5 841/3 855/5 868/12 868/19 870/3 888/3 891/21 905/5 913/6 916/23 940/13 949/19 949/19 949/23 952/4 952/15 964/23 965/2 968/6 968/11 973/1 973/14 976/3 976/4 978/11 978/13 978/16 980/6 982/1 982/2 982/13 984/12 984/23 989/13 991/8 999/16 1000/17 1000/24 1009/24 1010/24 1011/12 1011/15 1012/4 1032/22 1045/2 1045/14 1048/14 1051/9 1051/12 1051/13 1055/9 ways [8] 835/8 854/16 915/7 916/3 966/23 981/23 1009/6 1031/18 we [382] we'd [3] 775/9 839/17 1059/18 we'll [17] 829/1 842/8 868/5 907/4 932/7 932/9 933/3 933/12 933/14 933/24 959/21 993/5 996/9 1060/9 1060/9 1060/12 1060/14 we're [52] 770/7 771/10 772/16 772/17 773/20 774/1 774/1 775/20 781/21 781/24 807/6 807/8 807/10 820/12 821/10 821/14 845/22 854/19 856/15 863/4 873/13 876/17 882/18 907/1 914/9 920/18 921/14 926/12 928/18 932/8 939/11 940/9 948/17 950/6 960/16 962/3 967/19 967/24 970/11 972/9 972/10 973/18 978/16 982/3 983/2 984/21 996/25 1014/24 1019/11 1034/14 1041/5 1055/3 we've [24] 770/13 770/15 771/10 777/7 786/6 798/3 819/14 868/1 876/6 889/10 895/20 902/23 931/1 938/3 938/14 938/24 947/3 964/17 981/24 997/1 1019/13 1039/21 1040/4 1059/1 Wearable [1] 880/23 web [82] 780/12 782/20 786/11 786/13 834/12 837/7 837/8 837/12 837/20 837/21 838/18 838/18 839/6 839/24	840/12 840/19 841/15 845/6 846/25 847/17 848/24 848/24 849/6 852/7 852/14 852/15 853/12 860/6 871/23 873/10 873/12 873/14 878/4 885/25 886/7 886/15 888/8 891/4 891/14 891/15 891/17 891/20 891/20 891/24 892/5 892/7 892/10 892/19 894/4 897/14 897/18 897/20 898/1 898/5 898/8 922/11 922/14 1001/24 1009/18 1022/8 1023/2 1023/4 1023/11 1030/12 1035/6 1035/10 1036/12 1036/13 1036/18 1036/20 1037/5 1038/2 1038/4 1038/8 1038/12 1038/18 1038/23 1045/1 1045/9 1045/10 1051/23 1055/7 Web-based [1] 891/4 website [57] 780/2 780/2 831/16 831/17 831/18 831/19 832/25 833/9 833/13 833/14 833/17 833/21 834/8 834/18 839/23 852/19 853/22 858/18 858/20 859/20 860/12 860/14 860/24 861/3 875/3 875/6 878/5 881/2 881/12 881/19 886/5 886/19 887/2 887/17 894/9 898/18 898/24 899/2 899/4 899/5 1001/16 1001/25 1005/8 1020/5 1022/8 1023/3 1030/13 1030/14 1034/22 1035/7 1035/16 1036/21 1038/12 1038/13 1038/20 1038/24 1045/12 websites [1] 780/22 week [4] 770/9 770/9 785/2 816/16 weekend [1] 1059/15 weeks [1] 771/8 weight [1] 958/20 Weinstein [5] 815/18 817/11 817/22 818/11 818/21 welcome [5] 777/21 813/12 824/22 869/4 937/13 well [98] 771/11 772/17 774/17 789/18 792/7 800/2 803/4 804/23 807/2 807/10 807/18 809/3 809/23 811/11 814/25 816/21 817/14 817/22 821/14 822/18 825/3 831/24 832/15 834/1 838/4 843/9 856/22 858/19 860/18 862/13 863/7 866/9 871/24 873/18 874/11 876/22 878/7 890/17 890/18 905/21 906/25 916/2 919/2 923/18 924/5 927/1 928/14 930/2 935/4 935/25 951/7 953/5 955/22 956/12 963/1 963/10 964/19 966/15 967/19 969/5 969/13 969/21 971/13 974/15 976/3 976/5 978/4 978/14 979/6 980/4 980/24 981/19 982/16 983/10 984/21 986/14 992/15 993/5 1002/7 1005/16 1006/5 1007/18 1011/11 1013/10 1014/14 1016/7 1016/23 1019/24 1020/9 1025/5	1028/14 1030/1 1033/5 1039/5 1040/9 1043/20 1048/10 1059/12 went [19] 778/23 836/20 847/4 864/3 874/4 883/3 899/19 906/14 910/19 917/15 936/7 1002/15 1002/17 1002/18 1002/19 1003/4 1003/11 1004/2 1036/13 were [209] 771/13 771/14 775/15 781/5 781/6 781/6 784/6 784/20 785/3 789/24 794/12 803/4 809/16 810/22 811/17 811/18 814/25 816/21 817/10 817/13 818/1 821/4 823/7 831/9 833/15 833/20 833/23 833/25 834/13 836/4 840/1 840/1 840/1 840/2 840/8 841/6 841/7 841/8 841/10 843/1 843/3 843/21 843/23 843/25 845/5 845/16 847/11 848/23 849/20 850/1 850/2 850/6 850/9 850/9 850/23 851/6 856/17 858/15 861/8 862/18 864/14 865/10 867/12 867/13 870/20 871/6 872/23 873/8 873/25 874/18 875/24 877/18 877/21 879/6 879/10 880/14 885/3 888/2 888/10 888/10 888/12 889/5 889/13 890/4 890/5 890/5 890/6 890/8 890/11 891/2 891/3 892/1 892/1 892/16 894/11 894/19 894/23 895/1 895/6 895/24 896/13 896/21 899/18 900/11 900/22 901/3 902/1 902/11 903/12 905/25 906/9 910/16 911/21 919/3 919/13 921/23 928/16 929/12 934/25 935/10 935/11 935/15 935/20 937/19 938/4 942/14 943/6 943/12 944/13 945/13 946/9 950/19 950/20 954/23 954/23 955/11 957/2 957/5 968/14 974/4 977/17 982/4 991/19 1000/1 1000/5 1000/6 1002/22 1003/15 1004/15 1004/18 1006/11 1007/24 1008/11 1008/11 1008/25 1009/6 1009/9 1009/16 1010/22 1010/24 1012/2 1013/7 1013/11 1013/21 1013/21 1014/12 1015/8 1015/10 1015/13 1015/16 1017/7 1017/12 1018/11 1018/13 1023/6 1023/6 1024/25 1025/12 1028/14 1029/5 1029/18 1031/9 1031/21 1031/23 1031/24 1032/1 1032/4 1032/5 1032/7 1032/9 1032/21 1033/17 1035/2 1038/11 1038/23 1039/1 1042/3 1042/10 1042/12 1042/12 1043/6 1043/8 1044/6 1044/22 1045/25 1051/13 1054/23 1055/5 1056/6 weren't [4] 818/18 819/11 894/19 955/19 west [1] 1015/10	what [396] what's [26] 772/9 807/1 822/14 823/21 846/18 855/4 855/19 872/12 876/13 911/6 912/3 913/11 921/16 925/9 925/11 926/18 927/23 930/2 939/16 940/10 944/7 946/21 976/19 981/25 997/8 1050/18 whatever [10] 827/10 863/16 870/1 870/3 935/16 971/15 974/5 976/4 982/23 1043/8 whatsoever [1] 831/6 wheel [1] 962/9 when [163] 777/2 778/20 779/1 779/5 779/8 779/23 780/17 780/18 781/4 782/12 782/14 783/24 784/25 785/20 788/15 790/4 790/25 792/2 792/8 792/20 793/3 793/4 793/6 793/17 793/23 794/1 794/7 794/18 795/10 796/23 796/24 799/23 799/25 803/4 804/21 807/19 810/22 811/4 814/19 815/21 817/10 817/13 817/23 821/4 823/25 826/2 826/16 826/24 831/17 832/9 836/7 836/10 836/18 837/14 837/14 837/16 837/17 839/5 839/13 841/14 844/17 847/8 847/10 847/11 847/22 847/22 847/22 849/18 849/18 850/3 851/9 851/21 852/12 854/11 858/14 859/15 859/15 860/3 860/8 860/11 864/6 864/17 866/8 869/16 871/3 875/1 875/20 878/17 879/1 879/2 879/5 881/11 881/18 886/2 887/16 889/25 890/19 892/18 893/17 893/20 894/8 895/6 895/7 895/8 899/1 899/11 905/17 906/17 906/25 910/4 911/25 917/7 917/14 920/13 920/18 921/7 926/14 928/16 935/22 939/7 944/8 944/23 945/20 946/11 947/19 951/14 958/22 961/6 961/7 964/8 966/20 975/7 976/7 976/14 978/16 978/20 987/14 990/23 991/14 997/25 1003/20 1005/4 1005/25 1007/10 1011/9 1016/19 1017/11 1018/16 1019/22 1023/6 1027/18 1028/8 1029/21 1031/23 1033/12 1034/18 1034/25 1036/24 1046/3 1046/7 1051/17 1051/18 1058/17 whenever [1] 993/17 where [101] 772/12 777/2 778/16 778/18 778/21 778/22 783/3 787/13 787/13 787/22 787/23 788/10 788/13 788/22 790/5 790/12 793/15 798/15 798/17 798/18 799/18 799/24 822/16 823/1 823/11 824/1 824/24 825/17 825/25 826/8 831/21 836/4 840/8 845/15 850/15 854/16 872/16 876/9 876/18 877/18 888/20 890/6 890/11 902/14 905/25 909/15

W where... [55] 909/21 914/13 914/14 914/15 914/17 914/18 914/21 914/22 915/14 916/24 917/15 919/3 919/4 921/20 921/25 922/13 925/13 925/16 925/17 926/7 927/13 927/25 929/4 938/2 938/25 940/11 940/13 940/19 944/19 945/2 946/21 947/13 947/24 960/12 960/14 967/15 969/10 970/1 973/16 982/25 985/12 985/15 995/19 1005/2 1005/11 1008/13 1015/11 1029/10 1030/9 1030/12 1031/17 1039/9 1042/21 1057/25 1058/8
Whereas [1] 853/21
Whereupon [10] 777/5 813/1 813/19 823/19 827/13 827/18 828/8 868/6 936/15 996/24
whether [41] 774/4 799/3 799/12 801/23 802/15 803/10 803/22 803/23 805/13 814/14 839/18 856/8 864/4 900/7 912/16 925/20 926/17 927/18 931/12 942/11 946/3 947/6 947/21 951/23 952/17 952/19 952/22 954/12 954/16 954/18 955/11 955/18 955/25 956/3 956/16 956/17 956/23 985/8 994/23 1024/14 1049/12
which [106] 771/7 779/25 786/7 786/10 788/24 791/8 791/15 795/25 796/2 796/4 807/25 818/8 823/5 826/18 828/16 830/2 834/7 834/11 836/16 840/25 845/1 845/22 846/21 847/5 847/12 847/20 848/13 848/24 849/4 849/21 850/13 851/2 851/6 851/13 855/1 856/21 857/19 857/23 857/25 858/3 859/16 859/19 860/20 861/16 876/14 878/4 879/9 885/10 887/5 887/19 887/19 887/25 896/17 896/19 897/14 898/1 899/4 899/19 899/20 900/3 907/18 918/12 920/16 921/2 926/22 930/23 935/12 936/6 942/23 953/12 954/24 956/24 964/24 971/8 971/13 971/16 972/8 972/13 972/14 972/14 972/14 975/16 977/9 982/22 992/2 994/21 995/13 1006/15 1010/9 1013/22 1016/16 1023/2 1026/18 1033/3 1036/18 1039/4 1039/23 1042/18 1044/19 1045/9 1045/12 1045/13 1047/7 1050/10 1055/5 1059/5
while [15] 770/19 775/21 802/17 803/2 809/13 837/19 840/1 848/12 868/24 888/12 912/12 912/14 933/2 1030/2 1039/19
whittling [1] 796/3
who [38] 773/13 819/4 833/23 838/6 838/12 840/3 859/2 880/15 886/4 888/14 894/9

897/18 897/18 900/1 907/10 907/24 908/23 1007/10 1007/13 1007/16 1007/16 1018/3 1018/6 1021/14 1021/14 1021/18 1021/18 1021/25 1022/22 1028/9 1030/14 1031/15 1035/2 1038/7 1038/19 1041/21 1042/12 1058/13
who's [4] 782/16 835/10 974/15 1048/13
whoever [1] 858/1
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EXHIBIT D

1
 2 IN THE UNITED STATES DISTRICT COURT
 3 FOR THE DISTRICT OF DELAWARE
 4 ARENDI S.A.R.L.,)
 5)
 6 Plaintiff,) C.A. No. 13-919-JLH
 7 v.)
 8 GOOGLE LLC,)
 9 Defendant.)

10
 11 Friday, April 28, 2023
 12 8:35 a.m.
 13 Jury Trial

14 Volume V

15 Sealed

16 * * *

17
 18 844 King Street
 19 Wilmington, Delaware

20 BEFORE: THE HONORABLE JENNIFER L. HALL
 21 United States Magistrate Judge

22 APPEARANCES:

23
 24 SMITH, KATZENSTEIN & JENKINS LLP
 25 BY: NEAL C. BELGAM, ESQ.

1 -and-

1 APPEARANCES CONTINUED:

2
 3 SUSMAN GODFREY, LLP
 4 BY: JOHN LAHAD, ESQ.
 5 BY: KEMPER DIEHL, ESQ.,
 6 BY: MAX STRAUS, ESQ.
 7 BY: SETH ARD, ESQ.
 8 BY: KALPANA SRINIVASAN, ESQ.
 9 Counsel for the Plaintiff

10 POTTER ANDERSON & CORROON
 11 BY: DAVID ELLIS MOORE, ESQ.

12 -and-

13 PAUL HASTINGS
 14 BY: ROBERT W. UNIKEL, ESQ.
 15 BY: CHAD J. PETERMAN, ESQ.
 16 BY: MATTHIAS A. KAMBER, ESQ.
 17 BY: ANDREA ROBERTS, ESQ.

18 -and-

19 MUNGER TOLLES & OLSON
 20 BY: VINCENT LING, ESQ.

21 Counsel for the Defendant
 22
 23
 24 -----
 25

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

2
 3
 4 (Proceedings commenced in the courtroom beginning at
 5 8:35 a.m.)

6 **THE COURT:** Good morning. Please be seated.
 7 All right. We're here on Friday. Today we are not going
 8 to have the jury. We are going to work a little bit on
 9 the jury instructions and some other matters. As an
 10 initial matter, my courtroom deputy has prepared what we
 11 have for the time.

12 We currently have Arendi at 11 hours and eight
 13 minutes and Google at nine hours and 29 minutes. I will
 14 remind everybody we need each side to reserve at least an
 15 hour for the closing arguments.

16 I saw that there were a number of paper motions
 17 for judgment as a matter of law that came in last night
 18 that, I think, corresponded to the oral motions that were
 19 made today. I've laid eyes on them which laid eyes on
 20 them they came in around 11:30. I guess one question I
 21 had was with respect to the damages issue. And so I
 22 haven't thought this through completely yet. But are here
 23 the things that are on my mind, and I can let each side
 24 say something.

25 I'm not inclined to grant judgment as a matter

1 of law right now on any issue pertaining to damages. What
2 I'm thinking about, though, is that we've got this issue
3 that it seemed to me that both sides are agreeing that
4 Arendi's damages number with respect to the Chrome
5 downloads is not correct. I think everybody agrees about
6 that.

7 And so I don't think that's a basis to say that
8 Arendi can't get any damages for the Chrome downloads.
9 The statute says that the plaintiff is entitled to a
10 reasonable royalty. And there's evidence that there were
11 some downloads that would be infringing. Some portion of
12 those would infringe. I think it's reasonable to infer
13 that some of the downloads accused operating system
14 versions. So I think there's sufficient evidence to go to
15 the jury on damages.

16 But I think there's also no dispute that are
17 some downloads in there that are not infringing. So I
18 guess the question for you all is how should we deal with
19 this, if at all.

20 Let's hear from Arendi. Do you disagree with
21 anything that I've said?

22 **MS. SRINIVASAN:** Yeah. I don't think there is
23 an agreement as to the Chrome issue. And I'm not -- I
24 mean, we don't we do contest that issue that there's
25 been -- there's not agreement that the Chrome downloads

1 overstate or don't represent or include noninfringing
2 installation. And so, I mean, it may be best for us to
3 respond to the way it's been posed in the JMOL. But I
4 think that it certainly is an issue that should go to the
5 jury. And we obviously are going to have the opportunity
6 to cross-examine Google's expert.

7 But it was not our position that the Chrome
8 downloads include non-infringing installations such that
9 there's some agreement on that position between the
10 parties.

11 **THE COURT:** All right. Well, maybe it might be
12 helpful to pull up some of the trial transcripts.

13 Let me hear from Google on this.

14 **MR. UNIKEL:** Your Honor, first, on the Chrome
15 issue, there may not be agreement between the parties, but
16 there was agreement by the expert on the stand where he
17 said that he didn't think that the Chrome numbers
18 necessarily were accurate because there was this
19 installation issue and he did not have any way to
20 correlate the downloads to the operating systems. And we
21 have the testimony now of multiple witnesses that, not
22 only were there -- was there no possible -- that because
23 of the delay in the rollout of particular operating
24 systems, which could last for three to six months, that
25 just because the operating system released on a particular

1 date, doesn't mean that even as of that date, apps would
2 be downloaded to a device that would have the correct
3 operating system.

4 So we have a situation where their expert
5 acknowledged that there was a problem with the
6 correlation. And we now have evidence that there is this
7 rollout time, which makes it very difficult.

8 As to the question as to how to deal with it, I
9 agree it's a difficult question. At a minimum we, I think
10 what we would suggest is that there needs to be some sort
11 of indication to the jury that Mr. Weinstein's numbers as
12 to that are not a proper basis for consideration for the
13 damages.

14 The only other thing I will add, Your Honor,
15 and I mentioned this yesterday in open court, is that same
16 issue does impact all the different apps. Because
17 Mr. Weinstein had assumed on the stand that the numbers he
18 had were only for Android 8 or 9. We know for a fact
19 that's not true. Those numbers that we provided were for
20 just all daily downloads and installs regardless of
21 operating system. And because Linkify had previously been
22 in the case, that meant there was no correlation of
23 downloads of any apps to any operating systems. And Smart
24 Text Selection on all the apps, which is the only accused
25 functionality, could only have started working as of

1 O-MR1, and then only if the carriers and the OEMs, for
2 example, had pushed it out to their devices, which we know
3 took three to six months.

4 So at the end of the day, we're left with an
5 opinion which is fundamentally based on a number of
6 downloads by day, but we have no way to figure out for the
7 infringing period which of those downloads went to devices
8 with Android 7, Android 6, Android 8, Android 8 MR1, or
9 then later 9. And that's really the challenge of trying
10 to parse through these opinions from Dr. Weinstein.

11 **THE COURT:** All right. Everybody have a seat
12 for just a second. Let me just pull up a trial
13 transcript.

14 **MS. SRINIVASAN:** I would like to respond to the
15 additional argument counsel has made characterizing the
16 evidence in a way that there's no record of: You can
17 raise questions about what was your basis for relying on
18 something that Google provided you that was subject to a
19 stipulation of the parties. You can raise questions about
20 it, but there's not been any witness, and Google has
21 concluded its testimony of its fact witnesses who have
22 come out and said, Well, this reflects X or Y, the
23 downloads that we provided to Arendi.

24 So now what counsel asserted are not facts and
25 evidence in the record, and there's not going to be

1 anybody who says, "Well, this list actually included the X
2 or Y." Nobody has been able to attest to that on the
3 Google side. It's been an inference that's raised by
4 questioning. It is not a fact issue in the record.
5 Counsel asking questions that says, "How do you know this
6 includes other Android operating systems?" or "Do you know
7 if it might?" does not constitute evidence. And the
8 record is clear that Google provided the evidence that was
9 relied on by both experts, that they're entitled to rely
10 on reasonable estimates provided by the defendant who has
11 exclusive control over this information.

12 But I want to be very clear, asking questions
13 about the bases for an expert relying on something does
14 not make it as though there is factual evidence to show
15 that those installation numbers are over-inclusive. It's
16 been raised as a question, but where is the representation
17 made by Google ever? There is no trial evidence of that,
18 even when their own fact witnesses could have so
19 testified.

20 **THE COURT:** Okay. I understand your argument.
21 Everybody have a seat. I don't want to talk about the 12
22 apps. I want to talk about Google Chrome right now. And
23 I'm pull up the trial transcript, and I'm looking at it
24 now from Mr. Weinstein.

25 So -- what basis did Dr. Weinstein have to

1 assert that the Google Chrome downloads only included
2 downloads under the Android 8 or 9 operating system?

3 **MS. SRINIVASAN:** He's relying on the
4 installation data that's provided by Google in response to
5 the discovery request in this case, in addition to the
6 stipulation that Google also provided as to representative
7 products in this case to avoid having to do discovery
8 across many different products, the stipulation they
9 offered. So taking those together. And the installation
10 data that comes from Google, that is his basis for using
11 and arriving at his installation number, just as their
12 expert is going to opine the same way.

13 **THE COURT:** Okay. Did he rely on the
14 stipulation as part of his testimony? Is that in his
15 expert report.

16 **MS. SRINIVASAN:** I believe, Your Honor, that
17 it's in his expert report, but I'll confirm that.

18 **THE COURT:** Okay. And I guess, do you dispute
19 at the time he rendered this opinion, that there were
20 other accused functionalities that had to do with Google
21 Chrome that were at issue in the case?

22 **MS. SRINIVASAN:** We don't dispute that, but as
23 to the downloads that were provided and the issues -- the
24 issues that Google are raising now about there being some
25 kind of apportionment issue or something, that is not the

1 way that -- the data was provided to us as installation
2 data per application, and there's never been a question
3 that there should have been some apportionment that Google
4 should have given us as to some granular installation data
5 per sub-application or per year.

6 **THE COURT:** Well, what did you ask them for?

7 **MS. SRINIVASAN:** We asked them for all data
8 related to the accused products. I mean, that's --

9 **THE COURT:** And the accused products at that
10 time included products that are not currently accused,
11 correct?

12 **MS. SRINIVASAN:** Well, they included
13 applications that -- for a time period that's no longer at
14 issue, but the applications have been in the case since
15 the amendments of the complaint and the -- in 2019. So
16 those are have been in play, have been an issue. And we
17 can put aside the earlier time period, but let's say since
18 the case was unstayed.

19 **THE COURT:** All right. Have a seat.

20 Let me hear briefly, Mr. Unikel. I take it you
21 disagree?

22 **MR. UNIKEL:** I do. Quickly, Your Honor, the
23 requests that were made for us -- and I've gone back and
24 looked at them in discovery -- were they wanted to know
25 the dates that Android systems were initially downloaded,

1 so -- by date. And they also wanted to know daily
2 downloads or annual installs.

3 And they didn't care about correlating which
4 apps went with which operating systems on devices, because
5 at all times up until summary judgment and then up until
6 Friday night, there were other accused functionalities
7 that it didn't really matter. There was never a question
8 posed to us: Do you have data that could say which of the
9 downloads went to which devices with versions of Android?

10 And that's the part, now, given the new theory
11 that they're going to trial on, that is required, because
12 Smart Text Selection, as we all know, requires a certain
13 version of the operating system in 8 and/or 9. And if you
14 don't have a correlation that these apps got put onto a
15 device with one of those, there can't be infringement.
16 And during the infringement period, we know there's a huge
17 number of devices. As we heard from one of the witnesses,
18 it may be overcounting by as much as 95 percent given the
19 time lag that it takes to push out these operating
20 systems.

21 They could have asked. They didn't ask. And
22 maybe they didn't think they needed to ask because they
23 had these other functionalities at the time.

24 **THE COURT:** You're talking about Chrome and
25 other stuff, though, right now, too, right?

1 **MR. UNIKEL:** Well, it's the same for all, but
 2 it's definitely the same for Chrome.
 3 **THE COURT:** Okay. So putting aside Chrome
 4 damage for a second, the other accused functionalities
 5 were Linkify, Smart Linkify, Content Detectors, and
 6 Contextual Search Quick Actions; is that right?
 7 **MR. UNIKEL:** Yes.
 8 **THE COURT:** All of these other functionalities
 9 have to do with Chrome?
 10 **MR. UNIKEL:** Linkify did not work on Chrome;
 11 Linkify worked on the other functionalities.
 12 **THE COURT:** Okay. So that's out. Smart
 13 Linkify -- and those have only been out for a year?
 14 **MR. UNIKEL:** Correct. We have known they've
 15 been out a year.
 16 **THE COURT:** So until this weekend, we thought
 17 Content Detectors and Contextual Search Quick Actions were
 18 going to get tried?
 19 **MR. UNIKEL:** Correct, until Friday.
 20 **THE COURT:** CD and QA, which apps do those work
 21 on?
 22 **MR. UNIKEL:** They only work on Chrome.
 23 **THE COURT:** Chrome. Okay.
 24 **MR. UNIKEL:** Correct.
 25 **THE COURT:** All right. Have a seat, please.

1 **MS. SRINIVASAN:** For the devices.
 2 **THE COURT:** Any thoughts on that, or do you
 3 want to take time to think about it?
 4 **MS. SRINIVASAN:** I would like a little time to
 5 think about it, and I understand where the Court is
 6 focusing its attention. And I'll be -- not respond about
 7 the non-Chrome piece of it, but that's always been true.
 8 The issue --
 9 **THE COURT:** I understand. I get it. Yep.
 10 **MS. SRINIVASAN:** But I think it would be
 11 helpful if we had a little opportunity to go back and look
 12 and try to come up with a way to address the Court's
 13 question. But I think, in principle, we don't -- sounds
 14 like one option would be to put in the reasonable royalty
 15 for the applications.
 16 **THE COURT:** Okay. It would be, you know, only
 17 if the jury found that there was infringement, obviously.
 18 Mr. Unikel, any ideas about that?
 19 **MR. UNIKEL:** I think, well, candidly, I don't
 20 mean to bring up another issue but one that concerns me
 21 about that is we also have this four times multiplier
 22 problem. And that is supported only by the conversations
 23 with Mr. Hedloy, which seems inappropriate as a basis for
 24 expert opinion.
 25 My concern is if we ask them for the royalty

1 So here's what I'm wondering, I don't want to
 2 end up in a situation where this case goes up on appeal
 3 and the Federal Circuit says that we've got this damages
 4 number and there's not evidence that all of the asserted
 5 Chrome downloads are infringing, and, notwithstanding the
 6 position that the District Court judge was put in, there
 7 should be a new trial on damages.
 8 And so what do you say we put something in the
 9 verdict form about if there should be a reasonable
 10 royalty, what it should be, and so we've got a number to
 11 try to avoid any downstream issues?
 12 You don't have to give me an answer on that
 13 right now. But that's something that I'm thinking about.
 14 And by the way, I haven't looked at the verdict forms you
 15 guys all filed. Maybe that has it in there.
 16 **MS. SRINIVASAN:** You mean a rate for --
 17 **THE COURT:** Yes.
 18 **MS. SRINIVASAN:** -- so they would have the per
 19 app rate and the per device rate in the verdict form?
 20 **THE COURT:** Well, I think you've only given
 21 them one rate, right?
 22 **MS. SRINIVASAN:** Yes. For the apps, yes. For
 23 the apps, yes. There's a different rate for the Pixel
 24 devices themselves.
 25 **THE COURT:** Okay.

1 rate and they come up with a royalty rate that includes
 2 four times multiplier in it that now that's going to
 3 create a question even as to the rate itself as to the
 4 extent to which they included the four times multiplier,
 5 and how do we sort of deal with that issue if that itself,
 6 then, has to become an issue for appeal.
 7 Because as of right now, as you know, we've
 8 suggested that that's not a proper basis that has any
 9 actual evidentiary support.
 10 **THE COURT:** Right. It seems like -- please,
 11 have a seat. It seems like we ought to be able to think
 12 of a way to ensure that we at least know what number the
 13 jury is giving us. Maybe you disagree with the four times
 14 multiplier. Judge Stark's already ruled that it's
 15 appropriate, so I'm not inclined to revisit that. But if
 16 there's a way we can make sure that we instruct the jury
 17 on -- about what to fill in that blank, so at least we
 18 know what we're getting from them, right?
 19 That's sort of what I'm thinking, so why
 20 doesn't everybody go back and think about that. And I
 21 think you know why I'm asking all of this. Because I
 22 don't think we can grant JMOL with no damages on Chrome.
 23 I think there's evidence of that. The Federal Circuit has
 24 been clear you get to have a royalty if there's evidence
 25 of infringement. The Federal Circuit has been clear that

1 you don't get to have a damages number if it's not tied to
2 accused infringing devices. So what is one to do with
3 this? And this is one solution that I can think of.

4 **MS. SRINIVASAN:** All right. Thank you, Your
5 Honor. We'll take that back and discuss some options to
6 address the Court's concern.

7 **THE COURT:** All right.

8 **MR. UNIKEL:** May I ask one question on that
9 particular thing as we consider it?

10 **THE COURT:** Yes.

11 **MR. UNIKEL:** Would it be possible if we did the
12 royalty rate questions that would say what would be the
13 royalty rate should a multiplier be applied to the royalty
14 rate that is.

15 **THE COURT:** That's a possibility. Can think
16 off the top of my head why that wouldn't be a great idea
17 why don't you all think about it and talk with each other
18 about that.

19 **MS. SRINIVASAN:** Yeah. I mean we obviously
20 don't think -- we understand the Court is trying to
21 address what might be disputed factual issue, but I don't
22 think it's a place to insert a myriad number of issues
23 over legal questions, at least one of which was resolved
24 on *Daubert*, and I understand they can reargue it. But
25 what I don't want is a verdict form that's so complex that

1 we're getting variations on royalties. I think that will
2 not serve us either.

3 **THE COURT:** Right. Understood. I think we all
4 are on the same page about the issue is here at least,
5 even though we might disagree as to how it should be
6 resolved.

7 All right. So we can start going through the
8 jury instructions now. I can tell you this, we printed
9 them out before we took the bench, but we haven't -- I
10 wanted to at least lay eyes on the judgment as a matter of
11 law motion, so we haven't looked at them in great detail.
12 So I think we're just going to take them one by one so
13 everybody can -- it's going to be a slog, so everybody can
14 dig in. There's no need to stand when addressing the
15 Court. Let's work on these.

16 So I've got them printed out in front of me.
17 I'm looking at the final jury instructions filed by the
18 parties at seven this morning. So it looks like we're in
19 agreement on 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9,
20 1.10, and then we've got stipulated facts.

21 **MR. UNIKEL:** We have opposed this altogether,
22 Your Honor.

23 **THE COURT:** Yeah. So let's hear from Arendi on
24 this. Normally, we wouldn't have stipulated facts in the
25 jury instructions.

1 **MS. SRINIVASAN:** Thank you, Your Honor. You've
2 heard in part that some of these issues are being disputed
3 by Google even though they had a stipulation and the Court
4 obviously instructed during Dr. Smedley's, the jury,
5 multiple times about his reliance on representative
6 products.

7 If their position is going to be that there is
8 some open question about whether infringement applies and
9 it applies across all products during the relevant time
10 frame, we think that it is important the jury be reminded
11 they were instructed by Your Honor about the stipulated
12 facts that apply across the representative products and
13 that certain other facts were provided to the jury as
14 stipulations during the infringement testimony.

15 **THE COURT:** All right. Thank you.

16 So I'm not going to include these in the jury
17 instructions. They have been read in as evidence at
18 trial. You are welcome to refer to anything that's in
19 evidence in your closing argument.

20 **MS. SRINIVASAN:** Thank you, Your Honor.

21 **THE COURT:** All right. 1.12 looks like there's
22 agreement. And then we've got -- 1.13, we've got a
23 dispute as to how to instruct the jury on burdens of
24 proof.

25 All right. Let me just take a minute and

1 review this.

2 I see. So the only dispute is the second
3 paragraph. And Arendi wants to include an instruction
4 about indirect infringement, and Google only wants an
5 instruction on direct infringement.

6 And so I take it this has to do with Google's
7 pending judgment as a matter of law of no indirect
8 infringement?

9 **MR. LING:** Vincent ling. That's right, Your
10 Honor.

11 **THE COURT:** You can have a seat, sir. It's
12 going to be a long morning.

13 **MR. LING:** That's right, Your Honor. This is
14 our judgment as a matter of law motion that we do not
15 think there's substantial evidence to support the indirect
16 infringement claims. There's no record evidence. We're
17 frankly at a loss as to what their theory could be as to
18 indirect infringement. We do not think it should go to
19 the jury.

20 **THE COURT:** Counsel?

21 **MR. LAHAD:** Yes, Your Honor.

22 **THE COURT:** Please have a seat.

23 **MR. LAHAD:** Sorry. It's a reflex. I
24 apologize.

25 We included the indirect infringement claims

1 because there was some chatter before trial about some
2 potential non-infringement argument involving the computer
3 readable medium claim or portion of the claim. I did not
4 hear any kind of defense to infringement based on the fact
5 that this is a CRM claim. If Google will represent that
6 they're not asserting such non-infringement positions --
7 and I didn't hear it from Dr. Rinard yesterday, then I
8 think we can reach agreement, we can withdraw our indirect
9 infringement claim mooted the JMOL, also mooted this
10 dispute about indirect infringement in the jury
11 instructions.

12 **THE COURT:** Counsel?

13 **MR. UNIKEL:** Your Honor, if I may. We have
14 mentioned in the JMOL our defense based on the failure to
15 prove the computer readable medium claim. The problem is
16 this, what they have to show is that users actually
17 downloaded this to create -- to cause infringement and
18 used it to cause infringement. What they've shown -- what
19 they've said constantly through the case is Google did
20 this, Google used, Google sold. There's been no
21 identification of third party infringement of -- by any
22 specific users at any specific times. And then that has
23 to be tied to inducement where we would have to have
24 affirmative acts that we take to try and cause those
25 infringing acts by instruction to use it in an infringing

1 matter, or on contributory, that there would be, for
2 example, there wouldn't be substantial non-infringing uses
3 like cut, copy, paste in a tool bar.

4 So the problem is, their case is closed. They
5 have not put on any evidence, let alone substantial
6 evidence, of any infringement by any third parties, and
7 they haven't tied in any way that infringement to
8 potential active inducement or contributory. And so to
9 introduce this to the jury now in the instructions to say,
10 now there's this inducement claim by somebody else that
11 you haven't heard about, I think is going to create
12 immense confusion on the party of the jury.

13 **THE COURT:** So I have two questions. The first
14 one is, it's Google's position that there's no evidence
15 that a user actually used these apps in the way that they
16 were designed to be used?

17 **MR. UNIKEL:** No. That -- we believe that
18 that's the case, Your Honor. The issue is that, in order
19 to have the inducement, in order to make out an inducement
20 claim, they would have to first identify who is the
21 category. So if it's specific users at specific time
22 period, we need to know what that was. And then you have
23 to tie the users at a specific time period to some sort of
24 actions on our part that would have actually potentially
25 induced them to do something.

1 The issue is at this point, I don't believe
2 that we've seen anything that would show specific actions
3 on Google's part to ask them to infringe in a particular
4 way. And one thing I'll note on that, Your Honor, is, the
5 infringement here doesn't just come, as we've heard, from
6 just encouraging somebody to use the link to make a call.

7 So using first information -- find a phone
8 number, dial a phone number, find an e-mail, send an
9 e-mail -- that doesn't infringe the claims. What
10 infringes the claim is if you use the first computer
11 program to find second information then use the second
12 information to perform an action.

13 There's no indication that we ever encouraged
14 people to do that required element of infringement, to
15 find second information and use second information. And
16 that would have -- that is part of the infringing conduct.
17 So just encouraging people to generally use a feature
18 which has substantial non-infringing uses, does not
19 constitute inducement of infringement, and it doesn't
20 constitute contributory infringement.

21 **THE COURT:** Okay. So I'm going to reserve on
22 that. I think there's probably enough to go to the jury
23 on this and you can re-raise it after the trial. But that
24 said, there's the second question. I have an offer from
25 the other side that they'll drop it if you're willing to

1 agree to something. It sounds like the answer to that is,
2 no.

3 **MR. UNIKEL:** I believe --

4 **THE COURT:** I'm is or sure I understand exactly
5 what they're asking for. Do you?

6 **MR. UNIKEL:** I'm not sure. I'm happy to talk
7 with them about that. But since that's the first I've
8 heard of this issue, I'm happy to explore that with the
9 other side and see if we can't come to resolution.

10 **THE COURT:** Okay. Why don't you all talk about
11 this and see if you can get it worked out. Because if you
12 all are not going to argue at closing argument that Google
13 is inducing people to infringe, you're not going to say
14 that, I don't completely understand why we have to have
15 that instruction in there.

16 Does that make sense?

17 **MR. LAHAD:** Yes, Your Honor.

18 **THE COURT:** All right.
19 So that's the only dispute on 1.13.
20 Moving onto 2.1, there is agreement on that.
21 2.2, we've got a dispute about the summary of
22 the issues. Let me just take a minute and read that.

23 So you all agree on Number 1 it looks like. So
24 looks like the first dispute has to do with the order in
25 which you ask about invalidity and willfulness. And I --

1 that's right. I agree with Google that we should ask
 2 about invalidity before we ask about willfulness.
 3 And then with respect to this indirect
 4 infringement thing, I think we can meet and confer on
 5 that, like we said, on the last one. And that's Arendi's
 6 Number 3 and Number 4 paragraph and 5.
 7 And then what's the difference between Arendi's
 8 5 and Google's 4?
 9 **MR. LING:** Your Honor, our four is contingent.
 10 There's a phrase in there that we would like to pose to
 11 the jury that says: "If you decide that any claim of the
 12 '843 patent has been infringed by Google and is not
 13 invalid, then" -- and so that's just a point of clarity
 14 for the jury.
 15 **THE COURT:** Okay. Do you disagree with that
 16 statement of the law?
 17 **MS. SRINIVASAN:** Well, I don't disagree with
 18 that, but I'm not sure it's necessary given the way the
 19 verdict form is going to be set up. They're not going to
 20 reach that question in the absence of a finding of
 21 infringement and determining that the patent is valid or
 22 not invalid. So I don't know for purposes of the summary
 23 of the issue if that's really necessary. I think it's a
 24 little bit convoluted that way. I mean, it is how the
 25 verdict form is going to read.

1 3.2, got a discussion about claims, and then
 2 there's a dispute at the end about some additional
 3 language. So let me look at that now.
 4 Counsel, for Arendi, do you disagree with
 5 Google's statement of the law on Page 24?
 6 **MS. SRINIVASAN:** We don't disagree with it, but
 7 the model instruction, of course, just doesn't add all of
 8 this other detail about how we are trying to direct the
 9 jury on what constitutes plain and ordinary meaning, which
 10 is -- comes from case law, but the model instruction from
 11 the model patent jury instructions just says that, "If
 12 there is not an affirmative construction from the Court,
 13 they should apply the plain and ordinary meaning in the
 14 field for the patent."
 15 And the last sentence about the meaning of the
 16 words that "the patent claims" must be the same, when
 17 deciding both issues of infringement and validity, it
 18 introduces a lot of issues that have not been before the
 19 jury about claim construction. So I'm not -- again,
 20 there's a reason the model instruction doesn't include all
 21 of that. Not that it's a wrong statement of the law, but
 22 the jurors certainly haven't been instructed as how to
 23 claim construction applies in the first instance like
 24 that.
 25 **THE COURT:** Well, I haven't heard their

1 **THE COURT:** I understand. On this, we're going
 2 to go with Google's proposal because I do think it's more
 3 accurate and it's longer, but I think it's less confusing.
 4 **MR. LING:** Your Honor, may I add one thing? I
 5 just want to note for the record that on issue 4, where we
 6 talk about damages, we do on the verdict form break out a
 7 couple of additional questions that are factual
 8 disputes -- or sorry. Let me scratch that -- that are
 9 potential disputes that could go to the jury, and so when
 10 we phrase these issues, we reframe them at a high level.
 11 And so we would be opening, Your Honor, to including those
 12 more specific issues that are on the verdict form and
 13 propose. I just wanted to clarify, these were not meant
 14 to necessarily match up one to one.
 15 **THE COURT:** All right. But you're currently
 16 okay with what you proposed for Number 4?
 17 **MR. LING:** Yes, Your Honor.
 18 **THE COURT:** All right. I think that addresses
 19 all of the issues in 2.2; is that right?
 20 **MR. UNIKEL:** Yes, Your Honor.
 21 **MR. LING:** Yes.
 22 **THE COURT:** Arendi, is there any issue with
 23 2.2?
 24 **MS. SRINIVASAN:** Oh, yes, Your Honor.
 25 **THE COURT:** 3.1, we have agreement on.

1 invalidity case yet. But given what's occurred so far in
 2 the trial, I can imagine the types of things that might
 3 come up. And it seems like this might be something that
 4 the jury has a question about. And so given that there's
 5 no argument by Arendi that this is an incorrect statement
 6 of the law, I'm inclined to go with Google's proposal.
 7 That said, I'd be open to an application from
 8 Google -- or from Arendi at the close of the evidence if
 9 you think that this is going to be confusing in some way.
 10 At this point, I'm not thinking it is. And I actually
 11 think it might be an important thing that we may need to
 12 tell them. So we're going to go with Google's proposal.
 13 **MR. LING:** Before we move on, Your Honor.
 14 There are a couple of housekeeping matters on this one as
 15 well in addition to that.
 16 There's another difference between our
 17 proposals, which is where we say, "plain and ordinary,
 18 meaning as understood by one of ordinary skill in the
 19 field of technology of the '843 patent at the time of the
 20 alleged invention." That phrase is missing from Arendi's
 21 proposal, so we would like to have that phrase included to
 22 help the jury understand what plain and ordinary meaning.
 23 **THE COURT:** Yeah. Didn't I say I was going to
 24 go with your proposal?
 25 **MR. LING:** Sorry.

1 **THE COURT:** You won.

2 **MR. LING:** And then there's one -- it's got a

3 typo on Page 22. Since the method claims have dropped

4 out, I think the word "process" can be dropped in the

5 third paragraph.

6 **THE COURT:** Where?

7 **MR. LING:** Starts: "When a thing such as a

8 product or a process meets all the requirements."

9 **THE COURT:** And where's the typo.

10 **MR. LING:** Just the words "or a process"

11 because the method claims are no longer at issue.

12 **THE COURT:** Oh, okay.

13 Any dispute to get rid of "or a process"?

14 **MS. SRINIVASAN:** No, Your Honor.

15 **THE COURT:** Okay. We'll get rid of that.

16 **MR. LING:** Thank you.

17 **MS. SRINIVASAN:** And, Your Honor, we'll check

18 on the phrasing "one of ordinary skill in the field of the

19 technology of the '843 patent at the time of the alleged

20 invention." I am not sure that the term "alleged

21 invention" is used elsewhere in the construction, so we'll

22 check the cases on that.

23 The language as to "plain and ordinary meaning

24 as understood by one of ordinary skill in the field of the

25 technology of the '843 patent," I don't -- I'm sure it's

1 there. That doesn't seem objectionable. But I'm not sure

2 about the characterization of it as an alleged invention.

3 **THE COURT:** Okay. Well, for now we'll include

4 it, and then if you -- once you've had a chance to do the

5 legal research on that, if you want to make another

6 application, we'll take that under advisement.

7 Okay. I think that takes care of 3.2.

8 Let's turn to 3.3. Give me a second to review.

9 All right. Well, skimming this over, it

10 doesn't seem like there's any real dispute about the law

11 of infringement. I see that there's an issue here about

12 process that we just discussed with respect to the last

13 instruction that we can get rid of the reference to

14 process. And whichever one we pick.

15 **MR. LING:** Your Honor --

16 **MS. SRINIVASAN:** Yes, Your Honor. I think, as

17 to the instruction that -- on the Page 26, the additional

18 instruction said, "You can have infringement of one claim

19 but not another. If you find an independent claim does

20 not infringe, then you can't find infringement of a

21 dependent claim." I don't -- I mean, there's no citation

22 from where that comes from, and I don't think that's

23 proper.

24 They're obviously going to be asked on the

25 verdict form to find infringement of each claim. And

1 instructing them if they are unable to find infringement

2 on a dependent claim because they didn't find it for an

3 independent claim, does not require or called for.

4 They've already been instructed that they have to find

5 infringement on a claim-by-claim basis.

6 This additional language Google has added, the

7 last two paragraphs there, is not found in any model

8 instruction, and is not proper given that they've already

9 been instructed what their role is to find infringement

10 claim-by-claim under the appropriate standard, as opposed

11 to telling them all the reasons they may not be able to

12 find infringement of one claim over another or of a

13 dependent claim depending on what they've reached on the

14 independent claim. I think it's very likely to confuse

15 jurors. And of course it's not -- doesn't come from any

16 standard jury instruction to do that.

17 **THE COURT:** But you agree that they can't find

18 infringement of Claim 30 if they don't find infringement

19 of --

20 **MS. SRINIVASAN:** Of course, but they're already

21 being asked to do that. And to tell them that in this

22 case you can't find infringement of one claim over the

23 other or that you can have infringement of one claim but

24 no infringement of another is unnecessary and confusing to

25 the jury. They already have a verdict form that requires

1 them to say on a claim-by-claim basis whether they found

2 infringement.

3 **THE COURT:** Yeah. Yeah. So I just disagree.

4 I think, actually, we should give this instruction because

5 the verdict form doesn't say -- I mean, if the verdict

6 form that you proposed sort of said you can only find

7 verdict of 30 if you find 23, but it doesn't say that. I

8 think this is a correct -- do you disagree that this is a

9 correct statement of the law?

10 **MS. SRINIVASAN:** I mean, it's not cited to

11 anything.

12 **THE COURT:** Is it a correct statement of the

13 law?

14 **MS. SRINIVASAN:** Sure. You can't find

15 infringement of a dependent claim, but I don't think we

16 should be having instructions that from, frankly, not

17 rooted in any case law in the case law or in the model

18 instructions that are meant to, I think, to, I mean,

19 basically, if you look at the paragraph, they are being

20 instructed on additional -- you must still separately

21 decide this. You must still do this. Where does that

22 language come from?

23 And I don't think we should be inserting

24 directions to jurors that aren't rooted in at least the

25 model instructions or something that we can point to as

1 proper because the risk is that the language that's in
2 here now might tip the way they view their job on
3 determining infringement, which they've already been
4 instructed on.

5 **THE COURT:** Where have they been instructed
6 that they have to find all of the elements of 23 to find
7 infringement of 30?

8 **MS. SRINIVASAN:** They've been instructed that
9 they need to -- infringement is assessed on a
10 claim-by-claim basis. And that you see at the top of 3.3:
11 "There may be infringement of one claim, but no
12 infringement of another."

13 **THE COURT:** All right. Counsel.

14 **MR. UNIKEL:** Yeah. First, I apologize that we
15 didn't put the cite in here given the speed that we were
16 doing this last night. This is from model instructions,
17 and this is from, in particular, the FCBA Model Patent
18 Jury Instructions. It's 3.1a.

19 More importantly, however, the point of the
20 instructions is to make things clearer for the jury as to
21 what their roles are, what kinds of questions they have to
22 answer. The verdict form just asks them to look at them
23 independently, but it doesn't tell them how to relate the
24 dependent claims to the independent claim. This will, I
25 think, provide clarity, not confusion. It's an accurate

1 statement of the law; and, therefore, it's an appropriate
2 instruction to give because it will help the jury in their
3 task.

4 **MR. LAHAD:** All this is covered at the top of
5 Page 23 under claim construction, Your Honor, in great
6 detail, and it's actually a lot clearer. In Section 3.2,
7 bottom of Page 22, talks about an independent claim, and
8 then top of Page 23 talks about a dependent claim with
9 reference to Claim 30 of the '843 patent.

10 So not only is this -- well, it's redundant at
11 the very least. It's an additional paragraph but...

12 **THE COURT:** I understand your position. So I
13 see that on Page 23. I think it's important to give this
14 additional instruction. Why don't we take out the
15 language "there is one exception," and we'll just say, "If
16 you find that any independent claim is not infringing,
17 there cannot be infringement of any dependent claim," and
18 then go on from there.

19 So that's one issue. So we're going to include
20 that. Arendi's got an extra line at the top that says, "I
21 will now instruct you as to the rules you must follow when
22 deciding whether Plaintiff Arendi has proved that Google
23 infringed the '843 patent." That's okay to include.

24 Then we've got this issue about direct
25 inducement and contributory, which you all are going to

1 meet and confer about.

2 And then the rest of it kind of looks the same
3 to me. So it sounds like we've got to be able to work the
4 rest of this out given what I've said so far. And so I'll
5 just await from you all how it comes out with respect to
6 the contributory and induced infringement.

7 All right. Let's turn to -- I'm sorry. So
8 that was 3.3 and 3.4 that we talked about. Oh, I see.

9 **MR. UNIKEL:** If I may, Your Honor, part of the
10 issue was if inducement and contributory was going to be
11 in the case, then that might affect how you instructed.

12 **THE COURT:** Right.

13 **MR. UNIKEL:** And then sort of infects the next
14 two to three...

15 **THE COURT:** Right. Okay. So let me just
16 review what goes on here in the next couple of pages. And
17 then we've got -- flipping forward, you've got an
18 agreement by Google that you're prepared to agree to the
19 bulk of the proposed language subject to highlighted
20 revisions. This sounds like something you all ought to be
21 able to meet and confer about.

22 I don't know that it makes sense to spend time
23 any more time on this today we don't know what you all are
24 going to agree on.

25 **MS. SRINIVASAN:** I agree, Your Honor. And

1 it's -- until we get to 3.8, they're all tied up in this
2 open question we have as to the inducement and indirect
3 infringement argument.

4 **THE COURT:** Okay. So let's skip to 3.8, then.
5 Willfulness. I'm reading that now.

6 Okay. So Arendi's request that the jury be
7 instructed about the IPR is going to be denied. I don't
8 need to hear argument on that.

9 **MS. SRINIVASAN:** And, Your Honor, that was
10 responsive to the proposed additional language that Google
11 has offered on subjective knowledge, which is, I guess,
12 they've cited to some case, but I think that if they're
13 going to have an instruction that puts front and center
14 some question about subjective knowledge beyond what's in
15 the standard instruction, then that is the reason that we
16 included that as an alternative additional proposal.

17 **THE COURT:** Okay. Do you disagree with their
18 statement of the law. It says here that you just got this
19 language for the first time this morning, so maybe you
20 haven't had time to take a look at it yet?

21 **MS. SRINIVASAN:** Yeah. I don't -- well, one, I
22 mean, the language as to what you need to show willfulness
23 we think is clear from the instruction. And now we do
24 object to their adding additional citations of case law
25 specifically calling out the issue of their subjective

1 knowledge. It's already part of the instruction, and I
2 think if that's going to happen, and what they're trying
3 to highlight, and certainly by their JMOL, they want to
4 focus on their lack of notice as to a specific
5 functionality. And we, you know, frankly, think that
6 that's objectionable for them to do that in the light of
7 their objection to us being able to put on evidence about
8 the fact that they had knowledge and engaged in the effort
9 to invalidate the patent from 2013 to 2016, right before
10 this product's functionality was released.

11 So we don't think it's appropriate to add it.
12 The language is already there, the factors are already
13 there. For them to pull additional case law language
14 because they want to focus on the issue of their
15 subjective intent beyond what's already in the
16 instruction, we don't think is appropriate.

17 **MR. UNIKEL:** Your Honor, may I be heard
18 quickly?

19 **THE COURT:** Let me just finish reading this.

20 **MR. UNIKEL:** Sorry.

21 **THE COURT:** Sounds like -- so do we have
22 multiple disputes here? So we've got Google's proposed
23 additional language, and then we've got Arendi's
24 additional proposal. So I'm not clear, is Google --

25 **MS. SRINIVASAN:** The Google proposal is

1 primarily in response to this additional language we got
2 this morning that Google proposed. And we have made an
3 additional proposal that's really in response to this.

4 If that's going to come in, they're going to be
5 able to put in some language that tries to emphasize their
6 subjective intent, which is already covered in the
7 instruction, then we don't think it's appropriate in the
8 absence of the jury knowing that they had knowledge and
9 were aware leading up to the release of their product.

10 And actively, we're trying to engage in the
11 validation of the patent. We don't have it written that
12 way. But, again, I think the instruction, the model
13 instruction already gives the jury guidance on what the
14 requirements are. They're adding additional language from
15 the case law. We got it this morning. We can add
16 additional counter-language from the case law. I don't
17 think that's productive to do. But they want to call out
18 their own subjective knowledge by adding an additional
19 paragraph that's not in the model instructions.

20 And you can also tell from the briefing we got
21 last night that their argument, the focus is going to be
22 on their lack of notice and how that impacted their
23 subjective intent. And so I think that, given where we
24 are and where we landed on certain issues with represent
25 to our ability to introduce evidence of the IPR, we should

1 stick with the model instruction.

2 But if they're going to start introducing
3 things from the case law to focus on this issue and to
4 argue what I didn't really think was going to be argued,
5 but I think we would want a counter-instruction to address
6 that.

7 **THE COURT:** Counsel?

8 **MR. UNIKEL:** Yeah. First, we sent these at
9 11:30 last night. Second of all, this language was in our
10 original instruction at all times. This is not new
11 language. The only thing we tried to do to compromise is
12 to identify by putting it into their instruction where we
13 thought this particular thing was important and we should
14 be -- we could accept most of theirs, but we needed to
15 isolate this.

16 **THE COURT:** It sounds like we haven't reached
17 an impasse yet on this instruction. Is that fair to say?

18 **MR. UNIKEL:** I think I -- I'll say the one
19 thing that is important for everybody to understand is
20 this says about "the actions that constituted
21 infringement." We didn't receive our infringement notice
22 from them until after the patent had expired. On Smart
23 Text Selection.

24 They're trying to now bring into issues about
25 what did we think about validity from the IPR proceedings.

1 But validity questions, we've already resolved that in the
2 case. This is focused on what would we have believed as
3 to -- or known as to their allegations of infringement.
4 And because we never received any notice from them of
5 possible infringement by Smart Text Selection until after
6 the patent had expired, we had no reason to believe that
7 we were infringing.

8 That is something we plan to say as part of our
9 willfulness defense, but that's not because of -- the
10 invalidity issue is different. The question of did we
11 ever think that Smart Text Selection was actually
12 infringing is related to when did they ever tell us that
13 they thought Smart Text Selection might be implicated by
14 the patent.

15 They didn't send us a letter or anything else
16 even during the stay period after it was launched, and
17 we're pointing out that we never had any reason to believe
18 that Smart Text Selection was implicated by the patent
19 during the patent term.

20 **MS. SRINIVASAN:** Your Honor, if I may.

21 **THE COURT:** Yes.

22 **MS. SRINIVASAN:** We expressly discussed this on
23 Monday morning when we had argument about it. If they're
24 going to use the stay as a source, a shield to say, we
25 didn't know because there was a pending stay and we didn't

1 serve amended intentions --

2 **THE COURT:** That's not what I'm hearing,

3 actually, at all. I'm hearing they're going to say that,

4 regardless of whether there was a stay.

5 **MS. SRINIVASAN:** But their reason that there

6 were not amended contentions or an amended complaint is

7 that there was a stay in the case. If they're going to

8 say, well, we didn't get anything until 2019, this is

9 expressly the issue we discussed on Monday morning.

10 They are going to say, well, we didn't know

11 because she didn't serve us with contentions until after

12 the expiry of the patent. That's the argument they want

13 to make. And what we discussed is that that was one

14 reason to have evidence of the IPRs come in because that

15 is the -- that's what precipitated a stay in this case.

16 But we certainly discussed, at a minimum, if they're going

17 to raise that, that the jury should know the case was

18 stayed. And that -- as I understood our discussion on

19 Monday morning, they weren't going to make that argument.

20 The reason they got amended contentions in 2019 was

21 because there was a stay of this litigation and there was

22 a stay of this litigation because they chose to initiate

23 inter partes review proceedings.

24 **THE COURT:** All right. So I want you to meet

25 and confer about this and we'll get competing proposals.

1 I've got contingent proposals based on -- well, we will

2 leave it at that.

3 **MS. SRINIVASAN:** We can do that, Your Honor.

4 The other thing on Page 36 is that they proposed dropping

5 a factor as no longer being relevant as to their

6 good-faith efforts to avoiding infringing the patent. We

7 don't see any reason to drop a factor. There hasn't been

8 any determination as a matter of law.

9 **THE COURT:** I understand your position on that.

10 Why don't you all meet and confer and then just make sure

11 if there's still a dispute, that you leave in your

12 competing proposals and footnotes so we can go to the law

13 and figure out what we want to do.

14 Okay. Let's turn to 4.1. Look at those

15 competing proposals. So the first line is just an

16 introductory statement that Arendi includes, so that's

17 fine.

18 So we've got an issue about prior art, but then

19 there's a later instruction about prior art. So it looks

20 like Google wants to include the discussion of prior art

21 in the invalidity instruction. Is that...

22 **MR. UNIKEL:** I think we can defer that to the

23 prior art section, that particular one.

24 **THE COURT:** All right. So we can take that

25 out.

1 **MR. UNIKEL:** I think the two issues for us,

2 Your Honor, if I may isolate that --

3 **THE COURT:** Yes.

4 **MR. UNIKEL:** -- is, Number 1, providing the

5 jury some context about the fact that they have ultimate

6 responsibility for deciding whether the claims are valid

7 or invalid so they understand what their actual authority

8 is. And second, the last sentence, second to last

9 sentence, I guess, of our proposal is the fact that any

10 particular reference was or was not considered by the

11 Patent Office does not change Google's burden of proof.

12 **MS. SRINIVASAN:** Well, Your Honor, we

13 absolutely object to an instruction that says the Patent

14 Office sometimes issues invalid patent claims.

15 **THE COURT:** Yeah. That clause is going to come

16 out.

17 **MS. SRINIVASAN:** And, frankly, they have

18 already been instructed on their burden. It's an issue

19 that they've been asked to address as jurors in this case.

20 And this is basically telling them to disregard

21 anything -- they are allowed to give whatever weight they

22 want to the fact that there was patent art considered in

23 the prosecution. They still have to meet their burden.

24 But, I mean, this instruction asks them to basically

25 disregard that the patent owner might have looked at any

1 art in the course of prosecution of the patents.

2 **THE COURT:** Yeah. I don't see that at all.

3 But I do agree that that sentence that says about the

4 Patent Office sometimes issues invalid claims, issued

5 claims can be found invalid. I don't think that's a

6 misstatement of the law or the circumstances, but I agree

7 that that should come out. But I'm okay with saying, as

8 Google proposes, the issuance of a patent by the Patent

9 Office provides a presumption that the patent is valid.

10 That's okay to say. I think that's important to include.

11 And then it says, "In this case, you have the ultimate

12 responsibility for deciding whether the claims in the

13 patent are valid or invalid." I think that's appropriate

14 as well, so that should be included.

15 And then it says "consider the claims

16 individually." I think that's appropriate as well.

17 I think it's fine to say, as Arendi does, that

18 Google has the burden of proving that the asserted claims

19 are invalidity by clear and convincing. And we can

20 discuss the amount of evidence again because I think we

21 had a similar sentence for the infringement instruction,

22 unless I'm mistaken, so I do think it's appropriate to

23 include that here, if that's the case.

24 And then Arendi basically has the language

25 about claim construction that we've already included

1 earlier, so that can probably come out. So that's a
 2 Frankenstein ruling, but I think if you look at the
 3 transcript, it will all come together.
 4 Does anyone disagree?
 5 **MS. SRINIVASAN:** No, Your Honor.
 6 **MR. UNIKEL:** What about that last sentence for
 7 us, Your Honor, the fact that any particular reference was
 8 or is not considered by the Patent Office does not change
 9 Google's burden of proof?
 10 **THE COURT:** Do you disagree?
 11 **MS. SRINIVASAN:** I don't know why we need that
 12 in there given what's already in the rest of the
 13 instruction, but...
 14 **THE COURT:** I don't know that it helps or hurts
 15 either side, to be honest with you, so I'm inclined to --
 16 I'm inclined to include it. I can see how you both might
 17 make use of it in your closing arguments.
 18 **MS. SRINIVASAN:** Sure.
 19 **THE COURT:** All right. Okay.
 20 And then we've got person of ordinary skill in
 21 the art in the field of the asserted invention as of the
 22 time of the invention.
 23 **MR. UNIKEL:** I think we're agreed on that.
 24 **THE COURT:** You are agreed on that? Okay.
 25 Good to go. 4.2, we're good.

1 Prior art. So we just had agreement from
 2 Google that we're going to defer the discussion of the
 3 prior art to a separate prior art instruction. And so do
 4 we have a dispute about the language in this instruction?
 5 **MR. UNIKEL:** So the issue then, I guess, would
 6 be to take that paragraph that you indicated before --
 7 **THE COURT:** Move it here?
 8 **MR. UNIKEL:** -- move it here, if you would
 9 consider that, please.
 10 **THE COURT:** I'm not inclined to refer to -- or
 11 to include Google's first sentence about "During the
 12 course of this trial, Google had presented you with
 13 several prior art references." You can say that in your
 14 closing.
 15 **MR. UNIKEL:** Your Honor, I think that, and now
 16 that it's going to be put in the prior art section, I
 17 don't think that our particular paragraph here really does
 18 contradict with anything --
 19 **THE COURT:** No.
 20 **MR. UNIKEL:** -- proposal from Arendi. So I
 21 think we can accept Arendi's proposal on prior art in 4.3.
 22 **THE COURT:** Okay. Great. All right.
 23 Anticipation.
 24 Let me read the dispute. So the paragraph that
 25 Google talks about prior art not considered by the PTO

1 during examination and weighing it more heavily, I don't
 2 think that's appropriate at all.
 3 Do you want to make an argument about that?
 4 **MR. LING:** Sorry, Your Honor. Are you
 5 referring to --
 6 **THE COURT:** Top of Page 43. Well, let me hear
 7 from Arendi. Do you think that language is appropriate?
 8 **MR. UNIKEL:** That's their language, Your Honor.
 9 **THE COURT:** Oh, I'm sorry. And Google's
 10 proposed alternative language?
 11 **MR. UNIKEL:** We put in an alternative just to
 12 that. I know it's a bit confusing. We were trying to
 13 figure out -- so they have a third paragraph that begins
 14 with "Anticipation must be determined."
 15 We had proposed alternative language to that
 16 one paragraph.
 17 **THE COURT:** I see. To that paragraph. Okay.
 18 All right. So let's talk -- okay.
 19 Is there a dispute about the law between these
 20 two paragraphs on Page 42?
 21 **MR. LING:** Your Honor, this is -- I think we
 22 did not really include alternative here. We meant to --
 23 the language we have an issue with is actually right above
 24 where it says, "Google does not contend that any other
 25 alleged prior art discussed in this case anticipates

1 asserted claims of the '843 patent."
 2 It's redundant of the prior sentence but framed
 3 in a more misleading and overbroad way.
 4 **THE COURT:** Okay. So I'm going to take out the
 5 "specifically" paragraph. That's what you would propose?
 6 **MR. LING:** We are fine with the first sentence.
 7 **THE COURT:** "Google contends only that the" --
 8 Yeah. Okay. The second sentence comes out. I agree with
 9 that.
 10 **MR. LING:** And the first sentence, Your Honor,
 11 if we can clarify that, "contends" in this case.
 12 **THE COURT:** "Contends that the alleged" -- yes.
 13 So get rid of the "only." "Specifically, Google contends
 14 that the alleged CyberDesk system anticipates the Asserted
 15 Claims of the '843 patent." That's all that paragraph
 16 should say.
 17 Does Arendi want to make an argument about
 18 that?
 19 **MS. SRINIVASAN:** Yeah. I mean, it's just for
 20 clarity because there's only one. And --
 21 **THE COURT:** Yeah. You can make that argument
 22 at closing. Okay. And then we've got paragraphs about
 23 anticipation. Are there actually competing proposals
 24 here?
 25 **MR. LING:** There are not.

1 THE COURT: Okay. Great.
 2 All right. Then we have the next page, and
 3 then it says -- whose paragraph is this at the top of 43?
 4 MR. LING: This is Arendi's.
 5 THE COURT: Okay. Do you agree with it?
 6 MR. LING: We have an issue with the paragraph
 7 just below that. Let me read the one above it, Your
 8 Honor.
 9 Your Honor, we are okay with that paragraph.
 10 THE COURT: You're okay with that?
 11 MS. SRINIVASAN: Yeah. I know Your Honor
 12 raised a question about this paragraph when we started.
 13 We are fine taking it out if the Court finds it confusing.
 14 THE COURT: If everybody -- you are fine taking
 15 it out?
 16 MS. SRINIVASAN: We will take it out.
 17 THE COURT: Now you want to take it out?
 18 MR. LAHAD: Let's keep in.
 19 THE COURT: Let's keep it in. All right. We
 20 will keep it in. We've agreement to take it in.
 21 MS. SRINIVASAN: There may be an edit. We will
 22 meet and confer with the other side.
 23 THE COURT: All right. We're going to keep it
 24 in because the parties agree. Let me just read it again.
 25 I am not seeing that it's plain error and if

1 everybody agrees, we will keep it in.
 2 MR. ARD: Your Honor, we would like to meet and
 3 confer on that issue because --
 4 THE COURT: It's your proposal.
 5 MR. ARD: Exactly.
 6 THE COURT: Okay.
 7 MR. ARD: I think we want to perhaps withdraw
 8 it. So we will meet and confer with them and we'll tell
 9 you what we want to do with it.
 10 THE COURT: All right. Okay.
 11 MR. UNIKEL: On the last paragraph, we do have
 12 a dispute, Your Honor, the "Finally, Google does not
 13 allege..."
 14 THE COURT: "Finally, Google does not
 15 allege..." That comes out because you're not going to
 16 argue that other prior art reference anticipated at
 17 closing, right?
 18 MR. UNIKEL: Correct.
 19 THE COURT: Okay. All right. Seems like the
 20 rest of this can get worked out; is that right?
 21 MR. UNIKEL: Yes, Your Honor.
 22 MR. LING: Yes, Your Honor.
 23 MS. SRINIVASAN: Yes, Your Honor.
 24 THE COURT: All right. 4.5. So what's the
 25 issue here, and if you need a minute to read it, that's

1 fine.
 2 MR. LING: Your Honor, we've proposed language
 3 to clarify that the ultimate question of invalidity is a
 4 question of law.
 5 THE COURT: What's the jury going to do with
 6 that?
 7 MR. LING: It's --
 8 THE COURT: I'm confused by that, so I don't
 9 know what the jury is going to do with it, and I went to
 10 law school.
 11 MR. LING: Your Honor, we wanted to preserve
 12 this issue so...
 13 THE COURT: I think the Federal Circuit will
 14 consider a question of law regardless of whether we send
 15 that question to the jury.
 16 Do you understand that Google will have
 17 preserved this issue preserve the question of whether or
 18 not this is a question of law even if we don't have it in
 19 the jury instructions?
 20 MS. SRINIVASAN: We do understand that. And we
 21 object to the jury being instructed.
 22 THE COURT: Yes, so let's take that out.
 23 And then the first sentence about "clear and
 24 convincing evidence," I think that's a correct statement
 25 of the law. Sounds like there's not much difference

1 between the two. And then the section about "accordingly,
 2 you should apply the clear and convincing standard about
 3 the factual disputes," that, I think, doesn't really add
 4 anything that related to the sentence about obviousness
 5 being a question of law.
 6 Okay. So I think that resolves that part.
 7 MR. UNIKEL: Up until the last paragraph, I
 8 think we're otherwise in agreement on this, Your Honor.
 9 THE COURT: Okay.
 10 MR. UNIKEL: I think it's the last paragraph
 11 that has the same language that was in the last
 12 instruction.
 13 THE COURT: What page is that on?
 14 MR. UNIKEL: Page 47, Your Honor. Starting
 15 with, "finally."
 16 THE COURT: Yeah, that comes out.
 17 Does that take care of the rest of the
 18 obviousness instruction?
 19 MR. UNIKEL: I believe, yes, Your Honor.
 20 THE COURT: Okay. Let's move on to damages.
 21 Give me one second.
 22 It doesn't seem like there's a dispute. It's
 23 just about how and whether the jury should reach the
 24 damages issue, just seems like there's just -- it's the
 25 wording. Is that fair to say?

1 **MS. SRINIVASAN:** That's my understanding on
2 this. We obviously followed the model instruction, and
3 Google's proposal has some additional wording.
4 **THE COURT:** So I'm okay with Arendi's,
5 especially since we're going to have an additional
6 statement on the verdict form that says to stop before
7 they reach the damages issue if there's no infringement.
8 **MR. LING:** Your Honor, if I may?
9 **THE COURT:** Yes.
10 **MR. LING:** We disagree with the language where
11 Arendi has proposed "a valid claim of the '843 patent."
12 And it also does not address the instance of if the jury
13 finds differently, that it should not reach damages. So
14 that's why we believe our instruction is more accurate and
15 clear.
16 And we've --
17 **THE COURT:** Well, that's fine. We can parse
18 out and say, "If you find that Google infringed an
19 asserted claims of the '843 patent and that the claim is
20 not invalid, you must consider what amount of damages to
21 award Arendi for its infringement." That's fine. We can
22 add that clause to their first sentence.
23 **MS. SRINIVASAN:** Your Honor, that's fine. I
24 don't think the other part about "on the other hand" is
25 needed. They're being instructed to --

1 **THE COURT:** Yeah, we're going to go with yours;
2 we're just going to add their clause.
3 **MS. SRINIVASAN:** Okay.
4 **THE COURT:** I agree that's redundant.
5 And then Google wants to add in talking about
6 the particular accused apps.
7 Does Arendi dispute that?
8 **MS. SRINIVASAN:** Well, Your Honor, if we're
9 going to start doing that, I do think we need -- this is
10 connected to an issue that's going to come up about how
11 they instructed the verdict form. We don't think that --
12 if we're going to do this, I also think that we obviously
13 took out our stipulation with respect to the accused
14 products and the representative products agreement.
15 If they're going to ask that we include a list
16 of all the accused apps and products, we would like some
17 statement about how those were treated for purposes of
18 infringement. And I know that was some instructions ago,
19 but...
20 **THE COURT:** Well, we had an instruction -- in
21 the invalidity instruction, we talked about exactly what
22 the anticipation reference was. So I don't think it would
23 be inappropriate here to be consistent to have a list.
24 **MS. SRINIVASAN:** Yeah, but what they've added
25 here is, they've --

1 **THE COURT:** I agree.
2 **MS. SRINIVASAN:** It is not even a list.
3 They've added --
4 **THE COURT:** I agree, yes. I agree.
5 So why don't you meet and confer with them
6 about how we can generally refer to what the accused apps
7 are. To the extent you say, you know, talk about what's
8 not accused, that should come out. We're not going to
9 have a list of what's not accused. And we're not going to
10 say no other apps or devices are accused being's that's
11 what I ruled on with respect to the invalidity
12 instruction.
13 So it sounds like some of this can be worked
14 out.
15 **MS. SRINIVASAN:** Yeah, we can confer on that,
16 Your Honor. I just don't -- I think this list is arguing
17 facts rather --
18 **THE COURT:** I agree that it is. So let's work
19 to get it narrowed down and make it consistent with what
20 we permitted in the invalidity instruction.
21 All right. I'm just seeing how much more we've
22 got disputes on. Well, just skipping to the end, it looks
23 like the general instructions under six -- Section 6, are
24 all okay. So, basically, we're down to just the remainder
25 of the damages instructions.

1 **MS. SRINIVASAN:** That's right, Your Honor. And
2 there is an addition of a couple instructions that we
3 didn't have before from Google. One is with respect to
4 the Samsung agreement, and the other is an instruction on
5 the date of commencement of damages. These are new
6 instructions that we got from Google.
7 **THE COURT:** This morning?
8 **MS. SRINIVASAN:** Yeah. At midnight or -- we
9 got one version at midnight and one at 3 a.m.
10 **THE COURT:** Do you think it would be helpful to
11 take some time to meet and confer on these?
12 **MS. SRINIVASAN:** I do, Your Honor.
13 **THE COURT:** Counsel?
14 **MR. UNIKEL:** Yes, Your Honor.
15 **THE COURT:** It sounds like -- okay, great. We
16 agree.
17 And then, obviously, with respect to the
18 verdict form, you're going to talk about that, and that
19 may be indicated as well.
20 Let me just briefly -- and I apologize. I do
21 have to leave the bench at ten for another matter.
22 So we've got a dispute about whether the
23 accused products should be listed on the verdict form?
24 That's sort of opposite what we just had in the
25 instructions.

1 **MS. SRINIVASAN:** That is the proposal that
 2 Google has put in, in the instruction and in their verdict
 3 form.
 4 **THE COURT:** Oh, do I have them labeled the
 5 wrong way?
 6 All right. Who's got the Number 4 on the cover
 7 page?
 8 **MS. SRINIVASAN:** That is ours, Your Honor. So
 9 we have a list, but then in the cover. I just meant with
 10 respect to the actual --
 11 **THE COURT:** I see. All right. Why don't you
 12 talk about this. I'm not sure, is there a reason you
 13 don't want the accused product on the verdict form?
 14 **MR. UNIKEL:** No. I think we're okay with
 15 having the accused products. I think our issue was that
 16 it's actually not just the accused products, it's the
 17 accused products with specific versions of Android,
 18 otherwise, they don't actually infringe.
 19 **THE COURT:** I see.
 20 **MS. SRINIVASAN:** Yeah, I don't think that
 21 changes whether or not they are the accused products in
 22 the case. And obviously, there's a disputed fact issue
 23 about -- to the extent Google wants to raise. But if the
 24 Court prefers we take that out, I think that's fine too.
 25 **THE COURT:** Sounds like we can meet and confer

1 on this.
 2 First question seems pretty much the same. The
 3 second question seems pretty much the same.
 4 **MR. LING:** Your Honor, on Question 1, our
 5 verdict form specifies "direct infringement." That's the
 6 material difference. They've kept their "induced and
 7 contributory infringement" questions in their form.
 8 **THE COURT:** I see.
 9 So accused products don't infringe Google. My
 10 recollection of the statute is whether makes it's an
 11 entity that infringes. So we should specify that.
 12 So I think, given how we separated this out, it
 13 seems to me that we should say, "direct." If we're going
 14 to have separate questions, we should have "direct," and
 15 it should say, "Google directly infringed," and then we
 16 can have the question on inducing. That seems consistent.
 17 Do you disagree?
 18 **MS. SRINIVASAN:** No, we don't, Your Honor, and
 19 obviously, we are conferring about the inducement issue,
 20 so if that falls out, then I think we can take out
 21 "direct."
 22 **THE COURT:** Of course.
 23 And then we've got the contributory issue. And
 24 then, consistent with what I said in the jury
 25 instructions, it looks like we have a dispute about where

1 the willful question should come. I agree with Google
 2 that should come after the invalidity questions.
 3 So we've got a dispute as to whether or not we
 4 should have separate Interrogatories to the jury about
 5 anticipation and obviousness. Google wants separate
 6 questions, and Arendi does not.
 7 **MS. SRINIVASAN:** Your Honor, I think that it's
 8 specified in the instructions that there are different
 9 ways in which they can -- Google can meet its burden as to
 10 showing the patent is invalid. We don't think that they
 11 should be able to separate that out in the verdict form,
 12 which, likewise, for infringement, you could talk about
 13 the all the paths to infringement, but their burden -- I
 14 think they've already said in the instruction, and they'll
 15 be able to argue that here are the different ways you can
 16 get there by finding clear and convincing evidence of
 17 either anticipation or obviousness of the different
 18 combinations. But we think this severely complicates the
 19 verdict form in a way that emphasizes their invalidity
 20 positions.
 21 **THE COURT:** Well, we have separate instructions
 22 for anticipation and obviousness. So that makes it more
 23 complicated, obviously. But that's what the law says. I
 24 mean, I guess I'm wondering --
 25 Let me hear from Google on this.

1 **MR. UNIKEL:** Your Honor, I will say one issue
 2 that has come up on -- as a result of IPR estoppel issues
 3 is whether or not CyberDesk can be used and can it be used
 4 in combination with nonstopped references, for example.
 5 So I think it's important that we have an anticipation
 6 question and an obviousness question in case there's any
 7 issue about the basis that the jury actually found
 8 invalidity.
 9 **THE COURT:** Right. Right. So what your point
 10 is, is -- and I'm thinking out loud. Your point is that
 11 if they appeal the Court's ruling about prior art estoppel
 12 and find that there's a -- that CyberDesk cannot have been
 13 used as a reference --
 14 **MR. UNIKEL:** Right.
 15 **THE COURT:** -- that we ought to know the basis
 16 on which the jury found invalidity, essentially.
 17 **MR. UNIKEL:** Correct, Your Honor.
 18 **MS. SRINIVASAN:** I understand that position,
 19 Your Honor. I think there's a -- you know, there were
 20 instructions that we had included that addressed issues
 21 that would have isolated what their finding is with
 22 respect to -- especially to obviousness, which are now no
 23 longer in the instruction.
 24 So if their position is because it's
 25 anticipation as to CyberDesk, that they are able to --

1 they want to segregate that out, I think we can consider
2 that and talk about it.

3 **THE COURT:** Okay, great.

4 And then we've got a clarifying instruction,
5 and it says, "if you answered yes and answered no" and "do
6 not answer the rest of this."

7 As long as that's correct in terms of the law
8 what they should apply, I don't want them filling out the
9 damages portion if they found non-infringement or
10 invalidity. So if you want to discuss what the precise
11 wording of that should be, that's fine. But I agree that
12 it would be appropriate.

13 Oh, you've got the same type of caution. Well,
14 work on it in light of what we've just been discussing
15 about separate question for the jury about anticipation
16 and obviousness. If we could trim it down a little bit to
17 make it shorter, I think that would be better. So
18 something in between Arendi's and Google's proposal on
19 that.

20 Oh, boy.

21 **MS. SRINIVASAN:** Yeah. Your Honor, obviously,
22 we object to these additional questions. I think that
23 they want to argue there should be some start date or
24 disputed --

25 **THE COURT:** Yeah. I'm not inclined to ask

1 Question C3. Question 4 of Google's and Question 6 of
2 Arendi's seems to be the same thing. I'm not inclined to
3 ask Question 5 either, but maybe some of this can get
4 sorted out when you all discuss if we should ask the
5 question about a royalty rate. Maybe that will satisfy
6 everybody's need to have a record about exactly what the
7 jury found. Yes.

8 **MR. LING:** Understood, Your Honor. If I could
9 just make a couple objections for the record?

10 **THE COURT:** Yes.

11 **MR. LING:** On Question 3, there's clearly a
12 factual dispute about the start -- potential earliest
13 start date of infringement that we do believe the jury
14 needs to consider and that we need a ruling on.

15 On Question 5, this is the Samsung license
16 issue that we've raised with the Court and that the Court,
17 we understood, would take up on jury instruction/verdict
18 form. So that's why we have proposed a question for the
19 jury to determine whether their damages include damages
20 for Google apps [REDACTED]

21 **THE COURT:** Okay. Understood. Noted for the
22 record.

23 And why don't you talk with each other about
24 putting on a question about the royalty rate. We can see
25 if some of this gets worked out. Because maybe that

1 satisfies your worry if we need to have a record about
2 what exactly the jury found.

3 And then we have the willfulness question at
4 the end.

5 All right. I think that's it. Is that right,
6 counsel?

7 **MR. ARD:** Yes, Your Honor.

8 One thing I wanted to flag, on Page 47, you
9 took out instruction about Google not alleging "that the
10 '843 patent is invalid as obvious based on any combination
11 of the patent, printed references or other written
12 materials."

13 I understand the Court took that out because, I
14 presume in light of the Court's sort of ruling on Monday
15 morning where the Court departed from what Judge Stark had
16 held insofar as, you know, even if the system evidence is
17 materially the same as the printed reference evidence.

18 So the only thing I would flag --

19 **THE COURT:** I took that out because I didn't
20 want instructions about what parties weren't arguing. But
21 we can have instructions about what parties are arguing,
22 and we're not going to have instructions about what
23 parties aren't arguing.

24 **MR. ARD:** Okay.

25 **THE COURT:** So if you want to say to the jury,

1 "You heard the judge. This is what the other side is
2 arguing, note that" -- you know, but they aren't arguing
3 X, Y, and Z, right?

4 **MR. ARD:** Right. And so we could revise it and
5 meet and confer with them. But I just want to flag for
6 the Court that, I mean, it could say, "they could not
7 argue" is what we would say. But we understand the
8 Court's ruling on Monday morning sort of departed from
9 Judge Stark had held two years ago in this case on this
10 issue. And I just wanted to flag for the Court --

11 **THE COURT:** Well, to be clear for the record, I
12 don't think it departed from what he held. I think it
13 continued -- he left it as an open question, and I started
14 to close the door on that open question.

15 **MR. ARD:** Right. I understand that the Court
16 has said that. Maybe we'll just submit a letter to the
17 Court on this, if it's okay.

18 **THE COURT:** That's fine.

19 **MS. SRINIVASAN:** We may be able to compose
20 language that is more affirmative than what they're not
21 alleging, to your point, Your Honor, and see if we can
22 reach agreement on that.

23 **THE COURT:** All right. Anything else?

24 **MR. UNIKEL:** One last timing question, Your
25 Honor.

1 **THE COURT:** Yes.

2 **MR. UNIKEL:** Given the amount of time that's

3 left for the case, we were kind of assuming that closings

4 are going to have to happen on Tuesday morning, and we

5 have to just make arrangements if that's likely to be the

6 case.

7 **THE COURT:** I think you should make

8 arrangements, but we're going to start closings at the

9 time that we start closings. And so I have no idea what

10 else might drop out over the weekend. And we are not

11 going to be in a situation -- well, we might be a

12 situation where the evidence is over by midday on Monday

13 for whatever reason and everybody needs to go forward with

14 closings at that point.

15 So if we have to have closings Tuesday, we

16 will. And so you should make arrangements for that. But

17 we're not going to send everybody home and bring them back

18 another day if we have time left on the clock.

19 **MR. UNIKEL:** And my only request on that is,

20 can we both close on the same day?

21 **THE COURT:** Yes.

22 **MR. UNIKEL:** Thank you.

23 **THE COURT:** Yes.

24 How long do you anticipate closing to be?

25 **MS. SRINIVASAN:** An hour or less. An hour,

1 Counsel?

2 **MS. SRINIVASAN:** Tomorrow morning would be

3 ideal. That would give us an opportunity to go through

4 the transcript, clean up anything we clearly should come

5 out or we agree on, and then try to isolate the disputes a

6 little better and file something tomorrow.

7 **MR. LAHAD:** So do you think you're in a

8 position to work it out, work on it yourself and with the

9 other side tomorrow morning, counsel?

10 **MR. UNIKEL:** I agree. If we could maybe say

11 10 a.m. tomorrow morning so that we can actually talk in

12 the morning before we have to file in case something comes

13 up?

14 **THE COURT:** Absolutely, ten would be perfect.

15 Okay. And revised proposed verdict form as well. To the

16 extent that that can be a joint proposed verdict form with

17 competing proposal, that would be helpful as well.

18 Let me see if there's anything else I wanted to

19 tell you before I leave.

20 Okay. We've got the jury coming in at 8:30 on

21 Monday to get started, so if everybody can get here as

22 soon as they can get it going so we can be ready to the

23 take the bench to the extent we have to make any rulings.

24 Thank you all. Have a great weekend.

25 (The proceedings concluded at 10:08 a.m.)

1 plus or minus. Given our time constructions, we have to

2 balance using our time for evidence versus closing. I

3 don't expect it to be in excessive of an hour.

4 **THE COURT:** Okay.

5 **MR. UNIKEL:** Forty-five minutes to an hour.

6 **THE COURT:** Fantastic. So I could see a world

7 where we do actually go on Monday. So you should be ready

8 to go.

9 **MR. UNIKEL:** My biggest concern was having one

10 side go, and then be overnight and have the other side go.

11 **THE COURT:** So we're not going to have that.

12 Well, think about how it might play out. And if you want

13 to, discuss it amongst yourselves. But if we're in a

14 situation where we're ready to start closings at 3:30,

15 we're going to go ahead and start closings at 3:30 and

16 keep everybody here.

17 **MS. SRINIVASAN:** All right, Your Honor.

18 **THE COURT:** So on the jury instructions, if we

19 can get an updated -- I want to make sure we make as much

20 progress as possible before I have to make a decision

21 about something. So what amount of time do you think that

22 could be? And that time could include filing something

23 tomorrow morning as opposed to tonight. I can assure

24 you -- I hope that nobody has to look at these tonight,

25 but I know that that's not the case.

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CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer
Bonnie R. Archer
Official Court Reporter
U.S. District Court

MR. ARD: [7] 1110/2 1110/5
1110/7 1123/7 1123/24
1124/4 1124/15
MR. LAHAD: [6] 1080/21
1080/23 1084/17 1094/4
1109/18 1127/7
MR. LING: [29] 1080/9
1080/13 1085/9 1086/4
1086/17 1086/21 1088/13
1088/25 1089/2 1089/7
1089/10 1089/16 1090/15
1107/4 1107/21 1108/6
1108/10 1108/25 1109/4
1109/6 1110/22 1111/2
1111/7 1111/11 1113/8
1113/10 1118/4 1122/8
1122/11
MR. UNIKEL: [55] 1066/14
1071/22 1073/1 1073/7
1073/10 1073/14 1073/19
1073/22 1073/24 1075/19
1077/8 1077/11 1078/21
1081/13 1082/17 1084/3
1084/6 1086/20 1093/14
1095/9 1095/13 1097/17
1097/20 1099/8 1099/18
1102/22 1103/1 1103/4
1105/6 1105/23 1106/5
1106/8 1106/15 1106/20
1107/8 1107/11 1110/11
1110/18 1110/21 1112/7
1112/10 1112/14 1112/19
1116/14 1117/14 1120/1
1120/14 1120/17 1124/24
1125/2 1125/19 1125/22
1126/5 1126/9 1127/10
MS. SRINIVASAN: [67]
1065/22 1068/14 1070/3
1070/16 1070/22 1071/7
1071/12 1074/16 1074/18
1074/22 1075/1 1075/4
1075/10 1077/4 1077/19
1079/1 1079/20 1085/17
1086/24 1087/6 1089/14
1089/17 1090/16 1091/20
1092/10 1092/14 1093/8
1095/25 1096/9 1096/21
1097/25 1100/20 1100/22
1101/5 1102/3 1103/12
1103/17 1105/5 1105/11
1105/18 1108/19 1109/11
1109/16 1109/21 1110/23
1111/20 1113/1 1113/23
1114/3 1114/8 1114/24
1115/2 1115/15 1116/1
1116/8 1116/12 1117/1
1117/8 1117/20 1118/18
1119/7 1120/18 1121/21
1124/19 1125/25 1126/17
1127/2
THE COURT: [152]
'
'843 [11] 1085/12 1088/19
1089/19 1089/25 1094/9
1094/23 1108/1 1108/15
1113/11 1113/19 1123/10

-and [3] 1062/1 1063/10
1063/15
/
/s [1] 1129/7
1
1.1 [1] 1078/19
1.10 [1] 1078/20
1.12 [1] 1079/21
1.13 [2] 1079/22 1084/19
1.2 [1] 1078/19
1.3 [1] 1078/19
1.4 [1] 1078/19
1.5 [1] 1078/19
1.6 [1] 1078/19
1.7 [1] 1078/19
1.8 [1] 1078/19
1.9 [1] 1078/19
10 a.m [1] 1127/11
10:08 [1] 1127/25
11 [1] 1064/12
11:30 [1] 1064/20
11:30 last [1] 1099/9
12 [1] 1069/21
13-919-JLH [1] 1061/6
2
2.1 [1] 1084/20
2.2 [3] 1084/21 1086/19
1086/23
2013 [1] 1097/9
2016 [1] 1097/9
2019 [3] 1071/15 1101/8
1101/20
2023 [1] 1061/11
22 [2] 1089/3 1094/7
23 [5] 1092/7 1093/6 1094/5
1094/8 1094/13
24 [1] 1087/5
26 [1] 1090/17
28 [1] 1061/11
29 [1] 1064/13
3
3 a.m [1] 1116/9
3.1 [1] 1086/25
3.1a [1] 1093/18
3.2 [3] 1087/1 1090/7 1094/6
3.3 [3] 1090/8 1093/10 1095/8
3.4 [1] 1095/8
3.8 [2] 1096/1 1096/4
30 [4] 1091/18 1092/7 1093/7
1094/9
36 [1] 1102/4
3:30 [1] 1126/14
3:30 and [1] 1126/15
4
4.1 [1] 1102/14
4.2 [1] 1105/25
4.3 [1] 1106/21
4.5 [1] 1110/24
42 [1] 1107/20
43 [2] 1107/6 1109/3
47 [2] 1112/14 1123/8
8
844 [1] 1061/18

8:30 on [1] 1127/20
8:35 [2] 1061/11 1064/5
9
95 percent [1] 1072/18
A
a.m [5] 1061/11 1064/5
1116/9 1127/11 1127/25
ability [1] 1098/25
able [11] 1069/2 1076/11
1091/11 1095/3 1095/21
1097/7 1098/5 1119/11
1119/15 1120/25 1124/19
about [110]
above [2] 1107/23 1109/7
absence [2] 1085/20 1098/8
absolutely [2] 1103/13
1127/14
accept [2] 1099/14 1106/21
accordingly [1] 1112/1
accurate [5] 1066/18 1086/3
1093/25 1113/14 1129/5
accused [23] 1065/13
1067/24 1070/20 1071/8
1071/9 1071/10 1072/6
1073/4 1077/2 1114/6
1114/13 1114/16 1115/6
1115/8 1115/9 1115/10
1116/23 1117/13 1117/15
1117/16 1117/17 1117/21
1118/9
acknowledged [1] 1067/5
across [3] 1070/8 1079/9
1079/12
action [1] 1083/12
actions [5] 1073/6 1073/17
1082/24 1083/2 1099/20
active [1] 1082/8
actively [1] 1098/10
acts [2] 1081/24 1081/25
actual [3] 1076/9 1103/7
1117/10
actually [16] 1069/1 1081/16
1082/15 1082/24 1088/10
1092/4 1094/6 1100/11
1101/3 1107/23 1108/23
1117/16 1117/18 1120/7
1126/7 1127/11
add [9] 1067/14 1086/4
1087/7 1097/11 1098/15
1112/3 1113/22 1114/2
1114/5
added [3] 1091/6 1114/24
1115/3
adding [3] 1096/24 1098/14
1098/18
addition [3] 1070/5 1088/15
1116/2
additional [22] 1068/15
1086/7 1087/2 1090/17
1091/6 1092/20 1094/11
1094/14 1096/10 1096/16
1096/24 1097/13 1097/23
1097/24 1098/1 1098/3
1098/14 1098/16 1098/18
1113/3 1113/5 1121/22
address [6] 1075/12 1077/6
1077/21 1099/5 1103/19
1113/12

addressed [1] 1120/20
addresses [1] 1086/18
addressing [1] 1078/14
advisement [1] 1090/6
affect [1] 1095/11
affirmative [3] 1081/24
1087/12 1124/20
after [6] 1083/23 1099/22
1100/5 1100/16 1101/11
1119/2
again [4] 1087/19 1098/12
1104/20 1109/24
ago [2] 1114/18 1124/9
agree [23] 1067/9 1084/1
1084/23 1085/1 1091/17
1095/18 1095/24 1095/25
1104/3 1104/6 1108/8 1109/5
1109/24 1114/4 1115/1
1115/4 1115/4 1115/18
1116/16 1119/1 1121/11
1127/5 1127/10
agreed [2] 1105/23 1105/24
agreeing [1] 1065/3
agreement [17] 1065/23
1065/25 1066/9 1066/15
1066/16 1078/19 1079/22
1081/8 1084/20 1086/25
1095/18 1106/1 1109/20
1112/8 1114/14 1116/4
1124/22
agrees [2] 1065/5 1110/1
ahead [1] 1126/15
all [78]
allegations [1] 1100/3
allege [2] 1110/13 1110/15
alleged [7] 1088/20 1089/19
1089/20 1090/2 1107/25
1108/12 1108/14
alleging [2] 1123/9 1124/21
allowed [1] 1103/21
alone [1] 1082/5
already [17] 1076/14 1091/4
1091/8 1091/20 1091/25
1093/3 1097/1 1097/12
1097/12 1097/15 1098/6
1098/13 1100/1 1103/18
1104/25 1105/12 1119/14
also [8] 1065/16 1070/6
1072/1 1075/21 1081/9
1098/20 1113/12 1114/12
alternative [5] 1096/16
1107/10 1107/11 1107/15
1107/22
altogether [1] 1078/21
always [1] 1075/7
am [2] 1089/20 1109/25
amended [4] 1101/1 1101/6
1101/6 1101/20
amendments [1] 1071/15
amongst [1] 1126/13
amount [4] 1104/20 1113/20
1125/2 1126/21
ANDERSON [1] 1063/9
ANDREA [1] 1063/13
Android [10] 1067/18 1068/8
1068/8 1068/8 1068/8 1069/6
1070/2 1071/25 1072/9
1117/17
Android 6 [1] 1068/8
Android 7 [1] 1068/8

Android 8 [3] 1067/18 1068/8 1070/2
 Android 8 MR1 [1] 1068/8
 annual [1] 1072/2
 another [9] 1075/20 1088/16 1090/5 1090/19 1091/12 1091/24 1093/12 1116/21 1125/18
 answer [4] 1074/12 1084/1 1093/22 1121/6
 answered [2] 1121/5 1121/5
 anticipate [1] 1125/24
 anticipated [1] 1110/16
 anticipates [2] 1107/25 1108/14
 anticipation [10] 1106/23 1107/14 1108/23 1114/22 1119/5 1119/17 1119/22 1120/5 1120/25 1121/15
 any [38] 1065/1 1065/8 1066/19 1067/23 1067/23 1068/20 1074/11 1075/2 1075/18 1076/8 1081/4 1081/21 1081/22 1082/5 1082/6 1082/6 1082/7 1085/11 1086/22 1089/13 1090/10 1091/7 1091/15 1092/17 1094/16 1094/17 1095/23 1100/4 1100/17 1102/7 1102/8 1103/9 1103/25 1105/7 1107/24 1120/6 1123/10 1127/23
 anybody [1] 1069/1
 anyone [1] 1105/4
 anything [12] 1065/21 1079/18 1083/2 1092/11 1100/15 1101/8 1103/21 1106/18 1112/4 1124/23 1127/4 1127/18
 apologize [3] 1080/24 1093/14 1116/20
 app [1] 1074/19
 appeal [3] 1074/2 1076/6 1120/11
 APPEARANCES [2] 1061/23 1062/2
 application [4] 1071/2 1071/5 1088/7 1090/6
 applications [3] 1071/13 1071/14 1075/15
 applied [1] 1077/13
 applies [3] 1079/8 1079/9 1087/23
 apply [4] 1079/12 1087/13 1112/2 1121/8
 apportionment [2] 1070/25 1071/3
 appropriate [12] 1076/15 1091/10 1094/1 1097/11 1097/16 1098/7 1104/13 1104/16 1104/22 1107/2 1107/7 1121/12
 apps [16] 1067/1 1067/16 1067/23 1067/24 1069/22 1072/4 1072/14 1073/20 1074/22 1074/23 1082/15 1114/6 1114/16 1115/6 1115/10 1122/20
 April [1] 1061/11

Archer [2] 1129/7 1129/8
 ARD [1] 1063/3
 are [60] 1064/7 1064/8 1064/22 1064/23 1065/3 1065/16 1065/17 1066/5 1067/12 1068/24 1069/15 1070/24 1071/10 1071/16 1074/5 1078/4 1079/2 1079/18 1084/12 1086/7 1086/8 1086/12 1087/8 1088/14 1089/11 1091/1 1092/18 1092/19 1093/21 1094/25 1095/23 1097/12 1098/14 1098/24 1101/10 1103/6 1103/21 1104/13 1104/19 1105/24 1107/4 1108/6 1108/23 1108/25 1109/9 1109/13 1109/14 1115/7 1115/10 1115/23 1116/5 1117/21 1118/19 1119/8 1119/15 1120/22 1120/25 1123/21 1125/4 1125/10
 aren't [3] 1092/24 1123/23 1124/2
 ARENDI [22] 1061/4 1064/12 1065/8 1065/20 1068/23 1078/23 1080/3 1086/22 1087/4 1088/5 1088/8 1094/22 1102/16 1104/17 1104/24 1106/20 1107/7 1108/17 1113/11 1113/21 1114/7 1119/6
 Arendi's [12] 1065/4 1085/5 1085/7 1088/20 1094/20 1096/6 1097/23 1106/21 1109/4 1113/4 1121/18 1122/2
 argue [6] 1084/12 1099/4 1110/16 1119/15 1121/23 1124/7
 argued [1] 1099/4
 arguing [6] 1115/16 1123/20 1123/21 1123/23 1124/2 1124/2
 argument [15] 1068/15 1069/20 1079/19 1081/2 1084/12 1088/5 1096/3 1096/8 1098/21 1100/23 1101/12 1101/19 1107/3 1108/17 1108/21
 arguments [2] 1064/15 1105/17
 around [1] 1064/20
 arrangements [3] 1125/5 1125/8 1125/16
 arriving [1] 1070/11
 art [17] 1102/18 1102/19 1102/20 1102/23 1103/22 1104/1 1105/21 1106/1 1106/3 1106/3 1106/13 1106/16 1106/21 1106/25 1107/25 1110/16 1120/11
 as [86]
 aside [2] 1071/17 1073/3
 ask [13] 1071/6 1072/21 1072/22 1075/25 1077/8 1083/3 1084/25 1085/1 1085/2 1114/15 1121/25 1122/3 1122/4

asked [5] 1071/7 1072/21 1090/24 1091/21 1103/19
 asking [4] 1069/5 1069/12 1076/21 1084/5
 asks [2] 1093/22 1103/24
 assert [1] 1070/1
 asserted [7] 1068/24 1074/4 1104/18 1105/21 1108/1 1108/14 1113/19
 asserting [1] 1081/6
 assessed [1] 1093/9
 assumed [1] 1067/17
 assuming [1] 1125/3
 assure [1] 1126/23
 attention [1] 1075/6
 attest [1] 1069/2
 authority [1] 1103/7
 avoid [2] 1070/7 1074/11
 avoiding [1] 1102/6
 await [1] 1095/5
 award [1] 1113/21
 aware [1] 1098/9

B

back [5] 1071/23 1075/11 1076/20 1077/5 1125/17
 balance [1] 1126/2
 bar [1] 1082/3
 based [5] 1068/5 1081/4 1081/14 1102/1 1123/10
 bases [1] 1069/13
 basically [5] 1092/19 1103/20 1103/24 1104/24 1115/24
 basis [12] 1065/7 1067/12 1068/17 1069/25 1070/10 1075/23 1076/8 1091/5 1092/1 1093/10 1120/7 1120/15
 be [96]
 because [35] 1066/18 1066/22 1066/25 1067/16 1067/21 1072/4 1072/11 1072/22 1076/7 1076/21 1081/1 1084/11 1086/2 1089/11 1091/2 1092/4 1093/1 1094/2 1097/14 1100/4 1100/9 1100/25 1101/11 1101/14 1101/21 1101/22 1104/20 1108/20 1109/24 1110/3 1110/15 1120/24 1122/25 1123/13 1123/19
 become [1] 1076/6
 been [32] 1065/25 1066/3 1067/21 1068/20 1069/2 1069/3 1069/16 1071/2 1071/3 1071/14 1071/16 1071/16 1073/13 1073/15 1075/7 1076/24 1076/25 1079/17 1081/20 1085/12 1087/18 1087/22 1091/4 1091/9 1093/3 1093/5 1093/8 1102/7 1103/18 1103/19 1120/12 1121/14
 before [13] 1061/20 1078/9 1081/1 1085/2 1087/18 1088/13 1097/9 1106/6 1113/6 1116/3 1126/20 1127/12 1127/19
 beginning [1] 1064/4

begins [1] 1107/13
 being [9] 1070/24 1079/2 1091/21 1092/19 1097/7 1102/5 1111/21 1112/5 1113/25
 being's [1] 1115/10
 BELGAM [1] 1061/25
 believe [9] 1070/16 1082/17 1083/1 1084/3 1100/6 1100/17 1112/19 1113/14 1122/13
 believed [1] 1100/2
 below [1] 1109/7
 bench [3] 1078/9 1116/21 1127/23
 best [1] 1066/2
 better [2] 1121/17 1127/6
 between [7] 1066/9 1066/15 1085/7 1088/16 1107/19 1112/1 1121/18
 beyond [2] 1096/14 1097/15
 biggest [1] 1126/9
 bit [4] 1064/8 1085/24 1107/12 1121/16
 blank [1] 1076/17
 Bonnie [2] 1129/7 1129/8
 both [5] 1065/3 1069/9 1087/17 1105/16 1125/20
 bottom [1] 1094/7
 boy [1] 1121/20
 break [1] 1086/6
 briefing [1] 1098/20
 briefly [2] 1071/20 1116/20
 bring [3] 1075/20 1099/24 1125/17
 bulk [1] 1095/19
 burden [7] 1103/11 1103/18 1103/23 1104/18 1105/9 1119/9 1119/13
 burdens [1] 1079/23

C

C.A [1] 1061/6
 C3 [1] 1122/1
 call [2] 1083/6 1098/17
 called [1] 1091/3
 calling [1] 1096/25
 came [2] 1064/17 1064/20
 can [67] 1064/23 1068/16 1068/19 1071/17 1076/16 1076/22 1077/3 1077/15 1077/24 1078/7 1078/8 1078/13 1078/13 1080/11 1081/8 1081/8 1083/23 1084/11 1085/4 1088/2 1089/4 1090/13 1090/18 1091/23 1092/6 1092/25 1098/15 1098/20 1102/3 1102/12 1102/22 1102/24 1104/5 1104/19 1105/1 1105/16 1106/13 1106/21 1108/11 1108/21 1110/20 1113/17 1113/21 1115/6 1115/13 1115/15 1117/25 1118/16 1118/20 1119/9 1119/9 1119/15 1120/3 1120/3 1121/1 1122/3 1122/24 1123/21 1124/21 1125/20 1126/19 1126/23 1127/11 1127/16 1127/21

Case 1:13-cv-00919-JLH Document 603 Filed 08/21/23 Page 540 of 775 PageID #: 61319			
can... [2] 1127/22 1127/22	1092/15 1093/10 1093/10	concerns [1] 1075/20	1080/17 1086/9 1099/14
can't [7] 1065/8 1072/15	1095/11 1095/24 1094/5	concluded [2] 1099/21	1119/12 1121/16 1122/8
1084/9 1090/20 1091/17	1094/7 1094/8 1094/9	1127/25	1124/4 1124/6 1124/6 1126/6
1091/22 1092/14	1094/16 1094/17 1104/25	conduct [1] 1083/16	1126/22 1126/22 1127/10
candidly [1] 1075/19	1113/11 1113/19	confer [13] 1085/4 1095/1	counsel [14] 1063/6 1063/18
cannot [2] 1094/17 1120/12	Claim 30 [2] 1091/18 1094/9	1095/21 1101/25 1102/10	1068/15 1068/24 1069/5
care [3] 1072/3 1090/7	claims [18] 1080/16 1080/25	1109/22 1110/3 1110/8	1080/20 1081/12 1087/4
1112/17	1083/9 1087/1 1087/16	1115/5 1115/15 1116/11	1093/13 1099/7 1116/13
carriers [1] 1068/1	1089/3 1089/11 1093/24	1117/25 1124/5	1123/6 1127/1 1127/9
case [38] 1067/22 1070/5	1103/6 1103/14 1104/4	conferring [1] 1118/19	counter [2] 1098/16 1099/5
1070/7 1070/21 1071/14	1104/5 1104/12 1104/15	confirm [1] 1070/17	counter-instruction [1] 1099/5
1071/18 1074/2 1081/19	1104/18 1108/1 1108/15	confuse [1] 1091/14	counter-language [1] 1098/16
1082/4 1082/18 1087/10	1113/19	confused [1] 1111/8	couple [5] 1086/7 1088/14
1088/1 1091/22 1092/17	clarify [3] 1086/13 1108/11	confusing [5] 1086/3 1088/9	1095/16 1116/2 1122/9
1092/17 1095/11 1096/12	1111/3	1091/24 1107/12 1109/13	course [6] 1087/7 1091/15
1096/24 1097/13 1098/15	clarifying [1] 1121/4	confusion [2] 1082/12	1091/20 1104/1 1106/12
1098/16 1099/3 1100/2	clarity [3] 1085/13 1093/25	1093/25	1118/22
1101/7 1101/15 1101/17	1108/20	connected [1] 1114/10	court [21] 1061/2 1067/15
1103/19 1104/11 1104/23	clause [3] 1103/15 1113/22	consider [7] 1077/9 1104/15	1074/6 1075/5 1077/20
1107/25 1108/11 1117/22	1114/2	1106/9 1111/14 1113/20	1078/15 1079/3 1087/12
1120/6 1124/9 1125/3 1125/6	clean [1] 1127/4	1121/1 1122/14	1109/13 1117/24 1122/16
1126/25 1127/12	clear [12] 1069/8 1069/12	consideration [1] 1067/12	1122/16 1123/13 1123/15
cases [1] 1089/22	1076/24 1076/25 1096/23	considered [4] 1103/10	1124/6 1124/10 1124/15
category [1] 1082/21	1097/24 1104/19 1111/23	1103/22 1105/8 1106/25	1124/17 1129/2 1129/8
cause [3] 1081/17 1081/18	1112/2 1113/15 1119/16	consistent [4] 1114/23	1129/9
1081/24	1124/11	1115/19 1118/16 1118/24	Court's [5] 1075/12 1077/6
caution [1] 1121/13	clearer [2] 1093/20 1094/6	constantly [1] 1081/19	1120/11 1123/14 1124/8
CD [1] 1073/20	clearly [2] 1122/11 1127/4	constitute [3] 1069/7 1083/19	1124/8
center [1] 1096/13	clock [1] 1125/18	1083/20	courtroom [2] 1064/4 1064/10
certain [3] 1072/12 1079/13	close [3] 1088/8 1124/14	constituted [1] 1099/20	cover [2] 1117/6 1117/9
1098/24	1125/20	constitutes [1] 1087/9	covered [2] 1094/4 1098/6
certainly [4] 1066/4 1087/22	closed [1] 1082/4	construction [6] 1087/12	create [3] 1076/3 1081/17
1097/3 1101/16	closing [9] 1064/15 1079/19	1087/19 1087/23 1089/21	1082/11
CERTIFICATE [1] 1129/2	1084/12 1105/17 1106/14	1094/5 1104/25	CRM [1] 1081/5
certify [1] 1129/4	1108/22 1110/17 1125/24	constructions [1] 1126/1	cross [1] 1066/6
CHAD [1] 1063/12	1126/2	contend [1] 1107/24	cross-examine [1] 1066/6
challenge [1] 1068/9	closings [7] 1125/3 1125/8	contends [4] 1108/7 1108/11	currently [3] 1064/12 1071/10
chance [1] 1090/4	1125/9 1125/14 1125/15	1108/12 1108/13	1086/15
change [2] 1103/11 1105/8	1126/14 1126/15	Content [2] 1073/5 1073/17	cut [1] 1082/3
changes [1] 1117/21	combination [2] 1120/4	contentions [3] 1101/6	CyberDesk [4] 1108/14
characterization [1] 1090/2	1123/10	1101/11 1101/20	1120/3 1120/12 1120/25
characterizing [1] 1068/15	combinations [1] 1119/18	contest [1] 1065/24	D
chatter [1] 1081/1	come [20] 1068/22 1075/12	context [1] 1103/5	daily [2] 1067/20 1072/1
check [2] 1089/17 1089/22	1076/1 1083/5 1084/9 1088/3	Contextual [2] 1073/6	damage [1] 1073/4
chose [1] 1101/22	1091/15 1092/22 1098/4	1073/17	damages [21] 1064/21 1065/1
Chrome [20] 1065/4 1065/8	1101/14 1103/15 1104/7	contingent [2] 1085/9 1102/1	1065/4 1065/8 1065/15
1065/23 1065/25 1066/7	1105/1 1105/3 1114/10	continued [2] 1063/1 1124/13	1067/13 1074/3 1074/7
1066/14 1066/17 1069/22	1115/8 1119/1 1119/2 1120/2	contradict [1] 1106/18	1076/22 1077/1 1086/6
1070/1 1070/21 1072/24	1127/4	contributory [8] 1082/1 1082/8	1112/20 1112/24 1113/7
1073/2 1073/3 1073/9	comes [8] 1070/10 1087/10	1083/20 1094/25 1095/6	1113/13 1113/20 1115/25
1073/10 1073/22 1073/23	1090/22 1095/5 1108/8	1095/10 1118/7 1118/23	1116/5 1121/9 1122/19
1074/5 1075/7 1076/22	1110/15 1112/16 1127/12	control [1] 1069/11	1122/19
Circuit [4] 1074/3 1076/23	coming [1] 1127/20	conversations [1] 1075/22	data [7] 1070/4 1070/10
1076/25 1111/13	commenced [1] 1064/4	convincing [4] 1104/19	1071/1 1071/2 1071/4 1071/7
circumstances [1] 1104/6	commencement [1] 1116/5	1111/24 1112/2 1119/16	1072/8
citation [1] 1090/21	competing [5] 1101/25	convoluted [1] 1085/24	date [6] 1067/1 1067/1 1072/1
citations [1] 1096/24	1102/12 1102/15 1108/23	copy [1] 1082/3	1116/5 1121/23 1122/13
cite [1] 1093/15	1127/17	correct [13] 1065/5 1067/2	dates [1] 1071/25
cited [2] 1092/10 1096/12	complaint [2] 1071/15 1101/6	1071/11 1073/14 1073/19	Daubert [1] 1077/24
claim [43] 1081/3 1081/3	completely [2] 1064/22	1073/24 1092/8 1092/9	DAVID [1] 1063/9
1081/5 1081/9 1081/15	1084/14	1092/12 1110/18 1111/24	day [4] 1068/4 1068/6
1082/10 1082/20 1083/10	complex [1] 1077/25	1120/17 1121/7	1125/18 1125/20
1085/11 1087/19 1087/23	complicated [1] 1119/23	correlate [1] 1066/20	deal [3] 1065/18 1067/8
1090/18 1090/19 1090/21	complicates [1] 1119/18	correlating [1] 1072/3	1076/5
1090/25 1091/2 1091/3	compose [1] 1124/19	correlation [3] 1067/6 1067/22	decide [2] 1085/11 1092/21
1091/5 1091/5 1091/10	compromise [1] 1099/11	1072/14	deciding [4] 1087/17 1094/22
1091/10 1091/12 1091/13	computer [3] 1081/2 1081/15	corresponded [1] 1064/18	1103/6 1104/12
1091/14 1091/18 1091/22	1083/10	CORROON [1] 1063/9	decision [1] 1126/20
1091/23 1092/1 1092/1	concern [3] 1075/25 1077/6	could [18] 1066/24 1067/25	defendant [3] 1061/8 1063/18
	1126/9	1069/18 1072/8 1072/21	1069/10

<p>Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 541 of 776 PageID #: 631320</p> <p>D defense [3] 1081/4 1081/14 1100/9 defer [2] 1102/22 1106/2 definitely [1] 1073/2 DELAWARE [2] 1061/3 1061/18 delay [1] 1066/23 denied [1] 1096/7 departed [3] 1123/15 1124/8 1124/12 dependent [7] 1090/21 1091/2 1091/13 1092/15 1093/24 1094/8 1094/17 depending [1] 1091/13 deputy [1] 1064/10 designed [1] 1082/16 detail [3] 1078/11 1087/8 1094/6 Detectors [2] 1073/5 1073/17 determination [1] 1102/8 determine [1] 1122/19 determined [1] 1107/14 determining [2] 1085/21 1093/3 device [3] 1067/2 1072/15 1074/19 devices [10] 1068/2 1068/7 1072/4 1072/9 1072/17 1074/24 1075/1 1077/2 1115/10 1122/20 dial [1] 1083/8 did [12] 1066/19 1069/25 1070/13 1071/6 1073/10 1077/11 1081/3 1081/19 1099/25 1100/10 1100/12 1107/22 didn't [19] 1066/17 1072/3 1072/7 1072/21 1072/22 1081/7 1088/23 1091/2 1093/15 1099/4 1099/21 1100/15 1100/25 1100/25 1101/8 1101/10 1101/11 1116/3 1123/19 DIEHL [1] 1063/4 difference [4] 1085/7 1088/16 1111/25 1118/6 different [7] 1067/16 1070/8 1074/23 1100/10 1119/8 1119/15 1119/17 differently [1] 1113/13 difficult [2] 1067/7 1067/9 dig [1] 1078/14 direct [7] 1080/5 1087/8 1094/24 1118/5 1118/13 1118/14 1118/21 directions [1] 1092/24 directly [1] 1118/15 disagree [15] 1065/20 1071/21 1076/13 1078/5 1085/15 1085/17 1087/4 1087/6 1092/3 1092/8 1096/17 1105/4 1105/10 1113/10 1118/17 discovery [3] 1070/5 1070/7 1071/24 discuss [5] 1077/5 1104/20 1121/10 1122/4 1126/13 discussed [6] 1090/12 1100/22 1101/9 1101/13</p>	<p>1101/16 1107/25 discussing [1] 1121/14 discussion [4] 1087/1 1101/18 1102/20 1106/2 dispute [23] 1065/16 1070/18 1070/22 1079/23 1080/2 1081/10 1084/19 1084/21 1084/24 1087/2 1089/13 1090/10 1102/11 1106/4 1106/24 1107/19 1110/12 1112/22 1114/7 1116/22 1118/25 1119/3 1122/12 disputed [4] 1077/21 1079/2 1117/22 1121/24 disputes [6] 1086/8 1086/9 1097/22 1112/3 1115/22 1127/5 disregard [2] 1103/20 1103/25 DISTRICT [4] 1061/2 1061/3 1074/6 1129/9 do [65] 1065/20 1065/24 1069/5 1069/6 1070/7 1070/18 1070/20 1071/22 1072/8 1073/9 1073/20 1074/8 1075/2 1076/5 1077/2 1080/6 1080/14 1080/18 1082/25 1083/14 1084/5 1084/24 1085/15 1086/2 1086/6 1087/4 1090/4 1091/16 1091/21 1092/8 1092/21 1096/17 1096/23 1097/6 1097/21 1098/17 1099/11 1102/3 1102/13 1104/3 1104/22 1105/10 1106/3 1107/3 1107/7 1109/5 1110/9 1110/11 1111/5 1111/9 1111/16 1111/20 1114/9 1114/12 1116/10 1116/12 1116/20 1117/4 1118/17 1121/5 1122/13 1125/24 1126/7 1126/21 1127/7 does [21] 1067/16 1069/7 1069/13 1083/18 1084/16 1090/19 1091/3 1092/21 1103/11 1104/17 1105/4 1105/8 1106/17 1107/24 1108/17 1110/12 1110/14 1112/17 1113/12 1114/7 1119/6 doesn't [15] 1067/1 1076/20 1083/5 1083/9 1083/19 1087/7 1087/20 1090/1 1090/10 1091/15 1092/5 1092/7 1093/23 1112/3 1112/22 doing [2] 1093/16 1114/9 don't [65] 1065/7 1065/22 1065/24 1066/1 1069/21 1070/22 1072/14 1074/1 1074/12 1075/13 1075/19 1076/22 1077/1 1077/17 1077/20 1077/21 1077/25 1083/1 1084/10 1084/14 1085/17 1085/22 1087/6 1089/25 1090/21 1090/22 1091/18 1092/15 1092/23 1094/14 1095/22 1095/23 1096/7 1096/21 1097/11 1097/16 1098/7 1098/11</p>	<p>1098/16 1102/7 1102/10 1104/2 1104/5 1105/11 1105/14 1106/17 1107/1 1111/8 1111/18 1113/24 1114/11 1114/22 1115/5 1115/16 1117/11 1117/13 1117/18 1117/20 1118/9 1118/18 1119/10 1121/8 1122/23 1124/12 1126/3 door [1] 1124/14 down [3] 1115/19 1115/24 1121/16 downloaded [3] 1067/2 1071/25 1081/17 downloads [19] 1065/5 1065/8 1065/11 1065/13 1065/17 1065/25 1066/8 1066/20 1067/20 1067/23 1068/6 1068/7 1068/23 1070/1 1070/2 1070/23 1072/2 1072/9 1074/5 downstream [1] 1074/11 Dr [1] 1081/7 Dr. [3] 1068/10 1069/25 1079/4 Dr. Smedley's [1] 1079/4 Dr. Weinstein [2] 1068/10 1069/25 drop [3] 1083/25 1102/7 1125/10 dropped [2] 1089/3 1089/4 dropping [1] 1102/4 during [8] 1072/16 1079/4 1079/9 1079/14 1100/16 1100/19 1106/11 1107/1</p> <p>E e-mail [2] 1083/8 1083/9 each [5] 1064/14 1064/23 1077/17 1090/25 1122/23 earlier [2] 1071/17 1105/1 earliest [1] 1122/12 edit [1] 1109/21 effort [1] 1097/8 efforts [1] 1102/6 eight [1] 1064/12 either [4] 1078/2 1105/15 1119/17 1122/3 element [1] 1083/14 elements [1] 1093/6 ELLIS [1] 1063/9 else [5] 1082/10 1100/15 1124/23 1125/10 1127/18 elsewhere [1] 1089/21 emphasize [1] 1098/5 emphasizes [1] 1119/19 encouraged [1] 1083/13 encouraging [2] 1083/6 1083/17 end [5] 1068/4 1074/2 1087/2 1115/22 1123/4 engage [1] 1098/10 engaged [1] 1097/8 enough [1] 1083/22 ensure [1] 1076/12 entitled [2] 1065/9 1069/9 entity [1] 1118/11 error [1] 1109/25 especially [2] 1113/5 1120/22 ESQ [12] 1061/25 1063/3</p>	<p>1063/4 1063/4 1063/5 1063/5 1063/9 1063/12 1063/12 1063/13 1063/13 1063/16 essentially [1] 1120/16 estimates [1] 1069/10 estoppel [2] 1120/2 1120/11 even [9] 1067/1 1069/18 1076/3 1078/5 1079/3 1100/16 1111/18 1115/2 1123/16 ever [4] 1069/17 1083/13 1100/11 1100/12 everybody [14] 1064/14 1065/5 1068/11 1069/21 1076/20 1078/13 1078/13 1099/19 1109/14 1110/1 1125/13 1125/17 1126/16 1127/21 everybody's [1] 1122/6 evidence [30] 1065/10 1065/14 1067/6 1068/16 1068/25 1069/7 1069/8 1069/14 1069/17 1074/4 1076/23 1076/24 1079/17 1079/19 1080/15 1080/16 1082/5 1082/6 1082/14 1088/8 1097/7 1098/25 1101/14 1104/20 1111/24 1119/16 1123/16 1123/17 1125/12 1126/2 evidentiary [1] 1076/9 exactly [5] 1084/4 1110/5 1114/21 1122/6 1123/2 examination [1] 1107/1 examine [1] 1066/6 example [3] 1068/2 1082/2 1120/4 exception [1] 1094/15 excessive [1] 1126/3 exclusive [1] 1069/11 expect [1] 1126/3 expert [8] 1066/6 1066/16 1067/4 1069/13 1070/12 1070/15 1070/17 1075/24 experts [1] 1069/9 expired [2] 1099/22 1100/6 expiry [1] 1101/12 explore [1] 1084/8 expressly [2] 1100/22 1101/9 extent [5] 1076/4 1115/7 1117/23 1127/16 1127/23 extra [1] 1094/20 eyes [3] 1064/19 1064/19 1078/10</p> <p>F fact [11] 1067/18 1068/21 1069/4 1069/18 1081/4 1097/8 1103/5 1103/9 1103/22 1105/7 1117/22 factor [2] 1102/5 1102/7 factors [1] 1097/12 facts [6] 1068/24 1078/20 1078/24 1079/12 1079/13 1115/17 factual [5] 1069/14 1077/21 1086/7 1112/3 1122/12 failure [1] 1081/14 fair [2] 1099/17 1112/25 faith [1] 1102/6</p>
--	---	--	---

F	G	H	I
<p>falls [1] 1118/20 Fantastic [1] 1126/6 far [2] 1088/1 1095/4 FCBA [1] 1093/17 feature [1] 1083/17 Federal [4] 1074/3 1076/23 1076/25 1111/13 field [5] 1087/14 1088/19 1089/18 1089/24 1105/21 figure [3] 1068/6 1102/13 1107/13 file [2] 1127/6 1127/12 filed [2] 1074/15 1078/17 filing [1] 1126/22 fill [1] 1076/17 filling [1] 1121/8 final [1] 1078/17 finally [3] 1110/12 1110/14 1112/15 find [23] 1083/7 1083/8 1083/11 1083/15 1090/19 1090/20 1090/25 1091/1 1091/2 1091/4 1091/9 1091/12 1091/17 1091/18 1091/22 1092/6 1092/7 1092/14 1093/6 1093/6 1094/16 1113/18 1120/12 finding [3] 1085/20 1119/16 1120/21 finds [2] 1109/13 1113/13 fine [12] 1102/17 1104/17 1108/6 1109/13 1109/14 1111/1 1113/17 1113/21 1113/23 1117/24 1121/11 1124/18 finish [1] 1097/19 first [18] 1066/14 1082/13 1082/20 1083/7 1083/10 1084/7 1084/24 1087/23 1093/14 1096/19 1099/8 1102/15 1106/11 1108/6 1108/10 1111/23 1113/22 1118/2 five [1] 1126/5 flag [4] 1123/8 1123/18 1124/5 1124/10 flipping [1] 1095/17 focus [4] 1097/4 1097/14 1098/21 1099/3 focused [1] 1100/2 focusing [1] 1075/6 follow [1] 1094/21 followed [1] 1113/2 footnotes [1] 1102/12 foregoing [1] 1129/4 form [25] 1074/9 1074/19 1077/25 1085/19 1085/25 1086/6 1086/12 1090/25 1091/25 1092/5 1092/6 1093/22 1113/6 1114/11 1116/18 1116/23 1117/3 1117/13 1118/5 1118/7 1119/11 1119/19 1122/18 1127/15 1127/16 forms [1] 1074/14 Forty [1] 1126/5 Forty-five [1] 1126/5 forward [2] 1095/17 1125/13 found [9] 1075/17 1091/7</p>	<p>1092/1 1104/5 1120/7 1120/16 1121/9 1122/7 1123/2 four [5] 1075/21 1076/2 1076/4 1076/13 1085/9 frame [1] 1079/10 framed [1] 1108/2 Frankenstein [1] 1105/2 frankly [4] 1080/17 1092/16 1097/5 1103/17 Friday [4] 1061/11 1064/7 1072/6 1073/19 front [2] 1078/16 1096/13 functionalities [6] 1070/20 1072/6 1072/23 1073/4 1073/8 1073/11 functionality [3] 1067/25 1097/5 1097/10 fundamentally [1] 1068/5</p>	<p>1097/25 1098/2 1102/20 1104/8 1104/18 1106/2 1106/12 1106/25 1107/24 1108/7 1108/13 1110/12 1110/14 1111/16 1113/18 1114/5 1116/3 1116/6 1117/2 1117/23 1118/9 1118/15 1119/1 1119/5 1119/9 1119/25 1122/20 1123/9 Google's [17] 1066/6 1080/6 1082/14 1083/3 1085/8 1086/2 1087/5 1088/6 1088/12 1097/22 1103/11 1105/9 1106/11 1107/9 1113/3 1121/18 1122/1 got [37] 1065/2 1072/14 1074/3 1074/10 1078/16 1078/20 1079/22 1079/22 1084/21 1087/1 1089/2 1094/20 1094/24 1095/3 1095/17 1095/17 1096/18 1097/22 1097/23 1098/1 1098/15 1098/20 1101/20 1102/1 1102/18 1105/20 1108/22 1115/22 1116/6 1116/9 1116/22 1117/6 1118/23 1119/3 1121/4 1121/13 1127/20 grant [2] 1064/25 1076/22 granular [1] 1071/4 great [8] 1077/16 1078/11 1094/5 1106/22 1109/1 1116/15 1121/3 1127/24 guess [7] 1064/20 1065/18 1070/18 1096/11 1103/9 1106/5 1119/24 guidance [1] 1098/13 guys [1] 1074/15</p>	<p>1096/20 1099/16 having [4] 1070/7 1092/16 1117/15 1126/9 he [8] 1066/16 1066/17 1066/19 1067/17 1070/13 1070/19 1124/12 1124/13 He's [1] 1070/3 head [1] 1077/16 hear [9] 1065/20 1066/13 1071/20 1078/23 1081/4 1081/7 1096/8 1107/6 1119/25 heard [8] 1072/17 1079/2 1082/11 1083/5 1084/8 1087/25 1097/17 1124/1 hearing [2] 1101/2 1101/3 heavily [1] 1107/1 Hedloy [1] 1075/23 held [3] 1123/16 1124/9 1124/12 help [2] 1088/22 1094/2 helpful [4] 1066/12 1075/11 1116/10 1127/17 helps [1] 1105/14 here [22] 1064/7 1064/22 1078/4 1083/5 1090/11 1093/2 1093/15 1095/16 1096/18 1097/22 1104/23 1106/7 1106/8 1106/17 1107/22 1108/24 1110/25 1114/23 1114/25 1119/15 1126/16 1127/21 here's [1] 1074/1 hereby [1] 1129/4 high [1] 1086/10 highlight [1] 1097/3 highlighted [1] 1095/19 his [6] 1070/10 1070/11 1070/14 1070/14 1070/17 1079/5 home [1] 1125/17 honest [1] 1105/15 Honor [76] HONORABLE [1] 1061/20 hope [1] 1126/24 hour [5] 1064/15 1125/25 1125/25 1126/3 1126/5 hours [2] 1064/12 1064/13 housekeeping [1] 1088/14 how [22] 1065/18 1067/8 1069/5 1076/5 1078/5 1079/23 1085/24 1087/8 1087/22 1093/23 1095/5 1095/11 1098/22 1105/16 1112/23 1114/10 1114/17 1115/6 1115/21 1118/12 1125/24 1126/12 however [1] 1093/19 huge [1] 1072/16 hurts [1] 1105/14</p>
			<p>I'd [1] 1088/7 I'll [5] 1070/17 1075/6 1083/4 1095/4 1099/18 I'm [43] 1064/25 1065/2 1065/23 1069/23 1069/23 1074/1 1074/13 1076/15 1076/19 1076/21 1078/17 1079/16 1083/21 1084/4</p>

I'm... [29] 1084/6 1084/6
1084/8 1085/18 1087/19
1088/6 1088/10 1089/25
1090/1 1095/7 1096/5
1097/24 1101/2 1101/3
1104/7 1104/22 1105/15
1105/16 1106/10 1107/9
1108/4 1111/8 1113/4
1115/21 1117/12 1119/24
1120/10 1121/25 1122/2
I've [7] 1064/19 1065/21
1071/23 1078/16 1084/7
1095/4 1102/1
idea [2] 1077/16 1125/9
ideal [1] 1127/3
ideas [1] 1075/18
identification [1] 1081/21
identify [2] 1082/20 1099/12
imagine [1] 1088/2
immense [1] 1082/12
impact [1] 1067/16
impacted [1] 1098/22
impasse [1] 1099/17
implicated [2] 1100/13
1100/18
important [7] 1079/10 1088/11
1094/13 1099/13 1099/19
1104/10 1120/5
importantly [1] 1093/19
inappropriate [2] 1075/23
1114/23
inclined [8] 1064/25 1076/15
1088/6 1105/15 1105/16
1106/10 1121/25 1122/2
include [17] 1066/1 1066/8
1079/16 1080/3 1087/20
1090/3 1094/19 1094/23
1102/20 1104/10 1104/23
1105/16 1106/11 1107/22
1114/15 1122/19 1126/22
included [11] 1069/1 1070/1
1071/10 1071/12 1076/4
1080/25 1088/21 1096/16
1104/14 1104/25 1120/20
includes [3] 1069/6 1076/1
1102/16
including [1] 1086/11
inclusive [1] 1069/15
incorrect [1] 1088/5
independent [6] 1090/19
1091/3 1091/14 1093/24
1094/7 1094/16
independently [1] 1093/23
indicated [2] 1106/6 1116/19
indication [2] 1067/11
1083/13
indirect [9] 1080/4 1080/7
1080/15 1080/18 1080/25
1081/8 1081/10 1085/3
1096/2
individually [1] 1104/16
induced [3] 1082/25 1095/6
1118/6
inducement [10] 1081/23
1082/8 1082/10 1082/19
1082/19 1083/19 1094/25
1095/10 1096/2 1118/19
inducing [2] 1084/13 1118/16
infects [1] 1095/13

infer [1] 1065/12
inference [1] 1069/3
information [6] 1069/11
1083/7 1083/11 1083/12
1083/15 1083/15
infringe [7] 1065/12 1083/3
1083/9 1084/13 1090/20
1117/18 1118/9
infringed [4] 1085/12 1094/23
1113/18 1118/15
infringement [66] 1072/15
1072/16 1075/17 1076/25
1079/8 1079/14 1080/4
1080/5 1080/8 1080/16
1080/18 1080/25 1081/2
1081/4 1081/6 1081/9
1081/10 1081/17 1081/18
1081/21 1082/6 1082/7
1083/5 1083/14 1083/19
1083/20 1085/4 1085/21
1087/17 1090/11 1090/18
1090/20 1090/25 1091/1
1091/5 1091/9 1091/12
1091/18 1091/18 1091/22
1091/23 1091/24 1092/2
1092/15 1093/3 1093/7
1093/9 1093/11 1093/12
1094/17 1095/6 1096/3
1099/21 1099/21 1100/3
1100/5 1104/21 1113/7
1113/21 1114/18 1118/5
1118/7 1119/12 1119/13
1121/9 1122/13
infringes [2] 1083/10 1118/11
infringing [15] 1065/11
1065/17 1066/8 1068/7
1074/5 1077/2 1081/25
1081/25 1082/2 1083/16
1083/18 1094/16 1100/7
1100/12 1102/6
initial [1] 1064/10
initially [1] 1071/25
initiate [1] 1101/22
insert [1] 1077/22
inserting [1] 1092/23
insofar [1] 1123/16
installation [8] 1066/2 1066/19
1069/15 1070/4 1070/9
1070/11 1071/1 1071/4
installations [1] 1066/8
installed [1] 1122/20
installs [2] 1067/20 1072/2
instance [2] 1087/23 1113/12
instruct [3] 1076/16 1079/23
1094/21
instructed [15] 1079/4
1079/11 1087/22 1091/4
1091/9 1092/20 1093/4
1093/5 1093/8 1095/11
1096/7 1103/18 1111/21
1113/25 1114/11
instructing [1] 1091/1
instruction [51] 1080/3 1080/5
1081/25 1084/15 1087/7
1087/10 1087/20 1090/13
1090/17 1090/18 1091/8
1091/16 1092/4 1094/2
1094/14 1096/13 1096/15
1096/23 1097/1 1097/16
1098/7 1098/12 1098/13

1099/1 1099/5 1099/10
1099/12 1099/17 1102/19
1102/21 1103/13 1103/24
1104/21 1105/13 1106/3
1106/4 1112/12 1112/18
1113/2 1113/14 1114/20
1114/21 1115/12 1115/20
1116/4 1117/2 1119/14
1120/23 1121/4 1122/17
1123/9
instruction/verdict [1] 1122/17
instructions [30] 1064/9
1078/8 1078/17 1078/25
1079/17 1081/11 1082/9
1087/11 1092/16 1092/18
1092/25 1093/16 1093/18
1093/20 1098/19 1111/19
1114/18 1115/23 1115/25
1116/2 1116/6 1116/25
1118/25 1119/8 1119/21
1120/20 1123/20 1123/21
1123/22 1126/18
intent [3] 1097/15 1098/6
1098/23
intentions [1] 1101/1
inter [1] 1101/23
Interrogatories [1] 1119/4
introduce [2] 1082/9 1098/25
introduces [1] 1087/18
introducing [1] 1099/2
introductory [1] 1102/16
invalid [10] 1085/13 1085/22
1103/7 1103/14 1104/4
1104/5 1104/13 1113/20
1119/10 1123/10
invalidate [1] 1097/9
invalidity [15] 1084/25 1085/2
1088/1 1100/10 1102/21
1104/19 1111/3 1114/21
1115/11 1115/20 1119/2
1119/19 1120/8 1120/16
1121/10
invention [6] 1088/20 1089/20
1089/21 1090/2 1105/21
1105/22
involving [1] 1081/2
IPR [4] 1096/7 1098/25
1099/25 1120/2
IPRs [1] 1101/14
is [166]
isolate [3] 1099/15 1103/2
1127/5
isolated [1] 1120/21
issuance [1] 1104/8
issue [56] 1064/21 1065/1
1065/2 1065/23 1065/24
1066/4 1066/15 1066/19
1067/16 1069/4 1070/21
1070/25 1071/14 1071/16
1075/8 1075/20 1076/5
1076/6 1077/21 1078/4
1082/18 1083/1 1084/8
1085/23 1086/5 1086/22
1089/11 1090/11 1094/19
1094/24 1095/10 1096/25
1097/14 1099/3 1100/10
1101/9 1102/18 1103/18
1106/5 1107/23 1109/6
1110/3 1110/25 1111/12
1111/17 1112/24 1113/7

1114/10 1117/15 1117/22
1118/19 1118/23 1120/1
1120/7 1122/16 1124/10
issued [1] 1104/4
issues [18] 1070/23 1070/24
1074/11 1077/22 1079/2
1084/22 1086/10 1086/12
1086/19 1087/17 1087/18
1098/24 1099/24 1103/1
1103/14 1104/4 1120/2
1120/20
it [140]
it's [58] 1065/12 1066/3
1067/9 1069/3 1069/15
1070/17 1073/1 1073/2
1076/14 1077/1 1077/22
1078/13 1080/11 1080/23
1082/14 1082/21 1085/18
1085/23 1086/2 1086/3
1086/3 1087/21 1089/2
1089/25 1091/14 1091/15
1092/10 1093/18 1093/25
1094/1 1094/6 1094/10
1094/11 1094/13 1096/1
1097/1 1097/11 1098/7
1103/18 1104/17 1104/22
1106/16 1107/12 1108/2
1108/19 1109/25 1110/4
1111/7 1112/10 1112/22
1112/24 1117/16 1117/16
1118/10 1119/7 1120/5
1120/24 1124/17
its [5] 1068/21 1068/21
1075/6 1113/21 1119/9
itself [2] 1076/3 1076/5

J
JENKINS [1] 1061/24
JENNIFER [1] 1061/20
JLH [1] 1061/6
JMOL [5] 1066/3 1076/22
1081/9 1081/14 1097/3
job [1] 1093/2
JOHN [1] 1063/3
joint [1] 1127/16
judge [6] 1061/20 1074/6
1076/14 1123/15 1124/1
1124/9
judgment [6] 1064/17 1064/25
1072/5 1078/10 1080/7
1080/14
jurors [4] 1087/22 1091/15
1092/24 1103/19
jury [60] 1061/12 1064/8
1064/9 1065/15 1066/5
1067/11 1075/17 1076/13
1076/16 1078/8 1078/17
1078/25 1079/4 1079/10
1079/13 1079/16 1079/23
1080/19 1081/10 1082/9
1082/12 1083/22 1085/11
1085/14 1086/9 1087/9
1087/11 1087/19 1088/4
1088/22 1091/16 1091/25
1093/18 1093/20 1094/2
1096/6 1098/8 1098/13
1101/17 1103/5 1111/5
1111/9 1111/15 1111/19
1111/21 1112/23 1113/12
1118/24 1119/4 1120/7

J
jury... [10] 1120/16 1121/15
1122/7 1122/13 1122/17
1122/19 1123/2 1123/25
1126/18 1127/20
just [50] 1066/25 1067/20
1068/12 1068/12 1070/11
1078/12 1079/25 1083/5
1083/6 1083/17 1084/22
1085/13 1086/5 1086/13
1087/7 1087/11 1089/10
1090/12 1092/3 1093/22
1094/15 1095/5 1095/15
1096/18 1097/19 1102/10
1102/15 1106/1 1107/11
1108/19 1109/7 1109/24
1112/23 1112/24 1112/24
1114/2 1115/16 1115/21
1115/22 1115/24 1116/20
1116/24 1117/9 1117/16
1121/14 1122/9 1124/5
1124/10 1124/16 1125/5

K
KALPANA [1] 1063/5
KAMBER [1] 1063/13
KATZENSTEIN [1] 1061/24
keep [6] 1109/18 1109/19
1109/20 1109/23 1110/1
1126/16
KEMPER [1] 1063/4
kept [1] 1118/6
kind [4] 1070/25 1081/4
1095/2 1125/3
kinds [1] 1093/21
King [1] 1061/18
know [33] 1067/18 1068/2
1069/5 1069/6 1071/24
1072/1 1072/12 1072/16
1075/16 1076/7 1076/12
1076/18 1076/21 1082/22
1085/22 1095/22 1095/23
1097/5 1100/25 1101/10
1101/17 1105/11 1105/14
1107/12 1109/11 1111/9
1114/18 1115/7 1120/15
1120/19 1123/16 1124/2
1126/25
knowing [1] 1098/8
knowledge [6] 1096/11
1096/14 1097/1 1097/8
1098/8 1098/18
known [2] 1073/14 1100/3

L
labeled [1] 1117/4
lack [2] 1097/4 1098/22
lag [1] 1072/19
LAHAD [1] 1063/3
laid [2] 1064/19 1064/19
landed [1] 1098/24
language [30] 1087/3 1089/23
1091/6 1092/22 1093/1
1094/15 1095/19 1096/10
1096/19 1096/22 1097/12
1097/13 1097/23 1098/1
1098/5 1098/14 1098/16
1099/9 1099/11 1104/24
1106/4 1107/7 1107/8
1107/10 1107/15 1107/23

1111/2 1112/11 1113/10
1124/20
last [17] 1064/17 1066/24
1085/5 1087/15 1090/12
1091/7 1093/16 1098/21
1099/9 1103/8 1103/8 1105/6
1110/11 1112/7 1112/10
1112/11 1124/24
later [2] 1068/9 1102/19
launched [1] 1100/16
law [34] 1064/17 1065/1
1078/11 1080/7 1080/14
1085/16 1087/5 1087/10
1087/21 1088/6 1090/10
1092/9 1092/13 1092/17
1092/17 1094/1 1096/18
1096/24 1097/13 1098/15
1098/16 1099/3 1102/8
1102/12 1104/6 1107/19
1111/4 1111/10 1111/14
1111/18 1111/25 1112/5
1119/23 1121/7
lay [1] 1078/10

leading [1] 1098/9
least [8] 1064/14 1076/12
1076/17 1077/23 1078/4
1078/10 1092/24 1094/11
leave [4] 1102/2 1102/11
1116/21 1127/19
left [4] 1068/4 1124/13 1125/3
1125/18
legal [2] 1077/23 1090/5
less [2] 1086/3 1125/25
let [18] 1064/23 1066/13
1068/12 1071/20 1079/25
1082/5 1084/22 1086/8
1087/3 1095/15 1097/19
1106/24 1107/6 1109/7
1109/24 1116/20 1119/25
1127/18
let's [14] 1065/20 1071/17
1078/15 1078/23 1090/8
1095/7 1096/4 1102/14
1107/18 1109/18 1109/19
1111/22 1112/20 1115/18
letter [2] 1100/15 1124/16
level [1] 1086/10
license [1] 1122/15
light [3] 1097/6 1121/14
1123/14
like [33] 1068/14 1075/4
1075/14 1076/10 1076/11
1078/18 1079/21 1082/3
1084/1 1084/23 1084/24
1085/5 1085/10 1087/23
1088/3 1088/21 1090/10
1095/3 1095/20 1097/21
1099/16 1102/20 1110/2
1110/19 1111/25 1112/22
1112/24 1114/16 1115/13
1115/23 1116/15 1117/25
1118/25

likely [2] 1091/14 1125/5
likewise [1] 1119/12
line [2] 1094/20 1102/15
ling [2] 1063/16 1080/9
link [1] 1083/6
Linkify [6] 1067/21 1073/5
1073/5 1073/10 1073/11
1073/13

list [7] 1069/1 1114/15
1114/23 1115/2 1115/9
1115/16 1117/9
listed [1] 1116/23
litigation [2] 1101/21 1101/22
little [6] 1064/8 1075/4
1075/11 1085/24 1121/16
1127/6
LLC [1] 1061/7
LLP [2] 1061/24 1063/3
long [3] 1080/12 1121/7
1125/24
longer [5] 1071/13 1086/3
1089/11 1102/5 1120/23
look [8] 1075/11 1087/3
1092/19 1093/22 1096/20
1102/14 1105/2 1126/24
looked [4] 1071/24 1074/14
1078/11 1103/25
looking [2] 1069/23 1078/17
looks [8] 1078/18 1079/21
1084/23 1084/24 1095/2
1102/19 1115/22 1118/25
loss [1] 1080/17
lot [2] 1087/18 1094/6
loud [1] 1120/10

M
made [5] 1064/19 1068/15
1069/17 1071/23 1098/2
Magistrate [1] 1061/20
mail [2] 1083/8 1083/9
make [24] 1069/14 1076/16
1082/19 1083/6 1084/16
1090/5 1093/20 1101/13
1101/19 1102/10 1105/17
1107/3 1108/17 1108/21
1115/19 1121/17 1122/9
1125/5 1125/7 1125/16
1126/19 1126/19 1126/20
1127/23
makes [4] 1067/7 1095/22
1118/10 1119/22
many [1] 1070/8
match [1] 1086/14
material [1] 1118/6
materially [1] 1123/17
materials [1] 1123/12
matter [10] 1064/10 1064/17
1064/25 1072/7 1078/10
1080/7 1080/14 1082/1
1102/8 1116/21
matters [2] 1064/9 1088/14
MATTHIAS [1] 1063/13
MAX [1] 1063/4
may [17] 1066/2 1066/15
1072/18 1077/8 1081/13
1086/4 1088/11 1091/11
1093/11 1095/9 1097/17
1100/20 1103/2 1109/21
1113/8 1116/19 1124/19
maybe [10] 1066/11 1072/22
1074/15 1076/13 1096/19
1122/3 1122/5 1122/25
1124/16 1127/10
me [24] 1065/3 1066/13
1068/12 1071/20 1074/12
1075/20 1078/16 1079/25
1084/22 1086/8 1087/3
1090/8 1095/3 1095/15

1097/19 1106/24 1107/6
1109/7 1109/24 1112/21
1116/20 1118/13 1119/25
1127/18
mean [17] 1065/24 1066/2
1067/1 1071/8 1074/16
1075/20 1077/19 1085/24
1090/21 1092/5 1092/10
1092/18 1096/22 1103/24
1108/19 1119/24 1124/6
meaning [6] 1087/9 1087/13
1087/15 1088/18 1088/22
1089/23
meant [5] 1067/22 1086/13
1092/18 1107/22 1117/9
medium [2] 1081/3 1081/15
meet [14] 1085/4 1095/1
1095/21 1101/24 1102/10
1103/23 1109/22 1110/2
1110/8 1115/5 1116/11
1117/25 1119/9 1124/5
meets [1] 1089/8
mentioned [2] 1067/15
1081/14
method [2] 1089/3 1089/11
midday [1] 1125/12
midnight [2] 1116/8 1116/9
might [15] 1066/11 1069/7
1077/21 1078/5 1088/2
1088/3 1088/11 1093/2
1095/11 1100/13 1103/25
1105/16 1125/10 1125/11
1126/12
mind [1] 1064/23
minimum [2] 1067/9 1101/16
minus [1] 1126/1
minute [3] 1079/25 1084/22
1110/25
minutes [3] 1064/13 1064/13
1126/5
misleading [1] 1108/3
missing [1] 1088/20
misstatement [1] 1104/6
mistaken [1] 1104/22
model [13] 1087/7 1087/10
1087/11 1087/20 1091/7
1092/17 1092/25 1093/16
1093/17 1098/12 1098/19
1099/1 1113/2
Monday [8] 1100/23 1101/9
1101/19 1123/14 1124/8
1125/12 1126/7 1127/21
months [2] 1066/24 1068/3
MOORE [1] 1063/9
mooting [2] 1081/9 1081/9
more [10] 1086/2 1086/12
1093/19 1095/23 1107/1
1108/3 1113/14 1115/21
1119/22 1124/20
morning [18] 1064/6 1078/18
1080/12 1096/19 1098/2
1098/15 1100/23 1101/9
1101/19 1116/7 1123/15
1124/8 1125/4 1126/23
1127/2 1127/9 1127/11
1127/12
most [1] 1099/14
motion [2] 1078/11 1080/14
motions [2] 1064/16 1064/18
move [4] 1088/13 1106/7

<p>M</p> <p>move... [2] 1106/8 1112/20</p> <p>Moving [1] 1084/20</p> <p>Mr. [6] 1067/11 1067/17 1069/24 1071/20 1075/18 1075/23</p> <p>Mr. Hedloy [1] 1075/23</p> <p>Mr. Unikel [2] 1071/20 1075/18</p> <p>Mr. Weinstein [2] 1067/17 1069/24</p> <p>Mr. Weinstein's [1] 1067/11</p> <p>MR1 [2] 1068/1 1068/8</p> <p>much [6] 1072/18 1111/25 1115/21 1118/2 1118/3 1126/19</p> <p>multiple [3] 1066/21 1079/5 1097/22</p> <p>multiplier [5] 1075/21 1076/2 1076/4 1076/14 1077/13</p> <p>MUNGER [1] 1063/16</p> <p>must [6] 1087/16 1092/20 1092/21 1094/21 1107/14 1113/20</p> <p>my [9] 1064/10 1064/23 1075/25 1077/16 1113/1 1118/9 1125/19 1126/9 1129/5</p> <p>myriad [1] 1077/22</p>	<p>1121/9</p> <p>non-Chrome [1] 1075/7</p> <p>non-infringement [3] 1081/2 1081/6 1121/9</p> <p>non-infringing [3] 1066/8 1082/2 1083/18</p> <p>nonestopped [1] 1120/4</p> <p>noninfringing [1] 1066/1</p> <p>Normally [1] 1078/24</p> <p>not [107]</p> <p>note [3] 1083/4 1086/5 1124/2</p> <p>Noted [1] 1122/21</p> <p>notes [1] 1129/5</p> <p>notice [4] 1097/4 1098/22 1099/21 1100/4</p> <p>notwithstanding [1] 1074/5</p> <p>now [25] 1065/1 1066/21 1067/6 1068/24 1069/22 1069/24 1070/24 1072/10 1072/25 1074/13 1076/2 1076/7 1078/8 1082/9 1082/10 1087/3 1090/3 1093/2 1094/21 1096/5 1096/23 1099/24 1106/15 1109/17 1120/22</p> <p>number [18] 1064/16 1065/4 1068/5 1070/11 1072/17 1074/4 1074/10 1076/12 1077/1 1077/22 1083/8 1083/8 1084/23 1085/6 1085/6 1086/16 1103/4 1117/6</p> <p>Number 1 [2] 1084/23 1103/4</p> <p>Number 3 [1] 1085/6</p> <p>Number 4 [3] 1085/6 1086/16 1117/6</p> <p>numbers [5] 1066/17 1067/11 1067/17 1067/19 1069/15</p>	<p>1073/23 1074/25 1075/16</p> <p>1085/21 1084/10 1085/15</p> <p>1086/16 1089/12 1089/15</p> <p>1090/3 1090/7 1094/23</p> <p>1095/15 1096/4 1096/6</p> <p>1096/17 1102/14 1104/7</p> <p>1104/10 1105/19 1105/24</p> <p>1106/22 1107/17 1107/18</p> <p>1108/4 1108/8 1108/22</p> <p>1109/1 1109/5 1109/9</p> <p>1109/10 1110/6 1110/10</p> <p>1110/19 1112/6 1112/9</p> <p>1112/20 1113/4 1114/3</p> <p>1115/24 1116/15 1117/14</p> <p>1121/3 1122/21 1123/24</p> <p>1124/17 1126/4 1127/15 1127/20</p> <p>OLSON [1] 1063/16</p> <p>once [1] 1090/4</p> <p>one [46] 1064/20 1072/15 1072/17 1074/21 1075/14 1075/20 1077/2 1077/3 1077/8 1077/23 1078/12 1078/12 1082/14 1083/4 1085/5 1086/4 1086/14 1086/14 1088/14 1088/18 1089/2 1089/18 1089/24 1090/14 1090/18 1091/12 1091/22 1091/23 1093/11 1094/15 1094/19 1096/21 1099/18 1101/13 1102/23 1107/16 1108/20 1109/7 1112/21 1116/3 1116/9 1116/9 1120/1 1123/8 1124/24 1126/9</p> <p>only [23] 1066/22 1067/14 1067/18 1067/24 1067/25 1068/1 1070/1 1073/13 1073/22 1074/20 1075/16 1075/22 1080/2 1080/4 1084/19 1092/6 1094/10 1099/11 1108/7 1108/13 1108/20 1123/18 1125/19</p> <p>open [6] 1067/15 1079/8 1088/7 1096/2 1124/13 1124/14</p> <p>opening [1] 1086/11</p> <p>operating [12] 1065/13 1066/20 1066/23 1066/25 1067/3 1067/21 1067/23 1069/6 1070/2 1072/4 1072/13 1072/19</p> <p>opine [1] 1070/12</p> <p>opinion [3] 1068/5 1070/19 1075/24</p> <p>opinions [1] 1068/10</p> <p>opportunity [3] 1066/5 1075/11 1127/3</p> <p>opposed [3] 1078/21 1091/10 1126/23</p> <p>opposite [1] 1116/24</p> <p>option [1] 1075/14</p> <p>options [1] 1077/5</p> <p>oral [1] 1064/18</p> <p>order [3] 1082/18 1082/19 1084/24</p> <p>ordinary [9] 1087/9 1087/13 1088/17 1088/18 1088/22 1089/18 1089/23 1089/24 1105/20</p>	<p>original [1] 1099/10</p> <p>Other [29] 1064/9 1067/14 1069/6 1070/20 1072/6 1072/23 1072/25 1073/4 1073/8 1073/11 1077/17 1079/13 1083/25 1084/9 1087/8 1091/23 1102/4 1107/24 1109/22 1110/16 1113/24 1113/24 1115/10 1116/4 1122/23 1123/11 1124/1 1126/10 1127/9</p> <p>otherwise [2] 1112/8 1117/18</p> <p>ought [3] 1076/11 1095/20 1120/15</p> <p>our [20] 1066/7 1080/14 1081/8 1081/14 1082/24 1085/9 1088/16 1098/25 1099/9 1099/21 1100/8 1101/18 1103/9 1106/17 1113/14 1114/13 1117/15 1118/4 1126/1 1126/2</p> <p>ours [1] 1117/8</p> <p>out [56] 1068/2 1068/6 1068/22 1072/19 1073/12 1073/13 1073/15 1078/9 1078/16 1082/19 1084/11 1086/6 1089/4 1094/14 1095/4 1095/5 1096/25 1098/17 1100/17 1102/13 1102/25 1103/16 1104/7 1105/1 1107/13 1108/4 1108/8 1109/13 1109/15 1109/16 1109/17 1110/15 1110/20 1111/22 1112/16 1113/18 1114/13 1115/8 1115/14 1117/24 1118/12 1118/20 1118/20 1119/11 1120/10 1121/1 1121/8 1122/4 1122/25 1123/9 1123/13 1123/19 1125/10 1126/12 1127/5 1127/8</p> <p>over [8] 1069/11 1069/15 1077/23 1090/9 1091/12 1091/22 1125/10 1125/12</p> <p>over-inclusive [1] 1069/15</p> <p>overbroad [1] 1108/3</p> <p>overcounting [1] 1072/18</p> <p>overnight [1] 1126/10</p> <p>overstate [1] 1066/1</p> <p>own [2] 1069/18 1098/18</p> <p>owner [1] 1103/25</p>
<p>N</p> <p>narrowed [1] 1115/19</p> <p>NEAL [1] 1061/25</p> <p>necessarily [2] 1066/18 1086/14</p> <p>necessary [2] 1085/18 1085/23</p> <p>need [13] 1064/14 1078/14 1082/22 1088/11 1093/9 1096/8 1096/22 1105/11 1110/25 1114/9 1122/6 1122/14 1123/1</p> <p>needed [3] 1072/22 1099/14 1113/25</p> <p>needs [3] 1067/10 1122/14 1125/13</p> <p>never [4] 1071/2 1072/7 1100/4 1100/17</p> <p>new [4] 1072/10 1074/7 1099/10 1116/5</p> <p>next [3] 1095/13 1095/16 1109/2</p> <p>night [5] 1064/17 1072/6 1093/16 1098/21 1099/9</p> <p>nine [1] 1064/13</p> <p>no [34] 1061/6 1065/16 1066/22 1067/22 1068/6 1068/16 1069/17 1071/13 1076/22 1078/14 1080/7 1080/16 1081/20 1082/14 1082/17 1083/13 1084/2 1088/5 1089/11 1089/14 1090/21 1091/24 1093/11 1100/6 1102/5 1105/5 1106/19 1113/7 1115/10 1117/14 1118/18 1120/22 1121/5 1125/9</p> <p>nobody [2] 1069/2 1126/24</p> <p>non [7] 1066/8 1075/7 1081/2 1081/6 1082/2 1083/18</p>	<p>O</p> <p>O-MR1 [1] 1068/1</p> <p>object [4] 1096/24 1103/13 1111/21 1121/22</p> <p>objection [1] 1097/7</p> <p>objectionable [2] 1090/1 1097/6</p> <p>objections [1] 1122/9</p> <p>obvious [1] 1123/10</p> <p>obviously [12] 1066/5 1075/17 1077/19 1079/4 1090/24 1113/2 1114/12 1116/17 1117/22 1118/19 1119/23 1121/21</p> <p>obviousness [8] 1112/4 1112/18 1119/5 1119/17 1119/22 1120/6 1120/22 1121/16</p> <p>occurred [1] 1088/1</p> <p>OEMs [1] 1068/1</p> <p>off [1] 1077/16</p> <p>offer [1] 1083/24</p> <p>offered [2] 1070/9 1096/11</p> <p>Office [5] 1103/11 1103/14 1104/4 1104/9 1105/8</p> <p>Official [1] 1129/8</p> <p>Oh [7] 1086/24 1089/12 1095/8 1107/9 1117/4 1121/13 1121/20</p> <p>okay [54] 1069/20 1070/13 1070/18 1073/3 1073/12</p>	<p>1073/23 1074/25 1075/16</p> <p>1085/21 1084/10 1085/15</p> <p>1086/16 1089/12 1089/15</p> <p>1090/3 1090/7 1094/23</p> <p>1095/15 1096/4 1096/6</p> <p>1096/17 1102/14 1104/7</p> <p>1104/10 1105/19 1105/24</p> <p>1106/22 1107/17 1107/18</p> <p>1108/4 1108/8 1108/22</p> <p>1109/1 1109/5 1109/9</p> <p>1109/10 1110/6 1110/10</p> <p>1110/19 1112/6 1112/9</p> <p>1112/20 1113/4 1114/3</p> <p>1115/24 1116/15 1117/14</p> <p>1121/3 1122/21 1123/24</p> <p>1124/17 1126/4 1127/15 1127/20</p> <p>OLSON [1] 1063/16</p> <p>once [1] 1090/4</p> <p>one [46] 1064/20 1072/15 1072/17 1074/21 1075/14 1075/20 1077/2 1077/3 1077/8 1077/23 1078/12 1078/12 1082/14 1083/4 1085/5 1086/4 1086/14 1086/14 1088/14 1088/18 1089/2 1089/18 1089/24 1090/14 1090/18 1091/12 1091/22 1091/23 1093/11 1094/15 1094/19 1096/21 1099/18 1101/13 1102/23 1107/16 1108/20 1109/7 1112/21 1116/3 1116/9 1116/9 1120/1 1123/8 1124/24 1126/9</p> <p>only [23] 1066/22 1067/14 1067/18 1067/24 1067/25 1068/1 1070/1 1073/13 1073/22 1074/20 1075/16 1075/22 1080/2 1080/4 1084/19 1092/6 1094/10 1099/11 1108/7 1108/13 1108/20 1123/18 1125/19</p> <p>open [6] 1067/15 1079/8 1088/7 1096/2 1124/13 1124/14</p> <p>opening [1] 1086/11</p> <p>operating [12] 1065/13 1066/20 1066/23 1066/25 1067/3 1067/21 1067/23 1069/6 1070/2 1072/4 1072/13 1072/19</p> <p>opine [1] 1070/12</p> <p>opinion [3] 1068/5 1070/19 1075/24</p> <p>opinions [1] 1068/10</p> <p>opportunity [3] 1066/5 1075/11 1127/3</p> <p>opposed [3] 1078/21 1091/10 1126/23</p> <p>opposite [1] 1116/24</p> <p>option [1] 1075/14</p> <p>options [1] 1077/5</p> <p>oral [1] 1064/18</p> <p>order [3] 1082/18 1082/19 1084/24</p> <p>ordinary [9] 1087/9 1087/13 1088/17 1088/18 1088/22 1089/18 1089/23 1089/24 1105/20</p>	<p>P</p> <p>page [16] 1078/4 1087/5 1089/3 1090/17 1094/5 1094/7 1094/8 1094/13 1102/4 1107/6 1107/20 1109/2 1112/13 1112/14 1117/7 1123/8</p> <p>Page 22 [2] 1089/3 1094/7</p> <p>Page 23 [3] 1094/5 1094/8 1094/13</p> <p>Page 24 [1] 1087/5</p> <p>Page 26 [1] 1090/17</p> <p>Page 36 [1] 1102/4</p> <p>Page 42 [1] 1107/20</p> <p>Page 43 [1] 1107/6</p> <p>Page 47 [2] 1112/14 1123/8</p> <p>pages [1] 1095/16</p> <p>paper [1] 1064/16</p>

P	Document 601	Page 546 of 775	PageID #: 61125
<p>paragraph [21] 1080/3 1085/6 1089/5 1092/19 1094/11 1098/19 1106/6 1106/17 1106/24 1107/13 1107/16 1107/17 1108/5 1108/15 1109/3 1109/6 1109/9 1109/12 1110/11 1112/7 1112/10 paragraphs [3] 1091/7 1107/20 1108/22 parse [2] 1068/10 1113/17 part [11] 1070/14 1072/10 1079/2 1082/24 1083/3 1083/16 1095/9 1097/1 1100/8 1112/6 1113/24 partes [1] 1101/23 particular [11] 1066/23 1066/25 1077/9 1083/3 1093/17 1099/13 1102/23 1103/10 1105/7 1106/17 1114/6 parties [9] 1066/10 1066/15 1068/19 1078/18 1082/6 1109/24 1123/20 1123/21 1123/23 party [2] 1081/21 1082/12 paste [1] 1082/3 patent [38] 1085/12 1085/21 1087/11 1087/14 1087/16 1088/19 1089/19 1089/25 1093/17 1094/9 1094/23 1097/9 1098/11 1099/22 1100/6 1100/14 1100/18 1100/19 1101/12 1102/6 1103/11 1103/13 1103/14 1103/22 1103/25 1104/4 1104/8 1104/8 1104/9 1104/13 1105/8 1108/1 1108/15 1113/11 1113/19 1119/10 1123/10 1123/11 patents [1] 1104/1 paths [1] 1119/13 PAUL [1] 1063/11 pending [2] 1080/7 1100/25 people [3] 1083/14 1083/17 1084/13 per [5] 1071/2 1071/5 1071/5 1074/18 1074/19 percent [1] 1072/18 perfect [1] 1127/14 perform [1] 1083/12 perhaps [1] 1110/7 period [7] 1068/7 1071/13 1071/17 1072/16 1082/22 1082/23 1100/16 permitted [1] 1115/20 person [1] 1105/20 pertaining [1] 1065/1 PETERMAN [1] 1063/12 phone [2] 1083/7 1083/8 phrase [4] 1085/10 1086/10 1088/20 1088/21 phrasing [1] 1089/18 pick [1] 1090/14 piece [1] 1075/7 Pixel [1] 1074/23 place [1] 1077/22 plain [6] 1087/9 1087/13 1088/17 1088/22 1089/23</p>	<p>1109/25 plaintiff [4] 1061/3 1063/6 1065/9 1094/22 plan [1] 1100/8 play [2] 1071/16 1126/12 please [5] 1064/6 1073/25 1076/10 1080/22 1106/9 plus [1] 1126/1 point [9] 1083/1 1085/13 1088/10 1092/25 1093/19 1120/9 1120/10 1124/21 1125/14 pointing [1] 1100/17 portion [3] 1065/11 1081/3 1121/9 pose [1] 1085/10 posed [2] 1066/3 1072/8 position [10] 1066/7 1066/9 1074/6 1079/7 1082/14 1094/12 1102/9 1120/18 1120/24 1127/8 positions [2] 1081/6 1119/20 possibility [1] 1077/15 possible [4] 1066/22 1077/11 1100/5 1126/20 potential [4] 1081/2 1082/8 1086/9 1122/12 potentially [1] 1082/24 POTTER [1] 1063/9 precipitated [1] 1101/15 precise [1] 1121/10 prefers [1] 1117/24 prepared [2] 1064/10 1095/18 presented [1] 1106/12 preserve [2] 1111/11 1111/17 preserved [1] 1111/17 presume [1] 1123/14 presumption [1] 1104/9 pretty [2] 1118/2 1118/3 previously [1] 1067/21 primarily [1] 1098/1 principle [1] 1075/13 printed [4] 1078/8 1078/16 1123/11 1123/17 prior [15] 1102/18 1102/19 1102/20 1102/23 1106/1 1106/3 1106/3 1106/13 1106/16 1106/21 1106/25 1107/25 1108/2 1110/16 1120/11 probably [2] 1083/22 1105/1 problem [4] 1067/5 1075/22 1081/15 1082/4 proceeding [1] 1129/6 proceedings [4] 1064/4 1099/25 1101/23 1127/25 process [6] 1089/4 1089/8 1089/10 1089/13 1090/12 1090/14 product [3] 1089/8 1098/9 1117/13 product's [1] 1097/10 productive [1] 1098/17 products [17] 1070/7 1070/8 1071/8 1071/9 1071/10 1079/6 1079/9 1079/12 1114/14 1114/14 1114/16 1116/23 1117/15 1117/16 1117/17 1117/21 1118/9 program [1] 1083/11</p>	<p>progress [1] 1126/20 proof [3] 1079/24 1103/11 1105/9 proper [5] 1067/12 1076/8 1090/23 1091/8 1093/1 proposal [17] 1086/2 1088/6 1088/12 1088/21 1088/24 1096/16 1097/24 1097/25 1098/3 1103/9 1106/20 1106/21 1110/4 1113/3 1117/1 1121/18 1127/17 proposals [6] 1088/17 1101/25 1102/1 1102/12 1102/15 1108/23 propose [2] 1086/13 1108/5 proposed [14] 1086/16 1092/6 1095/19 1096/10 1097/22 1098/2 1102/4 1107/10 1107/15 1111/2 1113/11 1122/18 1127/15 1127/16 proposes [1] 1104/8 prosecution [2] 1103/23 1104/1 prove [1] 1081/15 proved [1] 1094/22 provide [1] 1093/25 provided [10] 1067/19 1068/18 1068/23 1069/8 1069/10 1070/4 1070/6 1070/23 1071/1 1079/13 provides [1] 1104/9 providing [1] 1103/4 proving [1] 1104/18 PTO [1] 1106/25 pull [4] 1066/12 1068/12 1069/23 1097/13 purposes [2] 1085/22 1114/17 push [1] 1072/19 pushed [1] 1068/2 put [12] 1071/17 1072/14 1074/6 1074/8 1075/14 1082/5 1093/15 1097/7 1098/5 1106/16 1107/11 1117/2 puts [1] 1096/13 putting [3] 1073/3 1099/12 1122/24</p>	<p>1122/15 Question 6 [1] 1122/1 questioning [1] 1069/4 questions [15] 1068/17 1068/19 1069/5 1069/12 1077/12 1077/23 1082/13 1086/7 1093/21 1100/1 1118/7 1118/14 1119/2 1119/6 1121/22 Quick [2] 1073/6 1073/17 quickly [2] 1071/22 1097/18</p> <hr/> <p>R</p> <p>raise [5] 1068/17 1068/19 1083/23 1101/17 1117/23 raised [4] 1069/3 1069/16 1109/12 1122/16 raising [1] 1070/24 rate [13] 1074/16 1074/19 1074/19 1074/21 1074/23 1076/1 1076/1 1076/3 1077/12 1077/13 1077/14 1122/5 1122/24 rather [1] 1115/17 re [1] 1083/23 re-raise [1] 1083/23 reach [6] 1081/8 1085/20 1112/23 1113/7 1113/13 1124/22 reached [2] 1091/13 1099/16 read [7] 1079/17 1084/22 1085/25 1106/24 1109/7 1109/24 1110/25 readable [2] 1081/3 1081/15 reading [2] 1096/5 1097/19 ready [3] 1126/7 1126/14 1127/22 real [1] 1090/10 really [8] 1068/9 1072/7 1085/23 1098/3 1099/4 1106/17 1107/22 1112/3 reargue [1] 1077/24 reason [10] 1087/20 1096/15 1100/6 1100/17 1101/5 1101/14 1101/20 1102/7 1117/12 1125/13 reasonable [5] 1065/10 1065/12 1069/10 1074/9 1075/14 reasons [1] 1091/11 receive [1] 1099/21 received [1] 1100/4 recollection [1] 1118/10 record [11] 1068/16 1068/25 1069/4 1069/8 1080/16 1086/5 1122/6 1122/9 1122/22 1123/1 1124/11 redundant [3] 1094/10 1108/2 1114/4 refer [3] 1079/18 1106/10 1115/6 reference [8] 1090/13 1094/9 1103/10 1105/7 1110/16 1114/22 1120/13 1123/17 references [3] 1106/13 1120/4 1123/11 referring [1] 1107/5 reflects [1] 1068/22 reflex [1] 1080/23 reframe [1] 1086/10</p>
		<p>Q</p> <p>QA [1] 1073/20 question [46] 1064/20 1065/18 1067/8 1067/9 1069/16 1071/2 1072/7 1075/13 1076/3 1077/8 1079/8 1083/24 1085/20 1088/4 1096/2 1096/14 1100/10 1109/12 1111/3 1111/4 1111/14 1111/15 1111/17 1111/18 1112/5 1118/2 1118/3 1118/4 1118/16 1119/1 1120/6 1120/6 1121/15 1122/1 1122/1 1122/1 1122/3 1122/5 1122/11 1122/15 1122/18 1122/24 1123/3 1124/13 1124/14 1124/24 Question 1 [1] 1118/4 Question 3 [1] 1122/11 Question 4 [1] 1122/1 Question 5 [2] 1122/3</p>	

regardless [3] 1067/20 1101/4 1111/14
relate [1] 1093/23
related [3] 1071/8 1100/12 1112/4
release [1] 1098/9
released [2] 1066/25 1097/10
relevant [2] 1079/9 1102/5
reliance [1] 1079/5
relied [1] 1069/9
rely [2] 1069/9 1070/13
relying [3] 1068/17 1069/13 1070/3
remainder [1] 1115/24
remind [1] 1064/14
reminded [1] 1079/10
rendered [1] 1070/19
report [2] 1070/15 1070/17
REPORTER [2] 1129/2 1129/8
represent [3] 1066/1 1081/5 1098/24
representation [1] 1069/16
representative [4] 1070/6 1079/5 1079/12 1114/14
request [3] 1070/5 1096/6 1125/19
requests [1] 1071/23
require [1] 1091/3
required [2] 1072/11 1083/14
requirements [2] 1089/8 1098/14
requires [2] 1072/12 1091/25
research [1] 1090/5
reserve [2] 1064/14 1083/21
resolution [1] 1084/9
resolved [3] 1077/23 1078/6 1100/1
resolves [1] 1112/6
respect [11] 1064/21 1065/4 1085/3 1090/12 1095/5 1114/13 1115/11 1116/3 1116/17 1117/10 1120/22
respond [3] 1066/3 1068/14 1075/6
response [3] 1070/4 1098/1 1098/3
responsibility [2] 1103/6 1104/12
responsive [1] 1096/10
rest [6] 1095/2 1095/4 1105/12 1110/20 1112/17 1121/6
result [1] 1120/2
review [4] 1080/1 1090/8 1095/16 1101/23
revise [1] 1124/4
revised [1] 1127/15
revisions [1] 1095/20
revisit [1] 1076/15
rid [4] 1089/13 1089/15 1090/13 1108/13
right [63] 1064/7 1065/1 1066/11 1068/11 1069/22 1071/19 1072/25 1072/25 1073/6 1073/25 1074/13 1074/21 1076/7 1076/10 1076/18 1077/4 1077/7 1078/3 1078/7 1079/15

1079/21 1079/25 1080/9 1080/13 1084/18 1085/1 1086/15 1086/18 1086/19 1090/9 1093/13 1095/7 1095/12 1095/15 1097/9 1101/24 1102/24 1105/19 1106/22 1107/18 1107/23 1109/2 1109/19 1109/23 1110/10 1110/17 1110/19 1110/20 1110/24 1115/21 1116/1 1117/6 1117/11 1120/9 1120/9 1120/14 1123/5 1123/5 1124/3 1124/4 1124/15 1124/23 1126/17
Rinard [1] 1081/7
risk [1] 1093/1
ROBERT [1] 1063/12
ROBERTS [1] 1063/13
role [1] 1091/9
roles [1] 1093/21
rollout [2] 1066/23 1067/7
rooted [2] 1092/17 1092/24
royalties [1] 1078/1
royalty [11] 1065/10 1074/10 1075/14 1075/25 1076/1 1076/24 1077/12 1077/13 1077/13 1122/5 1122/24
ruled [2] 1076/14 1115/11
rules [1] 1094/21
ruling [5] 1105/2 1120/11 1122/14 1123/14 1124/8
rulings [1] 1127/23

S

S.A.R.L [1] 1061/4
said [13] 1065/21 1066/17 1068/22 1081/19 1083/24 1085/5 1088/7 1090/18 1092/6 1095/4 1118/24 1119/14 1124/16
same [14] 1067/15 1070/12 1073/1 1073/2 1078/4 1087/16 1095/2 1112/11 1118/2 1118/3 1121/13 1122/2 1123/17 1125/20
Samsung [3] 1116/4 1122/15
satisfies [1] 1123/1
satisfy [1] 1122/5
saw [1] 1064/16
say [36] 1064/24 1065/7 1071/17 1072/8 1074/8 1077/12 1082/9 1084/13 1088/17 1088/23 1092/1 1092/5 1092/7 1094/15 1099/17 1099/18 1100/8 1100/24 1101/3 1101/8 1101/10 1104/10 1104/17 1106/13 1108/16 1112/25 1113/18 1115/7 1115/10 1118/13 1118/15 1120/1 1123/25 1124/6 1124/7 1127/10
saying [1] 1104/7
says [18] 1065/9 1069/1 1069/5 1074/3 1085/11 1087/11 1094/20 1096/18 1099/20 1103/13 1104/3 1104/11 1104/15 1107/24 1109/3 1113/6 1119/23

1121/5
school [1] 1111/10
scratch [1] 1086/8
Sealed [1] 1061/14
Search [2] 1073/6 1073/17
seat [7] 1068/11 1069/21 1071/19 1073/25 1076/11 1080/11 1080/22
seated [1] 1064/6
second [15] 1068/12 1073/4 1080/2 1083/11 1083/11 1083/15 1083/15 1083/24 1090/8 1099/9 1103/8 1103/8 1108/8 1112/21 1118/3
section [5] 1094/6 1102/23 1106/16 1112/1 1115/23
Section 3.2 [1] 1094/6
Section 6 [1] 1115/23
see [18] 1080/2 1084/9 1084/11 1090/11 1093/10 1094/13 1095/8 1102/7 1104/2 1105/16 1107/17 1117/11 1117/19 1118/8 1122/24 1124/21 1126/6 1127/18
seeing [2] 1109/25 1115/21
seem [3] 1090/1 1090/10 1112/22
seemed [1] 1065/3
seems [11] 1075/23 1076/10 1076/11 1088/3 1110/19 1112/24 1118/2 1118/3 1118/13 1118/16 1122/2
seen [1] 1083/2
segregate [1] 1121/1
Selection [7] 1067/24 1072/12 1099/23 1100/5 1100/11 1100/13 1100/18
send [4] 1083/8 1100/15 1111/14 1125/17
sense [2] 1084/16 1095/22
sent [1] 1099/8
sentence [14] 1087/15 1103/8 1103/9 1104/3 1104/21 1105/6 1106/11 1108/2 1108/6 1108/8 1108/10 1111/23 1112/4 1113/22
separate [7] 1106/3 1118/14 1119/4 1119/5 1119/11 1119/21 1121/15
separated [1] 1118/12
separately [1] 1092/20
serve [3] 1078/2 1101/1 1101/11
set [1] 1085/19
SETH [1] 1063/5
seven [1] 1078/18
several [1] 1106/13
severely [1] 1119/18
she [1] 1101/11
shield [1] 1100/24
shorter [1] 1121/17
should [42] 1065/18 1066/4 1071/3 1071/4 1074/7 1074/9 1074/10 1077/13 1078/5 1080/18 1085/1 1087/13 1092/4 1092/16 1092/23 1098/25 1099/13 1101/17 1104/7 1104/14 1108/16 1112/2 1112/23 1113/13

1115/8 1116/23 1118/11 1118/19 1118/14 1118/15 1119/1 1119/2 1119/4 1119/11 1121/8 1121/11 1121/23 1122/4 1125/7 1125/16 1126/7 1127/4
show [4] 1069/14 1081/16 1083/2 1096/22
showing [1] 1119/10
shown [1] 1081/18
side [11] 1064/14 1064/23 1069/3 1083/25 1084/9 1105/15 1109/22 1124/1 1126/10 1126/10 1127/9
sides [1] 1065/3
similar [1] 1104/21
since [5] 1071/14 1071/17 1084/7 1089/3 1113/5
sir [1] 1080/11
situation [5] 1067/4 1074/2 1125/11 1125/12 1126/14
six [3] 1066/24 1068/3 1115/23
skill [4] 1088/18 1089/18 1089/24 1105/20
skimming [1] 1090/9
skip [1] 1096/4
skipping [1] 1115/22
slog [1] 1078/13
Smart [9] 1067/23 1072/12 1073/5 1073/12 1099/22 1100/5 1100/11 1100/13 1100/18
Smedley's [1] 1079/4
SMITH [1] 1061/24
so [139]
sold [1] 1081/20
solution [1] 1077/3
some [31] 1064/9 1065/11 1065/11 1065/13 1065/17 1066/9 1066/12 1067/10 1070/24 1071/3 1071/4 1077/5 1079/2 1079/8 1081/1 1081/1 1082/23 1087/2 1088/9 1096/12 1096/14 1098/5 1103/5 1113/3 1114/16 1114/18 1115/13 1116/11 1121/23 1122/3 1122/25
somebody [2] 1082/10 1083/6
something [17] 1064/24 1068/18 1069/13 1070/25 1074/8 1074/13 1082/25 1084/1 1088/3 1092/25 1095/20 1100/8 1121/18 1126/21 1126/22 1127/6 1127/12
sometimes [2] 1103/14 1104/4
soon [1] 1127/22
sorry [7] 1080/23 1086/8 1088/25 1095/7 1097/20 1107/4 1107/9
sort [9] 1067/10 1076/5 1076/19 1080/23 1092/6 1095/13 1116/24 1123/14 1124/8
sorted [1] 1122/4
sounds [10] 1075/13 1084/1 1095/3 1095/20 1097/21

<p>S</p> <p>sounds... [5] 1099/16 1111/25 1115/13 1116/15 1117/25</p> <p>source [1] 1100/24</p> <p>specific [9] 1081/22 1081/22 1082/21 1082/21 1082/23 1083/2 1086/12 1097/4 1117/17</p> <p>specifically [3] 1096/25 1108/5 1108/13</p> <p>specified [1] 1119/8</p> <p>specifies [1] 1118/5</p> <p>specify [1] 1118/11</p> <p>speed [1] 1093/15</p> <p>spend [1] 1095/22</p> <p>SRINIVASAN [1] 1063/5</p> <p>stand [3] 1066/16 1067/17 1078/14</p> <p>standard [4] 1091/10 1091/16 1096/15 1112/2</p> <p>Stark [2] 1123/15 1124/9</p> <p>Stark's [1] 1076/14</p> <p>start [10] 1078/7 1099/2 1114/9 1121/23 1122/12 1122/13 1125/8 1125/9 1126/14 1126/15</p> <p>started [4] 1067/25 1109/12 1124/13 1127/21</p> <p>Starting [1] 1112/14</p> <p>Starts [1] 1089/7</p> <p>statement [12] 1085/16 1087/5 1087/21 1088/5 1092/9 1092/12 1094/1 1096/18 1102/16 1111/24 1113/6 1114/17</p> <p>STATES [2] 1061/2 1061/20</p> <p>statute [2] 1065/9 1118/10</p> <p>stay [8] 1100/16 1100/24 1100/25 1101/4 1101/7 1101/15 1101/21 1101/22</p> <p>stayed [1] 1101/18</p> <p>stenographic [1] 1129/5</p> <p>stick [1] 1099/1</p> <p>still [4] 1092/20 1092/21 1102/11 1103/23</p> <p>stipulated [3] 1078/20 1078/24 1079/11</p> <p>stipulation [6] 1068/19 1070/6 1070/8 1070/14 1079/3 1114/13</p> <p>stipulations [1] 1079/14</p> <p>stop [1] 1113/6</p> <p>STRAUS [1] 1063/4</p> <p>Street [1] 1061/18</p> <p>stuff [1] 1072/25</p> <p>sub [1] 1071/5</p> <p>sub-application [1] 1071/5</p> <p>subject [2] 1068/18 1095/19</p> <p>subjective [7] 1096/11 1096/14 1096/25 1097/15 1098/6 1098/18 1098/23</p> <p>submit [1] 1124/16</p> <p>substantial [4] 1080/15 1082/2 1082/5 1083/18</p> <p>such [3] 1066/8 1081/6 1089/7</p> <p>sufficient [1] 1065/14</p> <p>suggest [1] 1067/10</p> <p>suggested [1] 1076/8</p> <p>summary [3] 1072/5 1084/21</p>	<p>1085/22</p> <p>support [2] 1076/9 1080/15 1115/22 1114/2 1117/2</p> <p>supported [1] 1075/22</p> <p>sure [12] 1076/16 1084/4 1084/6 1085/18 1089/20 1089/25 1090/1 1092/14 1102/10 1105/18 1117/12 1126/19</p> <p>SUSMAN [1] 1063/3</p> <p>system [8] 1065/13 1066/25 1067/3 1067/21 1070/2 1072/13 1108/14 1123/16</p> <p>systems [7] 1066/20 1066/24 1067/23 1069/6 1071/25 1072/4 1072/20</p> <hr/> <p>T</p> <p>take [24] 1071/20 1075/3 1077/5 1078/12 1079/25 1080/6 1081/24 1084/22 1090/6 1094/14 1096/20 1102/24 1106/6 1108/4 1109/16 1109/17 1109/20 1111/22 1112/17 1116/11 1117/24 1118/20 1122/17 1127/23</p> <p>takes [2] 1072/19 1090/7</p> <p>taking [3] 1070/9 1109/13 1109/14</p> <p>talk [14] 1069/21 1069/22 1077/17 1084/6 1084/10 1086/6 1107/18 1115/7 1116/18 1117/12 1119/12 1121/2 1122/23 1127/11</p> <p>talked [2] 1095/8 1114/21</p> <p>talking [2] 1072/24 1114/5</p> <p>talks [3] 1094/7 1094/8 1106/25</p> <p>task [1] 1094/3</p> <p>technology [3] 1088/19 1089/19 1089/25</p> <p>tell [8] 1078/8 1088/12 1091/21 1093/23 1098/20 1100/12 1110/8 1127/19</p> <p>telling [2] 1091/11 1103/20</p> <p>ten [2] 1116/21 1127/14</p> <p>term [2] 1089/20 1100/19</p> <p>terms [1] 1121/7</p> <p>testified [1] 1069/19</p> <p>testimony [4] 1066/21 1068/21 1070/14 1079/14</p> <p>Text [7] 1067/24 1072/12 1099/23 1100/5 1100/11 1100/13 1100/18</p> <p>than [1] 1124/20</p> <p>Thank [7] 1077/4 1079/1 1079/15 1079/20 1089/16 1125/22 1127/24</p> <p>that [456]</p> <p>that's [75]</p> <p>their [43] 1067/4 1068/2 1069/18 1070/11 1079/7 1080/17 1082/4 1087/25 1091/9 1093/2 1093/21 1094/2 1096/17 1096/24 1096/25 1097/3 1097/4 1097/7 1097/14 1098/5 1098/9 1098/18 1098/21 1098/22 1098/22 1099/12 1100/3 1101/5 1102/5 1103/7</p>	<p>1103/18 1103/23 1107/8 1115/22 1114/2 1117/2</p> <p>1118/6 1118/7 1119/13</p> <p>1119/19 1120/21 1120/24 1122/19</p> <p>theirs [1] 1099/14</p> <p>them [36] 1064/19 1064/20 1071/6 1071/7 1071/24 1074/21 1075/25 1076/18 1078/9 1078/11 1078/12 1078/16 1082/25 1083/3 1084/7 1086/10 1088/12 1091/1 1091/11 1091/21 1092/1 1093/22 1093/22 1093/23 1097/6 1097/13 1099/22 1100/4 1103/20 1103/24 1110/8 1115/5 1117/4 1121/8 1124/5 1125/17</p> <p>themselves [1] 1074/24</p> <p>then [51] 1068/1 1068/9 1072/5 1076/6 1078/20 1079/22 1081/7 1081/22 1082/22 1083/11 1085/3 1085/7 1085/13 1087/1 1089/2 1090/4 1090/20 1094/8 1094/18 1094/24 1095/2 1095/11 1095/13 1095/17 1096/4 1096/15 1097/23 1098/7 1102/10 1102/18 1104/11 1104/15 1104/24 1105/20 1106/5 1108/22 1109/2 1109/3 1111/23 1112/1 1114/5 1116/17 1117/9 1118/15 1118/20 1118/23 1118/24 1121/4 1123/3 1126/10 1127/5</p> <p>theory [2] 1072/10 1080/17</p> <p>there [62] 1064/16 1065/10 1065/17 1065/22 1066/15 1066/16 1066/18 1066/22 1066/22 1067/5 1067/6 1067/10 1067/22 1069/14 1069/17 1070/19 1070/24 1071/3 1072/6 1072/7 1072/15 1074/6 1074/9 1074/15 1075/17 1079/7 1081/1 1082/1 1082/2 1084/15 1084/20 1085/10 1086/22 1087/12 1088/14 1090/1 1091/7 1093/11 1094/15 1094/17 1094/18 1097/12 1097/13 1100/25 1101/4 1101/5 1101/7 1101/21 1101/21 1102/7 1103/22 1105/12 1107/19 1108/23 1108/25 1109/21 1116/2 1117/12 1119/8 1119/16 1120/19 1121/23 there's [48] 1065/10 1065/14 1065/16 1065/24 1065/25 1066/9 1068/16 1068/20 1068/25 1071/2 1072/16 1074/4 1074/23 1076/16 1076/23 1076/24 1078/14 1079/21 1080/15 1080/16 1081/20 1082/10 1082/14 1083/13 1083/22 1083/24 1085/10 1087/2 1087/20</p>	<p>1088/4 1088/16 1089/2 1090/19 1090/11 1090/21</p> <p>1102/11 1102/19 1108/20 1111/25 1112/22 1112/24 1113/7 1117/22 1120/6 1120/12 1120/19 1122/11 1127/18</p> <p>therefore [1] 1094/1</p> <p>these [17] 1068/10 1072/14 1072/19 1072/23 1073/8 1078/15 1079/2 1079/16 1082/15 1086/10 1086/13 1099/8 1107/19 1116/5 1116/11 1121/22 1126/24</p> <p>they [75]</p> <p>they'll [2] 1083/25 1119/14</p> <p>they're [21] 1069/9 1072/11 1081/6 1084/5 1085/19 1090/24 1091/20 1096/1 1096/12 1097/2 1098/4 1098/14 1099/2 1099/24 1100/23 1101/3 1101/7 1101/16 1113/25 1114/15 1124/20</p> <p>they've [15] 1073/14 1081/18 1081/19 1091/4 1091/8 1091/13 1093/3 1093/8 1096/12 1103/19 1114/24 1114/25 1115/3 1118/6 1119/14</p> <p>thing [14] 1067/14 1077/9 1083/4 1085/4 1086/4 1088/11 1089/7 1099/11 1099/13 1099/19 1102/4 1122/2 1123/8 1123/18</p> <p>things [4] 1064/23 1088/2 1093/20 1099/3</p> <p>think [123]</p> <p>thinking [5] 1065/2 1074/13 1076/19 1088/10 1120/10</p> <p>third [4] 1081/21 1082/6 1089/5 1107/13</p> <p>this [125]</p> <p>those [13] 1065/12 1067/19 1068/7 1069/15 1070/9 1071/16 1072/15 1073/13 1073/20 1081/24 1086/11 1102/14 1114/17</p> <p>though [5] 1065/2 1069/14 1072/25 1078/5 1079/3</p> <p>thought [4] 1064/22 1073/16 1099/13 1100/13</p> <p>thoughts [1] 1075/2</p> <p>three [3] 1066/24 1068/3 1095/14</p> <p>through [5] 1064/22 1068/10 1078/7 1081/19 1127/3</p> <p>tie [1] 1082/23</p> <p>tied [4] 1077/1 1081/23 1082/7 1096/1</p> <p>time [28] 1064/11 1067/7 1070/19 1071/10 1071/13 1071/17 1072/19 1072/23 1075/3 1075/4 1079/9 1082/21 1082/23 1088/19 1089/19 1095/22 1095/23 1096/19 1096/20 1105/22 1116/11 1125/2 1125/9 1125/18 1126/1 1126/2 1126/21 1126/22</p>
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W
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1093/24 1094/2 1094/21
1102/1 1105/3 1109/16
1109/20 1109/21 1110/1
1110/8 1111/13 1111/16
1120/1 1122/5 1125/16
willful [1] 1119/1
willfulness [6] 1084/25 1085/2
1096/5 1096/22 1100/9
1123/3
willing [1] 1083/25
Wilmington [1] 1061/18
withdraw [2] 1081/8 1110/7
witness [1] 1068/20
witnesses [4] 1066/21
1068/21 1069/18 1072/17
won [1] 1089/1
wondering [2] 1074/1 1119/24
word [1] 1089/4
wording [3] 1112/25 1113/3
1121/11
words [2] 1087/16 1089/10
work [10] 1064/8 1073/10
1073/20 1073/22 1078/15
1095/3 1115/18 1121/14
1127/8 1127/8
worked [5] 1073/11 1084/11
1110/20 1115/13 1122/25
working [1] 1067/25
world [1] 1126/6
worry [1] 1123/1
would [42] 1065/11 1065/12
1067/1 1067/2 1067/10
1068/14 1074/18 1075/4
1075/10 1075/14 1075/16
1077/11 1077/12 1077/12
1081/23 1082/1 1082/20
1082/24 1083/2 1083/16
1085/10 1086/11 1088/21
1099/5 1100/2 1106/5 1106/8
1108/5 1110/2 1114/16
1114/22 1116/10 1120/21
1121/12 1121/17 1122/17
1123/18 1124/7 1127/2
1127/3 1127/14 1127/17
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1082/2
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wrong [2] 1087/21 1117/5

Y
Yeah [23] 1065/22 1077/19
1078/23 1088/23 1092/3
1092/3 1093/14 1096/21
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1108/8 1108/19 1108/21
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1073/15
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Yep [1] 1075/9
yes [31] 1073/7 1074/17
1074/22 1074/22 1074/23
1077/10 1080/21 1084/17
1086/17 1086/20 1086/21
1086/24 1090/16 1100/21
1103/3 1108/12 1110/21

1110/22 1110/23 1111/22
1112/19 1113/9 1115/4
1116/14 1121/5 1122/7
1122/10 1123/7 1125/1
1125/21 1125/23
yesterday [2] 1067/15 1081/7
yet [4] 1064/22 1088/1
1096/20 1099/17
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you're [9] 1072/24 1083/25
1084/13 1086/15 1095/18
1109/10 1110/15 1116/18
1127/7
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1090/4 1095/17 1121/13
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EXHIBIT E

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF DELAWARE
4 ARENDI S.A.R.L.,)
5)
6 Plaintiff,) C.A. No. 13-919-JLH
7 v.)
8 GOOGLE LLC,)
9 Defendant.)

10
11 Monday, May 1, 2023
12 8:22 a.m.
13 Jury Trial
14 Volume VI
15 * * *
16 Sealed

17 844 King Street
18 Wilmington, Delaware

19 BEFORE: THE HONORABLE JENNIFER L. HALL
20 United States Magistrate Judge

21
22 APPEARANCES:

23 SMITH, KATZENSTEIN & JENKINS LLP
24 BY: NEAL C. BELGAM, ESQ.

25 -and-

1 APPEARANCES CONTINUED:

2
3 SUSMAN GODFREY, LLP
4 BY: JOHN LAHAD, ESQ.
5 BY: KEMPER DIEHL, ESQ,
6 BY: MAX STRAUS, ESQ.
7 BY: SETH ARD, ESQ.
8 BY: KALPANA SRINIVASAN, ESQ.
9 Counsel for the Plaintiff

10 POTTER ANDERSON & CORROON
11 BY: DAVID ELLIS MOORE, ESQ.

12 -and-

13 PAUL HASTINGS
14 BY: ROBERT W. UNIKEL, ESQ.
15 BY: CHAD J. PETERMAN, ESQ.
16 BY: MATTHIAS A. KAMBER, ESQ.
17 BY: ANDREA ROBERTS, ESQ.

18 -and-

19 MUNGER TOLLES & OLSON
20 BY: VINCENT LING, ESQ.

21 Counsel for the Defendant

22 - - - - -

1
2 P R O C E E D I N G S
3
4 (Proceedings commenced in the courtroom beginning at
5 8:22 a.m.)
6 **THE COURT:** Please be seated.
7 Good morning.
8 So we're at our fifth day of evidence
9 presentation.
10 All right. Am I correct that who we're
11 planning to put on today is Mr. -- Dr. Fox, and then
12 Dr. Kidder, or Mr. Kidder?
13 **MR. PETERMAN:** Dr. Fox and Mr. Kidder, Your
14 Honor.
15 **THE COURT:** Okay. And do you have a sense of
16 how long we're going to hear from Dr. Fox?
17 **MR. PETERMAN:** Little over an hour, Your Honor.
18 **THE COURT:** Okay. And then we'll have cross.
19 And then Mr. Kidder is --
20 **MR. PETERMAN:** Mr. Kidder will be about
21 45 minutes to 50 minutes.
22 **THE COURT:** Okay. And at that point, does
23 defendant intend to be finished with their evidence
24 presentation?
25 **MR. PETERMAN:** After Mr. Kidder, yes, Your

1 Honor.
2 **THE COURT:** Okay. All right. And we've got
3 objections to demonstratives being used by Mr. Kidder, but
4 are we good with Dr. Fox, at least, so we can get started
5 without worrying about objections in his demonstratives?
6 **MR. LAHAD:** I think we're ready to go, Your
7 Honor.
8 **THE COURT:** Okay. You're -- pardon?
9 **MR. LAHAD:** I think we're ready to go. We have
10 no objections to Mr. Fox's demonstratives.
11 **THE COURT:** Okay. All right. But Mr. Kidder,
12 you do?
13 **MR. LAHAD:** Yes, Your Honor.
14 **THE COURT:** Okay. I got a letter -- please be
15 seated. I got a letter saying there were objections, but
16 I don't have copies or anything about what the
17 objectionable material is. So we've got five minutes now.
18 We can start taking a look at that.
19 **MR. PETERMAN:** Yes, Your Honor. I have a copy
20 of the all the demonstratives and exhibits that Arendi is
21 objecting to. I think, essentially, the objections can be
22 characterized as they went outside the scope of
23 Mr. Weinstein's report and presented a new damages number.
24 **THE COURT:** Yeah. I can see exactly where this
25 is going to go. I just need to lay eyes on them.

1 **MR. PETERMAN:** They are trying to prevent
 2 Mr. Kidder from responding to that new theory that --
 3 **THE COURT:** I am on the same page. Let me just
 4 see what slides -- do you want to confer with the other
 5 side about which slides are -- should be handed up?
 6 **MR. PETERMAN:** I have a copy of everything that
 7 they objected to.
 8 May I approach?
 9 **THE COURT:** Yes. Thank you. All right. Just
 10 give me a minute to take a look at these.
 11 This is everything -- these are just the ones
 12 that are objected to?
 13 **MR. PETERMAN:** Those are the ones that are
 14 objected to, Your Honor. And then also, there's an
 15 exhibit that we would like to introduce, same issue, that
 16 they -- that they've objected to as well.
 17 **THE COURT:** An exhibit that you want to
 18 introduce into evidence?
 19 **MR. PETERMAN:** Yes.
 20 **THE COURT:** Okay. All right. Why don't you
 21 hand that up as well.
 22 So they're objecting to like 40 of your slides?
 23 **MR. PETERMAN:** Yes.
 24 **THE COURT:** All right. Well, okay, we're not
 25 going to get this done in the next five minutes.

1 calculate it this way in his report.
 2 **THE COURT:** Okay. Do you dispute the
 3 calculations, or do you just dispute the way that it is
 4 being presented to the jury?
 5 **MS. SRINIVASAN:** Well, the methodology is just
 6 not what he did in his report.
 7 **THE COURT:** It's a different methodology.
 8 **MS. SRINIVASAN:** Right.
 9 **THE COURT:** Okay.
 10 Counsel.
 11 **MR. PETERMAN:** Your Honor, we disagree. This
 12 is a methodology based off of revenues. Clearly, it's a
 13 question of, if you apply the revenues versus the
 14 settlement agreement first, or if you apply it versus the
 15 revenues for Apple. So now we're thinking that, A plus B
 16 equals C, is what Mr. Kidder initially presented in his
 17 expert report.
 18 We think for a jury -- in order to not confuse
 19 the jury, we want to essentially put in front of them B
 20 plus A equals C. So it's the same result, it's just a
 21 slightly different way of getting presentation -- way of
 22 getting to the result.
 23 And this is a result of the change that
 24 plaintiffs made with respect to the damages theory. We
 25 think it's clearer now, the way that Mr. Kidder wants to

1 **MS. SRINIVASAN:** Well, Your Honor, if I may.
 2 Some of these, I understood, that they replaced last
 3 night, so...
 4 **MR. PETERMAN:** Well, no, that's not correct.
 5 **MS. SRINIVASAN:** Pursuant to our meet and
 6 confer.
 7 **THE COURT:** Okay. Everybody, let's slow down
 8 because we're going to -- I don't want to get off with a
 9 start this morning where we're muddling up the record. So
 10 let's, everybody, sit down. We'll just go and we can talk
 11 about it while everybody is having a seat.
 12 All right. The first page is DDX-10.018.
 13 What's plaintiff's objection to this?
 14 **MS. SRINIVASAN:** Your Honor, for these and the
 15 next few slides, the calculation that's performed here was
 16 not done by Mr. Kidder in his report. He did a different
 17 extended views calculation comparing revenues basis
 18 between the different entities without doing it as a
 19 function of each license amount.
 20 And when we conferred about this last night,
 21 Google sent replacement slides doing it with a manner in
 22 which Mr. Kidder had actually disclosed in his report. We
 23 said that we didn't object to those.
 24 So I don't know if they're insisting on doing
 25 it this way, but this isn't the way in which -- he didn't

1 present it in the slides that are in front of you, versus
 2 the way that he presented it in his expert report.
 3 **THE COURT:** Okay. Where in the record is his
 4 report that opines on this issue that we're talking about
 5 right now? What page so we can take a look at it on a
 6 break?
 7 **MR. PETERMAN:** Yes, Your Honor. So do you have
 8 his reports there?
 9 **THE COURT:** No. No one has ever presented them
 10 to us, the slides. We have hunted and found most of them
 11 on the docket.
 12 **MR. PETERMAN:** Okay. Give me a moment, Your
 13 Honor.
 14 **MS. SRINIVASAN:** I have a copy for the Court,
 15 Your Honor.
 16 **MR. PETERMAN:** Your Honor, I have one copy of
 17 both of his reports. I can get a second copy.
 18 **THE COURT:** Okay. Great. That's great.
 19 So counsel just handed up the expert report of
 20 Douglas Kidder, October 20, 2020, and a supplemental
 21 expert report of Mr. Kidder, August 26, 2022.
 22 What pages should I look at to see if this has
 23 been previously disclosed?
 24 **MR. PETERMAN:** Yeah. So, Your Honor, in the
 25 second report, the 2022 report, paragraphs 152 to 160 is

1 where Mr. Kidder goes through the revenue-based
 2 comparison.
 3 **THE COURT:** Okay. And then -- so we'll look at
 4 that on a break. And then what -- is it the same argument
 5 for how many of these slides?
 6 **MS. SRINIVASAN:** Through the first testimonial
 7 slide. So the next eight slides, through 10.026. They're
 8 all the same issue.
 9 **THE COURT:** Okay.
 10 **MR. PETERMAN:** And, Your Honor, I will state
 11 that it doesn't appear that Arendi disagrees that
 12 Mr. Kidder came up with the scale revenue number. So for
 13 that we'll look at the top of Slide 25. There's a scale
 14 revenue number for Apple, Samsung, Microsoft, and InNova.
 15 Doesn't appear that Arendi disagrees with those
 16 numbers, because I think no matter which way you do the
 17 calculation, you wind up with those same numbers. It's
 18 really just a question of presentation.
 19 **THE COURT:** Okay. All right. We will take a
 20 look at that. All right. It's 8:30 now. So we'll bring
 21 the jury out and then we'll deal with this. I want to
 22 make sure we get started on time because we told them all
 23 to get here early today.
 24 **MR. PETERMAN:** Thank you, Your Honor.
 25 **THE COURT:** All right. Ms. Garfinkel, can we

1 check and see if everybody is here.
 2 Sounds like we are missing one juror. So let's
 3 continue on.
 4 Okay. Then we've got objection to 10.032?
 5 **MS. SRINIVASAN:** That's right, Your Honor. As
 6 to the next three slides, 32, 33, 34, those are
 7 undisclosed opinions from Mr. Kidder's report. He does
 8 disclose December 2017. And I think he was instructed to
 9 use that date. There's nothing in his report about
 10 maintenance releases or source code being published around
 11 that time. He just said he was instructed to use that
 12 date.
 13 And now they're using testimony -- he had the
 14 opportunity to ask why that was, but now they're using
 15 testimony as to the basis for using that date, which
 16 Mr. Kidder didn't disclose in his report.
 17 He has one line in his report that says he was
 18 instructed to use December 2017 as the date when STS was
 19 enabled, that's it. There's no reference to maintenance
 20 releases, source code, any of the things that are being
 21 added here.
 22 So we don't object to him obviously relying on
 23 the December 2017 date, which has always been part of his
 24 analysis for the other apps, and then for Google Chrome.
 25 But for him to be utilizing the reason that they selected

1 that date when he didn't opine on it, that's an
 2 undisclosed opinion.
 3 They have it in the record from their fact
 4 witnesses, but he chose not to ask them at the time he
 5 issued two reports on this.
 6 **THE COURT:** All right. So stand by. Let me
 7 read these slides before I hear from Google.
 8 Counsel.
 9 **MR. PETERMAN:** Your Honor, Mr. Kidder chose to
 10 focus on different aspects of the case when there was more
 11 accused products at issue and --
 12 Mr. Kidder chose to focus on different aspects
 13 of the case when there were additional products at issue.
 14 As of April 21st when Arendi changed to narrow its theory
 15 to STS only, Mr. Kidder relooked at issues and looked at
 16 issues for the first time with an STS-only basis.
 17 Now he feels that his testimony regarding the
 18 maintenance release is important for his STS-only opinion.
 19 This is the first time that he's been able to make an
 20 STS-only opinion.
 21 **MS. SRINIVASAN:** Your Honor, if I may on that.
 22 **THE COURT:** Just give me a second.
 23 **MS. SRINIVASAN:** Sure.
 24 **THE COURT:** Let me just ask everyone about
 25 Slide 32, 33, and 34. This appears just to be testimony

1 that we've heard at trial. So is there any particular
 2 reason why we can't put this up on the screen?
 3 **MS. SRINIVASAN:** Well, for Mr. -- I mean, if
 4 Mr. Kidder is going to say he has understanding about why
 5 STS -- why he's using that December 2017 date, that is not
 6 in his opinion. He did -- in his report, paragraph 175,
 7 he said he was asked to consider a date of December 2017
 8 as the date of first infringement when STS was enabled
 9 Android 8. That's all he says.
 10 So our objection is that if he's going to get
 11 up there and say, I understand it was released on that
 12 date because that's when the maintenance release was,
 13 that's when the source code was published -- he doesn't
 14 have any basis for that. He was instructed to use the
 15 date. We understand that.
 16 But now they're trying to use, you know, things
 17 that he didn't develop. He didn't ask why that date was
 18 chosen. And it's not correct that he didn't analyze an
 19 STS-only world. That's the subject of his supplemental
 20 report from 2022. He specifically considered a scenario
 21 in which only STS was accused. He opined on a damages
 22 number, that's the damages number he's presenting today.
 23 So he had the opportunity to ask why that date,
 24 and he didn't. And so we object to him using testimony
 25 from the proceeding to try to add detail, well, as to why

1 that date was appropriate.

2 **THE COURT:** Wait. Let me just ask you about

3 what you just said. You're saying this 2022 report,

4 there's a scenario where he analyzed that STS, but not

5 Contact Detectors and Quick Action was accused?

6 **MS. SRINIVASAN:** Yes.

7 **THE COURT:** Where is that?

8 **MS. SRINIVASAN:** That's in Paragraph 30 and

9 175. In Paragraph 30, he says, "I have also been asked to

10 consider an alternative scenario in which only STS is

11 found to be properly accused of infringement such that the

12 hypothetical negotiation would have taken place around

13 December 5, 2017."

14 **THE COURT:** Give me a minute.

15 So Counsel, did or did he not analyze what the

16 royalty would be -- or respond to Mr. Weinstein's

17 calculation? You know what I'm asking.

18 **MR. PETERMAN:** Yes, yes.

19 **THE COURT:** Tell me what I'm asking, and then

20 tell me the answer.

21 **MR. PETERMAN:** There's two issues here.

22 Mr. Kidder did put forth an STS calculation under

23 Mr. Kidder's own model. And Mr. Kidder's own model is

24 really not dependent on the number of units. He did not

25 have the opportunity to present an STS under

1 Mr. Weinstein's new model. And that's really the

2 distinction here.

3 Mr. Weinstein's new model depends totally on

4 units. On cross-examination he admitted if the units were

5 wrong, the numbers were wrong. And that was squarely not

6 in front of Mr. Kidder in his 2022 report.

7 **THE COURT:** Okay. That was what I was asking,

8 and I appreciate the answer.

9 Counsel?

10 **MS. SRINIVASAN:** Your Honor, Mr. Weinstein's

11 model never changed. It has always been based on units.

12 And Mr. Kidder's responsive report is -- knew exactly what

13 Mr. Weinstein was disclosing.

14 In Paragraph 175 of his supplemental report, he

15 says he's been asked to consider -- and he's always had a

16 different model. He has a revenue-based model -- now, it

17 does apportion based on a number of installed units, and

18 we'll get to that.

19 But he's always had that model. Mr. Weinstein

20 always had a download-based model. But in Paragraph 175,

21 you can see -- and in the tables -- Paragraph 175, he

22 said, "I was asked to consider a scenario in which the

23 data of first alleged infringement was no earlier than

24 December 5, 2017, when STS was enabled to Android."

25 He says, "Under this scenario, the base of

1 accused devices and downloads would be smaller, and would

2 therefore result in a greater downward adjustment for

3 extensive used relative to Microsoft, Samsung, and Apple."

4 And he offers a damages, a lump sum payment damages number

5 of \$500,000, which based on the slides, I understand, is

6 the number he's going to be sponsoring today.

7 And then in the Exhibit 5 to the report, you

8 can see -- in the Exhibit 5.0, to the supplemental

9 reports, he can see that he has listed all the downloads

10 for 2017 and 2018 for all of the apps.

11 And at that time, he was responding to

12 Mr. Weinstein's report that was STS only for the 12 of the

13 13 apps. That he went ahead and assumed, what if it was

14 STS only for everything.

15 The \$500,000 that he came up with in his

16 September '22 report is what he's presenting today. It's

17 the same analysis he planned for that, and that's why it's

18 already disclosed in his report. It's not something that

19 he didn't foresee coming.

20 That's -- the December 2017 date forward, for

21 all applications, that is what he opined about in 2020 --

22 in this 2022 report; assuming that there would be only STS

23 accused, no Content Data Detectors, no CQSA.

24 He's responding to and providing an opinion

25 about an STS-only scenario.

1 **MR. PETERMAN:** Your Honor, Mr. Kidder --

2 **THE COURT:** So we've got multiple things going

3 on here. So we've kind of moved on from what we were

4 talking about with respect to these three slides. So...

5 **MS. SRINIVASAN:** Your Honor, with -- yeah, with

6 respect to those three slides, I think the issue is that

7 he was instructed to look at a December 2017 hypothetical

8 negotiation date for this alternative STS-only scenario.

9 And that's fine that he was instructed to use that.

10 Well, now he wants to say this is the reason

11 that date was chosen, there was a source code release,

12 there as maintenance release. That's not in his report.

13 There's nothing about that in there, even though he does

14 say he relies on this December report.

15 **THE COURT:** Right. But we've got two things

16 going on here that he's going to testify about. He's

17 going to testify about his own opinion, and he's also

18 going to testify about his reaction to your expert's

19 opinion. And so maybe that doesn't change what his own

20 opinion is, but certainly I think he should be allowed to

21 testify about his reaction to Arendi's opinion.

22 And these three slides, I don't have a problem

23 with. Let's keep going.

24 Actually, let me ask Ms. Garfinkel, do we have

25 all the jurors here?

1 All right. Let's take a break from this, and
 2 we will take it up later.
 3 Bring the jury in.
 4 **THE CLERK:** Yes, Your Honor.
 5 (The jury enters the courtroom at 8:44 a.m.)
 6 **THE COURT:** Please have a seat.
 7 Good morning, ladies and gentlemen of the jury.
 8 Please be seated.
 9 Welcome back. I hope everyone had a restful
 10 weekend. We are going to continue today with the
 11 testimony.
 12 Let's have Google call its next witness.
 13 **MS. ROBERTS:** Your Honor, Google calls
 14 Dr. Edward Fox.
 15 **THE CLERK:** Please approach.
 16 Please state and spell your name for the
 17 record.
 18 **THE WITNESS:** Edward Fox Edward, E-D-W-A-R-D,
 19 F-O-X.
 20 EDWARD FOX, having been called as a witness, being
 21 first duly sworn under oath or affirmed, testified as
 22 follows:
 23
 24 **THE CLERK:** Thank you. Please be seated.
 25

1 DIRECT EXAMINATION.
 2 **MS. ROBERTS:** Your Honor, may I approach with
 3 binders?
 4 **THE COURT:** Yes, please.
 5 **BY MS. ROBERTS:**
 6 **Q.** Good morning.
 7 **A.** Good morning.
 8 **Q.** Would you please introduce yourself to the jury.
 9 **A.** Good morning. My name is Edward Fox. I live in
 10 Blacksburg, Virginia with my wife of 51 years, and we've
 11 raised four children and occasionally have our four
 12 grandchildren visit us.
 13 **Q.** Did you prepare some demonstratives to assist with
 14 your testimony today?
 15 **A.** I did. I have an hour-long, a little bit shorter
 16 than some of the classes I teach.
 17 **Q.** Can you please describe your educational background
 18 to the jury.
 19 **A.** In 1965, I started taking courses at Columbia
 20 University and Stevens Institute of Technology. In 1967,
 21 I started at MIT, where I began as a math major. I wanted
 22 to work with computers. They didn't have a computer
 23 science program back then. And so when the
 24 electro-engineering department decided to offer a computer
 25 science elective, I switched to electro-engineering. And

1 so I worked in IT.
 2 I was really fortunate to have a good friend, Bob
 3 Frankston, who of the one of the two inventors of
 4 spreadsheets, and as my undergraduate advisor, I had a
 5 person named J.C.R. Licklider. He is often called the
 6 grandfather of the Internet because of his work leading to
 7 funding of the first Internet activities. Also, one on
 8 the founders in the field of hemorrhage computer tracks.
 9 So I had a wonderful mentor when I was undergraduate
 10 student at MIT in the electro-engineering department.
 11 **Q.** And did you obtain a degree from MIT?
 12 **A.** I finished my bachelors of science in 1972. I spent
 13 six years in South Carolina. My wife, who then was going
 14 to Harvard, had a wonderful job there, so I went to join
 15 her. And I spent a year teaching at a two-year college,
 16 and then I spent six years in a steel joist manufacturing
 17 plant running and developing software systems.
 18 I decided at that point that I had done all I could
 19 do and I wanted to pursue the field of information
 20 retrieval -- search engines, finding things -- then I
 21 started doing my bachelors thesis at MIT. So I picked
 22 Cornell University, where the world leader of the father
 23 of information retrieval was there so I could work with
 24 him. So I start in 1978 at Cornell university. I
 25 finished my master's in 1981 and my PhD in 1983.

1 **Q.** Can you describe your professional background for the
 2 jury?
 3 **A.** So tomorrow I finish the last class of my 40th year
 4 at Virginia Tech as a faculty member in computer science,
 5 and then I proceed with grading all of their student
 6 projects. There's twenty-two teams that I'm working with
 7 this semester in a Capstone computer science course.
 8 Along the way, I've served as a volunteer on a number
 9 of different editorial boards. One of boards I was
 10 elected to is the Computing Research Association board,
 11 which represents the computer research community for the
 12 whole U.S. In addition to that, I've, over the years,
 13 participated and helped assessing submissions and so forth
 14 at hundreds of conferences and workshops.
 15 And at Virginia Tech, I won a number of awards. One
 16 for teaching innovation, one for service, and most
 17 recently one as a commercialization champion because I
 18 worked with a lot of students filing different preliminary
 19 and patent applications, including one that's been issued
 20 so far.
 21 I've also working with my students and my colleagues.
 22 I've done a lot of publications of all different types and
 23 have been fortunate to travel all around the world giving
 24 talks. If you add all the numbers that are listed there,
 25 it's well over 1100. So many different things I've been

1 involved in.

2 Because of that, the Association for Computing, IEEE,

3 one of the professional societies, has designated me as a

4 fellow, as has ACM, the other big computer society that I

5 joined in 1967. ACM has also added me to the Academy for

6 Information Retrieval, which is the leaders in the field

7 of information retrieval.

8 Q. Are you being compensated for your work on this case?

9 A. Yes. I'm being compensated on an hourly basis.

10 Q. Do you have a financial interest in the outcome of

11 this matter?

12 A. No.

13 MS. ROBERTS: Your Honor, I'd like to tender

14 Dr. Fox as an expert in the art.

15 MR. LAHAD: No objection, Your Honor.

16 THE COURT: All right. Dr. Fox is accepted as

17 an expert.

18 BY MS. ROBERTS:

19 Q. Dr. Fox, what were you asked to do in this case?

20 A. I was asked to provide my expert opinion concerning

21 the validity of the asserted claims of the '843 patent and

22 as to the possible benefit of Arendi's inventions over the

23 prior art methods that existed.

24 Q. Can you please explain to the jury what work you did

25 to reach your opinions.

1 A. I did a lot of work starting in 2019 up until this --

2 up until this morning. I studied the '843 patent and its

3 asserted claims. I studied what's called the file history

4 or the prosecution history, which is a big binder that I

5 have sitting in front of me, which is all of the

6 documentation from the time the patent was filed until it

7 was issued.

8 In that, I noted there's a passage that points to

9 Arendi's Petition for Accelerated Examination Support that

10 it filed during the prosecution of the '356 patent, which

11 happens to share the same specification as the '843 patent

12 that we are considering in this litigation.

13 As I do with my students, I studied the prior art up

14 to the period of 1997 because I like them to know what

15 happened years ago. I also studied specific pieces of

16 prior art describing prior art systems. I studied the

17 deposition transcripts. We've heard testimony here from

18 Anind Dey, James Miller, and Atle Hedloy.

19 I traveled to California just as COVID was getting

20 started -- just made it out in time -- and inspected two

21 PowerBook systems, which we've heard about that James

22 Miller talked about and that he purchased and put software

23 on, so that I would understand the systems as they stood

24 from Apple Data Detectors. I also interviewed Mike

25 Pinkerton, who was a student at the same time as Anind Dey

1 and whose thesis I studied as well.

2 Q. What opinions did you reach?

3 A. So my opinion is that the asserted claims of the '843

4 patent are invalid. And I base this on two things.

5 First, is that they were anticipated by the CyberDesk

6 system. In other words, Anind Dey did it first. Also,

7 they were obvious in light of three prior art systems.

8 For example, Apple makes this obvious through its data

9 detectors. And the three systems I considered are

10 CyberDesk, Apple Data Detectors, and very common thing we

11 all are familiar with, Microsoft Word, but back in 1997.

12 Q. Can you give the jury a high level overview of the

13 basis for your opinion?

14 A. Yes. There were four points that I wanted to make

15 about this. The first is that Arendi admits that the

16 so-called shortcut elements of the asserted claims were

17 well known in the prior art. And we'll talk about what

18 those are. But just to quickly summarize what they are,

19 they're listed here.

20 The first is that analyzing text to find types of

21 information. The second is providing an input device for

22 a user command to act on identified information. The

23 third is receiving from it an input device, a command to

24 act on identified information. The fourth is causing a

25 search for the identified information to find the

1 associated information. And the fifth is performing

2 action, at least -- using at least part of the found

3 second information. These are all the pieces of this

4 so-called shortcut.

5 Q. What is the second important point supporting your

6 opinion?

7 A. The second point is that the '843 patent's

8 requirement to put instructions all in one program was a

9 very obvious choice and one of very few available design

10 choices. This makes clear and obvious argument, which

11 makes the patent invalid. But there's more; there's two

12 more points.

13 Q. All right. Can you tell us what the third important

14 point is?

15 A. The third point is that Arendi's principal argument

16 to the Patent Office that allowed it to get the patent was

17 that the prior art used instructions to set up the input

18 device and receive the user commands that were separate

19 from the document editing program. Arendi's invention

20 required the instructions for those actions to be fully

21 inside the first computer program.

22 Q. What is the fourth important point supporting your

23 opinion?

24 A. In spite of that, Arendi is now arguing that Google's

25 products are covered by the '843 patent's claims. You

1 heard last week from the experts who built the systems
2 that Google's products use instructions that are separate
3 from the document editing program.

4 Arendi's arguments contradict its statements to the
5 Patent Office. If we apply these new arguments, then the
6 '843 patent claims cover the prior art CyberDesk and Apple
7 Data Detectors systems, and, therefore, make the patent
8 invalid.

9 Q. So let's delve into those specific four points. What
10 do you mean that Arendi admitted that the shortcut
11 elements were well known in the prior art? What are the
12 shortcut elements?

13 A. So we've looked repeatedly at the '843 Claim 23.
14 We've seen it organized in different ways. To make it
15 simple for our discussion, I've decided to break it up
16 into eight parts, and I've labeled them A through H just
17 to make it easy to refer to those things.

18 On the right-hand side, so we can clearly go through
19 each one of these and see what's at issue, I've identified
20 a checklist. If you look at the checklist, we see checked
21 off in green are six of the eight things. Those are the
22 ones that I refer to as the shortcut elements. This is
23 all about connecting two things with a shortcut; that's
24 what this is all about.

25 Q. So let's talk about the first prior art system you

1 audiences over a long period of time demonstrations of the
2 system.

3 So this is like the class that I'm grading this week.
4 I've had them give multiple presentations. I've
5 interviewed the teams to ask what they're doing. I've had
6 them turn in reports, different versions of their reports,
7 and so that's how I've learned what the systems that
8 they're building are all about. Very similar things here.
9 A lot of evidence.

10 Q. Did the PTO review the full scope of materials about
11 the CyberDesk system that you reviewed before the PTO
12 issued the '843 patent?

13 A. It's my understanding the Patent Office looks at
14 publications of patents; they don't look at systems.
15 You're the ones who get to look at systems. So they
16 didn't have all this other information that I had
17 available, we've all here heard it at this Court in this
18 litigation.

19 Q. Did the CyberDesk system disclose the shortcut
20 elements?

21 A. Yes. They certainly did, and we can go through lots
22 of examples to illustrate that.

23 Q. Why don't you walk us through the examples shown on
24 this slide, 14?

25 A. So one of things we heard was one of the first

1 mentioned in the summary of your opinions, CyberDesk.

2 What is the CyberDesk system?

3 A. I'm going to recall to what's called "critical date."
4 Things before that clearly are prior art.

5 So the CyberDesk system was a system developed as we
6 heard last week in the testimony from Anind Dey starting
7 in the fall of 1996, well before the critical date. It
8 was developed. It was improved. New features were added.
9 By the time of the second instantiation, which was well
10 before the critical date, it had all the features that
11 talked to claims of the '843 patent.

12 Q. What materials did you consider to understand how the
13 CyberDesk system operated in the relevant time period?

14 A. So there -- to me, there's a preponderance of the
15 evidence supporting CyberDesk system. There are five
16 publications before the critical date. We've heard more
17 than an hour of testimony from its inventor, Anind Dey,
18 which teaches us all kinds of things that were not clear
19 in those publications.

20 We heard from Anind Dey that he set up a website at
21 Georgia Tech, which you can still go to and look at and
22 see the things that are listed there, that describes all
23 the work with the CyberDesk system. We also heard from
24 him that he ran what were called presentations and demo
25 days at Georgia Tech. He gave to a large number of

1 versions of CyberDesk system, and we saw this picture on
2 the right-hand side taken from a conference paper. The
3 CHI conference is the big event in the world of human
4 computer interaction. I went to the 1999 CHI conference
5 and gave a tutorial there. It's so big, I didn't want to
6 go back. I don't like big things like that. But it's the
7 way to go if you're in that field.

8 So in 1997, Anind Dey gave a presentation, and in the
9 presentation, he talked about CyberDesk. There was also a
10 paper in the proceedings, and taken from that paper we see
11 on the left some of the wording exactly from that paper.

12 On the right-hand side, we see one of the figures
13 from that paper. We've been through this by way of his
14 testimony. I don't want to take a lot of your time, but
15 just want to remind us what is said here.

16 So just sort of in short, what happens on the
17 right-hand side is we have a web browser that, at that
18 point in time was Netscape. Now we have Edge and Safari
19 and other things. But in that browser window, there are
20 sub-windows, parts of this that we see here. The top two
21 are about the main part of the CyberDesk system. The one
22 on the left is a service that is lets people do things.
23 They can write messages and so forth.

24 In this particular example, we see a message being
25 displayed. And in the top right, we see this input device

1 that we're talking about here. In this case, it's called
2 the ActOn button. You see a number of choices that people
3 can make. So the system is making suggestions of things
4 that they might want to do with first information coming
5 from the document editing program.

6 And on the bottom side, we see a couple of actions
7 and the screens that represent those actions that deal
8 with searching and doing different things. So if we just
9 read through -- and its all color coded to match this --
10 we begin with highlighting Gregory Abowd, which the system
11 is smart enough to figure out is a name. It's converting
12 that name to Abowd, Gregory, so it knows you can switch
13 first and last names when you're putting it in a different
14 order.

15 We see in the top right a number of things that we
16 can do. And the two that are highlighted in blue and
17 green correspond to the blue and green we see in the text.
18 So that, after we've highlighted this, the system causes
19 the ActOn button bar to suggest some actions that are
20 shown with the arrow A, so if we pop up that window, we
21 have those options.

22 The green says, one suggestion is to look up the name
23 in an available contact manager, which is B. So we see in
24 the bottom left, the contact manager with his name. We
25 can look at that up and get information based on the name.

1 Also, Anind decides -- discovers that he doesn't have
2 Gregory's phone number, so he decides to follow another
3 suggestion and initiates a search using the switchboard
4 web service C. So if he picks the blue option to the
5 ActOn button window, he goes off this particular system to
6 another program elsewhere in the web, the switchboard
7 service, which returns the second information that relates
8 to the first information, we see Abowd, Gregory D. We get
9 his middle name. We see his address. We see his phone
10 number. So we picked up all this extra information, and
11 the action displays this for us.

12 So this is just kind of a reminder, and if we
13 interpret this based on what we heard, that we're teaching
14 all the shortcut elements. And to make this clear, to
15 remind us of those things A through H that I pointed out
16 before, in the bottom right of the screen, you see in red
17 I ticked off A, B, C, D, F and H. So that is the six
18 shortcut elements out of the eight that we are concerned
19 with.

20 Q. Can we go to the next slide, and can you explain to
21 the jury what this shows.

22 A. Sure. So also from this CHI '97 paper, we saw on the
23 left-hand side the text that we've gone through that's
24 from that paper. Another figure in the paper, Figure 3,
25 is shown here on the right-hand side. This represents the

1 architecture, the structure, the way the system is built.
2 It lets us look under the hood and see what's going on.
3 And it tells us kind of the steps that are gone through:
4 First we display, then we convert. The system then makes
5 a suggestion. The system then takes from the user their
6 choice, accepts it, and does some actions with it.

7 So these are sort of the main parts of what's going
8 on. There are components inside the system that implement
9 all of this -- the locator, the Intellibutton, the ActOn
10 button, and a set of services are all parts of what's
11 going on here. We see on the left-hand side corresponding
12 to our is to story the particular service that we're
13 concerned with, a mail reader. We will learn later that
14 that is not the only kind of service we can start with.
15 We can start with services where we can do editing in the
16 particular application. We see on the right-hand side,
17 again, corresponding just to this particular story, a
18 number of applications and things we can do that
19 correspond to what we saw on the ActOn button. So lots of
20 different services. That's one of the nice things about
21 CyberDesk is it can do a lot of different things. So this
22 specific example is to corresponding to what we saw, but
23 the architecture is more general and it can do more
24 things.

25 Q. Are there any other ways that CyberDesk disclosed

1 shortcut elements?

2 A. So if -- what wasn't clear from looking at that
3 particular example from the left-hand side it said mail
4 reader, and one was wondering if this actually could
5 corresponds with the Court's claim construction of a
6 document and a first computer program, we can see from the
7 testimony that we heard last week from Anind Dey, the
8 question was: "So, for example, when you were talking
9 about an e-mail, when it could pull text from an e-mail,
10 was it possible that a user could be working in an e-mail
11 when the text was selected for the CyberDesk to work?"

12 And the answer is, "Absolutely."

13 So this teaches us that the first computer program
14 could be a first computer program according to the Court's
15 construction. It doesn't have to be a mail reader; you
16 can go with editing tools as he said. I wouldn't have
17 known if I just looked at the publication. I had to hear
18 from him to understand that.

19 Q. Are there any other ways that CyberDesk disclosed
20 shortcut elements?

21 A. Yes. When we looked at the '843 patent, we see that
22 one of the things it talks about is a kind of letter
23 functionality where you can also take the information and
24 put it into a letter. So here we see from testimony,
25 again, that we heard last week, a question and answer,

1 which I'll read just to make this clear: "Did you ever
2 come up with a version of CyberDesk that allowed the user
3 actually to automatically insert any of the text that was
4 found by CyberDesk?"

5 And the answer includes: "Absolutely, absolutely.
6 The example that comes to my mind is a text editor." So
7 we see that we can insert text into the working document
8 according to his testimony. Again, this wasn't clear from
9 just looking at the publication.

10 We also see that we've checked off some of the
11 elements that we see in the bottom right there in this red
12 box.

13 Q. Are there any on any other ways that CyberDesk
14 disclosed the shortcut elements?

15 A. So I mentioned that Anind Dey, he explained that he
16 set up a website, and in the web site, he described a
17 system with a lot more detail than appears in any of the
18 publications. When we look at the publications, it
19 mentions numbers of things that were services, but here we
20 actually see a list of the services that were included
21 here.

22 And we see in the highlighted section a number of
23 things that were given an address, in particular they
24 allow us to retrieve a map. Among the options we see here
25 for retrieving a map, in the bottom right there's one

1 called MapQuest, which is something I sometimes use along
2 with google Map and Apple Map.

3 Also, if we go to the very top where the first yellow
4 thing here is, and if we read the fine print, there's
5 another one about doing a search for e-mail address. So
6 lots of examples of kinds of things that you can search
7 for that were explained by way of the CyberDesk system
8 through this particular page on the website.

9 Q. If we could go to the next slide, could you explain
10 to the jury why you included this slide in the
11 presentation?

12 A. So we heard from Dr. Smedley about looking up an
13 address and finding information and going to a map. So I
14 just wanted to remind us that this is what we saw in the
15 CyberDesk system as well.

16 Q. And can we go to the next slide and can you explain
17 to the jury the network services you've identified here?

18 A. Yes. So also in this long list of services that you
19 could do with the CyberDesk system, there were a number
20 here highlight in yellow. This is the same list we saw
21 before, but I've highlighted a few others. It's very
22 small print. We see three things here. The first and the
23 third have to do with words, looking up words in
24 dictionaries. A lot of my students can't spell very well,
25 so I encourage them to pick good words and so on. So

1 having a service like that is very useful. A lot of
2 people aren't very good about history. My wife was a
3 history major in college. So this next one in the middle
4 is about for a given date, finding date history. So we
5 can put things in perspective, learn about interesting
6 events.

7 Q. And if we turn to the next slide can you explain why
8 you've included this slide?

9 A. So here we see, again, from Dr. Smedley's example
10 about looking at flight information. So this is another
11 type of information besides just contact information that,
12 again, was -- similar things done on the CyberDesk system.

13 Q. And the list of network services that we just looked
14 at on the prior slide and the earlier slide, is that
15 information included in the -- any of the publications and
16 articles you reviewed about CyberDesk?

17 A. So if we just look at the publications, it's hard to
18 understand all of this. We need to have this additional
19 information that we get from the website and we get from
20 the testimony, for example.

21 Q. Now, what did you mean when you said that Arendi
22 admitted that the shortcut elements were available in the
23 prior art?

24 A. So we've heard from discussion of the prior art about
25 the shortcut elements. But also, Arendi, the applicant,

1 Atle Hedloy, working through his attorneys, filed work
2 with the Patent Office. And in the file history, when I
3 looked through that, I saw a reference on the bottom of
4 one of the pages, and I'll read what it says here:

5 "Applicant notes" -- that's Arendi or Atle Hedloy -- "that
6 application Serial Number 12/841302, also before the
7 examiner, and the prior art references analyzed in the
8 accelerated examination support document, or AESD, of
9 July 22, 2010, are of particular interest in relation to
10 the present application."

11 So Arendi is pointing to the Patent Office that they
12 should look specifically at this document to understand
13 the '843 patent.

14 Q. All right. You mentioned the file history. Can you
15 just remind the jury of what the file history is?

16 A. I think one of these books here is that. I think
17 this big one here.

18 Q. If you look at DTX-2.

19 A. Okay. So this big thing, read through all of this
20 several times. It includes the original submission. It
21 includes interesting pages like the things that the Patent
22 Office was given but didn't look at. Lots of interesting
23 things here.

24 MR. LAHAD: Your Honor, I object to that.

25 THE WITNESS: Excuse me?

1 THE COURT: That objection is sustained. You
2 can disregard the last portion of the answer. So
3 disregard -- disregard all of answer.

4 BY MS. ROBERTS:

5 Q. If you could just hold up the binder for the jury so
6 they can see what you are referring to.

7 Thank you.

8 So what did Arendi say about the prior art references
9 in the AESD?

10 A. So in the AESD, if one looks into that, which I think
11 is another one of these binders. Yes. So this is another
12 big binder. This is the AESD document that I looked at.
13 And if I look into the table of contents, at the beginning
14 part, I see there's a reference to Page 114. And if I go
15 to Page 114, which is, I think, on the next slide, we see
16 part of what Arendi told the Patent Office.

17 So I'll read the highlighted sections on this page:
18 "The Dey reference describes a tool called CyberDesk.
19 CyberDesk is a framework that supports the automatic
20 integration of various software applications. In another
21 example, the user highlights a name in the e-mail message,
22 and CyberDesk offers various options that are specific to
23 the name, e.g., look up the name in a contact manager."

24 So if we just think about the things that are listed
25 here -- and, again, I should point out that Atle Hedloy in

1 the first day of the trial testified specifically that
2 this came from applicant to the Patent Office. If we look
3 at those things, we see in the bottom right-hand side,
4 again, I've checked off the six shortcut elements that are
5 confirmed by the statement from Arendi.

6 Q. Let's turn to another system that you mentioned
7 earlier, Apple Data Detectors. What is Apple Data
8 Detectors?

9 A. So if we go back to our timeline, we see that before
10 the critical date, there were -- we see at sort of the
11 bottom section there, there were two demonstrations to
12 very large public audiences about Apple Data Detectors.
13 We saw the videos last week. Big shows, lot of people
14 there, public disclosure of their exciting invention.

15 So this is the beginning part of our discussion with
16 regard to Apple Data Detectors.

17 Q. What materials did you consider to understand how
18 Apple Data Detectors operated in the relevant time period?

19 A. So we heard last week from Jim Miller, his testimony.
20 I went through his deposition and studied that in detail.
21 You've seen a part of that. As part of his deposition, we
22 saw the two videos: One at the Macworld conference in
23 San Francisco, and one at the Macworld conference in
24 Boston. So we saw both of those demonstrating that.

25 There were a number of publications I studied before

1 the critical date. And as I mentioned before, I went to
2 California and spent a day working with Apple devices to
3 understand Apple Data Detectors and try that myself.

4 Since he had gone to the trouble of buying a computer
5 and putting the software that he kept from years before
6 onto it. So I wanted to see how this worked.

7 Q. Did the PTO have all of the materials that you
8 considered regarding Apple Data Detectors available to it
9 before the PTO issued the '843 patent?

10 A. No. It's my understanding the Patent Office just
11 looks at publications and patents. They don't look at
12 this other kind of information.

13 Q. Did Apple Data Detectors disclose the shortcut
14 elements?

15 A. Yes. And I'll show you this in a few slides, just to
16 kind of remind us from these videos. So the first of
17 these video presentations slides shows us the Wall Street
18 Journal article, looked at in a browser on a computer
19 system. We see highlighted in yellow, the whole article.

20 And if you recall from the video, there was a flash
21 because the computer very quickly went through and
22 analyzed the entire publication in this Wall Street
23 Journal article and picked out what we now call "named
24 entities," things, names, addresses, and so forth.

25 So Frank Casanova, the person who was giving the

1 demonstration, was explaining this. And then he went on
2 to say, as we see in the next slide, that the system,
3 because of this flash of analysis, picked up those things
4 and gives the user a number of choices of things that they
5 can do with this.

6 Because its kind of fuzzy to read this at a distance,
7 on the right-hand side, I put in Jim Manzi's information
8 just so we can see this. So Jim Manzi, we have his e-mail
9 address and his phone number. So we see from the analysis
10 of this, that this pop-up menu or contextual menu is shown
11 on the screen for the user, and it gives the user five
12 choices of things to do. Browse, and it gives the web
13 address that it picked up for the Wall Street Journal
14 article and its website. You see at the bottom a phone
15 number that it picked up, the phone number as well.

16 We see second place, and then it has the block for
17 Jim Manzi and his address out of quote, "experiences," in
18 Now Contact, which is a contact book you put this and
19 store this information in.

20 We can send mail to manzi@lotus.com, so we can email
21 a message. And then highlighted in black there, a little
22 bit harder to read, is write a letter to manzi@lotus.com.
23 The post office wouldn't appreciate getting a letter
24 addressed with manzi@lotus.com on the envelope, so the
25 system goes through and does a search -- go to the next

1 slide -- looks up this e-mail address in a contact book,
2 in an address book, for the entry that we see here. And
3 it finds that information and picks up this second
4 information, additional information it learned based on
5 just using the e-mail address.

6 And given that information -- if we go to the next
7 slide -- and you can see this "write a letter"
8 functionality, very similar to what we see in the '843
9 patent, where it's popped up -- when we were processing
10 the document, and it's populated that document with text.
11 To make it clear, I put this on the right-hand side.

12 So we started off with manzi@lotus.com. It found
13 additional information. It found his company, found his
14 address, it figured out his first name, and put all this
15 stuff into the "write a letter."

16 So it did all this stuff to provide a shortcut to
17 help us do things more efficiently.

18 Q. And on the bottom of that slide, I see the letters in
19 the red box. Can you remind the jury of what that means?

20 A. Yes. So again we see the six shortcut elements are
21 ticked off: A, B, C, D, F, and H. So we've seen multiple
22 times that these things are taught.

23 Q. Did Arendi address Apple Data Detectors with the
24 Patent Office?

25 A. Yes. In this same AESD document that we talked about

1 before, we go to the table of contents, we see entry on
2 Page -- referring to Page 111. And if we go to the next
3 slide, we'll see Page 111, which is a summary of the
4 discussion that Arendi gave to the Patent Office about the
5 Apple Data Detectors system.

6 Q. What did Arendi say to the Patent Office about the
7 Apple Data Detectors system in the AESD?

8 A. So I will read the highlighted section here. "ADD
9 starts when a user highlights text in a word processing
10 document. ADD then analyzes the text to determine whether
11 it recognizes some portion of that text, as for an
12 example, an e-mail address or web address. The user can
13 use a contextual menu to initiate an action that is
14 related to the recognized data."

15 So this is a summary of what we've talked about as
16 the shortcut elements that we see again. I've ticked
17 those off on the bottom right-hand side.

18 If you recall from the first day of this trial, Atle
19 Hedloy confirmed that this was given to the Patent Office.

20 Q. Now, how did your analysis of the shortcut elements
21 of the prior art and Arendi's discussions of it impact
22 your overall analysis?

23 A. So if we go to the next slide, we get reminded of the
24 Claim 23 elements. And we see in this particular case,
25 that the six shortcut elements are ticked off. These are

1 the six things we've gone through repeatedly from both the
2 prior art and their descriptions, as well as from Arendi's
3 own statements.

4 So we're definitely sure, lots of evidence to confirm
5 the shortcut elements are being taught.

6 Q. In light of your discussion of what was available in
7 the prior art, what was new and nonobvious in the '843
8 patent?

9 A. In order to get a patent, one must say something new.
10 That is, new and nonobvious. So Arendi has explained that
11 Elements E and G, the things shown here in green, are the
12 things that were new and nonobvious. That was how it was
13 able to get its patent.

14 Q. When you say that this is what Arendi explained, what
15 do you mean by that?

16 A. So if we go back to this AESD document that was given
17 to the Patent Office by Arendi, we see more discussion in
18 the sections about CyberDesk and ADD. So I will read the
19 description here that goes to the CyberDesk. This is what
20 Arendi told the Patent Office about CyberDesk so that they
21 would understand Arendi's view of what CyberDesk is.

22 "Among other things, the Dey reference does not
23 disclose contact information handling implemented by a
24 document editing program. For example, Dey does not
25 disclose analyzing selected textual information by the

1 document editing program as required by the claims.
2 CyberDesk itself analyzes text highlighted by the user,
3 and CyberDesk is separate from any document editing
4 programs. Indeed CyberDesk is the framework that
5 integrates various applications."

6 So it's telling us about CyberDesk, but noted here
7 with big red highlight section here is the word
8 "separate." That's the main distinction that it's given
9 with regard to the CyberDesk system, to distinguish the
10 '843 from CyberDesk.

11 And, again, we heard on day one of this litigation,
12 Atle Hedloy testified that this was given to the Patent
13 Office.

14 Q. Did Arendi make any similar statements about Apple
15 Data Detectors to the Patent Office in the AESD?

16 A. Yes. So also in this document, we go to the red
17 section, I read part of it, that continues on with more
18 about Apple Data Detectors. "Among other things, ADD does
19 not disclose analyzing selected textual information by the
20 document editing program as required by the claims. Also,
21 ADD does not disclose providing an input device configured
22 by the document editing program as required by the claims.
23 Instead, ADD itself is a part of the operating system, and
24 it analyzes the selected textual information and
25 configures any input device. As ADD is a part of the

1 operating system which is separate from the document
 2 editing program, ADD does not meet the limitations of the
 3 claims."
 4 So again, we see the word "separate." This is the
 5 big distinction that's being drawn. We also saw that --
 6 it's explained that it's part of the operating system.
 7 Just remind to us from last week when we talked about the
 8 Android operating system.
 9 We also notice that was testified to by Atle Hedloy
 10 on the first day of the trial, as I show in the bottom
 11 right side.
 12 **Q.** If we can go to the next slide, can you explain to
 13 the jury what this image is supposed to show?
 14 **A.** Yes. So having started working with computers in
 15 1965, I have a built lots of systems and taught my
 16 students to build lots of systems. Sometimes they build
 17 small things, sometimes they build big things. Some of
 18 the bigger systems we build get so big it's really hard to
 19 learn them, so we split them up.
 20 So many of the things I built since the 1980s are
 21 distributed systems.
 22 So it was well known in the '80s and earlier, that
 23 the two ways to build software are to make a big thing or
 24 to have a lot of pieces and fit them together. So then we
 25 get the approaches that were used, Approach 1 and

1 Approach 2.
 2 So Approach 1 is to build something and add
 3 additional features and stick it in that. And systems
 4 like Microsoft Word are examples of the way that happens.
 5 But nowadays, especially -- and certainly back even in the
 6 '80s and the early '90s, many of us would build things
 7 that ran on multiple computers and talked to each other
 8 and utilized the Internet and the web and all that kind of
 9 stuff. So we split things up into different pieces.
 10 And when we did that, it was like in mathematics
 11 where you factor something out. Something you're going to
 12 use a lot, you put it off in one side, and other things
 13 make use of it. This is the tool I showed you.
 14 **Q.** And the one where you factor things out that you just
 15 described, is that Approach Number 2 on this slide?
 16 **A.** That's right. I'm calling that Approach Number 2.
 17 **Q.** If we can turn on the next slide, can you explain
 18 this image to the jury?
 19 **A.** So what we heard from the AESD is that Arendi argued
 20 that its method was Approach Number 1. In the '843
 21 patent, it took Microsoft Word and put extra things into
 22 that. So that shortcut capability was built into that
 23 particular program. And that's what it claimed.
 24 And when it distinguished in the AESD other work and
 25 said that they made things separate, which is Approach

1 Number 2, we see on the right hand.
 2 And Arendi has made clear that it views that both
 3 CyberDesk and Apple Data Detectors took this separate
 4 approach, Approach Number 2.
 5 **Q.** How are Arendi's argument to the Patent Office
 6 relevant to your analysis?
 7 **A.** Well, there are two points that tie into this.
 8 Arendi is accusing Google's apps, even though the
 9 instructions that set up the input device and receive the
 10 user command are separate from the apps, as we've heard in
 11 testimony here.
 12 If Arendi is right about that argument, then that
 13 means that the patent covers CyberDesk and ADD, and
 14 therefore the patent is not valid.
 15 **Q.** If we can go to the next slide, can you explain this
 16 next image for the jury?
 17 **A.** So we've talked about Approach Number 1 and Approach
 18 Number 2. They are different kind of approaches. It
 19 would be obvious to do either one of them depending on the
 20 circumstance. We heard from Arendi, through the AESD,
 21 that it distinguished its work and said it did Approach
 22 Number 1.
 23 Now instead of staying with what it's talking about,
 24 it's overreaching. It's claiming other things that it
 25 didn't do. And so it's claiming Approach 2 as well,

1 according to Dr. Smedley we heard last week.
 2 **Q.** Now, let's go back to the summary of your opinions.
 3 Can you please explain the basis for your opinion
 4 that the CyberDesk system anticipated the asserted claims?
 5 **A.** Yes. So what I've explained is that the CyberDesk
 6 system anticipates, and also later on we'll talk about the
 7 obviousness argument.
 8 But let's go to the next slide and talk about what
 9 anticipation means. I'm not really very good at bowling.
 10 It's very rare that I get a strike, but that's what
 11 anticipation is like. You have one ball and you knock it
 12 all down.
 13 So CyberDesk taught it; did it before. It
 14 anticipates. That's the terminology.
 15 The other kind of thing which is more likely for me
 16 if I'm lucky to do this, is to get a spare to have a few
 17 balls that together knock things down.
 18 So the obviousness arguments are like having a spare.
 19 **Q.** Can we go to the next slide, and can you explain to
 20 the jury why you included this slide?
 21 **A.** So I'm using this slide as a reminder just because
 22 it's good for us to keep remembering this particular thing
 23 that was taught at the big CHI conference in 1997. There
 24 is more that goes on besides what is described here, but
 25 it helps us to just have a picture to refresh our memory

1 and to have some text to refresh our memory.

2 So keeping this in mind, then we will go to the next

3 slide and explain in detail about the anticipation case.

4 So I wanted to just remind us about that.

5 So if we go to the next slide, we can sort of walk

6 our way through how the CyberDesk system anticipates all

7 of the elements of Claim 23.

8 Q. All right. Can you go ahead and walk the jury

9 through that anticipation analysis?

10 A. So I won't go through all the same detail we heard

11 from Dr. Smedley, but I will go through each of these

12 elements.

13 The first one, A, talks about the non-transitory

14 computer readable medium. So on the website for

15 CyberDesk, there's an option for you to get a single

16 version, standalone version of the CyberDesk system.

17 So you can go there and download the whole thing.

18 And then you can load it into your browser. You put in a

19 HTML page. It brings in all these, what are called

20 "applets."

21 And so now you have your browser, as we saw in that

22 window. The browser has all these parts of it, everything

23 is running inside the browser. The browser is a program,

24 and these applets are a part of that. They're running in

25 that situation.

1 We saw before, from the website and from the

2 demonstration, lots of things can be searched for. So

3 many different things can be searched for. So this gives

4 us Element Number C.

5 It found that name, that highlighted name. So it

6 retrieved it. So that's also covered. That's Element D.

7 And then we saw it provides an input device. So part

8 of this program shows us an input device, the ActOn button

9 bar with a bunch of different options. So it's providing

10 an input device. It's configured by this browser with all

11 this stuff, CyberDesk running in it. So it is configured

12 by the first computer program.

13 And what this ActOn button does is covered in F. And

14 there's a bunch of stuff here. It can do a search to --

15 for at least using -- at least part of the first

16 information, whether it's using the name. So that's part

17 of the first information. To find second information,

18 it's calling for options to go off and find additional

19 information given that first information. Find other

20 things that relate to that name, to Gregory Abowd.

21 And it's -- the type or types of the second

22 information are dependent at least in part of the type or

23 types of first information. So we have a name and we're

24 going to find things that depend on a name. So we get

25 street addresses, and we get phone numbers, we get other

1 So this is one way to think of it, according to the

2 Court's construction, the browser with all the applets,

3 all running in it, is self-contained, set of instructions

4 to do tasks.

5 So we have our computer system. We've loaded it from

6 outside, from another place, a non-transitory medium, and

7 it's now running in a computer. And this whole thing is

8 the first computer program. So that's the first part.

9 Part B is displaying the document electronically

10 using the first computer program. Browsers display

11 things. They display programs where you can make edits,

12 as we heard from Anind Dey. So we see the -- in the top

13 left of that picture that I showed you before, document.

14 So this teaches us Element B.

15 Elements C is while the document is being displayed,

16 doing analysis of the document information and finding

17 first information, that we saw Gregory Abowd -- was the

18 first information that was highlight there. So that's the

19 first information. And it's being analyzed in a computer

20 process. That's part of what CyberDesk does behind the

21 scenes. It's doing this analysis. Very smart system to

22 do all kinds of things like that.

23 And it can recognize a lot of different kinds of

24 information. So we have the plurality of types of

25 information that can be searched for.

1 kind of things that we saw in the demonstration.

2 And then the last thing is, setting this up to take

3 an action. So F is setting up this button to do all this

4 stuff. So we clearly covered all of that.

5 G is the step that actually does something with this

6 button. So the user clicks on something, and we saw the

7 user clicking on different things, getting different

8 results and actions. One of those was going to the second

9 computer program called "Switchboard," which is running

10 somewhere else in this -- I think it's a separate program.

11 It picks up the information, picks up the street address

12 and phone number and so forth for Gregory Abowd. So it's

13 getting additional information to find the second

14 information that's related to the search term to the name.

15 So that gives us Element G.

16 And Element H, if searching finds any second

17 information related to the search term performing the

18 action using at least part of the second information. So

19 we saw in the window we popped up this Switchboard that

20 showed us all this extra information. So the action is

21 displaying all that information to us.

22 So CyberDesk anticipated the claims of the '843

23 Claim 23, as we said. We can check off all these boxes.

24 And furthermore, if we want to, we can look at Elements E

25 and G, and say that Dr. Smedley also told us that that

1 would be covered by what he said was being claimed.

2 **Q.** Did you consider Claim 30 in your anticipation

3 analysis?

4 **A.** So using Dr. Smedley's argument, we can see that

5 another way to think of the CyberDesk system teaching

6 this, is by looking at the different applets. And we see

7 in the picture on the next slide, shown off in yellow is a

8 content page which has -- if you look really in the fine

9 print, you see Andy Wood is the -- is in this to find

10 information. And there's additional information about

11 that.

12 And you see on the bottom, there's a little button

13 that says "New Contact." So to explain this, and Claim 33

14 says "Providing a prompt for updating the information

15 source to include the first information." This whole

16 display is a prompt, as is the new command button there.

17 And we have confirmation of this that was taught by Anind

18 Dey.

19 And a user could add a new contact as well. And he

20 says correct. So this also teaches us Claim 30.

21 **Q.** And so just to be clear, what's your conclusion with

22 respect to whether the CyberDesk system anticipates

23 Claim 30?

24 **A.** Yes. As we just said, it anticipates Claim 30. And

25 I went through in detail and pointed out how Claim 23 is

1 entry that says Apple Data Detectors home page. So

2 CyberDesk is pointing us to look at Apple Data Detectors.

3 So just following that, we would be motivated to make a

4 combination of those two different things.

5 The other part of the screen on the bottom right we

6 see a screen from Apple Data Detectors. And if we look in

7 the picture there, we see that this is clearly a word

8 processing document. In the top in parentheses it also

9 says WP for word processing.

10 So apple Data Detectors tells us to think about word

11 processors and clearly that would lead us to something

12 like Microsoft Word. At that time, it was Word '97.

13 **Q.** What is the first combination that, in your opinion,

14 makes the asserted claims obvious?

15 **A.** So we heard about two systems, CyberDesk and ADD.

16 We've seen CyberDesk points to ADD. So that would

17 motivate us to want to combine those things, and that's

18 one of the combinations.

19 **Q.** Can we go to the next slide and can you explain this

20 slide to the jury.

21 **A.** Yes. So we start off with CyberDesk, and we want to

22 combine and add in ADD and its functionality. So we've

23 heard before, in going through for the CyberDesk system,

24 which of the element are checked off. If there was any

25 question about element number H, then we can show that

1 also anticipated.

2 **Q.** Turning back to the summary of your opinions, let's

3 move on to obviousness.

4 Why would a person of ordinary skill in the art be

5 motivated to combine the prior art systems that you are

6 relying on for this opinion?

7 **A.** So for something to be obvious, you have to be

8 motivated to make the combination. So if we go to the

9 next slide, we'll see that in addition to many other

10 reasons for wanting to be motivated to make the

11 combinations that we're talking about, that were explicit

12 instructions in the documentation that were available that

13 would guide us to do that.

14 So if we look at the description on the left-hand

15 side of that CyberDesk, we see three different things. In

16 the top sort of center, we see a list of desktop services

17 that were supported by CyberDesk. Highlighted in yellow

18 is one that says, "Simple Notepad." Simple Notepad is a

19 word processing document.

20 So if one thinks of word processing documents, one

21 would think of Microsoft Word. So we pointed to, by way

22 of that, to think about Microsoft Word.

23 Also, we can see in the bottom left and top right, in

24 publication -- some of the publications that describe

25 CyberDesk, we see in the references there's an explicit

1 this was supported by ADD as an additional combination.

2 So if we look at the example here of the question

3 mark, just in case there's any doubt about the CyberDesk

4 teaching element H.

5 So if we go to the next slide, we get reminded of

6 Apple Data Detectors "Write a Letter" functionality.

7 Again, this is working with word processing things and

8 making insertions in them and so forth. So this reminds

9 us, and we saw this earlier, so this confirms that with

10 ADD, we also have element H.

11 **Q.** What is your conclusion, then, with respect to the

12 combination of the CyberDesk system with the Apple Data

13 Detectors system?

14 **A.** So before I had a question mark in the bottom one,

15 now I have a red check mark to show that's also checked

16 off if we added ADD.

17 I also wanted to remind us, because there's a lot of

18 important terminology in this patent. I have gone through

19 this and explained it, and we've talked about this and

20 it's been testified about, but the word "document" is a

21 very important one. So I just wanted to point out that

22 clearly we're seeing editable documents in our examples.

23 **Q.** Are there any other combinations that, in your

24 opinion, render the asserted claims obvious?

25 **A.** So we looked at CyberDesk plus ADD. We can reverse

1 it and look at ADD plus CyberDesk, to be symmetrical. So
2 if we go to the next slide, we see -- and this reminds us
3 that we've had the shortcut elements being taught by ADD.
4 We checked those six things off.

5 So if we go to the next slide, we see that if we make
6 a combination -- I tried to put checklist here to make it
7 even more clear. ADD has the six things there, and we
8 know that CyberDesk has all eight things there. I went
9 through them one by one to show that. We also have
10 Dr. Smedley's argument that those two things would have
11 been filled in.

12 So combining these two, put the checklist together,
13 we have all of the limitations taught by this obvious
14 connection.

15 Q. Did you consider whether the CyberDesk system and the
16 Apple Data Detectors system would render Claim 30 obvious?

17 A. Yes. So Claim 30 gives us the additional requirement
18 of providing a prompt for updating the information source
19 to include the first information.

20 So we hear two examples here, and I showed this
21 earlier, Anind Dey, in response to the question: "And a
22 user could add new contact as well?" He says, "Correct."
23 And you see here, in the example in the bottom right, this
24 window where you can click on the button that says "new
25 contact."

1 put in Test Name One as the name to associate with this.
2 I hit the "okay" button, and then what appears on the
3 screen is shown on the top right here, where it says, "The
4 e-mail address has been installed in Claris e-mailers
5 address book." So then Claris e-mailer was also running
6 on that laptop. And it's taken the e-mail address plus
7 the name I've added to it and inserted that into the
8 address book. This is another example of teaching what
9 Claim 30 talks about.

10 Q. And just to be clear, this is an example of which
11 system teaching Claim 30?

12 A. Apple Data Detectors.

13 Q. And can we go to the next slide and can you explain
14 what's shown here to the jury.

15 A. So this is yet another photograph that was taken when
16 I was working with these Apple Data Detectors running
17 systems. This is another contact file that shows contact
18 information and it gives us -- because of having, like,
19 field, prompts to fill things in. So this is a prompt for
20 updating the information source. This is another example
21 that Apple Data Detectors gives us of teaching Claim 30.

22 Q. Are there any other combination that, in your
23 opinion, would make the asserted claims obvious?

24 A. Yes. So the other two combinations are connecting
25 stems with Microsoft Word. The first one we see here is

1 Q. Can we go to the next slide? What is this slide
2 showing?

3 A. So when I was working with the PowerBooks that we see
4 here in court, we heard about last week, there were
5 several pictures taken, as I was working through this,
6 just to understand how the system works.

7 So regarding Claim 30, it's very clear from these
8 three different pictures how this would work. So the
9 picture on the top left has a word processing document
10 called -- in the program called Notepad, which is an
11 editing program, or document editing program. We see in
12 the top right of the screen there a document. And I've
13 highlighted "testOne@apple.com." So that's the first
14 information that's been highlighted.

15 And the system, as a result, puts up this pop-up menu
16 which we see there, a long list of things that I can do,
17 one of which is highlighted in red, says "Add e-mail
18 address to e-mail address book." And then it says --
19 repeats the first information that I've highlighted,
20 "testone.apple.com."

21 So when I click on that, I get to another display,
22 which I show a photograph for in the bottom center of
23 this. And reading what it says there, "What user name
24 should be associated with this e-mail address?" So the
25 e-mail address is testone@apple.com. I say, Well, let's

1 CyberDesk plus Word, and the second one we see on the next
2 slide is Apple Data Detectors plus Word.

3 Q. When was Microsoft Word '97 publicly available?

4 A. The alpha version that did all the same stuff was
5 available 1996, became available from Microsoft early in
6 1997. Copyright comes from 1997.

7 Q. What is the basis for your opinion that the
8 combination of the CyberDesk system and Microsoft Word '97
9 and a combination of Apple Data Detectors and Microsoft
10 Word '97 would render the asserted claims obvious?

11 A. To save us time, I put them all in one slide. This
12 goes for CyberDesk and also for Apple Data Detectors.
13 Both of them, we've learned repeatedly, they practice the
14 shortcut elements. They cover the six things that are
15 checked off in green.

16 The question we've been discussing is about the other
17 two elements, Elements E and G. So I put a question mark
18 there to see how can we show, how do we learn, how do we
19 understand that it's obvious that these things would have
20 been taught by this combination.

21 So if we go to the next slide, we get reminded of
22 this picture we've seen before. I have Approach Number 1,
23 which is the one that we've been hearing about from
24 Arendi. And back in the day when I used Microsoft Word
25 '97, and I wanted to make sure that I didn't spell things

wrong, because that's not very good as a professor, I could use the spellcheck capabilities that was built into this.

Much earlier, when I first started with computers, the computers were much smaller. We couldn't do as much in them. So I used a separate program called Spell, which did spell checking. It was much more convenient in Word '97 to have it built into the word processor.

So Approach 1 is an example of Microsoft Word with something built into it. Remember this is different from Approach 2, where we have CyberDesk and Apple Data Detectors following this separation approach, factoring these out.

Q. So can we go to the next slide and can you tell the jury what you are showing here?

A. So obviousness combinations mean combining things and it doesn't mean that you take this bunch of software and this bunch of software and cram them together. It means that you can take functionality, the ideas, the methodology of something and put it into something else.

So if we take this CyberDesk shortcut functionality, which they programmed, move it into other programming packages, add it into Word -- it's easy to put stuff into Word back in the day. So if you take the shortcut functionality, you put this into the Microsoft Word

system, that combination would teach us all the elements.

Q. And if we go to the next slide, can you explain that to the jury.

A. The same kind of thing, we have Apple Data Detectors, and we take the key functionality, this shortcut functionality we've talked about, and we add that into Microsoft Word. And again, this combination, very much like what was done in the '843 patent, would teach us this. This was an obvious thing to do. You have two approaches, make combinations, and this would make it obvious.

Q. So what is your opinion with respect to combining CyberDesk system or Apple Data Detectors, the Apple Data Detectors system with Microsoft Word '97?

A. So we saw before, for both CyberDesk and ADD, that they taught us the six shortcut elements. In this combination with Word, where it's all built into that, clearly we satisfy all of these other elements, these elements checked off in blue. So we've made obvious the claim elements of the Claim 23.

Q. Let's turn back to the summary of your opinions on the next slide. And can you please recap for the jury what your opinions on invalidity are.

A. So my opinion is that the asserted claims of the '843 patent are invalid. They were anticipated by the

CyberDesk system. In other words, Anind Dey did it first. They were also obvious, through these various combinations, including the work from Jim Miller with Apple and Microsoft Word, for example, as we've talked about.

Q. What are secondary considerations of nonobviousness?

A. In addition to thinking about obviousness, there are other things to consider with regard to obviousness. These are referred to as secondary considerations. There's a list of these that are shown here. I have put them and numbered them 1 through 9 for the sake of discussion.

Q. Can we go to the next slide.

Can you tell us how the secondary considerations of nonobviousness impacted your obviousness conclusions, if at all?

A. So I considered them and I reaffirmed that the obviousness combinations that I've identified apply. These secondary considerations don't have impact on my decision and my opinion.

So when I wrote my first report, I made a statement of that. And in the response report, and you will hear later today from Dr. Sacerdoti, who wrote a response report. He didn't say anything about most of the things that I talked about. So he did consider a few of those --

indeed, we see a list here of the things he considered.

So just to be clear about secondary considerations, it's important to understand the details of some of these. For example, Number 7 says, "Others have licenses to use the invention." It's true that there are licenses to the '843 patent, but they all came as a result of settlements. And if a license comes as a result of settlement, it doesn't count as a secondary considerations. So that one doesn't apply.

The other three that are listed here talk about invention. It's important to understand the terminology. The invention --

MR. LAHAD: Sorry, Your Honor. Can I have a sidebar, please.

THE COURT: Yes.

- - -

(Whereupon, the following discussion is held at sidebar.)

THE COURT: Can we go off the record one second.

(Off the record.)

THE COURT: Okay. Counsel.

MR. LAHAD: Yes. I would object to that testimony, Your Honor. The witness said that if a license is a settlement license, you can't consider it as

1 secondary considerations of nonobviousness.
2 Number 1, he is not a lawyer. I don't think
3 that's the law. And so he's given the jury this notion
4 that -- some kind of legal opinion that you can't consider
5 it or that license, as a result of settlements, are
6 entitled to less weight.

7 So I would object to that. I'd ask for an
8 instruction -- or at least an instruction to the jury to
9 strike that testimony.

10 **THE COURT:** Let me review the testimony. One
11 minute.

12 Counsel?

13 **MS. ROBERTS:** Dr. Fox is explaining his
14 understanding as he went through the secondary
15 considerations. What he just said on the stand is in his
16 rebuttal report. This being raised now is a bit of a
17 surprise. Experts are allowed to get an understanding of
18 the law so they can do their analysis.

19 **THE COURT:** Okay. Standby for a second. I'm
20 going to grab a copy of his rebuttal report. Can you
21 check where that is in his report.

22 **MS. ROBERTS:** It's Paragraph 514.

23 **THE COURT:** Okay. So we have testimony from
24 the expert on the stand that licenses as part of the
25 settlement negotiations don't count. That's a different

1 thing than saying that it negates their utility. So I'm
2 going to ask the jury to strike -- I'm going to strike and
3 ask the jury to disregard the portion of the testimony
4 that licenses that result from settlement negotiations
5 don't count.

6 **MR. UNIKEL:** I mean, may there be a follow-up
7 question?

8 **THE COURT:** Yes.

9 **MR. LAHAD:** Thank you, Your Honor.

10 (Whereupon, the discussion at sidebar
11 concludes.)

12 - - -

13 **THE COURT:** Ladies and gentlemen of the jury,
14 I'm going to ask you to disregard the portion of the
15 testimony that states as follows: If a license comes as a
16 result of settlement, it doesn't have a secondary
17 consideration. You should disregard that portion of the
18 testimony.

19 **BY MS. ROBERTS:**

20 **Q.** Dr. Fox, in your consideration of this
21 seventh factor, whether others have licenses to use the
22 invention, did you consider the licenses in this case to
23 have utility as a secondary consideration of
24 nonobviousness?

25 **A.** I considered that. In my perspective, they don't

1 have utility.
2 **Q.** All right. There are other some other secondary
3 considerations you've listed on this slide. Can you
4 explain to the jury your consideration of those.

5 **A.** Yes. My understanding of these is that they all
6 refer to the invention. And here the invention is what's
7 being claimed, the '843 claim elements that we've heard
8 about.

9 There's referral to this as sort of the nexus of what
10 the invention is, is my recollection of the terminology.
11 So from what we've heard and what I've explained is that
12 other people had the invention first. And that other
13 people built systems that were being used. So any
14 long-felt need wasn't satisfied by the invention, but by
15 other people's work. And any praise that was given, was
16 not of this particular invention that's being claimed, but
17 of other people's work.

18 And the last point here is "Products incorporating
19 invention achieved commercial success attributable to
20 invention."

21 So when I studied the deposition, of Atle Hedloy, I
22 heard the testimony. We see on the next slide, my
23 understanding is that there was no commercial success.
24 The question, "You do not personally consider the one
25 button contact manager to have been a commercial success,

1 do you?" And the answer is, "Not particularly."

2 **Q.** Dr. Fox, you mentioned earlier in your testimony that
3 you were also asked to consider the benefit of the
4 asserted claims over the prior art methods, correct?

5 **A.** That's correct.

6 **Q.** Did you reach an opinion on that issue?

7 **A.** Yes. Two things are identified here. The one
8 element that Arendi emphasized was putting shortcut tools
9 inside a word processing or spreadsheet program. So
10 that's the first point.

11 The second point is for Google, who wanted separate
12 instructions, Arendi's claims were of low value.

13 **MS. ROBERTS:** Thank you. I will pass the
14 witness.

15 **THE COURT:** Thank you, Counsel.

16 Cross-examination.

17 **MR. LAHAD:** Yes, Your Honor. Before I begin,
18 could I please have a sidebar.

19 **THE COURT:** Yes.

20 - - -

21 (Whereupon, the following discussion is held at
22 sidebar.)

23 **MR. LAHAD:** Sorry, Your Honor.

24 **THE COURT:** What's on your mind?

25 **MR. LAHAD:** Yes. Thank you.

1 The witness repeatedly testified about what was
2 or was not considered by the Patent Office, what could and
3 could not be considered by the Patent Office. He's not an
4 expert in Patent Office procedure. He's not a patent
5 attorney. There's no foundation he has any familiarity
6 with the MPEP or anything like that. And so I think given
7 the testimony of what could and could not be submitted,
8 what was and was not submitted, I think he's opened the
9 door to the IPR evidence. So he's saying we could not
10 have put this -- Google could not have put -- or this art
11 was not available to the Patent Office. I think those
12 statements open the door to the IPR proceedings evidence
13 of the IPR proceedings.

14 At the very least, I think we need some kind of
15 curative instruction that this witness is not an expert in
16 patent prosecution, patent procedure, the MPEP, or the
17 like.

18 THE COURT: Counsel?

19 MS. ROBERTS: The witness -- first of all, he
20 only was asked questions about what was considered before
21 the patent was issued, only as to the CyberDesk system and
22 the Apple Data Detectors system. And there's no dispute
23 that the Patent Office does not consider systems. So he
24 didn't say anything incorrect. He didn't say anything to
25 open the door to IPR estoppel. That happened long after

1 the time period where the question was directly targeted.
2 MR. LAHAD: He held up what was a portion of
3 the prior art and said "the prosecution history" and said
4 "Well, the Patent Office didn't look at this," or couldn't
5 look at it. He mentioned the FCE website and said he
6 couldn't submit that to the Patent Office. Number 1,
7 that's incorrect, given the nature of the publications.

8 And I think, Your Honor, that opens the door to
9 Google or anybody else could have submitted those same
10 materials to the Patent Office as part of the submission
11 in some kind of post-grant review. I think the door is
12 opened.

13 THE COURT: So to the extent this is rearguing
14 the issues we've already discussed numerous times of IPR
15 estoppel, there wasn't an objection. The request for a
16 curative instruction is overruled.

17 Was there testimony that talked about the
18 inability of prior art systems to be disclosed to the
19 Patent Office?

20 MR. LAHAD: Yes.

21 THE COURT: And that, in your view, would be an
22 incorrect statement of the law?

23 MR. LAHAD: You can --

24 THE COURT: Because you can submit systems as
25 part of the original patent prosecution?

1 MR. LAHAD: Correct.

2 THE COURT: Counsel?

3 MS. ROBERTS: So the testimony was: What did
4 you consider about the CyberDesk system and about the
5 Apple Data Detectors system and was all of this
6 information available to the Patent Office?

7 THE COURT: All right. Let me take a look at
8 the transcript.

9 MS. ROBERTS: Your Honor, and the testimony one
10 of the things he considered was testimony about both
11 Dr. Dey and Dr. Miller, which was not available to the
12 Patent Office.

13 THE COURT: All right. Let me take a look at
14 the transcript.

15 MR. UNIKEL: Your Honor, would you like us to
16 stay here?

17 THE COURT: Yes.

18 MR. LAHAD: Your Honor, if it's helpful, do you
19 want to make sure we are looking at the same thing? There
20 are our instances I was focusing, 9:00, 18 seconds. I
21 have it on the transcript. If you'd like, he testified:
22 Did the PTO -- let me step back.

23 Question: Did the PTO review the full scope of
24 materials about the CyberDesk system that you reviewed
25 before the PTO issued the '843 patent?

1 Answer: It's my understanding the Patent
2 Office looks at publications of patents. They don't look
3 at systems. You're the ones who get to look at systems.
4 So they didn't have all this other information I had
5 available.

6 We all heard it at this Court in this
7 litigation.

8 MS. ROBERTS: Your Honor, there was no
9 objection, no opportunity to --

10 THE COURT: Here's what I'm going to say, there
11 was no objection at the time. So the possibilities are
12 that we can let you cross-examine this witness on this
13 issue. We could have a follow-up question from Google
14 right now to clear this up at this moment.

15 Either way, I don't think it opens the door to
16 the IPR. That's out. But we can deal with it one of
17 those other two ways.

18 MR. LAHAD: I will cross him on it, Your Honor.

19 THE COURT: All right. Great.

20 (Whereupon, the discussion at sidebar
21 concludes.)

22 - - -

23 MR. LAHAD: Your Honor, may I approach?

24 THE COURT: Yes.

25 MR. LAHAD: Thank you.

1 May I, Your Honor?

2 **THE COURT:** Please proceed.

3 CROSS EXAMINATION

4 **BY MR. LAHAD:**

5 **Q.** Good morning, Dr. Fox. How are you?

6 **A.** Good morning. Well, thanks. How are you?

7 **Q.** I'm hanging in there. My name is John Lahad. We've

8 not met before. I've got some questions for you this

9 morning. If I could direct your attention to -- it's

10 Slide 4 in the slide deck that I have. Just want to do

11 some table setting for us this morning. You are not here

12 to provide an opinion on non-infringement, correct?

13 **A.** That's correct.

14 **Q.** You are not here to explain to us how the products

15 accused of infringement work, correct?

16 **A.** That's correct.

17 **Q.** You did not speak with any of the Google engineers in

18 preparing your opinions for trial, correct?

19 **A.** Correct.

20 **Q.** You were not provided with any materials describing

21 the functionality of Google's accused products, correct?

22 **A.** Correct.

23 **Q.** So the jury should not somehow mistake your testimony

24 for evidence about why the accused products do not

25 infringe, correct?

1 **A.** I didn't testify at all about infringement issues,

2 yes.

3 **Q.** So the jury should not rely on anything you said at

4 all in determining infringement or non-infringement,

5 correct?

6 **A.** What the jury should do, and -- I have no idea. I

7 mean, they're supposed to do a good job. So I can't

8 really speak of that. That's not a thing I'm aware of.

9 **Q.** You're here for validity, correct?

10 **A.** My assignment was, as we see listed here, to do those

11 two things.

12 **Q.** And this case is not the first time you've been

13 retained by Google to present expert testimony on Google's

14 behalf, correct?

15 **A.** I've been to two trials out of four trials I've

16 attended where I was the non-infringement expert for

17 Google.

18 **Q.** But the extent of your prior retention by Google goes

19 well beyond those trials, right?

20 **A.** I have been retained on other cases, which often

21 didn't go anywhere.

22 **Q.** Google has retained you as an expert witness in no

23 less than ten cases, correct?

24 **A.** I don't remember the count, but I've worked with many

25 different defendants and plaintiffs.

1 **Q.** There is a black binder I just gave you. Let's look

2 at Exhibit C from your report.

3 Let me know when you are there?

4 **A.** I see it, yes.

5 **Q.** All right. Exhibit C to your report is something

6 that -- well, it's titled "Fox Patent Consulting Summary

7 List, 8-20 Confidential."

8 See that?

9 **A.** Yes, I try to keep a list of my different activities

10 and this looks like a fairly recent version, yes.

11 **Q.** You anticipated my next question, which was, did you

12 prepare this case list?

13 **A.** It looks like something that was part of my first

14 report.

15 **Q.** All right. So under Section A, cases with trial or

16 deposition, there's that Impact Engine versus Google case.

17 Do you see that?

18 **A.** I do.

19 **Q.** And you were retained by Google in that case, right?

20 **A.** Yes.

21 **Q.** The next case there is Uniloc 2017 LLC versus Google.

22 Do you see that?

23 **A.** So actually, I was retained by law firms that were

24 working with Google, so I wasn't actually retained

25 directly by Google.

1 **Q.** You were retained to give testimony on behalf of

2 Google, correct?

3 **A.** I was testifying to give my expert in opinion in

4 cases that related to Google, yes.

5 **Q.** On behalf of Google, right? Not on behalf of the law

6 firms, on behalf of Google. The law firms weren't the

7 parties in trial; it was Google in trial, right?

8 **A.** In the case in which Google was being accused, yes.

9 **Q.** Okay. So after Uniloc, you've got Arendi versus

10 Google, which is this case, right?

11 **A.** I'm trying to find where you are.

12 **Q.** I'm on the first page of Exhibit C about halfway

13 down. It says case: "Arendi versus Google." Would it be

14 helpful if we put it on the screen for you, sir, with Your

15 Honor's permission?

16 **A.** Which page are you on?

17 **Q.** I'm on the first page?

18 **THE COURT:** Counsel, can I have a copy of the

19 binder, please?

20 **MR. LAHAD:** Yes.

21 **THE WITNESS:** I don't think we're looking at

22 the same thing.

23 **MR. LAHAD:** I'm with opposing counsel, Your

24 Honor. Sort of highlighting.

25 **THE WITNESS:** I think the version you gave me

1 is out of order. The first page on my copy has something
 2 in the bottom that it says, Section E. If I go to the
 3 second sheet, it starts with A. So I think you gave it to
 4 me in the wrong order.

5 **MR. LAHAD:** Your Honor, may I approach to check
 6 the binder?

7 **THE COURT:** Yes.

8 **THE WITNESS:** See, this is the first page, but
 9 that's not the first page because it's E. So the pages
 10 are out of order.

11 **MR. LAHAD:** I apologize. There was one sheet
 12 that was out of order, Your Honor.

13 **BY MR. LAHAD:**

14 **Q.** All right. So there's the -- are we on the same page
 15 now?

16 **A.** I think so.

17 **Q.** Literally?

18 **A.** I think so.

19 **Q.** Okay. So we had the first case is impact engine.
 20 And then the second case was that Eolas case, right?

21 **A.** Second one was Uniloc.

22 **Q.** I'm sorry, sir, could you repeat that?

23 **A.** The first on this page was impact engine.

24 **Q.** Yeah, Impact Engine, then Uniloc, then Arendi, right?

25 **A.** Yes.

1 **Q.** Also on the page at the bottom there's a Software
 2 Rights Archive versus Google, correct?

3 **A.** Yes.

4 **Q.** Okay. And so in each of those cases, you provided
 5 expert testimony on behalf of Google as the defendant,
 6 correct?

7 **A.** I gave testimony based on what I was studying, and I
 8 was -- a case that had Google as a defendant, yes. And my
 9 opinions are my opinions. They don't necessarily have to
 10 be in support of Google. It depends on the situation. I
 11 always give an honest assessment.

12 **Q.** With each of those cases, Google or its lawyers paid
 13 your hourly rate; is that correct?

14 **A.** I'm sorry?

15 **Q.** In each of those cases, Google or its lawyers paid
 16 your hourly rate, correct?

17 **A.** Yes, that's true.

18 **Q.** And so you were either the non-infringement or
 19 invalidity expert in those cases, right?

20 **A.** Those are the two roles that I generally play, yes.

21 **Q.** Okay. So let me guess, in the cases in which you
 22 were the invalidity expert, your opinion was that the
 23 patents invalid, correct?

24 **A.** Yes.

25 **Q.** Every time?

1 **Q.** And there's the ELS at the bottom of that page right
 2 there for Case Number 4, right?

3 **A.** Yes. You skipped a few others, but, yes.

4 **Q.** Well, those others weren't Google cases, right?

5 **A.** That's right. They were among the other defendants
 6 I've worked with.

7 **Q.** Yeah. I want to focus on the Google defendant.

8 **A.** Okay.

9 **Q.** Next page, there's the Bright Response case, middle
 10 of the page.

11 Do you see that?

12 **A.** I do.

13 **Q.** All right. So that's five. And then if you go
 14 couple pages later, on some other cases, it's D.

15 Do you see that?

16 **A.** I do.

17 **Q.** Okay. There's another Impact Engine entry there.
 18 That's the same as the one before, right?

19 **A.** Yeah. I think I've cleaned this up in a newer copy.

20 **Q.** Right. On the next page, there's a Bright Smart Corp
 21 versus Google case that you were retained for, right?

22 **A.** Yes. In the middle of the page, yes.

23 **Q.** On the last page there's Rockstar Consortium versus
 24 Google, right? Do you see that, sir?

25 **A.** Yes. It's the second, third-from-the-last page, yes.

1 **A.** Because they were, yes.

2 **Q.** Not one time did you say, "Hey, you know what? This
 3 patent is valid," right?

4 **A.** I'm careful in picking cases so that I understand
 5 what the situation is, yes.

6 **Q.** Likewise, when you were the non-infringement expert
 7 on behalf of Google, in each case, you found that there
 8 was no infringement, correct?

9 **A.** Once again, I'm always careful picking my cases, yes.

10 **Q.** Not one time have you said that a patent asserted
 11 against Google was infringed, correct?

12 **A.** In the patent infringement cases, that's correct.

13 **Q.** And of course, you wouldn't mind being retained by
 14 Google or its lawyers in future cases, correct?

15 **MS. ROBERTS:** Objection; argumentative.

16 **MR. LAHAD:** Goes to bias, Your Honor.

17 **THE COURT:** Overruled.

18 **BY MR. LAHAD:**

19 **Q.** I'm sorry, sir, I didn't get your answer.

20 **A.** It depends on my health. I'm getting older, so I
 21 can't do as much.

22 **Q.** An opinion that a patent is valid and infringed or
 23 valid and/or infringed, that wouldn't help insofar as
 24 getting hired by Google again, would it?

25 **A.** I have no idea. I'm a world expert in search

Fox - Cross

Fox - Cross

1 systems, so I always give an honest opinion.

2 Q. For a certain hourly rate, right?

3 A. That's a result of my work, yes.

4 Q. And your rate for testifying today is about \$600 an

5 hour, correct?

6 A. Today it is, yes.

7 Q. If I could have Slide 8.

8 Dr. Fox, you went through this slide with your

9 lawyer.

10 Do you recall that, sir.

11 A. Yes. This was the second of the four points I was

12 making, yes.

13 Q. Right. You say, Putting -- "To put instructions all

14 in one program was an obvious choice, and one of very few

15 available design choices."

16 Those are your words, correct?

17 A. That's correct.

18 Q. That's not the Court's construction is it?

19 A. No. This is my opinion.

20 Q. Well, this notion that the -- you're describing in

21 this slide the requirement of the '843 patent, correct?

22 A. I think you are misreading this. What it says is,

23 "The '843 patent's requirement to put instructions all in

24 one program." So that's what the '843 patent says.

25 Q. Yeah, but --

1 A. My comment was that this was an obvious choice.

2 Q. Yeah. But you are using the word "requirement,"

3 right? Requirement is like a -- that's a claim

4 limitation. If a patent requires something, that's in the

5 claims, isn't it?

6 A. This is my understanding of what the patent's claim

7 elements tells us. This is what they teach.

8 Q. But your selection of words, your understanding has

9 to give way to the Court's construction, correct?

10 A. I follow the Court's construction as carefully and as

11 thoroughly as I could possibly do so.

12 Q. You followed the Court's construction thoroughly and

13 carefully, and then you just ignored it and used your own

14 words on this slide, correct?

15 A. I'm explaining my opinion. I don't understand what

16 you're --

17 Q. Yeah. You were explaining your opinion in your

18 words, right?

19 A. That's certainly something I am supposed to do, yes.

20 Q. And not the context of claims or Court's construction

21 right?

22 A. Certainly, this is all in the context of the

23 litigation.

24 Q. You talk about putting instructions in -- all in one

25 program was an obvious choice. You were in the

Fox - Cross

Fox - Cross

1 courtroom -- let me step back.

2 Were you in the courtroom last week when I was

3 chatting with Dr. Rinard?

4 A. I was here the whole time except for Mr. Weinstein's

5 discussion. So, yes, I have been here the whole week.

6 Q. And you were in the courtroom when I was asking

7 Dr. Rinard about combining computer programs, and he was

8 having trouble figuring out how you would do it.

9 Do you recall that?

10 MS. ROBERTS: Objection. Mischaracterizes

11 testimony.

12 THE COURT: That objection is sustained.

13 Please rephrase.

14 BY MR. LAHAD:

15 Q. Well, were you in the courtroom when I was asking

16 questions of Dr. Rinard about combining code from

17 different programs into one program.

18 Do you recall that?

19 A. I was here during the entire discussion.

20 Q. Yeah. And according to my colleagues, I don't

21 remember this, I made some kind of gesture about slapping

22 on the back of -- slapping one program on the back of the

23 other program.

24 Do you recall that at all?

25 A. I don't remember that, no.

1 Q. Okay. So you don't -- he and I were having trouble

2 communicating or connecting about the relative ease with

3 which you could combine two programs, but as I understand

4 it, in your view, it would be obvious, correct?

5 A. I'm not sure. I lost what you were saying would be

6 obvious, what were you referring to?

7 Q. Combining computer programs into one program.

8 A. In the examples I've given of making combinations,

9 they were obvious. Not every combination of things is

10 obvious. It depends on the situation.

11 Q. Well, that's not what you said here. You said, "The

12 requirement to put instructions all in one program was an

13 obvious choice." You didn't say, "Sometimes it's obvious;

14 sometimes it's not obvious."

15 I just want to know if we can rely on this statement.

16 A. You just told me about combining different things.

17 This statement is about putting instructions in one

18 program. Those are two different issues. So I think

19 you're confusing the two things.

20 Q. You're --

21 A. I can't answer one relative to the other without them

22 being fit together sensibly.

23 Q. Are you differentiating between instructions and

24 code?

25 A. My understanding of what you said, I mean, if you

1 want to repeat it, I'd be happy to hear that. But my
 2 understanding was that you were talking about combining
 3 two different programs. And that's not what this says
 4 here. This is saying putting instructions in a program.
 5 Q. Okay. So you're differentiating between instructions
 6 for a program and two different programs, right? Is that
 7 what I'm hearing?
 8 A. When I made the obviousness argument, I said, "to
 9 take the functionality and to put it into something." I
 10 put instructions in a program. Putting instructions in a
 11 program is a clear thing to do. When we write programs,
 12 we put them in a program. So this statement is sort of
 13 trivial kind of thing.
 14 Combining two different things is a different matter.
 15 So I think you are confusing the two issues.
 16 Q. Let's go to the next slide. This is -- well, let me
 17 step back. We agreed earlier that you are not here to
 18 opine on whether Google infringes, right?
 19 A. That was not part of my assignment, no.
 20 Q. So on this slide, when you talk about Arendi's
 21 position, right, you're talking about that's -- that this
 22 is Google's view of Arendi's argument, correct? This
 23 notion of instructions being separate from the document
 24 editing program?
 25 A. What I'm saying here is the same thing that appeared

1 products use instructions separate from the document
 2 editing program, right?
 3 A. That is what the expert who built the software
 4 systems explained last week that I heard.
 5 Q. Right. And just so we're on the same page, you
 6 understand that Arendi is disputing Google's
 7 characterization of Arendi's argument, right?
 8 A. Yes, of course.
 9 Q. Okay. So in order to get to this slide, you would
 10 have to adopt Google's view of Arendi's argument, correct?
 11 A. I'm just articulating what I heard last week.
 12 Q. Right. These are not your opinions. You're just
 13 kind of echoing what you heard last week, right?
 14 A. That particular bullet is a repetition of what I
 15 heard last week, what we all heard last week.
 16 Q. And, again, you have not performed any kind of
 17 analysis, because it wasn't your assignment, about whether
 18 or not this is true, right?
 19 A. That's not been my assignment, no.
 20 Q. Okay.
 21 A. I'm just repeating what I heard in court. We all
 22 heard it here.
 23 Q. And then you say, "Applying Arendi's argument" --
 24 again, that's Google's characterization of Arendi's
 25 argument, right?

1 in the AESD. There's a specific wording there that talks
 2 about separate. I'm just repeating Arendi's own statement
 3 to the Patent Office here.
 4 Q. Can we go to the next slide.
 5 You say, "Arendi is now arguing that Google's
 6 products are covered by the '843 patent claims," right?
 7 A. That's what I heard last week.
 8 Q. And then you say, "Google's products use instructions
 9 separate from the document editing program," right?
 10 A. That's what I heard last week.
 11 Q. This notion of Google's products using instructions
 12 that are separate from the document editing program,
 13 that's Google's view of Arendi's argument for non -- for
 14 infringement, right?
 15 A. I heard testimony that supports that statement last
 16 week. I don't quite understand what you're
 17 distinguishing.
 18 Q. Well, no, this bullet point right here, "Google's
 19 products use instructions separate from the document
 20 editing program," that's not Arendi's view of its
 21 position, right? You understand that that's -- those are
 22 Google's words being used to describe Arendi's position,
 23 right?
 24 A. As I said, I heard that last week.
 25 Q. Okay. It's Google that is saying that the infringing

1 A. No, actually, the next point is that Arendi's two
 2 statements, the statements by Dr. Smedley and the
 3 statements in the AESD, are contradicting each other.
 4 That's my understanding from studying those things.
 5 Q. Well, if the jury finds that Arendi is right and
 6 Google's characterization of its own technology is wrong,
 7 then the '843 patent claims are not invalid, correct?
 8 A. Can you say that one more time.
 9 Q. Sure.
 10 A. I didn't quite follow it.
 11 Q. If the jury finds that Arendi is right and Google's
 12 characterization of Google's technology is wrong, then the
 13 '843 patent claims are not invalid, correct?
 14 A. No. No, no. I gave clear evidence that the patent
 15 is invalid, the claims are invalid, many, many different
 16 arguments from many different sources. That's just one
 17 additional argument that one might use.
 18 Q. Well, if the jury rejects the notion -- strike that.
 19 If the jury rejects Google's and your
 20 characterization of what Arendi argued to the Patent
 21 Office, the '843 patent is not invalid, correct?
 22 A. That is one of many arguments about the patents being
 23 invalid. If that particular situation arose, then that
 24 last point wouldn't apply, but the rest of my discussion
 25 certainly applies.

1 Q. All right. So just, again, so we're on the same
 2 page, if the jury rejects the first part of your third
 3 bullet, rejects your characterization of Arendi's
 4 arguments, then the rest of it is wrong?

5 A. Yes. This is one of the many arguments for
 6 invalidity, and the logic here says that if we apply that
 7 argument, which I've pointed out is contradictory based on
 8 the evidence from Arendi, then we reach this particular
 9 conclusion.

10 Q. Now, I want to go back to the previous slide. Okay.
 11 I found the right question to go with this slide.
 12 At the time Arendi made these statements to the
 13 Patent Office, Arendi did not have benefit of the Court's
 14 construction, correct?

15 A. The Court's construction came well after the patent
 16 was issued.

17 Q. Right. So --

18 A. So, yes.

19 Q. Didn't have benefit of the Court's construction,
 20 right?

21 A. Sure.

22 Q. Now, you discussed about what was submitted, what
 23 could have been submitted to the Patent Office, and you
 24 held up the file history.
 25 Do you recall that?

1 MR. LAHAD: He didn't review the entire file
 2 history.

3 MS. ROBERTS: Are you referring -- are you --

4 THE COURT: Okay. So you are going to leave --
 5 he didn't review the entire file history?

6 MR. LAHAD: No, I'm not doing that. The file
 7 history is longer than 500 pages if you don't include the
 8 IPR stuff.

9 MS. ROBERTS: Okay. I wanted to make sure.
 10 (Whereupon, the discussion at sidebar concludes.)
 11 - - -

12 THE COURT: That objection is overruled.

13 BY MR. LAHAD:

14 Q. Let me ask it again, Dr. Fox. You're aware that the
 15 actual file history for the '843 patent is upwards of
 16 31,000 pages?

17 A. So in all of my work with patents, I have defined
 18 prosecution history and file history as this thing from
 19 the beginning of a file of a patent to the issue of the
 20 patent. I'm not aware of that terminology being used in a
 21 different way, so I don't know how to answer your
 22 question.

23 Q. Oh, no. We're on the same page as far as what it
 24 means.

25 MR. LAHAD: If we can put up PX-1, the patent,

1 A. Yes. There's a document sitting here that is the
 2 file history that I studied many times.

3 Q. And you understand that that's not the entirety of
 4 the file history, right?

5 A. My definition of file history is that it's the
 6 document from the time that a file -- that a patent is
 7 filed until it's issued. That's what I think of as file
 8 history, and that's what I referred to, and that's what
 9 this document is.

10 Q. Well, but you understand that the file history for
 11 the '843 patent is not -- how many pages is that? 400 or
 12 so, 300?

13 A. It's a big book certainly.

14 Q. Yeah, it's about that thick, two and a half inches?

15 A. Yeah. I don't think the pages -- actually, it's 488
 16 maybe.

17 Q. So let's call it 500 pages. But you held up 500
 18 pages. You understand the actual file history in this
 19 case is over 31,000 pages, correct?

20 MS. ROBERTS: Objection. May I have a sidebar?

21 THE COURT: Let me see counsel at sidebar.
 22 - - -
 23 (Whereupon, the following discussion is held at
 24 sidebar.)
 25 THE COURT: Where are we going with this?

1 Mr. Boles.

2 BY MR. LAHAD:

3 Q. You are familiar with, of course, the layout of the
 4 patent, Dr. Fox, right?

5 A. That's right. I've done lots of work with patents.

6 Q. All right. There's a section called "cited
 7 references" on a patent, right?

8 A. Yeah. It's not shown here. This is other
 9 publications.

10 Q. It starts right here.

11 A. References cited, yes.

12 Q. Right.

13 MR. LAHAD: And there's one reference here that
 14 goes onto the next page, Mr. Boles.

15 A. There are eight more pages, right.

16 Q. Eight more pages of references cited, right?

17 A. That's right.

18 Q. And you understand if you take all those pages of the
 19 references cited, it's a lot more than 500 pages, correct?

20 A. So I'm not aware of the file history referring to all
 21 the references and their content. If you say, so, I mean,
 22 if that's part of what should be considered in the file
 23 history, but I've never seen it in any of the documents
 24 I've worked with.

25 Q. Well, I mean, you testified a few times about what

1 the Patent Office saw and didn't see and could and could
2 not see, but, I mean, you understand that there are eight
3 pages of cited references on the face of the patent,
4 right?
5 **A.** Right. So when I do file patents, I'm disclosing
6 related work. I send the Patent Office copies of those
7 things. But I've never seen, in what I think the file
8 history, all of the text of those things included.
9 **Q.** So you're --
10 **A.** Certainly, they could be. I would guess that would
11 be...
12 **Q.** Okay. So your view is that, as you understand it,
13 the file history does not include all the references cited
14 on the face of the patent?
15 **A.** No, no. What I'm saying is the file history I have
16 seen in cases such as this book, is this document, not
17 the -- all the things pointed to in the references. So if
18 that's what you said should be considered the file
19 history, then that's fine.
20 **Q.** Well, I mean, as part of your work, you have to
21 figure out what was in front of the Patent Office, what
22 was disclosed to the Patent Office, right?
23 **A.** Yes.
24 **Q.** So, you know, step one is looking at the cited
25 references, right?

1 Office -- and the discussion between the Patent Office and
2 Arendi constituted, where they talked about specific
3 pieces of prior art that they considered and made
4 different comments about. That was what I thought was
5 relevant in this case.
6 **Q.** You didn't think looking at the other art disclosed
7 by the patentee to the Patent Office was relevant to
8 determining whether the patent's invalid?
9 **A.** If the patent examiner didn't say anything about the
10 other works, then to me they weren't considering them.
11 **Q.** Did you talk to the patent examiner in this case?
12 **A.** No.
13 **Q.** Are you a registered patent attorney?
14 **A.** No.
15 **Q.** Do you have experience prosecuting patents?
16 **A.** No.
17 **Q.** Do you know what an examiner looks for when reviewing
18 prior art in prosecuting a patent?
19 **A.** I see the documentation of what they actually looked
20 at and had the discussion in this document. That's what I
21 was going by.
22 **Q.** Well, you don't know what they actually looked at;
23 you just know what's in that paper, right? They could
24 have actually looked at something that had not been in
25 that paper, right?

1 **A.** Yes. As I went through this list, I saw there were
2 30-some works about hypertext, which reads on this. And I
3 looked through testimony of some friends. I looked
4 through the long list of things. It's a very long list.
5 **Q.** Did you review all of these documents?
6 **A.** No. I looked through the list, and I remembered many
7 of them because I worked in the field and I knew many of
8 them already.
9 **Q.** But you didn't review all of the documents?
10 **A.** I didn't review all those documents. That would have
11 taken months and months, no. I don't think -- I don't
12 know of any expert who has ever done that.
13 **Q.** Well, you don't know what other experts do; you know
14 what you do, right?
15 **A.** I said, I don't know of any other experts who would
16 have done that.
17 **Q.** But we're here to talk about what you did, right?
18 **A.** Yes.
19 **Q.** So you did not review all of these documents, right?
20 **A.** That's right.
21 **Q.** And you didn't ask Google or its lawyers, Well, hey,
22 I've got this binder right here, it's about 500 pages, why
23 don't I -- why aren't these documents -- or why isn't all
24 this other stuff in the file history, as you understand?
25 **A.** So I read this entire thing, which is what the Patent

1 **A.** If they didn't talk about it, then they probably
2 didn't consider it's very relevant.
3 **Q.** Well, you don't know that; that's just a guess.
4 **A.** That's the assumption.
5 **Q.** That is a big old assumption, isn't it?
6 **A.** I have the record of what they said and what they
7 wrote to Arendi. That's what --
8 **Q.** Where did you get that record?
9 **A.** The file history?
10 **Q.** Yeah.
11 **A.** I was given it by the attorneys.
12 **Q.** You were given it by google's lawyers?
13 **A.** Yes.
14 **Q.** You didn't go off and get it on your own?
15 **A.** I didn't see a reason to have to do that.
16 **THE COURT:** Counsel, I think at this point in
17 time we are going to take our morning break.
18 Ladies and gentlemen of the jury, we have
19 scheduled a 15-minute break. It may be a little bit
20 longer because there are some matters that I need to talk
21 to the attorneys about. We will take the jury out. Thank
22 you.
23 (The jury exits the courtroom at 10:45 a.m.)
24 **THE COURT:** Please have a seat, ladies and
25 gentlemen.

1 So in terms of triaging what the Court needs to
 2 deal with to make sure I dealt with everything at the
 3 appropriate time --
 4 You may step down, Doctor.
 5 It seems to me that there's a reasonable chance
 6 Mr. Kidder will be taking the stand before we go to lunch.
 7 Does that sound accurate and probable?
 8 **MR. PETERMAN:** Yes, Your Honor.
 9 **MS. SRINIVASAN:** Yes.
 10 **THE COURT:** Okay. So I need to deal with these
 11 objections to the demonstratives, and what I'd like to do
 12 before I hear any additional argument on them is to go
 13 back and read the expert reports and then that way I will
 14 be in a better position to put into context counsel's
 15 arguments about what is and isn't new. So that's what I'm
 16 going to do during this break. And it may take me some
 17 additional time, and then we'll have some arguments about
 18 that before we have Dr. Fox retake the stand and finish
 19 his cross-examination.
 20 I anticipate that Mr. Kidder's testimony and
 21 cross-examination will go past lunch. After that, does
 22 Arendi know -- you don't have to tell me if you don't know
 23 or don't want to -- how the rest of the afternoon is going
 24 to go in terms of your rebuttal case?
 25 **MS. SRINIVASAN:** We anticipate calling Dr. Earl

1 form. I think that's the universe -- there were some
 2 additional issues that came up. But I think that's
 3 reflective of what we have.
 4 In the jury instructions, we would probably
 5 like the opportunity to be heard on that because there
 6 were a few material changes that came in last night.
 7 **THE COURT:** Okay. And is it correct that the
 8 main issues with respect to the jury instructions have to
 9 do with how the jury is going to be instructed on the
 10 license and how the jury should be instructed on the prior
 11 art?
 12 **MS. SRINIVASAN:** And with respect to
 13 willfulness. There is a -- there was a change there.
 14 There's disputed provisions based on the law about what
 15 instruction should be given.
 16 **THE COURT:** Okay. Those, I think I can resolve
 17 without hearing argument. Let me hear from counsel for
 18 Google. Anything that we've missed in what we are going
 19 over?
 20 **MR. UNIKEL:** No. I think there's really those
 21 three principal instructions, the verdict form, and then
 22 it's just finishing the witnesses with the
 23 cross-examination.
 24 There is -- at the close of case, there will be
 25 the need to at least preserve the Rule 50A motions. I

1 Sacerdoti as a rebuttal expert on validity. And I don't
 2 know how long his testimony will be, but he would be our
 3 expected sole rebuttal witness.
 4 **THE COURT:** So Mr. Weinstein is not retaking
 5 the stand?
 6 **MS. SRINIVASAN:** No.
 7 **THE COURT:** Okay. And then we will have
 8 cross-examination of that expert. So that puts us in an
 9 interesting position about how we get to the end of the
 10 day. Let me hear what each side's position is on that.
 11 **MS. SRINIVASAN:** Well, Your Honor, and I don't
 12 mean this to be negative to the other side or anything,
 13 but we thought we had reached kind of closure on jury
 14 instructions and we got a red line last night with
 15 additional changes in the evening. So I know there was a
 16 new joint instruction submitted late last night to the
 17 Court. And so there are open issues there that still need
 18 to be addressed as with the verdict form, some of which we
 19 are responding to or have been working on responding to
 20 overnight because there were some issues --
 21 **THE COURT:** Were there new issues with respect
 22 to the verdict form after the one that was filed
 23 yesterday? Because I think the Court will be in a
 24 position to resolve those pretty quickly today.
 25 **MS. SRINIVASAN:** I don't think for the verdict

1 imagine we can do that briefly, as we did before. So I
 2 don't imagine that will take a lot of time, but that is
 3 something we will have to do on the record.
 4 **THE COURT:** Okay.
 5 **MR. LING:** Your Honor, may I be heard?
 6 **THE COURT:** Yes.
 7 **MR. LING:** There are some miscellaneous other
 8 issues as well in the jury instructions that the parties
 9 have flagged. Google would like the opportunity to make
 10 our objections on the record insofar as the Court would
 11 like the law.
 12 **THE COURT:** Okay. I understand.
 13 **MR. LING:** Thank you.
 14 **THE COURT:** We are not going to do that right
 15 this second though.
 16 Okay. We've got some things we need to work on
 17 then. It sounds like we can do some of this shortly after
 18 the lunch break today. I guess by my calculations --
 19 well, let me hear your best estimates based on what you've
 20 heard from the other side about when we're going to be
 21 done today if we don't spend a long time arguing about the
 22 jury instructions.
 23 **MR. UNIKEL:** Again, I don't know how long the
 24 cross-examination is planned for. So we have about, I'd
 25 say, 45 to 50 minutes with Mr. Kidder. I don't know how

1 long Mr. Sacerdoti is going to testify. I would expect
2 that my cross-examination of him would be somewhere
3 between 30 and 40 minutes, maximum. So again, assuming we
4 can work out the other things and breaks --

5 **THE COURT:** Counsel, what's your estimate? I
6 guess what I'm asking is this: Are we going to be done
7 with testimony before 3:00 today?

8 **MS. SRINIVASAN:** I think it's -- we will
9 probably be about 3:00 or after 3:00. I don't see us
10 being well ahead of 3:00 to finish the testimony, given
11 that we have the cross-examination ongoing of Dr. Fox. We
12 have Mr. Kidder's affirmative testimony. So let's say
13 that's 45 minutes, plus the remainder of the cross,
14 another hour and a half. Mr. Kidder's cross-examination
15 takes us probably in excess of two hours. And then
16 Dr. Sacerdoti's direct and cross is probably close to two
17 hours, an hour and 45 minutes. So I see us being probably
18 around the 3:00 threshold.

19 **THE COURT:** Do you agree with that?

20 **MR. UNIKEL:** It sounds about right. I suppose
21 the other issue is how long it will take for the Court to
22 read the jury instructions.

23 **THE COURT:** Right. So this is what I'm
24 thinking about. Please have a seat.

25 So if I read the jury instructions -- I'd like

1 to read the jury instructions at the same time as closing.
2 And I don't think it benefits anyone to go ahead with that
3 today and have the closings tomorrow.

4 So if I did that starting at 3:00, for example,
5 now we're talking about almost to 4:00, and then we've got
6 the closings. That puts us to 5:00. Everybody is going
7 to have to come back tomorrow anyway. I don't think I can
8 keep the jury past 6:00, even if I thought it was a good
9 idea, which I don't.

10 So I think at this point in time, given where
11 we are today, sitting here right now, I think we're going
12 to do the jury instructions in the morning and then the
13 closings in the morning.

14 So in light of that, I'm going to proceed on
15 the break right now with that in mind. We will have to
16 get the jury instructions straightened out, but some of
17 that might be able to be done after we send the jury home
18 for the day.

19 Okay? All right. We will be in recess.

20 (Whereupon, a recess was taken.)

21 **THE COURT:** Okay. Counsel. We took a look at
22 the damages expert reports to give us some context about
23 what's going on here. Can I ask counsel for Google, so
24 these numbers on DDX slide 20 where it says, "Google's
25 royalty X percentage above," is the reason why those

1 numbers don't match the expert report because we've
2 changed the accused functionalities?

3 **MR. PETERMAN:** Yes, Your Honor, it's a
4 different -- it's a different revenue base.

5 **THE COURT:** Okay. And how about Arendi? Do
6 you have any dispute about -- I know you dispute that it's
7 the same methodology, but the mathematical calculation
8 itself, are you disputing?

9 **MS. SRINIVASAN:** No. Just that the way he did
10 it in the report, putting aside the revenue base, Google's
11 revenue, which has changed, but the actual manner in which
12 they calculated Google's royalty at the percentage above
13 is different from what he did in his report.

14 **THE COURT:** Okay. All right. I understand
15 that objection. That objection is going to be overruled.
16 These slides can all come in. I read the report closely.
17 I -- I don't think we can say that the methodology has
18 changed.

19 That should take us through 26. I already
20 ruled that 32, 33, and 34 can come in. I want to talk
21 about 35. I don't know what this 30.2 million number is.

22 Can you explain that to me?

23 **MR. PETERMAN:** Yes, Your Honor. The only
24 dispute with the slides that look like this is the text on
25 the left-hand side where we say, "No evidence of commonly

1 installed devices with Android and STS." I believe that's
2 the only dispute. Just to answer Your Honor's question,
3 what the actual pie chart represents is that what damage
4 base is left under Mr. Weinstein's calculation once you
5 remove the August to December downloads.

6 And then if you saw other slides, you know,
7 that then take more off the pie chart, it's just taking
8 off the damage base, you know, as Mr. Kidder questions the
9 assumptions and methodology that Mr. Weinstein employed.

10 **THE COURT:** Okay. Counsel, any objection about
11 this text?

12 **MS. SRINIVASAN:** We objected to the text
13 because, again, even though Mr. Kidder had the opportunity
14 for virtually all the applications to raise some question
15 about lack of evidence of how Arendi installed devices
16 were on Android 8 with STS, that was never raised in his
17 reports.

18 Just to level set, every application with
19 Chrome was 2017, 2018. That was the playing field in his
20 supplemental report. He had the opportunity if he wanted
21 to raise this argument that there was a lack of evidence
22 about what applications or -- were installed on devices
23 with Android 8. He did not. Of course, he himself
24 utilized those installations.

25 So that is an opinion that, if he's intending

1 to offer today, would be new. And, again, all of the
2 other applications minus Chrome were in this world of STS
3 only at the time that he served his you supplemental
4 report. So if he was going to make that critique -- he
5 has many other critiques of Mr. Weinstein -- this is not
6 one of them. This is a new opinion that he wants to offer
7 today.

8 THE COURT: Okay. Well --

9 MS. SRINIVASAN: And counsel provided us last
10 night with modified slides -- I don't object to the
11 number -- without this text in them, but this text they
12 have in every single slide that contains this pie chart.
13 And if the idea is that he's going to testify or opine
14 that there's a lack of evidence there, that's not
15 contained in his report, and he had every opportunity to
16 make that argument.

17 THE COURT: All right. But in my view, that's
18 a factual argument. And we're putting that question to
19 the jury about what these numbers are based on the record
20 as I understand it, which by the way, I reviewed very
21 closely over the weekend. So that objection to that slide
22 is going to be overruled.

23 What do we have on 30(a)? What's the objection
24 there.

25 MS. SRINIVASAN: All right. Your Honor, we did

1 So we do -- we don't object to using a slide
2 like this as long as we are not showing to the jury
3 information that suggests there are all these other
4 revenues basis we're in. We think that should at least --

5 THE COURT: Understood. So I think what I hear
6 you saying is, there's going to be this big number, and
7 they are going to make an argument like, sir, we've heard
8 about what you did in the Apple case, and aren't you
9 trying to do the same thing here.

10 Is that what you're worried about?

11 MS. SRINIVASAN: That is a concern, and also
12 that how do we explain why we're looking at 2017 and 2018
13 now without getting into issues like the Court's summary
14 judgment ruling that narrowed what was at issue. So I
15 don't know fully how they intend to use it. It was the
16 subject of our conference. I don't object to showing
17 numbers that reflect 2017, 2018 and what's at issue, but
18 the concern I have is the question the jury will have if
19 they start seeing things dating back to the 2012, and,
20 obviously, we don't want to be talking about prior orders
21 or rulings.

22 THE COURT: Right. Understood.

23 Counsel?

24 MR. PETERMAN: Your Honor, I'd like to propose
25 a solution. On April 21, counsel for Arendi produced to

1 propose a suggestion that it be limited to the time
2 periods that are now at issue rather than putting all of
3 the prior numbers before the jury. I don't know for what
4 purpose that is to put something in there that there's
5 going to be a discussion about how the base was bigger
6 before. Because my understanding that was something we
7 were told not to do.

8 So I think if we're going to be using any
9 exhibits from reports on either side for the experts, we
10 should attempt to redact out anything that is not about
11 the universe that's before the jury, which is 2017, 2018.

12 THE COURT: So I think what I hear you saying
13 is you think that this would be prejudicial for the jury
14 to see something that's not still being argued?

15 MS. SRINIVASAN: Yes, Your Honor. It shows --

16 THE COURT: Even though this was the chart that
17 was used by your expert.

18 MS. SRINIVASAN: This is from his original
19 report; it's not the supplemental report chart. But
20 they're using things that goes back even prior to summary
21 judgment in this case. It's not just about something that
22 has to do with -- or the summary judgment ruling. It's
23 not just something that has to do with the narrowing with
24 respect to Chrome. Now we're talking about Nexus devices,
25 things that have long since not been part of the case.

1 us a new exhibit that we had marked at DTX-1148. That
2 exhibit includes the numbers that Mr. Weinstein relied on.

3 My understanding is that counsel, even though
4 they produced it on April 21, has an objection to us
5 actually using this as an exhibit in evidence here.
6 These -- you know, this exhibit that they produced is the
7 only reflection of the units that Mr. Weinstein actually
8 relied upon for his calculation. We believe it is
9 appropriately placed into evidence.

10 My understanding is that they're concerned
11 because, in what they produced to us, they still left some
12 other numbers on it. They certainly could have produced
13 an even more truncated version of this if they were
14 concerned about getting this in front of the jury.

15 So, you know, if Your Honor will allow this
16 DTX-1148 to be admitted into evidence or used as a
17 demonstrative, we could use this. And I think it takes
18 care of a lot of the concerns that counsel has raised.

19 MS. SRINIVASAN: We don't have an objection to
20 using it. But, again, it's not something we produced.
21 It's from his 2022 expert report. The highlighting that's
22 on there, could that be redacted? Because again, those
23 are the things that were being removed. So the remainder
24 of the exhibit, we don't have an issue with.

25 THE COURT: You want to take off the

1 highlighting, or you want to redact what's highlighted?

2 MS. SRINIVASAN: Redact what's highlighted.
3 Because again, we didn't produce this. We didn't make
4 this. This is what existed in the report as of 2022. We
5 don't have an objection to using it, but if it's going to
6 show something that's not longer at issue, that's going to
7 create the same question as to why is Chrome in there
8 prior to 2017 when we are only talking about 2017?

9 THE COURT: Yeah. I get it. Here's what I was
10 thinking when I saw this was, I wasn't understanding why
11 we needed to use the page that has the Pixel 1 on there.

12 Is there some reason we need to show the jury
13 that?

14 MR. PETERMAN: I think it's important to show
15 the jury because it also notes all the sources that
16 Mr. Weinstein used. So, you know, we can certainly show a
17 version of this that has Pixel 1 lined out. I would point
18 out that this is what Arendi produced to us on April 21.
19 They're the ones who put the highlighting in. They didn't
20 produce a version of this exhibit that excised the Pixel 1
21 line and excised different -- the Chrome and...

22 And if they had produced a different version of
23 this to us on April 21, that's something that we certainly
24 could have used. It's not up to us to amend their
25 exhibit. And so that's the position that we have here.

1 But if Your Honor is more comfortable with Pixel line
2 being taken out in order to put this into evidence, Google
3 certainly is willing to do that.

4 THE COURT: Well, you're going to have to
5 refresh my recollection. How did Mr. Weinstein get this?
6 We saw this evidence before. Was that admitted into
7 evidence? Or we had these numbers?

8 MS. SRINIVASAN: We used it as a demonstrative
9 with his testimony. We -- this is an exhibit to his
10 report. Traditionally, we don't move that into evidence,
11 the exhibits. But it is from the report that he
12 originally issued. We provided it so that it was clear
13 that he was using the same numbers minus what he was
14 removing.

15 THE COURT: Did the demonstrative he used have
16 the sources on there?

17 MS. SRINIVASAN: Yeah, it did. It had the --
18 the -- what is now DTX-581, Bates labels ending 156349.

19 THE COURT: So I think -- we'll get to the apps
20 in a second, because I have some different ideas about
21 that. But with respect to the page that talks about the
22 Pixel, can you just use his demonstrative?

23 MR. PETERMAN: Your Honor, I don't believe his
24 demonstrative actually included the sources. I believe
25 they created a demonstrative that only had the numbers and

1 not the sources. I could be mistaken.

2 MS. SRINIVASAN: There's one that had the
3 sources that was the comparative one with Mr. Kidder that
4 had the sources that had all of the accused app downloads
5 for 2018.

6 THE COURT: Which was that for the record?

7 MS. SRINIVASAN: Let me get the number from
8 Mr. Weinstein.

9 MR. PETERMAN: I believe that one had
10 Mr. Weinstein and then it had Mr. Kidder saying that
11 Mr. Kidder agreed with Mr. Weinstein. So that would not
12 be something we would be interested in using.

13 MS. SRINIVASAN: It's PDX-4-37 was the
14 demonstrative that used with Mr. Weinstein.

15 THE COURT: Do you want to take a second and
16 see what that is?

17 MR. PETERMAN: Yes.

18 Two things, Your Honor, that demonstrative --
19 and perhaps we can put it up -- has a comparison of
20 Mr. Weinstein and Mr. Kidder. And they used that to make
21 a point that Mr. Kidder agrees with Mr. Weinstein.

22 It also, based on what I saw, that's the just
23 the apps. It doesn't have that devices.

24 THE COURT: Right. I guess I'm wondering why
25 we need the -- well, as I'm talking, I understand.

1 MR. PETERMAN: Again --

2 THE COURT: Let me make sure. Let me just
3 paraphrase what I think you're saying. Is that
4 Mr. Weinstein said he relied on certain numbers, and you
5 want to be able to show the jury where those numbers came
6 from.

7 MR. PETERMAN: Exactly, Your Honor.

8 THE COURT: And this is a prior statement that
9 he made when he was on the stand.

10 MR. PETERMAN: Yes. And this is the last
11 exhibit -- last set of exhibits that was produced to us on
12 April 21 that Arendi used for Mr. Weinstein's testimony.

13 THE COURT: And can you confirm here today that
14 you're not going to be making some argument about, look at
15 this big number and now he's only asking for some small
16 number?

17 MR. PETERMAN: I can absolutely confirm that,
18 certainly, on direct. I would say I can't control what
19 they do on cross. But we are not intending to make
20 reference to all these other numbers in connection.

21 THE COURT: Okay. I'm going to rule that you
22 can use this as a demonstrative. I'm not going to admit
23 it into evidence. I think it's -- I get what you're
24 saying about how you got it with the highlighting on it,
25 but we're all just trying to do the best we can here in

1 figuring this out. So that's going to be my ruling on
2 that.

3 Any other questions about my ruling?

4 **MS. SRINIVASAN:** No, Your Honor.

5 **MR. PETERMAN:** And, Your Honor, is that ruling
6 for both the apps and for the --

7 **THE COURT:** Yes.

8 **MR. PETERMAN:** -- Pixel devices?

9 **THE COURT:** Yes.

10 **MR. PETERMAN:** All right. Just one thing that
11 we are concerned about just from an evidentiary basis, to
12 the extent that there is any further appeal work in this
13 case is actually having underlying unit value that's
14 understood and could be subject to challenge. And so
15 that's --

16 **THE COURT:** I see what you are saying. So you
17 want to have this inserted into evidence for that?

18 **MR. PETERMAN:** Correct, Your Honor. And we're
19 certainly willing to redact. If I can lean on Mr. Spence
20 here to make a redacted version of this where we take out
21 the Pixel line and take out the highlighted.

22 **THE COURT:** So the difference between these two
23 pages, because I agreed with counsel that I have some
24 concerns about the Chrome number. And we have no document
25 that's been put into evidence about the Chrome downloads

1 for 2017 to 2018 at this point?

2 **MS. SRINIVASAN:** It was presented as a
3 demonstrative. We did attempt to have an exhibit that
4 would be moved into evidence summarizing those numbers,
5 which counsel objected to, so that didn't happen before
6 his testimony. But the demonstrative that was presented
7 with Mr. Weinstein at PDX-4.

8 **THE COURT:** Okay. How's about --

9 **MS. SRINIVASAN:** PDX-4-3-31 had those app
10 installations for everything, including Chrome.

11 **THE COURT:** Here's what we're going to do.
12 This is creative thinking on the spot. We had a copy of
13 this exhibit that was going to be in evidence before the
14 changes, right? That you put in your -- that will be
15 admitted into evidence, and if you want to go through with
16 the witness and highlight to make a demonstrative that has
17 highlighting on that, you can do that.

18 Does that make sense?

19 **MR. PETERMAN:** I'm not sure I completely
20 understand Your Honor's solution.

21 **THE COURT:** So the solution is, we had an
22 exhibit that was part of the case. Before the case
23 changed, everybody was going to agree that that exhibit
24 was going to go into evidence. And it had these numbers
25 on it. It's exactly 1148 without the highlighting, right?

1 **MR. PETERMAN:** Yes. Yes.
2 **THE COURT:** Okay. And so put that up. That
3 can go in. They object to the highlighting being
4 introduced into evidence, but if you want to walk through
5 it with your witness and highlight as we go, that's okay.

6 **MR. PETERMAN:** Okay.

7 **THE COURT:** Does that make sense?

8 **MR. PETERMAN:** Yes. And then so -- and then
9 what's the ruling on whether this can be put into
10 evidence?

11 **THE COURT:** This is going to be put into
12 evidence without highlighting.

13 **MR. PETERMAN:** Okay. All right. That's fine.
14 Thank you, Your Honor.

15 **MS. SRINIVASAN:** That's fine, Your Honor.

16 **THE COURT:** What's the next objection?

17 **MR. PETERMAN:** I believe the next one would be
18 40.

19 **MS. SRINIVASAN:** Your Honor, now that we have
20 resolved that with respect to the exhibit, I think -- if I
21 understood Google counsel to say that, if they did that,
22 that would resolve the needing to use 38 and 39? I'm not
23 trying to speak for them.

24 **MR. PETERMAN:** Yeah.

25 **MS. SRINIVASAN:** That's what I heard. So is

1 that correct?

2 **MR. PETERMAN:** We would take out 38 and 39 and
3 replace with the unhighlighted exhibit.

4 **THE COURT:** Great.

5 **MS. SRINIVASAN:** All right.

6 **THE COURT:** So does that resolve 40? No, 40 is
7 something different.

8 **MR. PETERMAN:** Correct. 40, Your Honor, this
9 is, you know, this comes directly from admitted Exhibit
10 DTX-581, which was the number of app downloads. And this
11 is simply Mr. Kidder taking the number of app downloads
12 for Chrome, Calendar, Gmail, and Sheets, and, you know,
13 just a demonstrative as to how many were downloaded from
14 2015 to 2018.

15 **THE COURT:** Counsel?

16 **MS. SRINIVASAN:** Yeah. I guess I just, again,
17 we were trying to figure out what the universe of
18 information we were showing to the jury, so I don't know
19 for what purpose they want to show downloads that predated
20 2017?

21 **THE COURT:** What's the thinking?

22 **MR. PETERMAN:** I think this also helps to
23 confirm the fact that Mr. Weinstein was incorrect in the
24 units that he used. Particularly, if you look at the
25 difference between 2016 and 2017, his testimony is that he

1 only -- he believes that that data only included Android 8
2 or 9, and I think Mr. Kidder is prepared to testify that
3 this data does not lead to that conclusion. In fact, it
4 leads to the opposite conclusion, that you would expect
5 2017 to be much lower than 2016 if only Android 8 was
6 propounded 2017.

7 **THE COURT:** What do you think about what he
8 just said?

9 Counsel?

10 **MS. SRINIVASAN:** That is an undisclosed
11 opinion. If the idea is he's going to get up there now
12 and now say, "Well, can you infer from past years."

13 **THE COURT:** I agree with that. That's what
14 comes out.

15 **MR. PETERMAN:** But, Your Honor, this is in
16 response to Mr. Weinstein's new opinion that \$45 million
17 is the appropriate damage amount. This was -- we have not
18 had a chance to respond to that yet. And this is only in
19 rebuttal to Mr. Weinstein's \$45 million number, which was
20 undisputably disclosed for the first time on April 21.

21 **THE COURT:** Yeah. But I think what I'm
22 concerned about here is that this has got numbers on it,
23 and that numbers have power. And you're asking the jury
24 to make an inference about what trends show from 2015 to
25 2018. I just don't think it's borne out by the testimony

1 that we've heard.

2 And so I think I've heard Mr. Weinstein say on
3 the stand it would be overinflated. I think your expert
4 is free to say that it's overinflated. But as to putting
5 numbers and asking the jury to infer by how much it's
6 overinflated, I don't know that that's fair game at this
7 point.

8 **MR. PETERMAN:** Your Honor, this is certainly
9 not going to be used regarding the overinflation point.
10 This is going to be used solely for the point that
11 Mr. Weinstein said 2017 only included downloads of
12 Android 8 or 9.

13 And we know the data itself includes downloads
14 of all versions of Android. And if Mr. Weinstein was
15 correct that 2017 was only Android 8, and Android 8 was
16 released in August. So one would expect the number for
17 2017 to be a lot lower than the number in 2016 if you were
18 only counting downloads from August onwards.

19 And again, for 2018, if you were only counting
20 downloads from August onwards for 2017, the 2017 number
21 would be much lower than the 2018 number. And I think
22 that's borne out by the data, and that's the point that
23 Mr. Kidder is prepared to make.

24 **THE COURT:** Where are these numbers for 2015,
25 2016, 2017, for Calendar and Gmail in his report?

1 **MR. PETERMAN:** Oh, they're in his report. If
2 you look at Kidder 2022, Exhibit 5. I'm going to have to
3 take you a few places, Your Honor. If you look at 2022,
4 Exhibit 5. You'll see he has numbers for 2017, 2018, and
5 then Chrome going back to --

6 **THE COURT:** Chrome, right?

7 **MR. PETERMAN:** -- to 2012. But, Your Honor, if
8 we look at Kidder Exhibit 12, 2020, his first report, you
9 see he has numbers for the apps going back to -- in
10 various stages, going back to 2012, and so --

11 **THE COURT:** Where?

12 **MR. PETERMAN:** Sorry?

13 **THE COURT:** Where.

14 **MR. PETERMAN:** This is Exhibit 12 in Kidder's
15 2020 report, his first report.

16 **MS. SRINIVASAN:** Your Honor?

17 **THE COURT:** Just wait a second. I'm trying to
18 find -- I don't see Exhibit 12. I'm seeing A, B, C, D.

19 **MR. PETERMAN:** So, Your Honor, I don't know if
20 you are looking at the --

21 **THE COURT:** I must be looking at the wrong
22 thing. Yep.

23 **MR. PETERMAN:** So if you look at the first
24 line, you see it has Calendar, and there's data going back
25 to 2012.

1 **THE COURT:** All right. Counsel, we've got
2 numbers in here graphing out numbers.

3 **MS. SRINIVASAN:** Yeah. Yeah. So this 2020 is
4 before summary judgment in this case. What happened in
5 the supplemental report is that Mr. Kidder looked at 2017
6 and 2018 for Gmail, for Calendar, for Sheets because
7 that's what was in the case. He offered no opinion that
8 you could infer from prior download data that the numbers
9 were inflated.

10 This is totally new, and frankly, it's not
11 supported by anything their fact witnesses have said, nor
12 anything he has quoted in his report. It is very clear
13 that, after summary judgment, after this 2020 report was
14 issued, the universe for these apps, Calendar, Gmail,
15 Sheets, was 2017, 2018. If he wanted to offer the opinion
16 in 2022 that you could go back and infer something from
17 prior application data, he could have, but he didn't.

18 And this is entirely -- what counsel has
19 described is a new opinion, no support for him to now come
20 on the stand and say that. And he had a full opportunity
21 to do it, because what was at issue in his supplemental
22 report? 2017, 2018.

23 **THE COURT:** All right. Stand by for one
24 minute.

25 This document's going to be out. I'll sustain

1 the objection. Let's move on to the next one.

2 **MR. PETERMAN:** Next one, Your Honor, is I

3 believe that they, Arendi, objects to us using testimony

4 from Mr. Weinstein that Mr. Kidder was in the courtroom

5 for.

6 **THE COURT:** Yes, I've looked at these. So 41,

7 42, 43, 44. This is similar to what I ruled on earlier.

8 **MS. SRINIVASAN:** Yes. Your Honor, with respect

9 to 41, if he wants to rebut it, that's okay. 42 to 44,

10 the idea that there was a slow rollout after

11 December 2017, again, all those 12 out of 13 applications

12 were at issue for 2017 and 2018. In his '22 report, you

13 won't find any mention about a slow rollout. He said it

14 was enabled and that he was instructed to use

15 December 2017 as a date.

16 So those three slides are -- the idea that

17 there was some slow rollout or it shouldn't even be 2017,

18 it really happened later in 2018, never disclosed in his

19 2022 report, which was, again, for the 12 out of 13 apps,

20 about STS, 2017 and 2018. So if he's going to offer new

21 opinion on this now, he had a prior opportunity to do that

22 in his 2022 report.

23 **THE COURT:** I understand your argument on that.

24 The objection on those slides is overruled. I carefully

25 reviewed the reports; I think this is all fair game.

1 **MR. PETERMAN:** Your Honor, I believe 47, 48,

2 49, 53, 54, 55, 56, those all go to the same way as your

3 earlier ruling, because the only issue was the text.

4 **THE COURT:** Yep. Agreed.

5 **MS. SRINIVASAN:** Agreed.

6 **THE COURT:** And then 59 looks similar to

7 something I already ruled on?

8 **MS. SRINIVASAN:** Agreed.

9 **THE COURT:** 61?

10 **MR. PETERMAN:** Yes, Your Honor. My

11 understanding is that there is an objection to the title

12 here, possibly. I think the point here, and this is

13 covered in Mr. Kidder's report, is that if you exclude the

14 [REDACTED] the royalties go down by

15 approximately 42 percent. And Kidder raised this in

16 Paragraph 154 of his 2022 report. And so we think it's

17 disclosed, and we don't understand the objection.

18 **MS. SRINIVASAN:** Okay. We don't have an

19 objection in talking about his 42 percent calculation, but

20 he can't be talking about [REDACTED] already giving royalties

21 that apply to Google, obviously, because that's a legal

22 opinion. He can't do that. And that's the issue and

23 concern that I raised.

24 **THE COURT:** All right. Seems like this one we

25 ought to be able to resolve. Can we just change the

1 title?

2 **MR. PETERMAN:** Sure, Your Honor, we will revise

3 the title.

4 **THE COURT:** And then --

5 **MR. PETERMAN:** Down to the last one, Your

6 Honor.

7 **THE COURT:** 63. What's your objection?

8 **MS. SRINIVASAN:** Yeah, the objection there was

9 about the delayed release of STS for 11 months. That is

10 not an opinion that he offered in his reports. And

11 it's -- there's no opinion about a delayed release.

12 Again, he said he used December 2017 as his date for the

13 STS release. In the hypothetical negotiation, he applied

14 that for all of the apps. And there's nothing in there

15 about delayed release, quantifying that delayed release as

16 being 11 months. You're not going to find that anywhere

17 in his 2022 report, even though, if he wanted to make that

18 opinion with respect to all those apps that are solely

19 about the STS functionality, he could have done it. It is

20 not in there.

21 **THE COURT:** Counsel?

22 **MR. PETERMAN:** Your Honor, prior to April 21st,

23 apps prior to December -- December 2017 were at issue

24 here. And so if Mr. Kidder was not looking at it from the

25 perspective of Mr. Weinstein's new opinion for an 11-month

1 rollout.

2 **THE COURT:** So that has to do with Chrome, but

3 she's right --

4 **MR. PETERMAN:** Yes.

5 **THE COURT:** -- about the other apps, right?

6 **MR. PETERMAN:** Yes. Yes, Your Honor.

7 **THE COURT:** All right.

8 **MR. PETERMAN:** The whole negotiation does --

9 hypothetical negotiation takes place in December 2017 as

10 opposed to 2012.

11 **THE COURT:** Right. Okay. The objection on

12 this one is going to be overruled. Of course you're free

13 to discuss with him on cross regarding the situation we're

14 in.

15 **MR. PETERMAN:** That's it, Your Honor. We

16 appreciate it.

17 **THE COURT:** Okay. Let me just see if I have

18 anything else I wanted to talk to you about before we

19 bring the jury back in.

20 Just for purposes of the record, I just wanted

21 to put on the record that my rulings on this and related

22 issues reflect my finding that Dr. Weinstein's opinion on

23 the stand was a different opinion than what he gave in his

24 supplemental report. And the way I'm looking at it is

25 this: He relied on a number of accused app installations,

1 but during trial, after the jury was selected but before
 2 we began testimony, what the accused apps were changed.
 3 And so my view is that Google gets to rebut
 4 what I view as a new opinion. Arendi has pointed out that
 5 Mr. Kidder had his own opinion about what the lump sum
 6 payment would be if only the STS functionality were
 7 accused. That was his opinion. He didn't have an
 8 opportunity to respond to testimony from Mr. Weinstein
 9 regarding a royalty base that included only Chrome units
 10 with STS functionality because that was not
 11 Mr. Weinstein's opinion at that time.
 12 I don't think that Google was required to put
 13 on a contingency expert report about what Mr. Kidder's
 14 opinion would be if Mr. Weinstein changed his opinion
 15 because Arendi dropped a chunk of accused products. We
 16 will leave it at that.
 17 Okay. Let's finish up the cross-examination.
 18 Can you put the witness back on the stand.
 19 Ms. Garfinkel, let's bring out the jury.
 20 (The jury enters the courtroom at 12:22 p.m.)
 21 **THE CLERK:** Your Honor, the jury.
 22 **THE COURT:** Please be seated. Thanks for your
 23 patience.
 24 Doctor, I will remind you, you are still under
 25 oath. Let's proceed.

1 didn't go to the documents that were pointed to.
 2 **Q.** And you said that would take months and months of
 3 work, correct?
 4 **A.** Eight pages of references, I think you gave a large
 5 number of pages, yes, that would take a while.
 6 **Q.** And that work is not worth doing when you're trying
 7 to take a man's property away from him?
 8 **MS. ROBERTS:** Objection. Argumentative.
 9 **THE COURT:** Sustained. Please disregard the
 10 question.
 11 **BY MR. LAHAD:**
 12 **Q.** Well, it's not worth doing to show invalidity by
 13 clear and convincing evidence, correct? Is that your
 14 testimony?
 15 **A.** I think I provided clear and convincing evidence.
 16 **Q.** Right. But in your view, going through all the
 17 documents that the patentee gave to the Patent Office,
 18 that's not worth doing when you're trying to prove
 19 invalidity by clear and convincing evidence?
 20 **A.** To show invalidity, one needs to show that something
 21 anticipated or something made obvious. If I had gone
 22 through more of those, I would have had even more
 23 arguments for invalidity, I believe.
 24 **Q.** Well, there are many references on the face of the
 25 patent that are related to CyberDesk, correct?

1 **MR. LAHAD:** May I?
 2 **THE COURT:** Yes. Thank you.
 3 **MR. LAHAD:** Thank you, Your Honor.
 4 **BY MR. LAHAD:**
 5 **Q.** Dr. Fox, before the break, we were talking about the
 6 file history in front of you.
 7 Do you recall that?
 8 **A.** I do.
 9 **Q.** And you mentioned that you got that file history from
 10 Google's lawyers, correct?
 11 **A.** Yes.
 12 **Q.** And I asked you whether or not you pulled a copy of
 13 it down from the PTO, the Patent Office yourself.
 14 Do you recall that?
 15 **A.** I don't know if you asked me that, but I didn't do
 16 that.
 17 **Q.** And you didn't see a reason to do that?
 18 **A.** No.
 19 **Q.** You also mentioned that you didn't review each of the
 20 documents on the face of the patent, correct?
 21 **A.** I guess you are referring to the 8-page list; is that
 22 what you are referring to?
 23 **Q.** Yes, sir.
 24 **A.** No. I didn't review all of those. I went through
 25 and looked at the list and considered each of them, but I

1 **A.** A number of those are related to CyberDesk. That's
 2 true.
 3 **Q.** Yes. And let's show you a demonstrative that
 4 Mr. Boles has prepared for us. On the right -- excuse
 5 me -- on the left is DTX-8, which you will recall is one
 6 of Dr. Dey's exhibits. I believe it's his CV, correct?
 7 **A.** Could you point specifically to what you are
 8 referring to? There's a lot of stuff on this screen.
 9 **Q.** I'm referring to the left side of the screen. This
 10 is a list of CyberDesk references, right? It says
 11 "CyberDesk and Related Papers."
 12 **A.** This looks like what's on the website. Is that what
 13 you're referring to?
 14 **Q.** Well, it's DTX -- we can't really see it on the
 15 screen, but it's Defendant's Exhibit 8. Do you see that?
 16 **A.** I see it on the screen in front of me, yes.
 17 **Q.** And that's a list of CyberDesk papers, right?
 18 **A.** It is one list of CyberDesk papers.
 19 **Q.** What I've done is match up with these numbers --
 20 sorry -- one thing that Mr. Boles has done is match up the
 21 references when using these numbers. I've got 1, 2, 3
 22 through 7 on this side, on the left side, and they
 23 correspond with the seven papers identified on the face of
 24 the patent. Do you see that?
 25 **A.** They seem to correspond. Yes, I see that.

1 Q. Okay. So the patent examiner had before it during
 2 prosecution at least seven references related to
 3 CyberDesk, correct?
 4 A. That's correct.
 5 Q. And issued the patent nonetheless, correct?
 6 A. That's correct.
 7 Q. Now, as I understand it, you are relying on the
 8 CyberDesk system, air quotes, to prove anticipation,
 9 correct?
 10 A. Yes. That's the basis for the anticipation argument,
 11 yes.
 12 Q. You are using the CyberDesk system as part of
 13 combinations to show obviousness, correct?
 14 A. That's also true.
 15 Q. You've never used the CyberDesk system, have you?
 16 A. I have not.
 17 Q. In fact, that's impossible because the CyberDesk
 18 system no longer exists, correct?
 19 A. Right. This was done more than two decades ago, yes.
 20 Q. Yes. So we saw it was done more than two decades ago
 21 with -- in part by the gentleman we heard from, Dr. Dey,
 22 right?
 23 A. He testified to his work on the system, yes.
 24 Q. He talked about going to some conferences, right, and
 25 showing it off?

1 there's no copy. You're like, okay, cool, thanks. That's
 2 what you did?
 3 A. I didn't investigate further. Once I had
 4 confirmation there wasn't a copy, I didn't think it would
 5 make sense to go searching around further for something
 6 that didn't exist.
 7 Q. You didn't try to find a copy?
 8 A. That's true.
 9 Q. I mean, you've written extensively on the idea of
 10 digital libraries and storing digital information, right?
 11 A. That's correct.
 12 Q. And, of course, this CyberDesk system was digital
 13 information, right?
 14 A. That's true.
 15 Q. You could store it on a computer, on a hard disc, on
 16 a CD or a floppy, depending on its size, correct?
 17 A. Yes. There were different media forms.
 18 Unfortunately, they tend to decay over time. So even if I
 19 saves things from that period, I'm not sure they still
 20 would work.
 21 Q. Yeah, but, you know, if you really want to hold on to
 22 something, you would understand that media decays and get
 23 a new hard drive, put it on a new CD, if you really wanted
 24 to keep it, right, if you thought it was important?
 25 A. The publication record and the other records that are

1 A. He presented papers at conferences, a big conference
 2 in the field of human computer interactions.
 3 Q. Wrote a bunch of papers on it, presented it at
 4 conferences, and didn't keep a copy of it?
 5 A. He did this as a graduate student. He did a better
 6 job than most of my students do in keeping up things. He
 7 has a website with a lot of details on it, but I don't
 8 have -- most people don't keep things for decades.
 9 Q. This was his graduate student work, right?
 10 A. It was part of his graduate work. His thesis
 11 actually was on a different topic. This was part of his
 12 research.
 13 Q. I mean, this is what -- he's getting a master's or a
 14 Ph.D., what he's trying to do as his career, right? It's
 15 not just some kind of stuff on the side, woodworking
 16 beekeeping. This was his career, intended career, right?
 17 A. He did more than most people would do at the time
 18 with regard to documenting in the system, yes.
 19 Q. But he didn't keep a copy of it, did he?
 20 A. He didn't give us evidence of keeping a copy, no.
 21 Q. He didn't keep a copy of it, did he?
 22 A. As far as I know.
 23 Q. Did you try to find a copy?
 24 A. I was told there was not a copy.
 25 Q. So you didn't try to find one. You are like, hey,

1 existing for this are sufficient evidence for most people
 2 in the field.
 3 Q. Yeah. We're not there yet.
 4 I'm just asking you about -- I mean, you are -- like
 5 I said, you've written extensively on digital libraries
 6 and storage, right?
 7 A. If you look at my house and my lab, you will see all
 8 kinds of old junk that probably still doesn't work, even
 9 though I've kept it.
 10 Q. And if you really wanted to keep a copy of something,
 11 you would take into consideration, for example, that the
 12 media would decay or -- right?
 13 A. It's enormously expensive to try to reconstruct
 14 things and move them. Unfortunately, our society has not
 15 done a very good job of financing this kind of thing.
 16 There's very little support for doing that kind of work,
 17 especially after you've left an institution.
 18 MR. LAHAD: If I could have -- I think it's
 19 Slide 13, Mr. Boles, from Dr. Fox's presentation. Yes.
 20 Thank you.
 21 BY MR. LAHAD:
 22 Q. This is your slide describing what you say you relied
 23 on to understand CyberDesk system, air quotes, right?
 24 A. It's a summary, yes.
 25 Q. You would agree that the, quote-unquote, system that

1 you're relying on is -- when the evidence of the system
 2 that you're relying on is some kind of, like,
 3 Frankenstein, a little from here, a little from there, a
 4 little bit of demonstration, some engineer testimony and
 5 some publications; is that fair?
 6 **A.** No.
 7 **Q.** Well, you're using more than one piece of information
 8 to describe a CyberDesk system, correct?
 9 **A.** Just if -- as if I took a picture of you from many
 10 different angles, those would be different parts of
 11 evidence at the moment, yes. We need lots of information
 12 to understand something as complicated as CyberDesk.
 13 **Q.** Well, let's talk about this evidence or this
 14 information. Demonstrations, those are just documents
 15 showing how they work, right?
 16 **A.** Demonstrations are not documents. They are
 17 presentations in a public audience that demonstrate public
 18 disclosure.
 19 **Q.** Well, the demonstrations we're using that you're
 20 relying on in this case, it's not -- you're not looking at
 21 videos of CyberDesk or anything like that. It's just
 22 testimony regarding demonstrations, right?
 23 **A.** I'm sorry.
 24 I'm relying on the fact that he gave public
 25 demonstrations in large numbers to public audiences as

1 did you ask when was it no longer in existence?
 2 **A.** I read Anind Dey's testimony. He explained that. I
 3 thought that was sufficient information.
 4 **Q.** He explained when it went missing?
 5 **A.** He said it went missing. He said it wasn't there.
 6 He didn't say when.
 7 **Q.** He wasn't asked when.
 8 **A.** I don't recall whether he was asked or not, but he
 9 said, from my recollection, that it wasn't there.
 10 **Q.** Well, fortunately we have a transcript of what he
 11 said. Do you recall reading that transcript?
 12 **A.** I do.
 13 **Q.** Do you recall anything about -- anything in that
 14 transcript about when CyberDesk went missing?
 15 **A.** I don't recall such, no.
 16 **Q.** And the documents that were submitted to the Patent
 17 Office regarding CyberDesk, they reference the website,
 18 right?
 19 **A.** I think so.
 20 **Q.** Okay. So the examiner could, looking at those
 21 documents, be apprised of the website containing this
 22 information, right?
 23 **A.** I guess that's possible.
 24 **Q.** It's also possible -- and the website contained some
 25 of these demonstrations, correct?

1 part of his public disclosure of the system.
 2 **Q.** The FCE website, that, too, is a collection of
 3 documents, correct?
 4 **A.** It's a web page and it has links to different things.
 5 Documents -- depends on your terminology, whether they
 6 include links or not. It is an active site. It points to
 7 different things making connections. So it's hard to
 8 flatten the web to turn into documents. The web is a
 9 linked collection of information. So it's hard to just
 10 put it -- pack it into something. It has a different kind
 11 of existence, hypertext in the web, we're all familiar
 12 with, is much more than just documents. It's a whole
 13 collection, network of connections.
 14 **Q.** It's not like there's a working version of the
 15 quote-unquote system on the website, is there?
 16 **A.** It was a pointer to a self-contained version that is
 17 mentioned on the website, which doesn't exist anymore.
 18 **Q.** Yeah. When did it go missing?
 19 **A.** I don't know.
 20 **Q.** Didn't ask?
 21 **A.** No, I didn't ask.
 22 **Q.** Was Dr. Dey -- sorry. Go ahead.
 23 **A.** I was told it was an existing system, so I didn't go
 24 investigate further, as I've already said.
 25 **Q.** Did you ask -- well, if it was an existing system,

1 **A.** The website discusses a number of scenarios which
 2 were used for demonstrations. And a demonstration's
 3 different when you give it in person than if you look at
 4 some screens, as my testimony is different from the slides
 5 that we've shown.
 6 **Q.** Your testimony is different from the slides that
 7 you've shown?
 8 **A.** Yeah. I'm saying more words than just what are on
 9 the screen.
 10 **Q.** Same concepts though, right?
 11 **A.** When I give a demonstration, I answer people's
 12 questions, I chose different kinds of things. So it's a
 13 different entity than just a presentation in terms of
 14 slides.
 15 **Q.** You agree that the capabilities disclosed in these
 16 publications on the face of the CyberDesk, on the face of
 17 the '843 patent, you agree that those publications don't
 18 anticipate the patent, correct?
 19 **A.** It's the system that I'm arguing is anticipating.
 20 **Q.** Right.
 21 **A.** Not the publications.
 22 **Q.** In your view, publications themselves do not
 23 anticipate the '843 patent, correct?
 24 **A.** My discussion is about the system and that's my
 25 argument. I didn't consider whether the publications

1 anticipate it.

2 Q. You didn't consider whether the publications

3 anticipate it?

4 A. I didn't look at publication by publication and say,

5 "Does this one cover everything?" As far as I was

6 concerned, my charge was to look at the system as a whole,

7 which is what I did.

8 Q. Okay. So you weren't asked to just look at the

9 publications and see if they anticipated?

10 A. I considered whether the system anticipated. The

11 system includes more than the publications, so it's much

12 better to look at the whole than look at the pieces.

13 Q. Well, I hear you. My question is very simple. You

14 were not asked whether the publications on CyberDesk

15 anticipate the '843 patent, correct? You were not

16 asked -- that was not part of your assignment, right?

17 A. I don't recall that being my assignment. I'm not

18 sure, but I don't recall that being my assignment.

19 I don't think it's necessary. I think the system is

20 the right way.

21 Q. I hear you. We're going to talk about the system a

22 little bit more. But your testimony to this jury is you

23 don't recall what your assignment was, or rather -- let me

24 strike that.

25 You don't recall whether or not -- looking at

1 anticipation by the CyberDesk publications only, you don't

2 recall whether that was part of your assignment?

3 A. There might be some statement in my report that says

4 something, but I don't remember at this time.

5 Q. It wasn't part of your assignment because the

6 CyberDesk publications do not anticipate the '843 patent,

7 correct?

8 A. I didn't make that assessment. If I remember -- I

9 can't remember whether I made that assessment, but I can't

10 think at this moment whether that's the case or not. I'd

11 have to investigate more. It wasn't necessary because I

12 looked at the bigger picture.

13 Q. Well, investigate what? You have the documents,

14 right, and the patent, and Court's constructions. What

15 more do you need?

16 A. When those -- it's something bigger -- covers

17 something, I don't see a reason to be discussing why

18 whether a piece of it also is sufficient.

19 Q. Well, I know that wasn't your assignment. I get

20 that. But can you do it for me now? Can you just give me

21 an answer on whether the CyberDesk publications anticipate

22 the '843 patent? Yes or no?

23 A. There were parts of my argument that I made use of

24 Anind Dey's testimony where it was not clear from some of

25 the publications whether certain things were taught. So

1 in that regard, I used his testimony to make clear what I

2 understood from the publications.

3 So if we're using strict terminology and making sure

4 everything is specifically there, then the anticipation

5 argument is much more complicated. And I didn't think it

6 was necessary. Certainly the anticipation argument, if we

7 switch to obviousness, it would have been obvious from the

8 publications, I believe.

9 Q. You also -- hold on now. You are not relying on

10 CyberDesk publications alone to show obviousness, are you?

11 You're relying on the system, right?

12 A. You asked for my assessment now thinking of things,

13 publications. If I were to think of the publications, as

14 you just asked me to do, and try to say whether it made

15 obvious the claims of the '843 patent, I think that's the

16 case.

17 Q. Okay.

18 A. But I have to do a bit more thinking to make sure

19 about that. I believe that's the case.

20 Q. Okay. Same thing for anticipation. Go.

21 A. I think I've already answered this. I think I've

22 said that there were things in the publications that were

23 not so clear. And it was useful to have Anind Dey's

24 testimony to make those things clear, so that it was an

25 anticipation situation.

1 Q. Got it. So, documents alone, not so clear.

2 Accordingly, documents alone cannot anticipate by clear

3 and convincing evidence, correct?

4 A. I'm trying to make an off-the-cuff answer to your

5 question. That sounds possible, but again, I don't think

6 it was necessary to even consider that.

7 Q. Of course because the conclusion would have been no

8 anticipation, right?

9 A. (No audible response.)

10 Q. I'm sorry. Did you answer, sir?

11 A. You didn't ask a question; you made a statement.

12 Q. No. It was a question, comma, right: Because the

13 conclusion would have been no anticipation comma right,

14 question mark?

15 A. I didn't hear the last part. So could you repeat the

16 question?

17 Q. Sure. You didn't feel that it was necessary to do

18 the analysis because the conclusion would have been that

19 there would be no anticipation, correct?

20 A. No. I didn't do the analysis because I had the

21 conclusion from looking at the system, and it wasn't

22 necessary to look at a subset of the evidence and decide

23 whether the subset of the evidence would also produce the

24 conclusion I had for the system.

25 Q. All right. So the sole basis for your anticipation

1 opinion is this phantom CyberDesk system that no longer
 2 exists, except in the memory and some writings of memory
 3 of Dr. Dey and some writings, correct?
 4 **A.** Most of the systems from prior years are documented
 5 less well than this particular system was documented. I
 6 had clear and convincing evidence that this system did
 7 what it did at the -- in the second instantiation before
 8 the critical date and anticipated the '843 claims.
 9 **Q.** So on one hand you're telling me this is a
 10 well-documented system, better than others, I had what I
 11 needed. And on the other hand you're saying, I can't tell
 12 from the documents, things aren't clear from the
 13 documents. Is that what we're hearing today?
 14 **A.** Documents that are listed here as publications are on
 15 the right-hand side of this particular screen which
 16 describes four different sources of evidence. The
 17 combination of that information from all those different
 18 sources, just like I explain with my students in class,
 19 I've done interviews of them, I've looked at reports, I've
 20 looked at presentations, that's how I understand the
 21 system and can assign them grades in the next week.
 22 So the preponderance of the evidence is the
 23 combination of all these things.
 24 **Q.** What did you learn from Dr. Dey's testimony about
 25 CyberDesk that wasn't in these documents?

1 **A.** I couldn't be sure whether the Reader was something
 2 that could be editable. When we deal with e-mail systems,
 3 a person of skill in the art would know that e-mail is
 4 something which you can forward and make edits to. It
 5 wasn't crystal clear from that particular description in
 6 this very short document and this particular screen.
 7 **Q.** And Reader is understood by a person of ordinary
 8 skill in the art at the time to be just that, Reader.
 9 Read it, read only, can't edit, right?
 10 **A.** Reader presumes that can you read something. That's
 11 right.
 12 **Q.** But not write to it, correct?
 13 **A.** Doesn't necessarily say that you can write to it, no.
 14 **Q.** I'm sorry. Say it again.
 15 **A.** It doesn't indicate that you can write to it, no.
 16 **Q.** Okay. So despite the fact that Reader does not
 17 indicate that you can write to it, you are relying on the
 18 testimony of Dr. Dey to say, oh, yeah, when I said Reader,
 19 I meant full document editing. Is that your testimony?
 20 **A.** No. That's not what he said. He was asked if the
 21 first program was something that could be edited, and he
 22 said, yes, this is something you could write to. He
 23 didn't say the figure was misstated. He talked and gave
 24 us additional information in his testimony about how the
 25 system worked.

1 **A.** I mean, if you recall, in my testimony there were a
 2 number of slides where I had Dr. Dey's testimony. And I
 3 explained that they filled in and clarified what I was
 4 concerned with. So those are examples of what I learned
 5 through Dr. Dey's testimony. It's a long, long
 6 deposition. I went through the whole thing. And we heard
 7 a section of it last week that explained lots of things
 8 and went through carefully and explained how the claims
 9 were taught by this system.
 10 **Q.** Okay. Give me an example, please, of something you
 11 learned about CyberDesk from Dr. Dey's testimony that
 12 wasn't in the documents.
 13 **A.** Okay. So one of the things that I learned was that
 14 the -- what's referred to as the document editing program
 15 in some ways or the first computer program was something
 16 where you could do editing in the CHI 97 paper, when we
 17 looked at the screen there, we saw on the screen was from
 18 an e-mail message and Figure 3 it described Mail Reader.
 19 So readers are not typically things where you're sure that
 20 you can do editing, but he explained in his testimony,
 21 described that that indeed could be edited. So that's
 22 something that was not clear from that publication.
 23 **Q.** So your testimony is that when you look at Reader,
 24 it's ambiguous as to whether or not something is editable,
 25 the document is editable?

1 So the system works by combining two different
 2 things, a first program and a second one. And there are
 3 many different first programs that can be used, as he
 4 explained.
 5 **Q.** And you have no trouble relying on the uncorroborated
 6 testimony of Dr. Dey to prove invalidity by clear and
 7 convincing evidence?
 8 **A.** He's the creator of the system, and the system has
 9 been described as handling lots of different first
 10 programs. And he gave an example, and he explained that
 11 was the case. And if we look at the FCE website, the
 12 thing that we see in the second column over there, you see
 13 there are lots of different programs that are mentioned
 14 there. I pointed out and another slide of mine pointed
 15 out said Notepad was one of the desktop services. So
 16 there's a lot of evidence that supports what he said, and
 17 I believe it. He's a highly distinguished person. He's a
 18 dean --
 19 **Q.** Dean at the University of Washington computer science
 20 school, right?
 21 **A.** No, no. There's a different department for computer
 22 science. He's in the iSchool, the Information School.
 23 It's a different part of the campus and not the one that
 24 you were talking about the other day.
 25 **Q.** And you would agree -- so let me get this straight.

1 Again, on one hand, you are saying CyberDesk, well
2 documented, more than normal, and there's no proof, no
3 evidence other than Dr. Dey's testimony about documents
4 being editable?

5 **A.** I don't find that strange. I've tried in some of my
6 older systems to get them, to bring them back to life, and
7 it's really a hard thing to do.

8 **Q.** On one hand, you mentioned it's -- strike that.
9 On one hand, you mentioned that CyberDesk was well
10 documented, above average, but in the publications that
11 we've seen, there's nothing in there about editable text
12 so you have to go rely on Dr. Dey's uncorroborated
13 testimony.

14 That's your position, correct?

15 **A.** I think I've already said that the website talks
16 about a number of different services, including Notepad,
17 so that's another bit of documentation. Not in the
18 publications, but on the website.

19 **Q.** Well, again, as we agreed earlier the publication do
20 refer to the website right?

21 **A.** That's true.

22 **Q.** Yeah. So a person of ordinary skill in the art
23 person, like the patent examiner, could look at the
24 publications, see, hey, there's a website -- in fact,
25 actually, let's pull it up.

1 **A.** It wasn't clear from the other places that I looked
2 at. He made it very clear.

3 **Q.** Similarly --

4 **MR. LAHAD:** You can take that down, Mr. Boles.

5 **BY MR. LAHAD:**

6 **Q.** Similarly, you're relying on a collection of
7 materials to show what ADD did and when it did it,
8 correct?

9 **A.** Yes. I had a similar slide to the one you showed
10 with regard to CyberDesk pointing out the different
11 sources of evidence that were used, including the videos
12 that we all saw last week.

13 **Q.** I want to talk about those videos and the laptops.
14 You understand that those laptops, those didn't come --
15 let me step back.

16 You had a portion of your direct testimony where you
17 purported to use the actual ADD functionality, right?

18 **A.** Yes. So there's laptops sitting on the desk over
19 there that I referred to.

20 **Q.** Yes, you know, these --

21 **A.** And what I used -- can I finish?

22 **Q.** Yeah -- sorry. Go ahead.

23 **A.** So on the laptop, was a program called IAD. If we
24 remember, Miller's testimony, he explained that ADD was
25 the software system that was built, and a productized

1 **MR. LAHAD:** Mr. Boles, if you could pull up
2 DTX-14. And just go straight to the bottom paragraph.
3 Thank you.

4 **BY MR. LAHAD:**

5 **Q.** There's the website, the CyberDesk website in DTX-14,
6 correct?

7 Read the title of the document, please.

8 **A.** It says, "A demo version of CyberDesk is available
9 at," and then it gives the website.

10 **Q.** Right?

11 **A.** "Video accompanying the paper summarizes CyberDesk
12 and shows more sample scenarios. Code samples are
13 available at" -- and it gives another address.

14 **Q.** Okay. And so you testified earlier there's reference
15 to Notepad in the documents, correct?

16 **A.** On the website.

17 **Q.** Okay. On the website. And so let me ask you this
18 question: What did you get out of Dr. Dey's testimony
19 about how CyberDesk works that's not in the documents or
20 the website pointed to by the documents?

21 **A.** So the example I gave before is that he confirmed
22 that one could edit in the first computer program,
23 essentially.

24 **Q.** And there's a question about that from the documents
25 and the website?

1 version of this was IAD. So that's what I was actually
2 using on the system.

3 **Q.** You understand that these PowerBooks, those didn't
4 come from Apple, right?

5 **A.** Well, they were manufactured by Apple.

6 **Q.** Well, no, you recall Mr. Miller's testimony that he
7 found and purchased them?

8 **A.** As I said, they were manufactured by Apple.

9 **Q.** Yeah.

10 **A.** He purchased them later, yes, I understood that.

11 **Q.** Right.

12 No questioning from Google's lawyers about where and
13 when he came to have these laptops, right? Didn't hear
14 anything like that, did we?

15 **A.** We had his testimony where he talked about doing
16 that, in his deposition, which we all heard last week.

17 **Q.** Well, you recall that he said that he set up these
18 MAC Books about four or five years ago in that deposition.
19 Do you recall that?

20 **A.** Actually, they're PowerBooks. He said he purchased
21 them and he set them up. He had the old software, and he
22 installed that. That's what he said if I recall in his
23 deposition.

24 **Q.** We don't know where that software came from, do we?

25 **A.** He was under oath when he testified to that.

1 Q. We don't know where that software came from, do we?

2 A. Well, if you look on the machine and you run it, it

3 has information about that, but I don't recall the

4 details.

5 Q. He wasn't asked details during his deposition, was

6 he?

7 A. His deposition was quite long. We only heard a small

8 portion of it.

9 Q. And we didn't hear how he came to get the software,

10 did we?

11 A. I don't recall if there were other questions in his

12 deposition that was originally taken. We didn't hear that

13 last week.

14 Q. You understand that Mr. Miller put together these

15 laptops in 2013 or 2014, right? That's when he put these

16 laptops together; you understand that, right?

17 A. I haven't done the arithmetic to figure out when he

18 did the deposition and when he obtained them, how many

19 years ago. But if you say that.

20 Q. I mean, this is going to be easy, I hope. 2019 minus

21 five years is, 2014?

22 A. Sounds right, yes.

23 Q. All right. So assuming that, he put these laptops

24 together in 2014, right?

25 A. Yes. That's what the arithmetic tells us.

1 A. Jim Miller is the person that --

2 Q. Oh, I'm sorry. I get that messed up. Thank you very

3 much. Let me step back.

4 We heard deposition testimony from Dr. Dey -- again,

5 let me step back. I'm sorry.

6 One of your obviousness combinations is CyberDesk

7 plus Microsoft Word 97, correct?

8 A. Yes.

9 Q. Okay. We didn't hear any testimony from Dr. Dey

10 about combining CyberDesk with Microsoft Word 97, did we?

11 A. No, we didn't.

12 Q. Counsel for Google was asking him questions for, as

13 you said, well over an hour. We didn't hear any questions

14 about whether or not it would be appropriate to combine

15 CyberDesk with Word 97, correct?

16 A. He made clear that he was not hired as an expert

17 witness; he was hired as a fact witness. So my job is the

18 one to make the obviousness arguments. That's not the job

19 of a fact witness as far as I understand. That's my

20 interpretation.

21 Q. Yeah. But one of your opinions is that someone -- a

22 person of ordinary skill in the art would have been

23 motivated to combine CyberDesk and Word 97, right?

24 A. That's part of the argument of obviousness.

25 Q. At no point during his deposition was Dr. Dey asked,

1 Q. So the devices that you're relying on to show

2 invalidity are not from the late '90s, they're from 2013

3 and 2014, correct?

4 A. No. The machines are from the '90s and the software

5 is from the '90s.

6 Q. We don't know that, do we?

7 A. We have his testimony as far as that's concerned.

8 Q. You are -- as part of your opinions, you're combining

9 CyberDesk and ADD plus Word, right?

10 A. So my obviousness arguments were categorized. And I

11 had those three systems in four different combinations.

12 Q. Let me step back. Did you make any attempt to verify

13 the vintage of what was going on, on these laptops?

14 A. What do you mean by "vintage"?

15 Q. Did you make any effort to verify that the software

16 and programs and hardware and everything that these

17 laptops purport to be, did you make any attempt to

18 independently verify the accuracy of what they're

19 represented to be?

20 A. I looked at the machines, and I saw the date of

21 production. I looked at the running system. I looked at

22 the screens and the copyright notices and other kinds of

23 things, so I did some work about that, yes.

24 Q. Of course, the creator of ADD was deposed in this

25 case, right, Dr. Dey, right?

1 "Hey, would you have been motivated to combine CyberDesk

2 with Microsoft Word 97?"

3 A. That's a true statement as far as I know.

4 Q. Same thing with ADD. You're relying on ADD plus

5 Microsoft Word 97 to show obviousness, right?

6 A. That's one of obviousness cases, yes.

7 Q. And we heard from Mr. Miller, and at no point during

8 that deposition did we hear any questioning about whether

9 or not he would be motivated to combine ADD with Word 97,

10 correct?

11 A. I don't recall him being asked that, no.

12 Q. Nothing about that in either of those depositions,

13 correct?

14 A. I don't recall either of that, yes.

15 Q. If the jury finds that there is no motivation to

16 combine the systems you allege to be combined, then the

17 claims are not obvious, correct?

18 A. So I presented four different obviousness arguments.

19 Are you talking about all four of those?

20 Q. Well, you presented CyberDesk plus ADD, right?

21 A. Yes.

22 Q. If there's no motivation -- step back. Strike that.

23 If the jury finds there's no motivation to combine

24 CyberDesk with ADD, no obviousness, correct?

25 A. If the jury were to disregard the direct pointer from

1 CyberDesk to ADD --

2 Q. Dr. Fox, I'm on limited time could you answer my

3 question, please?

4 A. Could you repeat it?

5 Q. Sure. If the jury finds that there was no motivation

6 to combine CyberDesk plus ADD, there is no obviousness,

7 correct?

8 A. For that of the four cases, that would be the

9 situation, yes.

10 Q. And same thing for the combination of ADD plus

11 CyberDesk, right? If the jury finds there's no motivation

12 to combine in that direction, there's no obviousness,

13 correct?

14 A. If, in spite of evidence, they find there is no

15 additional motivation to combine, then that's what they

16 decide.

17 Q. And if the jury finds there is no motivation to

18 combine CyberDesk with Word 97, no obviousness, correct?

19 A. If the jury decides that, they make a decision.

20 Q. Say that again, please?

21 A. Again, if the jury makes a decision, then they make a

22 decision.

23 Q. Well, if their decision is that there is no

24 motivation to combine, then there's no obviousness, right?

25 A. If they make that decision, yes.

1 Q. Pictures are documentation of something, but it's not

2 a system, right?

3 A. No. The system is the software that is running that

4 we've heard all kind of evidence about.

5 MR. LAHAD: Thank you, Your Honor. No further

6 questions.

7 THE COURT: Thank you very much.

8 Redirect?

9 MS. ROBERTS: No redirect, Your Honor.

10 THE COURT: Okay. Please have a seat.

11 You may step down.

12 MS. ROBERTS: May Dr. Fox be excused?

13 THE COURT: Yes.

14 Okay. Ladies and gentlemen of the jury, we

15 will take our lunch break. I'm just double checking to

16 make sure that we have your lunches here, and we do. So

17 we will take you out right now.

18 (The jury exits the courtroom at 1:04 p.m.)

19 THE COURT: All right. Please be seated. I'm

20 going to take lunch as well and work on the jury

21 instructions. I can tell you this. I have a proposed

22 version of the verdict form that we'll put up and that

23 rules on disputing proposals with the jury instructions.

24 We are mostly done.

25 I did have a question that had to do with the

1 Q. If the jury finds there's no motivation to combine

2 ADD plus Word 97, there is no obviousness, correct?

3 A. Yes. The jury is empowered to make these decisions,

4 yes.

5 Q. All right. So using your bowling ball analogy, if

6 there is no motivation to combine, that's a gutter ball,

7 right?

8 A. That's the situation for the obviousness, but you

9 didn't give one for the anticipation.

10 Q. Well, there's no motivation to combine in the context

11 of anticipation, right?

12 A. That stands on its own. You don't need the

13 obviousness.

14 Q. No motivation to combine means gutter ball for

15 obviousness, right?

16 A. Yes. You don't get a second attempt if you can't

17 combine the things, certainly.

18 Q. In response to one of my questions, you said, "Well,

19 if you took a bunch of different pictures of me."

20 Do you recall that?

21 A. I recall testifying to that, I'm not sure if you

22 asked the question.

23 Q. That happens a lot. A picture of me or a set of

24 pictures of me, that's not a system, is it?

25 A. Pictures are documentation of something.

1 competing prior art proposals, understanding Arendi's

2 point that Google had already agreed to proposals. And I

3 will take that into account. But I was wondering why

4 we're disputing what the relevant date is for some of this

5 prior art. Does it even matter given the evidence we've

6 heard? We had an argument about a '97 date versus a '98

7 date. Can we get that worked out?

8 MS. SRINIVASAN: We can try to confer about it

9 maybe over lunch, but we have the '97 date, which was the

10 operative date that had been used in the jury instructions

11 until yesterday. So I think that's probably something we

12 should talk about. We got it back last night with the

13 addition of -- with the other date as well.

14 THE COURT: I don't think I was focused on

15 the -- the dates of this prior art as it was coming into

16 evidence because I didn't understand that to be a

17 particular dispute. But my recollection is that,

18 regardless of which date we used, the '97 or '98 date,

19 there wasn't really a dispute. But if you can all confer

20 on that, that would be helpful. That would streamline.

21 MR. LING: That was our understanding as well,

22 Your Honor. So we weren't really focused on that until we

23 were preparing for the -- our case in chief. And so there

24 is no evidence of an earlier invention date, so we don't

25 really think there should be a dispute.

1 THE COURT: Not having had the ten-year history
2 that you all have with this case, I don't know how we came
3 up with what we came up with. So understanding that I
4 could be opening up a can of worms with anything I do, you
5 all know better about this than I do. So why don't you
6 take a look at that and also take a look at version of the
7 Federal Circuit Bar Association Model Jury Instructions
8 where there is no dispute about dates, because I think we
9 might be able to maybe crib some language from that could
10 help with us. Okay? We will be in lunch recess.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Please be seated.

13 MR. UNIKEL: Your Honor, may I ask a 10-second
14 question?

15 THE COURT: Yes.

16 MR. UNIKEL: I know both parties have to
17 reserve enough time for closings, and I was wondering if
18 we can get some count from the Court as to --

19 THE COURT: That's what I'm working on right
20 now. So for today, I'm charging as of this minute, an
21 hour 18 to Arendi, and hour 12 to Google. So the time --
22 I won't charge the time before the jury came out to either
23 side as it took a significant amount of time reviewing
24 expert reports in chambers so that I could rule on
25 Arendi's objections. I won't charge that time to Arendi,

1 but I will charge the time to Arendi after I came out and
2 took the bench but before we brought the jury back out.
3 So I think that's fair to both sides because I didn't
4 charge additional time to Arendi, which I could have spent
5 on the bench reviewing expert reports to see if they were
6 inconsistent. That's the way that worked out.

7 So based on that, by my rough calculation, it
8 looks like Google is at 12:26 -- no, sorry, Arendi is at
9 12:26. Google is at 10:41.

10 Does that sound right to everyone?

11 MR. UNIKEL: I believe so, Your Honor.

12 MS. SRINIVASAN: Sounds right, Your Honor.

13 THE COURT: All right. So that means we have
14 to reserve an hour for closings, that Arendi's got a
15 little bit over an hour left for examinations. And
16 Google's got a couple hours more than that, almost.

17 Okay. Are we ready to bring the jury out?

18 MR. PETERMAN: Your Honor, just to note, this
19 is Mr. Kidder's testimony. There will be two segments
20 within his direct where we'll need to close the courtroom
21 talking because we're talking about other settlement
22 agreements.

23 THE COURT: Okay. How about cross? Can we
24 keep it modulated?

25 MS. SRINIVASAN: We will try to do that, Your

1 Honor.

2 THE COURT: Okay. Very good.

3 MS. SRINIVASAN: We will have to hear direct,
4 but I suspect we will try to do that.

5 MR. PETERMAN: Thank you, Your Honor.

6 THE COURT: Understood. All right. Let's
7 bring the jury out.

8 (The jury enters the courtroom at 2:20 p.m.)

9 THE CLERK: Your Honor, the jury.

10 THE COURT: Welcome back, ladies and gentlemen.
11 Have a seat.

12 Lets have Google call its next witness.

13 MR. PETERMAN: Good afternoon, Your Honor.
14 Google calls Mr. Douglas Kidder to the stand.

15 THE COURT: Please approach, sir.

16 MR. PETERMAN: May I approach?

17 THE COURT: Yes.

18 THE CLERK: Please state and spell your name
19 for the record.

20 THE WITNESS: Douglas Kidder, D-O-U-G-L-A-S,
21 K-I-D-D-E-R.

22 DOUGLAS KIDDER, having been called as a witness,
23 being first duly sworn under oath or affirmed, testified
24 as follows:
25

Kidder - Direct

1 THE CLERK: Thank you. Please be seated.

DIRECT EXAMINATION

2 BY MR. PETERMAN:

3 Q. Good afternoon, Mr. Kidder.

4 A. Good afternoon.

5 Q. Would you please introduce yourself to the jury.

6 A. Sure. My name is Doug Kidder.

7 Q. What is your area of professional expertise?

8 A. I'm a damages expert. I calculate damages in cases
9 such as this.

10 Q. And did you prepare some slides to accompany your
11 testimony today?

12 A. Yes, I did.

13 Q. What is your professional expertise as is relevant to
14 this case?

15 A. So I'm a managing partner with a small firm that we,
16 basically, do damages calculations. I have about 25 years
17 experience working with intellectual property matters.
18 I've bought and sold my own businesses before, and I've
19 testified in over 70 cases, over 30 of which involved
20 patents.

21 Q. And what experience do you have in licensing
22 practices?

23 A. So in the course of my career, I figure I've read
24
25

1 over a thousand different licenses. It's just -- kind of
 2 comes with the territory.

3 Q. And can you give the jury a little bit of
 4 understanding of your educational background and other
 5 accomplishments?

6 A. Sure. So it's not on here that I graduated from
 7 Milford Miller High School, Baltimore County, and went to
 8 Amherst College, and then went to UC Berkeley for a
 9 master's of science.

10 Q. And what about your professional affiliations?

11 A. I was Adjunct Professor at Golden Gate University,
 12 which is a local college in the San Francisco area. And I
 13 was teaching a course on damages in their school of
 14 accounting there. And I'm also a member of a couple of
 15 societies that people like me tend to join.

16 Q. Mr. Kidder, your firm is being compensated for the
 17 time that you've spent working on this case, correct?

18 A. Yes.

19 Q. And will the outcome of this trial have any impact on
 20 your compensation?

21 A. No, it will not.

22 MR. PETERMAN: Your Honor, we tender Mr. Kidder
 23 as an expert in the valuation of intellectual property,
 24 calculation of patent damages, and licensing.

25 MS. SRINIVASAN: No objection.

1 THE COURT: All right. He is so qualified.

2 BY MR. PETERMAN:

3 Q. Mr. Kidder, what were you asked to do in this case?

4 A. I was asked to calculate damages, assuming that the
 5 '843 patent is valid and infringed. So I take that as an
 6 assumption. So I was asked to calculate damages, and also
 7 reply to the opinions that were expressed by
 8 Mr. Weinstein, essentially my counterpart, on Arendi's
 9 side.

10 Q. Mr. Kidder, if the '843 patent is valid and
 11 infringed, what is your opinion on the appropriate measure
 12 of damages that Google would owe Arendi?

13 A. It is \$500,000. It is -- you know, it's not the
 14 \$45 million that Mr. Weinstein calculated.

15 Q. Now, Mr. --

16 MR. PETERMAN: Now, at this time, Your Honor,
 17 we actually do need to seal the courtroom.

18 THE COURT: All right. Ms. Garfinkel, seal the
 19 courtroom.

20 * * *

21 (The following discussion is held under seal:
 22 THE COURT: The courtroom has been sealed.
 23 MR. PETERMAN: Thank you, Your Honor.
 24 BY MR. PETERMAN:
 25 Q. Mr. Kidder, on a high level, why is Arendi's damages

1 request wrong?

2 A. Because it's completely out of scale with what
 3 they've settled for in other cases. So you can see, I
 4 just put together a quick graphic here showing that, you
 5 know, Arendi's asking for \$45 million. They settled for
 6 [REDACTED] and [REDACTED]. And as I'll
 7 describe later, the license that would be extended to
 8 Google is for a far shorter period of time for a far
 9 shorter extent of accused use. One would expect the
 10 payments to scale with the amount of accused products.

11 Q. So Mr. Weinstein is making a 45 and a half million
 12 dollar damage calculation for Google.

13 What demand did he make the Apple litigation?
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]

24 Q. Mr. Kidder, we are going to go through your opinions
 25 in a step-by-step manner, but let's get back to some of

1 the basics first.

2 Will you tell the jury what evidence you reviewed in
 3 order to form your opinions here?

4 A. Sure. It is very similar to what Mr. Weinstein
 5 looked at. I started by reviewing the '843 patent, and I
 6 looked at the existing licenses. And there are four up
 7 there you should probably recognize by now: Samsung,
 8 Microsoft, Microsoft Mobility, Apple. And then the fifth
 9 license with InNova, which you've heard a little bit
 10 about. I also reviewed the financial records that were
 11 produced by Google in this matter, some limited financials
 12 from Arendi, and other evidence, just e-mails, web
 13 searches, documents, kind of a catch-all.

14 Q. Mr. Kidder, what is your understanding of the
 15 products that are accused here? Start with the devices
 16 first.

17 A. So the accused devices here Pixel 2, Pixel 3 family
 18 of devices that were sold with Android 8 with STS on them.
 19 So there were some devices sold prior to that, that didn't
 20 have Android STS, but it's only those that were sold after
 21 December 5, 2017.

22 Q. And with respect to the apps, what is your
 23 understanding of the accused apps in this case?

24 A. Again, there are 12 apps here, and I think you've
 25 seen this list previously. So it's any app that was

1 downloaded from Google between December 5, 2017, when
 2 Android 8 with STS was enabled, to November 10, 2018, when
 3 the patent expired. So it's the accused apps here are all
 4 the ones downloaded from that period.

5 Q. Mr. Kidder, what were Google's revenues for the apps
 6 that are accused in this case?

7 A. So the total revenues here for the accused devices,
 8 the Pixel 2 and 3 in that time frame, is [REDACTED].
 9 And the accused apps, which is the apps that were
 10 downloaded, again, between December 5, 2017, and
 11 November 5, 2018, it's about [REDACTED], leaving you
 12 with a total of about [REDACTED] in accused revenue
 13 here.

14 Q. And what is the basic measure of damages that you
 15 applied in this patent case?

16 A. So the -- you should recognize this slide from
 17 Mr. Weinstein's. We're all doing the same thing here,
 18 which is that the measured damages is a reasonable royalty
 19 for the use made of the invention by the infringer.

20 Q. Mr. Weinstein mentioned Georgia-Pacific Factors, did
 21 you also use those?

22 A. Yes, I did.

23 Q. And in addition to the 14 factors that are listed
 24 here, is there a 15th factor that you also applied?

25 A. Yes, there is. So the 15th factor is really this

1 was asserting that Google was infringing on a patent that
 2 it had. And so inNova, Google paid inNova. So it's -- in
 3 the jargon, it's in-licensing versus out-licensing. This
 4 is Google taking a license to something.

5 Q. So how much was paid for each of these settlement and
 6 license agreements?

7 A. So again, these are numbers that I think we're
 8 generally familiar with. [REDACTED]
 9 [REDACTED] And inNova received \$625,000
 10 from Google.

11 Q. Now, in front of you in the binder, there is a tab
 12 that's marked DTX-499.

13 Do you see that?

14 A. Sorry. Yes, I do.

15 Q. Take a second to refresh yourself with the document,
 16 and the first question is, what is the document?

17 A. So this document is the license between inNova and
 18 Google.

19 Q. And is this the inNova agreement that you just
 20 referenced?

21 A. Yes, it is.

22 Q. Did you rely upon this inNova agreement as part of
 23 the opinions you are relying on in this case?

24 A. Yes.

1 notion of a hypothetical negotiation, which I thought
 2 Mr. Weinstein did a good job explaining the basic idea of
 3 the Georgia-Pacific analysis and the hypothetical
 4 negotiation, this idea that the parties sit down around
 5 the time that infringement began and negotiate the
 6 license. And the question is, what's the opinion as to
 7 what that license amount would be.

8 Q. And in general, how did you apply the Georgia-Pacific
 9 factors here?

10 A. So the Georgia-Pacific analysis is, basically, you
 11 start, it's like valuing real estate or valuing a car.
 12 The first thing you do is you look for comparable
 13 transactions. What did people actually pay for this
 14 property or similar properties. And then you adjust it up
 15 or down for various differences between comparables and
 16 the property that you're trying to evaluate.

17 Q. So what did you determine in this case were
 18 comparable licenses?

19 A. So there were four licenses I viewed as comparable.
 20 There was a settlement agreement with Apple, settlement
 21 agreement with Samsung, settlement agreement with
 22 Microsoft, and the settlement agreement with inNova.

23 Now, the inNova one is a little different. I mean,
 24 you've heard about Apple, Samsung, and Microsoft
 25 repeatedly. The inNova one was a license in which inNova

1 MR. PETERMAN: Your Honor, we move DTX-499, the
 2 inNova license, into evidence.

3 MS. SRINIVASAN: No objection.

4 THE COURT: It's admitted.

5 (Exhibit DTX-499 is admitted into evidence.)

6 BY MR. PETERMAN:

7 Q. Now, Mr. Kidder, why is it in your opinion that
 8 inNova is a comparable license?

9 A. So it's comparable in the sense -- in sort of two
 10 senses. There's economic comparability, and then this is
 11 a license for, turns out to be just three patents. There
 12 is one that was asserted against Google, an inNova
 13 license, just two other patents. So it's relatively
 14 simple.

15 There are a lot of licenses you see that are broad
 16 portfolio licenses that one company may take a license
 17 from another for a hundred different patents. And that's,
 18 in an economic sense, not comparable to what we're looking
 19 at here.

20 It's also comparable from a technology perspective in
 21 that it licensed a similar patent. The patent is similar
 22 technologically to the '843 patent.

23 Q. And how do you know its technologically comparable?

24 A. I relied on the opinion of Dr. Martin Rinard for
 25 that.

1 Q. And how comparable are the rest of the three licenses
 2 that you relied upon?
 3 A. Well, they're all very comparable in the sense that
 4 the '843 patent was licensed by every one of Apple,
 5 Samsung, and Microsoft.
 6 Q. Now, you mentioned under the Georgia-Pacific factors
 7 you need to make adjustments based on the licenses.
 8 What is the first adjustment that you made here?
 9 A. So the first adjustment I made was -- the jargoning
 10 term for it is extend of use. In other words, what -- how
 11 much in revenue is being accused or infringing by Arendi
 12 for each of the other licensees. And so in Apple's case,
 13 the accused products were some of their big sellers -- it
 14 was phones, tablets, PCs -- over a period of, I think it's
 15 nine years.
 16 So it amounts to \$422 billion of revenue that Arendi
 17 was accusing.
 18 Similarly, [REDACTED]
 19 [REDACTED]
 20 Excuse me. For Microsoft, it was Microsoft's Office
 21 product, and again, over the multi-year term of that
 22 [REDACTED]
 23 Microsoft.
 24 Q. Now, I understand that Mr. Weinstein looked at
 25 units -- number of apps, number of devices -- as opposed

1 Q. And I notice that there's no revenue for inNova. Why
 2 is that?
 3 A. Because there wasn't publicly available documentation
 4 on what the accused revenues were. It was all Google. So
 5 it was internal. It was Google products, and Google
 6 products, I wouldn't expect to see a difference in revenue
 7 there.
 8 Q. So, Mr. Kidder, what's the next step you took in your
 9 analysis?
 10 A. So the next thing is to understand the --
 11 essentially, how to scale that license amount. So we know
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 So it just gives you an idea of what percentage of
 20 those revenues were paid as a license amount.
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 to revenue.
 2 Why did you approach this as looking at revenue as
 3 opposed to units?
 4 A. Well, so the problem with units is that they're
 5 different things, right, and, you know, the Apple units
 6 and the Samsung units being phones and tablets, they're
 7 sort of the same thing. But when you move over to
 8 Microsoft and you start trying to equate one unit of
 9 Microsoft office, which, in and of itself, you wonder how
 10 to count the units there. Is that one unit, or is that --
 11 Word plus Excel plus PowerPoint plus Outlook -- is it four
 12 units?
 13 So "unit" becomes kind of this funny and sort of
 14 indeterminate number. But if you look at revenues,
 15 revenues are what the company's received from selling
 16 their products. And that's what profits are made off of.
 17 And then at the end of the day, what I'm talking about is
 18 money, so I focused on revenues.
 19 Q. And how did you determine the revenue numbers that
 20 you have here for Apple, Samsung, and Microsoft?
 21 A. It was a combination of evidence that was provided by
 22 Arendi and also just public -- you know, you go and you do
 23 searches and you try to understand to the best extent you
 24 can, you know, how much Microsoft made selling Office over
 25 those nine years.

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Q. Now, what's the next step in your analysis, Mr.
 8 Kidder?
 9 A. Well, you compare that to Google's revenue, which we
 10 just saw before. And you can see that Google's revenue is
 11 very much smaller than the accused revenue for [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED] And if you take the -- if you scale Google's
 21 revenues to [REDACTED] you get [REDACTED]. [REDACTED]
 22 [REDACTED]
 23 [REDACTED] And I did not do any scaling for inNova
 24 because that's Google on Google. So that would leave you
 25 with \$625,000.

1 Q. So, Mr. Kidder, how do the number of patents at issue
 2 in this current litigation compare to the number of
 3 patents at issue in the other litigations?
 4 A. So what I did here -- so the short answer is, there's
 5 only one patent here; there are multiple patents in the
 6 other litigations. And what I've done here is I've just
 7 prepared a chart in which you can see -- excuse me --
 8 under -- in the columns under each of those license names
 9 is the number of patents.
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED] -- and these are all Arendi
 13 patents, just to be clear. [REDACTED]
 14 [REDACTED] And in InNova,
 15 Google got a license to three patents plus seven patent
 16 applications.
 17 So they're all sort of bigger things than just the
 18 '843 patent.
 19 Q. So, Mr. Kidder, why did you feel it was important to
 20 point this out to the jury?
 21 A. Well, it's, you know, it's a comparable in the sense
 22 that, you know, all of these licenses are to the '843
 23 patent, but all of the licenses also included other stuff
 24 that has to have some value.
 25 Q. Going back to your house analogy, what effect does

1 the number of patents have on your conclusions?
 2 A. It would reduce it from the starting point. So if
 3 you scale it by revenue, you get numbers in blue at the
 4 top. But you also recognize that Google is getting a
 5 license to fewer things. So you -- that suggests a
 6 downward adjustment.
 7 Q. Do you have a precise amount of downward adjustment
 8 that you are applying?
 9 A. No, I don't. And the reason for that is that patents
 10 can have widely different values. [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED] The only thing you can be sure of is that the
 15 additional patents are worth something.
 16 Q. Now, did Mr. Weinstein account for additional patents
 17 in his analysis?
 18 A. No, he did not.
 19 Q. Do you believe this failure to account for additional
 20 patents was an error?
 21 A. I do.
 22 Q. Why is that?
 23 A. Because, basically, it inflates his opinion. It
 24 accords no value to it, and yet there had to have been
 25 some value. So some part of his calculation of

1 \$45 million has got to be attributable to the other
 2 [REDACTED] received a
 3 license to.
 4 Q. Now, what about the license terms, meaning, the
 5 length of the license? How do those compare between the
 6 license matter in the Google case versus the licenses in
 7 those other cases?
 8 A. So Apple, Samsung, and Microsoft all got licenses for
 9 approximately 9.7 years. That was the amount of time they
 10 had before the patents all expired. And in the InNova
 11 license, Google got a license to patents that lasted for
 12 about 12.4 years. And in this case, Arendi is accusing
 13 Google of using its patents for an 11-month term.
 14 So in this case, the license term for Google is
 15 vastly shorter than the license terms for the other
 16 patents -- excuse me -- the other agreements.
 17 Q. And what effect does the shorter duration for the
 18 Google license have in your opinions?
 19 A. It would tend to reduce it.
 20 Q. How much of a downward effect?
 21 A. Well, it's hard to, again, put an exact number on it
 22 for a couple of reasons. There doesn't tend to be a
 23 linear relationship between the length -- the term of the
 24 license and the amount paid.
 25 And secondarily, this is partly also covered by

1 scaling for revenue because the revenues I looked at were
 2 over the entire term. It has some downward affect, but
 3 it's not a dramatic effect.
 4 Q. So I see a lot of red arrows here.
 5 What does this mean for your opinion?
 6 A. Well, what it means is that you would start with the
 7 numbers in blue up there, which are the scaled revenue
 8 numbers, and you would adjust them downward for the number
 9 of licensed patents and the shorter term.
 10 Q. Are there any considerations that would increase the
 11 numbers upwards?
 12 A. Yes.
 13 Q. What consideration is that?
 14 A. That's the concept of known, valid, and infringed.
 15 And, again, Mr. Weinstein described this a little bit, so
 16 I won't belabor the point. But in this hypothetical
 17 negotiation between Arendi and Google around the date when
 18 Google first starts using this technology, the assumption
 19 is that the patent is valid and the patent is infringed.
 20 And this is not a situation that you see in a sort of a
 21 nonhypothetical negotiation license in the sense that in,
 22 not all, but in many negotiations, the licensee says,
 23 "Well, I'm not sure your patents are valid. I'm not sure
 24 I infringed," and that sort of gives them some leverage to
 25 negotiate downward on the amount they want to pay.

1 Q. So, Mr. Kidder, considering all these different
 2 factors, what is your opinion as to the amount of a
 3 reasonable royalty, assuming that Google is found to
 4 infringe the '843 patent and it's also found valid?
 5 A. Well, my conclusion, as I stated earlier, is
 6 \$500,000.
 7 Q. And how did you arrive at \$500,000 given all the
 8 information you presented to the jury?
 9 A. Well, what I did was that I very much followed what
 10 you're seeing on the screen here, and then sat back and
 11 thought about, well, as a damages expert, what I'm trying
 12 to do here is, I'm thinking about validity and
 13 infringement. I'm trying to be as conservative as
 14 possible. I'm trying to step back and give Arendi as much
 15 credit as I think it might be due in a hypothetical
 16 negotiation. And I think about where this might come out.
 17 And when I looked at the evidence, to me, the
 18 licenses that were most similar here to what we're dealing
 19 with Google are the Apple and Samsung licenses. Right.
 20 Microsoft is a different thing. Microsoft, they're
 21 licensing it for use in Office, which there's no sort of
 22 equivalent comparable product at Google. So the two that
 23 are clearest to me are Apple and Samsung. And I believe
 24 I've been very conservative in the \$500,000 opinion.
 25 MR. PETERMAN: Thank you. Mr. Spencer, you can

1 take that down.
 2 Your Honor, we can open the courtroom for this
 3 next section.
 4 THE COURT: Thank you. Let's unseal the
 5 courtroom.
 6 * * *
 7 (Whereupon, the sealed discussion concludes.)
 8 - - -
 9 BY MR. PETERMAN:
 10 Q. Mr. Kidder, in your binder you have Exhibit DTX-1148.
 11 A. Yes, I do.
 12 Q. What is this document?
 13 A. This was an exhibit that was attached to
 14 Mr. Weinstein's report, maybe it's two separate exhibits,
 15 but they were exhibits to Mr. Weinstein report.
 16 Q. And did you rely upon this document in forming your
 17 opinions with respect to this case?
 18 A. Yes, I did.
 19 Q. In general, what are the contents of the exhibit?
 20 A. So what's in the exhibit is, basically, it's a count
 21 by Mr. Weinstein of the total number of units of accused
 22 products and between 2012 and 2018 with a lot of blanks.
 23 MR. PETERMAN: Your Honor, we move to admit
 24 DTX-1148.
 25 MS. SRINIVASAN: My understanding was we were

1 going to use it for demonstrative purposes rather than for
 2 admission.
 3 THE COURT: All right. Let me see counsel at
 4 sidebar briefly.
 5 - - -
 6 (Whereupon, the following discussion is held at
 7 sidebar.)
 8 THE COURT: Counsel, my recollection is that I
 9 said that this exhibit could be admitted to the extent he
 10 wants to highlight it, and he can make that into a
 11 demonstrative.
 12 MS. SRINIVASAN: Objection withdrawn.
 13 MR. PETERMAN: Thank you, Your Honor.
 14 (Whereupon, the discussion at sidebar concludes.)
 15 - - -
 16 MR. PETERMAN: We move to admit DTX-1148 into
 17 evidence.
 18 MS. SRINIVASAN: No objection.
 19 THE COURT: It's admitted.
 20 (Exhibit DTX-1148 is admitted into evidence.)
 21 BY MR. PETERMAN:
 22 Q. Mr. Kidder, what's being reflected here on the first
 23 page of this exhibit?
 24 A. So this is the total number of count of devices for
 25 Pixel 1, Pixel 2, Pixel 3. And you can see the sources

1 down at the bottom come from a couple of Google documents
 2 and deposition of Sai Marri.
 3 Q. And who is Sai Marri?
 4 A. He's a Google employee that was the individual who
 5 produced these documents.
 6 Q. And did you review this deposition of Mr. Marri?
 7 A. Yes, I did.
 8 Q. And is it your understanding that some of the numbers
 9 here within this exhibit are no longer accused?
 10 A. Yes, that's correct; this is an older version.
 11 Q. And what numbers need to be removed?
 12 A. So you need to take out the entire row that says,
 13 "Pixel 1." I'm hoping that we can do that graphically.
 14 Is there a way to sort of highlight that? Oh, look at
 15 that. Okay. Great.
 16 And my memory is that the Pixel 2 started selling a
 17 little before -- I think it started selling in
 18 October 2017. So part of the Pixel 2 number, 926,349, is
 19 also -- I wouldn't erase the whole thing, but recognize
 20 not all of that is currently accused.
 21 Q. And to be clear whose exhibit is this?
 22 A. This is Mr. Weinstein's.
 23 Q. And let's go to the next page of this exhibit.
 24 What's being reflected here in the second page of
 25 DTX-1148?

1 A. So this is Mr. Weinstein's count of the accused app
2 downloads by year. And you can see, again, there's some
3 sources down the bottom that have GOOG-something, and
4 those are documents that were produced by Google in this
5 case.
6 Q. And did you review those documents?
7 A. Yes, I did.
8 Q. Now, what entries did Mr. Weinstein remove from this
9 exhibit in connection with his opinions in this case?
10 A. Well, the current opinion, if you see Row 6 there, it
11 says, "News," so please remove all of News because that's
12 no longer accused. And then you remove all of the numbers
13 for Chrome up through 2016. That's the first row.
14 And then you would remove part of the 2017 figures
15 for Chrome, that 105,609. Again, the accused infringement
16 starts in December of 2017, so most of that 105 million
17 units in 2017 occurred before December, so you remove a
18 good chunk of that as well.
19 Q. And in the opinions that you formed regarding
20 Mr. Weinstein's analysis, did you use the numbers based
21 off of the updated modifications that you just made on the
22 stand?
23 A. Yes. So this led me to understand what he was
24 accusing, and I used that to calculate the revenues for
25 the appropriate time period.

1 Q. So what does that mean for his analysis?
2 A. It means that it's overstated. So if you -- so the
3 entire pie here is his entire \$45 million analysis.
4 If you take out the units I just identified between
5 August and December 2017, you take out about a third of
6 that pie.
7 Q. Now, Mr. Weinstein testified regarding the launch of
8 STS in connection with his testimony last week, correct?
9 A. Yes.
10 Q. And what did Mr. Weinstein say as far as you are
11 aware, was the impact if STS did not launch before
12 December 5, 2017, on his opinions?
13 A. Well, he agreed. If Google is correct the date is
14 later than August, which is the date I and Mr. Weinstein
15 used, then the period between August and December would
16 not include infringing devices or apps. So he agrees that
17 if Google is right, it was December instead of August,
18 that his figures are all overstated.
19 Q. Is there specific testimony that you recall from last
20 week which supports the December date as opposed to August
21 date?
22 A. Yes. My memory is that -- I think it was
23 Mr. Elbouchikhi -- yes, Mr. Elbouchikhi testified
24 December 2017 is the first time when we actually activated
25 this feature for users who had 0-MR1, which is Android 8

1 MR. PETERMAN: You can go back to the deck.
2 BY MR. PETERMAN:
3 Q. Now, were you in Court for Mr. Weinstein's testimony?
4 A. Yes, I was.
5 Q. And you come to a very different conclusion with
6 respect to damages than Mr. Weinstein did; is that
7 correct?
8 A. Yes. I think that's a fair statement.
9 Q. What were the major errors that you've identified in
10 his analysis?
11 A. So there are a number of them. And I will just, you
12 know, without reading the cover slide, I'll take you
13 through the six major errors that I saw in his analysis.
14 The first one is -- I just call it the wrong number
15 of units.
16 Q. Explain what you mean by "the wrong number of units."
17 A. Sure. There are a couple of parts to that. But the
18 first thing to start with is this -- as he told you, he
19 started his count of the number of units on August 21,
20 2017, when Android 8 was released. But the testimony I
21 heard was that STS was not enabled in Android 8 until
22 December 5, 2017. And in between those two periods,
23 there's 149 million app downloads and .9 million or
24 900,000 devices sold that were sold or downloaded without
25 STS enabled.

1 with maintenance release 1.
2 Q. Was there additional testimony?
3 A. Yes. Mr. Toki, who is also a Google engineer, said
4 that the source code would have been published around
5 December 2017. Again, the evidence seems that while
6 Android 8 was released in August, STS was not enabled
7 until December.
8 Q. Did you also consider testimony from Mr. Choc?
9 A. Yes. Mr. Choc verified that Android 8, or O-MR1,
10 released in December 2017.
11 Q. Are there other errors with the unit count?
12 A. Yes.
13 Q. What are those errors?
14 A. So we've been talking about particularly the apps,
15 and the question is -- well, not the question -- but what
16 Mr. Weinstein did was he assumed that an app that was
17 downloaded, let's assume in middle of December,
18 December 15, 2017. He assumed that an app downloaded in
19 December of 2017 would be downloaded onto a device that
20 had STS. Well, that would require that device be running
21 not only Android 8, but it's got to be running Android 8
22 with maintenance release 1 on it.
23 Q. Now, what data did Mr. Weinstein rely upon for his
24 analysis?
25 A. So this is DTX-581, which I'm assuming is in this

1 binder?

2 Q. Yes, it is.

3 A. Good guess, huh? There it is.

4 Q. Now, did you also review DTX-581 as part of your

5 analysis?

6 A. Yes. It's the underlying data provided by Google

7 that led to the unit count that Mr. Weinstein relied upon.

8 Q. And what did Mr. Weinstein understand with respect to

9 the data in DTX-581 for the year 2017 and 2018?

10 A. Well, what he testified to was he understood them to

11 be specifically for Android 8 or 9. That that's what his

12 number was.

13 Q. Was Mr. Weinstein correct?

14 A. No, absolutely not.

15 Q. How do you know that?

16 A. Well, the most definitive source of that was a

17 deposition of Sai Marri which he reviewed, and Mr. Marri

18 was specifically asked whether downloads -- the download

19 counts in this document for the time period of 2018 were

20 just for Android 8 or 9 or whether they were from all

21 versions of Android and Mr. Marri said, no, they are from

22 all versions of Android.

23 MS. SRINIVASAN: Your Honor, can we have a

24 sidebar?

25 THE COURT: Yes.

Kidder - Direct

1 devices.

2 The point here is that Mr. Weinstein, on the

3 stand, referred to the phantom interrogatory that he

4 relied upon in support of his opinion. It's very clear

5 that Mr. Weinstein was aware of the Marri deposition. He

6 cites it in his "materials considered" as part of his

7 report and this evidence regarding Mr. Marri's deposition

8 directly counters the position Mr. Weinstein took on the

9 stand.

10 THE COURT: He is talking on the stand about

11 the Pixel devices?

12 MR. PETERMAN: No, he is talking about the

13 deposition of Mr. Marri in connection with the Android

14 downloads.

15 THE COURT: All right. Stand by.

16 We're going to allow him to testify about this.

17 And we've reviewed the testimony of Mr. Weinstein over the

18 weekend, and he testified that he understood these numbers

19 to come from interrogatory response. We've had no

20 interrogatory response identified, but the jury has heard

21 evidence about where he says these numbers came from.

22 I do think that Google ought to be able to

23 rebut that, but I don't want to hear any new opinions from

24 him about those numbers beyond just the fact of where they

25 came from.

Kidder - Direct

1 - - -

2 (Whereupon, the following discussion is held at

3 sidebar.)

4 MS. SRINIVASAN: Your Honor, this is

5 undisclosed opinion for Mr. Kidder. His reliance on

6 Mr. Marri's testimony -- by the way, Mr. Marri was deposed

7 in 2019. He could not have disclosed this opinion in 2022

8 if he had the opinion that somehow the units in these

9 installed downloaded numbers were overstated, but he

10 didn't because he uses those numbers himself. Never

11 disclosed an opinion like this in his prior -- we are

12 talking about a spreadsheet was available to him that he

13 cites in his report.

14 This is something that is now being raised for

15 the first time from Mr. Kidder, that he has a reason to

16 believe that those numbers are overstated because of the

17 operating system. That is not what -- he did not disclose

18 that opinion in his report.

19 THE COURT: Let me make sure we are all on the

20 same page. So does Mr. Kidder have in his expert report

21 any reliance on the testimony of Mr. Marri?

22 MR. PETERMAN: Mr. Kidder does list depositions

23 as part of "materials considered" and the deposition of

24 Sai Marri is, I think, part of -- it's cited in a couple

25 different places and his report with respect to the Pixel

1 MR. PETERMAN: Yes, Your Honor. Our point is

2 that the numbers, the data that Mr. Weinstein relied upon

3 included all versions of Android, not just 8 or 9, so

4 Mr. Weinstein's analysis is unreliable on that basis.

5 THE COURT: That's where it will end.

6 MS. SRINIVASAN: Mr. Kidder is not a technical

7 expert. He is not here to give an opinion about

8 non-infringing units. Again, not in his report. So if

9 he's talking just about the numbers, that's one thing. If

10 he is going to offer an opinion it is overstated by any

11 amount, that's not disclosed.

12 THE COURT: He is allowed to offer an opinion

13 it is overstated by some amount. That is fair and within

14 the scope of the other opinions he's rendered in his

15 expert report. And I also think it's fair, given the

16 situation that we're in right now; we had changes, as I

17 mentioned on the last break, to what Dr. Smedley's opinion

18 was. So it sounds like we will be talking in general

19 terms and that's fine.

20 MS. SRINIVASAN: For a point of clarification,

21 if we are going to be doing this, we will want to use

22 exhibits from Mr. Kidder's expert reports, which per our

23 conversation this morning, if we are going to use that as

24 a demonstrative, we only show 2017, 2018 because he's, you

25 know, using the same units we are going to demonstrate

1 that he -- to rebut his position now that they are not
2 reliable or overstated.

3 **THE COURT:** I understand you may want to do
4 that. If there are objections to the exhibits, we will
5 deal with those at the time.

6 **MS. SRINIVASAN:** Thank you, Your Honor.

7 **MR. PETERMAN:** Thank you, Your Honor.

8 **THE COURT:** Let's continue.

9 (Whereupon, the discussion at sidebar
10 concludes.)

11 - - -

12 **BY MR. PETERMAN:**

13 **Q.** Mr. Kidder, the deposition of Mr. Marri that you
14 referred to, was that the same deposition that was cited
15 on the face of DTX-1148, Mr. Weinstein's Supplemental
16 Reply exhibit?

17 **A.** I am pretty sure it was. I think it was the
18 December 2019 deposition.

19 **Q.** And did you rely on Mr. Marri's December 2019
20 deposition as part of your opinions in this case?

21 **A.** Yes, I did.

22 **Q.** What does -- the testimony from Mr. Marri, how does
23 that impact your opinions here?

24 **A.** It doesn't affect my affirmative opinion, but it
25 affects my view of Mr. Weinstein's opinion in that

1 Mr. Marri confirmed that, in fact, those downloads were
2 for more than just Android 8 or 9.

3 **Q.** What does that mean for Mr. Weinstein's analysis that
4 he presented last week?

5 **A.** Well, it means that his counts of downloads, the many
6 of those downloads are actually not infringing, or there
7 is no evidence of what portion of those downloads are on a
8 device that has STS on it.

9 **Q.** Besides Mr. Marri's deposition testimony, is there
10 any other evidence that confirms that the data in DTX-0581
11 for 2017 and 2018 is for all Android versions, not just
12 Android 8 and Android 9?

13 **A.** Sure. So I don't know if you have a version -- okay.
14 That's fine. So --

15 **Q.** I'm sorry.

16 **MR. PETERMAN:** Mr. Spence, if you can pull up
17 the Excel spreadsheet.

18 **THE WITNESS:** Great. Okay.

19 **BY MR. PETERMAN:**

20 **Q.** First of all, can you tell the jury what we're
21 looking at here?

22 **A.** Sure. This is DTX-581.

23 **Q.** What is this again?

24 **A.** Sorry. This is DTX-581. This is the data that was
25 provided by Google that Mr. Weinstein used to count the

1 number of downloads.

2 **Q.** Is there anything about this data that leads you to
3 the conclusion that it includes all downloads of the
4 various apps on all versions of Android as opposed to just
5 Android 8 or 9?

6 **A.** Yes. So for example, the first thing to know is the
7 left-hand column here just says "Year." Okay. So that
8 was the -- essentially the unit that they were
9 aggregating. There's no months, there's no days, it's
10 just "Year." So you see, for example, that top row says
11 "2017." The package name is com.Android.Chrome. And so
12 what that is, that's the Chrome app download. And the
13 first column there is "Daily Device Installs." And,
14 basically, what that means is that in 2017 -- this is
15 something Mr. Marri testified to -- that in 2017, there
16 were roughly 105 million downloads of the Chrome app onto
17 some kind of an Android device. You will see, if you are
18 familiar with spreadsheets, down at the bottom here
19 there's a -- we're on the Android tab. They also had
20 another tab for iOS, which we don't care about in this
21 case. But these are downloads onto Android devices for
22 2017.

23 So your question was why am I confident that this is
24 all versions. And the first reason is that the
25 105 million -- so what Mr. Weinstein had to do to get his

1 estimate of the number of downloads after August of 2017
2 was he just took the number of days in the year after
3 August 21, 2017, divided into 365, and multiplied by this
4 number up here. So he just sort of assumed. He's
5 prorated it, technically.

6 And recognize in 2017 that the -- and his accusation
7 is only four months. Okay. So he took about a third of
8 the units for Chrome in 2017.

9 Now, if the number of units -- if this was just
10 Android 8 or 9, then you would expect to see, for example,
11 the 2018 number, because that's 11 months. You would
12 expect to see that as more than what he had. If you
13 scroll down to row -- looks like 21 maybe -- you will see
14 2018.com.Android -- yes. That one.

15 What you see is a total number of downloads in 2018
16 is actually 80 million. So that's over 11 months. And
17 105 million he had to prorate. He to four months. It
18 makes no sense that the four months of data would be
19 bigger than the eight months of data. And we can go
20 through more examples but, basically, it's -- there's
21 absolutely no doubt that this data is for all versions of
22 Android.

23 **Q.** Just -- let's just do one more example.

24 **MR. PETERMAN:** If you would look at Calendar
25 from 2017 versus 2018. I believe it's Row 46, Mr. Spence.

1 THE WITNESS: So row -- there we
2 com.google.Android.Calendar. So that's the Calendar app.
3 And again, Column C, you can see that there are -- without
4 the columns, it's hard -- but it looks like it's
5 29 million. I think that's right. So 29 million
6 downloads in 2017. And if you -- thank you.

7 If you go down to the row for 2018, it's -- I
8 have it right here. Sorry. It's 27 million. So you've
9 actually got slightly less. But again, over an 11-month
10 time period, this is all versions of Android. This isn't
11 just Android 8 and 9.

12 BY MR. PETERMAN:
13 Q. So what conclusions do you draw from your analysis of
14 this document and the testimony that you also relied upon
15 regarding Mr. Weinstein's count?

16 A. That Mr. Weinstein has counted a number of devices
17 that he's accused of infringing that were not infringing.
18 They were not running on devices with Android 8 or 9 or 8
19 with MR1 or 9.

20 MR. PETERMAN: Go to slide 41, Mr. Spence.

21 BY MR. PETERMAN:
22 Q. And you were in the courtroom when Mr. Weinstein
23 provided this testimony about this claim here?

24 A. Yes. We agree. He understands that if it includes
25 downloads on versions other than 8 or 9, then his numbers

1 A. Yes, I do.
2 Q. And what was Mr. Choc's testimony there?
3 A. So he said -- so Mr. Lahad asked: So he's pretty
4 much -- he's off by pretty much the whole thing; is that
5 what you're saying?

6 Mr. Choc answered: Yes. This is my understanding of
7 the slow ramp-up process for Android. And the estimate
8 Mr. Choc gave would be probably 95 percent wrong. This is
9 a rounding error. This isn't like a couple of ones might
10 have gone down, hit some device other than Android 8 or 9.
11 It's, in Mr. Choc's opinion, the vast majority of them.

12 Q. Now, Mr. Kidder, what does all this information
13 you've just relayed to the jury have on your ultimate
14 opinions here?

15 A. It means that Mr. Weinstein's opinion is just
16 completely unreliable. It's based on an absolutely
17 incorrect count of the number of apps. You need to recall
18 that in his testimony the apps provided the vast majority
19 of his damages number.

20 Q. Now, Mr. Weinstein used, as part of his
21 justification, that you used the same numbers that he did.
22 How do you respond to that?

23 A. It was -- I was surprised. So just by way of
24 background, understand how this process works a little
25 bit.

1 are too high.
2 Q. Now, Mr. Kidder, you heard from a number of Google
3 witnesses as to the length of time that it took to roll
4 out Android 8 with STS, correct?

5 A. Yes.
6 Q. And what is your understanding of the length of time
7 that that all took?

8 A. So my understanding is that for Mr. Elbouchikhi, he
9 testified that, you know, with a typical Android release,
10 the rollout takes three to six months. In other words, it
11 takes a while for it to get adopted. It's not, you know,
12 it doesn't come out and then all of a sudden everybody has
13 got Android 8 MR1 running on their phone.

14 Q. What about testimony from Mr. Choc?

15 A. Similarly, Mr. Choc testified it takes quite a long
16 time, potentially never happening to users' phone -- I'm
17 one of those users. I see the update and I get scared and
18 I don't do it. Right? So I'm not running the latest
19 version.

20 Q. Could Arendi or Mr. Weinstein have asked Google for
21 more detailed information if Mr. Weinstein needed it?

22 A. I would assume so, yes.

23 Q. Do you recall when Mr. Lahad, on cross-examination
24 asked Mr. Choc the question regarding how far off
25 Mr. Weinstein's numbers were?

1 In this case, or in all cases -- so here
2 Mr. Weinstein issued a report and said: Here's what I
3 think damages are. And I was retained to similarly offer
4 an opinion on damages, but also reply to Mr. Weinstein's
5 report.

6 So my reply came about a month after I had his
7 report. One of the things I do when I'm looking at
8 another expert's report is I just check the math, see if
9 there are any math errors. And so I went through and I --
10 because the data didn't naturally fall into those buckets,
11 he had to do some allocation and apportioning, I asked my
12 team to check the numbers. And I did not find that he
13 made math errors. But that's what he showed on the
14 screen, was my check of his work.

15 Q. So is it an incorrect assumption to say that you
16 signed off on his work?

17 A. Well, I signed off on his math, but I did not sign
18 off on the underlying concept of what was accused there.

19 Q. Now, the next error that you had identified in your
20 slide deck was the 4X multiplier. Would you explain to
21 the jury what you mean by this?

22 A. Sure. So the 4X multiplier, if you recall,
23 Mr. Weinstein testified that he had conversations with
24 Mr. Hedloy, which Mr. Hedloy said that there was a chance
25 of losing before trial, there's a chance of losing at

1 trial, and there was a chance of losing of appeal. So
 2 Mr. Weinstein said, well, that means that for the
 3 Microsoft case, that there was a 1-in-8 chance of winning.
 4 And so -- but he conservatively -- instead of multiplying
 5 by 8, he conservatively multiplied by 4.
 6 Q. Do you believe that was the correct thing to do,
 7 given the testimony?
 8 A. No. So I was sitting in court on the first day when
 9 Mr. Hedloy testified. And what Mr. Hedloy testified to --
 10 relative to the Microsoft agreement, was that even if we
 11 went through the litigation and won, which we thought we
 12 would of course -- so this is a very different statement
 13 from: We have a 1-in-8 chance of winning and you need to
 14 multiply that number by 4. This is Mr. Hedloy saying: We
 15 thought we were going to win that litigation.
 16 Q. So how does that statement from Mr. Hedloy contradict
 17 the analysis that Mr. Weinstein did?
 18 A. Well, what it says is that Mr. Weinstein's basis for
 19 the 4X multiplier, I mean, it's -- it contradicts the
 20 basis for the 4X multiplier.
 21 Q. Now, can you explain to the jury what impact the 4X
 22 multiplier has on Mr. Weinstein opinions?
 23 A. Sure. You know, so we've already taken out the
 24 devices and apps, it's about a third of them that are
 25 between August and December. That took about a third of

1 his damages out. If you take out the 4X multiplier, then
 2 the 30.2 million, most of that goes away as well. The
 3 next slide should show that.
 4 Yeah. So the multiplier is 22.65 million of the
 5 remaining 30. If you take out that 22.65, you are left
 6 with 7.55 million from -- again, this is Mr. Weinstein's
 7 calculation. I've just taken out a couple of what I
 8 believe to be clear errors -- you're down to
 9 \$7.55 million.
 10 Q. Do you believe that \$7.55 million is an accurate
 11 number?
 12 A. No. Because it includes Mr. Weinstein's royalty on,
 13 in particular, the apps, all of the apps that are
 14 downloaded, even the ones that are not running on devices
 15 with Android 8 with STS.
 16 MR. PETERMAN: Your Honor, for this next
 17 section, we do need to seal the courtroom again.
 18 THE COURT: All right. Let's seal the
 19 courtroom, please.
 20 * * *
 21 (The following discussion is held under seal:
 22
 23 BY MR. PETERMAN:
 24 [REDACTED]
 25 [REDACTED]

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 2 [REDACTED]
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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 Q. [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 how many of these apps were downloaded onto devices
 18 running Android 8 or Android 9 versus earlier versions?
 19 A. No. This is just every download that happened
 20 between August of 2017 and November 2018, so regardless of
 21 what Android version they were downloaded to.
 22 Q. If you take Mr. Choc's testimony that Mr. Weinstein
 23 was 95 percent off, what impact does that have on the
 24 analysis?
 25 [REDACTED]

1 [REDACTED]
 2 apps, again, just using Mr. Weinstein's calculations and
 3 methodology.
 4 Q. Now, the next area you mentioned was a royalty per
 5 app error.
 6 What do you mean here?
 7 A. So again, refresher from last week, Mr. Weinstein's
 8 analysis. Remember how he gets to his per app royalty.
 9 He says the royalty per device is 48 cents. And then he
 10 divides that by five to get to a ten cent royalty per app.
 11 And there are sort of two problems with that. The first
 12 one of which is that dividing by five has never made any
 13 sense to me. There are 12 accused apps in this case. If
 14 you divide by 12 instead of by five. Right. You get to a
 15 number that's four cents and not ten cents. So that has a
 16 huge impact.
 17 Q. Now, what does the ten cent per app royalty that
 18 Mr. Weinstein claims is appropriate mean in terms of an
 19 actual percentage of royalty?
 20 A. So Mr. Weinstein calculated that each app generates
 21 [REDACTED] of revenue for Google. And he's applying a
 22 ten cent per unit royalty. So of the [REDACTED] in revenue
 23 that's generated by Google for an app, he's taking ten
 24 cents of it as a royalty. So he's taking 15 percent of
 25 the total. And if you look at that 15 percent, first of

1 all -- as I said, I've read a lot of licenses. 15 percent
 2 is just -- that's an unreasonably high percentage.
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 MR. PETERMAN: Your Honor, we can unseal the
 16 courtroom for the remainder of Mr. Kidder's direct.
 17 THE COURT: Let's unseal the courtroom.
 18 * * *
 19 (Whereupon, the sealed discussion concludes.)
 20 - - -
 21
 22 BY MR. PETERMAN:
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 Q. In your experience reviewing hundreds of licenses,
 18 how common is it for a license agreement to cover a
 19 different company without mentioning that separate company
 20 by name in the agreement?
 21 A. It's pretty typical.
 22 Q. Can you provide examples of how this would be done?
 23 A. Well, you know, typically, a licensee will want to
 24 make sure that its customers can use their products
 25 without being accused of patent infringement or that the

1 supplier can provide a component without being accused.
 2 So the licenses very frequently have language in them
 3 saying, "Not only do I have a license, but suppliers,
 4 customers" -- but, you know, they don't list them out,
 5 because, of course, customers and suppliers can change.
 6 **Q.** Is Google a supplier of Samsung as it pertains of
 7 operating systems and apps?
 8 **A.** Yes. It's my understanding that Google provides
 9 Samsung Android.
 10 **Q.** And do customers of Samsung use Google apps on
 11 Samsung phones?
 12 **A.** I'm sorry. Customers of?
 13 **Q.** Of Samsung use Google apps on Samsung phones?
 14 **A.** Yes. My son has a Samsung phone, and used Google
 15 Chrome on it.
 16 **Q.** Mr. Kidder, the last major error you identified was
 17 non-infringing alternatives. Will you please explain to
 18 the jury what that is.
 19 **A.** So let's put this in the context of damages because I
 20 think you've heard about it in the context of technology.
 21 So from the context of damages, you think about
 22 hypothetical negotiation. And in this hypothetical
 23 negotiation Arendi wants \$45 million. And Google can, if
 24 they want to use that technology, they absolutely have to
 25 negotiate a settlement agreement or a license. But if

1 identify non-infringing alternatives. That is different
 2 from saying the Court has determined they are
 3 non-infringing alternatives. There is no basis for him to
 4 be introducing an opinion based on Court order.
 5 **THE COURT:** All right. Let's take a look at
 6 his report and see what he says.
 7 **MR. PETERMAN:** Your Honor, it's Paragraph 147.
 8 2022 report.
 9 **THE COURT:** So the distinction here is the fact
 10 that the Court adjudged Linkify and Smart Linkify as being
 11 non-infringing. I don't think the Court adjudged they
 12 were non-infringing alternatives.
 13 **MS. SRINIVASAN:** Correct, Your Honor.
 14 **THE COURT:** I'll ask the jury to disregard --
 15 I'm going to ask the jury to disregard the last answer.
 16 We will have you ask a different question.
 17 Do you need anything else from the Court?
 18 **MS. SRINIVASAN:** No.
 19 **MR. PETERMAN:** May I ask if the Court adjudged
 20 Linkify and Smart Linkify as non-infringing?
 21 **MS. SRINIVASAN:** He shouldn't ask about the
 22 Court's opinion at all. He doesn't need to say the Court
 23 rendered a decision on it. If we go to that path, we will
 24 open the door to all kinds of prior rulings. In the
 25 ordinary course, the damages expert says: In my opinion,

1 they have something else they can do that would avoid them
 2 having to take a license, that's a non-infringing
 3 alternative and it exerts pressure on the hypothetical
 4 negotiation, like why would I pay you that much. I can
 5 just do this.
 6 **Q.** On the -- I think it was the next slide. What other
 7 areas did Mr. Weinstein fail to consider?
 8 **A.** So Mr. Weinstein failed to consider Linkify and Smart
 9 Linkify, which had been judged by the Court to be
 10 non-infringing alternatives. They're essentially similar
 11 technology. And he also failed --
 12 **MS. SRINIVASAN:** Your Honor, sidebar.
 13 **THE COURT:** Yes.
 14 - - -
 15 (Whereupon, the following discussion is held at
 16 sidebar.)
 17 **THE COURT:** I think I understand the basis for
 18 the objection.
 19 **MR. PETERMAN:** It's in his report --
 20 **THE COURT:** That the Court has adjudged those
 21 to be non-infringing alternatives.
 22 **MR. PETERMAN:** Identified as non-infringing
 23 alternative.
 24 **THE COURT:** Counsel?
 25 **MS. SRINIVASAN:** Damages experts always

1 these are non-infringing alternatives, relying on the
 2 technical opinion that's been rendered. So I don't see
 3 any need for him to be talking about any Court opinion.
 4 **THE COURT:** I tend to agree with Arendi on this
 5 one. Did we have testimony from one of the infringement
 6 folks about Linkify and Smart Linkify?
 7 **MR. PETERMAN:** They identified Linkify and
 8 Dr. Rinard identified Linkify and Smart Linkify as
 9 non-infringing alternatives.
 10 **THE COURT:** Is there any reason why he can't
 11 ask that in this way?
 12 **MS. SRINIVASAN:** No. As long as we are not
 13 talking about Court's orders or Court opinions.
 14 **THE COURT:** That's fair. That's the ruling.
 15 (Whereupon, the discussion at sidebar concludes.)
 16 - - -
 17 **THE COURT:** Ladies and gentlemen of the jury,
 18 you should disregard the last answer by the witness.
 19 **BY MR. PETERMAN:**
 20 **Q.** Mr. Kidder, did you rely upon any experts in this
 21 case regarding whether or not Linkify or Smart Linkify
 22 were non-infringing alternatives?
 23 **A.** Yes.
 24 **Q.** Which expert did you rely upon?
 25 **A.** Dr. Rinard.

1 Q. On the slide here, you have the last point being
 2 "Delay release of STS by 11 months."
 3 What does that mean?
 4 A. Well, we know that STS was -- that they decided in
 5 August 2017 that it wasn't ready to roll out. They
 6 delayed it and implemented four months later in December.
 7 And when faced with a \$45 million request, Google had the
 8 option of saying, "Well, we'll just delay this release for
 9 11 months until November, and then the patent expired and
 10 no harm, no foul."
 11 MS. SRINIVASAN: Objection, Your Honor,
 12 sidebar.
 13 - - -
 14 (Whereupon, the following discussion is held at
 15 sidebar.)
 16 THE COURT: It is pretty clearly seems to be
 17 undisclosed opinion.
 18 Do you disagree with that?
 19 MR. PETERMAN: I do have -- this was one slide,
 20 we discussed it this morning. It is only relevant now
 21 because of the change of Mr. Weinstein's opinion. Only
 22 looking at the last 11 months means this is a new
 23 hypothetical negotiation date.
 24 Mr. Kidder is not offering affirmative opinion
 25 on non-infringing alternative he said Mr. Weinstein failed

1 Can I ask him: Could Google have delayed the
 2 rolling out of STS for 11 months in a hypothetical
 3 negotiation?
 4 MS. SRINIVASAN: No, Your Honor. That is --
 5 first of all, there is no factual support -- if he is
 6 going to render an opinion about what could have been
 7 done -- hypothetical negotiation still involves book of
 8 wisdom looking at what actual facts are in the records.
 9 The clear implication they did rely on the
 10 forthcoming expiration of patent to delay rollout, he has
 11 no basis for that.
 12 THE COURT: So the reason for my ruling to not
 13 let him testify about this is I just recently rereviewed
 14 his supplemental expert report this morning during a
 15 break, and he did talk about what the negotiation would be
 16 if it had occurred in 2017 with his own damages model.
 17 And I would have thought if he wanted to say
 18 that one of the options was to wait to roll it out, that
 19 he would have done that. I didn't see that that's
 20 something he said they could have done.
 21 I understand that you are taking issue with
 22 their damages model at this point in time. But that's
 23 still something that I would have expected to be in his
 24 report. So that last answer is going to be stricken.
 25 MR. PETERMAN: May I ask a question: Did

1 to consider. So that's context of which all this comes
 2 in.
 3 MS. SRINIVASAN: His testimony that they chose
 4 to forego rolling out their STS because of having the
 5 threat of having to pay \$45 million is totally
 6 undisclosed. There is zero fact evidence that came in to
 7 support that statement. It is way beyond talking about
 8 non-infringing alternative. He is asserting Google made a
 9 conscious decision.
 10 THE COURT: All right. Let me --
 11 MS. SRINIVASAN: His reference to damages
 12 model, \$45 million implication is there was a decision to
 13 not have to do that and pay a license instead to wait
 14 11 months. There's been no testimony about a decision to
 15 wait or 11 months, frankly, on the record at all.
 16 THE COURT: Let me review the response.
 17 So my ruling is as follows: You are welcome to
 18 bring in -- the prior response will be stricken. You are
 19 welcome to bring in testimony about the rollout beginning
 20 when it began. But he can't testify that there was an
 21 option for Google to delay rolling out the STS until the
 22 patent was expired.
 23 MR. PETERMAN: Your Honor, this is in the
 24 context of hypothetical negotiation of what Google could
 25 have done.

1 Mr. Weinstein consider whether Google could have waited
 2 11 months to roll out STS?
 3 THE COURT: You can ask that question. You
 4 will take the answer that you get.
 5 (Whereupon, the discussion at sidebar concludes.)
 6 - - -
 7 THE COURT: Ladies and gentlemen of the jury,
 8 you should disregard the witness's answer to the last
 9 question.
 10 BY MR. PETERMAN:
 11 Q. Did Mr. Weinstein fail to consider Linkify and Smart
 12 Linkify as non-infringing alternatives?
 13 A. Yes, he did.
 14 Q. We've gone through the various errors that you've
 15 identified in Mr. Weinstein opinion. Will you just sum
 16 them up for the jury?
 17 A. Sure. And I won't go through this entire list, but
 18 these are the six errors we just stepped our way through,
 19 starting with wrong number of units, four times
 20 multiplier, et cetera. And my point is, when you correct
 21 these errors, what you get to is -- that \$45 million is
 22 entirely unreliable.
 23 Q. And again, what is your final opinion with respect to
 24 the appropriate measure of damages if the patent is found
 25 valid and infringed?

1 A. It is \$500,000, not the \$45 million that
 2 Mr. Weinstein calculated.

3 MR. PETERMAN: Thank you. I pass the witness.
 4 THE COURT: Thank you.
 5 Counsel.

6 MS. SRINIVASAN: Your Honor, may I approach to
 7 hand the witness the binder?
 8 THE COURT: Yes.
 9 THE WITNESS: Thank you.

10 CROSS EXAMINATION

11 BY MS. SRINIVASAN:
 12 Q. All right. Good afternoon, Mr. Kidder. My name is
 13 Kalpana Srinivasan. We have not met before.
 14 In the start of your testimony, you made a point of
 15 emphasizing that you looked at the revenue rather than
 16 focusing on units, right?
 17 A. Yes.
 18 Q. And you did your own analysis, you provided an
 19 affirmative opinion about what you think the reasonable
 20 royalty is in this case, correct?
 21 A. Yes.
 22 Q. Okay. So I want to drill down a little bit about how
 23 you got there. Let's pull up your DDX slides and go to
 24 Number 9.
 25 So you were looking at the revenue for the apps

1 installed on devices with Android 8 with STS, and your
 2 start date is December 5, 2017, to November 10, 2018,
 3 correct?
 4 A. So, yes, and what I did was I just apportioned
 5 revenue after December 5, 2017.
 6 Q. You apportioned revenue. You didn't want to include
 7 in your base all revenue that might be associated with an
 8 application. You wanted to narrow in on the revenue
 9 related to the accused applications in this case, the
 10 applications accused of using STS, correct?
 11 A. Yes. As the accusations were laid out in
 12 Mr. Weinstein's report.
 13 Q. All right. So let's look at slide Number 10. And
 14 that has your revenue numbers for the accused products and
 15 the accused --
 16 MS. SRINIVASAN: I'm sorry, Your Honor. We
 17 need to seal the courtroom.
 18 THE COURT: Let's seal the courtroom.
 19 MR. PETERMAN: Seal the courtroom, yes.
 20 * * *
 21 (The following discussion is held under seal:
 22 THE COURT: The courtroom has been sealed.
 23 BY MS. SRINIVASAN:
 24 Q. All right. Back to DDX-10.10. This is your slide of
 25 the Google revenue for the accused products. And by that,

1 you mean the accused devices and the accused apps, what's
 2 at issue in this case. That's right, Mr. Kidder, right?
 3 A. That's correct.
 4 Q. And you say -- and I'd like to talk about how you got
 5 to this [REDACTED] number for the accused apps.
 6 Now, to do that, you started by looking at all the
 7 revenue associated with the various apps at issue in this
 8 case; is that right?
 9 A. Yes, that's fair.
 10 Q. And then you took it down to a specific number to
 11 reflect the revenue for the accused applications in this
 12 case, correct?
 13 A. Well, I took it down to anything that might have been
 14 accused under Mr. Weinstein's theory with a start date of
 15 December 1st, 2017, that's correct.
 16 Q. All right. If you could look at your supplemental
 17 Exhibit 5.2. That's from your expert report in this case,
 18 from August of 2022. And you prepared that report, Mr.
 19 Kidder, correct?
 20 A. Yes, I prepared the supplemental report. I'm sorry.
 21 I'm just -- did you put a little yellow sticky on it for
 22 me?
 23 Q. I did not. But it's in the Exhibit 5.2 that's
 24 attached to the back of it.
 25 A. I'm not far off. Hang on a second.

1 Q. Okay.
 2 A. Sorry. The supplemental I labeled them side A, 5B,
 3 do you mean 5B?
 4 Q. Side two on your supplemental report. Do you have
 5 that? On your report dated August 2022.
 6 A. I apologize. I have my August 26, 2022 report. Oh,
 7 I'm sorry. Hang on a second. I was back into
 8 Mr. Weinstein's. I apologize. Okay. Now I'm at 5.2,
 9 yes.
 10 Q. Okay. And that -- you prepared that supplement to
 11 the report, correct?
 12 A. Yes, that's correct.
 13 Q. All right. Now, I want you to just focus on Gmail,
 14 Gmail in 2018. What was the total amount of revenue that
 15 you found there?
 16 A. For 2018, it was [REDACTED] -- sorry hang on a
 17 second. No, for a portion of Android was [REDACTED].
 18 [REDACTED].
 19 MS. SRINIVASAN: And, Your Honor, to aid the
 20 witness, I have a demonstrative of this exhibit that he
 21 prepared with some redactions that I'd like to be able to
 22 use and publish to use as a demonstrative.
 23 THE COURT: Any objection?
 24 MR. PETERMAN: Not as counsel has presented it
 25 to me.

1 THE COURT: Okay. Let's proceed.

2 BY MS. SRINIVASAN:

3 Q. All right.

4 MS. SRINIVASAN: If you could bring up,

5 Mr. Boles, the Kidder supplement 5.2 demonstrative. And I

6 just want you to focus on the Gmail number, Mr. Boles,

7 when you bring that up.

8 BY MS. SRINIVASAN:

9 Q. Okay. So, Mr. Kidder, you said it was [REDACTED]

10 for the Android. Let's go to the Gmail line item .but you

11 started with a bigger number?

12 A. Yes, that's correct. I started -- well, I started

13 with all of the Gmail revenues for 2018 for iOS and

14 Android.

15 Q. And to get down to that [REDACTED] number, for

16 revenue, you looked at the number of downloads that were

17 for Android versus the number of downloads that were for

18 iOS, correct?

19 A. Yeah. I guess it's -- it's funny because, since

20 they're all annual numbers, it's all based on apportioning

21 the year, but it's the same idea, yes.

22 Q. Well, it's not just based on apportioning the year.

23 You apportioned it based on the app downloads that were

24 for Android versus everything else, correct?

25 A. I'm sorry. I'm not quite understanding. I agree

1 with you that it was apportionment based on time, which is

2 how you get to the app downloads for Android for that

3 portion of the year.

4 Q. And you've relied on the app downloads for Android to

5 come up with a percentage of the total revenue that you

6 allocated for Android, correct?

7 A. Maybe we're talking past each other. There's no --

8 there's no distinction between the apportioning -- I'm

9 trying to figure out how to phrase this.

10 As we saw earlier, the number of downloads were

11 provided just for the year. So I didn't have a way to

12 say, I know exactly how many were downloaded on these

13 days, so what we did was we used a percentage of the year,

14 just like Mr. Weinstein did, to calculate the number of

15 downloads. And that's mathematically the same. It's just

16 apportioning based on time across the year. So maybe it's

17 a distinction without a difference.

18 Q. My question was a little different, but I appreciate

19 your answer. To get from -- to go from 231 to 119, to

20 take 52 percent of the total revenue to figure out the

21 revenue dedicated to Android, you looked at the downloads

22 for Android versus the downloads for other devices?

23 A. I'm sorry. I understand your point. So, yes, we

24 know that in 2018, 52 percent of all downloads were on

25 Android devices as opposed to iOS devices.

1 Q. And the way that you got there, you looked at this

2 number that is listed there, 67 million and change for the

3 Android app downloads for 2018, correct?

4 A. Yes. That's what that number is.

5 Q. And so that's how you were able to do an

6 apportionment, take all this revenue and focus in on what

7 was at issue in this case, correct?

8 A. This was divided between Android. We made making

9 sure we weren't getting iOS downloads in there, yes.

10 Q. Well, let's look at where that 67 million number that

11 you used to try to narrow the revenue came from. If you

12 could turn to your Exhibit 5 of your -- in your

13 supplemental report?

14 A. This is 5.0?

15 Q. 5.0.

16 A. Yep.

17 Q. Now, that exhibit shows the accused U.S. app device

18 installations.

19 MS. SRINIVASAN: Mr. Boles, I think you could

20 bring that up as the first -- there you go.

21 BY MS. SRINIVASAN:

22 Q. Do you see that?

23 A. Yes. Sorry. I'm good.

24 Q. And if you look at Gmail, which is what we had just

25 been looking at --

1 A. Sure.

2 Q. -- for 2018. 67 million downloads. That's what you

3 used to apportion the revenue, correct?

4 A. Yes. That's based on a -- the fraction of the year

5 that would be represented by January 1st through November,

6 I guess -- is it 5th? 8th? -- 2018.

7 Q. And that's how you were able to feel confident that

8 when you're looking at revenue, you're trying to isolate

9 what is relevant to this case by looking at the downloads

10 related to the accused applications in this case, correct?

11 A. Yes. To the Android portion of it, correct.

12 Q. Now, this list here, you see these sources at the

13 bottom? You can see the top of the exhibit, "Accused U.S.

14 App Device Installs." You're talking here about the

15 applications that are using the STS feature, correct?

16 A. This is actually the device downloads that were

17 accused by Mr. Weinstein, so we are, basically, following

18 his math there.

19 Q. You aren't just following his math. You are using it

20 to apportion revenue, Mr. Kidder.

21 A. No, I agree with that. It's all based on time and

22 prorated.

23 Q. Now, you mentioned Mr. Weinstein, but I'm looking at

24 this exhibit. I don't see a reference to Mr. Weinstein

25 here. Do you see one?

1 A. No, there's no reference to Mr. Weinstein.
 2 Q. Okay. Instead, there's a reference to two sources,
 3 and those are Google documents?
 4 A. Yes. That's correct. And the bottom one there is
 5 DTX-581.
 6 Q. And that's the exhibit we looked at during your
 7 direct examination?
 8 A. That's correct.
 9 Q. And I heard you say, I think, that this was something
 10 Mr. Weinstein looked at, Mr. Weinstein relied on, I was
 11 there to do a math check. But your own apportionment of
 12 revenue, you relied on the same document, correct?
 13 A. That's correct.
 14 Q. Okay. Now, you have these figures here of the
 15 downloads from 2017 and 2018 for each of the apps. And
 16 you know that Mr. Weinstein also looked at downloads --
 17 application downloads for all of these applications in
 18 2017 and 2018, you're aware of that?
 19 A. Right. Yes. He looked at the entirety of 2017,
 20 2018, and prorated.
 21 Q. Well, if you could look at Mr. Weinstein's
 22 supplemental 4B report. I'm sorry. The supplemental
 23 report, Exhibit 4B.
 24 And let me know when you're there.
 25 A. Yes, I'm there.

1 download installations that Mr. Weinstein relied on in
 2 2017 and 2018, correct?
 3 A. I believe that's correct, yes.
 4 Q. All right. So I'd like to move to a demo,
 5 demonstrative, that compares what you did in your
 6 Exhibit 5.0 with Mr. Weinstein's supplemental 4B exhibit.
 7 MS. SRINIVASAN: Mr. Boles, if you could take
 8 us to slide 3.
 9 BY MS. SRINIVASAN:
 10 Q. For 2018. Now, I know you have a dispute with
 11 Mr. Weinstein about 2017, when the first date of
 12 infringement is.
 13 But for 2018, if you start in January, you go through
 14 the life of the patent, you both have the same time period
 15 at issue; is that fair?
 16 A. Yes. We used the same prorating methodology. I
 17 agree with that.
 18 Q. Okay. And when you use that same prorating
 19 methodology, your installation counts that you use in your
 20 report and that Mr. Weinstein uses in his report are
 21 identical for each of those applications?
 22 A. Yes.
 23 Q. It's a 1-to-1 match, correct?
 24 A. Yes.
 25 Q. All right. Now, for 2017 it's a little bit of a

1 Q. Okay. So -- and I want you to look at that.
 2 MS. SRINIVASAN: I'm going to put up his --
 3 that as a demonstrative, Mr. Boles. There we go.
 4 BY MS. SRINIVASAN:
 5 Q. And that is Mr. Weinstein's, the downloads that he
 6 presented in connection with each of the accused
 7 applications, correct?
 8 A. Not quite.
 9 Q. Is there something there that you dispute?
 10 A. Yes. You removed the Chrome line from that.
 11 Q. For purposes of our -- okay. That's fair. We're
 12 going to come back to Chrome. Good catch, Mr. Kidder.
 13 Aside from Chrome, the other applications, those are
 14 the download figures that he included in his analysis,
 15 correct?
 16 A. No.
 17 Q. The download figures from 2017 and 2018 he, included
 18 this in his report as accused app installations?
 19 A. Again, the Row 6 there, News, was not part of his
 20 calculation.
 21 Q. All right. That's --
 22 MS. SRINIVASAN: Mr. Boles, can you remove 6,
 23 please.
 24 BY MS. SRINIVASAN:
 25 Q. So other than that, the other apps reflect the

1 different issue, as you forecasted. Mr. Weinstein begins
 2 in August; you begin in December, correct?
 3 A. Yes.
 4 Q. All right.
 5 MS. SRINIVASAN: So let's move, Mr. Boles, to
 6 Slide 4.
 7 BY MS. SRINIVASAN:
 8 Q. So, not surprisingly, your numbers as to the
 9 installation of the accused applications, the numbers are
 10 not going to be the same because he has a longer time
 11 period than yourself; is that fair?
 12 A. Yes, it is.
 13 Q. Okay. But you're both relying on the same underlying
 14 data to begin with, correct?
 15 A. Yes. That was the data that was produced by Google.
 16 Absolutely.
 17 Q. And you're not -- there's no issue about the data
 18 being different. You're just -- the number of days that
 19 you each used to calculate the downloads is not -- is
 20 different. That's what's different?
 21 A. Yes. Absolutely.
 22 Q. Okay. And you were right to put a little pin in
 23 Chrome, because that wasn't on the last tab we looked at.
 24 So we're going to come to that now.
 25 I'd like you to look at your opening report. That

1 should be in your binder, Exhibit 5.

2 **A.** The opening you said, right?

3 **Q.** Yes. Your opening report. Exhibit 5.

4 **MS. SRINIVASAN:** And, Mr. Boles, if you could

5 put that up at Slide 7.

6 **BY MS. SRINIVASAN:**

7 **Q.** In your opening report --

8 **A.** Sorry. Hang on a second.

9 **Q.** I'll wait for you to get there.

10 **A.** Thank you. I appreciate that.

11 **Q.** Sure. And your analysis in 2020 -- I'm just focusing

12 on Chrome now.

13 **A.** That's good to make that point.

14 **Q.** Yeah. In 2020, you prepared this exhibit, and you

15 didn't calculate Chrome or put in installations for Chrome

16 for any other years but 2017 and 2018; is that fair,

17 Mr. Kidder?

18 **A.** Yes. In this particular version, that's correct.

19 **Q.** Well, that's the version you served. That's the

20 version that was attached to your expert report.

21 **A.** In the opening expert report, yes.

22 **Q.** Okay. So you isolated 2017 and 2018 for Chrome.

23 **A.** Um-hmm.

24 **Q.** And those are the total -- those are the total number

25 of installations of the accused applications -- accused

1 Chrome application using STS that you relied on, correct?

2 **A.** Yes. Using the same, you know, prorating by the

3 number of days in the year methodology.

4 **Q.** All right. And Mr. Weinstein also looked at how --

5 the number of downloads for the accused Chrome

6 application, correct?

7 **A.** That's correct.

8 **Q.** And as to 2018, you would expect that his number

9 would be identical to yours, right?

10 **A.** Yes, I would expect so.

11 **Q.** Okay. And let's look at that.

12 **MS. SRINIVASAN:** We have a comparison there.

13 Mr. Boles, at PDX-7-25 -- sorry, 7-26. So for 2018, it's

14 going to be identical, and that is the number that

15 Mr. Weinstein also offered.

16 For 2017, it's not going to be identical for

17 the same reason that you started your first date of

18 infringement in December and he started his first date of

19 infringement in August.

20 So you agree with that Mr. Kidder?

21 **A.** Yeah, I'm sorry. I got caught up in trying to follow

22 the math, but yes.

23 **Q.** I mean, effectively, you're working from the same

24 number of installations and downloads for the accused

25 application, the accused Chrome application here, and you

1 just have a different number of days that are at issue,

2 correct?

3 **A.** Yes. That's where the time difference is between us.

4 That's absolutely right.

5 **Q.** All right. And -- and I can go back.

6 **MS. SRINIVASAN:** Let's go back to PDX-7-8.

7 **THE WITNESS:** I'm sorry. Is there something

8 you wanted me to look at?

9 **BY MS. SRINIVASAN:**

10 **Q.** Yeah. Sure. We are looking up here at PDX-7-8.

11 Again, for the purposes of your analysis, you looked --

12 and the way that you got to that 7,812,179 number is by

13 taking the Chrome download data you had and apportioning

14 it for December 2017 through the end of the year, correct?

15 **A.** That's correct.

16 **Q.** And the difference between you and Mr. Weinstein is

17 that he started in August, so he was apportioning for a

18 larger part of the year?

19 **A.** That's correct. That was the error I was talking

20 about with the number of units.

21 **Q.** And again, when we're looking at your exhibit, from

22 October 20, 2020 of the accused U.S. app device installs,

23 you relied on Google's data for that purpose, correct?

24 **A.** Yes. I mean, you need to recognize that in October

25 of 2020, it was a much more extensive set of accused

1 products, et cetera.

2 **Q.** That didn't change the source material that you were

3 relying on. At the end of the day, you were looking at

4 what Google provided to make your determination.

5 **A.** That's absolutely right. My point is that this

6 report was focused on a different set of accused

7 functionalities, of which STS was one.

8 **Q.** Now, Mr. Kidder, you are an expert for Google, right?

9 **A.** I have been retained by Google's attorneys in this

10 case, yes.

11 **Q.** Fair to say that you have unlimited access to Google

12 as an expert in this case?

13 **A.** No. I don't think that's fair to say.

14 **Q.** Well, you have access to anybody that you would need

15 to talk to for purposes of preparing your analysis, fair?

16 **A.** I don't think that's quite fair. It's not that easy,

17 no.

18 **Q.** Well, did you ask anybody about this download data?

19 Did you raise any questions about it when you received it?

20 **A.** No. Because we had Mr. Marri's deposition that

21 clarified what it was for us, that it was all versions of

22 Android.

23 **Q.** You didn't go to anybody within Google to ask whether

24 there was better data that existed for your purposes,

25 right?

1 A. No. That's correct. I took this data that had been
 2 produce.
 3 Q. And I think your counsel asked you on direct if
 4 Arendi could have asked for better data. Do you recall
 5 that question?
 6 A. Yes.
 7 Q. Now, as between Arendi and Google, you'd agree with
 8 me that Google has better access to its own data, correct?
 9 A. Yes. I think Google has better access to its own
 10 data than Arendi does.
 11 Q. And I heard you on direct reference Mr. Choc and his
 12 testimony last week about the download data.
 13 Were you here when he indicated that he didn't know
 14 if there was any better data available within Google? Did
 15 you hear that testimony?
 16 A. I think I read that, yes.
 17 Q. And likewise, that he didn't really go talk to
 18 anybody in the Google Play Store to find out if there was
 19 additional or different data he should be looking at or
 20 you should be looking at related to the Google Android
 21 installations for the accused applications.
 22 Do you recall that testimony?
 23 A. Not really, but I'm not debating your
 24 characterization of it.
 25 Q. Well, in fairness, you didn't go talk to anybody at

1 A. Yes. That's correct.
 2 Q. And that did not prompt you to ask questions about
 3 the source data that you relied on for your apportionment
 4 analysis?
 5 A. No. The source data -- it was clear what the source
 6 data was. It was all versions of Android.
 7 Q. Now, by the way, for this 2020 report, you were
 8 focused on Chrome as to STS only, correct? I mean, when
 9 we look looking at these numbers here for 2017, 2018?
 10 A. Sorry. In the 2020 report? I honestly don't recall
 11 why we were looking at Chrome just for 2017.
 12 Q. Well, you would agree with me that you didn't provide
 13 data for downloads prior to 2017 as to Chrome in this 2020
 14 report?
 15 A. No, I disagree with that.
 16 Q. For -- in this report?
 17 A. I'm pretty sure. I can go back and look.
 18 So if you go to Exhibit 12 of the 2020 report, it's
 19 got downloads for Chrome back to 2012.
 20 Q. And for purposes of looking at your Exhibit 5, which
 21 is the accused apps, in your 2020 report, you looked only
 22 at 2017 and 2018?
 23 A. In Exhibit 5. In Exhibit 12, which is also labeled
 24 "Accused U.S. App Device Installs," it goes back to 2012.
 25 Q. Well, at least one of your analyses was focused on a

1 Google Play to ask them about whether or not they had
 2 different data related to downloading -- download data for
 3 the accused applications in this case? You didn't do
 4 that?
 5 A. No, I did not.
 6 Q. And, in fact, you didn't go talk to Mr. Marri about
 7 it. I know you read his deposition, but you didn't go ask
 8 him to say: Is this data that's in this source document,
 9 is there other data that I should be looking at when I
 10 apportion revenue? You didn't do that?
 11 A. No, I didn't. I was just trying to figure out what
 12 that question would even look like. But, no, I didn't do
 13 that.
 14 Q. You don't know what that question would look like
 15 because you didn't have a reason to think you needed to
 16 ask it? Is it a fair way to say it, Mr. Kidder?
 17 A. Well, because at that time, it was a much more
 18 complex overlapping, sort of intertwined set of release
 19 dates. And it was a much more complicated case. And when
 20 it boiled down to STS only, then some issues sort of
 21 popped out that I hadn't caught previously.
 22 Q. Well, you issued a report in 2022 that was focused on
 23 STS. And we're looking here at a time in which you looked
 24 at Chrome data for 2017 and 2018, during the period when
 25 STS was released, correct?

1 scenario in which STS was the infringing function in the
 2 Chrome application, correct? You would agree with that?
 3 A. I honestly don't recall why we did Exhibit 5, but
 4 that sounds right. It was relatively complex back then.
 5 Q. All right. I want to go back to Slide 10 from your
 6 demonstratives. And we've talked a little bit about how
 7 you apportioned to get down to that revenue that is
 8 related to the accused applications in this case using
 9 STS. We talked about that already, correct?
 10 A. Yes.
 11 Q. All right. Now I want to talk about where you
 12 started from. The pool of revenue that you started from.
 13 You got that revenue information from Google, correct?
 14 A. That's correct.
 15 Q. All right. Well, let's look at some of those revenue
 16 numbers that you relied on in your analysis. Here's one
 17 at PX-37 for Chrome. Actually, before we do that, do you
 18 have in your binder, if you look at the back tabs, PX-37?
 19 A. Probably. Yeah. It's yellow. 37 you said?
 20 Q. Yeah.
 21 A. I may need some help. I see one that's labeled 77
 22 and I see a PX-61. Yeah.
 23 Q. Okay. If you look at the tab marked "Natives."
 24 A. I see. Yes.
 25 Q. Okay. Then you will see there -- after the second

1 yellow slip sheet, you will see --

2 **A.** You are looking for PX-37, you said?

3 **Q.** Yes.

4 **A.** Okay. Yes. I've got that.

5 **Q.** Are you with me there?

6 **A.** Yes.

7 **Q.** And is this revenue data that you relied on in the

8 course of preparing your opinions in this case?

9 **A.** I believe it is. I can't remember the Bates numbers

10 precisely.

11 **MS. SRINIVASAN:** Your Honor, we move to admit

12 PX-37.

13 **MR. PETERMAN:** Is there a citation you can

14 point us to, to make sure this is exactly what he relied

15 upon?

16 **MS. SRINIVASAN:** Do you need his report? He

17 just said that he did rely on revenue data.

18 **THE COURT:** Let me see counsel at sidebar.

19 - - -

20 (Whereupon, the following discussion is held at

21 sidebar.)

22 **THE COURT:** Do we need to take a minute to

23 confirm?

24 **MR. PETERMAN:** Your Honor, he said he wasn't

25 sure if this was the revenue number. We need to make sure

1 this is the correct one. Obviously counsel can have him

2 look at his report.

3 **THE COURT:** Why don't you take a minute and

4 confer.

5 **MS. SRINIVASAN:** This is internal Google

6 revenue data that he used. I don't know what their

7 objection would be to their own revenue numbers.

8 **THE COURT:** I want him to confirm that whatever

9 data he relied on is the same exhibit you are trying to

10 admit. This should take 30 seconds.

11 **MS. SRINIVASAN:** Okay.

12 (Whereupon, the discussion at sidebar concludes.)

13 - - -

14 **MR. PETERMAN:** No objection.

15 **THE COURT:** It's admitted.

16 (Exhibit PX-37 is admitted into evidence.)

17 **MR. PETERMAN:** Your Honor, we want to make sure

18 that this is kept under seal. It is Google's financial

19 information.

20 **MS. SRINIVASAN:** We are presently under seal,

21 and no objection to that remaining under seal.

22 **THE COURT:** That's fine. Let's proceed.

23 **BY MS. SRINIVASAN:**

24 **Q.** All right. Okay. So, Mr. Kidder, this is the, as an

25 example, the revenue information you looked at for Chrome

1 in coming up with your revenue apportionment, correct?

2 **A.** Yes.

3 **Q.** And you got that revenue information from Google. To

4 be clear, this is the form in which it came to you, this

5 spreadsheet?

6 **A.** That is correct.

7 **Q.** You didn't get any backup for this, right?

8 **A.** What do you mean by "backup"? I got a spreadsheet

9 with the numbers.

10 **Q.** Just this for Chrome?

11 **A.** Yes.

12 **Q.** And you don't have any understanding of how Google

13 makes money off of its accused apps, do you?

14 **A.** Not off of Chrome, no.

15 **Q.** How about the other apps?

16 **A.** Yeah. I was reviewing in the course of the last few

17 days, just reviewing things, and the Gmail revenue appears

18 to come from advertising.

19 **Q.** Okay. In the course of preparing your report for

20 this case, you didn't dig into how Google generates

21 revenue from its applications, fair?

22 **A.** That's correct, yes.

23 **Q.** You relied on these summaries that you got from

24 Google to come up with your numbers, correct?

25 **A.** That is correct.

1 **Q.** So if I ask you now: What is the Chrome revenue

2 number based on that we're seeing up here, you can't

3 answer that for me?

4 **A.** No, I can't.

5 **Q.** In fact, the number for 2018 is [REDACTED], but you

6 can't tell us why that is?

7 **A.** I think Mr. Marri was asked about that in his

8 deposition, and I don't actually recall. It had something

9 to do with accounting.

10 **Q.** During your direct examination -- I know it was bit

11 tongue-in-cheek, you referred to yourself as a math nerd.

12 And I'm just wondering when you get, you know, numbers

13 like this going from, you know, [REDACTED] t [REDACTED]

14 [REDACTED] did it not make you want to dig in and figure out

15 what's going on there?

16 **A.** So, first of all, these are -- these are not in

17 thousands. So it's [REDACTED]. And this looked to me like

18 a product that they were, like, [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED]. I think that's what

20 Mr. Marri testified to.

21 **Q.** Okay. But you didn't ask anybody when you got this

22 spreadsheet?

23 **A.** You know, I think that's correct. We noted [REDACTED]

24 [REDACTED] and were curious about it, but I think that was

25 cleared up in Mr. Marri deposition.

1 Q. And you had three other people in your team looking
 2 at these numbers with you, auditing numbers, right?
 3 A. That's correct.
 4 Q. But none of this flagged for them such that you went
 5 back and looked at the backup to see exactly why the
 6 Chrome revenue does this?
 7 A. No. As I said, I think it was addressed in
 8 Mr. Marri's deposition. Those are questions that Arendi
 9 asked.
 10 Q. Arendi's questions about it.
 11 A. Yes.
 12 Q. Not your questions?
 13 A. That's correct.
 14 Q. Okay. Let's -- I'd like to look at one more of
 15 these, PX-37.
 16 MS. SRINIVASAN: And, Mr. Boles, just hang
 17 tight for a minute.
 18 BY MS. SRINIVASAN:
 19 Q. If you could look, Mr. Kidder, at your exhibits
 20 there.
 21 A. Sure. And I'm sorry. PX-37 is what we are looking
 22 at, it's a different one?
 23 Q. PX-36. Thank you.
 24 A. Yes, I've got that.
 25 Q. Okay. And is this revenue information that you

1 relied on in preparing your analysis in this case?
 2 A. It looks like it, yes.
 3 MS. SRINIVASAN: Arendi moves for admission of
 4 PX-36.
 5 MR. PETERMAN: One second, Your Honor.
 6 No objection.
 7 THE COURT: It's admitted.
 8 (Exhibit PX-36 is admitted into evidence.)
 9 BY MS. SRINIVASAN:
 10 Q. Okay. We can put that up now.
 11 All right. And so this is the data -- again, you got
 12 a spreadsheet from Google. You used that to come up with
 13 your revenue numbers, right?
 14 A. That's correct, yes.
 15 Q. And for some of these, [REDACTED]
 16 [REDACTED] [REDACTED] [REDACTED]. But you didn't ask any
 17 questions of Google about where this data came from, did
 18 you?
 19 A. No, I did not.
 20 Q. And you used it in coming up with that number that
 21 you showed us in your direct examination that all of the
 22 accused app-related revenue was [REDACTED], correct?
 23 A. That's correct. I relied on data that Arendi
 24 requested from Google and Google produced.
 25 MS. SRINIVASAN: Your Honor, may I approach for

1 a minute?
 2 THE COURT: Yes.
 3 MS. SRINIVASAN: Sidebar.
 4 - - -
 5 (Whereupon, the following discussion is held at
 6 sidebar.)
 7 MS. SRINIVASAN: Your Honor, Google had moved
 8 in limine to prevent -- well, I guess really to prevent
 9 Mr. Weinstein from testifying about Google app-related
 10 revenue.
 11 The witness has just said that he noted that
 12 some of the way in which they accounted for Gmail revenue
 13 was through advertising, and I would like to explore that
 14 with him. I want to make sure there is no ruling on the
 15 Court has issued on limine.
 16 One issue I would like to ask about is their
 17 public filings that show they are looking at advertising
 18 revenue when they talk about these Google properties.
 19 MR. PETERMAN: Your Honor, I think that's
 20 inappropriate. There is a MIL with respect to the larger
 21 Google advertising. There is no tie that's been made
 22 between Gmail and larger Google advertising.
 23 The testimony in the record is specifically
 24 with respect to the Gmail app and the revenue numbers that
 25 have been provided here. I don't think we have an

1 objection to the Gmail app revenue numbers. Specifically
 2 anything beyond what is the subject of the MIL.
 3 THE COURT: All right. Let's let the jury take
 4 their afternoon break, and we will take this one under
 5 advisement.
 6 In the meantime, I want to alert Arendi counsel
 7 that I won't charge you for the times we spent at sidebar,
 8 but you are running out of time to put on your validity
 9 case. I don't know how much more of this you want to get
 10 into it.
 11 MS. SRINIVASAN: He said it. I don't want to
 12 ask if it's going to violate the limine.
 13 (Whereupon, the discussion at sidebar concludes.)
 14 - - -
 15 THE COURT: Ladies and gentlemen of the jury,
 16 we are going to take the afternoon break, give you a
 17 chance to stretch, use the restroom if you need to. We
 18 will take approximately a ten-minute break.
 19 Ms. Garfinkel.
 20 (The jury exits the courtroom at 4:20 p.m.)
 21 THE COURT: All right. Counsel, we will be in
 22 recess. I will remain on the bench. Feel free to move
 23 about the cabin. But I'm going to take a look at the
 24 pending objection.
 25 (Whereupon, a recess was taken.)

1 **THE COURT:** All right. Let's go back on the
2 record. Can I see counsel at sidebar.
3 (Whereupon, the following occurred at sidebar:
4 **THE COURT:** So I went back and looked at the
5 testimony. There was an answer from the witness that he
6 had reviewed things and that the Gmail revenue appears to
7 come from advertising. There can be limited follow-up
8 questioning about that as long as it's in compliance with
9 the Court's ruling on the motion in limine.
10 **MS. SRINIVASAN:** Meaning, that if I asked him
11 about Google's own representations about advertising
12 connected to Gmail and Google properties is that in
13 bounds, out of bounds?
14 **THE COURT:** I don't know if he's reviewed
15 Google's representations about that.
16 Counsel, do you have any views on this?
17 **MR. PETERMAN:** I don't think he's reviewed
18 those. We think it gets close to asking about Google's
19 overall advertising revenue, things that are not tied to
20 the apps have the -- I believe the testimony is specific
21 to the apps.
22 We are okay with questioning on that, but
23 broader I think is really subject to sort of the
24 agreed-upon MIL, not to talk about the size of Google
25 revenues, overall wealth and the MIL with the Court. They

1 related to the browser and then other Google properties
2 like Gmail, Google Maps, and YouTube. This advertising
3 revenue feature is tied to those Google properties. It's
4 not a company-wide global corporate advertising revenue
5 figure.
6 **MR. PETERMAN:** First of all, I think YouTube is
7 not accused here. Are you intending to ask about these
8 specific numbers or any number?
9 **MS. SRINIVASAN:** To ask if he considered this
10 revenue that was related to the Google property and
11 whether he knows if it's included in the revenue that he
12 relied on for this case.
13 **MR. PETERMAN:** Google property is not
14 synonymous with the 12 apps on Android or nine at issue.
15 We think that goes beyond the bounds of what's under the
16 MIL.
17 **THE COURT:** Why don't you show me a copy of
18 what you intend to ask him. Why don't you all sit down
19 while I take this under consideration.
20 (Whereupon, the discussion at sidebar concludes.)
21 - - -
22 (Whereupon, a recess was taken.)
23 **THE COURT:** Counsel, I'm ready to see you at
24 sidebar.
25 - - -

1 can't put any specific number on advertising.
2 **MS. SRINIVASAN:** Well, they have revenue
3 figures that are tied to Google properties, like Google
4 Chrome, Search and Google Gmail and Google Maps, so it's
5 not global advertising revenue, it's what they describe as
6 Google properties, like the apps at issue.
7 I want to know if he looked at it at least
8 because he's talking about now that he looked at one
9 application revenue figure that he thinks advertising may
10 be relevant to. But as I took it from his testimony he
11 didn't consider or doesn't know if it was reflected in the
12 revenue that he looked at for every other app.
13 **THE COURT:** It's fair. She asked him if he
14 looked into other numbers, is it not?
15 **MR. PETERMAN:** Your Honor, with respect to the
16 accused apps at issue, I don't know if the numbers counsel
17 is referring to are --
18 **MR. UNIKEL:** I argued the MIL on --
19 **THE COURT:** We will stick with the rule. You
20 are welcome to confer with counsel.
21 Why don't you take a look at what she proposes
22 to ask him.
23 **MS. SRINIVASAN:** There is specific disclosure
24 around Google property search properties revenue from
25 traffic generated by search distribution partners, that's

1 (Whereupon, the following discussion is held at
2 sidebar.)
3 **MR. BELGAM:** Your Honor, Mr. Kidder is still
4 here, so we might need the noise machine or we could ask
5 him to leave.
6 **THE COURT:** You can turn on the machine. That
7 thing is very effective.
8 False alarm. Give us one more minute.
9 (Whereupon, the discussion at sidebar concludes.)
10 - - -
11 (Whereupon, a recess was taken.)
12 **THE COURT:** All right, Counsel, I'm ready.
13 - - -
14 (Whereupon, the following discussion is held at
15 sidebar.)
16 **THE COURT:** Okay. My ruling is that counsel
17 for Arendi can ask questions about this. You will not
18 show this exhibit to the jury. This exhibit will not be
19 admitted into evidence.
20 You can ask him if he took these things under
21 consideration. You have to stick with the answer that you
22 get.
23 **MR. PETERMAN:** Your Honor, we object to the
24 extent she is allowed to mention the number. This was not
25 raised in the MIL discussion. We had a very long

1 discussion about MIL. Counsel for Arendi could have
2 raised it during the argument. This was not produced
3 during discovery. This was not shown to Mr. Kidder or any
4 other witness during deposition.

5 We respect Your Honor's decision, but the
6 numbers themselves are very harmful, very, and
7 particularly at issue in the MIL we don't believe they
8 should come in. He's going to answer that he didn't
9 consider this.

10 **THE COURT:** Okay. All of your points are
11 taken. I did review the transcript of the motion in
12 limine. I believe this is fair game.

13 Your expert testified about appropriate numbers
14 based on revenues. She wants to cross him on whether his
15 revenue numbers are correct and the word "revenues" is on
16 this page. She can ask about it.

17 You have to take the answer you get from him.

18 **MR. UNIKEL:** Does that mean she can ask about
19 the numbers themselves?

20 **THE COURT:** Counsel.

21 **MR. PETERMAN:** Two things, Your Honor. This
22 document is not limited to the apps at issue in this case.
23 Numbers themselves are something that was specifically the
24 subject of the MIL the Court ruled that numbers regarding
25 overall advertising cannot be asked about included

1 Chancery Court connection with the trial.

2 **MS. SRINIVASAN:** This is a global advertising
3 number.

4 **THE COURT:** It is global.

5 **MS. SRINIVASAN:** It is not global. They didn't
6 want corporate advertising global advertising for the
7 company. He's relied on documents that are not kept in
8 the ordinary course as to revenue. He doesn't know how
9 they were prepared. He was handed them by Google. It is
10 fair game to ask. He could have gone and looked at the
11 SEC filings.

12 **THE COURT:** So the problem, Counsel, that
13 counsel just raised is that these numbers are not limited
14 to the apps in this case, so why is that appropriate?

15 **MS. SRINIVASAN:** They don't keep that in the
16 ordinary course. So they have generated a number for
17 revenues. He doesn't know how they did it. They are
18 relying on that and ignoring other relevant financial
19 information. They don't have an explanation.

20 **THE COURT:** Counsel, standby. Standby.

21 When I initially made the ruling, I had
22 understood that we were crossing. As I'm looking at this,
23 this very clearly, on its face, relates to things that are
24 not accused in this case.

25 Do you disagree with that?

1 **MS. SRINIVASAN:** It includes Google properties,
2 Your Honor, but this is the closest that they keep --

3 **THE COURT:** Okay.

4 **MS. SRINIVASAN:** But, Your Honor --

5 **THE COURT:** I usually want to make sure
6 everyone understands I am not the type of person -- you
7 realize by now this is not a situation where whoever talks
8 last wins.

9 In this particular case, the point that counsel
10 just brought up about this not being limited to the
11 accused apps, I do find persuasive on that point.

12 You can not bring up these numbers because they
13 are not tied to the apps in this case. You can ask him if
14 he considered things like the 10-K or if he explored other
15 revenue, sources for revenue, but we're not going to
16 reveal these numbers. That's the ruling. Thank you.

17 Let's bring the jury back in.

18 **MR. BELGAM:** Your Honor --

19 **MS. SRINIVASAN:** May we make a proffer on the
20 record? This is what we would have offered had we been
21 permitted to do so.

22 **THE COURT:** Okay.

23 **MS. SRINIVASAN:** This is PX-61 that we would
24 have introduced.

25 **MR. PETERMAN:** Has not been admitted.

1 **MS. SRINIVASAN:** No. It's not been admitted
2 yet.

3 PX-61 that we would have questioned Mr. Kidder
4 about Google SEC statements that talk specifically as to
5 advertising revenue related to Google properties including
6 Gmail, Google Maps, Google Play, YouTube, and as well as
7 traffic revenue from traffic generated by Google browsers
8 at Page 28.

9 **THE COURT:** Okay. Counsel, would you put on
10 the record your view about whether or not this -- what
11 these numbers correspond to.

12 **MR. PETERMAN:** Yes. Our view is the numbers
13 that are in PX-61 relate to many properties beyond the
14 specific 12 accused apps in the case and Google Pixel
15 devices that are part of this.

16 We believe it is subject to the MIL that the
17 Court ruled on regarding larger advertising numbers and
18 believe that the Court is appropriately keeping these
19 numbers out of the case.

20 **THE COURT:** All right. Let's bring the jury
21 in.

22 (Whereupon, the discussion at sidebar concludes.)

23 - - -

24 **THE COURT:** For the record. The ruling at
25 sidebar relied on Federal Rule of Evidence 403, as well as

1 the Court's prior ruling on the motion in limine.
 2 Let's get the witness back on the stand.
 3 Ms. Garfinkel, let's bring the jury back in.
 4 **THE CLERK:** Yes, Your Honor.
 5 (The jury enters the courtroom at 4:48 p.m.)
 6 **THE CLERK:** Your Honor, the jury.
 7 **THE COURT:** Please have a seat.
 8 Let's continue with cross-examination.
 9 **MS. SRINIVASAN:** Thank you.
 10 **BY MS. SRINIVASAN:**
 11 **Q.** Mr. Kidder, before the break, I had asked you about
 12 the revenue information that you relied on in preparing
 13 your opinions, and your testimony was that that was data
 14 that you got from Google, correct?
 15 **A.** Yes.
 16 **Q.** Did you make any effort to go look at Google's public
 17 securities filings or any publicly available information
 18 about how Google earns revenue?
 19 **A.** Not in the context of this case, no.
 20 **Q.** Did you make an effort to determine the different
 21 revenue streams that Google earns related to the accused
 22 applications?
 23 **A.** No.
 24 **Q.** You testified earlier that you had considered
 25 advertising in connection with Gmail.

1 Did you look at how advertising revenue might have
 2 impacted the revenue numbers you received from Google in
 3 this case?
 4 **A.** Just by understanding that the Gmail revenues
 5 included advertising revenues.
 6 **Q.** But for the remainder of the applications that you
 7 analyzed that form that [REDACTED] application revenue
 8 number, your understanding is that the rest of those did
 9 not take into account advertising, correct?
 10 **A.** No, it's not correct. I just didn't know what was in
 11 the rest of those.
 12 **Q.** And you didn't ask, to be fair?
 13 **A.** That is correct, yes.
 14 **Q.** Is you didn't ask anybody at Google, should the
 15 numbers that I get reflect the benefits from advertising
 16 revenue that Google gets in connection with those
 17 applications, correct?
 18 **MR. PETERMAN:** Objection, Your Honor.
 19 **THE COURT:** Overruled.
 20 **THE WITNESS:** I'm sorry. Can you repeat the
 21 question?
 22 **BY MS. SRINIVASAN:**
 23 **Q.** Sure. In the course of doing your analysis, you got
 24 these revenue numbers, you didn't ask anybody at Google
 25 whether those numbers reflected the benefit that Google

1 gets from advertising revenue in connection with any of
 2 the accused applications, correct?
 3 **A.** Yeah. As I said, I accepted them at face value,
 4 didn't try to understand the components.
 5 **Q.** You testified earlier that it's not so easy to get
 6 information from Google.
 7 That was your testimony?
 8 **A.** Yes.
 9 **Q.** But you, in fact, have worked with Google quite
 10 frequently, correct?
 11 **A.** I have done other cases with Google, yes.
 12 **Q.** And fair to say it's not just one or two cases where
 13 you have served as an expert testifying for Google?
 14 **A.** No. I think over 16 years, it's been more than one
 15 or two, yes.
 16 **Q.** And I know you have before you your CV. And in the
 17 interest of time, I'm not going to go through each of
 18 those engagements, but I have a demonstrative that
 19 reflects what's in your CV. You see those, those are
 20 references to the litigation experience that come from
 21 your CV, your resume, from your August 2022 report.
 22 Do you see that?
 23 **A.** Yes, I do.
 24 **Q.** And does that reflect the instances and cases in
 25 which you testified as a damages expert for Google over

1 the past few years?
 2 **A.** Over the past, I think, 16 years, I think that's
 3 correct.
 4 **Q.** And that is almost ten times that you've served for
 5 Google in that capacity, correct?
 6 **A.** I have been retained by attorneys for Google, yes.
 7 **Q.** And you've offered testimony as to damages in each of
 8 those cases, correct?
 9 **A.** That is correct.
 10 **MS. SRINIVASAN:** Pass the witness.
 11 **REDIRECT EXAMINATION**
 12 **BY MR. PETERMAN:**
 13 **Q.** Mr. Kidder, just a few follow-up questions.
 14 What date did you first understand that Arendi was
 15 accusing the STS functionality only of infringement?
 16 **A.** Whatever the late Friday night was before trial
 17 started.
 18 **Q.** And what date did you first learn that Arendi was
 19 alleging a \$45.5 million damage number in this case?
 20 **A.** At the same time frame, like, 10:00 at night or
 21 something like that on the Friday before trial started.
 22 **Q.** That was after the day the jury was impaneled?
 23 **A.** Yes.
 24 **MR. PETERMAN:** Mr. Boles, can you bring up
 25 PDX-7-3, please.

1 **BY MR. PETERMAN:**

2 **Q.** Will you explain to the jury why your numbers and

3 Mr. Weinstein's numbers in PDX-7-3 are the same?

4 **A.** Because we matched his methodology.

5 **Q.** Is it your opinion that the numbers here overstate

6 the downloads to Android 8 with STS or Android 9?

7 **MS. SRINIVASAN:** Objection. Leading.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** Yes. These are all -- this is

10 just an apportionment of all downloads for -- sorry, this

11 isn't an apportionment for 2018. This is most of 2018,

12 but it doesn't -- there's no specificity as to which

13 version of Android were downloaded to. It's just

14 downloaded to Android, as we saw the tab in that prior

15 sheet.

16 **BY MR. PETERMAN:**

17 **Q.** And what is the impact of this overstatement on your

18 \$500,000 damages calculation?

19 **A.** It doesn't make too much difference, actually. So if

20 you remember, I'm looking at revenues. And most of

21 revenues come from the devices. And there's ██████████

22 out of ██████████ that came from the apps. So, you know,

23 even if I took away the entirety of the apps revenue, it

24 wouldn't make a substantive difference in my opinion.

25 **Q.** And what is the impact of this overstatement on

1 Mr. Weinstein's \$45.5 million damages calculation?

2 **A.** It's significant. Because, I mean, most of his

3 damages opinion relies on app counts and multiplying the

4 app counts by ten cents.

5 **MR. PETERMAN:** Thank you, Mr. Kidder. No

6 further questions.

7 **THE COURT:** Thank you very much.

8 You may step down, sir.

9 **MR. PETERMAN:** May Mr. Kidder be released, Your

10 Honor?

11 **THE COURT:** Yes, he may.

12 **THE COURT:** Does Google have any additional

13 witnesses to call?

14 **MR. UNIKEL:** Google rests its case, Your Honor.

15 **THE COURT:** Thank you very much.

16 **MS. SRINIVASAN:** And, Your Honor, we might have

17 some motions to raise outside the presence of the jury. I

18 think we can do that at the end of the day if the Court

19 agrees with that.

20 **THE COURT:** That's fine.

21 Would Arendi like to present a rebuttal case?

22 **MR. LAHAD:** Yes, Your Honor. We have a

23 rebuttal witness, Dr. Earl Sacerdoti, please.

24 **MR. PETERMAN:** Is the room unsealed as of yet?

25 **THE COURT:** The courtroom should be unsealed.

Sacerdoti - Direct

1 **MR. PETERMAN:** Thank you. Just checking. I

2 wasn't sure.

3 **THE COURT:** Thank you.

4 * * *

5 (Whereupon, the sealed discussion concludes.)

6 - - -

7 **THE CLERK:** Please state spell your name for

8 the record.

9 **THE WITNESS:** It's Earl Sacerdoti, E-A-R-L,

10 S-A-C-E-R-D-O-T-I.

11 **THE CLERK:** Thank you. Please be seated.

12

13 EARL SACERDOTI, having been called as a witness,

14 being first duly sworn under oath or affirmed, testified

15 as follows:

16

17 DIRECT EXAMINATION

18 **MR. LAHAD:** Your Honor, may I approach?

19 **THE COURT:** Please.

20 **BY MR. LAHAD:**

21 **Q.** Good afternoon, sir. Could you please introduce

22 yourself to the Court and the jury.

23 **A.** Yeah. Good afternoon. My name is Earl Sacerdoti.

24 **Q.** Why are you here today, sir?

25 **A.** I'm here to testify regarding the validity of the

Sacerdoti - Direct

1 '843 patent.

2 **Q.** I believe you have some slides for us today; is that

3 true?

4 **A.** I do.

5 **Q.** These are they, correct?

6 **A.** This is the first one.

7 **Q.** We are on the clock today, Doctor, so we're going to

8 be going through these pretty quickly. But before we get

9 into your -- let me ask you this: What is, generally,

10 your opinion that you are going to give today?

11 **A.** My opinion is that the currently validated '843

12 remains valid.

13 **Q.** Before we get into that, tell me about yourself.

14 Where were you from?

15 **A.** I'm from Northern California, been out there for

16 about 52 years.

17 **Q.** Where did you go to school?

18 **A.** Did my undergraduate work at Yale, my graduate work

19 in computer science at Stanford.

20 **Q.** You have an MS and a PhD from Stanford; is that

21 correct?

22 **A.** That's correct.

23 **Q.** How long have you been -- let's call it working in

24 computers or working with computers?

25 **A.** Well, a bit longer than Dr. Fox who testified this

1 morning. I wrote my first company computer program in
 2 1963.

3 Q. And can you give the jury a flavor of some of your
 4 experience involving computers and computer science since
 5 then?

6 A. Yeah, I've done a range of things. I was working at
 7 SRI, Stanford Research Institute, nonprofit research
 8 institute at Stanford for about ten years. Got the
 9 entrepreneurial itch and founded a number of companies,
 10 one called Machine Intelligence that was trying to
 11 commercialize machine vision and robotics. And we spun
 12 out of there another company that -- an initial product
 13 understanding natural language questions against a
 14 database. That product became Q and A, which was the
 15 first product of a company we spun out of Machine
 16 Intelligence called Symantec, which you may have heard of.

17 Q. What did you do for Apple?

18 A. After consulting for Apple for a while, they hired me
 19 on as a full-time employee to establish a group, basically
 20 to coordinate their R&D efforts. This was in the middle
 21 '90s, and believe it or not, they'd been around for 15
 22 years and they'd never had what's called a product
 23 roadmap, a plan of which products are going to come out
 24 which order, what software is going to be in what hardware
 25 and stuff. So that was the job I took on there.

1 Q. And you've got a few patents. Can give us a brief
 2 flavor about the technology you've invented?

3 A. Yeah. I've done a range of things. The first couple
 4 patents I did were in the area of data visualization and
 5 an interactive system for building these kind of
 6 visualizations. With some colleagues, I built a portfolio
 7 of patents around consumer-selected advertising in virtual
 8 worlds. So if you had an avatar and you put a Nike Swish
 9 on your chest, you could get paid for that as other people
 10 saw it and interacted with you.

11 And then and I also have a patent in applying machine
 12 learning to predicting which homes in a given local area
 13 are most likely to go on the market and sell in the next
 14 year.

15 MR. LAHAD: Your Honor, I'd offer Dr. Sacerdoti
 16 as an expert in computer science and programming?

17 MR. UNIKEL: No objection, Your Honor.

18 THE COURT: He's qualified.

19 MR. LAHAD: Thank you, Your Honor.

20 THE WITNESS: Thank you, Your Honor.

21 BY MR. LAHAD:

22 Q. In forming your opinions, sir, what materials did you
 23 review?

24 A. I kind of looked at all the stuff you've been talking
 25 about all week; the patent itself, it's file history,

1 prior art references, transcripts of the depositions that
 2 we all saw last week, the videos of the various conference
 3 presentations that we heard about and saw. And I also
 4 inspected the MAC Book devices that Dr. Miller discussed
 5 in his deposition.

6 Q. You were in the courtroom today for Dr. Fox's
 7 testimony, correct?

8 A. I was.

9 Q. You read the reports he issued in this case, correct?

10 A. I did.

11 Q. Do you agree with Dr. Fox's conclusion regarding
 12 validity of the patents?

13 A. No, I don't.

14 Q. Do you agree with Dr. Fox's approach or his analysis?

15 A. I'm not sure I understand his approach for the
 16 analysis, but I certainly don't agree with how he's
 17 presented or what the results of that are. It doesn't
 18 make -- he hasn't given, in my perspective, thorough
 19 analysis.

20 Q. What do you mean by that?

21 A. Well, this is a very intricate and connected pattern
 22 of all the various claim terms there, claim elements refer
 23 to the same terms, in many of the claim elements. And
 24 it's not okay to just say, okay, I see some of these
 25 things in some prior art and some others in some other

1 prior art and paste them together and check off the things
 2 that are in the middle. All of these things in this day
 3 after New Years confetti of the floor slide are intended
 4 to indicate how the various terms in the claim elements
 5 are used over and over again.

6 And if I talk about first computer program in one of
 7 the elements, I have to be talking about the same first
 8 computer program in all the others. So what Dr. Fox
 9 didn't do, for example, this morning was when he said,
 10 "Okay, I can check off this line here," he didn't go back
 11 and see if the way he checked off that line connected
 12 using the same other elements, other terms consistently
 13 throughout all the different elements. And in my
 14 understanding of how to interpret a claim, that has to be
 15 done.

16 Q. What are you showing us here with this slide?

17 A. So the approach that I took was to kind of take the
 18 kind of analysis that's suggested by my New Year's party
 19 slide and give myself a sequence of questions that I to
 20 have to say, "yes" to for something to possibly practice
 21 the patent, that is, you know, kind of do the invention.

22 And so first question is, "Was an editable document
 23 displayed by the first computer program? If so, does
 24 analyzing the information identify multiple types meeting
 25 the Court's construction?" And so on and so on and so on.

1 There's a whole set of questions that I ask in sequence,
 2 and if I can go through that and get to the end, then I
 3 know that I have a candidate for something that might
 4 practice the patent. And I'll go back and look at it in
 5 more detail.

6 **Q.** And Dr. Fox provided his opinions with respect to
 7 anticipation and obviousness this morning. And is there
 8 any portion of Dr. Fox's opinion that you agree with?

9 **A.** Is there any portion of it that I agree with? Well,
 10 I don't agree with his bottom line conclusions. I'm sure
 11 if we looked, there would be parts of it I agree with.

12 **Q.** Let me ask you that. Do you agree with any of
 13 Dr. Fox's opinion on the validity of the patent?

14 **A.** I don't.

15 **Q.** And is it true with respect to anticipation and
 16 obviousness?

17 **A.** Yes, it is.

18 **Q.** Can you -- the Court will instruct the jury on the
 19 law, but can you give us just a brief recap of
 20 anticipation and obviousness?

21 **A.** Yeah. As I understand it. I'm not a lawyer; that's
 22 not where my expertise lies. But anticipation, as we've
 23 heard several times, is when a single prior art, a piece
 24 of prior art, a document or a system, if you can prove out
 25 that the system existed -- does everything. Practices

1 **Q.** Let's start talking about some of the Dr. Fox's
 2 opinions and some of the grounds for invalidity. Let's
 3 start with anticipation by CyberDesk. Of course, you
 4 disagree that CyberDesk anticipates the '843 patent,
 5 correct?

6 **A.** Yes.

7 **Q.** So tell me, what's CyberDesk missing?

8 **A.** Well, one thing that it's missing, we can see here
 9 from the -- this is the Chi paper that we've heard a lot
 10 about over the last week. The diagram that shows how
 11 CyberDesk works, shows as its example the input coming
 12 from a mail reader. It's a mail reader, not a full mail
 13 client. It means it's reading your mail. That means what
 14 it's reading is not an editable document under the Court's
 15 construction; therefore, it's not a document. If it's not
 16 a document, then my cascading list of questions kind of
 17 gets a "no" right at the very top. And consequently,
 18 CyberDesk cannot invalidate the '843 patent, cannot
 19 anticipate the '843 patent.

20 **Q.** You were in the courtroom last week when we heard the
 21 testimony of Dr. Dey, correct?

22 **A.** Yes.

23 **Q.** And you recall he gave some testimony about editable
 24 documents in CyberDesk. Do you recall that?

25 **A.** Yes, I do.

1 every element of the claim and does so in the way that the
 2 claim is arranged. If that is the case, if that can be
 3 proven, then it practices the claim.

4 **Q.** What about obviousness?

5 **A.** With respect to obviousness, you can combine multiple
 6 references. You can't combine them willy-nilly, though.
 7 You have to ask yourself the question, would a person of
 8 ordinary skill in the art at the time of the invention,
 9 have had the motivation to do so? You know, would they
 10 have said, "Oh, it would be a good way, a idea to put
 11 these things together," for some reason. And that has to
 12 be done, importantly, not in hindsight. The game here
 13 isn't, oh, I see this patent. So let me look around at
 14 what art was available at the time and see if I can take a
 15 piece here and there and copy what the patent did.

16 The idea is, would you see those things and be
 17 motivated to make the invention. So it's like would you
 18 be motivated to put all these things together and end up
 19 with the invention, not just see the invention and then
 20 make art that copies it.

21 So if you're trying to build the invention from
 22 reading the claims, that's hindsight. You have to imagine
 23 that somebody hasn't seen those claims yet, hasn't seen
 24 the invention, and they're motivated to build it on their
 25 own.

1 **Q.** And candidly, that testimony is inconsistent with
 2 your opinion. You'd agree with that?

3 **A.** Yes, I would.

4 **Q.** So are you ignoring or disagreeing with Dr. Dey's
 5 testimony?

6 **A.** No. I'm sure he believes what he said. And it's a
 7 question of looking at all the evidence. We have
 8 contemporaneous evidence like that picture we just showed
 9 from the CHI paper that says at that point in time, at
 10 least his best example, wasn't editable text.

11 And Dr. Dey from 20 years later, remembered that at
 12 some point in the CyberDesk project, which took years,
 13 some work was done before the CHI paper. A lot of it was
 14 done after the CHI paper. He recalled that at some point
 15 it was an editable document, but he didn't recall -- in
 16 the deposition transcripts that I've read, he didn't
 17 recall when.

18 **Q.** So fair to say you're putting more weight on the
 19 contemporaneous documents that we saw rather than
 20 uncorroborated testimony of Dr. Dey?

21 **A.** Yeah. That's a good way to put it.

22 **MR. UNIKEL:** Objection. Leading.

23 **THE COURT:** Overruled.

24 **BY MR. LAHAD:**

25 **Q.** So what are you showing us here with respect to

1 CyberDesk, sir?

2 **A.** This is demonstrating that, under my analysis, it's

3 pretty clear that CyberDesk doesn't anticipate the '843

4 patent.

5 **Q.** Because there's no document?

6 **A.** Because there's first -- there's no document, that's

7 correct.

8 **Q.** You were in the courtroom this afternoon when -- or

9 this morning, rather, when Dr. Fox testified about

10 CyberDesk's browser.

11 Do you recall that?

12 **A.** Yes, I do.

13 **Q.** And all the applets being in the browser?

14 **A.** Yes.

15 **Q.** What do you think about that opinion with respect to

16 anticipation by CyberDesk?

17 **A.** That what he showed us this morning also demonstrated

18 that CyberDesk doesn't anticipate. This was a good

19 example of him not applying the kind of approach that I'd

20 suggest. Yeah.

21 **Q.** Let's talk about Claim 30. Does CyberDesk anticipate

22 Claim 30?

23 **A.** It does not.

24 **Q.** Why not?

25 **A.** Well, as we've heard several times, the dependent

1 claim depends on an independent claim. And if the

2 independent claim isn't practiced, then the claim that

3 depends on it will also not be practiced. So because

4 Claim 23 didn't anticipate Claim 30, which depends on

5 Claim 23, can't anticipate either.

6 **Q.** And does this apply to the obviousness argument that

7 we're going to talk about in a second?

8 **A.** It does.

9 **Q.** So if Claim 23 is not rendered obvious, then Claim 30

10 is not rendered obvious, correct?

11 **A.** Correct.

12 **Q.** All right. So we can cross that one off.

13 Let's put a bow on it. What's your independent

14 opinion on whether CyberDesk anticipates the asserted

15 claims of '843 patent?

16 **A.** CyberDesk does not anticipate the asserted claims of

17 the '843 patent.

18 **Q.** Let's move to some of the combinations. Now, you

19 understand that the CyberDesk system is the only ground of

20 invalidity that Dr. Fox asserts anticipates?

21 **A.** That's correct.

22 **Q.** Okay. And he's got a few combinations. Let's talk

23 about the combinations. First, let's talk about ADD and

24 CyberDesk. Very briefly, remind the jury what is or what

25 was ADD?

1 **A.** ADD, if you remember, was the system for dynamically

2 integrating programs that Apple Computer developed. This

3 was a multi-year project. Started in their R&D group.

4 And the papers about it discuss a kind of cheat by gel

5 collaboration between the R&D and the product group trying

6 out different things and doing what one of the authors

7 called "a dance" to try out features and put them in and

8 out and user test them, and come down with a tight system

9 that would support Apple's user's.

10 **Q.** What's ADD missing from the claims?

11 **A.** Well, ADD doesn't have a first computer program that

12 sets up the input device. ADD was created by modifying

13 the operating system so that it would watch what the

14 applications were doing and be able to provide the kind of

15 integration that they wanted without having to go in to

16 modify every application, which would be unpleasant for

17 all Apple's developers.

18 **Q.** Doctor, if I could direct your attention to your

19 notebook and have you turn to Page -- or the tab at

20 DTX-192.

21 **A.** Sorry. I'm having trouble finding it.

22 **Q.** So am I. Let's move on.

23 So remind us, what's missing from ADD?

24 **A.** So what's missing from ADD is an input device that's

25 set up by the first computer program because the only

1 input device there, the menu, is set up, like I said, by

2 the operating system.

3 **Q.** What sets up ADD, then, the input device in ADD?

4 **A.** The input device is set up by the operating system,

5 by the code that was added to the operating system to

6 support ADD.

7 **Q.** Okay. Well, let's -- you're my witness, but let me

8 cross-examine you for a little bit. You were in the

9 courtroom last week when Dr. Smedley and the rest of the

10 witnesses testified about infringement?

11 **A.** I was here for some of it. I wasn't here for the

12 protected parts of the testimony.

13 **Q.** And -- but you were here for the portions that

14 discuss this notion of the application being serviced by

15 functionality provided by the Java API framework.

16 Do you recall that?

17 **A.** Yes.

18 **Q.** And the allegation was that the Java API framework

19 was part of the operating system.

20 Do you recall that?

21 **A.** I do.

22 **Q.** Okay.

23 **MR. UNIKEL:** Objection, Your Honor. Sidebar,

24 please.

25 - - -

1 (Whereupon, the following discussion is held at
 2 sidebar.)

3 **THE COURT:** Okay. What's the basis?
 4 **MR. UNIKEL:** Your Honor, objection. This is
 5 outside the scope of the expert report. He's a validity
 6 expert. He's not an infringement expert. If he is about
 7 to give infringement opinion about how our system does or
 8 does not work, it would be infringement opinion. He can
 9 talk about how Apple Data Detectors works, talk about
 10 Dr. Fox's opinion that if Arendi's position is right what
 11 would that mean for the invalidity case. He cannot offer
 12 opinions on how our system work does or doesn't do.

13 **THE COURT:** Counsel?
 14 **MR. LAHAD:** I agree. He is not going to talk
 15 about that.

16 **THE COURT:** Great.
 17 **MR. UNIKEL:** Great. We are in agreement.
 18 Thank you.

19 **THE COURT:** There wasn't a pending question,
 20 jury.

21 Let's continue.
 22 (Whereupon, the discussion at sidebar concludes.)
 23 - - -
 24 **MR. LAHAD:** Thank you, Your Honor.
 25

1 **BY MR. LAHAD:**
 2 **Q.** My question to you is, how is this any different than
 3 what we heard last week?
 4 **A.** Remind me back one question. What -- oh, the -- the
 5 Infringement discussion.
 6 **Q.** The Java API framework?
 7 **A.** Yeah. The Apple Data Detectors documentation clearly
 8 indicates that the communication here is done through what
 9 are call Apple Events, which are messages that are sent
 10 from one piece of system to another. The message would be
 11 a piece of a data structure that gets built up by one
 12 program and that data structure is then transmitted to
 13 another program. It's quite different from linking from
 14 one piece of code to another during execution, which is --
 15 was my understanding of what Dr. Smedley was, basically,
 16 accusing Google of doing, linking as opposed to sending
 17 messages.
 18 **Q.** Is there a call from, for example, Notepad or a text
 19 editor in the Apple product to ADD?
 20 **A.** No. There's no call in that sense. The programs
 21 aren't linked together. They don't behave in execution
 22 like one big program.
 23 **Q.** So they're not joined together temporarily like
 24 Mr. Elbouchikhi said?
 25 **A.** That's correct.

1 **MR. UNIKEL:** Objection, your Honor. Leading
 2 the witness.
 3 **THE COURT:** Overruled.
 4 **BY MR. LAHAD:**
 5 **Q.** So what are you showing us here?
 6 **A.** What I'm showing us here is, if there is no input
 7 device set up by the first computer program, that fails my
 8 fourth question, and so that helps me determine that Apple
 9 Data Detectors does not practice the '843 patent claims.
 10 **Q.** Right. So but Dr. Fox is not asserting that
 11 anticipation by Apple Data Detectors is asserting the
 12 obviousness by the combination of CyberDesk and ADD,
 13 right?
 14 **A.** Correct.
 15 **Q.** Okay. So what is your opinion with respect to
 16 whether or not the combination of CyberDesk and ADD
 17 renders the claim obvious?
 18 **A.** That combination also does not render the claims
 19 obvious. If neither of the prior art systems practices
 20 one of these steps, then the combination couldn't either.
 21 **Q.** What about a motivation to combine? Would a person
 22 of ordinary skill in the art be motivated to combine
 23 Cyberdesk and ADD?
 24 **A.** I don't believe so.
 25 **Q.** Why not?

1 **A.** Well, the two systems are both trying to work on
 2 integrating computer programs dynamically as the user was
 3 doing stuff. But they were following very different
 4 objectives, and they're kind of going in opposite
 5 directions. Apple's system was designed to be something
 6 that was going to be actually added to the commercial
 7 operating system and needed to be attractive to their
 8 developer community because a lot of the value in Apple's
 9 computers was the software that would run on them. They
 10 couldn't keep their developers happy, they couldn't keep
 11 selling hardware.
 12 CyberDesk, by contrast, was a research project that
 13 was looking -- as opposed to Apple, which was trying to
 14 narrow the kinds of options they gave to users so the user
 15 wouldn't have no think about it much and could do it
 16 really quick.
 17 What CyberDesk was looking at was kind of blowing out
 18 the menu, looking at way more kinds of options over time.
 19 So they were looking at things like where am I on the
 20 campus when I'm asking this question or when I'm using
 21 this program? What does my face look like when I'm using
 22 the computer? It's a research project. So they were
 23 looking at finding other ways to determine the context and
 24 figure out what options to offer to the user.
 25 So one was a research project looking at making

1 bigger menus, if you will, or bigger kinds of choices.
 2 The other was a commercial effort, which required changing
 3 the operating system, was looking for the smallest
 4 increment to take advantage, make real value to their end
 5 users. Different motivations, different directions, they
 6 were headed altogether. It's hard to understand why you
 7 would combine them.
 8 Q. So what's your opinion regarding whether CyberDesk
 9 and ADD or ADD plus CyberDesk renders the claims obvious?
 10 A. My opinion is that the combination of those two
 11 systems would not render the '843 patent claims obvious.
 12 Q. Let's move on to the combination of CyberDesk and
 13 Microsoft Word 97.
 14 What's your opinion on whether that combination
 15 renders the claims obvious?
 16 A. My opinion is that combination, likewise, does not
 17 render the claims obvious.
 18 Q. So what's missing from the combination of CyberDesk
 19 and Microsoft Word 97?
 20 A. Well, I haven't seen anything in the documentation
 21 from Microsoft Word that would suggest that it analyzes
 22 information in the document to determine if the
 23 information is one or more types as the Court has
 24 construed, the kind of types that it's looking for,
 25 namely, contact information or identifying information.

1 me. I misread it. "One approach to integration is a
 2 tightly integrated suite of tools that take advantage of
 3 known services." This is what CyberDesk wants to say. So
 4 that is one approach. That is the Word 97 approach. It's
 5 part of Office 97, tightly integrated suite of services.
 6 If something is going to link to Microsoft Word in the
 7 Microsoft world, it's coded into the program.
 8 And what the CyberDesk folks say is, "This approach,
 9 available in many commercial personal productivity
 10 products, is unsatisfactory," and then they give you two
 11 reasons.
 12 Q. Is Microsoft Word 97 a commercial personal
 13 productivity product?
 14 A. Yes.
 15 Q. And they find the use of Microsoft -- they being the
 16 CyberDesk guys -- they find the use of a tightly
 17 integrated suite of tools like Microsoft Word 97 to be
 18 unsatisfactory?
 19 A. That's what they're saying here, yes.
 20 Q. So what does that tell you about whether or not there
 21 would be a motivation to combine the two?
 22 A. Well, if I were a person of skill in the art and I
 23 read that one approach was unsatisfactory from the point
 24 of the other, I don't believe I'd have a strong motivation
 25 as to checkout whether they could be combined.

1 So a system that, as Dr. Fox had suggested this
 2 morning, that pulls aspects from CyberDesk, wouldn't do so
 3 either.
 4 Q. Well, do you agree that there's a motivation to
 5 combine CyberDesk and Word 97?
 6 A. I pretty strongly disagree with that. There's good
 7 evidence that such a motivation does not exist.
 8 Q. You think the CyberDesk guys would agree with you?
 9 A. I do.
 10 Q. Why do you say that?
 11 A. Well, I've read their papers and they say it.
 12 Q. Let's go to DTX-10, please, which is in your
 13 notebook.
 14 A. I have that one.
 15 Q. Excellent.
 16 MR. LAHAD: If we can have DTX-10 on the
 17 screen, please, Mr. Boles.
 18 BY MR. LAHAD:
 19 Q. Can you direct us to the portion of this document on
 20 which you are relying?
 21 A. Yeah. If you go down to the second paragraph in the
 22 introduction. There we go.
 23 Let me read out that first sentence there: "Our
 24 approach to integration is a tightly integrated suite of
 25 tools that take advantage of known services" -- oh, excuse

1 Q. Are you familiar with the concept of teaching away?
 2 A. Yes.
 3 Q. What's teaching away?
 4 A. Teaching away is a lawyerly kind of term for saying
 5 that a piece of prior art suggests that you shouldn't do
 6 what the patent does.
 7 Q. Does this document teach away from the combination
 8 from CyberDesk and Microsoft Word 97?
 9 A. Yes, it does. It's saying taking Microsoft Word
 10 approach tightly integrated is not the direction that we
 11 should be going in.
 12 Q. Thank you.
 13 So let's wrap it up. What is your opinion on whether
 14 there is a motivation to combine CyberDesk and Microsoft
 15 Word?
 16 A. In my opinion, there is not a motivation to
 17 combine --
 18 Q. And does that --
 19 A. CyberDesk Microsoft Word.
 20 Q. I'm sorry, Doctor.
 21 And does that render the claims obvious?
 22 A. Yes, it does -- sorry. That does not render the
 23 claims obvious.
 24 Q. Thank you.
 25 Let's go to the last one, ADA and Microsoft Word.

1 Does that combination render claims obvious in your view?

2 **A.** It does not.

3 **Q.** Why not?

4 **A.** Generally, the same kind of argument. Apple Data

5 Detectors was very explicitly looking at a way to

6 integrate programs from the user's point of view

7 dynamically, and not -- again, not require changing the

8 individual apps, not making the developers go in and

9 change their code in order to product the integration.

10 That was kind of the whole thrust of what they were doing

11 as well.

12 **Q.** Do you think there's motivation to combine the two

13 references?

14 **A.** There isn't.

15 **Q.** Why not?

16 **A.** Well, again, as I said, they were aiming in opposite

17 directions. Microsoft Word is trying to keep a closed

18 system around the Office suite of products that call each

19 other or send messages to each other. And Apple Data

20 Detectors was trying to allow all programs to participate

21 in this integration process dynamically in run time.

22 **Q.** Let me direct your attention to your binder at

23 DTX-9-54. I think it's the last tab.

24 Do you recognize DTX-954?

25 **A.** I do.

1 LiveDoc was experimental system to look at some other ways

2 of providing user interface other than a menu that was in

3 a released Apple Doc product.

4 **Q.** Does LiveDoc include ADD functionality?

5 **A.** It does. It's built on top of ADD functionality.

6 **Q.** And one of authors on this paper is James R. Miller.

7 Do you see that?

8 **A.** That's correct.

9 **Q.** Same James Miller we heard from last week?

10 **A.** Yes, that's Jim Miller.

11 **Q.** Now if I could can have you join me at Page 8 of 11.

12 **MR. LAHAD:** And, Mr. Boles, if you could

13 highlight "A live simple text."

14 **THE WITNESS:** Yeah, so it's the second

15 paragraph there I'm interested in.

16 **BY MR. LAHAD:**

17 **Q.** Yeah. So what does this say with respect to

18 motivation to combine or the lack thereof?

19 **A.** Okay. Just a second. Live simple text was a version

20 of a text writing and weaving program, and they -- they

21 went in and changed the code of simple text to make it

22 work with this experimental system they were doing. So it

23 was a prototype. It was not something that was intended

24 for release. But -- so what they said was Live Simple

25 Text worked well as a prototype.

1 **Q.** This is one of the documents that you relied on in

2 forming your opinion regarding validity, correct?

3 **A.** It is.

4 **MR. LAHAD:** Your Honor, I offer DTX-954.

5 **MR. UNIKEL:** No objection, Your Honor.

6 **THE COURT:** It's admitted.

7 **MR. LAHAD:** Thank you, Your Honor.

8 (Exhibit DTX-954 is admitted into evidence.)

9 **BY MR. LAHAD:**

10 **Q.** I want to direct your attention to Page 8 of 11 at

11 the bottom.

12 **MR. LAHAD:** And that paragraph right there

13 Mr. Boles that starts with -- let me step back.

14 **BY MR. LAHAD:**

15 **Q.** If we go to the front of this document, it says, "An

16 overview of LiveDoc."

17 Do you see that?

18 **A.** Yes.

19 **Q.** What is LiveDoc?

20 **A.** LiveDoc was a research project that was done using

21 Apple Data Detectors kind of as a basis and standing on

22 its shoulders. One of problems that Apple was finding

23 with Apple Data Detectors was kind of the use of these

24 menus was a little clunky. And they were looking at ways

25 to make it kind of faster and easier for the user, and

1 But we were still concerned about acquiring

2 developers to change their applications to gain access to

3 LiveDoc's capabilities. Again, from Apple's perspective,

4 we don't want to make our developers have to recode

5 something just because we have a cool new feature. And

6 that's what they said and it makes sense.

7 We know from experience that developers are

8 justifiably reluctant to change their applications just to

9 implement a new feature provided by the toolbox. So we

10 experimented with some alternatives that we hoped would

11 ease this restriction.

12 **Q.** Would the -- would you have to change the

13 application, in this case Microsoft Word, to include the

14 Apple Data Detectors functionality?

15 **A.** Well, no. With respect to Apple Data Detectors, the

16 InNova system you would not. It would work with any

17 application.

18 **Q.** So what does this say about -- what does this say

19 with respect to teaching away as to ADD and Word '97?

20 **A.** Again, the ADD folks, we're looking at ways to not

21 make -- not have to make the programs explicitly link with

22 one another, in direct contrast with Microsoft Word '97's

23 approach, which was to directly link to the other

24 programs. So directly link, try to avoid directly

25 linking, teaching a way.

1 Q. And so let's wrap it up. What is your view as to
 2 whether or not the claims of the '843 patent are obvious
 3 in light of the combination of ADD and Word '97?
 4 A. My opinion is that they are not -- that combination
 5 does not render the '843 patent obvious.
 6 Q. Let's briefly touch on secondary considerations of
 7 nonobviousness. I will focus on the licensing one. Why
 8 is licensing relevant or how is licensing relevant to
 9 obviousness or nonobviousness?
 10 A. Well, these secondary considerations, ones that
 11 aren't technical, they're just other considerations.
 12 Doesn't mean they're not important. They are both
 13 secondary, which means they don't have to do with the
 14 technical stuff, per se. But if someone is paying for a
 15 license, they've got to be paying for something that they
 16 believe is valuable. And something that was obvious, you
 17 wouldn't think to pay for it, right? It's obvious.
 18 So the fact that other firms paid for licenses for
 19 the '843 patent suggests that there is something
 20 innovative there, there is something that was worth it to
 21 them to have a right to practice that patent in their
 22 products.
 23 MR. LAHAD: Pass the witness, Your Honor.
 24 THE COURT: Thank you.
 25 Cross-examination?

1 billed to Arendi in excess of \$200,000 for your work on
 2 these various cases?
 3 A. Frankly, I don't remember what I may have -- what I
 4 may have billed -- what I did bill in 2020.
 5 Q. Sir, do you recall at your deposition that you gave
 6 testimony under oath?
 7 A. I do.
 8 Q. And, sir, you were asked the following question and
 9 gave the following answer:
 10 "Question: Do you believe it's in excess of \$200,000
 11 that you've billed to Arendi in connection to your work on
 12 these various cases?
 13 "Answer: I believe so, yes." Unquote.
 14 Do you recall that testimony?
 15 A. No.
 16 Q. Do you have any reason to believe were you not
 17 telling me the truth?
 18 A. I have no reason to believe I wasn't telling you the
 19 truth.
 20 Q. Do you know three years later how much you've
 21 actually billed to Arendi in connection with your work on
 22 these cases today?
 23 A. No, I don't.
 24 Q. Your work on these cases focused on validity issues,
 25 correct?

1 MR. UNIKEL: Thank you, Your Honor.
 2 CROSS EXAMINATION
 3 BY MR. UNIKEL:
 4 Q. Good afternoon, sir.
 5 A. Good afternoon. It's nice to see you in person. You
 6 look much better than when you are a 1-inch square on my
 7 computer screen at the deposition.
 8 Q. Thank you. I will try to be brief. I know it's a
 9 late in the day.
 10 Sir, like all the experts in this case, you are being
 11 paid for your hourly service, correct?
 12 A. That's correct.
 13 Q. You are being paid at the rate of \$550 an hour; is
 14 that right?
 15 A. Yes.
 16 Q. When we spoke, you and I spoke, I think you just
 17 mentioned, in October of 2020, correct?
 18 A. I don't remember the date, but I'll take your word
 19 for it.
 20 Q. As of that date, you had told me that you had already
 21 made in excess of \$200,000 from Arendi at that point in
 22 time. Do you recall that?
 23 A. No, I don't.
 24 Q. I'll show him his --
 25 Sir, as of October 2020, do you believe that you have

1 A. That's correct.
 2 Q. And you looked at the patent in this case in
 3 connection with validity analysis, correct?
 4 A. A few times, yes.
 5 Q. And you're aware that the earlier U.S. filing date
 6 that is claimed by these patents is November 10, 1998; is
 7 that right?
 8 A. Yes, that's right.
 9 Q. Sir, if I may --
 10 MR. UNIKEL: And if I may impose on Mr. Boles
 11 to put up one of your slides, PDX-5-16, please. Sorry. I
 12 think we may be --
 13 Thank you very much.
 14 BY MR. UNIKEL:
 15 Q. Sir, am I correct that this is sort of the sequence
 16 of questions that you used to perform your analysis?
 17 A. It's not the entirety of performing my analysis.
 18 This was kind of a summary description of what I did.
 19 It's -- how do I say this? What this doesn't do, which I
 20 insist on doing to myself, is to incorporate the exact
 21 claim language and the terms as construed by the Court.
 22 I'm always -- when I'm doing this work, I have to --
 23 Q. Sir, I want to make sure we get out of this, so I'm
 24 going to ask you some specific questions. If you could
 25 give me some specific answers, it will help us to get

1 home.

2 **A.** I'm sorry. I'm happy to do so.

3 **Q.** Sir, this particular claim language that you took the

4 jury through, this is not the actual claim language of the

5 patent, correct?

6 **A.** That was the point I was trying to make.

7 **Q.** This is how you personally think about the claims, as

8 you say in the title of this slide, correct?

9 **A.** That is correct.

10 **Q.** And you've created these questions that you believe

11 correlate to the elements of the claims, but this is not

12 the actual claim language; is that right?

13 **A.** That's correct.

14 **Q.** And as I think you took us through, you went through

15 these questions and you answered yes or no, and then that

16 told you whether you could move on to the next question;

17 is that right?

18 **A.** Generally speaking, that's right.

19 When I get to the bottom, that doesn't mean, okay, I

20 don't do anymore analysis, that just means, okay, this is

21 worth analyzing. This is now looking close.

22 **Q.** And, sir, when it comes to CyberDesk, you agree that

23 Dr. Dey knows more about how the CyberDesk system works

24 than you do, correct?

25 **A.** You'd have to tell me what the CyberDesk system is

1 for me to answer that.

2 **Q.** Do you believe that Dr. Dey knows more about the work

3 that he did in connection with CyberDesk than you do?

4 **A.** Yes.

5 **Q.** And, sir, you are aware of the Future Computing

6 Environment's CyberDesk website from Georgia Tech,

7 correct?

8 **A.** Yes.

9 **Q.** In fact, as part of the work on this case, you

10 personally went to that website, clicked on some of its

11 hyperlinks to retrieve versions of some of the materials

12 that are on that website concerning CyberDesk; is that

13 right?

14 **A.** That's correct.

15 **Q.** Did you see, for example, the list of network

16 services and desktop services that CyberDesk actually

17 allowed to be used?

18 **A.** Yes, I did.

19 **Q.** And did you see Mr. Fox earlier today -- Dr. Fox --

20 included some excerpts from that referring to, for

21 example, a Notepad that was referred to in the desktop

22 services that were integrated?

23 **A.** I think we need to look at that slide. I'm not sure

24 that it was identified -- Dr. Dey, in his testimony, I

25 believe called -- said there was a Notepad at some point.

1 My recollection of what's on the website pages has

2 something like a simple Notepad or there's some adjective

3 that suggests that it's not a complete notepad program.

4 **Q.** So you recall that on the desktop services, there was

5 mention of a simple Notepad; is that correct?

6 **A.** Again, I would want to look at that document. I

7 don't -- as I say, I'm older than Dr. Fox. I don't

8 necessarily trust my memory any more than I would trust

9 Dr. Dey's memory. I would like to look at that document

10 and we can see what -- you know, we can see what the

11 contemporaneous document shows us rather than my

12 recollection --

13 **Q.** Sir, sitting here today, you don't whether or not the

14 desktop services on the CyberDesk website included a

15 reference to the simple Notepad; is that what you're

16 telling me?

17 **A.** I am saying I don't recall. I believe there was a

18 reference to a simple Notepad.

19 **Q.** And, sir, you have no reason to dispute Dr. Dey's

20 testimony concerning when he posted individual items on

21 the CyberDesk website, correct?

22 **A.** Please repeat that.

23 **Q.** Yes. You have no reason to dispute Dr. Dey's

24 testimony concerning when he posted individual items to

25 his website, correct?

1 **A.** I don't recall a whole lot of testimony regarding

2 when individual items were placed on that website, other

3 than some of the papers that he was preparing for

4 publication.

5 **Q.** And you have no reason to dispute Dr. Dey's testimony

6 about that, correct?

7 **A.** Regarding those dates for those papers, no.

8 **Q.** And sir, you -- I think you opined that the reason

9 you don't think that CyberDesk anticipates is because the

10 Mail Reader does not allow editing of documents, correct?

11 That was what you testified to a few moments ago.

12 **A.** I believe I said that was "a" reason. I didn't say

13 it was "the" reason.

14 **Q.** You provided that reason in this Court, correct, that

15 you don't believe that the Mail Reader allowed you to work

16 on editable documents; is that correct?

17 **A.** That is correct.

18 **Q.** And you concluded from the title "Mail Reader" that

19 it did not allow editing of the document, of the e-mail

20 that's shown in the CyberDesk screenshots, correct?

21 **A.** From that and other contemporaneous evidence on the

22 website as well.

23 **Q.** And so you watched the testimony of Anind Dey with

24 the jury, correct?

25 **A.** Yes.

1 Q. And I think you told your counsel that Dr. Dey's was,
 2 in fact, inconsistent with your conclusion about Mail
 3 Reader; is that right?
 4 A. No. I don't believe I said that. Maybe I did, but I
 5 don't believe I did.
 6 Q. Do you recall your counsel asked whether or not
 7 Dr. Dey's testimony about the use of a text editor was
 8 inconsistent with your view about Mail Reader?
 9 A. Again, I'm at a loss here. You're talking about a
 10 text editor or are we talking about a Mail Reader?
 11 Q. I'm just asking you, sir --
 12 A. A text editor doesn't say anything about a mail
 13 reader.
 14 Q. Sir, do you recall about 20 minutes ago that your
 15 counsel asked you expressly whether or not your opinion
 16 was inconsistent with the testimony of Dr. Dey?
 17 A. Yes, I do. I understood that as referring to the
 18 entirety of his testimony, not to any specific statement
 19 within it.
 20 Q. And you agreed that your opinion is inconsistent with
 21 the testimony of Dr. Dey, correct?
 22 A. Correct.
 23 Q. Sir, let me ask you a bit about Microsoft Word.
 24 As part of your work in this case, you looked at how
 25 Mr. Hedloy created the prototype for his products,

1 correct?
 2 A. I looked at a few instances of the prototypes of his
 3 product. I didn't see -- I didn't look at how he created
 4 it. I looked at what he created.
 5 Q. Well, in fact, didn't you state in your report that
 6 Mr. Hedloy used Microsoft's Visual Basic Scripting to
 7 create the macros that he used for the prototypes; is that
 8 correct?
 9 A. Yes.
 10 Q. And so the jury understands, a macro is a feature of
 11 Microsoft Word that lets a developer put instructions into
 12 a command inside of Microsoft Word, correct?
 13 A. I don't know that I would use the word "inside," but
 14 in general, that's correct. I don't know what it means to
 15 be inside.
 16 Q. And a Microsoft Word macro is designed to be used
 17 with Microsoft Word the program, correct?
 18 A. Yes.
 19 Q. And Visual Basic is a particular language that was
 20 developed and offered by Microsoft for people to program
 21 into their various applications, correct?
 22 A. I believe it was developed by Microsoft. It was kind
 23 of a second-generation macro language that they used with
 24 a number of their Office Suite products.
 25 Q. That allowed people like Mr. Hedloy to build program

1 features into Microsoft Word; is that correct?
 2 A. That's correct.
 3 Q. And sir, when reviewing the '843 patent, one of the
 4 questions you tried to answer was whether a person of
 5 ordinary skill in the art reading the patent would
 6 understand that the invention could be readily implemented
 7 using the macro facility that was well known in Microsoft
 8 Word; is that right?
 9 A. I apologize. I lost the beginning of your question
 10 by the time you got to the end.
 11 Q. Yes. In reviewing the patent, one of the questions
 12 you tried to answer was whether a person of skill in the
 13 art reading the patent would understand that the invention
 14 could be readily implemented by macros in Microsoft Word?
 15 A. I would agree with that.
 16 Q. And your conclusion was that a person of ordinary
 17 skill in the art would, in fact, realize that using the
 18 macro facility of Microsoft Word was a natural and easy
 19 and direct way to implement the invention; is that
 20 correct?
 21 A. Yes.
 22 Q. And you understood that people of skill in the art
 23 were aware of Visual Basic to use with Microsoft Word,
 24 correct?
 25 A. Yes.

1 Q. In fact, in your view, that was a well-known feature
 2 of Microsoft Word, correct?
 3 A. Correct.
 4 Q. Sir, I believe you expressed the opinion that one of
 5 the distinctions between the Apple Data Detectors
 6 functionality and the patented functionality was that
 7 Apple Data Detectors used the operating system to set up
 8 the input device; is that correct?
 9 A. Yes.
 10 Q. And you feel that that is a distinction that meant
 11 that the first computer program was not, in fact, setting
 12 up the input device?
 13 A. Yes.
 14 Q. Sir, let me ask you, by the way, you pointed out an
 15 article -- your DTX-10?
 16 MR. UNIKEL: Can we bring that up, please?
 17 Yes. Defense -- sorry. Apologize.
 18 BY MR. UNIKEL:
 19 Q. With your counsel -- you recall looking at this with
 20 your counsel?
 21 A. Yes.
 22 Q. You recall you've highlighted a certain -- a few
 23 sentences at the beginning of this Paragraph in CHI 97
 24 correct?
 25 A. Yes.

1 Q. So this article is from March of 1997 that you were
 2 quoting from, correct?
 3 A. That's when it was -- that's when the contents was.
 4 Q. Yes. And that's what the publication shows --
 5 A. Yes.
 6 Q. -- as far as the date?
 7 A. Yes.
 8 Q. And I believe you highlighted the first two
 9 sentences; is that right?
 10 A. Yes, I believe so.
 11 Q. And if I'm reading it correctly, you said -- you
 12 quoted, "One approach to integration is a tightly
 13 integrated suite of tools that take advantage of known
 14 services. This approach, available in many commercial
 15 personal productivity products, is unsatisfactory for two
 16 reasons."
 17 You quoted that language, correct?
 18 A. Correct.
 19 Q. And so you acknowledge that there was one approach to
 20 the integration of services to put those services inside a
 21 particular program, correct?
 22 A. Correct.
 23 Q. And it's your view that CyberDesk took a different
 24 approach; is that right?
 25 A. Yes.

1 independent -- the individual applets -- which, again, are
 2 not runnable by themselves -- were making believe, were
 3 the prototypes for the different applications that, in a
 4 regular system would have been hard coded by developers.
 5 Q. So it's your belief that the first computer program,
 6 so to speak, in CyberDesk is the web browser program; is
 7 that right?
 8 A. Yes.
 9 Q. And you're aware that in this case, Google Chrome is
 10 being accused of infringement. You are aware of that,
 11 correct?
 12 A. I am. I've heard that reference.
 13 Q. And Google Chrome is also a web browser; is that
 14 right?
 15 A. Yes.
 16 Q. And I think you just told me that it is your view
 17 that CyberDesk actually integrated its instructions into
 18 the web browser? Is that what you understood you to say?
 19 A. Well, at runtime, you are running the CyberDesk
 20 system, the applet code is linked, as Mr. Elbouchikhi
 21 described last week, temporarily joined while the program
 22 is being executed.
 23 Q. So you feel that that's what was happening in
 24 CyberDesk with the browser program, correct?
 25 A. Yes. When CyberDesk was running, all of these

1 Q. And it's your view that CyberDesk separated the
 2 instructions and did not put them inside a single computer
 3 program, correct?
 4 A. Depends -- that depends on how you view the CyberDesk
 5 architecture.
 6 Q. Do you believe that CyberDesk put all of the
 7 instructions into a single computer program under any
 8 interpretation of the architecture?
 9 A. Yes.
 10 Q. What is the interpretation of the architecture that
 11 leads you to believe that CyberDesk actually put the
 12 instructions into a single program?
 13 A. The CyberDesk documents -- this one probably does
 14 somewhere, but rather than looking through it, let me just
 15 talk about it in general.
 16 The CyberDesk documentation indicates that the
 17 CyberDesk system was implemented in a prototype fashion as
 18 a collection of what are called Java applets. Those are
 19 little chunks of code that are not actually separately
 20 runnable programs, that, when loaded into a web browser --
 21 and, as they described in the documentation, the web
 22 browser served as a model of a desktop.
 23 So they were kind of making believe that the browser
 24 screen was the desktop and exploring the integration of
 25 these various applications within that desktop. And the

1 applets were operating within the environment of the
 2 browser program.
 3 Q. Thank you, sir.
 4 MR. UNIKEL: I have no further questions.
 5 THE COURT: Any redirect?
 6 MR. LAHAD: Tiny.
 7 REDIRECT EXAMINATION
 8 BY MR. LAHAD:
 9 Q. Doctor, in that last scenario that counsel was
 10 talking to you about, when the browser is the first
 11 computer program, does that show any kind of anticipation
 12 by CyberDesk?
 13 A. No.
 14 Q. Why not?
 15 A. Well, as I have been showing with my waterfall slide
 16 and my New Year's Day party slide, you've got to see all
 17 the elements practiced within -- with one system for it to
 18 anticipate. We haven't seen that, even under the
 19 interpretation that the browser is the one first computer
 20 program.
 21 Q. That's, like as you testified earlier, because
 22 there's no second computer program, no second information;
 23 is that correct?
 24 MR. UNIKEL: Objection. Sidebar, please.
 25 - - -

1 (Whereupon, the following discussion is held at
 2 sidebar.)
 3 **MR. UNIKEL:** That was not his testimony
 4 earlier. That would be a new opinion rendered on
 5 redirect. It does not answer my question. That was only
 6 about the document element, the only expression he
 7 expressed on direct. It did not meet the document
 8 element, not that there was lack of a second computer
 9 program.
 10 **THE COURT:** Counsel?
 11 **MR. LAHAD:** I think he testified in the context
 12 of if the browser applets running in the browser, why is
 13 there no anticipation. He referenced the elements of the
 14 slide that weren't met.
 15 **MR. UNIKEL:** I don't believe he did offer that
 16 opinion. If he did, I would have a follow-up question to
 17 clarify something.
 18 **MR. LAHAD:** I am happy to move to withdraw the
 19 question.
 20 **THE COURT:** Let's do that.
 21 **MR. UNIKEL:** Thank you, Your Honor.
 22 **MR. LAHAD:** Thank you, Your Honor.
 23 (Whereupon, the discussion at sidebar
 24 concludes.)
 25 - - -

1 **THE WITNESS:** Thank you, Your Honor.
 2 **THE COURT:** Ladies and gentlemen of the jury,
 3 we have one more phase of this trial to go, and that's the
 4 phase where I give you the jury instructions and you hear
 5 the closing arguments from the attorneys. It's now almost
 6 6:00 at night on Monday. So it doesn't make a lot of
 7 sense for us to start that process tonight because it's
 8 going to take approximately two to three hours.
 9 So what I'm going to ask is for you all to
 10 appear tomorrow morning at 9:30. We should be ready to go
 11 with the jury instructions, and then we'll hear from
 12 counsel with their closing arguments. We should have the
 13 case to you for your deliberations by lunch. And I
 14 understand that we will be providing you lunch tomorrow as
 15 well.
 16 Just to remind everyone, until you retire to
 17 jury room after the closing arguments to deliberate on the
 18 case, you are simply not to talk about the case with each
 19 other. Do not do any research or investigate the case on
 20 your own, and don't form any opinion about the case until
 21 after we've heard the jury instructions and the closing
 22 arguments. Okay?
 23 You may be excused for the evening. We will
 24 see you tomorrow at 9:30.
 25 (The jury exits the courtroom at 5:53 p.m.)

1 **BY MR. LAHAD:**
 2 **Q.** There were some questions about money.
 3 Have you been retained by Arendi before as an expert
 4 witness?
 5 **A.** No, I have not.
 6 **Q.** Do you hope to be retained by Arendi in the future as
 7 an expert witness?
 8 **A.** I'm hoping this is my last time on the stand. I'm
 9 turning 75 next month. I'm done.
 10 **Q.** So you don't want to be retained by anybody in the
 11 future, correct?
 12 **A.** That's a fair way to put it, yes.
 13 **Q.** There was some talk about macros. At any point
 14 during his testimony, did you hear Dr. Fox say anything
 15 about macros?
 16 **A.** I don't remember I don't recall anything that he said
 17 about macros, no.
 18 **MR. LAHAD:** No further questions, Your Honor.
 19 Thank you.
 20 **THE COURT:** All right. Thank you very much.
 21 Does Arendi have any other rebuttal witnesses?
 22 **MR. LAHAD:** No other rebuttal witnesses, Your
 23 Honor.
 24 May the witness be excused?
 25 **THE COURT:** Yes, he may. Please step down.

1 **THE COURT:** Please have a seat. Okay, folks,
 2 let's spend a little time, if we could, just talking about
 3 the jury instructions before we -- let's take a
 4 five-minute break. We will be in recess.
 5 (Whereupon, a recess was taken.)
 6 **THE COURT:** All right. Please be seated.
 7 **MR. UNIKEL:** Your Honor, may I ask a quick
 8 question?
 9 **THE COURT:** Yes.
 10 **MR. UNIKEL:** For 50A motions, how would you
 11 like us to do those today? Do we just obviously want to
 12 make sure we don't waive them?
 13 **THE COURT:** Why don't you have everybody come
 14 up and put everything on the record that you want to say.
 15 So we had defendant rest, so let's hear from
 16 plaintiff.
 17 **MS. SRINIVASAN:** Yes, we have two 50A motions.
 18 **MR. LAHAD:** Your Honor, we move under Rule 50A
 19 for judgment as a matter of law regarding invalidity. The
 20 issue on which defendant bears the burden. There is
 21 legally insufficient evidence for a jury to find any
 22 invalidity through anticipation of obviousness.
 23 Dr. Fox did not present sufficient, legally
 24 sufficient evidence of anticipation of obviousness. There
 25 were significant shortcomings in his evidence of

1 anticipation with respect to CyberDesk, did not prove by
2 clear and convincing evidence that CyberDesk disclosed
3 document, as construed by the Court, among other deficient
4 claim limitations.

5 Likewise, Dr. Fox did not show obviousness by
6 any combinations that he raised, ADD and CyberDesk,
7 CyberDesk and ADD, and those two technologies or systems,
8 combined with Microsoft Word '97.

9 In particular, Dr. Fox failed to show any kind
10 of motivation to combine those references with each other.
11 And accordingly, we think there's legally insufficient
12 evidence of anticipation and obviousness.

13 Thank you, Your Honor.

14 **THE COURT:** All right. So the Court will
15 reserve decision on that, and we'll submit it to the jury
16 subject to the Court's later deciding the legal questions
17 raised by your motions.

18 Go ahead. Did you have another one?

19 **MR. ARD:** Yes, Your Honor.

20 **THE COURT:** All right. We've got another one.

21 **MS. SRINIVASAN:** And I stand corrected. I said
22 two. We have three, but we will be quick.

23 **THE COURT:** Okay.

24 **MR. ARD:** Your Honor, on the Samsung license,
25 we think the contract is unambiguously sort of in our

1 favor for the reasons we discussed previously. I think
2 it's Docket 220. I don't need to belabor the point.

3 If it's ambiguous, we don't think that they
4 have submitted any extrinsic evidence to support their
5 position, so we think that summary judgment would be sort
6 of warranted on that aspect as well.

7 The case that we would cite for that was cited
8 in our joint jury instructions.

9 **THE COURT:** What's the case? Can you just put
10 it on the record.

11 **MR. ARD:** Sorry. Need my glasses.

12 **THE COURT:** Yeah.

13 **MR. ARD:** *Weiner v. Anesthesia Associates*, it's
14 203 A.D.2d 455, New York.

15 **THE COURT:** All right. Thanks very much.

16 **MR. ARD:** That's the Samsung license.

17 Also, on estoppel, we think the only evidence
18 that they presented -- that they purport to have presented
19 that it allegedly was not in the publications was a
20 uncorroborated oral statement. So we think that they
21 should be estopped from raising CyberDesk. And for the
22 rest of them, we don't think there is anything they put in
23 the record that was noncumulative to the publications that
24 was germane to their invalidity theories. So we would
25 move on estoppel as well, for obviousness and

1 anticipation.

2 **THE COURT:** All right.

3 Did the -- in your view, did the Court not
4 already rule on the IPR estoppel issue? I know I said
5 that the Court would reconsider to the extent that
6 defendant's only evidence of the CyberDesk system
7 consisted of a prior art publication or patent. That's
8 not my recollection of the evidence that came in.

9 Are you asking for reconsideration of that or
10 this is just you're going to be preserving your ability to
11 raise this in a JMOL motion?

12 **MR. ARD:** Well, certainly the latter, I
13 suppose. But as to the former -- that we're preserving
14 it -- but as to the former, I think there are two distinct
15 questions, one is whether they can present evidence of the
16 system, and the second is whether the noncumulative aspect
17 of the evidence, the system that they've presented is
18 germane to the invalidity theory.

19 So if all of their sort of grounds for
20 invalidity are contained in the written publications they
21 presented, we think that's estopped. That's under Judge
22 Stark's summary judgment order in this case.

23 **THE COURT:** All right. Your position is noted
24 for the record.

25 Let me ask counsel for Google if somebody wants

1 to talk to me about the point about apparently under New
2 York law, they have a case that says that if you don't --
3 if the Court ultimately rules that the contract is
4 ambiguous and you don't present any extrinsic evidence
5 that you should grant judgment for the other side?

6 **MR. UNIKEL:** Your Honor, there's ample case law
7 cited in our various submissions on this that the best
8 evidence of the intent of the parties is the contract
9 agreements itself, and that actually is the most accurate,
10 most complete, and most on-point indication of what the
11 parties intended.

12 In addition, Mr. Hedloy, in cross-examination,
13 when taken through the terms did acknowledge that he
14 agreed to those terms voluntarily. When I asked him
15 whether or not he agreed to these on behalf of Arendi, he
16 acknowledged that he did. This is, in fact, evidence of
17 his intent and of what it was that he was agreeing to.

18 In addition, we pointed out to the Court the
19 integration clause of the contract itself, which actually
20 directs anybody to the terms of the contract as the
21 indication of the parties' agreement, as opposed to any
22 oral statements or anything extrinsic to the agreement.

23 So Mr. Hedloy's testimony itself is extrinsic
24 testimony that supports the intent and shows what the
25 actual positions of the parties were when they agreed to

1 the terms.

2 **THE COURT:** Okay. Your position is noted. I'm

3 going to reserve judgment on the license issue.

4 Counsel?

5 **MR. ARD:** May I respond very briefly?

6 **THE COURT:** Very briefly.

7 **MR. ARD:** Yes, Your Honor. First of all, the

8 cases they cited are not about ambiguous contracts. They

9 are all about the plain meaning of the contract.

10 Two, they have the burden of proof here. And

11 under the Wiseman case, it says explicitly if they don't

12 present any extrinsic evidence, they lose as ambiguous.

13 And three, on the parol evidence rule, under

14 ^FCHR1 one of the cases they cite, it says explicitly that

15 parol evidence rule, parol evidence is admissible if a

16 Court finds ambiguity in the contract.

17 **THE COURT:** Okay. All right. Your position is

18 noted for the record. I'm going to reserve judgment on

19 this no-license issue. I do want to talk about this again

20 in the context of the jury instructions, but we will get

21 to that in a minute.

22 Any motions to make for the record?

23 **MR. UNIKEL:** Yes, Your Honor. I assume that

24 I'm doing a quick recitation now and then we're submitting

25 the papers; is that correct?

1 **THE COURT:** All of those are renewed.

2 **MR. UNIKEL:** Thank you, Your Honor.

3 **THE COURT:** Okay. Please have a seat.

4 So I filed the Court's proposed edits to the

5 parties' jury verdict form earlier today. Does anybody

6 have anything they want to say about the form of those as

7 opposed to the substantive issues we're going to talk

8 about when we talk about the actual instructions?

9 **MR. LING:** Does Your Honor want to hear -- we

10 had objections to Question 4 and Question 6. We had

11 proposed that Your Honor did not include in the verdict

12 form -- I wasn't sure if you wanted to address those with

13 the jury instructions or now.

14 **THE COURT:** Remind me of what they are.

15 **MR. LING:** Question 4 was on the earliest

16 possible date of first infringement. And Google's

17 proposal Question 6 was whether the amount that the jury

18 determined, response to Question 5, includes damages for

19 Google apps [REDACTED]

20 **THE COURT:** All right. Why don't you just put

21 your position on the record about why those are

22 appropriate.

23 **MR. LING:** So there's a clear dispute based on

24 the trial record as to the earliest possible date of first

25 infringement. There was testimony from Mr. Elbouchikhi,

1 **THE COURT:** In post-trial briefing, correct.

2 **MR. UNIKEL:** Correct.

3 So, first, Your Honor, we will be filing a

4 motion for 102(a) and (b), anticipation of the asserted

5 claims in view of CyberDesk, both on the base of public

6 knowledge and in public use before the 102(b) critical

7 date and certainly before the application filing date of

8 November 10, 1998 or September 3, 1998. We believe

9 there's clear and convincing evidence that CyberDesk

10 system discloses all the asserted elements.

11 We'll also be making a motion on 103,

12 obviousness of the asserted claims, in view of the

13 combinations of CyberDesk system plus ADD, CyberDesk

14 system plus Word '97 and ADD system plus Word '97. We

15 believe there's been clear and convincing evidence that

16 has been rebutted that each of these combinations

17 discloses all of the elements.

18 We also will be renewing, because it is a

19 affirmative defense, the patent exhaustion and implied

20 license defense based on the Samsung license agreement,

21 which the parties both seem to agree is unambiguous.

22 In addition, Your Honor, I won't go through

23 them all unless you want me to, but we will be renewing

24 our previous 50A motions which were submitted at the close

25 of plaintiff's evidence.

1 Mr. Toki, Mr. Choc, as well as both sides' infringement

2 and noninfringement experts, Dr. Smedley and Dr. Rinard,

3 and the damages experts, Mr. Weinstein, Mr. Kidder. This

4 was a dispute that we believe the jury needs to decide.

5 **THE COURT:** How is it going to help us if we

6 have an answer to that? Because we've still got a dispute

7 about the one guy that downloaded it at midnight when it

8 came out versus when everybody else downloaded it.

9 **MR. LING:** Well, we believe the record is clear

10 and the evidence is clear that there was no possible

11 infringement earlier than December 5th, 2017. As to how

12 further allocate that, I think that is a separate issue.

13 But at least the period between August 21, 2017, which is

14 Arendi's asserted earliest possible date and Google's

15 asserted first possible date, there is a several-month gap

16 that was either in or out and without this question in the

17 verdict form, we believe it would not be possible to unwind

18 the damages verdict to the extent that issue is resolved

19 in Google's favor on appeal or either way, really.

20 **THE COURT:** All right. Let me hear from the

21 other side on this.

22 **MS. SRINIVASAN:** Your Honor, it's a disputed

23 fact issue. We offered a representative product

24 stipulation that Google offered as to when the accused

25 applications -- the devices that should be used that for

1 all other applications and products to be representative.
2 The jury received an instruction on that, and they heard
3 testimony about it. So it is not an issue they should be
4 asked to determine on the verdict form. They've heard
5 extensive testimony from Mr. Kidder that he started on a
6 different date because he viewed that as the appropriate
7 date. And they heard other testimony from Mr. Weinstein
8 based on his reliance on Dr. Smedley.

9 So it is not -- you know, it's not an issue of
10 law that should be presented to the jury. It is a
11 disputed fact issue that's obviously relevant for how they
12 calculated different damages. But the jury heard evidence
13 as to why it would be appropriate to select August 2017.

14 **THE COURT:** Right. But the jury also heard
15 evidence that a later date would be appropriate as well.

16 **MS. SRINIVASAN:** Correct. And that's part of
17 their apportionment for damages they offered today a
18 methodology if -- as one of many different for reducing
19 damages on that basis. But I don't think that there's --
20 there's sort of a fact finding on that particular question
21 that's needed because Google has explained to the jury, if
22 they believe Mr. Kidder and the evidence that he relied
23 on, then they can make an allocation of how to reduce and
24 offset damages.

25 But it is a disputed fact issue, and to force

1 the jury to make a fact finding on that date, we don't
2 think is necessary for the verdict form.

3 **THE COURT:** All right. So I've let everybody
4 put their positions on the record. So we're going to go
5 with what the Court had proposed not include that
6 question.

7 Did you have another one you wanted to put
8 Google's position on the record about?

9 **MR. LING:** Yes, Your Honor. On the proposed
10 question about whether the damages include Google apps
11 [REDACTED] similarly, that's clearly
12 been a dispute in this trial based on the record. And
13 again, any damages number that's presented as a lump sum
14 would be impossible to unwind or to fix depending on how
15 that question is answered if we don't know what the jury
16 was accounting for in their verdict.

17 **THE COURT:** Well, your expert opined about a
18 lump sum that would be appropriate if [REDACTED] were
19 included and if they weren't included, right?

20 **MR. LING:** That's correct, Your Honor. But the
21 jury could come back with conceivably a number in between,
22 for example, the damages experts' numbers. If we don't
23 know which party's theories they went with, it would not
24 be possible to tell whether or not they thought the
25 damages included the Google apps [REDACTED] [REDACTED]

1 [REDACTED] or not.

2 If we knew that answer, if they answered "yes"
3 to that question, then we could, if it turns out to be the
4 case that those apps were covered, then we could just --
5 then we know they did include them. If the jury answered
6 "no" and it turns out later that those devices were --
7 those apps were covered, then we could do a pro rata,
8 theoretically, as one way to fix the jury verdict. So
9 it's one way --

10 **THE COURT:** I understand your position. I'm
11 not going to say this is my view, but one reasonable
12 observer watching this trial might say there's a lot we're
13 not going to know if the jury comes back in between your
14 number and their number.

15 Would you disagree with that?

16 **MR. LING:** Understood, Your Honor. I take your
17 point. It's just one way we think that we could avoid
18 error and try to streamline things on appeal. I just
19 wanted to preserve the objection.

20 **THE COURT:** I appreciate it. Thanks.

21 Let's hear Arendi's position on that.

22 **MS. SRINIVASAN:** Well, first. I think the
23 inclusion of that in the verdict form is asking the jury
24 to decide what they've characterized as a legal issue,
25 question of law. That's been Google's position. So I

1 don't think they should be advocating for the jury to do
2 that in the first instance. And I concur with the Court.
3 We went through damages, direct testimony by Google in
4 which there are probably 20 different options of potential
5 numbers that the jury could consider as offsets to a
6 damages calculation, whether it be with respect to the
7 Samsung license or taking off a certain time frame. And
8 the number that they come up with is going to reflect how
9 they weighed the evidence.

10 But in this case in particular, given what
11 Google has said repeatedly with respect to its Samsung
12 license defense, it would not be proper to ask for a
13 verdict question on that given that they've maintained
14 this question is wrong.

15 **THE COURT:** All right. In this issue, I also
16 agree with Arendi, and we are going to not have that
17 question on the verdict form. So, so far, we're sticking
18 with what the Court filed earlier today.

19 Anybody else have anything else they want to
20 say about this form of verdict?

21 **MR. LING:** Not from Google.

22 **MS. SRINIVASAN:** Not from Arendi, Your Honor.

23 **THE COURT:** Okay, great. Let's turn to the
24 jury instructions.

25 Okay. Some of these, I don't need to hear

1 argument on. We'll try to make it through this really
2 quick. So the first dispute I see in what was filed this
3 morning...

4 **MR. LING:** Your Honor, before we do them in
5 order, I was wondering if I could address a question you
6 raised earlier about the prior art section?

7 **THE COURT:** Let's go in order, because
8 otherwise, it's late in the day. We're all going to get
9 off track. Here we go.

10 So let's, when we get to one, we'll get to that
11 one.

12 So I'm looking now at document 511 filed
13 5/1/23. Does somebody want to remind me what the first
14 dispute is here?

15 **MR. DIEHL:** Page 19, Your Honor.

16 **THE COURT:** Page 19. I'm just going to tell
17 you what's going to happen here, which is this. After it
18 says, "I will now instruct you as to the rules you must
19 follow when deciding whether plaintiff Arendi has proven
20 that Google infringed the '843 patent," I'm going to say,
21 "a claim covers a product for each of the claim elements
22 or limitations as present in that product."

23 Does anybody have a dispute that that's an
24 accurate summary of the all elements rule?

25 **MR. UNIKEL:** Your Honor, forgive me. In this

1 particular case, we're dealing with a computer readable
2 medium, not a pure product. The concern with the
3 product -- I know computer readable medium makes it very
4 difficult to assess and instruct on, which is why the just
5 going on the element-by-element basis language seemed to
6 make more sense.

7 **THE COURT:** I guess I would tend to agree with
8 that, except we used "product" all over the rest of jury
9 instructions. So given it's late in the day on that.

10 **MR. LAHAD:** Also, there is support in Federal
11 Circuit law that CRM claims are treated as apparatus
12 claims. There is supporting evidence.

13 **THE COURT:** You know, if we want to start
14 relooking at that, we're going to have to go and search
15 and find product. I know we used it other places, so I
16 was just trying to be consistent with what we've done
17 other places in the jury instructions.

18 Any other dispute as to adding that sentence
19 there?

20 **MS. SRINIVASAN:** Not for Arendi.

21 **THE COURT:** All right. I'm hearing none, so
22 that's going to get accepted.

23 All right. Let's turn to 3.5.

24 **MR. LING:** There's an issue on 3.4.

25 **THE COURT:** Okay. Let's see. 3.4.

1 Okay. So Google's got a proposal in there.
2 That's not going to be inserted there, but I'll tell you
3 where it will be inserted. We're coming up on that. I
4 don't think it's appropriate right there. Actually, we
5 inserted it to the previous instruction. So do you
6 dispute that that's good enough?

7 **MR. LING:** That's okay, Your Honor.

8 **THE COURT:** All right, fine. So 3.4, that's
9 not going to be inserted.

10 Turning to 3.5. Okay. Here's what it's going
11 to say in the second paragraph: "To show that
12 infringement was willful, Arendi must establish that it is
13 more likely than not that Google knew of the '843 patent
14 at the time of the alleged infringement, and also, that
15 Google engaged in deliberate or intentional infringement."
16 And then none of the rest of the parties proposed language
17 is going to be inserted. And then the next line will
18 start with "To decide whether Google acted willfully."

19 **MR. DIEHL:** Your Honor, may I place an
20 objection on the record for that one?

21 **THE COURT:** You may.

22 **MR. DIEHL:** Yes. I just want to say that
23 Arendi believes that, in light of the *Ironburg* case that
24 came down from the Federal Circuit -- *Ironburg Inventions*
25 at 64 F.4th 1274.

1 We think it's important to clarify for the jury
2 that deliberate or intentional includes reckless disregard
3 for a patent owner's rights.

4 **THE COURT:** Okay. That objection is noted for
5 the record. It's overruled. I read the *Ironburg* case. I
6 think Judge Stark was pretty clear there that he was
7 dealing with a situation where the parties had agreed on
8 that instruction. I read a lot of his opinions, and that
9 seemed to me to be exactly what was going on.

10 And so I'm not going to let the jury find
11 willful infringement based upon a finding of recklessness.

12 **MR. LING:** Can I also make an objection for the
13 record. There's a sentence that Google proposed that said
14 that, "Mere knowledge of the patent at the time is not
15 sufficient," and I understand that's not going to be in
16 the jury instruction per the Court's ruling, and if so, I
17 wanted to lodge just the objection and state for the
18 record that that's a particularly important sentence
19 instruction in this case where there's little more than
20 knowledge being alleged for willfulness. This is -- this
21 sentence is found in the FCBA Model Patent Jury
22 Instruction 3.10, as well as the AIPLA model patent jury
23 instruction.

24 **THE COURT:** All right. That's fine. I think
25 your objection is covered by the Court's ruling that I'm

1 going to instruct the jury that Arendi must establish both
2 that it's more likely than not that Google knew of the
3 patent, and also that Google engaged in deliberate or
4 intentional infringement. I think that's covered, and I
5 don't think that what the Court's going to instruct the
6 jury is error. It doesn't leave the jury open to find
7 willful infringement based on mere knowledge.

8 All right. Prior art?

9 **MR. LING:** Your Honor, the parties reached
10 agreement on this we're happy to report. Per your
11 suggestion, we do believe FCBA Model Patent Jury
12 Instruction 4.3a-1, prior art is not in dispute, would be
13 appropriate because I understand there's no dispute over
14 the 1998 priority date. And so we think that instruction
15 would simplify things.

16 **THE COURT:** Okay, great. Stand by while I pull
17 it up.

18 Okay. So we're going to say, "In order for
19 someone to be entitled to a patent, the invention must
20 actually be new and not obvious over what came before,
21 which is referred to as the prior art. Prior art is
22 considered in determining whether Claims 23 and 30 of the
23 '843 patent are anticipated or obvious. Prior art may
24 include items that were publicly known or that have been
25 used." Do we need to say "or offered for sale"? I didn't

1 hear any evidence of that.

2 **MR. UNIKEL:** Yeah, I think, Your Honor, there
3 was an Apple Data Detectors product that was monetized.

4 **THE COURT:** Okay. "So known or have been used
5 or offered for sale."

6 Any objection on Arendi's side to saying, "or
7 offered for sale"?

8 **MR. DIEHL:** No, Your Honor.

9 **THE COURT:** Okay. And then I'd be inclined to
10 cross out "or references such as publications or patents,"
11 so it would just say, "Prior art may include items
12 publicly that were known or have been used or offered for
13 sale that disclose the claimed invention or elements of
14 the claimed invention."

15 **MR. LING:** That's okay, Your Honor.

16 **MR. DIEHL:** No objection, Your Honor.

17 **THE COURT:** Okay. Then it would say, "Arendi
18 contends the following is prior art to the '843 patent."

19 **MR. LAHAD:** I think it's going Google contends.

20 **THE COURT:** I'm sorry. I only do that like
21 half the time. Let's see here. "Google contends that the
22 following is prior art to the '843 patent," and then we
23 have --

24 **MR. LING:** CyberDesk system, Apple Data
25 Detectors system, and Word 97 system -- Microsoft Word 97

1 system.

2 **THE COURT:** Counsel?

3 **MR. DIEHL:** Your Honor, that's fine. If I may
4 respond briefly to something Google's counsel said prior
5 about no dispute about the priority date, I just want to
6 make clear that Arendi does not dispute the date for
7 102(b) purposes as November 10, 2017, and that the US
8 filing date for the '843 patent application was
9 November 10, 1998. So I just want to make clear that
10 that's what we're not disputing.

11 **THE COURT:** Does it matter for these pieces of
12 prior art?

13 **MR. DIEHL:** No, I'm just responding to their
14 assertion.

15 **THE COURT:** Okay.

16 **MR. DIEHL:** Thank you.

17 **THE COURT:** All right. And then that would be
18 the end of 4.3.

19 **MR. DIEHL:** Yes, Your Honor.

20 **MR. LING:** Yes, Your Honor.

21 **THE COURT:** Great.

22 Then we had a typo fixed on Page 34, 5.3?

23 **MR. LING:** Yes, Your Honor.

24 **THE COURT:** Any objection?

25 **MR. DIEHL:** Yes, Your Honor. That's not a

1 typo. The alleged word is not in the Federal Circuit Bar
2 Association --

3 **THE COURT:** Oh, I'm sorry. We're talking about
4 a different section here. I'm talking about 5.3 where we
5 changed "each defendant" to "Google."

6 **MR. DIEHL:** Oh, we have no objection.

7 **THE COURT:** Okay. And then we turn to the next
8 page with the "alleged," that's not going to come in. I
9 agree with you.

10 **MR. DIEHL:** Thank you, Your Honor.

11 **THE COURT:** All right. 5.5. Is that the next
12 one?

13 **MR. DIEHL:** Yes, that's next, Your Honor.

14 **THE COURT:** All right. And the last I heard,
15 Arendi was reviewing Google's proposals.

16 **MR. DIEHL:** Yes, we did, Your Honor. We noted
17 case that law that Google cites is from the 1800s here.
18 If you look at Footnote 13, they cite case law from 1915,
19 1884. We don't think this statement is accurate, and
20 federal Circuit has, you know, wasn't even in existence at
21 the time. So we think, we would say that Google's
22 proposed addition there should be stricken.

23 **THE COURT:** Well, I know you're not saying that
24 the Federal Circuit doesn't have to follow the Supreme
25 Court cases from the 1800s and early 1900s.

1 **MR. DIEHL:** No, I'm not saying that. There's
 2 just been a lot of intervening law, Your Honor.
 3 **THE COURT:** All right. Let me hear from
 4 Google.
 5 **MR. LING:** All right. We also cite the *Lucent*
 6 case from 2009. I don't think this is a controversial
 7 point that the plaintiff has the burden to show
 8 apportionment. It's also, if Your Honor wants a more
 9 recent case cite, there's *Finjan v. Blue Coat* from 2018,
 10 and that's 879 F.3d 1299. That's clearly discussing the
 11 burden in the context of apportionment.
 12 **THE COURT:** All right. We'll take a look at
 13 that.
 14 **MR. DIEHL:** Your Honor, if I may respond
 15 briefly.
 16 **THE COURT:** You may.
 17 **MR. DIEHL:** We do cover that same point in the
 18 Arendi's proposal at the top of the instruction. So right
 19 there it says, "Damages must be based on the value
 20 attributable at the time to technology as distinct from
 21 other unpatented features of the accused product." And we
 22 are working from the Federal Bar Association's model.
 23 **THE COURT:** All right. I'll take a look at
 24 that. With respect to the debate at the top, we'll go
 25 with Google's proposal that it say, "other market

1 factors," and then we'll look at the dispute at the bottom
 2 and get you an answer on that.
 3 **MR. LAHAD:** Your Honor, it seems like the
 4 dispute at the bottom -- Google's proposed addition at the
 5 bottom seems redundant in light of --
 6 **THE COURT:** Yeah. We'll take a look at it.
 7 **MR. LING:** Just to clarify, Your Honor, I think
 8 the proposal on the bottom, the distinction is "the
 9 burden."
 10 **THE COURT:** I understand.
 11 **MR. LING:** Thank you.
 12 **THE COURT:** Okay. I don't need to hear
 13 argument on 5.6. We're not going to include that
 14 instruction.
 15 **MR. LING:** Google preserves just its --
 16 **THE COURT:** Yeah. You've made the proposal.
 17 Your objection is preserved.
 18 **MR. LING:** Thank you, Your Honor.
 19 **THE COURT:** All right. Let's just skip 5.7 for
 20 a second. Were there any other issues besides 5.7
 21 remaining?
 22 **MR. DIEHL:** No, Your Honor.
 23 **MR. LING:** I don't believe so, Your Honor.
 24 **THE COURT:** Okay. All right. Let me pull up
 25 my notes.

1 I just want to refresh everyone's recollection
 2 about how we got here. So the issue came up with respect
 3 to the Samsung license. It first came to me when Google
 4 filed a motion to strike certain portions of the
 5 Dr. Weinstein's report to the extent it relied on apps
 6 [REDACTED] which I denied as having
 7 been improperly brought as a motion to strike rather than
 8 a summary judgment motion.
 9 And then, right before trial began, we had
 10 another letter from Google, in the letter, and Arendi
 11 answered that letter. And both parties maintained in
 12 their letters that the Samsung license is unambiguous and
 13 should be interpreted in favor of their side.
 14 And we tabled it at that time so that it could
 15 be worked out at the charge conference. And then I spoke
 16 about it again on the first day of trial and I ruled this:
 17 If Google thinks that the jury needs to be instructed on
 18 the meaning of a written contract as part of the defense,
 19 it's incumbent upon Google to propose a jury instruction,
 20 and it has not proposed any jury instructions on that
 21 issue.
 22 And then I said, I don't have a proposed jury
 23 instruction construing the license from either side, and
 24 if I had, I'd be in a position to make a ruling that the
 25 agreement was unambiguous and favored one side or the

1 other, but I don't have proposed instructions on this
 2 issue.
 3 And so what I was hoping to get from the
 4 parties was, to the extent this agreement needed
 5 interpretation, sort of like a claim of a patent sometimes
 6 needs construction, that you would say which part needed
 7 interpretation and then you would say what you thought it
 8 meant.
 9 And what I still have from the parties is, "I
 10 win," "No, I win." And so I'm in a little bit of a
 11 conundrum here, and so I'm -- let's just walk through this
 12 license, and you can tell me what you think it means.
 13 **MR. ARD:** Well, Your Honor.
 14 **THE COURT:** Let's hear from defendant first.
 15 **MR. UNIKEL:** Your Honor, I just have to find a
 16 copy of the agreement.
 17 Thank you, Your Honor. And is there a
 18 particular question that you --
 19 **THE COURT:** Absolutely. So let's talk about
 20 this.
 21 **MR. UNIKEL:** Okay.
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1 Let's here from Arendi.
2 **MR. LAHAD:** Just as a threshold point, Your
3 Honor, we dispute that this infringement in this
4 context -- CRM infringes server. There's no active
5 downloading that requires infringement.
6 The way the CRM claim is written, since they're
7 on the server, so there's this notion that, well, we've
8 got to look at the downloads, and it's on the operating
9 system. That's a false premise factually.
10 Dr. Smedley testified that infringement occurs
11 both ways, the CRM claim on the server. That infringes --
12 that meets the claim elements of Claim 23. It's not a
13 method claim, as you know. So that threshold issue,
14 factually, is just incorrect.
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 5 And if I can just step back a second, Your
 6 Honor, it is important to talk about specific language,
 7 but I think it's also important to talk about New York
 8 law.
 9 If you go back to the first slide -- yeah.
 10 Right there.
 11 So under New York law -- let me step back --
 12 one more.
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1 Under New York law, it's a little bit unique in
 2 that, yes, you consider -- when you're determining the
 3 unambiguous meaning of a contract, you consider the words
 4 of the contract, but you're also supposed to consider the
 5 relationship of the parties and the circumstances under
 6 which it's executed, the overall intention of the parties.
 7 Go to the next slide.
 8 Well, so this just explains that, you know, at
 9 the time this agreement was made --
 10 **THE COURT:** Yeah. I get all of this.
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1 [REDACTED]

2 Under New York law, that has to be considered

3 when you are evaluating the plain language of the

4 contract.

5 There's also -- in our jury instructions, we

6 cite a couple cases that sort of have two threshold

7 principles that are at play here. One is that release

8 language is strictly construed. You are not supposed to

9 extend a release beyond the explicit words in the

10 agreement. And the case that we cite in our

11 instructions -- *Bugel v. Wps*, which is 19 AD3d 1081, says:

12 "It is unreasonable to conclude that the parties as a

13 condition of the release intended that plaintiff release

14 all his existing unrelated claims against conceivably

15 hundreds of named and unnamed corporations, employees,

16 et cetera."

17 It also says in the New York Pattern Jury

18 Instructions that we cite that: "If, from recitals

19 therein, it appears that the release is to be limited to

20 only particular claims, demands, or obligations, then the

21 release will be operative as to those matters only."

22 So that's Principle Number 1, is that, under

23 New York law, when you have a release, that's strictly

24 construed and you're supposed to look at the recitals to

25 figure out what the parties were intending to do.

1 And if you go back a slide. Another slide.

2 It also says you're not supposed to look -- you

3 shouldn't look -- you shouldn't look at particular

4 words -- should be considered not in isolation, and form

5 should not prevail over substance and a sensible meaning

6 of the words should be sought in light of the overall

7 intention of the parties. So that's one limiting

8 principle.

9 A second limiting principle, independent

10 limiting principle in New York law, is the idea of a

11 third-party beneficiary. A third-party beneficiary is

12 what Google is saying they are here. They're saying a

13 third-party beneficiary to this contract, without a

14 contract. We cite a case -- or, sorry. Again, in the

15 New York Pattern Jury Instructions, "Courts are generally

16 reluctant to construe an intent to benefit a third party

17 in the absence of clear contractual language evincing such

18 an intent."

19 So you have two limiting principles. You have

20 principle of release and you have the principle of a

21 third-party beneficiary that both require that their

22 agreement be strictly construed. And what you're trying

23 to do as an overall thing here is try to find out what the

24 intention of parties was.

25 **THE COURT:** All right. Thank you.

1 **MR. UNIKEL:** Can I make a 30-second point?

2 **THE COURT:** 30 seconds.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 **THE COURT:** All right. I understand

17 everybody's point, so I think there's at least one

18 ambiguity that can go to the jury on this.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 **MR. ARD:** Your Honor --

25 **THE COURT:** Please have a seat.

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10 **MR. ARD:** Your Honor, that's Google's proposal.

11 Our proposal didn't do that. Our proposal, if you look at

12 Arendi's alternative proposal, we tried to do exactly what

13 the Court asked.

14 **THE COURT:** Okay. So why don't you meet and

15 confer with the other side. It's 7:00 right now. And get

16 me competing proposals by 9:00, to the extent you can, and

17 I will look at those before bed. And I will get up again

18 at 4:00 a.m. tomorrow and get the rest of it done.

19 Yes, Counsel.

20 **MR. ARD:** I thought that the instructions said

21 as a supplier, and it should be an alleged supplier.

22 That's disputed. That's part of what is being disputed.

23 **THE COURT:** Okay. So you're saying there's an

24 ambiguity as to "supplier" now?

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THE COURT: Okay. So that's another -- that's another ambiguity. Right. So that's another question.
MR. ARD: Yeah, throughout, yeah.
THE COURT: Right. So why don't you have competing proposals in light of the Court's ruling that there are ambiguities in the contract that the jury can decide. And then I'll take what you get. And we'll get you something by tomorrow morning.
What we might do is put up a proposed version tonight that has a placeholder for this particular part, because I think we've ruled on the rest and we have a working document.
So we'll go work on that now while you all discuss the license.
We're almost finished, folks.
We will be in recess.
(The proceedings concluded at 6:56 p.m.)

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CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer
Bonnie R. Archer
Official Court Reporter
U.S. District Court

BY MR. LAHAD: [22] 1201/4
1205/13 1208/18 1211/14
1219/13 1220/2 1254/4
1255/11 1260/21 1274/4
1275/5 1383/20 1386/21
1392/24 1397/25 1399/4
1402/18 1406/9 1406/14
1407/16 1424/8 1426/1
BY MR. PETERMAN: [18]
1288/4 1290/2 1290/24
1296/6 1306/9 1307/21
1310/2 1317/12 1318/19
1321/12 1321/21 1326/23
1331/22 1336/19 1340/10
1380/12 1381/1 1381/16
BY MR. UNIKEL: [3] 1410/3
1412/14 1420/18
BY MS. ROBERTS: [4]
1146/5 1149/18 1165/4
1194/19
BY MS. SRINIVASAN: [16]
1341/11 1342/23 1345/2
1345/8 1347/21 1350/4
1350/24 1351/9 1352/7
1353/6 1355/9 1362/23
1365/18 1366/9 1377/10
1378/22
MR. ARD: [20] 1429/19
1429/24 1430/11 1430/13
1430/16 1431/12 1433/5
1433/7 1452/13 1460/15
1461/8 1461/11 1462/17
1462/20 1464/11 1467/24
1468/10 1468/20 1468/25
1469/4
MR. BELGAM: [2] 1372/3
1375/18
MR. DIEHL: [18] 1441/15
1443/19 1443/22 1446/8
1446/16 1447/3 1447/13
1447/16 1447/19 1447/25
1448/6 1448/10 1448/13
1448/16 1449/1 1449/14
1449/17 1450/22
MR. LAHAD: [57] 1132/6
1132/9 1132/13 1149/15
1164/24 1192/13 1192/23
1194/9 1196/17 1196/23
1196/25 1198/2 1198/20
1198/23 1199/1 1199/18
1200/18 1200/23 1200/25
1204/20 1204/23 1205/5
1205/11 1208/16 1219/1
1219/6 1219/25 1220/13
1254/1 1254/3 1260/18
1274/1 1275/4 1283/5
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1386/19 1397/14 1397/24
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1424/6 1425/11 1425/18
1425/22 1426/18 1426/22
1428/18 1442/10 1446/19
1450/3 1460/2
MR. LING: [27] 1228/5
1228/7 1228/13 1284/21
1435/9 1435/15 1435/23
1436/9 1438/9 1438/20
1439/16 1440/21 1441/4

1442/24 1443/7 1444/12
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1447/20 1447/23 1449/5
1450/7 1450/11 1450/15
1450/18 1450/23
MR. PETERMAN: [119]
1131/13 1131/17 1131/20
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1136/7 1136/12 1136/16
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1369/17 1370/15 1371/6
1371/13 1372/23 1373/21
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1382/24 1383/1
MR. UNIKEL: [53] 1194/6
1199/15 1227/20 1228/23
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1458/22 1459/1 1467/1
1467/3
MS. ROBERTS: [18] 1145/13
1146/2 1149/13 1193/13
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1208/15 1211/10 1218/20

1219/3 1219/9 1255/8 1283/9
1285/12
MS. SRINIVASAN: [122]
1134/1 1134/5 1134/14
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1141/8 1142/10 1144/5
1225/9 1225/25 1226/6
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1251/8 1284/8 1286/12
1286/25 1287/3 1289/25
1296/3 1306/25 1307/12
1307/18 1313/23 1314/4
1316/6 1316/20 1317/6
1334/12 1334/25 1335/13
1335/18 1335/21 1336/12
1337/11 1338/3 1338/11
1339/4 1341/6 1342/16
1344/19 1345/4 1347/19
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1352/5 1353/4 1354/12
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1375/19 1375/23 1376/1
1377/9 1380/10 1381/7
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1436/22 1437/16 1439/22
1440/22 1442/20
THE CLERK: [11] 1145/4
1145/15 1145/24 1253/21
1287/9 1287/18 1288/1
1377/4 1377/6 1383/7
1383/11
THE COURT: [361]
THE WITNESS: [16] 1145/18
1164/25 1204/21 1204/25
1205/8 1287/20 1318/18
1321/1 1341/9 1355/7
1378/20 1381/9 1383/9
1386/20 1407/14 1427/1

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1326/10
'22 [2] 1143/16 1249/12
'356 [1] 1150/10
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'843 [67] 1149/21 1150/2
1150/11 1151/3 1152/7
1152/25 1153/6 1153/13
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1171/7 1172/10 1174/20
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1209/21 1209/23 1209/24
1214/6 1216/7 1216/13

'843... [38] 1216/21 1218/11
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 '90s [5] 1174/6 1278/2 1278/4
 1278/5 1385/21
 '97 [16] 1158/22 1183/12
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 1188/25 1189/8 1190/14
 1284/6 1284/9 1284/18
 1408/19 1409/3 1429/8
 1434/14 1434/14
 '97's [1] 1408/22
 '98 [2] 1284/6 1284/18
 -
 -and [3] 1129/25 1130/10
 1130/15
 .
 .00736 [1] 1299/18
 .00736 percent [1] 1299/18
 .9 [1] 1310/23
 .9 million [1] 1310/23
 .but [1] 1345/10
 /
 /s [1] 1470/7
 0
 0-MR1 [1] 1311/25
 0581 [1] 1318/10
 1
 1-inch [1] 1410/6
 1.5 million [1] 1329/1
 1.6 [4] 1455/10 1456/6 1467/8
 1468/1
 10 [10] 1293/2 1342/2
 1342/13 1360/5 1402/12
 1402/16 1420/15 1434/8
 1447/7 1447/9
 10-K [1] 1375/14
 10-second [1] 1285/13
 10.018 [1] 1134/12
 10.026 [1] 1137/7
 10.032 [1] 1138/4
 10.10 [1] 1342/24
 102 [3] 1434/4 1434/6 1447/7

103 [1] 1434/11
 105 million [4] 1309/16
 1319/16 1319/25 1320/17
 105,609 [1] 1309/15
 1081 [1] 1465/11
 10:00 [1] 1380/20
 10:41 [1] 1286/9
 10:45 [1] 1224/23
 11 [11] 1251/9 1251/16
 1320/11 1320/16 1337/2
 1337/9 1337/22 1338/15
 1339/2 1406/10 1407/11
 11 months [2] 1338/14 1340/2
 11-month [3] 1251/25
 1303/13 1321/9
 1100 [1] 1148/25
 111 [2] 1170/2 1170/3
 114 [2] 1165/14 1165/15
 1148 [9] 1236/1 1236/16
 1242/25 1306/10 1306/24
 1307/16 1307/20 1308/25
 1317/15
 12 [18] 1143/12 1247/8
 1247/14 1247/18 1249/11
 1249/19 1285/21 1292/24
 1328/4 1328/5 1328/12
 1329/8 1330/13 1330/14
 1359/18 1359/23 1371/14
 1376/14
 12.4 [1] 1303/12
 1274 [1] 1443/25
 1299 [1] 1449/10
 12:22 [1] 1253/20
 12:26 [2] 1286/8 1286/9
 13 [6] 1143/13 1249/11
 1249/19 1260/19 1328/6
 1448/18
 13-919-JLH [1] 1129/6
 14 [4] 1155/24 1274/2 1274/5
 1293/23
 149 million [1] 1310/23
 15 percent [6] 1330/24
 1330/25 1331/1 1331/6
 1331/9 1331/12
 15-minute [1] 1224/19
 152 [1] 1136/25
 154 [1] 1250/16
 156349 [1] 1238/18
 15th [1] 1293/25
 15th factor [1] 1293/24
 16 [2] 1379/14 1412/11
 16 years [1] 1380/2
 160 [1] 1136/25
 175 [5] 1140/6 1141/9
 1142/14 1142/20 1142/21
 18 [1] 1285/21
 18 seconds [1] 1199/20
 1800s [2] 1448/17 1448/25
 1884 [1] 1448/19
 19 [3] 1441/15 1441/16
 1465/11
 1900s [1] 1448/25

1915 [1] 1448/18
 192 [1] 1395/20
 1963 [1] 1385/2
 1965 [2] 1146/19 1173/15
 1967 [2] 1146/20 1149/5
 1972 [1] 1147/12
 1978 [1] 1147/24
 1980s [1] 1173/20
 1981 [1] 1147/25
 1983 [1] 1147/25
 1996 [2] 1154/7 1188/5
 1997 [7] 1150/14 1151/11
 1156/8 1176/23 1188/6
 1188/6 1421/1
 1998 [5] 1412/6 1434/8
 1434/8 1445/14 1447/9
 1999 [1] 1156/4
 1:04 [1] 1283/18
 1st [2] 1343/15 1348/5
 2
 2.1 [2] 1456/13 1457/2
 20 [7] 1136/20 1203/7
 1230/24 1355/22 1392/11
 1417/14 1440/4
 2009 [1] 1449/6
 2010 [1] 1164/9
 2012 [8] 1235/19 1247/7
 1247/10 1247/25 1252/10
 1306/22 1359/19 1359/24
 2013 [2] 1277/15 1278/2
 2014 [4] 1277/15 1277/21
 1277/24 1278/3
 2015 [3] 1244/14 1245/24
 1246/24
 2016 [5] 1244/25 1245/5
 1246/17 1246/25 1309/13
 2017 [94] 1138/8 1138/18
 1138/23 1140/5 1140/7
 1141/13 1142/24 1143/10
 1143/20 1144/7 1232/19
 1234/11 1235/12 1235/17
 1237/8 1237/8 1242/1
 1244/20 1244/25 1245/5
 1245/6 1246/11 1246/15
 1246/17 1246/20 1246/20
 1246/25 1247/4 1248/5
 1248/15 1248/22 1249/11
 1249/12 1249/15 1249/17
 1249/20 1251/12 1251/23
 1252/9 1292/21 1293/1
 1293/10 1308/18 1309/14
 1309/16 1309/17 1310/20
 1310/22 1311/5 1311/12
 1311/24 1312/5 1312/10
 1312/18 1312/19 1313/9
 1316/24 1318/11 1319/11
 1319/14 1319/15 1319/22
 1320/1 1320/3 1320/6 1320/8
 1320/25 1321/6 1329/20
 1337/5 1339/16 1342/2
 1342/5 1343/15 1349/15
 1349/18 1349/19 1350/17
 1351/2 1351/11 1351/25
 1353/16 1353/22 1354/16
 1355/14 1358/24 1359/9
 1359/11 1359/13 1359/22
 1436/11 1436/13 1437/13
 1447/7
 2017 LLC [1] 1203/21

2018 [56] 1143/10 1232/19
 1234/11 1235/12 1235/17
 1239/5 1242/1 1244/14
 1245/25 1246/19 1246/21
 1247/4 1248/6 1248/15
 1248/22 1249/12 1249/18
 1249/20 1293/2 1293/11
 1306/22 1313/9 1313/19
 1316/24 1318/11 1320/11
 1320/15 1320/25 1321/7
 1329/20 1342/2 1344/14
 1344/16 1345/13 1346/24
 1347/3 1348/2 1348/6
 1349/15 1349/18 1349/20
 1350/17 1351/2 1351/10
 1351/13 1353/16 1353/22
 1354/8 1354/13 1358/24
 1359/9 1359/22 1364/5
 1381/11 1381/11 1449/9
 2018.com.Android [1]
 1320/14
 2019 [5] 1150/1 1277/20
 1314/7 1317/18 1317/19
 2020 [19] 1136/20 1143/21
 1247/8 1247/15 1248/3
 1248/13 1327/13 1353/11
 1353/14 1355/22 1355/25
 1359/7 1359/10 1359/13
 1359/18 1359/21 1410/17
 1410/25 1411/4
 2022 [22] 1136/21 1136/25
 1140/20 1141/3 1142/6
 1143/22 1236/21 1237/4
 1247/2 1247/3 1248/16
 1249/19 1249/22 1250/16
 1251/17 1314/7 1335/8
 1343/18 1344/5 1344/6
 1358/22 1379/21
 2023 [1] 1129/11
 203 [1] 1430/14
 21 [10] 1235/25 1236/4
 1237/18 1237/23 1240/12
 1245/20 1310/19 1320/3
 1320/13 1436/13
 21st [2] 1139/14 1251/22
 22 [1] 1164/9
 22.65 [1] 1326/5
 22.65 million [1] 1326/4
 220 [1] 1430/2
 23 [12] 1153/13 1170/24
 1177/7 1180/23 1181/25
 1190/20 1394/4 1394/5
 1394/9 1441/13 1445/22
 1460/12
 24 million [1] 1291/6
 25 [3] 1137/13 1288/18
 1354/13
 26 [4] 1136/21 1231/19
 1344/6 1354/13
 27 million [1] 1321/8
 28 [1] 1376/8
 29 million [2] 1321/5 1321/5
 2:20 [1] 1287/8
 3
 3.1 [2] 1457/24 1467/19
 3.10 [1] 1444/22
 3.4 [3] 1442/24 1442/25

3
3.4... [1] 1443/8
3.5 [2] 1442/23 1443/10
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
30-second [1] 1467/1
30-some [1] 1222/2
30.2 million [2] 1231/21
1326/2
300 [1] 1218/12
31 [1] 1242/9
31,000 [2] 1218/19 1219/16
32 [3] 1138/6 1139/25
1231/20
33 [4] 1138/6 1139/25
1181/13 1231/20
34 [4] 1138/6 1139/25
1231/20 1447/22
[REDACTED]
35 [1] 1231/21
36 [3] 1365/23 1366/4 1366/8
365 [1] 1320/3
37 [9] 1239/13 1360/17
1360/18 1360/19 1361/2
1361/12 1362/16 1365/15
1365/21
38 [2] 1243/22 1244/2
39 [2] 1243/22 1244/2
3:00 [6] 1229/7 1229/9 1229/9
1229/10 1229/18 1230/4

4
4.3 [1] 1447/18
4.3a-1 [1] 1445/12
40 [6] 1133/22 1229/3
1243/18 1244/6 1244/6
1244/8
400 [1] 1218/11
403 [1] 1376/25
40th year [1] 1148/3
41 [3] 1249/6 1249/9 1321/20
42 [2] 1249/7 1249/9
42 percent [4] 1250/15
1250/19 1332/9 1332/13
43 [1] 1249/7
44 [2] 1249/7 1249/9
45 [4] 1228/25 1229/13
1229/17 1291/11
45 minutes [1] 1131/21
455 [1] 1430/14
46 [1] 1320/25
47 [1] 1250/1
48 [2] 1250/1 1330/9
488 [1] 1218/15
49 [1] 1250/2
499 [3] 1295/13 1296/1
1296/5
4:00 [2] 1230/5 1468/18
4:20 [1] 1368/20
4:48 [1] 1377/5
4B [3] 1349/22 1349/23
1351/6

4X [6] 1324/20 1324/22
1325/19 1325/20 1325/21
1326/1
5
5.0 [4] 1143/8 1347/14
1347/15 1351/6
5.2 [4] 1343/17 1343/23
1344/8 1345/5
5.3 [2] 1447/22 1448/4
5.5 [1] 1448/11
5.6 [1] 1450/13
5.7 [2] 1450/19 1450/20
5/1/23 [1] 1441/13
50 [1] 1228/25
50 minutes [1] 1131/21
500 [5] 1218/17 1218/17
1219/7 1220/19 1222/22
50A [5] 1227/25 1428/10
1428/17 1428/18 1434/24
51 [1] 1146/10
511 [1] 1441/12
514 [1] 1193/22
52 [1] 1384/16
52 percent [2] 1346/20
1346/24
53 [1] 1250/2
54 [2] 1250/2 1405/23
55 [1] 1250/2
56 [1] 1250/2
581 [8] 1238/18 1244/10
1312/25 1313/4 1313/9
1318/22 1318/24 1349/5
59 [1] 1250/6
5:00 [1] 1230/6
5:53 [1] 1427/25
5B [2] 1344/2 1344/3
5th [2] 1348/6 1436/11

6
61 [5] 1250/9 1360/22
1375/23 1376/3 1376/13
63 [1] 1251/7
64 [1] 1443/25
67 million [3] 1347/2 1347/10
1348/2
[REDACTED]
[REDACTED]
6:00 [1] 1230/8
6:00 at [1] 1427/6
6:56 [1] 1469/18
7
7,812,179 [1] 1355/12
7-26 [1] 1354/13
7.55 million [2] 1326/6
1329/12
70 [1] 1288/21
75 [1] 1426/9
77 [1] 1360/21
7:00 [1] 1468/15
8
8-20 [1] 1203/7
8-page [1] 1254/21
80 million [1] 1320/16
841302 [1] 1164/6
844 [1] 1129/17
879 [1] 1449/10
8:22 [2] 1129/11 1131/5

8:30 now [1] 1137/20
8:44 a.m [1] 1149/5
8th [1] 1348/6
9
9.7 [1] 1303/9
900,000 [1] 1310/24
926,349 [1] 1308/18
95 percent [3] 1323/8 1329/23
1329/25
954 [3] 1405/24 1406/4
1406/8
97 [21] 1270/16 1279/7
1279/10 1279/15 1279/23
1280/2 1280/5 1280/9
1281/18 1282/2 1401/13
1401/19 1402/5 1403/4
1403/5 1403/12 1403/17
1404/8 1420/23 1446/25
1446/25
9:00 [2] 1199/20 1468/16
9:30 [2] 1427/10 1427/24

A
A.D.2d [1] 1430/14
a.m [5] 1129/11 1131/5
1145/5 1224/23 1468/18
ability [1] 1431/10
able [11] 1139/19 1171/13
1230/17 1240/5 1250/25
1285/9 1315/22 1344/21
1347/5 1348/7 1395/14
about [384]
above [3] 1230/25 1231/12
1273/10
Abowd [6] 1157/10 1157/12
1158/8 1178/17 1179/20
1180/12
absence [1] 1466/17
absolutely [13] 1160/12
1161/5 1161/5 1240/17
1313/14 1320/21 1323/16
1333/24 1352/16 1352/21
1355/4 1356/5 1452/19
Academy [1] 1149/5
accelerated [2] 1150/9 1164/8
accept [1] 1291/17
accepted [3] 1149/16 1379/3
1442/22
accepts [1] 1159/6
access [5] 1356/11 1356/14
1357/8 1357/9 1408/2
accompany [1] 1288/12
accompanying [1] 1274/11
accomplishments [1] 1289/5
according [5] 1160/14 1161/8
1176/1 1178/1 1211/20
accordingly [2] 1268/2
1429/11
accords [1] 1302/24
account [5] 1284/3 1302/16
1302/19 1329/16 1378/9
accounted [1] 1367/12
accounting [3] 1289/14
1364/9 1438/16
accuracy [1] 1278/18
accurate [6] 1225/7 1326/10
1432/9 1441/24 1448/19
1470/5
accusation [2] 1320/6 1467/8

accusations [1] 1342/11
accused [65] 1139/11
1140/21 1141/5 1141/11
1143/1 1143/23 1201/15
1201/21 1201/24 1204/8
1231/2 1239/4 1252/25
1253/2 1253/7 1253/15
1291/9 1291/10 1292/15
1292/17 1292/23 1293/3
1293/6 1293/7 1293/9
1293/12 1297/11 1297/13
1297/22 1299/4 1300/6
1300/11 1306/21 1308/9
1308/20 1309/1 1309/12
1309/15 1321/17 1324/18
1330/13 1332/25 1333/1
1342/9 1342/10 1342/14
1342/15 1342/25 1343/1
1343/1 1343/5 1343/11
1343/14 1347/17 1348/10
1348/13 1348/17 1350/6
1350/18 1352/9 1353/25
1353/25 1354/5 1354/24
1354/25 1355/22 1355/25
1356/6 1357/21 1358/3
1359/21 1359/24 1360/8
1363/13 1366/22 1370/16
1371/7 1374/24 1375/11
1376/14 1377/21 1379/2
1423/10 1436/24 1449/21
accusing [6] 1175/8 1297/17
1303/12 1309/24 1380/15
1398/16
achieved [1] 1195/19
acknowledge [2] 1421/19
1432/13
acknowledged [2] 1432/16
1458/14
ACM [2] 1149/4 1149/5
acquiring [1] 1408/1
across [1] 1346/16
act [2] 1151/22 1151/24
acted [1] 1443/18
action [7] 1141/5 1152/2
1158/11 1170/13 1180/3
1180/18 1180/20
actions [6] 1152/20 1157/6
1157/7 1157/19 1159/6
1180/8
activated [1] 1311/24
active [2] 1262/6 1460/4
activities [2] 1147/7 1203/9
ActOn [7] 1157/2 1157/19
1158/5 1159/9 1159/19
1179/8 1179/13
actual [11] 1218/18 1219/15
1231/11 1232/3 1275/17
1330/19 1339/8 1413/4
1413/12 1432/25 1435/8
actually [46] 1134/22 1144/24
1160/4 1161/3 1161/20
1180/5 1203/23 1203/24
1216/1 1218/15 1223/19
1223/22 1223/24 1236/5
1236/7 1238/24 1241/13
1258/11 1273/25 1276/1
1276/20 1290/17 1294/13
1311/24 1318/6 1320/16
1321/9 1332/14 1332/16
1348/16 1360/17 1364/8

<p>actually... [14] 1381/19 1400/6 1411/21 1414/16 1422/11 1422/19 1423/17 1432/9 1432/19 1443/4 1445/20 1457/5 1457/18 1460/16 AD3d [1] 1465/11 ADA [1] 1404/25 add [69] 1140/25 1148/24 1170/8 1170/10 1171/18 1172/18 1172/21 1172/23 1172/25 1173/2 1174/2 1175/13 1181/19 1183/15 1183/16 1183/22 1183/22 1184/1 1184/10 1184/16 1184/25 1185/1 1185/3 1185/7 1185/22 1186/17 1189/23 1190/6 1190/15 1275/7 1275/17 1275/24 1278/9 1278/24 1280/4 1280/4 1280/9 1280/20 1280/24 1281/1 1281/6 1281/10 1282/2 1394/23 1394/25 1395/1 1395/10 1395/11 1395/12 1395/23 1395/24 1396/3 1396/3 1396/6 1398/19 1399/12 1399/16 1399/23 1401/9 1401/9 1407/4 1407/5 1408/19 1408/20 1409/3 1429/6 1429/7 1434/13 1434/14 added [7] 1138/21 1149/5 1154/8 1184/16 1187/7 1396/5 1400/6 adding [1] 1442/18 addition [12] 1148/12 1182/9 1191/7 1284/13 1293/23 1432/12 1432/18 1434/22 1448/22 1450/4 1453/16 1456/13 additional [25] 1139/13 1163/18 1169/4 1169/13 1174/3 1179/18 1180/13 1181/10 1184/1 1185/17 1216/17 1225/12 1225/17 1226/15 1227/2 1271/24 1281/15 1286/4 1302/15 1302/16 1302/19 1312/2 1332/5 1357/19 1382/12 address [27] 1158/9 1161/23 1162/5 1162/13 1168/9 1168/13 1168/17 1169/1 1169/2 1169/5 1169/14 1169/23 1170/12 1170/12 1180/11 1186/18 1186/18 1186/24 1186/25 1187/4 1187/5 1187/6 1187/8 1274/13 1435/12 1441/5 1460/15 addressed [3] 1168/24 1226/18 1365/7 addresses [2] 1167/24 1179/25 adjective [1] 1415/2 adjudged [4] 1334/20 1335/10 1335/11 1335/19 Adjunct [1] 1289/11 adjust [2] 1294/14 1304/8 adjustment [5] 1143/2 1297/8</p>	<p>1297/9 1302/6 1302/7 adjustments [1] 1297/7 admissible [1] 1433/15 admission [2] 1307/2 1366/3 admit [5] 1240/22 1306/23 1307/16 1361/11 1362/10 admits [1] 1151/15 admitted [21] 1142/4 1153/10 1163/22 1236/16 1238/6 1242/15 1244/9 1296/4 1296/5 1307/9 1307/19 1307/20 1362/15 1362/16 1366/7 1366/8 1372/19 1375/25 1376/1 1406/6 1406/8 adopt [1] 1215/10 adopted [1] 1322/11 advantage [4] 1401/4 1402/25 1403/2 1421/13 advertising [26] 1363/18 1367/13 1367/17 1367/21 1367/22 1369/7 1369/11 1369/19 1370/1 1370/5 1370/9 1371/2 1371/4 1373/25 1374/2 1374/6 1374/6 1376/5 1376/17 1377/25 1378/1 1378/5 1378/9 1378/15 1379/1 1386/7 advisement [1] 1368/5 advisor [1] 1147/4 advocating [1] 1440/1 AESD [13] 1164/8 1165/9 1165/10 1165/12 1169/25 1170/7 1171/16 1172/15 1174/19 1174/24 1175/20 1214/1 1216/3 affect [2] 1304/2 1317/24 affects [1] 1317/25 affiliates [10] 1452/25 1456/15 1456/17 1456/18 1458/1 1458/3 1461/4 1462/15 1464/23 1464/25 affiliations [1] 1289/10 affirmative [5] 1229/12 1317/24 1337/24 1341/19 1434/19 affirmed [3] 1145/21 1287/23 1383/14 aforementioned [1] 1458/10 after [34] 1131/25 1157/18 1197/25 1204/9 1217/15 1225/21 1226/22 1228/17 1229/9 1230/17 1248/13 1248/13 1249/10 1253/1 1260/17 1286/1 1292/20 1320/1 1320/2 1324/6 1327/8 1342/5 1360/25 1380/22 1385/18 1388/3 1392/14 1427/17 1427/21 1441/17 1456/2 1458/12 1458/24 1467/21 afternoon [12] 1225/23 1287/13 1288/5 1288/6 1341/12 1368/4 1368/16 1383/21 1383/23 1393/8 1410/4 1410/5 again [76] 1159/17 1160/25 1161/8 1163/9 1163/12 1165/25 1166/4 1169/20</p>	<p>1170/16 1172/11 1173/4 1184/7 1190/7 1208/9 1208/24 1215/16 1215/24 1217/1 1219/14 1228/23 1229/3 1232/13 1233/1 1236/20 1236/22 1237/3 1240/1 1244/16 1246/19 1249/11 1249/19 1251/12 1268/5 1271/14 1273/1 1273/19 1279/4 1281/20 1281/21 1292/24 1293/10 1295/7 1297/21 1299/15 1303/21 1304/15 1309/2 1309/15 1312/5 1316/8 1318/23 1321/3 1321/9 1326/6 1326/17 1330/2 1330/7 1340/23 1350/19 1355/11 1355/21 1366/11 1388/5 1405/7 1405/16 1408/3 1408/20 1415/6 1417/9 1423/1 1433/19 1438/13 1451/16 1461/24 1466/14 1468/17 against [6] 1208/11 1296/12 1385/13 1458/9 1463/22 1465/14 aggregating [1] 1319/9 ago [8] 1150/15 1257/19 1257/20 1276/18 1277/19 1416/11 1417/14 1460/17 agree [37] 1229/19 1242/23 1245/13 1260/25 1264/15 1264/17 1272/25 1321/24 1327/17 1327/18 1336/4 1345/25 1348/21 1351/17 1354/20 1357/7 1359/12 1360/2 1387/11 1387/14 1387/16 1389/8 1389/9 1389/10 1389/11 1389/12 1392/2 1397/14 1402/4 1402/8 1413/22 1419/15 1434/21 1440/16 1442/7 1448/9 1462/18 agreed [16] 1213/17 1239/11 1241/23 1250/4 1250/5 1250/8 1273/19 1284/2 1311/13 1327/25 1369/24 1417/20 1432/14 1432/15 1432/25 1444/7 agreed-upon [1] 1369/24 agreeing [2] 1327/17 1432/17 agreement [39] 1135/14 1294/20 1294/21 1294/21 1294/22 1295/20 1295/23 1325/10 1326/25 1327/3 1327/8 1327/23 1328/15 1328/25 1329/10 1329/14 1332/18 1332/20 1333/25 1397/17 1432/21 1432/22 1434/20 1445/10 1451/25 1452/4 1452/16 1457/3 1458/11 1459/12 1461/1 1462/11 1462/23 1463/13 1464/9 1464/18 1465/10 1466/22 1468/9 agreements [4] 1286/22 1295/6 1303/16 1432/9 agrees [4] 1239/21 1311/16 1382/19 1456/16 ahead [7] 1143/13 1177/8</p>	<p>1229/10 1230/2 1262/22 1275/22 1429/18 aid [1] 1344/19 aiming [1] 1405/16 AIPLA [1] 1444/22 air [2] 1257/8 1260/23 alarm [1] 1372/8 alert [1] 1368/6 all [320] 1131/10 1132/2 1132/11 1132/20 1133/9 1133/20 1133/24 1134/12 1137/8 1137/19 1137/20 1137/22 1137/25 1139/6 1140/9 1143/9 1143/10 1143/21 1144/25 1145/1 1147/18 1148/5 1148/22 1148/23 1148/24 1149/16 1150/5 1151/11 1152/3 1152/8 1152/13 1153/23 1153/24 1154/10 1154/18 1154/22 1155/8 1155/16 1155/17 1157/9 1158/10 1158/14 1159/9 1159/10 1163/18 1164/14 1164/19 1165/3 1167/7 1169/14 1169/16 1174/8 1176/12 1177/6 1177/8 1177/10 1177/19 1177/22 1178/2 1178/3 1178/22 1179/10 1180/3 1180/4 1180/20 1180/21 1180/23 1185/8 1185/13 1188/4 1188/11 1190/1 1190/17 1190/18 1191/16 1192/6 1195/2 1195/5 1197/19 1199/5 1199/7 1199/13 1200/4 1200/6 1200/19 1202/1 1202/4 1203/5 1203/15 1205/14 1206/13 1209/13 1209/23 1210/22 1210/24 1211/24 1212/12 1215/15 1215/21 1217/1 1219/17 1220/6 1220/18 1220/20 1221/8 1221/13 1221/17 1222/5 1222/9 1222/10 1222/19 1222/23 1230/19 1231/14 1231/16 1232/14 1233/1 1233/17 1233/25 1234/2 1235/3 1237/15 1239/4 1240/20 1240/25 1241/10 1243/13 1244/5 1246/14 1248/1 1248/23 1249/11 1249/25 1250/2 1250/24 1251/14 1251/18 1252/7 1254/24 1255/16 1260/7 1262/11 1268/25 1269/17 1269/23 1275/12 1276/16 1277/23 1280/19 1282/5 1283/4 1283/19 1284/19 1285/2 1285/5 1285/12 1286/13 1287/6 1290/1 1290/18 1292/13 1293/3 1293/17 1297/3 1299/4 1301/12 1301/17 1301/22 1301/23 1303/8 1303/10 1304/22 1305/1 1305/7 1307/3 1308/20 1309/11 1309/12 1311/18 1313/20 1313/22 1314/19 1315/15 1316/3 1318/11</p>
--	---	--	--

A	Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 542 of 775 PageID# 61321		
all... [135] 1318/20 1319/3	along [2] 1148/8 1162/1	1172/18 1206/5 1429/3	1455/3 1455/9 1455/20
1319/4 1319/24 1320/21	alpha [1] 1188/4	amount [16] 1134/19 1245/17	1455/21 1456/4 1458/16
1321/10 1322/7 1322/12	already [18] 1143/18 1198/14	1285/23 1291/10 1294/7	1467/4 1467/5 1467/11
1323/12 1324/1 1326/13	1222/8 1231/19 1250/7	1299/11 1299/20 1302/7	1467/12 1468/3
1326/18 1328/20 1331/1	1250/20 1262/24 1267/21	1303/9 1303/24 1304/25	Android 8 [32] 1140/9
1332/11 1335/5 1335/22	1273/15 1284/2 1325/23	1305/2 1316/11 1316/13	1232/16 1232/23 1245/1
1335/24 1338/1 1338/10	1327/7 1327/20 1332/6	1344/14 1435/17	1245/5 1246/12 1246/15
1338/15 1339/5 1341/12	1360/9 1410/20 1431/4	amounts [1] 1297/16	1246/15 1292/18 1293/2
1342/7 1342/13 1342/24	1456/6	ample [1] 1432/6	1310/20 1310/21 1311/25
1343/6 1343/16 1344/13	also [101] 1133/14 1141/9	analogy [3] 1282/5 1300/1	1312/6 1312/9 1312/21
1345/3 1345/13 1345/20	1144/17 1147/7 1148/21	1301/25	1312/21 1313/11 1313/20
1345/20 1346/24 1347/6	1149/5 1150/15 1150/24	analyses [1] 1359/25	1318/2 1318/12 1319/5
1348/21 1349/17 1350/21	1151/6 1154/23 1156/9	analysis [54] 1138/24 1143/17	1320/10 1321/11 1321/18
1351/4 1351/25 1352/4	1158/1 1158/22 1160/23	1168/3 1168/9 1170/20	1322/4 1322/13 1326/15
1354/4 1355/5 1356/21	1161/10 1162/3 1162/18	1170/22 1175/6 1177/9	1329/18 1342/1 1381/6
1359/6 1360/5 1360/11	1163/25 1164/6 1172/16	1178/16 1178/21 1181/3	1456/4
1360/15 1362/24 1364/16	1172/20 1173/5 1173/9	1193/18 1215/17 1268/18	Android 9 [3] 1318/12
1366/11 1366/21 1368/3	1176/6 1179/6 1180/25	1268/20 1294/3 1294/10	1329/18 1381/6
1368/21 1369/1 1371/6	1181/20 1182/1 1182/23	1299/9 1300/7 1302/17	Andy [1] 1181/9
1371/18 1372/12 1373/10	1183/8 1184/10 1184/15	1309/20 1310/10 1310/13	Anesthesia [1] 1430/13
1376/20 1381/9 1381/10	1184/17 1185/9 1187/5	1311/1 1311/3 1312/24	angles [1] 1261/10
1386/24 1386/25 1387/2	1188/12 1191/2 1196/3	1313/5 1316/4 1318/3	Anind [18] 1150/18 1150/25
1387/22 1388/2 1388/8	1207/1 1235/11 1237/15	1321/13 1325/17 1327/4	1151/6 1154/6 1154/17
1388/13 1390/18 1392/7	1239/22 1244/22 1254/19	1327/5 1327/24 1329/24	1154/20 1156/8 1158/1
1393/13 1394/12 1395/17	1257/14 1263/24 1266/18	1330/8 1341/18 1350/14	1160/7 1161/15 1178/12
1405/20 1410/10 1422/6	1267/9 1268/23 1285/6	1353/11 1355/11 1356/15	1181/17 1185/21 1191/1
1423/25 1424/16 1426/20	1289/14 1290/6 1292/10	1359/4 1360/16 1366/1	1263/2 1266/24 1267/23
1427/9 1428/6 1429/14	1293/21 1293/24 1296/20	1378/23 1387/14 1387/16	1416/23
1429/20 1430/15 1431/2	1298/22 1301/23 1302/4	1387/19 1388/18 1393/2	annual [1] 1345/20
1431/19 1431/23 1433/7	1303/25 1305/4 1308/19	1412/3 1412/16 1412/17	another [37] 1158/2 1158/6
1433/9 1433/17 1434/10	1312/3 1312/8 1313/4	1413/20	1158/24 1162/5 1163/10
1434/17 1434/23 1435/1	1316/15 1319/19 1321/14	analyze [2] 1140/18 1141/15	1165/11 1165/11 1165/20
1435/20 1436/20 1437/1	1324/4 1334/11 1349/16	analyzed [5] 1141/4 1164/7	1166/6 1178/6 1181/5
1438/3 1440/15 1441/8	1354/4 1354/15 1359/23	1167/22 1178/19 1378/7	1186/21 1187/8 1187/15
1441/24 1442/8 1442/21	1386/11 1387/3 1393/17	analyzes [4] 1170/10 1172/2	1187/17 1187/20 1206/17
1442/23 1443/8 1444/24	1394/3 1399/18 1423/13	1172/24 1401/21	1229/14 1272/14 1273/17
1445/8 1447/17 1448/11	1430/17 1434/11 1434/18	analyzing [5] 1151/20 1171/25	1274/13 1296/17 1319/20
1448/14 1449/3 1449/5	1437/14 1440/15 1442/10	1172/19 1388/24 1413/21	1324/8 1385/12 1398/10
1449/12 1449/23 1450/19	1443/14 1444/12 1445/3	ANDERSON [1] 1130/9	1398/13 1398/14 1408/22
1450/24 1453/10 1453/21	1449/5 1449/8 1453/13	ANDREA [1] 1130/13	1429/18 1429/20 1438/7
1457/11 1458/8 1458/23	1453/17 1455/23 1458/7	Android [100] 1140/9 1142/24	1451/10 1466/1 1469/2
1459/9 1459/14 1459/18	1459/3 1463/7 1464/4 1465/5	1173/8 1232/1 1232/16	1469/3 1469/3
1459/19 1459/24 1462/3	1465/17 1466/2	1232/23 1245/1 1245/5	answer [39] 1141/20 1142/8
1462/3 1462/11 1464/10	alternative [7] 1141/10 1144/8	1246/12 1246/14 1246/15	1160/12 1160/25 1161/5
1465/14 1466/25 1467/16	1334/3 1334/23 1337/25	1246/15 1292/18 1292/20	1165/2 1165/3 1196/1 1200/1
1469/14	1338/8 1468/12	1293/2 1310/20 1310/21	1208/19 1212/21 1219/21
allegation [2] 1396/18 1459/3	alternatives [11] 1333/17	1311/25 1312/6 1312/9	1232/2 1264/11 1266/21
allege [1] 1280/16	1334/10 1334/21 1335/1	1312/21 1312/21 1313/11	1268/4 1268/10 1281/2
alleged [6] 1142/23 1443/14	1335/3 1335/12 1336/1	1313/20 1313/21 1313/22	1301/4 1335/15 1336/18
1444/20 1448/1 1448/8	1336/9 1336/22 1340/12	1315/13 1316/3 1318/2	1339/24 1340/4 1340/8
1468/21	1408/10	1318/11 1318/12 1318/12	1346/19 1364/3 1369/5
allegedly [1] 1430/19	altogether [1] 1401/6	1319/4 1319/5 1319/17	1372/21 1373/8 1373/17
alleging [2] 1380/19 1457/8	always [10] 1138/23 1142/11	1319/19 1319/21 1320/10	1411/9 1411/13 1414/1
allocate [1] 1436/12	1142/15 1142/19 1142/20	1320/22 1321/10 1321/11	1419/4 1419/12 1425/5
allocated [1] 1346/6	1207/11 1208/9 1209/1	1321/18 1322/4 1322/9	1436/6 1439/2 1450/2
allocation [2] 1324/11	1334/25 1412/22	1322/13 1323/7 1323/10	answered [7] 1267/21 1323/6
1437/23	am [12] 1131/10 1133/3	1326/15 1329/18 1329/18	1413/15 1438/15 1439/2
allow [6] 1161/24 1236/15	1210/19 1317/17 1319/23	1329/21 1332/12 1332/12	1439/5 1451/11
1315/16 1405/20 1416/10	1375/6 1395/22 1400/19	1333/9 1342/1 1344/17	answers [1] 1412/25
1416/19	1412/15 1415/17 1423/12	1345/10 1345/14 1345/17	anticipate [18] 1225/20
allowed [9] 1144/20 1152/16	1425/18	1345/24 1346/2 1346/4	1225/25 1264/18 1264/23
1161/2 1193/17 1316/12	ambiguities [1] 1469/7	1346/6 1346/21 1346/22	1265/1 1265/3 1265/15
1372/24 1414/17 1416/15	ambiguity [4] 1433/16	1346/25 1347/3 1347/8	1266/6 1266/21 1268/2
1418/25	1467/18 1468/24 1469/3	1348/11 1356/22 1357/20	1391/19 1393/3 1393/18
almost [6] 1230/5 1286/16	ambiguous [7] 1270/24	1359/6 1371/14 1381/6	1393/21 1394/4 1394/5
1380/4 1427/5 1463/17	1430/3 1432/4 1433/8	1381/6 1381/13 1381/14	1394/16 1424/18
1469/16	1433/12 1467/19 1468/1	1453/9 1453/12 1453/19	anticipated [11] 1151/5
alone [3] 1267/10 1268/1	amend [1] 1237/24	1453/20 1454/4 1454/7	1176/4 1180/22 1182/1
1268/2	Amherst [1] 1289/8	1454/7 1454/10 1454/13	1190/25 1203/11 1255/21
	among [5] 1161/24 1171/22	1454/15 1454/20 1454/25	1265/9 1265/10 1269/8

A	1248/11 1248/12 1252/18	1395/2 1397/9 1398/7 1398/9	1189/9 1189/11 1189/12
anticipated... [1] 1445/23	1261/21 1263/13 1263/13	1396/19 1399/8 1399/11	1200/29 1205/5 1267/15
anticipates [9] 1176/6	1276/14 1285/4 1319/2	1400/13 1405/4 1405/19	1287/16 1298/2 1341/6
1176/14 1177/6 1181/22	1335/17 1343/13 1368/2	1406/21 1406/22 1406/23	1366/25 1383/18 1387/14
1181/24 1391/4 1394/14	1401/20 1417/12 1426/14	1407/3 1408/14 1408/15	1387/15 1388/17 1393/19
1394/20 1416/9	1426/16 1430/22 1432/22	1420/5 1420/7 1446/3	1402/24 1403/1 1403/4
anticipating [1] 1264/19	1435/6 1440/19 1456/24	1446/24	1403/4 1403/8 1403/23
anticipation [33] 1176/9	1458/13 1461/20	Apple's [6] 1297/12 1395/9	1404/10 1408/23 1421/12
1176/11 1177/3 1177/9	anyway [1] 1230/7	1395/17 1400/5 1400/8	1421/14 1421/19 1421/24
1181/2 1257/8 1257/10	anywhere [3] 1202/21	1408/3	Approach 1 [3] 1173/25
1266/1 1267/4 1267/6	1251/16 1456/21	apple.com [2] 1186/13	1174/2 1189/9
1267/20 1267/25 1268/8	API [3] 1396/15 1396/18	1186/25	Approach 2 [3] 1174/1
1268/13 1268/19 1268/25	1398/6	applet [1] 1423/20	1175/25 1189/11
1282/9 1282/11 1389/7	apologize [5] 1205/11 1344/6	applets [9] 1177/20 1177/24	approaches [3] 1173/25
1389/15 1389/20 1389/22	1344/8 1419/9 1420/17	1178/2 1181/6 1393/13	1175/18 1190/10
1391/3 1393/16 1399/11	app [45] 1239/4 1242/9	1422/18 1423/1 1424/1	appropriate [17] 1141/1
1424/11 1425/13 1428/22	1244/10 1244/11 1252/25	1425/12	1225/3 1245/17 1279/14
1428/24 1429/1 1429/12	1292/25 1309/1 1310/23	applicant [3] 1163/25 1164/5	1290/11 1309/25 1330/18
1431/1 1434/4	1312/16 1312/18 1319/12	1166/2	1340/24 1373/13 1374/14
any [115] 1138/20 1140/1	1319/16 1321/2 1330/5	application [20] 1159/16	1435/22 1437/6 1437/13
1140/14 1159/25 1160/19	1330/8 1330/10 1330/17	1164/6 1164/10 1232/18	1437/15 1438/18 1443/4
1161/3 1161/13 1161/13	1330/20 1330/23 1345/23	1248/17 1342/8 1349/17	1445/13
1161/17 1163/15 1172/3	1346/2 1346/4 1347/3	1354/1 1354/6 1354/25	appropriately [2] 1236/9
1172/14 1172/25 1180/16	1347/17 1348/14 1350/18	1354/25 1360/2 1370/9	1376/18
1183/24 1184/3 1184/23	1355/22 1359/24 1366/22	1378/7 1395/16 1396/14	approximately [5] 1250/15
1187/22 1195/13 1195/15	1367/9 1367/24 1368/1	1408/13 1408/17 1434/7	1299/13 1303/9 1368/18
1197/5 1201/17 1201/20	1370/12 1382/3 1382/4	1447/8	1427/8
1215/16 1220/23 1222/12	1454/5 1454/10 1454/13	applications [37] 1143/21	apps [93] 1138/24 1143/10
1222/15 1225/12 1231/6	1454/13 1454/25 1457/2	1148/19 1159/18 1165/20	1143/13 1175/8 1175/10
1232/10 1234/8 1241/3	1457/11 1461/16 1463/1	1172/5 1232/14 1232/22	1238/19 1239/23 1241/6
1241/12 1249/13 1278/12	1463/2	1233/2 1249/11 1301/16	1247/9 1248/14 1249/19
1278/15 1278/17 1279/9	app-related [2] 1366/22	1342/9 1342/10 1343/11	1250/14 1251/14 1251/18
1279/13 1280/8 1289/19	1367/9	1348/10 1348/15 1349/17	1251/23 1252/5 1253/2
1292/25 1300/23 1304/10	apparatus [1] 1442/11	1350/7 1350/13 1351/21	1292/22 1292/23 1292/24
1314/21 1315/23 1316/10	apparently [1] 1432/1	1352/9 1353/25 1357/21	1293/3 1293/5 1293/9 1293/9
1318/10 1324/9 1327/19	appeal [4] 1241/12 1325/1	1358/3 1360/8 1363/21	1297/25 1311/16 1312/14
1330/12 1336/3 1336/3	1436/19 1439/18	1377/22 1378/6 1378/17	1319/4 1323/17 1323/18
1336/10 1336/20 1344/23	appear [3] 1137/11 1137/15	1379/2 1395/14 1408/2	1325/24 1326/13 1326/13
1353/16 1356/19 1357/14	1427/10	1408/8 1418/21 1422/25	1329/15 1329/16 1329/17
1363/7 1363/12 1366/16	APPEARANCES [2] 1129/22	1423/3 1436/25 1437/1	1330/2 1330/13 1332/4
1369/16 1370/1 1371/8	1130/1	1423/3 1436/25 1437/1	1332/6 1333/7 1333/10
1373/3 1377/16 1377/17	appeared [1] 1213/25	1423/3 1436/25 1437/1	1333/13 1341/25 1343/1
1379/1 1382/12 1389/8	appears [6] 1139/25 1161/17	1423/3 1436/25 1437/1	1343/5 1343/7 1349/15
1389/9 1389/12 1398/2	1187/2 1363/17 1369/6	1423/3 1436/25 1437/1	1350/25 1359/21 1363/13
1408/16 1411/16 1415/8	1465/19	1423/3 1436/25 1437/1	1363/15 1369/20 1369/21
1417/18 1422/7 1424/5	apple [94] 1135/15 1137/14	1423/3 1436/25 1437/1	1370/6 1370/16 1371/14
1424/11 1426/13 1426/21	1143/3 1150/24 1151/8	1423/3 1436/25 1437/1	1373/22 1374/14 1375/11
1427/19 1427/20 1428/21	1151/10 1153/6 1162/2	1423/3 1436/25 1437/1	1375/13 1376/14 1381/22
1429/6 1429/9 1430/4 1432/4	1166/7 1166/7 1166/12	1423/3 1436/25 1437/1	1381/23 1405/8 1435/19
1432/21 1433/12 1433/22	1166/16 1166/18 1167/2	1423/3 1436/25 1437/1	1438/10 1438/25 1439/4
1438/13 1442/18 1446/1	1167/3 1167/8 1167/13	1423/3 1436/25 1437/1	1439/7 1451/5 1453/16
1446/6 1447/24 1450/20	1169/23 1170/5 1170/7	1423/3 1436/25 1437/1	1453/20 1455/11 1455/24
1451/20 1453/5 1454/14	1172/14 1172/18 1175/3	1423/3 1436/25 1437/1	1456/1 1458/17 1458/21
1456/11 1456/20 1458/7	1183/1 1183/2 1183/6	1423/3 1436/25 1437/1	1459/2 1459/10 1459/23
1458/8 1458/9 1458/12	1183/10 1184/6 1184/12	1423/3 1436/25 1437/1	1461/5 1461/5 1461/10
1459/3 1459/11 1462/22	1185/16 1187/12 1187/16	1423/3 1436/25 1437/1	1461/14 1462/4 1462/4
1463/19 1463/19 1463/23	1187/21 1188/2 1188/9	1423/3 1436/25 1437/1	1462/9 1462/19 1467/12
1467/9	1188/12 1189/11 1190/4	1423/3 1436/25 1437/1	1467/21 1468/3 1469/1
anybody [16] 1198/9 1356/14	1190/13 1190/13 1191/4	1423/3 1436/25 1437/1	April [8] 1139/14 1235/25
1356/18 1356/23 1357/18	1197/22 1199/5 1235/8	1423/3 1436/25 1437/1	1236/4 1237/18 1237/23
1357/25 1364/21 1378/14	1276/4 1276/5 1276/8	1423/3 1436/25 1437/1	1240/12 1245/20 1251/22
1378/24 1426/10 1432/20	1291/13 1291/14 1291/18	1423/3 1436/25 1437/1	April 21 [5] 1235/25 1236/4
1435/5 1440/19 1441/23	1291/22 1292/8 1294/20	1423/3 1436/25 1437/1	1237/18 1240/12 1245/20
1454/12 1463/3	1294/24 1295/8 1297/4	1423/3 1436/25 1437/1	April 21st [2] 1139/14 1251/22
anymore [2] 1262/17 1413/20	1298/5 1298/20 1299/12	1423/3 1436/25 1437/1	Archer [2] 1470/7 1470/8
anyone [1] 1230/2	1300/2 1300/4 1300/11	1423/3 1436/25 1437/1	architecture [5] 1159/1
anything [33] 1132/16	1300/18 1301/10 1302/11	1423/3 1436/25 1437/1	1159/23 1422/5 1422/8
1191/24 1197/6 1197/24	1303/2 1303/8 1305/19	1423/3 1436/25 1437/1	1422/10
1197/24 1202/3 1223/9	1305/23 1328/8 1329/2	1423/3 1436/25 1437/1	Archive [1] 1207/2
1226/12 1227/18 1234/10	1331/4 1385/17 1385/18	1423/3 1436/25 1437/1	ARD [1] 1130/5

A	Case 1:13-cv-00919-JLH Document 605 Filed 08/21/23 Page 524 of 775 PageID #: 61223	1217/7 1225/12 1227/17 1232/21 1233/16 1233/18 1235/7 1240/14 1249/23 1257/10 1264/25 1266/23 1267/5 1267/6 1279/24 1284/6 1373/2 1394/6 1405/4 1441/1 1450/13 1457/6 argumentative [2] 1208/15 1255/8 arguments [17] 1153/4 1153/5 1176/18 1216/16 1216/22 1217/4 1217/5 1225/15 1225/17 1255/23 1278/10 1279/18 1280/18 1427/5 1427/12 1427/17 1427/22 arithmetic [2] 1277/17 1277/25 arose [1] 1216/23 around [13] 1138/10 1141/12 1148/23 1229/18 1259/5 1294/4 1304/17 1312/4 1370/24 1385/21 1386/7 1390/13 1405/18 arranged [1] 1390/2 arrive [1] 1305/7 arrow [1] 1157/20 arrows [1] 1304/4 art [63] 1149/14 1149/23 1150/13 1150/16 1150/16 1151/7 1151/17 1152/17 1153/6 1153/11 1153/25 1154/4 1163/23 1163/24 1164/7 1165/8 1170/21 1171/2 1171/7 1182/4 1182/5 1196/4 1197/10 1198/3 1198/18 1223/3 1223/6 1223/18 1227/11 1271/3 1271/8 1273/22 1279/22 1284/1 1284/5 1284/15 1387/1 1387/25 1388/1 1389/23 1389/24 1390/8 1390/14 1390/20 1399/19 1399/22 1403/22 1404/5 1419/5 1419/13 1419/17 1419/22 1431/7 1441/6 1445/8 1445/12 1445/21 1445/21 1445/23 1446/11 1446/18 1446/22 1447/12 article [6] 1167/18 1167/19 1167/23 1168/14 1420/15 1421/1 articles [1] 1163/16 articulating [1] 1215/11 as [353] aside [2] 1231/10 1350/13 ask [69] 1138/14 1139/4 1139/24 1140/17 1140/23 1141/2 1144/24 1155/5 1193/7 1194/2 1194/3 1194/14 1219/14 1222/21 1230/23 1262/20 1262/21 1262/25 1263/1 1268/11 1274/17 1285/13 1335/14 1335/15 1335/16 1335/19 1335/21 1336/11 1339/1 1339/25 1340/3 1356/18 1356/23 1358/1 1358/7 1358/16 1359/2 1364/1 1364/21 1366/16 1367/16 1368/12 1370/22 1371/7 <th data-bbox="836 73 1177 2016">1371/9 1371/18 1372/4 1372/17 1372/20 1373/16 1373/18 1374/10 1375/13 1378/12 1378/14 1378/24 1384/9 1389/1 1389/12 1390/7 1412/24 1417/23 1420/14 1427/9 1428/7 1431/25 1440/12 1457/6 1458/19 asked [44] 1140/7 1141/9 1142/15 1142/22 1149/19 1149/20 1196/3 1197/20 1254/12 1254/15 1263/7 1263/8 1265/8 1265/14 1265/16 1267/12 1267/14 1271/20 1277/5 1279/25 1280/11 1282/22 1290/3 1290/4 1290/6 1313/18 1322/20 1322/24 1323/3 1324/11 1357/3 1357/4 1364/7 1365/9 1369/10 1370/13 1373/25 1377/11 1411/8 1417/6 1417/15 1432/14 1437/4 1468/13 asking [17] 1141/17 1141/19 1142/7 1211/6 1211/15 1229/6 1240/15 1245/23 1246/5 1260/4 1279/12 1291/5 1369/18 1400/20 1417/11 1431/9 1439/23 aspect [2] 1430/6 1431/16 aspects [3] 1139/10 1139/12 1402/2 asserted [20] 1149/21 1150/3 1151/3 1151/16 1176/4 1183/14 1184/24 1187/23 1188/10 1190/24 1196/4 1208/10 1296/12 1394/14 1394/16 1434/4 1434/10 1434/12 1436/14 1436/15 asserting [6] 1295/1 1338/8 1399/10 1399/11 1463/18 1463/21 assertion [1] 1447/14 asserts [1] 1394/20 assess [1] 1442/4 assessing [1] 1148/13 assessment [4] 1207/11 1266/8 1266/9 1267/12 assign [1] 1269/21 assignment [11] 1202/10 1213/19 1215/17 1215/19 1265/16 1265/17 1265/18 1265/23 1266/2 1266/5 1266/19 assist [1] 1146/13 associate [1] 1187/1 associated [4] 1152/1 1186/24 1342/7 1343/7 Associates [1] 1430/13 Association [4] 1148/10 1149/2 1285/7 1448/2 Association's [1] 1449/22 assume [3] 1312/17 1322/22 1433/23 assumed [4] 1143/13 1312/16 1312/18 1320/4 assuming [6] 1143/22 1229/3 1277/23 1290/4 1305/3 1312/25 <th data-bbox="1177 21 1534 2016">assumption [5] 1224/4 1224/5 1290/6 1304/18 1324/15 assumptions [1] 1232/9 assure [1] 1459/15 Atle [8] 1150/18 1164/1 1164/5 1165/25 1170/18 1172/12 1173/9 1195/21 attached [3] 1306/13 1343/24 1353/20 attempt [5] 1234/10 1242/3 1278/12 1278/17 1282/16 attended [1] 1202/16 attention [4] 1201/9 1395/18 1405/22 1406/10 attorney [2] 1197/5 1223/13 attorneys [7] 1164/1 1224/11 1224/21 1356/9 1380/6 1427/5 1458/4 attractive [1] 1400/7 attributable [3] 1195/19 1303/1 1449/20 audible [1] 1268/9 audience [1] 1261/17 audiences [3] 1155/1 1166/12 1261/25 auditing [1] 1365/2 August [26] 1136/21 1232/5 1246/16 1246/18 1246/20 1310/19 1311/5 1311/14 1311/15 1311/17 1311/20 1312/6 1320/1 1320/3 1325/25 1329/20 1337/5 1343/18 1344/5 1344/6 1352/2 1354/19 1355/17 1379/21 1436/13 1437/13 August 2017 [2] 1337/5 1437/13 August 2022 [2] 1344/5 1379/21 August 21 [3] 1310/19 1320/3 1436/13 August 26 [2] 1136/21 1344/6 authors [2] 1395/6 1407/6 automatic [1] 1165/19 automatically [1] 1161/3 available [26] 1152/9 1155/17 1157/23 1163/22 1167/8 1171/6 1182/12 1188/3 1188/5 1188/5 1197/11 1199/6 1199/11 1200/5 1209/15 1274/8 1274/13 1299/3 1314/12 1357/14 1377/17 1390/14 1403/9 1421/14 1461/17 1463/2 avatar [1] 1386/8 average [6] 1273/10 1328/5 1328/12 1329/4 1329/6 1329/7 avoid [3] 1334/1 1408/24 1439/17 awards [1] 1148/15 aware [12] 1202/8 1219/14 1219/20 1220/20 1311/11 1315/5 1349/18 1412/5 1414/5 1419/23 1423/9 1423/10 away [8] 1255/7 1326/2 1381/23 1404/1 1404/3 1404/4 1404/7 1408/19 </th></th>	1371/9 1371/18 1372/4 1372/17 1372/20 1373/16 1373/18 1374/10 1375/13 1378/12 1378/14 1378/24 1384/9 1389/1 1389/12 1390/7 1412/24 1417/23 1420/14 1427/9 1428/7 1431/25 1440/12 1457/6 1458/19 asked [44] 1140/7 1141/9 1142/15 1142/22 1149/19 1149/20 1196/3 1197/20 1254/12 1254/15 1263/7 1263/8 1265/8 1265/14 1265/16 1267/12 1267/14 1271/20 1277/5 1279/25 1280/11 1282/22 1290/3 1290/4 1290/6 1313/18 1322/20 1322/24 1323/3 1324/11 1357/3 1357/4 1364/7 1365/9 1369/10 1370/13 1373/25 1377/11 1411/8 1417/6 1417/15 1432/14 1437/4 1468/13 asking [17] 1141/17 1141/19 1142/7 1211/6 1211/15 1229/6 1240/15 1245/23 1246/5 1260/4 1279/12 1291/5 1369/18 1400/20 1417/11 1431/9 1439/23 aspect [2] 1430/6 1431/16 aspects [3] 1139/10 1139/12 1402/2 asserted [20] 1149/21 1150/3 1151/3 1151/16 1176/4 1183/14 1184/24 1187/23 1188/10 1190/24 1196/4 1208/10 1296/12 1394/14 1394/16 1434/4 1434/10 1434/12 1436/14 1436/15 asserting [6] 1295/1 1338/8 1399/10 1399/11 1463/18 1463/21 assertion [1] 1447/14 asserts [1] 1394/20 assess [1] 1442/4 assessing [1] 1148/13 assessment [4] 1207/11 1266/8 1266/9 1267/12 assign [1] 1269/21 assignment [11] 1202/10 1213/19 1215/17 1215/19 1265/16 1265/17 1265/18 1265/23 1266/2 1266/5 1266/19 assist [1] 1146/13 associate [1] 1187/1 associated [4] 1152/1 1186/24 1342/7 1343/7 Associates [1] 1430/13 Association [4] 1148/10 1149/2 1285/7 1448/2 Association's [1] 1449/22 assume [3] 1312/17 1322/22 1433/23 assumed [4] 1143/13 1312/16 1312/18 1320/4 assuming [6] 1143/22 1229/3 1277/23 1290/4 1305/3 1312/25 <th data-bbox="1177 21 1534 2016">assumption [5] 1224/4 1224/5 1290/6 1304/18 1324/15 assumptions [1] 1232/9 assure [1] 1459/15 Atle [8] 1150/18 1164/1 1164/5 1165/25 1170/18 1172/12 1173/9 1195/21 attached [3] 1306/13 1343/24 1353/20 attempt [5] 1234/10 1242/3 1278/12 1278/17 1282/16 attended [1] 1202/16 attention [4] 1201/9 1395/18 1405/22 1406/10 attorney [2] 1197/5 1223/13 attorneys [7] 1164/1 1224/11 1224/21 1356/9 1380/6 1427/5 1458/4 attractive [1] 1400/7 attributable [3] 1195/19 1303/1 1449/20 audible [1] 1268/9 audience [1] 1261/17 audiences [3] 1155/1 1166/12 1261/25 auditing [1] 1365/2 August [26] 1136/21 1232/5 1246/16 1246/18 1246/20 1310/19 1311/5 1311/14 1311/15 1311/17 1311/20 1312/6 1320/1 1320/3 1325/25 1329/20 1337/5 1343/18 1344/5 1344/6 1352/2 1354/19 1355/17 1379/21 1436/13 1437/13 August 2017 [2] 1337/5 1437/13 August 2022 [2] 1344/5 1379/21 August 21 [3] 1310/19 1320/3 1436/13 August 26 [2] 1136/21 1344/6 authors [2] 1395/6 1407/6 automatic [1] 1165/19 automatically [1] 1161/3 available [26] 1152/9 1155/17 1157/23 1163/22 1167/8 1171/6 1182/12 1188/3 1188/5 1188/5 1197/11 1199/6 1199/11 1200/5 1209/15 1274/8 1274/13 1299/3 1314/12 1357/14 1377/17 1390/14 1403/9 1421/14 1461/17 1463/2 avatar [1] 1386/8 average [6] 1273/10 1328/5 1328/12 1329/4 1329/6 1329/7 avoid [3] 1334/1 1408/24 1439/17 awards [1] 1148/15 aware [12] 1202/8 1219/14 1219/20 1220/20 1311/11 1315/5 1349/18 1412/5 1414/5 1419/23 1423/9 1423/10 away [8] 1255/7 1326/2 1381/23 1404/1 1404/3 1404/4 1404/7 1408/19 </th>	assumption [5] 1224/4 1224/5 1290/6 1304/18 1324/15 assumptions [1] 1232/9 assure [1] 1459/15 Atle [8] 1150/18 1164/1 1164/5 1165/25 1170/18 1172/12 1173/9 1195/21 attached [3] 1306/13 1343/24 1353/20 attempt [5] 1234/10 1242/3 1278/12 1278/17 1282/16 attended [1] 1202/16 attention [4] 1201/9 1395/18 1405/22 1406/10 attorney [2] 1197/5 1223/13 attorneys [7] 1164/1 1224/11 1224/21 1356/9 1380/6 1427/5 1458/4 attractive [1] 1400/7 attributable [3] 1195/19 1303/1 1449/20 audible [1] 1268/9 audience [1] 1261/17 audiences [3] 1155/1 1166/12 1261/25 auditing [1] 1365/2 August [26] 1136/21 1232/5 1246/16 1246/18 1246/20 1310/19 1311/5 1311/14 1311/15 1311/17 1311/20 1312/6 1320/1 1320/3 1325/25 1329/20 1337/5 1343/18 1344/5 1344/6 1352/2 1354/19 1355/17 1379/21 1436/13 1437/13 August 2017 [2] 1337/5 1437/13 August 2022 [2] 1344/5 1379/21 August 21 [3] 1310/19 1320/3 1436/13 August 26 [2] 1136/21 1344/6 authors [2] 1395/6 1407/6 automatic [1] 1165/19 automatically [1] 1161/3 available [26] 1152/9 1155/17 1157/23 1163/22 1167/8 1171/6 1182/12 1188/3 1188/5 1188/5 1197/11 1199/6 1199/11 1200/5 1209/15 1274/8 1274/13 1299/3 1314/12 1357/14 1377/17 1390/14 1403/9 1421/14 1461/17 1463/2 avatar [1] 1386/8 average [6] 1273/10 1328/5 1328/12 1329/4 1329/6 1329/7 avoid [3] 1334/1 1408/24 1439/17 awards [1] 1148/15 aware [12] 1202/8 1219/14 1219/20 1220/20 1311/11 1315/5 1349/18 1412/5 1414/5 1419/23 1423/9 1423/10 away [8] 1255/7 1326/2 1381/23 1404/1 1404/3 1404/4 1404/7 1408/19
<p>are [395] area [5] 1288/9 1289/12 1330/4 1386/4 1386/12 areas [1] 1334/7 aren't [7] 1163/2 1222/23 1235/8 1269/12 1348/19 1398/21 1409/11 ARENDI [110] 1129/4 1132/20 1137/11 1137/15 1139/14 1151/15 1152/24 1153/10 1163/21 1163/25 1164/5 1164/11 1165/8 1165/16 1166/5 1169/23 1170/4 1170/6 1171/10 1171/14 1171/17 1171/20 1172/14 1174/19 1175/2 1175/8 1175/12 1175/20 1188/24 1196/8 1204/9 1204/13 1205/24 1214/5 1215/6 1216/5 1216/11 1216/20 1217/8 1217/12 1217/13 1223/2 1224/7 1225/22 1231/5 1232/15 1235/25 1237/18 1240/12 1249/3 1253/4 1253/15 1285/21 1285/25 1286/1 1286/4 1286/8 1290/12 1291/17 1292/12 1295/9 1295/9 1295/10 1297/11 1297/16 1298/22 1301/12 1303/12 1304/17 1305/14 1322/20 1327/13 1332/3 1333/23 1336/4 1357/4 1357/7 1357/10 1365/8 1366/3 1366/23 1368/6 1372/17 1373/1 1380/14 1380/18 1382/21 1410/21 1411/1 1411/11 1411/21 1426/3 1426/6 1426/21 1432/15 1440/16 1440/22 1441/19 1442/20 1443/12 1443/23 1445/1 1446/17 1447/6 1448/15 1451/10 1457/8 1460/1 1464/15 1464/19 Arendi's [37] 1144/21 1149/22 1150/9 1152/15 1152/19 1153/4 1170/21 1171/2 1171/21 1175/5 1196/12 1213/20 1213/22 1214/2 1214/13 1214/20 1214/22 1215/7 1215/10 1215/23 1215/24 1216/1 1217/3 1284/1 1285/25 1286/14 1290/8 1290/25 1291/5 1365/10 1397/10 1436/14 1439/21 1446/6 1449/18 1463/17 1468/12 argue [1] 1461/3 argued [4] 1174/19 1216/20 1234/14 1370/18 arguing [5] 1152/24 1214/5 1228/21 1264/19 1463/13 argument [38] 1137/4 1152/10 1152/15 1175/5 1175/12 1176/7 1181/4 1185/10 1213/8 1213/22 1214/13 1215/7 1215/10 1215/23 1215/25 1216/17</p>				

<p>back [74] 1145/9 1146/23 1151/11 1156/6 1166/9 1171/16 1174/5 1176/2 1182/2 1188/24 1189/24 1190/21 1199/22 1211/1 1211/22 1211/22 1213/17 1217/10 1225/13 1230/7 1234/20 1235/19 1247/5 1247/9 1247/10 1247/24 1248/16 1252/19 1253/18 1273/6 1275/15 1278/12 1279/3 1279/5 1280/22 1284/12 1286/2 1287/10 1291/25 1301/25 1305/10 1305/14 1310/1 1329/9 1342/24 1343/24 1344/7 1350/12 1355/5 1355/6 1359/17 1359/19 1359/24 1360/4 1360/5 1360/18 1365/5 1369/1 1369/4 1375/17 1377/2 1377/3 1388/10 1389/4 1398/4 1406/13 1438/21 1439/13 1460/20 1462/12 1463/5 1463/9 1463/11 1466/1 background [4] 1146/17 1148/1 1289/4 1323/24 backup [3] 1363/7 1363/8 1365/5 ball [4] 1176/11 1282/5 1282/6 1282/14 balls [1] 1176/17 Baltimore [1] 1289/7 bar [5] 1157/19 1179/9 1285/7 1448/1 1449/22 base [10] 1142/25 1151/4 1231/4 1231/10 1232/4 1232/8 1234/5 1253/9 1342/7 1434/5 based [38] 1135/12 1137/1 1142/11 1142/16 1142/17 1142/20 1143/5 1157/25 1158/13 1169/4 1207/7 1217/7 1227/14 1228/19 1233/19 1239/22 1286/7 1297/7 1309/20 1323/16 1335/4 1345/20 1345/22 1345/23 1346/1 1346/16 1348/4 1348/21 1364/2 1373/14 1434/20 1435/23 1437/8 1438/12 1444/11 1445/7 1449/19 1454/17 basic [7] 1293/14 1294/2 1418/6 1418/19 1419/23 1461/21 1461/21 basically [10] 1288/18 1294/10 1302/23 1306/20 1319/14 1320/20 1332/10 1348/17 1385/19 1398/15 basics [1] 1292/1 basis [22] 1134/17 1138/15 1139/16 1140/14 1149/9 1151/13 1176/3 1188/7 1235/4 1241/11 1257/10 1268/25 1316/4 1325/18 1325/20 1334/17 1335/3 1339/11 1397/3 1406/21 1437/19 1442/5 Bates [2] 1238/18 1361/9</p>	<p>be [292] 1131/6 1131/20 1131/23 1132/14 1132/21 1133/5 1138/25 1139/25 1141/11 1141/16 1143/1 1143/6 1143/22 1144/20 1145/8 1145/24 1152/20 1160/10 1160/14 1160/15 1175/19 1178/25 1179/2 1179/3 1181/1 1181/21 1182/4 1182/7 1182/7 1182/10 1183/3 1185/1 1186/24 1187/10 1192/2 1194/6 1197/3 1197/7 1198/18 1198/21 1204/13 1207/10 1212/4 1212/5 1213/1 1220/22 1221/10 1221/11 1221/18 1224/19 1225/6 1225/14 1226/2 1226/2 1226/12 1226/18 1226/23 1227/5 1227/9 1227/10 1227/15 1227/24 1228/5 1228/20 1229/2 1229/6 1229/9 1230/17 1230/17 1230/19 1231/15 1233/1 1233/22 1234/1 1234/5 1234/8 1234/13 1235/6 1235/20 1236/16 1236/22 1239/1 1239/12 1239/12 1240/5 1240/14 1241/1 1241/14 1242/4 1242/13 1242/14 1243/9 1243/11 1243/17 1245/5 1246/3 1246/9 1246/10 1246/17 1246/21 1247/21 1248/25 1249/17 1250/20 1250/25 1252/12 1253/6 1253/14 1253/22 1261/10 1263/21 1266/3 1266/17 1268/19 1270/21 1271/1 1271/2 1271/8 1271/21 1272/3 1277/20 1278/17 1278/19 1279/14 1280/9 1280/16 1281/8 1283/12 1283/19 1284/16 1284/20 1284/25 1285/4 1285/9 1285/10 1285/12 1286/19 1288/1 1291/7 1294/7 1296/11 1301/13 1302/10 1302/13 1302/13 1302/14 1303/1 1303/22 1305/13 1305/15 1307/9 1308/11 1308/21 1312/19 1312/20 1312/21 1313/11 1315/22 1316/18 1316/21 1320/18 1323/8 1326/8 1327/25 1328/22 1332/22 1334/9 1334/21 1335/4 1336/3 1337/16 1338/18 1339/15 1339/23 1339/24 1342/7 1344/21 1348/5 1352/10 1353/1 1354/9 1354/14 1354/16 1357/19 1357/20 1358/9 1362/7 1363/4 1368/21 1369/7 1370/10 1372/18 1373/25 1378/12 1382/9 1382/25 1383/11 1384/8 1385/24 1388/7 1388/14 1389/11 1390/2 1390/10 1390/12 1390/16 1390/18 1394/3 1395/14</p>	<p>1395/16 1397/8 1398/10 1399/22 1400/5 1400/6 1400/7 1403/17 1403/21 1403/25 1404/11 1409/15 1410/8 1412/12 1414/17 1418/15 1418/16 1419/6 1419/14 1425/4 1426/6 1426/10 1426/24 1427/10 1427/14 1427/23 1428/4 1428/6 1429/22 1430/5 1430/21 1431/10 1434/3 1434/11 1434/18 1434/23 1436/17 1436/25 1437/1 1437/3 1437/10 1437/13 1437/15 1438/14 1438/18 1438/24 1439/3 1440/1 1440/6 1440/12 1442/16 1443/2 1443/3 1443/9 1443/17 1444/9 1444/15 1445/12 1445/19 1445/20 1446/9 1447/17 1448/22 1449/19 1451/13 1451/15 1451/17 1451/24 1454/6 1454/14 1456/3 1457/20 1459/16 1459/17 1460/18 1465/2 1465/19 1465/21 1466/4 1466/6 1466/22 1468/21 1469/17 bears [1] 1428/20 became [2] 1188/5 1385/14 because [103] 1134/8 1137/16 1137/22 1140/12 1147/6 1148/17 1149/2 1150/14 1167/21 1168/3 1168/6 1176/21 1184/17 1187/18 1189/1 1198/24 1205/9 1208/1 1215/17 1222/7 1224/20 1226/20 1226/23 1227/5 1231/1 1232/13 1234/6 1236/11 1236/22 1237/3 1237/15 1238/20 1241/23 1248/6 1248/21 1250/3 1250/21 1253/10 1253/15 1257/17 1266/5 1266/11 1268/7 1268/12 1268/18 1268/20 1284/16 1285/8 1286/3 1286/21 1291/2 1299/3 1300/24 1302/12 1302/23 1304/1 1309/11 1314/10 1314/16 1316/24 1320/11 1324/10 1326/12 1329/7 1332/10 1333/5 1333/19 1337/21 1338/4 1345/19 1352/10 1352/23 1356/20 1358/15 1358/17 1370/8 1375/12 1381/4 1382/2 1393/5 1393/6 1394/3 1395/25 1400/8 1408/5 1416/9 1424/21 1427/7 1434/18 1436/6 1437/6 1437/21 1441/7 1445/13 1455/1 1456/3 1456/5 1457/19 1459/6 1459/7 1467/14 1468/7 1469/12 become [1] 1457/19 becomes [1] 1298/13 bed [1] 1468/17 beekeeping [1] 1258/16 been [79] 1136/23 1138/23</p>	<p>1139/19 1141/9 1142/11 1142/19 1145/20 1146/19 1148/23 1148/25 1156/13 1184/20 1185/11 1186/14 1187/4 1188/16 1188/20 1188/23 1195/25 1202/12 1202/15 1202/20 1211/5 1215/19 1217/23 1223/24 1226/19 1234/25 1241/25 1267/7 1268/7 1268/13 1268/18 1272/9 1279/22 1280/1 1284/10 1287/22 1290/22 1302/24 1305/24 1312/4 1312/14 1334/9 1336/2 1338/14 1339/6 1342/22 1343/13 1347/25 1356/9 1357/1 1367/21 1367/25 1375/20 1375/25 1376/1 1379/14 1380/6 1383/13 1384/15 1384/23 1385/21 1386/24 1423/4 1424/15 1426/3 1434/15 1434/16 1438/12 1439/25 1445/24 1446/4 1446/12 1449/2 1451/7 1458/9 1458/9 1464/17 before [74] 1129/19 1139/7 1154/4 1154/7 1154/10 1154/16 1155/11 1158/16 1162/21 1164/6 1166/9 1166/25 1167/1 1167/5 1167/9 1170/1 1176/13 1178/13 1179/1 1183/23 1184/14 1188/22 1190/15 1196/17 1197/20 1199/25 1201/8 1206/18 1225/6 1225/12 1225/18 1228/1 1229/7 1234/3 1234/6 1234/11 1238/6 1242/5 1242/13 1242/22 1248/4 1252/18 1253/1 1254/5 1257/1 1269/7 1274/21 1285/22 1286/2 1288/20 1300/10 1303/10 1308/17 1309/17 1311/11 1324/25 1341/13 1360/17 1377/11 1379/16 1380/16 1380/21 1384/8 1384/13 1392/13 1426/3 1428/3 1434/6 1434/7 1441/4 1445/20 1451/9 1455/18 1468/17 began [5] 1146/21 1253/2 1294/5 1338/20 1451/9 begin [4] 1157/10 1196/17 1352/2 1352/14 beginning [8] 1131/4 1165/13 1166/15 1219/19 1338/19 1419/9 1420/23 1461/25 begins [1] 1352/1 behalf [11] 1202/14 1204/1 1204/5 1204/5 1204/6 1207/5 1208/7 1328/19 1432/15 1456/15 1458/1 behave [1] 1398/21 behind [1] 1178/20 being [64] 1132/3 1135/4 1138/10 1138/20 1145/20 1149/8 1149/9 1156/24 1171/5 1173/5 1178/15 1178/19 1181/1 1185/3</p>
--	---	--	--

B	Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 546 of 775 PageID #: 61235	both [25] 1136/17 1166/24 1171/1 1175/2 1188/13	1390/24 1418/25 building [2] 1155/8 1386/5
<p>being... [50] 1193/16 1195/7 1195/13 1195/16 1204/8 1208/13 1212/22 1213/23 1214/22 1216/22 1219/20 1229/10 1229/17 1234/14 1236/23 1238/2 1243/3 1251/16 1265/17 1265/18 1273/4 1280/11 1287/23 1289/16 1297/11 1298/6 1307/22 1308/24 1314/14 1332/25 1333/1 1335/10 1337/1 1352/18 1375/10 1383/14 1393/13 1396/14 1403/15 1410/10 1410/13 1423/10 1423/22 1444/20 1461/12 1461/12 1462/4 1462/7 1468/9 1468/22 belabor [2] 1304/16 1430/2 BELGAM [1] 1129/24 belief [1] 1423/5 believe [66] 1232/1 1236/8 1238/23 1238/24 1239/9 1243/17 1249/3 1250/1 1255/23 1256/6 1267/8 1267/19 1272/17 1286/11 1302/19 1305/23 1314/16 1320/25 1325/6 1326/8 1326/10 1328/18 1351/3 1361/9 1369/20 1373/7 1373/12 1376/16 1376/18 1384/2 1385/21 1399/24 1403/24 1409/16 1410/25 1411/10 1411/13 1411/16 1411/18 1413/10 1414/2 1414/25 1415/17 1416/12 1416/15 1417/4 1417/5 1418/22 1420/4 1421/8 1421/10 1422/6 1422/11 1422/23 1423/2 1425/15 1434/8 1434/15 1436/4 1436/9 1436/17 1437/22 1445/11 1450/23 1455/11 1455/12 believes [3] 1245/1 1392/6 1443/23 bench [3] 1286/2 1286/5 1368/22 beneficiary [4] 1466/11 1466/11 1466/13 1466/21 benefit [6] 1149/22 1196/3 1217/13 1217/19 1378/25 1466/16 benefits [2] 1230/2 1378/15 Berkeley [1] 1289/8 besides [4] 1163/11 1176/24 1318/9 1450/20 best [6] 1228/19 1240/25 1298/23 1300/1 1392/10 1432/7 better [11] 1225/14 1258/5 1265/12 1269/10 1285/5 1356/24 1357/4 1357/8 1357/9 1357/14 1410/6 between [34] 1134/18 1212/23 1213/5 1223/1 1229/3 1241/22 1244/25 1293/1 1293/10 1294/15 1295/18 1303/5 1303/23 1304/17 1306/22 1310/22</p>	<p>1311/4 1311/15 1325/25 1329/20 1346/8 1347/8 1355/3 1355/16 1357/7 1367/22 1395/5 1420/5 1436/13 1438/21 1439/13 1463/14 1464/15 1464/18 beyond [7] 1202/19 1315/24 1338/7 1368/2 1371/15 1376/13 1465/9 bias [1] 1208/16 big [22] 1149/4 1150/4 1156/3 1156/5 1156/6 1164/17 1164/19 1165/12 1166/13 1172/7 1173/5 1173/17 1173/18 1173/23 1176/23 1218/13 1224/5 1235/6 1240/15 1258/1 1297/13 1398/22 bigger [9] 1173/18 1234/5 1266/12 1266/16 1301/17 1320/19 1345/11 1401/1 1401/1 bill [1] 1411/4 billed [4] 1411/1 1411/4 1411/11 1411/21 [REDACTED] [REDACTED] [REDACTED] binder [14] 1150/4 1165/5 1165/12 1203/1 1204/19 1205/6 1222/22 1295/12 1306/10 1313/1 1341/7 1353/1 1360/18 1405/22 binders [2] 1146/3 1165/11 bit [23] 1146/15 1168/22 1193/16 1224/19 1261/4 1265/22 1267/18 1273/17 1286/15 1289/3 1292/9 1300/1 1304/15 1323/25 1341/22 1351/25 1360/6 1364/10 1384/25 1396/8 1417/23 1452/10 1464/1 black [2] 1168/21 1203/1 Blacksburg [1] 1146/10 blanks [1] 1306/22 block [1] 1168/16 blowing [1] 1400/17 blue [7] 1157/16 1157/17 1158/4 1190/19 1302/3 1304/7 1449/9 board [1] 1148/10 boards [2] 1148/9 1148/9 Bob [1] 1147/2 boiled [1] 1358/20 Boles [22] 1220/1 1220/14 1256/4 1256/20 1260/19 1274/1 1275/4 1345/5 1345/6 1347/19 1350/3 1350/22 1351/7 1352/5 1353/4 1354/13 1365/16 1380/24 1402/17 1406/13 1407/12 1412/10 Bonnie [2] 1470/7 1470/8 book [10] 1168/18 1169/1 1169/2 1186/18 1187/5 1187/8 1218/13 1221/16 1339/7 1387/4 books [2] 1164/16 1276/18 borne [2] 1245/25 1246/22 Boston [1] 1166/24</p>	<p>1190/15 1199/10 1241/6 1285/16 1286/3 1327/16 1351/14 1352/13 1400/1 1409/12 1434/5 1434/21 1436/1 1445/1 1451/11 1453/14 1455/8 1459/9 1460/11 1466/21 bottom [34] 1157/6 1157/24 1158/16 1161/11 1161/25 1164/3 1166/3 1166/11 1168/14 1169/18 1170/17 1173/10 1181/12 1182/23 1183/5 1184/14 1185/23 1186/22 1205/2 1206/1 1207/1 1274/2 1308/1 1309/3 1319/18 1348/13 1349/4 1389/10 1406/11 1413/19 1450/1 1450/4 1450/5 1450/8 bought [1] 1288/20 bounds [3] 1369/13 1369/13 1371/15 bow [1] 1394/13 bowling [2] 1176/9 1282/5 box [2] 1161/12 1169/19 boxes [1] 1180/23 break [18] 1136/6 1137/4 1145/1 1153/15 1224/17 1224/19 1225/16 1228/18 1230/15 1254/5 1283/15 1316/17 1339/15 1368/4 1368/16 1368/18 1377/11 1428/4 breaks [1] 1229/4 brief [3] 1386/1 1389/19 1410/8 briefing [1] 1434/1 briefly [8] 1228/1 1307/4 1394/24 1409/6 1433/5 1433/6 1447/4 1449/15 Bright [2] 1206/9 1206/20 bring [18] 1137/20 1145/3 1252/19 1253/19 1273/6 1286/17 1287/7 1338/18 1338/19 1345/4 1345/7 1347/20 1375/12 1375/17 1376/20 1377/3 1380/24 1420/16 brings [1] 1177/19 broad [1] 1296/15 broader [1] 1369/23 brought [4] 1286/2 1375/10 1451/7 1458/9 Browse [1] 1168/12 browser [25] 1156/17 1156/19 1167/18 1177/18 1177/21 1177/22 1177/23 1177/23 1178/2 1179/10 1371/1 1393/10 1393/13 1422/20 1422/22 1422/23 1423/6 1423/13 1423/18 1423/24 1424/2 1424/10 1424/19 1425/12 1425/12 browsers [2] 1178/10 1376/7 buckets [1] 1324/10 Bugel [1] 1465/11 build [10] 1173/16 1173/16 1173/17 1173/18 1173/23 1174/2 1174/6 1390/21</p>	<p>1390/24 1418/25 built [15] 1153/1 1159/1 1173/15 1173/20 1174/22 1189/2 1189/8 1189/10 1190/17 1195/13 1215/3 1275/25 1386/6 1398/11 1407/5 bullet [3] 1214/18 1215/14 1217/3 bunch [6] 1179/9 1179/14 1189/17 1189/18 1258/3 1282/19 burden [5] 1428/20 1433/10 1449/7 1449/11 1450/9 businesses [1] 1288/20 button [14] 1157/2 1157/19 1158/5 1159/10 1159/19 1179/8 1179/13 1180/3 1180/6 1181/12 1181/16 1185/24 1187/2 1195/25 buy [1] 1454/20 buying [1] 1167/4</p> <hr/> <p>C</p> <p>C.A [1] 1129/6 cabin [1] 1368/23 calculate [8] 1135/1 1288/10 1290/4 1290/6 1309/24 1346/14 1352/19 1353/15 calculated [5] 1231/12 1290/14 1330/20 1341/2 1437/12 calculation [21] 1134/15 1134/17 1137/17 1141/17 1141/22 1231/7 1232/4 1236/8 1250/19 1286/7 1289/24 1291/12 1302/25 1326/7 1328/14 1329/11 1350/20 1381/18 1382/1 1440/6 1461/10 calculations [5] 1135/3 1228/18 1288/18 1328/2 1330/2 Calendar [8] 1244/12 1246/25 1247/24 1248/6 1248/14 1320/24 1321/2 1366/16 California [3] 1150/19 1167/2 1384/15 call [11] 1145/12 1167/23 1218/17 1287/12 1310/14 1382/13 1384/23 1398/9 1398/18 1398/20 1405/18 called [25] 1145/20 1147/5 1150/3 1151/16 1152/4 1154/3 1154/24 1157/1 1162/1 1165/18 1177/19 1180/9 1186/10 1186/10 1189/6 1220/6 1275/23 1287/22 1383/13 1385/10 1385/16 1385/22 1395/7 1414/25 1422/18 calling [3] 1174/16 1179/18 1225/25 calls [2] 1145/13 1287/14 came [31] 1137/12 1143/15 1166/2 1192/6 1217/15 1227/2 1227/6 1240/5 1276/13 1276/24 1277/1 1277/9 1285/2 1285/3</p>

came... [17] 1285/22 1286/1
1315/21 1315/25 1324/6
1328/3 1338/6 1347/11
1363/4 1366/17 1381/22
1431/8 1436/8 1443/24
1445/20 1451/2 1451/3
campus [2] 1272/23 1400/20
can [236] 1132/4 1132/18
1132/21 1132/24 1134/10
1136/5 1136/17 1137/25
1142/21 1143/8 1143/9
1146/17 1148/1 1149/24
1151/12 1152/13 1153/18
1154/21 1155/21 1156/23
1157/3 1157/12 1157/16
1157/25 1158/20 1158/20
1159/14 1159/15 1159/15
1159/18 1159/21 1159/23
1160/6 1160/16 1160/23
1161/7 1162/6 1162/16
1162/16 1163/5 1163/7
1164/14 1165/2 1165/6
1168/5 1168/8 1168/20
1168/20 1169/7 1169/19
1170/12 1173/12 1173/12
1174/17 1174/17 1175/15
1175/15 1176/3 1176/19
1176/19 1177/5 1177/8
1177/17 1177/18 1178/11
1178/23 1178/25 1179/2
1179/3 1179/14 1180/23
1180/24 1181/4 1182/23
1183/19 1183/19 1183/25
1184/25 1185/24 1186/1
1186/16 1187/13 1187/13
1188/18 1189/14 1189/14
1189/19 1190/2 1190/22
1191/13 1191/14 1192/13
1192/19 1193/18 1193/20
1195/3 1198/23 1198/24
1200/12 1200/16 1204/18
1212/15 1214/4 1216/8
1219/25 1227/16 1228/1
1228/17 1229/4 1230/7
1230/23 1231/16 1231/17
1231/20 1231/22 1237/16
1238/22 1239/19 1240/13
1240/17 1240/22 1240/25
1241/19 1242/17 1243/3
1243/9 1245/12 1250/25
1253/18 1266/20 1266/20
1269/21 1270/20 1271/4
1271/10 1271/13 1271/15
1271/17 1272/3 1275/4
1275/21 1283/21 1284/7
1284/8 1284/19 1285/4
1285/18 1286/23 1289/3
1291/3 1298/24 1299/22
1300/1 1300/10 1301/7
1301/10 1302/10 1302/12
1302/14 1305/25 1306/2
1307/10 1307/25 1308/13
1309/2 1310/1 1313/23
1318/16 1318/20 1320/19
1321/3 1325/21 1331/8
1331/15 1332/22 1332/24
1333/1 1333/5 1333/23
1334/1 1334/4 1339/1 1340/3
1348/13 1350/22 1355/5

1359/17 1361/13 1362/1
1366/10 1369/2 1369/7
1372/6 1372/17 1372/20
1373/16 1373/18 1375/12
1375/13 1378/20 1380/24
1382/18 1385/3 1386/1
1388/10 1389/2 1389/18
1389/19 1389/24 1390/2
1390/5 1390/14 1391/8
1394/12 1397/8 1402/16
1402/19 1407/11 1415/10
1415/10 1420/16 1430/9
1431/15 1437/23 1444/12
1452/12 1457/14 1457/18
1460/15 1460/23 1461/2
1463/5 1467/1 1467/18
1468/16 1469/7
can't [25] 1140/2 1162/24
1192/25 1193/4 1202/7
1208/21 1212/21 1240/18
1250/20 1250/22 1256/14
1266/9 1266/9 1269/11
1271/9 1282/16 1336/10
1338/20 1361/9 1364/2
1364/4 1364/6 1370/1 1390/6
1394/5
candidate [1] 1389/3
candidly [1] 1392/1
cannot [7] 1268/2 1373/25
1391/18 1391/18 1397/11
1454/5 1457/3
capabilities [3] 1189/2
1264/15 1408/3
capability [1] 1174/22
capable [1] 1331/12
capacity [1] 1380/5
Capstone [1] 1148/7
capture [1] 1299/22
car [1] 1294/11
care [2] 1236/18 1319/20
career [4] 1258/14 1258/16
1258/16 1288/25
careful [2] 1208/4 1208/9
carefully [4] 1210/10 1210/13
1249/24 1270/8
Carolina [1] 1147/13
Casanova [1] 1167/25
cascading [1] 1391/16
case [136] 1139/10 1139/13
1149/8 1149/19 1157/1
1170/24 1177/3 1184/3
1194/22 1202/12 1203/12
1203/16 1203/19 1203/21
1204/8 1204/10 1204/13
1205/19 1205/20 1205/20
1206/2 1206/9 1206/21
1207/8 1208/7 1218/19
1223/5 1223/11 1225/24
1227/24 1234/21 1234/25
1235/8 1241/13 1242/22
1242/22 1248/4 1248/7
1261/20 1266/10 1267/16
1267/19 1272/11 1278/25
1284/23 1285/2 1288/16
1289/17 1290/3 1291/21
1291/22 1292/23 1293/6
1293/15 1294/17 1295/24
1297/12 1303/6 1303/12
1303/14 1306/17 1309/5
1309/9 1317/20 1319/21

1324/1 1325/3 1330/13
1336/21 1341/20 1342/9
1343/2 1343/8 1343/12
1343/17 1347/7 1348/9
1348/10 1356/10 1356/12
1358/3 1358/19 1360/8
1361/8 1363/20 1366/1
1368/9 1371/12 1373/22
1374/14 1374/24 1375/9
1375/13 1376/14 1376/19
1377/19 1378/3 1380/19
1382/14 1382/21 1387/9
1390/2 1397/11 1408/13
1410/10 1412/2 1414/9
1417/24 1423/9 1427/13
1427/18 1427/18 1427/19
1427/20 1430/7 1430/9
1431/22 1432/2 1432/6
1433/11 1439/4 1440/10
1442/1 1443/23 1444/5
1444/19 1448/17 1448/18
1449/6 1449/9 1462/21
1462/23 1464/20 1464/21
1465/10 1466/14
cases [35] 1202/20 1202/23
1203/15 1204/4 1206/4
1206/14 1207/4 1207/12
1207/15 1207/19 1207/21
1208/4 1208/9 1208/12
1208/14 1221/16 1280/6
1281/8 1288/10 1288/21
1291/3 1303/7 1324/1
1379/11 1379/12 1379/24
1380/8 1411/2 1411/12
1411/22 1411/24 1433/8
1433/14 1448/25 1465/6
catch [2] 1292/13 1350/12
catch-all [1] 1292/13
categorized [1] 1278/10
caught [2] 1354/21 1358/21
causes [1] 1157/18
causing [1] 1151/24
CD [2] 1259/16 1259/23
cent [3] 1330/10 1330/17
1330/22
center [2] 1182/16 1186/22
cents [22] 1300/4 1300/5
1328/4 1328/5 1328/6 1328/8
1328/9 1328/10 1328/11
1328/12 1328/12 1329/5
1329/8 1329/8 1330/9
1330/15 1330/15 1330/21
1330/22 1330/24 1331/11
1382/4
certain [7] 1209/2 1240/4
1266/25 1420/22 1440/7
1451/4 1464/24
certainly [20] 1144/20
1155/21 1174/5 1210/19
1210/22 1216/25 1218/13
1221/10 1236/12 1237/16
1237/23 1238/3 1240/18
1241/19 1246/8 1267/6
1282/17 1387/16 1431/12
1434/7
CERTIFICATE [1] 1470/2
certify [1] 1470/4
cetera [3] 1340/20 1356/1
1465/16
CHAD [1] 1130/12

challenge [1] 1241/14
chambers [1] 1285/24
champion [1] 1148/17
chance [8] 1225/5 1245/18
1324/24 1324/25 1325/1
1325/3 1325/13 1368/17
Chancery [1] 1374/1
change [12] 1135/23 1144/19
1227/13 1250/25 1333/5
1337/21 1347/2 1356/2
1405/9 1408/2 1408/8
1408/12
changed [10] 1139/14
1142/11 1231/2 1231/11
1231/18 1242/23 1253/2
1253/14 1407/21 1448/5
changes [4] 1226/15 1227/6
1242/14 1316/16
changing [2] 1401/2 1405/7
characterization [7] 1215/7
1215/24 1216/6 1216/12
1216/20 1217/3 1357/24
characterized [2] 1132/22
1439/24
charge [7] 1265/6 1285/22
1285/25 1286/1 1286/4
1368/7 1451/15
charging [1] 1285/20
chart [7] 1232/3 1232/7
1233/12 1234/16 1234/19
1301/7 1329/9
chatting [1] 1211/3
cheat [1] 1395/4
check [11] 1138/1 1180/23
1184/15 1193/21 1205/5
1324/8 1324/12 1324/14
1349/11 1388/1 1388/10
checked [9] 1153/20 1161/10
1166/4 1183/24 1184/15
1185/4 1188/15 1190/19
1388/11
checking [3] 1189/7 1283/15
1383/1
checklist [4] 1153/20 1153/20
1185/6 1185/12
checkout [1] 1403/25
cheek [1] 1364/11
chest [1] 1386/9
CHI [10] 1156/3 1156/4
1158/22 1176/23 1270/16
1391/9 1392/9 1392/13
1392/14 1420/23
CHI 97 [1] 1420/23
chief [1] 1284/23
children [1] 1146/11
Choc [9] 1312/8 1312/9
1322/14 1322/15 1322/24
1323/6 1323/8 1357/11
1436/1
Choc's [3] 1323/2 1323/11
1329/22
choice [7] 1152/9 1159/6
1209/14 1210/1 1210/25
1212/13 1459/8
choices [6] 1152/10 1157/2
1168/4 1168/12 1209/15
1401/1
chose [5] 1139/4 1139/9
1139/12 1264/12 1338/3
chosen [2] 1140/18 1144/11

Chrome [51] 1138/24 1232/19
1233/2 1234/24 1237/7
1237/21 1241/24 1241/25
1242/10 1244/12 1247/5
1247/6 1252/2 1253/9
1309/13 1309/15 1319/12
1319/16 1320/8 1332/15
1333/15 1350/10 1350/12
1350/13 1352/23 1353/12
1353/15 1353/15 1353/22
1354/1 1354/5 1354/25
1355/13 1358/24 1359/8
1359/11 1359/13 1359/19
1360/2 1360/17 1362/25
1363/10 1363/14 1364/1
1365/6 1370/4 1423/9
1423/13 1454/21 1454/22
1454/24
chunk [2] 1253/15 1309/18
chunks [1] 1422/19
Circuit [6] 1285/7 1442/11
1443/24 1448/1 1448/20
1448/24
circumstance [1] 1175/20
circumstances [2] 1328/21
1464/5
citation [1] 1361/13
cite [9] 1430/7 1433/14
1448/18 1449/5 1449/9
1465/6 1465/10 1465/18
1466/14
cited [12] 1220/6 1220/11
1220/16 1220/19 1221/3
1221/13 1221/24 1314/24
1317/14 1430/7 1432/7
1433/8
cites [3] 1314/13 1315/6
1448/17
claim [58] 1153/13 1160/5
1170/24 1177/7 1180/23
1181/2 1181/13 1181/20
1181/23 1181/24 1181/25
1185/16 1185/17 1186/7
1187/9 1187/11 1187/21
1190/20 1190/20 1195/7
1210/3 1210/6 1321/23
1387/22 1387/22 1387/23
1388/4 1388/14 1390/1
1390/2 1390/3 1393/21
1393/22 1394/1 1394/1
1394/2 1394/2 1394/4 1394/4
1394/5 1394/9 1394/9
1399/17 1412/21 1413/3
1413/4 1413/12 1429/4
1441/21 1441/21 1452/5
1457/8 1459/11 1460/6
1460/11 1460/12 1460/12
1460/13
Claim 23 [10] 1153/13
1170/24 1177/7 1180/23
1181/25 1190/20 1394/4
1394/5 1394/9 1460/12
Claim 30 [14] 1181/2 1181/20
1181/23 1181/24 1185/16
1185/17 1186/7 1187/9
1187/11 1187/21 1393/21
1393/22 1394/4 1394/9
Claim 33 [1] 1181/13
claimed [7] 1174/23 1181/1

1195/7 1195/16 1412/6
1446/13 1446/14
claiming [2] 1175/24 1175/25
claims [59] 1149/21 1150/3
1151/3 1151/16 1152/25
1153/6 1154/11 1172/1
1172/20 1172/22 1173/3
1176/4 1180/22 1183/14
1184/24 1187/23 1188/10
1190/24 1196/4 1196/12
1210/5 1210/20 1214/6
1216/7 1216/13 1216/15
1267/15 1269/8 1270/8
1280/17 1330/18 1390/22
1390/23 1394/15 1394/16
1395/10 1399/9 1399/18
1401/9 1401/11 1401/15
1401/17 1404/21 1404/23
1405/1 1409/2 1413/7
1413/11 1434/5 1434/12
1442/11 1442/12 1445/22
1458/8 1463/17 1463/21
1465/14 1465/20 1467/21
Claims 23 [1] 1445/22
clarification [1] 1316/20
clarified [2] 1270/3 1356/21
clarify [3] 1425/17 1444/1
1450/7
Claris [2] 1187/4 1187/5
class [3] 1148/3 1155/3
1269/18
classes [1] 1146/16
clause [2] 1432/19 1453/4
clauses [1] 1464/12
cleaned [1] 1206/19
clear [54] 1152/10 1154/18
1158/14 1160/2 1161/1
1161/8 1169/11 1175/2
1181/21 1185/7 1186/7
1187/10 1192/2 1200/14
1213/11 1216/14 1238/12
1248/12 1255/13 1255/15
1255/19 1266/24 1267/1
1267/23 1267/24 1268/1
1268/2 1269/6 1269/12
1270/22 1271/5 1272/6
1275/1 1275/2 1279/16
1301/13 1308/21 1315/4
1326/8 1339/9 1359/5 1363/4
1393/3 1429/2 1434/9
1434/15 1435/23 1436/9
1436/10 1444/6 1447/6
1447/9 1464/13 1466/17
cleared [1] 1364/25
clearer [1] 1135/25
clearest [1] 1305/23
clearly [17] 1135/12 1153/18
1154/4 1180/4 1183/7
1183/11 1184/22 1190/18
1329/6 1337/16 1374/23
1398/7 1438/11 1449/10
1467/10 1467/13 1467/14
click [2] 1185/24 1186/21
clicked [1] 1414/10
clicking [1] 1180/7
clicks [1] 1180/6
client [1] 1391/13
clock [1] 1384/7
close [6] 1227/24 1229/16
1286/20 1369/18 1413/21

1434/24
closed [1] 1405/14
closely [2] 1231/16 1233/21
closest [1] 1375/2
closing [5] 1230/1 1427/5
1427/12 1427/17 1427/21
closings [5] 1230/3 1230/6
1230/13 1285/17 1286/14
closure [1] 1226/13
clunky [1] 1406/24
Coat [1] 1449/9
code [14] 1138/10 1138/20
1140/13 1144/11 1211/16
1212/24 1274/12 1312/4
1396/5 1398/14 1405/9
1407/21 1422/19 1423/20
coded [3] 1157/9 1403/7
1423/4
collaboration [1] 1395/5
colleagues [3] 1148/21
1211/20 1386/6
collection [5] 1262/2 1262/9
1262/13 1275/6 1422/18
college [4] 1147/15 1163/3
1289/8 1289/12
color [1] 1157/9
Columbia [1] 1146/19
column [4] 1272/12 1319/7
1319/13 1321/3
columns [2] 1301/8 1321/4
com.Android.Chrome [1]
1319/11
com.google.Android.Calendar
[1] 1321/2
combination [31] 1182/8
1183/4 1183/13 1184/1
1184/12 1185/6 1187/22
1188/8 1188/9 1188/20
1190/1 1190/7 1190/17
1212/9 1269/17 1269/23
1281/10 1298/21 1399/12
1399/16 1399/18 1399/20
1401/10 1401/12 1401/14
1401/16 1401/18 1404/7
1405/1 1409/3 1409/4
combinations [18] 1182/11
1183/18 1184/23 1187/24
1189/16 1190/10 1191/3
1191/18 1212/8 1257/13
1278/11 1279/6 1394/18
1394/22 1394/23 1429/6
1434/13 1434/16
combine [33] 1182/5 1183/17
1183/22 1212/3 1279/14
1279/23 1280/1 1280/9
1280/16 1280/23 1281/6
1281/12 1281/15 1281/18
1281/24 1282/1 1282/6
1282/10 1282/14 1282/17
1390/5 1390/6 1399/21
1399/22 1401/7 1402/5
1403/21 1404/14 1404/17
1405/12 1407/18 1429/10
1455/5
combined [3] 1280/16
1403/25 1429/8
combining [12] 1185/12
1189/16 1190/12 1211/7
1211/16 1212/7 1212/16
1213/2 1213/14 1272/1

1278/8 1279/10
come [30] 1161/2 1250/7
1231/16 1231/20 1248/19
1275/14 1276/4 1300/1
1305/16 1308/1 1310/5
1315/19 1322/12 1346/5
1350/12 1352/24 1363/18
1363/24 1366/12 1369/7
1373/8 1379/20 1381/21
1385/23 1395/8 1428/13
1438/21 1440/8 1448/8
1454/6
comes [12] 1161/6 1188/6
1192/7 1194/15 1244/9
1245/14 1289/2 1328/14
1338/1 1413/22 1439/13
1454/16
comfortable [1] 1238/1
coming [7] 1143/19 1157/4
1284/15 1363/1 1366/20
1391/11 1443/3
comma [2] 1268/12 1268/13
command [5] 1151/22
1151/23 1175/10 1181/16
1418/12
commands [1] 1152/18
commenced [1] 1131/4
comment [1] 1210/1
comments [1] 1223/4
commercial [8] 1195/19
1195/23 1195/25 1400/6
1401/2 1403/9 1403/12
1421/14
commercialization [1] 1148/17
commercialize [1] 1385/11
common [2] 1151/10 1332/18
commonly [1] 1231/25
communicating [1] 1212/2
communication [1] 1398/8
community [2] 1148/11
1400/8
companies [1] 1385/9
company [9] 1169/13 1296/16
1332/19 1332/19 1371/4
1374/7 1385/1 1385/12
1385/15
company's [1] 1298/15
company-wide [1] 1371/4
comparability [1] 1296/10
comparable [12] 1294/12
1294/18 1294/19 1296/8
1296/9 1296/18 1296/20
1296/23 1297/1 1297/3
1301/21 1305/22
comparables [1] 1294/15
comparative [1] 1239/3
compare [4] 1300/9 1301/2
1303/5 1331/3
compared [2] 1329/1 1331/8
compares [1] 1351/5
comparing [1] 1134/17
comparison [3] 1137/2
1239/19 1354/12
compensated [3] 1149/8
1149/9 1289/16
compensation [1] 1289/20
competing [3] 1284/1 1468/16
1469/6
complete [2] 1415/3 1432/10
completely [4] 1242/19 1291/2

<p>Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 549 of 775 PageID #: 61228</p> <p>completely... [2] 1323/16 1467/8 complex [2] 1358/18 1360/4 compliance [1] 1369/8 complicated [3] 1261/12 1267/5 1358/19 component [1] 1333/1 components [2] 1159/8 1379/4 computer [55] 1146/22 1146/24 1147/8 1148/4 1148/7 1148/11 1149/4 1152/21 1156/4 1160/6 1160/13 1160/14 1167/4 1167/18 1167/21 1177/14 1178/5 1178/7 1178/8 1178/10 1178/19 1179/12 1180/9 1211/7 1212/7 1258/2 1259/15 1270/15 1272/19 1272/21 1274/22 1384/19 1385/1 1385/4 1386/16 1388/6 1388/8 1388/23 1395/2 1395/11 1395/25 1399/7 1400/2 1400/22 1410/7 1420/11 1422/2 1422/7 1423/5 1424/11 1424/19 1424/22 1425/8 1442/1 1442/3 computers [9] 1146/22 1173/14 1174/7 1189/4 1189/5 1384/24 1384/24 1385/4 1400/9 Computing [3] 1148/10 1149/2 1414/5 concede [1] 1461/2 conceded [2] 1461/15 1461/24 conceivably [2] 1438/21 1465/14 concept [3] 1304/14 1324/18 1404/1 concepts [1] 1264/10 conceptualize [1] 1299/25 concern [4] 1235/11 1235/18 1250/23 1442/2 concerned [10] 1158/18 1159/13 1236/10 1236/14 1241/11 1245/22 1265/6 1270/4 1278/7 1408/1 concerning [4] 1149/20 1414/12 1415/20 1415/24 concerns [2] 1236/18 1241/24 conclude [1] 1465/12 concluded [2] 1416/18 1469/18 concludes [17] 1194/11 1200/21 1219/10 1306/7 1307/14 1317/10 1331/19 1336/15 1340/5 1362/12 1368/13 1371/20 1372/9 1376/22 1383/5 1397/22 1425/24 conclusion [17] 1181/21 1184/11 1217/9 1245/3 1245/4 1268/7 1268/13 1268/18 1268/21 1268/24 1305/5 1310/5 1319/3 1329/5 1387/11 1417/2 1419/16 conclusions [4] 1191/15</p>	<p>1302/1 1321/13 1389/10 concur [1] 1440/2 condition [1] 1465/13 confer [7] 1133/4 1134/6 1284/8 1284/19 1362/4 1370/20 1468/15 conference [10] 1156/2 1156/3 1156/4 1166/22 1166/23 1176/23 1235/16 1258/1 1387/2 1451/15 conferences [4] 1148/14 1257/24 1258/1 1258/4 conferred [1] 1134/20 confetti [1] 1388/3 confident [2] 1319/23 1348/7 Confidential [1] 1203/7 configured [3] 1172/21 1179/10 1179/11 confirms [1] 1172/25 confirm [6] 1171/4 1240/13 1240/17 1244/23 1361/23 1362/8 confirmation [2] 1181/17 1259/4 confirmed [4] 1166/5 1170/19 1274/21 1318/1 confirms [2] 1184/9 1318/10 confuse [1] 1135/18 confusing [2] 1212/19 1213/15 connected [3] 1369/12 1387/21 1388/11 connecting [3] 1153/23 1187/24 1212/2 connection [16] 1185/14 1240/20 1309/9 1311/8 1315/13 1350/6 1374/1 1377/25 1378/16 1379/1 1411/11 1411/21 1412/3 1414/3 1458/8 1467/21 connections [2] 1262/7 1262/13 conscious [1] 1338/9 consequently [1] 1391/17 conservative [2] 1305/13 1305/24 conservatively [2] 1325/4 1325/5 consider [33] 1140/7 1141/10 1142/15 1142/22 1154/12 1166/17 1181/2 1185/15 1191/8 1191/25 1192/25 1193/4 1194/22 1195/24 1196/3 1197/23 1199/4 1224/2 1264/25 1265/2 1268/6 1312/8 1334/7 1334/8 1338/1 1340/1 1340/11 1370/11 1373/9 1440/5 1464/2 1464/3 1464/4 consideration [9] 1194/17 1194/20 1194/23 1195/4 1260/11 1304/13 1371/19 1372/21 1457/25 considerations [13] 1191/6 1191/9 1191/14 1191/19 1192/2 1192/8 1193/1 1193/15 1195/3 1304/10 1409/6 1409/10 1409/11 considered [23] 1140/20 1151/9 1167/8 1191/17</p>	<p>1192/1 1194/25 1197/2 1197/3 1197/20 1199/10 1220/22 1221/18 1223/3 1254/25 1265/10 1314/23 1315/6 1371/9 1375/14 1377/24 1445/22 1465/2 1466/4 considering [3] 1150/12 1223/10 1305/1 consisted [1] 1431/7 consistent [1] 1442/16 consistently [1] 1388/12 Consortium [1] 1206/23 constituted [1] 1223/2 construction [14] 1160/5 1160/15 1178/2 1209/18 1210/9 1210/10 1210/12 1210/20 1217/14 1217/15 1217/19 1388/25 1391/15 1452/6 constructions [1] 1266/14 construe [1] 1466/16 construed [6] 1401/24 1412/21 1429/3 1465/8 1465/24 1466/22 construing [1] 1451/23 consulting [2] 1203/6 1385/18 consumer [3] 1386/7 1456/25 1461/6 consumer-selected [1] 1386/7 consumers [1] 1463/3 contact [17] 1141/5 1157/23 1157/24 1163/11 1165/23 1168/18 1168/18 1169/1 1171/23 1181/13 1181/19 1185/22 1185/25 1187/17 1187/17 1195/25 1401/25 contained [6] 1178/3 1233/15 1262/16 1263/24 1431/20 1453/17 containing [2] 1263/21 1468/3 contains [2] 1233/12 1467/6 contemporaneous [4] 1392/8 1392/19 1415/11 1416/21 contends [3] 1446/18 1446/19 1446/21 content [3] 1143/23 1181/8 1220/21 contents [4] 1165/13 1170/1 1306/19 1421/3 context [19] 1210/20 1210/22 1225/14 1230/22 1282/10 1327/16 1331/7 1331/8 1333/19 1333/20 1333/21 1338/1 1338/24 1377/19 1400/23 1425/11 1433/20 1449/11 1460/4 contextual [2] 1168/10 1170/13 contingency [1] 1253/13 continue [5] 1138/3 1145/10 1317/8 1377/8 1397/21 CONTINUED [1] 1130/1 continues [1] 1172/17 contract [17] 1429/25 1432/3 1432/8 1432/19 1432/20 1433/9 1433/16 1451/18 1460/16 1460/21 1464/3 1464/4 1465/4 1466/13 1466/14 1467/20 1469/7</p>	<p>contracts [1] 1433/8 contractual [1] 1466/17 contradict [2] 1153/4 1325/16 contradicting [1] 1216/3 contradictory [1] 1217/7 contradicts [1] 1325/19 contrast [2] 1400/12 1408/22 control [1] 1240/18 controversial [1] 1449/6 conundrum [1] 1452/11 convenient [1] 1189/7 conversation [1] 1316/23 conversations [1] 1324/23 convert [1] 1159/4 converting [1] 1157/11 convincing [9] 1255/13 1255/15 1255/19 1268/3 1269/6 1272/7 1429/2 1434/9 1434/15 cool [2] 1259/1 1408/5 coordinate [1] 1385/20 copies [3] 1132/16 1221/6 1390/20 copy [24] 1132/19 1133/6 1136/14 1136/16 1136/17 1193/20 1204/18 1205/1 1206/19 1242/12 1254/12 1258/4 1258/19 1258/20 1258/21 1258/23 1258/24 1259/1 1259/4 1259/7 1260/10 1371/17 1390/15 1452/16 copyright [2] 1188/6 1278/22 Cornell [2] 1147/22 1147/24 Corp [1] 1206/20 corporate [2] 1371/4 1374/6 corporations [1] 1465/15 correct [248] 1131/10 1134/4 1140/18 1181/20 1185/22 1196/4 1196/5 1199/1 1201/12 1201/13 1201/15 1201/16 1201/18 1201/19 1201/21 1201/22 1201/25 1202/5 1202/9 1202/14 1202/23 1204/2 1207/2 1207/6 1207/13 1207/16 1207/23 1208/8 1208/11 1208/12 1208/14 1209/5 1209/16 1209/17 1209/21 1210/9 1210/14 1212/4 1213/22 1215/10 1216/7 1216/13 1216/21 1217/14 1218/19 1220/19 1227/7 1241/18 1244/1 1244/8 1246/15 1254/10 1254/20 1255/3 1255/13 1255/25 1256/6 1257/3 1257/4 1257/5 1257/6 1257/9 1257/13 1257/18 1259/11 1259/16 1261/8 1262/3 1263/25 1264/18 1264/23 1265/15 1266/7 1268/3 1268/19 1269/3 1271/12 1273/14 1274/6 1274/15 1275/8 1278/3 1279/7 1279/15 1280/10 1280/13 1280/17 1280/24 1281/7 1281/13 1281/18 1282/2 1289/17 1308/10 1310/7 1311/8 1311/13 1313/13 1322/4</p>
---	--	---	---

Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 650 of 775 PageID #: 61290	County [1] 1289/7	create [2] 1237/7 1418/7	
<p>correct... [149] 1325/6 1335/13 1340/20 1341/20 1342/3 1342/10 1343/3 1343/12 1343/15 1343/19 1344/11 1344/12 1345/12 1345/18 1345/24 1346/6 1347/3 1347/7 1348/3 1348/10 1348/11 1348/15 1349/4 1349/8 1349/12 1349/13 1350/7 1350/15 1351/2 1351/3 1351/23 1352/2 1352/14 1353/18 1354/1 1354/6 1354/7 1355/2 1355/14 1355/15 1355/19 1355/23 1357/1 1357/8 1358/25 1359/1 1359/8 1360/2 1360/9 1360/13 1360/14 1362/1 1363/1 1363/6 1363/22 1363/24 1363/25 1364/23 1365/3 1365/13 1366/14 1366/22 1366/23 1373/15 1377/14 1378/9 1378/10 1378/13 1378/17 1379/2 1379/10 1380/3 1380/5 1380/8 1380/9 1384/5 1384/21 1384/22 1387/7 1387/9 1391/5 1391/21 1393/7 1394/10 1394/11 1394/21 1398/25 1399/14 1406/2 1407/8 1410/11 1410/12 1410/17 1411/25 1412/1 1412/3 1412/15 1413/5 1413/8 1413/9 1413/13 1413/24 1414/7 1414/14 1415/5 1415/21 1415/25 1416/6 1416/10 1416/14 1416/16 1416/17 1416/20 1416/24 1417/21 1417/22 1418/1 1418/8 1418/12 1418/14 1418/17 1418/21 1419/1 1419/2 1419/20 1419/24 1420/2 1420/3 1420/8 1420/24 1421/2 1421/17 1421/18 1421/21 1421/22 1422/3 1423/11 1423/24 1424/23 1426/11 1433/25 1434/1 1434/2 1437/16 1438/20 1455/9 1455/22 1455/25 1458/22 corrected [1] 1429/21 correctly [1] 1421/11 correlate [1] 1413/11 correspond [5] 1157/17 1159/19 1256/23 1256/25 1376/11 corresponding [3] 1159/11 1159/17 1159/22 corresponds [1] 1160/5 CORROON [1] 1130/9 could [105] 1147/18 1147/23 1160/4 1160/9 1160/10 1160/14 1162/9 1162/9 1162/19 1165/5 1181/19 1185/22 1189/2 1196/18 1197/2 1197/3 1197/7 1197/7 1197/9 1197/10 1198/9 1200/13 1201/9 1205/22 1209/7 1210/11 1212/3</p>	<p>1217/23 1221/1 1221/1 1221/10 1223/22 1236/12 1236/17 1236/22 1237/24 1239/1 1241/14 1248/8 1248/16 1248/17 1251/19 1256/7 1259/15 1260/18 1263/20 1268/15 1270/16 1270/21 1271/2 1271/21 1271/22 1273/23 1274/1 1274/22 1281/2 1281/4 1285/4 1285/9 1285/24 1286/4 1302/13 1307/9 1314/7 1322/20 1338/24 1339/1 1339/6 1339/20 1340/1 1343/16 1345/4 1347/12 1347/19 1349/21 1351/7 1353/4 1357/4 1365/19 1372/4 1373/1 1374/10 1383/21 1386/9 1395/18 1400/15 1403/25 1407/11 1407/12 1412/24 1413/16 1419/6 1419/14 1428/2 1438/21 1439/3 1439/4 1439/7 1439/17 1440/5 1441/5 1451/14 1458/9 1459/15 1459/16 couldn't [8] 1189/5 1198/4 1198/6 1271/1 1399/20 1400/10 1400/10 1454/14 counsel [76] 1130/6 1130/18 1135/10 1136/19 1139/8 1141/15 1142/9 1192/22 1193/12 1196/15 1197/18 1199/2 1204/18 1204/23 1218/21 1224/16 1227/17 1229/5 1230/21 1230/23 1232/10 1233/9 1235/23 1235/25 1236/3 1236/18 1241/23 1242/5 1243/21 1244/15 1245/9 1248/1 1248/18 1251/21 1279/12 1307/3 1307/8 1334/24 1341/5 1344/24 1357/3 1361/18 1362/1 1368/6 1368/21 1369/2 1369/16 1370/16 1370/20 1371/23 1372/12 1372/16 1373/1 1373/20 1374/12 1374/13 1374/20 1375/9 1376/9 1397/13 1417/1 1417/6 1417/15 1420/19 1420/20 1424/9 1425/10 1427/12 1431/25 1433/4 1447/2 1447/4 1461/1 1461/14 1461/24 1468/19 counsel's [1] 1225/14 count [15] 1192/8 1193/25 1194/5 1202/24 1285/18 1298/10 1306/20 1307/24 1309/1 1310/19 1312/11 1313/7 1318/25 1321/15 1323/17 counted [1] 1321/16 counterpart [1] 1290/8 counters [1] 1315/8 counting [4] 1246/18 1246/19 1331/24 1332/1 country [1] 1456/22 counts [5] 1313/19 1318/5 1351/19 1382/3 1382/4</p>	<p>Couple [12] 1157/6 1206/14 1286/16 1289/14 1303/22 1308/1 1310/17 1314/24 1323/9 1326/7 1386/3 1465/6 course [21] 1148/7 1208/13 1215/8 1220/3 1232/23 1252/12 1259/12 1268/7 1278/24 1288/25 1289/13 1325/12 1333/5 1335/25 1361/8 1363/16 1363/19 1374/8 1374/16 1378/23 1391/3 courses [1] 1146/19 court [57] 1129/2 1136/14 1155/17 1186/4 1200/6 1215/21 1225/1 1226/17 1226/23 1228/10 1229/21 1285/18 1310/3 1325/8 1327/17 1334/9 1334/20 1335/2 1335/4 1335/10 1335/11 1335/17 1335/19 1335/22 1336/3 1336/13 1367/15 1369/25 1373/24 1374/1 1376/17 1376/18 1382/18 1383/22 1389/18 1401/23 1412/21 1416/14 1429/3 1429/14 1431/3 1431/5 1432/3 1432/18 1433/16 1438/5 1440/2 1440/18 1448/25 1453/4 1456/12 1464/17 1468/8 1468/13 1470/2 1470/8 1470/9 Court's [25] 1160/5 1160/14 1178/2 1209/18 1210/9 1210/10 1210/12 1210/20 1217/13 1217/15 1217/19 1235/13 1266/14 1335/22 1336/13 1369/9 1377/1 1388/25 1391/14 1429/16 1435/4 1444/16 1444/25 1445/5 1469/6 courtroom [34] 1131/4 1145/5 1211/1 1211/2 1211/6 1211/15 1224/23 1249/4 1253/20 1283/18 1286/20 1287/8 1290/17 1290/19 1290/22 1306/2 1306/5 1321/22 1326/17 1326/19 1331/16 1331/17 1342/17 1342/18 1342/19 1342/22 1368/20 1377/5 1382/25 1387/6 1391/20 1393/8 1396/9 1427/25 Courts [1] 1466/15 cover [9] 1153/6 1188/14 1265/5 1310/12 1332/18 1449/17 1458/13 1459/20 1461/15 covered [13] 1152/25 1179/6 1179/13 1180/4 1181/1 1214/6 1250/13 1303/25 1439/4 1439/7 1444/25 1445/4 1456/10 covers [3] 1175/13 1266/16 1441/21 COVID [1] 1150/19 CQSA [1] 1143/23 cram [1] 1189/18</p>	<p>created [6] 1238/25 1393/12 1413/10 1417/25 1418/3 1418/4 creative [1] 1242/12 creator [2] 1272/8 1278/24 credit [1] 1305/15 crib [1] 1285/9 critical [8] 1154/3 1154/7 1154/10 1154/16 1166/10 1167/1 1269/8 1434/6 critique [1] 1233/4 critiques [1] 1233/5 CRM [4] 1442/11 1460/4 1460/6 1460/11 cross [30] 1131/18 1142/4 1196/16 1200/12 1200/18 1201/3 1225/19 1225/21 1226/8 1227/23 1228/24 1229/2 1229/11 1229/13 1229/14 1229/16 1240/19 1252/13 1253/17 1286/23 1322/23 1341/10 1373/14 1377/8 1394/12 1396/8 1409/25 1410/2 1432/12 1446/10 cross-examination [15] 1142/4 1196/16 1225/19 1225/21 1226/8 1227/23 1228/24 1229/2 1229/11 1229/14 1253/17 1322/23 1377/8 1409/25 1432/12 cross-examine [2] 1200/12 1396/8 crossing [1] 1374/22 crystal [1] 1271/5 cuff [1] 1268/4 curative [2] 1197/15 1198/16 curious [1] 1364/24 current [2] 1301/2 1309/10 currently [2] 1308/20 1384/11 customer [9] 1456/25 1457/2 1457/10 1457/13 1457/14 1457/19 1459/6 1459/8 1459/22 customers [11] 1332/24 1333/4 1333/5 1333/10 1333/12 1456/19 1456/20 1458/7 1458/7 1459/2 1459/15 customers' [1] 1457/18 cut [1] 1328/12 CV [4] 1256/6 1379/16 1379/19 1379/21 CyberDesk [193] 1151/5 1151/10 1153/6 1154/1 1154/2 1154/5 1154/13 1154/15 1154/23 1155/11 1155/19 1156/1 1156/9 1156/21 1159/21 1159/25 1160/11 1160/19 1161/2 1161/4 1161/13 1162/7 1162/15 1162/19 1163/12 1163/16 1165/18 1165/19 1165/22 1171/18 1171/19 1171/20 1171/21 1172/2 1172/3 1172/4 1172/6 1172/9 1172/10 1175/3 1175/13 1176/4 1176/5 1176/13 1177/6 1177/15 1177/16</p>

CyberDesk... [146] 1178/20
1179/11 1180/22 1181/5
1181/22 1182/15 1182/17
1182/25 1183/2 1183/15
1183/16 1183/21 1183/23
1184/3 1184/12 1184/25
1185/1 1185/8 1185/15
1188/1 1188/8 1188/12
1189/11 1189/21 1190/13
1190/15 1191/1 1197/21
1199/4 1199/24 1255/25
1256/1 1256/10 1256/11
1256/17 1256/18 1257/3
1257/8 1257/12 1257/15
1257/17 1259/12 1260/23
1261/8 1261/12 1261/21
1263/14 1263/17 1264/16
1265/14 1266/1 1266/6
1266/21 1267/10 1269/1
1269/25 1270/11 1273/1
1273/9 1274/5 1274/8
1274/11 1274/19 1275/10
1278/9 1279/6 1279/10
1279/15 1279/23 1280/1
1280/20 1280/24 1281/1
1281/6 1281/11 1281/18
1391/3 1391/4 1391/7
1391/11 1391/18 1391/24
1392/12 1393/1 1393/3
1393/16 1393/18 1393/21
1394/14 1394/16 1394/19
1394/24 1399/12 1399/16
1399/23 1400/12 1400/17
1401/8 1401/9 1401/12
1401/18 1402/2 1402/5
1402/8 1403/3 1403/8
1403/16 1404/8 1404/14
1404/19 1413/22 1413/23
1413/25 1414/3 1414/6
1414/12 1414/16 1415/14
1415/21 1416/9 1416/20
1421/23 1422/1 1422/4
1422/6 1422/11 1422/13
1422/16 1422/17 1423/6
1423/17 1423/19 1423/24
1423/25 1424/12 1429/1
1429/2 1429/6 1429/7
1430/21 1431/6 1434/5
1434/9 1434/13 1434/13
1446/24
CyberDesk's [1] 1393/10

D
Daily [1] 1319/13
damage [5] 1232/3 1232/8
1245/17 1291/12 1380/19
damages [56] 1132/23
1135/24 1140/21 1140/22
1143/4 1143/4 1230/22
1288/10 1288/10 1288/18
1289/13 1289/24 1290/4
1290/6 1290/12 1290/25
1293/14 1293/18 1305/11
1310/6 1323/19 1324/3
1324/4 1326/1 1328/13
1328/14 1329/11 1332/8
1333/19 1333/21 1334/25
1335/25 1338/11 1339/16
1339/22 1340/24 1379/25

1380/7 1381/18 1382/1
1382/3 1433/18 1436/3
1436/18 1437/12 1437/17
1437/19 1437/24 1438/10
1438/13 1438/22 1438/25
1440/3 1440/6 1449/19
1461/10
dance [1] 1395/7
data [106] 1142/23 1143/23
1150/24 1151/8 1151/10
1153/7 1166/7 1166/7
1166/12 1166/16 1166/18
1167/3 1167/8 1167/13
1169/23 1170/5 1170/7
1170/14 1172/15 1172/18
1175/3 1183/1 1183/2 1183/6
1183/10 1184/6 1184/12
1185/16 1187/12 1187/16
1187/21 1188/2 1188/9
1188/12 1189/11 1190/4
1190/13 1190/13 1197/22
1199/5 1245/1 1245/3
1246/13 1246/22 1247/24
1248/8 1248/17 1312/23
1313/6 1313/9 1316/2
1318/10 1318/24 1319/2
1320/18 1320/19 1320/21
1324/10 1352/14 1352/15
1352/17 1355/13 1355/23
1356/18 1356/24 1357/1
1357/4 1357/8 1357/10
1357/12 1357/14 1357/19
1358/2 1358/2 1358/8 1358/9
1358/24 1359/3 1359/5
1359/6 1359/13 1361/7
1361/17 1362/6 1362/9
1366/11 1366/17 1366/23
1377/13 1386/4 1397/9
1398/7 1398/11 1398/12
1399/9 1399/11 1405/4
1405/19 1406/21 1406/23
1408/14 1408/15 1420/5
1420/7 1446/3 1446/24
database [1] 1385/14
date [71] 1138/9 1138/12
1138/15 1138/18 1138/23
1139/1 1140/5 1140/7 1140/8
1140/12 1140/15 1140/17
1140/23 1141/1 1143/20
1144/8 1144/11 1154/3
1154/7 1154/10 1154/16
1163/4 1163/4 1166/10
1167/1 1249/15 1251/12
1269/8 1278/20 1284/4
1284/6 1284/7 1284/9
1284/10 1284/13 1284/18
1284/18 1284/24 1304/17
1311/13 1311/14 1311/20
1311/21 1337/23 1342/2
1343/14 1351/11 1354/17
1354/18 1380/14 1380/18
1410/18 1410/20 1412/5
1421/6 1434/7 1434/7
1435/16 1435/24 1436/14
1436/15 1437/6 1437/7
1437/15 1438/1 1445/14
1447/5 1447/6 1447/8
1458/10 1458/11
dated [1] 1344/5
dates [4] 1284/15 1285/8

1358/19 1416/7
dating [1] 1235/19
DAVID [1] 1130/9
day [22] 1131/8 1166/1
1167/2 1170/18 1172/11
1173/10 1188/24 1189/24
1226/10 1230/18 1272/24
1298/17 1325/8 1356/3
1380/22 1382/18 1388/2
1410/9 1424/16 1441/8
1442/9 1451/16
days [8] 1154/25 1319/9
1320/2 1346/13 1352/18
1354/3 1355/1 1363/17
DDX [4] 1134/12 1230/24
1341/23 1342/24
DDX-10.018 [1] 1134/12
DDX-10.10 [1] 1342/24
deal [8] 1137/21 1157/7
1200/16 1225/2 1225/10
1271/2 1299/24 1317/5
dealing [4] 1305/18 1442/1
1444/7 1459/19
dealt [1] 1225/2
dean [2] 1272/18 1272/19
debate [2] 1332/2 1449/24
debating [1] 1357/23
decades [3] 1257/19 1257/20
1258/8
decay [2] 1259/18 1260/12
decays [1] 1259/22
December [46] 1138/8
1138/18 1138/23 1140/5
1140/7 1141/13 1142/24
1143/20 1144/7 1144/14
1232/5 1249/11 1249/15
1251/12 1251/23 1251/23
1252/9 1292/21 1293/1
1293/10 1309/16 1309/17
1310/22 1311/5 1311/12
1311/15 1311/17 1311/20
1311/24 1312/5 1312/7
1312/10 1312/17 1312/18
1312/19 1317/18 1317/19
1325/25 1337/6 1342/2
1342/5 1343/15 1352/2
1354/18 1355/14 1436/11
December 15 [1] 1312/18
December 1st [1] 1343/15
December 2017 [15] 1138/8
1138/18 1140/7 1143/20
1144/7 1249/11 1249/15
1251/12 1251/23 1252/9
1311/5 1311/24 1312/5
1312/10 1355/14
December 2019 [1] 1317/18
December 5 [7] 1141/13
1142/24 1292/21 1293/1
1293/10 1311/12 1342/5
December 5th [1] 1436/11
December of [1] 1312/19
decide [6] 1268/22 1281/16
1436/4 1439/24 1443/18
1469/8
decided [4] 1146/24 1147/18
1153/15 1337/4
decides [4] 1158/1 1158/2
1281/19 1457/4
deciding [2] 1429/16 1441/19
decision [14] 1191/20

1281/19 1281/21 1281/22
1281/23 1281/25 1335/23
1338/9 1338/12 1338/14
1373/5 1429/15 1457/1
1457/13
decisions [1] 1282/3
deck [3] 1201/10 1310/1
1324/20
dedicated [1] 1346/21
defendant [10] 1129/8
1130/18 1131/23 1206/7
1207/5 1207/8 1428/15
1428/20 1448/5 1452/14
defendant's [2] 1256/15
1431/6
defendants [2] 1202/25
1206/5
defense [5] 1420/17 1434/19
1434/20 1440/12 1451/18
deficient [1] 1429/3
defined [1] 1219/17
defines [2] 1456/14 1460/22
definitely [1] 1171/4
definition [2] 1218/5 1454/17
definitive [1] 1313/16
degree [1] 1147/11
DELAWARE [2] 1129/3
1129/17
delay [4] 1337/2 1337/8
1338/21 1339/10
delayed [6] 1251/9 1251/11
1251/15 1251/15 1337/6
1339/1
deliberate [4] 1427/17
1443/15 1444/2 1445/3
deliberations [1] 1427/13
delve [1] 1153/9
demand [1] 1291/13
demands [1] 1465/20
demo [3] 1154/24 1274/8
1351/4
demonstrate [2] 1261/17
1316/25
demonstrated [1] 1393/17
demonstrating [2] 1166/24
1393/2
demonstration [5] 1168/1
1179/2 1180/1 1261/4
1264/11
demonstration's [1] 1264/2
demonstrations [9] 1155/1
1166/11 1261/14 1261/16
1261/19 1261/22 1261/25
1263/25 1264/2
demonstrative [23] 1236/17
1238/8 1238/15 1238/22
1238/24 1238/25 1239/14
1239/18 1240/22 1242/3
1242/6 1242/16 1244/13
1256/3 1307/1 1307/11
1316/24 1344/20 1344/22
1345/5 1350/3 1351/5
1379/18
demonstratives [7] 1132/3
1132/5 1132/10 1132/20
1146/13 1225/11 1360/6
denied [1] 1451/6
department [3] 1146/24
1147/10 1272/21
depend [1] 1179/24

D
dependent [3] 1141/24
1179/22 1393/25
depending [3] 1175/19
1259/16 1438/14
depends [10] 1142/3 1207/10
1208/20 1212/10 1262/5
1394/1 1394/3 1394/4 1422/4
1422/4
deposed [2] 1278/24 1314/6
deposition [38] 1150/17
1166/20 1166/21 1195/21
1203/16 1270/6 1276/16
1276/18 1276/23 1277/5
1277/7 1277/12 1277/18
1279/4 1279/25 1280/8
1308/2 1308/6 1313/17
1314/23 1315/5 1315/7
1315/13 1317/13 1317/14
1317/18 1317/20 1318/9
1356/20 1358/7 1364/8
1364/25 1365/8 1373/4
1387/5 1392/16 1410/7
1411/5
depositions [3] 1280/12
1314/22 1387/1
describe [7] 1146/17 1148/1
1182/24 1214/22 1261/8
1291/7 1370/5
described [10] 1161/16
1174/15 1176/24 1248/19
1270/18 1270/21 1272/9
1304/15 1422/21 1423/21
describes [3] 1154/22
1165/18 1269/16
describing [4] 1150/16
1201/20 1209/20 1260/22
description [4] 1171/19
1182/14 1271/5 1412/18
descriptions [1] 1171/2
design [2] 1152/9 1209/15
designated [1] 1149/3
designed [2] 1400/5 1418/16
desires [1] 1464/23
desk [1] 1275/18
desktop [9] 1182/16 1272/15
1414/16 1414/21 1415/4
1415/14 1422/22 1422/24
1422/25
despite [1] 1271/16
detail [7] 1140/25 1161/17
1166/20 1177/3 1177/10
1181/25 1389/5
detailed [1] 1322/21
details [4] 1192/3 1258/7
1277/4 1277/5
detectors [53] 1141/5 1143/23
1150/24 1151/9 1151/10
1153/7 1166/7 1166/8
1166/12 1166/16 1166/18
1167/3 1167/8 1167/13
1169/23 1170/5 1170/7
1172/15 1172/18 1175/3
1183/1 1183/2 1183/6
1183/10 1184/6 1184/13
1185/16 1187/12 1187/16
1187/21 1188/2 1188/9
1188/12 1189/12 1190/4
1190/13 1190/14 1197/22
1199/5 1397/9 1398/7 1399/9

1399/11 1405/5 1405/20
1406/21 1406/23 1408/14
1408/15 1420/5 1420/7
1446/3 1446/25
determination [1] 1356/4
determine [8] 1170/10
1294/17 1298/19 1377/20
1399/8 1400/23 1401/22
1437/4
determined [2] 1335/2
1435/18
determining [4] 1202/4 1223/8
1445/22 1464/2
develop [1] 1140/17
developed [5] 1154/5 1154/8
1395/2 1418/20 1418/22
developer [2] 1400/8 1418/11
developers [7] 1395/17
1400/10 1405/8 1408/2
1408/4 1408/7 1423/4
developing [1] 1147/17
device [55] 1151/21 1151/23
1152/18 1156/25 1172/21
1172/25 1175/9 1179/7
1179/8 1179/10 1312/19
1312/20 1318/8 1319/13
1319/17 1323/10 1328/3
1328/6 1328/7 1328/8 1330/9
1332/16 1347/17 1348/14
1348/16 1355/22 1359/24
1395/12 1395/24 1396/1
1396/3 1396/4 1399/7 1420/8
1420/12 1453/12 1453/18
1453/19 1454/11 1454/16
1454/18 1455/10 1455/14
1455/15 1455/20 1456/2
1456/3 1456/5 1457/1 1457/5
1457/12 1459/8 1467/6
1467/14 1467/15
devices [50] 1143/1 1167/2
1232/1 1232/15 1232/22
1234/24 1239/23 1241/8
1250/14 1278/1 1292/15
1292/17 1292/18 1292/19
1293/7 1297/25 1307/24
1310/24 1311/16 1315/1
1315/11 1319/21 1321/16
1321/18 1325/24 1326/14
1329/15 1329/17 1330/1
1342/1 1343/1 1346/22
1346/25 1346/25 1376/15
1381/21 1387/4 1435/19
1436/25 1438/11 1438/18
1439/1 1439/6 1451/6 1453/3
1453/25 1454/6 1458/18
1459/2 1459/18
Dey [35] 1150/18 1150/25
1151/6 1154/6 1154/17
1154/20 1156/8 1160/7
1161/15 1165/18 1171/22
1171/24 1178/12 1181/18
1185/21 1191/1 1199/11
1257/21 1262/22 1269/3
1271/18 1272/6 1278/25
1279/4 1279/9 1279/25
1391/21 1392/11 1392/20
1413/23 1414/2 1414/24
1416/23 1417/16 1417/21
Dey's [18] 1256/6 1263/2
1266/24 1267/23 1269/24

1270/2 1270/5 1270/11
1273/5 1273/12 1274/18
1392/4 1415/9 1415/19
1415/23 1416/5 1417/1
1417/7
diagram [2] 1391/10 1459/19
dictionaries [1] 1162/24
did [212] 1134/16 1135/6
1140/6 1141/15 1141/15
1141/22 1141/24 1146/13
1146/15 1147/11 1149/24
1150/1 1151/2 1151/6
1154/12 1155/10 1155/19
1155/21 1161/1 1163/21
1165/8 1166/17 1167/7
1167/13 1169/16 1169/23
1170/6 1170/20 1172/14
1174/10 1175/21 1176/13
1181/2 1185/15 1188/4
1189/7 1191/1 1191/25
1194/22 1196/6 1199/3
1199/22 1199/23 1201/17
1203/11 1208/2 1217/13
1222/5 1222/17 1222/19
1223/11 1224/8 1228/1
1230/4 1231/9 1231/13
1232/23 1233/25 1235/8
1238/5 1238/15 1238/17
1242/3 1243/21 1258/5
1258/5 1258/17 1258/19
1258/21 1258/23 1259/2
1262/18 1262/25 1263/1
1265/7 1268/10 1269/6
1269/7 1269/24 1274/18
1275/7 1275/7 1276/14
1277/10 1277/18 1278/12
1278/15 1278/17 1278/23
1279/10 1280/8 1283/25
1288/12 1288/14 1291/13
1291/17 1293/20 1293/22
1294/2 1294/8 1294/13
1294/17 1295/23 1298/2
1298/19 1299/13 1300/23
1301/4 1301/19 1302/16
1302/18 1305/7 1305/9
1306/16 1306/18 1308/6
1308/7 1309/6 1309/7 1309/8
1309/20 1310/6 1311/10
1311/11 1312/8 1312/16
1312/23 1313/4 1313/8
1314/17 1317/19 1317/21
1323/21 1324/12 1324/17
1325/17 1327/4 1327/11
1327/19 1327/22 1329/7
1329/10 1334/7 1336/5
1336/20 1336/24 1339/9
1339/15 1339/25 1340/11
1340/13 1341/18 1342/4
1343/21 1343/23 1346/13
1346/14 1351/5 1356/18
1356/19 1357/14 1358/5
1359/2 1360/3 1361/17
1364/14 1366/17 1366/19
1373/11 1374/17 1377/16
1377/20 1378/1 1378/8
1380/14 1380/18 1384/17
1384/18 1385/17 1386/4
1386/22 1387/10 1390/15
1411/4 1412/18 1414/3
1414/15 1414/18 1414/19

1416/19 1417/4 1417/5
1422/24 1423/7 1425/15
1425/16 1426/14 1428/23
1429/1 1429/5 1429/18
1431/3 1431/3 1432/13
1432/16 1435/11 1438/7
1439/5 1448/16 1453/4
1463/14 1463/22
didn't [131] 1134/23 1134/25
1138/16 1139/1 1140/17
1140/17 1140/18 1140/24
1143/19 1146/22 1155/16
1156/5 1164/22 1175/25
1188/25 1191/24 1197/24
1197/24 1198/4 1200/4
1202/1 1202/21 1208/19
1212/13 1216/10 1217/19
1219/1 1219/5 1221/1 1222/9
1222/10 1222/21 1223/6
1223/9 1224/1 1224/2
1224/14 1224/15 1237/3
1237/3 1237/19 1242/5
1248/17 1253/7 1254/15
1254/17 1254/19 1254/24
1255/1 1258/4 1258/9
1258/20 1258/21 1258/25
1259/3 1259/4 1259/6 1259/7
1262/20 1262/21 1262/23
1263/6 1264/25 1265/2
1265/4 1266/8 1267/5
1268/11 1268/15 1268/17
1268/20 1271/23 1275/14
1276/3 1276/13 1277/9
1277/12 1279/9 1279/11
1279/13 1282/9 1284/16
1286/3 1291/15 1292/19
1314/10 1324/10 1327/5
1339/19 1342/6 1346/11
1353/15 1356/2 1356/23
1357/13 1357/17 1357/25
1358/3 1358/6 1358/7
1358/10 1358/11 1358/12
1358/15 1359/12 1363/7
1363/20 1364/21 1366/16
1370/11 1373/8 1374/5
1378/10 1378/12 1378/14
1378/24 1379/4 1388/9
1388/10 1392/15 1392/16
1394/4 1416/12 1418/3
1418/3 1418/5 1445/25
1455/2 1461/7 1461/9
1468/11
DIEHL [1] 1130/4
difference [8] 1241/22
1244/25 1299/6 1346/17
1355/3 1355/16 1381/19
1381/24
differences [1] 1294/15
different [119] 1134/16
1134/18 1135/7 1135/21
1139/10 1139/12 1142/16
1148/9 1148/18 1148/22
1148/25 1153/14 1155/6
1157/8 1157/13 1159/20
1159/21 1174/9 1175/18
1178/23 1179/3 1179/9
1180/7 1180/7 1181/6
1182/15 1183/4 1186/8
1189/10 1193/25 1202/25
1203/9 1211/17 1212/16

D
different... [85] 1212/18
1213/3 1213/6 1213/14
1213/14 1216/15 1216/16
1219/21 1223/4 1231/4
1231/4 1231/13 1237/21
1237/22 1238/20 1244/7
1252/23 1258/11 1259/17
1261/10 1261/10 1262/4
1262/7 1262/10 1264/3
1264/4 1264/6 1264/12
1264/13 1269/16 1269/17
1272/1 1272/3 1272/9
1272/13 1272/21 1272/23
1273/16 1275/10 1278/11
1280/18 1282/19 1289/1
1294/23 1296/17 1298/5
1302/10 1305/1 1305/20
1310/5 1314/25 1325/12
1328/16 1331/14 1332/19
1335/1 1335/16 1346/18
1352/1 1352/18 1352/20
1352/20 1355/1 1356/6
1357/19 1358/2 1365/22
1377/20 1388/13 1395/6
1398/2 1398/13 1400/3
1401/5 1401/5 1421/23
1423/3 1437/6 1437/12
1437/18 1440/4 1448/4
1463/18 1463/21 1464/18
differentiating [2] 1212/23
1213/5
difficult [1] 1442/4
dig [2] 1363/20 1364/14
digital [4] 1259/10 1259/10
1259/12 1260/5
direct [24] 1146/1 1201/9
1229/16 1240/18 1275/16
1280/25 1286/20 1287/3
1288/3 1331/16 1349/7
1357/3 1357/11 1364/10
1366/21 1383/17 1395/18
1402/19 1405/22 1406/10
1408/22 1419/19 1425/7
1440/3
directed [1] 1468/8
direction [2] 1281/12 1404/10
directions [3] 1400/5 1401/5
1405/17
directly [7] 1198/1 1203/25
1244/9 1315/8 1408/23
1408/24 1408/24
directors [1] 1458/4
directs [1] 1432/20
disagree [7] 1135/11 1337/18
1359/15 1374/25 1391/4
1402/6 1439/15
disagreeing [1] 1392/4
disagreement [1] 1327/14
disagrees [2] 1137/11
1137/15
disc [1] 1259/15
discharges [1] 1458/2
disclose [10] 1138/8 1138/16
1155/19 1167/13 1171/23
1171/25 1172/19 1172/21
1314/17 1446/13
disclosed [17] 1134/22
1136/23 1143/18 1159/25
1160/19 1161/14 1198/18

1221/22 1223/6 1245/20
1249/18 1250/17 1264/15
1314/7 1314/11 1316/11
1429/2
discloses [2] 1434/10 1434/17
disclosing [2] 1142/13 1221/5
disclosure [4] 1166/14
1261/18 1262/1 1370/23
discovers [1] 1158/1
discovery [1] 1373/3
discuss [4] 1252/13 1395/4
1396/14 1469/15
discussed [5] 1198/14
1217/22 1337/20 1387/4
1430/1
discusses [1] 1264/1
discussing [3] 1188/16
1266/17 1449/10
discussion [50] 1153/15
1163/24 1166/15 1170/4
1171/6 1171/17 1191/12
1192/17 1194/10 1196/21
1200/20 1211/5 1211/19
1216/24 1218/23 1219/10
1223/1 1223/20 1234/5
1264/24 1290/21 1306/7
1307/6 1307/14 1314/2
1317/9 1326/21 1331/19
1334/15 1336/15 1337/14
1340/5 1342/21 1361/20
1362/12 1367/5 1368/13
1371/20 1372/1 1372/9
1372/14 1372/25 1373/1
1376/22 1383/5 1397/1
1397/22 1398/5 1425/1
1425/23
discussions [1] 1170/21
display [5] 1159/4 1178/10
1178/11 1181/16 1186/21
displayed [3] 1156/25 1178/15
1388/23
displaying [2] 1178/9 1180/21
displays [1] 1158/11
dispute [34] 1135/2 1135/3
1197/22 1231/6 1231/6
1231/24 1232/2 1284/17
1284/19 1284/25 1285/8
1327/7 1350/9 1351/10
1415/19 1415/23 1416/5
1435/23 1436/4 1436/6
1438/12 1441/2 1441/14
1441/23 1442/18 1443/6
1445/12 1445/13 1447/5
1447/6 1450/1 1450/4 1460/3
1462/23
disputed [6] 1227/14 1436/22
1437/11 1437/25 1468/22
1468/22
disputes [3] 1464/14 1464/14
1464/16
disputing [5] 1215/6 1231/8
1283/23 1284/4 1447/10
disregard [13] 1165/2 1165/3
1165/3 1194/3 1194/14
1194/17 1255/9 1280/25
1335/14 1335/15 1336/18
1340/8 1444/2
distance [1] 1168/6
distinct [2] 1431/14 1449/20
distinction [8] 1142/2 1172/8

1173/5 1335/9 1346/8
1346/17 1420/10 1450/8
distinctions [1] 1420/5
distinguish [1] 1172/9
distinguished [3] 1174/24
1175/21 1272/17
distinguishing [1] 1214/17
distributed [1] 1173/21
distribution [1] 1370/25
distributors [2] 1456/18
1458/6
DISTRICT [3] 1129/2 1129/3
1470/9
divide [3] 1299/14 1302/12
1330/14
divided [2] 1320/3 1347/8
divides [1] 1330/10
dividing [1] 1330/12
do [277] 1131/15 1132/12
1133/4 1135/2 1135/3 1136/7
1137/16 1144/24 1147/19
1149/10 1149/19 1150/13
1153/10 1156/22 1157/4
1157/16 1159/15 1159/18
1159/21 1159/23 1162/19
1162/23 1168/5 1168/12
1169/17 1171/15 1175/19
1175/25 1176/16 1178/4
1178/22 1179/14 1180/3
1182/13 1186/16 1188/18
1188/18 1189/5 1190/9
1193/18 1195/24 1196/1
1199/18 1201/10 1201/24
1202/6 1202/7 1202/10
1203/17 1203/18 1203/22
1206/11 1206/12 1206/15
1206/16 1206/24 1208/21
1209/10 1210/11 1210/19
1211/8 1211/9 1211/18
1211/24 1213/11 1217/25
1221/5 1222/13 1222/14
1223/15 1223/17 1224/15
1225/11 1225/16 1227/9
1228/1 1228/3 1228/14
1228/17 1229/19 1230/12
1231/5 1233/23 1234/7
1234/22 1234/23 1235/1
1235/9 1235/12 1238/3
1239/15 1240/19 1240/25
1242/11 1242/17 1245/7
1248/21 1249/21 1250/22
1252/2 1254/7 1254/8
1254/14 1254/15 1254/17
1256/15 1256/24 1258/6
1258/14 1258/17 1263/11
1263/12 1263/13 1264/22
1266/6 1266/15 1266/20
1267/14 1267/18 1268/17
1268/20 1270/16 1270/20
1273/7 1273/19 1276/19
1276/24 1277/1 1278/6
1278/14 1282/20 1283/16
1283/25 1285/4 1285/5
1286/25 1287/4 1288/18
1288/23 1290/3 1290/17
1294/12 1295/14 1295/15
1296/23 1298/22 1300/23
1301/1 1302/7 1302/19
1302/21 1303/5 1305/12
1306/11 1308/13 1313/15

1315/22 1317/3 1319/25
1320/23 1321/13 1322/18
1322/23 1323/1 1323/22
1324/7 1324/11 1325/6
1325/6 1326/10 1326/17
1328/18 1330/6 1333/3
1333/10 1334/1 1334/5
1335/17 1337/18 1337/19
1338/13 1343/6 1344/3
1344/4 1347/5 1347/22
1348/25 1349/11 1357/4
1357/22 1358/3 1358/10
1358/12 1360/17 1360/17
1361/16 1361/22 1363/8
1363/13 1364/9 1369/16
1374/25 1375/11 1375/21
1379/22 1379/23 1382/18
1384/4 1385/17 1387/11
1387/14 1387/20 1388/9
1388/21 1389/12 1390/9
1391/24 1391/25 1393/11
1393/12 1393/15 1396/16
1396/20 1396/21 1397/12
1400/15 1402/2 1402/4
1402/9 1402/10 1404/5
1405/12 1405/24 1405/25
1406/17 1407/7 1409/13
1410/22 1410/25 1411/5
1411/7 1411/10 1411/14
1411/16 1411/20 1412/19
1412/19 1413/2 1413/20
1413/24 1414/2 1414/3
1417/6 1417/14 1417/17
1422/6 1425/20 1426/6
1427/19 1427/19 1428/11
1428/11 1433/19 1439/7
1440/1 1441/4 1443/5
1445/11 1445/25 1446/20
1449/17 1459/22 1465/25
1466/23 1468/11 1468/12
1469/10
Doc [1] 1407/3
docket [2] 1136/11 1430/2
Doctor [6] 1225/4 1253/24
1384/7 1395/18 1404/20
1424/9
document [77] 1152/19
1153/3 1157/5 1160/6 1161/7
1164/8 1164/12 1165/12
1169/10 1169/10 1169/25
1170/10 1171/16 1171/24
1172/1 1172/3 1172/16
1172/20 1172/22 1173/1
1178/9 1178/13 1178/15
1178/16 1182/19 1183/8
1184/20 1186/9 1186/11
1186/12 1213/23 1214/9
1214/12 1214/19 1215/1
1218/1 1218/6 1218/9
1221/16 1223/20 1241/24
1270/14 1270/25 1271/6
1271/19 1274/7 1295/16
1295/17 1295/18 1306/12
1306/16 1313/19 1321/14
1349/12 1358/8 1373/22
1388/22 1389/24 1391/14
1391/15 1391/16 1392/15
1393/5 1393/6 1401/22
1402/19 1404/7 1406/15
1415/6 1415/9 1415/11

D
document... [6] 1416/19
1425/6 1425/7 1429/3
1441/12 1469/13
document's [1] 1248/25
documentation [11] 1150/6
1182/12 1223/19 1273/17
1282/25 1283/1 1299/3
1398/7 1401/20 1422/16
1422/21
documented [5] 1269/4
1269/5 1269/10 1273/2
1273/10
documenting [1] 1258/18
documents [45] 1182/20
1184/22 1220/23 1222/5
1222/9 1222/10 1222/19
1222/23 1254/20 1255/1
1255/17 1261/14 1261/16
1262/3 1262/5 1262/8
1262/12 1263/16 1263/21
1266/13 1268/1 1268/2
1269/12 1269/13 1269/14
1269/25 1270/12 1273/3
1274/15 1274/19 1274/20
1274/24 1292/13 1308/1
1308/5 1309/4 1309/6 1349/3
1374/7 1391/24 1392/19
1406/1 1416/10 1416/16
1422/13
does [97] 1131/22 1138/7
1142/17 1144/13 1159/6
1168/25 1171/22 1171/24
1172/18 1172/21 1173/2
1178/20 1179/13 1180/5
1197/23 1221/13 1225/7
1225/21 1242/18 1243/7
1244/6 1245/3 1252/8 1265/5
1271/16 1284/5 1286/10
1291/20 1301/25 1303/17
1304/5 1311/1 1314/20
1314/22 1317/22 1317/22
1318/3 1323/12 1325/16
1327/18 1329/16 1329/23
1330/17 1331/25 1332/7
1337/3 1357/10 1365/6
1373/18 1379/24 1382/12
1388/23 1389/25 1390/1
1393/21 1393/23 1394/6
1394/8 1394/16 1397/7
1397/8 1397/12 1399/9
1399/18 1400/21 1401/16
1402/7 1403/20 1404/6
1404/7 1404/9 1404/18
1404/21 1404/22 1404/22
1405/1 1405/2 1407/4 1407/5
1407/17 1408/18 1408/18
1409/5 1416/10 1422/13
1424/11 1425/5 1426/21
1435/5 1435/9 1441/13
1441/23 1447/6 1447/11
1461/15 1464/20 1467/15
doesn't [36] 1137/11 1137/15
1140/13 1144/19 1158/1
1160/15 1189/17 1192/8
1192/9 1194/16 1239/23
1260/8 1262/17 1271/13
1271/15 1303/22 1317/24
1322/12 1335/22 1370/11
1374/8 1374/17 1381/12

1381/19 1387/17 1393/3
1395/18 1395/11 1397/12
1409/12 1412/19 1413/19
1417/12 1427/6 1445/6
1448/24
doing [28] 1134/18 1134/21
1134/24 1147/21 1155/5
1157/8 1162/5 1178/16
1178/21 1219/6 1255/6
1255/12 1255/18 1260/16
1276/15 1293/17 1316/21
1331/12 1378/23 1395/6
1395/14 1398/16 1400/3
1405/10 1407/22 1412/20
1412/22 1433/24
dollar [1] 1291/12
dollars [4] 1300/3 1300/5
1331/11 1331/13
don't [193] 1132/16 1133/20
1134/8 1134/24 1138/22
1144/22 1155/14 1155/23
1156/6 1156/14 1167/11
1191/19 1193/2 1193/25
1194/5 1194/25 1200/2
1200/15 1202/24 1204/21
1207/9 1210/15 1211/20
1211/25 1212/1 1214/16
1218/15 1219/7 1219/21
1222/11 1222/11 1222/13
1222/15 1222/23 1223/22
1224/3 1225/22 1225/22
1225/23 1226/1 1226/11
1226/25 1228/2 1228/21
1228/23 1228/25 1229/9
1230/2 1230/7 1230/9 1231/1
1231/17 1231/21 1233/10
1234/3 1235/1 1235/15
1235/16 1235/20 1236/19
1236/24 1237/5 1238/10
1238/23 1244/18 1245/25
1246/6 1247/18 1247/19
1250/17 1250/18 1253/12
1254/15 1258/7 1258/8
1262/19 1263/8 1263/15
1264/17 1265/17 1265/18
1265/19 1265/23 1265/25
1266/1 1266/4 1266/17
1268/5 1273/5 1276/24
1277/1 1277/3 1277/11
1278/6 1280/11 1280/14
1282/12 1282/16 1284/14
1284/24 1285/2 1285/5
1299/24 1302/9 1315/23
1318/13 1319/20 1322/18
1329/4 1333/4 1335/11
1336/2 1348/24 1356/13
1356/16 1358/14 1359/10
1360/3 1362/3 1362/6
1363/12 1364/8 1367/25
1368/9 1368/11 1369/14
1369/17 1370/16 1370/21
1371/17 1371/18 1373/7
1374/15 1374/19 1387/13
1387/16 1389/10 1389/14
1398/21 1399/24 1403/24
1408/4 1409/13 1410/18
1410/23 1411/3 1411/23
1413/20 1415/7 1415/7
1415/13 1415/17 1416/1
1416/9 1416/15 1417/4

1417/5 1418/13 1418/14
1425/15 1426/10 1426/16
1426/16 1427/20 1428/12
1428/13 1430/2 1430/3
1430/22 1432/2 1432/4
1433/11 1435/20 1437/19
1438/1 1438/15 1438/22
1440/1 1440/25 1443/4
1445/5 1448/19 1449/6
1450/12 1450/23 1451/22
1452/1 1454/24 1462/20
1462/23 1468/6 1468/14
1469/5
done [41] 1133/25 1134/16
1147/18 1148/22 1163/12
1190/8 1220/5 1222/12
1222/16 1228/21 1229/6
1230/17 1251/19 1256/19
1256/20 1257/19 1257/20
1260/15 1269/19 1277/17
1283/24 1300/15 1301/6
1332/22 1338/25 1339/7
1339/19 1339/20 1379/11
1385/6 1386/3 1388/15
1390/12 1392/13 1392/14
1398/8 1406/20 1426/9
1442/16 1457/22 1468/18
door [7] 1197/9 1197/12
1197/25 1198/8 1198/11
1200/15 1335/24
double [3] 1283/15 1331/23
1332/1
doubt [2] 1184/3 1320/21
Doug [1] 1288/8
Douglas [4] 1136/20 1287/14
1287/20 1287/22
down [34] 1134/7 1134/10
1176/12 1176/17 1204/13
1225/4 1250/14 1251/5
1254/13 1275/4 1283/11
1294/4 1294/15 1306/1
1308/1 1309/3 1319/18
1320/13 1321/7 1323/10
1326/8 1329/14 1341/22
1343/10 1343/13 1345/15
1358/20 1360/7 1371/18
1382/8 1395/8 1402/21
1426/25 1443/24
download [24] 1142/20
1177/17 1248/8 1313/18
1319/12 1329/19 1332/15
1350/14 1350/17 1351/1
1355/13 1356/18 1357/12
1358/2 1454/12 1455/4
1456/24 1457/1 1457/4
1457/5 1457/13 1457/16
1457/20 1463/1
download-based [1] 1142/20
downloaded [23] 1244/13
1293/1 1293/4 1293/10
1310/24 1312/17 1312/18
1312/19 1314/9 1326/14
1329/17 1329/21 1346/12
1381/13 1381/14 1436/7
1436/8 1451/6 1453/20
1454/13 1458/17 1461/6
1468/4
downloading [6] 1358/2
1459/7 1459/8 1459/10
1459/22 1460/5

downloads [64] 1143/1
1143/9 1232/5 1239/4
1241/25 1244/10 1244/11
1244/19 1246/11 1246/13
1246/18 1246/20 1309/2
1310/23 1313/18 1315/14
1318/1 1318/5 1318/6 1318/7
1319/1 1319/3 1319/16
1319/21 1320/1 1320/15
1321/6 1321/25 1332/11
1345/16 1345/17 1345/23
1346/2 1346/4 1346/10
1346/15 1346/21 1346/22
1346/24 1347/3 1347/9
1348/2 1348/9 1348/16
1349/15 1349/16 1349/17
1350/5 1352/19 1354/5
1354/24 1359/13 1359/19
1381/6 1381/10 1453/25
1454/1 1454/3 1454/23
1460/8 1461/16 1461/23
1462/5 1467/21
downward [7] 1143/2 1302/6
1302/7 1303/20 1304/2
1304/8 1304/25
Dr [9] 1149/14 1149/16
1191/23 1199/11 1211/3
1260/19 1386/15 1415/23
1460/10
Dr. [96] 1131/11 1131/12
1131/13 1131/16 1132/4
1145/14 1149/19 1162/12
1163/9 1176/1 1177/11
1180/25 1181/4 1185/10
1193/13 1194/20 1196/2
1199/11 1201/5 1209/8
1211/7 1211/16 1216/2
1219/14 1220/4 1225/18
1225/25 1229/11 1229/16
1252/22 1254/5 1256/6
1257/21 1262/22 1269/3
1269/24 1270/2 1270/5
1270/11 1271/18 1272/6
1273/3 1273/12 1274/18
1278/25 1279/4 1279/9
1279/25 1281/2 1283/12
1296/24 1316/17 1336/8
1336/25 1382/23 1384/25
1387/4 1387/6 1387/11
1387/14 1388/8 1389/6
1389/8 1389/13 1391/1
1391/21 1392/4 1392/11
1392/20 1393/9 1394/20
1396/9 1397/10 1398/15
1399/10 1402/1 1413/23
1414/2 1414/19 1414/24
1415/7 1415/9 1415/19
1416/5 1417/1 1417/7
1417/16 1417/21 1426/14
1428/23 1429/5 1429/9
1436/2 1436/2 1437/8 1451/5
Dr. Dey [18] 1199/11 1257/21
1262/22 1269/3 1271/18
1272/6 1278/25 1279/4
1279/9 1279/25 1391/21
1392/11 1392/20 1413/23
1414/2 1414/24 1417/16
1417/21
Dr. Dey's [14] 1256/6 1269/24
1270/2 1270/5 1270/11

<p>D Dr. Dey's... [9] 1273/3 1273/12 1274/18 1392/4 1415/9 1415/19 1416/5 1417/1 1417/7 Dr. Earl [2] 1225/25 1382/23 Dr. Edward Fox [1] 1145/14 Dr. Fox [30] 1131/11 1131/13 1131/16 1132/4 1149/19 1193/13 1194/20 1196/2 1201/5 1209/8 1219/14 1220/4 1225/18 1229/11 1254/5 1281/2 1283/12 1384/25 1388/8 1389/6 1393/9 1394/20 1399/10 1402/1 1414/19 1415/7 1426/14 1428/23 1429/5 1429/9 Dr. Fox's [7] 1387/6 1387/11 1387/14 1389/8 1389/13 1391/1 1397/10 Dr. Kidder [1] 1131/12 Dr. Martin [1] 1296/24 Dr. Miller [1] 1387/4 Dr. Rinard [5] 1211/7 1211/16 1336/8 1336/25 1436/2 Dr. Sacerdoti's [1] 1229/16 Dr. Smedley [9] 1162/12 1176/1 1177/11 1180/25 1216/2 1396/9 1398/15 1436/2 1437/8 Dr. Smedley's [4] 1163/9 1181/4 1185/10 1316/17 Dr. Weinstein's [2] 1252/22 1451/5 dramatic [1] 1304/3 dramatically [1] 1291/23 draw [1] 1321/13 drawn [1] 1173/5 drill [1] 1341/22 drive [1] 1259/23 dropped [1] 1253/15 DTX [33] 1164/18 1236/1 1236/16 1238/18 1244/10 1256/5 1256/14 1274/2 1274/5 1295/13 1296/1 1296/5 1306/10 1306/24 1307/16 1307/20 1308/25 1312/25 1313/4 1313/9 1317/15 1318/10 1318/22 1318/24 1349/5 1395/20 1402/12 1402/16 1405/23 1405/24 1406/4 1406/8 1420/15 DTX-0581 [1] 1318/10 DTX-10 [3] 1402/12 1402/16 1420/15 DTX-1148 [8] 1236/1 1236/16 1306/10 1306/24 1307/16 1307/20 1308/25 1317/15 DTX-14 [2] 1274/2 1274/5 DTX-192 [1] 1395/20 DTX-2 [1] 1164/18 DTX-499 [3] 1295/13 1296/1 1296/5 DTX-581 [8] 1238/18 1244/10 1312/25 1313/4 1313/9 1318/22 1318/24 1349/5 DTX-8 [1] 1256/5 DTX-9-54 [1] 1405/23</p>	<p>DTX-954 [3] 1405/24 1406/4 1406/8 due [2] 1305/15 1329/13 duly [3] 1145/21 1287/23 1383/14 duration [1] 1303/17 during [17] 1150/10 1211/19 1225/16 1253/1 1257/1 1277/5 1279/25 1280/7 1339/14 1349/6 1358/24 1364/10 1373/2 1373/3 1373/4 1398/14 1426/14 dynamically [4] 1395/1 1400/2 1405/7 1405/21 E E-A-R-L [1] 1383/9 E-D-W-A-R-D [1] 1145/18 e-mail [19] 1160/9 1160/9 1160/10 1162/5 1165/21 1168/8 1169/1 1169/5 1170/12 1186/17 1186/18 1186/24 1186/25 1187/4 1187/6 1270/18 1271/2 1271/3 1416/19 e-mailer [1] 1187/5 e-mailers [1] 1187/4 e-mails [1] 1292/12 e.g [1] 1165/23 each [30] 1134/19 1153/19 1174/7 1177/11 1207/4 1207/12 1207/15 1208/7 1216/3 1226/10 1254/19 1254/25 1295/5 1297/12 1301/8 1330/20 1346/7 1349/15 1350/6 1351/21 1352/19 1379/17 1380/7 1405/18 1405/19 1427/18 1429/10 1434/16 1441/21 1448/5 Earl [5] 1225/25 1382/23 1383/9 1383/13 1383/23 earlier [29] 1142/23 1163/14 1166/7 1173/22 1184/9 1185/21 1189/4 1196/2 1213/17 1249/7 1250/3 1273/19 1274/14 1284/24 1305/5 1329/18 1331/7 1331/10 1346/10 1377/24 1379/5 1412/5 1414/19 1424/21 1425/4 1435/5 1436/11 1440/18 1441/6 earliest [3] 1435/15 1435/24 1436/14 early [4] 1137/23 1174/6 1188/5 1448/25 earns [2] 1377/18 1377/21 ease [2] 1212/2 1408/11 easier [2] 1406/25 1460/18 easy [6] 1153/17 1189/23 1277/20 1356/16 1379/5 1419/18 echoing [1] 1215/13 economic [2] 1296/10 1296/18 Edge [1] 1156/18 edit [2] 1271/9 1274/22 editable [12] 1184/22 1270/24 1270/25 1271/2 1273/4 1273/11 1388/22 1391/14</p>	<p>1391/23 1392/10 1392/15 1416/16 edited [2] 1270/21 1271/21 editing [24] 1152/19 1153/3 1157/5 1159/15 1160/16 1171/24 1172/1 1172/3 1172/20 1172/22 1173/2 1186/11 1186/11 1213/24 1214/9 1214/12 1214/20 1215/2 1270/14 1270/16 1270/20 1271/19 1416/10 1416/19 editor [5] 1161/6 1398/19 1417/7 1417/10 1417/12 editorial [1] 1148/9 edits [3] 1178/11 1271/4 1435/4 educational [2] 1146/17 1289/4 Edward [5] 1145/14 1145/18 1145/18 1145/20 1146/9 effect [4] 1301/25 1303/17 1303/20 1304/3 effective [3] 1372/7 1458/10 1458/11 effectively [2] 1300/4 1354/23 efficiently [1] 1169/17 effort [4] 1278/15 1377/16 1377/20 1401/2 efforts [1] 1385/20 eight [10] 1137/7 1153/16 1153/21 1158/18 1185/8 1220/15 1220/16 1221/2 1255/4 1320/19 either [14] 1175/19 1200/15 1207/18 1234/9 1280/12 1280/14 1285/22 1394/5 1399/20 1402/3 1436/16 1436/19 1451/23 1459/9 Elbouchikhi [6] 1311/23 1311/23 1322/8 1398/24 1423/20 1435/25 elected [1] 1148/10 elective [1] 1146/25 electro [3] 1146/24 1146/25 1147/10 electro-engineering [3] 1146/24 1146/25 1147/10 electronically [1] 1178/9 element [15] 1178/14 1179/4 1179/6 1180/15 1180/16 1183/24 1183/25 1184/4 1184/10 1196/8 1390/1 1425/6 1425/8 1442/5 1442/5 elements [52] 1151/16 1153/11 1153/12 1153/22 1155/20 1158/14 1158/18 1160/1 1160/20 1161/11 1161/14 1163/22 1163/25 1166/4 1167/14 1169/20 1170/16 1170/20 1170/24 1170/25 1171/5 1171/11 1177/7 1177/12 1178/15 1180/24 1185/3 1188/14 1188/17 1188/17 1190/1 1190/16 1190/18 1190/19 1190/20 1195/7 1210/7 1387/22 1387/23 1388/4 1388/7 1388/12 1388/13 1413/11 1424/17 1425/13</p>	<p>1434/10 1434/17 1441/21 1441/24 1446/13 1460/12 ELLIS [1] 1130/9 ELS [1] 1206/1 else [11] 1180/10 1189/20 1198/9 1252/18 1328/23 1334/1 1335/17 1345/24 1436/8 1440/19 1440/19 elsewhere [1] 1158/6 email [1] 1168/20 emphasized [1] 1196/8 emphasizing [1] 1341/15 employed [1] 1232/9 employee [2] 1308/4 1385/19 employees [2] 1458/4 1465/15 empowered [1] 1282/3 enabled [8] 1138/19 1140/8 1142/24 1249/14 1293/2 1310/21 1310/25 1312/6 encourage [1] 1162/25 end [11] 1226/9 1298/17 1316/5 1355/14 1356/3 1382/18 1389/2 1390/18 1401/4 1419/10 1447/18 ending [1] 1238/18 engaged [2] 1443/15 1445/3 engagements [1] 1379/18 engine [5] 1203/16 1205/19 1205/23 1205/24 1206/17 engineer [2] 1261/4 1312/3 engineering [3] 1146/24 1146/25 1147/10 engineers [1] 1201/17 engines [1] 1147/20 enormously [1] 1260/13 enough [3] 1157/11 1285/17 1443/6 enters [4] 1145/5 1253/20 1287/8 1377/5 entire [10] 1167/22 1211/19 1219/1 1219/5 1222/25 1304/2 1308/12 1311/3 1311/3 1340/17 entirely [2] 1248/18 1340/22 entirety [5] 1218/3 1349/19 1381/23 1412/17 1417/18 entities [2] 1134/18 1167/24 entitled [2] 1193/6 1445/19 entity [1] 1264/13 entrepreneurial [1] 1385/9 entries [1] 1309/8 entry [4] 1169/2 1170/1 1183/1 1206/17 envelope [1] 1168/24 environment [1] 1424/1 Environment's [1] 1414/6 Eolas [1] 1205/20 equals [2] 1135/16 1135/20 equate [1] 1298/8 equivalent [1] 1305/22 erase [1] 1308/19 error [10] 1302/20 1323/9 1324/19 1326/24 1330/5 1331/23 1333/16 1355/19 1439/18 1445/6 errors [10] 1310/9 1310/13 1312/11 1312/13 1324/9 1324/13 1326/8 1340/14 1340/18 1340/21</p>
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E	Case 1:13-cv-00919-JLH Document 604 Filed 08/21/23 Page 656 of 775 PageID #: 61335	1261/1 1261/11 1261/13 1268/3 1268/22 1268/23 1269/6 1269/16 1269/22 1272/7 1272/16 1273/3 1275/11 1281/14 1283/4 1284/5 1284/16 1284/24 1292/2 1292/12 1296/2 1296/5 1298/21 1305/17 1307/17 1307/20 1312/5 1315/7 1315/21 1318/7 1318/10 1338/6 1362/16 1366/8 1372/19 1376/25 1392/7 1392/8 1402/7 1406/8 1416/21 1428/21 1428/24 1428/25 1429/2 1429/12 1430/4 1430/17 1431/6 1431/8 1431/15 1431/17 1432/4 1432/8 1432/16 1433/12 1433/13 1433/15 1433/15 1434/9 1434/15 1434/25 1436/10 1437/12 1437/15 1437/22 1440/9 1442/12 1446/1 evidentiary [1] 1241/11 evincing [1] 1466/17 exact [2] 1303/21 1412/20 exactly [12] 1132/24 1142/12 1156/11 1240/7 1242/25 1346/12 1361/14 1365/5 1444/9 1458/20 1461/11 1468/12 examination [28] 1142/4 1146/1 1150/9 1164/8 1196/16 1201/3 1225/19 1225/21 1226/8 1227/23 1228/24 1229/2 1229/11 1229/14 1253/17 1288/3 1322/23 1341/10 1349/7 1364/10 1366/21 1377/8 1380/11 1383/17 1409/25 1410/2 1424/7 1432/12 examinations [1] 1286/15 examine [2] 1200/12 1396/8 examiner [7] 1164/7 1223/9 1223/11 1223/17 1257/1 1263/20 1273/23 example [40] 1151/8 1156/24 1159/22 1160/3 1160/8 1161/6 1163/9 1163/20 1165/21 1170/12 1171/24 1184/2 1185/23 1187/8 1187/10 1187/20 1189/9 1191/4 1192/4 1230/4 1260/11 1270/10 1272/10 1274/21 1299/12 1300/2 1301/10 1319/6 1319/10 1320/10 1320/23 1362/25 1388/9 1391/11 1392/10 1393/19 1398/18 1414/15 1414/21 1438/22 examples [10] 1155/22 1155/23 1162/6 1174/4 1184/22 1185/20 1212/8 1270/4 1320/20 1332/22 Excel [2] 1298/11 1318/17 Excellent [1] 1402/15 except [3] 1211/4 1269/2 1442/8 excerpts [1] 1414/20 excess [4] 1229/15 1410/21	1411/1 1411/10 excised [2] 1237/20 1237/21 exciting [1] 1166/14 exclude [1] 1250/13 excuse [7] 1164/25 1256/4 1297/20 1301/7 1303/16 1327/10 1402/25 excused [3] 1283/12 1426/24 1427/23 executed [2] 1423/22 1464/6 execution [2] 1398/14 1398/21 exerts [1] 1334/3 exhaustion [1] 1434/19 exhibit [68] 1133/15 1133/17 1143/7 1143/8 1203/2 1203/5 1204/12 1236/1 1236/2 1236/5 1236/6 1236/24 1237/20 1237/25 1238/9 1240/11 1242/3 1242/13 1242/22 1242/23 1243/20 1244/3 1244/9 1247/2 1247/4 1247/8 1247/14 1247/18 1256/15 1296/5 1306/10 1306/13 1306/19 1306/20 1307/9 1307/20 1307/23 1308/9 1308/21 1308/23 1309/9 1317/16 1343/17 1343/23 1344/20 1347/12 1347/17 1348/13 1348/24 1349/6 1349/23 1351/6 1351/6 1353/1 1353/3 1353/14 1355/21 1359/18 1359/20 1359/23 1359/23 1360/3 1362/9 1362/16 1366/8 1372/18 1372/18 1406/8 Exhibit 12 [5] 1247/8 1247/14 1247/18 1359/18 1359/23 Exhibit 4B [1] 1349/23 Exhibit 5 [9] 1143/7 1247/2 1247/4 1347/12 1353/1 1353/3 1359/20 1359/23 1360/3 Exhibit 5.0 [2] 1143/8 1351/6 Exhibit 5.2 [1] 1343/17 Exhibit C [1] 1203/2 exhibits [10] 1132/20 1234/9 1238/11 1240/11 1256/6 1306/14 1306/15 1316/22 1317/4 1365/19 exist [3] 1259/6 1262/17 1402/7 existed [4] 1149/23 1237/4 1356/24 1389/25 existence [3] 1262/11 1263/1 1448/20 existing [6] 1260/1 1262/23 1262/25 1292/6 1300/16 1465/14 exists [2] 1257/18 1269/2 exits [4] 1224/23 1283/18 1368/20 1427/25 expect [9] 1229/1 1245/4 1246/16 1291/9 1299/6 1320/10 1320/12 1354/8 1354/10 expected [2] 1226/3 1339/23 expensive [1] 1260/13 experience [7] 1223/15	1288/19 1288/23 1332/17 1379/20 1385/4 1408/7 experiences [1] 1168/17 experimental [2] 1407/1 1407/22 experimented [1] 1408/10 expert [58] 1135/17 1136/2 1136/19 1136/21 1149/14 1149/17 1149/20 1193/24 1197/4 1197/15 1202/13 1202/16 1202/22 1204/3 1207/5 1207/19 1207/22 1208/6 1208/25 1215/3 1222/12 1225/13 1226/1 1226/8 1230/22 1231/1 1234/17 1236/21 1246/3 1253/13 1279/16 1285/24 1286/5 1288/10 1289/23 1305/11 1314/20 1316/7 1316/15 1316/22 1335/25 1336/24 1339/14 1343/17 1353/20 1353/21 1356/8 1356/12 1373/13 1379/13 1379/25 1386/16 1397/5 1397/6 1397/6 1426/3 1426/7 1438/17 expert's [2] 1144/18 1324/8 expertise [3] 1288/9 1288/15 1389/22 experts [10] 1153/1 1193/17 1222/13 1222/15 1234/9 1334/25 1336/20 1410/10 1436/2 1436/3 experts' [1] 1438/22 expiration [2] 1339/10 1458/12 expired [4] 1293/3 1303/10 1337/9 1338/22 explain [26] 1149/24 1158/20 1162/9 1162/16 1163/7 1173/12 1174/17 1175/15 1176/3 1176/19 1177/3 1181/13 1183/19 1187/13 1190/2 1195/4 1201/14 1231/22 1235/12 1269/18 1310/16 1324/20 1325/21 1326/25 1333/17 1381/2 explained [19] 1161/15 1162/7 1171/10 1171/14 1173/6 1176/5 1184/19 1195/11 1215/4 1263/2 1263/4 1270/3 1270/7 1270/8 1270/20 1272/4 1272/10 1275/24 1437/21 explaining [5] 1168/1 1193/13 1210/15 1210/17 1294/2 explains [1] 1464/8 explanation [1] 1374/19 explicit [3] 1182/11 1182/25 1465/9 explicitly [4] 1405/5 1408/21 1433/11 1433/14 explore [1] 1367/13 explored [1] 1375/14 exploring [1] 1422/24 expressed [3] 1290/7 1420/4 1425/7 expression [1] 1425/6 expressly [2] 1417/15 1457/2 extend [2] 1297/10 1465/9
---	--	---	--	--

<p>E extended [2] 1134/17 1291/7 extends [1] 1457/17 extension [1] 1459/20 extensive [3] 1143/3 1355/25 1437/5 extensively [2] 1259/9 1260/5 extent [15] 1198/13 1202/18 1241/12 1291/9 1298/23 1300/16 1307/9 1372/24 1431/5 1436/18 1451/5 1452/4 1453/17 1456/1 1468/16 extra [3] 1158/10 1174/21 1180/20 extrinsic [5] 1430/4 1432/4 1432/22 1432/23 1433/12 eyes [1] 1132/25</p>	<p>1404/1 familiarity [1] 1197/5 family [1] 1292/17 far [14] 1148/20 1219/23 1258/22 1265/5 1278/7 1279/19 1280/3 1291/8 1291/8 1311/10 1322/24 1343/25 1421/6 1440/17 fashion [1] 1422/17 faster [1] 1406/25 father [1] 1147/22 favor [3] 1430/1 1436/19 1451/13 favored [1] 1451/25 FCBA [2] 1444/21 1445/11 FCE [3] 1198/5 1262/2 1272/11 FCHR1 [1] 1433/14 feature [8] 1311/25 1348/15 1371/3 1408/5 1408/9 1418/10 1420/1 1453/10 features [6] 1154/8 1154/10 1174/3 1395/7 1419/1 1449/21 federal [8] 1285/7 1376/25 1442/10 1443/24 1448/1 1448/20 1448/24 1449/22 fee [2] 1457/25 1459/14 feel [6] 1268/17 1301/19 1348/7 1368/22 1420/10 1423/23 feels [1] 1139/17 fellow [1] 1149/4 felt [1] 1195/14 few [20] 1134/15 1152/9 1162/21 1167/15 1176/16 1191/25 1206/3 1209/14 1220/25 1227/6 1247/3 1363/16 1380/1 1380/13 1386/1 1394/22 1412/4 1416/11 1418/2 1420/22 fewer [1] 1302/5 field [9] 1147/8 1147/19 1149/6 1156/7 1187/19 1222/7 1232/19 1258/2 1260/2 fifth [3] 1131/8 1152/1 1292/8 figure [17] 1157/11 1158/24 1158/24 1221/21 1244/17 1270/18 1271/23 1277/17 1288/25 1346/9 1346/20 1358/11 1364/14 1370/9 1371/5 1400/24 1465/25 Figure 3 [2] 1158/24 1270/18 figured [1] 1169/14 figures [9] 1156/12 1291/22 1309/14 1311/18 1331/5 1349/14 1350/14 1350/17 1370/3 figuring [2] 1211/8 1241/1 file [31] 1150/3 1164/2 1164/14 1164/15 1187/17 1217/24 1218/2 1218/4 1218/5 1218/6 1218/7 1218/10 1218/18 1219/1 1219/5 1219/6 1219/15 1219/18 1219/19 1220/20 1220/22 1221/5 1221/7 1221/13 1221/15 1221/18 1222/24 1224/9 1254/6</p>	<p>1254/9 1386/25 filed [12] 1150/6 1150/10 1164/1 1218/7 1226/22 1435/4 1440/18 1441/2 1441/12 1451/4 1464/17 1464/18 filing [5] 1148/18 1412/5 1434/3 1434/7 1447/8 filings [3] 1367/17 1374/11 1377/17 fill [1] 1187/19 filled [2] 1185/11 1270/3 final [2] 1340/23 1455/18 financial [4] 1149/10 1292/10 1362/18 1374/18 financials [1] 1292/11 financing [1] 1260/15 find [28] 1151/20 1151/25 1179/17 1179/18 1179/19 1179/24 1180/13 1181/9 1204/11 1247/18 1249/13 1251/16 1258/23 1258/25 1259/7 1273/5 1281/14 1324/12 1357/18 1375/11 1403/15 1403/16 1428/21 1442/15 1444/10 1445/6 1452/15 1466/23 finding [11] 1147/20 1162/13 1163/4 1178/16 1252/22 1395/21 1400/23 1406/22 1437/20 1438/1 1444/11 finds [11] 1169/3 1180/16 1216/5 1216/11 1280/15 1280/23 1281/5 1281/11 1281/17 1282/1 1433/16 fine [14] 1144/9 1162/4 1181/8 1221/19 1243/13 1243/15 1316/19 1318/14 1362/22 1382/20 1443/8 1444/24 1447/3 1462/22 finish [5] 1148/3 1225/18 1229/10 1253/17 1275/21 finished [4] 1131/23 1147/12 1147/25 1469/16 finishing [1] 1227/22 Finjan [1] 1449/9 firm [2] 1288/17 1289/16 firms [4] 1203/23 1204/6 1204/6 1409/18 first [141] 1134/12 1135/14 1137/6 1139/16 1139/19 1140/8 1142/23 1145/21 1147/7 1151/5 1151/6 1151/15 1151/20 1152/21 1153/25 1155/25 1157/4 1157/13 1158/8 1159/4 1160/6 1160/13 1160/14 1162/3 1162/22 1166/1 1167/16 1169/14 1170/18 1173/10 1177/13 1178/8 1178/8 1178/10 1178/17 1178/18 1178/19 1179/12 1179/15 1179/17 1179/19 1179/23 1181/15 1183/13 1185/19 1186/13 1186/19 1187/25 1189/4 1191/1 1191/21 1195/12 1196/10 1197/19 1202/12 1203/13 1204/12 1204/17 1205/1 1205/8 1205/9 1205/19</p>	<p>1205/23 1217/2 1245/20 1247/6 1247/15 1247/23 1270/15 1271/21 1272/2 1272/3 1272/9 1274/22 1287/23 1292/1 1292/16 1294/12 1295/17 1297/8 1297/9 1304/18 1307/22 1309/13 1310/14 1310/18 1311/24 1314/15 1318/20 1319/6 1319/13 1319/24 1325/8 1328/20 1330/11 1330/25 1339/5 1347/20 1351/11 1354/17 1354/18 1364/16 1371/6 1380/14 1380/18 1383/14 1384/6 1385/1 1385/15 1386/3 1388/6 1388/7 1388/22 1388/23 1393/6 1394/23 1395/11 1395/25 1399/7 1402/23 1420/11 1421/8 1423/5 1424/10 1424/19 1433/7 1434/3 1435/16 1435/24 1436/15 1439/22 1440/2 1441/2 1441/13 1451/3 1451/16 1452/14 1456/22 1457/11 1458/11 1463/9 fit [2] 1173/24 1212/22 five [11] 1132/17 1133/25 1154/15 1168/11 1206/13 1276/18 1277/21 1330/10 1330/12 1330/14 1428/4 five minutes [2] 1132/17 1133/25 five-minute [1] 1428/4 fix [2] 1438/14 1439/8 fixed [1] 1447/22 flagged [2] 1228/9 1365/4 flash [2] 1167/20 1168/3 flatten [1] 1262/8 flavor [2] 1385/3 1386/2 flight [1] 1163/10 floor [1] 1388/3 floppy [1] 1259/16 focus [7] 1139/10 1139/12 1206/7 1344/13 1345/6 1347/6 1409/7 focused [8] 1284/14 1284/22 1298/18 1356/6 1358/22 1359/8 1359/25 1411/24 focusing [3] 1199/20 1341/16 1353/11 folks [5] 1336/6 1403/8 1408/20 1428/1 1469/16 follow [11] 1158/2 1194/6 1200/13 1210/10 1216/10 1354/21 1369/7 1380/13 1425/16 1441/19 1448/24 follow-up [5] 1194/6 1200/13 1369/7 1380/13 1425/16 followed [2] 1210/12 1305/9 following [27] 1183/3 1189/12 1192/17 1196/21 1218/23 1290/21 1307/6 1314/2 1326/21 1334/15 1337/14 1342/21 1348/17 1348/19 1361/20 1367/5 1369/3 1372/1 1372/14 1397/1 1400/3 1411/8 1411/9 1425/1 1446/18 1446/22 1464/16</p>
<p>F F-O-X [1] 1145/19 F.3d [1] 1449/10 F.4th [1] 1443/25 F.4th 1274 [1] 1443/25 face [11] 1221/3 1221/14 1254/20 1255/24 1256/23 1264/16 1264/16 1317/15 1374/23 1379/3 1400/21 faced [1] 1337/7 facility [2] 1419/7 1419/18 fact [31] 1139/3 1244/23 1245/3 1248/11 1257/17 1261/24 1271/16 1273/24 1279/17 1279/19 1315/24 1318/1 1327/20 1335/9 1338/6 1358/6 1364/5 1379/9 1409/18 1414/9 1417/2 1418/5 1419/17 1420/1 1420/11 1432/16 1436/23 1437/11 1437/20 1437/25 1438/1 factor [5] 1174/11 1174/14 1194/21 1293/24 1293/25 factoring [1] 1189/12 factors [6] 1293/20 1293/23 1294/9 1297/6 1305/2 1450/1 facts [1] 1339/8 factual [2] 1233/18 1339/5 factually [2] 1460/9 1460/14 faculty [1] 1148/4 fail [2] 1334/7 1340/11 failed [4] 1334/8 1334/11 1337/25 1429/9 fails [1] 1399/7 failure [1] 1302/19 fair [26] 1246/6 1249/25 1261/5 1286/3 1310/8 1316/13 1316/15 1336/14 1343/9 1350/11 1351/15 1352/11 1353/16 1356/11 1356/13 1356/15 1356/16 1358/16 1363/21 1370/13 1373/12 1374/10 1378/12 1379/12 1392/18 1426/12 fairly [1] 1203/10 fairness [1] 1357/25 fall [2] 1154/7 1324/10 false [2] 1372/8 1460/9 familiar [6] 1151/11 1220/3 1262/11 1295/8 1319/18</p>			

F
follows [5] 1145/22 1194/15
1287/24 1338/17 1383/15
Footnote [1] 1448/18
Footnote 13 [1] 1448/18
force [1] 1437/25
forecasted [1] 1352/1
forego [1] 1338/4
foregoing [1] 1470/4
foreign [2] 1301/12 1301/14
foresee [1] 1143/19
forever [1] 1458/2
forgive [1] 1441/25
form [19] 1226/18 1226/22
1227/1 1227/21 1283/22
1292/3 1363/4 1378/7
1427/20 1435/5 1435/6
1435/12 1436/17 1437/4
1438/2 1439/23 1440/17
1440/20 1466/4
formed [1] 1309/19
former [2] 1431/13 1431/14
forming [3] 1306/16 1386/22
1406/2
forms [1] 1259/17
forth [6] 1141/22 1148/13
1156/23 1167/24 1180/12
1184/8
forthcoming [1] 1339/10
fortunate [2] 1147/2 1148/23
fortunately [1] 1263/10
forward [2] 1143/20 1271/4
foul [1] 1337/10
found [16] 1136/10 1141/11
1152/2 1161/4 1169/12
1169/13 1169/13 1179/5
1208/7 1217/11 1276/7
1305/3 1305/4 1340/24
1344/15 1444/21
foundation [1] 1197/5
founded [1] 1385/9
founders [1] 1147/8
four [22] 1146/11 1146/11
1151/14 1153/9 1202/15
1209/11 1269/16 1276/18
1278/11 1280/18 1280/19
1281/8 1292/6 1294/19
1298/11 1320/7 1320/17
1320/18 1328/4 1330/15
1337/6 1340/19
fourth [3] 1151/24 1152/22
1399/8
Fox [38] 1131/11 1131/13
1131/16 1132/4 1145/14
1145/18 1145/20 1146/9
1149/14 1149/16 1149/19
1193/13 1194/20 1196/2
1201/5 1203/6 1209/8
1219/14 1220/4 1225/18
1229/11 1254/5 1281/2
1283/12 1384/25 1388/8
1389/6 1393/9 1394/20
1399/10 1402/1 1414/19
1414/19 1415/7 1426/14
1428/23 1429/5 1429/9
Fox's [9] 1132/10 1260/19
1387/6 1387/11 1387/14
1389/8 1389/13 1391/1
1397/10
fraction [1] 1348/4

frame [3] 1293/8 1380/20
1440/7
framework [5] 1165/19 1172/4
1396/15 1396/18 1398/6
Francisco [2] 1166/23
1289/12
Frank [1] 1167/25
Frankenstein [1] 1261/3
frankly [3] 1248/10 1338/15
1411/3
Frankston [1] 1147/3
free [3] 1246/4 1252/12
1368/22
frequently [2] 1333/2 1379/10
Friday [2] 1380/16 1380/21
friend [1] 1147/2
friends [1] 1222/3
front [10] 1135/19 1136/1
1142/6 1150/5 1221/21
1236/14 1254/6 1256/16
1295/12 1406/15
full [8] 1155/10 1199/23
1248/20 1271/19 1385/19
1391/12 1459/13 1459/14
full-time [1] 1385/19
fully [2] 1152/20 1235/15
function [2] 1134/19 1360/1
functionalities [2] 1231/2
1356/7
functionality [26] 1160/23
1169/8 1183/22 1184/6
1189/19 1189/21 1189/25
1190/5 1190/6 1201/21
1213/9 1251/19 1253/6
1253/10 1275/17 1380/15
1396/15 1407/4 1407/5
1408/14 1420/6 1420/6
1453/13 1456/9 1467/7
1467/13
fundamentally [1] 1331/14
funding [1] 1147/7
funny [2] 1298/13 1345/19
further [9] 1241/12 1259/3
1259/5 1262/24 1283/5
1382/6 1424/4 1426/18
1436/12
furthermore [1] 1180/24
future [5] 1208/14 1414/5
1426/6 1426/11 1452/23
fuzzy [1] 1168/6

G
gain [1] 1408/2
game [5] 1246/6 1249/25
1373/12 1374/10 1390/12
gap [1] 1436/15
Garfinkel [6] 1137/25 1144/24
1253/19 1290/18 1368/19
1377/3
Gate [1] 1289/11
gave [22] 1154/25 1156/5
1156/8 1170/4 1203/1
1204/25 1205/3 1207/7
1216/14 1252/23 1255/4
1255/17 1261/24 1271/23
1272/10 1274/21 1323/8
1332/3 1391/23 1400/14
1411/5 1411/9
gel [1] 1395/4
general [6] 1159/23 1294/8

1306/19 1316/18 1418/14
1422/15
generally [6] 1207/20 1295/8
1384/9 1405/4 1413/18
1466/15
generated [4] 1330/23
1370/25 1374/16 1376/7
generates [2] 1330/20
1363/20
generation [1] 1418/23
gentleman [1] 1257/21
gentlemen [10] 1145/7
1194/13 1224/18 1224/25
1283/14 1287/10 1336/17
1340/7 1368/15 1427/2
Georgia [8] 1154/21 1154/25
1293/20 1294/3 1294/8
1294/10 1297/6 1414/6
Georgia-Pacific [5] 1293/20
1294/3 1294/8 1294/10
1297/6
germane [2] 1430/24 1431/18
gesture [1] 1211/21
get [105] 1132/4 1133/25
1134/8 1136/17 1137/22
1137/23 1140/10 1142/18
1152/16 1155/15 1157/25
1158/8 1163/19 1163/19
1170/23 1171/9 1171/13
1173/18 1173/25 1176/10
1176/16 1177/15 1179/24
1179/25 1179/25 1184/5
1186/21 1188/21 1193/17
1200/3 1208/19 1215/9
1224/8 1224/14 1226/9
1230/16 1237/9 1238/5
1238/19 1239/7 1240/23
1245/11 1259/22 1266/19
1272/25 1273/6 1274/18
1277/9 1279/2 1282/16
1284/7 1285/18 1291/25
1299/17 1300/14 1300/18
1300/21 1300/23 1302/3
1319/25 1322/11 1322/17
1327/12 1327/19 1330/1
1330/10 1330/14 1340/4
1340/21 1345/15 1346/2
1346/19 1353/9 1360/7
1363/7 1364/12 1368/9
1372/22 1373/17 1377/2
1378/15 1379/5 1384/8
1384/13 1386/9 1389/2
1412/23 1412/25 1413/19
1433/20 1441/8 1441/10
1441/10 1442/22 1450/2
1452/3 1453/5 1455/18
1456/2 1464/10 1468/15
1468/17 1468/18 1469/8
1469/8
gets [7] 1253/3 1330/8
1369/18 1378/16 1379/1
1391/17 1398/11
getting [13] 1135/21 1135/22
1150/19 1168/23 1180/7
1180/13 1208/20 1208/24
1235/13 1236/14 1258/13
1302/4 1347/9
give [32] 1133/10 1136/12
1139/22 1141/14 1151/12
1155/4 1204/1 1204/3

1207/11 1209/1 1210/9
1230/22 1258/20 1264/3
1264/11 1266/20 1270/10
1282/9 1289/3 1305/14
1316/7 1368/16 1372/8
1384/10 1385/3 1386/1
1388/19 1389/19 1397/7
1403/10 1412/25 1427/4
given [30] 1161/23 1163/4
1164/22 1169/6 1170/19
1171/16 1172/8 1172/12
1179/19 1193/3 1195/15
1197/6 1198/7 1212/8
1224/11 1224/12 1227/15
1229/10 1230/10 1284/5
1305/7 1316/15 1325/7
1386/12 1387/18 1440/10
1440/13 1442/9 1457/17
1462/8
gives [12] 1168/4 1168/11
1168/12 1179/3 1180/15
1185/17 1187/18 1187/21
1274/9 1274/13 1299/19
1304/24
giving [3] 1148/23 1167/25
1250/20
glasses [1] 1430/11
global [6] 1370/5 1371/4
1374/2 1374/4 1374/5 1374/6
Gmail [25] 1244/12 1246/25
1248/6 1248/14 1344/13
1344/14 1345/6 1345/10
1345/13 1347/24 1363/17
1367/12 1367/22 1367/24
1368/1 1369/6 1369/12
1370/4 1371/2 1376/6
1377/25 1378/4 1454/21
1454/22 1454/25
go [138] 1132/6 1132/9
1132/25 1134/10 1153/18
1154/21 1155/21 1156/6
1156/7 1158/20 1160/16
1162/3 1162/9 1162/16
1165/14 1166/9 1168/25
1169/6 1170/1 1170/2
1170/23 1171/16 1172/16
1173/12 1175/15 1176/2
1176/8 1176/19 1177/2
1177/5 1177/8 1177/10
1177/11 1177/17 1179/18
1182/8 1183/19 1184/5
1185/2 1185/5 1186/1
1187/13 1188/21 1189/14
1190/2 1191/13 1192/19
1202/21 1205/2 1206/13
1213/16 1214/4 1217/10
1217/11 1224/14 1225/6
1225/12 1225/21 1225/24
1230/2 1242/15 1242/24
1243/3 1243/5 1248/16
1250/2 1250/14 1255/1
1259/5 1262/18 1262/22
1262/23 1267/20 1273/12
1274/2 1275/22 1291/15
1291/24 1298/22 1308/23
1310/1 1320/19 1321/7
1321/20 1335/23 1340/17
1341/23 1345/10 1346/19
1347/20 1350/3 1351/13
1355/5 1355/6 1356/23

G
go... [43] 1357/17 1357/25
1358/6 1358/7 1359/17
1359/18 1360/5 1369/1
1377/16 1379/17 1384/17
1386/13 1388/10 1389/2
1389/4 1395/15 1402/12
1402/21 1402/22 1404/25
1405/8 1406/15 1427/3
1427/10 1429/18 1434/22
1438/4 1441/7 1441/9
1442/14 1449/24 1455/14
1460/19 1460/23 1462/1
1462/6 1463/9 1464/7
1464/11 1466/1 1467/18
1468/5 1469/14
GODFREY [1] 1130/3
goes [13] 1137/1 1158/5
1168/25 1171/19 1176/24
1188/12 1202/18 1208/16
1220/14 1234/20 1326/2
1359/24 1371/15
going [158] 1131/16 1132/25
1133/25 1134/8 1140/4
1140/10 1143/6 1144/2
1144/16 1144/16 1144/17
1144/18 1144/23 1145/10
1147/13 1154/3 1159/2
1159/7 1159/11 1162/13
1174/11 1179/24 1180/8
1183/23 1193/20 1194/2
1194/2 1194/14 1200/10
1218/25 1219/4 1223/21
1224/17 1225/16 1225/23
1227/9 1227/18 1228/14
1228/20 1229/1 1229/6
1230/6 1230/11 1230/14
1230/23 1231/15 1233/4
1233/13 1233/22 1234/5
1234/8 1235/6 1235/7 1237/5
1237/6 1238/4 1240/14
1240/21 1240/22 1241/1
1242/11 1242/13 1242/23
1242/24 1243/11 1245/11
1246/9 1246/10 1247/2
1247/5 1247/9 1247/10
1247/24 1248/25 1249/20
1251/16 1252/12 1255/16
1257/24 1265/21 1277/20
1278/13 1283/20 1291/24
1301/25 1307/1 1315/16
1316/10 1316/21 1316/23
1316/25 1325/15 1329/9
1335/15 1339/6 1339/24
1350/2 1350/12 1352/10
1352/24 1354/14 1354/16
1364/13 1364/15 1366/15
1368/12 1368/16 1368/23
1373/8 1375/15 1379/17
1384/7 1384/8 1384/10
1385/23 1385/24 1394/7
1397/14 1400/4 1400/6
1403/6 1404/11 1412/24
1427/8 1427/9 1431/10
1433/3 1433/18 1435/7
1436/5 1438/4 1439/11
1439/13 1440/8 1440/16
1441/8 1441/16 1441/17
1441/20 1442/5 1442/14
1442/22 1443/2 1443/9

1443/10 1443/17 1444/9
1444/10 1444/15 1445/1
1445/5 1445/18 1446/19
1448/8 1450/13 1457/4
1458/20 1468/5
Golden [1] 1289/11
gone [9] 1158/23 1159/3
1167/4 1171/1 1184/18
1255/21 1323/10 1340/14
1374/10
good [38] 1131/7 1132/4
1145/7 1146/6 1146/7 1146/9
1147/2 1162/25 1163/2
1176/9 1176/22 1189/1
1201/5 1201/6 1202/7 1230/8
1260/15 1287/2 1287/13
1288/5 1288/6 1291/22
1294/2 1309/18 1313/3
1341/12 1347/23 1350/12
1353/13 1383/21 1383/23
1390/10 1392/21 1393/18
1402/6 1410/4 1410/5 1443/6
GOOG [1] 1309/3
GOOG-something [1] 1309/3
google [233] 1129/7 1134/21
1138/24 1139/7 1145/12
1145/13 1162/2 1196/11
1197/10 1198/9 1200/13
1201/17 1202/13 1202/17
1202/18 1202/22 1203/16
1203/19 1203/21 1203/24
1203/25 1204/2 1204/4
1204/5 1204/6 1204/7 1204/8
1204/10 1204/13 1206/4
1206/7 1206/21 1206/24
1207/2 1207/5 1207/8
1207/10 1207/12 1207/15
1208/7 1208/11 1208/14
1208/24 1213/18 1214/25
1222/21 1227/18 1228/9
1230/23 1238/2 1243/21
1250/21 1253/3 1253/12
1279/12 1284/2 1285/21
1286/8 1286/9 1287/12
1287/14 1290/12 1291/8
1291/12 1292/11 1293/1
1295/1 1295/2 1295/4
1295/11 1295/19 1296/12
1299/4 1299/5 1299/5
1300/24 1300/24 1301/15
1302/4 1303/6 1303/11
1303/13 1303/14 1303/18
1304/17 1304/18 1305/3
1305/19 1305/22 1308/1
1308/4 1309/4 1311/13
1311/17 1312/3 1313/6
1315/22 1318/25 1322/2
1322/20 1330/21 1330/23
1332/4 1333/6 1333/8
1333/10 1333/13 1333/14
1333/23 1337/7 1338/8
1338/21 1338/24 1339/1
1340/1 1342/25 1349/3
1352/15 1356/4 1356/8
1356/11 1356/23 1357/7
1357/8 1357/9 1357/14
1357/18 1357/20 1358/1
1360/13 1362/5 1363/3
1363/12 1363/20 1363/24
1366/12 1366/17 1366/24

1366/24 1367/7 1367/9
1367/16 1367/21 1367/22
1369/12 1369/24 1370/3
1370/3 1370/4 1370/4 1370/6
1370/24 1371/1 1371/2
1371/3 1371/10 1371/13
1374/9 1375/1 1376/4 1376/5
1376/6 1376/6 1376/7
1376/14 1377/14 1377/18
1377/21 1378/2 1378/14
1378/16 1378/24 1378/25
1379/6 1379/9 1379/11
1379/13 1379/25 1380/5
1380/6 1382/12 1382/14
1398/16 1423/9 1423/13
1431/25 1435/19 1436/24
1437/21 1438/10 1438/25
1440/3 1440/11 1440/21
1441/20 1443/13 1443/15
1443/18 1444/13 1445/2
1445/3 1446/19 1446/21
1448/5 1448/17 1449/4
1450/15 1451/3 1451/10
1451/17 1451/19 1457/9
1457/9 1458/15 1458/16
1458/25 1459/5 1462/10
1462/18 1463/13 1463/15
1463/15 1463/16 1463/18
1463/22 1463/22 1463/23
1464/20 1466/12 1467/5
1467/10 1467/20 1468/4
google's [53] 1152/24 1153/2
1175/8 1201/21 1202/13
1213/22 1214/5 1214/8
1214/11 1214/13 1214/18
1214/22 1215/6 1215/10
1215/24 1216/6 1216/11
1216/12 1216/19 1224/12
1230/24 1231/10 1231/12
1254/10 1276/12 1286/16
1293/5 1300/9 1300/10
1300/18 1300/20 1300/22
1355/23 1356/9 1362/18
1369/11 1369/15 1369/18
1377/16 1435/16 1436/14
1436/19 1438/8 1439/25
1443/1 1447/4 1448/15
1448/21 1449/25 1450/4
1461/1 1461/17 1468/10
got [61] 1132/2 1132/14
1132/15 1132/17 1138/4
1144/2 1144/15 1201/8
1204/9 1222/22 1226/14
1228/16 1230/5 1240/24
1245/22 1248/1 1254/9
1256/21 1268/1 1284/12
1286/14 1286/16 1301/10
1301/11 1301/13 1301/15
1302/11 1303/1 1303/8
1303/11 1312/21 1321/9
1322/13 1332/14 1341/23
1343/4 1347/1 1354/21
1355/12 1359/19 1360/13
1361/4 1363/3 1363/8
1363/23 1364/21 1365/24
1366/11 1377/14 1378/23
1385/8 1386/1 1394/22
1409/15 1419/10 1424/16
1429/20 1436/6 1443/1
1451/2 1460/8

grab [1] 1193/20
grades [1] 1269/21
grading [2] 1148/5 1155/3
graduate [4] 1258/5 1258/9
1258/10 1384/18
graduated [1] 1289/6
grandchildren [1] 1146/12
grandfather [1] 1147/6
grant [4] 1198/11 1432/5
1464/23 1464/24
granted [1] 1456/16
graphic [1] 1291/4
graphically [1] 1308/13
graphing [1] 1248/2
great [11] 1136/18 1136/18
1200/19 1244/4 1308/15
1318/18 1397/16 1397/17
1440/23 1445/16 1447/21
greater [1] 1143/2
green [7] 1153/21 1157/17
1157/17 1157/22 1171/11
1188/15 1300/14
Gregory [6] 1157/10 1157/12
1158/8 1178/17 1179/20
1180/12
Gregory's [1] 1158/2
ground [1] 1394/19
grounds [2] 1391/2 1431/19
group [3] 1385/19 1395/3
1395/5
guess [14] 1207/21 1221/10
1224/3 1228/18 1229/6
1239/24 1244/16 1254/21
1263/23 1313/3 1345/19
1348/6 1367/8 1442/7
guide [1] 1182/13
gutter [2] 1282/6 1282/14
guy [1] 1436/7
guys [2] 1402/8 1403/16

H

had [116] 1134/22 1138/13
1140/23 1142/15 1142/19
1142/20 1145/9 1147/4
1147/9 1147/14 1147/18
1154/10 1155/4 1155/5
1155/16 1160/17 1167/4
1184/14 1185/3 1195/12
1200/4 1205/19 1207/8
1223/20 1223/24 1226/13
1232/13 1232/20 1233/15
1236/1 1237/22 1238/7
1238/17 1238/25 1239/2
1239/4 1239/4 1239/9
1239/10 1242/9 1242/12
1242/21 1242/24 1245/18
1248/20 1249/21 1253/5
1255/21 1255/22 1257/1
1259/3 1268/20 1268/24
1269/6 1269/10 1270/2
1275/9 1275/16 1276/15
1276/21 1278/11 1283/25
1284/2 1284/6 1284/10
1285/1 1295/2 1302/24
1303/10 1311/25 1312/20
1314/8 1315/19 1316/16
1319/19 1319/25 1320/12
1320/17 1324/6 1324/11
1324/19 1324/23 1327/9
1334/9 1337/7 1339/16

H
had... [30] 1347/24 1355/13
1356/20 1357/1 1358/1
1364/8 1365/1 1367/7 1369/6
1372/25 1374/21 1375/20
1377/11 1377/24 1385/22
1386/8 1390/9 1402/1
1410/20 1410/20 1428/15
1435/10 1435/10 1438/5
1444/7 1447/22 1451/9
1451/24 1463/19 1463/23
hadn't [1] 1358/21
half [12] 1218/14 1229/14
1291/11 1300/4 1300/5
1328/13 1328/14 1329/12
1329/13 1331/11 1446/21
1463/17
halfway [1] 1204/12
HALL [1] 1129/19
hand [26] 1133/21 1153/18
1156/2 1156/12 1156/17
1158/23 1158/25 1159/11
1159/16 1160/3 1166/3
1168/7 1169/11 1170/17
1175/1 1182/14 1231/25
1269/9 1269/11 1269/15
1273/1 1273/8 1273/9 1319/7
1341/7 1456/25
handed [3] 1133/5 1136/19
1374/9
handling [2] 1171/23 1272/9
hang [5] 1343/25 1344/7
1344/16 1353/8 1365/16
hanging [1] 1201/7
happen [2] 1242/5 1441/17
happened [5] 1150/15
1197/25 1248/4 1249/18
1329/19
happening [2] 1322/16
1423/23
happens [4] 1150/11 1156/16
1174/4 1282/23
happy [5] 1213/1 1400/10
1413/2 1425/18 1445/10
hard [12] 1163/17 1173/18
1259/15 1259/23 1262/7
1262/9 1273/7 1299/25
1303/21 1321/4 1401/6
1423/4
harder [1] 1168/22
hardware [5] 1278/16 1385/24
1400/11 1453/5 1467/9
harm [1] 1337/10
harmful [1] 1373/6
Harvard [1] 1147/14
has [96] 1136/9 1136/22
1138/17 1138/23 1140/4
1142/11 1142/16 1143/9
1149/3 1149/4 1149/5
1168/16 1171/10 1175/2
1177/22 1181/8 1185/7
1185/8 1186/9 1187/4 1197/5
1202/22 1205/1 1210/8
1222/12 1231/11 1231/17
1233/5 1234/22 1234/23
1236/4 1236/18 1237/11
1237/17 1239/19 1242/16
1245/22 1247/4 1247/9
1247/24 1248/12 1248/18
1252/2 1253/4 1256/4

1256/20 1258/7 1260/14
1262/4 1262/10 1272/8
1277/3 1290/22 1301/24
1303/1 1304/2 1314/15
1315/20 1318/8 1321/16
1322/12 1325/22 1330/12
1330/15 1332/13 1333/14
1334/20 1335/2 1339/10
1342/14 1342/22 1344/24
1352/10 1357/8 1357/9
1367/11 1367/15 1375/25
1388/14 1390/11 1401/23
1415/1 1434/16 1437/21
1440/11 1441/19 1448/20
1449/7 1451/20 1453/8
1453/14 1454/20 1454/21
1455/15 1465/2 1469/11
hasn't [3] 1387/18 1390/23
1390/23
HASTINGS [1] 1130/11
have [370]
haven't [4] 1277/17 1401/20
1424/18 1462/22
having [18] 1134/11 1145/20
1163/1 1173/14 1176/18
1187/18 1211/8 1212/1
1241/13 1285/1 1287/22
1334/2 1338/4 1338/5
1383/13 1395/15 1395/21
1451/6
he [350]
he's [50] 1139/19 1140/5
1140/10 1140/22 1142/15
1142/15 1142/19 1143/6
1143/16 1143/24 1144/16
1144/16 1144/17 1193/3
1197/3 1197/4 1197/8 1197/9
1232/25 1233/13 1240/15
1245/11 1249/20 1258/13
1258/14 1272/8 1272/17
1272/17 1272/22 1308/4
1316/9 1316/14 1316/24
1320/4 1321/17 1323/3
1323/4 1330/21 1330/23
1330/24 1369/14 1369/17
1370/8 1373/8 1374/7
1386/18 1387/16 1394/22
1397/5 1397/6
headed [1] 1401/6
health [1] 1208/20
hear [37] 1131/16 1139/7
1160/17 1185/20 1191/22
1213/1 1225/12 1226/10
1227/17 1228/19 1234/12
1235/5 1265/13 1265/21
1268/15 1276/13 1277/9
1277/12 1279/9 1279/13
1280/8 1287/3 1315/23
1357/15 1426/14 1427/4
1427/11 1428/15 1435/9
1436/20 1439/21 1440/25
1446/1 1449/3 1450/12
1452/14 1457/23
heard [82] 1140/1 1150/17
1150/21 1153/1 1154/6
1154/16 1154/20 1154/23
1155/17 1155/25 1158/13
1160/7 1160/25 1162/12
1163/24 1166/19 1172/11
1174/19 1175/10 1175/20

1176/1 1177/10 1178/12
1185/15 1185/23 1186/4
1195/7 1195/11 1195/22
1200/6 1214/7 1214/10
1214/15 1214/24 1215/4
1215/11 1215/13 1215/15
1215/15 1215/21 1215/22
1227/5 1228/5 1228/20
1235/7 1243/25 1246/1
1246/2 1257/21 1270/6
1276/16 1277/7 1279/4
1280/7 1283/4 1284/6 1292/9
1294/24 1310/21 1315/20
1322/2 1327/2 1333/20
1349/9 1357/11 1385/16
1387/3 1389/23 1391/9
1391/20 1393/25 1398/3
1407/9 1423/12 1427/21
1437/2 1437/4 1437/7
1437/12 1437/14 1448/14
1461/1
hearing [5] 1188/23 1213/7
1227/17 1269/13 1442/21
Hedloy [19] 1150/18 1164/1
1164/5 1165/25 1170/19
1172/12 1173/9 1195/21
1324/24 1324/24 1325/9
1325/9 1325/14 1325/16
1417/25 1418/6 1418/25
1432/12 1458/15
Hedloy's [1] 1432/23
held [19] 1192/17 1196/21
1198/2 1217/24 1218/17
1218/23 1290/21 1307/6
1314/2 1326/21 1334/15
1337/14 1342/21 1361/20
1367/5 1372/1 1372/14
1397/1 1425/1
help [6] 1169/17 1208/23
1285/10 1360/21 1412/25
1436/5
helped [1] 1148/13
helpful [3] 1199/18 1204/14
1284/20
helps [3] 1176/25 1244/22
1399/8
hemorrhage [1] 1147/8
her [1] 1147/15
here [192] 1134/15 1137/23
1138/1 1138/21 1141/21
1142/2 1144/3 1144/16
1144/25 1150/17 1151/19
1155/8 1155/17 1156/15
1156/20 1157/1 1158/25
1159/11 1160/24 1161/19
1161/21 1161/24 1162/4
1162/17 1162/20 1162/22
1163/9 1164/4 1164/16
1164/17 1164/23 1165/25
1169/2 1170/8 1171/11
1171/19 1172/6 1172/7
1175/11 1176/24 1179/14
1184/2 1185/6 1185/20
1185/23 1186/4 1187/3
1187/14 1187/25 1189/15
1191/10 1192/1 1192/10
1195/6 1195/18 1196/7
1199/16 1201/11 1201/14
1202/9 1202/10 1211/4
1211/5 1211/19 1212/11

1213/4 1213/17 1213/25
1214/5 1214/18 1215/22
1217/6 1218/1 1220/8
1220/10 1220/13 1222/17
1222/22 1230/11 1230/23
1235/9 1236/5 1237/25
1240/13 1240/25 1241/20
1245/22 1248/2 1250/12
1250/12 1251/24 1261/3
1269/14 1283/16 1289/6
1291/4 1292/3 1292/15
1292/17 1292/24 1293/3
1293/7 1293/13 1293/17
1293/24 1294/9 1296/19
1297/8 1298/20 1300/2
1300/3 1301/4 1301/5 1301/6
1304/4 1305/10 1305/12
1305/18 1307/22 1308/9
1308/24 1311/3 1315/2
1316/7 1317/23 1318/21
1319/7 1319/18 1320/4
1321/8 1321/23 1323/14
1324/1 1327/1 1327/15
1328/1 1330/6 1332/1 1335/9
1337/1 1348/12 1348/14
1348/25 1349/14 1354/25
1355/10 1357/13 1358/23
1359/9 1364/2 1367/25
1371/7 1372/4 1381/5
1383/24 1383/25 1388/10
1388/16 1390/12 1390/15
1391/8 1392/25 1396/11
1396/11 1396/13 1398/8
1399/5 1399/6 1403/19
1415/13 1417/9 1433/10
1441/9 1441/14 1441/17
1446/21 1448/4 1448/17
1451/2 1452/11 1460/1
1460/16 1461/12 1461/13
1461/14 1462/2 1462/3
1462/13 1465/7 1466/12
1466/23 1467/8
Here's [6] 1200/10 1237/9
1242/11 1324/2 1360/16
1443/10
hereby [2] 1458/1 1470/4
hey [5] 1208/2 1222/21
1258/25 1273/24 1280/1
high [6] 1151/12 1289/7
1290/25 1322/1 1331/2
1332/14
higher [1] 1328/10
highlight [8] 1162/20 1172/7
1178/18 1242/16 1243/5
1307/10 1308/14 1407/13
highlighted [20] 1157/16
1157/18 1161/22 1162/21
1165/17 1167/19 1168/21
1170/8 1172/2 1179/5
1182/17 1186/13 1186/14
1186/17 1186/19 1237/1
1237/2 1241/21 1420/22
1421/8
highlighting [10] 1157/10
1204/24 1236/21 1237/1
1237/19 1240/24 1242/17
1242/25 1243/3 1243/12
highlights [2] 1165/21 1170/9
highly [1] 1272/17
him [36] 1138/22 1138/25

H
him... [34] 1140/24 1147/24
1154/24 1160/18 1200/18
1229/2 1248/19 1252/13
1255/7 1279/12 1280/11
1314/12 1315/16 1315/24
1335/3 1336/3 1339/1
1339/13 1358/8 1362/1
1362/8 1367/14 1369/10
1370/13 1370/22 1371/18
1372/5 1372/20 1373/14
1373/17 1375/13 1393/19
1410/24 1432/14
himself [2] 1232/23 1314/10
hindsight [2] 1390/12 1390/22
hired [4] 1208/24 1279/16
1279/17 1385/18
his [195] 1132/5 1134/16
1134/22 1135/1 1135/6
1135/16 1136/2 1136/3
1136/8 1136/17 1138/9
1138/16 1138/17 1138/23
1139/17 1139/18 1140/6
1140/6 1140/19 1142/6
1142/14 1143/15 1143/18
1144/12 1144/17 1144/18
1144/19 1144/21 1147/6
1156/13 1157/24 1158/9
1158/9 1158/9 1161/8 1164/1
1166/19 1166/20 1166/21
1168/8 1168/9 1168/17
1169/13 1169/13 1169/14
1193/13 1193/15 1193/20
1193/21 1225/19 1226/2
1231/13 1232/16 1232/19
1233/3 1233/15 1234/18
1236/8 1236/21 1238/9
1238/9 1238/22 1238/23
1242/6 1244/25 1246/25
1247/1 1247/8 1247/15
1248/12 1248/21 1249/12
1249/18 1249/22 1250/16
1250/19 1251/10 1251/12
1251/17 1252/23 1253/5
1253/7 1253/14 1256/6
1257/23 1258/9 1258/10
1258/10 1258/11 1258/14
1258/16 1262/1 1267/1
1270/20 1271/24 1276/15
1276/16 1276/22 1277/5
1277/7 1277/11 1278/7
1279/25 1286/20 1291/14
1291/22 1302/17 1302/23
1302/25 1309/9 1310/10
1310/13 1310/19 1311/1
1311/3 1311/8 1311/12
1311/18 1312/23 1313/11
1314/5 1314/11 1314/13
1314/18 1314/20 1314/25
1315/4 1315/6 1315/6 1316/8
1316/14 1317/1 1318/5
1319/25 1320/6 1321/25
1323/18 1323/19 1323/20
1324/6 1324/14 1324/16
1324/17 1326/1 1327/23
1328/6 1328/10 1328/12
1328/12 1328/14 1330/8
1334/19 1335/6 1338/3
1338/11 1339/14 1339/16
1339/23 1348/18 1348/19

1350/2 1350/14 1350/18
1350/19 1351/20 1354/8
1354/18 1357/11 1358/7
1361/16 1362/2 1364/7
1370/10 1373/14 1381/4
1382/2 1387/5 1387/14
1387/15 1389/6 1389/10
1392/10 1410/24 1414/24
1415/25 1417/18 1417/25
1418/2 1425/3 1426/14
1428/25 1432/17 1437/8
1444/8 1465/14
history [34] 1150/3 1150/4
1163/2 1163/3 1163/4 1164/2
1164/14 1164/15 1198/3
1217/24 1218/2 1218/4
1218/5 1218/8 1218/10
1218/18 1219/2 1219/5
1219/7 1219/15 1219/18
1219/18 1220/20 1220/23
1221/8 1221/13 1221/15
1221/19 1222/24 1224/9
1254/6 1254/9 1285/1
1386/25
hit [2] 1187/2 1323/10
hmm [1] 1353/23
hold [3] 1165/5 1259/21
1267/9
home [3] 1183/1 1230/17
1413/1
homes [1] 1386/12
honest [2] 1207/11 1209/1
honestly [2] 1359/10 1360/3
Honor [214] 1131/14 1131/17
1132/1 1132/7 1132/13
1132/19 1133/14 1134/1
1134/14 1135/11 1136/7
1136/13 1136/15 1136/16
1136/24 1137/10 1137/24
1138/5 1139/9 1139/21
1142/10 1144/1 1144/5
1145/4 1145/13 1146/2
1149/13 1149/15 1164/24
1192/13 1192/24 1194/9
1196/17 1196/23 1198/8
1199/9 1199/15 1199/18
1200/8 1200/18 1200/23
1201/1 1204/24 1205/5
1205/12 1208/16 1225/8
1226/11 1228/5 1231/3
1231/23 1233/25 1234/15
1235/24 1236/15 1238/1
1238/23 1239/18 1240/7
1241/4 1241/5 1241/18
1243/14 1243/15 1243/19
1244/8 1245/15 1246/8
1247/3 1247/7 1247/16
1247/19 1249/2 1249/8
1250/1 1250/10 1251/2
1251/6 1251/22 1252/6
1252/15 1253/21 1254/3
1283/5 1283/9 1284/22
1285/13 1286/11 1286/12
1286/18 1287/1 1287/5
1287/9 1287/13 1289/22
1290/16 1290/23 1296/1
1306/2 1306/23 1307/13
1313/23 1314/4 1316/1
1317/6 1317/7 1326/16
1331/15 1334/12 1335/7

1335/13 1337/11 1338/23
1339/4 1341/6 1342/16
1344/19 1361/11 1361/24
1362/17 1366/5 1366/25
1367/7 1367/19 1370/15
1372/3 1372/23 1373/21
1375/2 1375/4 1375/18
1377/4 1377/6 1378/18
1382/10 1382/14 1382/16
1382/22 1383/18 1386/15
1386/17 1386/19 1386/20
1396/23 1397/4 1397/24
1399/1 1406/4 1406/5 1406/7
1409/23 1410/1 1425/21
1425/22 1426/18 1426/23
1427/1 1428/7 1428/18
1429/13 1429/19 1429/24
1432/6 1433/7 1433/23
1434/3 1434/22 1435/2
1435/9 1435/11 1436/22
1438/9 1438/20 1439/16
1440/22 1441/4 1441/15
1441/25 1443/7 1443/19
1445/9 1446/2 1446/8
1446/15 1446/16 1447/3
1447/19 1447/20 1447/23
1447/25 1448/10 1448/13
1448/16 1449/2 1449/8
1449/14 1450/3 1450/7
1450/18 1450/22 1450/23
1452/13 1452/15 1452/17
1453/4 1453/16 1456/13
1457/21 1460/3 1460/15
1463/6 1467/3 1467/24
1468/10
Honor's [4] 1204/15 1232/2
1242/20 1373/5
HONORABLE [1] 1129/19
hood [1] 1159/2
hook [2] 1459/16 1459/17
hope [3] 1145/9 1277/20
1426/6
hoped [1] 1408/10
hoping [3] 1308/13 1426/8
1452/3
hour [12] 1131/17 1146/15
1154/17 1209/5 1229/14
1229/17 1279/13 1285/21
1285/21 1286/14 1286/15
1410/13
hour-long [1] 1146/15
hourly [5] 1149/9 1207/13
1207/16 1209/2 1410/11
hours [4] 1229/15 1229/17
1286/16 1427/8
house [2] 1260/7 1301/25
how [115] 1131/16 1137/5
1154/12 1155/7 1166/17
1167/6 1170/20 1171/12
1175/5 1177/6 1181/25
1186/6 1186/8 1188/18
1188/18 1188/18 1191/14
1201/5 1201/6 1201/14
1211/8 1218/11 1219/21
1225/23 1226/2 1226/9
1227/9 1227/10 1228/23
1228/25 1229/21 1231/5
1232/15 1234/5 1235/12
1235/15 1238/5 1240/24
1244/13 1246/5 1261/15

1269/20 1270/8 1271/24
1274/19 1277/5 1277/18
1285/2 1286/23 1294/8
1295/5 1296/23 1297/1
1297/10 1298/9 1298/19
1298/24 1299/11 1299/22
1301/1 1303/5 1303/20
1305/7 1313/15 1317/22
1322/24 1323/22 1323/24
1325/16 1329/17 1330/8
1332/18 1332/22 1341/22
1343/4 1346/2 1346/9
1346/12 1347/5 1348/7
1354/4 1360/6 1363/12
1363/15 1363/20 1368/9
1374/8 1374/17 1377/18
1378/1 1384/23 1387/16
1388/4 1388/14 1391/10
1397/7 1397/9 1397/12
1398/2 1409/8 1411/20
1412/19 1413/7 1413/23
1417/24 1418/3 1422/4
1428/10 1436/5 1436/11
1437/11 1437/23 1438/14
1440/8 1451/2
How's [1] 1242/8
HTML [1] 1177/19
huge [1] 1330/16
huh [1] 1313/3
human [2] 1156/3 1258/2
humans [1] 1299/24
hundreds [4] 1148/14 1329/2
1332/17 1465/15
hunted [1] 1136/10
hyperlinks [1] 1414/11
hypertext [2] 1222/2 1262/11
hypothetical [15] 1141/12
1144/7 1251/13 1252/9
1294/1 1294/3 1304/16
1305/15 1333/22 1333/22
1334/3 1337/23 1338/24
1339/2 1339/7
I
I'd [18] 1149/13 1193/7
1213/1 1225/11 1228/24
1229/25 1235/24 1266/10
1343/4 1344/21 1351/4
1352/25 1365/14 1386/15
1393/19 1403/24 1446/9
1451/24
I'll [15] 1161/1 1164/4
1165/17 1167/15 1248/25
1291/6 1310/12 1335/14
1353/9 1389/4 1410/18
1410/24 1443/2 1449/23
1469/8
I'm [168] 1141/17 1141/19
1148/6 1149/9 1154/3 1155/3
1174/16 1176/9 1176/16
1176/21 1193/19 1194/1
1194/2 1194/14 1200/10
1201/7 1202/8 1204/11
1204/12 1204/17 1204/23
1205/22 1207/14 1208/4
1208/9 1208/19 1208/20
1208/25 1210/15 1212/5
1213/7 1213/25 1214/2
1215/11 1215/21 1219/6

I'm... [132] 1219/20 1220/20
1221/5 1221/15 1225/15
1229/6 1229/23 1230/14
1239/24 1239/25 1240/21
1240/22 1242/19 1243/22
1245/21 1247/2 1247/17
1247/18 1252/24 1256/9
1259/19 1260/4 1261/23
1261/24 1264/8 1264/19
1265/17 1268/4 1268/10
1271/14 1279/2 1279/5
1281/2 1282/21 1283/15
1283/19 1285/19 1285/20
1288/10 1288/17 1289/14
1298/17 1304/23 1304/23
1305/11 1305/12 1305/13
1305/14 1308/13 1312/25
1318/15 1322/16 1322/18
1324/7 1331/12 1333/12
1335/15 1342/16 1343/20
1343/21 1343/25 1344/7
1344/8 1345/25 1345/25
1346/8 1346/23 1347/23
1348/23 1349/22 1349/25
1350/2 1353/11 1354/21
1355/7 1357/23 1359/17
1364/12 1365/21 1368/23
1371/23 1372/12 1374/22
1378/20 1379/17 1381/20
1383/25 1384/15 1387/15
1389/10 1389/21 1392/6
1395/21 1399/6 1400/20
1400/20 1400/21 1404/20
1407/15 1412/22 1412/22
1412/23 1413/2 1413/2
1414/23 1415/7 1417/9
1417/11 1421/11 1426/8
1426/8 1426/9 1427/9 1433/2
1433/18 1433/24 1439/10
1441/12 1441/16 1441/20
1442/21 1444/10 1444/25
1446/20 1447/13 1448/3
1448/4 1449/1 1452/10
1452/11 1454/25 1460/23
I've [68] 1148/8 1148/12
1148/21 1148/22 1148/25
1153/15 1153/16 1153/19
1155/4 1155/4 1155/5 1155/7
1162/21 1166/4 1170/16
1176/5 1186/12 1186/19
1187/7 1191/18 1195/11
1201/8 1202/15 1202/15
1202/24 1206/6 1206/19
1212/8 1217/7 1220/5
1220/23 1220/24 1221/7
1222/22 1246/2 1249/6
1256/19 1256/21 1260/9
1262/24 1267/21 1267/21
1269/19 1269/19 1269/19
1273/5 1273/15 1288/20
1288/20 1288/25 1300/15
1300/15 1300/16 1300/19
1301/6 1301/6 1305/24
1326/7 1331/1 1331/10
1361/4 1365/24 1385/6
1386/3 1392/16 1402/11
1423/12 1438/3
IAD [2] 1275/23 1276/1
idea [18] 1202/6 1208/25

1230/9 1233/13 1245/11
1249/10 1249/16 1259/9
1294/2 1294/4 1299/19
1345/21 1390/10 1390/16
1461/21 1462/12 1463/4
1466/10
ideas [2] 1189/19 1238/20
identical [4] 1351/21 1354/9
1354/14 1354/16
identified [18] 1151/22
1151/24 1151/25 1153/19
1162/17 1191/18 1196/7
1256/23 1310/9 1311/4
1315/20 1324/19 1333/16
1334/22 1336/7 1336/8
1340/15 1414/24
identify [2] 1335/1 1388/24
identifying [1] 1401/25
IEEE [1] 1149/2
ignored [2] 1210/13 1467/4
ignoring [2] 1374/18 1392/4
illustrate [1] 1155/22
image [3] 1173/13 1174/18
1175/16
imagine [3] 1228/1 1228/2
1390/22
impact [18] 1170/21 1191/19
1203/16 1205/19 1205/23
1205/24 1206/17 1289/19
1311/11 1317/23 1325/21
1327/22 1329/10 1329/23
1330/16 1332/7 1381/17
1381/25
impacted [2] 1191/15 1378/2
impaneled [1] 1380/22
implement [3] 1159/8 1408/9
1419/19
implemented [5] 1171/23
1337/6 1419/6 1419/14
1422/17
implication [2] 1338/12 1339/9
implied [1] 1434/19
important [19] 1139/18 1152/5
1152/13 1152/22 1184/18
1184/21 1192/3 1192/11
1237/14 1259/24 1301/19
1327/15 1409/12 1444/1
1444/18 1456/20 1458/6
1463/6 1463/7
importantly [1] 1390/12
impose [1] 1412/10
impossible [2] 1257/17
1438/14
improperly [1] 1451/7
improved [1] 1154/8
inability [1] 1198/18
inappropriate [2] 1328/18
1367/20
inch [1] 1410/6
inches [1] 1218/14
inclined [1] 1446/9
include [21] 1181/15 1185/19
1219/7 1221/13 1262/6
1311/16 1327/4 1327/5
1328/19 1342/6 1407/4
1408/13 1435/11 1438/5
1438/10 1439/5 1445/24
1446/11 1450/13 1455/19
1455/21
included [23] 1161/20

1162/10 1163/8 1163/15
1176/20 1221/8 1238/24
1245/1 1246/11 1253/9
1301/23 1316/3 1350/14
1350/17 1371/11 1373/25
1378/5 1414/20 1415/14
1438/19 1438/19 1438/25
1454/22
includes [20] 1161/5 1164/20
1164/21 1236/2 1246/13
1265/11 1319/3 1321/24
1326/12 1375/1 1435/18
1444/2 1453/10 1453/12
1453/13 1453/19 1453/20
1457/16 1467/9 1468/2
including [11] 1148/19 1191/3
1242/10 1273/16 1275/11
1376/5 1453/5 1454/1 1458/3
1458/14 1459/22
inclusion [3] 1327/22 1329/10
1439/23
inconsistent [6] 1286/6 1392/1
1417/2 1417/8 1417/16
1417/20
incorporate [1] 1412/20
incorporating [1] 1195/18
incorrect [7] 1197/24 1198/7
1198/22 1244/23 1323/17
1324/15 1460/14
increase [1] 1304/10
increment [1] 1401/4
incumbent [1] 1451/19
indeed [3] 1172/4 1192/1
1270/21
independent [5] 1394/1
1394/2 1394/13 1423/1
1466/9
independently [1] 1278/18
indeterminate [1] 1298/14
indicate [3] 1271/15 1271/17
1388/4
indicated [1] 1357/13
indicates [3] 1398/8 1422/16
1457/24
indication [2] 1432/10
1432/21
indirect [1] 1457/7
individual [6] 1308/4 1405/8
1415/20 1415/24 1416/2
1423/1
infer [4] 1245/12 1246/5
1248/8 1248/16
inference [1] 1245/24
inflated [2] 1248/9 1291/23
inflates [1] 1302/23
information [99] 1147/19
1147/23 1149/6 1149/7
1151/21 1151/22 1151/24
1151/25 1152/1 1152/3
1155/16 1157/4 1157/25
1158/7 1158/8 1158/10
1160/23 1162/13 1163/10
1163/11 1163/11 1163/15
1163/19 1167/12 1168/7
1168/19 1169/3 1169/4
1169/4 1169/6 1169/13
1171/23 1171/25 1172/19
1172/24 1178/16 1178/17
1178/18 1178/19 1178/24
1178/25 1179/16 1179/17

1179/17 1179/19 1179/19
1179/22 1179/23 1180/11
1180/13 1180/14 1180/17
1180/18 1180/20 1180/21
1181/10 1181/10 1181/14
1181/15 1185/18 1185/19
1186/14 1186/19 1187/18
1187/20 1199/6 1200/4
1235/3 1244/18 1259/10
1259/13 1261/7 1261/11
1261/14 1262/9 1263/3
1263/22 1269/17 1271/24
1272/22 1277/3 1305/8
1322/21 1323/12 1360/13
1362/19 1362/25 1363/3
1365/25 1374/19 1377/12
1377/17 1379/6 1388/24
1401/22 1401/23 1401/25
1401/25 1424/22
infringe [3] 1201/25 1305/4
1454/12
infringed [11] 1208/11
1208/22 1208/23 1290/5
1290/11 1304/14 1304/19
1304/24 1340/25 1441/20
1457/9
infringement [47] 1140/8
1141/11 1142/23 1201/12
1201/15 1202/1 1202/4
1202/4 1202/16 1207/18
1208/6 1208/8 1208/12
1214/14 1294/5 1305/13
1309/15 1332/25 1336/5
1351/12 1354/18 1354/19
1380/15 1396/10 1397/6
1397/7 1397/8 1398/5
1423/10 1435/16 1435/25
1436/1 1436/11 1443/12
1443/14 1443/15 1444/11
1445/4 1445/7 1454/6
1454/11 1454/15 1454/18
1457/8 1460/3 1460/5
1460/10
infringer [1] 1293/19
infringes [3] 1213/18 1460/4
1460/11
infringing [28] 1214/25 1295/1
1297/11 1300/6 1311/16
1316/8 1318/6 1321/17
1321/17 1333/17 1334/2
1334/10 1334/21 1334/22
1335/1 1335/3 1335/11
1335/12 1335/20 1336/1
1336/9 1336/22 1337/25
1338/8 1340/12 1360/1
1457/19 1467/12
initial [1] 1385/12
initially [2] 1135/16 1374/21
initiate [1] 1170/13
initiates [1] 1158/3
inNova [20] 1137/14 1292/9
1294/22 1294/23 1294/25
1294/25 1295/2 1295/2
1295/10 1295/18 1295/20
1295/23 1296/2 1296/8
1296/12 1299/1 1300/23
1301/14 1303/10 1408/16
innovation [1] 1148/16
innovative [1] 1409/20
input [19] 1151/21 1151/23

input... [17] 1152/17 1156/25
1172/21 1172/25 1175/9
1179/7 1179/8 1179/10
1391/11 1395/12 1395/24
1396/1 1396/3 1396/4 1399/6
1420/8 1420/12
insert [2] 1161/3 1161/7
inserted [7] 1187/7 1241/17
1443/2 1443/3 1443/5 1443/9
1443/17
insertions [1] 1184/8
inside [9] 1152/21 1159/8
1177/23 1196/9 1418/12
1418/13 1418/15 1421/20
1422/2
insist [1] 1412/20
insisting [1] 1134/24
insofar [2] 1208/23 1228/10
inspected [2] 1150/20 1387/4
install [1] 1454/9
installation [4] 1351/19 1352/9
1457/3 1457/12
installations [10] 1232/24
1242/10 1252/25 1347/18
1350/18 1351/1 1353/15
1353/25 1354/24 1357/21
installed [15] 1142/17 1187/4
1232/1 1232/15 1232/22
1276/22 1314/9 1342/1
1435/19 1438/11 1438/25
1455/13 1461/5 1461/16
1469/1
installs [4] 1319/13 1348/14
1355/22 1359/24
instance [1] 1440/2
instances [3] 1199/20
1379/24 1418/2
instantiation [2] 1154/9
1269/7
instead [7] 1172/23 1175/23
1311/17 1325/4 1330/14
1338/13 1349/2
institute [3] 1146/20 1385/7
1385/8
institution [1] 1260/17
instruct [5] 1389/18 1441/18
1442/4 1445/1 1445/5
instructed [10] 1138/8
1138/11 1138/18 1140/14
1144/7 1144/9 1227/9
1227/10 1249/14 1451/17
instruction [20] 1193/8 1193/8
1197/15 1198/16 1226/16
1227/15 1437/2 1443/5
1444/8 1444/16 1444/19
1444/22 1444/23 1445/12
1445/14 1449/18 1450/14
1451/19 1451/23 1468/6
instructions [61] 1152/8
1152/17 1152/20 1153/2
1175/9 1178/3 1182/12
1196/12 1209/13 1209/23
1210/24 1212/12 1212/17
1212/23 1213/4 1213/5
1213/10 1213/10 1213/23
1214/8 1214/11 1214/19
1215/1 1226/14 1227/4
1227/8 1227/21 1228/8
1228/22 1229/22 1229/25

1230/1 1230/12 1230/16
1263/21 1263/23 1284/10
1285/7 1418/11 1422/2
1422/7 1422/12 1423/17
1427/4 1427/11 1427/21
1428/3 1430/8 1433/20
1435/8 1435/13 1440/24
1442/9 1442/17 1451/20
1452/1 1465/5 1465/11
1465/18 1466/15 1468/20
insufficient [2] 1428/21
1429/11
insulated [1] 1459/3
integrate [1] 1405/6
integrated [8] 1402/24 1403/2
1403/5 1403/17 1404/10
1414/22 1421/13 1423/17
integrates [1] 1172/5
integrating [2] 1395/2 1400/2
integration [10] 1165/20
1395/15 1402/24 1403/1
1405/9 1405/21 1421/12
1421/20 1422/24 1432/19
intellectual [2] 1288/19
1289/23
Intellibutton [1] 1159/9
Intelligence [2] 1385/10
1385/16
intend [3] 1131/23 1235/15
1371/18
intended [6] 1258/16 1388/3
1407/23 1432/11 1463/16
1465/13
intending [4] 1232/25 1240/19
1371/7 1465/25
intent [7] 1432/8 1432/17
1432/24 1464/13 1464/13
1466/16 1466/18
intention [4] 1464/6 1465/1
1466/7 1466/24
intentional [3] 1443/15 1444/2
1445/4
interacted [1] 1386/10
interaction [1] 1156/4
interactions [1] 1258/2
interactive [1] 1386/5
interest [3] 1149/10 1164/9
1379/17
interested [2] 1239/12
1407/15
interesting [4] 1163/5 1164/21
1164/22 1226/9
interface [1] 1407/2
internal [2] 1299/5 1362/5
Internet [3] 1147/6 1147/7
1174/8
interpret [2] 1158/13 1388/14
interpretation [6] 1279/20
1422/8 1422/10 1424/19
1452/5 1452/7
interpreted [1] 1451/13
interrogatory [3] 1315/3
1315/19 1315/20
intertwined [1] 1358/18
intervening [1] 1449/2
interviewed [2] 1150/24
1155/5
interviews [1] 1269/19
intricate [1] 1387/21
introduce [5] 1133/15 1133/18

1146/8 1288/7 1383/21
introduced [2] 1243/4 1375/24
introducing [1] 1335/4
introduction [1] 1402/22
invalid [12] 1151/4 1152/11
1153/8 1190/25 1207/23
1216/7 1216/13 1216/15
1216/15 1216/21 1216/23
1223/8
invalidate [1] 1391/18
invalidity [18] 1190/23
1207/19 1207/22 1217/6
1255/12 1255/19 1255/20
1255/23 1272/6 1278/2
1391/2 1394/20 1397/11
1428/19 1428/22 1430/24
1431/18 1431/20
invented [1] 1386/2
invention [29] 1152/19
1166/14 1192/5 1192/11
1192/12 1194/22 1195/6
1195/6 1195/10 1195/12
1195/14 1195/16 1195/19
1195/20 1284/24 1293/19
1388/21 1390/8 1390/17
1390/19 1390/19 1390/21
1390/24 1419/6 1419/13
1419/19 1445/19 1446/13
1446/14
inventions [2] 1149/22
1443/24
inventor [1] 1154/17
inventors [1] 1147/3
investigate [5] 1259/3
1262/24 1266/11 1266/13
1427/19
involve [1] 1463/14
involved [2] 1149/1 1288/21
involves [1] 1339/7
involving [1] 1385/4
iOS [5] 1319/20 1345/13
1345/18 1346/25 1347/9
IPR [8] 1197/9 1197/12
1197/13 1197/25 1198/14
1200/16 1219/8 1431/4
Ironburg [3] 1443/23 1443/24
1444/5
irrevocably [1] 1458/2
is [1037]
iSchool [1] 1272/22
isn't [11] 1134/25 1210/5
1222/23 1224/5 1225/15
1321/10 1323/9 1381/11
1390/13 1394/2 1405/14
isolate [1] 1348/8
isolated [1] 1353/22
isolation [1] 1466/4
issue [59] 1133/15 1136/4
1137/8 1139/11 1139/13
1144/6 1153/19 1196/6
1200/13 1219/19 1229/21
1234/2 1235/14 1235/17
1236/24 1237/6 1248/21
1249/12 1250/3 1250/22
1251/23 1301/1 1301/3
1339/21 1343/2 1343/7
1347/7 1351/15 1352/1
1352/17 1355/1 1367/16
1370/6 1370/16 1371/14
1373/7 1373/22 1428/20

1431/4 1433/3 1433/19
1436/12 1436/18 1436/23
1437/3 1437/9 1437/11
1437/25 1439/24 1440/15
1442/24 1451/2 1451/21
1452/2 1460/13 1462/5
1462/24 1462/25 1463/24
issued [16] 1139/5 1148/19
1150/7 1155/12 1167/9
1197/21 1199/25 1217/16
1218/7 1238/12 1248/14
1257/5 1324/2 1358/22
1367/15 1387/9
issues [19] 1139/15 1139/16
1141/21 1198/14 1202/1
1212/18 1213/15 1226/17
1226/20 1226/21 1227/2
1227/8 1228/8 1235/13
1252/22 1358/20 1411/24
1435/7 1450/20
it [645]
it's [278] 1135/7 1135/12
1135/20 1135/20 1135/25
1137/17 1137/20 1140/18
1143/16 1143/17 1143/18
1148/25 1155/13 1156/5
1156/6 1157/1 1157/11
1162/21 1163/17 1167/10
1169/9 1169/10 1172/6
1172/8 1173/6 1173/6
1173/18 1175/23 1175/24
1175/24 1175/25 1176/10
1176/22 1178/7 1178/19
1178/21 1179/9 1179/10
1179/16 1179/18 1179/21
1180/10 1180/12 1184/20
1186/7 1187/6 1188/19
1189/23 1190/17 1192/3
1192/5 1192/11 1193/22
1199/18 1200/1 1201/9
1203/6 1205/9 1206/14
1206/25 1212/13 1212/14
1214/25 1218/5 1218/7
1218/13 1218/14 1218/15
1220/8 1220/19 1222/4
1222/22 1224/2 1227/22
1229/8 1231/3 1231/4 1231/6
1232/7 1234/19 1234/21
1234/22 1236/20 1236/21
1237/5 1237/14 1237/24
1239/13 1240/23 1242/25
1245/25 1246/4 1246/5
1248/10 1250/16 1251/11
1255/12 1256/6 1256/14
1256/15 1258/14 1260/13
1260/18 1260/24 1261/20
1261/21 1262/4 1262/7
1262/9 1262/12 1262/14
1263/24 1264/12 1264/19
1265/11 1265/19 1266/16
1270/5 1270/24 1272/23
1273/7 1273/8 1283/1 1289/1
1289/6 1290/13 1291/2
1292/20 1292/25 1293/3
1293/11 1294/11 1295/2
1295/3 1296/4 1296/9
1296/13 1296/20 1297/14
1297/18 1297/19 1299/16
1299/25 1301/21 1301/21
1303/21 1304/3 1305/4

it's... [130] 1306/14 1306/20
1307/19 1311/2 1312/21
1313/6 1314/24 1315/4
1316/15 1319/9 1320/20
1320/25 1321/4 1321/4
1321/7 1321/8 1322/11
1323/11 1323/16 1325/19
1325/24 1329/12 1332/15
1332/21 1333/8 1334/19
1335/7 1343/23 1345/19
1345/19 1345/20 1345/21
1345/22 1346/15 1346/16
1348/21 1351/23 1351/25
1354/13 1354/16 1356/16
1359/18 1360/19 1362/15
1364/17 1365/22 1366/7
1366/16 1368/12 1369/8
1370/4 1370/5 1370/13
1371/3 1371/11 1376/1
1378/10 1379/5 1379/12
1379/14 1381/13 1382/2
1383/9 1386/25 1387/24
1390/17 1391/8 1391/12
1391/13 1391/14 1391/15
1391/15 1392/6 1393/2
1398/13 1400/22 1401/6
1401/24 1403/4 1403/7
1404/9 1405/23 1406/6
1407/5 1407/14 1409/17
1410/5 1410/8 1411/10
1412/17 1412/19 1415/3
1421/23 1422/1 1423/5
1427/5 1427/7 1430/2 1430/3
1430/13 1436/22 1437/9
1439/9 1439/17 1441/8
1442/9 1443/4 1443/10
1444/1 1444/5 1445/2
1446/19 1449/8 1451/19
1453/11 1455/10 1457/19
1460/8 1460/12 1461/22
1462/3 1463/3 1463/3 1463/7
1464/1 1464/6 1464/24
1467/19 1468/1 1468/15
itch [1] 1385/9
item [1] 1345/10
items [5] 1415/20 1415/24
1416/2 1445/24 1446/11
its [47] 1139/14 1145/12
1150/2 1151/8 1153/4
1154/17 1157/9 1168/6
1168/14 1171/13 1174/20
1175/21 1183/22 1207/12
1207/15 1208/14 1214/20
1216/6 1222/21 1259/16
1282/12 1287/12 1296/23
1303/13 1332/24 1357/8
1357/9 1363/13 1363/21
1374/23 1382/14 1391/11
1406/22 1414/10 1423/17
1440/11 1450/15 1452/25
1456/15 1456/16 1456/17
1458/1 1458/3 1461/4
1464/23 1464/25 1467/6
itself [11] 1172/2 1172/23
1231/8 1246/13 1298/9
1386/25 1432/9 1432/19
1432/23 1456/15 1458/1

J
J.C.R [1] 1147/5
James [4] 1150/18 1150/21
1407/6 1407/9
January [2] 1348/5 1351/13
January 1st [1] 1348/5
jargon [1] 1295/3
jargoning [1] 1297/9
Java [4] 1396/15 1396/18
1398/6 1422/18
JENKINS [1] 1129/23
JENNIFER [1] 1129/19
Jim [7] 1166/19 1168/7
1168/8 1168/17 1191/3
1279/1 1407/10
Jim Manzi [2] 1168/8 1168/17
Jim Manzi's [1] 1168/7
JLH [1] 1129/6
JMOL [1] 1431/11
job [8] 1147/14 1202/7 1258/6
1260/15 1279/17 1279/18
1294/2 1385/25
JOHN [2] 1130/3 1201/7
join [3] 1147/14 1289/15
1407/11
joined [3] 1149/5 1398/23
1423/21
joint [2] 1226/16 1430/8
joist [1] 1147/16
Journal [3] 1167/18 1167/23
1168/13
Judge [3] 1129/19 1431/21
1444/6
judged [1] 1334/9
judgment [12] 1234/21
1234/22 1235/14 1248/4
1248/13 1428/19 1430/5
1431/22 1432/5 1433/3
1433/18 1451/8
July [1] 1164/9
July 22 [1] 1164/9
junk [1] 1260/8
juror [1] 1138/2
jurors [1] 1144/25
jury [191] 1129/12 1135/4
1135/18 1135/19 1137/21
1145/3 1145/5 1145/7 1146/8
1146/18 1148/2 1149/24
1151/12 1158/21 1162/10
1162/17 1164/15 1165/5
1169/19 1173/13 1174/18
1175/16 1176/20 1177/8
1183/20 1187/14 1189/15
1190/3 1190/22 1193/3
1193/8 1194/2 1194/3
1194/13 1195/4 1201/23
1202/3 1202/6 1216/5
1216/11 1216/18 1216/19
1217/2 1224/18 1224/21
1224/23 1226/13 1227/4
1227/8 1227/9 1227/10
1228/8 1228/22 1229/22
1229/25 1230/1 1230/8
1230/12 1230/16 1230/17
1233/19 1234/3 1234/11
1234/13 1235/2 1235/18
1236/14 1237/12 1237/15
1240/5 1244/18 1245/23
1246/5 1252/19 1253/1
1253/19 1253/20 1253/21

1265/22 1280/15 1280/23
1280/25 1281/5 1281/11
1281/17 1281/19 1281/21
1282/1 1282/3 1283/14
1283/18 1283/20 1283/23
1284/10 1285/7 1285/22
1286/2 1286/17 1287/7
1287/8 1287/9 1288/7 1289/3
1292/2 1301/20 1305/8
1315/20 1318/20 1323/13
1324/21 1325/21 1329/10
1331/8 1333/18 1335/14
1335/15 1336/17 1340/7
1340/16 1368/3 1368/15
1368/20 1372/18 1375/17
1376/20 1377/3 1377/5
1377/6 1380/22 1381/2
1382/17 1383/22 1385/3
1389/18 1394/24 1397/20
1413/4 1416/24 1418/10
1427/2 1427/4 1427/11
1427/17 1427/21 1427/25
1428/3 1428/21 1429/15
1430/8 1433/20 1435/5
1435/13 1435/17 1436/4
1437/2 1437/10 1437/12
1437/14 1437/21 1438/1
1438/15 1438/21 1439/5
1439/8 1439/13 1439/23
1440/1 1440/5 1440/24
1442/8 1442/17 1444/1
1444/10 1444/16 1444/21
1444/22 1445/1 1445/6
1445/6 1445/11 1451/17
1451/19 1451/20 1451/22
1465/5 1465/17 1466/15
1467/18 1468/5 1468/6
1469/7
just [239] 1132/25 1133/3
1133/9 1133/11 1134/10
1135/3 1135/5 1135/20
1136/19 1137/18 1138/11
1139/22 1139/24 1139/25
1141/2 1141/3 1150/19
1150/20 1151/18 1153/16
1156/15 1156/16 1157/8
1158/12 1159/17 1160/17
1161/1 1161/9 1162/14
1163/11 1163/13 1163/17
1164/15 1165/5 1165/24
1167/10 1167/15 1168/8
1169/5 1173/7 1174/14
1176/21 1176/25 1177/4
1181/21 1181/24 1183/3
1184/3 1184/21 1186/6
1187/10 1192/2 1193/15
1201/10 1203/1 1210/13
1212/15 1212/16 1214/2
1215/5 1215/11 1215/12
1215/21 1216/16 1217/1
1223/23 1224/3 1227/22
1231/9 1232/2 1232/7
1232/18 1234/21 1234/23
1238/22 1239/22 1240/2
1240/25 1241/10 1241/11
1244/13 1244/16 1245/8
1245/25 1247/17 1250/25
1252/17 1252/20 1252/20
1258/15 1260/4 1261/9
1261/14 1261/21 1262/9

1262/12 1264/8 1264/13
1265/8 1266/20 1267/14
1269/18 1271/8 1274/2
1283/15 1286/18 1289/1
1291/4 1292/12 1295/20
1296/11 1296/13 1298/22
1299/19 1300/10 1300/15
1301/6 1301/13 1301/17
1302/11 1309/21 1310/11
1310/14 1311/4 1313/20
1315/24 1316/3 1316/9
1318/2 1318/11 1319/4
1319/7 1319/10 1320/2
1320/4 1320/9 1320/23
1320/23 1321/11 1323/13
1323/15 1323/23 1324/8
1326/7 1327/6 1328/1
1329/19 1330/2 1331/2
1334/5 1337/8 1339/13
1340/15 1340/18 1342/4
1343/21 1344/13 1345/6
1345/22 1346/11 1346/14
1346/15 1347/24 1348/19
1352/18 1353/11 1355/1
1358/11 1359/11 1361/17
1363/10 1363/17 1364/12
1365/16 1367/11 1374/13
1375/10 1378/4 1378/10
1379/12 1380/13 1381/10
1381/13 1383/1 1387/24
1389/19 1390/19 1392/8
1407/19 1408/5 1408/8
1409/11 1410/16 1413/20
1417/11 1422/14 1423/16
1427/16 1428/2 1428/11
1430/9 1431/10 1435/20
1439/4 1439/17 1439/18
1441/16 1442/4 1442/16
1443/22 1444/17 1446/11
1447/5 1447/9 1447/13
1449/2 1450/7 1450/15
1450/19 1451/1 1452/11
1452/15 1453/21 1453/23
1454/10 1454/12 1454/19
1457/6 1458/19 1459/7
1460/2 1460/14 1461/1
1461/14 1461/17 1462/16
1463/1 1463/5 1464/8
justifiably [1] 1408/8
justification [1] 1323/21

K
K-I-D-D-E-R [1] 1287/21
KALPANA [2] 1130/5 1341/13
KAMBER [1] 1130/13
KATZENSTEIN [1] 1129/23
keep [17] 1144/23 1176/22
1203/9 1230/8 1258/4 1258/8
1258/19 1258/21 1259/24
1260/10 1286/24 1327/15
1374/15 1375/2 1400/10
1400/10 1405/17
keeping [4] 1177/2 1258/6
1258/20 1376/18
KEMPER [1] 1130/4
kept [4] 1167/5 1260/9
1362/18 1374/7
key [4] 1190/5 1460/16
1460/21 1460/25
Kidder [101] 1131/12 1131/12

K
Kidder... [99] 1131/13
1131/19 1131/20 1131/25
1132/3 1132/11 1133/2
1134/16 1134/22 1135/16
1135/25 1136/20 1136/21
1137/1 1137/12 1138/16
1139/9 1139/12 1139/15
1140/4 1141/22 1142/6
1144/1 1225/6 1228/25
1232/8 1232/13 1239/3
1239/10 1239/11 1239/20
1239/21 1244/11 1245/2
1246/23 1247/2 1247/8
1248/5 1249/4 1250/15
1251/24 1253/5 1287/14
1287/20 1287/22 1288/5
1288/8 1289/16 1289/22
1290/3 1290/10 1290/25
1291/24 1292/14 1293/5
1296/7 1299/8 1300/8 1301/1
1301/19 1305/1 1306/10
1307/22 1314/5 1314/15
1314/20 1314/22 1316/6
1317/13 1322/2 1323/12
1326/24 1331/23 1333/16
1336/20 1337/24 1341/12
1343/2 1343/19 1345/5
1345/9 1348/20 1350/12
1353/17 1354/20 1356/8
1358/16 1362/24 1365/19
1372/3 1373/3 1376/3
1377/11 1380/13 1382/5
1382/9 1436/3 1437/5
1437/22
Kidder 2022 [1] 1247/2
Kidder's [13] 1138/7 1141/23
1141/23 1142/12 1225/20
1229/12 1229/14 1247/14
1250/13 1253/13 1286/19
1316/22 1331/16
kind [54] 1144/3 1158/12
1159/3 1159/14 1160/22
1167/12 1167/16 1168/6
1174/8 1175/18 1176/15
1180/1 1190/4 1193/4
1197/14 1198/11 1211/21
1213/13 1215/13 1215/16
1226/13 1258/15 1260/15
1260/16 1261/2 1262/10
1283/4 1289/1 1292/13
1298/13 1319/17 1386/5
1386/24 1388/17 1388/18
1388/21 1391/16 1393/19
1395/4 1395/14 1400/4
1400/17 1401/24 1404/4
1405/4 1405/10 1406/21
1406/23 1406/25 1412/18
1418/22 1422/23 1424/11
1429/9
kinds [11] 1154/18 1162/6
1178/22 1178/23 1260/8
1264/12 1278/22 1335/24
1400/14 1400/18 1401/1
King [1] 1129/17
knew [5] 1142/12 1222/7
1439/2 1443/13 1445/2
knock [2] 1176/11 1176/17
know [129] 1134/24 1140/16
1141/17 1150/14 1185/8

1203/3 1208/2 1212/15
1219/21 1221/24 1222/12
1222/13 1222/13 1222/15
1223/17 1223/22 1223/23
1224/3 1225/22 1225/22
1226/2 1226/15 1228/23
1228/25 1231/6 1231/21
1232/6 1232/8 1234/3
1235/15 1236/6 1236/15
1237/16 1244/9 1244/12
1244/18 1246/6 1246/13
1247/19 1254/15 1258/22
1259/21 1262/19 1266/19
1271/3 1275/20 1276/24
1277/1 1278/6 1280/3 1285/2
1285/5 1285/16 1290/13
1291/5 1296/23 1298/5
1298/22 1298/24 1299/11
1301/21 1301/22 1302/12
1310/12 1313/15 1316/25
1318/13 1319/6 1322/9
1322/11 1325/23 1328/24
1329/3 1332/23 1333/4
1337/4 1346/12 1346/24
1349/16 1349/24 1351/10
1354/2 1357/13 1358/7
1358/14 1362/6 1364/10
1364/12 1364/13 1364/23
1368/9 1369/14 1370/7
1370/11 1370/16 1374/8
1374/17 1378/10 1379/16
1381/22 1388/21 1389/3
1390/9 1408/7 1410/8
1411/20 1415/10 1418/13
1418/14 1431/4 1437/9
1438/15 1438/23 1439/5
1439/13 1442/3 1442/13
1442/15 1448/20 1448/23
1453/10 1454/3 1454/14
1458/20 1460/13 1462/25
1464/8 1464/22 1468/6
knowledge [4] 1434/6
1444/14 1444/20 1445/7
known [13] 1151/17 1153/11
1160/17 1173/22 1304/14
1402/25 1403/3 1419/7
1420/1 1421/13 1445/24
1446/4 1446/12
knows [4] 1157/12 1371/11
1413/23 1414/2

L
lab [1] 1260/7
labeled [4] 1153/16 1344/2
1359/23 1360/21
labels [1] 1238/18
lack [5] 1232/15 1232/21
1233/14 1407/18 1425/8
ladies [10] 1145/7 1194/13
1224/18 1224/24 1283/14
1287/10 1336/17 1340/7
1368/15 1427/2
LAHAD [4] 1130/3 1201/7
1322/23 1323/3
laid [1] 1342/11
language [16] 1285/9 1333/2
1385/13 1412/21 1413/3
1413/4 1413/12 1418/19
1418/23 1421/17 1442/5
1443/16 1463/6 1465/3

1465/8 1466/17
laptop [2] 1187/6 1275/23
laptops [9] 1275/13 1275/14
1275/18 1276/13 1277/15
1277/16 1277/23 1278/13
1278/17
large [4] 1154/25 1166/12
1255/4 1261/25
larger [4] 1355/18 1367/20
1367/22 1376/17
last [70] 1134/2 1134/20
1148/3 1153/1 1154/6
1157/13 1160/7 1160/25
1165/2 1166/13 1166/19
1173/7 1176/1 1180/2 1186/4
1195/18 1206/23 1206/25
1211/2 1214/7 1214/10
1214/15 1214/24 1215/4
1215/11 1215/13 1215/15
1215/15 1216/24 1226/14
1226/16 1227/6 1233/9
1240/10 1240/11 1251/5
1268/15 1270/7 1275/12
1276/16 1277/13 1284/12
1311/8 1311/19 1316/17
1318/4 1330/7 1333/16
1335/15 1336/18 1337/1
1337/22 1339/24 1340/8
1352/23 1357/12 1363/16
1375/8 1387/2 1391/10
1391/20 1396/9 1398/3
1404/25 1405/23 1407/9
1423/21 1424/9 1426/8
1448/14
lasted [1] 1303/11
late [6] 1226/16 1278/2
1380/16 1410/9 1441/8
1442/9
later [17] 1145/2 1159/13
1176/6 1191/23 1206/14
1249/18 1276/10 1291/7
1311/14 1337/6 1392/11
1411/20 1429/16 1437/15
1439/6 1463/25 1468/4
latest [1] 1322/18
latter [1] 1431/12
launch [2] 1311/7 1311/11
law [25] 1193/3 1193/18
1198/22 1203/23 1204/5
1204/6 1227/14 1228/11
1389/19 1428/19 1432/2
1432/6 1437/10 1439/25
1442/11 1448/17 1448/18
1449/2 1463/8 1463/11
1464/1 1465/2 1465/23
1466/10 1468/8
lawsuit [2] 1463/18 1463/22
lawsuits [1] 1464/18
lawyer [3] 1193/2 1209/9
1389/21
lawyerly [1] 1404/4
lawyers [7] 1207/12 1207/15
1208/14 1222/21 1224/12
1254/10 1276/12
lay [1] 1132/25
layout [1] 1220/3
lead [2] 1183/11 1245/3
leader [1] 1147/22
leaders [1] 1149/6
leading [4] 1147/6 1381/7

1392/22 1399/1
leads [5] 1245/4 1319/2
1422/11
lean [1] 1241/19
learn [6] 1159/13 1163/5
1173/19 1188/18 1269/24
1380/18
learned [6] 1155/7 1169/4
1188/13 1270/4 1270/11
1270/13
learning [1] 1386/12
least [17] 1132/4 1152/2
1152/2 1179/15 1179/15
1179/22 1180/18 1193/8
1197/14 1227/25 1235/4
1257/2 1359/25 1370/7
1392/10 1436/13 1467/17
leave [5] 1219/4 1253/16
1300/24 1372/5 1445/6
leaving [1] 1293/11
led [3] 1309/23 1313/7 1327/7
left [21] 1156/11 1156/22
1157/24 1158/23 1159/11
1160/3 1178/13 1182/14
1182/23 1186/9 1231/25
1232/4 1236/11 1256/5
1256/9 1256/22 1260/17
1286/15 1319/7 1326/5
1329/13
left-hand [6] 1158/23 1159/11
1160/3 1182/14 1231/25
1319/7
legal [4] 1193/4 1250/21
1429/16 1439/24
legally [3] 1428/21 1428/23
1429/11
length [4] 1303/5 1303/23
1322/3 1322/6
less [4] 1193/6 1202/23
1269/5 1321/9
let [58] 1133/3 1139/6
1139/24 1141/2 1144/24
1193/10 1199/7 1199/13
1199/22 1200/12 1203/3
1207/21 1211/1 1213/16
1218/21 1219/14 1226/10
1227/17 1228/19 1239/7
1240/2 1240/2 1252/17
1265/23 1272/25 1274/17
1275/15 1278/12 1279/3
1279/5 1307/3 1314/19
1338/10 1338/16 1339/13
1349/24 1361/18 1368/3
1384/9 1389/12 1390/13
1396/7 1402/23 1405/22
1406/13 1417/23 1420/14
1422/14 1431/25 1436/20
1438/3 1444/10 1449/3
1450/24 1454/19 1457/6
1458/19 1463/11
let's [92] 1134/7 1134/10
1138/2 1144/23 1145/1
1145/12 1153/9 1153/25
1166/6 1176/2 1176/8 1182/2
1186/25 1190/21 1203/1
1213/16 1218/17 1229/12
1249/1 1253/17 1253/19
1253/25 1256/3 1261/13
1273/25 1287/6 1291/25
1306/4 1308/23 1312/17

Case 1:13-cv-00919-JLH Document 60 Filed 08/21/13 Page 666 of 715 PageID #: 61245	1457/2 1457/14 1458/8 1459/11 1460/25 1461/12 1461/13 1461/13 1461/22 1462/3 1462/8 1462/12 1467/14 1468/2 licensee [9] 1304/22 1332/23 1452/25 1456/17 1458/3 1461/4 1464/22 1464/23 1464/25 licensees [2] 1297/12 1458/2 licenses [26] 1192/4 1192/5 1193/24 1194/4 1194/21 1194/22 1289/1 1292/6 1294/18 1294/19 1296/15 1296/16 1297/1 1297/7 1300/16 1301/10 1301/22 1301/23 1303/6 1303/8 1305/18 1305/19 1331/1 1332/17 1333/2 1409/18 licensing [9] 1288/23 1289/24 1295/3 1295/3 1305/21 1409/7 1409/8 1409/8 1461/22 licensor [2] 1456/15 1458/1 Licklider [1] 1147/5 lies [1] 1389/22 life [2] 1273/6 1351/14 light [8] 1151/7 1171/6 1230/14 1409/3 1443/23 1450/5 1466/6 1469/6 like [97] 1133/15 1133/22 1138/2 1149/13 1150/14 1155/3 1156/6 1156/6 1163/1 1164/21 1174/4 1174/10 1176/11 1176/18 1178/22 1183/12 1187/18 1190/8 1197/6 1197/17 1199/15 1199/21 1203/10 1203/13 1210/3 1225/11 1227/5 1228/9 1228/11 1228/17 1229/25 1231/24 1235/2 1235/7 1235/13 1235/24 1250/24 1256/12 1258/25 1259/1 1260/4 1261/2 1261/21 1262/14 1269/18 1273/23 1276/14 1286/8 1289/15 1294/11 1297/19 1314/11 1316/18 1320/13 1321/4 1323/9 1329/3 1334/4 1343/4 1344/21 1346/14 1351/4 1352/25 1358/12 1358/14 1364/13 1364/17 1364/18 1365/14 1366/2 1367/13 1367/16 1370/3 1370/6 1371/2 1375/14 1380/20 1380/21 1382/21 1390/17 1392/8 1396/1 1398/22 1398/23 1400/19 1400/21 1403/17 1410/10 1415/2 1415/9 1418/25 1424/21 1428/11 1446/20 1450/3 1452/5 1463/24 likely [5] 1176/15 1327/17 1386/13 1443/13 1445/2 likewise [4] 1208/6 1357/17 1401/16 1429/5 limine [6] 1367/8 1367/15 1368/12 1369/9 1373/12 1377/1 limitation [1] 1210/4 <th data-bbox="839 21 1183 63">limitations [4] 1173/2 1185/13 1429/4 1441/22 limited [8] 1234/1 1281/2 1292/11 1369/7 1373/22 1374/13 1375/10 1465/19 limiting [4] 1466/7 1466/9 1466/10 1466/19 line [12] 1138/17 1226/14 1237/21 1238/1 1241/21 1247/24 1345/10 1350/10 1388/10 1388/11 1389/10 1443/17 linear [1] 1303/23 lined [1] 1237/17 LING [1] 1130/16 link [4] 1403/6 1408/21 1408/23 1408/24 linked [3] 1262/9 1398/21 1423/20 Linkify [15] 1334/8 1334/9 1335/10 1335/10 1335/20 1335/20 1336/6 1336/6 1336/7 1336/8 1336/8 1336/21 1336/21 1340/11 1340/12 linking [3] 1398/13 1398/16 1408/25 links [2] 1262/4 1262/6 list [29] 1161/20 1162/18 1162/20 1163/13 1182/16 1186/16 1191/10 1192/1 1203/7 1203/9 1203/12 1222/1 1222/4 1222/4 1222/6 1254/21 1254/25 1256/10 1256/17 1256/18 1292/25 1314/22 1333/4 1340/17 1348/12 1391/16 1414/15 1464/17 1464/20 listed [11] 1143/9 1148/24 1151/19 1154/22 1165/24 1192/10 1195/3 1202/10 1269/14 1293/23 1347/2 Literally [1] 1205/17 litigation [11] 1150/12 1155/18 1172/11 1200/7 1210/23 1291/13 1291/14 1301/2 1325/11 1325/15 1379/20 litigations [2] 1301/3 1301/6 little [31] 1131/17 1146/15 1168/21 1181/12 1224/19 1260/16 1261/3 1261/3 1261/4 1265/22 1286/15 1289/3 1292/9 1294/23 1304/15 1308/17 1323/24 1341/22 1343/21 1346/18 1351/25 1352/22 1360/6 1396/8 1406/24 1422/19 1428/2 1444/19 1452/10 1457/7 1464/1 live [4] 1146/9 1407/13 1407/19 1407/24 LiveDoc [5] 1406/16 1406/19 1406/20 1407/1 1407/4 LiveDoc's [1] 1408/3 LLC [2] 1129/7 1203/21 LLP [2] 1129/23 1130/3 load [1] 1177/18 loaded [5] 1178/5 1422/20 1456/2 1458/21 1458/24 <th data-bbox="1183 21 1537 63">local [2] 1289/12 1386/12 locator [1] 1159/9 lodge [1] 1444/17 logic [1] 1217/6 long [25] 1131/16 1146/15 1155/1 1162/18 1186/16 1195/14 1197/25 1222/4 1222/4 1226/2 1228/21 1228/23 1229/1 1229/21 1234/25 1235/2 1270/5 1270/5 1277/7 1322/15 1336/12 1369/8 1372/25 1384/23 1464/17 long-felt [1] 1195/14 longer [12] 1219/7 1224/20 1237/6 1257/18 1263/1 1269/1 1308/9 1309/12 1352/10 1364/18 1364/19 1384/25 look [112] 1132/18 1133/10 1136/5 1136/22 1137/3 1137/13 1137/20 1144/7 1153/20 1154/21 1155/14 1155/15 1157/22 1157/25 1159/2 1161/18 1163/17 1164/12 1164/18 1164/22 1165/13 1165/23 1166/2 1167/11 1180/24 1181/8 1182/14 1183/2 1183/6 1184/2 1185/1 1198/4 1198/5 1199/7 1199/13 1200/2 1200/3 1203/1 1230/21 1231/24 1240/14 1244/24 1247/2 1247/3 1247/8 1247/23 1260/7 1264/3 1265/4 1265/6 1265/8 1265/12 1265/12 1268/22 1270/23 1272/11 1273/23 1277/2 1285/6 1285/6 1294/12 1298/14 1308/14 1320/24 1330/25 1335/5 1342/13 1343/16 1347/10 1347/24 1349/21 1350/1 1352/25 1354/11 1355/8 1358/12 1358/14 1359/9 1359/17 1360/15 1360/18 1360/23 1362/2 1365/14 1365/19 1368/23 1370/21 1377/16 1378/1 1389/4 1390/13 1400/21 1407/1 1410/6 1414/23 1415/6 1415/9 1418/3 1448/18 1449/12 1449/23 1450/1 1450/6 1459/5 1460/8 1464/12 1465/24 1466/2 1466/3 1466/3 1468/11 1468/17 looked [59] 1139/15 1153/13 1160/17 1160/21 1163/13 1164/3 1165/12 1167/18 1184/25 1222/3 1222/3 1222/6 1223/19 1223/22 1223/24 1248/5 1249/6 1254/25 1266/12 1269/19 1269/20 1270/17 1275/1 1278/20 1278/21 1278/21 1292/5 1292/6 1297/24 1304/1 1305/17 1341/15 1345/16 1346/21 1347/1 1349/6 1349/10 1349/16 </th></th>	limitations [4] 1173/2 1185/13 1429/4 1441/22 limited [8] 1234/1 1281/2 1292/11 1369/7 1373/22 1374/13 1375/10 1465/19 limiting [4] 1466/7 1466/9 1466/10 1466/19 line [12] 1138/17 1226/14 1237/21 1238/1 1241/21 1247/24 1345/10 1350/10 1388/10 1388/11 1389/10 1443/17 linear [1] 1303/23 lined [1] 1237/17 LING [1] 1130/16 link [4] 1403/6 1408/21 1408/23 1408/24 linked [3] 1262/9 1398/21 1423/20 Linkify [15] 1334/8 1334/9 1335/10 1335/10 1335/20 1335/20 1336/6 1336/6 1336/7 1336/8 1336/8 1336/21 1336/21 1340/11 1340/12 linking [3] 1398/13 1398/16 1408/25 links [2] 1262/4 1262/6 list [29] 1161/20 1162/18 1162/20 1163/13 1182/16 1186/16 1191/10 1192/1 1203/7 1203/9 1203/12 1222/1 1222/4 1222/4 1222/6 1254/21 1254/25 1256/10 1256/17 1256/18 1292/25 1314/22 1333/4 1340/17 1348/12 1391/16 1414/15 1464/17 1464/20 listed [11] 1143/9 1148/24 1151/19 1154/22 1165/24 1192/10 1195/3 1202/10 1269/14 1293/23 1347/2 Literally [1] 1205/17 litigation [11] 1150/12 1155/18 1172/11 1200/7 1210/23 1291/13 1291/14 1301/2 1325/11 1325/15 1379/20 litigations [2] 1301/3 1301/6 little [31] 1131/17 1146/15 1168/21 1181/12 1224/19 1260/16 1261/3 1261/3 1261/4 1265/22 1286/15 1289/3 1292/9 1294/23 1304/15 1308/17 1323/24 1341/22 1343/21 1346/18 1351/25 1352/22 1360/6 1396/8 1406/24 1422/19 1428/2 1444/19 1452/10 1457/7 1464/1 live [4] 1146/9 1407/13 1407/19 1407/24 LiveDoc [5] 1406/16 1406/19 1406/20 1407/1 1407/4 LiveDoc's [1] 1408/3 LLC [2] 1129/7 1203/21 LLP [2] 1129/23 1130/3 load [1] 1177/18 loaded [5] 1178/5 1422/20 1456/2 1458/21 1458/24 <th data-bbox="1183 21 1537 63">local [2] 1289/12 1386/12 locator [1] 1159/9 lodge [1] 1444/17 logic [1] 1217/6 long [25] 1131/16 1146/15 1155/1 1162/18 1186/16 1195/14 1197/25 1222/4 1222/4 1226/2 1228/21 1228/23 1229/1 1229/21 1234/25 1235/2 1270/5 1270/5 1277/7 1322/15 1336/12 1369/8 1372/25 1384/23 1464/17 long-felt [1] 1195/14 longer [12] 1219/7 1224/20 1237/6 1257/18 1263/1 1269/1 1308/9 1309/12 1352/10 1364/18 1364/19 1384/25 look [112] 1132/18 1133/10 1136/5 1136/22 1137/3 1137/13 1137/20 1144/7 1153/20 1154/21 1155/14 1155/15 1157/22 1157/25 1159/2 1161/18 1163/17 1164/12 1164/18 1164/22 1165/13 1165/23 1166/2 1167/11 1180/24 1181/8 1182/14 1183/2 1183/6 1184/2 1185/1 1198/4 1198/5 1199/7 1199/13 1200/2 1200/3 1203/1 1230/21 1231/24 1240/14 1244/24 1247/2 1247/3 1247/8 1247/23 1260/7 1264/3 1265/4 1265/6 1265/8 1265/12 1265/12 1268/22 1270/23 1272/11 1273/23 1277/2 1285/6 1285/6 1294/12 1298/14 1308/14 1320/24 1330/25 1335/5 1342/13 1343/16 1347/10 1347/24 1349/21 1350/1 1352/25 1354/11 1355/8 1358/12 1358/14 1359/9 1359/17 1360/15 1360/18 1360/23 1362/2 1365/14 1365/19 1368/23 1370/21 1377/16 1378/1 1389/4 1390/13 1400/21 1407/1 1410/6 1414/23 1415/6 1415/9 1418/3 1448/18 1449/12 1449/23 1450/1 1450/6 1459/5 1460/8 1464/12 1465/24 1466/2 1466/3 1466/3 1468/11 1468/17 looked [59] 1139/15 1153/13 1160/17 1160/21 1163/13 1164/3 1165/12 1167/18 1184/25 1222/3 1222/3 1222/6 1223/19 1223/22 1223/24 1248/5 1249/6 1254/25 1266/12 1269/19 1269/20 1270/17 1275/1 1278/20 1278/21 1278/21 1292/5 1292/6 1297/24 1304/1 1305/17 1341/15 1345/16 1346/21 1347/1 1349/6 1349/10 1349/16 </th>	local [2] 1289/12 1386/12 locator [1] 1159/9 lodge [1] 1444/17 logic [1] 1217/6 long [25] 1131/16 1146/15 1155/1 1162/18 1186/16 1195/14 1197/25 1222/4 1222/4 1226/2 1228/21 1228/23 1229/1 1229/21 1234/25 1235/2 1270/5 1270/5 1277/7 1322/15 1336/12 1369/8 1372/25 1384/23 1464/17 long-felt [1] 1195/14 longer [12] 1219/7 1224/20 1237/6 1257/18 1263/1 1269/1 1308/9 1309/12 1352/10 1364/18 1364/19 1384/25 look [112] 1132/18 1133/10 1136/5 1136/22 1137/3 1137/13 1137/20 1144/7 1153/20 1154/21 1155/14 1155/15 1157/22 1157/25 1159/2 1161/18 1163/17 1164/12 1164/18 1164/22 1165/13 1165/23 1166/2 1167/11 1180/24 1181/8 1182/14 1183/2 1183/6 1184/2 1185/1 1198/4 1198/5 1199/7 1199/13 1200/2 1200/3 1203/1 1230/21 1231/24 1240/14 1244/24 1247/2 1247/3 1247/8 1247/23 1260/7 1264/3 1265/4 1265/6 1265/8 1265/12 1265/12 1268/22 1270/23 1272/11 1273/23 1277/2 1285/6 1285/6 1294/12 1298/14 1308/14 1320/24 1330/25 1335/5 1342/13 1343/16 1347/10 1347/24 1349/21 1350/1 1352/25 1354/11 1355/8 1358/12 1358/14 1359/9 1359/17 1360/15 1360/18 1360/23 1362/2 1365/14 1365/19 1368/23 1370/21 1377/16 1378/1 1389/4 1390/13 1400/21 1407/1 1410/6 1414/23 1415/6 1415/9 1418/3 1448/18 1449/12 1449/23 1450/1 1450/6 1459/5 1460/8 1464/12 1465/24 1466/2 1466/3 1466/3 1468/11 1468/17 looked [59] 1139/15 1153/13 1160/17 1160/21 1163/13 1164/3 1165/12 1167/18 1184/25 1222/3 1222/3 1222/6 1223/19 1223/22 1223/24 1248/5 1249/6 1254/25 1266/12 1269/19 1269/20 1270/17 1275/1 1278/20 1278/21 1278/21 1292/5 1292/6 1297/24 1304/1 1305/17 1341/15 1345/16 1346/21 1347/1 1349/6 1349/10 1349/16
<p>let's... [62] 1317/8 1320/23 1326/18 1331/17 1333/19 1335/5 1341/23 1342/13 1342/18 1345/1 1345/10 1347/10 1352/5 1354/11 1355/6 1360/15 1362/22 1365/14 1368/3 1369/1 1375/17 1376/20 1377/2 1377/3 1377/8 1384/23 1391/1 1391/2 1393/21 1394/13 1394/18 1394/22 1394/23 1395/22 1396/7 1397/21 1401/12 1402/12 1404/13 1404/25 1409/1 1409/6 1425/20 1428/2 1428/3 1428/15 1439/21 1440/23 1441/7 1441/10 1442/23 1442/25 1446/21 1450/19 1452/11 1452/14 1452/19 1452/22 1453/23 1455/18 1457/23 1460/1 lets [4] 1156/22 1159/2 1287/12 1418/11 letter [12] 1132/14 1132/15 1160/22 1160/24 1168/22 1168/23 1169/7 1169/15 1184/6 1451/10 1451/10 1451/11 letters [2] 1169/18 1451/12 level [3] 1151/12 1232/18 1290/25 leverage [1] 1304/24 libraries [2] 1259/10 1260/5 license [89] 1134/19 1192/7 1192/24 1192/25 1193/5 1194/15 1227/10 1291/7 1292/9 1294/6 1294/7 1294/25 1295/4 1295/6 1295/18 1296/2 1296/8 1296/11 1296/13 1296/16 1297/19 1297/22 1299/11 1299/13 1299/20 1300/21 1300/22 1301/8 1301/11 1301/13 1301/15 1302/5 1303/3 1303/4 1303/5 1303/6 1303/11 1303/11 1303/14 1303/15 1303/18 1303/24 1304/21 1327/9 1327/11 1327/12 1327/19 1327/21 1328/15 1328/17 1331/4 1332/2 1332/18 1333/3 1333/25 1334/2 1338/13 1409/15 1429/24 1430/16 1433/3 1433/19 1434/20 1434/20 1440/7 1440/12 1451/3 1451/12 1451/23 1452/12 1454/17 1456/10 1456/14 1456/16 1456/16 1457/17 1457/25 1459/14 1459/14 1459/20 1460/22 1461/22 1462/2 1462/6 1463/4 1464/23 1464/24 1467/9 1469/15 licensed [31] 1296/21 1297/4 1304/9 1327/21 1328/25 1332/7 1452/22 1453/2 1453/21 1454/18 1455/10 1455/16 1455/19 1456/3 1456/6 1456/21 1456/21</p>			

looked... [21] 1349/19
1352/23 1354/4 1355/11
1358/23 1359/21 1362/25
1364/17 1365/5 1369/4
1370/7 1370/8 1370/12
1370/14 1374/10 1386/24
1389/11 1412/2 1417/24
1418/2 1418/4
looking [64] 1160/2 1161/9
1162/12 1162/23 1163/10
1181/6 1199/19 1204/21
1221/24 1223/6 1235/12
1247/20 1247/21 1251/24
1252/24 1261/20 1263/20
1265/25 1268/21 1296/18
1298/2 1318/21 1324/7
1332/15 1337/22 1339/8
1341/25 1343/6 1347/25
1348/8 1348/9 1348/23
1355/10 1355/21 1356/3
1357/19 1357/20 1358/9
1358/23 1359/9 1359/11
1359/20 1361/2 1365/1
1365/21 1367/17 1374/22
1381/20 1392/7 1400/13
1400/17 1400/18 1400/19
1400/23 1400/25 1401/3
1401/24 1405/5 1406/24
1408/20 1413/21 1420/19
1422/14 1441/12
looks [14] 1155/13 1165/10
1167/11 1169/1 1200/2
1203/10 1203/13 1223/17
1250/6 1256/12 1286/8
1320/13 1321/4 1366/2
lose [1] 1433/12
losing [3] 1324/25 1324/25
1325/1
loss [1] 1417/9
lost [2] 1212/5 1419/9
lot [37] 1148/18 1148/22
1150/1 1155/9 1156/14
1159/21 1161/17 1162/24
1163/1 1166/13 1173/24
1174/12 1178/23 1184/17
1220/19 1228/2 1236/18
1246/17 1256/8 1258/7
1272/16 1282/23 1296/15
1302/13 1304/4 1306/22
1331/1 1332/10 1391/9
1392/13 1400/8 1416/1
1427/6 1439/12 1444/8
1449/2 1468/7
lots [13] 1155/21 1159/19
1162/6 1164/22 1171/4
1173/15 1173/16 1179/2
1220/5 1261/11 1270/7
1272/9 1272/13
lotus.com [4] 1168/20
1168/22 1168/24 1169/12
low [1] 1196/12
lower [3] 1245/5 1246/17
1246/21
Lucent [1] 1449/5
lucky [1] 1176/16
lump [4] 1143/4 1253/5
1438/13 1438/18
lunch [9] 1225/6 1225/21
1228/18 1283/15 1283/20

1284/9 1285/10 1427/13
1427/14
lunches [1] 1283/16
M
MAC [2] 1276/18 1387/4
machine [7] 1277/2 1372/4
1372/6 1385/10 1385/11
1385/15 1386/11
machines [2] 1278/4 1278/20
macro [5] 1418/10 1418/16
1418/23 1419/7 1419/18
macros [5] 1418/7 1419/14
1426/13 1426/15 1426/17
Macworld [2] 1166/22
1166/23
made [41] 1135/24 1150/20
1174/25 1175/2 1190/19
1191/21 1211/21 1213/8
1217/12 1223/3 1240/9
1255/21 1266/9 1266/23
1267/14 1268/11 1275/2
1279/16 1293/19 1297/8
1297/9 1298/16 1298/24
1309/21 1324/13 1330/12
1331/4 1338/8 1341/14
1347/8 1367/21 1374/21
1410/21 1450/16 1452/24
1457/7 1461/3 1461/5
1461/20 1463/2 1464/9
Magistrate [1] 1129/19
mail [35] 1159/13 1160/3
1160/9 1160/9 1160/10
1160/15 1162/5 1165/21
1168/8 1168/20 1169/1
1169/5 1170/12 1186/17
1186/18 1186/24 1186/25
1187/4 1187/6 1270/18
1270/18 1271/2 1271/3
1391/12 1391/12 1391/12
1391/13 1416/10 1416/15
1416/18 1416/19 1417/2
1417/8 1417/10 1417/12
mailer [1] 1187/5
mailers [1] 1187/4
mails [1] 1292/12
main [4] 1156/21 1159/7
1172/8 1227/8
maintained [2] 1440/13
1451/11
maintenance [7] 1138/10
1138/19 1139/18 1140/12
1144/12 1312/1 1312/22
major [5] 1146/21 1163/3
1310/9 1310/13 1333/16
majority [2] 1323/11 1323/18
make [103] 1137/22 1139/19
1151/14 1153/7 1153/14
1153/17 1157/3 1158/14
1161/1 1169/11 1172/14
1173/23 1174/13 1178/11
1182/8 1182/10 1183/3
1185/5 1185/6 1187/23
1188/25 1190/10 1190/10
1199/19 1219/9 1225/2
1228/9 1233/4 1233/16
1235/7 1237/3 1239/20
1240/2 1240/19 1241/20
1242/16 1242/18 1243/7
1245/24 1246/23 1251/17

1259/5 1266/8 1267/1
1267/16 1267/24 1268/4
1271/4 1278/12 1278/15
1278/17 1279/18 1281/19
1281/21 1281/25 1282/3
1283/16 1291/13 1297/7
1307/10 1314/19 1328/21
1332/24 1353/13 1356/4
1361/14 1361/25 1362/17
1364/14 1367/14 1375/5
1375/19 1377/16 1377/20
1381/19 1381/24 1387/18
1390/17 1390/20 1401/4
1406/25 1407/21 1408/4
1408/21 1408/21 1412/23
1413/6 1427/6 1428/12
1433/22 1437/23 1438/1
1441/1 1442/6 1444/12
1447/6 1447/9 1451/24
1457/5 1457/16 1462/16
1467/1 1468/6
makes [14] 1151/8 1152/10
1152/11 1159/4 1183/14
1281/21 1320/18 1363/13
1408/6 1442/3 1454/16
1457/1 1457/12 1457/13
making [16] 1157/3 1184/8
1209/12 1212/8 1240/14
1262/7 1267/3 1291/11
1347/8 1400/25 1405/8
1422/23 1423/2 1434/11
1461/17 1461/18
man's [1] 1255/7
manager [4] 1157/23 1157/24
1165/23 1195/25
managing [1] 1288/17
manner [3] 1134/21 1231/11
1291/25
manufactured [2] 1276/5
1276/8
manufacturing [1] 1147/16
many [32] 1137/5 1148/25
1173/20 1174/6 1179/3
1182/9 1202/24 1216/15
1216/15 1216/16 1216/22
1217/5 1218/2 1218/11
1222/6 1222/7 1233/5
1244/13 1255/24 1261/9
1272/3 1277/18 1302/11
1304/22 1318/5 1329/17
1346/12 1376/13 1387/23
1403/9 1421/14 1437/18
manzi [6] 1168/8 1168/17
1168/20 1168/22 1168/24
1169/12
Manzi's [1] 1168/7
map [5] 1161/24 1161/25
1162/2 1162/2 1162/13
MapQuest [1] 1162/1
Maps [3] 1370/4 1371/2
1376/6
March [2] 1327/13 1421/1
mark [5] 1184/3 1184/14
1184/15 1188/17 1268/14
marked [3] 1236/1 1295/13
1360/23
market [3] 1332/13 1386/13
1449/25
Marri [19] 1308/2 1308/3
1308/6 1313/17 1313/17

1313/21 1314/6 1314/21
1314/24 1315/5 1315/13
1317/13 1317/22 1318/1
1319/15 1358/6 1364/7
1364/20 1364/25
Marri's [6] 1314/6 1315/7
1317/19 1318/9 1356/20
1365/8
Martin [1] 1296/24
master's [3] 1147/25 1258/13
1289/9
match [5] 1157/9 1231/1
1256/19 1256/20 1351/23
matched [1] 1381/4
material [3] 1132/17 1227/6
1356/2
materials [12] 1154/12
1155/10 1166/17 1167/7
1198/10 1199/24 1201/20
1275/7 1314/23 1315/6
1386/22 1414/11
math [15] 1146/21 1324/8
1324/9 1324/13 1324/17
1327/25 1328/6 1328/10
1329/1 1329/3 1348/18
1348/19 1349/11 1354/22
1364/11
mathematical [1] 1231/7
mathematically [1] 1346/15
mathematics [1] 1174/10
matter [9] 1137/16 1149/11
1213/14 1284/5 1292/11
1303/6 1329/7 1428/19
1447/11
matters [3] 1224/20 1288/19
1465/21
MATTHIAS [1] 1130/13
MAX [1] 1130/4
maximum [1] 1229/3
may [50] 1129/11 1133/8
1134/1 1139/21 1146/2
1194/6 1200/23 1201/1
1205/5 1218/20 1224/19
1225/4 1225/16 1228/5
1254/1 1283/11 1283/12
1285/13 1287/16 1296/16
1317/3 1335/19 1339/25
1341/6 1360/21 1366/25
1370/9 1375/19 1382/8
1382/9 1382/11 1383/18
1385/16 1411/3 1411/4
1412/9 1412/10 1412/12
1426/24 1426/25 1427/23
1428/7 1433/5 1443/19
1443/21 1445/23 1446/11
1447/3 1449/14 1449/16
maybe [9] 1144/19 1218/16
1284/9 1285/9 1306/14
1320/13 1346/7 1346/16
1417/4
me [128] 1133/3 1133/10
1136/12 1139/6 1139/22
1139/24 1141/2 1141/14
1141/19 1141/20 1144/24
1149/3 1149/5 1150/5
1154/14 1164/25 1176/15
1193/10 1199/7 1199/13
1199/22 1203/3 1204/25
1205/4 1207/21 1211/1
1212/16 1213/16 1218/21

M			
me... [99] 1219/14 1223/10	medium [4] 1177/14 1178/6	1404/19 1404/25 1405/17	misreading [1] 1209/22
1225/5 1225/16 1225/22	1442/2 1442/3	1406/13 1408/22 1417/23	missed [1] 1227/18
1226/10 1227/17 1228/19	meet [4] 1134/5 1173/2	1418/11 1418/12 1418/16	missing [11] 1138/2 1262/18
1231/22 1239/7 1240/2	1425/7 1468/14	1418/17 1418/20 1418/22	1263/4 1263/5 1263/14
1240/2 1252/17 1254/15	meeting [1] 1388/24	1419/1 1419/7 1419/14	1391/7 1391/8 1395/10
1256/5 1256/16 1265/23	meets [1] 1460/12	1419/18 1419/23 1420/2	1395/23 1395/24 1401/18
1266/20 1266/20 1267/14	member [2] 1148/4 1289/14	1429/8 1446/25	misstated [1] 1271/23
1269/9 1270/10 1272/25	memory [8] 1176/25 1177/1	Microsoft's [2] 1297/20 1418/6	mistake [1] 1201/23
1274/17 1275/15 1278/12	1269/2 1269/2 1308/16	middle [7] 1158/9 1163/3	mistaken [1] 1239/1
1279/3 1279/5 1282/19	1311/22 1415/8 1415/9	1206/9 1206/22 1312/17	MIT [4] 1146/21 1147/10
1282/23 1282/24 1289/15	mention [6] 1249/13 1331/23	1385/20 1388/2	1147/11 1147/21
1297/20 1301/7 1303/16	1372/24 1415/5 1463/15	midnight [1] 1436/7	MMI [2] 1329/10 1329/14
1305/17 1305/23 1307/3	1464/16	might [18] 1157/4 1216/17	Mobility [9] 1292/8 1326/25
1309/23 1314/19 1327/10	mentioned [21] 1154/1	1230/17 1266/3 1285/9	1327/3 1327/8 1327/23
1329/3 1330/13 1338/10	1161/15 1164/14 1166/6	1305/15 1305/16 1323/9	1328/9 1328/15 1328/16
1338/16 1343/22 1344/25	1167/1 1196/2 1198/5 1254/9	1327/3 1342/7 1343/13	1328/25
1349/24 1355/8 1357/8	1254/19 1262/17 1272/13	1372/4 1378/1 1382/16	model [18] 1141/23 1141/23
1359/12 1361/5 1361/18	1273/8 1273/9 1291/15	1389/3 1439/12 1459/22	1142/1 1142/3 1142/11
1364/3 1364/17 1371/17	1293/20 1297/6 1316/17	1469/10	1142/16 1142/16 1142/19
1384/9 1384/13 1385/18	1326/24 1330/4 1348/23	Mike [1] 1150/24	1142/20 1285/7 1338/12
1389/12 1390/13 1391/7	1410/17	MIL [11] 1367/20 1368/2	1339/16 1339/22 1422/22
1396/7 1398/4 1399/8	mentioning [1] 1332/19	1369/24 1369/25 1370/18	1444/21 1444/22 1445/11
1402/23 1403/1 1405/22	mentions [1] 1161/19	1371/16 1372/25 1373/1	1449/22
1406/13 1407/11 1410/20	mentor [1] 1147/9	1373/7 1373/24 1376/16	modifications [1] 1309/21
1411/17 1412/25 1413/25	menu [7] 1168/10 1168/10	Milford [1] 1289/7	modified [1] 1233/10
1414/1 1415/16 1417/23	1170/13 1186/15 1396/1	Miller [13] 1150/18 1150/22	modify [1] 1395/16
1420/14 1422/14 1423/16	1400/18 1407/2	1166/19 1191/3 1199/11	modifying [1] 1395/12
1431/25 1432/1 1434/23	menus [2] 1401/1 1406/24	1277/14 1279/1 1280/7	modulated [1] 1286/24
1435/14 1436/20 1441/13	mere [2] 1444/14 1445/7	1289/7 1387/4 1407/6 1407/9	moment [4] 1136/12 1200/14
1441/25 1444/9 1449/3	mess [1] 1329/5	1407/10	1261/11 1266/10
1450/24 1451/3 1452/12	message [5] 1156/24 1165/21	Miller's [2] 1275/24 1276/6	moments [1] 1416/11
1454/19 1455/2 1457/6	1168/21 1270/18 1398/10		Monday [2] 1129/11 1427/6
1458/19 1460/18 1463/11	messages [4] 1156/23 1398/9		monetize [1] 1364/19
1468/16	1398/17 1405/19		monetized [1] 1446/3
mean [49] 1140/3 1153/10	messed [1] 1279/2		money [6] 1298/18 1363/13
1163/21 1171/15 1189/16	met [3] 1201/8 1341/13		1426/2 1463/16 1463/19
1189/17 1194/6 1202/7	1425/14		1463/20
1212/25 1220/21 1220/25	method [2] 1174/20 1460/13		month [6] 1251/25 1303/13
1221/2 1221/20 1226/12	methodology [13] 1135/5		1321/9 1324/6 1426/9
1258/13 1259/9 1260/4	1135/7 1135/12 1189/20		1436/15
1270/1 1277/20 1278/14	1231/7 1231/17 1232/9		months [23] 1222/11 1222/11
1294/23 1304/5 1310/16	1330/3 1351/16 1351/19		1251/9 1251/16 1255/2
1311/1 1318/3 1324/21	1354/3 1381/4 1437/18		1255/2 1319/9 1320/7
1325/19 1327/1 1327/18	methods [2] 1149/23 1196/4		1320/11 1320/16 1320/17
1330/6 1330/18 1331/25	Microsoft [94] 1137/14 1143/3		1320/18 1320/19 1322/10
1337/3 1343/1 1344/3	1151/11 1174/4 1174/21		1337/2 1337/6 1337/9
1354/23 1355/24 1359/8	1182/21 1182/22 1183/12		1337/22 1338/14 1338/15
1363/8 1373/18 1382/2	1187/25 1188/3 1188/5		1339/2 1340/2 1460/17
1387/20 1397/11 1409/12	1188/8 1188/9 1188/24		MOORE [1] 1130/9
1413/19 1455/5 1462/20	1189/9 1189/25 1190/7		more [67] 1139/10 1152/11
1462/22 1462/23	1190/14 1191/4 1279/7		1152/12 1154/16 1159/23
meaning [6] 1303/4 1369/10	1279/10 1280/2 1280/5		1159/23 1161/17 1169/17
1433/9 1451/18 1464/3	1292/8 1292/8 1294/22		1171/17 1172/17 1176/15
1466/5	1294/24 1295/9 1297/5		1176/24 1185/7 1189/7
means [21] 1169/19 1175/13	1297/20 1297/23 1298/8		1216/8 1220/15 1220/16
1176/9 1189/18 1219/24	1298/9 1298/20 1298/24		1220/19 1232/7 1236/13
1282/14 1286/13 1304/6	1299/18 1300/12 1300/22		1238/1 1255/22 1255/22
1311/2 1318/5 1319/14	1301/13 1303/2 1303/8		1257/19 1257/20 1258/17
1323/15 1325/2 1337/22	1305/20 1305/20 1325/3		1261/7 1262/12 1264/8
1391/13 1391/13 1409/13	1325/10 1326/25 1327/3		1265/11 1265/22 1266/11
1413/20 1418/14 1452/12	1327/8 1327/9 1327/11		1266/15 1267/5 1267/18
1452/23	1327/11 1327/13 1327/18		1273/2 1274/12 1286/16
meant [3] 1271/19 1420/10	1327/19 1327/21 1327/23		1318/2 1320/12 1320/20
1452/8	1328/6 1328/7 1328/9		1320/23 1322/21 1355/25
meantime [1] 1368/6	1328/15 1328/16 1328/25		1358/17 1358/19 1365/14
measure [3] 1290/11 1293/14	1331/4 1401/13 1401/19		1368/9 1372/8 1379/14
1340/24	1401/21 1403/6 1403/7		1389/5 1392/18 1400/18
measured [1] 1293/18	1403/12 1403/15 1403/17		1401/23 1413/23 1414/2
media [3] 1259/17 1259/22	1404/8 1404/9 1404/14		1415/8 1427/3 1442/6
			1443/13 1444/19 1445/2

M	Mr. [284]	1334/7	1225/20
more... [5] 1449/8 1457/7	1131/12 1131/13	1334/8 1337/21	1229/12 1229/14
1457/21 1460/24 1463/12	1131/19 1131/20 1131/25	1337/25 1340/1 1340/11	1250/19 1253/13
morning [26] 1131/7 1134/9	1132/3 1132/10 1132/11	1340/15 1341/2 1342/12	Mr. Lahad [2] 1322/23 1323/3
1145/7 1146/6 1146/7 1146/9	1132/23 1133/2 1134/16	1343/14 1344/8 1345/5	Mr. Marri [14] 1308/6 1313/17
1150/2 1201/5 1201/6 1201/9	1134/22 1135/16 1135/25	1345/6 1345/9 1346/14	1313/21 1314/6 1314/21
1201/11 1224/17 1230/12	1136/21 1137/1 1137/12	1347/19 1348/17 1348/23	1315/13 1317/13 1317/22
1230/13 1316/23 1337/20	1138/7 1138/16 1139/9	1348/24 1349/1 1349/10	1318/1 1319/15 1358/6
1339/14 1385/1 1388/9	1139/12 1139/15 1140/4	1349/10 1349/16 1349/21	1364/7 1364/20 1364/25
1389/7 1393/9 1393/17	1141/16 1141/22 1141/23	1350/3 1350/5 1350/22	Mr. Marri's [6] 1314/6 1315/7
1402/2 1427/10 1441/3	1141/23 1142/1 1142/3	1351/1 1351/6 1351/7	1317/19 1318/9 1356/20
1469/9	1142/6 1142/10 1142/12	1351/11 1351/20 1352/1	1365/8
most [19] 1136/10 1148/16	1142/13 1142/19 1143/12	1352/5 1353/4 1353/17	Mr. Miller [2] 1277/14 1280/7
1191/24 1258/6 1258/8	1144/1 1211/4 1220/1	1354/4 1354/13 1354/15	Mr. Miller's [1] 1276/6
1258/17 1260/1 1269/4	1220/14 1225/6 1225/20	1355/16 1356/20 1357/11	Mr. Sacerdoti [1] 1229/1
1305/18 1309/16 1313/16	1226/4 1228/25 1229/1	1358/6 1364/7 1364/20	Mr. Spence [3] 1241/19
1326/2 1381/11 1381/20	1229/12 1229/14 1232/4	1364/25 1365/8 1365/16	1320/25 1321/20
1382/2 1386/13 1432/9	1232/8 1232/9 1232/13	1367/9 1372/3 1376/3	Mr. Spencer [1] 1305/25
1432/10 1432/10	1233/5 1236/2 1236/7	1377/11 1380/24 1381/3	Mr. Toki [2] 1312/3 1436/1
mostly [1] 1283/24	1237/16 1238/5 1239/3	1382/1 1382/5 1382/9	Mr. Weinstein [93] 1142/13
motion [9] 1369/9 1373/11	1239/8 1239/10 1239/10	1398/24 1402/17 1406/13	1142/19 1226/4 1232/9
1377/1 1431/11 1434/4	1239/11 1239/11 1239/14	1407/12 1412/10 1414/19	1233/5 1236/2 1236/7
1434/11 1451/4 1451/7	1239/20 1239/20 1239/21	1417/25 1418/6 1418/25	1237/16 1238/5 1239/8
1451/8	1239/21 1240/4 1240/12	1423/20 1432/12 1432/23	1239/10 1239/11 1239/14
motions [7] 1227/25 1382/17	1241/19 1242/7 1244/11	1436/1 1436/1 1436/3 1437/7	1239/20 1239/21 1240/4
1428/10 1428/17 1429/17	1244/23 1245/2 1245/11	1458/15	1242/7 1244/23 1246/2
1433/22 1434/24	1245/19 1246/2 1246/11	Mr. Boles [22] 1220/1	1246/11 1246/14 1249/4
motivate [1] 1183/17	1246/14 1246/23 1248/5	1220/14 1256/4 1256/20	1253/8 1253/14 1290/8
motivated [11] 1182/5 1182/8	1249/4 1249/4 1250/13	1260/19 1274/1 1275/4	1290/14 1291/11 1292/4
1182/10 1183/3 1279/23	1251/24 1251/25 1253/5	1345/5 1345/6 1347/19	1293/20 1294/2 1297/24
1280/1 1280/9 1390/17	1253/8 1253/11 1253/13	1350/3 1350/22 1351/7	1302/16 1304/15 1306/15
1390/18 1390/24 1399/22	1253/14 1256/4 1256/20	1352/5 1353/4 1354/13	1306/21 1309/8 1310/6
motivation [23] 1280/15	1260/19 1274/1 1275/4	1365/16 1380/24 1402/17	1311/7 1311/10 1311/14
1280/22 1280/23 1281/5	1276/6 1277/14 1280/7	1406/13 1407/12 1412/10	1312/16 1312/23 1313/7
1281/11 1281/15 1281/17	1287/14 1289/22 1290/8	Mr. Choc [9] 1312/8 1312/9	1313/8 1313/13 1315/2
1281/24 1282/1 1282/6	1290/14 1291/11 1291/20	1322/14 1322/15 1322/24	1315/5 1315/8 1315/17
1282/10 1282/14 1390/9	1292/4 1293/17 1293/20	1323/6 1323/8 1357/11	1316/2 1318/25 1319/25
1399/21 1402/4 1402/7	1294/2 1297/24 1302/16	1436/1	1321/16 1321/22 1322/20
1403/21 1403/24 1404/14	1304/15 1305/25 1306/14	Mr. Choc's [3] 1323/2 1323/11	1322/21 1323/20 1324/2
1404/16 1405/12 1407/18	1306/15 1306/21 1308/6	1329/22	1324/23 1325/2 1325/17
1429/10	1308/22 1309/1 1309/8	Mr. Douglas [1] 1287/14	1325/22 1327/2 1327/25
motivations [1] 1401/5	1309/20 1310/3 1310/6	Mr. Elbouchikhi [5] 1311/23	1328/19 1329/22 1330/18
move [20] 1182/3 1189/22	1311/7 1311/10 1311/14	1311/23 1322/8 1398/24	1330/20 1334/7 1334/8
1238/10 1249/1 1260/14	1311/23 1311/23 1312/3	1423/20	1337/25 1340/1 1340/11
1296/1 1298/7 1306/23	1312/8 1312/9 1312/16	Mr. Fox [1] 1414/19	1340/15 1341/2 1346/14
1307/16 1351/4 1352/5	1312/23 1313/7 1313/8	Mr. Fox's [1] 1132/10	1348/17 1348/23 1348/24
1361/11 1368/22 1394/18	1313/13 1313/17 1313/21	Mr. Hedloy [11] 1324/24	1349/1 1349/10 1349/10
1395/22 1401/12 1413/16	1314/6 1314/6 1314/21	1324/24 1325/9 1325/9	1349/16 1351/1 1351/11
1425/18 1428/18 1430/25	1315/2 1315/5 1315/7 1315/8	1325/14 1325/16 1417/25	1351/20 1352/1 1354/4
moved [3] 1144/3 1242/4	1315/13 1315/17 1316/2	1418/6 1418/25 1432/12	1354/15 1355/16 1367/9
1367/7	1316/4 1317/13 1317/15	1458/15	1436/3 1437/7
moves [1] 1366/3	1317/19 1317/22 1317/25	Mr. Hedloy's [1] 1432/23	Mr. Weinstein's [47] 1132/23
MPEP [2] 1197/6 1197/16	1318/1 1318/3 1318/9	Mr. Kidder [49] 1131/12	1141/16 1142/1 1142/3
Mr [50] 1131/11 1140/3	1318/25 1319/15 1319/25	1131/13 1131/19 1131/20	1142/10 1143/12 1211/4
1286/19 1288/5 1289/16	1320/25 1321/15 1321/16	1131/25 1132/3 1132/11	1232/4 1240/12 1245/16
1290/3 1290/10 1290/15	1321/20 1321/22 1322/8	1133/2 1134/16 1134/22	1245/19 1251/25 1253/11
1290/25 1291/24 1292/14	1322/14 1322/15 1322/20	1135/16 1135/25 1136/21	1291/20 1293/17 1306/14
1293/5 1296/7 1299/8 1300/7	1322/21 1322/23 1322/24	1137/1 1137/12 1138/16	1308/22 1309/1 1309/20
1301/1 1301/19 1305/1	1322/25 1323/2 1323/3	1139/9 1139/12 1139/15	1310/3 1316/4 1317/15
1306/10 1307/22 1314/5	1323/6 1323/8 1323/11	1140/4 1141/22 1142/6	1317/25 1318/3 1321/15
1314/15 1314/20 1314/22	1323/15 1323/20 1324/2	1144/1 1225/6 1228/25	1322/25 1323/15 1324/4
1316/6 1316/22 1317/13	1324/4 1324/23 1324/24	1232/8 1232/13 1239/3	1325/18 1326/6 1326/12
1318/16 1322/2 1323/12	1324/24 1325/2 1325/9	1239/10 1239/11 1239/20	1327/22 1328/2 1329/1
1331/16 1333/16 1336/20	1325/9 1325/14 1325/16	1239/21 1244/11 1245/2	1329/11 1330/2 1330/7
1337/24 1341/12 1343/2	1325/17 1325/18 1325/22	1246/23 1248/5 1249/4	1332/7 1337/21 1342/12
1343/18 1348/20 1350/12	1326/6 1326/12 1326/24	1251/24 1253/5 1289/22	1343/14 1344/8 1349/21
1354/20 1356/8 1358/16	1327/2 1327/22 1327/25	1326/24 1331/23 1345/9	1350/5 1351/6 1381/3 1382/1
1362/24 1365/19 1373/3	1328/2 1328/19 1329/1	1353/17 1372/3 1376/3	MR1 [4] 1311/25 1312/9
1380/13 1435/25 1436/3	1329/11 1329/22 1329/22	1377/11 1382/5 1382/9	1321/19 1322/13
1437/5 1437/22	1330/2 1330/7 1330/18	Mr. Kidder's [9] 1138/7	MS [1] 1384/20
	1330/20 1331/23 1332/7	1141/23 1141/23 1142/12	Ms. [6] 1137/25 1144/24

M
 Ms.... [4] 1253/19 1290/18
 1368/19 1377/3
 Ms. Garfinkel [6] 1137/25
 1144/24 1253/19 1290/18
 1368/19 1377/3
 much [39] 1189/4 1189/5
 1189/5 1189/7 1190/7
 1208/21 1245/5 1246/5
 1246/21 1262/12 1265/11
 1267/5 1279/3 1283/7 1295/5
 1297/11 1298/24 1300/11
 1302/14 1303/20 1305/9
 1305/14 1323/4 1323/4
 1328/10 1334/4 1355/25
 1358/17 1358/19 1368/9
 1381/19 1382/7 1382/15
 1400/15 1410/6 1411/20
 1412/13 1426/20 1430/15
 muddling [1] 1134/9
 multi [2] 1297/21 1395/3
 multi-year [2] 1297/21 1395/3
 multiple [7] 1144/2 1155/4
 1169/21 1174/7 1301/5
 1388/24 1390/5
 multiplied [3] 1320/3 1325/5
 1328/4
 multiplier [8] 1324/20 1324/22
 1325/19 1325/20 1325/22
 1326/1 1326/4 1340/20
 multiply [2] 1300/13 1325/14
 multiplying [2] 1325/4 1382/3
 MUNGER [1] 1130/16
 must [9] 1171/9 1247/21
 1441/18 1443/12 1445/1
 1445/19 1449/19 1454/4
 1454/5
 my [156] 1146/9 1146/10
 1147/4 1147/12 1147/13
 1147/21 1147/25 1147/25
 1148/3 1148/21 1148/21
 1149/20 1150/13 1151/3
 1155/13 1161/6 1162/24
 1163/2 1167/10 1173/15
 1190/24 1191/19 1191/20
 1191/21 1194/25 1195/5
 1195/10 1195/22 1200/1
 1201/7 1202/10 1203/9
 1203/11 1203/13 1204/3
 1205/1 1207/8 1207/9 1208/9
 1208/20 1209/3 1209/19
 1210/1 1210/6 1210/15
 1211/20 1212/25 1213/1
 1213/19 1215/19 1216/4
 1216/24 1218/5 1219/17
 1228/18 1229/2 1233/17
 1234/6 1236/3 1236/10
 1238/5 1241/1 1241/3
 1250/10 1252/21 1252/22
 1253/3 1258/6 1260/7 1260/7
 1263/9 1264/4 1264/24
 1264/24 1265/6 1265/13
 1265/17 1265/18 1266/3
 1266/23 1267/12 1269/18
 1270/1 1273/5 1278/10
 1279/17 1279/19 1281/2
 1282/18 1284/17 1286/7
 1288/8 1288/20 1288/25
 1290/8 1305/5 1306/25
 1307/8 1308/16 1311/22

1317/24 1317/25 1322/8
 1323/6 1324/6 1324/11
 1324/14 1327/4 1327/5
 1328/1 1333/8 1333/14
 1335/25 1338/17 1339/12
 1340/20 1341/12 1344/6
 1346/18 1356/5 1372/16
 1381/24 1383/23 1384/11
 1384/18 1384/18 1385/1
 1387/18 1388/13 1388/18
 1389/22 1391/16 1393/2
 1396/7 1398/2 1398/15
 1399/7 1400/21 1401/10
 1401/16 1404/16 1409/4
 1410/6 1412/17 1415/1
 1415/8 1415/11 1424/15
 1424/16 1425/5 1426/8
 1430/11 1431/8 1439/11
 1450/25 1470/5
 myself [3] 1167/3 1388/19
 1412/20

N
 name [31] 1145/16 1146/9
 1157/11 1157/12 1157/22
 1157/24 1157/25 1158/9
 1165/21 1165/23 1165/23
 1169/14 1179/5 1179/5
 1179/16 1179/20 1179/23
 1179/24 1180/14 1186/23
 1187/1 1187/1 1187/7 1201/7
 1287/18 1288/8 1319/11
 1332/20 1341/12 1383/7
 1383/23
 named [3] 1147/5 1167/23
 1465/15
 namely [1] 1401/25
 names [3] 1157/13 1167/24
 1301/8
 narrow [4] 1139/14 1342/8
 1347/11 1400/14
 narrowed [1] 1235/14
 narrowing [1] 1234/23
 Natives [1] 1360/23
 natural [2] 1385/13 1419/18
 naturally [1] 1324/10
 nature [1] 1198/7
 NEAL [1] 1129/24
 necessarily [3] 1207/9
 1271/13 1415/8
 necessary [7] 1265/19
 1266/11 1267/6 1268/6
 1268/17 1268/22 1438/2
 need [41] 1132/25 1163/18
 1195/14 1197/14 1224/20
 1225/10 1226/17 1227/25
 1228/16 1237/12 1239/25
 1261/11 1266/15 1282/12
 1286/20 1290/17 1297/7
 1308/11 1308/12 1323/17
 1325/13 1326/17 1327/19
 1335/17 1335/22 1336/3
 1342/17 1355/24 1356/14
 1360/21 1361/16 1361/22
 1361/25 1368/17 1372/4
 1414/23 1430/2 1430/11
 1440/25 1445/25 1450/12
 needed [8] 1237/11 1269/11
 1322/21 1358/15 1400/7
 1437/21 1452/4 1452/6

needing [1] 1243/22
 needs [5] 1225/10 1255/20
 1436/4 1451/17 1452/6
 negates [1] 1194/1
 negotiate [3] 1294/5 1304/25
 1333/25
 negotiation [19] 1141/12
 1144/8 1251/13 1252/8
 1252/9 1294/1 1294/4
 1304/17 1304/21 1305/16
 1333/22 1333/23 1334/4
 1337/23 1338/24 1339/3
 1339/7 1339/15 1463/23
 negotiations [4] 1193/25
 1194/4 1304/22 1463/16
 neither [1] 1399/19
 nerd [2] 1329/3 1364/11
 Netscape [1] 1156/18
 network [4] 1162/17 1163/13
 1262/13 1414/15
 never [12] 1142/11 1220/23
 1221/7 1232/16 1249/18
 1257/15 1314/10 1322/16
 1330/12 1385/22 1457/12
 1463/24
 new [48] 1132/23 1133/2
 1142/1 1142/3 1153/5 1154/8
 1171/7 1171/9 1171/10
 1171/12 1181/13 1181/16
 1181/19 1185/22 1185/24
 1225/15 1226/16 1226/21
 1233/1 1233/6 1236/1
 1245/16 1248/10 1248/19
 1249/20 1251/25 1253/4
 1259/23 1259/23 1315/23
 1337/22 1388/3 1388/18
 1408/5 1408/9 1424/16
 1425/4 1430/14 1432/1
 1445/20 1463/7 1463/11
 1464/1 1465/2 1465/17
 1465/23 1466/10 1466/15
 New York [1] 1466/15
 newer [1] 1206/19
 News [3] 1309/11 1309/11
 1350/19
 next [85] 1133/25 1134/15
 1137/7 1138/6 1145/12
 1158/20 1162/9 1162/16
 1163/3 1163/7 1165/15
 1168/2 1168/25 1169/6
 1170/2 1170/23 1173/12
 1174/17 1175/15 1175/16
 1176/8 1176/19 1177/2
 1177/5 1181/7 1182/9
 1183/19 1184/5 1185/2
 1185/5 1186/1 1187/13
 1188/1 1188/21 1189/14
 1190/2 1190/22 1191/13
 1195/22 1203/11 1203/21
 1206/9 1206/20 1213/16
 1214/4 1216/1 1220/14
 1243/16 1243/17 1249/1
 1249/2 1269/21 1287/12
 1299/8 1299/10 1300/7
 1306/3 1308/23 1324/19
 1326/3 1326/16 1326/24
 1328/1 1330/4 1331/23
 1334/6 1386/13 1413/16

1426/9 1443/17 1448/7
 1448/11 1448/13 1457/23
 1457/24 1460/19 1460/19
 1460/19 1460/23 1462/1
 1462/2 1462/6 1464/7
 1464/11 1464/11
 nexus [2] 1195/9 1234/24
 nice [2] 1159/20 1410/5
 night [10] 1134/3 1134/20
 1226/14 1226/16 1227/6
 1233/10 1284/12 1380/16
 1380/20 1427/6
 Nike [1] 1386/8
 nilly [1] 1390/6
 nine [3] 1297/15 1298/25
 1371/14
 no [225] 1129/6 1132/10
 1134/4 1136/9 1136/9
 1137/16 1138/19 1142/23
 1143/23 1143/23 1149/12
 1149/15 1167/10 1195/23
 1197/5 1197/22 1200/8
 1200/9 1200/11 1202/6
 1202/22 1208/8 1208/25
 1209/19 1211/25 1213/19
 1214/18 1215/19 1216/1
 1216/14 1216/14 1216/14
 1219/6 1219/23 1221/15
 1221/15 1222/6 1222/11
 1223/12 1223/14 1223/16
 1226/6 1227/20 1231/9
 1231/25 1241/4 1241/24
 1244/6 1248/7 1248/19
 1251/11 1254/18 1254/24
 1257/18 1258/20 1259/1
 1261/6 1262/21 1263/1
 1263/15 1266/22 1268/7
 1268/9 1268/12 1268/13
 1268/19 1268/20 1269/1
 1271/13 1271/15 1271/20
 1272/5 1272/21 1272/21
 1273/2 1273/2 1276/6
 1276/12 1278/4 1279/11
 1279/25 1280/7 1280/11
 1280/15 1280/22 1280/23
 1280/24 1281/5 1281/6
 1281/11 1281/12 1281/14
 1281/17 1281/18 1281/23
 1281/24 1282/1 1282/2
 1282/6 1282/10 1282/14
 1283/3 1283/5 1283/9
 1284/24 1285/8 1286/8
 1289/21 1289/25 1296/3
 1299/1 1302/9 1302/18
 1302/24 1305/21 1307/18
 1308/9 1309/12 1313/14
 1313/21 1315/12 1315/19
 1318/7 1319/9 1319/9
 1320/18 1320/21 1325/8
 1326/12 1329/19 1335/3
 1335/18 1336/12 1337/10
 1337/10 1338/14 1339/4
 1339/5 1339/11 1344/17
 1346/7 1346/8 1348/21
 1349/1 1349/1 1350/16
 1352/17 1356/13 1356/17
 1356/20 1357/1 1358/5
 1358/11 1358/12 1359/5
 1359/15 1362/14 1362/21
 1363/14 1364/4 1364/18

N
no... [64] 1364/19 1365/7
1366/6 1366/19 1367/14
1367/21 1376/1 1377/19
1377/23 1378/10 1379/14
1381/12 1382/5 1386/17
1387/13 1391/17 1392/6
1393/5 1393/6 1398/20
1398/20 1399/6 1400/15
1406/5 1408/15 1410/23
1411/15 1411/18 1411/23
1413/15 1415/19 1415/23
1416/5 1416/7 1417/4 1424/4
1424/13 1424/22 1424/22
1425/13 1426/5 1426/17
1426/18 1426/22 1433/19
1436/10 1439/6 1445/13
1446/8 1446/16 1447/5
1447/13 1448/6 1449/1
1450/22 1452/10 1454/17
1454/24 1457/11 1457/18
1460/4 1460/20 1463/16
1467/12
no-license [1] 1433/19
noise [1] 1372/4
Nokia [6] 1327/9 1327/9
1327/10 1327/12 1327/20
1327/20
non [27] 1177/13 1178/6
1201/12 1202/4 1202/16
1207/18 1208/6 1214/13
1316/8 1333/17 1334/2
1334/10 1334/21 1334/22
1335/1 1335/3 1335/11
1335/12 1335/20 1336/1
1336/9 1336/22 1337/25
1338/8 1340/12 1455/11
1455/13
non-infringement [5] 1201/12
1202/4 1202/16 1207/18
1208/6
non-infringing [17] 1316/8
1333/17 1334/2 1334/10
1334/21 1334/22 1335/1
1335/3 1335/11 1335/12
1335/20 1336/1 1336/9
1336/22 1337/25 1338/8
1340/12
non-preloaded [1] 1455/13
non-transitory [2] 1177/13
1178/6
noncumulative [2] 1430/23
1431/16
none [3] 1365/4 1442/21
1443/16
nonetheless [1] 1257/5
nonhypothetical [1] 1304/21
noninfringement [1] 1436/2
nonobvious [3] 1171/7
1171/10 1171/12
nonobviousness [6] 1191/6
1191/15 1193/1 1194/24
1409/7 1409/9
nonprofit [1] 1385/7
normal [1] 1273/2
Northern [1] 1384/15
not [415]
note [1] 1286/18
notebook [2] 1395/19 1402/13
noted [9] 1150/8 1172/6

1364/23 1367/11 1431/23
1433/2 1433/18 1444/4
1448/16
notepad [14] 1182/18 1182/18
1186/10 1272/15 1273/16
1274/15 1398/18 1414/21
1414/25 1415/2 1415/3
1415/5 1415/15 1415/18
notes [4] 1164/5 1237/15
1450/25 1470/5
nothing [6] 1138/9 1144/13
1251/14 1273/11 1280/12
1455/5
notice [2] 1173/9 1299/1
noticed [1] 1327/4
notices [1] 1278/22
notion [8] 1193/3 1209/20
1213/23 1214/11 1216/18
1294/1 1396/14 1460/7
November [10] 1293/2
1293/11 1329/20 1337/9
1342/2 1348/5 1412/6 1434/8
1447/7 1447/9
November 10 [4] 1293/2
1342/2 1447/7 1447/9
November 10, -1998 [1]
1412/6
November 2018 [1] 1329/20
November 5 [1] 1293/11
now [110] 1132/17 1135/15
1135/25 1136/5 1137/20
1138/13 1138/14 1139/17
1140/16 1142/16 1144/10
1152/24 1156/18 1163/21
1167/23 1168/18 1170/20
1175/23 1176/2 1177/21
1178/7 1184/15 1193/16
1200/14 1205/15 1214/5
1217/10 1217/22 1230/5
1230/11 1230/15 1234/2
1234/24 1235/13 1238/18
1240/15 1243/19 1245/11
1245/12 1248/19 1249/21
1257/7 1266/20 1267/9
1267/12 1283/17 1285/20
1290/15 1290/16 1292/7
1294/23 1295/12 1296/7
1297/6 1297/24 1299/21
1300/7 1302/16 1303/4
1309/8 1310/3 1311/7
1312/23 1313/4 1314/14
1316/16 1317/1 1320/9
1322/2 1323/12 1323/20
1324/19 1325/21 1326/24
1329/14 1330/4 1330/17
1332/6 1337/20 1343/6
1344/8 1344/13 1347/17
1348/12 1348/23 1349/14
1351/10 1351/25 1352/24
1353/12 1356/8 1357/7
1359/7 1360/11 1364/1
1366/10 1370/8 1375/7
1394/18 1407/11 1413/21
1427/5 1433/24 1435/13
1441/12 1441/18 1457/8
1468/15 1468/24 1469/14
nowadays [1] 1174/5
number [138] 1132/23
1137/12 1137/14 1140/22
1140/22 1141/24 1142/17

1143/4 1143/6 1148/8
1148/15 1154/25 1157/2
1157/15 1158/2 1158/10
1159/18 1161/22 1162/19
1164/6 1166/25 1168/4
1168/9 1168/15 1168/15
1174/15 1174/16 1174/20
1175/1 1175/4 1175/17
1175/18 1175/22 1179/4
1180/12 1183/25 1188/22
1192/4 1193/2 1198/6 1206/2
1231/21 1233/11 1235/6
1239/7 1240/15 1240/16
1241/24 1244/10 1244/11
1245/19 1246/16 1246/17
1246/20 1246/21 1252/25
1255/5 1256/1 1264/1 1270/2
1273/16 1297/25 1297/25
1298/14 1301/1 1301/2
1301/9 1302/1 1303/21
1304/8 1306/21 1307/24
1308/18 1310/11 1310/14
1310/16 1310/19 1313/12
1319/1 1320/1 1320/2 1320/4
1320/9 1320/11 1320/15
1321/16 1322/2 1323/17
1323/19 1325/14 1326/11
1328/13 1328/24 1330/15
1340/19 1341/24 1342/13
1343/5 1343/10 1345/6
1345/11 1345/15 1345/16
1345/17 1346/10 1346/14
1347/2 1347/4 1347/10
1352/18 1353/24 1354/3
1354/5 1354/8 1354/14
1354/24 1355/1 1355/12
1355/20 1361/25 1364/2
1364/5 1366/20 1370/1
1371/8 1372/24 1374/3
1374/16 1378/8 1380/19
1385/9 1418/24 1438/13
1438/21 1439/14 1439/14
1440/8 1465/22
Number 1 [7] 1174/20
1175/17 1175/22 1188/22
1193/2 1198/6 1465/22
Number 10 [1] 1342/13
Number 12/841302 [1] 1164/6
Number 2 [5] 1174/15
1174/16 1175/1 1175/4
1175/18
Number 4 [1] 1206/2
Number 7 [1] 1192/4
Number 9 [1] 1341/24
Number C [1] 1179/4
numbered [1] 1191/11
numbers [103] 1137/16
1137/17 1142/5 1148/24
1161/19 1179/25 1230/24
1231/1 1233/19 1234/3
1235/17 1236/2 1236/12
1238/7 1238/13 1238/25
1240/4 1240/5 1240/20
1242/4 1242/24 1245/22
1245/23 1246/5 1246/24
1247/4 1247/9 1248/2 1248/2
1248/8 1256/19 1256/21
1261/25 1295/7 1298/19
1299/24 1300/14 1302/3
1304/7 1304/8 1304/11

1308/8 1308/11 1309/12
1309/20 1314/9 1314/10
1314/16 1315/18 1315/21
1315/24 1316/2 1316/9
1321/25 1322/25 1323/21
1324/12 1342/14 1345/20
1352/8 1352/9 1359/9
1360/16 1361/9 1362/7
1363/9 1363/24 1364/12
1365/2 1365/2 1366/13
1367/24 1368/1 1370/14
1370/16 1371/8 1373/6
1373/13 1373/15 1373/19
1373/23 1373/24 1374/13
1375/12 1375/16 1376/11
1376/12 1376/17 1376/19
1378/2 1378/15 1378/24
1378/25 1381/2 1381/3
1381/5 1438/22 1440/5
1453/24 1454/9 1454/23
1455/2 1455/5
numerous [1] 1198/14

O
O-MR1 [1] 1312/9
oath [6] 1145/21 1253/25
1276/25 1287/23 1383/14
1411/6
object [11] 1134/23 1138/22
1140/24 1164/24 1192/23
1193/7 1233/10 1235/1
1235/16 1243/3 1372/23
objected [6] 1133/7 1133/12
1133/14 1133/16 1232/12
1242/5
objecting [2] 1132/21 1133/22
objection [64] 1134/13 1138/4
1140/10 1149/15 1165/1
1198/15 1200/9 1200/11
1208/15 1211/10 1211/12
1218/20 1219/12 1231/15
1231/15 1232/10 1233/21
1233/23 1236/4 1236/19
1237/5 1243/16 1249/1
1249/24 1250/11 1250/17
1250/19 1251/7 1251/8
1252/11 1255/8 1289/25
1296/3 1307/12 1307/18
1334/18 1337/11 1344/23
1362/7 1362/14 1362/21
1366/6 1368/1 1368/24
1378/18 1381/7 1386/17
1392/22 1396/23 1397/4
1399/1 1406/5 1424/24
1439/19 1443/20 1444/4
1444/12 1444/17 1444/25
1446/6 1446/16 1447/24
1448/6 1450/17
objectionable [1] 1132/17
objections [10] 1132/3 1132/5
1132/10 1132/15 1132/21
1225/11 1228/10 1285/25
1317/4 1435/10
objectives [1] 1400/4
objects [1] 1249/3
obligations [1] 1465/20
observer [1] 1439/12
obtain [1] 1147/11
obtained [1] 1277/18
obvious [48] 1151/7 1151/8

obvious... [46] 1152/9
1152/10 1175/19 1182/7
1183/14 1184/24 1185/13
1185/16 1187/23 1188/10
1188/19 1190/9 1190/11
1190/19 1191/2 1209/14
1210/1 1210/25 1212/4
1212/6 1212/9 1212/10
1212/13 1212/13 1212/14
1255/21 1267/7 1267/15
1280/17 1394/9 1394/10
1399/17 1399/19 1401/9
1401/11 1401/15 1401/17
1404/21 1404/23 1405/1
1409/2 1409/5 1409/16
1409/17 1445/20 1445/23
obviously [8] 1138/22 1235/20
1250/21 1300/19 1362/1
1428/11 1437/11 1459/13
obviousness [42] 1176/7
1176/18 1182/3 1189/16
1191/7 1191/8 1191/15
1191/18 1213/8 1257/13
1267/7 1267/10 1278/10
1279/6 1279/18 1279/24
1280/5 1280/6 1280/18
1280/24 1281/6 1281/12
1281/18 1281/24 1282/2
1282/8 1282/13 1282/15
1389/7 1389/16 1389/20
1390/4 1390/5 1394/6
1399/12 1409/9 1428/22
1428/24 1429/5 1429/12
1430/25 1434/12
occasionally [1] 1146/11
occurred [3] 1309/17 1339/16
1369/3
occurs [1] 1460/10
October [6] 1136/20 1308/18
1355/22 1355/24 1410/17
1410/25
October 20 [2] 1136/20
1355/22
October 2017 [1] 1308/18
October 2020 [1] 1410/25
off [46] 1134/8 1135/12
1153/21 1158/5 1158/17
1161/10 1166/4 1169/12
1169/21 1170/17 1170/25
1174/12 1179/18 1180/23
1181/7 1183/21 1183/24
1184/16 1185/4 1188/15
1190/19 1192/19 1192/21
1224/14 1232/7 1232/8
1236/25 1257/25 1268/4
1298/16 1309/21 1322/24
1323/4 1324/16 1324/17
1324/18 1329/23 1343/25
1363/13 1363/14 1388/1
1388/10 1388/11 1394/12
1440/7 1441/9
offer [13] 1146/24 1233/1
1233/6 1248/15 1249/20
1316/10 1316/12 1324/3
1386/15 1397/11 1400/24
1406/4 1425/15
offered [15] 1248/7 1251/10
1354/15 1375/20 1380/7
1418/20 1436/23 1436/24

1437/17 1445/25 1446/5
1446/7 1446/12 1452/24
1461/3
offering [1] 1337/24
offers [2] 1143/4 1165/22
office [53] 1152/16 1153/5
1155/13 1164/2 1164/11
1164/22 1165/16 1166/2
1167/10 1168/23 1169/24
1170/4 1170/6 1170/19
1171/17 1171/20 1172/13
1172/15 1175/5 1197/2
1197/3 1197/4 1197/11
1197/23 1198/4 1198/6
1198/10 1198/19 1199/6
1199/12 1200/2 1214/3
1216/21 1217/13 1217/23
1221/1 1221/6 1221/21
1221/22 1223/1 1223/1
1223/7 1254/13 1255/17
1263/17 1297/20 1298/9
1298/24 1305/21 1328/7
1403/5 1405/18 1418/24
officers [1] 1458/4
Official [1] 1470/8
offset [1] 1437/24
offsets [1] 1440/5
often [2] 1147/5 1202/20
oh [12] 1219/23 1247/1
1271/18 1279/2 1308/14
1344/6 1390/10 1390/13
1398/4 1402/25 1448/3
1448/6
okay [163] 1131/15 1131/18
1131/22 1132/2 1132/8
1132/11 1132/14 1133/20
1133/24 1134/7 1135/2
1135/9 1136/3 1136/12
1136/18 1137/3 1137/9
1137/19 1138/4 1142/7
1164/19 1187/2 1192/22
1193/19 1193/23 1204/9
1205/19 1206/8 1206/17
1207/4 1207/21 1212/1
1213/5 1214/25 1215/9
1215/20 1217/10 1219/4
1219/9 1221/12 1225/10
1226/7 1227/7 1227/16
1228/4 1228/12 1228/16
1230/19 1230/21 1231/5
1231/14 1232/10 1233/8
1240/21 1242/8 1243/2
1243/5 1243/6 1243/13
1249/9 1250/18 1252/11
1252/17 1253/17 1257/1
1259/1 1263/20 1265/8
1267/17 1267/20 1270/10
1270/13 1271/16 1274/14
1274/17 1279/9 1283/10
1283/14 1285/10 1286/17
1286/23 1287/2 1308/15
1318/13 1318/18 1319/7
1320/7 1341/22 1344/1
1344/8 1344/10 1345/1
1345/9 1349/2 1349/14
1350/1 1350/11 1351/18
1352/13 1352/22 1353/22
1354/11 1360/23 1360/25
1361/4 1362/11 1362/24
1363/19 1364/21 1365/14

1365/25 1366/10 1369/22
1372/16 1373/10 1373/3
1375/22 1376/9 1387/24
1387/24 1388/10 1394/22
1396/7 1396/22 1397/3
1399/15 1407/19 1413/19
1413/20 1427/22 1428/1
1429/23 1433/2 1433/17
1435/3 1440/23 1440/25
1442/25 1443/1 1443/7
1443/10 1444/4 1445/16
1445/18 1446/4 1446/9
1446/15 1446/17 1447/15
1448/7 1450/12 1450/24
1452/21 1453/7 1453/23
1455/17 1455/17 1456/7
1456/11 1457/23 1468/14
1468/23 1469/2
old [3] 1224/5 1260/8 1276/21
older [4] 1208/20 1273/6
1308/10 1415/7
OLSON [1] 1130/16
once [3] 1208/9 1232/4
1259/3
one [228] 1136/9 1136/16
1138/2 1138/17 1147/3
1147/7 1148/9 1148/15
1148/16 1148/17 1148/19
1149/3 1152/8 1152/9
1153/19 1155/25 1155/25
1156/12 1156/21 1157/22
1159/20 1160/4 1160/22
1161/25 1162/5 1163/3
1164/4 1164/16 1164/17
1165/10 1165/11 1166/22
1166/23 1171/9 1172/11
1174/12 1174/14 1175/19
1176/11 1177/13 1178/1
1180/8 1182/18 1182/20
1182/20 1183/18 1184/14
1184/21 1185/9 1185/9
1186/17 1187/1 1187/25
1188/1 1188/11 1188/23
1192/8 1192/19 1193/10
1195/24 1196/7 1199/9
1200/16 1205/11 1205/21
1206/18 1208/2 1208/10
1209/14 1209/14 1209/24
1210/24 1211/17 1211/22
1212/7 1212/12 1212/17
1212/21 1216/8 1216/16
1216/17 1216/22 1217/5
1220/13 1221/24 1226/22
1233/6 1239/2 1239/3 1239/9
1241/10 1243/17 1246/16
1248/23 1249/1 1249/2
1250/24 1251/5 1252/12
1255/20 1256/5 1256/18
1256/20 1258/25 1261/7
1265/5 1269/9 1270/13
1272/2 1272/15 1272/23
1273/1 1273/8 1273/9
1274/22 1275/9 1279/6
1279/18 1279/21 1280/6
1282/9 1282/18 1291/9
1294/23 1294/25 1296/12
1296/16 1297/4 1298/8
1298/10 1301/5 1302/12
1310/14 1316/9 1320/14
1320/23 1322/17 1324/7

1328/11 1330/12 1336/5
1336/5 1337/19 1339/18
1348/25 1349/4 1356/7
1359/25 1360/16 1360/21
1362/1 1365/14 1365/22
1366/5 1367/16 1368/4
1370/8 1372/8 1379/12
1379/14 1384/6 1385/10
1388/6 1391/8 1394/12
1395/6 1398/4 1398/10
1398/11 1398/14 1398/22
1399/20 1400/25 1401/23
1402/14 1403/1 1403/4
1403/23 1404/25 1406/1
1406/22 1407/6 1408/22
1409/7 1412/11 1419/3
1419/11 1420/4 1421/12
1421/19 1422/13 1424/17
1424/19 1427/3 1429/18
1429/20 1431/15 1433/14
1436/7 1437/18 1438/7
1439/8 1439/9 1439/11
1439/17 1441/10 1441/11
1443/20 1448/12 1451/25
1456/25 1457/21 1457/23
1460/19 1460/19 1460/20
1460/20 1460/21 1460/23
1460/23 1460/24 1462/2
1462/6 1463/12 1465/7
1466/7 1467/3 1467/17
ones [12] 1133/11 1133/13
1153/22 1155/15 1200/3
1237/19 1293/4 1323/9
1326/14 1409/10 1458/23
1461/6
ongoing [1] 1229/11
only [66] 1139/15 1139/16
1139/18 1139/20 1140/19
1140/21 1141/10 1143/12
1143/14 1143/22 1143/25
1144/8 1159/14 1197/20
1197/21 1231/23 1232/2
1233/3 1236/7 1237/8
1238/25 1240/15 1245/1
1245/1 1245/5 1245/18
1246/11 1246/15 1246/18
1246/19 1250/3 1253/6
1253/9 1266/1 1271/9 1277/7
1292/20 1301/5 1302/14
1312/21 1316/24 1320/7
1333/3 1337/20 1337/21
1358/20 1359/8 1359/21
1380/15 1394/19 1395/25
1425/5 1425/6 1430/17
1431/6 1446/20 1457/8
1461/2 1461/11 1461/12
1461/13 1461/22 1462/4
1462/7 1465/20 1465/21
onwards [2] 1246/18 1246/20
open [6] 1197/12 1197/25
1226/17 1306/2 1335/24
1445/6
opened [2] 1197/8 1198/12
opening [6] 1285/4 1352/25
1353/2 1353/3 1353/7
1353/21
opens [2] 1198/8 1200/15
operated [2] 1154/13 1166/18
operating [40] 1172/23 1173/1
1173/6 1173/8 1314/17

Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 573 of 775 PageID #: 61353			
<p>operating... [35] 1333/7 1395/13 1396/2 1396/4 1396/5 1396/19 1400/7 1401/3 1420/7 1424/1 1453/9 1453/11 1453/12 1453/19 1454/4 1454/7 1454/8 1454/14 1454/15 1454/21 1455/1 1455/3 1455/6 1455/15 1455/16 1455/21 1456/4 1456/6 1456/9 1458/16 1460/8 1467/4 1467/5 1467/15 1468/3 operative [2] 1284/10 1465/21 opine [3] 1139/1 1213/18 1233/13 opined [4] 1140/21 1143/21 1416/8 1438/17 opines [1] 1136/4 opinion [121] 1139/2 1139/18 1139/20 1140/6 1143/24 1144/17 1144/19 1144/20 1144/21 1149/20 1151/3 1151/13 1152/6 1152/23 1176/3 1182/6 1183/13 1184/24 1187/23 1188/7 1190/12 1190/24 1191/20 1193/4 1196/6 1201/12 1204/3 1207/22 1208/22 1209/1 1209/19 1210/15 1210/17 1232/25 1233/6 1245/11 1245/16 1248/7 1248/15 1248/19 1249/21 1250/22 1251/10 1251/11 1251/18 1251/25 1252/22 1252/23 1253/4 1253/5 1253/7 1253/11 1253/14 1253/14 1269/1 1290/11 1291/14 1291/21 1294/6 1296/7 1296/24 1302/23 1304/5 1305/2 1305/24 1309/10 1314/5 1314/7 1314/8 1314/11 1314/18 1315/4 1316/7 1316/10 1316/12 1316/17 1317/24 1317/25 1323/11 1323/15 1324/4 1335/4 1335/22 1335/25 1336/2 1336/3 1337/17 1337/21 1337/24 1339/6 1340/15 1340/23 1341/19 1381/5 1381/24 1382/3 1384/10 1384/11 1389/8 1389/13 1392/2 1393/15 1394/14 1397/7 1397/8 1397/10 1399/15 1401/8 1401/10 1401/14 1401/16 1404/13 1404/16 1406/2 1409/4 1417/15 1417/20 1420/4 1425/4 1425/16 1427/20 opinions [37] 1138/7 1149/25 1151/2 1154/1 1176/2 1182/2 1190/21 1190/23 1201/18 1207/9 1207/9 1215/12 1278/8 1279/21 1290/7 1291/24 1292/3 1295/24 1303/18 1306/17 1309/9 1309/19 1311/12 1315/23 1316/14 1317/20 1317/23 1323/14 1325/22 1336/13</p>	<p>1361/8 1377/13 1386/22 1389/6 1391/2 1397/12 1444/8 opportunity [12] 1138/14 1140/23 1141/25 1200/9 1227/5 1228/9 1232/13 1232/20 1233/15 1248/20 1249/21 1253/8 opposed [10] 1252/10 1297/25 1298/3 1311/20 1319/4 1346/25 1398/16 1400/13 1432/21 1435/7 opposing [1] 1204/23 opposite [3] 1245/4 1400/4 1405/16 option [4] 1158/4 1177/15 1337/8 1338/21 options [10] 1157/21 1161/24 1165/22 1179/9 1179/18 1339/18 1400/14 1400/18 1400/24 1440/4 oral [2] 1430/20 1432/22 order [18] 1135/18 1157/14 1171/9 1205/1 1205/4 1205/10 1205/12 1215/9 1238/2 1292/3 1335/4 1385/24 1405/9 1431/22 1441/5 1441/7 1445/18 1454/11 orders [2] 1235/20 1336/13 ordinary [11] 1182/4 1271/7 1273/22 1279/22 1335/25 1374/8 1374/16 1390/8 1399/22 1419/5 1419/16 organized [1] 1153/14 original [4] 1164/20 1198/25 1234/18 1327/21 originally [2] 1238/12 1277/12 other [146] 1133/4 1138/24 1149/4 1151/6 1155/16 1156/19 1159/25 1160/19 1161/13 1167/12 1171/22 1172/18 1174/7 1174/12 1174/24 1175/24 1176/15 1179/19 1179/25 1182/9 1183/5 1184/23 1187/22 1187/24 1188/16 1189/22 1190/18 1191/1 1191/8 1192/10 1195/2 1195/2 1195/12 1195/12 1195/15 1195/17 1200/4 1200/17 1202/20 1206/5 1206/14 1211/23 1212/21 1216/3 1220/8 1222/13 1222/15 1222/24 1223/6 1223/10 1226/12 1228/7 1228/20 1229/4 1229/21 1232/6 1233/2 1233/5 1235/3 1236/12 1240/20 1241/3 1252/5 1259/25 1269/11 1272/24 1273/3 1275/1 1277/11 1278/22 1284/13 1286/21 1289/4 1291/3 1292/12 1296/13 1297/10 1297/12 1301/3 1301/6 1301/23 1302/13 1303/1 1303/7 1303/15 1303/16 1312/11 1316/14 1318/10 1321/25 1322/10 1323/10 1327/11 1334/6 1346/7</p>	<p>1346/22 1350/13 1350/25 1350/25 1353/16 1358/9 1363/15 1365/1 1370/12 1370/14 1371/1 1373/4 1374/18 1375/14 1379/11 1386/9 1387/25 1388/12 1388/12 1400/23 1401/2 1403/24 1405/19 1405/19 1407/1 1407/2 1408/23 1409/11 1409/18 1416/2 1416/21 1426/21 1426/22 1427/19 1429/3 1429/10 1432/5 1436/21 1437/1 1437/7 1442/15 1442/17 1442/18 1449/21 1449/25 1450/20 1452/1 1453/22 1456/11 1462/10 1468/15 others [8] 1162/21 1192/4 1194/21 1206/3 1206/4 1269/10 1387/25 1388/8 otherwise [2] 1441/8 1454/5 ought [2] 1250/25 1315/22 our [39] 1131/8 1134/5 1140/10 1146/11 1153/15 1159/12 1166/9 1166/15 1176/25 1177/1 1177/6 1178/5 1184/22 1199/20 1224/17 1226/2 1228/10 1235/16 1260/14 1283/15 1284/21 1284/23 1316/1 1316/22 1340/18 1350/11 1376/12 1397/7 1397/12 1402/23 1408/4 1429/25 1430/8 1432/7 1434/24 1465/5 1465/10 1468/11 1468/11 out [115] 1137/21 1150/20 1157/11 1158/15 1158/18 1165/25 1167/23 1168/17 1169/14 1174/11 1174/14 1181/25 1184/21 1189/13 1200/16 1202/15 1205/1 1205/10 1205/12 1211/8 1217/7 1221/21 1224/21 1229/4 1230/16 1234/10 1237/17 1237/18 1238/2 1241/1 1241/20 1241/21 1244/2 1244/17 1245/14 1245/25 1246/22 1248/2 1248/25 1249/11 1249/19 1253/4 1253/19 1272/14 1272/15 1274/18 1275/10 1277/17 1283/17 1284/7 1285/22 1286/1 1286/2 1286/6 1286/17 1287/7 1291/2 1295/3 1296/11 1301/20 1305/16 1308/12 1311/4 1311/5 1322/4 1322/12 1325/23 1326/1 1326/1 1326/5 1326/7 1328/11 1328/11 1329/13 1332/10 1333/4 1337/5 1338/4 1338/21 1339/2 1339/18 1340/2 1342/11 1346/9 1346/20 1357/18 1358/11 1358/21 1364/14 1368/8 1369/13 1376/19 1381/22 1384/15 1385/12 1385/15 1385/23 1389/24 1395/6 1395/7 1395/8</p>	<p>1400/17 1400/24 1402/23 1412/29 1420/14 1432/18 1436/8 1436/16 1439/3 1439/6 1446/10 1451/15 1465/25 1466/23 out-licensing [1] 1295/3 outcome [2] 1149/10 1289/19 outlier [3] 1328/11 1328/21 1329/6 outliers [1] 1329/4 Outlook [1] 1298/11 outside [4] 1132/22 1178/6 1382/17 1397/5 over [38] 1131/17 1148/12 1148/25 1149/22 1155/1 1196/4 1218/19 1227/19 1233/21 1259/18 1272/12 1275/18 1279/13 1284/9 1286/15 1288/21 1288/21 1289/1 1297/14 1297/19 1297/21 1298/7 1298/24 1304/2 1315/17 1320/16 1321/9 1379/14 1379/25 1380/2 1388/5 1388/5 1391/10 1400/18 1442/8 1445/13 1445/20 1466/5 overall [9] 1170/22 1369/19 1369/25 1373/25 1464/6 1464/13 1464/25 1466/6 1466/23 overinflated [3] 1246/3 1246/4 1246/6 overinflation [1] 1246/9 overlapping [1] 1358/18 overnight [1] 1226/20 overreaching [1] 1175/24 overruled [12] 1198/16 1208/17 1219/12 1231/15 1233/22 1249/24 1252/12 1378/19 1381/8 1392/23 1399/3 1444/5 overstate [1] 1381/5 overstated [7] 1311/2 1311/18 1314/9 1314/16 1316/10 1316/13 1317/2 overstatement [2] 1381/17 1381/25 overview [2] 1151/12 1406/16 owe [1] 1290/12 own [21] 1141/23 1141/23 1144/17 1144/19 1171/3 1210/13 1214/2 1216/6 1224/14 1253/5 1282/12 1288/20 1339/16 1341/18 1349/11 1357/8 1357/9 1362/7 1369/11 1390/25 1427/20 owner's [1] 1444/3</p> <hr/> <p>P</p> <p>p.m [7] 1253/20 1283/18 1287/8 1368/20 1377/5 1427/25 1469/18 Pacific [5] 1293/20 1294/3 1294/8 1294/10 1297/6 pack [1] 1262/10 package [1] 1319/11 packages [1] 1189/23 page [50] 1133/3 1134/12 1136/5 1162/8 1165/14</p>

<p>P page... [45] 1165/15 1165/17 1170/2 1170/2 1170/3 1177/19 1181/8 1183/1 1204/12 1204/16 1204/17 1205/1 1205/8 1205/9 1205/14 1205/23 1206/1 1206/9 1206/10 1206/20 1206/22 1206/23 1206/25 1207/1 1215/5 1217/2 1219/23 1220/14 1237/11 1238/21 1254/21 1262/4 1307/23 1308/23 1308/24 1314/20 1373/16 1376/8 1395/19 1406/10 1407/11 1441/15 1441/16 1447/22 1448/8 Page 111 [2] 1170/2 1170/3 Page 114 [2] 1165/14 1165/15 Page 19 [2] 1441/15 1441/16 Page 28 [1] 1376/8 Page 34 [1] 1447/22 Page 8 [1] 1406/10 pages [22] 1136/22 1164/4 1164/21 1205/9 1206/14 1218/11 1218/15 1218/17 1218/18 1218/19 1219/7 1219/16 1220/15 1220/16 1220/18 1220/19 1221/3 1222/22 1241/23 1255/4 1255/5 1415/1 paid [23] 1207/12 1207/15 1295/2 1295/5 1295/8 1295/9 1295/10 1299/12 1299/20 1300/4 1303/24 1327/16 1328/6 1328/7 1328/8 1386/9 1409/18 1410/11 1410/13 1459/14 1463/15 1463/16 1463/19 paper [17] 1156/2 1156/10 1156/10 1156/11 1156/13 1158/22 1158/24 1158/24 1223/23 1223/25 1270/16 1274/11 1391/9 1392/9 1392/13 1392/14 1407/6 papers [11] 1256/11 1256/17 1256/18 1256/23 1258/1 1258/3 1395/4 1402/11 1416/3 1416/7 1433/25 paragraph [17] 1140/6 1141/8 1141/9 1142/14 1142/20 1142/21 1193/22 1250/16 1274/2 1335/7 1402/21 1406/12 1407/15 1420/23 1443/11 1453/21 1456/10 Paragraph 147 [1] 1335/7 Paragraph 154 [1] 1250/16 Paragraph 175 [3] 1142/14 1142/20 1142/21 Paragraph 30 [2] 1141/8 1141/9 Paragraph 514 [1] 1193/22 paragraphs [3] 1136/25 1453/22 1456/11 paraphrase [1] 1240/3 pardon [1] 1132/8 parentheses [1] 1183/8 parol [3] 1433/13 1433/15 1433/15</p>	<p>part [75] 1138/23 1152/2 1156/21 1165/14 1165/16 1166/15 1166/21 1166/21 1172/17 1172/23 1172/25 1173/6 1177/24 1178/8 1178/9 1178/20 1179/7 1179/15 1179/16 1179/22 1180/18 1183/5 1193/24 1198/10 1198/25 1203/13 1213/19 1217/2 1220/22 1221/20 1234/25 1242/22 1257/12 1257/21 1258/10 1258/11 1262/1 1265/16 1266/2 1266/5 1268/15 1272/23 1278/8 1279/24 1295/23 1302/25 1308/18 1309/14 1313/4 1314/23 1314/24 1315/6 1317/20 1323/20 1350/19 1355/18 1376/15 1396/19 1403/5 1414/9 1417/24 1437/16 1451/18 1452/6 1453/11 1454/10 1454/11 1454/15 1455/9 1456/9 1456/9 1456/20 1459/21 1468/22 1469/11 Part B [1] 1178/9 participate [1] 1405/20 participated [1] 1148/13 particular [36] 1140/1 1156/24 1158/5 1159/12 1159/16 1159/17 1160/3 1161/23 1162/8 1164/9 1170/24 1174/23 1176/22 1195/16 1215/14 1216/23 1217/8 1269/5 1269/15 1271/5 1271/6 1284/17 1326/13 1353/18 1375/9 1413/3 1418/19 1421/21 1429/9 1437/20 1440/10 1442/1 1452/18 1465/20 1466/3 1469/11 particularly [5] 1196/1 1244/24 1312/14 1373/7 1444/18 parties [25] 1204/7 1228/8 1285/16 1294/4 1327/16 1432/8 1432/11 1432/25 1434/21 1443/16 1444/7 1445/9 1451/11 1452/4 1452/9 1459/9 1463/14 1464/5 1464/6 1464/13 1465/1 1465/12 1465/25 1466/7 1466/24 parties' [2] 1432/21 1435/5 partly [1] 1303/25 partner [1] 1288/17 partners [1] 1370/25 parts [10] 1153/16 1156/20 1159/7 1159/10 1177/22 1261/10 1266/23 1310/17 1389/11 1396/12 party [7] 1388/18 1424/16 1466/11 1466/11 1466/13 1466/16 1466/21 party's [1] 1438/23 pass [4] 1196/13 1341/3 1380/10 1409/23 passage [1] 1150/8 past [7] 1225/21 1230/8</p>	<p>1245/12 1346/7 1380/1 1380/2 1452/23 paste [1] 1388/1 patent [191] 1148/19 1149/21 1150/2 1150/6 1150/10 1150/11 1151/4 1152/11 1152/16 1152/16 1153/5 1153/6 1153/7 1154/11 1155/12 1155/13 1160/21 1164/2 1164/11 1164/13 1164/21 1165/16 1166/2 1167/9 1167/10 1169/9 1169/24 1170/4 1170/6 1170/19 1171/8 1171/9 1171/13 1171/17 1171/20 1172/12 1172/15 1174/21 1175/5 1175/13 1175/14 1184/18 1190/8 1190/25 1192/6 1197/2 1197/3 1197/4 1197/4 1197/11 1197/16 1197/16 1197/21 1197/23 1198/4 1198/6 1198/10 1198/19 1198/25 1199/6 1199/12 1199/25 1200/1 1203/6 1208/3 1208/10 1208/12 1208/22 1209/21 1209/24 1210/4 1214/3 1214/6 1216/7 1216/13 1216/14 1216/20 1216/21 1217/13 1217/15 1217/23 1218/6 1218/11 1219/15 1219/19 1219/20 1219/25 1220/4 1220/7 1221/1 1221/3 1221/6 1221/14 1221/21 1221/22 1222/25 1223/1 1223/7 1223/9 1223/11 1223/13 1223/18 1254/13 1254/20 1255/17 1255/25 1256/24 1257/1 1257/5 1263/16 1264/17 1264/18 1264/23 1265/15 1266/6 1266/14 1266/22 1267/15 1273/23 1289/24 1290/5 1290/10 1292/5 1293/3 1293/15 1295/1 1296/21 1296/21 1296/22 1297/4 1301/5 1301/15 1301/18 1301/23 1302/12 1304/19 1304/19 1305/4 1332/25 1337/9 1338/22 1339/10 1340/24 1351/14 1384/1 1386/11 1386/25 1388/21 1389/4 1389/13 1390/13 1390/15 1391/4 1391/18 1391/19 1393/4 1394/15 1394/17 1399/9 1401/11 1404/6 1409/2 1409/5 1409/19 1409/21 1412/2 1413/5 1419/3 1419/5 1419/11 1419/13 1431/7 1434/19 1441/20 1443/13 1444/3 1444/14 1444/21 1444/22 1445/3 1445/11 1445/19 1445/23 1446/18 1446/22 1447/8 1452/5 1458/8 1458/12 1458/13 1459/4 patent's [5] 1152/7 1152/25 1209/23 1210/6 1223/8 patented [1] 1420/6</p>	<p>patentee [2] 1223/7 1255/17 patents [46] 1155/14 1167/11 1200/2 1207/23 1216/22 1219/17 1220/5 1221/5 1223/15 1288/22 1296/11 1296/13 1296/17 1301/1 1301/3 1301/5 1301/9 1301/11 1301/11 1301/12 1301/13 1301/14 1301/15 1302/1 1302/9 1302/13 1302/15 1302/16 1302/20 1303/2 1303/10 1303/11 1303/13 1303/16 1304/9 1304/23 1386/1 1386/4 1386/7 1387/12 1412/6 1446/10 1456/22 1457/15 1459/11 1464/24 path [1] 1335/23 patience [1] 1253/23 pattern [3] 1387/21 1465/17 1466/15 PAUL [1] 1130/11 pay [7] 1294/13 1304/25 1334/4 1338/5 1338/13 1409/17 1463/20 paying [3] 1332/4 1409/14 1409/15 payment [2] 1143/4 1253/6 payments [2] 1291/10 1331/3 PCs [1] 1297/14 PDX [9] 1239/13 1242/7 1242/9 1354/13 1355/6 1355/10 1380/25 1381/3 1412/11 PDX-4 [1] 1242/7 PDX-4-3-31 [1] 1242/9 PDX-4-37 [1] 1239/13 PDX-5-16 [1] 1412/11 PDX-7-25 [1] 1354/13 PDX-7-3 [2] 1380/25 1381/3 PDX-7-8 [2] 1355/6 1355/10 pending [2] 1368/24 1397/19 people [16] 1156/22 1157/2 1163/2 1166/13 1195/12 1195/13 1258/8 1258/17 1260/1 1289/15 1294/13 1365/1 1386/9 1418/20 1418/25 1419/22 people's [3] 1195/15 1195/17 1264/11 per [14] 1316/22 1328/3 1328/6 1330/4 1330/8 1330/9 1330/10 1330/17 1330/22 1331/11 1331/13 1409/14 1444/16 1445/10 percent [22] 1250/15 1250/19 1299/16 1299/18 1299/18 1300/13 1323/8 1329/23 1329/25 1330/24 1330/25 1331/1 1331/5 1331/6 1331/7 1331/9 1331/10 1331/12 1332/9 1332/13 1346/20 1346/24 percentage [9] 1230/25 1231/12 1299/15 1299/19 1300/19 1330/19 1331/2 1346/5 1346/13 percentages [2] 1299/21 1299/23 perform [1] 1412/16</p>
---	---	--	--

P	D	D	D
performed [2] 1134/15 1215/16 performing [3] 1152/1 1180/17 1412/17 perhaps [1] 1239/19 period [18] 1150/14 1154/13 1155/1 1166/18 1198/1 1259/19 1291/8 1293/4 1297/14 1297/19 1309/25 1311/15 1313/19 1321/10 1351/14 1352/11 1358/24 1436/13 periods [2] 1234/2 1310/22 permission [1] 1204/15 permits [1] 1456/17 permitted [1] 1375/21 person [19] 1147/5 1167/25 1182/4 1264/3 1271/3 1271/7 1272/17 1273/22 1273/23 1279/1 1279/22 1375/6 1390/7 1399/21 1403/22 1410/5 1419/4 1419/12 1419/16 personal [3] 1403/9 1403/12 1421/15 personally [3] 1195/24 1413/7 1414/10 perspective [6] 1163/5 1194/25 1251/25 1296/20 1387/18 1408/3 persuasive [1] 1375/11 pertains [1] 1333/6 PETERMAN [1] 1130/12 Petition [1] 1150/9 Ph.D [1] 1258/14 phantom [2] 1269/1 1315/3 phase [2] 1427/3 1427/4 PhD [2] 1147/25 1384/20 phone [17] 1158/2 1158/9 1168/9 1168/14 1168/15 1179/25 1180/12 1322/13 1322/16 1328/8 1328/9 1333/14 1454/20 1457/14 1459/21 1459/22 1462/5 phones [19] 1297/14 1297/18 1298/6 1327/10 1327/12 1327/20 1327/20 1332/4 1332/6 1332/10 1332/13 1332/14 1333/11 1333/13 1454/1 1454/2 1455/20 1467/22 1468/2 photograph [2] 1186/22 1187/15 phrase [1] 1346/9 pick [1] 1162/25 picked [6] 1147/21 1158/10 1167/23 1168/3 1168/13 1168/15 picking [2] 1208/4 1208/9 picks [4] 1158/4 1169/3 1180/11 1180/11 picture [11] 1156/1 1176/25 1178/13 1181/7 1183/7 1186/9 1188/22 1261/9 1266/12 1282/23 1392/8 pictures [6] 1186/5 1186/8 1282/19 1282/24 1282/25 1283/1 pie [6] 1232/3 1232/7 1233/12	1311/3 1311/6 1329/9 piece [8] 1261/7 1266/18 1389/23 1390/15 1398/10 1398/11 1398/14 1404/5 pieces [7] 1150/15 1152/3 1173/24 1174/9 1223/3 1265/12 1447/11 pin [1] 1352/22 Pinkerton [1] 1150/25 Pixel [19] 1237/11 1237/17 1237/20 1238/1 1238/22 1241/8 1241/21 1292/17 1292/17 1293/8 1307/25 1307/25 1307/25 1308/13 1308/16 1308/18 1314/25 1315/11 1376/14 Pixel 1 [5] 1237/11 1237/17 1237/20 1307/25 1308/13 Pixel 2 [5] 1292/17 1293/8 1307/25 1308/16 1308/18 Pixel 3 [2] 1292/17 1307/25 place [6] 1141/12 1168/16 1178/6 1252/9 1443/19 1456/23 placed [2] 1236/9 1416/2 placeholder [1] 1469/11 places [5] 1247/3 1275/1 1314/25 1442/15 1442/17 plain [2] 1433/9 1465/3 plaintiff [6] 1129/5 1130/6 1428/16 1441/19 1449/7 1465/13 plaintiff's [2] 1134/13 1434/25 plaintiffs [2] 1135/24 1202/25 plan [1] 1385/23 planned [2] 1143/17 1228/24 planning [1] 1131/11 plant [1] 1147/17 plausibly [1] 1461/2 play [6] 1207/20 1357/18 1358/1 1376/6 1461/18 1465/7 playing [1] 1232/19 please [58] 1131/6 1132/14 1145/6 1145/8 1145/15 1145/16 1145/24 1146/4 1146/8 1146/17 1149/24 1176/3 1190/22 1192/14 1196/18 1201/2 1204/19 1211/13 1224/24 1229/24 1253/22 1255/9 1270/10 1274/7 1281/3 1281/20 1283/10 1283/19 1285/12 1287/15 1287/18 1288/1 1288/7 1309/11 1326/19 1326/25 1333/17 1350/23 1377/7 1380/25 1382/23 1383/7 1383/11 1383/19 1383/21 1396/24 1402/12 1402/17 1412/11 1415/22 1420/16 1424/24 1426/25 1428/1 1428/6 1435/3 1460/19 1467/25 plurality [1] 1178/24 plus [25] 1135/15 1135/20 1184/25 1185/1 1187/6 1188/1 1188/2 1229/13 1278/9 1279/7 1280/4 1280/20 1281/6 1281/10 1282/2 1298/11 1298/11	1298/11 1301/12 1301/14 1301/15 1401/9 1434/13 1434/14 1434/14 point [66] 1131/22 1147/18 1152/5 1152/7 1152/14 1152/15 1152/22 1156/18 1165/25 1184/21 1195/18 1196/10 1196/11 1214/18 1216/1 1216/24 1224/16 1230/10 1237/17 1239/21 1242/1 1246/7 1246/9 1246/10 1246/22 1250/12 1256/7 1279/25 1280/7 1284/2 1301/20 1302/2 1304/16 1315/2 1316/1 1316/20 1337/1 1339/22 1340/20 1341/14 1346/23 1353/13 1356/5 1361/14 1375/9 1375/11 1392/9 1392/12 1392/14 1403/23 1405/6 1410/21 1413/6 1414/25 1426/13 1430/2 1432/1 1432/10 1439/17 1449/7 1449/17 1456/12 1460/2 1460/18 1467/1 1467/17 pointed [12] 1158/15 1181/25 1182/21 1217/7 1221/17 1253/4 1255/1 1272/14 1272/14 1274/20 1420/14 1432/18 pointer [2] 1262/16 1280/25 pointing [3] 1164/11 1183/2 1275/10 points [9] 1150/8 1151/14 1152/12 1153/9 1175/7 1183/16 1209/11 1262/6 1373/10 pool [1] 1360/12 pop [3] 1157/20 1168/10 1186/15 pop-up [2] 1168/10 1186/15 popped [3] 1169/9 1180/19 1358/21 populated [1] 1169/10 portfolio [2] 1296/16 1386/6 portion [15] 1165/2 1170/11 1194/3 1194/14 1194/17 1198/2 1275/16 1277/8 1318/7 1344/17 1346/3 1348/11 1389/8 1389/9 1402/19 portions [2] 1396/13 1451/4 position [23] 1213/21 1214/21 1214/22 1225/14 1226/9 1226/10 1226/24 1237/25 1273/14 1315/8 1317/1 1397/10 1430/5 1431/23 1433/2 1433/17 1435/21 1438/8 1439/10 1439/21 1439/25 1451/24 1459/25 positions [2] 1432/25 1438/4 possibilities [1] 1200/11 possible [15] 1149/22 1160/10 1263/23 1263/24 1268/5 1305/14 1435/16 1435/24 1436/10 1436/14 1436/15 1436/17 1438/24 1454/18 1459/11 possibly [4] 1210/11 1250/12	1388/20 1459/9 post [12] 1168/23 1198/11 1434/1 1454/1 1455/13 1456/24 1457/3 1457/12 1459/10 1459/17 1461/5 1461/16 post-grant [1] 1198/11 post-installation [1] 1457/3 post-installed [3] 1455/13 1461/5 1461/16 post-sale [4] 1454/1 1456/24 1457/12 1459/17 post-trial [1] 1434/1 posted [2] 1415/20 1415/24 potential [1] 1440/4 potentially [3] 1322/16 1459/16 1459/17 POTTER [1] 1130/9 power [1] 1245/23 PowerBook [1] 1150/21 PowerBooks [3] 1186/3 1276/3 1276/20 PowerPoint [1] 1298/11 practice [5] 1188/13 1388/20 1389/4 1399/9 1409/21 practiced [3] 1394/2 1394/3 1424/17 practices [4] 1288/24 1389/25 1390/3 1399/19 praise [1] 1195/15 precise [1] 1302/7 precisely [1] 1361/10 predated [1] 1244/19 predicting [1] 1386/12 preinstalled [8] 1453/20 1461/4 1461/9 1461/14 1461/23 1462/4 1462/8 1462/19 prejudicial [1] 1234/13 preliminary [1] 1148/18 preloaded [5] 1453/17 1454/21 1455/13 1455/24 1458/21 premise [1] 1460/9 prepare [3] 1146/13 1203/12 1288/12 prepared [11] 1245/2 1246/23 1256/4 1301/7 1343/18 1343/20 1344/10 1344/21 1353/14 1374/9 1460/17 preparing [8] 1201/18 1284/23 1356/15 1361/8 1363/19 1366/1 1377/12 1416/3 preponderance [2] 1154/14 1269/22 presence [1] 1382/17 present [11] 1136/1 1141/25 1164/10 1202/13 1382/21 1428/23 1431/15 1432/4 1433/12 1441/22 1452/23 presentation [10] 1131/9 1131/24 1135/21 1137/18 1156/8 1156/9 1162/11 1260/19 1264/13 1467/4 presentations [6] 1154/24 1155/4 1167/17 1261/17 1269/20 1387/3 presented [23] 1132/23 1135/4 1135/16 1136/2

P	D	E	C
<p>presented... [19] 1136/9 1242/2 1242/6 1258/1 1258/3 1280/18 1280/20 1305/8 1318/4 1344/24 1350/6 1387/17 1430/18 1430/18 1431/17 1431/21 1437/10 1438/13 1454/23 presenting [2] 1140/22 1143/16 presently [1] 1362/20 preserve [2] 1227/25 1439/19 preserved [1] 1450/17 preserves [1] 1450/15 preserving [2] 1431/10 1431/13 pressure [1] 1334/3 presumes [1] 1271/10 pretty [13] 1226/24 1302/10 1317/17 1323/3 1323/4 1332/14 1332/21 1337/16 1359/17 1384/8 1393/3 1402/6 1444/6 prevail [1] 1466/5 prevent [3] 1133/1 1367/8 1367/8 previous [3] 1217/10 1434/24 1443/5 previously [4] 1136/23 1292/25 1358/21 1430/1 principal [2] 1152/15 1227/21 principle [6] 1465/22 1466/8 1466/9 1466/10 1466/20 1466/20 principles [2] 1465/7 1466/19 print [3] 1162/4 1162/22 1181/9 prior [68] 1149/23 1150/13 1150/16 1150/16 1151/7 1151/17 1152/17 1153/6 1153/11 1153/25 1154/4 1163/14 1163/23 1163/24 1164/7 1165/8 1170/21 1171/2 1171/7 1182/5 1196/4 1198/3 1198/18 1202/18 1223/3 1223/18 1227/10 1234/3 1234/20 1235/20 1237/8 1240/8 1248/8 1248/17 1249/21 1251/22 1251/23 1269/4 1284/1 1284/5 1284/15 1292/19 1314/11 1335/24 1338/18 1359/13 1377/1 1381/14 1387/1 1387/25 1388/1 1389/23 1389/24 1399/19 1404/5 1431/7 1441/6 1445/8 1445/12 1445/21 1445/21 1445/23 1446/11 1446/18 1446/22 1447/4 1447/12 1458/10 priority [2] 1445/14 1447/5 pro [1] 1439/7 probability [1] 1332/14 probable [1] 1225/7 probably [14] 1224/1 1227/4 1229/9 1229/15 1229/16 1229/17 1260/8 1284/11 1292/7 1323/8 1360/19 1422/13 1440/4 1460/18 problem [3] 1144/22 1298/4</p>	<p>1374/12 problems [2] 1130/11 1406/22 procedure [2] 1197/4 1197/16 proceed [6] 1148/5 1201/2 1230/14 1253/25 1345/1 1362/22 proceeding [2] 1140/25 1470/6 proceedings [5] 1131/4 1156/10 1197/12 1197/13 1469/18 process [5] 1178/20 1323/7 1323/24 1405/21 1427/7 processing [9] 1169/9 1170/9 1182/19 1182/20 1183/8 1183/9 1184/7 1186/9 1196/9 processor [1] 1189/8 processors [1] 1183/11 produce [4] 1237/3 1237/20 1268/23 1357/2 produced [15] 1235/25 1236/4 1236/6 1236/11 1236/12 1236/20 1237/18 1237/22 1240/11 1292/11 1308/5 1309/4 1352/15 1366/24 1373/2 product [34] 1297/21 1299/14 1305/22 1364/18 1385/12 1385/14 1385/15 1385/22 1395/5 1398/19 1403/13 1405/9 1407/3 1418/3 1436/23 1441/21 1441/22 1442/2 1442/3 1442/8 1442/15 1446/3 1449/21 1452/23 1453/1 1453/2 1453/8 1454/17 1455/19 1456/21 1460/25 1461/13 1462/8 1462/12 production [1] 1278/21 productivity [3] 1403/9 1403/13 1421/15 productized [1] 1275/25 products [37] 1139/11 1139/13 1152/25 1153/2 1195/18 1201/14 1201/21 1201/24 1214/6 1214/8 1214/11 1214/19 1215/1 1253/15 1291/10 1292/15 1297/13 1298/16 1299/5 1299/6 1306/22 1332/24 1342/14 1342/25 1356/1 1385/23 1403/10 1405/18 1409/22 1417/25 1418/24 1421/15 1437/1 1452/22 1461/23 1462/3 1468/2 professional [5] 1148/1 1149/3 1288/9 1288/15 1289/10 professor [2] 1189/1 1289/11 proffer [1] 1375/19 profits [1] 1298/16 program [84] 1146/23 1152/8 1152/19 1152/21 1153/3 1157/5 1158/6 1160/6 1160/13 1160/14 1171/24 1172/1 1172/20 1172/22 1173/2 1174/23 1177/23 1178/8 1178/10 1179/8 1179/12 1180/9 1180/10 1186/10 1186/11 1186/11</p>	<p>1189/6 1196/9 1209/14 1209/24 1210/25 1211/17 1211/22 1211/23 1212/7 1212/12 1212/18 1213/4 1213/6 1213/10 1213/11 1213/12 1213/24 1214/9 1214/12 1214/20 1215/2 1270/14 1270/15 1271/21 1272/2 1274/22 1275/23 1385/1 1388/6 1388/8 1388/23 1395/11 1395/25 1398/12 1398/13 1398/22 1399/7 1400/21 1403/7 1407/20 1415/3 1418/17 1418/20 1418/25 1420/11 1421/21 1422/3 1422/7 1422/12 1423/5 1423/6 1423/21 1423/24 1424/2 1424/11 1424/20 1424/22 1425/9 programmed [1] 1189/22 programming [2] 1189/22 1386/16 programs [21] 1172/4 1178/11 1211/7 1211/17 1212/3 1212/7 1213/3 1213/6 1213/11 1272/3 1272/10 1272/13 1278/16 1395/2 1398/20 1400/2 1405/6 1405/20 1408/21 1408/24 1422/20 project [6] 1392/12 1395/3 1400/12 1400/22 1400/25 1406/20 projects [1] 1148/6 prompt [5] 1181/14 1181/16 1185/18 1187/19 1359/2 prompts [1] 1187/19 proof [2] 1273/2 1433/10 proper [1] 1440/12 properly [1] 1141/11 properties [11] 1294/14 1367/18 1369/12 1370/3 1370/6 1370/24 1371/1 1371/3 1375/1 1376/5 1376/13 property [8] 1255/7 1288/19 1289/23 1294/14 1294/16 1370/24 1371/10 1371/13 proposal [10] 1435/17 1443/1 1449/18 1449/25 1450/8 1450/16 1468/10 1468/11 1468/11 1468/12 proposals [7] 1283/23 1284/1 1284/2 1448/15 1468/7 1468/16 1469/6 propose [3] 1234/1 1235/24 1451/19 proposed [14] 1283/21 1435/4 1435/11 1438/5 1438/9 1443/16 1444/13 1448/22 1450/4 1451/20 1451/22 1452/1 1468/6 1469/10 proposes [1] 1370/21 propounded [1] 1245/6 prorate [1] 1320/17 prorated [3] 1320/5 1348/22 1349/20 prorating [3] 1351/16 1351/18 1354/2</p>	<p>prosecuting [2] 1223/15 1223/19 prosecution [7] 1150/4 1150/10 1197/16 1198/3 1198/25 1219/18 1257/2 protected [1] 1396/12 protection [2] 1459/15 1459/19 prototype [4] 1407/23 1407/25 1417/25 1422/17 prototypes [3] 1418/2 1418/7 1423/3 prove [5] 1255/18 1257/8 1272/6 1389/24 1429/1 proven [2] 1390/3 1441/19 provide [7] 1149/20 1169/16 1201/12 1332/22 1333/1 1359/12 1395/14 provided [18] 1201/20 1207/4 1233/9 1238/12 1255/15 1298/21 1313/6 1318/25 1321/23 1323/18 1341/18 1346/11 1356/4 1367/25 1389/6 1396/15 1408/9 1416/14 provides [2] 1179/7 1333/8 providing [8] 1143/24 1151/21 1172/21 1179/9 1181/14 1185/18 1407/2 1427/14 provision [1] 1457/21 provisions [2] 1227/14 1462/10 proxy [1] 1291/22 PTO [8] 1155/10 1155/11 1167/7 1167/9 1199/22 1199/23 1199/25 1254/13 public [12] 1166/12 1166/14 1261/17 1261/17 1261/24 1261/25 1262/1 1298/22 1367/17 1377/16 1434/5 1434/6 publication [12] 1160/17 1161/9 1167/22 1182/24 1259/25 1265/4 1265/4 1270/22 1273/19 1416/4 1421/4 1431/7 publications [42] 1148/22 1154/16 1154/19 1155/14 1161/18 1161/18 1163/15 1163/17 1166/25 1167/11 1182/24 1198/7 1200/2 1220/9 1261/5 1264/16 1264/17 1264/21 1264/22 1264/25 1265/2 1265/9 1265/11 1265/14 1266/1 1266/6 1266/21 1266/25 1267/2 1267/8 1267/10 1267/13 1267/13 1267/22 1269/14 1273/10 1273/18 1273/24 1430/19 1430/23 1431/20 1446/10 publicly [5] 1188/3 1299/3 1377/17 1445/24 1446/12 publish [1] 1344/22 published [3] 1138/10 1140/13 1312/4 pull [7] 1160/9 1273/25 1274/1 1318/16 1341/23 1445/16 1450/24 pulled [1] 1254/12</p>

P
pulls [1] 1402/2
purchased [5] 1150/22 1276/7
1276/10 1276/20 1327/9
pure [1] 1442/2
purely [1] 1454/17
purport [2] 1278/17 1430/18
purported [1] 1275/17
purpose [3] 1234/4 1244/19
1355/23
purposes [8] 1252/20 1307/1
1350/11 1355/11 1356/15
1356/24 1359/20 1447/7
Pursuant [1] 1134/5
pursue [1] 1147/19
pushed [1] 1454/7
put [89] 1131/11 1135/19
1140/2 1141/22 1150/22
1152/8 1160/24 1163/5
1168/7 1168/18 1169/11
1169/14 1174/12 1174/21
1177/18 1185/6 1185/12
1187/1 1188/11 1188/17
1189/20 1189/23 1189/25
1191/10 1197/10 1197/10
1204/14 1209/13 1209/23
1212/12 1213/9 1213/10
1213/12 1219/25 1225/14
1234/4 1237/19 1238/2
1239/19 1241/25 1242/14
1243/2 1243/9 1243/11
1252/21 1253/12 1253/18
1259/23 1262/10 1277/14
1277/15 1277/23 1283/22
1291/4 1303/21 1331/7
1331/8 1333/19 1343/21
1350/2 1352/22 1353/5
1353/15 1366/10 1368/8
1370/1 1376/9 1386/8
1390/10 1390/18 1392/21
1394/13 1395/7 1412/11
1418/11 1421/20 1422/2
1422/6 1422/11 1426/12
1428/14 1430/9 1430/22
1435/20 1438/4 1438/7
1453/24 1462/22 1469/10
puts [3] 1186/15 1226/8
1230/6
putting [13] 1157/13 1167/5
1196/8 1209/13 1210/24
1212/17 1213/4 1213/10
1231/10 1233/18 1234/2
1246/4 1392/18
PX [15] 1219/25 1360/17
1360/18 1360/22 1361/2
1361/12 1362/16 1365/15
1365/21 1365/23 1366/4
1366/8 1375/23 1376/3
1376/13
PX-1 [1] 1219/25
PX-36 [3] 1365/23 1366/4
1366/8
PX-37 [7] 1360/17 1360/18
1361/2 1361/12 1362/16
1365/15 1365/21
PX-61 [4] 1360/22 1375/23
1376/3 1376/13

Q
qualified [2] 1290/1 1386/18

quantifying [1] 1251/15
question [66] 1135/13
1137/18 1160/8 1160/25
1183/25 1184/2 1184/14
1185/21 1188/16 1188/17
1194/7 1195/24 1198/1
1199/23 1200/13 1203/11
1217/11 1219/22 1232/2
1232/14 1233/18 1235/18
1237/7 1255/10 1265/13
1268/5 1268/11 1268/12
1268/14 1268/16 1274/18
1274/24 1281/3 1282/22
1283/25 1285/14 1294/6
1295/17 1312/15 1312/15
1319/23 1322/24 1335/16
1339/25 1340/3 1340/9
1346/18 1357/5 1358/12
1358/14 1378/21 1388/22
1390/7 1392/7 1397/19
1398/2 1398/4 1399/8
1400/20 1411/8 1411/10
1413/16 1419/9 1425/5
1425/16 1425/19 1428/8
1435/10 1435/10 1435/15
1435/17 1435/18 1436/16
1437/20 1438/6 1438/10
1438/15 1439/3 1439/25
1440/13 1440/14 1440/17
1441/5 1452/18 1458/19
1469/3
Question 4 [2] 1435/10
1435/15
Question 5 [1] 1435/18
Question 6 [2] 1435/10
1435/17
questioned [1] 1376/3
questioning [4] 1276/12
1280/8 1369/8 1369/22
questions [35] 1197/20
1201/8 1211/16 1232/8
1241/3 1264/12 1277/11
1279/12 1279/13 1282/18
1283/6 1356/19 1359/2
1365/8 1365/10 1365/12
1366/17 1372/17 1380/13
1382/6 1385/13 1388/19
1389/1 1391/16 1412/16
1412/24 1413/10 1413/15
1419/4 1419/11 1424/4
1426/2 1426/18 1429/16
1431/15
quick [7] 1141/5 1291/4
1400/16 1428/7 1429/22
1433/24 1441/2
quickly [4] 1151/18 1167/21
1226/24 1384/8
quite [9] 1214/16 1216/10
1277/7 1322/15 1345/25
1350/8 1356/16 1379/9
1398/13
quote [3] 1168/17 1260/25
1262/15
quote-unquote [2] 1260/25
1262/15
quoted [3] 1248/12 1421/12
1421/17
quotes [2] 1257/8 1260/23
quoting [1] 1421/2

R.
R. [1] 1407/6
R. Miller [1] 1407/6
raise [5] 1232/14 1232/21
1356/19 1382/17 1431/11
raised [14] 1146/11 1193/16
1232/16 1236/18 1250/15
1250/23 1314/14 1372/25
1373/2 1374/13 1429/6
1429/17 1441/6 1463/24
raising [1] 1430/21
ramp [1] 1323/7
ramp-up [1] 1323/7
ran [2] 1154/24 1174/7
range [2] 1385/6 1386/3
rare [1] 1176/10
rata [1] 1439/7
rate [6] 1207/13 1207/16
1209/2 1209/4 1328/3
1410/13
rather [9] 1234/2 1265/23
1307/1 1341/15 1392/19
1393/9 1415/11 1422/14
1451/7
ratio [1] 1299/17
reach [4] 1149/25 1151/2
1196/6 1217/8
reached [2] 1226/13 1445/9
reaction [2] 1144/18 1144/21
read [34] 1139/7 1157/9
1161/1 1162/4 1164/4
1164/19 1165/17 1168/6
1168/22 1170/8 1171/18
1172/17 1222/25 1225/13
1229/22 1229/25 1230/1
1231/16 1263/2 1271/9
1271/9 1271/10 1274/7
1288/25 1331/1 1357/16
1358/7 1387/9 1392/16
1402/11 1402/23 1403/23
1444/5 1444/8
readable [3] 1177/14 1442/1
1442/3
reader [20] 1159/13 1160/4
1160/15 1270/18 1270/23
1271/1 1271/7 1271/8
1271/10 1271/16 1271/18
1391/12 1391/12 1416/10
1416/15 1416/18 1417/3
1417/8 1417/10 1417/13
readers [1] 1270/19
readily [2] 1419/6 1419/14
reading [9] 1186/23 1263/11
1310/12 1390/22 1391/13
1391/14 1419/5 1419/13
1421/11
reads [1] 1222/2
ready [7] 1132/6 1132/9
1286/17 1337/5 1371/23
1372/12 1427/10
reaffirmed [1] 1191/17
real [2] 1294/11 1401/4
realize [2] 1375/7 1419/17
really [27] 1137/18 1141/24
1142/1 1147/2 1173/18
1176/9 1181/8 1202/8
1227/20 1249/18 1256/14
1259/21 1259/23 1260/10
1273/7 1284/19 1284/22
1284/25 1293/25 1357/17

1357/23 1367/8 1369/23
1400/19 1436/19 1441/1
1468/8
rearguing [1] 1198/13
reason [26] 1138/25 1140/2
1144/10 1224/15 1230/25
1237/12 1254/17 1266/17
1302/9 1314/15 1319/24
1327/5 1336/10 1339/12
1354/17 1358/15 1390/11
1411/16 1411/18 1415/19
1415/23 1416/5 1416/8
1416/12 1416/13 1416/14
reasonable [5] 1225/5
1293/18 1305/3 1341/19
1439/11
reasons [6] 1182/10 1303/22
1328/20 1403/11 1421/16
1430/1
rebut [4] 1249/9 1253/3
1315/23 1317/1
rebuttal [10] 1193/16 1193/20
1225/24 1226/1 1226/3
1245/19 1382/21 1382/23
1426/21 1426/22
recall [59] 1154/3 1167/20
1170/18 1209/10 1211/9
1211/18 1211/24 1217/25
1254/7 1254/14 1256/5
1263/8 1263/11 1263/13
1263/15 1265/17 1265/18
1265/23 1265/25 1266/2
1270/1 1276/6 1276/17
1276/19 1276/22 1277/3
1277/11 1280/11 1280/14
1282/20 1282/21 1311/19
1322/23 1323/17 1324/22
1328/3 1357/4 1357/22
1359/10 1360/3 1364/8
1391/23 1391/24 1392/15
1392/17 1393/11 1396/16
1396/20 1410/22 1411/5
1411/14 1415/4 1415/17
1416/1 1417/6 1417/14
1420/19 1420/22 1426/16
recalled [1] 1392/14
recap [2] 1190/22 1389/19
receive [2] 1152/18 1175/9
received [7] 1295/10 1298/15
1303/2 1356/19 1378/2
1437/2 1459/13
receiving [1] 1151/23
recent [2] 1203/10 1449/9
recently [2] 1148/17 1339/13
recess [11] 1230/19 1230/20
1285/10 1285/11 1368/22
1368/25 1371/22 1372/11
1428/4 1428/5 1469/17
recitals [2] 1465/18 1465/24
recitation [1] 1433/24
reckless [1] 1444/2
recklessness [1] 1444/11
recode [1] 1408/4
recognize [8] 1178/23 1292/7
1293/16 1302/4 1308/19
1320/6 1355/24 1405/24
recognized [1] 1170/14
recognizes [1] 1170/11
recollection [9] 1195/10
1238/5 1263/9 1284/17

<p>recollection... [5] 1307/8 1415/1 1415/12 1431/8 1451/1 reconsider [1] 1431/5 reconsideration [1] 1431/9 reconstruct [1] 1260/13 record [39] 1134/9 1136/3 1139/3 1145/17 1192/19 1192/21 1224/6 1224/8 1228/3 1228/10 1233/19 1239/6 1252/20 1252/21 1259/25 1287/19 1338/15 1367/23 1369/2 1375/20 1376/10 1376/24 1383/8 1428/14 1430/10 1430/23 1431/24 1433/18 1433/22 1435/21 1435/24 1436/9 1438/4 1438/8 1438/12 1443/20 1444/5 1444/13 1444/18 records [3] 1259/25 1292/10 1339/8 recreation [1] 1328/2 red [9] 1158/16 1161/11 1169/19 1172/7 1172/16 1184/15 1186/17 1226/14 1304/4 redact [4] 1234/10 1237/1 1237/2 1241/19 redacted [2] 1236/22 1241/20 redactions [1] 1344/21 redirect [6] 1283/8 1283/9 1380/11 1424/5 1424/7 1425/5 reduce [3] 1302/2 1303/19 1437/23 reduces [1] 1332/9 reducing [1] 1437/18 redundant [1] 1450/5 refer [5] 1153/17 1153/22 1195/6 1273/20 1387/22 reference [18] 1138/19 1164/3 1165/14 1165/18 1171/22 1220/13 1240/20 1263/17 1274/14 1332/1 1338/11 1348/24 1349/1 1349/2 1357/11 1415/15 1415/18 1423/12 referenced [2] 1295/21 1425/13 references [23] 1164/7 1165/8 1182/25 1220/7 1220/11 1220/16 1220/19 1220/21 1221/3 1221/13 1221/17 1221/25 1255/4 1255/24 1256/10 1256/21 1257/2 1379/20 1387/1 1390/6 1405/13 1429/10 1446/10 referral [1] 1195/9 referred [9] 1191/9 1218/8 1270/14 1275/19 1315/3 1317/14 1364/11 1414/21 1445/21 referring [13] 1165/6 1170/2 1212/6 1219/3 1220/20 1254/21 1254/22 1256/8 1256/9 1256/13 1370/17 1414/20 1417/17 reflect [7] 1235/17 1252/22</p>	<p>1343/11 1350/25 1378/15 1379/24 1440/8 reflected [4] 1307/22 1308/24 1370/11 1378/25 reflection [1] 1236/7 reflective [1] 1227/3 reflects [1] 1379/19 refresh [5] 1176/25 1177/1 1238/5 1295/16 1451/1 refresher [2] 1327/6 1330/7 regard [6] 1166/16 1172/9 1191/8 1258/18 1267/1 1275/10 regarding [23] 1139/17 1167/8 1186/7 1246/9 1252/13 1253/9 1261/22 1263/17 1309/19 1311/7 1315/7 1321/15 1322/24 1336/21 1373/24 1376/17 1383/25 1387/11 1401/8 1406/2 1416/1 1416/7 1428/19 regardless [4] 1284/18 1329/20 1456/22 1467/11 registered [1] 1223/13 regular [1] 1423/4 rejects [4] 1216/18 1216/19 1217/2 1217/3 relate [2] 1179/20 1376/13 related [25] 1170/14 1180/14 1180/17 1204/4 1221/6 1252/21 1255/25 1256/1 1256/11 1257/2 1342/9 1348/10 1357/20 1358/2 1360/8 1366/22 1367/9 1371/1 1371/10 1376/5 1377/21 1453/14 1453/15 1459/10 1467/10 relates [2] 1158/7 1374/23 relating [1] 1453/6 relation [1] 1164/9 relationship [2] 1303/23 1464/5 relative [4] 1143/3 1212/2 1212/21 1325/10 relatively [2] 1296/13 1360/4 relayed [1] 1323/13 release [33] 1139/18 1140/12 1144/11 1144/12 1251/9 1251/11 1251/13 1251/15 1251/15 1312/1 1312/22 1322/9 1337/2 1337/8 1358/18 1407/24 1458/12 1459/20 1462/2 1462/7 1462/7 1462/13 1462/14 1463/17 1463/21 1465/7 1465/9 1465/13 1465/13 1465/19 1465/21 1465/23 1466/20 released [10] 1140/11 1246/16 1310/20 1312/6 1312/10 1358/25 1382/9 1407/3 1459/10 1462/13 releases [4] 1138/10 1138/20 1458/2 1467/20 relevant [15] 1154/13 1166/18 1175/6 1223/5 1223/7 1224/2 1284/4 1288/15 1337/20 1348/9 1370/10 1374/18 1409/8 1409/8 1437/11 reliable [1] 1317/2</p>	<p>reliance [3] 1314/5 1314/21 1437/8 relied [32] 1236/2 1236/8 1240/4 1252/25 1260/22 1296/24 1297/2 1313/7 1315/4 1316/2 1321/14 1346/4 1349/10 1349/12 1351/1 1354/1 1355/23 1359/3 1360/16 1361/7 1361/14 1362/9 1363/23 1366/1 1366/23 1371/12 1374/7 1376/25 1377/12 1406/1 1437/22 1451/5 relies [2] 1144/14 1382/3 relooked [1] 1139/15 relooking [1] 1442/14 reluctant [2] 1408/8 1466/16 rely [11] 1202/3 1212/15 1273/12 1295/23 1306/16 1312/23 1317/19 1336/20 1336/24 1339/9 1361/17 relying [20] 1138/22 1182/6 1257/7 1261/1 1261/2 1261/20 1261/24 1267/9 1267/11 1271/17 1272/5 1275/6 1278/1 1280/4 1295/24 1336/1 1352/13 1356/3 1374/18 1402/20 remain [1] 1368/22 remainder [4] 1229/13 1236/23 1331/16 1378/6 remaining [3] 1326/5 1362/21 1450/21 remains [1] 1384/12 remember [18] 1189/10 1202/24 1211/21 1211/25 1266/4 1266/8 1266/9 1275/24 1328/6 1330/8 1331/5 1361/9 1381/20 1395/1 1410/18 1411/3 1426/16 1455/4 remembered [2] 1222/6 1392/11 remembering [1] 1176/22 remind [16] 1156/15 1158/15 1162/14 1164/15 1167/16 1169/19 1173/7 1177/4 1184/17 1253/24 1394/24 1395/23 1398/4 1427/16 1435/14 1441/13 reminded [3] 1170/23 1184/5 1188/21 reminder [2] 1158/12 1176/21 reminds [2] 1184/8 1185/2 remove [8] 1232/5 1309/8 1309/11 1309/12 1309/14 1309/17 1329/25 1350/22 removed [3] 1236/23 1308/11 1350/10 removing [1] 1238/14 render [11] 1184/24 1185/16 1188/10 1339/6 1399/18 1401/11 1401/17 1404/21 1404/22 1405/1 1409/5 rendered [6] 1316/14 1335/23 1336/2 1394/9 1394/10 1425/4 renders [3] 1399/17 1401/9 1401/15 renewed [1] 1435/1</p>	<p>renewing [2] 1434/18 1434/23 repeat [9] 1203/22 1213/1 1268/15 1281/4 1378/20 1415/22 repeatedly [6] 1153/13 1171/1 1188/13 1197/1 1294/25 1440/11 repeating [2] 1214/2 1215/21 repeats [1] 1186/19 repetition [1] 1215/14 rephrase [1] 1211/13 replace [1] 1244/3 replaced [1] 1134/2 replacement [1] 1134/21 reply [4] 1290/7 1317/16 1324/4 1324/6 report [122] 1132/23 1134/16 1134/22 1135/1 1135/6 1135/17 1136/2 1136/4 1136/19 1136/21 1136/25 1136/25 1138/7 1138/9 1138/16 1138/17 1140/6 1140/20 1141/3 1142/6 1142/12 1142/14 1143/7 1143/12 1143/16 1143/18 1143/22 1144/12 1144/14 1191/21 1191/22 1191/24 1193/16 1193/20 1193/21 1203/2 1203/5 1203/14 1231/1 1231/10 1231/13 1231/16 1232/20 1233/4 1233/15 1234/19 1234/19 1236/21 1237/4 1238/10 1238/11 1246/25 1247/1 1247/8 1247/15 1247/15 1248/5 1248/12 1248/13 1248/22 1249/12 1249/19 1249/22 1250/13 1250/16 1251/17 1252/24 1253/13 1266/3 1306/14 1306/15 1314/13 1314/18 1314/20 1314/25 1315/7 1316/8 1316/15 1324/2 1324/5 1324/7 1324/8 1334/19 1335/6 1335/8 1339/14 1339/24 1342/12 1343/17 1343/18 1343/20 1344/4 1344/5 1344/6 1344/11 1347/13 1349/22 1349/23 1350/18 1351/20 1351/20 1352/25 1353/3 1353/7 1353/20 1353/21 1356/6 1358/22 1359/7 1359/10 1359/14 1359/16 1359/18 1359/21 1361/16 1362/2 1363/19 1379/21 1397/5 1418/5 1445/10 1451/5 REPORTER [2] 1470/2 1470/8 reports [17] 1136/8 1136/17 1139/5 1143/9 1155/6 1155/6 1225/13 1230/22 1232/17 1234/9 1249/25 1251/10 1269/19 1285/24 1286/5 1316/22 1387/9 represent [1] 1157/7 representations [2] 1369/11 1369/15 representative [2] 1436/23 1437/1</p>
---	---	--	--

<p>represented [2] 1278/19 1348/5 represents [4] 1148/11 1158/25 1232/3 1300/3 request [3] 1198/15 1291/1 1337/7 requested [1] 1366/24 require [3] 1312/20 1405/7 1466/21 required [6] 1152/20 1172/1 1172/20 1172/22 1253/12 1401/2 requirement [7] 1152/8 1185/17 1209/21 1209/23 1210/2 1210/3 1212/12 requires [2] 1210/4 1460/5 rereviewed [1] 1339/13 research [10] 1148/10 1148/11 1258/12 1385/7 1385/7 1400/12 1400/22 1400/25 1406/20 1427/19 resellers [2] 1456/19 1458/6 reserve [5] 1285/17 1286/14 1429/15 1433/3 1433/18 resolve [8] 1226/24 1227/16 1243/22 1244/6 1250/25 1464/14 1464/20 1464/21 resolved [2] 1243/20 1436/18 respect [43] 1135/24 1144/4 1144/6 1181/22 1184/11 1190/12 1226/21 1227/8 1227/12 1234/24 1238/21 1243/20 1249/8 1251/18 1292/22 1306/17 1310/6 1313/8 1314/25 1340/23 1367/20 1367/24 1370/15 1373/5 1389/6 1389/15 1390/5 1392/25 1393/15 1399/15 1407/17 1408/15 1408/19 1429/1 1440/6 1440/11 1449/24 1451/2 1453/25 1462/8 1467/19 1467/23 1468/1 respond [7] 1141/16 1245/18 1253/8 1323/22 1433/5 1447/4 1449/14 responding [6] 1133/2 1143/11 1143/24 1226/19 1226/19 1447/13 response [12] 1185/21 1191/22 1191/23 1206/9 1245/16 1268/9 1282/18 1315/19 1315/20 1338/16 1338/18 1435/18 responsive [1] 1142/12 rest [14] 1216/24 1217/4 1225/23 1297/1 1378/8 1378/11 1396/9 1428/15 1430/22 1442/8 1443/16 1460/16 1468/18 1469/12 restful [1] 1145/9 restriction [1] 1408/11 restroom [1] 1368/17 rests [1] 1382/14 result [11] 1135/20 1135/22 1135/23 1143/2 1186/15 1192/6 1192/7 1193/5 1194/4 1194/16 1209/3 results [2] 1180/8 1387/17</p>	<p>resume [1] 1379/21 retailers [2] 1456/19 1458/7 retained [15] 1202/13 1202/20 1202/22 1203/19 1203/23 1203/24 1204/1 1206/21 1208/13 1324/3 1356/9 1380/6 1426/3 1426/6 1426/10 retake [1] 1225/18 retaking [1] 1226/4 retention [1] 1202/18 retire [1] 1427/16 retrieval [4] 1147/20 1147/23 1149/6 1149/7 retrieve [2] 1161/24 1414/11 retrieved [1] 1179/6 retrieving [1] 1161/25 returns [1] 1158/7 reveal [1] 1375/16 revenue [100] 1137/1 1137/12 1137/14 1142/16 1231/4 1231/10 1231/11 1293/12 1297/11 1297/16 1297/22 1298/1 1298/2 1298/19 1299/1 1299/6 1300/5 1300/9 1300/10 1300/11 1300/22 1302/3 1304/1 1304/7 1330/21 1330/22 1341/15 1341/25 1342/5 1342/6 1342/7 1342/8 1342/14 1342/25 1343/7 1343/11 1344/14 1345/16 1346/5 1346/20 1346/21 1347/6 1347/11 1348/3 1348/8 1348/20 1349/12 1358/10 1360/7 1360/12 1360/13 1360/15 1361/7 1361/17 1361/25 1362/6 1362/7 1362/25 1363/1 1363/3 1363/17 1363/21 1364/1 1365/6 1365/25 1366/13 1366/15 1366/22 1367/10 1367/12 1367/18 1367/24 1368/1 1369/6 1369/19 1370/2 1370/5 1370/9 1370/12 1370/24 1371/3 1371/4 1371/10 1371/11 1373/15 1374/8 1375/15 1375/15 1376/5 1376/7 1377/12 1377/18 1377/21 1378/1 1378/2 1378/7 1378/16 1378/24 1379/1 1381/23 revenue-based [2] 1137/1 1142/16 revenues [24] 1134/17 1135/12 1135/13 1135/15 1235/4 1293/5 1293/7 1298/14 1298/15 1298/18 1299/4 1299/20 1300/21 1304/1 1309/24 1345/13 1369/25 1373/14 1373/15 1374/17 1378/4 1378/5 1381/20 1381/21 reverse [1] 1184/25 review [18] 1155/10 1193/10 1198/11 1199/23 1219/1 1219/5 1222/5 1222/9 1222/10 1222/19 1254/19 1254/24 1308/6 1309/6</p>	<p>1313/4 1338/16 1373/11 1386/23 reviewed [12] 1155/11 1163/16 1199/24 1233/20 1249/25 1292/2 1292/10 1313/17 1315/17 1369/6 1369/14 1369/17 reviewing [10] 1223/17 1285/23 1286/5 1292/5 1332/17 1363/16 1363/17 1419/3 1419/11 1448/15 revise [1] 1251/2 right [329] 1131/10 1132/2 1132/11 1133/9 1133/20 1133/24 1134/12 1135/8 1136/5 1137/19 1137/20 1137/25 1138/5 1139/6 1144/15 1145/1 1149/16 1152/13 1153/18 1156/2 1156/12 1156/17 1156/25 1157/15 1158/16 1158/25 1159/16 1161/11 1161/25 1164/14 1166/3 1168/7 1169/11 1170/17 1173/11 1174/16 1175/1 1175/12 1177/8 1182/23 1183/5 1185/23 1186/12 1187/3 1195/2 1199/7 1199/13 1200/14 1200/19 1202/19 1203/5 1203/15 1203/19 1204/5 1204/7 1204/10 1205/14 1205/20 1205/24 1206/1 1206/2 1206/4 1206/5 1206/13 1206/18 1206/20 1206/21 1206/24 1207/19 1208/3 1209/2 1209/13 1210/3 1210/18 1210/21 1213/6 1213/18 1213/21 1214/6 1214/9 1214/14 1214/18 1214/21 1214/23 1215/2 1215/5 1215/7 1215/12 1215/13 1215/18 1215/25 1216/5 1216/11 1217/1 1217/11 1217/17 1217/20 1218/4 1220/4 1220/5 1220/6 1220/7 1220/10 1220/12 1220/15 1220/16 1220/17 1221/4 1221/5 1221/22 1221/25 1222/14 1222/17 1222/19 1222/20 1222/22 1223/23 1223/25 1228/14 1229/20 1229/23 1230/11 1230/15 1230/19 1231/14 1233/17 1233/25 1235/22 1239/24 1241/10 1242/14 1242/25 1243/13 1244/5 1247/6 1248/1 1248/23 1250/24 1252/3 1252/5 1252/7 1252/11 1255/16 1256/4 1256/10 1256/17 1257/19 1257/22 1257/24 1258/9 1258/14 1258/16 1259/10 1259/13 1259/24 1260/6 1260/12 1260/23 1261/15 1261/22 1263/18 1263/22 1264/10 1264/20 1265/16 1265/20 1266/14 1267/11 1268/8 1268/12 1268/13 1268/25 1269/15 1271/9</p>	<p>1271/11 1272/20 1273/20 1274/10 1275/17 1276/4 1276/11 1276/13 1277/15 1277/16 1277/22 1277/23 1277/24 1278/9 1278/25 1278/25 1279/23 1280/5 1280/20 1281/11 1281/24 1282/5 1282/7 1282/11 1282/15 1283/2 1283/17 1283/19 1285/12 1285/19 1286/10 1286/12 1286/13 1287/6 1290/1 1290/18 1298/5 1305/19 1307/3 1311/17 1315/15 1316/16 1321/5 1321/8 1322/18 1326/18 1329/2 1329/5 1330/14 1331/13 1332/3 1335/5 1338/10 1341/12 1341/16 1342/13 1342/24 1343/2 1343/2 1343/8 1343/16 1344/13 1345/3 1349/19 1350/21 1351/4 1351/25 1352/4 1352/22 1353/2 1354/4 1354/9 1355/4 1355/5 1356/5 1356/8 1356/25 1360/4 1360/5 1360/11 1360/15 1362/24 1363/7 1365/2 1366/11 1366/13 1368/3 1368/21 1369/1 1372/12 1376/20 1391/17 1394/12 1397/10 1399/10 1399/13 1406/12 1409/17 1409/21 1410/14 1412/7 1412/8 1413/12 1413/17 1413/18 1414/13 1417/3 1419/8 1421/9 1421/24 1423/7 1423/14 1426/20 1428/6 1429/14 1429/20 1430/15 1431/2 1431/23 1433/17 1435/20 1436/20 1437/14 1438/3 1438/19 1440/15 1442/21 1442/23 1443/4 1443/8 1444/24 1445/8 1447/17 1448/11 1448/14 1449/3 1449/5 1449/12 1449/18 1449/23 1450/19 1450/24 1451/9 1454/4 1455/5 1455/8 1458/23 1459/24 1461/10 1463/10 1466/25 1467/16 1468/15 1469/3 1469/5 right-hand [11] 1153/18 1156/2 1156/12 1156/17 1158/25 1159/16 1166/3 1168/7 1169/11 1170/17 1269/15 rights [5] 1207/2 1444/3 1456/14 1457/17 1464/24 Rinard [7] 1211/3 1211/7 1211/16 1296/24 1336/8 1336/25 1436/2 roadmap [1] 1385/23 ROBERT [1] 1130/12 ROBERTS [1] 1130/13 robotics [1] 1385/11 Rockstar [1] 1206/23 role [3] 1463/15 1463/19 1463/23 roles [1] 1207/20 roll [4] 1322/3 1337/5 1339/18</p>
--	---	---	---

S	1136/22 1138/1 1142/21	1220/23 1221/7 1221/16	1163/13 1182/16 1272/15
seal [13] 1290/17 1290/18	1143/8 1143/9 1153/19	1275/11 1292/25 1327/7	1275/10 1402/25 1403/3
1290/21 1326/17 1326/18	1153/20 1154/22 1156/10	1390/23 1390/23 1401/20	1403/5 1414/16 1414/16
1326/21 1342/17 1342/18	1156/12 1156/20 1156/24	1424/18	1414/22 1415/4 1415/14
1342/19 1342/21 1362/18	1156/25 1157/2 1157/6	segments [1] 1286/19	1421/14 1421/20 1421/20
1362/20 1362/21	1157/15 1157/17 1157/23	select [1] 1437/13	set [20] 1152/17 1154/20
sealed [6] 1129/15 1290/22	1158/8 1158/9 1158/9	selected [7] 1138/25 1160/11	1159/10 1161/16 1175/9
1306/7 1331/19 1342/22	1158/16 1159/2 1159/11	1171/25 1172/19 1172/24	1178/3 1232/18 1240/11
1383/5	1159/16 1160/6 1160/21	1253/1 1386/7	1276/17 1276/21 1282/23
search [14] 1147/20 1151/25	1160/24 1161/7 1161/10	selection [5] 1210/8 1453/10	1355/25 1356/6 1358/18
1158/3 1162/5 1162/6	1161/11 1161/20 1161/22	1453/13 1456/8 1467/7	1389/1 1395/25 1396/1
1168/25 1179/14 1180/14	1161/24 1162/22 1163/9	self [2] 1178/3 1262/16	1396/4 1399/7 1420/7
1180/17 1208/25 1370/4	1165/6 1165/14 1165/15	self-contained [2] 1178/3	SETH [1] 1130/5
1370/24 1370/25 1442/14	1166/3 1166/9 1166/10	1262/16	sets [2] 1395/12 1396/3
searched [3] 1178/25 1179/2	1167/6 1167/19 1168/2	sell [2] 1386/13 1456/20	setting [4] 1180/2 1180/3
1179/3	1168/8 1168/9 1168/14	sellers [1] 1297/13	1201/11 1420/11
searches [2] 1292/13 1298/23	1168/16 1169/2 1169/7	selling [6] 1298/15 1298/24	settled [3] 1291/3 1291/5
searching [3] 1157/8 1180/16	1169/8 1169/18 1169/20	1308/16 1308/17 1400/11	1327/13
1259/5	1170/1 1170/3 1170/16	1461/19	settlement [18] 1135/14
seat [10] 1134/11 1145/6	1170/24 1171/17 1173/4	sells [3] 1453/7 1453/12	1192/7 1192/25 1193/25
1224/24 1229/24 1283/10	1175/1 1178/12 1181/4	1453/18	1194/4 1194/16 1286/21
1287/11 1377/7 1428/1	1181/6 1181/9 1181/12	semester [1] 1148/7	1291/17 1294/20 1294/20
1435/3 1467/25	1182/9 1182/15 1182/16	send [4] 1168/20 1221/6	1294/21 1294/22 1295/5
seated [10] 1131/6 1132/15	1182/23 1182/25 1183/6	1230/17 1405/19	1327/16 1328/15 1333/25
1145/8 1145/24 1253/22	1183/7 1185/2 1185/5	sending [1] 1398/16	1457/25 1463/13
1283/19 1285/12 1288/1	1185/23 1186/3 1186/11	sense [16] 1131/15 1242/18	settlements [2] 1192/6 1193/5
1383/11 1428/6	1186/16 1187/25 1188/1	1243/7 1259/5 1296/9	seven [8] 1256/23 1257/2
SEC [2] 1374/11 1376/4	1188/18 1192/1 1195/22	1296/18 1297/3 1301/21	1301/11 1301/11 1301/14
second [60] 1136/17 1136/25	1202/10 1203/4 1203/8	1304/21 1320/18 1330/13	1301/15 1302/11 1302/12
1139/22 1151/21 1152/3	1203/17 1203/22 1205/8	1398/20 1408/6 1427/7	seventh [1] 1194/21
1152/5 1152/7 1154/9 1158/7	1206/11 1206/15 1206/24	1442/6 1457/7	seventh factor [1] 1194/21
1168/16 1169/3 1179/17	1218/21 1221/1 1221/2	senses [1] 1296/10	several [5] 1164/20 1186/5
1179/21 1180/8 1180/13	1223/19 1224/15 1229/9	sensible [1] 1466/5	1389/23 1393/25 1436/15
1180/16 1180/18 1188/1	1229/17 1234/14 1239/16	sensibly [1] 1212/22	several-month [1] 1436/15
1192/20 1193/19 1196/11	1241/16 1247/4 1247/9	sent [2] 1134/21 1398/9	share [1] 1150/11
1205/3 1205/20 1205/21	1247/18 1247/24 1252/17	sentence [6] 1402/23 1442/18	she [6] 1370/13 1370/21
1206/25 1209/11 1228/15	1254/17 1256/14 1256/15	1444/13 1444/18 1444/21	1372/24 1373/14 1373/16
1238/20 1239/15 1247/17	1256/16 1256/24 1256/25	1456/14	1373/18
1269/7 1272/2 1272/12	1260/7 1265/9 1266/17	sentences [2] 1420/23 1421/9	she's [1] 1252/3
1282/16 1285/13 1295/16	1272/12 1272/12 1273/24	separate [23] 1152/18 1153/2	sheet [4] 1205/3 1205/11
1308/24 1343/25 1344/7	1286/5 1291/3 1295/14	1172/3 1172/8 1173/1 1173/4	1361/1 1381/15
1344/17 1353/8 1360/25	1296/15 1299/6 1300/10	1174/25 1175/3 1175/10	Sheets [3] 1244/12 1248/6
1366/5 1394/7 1402/21	1301/7 1301/10 1304/4	1180/10 1189/6 1196/11	1248/15
1407/14 1407/19 1418/23	1304/20 1307/3 1307/25	1213/23 1214/2 1214/9	short [3] 1156/16 1271/6
1424/22 1424/22 1425/8	1309/2 1309/10 1319/10	1214/12 1214/19 1215/1	1301/4
1431/16 1443/11 1450/20	1319/17 1320/10 1320/12	1306/14 1327/12 1332/19	shortcomings [1] 1428/25
1453/24 1456/14 1458/14	1320/13 1320/15 1321/3	1436/12 1462/5	shortcut [30] 1151/16 1152/4
1463/5 1466/9 1467/1	1322/17 1324/8 1335/6	separated [1] 1422/1	1153/10 1153/12 1153/22
second-generation [1]	1336/2 1339/19 1347/22	separately [1] 1422/19	1153/23 1155/19 1158/14
1418/23	1348/12 1348/13 1348/24	separation [1] 1189/12	1158/18 1160/1 1160/20
secondarily [1] 1303/25	1348/25 1360/21 1360/22	September [2] 1143/16	1161/14 1163/22 1163/25
secondary [14] 1191/6 1191/9	1360/24 1360/25 1361/1	1434/8	1166/4 1167/13 1169/16
1191/14 1191/19 1192/2	1361/18 1365/5 1369/2	September 3 [1] 1434/8	1169/20 1170/16 1170/20
1192/8 1193/1 1193/14	1371/23 1379/19 1379/22	sequence [3] 1388/19 1389/1	1170/25 1171/5 1174/22
1194/16 1194/23 1195/2	1387/24 1388/11 1390/13	1412/15	1185/3 1188/14 1189/21
1409/6 1409/10 1409/13	1390/14 1390/16 1390/19	Serial [1] 1164/6	1189/24 1190/5 1190/16
secondly [1] 1328/24	1391/8 1406/17 1407/7	served [6] 1148/8 1233/3	1196/8
seconds [3] 1199/20 1362/10	1410/5 1414/15 1414/19	1353/19 1379/13 1380/4	shorter [6] 1146/15 1291/8
1467/2	1415/10 1415/10 1418/3	1422/22	1291/9 1303/15 1303/17
secretly [1] 1463/16	1424/16 1427/24 1441/2	server [3] 1460/4 1460/7	1304/9
section [14] 1161/22 1166/11	1442/25 1446/21	1460/11	shortly [1] 1228/17
1170/8 1172/7 1172/17	seeing [5] 1184/22 1235/19	service [12] 1148/16 1156/22	should [48] 1133/5 1136/22
1203/15 1205/2 1220/6	1247/18 1305/10 1364/2	1158/4 1158/7 1159/12	1144/20 1164/12 1165/25
1270/7 1306/3 1326/17	seem [2] 1256/25 1434/21	1159/14 1163/1 1410/11	1186/24 1194/17 1201/23
1441/6 1448/4 1456/17	seemed [2] 1442/5 1444/9	1453/6 1453/14 1453/15	1202/3 1202/6 1220/22
Section A [1] 1203/15	seems [6] 1225/5 1250/24	1467/10	1221/18 1227/10 1227/15
Section E [1] 1205/2	1312/5 1337/16 1450/3	serviced [1] 1396/14	1231/19 1234/10 1235/4
sections [2] 1165/17 1171/18	1450/5	services [22] 1159/10	1284/12 1284/25 1292/7
securities [1] 1377/17	seen [15] 1153/14 1166/21	1159/15 1159/20 1161/19	1293/16 1326/3 1327/25
see [184] 1132/24 1133/4	1169/21 1183/16 1188/22	1161/20 1162/17 1162/18	1336/18 1340/8 1353/1

S	Document 601	Page 682 of 775	PageID #: 61261
should... [22] 1357/19	1369/2 1369/3 1371/20	skipped [1] 1206/3	1437/8 1460/10
1357/20 1358/9 1362/10	1371/24 1372/2 1372/9	slapping [2] 1211/21 1211/22	1185/10 1316/17
1373/8 1378/14 1382/25	1372/15 1376/22 1376/25	slice [1] 1329/12	SMITH [1] 1129/23
1404/11 1427/10 1427/12	1396/23 1397/2 1397/22	slide [98] 1137/7 1137/13	so [763]
1430/21 1432/5 1436/25	1424/24 1425/2 1425/23	1139/25 1155/24 1158/20	so-called [2] 1151/16 1152/4
1437/3 1437/10 1440/1	sides [1] 1286/3	1162/9 1162/10 1162/16	societies [2] 1149/3 1289/15
1448/22 1451/13 1466/4	sides' [1] 1436/1	1163/7 1163/8 1163/14	society [2] 1149/4 1260/14
1466/5 1466/6 1468/21	sign [1] 1324/17	1163/14 1165/15 1168/2	software [23] 1147/17
shoulders [1] 1406/22	signed [3] 1324/16 1324/17	1169/1 1169/7 1169/18	1150/22 1165/20 1167/5
shouldn't [6] 1249/17 1328/22	1332/2	1170/3 1170/23 1173/12	1173/23 1189/17 1189/18
1335/21 1404/5 1466/3	significant [3] 1285/23 1382/2	1174/15 1174/17 1175/15	1207/1 1215/3 1275/25
1466/3	1428/25	1176/8 1176/19 1176/20	1276/21 1276/24 1277/1
show [36] 1167/15 1173/10	silently [1] 1463/17	1176/21 1177/3 1177/5	1277/9 1278/4 1278/15
1173/13 1183/25 1184/15	similar [13] 1155/8 1163/12	1181/7 1182/9 1183/19	1283/3 1385/24 1400/9
1185/9 1186/22 1188/18	1169/8 1172/14 1249/7	1183/20 1184/5 1185/2	1453/5 1453/15 1453/18
1237/6 1237/12 1237/14	1250/6 1275/9 1292/4	1185/5 1186/1 1186/1	1467/9
1237/16 1240/5 1244/19	1294/14 1296/21 1296/21	1187/13 1188/2 1188/11	sold [9] 1288/20 1292/18
1245/24 1255/12 1255/20	1305/18 1334/10	1188/21 1189/14 1190/2	1292/19 1292/20 1310/24
1255/20 1256/3 1257/13	similarly [7] 1275/3 1275/6	1190/22 1191/13 1195/3	1310/24 1452/24 1461/3
1267/10 1275/7 1278/1	1297/18 1299/17 1322/15	1195/22 1201/10 1201/10	1467/14
1280/5 1316/24 1326/3	1324/3 1438/11	1209/7 1209/8 1209/21	sole [2] 1226/3 1268/25
1367/17 1371/17 1372/18	simple [14] 1153/15 1182/18	1210/14 1213/16 1213/20	solely [2] 1246/10 1251/18
1410/24 1424/11 1429/5	1182/18 1265/13 1296/14	1214/4 1215/9 1217/10	solution [3] 1235/25 1242/20
1429/9 1443/11 1449/7	1329/7 1407/13 1407/19	1217/11 1230/24 1233/12	1242/21
1455/2	1407/21 1407/24 1415/2	1233/21 1235/1 1260/19	some [115] 1134/2 1146/13
showed [9] 1174/13 1178/13	1415/5 1415/15 1415/18	1260/22 1272/14 1275/9	1146/16 1156/11 1157/19
1180/20 1185/20 1275/9	simplify [1] 1445/15	1293/16 1310/12 1321/20	1159/6 1161/10 1170/11
1324/13 1366/21 1392/8	simply [2] 1244/11 1427/18	1324/20 1326/3 1328/1	1173/17 1177/1 1182/24
1393/17	since [6] 1167/4 1173/20	1334/6 1337/1 1337/19	1192/3 1193/4 1195/2
showing [13] 1186/2 1189/15	1234/25 1345/19 1385/4	1342/13 1342/24 1351/8	1197/14 1198/11 1201/8
1235/2 1235/16 1244/18	1460/6	1352/6 1353/5 1360/5 1388/3	1201/11 1206/14 1211/21
1257/25 1261/15 1291/4	single [7] 1177/15 1233/12	1388/16 1388/19 1413/8	1222/2 1222/3 1224/20
1388/16 1392/25 1399/5	1389/23 1422/2 1422/7	1414/23 1424/15 1424/16	1225/16 1225/17 1226/18
1399/6 1424/15	1422/12 1462/2	1425/14 1462/2 1463/9	1226/20 1227/1 1228/7
shown [15] 1155/23 1157/20	sir [35] 1204/14 1205/22	1464/7 1464/11 1464/11	1228/16 1228/17 1230/16
1158/25 1168/10 1171/11	1206/24 1208/19 1209/10	1466/1 1466/1	1230/22 1232/14 1236/11
1181/7 1187/3 1187/14	1235/7 1254/23 1268/10	Slide 25 [1] 1137/13	1237/12 1238/20 1240/14
1191/10 1220/8 1264/5	1287/15 1382/8 1383/21	Slide 32 [1] 1139/25	1240/15 1241/23 1249/17
1264/7 1329/16 1373/3	1383/24 1386/22 1393/1	Slide 4 [2] 1201/10 1352/6	1257/24 1258/15 1261/2
1416/20	1410/4 1410/10 1410/25	Slide 8 [1] 1209/7	1261/4 1261/5 1263/24
shows [13] 1158/21 1166/13	1411/5 1411/8 1412/9	slides [32] 1133/4 1133/5	1264/4 1266/3 1266/24
1167/17 1179/8 1187/17	1412/15 1412/23 1413/3	1133/22 1134/15 1134/21	1269/2 1269/3 1270/15
1234/15 1274/12 1347/17	1413/22 1414/5 1415/13	1136/1 1136/10 1137/5	1273/5 1278/23 1284/4
1391/10 1391/11 1415/11	1415/19 1416/8 1417/11	1137/7 1138/6 1139/7 1143/5	1285/9 1285/18 1288/12
1421/4 1432/24	1417/14 1417/23 1419/3	1144/4 1144/6 1144/22	1291/25 1292/11 1292/19
side [38] 1133/5 1153/18	1420/4 1420/14 1424/3	1167/15 1167/17 1231/16	1297/13 1301/14 1301/24
1156/2 1156/12 1156/17	sit [3] 1134/10 1294/4	1231/24 1232/6 1233/10	1302/25 1302/25 1304/2
1157/6 1158/23 1158/25	1371/18	1249/16 1249/24 1264/4	1304/24 1308/8 1309/2
1159/11 1159/16 1160/3	site [2] 1161/16 1262/6	1264/6 1264/14 1270/2	1316/13 1319/17 1323/10
1166/3 1168/7 1169/11	sitting [6] 1150/5 1218/1	1288/12 1341/23 1384/2	1324/11 1327/2 1332/12
1170/17 1173/11 1174/12	1230/11 1275/18 1325/8	1412/11 1460/17	1344/21 1358/20 1360/15
1182/15 1226/12 1228/20	1415/13	slightly [2] 1135/21 1321/9	1360/21 1366/15 1367/12
1231/25 1234/9 1256/9	situation [13] 1177/25	slip [1] 1361/1	1382/17 1384/2 1385/3
1256/22 1256/22 1258/15	1207/10 1208/5 1212/10	slow [5] 1134/7 1249/10	1386/6 1387/24 1387/25
1269/15 1285/23 1290/9	1216/23 1252/13 1267/25	1249/13 1249/17 1323/7	1387/25 1387/25 1390/11
1344/2 1344/4 1432/5	1281/9 1282/8 1304/20	small [9] 1162/22 1173/17	1391/1 1391/2 1391/23
1436/21 1446/6 1451/13	1316/16 1375/7 1444/7	1240/15 1277/7 1288/17	1392/12 1392/13 1392/14
1451/23 1451/25 1468/15	six [17] 1147/13 1147/16	1299/15 1299/21 1299/22	1394/18 1396/11 1407/1
side's [1] 1226/10	1153/21 1158/17 1166/4	1299/25	1408/10 1412/24 1412/25
sidebar [44] 1192/14 1192/18	1169/20 1170/25 1171/1	smaller [3] 1143/1 1189/5	1414/10 1414/11 1414/20
1194/10 1196/18 1196/22	1185/4 1185/7 1188/14	1300/11	1414/25 1415/2 1416/3
1200/20 1218/20 1218/21	1190/16 1310/13 1322/10	smallest [1] 1401/3	1426/2 1426/13 1440/25
1218/24 1219/10 1307/4	1328/12 1329/8 1340/18	smart [14] 1157/11 1178/21	1455/23 1460/17
1307/7 1307/14 1313/24	size [2] 1259/16 1369/24	1206/20 1334/8 1335/10	somebody [3] 1390/23
1314/3 1317/9 1334/12	skill [12] 1182/4 1271/3	1335/20 1336/6 1336/8	1431/25 1441/13
1334/16 1336/15 1337/12	1271/8 1273/22 1279/22	1336/21 1340/11 1453/10	somehow [2] 1201/23 1314/8
1337/15 1340/5 1361/18	1390/8 1399/22 1403/22	1453/13 1456/8 1467/6	someone [3] 1279/21 1409/14
1361/21 1362/12 1367/3	1419/5 1419/12 1419/17	Smedley [10] 1162/12 1176/1	1445/19
1367/6 1368/7 1368/13	1419/22	1177/11 1180/25 1216/2	something [87] 1143/18
	skip [1] 1450/19	1396/9 1398/15 1436/2	

<p> something... [86] 1162/1 1171/9 1174/2 1174/11 1174/11 1180/5 1180/6 1182/7 1183/11 1189/10 1189/20 1189/20 1203/5 1203/13 1205/1 1210/4 1210/19 1213/9 1223/24 1228/3 1234/4 1234/6 1234/14 1234/21 1234/23 1236/20 1237/6 1237/23 1239/12 1244/7 1248/16 1250/7 1255/20 1255/21 1259/5 1259/22 1260/10 1261/12 1262/10 1266/4 1266/16 1266/17 1270/10 1270/15 1270/22 1270/24 1271/1 1271/4 1271/10 1271/21 1271/22 1282/25 1283/1 1284/11 1295/4 1302/15 1309/3 1314/14 1319/15 1334/1 1339/20 1339/23 1349/9 1350/9 1355/7 1364/8 1373/23 1380/21 1388/20 1389/3 1400/5 1403/6 1407/23 1408/5 1409/15 1409/16 1409/19 1409/20 1415/2 1425/17 1447/4 1461/17 1461/19 1461/20 1463/2 1469/9 sometimes [6] 1162/1 1173/16 1173/17 1212/13 1212/14 1452/5 somewhere [3] 1180/10 1229/2 1422/14 son [1] 1333/14 sorry [54] 1192/13 1196/23 1205/22 1207/14 1208/19 1247/12 1256/20 1261/23 1262/22 1268/10 1271/14 1275/22 1279/2 1279/5 1286/8 1295/15 1318/15 1318/24 1321/8 1333/12 1342/16 1343/20 1344/2 1344/7 1344/16 1345/25 1346/23 1347/23 1349/22 1353/8 1354/13 1354/21 1355/7 1359/10 1365/21 1378/20 1381/10 1395/21 1404/20 1404/22 1412/11 1413/2 1420/17 1430/11 1446/20 1448/3 1454/25 1455/20 1458/18 1459/7 1460/20 1460/22 1460/23 1466/14 sort [30] 1156/16 1159/7 1166/10 1177/5 1182/16 1195/9 1204/24 1213/12 1296/9 1298/7 1298/13 1301/17 1304/20 1304/24 1305/21 1308/14 1320/4 1327/6 1330/11 1358/18 1358/20 1364/18 1369/23 1412/15 1429/25 1430/5 1431/19 1437/20 1452/5 1465/6 sought [1] 1466/6 sound [2] 1225/7 1286/10 sounds [8] 1138/2 1228/17 </p>	<p> 1229/20 1268/5 1277/22 1286/12 1316/18 1360/4 source [16] 1138/10 1138/20 1140/13 1144/11 1181/15 1185/18 1187/20 1312/4 1313/16 1356/2 1358/8 1359/3 1359/5 1359/5 1457/20 1467/7 sources [15] 1216/16 1237/15 1238/16 1238/24 1239/1 1239/3 1239/4 1269/16 1269/18 1275/11 1307/25 1309/3 1348/12 1349/2 1375/15 South [1] 1147/13 spare [2] 1176/16 1176/18 speak [4] 1201/17 1202/8 1243/23 1423/6 speaking [1] 1413/18 specific [17] 1150/15 1153/9 1159/22 1165/22 1214/1 1223/2 1311/19 1343/10 1369/20 1370/1 1370/23 1371/8 1376/14 1412/24 1412/25 1417/18 1463/6 specifically [12] 1140/20 1164/12 1166/1 1256/7 1267/4 1313/11 1313/18 1367/23 1368/1 1373/23 1376/4 1467/8 specification [1] 1150/11 specificity [1] 1381/12 spell [7] 1145/16 1162/24 1188/25 1189/6 1189/7 1287/18 1383/7 spellcheck [1] 1189/2 Spence [4] 1241/19 1318/16 1320/25 1321/20 Spencer [1] 1305/25 spend [2] 1228/21 1428/2 spent [7] 1147/12 1147/15 1147/16 1167/2 1286/4 1289/17 1368/7 spite [2] 1152/24 1281/14 split [2] 1173/19 1174/9 spoke [3] 1410/16 1410/16 1451/15 sponsoring [1] 1143/6 spot [1] 1242/12 spreadsheet [7] 1196/9 1314/12 1318/17 1363/5 1363/8 1364/22 1366/12 spreadsheets [2] 1147/4 1319/18 spun [2] 1385/11 1385/15 square [1] 1410/6 squarely [1] 1142/5 SRI [1] 1385/7 SRINIVASAN [2] 1130/5 1341/13 stages [1] 1247/10 stake [1] 1300/3 stand [22] 1139/6 1193/15 1193/24 1225/6 1225/18 1226/5 1240/9 1246/3 1248/20 1248/23 1252/23 1253/18 1287/14 1309/22 1315/3 1315/9 1315/10 1315/15 1377/2 1426/8 1429/21 1445/16 </p>	<p> standalone [1] 1177/16 standby [3] 1193/19 1374/20 1374/20 standing [1] 1406/21 stands [1] 1282/12 Stanford [4] 1384/19 1384/20 1385/7 1385/8 Stark [1] 1444/6 Stark's [1] 1431/22 start [21] 1132/18 1134/9 1147/24 1159/14 1159/15 1183/21 1235/19 1292/15 1294/11 1298/8 1304/6 1310/18 1341/14 1342/2 1343/14 1351/13 1391/1 1391/3 1427/7 1442/13 1443/18 started [26] 1132/4 1137/22 1146/19 1146/21 1147/21 1150/20 1169/12 1173/14 1189/4 1292/5 1308/16 1308/17 1310/19 1343/6 1345/11 1345/12 1345/12 1354/17 1354/18 1355/17 1360/12 1360/12 1380/17 1380/21 1395/3 1437/5 starting [5] 1150/1 1154/6 1230/4 1302/2 1340/19 starts [6] 1170/9 1205/3 1220/10 1304/18 1309/16 1406/13 state [6] 1137/10 1145/16 1287/18 1383/7 1418/5 1444/17 stated [1] 1305/5 statement [19] 1166/5 1191/21 1198/22 1212/15 1212/17 1213/12 1214/2 1214/15 1240/8 1266/3 1268/11 1280/3 1310/8 1325/12 1325/16 1338/7 1417/18 1430/20 1448/19 statements [11] 1153/4 1171/3 1172/14 1197/12 1216/2 1216/2 1216/3 1217/12 1376/4 1432/22 1468/7 states [3] 1129/2 1129/19 1194/15 stay [1] 1199/16 staying [2] 1175/23 1328/5 steel [1] 1147/16 stems [1] 1187/25 stenographic [1] 1470/5 step [22] 1180/5 1199/22 1211/1 1213/17 1221/24 1225/4 1275/15 1278/12 1279/3 1279/5 1280/22 1283/11 1291/25 1291/25 1299/8 1300/7 1305/14 1382/8 1406/13 1426/25 1463/5 1463/11 stepped [1] 1340/18 steps [2] 1159/3 1399/20 Stevens [1] 1146/20 stick [3] 1174/3 1370/19 1372/21 sticking [1] 1440/17 sticky [1] 1343/21 still [14] 1154/21 1226/17 </p>	<p> 1234/14 1236/11 1253/24 1259/19 1260/8 1359/7 1339/23 1372/3 1408/1 1436/6 1452/9 1455/14 stipulation [1] 1436/24 stood [1] 1150/23 storage [1] 1260/6 store [5] 1168/19 1259/15 1357/18 1461/18 1463/2 storing [1] 1259/10 story [2] 1159/12 1159/17 straight [2] 1272/25 1274/2 straightened [1] 1230/16 strange [1] 1273/5 STRAUS [1] 1130/4 streamline [2] 1284/20 1439/18 streams [1] 1377/21 street [6] 1129/17 1167/17 1167/22 1168/13 1179/25 1180/11 stretch [1] 1368/17 stricken [3] 1338/18 1339/24 1448/22 strict [1] 1267/3 strictly [3] 1465/8 1465/23 1466/22 strike [10] 1176/10 1193/9 1194/2 1194/2 1216/18 1265/24 1273/8 1280/22 1451/4 1451/7 strong [1] 1403/24 strongly [1] 1402/6 structure [3] 1159/1 1398/11 1398/12 STS [59] 1138/18 1139/15 1139/16 1139/18 1139/20 1140/5 1140/8 1140/19 1140/21 1141/4 1141/10 1141/22 1141/25 1142/24 1143/12 1143/14 1143/22 1143/25 1144/8 1232/1 1232/16 1233/2 1249/20 1251/9 1251/13 1251/19 1253/6 1253/10 1292/18 1292/20 1293/2 1310/21 1310/25 1311/8 1311/11 1312/6 1312/20 1318/8 1322/4 1326/15 1337/2 1337/4 1338/4 1338/21 1339/2 1340/2 1342/1 1342/10 1348/15 1354/1 1356/7 1358/20 1358/23 1358/25 1359/8 1360/1 1360/9 1380/15 1381/6 STS-only [6] 1139/16 1139/18 1139/20 1140/19 1143/25 1144/8 student [5] 1147/10 1148/5 1150/25 1258/5 1258/9 students [7] 1148/18 1148/21 1150/13 1162/24 1173/16 1258/6 1269/18 studied [10] 1150/2 1150/3 1150/13 1150/15 1150/16 1151/1 1166/20 1166/25 1195/21 1218/2 studying [2] 1207/7 1216/4 stuff [18] 1169/15 1169/16 1174/9 1179/11 1179/14 </p>
--	--	--	---

S	T	T	T
<p>stuff... [13] 1180/4 1188/4 1189/23 1219/8 1222/24 1256/8 1258/15 1301/23 1327/6 1385/25 1386/24 1400/3 1409/14 sub [1] 1156/20 sub-windows [1] 1156/20 subject [8] 1140/19 1235/16 1241/14 1368/2 1369/23 1373/24 1376/16 1429/16 submission [2] 1164/20 1198/10 submissions [2] 1148/13 1432/7 submit [3] 1198/6 1198/24 1429/15 submitted [9] 1197/7 1197/8 1198/9 1217/22 1217/23 1226/16 1263/16 1430/4 1434/24 submitting [1] 1433/24 subsequently [1] 1328/4 subset [2] 1268/22 1268/23 substance [1] 1466/5 substantive [2] 1381/24 1435/7 success [3] 1195/19 1195/23 1195/25 such [9] 1141/11 1221/16 1263/15 1288/11 1328/20 1365/4 1402/7 1446/10 1466/17 sudden [1] 1322/12 sufficient [6] 1260/1 1263/3 1266/18 1428/23 1428/24 1444/15 suggest [3] 1157/19 1393/20 1401/21 suggested [2] 1388/18 1402/1 suggestion [5] 1157/22 1158/3 1159/5 1234/1 1445/11 suggestions [1] 1157/3 suggests [5] 1235/3 1302/5 1404/5 1409/19 1415/3 suite [7] 1402/24 1403/2 1403/5 1403/17 1405/18 1418/24 1421/13 sum [5] 1143/4 1253/5 1340/15 1438/13 1438/18 summaries [1] 1363/23 summarize [1] 1151/18 summarizes [1] 1274/11 summarizing [1] 1242/4 summary [18] 1154/1 1170/3 1170/15 1176/2 1182/2 1190/21 1203/6 1234/20 1234/22 1235/13 1248/4 1248/13 1260/24 1412/18 1430/5 1431/22 1441/24 1451/8 supplement [2] 1344/10 1345/5 supplemental [20] 1136/20 1140/19 1142/14 1143/8 1232/20 1233/3 1234/19 1248/5 1248/21 1252/24 1317/15 1339/14 1343/16 1343/20 1344/2 1344/4</p>	<p>1347/13 1349/22 1349/22 1351/6 supplier [16] 1333/1 1333/6 1458/15 1458/16 1458/25 1459/5 1459/6 1462/18 1463/1 1467/11 1467/13 1467/20 1468/21 1468/21 1468/24 1468/25 suppliers [8] 1333/3 1333/5 1458/5 1458/5 1458/24 1459/16 1462/13 1462/14 supplies [1] 1467/5 supply [1] 1462/22 supplying [2] 1459/1 1459/2 support [12] 1150/9 1164/8 1207/10 1248/19 1260/16 1315/4 1338/7 1339/5 1395/9 1396/6 1430/4 1442/10 supported [3] 1182/17 1184/1 1248/11 supporting [4] 1152/5 1152/22 1154/15 1442/12 supports [6] 1165/19 1214/15 1272/16 1311/20 1432/24 1462/11 suppose [2] 1229/20 1431/13 supposed [7] 1173/13 1202/7 1210/19 1464/4 1465/8 1465/24 1466/2 Supreme [1] 1448/24 sure [63] 1137/22 1139/23 1158/22 1171/4 1188/25 1199/19 1212/5 1216/9 1217/21 1219/9 1225/2 1240/2 1242/19 1251/2 1259/19 1265/18 1267/3 1267/18 1268/17 1270/19 1271/1 1281/5 1282/21 1283/16 1288/8 1289/6 1292/4 1302/14 1304/23 1304/23 1310/17 1314/19 1317/17 1318/13 1318/22 1324/22 1325/23 1331/10 1331/12 1332/24 1340/17 1347/9 1348/1 1353/11 1355/10 1359/17 1361/14 1361/25 1361/25 1362/17 1365/21 1367/14 1375/5 1378/23 1383/2 1387/15 1389/10 1392/6 1412/23 1414/23 1428/12 1435/12 1462/16 surprise [1] 1193/17 surprised [1] 1323/23 surprisingly [1] 1352/8 surrounding [1] 1328/21 SUSMAN [1] 1130/3 suspect [1] 1287/4 sustain [1] 1248/25 sustained [3] 1165/1 1211/12 1255/9 Swish [1] 1386/8 switch [2] 1157/12 1267/7 switchboard [4] 1158/3 1158/6 1180/9 1180/19 switched [1] 1146/25 sworn [3] 1145/21 1287/23 1383/14 Symantec [1] 1385/16 symmetrical [1] 1185/1</p>	<p>synonymous [1] 1371/14 system [170] 1131/6 1153/25 1154/2 1154/5 1154/5 1154/13 1154/15 1154/23 1155/2 1155/11 1155/19 1156/1 1156/21 1157/3 1157/10 1157/18 1158/5 1159/1 1159/4 1159/5 1159/8 1161/17 1162/7 1162/15 1162/19 1163/12 1166/6 1167/19 1168/2 1168/25 1170/5 1170/7 1172/9 1172/23 1173/1 1173/6 1173/8 1176/4 1176/6 1177/6 1177/16 1178/5 1178/21 1181/5 1181/22 1183/23 1184/12 1184/13 1185/15 1185/16 1186/6 1186/15 1187/11 1188/8 1190/1 1190/13 1190/14 1191/1 1197/21 1197/22 1199/4 1199/5 1199/24 1257/8 1257/12 1257/15 1257/18 1257/23 1258/18 1259/12 1260/23 1260/25 1261/1 1261/8 1262/1 1262/15 1262/23 1262/25 1264/19 1264/24 1265/6 1265/10 1265/11 1265/19 1265/21 1267/11 1268/21 1268/24 1269/1 1269/5 1269/6 1269/10 1269/21 1270/9 1271/25 1272/1 1272/8 1272/8 1275/25 1276/2 1278/21 1282/24 1283/2 1283/3 1314/17 1386/5 1389/24 1389/25 1394/19 1395/1 1395/8 1395/13 1396/2 1396/4 1396/5 1396/19 1397/7 1397/12 1398/10 1400/5 1400/7 1401/3 1402/1 1405/18 1407/1 1407/22 1408/16 1413/23 1413/25 1420/7 1422/17 1423/4 1423/20 1424/17 1431/6 1431/16 1431/17 1434/10 1434/13 1434/14 1434/14 1446/24 1446/25 1446/25 1447/1 1453/9 1453/11 1453/12 1453/19 1454/5 1454/7 1454/8 1454/14 1454/15 1454/21 1455/1 1455/3 1455/6 1455/15 1455/16 1455/21 1456/4 1456/6 1456/9 1458/16 1460/9 1467/5 1467/5 1467/15 1468/3 systems [37] 1147/17 1150/16 1150/21 1150/23 1151/7 1151/9 1153/1 1153/7 1155/7 1155/14 1155/15 1173/15 1173/16 1173/18 1173/21 1174/3 1182/5 1183/15 1187/17 1195/13 1197/23 1198/18 1198/24 1200/3 1200/3 1209/1 1215/4 1269/4 1271/2 1273/6 1278/11 1280/16 1333/7 1399/19 1400/1 1401/11</p>	<p>1429/7 tab [8] 1295/12 1319/19 1319/20 1352/23 1360/23 1381/14 1395/19 1405/23 table [3] 1165/13 1170/1 1201/11 tabled [1] 1451/14 tables [1] 1142/21 tablet [2] 1328/8 1328/9 tablets [3] 1297/14 1297/18 1298/6 tabs [1] 1360/18 take [91] 1133/10 1136/5 1137/19 1145/1 1145/2 1156/14 1160/23 1180/2 1189/17 1189/19 1189/21 1189/24 1190/5 1199/7 1199/13 1213/9 1220/18 1224/17 1224/21 1225/16 1228/2 1229/21 1231/19 1232/7 1236/25 1239/15 1241/20 1241/21 1244/2 1247/3 1255/2 1255/5 1255/7 1260/11 1275/4 1283/15 1283/17 1283/20 1284/3 1285/6 1285/6 1290/5 1295/16 1296/16 1299/14 1299/17 1300/12 1300/20 1306/1 1308/12 1310/12 1311/4 1311/5 1326/1 1326/5 1328/11 1328/11 1329/13 1329/22 1334/2 1335/5 1340/4 1346/20 1347/6 1351/7 1361/22 1362/3 1362/10 1368/3 1368/4 1368/16 1368/18 1368/23 1370/21 1371/19 1373/17 1378/9 1388/17 1390/14 1401/4 1402/25 1403/2 1410/18 1421/13 1427/8 1428/3 1439/16 1449/12 1449/23 1450/6 1469/8 taken [20] 1141/12 1156/2 1156/10 1186/5 1187/6 1187/15 1222/11 1230/20 1238/2 1277/12 1285/11 1300/15 1325/23 1326/7 1368/25 1371/22 1372/11 1373/11 1428/5 1432/13 takes [7] 1159/5 1229/15 1236/17 1252/9 1322/10 1322/11 1322/15 taking [12] 1132/18 1146/19 1225/6 1232/7 1244/11 1295/4 1330/23 1330/24 1339/21 1355/13 1404/9 1440/7 talk [49] 1134/10 1151/17 1153/25 1176/6 1176/8 1192/10 1210/24 1213/20 1222/17 1223/11 1224/1 1224/20 1231/20 1252/18 1261/13 1265/21 1275/13 1284/12 1339/15 1343/4 1356/15 1357/17 1357/25 1358/6 1360/11 1367/18 1369/24 1376/4 1388/6 1393/21 1394/7 1394/22</p>

T	telling [5] 1172/6 1269/9	1242/6 1244/25 1245/25	1415/7 1415/8 1416/3
talk... [17] 1394/23 1397/9	1411/17 1411/18 1415/16	1249/5 1253/2 1253/8	1422/14 1436/11 1443/13
1397/9 1397/14 1422/15	tells [4] 1159/3 1183/10	1255/14 1261/4 1261/22	1444/19 1445/2 1451/7
1426/13 1427/18 1432/1	1210/7 1277/25	1263/2 1264/4 1264/6	thank [67] 1133/9 1137/24
1433/19 1435/7 1435/8	temporarily [2] 1398/23	1265/22 1266/24 1267/1	1145/24 1165/7 1194/9
1452/19 1452/22 1453/23	1423/21	1267/24 1269/24 1270/1	1196/13 1196/15 1196/25
1462/10 1463/6 1463/7	ten [11] 1202/23 1285/1	1270/2 1270/5 1270/11	1200/25 1224/21 1228/13
talked [19] 1150/22 1154/11	1330/10 1330/15 1330/17	1270/20 1270/23 1271/18	1243/14 1254/2 1254/3
1156/9 1169/25 1170/15	1330/22 1330/23 1368/18	1271/19 1271/24 1272/6	1260/20 1274/3 1279/2
1173/7 1174/7 1175/17	1380/4 1382/4 1385/8	1273/3 1273/13 1274/18	1283/5 1283/7 1287/5 1288/1
1184/19 1190/6 1191/4	ten cent [1] 1330/22	1275/16 1275/24 1276/6	1290/23 1305/25 1306/4
1191/25 1198/17 1223/2	ten-minute [1] 1368/18	1276/15 1278/7 1279/4	1307/13 1317/6 1317/7
1257/24 1271/23 1276/15	ten-year [1] 1285/1	1279/9 1286/19 1288/13	1321/6 1341/3 1341/4 1341/9
1360/6 1360/9	tend [6] 1259/18 1289/15	1310/3 1310/20 1311/8	1353/10 1365/23 1375/16
talking [43] 1136/4 1144/4	1303/19 1303/22 1336/4	1311/19 1312/2 1312/8	1377/9 1382/5 1382/7
1157/1 1160/8 1175/23	1442/7	1314/6 1314/21 1315/17	1382/15 1383/1 1383/3
1182/11 1213/2 1213/21	tender [2] 1149/13 1289/22	1317/22 1318/9 1321/14	1383/11 1386/19 1386/20
1230/5 1234/24 1235/20	term [13] 1180/14 1180/17	1321/23 1322/14 1323/2	1397/18 1397/24 1404/12
1237/8 1239/25 1250/19	1297/10 1297/21 1303/13	1323/18 1325/7 1327/2	1404/24 1406/7 1409/24
1250/20 1254/5 1272/24	1303/14 1303/23 1304/2	1329/22 1336/5 1338/3	1410/1 1410/8 1412/13
1280/19 1286/21 1286/21	1304/9 1404/4 1460/16	1338/14 1338/19 1341/14	1424/3 1425/21 1425/22
1298/17 1312/14 1314/12	1460/21 1460/25	1357/12 1357/15 1357/22	1426/19 1426/20 1427/1
1315/10 1315/12 1316/9	terminology [7] 1176/14	1367/23 1369/5 1369/20	1429/13 1435/2 1447/16
1316/18 1336/3 1336/13	1184/18 1192/11 1195/10	1370/10 1377/13 1379/7	1448/10 1450/11 1450/18
1338/7 1346/7 1348/14	1219/20 1262/5 1267/3	1380/7 1387/7 1391/21	1452/17 1460/24 1466/25
1355/19 1370/8 1386/24	terms [16] 1225/1 1225/24	1391/23 1392/1 1392/5	thanks [5] 1201/6 1253/22
1388/7 1391/1 1417/9	1264/13 1303/4 1303/15	1392/20 1396/12 1411/6	1259/1 1430/15 1439/20
1417/10 1424/10 1428/2	1316/19 1330/18 1387/22	1411/14 1414/24 1415/20	that [1975]
1448/3 1448/4	1387/23 1388/4 1388/12	1415/24 1416/1 1416/5	that's [340] 1134/4 1134/15
talks [8] 1148/24 1160/22	1412/21 1432/13 1432/14	1416/23 1417/7 1417/16	1136/18 1138/5 1138/19
1177/13 1187/9 1214/1	1432/20 1433/1	1417/18 1417/21 1425/3	1139/1 1140/9 1140/12
1238/21 1273/15 1375/7	territory [1] 1289/2	1426/14 1432/23 1432/24	1140/13 1140/19 1140/22
targeted [1] 1198/1	test [2] 1187/1 1395/8	1435/25 1437/3 1437/5	1141/8 1142/1 1143/17
tasks [1] 1178/4	testified [36] 1145/21 1166/1	1437/7 1440/3 1454/4	1143/20 1144/9 1144/12
taught [12] 1169/22 1171/5	1172/12 1173/9 1184/20	testone [2] 1186/13 1186/25	1148/19 1153/23 1155/7
1173/15 1176/13 1176/23	1197/1 1199/21 1220/25	testone.apple.com [1]	1158/23 1159/20 1164/5
1181/17 1185/3 1185/13	1257/23 1274/14 1276/25	1186/20	1172/8 1173/5 1174/16
1188/20 1190/16 1266/25	1287/23 1288/21 1311/7	text [36] 1151/20 1157/17	1174/23 1176/10 1176/14
1270/9	1311/23 1313/10 1315/18	1158/23 1160/9 1160/11	1178/8 1178/18 1178/20
teach [5] 1146/16 1190/1	1319/15 1322/9 1322/15	1161/3 1161/6 1161/7	1179/6 1179/6 1179/16
1190/8 1210/7 1404/7	1324/23 1325/9 1325/9	1169/10 1170/9 1170/10	1180/14 1183/17 1184/15
teaches [4] 1154/18 1160/13	1364/20 1373/13 1377/24	1170/11 1172/2 1177/1	1186/13 1186/14 1189/1
1178/14 1181/20	1379/5 1379/25 1383/14	1221/8 1231/24 1232/11	1193/3 1193/25 1195/16
teaching [14] 1147/15	1384/25 1393/9 1396/10	1232/12 1233/11 1233/11	1196/5 1196/10 1198/7
1148/16 1158/13 1181/5	1416/11 1424/21 1425/11	1250/3 1273/11 1392/10	1200/16 1201/13 1201/16
1184/4 1187/8 1187/11	1460/10	1398/18 1407/13 1407/19	1202/8 1205/9 1206/5
1187/21 1289/13 1404/1	testify [12] 1144/16 1144/17	1407/20 1407/21 1407/25	1206/13 1206/18 1207/17
1404/3 1404/4 1408/19	1144/18 1144/21 1202/1	1417/7 1417/10 1417/12	1208/12 1209/3 1209/17
1408/25	1229/1 1233/13 1245/2	1453/10 1453/13 1456/8	1209/18 1209/24 1210/3
team [2] 1324/12 1365/1	1315/16 1338/20 1339/13	1467/6	1210/4 1210/19 1212/11
teams [2] 1148/6 1155/5	1383/25	textual [3] 1171/25 1172/19	1213/3 1213/21 1214/7
Tech [5] 1148/4 1148/15	testifying [5] 1204/3 1209/4	1172/24	1214/10 1214/13 1214/20
1154/21 1154/25 1414/6	1282/21 1367/9 1379/13	than [62] 1142/23 1146/16	1214/21 1215/19 1215/24
technical [4] 1316/6 1336/2	testimonial [1] 1137/6	1154/17 1161/17 1194/1	1216/4 1216/16 1218/3
1409/11 1409/14	testimony [148] 1138/13	1202/23 1219/7 1220/19	1218/7 1218/8 1218/8 1220/5
technically [1] 1320/5	1138/15 1139/17 1139/25	1234/2 1245/5 1246/17	1220/17 1220/22 1221/18
technologically [2] 1296/22	1140/24 1145/11 1146/14	1246/21 1252/23 1257/19	1221/19 1222/20 1223/20
1296/23	1150/17 1154/6 1154/17	1257/20 1258/6 1258/17	1224/3 1224/4 1224/7
technologies [1] 1429/7	1156/14 1160/7 1160/24	1261/7 1262/12 1264/3	1225/15 1227/1 1227/2
technology [10] 1146/20	1161/8 1163/20 1166/19	1264/8 1264/13 1265/11	1229/13 1232/1 1233/14
1216/6 1216/12 1296/20	1175/11 1192/24 1193/9	1265/12 1269/5 1269/10	1233/17 1234/11 1234/14
1304/18 1333/20 1333/24	1193/10 1193/23 1194/3	1273/2 1273/3 1285/5	1236/21 1237/6 1237/6
1334/11 1386/2 1449/20	1194/15 1194/18 1195/22	1286/16 1300/11 1301/17	1237/23 1237/25 1239/22
tell [20] 1141/19 1141/20	1196/2 1197/7 1198/17	1303/15 1307/1 1310/6	1241/1 1241/13 1241/15
1152/13 1189/14 1191/14	1199/3 1199/9 1199/10	1311/14 1318/2 1320/12	1241/25 1243/5 1243/13
1225/22 1269/11 1283/21	1201/23 1202/13 1204/1	1320/19 1321/25 1323/10	1243/15 1243/25 1245/13
1291/20 1292/2 1318/20	1207/5 1207/7 1211/11	1341/15 1350/25 1352/11	1246/6 1246/22 1246/22
1364/6 1384/13 1391/7	1214/15 1222/3 1225/20	1357/10 1379/14 1384/25	1248/7 1249/9 1250/21
1403/20 1413/25 1438/24	1226/2 1229/7 1229/10	1392/19 1398/2 1407/2	1250/22 1252/15 1255/18
1441/16 1443/2 1452/12	1229/12 1238/9 1240/12	1410/6 1413/24 1414/3	1256/1 1256/17 1257/4

T
that's... [214] 1257/6 1257/10
1257/14 1257/17 1259/1
1259/8 1259/11 1259/14
1263/23 1264/24 1266/10
1267/15 1267/19 1269/20
1270/21 1271/10 1271/20
1273/14 1273/17 1273/21
1274/19 1276/1 1276/22
1277/15 1277/25 1278/7
1279/18 1279/19 1279/24
1280/3 1280/6 1281/15
1282/6 1282/8 1282/24
1284/11 1285/19 1286/3
1286/6 1295/13 1296/17
1298/16 1300/24 1304/14
1308/10 1309/11 1309/13
1310/8 1313/11 1316/5
1316/9 1316/11 1316/19
1318/14 1319/12 1320/11
1320/16 1321/2 1321/5
1324/13 1329/13 1329/13
1330/15 1330/23 1331/2
1332/9 1334/2 1336/2
1336/14 1336/14 1338/1
1339/19 1339/22 1343/2
1343/3 1343/9 1343/15
1343/17 1343/23 1344/12
1345/12 1346/15 1347/4
1347/5 1348/2 1348/4 1348/7
1349/4 1349/6 1349/8
1349/13 1350/11 1350/21
1351/3 1352/20 1353/13
1353/18 1353/19 1353/19
1354/7 1355/3 1355/4
1355/15 1355/19 1356/5
1356/13 1356/16 1357/1
1358/8 1359/1 1360/14
1360/21 1362/22 1363/22
1364/19 1364/23 1365/3
1365/13 1366/14 1366/23
1367/19 1367/21 1370/25
1375/16 1380/2 1382/20
1384/22 1388/18 1389/21
1390/22 1392/21 1393/6
1394/21 1395/24 1398/25
1403/19 1407/8 1407/10
1408/6 1410/12 1412/1
1412/8 1413/13 1413/18
1414/14 1416/20 1418/14
1419/2 1421/3 1421/3 1421/4
1423/23 1424/21 1426/12
1427/3 1430/16 1431/7
1431/21 1431/21 1437/11
1437/16 1437/21 1438/11
1438/13 1438/20 1439/25
1441/23 1442/22 1443/2
1443/6 1443/7 1443/8
1444/15 1444/18 1444/24
1445/4 1446/15 1447/3
1447/10 1447/25 1448/8
1448/13 1449/10 1449/10
1453/21 1456/25 1459/18
1460/9 1461/11 1461/12
1461/12 1461/13 1461/17
1461/19 1461/20 1461/21
1462/5 1462/21 1462/22
1462/24 1463/1 1463/2
1463/4 1464/19 1464/25
1465/22 1465/23 1466/7

1468/10 1468/22 1468/22
1469/2 1469/2 1469/3
their [62] 1131/23 1139/3
1148/5 1155/6 1159/5
1166/14 1171/2 1193/18
1194/1 1220/21 1237/24
1248/11 1281/23 1289/13
1297/13 1298/16 1322/13
1332/24 1338/4 1339/22
1362/6 1362/7 1367/16
1368/4 1385/20 1390/24
1395/3 1400/7 1400/10
1401/4 1402/11 1405/9
1408/2 1408/8 1409/21
1418/21 1418/24 1427/12
1430/4 1430/24 1431/19
1437/17 1438/4 1438/16
1439/14 1447/13 1451/12
1451/13 1456/18 1457/5
1457/14 1458/3 1458/5
1459/8 1459/15 1459/16
1462/13 1462/14 1462/14
1462/14 1464/14 1466/21
them [78] 1132/25 1135/19
1136/9 1136/10 1137/22
1139/4 1150/14 1153/16
1155/4 1155/6 1162/25
1173/19 1173/19 1173/24
1175/19 1184/8 1185/9
1188/11 1188/13 1189/6
1189/18 1191/11 1191/11
1191/17 1212/21 1213/12
1222/7 1222/8 1223/10
1225/12 1233/6 1233/11
1243/23 1254/25 1260/14
1269/19 1269/21 1273/6
1273/6 1276/7 1276/10
1276/21 1276/21 1277/18
1292/18 1300/16 1304/8
1304/24 1310/11 1313/10
1323/11 1325/24 1332/9
1333/2 1333/4 1334/1
1340/16 1344/2 1358/1
1365/4 1374/9 1379/3 1388/1
1390/6 1395/7 1395/8 1400/9
1401/7 1409/21 1422/2
1428/12 1430/22 1434/23
1439/5 1441/4 1455/21
1455/23 1462/11
them 1 [1] 1191/11
themselves [8] 1264/22
1373/6 1373/19 1373/23
1423/2 1453/3 1455/11
1459/3
then [132] 1131/11 1131/18
1131/19 1133/14 1137/3
1137/4 1137/21 1138/4
1138/24 1141/19 1143/7
1146/23 1147/13 1147/16
1147/20 1148/5 1153/5
1159/4 1159/4 1159/5 1168/1
1168/16 1168/21 1170/10
1173/24 1175/12 1177/2
1177/18 1179/7 1180/2
1183/25 1184/11 1186/18
1187/2 1187/5 1205/20
1205/24 1205/24 1206/13
1210/13 1214/8 1215/23
1216/7 1216/12 1216/23
1217/4 1217/8 1221/19

1223/10 1224/1 1225/13
1225/17 1226/7 1227/21
1228/17 1229/15 1230/5
1230/12 1232/6 1232/7
1239/10 1243/8 1243/8
1247/5 1250/6 1251/4 1267/4
1274/9 1280/16 1281/15
1281/21 1281/24 1289/8
1291/22 1292/8 1294/14
1296/10 1298/17 1300/1
1305/10 1309/12 1309/14
1311/15 1320/10 1321/25
1322/12 1326/1 1330/9
1337/9 1343/10 1358/20
1360/4 1360/25 1371/1
1385/5 1386/11 1389/2
1390/3 1390/19 1391/16
1394/2 1394/9 1396/3
1398/12 1399/20 1403/10
1413/15 1427/11 1433/24
1437/23 1439/3 1439/4
1439/5 1439/7 1443/16
1443/17 1446/9 1446/17
1446/22 1447/17 1447/22
1448/7 1450/1 1451/9
1451/15 1451/22 1452/7
1456/1 1460/15 1464/16
1465/20 1469/8
theoretically [1] 1439/8
theories [2] 1430/24 1438/23
theory [5] 1133/2 1135/24
1139/14 1343/14 1431/18
there [289] 1132/15 1136/8
1139/10 1139/13 1140/1
1140/11 1143/22 1144/11
1144/12 1144/13 1147/14
1147/23 1148/24 1151/14
1154/14 1154/15 1154/22
1156/5 1156/9 1156/19
1159/8 1159/25 1160/19
1161/11 1161/13 1162/19
1166/10 1166/11 1166/11
1166/14 1166/25 1167/20
1168/21 1175/7 1176/23
1177/17 1178/18 1181/16
1183/7 1183/24 1184/23
1185/7 1185/8 1186/4
1186/12 1186/16 1186/23
1187/22 1188/18 1191/7
1192/5 1194/6 1195/2
1195/23 1198/15 1198/17
1199/19 1200/8 1200/10
1201/7 1203/1 1203/3
1203/21 1205/11 1206/2
1206/17 1208/7 1214/1
1220/15 1221/2 1222/1
1224/20 1226/15 1226/17
1226/17 1226/20 1226/21
1227/1 1227/5 1227/13
1227/13 1227/13 1227/24
1227/24 1228/7 1232/21
1233/14 1233/24 1234/4
1235/3 1236/22 1237/7
1237/11 1237/12 1238/16
1241/12 1245/11 1249/10
1249/17 1250/11 1251/8
1251/14 1251/20 1255/24
1258/24 1259/4 1259/17
1260/3 1261/3 1262/15
1263/5 1263/9 1266/3

1266/23 1267/4 1267/22
1268/19 1270/1 1270/17
1272/2 1272/12 1272/13
1272/14 1273/11 1275/19
1277/11 1280/15 1281/5
1281/6 1281/14 1281/17
1281/23 1282/2 1282/6
1284/19 1284/23 1284/25
1285/8 1286/19 1289/14
1292/6 1292/7 1292/19
1292/24 1293/24 1293/25
1294/19 1294/20 1295/12
1296/11 1296/15 1298/10
1299/3 1299/7 1299/22
1300/14 1301/5 1302/24
1303/22 1304/7 1304/10
1308/14 1309/10 1310/11
1310/17 1311/19 1312/2
1312/11 1313/3 1317/4
1318/6 1318/9 1319/2
1319/13 1319/15 1321/1
1321/3 1323/2 1324/9
1324/18 1324/24 1325/1
1325/3 1328/20 1330/11
1330/13 1332/10 1332/11
1335/3 1336/10 1338/6
1338/12 1338/20 1339/5
1341/23 1344/15 1347/1
1347/2 1347/9 1347/20
1348/18 1349/4 1349/11
1349/24 1349/25 1350/3
1350/9 1350/9 1350/19
1353/9 1354/12 1355/7
1356/24 1357/14 1357/18
1358/9 1360/25 1361/5
1361/13 1364/15 1365/20
1367/14 1367/20 1367/21
1369/5 1369/7 1370/23
1384/15 1385/12 1385/25
1387/22 1389/7 1389/9
1389/11 1390/15 1396/1
1397/19 1398/18 1399/6
1402/22 1402/23 1403/20
1404/14 1404/16 1405/14
1406/12 1407/15 1409/19
1409/20 1409/20 1414/25
1415/4 1415/17 1421/19
1425/8 1425/13 1426/2
1426/13 1428/20 1428/24
1430/22 1431/14 1435/25
1436/10 1436/15 1440/4
1442/10 1442/12 1442/19
1443/1 1443/2 1443/4 1444/6
1446/2 1448/22 1449/19
1450/20 1452/17 1453/4
1453/4 1453/21 1454/5
1454/14 1457/7 1458/20
1462/1 1463/10 1467/12
1469/7
there's [121] 1133/14 1137/13
1138/9 1138/19 1141/4
1141/21 1144/13 1148/6
1150/8 1152/11 1152/11
1154/14 1161/25 1162/4
1165/14 1177/15 1179/14
1181/10 1181/12 1182/25
1184/3 1184/17 1191/10
1195/9 1197/5 1197/22
1203/16 1205/14 1206/1
1206/9 1206/17 1206/20

T	1366/15 1367/18 1371/7	1422/23 1430/3 1430/18	1171/11 1171/12 1171/22
there's... [89] 1206/23 1207/1	1372/20 1374/13 1375/12	1430/16 1430/20 1430/22	1172/19 1173/17 1173/17
1214/1 1218/1 1220/6	1375/16 1376/11 1376/18	1431/15 1431/20 1432/2	1173/20 1174/6 1174/9
1220/13 1225/5 1227/14	1378/24 1381/9 1384/5	1432/25 1433/8 1433/8	1174/12 1174/14 1174/21
1227/20 1233/14 1234/4	1384/8 1386/5 1387/24	1433/10 1433/11 1433/12	1174/25 1175/24 1176/17
1235/6 1239/2 1247/24	1388/2 1390/11 1390/18	1433/14 1435/6 1435/14	1178/11 1178/22 1179/2
1251/11 1251/14 1256/8	1399/20 1406/23 1409/10	1437/2 1437/3 1437/7	1179/3 1179/20 1179/24
1259/1 1260/16 1262/14	1411/2 1411/12 1411/22	1437/11 1437/17 1437/22	1180/1 1180/7 1182/15
1272/16 1272/21 1273/2	1411/24 1412/6 1413/10	1437/23 1438/19 1438/23	1183/4 1183/17 1184/7
1273/11 1273/24 1274/5	1413/15 1422/25 1423/25	1438/24 1439/2 1439/5	1185/4 1185/7 1185/8
1274/14 1274/24 1275/18	1432/15 1434/16 1440/25	1440/1 1440/8 1440/9	1185/10 1186/16 1187/19
1280/22 1280/23 1281/11	1447/11 1459/18	1440/19 1448/18 1454/12	1188/14 1188/19 1188/25
1281/12 1281/24 1282/1	thesis [3] 1147/21 1151/1	1455/2 1455/5 1455/12	1189/16 1191/8 1191/24
1282/10 1296/10 1299/1	1258/10	1455/14 1456/2 1456/3	1192/1 1196/7 1199/10
1301/4 1305/21 1309/2	they [227] 1132/22 1133/1	1457/14 1457/15 1458/24	1202/11 1212/9 1212/16
1310/23 1319/9 1319/9	1133/7 1133/16 1134/2	1459/1 1459/1 1461/2	1212/19 1213/14 1216/4
1319/19 1320/20 1324/25	1138/25 1139/3 1146/22	1461/18 1462/22 1464/14	1221/7 1221/8 1221/17
1331/13 1338/14 1346/7	1150/23 1151/5 1151/7	1464/16 1464/19 1464/19	1222/4 1228/16 1229/4
1346/8 1349/1 1349/2	1151/18 1155/14 1155/15	1464/21 1466/12	1234/20 1234/25 1235/19
1352/17 1381/12 1381/21	1155/21 1156/23 1157/4	they'd [2] 1385/21 1385/22	1236/23 1239/18 1258/6
1389/1 1393/5 1393/6 1393/6	1161/23 1164/11 1165/6	they're [41] 1133/22 1134/24	1258/8 1259/19 1260/14
1398/20 1402/4 1402/6	1167/11 1168/4 1171/20	1137/7 1138/13 1138/14	1262/4 1262/7 1264/12
1405/12 1415/2 1424/22	1173/16 1173/17 1174/25	1140/16 1151/19 1155/5	1266/25 1267/12 1267/22
1429/11 1432/6 1434/9	1175/18 1178/11 1188/13	1155/8 1177/24 1202/7	1267/24 1269/12 1269/23
1434/15 1435/23 1437/19	1188/14 1189/22 1190/16	1234/20 1236/10 1237/19	1270/7 1270/13 1270/19
1437/20 1439/12 1442/24	1190/25 1191/2 1192/6	1247/1 1276/20 1278/2	1272/2 1278/23 1282/17
1444/13 1444/19 1445/13	1193/18 1194/25 1195/5	1278/18 1297/3 1298/4	1298/5 1301/17 1302/5
1449/1 1449/9 1454/17	1200/2 1200/4 1206/5 1207/9	1298/6 1301/17 1305/20	1324/7 1363/17 1369/6
1457/18 1457/21 1460/4	1208/1 1210/7 1212/9	1334/10 1345/20 1390/24	1369/19 1372/20 1373/21
1460/7 1464/17 1465/5	1221/10 1223/2 1223/3	1398/23 1400/4 1403/19	1374/23 1375/14 1385/6
1467/17 1468/23	1223/10 1223/19 1223/22	1409/11 1409/12 1453/17	1386/3 1387/25 1388/1
therefore [5] 1143/2 1153/7	1223/23 1224/1 1224/1	1453/18 1454/7 1457/4	1388/2 1390/11 1390/16
1175/14 1391/15 1455/15	1224/6 1224/6 1231/12	1459/7 1460/6 1461/19	1390/18 1395/6 1400/19
therein [1] 1465/19	1233/11 1235/7 1235/15	1462/25 1466/12 1468/25	1439/18 1445/15
thereof [1] 1407/18	1235/19 1236/4 1236/6	they've [8] 1133/16 1291/3	think [200] 1132/6 1132/9
thereto [4] 1453/6 1453/14	1236/11 1236/11 1236/12	1409/15 1431/17 1437/4	1132/21 1135/18 1135/25
1453/15 1467/10	1236/13 1237/19 1237/22	1439/24 1440/13 1455/12	1137/16 1138/8 1144/6
these [133] 1133/10 1133/11	1238/25 1239/20 1240/19	thick [1] 1218/14	1144/20 1164/16 1164/16
1134/2 1134/14 1137/5	1243/3 1243/21 1244/19	thing [52] 1151/10 1162/4	1165/10 1165/15 1165/24
1139/7 1144/4 1144/22	1249/3 1256/22 1256/25	1164/19 1173/23 1176/15	1178/1 1180/10 1181/5
1152/3 1153/5 1153/19	1259/18 1259/19 1261/15	1176/22 1177/17 1178/7	1182/21 1182/22 1183/10
1159/7 1164/16 1165/11	1261/16 1262/5 1263/17	1180/2 1190/4 1190/9 1194/1	1193/2 1197/6 1197/8
1167/16 1167/17 1169/22	1265/9 1270/3 1276/5 1276/8	1199/19 1202/8 1204/22	1197/11 1197/14 1198/8
1170/25 1177/11 1177/19	1281/14 1281/15 1281/19	1213/11 1213/13 1213/25	1198/11 1200/15 1204/21
1177/22 1177/24 1180/23	1281/21 1281/25 1286/5	1219/18 1222/25 1235/9	1204/25 1205/3 1205/16
1185/12 1186/7 1187/16	1291/5 1299/12 1300/6	1241/10 1247/22 1256/20	1205/18 1206/19 1209/22
1188/19 1189/13 1190/18	1303/9 1304/25 1306/15	1260/15 1267/20 1270/6	1212/18 1213/15 1218/7
1190/18 1191/2 1191/9	1313/20 1313/21 1315/24	1272/12 1273/7 1280/4	1218/15 1221/7 1222/11
1191/10 1191/19 1192/3	1317/1 1319/8 1319/19	1281/10 1293/17 1294/12	1223/6 1224/16 1226/23
1195/5 1215/12 1217/12	1321/18 1329/21 1333/4	1298/7 1299/10 1302/14	1226/25 1227/1 1227/2
1222/5 1222/19 1222/23	1333/24 1333/24 1334/1	1305/20 1308/19 1310/18	1227/16 1227/20 1229/8
1225/10 1230/24 1231/16	1334/1 1335/2 1335/11	1316/9 1319/6 1323/4 1325/6	1230/2 1230/7 1230/10
1233/19 1235/3 1236/6	1336/7 1337/4 1337/5 1338/3	1327/15 1372/7 1391/8	1230/11 1231/17 1234/8
1238/7 1240/20 1241/22	1339/9 1339/20 1358/1	1461/2 1461/11 1461/12	1234/12 1234/13 1235/4
1242/24 1246/24 1248/14	1364/18 1367/12 1367/17	1461/13 1466/23 1467/3	1235/5 1236/17 1237/14
1249/6 1256/19 1256/21	1367/18 1369/25 1370/2	things [145] 1138/20 1140/16	1238/19 1240/3 1240/23
1263/25 1264/15 1269/23	1370/5 1373/7 1374/5 1374/9	1144/2 1144/15 1147/20	1243/20 1244/22 1245/2
1269/25 1275/20 1276/3	1374/15 1374/16 1374/17	1148/25 1151/4 1153/17	1245/7 1245/21 1245/25
1276/13 1276/17 1277/14	1374/17 1374/19 1375/2	1153/21 1153/23 1154/4	1246/2 1246/3 1246/21
1277/15 1277/23 1278/13	1375/12 1384/5 1385/18	1154/18 1154/22 1155/8	1249/25 1250/12 1250/16
1278/16 1282/3 1295/5	1390/9 1395/15 1398/21	1155/25 1156/6 1156/19	1253/12 1255/4 1255/15
1295/7 1300/20 1301/12	1400/3 1400/9 1400/10	1156/22 1157/3 1157/8	1259/4 1260/18 1263/19
1301/22 1305/1 1308/5	1400/14 1400/19 1400/22	1157/15 1158/15 1159/18	1265/19 1265/19 1266/10
1314/8 1315/18 1315/21	1401/5 1402/11 1403/10	1159/20 1159/21 1159/24	1267/5 1267/13 1267/15
1319/21 1329/4 1329/17	1403/15 1403/15 1403/16	1160/22 1161/19 1161/23	1267/21 1267/21 1268/5
1331/5 1332/11 1336/1	1403/25 1405/10 1405/16	1162/6 1162/22 1163/5	1273/15 1284/11 1284/14
1340/18 1340/21 1346/12	1406/24 1407/20 1407/20	1163/12 1164/21 1164/23	1284/25 1285/8 1286/3
1348/12 1349/14 1349/17	1407/22 1407/24 1408/6	1165/24 1166/3 1167/24	1292/24 1295/7 1297/14
1359/9 1363/23 1364/16	1409/4 1409/12 1409/13	1168/3 1168/4 1168/12	1305/15 1305/16 1308/17
1364/16 1365/2 1365/15	1409/15 1418/23 1422/21	1169/17 1169/22 1171/1	1310/8 1311/22 1314/24

T	1249/24 1250/2 1251/18	1256/22 1270/5 1270/6	1209/4 1209/6 1226/24
think... [93]	1254/24 1255/22 1256/1	1270/8 1291/24 1309/13	1228/19 1228/21 1229/7
1317/17 1321/5 1324/3	1261/10 1261/14 1263/20	1310/13 1320/20 1324/9	1230/3 1230/11 1233/1
1328/22 1333/20 1333/21	1264/17 1266/16 1267/24	1325/11 1340/14 1340/17	1233/7 1240/13 1269/13
1334/6 1334/17 1335/11	1269/17 1270/4 1275/13	1340/18 1348/5 1351/13	1285/20 1288/13 1383/24
1341/19 1347/19 1349/9	1275/14 1275/14 1276/3	1355/14 1367/13 1379/17	1384/2 1384/7 1384/10
1356/13 1356/16 1357/3	1278/11 1280/12 1280/19	1384/8 1389/2 1398/8 1413/4	1387/6 1411/22 1414/19
1357/9 1357/16 1358/15	1292/20 1293/21 1298/25	1413/14 1413/14 1422/14	1415/13 1428/11 1435/5
1364/7 1364/19 1364/23	1299/20 1299/22 1301/8	1428/22 1432/13 1434/22	1437/17 1440/18
1364/24 1365/7 1367/19	1303/5 1303/7 1309/4 1309/6	1440/3 1441/1 1452/11	together [16] 1173/24
1367/25 1369/17 1369/18	1310/22 1312/13 1314/10	1454/16	1176/17 1185/12 1189/18
1369/23 1371/6 1371/15	1314/16 1315/24 1317/5	throughout [2] 1388/13	1212/22 1277/14 1277/16
1379/14 1380/2 1380/2	1318/1 1318/6 1318/7	1469/4	1277/24 1291/4 1388/1
1382/18 1393/15 1400/15	1322/17 1324/10 1332/12	thrust [1] 1405/10	1390/11 1390/18 1398/21
1402/8 1405/12 1405/23	1334/20 1349/3 1350/13	ticked [4] 1158/17 1169/21	1398/23 1458/4 1459/18
1409/17 1410/16 1412/12	1351/21 1353/24 1353/24	1170/16 1170/25	Toki [2] 1312/3 1436/1
1413/7 1413/14 1414/23	1360/15 1365/8 1369/18	tie [2] 1175/7 1367/21	told [14] 1137/22 1165/16
1416/8 1416/9 1417/1	1371/3 1378/8 1378/11	tied [7] 1369/19 1370/3	1171/20 1180/25 1212/16
1423/16 1425/11 1429/11	1378/16 1378/25 1379/18	1371/3 1375/13 1462/3	1234/7 1258/24 1262/23
1429/25 1430/1 1430/3	1379/19 1379/19 1380/8	1462/4 1462/12	1310/18 1410/20 1413/16
1430/5 1430/17 1430/20	1390/16 1390/23 1401/10	tight [2] 1365/17 1395/8	1417/1 1423/16 1455/12
1430/22 1431/14 1431/21	1416/7 1416/7 1421/20	tightly [6] 1402/24 1403/2	TOLLES [1] 1130/16
1436/12 1437/19 1438/2	1422/18 1428/11 1429/7	1403/5 1403/16 1404/10	tomorrow [8] 1148/3 1230/3
1439/17 1439/22 1440/1	1429/10 1432/14 1435/1	1421/12	1230/7 1427/10 1427/14
1443/4 1444/1 1444/6	1435/6 1435/12 1435/21	time [95] 1137/22 1138/11	1427/24 1468/18 1469/9
1444/24 1445/4 1445/5	1439/4 1439/6 1439/7	1139/4 1139/16 1139/19	tongue [1] 1364/11
1445/14 1446/2 1446/19	1453/20 1455/12 1456/3	1143/11 1150/6 1150/20	tonight [2] 1427/7 1469/11
1448/19 1448/21 1449/6	1458/18 1458/21 1459/9	1150/25 1154/9 1154/13	too [3] 1262/2 1322/1 1381/19
1450/7 1452/12 1454/24	1465/21 1468/17	1155/1 1156/14 1156/18	took [27] 1174/21 1175/3
1461/1 1461/14 1461/24	though [11] 1144/13 1175/8	1166/18 1183/12 1188/11	1230/21 1261/9 1282/19
1462/7 1463/7 1467/11	1228/15 1232/13 1234/16	1198/1 1200/11 1202/12	1285/23 1286/2 1299/8
1467/17 1467/19 1468/1	1236/3 1251/17 1260/9	1207/25 1208/2 1208/10	1315/8 1320/2 1320/7 1322/3
1469/12	1264/10 1390/6 1455/14	1211/4 1216/8 1217/12	1322/7 1325/25 1343/10
thinking [9] 1135/15 1191/7	thought [15] 1223/4 1226/13	1218/6 1224/17 1225/3	1343/13 1357/1 1370/10
1229/24 1237/10 1242/12	1230/8 1259/24 1263/3	1225/17 1228/2 1228/21	1372/20 1381/23 1385/25
1244/21 1267/12 1267/18	1294/1 1299/25 1305/11	1230/1 1230/10 1233/3	1388/17 1392/12 1413/3
1305/12	1325/11 1325/15 1328/22	1234/1 1245/20 1253/11	1413/14 1421/23 1456/23
thinks [4] 1182/20 1370/9	1339/17 1438/24 1452/7	1258/17 1259/18 1266/4	tool [2] 1165/18 1174/13
1451/17 1462/11	1468/20	1271/8 1281/2 1285/17	toolbox [1] 1408/9
third [16] 1151/23 1152/13	thousand [5] 1289/1 1300/3	1285/21 1285/22 1285/23	tools [6] 1160/16 1196/8
1152/15 1162/23 1206/25	1300/5 1331/11 1331/13	1285/25 1286/1 1286/4	1402/25 1403/2 1403/17
1217/2 1311/5 1320/7	thousands [1] 1364/17	1289/17 1290/16 1291/8	1421/13
1325/24 1325/25 1463/14	threat [1] 1338/5	1293/8 1294/5 1303/9	top [19] 1137/13 1156/20
1466/11 1466/11 1466/13	three [27] 1138/6 1144/4	1309/25 1311/24 1313/19	1156/25 1157/15 1162/3
1466/16 1466/21	1144/6 1144/22 1151/7	1314/15 1317/5 1321/10	1178/12 1182/16 1182/23
third-party [4] 1466/11	1151/9 1162/22 1182/15	1322/3 1322/6 1322/16	1183/8 1186/9 1186/12
1466/11 1466/13 1466/21	1186/8 1192/10 1227/21	1339/22 1346/1 1346/16	1187/3 1302/4 1319/10
this [747]	1249/16 1278/11 1296/11	1348/21 1351/14 1352/10	1348/13 1391/17 1407/5
thorough [1] 1387/18	1297/1 1300/4 1300/4	1355/3 1358/17 1358/23	1449/18 1449/24
thoroughly [2] 1210/11	1301/15 1322/10 1328/8	1368/8 1379/17 1380/20	topic [1] 1258/11
1210/12	1331/11 1365/1 1411/20	1385/19 1390/8 1390/14	total [12] 1293/7 1293/12
those [143] 1133/13 1134/23	1427/8 1429/22 1433/13	1392/9 1400/18 1405/21	1306/21 1307/24 1320/15
1137/15 1137/17 1138/6	1463/24	1410/22 1419/10 1426/8	1328/24 1330/25 1344/14
1144/6 1151/18 1152/20	threshold [4] 1229/18 1460/2	1428/2 1440/7 1443/14	1346/5 1346/20 1353/24
1153/9 1153/17 1153/21	1460/13 1465/6	1444/14 1446/21 1448/21	1353/24
1154/19 1157/7 1157/21	through [77] 1137/1 1137/6	1449/20 1451/14 1464/9	totally [3] 1142/3 1248/10
1158/15 1166/3 1166/24	1137/7 1151/8 1153/16	1166/9	1338/5
1168/3 1170/17 1180/8	1153/18 1155/21 1155/23	timeline [1] 1166/9	touch [1] 1409/6
1183/4 1183/17 1185/4	1156/13 1157/9 1158/15	times [12] 1164/20 1169/22	track [1] 1441/9
1185/10 1191/25 1195/4	1158/23 1159/3 1162/8	1198/14 1218/2 1220/25	tracking [1] 1364/18
1197/11 1198/9 1200/17	1164/1 1164/3 1164/19	1302/11 1340/19 1368/7	tracks [1] 1147/8
1202/10 1202/19 1206/4	1166/20 1167/21 1168/25	1380/4 1389/23 1393/25	Traditionally [1] 1238/10
1207/4 1207/12 1207/15	1171/1 1175/20 1177/6	1412/4	traffic [3] 1370/25 1376/7
1207/19 1207/20 1209/16	1177/9 1177/10 1177/11	Tiny [1] 1424/6	1376/7
1212/18 1214/21 1216/4	1181/25 1183/23 1184/18	title [6] 1250/11 1251/1	transactions [1] 1294/13
1220/18 1221/6 1221/8	1185/9 1186/5 1191/2	1251/3 1274/7 1413/8	transcript [8] 1199/8 1199/14
1222/10 1226/24 1227/16	1191/11 1193/14 1209/8	1416/18	1199/21 1263/10 1263/11
1227/20 1230/25 1232/24	1222/1 1222/3 1222/4 1222/6	titled [1] 1203/6	1263/14 1373/11 1470/5
1236/22 1240/5 1242/4	1231/19 1242/15 1243/4	today [34] 1131/11 1137/23	transcripts [3] 1150/17 1387/1
1242/9 1249/11 1249/16	1254/24 1255/16 1255/22	1140/22 1143/6 1143/16	1392/16
		1145/10 1146/14 1191/23	

T			
transitory [2] 1177/13 1178/6	1157/16 1166/11 1166/22 1173/23 1175/7 1183/4	1147/9 1384/18 underlying [5] 1241/13 1313/6	1298/5 1298/6 1298/10 1298/12 1306/21 1309/17
transmitted [1] 1398/12	1183/15 1185/10 1185/12 1185/20 1187/24 1188/17	1324/18 1327/7 1352/13	1310/15 1310/16 1310/19 1311/4 1314/8 1316/8
travel [1] 1148/23	1190/9 1196/7 1200/17	understand [74] 1140/11 1140/15 1143/5 1150/23	1316/25 1320/8 1320/9 1328/25 1340/19 1341/16
traveled [1] 1150/19	1202/11 1202/15 1207/20	1154/12 1160/18 1163/18 1164/12 1166/17 1167/3	1355/20
treated [1] 1442/11	1212/3 1212/18 1212/19 1213/3 1213/6 1213/14	1171/21 1186/6 1188/19 1192/3 1192/11 1208/4	universe [4] 1227/1 1234/11 1244/17 1248/14
trends [1] 1245/24	1213/15 1216/1 1218/14 1229/15 1229/16 1239/18	1210/15 1212/3 1214/16 1214/21 1215/6 1218/3	university [5] 1146/20 1147/22 1147/24 1272/19 1289/11
triaging [1] 1225/1	1272/1 1286/19 1296/9 1296/13 1305/22 1306/14	1218/10 1218/18 1220/18 1221/2 1221/12 1222/24	unless [4] 1434/23 1455/5 1457/4 1457/13
trial [24] 1129/12 1140/1 1166/1 1170/18 1173/10 1201/18 1203/15 1204/7 1204/7 1253/1 1289/19 1291/15 1324/25 1325/1 1374/1 1380/16 1380/21 1427/3 1434/1 1435/24 1438/12 1439/12 1451/9 1451/16	1310/22 1328/9 1328/20 1330/11 1344/4 1349/2 1373/21 1379/12 1379/15 1400/1 1401/10 1403/10 1403/21 1405/12 1421/8 1421/15 1427/8 1428/17 1429/7 1429/22 1431/14 1433/10 1463/14 1465/6 1466/19	1228/12 1231/14 1233/20 1239/25 1242/20 1249/23 1250/17 1257/7 1259/22 1260/23 1261/12 1269/20 1275/14 1276/3 1277/14 1277/16 1279/19 1284/16 1297/24 1298/23 1299/10 1309/23 1313/8 1317/3 1323/24 1334/17 1339/21 1346/23 1379/4 1380/14 1387/15 1389/21 1394/19 1401/6 1419/6 1419/13 1427/14 1439/10 1444/15 1445/13 1450/10 1454/19 1455/7 1459/24 1462/16 1467/16	1457/4 1457/13 unlimited [1] 1356/11 unnamed [1] 1465/15 unpatented [1] 1449/21 unpleasant [1] 1395/16 unquote [3] 1260/25 1262/15 1411/13 unreasonable [1] 1465/12 unreasonably [1] 1331/2 unrebutted [1] 1434/16 unrelated [1] 1465/14 unreliable [3] 1316/4 1323/16 1340/22 unsatisfactory [4] 1403/10 1403/18 1403/23 1421/15 unseal [3] 1306/4 1331/15 1331/17 unsealed [2] 1382/24 1382/25 until [13] 1150/1 1150/2 1150/6 1218/7 1284/11 1284/22 1310/21 1312/7 1337/9 1338/21 1427/16 1427/20 1463/24 unwind [2] 1436/17 1438/14 up [126] 1133/5 1133/21 1134/9 1136/19 1137/12 1137/17 1140/2 1140/11 1143/15 1145/2 1150/1 1150/2 1150/13 1152/17 1153/15 1154/20 1157/20 1157/22 1157/25 1158/10 1161/2 1161/16 1162/12 1162/23 1165/5 1165/23 1168/3 1168/10 1168/13 1168/15 1169/1 1169/3 1169/9 1173/19 1174/9 1175/9 1180/2 1180/3 1180/11 1180/11 1180/19 1186/15 1186/15 1194/6 1198/2 1200/13 1200/14 1206/19 1217/24 1218/17 1219/25 1227/2 1237/24 1239/19 1243/2 1245/11 1253/17 1256/19 1256/20 1258/6 1273/25 1274/1 1276/17 1276/21 1279/2 1283/22 1285/3 1285/3 1285/4 1292/6 1294/14 1300/2 1300/14 1304/7 1309/13 1318/16 1320/4 1323/7 1329/5 1340/16 1341/23 1345/4 1345/7 1346/5 1347/20 1350/2 1353/5 1354/21 1355/10 1363/1 1363/24 1364/2 1364/25 1366/10 1366/12 1366/20 1369/7 1375/10 1375/12 1380/13 1380/24
trials [3] 1202/15 1202/15 1202/19	1400/1 1401/10 1403/10 1403/21 1405/12 1421/8 1421/15 1427/8 1428/17 1429/7 1429/22 1431/14 1433/10 1463/14 1465/6 1466/19	understanding [37] 1140/4 1155/13 1167/10 1193/14 1193/17 1195/5 1195/23 1200/1 1210/6 1210/8 1212/25 1213/2 1216/4 1234/6 1236/3 1236/10 1237/10 1250/11 1284/1 1284/21 1285/3 1289/4 1292/14 1292/23 1306/25 1308/8 1322/6 1322/8 1323/6 1333/8 1345/25 1363/12 1378/4 1378/8 1385/13 1388/14 1398/15	1457/4 1457/13 unlimited [1] 1356/11 unnamed [1] 1465/15 unpatented [1] 1449/21 unpleasant [1] 1395/16 unquote [3] 1260/25 1262/15 1411/13 unreasonable [1] 1465/12 unreasonably [1] 1331/2 unrebutted [1] 1434/16 unrelated [1] 1465/14 unreliable [3] 1316/4 1323/16 1340/22 unsatisfactory [4] 1403/10 1403/18 1403/23 1421/15 unseal [3] 1306/4 1331/15 1331/17 unsealed [2] 1382/24 1382/25 until [13] 1150/1 1150/2 1150/6 1218/7 1284/11 1284/22 1310/21 1312/7 1337/9 1338/21 1427/16 1427/20 1463/24 unwind [2] 1436/17 1438/14 up [126] 1133/5 1133/21 1134/9 1136/19 1137/12 1137/17 1140/2 1140/11 1143/15 1145/2 1150/1 1150/2 1150/13 1152/17 1153/15 1154/20 1157/20 1157/22 1157/25 1158/10 1161/2 1161/16 1162/12 1162/23 1165/5 1165/23 1168/3 1168/10 1168/13 1168/15 1169/1 1169/3 1169/9 1173/19 1174/9 1175/9 1180/2 1180/3 1180/11 1180/11 1180/19 1186/15 1186/15 1194/6 1198/2 1200/13 1200/14 1206/19 1217/24 1218/17 1219/25 1227/2 1237/24 1239/19 1243/2 1245/11 1253/17 1256/19 1256/20 1258/6 1273/25 1274/1 1276/17 1276/21 1279/2 1283/22 1285/3 1285/3 1285/4 1292/6 1294/14 1300/2 1300/14 1304/7 1309/13 1318/16 1320/4 1323/7 1329/5 1340/16 1341/23 1345/4 1345/7 1346/5 1347/20 1350/2 1353/5 1354/21 1355/10 1363/1 1363/24 1364/2 1364/25 1366/10 1366/12 1366/20 1369/7 1375/10 1375/12 1380/13 1380/24
tried [5] 1185/6 1273/5 1419/4 1419/12 1468/12	two-year [1] 1147/15 type [4] 1163/11 1179/21 1179/22 1375/6 types [8] 1148/22 1151/20 1178/24 1179/21 1179/23 1388/24 1401/23 1401/24 typical [3] 1322/9 1328/17 1332/21 typically [2] 1270/19 1332/23 typo [2] 1447/22 1448/1	understands [3] 1321/24 1375/6 1418/10 understood [16] 1134/2 1235/5 1235/22 1241/14 1243/21 1267/2 1271/7 1276/10 1287/6 1313/10 1315/18 1374/22 1417/17 1419/22 1423/18 1439/16 undisclosed [6] 1138/7 1139/2 1245/10 1314/5 1337/17 1338/6 undisputably [1] 1245/20 Unfortunately [2] 1259/18 1260/14 unhighlighted [1] 1244/3 UNIKEL [1] 1130/12 Uniloc [4] 1203/21 1204/9 1205/21 1205/24 unique [1] 1464/1 unit [9] 1241/13 1298/8 1298/10 1298/13 1312/11 1313/7 1319/8 1328/7 1330/22 UNITED [2] 1129/2 1129/19 units [30] 1141/24 1142/4 1142/4 1142/11 1142/17 1236/7 1244/24 1253/9 1297/25 1298/3 1298/4	1419/12 1468/12 tries [1] 1462/10 trivial [1] 1213/13 trouble [5] 1167/4 1211/8 1212/1 1272/5 1395/21 true [12] 1192/5 1207/17 1215/18 1256/2 1257/14 1259/8 1259/14 1273/21 1280/3 1384/3 1389/15 1470/4 truncated [1] 1236/13 trust [2] 1415/8 1415/8 truth [2] 1411/17 1411/19 try [20] 1140/25 1167/3 1203/9 1258/23 1258/25 1259/7 1260/13 1267/14 1284/8 1286/25 1287/4 1298/23 1347/11 1379/4 1395/7 1408/24 1410/8 1439/18 1441/1 1466/23 trying [36] 1133/1 1140/16 1204/11 1235/9 1240/25 1243/23 1244/17 1247/17 1255/6 1255/18 1258/14 1268/4 1294/16 1298/8 1305/11 1305/13 1305/14 1346/9 1348/8 1354/21 1358/11 1362/9 1364/19 1385/10 1390/21 1395/5 1400/1 1400/13 1405/17 1405/20 1413/6 1442/16 1464/14 1464/20 1464/21 1466/22 turn [12] 1155/6 1163/7 1166/6 1174/17 1190/21 1262/8 1347/12 1372/6 1395/19 1440/23 1442/23 1448/7 turned [1] 1329/8 turning [3] 1182/2 1426/9 1443/10 turns [3] 1296/11 1439/3 1439/6 tutorial [1] 1156/5 twenty [1] 1148/6 twenty-two [1] 1148/6 two [75] 1139/5 1141/21 1144/15 1147/3 1147/15 1148/6 1150/20 1151/4 1152/11 1153/23 1156/20
	U		
	U.S [7] 1148/12 1347/17 1348/13 1355/22 1359/24 1412/5 1470/9 UC [1] 1289/8 ultimate [2] 1323/13 1327/23 ultimately [4] 1291/17 1432/3 1457/20 1458/17 Um [1] 1353/23 Um-hmm [1] 1353/23 unambiguous [5] 1434/21 1451/12 1451/25 1464/3 1468/9 unambiguously [1] 1429/25 uncorroborated [4] 1272/5 1273/12 1392/20 1430/20 under [57] 1141/22 1141/25 1142/25 1145/21 1159/2 1203/15 1232/4 1253/24 1276/25 1287/23 1290/21 1297/6 1301/8 1301/8 1326/21 1327/10 1327/21 1328/5 1328/10 1328/25 1342/21 1343/14 1362/18 1362/20 1362/21 1368/4 1371/15 1371/19 1372/20 1383/14 1391/14 1393/2 1411/6 1422/7 1424/18 1428/18 1431/21 1432/1 1433/11 1433/13 1453/21 1455/10 1455/10 1456/6 1456/10 1456/17 1456/21 1457/15 1458/13 1459/3 1459/11 1459/11 1463/11 1464/1 1464/5 1465/2 1465/22 undergraduate [3] 1147/4		

U
up... [25] 1390/18 1395/12
1395/25 1396/1 1396/3
1396/4 1398/11 1399/7
1404/13 1409/1 1412/11
1420/7 1420/12 1420/16
1425/16 1428/14 1440/8
1443/3 1445/17 1450/24
1451/2 1453/25 1455/5
1468/17 1469/10
update [1] 1322/17
updated [1] 1309/21
updating [3] 1181/14 1185/18
1187/20
upon [16] 1236/8 1295/23
1297/2 1306/16 1312/23
1313/7 1315/4 1316/2
1321/14 1336/20 1336/24
1361/15 1369/24 1444/11
1451/19 1467/6
upwards [2] 1219/15 1304/11
us [98] 1136/10 1146/12
1152/13 1154/18 1155/23
1156/15 1158/11 1158/15
1159/2 1159/3 1160/13
1161/24 1162/14 1167/16
1167/17 1169/17 1172/6
1173/7 1174/6 1176/22
1176/25 1177/4 1178/14
1179/4 1179/8 1180/15
1180/20 1180/21 1180/25
1181/20 1182/13 1183/2
1183/10 1183/11 1183/17
1184/9 1184/17 1185/2
1185/17 1187/18 1187/21
1188/11 1190/1 1190/8
1190/16 1191/14 1199/15
1201/11 1201/14 1210/7
1226/8 1229/9 1229/15
1229/17 1230/6 1230/22
1231/19 1233/9 1236/1
1236/4 1236/11 1237/18
1237/23 1237/24 1240/11
1249/3 1256/4 1258/20
1271/24 1277/25 1285/10
1351/8 1355/3 1356/21
1361/14 1364/6 1366/21
1372/8 1384/2 1386/1
1388/16 1389/19 1392/25
1393/17 1395/23 1399/5
1399/6 1402/19 1412/25
1413/14 1415/11 1427/7
1428/11 1436/5 1447/7
1455/12 1463/20 1463/21
use [64] 1138/9 1138/11
1138/18 1140/14 1140/16
1144/9 1153/2 1162/1
1170/13 1174/12 1174/13
1189/2 1192/4 1194/21
1214/8 1214/19 1215/1
1216/17 1235/15 1236/17
1237/11 1238/22 1240/22
1243/22 1249/14 1266/23
1275/17 1291/9 1293/19
1293/21 1297/10 1300/17
1305/21 1307/1 1309/20
1316/21 1316/23 1329/4
1329/6 1332/24 1333/10
1333/13 1333/24 1344/22
1344/22 1351/18 1351/19

1368/17 1403/15 1403/16
1406/23 1417/7 1418/13
1419/23 1434/6 1456/3
1456/20 1457/2 1457/5
1457/14 1457/14 1457/18
1457/19 1459/17
used [61] 1132/3 1143/3
1152/17 1173/25 1188/24
1189/6 1195/13 1210/13
1214/22 1219/20 1234/17
1236/16 1237/16 1237/24
1238/8 1238/15 1239/14
1239/20 1240/12 1244/24
1246/9 1246/10 1251/12
1257/15 1264/2 1267/1
1272/3 1275/11 1275/21
1284/10 1284/18 1309/24
1311/15 1318/25 1323/20
1323/21 1333/14 1346/13
1347/11 1348/3 1351/16
1352/19 1362/6 1366/12
1366/20 1388/5 1412/16
1414/17 1418/6 1418/7
1418/16 1418/23 1420/7
1436/25 1442/8 1442/15
1445/25 1446/4 1446/12
1452/24 1461/3
useful [2] 1163/1 1267/23
user [32] 1151/22 1152/18
1159/5 1160/10 1161/2
1165/21 1168/4 1168/11
1168/11 1170/9 1170/12
1172/2 1175/10 1180/6
1180/7 1181/19 1185/22
1186/23 1395/8 1400/2
1400/14 1400/24 1406/25
1407/2 1454/9 1456/2 1457/4
1461/16 1461/20 1462/5
1463/1 1469/1
user's [2] 1395/9 1405/6
user-installed [1] 1469/1
users [5] 1311/25 1322/17
1400/14 1401/5 1455/13
users' [1] 1322/16
uses [2] 1314/10 1351/20
using [50] 1138/13 1138/14
1138/15 1140/5 1140/24
1152/2 1158/3 1169/5
1176/21 1178/10 1179/15
1179/16 1180/18 1181/4
1210/2 1214/11 1234/8
1234/20 1235/1 1236/5
1236/20 1237/5 1238/13
1239/12 1249/3 1256/21
1257/12 1261/7 1261/19
1267/3 1276/2 1282/5
1303/13 1304/18 1316/25
1329/9 1330/2 1342/10
1348/15 1348/19 1354/1
1354/2 1360/8 1388/12
1400/20 1400/21 1406/20
1419/7 1419/17 1457/1
usually [1] 1375/5
utility [3] 1194/1 1194/23
1195/1
utilized [2] 1174/8 1232/24
utilizing [1] 1138/25

V

valid [12] 1175/14 1208/3

1208/22 1208/23 1290/5
1290/10 1304/14 1304/19
1304/23 1305/4 1340/25
1384/12
validated [1] 1384/11
validity [12] 1149/21 1202/9
1226/1 1305/12 1368/8
1383/25 1387/12 1389/13
1397/5 1406/2 1411/24
1412/3
valuable [1] 1409/16
valuation [1] 1289/23
value [9] 1196/12 1241/13
1301/24 1302/24 1302/25
1379/3 1400/8 1401/4
1449/19
values [1] 1302/10
valuuing [2] 1294/11 1294/11
various [17] 1165/20 1165/22
1172/5 1191/2 1247/10
1294/15 1319/4 1340/14
1343/7 1387/2 1387/22
1388/4 1411/2 1411/12
1418/21 1422/25 1432/7
vast [2] 1323/11 1323/18
vastly [1] 1303/15
Venn [1] 1459/19
verdict [16] 1226/18 1226/22
1226/25 1227/21 1283/22
1435/5 1435/11 1436/18
1437/4 1438/2 1438/16
1439/8 1439/23 1440/13
1440/17 1440/20
verdit [1] 1436/17
verified [1] 1312/9
verify [3] 1278/12 1278/15
1278/18
version [27] 1161/2 1177/16
1177/16 1188/4 1203/10
1204/25 1236/13 1237/17
1237/20 1237/22 1241/20
1262/14 1262/16 1274/8
1276/1 1283/22 1285/6
1308/10 1318/13 1322/19
1329/21 1353/18 1353/19
1353/20 1381/13 1407/19
1469/10
versions [18] 1155/6 1156/1
1246/14 1313/21 1313/22
1316/3 1318/11 1319/4
1319/24 1320/21 1321/10
1321/25 1329/18 1332/11
1332/12 1356/21 1359/6
1414/11
versus [19] 1135/13 1135/14
1136/1 1203/16 1203/21
1204/9 1204/13 1206/21
1206/23 1207/2 1284/6
1295/3 1303/6 1320/25
1329/18 1345/17 1345/24
1346/22 1436/8
very [66] 1151/10 1152/9
1152/9 1155/8 1162/3
1162/21 1162/24 1163/1
1163/2 1166/12 1167/21
1169/8 1176/9 1176/10
1178/21 1184/21 1186/7
1189/1 1190/7 1197/14
1209/14 1222/4 1224/2
1233/20 1248/12 1260/15

1260/16 1265/13 1271/6
1275/24 1279/2 1283/7 1287/2
1292/4 1297/3 1299/15
1299/21 1300/11 1305/9
1305/24 1310/5 1315/4
1325/12 1327/17 1328/16
1333/2 1372/7 1372/25
1373/6 1373/6 1374/23
1382/7 1382/15 1387/21
1391/17 1394/24 1400/3
1405/5 1412/13 1426/20
1430/15 1433/5 1433/6
1442/3 1461/24 1464/13
VI [1] 1129/13
video [3] 1167/17 1167/20
1274/11
videos [7] 1166/13 1166/22
1167/16 1261/21 1275/11
1275/13 1387/2
view [33] 1171/21 1198/21
1212/4 1213/22 1214/13
1214/20 1215/10 1221/12
1233/17 1253/3 1253/4
1255/16 1264/22 1317/25
1376/10 1376/12 1405/1
1405/6 1409/1 1417/8 1420/1
1421/23 1422/1 1422/4
1423/16 1431/3 1434/5
1434/12 1439/11 1455/17
1455/18 1455/19 1462/20
viewed [2] 1294/19 1437/6
views [3] 1134/17 1175/2
1369/16
VINCENT [1] 1130/16
vintage [2] 1278/13 1278/14
violate [1] 1368/12
Virginia [3] 1146/10 1148/4
1148/15
virtual [1] 1386/7
virtually [1] 1232/14
vision [1] 1385/11
visit [1] 1146/12
Visual [3] 1418/6 1418/19
1419/23
visualization [1] 1386/4
visualizations [1] 1386/6
Volume [1] 1129/13
voluntarily [1] 1432/14
volunteer [1] 1148/8

W

wait [6] 1141/2 1247/17
1338/13 1338/15 1339/18
1353/9
waited [1] 1340/1
waive [1] 1428/12
walk [5] 1155/23 1177/5
1177/8 1243/4 1452/11
Wall [3] 1167/17 1167/22
1168/13
want [74] 1133/4 1133/17
1134/8 1135/19 1137/21
1156/5 1156/14 1156/15
1157/4 1180/24 1183/17
1183/21 1199/19 1201/10
1206/7 1212/15 1213/1
1217/10 1225/23 1231/20
1235/20 1236/25 1237/1
1239/15 1240/5 1241/17
1242/15 1243/4 1244/19

W
want... [45] 1259/21 1275/13
1304/25 1315/23 1316/21
1317/3 1332/23 1333/24
1341/22 1342/6 1344/13
1345/6 1350/1 1360/5
1360/11 1362/8 1362/17
1364/14 1367/14 1368/6
1368/9 1368/11 1370/7
1374/6 1375/5 1406/10
1408/4 1412/23 1415/6
1426/10 1428/11 1428/14
1433/19 1434/23 1435/6
1435/9 1440/19 1441/13
1442/13 1443/22 1447/5
1447/9 1451/1 1456/12
1457/15
wanted [26] 1146/21 1147/19
1151/14 1162/14 1167/6
1177/4 1184/17 1184/21
1188/25 1196/11 1219/9
1232/20 1248/15 1251/17
1252/18 1252/20 1259/23
1260/10 1339/17 1342/8
1355/8 1395/15 1435/12
1438/7 1439/19 1444/17
wanting [1] 1182/10
wants [10] 1135/25 1144/10
1233/6 1249/9 1307/10
1333/23 1373/14 1403/3
1431/25 1449/8
warranted [1] 1430/6
was [574]
Washington [1] 1272/19
wasn't [32] 1160/2 1161/8
1195/14 1198/15 1203/24
1215/17 1237/10 1259/4
1263/5 1263/7 1263/9 1266/5
1266/11 1266/19 1268/21
1269/25 1270/12 1271/5
1275/1 1277/5 1284/19
1299/3 1337/5 1352/23
1361/24 1383/2 1392/10
1396/11 1397/19 1411/18
1435/12 1448/20
watch [1] 1395/13
watched [1] 1416/23
watching [1] 1439/12
waterfall [1] 1424/15
way [62] 1134/25 1134/25
1135/1 1135/3 1135/21
1135/21 1135/25 1136/2
1137/16 1148/8 1156/7
1156/13 1159/1 1162/7
1174/4 1177/6 1178/1 1181/5
1182/21 1200/15 1210/9
1219/21 1225/13 1231/9
1233/20 1250/2 1252/24
1265/20 1286/6 1299/22
1308/14 1314/6 1323/23
1328/22 1336/11 1338/7
1340/18 1346/11 1347/1
1355/12 1358/16 1359/7
1367/12 1388/11 1390/1
1390/10 1392/21 1400/18
1405/5 1408/25 1419/19
1420/14 1426/12 1436/19
1439/8 1439/9 1439/17
1457/5 1457/18 1459/9
1459/18 1460/6

ways [12] 1153/14 1159/25
1160/19 1161/13 1173/23
1200/17 1270/15 1400/23
1406/24 1407/1 1408/20
1460/11
we [677]
we'll [27] 1131/18 1134/10
1137/3 1137/13 1137/20
1137/21 1142/18 1151/17
1170/3 1176/6 1182/9
1225/17 1238/19 1283/22
1286/20 1337/8 1427/11
1429/15 1434/11 1441/1
1441/10 1449/12 1449/24
1450/1 1450/6 1469/8
1469/14
we're [77] 1131/8 1131/10
1131/16 1132/6 1132/9
1133/24 1134/8 1134/9
1135/15 1136/4 1157/1
1158/13 1159/12 1171/4
1179/23 1182/11 1184/22
1204/21 1215/5 1217/1
1219/23 1222/17 1228/20
1230/5 1230/11 1233/18
1234/8 1234/24 1235/4
1235/12 1240/25 1241/18
1242/11 1252/13 1260/3
1261/19 1262/11 1265/21
1267/3 1269/13 1284/4
1286/21 1293/17 1295/7
1296/18 1305/18 1315/16
1316/16 1318/20 1319/19
1346/7 1350/11 1352/24
1355/21 1358/23 1364/2
1375/15 1384/7 1394/7
1408/20 1431/13 1433/24
1435/7 1438/4 1439/12
1440/17 1441/8 1442/1
1442/14 1443/3 1445/10
1445/18 1447/10 1448/3
1450/13 1463/21 1469/16
we've [66] 1132/2 1132/17
1138/4 1140/1 1144/2 1144/3
1144/15 1146/10 1150/17
1150/21 1153/13 1153/14
1154/16 1155/17 1156/13
1157/18 1158/23 1161/10
1163/24 1169/21 1170/15
1171/1 1175/10 1175/17
1178/5 1183/16 1183/22
1184/19 1185/3 1188/13
1188/16 1188/22 1188/23
1190/6 1190/19 1191/4
1195/7 1195/11 1198/14
1201/7 1227/18 1228/16
1230/5 1231/1 1235/7 1246/1
1248/1 1264/5 1273/11
1283/4 1284/5 1312/14
1315/17 1315/19 1325/23
1340/14 1360/6 1389/22
1391/9 1393/25 1427/21
1429/20 1436/6 1442/16
1460/7 1469/12
wealth [1] 1369/25
weaving [1] 1407/20
web [17] 1156/17 1158/4
1158/6 1161/16 1168/12
1170/12 1174/8 1262/4
1262/8 1262/8 1262/11

1292/12 1422/20 1422/21
1425/6 1423/13 1423/18
website [38] 1154/20 1161/16
1162/8 1163/19 1168/14
1177/14 1179/1 1198/5
1256/12 1258/7 1262/2
1262/15 1262/17 1263/17
1263/21 1263/24 1264/1
1272/11 1273/15 1273/18
1273/20 1273/24 1274/5
1274/5 1274/9 1274/16
1274/17 1274/20 1274/25
1414/6 1414/10 1414/12
1415/1 1415/14 1415/21
1415/25 1416/2 1416/22
week [39] 1153/1 1154/6
1155/3 1160/7 1160/25
1166/13 1166/19 1173/7
1176/1 1186/4 1211/2 1211/5
1214/7 1214/10 1214/16
1214/24 1215/4 1215/11
1215/13 1215/15 1215/15
1269/21 1270/7 1275/12
1276/16 1277/13 1311/8
1311/20 1318/4 1330/7
1357/12 1386/25 1387/2
1391/10 1391/20 1396/9
1398/3 1407/9 1423/21
weekend [3] 1145/10 1233/21
1315/18
weighed [1] 1440/9
weight [2] 1193/6 1392/18
weighted [2] 1329/4 1329/6
Weiner [1] 1430/13
Weinstein [93] 1142/13
1142/19 1226/4 1232/9
1233/5 1236/2 1236/7
1237/16 1238/5 1239/8
1239/10 1239/11 1239/14
1239/20 1239/21 1240/4
1242/7 1244/23 1246/2
1246/11 1246/14 1249/4
1253/8 1253/14 1290/8
1290/14 1291/11 1292/4
1293/20 1294/2 1297/24
1302/16 1304/15 1306/15
1306/21 1309/8 1310/6
1311/7 1311/10 1311/14
1312/16 1312/23 1313/7
1313/8 1313/13 1315/2
1315/5 1315/8 1315/17
1316/2 1318/25 1319/25
1321/16 1321/22 1322/20
1322/21 1323/20 1324/2
1324/23 1325/2 1325/17
1325/22 1327/2 1327/25
1328/19 1329/22 1330/18
1330/20 1334/7 1334/8
1337/25 1340/1 1340/11
1340/15 1341/2 1346/14
1348/17 1348/23 1348/24
1349/1 1349/10 1349/10
1349/16 1351/1 1351/11
1351/20 1352/1 1354/4
1354/15 1355/16 1367/9
1436/3 1437/7
Weinstein's [49] 1132/23
1141/16 1142/1 1142/3
1142/10 1143/12 1211/4
1232/4 1240/12 1245/16

1245/19 1251/25 1252/22
1253/14 1251/20 1253/17
1306/14 1308/22 1309/1
1309/20 1310/3 1316/4
1317/15 1317/25 1318/3
1321/15 1322/25 1323/15
1324/4 1325/18 1326/6
1326/12 1327/22 1328/2
1329/1 1329/11 1330/2
1330/7 1332/7 1337/21
1342/12 1343/14 1344/8
1349/21 1350/5 1351/6
1381/3 1382/1 1451/5
welcome [5] 1145/9 1287/10
1338/17 1338/19 1370/20
well [168] 1133/16 1133/21
1133/24 1134/1 1134/4
1135/5 1140/3 1140/25
1144/10 1148/25 1151/1
1151/17 1153/11 1154/7
1154/9 1162/15 1162/24
1168/15 1171/2 1173/22
1175/7 1175/25 1181/19
1185/22 1186/25 1198/4
1201/6 1202/19 1203/6
1206/4 1209/20 1211/15
1212/11 1213/16 1214/18
1216/5 1216/18 1217/15
1218/10 1220/25 1221/20
1222/13 1222/21 1223/22
1224/3 1226/11 1228/8
1228/19 1229/10 1233/8
1238/4 1239/25 1245/12
1255/12 1255/24 1256/14
1261/7 1261/13 1261/19
1262/25 1263/10 1265/13
1266/13 1266/19 1269/5
1269/10 1273/1 1273/9
1273/19 1276/5 1276/6
1276/17 1277/2 1279/13
1280/20 1281/23 1282/10
1282/18 1283/20 1284/13
1284/21 1291/14 1297/3
1298/4 1300/9 1301/21
1302/11 1303/21 1304/6
1304/23 1305/5 1305/9
1305/11 1309/10 1309/18
1311/13 1312/15 1312/20
1313/10 1313/16 1318/5
1324/17 1325/2 1325/18
1326/2 1329/12 1329/25
1332/23 1337/4 1337/8
1343/13 1345/12 1345/22
1347/10 1349/21 1353/19
1356/14 1356/18 1357/25
1358/17 1358/22 1359/12
1359/25 1360/15 1367/8
1370/2 1376/6 1376/25
1384/25 1387/21 1389/9
1391/8 1393/25 1395/11
1396/7 1400/1 1401/20
1402/4 1402/11 1403/22
1405/11 1405/16 1407/25
1408/15 1409/10 1416/22
1418/5 1419/7 1420/1
1423/19 1424/15 1427/15
1430/6 1430/25 1431/12
1436/1 1436/9 1437/15
1438/17 1439/22 1444/22
1448/23 1452/13 1457/21

W
well... [4] 1460/7 1461/7
1464/8 1468/25
well-documented [1] 1269/10
well-known [1] 1420/1
went [30] 1132/22 1143/13
1147/14 1156/4 1166/20
1167/1 1167/21 1168/1
1181/25 1185/8 1193/14
1209/8 1222/1 1254/24
1263/4 1263/5 1263/14
1270/6 1270/8 1289/7 1289/8
1324/9 1325/11 1365/4
1369/4 1407/21 1413/14
1414/10 1438/23 1440/3
were [209] 1132/15 1139/13
1142/4 1142/5 1144/3
1149/19 1151/5 1151/7
1151/14 1151/16 1152/18
1153/11 1154/8 1154/18
1154/24 1160/8 1161/19
1161/20 1161/23 1162/7
1162/19 1163/22 1166/10
1166/11 1166/25 1169/9
1171/12 1173/25 1182/11
1182/12 1182/17 1186/4
1189/5 1190/25 1191/2
1195/13 1196/3 1196/12
1201/20 1203/19 1203/23
1204/1 1206/5 1206/21
1207/18 1207/22 1208/1
1208/6 1210/17 1210/25
1211/2 1211/6 1211/15
1212/1 1212/5 1212/6 1212/9
1213/2 1222/1 1224/12
1226/20 1226/21 1227/1
1227/6 1232/16 1232/22
1233/2 1234/7 1236/13
1236/23 1244/13 1244/17
1244/18 1246/17 1246/19
1248/9 1249/12 1251/23
1253/2 1253/6 1254/5 1255/1
1259/17 1263/16 1264/2
1265/14 1265/15 1266/23
1266/25 1267/13 1267/22
1267/22 1270/1 1270/9
1272/24 1275/11 1276/5
1276/8 1277/11 1278/10
1280/25 1284/23 1286/5
1290/3 1290/7 1292/10
1292/18 1292/19 1292/20
1293/5 1293/9 1294/17
1294/19 1297/13 1299/4
1299/20 1299/21 1300/6
1304/1 1305/18 1306/15
1306/25 1309/4 1310/3
1310/9 1310/24 1313/19
1313/20 1314/9 1318/1
1319/8 1319/16 1321/17
1321/18 1321/22 1322/25
1325/15 1327/10 1327/20
1329/9 1329/17 1329/21
1335/12 1336/22 1341/25
1342/11 1345/16 1345/17
1345/23 1346/10 1346/12
1346/24 1347/5 1348/7
1348/16 1352/22 1356/2
1356/3 1357/13 1359/7
1359/11 1364/18 1364/24
1374/9 1374/22 1381/13

1384/14 1386/4 1387/6
1391/20 1393/8 1395/14
1396/8 1396/13 1400/3
1400/19 1400/22 1401/6
1403/22 1405/10 1405/16
1406/24 1407/22 1408/1
1411/8 1411/16 1414/22
1416/2 1419/23 1421/1
1422/23 1423/2 1423/2
1424/1 1426/2 1428/25
1432/25 1434/24 1438/18
1439/4 1439/6 1439/7
1445/24 1446/12 1450/20
1453/24 1454/23 1464/18
1465/25
werent [8] 1204/6 1206/4
1223/10 1265/8 1284/22
1347/9 1425/14 1438/19
what [485]
what's [50] 1134/13 1150/3
1153/19 1154/3 1159/2
1159/7 1159/10 1181/21
1187/14 1195/6 1196/24
1223/23 1229/5 1230/23
1233/23 1235/17 1237/1
1237/2 1243/9 1243/16
1244/21 1251/7 1256/12
1270/14 1294/6 1299/8
1300/7 1306/20 1307/22
1308/24 1343/1 1352/20
1364/15 1371/15 1379/19
1385/22 1391/7 1394/13
1395/10 1395/23 1395/24
1397/3 1401/8 1401/14
1401/18 1404/3 1415/1
1430/9 1441/17 1456/10
whatever [3] 1362/8 1380/16
1457/15
when [145] 1134/20 1138/18
1139/1 1139/10 1139/13
1139/14 1140/8 1140/12
1140/13 1142/24 1146/23
1147/9 1157/13 1160/8
1160/9 1160/11 1160/21
1161/18 1163/21 1164/2
1169/9 1170/9 1171/14
1173/7 1174/10 1174/24
1186/3 1186/21 1187/15
1188/3 1188/24 1189/4
1191/21 1195/21 1203/3
1208/6 1211/2 1211/6
1211/15 1213/8 1213/11
1213/20 1221/5 1223/17
1228/20 1237/8 1237/10
1240/9 1255/6 1255/18
1256/21 1261/1 1262/18
1263/1 1263/4 1263/6 1263/7
1263/14 1264/3 1264/11
1266/16 1270/16 1270/23
1271/2 1271/18 1275/7
1276/13 1276/25 1277/15
1277/17 1277/18 1293/1
1293/2 1298/7 1299/14
1304/17 1305/17 1310/20
1311/24 1321/22 1322/23
1324/7 1325/8 1332/2 1337/7
1338/20 1340/20 1345/7
1348/8 1349/24 1351/11
1351/18 1355/21 1356/19
1357/13 1358/9 1358/19

1358/24 1359/8 1364/12
1364/21 1367/18 1374/21
1388/9 1389/23 1391/20
1392/17 1393/8 1393/9
1396/9 1400/20 1400/20
1400/21 1410/6 1410/16
1412/22 1413/19 1413/22
1415/20 1415/24 1416/2
1419/3 1421/3 1421/3
1422/20 1423/25 1424/10
1432/13 1432/14 1432/25
1435/8 1436/7 1436/8
1436/24 1441/10 1441/19
1451/3 1453/7 1453/11
1453/18 1457/7 1457/22
1464/2 1465/3 1465/23
where [68] 1132/24 1134/9
1136/3 1137/1 1141/4 1141/7
1146/21 1147/22 1159/15
1160/23 1162/3 1169/9
1174/11 1174/14 1178/11
1185/24 1187/3 1189/11
1190/17 1193/21 1198/1
1202/16 1204/11 1218/25
1223/2 1224/8 1230/10
1230/24 1231/25 1240/5
1241/20 1246/24 1247/11
1247/13 1266/24 1270/2
1270/16 1270/19 1275/16
1276/12 1276/15 1276/24
1277/1 1285/8 1286/20
1305/16 1315/21 1315/24
1316/5 1327/9 1327/10
1329/3 1347/10 1355/3
1360/11 1366/17 1375/7
1379/12 1384/14 1384/17
1389/22 1400/19 1427/4
1443/3 1444/7 1444/19
1448/4 1463/15
whereas [2] 1464/12 1464/22
Whereupon [37] 1192/17
1194/10 1196/21 1200/20
1218/23 1219/10 1230/20
1285/11 1306/7 1307/6
1307/14 1314/2 1317/9
1331/19 1334/15 1336/15
1337/14 1340/5 1361/20
1362/12 1367/5 1368/13
1368/25 1369/3 1371/20
1371/22 1372/1 1372/9
1372/11 1372/14 1376/22
1383/5 1397/1 1397/22
1425/1 1425/23 1428/5
whether [72] 1170/10 1179/16
1181/22 1185/15 1194/21
1213/18 1215/17 1223/8
1243/9 1254/12 1262/5
1263/8 1264/25 1265/2
1265/10 1265/14 1265/25
1266/2 1266/9 1266/10
1266/18 1266/21 1266/25
1267/14 1268/23 1270/24
1271/1 1279/14 1280/8
1313/18 1313/20 1327/8
1332/2 1336/21 1340/1
1356/23 1358/1 1371/11
1373/14 1376/10 1378/25
1394/14 1399/16 1401/8
1401/14 1403/20 1403/25
1404/13 1409/2 1413/16

1415/13 1417/6 1417/15
1419/4 1419/12 1431/15
1431/16 1432/15 1435/17
1438/10 1438/24 1440/6
1441/19 1443/18 1445/22
1458/18 1458/20 1458/21
1459/5 1462/25 1467/20
1468/2
which [154] 1133/5 1134/22
1134/25 1137/16 1138/15
1138/23 1140/21 1141/10
1142/22 1143/5 1148/11
1149/6 1150/4 1150/5
1150/10 1150/21 1152/10
1154/9 1154/18 1154/21
1157/10 1157/23 1158/7
1161/1 1162/1 1165/10
1165/15 1168/18 1170/3
1173/1 1174/25 1176/15
1180/9 1181/8 1183/24
1186/10 1186/16 1186/17
1186/22 1187/10 1188/23
1189/6 1189/22 1199/11
1202/20 1203/11 1204/8
1204/10 1204/16 1207/21
1212/3 1217/7 1222/2
1222/25 1226/18 1230/9
1231/11 1231/11 1233/20
1234/11 1239/6 1242/5
1244/10 1245/19 1249/19
1256/5 1262/17 1264/1
1265/7 1269/15 1271/4
1276/16 1284/9 1284/18
1286/4 1288/21 1289/12
1291/15 1292/9 1293/9
1293/18 1294/1 1294/25
1298/9 1299/15 1300/9
1301/7 1304/7 1305/21
1311/14 1311/20 1311/25
1312/25 1313/17 1316/22
1319/20 1324/24 1325/11
1328/4 1330/12 1334/9
1336/24 1338/1 1346/1
1347/24 1356/7 1358/23
1359/20 1359/23 1360/1
1363/4 1367/12 1379/25
1381/12 1385/14 1385/16
1385/23 1385/24 1386/12
1392/12 1394/4 1395/16
1398/9 1398/14 1400/13
1401/2 1402/12 1402/20
1408/23 1409/13 1412/19
1423/1 1428/20 1432/19
1434/21 1434/24 1436/13
1438/23 1440/4 1441/17
1442/4 1445/21 1451/6
1452/6 1453/5 1453/10
1453/19 1456/22 1457/24
1461/23 1463/14 1464/6
1465/11 1468/3
while [10] 1134/11 1178/15
1255/5 1312/5 1322/11
1371/19 1385/18 1423/21
1445/16 1469/14
who [21] 1131/10 1147/3
1147/13 1150/25 1153/1
1155/15 1167/25 1191/23
1196/11 1200/3 1215/3
1222/12 1222/15 1237/19
1308/3 1308/4 1311/25

<p>W who... [4] 1312/3 1384/25 1457/1 1459/9 whoever [1] 1375/7 whole [18] 1148/12 1167/19 1177/17 1178/7 1181/15 1211/4 1211/5 1252/8 1262/12 1265/6 1265/12 1270/6 1308/19 1323/4 1389/1 1405/10 1416/1 1463/4 wholesalers [2] 1456/18 1458/6 whose [2] 1151/1 1308/21 why [64] 1133/20 1138/14 1140/2 1140/4 1140/5 1140/17 1140/23 1140/25 1143/17 1155/23 1162/10 1163/7 1176/20 1182/4 1201/24 1222/22 1222/23 1222/23 1230/25 1235/12 1237/7 1237/10 1239/24 1266/17 1284/3 1285/5 1290/25 1296/7 1298/2 1299/1 1301/19 1302/22 1319/23 1328/18 1334/4 1336/10 1359/11 1360/3 1362/3 1364/6 1365/5 1370/21 1371/17 1371/18 1374/14 1381/2 1383/24 1393/24 1399/25 1401/6 1402/10 1405/3 1405/15 1409/7 1424/14 1425/12 1428/13 1435/20 1435/21 1437/13 1442/4 1459/18 1468/14 1469/5 wide [1] 1371/4 widely [1] 1302/10 wife [3] 1146/10 1147/13 1163/2 will [95] 1131/20 1137/10 1137/19 1145/2 1159/13 1170/8 1171/18 1177/2 1177/11 1191/22 1196/13 1200/18 1224/21 1225/6 1225/13 1225/21 1226/2 1226/7 1226/23 1227/24 1228/2 1228/3 1229/8 1229/21 1230/15 1230/19 1235/18 1236/15 1242/14 1251/2 1253/16 1253/24 1256/5 1260/7 1283/15 1283/17 1284/3 1285/10 1286/1 1286/19 1286/25 1287/3 1287/4 1289/19 1289/21 1292/2 1302/12 1310/11 1316/5 1316/18 1316/21 1317/4 1319/17 1320/13 1326/25 1332/23 1333/17 1335/16 1335/23 1338/18 1340/4 1340/15 1360/25 1361/1 1368/4 1368/18 1368/21 1368/22 1370/19 1372/17 1372/18 1381/2 1389/18 1394/3 1401/1 1409/7 1410/8 1412/25 1427/14 1427/23 1428/4 1429/14 1429/22 1433/20 1434/3 1434/18 1434/23 1441/18 1443/3</p>	<p>1443/17 1460/18 1465/21 1468/17 1468/17 1469/17 willful [3] 1443/12 1444/11 1445/7 willfully [1] 1443/18 willfulness [2] 1227/13 1444/20 willing [2] 1238/3 1241/19 willy [1] 1390/6 willy-nilly [1] 1390/6 Wilmington [1] 1129/17 win [3] 1325/15 1452/10 1452/10 wind [1] 1137/17 window [6] 1156/19 1157/20 1158/5 1177/22 1180/19 1185/24 windows [1] 1156/20 winning [2] 1325/3 1325/13 wins [1] 1375/8 wisdom [1] 1339/8 Wiseman [1] 1433/11 withdraw [1] 1425/18 withdrawn [1] 1307/12 within [9] 1286/20 1308/9 1316/13 1356/23 1357/14 1417/19 1422/25 1424/1 1424/17 without [21] 1132/5 1134/18 1212/21 1227/17 1233/11 1235/13 1242/25 1243/12 1310/12 1310/24 1321/3 1332/4 1332/19 1332/25 1333/1 1346/17 1395/15 1436/16 1466/13 1467/12 1467/15 witness [35] 1145/12 1145/20 1192/24 1196/14 1197/1 1197/15 1197/19 1200/12 1202/22 1226/3 1242/16 1243/5 1253/18 1279/17 1279/17 1279/19 1287/12 1287/22 1336/18 1341/3 1341/7 1344/20 1367/11 1369/5 1373/4 1377/2 1380/10 1382/23 1383/13 1396/7 1399/2 1409/23 1426/4 1426/7 1426/24 witness's [1] 1340/8 witnesses [8] 1139/4 1227/22 1248/11 1322/3 1382/13 1396/10 1426/21 1426/22 won [2] 1148/15 1325/11 won't [8] 1177/10 1249/13 1285/22 1285/25 1304/16 1340/17 1368/7 1434/22 wonder [1] 1298/9 wonderful [2] 1147/9 1147/14 wondering [6] 1160/4 1239/24 1284/3 1285/17 1364/12 1441/5 Wood [1] 1181/9 woodworking [1] 1258/15 word [86] 1151/11 1170/9 1172/7 1173/4 1174/4 1174/21 1182/19 1182/20 1182/21 1182/22 1183/7 1183/9 1183/10 1183/12 1183/12 1184/7 1184/20 1186/9 1187/25 1188/1</p>	<p>1188/2 1188/3 1188/8 1188/10 1188/24 1189/7 1189/8 1189/9 1189/23 1189/24 1189/25 1190/7 1190/14 1190/17 1191/4 1196/9 1210/2 1278/9 1279/7 1279/10 1279/15 1279/23 1280/2 1280/5 1280/9 1281/18 1282/2 1298/11 1373/15 1401/13 1401/19 1401/21 1402/5 1403/4 1403/6 1403/12 1403/17 1404/8 1404/9 1404/15 1404/19 1404/25 1405/17 1408/13 1408/19 1408/22 1409/3 1410/18 1417/23 1418/11 1418/12 1418/13 1418/16 1418/17 1419/1 1419/8 1419/14 1419/18 1419/23 1420/2 1429/8 1434/14 1434/14 1446/25 1446/25 1448/1 wording [2] 1156/11 1214/1 words [18] 1151/6 1162/23 1162/23 1162/25 1191/1 1209/16 1210/8 1210/14 1210/18 1214/22 1264/8 1297/10 1322/10 1327/11 1464/3 1465/9 1466/4 1466/6 work [56] 1146/22 1147/6 1147/23 1149/8 1149/24 1150/1 1154/23 1160/11 1164/1 1174/24 1175/21 1186/8 1191/3 1195/15 1195/17 1201/15 1209/3 1219/17 1220/5 1221/6 1221/20 1228/16 1229/4 1241/12 1255/3 1255/6 1257/23 1258/9 1258/10 1259/20 1260/8 1260/16 1261/15 1278/23 1283/20 1324/14 1324/16 1384/18 1384/18 1392/13 1397/8 1397/12 1400/1 1407/22 1408/16 1411/1 1411/11 1411/21 1411/24 1412/22 1414/2 1414/9 1416/15 1417/24 1467/15 1469/14 worked [13] 1147/1 1148/18 1167/6 1202/24 1206/6 1220/24 1222/7 1271/25 1284/7 1286/6 1379/9 1407/25 1451/15 working [23] 1148/6 1148/21 1160/10 1161/7 1164/1 1167/2 1173/14 1184/7 1186/3 1186/5 1187/16 1203/24 1226/19 1262/14 1285/19 1288/19 1289/17 1354/23 1384/23 1384/24 1385/6 1449/22 1469/13 works [9] 1186/6 1222/2 1223/10 1272/1 1274/19 1323/24 1391/11 1397/9 1413/23 workshops [1] 1148/14 world [8] 1140/19 1147/22 1148/23 1156/3 1208/25 1233/2 1403/7 1456/21 worlds [1] 1386/8</p>	<p>worms [1] 1285/4 worried [1] 1235/10 worrying [1] 1132/5 worth [9] 1255/6 1255/12 1255/18 1299/13 1302/13 1302/13 1302/15 1409/20 1413/21 would [202] 1133/15 1141/12 1141/16 1143/1 1143/1 1143/22 1146/8 1150/23 1171/21 1174/6 1175/19 1181/1 1182/4 1182/13 1182/21 1183/3 1183/11 1183/16 1185/10 1185/16 1186/8 1187/23 1188/10 1188/19 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1401/11 1401/21 1402/8 1403/21 1408/10 1408/12 1408/12 1408/16 1408/16 1415/6 1415/8 1415/9 1418/13 1419/5 1419/13 1419/15 1419/17 1423/4 1425/4 1425/16 1428/10 1430/5 1430/7 1430/24 1431/5 1436/17 1437/13 1437/15 1438/14 1438/18 1438/23 1439/15 1440/12</p>
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1445/15 1446/11 1446/17
1447/17 1448/21 1452/6
1452/7 1454/12 1456/3
1457/19 1458/12 1463/20
wouldn't [12] 1160/16 1168/23
1208/13 1208/23 1216/24
1299/6 1308/19 1329/7
1381/24 1400/15 1402/2
1409/17
WP [1] 1183/9
Wps [1] 1465/11
wrap [2] 1404/13 1409/1
write [11] 1156/23 1168/22
1169/7 1169/15 1184/6
1213/11 1271/12 1271/13
1271/15 1271/17 1271/22
writing [1] 1407/20
writings [2] 1269/2 1269/3
written [5] 1259/9 1260/5
1431/20 1451/18 1460/6
wrong [16] 1142/5 1142/5
1189/1 1205/4 1216/6
1216/12 1217/4 1247/21
1291/1 1302/11 1310/14
1310/16 1323/8 1340/19
1440/14 1454/13
wrote [5] 1191/21 1191/23
1224/7 1258/3 1385/1

Y
Yale [1] 1384/18
yeah [61] 1132/24 1136/24
1144/5 1205/24 1206/7
1206/19 1209/25 1210/2
1210/17 1211/20 1218/14
1218/15 1220/8 1224/10
1237/9 1238/17 1243/24
1244/16 1245/21 1248/3
1248/3 1251/8 1259/21
1260/3 1262/18 1264/8
1271/18 1273/22 1275/22
1276/9 1279/21 1299/24
1326/4 1345/19 1353/14
1354/21 1355/10 1360/19
1360/20 1360/22 1363/16
1379/3 1383/23 1385/6
1386/3 1389/21 1392/21
1393/20 1398/7 1402/21
1407/14 1407/17 1430/12
1446/2 1450/6 1450/16
1462/20 1463/9 1464/10
1469/4 1469/4
year [22] 1147/15 1147/15
1148/3 1285/1 1297/21
1309/2 1313/9 1319/7
1319/10 1320/2 1345/21
1345/22 1346/3 1346/11
1346/13 1346/16 1348/4
1354/3 1355/14 1355/18
1386/14 1395/3
Year's [2] 1388/18 1424/16
years [28] 1146/10 1147/13
1147/16 1148/12 1150/15
1167/5 1245/12 1269/4
1276/18 1277/19 1277/21
1288/18 1297/15 1298/25
1303/9 1303/12 1353/16
1379/14 1380/1 1380/2

1384/16 1385/8 1385/22
1388/3 1392/11 1392/12
1411/20 1463/24
yellow [8] 1162/3 1162/20
1167/19 1181/7 1182/17
1343/21 1360/19 1361/1
Yep [3] 1247/22 1250/4
1347/16
yes [313] 1131/25 1132/13
1132/19 1133/9 1133/19
1133/23 1136/7 1141/6
1141/18 1141/18 1145/4
1146/4 1149/9 1151/14
1155/21 1160/21 1162/18
1165/11 1167/15 1169/20
1169/25 1172/16 1173/14
1176/5 1181/24 1183/21
1185/17 1187/24 1192/15
1192/23 1194/8 1195/5
1196/7 1196/17 1196/19
1196/25 1198/20 1199/17
1200/24 1202/2 1203/4
1203/9 1203/10 1203/20
1204/4 1204/8 1204/20
1205/7 1205/25 1206/3
1206/3 1206/22 1206/22
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1209/11 1209/12 1210/19
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1217/18 1218/1 1220/11
1221/23 1222/1 1222/18
1224/13 1225/8 1225/9
1228/6 1231/3 1231/23
1234/15 1239/17 1240/10
1241/7 1241/9 1243/1 1243/1
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1250/10 1252/4 1252/6
1252/6 1254/2 1254/11
1254/23 1255/5 1256/3
1256/16 1256/25 1257/10
1257/11 1257/19 1257/20
1257/23 1258/18 1259/17
1260/19 1260/24 1261/11
1266/22 1271/22 1275/9
1275/18 1275/20 1276/10
1277/22 1277/25 1278/23
1279/8 1280/6 1280/14
1280/21 1281/9 1281/25
1282/3 1282/4 1282/16
1283/13 1285/15 1287/17
1288/14 1289/18 1293/22
1293/25 1295/15 1295/22
1295/25 1304/12 1306/11
1306/18 1308/7 1308/10
1309/7 1309/23 1310/4
1310/8 1311/9 1311/22
1311/23 1312/3 1312/9
1312/12 1313/2 1313/6
1313/25 1316/1 1317/21
1319/6 1320/14 1321/24
1322/5 1322/22 1323/1
1323/6 1327/2 1328/1 1333/8
1333/14 1334/13 1336/23
1340/13 1341/8 1341/17
1341/21 1342/4 1342/11
1342/19 1343/9 1343/20
1344/9 1344/12 1345/12

1345/21 1346/23 1347/4
1347/9 1347/23 1348/4
1348/11 1349/4 1349/19
1349/25 1350/10 1351/3
1351/16 1351/22 1351/24
1352/3 1352/12 1352/15
1352/21 1353/3 1353/18
1353/21 1354/2 1354/10
1354/22 1355/3 1355/24
1356/10 1357/6 1357/9
1357/16 1359/1 1360/10
1360/24 1361/3 1361/4
1361/6 1363/2 1363/11
1363/22 1365/11 1365/24
1366/2 1366/14 1367/2
1376/12 1377/4 1377/15
1378/13 1379/8 1379/11
1379/15 1379/23 1380/6
1380/23 1381/9 1382/11
1382/22 1388/20 1389/17
1391/6 1391/22 1391/25
1392/3 1393/12 1393/14
1396/17 1403/14 1403/19
1404/2 1404/9 1404/22
1406/18 1407/10 1410/15
1411/13 1412/4 1412/8
1413/15 1414/4 1414/8
1414/18 1415/23 1416/25
1417/17 1418/9 1418/18
1419/11 1419/21 1419/25
1420/9 1420/13 1420/17
1420/21 1420/25 1421/4
1421/5 1421/7 1421/10
1421/25 1422/9 1423/8
1423/15 1423/25 1426/12
1426/25 1428/9 1428/17
1429/19 1433/7 1433/23
1438/9 1439/2 1443/22
1447/19 1447/20 1447/23
1447/25 1448/13 1448/16
1456/5 1456/13 1462/17
1462/21 1464/2 1468/19
yesterday [2] 1226/23
1284/11
yet [7] 1187/15 1245/18
1260/3 1302/24 1376/2
1382/24 1390/23
York [10] 1430/14 1432/2
1463/7 1463/11 1464/1
1465/2 1465/17 1465/23
1466/10 1466/15
you [1236]
you'd [5] 1199/21 1329/25
1357/7 1392/2 1413/25
You'll [1] 1247/4
you're [77] 1132/8 1141/3
1155/15 1156/7 1157/13
1174/11 1200/3 1202/9
1209/20 1210/16 1212/19
1212/20 1213/5 1213/21
1214/16 1215/12 1219/14
1221/9 1235/10 1238/4
1240/3 1240/14 1240/23
1245/23 1251/16 1252/12
1255/6 1255/18 1256/13
1259/1 1261/1 1261/2 1261/7
1261/19 1261/20 1267/11
1269/9 1269/11 1270/19
1275/6 1278/1 1278/8 1280/4
1294/16 1305/10 1323/5

1326/8 1329/3 1329/14
1331/12 1332/15 1348/8
1348/8 1348/14 1349/18
1349/24 1352/13 1352/17
1352/18 1354/23 1390/21
1392/18 1396/7 1412/5
1415/15 1417/9 1423/9
1431/10 1448/23 1457/9
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1465/24 1466/2 1466/22
1468/23
you've [35] 1162/17 1163/8
1166/21 1195/3 1202/12
1204/9 1228/19 1257/15
1259/9 1260/5 1260/17
1264/7 1289/17 1292/9
1292/24 1294/24 1310/9
1321/8 1323/13 1327/6
1332/14 1333/20 1340/14
1346/4 1380/4 1380/7 1386/1
1386/2 1386/24 1411/11
1411/20 1413/10 1420/22
1424/16 1450/16
your [496]
Your Honor [3] 1131/17
1132/13 1145/4
yours [1] 1354/9
yourself [9] 1146/8 1254/13
1288/7 1295/16 1352/11
1364/11 1383/22 1384/13
1390/7
YouTube [3] 1371/2 1371/6
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EXHIBIT F

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF DELAWARE
4 ARENDI S.A.R.L.,)
5)
6 Plaintiff,) C.A. No. 13-919-JLH
7 v.)
8 GOOGLE LLC,)
9 Defendant.)

1 -and-

10
11 Tuesday, May 2, 2023
12 8:43 a.m.
13 Jury Trial
14 Volume VII
15 Sealed
16 * * *

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17
18 844 King Street
19 Wilmington, Delaware

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20 BEFORE: THE HONORABLE JENNIFER L. HALL
21 United States Magistrate Judge

20
21

22 APPEARANCES:

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25 BY: NEAL C. BELGAM, ESQ.

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

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3
4 (Proceedings commenced in the courtroom beginning at
5 8:43 a.m.)

6 **THE COURT:** Good morning, everyone. Please be
7 seated.

8 Okay. So we're here for the last day of trial.
9 We're going to give the jury instructions and hear the
10 closing arguments.

11 So let's talk first about the license
12 instruction that we docketed as Instruction 5.7, but I
13 think because we got rid of one of the other instructions,
14 it's actually going to be 5.6.

15 So let me hear from Arendi on its views about
16 the Court's proposed construction.

17 **MR. ARD:** So, Your Honor, thank you. A couple
18 very small comments.

19 **THE COURT:** Okay.

20 **MR. ARD:** In the one, two, three, fourth
21 paragraph, it says, "In making this determination, you
22 should consider whether accused Google apps ██████████
23 ██████████ ██████████ -- we think it should say,
24 "downloaded by users."
25 **THE COURT:** Yep.

1 MR. ARD: The next paragraph, the second
2 sentence, we disagree with because the cases they're
3 citing are cases about unambiguous contracts, and, of
4 course, when you're talking about interpreting the four
5 corners of a contract, the best evidence is the words of
6 the contract. But we cited cases saying that when you are
7 talking about an ambiguous contract that, for example,
8 sworn statements by the parties to the agreement is strong
9 evidence of the parties' intent. And if you're going to
10 comment on the strength of evidence, we think that should
11 be there too.

12 We think the best solution is just to delete
13 that second sentence, because the first sentence already
14 says you have to interpret the agreement.

15 THE COURT: Understood. You would just delete
16 the "best evidence"?

17 MR. ARD: Yes. And the last sentence in that
18 paragraph, it says, "You may also consider." It should
19 be, "you should also consider." Doesn't say what weight
20 to put on it or anything else, but they should be
21 considering evidence presented at trial regarding that.
22 That's the whole point of the instruction.

23 THE COURT: All right.

24 MR. ARD: Thank you, Your Honor.

25 THE COURT: Thank you.

1 and which are appropriately given to the jury.

2 MR. ARD: Right. And my whole point is there's
3 nothing on this that is a pattern jury instruction for
4 this issue.

5 THE COURT: Okay.

6 MR. LING: Arendi's correct they are
7 commentaries, but it does come under contract instruction
8 Number 1 in general, and then the language from the
9 commentary is, quote, "A fundamental tenet of contract law
10 is that agreements are construed in accordance with the
11 intent of the parties' and the best evidence of the
12 parties intent is what They express in their written
13 contract."

14 THE COURT: Where is that? Sorry.

15 MR. LING: This is Page 33 of the cited New
16 York pattern jury instructions, Civil 4:1, commentary.

17 THE COURT: Okay. Stand by.

18 What do you say we take out the statement about
19 the best evidence that Arendi objects to, and we say, "In
20 evaluating the words of the agreement, you should not
21 consider particular words in isolation, but should
22 consider the agreement as a whole in light of the overall
23 intention of the parties to the agreement," and then I'll
24 say, "You should also consider other evidence presented at
25 trial regarding the intent of the parties to the

1 MR. LING: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. LING: So let me address Arendi's points
4 first, then I have few additional points to raise. On the
5 first point about "downloaded by users," Google does not
6 object to that.

7 THE COURT: Okay.

8 MR. LING: If Your Honor would like to include
9 that language.

10 On the second point about best evidence, the
11 cases we cited in our proposed instructions, namely the
12 *Tomhannock* case, the *Marin* case, as well as the New York
13 Pattern Jury Instructions comments, make it clear the best
14 evidence language comes before even any discussion about
15 ambiguity or nonambiguity. It's a general umbrella rule
16 under New York law.

17 THE COURT: Can you -- I have the pattern jury
18 instructions here. Hopefully, we've got the same version.

19 MR. ARD: Your Honor, to be clear, the pattern
20 jury instructions I think both sides are citing, there is
21 no pattern jury instruction on this issue. What the
22 parties are citing is, you know, dozens of pages of
23 commentary of various issues of law.

24 THE COURT: Right. So what I'm trying to tease
25 out is which of these statements of law are for the Court

1 agreement; however, evidence" -- well, what I was thinking
2 about saying is something like "evidence" -- "extrinsic
3 evidence," but we haven't told the jury what that is, but
4 we can explain that to them. "Evidence, basically,
5 outside the contract cannot be used to contradict the
6 language of the contract." Or something like that.

7 MR. LING: I believe that -- the last sentence,
8 Your Honor, just proposed was in our proposed
9 instructions, so we would be fine with that.

10 THE COURT: Okay. Let me pull that up.

11 So I'll say -- so I would say, "But evidence
12 outside the contract regarding Arendi's and Samsung's
13 intent cannot be used to contradict the ordinary meaning
14 of the contract's terms."

15 MR. ARD: Your Honor, that's -- they're
16 conflating two different issues. What they're citing
17 there when it says you can't use words outside of contract
18 to contradict the unambiguous meaning of the contract,
19 those are cases where you're first trying to determine
20 what the plain meaning of a contract is. We're in a world
21 where the contract is ambiguous, and the whole point is
22 you're supposed to be looking at the statements by the
23 parties to interpret what it means.

24 So there is nothing here that's being
25 contradicted. The point is here that the Court has held

1 as ambiguous these provisions, and the jury is being asked
 2 to figure out what it is.
 3 **THE COURT:** Yeah, but we need to say something
 4 about the jury can take into account the words of the
 5 contract.
 6 **MR. ARD:** Well, the very first sentence says,
 7 "To make this determination, you must interpret," you say
 8 "the words of Samsung agreement." It's the very first
 9 sentence in this paragraph; it's already there.
 10 **MR. LING:** Your Honor, it does not say the
 11 words "of the Samsung agreement."
 12 **MR. ARD:** That's fine to put that in. We're
 13 okay with that.
 14 **THE COURT:** So I'm going to say, "To make this
 15 determination, you must interpret the words of the Samsung
 16 agreement --
 17 **MR. ARD:** Yeah.
 18 **THE COURT:** -- "to decide what Arendi and
 19 Samsung intended to agree upon. In evaluating the words
 20 of the agreement, you should not consider particular words
 21 in isolation, but consider the agreement as a whole in
 22 light of the overall intention of the parties to the
 23 agreement."
 24 I -- I disagree with Arendi about saying,
 25 "should" instead of "may." I think it should be "may"

1 unless Google is okay with it.
 2 **MR. LING:** We think it should be "may" as well,
 3 Your Honor.
 4 **THE COURT:** I'm going to say, "may". "You may
 5 also consider other evidence presented at trial regarding
 6 the intent of the parties to the agreement."
 7 I don't think it's a legal error for me to say
 8 that evidence outside of the contract cannot be used to
 9 contradict the ordinary meaning of the contract's terms,
 10 so I'm going to add that in because that's from the law.
 11 Is that not a statement of the law?
 12 **MR. ARD:** There's zero evidence here of any
 13 statement outside the contract that is contradicting the
 14 plain meaning of the contract. The whole question here is
 15 what these provisions mean. You've decided it's ambiguous
 16 on that issue, and there's no evidence in the record of
 17 anything that contradicts what you said is ambiguous.
 18 **MR. LING:** Your Honor, that's inaccurate.
 19 Arendi is trying to elevate Mr. Hedloy's testimony as
 20 extrinsic evidence over all else, but extrinsic evidence
 21 includes also evidence of the ordinary and customary
 22 meanings and customs in the field, and so there is other
 23 extrinsic evidence as well.
 24 So I just want to clarify for the record, we
 25 stand on our objection that the language about the words

1 of the contract being the best evidence is the correct
 2 law, as well as the language about that evidence -- that
 3 extrinsic evidence cannot be used to contradict the
 4 ordinary meaning on the contract's terms. That is also
 5 plain law. And that does apply to ambiguous
 6 interpretation -- interpretation of nonambiguous
 7 provisions.
 8 **THE COURT:** So what I'm going to do is I'm
 9 going to add the language about "you have to interpret the
 10 words of the agreement," and I'm going to tell them
 11 "evaluating the words of agreement, you should consider
 12 the agreement as a whole." they may also consider
 13 extrinsic evidence, and then I am going to add that
 14 "evidence outside the contract can't be used to contradict
 15 the ordinary meaning." We're going to add that. And
 16 that's the Court's ruling on that. Thank you.
 17 **MR. ARD:** All right. Thank you, Your Honor.
 18 Then let me point -- if we're going to
 19 accommodating that, let me point to the other things on
 20 pattern jury instruction.
 21 If you look at Page 19 of the pattern jury
 22 instruction. First paragraph --
 23 **THE COURT:** Are we going to be commenting about
 24 what -- about the Court's ruling?
 25 **MR. ARD:** No. We're commenting on what kind of

1 evidence --
 2 **THE COURT:** Okay. We're going to add this
 3 language?
 4 **MR. ARD:** Yeah. On paragraph -- it's Page 19,
 5 first full paragraph of the pattern jury instructions.
 6 **THE COURT:** What -- I don't think I have the
 7 same pagination as you do. Do you want to tell me what
 8 section?
 9 **MR. ARD:** Third party beneficiaries.
 10 **THE COURT:** Okay. Slow down. All right.
 11 Okay, yeah. I have something I can say about
 12 that. It's Arendi's position that there's no evidence in
 13 the contract to suggest an intent to benefit third party
 14 beneficiaries? It specifically talks about folks other
 15 than the parties to contract. You're saying there's no
 16 intent to specifically benefit Google?
 17 **MR. ARD:** Right.
 18 **THE COURT:** Okay. Overruled. On that
 19 objection.
 20 Any other ones.
 21 **MR. ARD:** Yeah, sure. Pattern jury instruction
 22 where it says, "Where agreement is ambiguous and extrinsic
 23 evidence is introduced to aid in construction, both sworn
 24 affidavits by both original parties to the contract and
 25 those parties who come in after the contract is formed are

1 significant evidence of the parties intent."
 2 **THE COURT:** Right. So we're in trial now.
 3 We've had live testimony. You've got to put that
 4 testimony on.
 5 **MR. ARD:** That's right.
 6 **THE COURT:** Anything else you want? I said I
 7 could consider it.
 8 **MR. ARD:** Well, I think it should say that it's
 9 strong evidence of the parties intent.
 10 **THE COURT:** We don't have any sworn affidavits.
 11 **MR. ARD:** We have sworn testimony.
 12 **THE COURT:** Okay. Yeah, I'm not going to tell
 13 the jury that this is strong evidence.
 14 Anything else?
 15 **MR. ARD:** Yeah. One more. On Page 80. "If
 16 from the recitals therein, it appears a release is to be
 17 limited to only particular claims, demands or obligations,
 18 the release will be operative as to those matters only."
 19 **MR. LING:** Your Honor, that was not in Arendi's
 20 proposed instruction.
 21 **MR. ARD:** What was in our proposed instruction
 22 is that they're supposed to look at the whereas clause.
 23 **THE COURT:** I said we're going to look at the
 24 agreement as a whole in light of the overall intentions of
 25 the parties. I think that will cover that.

1 **MR. ARD:** Thank you, Your Honor.
 2 **THE COURT:** Any other? Okay. Thank you.
 3 **MR. LING:** Can I make two comments in addition
 4 on behalf of Google?
 5 **THE COURT:** Does it have to do about construing
 6 the contract against the drafter?
 7 **MR. LING:** One of them actually --
 8 **THE COURT:** That's not going in.
 9 **MR. LING:** On the second, I'll just make my
 10 objection. On the first, though, the language the Court
 11 proposed in the fourth paragraph, "In making this
 12 determination, you should consider whether accused Google
 13 apps [REDACTED] we do
 14 think there's clarification needed on an undisputed point,
 15 which is that [REDACTED] with Google's
 16 Android operating system.
 17 **THE COURT:** Yeah. That's not going to come in.
 18 Go ahead.
 19 **MR. LING:** And then the second objection, Your
 20 Honor, that we would like to make for the record is that
 21 the Court's deleted our proposed language that said,
 22 quote, "In cases of doubt or ambiguity, a contract must be
 23 construed most strongly against the party who prepared it
 24 and favorably to a party who had no voice in the selection
 25 of this language."

1 And that is also from the commentary to the New
 2 York Pattern Jury Instruction discussing ambiguous
 3 interpretations.
 4 **THE COURT:** Okay. And your objection is in the
 5 record. Is there evidence that came in at trial at all
 6 about who drafted this contract?
 7 **MR. LING:** Your Honor, the evidence that
 8 Mr. Hedloy said he was part of the negotiation and that he
 9 agreed to it.
 10 **THE COURT:** Okay. That one is overruled.
 11 **MR. LING:** Thank you.
 12 **THE COURT:** Yep. Okay. Next we have, Google
 13 had a couple style changes in its letter. We've got issue
 14 Number 2 referring to Claims 23 and 30 about asserted
 15 claims. Issues 3 and 4 should refer to Claim 23 or 30
 16 instead of "any claim," which they say would harmonize the
 17 wording with issue Number 1.
 18 Any objection to those changes from Arendi?
 19 **MR. DIEHL:** No objection, Your Honor.
 20 **THE COURT:** All right. Great.
 21 And then they want to switch the order of
 22 issues 3 and 4 to match the order of questions on the
 23 verdict form.
 24 Any objection to that?
 25 **MR. DIEHL:** Your Honor, not in principle, but I

1 thought it would mess up some of the language because the
 2 language right now kind of flows from one to the next.
 3 **THE COURT:** Okay. Let's take a look at that.
 4 **MR. LING:** Your Honor, the preamble language
 5 for issues 3 and 4 is the same, so I don't think there's
 6 any change in the flow of the language if Your Honor --
 7 **THE COURT:** Do you have a proposed edit to it
 8 just so I can understand what we're talking about?
 9 **MR. LING:** If I may propose something? If Your
 10 Honor would make issue 4, issue 3, we can take out the
 11 word "also" that is currently in issue 4 so it says, "If
 12 you decide that any claim of the '843 patent has been
 13 infringed by Google and is not invalid, you will need to
 14 decide the amount of money damages Arendi has proven by a
 15 preponderance of the evidence or to be awarded to
 16 compensate it for Google's infringement." And then
 17 current issue 3 would become issue 4, and the word "then"
 18 could be swapped for the word "also."
 19 **THE COURT:** Yes.
 20 **MR. LING:** So "if you decide that any claim of
 21 the '843 patent has been infringed by Google and is not
 22 invalid, you will also need to decide whether Arendi has
 23 proven by a preponderance of the evidence that Google's
 24 infringement was willful."
 25 **THE COURT:** So I think that makes sense to me,

1 and the reason why I wasn't tracking is because my law
 2 clerk had already made that change.

3 **MR. LING:** Thank you, Your Honor.

4 **THE COURT:** Yep.

5 **MR. LING:** And then there's one more just for
 6 punctuation and capitalization consistency in Section 4.3,
 7 prior art. It should be noncontroversial, but I just
 8 wanted to note that for the record.

9 **THE COURT:** Great. Any objection to the
 10 punctuation?

11 **MR. DIEHL:** About the capitalization of the
 12 system?

13 **THE COURT:** Yes.

14 **MR. DIEHL:** That's okay either way.

15 **THE COURT:** And then was what we talked about
 16 in court yesterday, right? 4.3.

17 **MR. DIEHL:** Yes.

18 **MR. LING:** Yes, Your Honor.

19 **THE COURT:** Was there anything else we needed
 20 to deal with on the jury instructions?

21 **MR. LING:** No, Your Honor.

22 **MR. DIEHL:** Not from our perspective either,
 23 Your Honor.

24 **THE COURT:** All right. So we'll get those
 25 changes put in, and given the time, we'll make the copies

1 as an exhibit, you may recall we had a sidebar. The issue
 2 was whether this could be go back with the jury or it
 3 could just be used to read the stipulations at appropriate
 4 times. Your Honor made the ruling at the time that it
 5 could be read and it would be admitted for the record, but
 6 that it wouldn't go back to the jury because stipulations
 7 typically don't go back to the jury in that way.

8 And that was the ruling of the Court then, so
 9 we believe it should be enforced and not be in the jury
 10 book.

11 **THE COURT:** Okay. And refresh my recollection.
 12 We can go back and look at the transcript as well. This
 13 document was on their exhibit list; is that right?

14 **MR. UNIKEL:** I believe it was on the exhibit
 15 list, but, again, we had objected to it at the time to the
 16 extent that it was going back to the jury. We understand
 17 why they want it to be a part of the record in case it
 18 goes up on appeal. But to go back with the jury,
 19 stipulations typically do not go back on the jury. We
 20 made the appropriate objection when it was raised.

21 The point was they could read it as
 22 stipulations are typically supposed to be read, and they
 23 read many of them but not all of them. And even redacted
 24 form, sending it back to the jury then would be -- it's
 25 not really an exhibit; it's something that they were

1 as well.

2 **MR. UNIKEL:** Your Honor, I have one exhibit
 3 matter to discuss when it's a convenient time.

4 **THE COURT:** Yes, absolutely. While it's on my
 5 mind, the one other thing I was going to say was this. I
 6 have the times from yesterday. We have Arendi at 13:40
 7 and Google at 12:06. I'll give Arendi the extra time so
 8 you'll have the full hour to make your closing arguments.
 9 But that hour should apply to both your closing and any
 10 rebuttal closing that you have. So you need to make sure
 11 to reserve enough time.

12 **MS. SRINIVASAN:** Thank you, Your Honor.

13 **THE COURT:** Yes, absolutely.

14 And then, of course, Google is welcome to use
 15 the remainder of its time, although I can't say I
 16 recommend that.

17 Okay. Let's talk about the exhibit, and this
 18 may take a minute to go through, so I'll pull up the trial
 19 transcript. I have a recollection we talked about this
 20 during the course of the trial.

21 So we've got PX-67; is that right?

22 **MR. UNIKEL:** Correct, Your Honor.

23 **THE COURT:** Okay. Take it real slow and tell
 24 me what the problem is.

25 **MR. UNIKEL:** When this was originally proposed

1 allowed to use as read stipulations.

2 **THE COURT:** Yeah. All right. I'd like to hear
 3 from Arendi on this.

4 **MS. SRINIVASAN:** Yeah. Sure.

5 **THE COURT:** You can approach the podium.

6 **MS. SRINIVASAN:** Thank you, Your Honor.

7 Obviously, an issue that's been central to
 8 Google's presentation of its damages case is the relevant
 9 start date for the infringing products. We think it's
 10 important for the jury to be able to have the stipulation
 11 because we have a situation where certain things that we
 12 were told, Arendi was told to rely on are now being
 13 undermined by positions Google has taken.

14 I understand that there were things read into
 15 the record. They're obviously not going to have the
 16 benefit of the testimony with them back there. We
 17 prepared a redacted version that addresses the Court's
 18 question about not having things that are not at issue in
 19 this case referenced in the stipulation.

20 But we think it's quite critical, particularly
 21 the way the evidence has come in and the arguments that
 22 are being raised by Google in this case, for them to have
 23 something to show what Arendi relied on, rather than just
 24 the testimony of counsel.

25 **THE COURT:** Can someone remind me where we

1 discussed this during the course of the trial? Was it
 2 on --

3 **MS. SRINIVASAN:** I believe it would have been
 4 in Dr. Smedley's direct examination because he didn't
 5 testify about that. So that would have been on Tuesday.

6 **THE COURT:** Let me pull that up.

7 **MS. SRINIVASAN:** And, Your Honor, I have a copy
 8 of the proposed redacted version.

9 **THE COURT:** Yeah. Why don't you put that --
 10 bring that up at the same time.

11 Have you shared your proposal with the other
 12 side?

13 **MS. SRINIVASAN:** Yeah. I don't --

14 **MR. KAMBER:** Just now, yes.

15 **THE COURT:** Just the second?

16 **MR. DIEHL:** No, on Thursday we sent a -- I'm
 17 sorry. I believe it was on Sunday, we sent this same
 18 exact thing with redactions proposed, but not actually
 19 applied. We applied the same redactions in this document,
 20 Your Honor.

21 **MR. KAMBER:** Your Honor --

22 **THE COURT:** Just give me a second to read
 23 through, unless it's --

24 **MR. KAMBER:** I have the cite for the trial
 25 transcript.

1 So I see what your point is, and I wasn't
 2 entirely clear, but I thought my intent here was that we
 3 would agree on a form that would go back to the jury, as
 4 opposed to agree as to whether it would go back to the
 5 jury.

6 Is that --

7 **MS. SRINIVASAN:** That was my understanding as
 8 well, Your Honor. And one way we also attempted to do
 9 that was to include it in the jury instructions, which we
 10 ended up taking out or the -- Google opposed that.

11 So that was the way I understood the sidebar as
 12 well, was that it wouldn't go in with the document. That
 13 we had the admitted exhibit, which was admitted over any
 14 objection by Google, but that we would attempt to redact
 15 it or put in another form that could go back to the jury.

16 **THE COURT:** Okay. So let me hear from Google.
 17 To the extent I'm inclined to let some form of this go
 18 back to the jury, is there any changes that you would
 19 make?

20 **MR. UNIKEL:** No, Your Honor. I believe these
 21 were all read. The difficulty becomes that -- what it's
 22 doing is exalting some testimony, the stipulation over
 23 others. We did make our objection immediately and that's
 24 what this colloquy on the record is about, about whether
 25 it could go back to the jury or not, as opposed to whether

1 **THE COURT:** You do. That's perfect. That
 2 would help.

3 **MR. KAMBER:** It's -- I think it starts right
 4 about 315, 1 through, I believe, 319, 16.

5 **THE COURT:** All right. Let's everybody have a
 6 seat. We can all take a look.

7 Let me ask this narrow question: Does Google
 8 dispute that the portions that are unredacted correspond
 9 to stipulations that were read at trial?

10 **MR. UNIKEL:** I believe that's correct, Your
 11 Honor, though I think the Court's -- reading the
 12 transcript, the Court was very clear that this would not
 13 go back to the jury.

14 **THE COURT:** I don't think that's what I said at
 15 all. So --

16 **MR. UNIKEL:** On 317, Line 16, Your Honor.

17 **THE COURT:** Okay. "You all can agree on a set
 18 of facts that should go back to the jury, that's what we
 19 will do. As of now, although this document has been
 20 admitted into evidence, we are not going to have it go
 21 back with the jury. And this document," meaning the
 22 version that included facts that we weren't going to
 23 discuss at trial. "That's my ruling. At this point, we
 24 will agree on a form that's going back with the jury
 25 before we go to deliberations."

1 or not they could be read.

2 Obviously, we have plenty of testimony that
 3 came in on what the right date is and how it is consistent
 4 with these representative product stipulations.

5 And so the concern is if you send this back,
 6 they don't have anything in writing about the testimony
 7 that's on the same point, it becomes, well, they have this
 8 to read and reread, but they don't have the testimony on
 9 it that also -- that they could also read and reread.
 10 That's why the stipulations are read as part of ordinary
 11 other testimony that would come in during the case.

12 **THE COURT:** Okay. I understand your objection
 13 on that. I think this is a close call. Google's
 14 objection will be overruled on that, particularly because
 15 it was on Plaintiff's Exhibit list and there was no
 16 objection to it, and it was admitted over objection at the
 17 trial. We did have a clarification, and I do think this
 18 is the best compromise in light of how this happened.

19 Is there anything we need to say to the jury
 20 about why I admitted 67? And this is 67(a).

21 **MS. SRINIVASAN:** I don't believe so, Your
 22 Honor. I mean, I think we can make clear that that's a
 23 substitute exhibit that's going back, if that would be
 24 helpful. But I'm not sure that we need to say anything
 25 beyond that to the jury.

1 **THE COURT:** Okay.

2 Google, do I need to say anything else?

3 **MR. UNIKEL:** No, you don't, Your Honor.

4 **THE COURT:** Very good. All right. So are we

5 getting close?

6 **MR. ARD:** Yes, Your Honor.

7 **THE COURT:** Yes.

8 **MR. ARD:** And I apologize. It's just hard for

9 me to process exactly what the Court had said about the

10 Samsung agreement and the order of it.

11 I'd just like to say one thing, that we prefer

12 the original language that said, "The best evidence of

13 what Arendi and Samsung intended is the words used in the

14 agreement," than something that says, "You may also

15 consider evidence presented at trial regarding intent of

16 the parties," and then saying, "however, that evidence

17 cannot contradict the plain language of the contract."

18 And the reason is, that the only evidence

19 presented at trial regarding the intent of the parties was

20 Mr. Hedloy's testimony. And we would hate for the jury to

21 think that the Court is suggesting that his testimony may

22 have somehow contradicted the plain meaning of the

23 contract.

24 So we would just prefer the original wording

25 that just says, "the best" -- that they were advocating

1 for, that just says "the best evidence of what Arendi and

2 Samsung intended is the words they used in the agreement,"

3 and leave it at that.

4 **MR. UNIKEL:** Your Honor, once again, I think we

5 have been clear throughout, as is the Court, that the best

6 evidence of the parties intention includes the actual

7 meaning of the contract, and that the stated intent of the

8 party in the testimony isn't by itself enough to

9 contradict or shouldn't be able to contradict or overcome

10 the actual words of the contract.

11 **THE COURT:** So I made a ruling on what we were

12 going to have. And then we had an offer by Arendi that

13 said they were willing to put back -- they would rather

14 have me say, "The best evidence of what the parties

15 intended is the words they used in the agreement," rather

16 than what I added on later.

17 So which would you rather do, stick with the

18 original ruling or take them up on their offer?

19 **MR. LING:** Your Honor, we prefer Your Honor's

20 ruling. We think both sentences should be in, but if only

21 one, we believe Your Honor has already ruled on that.

22 **MR. ARD:** And we just think it would be

23 extremely prejudicial to suggest that Mr. Hedloy's

24 testimony may have been contradicted by the words in the

25 agreement, which is how it reads now.

1 **THE COURT:** Okay. I understand your point.

2 **MR. ARD:** Thank you, Your Honor.

3 **THE COURT:** All right. Anything else?

4 **MR. UNIKEL:** Housekeeping matter about sealing

5 the courtroom for closings.

6 So I do believe both sides are going to end up

7 talking about the settlement terms from those various

8 agreements, as well as revenue numbers for Google.

9 I will say that as far as corporate

10 representative goes, we do have the permission from Apple

11 that our corporate representative, Mr. Choc, can stay in

12 the courtroom for the closings regardless of whether they

13 are sealed or not.

14 But we did want to raise the issue to Your

15 Honor because I don't know how you want to handle the

16 sealing for the closings or not.

17 **THE COURT:** Are both sides intending to seal

18 the courtroom during their closing?

19 **MS. SRINIVASAN:** Well, I have a way to

20 circumvent the discussion of the license agreements by

21 doing the same thing we did in opening with printouts. We

22 do plan to talk about some of the Google revenue

23 information that was shown yesterday.

24 If Google insists the courtroom needs to be

25 sealed for that purpose, then I guess so, but...

1 **THE COURT:** Can you do the same thing? It

2 would be -- I don't want to tell you what to do, but

3 interrupting your closing to seal the courtroom...

4 **MR. UNIKEL:** Yeah. It's going to be -- maybe

5 give me a couple minutes to figure out if there's

6 something I can do. It is very challenging given how

7 interrelated the revenue is to the actual damages analysis

8 for us, how we could do it without mentioning it. It

9 becomes very challenging.

10 **THE COURT:** Okay. All right. Well, I'll have

11 some things to say after we send the jury back with the

12 case about how we're going to do sealing in the future,

13 but it's not going to be like this.

14 But I understand that we are where we are. So

15 if we need to seal the courtroom for a portion of the

16 closing, that's what we will do.

17 If there's a way you can figure out, I do think

18 it's what we are required to do under the Third Circuit's

19 *Avandia* opinion.

20 **MS. SRINIVASAN:** Yeah. Your Honor, I think I

21 can -- I can circumvent that, as long as the Court has no

22 objection to me providing the jurors with the slides with

23 the numbers and me not saying them out loud.

24 **THE COURT:** Yeah. I think that's fine. And I

25 would just ask that once you finish with the slides that

1 have the confidential information, that you would request
 2 that the Court collect the slides or something like that.
 3 **MS. SRINIVASAN:** Sure.
 4 **THE COURT:** I just -- I was -- I didn't like
 5 that the jurors were still looking at slides while you
 6 were talking about something else. You probably don't
 7 want that either.
 8 **MR. UNIKEL:** I will see if I can just print out
 9 my slides and change the presentation a little bit so they
 10 don't have to mention, you know, explicitly our revenue
 11 numbers, and maybe we can do it that way. I'll try very
 12 hard to do that, Your Honor.
 13 **THE COURT:** All right. Very good.
 14 All right. We'll be in recess. I'm going to
 15 sit up on the bench here for a minute while I work on some
 16 of these changes.
 17 **MR. ARD:** Thank you, Your Honor.
 18 (Whereupon, a recess was taken.)
 19 **THE COURT:** All right. Please be seated.
 20 All right. So we have copies of the jury
 21 instructions.
 22 Ms. Garfinkel, can we hand out copies to
 23 counsel.
 24 **THE CLERK:** Yes, Your Honor.
 25 **THE COURT:** Did anyone bring a copy of the

1 verdict form?
 2 **MR. UNIKEL:** No. We can probably print one.
 3 **THE COURT:** We can grab it, probably, just as
 4 quick as you all can.
 5 Okay. So counsel, so while we're getting that
 6 printed out, so we're going to read up through Page 37,
 7 and then the pages actually start again at one. I don't
 8 know, if we introduce that. But it doesn't matter because
 9 they should start again at one because we're going to
 10 break and have the closing arguments go for that.
 11 So then we're going to read the 6.1 through 6.5
 12 instructions. It states, in 6.2, "A form of verdict has
 13 been prepared for you. I will review it with you in a
 14 moment."
 15 Is there something somebody thinks I should say
 16 about it? I will just read it?
 17 Yes?
 18 **MS. SRINIVASAN:** That's fine, Your Honor.
 19 **MR. UNIKEL:** That makes sense, Your Honor.
 20 **THE COURT:** Okay. All right.
 21 So what we'll do is, you will have copies of the
 22 verdict form while you do your closings in case either one
 23 of you -- either one wants to go with the jury, how you
 24 want them to fill it out. But I'm not going to hand
 25 copies out to the jury until after I read 6.5, just so

1 that they don't get distracted. And I also don't want
 2 them writing on it while you're doing your closings.
 3 All right. Are we ready to bring the jury out?
 4 **MS. SRINIVASAN:** Yes, Your Honor.
 5 **THE COURT:** Yes.
 6 **MR. UNIKEL:** Yes.
 7 (The jury enters the courtroom at 10:01 a.m.)
 8 **THE CLERK:** Your Honor, the jury.
 9 **THE COURT:** Please have a seat. Welcome back,
 10 ladies and gentlemen of the jury.
 11 Ms. Garfinkel, can we hand out copies of the
 12 Court's jury instructions to the jury, please.
 13 **THE CLERK:** Yes, Your Honor.
 14 **THE COURT:** Members of the jury, it is now time
 15 for me to instruct you about the law that you must follow
 16 in deciding this case. Each of you has been provided a
 17 copy of these instructions. You may read along as I
 18 deliver them if you prefer.
 19 I will start by explaining your duties and the
 20 general rules that apply in every civil case. Then I will
 21 explain some rules that you must use in evaluating
 22 particular testimony and evidence. Then I will explain
 23 the positions of the parties and the law you will apply in
 24 this case. And last, I will explain the rules that you
 25 must follow during your deliberations in the jury room and

1 the possible verdicts that you may return.
 2 Please listen carefully to everything I say.
 3 You will have a written copy of these
 4 instructions with you in the jury room for your reference
 5 during your deliberations. You will also have a verdict
 6 form which will list the questions that you must answer to
 7 decide this case.
 8 You have two main duties as jurors. The first
 9 is to decide what the facts are from the evidence that you
 10 saw and heard in court. Deciding what the facts are is
 11 your job, not mine, and nothing that I have said or done
 12 during this trial was meant to influence your decision
 13 about the facts in any way. You are the sole judges of
 14 the facts.
 15 Your second duty is to take the law that I give
 16 you, apply it to the facts, and decide under the
 17 appropriate burden of proof which party should prevail on
 18 any given issue. It is my job to instruct you about the
 19 law, and you are bound by the oath you took at the
 20 beginning of the trial to follow the instructions that I
 21 give you, even if you personally disagree with them. This
 22 includes the instructions that I give you before and
 23 during the trial, and these instructions. All of the
 24 instructions are important, and you should consider them
 25 together as a whole.

1 Perform these duties fairly. Do not guess or
2 speculate, and do not let any bias, sympathy, or prejudice
3 you may feel toward one side or the other influence your
4 decision in any way.

5 You must make your decision based only on the
6 evidence that you saw and heard here in court. Do not let
7 rumors, suspicions, or anything else that you may have
8 seen or heard outside of court influence your decision in
9 any way. The evidence in this case includes only what the
10 witnesses said while they were testifying under oath,
11 including deposition transcript testimony that has been
12 played by video or read to you, the exhibits that I
13 allowed into evidence, matters I have instructed you to
14 take judicial notice of, and the stipulations to which the
15 lawyers agreed.

16 Certain models, reproductions, charts,
17 summaries, and graphics have been used to illustrate
18 certain evidence and testimony from witnesses. Unless I
19 have specifically admitted them into evidence, these
20 models, reproductions, charts, summaries, and graphics are
21 not themselves evidence, even if they refer to, identify,
22 or summarize evidence, and you will not have these
23 demonstratives in the jury room.

24 Nothing else is evidence. The lawyers'
25 statements and arguments are not evidence. The arguments

1 of the lawyers are offered solely as an aid to help you in
2 your determination of the facts. Their questions and
3 objections are not evidence. My legal rulings are not
4 evidence. You should not be influenced by a lawyer's
5 objection or by my ruling on that objection. Any of my
6 comments and questions are not evidence.

7 During the trial, I may not -- I may have not
8 let you hear the answers to some of the questions that the
9 lawyers asked. I also may have ruled that you could not
10 see some of the exhibits that the lawyers wanted you to
11 see. And, sometimes I may have ordered you to disregard
12 things that you saw or heard, or that I struck from the
13 record. You must completely ignore all of these things.

14 Do not speculate about what a witness might
15 have said or what an exhibit might have shown. These
16 things are not evidence and you are bound by your oath not
17 to let them influence your decision in any way. Make your
18 decision based only on the evidence, as I have defined it
19 here, and nothing else.

20 During the preliminary instructions, I told you
21 about "direct evidence" and "circumstantial evidence." I
22 will now remind you what each means.

23 Direct evidence is simply evidence like the
24 testimony of an eyewitness which, if you believe it,
25 directly proves a fact. If a witness testified that he

1 saw it raining outside, and you believe him, that would be
2 direct evidence that it was raining.

3 Circumstantial evidence is simply a chain of
4 circumstances that indirectly proves a fact. If someone
5 walked into the courtroom wearing a raincoat covered with
6 drops of water and carrying a wet umbrella, that would be
7 circumstantial evidence from which you could conclude that
8 it was raining.

9 It is your job to decide how much weight to
10 give the direct and circumstantial evidence. The law
11 makes no distinction between the weight that you should
12 give to either one, nor does it say that anyone -- excuse
13 me, nor does it say that one is any better evidence than
14 the other. You should consider all the evidence, both
15 direct and circumstantial, and give it whatever weight you
16 believe it deserves.

17 You should use your common sense in weighing
18 the evidence. Consider it in light of your everyday
19 experience with people and events, and give it whatever
20 weight you believe it deserves. If your experience tells
21 you that certain evidence reasonably leads to a
22 conclusion, you are free to reach that conclusion.

23 A further word about statements of counsel and
24 arguments of counsel. The attorneys' statements and
25 arguments are not evidence. Instead, their statements and

1 arguments are intended to help you review the evidence
2 presented.

3 If you remember the evidence differently from
4 the way it was described by the attorneys, you should rely
5 on your own recollection.

6 You are the sole judges of each witness'
7 credibility. You may believe everything a witness says,
8 or part of it, or none of it. You should consider each
9 witness' means of knowledge, strength of memory,
10 opportunity to observe, how reasonable or unreasonable the
11 testimony is, whether it is consistent or inconsistent,
12 whether it has been contradicted, the witness biases,
13 prejudices, or interests, the witness' manner or demeanor
14 on the witness stand, and all circumstances that,
15 according to the evidence, could affect the credibility of
16 the testimony.

17 In determining the weight to give to the
18 testimony of a witness, you should ask yourself whether
19 there is evidence tending to prove that the witness
20 testified falsely about some important fact or whether
21 there was evidence that at some time the witness said or
22 did something, or failed to say or do something, that was
23 different from the testimony he or she gave at the trial
24 in person or by deposition testimony played by video or
25 read to you.

1 You have the right to distrust such witness'
2 testimony and you may reject all or some of the testimony
3 of that witness or give it such credibility as you may
4 think it deserves.

5 Expert testimony is testimony from a person who
6 has special skill or knowledge in some science,
7 profession, or business. This skill or knowledge is not
8 common to the average person but has been acquired by the
9 expert through special study or experience.

10 In weighing expert testimony, you may consider
11 the expert's qualifications, the reasons for the expert's
12 opinions, and the reliability of the information
13 supporting the expert's opinions, as well as the factors I
14 have previously mentioned for weighing testimony of any
15 other witness. Expert testimony should receive whatever
16 weight and credit you think appropriate, given all the
17 other evidence in the case. You are free to accept or
18 reject the testimony of experts, just as with any other
19 witness.

20 During the trial, certain testimony was
21 presented to you by the playing of video excerpts from a
22 deposition. The deposition testimony may have been edited
23 or cut to exclude irrelevant testimony as the parties only
24 have a limited amount of time to present you with
25 evidence. You should not attribute any significance to

1 at the time presented, and thus not written down, takes on
2 greater importance later in the trial in light of all the
3 evidence presented. Therefore, your notes are only a tool
4 to aid your own individual memory, and you should not
5 compare notes with other jurors in determining the content
6 of any testimony or in evaluating the importance of any
7 evidence.

8 Your notes are not evidence, and are by no
9 means a complete outline of the proceeding or a list of
10 the highlights of the trial. Above all, your memory
11 should be the greatest asset when it comes time to
12 deliberate and render a decision in this case.

13 In any legal action, facts must be proven by a
14 required standard of evidence, known as the "burden of
15 proof." In a patent case such as this, there are two
16 different burdens of proof that are used. The first is
17 called "preponderance of the evidence." The second is
18 called "clear and convincing evidence." I told you about
19 these two standards of proof during my preliminary
20 instructions to you, and I will now remind you what they
21 mean.

22 Plaintiff Arendi asserts that Defendant Google
23 infringes the '843 Patent. Plaintiff Arendi has the
24 burden of proving its infringement claims by a
25 "preponderance of the evidence." That means Plaintiff

1 the fact that the deposition videos may appear to have
2 been edited.

3 Deposition testimony is out-of-court testimony
4 given under oath and is entitled to the same consideration
5 you would give it had the witnesses personally appeared in
6 court.

7 During the course of the trial, you have seen
8 many exhibits. Many of these exhibits were admitted as
9 evidence. You will have these admitted exhibits in the
10 jury room for your deliberations. The remainder of the
11 exhibits (including charts, models, reproductions
12 PowerPoint presentations, and animations) were offered to
13 help illustrate the testimony of the various witnesses.
14 These illustrative exhibits, called "demonstrative
15 exhibits," have not been admitted, are not evidence, and
16 should not be considered as evidence. Rather, it is the
17 underlying testimony of the witness that you heard when
18 you saw the demonstrative exhibits that is the evidence in
19 this case.

20 You may have taken notes during trial to assist
21 your memory. As I instructed you at the beginning of the
22 case, you should use caution in consulting your notes.
23 There is generally a tendency, I think, to attach undue
24 importance to matters which one has written down.

25 Some testimony which is considered unimportant

1 Arendi has to prove to you, in light of all the evidence,
2 that what it claims is more likely true than not.

3 To say it differently, if you were to put the
4 evidence of Plaintiff Arendi and the evidence of defendant
5 on opposite sides of a scale, the evidence supporting
6 Plaintiff Arendi's claims would have to make the scale tip
7 slightly on its side in each instance.

8 If the scales should remain equal or tip in
9 favor of Defendant Google, you must find in favor of
10 defendant.

11 In addition to denying Plaintiff Arendi's
12 claims that it infringes, Google asserts that the asserted
13 claims of the '843 Patent are invalid. A party
14 challenging the validity of a patent, in this instance,
15 Defendant Google, has the burden to prove that the
16 asserted claims are invalid by clear and convincing
17 evidence.

18 Clear and convincing evidence means evidence
19 that it is highly probable that a fact is true. Proof by
20 clear and convincing evidence is a higher burden of proof
21 than by a preponderance of the evidence, is a higher
22 burden than proof by a preponderance of the evidence.

23 You may have heard of the "beyond a reasonable
24 doubt" burden from criminal cases. That requirement is
25 the highest burden of proof. It does not apply to civil

1 cases and, therefore, you should put it out of your mind.

2 I will now review for you the parties in this
3 action and the positions of the parties that you will have
4 to consider in reaching your verdict.

5 As I have previously told you, the plaintiff in
6 this case is Arendi S.A.R.L. We have referred to the
7 plaintiff as "Arendi." The defendant in this case is
8 Google LLC. We have referred to it as "Google."

9 Plaintiff Arendi is the owner of U.S. Patent
10 Number 7,917,843. During this case, we have referred to
11 the patent by its last three digits, the '843 Patent, or
12 as the "patent-in-suit" or the "Asserted Patent."

13 You must decide the following issues in this
14 case according to the instructions that I give you:

15 1. Whether Plaintiff Arendi has proven by a
16 preponderance of the evidence that Google infringes one or
17 more of Claims 23 and 30 of the '843 Patent;

18 2. Whether Defendant Google has proven by
19 clear and convincing evidence that one or more claims, 23
20 and 30, of the '843 Patent is invalid;

21 3. If you decide that Claim 23 or 30 of the
22 '843 Patent has been infringed by Google and is not
23 invalid, you will then need to decide the amount of
24 damages Arendi has proven by a preponderance of the
25 evidence are to be awarded to compensate it for Google's

1 infringement;

2 4. If you decide that Claim 23 or 30 of the
3 '843 Patent has been infringed by Google and is not
4 invalid, you will also need to decide whether Arendi has
5 proven by a preponderance of the evidence that Google's
6 infringement was willful.

7 At the beginning of the trial, I gave you some
8 general information about patents and the patent system
9 and a brief overview of the patent laws relevant to this
10 case. I will now give you more detailed instructions
11 about the patent laws that specifically relate to this
12 case.

13 If you would like to review my instructions at
14 any time during your deliberations, you will have a
15 copy -- you will have your copy available to you in the
16 jury room.

17 Before you can decide many of the issues in
18 this case, you will need to understand the role of patent
19 claims. The patent claims are the numbered sentences at
20 the end of a patent. The claims are important because it
21 is the words of the claims that define what a patent
22 covers. The figures and text in the rest of the patent
23 provides a description and/or examples of the invention
24 and provide a context for the claims, but it is the claims
25 that define the breadth of the patent's coverage.

1 Therefore, what a patent covers depends in turn on what
2 each of its claims covers.

3 To know what a claim covers, a claim sets forth
4 in words a set of requirements. Each claim sets forth its
5 requirements in a single sentence. A claim may be
6 narrower or broader than another claim by setting forth
7 more or fewer requirements. The requirements of a claim
8 are often referred to as "claim elements" or "claim
9 limitations." The coverage of a patent is assessed
10 claim-by-claim.

11 When a thing (such as a product) meets all of
12 the requirements of a claim, the claim is said to cover
13 that thing and that thing is said to fall within the scope
14 of that claim.

15 In other words, a claim covers a product where
16 each of the claim elements or limitations is present in
17 that product. If a product is missing even one limitation
18 or element of a claim, the product is not covered by that
19 claim.

20 You will first need to understand what each
21 claim covers in order to decide whether or not there is
22 infringement of the claim and to decide whether or not the
23 claim is invalid. The first step is to understand the
24 meaning of the words used in the patent claim.

25 This case involves two types of patent claims,

1 independent claims and dependent claims.

2 An independent claim sets forth all of the
3 requirements that must be met in order to be covered by
4 that claim. Thus, it is not necessary to look at any
5 other claim to determine what an independent claim covers.
6 Claim 23 of the '843 Patent is an independent claim.

7 In contrast, Claim 30 of the '843 Patent is a
8 dependent claim. A dependent claim does not itself recite
9 all of the requirements of the claim, but refers to
10 another claim for some of its requirements.

11 In this way, the claim depends on another
12 claim. A dependent claim incorporates all of the
13 requirements of the claims to which it refers. The
14 dependent claim then adds its own additional requirements.
15 Therefore, to determine what a dependent claim covers, it
16 is necessary to look at both the dependent claim and the
17 other claim or claims to which it refers.

18 A product that meets all of the requirements of
19 both the dependent claim and the claims to which it refers
20 is covered by that dependent claim.

21 It is my job as a judge to define the terms of
22 the claims and to instruct you about the meaning. It is
23 your role to apply my definitions to the issues that you
24 are asked to decide. In this case, I have determined that
25 the meaning of the following terms of the asserted

1 claims -- strike that.

2 In this case, I have determined the meaning of

3 the following terms of the asserted claims of the '843

4 Patent:

5 Claim term: Document. Court's construction:

6 A word processing, spreadsheet, or similar file into which

7 text can be entered.

8 Claim term: First information. Court's

9 construction: Text in a document that can be used as

10 input for a search operation in a source external to the

11 document.

12 Claim term: Computer program. Court's

13 construction: A self-contained set of instructions, as

14 opposed to a routine or library, intended to be executed

15 on a computer so as to perform some task.

16 Claim term: To determine if the first

17 information is at least one of a plurality of types of

18 information that can be searched for. Court's

19 construction: To determine if the first information

20 belongs to one or more of several predefined categories of

21 identifying information, (e.g., a name) or contact

22 information (e.g., a phone number, a fax number, or an

23 e-mail address) that can be used search for in an

24 information source external to the document.

25 Claim term: That allows a user to enter a user

1 command to initiate an operation. Court's construction:

2 That allows a user to enter an input or series of inputs

3 to initiate an operation.

4 Claim term: Providing an input device

5 configured by the first computer program. Court's

6 construction: Providing an input device set up by the

7 first computer program for use by the user.

8 You must accept my definition of these words as

9 being correct. It is your job to take these definitions

10 and apply them to the issues that you are deciding,

11 including the issues of infringement and validity.

12 The beginning portion of a claim, also known as

13 the preamble, often uses the word "comprising." The word

14 "comprising," when used in the preamble, means "including

15 but not limited to" or "containing but not limited to."

16 When "comprising" is used in the preamble, if you decide

17 that an accused product includes all of the requirements

18 of that claim, the claim is infringed. This is true even

19 if the accused product contains additional elements.

20 For any words in the claim for which I have not

21 provided you with a definition, you should apply their

22 plain and ordinary meaning as understood by one of

23 ordinary skill in the field of technology of the '843

24 Patent at the time of the invention. The meanings of the

25 words of the patent claims must be the same when deciding

1 both the issues of infringement and validity.

2 You should not take my definition of the

3 language of the claims as an indication that I have a view

4 regarding how you should decide the issues that you are

5 being asked to decide, such as infringement and validity.

6 These issues are yours to decide.

7 I will now instruct you as to the rules you

8 must follow when deciding whether Plaintiff Arendi has

9 proven that Google has infringed the '843 Patent. A claim

10 covers a product where each of the claim elements or

11 limitations is present in that product. Infringement is

12 assessed on a claim-by-claim basis. Therefore, there may

13 be infringement of one claim but no infringement of

14 another.

15 In order to prove infringement, Arendi must

16 prove that the requirements for infringement are met by a

17 preponderance of the evidence. That is, that it is more

18 likely than not that all of the requirements of

19 infringement have been proved.

20 A person or business entity that makes, uses,

21 sells, or offers for sale within the United States or

22 imports into the United States an invention claimed in a

23 patent, infringes that patent. There may be infringement

24 of one claim but no infringement of another.

25 If you find that an independent claim is not

1 infringed, there cannot be infringement of any dependent

2 claim that depends from that claim. On the other hand, if

3 you find that an independent claim has been infringed, you

4 must still separately decide whether the accused products

5 meet the additional requirements of any dependent claim to

6 determine whether that dependent claim has also been

7 infringed.

8 Arendi asserts that Google infringed the '843

9 Patent, and further, that Google infringed willfully. If

10 you find that Google infringed one or more claims of the

11 '843 Patent, then you must also determine whether or not

12 such infringement was willful.

13 To show that infringement was willful, Arendi

14 must establish that it is more likely than not that Google

15 knew of the '843 Patent at the time of the alleged

16 infringement and also that Google engaged in deliberate or

17 intentional infringement.

18 To decide whether Google acted willfully, you

19 should consider all of the facts and assess Google's

20 knowledge at the time of the challenged conduct. Facts

21 that may be considered include but are not limited to:

22 1. Whether or not Google acted consistently

23 with the standards of behavior for its industry;

24 2. Whether or not Google intentionally copied

25 a product of Arendi that is covered by the '843 Patent;

1 3. Whether or not Google reasonably believed
2 it did not infringe or that the patent was invalid;

3 4. Whether or not Google made a good faith
4 effort to avoid infringing the '843 Patent by, for
5 example, attempting to design around the '843 Patent; and,

6 5. Whether or not Google tried to cover up its
7 infringement.

8 If you determine that any infringement was
9 willful, you may not allow that decision to affect the
10 amount of any damages award you give for infringement. I
11 will take willfulness into account later.

12 I will now instruct you on the rules you must
13 follow in deciding whether or not Google has proven that
14 the asserted claims are invalid.

15 Patent invalidity is a defense to patent
16 infringement. The issuance of a patent by the Patent
17 Office provides a presumption that the patent is valid.

18 A party challenging the validity of a patent --
19 in this instance, Google -- has the burden to prove that
20 the asserted claims are invalid by clear and convincing
21 evidence.

22 Clear and convincing evidence means evidence
23 that it is highly probable that a fact is true. Proof by
24 clear and convincing evidence is a higher burden than
25 proof by a preponderance of the evidence.

1 (4) rapidity with which innovations are made;
2 and

3 (5) the sophistication of the technology.

4 In order for someone to be entitled to a
5 patent, the invention must actually be "new" and not
6 obvious over what came before, which is referred to as the
7 prior art. Prior art is considered in determining whether
8 the asserted claims of the '843 Patent are anticipated or
9 obvious.

10 Prior art may include items that were publicly
11 known or that have been used or offered for sale that
12 disclose the claimed invention or elements of the claimed
13 invention.

14 Google contends that the following is prior art
15 to the '843 Patent:

16 The CyberDesk system;
17 Apple Data Detectors system; and,
18 Microsoft Word 97 system.

19 In order for someone to be entitled to a
20 patent, the invention must actually be "new." If an
21 invention is not new, it is said to be "anticipated."
22 Google contends that the asserted claims of the '843
23 Patent are invalid because the claimed inventions are
24 anticipated. Google must convince you of this by clear
25 and convincing evidence.

1 In this case, you have the ultimate
2 responsibility for deciding whether the claims of the
3 patent are valid or invalid. In making your
4 determination, you must consider the claims individually
5 as you did when you considered whether each claim was
6 infringed or not.

7 If clear and convincing evidence demonstrates
8 that a claim of the '843 Patent fails to meet any
9 requirement of the patent laws, then that claim is
10 invalid. The fact that any particular reference was or
11 was not considered by the Patent Office does not change
12 Google's burden of proof.

13 I will now instruct you on the invalidity
14 issues you should consider.

15 The question of invalidity of a patent claim is
16 determined from the perspective of a person of ordinary
17 skill in the art in the field of the asserted invention as
18 of the time of invention. In deciding the level of
19 ordinary skill, you should consider all the evidence
20 introduced at trial including:

21 (1) the levels of education and experience of
22 persons working in the field;

23 (2) the types of problems encountered in the
24 field;

25 (3) prior art solutions to those problems;

1 Specifically, Google contends that the alleged
2 CyberDesk System anticipates the asserted claims of the
3 '843 Patent.

4 Anticipation must be determined on a
5 claim-by-claim basis. Google must prove by clear and
6 convincing evidence that all of the requirements of a
7 claim are present in a single piece of prior art. To
8 anticipate the invention, the prior art does not have to
9 use the same words as the claim, but all of the
10 requirements of the claim must have been disclosed and
11 arranged as in the claim. The claim requirements meet --
12 may either be disclosed expressly or inherently -- that
13 is, necessarily implied -- but must be disclosed in
14 sufficient detail that a person having ordinary skill in
15 the art of the invention, looking at that one reference,
16 could make and use the claimed invention.

17 Even though an invention may not have been
18 identically disclosed or described in a single prior art
19 reference before it was made by an inventor, in order to
20 be patentable, the invention must also not have been
21 obvious to a person of ordinary skill in the field of
22 technology of the patent at the time of the invention.

23 Google may establish that a patent claim is
24 invalid by proving by clear and convincing evidence that
25 the claimed invention would have been obvious to persons

1 having ordinary skill in the art in the field of the
 2 invention at the time the invention was made.

3 In determining whether a claimed invention is
 4 obvious, you must consider the level of ordinary skill in
 5 the field of the invention that someone would have had at
 6 the time the invention was made, the scope and content of
 7 the prior art, any differences between the prior art and
 8 the claimed invention, and, if present, so-called
 9 objective evidence or secondary considerations, which I
 10 will describe shortly. Do not use hindsight; consider
 11 only what was known at the time of the invention.

12 Keep in mind that the mere existence of each
 13 element of the claimed invention in the prior art does not
 14 necessarily prove obviousness. Most, if not all,
 15 inventions rely on building blocks of prior art. In
 16 considering whether a claimed invention is obvious, you
 17 should consider whether, at the time of the claimed
 18 invention, there was a reason that would have prompted a
 19 person having ordinary skill in the field of the invention
 20 to combine the known elements in the prior art in the way
 21 that the claimed invention does, taking into account such
 22 factors as: (1) whether the claimed invention was merely
 23 the predictable result of using prior art elements
 24 according to their known function(s); (2) whether the
 25 claimed invention provides an obvious solution to a known

1 If you find that Google has infringed a claim
 2 of the '843 Patent, and the claim is not invalid, you must
 3 consider what amount of damages to award Arendi for its
 4 infringement. By instructing you on damages, I am not
 5 suggesting which party should win this case, on any issue.

6 Arendi has the burden to establish the amount
 7 of its damages by a preponderance of the evidence. In
 8 other words, you should award only those damages that
 9 Arendi establishes that it more likely than not has
 10 suffered. While Arendi is not required to prove the
 11 amount of its damages with mathematical precision, it must
 12 prove them with reasonable certainty. You may not award
 13 damages that are speculative, damages that are only
 14 possible, or damages that are based on guesswork.

15 Arendi accuses the following 12 Google apps of
 16 infringement: Chrome, Sheets, Contacts, Docs, Calendar,
 17 Keep, Messages/Messaging, Inbox, Tasks, Hangouts, Slides,
 18 and Gmail. Arendi accuses the following Google devices of
 19 infringement: Pixel 2, Pixel 2 XL, Pixel 3, and Pixel 3
 20 XL smartphones.

21 The damages you award must be adequate to
 22 compensate Arendi for the infringement. They are not
 23 meant to punish an infringer. Your damages award, if you
 24 reach this issue, should put Arendi in approximately the
 25 same financial position that it would have been in had the

1 problem in the relevant field; (3) whether the prior art
 2 teaches or suggests the desirability of combining elements
 3 claimed in the invention; (4) whether the prior art
 4 teaches away from combining elements in the claimed
 5 invention; and (5) whether it would have been obvious to
 6 try the combinations of elements, such as when there is a
 7 design incentive or market pressure to solve a problem and
 8 there are a finite number of identified, predictable
 9 solutions. To find it rendered the claimed invention
 10 obvious, you must find that the prior art provided a
 11 reasonable expectation of success. Obvious to try is not
 12 sufficient in unpredictable technologies.

13 In determining whether the claimed invention is
 14 obvious, you should take into account any objective
 15 evidence (sometimes called "secondary considerations")
 16 that may shed light on whether or not the claimed
 17 invention was obvious, such as:

18 A. Whether the claimed invention satisfied a
 19 long-felt need;

20 B. Whether others in the field praised the
 21 claimed invention; and.

22 C. Whether others sought or obtained rights to
 23 the patent from the patent holder.

24 In determining whether the claimed invention
 25 was obvious, you must consider each claim separately.

1 infringement not occurred.

2 Plaintiff Arendi alleges that it is owed a
 3 reasonable royalty as compensation for Google's
 4 infringement. A royalty is a payment made to a patent
 5 holder in exchange for the right to make, use, or sell the
 6 claimed invention. A reasonable royalty award must be
 7 based on the incremental value that the patented invention
 8 adds to the end product. When the infringing products
 9 have both patented and unpatented features, measuring this
 10 value requires you to determine a value added only by the
 11 patented features because the royalty you award should be
 12 only for the incremental value added by the patented
 13 features.

14 One way to -- excuse me.

15 One way to calculate a reasonable royalty is
 16 through the hypothetical negotiation approach. Under this
 17 approach, the reasonable royalty is the amount of royalty
 18 payment that would have resulted from a hypothetical
 19 negotiation between the patent owner and the alleged
 20 infringer just before the infringement began.

21 In considering this hypothetical negotiation,
 22 you should focus on what the expectations of the patent
 23 holder and the alleged infringer would have been had they
 24 entered into an agreement at that time and had they acted
 25 reasonably in their negotiations. In determining this,

1 you must assume that both parties believed the patent was
2 valid and infringed and that both parties were willing to
3 enter into an agreement. The reasonable royalty you
4 determine must be a royalty that would have resulted from
5 a hypothetical negotiation and not simply a royalty either
6 party would have preferred. Evidence of things that
7 happened after the infringement first began can be
8 considered in evaluating the reasonable royalty only to
9 the extent that the evidence aids in assessing what
10 royalty would have resulted from a hypothetical
11 negotiation just prior to the first infringement.

12 In determining the amount of a reasonable
13 royalty, you may consider evidence on any of the following
14 factors in addition to any evidence presented by the
15 parties on the economic value of the patent:

- 16 1. The royalties received by Arendi for the
- 17 licensing of the '843 Patent to the extent those royalties
- 18 prove or tend to prove an established royalty.
- 19 2. The rates paid by Google to license other
- 20 patents comparable to the '843 Patent.
- 21 3. The nature and scope of the license as
- 22 exclusive or nonexclusive or as restricted or
- 23 nonrestricted in terms of its territory or with respect to
- 24 whom the manufactured product may be sold.
- 25 4. Arendi's established policy and marketing

1 program, if any, to maintain its right to exclude others
2 from using the patented inventions by not licensing others
3 to use the inventions or by granting licenses under
4 special conditions designed to preserve that exclusivity.

5 5. The commercial relationship between Arendi
6 and Google, if any, such as whether or not they are
7 competitors in the same territory in the same line of
8 business.

9 6. The effect of selling the patented product
10 in promoting other sales of Google products, the existing
11 value of the inventions to Arendi as a generator of sales
12 of its non-patented items, and the extent of such
13 derivative or collateral sales.

14 7. The duration of the '843 Patent and the
15 term of the license.

16 8. The established profitability of the
17 accused products, their commercial success, and their
18 popularity.

19 9. The utility and advantages of the patented
20 inventions over the old modes or devices, if any, that had
21 been used for achieving similar results.

22 10. The nature of the patented inventions, the
23 character of the commercial embodiments of it as owned and
24 produced by or for the licensor; and the benefits to those
25 who have used the inventions.

1 11. The extent to which the infringer has made
2 use of the inventions, and any evidence that shows the
3 value of that use.

4 12. The portion of the profit or of the
5 selling price that may be customary in the particular
6 business or in comparable businesses to allow for the use
7 of the inventions or analogous inventions.

8 13. The portion of the profit that arises from
9 the patented inventions themselves as opposed to profit
10 arising from unpatented features, such as the
11 manufacturing process, business risks, or significant
12 features or improvements added by the accused infringer.

13 14. The opinion testimony of qualified
14 experts.

15 15. The amount that a licensor (such as
16 Arendi) and a licensee (such as Google) would have agreed
17 upon (at the time of the infringement began) if both sides
18 had been reasonably and voluntarily trying to reach an
19 agreement, that is, the amount which a prudent licensee -
20 who desired, as a business proposition, to obtain a
21 license to manufacture and sell a particular article or
22 process embodying the patented invention - would have been
23 willing to pay as a royalty and yet be able to make a
24 reasonable profit and which amount would have been
25 acceptable by a patentee who was willing to grant a

1 license.

2 16. Any other economic factor that a normally
3 prudent business person would, under similar
4 circumstances, take into consideration in negotiating the
5 hypothetical license.

6 No one factor is dispositive, and you can and
7 should consider the evidence that has been presented to
8 you in this case on each of these factors. You may also
9 consider any other factors which in your mind would have
10 increased or decreased the royalty of the alleged
11 infringer would have been willing to pay and patent holder
12 would have been willing to accept, acting as normally
13 prudent business people.

14 In determining a reasonable royalty, you may
15 also consider whether or not Google had acceptable
16 non-infringing alternatives to the patented technology
17 that were available to it, the cost of such alternatives,
18 and whether that would have affected the reasonable
19 royalty the parties would have agreed upon. A
20 non-infringing alternative is a way of providing the same
21 or comparable functionality or achieving the same or a
22 comparable result that does not infringe the patent. You
23 may also consider the utility and advantages of the patent
24 technology over any non-infringing alternatives that could
25 be used for achieving similar results.

1 For any damages you award, the amount you find
 2 as damages must be based on the value attributable to the
 3 patented technology, as distinct from other, unpatented
 4 features of the accused product or other market factors.
 5 A royalty compensating the patent holder for
 6 damages must reflect the value attributable to the
 7 infringing features of the product, and no more. The
 8 process of separating the value of the allegedly
 9 infringing features from the value of all other features
 10 is called "apportionment." When the accused infringing
 11 products have both patented and unpatented features, your
 12 award must be apportioned so that it is based only on the
 13 value of the patented features, and no more.

14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 To make this determination, you must interpret
 8 the Samsung Agreement to decide what Arendi and Samsung
 9 intended to agree upon. In evaluating the words in the
 10 agreement, you should not consider particular words in
 11 isolation but should consider the agreement as a whole in
 12 light of the overall intention of the parties to the
 13 agreement. You may also consider other evidence presented
 14 at trial regarding the intent of the parties to the
 15 agreement. Evidence outside the contract regarding
 16 Arendi's and Samsung's intent cannot be used to contradict
 17 the ordinary meaning of the contract's terms.

18 Google bears the burden of proving, by a
 19 preponderance of the evidence, that Arendi's license
 20 agreement with Samsung reduces the damages to which Arendi
 21 is entitled to receive from Google.

22 Ladies and gentlemen, the rest of the
 23 instructions will be read to you after we hear from the
 24 parties with their closing arguments.

25 We have been going for almost an hour now,

1 hearing instructions, so what I think makes the most sense
 2 is for us to take a short break, your final break, and
 3 then when you come back, we'll hear both sides' closing
 4 arguments before we give the case to you.

5 Ms. Garfinkel, let's take the jury out.

6 (The jury exits the courtroom at 10:50 a.m.)

7 **THE COURT:** All right, folks, please be seated.

8 So we'll take a ten-minute break. I didn't want to have a
 9 break after we heard from one side, but not the other, or
 10 before we hear from the rebuttal closings. So let's do
 11 that now, and then we'll just plow through until the end
 12 into lunch.

13 **MR. UNIKEL:** Thank you, Your Honor.

14 **MS. SRINIVASAN:** Thank you, Your Honor.

15 And, Your Honor, are we getting copies of the
 16 verdict form?

17 **THE COURT:** Yes. I think -- am I correct that
 18 there were no changes that the Court ruled on after we
 19 docketed the verdict form last night?

20 **MS. SRINIVASAN:** That's correct.

21 **THE COURT:** Okay. So we've just changed the
 22 caption to "Verdict Form," instead of the "Court's
 23 Proposed Verdict Form." And we'll hand that out now.

24 **MS. SRINIVASAN:** Thank you.

25 (Whereupon, a recess was taken.)

1 **THE COURT:** All right. Please be seated.
 2 Have we sorted out what's going to go back to
 3 the jury while they deliberate in terms of the exhibits?

4 **MR. STRAUS:** Yes, Your Honor.

5 **THE COURT:** We have it? All right. Great.

6 All right. Are we ready to bring them in?

7 **MS. SRINIVASAN:** Yes, Your Honor.

8 **THE COURT:** All right.

9 Ms. Garfinkel, let's bring the jury in.

10 **THE CLERK:** Yes, Your Honor.

11 (The jury enters the courtroom at 11:03 a.m.)

12 **THE CLERK:** Your Honor, the jury.

13 **THE COURT:** Please be seated.

14 We'll now hear closing arguments from the
 15 parties.

16 Counsel.

17 **MS. SRINIVASAN:** Good morning, ladies and
 18 gentlemen. I want to thank you, first, for the past
 19 ten days that you've spent your attention to the important
 20 matters in this case. And I thank you on behalf of
 21 myself, the Arendi legal team, and Mr. Hedloy and Arendi.

22 When we started last Monday, I talked to you a
 23 little bit about when we're young and we learn about
 24 playing fair and sharing fairly and doing things that are
 25 fair. And one of the things that I wanted you to think

1 about is when you are playing a game, when you're young,
2 to make it fair when the other side does something to
3 throw up the dust to cloud the playing field so that you
4 don't even know where the bases are, that is what has
5 happened over the past ten years as Arendi has pursued
6 Google for its infringement of its patents. And,
7 respectfully, that is what has happened over the course of
8 the trial that you've had before you.

9 Now, our job is to clear away that dust to
10 focus on the issues that are here for you to decide in
11 this case. And you're going to be asked to decide four
12 issues in particular: Whether Arendi has proven that
13 Google infringed the '843 Patent, whether Google has shown
14 by clear and convincing evidence that the '843 Patent is
15 invalid, whether Arendi has demonstrated that Google's
16 infringement was willful, and the amount of damages to
17 which Arendi is entitled to from Google if infringement is
18 found.

19 At the same time, you're going to be hearing
20 about and thinking about the various excuses and defenses
21 that Google has raised over the course of this case.

22 You've heard Google say that it used a
23 different approach, that it went a different way from the
24 patent.

25 You also heard Google say that if, in fact, the

1 Arendi patent covers what Google does, then the patent is
2 invalid.

3 You've heard Google say that the Patent Office
4 just got it wrong, and the '843 Patent should be invalid.

5 And, finally, you've heard Google say that
6 well, if the patent is valid and it's infringed, it's just
7 not worth that much.

8 And I want you to be thinking about those
9 issues as we talk about the evidence that's been before
10 you in this case.

11 One of the very first things that Google told
12 you, when it opened last week, was to look under the hood,
13 that we needed to look under the hood. And perhaps the
14 idea was that Arendi was not going to do that with you
15 over the course of this case. But you all know now that
16 that is not true. Arendi and its expert, Dr. Smedley,
17 went through each limitation of the patent. One by one,
18 step by step.

19 In fact, Dr. Smedley even covered limitations
20 of the patent that Google doesn't dispute. Why? Because
21 it is our burden to show you that the patents are
22 infringed, and Arendi takes that burden extremely
23 seriously.

24 Dr. Smedley testified for five and a half hours
25 on the stand. He told you all that he spent 900 hours

1 analyzing infringement in this case. He looked at source
2 code. He looked at documents. He did testing of the
3 devices on his own independently to assure himself that
4 the claims were practiced.

5 He was cross-examined for about 40 minutes in
6 this case because what he attested to under oath on the
7 stand was not disputable. He did the technical work to
8 meet Arendi's burden. Step by step, one by one.

9 Now, Google's expert actually really doesn't
10 contend or contest the work that Dr. Smedley did. He says
11 he did it the right way. What Dr. Smedley undertook to
12 prove and help show infringement in this case was the
13 right way to do it.

14 And Dr. Rinard, Google's expert, he actually
15 agreed with Dr. Smedley for the vast majority of the
16 limitations in the claims. He said he didn't dispute it.
17 So where did that leave us?

18 Dr. Rinard focused on two limitations in the
19 claim, and those limitations centered around this term
20 "computer program." The Court has given a definition of
21 what that term means.

22 But when Dr. Rinard was asked a very simple
23 question, "Do the applications accused in this case, are
24 they computer programs," he could not give you an answer.

25 And you will hear and have heard over the

1 course of this case Google's experts telling you, again
2 and again, that they do not have an answer for you, or
3 that it wasn't their assignment to look at these
4 questions. But these are the very fundamental and hard
5 questions in this case.

6 Dr. Rinard, he was asked, "Are Google Docs, is
7 it a computer program?" And he said, "I -- I'm not going
8 to answer that question. I was asked to respond to
9 Dr. Smedley's analysis." Could he answer that question on
10 the stand? "I would prefer not to. I prefer to do my
11 analysis and take the time I need."

12 But the truth, ladies and gentlemen, is that
13 Dr. Rinard didn't want to answer the question because he
14 knew the answer was "yes, of course, the applications that
15 accused in this case are computer programs."

16 If he answered "yes," then that would be
17 inconsistent with the positions Google has taken in this
18 litigation. And if he answered "no," he couldn't do that
19 credibly. He's obviously very experienced and educated in
20 his field.

21 So instead, he declined to give an answer. His
22 refusal to answer that question tells you everything you
23 need to know about Google's infringement theory.

24 Dr. Rinard and Google, they know that the two
25 issues -- the two limitations they dispute are really not

1 in dispute after all, and that he agrees with Dr. Smedley,
2 the applications accused in this case absolutely are
3 computer programs and every limitation is met.

4 And, in fact, when we started to pick through
5 and work through the definition the Court had given us,
6 then Dr. Rinard slowly had to concede that. He doesn't
7 dispute that Google Docs, as an example of an application,
8 is a set of instructions. It's not a routine or library,
9 and it is an application that is performing some task.

10 So at the end of the day, when asked, when
11 pushed to look at this issue, the one issue that
12 Dr. Rinard identified as being in dispute was not in
13 dispute after all.

14 Google told you next that it was taking a
15 different approach by going in another direction. And the
16 primary way that they did this is by showing you these
17 boxes. You saw them many times over the course of the
18 trial.

19 Now, surely Google didn't think that you all
20 were going to believe that this case was just about these
21 boxes and these diagrams after all this time. This is a
22 very simplistic approach to trying to present what is at
23 issue in this case.

24 And what did Google tell you? They said Arendi
25 follows Approach 1, and we do it Approach 2. And we have

1 a tool that sits outside and away from the applications,
2 totally apart from them. That's what they told you.
3 That's what they showed on you this diagram. But then you
4 heard from their own witnesses, their own executives, and
5 their own expert that that is really not the case at all.

6 You heard from Mr. Elbouchikhi, Google's
7 director of product management, and he testified about
8 this document where it says the Android framework code
9 runs inside an apps' process, not out here, but inside the
10 apps process.

11 And when he was asked under oath about this
12 interaction between the Android framework code and the
13 applications, he had to admit the processes run together
14 for a period of time. Again, not a tool out here, and
15 applications over there, they must run together to enable
16 the functionality in the application, and that is where
17 it's happening.

18 Mr. Toki, he is the software engineer at
19 Google, played a critical role in STS. He came here from
20 London, and he testified as well that once you have the
21 TextView inside the application, in the app, that that
22 will eventually lead to the features like Smart Text
23 Selection. It starts in the app. It is in the app. And
24 that is Mr. Toki's own admission under oath before you
25 all.

1 And, finally, Google's corporate
2 representative, Mr. Choc, he talked about Chrome, which is
3 one of the applications accused in this case. And he said
4 the code for Chrome, it calls the APIs for Smart Text
5 Selection. What does that mean?

6 His testimony again is, it starts in the app.
7 The app is what is central here. It is reaching out. It
8 is grabbing the Smart Text Selection as a tool. But it is
9 the app where the functionality is being used.

10 All consistent testimony from all of Google's
11 executives that were brought here to talk about how the
12 system actually works.

13 And as you heard in Dr. Smedley's testimony, he
14 told you that the diagram that you had been shown with
15 these boxes is really not accurate. And that's what the
16 Google witnesses themselves said. So Dr. Smedley is not
17 saying something different.

18 He said, well, the Smart Text Selection that
19 we're talking about, it doesn't sit out somewhere on its
20 own. It doesn't do anything sitting out on its own. It
21 has to be inside an app in order to do anything at all.

22 What he did, is he drew these lines to show you
23 the way in which that tool and the Smart Text Selection
24 feature, which is a functionality that's accused in these
25 applications, how that comes back to the application. He

1 did that before he even heard the witnesses that Google
2 brought to this court to testify. And their testimony is
3 absolutely consistent with what Arendi's expert said.

4 And, in fact, Google's own expert, Dr. Rinard,
5 he landed in the same place. He says nothing happens
6 without the app around it. The code, the Android
7 framework -- nothing happens until the app is around it.
8 It is critical. And that is what we are talking about
9 today.

10 Dr. Rinard also recognized that they are not
11 separate. You need them both. So the app is what is
12 calling out to the framework. It's coming in to the
13 application. And that is exactly what the diagram fails
14 to show.

15 Now, these applications that are accused in
16 this case, they pull a lot of tools from the Android
17 framework. And if they didn't do that, they would be not
18 operational. You'd have Gmail with no messages. You
19 you'd have Calendar with no entries. You'd have Google
20 Maps with no maps.

21 The point is, the applications are there. They
22 pick up tools from the Android framework, but they operate
23 in the application.

24 And under Google's theory, you would have
25 applications that didn't do anything if they weren't able

1 to go pick up tools from the Android framework. It
2 doesn't change that they're applications just because they
3 go and get a tool. They need them to function. And they
4 use them to be able to pick up the Smart Text Selection
5 functionality that is accused in this case.

6 Dr. Rinard said the same thing. You can't have
7 a workable product with the way the current Android
8 platform is set up without being able to go pick up a
9 tool. You'd end up with what I just showed you, devices
10 and applications that didn't have anything on them. And
11 he said again, it doesn't happen without the app. You
12 need both.

13 So again, where does that leave us? We come
14 back to the approach that Google said it was taking, where
15 there was a box out here and applications out here, and
16 it's just not the case. Every witness has testified
17 consistently that is not the case. That is not what is
18 happening. And the functionality that's being accused is
19 absolutely part of the application.

20 Now, recognizing that maybe this argument --
21 and I'll tell you one other thing. This idea about there
22 being an operating system, that's not unique to Google.
23 Apple has an operating system, and Samsung has an Android
24 operating system. Apple has iOS. Microsoft has a word
25 operating system. They all have operating systems. It

1 doesn't mean they don't infringe or they don't use the
2 patent.

3 I urge you to use what you've been instructed
4 to do, your common sense, your everyday experience. This
5 is not a defense to infringement in this case.

6 I think that when Google started this case,
7 they anticipated that we would say this different approach
8 argument doesn't work. So they told you something else.
9 They said, if Arendi can show that its patents cover the
10 Google products, well, then the patent's invalid.

11 And this is a little bit of a "heads, I win;
12 tails, you lose" approach. If the patent covers the
13 products, well, then the patent has to be invalid.

14 I really hope that we can walk through exactly
15 how Google has come to this argument, because when they
16 started last week, they told you something different.
17 They actually said that CyberDesk and Apple Data
18 Detectors, the two big systems they're relying on -- they
19 told you a week ago, that they were different than the
20 Arendi approach. If they're different than the Arendi
21 approach, then they can't invalidate the patent. That's
22 what they told you a week ago Monday.

23 Dr. Fox, their invalidity expert, he took a
24 different approach. He said, well, no, the CyberDesk
25 system invalidates the patent.

1 I want to talk to you about this system. It is
2 Google's burden to prove their is a system, to start,
3 before then showing, by clear and convincing evidence,
4 that it invalidates the patent. That is their burden.

5 But you heard Dr. Fox, there is no system.
6 He's unaware of when it was last available. It was done
7 more than two decades ago. It's -- the system doesn't
8 exist. He didn't examine it because there's no copy of it
9 that exists today.

10 And as with the other Google experts you heard
11 from, he has no answer for you. Where is the system? And
12 how could he rely on a system that he couldn't see?

13 He said that once he realized it didn't exist,
14 he didn't investigate further.

15 I want to remind you that, you know,
16 Dr. Smedley did this claim-by-claim-by-claim analysis.
17 That is what Dr. Fox should have done, but with a higher
18 burden because he's trying to invalidate the patent. But
19 that is not what we got.

20 We heard him say that we should rely on a
21 system, a phantom system that existed. He's never seen
22 and maybe it was available 25 years ago, and that should
23 invalidate the patent.

24 He was very careful to say, "The system. Why?"
25 Because the articles around the system, he admitted that

1 those do not anticipate the patent. He was asked, "You
2 agree that the capabilities disclosed in these
3 publications on the face of the CyberDesk, on the face of
4 the '843 Patent -- you agree that those publications don't
5 anticipate the patent, correct?"

6 And he said, "It's the system that I'm arguing
7 it's anticipating, right. Not the publications."

8 So he's relying on a system. All those
9 articles that he looked at, we showed you, that Dr. Dey
10 testified about, he doesn't say those anticipate the
11 patent. And he couldn't. They're on the face of the
12 patent.

13 The examiner studied all of those articles
14 about CyberDesk before it issued the patent in this case
15 in 2011. Examiner had before it all of the articles. It
16 had the website link. It had before it extensive
17 information about CyberDesk. And it -- the Patent Office
18 elected to issue the patent anyway.

19 And that is why Dr. Fox is trying to say
20 there's something else you should think about, this
21 system. But he can't tell you what it is, he can't tell
22 you where it is because it doesn't exist.

23 And the CyberDesk system, or that he says now
24 has something else, it's important know that in 1999, it
25 lacked a full e-mail client that could edit text. That's

1 really important, because there is no distinction there.
2 There's nothing in this system that shows that it was
3 doing what was in the Arendi patent.

4 You can see here, a document -- you'll have
5 this back before you, DTX-28, and it's talking about
6 desktop services to be added. They're not there in the
7 1999. This is something they think they might add in the
8 future, which is to have a full e-mail client with
9 editable text. Somewhere down the road, they might add
10 it. But in 1999, it wasn't available. And it can't
11 invalidating when it is missing critical features like
12 that at the time that CyberDesk was available.

13 Dr. Fox then says, well, if CyberDesk doesn't
14 anticipate, you can also look at these combinations. A
15 little bit of this and that. You heard Dr. Sacerdoti say,
16 that's not the right way to do it. You can't just -- it's
17 not a grab bag and pick little pieces and cobble them
18 together to invalid the patent. It doesn't work that way.

19 But let's look at what Dr. Fox is even relying
20 on. He then talked to you about this Apple Data
21 Detectors, another system. Where is that system? He said
22 that it was on a laptop. It was added to that laptop in
23 2014, years after the patent issued.

24 And Dr. Fox has no way of telling you when that
25 software was developed, when it was actually properly

1 available, the chain of custody of that. He is relying on
2 Mr. Miller, a former Apple employee, who said that he put
3 together the laptops years after the patent issued during
4 litigation.

5 That is not enough for Google to meet its
6 extraordinary burden to show clearly and convincingly that
7 there is something that invalidates this patent. He's
8 simply relying on Mr. Miller's testimony without doing any
9 investigation himself as to whether this system existed,
10 what was in the system, and whether it was available
11 before the patent issued.

12 And, again, Apple Detectors -- Apple Data
13 Detectors, whatever it is, it was an Apple product. You
14 saw the Apple witness, you saw the presentation at
15 Macworld. Surely Apple was aware of that. And it was
16 aware of it when it took a license to the Arendi patent
17 portfolio. It knew about it. That's its product.

18 If this was such a slam-dunk argument about
19 invaliding the patent, would Apple have paid to license
20 the patent, or would it have said, look, we had Apple Data
21 Detectors and we did it first?

22 Dr. Fox also noted -- and we'll look at -- we
23 heard the testimony from Mr. Miller -- every publication
24 that Mr. Miller talked about in his testimony is on the
25 face of the patent. What does that mean?

1 It was before the Patent Office, before the
2 patent was issued in 2011. The Patent Office had before
3 it extensive information about Apple, the Data Detectors,
4 and still issued this patent with the presumption that the
5 patent was valid.

6 Dr. Fox also, and you heard Google and you'll
7 hear Google talk about Microsoft Word. There are 27
8 references to Microsoft Word on the patent, meaning that
9 the Patent Office looked at Microsoft Word and it looked
10 at whether that, too, was invalidating prior art. The
11 Patent Office has the ability to put together all these
12 combinations. It has the ability to look at system.

13 It considered a wealth of information before
14 deciding the patent should issue as something new and
15 novel with a presumption of validity.

16 Of course, when Dr. Fox was asked if he had
17 gone through all the references cited on the face of the
18 '843 Patent, he admitted he did not. And, yes, it's a
19 huge volume, because what Arendi put before the Patent
20 Office and what the Patent Office reviewed to issue this
21 patent was extensive and they spent years reviewing it.

22 Dr. Fox, he said, "I didn't review all the
23 documents. That would have taken months and months."
24 Another example of Google's expert not having an answer
25 for you.

1 He said he looked at what was given to him by
2 the attorneys, and he didn't have a reason and felt no
3 need to go investigate further to give you the answer
4 about whether those references on the face of the patent,
5 all of those references, were considered and how they were
6 considered by the Patent Office.

7 You heard from Arendi's expert, Dr. Sacerdoti,
8 who said and told you that, even though there's all these
9 presentations of these bits and pieces, that is not
10 enough. You need to show that there would be a motivation
11 to combine them in order to create something that would
12 invalid the patent.

13 And what he found was the opposite. The Apple
14 Data Detectors system and the CyberDesk system were going
15 in different directions. And so a person of ordinary
16 skill in the art, they wouldn't look at those two systems
17 say, "How do we combine them?" They'd say, "Well, these
18 are different from one another; we're not trying to
19 combine them."

20 And that's a fatal, fatal to the question of
21 whether Google has met its burden to show obviousness of
22 the patents. You must show that there was a motivation to
23 combine these different references. Google couldn't do
24 it, and, in fact, that evidence was disputed by
25 Dr. Sacerdoti, who is the person of ordinary skill in the

1 art in this field.
2 You have heard in the jury instructions about
3 the burden that Google bears on trying to invalidate this
4 patent, clear and convincing evidence, highly probable
5 that the facts underlying that are true. The fact that
6 there's a system, that the system does what Google says it
7 does when nobody has seen that system.

8 And again, I would ask you all to consider your
9 own life experience, common sense. This patent has been
10 around for 12 years now. It has been through litigation.
11 It has been involved in licensing with many other
12 companies, savvy technology companies. After all this
13 time, has Google come up with something new to try to
14 invalidate this patent? They have not. They have brought
15 you right back to where the patent started in the Patent
16 Office looking at the same thing the patent examiners did.

17 They want you to believe the Patent Office made
18 a mistake and that everybody else along the way missed it
19 too. And that's simply not the case. The patent stands
20 after all of this time. It has withstood the test of
21 time, and it remains valid.

22 If you find -- and you will have the verdict
23 form before you as to these questions. There are two
24 questions on invalidity. You will be asked: Was the
25 invalidated as anticipated by the prior art? And was it

1 invalid as obvious in view of prior art?
2 And we submit to you that the answers to all of
3 those questions should be, "no." There is nothing to
4 demonstrate by clear and convincing evidence that the '843
5 Patent has been validated by what Google has put before
6 you in this trial.

7 If you find the patent has been infringed and
8 it is not invalid by -- Google has not proven, met its
9 burden, you will also be asked whether or not that
10 infringement was willful? Was it intentional? And was it
11 deliberate?

12 A lot of the facts that you heard about this
13 are unrebutted. It is unrebutted that Arendi filed suit
14 against Google and put it on notice of its claims back in
15 2013 and that Google released its Smart Text Selection in
16 2017. You heard from Google's corporate representative
17 that the complaint that Google filed in 2013, it referred
18 to Gmail and the Google -- other Google products way back
19 in 2013.

20 And in 2017, when Google launched and released
21 the Smart Text Selection feature, it knew about the '843
22 Patent. It had known about it for years. There was
23 someone on the Google legal side aware of this. And they
24 understood the accused technology in this case, released
25 in 2017, and at the time it was released that Google had

1 knowledge of the '843 Patent. That's right, Google legal
2 would have known. That's undisputed that at the time that
3 the Smart Text Selection functionality was released, that
4 Google had knowledge and would have known of the patent,
5 the asserted patent here.

6 What did it do? Did it go find another path, a
7 different path? Google offered no evidence of that. When
8 asked, its corporate representative said that he couldn't
9 provide guidance on that. He was asked, "Did Google try
10 to develop an alternative to avoid infringing the '843
11 Patent?" He had no facts to offer about what Google did
12 or could have done.

13 He was asked whether, in 2017, when Google
14 released its Smart Text Selection feature, did it have a
15 reason to think that the patent was valid -- invalid. And
16 he couldn't point to any facts.

17 So in 2017, when Smart Text Selection is
18 launched into all of these Google applications, Google
19 didn't look for a way to avoid infringing, and it didn't
20 have a basis to believe the patent was invalid.

21 As you heard -- and you -- as you heard in the
22 Court's final instructions, there are a list of factors to
23 consider. And what we've heard about are directly related
24 to those factors.

25 Did Google act consistently with the standards

1 of behavior for its industry, technology industry, where
2 others pursue and take licenses? Did Google reasonably
3 believe it did not infringe the patents or that the patent
4 was invalid? You heard corporate testimony that they
5 didn't have any of those beliefs at the time they launched
6 STS in 2017. Did Google make a good faith effort to avoid
7 infringing the '843 Patent by like trying to design around
8 it, figure out a way not to use it? Google could offer no
9 fact showing that it did this.

10 These are the factors to consider whether, when
11 Google launched the Smart Text Selection in 2017, not only
12 did it infringe, but that its infringement was willful.

13 The timeline is clear on this. You will be
14 asked in Question 5 of the verdict form: Did Arendi prove
15 by a preponderance of the evidence that Google's
16 infringement of any of the claim of the '843 Patent was
17 willful? And, again, given the unrebutted, undisputed
18 evidence in this record, we believe the answer to that
19 should clearly be yes.

20 Finally, Google told you that, even if the
21 patent is valid, even if the patent is infringed -- and it
22 must assume that for purposes of coming up with a damages
23 number -- even with all of that, the amount that Google
24 should have to pay is \$500,000. And it's shown to you all
25 this chart, and it pointed to the other settlements, and

1 it showed Google's damages claim from Arendi in this case
2 relative to those.

3 What it didn't include in this chart was its
4 own rebuttal damages number and how that stacks up against
5 the license agreements Arendi has received from other
6 major players in the technology industry and its damages
7 number in this case.

8 And when Google's expert yesterday, when he was
9 talking about these different numbers, he made them sound
10 like they should all be looked at the same way, the three
11 settlements and the damages number in this case. But as
12 he admits, settlements are just that. They're a deal.
13 They are a discount to avoid continuing with litigation to
14 avoid the risk, to avoid having to proceed all the way to
15 trial like we are today.

16 And Mr. Weinstein explained to you that
17 real-world negotiations where you end up settling
18 something in a license, they are always going to have a
19 lower outcome than a hypothetical negotiation. The
20 hypothetical negotiation, you have to assume the patents
21 are valid and infringed.

22 And Mr. Kidder, Google's damages expert, he
23 agrees that's the same thing. There's always going to be
24 a downward pressure on a settlement agreement compared to
25 what they're supposed to assume for damages.

1 prorating methodology." I agree with that. And when he
2 compared his unit counts of the downloads to
3 Mr. Weinstein's, he said, "It's a one-to-one match." He
4 agreed with that.

5 Google's expert recognized -- the only
6 difference they had in how they were using that
7 installation data is the start date. He says it should be
8 from December; Mr. Weinstein says it should be from
9 August 2017.

10 But the key point, ladies and gentlemen, is
11 that there's no flaw in the data when their own expert,
12 who could have asked, who could have raised concerns, who
13 have asked for alternative data; he didn't. He relied on
14 it. He has no answer for you, again, about why there's
15 some problem with the very data that Google produced in
16 its case.

17 And I would say to you that that is not a fair
18 way to play, to hand over data and to say, "This is the
19 data that we're going to provide to you about what we do
20 internally at Google," and then turn around say, "Well,
21 you can't rely on that. There's some problems with it."
22 That is not a fair way to play the game. That is data
23 solely in the control of Google.

24 And when Google's corporate representative was
25 asked about it, he said he doesn't know if there's other

1 Mr. Weinstein accounted for that discounting;
2 Mr. Kidder did not when he came up with his \$500,000
3 damages number in this case.

4 There were a lot of issues by Google throwing
5 up what I would consider clouds of dust about whether or
6 not the multiplier was okay, whether the apps install base
7 was okay, whether the start date was right. Challenging
8 even whether another license agreement with Samsung
9 relieved them of some damages. Many issues and questions
10 that Google raised. But I want to focus on three that I
11 think are very tell in this case.

12 The first is that Google challenged the data
13 that Arendi's expert, Mr. Weinstein, relied on. He looked
14 at the number of downloads, the hundreds of millions of
15 downloads of the accused applications on Android devices.
16 That's what Mr. Weinstein looked at, and Google implied
17 that there was something wrong with that. Maybe that data
18 wasn't right, the very data that it supplied.

19 And Google's expert raised questions about it,
20 too, during his direct examination. He did that, but as
21 became clear when he was examined on cross, he relied on
22 the exact same data for his analysis. He took those
23 downloads and he used it to apportion the revenue that
24 Google makes on these applications. It's the same data,
25 and he relied on it himself. He said, "We used the same

1 data available. He didn't ask the Play Store. There
2 could be reasons that it's available, and there could be
3 reasons why it's not. He wasn't able to get that
4 information, even though he is the corporate
5 representative that came from California to testify.

6 So I would submit to you all that the data that
7 Google provided for Mr. Weinstein, for Mr. Kidder to rely
8 on, is the best available data. That's why they produced
9 it. And if there was something else, there some reason
10 not to rely on it, they could have made that available and
11 known before.

12 And you'll see here, just as Mr. Kidder
13 testified, a one-to-one match for 2018 in the units and
14 the installations of the Android applications that were
15 downloaded. One-to-one.

16 In 2017, there's a difference because
17 Mr. Kidder starts in December and Mr. Weinstein starts in
18 September. There's no dispute that the underlying data is
19 the same, and it is relied on by both of them.

20 The next issue that I want to raise is with
21 respect to what Mr. Kidder did rely on. And I'm going to
22 ask the Court if -- so I don't publish this on the screen,
23 if you could.

24 Since we're not sealing the courtroom, I'm not
25 going to say these numbers out loud, but I wanted you to

1 have a copy of them because Mr. Kidder said he got revenue
2 information from Google for each of the applications. And
3 one of them was Chrome. And that's what you have before
4 you. This is the revenue data he said he got from Google.
5 And I ask you, again, to look and to apply your own
6 understanding, because the last number there, the revenue
7 is negative. Not the profitability, the revenue. And it
8 doesn't make any sense at all how Chrome, an application,
9 a popular web browser used and for which advertising is
10 served alongside with it, could have negative revenue.

11 Again, we're not even talking about
12 profitability. Where did these numbers come from? How
13 could they be reliable for using a revenue apportionment
14 when Mr. Kidder didn't even ask the questions? It is a
15 web browser, and many of you know using them, advertising
16 is a critical part of what is served with those search
17 engines. It doesn't make sense. It defies logic to think
18 that Google is losing revenue on one of the cornerstone
19 features of its properties, its own browser.

20 Dr. Kidder -- or Mr. Kidder never asked the
21 questions. He doesn't have an answer for you. Did he dig
22 in to how these how Google generates revenue from its
23 applications? No, he didn't do it. He relied on the
24 summaries that he got from Google to come up with his
25 numbers. That is correct. That is what he said.

1 they said, "Our start dates are different. The product
2 was really released in December rather than in August."
3 In this case, Google entered into a stipulation in which
4 it said that Arendi could rely on representative products.
5 A representative product from August of 2017 that had the
6 applications that are at issue in this case on it working
7 with versions of Android 8.

8 It said, "You can use this, and then you can
9 use this to determine how the applications function on an
10 Android device." Now it says that that date isn't right
11 and we should look at a different date. But when Google
12 provides information, when it provides a representative
13 device that should be used for purposes of analyzing
14 infringement and the applications in this case, Arendi
15 should be able and entitled to rely on that stipulation.
16 And you'll have that back with you. It's PX-67A. It is
17 the stipulation that Google provided to us in this case.

18 That stipulation is consistent with
19 Dr. Smedley's testimony in this case. You can see that he
20 also concluded that infringement starts in August 2017
21 with the release of Android 8. He used the representative
22 products to test that out and to make a determination, and
23 he looked at Google presentations and Google
24 documentation. And those representative devices, by the
25 way, are going to be back with you in the jury room. They

1 He didn't make an effort to determine the
2 different revenue streams that Google might earn on its
3 accused applications. He didn't do it. He said he didn't
4 ask anybody, he didn't try or attempt to do it, even
5 though he has served as an expert for Google ten times, he
6 did not reach out to anybody to try to figure out what the
7 revenue base should be.

8 He didn't ask Google about advertising revenue
9 and whether advertising revenue was included in the
10 numbers like in the Chrome data you have before you. He
11 admitted he never asked those questions. He knows that
12 advertising data could be relevant. He mentioned that it
13 might be relevant to Gmail, but for these other
14 applications, he didn't look at it. He said, "I accepted
15 them at face value; I didn't try to understand the
16 components."

17 Again, no answer for you. And as you heard in
18 the jury instructions, expert testimony, these are people
19 who are supposed to be skilled, who are there to offer an
20 analysis of facts that they want and investigated in an
21 unbiased fashion. Mr. Kidder did none of that like
22 Google's other experts. He relied on data provided to him
23 by Google without questioning it, and, again, if you look
24 at the numbers, they simply don't make sense.

25 Google then offered yet another argument, and

1 are PX-456 and 458.

2 Dr. Smedley did the work. He established when
3 an appropriate date to consider damages and infringement
4 would be, and it was August 2017. Google is trying to
5 change the playing field again by saying now the date
6 should be later. It should December. Maybe it should be
7 2018, pushing it out further and further, when, during the
8 course of this case, they made clear that Arendi could
9 rely on their representations about a representative
10 product that was released in August of 2017.

11 Google also wants to say that Arendi's damages
12 against it should be limited because of an agreement that
13 [REDACTED]

14 [REDACTED] And you heard testimony from Mr. Hedloy for
15 the obvious point that [REDACTED]

16 [REDACTED] Why would it do that when it was in
17 the middle of litigation with Google? It wouldn't. And
18 it didn't.

19 And Mr. Hedloy's testimony is the only
20 testimony you're going to hear from a party to that
21 agreement. [REDACTED]
22 Mr. Hedloy was. He was part of the negotiations of the
23 Samsung-Arendi license, and he knows what was covered and
24
25

1 not covered.

2 Arendi's expert, Mr. Weinstein, who has

3 experience with dozens of license agreements, maybe

4 hundreds, he testified that he would expect to see

5 [REDACTED]

6 [REDACTED] So

7 again, the [REDACTED]

8 [REDACTED]

9 Finally, Google said that there -- and Google

10 itself, by the way, admits [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 In this case, Google is trying [REDACTED]

15 [REDACTED] the agreements that

16 it reached.

17 Finally, Google says that there are other ways

18 that it could have implemented the technology. And you

19 heard in your instructions about this concept of a

20 non-infringing alternative. Google is going to say they

21 could have used an older methodology instead of the Smart

22 Text Selection feature. But their own expert said it was

23 not good. It had limited utility. And Google's own

24 developers were told to stop using Linkify, which is what

25 they say was an alternative to the Smart Text Selection

1 be considered in this hypothetical negotiation that

2 happens between Arendi and Google, different than the

3 settlements between Arendi and Samsung and Apple and

4 Microsoft.

5 And they're probative. They are highly

6 relevant, but they need to be modified to address what

7 happens when the parties agree the patent is valid and

8 infringed. That's the analysis Mr. Weinstein did in this

9 case.

10 He then looked at the installed application

11 units to figure out a per unit and per device rate.

12 48 cents per device for the phone devices, the Pixels.

13 And you see the total number he reached for the devices,

14 1,155,235.

15 And then he did an analysis for the

16 applications, for 10 cents, a dime, per downloaded

17 application. And the installed applications, again, those

18 are the same numbers Mr. Kidder relied on. Mr. Weinstein

19 applied a dime, a 10-cent per unit royalty, and came up

20 with 44,349,601 for that portion of the damages.

21 Taken together, Mr. Weinstein put together

22 total damages of 45,504,836. And that's the question you

23 will be answering on the verdict form Number 4, the amount

24 of damages that Arendi has proven by a preponderance of

25 the evidence that it is entitled to as a reasonable

1 accused functionality in this case.

2 It's absolutely not an alternative. When you

3 tell your developers to put it down, it's not a viable

4 alternative, and it wasn't, which is why Google wanted to

5 move on to something new.

6 On damages, you heard Mr. Weinstein's testimony

7 about the license agreements in this case. In lieu of

8 publishing those numbers, we're going to pass the slide

9 out that has them on there.

10 **MR. UNIKEL:** And, I'm sorry, may I get a copy

11 as well, please?

12 **MS. SRINIVASAN:** Sure.

13 You heard Mr. Weinstein analysis of how he used

14 these three license agreements, these three settlements.

15 He took into account that they were settlements, and he

16 thought about what would happen if you had to assume they

17 were valid and infringed. And that allowed him to modify

18 the numbers in those agreements to make them

19 apples-to-apples, to make them consistent with the

20 hypothetical negotiation that has to happen for damages in

21 this case. Not a settlement where validity and

22 infringement are disputed, but a hypothetical negotiation

23 where everybody agrees the patent has been infringed and

24 it's valid, and people are willingly licensing. That is

25 what you were instructed on earlier today as to what must

1 royalty.

2 I want to very quickly leave you with just a

3 few thoughts. One is that you heard from Google itself,

4 doesn't matter whether a company makes a product for its

5 intellectual property to be infringed. Somebody can step

6 on your property whether or not you have a product. He

7 acknowledged that. That's a true fact. That is an aspect

8 of the law.

9 Second, valuable patents can come from

10 anywhere. They can come from big companies. They can

11 come from small companies. They can come from inventors.

12 And it doesn't matter as between those two, the fact that

13 the invention is important, useful, and new, that is what

14 gives it its value, not who it comes from.

15 And finally, you heard Mr. Elbouchikhi say, if

16 you do something great, you should be paid for it. And

17 that is what Arendi is seeking here. Mr. Hedloy invented

18 something great 25-plus years ago. It stood the test of

19 time. It proved to be valuable through its life. And, in

20 fact, companies are still using that technology today, but

21 now he has made it available to the world. That's the

22 trade-off he made with the Patent Office.

23 But he invented something great, highly

24 valuable, useful, and that was recognized by Microsoft,

25 Apple, and Samsung, and should be recognized by Google in

1 this case.

2 We thank you for your time and appreciate your

3 attention to help holding Google accountable for paying

4 its fair share for its use of the '843 Patent. Thank you.

5 **THE COURT:** Thank you. Ms. Garfinkel, can we

6 collect the demonstratives from the jury.

7 You may proceed, counsel.

8 **MR. UNIKEL:** Thank you, Your Honor.

9 Good morning, everyone. I think we're still

10 morning. Before I begin, I wanted to thank all of you for

11 your time and attention over the last week. I know it's

12 been a long ten days. I know you've heard a lot of facts,

13 a lot of evidence, some of them many, many times. But

14 your focus, your hard work I know is appreciated by

15 everybody in the courtroom, especially by me and everybody

16 on the Google team. So, thank you.

17 Last Monday -- let me get my clicker -- I asked

18 you to focus on one question as were you listening to all

19 the evidence over the last week. What exactly did Arendi

20 invent? If you think back to the testimony of Mr. Hedloy,

21 to the opening statement with pictures of Mr. Hedloy in

22 his Harvard dorm room, I think you're going to find it

23 difficult to put your finger on what exactly Mr. Hedloy

24 came up with that was new, that was different than

25 CyberDesk, than Apple Data Detectors.

1 And then you heard from the designer himself.

2 You saw the website. It's not a phantom system. It was a

3 real system that was displayed for more than two years

4 before the patent application was filed.

5 The Apple Data Detectors was demoed at Macworld

6 in August of 1996. Again in January of 1997. You saw the

7 system in action. It wasn't a phantom system.

8 These were long before Mr. Hedloy says that he

9 even thought about the idea of OneButton Contact Manager.

10 So once again, I want to ask you to take a

11 moment and really ask yourselves: What exactly did Arendi

12 invent? What was new?

13 I'm confident that, based on the evidence that

14 you've heard over the last week, you now understand that

15 the only thing that Arendi can even possibly point to in

16 the patent claims to say it was somehow different from

17 CyberDesk, or different from Apple Data Detectors, are the

18 elements that require the first computer program to do

19 three very specific things. And they're called out

20 expressly in the patent.

21 The first one is to display the document. The

22 second one is to set up the input device. The third is to

23 receive the user command from the input device and cause a

24 search.

25 Over the last week, Arendi itself, you saw, had

1 We certainly know that Arendi and Mr. Hedloy

2 did not invent the idea of shortcuts, they did not invent

3 the idea of analyzing text, of finding names, e-mails,

4 phone numbers, street addresses, because you saw these

5 exact types of shortcuts had already been disclosed and

6 were well trod ground in CyberDesk, for example. Here is

7 just a screen shot from March of 1997.

8 And we know that the same types of shortcuts

9 and more were publicly disclosed by Apple Data Detectors

10 in 1996, 1997. You saw the videos yourself that showed

11 how it analyzed text, how it found the information, how it

12 looked up additional information, how it put it in a word

13 processor. You even saw how Apple Data Detectors could

14 implement the exact same write-a-letter feature, put an

15 address in a word processing feature, that appeared in the

16 one example that is in the patent itself. Here you see on

17 the screen the result of the write-a-letter feature from

18 Apple, which was almost a year and a half before

19 Mr. Hedloy ever filed the U.S. patent application. And

20 the figure from the patent itself.

21 And just to remind you, CyberDesk was publicly

22 demonstrated starting in the fall of 1996 at demo days, at

23 conferences, through papers. When they say there was no

24 system, they also point to you all of the papers that were

25 delivered about the system.

1 emphasized the critical importance of this first computer

2 program element to the Patent Office in trying to get the

3 patent issued in the first place.

4 You saw Arendi's clear statement in the

5 Accelerated Examination Support document, the document

6 that Mr. Hedloy specifically told the patent examiner he

7 should read because it was of particular interest.

8 And he explicitly told the Patent Office about

9 Apple Data Detectors. For example, that it did not

10 disclose configuring -- providing an input device

11 configured by the document editing program, the same

12 element that you see in the claims, because ADD itself is

13 a part of the operating system, and is a part of the

14 operating system which is separate from the document

15 editing program. ADD does not do what the claims require

16 because it was part of the operating system.

17 You saw that Arendi, when trying to get the

18 patent, made a very similar statement about CyberDesk. It

19 says, CyberDesk is separate from the document editing

20 program.

21 So Mr. Hedloy confirmed to the Patent Office

22 and made very clear that in order to get his patent, the

23 first computer program elements were the key. They were

24 what supposedly differentiated his invention from Apple

25 Data Detectors and CyberDesk.

1 You may recall that Mr. Hedloy expressly
2 testified that his claim is focused on the invention where
3 the first computer program is configuring the input
4 device.

5 In fact, Mr. Hedloy agreed that there's a
6 particular advantage to having the configuring of the
7 input device done by the first computer program, as
8 opposed to having it done by the operating system.

9 You'll also recall that Mr. Hedloy specifically
10 acknowledged that one of the advantages of having the
11 first computer program receive the user command was that
12 the programmer of the first computer program could have
13 control instead of putting the control into the operating
14 system or whoever was designing the tool in the operating
15 system.

16 So if Arendi invented anything -- which, as
17 you've heard, is one of the key questions you're going to
18 be asked to answer in the next few hours -- is to take --
19 is to put well-known shortcut tools inside a word
20 processing program or spreadsheet program. There's
21 nothing else that the claims even arguably specify that
22 could have been new in 1998.

23 And this is consistent with the only example
24 that Mr. Hedloy gave of his invention in the patent, his
25 OneButton Contact Manager product. You see a picture of

1 see how it operated.

2 Make what you will about the fact that Arendi's
3 own lawyer seems to think this is an indication of
4 something significant. But the reality is, is Mr. Hedloy
5 did not save that, not even a single copy of it for you to
6 look at.

7 But what we know for certain, even without a
8 working copy of the product, is that it was built to work
9 with only one program, Microsoft Word.

10 By contrast, you've heard now, time and time
11 again -- and you've seen Google's design documents, you've
12 heard from their engineers -- Google went in a different
13 direction, then putting the instructions in a single
14 program. Google created Smart Text Selection to be
15 separate from any individual program. The entire point of
16 Smart Text Selection, as you have heard, is to make sure
17 it could be used by many different applications, as
18 opposed to just one.

19 Google's approach and Arendi's approach are not
20 just opposite, they're actually incompatible with one
21 another. If you take the instructions and you put them
22 inside of one program just to serve that one program, it's
23 not possible for it to serve many others. And if you
24 deliberately make it able to serve many others, it will
25 never be captive or just for a single program.

1 it here from the patent.

2 There is no dispute that Mr. Hedloy created
3 this program exclusively for Microsoft Word using a tool
4 from Microsoft Word called "Visual Basic for
5 Applications." A language that they provided.

6 Mr. Hedloy admitted to you that OneButton
7 Contact Manager could not operate in any other program or
8 with any other program other than Microsoft Word. And as
9 he also told you, it can only act on names. It couldn't
10 detect and act on phone numbers. It couldn't detect and
11 act on e-mails. It couldn't detect and act on street
12 addresses.

13 OneButton Contact Manager certainly could not
14 be used with any other program. It certainly could not be
15 used with many programs operating at the same time.

16 Consistent with the patent claims, the
17 instructions for OneButton were entirely within Microsoft
18 Word. That was the testimony.

19 Interestingly, yesterday and a little bit just
20 before, Arendi's lawyer made a big deal about the fact
21 that the CyberDesk system is not in existence today, so
22 you couldn't see how it actually worked.

23 But you may recall that Mr. Hedloy told you
24 that he didn't save a single copy of OneButton Contact
25 Manager. Not a single copy of it exists today. You can't

1 You have to choose one path or the other.
2 These were two basic paths that were well known in the
3 art, but you have to choose one or the other when you're
4 designing a tool. Google went one way, and Arendi went
5 the other.

6 It's not just a clever slide with a car. It
7 really is the fact that Google took one approach that was
8 incompatible with the approach that Arendi chose in its
9 patent.

10 As we dig into the critical questions in the
11 case, the ones you have to answer for the verdict form,
12 let's start by looking at some of the key points that we
13 really don't have any dispute on. Arendi essentially
14 agrees with us on it.

15 First, everybody agrees that the claims require
16 you to look under the hood. And that's because the claim
17 specifies how the system must operate; not just what the
18 user has to see, how the system must operate.

19 Obviously, Arendi thought this was true,
20 because their own expert adopted that phrase in his own
21 testimony, and they agreed, just in their closing
22 argument, that we all do need to look under the hood.

23 So all the screenshots that show what a user
24 sees, that shows the menu bar on top of a screen, those
25 obviously don't tell you what's under the hood. We all

1 agree: You've to get into the system, you've got to look
2 at the code, you have to really understand how it was
3 designed. It's not enough just to look and say, oh, it
4 creates a shortcut.

5 Second, the other thing that we now all agree
6 on is that in the 1990s, and today, there are two basic
7 approaches to creating a shortcut tool. One, is to put
8 the instructions inside a single program; the second, is
9 to put the instructions separate where it can help serve
10 all different programs at the same time.

11 Both of these approaches were basic. They were
12 well known in the 1990s, and well before. There is
13 nothing new or remarkable about either of these
14 approaches. Nobody in this courtroom invented these
15 approaches.

16 And, certainly, Arendi didn't come up with the
17 idea of Approach Number 1. It was just a question of, if
18 you wanted to create a shortcut tool, like a CyberDesk or
19 an Apple Data Detectors, do you put it in one program so
20 it's only usable by that one program, or do you let it do
21 a lot for a lot of programs.

22 Mr. Hedloy recognized these contrasting
23 approaches when he explained the important difference
24 between putting the instructions in the first computer
25 program or putting them in the operating system where it

1 could serve many programs.

2 Dr. Smedley was very explicit about
3 acknowledging that these were two different approaches in
4 his own recognition about the difference between putting
5 the instructions in a single program versus putting them
6 in the operating system.

7 And just yesterday, Dr. Sacerdoti pointed you
8 to the CHI March 1997 article which acknowledged the two
9 opposite approaches in the art. And as he confirmed for
10 you, these two approaches, to put the instructions totally
11 into one program or to keep them separate, were
12 acknowledged in 1997, and they continue to be acknowledged
13 today. He recognized that for you.

14 Furthermore, virtually every Google witness you
15 heard from -- Mr. Elbouchikhi, Mr. Toki, Mr. Choc,
16 Dr. Rinard -- they explained to you that the reasons,
17 there are real reasons why you choose one of these
18 approaches over the other.

19 In Approach Number 1, you would put the
20 instructions into a single program to create a customized
21 tool. If you want to have a tool that is only available
22 to your program -- and maybe that's a great selling point
23 for some reason -- that you can do that with Approach
24 Number 1.

25 But if you want to use Approach Number 2, the

1 reasons are -- that we're specified by the witnesses --
2 first, you can create a consistent experience across
3 different programs so everybody will get the same feature,
4 and it will look and work the same way.

5 Second, it's easier for app developers. Each
6 app developers doesn't have to write or put their own code
7 into their own program. They can leverage the common code
8 that exists in the operating system.

9 And the third is, you only need to update it or
10 fix it in one spot. If it's in a hundred different apps,
11 you've got to fix it or update it in a hundred different
12 apps. If it's in one spot in the operating system, you
13 only have to update the operating system version.

14 These are the reasons you choose Approach 2,
15 which Google did, as opposed to Approach 1, which
16 Mr. Hedloy did.

17 And, again, you know that Arendi was choosing
18 Approach 1, as opposed to Approach 2, when it was getting
19 its patent because it specifically told the patent that
20 the distinction between what Mr. Hedloy was suggesting he
21 invented and the Apple Data Detectors, was that Apple Data
22 Detectors was in the operating system. And because it was
23 part of the operating system, which is separate from the
24 document editing program, it did not meet the "setting up
25 the input device" limitation.

1 So the parties, at the end of the day,
2 essentially agree that there were two approaches. And
3 that Arendi's was different than the approach of putting
4 it in the operating system. It took Approach 1. It put
5 the instructions in a single program.

6 The next thing that we all agree on is that the
7 Court has given us a very specific definition of what
8 "computer program" means in this patent.

9 In lots of different ways, "computer program"
10 is a term that can be used in different ways, different
11 contexts. But in this patent, the Court has told us what
12 it means. It means "A self-contained set of instructions,
13 as opposed to a routine or library, intended to be
14 executed on a computer so as to perform some task."

15 Now, as the experts all recognized, some were
16 explicitly than others, it's not enough that there's a
17 group of different instructions that all work together.
18 It's not that it's mostly self-contained with some of it
19 being outside of the container.

20 In this patent, according to the Court's
21 definition, there must be a self-contained set of
22 instructions that performs the task. If you need
23 instructions in more than one place, you know it's not
24 self-contained.

25 So the question, of course, is, what's the

1 task? Right? What's the task that has to be performed by
2 the self-contained set of instructions?

3 Well, we know what the task is because the
4 patent tells us. The task for the first computer program
5 includes three things that it has to do. All of them has
6 to display the document, it has to set up the input
7 device, it has to receive the user command to cause the
8 search.

9 That's the task for the first computer program.
10 There must be a self-contained set of instructions that
11 does all three of those things.

12 As we'll talk about, even if you could say, oh,
13 well, maybe it does two of the three. That's not enough.
14 The task is to perform all three, and it must be a
15 self-contained set of instructions. The fact is that
16 there's different code that does each one of these things,
17 so there is no self-contained set of instructions.

18 The other thing that that we know -- and we
19 don't really disagree on at this point -- is that the
20 instructions for Smart Text Selection and for the intents
21 handling mechanism, are all located in the operating
22 system, in the framework code of the operating system.

23 Despite all the different theatrics at trial,
24 there wasn't any dispute about this point.

25 Mr. Toki, who is the Google engineer who

1 actually created this product, he designed it, he built
2 it -- he told you that he personally put the Smart Text
3 Selection code in the framework of the operating system,
4 and he explained to you why.

5 He showed you this diagram, from the time that
6 he was designing Smart Text Selection, that clearly shows
7 how he built Smart Text Selection code to be in the
8 framework so that it would be separate from the app, hence
9 the reason for two different color boxes.

10 And he told you that he wanted it to be
11 available to developers through something called a
12 "TextView," which is the screen that they use to display
13 text. And he said to you that he didn't want developers
14 to have to do any work at all; just to show their text and
15 then Smart Text Selection would be operable from the
16 operating system. That's how he created it. That's why
17 it's available to all the different apps.

18 Mr. Toki also explained to you that the intents
19 handling instructions are also in the framework. You saw
20 the documents that show there is not a single set of
21 instructions that even perform intents handling. There's
22 three separate set of instructions that you need.

23 Bless you.

24 Mr. Choc, the director of engineering who's
25 been here throughout the trial, had confirmed for you that

1 there are no instructions for Smart Text Selection in
2 Chrome. And he explained that the intents handling is put
3 in the framework deliberately.

4 Dr. Rinard told you something that nobody else
5 in the case bothered to analyze. He looked at, what is
6 the container for the app? The container for the app was
7 the APK, which was undisputed. The APK file contains all
8 the contents of an Android app.

9 And he was able to look, using a tool, the
10 package analysis tool that he showed you, to confirm that
11 none of the Smart Text Selection or intents handling
12 instructions are in the container for the app. He showed
13 you how -- where there was regular text that appeared for
14 something, that showed that there was no code inside of --
15 that there was code inside of the APK. And if you saw a
16 number in the "Defined Methods" column, that showed you
17 also, there was code running in the APK.

18 But when he went through all of the APKs for
19 all of the apps, what he saw was that the TextView, which
20 is the thing they're pointing to that has the Smart Text
21 Selection running on it, was in italic text, which showed
22 that it was not in the APK, it was running from an
23 external source.

24 And the fact there was no entry in the column
25 for "Defined Methods" confirmed there was no code, no

1 lines of code that were being run inside the app to make
2 that happen.

3 He did the analysis for you. He looked at the
4 containers. The code wasn't in there.

5 When Dr. Smedley himself, their expert
6 testified, for the input device step, what he cited to was
7 not app code, he cited to you Android framework code.
8 This is the code from Android 8.0.0. That's framework
9 code. He showed you for the same step in Android 9, the
10 framework code. This is not code that's in any one app.
11 This is code that's in Android, in the operating system.

12 And if there's any remaining doubt in your
13 mind, you need only consider the fact that everyone in the
14 case, every single witness in the case agrees, you need to
15 have Android 8 or Android 9 downloaded to your device to
16 make the apps work with Smart Text Selection. Why?

17 Because it's an Android where the Smart Text
18 Selection resides. If you didn't need Android -- if you
19 didn't have Android, you couldn't work Smart Text
20 Selection with any of the apps. It's Android that is the
21 key to the functionality. You need to have the app code
22 to display the document. You need the Smart Text
23 Selection code to set up the input device. It is not
24 self-contained.

25 And if there was really any shred of doubt

1 left, I want you to consider this one fact which should
2 make it clear. They are accusing 12 different apps in the
3 case. But they're only pointing to a single set of
4 instructions in the operating system for Smart Text
5 Selection. That's because Smart Text Selection serves all
6 of these different apps from its location in the operating
7 system.

8 If they could have pointed to just the code for
9 the apps, they would have. They can't because the code
10 for the apps doesn't contain Smart Text Selection. It
11 doesn't contain intents handling instructions. Those are
12 in the operating system so they can be used by all the
13 different apps.

14 So there's really no dispute at the end of the
15 day, that the instructions are in -- for Smart Text
16 Selection and intents handling are in the framework, and
17 then you've got a separate group of code for the apps.

18 And as you've seen, these various birthday
19 cake-colored diagrams over the course of the last week,
20 you've seen that this is how the operating system is set
21 up. And each different area of the operating system is
22 given its own color, so you can understand where it is.

23 This isn't just made up by us. This is actual
24 documents that are given to developers so they know where
25 to put code for different things.

1 And what you saw was that in the green
2 framework area, was the code for Smart Text Selection and
3 intents handling; in the blue area for the system apps,
4 was the code for the actual app for displaying. And they
5 are separate. If they were the same, they wouldn't be in
6 different colors. They would be called out in different
7 areas.

8 So what does all this mean for your analysis of
9 whether or not Google practices the '843 Patent claims?

10 Well, let's just briefly look at the elements
11 that are at the center of this.

12 As a starting point, we know that Arendi and
13 Dr. Smedley have specifically said to you that the app is
14 supposedly the first computer program. So that's what we
15 all agree. As a starting point for testing this, the app
16 is the first computer program according to Arendi. And
17 they've identified the app as being what displays the
18 document. On that, we all agree.

19 So we know that each app now has to be the
20 container that doesn't just display the document, it also
21 sets up the input device, and it also receives the user
22 command to perform a search.

23 So we next look at the requirement providing an
24 input device configured by the first computer program.
25 And, again, not to belabor the point, but we know from the

1 Court's construction that the first computer program must
2 be a self-contained set of instructions that performs the
3 task.

4 There can't be different groups of instructions
5 that work together. Again, there can't be a mostly
6 self-contained set of instructions. It has to be a
7 self-contained set of instructions.

8 If there is no self-contained set of
9 instructions, there is no infringement. It's as simple as
10 that. It's an easy question for you to ask yourself as
11 you contemplate infringement.

12 You've seen all the evidence. You know, as a
13 matter of undeniable fact, that in the Google products,
14 there is no single container. Not one that contains the
15 Smart Text Selection instructions, the intents handling
16 instructions, and the app instructions for displaying the
17 document. You need them all.

18 And if you need instructions from two different
19 places, you know they're not self-contained. That's sort
20 of the opposite of being self-contained.

21 Mr. Toki, Mr. Choc, Mr. Elbouchikhi explained
22 to you why Google set it up this way, why they wanted to
23 have separate instructions that could serve many apps,
24 rather than a single program that had one tool that was
25 specific to that one particular program. Google wanted

1 Approach 2. They wanted to keep theirs separate.

2 There is a broader point that I'd like you to
3 think about as you're deliberating as well. Google
4 brought here, for trial, the engineers and the product
5 manager who actually were responsible for building this
6 product, the way they designed it, the way they
7 implemented it, when they launched it, and why they
8 launched when they did.

9 And we brought them here so they could explain
10 to you the technical details of the actual product, and
11 when it exactly launched.

12 Arendi asked Google's witnesses very few
13 questions about the technical details of the product. And
14 they certainly did not want to get the accurate
15 information about when it became available to users.
16 Instead, Arendi spent a lot of its time asking the
17 engineers about legal issues.

18 And admittedly, as engineers, they are not
19 lawyers. They don't know about the patent issues. That's
20 not their role at Google. They were here to answer
21 questions about how they built the product. Why did they
22 design it the way they did? Why did they make the
23 instructions separate?

24 So when Arendi tells you that they also wanted
25 to look under the hood, I'll ask you whether that rings

1 true in light of the questions that actually asked of the
2 engineers; whether they wanted to know how the products
3 work or not.

4 Ultimately, Arendi and its expert tried to
5 confuse the issues and obscure the basic facts of how
6 things work. So let's look at how and why that is.

7 First, they tried to suggest because the apps
8 use what's called a "TextView" to display the text -- and
9 as we know, the TextView had the Smart Text Selection
10 functionality that was part of it -- that somehow that
11 caused the instructions for Smart Text Selection to be
12 pulled into the app. That it was -- essentially, they
13 became part of the app, I think was the word that their
14 expert used, when they were running.

15 You may recall that an effort to cause some
16 confusion about this, they tried to show Mr. Toki a black
17 and white version of this colored diagram that he had
18 discussed, to suggest, oh, the TextView is running inside
19 the app.

20 But Mr. Toki quickly had corrected them on that
21 and said, if you look at the colored version, what you see
22 is that the TextView is blue because it's part of the
23 framework code, and it's running at the same time as the
24 app, but it doesn't become a part of the app.

25 There's no magical cutting and pasting of the

1 Smart Text Selection instructions that causes those to be
2 pulled into every app every time it's running. That's
3 just not the way it operates.

4 And Mr. Toki explained to you that TextView is
5 also in the framework. And he used the colored diagram to
6 explain that it's the same color precisely because it
7 never becomes a part of the app.

8 And please remember, TextView is not Smart Text
9 Selection. TextView is the window that is displaying your
10 text. Smart Text Selection is essentially made a part of
11 the TextView, and as Mr. Toki told you, that means that
12 developers don't have to do anything, nothing, to get
13 Smart Text Selection to work on their apps. They just
14 have to go ahead and use a Text View and Smart Text
15 Selection would be operational on it.

16 But all apps were using TextViews even before
17 Android 8 or 9, and if you used it on an Android 7, you
18 wouldn't have Smart Text Selection because Smart Text
19 Selection wasn't in that Android framework.

20 How can Arendi honestly suggest that the apps
21 are somehow making a specific call-out to Smart Text
22 Selection to pull it into the app, when they don't even
23 call out to Smart Text Selection. They use TextView.

24 And as Mr. Toki -- he created Smart Text
25 Selection so that it would be separate, so the developers

1 didn't have to make any special arrangements in their app
2 to pull it up. It would be operational because it was
3 part of the operating system. It works with every app;
4 developers don't have to build it into their own app.

5 Now, the second way that Arendi, I think, still
6 tried to confuse issues is, even though they said they
7 weren't, they and their expert consistently tried to get
8 you to look at just what the user sees. How many videos
9 and screenshots did we see from Dr. Smedley in his five
10 hours showing what the user sees on the device? A lot.

11 And why? We've already talked about the fact
12 that what the user sees doesn't tell you anything about
13 what's under the hood; we all agree with that. The
14 critical question is, what instructions are causing these
15 things to happen, not what happens on the screen. And we
16 know where those instructions are.

17 Arendi and its expert finally suddenly suggest
18 that you can ignore the requirements that there be a
19 self-contained set of instructions because they point to
20 the fact that Smart Text Selection runs at the same time
21 as the app.

22 Arendi does this by pointing to
23 Mr. Elbouchikhi's testimony about his view of what happens
24 when the apps are running at the same time. Now, set
25 aside the fact that Arendi started its questioning of

1 Mr. Elbouchikhi by saying he was not a source code guy. I
2 think they said he was the commerce guy because he was the
3 guy in charge of deciding when the product would be
4 launched and under what circumstances it would be
5 launched.

6 Set aside the fact that Arendi didn't really
7 want to focus on Dr. Rinard's testimony, who made clear
8 that, in actuality, when the app and Smart Text Selection
9 are running at the same time, there's transfer in and
10 transfer out of information because they are not running
11 together, they are not actually run set of code, they're
12 two sets of code that are running alongside each other and
13 they have to communicate with each other. That's
14 certainly true.

15 But ultimately, Arendi's emphasis on this point
16 is nothing more than a distraction, and the reason is, the
17 critical question in the claims is, is there a container?
18 Is there a single container that does all three things:
19 Display the document, set up the input device, receive the
20 user command? Even if you could say that they were
21 running together and that somehow made them interact at
22 that moment in time when they are setting up the input
23 device, that, first, wouldn't create a container that they
24 would be part of.

25 And second of all, it wouldn't tell you that

1 they did anything on the intents handling part because the
2 intents handling part runs separately. There is not a
3 single container that does all three of the required
4 things, even if they try to convince you that they're
5 running at the same time. And, yes, they run at the same
6 time. That's why you get a menu bar that appears while
7 you are working in the document. But that doesn't mean
8 that the instructions are all in the same place.

9 And let's be honest, Arendi didn't even try to
10 identify a container for you. Right? They tried to say,
11 "Well, they run at the same time. They interact with each
12 other. They communicate with each other." But did they
13 ever say, "Here's the container. Look at this container.
14 It's in here that all the instructions are?" No, because
15 they can't. It doesn't exist.

16 We know the instructions for the Smart Text
17 Selection and Intents handling are in the framework. We
18 know the app code is in the APK. They're not in the same
19 container.

20 So ultimately, we know that the actual evidence
21 indicates that Google does not practice providing an input
22 device configured by the first computer program.

23 Now, there's one more element that is, again,
24 the third part of what the first computer program needs to
25 do. And that's in consequence of receipt by the first

1 computer program of the user command from the input
2 device, causing a search for the search term.

3 I'm not going to belabor this because we've
4 talked about it a lot, but you've seen the Google
5 documents showing that Intents handling instructions are
6 in the operating system -- you can see the purple box
7 here -- and those are responsible for receiving and
8 processing any user command that comes through the STS
9 menu bar.

10 And the Intents handling instructions are
11 ultimately responsible for deciding what's activity B,
12 what second program might get that intent. And then that
13 second program is the one that will decide, is a search
14 going to be performed, or am I going to be opening a phone
15 dialer, or what's going to happen? The app, which starts
16 at activity A, has no idea where that Intent is going to
17 go, how it is going to be processed, or what the end
18 result is going to ultimately be. It doesn't know, is
19 there going to be a searched performed or not a search
20 performed by the program that eventually receives it.

21 You heard from Mr. Toki that the Intents
22 handling instructions are deliberately placed in the
23 operating system framework precisely so they can be used
24 to service every different app that wants to use them.

25 Dr. Rinard took you through the instruction

1 involved in Intents handling that are in the operating
2 system framework, and Dr. Rinard and Mr. Choc confirmed
3 that a receipt of the user command by the app, by the
4 instructions that are in the APK, don't cause anything to
5 happen. The only way they cause something to happen is if
6 the Intents handling system in the operating system takes
7 that intent, does something with it, sends it to another
8 program, and then the other program makes a decision about
9 what to do with it.

10 Mr. Choc explained why Google doesn't want to
11 place the instructions for this into any individual app
12 precisely because you want to give users choice. You
13 don't want to give the app control over what other
14 programs might be able to run.

15 And even Mr. Smedley accidentally confirmed
16 that it's coded from the framework rather than coded from
17 the app that is involved in Intents handling. You might
18 remember this slide on the bottom right, which Dr. Smedley
19 had titled "Google's Public Source Code for Chromium," but
20 in fact, as Mr. Choc, who is the director of engineering
21 for Chrome, confirmed, this is actually code from the
22 framework. This is not code from inside Chromium.

23 Ultimately, there really is no dispute that the
24 Intents handling instructions are in the operating system;
25 they're not in the app. So when we look under the hood,

1 really look under the hood, it's clear that Google
2 products simply don't have a self-contained set of
3 instructions that do the three things that are required
4 for the first computer program; and, therefore, Google
5 does not infringe.

6 No matter how hard Arendi tries to twist the
7 facts, get you to think about them in a different or
8 confusing way, the simple truth is that Google adopted
9 Approach 2 in designing its products. It separated the
10 instructions so they could be used by many different apps,
11 not just one.

12 It's the complete opposite of Approach 1. To
13 give you the -- to bring you back to the example I used in
14 the opening, it's kind of the difference between a
15 restaurant that has a central kitchen where the central
16 kitchen is making food for all of the different tables, or
17 the Benihana restaurant of the world, where you have a
18 cooktop at the individual table. At the end of the day,
19 each diner get food on their plate, but the way it gets
20 there, the design of the restaurant is completely
21 different, as anybody who's seen the Onion Volcano before
22 knows, it's a different thing when the cooktop is at the
23 table than when you're dealing with a central kitchen that
24 is serving all the different tables at once.

25 And again, if you had any doubt that Google is

1 using Approach 2, just remember, there's 12 different apps
2 in this case, but they're only pointing to one group of
3 instructions for Smart Text Selection in the framework and
4 another group of instructions in the framework for Intents
5 handling. That's because Intents handling and Smart Text
6 Selection serve all the different apps.

7 And please remember that Arendi bears the
8 burden of proof on infringement. They have to prove to
9 you that Google practices every one of those elements of
10 the claim. If any one of them is missing or if Arendi has
11 not proven to you that the Google is practicing those
12 elements, there is no infringement.

13 So this is what the question you're going to be
14 asked on the verdict form: Did Arendi prove by a
15 preponderance of the evidence that Google directly
16 infringed any of the following claims of the '843 Patent?

17 Based on all the evidence you've heard over the
18 past week, you can confidently check "no." Remember that
19 Google can't infringe Claim 30 if it doesn't first
20 infringe Claim 23 because Claim 30 depends on Claim 23.
21 It has to have all of the same elements that are part of
22 it, and you know that Google does not have a
23 self-contained set of instructions.

24 Of course, there's one more major problem with
25 the Arendi's claim in the case. As you've now seen, in

1 order to make the infringement claim against the Google
2 products, Arendi must argue that the first computer
3 program elements are broad enough to cover the Smart Text
4 Selection code and the Intents handling code that are in
5 the operating system. It has to be. They have to say the
6 first computer program is that broad.

7 But if Arendi is right in that litigation
8 position, if the claim elements can really be covered --
9 can be included in a first computer program even though
10 the instructions for Smart Text Selection and Intents
11 handling are in the operating system, then Arendi's
12 arguments to get the patent in the first instance are flat
13 wrong.

14 If Arendi is right, that you can disregard the
15 features in the operating system because they all work
16 together, which seems to be their current assertion, then
17 CyberDesk and Apple Data Detectors did exactly the same
18 thing. They did it years before any patent application
19 was filed. And the patent can't possibly be valid.

20 Let's start by making sure that we all, again,
21 understand what's involved with patent invalidity. As you
22 heard in the Federal Judicial Center patent video, in what
23 seems like many moons ago at this point, sometimes the
24 Patent Office issues a patent because it claims something
25 that is not really new and not obvious. As stated in the

1 video, sometimes this happens because the patent examiner
2 has incorrect information for some reason, or it just
3 didn't know all of the relevant information.

4 Remember that the process of getting a patent
5 is one that only the applicant, who in this case was
6 Mr. Hedloy, and the patent on office are involved with.
7 Nobody else can be involved in that process. Google
8 certainly couldn't be involved in that process.

9 So the patent understandably -- Patent Office,
10 understandably, relies heavily on the information and the
11 arguments they're getting from the applicant. That's how
12 they evaluate is there an invention here? Is there not an
13 invention here? And it's precisely because of the
14 possibility that the Patent Office might issue a patent on
15 the basis of something incorrect that litigants who are
16 being accused of infringement, like Google, are allowed to
17 come to you with the full group of evidence and ask you to
18 make an evaluation as to whether the patent should have
19 been issued in the first place.

20 During opening, and then just in closing again,
21 Arendi made a big show about the fact that there are some
22 written materials about CyberDesk and Apple Data Detectors
23 that were closed to the Patent Office. And that's a
24 hundred percent right. The problem is, Arendi wanted you
25 to believe that the Patent Office had everything it needed

1 to know about those systems as a result of just getting
2 those publications. But you know now that is not true,
3 and there's two reasons why.

4 The first is that the Patent Office did not
5 know of Arendi's current litigation position. As you're
6 aware -- and we looked through this and we'll look at it
7 again -- Arendi clearly and very explicitly told the
8 Patent Office that CyberDesk and Apple Data Detectors were
9 different from its claimed invention because they used
10 instructions that were separate from what set up the input
11 device, and they were -- it used instructions that were in
12 the operating system. That's what they told the Patent
13 Office.

14 You'll start by recalling this submission that
15 was made by Arendi to the examiner of the '843 patent.
16 This is actually part of the file history for the '843
17 patent. And the applicant, Mr. Hedloy, pointed the '843
18 examiner to what's called the AESD. He said, "The prior
19 art references analyzed in the accelerated examination
20 support document are of particular interest in relation to
21 the present application." He wanted the examiner to look
22 at that AESD.

23 Then what did he say in the AESD? Well, about
24 CyberDesk, he said that CyberDesk is separate from the
25 document editing program. That was the distinction that

1 was made. CyberDesk is separate, and you need them to be
2 together. More explicitly about Apple Data Detectors,
3 once again, he cited to the same claim limitation that
4 we're dealing with here: "ADD does not disclose providing
5 an input device configured by the document editing program
6 as required by the claims."

7 Why? Because Mr. Hedloy said ADD is a part of
8 the operating system. And as part of the operating
9 system, it's separate from the document editing program.
10 That was the position in front of the Patent Office to get
11 the patent issued.

12 But now, you know something that the Patent
13 Office didn't know. Then, Mr. Hedloy was very clear that
14 he covered Approach 1 but not Approach 2. That's how he
15 got the patent issued. He said about Approach 2 through
16 Apple Data Detectors and CyberDesk, those are separate.
17 If you put the code in the operating system, it's
18 separate. If you use the CyberDesk tool, it's separate.

19 But now, when it comes to Google's products,
20 which also put the code in the operating system, which
21 also used code that is separate, he says, "Well, now the
22 patent covers any approach. Approach 1 or Approach 2."
23 Because without saying that, Google's products are not
24 covered by the claims. So instead, what he's now saying
25 is, "My patent covers both." And, therefore, what we know

1 for a fact is that it also covers Apple Data Detectors and
2 it also covers CyberDesk, because the distinction that
3 Mr. Hedloy made no longer holds up if it covers both
4 approaches.

5 And additionally, the other reason that the
6 Patent Office did not have all the correct and full
7 information is that it had limited information about the
8 CyberDesk system and the Apple Data Detectors system. As
9 to CyberDesk, we know the patent examiner was presented
10 with some printed publications; that is true. But the
11 examiner did not have a chance to consider, and there's no
12 evidence that he considered, the Georgia Tech website and
13 all the materials that are on that, including some code
14 snapshots when you look at the website, which is in
15 evidence.

16 And the Patent Office certainly did not have
17 the extensive information provided by Dr. Dey, who
18 actually was the person who created it and displayed it
19 and presented it at a variety of conferences. Dr. Dey
20 told about many public demonstrations of features that you
21 can't tell from the publications alone.

22 Features like the ability of CyberDesk to
23 retrieve a map for a given address. When you go to the
24 website and you look at all of the network services that
25 were available in CyberDesk, there are four entries for

1 retrieving a map for a street address. Interestingly,
2 that's just like they're accusing now of us using a street
3 address to look up a map in Google Maps. It's the same
4 functionality, and it was disclosed by CyberDesk two years
5 before Mr. Hedloy filed his application.

6 The network services that are on the website
7 also looking -- include look up things that are not
8 contact information: Look up a definition, look up an
9 interesting event in history, look up a definition of a
10 selected word.

11 That's similar to what they are accusing now of
12 Google with flight numbers. They're saying you can
13 identify a flight number and look that up to see what the
14 status of the flight number. But that kind of search was
15 already disclosed by CyberDesk two years before.

16 You are the first people ever to hear and be
17 able to consider the validity of the '843 Patent in light
18 of all the information about the CyberDesk system. The
19 Patent Office did not have all of that.

20 The same is true for Apple Data Detectors. We
21 know the patent examiner had some printed publications;
22 that is true. But unlike you, the Patent Office did not
23 have the testimony of James Miller, who actually designed
24 the program, and who explained at length how the program
25 actually worked, how developers could actually build their

1 own pattern matching so that Apple Data Detectors could
2 match with any kind of pattern it wanted to.

3 More importantly, the Patent Office certainly
4 did not have the Macworld videos in front of it like this
5 from January of 1997 before Mr. Hedloy filed his first US
6 patent application. And because it's a piece of evidence
7 in the case that really is important to answer the core
8 question, I'd like us to take a moment and actually
9 rewatch that two minute.

10 (Video played.)

11 **MR. UNIKEL:** That video was not before the
12 Patent Office. Those examples of all that Apple Data
13 Detectors could do was not in front of the Patent Office.
14 The write-a-letter demonstration was not in front of the
15 Patent Office. And you can see that what's displayed here
16 is the result of the write-a-letter feature from Apple
17 Data Detectors. It results in the exact same sort of
18 document, ready to go letter, that Mr. Hedloy said was the
19 principal advantage of the OneButton contact manager.

20 You are the first people to hear all of this
21 information about the Apple Data Detectors system,
22 especially in connection with evaluating the '843 Patent.
23 You are the only people to have the information that the
24 Patent Office did not have about the full details of the
25 CyberDesk system, the full details of Apple Data Detectors

1 system, and with knowledge of how Arendi is arguing about
2 its patent claims in this litigation. In particular, its
3 notion that it doesn't matter if you put instructions in
4 the operating system because it all works together.

5 If you ultimately agree with Arendi's new
6 litigation position that the claims cover both Approach 1
7 and Approach 2, instructions in the operating system
8 because it all works together, then there is no question
9 that Apple Data Detectors system and the CyberDesk system
10 taught all of those things.

11 Yesterday morning, Dr. Fox took you through the
12 claims element by element and showed you where each of
13 those elements was met. And I'm going to short-circuit
14 this by saying the one thing that their expert said was
15 missing from the CyberDesk, the one thing was that it
16 wasn't working on an editable document. That was the one
17 thing. We see in the top left in just this screen shot,
18 that there is an e-mail. Their expert presumed that
19 because it was called "mail reader," that it wasn't
20 editable.

21 But we know from Dr. Dey, who testified, that
22 he actually -- he did come up with a version of CyberDesk
23 that he would demonstrate that allowed you to insert the
24 information back into the text as a text editor. You know
25 from Dr. Dey that he also provided a prompt for updating

1 the information source to include the first information,
2 which is the one thing that's added by Claim 30.

3 So the reality is, is the one thing that their
4 expert said is missing, that the document isn't editable,
5 the actual person who devised the system, who practiced
6 the system, who demonstrated the system at demo days and
7 conferences told you that his -- Dr. Sacerdoti's
8 assumption was wrong. It was not just a reader. You
9 could also edit the text, and it would work on any kind of
10 document.

11 Arendi just -- at the end of the day, Arendi
12 can't have it both ways, ladies and gentlemen. For
13 infringement, Arendi want to say that the patent covers
14 the use of Smart Text Selection and Intents handling
15 instructions that are in the operating system.

16 But to save its patent from invalidity, Arendi
17 suggests to you that CyberDesk and Apple Data Detectors
18 were different because they put their instructions in the
19 operating system and they were separate. You can't have
20 both.

21 Simply put, if you accept Arendi's litigation
22 position on infringement, that the claims can cover the
23 use of instructions for Intents handling and Smart Text
24 Selection in the operating system, then the argument that
25 they made to get the patent doesn't hold up anymore. And

1 Apple Data Detectors and CyberDesk did it first. They did
2 the years before Mr. Hedloy filed his application.
3 Because there's not a single element that's missing from
4 CyberDesk once you pierce this notion that it was somehow
5 separate from the system. Arendi can't have it both ways.

6 Dr. Fox took you through every claim element
7 and explained to you how, if you accept Mr. Smedley's
8 theory, every element is unquestionably shown by clear and
9 convincing evidence.

10 The '843 Patent claims, though, are
11 unquestionably obvious, even if you're not sure that
12 they -- that CyberDesk teaches every element based on
13 CyberDesk plus ADD. And here's the reason why. There's
14 only one thing that their expert told you was missing.
15 That's the use of an editable document.

16 Well, you just saw the demonstration of Apple
17 Data Detectors that taught. You could do a write-a-letter
18 shortcut. You could use your text edit and insert
19 information back into the document. Given what Dr. Dey
20 testified, that CyberDesk was -- you could add multiple
21 different kinds of shortcuts, multiple different kinds of
22 activities, it would have been an obvious addition to the
23 shortcuts of CyberDesk to just say, "Just add the
24 write-a-letter feature."

25 Instead of just reading an e-mail, if you're

1 not sure it was editable, add the editability feature so
2 you can use CyberDesk on an e-mail that you're drafting,
3 not just one that you're reading. This was not a big leap
4 of technology to add that to CyberDesk.

5 And, in fact, we know that people who were
6 using CyberDesk were being pointed to Apple Data Detectors
7 for learnings. In fact, on the website for CyberDesk,
8 there's actually links to the Apple Data Detectors site.
9 And Jim Miller, who you saw the testimony from, actually
10 came to demo days for CyberDesk and he and Dr. Dey would
11 talk and share ideas.

12 So as Dr. Fox took you through, if there's any
13 elements that we're missing in your mind from CyberDesk,
14 and in particular the one element that their expert said
15 was missing on editable document, that would have been
16 obvious by combining CyberDesk and Apple Data Detectors.

17 Lastly, we have the Microsoft Word plus
18 CyberDesk and ADD. Dr. Fox explained to you that,
19 regardless of Arendi's litigation position on
20 infringement, the '843 claims were obvious because you
21 could have added any of these shortcut features to
22 Microsoft Word.

23 Recall that Mr. Hedloy testified himself that
24 he created the OneButton product using the very simple
25 Visual Basic for Applications language. He admitted that

1 it was easy to create the so-called macro inside of
2 Microsoft Word, and he said that any person of skill in
3 the art would have known how to do it at the time. That
4 was his testimony. That's why he didn't provide detailed
5 instructions in the patent about how you could build this
6 kind of thing for Microsoft Word.

7 Arendi's expert, Mr. Sacerdoti, yesterday,
8 agreed, if you'll recall, that it would have been natural
9 and easy for a person of skill in the art to create a
10 shortcut tool inside of Microsoft Word. And, in fact, you
11 might remember this memo that Mr. Hedloy sent to an
12 investor the day before he filed his patent application in
13 Norway where he wrote to the investor, "The invention is
14 that it is so easy and obvious."

15 It did not require much of a stretch for
16 Dr. Fox to explain that, just as it was easy and obvious
17 for Mr. Hedloy to add this to Microsoft Word in 1998, it
18 would not have been difficult, once you knew the shortcuts
19 of CyberDesk or you knew the shortcuts of Microsoft Word,
20 to add similar shortcuts into Microsoft Word -- I'm sorry.
21 Between CyberDesk and Apple Data Detectors, if you knew
22 those shortcuts, it would not take too much effort to put
23 them into Microsoft Word just as Mr. Hedloy did.

24 As to the OneButton product that Mr. Hedloy put
25 into Microsoft Word, you'll recall that he indicated that

1 product couldn't detect phone numbers or act on them, they
2 couldn't detect or act on e-mail addresses, it could not
3 pull up a map for a street address.

4 But CyberDesk had all of those things available
5 to it. Apple Data Detectors had all of those things that
6 were suggested.

7 So taking even just the suggestions from
8 CyberDesk and Apple Data Detectors and implementing them
9 in Microsoft Word, as Mr. Hedloy did for a name, would not
10 have been a difficult stretch.

11 Ladies and gentlemen, you are the first and
12 only people to consider the '843 Patent with all of this
13 information.

14 When you see the questions on the verdict form,
15 you will see there's a Question 2: Did Google prove, by
16 clear and convincing evidence, that any of the following
17 claims of the '843 Patent are invalid as anticipated by
18 the prior art, CyberDesk in particular;

19 And Question 3: Did Google prove, by clear and
20 convincing evidence, that any of the following claims of
21 the '843 Patent are invalid as obvious in view of the
22 prior art?

23 You can confidently answer those questions
24 "yes" because you've seen that CyberDesk, in particular,
25 taught everything, everything, especially if you accept

1 their litigation position, that the difference between
2 code in the operating system and the app code doesn't make
3 a difference because it all works together.

4 And you've seen that even if you're not sure
5 whether CyberDesk worked on an editable document or not,
6 despite the fact that Dr. Dey told you that he had
7 demonstrated that, it would have been obvious to add that
8 functionality through -- from Apple Data Detectors.

9 It's up to you to determine whether Arendi can
10 run away from the very arguments that it made to the
11 Patent Office to get the patent issued. And it's
12 ultimately up to you to compare what Arendi did put in its
13 patent with the prior art. And please ask yourselves
14 again, what exactly did Arendi invent?

15 Obviously, Arendi has asked you to consider the
16 right amount of damages in the case as well. In fact, I
17 think it's fair to say Arendi spent a vast majority of its
18 time over the past week delving less into the specifics of
19 the technology, and more into how much it thinks Google
20 should pay.

21 Arendi doesn't mention the fact that before it
22 filed this lawsuit, it never bothered to reach out to
23 Google to identify the patents. Not a phone call, not a
24 letter, nothing.

25 It's not -- perhaps it's not surprising because

1 we know that after Arendi stopped making any products in
2 2000, its business became all about managing and
3 exploiting patents. But the lawsuit certainly came as a
4 surprise to Google.

5 I think you've seen, over the past week, that
6 Google genuinely and fervently believes that it took a
7 different approach than what is claimed in the patent.
8 That it used the Approach Number 2 which separated the
9 instructions from the apps so that every app could use it,
10 which is the opposite of what was claimed in the patent.
11 This belief was cemented by Arendi's own statements to the
12 Patent Office about Apple Data Detectors and CyberDesk.

13 There's not a shred of evidence, not a shred
14 that we somehow developed our products with Arendi's
15 patent or products in mind. In fact, the engineers all
16 told you that they built these things from scratch using
17 their own hard work and technology, and that none of them
18 were aware of Arendi, Arendi's technology, or the
19 OneButton Contact Manager.

20 Ladies and gentlemen, Google has stood up for
21 its convictions in this lawsuit, rather than just settling
22 like other companies did to avoid the expense and
23 uncertainty of a trial because Google does believe that if
24 you build the technology yourself, if you put in the hard
25 work, if you go your own technological direction, that you

1 shouldn't have to give in just because trials are
 2 expensive and uncertain.

3 Google went an entirely different way. We went
 4 with an entirely different technological approach. And
 5 we're relying on you and the process to show that we were
 6 right.

7 Which, unfortunately, leads me back to damages.
 8 The reality is, you've heard, if you think Google doesn't
 9 infringe, or if you think the patent is invalid, you don't
 10 even have to think about damages. That will end the case,
 11 and damages will become something you don't even have to
 12 consider.

13 But if you do bother to think about damages,
 14 now that you've heard all the evidence, please ask
 15 yourself, how much Google really would have paid, how much
 16 they value a technology that went in an opposite direction
 17 of the one that they wanted.

18 As I mentioned a week ago, it's kind of like
 19 asking how much somebody would pay to drive on a road that
 20 they didn't want to drive on and never did drive on.
 21 Doesn't make any sense.

22 But you've now heard that Arendi is asking for
 23 more than \$45 million as a reasonable royalty for the
 24 period from December 2017, when users were first able to
 25 use Smart Text Selection, until November 10, 2018, when

1 the patent expired. It's a period of 11 months. Arendi's
 2 asking for \$45 million for this, for 11 months.

3 To recap the evidence as to why this demand
 4 makes no sense, and is completely untethered from the
 5 facts, let's start with, perhaps, the most misleading
 6 thing you've been told by Arendi in the entire trial.

7 In its opening argument with you a week ago,
 8 Arendi told you the following: You will hear that Apple
 9 and Samsung and Microsoft all paid because they had used
 10 or wanted the right to use the asserted patent.

11 Well, you know now, because you've seen the
 12 agreements, and I'm going to give you some slides that
 13 show the recitals from those agreements, that this
 14 statement was false.

15 In every one of those agreements, the companies
 16 acknowledged that they thought the patents were invalid,
 17 that there was no infringement by them, and that they were
 18 settling to avoid the uncertainty and expense of
 19 litigation. And every one of those [REDACTED]
 20 [REDACTED]
 21 [REDACTED]

22 If I may, may I ask that the slides be handed
 23 to the jury.

24 For confidentiality reasons, we have to do it
 25 this way, rather than publishing them.

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23 And by the way, think about one thing. They're
 24 trying to justify a four-times multiplier because
 25 Mr. Hedloy thought that there was a 25 percent chance that

1 he would win the cases. He thought that the likelihood
 2 was that he was going to lose the cases, which would have
 3 resulted potentially in the invalidity of the patents or
 4 findings of infringement. Rather than potentially lose
 5 the cases, he and the other parties, they settled those
 6 cases.

7 Mr. Hedloy says that entitles him to four times
 8 the amount that was paid against Google, but ignore the
 9 fact that the odds were that, according to him, he was
 10 likely going to lose those cases.

11 Does that indicate that the parties to those
 12 agreements thought that the patents were valid, wanted the
 13 technology from those patents? It does not.

14 The other thing that we know is that the
 15 patents -- [REDACTED]
 16 [REDACTED] And so the notion that
 17 it's the '843 Patent that accounted for all of those
 18 payments -- [REDACTED]
 19 [REDACTED] -- absolutely makes no sense.

20 And yet Mr. Weinstein used the entire amount of
 21 the settlement payments to calculate his per units as a
 22 starting point. He didn't take off anything from those
 23 for the other patents or for the settlement of the
 24 litigation.

25 And this is just the tip of the iceberg when it

1 comes to the problems with the damages theory from
2 Mr. Weinstein. And remember, the entire damages theory is
3 based on Mr. Weinstein and what is his analysis.

4 But you've heard from Mr. Weinstein and
5 Mr. Kidder that there are some serious problems with his
6 analysis. Let's start with, he used the wrong number of
7 units.

8 First, he used August 21, 2017, as the starting
9 date for when Smart Text Selection would have been
10 available to users. But we know the absolute fact -- it's
11 not an opinion. It's a fact, demonstrable fact, that you
12 heard from all the engineers on, is that Smart Text
13 Selection was not actually turned on for users until
14 December 5th, 2017. And if -- that accounts, that
15 difference, accounts for 149 million -- 149 million app
16 downloads, and 900,000 million devices.

17 That is a problem with his counting.

18 They seem very bothered -- you'll notice, they
19 talk about this representative product stipulation. The
20 stipulation, when you read it, simply says you can treat
21 the code that was downloaded onto an Android 8 device as
22 representative so you can study the code and understand
23 how it works.

24 Nowhere in that stipulation does it say, by the
25 way, we started this for customers in August 2017. We

1 didn't. We couldn't say that. We know that when it was
2 turned on, that code, was December 5th, 2017.

3 Arendi doesn't like the reality, but that's
4 what the evidence is. And this alone accounts for a
5 massive overcounting on the part of Mr. Weinstein.

6 Next, Mr. Weinstein fails to account for the
7 time it took to roll out distribution of Android 8 and 9,
8 which everyone agrees at this point, that 8 and 9 are the
9 operating systems that you have to have on the device for
10 there to be infringement.

11 If you can't say that an app was downloaded to
12 an Android 8 or Android 9 device, if it went to a 7 or a
13 6, then there can't possibly be infringement. So there
14 has to be some attribution to say, yeah, you downloaded it
15 to right devices.

16 But you heard from the Google witnesses that
17 because of the amount of time, even after you release
18 O-MR1 in December of 2017, it takes a while for the
19 carriers and for the other device manufacturers to approve
20 that so it actually gets download -- could even be
21 downloadable to devices. That process takes a minimum of
22 three to six months. And according to Mr. Choc, it might
23 not ever happen for some pockets of devices. But
24 Mr. Weinstein didn't account for that.

25 Now, they say, well, he was just relying on the

1 information that Google gave. But the way that a
2 litigation works is, we don't just, you know, open up and
3 give them a billion documents that we have because there's
4 litigation. They ask us for specific information. We
5 respond to their specific requests, and give us what we
6 specifically asked for. If they need something more, they
7 come back to us and ask for it.

8 For whatever reason, what they asked for was
9 total number of downloads, total number of installs. We
10 provided that.

11 Apparently Mr. Weinstein used it under the
12 assumption that that was for ever -- that was only for 8
13 and 9. That was incorrect assumption. But he never asked
14 us for more information. Had he asked us for that
15 information, we could have tried to provide it.

16 What he used and what they asked for was
17 information that does not correlate the downloads to any
18 operating system. So we know there's a massive
19 overcounting, but Mr. Weinstein didn't do anything to fix
20 it.

21 Next, Mr. Weinstein included a four-times
22 multiplier. He took the actual effective rate that he
23 thought Apple, Samsung, Microsoft applied and he said
24 multiply it by four. Based on what?

25 Based on his conversations with Mr. Hedloy,

1 who's Arendi. That's it. That's the only reason he said
2 you should multiply by four. That is about as flimsy a
3 basis to say Google should pay four times the right damage
4 amount as I can conceive of.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Next, you -- Mr. Weinstein admitted that he
16 took his per device royalty rate, which he calculated that
17 48 cents -- by the way, that includes the four-times
18 multiplier -- and he divided it by five. Even though
19 there are 12 apps accused in the case, he divided it by
20 five. Why did he divide it by five? I have no idea.
21 Because that produces a higher number than dividing it by
22 12.

23 Next, he stated to you that he didn't take off
24 anything for apps that were [REDACTED].
25 But you'll recall, because we went through the license

1 agreement with Mr. Hedloy, that all of the [REDACTED]
2 [REDACTED], including the software and services that are
3 downloaded to those, like Android, like the apps -- [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]

18 Next, Mr. Weinstein admittedly didn't even
19 bother to consider the alternatives available to Google.
20 You've heard that there already was being used Linkify.
21 And you heard that, yes, Linkify was not the best, so they
22 replaced it was Smart Linkify, which used the same
23 TextClassifier, what they call "machine learning models."
24 So Mr. Weinstein didn't account for the fact
25 that we had Linkify. We had Smart Linkify, which could

1 work on noneditable text, like sent and received e-mails,
2 sent and received texts, web pages. These are all
3 examples of noneditable text that Linkify and Smart
4 Linkify could still have been used on.

5 So the question is, with those available and
6 had been available for some time, why would Google, in a
7 hypothetical negotiation, agree to a \$45-million license
8 fee for 11 months? Doesn't make any sense.

9 Most egregiously -- and I'm going to ask you to
10 look at your slide on this, please. It's the next slide,
11 the last slide that you have -- Mr. Weinstein completely
12 ignored the vastly different levels of product revenue
13 that [REDACTED] [REDACTED] had licensed in their
14 [REDACTED] [REDACTED] as compared to the undisputed
15 revenue that Google has realized.

16 I want to start at a moment by saying, they're
17 trying to cast some sort of doubt on Google's revenue
18 numbers, as, oh, there must be some pile of money that
19 they're not accounting for here. But the numbers for the
20 revenue were provided in the litigation. This is the
21 revenue that is attributable to these particular products.

22 And the fact that Google might have other
23 businesses that make money in a different way doesn't mean
24 anything about what is the revenue from these products,
25 because these are the products that are accused in the

1 case. These are the products that are covered by this
2 hypothetical license.

3 Mr. Kidder showed you -- you can see for
4 yourself on the slide, I can't say it out loud. But if
5 you were to look at the license amount that Apple paid,
6 compared to the accused revenue that was covered by that
7 license, you see what the royalty is as a percentage of
8 the revenue. If you, then, apply that same percentage to
9 Google, you get the number at the bottom. [REDACTED] [REDACTED]
10 [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

18 And you see that same numbers, same analysis as
19 to Microsoft, which produces the high watermark of
20 potential comparable payments that Google would have had
21 to make, which is \$347,000.

22 So to ask for \$45 million based on those
23 agreements, when you properly adjust for the size of the
24 house that they were buying, so to speak, right, they were
25 paying a fee to buy a house of revenue that was worth a

1 certain amount.

2 They want Google to pay a rate that is hundreds
3 of times bigger than the rate that these actually -- these
4 companies actually paid on their revenue.

5 In the end, the only thing that's truly clear
6 from Mr. Weinstein's testimony and his report, is that his
7 numbers make no sense at all; that they just are not
8 reliable as a basis for a \$45-million number.

9 And because I don't want to belabor this
10 anymore, what I'll tell you is, we know from Dr. Kidder --
11 Mr. Kidder, that the right place to start is with the
12 inNova license. Why? Because it was a Google license
13 with the company inNova, that was for resolving a patent
14 dispute over a single patent.

15 You heard from Dr. Rinard that that patent was
16 technically comparable. The payment that Google made on
17 that license was \$625,000. The term of that license was
18 significantly longer than the term of this 11-month
19 license that would have been negotiated.

20 So as Mr. Kidder explained to you, if you start
21 with the 625,000, which is already bigger than the
22 comparable number if you use Microsoft, Samsung, or Apple
23 as your starting point, you would then decrease for the
24 short amount of the license, you would decrease for the
25 fact that the invention was not that big in advance over

1 agreement with Mr. Hedloy, that all of the [REDACTED]
2 [REDACTED] including the software and services that are
3 downloaded to those, like Android, like the apps -- [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]

18 Next, Mr. Weinstein admittedly didn't even
19 bother to consider the alternatives available to Google.
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21 And you heard that, yes, Linkify was not the best, so they
22 replaced it was Smart Linkify, which used the same
23 TextClassifier, what they call "machine learning models."
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21 revenue that is attributable to these particular products.

22 And the fact that Google might have other
23 businesses that make money in a different way doesn't mean
24 anything about what is the revenue from these products,
25 because these are the products that are accused in the

1 case. These are the products that are covered by this
2 hypothetical license.

3 Mr. Kidder showed you -- you can see for
4 yourself on the slide, I can't say it out loud. But if
5 you were to look at the license amount that Apple paid,
6 compared to the accused revenue that was covered by that
7 license, you see what the royalty is as a percentage of
8 the revenue. If you, then, apply that same percentage to
9 Google, you get the number at the bottom. [REDACTED] [REDACTED]
10 [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

18 And you see that same numbers, same analysis as
19 to Microsoft, which produces the high watermark of
20 potential comparable payments that Google would have had
21 to make, which is \$347,000.

22 So to ask for \$45 million based on those
23 agreements, when you properly adjust for the size of the
24 house that they were buying, so to speak, right, they were
25 paying a fee to buy a house of revenue that was worth a

1 certain amount.

2 They want Google to pay a rate that is hundreds
3 of times bigger than the rate that these actually -- these
4 companies actually paid on their revenue.

5 In the end, the only thing that's truly clear
6 from Mr. Weinstein's testimony and his report, is that his
7 numbers make no sense at all; that they just are not
8 reliable as a basis for a \$45-million number.

9 And because I don't want to belabor this
10 anymore, what I'll tell you is, we know from Dr. Kidder --
11 Mr. Kidder, that the right place to start is with the
12 inNova license. Why? Because it was a Google license
13 with the company inNova, that was for resolving a patent
14 dispute over a single patent.

15 You heard from Dr. Rinard that that patent was
16 technically comparable. The payment that Google made on
17 that license was \$625,000. The term of that license was
18 significantly longer than the term of this 11-month
19 license that would have been negotiated.

20 So as Mr. Kidder explained to you, if you start
21 with the 625,000, which is already bigger than the
22 comparable number if you use Microsoft, Samsung, or Apple
23 as your starting point, you would then decrease for the
24 short amount of the license, you would decrease for the
25 fact that the invention was not that big in advance over

1 what came before, and you would decrease because Linkify
2 and Smart Linkify were available at the time.

3 And so he told you that the right number would
4 be \$500,000, which makes a significant more amount of
5 sense given what we're talking about as to the advance
6 that they're claiming, the available alternatives, and the
7 amount of time.

8 But, again, you don't even have to get to
9 damages. You don't even have to think about all of this
10 if you decide that Google is not infringing or that the
11 patent is invalid.

12 In the end, ladies and gentlemen, you've seen
13 the evidence that I think now, at the end, allows you to
14 answer this question. What exactly did Arendi invent?

15 I'm confident that you've seen that while
16 Mr. Hedloy might have been very excited about the
17 OneButton Contact Manager product, he didn't really invent
18 anything.

19 Had the Patent Office known everything you know
20 about the current litigation positions, about the full
21 features of CyberDesk, about the full features of Apple
22 Data Detectors, it's not -- it's likely that the patent
23 would not have issued in the first place. But you now
24 have the ability to consider it from scratch in light of
25 all the information.

1 the demonstratives.

2 We will hear from Arendi.

3 **MS. SRINIVASAN:** Thank you, ladies and
4 gentlemen. Where did we start on the question of
5 infringement? Exactly where I thought we would, looking
6 at what is not at issue in this case.

7 I want to pull up the Court's construction of
8 what a computer program is. Every time in this case that
9 Google has talked to you about that instruction, they have
10 highlighted the first few words, "a self-contained set of
11 instructions."

12 Then they've told you there needs to be a
13 container, a location, storage. Words that do not appear
14 in the claim. They do it to ignore what this Court
15 defines, "A self-contained set of instructions as opposed
16 to a routine or library, intended to be executed on a
17 computer so as to perform some task." That part is
18 absolutely critical.

19 The important issue is what set of code is
20 intended to be executed to perform a task. And what did
21 the Google engineers tell -- told you, over and over
22 again, is that STS and the applications are joined
23 together temporarily when it is being executed to perform
24 a task. That is what matters in this case.

25 Dr. Rinard himself acknowledged, there's

1 More importantly, I'm confident that you now
2 see that Arendi, in its patent claims, required a
3 self-contained set of instructions that did three things.
4 There is no container, and there's certainly no container
5 that includes the code that does all three things.

6 Their patent covers Approach 1, which was
7 already a known approach. We went with Approach 2. We
8 went with a system that separated the code so it could be
9 used by all the apps, including the 12 apps that they're
10 accusing in this case.

11 If Arendi invented anything, it was to use the
12 first computer program to do the three things. That is an
13 approach that Google went the entirely opposite way on.

14 Arendi went one way; Google went the other way.
15 They went left; we went right.

16 It's now up to you to answer the critical
17 questions in the case based on the evidence that you've
18 heard, based on the direct testimony you heard about the
19 technology from the Google engineers. And I ask that
20 based on the evidence, you answer those questions in favor
21 of Google.

22 Thank you very much for all your time and
23 attention. I know it's been a long week. Thank you.

24 **THE COURT:** Thank you.

25 Ms. Garfinkel, I'm going to have you collect

1 nothing in the claims or in the construction offered by
2 the Court about storage, about source code. It speaks in
3 terms of instructions to execute and perform a task.

4 And here, it is undisputed that the task to be
5 performed, to be enabling that Smart Text Selection
6 technology, requires the code -- the execution to perform
7 that task. That is what we're focused on.

8 And Mr. Toki -- pardon me, Mr. Elbouchikhi, his
9 testimony on this is also clear. It is undisputed. He
10 said that those instructions have to join and do join
11 together to perform the task that we're here about.

12 And, Mr. Boles, if you can bring up
13 Mr. Elbouchikhi's testimony again. Slide 17.

14 Dr. Rinard, he actually tried to walk back
15 Mr. Elbouchikhi's testimony. And you saw it. And they
16 have no response, they have no response for their own
17 documents that say the Android framework code runs inside
18 an apps process, which is consistent with the Court's full
19 definition. Not choosing the words and saying that
20 there's a container. "I heard the reference to a
21 container" appears nowhere in the claims.

22 Now, Dr. Rinard, he tried to walk back what
23 Mr. Elbouchikhi said. He said that he preferred his
24 characterization as a transfer in and a transfer out. But
25 his characterization doesn't control over the admission of

1 Google's own engineer.
2 And I would submit to you, this is one of those
3 situations where you need to look closely at the words,
4 because every time Dr. Rinard and Google have been up here
5 showing you the Court's construction, they have focused on
6 a portion of the claim term.

7 And we already know, because Dr. Rinard
8 indicated when asked, well, is the application a computer
9 program? He didn't answer the question because he knows
10 that it is.

11 If you read the entirety of the Court's
12 construction, it plainly is a computer program. Those are
13 the applications in this case. That is exactly how the
14 systems are designed. And it is exactly consistent with
15 Arendi's patent.

16 Now, you heard what I also expected to happen,
17 which is this argument that, well, if the Arendi patent
18 happens to cover the way Google does it, then it's also
19 invalid. Heads, I win; tails, you lose.

20 Google told you that there were things that you
21 saw that were not before the Patent Office. What are
22 those things?

23 The video from Macworld, everything captured
24 there were in papers that were before the Patent Office.

25 And the implication from Google is that somehow

1 nobody, in all of these years of litigation, has been able
2 to raise issues as to the invalidity or validity of the
3 '843 Patent. That this is the first time these issues are
4 being raised is just wrong.

5 The Patent Office had before it -- they can't
6 point to one thing that is new before you. Because of a
7 video that shown in Macworld? Well, all of these
8 individuals -- Mr. Dey, Mr. Miller -- they put their best
9 foot forward in their printed publications.

10 Google counsel said, well, the patent examiners
11 didn't have before it the CyberDesk website. Well, you
12 know that's not the case. It was referenced in the papers
13 that went before the patent examiner.

14 I understand that they're here arguing that you
15 have a chance to do something new. But they have not
16 given you one thing that is different above and beyond
17 what the Patent Office had before it when it spent years
18 rendering this decision, one thing that's new from the
19 dozen years since that time when other parties have been
20 able to contest the validity of the patent too. And they
21 can't.

22 And I bring you back to where we started a week
23 ago. Because a week ago, as you'll recall, Google took
24 the position that the approach done by Apple Data
25 Detectors and CyberDesk was different than the Arendi

1 patent.

2 Mr. Boles, if we can go back to our original
3 slide on that.

4 It was different. Last week, the -- last week
5 the prior art that we're now relying on had nothing to do
6 with the patent claims. It was different. This week,
7 we're told that the CyberDesk reads on every element of
8 the patent claims. Which is it?

9 When Google wants to avoid the ability to find
10 that its claims -- the claims have been infringed as to
11 its systems, it then tells you that that automatically
12 means that these claims have been -- that are now
13 invalidated.

14 What Google said last week was that those
15 systems, CyberDesk and Apple Data Detectors, they don't
16 practice the claims because they did it with separate
17 instructions rather than the self-contained instructions
18 that are required by the claims.

19 Again, I urge you to consider why these
20 positions shift day to day in the course of a week.
21 CyberDesk, Apple Data Detectors, Microsoft Word heavily
22 vetted before the Patent Office, and it is Google's burden
23 by clear and convincing evidence to show you that there is
24 something new there that is going to disclose every
25 element of the patent claims in order to invalidate this

1 patent. They can't do that. They can't tell you what is
2 different.

3 They spoke about OneButton. That is another
4 distraction. We're not here about whether or not we
5 should compare OneButton to the -- Apple's or to Google's
6 or Microsoft's or Samsung's programs and devices. We are
7 here as to whether Google's applications practice the
8 claims, not whether they can be compared to OneButton.

9 And you heard repeated reference to OneButton
10 as a way to try to limit what these claims are about.
11 It's improper. And Google tried to suggest the fact that
12 there isn't OneButton system available anymore that's the
13 same as the fact that the CyberDesk system is not
14 available anymore? Those are two separate things. Arendi
15 is not here asserting that somebody copied OneButton.
16 It's here asserting that somebody has practiced its patent
17 claims.

18 But Google, Google is here asserting that the
19 CyberDesk system that it cannot show you, that it cannot
20 tell you why it's different from any of the art before the
21 Patent Office, it's here to prove that to you, and that
22 system is completely unavailable to it.

23 Now, I want to come back to this issue about
24 the motivation to combine. It is critical. Our expert
25 explained to you, you just pull different pieces together

1 and say, "Oh, somebody would have come up with that."
2 Google offered no evidence of how these combinations would
3 possibly be used in order to invalidate the patent. It
4 can't, and it's not going to do that for you.

5 In the end, what Google has said to you is, "We
6 want to be able to escape liability in this case." Even
7 though others have been found to use the patents.

8 And I've heard Google counsel say that we had
9 somehow misrepresented what happened in those license
10 agreements. We didn't. It's very clear that, on the face
11 of those license agreements, the parties disputed
12 invalidity and infringement. Of course they did. They
13 settled. And that's exactly the reason that those license
14 agreements undervalue the actual technology if two parties
15 sat down to do a license agreement today, assuming the
16 patents are valid and infringed, the value of those
17 license agreements understate what was at issue.

18 But those parties had before it a massive
19 amount of evidence. They had the patent prosecution
20 history. Apple surely had the Macworld videos and ability
21 to look at Apple Data Detectors, as did Samsung, as did
22 Microsoft. They, Microsoft had the ability to analyze
23 Microsoft Word. And what Google wants you to believe,
24 different from what it told you last week, all of this is
25 somehow a new reason to invalidate the patent, a patent

1 that has been -- stood the test of time and been through
2 these litigations and through these years. It is simply
3 not plausible, and their burden is extremely high to make
4 that showing today.

5 I told you at the beginning about these clouds
6 of concern, these dust-ups. And the definition the Court
7 has given us must be followed and must be paid attention
8 to, and their own expert concedes that their applications
9 meet it. So don't be distracted by words that are not in
10 the claim limitations. And don't be distracted by
11 Google's position that there is something new about a
12 video or about a deposition or somebody describing
13 something that are all contained in papers that the Patent
14 Office examined extensively.

15 I heard Google counsel say --
16 **THE COURT:** Counsel.

17 **MS. SRINIVASAN:** That -- that they were not
18 approached before the litigation, that they -- nobody came
19 to them and said, "I want to take a license. I want to
20 talk to you about it."

21 Can we go to Slide 85, Mr. Boles.

22 Google's own corporate representative, what did
23 he say? What would Google have done if Arendi had gone to
24 Google and said this was an area that they thought was of
25 concern? Would Google have taken a license? Would they

1 have stopped infringing? Or would they have done one of
2 the things it could have done, which is to turn around and
3 sue Arendi itself?

4 Google wants to make it sound like Arendi
5 should have come forward, and it did give them notice by
6 bringing a complaint in this case by identifying the
7 products at issue. That is how it did so, and Google had
8 years to remedy their infringement, to address their
9 concern. Google tells you today, "Well, we believe we had
10 a good faith understanding. We weren't infringing and the
11 patent wasn't invalid."

12 They can't point to anything that demonstrates,
13 when they launched their product in 2017, that they had
14 undertaken that analysis and that they were confident when
15 they brought this product out into their accused
16 applications. It is a position that they're taking today,
17 but one they cannot support from when they launched their
18 product and were aware of it at this time -- google also.

19 **THE COURT:** Counsel, we need to wrap it up.

20 **MS. SRINIVASAN:** Google, finally, wants you to
21 think about the revenue that was made by other companies.
22 Companies and whether they had phones and tablets and
23 other kind of devices. Google is a software company. The
24 ability to enhance its application with functionality is
25 critical to its business. I urge you to consider again

1 whether it's plausible, whether it's common sense that
2 they don't benefit in ways that are not reflected in the
3 revenue that they have shared with you today. They draw
4 comparisons to companies that have all kinds of other
5 products, but as a software company that serves consumers
6 and wants the best technology, is it worth it for them to
7 spend a dime -- a dime -- per application to give their
8 consumers a better experience for 48-cent per phone. Our
9 expert has explained why that is absolutely the case to
10 benefit from the '843 invention. Thank you.

11 **THE COURT:** Thank you.

12 Ladies and gentlemen. Let's just take a brief
13 stretch. I just have a couple more things to tell you
14 before I send you back. Feel free to stretch if you like.

15 **MR. UNIKEL:** May we stretch as well, Your
16 Honor?

17 **THE COURT:** Yes, please.

18 We're taking up just the final couple pages of
19 instructions. It says Section-6, deliberation and
20 verdict. It says Page 1. It follows just where we ended
21 off.

22 Now let me finish up by explaining some things
23 about your deliberation in the jury room and your possible
24 verdicts.

25 Once you start deliberating, do not talk to the

1 jury officer or to me or to anyone else except each other
2 about the case. If you have any questions or messages,
3 you must write them down on a piece of paper, sign them,
4 and then give them to the jury officer. The officer will
5 give them to me, and I will respond as soon as I can. I
6 may have to talk to the lawyers about what you've asked,
7 so it may take some time to get back to you. Any
8 questions or messages normally should be sent to me
9 through your foreperson, who by custom of this Court, is
10 Juror Number 1.

11 One more thing about messages. Do not ever
12 write down or tell anyone how you stand on your votes.
13 For example, do not write down or tell anyone that you are
14 split four to four or six to two or whatever your vote
15 happens to be. That should stay secret until you are
16 finished.

17 Your verdict must represent the considered
18 judgment of each juror. In order for you as a jury to
19 return a verdict, it is necessary that each juror agree to
20 the verdict. Your verdict must be unanimous.

21 It is your duty as jurors to consult with one
22 another and to deliberate with a view towards reaching an
23 agreement, if you can do so without violence to your
24 individual judgment. Each of you must decide the case for
25 yourself, but do so only after an impartial consideration

1 What the verdict shall be is your sole and exclusive duty
2 and responsibility.

3 Now that all the evidence is in and the
4 arguments are completed, you are free to talk about the
5 case in the jury room. In fact, it is your duty to talk
6 with each other about the evidence, and to make every
7 reasonable effort you can to reach unanimous agreement.
8 Talk with each other, listen carefully and respectfully to
9 each other's views, and keep an open mind as you listen to
10 what your fellow jurors have to say. Try your best to
11 work out your differences. Do not hesitate to change your
12 mind if you are convinced that other jurors are right and
13 that your original position was wrong. But do not ever
14 change your mind just because other jurors see things
15 differently or just to get the case over with. In the
16 end, your vote must be exactly that, your own vote. It is
17 important for you to reach unanimous agreement, but only
18 if you can do so honestly and in good conscience.

19 No one will be allowed to hear your discussions
20 in the jury room, and no record will be made of what you
21 say. So you should all feel free to speak your minds.
22 Listen carefully to what the other jurors have to say, and
23 then decide for yourself.

24 During your deliberations, you must not
25 communicate with or provide any information to anyone by

1 of the evidence with your fellow jurors. In the course of
2 your deliberations, do not hesitate to reexamine your own
3 views and change your opinion if convinced it is
4 erroneous. But do not surrender your honest conviction as
5 to the weight or effect of evidence solely because of the
6 opinion of your fellow jurors or for the purpose of
7 returning a verdict. Remember at all times that you are
8 not partisans. You are judges of the facts. Your sole
9 interest is to seek the truth from the evidence in this
10 case.

11 A form of verdict has been prepared for you. I
12 will review it with you in a moment. You will take this
13 form to the jury room, and when you have reached unanimous
14 agreement as to your verdict, you will have your
15 foreperson fill in, date, and sign the form. You will
16 then return to the courtroom and my deputy will read aloud
17 your verdict. Answer each question in the verdict form
18 based on the facts as you find them to be following the
19 instructions that the Court has given you on the law. Do
20 not decide who you think should win this case and then
21 answer the questions accordingly.

22 It is proper to add the caution that nothing
23 said in these instructions and nothing in the form of a
24 verdict is meant to suggest or convey in any way or manner
25 any intimation as to what verdict I think you should find.

1 any means about this case. You may not use any electronic
2 device or media such as telephone, cell phone, smartphone,
3 iPhone, iPad, blackberry, tablet or computer, the
4 Internet, any Internet service, any text or instant
5 messaging service, any Internet chat room, blog, or
6 website such a Facebook, LinkedIn, YouTube, Instagram,
7 WeChat, WhatsApp, Snapchat, or Twitter to communicate to
8 anyone any information about this case or to conduct any
9 research about this case until I accept your verdict. In
10 other words, you cannot talk to anyone on the phone,
11 correspond with anyone, or electronically communicate with
12 anyone about this case. You can only discuss the case in
13 the jury room with your fellow jurors during
14 deliberations.

15 Of course, you may examine the various devices
16 entered into evidence in this case -- just as you may
17 examine other evidence from this case. But you should not
18 use those devices to perform Internet research about this
19 case or to communicate with anyone outside the jury room.

20 Let me finish by repeating something I said to
21 you earlier. Nothing that I have said or done during this
22 trial was meant to influence your decision in any way.
23 You must decide the case yourselves based on the evidence
24 presented.

25 Ms. Garfinkel, can we hand out the jury verdict

1 forms, please.

2 **THE CLERK:** Yes, Your Honor.

3 **THE COURT:** I'm going to read it to you. It

4 says, "Verdict form."

5 Instructions. When answering the following

6 questions and completing this verdict form, please follow

7 the directions provided and follow the jury instructions

8 that you have been given. Your answer to each question

9 must be unanimous. Some of the questions contain legal

10 terms that are defined and explained in the jury

11 instructions. Please refer to the jury instructions if

12 you are unsure about the meaning or usage of any legal

13 term that appears in the questions below.

14 As used herein:

15 "Arendi" refers to Plaintiff Arendi S.A.R.L.;

16 "Google" refers to Defendant Google LLC.

17 The "'843 Patent" refers to U.S. Patent

18 Number 7,917,843.

19 Question No. 1. Did Arendi prove, by a

20 preponderance of the evidence, that Google directly

21 infringed any of the following claims of the '843 patent?

22 "Yes" is a finding for Arendi.

23 "No" is a finding for Google.

24 And then it says Claim 23 and Claim 30.

25 Question 2. Did Google prove by clear and

1 convincing evidence that any of the following claims of

2 the '843 patent are invalid as anticipated by prior art?

3 "Yes" is a finding in favor of Google.

4 "No" is a finding in favor of Arendi.

5 Then it says Claim 23 and Claim 30.

6 Question 3. Did Google prove by clear and

7 convincing evidence that any of the following claims of

8 the '843 patent are invalid as obvious in view of prior

9 art?

10 "Yes" is a finding in favor of Google.

11 "No" is a finding in favor of Arendi.

12 And it says claims 23 and 30.

13 Instructions. Only answer Questions 4 and 5 if

14 you answered yes for any of the claims in Question 1 and

15 answered no for any of those same claims in Question 2 and

16 Question 3. Otherwise, skip and do not answer Questions 4

17 and 5, and instead, please proceed directly to the final

18 page of this verdict form and sign and date that page.

19 Question 4. What amount of damages has Arendi

20 proven by a preponderance of the evidence that it is

21 entitled to as a reasonable royalty for Google's

22 infringement of the '843 Patent?

23 Question 5. Did Arendi prove by a

24 preponderance of the evidence that Google's infringement

25 of any of the claims of the '843 Patent was willful?

1 "Yes" is a finding for Arendi.

2 "No" is a finding for Google.

3 You have now reached the end of the verdict

4 form, and you should review it to ensure that it entirely

5 reflects your unanimous determinations. The foreperson

6 should then sign the verdict form in the space below and

7 notify the Court security officer you have reached a

8 verdict.

9 The foreperson should retain possession of the

10 verdict form and bring it to the courtroom with the jury.

11 I will now ask the courtroom security officer

12 to come forward.

13 Ms. Garfinkel, please administer the oath.

14 **THE CLERK:** Please raise your right hand.

15 (Courtroom security officer sworn.)

16 **THE CLERK:** Thank you.

17 **THE COURT:** At this time, you can retire to the

18 jury room to deliberate. Your lunches are waiting for you

19 there.

20 (The jury exits the courtroom at 1:45 pm.)

21 **THE COURT:** Please be seated. I don't want to

22 keep all of you from your lunches, so just make sure that

23 we have numbers that we can reach you at if we have a

24 question or if we get a verdict.

25 I want to discuss when we get back to make sure

1 we're all on the same page about what we need to do

2 regarding the sealing of the transcripts and/or the

3 exhibits.

4 We will be in recess.

5 (Whereupon, a recess is taken.)

6

7 **THE COURT:** Please be seated. Thanks for your

8 patience. I was in another hearing. I understand that we

9 have a verdict.

10 Is everyone convened that needs to be here from

11 plaintiff's side?

12 **MS. SRINIVASAN:** Yes, Your Honor.

13 **THE COURT:** And how about from defendant's

14 side?

15 **MR. UNIKEL:** Yes, Your Honor.

16 **THE COURT:** All right. I'm going to ask the

17 courtroom security officer to have the jury enter and

18 assume their seats in the jury box.

19 (The jury enters the courtroom at 3:38 p.m.)

20

21 **THE COURT:** Please be seated. Welcome back,

22 ladies and gentlemen of the jury.

23 Madam Foreperson, has the jury unanimously

24 agreed upon its verdict?

25 **THE FOREPERSON:** Yes, Your Honor.

1 **THE COURT:** Okay. I'm going to have you hand
2 that verdict form to Ms. Garfinkel to bring to me.
3 Ladies and gentlemen of the jury, your verdict
4 will now be published; that is, read aloud in open court.
5 I want to instruct you to pay close attention to the
6 verdict as it is published. And after publication, I'm
7 going to ask you, potentially, whether it represents the
8 verdict in all respects. So please pay close attention.
9 Ms. Garfinkel.
10 **THE CLERK:** Yes, Your Honor.
11 Question 1: Did Arendi prove by a
12 preponderance of the evidence that Google directly
13 infringed any of the following claims of the '843 Patent?
14 Number Claim 23. Answer: No.
15 Claim 30. Answer: No.
16 Question 2: Did Google prove by clear and
17 convincing evidence that any of the following claims of
18 the '843 Patent are invalid as anticipated by prior art?
19 Claim 23. Answer: Yes.
20 Claim 30. Answer: Yes.
21 Question 3: Did Google prove by clear and
22 convincing evidence that any of the following claims of
23 '843 Patent are invalid as obvious in view of prior art?
24 Claim 23. Answer: Yes.
25 Claim 30. Answer: Yes.

1 **THE COURT:** Okay. Any requests from plaintiff?
2 **MS. SRINIVASAN:** Yes, Your Honor, to poll the
3 jury, please.
4 **THE COURT:** Ms. Garfinkel, please poll the
5 jury.
6 **THE CLERK:** Yes, Your Honor.
7 Members of the jury, is this the verdict you
8 have agreed upon?
9 Juror Number 1, is this the verdict you have
10 agreed upon?
11 **JUROR:** Yes.
12 **THE CLERK:** Juror Number 2, is this the verdict
13 you have agreed upon?
14 **JUROR:** Yes.
15 **THE CLERK:** Juror Number 3, is this the verdict
16 you have agreed upon?
17 **JUROR:** Yes.
18 **THE CLERK:** Juror Number 4, is this the verdict
19 you have agreed upon?
20 **JUROR:** Yes.
21 **THE CLERK:** Juror Number 5, is this the verdict
22 you have agreed upon?
23 **JUROR:** Yes.
24 **THE CLERK:** Juror Number 6, is this the verdict
25 you have agreed upon?

1 **JUROR:** Yes.
2 **THE CLERK:** Juror Number 7, is this the verdict
3 you have agreed upon?
4 **JUROR:** Yes.
5 **THE CLERK:** And, Juror Number 8, is this the
6 verdict you have agreed upon?
7 **JUROR:** Yes.
8 **THE COURT:** Ladies and gentlemen of the jury,
9 your service has now ended. I want to thank you on the
10 record for performing your civic duty serving on the jury.
11 I apologize that the trial took a little longer than I
12 thought it would. But your patience and your prompt
13 attendance each day is greatly appreciated.
14 You are now discharged; however, if you would
15 like to stay for a few minutes, I need to just talk with
16 the attorneys for a couple minutes, and then I would like
17 to thank you in person back in the jury room, if you want
18 to stick around. If you can't, I totally understand.
19 Ms. Garfinkel, please bring the jury out.
20 **THE CLERK:** Yes, Your Honor.
21 (The jury exits the courtroom at 3:42 p.m.)
22 **THE COURT:** Please be seated. Ladies and
23 gentlemen, I know we spoke a couple days ago about the
24 sealing of the transcript. I want to make sure that the
25 transcript is available to the public for whoever wants

1 it.
2 Where are we with proposing redactions to the
3 transcript?
4 **MS. SRINIVASAN:** From our perspective, we don't
5 have anything to redact. So it's not our confidential
6 information --
7 **THE COURT:** Okay. Understood. Thank you.
8 **MS. PALAPURA:** Your Honor, on behalf of Google,
9 we have a few small limited redactions on the main first
10 transcript, and the portions that were discussing some
11 confidential financial information of Google. So we will
12 be happy to -- just finishing up those, and we will send
13 it to the other side to see if they have any objections,
14 and we will get a motion.
15 **THE COURT:** Okay. Yep. And the motion should
16 comply with the case law that I mentioned earlier. When
17 do you think we'd be able to have that?
18 **MS. PALAPURA:** Yes. And I forgot to mention,
19 there's also two exhibits. I think, PTX-36 and 37, if I'm
20 not mistaken. So we'll just put all of that into one
21 motion. We should be able to get that on file tomorrow.
22 **THE COURT:** All right. Thank you very much.
23 And I see we have a representative from Apple
24 here. Your motion is still pending. And we'll get that
25 reviewed and ruled on.

1 Is there anything you wanted to add?

2 **MS. KANNOM:** If you don't mind, Your Honor.

3 **THE COURT:** Sure.

4 **MS. KANNOM:** Hannah Kannom on behalf of Apple.

5 So we weren't in the courtroom for portions of the trial

6 that were under seal, but I understand that Apple

7 confidential information was discussed during that

8 portion.

9 I filed a pro hac vice application this

10 morning, so I'd like an opportunity to -- now that I'm

11 signed on to the protective order, to view the transcript

12 except if Google has portions that they don't want me to

13 view, so that we can propose limited redactions to that as

14 well.

15 **THE COURT:** Okay. Do you think you could work

16 this out where you could get limited access to the

17 transcript from Google, to the extent appropriate, and

18 work out with them what you would like to move on?

19 **MS. KANNOM:** I'm sure I can.

20 **THE COURT:** Okay. That sounds fine.

21 **MS. KANNOM:** Thank you, Your Honor.

22 **THE COURT:** Thank you very much.

23 Is there anything else we need to address while

24 we are all sitting here today?

25 **MS. SRINIVASAN:** I don't believe so,

1 Your Honor. Not for Arendi.

2 **MR. UNIKEL:** I don't believe so, Your Honor.

3 **THE COURT:** And if there are any outstanding

4 issues with respect to post-trial briefing, to the extent

5 there is any, if you could give me an update on the status

6 on that by the end of the week. Just let me know what

7 you're thinking is, and we'll expect to hear from you, and

8 then we'll go on from there.

9 I have a recollection that we might have had an

10 agreement about what the post-trial briefing would be, but

11 it's in the pre-trial order. And I've got a big stack of

12 papers now. They're bigger than the stack was at the

13 beginning of last week.

14 So why don't you let me know where we are in

15 that, if there's anything that the Court needs to address.

16 **MS. SRINIVASAN:** Sure. We'll review it and

17 discuss with the other side.

18 **THE COURT:** I wanted to thank you all for your

19 professionalism this week, and your skill in presenting

20 the case. I was so impressed by, not only the outside

21 counsel, but also the Delaware counsel.

22 I'm sure we've all had enough of each other,

23 but I could go on forever because it was a great, great

24 pleasure watching you all. So I think we'll leave it at

25 that.

1 We'll be in recess.

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JUROR: [8] 1644/11 1644/14
1644/17 1644/20 1644/23
1645/1 1645/4 1645/7
MR. ARD: [29] 1474/17
1474/20 1475/1 1475/17
1475/24 1476/19 1477/2
1478/15 1479/6 1479/12
1479/17 1480/12 1481/17
1481/25 1482/4 1482/9
1482/17 1482/21 1483/5
1483/8 1483/11 1483/15
1483/21 1484/1 1495/6
1495/8 1496/22 1497/2
1499/17
MR. DIEHL: [7] 1485/19
1485/25 1487/11 1487/14
1487/17 1487/22 1491/16
MR. KAMBER: [4] 1491/14
1491/21 1491/24 1492/3
MR. LING: [24] 1476/1
1476/3 1476/8 1477/6
1477/15 1478/7 1479/10
1480/2 1480/18 1483/19
1484/3 1484/7 1484/9
1484/19 1485/7 1485/11
1486/4 1486/9 1486/20
1487/3 1487/5 1487/18
1487/21 1496/19
MR. STRAUS: [1] 1534/4
MR. UNIKEL: [22] 1488/2
1488/22 1488/25 1489/14
1492/10 1492/16 1493/20
1495/3 1496/4 1497/4 1498/4
1499/8 1500/2 1500/19
1501/6 1533/13 1564/10
1567/8 1602/11 1634/15
1642/15 1648/2
MS. KANNOM: [4] 1647/2
1647/4 1647/19 1647/21
MS. PALAPURA: [2] 1646/8
1646/18
MS. SRINIVASAN: [27]
1488/12 1490/4 1490/6
1491/3 1491/7 1491/13
1493/7 1494/21 1497/19
1498/20 1499/3 1500/18
1501/4 1533/14 1533/20
1533/24 1534/7 1534/17
1564/12 1625/3 1632/17
1633/20 1642/12 1644/2
1646/4 1647/25 1648/16
THE CLERK: [18] 1499/24
1501/8 1501/13 1534/10
1534/12 1639/2 1641/14
1641/16 1643/10 1644/6
1644/12 1644/15 1644/18
1644/21 1644/24 1645/2
1645/5 1645/20
THE COURT: [117] 1474/6
1474/19 1474/25 1475/15
1475/23 1475/25 1476/2
1476/7 1476/17 1476/24
1477/5 1477/14 1477/17
1478/10 1479/3 1479/14
1479/18 1480/4 1481/8
1481/23 1482/2 1482/6
1482/10 1482/18 1483/2
1483/6 1483/10 1483/12
1483/23 1484/2 1484/5

1484/8 1484/17 1485/4
1485/10 1485/12 1485/20
1486/3 1486/7 1486/19
1486/25 1487/4 1487/9
1487/13 1487/15 1487/19
1487/24 1488/4 1488/13
1488/23 1489/11 1490/2
1490/5 1490/25 1491/6
1491/9 1491/15 1491/22
1492/1 1492/5 1492/14
1492/17 1493/16 1494/12
1495/1 1495/4 1495/7
1496/11 1497/1 1497/3
1497/17 1498/1 1498/10
1498/24 1499/4 1499/13
1499/19 1499/25 1500/3
1500/20 1501/5 1501/9
1501/14 1533/7 1533/17
1533/21 1534/1 1534/5
1534/8 1534/13 1567/5
1624/24 1632/16 1633/19
1634/11 1634/17 1639/3
1641/17 1641/21 1642/7
1642/13 1642/16 1642/21
1643/1 1644/1 1644/4 1645/8
1645/22 1646/7 1646/15
1646/22 1647/3 1647/15
1647/20 1647/22 1648/3
1648/18
THE FOREPERSON: [1]
1642/25
\$
\$347,000 [1] 1621/21
\$45 [5] 1611/23 1612/2
1620/7 1621/22 1622/8
\$45 million [3] 1611/23 1612/2
1621/22
\$45,000 [1] 1621/10
\$45-million [2] 1620/7 1622/8
\$500,000 [3] 1554/24 1556/2
1623/4
\$625,000 [1] 1622/17
\$82,000 [1] 1621/17
'
'843 [71] 1486/12 1486/21
1509/23 1510/13 1511/11
1511/17 1511/20 1511/22
1512/3 1514/6 1514/7 1515/3
1516/23 1517/9 1518/8
1518/11 1518/15 1518/25
1519/4 1519/5 1520/8 1521/8
1521/15 1521/22 1522/3
1525/2 1527/17 1527/20
1528/14 1535/13 1535/14
1536/4 1546/4 1549/18
1552/4 1552/21 1553/1
1553/10 1554/7 1554/16
1567/4 1584/9 1595/16
1598/15 1598/16 1598/17
1601/17 1602/22 1605/10
1606/20 1608/12 1608/17
1608/21 1612/20 1613/5
1613/6 1613/10 1614/16
1614/17 1621/13 1628/3
1634/10 1639/17 1639/21
1640/2 1640/8 1640/22
1640/25 1643/13 1643/18
1643/23

-and [3] 1472/1 1473/10
1473/15
1
1,155,235 [1] 1565/14
1.6 [2] 1532/5 1619/4
10 [3] 1528/22 1565/16
1611/25
10-cent [1] 1565/19
10:01 a.m [1] 1501/7
10:50 a.m [1] 1533/6
11 [1] 1529/1
11 months [3] 1612/1 1612/2
1620/8
11-month [1] 1622/18
11:03 a.m [1] 1534/11
12 [8] 1525/15 1529/4
1551/10 1583/2 1595/1
1618/19 1618/22 1624/9
12:06 [1] 1488/7
13 [1] 1529/8
13-919-JLH [1] 1471/6
13:40 [1] 1488/6
14 [1] 1529/13
149 million [2] 1615/15
1615/15
15 [1] 1529/15
16 [3] 1492/4 1492/16 1530/2
17 [1] 1626/13
19 [2] 1481/21 1482/4
1990s [2] 1575/6 1575/12
1996 [3] 1568/10 1568/22
1569/6
1997 [6] 1568/7 1568/10
1569/6 1576/8 1576/12
1602/5
1998 [2] 1571/22 1607/17
1999 [3] 1546/24 1547/7
1547/10
1:45 [1] 1641/20
2
2000 [1] 1610/2
2011 [2] 1546/15 1549/2
2013 [3] 1552/15 1552/17
1552/19
2014 [1] 1547/23
2017 [20] 1552/16 1552/20
1552/25 1553/13 1553/17
1554/6 1554/11 1557/9
1558/16 1561/5 1561/20
1562/4 1562/10 1611/24
1615/8 1615/14 1615/25
1616/2 1616/18 1633/13
2018 [3] 1558/13 1562/7
1611/25
2023 [1] 1471/11
21 [1] 1615/8
23 [15] 1485/14 1485/15
1511/17 1511/19 1511/21
1512/2 1514/6 1595/20
1595/20 1639/24 1640/5
1640/12 1643/14 1643/19
1643/24
25 percent [1] 1613/25
25 years [1] 1545/22
25-plus [1] 1566/18
27 [1] 1549/7
28 [1] 1547/5

3
3.1 [1] 1532/6
30 [16] 1485/14 1485/15
1511/17 1511/20 1511/21
1512/2 1514/7 1595/19
1595/20 1604/2 1639/24
1640/5 1640/12 1643/15
1643/20 1643/25
315 [1] 1492/4
317 [1] 1492/16
319 [1] 1492/4
33 [1] 1477/15
36 [1] 1646/19
37 [2] 1500/6 1646/19
3:38 [1] 1642/19
3:42 [1] 1645/21
4
4.3 [2] 1487/6 1487/16
40 minutes [1] 1537/5
44,349,601 [1] 1565/20
45,504,836 [1] 1565/22
456 [1] 1562/1
458 [1] 1562/1
48 cents [2] 1565/12 1618/17
48-cent [1] 1634/8
4:1 [1] 1477/16
5
5.6 [1] 1474/14
5.7 [1] 1474/12
5th [2] 1615/14 1616/2
6
6.1 [1] 1500/11
6.2 [1] 1500/12
6.5 [2] 1500/11 1500/25
625,000 [1] 1622/21
67 [3] 1488/21 1494/20
1494/20
67A [1] 1561/16
7
7,917,843 [2] 1511/10
1639/18
8
8.0.0 [1] 1582/8
80 [1] 1483/15
844 [1] 1471/18
85 [1] 1632/21
8:43 [2] 1471/11 1474/5
9
900 hours [1] 1536/25
900,000 million [1] 1615/16
97 [1] 1521/18
A
a.m [5] 1471/11 1474/5
1501/7 1533/6 1534/11
ability [8] 1549/11 1549/12
1600/22 1623/24 1629/9
1631/20 1631/22 1633/24
able [18] 1490/10 1496/9
1529/23 1542/25 1543/4
1543/8 1558/3 1561/15
1573/24 1581/9 1593/14
1601/17 1611/24 1628/1
1628/20 1631/6 1646/17

A	Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 743 of 745 PageID #: 61322	1586/10 1591/20 1604/5 1617/22 1631/14	1548/3 1551/12 1551/20 1610/1 1616/17 1635/25	ahead [2] 1484/18 1588/14 aid [5] 1482/23 1504/1 1509/4
<p>able... [1] 1646/21 about [181] above [2] 1509/10 1628/16 absolute [1] 1615/10 absolutely [9] 1488/4 1488/13 1539/2 1542/3 1543/19 1564/2 1614/19 1625/18 1634/9 accelerated [2] 1570/5 1598/19 accept [7] 1507/17 1516/8 1530/12 1604/21 1605/7 1608/25 1638/9 acceptable [2] 1529/25 1530/15 accepted [1] 1560/14 access [1] 1647/16 accidentally [1] 1593/15 accommodating [1] 1481/19 accordance [1] 1477/10 according [7] 1506/15 1511/14 1523/24 1578/20 1584/16 1614/9 1616/22 accordingly [1] 1636/21 account [8] 1479/4 1519/11 1523/21 1524/14 1564/15 1616/6 1616/24 1619/24 accountable [1] 1567/3 accounted [2] 1556/1 1614/17 accounting [1] 1620/19 accounts [3] 1615/14 1615/15 1616/4 accurate [2] 1541/15 1586/14 accused [30] 1474/22 1484/12 1516/17 1516/19 1518/4 1528/17 1529/12 1531/4 1531/10 1531/17 1531/25 1532/3 1537/23 1538/15 1539/2 1541/3 1541/24 1542/15 1543/5 1543/18 1552/24 1556/15 1560/3 1564/1 1597/16 1618/19 1620/25 1621/6 1621/15 1633/15 accuses [2] 1525/15 1525/18 accusing [4] 1583/2 1601/2 1601/11 1624/10 achieving [3] 1528/21 1530/21 1530/25 acknowledged [7] 1566/7 1571/10 1576/8 1576/12 1576/12 1612/16 1625/25 acknowledging [2] 1576/3 1613/9 acquired [1] 1507/8 across [1] 1577/2 act [7] 1553/25 1572/9 1572/10 1572/11 1572/11 1608/1 1608/2 acted [3] 1518/18 1518/22 1526/24 acting [1] 1530/12 action [3] 1509/13 1511/3 1569/7 actions [1] 1613/16 activities [1] 1605/22 activity [2] 1592/11 1592/16 actual [10] 1496/6 1496/10 1498/7 1583/23 1584/4</p>	<p>actuality [1] 1590/8 actually [32] 1474/14 1484/7 1491/18 1500/7 1521/5 1521/20 1537/9 1537/14 1541/12 1544/17 1547/25 1572/22 1573/20 1580/1 1586/5 1587/1 1590/11 1593/21 1598/16 1600/18 1601/23 1601/25 1601/25 1602/8 1603/22 1606/8 1606/9 1615/13 1616/20 1622/3 1622/4 1626/14 add [22] 1480/10 1481/9 1481/13 1481/15 1482/2 1547/7 1547/9 1570/12 1570/15 1599/4 1599/7 1605/13 1605/20 1605/23 1606/1 1606/4 1606/18 1607/17 1607/20 1609/7 1636/22 1647/1 added [8] 1496/16 1526/10 1526/12 1529/12 1547/6 1547/22 1604/2 1606/21 addition [4] 1484/3 1510/11 1527/14 1605/22 additional [5] 1476/4 1514/14 1516/19 1518/5 1568/12 additionally [1] 1600/5 address [11] 1476/3 1515/23 1565/6 1568/15 1600/23 1601/1 1601/3 1608/3 1633/8 1647/23 1648/15 addresses [4] 1490/17 1568/4 1572/12 1608/2 adds [2] 1514/14 1526/8 adequate [1] 1525/21 adjust [1] 1621/23 administer [1] 1641/13 admission [2] 1540/24 1626/25 admit [1] 1540/13 admits [2] 1555/12 1563/10 admitted [17] 1489/5 1492/20 1493/13 1493/13 1494/16 1494/20 1503/19 1508/8 1508/9 1508/15 1545/25 1549/18 1560/11 1572/6 1606/25 1618/15 1619/7 admittedly [2] 1586/18 1619/18 adopted [2] 1574/20 1594/8 advance [2] 1622/25 1623/5 advantage [2] 1571/6 1602/19 advantages [3] 1528/19 1530/23 1571/10 advertising [5] 1559/9 1559/15 1560/8 1560/9 1560/12 advocating [1] 1495/25 AESD [3] 1598/18 1598/22 1598/23 affect [2] 1506/15 1519/9 affected [1] 1530/18 affidavits [2] 1482/24 1483/10 after [18] 1482/25 1498/11 1500/25 1527/7 1532/23 1533/9 1533/18 1539/1 1539/13 1539/21 1547/23</p>	<p>1643/6 again [40] 1489/15 1496/4 1500/7 1500/9 1538/1 1538/2 1540/14 1541/6 1543/11 1543/13 1548/12 1551/8 1554/17 1557/14 1559/5 1559/11 1560/17 1560/23 1562/5 1563/7 1565/17 1569/6 1569/10 1573/11 1577/17 1584/25 1585/5 1591/23 1594/25 1596/20 1597/20 1598/7 1599/3 1609/14 1613/8 1623/8 1625/22 1626/13 1629/19 1633/25 against [7] 1484/6 1484/23 1552/14 1555/4 1562/12 1596/1 1614/8 ago [11] 1544/19 1544/22 1545/7 1545/22 1566/18 1596/23 1611/18 1612/7 1628/23 1628/23 1645/23 agree [20] 1479/19 1492/17 1492/24 1493/3 1493/4 1532/9 1546/2 1546/4 1557/1 1565/7 1575/1 1575/5 1578/2 1578/6 1584/15 1584/18 1589/13 1603/5 1620/7 1635/19 agreed [19] 1485/9 1503/15 1529/16 1530/19 1537/15 1557/4 1571/5 1574/21 1607/8 1642/24 1644/8 1644/10 1644/13 1644/16 1644/19 1644/22 1644/25 1645/3 1645/6 agreement [63] 1475/8 1475/14 1477/20 1477/22 1477/23 1478/1 1479/8 1479/11 1479/16 1479/20 1479/21 1479/23 1480/6 1481/10 1481/11 1481/12 1482/22 1483/24 1495/10 1495/14 1496/2 1496/15 1496/25 1526/24 1527/3 1529/19 1531/15 1531/17 1531/19 1531/24 1532/5 1532/6 1532/8 1532/10 1532/11 1532/13 1532/15 1532/20 1555/24 1556/8 1562/12 1562/14 1562/15 1562/17 1562/23 1562/23 1563/7 1563/11 1563/13 1613/3 1613/8 1613/14 1613/15 1613/21 1619/1 1619/5 1619/11 1631/15 1635/23 1636/14 1637/7 1637/17 1648/10 agreements [19] 1477/10 1497/8 1497/20 1555/5 1563/3 1563/15 1564/7 1564/14 1564/18 1612/12 1612/13 1612/15 1614/12 1620/14 1621/23 1631/10 1631/11 1631/14 1631/17 agrees [7] 1539/1 1555/23 1564/23 1574/14 1574/15 1582/14 1616/8</p>	<p>aids [1] 1527/9 all [175] 1475/23 1480/20 1481/17 1482/10 1485/5 1485/20 1487/24 1489/23 1490/2 1492/5 1492/6 1492/15 1492/17 1493/21 1495/4 1497/3 1498/10 1499/13 1499/14 1499/19 1499/20 1500/4 1500/20 1501/3 1502/23 1504/13 1505/14 1506/14 1507/2 1507/16 1509/2 1509/10 1510/1 1513/11 1514/2 1514/9 1514/12 1514/18 1516/17 1517/18 1518/19 1520/19 1522/6 1522/9 1523/14 1531/9 1533/7 1534/1 1534/5 1534/6 1534/8 1536/15 1536/25 1539/1 1539/13 1539/19 1539/21 1540/5 1540/25 1541/10 1541/10 1541/21 1543/25 1546/8 1546/13 1546/15 1549/11 1549/17 1549/22 1550/5 1550/8 1551/8 1551/12 1551/20 1552/2 1553/18 1554/23 1554/24 1555/10 1555/14 1558/6 1559/8 1567/10 1567/18 1568/24 1574/22 1574/23 1574/25 1575/5 1575/10 1578/6 1578/15 1578/17 1579/5 1579/11 1579/14 1579/21 1579/23 1580/14 1580/17 1581/7 1581/18 1581/19 1583/5 1583/12 1584/8 1584/15 1584/18 1585/12 1585/17 1588/16 1589/13 1590/18 1590/25 1591/3 1591/8 1591/14 1594/16 1594/24 1595/6 1595/17 1595/21 1596/15 1596/20 1597/3 1600/6 1600/13 1600/24 1601/18 1601/19 1602/12 1602/20 1603/4 1603/8 1603/10 1608/4 1608/5 1608/12 1609/3 1610/2 1610/15 1611/14 1612/9 1613/16 1614/17 1615/12 1619/1 1619/3 1619/14 1620/2 1621/12 1622/7 1623/9 1623/25 1624/5 1624/9 1624/22 1628/1 1628/7 1631/24 1632/13 1634/4 1636/7 1637/3 1637/21 1641/22 1642/1 1642/16 1643/8 1646/20 1646/22 1647/24 1648/18 1648/22 1648/24 alleged [5] 1518/15 1522/1 1526/19 1526/23 1530/10 allegedly [1] 1531/8 alleges [1] 1526/2 allow [2] 1519/9 1529/6 allowed [6] 1490/1 1503/13 1564/17 1597/16 1603/23 1637/19</p>	

A	analyzing [3] 1537/1 1561/13 1568/3	1528/20 1529/2 1530/2 1530/9 1530/24 1531/1	1593/25 1609/2 1610/9 1615/19 1616/11
allows [3] 1515/25 1516/2 1623/13	ANDERSON [1] 1473/9	1531/24 1548/8 1553/16	Apparently [1] 1617/11
almost [2] 1532/25 1568/18	ANDREA [1] 1473/13	1554/5 1554/16 1559/8	appeal [1] 1489/18
alone [2] 1600/21 1616/4	Android [35] 1484/16 1540/8	1562/16 1563/10 1563/11	appear [3] 1508/1 1562/14
along [2] 1501/17 1551/18	1540/12 1542/6 1542/16	1572/7 1572/8 1572/14	1625/13
alongside [2] 1559/10	1542/22 1543/1 1543/7	1573/15 1574/13 1579/24	APPEARANCES [2] 1471/23
1590/12	1543/23 1556/15 1558/14	1580/14 1582/10 1582/12	1472/2
aloud [2] 1636/16 1643/4	1561/7 1561/10 1561/21	1582/20 1582/25 1589/1	appeared [3] 1508/5 1568/15
already [13] 1475/13 1479/9	1581/8 1582/7 1582/8 1582/9	1592/8 1593/11 1594/25	1581/13
1487/2 1496/21 1563/15	1582/11 1582/15 1582/15	1595/10 1595/16 1596/18	appears [4] 1483/16 1591/6
1568/5 1589/11 1601/15	1582/17 1582/18 1582/19	1599/22 1602/2 1604/9	1626/21 1639/13
1619/20 1621/13 1622/21	1582/20 1588/17 1588/17	1606/12 1606/21 1607/2	Apple [70] 1497/10 1521/17
1624/7 1627/7	1588/19 1615/21 1616/7	1608/16 1608/20 1610/1	1543/23 1543/24 1544/17
also [59] 1475/18 1475/19	1616/12 1616/12 1619/3	1611/21 1617/17 1619/15	1547/20 1548/2 1548/12
1477/24 1480/5 1480/21	1619/8 1626/17	1620/8 1630/20 1635/2	1548/12 1548/13 1548/14
1481/4 1481/12 1485/1	Android 7 [1] 1588/17	1635/7 1636/24 1636/25	1548/15 1548/19 1548/20
1486/11 1486/18 1486/22	Android 8 [5] 1561/7 1561/21	1637/25 1638/1 1638/1	1549/3 1550/13 1565/3
1493/8 1494/9 1494/9	1582/15 1615/21 1616/7	1638/4 1638/4 1638/5 1638/8	1566/25 1567/25 1568/9
1495/14 1501/1 1502/5	Android 9 [3] 1582/9 1582/15	1638/8 1638/22 1639/12	1568/13 1568/18 1569/5
1504/9 1512/4 1516/12	1616/12	1639/21 1640/1 1640/7	1569/17 1570/9 1570/24
1518/6 1518/11 1518/16	animations [1] 1508/12	1640/14 1640/15 1640/25	1575/19 1577/21 1577/21
1522/20 1530/8 1530/15	another [19] 1493/15 1513/6	1643/13 1643/17 1643/22	1596/17 1597/22 1598/8
1530/23 1532/13 1535/25	1514/10 1514/11 1517/14	1644/1 1646/13 1648/3	1599/2 1599/16 1600/1
1542/10 1547/14 1548/22	1517/24 1539/15 1547/21	1648/5	1600/8 1601/20 1602/1
1549/6 1552/9 1561/20	1549/24 1550/18 1553/6	anybody [3] 1560/4 1560/6	1602/12 1602/16 1602/21
1562/11 1568/24 1571/9	1556/8 1560/25 1573/21	1594/21	1602/25 1603/9 1604/17
1572/9 1580/18 1580/19	1593/7 1595/4 1630/3	anymore [4] 1604/25 1622/10	1605/1 1605/16 1606/6
1581/17 1584/20 1584/21	1635/22 1642/8	1630/12 1630/14	1606/8 1606/16 1607/21
1586/24 1588/5 1599/20	answer [36] 1502/6 1537/24	anyone [11] 1499/25 1505/12	1608/5 1608/8 1609/8
1599/21 1600/1 1600/2	1538/2 1538/8 1538/9	1635/1 1635/12 1635/13	1610/12 1612/8 1613/2
1601/7 1603/25 1604/9	1538/13 1538/14 1538/21	1637/25 1638/8 1638/10	1613/4 1617/23 1620/13
1626/9 1627/16 1627/18	1538/22 1545/11 1549/24	1638/11 1638/12 1638/19	1621/5 1622/22 1623/21
1633/18 1646/19 1648/21	1550/3 1554/18 1557/14	anything [31] 1475/20	1628/24 1629/15 1629/21
alternative [7] 1530/20	1559/21 1560/17 1571/18	1480/17 1483/6 1483/14	1631/20 1631/21 1646/23
1553/10 1557/13 1563/20	1574/11 1586/20 1602/7	1487/19 1494/6 1494/19	1647/4 1647/6
1563/25 1564/2 1564/4	1608/23 1623/14 1624/16	1494/24 1495/2 1497/3	Apple's [1] 1630/5
alternatives [5] 1530/16	1624/20 1627/9 1636/17	1503/7 1541/20 1541/21	apples [2] 1564/19 1564/19
1530/17 1530/24 1619/19	1636/21 1639/8 1640/13	1542/25 1543/10 1571/16	applicant [3] 1597/5 1597/11
1623/6	1640/16 1643/14 1643/15	1588/12 1589/12 1591/1	1598/17
although [2] 1488/15 1492/19	1643/19 1643/20 1643/24	1593/4 1614/22 1617/19	application [23] 1539/7
always [2] 1555/18 1555/23	1643/25	1618/24 1620/24 1623/18	1539/9 1540/16 1540/21
am [4] 1481/13 1525/4	answered [4] 1538/16	1624/11 1633/12 1646/5	1541/25 1542/13 1542/23
1533/17 1592/14	1538/18 1640/14 1640/15	1647/1 1647/23 1648/15	1543/19 1559/8 1565/10
ambiguity [2] 1476/15	answering [2] 1565/23 1639/5	anyway [1] 1546/18	1565/17 1568/19 1569/4
1484/22	answers [2] 1504/8 1552/2	anywhere [2] 1562/14	1596/18 1598/21 1601/5
ambiguous [8] 1475/7	anticipate [5] 1522/8 1546/1	1566/10	1602/6 1605/2 1607/12
1478/21 1479/1 1480/15	1546/5 1546/10 1547/14	apart [1] 1540/2	1627/8 1633/24 1634/7
1480/17 1481/5 1482/22	anticipated [8] 1521/8	APIs [1] 1541/4	1647/9
1485/2	1521/21 1521/24 1544/7	APK [7] 1581/7 1581/7	applications [37] 1537/23
amount [31] 1486/14 1507/24	1551/25 1608/17 1640/2	1581/15 1581/17 1581/22	1538/14 1539/2 1540/1
1511/23 1519/10 1525/3	1643/18	1591/18 1593/4	1540/13 1540/15 1541/3
1525/6 1525/11 1526/17	anticipates [1] 1522/2	APKs [1] 1581/18	1541/25 1542/15 1542/21
1527/12 1529/15 1529/19	anticipating [1] 1546/7	apologize [2] 1495/8 1645/11	1542/25 1543/2 1543/10
1529/24 1531/1 1535/16	Anticipation [1] 1522/4	app [53] 1540/21 1540/23	1543/15 1553/18 1556/15
1554/23 1565/23 1609/16	any [119] 1476/14 1480/12	1540/23 1541/6 1541/7	1556/24 1558/14 1559/2
1614/8 1614/20 1616/17	1482/20 1483/10 1484/2	1541/9 1541/21 1542/6	1559/23 1560/3 1560/14
1618/4 1618/8 1618/12	1485/16 1485/18 1485/24	1542/7 1542/11 1543/11	1561/6 1561/9 1561/14
1618/13 1621/5 1622/1	1486/6 1486/12 1486/20	1577/5 1577/6 1580/8 1581/6	1562/17 1563/6 1565/16
1622/24 1623/4 1623/7	1487/9 1488/9 1493/13	1581/6 1581/8 1581/12	1565/17 1572/5 1573/17
1631/19 1640/19	1493/18 1502/13 1502/18	1582/1 1582/7 1582/10	1606/25 1625/22 1627/13
analogous [1] 1529/7	1503/2 1503/4 1503/9 1504/5	1582/21 1584/4 1584/13	1630/7 1632/8 1633/16
analysis [16] 1498/7 1538/9	1504/17 1505/13 1507/14	1584/15 1584/17 1584/19	applied [4] 1491/19 1491/19
1538/11 1545/16 1556/22	1507/18 1507/25 1509/6	1585/16 1587/12 1587/13	1565/19 1617/23
1560/20 1564/13 1565/8	1509/6 1509/13 1512/14	1587/19 1587/24 1587/24	apply [12] 1481/5 1488/9
1565/15 1581/10 1582/3	1514/4 1516/20 1518/1	1588/2 1588/7 1588/22	1501/20 1501/23 1502/16
1584/8 1615/3 1615/6	1518/5 1519/8 1519/10	1589/1 1589/3 1589/4	1510/25 1514/23 1516/10
1621/18 1633/14	1520/8 1520/10 1523/7	1589/21 1590/8 1591/18	1516/21 1559/5 1621/8
analyze [2] 1581/5 1631/22	1524/14 1525/5 1527/13	1592/15 1592/24 1593/3	1621/16
analyzed [2] 1568/11 1598/19	1527/14 1528/1 1528/6	1593/11 1593/13 1593/17	apportion [1] 1556/23

A	Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 75 of 75 PageID #: 61324		asset [1] 1509/11 assignment [1] 1538/3
<p>apportioned [1] 1531/12 apportionment [2] 1531/10 1559/13 appreciate [1] 1567/2 appreciated [2] 1567/14 1645/13 approach [48] 1490/5 1526/16 1526/17 1535/23 1539/15 1539/22 1539/25 1539/25 1543/14 1544/7 1544/12 1544/20 1544/21 1544/24 1573/19 1573/19 1574/7 1574/8 1575/17 1576/19 1576/23 1576/25 1577/14 1577/15 1577/18 1577/18 1578/3 1578/4 1586/1 1594/9 1594/12 1595/1 1599/14 1599/14 1599/15 1599/22 1599/22 1599/22 1603/6 1603/7 1610/7 1610/8 1611/4 1624/6 1624/7 1624/7 1624/13 1628/24 Approach 1 [9] 1539/25 1577/15 1577/18 1578/4 1594/12 1599/14 1599/22 1603/6 1624/6 Approach 2 [11] 1539/25 1577/14 1577/18 1586/1 1594/9 1595/1 1599/14 1599/15 1599/22 1603/7 1624/7 approached [1] 1632/18 approaches [11] 1575/7 1575/11 1575/14 1575/15 1575/23 1576/3 1576/9 1576/10 1576/18 1578/2 1600/4 appropriate [6] 1489/3 1489/20 1502/17 1507/16 1562/3 1647/17 appropriately [1] 1477/1 approve [1] 1616/19 approximately [1] 1525/24 apps [38] 1474/22 1484/13 1525/15 1531/18 1531/21 1532/1 1532/3 1540/10 1556/6 1577/10 1577/12 1580/17 1581/19 1582/16 1582/20 1583/2 1583/6 1583/9 1583/10 1583/13 1583/17 1584/3 1585/23 1587/7 1588/13 1588/16 1588/20 1589/24 1594/10 1595/1 1595/6 1610/9 1618/19 1618/24 1619/3 1624/9 1624/9 1626/18 apps' [1] 1540/9 ARD [1] 1473/5 are [235] area [4] 1583/21 1584/2 1584/3 1632/24 areas [1] 1584/7 ARENDI [161] 1471/4 1474/15 1477/19 1479/18 1479/24 1480/19 1485/18 1486/14 1486/22 1488/6 1488/7 1490/3 1490/12 1490/23 1495/13 1496/1 1496/12 1509/22 1509/23</p>	<p>1510/1 1510/4 1511/6 1511/7 1511/9 1511/15 1511/24 1512/4 1517/8 1517/15 1518/8 1518/13 1518/25 1525/3 1525/6 1525/9 1525/10 1525/15 1525/18 1525/22 1525/24 1526/2 1527/16 1528/5 1528/11 1529/16 1531/19 1531/20 1532/8 1532/20 1534/21 1534/21 1535/5 1535/12 1535/15 1535/17 1536/1 1536/14 1536/16 1536/22 1539/24 1544/9 1544/20 1544/20 1547/3 1548/16 1549/19 1552/13 1554/14 1555/1 1555/5 1561/4 1561/14 1562/8 1562/13 1562/16 1562/25 1563/7 1563/15 1565/2 1565/3 1565/24 1566/17 1567/19 1568/1 1569/11 1569/15 1569/25 1570/17 1571/16 1574/4 1574/8 1574/13 1574/19 1575/16 1577/17 1584/12 1584/16 1586/12 1586/16 1586/24 1587/4 1588/20 1589/5 1589/17 1589/22 1589/25 1590/6 1591/9 1594/6 1595/7 1595/10 1595/14 1596/2 1596/7 1596/14 1597/21 1597/24 1598/7 1598/15 1603/1 1604/11 1604/11 1604/13 1604/16 1605/5 1609/9 1609/12 1609/14 1609/15 1609/17 1609/21 1610/1 1610/18 1611/22 1612/6 1612/8 1613/17 1616/3 1618/1 1623/14 1624/2 1624/11 1624/14 1625/2 1627/17 1628/25 1630/14 1632/23 1633/3 1633/4 1639/15 1639/15 1639/19 1639/22 1640/4 1640/11 1640/19 1640/23 1641/1 1643/11 1648/1 Arendi's [37] 1476/3 1477/6 1478/12 1482/12 1483/19 1510/6 1510/11 1527/25 1531/14 1531/15 1531/24 1532/16 1532/19 1537/8 1542/3 1550/7 1556/13 1562/11 1563/2 1570/4 1572/20 1573/2 1573/19 1578/3 1590/15 1595/25 1596/11 1598/5 1603/5 1604/21 1606/19 1607/7 1610/11 1610/14 1610/18 1612/1 1627/15 arguably [1] 1571/21 argue [1] 1596/2 arguing [3] 1546/6 1603/1 1628/14 argument [9] 1543/20 1544/8 1544/15 1548/18 1560/25 1574/22 1604/24 1612/7 1627/17 arguments [16] 1474/10 1488/8 1490/21 1500/10</p>	<p>1503/25 1503/25 1505/24 1505/25 1506/1 1532/24 1533/4 1534/14 1596/12 1597/11 1609/10 1637/4 arises [1] 1529/8 arising [1] 1529/10 around [10] 1519/5 1537/19 1542/6 1542/7 1545/25 1551/10 1554/7 1557/20 1633/2 1645/18 arranged [1] 1522/11 arrangements [1] 1589/1 art [40] 1487/7 1520/17 1520/25 1521/7 1521/7 1521/10 1521/14 1522/7 1522/8 1522/15 1522/18 1523/1 1523/7 1523/7 1523/13 1523/15 1523/20 1523/23 1524/1 1524/3 1524/10 1549/10 1550/16 1551/1 1551/25 1552/1 1574/3 1576/9 1598/19 1607/3 1607/9 1608/18 1608/22 1609/13 1629/5 1630/20 1640/2 1640/9 1643/18 1643/23 article [2] 1529/21 1576/8 articles [4] 1545/25 1546/9 1546/13 1546/15 as [219] aside [2] 1589/25 1590/6 ask [26] 1492/7 1498/25 1506/18 1551/8 1558/1 1558/22 1559/5 1559/14 1560/4 1560/8 1569/10 1569/11 1585/10 1586/25 1597/17 1609/13 1611/14 1612/22 1617/4 1617/7 1620/9 1621/22 1624/19 1641/11 1642/16 1643/7 asked [36] 1479/1 1504/9 1514/24 1517/5 1535/11 1537/22 1538/6 1538/8 1539/10 1540/11 1546/1 1549/16 1551/24 1552/9 1553/8 1553/9 1553/13 1554/14 1557/12 1557/13 1557/25 1559/20 1560/11 1567/17 1571/18 1586/12 1587/1 1595/14 1609/15 1617/6 1617/8 1617/13 1617/14 1617/16 1627/8 1635/6 asking [5] 1586/16 1611/19 1611/22 1612/2 1618/13 aspect [1] 1566/7 asserted [14] 1485/14 1510/12 1510/16 1511/12 1514/25 1515/3 1519/14 1519/20 1520/17 1521/8 1521/22 1522/2 1553/5 1612/10 asserting [3] 1630/15 1630/16 1630/18 assertion [1] 1596/16 asserts [4] 1509/22 1510/12 1518/8 1531/16 assess [1] 1518/19 assessed [2] 1513/9 1517/12 assessing [1] 1527/9</p>	<p>assist [1] 1508/20 assume [6] 1527/1 1554/22 1555/20 1555/25 1564/16 1642/18 assuming [1] 1631/15 assumption [3] 1604/8 1617/12 1617/13 assure [1] 1537/3 attach [1] 1508/23 attempt [2] 1493/14 1560/4 attempted [1] 1493/8 attempting [1] 1519/5 attendance [1] 1645/13 attention [7] 1534/19 1567/3 1567/11 1624/23 1632/7 1643/5 1643/8 attested [1] 1537/6 attorneys [3] 1506/4 1550/2 1645/16 attorneys' [1] 1505/24 attributable [3] 1531/2 1531/6 1620/21 attribute [1] 1507/25 attributing [1] 1621/12 attribution [1] 1616/14 August [9] 1557/9 1561/2 1561/5 1561/20 1562/4 1562/10 1569/6 1615/8 1615/25 August 2017 [4] 1557/9 1561/20 1562/4 1615/25 August 21 [1] 1615/8 automatically [1] 1629/11 available [28] 1512/15 1530/17 1545/6 1545/22 1547/10 1547/12 1548/1 1548/10 1558/1 1558/2 1558/8 1558/10 1566/21 1576/21 1580/11 1580/17 1586/15 1600/25 1608/4 1615/10 1619/19 1620/5 1620/6 1623/2 1623/6 1630/12 1630/14 1645/25 Avandia [1] 1498/19 average [3] 1507/8 1618/6 1618/13 avoid [11] 1519/4 1553/10 1553/19 1554/6 1555/13 1555/14 1555/14 1610/22 1612/18 1613/21 1629/9 award [10] 1519/10 1525/3 1525/8 1525/12 1525/21 1525/23 1526/6 1526/11 1531/1 1531/12 awarded [2] 1486/15 1511/25 aware [6] 1548/15 1548/16 1552/23 1598/6 1610/18 1633/18 away [4] 1524/4 1535/9 1540/1 1609/10</p>
			B
			<p>back [49] 1489/2 1489/6 1489/7 1489/12 1489/16 1489/18 1489/19 1489/24 1490/16 1492/13 1492/18 1492/21 1492/24 1493/3 1493/4 1493/15 1493/18</p>

back... [32] 1493/25 1494/5
1494/23 1496/13 1498/11
1501/9 1533/3 1534/2
1541/25 1543/14 1547/5
1551/15 1552/14 1552/18
1561/16 1561/25 1567/20
1594/13 1603/24 1605/19
1611/7 1617/7 1626/14
1626/22 1628/22 1629/2
1630/23 1634/14 1635/7
1641/25 1642/21 1645/17
bag [1] 1547/17
bar [3] 1574/24 1591/6
1592/9
base [2] 1556/6 1560/7
based [18] 1503/5 1504/18
1525/14 1526/7 1531/2
1531/12 1569/13 1595/17
1605/12 1615/3 1617/24
1617/25 1621/22 1624/17
1624/18 1624/20 1636/18
1638/23
bases [1] 1535/4
basic [6] 1572/4 1574/2
1575/6 1575/11 1587/5
1606/25
basically [1] 1478/4
basis [7] 1517/12 1522/5
1553/20 1563/8 1597/15
1618/3 1622/8
be [224]
bears [3] 1532/18 1551/3
1595/7
became [4] 1556/21 1586/15
1587/13 1610/2
because [98] 1474/13 1475/2
1475/13 1480/10 1486/1
1487/1 1489/6 1490/11
1491/4 1494/14 1497/15
1500/8 1500/9 1512/20
1521/23 1526/11 1536/20
1537/6 1538/13 1543/2
1544/15 1545/8 1545/18
1545/25 1546/22 1547/1
1549/19 1558/16 1559/1
1559/6 1562/12 1568/4
1570/7 1570/12 1570/16
1574/16 1574/20 1577/19
1577/22 1579/3 1582/17
1583/5 1583/9 1587/7
1587/22 1588/6 1588/18
1589/2 1589/19 1590/2
1590/10 1591/1 1591/14
1592/3 1593/12 1595/5
1595/20 1596/15 1596/24
1597/1 1597/13 1598/9
1599/7 1599/23 1600/2
1602/6 1603/4 1603/8
1603/19 1604/18 1605/3
1606/20 1608/24 1609/3
1609/25 1610/23 1611/1
1612/9 1612/11 1613/21
1613/24 1616/17 1617/3
1618/21 1618/25 1620/25
1622/9 1622/12 1623/1
1627/4 1627/7 1627/9 1628/6
1628/23 1629/16 1636/5
1637/14 1648/23
become [3] 1486/17 1587/24

1611/11
becomes [4] 1493/21 1494/7
1498/9 1588/7
been [75] 1486/12 1486/21
1490/7 1491/3 1491/5
1492/19 1496/5 1496/24
1500/13 1501/16 1503/11
1503/17 1506/12 1507/8
1507/22 1508/2 1508/15
1511/22 1512/3 1517/19
1518/3 1518/6 1521/11
1522/10 1522/17 1522/20
1522/25 1524/5 1525/25
1526/23 1528/21 1529/18
1529/22 1529/24 1530/7
1530/11 1530/12 1532/25
1536/9 1541/14 1544/3
1551/9 1551/10 1551/11
1552/5 1552/7 1564/23
1567/12 1568/5 1571/22
1580/25 1597/19 1605/22
1606/15 1607/8 1607/18
1608/10 1609/7 1612/6
1615/9 1620/4 1620/6
1622/19 1623/16 1624/23
1627/4 1628/1 1628/19
1629/10 1629/12 1631/7
1632/1 1632/1 1636/11
1639/8
before [59] 1471/20 1476/14
1492/25 1502/22 1512/17
1521/6 1522/19 1526/20
1533/4 1533/10 1535/8
1536/9 1540/24 1542/1
1545/3 1546/14 1546/15
1546/16 1547/5 1548/11
1549/1 1549/1 1549/2
1549/13 1549/19 1551/23
1552/5 1558/11 1559/3
1560/10 1567/10 1568/18
1569/4 1569/8 1572/20
1575/12 1588/16 1594/21
1596/18 1601/5 1601/15
1602/5 1602/11 1605/2
1607/12 1609/21 1623/1
1627/21 1627/24 1628/5
1628/6 1628/11 1628/13
1628/17 1629/22 1630/20
1631/18 1632/18 1634/14
began [3] 1526/20 1527/7
1529/17
begin [1] 1567/10
beginning [7] 1474/4 1502/20
1508/21 1512/7 1516/12
1632/5 1648/13
behalf [4] 1484/4 1534/20
1646/8 1647/4
behavior [2] 1518/23 1554/1
being [21] 1478/24 1479/1
1481/1 1490/12 1490/22
1516/9 1517/5 1539/12
1541/9 1543/8 1543/18
1543/22 1578/19 1582/1
1584/17 1585/20 1597/16
1606/6 1619/20 1625/23
1628/4
belabor [3] 1584/25 1592/3
1622/9
BELGAM [1] 1471/25
belief [1] 1610/11

beliefs [1] 1554/5
believe [27] 1478/7 1489/9
1489/14 1491/3 1491/17
1492/4 1492/10 1493/20
1494/21 1496/21 1497/6
1504/24 1505/1 1505/16
1505/20 1506/7 1539/20
1551/17 1553/20 1554/3
1554/18 1597/25 1610/23
1631/23 1633/9 1647/25
1648/2
believed [2] 1519/1 1527/1
believes [1] 1610/6
belongs [1] 1515/20
below [2] 1639/13 1641/6
bench [1] 1499/15
beneficiaries [2] 1482/9
1482/14
benefit [5] 1482/13 1482/16
1490/16 1634/2 1634/10
benefits [1] 1528/24
Benihana [1] 1594/17
best [19] 1475/5 1475/12
1475/16 1476/10 1476/13
1477/11 1477/19 1481/1
1494/18 1495/12 1495/25
1496/1 1496/5 1496/14
1558/8 1619/21 1628/8
1634/6 1637/10
better [2] 1505/13 1634/8
between [16] 1505/11 1523/7
1526/19 1528/5 1540/12
1563/7 1565/2 1565/3
1566/12 1575/24 1576/4
1577/20 1594/14 1607/21
1609/1 1613/16
beyond [3] 1494/25 1510/23
1628/16
bias [1] 1503/2
biases [1] 1506/12
big [7] 1544/18 1566/10
1572/20 1597/21 1606/3
1622/25 1648/11
bigger [3] 1622/3 1622/21
1648/12
billion [1] 1617/3
birthday [1] 1583/18
bit [5] 1499/9 1534/23
1544/11 1547/15 1572/19
bits [1] 1550/9
black [1] 1587/16
blackberry [1] 1638/3
Bless [1] 1580/23
blocks [1] 1523/15
blog [1] 1638/5
blue [2] 1584/3 1587/22
Boles [3] 1626/12 1629/2
1632/21
book [1] 1489/10
both [27] 1476/20 1482/23
1482/24 1488/9 1496/20
1497/6 1497/17 1505/14
1514/16 1514/19 1517/1
1526/9 1527/1 1527/2
1529/17 1531/11 1533/3
1542/11 1543/12 1558/19
1575/11 1599/25 1600/3
1603/6 1604/12 1604/20
1605/5
bother [2] 1611/13 1619/19

bothered [3] 1581/5 1609/22
1615/18
bottom [2] 1593/18 1621/9
bound [2] 1502/19 1504/16
box [3] 1543/15 1592/6
1642/18
boxes [4] 1539/17 1539/21
1541/15 1580/9
breadth [1] 1512/25
break [5] 1500/10 1533/2
1533/2 1533/8 1533/9
brief [2] 1512/9 1634/12
briefing [2] 1648/4 1648/10
briefly [1] 1584/10
bring [11] 1491/10 1499/25
1501/3 1534/6 1534/9
1594/13 1626/12 1628/22
1641/10 1643/2 1645/19
bringing [1] 1633/6
broad [2] 1596/3 1596/6
broader [2] 1513/6 1586/2
brought [6] 1541/11 1542/2
1551/14 1586/4 1586/9
1633/15
browser [3] 1559/9 1559/15
1559/19
build [4] 1589/4 1601/25
1607/5 1610/24
building [2] 1523/15 1586/5
built [5] 1573/8 1580/1 1580/7
1586/21 1610/16
burden [26] 1502/17 1509/14
1509/24 1510/15 1510/20
1510/22 1510/24 1510/25
1519/19 1519/24 1520/12
1525/6 1532/18 1536/21
1536/22 1537/8 1545/2
1545/4 1545/18 1548/6
1550/21 1551/3 1552/9
1595/8 1629/22 1632/3
burdens [1] 1509/16
business [10] 1507/7 1517/20
1528/8 1529/6 1529/11
1529/20 1530/3 1530/13
1610/2 1633/25
businesses [2] 1529/6
1620/23
buy [1] 1621/25
buying [1] 1621/24

C

C.A [1] 1471/6
cake [1] 1583/19
cake-colored [1] 1583/19
calculate [2] 1526/15 1614/21
calculated [1] 1618/16
Calendar [2] 1525/16 1542/19
California [1] 1558/5
call [5] 1494/13 1588/21
1588/23 1609/23 1619/23
call-out [1] 1588/21
called [14] 1508/14 1509/17
1509/18 1523/8 1524/15
1531/10 1569/19 1572/4
1580/11 1584/6 1587/8
1598/18 1603/19 1607/1
calling [1] 1542/12
calls [1] 1541/4
came [12] 1485/5 1494/3
1521/6 1540/19 1556/2

Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 717 of 778 PageID# 61326	1513/25 1514/24 1515/2 1520/1 1520/3 1530/8	1499/9 1520/11 1543/2 1562/5 1636/3 1637/11	1518/3 1518/5 1518/6 1520/5 1520/8 1520/9 1520/15
came... [7] 1558/5 1565/19	1531/22 1533/4 1534/20	1637/14	1522/5 1522/5 1522/7 1522/9
1567/24 1606/10 1610/3	1535/11 1535/21 1536/10	changed [1] 1533/21	1522/10 1522/11 1522/11
1623/1 1632/18	1536/15 1537/1 1537/6	changes [6] 1485/13 1485/18	1522/23 1524/25 1525/1
can [89] 1476/17 1478/4	1537/12 1537/23 1538/1	1487/25 1493/18 1499/16	1525/2 1531/16 1537/19
1479/4 1482/11 1484/3	1538/5 1538/15 1539/2	1533/18	1545/16 1545/16 1545/16
1486/8 1486/10 1489/12	1539/20 1539/23 1540/5	character [1] 1528/23	1554/16 1555/1 1571/2
1490/5 1490/25 1492/6	1541/3 1542/16 1543/5	characterization [2] 1626/24	1574/16 1595/10 1595/19
1492/17 1494/22 1497/11	1543/16 1543/17 1544/5	1626/25	1595/20 1595/20 1595/20
1498/1 1498/6 1498/17	1544/6 1546/14 1551/19	charge [1] 1590/3	1595/25 1596/1 1596/8
1498/21 1498/21 1499/8	1552/24 1555/1 1555/7	chart [2] 1554/25 1555/3	1599/3 1604/2 1605/6
1499/11 1499/22 1500/2	1555/11 1556/3 1556/11	charts [3] 1503/16 1503/20	1625/14 1627/6 1632/10
1500/3 1500/4 1501/11	1557/16 1561/3 1561/6	1508/11	1639/24 1639/24 1640/5
1512/17 1515/7 1515/9	1561/14 1561/17 1561/19	chat [1] 1638/5	1640/5 1643/14 1643/15
1515/18 1515/23 1527/7	1562/8 1563/14 1564/1	check [1] 1595/18	1643/19 1643/20 1643/24
1530/6 1544/9 1544/14	1564/7 1564/21 1565/9	CHI [1] 1576/8	1643/25
1547/4 1547/14 1561/8	1567/1 1574/11 1581/5	Choc [9] 1497/11 1541/2	Claim 23 [11] 1485/15
1561/8 1561/19 1566/5	1582/14 1582/14 1583/3	1576/15 1580/24 1585/21	1511/21 1512/2 1514/6
1566/9 1566/10 1566/10	1595/2 1595/25 1597/5	1593/2 1593/10 1593/20	1595/20 1595/20 1639/24
1566/11 1567/5 1569/15	1602/7 1609/16 1611/10	1616/22	1640/5 1643/14 1643/19
1572/9 1575/9 1576/23	1618/11 1618/19 1621/1	choice [1] 1593/12	1643/24
1577/2 1577/7 1578/10	1624/10 1624/17 1625/6	choose [4] 1574/1 1574/3	Claim 30 [9] 1514/7 1595/19
1583/12 1583/22 1588/20	1625/8 1625/24 1627/13	1576/17 1577/14	1595/20 1604/2 1639/24
1589/18 1592/6 1592/23	1628/12 1631/6 1633/6	choosing [2] 1577/17 1626/19	1640/5 1643/15 1643/20
1595/18 1596/8 1596/9	1634/9 1635/2 1635/24	chose [1] 1574/8	1643/25
1596/14 1597/7 1601/12	1636/10 1636/20 1637/5	Chrome [8] 1525/16 1541/2	claimed [26] 1517/22 1521/12
1602/15 1604/22 1606/2	1637/15 1638/1 1638/8	1541/4 1559/3 1559/8	1521/12 1521/23 1522/16
1608/23 1609/9 1615/20	1638/9 1638/12 1638/12	1560/10 1581/2 1593/21	1522/25 1523/3 1523/8
1615/22 1618/4 1621/3	1638/16 1638/17 1638/19	Chromium [2] 1593/19	1523/13 1523/16 1523/17
1621/9 1626/12 1629/2	1638/23 1646/16 1648/20	1593/22	1523/21 1523/22 1523/25
1630/8 1632/21 1635/5	cases [13] 1475/2 1475/3	circuit [1] 1603/13	1524/3 1524/4 1524/9
1635/23 1637/7 1637/18	1475/6 1476/11 1478/19	Circuit's [1] 1498/18	1524/13 1524/16 1524/18
1638/12 1638/25 1641/17	1484/22 1510/24 1511/1	circumstances [4] 1505/4	1524/21 1524/24 1526/6
1641/23 1647/13 1647/19	1614/1 1614/2 1614/5 1614/6	1506/14 1530/4 1590/4	1598/9 1610/7 1610/10
can't [32] 1478/17 1481/14	1614/10	circumstantial [5] 1504/21	claiming [1] 1623/6
1488/15 1543/6 1544/21	cast [1] 1620/17	1505/3 1505/7 1505/10	claims [84] 1483/17 1485/14
1546/21 1546/21 1547/10	categories [1] 1515/20	1505/15	1485/15 1509/24 1510/2
1547/16 1557/21 1572/25	cause [5] 1569/23 1579/7	circumvent [2] 1497/20	1510/6 1510/12 1510/13
1583/9 1585/4 1585/5	1587/15 1593/4 1593/5	1498/21	1510/16 1511/17 1511/19
1591/15 1595/19 1596/19	caused [1] 1587/11	cite [1] 1491/24	1512/19 1512/19 1512/20
1600/21 1604/12 1604/19	causes [1] 1588/1	cited [7] 1475/6 1476/11	1512/21 1512/24 1512/24
1605/5 1616/11 1616/13	causing [2] 1589/14 1592/2	1477/15 1549/17 1582/6	1513/2 1513/25 1514/1
1618/8 1621/4 1628/5	caution [2] 1508/22 1636/22	1582/7 1599/3	1514/1 1514/13 1514/17
1628/21 1630/1 1630/1	cell [1] 1638/2	citing [4] 1475/3 1476/20	1514/19 1514/22 1515/1
1631/4 1633/12 1645/18	cemented [1] 1610/11	1476/22 1478/16	1515/3 1516/25 1517/3
cannot [11] 1478/5 1478/13	cent [2] 1565/19 1634/8	civic [1] 1645/10	1518/10 1519/14 1519/20
1480/8 1481/3 1495/17	center [2] 1584/11 1596/22	civil [3] 1477/16 1501/20	1520/2 1520/4 1521/8
1518/1 1532/16 1630/19	centered [1] 1537/19	1510/25	1521/22 1522/2 1537/4
1630/19 1633/17 1638/10	central [5] 1490/7 1541/7	claim [117] 1485/15 1485/16	1537/16 1552/14 1569/16
capabilities [1] 1546/2	1594/15 1594/15 1594/23	1486/12 1486/20 1511/21	1570/12 1570/15 1571/21
capitalization [2] 1487/6	cents [3] 1565/12 1565/16	1512/2 1513/3 1513/3 1513/4	1572/16 1574/15 1584/9
1487/11	1618/17	1513/5 1513/6 1513/7 1513/8	1590/17 1595/16 1596/24
caption [1] 1533/22	certain [7] 1490/11 1503/16	1513/8 1513/10 1513/10	1599/6 1599/24 1603/2
captive [1] 1573/25	1503/18 1505/21 1507/20	1513/12 1513/12 1513/14	1603/6 1603/12 1604/22
captured [1] 1627/23	1573/7 1622/1	1513/15 1513/16 1513/18	1605/10 1606/20 1608/17
car [1] 1574/6	certainly [11] 1568/1 1572/13	1513/19 1513/21 1513/22	1608/20 1624/2 1626/1
careful [1] 1545/24	1572/14 1575/16 1586/14	1513/23 1513/24 1514/2	1626/21 1629/6 1629/8
carefully [3] 1502/2 1637/8	1590/14 1597/8 1600/16	1514/4 1514/5 1514/5 1514/6	1629/10 1629/10 1629/12
1637/22	1602/3 1610/3 1624/4	1514/6 1514/7 1514/8 1514/8	1629/16 1629/18 1629/25
carriers [1] 1616/19	certainty [1] 1525/12	1514/9 1514/10 1514/11	1630/8 1630/10 1630/17
carrying [1] 1505/6	CHAD [1] 1473/12	1514/12 1514/12 1514/14	1639/21 1640/1 1640/7
case [119] 1476/12 1476/12	chain [2] 1505/3 1548/1	1514/15 1514/16 1514/17	1640/12 1640/14 1640/15
1489/17 1490/8 1490/19	challenged [2] 1518/20	1514/19 1514/20 1515/5	1640/25 1643/13 1643/17
1490/22 1494/11 1498/12	1556/12	1515/8 1515/12 1515/16	1643/22
1500/22 1501/16 1501/20	challenging [5] 1498/6 1498/9	1515/25 1516/4 1516/12	clarification [2] 1484/14
1501/24 1502/7 1503/9	1510/14 1519/18 1556/7	1516/18 1516/18 1516/20	1494/17
1507/17 1508/19 1508/22	chance [3] 1600/11 1613/25	1517/9 1517/10 1517/12	clarify [1] 1480/24
1509/12 1509/15 1511/6	1628/15	1517/12 1517/13 1517/24	clause [1] 1483/22
1511/7 1511/10 1511/14	change [9] 1486/6 1487/2	1517/25 1518/2 1518/2	clear [43] 1476/13 1476/19
1512/10 1512/12 1512/18			

Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 748 of 773 PageID #: 61327	1550/17 1550/19 1550/23 1630/24	computer [39] 1515/12 1515/15 1516/5 1516/7	consideration [3] 1508/4 1530/4 1633/25
<p>clear... [41] 1492/12 1493/2 1494/22 1496/5 1509/18 1510/16 1510/18 1510/20 1511/19 1519/20 1519/22 1519/24 1520/7 1521/24 1522/5 1522/24 1535/9 1535/14 1545/3 1551/4 1552/4 1554/13 1556/21 1562/8 1570/4 1570/22 1583/2 1590/7 1594/1 1599/13 1605/8 1608/16 1608/19 1622/5 1626/9 1629/23 1631/10 1639/25 1640/6 1643/16 1643/21 clearly [4] 1548/6 1554/19 1580/6 1598/7 clerk [1] 1487/2 clever [1] 1574/6 clicker [1] 1567/17 client [2] 1546/25 1547/8 close [4] 1494/13 1495/5 1643/5 1643/8 closed [1] 1597/23 closely [1] 1627/3 closing [13] 1474/10 1488/8 1488/9 1488/10 1497/18 1498/3 1498/16 1500/10 1532/24 1533/3 1534/14 1574/21 1597/20 closings [6] 1497/5 1497/12 1497/16 1500/22 1501/2 1533/10 cloud [1] 1535/3 clouds [2] 1556/5 1632/5 cobble [1] 1547/17 code [58] 1537/2 1540/8 1540/12 1541/4 1542/6 1575/2 1577/6 1577/7 1579/16 1579/22 1580/3 1580/7 1581/14 1581/15 1581/17 1581/25 1582/1 1582/4 1582/7 1582/7 1582/8 1582/9 1582/10 1582/10 1582/11 1582/21 1582/23 1583/8 1583/9 1583/17 1583/25 1584/2 1584/4 1587/23 1590/1 1590/11 1590/12 1591/18 1593/19 1593/21 1593/22 1596/4 1596/4 1599/17 1599/20 1599/21 1600/13 1609/2 1609/2 1615/21 1615/22 1616/2 1624/5 1624/8 1625/19 1626/2 1626/6 1626/17 coded [2] 1593/16 1593/16 collateral [1] 1528/13 collect [3] 1499/2 1567/6 1624/25 colloquy [1] 1493/24 color [3] 1580/9 1583/22 1588/6 colored [4] 1583/19 1587/17 1587/21 1588/5 colors [1] 1584/6 column [2] 1581/16 1581/24 combinations [4] 1524/6 1547/14 1549/12 1631/2 combine [6] 1523/20 1550/11</p>	<p>combining [3] 1524/2 1524/4 1606/16 come [23] 1477/7 1482/25 1484/17 1490/21 1494/11 1533/3 1543/13 1544/15 1551/13 1559/12 1559/24 1566/9 1566/10 1566/11 1566/11 1575/16 1597/17 1603/22 1617/7 1630/23 1631/1 1633/5 1641/12 comes [7] 1476/14 1509/11 1541/25 1566/14 1592/8 1599/19 1615/1 coming [2] 1542/12 1554/22 command [9] 1516/1 1569/23 1571/11 1579/7 1584/22 1590/20 1592/1 1592/8 1593/3 commenced [1] 1474/4 comment [1] 1475/10 commentaries [1] 1477/7 commentary [4] 1476/23 1477/9 1477/16 1485/1 commenting [2] 1481/23 1481/25 comments [4] 1474/18 1476/13 1484/3 1504/6 commerce [1] 1590/2 commercial [3] 1528/5 1528/17 1528/23 common [6] 1505/17 1507/8 1544/4 1551/9 1577/7 1634/1 communicate [6] 1590/13 1591/12 1637/25 1638/7 1638/11 1638/19 communication [1] 1563/12 companies [11] 1551/12 1551/12 1566/10 1566/11 1566/20 1610/22 1612/15 1622/4 1633/21 1633/22 1634/4 company [4] 1566/4 1622/13 1633/23 1634/5 comparable [7] 1527/20 1529/6 1530/21 1530/22 1621/20 1622/16 1622/22 compare [3] 1509/5 1609/12 1630/5 compared [5] 1555/24 1557/2 1620/14 1621/6 1630/8 comparisons [1] 1634/4 compensate [3] 1486/16 1511/25 1525/22 compensating [1] 1531/5 compensation [1] 1526/3 competitors [1] 1528/7 complaint [2] 1552/17 1633/6 complete [2] 1509/9 1594/12 completed [1] 1637/4 completely [6] 1504/13 1563/13 1594/20 1612/4 1620/11 1630/22 completing [1] 1639/6 comply [1] 1646/16 components [1] 1560/16 comprising [3] 1516/13 1516/14 1516/16 compromise [1] 1494/18</p>	<p>1537/20 1537/24 1538/7 1538/15 1539/3 1569/18 1570/1 1570/23 1571/3 1571/7 1571/11 1571/12 1575/24 1578/8 1578/9 1578/14 1579/4 1579/9 1584/14 1584/16 1584/24 1585/1 1591/22 1591/24 1592/1 1594/4 1596/2 1596/6 1596/9 1624/12 1625/8 1625/17 1627/8 1627/12 1638/3 concede [1] 1539/6 concedes [1] 1632/8 conceive [1] 1618/4 concept [1] 1563/19 concern [4] 1494/5 1632/6 1632/25 1633/9 concerns [1] 1557/12 conclude [1] 1505/7 concluded [1] 1561/20 conclusion [2] 1505/22 1505/22 conditions [1] 1528/4 conduct [2] 1518/20 1638/8 conferences [3] 1568/23 1600/19 1604/7 confident [4] 1569/13 1623/15 1624/1 1633/14 confidential [4] 1499/1 1646/5 1646/11 1647/7 confidentiality [1] 1612/24 confidently [2] 1595/18 1608/23 configured [5] 1516/5 1570/11 1584/24 1591/22 1599/5 configuring [3] 1570/10 1571/3 1571/6 confirm [1] 1581/10 confirmed [7] 1570/21 1576/9 1580/25 1581/25 1593/2 1593/15 1593/21 conflating [1] 1478/16 confuse [2] 1587/5 1589/6 confusing [1] 1594/8 confusion [1] 1587/16 connection [1] 1602/22 conscience [1] 1637/18 consequence [1] 1591/25 consider [54] 1474/22 1475/18 1475/19 1477/21 1477/22 1477/24 1479/20 1479/21 1480/5 1481/11 1481/12 1483/7 1484/12 1495/15 1502/24 1505/14 1505/18 1506/8 1507/10 1511/4 1518/19 1520/4 1520/14 1520/19 1523/4 1523/10 1523/17 1524/25 1525/3 1527/13 1530/7 1530/9 1530/15 1530/23 1532/3 1532/10 1532/11 1532/13 1551/8 1553/23 1554/10 1556/5 1562/3 1582/13 1583/1 1600/11 1601/17 1608/12 1609/15 1611/12 1619/19 1623/24 1629/19 1633/25</p>	<p>considerations [2] 1523/9 1524/15 considered [13] 1508/16 1508/25 1518/21 1520/5 1520/11 1521/7 1527/8 1549/13 1550/5 1550/6 1565/1 1600/12 1635/17 considering [3] 1475/21 1523/16 1526/21 consistency [1] 1487/6 consistent [11] 1494/3 1506/11 1541/10 1542/3 1561/18 1564/19 1571/23 1572/16 1577/2 1626/18 1627/14 consistently [4] 1518/22 1543/17 1553/25 1589/7 construction [13] 1474/16 1482/23 1515/5 1515/9 1515/13 1515/19 1516/1 1516/6 1585/1 1625/7 1626/1 1627/5 1627/12 construed [2] 1477/10 1484/23 construing [1] 1484/5 consult [1] 1635/21 consulting [1] 1508/22 consumers [2] 1634/5 1634/8 contact [10] 1515/21 1569/9 1571/25 1572/7 1572/13 1572/24 1601/8 1602/19 1610/19 1623/17 Contacts [1] 1525/16 contain [3] 1583/10 1583/11 1639/9 contained [24] 1515/13 1578/12 1578/18 1578/21 1578/24 1579/2 1579/10 1579/15 1579/17 1582/24 1585/2 1585/6 1585/7 1585/8 1585/19 1585/20 1589/19 1594/2 1595/23 1624/3 1625/10 1625/15 1629/17 1632/13 container [19] 1578/19 1581/6 1581/6 1581/12 1584/20 1585/14 1590/17 1590/18 1590/23 1591/3 1591/10 1591/13 1591/13 1591/19 1624/4 1624/4 1625/13 1626/20 1626/21 containers [1] 1582/4 containing [1] 1516/15 contains [3] 1516/19 1581/7 1585/14 contemplate [1] 1585/11 contend [1] 1537/10 contends [5] 1521/14 1521/22 1522/1 1531/14 1531/19 content [2] 1509/5 1523/6 contents [1] 1581/8 contest [2] 1537/10 1628/20 context [1] 1512/24 contexts [1] 1578/11 continue [1] 1576/12 CONTINUED [1] 1473/1 continuing [1] 1555/13 contract [31] 1475/5 1475/6</p>

C	CORROON [1] 1473/9	1497/12 1497/18 1497/24	1604/17 1605/1 1605/4
<p>contract... [29] 1475/7 1477/7 1477/9 1477/13 1478/5 1478/6 1478/12 1478/17 1478/18 1478/20 1478/21 1479/5 1480/8 1480/13 1480/14 1481/1 1481/14 1482/13 1482/15 1482/24 1482/25 1484/6 1484/22 1485/6 1495/17 1495/23 1496/7 1496/10 1532/15 contract's [4] 1478/14 1480/9 1481/4 1532/17 contracts [1] 1475/3 contradict [10] 1478/5 1478/13 1478/18 1480/9 1481/3 1481/14 1495/17 1496/9 1496/9 1532/16 contradicted [4] 1478/25 1495/22 1496/24 1506/12 contradicting [1] 1480/13 contradicts [1] 1480/17 contrast [2] 1514/7 1573/10 contrasting [1] 1575/22 contribute [1] 1563/12 control [5] 1557/23 1571/13 1571/13 1593/13 1626/25 convened [1] 1642/10 convenient [1] 1488/3 conversations [1] 1617/25 convey [1] 1636/24 conviction [1] 1636/4 convictions [1] 1610/21 convince [2] 1521/24 1591/4 convinced [2] 1636/3 1637/12 convincing [24] 1509/18 1510/16 1510/18 1510/20 1511/19 1519/20 1519/22 1519/24 1520/7 1521/25 1522/6 1522/24 1535/14 1545/3 1551/4 1552/4 1605/9 1608/16 1608/20 1629/23 1640/1 1640/7 1643/17 1643/22 convincingly [1] 1548/6 cooktop [2] 1594/18 1594/22 copied [2] 1518/24 1630/15 copies [7] 1487/25 1499/20 1499/22 1500/21 1500/25 1501/11 1533/15 copy [13] 1491/7 1499/25 1501/17 1502/3 1512/15 1512/15 1545/8 1559/1 1564/10 1572/24 1572/25 1573/5 1573/8 core [1] 1602/7 corners [1] 1475/5 cornerstone [1] 1559/18 corporate [9] 1497/9 1497/11 1541/1 1552/16 1553/8 1554/4 1557/24 1558/4 1632/22 correct [10] 1477/6 1481/1 1488/22 1492/10 1516/9 1533/17 1533/20 1546/5 1559/25 1600/6 corrected [1] 1587/20 correlate [1] 1617/17 correspond [2] 1492/8 1638/11</p>	<p>cost [1] 1530/17 could [71] 1483/7 1486/18 1489/2 1489/3 1489/5 1489/21 1493/15 1493/25 1494/1 1494/9 1498/8 1504/9 1505/7 1506/15 1522/16 1530/24 1537/24 1538/9 1545/12 1546/25 1553/12 1554/8 1557/12 1557/12 1558/2 1558/2 1558/10 1558/23 1559/10 1559/13 1560/12 1561/4 1562/8 1563/11 1563/18 1563/21 1568/13 1571/12 1571/22 1572/7 1572/13 1572/14 1573/17 1576/1 1579/12 1583/8 1585/23 1586/9 1590/20 1594/10 1601/25 1602/1 1602/13 1604/9 1605/17 1605/18 1605/20 1606/21 1607/5 1608/2 1610/9 1616/20 1617/15 1619/25 1620/4 1624/8 1633/2 1647/15 1647/16 1648/5 1648/23 couldn't [15] 1538/18 1545/12 1546/11 1550/23 1553/8 1553/16 1572/9 1572/10 1572/11 1572/22 1582/19 1597/8 1608/1 1608/2 1616/1 counsel [16] 1473/6 1473/17 1490/24 1499/23 1500/5 1505/23 1505/24 1534/16 1567/7 1628/10 1631/8 1632/15 1632/16 1633/19 1648/21 1648/21 counting [1] 1615/17 counts [1] 1557/2 couple [7] 1474/17 1485/13 1498/5 1634/13 1634/18 1645/16 1645/23 course [20] 1475/4 1488/14 1488/20 1491/1 1508/7 1535/7 1535/21 1536/15 1538/1 1538/14 1539/17 1549/16 1562/8 1578/25 1583/19 1595/24 1629/20 1631/12 1636/1 1638/15 court [33] 1471/2 1476/25 1478/25 1484/10 1487/16 1489/8 1492/12 1495/9 1495/21 1496/5 1498/21 1499/2 1502/10 1503/6 1503/8 1508/3 1508/6 1533/18 1537/20 1539/5 1542/2 1558/22 1578/7 1578/11 1618/8 1625/14 1626/2 1632/6 1635/9 1636/19 1641/7 1643/4 1648/15 Court's [21] 1474/16 1481/16 1481/24 1484/21 1490/17 1492/11 1501/12 1515/5 1515/8 1515/12 1515/18 1516/1 1516/5 1533/22 1553/22 1578/20 1585/1 1625/7 1626/18 1627/5 1627/11 courtroom [23] 1474/4 1497/5</p>	<p>1497/12 1497/18 1497/24 1498/3 1498/15 1501/7 1505/5 1533/6 1534/11 1558/24 1567/15 1575/14 1636/16 1641/10 1641/11 1641/15 1641/20 1642/17 1642/19 1645/21 1647/5 cover [8] 1483/25 1513/12 1519/6 1544/9 1596/3 1603/6 1604/22 1627/18 coverage [2] 1512/25 1513/9 covered [15] 1505/5 1513/18 1514/3 1514/20 1518/25 1536/19 1562/25 1563/1 1596/8 1599/14 1599/24 1619/4 1619/16 1621/1 1621/6 covers [19] 1512/22 1513/1 1513/2 1513/3 1513/15 1513/21 1514/5 1514/15 1517/10 1531/17 1536/1 1544/12 1599/22 1599/25 1600/1 1600/2 1600/3 1604/13 1624/6 create [7] 1550/11 1575/18 1576/20 1577/2 1590/23 1607/1 1607/9 created [7] 1572/2 1573/14 1580/1 1580/16 1588/24 1600/18 1606/24 creates [1] 1575/4 creating [1] 1575/7 credibility [3] 1506/7 1506/15 1507/3 credibly [1] 1538/19 credit [1] 1507/16 criminal [1] 1510/24 critical [13] 1490/20 1540/19 1542/8 1547/11 1559/16 1570/1 1574/10 1589/14 1590/17 1624/16 1625/18 1630/24 1633/25 cross [2] 1537/5 1556/21 cross-examined [1] 1537/5 current [5] 1486/17 1543/7 1596/16 1598/5 1623/20 currently [1] 1486/11 custody [1] 1548/1 custom [1] 1635/9 customary [2] 1480/21 1529/5 customers [3] 1615/25 1619/7 1619/12 customized [1] 1576/20 customs [1] 1480/22 cut [1] 1507/23 cutting [1] 1587/25 CyberDesk [71] 1521/16 1522/2 1544/17 1544/24 1546/3 1546/14 1546/17 1546/23 1547/12 1547/13 1550/14 1567/25 1568/6 1568/21 1569/17 1570/18 1570/19 1570/25 1572/21 1575/18 1596/17 1597/22 1598/8 1598/24 1598/24 1599/1 1599/16 1599/18 1600/2 1600/8 1600/9 1600/22 1600/25 1601/4 1601/15 1601/18 1602/25 1603/9 1603/15 1603/22</p>	<p>1604/17 1605/1 1605/4 1605/12 1605/13 1605/20 1605/23 1606/2 1606/4 1606/6 1606/7 1606/10 1606/13 1606/16 1606/18 1607/19 1607/21 1608/4 1608/8 1608/18 1608/24 1609/5 1610/12 1623/21 1628/11 1628/25 1629/7 1629/15 1629/21 1630/13 1630/19</p> <hr/> <p>D</p> <p>damage [1] 1618/3 damages [51] 1486/14 1490/8 1498/7 1511/24 1519/10 1525/3 1525/4 1525/7 1525/8 1525/11 1525/13 1525/13 1525/14 1525/21 1525/23 1531/1 1531/2 1531/6 1531/16 1531/20 1531/23 1531/24 1532/20 1535/16 1554/22 1555/1 1555/4 1555/6 1555/11 1555/22 1555/25 1556/3 1556/9 1562/3 1562/11 1563/8 1564/6 1564/20 1565/20 1565/22 1565/24 1609/16 1611/7 1611/10 1611/11 1611/13 1615/1 1615/2 1618/13 1623/9 1640/19 data [67] 1521/17 1544/17 1547/20 1548/12 1548/20 1549/3 1550/14 1556/12 1556/17 1556/18 1556/22 1556/24 1557/7 1557/11 1557/13 1557/15 1557/18 1557/19 1557/22 1558/1 1558/6 1558/8 1558/18 1559/4 1560/10 1560/12 1560/22 1567/25 1568/9 1568/13 1569/5 1569/17 1570/9 1570/25 1575/19 1577/21 1577/21 1596/17 1597/22 1598/8 1599/2 1599/16 1600/1 1600/8 1601/20 1602/1 1602/12 1602/17 1602/21 1602/25 1603/9 1604/17 1605/1 1605/17 1606/6 1606/8 1606/16 1607/21 1608/5 1608/8 1609/8 1610/12 1623/22 1628/24 1629/15 1629/21 1631/21 date [11] 1490/9 1494/3 1556/7 1557/7 1561/10 1561/11 1562/3 1562/5 1615/9 1636/15 1640/18 dates [1] 1561/1 DAVID [1] 1473/9 day [10] 1474/8 1539/10 1578/1 1583/15 1594/18 1604/11 1607/12 1629/20 1629/20 1645/13 days [6] 1534/19 1567/12 1568/22 1604/6 1606/10 1645/23 deal [3] 1487/20 1555/12 1572/20 dealing [2] 1594/23 1599/4</p>

<p>D dealt [1] 1613/17 decades [1] 1545/7 December [8] 1557/8 1558/17 1561/2 1562/6 1611/24 1615/14 1616/2 1616/18 December 2017 [1] 1611/24 December 5th [2] 1615/14 1616/2 decide [34] 1479/18 1486/12 1486/14 1486/20 1486/22 1502/7 1502/9 1502/16 1505/9 1511/13 1511/21 1511/23 1512/2 1512/4 1512/17 1513/21 1513/22 1514/24 1516/16 1517/4 1517/5 1517/6 1518/4 1518/18 1531/23 1532/8 1535/10 1535/11 1592/13 1623/10 1635/24 1636/20 1637/23 1638/23 decided [1] 1480/15 deciding [11] 1501/16 1502/10 1516/10 1516/25 1517/8 1519/13 1520/2 1520/18 1549/14 1590/3 1592/11 decision [11] 1502/12 1503/4 1503/5 1503/8 1504/17 1504/18 1509/12 1519/9 1593/8 1628/18 1638/22 declined [1] 1538/21 decrease [3] 1622/23 1622/24 1623/1 decreased [1] 1530/10 defendant [10] 1471/8 1473/17 1509/22 1510/4 1510/9 1510/10 1510/15 1511/7 1511/18 1639/16 defendant's [1] 1642/13 defense [2] 1519/15 1544/5 defenses [1] 1535/20 defies [1] 1559/17 define [3] 1512/21 1512/25 1514/21 defined [4] 1504/18 1581/16 1581/25 1639/10 defines [1] 1625/15 definition [11] 1516/8 1516/21 1517/2 1537/20 1539/5 1578/7 1578/21 1601/8 1601/9 1626/19 1632/6 definitions [2] 1514/23 1516/9 DELAWARE [3] 1471/3 1471/18 1648/21 delete [2] 1475/12 1475/15 deleted [1] 1484/21 deliberate [6] 1509/12 1518/16 1534/3 1552/11 1635/22 1641/18 deliberately [3] 1573/24 1581/3 1592/22 deliberating [2] 1586/3 1634/25 deliberation [2] 1634/19 1634/23 deliberations [8] 1492/25 1501/25 1502/5 1508/10 1512/14 1636/2 1637/24 1638/14</p>	<p>deliver [1] 1501/18 delivered [1] 1568/25 delving [1] 1609/18 demand [1] 1612/3 demands [1] 1483/17 demeanor [1] 1506/13 demo [3] 1568/22 1604/6 1606/10 demoed [1] 1569/5 demonstrable [1] 1615/11 demonstrate [2] 1552/4 1603/23 demonstrated [4] 1535/15 1568/22 1604/6 1609/7 demonstrates [2] 1520/7 1633/12 demonstration [2] 1602/14 1605/16 demonstrations [1] 1600/20 demonstrative [2] 1508/14 1508/18 demonstratives [3] 1503/23 1567/6 1625/1 denying [1] 1510/11 dependent [12] 1514/1 1514/8 1514/8 1514/12 1514/14 1514/15 1514/16 1514/19 1514/20 1518/1 1518/5 1518/6 depends [4] 1513/1 1514/11 1518/2 1595/20 deposition [7] 1503/11 1506/24 1507/22 1507/22 1508/1 1508/3 1632/12 deputy [1] 1636/16 derivative [1] 1528/13 describe [1] 1523/10 described [2] 1506/4 1522/18 describing [1] 1632/12 description [1] 1512/23 deserves [3] 1505/16 1505/20 1507/4 design [6] 1519/5 1524/7 1554/7 1573/11 1586/22 1594/20 designed [6] 1528/4 1575/3 1580/1 1586/6 1601/23 1627/14 designer [1] 1569/1 designing [4] 1571/14 1574/4 1580/6 1594/9 desirability [1] 1524/2 desired [1] 1529/20 desktop [1] 1547/6 despite [2] 1579/23 1609/6 detail [1] 1522/14 detailed [2] 1512/10 1607/4 details [5] 1586/10 1586/13 1602/24 1602/25 1613/16 detect [5] 1572/10 1572/10 1572/11 1608/1 1608/2 Detectors [48] 1521/17 1544/18 1547/21 1548/12 1548/13 1548/21 1549/3 1550/14 1567/25 1568/9 1568/13 1569/5 1569/17 1570/9 1570/25 1575/19 1577/21 1577/22 1596/17 1597/22 1598/8 1599/2 1599/16 1600/1 1600/8</p>	<p>1601/20 1602/1 1602/13 1602/17 1602/21 1602/25 1603/9 1604/17 1605/1 1605/17 1606/6 1606/8 1606/16 1607/21 1608/5 1608/8 1609/8 1610/12 1623/22 1628/25 1629/15 1629/21 1631/21 determination [9] 1474/21 1479/7 1479/15 1484/12 1504/2 1520/4 1532/2 1532/7 1561/22 determinations [1] 1641/5 determine [13] 1478/19 1514/5 1514/15 1515/16 1515/19 1518/6 1518/11 1519/8 1526/10 1527/4 1560/1 1561/9 1609/9 determined [4] 1514/24 1515/2 1520/16 1522/4 determining [9] 1506/17 1509/5 1521/7 1523/3 1524/13 1524/24 1526/25 1527/12 1530/14 develop [1] 1553/10 developed [2] 1547/25 1610/14 developers [11] 1563/24 1564/3 1577/5 1577/6 1580/11 1580/13 1583/24 1588/12 1588/25 1589/4 1601/25 device [31] 1516/4 1516/6 1561/10 1561/13 1565/11 1565/12 1569/22 1569/23 1570/10 1571/4 1571/7 1577/25 1579/7 1582/6 1582/15 1582/23 1584/21 1584/24 1589/10 1590/19 1590/23 1591/22 1592/2 1598/11 1599/5 1615/21 1616/9 1616/12 1616/19 1618/16 1638/2 devices [26] 1474/23 1484/13 1484/15 1525/18 1528/20 1531/18 1531/22 1532/1 1532/4 1537/3 1543/9 1556/15 1561/24 1565/12 1565/13 1615/16 1616/15 1616/21 1616/23 1618/24 1619/2 1619/9 1630/6 1633/23 1638/15 1638/18 devised [1] 1604/5 Dey [9] 1546/9 1600/17 1600/19 1603/21 1603/25 1605/19 1606/10 1609/6 1628/8 diagram [6] 1540/3 1541/14 1542/13 1580/5 1587/17 1588/5 diagrams [2] 1539/21 1583/19 dialer [1] 1592/15 did [105] 1493/23 1494/17 1497/14 1497/21 1499/25 1506/22 1519/2 1520/5 1537/2 1537/7 1537/10 1537/11 1537/17 1539/16 1539/24 1541/22 1542/1 1545/16 1548/21 1549/18 1551/16 1553/6 1553/6</p>	<p>1553/9 1553/11 1553/14 1553/29 1554/2 1554/5 1554/6 1554/9 1554/12 1554/14 1556/2 1556/20 1558/21 1559/12 1559/21 1560/6 1560/21 1562/2 1563/15 1565/8 1565/15 1567/19 1568/2 1568/2 1569/11 1570/9 1573/5 1577/15 1577/16 1577/24 1582/3 1586/8 1586/14 1586/21 1586/22 1586/22 1589/9 1591/1 1591/12 1595/14 1596/17 1596/18 1598/4 1598/23 1600/6 1600/11 1600/16 1601/19 1601/22 1602/4 1602/24 1603/22 1605/1 1605/1 1607/15 1607/23 1608/9 1608/15 1608/19 1609/12 1609/14 1610/22 1611/20 1618/20 1623/14 1624/3 1625/4 1625/20 1629/16 1631/12 1631/21 1631/21 1632/22 1633/5 1633/7 1639/19 1639/25 1640/6 1640/23 1643/11 1643/16 1643/21 didn't [55] 1491/4 1499/4 1533/8 1537/16 1538/13 1539/19 1542/17 1542/25 1543/10 1545/8 1545/13 1545/14 1549/22 1550/2 1553/19 1553/19 1554/5 1555/3 1557/13 1558/1 1559/14 1559/23 1560/1 1560/3 1560/3 1560/4 1560/8 1560/14 1560/15 1562/20 1563/10 1563/12 1572/24 1575/16 1580/13 1582/18 1582/19 1589/1 1590/6 1591/9 1597/3 1599/13 1607/4 1611/20 1614/22 1616/1 1616/24 1617/19 1618/23 1619/18 1619/24 1623/17 1627/9 1628/11 1631/10 DIEHL [1] 1473/4 difference [8] 1557/6 1558/16 1575/23 1576/4 1594/14 1609/1 1609/3 1615/15 differences [2] 1523/7 1637/11 different [77] 1478/16 1506/23 1509/16 1535/23 1535/23 1539/15 1541/17 1544/7 1544/16 1544/19 1544/20 1544/24 1550/15 1550/18 1550/23 1553/7 1555/9 1560/2 1561/1 1561/11 1562/17 1565/2 1567/24 1569/16 1569/17 1573/12 1573/17 1575/10 1576/3 1577/3 1577/10 1577/11 1578/3 1578/9 1578/10 1578/10 1578/17 1579/16 1579/23 1580/9 1580/17 1583/2 1583/6 1583/13 1583/21 1583/25 1584/6 1584/6 1585/4 1585/18</p>
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D	disregard [2] 1504/11 1596/14	does [43] 1476/5 1477/7	1582/15 1615/21 1616/11
different... [27] 1592/24	distinct [1] 1531/3	1479/10 1481/5 1484/5	1616/14 1618/24 1619/3
1594/7 1594/10 1594/16	distinction [5] 1505/11 1547/1	1492/7 1505/12 1505/13	downloads [9] 1531/17
1594/21 1594/22 1594/24	1577/20 1598/25 1600/2	1510/25 1514/8 1520/11	1531/25 1556/14 1556/15
1595/1 1595/6 1598/9	distracted [2] 1501/1 1632/9	1522/8 1523/13 1523/21	1556/23 1557/2 1615/16
1604/18 1605/21 1605/21	distracton [2] 1590/16 1630/4	1530/22 1531/19 1535/2	1617/9 1617/17
1610/7 1611/3 1611/4	distribution [1] 1616/7	1536/1 1541/5 1543/13	downward [1] 1555/24
1614/15 1620/12 1620/23	DISTRICT [2] 1471/2 1471/3	1548/25 1551/6 1551/7	dozen [1] 1628/19
1628/16 1628/25 1629/4	districted [1] 1632/10	1570/15 1579/11 1579/13	dozens [2] 1476/22 1563/3
1629/6 1630/2 1630/20	distrust [1] 1507/1	1579/16 1584/8 1589/22	Dr. [72] 1491/4 1536/16
1630/25 1631/24	divide [1] 1618/20	1590/18 1591/3 1591/21	1536/19 1536/24 1537/10
differentiated [1] 1570/24	divided [3] 1618/18 1618/19	1593/7 1594/5 1595/22	1537/11 1537/14 1537/15
differently [3] 1506/3 1510/3	1621/14	1599/4 1610/23 1614/11	1537/18 1537/22 1538/6
1637/15	dividing [1] 1618/21	1614/13 1615/24 1617/17	1538/9 1538/13 1538/24
difficult [3] 1567/23 1607/18	do [103] 1477/18 1481/8	1624/5 1627/18	1539/1 1539/6 1539/12
1608/10	1482/7 1482/7 1484/5	doesn't [45] 1475/19 1500/8	1541/13 1541/16 1542/4
difficulty [1] 1493/21	1484/13 1486/7 1489/19	1536/20 1537/9 1539/6	1542/10 1543/6 1544/23
dig [2] 1559/21 1574/10	1492/1 1492/19 1493/8	1541/19 1541/20 1543/2	1545/5 1545/16 1545/17
digits [1] 1511/11	1494/17 1495/2 1496/17	1543/11 1544/1 1544/8	1546/9 1546/19 1547/13
dime [4] 1565/16 1565/19	1497/6 1497/10 1497/22	1545/7 1546/10 1546/22	1547/15 1547/19 1547/24
1634/7 1634/7	1498/1 1498/2 1498/6 1498/8	1547/13 1547/18 1557/25	1548/22 1549/6 1549/16
diner [1] 1594/19	1498/12 1498/16 1498/17	1559/8 1559/17 1559/21	1549/22 1550/7 1550/25
direct [8] 1491/4 1504/21	1498/18 1499/11 1499/12	1562/14 1566/4 1566/12	1559/20 1561/19 1562/2
1504/23 1505/2 1505/10	1500/21 1500/22 1503/1	1577/6 1583/10 1583/11	1576/2 1576/7 1576/16
1505/15 1556/20 1624/18	1503/2 1503/6 1504/14	1584/20 1587/24 1589/12	1581/4 1582/5 1584/13
direction [4] 1539/15 1573/13	1506/22 1523/10 1533/10	1591/7 1591/15 1592/18	1589/9 1590/7 1592/25
1610/25 1611/16	1536/14 1537/13 1537/23	1593/10 1595/19 1603/3	1593/2 1593/18 1600/17
directions [2] 1550/15 1639/7	1538/2 1538/10 1538/18	1604/25 1609/2 1609/21	1600/19 1603/11 1603/21
directly [6] 1504/25 1553/23	1539/25 1541/20 1541/21	1611/8 1611/21 1616/3	1603/25 1604/7 1605/6
1595/15 1639/20 1640/17	1542/17 1542/25 1544/4	1619/12 1620/8 1620/23	1605/19 1606/10 1606/12
1643/12	1546/1 1547/16 1550/17	1626/25	1606/18 1607/16 1609/6
director [3] 1540/7 1580/24	1550/23 1553/6 1557/19	doing [6] 1493/22 1497/21	1622/10 1622/15 1625/25
1593/20	1559/23 1560/3 1560/4	1501/2 1534/24 1547/3	1626/14 1626/22 1627/4
disagree [4] 1475/2 1479/24	1562/18 1566/16 1569/18	1548/8	1627/7
1502/21 1579/19	1570/15 1574/22 1575/19	don't [52] 1480/7 1482/6	Dr. Dey [8] 1546/9 1600/17
discharged [1] 1645/14	1575/20 1575/20 1576/23	1483/10 1486/5 1489/7	1600/19 1603/21 1603/25
disclose [4] 1521/12 1570/10	1579/5 1580/14 1588/12	1491/9 1491/13 1492/14	1605/19 1606/10 1609/6
1599/4 1629/24	1591/25 1593/9 1594/3	1494/6 1494/8 1494/21	Dr. Fox [16] 1544/23 1545/5
disclosed [9] 1522/10 1522/12	1602/13 1605/17 1607/3	1495/3 1497/15 1498/2	1545/17 1546/19 1547/13
1522/13 1522/18 1546/2	1611/13 1612/24 1617/19	1499/6 1499/10 1500/7	1547/19 1547/24 1548/22
1568/5 1568/9 1601/4	1621/14 1624/12 1625/13	1501/1 1501/1 1535/4 1544/1	1549/6 1549/16 1549/22
1601/15	1625/14 1626/10 1628/15	1544/1 1546/4 1558/22	1603/11 1605/6 1606/12
discount [1] 1555/13	1629/5 1630/1 1631/4	1560/24 1574/13 1574/25	1606/18 1607/16
discounting [1] 1556/1	1631/15 1634/25 1635/11	1579/19 1586/19 1588/12	Dr. Kidder [2] 1559/20
discuss [5] 1488/3 1492/23	1635/13 1635/23 1635/25	1588/22 1589/4 1593/4	1622/10
1638/12 1641/25 1648/17	1636/2 1636/4 1636/19	1593/13 1594/2 1611/9	Dr. Rinard [21] 1537/14
discussed [3] 1491/1 1587/18	1637/11 1637/13 1637/18	1611/11 1617/2 1622/9	1537/18 1537/22 1538/6
1647/7	1640/16 1642/1 1646/17	1623/8 1623/9 1629/15	1538/13 1538/24 1539/6
discussing [2] 1485/2 1646/10	1647/15	1632/9 1632/10 1634/2	1539/12 1542/4 1542/10
discussion [2] 1476/14	docketed [2] 1474/12 1533/19	1641/21 1646/4 1647/2	1543/6 1576/16 1581/4
1497/20	Docs [3] 1525/16 1538/6	1647/12 1647/25 1648/2	1592/25 1593/2 1622/15
discussions [1] 1637/19	1539/7	1648/14	1625/25 1626/14 1626/22
display [7] 1569/21 1579/6	document [37] 1489/13	done [11] 1502/11 1545/6	1627/4 1627/7
1580/12 1582/22 1584/20	1491/19 1492/19 1492/21	1545/17 1553/12 1571/7	Dr. Rinard's [1] 1590/7
1587/8 1590/19	1493/12 1515/5 1515/9	1571/8 1628/24 1632/23	Dr. Sacerdoti [4] 1547/15
displayed [3] 1569/3 1600/18	1515/11 1515/24 1540/8	1633/1 1633/2 1638/21	1550/7 1550/25 1576/7
1602/15	1547/4 1569/21 1570/5	dorm [1] 1567/22	Dr. Sacerdoti's [1] 1604/7
displaying [3] 1584/4 1585/16	1570/5 1570/11 1570/14	doubled [1] 1618/13	Dr. Smedley [15] 1536/16
1588/9	1570/19 1577/24 1579/6	doubt [6] 1484/22 1510/24	1536/19 1536/24 1537/10
displays [1] 1584/17	1582/22 1584/18 1584/20	1582/12 1582/25 1594/25	1537/11 1537/15 1539/1
dispositive [1] 1530/6	1585/17 1590/19 1591/7	1620/17	1541/16 1545/16 1562/2
disputable [1] 1537/7	1598/20 1598/25 1599/5	down [9] 1482/10 1508/24	1576/2 1582/5 1584/13
dispute [16] 1492/8 1536/20	1599/9 1602/18 1603/16	1509/1 1547/9 1564/3	1589/9 1593/18
1537/16 1538/25 1539/1	1604/4 1604/10 1605/15	1631/15 1635/3 1635/12	Dr. Smedley's [4] 1491/4
1539/7 1539/12 1539/13	1605/19 1606/15 1609/5	1635/13	1538/9 1541/13 1561/19
1558/18 1572/2 1574/13	documentation [1] 1561/24	download [1] 1616/20	drafted [1] 1485/6
1579/24 1583/14 1593/23	documents [8] 1537/2	downloadable [1] 1616/21	drafter [1] 1484/6
1618/9 1622/14	1549/23 1573/11 1580/20	downloaded [13] 1474/22	drafting [1] 1606/2
disputed [3] 1550/24 1564/22	1583/24 1592/5 1617/3	1474/24 1476/5 1484/13	draw [1] 1634/3
1631/11	1626/17	1532/3 1558/15 1565/16	drew [1] 1541/22

<p>D</p> <p>drive [3] 1611/19 1611/20 1611/20</p> <p>drops [1] 1505/6</p> <p>DTX [1] 1547/5</p> <p>DTX-28 [1] 1547/5</p> <p>dunk [1] 1548/18</p> <p>duration [1] 1528/14</p> <p>during [24] 1488/20 1491/1 1494/11 1497/18 1501/25 1502/5 1502/12 1502/23 1504/7 1504/20 1507/20 1508/7 1508/20 1509/19 1511/10 1512/14 1548/3 1556/20 1562/7 1597/20 1637/24 1638/13 1638/21 1647/7</p> <p>dust [4] 1535/3 1535/9 1556/5 1632/6</p> <p>dust-ups [1] 1632/6</p> <p>duties [3] 1501/19 1502/8 1503/1</p> <p>duty [5] 1502/15 1635/21 1637/1 1637/5 1645/10</p>	<p>egregiously [1] 1620/9</p> <p>either [9] 1487/14 1487/22 1499/7 1500/22 1500/23 1505/12 1522/12 1527/5 1575/13</p> <p>Elbouchikhi [7] 1540/6 1566/15 1576/15 1585/21 1590/1 1626/8 1626/23</p> <p>Elbouchikhi's [3] 1589/23 1626/13 1626/15</p> <p>elected [1] 1546/18</p> <p>electronic [1] 1638/1</p> <p>electronically [1] 1638/11</p> <p>element [14] 1513/18 1523/13 1570/2 1570/12 1591/23 1603/12 1603/12 1605/3 1605/6 1605/8 1605/12 1606/14 1629/7 1629/25</p> <p>elements [20] 1513/8 1513/16 1516/19 1517/10 1521/12 1523/20 1523/23 1524/2 1524/4 1524/6 1569/18 1570/23 1584/10 1595/9 1595/12 1595/21 1596/3 1596/8 1603/13 1606/13</p> <p>elevate [1] 1480/19</p> <p>ELLIS [1] 1473/9</p> <p>else [21] 1475/20 1480/20 1483/6 1483/14 1487/19 1495/2 1497/3 1499/6 1503/7 1503/24 1504/19 1544/8 1546/20 1546/24 1551/18 1558/9 1571/21 1581/4 1597/7 1635/1 1647/23</p> <p>embodiments [1] 1528/23</p> <p>embodying [1] 1529/22</p> <p>emphasis [1] 1590/15</p> <p>emphasized [1] 1570/1</p> <p>employee [1] 1548/2</p> <p>enable [1] 1540/15</p> <p>enabling [1] 1626/5</p> <p>encountered [1] 1520/23</p> <p>end [20] 1497/6 1512/20 1526/8 1533/11 1539/10 1543/9 1555/17 1578/1 1583/14 1592/17 1594/18 1604/11 1611/10 1622/5 1623/12 1623/13 1631/5 1637/16 1641/3 1648/6</p> <p>ended [3] 1493/10 1634/20 1645/9</p> <p>enforced [1] 1489/9</p> <p>engaged [1] 1518/16</p> <p>engineer [3] 1540/18 1579/25 1627/1</p> <p>engineering [2] 1580/24 1593/20</p> <p>engineers [9] 1573/12 1586/4 1586/17 1586/18 1587/2 1610/15 1615/12 1624/19 1625/21</p> <p>engines [1] 1559/17</p> <p>enhance [1] 1633/24</p> <p>enough [9] 1488/11 1496/8 1548/5 1550/10 1575/3 1578/16 1579/13 1596/3 1648/22</p> <p>ensure [1] 1641/4</p> <p>enter [4] 1515/25 1516/2 1527/3 1642/17</p>	<p>entered [4] 1515/7 1526/24 1561/3 1638/16</p> <p>enters [3] 1501/7 1534/11 1642/19</p> <p>entire [4] 1573/15 1612/6 1614/20 1615/2</p> <p>entirely [6] 1493/2 1572/17 1611/3 1611/4 1624/13 1641/4</p> <p>entirety [1] 1627/11</p> <p>entitled [9] 1508/4 1521/4 1521/19 1531/20 1532/21 1535/17 1561/15 1565/25 1640/21</p> <p>entitles [1] 1614/7</p> <p>entity [1] 1517/20</p> <p>entries [2] 1542/19 1600/25</p> <p>entry [1] 1581/24</p> <p>equal [1] 1510/8</p> <p>erroneous [1] 1636/4</p> <p>error [1] 1480/7</p> <p>escape [1] 1631/6</p> <p>especially [3] 1567/15 1602/22 1608/25</p> <p>ESQ [12] 1471/25 1473/3 1473/4 1473/4 1473/5 1473/5 1473/9 1473/12 1473/12 1473/13 1473/13 1473/16</p> <p>essentially [4] 1574/13 1578/2 1587/12 1588/10</p> <p>establish [3] 1518/14 1522/23 1525/6</p> <p>established [4] 1527/18 1527/25 1528/16 1562/2</p> <p>establishes [1] 1525/9</p> <p>evaluate [1] 1597/12</p> <p>evaluating [8] 1477/20 1479/19 1481/11 1501/21 1509/6 1527/8 1532/9 1602/22</p> <p>evaluation [1] 1597/18</p> <p>even [51] 1476/14 1489/23 1502/21 1503/21 1513/17 1516/18 1522/17 1535/4 1536/19 1542/1 1547/19 1550/8 1554/20 1554/21 1554/23 1556/8 1558/4 1559/11 1559/14 1560/4 1568/13 1569/9 1569/15 1571/21 1573/5 1573/7 1579/12 1580/21 1588/16 1588/22 1589/6 1590/20 1591/4 1591/9 1593/15 1596/9 1605/11 1608/7 1609/4 1611/10 1611/11 1613/10 1616/17 1616/20 1618/18 1619/6 1619/18 1621/14 1623/8 1623/9 1631/6</p> <p>event [1] 1601/9</p> <p>events [1] 1505/19</p> <p>eventually [2] 1540/22 1592/20</p> <p>ever [7] 1568/19 1591/13 1601/16 1616/23 1617/12 1635/11 1637/13</p> <p>every [22] 1501/20 1539/3 1543/16 1548/23 1576/14 1582/14 1588/2 1588/2 1589/3 1592/24 1595/9</p>	<p>1605/6 1605/8 1605/12 1610/9 1612/15 1612/19 1625/8 1627/4 1629/7 1629/24 1637/6</p> <p>everybody [7] 1492/5 1551/18 1564/23 1567/15 1567/15 1574/15 1577/3</p> <p>everyday [2] 1505/18 1544/4</p> <p>everyone [5] 1474/6 1567/9 1582/13 1616/8 1642/10</p> <p>everything [8] 1502/2 1506/7 1538/22 1597/25 1608/25 1608/25 1623/19 1627/23</p> <p>evidence [181]</p> <p>exact [5] 1491/18 1556/22 1568/5 1568/14 1602/17</p> <p>exactly [15] 1495/9 1542/13 1544/14 1567/19 1567/23 1569/11 1586/11 1596/17 1609/14 1623/14 1625/5 1627/13 1627/14 1631/13 1637/16</p> <p>exalting [1] 1493/22</p> <p>examination [4] 1491/4 1556/20 1570/5 1598/19</p> <p>examine [3] 1545/8 1638/15 1638/17</p> <p>examined [3] 1537/5 1556/21 1632/14</p> <p>examiner [11] 1546/13 1546/15 1570/6 1597/1 1598/15 1598/18 1598/21 1600/9 1600/11 1601/21 1628/13</p> <p>examiners [2] 1551/16 1628/10</p> <p>example [10] 1475/7 1519/5 1539/7 1549/24 1568/6 1568/16 1570/9 1571/23 1594/13 1635/13</p> <p>examples [3] 1512/23 1602/12 1620/3</p> <p>except [2] 1635/1 1647/12</p> <p>excerpts [1] 1507/21</p> <p>exchange [1] 1526/5</p> <p>excited [1] 1623/16</p> <p>exclude [2] 1507/23 1528/1</p> <p>exclusive [1] 1527/22 1637/1</p> <p>exclusively [1] 1572/3</p> <p>exclusivity [1] 1528/4</p> <p>excuse [2] 1505/12 1526/14</p> <p>excuses [1] 1535/20</p> <p>execute [1] 1626/3</p> <p>executed [5] 1515/14 1578/14 1625/16 1625/20 1625/23</p> <p>execution [1] 1626/6</p> <p>executives [2] 1540/4 1541/11</p> <p>exhibit [10] 1488/2 1488/17 1489/1 1489/13 1489/14 1489/25 1493/13 1494/15 1494/23 1504/15</p> <p>exhibits [12] 1503/12 1504/10 1508/8 1508/8 1508/9 1508/11 1508/14 1508/15 1508/18 1534/3 1642/3 1646/19</p> <p>exist [4] 1545/8 1545/13 1546/22 1591/15</p> <p>existed [2] 1545/21 1548/9</p> <p>existence [2] 1523/12</p>
<p>E</p> <p>e-mail [7] 1515/23 1546/25 1547/8 1603/18 1605/25 1606/2 1608/2</p> <p>e-mails [3] 1568/3 1572/11 1620/1</p> <p>e.g [2] 1515/21 1515/22</p> <p>each [37] 1501/16 1504/22 1506/6 1506/8 1510/7 1513/2 1513/4 1513/16 1513/20 1517/10 1520/5 1523/12 1524/25 1530/8 1536/17 1559/2 1577/5 1579/16 1583/21 1584/19 1590/12 1590/13 1591/11 1591/12 1594/19 1603/12 1635/1 1635/18 1635/19 1635/24 1636/17 1637/6 1637/8 1637/9 1639/8 1645/13 1648/22</p> <p>earlier [4] 1564/25 1618/10 1638/21 1646/16</p> <p>earn [1] 1560/2</p> <p>easier [1] 1577/5</p> <p>easy [5] 1585/10 1607/1 1607/9 1607/14 1607/16</p> <p>economic [2] 1527/15 1530/2</p> <p>edit [4] 1486/7 1546/25 1604/9 1605/18</p> <p>editability [1] 1606/1</p> <p>editable [8] 1547/9 1603/16 1603/20 1604/4 1605/15 1606/1 1606/15 1609/5</p> <p>edited [2] 1507/22 1508/2</p> <p>editing [7] 1570/11 1570/15 1570/19 1577/24 1598/25 1599/5 1599/9</p> <p>editor [1] 1603/24</p> <p>educated [1] 1538/19</p> <p>education [1] 1520/21</p> <p>effect [2] 1528/9 1636/5</p> <p>effective [1] 1617/22</p> <p>effort [6] 1519/4 1554/6 1560/1 1587/15 1607/22 1637/7</p>	<p>egregiously [1] 1620/9</p> <p>either [9] 1487/14 1487/22 1499/7 1500/22 1500/23 1505/12 1522/12 1527/5 1575/13</p> <p>Elbouchikhi [7] 1540/6 1566/15 1576/15 1585/21 1590/1 1626/8 1626/23</p> <p>Elbouchikhi's [3] 1589/23 1626/13 1626/15</p> <p>elected [1] 1546/18</p> <p>electronic [1] 1638/1</p> <p>electronically [1] 1638/11</p> <p>element [14] 1513/18 1523/13 1570/2 1570/12 1591/23 1603/12 1603/12 1605/3 1605/6 1605/8 1605/12 1606/14 1629/7 1629/25</p> <p>elements [20] 1513/8 1513/16 1516/19 1517/10 1521/12 1523/20 1523/23 1524/2 1524/4 1524/6 1569/18 1570/23 1584/10 1595/9 1595/12 1595/21 1596/3 1596/8 1603/13 1606/13</p> <p>elevate [1] 1480/19</p> <p>ELLIS [1] 1473/9</p> <p>else [21] 1475/20 1480/20 1483/6 1483/14 1487/19 1495/2 1497/3 1499/6 1503/7 1503/24 1504/19 1544/8 1546/20 1546/24 1551/18 1558/9 1571/21 1581/4 1597/7 1635/1 1647/23</p> <p>embodiments [1] 1528/23</p> <p>embodying [1] 1529/22</p> <p>emphasis [1] 1590/15</p> <p>emphasized [1] 1570/1</p> <p>employee [1] 1548/2</p> <p>enable [1] 1540/15</p> <p>enabling [1] 1626/5</p> <p>encountered [1] 1520/23</p> <p>end [20] 1497/6 1512/20 1526/8 1533/11 1539/10 1543/9 1555/17 1578/1 1583/14 1592/17 1594/18 1604/11 1611/10 1622/5 1623/12 1623/13 1631/5 1637/16 1641/3 1648/6</p> <p>ended [3] 1493/10 1634/20 1645/9</p> <p>enforced [1] 1489/9</p> <p>engaged [1] 1518/16</p> <p>engineer [3] 1540/18 1579/25 1627/1</p> <p>engineering [2] 1580/24 1593/20</p> <p>engineers [9] 1573/12 1586/4 1586/17 1586/18 1587/2 1610/15 1615/12 1624/19 1625/21</p> <p>engines [1] 1559/17</p> <p>enhance [1] 1633/24</p> <p>enough [9] 1488/11 1496/8 1548/5 1550/10 1575/3 1578/16 1579/13 1596/3 1648/22</p> <p>ensure [1] 1641/4</p> <p>enter [4] 1515/25 1516/2 1527/3 1642/17</p>	<p>entered [4] 1515/7 1526/24 1561/3 1638/16</p> <p>enters [3] 1501/7 1534/11 1642/19</p> <p>entire [4] 1573/15 1612/6 1614/20 1615/2</p> <p>entirely [6] 1493/2 1572/17 1611/3 1611/4 1624/13 1641/4</p> <p>entirety [1] 1627/11</p> <p>entitled [9] 1508/4 1521/4 1521/19 1531/20 1532/21 1535/17 1561/15 1565/25 1640/21</p> <p>entitles [1] 1614/7</p> <p>entity [1] 1517/20</p> <p>entries [2] 1542/19 1600/25</p> <p>entry [1] 1581/24</p> <p>equal [1] 1510/8</p> <p>erroneous [1] 1636/4</p> <p>error [1] 1480/7</p> <p>escape [1] 1631/6</p> <p>especially [3] 1567/15 1602/22 1608/25</p> <p>ESQ [12] 1471/25 1473/3 1473/4 1473/4 1473/5 1473/5 1473/9 1473/12 1473/12 1473/13 1473/13 1473/16</p> <p>essentially [4] 1574/13 1578/2 1587/12 1588/10</p> <p>establish [3] 1518/14 1522/23 1525/6</p> <p>established [4] 1527/18 1527/25 1528/16 1562/2</p> <p>establishes [1] 1525/9</p> <p>evaluate [1] 1597/12</p> <p>evaluating [8] 1477/20 1479/19 1481/11 1501/21 1509/6 1527/8 1532/9 1602/22</p> <p>evaluation [1] 1597/18</p> <p>even [51] 1476/14 1489/23 1502/21 1503/21 1513/17 1516/18 1522/17 1535/4 1536/19 1542/1 1547/19 1550/8 1554/20 1554/21 1554/23 1556/8 1558/4 1559/11 1559/14 1560/4 1568/13 1569/9 1569/15 1571/21 1573/5 1573/7 1579/12 1580/21 1588/16 1588/22 1589/6 1590/20 1591/4 1591/9 1593/15 1596/9 1605/11 1608/7 1609/4 1611/10 1611/11 1613/10 1616/17 1616/20 1618/18 1619/6 1619/18 1621/14 1623/8 1623/9 1631/6</p> <p>event [1] 1601/9</p> <p>events [1] 1505/19</p> <p>eventually [2] 1540/22 1592/20</p> <p>ever [7] 1568/19 1591/13 1601/16 1616/23 1617/12 1635/11 1637/13</p> <p>every [22] 1501/20 1539/3 1543/16 1548/23 1576/14 1582/14 1588/2 1588/2 1589/3 1592/24 1595/9</p>	<p>1605/6 1605/8 1605/12 1610/9 1612/15 1612/19 1625/8 1627/4 1629/7 1629/24 1637/6</p> <p>everybody [7] 1492/5 1551/18 1564/23 1567/15 1567/15 1574/15 1577/3</p> <p>everyday [2] 1505/18 1544/4</p> <p>everyone [5] 1474/6 1567/9 1582/13 1616/8 1642/10</p> <p>everything [8] 1502/2 1506/7 1538/22 1597/25 1608/25 1608/25 1623/19 1627/23</p> <p>evidence [181]</p> <p>exact [5] 1491/18 1556/22 1568/5 1568/14 1602/17</p> <p>exactly [15] 1495/9 1542/13 1544/14 1567/19 1567/23 1569/11 1586/11 1596/17 1609/14 1623/14 1625/5 1627/13 1627/14 1631/13 1637/16</p> <p>exalting [1] 1493/22</p> <p>examination [4] 1491/4 1556/20 1570/5 1598/19</p> <p>examine [3] 1545/8 1638/15 1638/17</p> <p>examined [3] 1537/5 1556/21 1632/14</p> <p>examiner [11] 1546/13 1546/15 1570/6 1597/1 1598/15 1598/18 1598/21 1600/9 1600/11 1601/21 1628/13</p> <p>examiners [2] 1551/16 1628/10</p> <p>example [10] 1475/7 1519/5 1539/7 1549/24 1568/6 1568/16 1570/9 1571/23 1594/13 1635/13</p> <p>examples [3] 1512/23 1602/12 1620/3</p> <p>except [2] 1635/1 1647/12</p> <p>excerpts [1] 1507/21</p> <p>exchange [1] 1526/5</p> <p>excited [1] 1623/16</p> <p>exclude [2] 1507/23 1528/1</p> <p>exclusive [1] 1527/22 1637/1</p> <p>exclusively [1] 1572/3</p> <p>exclusivity [1] 1528/4</p> <p>excuse [2] 1505/12 1526/14</p> <p>excuses [1] 1535/20</p> <p>execute [1] 1626/3</p> <p>executed [5] 1515/14 1578/14 1625/16 1625/20 1625/23</p> <p>execution [1] 1626/6</p> <p>executives [2] 1540/4 1541/11</p> <p>exhibit [10] 1488/2 1488/17 1489/1 1489/13 1489/14 1489/25 1493/13 1494/15 1494/23 1504/15</p> <p>exhibits [12] 1503/12 1504/10 1508/8 1508/8 1508/9 1508/11 1508/14 1508/15 1508/18 1534/3 1642/3 1646/19</p> <p>exist [4] 1545/8 1545/13 1546/22 1591/15</p> <p>existed [2] 1545/21 1548/9</p> <p>existence [2] 1523/12</p>

existence... [1] 1572/21
existing [1] 1528/10
exists [3] 1545/9 1572/25
1577/8
exits [3] 1533/6 1641/20
1645/21
expect [2] 1563/4 1648/7
expectation [1] 1524/11
expectations [1] 1526/22
expected [1] 1627/16
expense [3] 1610/22 1612/18
1613/21
expensive [1] 1611/2
experience [9] 1505/19
1505/20 1507/9 1520/21
1544/4 1551/9 1563/3 1577/2
1634/8
experienced [1] 1538/19
expert [38] 1507/5 1507/9
1507/10 1507/15 1536/16
1537/9 1537/14 1540/5
1542/3 1542/4 1544/23
1549/24 1550/7 1555/8
1555/22 1556/13 1556/19
1557/5 1557/11 1560/5
1560/18 1563/2 1563/22
1574/20 1582/5 1587/4
1587/14 1589/7 1589/17
1603/14 1603/18 1604/4
1605/14 1606/14 1607/7
1630/24 1632/8 1634/9
expert's [3] 1507/11 1507/11
1507/13
experts [6] 1507/18 1529/14
1538/1 1545/10 1560/22
1578/15
expired [1] 1612/1
explain [7] 1478/4 1501/21
1501/22 1501/24 1586/9
1588/6 1607/16
explained [16] 1555/16
1575/23 1576/16 1580/4
1580/18 1581/2 1585/21
1588/4 1593/10 1601/24
1605/7 1606/18 1622/20
1630/25 1634/9 1639/10
explaining [2] 1501/19
1634/22
explicit [1] 1576/2
explicitly [5] 1499/10 1570/8
1578/16 1598/7 1599/2
exploiting [1] 1610/3
express [1] 1477/12
expressly [3] 1522/12 1569/20
1571/1
extensive [4] 1546/16 1549/3
1549/21 1600/17
extensively [1] 1632/14
extent [8] 1489/16 1493/17
1527/9 1527/17 1528/12
1529/1 1647/17 1648/4
external [3] 1515/10 1515/24
1581/23
extra [1] 1488/7
extraordinary [1] 1548/6
extremely [3] 1496/23
1536/22 1632/3
extrinsic [7] 1478/2 1480/20
1480/20 1480/23 1481/3

1481/13 1482/22
eyewitness [1] 1504/24
F
face [8] 1546/3 1546/3
1546/11 1548/25 1549/17
1550/4 1560/15 1631/10
Facebook [1] 1638/6
fact [50] 1504/25 1505/4
1506/20 1508/1 1510/19
1519/23 1520/10 1535/25
1536/19 1539/4 1542/4
1550/24 1551/5 1554/9
1566/7 1566/12 1566/20
1571/5 1572/20 1573/2
1574/7 1579/15 1581/24
1582/13 1583/1 1585/13
1589/11 1589/20 1589/25
1590/6 1593/20 1597/21
1600/1 1606/5 1606/7
1607/10 1609/6 1609/16
1609/21 1610/15 1614/9
1615/10 1615/11 1615/11
1619/24 1620/22 1622/25
1630/11 1630/13 1637/5
factor [2] 1530/2 1530/6
factors [9] 1507/13 1523/22
1527/14 1530/8 1530/9
1531/4 1553/22 1553/24
1554/10
facts [22] 1492/18 1492/22
1502/9 1502/10 1502/13
1502/14 1502/16 1504/2
1509/13 1518/19 1518/20
1551/5 1552/12 1553/11
1553/16 1560/20 1567/12
1587/5 1594/7 1612/5 1636/8
1636/18
failed [1] 1506/22
fails [3] 1520/8 1542/13
1616/6
fair [7] 1534/24 1534/25
1535/2 1557/17 1557/22
1567/4 1609/17
fairly [2] 1503/1 1534/24
faith [3] 1519/3 1554/6
1633/10
fall [2] 1513/13 1568/22
false [1] 1612/14
falsely [1] 1506/20
far [1] 1497/9
fashion [1] 1560/21
fatal [2] 1550/20 1550/20
favor [7] 1510/9 1510/9
1624/20 1640/3 1640/4
1640/10 1640/11
favorably [1] 1484/24
fax [1] 1515/22
feature [11] 1541/24 1552/21
1553/14 1563/22 1568/14
1568/15 1568/17 1577/3
1602/16 1605/24 1606/1
features [20] 1526/9 1526/11
1526/13 1529/10 1529/12
1531/4 1531/7 1531/9 1531/9
1531/11 1531/13 1540/22
1547/11 1559/19 1596/15
1600/20 1600/22 1606/21
1623/21 1623/21
Federal [1] 1596/22

fee [4] 1620/8 1621/11
1621/13 1621/25
feel [3] 1503/3 1634/14
1637/21
fellow [4] 1636/1 1636/6
1637/10 1638/13
felt [2] 1524/19 1550/2
fervently [1] 1610/6
few [7] 1476/4 1566/3
1571/18 1586/12 1625/10
1645/15 1646/9
fewer [1] 1513/7
field [15] 1480/22 1516/23
1520/17 1520/22 1520/24
1522/21 1523/1 1523/5
1523/19 1524/1 1524/20
1535/3 1538/20 1551/1
1562/5
figure [7] 1479/2 1498/5
1498/17 1554/8 1560/6
1565/11 1568/20
figures [1] 1512/22
file [4] 1515/6 1581/7 1598/16
1646/21
filed [11] 1552/13 1552/17
1568/19 1569/4 1596/19
1601/5 1602/5 1605/2
1607/12 1609/22 1647/9
fill [2] 1500/24 1636/15
final [4] 1533/2 1553/22
1634/18 1640/17
finally [8] 1536/5 1541/1
1554/20 1563/9 1563/17
1566/15 1589/17 1633/20
financial [2] 1525/25 1646/11
find [15] 1510/9 1517/25
1518/3 1518/10 1524/9
1524/10 1525/1 1531/1
1551/22 1552/7 1553/6
1567/22 1629/9 1636/18
1636/25
finding [9] 1568/3 1639/22
1639/23 1640/3 1640/4
1640/10 1640/11 1641/1
1641/2
findings [1] 1614/4
fine [5] 1478/9 1479/12
1498/24 1500/18 1647/20
finger [1] 1567/23
finish [3] 1498/25 1634/22
1638/20
finished [1] 1635/16
finishing [1] 1646/12
finite [1] 1524/8
first [71] 1474/11 1475/13
1476/4 1476/5 1478/19
1479/6 1479/8 1481/22
1482/5 1484/10 1502/8
1509/16 1513/20 1513/23
1515/8 1515/16 1515/19
1516/5 1516/7 1527/7
1527/11 1534/18 1536/11
1548/21 1556/12 1569/18
1569/21 1570/1 1570/3
1570/23 1571/3 1571/7
1571/11 1571/12 1574/15
1575/24 1577/2 1579/4
1579/9 1584/14 1584/16
1584/24 1585/1 1587/7
1590/23 1591/22 1591/24

1591/25 1594/4 1595/19
1596/24 1596/6 1596/9
1596/12 1597/19 1598/4
1601/16 1602/5 1602/20
1604/1 1605/1 1608/11
1611/24 1613/1 1613/15
1615/8 1623/23 1624/12
1625/10 1628/3 1646/9
five [5] 1536/24 1589/9
1618/18 1618/20 1618/20
fix [3] 1577/10 1577/11
1617/19
flat [1] 1596/12
flaw [1] 1557/11
flight [3] 1601/12 1601/13
1601/14
flimsy [1] 1618/2
flow [1] 1486/6
flows [1] 1486/2
focus [6] 1526/22 1535/10
1556/10 1567/14 1567/18
1590/7
focused [4] 1537/18 1571/2
1626/7 1627/5
folks [2] 1482/14 1533/7
follow [7] 1501/15 1501/25
1502/20 1517/8 1519/13
1639/6 1639/7
followed [2] 1618/9 1632/7
following [19] 1511/13
1514/25 1515/3 1521/14
1525/15 1525/18 1527/13
1595/16 1608/16 1608/20
1612/8 1636/18 1639/5
1639/21 1640/1 1640/7
1643/13 1643/17 1643/22
follows [2] 1539/25 1634/20
food [2] 1594/16 1594/19
foot [1] 1628/9
foreperson [5] 1635/9
1636/15 1641/5 1641/9
1642/23
forever [1] 1648/23
forgot [1] 1646/18
form [32] 1485/23 1489/24
1492/24 1493/3 1493/15
1493/17 1500/1 1500/12
1500/22 1502/6 1533/16
1533/19 1533/22 1533/23
1551/23 1554/14 1565/23
1574/11 1595/14 1608/14
1636/11 1636/13 1636/15
1636/17 1636/23 1639/4
1639/6 1640/18 1641/4
1641/6 1641/10 1643/2
formed [1] 1482/25
former [1] 1548/2
forms [1] 1639/1
forth [4] 1513/3 1513/4
1513/6 1514/2
forward [3] 1628/9 1633/5
1641/12
found [4] 1535/18 1550/13
1568/11 1631/7
four [12] 1475/4 1535/11
1600/25 1613/24 1614/7
1617/21 1617/24 1618/2
1618/3 1618/17 1635/14
1635/14
four-times [3] 1613/24

F
 four-times... [2] 1617/21
 1618/17
 fourth [2] 1474/20 1484/11
 Fox [16] 1544/23 1545/5
 1545/17 1546/19 1547/13
 1547/19 1547/24 1548/22
 1549/6 1549/16 1549/22
 1603/11 1605/6 1606/12
 1606/18 1607/16
 framework [28] 1540/8
 1540/12 1542/7 1542/12
 1542/17 1542/22 1543/1
 1579/22 1580/3 1580/8
 1580/19 1581/3 1582/7
 1582/8 1582/10 1583/16
 1584/2 1587/23 1588/5
 1588/19 1591/17 1592/23
 1593/2 1593/16 1593/22
 1595/3 1595/4 1626/17
 free [5] 1505/22 1507/17
 1634/14 1637/4 1637/21
 front [4] 1599/10 1602/4
 1602/13 1602/14
 full [11] 1482/5 1488/8
 1546/25 1547/8 1597/17
 1600/6 1602/24 1602/25
 1623/20 1623/21 1626/18
 function [3] 1523/24 1543/3
 1561/9
 functionality [14] 1530/21
 1540/16 1541/9 1541/24
 1543/5 1543/18 1553/3
 1564/1 1582/21 1587/10
 1601/4 1609/8 1619/10
 1633/24
 fundamental [2] 1477/9
 1538/4
 further [6] 1505/23 1518/9
 1545/14 1550/3 1562/7
 1562/7
 Furthermore [1] 1576/14
 future [2] 1498/12 1547/8

G
 game [2] 1535/1 1557/22
 Garfinkel [12] 1499/22
 1501/11 1533/5 1534/9
 1567/5 1624/25 1638/25
 1641/13 1643/2 1643/9
 1644/4 1645/19
 gave [4] 1506/23 1512/7
 1571/24 1617/1
 general [4] 1476/15 1477/8
 1501/20 1512/8
 generally [1] 1508/23
 generates [1] 1559/22
 generator [1] 1528/11
 gentlemen [15] 1501/10
 1532/22 1534/18 1538/12
 1557/10 1604/12 1608/11
 1610/20 1623/12 1625/4
 1634/12 1642/22 1643/3
 1645/8 1645/23
 genuinely [1] 1610/6
 Georgia [1] 1600/12
 get [32] 1487/24 1501/1
 1543/3 1558/3 1564/10
 1567/17 1570/2 1570/17
 1570/22 1575/1 1577/3

1586/14 1588/12 1589/7
 1591/6 1592/12 1594/7
 1594/19 1596/12 1599/10
 1604/25 1609/11 1621/9
 1623/8 1635/7 1637/15
 1641/24 1641/25 1646/14
 1646/21 1646/24 1647/16
 gets [2] 1594/19 1616/20
 getting [7] 1495/5 1500/5
 1533/15 1577/18 1597/4
 1597/11 1598/1
 give [33] 1474/9 1488/7
 1491/22 1498/5 1502/15
 1502/21 1502/22 1505/10
 1505/12 1505/15 1505/19
 1506/17 1507/3 1508/5
 1511/14 1512/10 1519/10
 1533/4 1537/24 1538/21
 1550/3 1593/12 1593/13
 1594/13 1611/1 1612/12
 1617/3 1617/5 1633/5 1634/7
 1635/4 1635/5 1648/5
 given [20] 1477/1 1487/25
 1498/6 1502/18 1507/16
 1508/4 1537/20 1539/5
 1550/1 1554/17 1578/7
 1583/22 1583/24 1600/23
 1605/19 1623/5 1628/16
 1632/7 1636/19 1639/8
 gives [1] 1566/14
 Gmail [4] 1525/18 1542/18
 1552/18 1560/13
 go [35] 1484/18 1488/18
 1489/2 1489/6 1489/7
 1489/12 1489/18 1489/19
 1492/13 1492/18 1492/20
 1492/25 1493/3 1493/4
 1493/12 1493/15 1493/17
 1493/25 1500/10 1500/23
 1534/2 1543/1 1543/3 1543/8
 1550/3 1553/6 1588/14
 1592/17 1600/23 1602/18
 1610/25 1629/2 1632/21
 1648/8 1648/23
 GODFREY [1] 1473/3
 goes [2] 1489/18 1497/10
 going [76] 1474/9 1474/14
 1475/9 1479/14 1480/4
 1480/10 1481/8 1481/9
 1481/10 1481/13 1481/15
 1481/18 1481/23 1482/2
 1483/12 1483/23 1484/8
 1484/17 1488/5 1489/16
 1490/15 1492/20 1492/22
 1492/24 1494/23 1496/12
 1497/6 1498/4 1498/12
 1498/13 1499/14 1500/6
 1500/9 1500/11 1500/24
 1532/25 1534/2 1535/11
 1535/19 1536/14 1538/7
 1539/15 1539/20 1550/14
 1555/18 1555/23 1557/19
 1558/21 1558/25 1561/25
 1562/22 1563/20 1564/8
 1567/22 1571/17 1592/3
 1592/14 1592/14 1592/15
 1592/16 1592/17 1592/18
 1592/19 1595/13 1603/13
 1612/12 1614/2 1614/10
 1620/9 1624/25 1629/24

1631/4 1639/3 1642/16
 1645/1 1643/7
 gone [2] 1549/17 1632/23
 good [12] 1474/6 1476/1
 1476/2 1495/4 1499/13
 1519/3 1534/17 1554/6
 1563/23 1567/9 1633/10
 1637/18
 google [283]
 Google's [50] 1484/15
 1486/16 1486/23 1490/8
 1494/13 1511/25 1512/5
 1518/19 1520/12 1526/3
 1535/15 1537/9 1537/14
 1538/1 1538/23 1540/6
 1541/1 1541/10 1542/4
 1542/24 1545/2 1549/24
 1552/16 1554/15 1555/1
 1555/8 1555/22 1556/19
 1557/5 1557/24 1560/22
 1562/13 1562/17 1563/5
 1563/23 1573/11 1573/19
 1586/12 1593/19 1599/19
 1599/23 1620/17 1627/1
 1629/22 1630/5 1630/7
 1632/11 1632/22 1640/21
 1640/24
 got [15] 1474/13 1476/18
 1483/3 1485/13 1488/21
 1536/4 1545/19 1559/1
 1559/4 1559/24 1575/1
 1577/11 1583/17 1599/15
 1648/11
 grab [2] 1500/3 1547/17
 grabbing [1] 1541/8
 grant [1] 1529/25
 granting [1] 1528/3
 graphics [2] 1503/17 1503/20
 great [9] 1485/20 1487/9
 1534/5 1566/16 1566/18
 1566/23 1576/22 1648/23
 1648/23
 greater [1] 1509/2
 greatest [1] 1509/11
 greatly [1] 1645/13
 green [1] 1584/1
 ground [1] 1568/6
 group [5] 1578/17 1583/17
 1595/2 1595/4 1597/17
 groups [1] 1585/4
 guess [2] 1497/25 1503/1
 guesswork [1] 1525/14
 guidance [1] 1553/9
 guy [3] 1590/1 1590/2 1590/3

H
 hac [1] 1647/9
 had [75] 1483/3 1484/24
 1485/13 1487/2 1489/1
 1489/15 1493/13 1495/9
 1496/12 1508/5 1523/5
 1525/25 1526/23 1526/24
 1528/20 1529/18 1530/15
 1535/8 1539/5 1539/6
 1540/13 1541/14 1546/15
 1546/16 1546/16 1548/20
 1549/2 1549/16 1552/22
 1552/25 1553/4 1553/11
 1557/6 1561/5 1563/12
 1563/23 1564/16 1568/5

1569/25 1580/25 1585/24
 1587/9 1587/17 1587/20
 1593/19 1594/25 1597/25
 1600/7 1601/21 1608/4
 1608/5 1609/6 1612/9
 1617/14 1619/25 1619/25
 1620/6 1620/13 1621/20
 1623/19 1628/5 1628/17
 1629/5 1631/8 1631/18
 1631/19 1631/20 1631/22
 1632/23 1633/7 1633/9
 1633/13 1633/22 1648/9
 1648/22
 half [2] 1536/24 1568/18
 HALL [1] 1471/20
 hand [9] 1499/22 1500/24
 1501/11 1518/2 1533/23
 1557/18 1638/25 1641/14
 1643/1
 handed [1] 1612/22
 handle [1] 1497/15
 handling [25] 1579/21
 1580/19 1580/21 1581/2
 1581/11 1583/11 1583/16
 1584/3 1585/15 1591/1
 1591/2 1591/17 1592/5
 1592/10 1592/22 1593/1
 1593/6 1593/17 1593/24
 1595/5 1595/5 1596/4
 1596/11 1604/14 1604/23
 handout [1] 1613/2
 Hangouts [1] 1525/17
 Hannah [1] 1647/4
 Hannah Kannon [1] 1647/4
 happen [10] 1543/11 1564/16
 1564/20 1582/2 1589/15
 1592/15 1593/5 1593/5
 1616/23 1627/16
 happened [5] 1494/18 1527/7
 1535/5 1535/7 1631/9
 happening [2] 1540/17
 1543/18
 happens [9] 1542/5 1542/7
 1565/2 1565/7 1589/15
 1589/23 1597/1 1627/18
 1635/15
 happy [1] 1646/12
 hard [7] 1495/8 1499/12
 1538/4 1567/14 1594/6
 1610/17 1610/24
 harmonize [1] 1485/16
 Harvard [1] 1567/22
 has [115] 1478/25 1486/12
 1486/14 1486/21 1486/22
 1490/13 1490/21 1492/19
 1496/21 1498/21 1500/12
 1501/16 1503/11 1506/12
 1507/6 1507/8 1508/24
 1509/23 1510/1 1510/15
 1511/15 1511/18 1511/22
 1511/24 1512/3 1512/4
 1517/8 1517/9 1518/3 1518/6
 1519/13 1519/19 1525/1
 1525/6 1525/9 1529/1 1530/7
 1535/4 1535/5 1535/7
 1535/12 1535/13 1535/15
 1535/21 1537/20 1538/17
 1541/21 1543/16 1543/23
 1543/23 1543/24 1543/24
 1544/13 1544/15 1545/11

H	I	J	K
<p>has... [60] 1546/24 1547/24 1549/11 1549/12 1550/21 1551/7 1551/9 1551/10 1551/11 1551/13 1551/20 1552/5 1552/5 1552/7 1552/8 1555/5 1557/14 1560/5 1562/13 1563/2 1564/9 1564/20 1564/23 1565/24 1566/21 1574/18 1578/7 1578/11 1579/1 1579/5 1579/5 1579/6 1579/7 1581/20 1584/19 1585/6 1592/16 1594/15 1595/10 1595/21 1596/5 1597/2 1609/15 1610/20 1616/14 1619/10 1620/15 1625/9 1628/1 1630/16 1631/5 1632/1 1632/7 1634/9 1636/11 1636/19 1640/19 1642/23 1645/9 1647/12 HASTINGS [1] 1473/11 hate [1] 1495/20 have [290] haven't [1] 1478/3 having [9] 1490/18 1522/14 1523/1 1523/19 1549/24 1555/14 1571/6 1571/8 1571/10 he [248] he's [7] 1538/19 1545/6 1545/18 1545/21 1546/8 1548/7 1599/24 heads [2] 1544/11 1627/19 hear [18] 1474/9 1474/15 1490/2 1493/16 1504/8 1532/23 1533/3 1533/10 1534/14 1537/25 1549/7 1562/22 1601/16 1602/20 1612/8 1625/2 1637/19 1648/7 heard [65] 1502/10 1503/6 1503/8 1504/12 1508/17 1510/23 1533/9 1535/22 1535/25 1536/3 1536/5 1537/25 1540/4 1540/6 1541/13 1542/1 1545/5 1545/10 1545/20 1547/15 1548/23 1549/6 1550/7 1551/2 1552/12 1552/16 1553/21 1553/21 1553/23 1554/4 1560/17 1562/15 1563/19 1564/6 1564/13 1566/3 1566/15 1567/12 1569/1 1569/14 1571/17 1573/10 1573/12 1573/16 1576/15 1592/21 1595/17 1596/22 1611/8 1611/14 1611/22 1615/4 1615/12 1616/16 1618/7 1619/20 1619/21 1622/15 1624/18 1624/18 1626/20 1627/16 1630/9 1631/8 1632/15 hearing [3] 1533/1 1535/19 1642/8 heavily [2] 1597/10 1629/21 Hedloy [45] 1485/8 1534/21 1562/15 1562/24 1566/17 1567/20 1567/21 1567/23 1568/1 1568/19 1569/8</p>	<p>1570/6 1570/21 1571/1 1571/5 1571/9 1571/24 1572/2 1572/6 1572/23 1573/4 1575/22 1577/16 1577/20 1597/6 1598/17 1599/7 1599/13 1600/3 1601/5 1602/5 1602/18 1605/2 1606/23 1607/11 1607/17 1607/23 1607/24 1608/9 1613/25 1614/7 1617/25 1619/1 1619/7 1623/16 Hedloy's [4] 1480/19 1495/20 1496/23 1562/21 held [1] 1478/25 help [7] 1492/2 1504/1 1506/1 1508/13 1537/12 1567/3 1575/9 helpful [1] 1494/24 hence [1] 1580/8 here [49] 1474/8 1476/18 1478/24 1478/25 1480/12 1480/14 1493/2 1499/15 1503/6 1504/19 1535/10 1540/9 1540/14 1540/19 1541/7 1541/11 1543/15 1543/15 1547/4 1553/5 1558/12 1566/17 1568/6 1568/16 1572/1 1580/25 1586/4 1586/9 1586/20 1591/14 1592/7 1597/12 1597/13 1599/4 1602/15 1620/19 1626/4 1626/11 1627/4 1628/14 1630/4 1630/7 1630/15 1630/16 1630/18 1630/21 1642/10 1646/24 1647/24 here's [2] 1591/13 1605/13 herein [1] 1639/14 hesitate [2] 1636/2 1637/11 high [2] 1621/19 1632/3 higher [5] 1510/20 1510/21 1519/24 1545/17 1618/21 highest [1] 1510/25 highlighted [1] 1625/10 highlights [1] 1509/10 highly [5] 1510/19 1519/23 1551/4 1565/5 1566/23 him [7] 1505/1 1545/20 1550/1 1560/22 1564/17 1614/7 1614/9 himself [7] 1537/3 1548/9 1556/25 1569/1 1582/5 1606/23 1625/25 hindsight [1] 1523/10 his [40] 1495/21 1537/3 1538/20 1538/21 1541/6 1548/24 1556/2 1556/20 1556/22 1557/2 1559/24 1567/22 1570/22 1570/24 1571/2 1571/24 1571/24 1574/20 1576/4 1589/9 1589/23 1601/5 1602/5 1604/7 1605/2 1607/4 1607/12 1614/21 1615/3 1615/5 1615/17 1617/25 1618/6 1618/12 1618/16 1622/6 1622/6 1626/8 1626/23 1626/25 his per [2] 1614/21 1618/16</p>	<p>history [3] 1598/16 1601/9 1631/20 hold [1] 1604/25 holder [5] 1524/23 1526/5 1526/23 1530/11 1531/5 holding [1] 1567/3 holds [1] 1600/3 honest [2] 1591/9 1636/4 honestly [2] 1588/20 1637/18 Honor [75] 1474/17 1475/24 1476/1 1476/8 1476/19 1478/8 1478/15 1479/10 1480/3 1480/18 1481/17 1483/19 1484/1 1484/20 1485/7 1485/19 1485/25 1486/4 1486/6 1486/10 1487/3 1487/18 1487/21 1487/23 1488/2 1488/12 1488/22 1489/4 1490/6 1491/7 1491/20 1491/21 1492/11 1492/16 1493/8 1493/20 1494/22 1495/3 1495/6 1496/4 1496/19 1496/21 1497/2 1497/15 1498/20 1499/12 1499/17 1499/24 1500/18 1500/19 1501/4 1501/8 1501/13 1533/13 1533/14 1533/15 1534/4 1534/7 1534/10 1534/12 1567/8 1634/16 1639/2 1642/12 1642/15 1642/25 1643/10 1644/2 1644/6 1645/20 1646/8 1647/2 1647/21 1648/1 1648/2 Honor's [1] 1496/19 HONORABLE [1] 1471/20 hood [9] 1536/12 1536/13 1574/16 1574/22 1574/25 1586/25 1589/13 1593/25 1594/1 hope [1] 1544/14 Hopefully [1] 1476/18 hour [3] 1488/8 1488/9 1532/25 hours [4] 1536/24 1536/25 1571/18 1589/10 house [2] 1621/24 1621/25 Housekeeping [1] 1497/4 how [65] 1494/3 1494/18 1496/25 1497/15 1498/6 1498/8 1498/12 1500/23 1505/9 1506/10 1517/4 1541/11 1541/25 1544/15 1545/12 1550/5 1550/17 1555/4 1557/6 1559/8 1559/12 1559/22 1559/22 1561/9 1564/13 1568/11 1568/11 1568/11 1568/12 1568/13 1572/22 1573/1 1574/17 1574/18 1575/2 1580/7 1580/16 1581/13 1583/20 1586/21 1587/2 1587/5 1587/6 1588/20 1589/8 1592/17 1594/6 1597/11 1599/14 1601/24 1601/25 1603/1 1605/7 1607/3 1607/5 1609/19 1611/15 1611/15 1611/19 1615/23 1627/13 1631/2</p>	<p>1633/7 1635/12 1642/13 however [3] 1478/1 1495/16 1645/14 huge [1] 1549/19 hundred [3] 1577/10 1577/11 1597/24 hundreds [3] 1556/14 1563/4 1622/2 hypothetical [13] 1526/16 1526/18 1526/21 1527/5 1527/10 1530/5 1555/19 1555/20 1564/20 1564/22 1565/1 1620/7 1621/2</p> <hr/> <p>I'd [5] 1490/2 1495/11 1586/2 1602/8 1647/10 I'll [10] 1477/23 1478/11 1484/9 1488/7 1488/18 1498/10 1499/11 1543/21 1586/25 1622/10 I'm [35] 1476/24 1479/14 1480/4 1480/10 1481/8 1481/8 1481/10 1483/12 1491/16 1493/17 1494/24 1499/14 1500/24 1538/7 1546/6 1558/21 1558/24 1564/10 1569/13 1592/3 1603/13 1607/20 1612/12 1620/9 1623/15 1624/1 1624/25 1639/3 1642/16 1643/1 1643/6 1646/19 1647/10 1647/19 1648/22 I've [2] 1631/8 1648/11 iceberg [1] 1614/25 idea [8] 1536/14 1543/21 1568/2 1568/3 1569/9 1575/17 1592/16 1618/20 ideas [1] 1606/11 identically [1] 1522/18 identified [3] 1524/8 1539/12 1584/17 identify [5] 1503/21 1563/11 1591/10 1601/13 1609/23 identifying [2] 1515/21 1633/6 ignore [4] 1504/13 1589/18 1614/8 1625/14 ignored [1] 1620/12 illustrate [2] 1503/17 1508/13 illustrative [1] 1508/14 immediately [1] 1493/23 impartial [1] 1635/25 implement [1] 1568/14 implemented [2] 1563/18 1586/7 implementing [1] 1608/8 implication [1] 1627/25 implied [2] 1522/13 1556/16 importance [4] 1508/24 1509/2 1509/6 1570/1 important [12] 1490/10 1502/24 1506/20 1512/20 1534/19 1546/24 1547/1 1566/13 1575/23 1602/7 1625/19 1637/17 importantly [2] 1602/3 1624/1 imports [1] 1517/22 impossible [1] 1612/20 impressed [1] 1648/20 improper [1] 1630/11</p>

<p>improvements [1] 1529/12 inaccurate [1] 1480/18 Inbox [1] 1525/17 incentive [1] 1524/7 inclined [1] 1493/17 include [7] 1476/8 1493/9 1518/21 1521/10 1555/3 1601/7 1604/1 included [6] 1492/22 1560/9 1596/9 1614/15 1617/21 1618/5 includes [10] 1480/21 1496/6 1502/22 1503/9 1516/17 1579/5 1618/17 1619/6 1619/12 1624/5 including [10] 1503/11 1508/11 1516/11 1516/14 1520/20 1600/13 1613/17 1618/12 1619/2 1624/9 incompatible [2] 1573/20 1574/8 inconsistent [2] 1506/11 1538/17 incorporated [1] 1563/5 incorporates [1] 1514/12 incorrect [3] 1597/2 1597/15 1617/13 increased [1] 1530/10 incremental [2] 1526/7 1526/12 independent [6] 1514/1 1514/2 1514/5 1514/6 1517/25 1518/3 independently [1] 1537/3 indicate [1] 1614/11 indicated [2] 1607/25 1627/8 indicates [1] 1591/21 indication [2] 1517/3 1573/3 indirectly [1] 1505/4 individual [5] 1509/4 1573/15 1593/11 1594/18 1635/24 individually [1] 1520/4 individuals [1] 1628/8 industry [4] 1518/23 1554/1 1554/1 1555/6 influence [5] 1502/12 1503/3 1503/8 1504/17 1638/22 influenced [1] 1504/4 information [47] 1497/23 1499/1 1507/12 1512/8 1515/8 1515/17 1515/18 1515/19 1515/21 1515/22 1515/24 1546/17 1549/3 1549/13 1558/4 1559/2 1561/12 1568/11 1568/12 1586/15 1590/10 1597/2 1597/3 1597/10 1600/7 1600/7 1600/17 1601/8 1601/18 1602/21 1602/23 1603/24 1604/1 1604/1 1605/19 1608/13 1617/1 1617/4 1617/14 1617/15 1617/17 1623/25 1637/25 1638/8 1646/6 1646/11 1647/7 infringe [9] 1519/2 1530/22 1544/1 1554/3 1554/12 1594/5 1595/19 1595/20 1611/9</p>	<p>infringed [30] 1486/13 1486/21 1511/22 1512/3 1516/18 1517/9 1518/1 1518/3 1518/7 1518/8 1518/9 1518/10 1520/6 1525/1 1527/2 1535/13 1536/6 1536/22 1552/7 1554/21 1555/21 1564/17 1564/23 1565/8 1566/5 1595/16 1629/10 1631/16 1639/21 1643/13 infringement [69] 1486/16 1486/24 1509/24 1512/1 1512/6 1513/22 1516/11 1517/1 1517/5 1517/11 1517/13 1517/13 1517/15 1517/16 1517/19 1517/23 1517/24 1518/1 1518/12 1518/13 1518/16 1518/17 1519/7 1519/8 1519/10 1519/16 1525/4 1525/16 1525/19 1525/22 1526/1 1526/4 1526/20 1527/7 1527/11 1529/17 1535/6 1535/16 1535/17 1537/1 1537/12 1538/23 1544/5 1552/10 1554/12 1554/16 1561/14 1561/20 1562/3 1564/22 1585/9 1585/11 1595/8 1595/12 1596/1 1597/16 1604/13 1604/22 1606/20 1612/17 1614/4 1616/10 1616/13 1618/11 1625/5 1631/12 1633/8 1640/22 1640/24 infringer [6] 1525/23 1526/20 1526/23 1529/1 1529/12 1530/11 infringes [4] 1509/23 1510/12 1511/16 1517/23 infringing [16] 1490/9 1519/4 1526/8 1530/16 1530/20 1530/24 1531/7 1531/9 1531/10 1553/10 1553/19 1554/7 1563/20 1623/10 1633/1 1633/10 inherently [1] 1522/12 initiate [2] 1516/1 1516/3 inNova [2] 1622/12 1622/13 innovations [1] 1521/1 input [21] 1515/10 1516/2 1516/4 1516/6 1569/22 1569/23 1570/10 1571/3 1571/7 1577/25 1579/6 1582/6 1582/23 1584/21 1584/24 1590/19 1590/22 1591/21 1592/1 1598/10 1599/5 inputs [1] 1516/2 insert [2] 1603/23 1605/18 inside [15] 1540/9 1540/9 1540/21 1541/21 1571/19 1573/22 1575/8 1581/14 1581/15 1582/1 1587/18 1593/22 1607/1 1607/10 1626/17 insists [1] 1497/24 Instagram [1] 1638/6 install [1] 1556/6 installation [1] 1557/7</p>	<p>installations [1] 1558/14 installed [2] 1565/10 1565/17 installs [1] 1617/9 instance [4] 1510/7 1510/14 1519/19 1596/12 instant [1] 1638/4 instead [11] 1479/25 1485/16 1505/25 1533/22 1538/21 1563/21 1571/13 1586/16 1599/24 1605/25 1640/17 instruct [7] 1501/15 1502/18 1514/22 1517/7 1519/12 1520/13 1643/5 instructed [4] 1503/13 1508/21 1544/3 1564/25 instructing [1] 1525/4 instruction [14] 1474/12 1474/12 1475/22 1476/21 1477/3 1477/7 1481/20 1481/22 1482/21 1483/20 1483/21 1485/2 1592/25 1625/9 Instruction 5.7 [1] 1474/12 instructions [115] 1474/9 1474/13 1476/11 1476/13 1476/18 1476/20 1477/16 1478/9 1482/5 1487/20 1493/9 1499/21 1500/12 1501/12 1501/17 1502/4 1502/20 1502/22 1502/23 1502/24 1504/20 1509/20 1511/14 1512/10 1512/13 1515/13 1532/23 1533/1 1539/8 1551/2 1553/22 1560/18 1563/19 1572/17 1573/13 1573/21 1575/8 1575/9 1575/24 1576/5 1576/10 1576/20 1578/5 1578/12 1578/17 1578/22 1578/23 1579/2 1579/10 1579/15 1579/17 1579/20 1580/19 1580/21 1580/22 1581/1 1581/12 1583/4 1583/11 1583/15 1585/2 1585/4 1585/6 1585/7 1585/9 1585/15 1585/16 1585/16 1585/18 1585/23 1586/23 1587/11 1588/1 1589/14 1589/16 1589/19 1591/8 1591/14 1591/16 1592/5 1592/10 1592/22 1593/4 1593/11 1593/24 1594/3 1594/10 1595/3 1595/4 1595/23 1596/10 1598/10 1598/11 1603/3 1603/7 1604/15 1604/18 1604/23 1607/5 1610/9 1624/3 1625/11 1625/15 1626/3 1626/10 1629/17 1629/17 1634/19 1636/19 1636/23 1639/5 1639/7 1639/11 1639/11 1640/13 intellectual [1] 1566/5 intended [10] 1479/19 1495/13 1496/2 1496/15 1506/1 1515/14 1532/9 1578/13 1625/16 1625/20 intending [1] 1497/17 intent [19] 1475/9 1477/11 1477/12 1477/25 1478/13</p>	<p>1480/6 1482/13 1482/16 1483/1 1483/9 1493/2 1495/15 1495/19 1496/7 1532/14 1532/16 1592/12 1592/16 1593/7 intention [5] 1477/23 1479/22 1496/6 1532/12 1563/6 intentional [2] 1518/17 1552/10 intentionally [1] 1518/24 intentions [1] 1483/24 intents [25] 1579/20 1580/18 1580/21 1581/2 1581/11 1583/11 1583/16 1584/3 1585/15 1591/1 1591/2 1591/17 1592/5 1592/10 1592/21 1593/1 1593/6 1593/17 1593/24 1595/4 1595/5 1596/4 1596/10 1604/14 1604/23 interact [2] 1590/21 1591/11 interaction [1] 1540/12 interest [3] 1570/7 1598/20 1636/9 interesting [1] 1601/9 Interestingly [2] 1572/19 1601/1 interests [1] 1506/13 internally [1] 1557/20 Internet [4] 1638/4 1638/4 1638/5 1638/18 interpret [6] 1475/14 1478/23 1479/7 1479/15 1481/9 1532/7 interpretation [2] 1481/6 1481/6 interpretations [1] 1485/3 interpreting [1] 1475/4 interrelated [1] 1498/7 interrupting [1] 1498/3 intimation [1] 1636/25 introduce [1] 1500/8 introduced [2] 1482/23 1520/20 invalid [40] 1486/13 1486/22 1510/13 1510/16 1511/20 1511/23 1512/4 1513/23 1519/2 1519/14 1519/20 1520/3 1520/10 1521/23 1522/24 1525/2 1535/15 1536/2 1536/4 1544/10 1544/13 1547/18 1550/12 1551/14 1552/1 1552/8 1553/15 1553/20 1554/4 1608/17 1608/21 1611/9 1612/16 1623/11 1627/19 1633/11 1640/2 1640/8 1643/18 1643/23 invalidate [7] 1544/21 1545/18 1545/23 1551/3 1629/25 1631/3 1631/25 invalidated [2] 1551/25 1629/13 invalidates [3] 1544/25 1545/4 1548/7 invalidating [2] 1547/11 1549/10 invaliding [1] 1548/19 invalidity [10] 1519/15 1520/13 1520/15 1544/23</p>
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invalidity... [6] 1551/24
 1596/21 1604/16 1614/3
 1628/2 1631/12
 invent [7] 1567/20 1568/2
 1568/2 1569/12 1609/14
 1623/14 1623/17
 invented [6] 1566/17 1566/23
 1571/16 1575/14 1577/21
 1624/11
 invention [52] 1512/23
 1516/24 1517/22 1520/17
 1520/18 1521/5 1521/12
 1521/13 1521/20 1521/21
 1522/8 1522/15 1522/16
 1522/17 1522/20 1522/22
 1522/25 1523/2 1523/2
 1523/3 1523/5 1523/6 1523/8
 1523/11 1523/13 1523/16
 1523/18 1523/19 1523/21
 1523/22 1523/25 1524/3
 1524/5 1524/9 1524/13
 1524/17 1524/18 1524/21
 1524/24 1526/6 1526/7
 1529/22 1566/13 1570/24
 1571/2 1571/24 1597/12
 1597/13 1598/9 1607/13
 1622/25 1634/10
 inventions [12] 1521/23
 1523/15 1528/2 1528/3
 1528/11 1528/20 1528/22
 1528/25 1529/2 1529/7
 1529/7 1529/9
 inventor [1] 1522/19
 inventors [1] 1566/11
 investigate [2] 1545/14
 1550/3
 investigated [1] 1560/20
 investigation [1] 1548/9
 investor [2] 1607/12 1607/13
 involved [8] 1551/11 1593/1
 1593/17 1596/21 1597/6
 1597/7 1597/8 1612/19
 involves [1] 1513/25
 iOS [1] 1543/24
 iPad [1] 1638/3
 iPhone [1] 1638/3
 irrelevant [1] 1507/23
 is [561]
 isn't [5] 1496/8 1561/10
 1583/23 1604/4 1630/12
 isolation [3] 1477/21 1479/21
 1532/11
 issuance [1] 1519/16
 issue [33] 1476/21 1477/4
 1480/16 1485/13 1485/17
 1486/10 1486/10 1486/11
 1486/17 1486/17 1489/1
 1490/7 1490/18 1497/14
 1502/18 1525/5 1525/24
 1531/22 1531/23 1539/11
 1539/11 1539/23 1546/18
 1549/14 1549/20 1558/20
 1561/6 1597/14 1625/6
 1625/19 1630/23 1631/17
 1633/7
 issue 3 [1] 1486/17
 issue 4 [2] 1486/11 1486/17
 issued [12] 1546/14 1547/23
 1548/3 1548/11 1549/2

1549/4 1570/3 1597/19
 1599/11 1599/13 1609/11
 1623/23
 issues [28] 1476/23 1478/16
 1485/15 1485/22 1486/5
 1511/13 1512/17 1514/23
 1516/10 1516/11 1517/1
 1517/4 1517/6 1520/14
 1535/10 1535/12 1536/9
 1538/25 1556/4 1556/9
 1586/17 1586/19 1587/5
 1589/6 1596/24 1628/2
 1628/3 1648/4
 it [564]
 it's [105] 1474/14 1476/15
 1479/8 1479/9 1480/7
 1480/15 1482/4 1482/12
 1483/8 1488/3 1488/4
 1489/24 1489/25 1490/9
 1490/20 1491/23 1492/3
 1493/21 1495/8 1498/4
 1498/13 1498/18 1536/6
 1536/6 1539/8 1540/17
 1542/12 1543/16 1545/7
 1546/6 1546/7 1546/24
 1547/5 1547/16 1549/18
 1554/24 1556/24 1557/3
 1558/2 1558/3 1561/16
 1564/2 1564/3 1564/24
 1567/11 1569/2 1573/22
 1574/6 1575/3 1575/20
 1577/5 1577/10 1577/12
 1578/16 1578/18 1578/18
 1578/23 1580/17 1582/17
 1582/20 1585/9 1585/10
 1587/22 1587/23 1588/2
 1588/6 1591/14 1593/16
 1594/1 1594/12 1594/14
 1594/22 1597/13 1599/9
 1599/17 1599/18 1601/3
 1602/6 1609/9 1609/11
 1609/17 1609/25 1609/25
 1611/18 1612/1 1612/20
 1614/17 1615/10 1615/11
 1620/10 1623/22 1623/22
 1624/16 1624/23 1627/18
 1630/11 1630/16 1630/20
 1630/21 1631/4 1631/10
 1634/1 1634/1 1646/5
 1648/11
 italic [1] 1581/21
 items [2] 1521/10 1528/12
 its [72] 1474/15 1485/13
 1488/15 1490/8 1509/24
 1510/7 1511/11 1513/2
 1513/4 1514/10 1514/14
 1518/23 1519/6 1525/3
 1525/7 1525/11 1527/23
 1528/1 1528/12 1535/6
 1535/6 1536/16 1541/19
 1541/20 1544/9 1548/5
 1548/17 1550/21 1552/8
 1552/14 1552/15 1553/8
 1553/14 1554/1 1554/12
 1555/3 1555/6 1557/16
 1559/19 1559/19 1559/22
 1560/2 1566/4 1566/14
 1566/19 1567/4 1567/4
 1574/8 1577/19 1583/6
 1583/22 1586/16 1587/4

1589/17 1589/25 1594/9
 1596/9 1603/2 1603/2
 1604/16 1609/12 1609/17
 1610/2 1610/21 1612/7
 1624/2 1629/10 1629/11
 1630/16 1633/24 1633/25
 1642/24
 itself [9] 1496/8 1514/8
 1563/10 1566/3 1568/16
 1568/20 1569/25 1570/12
 1633/3

J
 James [1] 1601/23
 January [2] 1569/6 1602/5
 JENKINS [1] 1471/24
 JENNIFER [1] 1471/20
 Jim [1] 1606/9
 JLH [1] 1471/6
 job [6] 1502/11 1502/18
 1505/9 1514/21 1516/9
 1535/9
 JOHN [1] 1473/3
 join [2] 1626/10 1626/10
 joined [1] 1625/22
 judge [2] 1471/20 1514/21
 judges [3] 1502/13 1506/6
 1636/8
 judgment [2] 1635/18 1635/24
 judicial [2] 1503/14 1596/22
 juror [11] 1635/10 1635/18
 1635/19 1644/9 1644/12
 1644/15 1644/18 1644/21
 1644/24 1645/2 1645/5
 jurors [12] 1498/22 1499/5
 1502/8 1509/5 1635/21
 1636/1 1636/6 1637/10
 1637/12 1637/14 1637/22
 1638/13
 jury [98] 1471/12 1474/9
 1476/13 1476/17 1476/20
 1476/21 1477/1 1477/3
 1477/16 1478/3 1479/1
 1479/4 1481/20 1481/21
 1482/5 1482/21 1483/13
 1485/2 1487/20 1489/2
 1489/6 1489/7 1489/9
 1489/16 1489/18 1489/19
 1489/24 1490/10 1492/13
 1492/18 1492/21 1492/24
 1493/3 1493/5 1493/9
 1493/15 1493/18 1493/25
 1494/19 1494/25 1495/20
 1498/11 1499/20 1500/23
 1500/25 1501/3 1501/7
 1501/8 1501/10 1501/12
 1501/12 1501/14 1501/25
 1502/4 1503/23 1508/10
 1512/16 1533/5 1533/6
 1534/3 1534/9 1534/11
 1534/12 1551/2 1560/18
 1561/25 1567/6 1612/23
 1634/23 1635/1 1635/4
 1635/18 1636/13 1637/5
 1637/20 1638/13 1638/19
 1638/25 1639/7 1639/10
 1639/11 1641/10 1641/18
 1641/20 1642/17 1642/18
 1642/19 1642/22 1642/23
 1643/3 1644/3 1644/5 1644/7

1645/8 1645/10 1645/17
 1645/19 1645/21
 just [99] 1475/12 1475/15
 1478/8 1480/24 1484/9
 1486/8 1487/5 1487/7 1489/3
 1490/23 1491/14 1491/15
 1491/22 1495/8 1495/11
 1495/24 1495/25 1496/1
 1496/22 1498/25 1499/4
 1499/8 1500/3 1500/16
 1500/25 1507/18 1526/20
 1527/11 1533/11 1533/21
 1536/4 1536/6 1539/20
 1543/2 1543/9 1543/16
 1547/16 1555/12 1558/12
 1566/2 1568/7 1568/21
 1572/19 1573/18 1573/20
 1573/22 1573/25 1574/6
 1574/17 1574/21 1575/3
 1575/17 1576/7 1580/14
 1583/8 1583/23 1584/10
 1584/20 1588/3 1588/13
 1589/8 1594/11 1595/1
 1597/2 1597/20 1598/1
 1601/2 1603/17 1604/8
 1604/11 1605/16 1605/23
 1605/23 1605/25 1606/3
 1607/16 1607/23 1608/7
 1610/21 1611/1 1614/16
 1614/25 1616/25 1617/2
 1622/7 1628/4 1630/25
 1634/12 1634/13 1634/18
 1634/20 1637/14 1637/15
 1638/16 1641/22 1645/15
 1646/12 1646/20 1648/6
 justify [1] 1613/24

K
 KALPANA [1] 1473/5
 KAMBER [1] 1473/13
 Kannom [1] 1647/4
 KATZENSTEIN [1] 1471/24
 keep [6] 1523/12 1525/17
 1576/11 1586/1 1637/9
 1641/22
 KEMPER [1] 1473/4
 key [5] 1557/10 1570/23
 1571/17 1574/12 1582/21
 Kidder [17] 1555/22 1556/2
 1558/7 1558/12 1558/17
 1558/21 1559/1 1559/14
 1559/20 1559/20 1560/21
 1565/18 1615/5 1621/3
 1622/10 1622/11 1622/20
 kind [9] 1481/25 1486/2
 1594/14 1601/14 1602/2
 1604/9 1607/6 1611/18
 1633/23
 kinds [3] 1605/21 1605/21
 1634/4
 King [1] 1471/18
 kitchen [3] 1594/15 1594/16
 1594/23
 knew [7] 1518/15 1538/14
 1548/17 1552/21 1607/18
 1607/19 1607/21
 know [65] 1476/22 1497/15
 1499/10 1500/8 1513/3
 1535/4 1536/15 1538/23
 1538/24 1545/15 1546/24

K
know... [54] 1557/25 1559/15
1567/11 1567/12 1567/14
1568/1 1568/8 1573/7
1577/17 1578/23 1579/3
1579/18 1583/24 1584/12
1584/19 1584/25 1585/12
1585/19 1586/19 1587/2
1587/9 1589/16 1591/16
1591/18 1591/20 1592/18
1595/22 1597/3 1598/1
1598/2 1598/5 1599/12
1599/13 1599/25 1600/9
1601/21 1603/21 1603/24
1606/5 1610/1 1612/11
1614/14 1615/10 1616/1
1617/2 1617/18 1622/10
1623/19 1624/23 1627/7
1628/12 1645/23 1648/6
1648/14
knowledge [7] 1506/9 1507/6
1507/7 1518/20 1553/1
1553/4 1603/1
known [17] 1509/14 1516/12
1521/11 1523/11 1523/20
1523/24 1523/25 1552/22
1553/2 1553/4 1558/11
1571/19 1574/2 1575/12
1607/3 1623/19 1624/7
knows [4] 1560/11 1562/25
1594/22 1627/9

L
lacked [1] 1546/25
ladies [15] 1501/10 1532/22
1534/17 1538/12 1557/10
1604/12 1608/11 1610/20
1623/12 1625/3 1634/12
1642/22 1643/3 1645/8
1645/22
LAHAD [1] 1473/3
landed [1] 1542/5
language [20] 1476/9 1476/14
1477/8 1478/6 1480/25
1481/2 1481/9 1482/3
1484/10 1484/21 1484/25
1486/1 1486/2 1486/4 1486/6
1495/12 1495/17 1517/3
1572/5 1606/25
laptop [2] 1547/22 1547/22
laptops [1] 1548/3
large [1] 1613/15
last [23] 1474/8 1475/17
1478/7 1501/24 1511/11
1533/19 1534/22 1536/12
1544/16 1545/6 1559/6
1567/11 1567/17 1567/19
1569/14 1569/25 1583/19
1620/11 1629/4 1629/4
1629/14 1631/24 1648/13
Lastly [1] 1606/17
later [4] 1496/16 1509/2
1519/11 1562/6
launched [11] 1552/20
1553/18 1554/5 1554/11
1586/7 1586/8 1586/11
1590/4 1590/5 1633/13
1633/17
law [17] 1476/16 1476/23
1476/25 1477/9 1480/10

1480/11 1481/2 1481/5
1487/1 1507/15 1507/25
1502/15 1502/19 1505/10
1566/8 1636/19 1646/16
laws [3] 1512/9 1512/11
1520/9
lawsuit [3] 1609/22 1610/3
1610/21
lawyer [2] 1572/20 1573/3
lawyer's [1] 1504/4
lawyers [6] 1503/15 1504/1
1504/9 1504/10 1586/19
1635/6
lawyers' [1] 1503/24
lead [1] 1540/22
leads [2] 1505/21 1611/7
leap [1] 1606/3
learn [1] 1534/23
learning [1] 1619/23
learnings [1] 1606/7
least [1] 1515/17
leave [5] 1496/3 1537/17
1543/13 1566/2 1648/24
left [3] 1583/1 1603/17
1624/15
legal [9] 1480/7 1504/3
1509/13 1534/21 1552/23
1553/1 1586/17 1639/9
1639/12
length [1] 1601/24
less [1] 1609/18
let [19] 1474/15 1476/3
1478/10 1481/18 1481/19
1491/6 1492/7 1493/16
1493/17 1503/2 1503/6
1504/8 1504/17 1567/17
1575/20 1634/22 1638/20
1648/6 1648/14
let's [16] 1474/11 1486/3
1488/17 1492/5 1533/5
1533/10 1534/9 1547/19
1574/12 1584/10 1587/6
1591/9 1596/20 1612/5
1615/6 1634/12
letter [9] 1485/13 1568/14
1568/17 1602/14 1602/16
1602/18 1605/17 1605/24
1609/24
level [2] 1520/18 1523/4
levels [2] 1520/21 1620/12
leverage [1] 1577/7
liability [1] 1631/6
library [4] 1515/14 1539/8
1578/13 1625/16
license [46] 1474/11 1497/20
1527/19 1527/21 1528/15
1529/21 1530/1 1530/5
1531/15 1532/19 1548/16
1548/19 1555/5 1555/18
1556/8 1562/25 1563/3
1563/5 1563/11 1563/13
1564/7 1564/14 1618/6
1618/6 1618/7 1618/10
1618/25 1620/7 1621/2
1621/5 1621/7 1621/11
1621/13 1622/12 1622/12
1622/17 1622/17 1622/19
1622/24 1631/9 1631/11
1631/13 1631/15 1631/17
1632/19 1632/25

licensed [3] 1532/4 1619/4
1620/13
licensee [2] 1529/16 1529/19
licenses [3] 1528/3 1554/2
1614/15
licensing [5] 1527/17 1528/2
1551/11 1564/24 1618/9
licensor [2] 1528/24 1529/15
lieu [1] 1564/7
life [2] 1551/9 1566/19
light [12] 1477/22 1479/22
1483/24 1494/18 1505/18
1509/2 1510/1 1524/16
1532/12 1587/1 1601/17
1623/24
like [38] 1476/8 1478/2
1478/6 1484/20 1490/2
1495/11 1498/13 1499/2
1499/4 1504/23 1512/13
1540/22 1547/11 1554/7
1555/10 1555/15 1560/10
1560/21 1575/18 1586/2
1596/23 1597/16 1600/22
1601/2 1602/4 1602/8
1610/22 1611/18 1616/3
1619/3 1619/3 1620/1 1633/4
1634/14 1645/15 1645/16
1647/10 1647/18
likelihood [1] 1614/1
likely [6] 1510/2 1517/18
1518/14 1525/9 1614/10
1623/22
limit [1] 1630/10
limitation [5] 1513/17 1536/17
1539/3 1577/25 1599/3
limitations [9] 1513/9 1513/16
1517/11 1536/19 1537/16
1537/18 1537/19 1538/25
1632/10
limited [11] 1483/17 1507/24
1516/15 1516/15 1518/21
1562/12 1563/23 1600/7
1646/9 1647/13 1647/16
line [2] 1492/16 1528/7
Line 16 [1] 1492/16
lines [2] 1541/22 1582/1
LING [1] 1473/16
link [1] 1546/16
LinkedIn [1] 1638/6
Linkify [10] 1563/24 1619/20
1619/21 1619/22 1619/25
1619/25 1620/3 1620/4
1623/1 1623/2
links [1] 1606/8
list [7] 1489/13 1489/15
1494/15 1502/6 1509/9
1553/22 1619/14
listen [4] 1502/2 1637/8
1637/9 1637/22
listening [1] 1567/18
litigants [1] 1597/15
litigation [23] 1538/18 1548/4
1551/10 1555/13 1562/19
1596/7 1598/5 1603/2 1603/6
1604/21 1606/19 1609/1
1612/19 1613/12 1613/22
1614/19 1614/24 1617/2
1617/4 1620/20 1623/20
1628/1 1632/18
litigations [1] 1632/2

little [7] 1499/9 1534/23
1544/11 1547/15 1547/17
1572/19 1645/11
live [1] 1483/3
LLC [3] 1471/7 1511/8
1639/16
LLP [2] 1471/24 1473/3
located [1] 1579/21
location [2] 1583/6 1625/13
logic [1] 1559/17
London [1] 1540/20
long [5] 1498/21 1524/19
1567/12 1569/8 1624/23
long-felt [1] 1524/19
longer [3] 1600/3 1622/18
1645/11
look [55] 1481/21 1483/22
1483/23 1486/3 1489/12
1492/6 1514/4 1514/16
1536/12 1536/13 1538/3
1539/11 1547/14 1547/19
1548/20 1548/22 1549/12
1550/16 1553/19 1559/5
1560/14 1560/23 1561/11
1573/6 1574/16 1574/22
1575/1 1575/3 1577/4 1581/9
1584/10 1584/23 1586/25
1587/6 1587/21 1589/8
1591/13 1593/25 1594/1
1598/6 1598/21 1600/14
1600/24 1601/3 1601/7
1601/8 1601/8 1601/9
1601/13 1613/14 1619/5
1620/10 1621/5 1627/3
1631/21
looked [15] 1537/1 1537/2
1546/9 1549/9 1549/9 1550/1
1555/10 1556/13 1556/16
1561/23 1565/10 1568/12
1581/5 1582/3 1598/6
looking [7] 1478/22 1499/5
1522/15 1551/16 1574/12
1601/7 1625/5
lose [5] 1544/12 1614/2
1614/4 1614/10 1627/19
losing [1] 1559/18
lot [10] 1542/16 1552/12
1556/4 1567/12 1567/13
1575/21 1575/21 1586/16
1589/10 1592/4
lots [1] 1578/9
loud [3] 1498/23 1558/25
1621/4
lower [1] 1555/19
lunch [1] 1533/12
lunches [2] 1641/18 1641/22

M
machine [1] 1619/23
macro [1] 1607/1
Macworld [6] 1548/15 1569/5
1602/4 1627/23 1628/7
1631/20
Madam [1] 1642/23
made [33] 1487/2 1489/4
1489/20 1496/11 1519/3
1521/1 1522/19 1523/2
1523/6 1526/4 1529/1
1551/17 1555/9 1558/10
1562/8 1566/21 1566/22

M
made... [16] 1570/18 1570/22
1572/20 1583/23 1588/10
1590/7 1590/21 1597/21
1598/15 1599/1 1600/3
1604/25 1609/10 1622/16
1633/21 1637/20
magical [1] 1587/25
Magistrate [1] 1471/20
mail [8] 1515/23 1546/25
1547/8 1603/18 1603/19
1605/25 1606/2 1608/2
mails [3] 1568/3 1572/11
1620/1
main [2] 1502/8 1646/9
maintain [1] 1528/1
major [2] 1555/6 1595/24
majority [2] 1537/15 1609/17
make [52] 1476/13 1479/7
1479/14 1484/3 1484/9
1484/20 1486/10 1487/25
1488/8 1488/10 1493/19
1493/23 1494/22 1503/5
1504/17 1510/6 1522/16
1526/5 1529/23 1532/7
1535/2 1554/6 1559/8
1559/17 1560/1 1560/24
1561/22 1564/18 1564/19
1573/2 1573/16 1573/24
1582/1 1582/16 1583/2
1586/22 1589/1 1596/1
1597/18 1609/2 1611/21
1619/15 1620/8 1620/23
1621/21 1622/7 1632/3
1633/4 1637/6 1641/22
1641/25 1645/24
makes [12] 1486/25 1500/19
1505/11 1517/20 1533/1
1556/24 1566/4 1593/8
1612/4 1614/19 1621/14
1623/4
making [8] 1474/21 1484/11
1520/3 1532/2 1588/21
1594/16 1596/20 1610/1
management [1] 1540/7
manager [9] 1569/9 1571/25
1572/7 1572/13 1572/25
1586/5 1602/19 1610/19
1623/17
managing [1] 1610/2
manner [2] 1506/13 1636/24
manufacture [1] 1529/21
manufactured [1] 1527/24
manufacturers [1] 1616/19
manufacturing [1] 1529/11
many [22] 1489/23 1508/8
1508/8 1512/17 1539/17
1551/11 1556/9 1559/15
1567/13 1567/13 1572/15
1573/17 1573/23 1573/24
1576/1 1585/23 1589/8
1594/10 1596/23 1600/20
1612/19 1614/15
map [4] 1600/23 1601/1
1601/3 1608/3
maps [3] 1542/20 1542/20
1601/3
March [2] 1568/7 1576/8
Marin [1] 1476/12
market [2] 1524/7 1531/4

marketing [1] 1527/25
massive [3] 1610/5 1617/18
1631/18
match [4] 1485/22 1557/3
1558/13 1602/2
matching [1] 1602/1
materials [2] 1597/22 1600/13
mathematical [1] 1525/11
matter [8] 1488/3 1497/4
1500/8 1566/4 1566/12
1585/13 1594/6 1603/3
matters [5] 1483/18 1503/13
1508/24 1534/20 1625/24
MATTHIAS [1] 1473/13
MAX [1] 1473/4
may [61] 1471/11 1475/18
1479/25 1479/25 1480/2
1480/4 1480/4 1481/12
1486/9 1488/18 1489/1
1495/14 1495/21 1496/24
1501/17 1502/1 1503/3
1503/7 1504/7 1504/7 1504/9
1504/11 1506/7 1507/2
1507/3 1507/10 1507/22
1508/1 1508/20 1510/23
1513/5 1517/12 1517/23
1518/21 1519/9 1521/10
1522/12 1522/17 1522/23
1524/16 1525/12 1527/13
1527/24 1529/5 1530/8
1530/14 1530/23 1532/13
1564/10 1567/7 1571/1
1572/23 1587/15 1612/22
1612/22 1634/15 1635/6
1635/7 1638/1 1638/15
1638/16
maybe [9] 1498/4 1499/11
1543/20 1545/22 1556/17
1562/6 1563/3 1576/22
1579/13
me [36] 1474/15 1476/3
1478/10 1480/7 1481/18
1481/19 1482/7 1486/25
1488/24 1490/25 1491/6
1491/22 1492/7 1493/16
1495/9 1496/14 1498/5
1498/22 1498/23 1501/15
1505/13 1526/14 1567/15
1567/17 1611/7 1626/8
1634/22 1635/1 1635/5
1635/8 1638/20 1643/2
1647/12 1648/5 1648/6
1648/14
mean [9] 1480/15 1494/22
1509/21 1541/5 1544/1
1548/25 1584/8 1591/7
1620/23
meaning [18] 1478/13
1478/18 1478/20 1480/9
1480/14 1481/4 1481/15
1492/21 1495/22 1496/7
1513/24 1514/22 1514/25
1515/2 1516/22 1532/17
1549/8 1639/12
meanings [2] 1480/22
1516/24
means [16] 1478/23 1504/22
1506/9 1509/9 1509/25
1510/18 1516/14 1519/22
1537/21 1578/8 1578/12

1578/12 1588/11 1613/4
1629/12 1638/1
meant [4] 1502/12 1525/23
1636/24 1638/22
measuring [1] 1526/9
mechanism [1] 1579/21
media [1] 1638/2
meet [7] 1518/5 1520/8
1522/11 1537/8 1548/5
1577/24 1632/9
meets [2] 1513/11 1514/18
Members [2] 1501/14 1644/7
memo [1] 1607/11
memory [4] 1506/9 1508/21
1509/4 1509/10
mention [3] 1499/10 1609/21
1646/18
mentioned [4] 1507/14
1560/12 1611/18 1646/16
mentioning [1] 1498/8
menu [3] 1574/24 1591/6
1592/9
mere [1] 1523/12
merely [1] 1523/22
mess [1] 1486/1
messages [5] 1525/17
1542/18 1635/2 1635/8
1635/11
Messages/Messaging [1]
1525/17
messaging [2] 1525/17
1638/5
met [6] 1514/3 1517/16
1539/3 1550/21 1552/8
1603/13
methodology [2] 1557/1
1563/21
Methods [2] 1581/16 1581/25
Microsoft [37] 1521/18
1543/24 1549/7 1549/8
1549/9 1565/4 1566/24
1572/3 1572/4 1572/8
1572/17 1573/9 1606/17
1606/22 1607/2 1607/6
1607/10 1607/17 1607/19
1607/20 1607/23 1607/25
1608/9 1612/9 1613/8 1613/9
1617/23 1618/5 1618/7
1618/10 1620/13 1621/19
1622/22 1629/21 1631/22
1631/22 1631/23
Microsoft's [1] 1630/6
middle [1] 1562/19
might [15] 1504/14 1504/15
1547/7 1547/9 1560/2
1560/13 1592/12 1593/14
1593/17 1597/14 1607/11
1616/22 1620/22 1623/16
1648/9
Miller [6] 1548/2 1548/23
1548/24 1601/23 1606/9
1628/8
Miller's [1] 1548/8
million [8] 1611/23 1612/2
1615/15 1615/15 1615/16
1620/7 1621/22 1622/8
millions [1] 1556/14
mind [11] 1488/5 1511/1
1523/12 1530/9 1582/13
1606/13 1610/15 1637/9

1637/12 1637/14 1647/2
minds [1] 1637/21
mine [1] 1502/11
minimum [1] 1616/21
minute [4] 1488/18 1499/15
1533/8 1602/9
minutes [4] 1498/5 1537/5
1645/15 1645/16
misleading [1] 1612/5
misrepresented [1] 1631/9
missed [1] 1551/18
missing [9] 1513/17 1547/11
1595/10 1603/15 1604/4
1605/3 1605/14 1606/13
1606/15
mistake [1] 1551/18
mistaken [1] 1646/20
Mobility [2] 1618/5 1618/7
models [4] 1503/16 1503/20
1508/11 1619/23
modes [1] 1528/20
modified [1] 1565/6
modify [1] 1564/17
moment [6] 1500/14 1569/11
1590/22 1602/8 1620/16
1636/12
Monday [3] 1534/22 1544/22
1567/17
money [4] 1486/14 1618/12
1620/18 1620/23
month [1] 1622/18
months [6] 1549/23 1549/23
1612/1 1612/2 1616/22
1620/8
moons [1] 1596/23
MOORE [1] 1473/9
more [31] 1483/15 1487/5
1510/2 1511/17 1511/19
1512/10 1513/7 1515/20
1517/17 1518/10 1518/14
1525/9 1531/7 1531/13
1545/7 1568/9 1569/3
1578/23 1590/16 1591/23
1595/24 1599/2 1602/3
1609/19 1611/23 1617/6
1617/14 1623/4 1624/1
1634/13 1635/11
morning [8] 1474/6 1476/1
1476/2 1534/17 1567/9
1567/10 1603/11 1647/10
most [5] 1484/23 1523/14
1533/1 1612/5 1620/9
mostly [2] 1578/18 1585/5
motion [4] 1646/14 1646/15
1646/21 1646/24
motivation [3] 1550/10
1550/22 1630/24
move [2] 1564/5 1647/18
Mr [4] 1555/22 1588/4
1588/11 1592/21
Mr. [133] 1480/19 1485/8
1495/20 1496/23 1497/11
1534/21 1540/6 1540/18
1540/24 1541/2 1548/2
1548/8 1548/23 1548/24
1555/16 1556/1 1556/2
1556/13 1556/16 1557/3
1557/8 1558/7 1558/7
1558/12 1558/17 1558/17
1558/21 1559/1 1559/14

M	N	O	P
Mr... [104] 1559/20 1560/21	Mr. Miller [4] 1548/2 1548/25	1502/18 1504/3 1504/5	1482/15 1484/24 1485/19
1562/15 1562/21 1562/24	1548/24 1628/8	1504/5 1509/19 1512/13	1487/21 1491/16 1493/20
1563/2 1564/6 1564/13	Mr. Miller's [1] 1548/8	1514/21 1514/23 1516/8	1494/15 1495/3 1498/21
1565/8 1565/18 1565/18	Mr. Sacerdoti [1] 1607/7	1517/2 1538/10 1567/17	1500/2 1505/11 1509/8
1565/21 1566/15 1566/17	Mr. Smedley [1] 1593/15	1599/25 1636/16	1517/13 1517/24 1530/6
1567/20 1567/21 1567/23	Mr. Smedley's [1] 1605/7	myself [1] 1534/21	1531/7 1531/13 1533/18
1568/1 1568/19 1569/8	Mr. Toki [9] 1540/18 1576/15	N	1538/18 1542/18 1542/19
1570/6 1570/21 1571/1	1579/25 1580/18 1585/21	name [3] 1515/21 1563/5	1542/20 1544/24 1545/5
1571/5 1571/9 1571/24	1587/16 1587/20 1588/24	1608/9	1545/8 1545/11 1547/1
1572/2 1572/6 1572/23	1626/8	namely [1] 1476/11	1547/24 1550/2 1552/3
1573/4 1575/22 1576/15	Mr. Toki's [1] 1540/24	names [2] 1568/3 1572/9	1553/7 1553/11 1554/8
1576/15 1576/15 1577/16	Mr. Weinstein [26] 1555/16	narrow [1] 1492/7	1557/11 1557/14 1558/18
1577/20 1579/25 1580/18	1556/1 1556/13 1556/16	narrower [1] 1513/6	1559/23 1560/17 1568/23
1580/24 1585/21 1585/21	1557/8 1558/7 1558/17	natural [1] 1607/8	1572/2 1579/17 1581/1
1585/21 1587/16 1587/20	1563/2 1564/13 1565/8	nature [2] 1527/21 1528/22	1581/14 1581/24 1581/25
1588/24 1589/23 1590/1	1565/18 1565/21 1614/20	NEAL [1] 1471/25	1581/25 1583/14 1585/8
1593/2 1593/10 1593/15	1615/2 1615/3 1615/4 1616/5	necessarily [2] 1522/13	1585/9 1585/14 1587/25
1593/20 1597/6 1598/17	1616/6 1616/24 1617/11	1523/14	1591/14 1592/16 1593/23
1599/7 1599/13 1600/3	1617/19 1617/21 1618/15	necessary [3] 1514/4 1514/16	1594/6 1595/12 1595/18
1601/5 1602/5 1602/18	1619/18 1619/24 1620/11	1635/19	1600/3 1600/11 1603/8
1605/2 1605/7 1606/23	Mr. Weinstein's [3] 1557/3	need [40] 1479/3 1486/13	1612/4 1612/17 1613/4
1607/7 1607/11 1607/17	1564/6 1622/6	1486/22 1488/10 1494/19	1614/19 1618/20 1621/14
1607/23 1607/24 1608/9	MR1 [1] 1616/18	1494/24 1495/2 1498/15	1622/7 1624/4 1624/4
1613/25 1614/7 1614/20	Ms. [12] 1499/22 1501/11	1511/23 1512/4 1512/18	1626/16 1626/16 1631/2
1615/2 1615/3 1615/4 1615/5	1533/5 1534/9 1567/5	1513/20 1524/19 1538/11	1637/19 1637/20 1639/23
1616/5 1616/6 1616/22	1624/25 1638/25 1641/13	1538/23 1542/11 1543/3	1640/4 1640/11 1640/15
1616/24 1617/11 1617/19	1643/2 1643/9 1644/4	1543/12 1550/3 1550/10	1641/2 1643/14 1643/15
1617/21 1617/25 1618/15	1645/19	1565/6 1574/22 1577/9	No. [1] 1639/19
1619/1 1619/7 1619/18	Ms. Garfinkel [12] 1499/22	1578/22 1580/22 1582/13	No. 1 [1] 1639/19
1619/24 1620/11 1621/3	1501/11 1533/5 1534/9	1582/14 1582/18 1582/21	nobody [6] 1551/7 1575/14
1622/6 1622/11 1622/20	1567/5 1624/25 1638/25	1582/22 1585/17 1585/18	1581/4 1597/7 1628/1
1623/16 1626/8 1626/8	1641/13 1643/2 1643/9	1599/1 1617/6 1619/12	1632/18
1626/12 1626/13 1626/15	1644/4 1645/19	1627/3 1633/19 1642/1	non [5] 1528/12 1530/16
1626/23 1628/8 1628/8	much [11] 1505/9 1536/7	1645/15 1647/23	1530/20 1530/24 1563/20
1629/2 1632/21	1607/15 1607/22 1609/19	needed [4] 1484/14 1487/19	non-infringing [4] 1530/16
Mr. Boles [3] 1626/12 1629/2	1611/15 1611/15 1611/19	1536/13 1597/25	1530/20 1530/24 1563/20
1632/21	1624/22 1646/22 1647/22	needs [5] 1497/24 1591/24	non-patented [1] 1528/12
Mr. Choc [9] 1497/11 1541/2	multi [1] 1620/14	1625/12 1642/10 1648/15	nonambiguity [1] 1476/15
1576/15 1580/24 1585/21	multi-patent [1] 1620/14	1625/12 1642/10 1648/15	nonambiguous [1] 1481/6
1593/2 1593/10 1593/20	multiple [2] 1605/20 1605/21	negative [2] 1559/7 1559/10	noncontroversial [1] 1487/7
1616/22	multiplier [4] 1556/6 1613/24	negotiated [1] 1622/19	none [4] 1506/8 1560/21
Mr. Dey [1] 1628/8	1617/22 1618/18	negotiating [1] 1530/4	1581/11 1610/17
Mr. Elbouchikhi [7] 1540/6	multiply [2] 1617/24 1618/2	negotiation [12] 1485/8	noneditable [2] 1620/1 1620/3
1566/15 1576/15 1585/21	MUNGER [1] 1473/16	1526/16 1526/19 1526/21	nonexclusive [1] 1527/22
1590/1 1626/8 1626/23	must [65] 1479/7 1479/15	1527/5 1527/11 1555/19	nonrestricted [1] 1527/23
Mr. Elbouchikhi's [3] 1589/23	1484/22 1501/15 1501/21	1555/20 1564/20 1564/22	normally [3] 1530/2 1530/12
1626/13 1626/15	1501/25 1502/6 1503/5	1565/1 1620/7	1635/8
Mr. Hedloy [45] 1485/8	1504/13 1509/13 1510/9	negotiations [3] 1526/25	Norway [1] 1607/13
1534/21 1562/15 1562/24	1511/13 1514/3 1516/8	1555/17 1562/24	not [317]
1566/17 1567/20 1567/21	1516/25 1517/8 1517/15	network [2] 1600/24 1601/6	note [1] 1487/8
1567/23 1568/1 1568/19	1518/4 1518/11 1518/14	never [8] 1545/21 1559/20	noted [1] 1548/22
1569/8 1570/6 1570/21	1519/12 1520/4 1521/5	1560/11 1573/25 1588/7	notes [5] 1508/20 1508/22
1571/1 1571/5 1571/9	1521/20 1521/24 1522/4	1609/22 1611/20 1617/13	1509/3 1509/5 1509/8
1571/24 1572/2 1572/6	1522/5 1522/10 1522/13	new [23] 1476/12 1476/16	nothing [19] 1477/3 1478/24
1572/23 1573/4 1575/22	1522/20 1523/4 1524/10	1477/15 1485/1 1521/5	1502/11 1503/24 1504/19
1577/16 1577/20 1597/6	1524/25 1525/2 1525/11	1521/20 1521/21 1549/14	1542/5 1542/7 1547/2 1552/3
1598/17 1599/7 1599/13	1525/21 1526/6 1527/1	1551/13 1564/5 1566/13	1571/21 1575/13 1588/12
1600/3 1601/5 1602/5	1527/4 1531/2 1531/6	1567/24 1569/12 1571/22	1590/16 1609/24 1626/1
1602/18 1605/2 1606/23	1531/12 1532/7 1540/15	1575/13 1596/25 1603/5	1629/5 1636/22 1636/23
1607/11 1607/17 1607/23	1550/22 1554/22 1564/25	1628/6 1628/15 1628/18	1638/21
1607/24 1608/9 1613/25	1574/17 1574/18 1578/21	1629/24 1631/25 1632/11	notice [4] 1503/14 1552/14
1614/7 1617/25 1619/1	1579/10 1579/14 1585/1	1486/2 1539/14 1558/20	1615/18 1633/5
1619/7 1623/16	1596/2 1620/18 1632/7	1571/18 1578/6 1584/23	notify [1] 1641/7
Mr. Hedloy's [4] 1480/19	1632/7 1635/3 1635/17	1613/7 1613/13 1616/6	notion [3] 1603/3 1605/4
1495/20 1496/23 1562/21	1635/20 1635/24 1637/16	1617/21 1618/5 1618/15	1614/16
Mr. Kidder [14] 1556/2 1558/7	1637/24 1638/23 1639/9	1618/23 1619/18 1620/10	novel [1] 1549/15
1558/12 1558/17 1558/21	my [23] 1477/2 1484/9 1487/1	night [1] 1533/19	

N
 now... [62] 1496/25 1501/14
 1504/22 1509/20 1511/2
 1512/10 1517/7 1519/12
 1520/13 1532/25 1533/11
 1533/23 1534/14 1535/9
 1536/15 1537/9 1539/19
 1542/15 1543/20 1546/23
 1551/10 1561/10 1562/5
 1566/21 1569/14 1573/10
 1575/5 1578/15 1584/19
 1589/5 1589/24 1591/23
 1595/25 1598/2 1599/12
 1599/19 1599/21 1599/24
 1601/2 1601/11 1611/14
 1611/22 1612/11 1616/25
 1623/13 1623/23 1624/1
 1624/16 1626/22 1627/16
 1629/5 1629/12 1630/23
 1634/22 1637/3 1641/3
 1641/11 1643/4 1645/9
 1645/14 1647/10 1648/12
 nowhere [2] 1615/24 1626/21
 number [43] 1477/8 1485/14
 1485/17 1511/10 1515/22
 1515/22 1524/8 1554/23
 1555/4 1555/7 1555/11
 1556/3 1556/14 1559/6
 1565/13 1565/23 1575/17
 1576/19 1576/24 1576/25
 1581/16 1601/13 1601/14
 1610/8 1615/6 1617/9 1617/9
 1618/21 1621/9 1622/8
 1622/22 1623/3 1635/10
 1639/18 1643/14 1644/9
 1644/12 1644/15 1644/18
 1644/21 1644/24 1645/2
 1645/5
 Number 1 [7] 1477/8 1485/17
 1575/17 1576/19 1576/24
 1635/10 1644/9
 Number 2 [4] 1485/14
 1576/25 1610/8 1644/12
 Number 3 [1] 1644/15
 Number 4 [2] 1565/23
 1644/18
 Number 5 [1] 1644/21
 Number 6 [1] 1644/24
 Number 7 [1] 1645/2
 Number 7,917,843 [2]
 1511/10 1639/18
 Number 8 [1] 1645/5
 numbered [1] 1512/19
 numbers [21] 1497/8 1498/23
 1499/11 1555/9 1558/25
 1559/12 1559/25 1560/10
 1560/24 1564/8 1564/18
 1565/18 1568/4 1572/10
 1601/12 1608/1 1620/18
 1620/19 1621/18 1622/7
 1641/23

O
 O-MR1 [1] 1616/18
 oath [8] 1502/19 1503/10
 1504/16 1508/4 1537/6
 1540/11 1540/24 1641/13
 object [1] 1476/6
 objected [1] 1489/15
 objection [19] 1480/25

1482/19 1484/10 1484/19
 1485/4 1485/18 1485/19
 1485/24 1487/9 1489/20
 1493/14 1493/23 1494/12
 1494/14 1494/16 1494/16
 1498/22 1504/5 1504/5
 objections [2] 1504/3 1646/13
 objective [2] 1523/9 1524/14
 objects [1] 1477/19
 obligations [1] 1483/17
 obscure [1] 1587/5
 observe [1] 1506/10
 obtain [1] 1529/20
 obtained [1] 1524/22
 obvious [26] 1521/6 1521/9
 1522/21 1522/25 1523/4
 1523/16 1523/25 1524/5
 1524/10 1524/11 1524/14
 1524/17 1524/25 1552/1
 1562/16 1596/25 1605/11
 1605/22 1606/16 1606/20
 1607/14 1607/16 1608/21
 1609/7 1640/8 1643/23
 obviously [7] 1490/7 1490/15
 1494/2 1538/19 1574/19
 1574/25 1609/15
 obviousness [2] 1523/14
 1550/21
 occurred [1] 1526/1
 odds [1] 1614/9
 off [4] 1566/22 1614/22
 1618/23 1634/21
 offer [5] 1496/12 1496/18
 1553/11 1554/8 1560/19
 offered [7] 1504/1 1508/12
 1521/11 1553/7 1560/25
 1626/1 1631/2
 offers [1] 1517/21
 office [47] 1519/17 1520/11
 1536/3 1546/17 1549/1
 1549/2 1549/9 1549/11
 1549/20 1549/20 1550/6
 1551/16 1551/17 1566/22
 1570/2 1570/8 1570/21
 1596/24 1597/6 1597/9
 1597/14 1597/23 1597/25
 1598/4 1598/8 1598/13
 1599/10 1599/13 1600/6
 1600/16 1601/19 1601/22
 1602/3 1602/12 1602/13
 1602/15 1602/24 1609/11
 1610/12 1623/19 1627/21
 1627/24 1628/5 1628/17
 1629/22 1630/21 1632/14
 officer [7] 1635/1 1635/4
 1635/4 1641/7 1641/11
 1641/15 1642/17
 often [2] 1513/8 1516/13
 oh [6] 1575/3 1579/12
 1587/18 1612/20 1620/18
 1631/1
 okay [39] 1474/8 1474/19
 1476/7 1477/5 1477/17
 1478/10 1479/13 1480/1
 1482/2 1482/10 1482/11
 1482/18 1483/12 1484/2
 1485/4 1485/10 1485/12
 1486/3 1487/14 1488/17
 1488/23 1489/11 1492/17
 1493/16 1494/12 1495/1

1497/1 1498/10 1500/5
 1500/20 1533/21 1556/6
 1556/7 1643/1 1644/1 1646/7
 1646/15 1647/15 1647/20
 old [1] 1528/20
 older [1] 1563/21
 OLSON [1] 1473/16
 once [11] 1496/4 1498/25
 1540/20 1545/13 1569/10
 1594/24 1599/3 1605/4
 1607/18 1613/8 1634/25
 one [117] 1474/13 1474/20
 1483/15 1484/7 1485/10
 1486/2 1487/5 1488/2 1488/5
 1493/8 1495/11 1496/21
 1500/2 1500/7 1500/9
 1500/22 1500/23 1503/3
 1505/12 1505/13 1508/24
 1511/16 1511/19 1513/17
 1515/17 1515/20 1516/22
 1517/13 1517/24 1518/10
 1522/15 1526/14 1526/15
 1530/6 1533/9 1534/25
 1536/11 1536/17 1536/17
 1537/8 1537/8 1539/11
 1541/3 1543/21 1550/18
 1557/3 1557/3 1558/13
 1558/13 1558/15 1558/15
 1559/3 1559/18 1566/3
 1567/18 1568/16 1569/21
 1569/22 1571/10 1571/17
 1573/9 1573/18 1573/20
 1573/22 1573/22 1574/1
 1574/3 1574/4 1574/7 1575/7
 1575/19 1575/20 1576/11
 1576/17 1577/10 1577/12
 1578/23 1579/16 1582/10
 1583/1 1585/14 1585/24
 1585/25 1591/23 1592/13
 1594/11 1595/2 1595/9
 1595/10 1595/24 1597/5
 1603/14 1603/15 1603/16
 1604/2 1604/3 1605/14
 1606/3 1606/14 1611/17
 1612/15 1612/19 1612/20
 1613/23 1619/13 1619/16
 1624/14 1627/2 1628/6
 1628/16 1628/18 1633/1
 1633/17 1635/11 1635/21
 1637/19 1646/20
 OneButton [17] 1569/9
 1571/25 1572/6 1572/13
 1572/17 1572/24 1602/19
 1606/24 1607/24 1610/19
 1623/17 1630/3 1630/5
 1630/8 1630/9 1630/12
 1630/15
 ones [2] 1482/20 1574/11
 Onion [1] 1594/21
 only [45] 1483/17 1483/18
 1495/18 1496/20 1503/5
 1503/9 1504/18 1507/23
 1509/3 1523/11 1525/8
 1525/13 1526/10 1526/12
 1527/8 1531/12 1554/11
 1557/5 1562/21 1569/15
 1571/23 1572/9 1573/9
 1575/20 1576/21 1577/9
 1577/13 1582/13 1583/3
 1593/5 1595/2 1597/5

1602/23 1605/14 1608/12
 1613/19 1613/20 1617/12
 1618/1 1622/5 1635/25
 1637/17 1638/12 1640/13
 1648/20
 open [4] 1617/2 1618/8
 1637/9 1643/4
 opened [1] 1536/12
 opening [6] 1497/21 1567/21
 1592/14 1594/14 1597/20
 1612/7
 operable [1] 1580/15
 operate [4] 1542/22 1572/7
 1574/17 1574/18
 operated [1] 1573/1
 operates [1] 1588/3
 operating [53] 1484/16
 1543/22 1543/23 1543/24
 1543/25 1543/25 1570/13
 1570/14 1570/16 1571/8
 1571/13 1571/14 1572/15
 1575/25 1576/6 1577/8
 1577/12 1577/13 1577/22
 1577/23 1578/4 1579/21
 1579/22 1580/3 1580/16
 1582/11 1583/4 1583/6
 1583/12 1583/20 1583/21
 1589/3 1592/6 1592/23
 1593/1 1593/6 1593/24
 1596/5 1596/11 1596/15
 1598/12 1599/8 1599/8
 1599/17 1599/20 1603/4
 1603/7 1604/15 1604/19
 1604/24 1609/2 1616/9
 1617/18
 operation [3] 1515/10 1516/1
 1516/3
 operational [3] 1542/18
 1588/15 1589/2
 operative [1] 1483/18
 opinion [5] 1498/19 1529/13
 1615/11 1636/3 1636/6
 opinions [2] 1507/12 1507/13
 opportunity [2] 1506/10
 1647/10
 opposed [11] 1493/4 1493/10
 1493/25 1515/14 1529/9
 1571/8 1573/18 1577/15
 1577/18 1578/13 1625/15
 opposite [9] 1510/5 1550/13
 1573/20 1576/9 1585/20
 1594/12 1610/10 1611/16
 1624/13
 order [18] 1485/21 1485/22
 1495/10 1513/21 1514/3
 1517/15 1521/4 1521/19
 1522/19 1541/21 1550/11
 1570/22 1596/1 1629/25
 1631/3 1635/18 1647/11
 1648/11
 ordered [1] 1504/11
 ordinary [18] 1478/13 1480/9
 1480/21 1481/4 1481/15
 1494/10 1516/22 1516/23
 1520/16 1520/19 1522/14
 1522/21 1523/1 1523/4
 1523/19 1532/17 1550/15
 1550/25
 original [6] 1482/24 1495/12
 1495/24 1496/18 1629/2

original... [1] 1637/13
originally [1] 1488/25
other [82] 1474/13 1477/24
1480/5 1480/22 1481/19
1482/14 1482/20 1484/2
1488/5 1491/11 1494/11
1503/3 1505/14 1507/15
1507/17 1507/18 1509/5
1513/15 1514/5 1514/17
1518/2 1525/8 1527/19
1528/10 1530/2 1530/9
1531/3 1531/4 1531/9
1532/13 1533/9 1535/2
1543/21 1545/10 1551/11
1552/18 1554/25 1555/5
1557/25 1560/13 1560/22
1563/17 1572/7 1572/8
1572/8 1572/14 1574/1
1574/3 1574/5 1575/5
1576/18 1579/18 1590/12
1590/13 1591/12 1591/12
1593/8 1593/13 1600/5
1610/22 1614/5 1614/14
1614/18 1614/23 1616/19
1620/22 1624/14 1628/19
1633/21 1633/23 1634/4
1635/1 1637/6 1637/8
1637/12 1637/14 1637/22
1638/10 1638/17 1646/13
1648/17 1648/22
other's [1] 1637/9
others [10] 1493/23 1524/20
1524/22 1528/1 1528/2
1554/2 1573/23 1573/24
1578/16 1631/7
Otherwise [1] 1640/16
our [18] 1476/11 1478/8
1480/25 1483/21 1484/21
1487/22 1493/23 1497/11
1499/10 1535/9 1536/21
1561/1 1610/14 1629/2
1630/24 1634/8 1646/4
1646/5
out [52] 1476/25 1477/18
1479/2 1486/10 1493/10
1498/5 1498/17 1498/23
1499/8 1499/22 1500/6
1500/24 1500/25 1501/3
1501/11 1508/3 1511/1
1533/5 1533/23 1534/2
1540/9 1540/14 1541/7
1541/19 1541/20 1542/12
1543/15 1543/15 1554/8
1558/25 1560/6 1560/6
1561/22 1562/7 1564/9
1565/11 1569/19 1584/6
1588/21 1588/23 1590/10
1609/22 1616/7 1619/14
1621/4 1626/24 1633/15
1637/11 1638/25 1645/19
1647/16 1647/18
outcome [1] 1555/19
outline [1] 1509/9
outside [13] 1478/5 1478/12
1478/17 1480/8 1480/13
1481/14 1503/8 1505/1
1532/15 1540/1 1578/19
1638/19 1648/20
outstanding [1] 1648/3

over [31] 1480/20 1493/13
1493/22 1494/16 1521/6
1528/20 1530/24 1535/5
1535/7 1535/21 1536/15
1537/25 1539/17 1540/15
1557/18 1567/11 1567/19
1569/14 1569/25 1576/18
1583/19 1593/13 1595/17
1609/18 1610/5 1622/14
1622/25 1625/21 1625/21
1626/25 1637/15
overall [4] 1477/22 1479/22
1483/24 1532/12
overcome [1] 1496/9
overcounting [2] 1616/5
1617/19
overruled [3] 1482/18 1485/10
1494/14
overview [1] 1512/9
owed [1] 1526/2
own [36] 1506/5 1509/4
1514/14 1537/3 1540/4
1540/4 1540/5 1540/24
1541/20 1541/20 1542/4
1551/9 1555/4 1557/11
1559/5 1559/19 1563/22
1563/23 1573/3 1574/20
1574/20 1576/4 1577/6
1577/7 1583/22 1589/4
1602/1 1610/11 1610/17
1610/25 1626/16 1627/1
1632/8 1632/22 1636/2
1637/16
owned [1] 1528/23
owner [2] 1511/9 1526/19

P
p.m [2] 1642/19 1645/21
package [1] 1581/10
page [9] 1477/15 1481/21
1482/4 1483/15 1500/6
1634/20 1640/18 1640/18
1642/1
Page 1 [1] 1634/20
Page 19 [2] 1481/21 1482/4
Page 33 [1] 1477/15
Page 37 [1] 1500/6
Page 80 [1] 1483/15
pages [4] 1476/22 1500/7
1620/2 1634/18
pagination [1] 1482/7
paid [11] 1527/19 1548/19
1566/16 1611/15 1612/9
1614/8 1621/5 1621/11
1621/16 1622/4 1632/7
paper [1] 1635/3
papers [6] 1568/23 1568/24
1627/24 1628/12 1632/13
1648/12
paragraph [9] 1474/21 1475/1
1475/18 1479/9 1481/22
1482/4 1482/5 1484/11
1613/15
pardon [1] 1626/8
part [30] 1485/8 1489/17
1494/10 1506/8 1543/19
1559/16 1562/13 1562/24
1570/13 1570/13 1570/16
1577/23 1587/10 1587/13
1587/22 1587/24 1588/7

1588/10 1589/3 1590/24
1591/1 1591/2 1591/24
1595/21 1598/16 1599/7
1599/8 1616/5 1618/6
1625/17
particular [21] 1477/21
1479/20 1483/17 1501/22
1520/10 1529/5 1529/21
1531/16 1532/10 1535/12
1570/7 1571/6 1585/25
1598/20 1603/2 1606/14
1608/18 1608/24 1613/5
1613/6 1620/21
particularly [2] 1490/20
1494/14
parties [38] 1475/8 1476/22
1477/12 1477/23 1477/25
1478/23 1479/22 1480/6
1482/15 1482/24 1482/25
1483/1 1483/9 1483/25
1495/16 1495/19 1496/6
1496/14 1501/23 1507/23
1511/2 1511/3 1527/1 1527/2
1527/15 1530/19 1532/12
1532/14 1532/24 1534/15
1565/7 1578/1 1614/5
1614/11 1628/19 1631/11
1631/14 1631/18
parties' [2] 1475/9 1477/11
partisans [1] 1636/8
party [13] 1482/9 1482/13
1484/23 1484/24 1496/8
1502/17 1510/13 1519/18
1525/5 1527/6 1562/18
1562/22 1562/23
pass [1] 1564/8
past [5] 1534/18 1535/5
1595/18 1609/18 1610/5
pasting [1] 1587/25
patent [293]
patent's [2] 1512/25 1544/10
patentable [1] 1522/20
patented [16] 1526/7 1526/9
1526/11 1526/12 1528/2
1528/9 1528/12 1528/19
1528/22 1529/9 1529/22
1530/16 1531/3 1531/11
1531/13 1613/11
patentee [1] 1529/25
patents [23] 1512/8 1527/20
1535/6 1536/21 1544/9
1550/22 1554/3 1555/20
1566/9 1609/23 1610/3
1612/16 1612/19 1613/18
1614/3 1614/12 1614/13
1614/15 1614/16 1614/18
1614/23 1631/7 1631/16
path [3] 1553/6 1553/7 1574/1
paths [1] 1574/2
patience [2] 1642/8 1645/12
pattern [13] 1476/13 1476/17
1476/19 1476/21 1477/3
1477/16 1481/20 1481/21
1482/5 1482/21 1485/2
1602/1 1602/2
PAUL [1] 1473/11
pay [9] 1529/23 1530/11
1554/24 1609/20 1611/19
1618/3 1622/2 1643/5 1643/8
paying [2] 1567/3 1621/25

payment [3] 1526/4 1526/18
1622/16
payments [3] 1614/18
1614/21 1621/20
pending [2] 1613/16 1646/24
people [9] 1505/19 1530/13
1560/18 1564/24 1601/16
1602/20 1602/23 1606/5
1608/12
per [9] 1565/11 1565/11
1565/12 1565/16 1565/19
1614/21 1618/16 1634/7
1634/8
percent [2] 1597/24 1613/25
percentage [3] 1621/7 1621/8
1621/16
perfect [1] 1492/1
perform [13] 1503/1 1515/15
1578/14 1579/14 1580/21
1584/22 1625/17 1625/20
1625/23 1626/3 1626/6
1626/11 1638/18
performed [5] 1579/1 1592/14
1592/19 1592/20 1626/5
performing [2] 1539/9
1645/10
performs [2] 1578/22 1585/2
perhaps [3] 1536/13 1609/25
1612/5
period [3] 1540/14 1611/24
1612/1
permission [1] 1497/10
person [16] 1506/24 1507/5
1507/8 1517/20 1520/16
1522/14 1522/21 1523/19
1530/3 1550/15 1550/25
1600/18 1604/5 1607/2
1607/9 1645/17
personally [3] 1502/21 1508/5
1580/2
persons [2] 1520/22 1522/25
perspective [3] 1487/22
1520/16 1646/4
PETERMAN [1] 1473/12
phantom [3] 1545/21 1569/2
1569/7
phone [10] 1515/22 1565/12
1568/4 1572/10 1592/14
1608/1 1609/23 1634/8
1638/2 1638/10
phones [1] 1633/22
phrase [1] 1574/20
pick [6] 1539/4 1542/22
1543/1 1543/4 1543/8
1547/17
picture [1] 1571/25
pictures [1] 1567/21
piece [3] 1522/7 1602/6
1635/3
pieces [3] 1547/17 1550/9
1630/25
pierce [1] 1605/4
piggyback [1] 1563/14
pile [1] 1620/18
Pixel [4] 1525/19 1525/19
1525/19 1525/19
Pixel 2 [2] 1525/19 1525/19
Pixel 3 [2] 1525/19 1525/19
Pixels [1] 1565/12
place [8] 1542/5 1570/3

P	Document 601	Page 763 of 778	PageID #: 61342
<p>place... [6] 1578/23 1591/8 1593/11 1597/19 1622/11 1623/23 placed [1] 1592/22 places [1] 1585/19 plain [6] 1478/20 1480/14 1481/5 1495/17 1495/22 1516/22 plainly [1] 1627/12 plaintiff [16] 1471/5 1473/6 1509/22 1509/23 1509/25 1510/4 1510/6 1510/11 1511/5 1511/7 1511/9 1511/15 1517/8 1526/2 1639/15 1644/1 plaintiff's [2] 1494/15 1642/11 plan [1] 1497/22 plate [1] 1594/19 platform [1] 1543/8 plausible [2] 1632/3 1634/1 play [4] 1531/18 1557/18 1557/22 1558/1 played [4] 1503/12 1506/24 1540/19 1602/10 players [1] 1555/6 playing [5] 1507/21 1534/24 1535/1 1535/3 1562/5 please [29] 1474/6 1499/19 1501/9 1501/12 1502/2 1533/7 1534/1 1534/13 1564/11 1588/8 1595/7 1609/13 1611/14 1620/10 1634/17 1639/1 1639/6 1639/11 1640/17 1641/13 1641/14 1641/21 1642/7 1642/21 1643/8 1644/3 1644/4 1645/19 1645/22 pleasure [1] 1648/24 plenty [1] 1494/2 plow [1] 1533/11 plurality [1] 1515/17 plus [3] 1566/18 1605/13 1606/17 pm [1] 1641/20 pockets [1] 1616/23 podium [1] 1490/5 point [36] 1475/22 1476/5 1476/10 1477/2 1478/21 1478/25 1481/18 1481/19 1484/14 1489/21 1492/23 1493/1 1494/7 1497/1 1542/21 1553/16 1557/10 1562/16 1568/24 1569/15 1573/15 1576/22 1579/19 1579/24 1584/12 1584/15 1584/25 1586/2 1589/19 1590/15 1596/23 1614/22 1616/8 1622/23 1628/6 1633/12 pointed [5] 1554/25 1576/7 1583/8 1598/17 1606/6 pointing [4] 1581/20 1583/3 1589/22 1595/2 points [3] 1476/3 1476/4 1574/12 policy [1] 1527/25 poll [2] 1644/2 1644/4 popular [1] 1559/9 popularity [1] 1528/18</p>	<p>portfolio [1] 1548/17 portion [7] 1493/15 1516/12 1529/4 1529/8 1565/20 1627/6 1647/8 portions [4] 1492/8 1646/10 1647/5 1647/12 position [13] 1482/12 1525/25 1596/8 1598/5 1599/10 1603/6 1604/22 1606/19 1609/1 1628/24 1632/11 1633/16 1637/13 positions [6] 1490/13 1501/23 1511/3 1538/17 1623/20 1629/20 possession [1] 1641/9 possibility [1] 1597/14 possible [4] 1502/1 1525/14 1573/23 1634/23 possibly [4] 1569/15 1596/19 1616/13 1631/3 post [2] 1648/4 1648/10 post-trial [2] 1648/4 1648/10 potential [1] 1621/20 potentially [3] 1614/3 1614/4 1643/7 POTTER [1] 1473/9 PowerPoint [1] 1508/12 practice [3] 1591/21 1629/16 1630/7 practiced [3] 1537/4 1604/5 1630/16 practices [2] 1584/9 1595/9 practicing [1] 1595/11 praised [1] 1524/20 pre [1] 1648/11 pre-trial [1] 1648/11 preamble [4] 1486/4 1516/13 1516/14 1516/16 precisely [4] 1588/6 1592/23 1593/12 1597/13 precision [1] 1525/11 predefined [1] 1515/20 predictable [2] 1523/23 1524/8 prefer [6] 1495/11 1495/24 1496/19 1501/18 1538/10 1538/10 preferred [2] 1527/6 1626/23 preinstalled [1] 1531/21 prejudice [1] 1503/2 prejudices [1] 1506/13 prejudicial [1] 1496/23 preliminary [2] 1504/20 1509/19 prepared [4] 1484/23 1490/17 1500/13 1636/11 preponderance [20] 1486/15 1486/23 1509/17 1509/25 1510/21 1510/22 1511/16 1511/24 1512/5 1517/17 1519/25 1525/7 1532/19 1554/15 1565/24 1595/15 1639/20 1640/20 1640/24 1643/12 present [7] 1507/24 1513/16 1517/11 1522/7 1523/8 1539/22 1598/21 presentation [3] 1490/8 1499/9 1548/14 presentations [3] 1508/12</p>	<p>1550/9 1561/23 presented [15] 1475/21 1477/24 1480/5 1495/15 1495/19 1506/2 1507/21 1509/1 1509/3 1527/14 1530/7 1532/13 1600/9 1600/19 1638/24 presenting [1] 1648/19 preserve [1] 1528/4 pressure [2] 1524/7 1555/24 presumed [1] 1603/18 presumption [3] 1519/17 1549/4 1549/15 prevail [1] 1502/17 previously [2] 1507/14 1511/5 price [1] 1529/5 primary [1] 1539/16 principal [1] 1602/19 principle [1] 1485/25 print [2] 1499/8 1500/2 printed [4] 1500/6 1600/10 1601/21 1628/9 printouts [1] 1497/21 prior [31] 1487/7 1520/25 1521/7 1521/7 1521/10 1521/14 1522/7 1522/8 1522/18 1523/7 1523/7 1523/13 1523/15 1523/20 1523/23 1524/1 1524/3 1524/10 1527/11 1549/10 1551/25 1552/1 1598/18 1608/18 1608/22 1609/13 1629/5 1640/2 1640/8 1643/18 1643/23 pro [1] 1647/9 probable [3] 1510/19 1519/23 1551/4 probably [3] 1499/6 1500/2 1500/3 probative [1] 1565/5 problem [7] 1488/24 1524/1 1524/7 1557/15 1595/24 1597/24 1615/17 problems [5] 1520/23 1520/25 1557/21 1615/1 1615/5 proceed [3] 1555/14 1567/7 1640/17 proceeding [1] 1509/9 Proceedings [1] 1474/4 process [12] 1495/9 1529/11 1529/22 1531/8 1540/9 1540/10 1597/4 1597/7 1597/8 1611/5 1616/21 1626/18 processed [1] 1592/17 processes [1] 1540/13 processing [4] 1515/6 1568/15 1571/20 1592/8 processor [1] 1568/13 produced [3] 1528/24 1557/15 1558/8 produces [2] 1618/21 1621/19 product [45] 1494/4 1513/11 1513/15 1513/17 1513/17 1513/18 1514/18 1516/17 1516/19 1517/10 1517/11 1518/25 1526/8 1527/24 1528/9 1531/4 1531/7 1532/4 1540/7 1543/7 1548/13 1548/17 1561/1 1561/5</p>	<p>1562/10 1566/4 1566/6 1571/29 1573/8 1580/1 1586/4 1586/6 1586/10 1586/13 1586/21 1590/3 1606/24 1607/24 1608/1 1615/19 1620/12 1623/17 1633/13 1633/15 1633/18 products [28] 1490/9 1518/4 1526/8 1528/10 1528/17 1531/11 1544/10 1544/13 1552/18 1561/4 1561/22 1585/13 1587/2 1594/2 1594/9 1596/2 1599/19 1599/23 1610/1 1610/14 1610/15 1619/4 1620/21 1620/24 1620/25 1621/1 1633/7 1634/5 profession [1] 1507/7 professionalism [1] 1648/19 profit [4] 1529/4 1529/8 1529/9 1529/24 profitability [3] 1528/16 1559/7 1559/12 program [70] 1515/12 1516/5 1516/7 1528/1 1537/20 1538/7 1569/18 1570/2 1570/11 1570/15 1570/20 1570/23 1571/3 1571/7 1571/11 1571/12 1571/20 1571/20 1572/3 1572/7 1572/8 1572/14 1573/9 1573/14 1573/15 1573/22 1573/22 1573/25 1575/8 1575/19 1575/20 1575/25 1576/5 1576/11 1576/20 1576/22 1577/7 1577/24 1578/5 1578/8 1578/9 1579/4 1579/9 1584/14 1584/16 1584/24 1585/1 1585/24 1585/25 1591/22 1591/24 1592/1 1592/12 1592/13 1592/20 1593/8 1593/8 1594/4 1596/3 1596/6 1596/9 1598/25 1599/5 1599/9 1601/24 1601/24 1624/12 1625/8 1627/9 1627/12 programmer [1] 1571/12 programs [10] 1537/24 1538/15 1539/3 1572/15 1575/10 1575/21 1576/1 1577/3 1593/14 1630/6 promoting [1] 1528/10 prompt [2] 1603/25 1645/12 prompted [1] 1523/18 proof [12] 1502/17 1509/15 1509/16 1509/19 1510/19 1510/20 1510/22 1510/25 1519/23 1519/25 1520/12 1595/8 proper [1] 1636/22 properly [2] 1547/25 1621/23 properties [1] 1559/19 property [2] 1566/5 1566/6 proposal [1] 1491/11 propose [2] 1486/9 1647/13 proposed [13] 1474/16 1476/11 1478/8 1478/8 1483/20 1483/21 1484/11 1484/21 1486/7 1488/25 1491/8 1491/18 1533/23</p>

P
 proposing [1] 1646/2
 proposition [1] 1529/20
 prorating [1] 1557/1
 prosecution [1] 1631/19
 protective [1] 1647/11
 prove [27] 1506/19 1510/1
 1510/15 1517/15 1517/16
 1519/19 1522/5 1523/14
 1525/10 1525/12 1527/18
 1527/18 1537/12 1545/2
 1554/14 1595/8 1595/14
 1608/15 1608/19 1630/21
 1639/19 1639/25 1640/6
 1640/23 1643/11 1643/16
 1643/21
 proved [2] 1517/19 1566/19
 proven [14] 1486/14 1486/23
 1509/13 1511/15 1511/18
 1511/24 1512/5 1517/9
 1519/13 1535/12 1552/8
 1565/24 1595/11 1640/20
 proves [2] 1504/25 1505/4
 provide [6] 1512/24 1553/9
 1557/19 1607/4 1617/15
 1637/25
 provided [12] 1501/16
 1516/21 1524/10 1558/7
 1560/22 1561/17 1572/5
 1600/17 1603/25 1617/10
 1620/20 1639/7
 provides [5] 1512/23 1519/17
 1523/25 1561/12 1561/12
 providing [8] 1498/22 1516/4
 1516/6 1530/20 1570/10
 1584/23 1591/21 1599/4
 proving [3] 1509/24 1522/24
 1532/18
 provisions [3] 1479/1 1480/15
 1481/7
 prudent [3] 1529/19 1530/3
 1530/13
 PTX [1] 1646/19
 PTX-36 [1] 1646/19
 public [3] 1593/19 1600/20
 1645/25
 publication [2] 1548/23 1643/6
 publications [8] 1546/3 1546/4
 1546/7 1598/2 1600/10
 1600/21 1601/21 1628/9
 publicly [3] 1521/10 1568/9
 1568/21
 publish [1] 1558/22
 published [2] 1643/4 1643/6
 publishing [2] 1564/8 1612/25
 pull [9] 1478/10 1488/18
 1491/6 1542/16 1588/22
 1589/2 1608/3 1625/7
 1630/25
 pulled [2] 1587/12 1588/2
 punctuation [2] 1487/6 1487/10
 punish [1] 1525/23
 pure [1] 1618/9
 purple [1] 1592/6
 purpose [2] 1497/25 1636/6
 purposes [2] 1554/22 1561/13
 pursue [1] 1554/2
 pursued [1] 1535/5
 pushed [1] 1539/11
 pushing [1] 1562/7

put [43] 1475/20 1479/12
 1483/3 1487/25 1491/9
 1493/15 1496/13 1510/3
 1511/1 1525/24 1548/2
 1549/11 1549/19 1552/5
 1552/14 1564/3 1565/21
 1567/23 1568/12 1568/14
 1571/19 1573/21 1575/7
 1575/9 1575/19 1576/10
 1576/19 1577/6 1578/4
 1580/2 1581/2 1583/25
 1599/17 1599/20 1603/3
 1604/18 1604/21 1607/22
 1607/24 1609/12 1610/24
 1628/8 1646/20
 putting [7] 1571/13 1573/13
 1575/24 1575/25 1576/4
 1576/5 1578/3
 PX [3] 1488/21 1561/16
 1562/1
 PX-456 [1] 1562/1
 PX-67 [1] 1488/21
 PX-67A [1] 1561/16

Q
 qualifications [1] 1507/11
 qualified [1] 1529/13
 question [41] 1480/14
 1490/18 1492/7 1520/15
 1537/23 1538/8 1538/9
 1538/13 1538/22 1550/20
 1554/14 1565/22 1567/18
 1575/17 1578/25 1585/10
 1589/14 1590/17 1595/13
 1602/8 1603/8 1608/15
 1608/19 1620/5 1623/14
 1625/4 1627/9 1636/17
 1639/8 1639/19 1639/25
 1640/6 1640/14 1640/15
 1640/16 1640/19 1640/23
 1641/24 1643/11 1643/16
 1643/21
 Question 1 [2] 1640/14
 1643/11
 Question 2 [4] 1608/15
 1639/25 1640/15 1643/16
 Question 3 [4] 1608/19
 1640/6 1640/16 1643/21
 Question 4 [1] 1640/19
 Question 5 [2] 1554/14
 1640/23
 questioning [2] 1560/23
 1589/25
 questions [32] 1485/22
 1502/6 1504/2 1504/6 1504/8
 1538/4 1538/5 1551/23
 1551/24 1552/3 1556/9
 1556/19 1559/14 1559/21
 1560/11 1571/17 1574/10
 1586/13 1586/21 1587/1
 1608/14 1608/23 1624/17
 1624/20 1635/2 1635/8
 1636/21 1639/6 1639/9
 1639/13 1640/13 1640/16
 quick [1] 1500/4
 quickly [2] 1566/2 1587/20
 quite [1] 1490/20
 quote [2] 1477/9 1484/22
 quoting [1] 1613/3

R
 raincoat [1] 1505/5
 raining [3] 1505/1 1505/2
 1505/8
 raise [5] 1476/4 1497/14
 1558/20 1628/2 1641/14
 raised [7] 1489/20 1490/22
 1535/21 1556/10 1556/19
 1557/12 1628/4
 rapidity [1] 1521/1
 rate [6] 1565/11 1617/22
 1618/16 1621/17 1622/2
 1622/3
 rates [2] 1527/19 1618/6
 rather [12] 1490/23 1496/13
 1496/15 1496/17 1508/16
 1561/2 1585/24 1593/16
 1610/21 1612/25 1614/4
 1629/17
 reach [9] 1505/22 1525/24
 1529/18 1531/22 1560/6
 1609/22 1637/7 1637/17
 1641/23
 reached [5] 1563/16 1565/13
 1636/13 1641/3 1641/7
 reaching [3] 1511/4 1541/7
 1635/22
 read [28] 1489/3 1489/5
 1489/21 1489/22 1489/23
 1490/1 1490/14 1491/22
 1492/9 1493/21 1494/1
 1494/8 1494/9 1494/10
 1500/6 1500/11 1500/16
 1500/25 1501/17 1503/12
 1506/25 1532/23 1570/7
 1615/20 1627/11 1636/16
 1639/3 1643/4
 reader [2] 1603/19 1604/8
 reading [3] 1492/11 1605/25
 1606/3
 reads [2] 1496/25 1629/7
 ready [3] 1501/3 1534/6
 1602/18
 real [4] 1488/23 1555/17
 1569/3 1576/17
 real-world [1] 1555/17
 reality [4] 1573/4 1604/3
 1611/8 1616/3
 realized [2] 1545/13 1620/15
 really [24] 1489/25 1537/9
 1538/25 1540/5 1541/15
 1544/14 1547/1 1561/2
 1569/11 1574/7 1574/13
 1575/2 1579/19 1582/25
 1583/14 1590/6 1593/23
 1594/1 1596/8 1596/25
 1602/7 1611/15 1612/21
 1623/17
 reason [17] 1487/1 1495/18
 1523/18 1550/2 1553/15
 1558/9 1576/23 1580/9
 1590/16 1597/2 1600/5
 1605/13 1613/20 1617/8
 1618/1 1631/13 1631/25
 reasonable [18] 1506/10
 1510/23 1524/11 1525/12
 1526/3 1526/6 1526/15
 1526/17 1527/3 1527/8
 1527/12 1529/24 1530/14
 1530/18 1565/25 1611/23

1637/7 1640/21
 reasonably [5] 1505/21
 1519/1 1526/25 1529/18
 1554/2
 reasons [9] 1507/11 1558/2
 1558/3 1576/16 1576/17
 1577/1 1577/14 1598/3
 1612/24
 rebuttal [3] 1488/10 1533/10
 1555/4
 recall [10] 1489/1 1571/1
 1571/9 1572/23 1587/15
 1606/23 1607/8 1607/25
 1618/25 1628/23
 recalling [1] 1598/14
 recap [1] 1612/3
 receipt [2] 1591/25 1593/3
 receive [7] 1507/15 1531/20
 1532/21 1569/23 1571/11
 1579/7 1590/19
 received [4] 1527/16 1555/5
 1620/1 1620/2
 receives [2] 1584/21 1592/20
 receiving [1] 1592/7
 recess [6] 1499/14 1499/18
 1533/25 1642/4 1642/5
 1649/1
 recital [1] 1613/19
 recitals [4] 1483/16 1612/13
 1613/2 1613/7
 recite [1] 1514/8
 recognition [1] 1576/4
 recognized [7] 1542/10
 1557/5 1566/24 1566/25
 1575/22 1576/13 1578/15
 recognizing [1] 1543/20
 recollection [4] 1488/19
 1489/11 1506/5 1648/9
 recommend [1] 1488/16
 record [13] 1480/16 1480/24
 1484/20 1485/5 1487/8
 1489/5 1489/17 1490/15
 1493/24 1504/13 1554/18
 1637/20 1645/10
 redact [2] 1493/14 1646/5
 redacted [3] 1489/23 1490/17
 1491/8
 redactions [5] 1491/18
 1491/19 1646/2 1646/9
 1647/13
 reduce [2] 1531/20 1563/8
 reduces [3] 1531/15 1531/24
 1532/20
 reexamine [1] 1636/2
 refer [3] 1485/15 1503/21
 1639/11
 reference [6] 1502/4 1520/10
 1522/15 1522/19 1626/20
 1630/9
 referenced [2] 1490/19
 1628/12
 references [6] 1549/8 1549/17
 1550/4 1550/5 1550/23
 1598/19
 referred [6] 1511/6 1511/8
 1511/10 1513/8 1521/6
 1552/17
 referring [1] 1485/14
 refers [7] 1514/9 1514/13
 1514/17 1514/19 1639/15

<p>Case 1:13-cv-00919-JLH Document 601 Filed 08/21/23 Page 755 of 772 PageID #: 61344</p> <p>refers... [2] 1639/16 1639/17 reflect [1] 1531/6 reflected [1] 1634/2 reflects [1] 1641/5 refresh [1] 1489/11 refusal [1] 1538/22 regarding [10] 1475/21 1477/25 1478/12 1480/5 1495/15 1495/19 1517/4 1532/14 1532/15 1642/2 regardless [2] 1497/12 1606/19 regular [1] 1581/13 reject [2] 1507/2 1507/18 relate [1] 1512/11 related [1] 1553/23 relation [1] 1598/20 relationship [1] 1528/5 relative [1] 1555/2 release [7] 1483/16 1483/18 1561/21 1562/16 1563/6 1616/17 1619/6 released [8] 1552/15 1552/20 1552/24 1552/25 1553/3 1553/14 1561/2 1562/10 releases [1] 1619/11 relevant [7] 1490/8 1512/9 1524/1 1560/12 1560/13 1565/6 1597/3 reliability [1] 1507/12 reliable [2] 1559/13 1622/8 relied [9] 1490/23 1556/13 1556/21 1556/25 1557/13 1558/19 1559/23 1560/22 1565/18 relies [1] 1597/10 relieved [1] 1556/9 rely [12] 1490/12 1506/4 1523/15 1545/12 1545/20 1557/21 1558/7 1558/10 1558/21 1561/4 1561/15 1562/9 relying [8] 1544/18 1546/8 1547/19 1548/1 1548/8 1611/5 1616/25 1629/5 remain [1] 1510/8 remainder [2] 1488/15 1508/10 remaining [1] 1582/12 remains [1] 1551/21 remarkable [1] 1575/13 remedy [1] 1633/8 remember [10] 1506/3 1588/8 1593/18 1595/1 1595/7 1595/18 1597/4 1607/11 1615/2 1636/7 remind [5] 1490/25 1504/22 1509/20 1545/15 1568/21 render [1] 1509/12 rendered [1] 1524/9 rendering [1] 1628/18 repeated [1] 1630/9 repeating [1] 1638/20 replaced [1] 1619/22 report [1] 1622/6 represent [1] 1635/17 representations [1] 1562/9 representative [18] 1494/4 1497/10 1497/11 1541/2</p>	<p>1552/16 1553/8 1557/24 1558/5 1561/4 1561/5 1561/12 1561/21 1561/24 1562/9 1615/19 1615/22 1632/22 1646/23 represents [1] 1643/7 reproductions [3] 1503/16 1503/20 1508/11 request [1] 1499/1 requests [2] 1617/5 1644/1 require [4] 1569/18 1570/15 1574/15 1607/15 required [8] 1498/18 1509/14 1525/10 1591/3 1594/3 1599/6 1624/2 1629/18 requirement [3] 1510/24 1520/9 1584/23 requirements [19] 1513/4 1513/5 1513/7 1513/7 1513/12 1514/3 1514/9 1514/10 1514/13 1514/14 1514/18 1516/17 1517/16 1517/18 1518/5 1522/6 1522/10 1522/11 1589/18 requires [2] 1526/10 1626/6 reread [2] 1494/8 1494/9 research [2] 1638/9 1638/18 reserve [1] 1488/11 resides [1] 1582/18 resolve [1] 1618/9 resolving [1] 1622/13 respect [4] 1527/23 1531/25 1558/21 1648/4 respectfully [2] 1535/7 1637/8 respects [1] 1643/8 respond [3] 1538/8 1617/5 1635/5 response [2] 1626/16 1626/16 responsibility [2] 1520/2 1637/2 responsible [3] 1586/5 1592/7 1592/11 rest [2] 1512/22 1532/22 restaurant [3] 1594/15 1594/17 1594/20 restricted [1] 1527/22 result [7] 1523/23 1530/22 1568/17 1592/18 1598/1 1602/16 1621/17 resulted [4] 1526/18 1527/4 1527/10 1614/3 results [3] 1528/21 1530/25 1602/17 retain [1] 1641/9 retire [1] 1641/17 retrieve [1] 1600/23 retrieving [1] 1601/1 return [3] 1502/1 1635/19 1636/16 returning [1] 1636/7 revenue [30] 1497/8 1497/22 1498/7 1499/10 1556/23 1559/1 1559/4 1559/6 1559/7 1559/10 1559/13 1559/18 1559/22 1560/2 1560/7 1560/8 1560/9 1620/12 1620/15 1620/17 1620/20 1620/21 1620/24 1621/6 1621/8 1621/15 1621/25 1622/4 1633/21 1634/3</p>	<p>review [8] 1500/13 1506/1 1511/2 1512/13 1549/22 1636/12 1641/4 1648/16 reviewed [2] 1549/20 1646/25 reviewing [1] 1549/21 rewatch [1] 1602/9 rid [1] 1474/13 right [64] 1475/23 1476/24 1477/2 1481/17 1482/10 1482/17 1483/2 1483/5 1485/20 1486/2 1487/16 1487/24 1488/21 1489/13 1490/2 1492/3 1492/5 1494/3 1495/4 1497/3 1498/10 1499/13 1499/14 1499/19 1499/20 1500/20 1501/3 1507/1 1526/5 1528/1 1533/7 1534/1 1534/5 1534/6 1534/8 1537/11 1537/13 1546/7 1547/16 1551/15 1553/1 1556/7 1556/18 1561/10 1579/1 1591/10 1593/18 1596/7 1596/14 1597/24 1609/16 1611/6 1612/10 1616/15 1618/3 1619/9 1621/24 1622/11 1623/3 1624/15 1637/12 1641/14 1642/16 1646/22 rights [1] 1524/22 Rinard [21] 1537/14 1537/18 1537/22 1538/6 1538/13 1538/24 1539/6 1539/12 1542/4 1542/10 1543/6 1576/16 1581/4 1592/25 1593/2 1622/15 1625/25 1626/14 1626/22 1627/4 1627/7 Rinard's [1] 1590/7 rings [1] 1586/25 risk [1] 1555/14 risks [1] 1529/11 road [2] 1547/9 1611/19 ROBERT [1] 1473/12 ROBERTS [1] 1473/13 role [5] 1512/18 1514/23 1540/19 1563/10 1586/20 roll [1] 1616/7 room [16] 1501/25 1502/4 1503/23 1508/10 1512/16 1561/25 1567/22 1634/23 1636/13 1637/5 1637/20 1638/5 1638/13 1638/19 1641/18 1645/17 routine [4] 1515/14 1539/8 1578/13 1625/16 royalties [2] 1527/16 1527/17 royalty [26] 1526/3 1526/4 1526/6 1526/11 1526/15 1526/17 1526/17 1527/3 1527/4 1527/5 1527/8 1527/10 1527/13 1527/18 1529/23 1530/10 1530/14 1530/19 1531/5 1565/19 1566/1 1611/23 1618/16 1621/7 1621/15 1640/21 rule [1] 1476/15 ruled [4] 1496/21 1504/9 1533/18 1646/25 rules [5] 1501/20 1501/21 1501/24 1517/7 1519/12</p>	<p>ruling [9] 1481/16 1481/24 1489/4 1489/8 1492/23 1496/11 1496/18 1496/20 1504/5 rulings [1] 1504/3 rumors [1] 1503/7 run [8] 1540/13 1540/15 1582/1 1590/11 1591/5 1591/11 1593/14 1609/10 running [13] 1581/17 1581/21 1581/22 1587/14 1587/18 1587/23 1588/2 1589/24 1590/9 1590/10 1590/12 1590/21 1591/5 runs [4] 1540/9 1589/20 1591/2 1626/17</p> <hr/> <p>S</p> <p>S.A.R.L [3] 1471/4 1511/6 1639/15 Sacerdoti [5] 1547/15 1550/7 1550/25 1576/7 1607/7 Sacerdoti's [1] 1604/7 said [79] 1480/17 1483/6 1483/23 1484/21 1485/8 1492/14 1495/9 1495/12 1496/13 1502/11 1503/10 1504/15 1506/21 1513/12 1513/13 1521/21 1537/16 1538/7 1539/24 1541/3 1541/16 1541/18 1542/3 1543/6 1543/11 1543/14 1544/9 1544/17 1544/24 1545/13 1546/6 1547/21 1548/2 1548/20 1549/22 1550/1 1550/8 1553/8 1556/25 1557/3 1557/25 1559/1 1559/4 1559/25 1560/3 1560/14 1561/1 1561/4 1561/8 1563/9 1563/22 1580/13 1584/13 1587/21 1589/6 1590/2 1598/18 1598/24 1599/7 1599/15 1602/18 1603/14 1604/4 1606/14 1607/2 1617/23 1618/1 1621/13 1626/10 1626/23 1626/23 1628/10 1629/14 1631/5 1632/19 1632/24 1636/23 1638/20 1638/21 sale [2] 1517/21 1521/11 sales [3] 1528/10 1528/11 1528/13 same [61] 1476/18 1482/7 1486/5 1491/10 1491/17 1491/19 1494/7 1497/21 1498/1 1508/4 1516/25 1522/9 1525/25 1528/7 1528/7 1530/20 1530/21 1535/19 1542/5 1543/6 1551/16 1555/10 1555/23 1556/22 1556/24 1556/25 1558/19 1565/18 1568/8 1568/14 1570/11 1572/15 1575/10 1577/3 1577/4 1582/9 1584/5 1587/23 1588/6 1589/20 1589/24 1590/9 1591/5 1591/5 1591/8 1591/11 1591/18 1595/21 1596/17 1599/3 1601/3</p>
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<p>S she [1] 1506/23 shed [1] 1524/16 Sheets [1] 1525/16 shift [1] 1629/20 short [3] 1533/2 1603/13 1622/24 short-circuit [1] 1603/13 shortcut [7] 1571/19 1575/4 1575/7 1575/18 1605/18 1606/21 1607/10 shortcuts [9] 1568/2 1568/5 1568/8 1605/21 1605/23 1607/18 1607/19 1607/20 1607/22 shortly [1] 1523/10 shot [2] 1568/7 1603/17 should [99] 1474/22 1474/23 1475/10 1475/18 1475/19 1475/20 1477/20 1477/21 1477/24 1479/20 1479/25 1479/25 1480/2 1481/11 1483/8 1484/12 1485/15 1487/7 1488/9 1489/9 1492/18 1496/20 1500/9 1500/15 1502/17 1502/24 1504/4 1505/11 1505/14 1505/17 1506/4 1506/8 1506/18 1507/15 1507/25 1508/16 1508/22 1509/4 1509/11 1510/8 1511/1 1516/21 1517/2 1517/4 1518/19 1520/14 1520/19 1523/17 1524/14 1525/5 1525/8 1525/24 1526/11 1526/22 1530/7 1532/2 1532/10 1532/11 1536/4 1545/17 1545/20 1545/22 1546/20 1549/14 1552/3 1554/19 1554/24 1555/10 1557/7 1557/8 1560/7 1561/11 1561/13 1561/15 1562/6 1562/6 1562/6 1562/12 1566/16 1566/25 1570/7 1583/1 1597/18 1609/20 1618/2 1618/3 1630/5 1633/5 1635/8 1635/15 1636/20 1636/25 1637/21 1638/17 1641/4 1641/6 1641/9 1646/15 1646/21 shouldn't [2] 1496/9 1611/1 show [20] 1490/23 1518/13 1536/21 1537/12 1541/22 1542/14 1544/9 1548/6 1550/10 1550/21 1550/22 1574/23 1580/14 1580/20 1587/16 1597/21 1611/5 1612/13 1629/23 1630/19 showed [14] 1540/3 1543/9 1546/9 1555/1 1568/10 1580/5 1581/10 1581/12 1581/14 1581/16 1581/21 1582/9 1603/12 1621/3 showing [7] 1539/16 1545/3 1554/9 1589/10 1592/5 1627/5 1632/4 shown [7] 1497/23 1504/15 1535/13 1541/14 1554/24 1605/8 1628/7</p>	<p>shows [4] 1529/2 1547/2 1574/24 1580/6 shred [3] 1582/25 1610/13 1610/13 side [10] 1491/12 1503/3 1510/7 1533/9 1535/2 1552/23 1642/11 1642/14 1646/13 1648/17 sidebar [2] 1489/1 1493/11 sides [5] 1476/20 1497/6 1497/17 1510/5 1529/17 sides' [1] 1533/3 sign [4] 1635/3 1636/15 1640/18 1641/6 signed [1] 1647/11 significance [1] 1507/25 significant [4] 1483/1 1529/11 1573/4 1623/4 significantly [1] 1622/18 similar [7] 1515/6 1528/21 1530/3 1530/25 1570/18 1601/11 1607/20 simple [4] 1537/22 1585/9 1594/8 1606/24 simplistic [1] 1539/22 simply [10] 1504/23 1505/3 1527/5 1548/8 1551/19 1560/24 1594/2 1604/21 1615/20 1632/2 since [2] 1558/24 1628/19 single [21] 1513/5 1522/7 1522/18 1572/24 1572/25 1573/5 1573/13 1573/25 1575/8 1576/5 1576/20 1578/5 1580/20 1582/14 1583/3 1585/14 1585/24 1590/18 1591/3 1605/3 1622/14 sit [2] 1499/15 1541/19 site [1] 1606/8 sits [1] 1540/1 sitting [2] 1541/20 1647/24 situation [1] 1490/11 situations [1] 1627/3 six [2] 1616/22 1635/14 six months [1] 1616/22 size [1] 1621/23 skill [15] 1507/6 1507/7 1516/23 1520/17 1520/19 1522/14 1522/21 1523/1 1523/4 1523/19 1550/16 1550/25 1607/2 1607/9 1648/19 skilled [1] 1560/19 skip [1] 1640/16 slam [1] 1548/18 slam-dunk [1] 1548/18 slide [13] 1564/8 1574/6 1593/18 1613/1 1613/7 1613/13 1620/10 1620/10 1620/11 1621/4 1626/13 1629/3 1632/21 Slide 17 [1] 1626/13 Slide 85 [1] 1632/21 slides [8] 1498/22 1498/25 1499/2 1499/5 1499/9 1525/17 1612/12 1612/22 slightly [1] 1510/7 slow [2] 1482/10 1488/23 slowly [1] 1539/6</p>	<p>small [5] 1474/18 1566/11 1616/8 1618/12 1646/9 Smart [64] 1540/22 1541/4 1541/8 1541/18 1541/23 1543/4 1552/15 1552/21 1553/3 1553/14 1553/17 1554/11 1563/21 1563/25 1573/14 1573/16 1579/20 1580/2 1580/6 1580/7 1580/15 1581/1 1581/11 1581/20 1582/16 1582/17 1582/19 1582/22 1583/4 1583/5 1583/10 1583/15 1584/2 1585/15 1587/9 1587/11 1588/1 1588/8 1588/10 1588/13 1588/14 1588/18 1588/18 1588/21 1588/23 1588/24 1589/20 1590/8 1591/16 1595/3 1595/5 1596/3 1596/10 1604/14 1604/23 1611/25 1615/9 1615/12 1619/10 1619/22 1619/25 1620/3 1623/2 1626/5 smartphone [1] 1638/2 smartphones [1] 1525/20 Smedley [16] 1536/16 1536/19 1536/24 1537/10 1537/11 1537/15 1539/1 1541/16 1545/16 1562/2 1576/2 1582/5 1584/13 1589/9 1593/15 1593/18 Smedley's [5] 1491/4 1538/9 1541/13 1561/19 1605/7 SMITH [1] 1471/24 Snapchat [1] 1638/7 snapshots [1] 1600/14 so [148] 1474/8 1474/11 1474/15 1474/17 1476/3 1476/24 1478/9 1478/11 1478/11 1478/24 1479/14 1480/10 1480/22 1480/24 1481/8 1483/2 1486/5 1486/8 1486/11 1486/20 1486/25 1487/24 1488/7 1488/10 1488/18 1488/21 1489/8 1491/5 1492/15 1493/1 1493/11 1493/16 1494/5 1494/21 1495/4 1495/24 1496/11 1496/17 1497/6 1497/25 1498/14 1499/9 1499/20 1500/5 1500/5 1500/6 1500/11 1500/21 1500/25 1515/15 1523/8 1531/12 1533/1 1533/8 1533/10 1533/21 1535/3 1537/17 1538/21 1539/10 1541/16 1542/11 1543/13 1544/8 1546/8 1550/15 1553/17 1558/6 1558/22 1563/6 1567/16 1569/10 1570/21 1571/16 1572/21 1574/23 1575/19 1577/3 1578/1 1578/14 1578/25 1579/17 1580/8 1583/12 1583/14 1583/22 1583/24 1584/8 1584/14 1584/19 1584/23 1586/9 1586/24 1587/6 1588/25 1588/25 1591/20 1592/23 1593/25</p>	<p>1594/10 1595/13 1597/9 1599/24 1602/1 1604/3 1606/1 1606/12 1607/1 1607/14 1608/7 1610/9 1612/20 1614/16 1615/22 1616/13 1616/20 1617/18 1619/11 1619/15 1619/21 1619/24 1620/5 1621/22 1621/24 1622/20 1623/3 1624/8 1625/17 1632/9 1633/7 1635/7 1635/23 1635/25 1637/18 1637/21 1641/22 1643/8 1646/5 1646/11 1646/20 1647/5 1647/10 1647/13 1647/25 1648/2 1648/14 1648/20 1648/24 so-called [2] 1523/8 1607/1 software [5] 1540/18 1547/25 1619/2 1633/23 1634/5 sold [2] 1527/24 1619/9 sole [4] 1502/13 1506/6 1636/8 1637/1 solely [3] 1504/1 1557/23 1636/5 solution [2] 1475/12 1523/25 solutions [2] 1520/25 1524/9 solve [1] 1524/7 some [49] 1486/1 1493/17 1493/22 1497/22 1498/11 1499/15 1501/21 1504/8 1504/10 1506/20 1506/21 1507/2 1507/6 1508/25 1512/7 1514/10 1515/15 1539/9 1556/9 1557/15 1557/21 1558/9 1567/13 1574/12 1576/23 1578/14 1578/15 1578/18 1587/15 1597/2 1597/21 1600/10 1600/13 1601/21 1612/12 1613/2 1613/7 1613/17 1615/5 1616/14 1616/23 1620/6 1620/17 1620/18 1625/17 1634/22 1635/7 1639/9 1646/10 somebody [7] 1500/15 1566/5 1611/19 1630/15 1630/16 1631/1 1632/12 somehow [10] 1495/22 1569/16 1587/10 1588/21 1590/21 1605/4 1610/14 1627/25 1631/9 1631/25 someone [6] 1490/25 1505/4 1521/4 1521/19 1523/5 1552/23 something [48] 1478/2 1478/6 1479/3 1482/11 1486/9 1489/25 1490/23 1495/14 1498/6 1499/2 1499/6 1500/15 1506/22 1506/22 1535/2 1541/17 1544/8 1544/16 1546/20 1546/24 1547/7 1548/7 1549/14 1550/11 1551/13 1555/18 1556/17 1558/9 1564/5 1566/16 1566/18 1566/23 1573/4 1580/11 1581/4 1581/14 1593/5 1593/7 1596/24 1597/15 1599/12 1611/11 1617/6 1628/15</p>
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S	starts [7] 1492/3 1540/23	suffered [1] 1525/10	1580/16 1582/11 1583/4
<p>something... [4] 1629/24 1632/11 1632/13 1638/20 sometimes [4] 1504/11 1524/15 1596/23 1597/1 somewhere [2] 1541/19 1547/9 soon [1] 1635/5 sophistication [1] 1521/3 sorry [4] 1477/14 1491/17 1564/10 1607/20 sort [3] 1585/19 1602/17 1620/17 sorted [1] 1534/2 sought [1] 1524/22 sound [2] 1555/9 1633/4 sounds [1] 1647/20 source [8] 1515/10 1515/24 1537/1 1581/23 1590/1 1593/19 1604/1 1626/2 space [1] 1641/6 speak [2] 1621/24 1637/21 speaks [1] 1626/2 special [4] 1507/6 1507/9 1528/4 1589/1 specific [6] 1569/19 1578/7 1585/25 1588/21 1617/4 1617/5 specifically [11] 1482/14 1482/16 1503/19 1512/11 1522/1 1563/5 1570/6 1571/9 1577/19 1584/13 1617/6 specifics [1] 1609/18 specified [1] 1577/1 specifies [1] 1574/17 specify [1] 1571/21 speculate [2] 1503/2 1504/14 speculative [1] 1525/13 spend [1] 1634/7 spent [6] 1534/19 1536/25 1549/21 1586/16 1609/17 1628/17 split [1] 1635/14 spoke [2] 1630/3 1645/23 spot [2] 1577/10 1577/12 spreadsheet [2] 1515/6 1571/20 SRINIVASAN [1] 1473/5 stack [2] 1648/11 1648/12 stacks [1] 1555/4 stand [7] 1477/17 1480/25 1506/14 1536/25 1537/7 1538/10 1635/12 standard [1] 1509/14 standards [3] 1509/19 1518/23 1553/25 stands [1] 1551/19 start [18] 1490/9 1500/7 1500/9 1501/19 1545/2 1556/7 1557/7 1561/1 1574/12 1596/20 1598/14 1612/5 1615/6 1620/16 1622/11 1622/20 1625/4 1634/25 started [8] 1534/22 1539/4 1544/6 1544/16 1551/15 1589/25 1615/25 1628/22 starting [6] 1568/22 1584/12 1584/15 1614/22 1615/8 1622/23</p>	<p>1541/6 1538/17 1538/17 1561/20 1592/15 stated [4] 1496/7 1596/25 1613/20 1618/23 statement [7] 1477/18 1480/11 1480/13 1567/21 1570/4 1570/18 1612/14 statements [8] 1475/8 1476/25 1478/22 1503/25 1505/23 1505/24 1505/25 1610/11 states [5] 1471/2 1471/20 1500/12 1517/21 1517/22 status [2] 1601/14 1648/5 stay [3] 1497/11 1635/15 1645/15 step [8] 1513/23 1536/18 1536/18 1537/8 1537/8 1566/5 1582/6 1582/9 stick [2] 1496/17 1645/18 still [8] 1499/5 1518/4 1549/4 1566/20 1567/9 1589/5 1620/4 1646/24 stipulation [10] 1490/10 1490/19 1493/22 1561/3 1561/15 1561/17 1561/18 1615/19 1615/20 1615/24 stipulations [9] 1489/3 1489/6 1489/19 1489/22 1490/1 1492/9 1494/4 1494/10 1503/14 stood [3] 1566/18 1610/20 1632/1 stop [1] 1563/24 stopped [2] 1610/1 1633/1 storage [2] 1625/13 1626/2 Store [2] 1531/18 1558/1 STRAUS [1] 1473/4 streams [1] 1560/2 street [6] 1471/18 1568/4 1572/11 1601/1 1601/2 1608/3 strength [2] 1475/10 1506/9 stretch [5] 1607/15 1608/10 1634/13 1634/14 1634/15 strike [1] 1515/1 strong [3] 1475/8 1483/9 1483/13 strongly [1] 1484/23 struck [1] 1504/12 STS [4] 1540/19 1554/6 1592/8 1625/22 studied [1] 1546/13 study [2] 1507/9 1615/22 style [1] 1485/13 submission [1] 1598/14 submit [3] 1552/2 1558/6 1627/2 substitute [1] 1494/23 success [2] 1524/11 1528/17 such [18] 1507/1 1507/3 1509/15 1513/11 1517/5 1518/12 1523/21 1524/6 1524/17 1528/6 1528/12 1529/10 1529/15 1529/16 1530/17 1548/18 1638/2 1638/6 suddenly [1] 1589/17 sue [1] 1633/3</p>	<p>1522/14 1524/12 suggest [9] 1482/13 1496/23 1587/7 1587/18 1588/20 1589/17 1613/4 1630/11 1636/24 suggested [1] 1608/6 suggesting [3] 1495/21 1525/5 1577/20 suggestions [1] 1608/7 suggests [2] 1524/2 1604/17 suit [2] 1511/12 1552/13 summaries [3] 1503/17 1503/20 1559/24 summarize [1] 1503/22 Sunday [1] 1491/17 supplied [1] 1556/18 supplier [2] 1532/6 1619/7 suppliers [7] 1619/6 1619/11 1619/13 1619/14 1619/15 1619/16 1619/17 support [3] 1570/5 1598/20 1633/17 supporting [2] 1507/13 1510/5 supposed [5] 1478/22 1483/22 1489/22 1555/25 1560/19 supposedly [2] 1570/24 1584/14 sure [18] 1482/21 1488/10 1490/4 1494/24 1499/3 1564/12 1573/16 1596/20 1605/11 1606/1 1609/4 1641/22 1641/25 1645/24 1647/3 1647/19 1648/16 1648/22 surely [3] 1539/19 1548/15 1631/20 surprise [1] 1610/4 surprising [1] 1609/25 surrender [1] 1636/4 SUSMAN [1] 1473/3 suspicions [1] 1503/7 swapped [1] 1486/18 switch [1] 1485/21 sworn [5] 1475/8 1482/23 1483/10 1483/11 1641/15 sympathy [1] 1503/2 system [112] 1484/16 1487/12 1512/8 1521/16 1521/17 1521/18 1522/2 1541/12 1543/22 1543/23 1543/24 1543/25 1544/25 1545/1 1545/2 1545/5 1545/7 1545/11 1545/12 1545/21 1545/21 1545/24 1545/25 1546/6 1546/8 1546/21 1546/23 1547/2 1547/21 1547/21 1548/9 1548/10 1549/12 1550/14 1550/14 1551/6 1551/6 1551/7 1568/24 1568/25 1569/2 1569/3 1569/7 1569/7 1570/13 1570/14 1570/16 1571/8 1571/14 1571/15 1572/21 1574/17 1574/18 1575/1 1575/25 1576/6 1577/8 1577/12 1577/13 1577/22 1577/23 1578/4 1579/22 1579/22 1580/3</p>	<p>1583/7 1583/12 1583/20 1583/21 1584/3 1589/3 1592/6 1592/23 1593/2 1593/6 1593/6 1593/24 1596/5 1596/11 1596/15 1598/12 1599/8 1599/9 1599/17 1599/20 1600/8 1600/8 1601/18 1602/21 1602/25 1603/1 1603/4 1603/7 1603/9 1603/9 1604/5 1604/6 1604/6 1604/15 1604/19 1604/24 1605/5 1609/2 1617/18 1624/8 1630/12 1630/13 1630/19 1630/22 systems [8] 1543/25 1544/18 1550/16 1598/1 1616/9 1627/14 1629/11 1629/15</p> <hr/> <p>T</p> <p>table [2] 1594/18 1594/23 tables [2] 1594/16 1594/24 tablet [1] 1638/3 tablets [1] 1633/22 tails [2] 1544/12 1627/19 take [31] 1477/18 1479/4 1486/3 1486/10 1488/18 1488/23 1492/6 1496/18 1502/15 1503/14 1516/9 1517/2 1519/11 1524/14 1530/4 1533/2 1533/5 1533/8 1538/11 1554/2 1569/10 1571/18 1573/21 1602/8 1607/22 1614/22 1618/23 1632/19 1634/12 1635/7 1636/12 taken [9] 1490/13 1499/18 1508/20 1533/25 1538/17 1549/23 1565/21 1632/25 1642/5 takes [5] 1509/1 1536/22 1593/6 1616/18 1616/21 taking [7] 1493/10 1523/21 1539/14 1543/14 1608/7 1633/16 1634/18 talk [18] 1474/11 1488/17 1497/22 1536/9 1541/11 1545/1 1549/7 1579/12 1606/11 1615/19 1632/20 1634/25 1635/6 1637/4 1637/5 1637/8 1638/10 1645/15 talked [9] 1487/15 1488/19 1534/22 1541/2 1547/20 1548/24 1589/11 1592/4 1625/9 talking [11] 1475/4 1475/7 1486/8 1497/7 1499/6 1541/19 1542/8 1547/5 1555/9 1559/11 1623/5 talks [1] 1482/14 task [18] 1515/15 1539/9 1578/14 1578/22 1579/1 1579/1 1579/3 1579/4 1579/9 1579/14 1585/3 1625/17 1625/20 1625/24 1626/3 1626/4 1626/7 1626/11 Tasks [1] 1525/17 taught [3] 1603/10 1605/17</p>

<p>T taught... [1] 1608/25 teaches [3] 1524/2 1524/4 1605/12 team [2] 1534/21 1567/16 tease [1] 1476/24 Tech [1] 1600/12 technical [3] 1537/7 1586/10 1586/13 technically [1] 1622/16 technological [2] 1610/25 1611/4 technologies [1] 1524/12 technology [25] 1516/23 1521/3 1522/22 1530/16 1530/24 1531/3 1551/12 1552/24 1554/1 1555/6 1563/18 1566/20 1606/4 1609/19 1610/17 1610/18 1610/24 1611/16 1613/10 1613/11 1614/13 1624/19 1626/6 1631/14 1634/6 telephone [1] 1638/2 tell [22] 1481/10 1482/7 1483/12 1488/23 1498/2 1539/24 1543/21 1546/21 1546/21 1556/11 1564/3 1574/25 1589/12 1590/25 1600/21 1622/10 1625/21 1630/1 1630/20 1634/13 1635/12 1635/13 telling [2] 1538/1 1547/24 tells [6] 1505/20 1538/22 1579/4 1586/24 1629/11 1633/9 temporarily [1] 1625/23 ten [5] 1533/8 1534/19 1535/5 1560/5 1567/12 ten days [1] 1534/19 ten years [1] 1535/5 ten-minute [1] 1533/8 tend [1] 1527/18 tendency [1] 1508/23 tending [1] 1506/19 tenet [1] 1477/9 term [15] 1515/5 1515/8 1515/12 1515/16 1515/25 1516/4 1528/15 1537/19 1537/21 1578/10 1592/2 1622/17 1622/18 1627/6 1639/13 terms [12] 1478/14 1480/9 1481/4 1497/7 1514/21 1514/25 1515/3 1527/23 1532/17 1534/3 1626/3 1639/10 territory [2] 1527/23 1528/7 test [4] 1551/20 1561/22 1566/18 1632/1 testified [14] 1504/25 1506/20 1536/24 1540/7 1540/20 1543/16 1546/10 1558/13 1563/4 1571/2 1582/6 1603/21 1605/20 1606/23 testify [3] 1491/5 1542/2 1558/5 testifying [1] 1503/10 testimony [69] 1480/19 1483/3 1483/4 1483/11 1490/16 1490/24 1493/22</p>	<p>1494/2 1494/6 1494/8 1494/11 1495/20 1495/21 1496/8 1496/24 1501/22 1503/11 1503/18 1504/24 1506/11 1506/16 1506/18 1506/23 1506/24 1507/2 1507/2 1507/5 1507/5 1507/10 1507/14 1507/15 1507/18 1507/20 1507/22 1507/23 1508/3 1508/3 1508/13 1508/17 1508/25 1509/6 1529/13 1541/6 1541/10 1541/13 1542/2 1548/8 1548/23 1548/24 1554/4 1560/18 1561/19 1562/15 1562/21 1562/22 1564/6 1567/20 1572/18 1574/21 1589/23 1590/7 1601/23 1606/9 1607/4 1622/6 1624/18 1626/9 1626/13 1626/15 testing [2] 1537/2 1584/15 text [81] 1512/22 1515/7 1515/9 1540/22 1541/4 1541/8 1541/18 1541/23 1543/4 1546/25 1547/9 1552/15 1552/21 1553/3 1553/14 1553/17 1554/11 1563/22 1563/25 1568/3 1568/11 1573/14 1573/16 1579/20 1580/2 1580/6 1580/7 1580/13 1580/14 1580/15 1581/1 1581/11 1581/13 1581/20 1581/21 1582/16 1582/17 1582/19 1582/22 1583/4 1583/5 1583/10 1583/15 1584/2 1585/15 1587/8 1587/9 1587/11 1588/1 1588/8 1588/10 1588/10 1588/13 1588/14 1588/14 1588/18 1588/18 1588/21 1588/23 1588/24 1589/20 1590/8 1591/16 1595/3 1595/5 1596/3 1596/10 1603/24 1603/24 1604/9 1604/14 1604/23 1605/18 1611/25 1615/9 1615/12 1619/10 1620/1 1620/3 1626/5 1638/4 TextClassifier [1] 1619/23 texts [1] 1620/2 TextView [12] 1540/21 1580/12 1581/19 1587/8 1587/9 1587/18 1587/22 1588/4 1588/8 1588/9 1588/11 1588/23 TextViews [1] 1588/16 than [43] 1482/15 1490/23 1495/14 1496/16 1505/13 1510/2 1510/21 1510/22 1513/6 1517/18 1518/14 1519/24 1525/9 1544/19 1544/20 1545/7 1555/19 1561/2 1565/2 1567/24 1567/25 1569/3 1572/8 1578/3 1578/16 1578/23 1585/24 1590/16 1593/16 1594/23 1610/7 1610/21 1611/23 1612/25 1614/4 1618/21 1622/3 1622/18</p>	<p>1622/21 1628/25 1629/17 1645/11 1648/12 thank [38] 1474/17 1475/24 1475/25 1481/16 1481/17 1484/1 1484/2 1485/11 1487/3 1488/12 1490/6 1497/2 1499/17 1533/13 1533/14 1533/24 1534/18 1534/20 1567/2 1567/4 1567/5 1567/8 1567/10 1567/16 1624/22 1624/23 1624/24 1625/3 1634/10 1634/11 1641/16 1645/9 1645/17 1646/7 1646/22 1647/21 1647/22 1648/18 Thanks [1] 1642/7 that [1201] that's [90] 1475/22 1478/15 1478/24 1479/12 1480/10 1480/18 1481/16 1483/5 1484/8 1484/17 1487/14 1490/7 1492/1 1492/10 1492/14 1492/18 1492/23 1492/24 1493/23 1494/7 1494/10 1494/22 1494/23 1498/16 1498/24 1500/18 1533/20 1536/9 1540/2 1540/3 1541/15 1541/24 1543/18 1543/22 1544/21 1546/25 1547/16 1548/17 1550/20 1551/19 1553/1 1553/2 1555/23 1556/16 1558/8 1559/3 1565/8 1565/22 1566/7 1566/21 1574/16 1576/22 1579/9 1579/13 1580/16 1580/16 1582/8 1582/10 1582/11 1583/5 1584/14 1585/19 1586/19 1588/2 1590/13 1591/6 1591/25 1595/5 1597/11 1597/23 1598/12 1599/14 1601/2 1601/11 1604/2 1605/3 1605/15 1607/4 1613/20 1616/3 1618/1 1618/1 1619/8 1619/9 1621/12 1622/5 1628/12 1628/18 1630/12 1631/13 theatrics [1] 1579/23 their [64] 1477/12 1489/13 1496/18 1497/18 1504/2 1505/25 1516/21 1523/24 1526/25 1528/17 1528/17 1532/24 1538/3 1540/4 1540/4 1540/5 1542/2 1544/23 1545/2 1545/4 1557/11 1562/9 1563/22 1573/12 1574/20 1574/21 1577/6 1577/7 1580/14 1582/5 1586/20 1587/13 1588/13 1589/1 1589/4 1589/7 1594/19 1596/16 1601/25 1603/14 1603/18 1604/3 1604/18 1605/14 1606/14 1609/1 1610/17 1617/5 1620/13 1622/4 1624/6 1626/16 1628/8 1628/9 1632/3 1632/8 1632/8 1633/8 1633/8 1633/13 1633/15 1633/17 1634/7 1642/18</p>	<p>theirs [1] 1586/1 them [70] 1478/4 1481/10 1484/7 1489/23 1489/23 1490/16 1490/22 1496/18 1498/23 1500/24 1501/2 1501/18 1502/21 1502/24 1503/19 1504/17 1516/10 1525/12 1534/6 1539/17 1540/2 1542/11 1543/3 1543/4 1543/10 1547/17 1550/11 1550/17 1550/19 1555/9 1556/9 1558/19 1559/1 1559/3 1559/15 1560/15 1564/9 1564/18 1564/19 1567/13 1573/21 1575/25 1576/5 1576/11 1579/5 1585/17 1586/9 1587/20 1590/21 1592/24 1594/7 1595/10 1599/1 1607/23 1608/1 1608/8 1610/17 1612/17 1612/25 1613/3 1617/3 1632/19 1633/5 1634/6 1635/3 1635/3 1635/4 1635/5 1636/18 1647/18 themselves [4] 1503/21 1529/9 1541/16 1614/15 then [72] 1476/4 1477/8 1477/23 1481/13 1481/18 1484/19 1485/21 1486/16 1486/17 1487/5 1487/15 1488/14 1489/8 1489/24 1495/16 1496/12 1497/25 1500/7 1500/11 1501/20 1501/22 1511/23 1514/14 1518/11 1520/9 1533/3 1533/11 1536/1 1538/16 1539/6 1540/3 1544/10 1544/13 1544/21 1545/3 1547/13 1547/20 1557/20 1560/25 1561/8 1565/10 1565/15 1569/1 1573/13 1580/15 1583/17 1592/12 1593/8 1596/11 1596/16 1597/20 1598/23 1599/13 1603/8 1604/24 1613/13 1616/13 1619/16 1621/8 1622/23 1625/12 1627/18 1629/11 1635/4 1636/16 1636/20 1637/23 1639/24 1640/5 1641/6 1645/16 1648/8 theory [5] 1538/23 1542/24 1605/8 1615/1 1615/2 there [116] 1475/11 1476/20 1478/17 1478/24 1479/9 1480/22 1485/5 1487/19 1490/14 1490/16 1493/18 1494/15 1494/19 1500/15 1506/19 1506/21 1508/23 1509/15 1513/21 1517/12 1517/23 1518/1 1523/18 1524/6 1524/8 1533/18 1540/15 1542/21 1543/15 1543/21 1545/5 1547/1 1547/1 1547/6 1548/7 1549/7 1550/10 1550/22 1551/23 1552/3 1552/22 1553/22 1556/4 1556/17 1558/1 1558/2 1558/9 1558/9 1559/6</p>
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T	L	H	R
there... [67] 1560/19 1563/9	1622/3 1628/1 1628/3 1628/7	1500/15 1609/19	1488/7 1488/11 1488/15
1563/17 1564/9 1568/23	1629/12 1629/13 1630/10	1482/9 1482/13	1489/4 1489/15 1491/10
1572/2 1575/6 1575/12	1631/2 1632/2 1632/2 1632/5	1498/18 1569/22 1577/9	1501/14 1506/21 1507/24
1576/17 1578/2 1578/21	1632/6 1636/23	1591/24	1509/1 1509/11 1512/14
1579/10 1579/17 1579/24	they [247]	this [286]	1516/24 1518/15 1518/20
1580/20 1581/1 1581/13	They'd [1] 1550/17	those [78] 1478/19 1482/25	1520/18 1522/22 1523/2
1581/14 1581/15 1581/17	they're [34] 1475/2 1478/15	1483/18 1485/18 1487/24	1523/6 1523/11 1523/17
1581/24 1581/25 1582/4	1478/16 1483/22 1490/15	1497/7 1520/25 1525/8	1526/24 1529/17 1535/19
1582/25 1585/4 1585/5	1543/2 1544/18 1544/20	1527/17 1528/24 1536/8	1538/11 1539/21 1540/14
1585/8 1585/9 1585/14	1546/11 1547/6 1555/12	1537/19 1546/1 1546/4	1547/12 1551/13 1551/20
1586/2 1589/18 1590/17	1555/25 1565/5 1569/19	1546/8 1546/10 1546/13	1551/21 1552/25 1553/2
1590/18 1591/2 1592/19	1573/20 1581/20 1583/3	1550/4 1550/5 1550/16	1554/5 1566/19 1567/2
1593/23 1594/20 1595/12	1585/19 1590/11 1591/4	1552/3 1553/24 1554/5	1567/11 1572/15 1573/10
1597/12 1597/12 1597/21	1591/18 1593/25 1595/2	1555/2 1556/22 1559/16	1573/10 1575/10 1580/5
1600/25 1603/8 1603/18	1597/11 1601/2 1601/12	1560/11 1561/24 1564/8	1586/16 1587/23 1588/2
1612/17 1613/25 1615/5	1613/23 1620/16 1620/19	1564/18 1565/17 1566/12	1589/20 1589/24 1590/9
1616/10 1616/13 1616/13	1623/6 1624/9 1628/14	1574/24 1579/11 1583/11	1590/22 1591/5 1591/6
1618/19 1619/20 1620/18	1633/16 1648/12	1588/1 1589/16 1592/7	1591/11 1607/3 1609/18
1624/4 1625/12 1627/20	they've [2] 1584/17 1625/12	1595/9 1595/11 1598/1	1613/17 1616/7 1616/17
1627/24 1629/23 1629/24	thing [35] 1488/5 1491/18	1598/2 1599/16 1602/12	1620/6 1623/2 1623/7
1630/12 1632/11 1641/19	1495/11 1497/21 1498/1	1603/10 1603/13 1607/22	1624/22 1625/8 1627/4
1647/1 1647/23 1648/3	1513/11 1513/13 1513/13	1608/4 1608/5 1608/23	1628/3 1628/19 1632/1
1648/5 1648/8	1543/6 1543/21 1551/16	1612/13 1612/15 1612/19	1633/18 1635/7 1641/17
there's [49] 1477/2 1480/12	1555/23 1569/15 1575/5	1614/5 1614/10 1614/11	timeline [1] 1554/13
1480/16 1482/12 1482/15	1578/6 1579/18 1581/20	1614/13 1614/17 1614/22	times [12] 1488/6 1489/4
1484/14 1486/5 1487/5	1594/22 1596/18 1603/14	1619/3 1619/4 1620/5	1539/17 1560/5 1567/13
1498/5 1498/17 1545/8	1603/15 1603/17 1604/2	1621/22 1624/20 1626/10	1613/24 1614/7 1617/21
1546/20 1547/2 1550/8	1604/3 1605/14 1607/6	1627/2 1627/12 1627/22	1618/3 1618/17 1622/3
1551/6 1555/23 1557/11	1612/6 1613/20 1613/23	1629/14 1630/14 1631/9	1636/7
1557/14 1557/21 1557/25	1614/14 1622/5 1628/6	1631/11 1631/13 1631/16	tip [3] 1510/6 1510/8 1614/25
1558/16 1558/18 1571/5	1628/16 1628/18 1635/11	1631/18 1638/18 1640/15	titled [1] 1593/19
1571/20 1578/16 1579/16	things [37] 1481/19 1490/11	1646/12	today [15] 1542/9 1545/9
1580/21 1582/12 1583/14	1490/14 1490/18 1498/11	thought [12] 1484/10 1492/11	1555/15 1564/25 1566/20
1587/25 1590/9 1591/23	1504/12 1504/13 1504/16	1522/17 1550/8 1558/4	1572/21 1572/25 1575/6
1595/1 1595/24 1598/3	1527/6 1534/24 1534/25	1560/5 1589/6 1596/9	1576/13 1631/15 1632/4
1600/11 1605/3 1605/13	1536/11 1569/19 1579/5	1605/10 1613/10 1618/18	1633/9 1633/16 1634/3
1606/8 1606/12 1608/15	1579/11 1579/16 1583/25	1631/7	1647/24
1610/13 1617/3 1617/18	1587/6 1589/15 1590/18	thought [15] 1486/1 1493/2	together [20] 1502/25
1624/4 1625/25 1626/20	1591/4 1594/3 1601/7	1564/16 1569/9 1574/19	1540/13 1540/15 1547/18
1646/19 1648/15	1603/10 1608/4 1608/5	1612/16 1613/5 1613/11	1548/3 1549/11 1565/21
therefore [7] 1509/3 1511/1	1610/16 1624/3 1624/5	1613/25 1614/1 1614/12	1565/21 1578/17 1585/5
1513/1 1514/15 1517/12	1624/12 1627/20 1627/22	1617/23 1625/5 1632/24	1590/11 1590/21 1596/16
1594/4 1599/25	1630/14 1633/2 1634/13	1645/12	1599/2 1603/4 1603/8 1609/3
therein [1] 1483/16	1634/22 1637/14	thoughts [1] 1566/3	1625/23 1626/11 1630/25
these [88] 1476/25 1479/1	think [70] 1474/13 1474/23	thousands [1] 1619/13	Toki [12] 1540/18 1576/15
1480/15 1484/15 1493/20	1475/10 1475/12 1476/20	three [19] 1474/20 1511/11	1579/25 1580/18 1585/21
1494/4 1499/16 1501/17	1479/25 1480/2 1480/7	1555/10 1556/10 1564/14	1587/16 1587/20 1588/4
1502/3 1502/23 1503/1	1482/6 1483/8 1483/25	1564/14 1569/19 1579/5	1588/11 1588/24 1592/21
1503/19 1503/22 1504/13	1484/14 1486/5 1486/25	1579/11 1579/13 1579/14	1626/8
1504/15 1508/8 1508/9	1490/9 1490/20 1492/3	1580/22 1590/18 1591/3	Toki's [1] 1540/24
1508/14 1509/19 1516/8	1492/11 1492/14 1494/13	1594/3 1616/22 1624/3	told [44] 1478/3 1490/12
1516/9 1517/6 1530/8 1538/3	1494/17 1494/22 1495/21	1624/5 1624/12	1490/12 1504/20 1509/18
1538/4 1539/16 1539/20	1496/4 1496/20 1496/22	through [30] 1488/18 1491/23	1511/5 1536/11 1536/25
1539/21 1541/15 1541/22	1498/17 1498/20 1498/24	1492/4 1500/6 1500/11	1539/14 1540/2 1541/14
1541/24 1542/15 1546/2	1507/4 1507/16 1508/23	1507/9 1526/16 1533/11	1544/8 1544/16 1544/19
1547/14 1549/11 1550/8	1533/1 1533/17 1534/25	1536/17 1539/4 1539/5	1544/22 1550/8 1554/20
1550/9 1550/17 1550/23	1539/19 1544/6 1546/20	1544/14 1549/17 1551/10	1563/24 1570/6 1570/8
1551/23 1553/18 1554/10	1547/7 1553/15 1556/11	1566/19 1568/23 1580/11	1572/9 1572/23 1577/19
1555/9 1556/24 1558/25	1559/17 1567/9 1567/20	1581/18 1592/8 1592/25	1578/11 1580/2 1580/10
1559/12 1559/22 1560/13	1567/22 1573/3 1586/3	1598/6 1599/15 1603/11	1581/4 1588/11 1598/7
1560/18 1564/14 1564/14	1587/13 1589/5 1590/2	1605/6 1606/12 1609/8	1598/12 1600/20 1604/7
1568/4 1569/8 1574/2	1594/7 1609/17 1610/5	1618/25 1632/1 1632/2	1605/14 1609/6 1610/16
1575/11 1575/13 1575/14	1611/8 1611/9 1611/10	1635/9	1612/6 1612/8 1623/3
1575/22 1576/3 1576/10	1611/13 1613/3 1613/8	throughout [2] 1496/5	1625/12 1625/21 1627/20
1576/17 1577/14 1579/16	1613/13 1613/23 1623/9	1580/25	1629/7 1631/24 1632/5
1583/6 1583/18 1589/14	1623/13 1633/21 1636/20	throw [1] 1535/3	TOLLES [1] 1473/16
1606/21 1610/16 1614/18	1636/25 1646/17 1646/19	throwing [1] 1556/4	Tomhannock [1] 1476/12
1620/2 1620/21 1620/24	1647/15 1648/24	Thursday [1] 1491/16	tomorrow [1] 1646/21
1620/25 1621/1 1622/3	thinking [4] 1478/1 1535/20	thus [2] 1509/1 1514/4	too [6] 1475/11 1549/10
	1536/8 1648/7	time [71] 1487/25 1488/3	1551/19 1556/20 1607/22

T	U		
<p>too... [1] 1628/20</p> <p>took [18] 1502/19 1544/23 1548/16 1556/22 1564/15 1574/7 1578/4 1592/25 1603/11 1605/6 1606/12 1610/6 1616/7 1617/22 1618/16 1621/11 1628/23 1645/11</p> <p>tool [19] 1509/3 1540/1 1540/14 1541/8 1541/23 1543/3 1543/9 1571/14 1572/3 1574/4 1575/7 1575/18 1576/21 1576/21 1581/9 1581/10 1585/24 1599/18 1607/10</p> <p>tools [4] 1542/16 1542/22 1543/1 1571/19</p> <p>top [2] 1574/24 1603/17</p> <p>total [4] 1565/13 1565/22 1617/9 1617/9</p> <p>totally [3] 1540/2 1576/10 1645/18</p> <p>toward [1] 1503/3</p> <p>towards [1] 1635/22</p> <p>tracking [1] 1487/1</p> <p>trade [1] 1566/22</p> <p>trade-off [1] 1566/22</p> <p>transcript [11] 1488/19 1489/12 1491/25 1492/12 1503/11 1645/24 1645/25 1646/3 1646/10 1647/11 1647/17</p> <p>transcripts [1] 1642/2</p> <p>transfer [4] 1590/9 1590/10 1626/24 1626/24</p> <p>treat [1] 1615/20</p> <p>trial [44] 1471/12 1474/8 1475/21 1477/25 1480/5 1483/2 1485/5 1488/18 1488/20 1491/1 1491/24 1492/9 1492/23 1494/17 1495/15 1495/19 1502/12 1502/20 1502/23 1504/7 1506/23 1507/20 1508/7 1508/20 1509/2 1509/10 1512/7 1520/20 1532/14 1535/8 1539/18 1552/6 1555/15 1579/23 1580/25 1586/4 1610/23 1612/6 1638/22 1645/11 1647/5 1648/4 1648/10 1648/11</p> <p>trials [1] 1611/1</p> <p>tried [12] 1519/6 1587/4 1587/7 1587/16 1589/6 1589/7 1591/10 1617/15 1619/14 1626/14 1626/22 1630/11</p> <p>tries [1] 1594/6</p> <p>trod [1] 1568/6</p> <p>true [14] 1510/2 1510/19 1516/18 1519/23 1536/16 1551/5 1566/7 1574/19 1587/1 1590/14 1598/2 1600/10 1601/20 1601/22</p> <p>truly [1] 1622/5</p> <p>truth [3] 1538/12 1594/8 1636/9</p> <p>try [12] 1499/11 1524/6 1524/11 1551/13 1553/9</p>	<p>1560/4 1560/6 1560/15 1591/4 1591/9 1630/10 1637/10</p> <p>trying [16] 1476/24 1478/19 1480/19 1529/18 1539/22 1545/18 1546/19 1550/18 1551/3 1554/7 1562/4 1563/14 1570/2 1570/17 1613/24 1620/17</p> <p>Tuesday [2] 1471/11 1491/5</p> <p>turn [3] 1513/1 1557/20 1633/2</p> <p>turned [2] 1615/13 1616/2</p> <p>twist [1] 1594/6</p> <p>Twitter [1] 1638/7</p> <p>two [34] 1474/20 1478/16 1484/3 1502/8 1509/15 1509/19 1513/25 1537/18 1538/24 1538/25 1544/18 1545/7 1550/16 1551/23 1566/12 1569/3 1574/2 1575/6 1576/3 1576/8 1576/10 1578/2 1579/13 1580/9 1585/18 1590/12 1598/3 1601/4 1601/15 1602/9 1630/14 1631/14 1635/14 1646/19</p> <p>two decades [1] 1545/7</p> <p>two years [1] 1569/3</p> <p>types [5] 1513/25 1515/17 1520/23 1568/5 1568/8</p> <p>typically [3] 1489/7 1489/19 1489/22</p>	<p>1497/1 1498/14 1512/18 1515/20 1515/23 1560/15 1569/14 1575/2 1583/22 1596/21 1615/22 1628/14 1642/8 1645/18 1647/6</p> <p>understandably [2] 1597/9 1597/10</p> <p>understanding [3] 1493/7 1559/6 1633/10</p> <p>understate [1] 1631/17</p> <p>understood [5] 1475/15 1493/11 1516/22 1552/24 1646/7</p> <p>undertaken [1] 1633/14</p> <p>undertook [1] 1537/11</p> <p>undervalue [1] 1631/14</p> <p>undisputed [7] 1484/14 1553/2 1554/17 1581/7 1620/14 1626/4 1626/9</p> <p>undue [1] 1508/23</p> <p>unfortunately [1] 1611/7</p> <p>UNIKEL [1] 1473/12</p> <p>unimportant [1] 1508/25</p> <p>unique [1] 1543/22</p> <p>unit [3] 1557/2 1565/11 1565/19</p> <p>UNITED [4] 1471/2 1471/20 1517/21 1517/22</p> <p>units [4] 1558/13 1565/11 1614/21 1615/7</p> <p>unless [3] 1480/1 1491/23 1503/18</p> <p>unlike [1] 1601/22</p> <p>unpatented [4] 1526/9 1529/10 1531/3 1531/11</p> <p>unpredictable [1] 1524/12</p> <p>unquestionably [2] 1605/8 1605/11</p> <p>unreasonable [1] 1506/10</p> <p>unrebutted [3] 1552/13 1552/13 1554/17</p> <p>unredacted [1] 1492/8</p> <p>unsure [1] 1639/12</p> <p>untethered [1] 1612/4</p> <p>until [7] 1500/25 1533/11 1542/7 1611/25 1615/13 1635/15 1638/9</p> <p>up [67] 1478/10 1486/1 1488/18 1489/18 1491/6 1491/10 1493/10 1496/18 1497/6 1499/15 1500/6 1516/6 1519/6 1531/23 1535/3 1542/22 1543/1 1543/4 1543/8 1543/8 1543/9 1551/13 1554/22 1555/4 1555/17 1556/2 1556/5 1559/24 1565/19 1567/24 1568/12 1569/22 1575/16 1577/24 1579/6 1582/23 1583/21 1583/23 1584/21 1585/22 1589/2 1590/19 1590/22 1598/10 1600/3 1601/3 1601/7 1601/8 1601/8 1601/9 1601/13 1603/22 1604/25 1608/3 1609/9 1609/12 1610/20 1617/2 1624/16 1625/7 1626/12 1627/4 1631/1 1633/19 1634/18 1634/22 1646/12</p> <p>update [4] 1577/9 1577/11</p>	<p>1577/13 1648/5 updating [1] 1603/25</p> <p>upon [14] 1479/19 1529/17 1530/19 1532/9 1642/24 1644/8 1644/10 1644/13 1644/16 1644/19 1644/22 1644/25 1645/3 1645/6</p> <p>ups [1] 1632/6</p> <p>urge [3] 1544/3 1629/19 1633/25</p> <p>us [20] 1498/8 1533/2 1537/17 1539/5 1543/13 1561/17 1574/14 1578/7 1578/11 1579/4 1583/23 1601/2 1602/5 1602/8 1617/4 1617/5 1617/7 1617/14 1617/14 1632/7</p> <p>usable [1] 1575/20</p> <p>usage [1] 1639/12</p> <p>use [42] 1478/17 1488/14 1490/1 1501/21 1505/17 1508/22 1516/7 1522/9 1522/16 1523/10 1526/5 1528/3 1529/2 1529/3 1529/6 1543/4 1544/1 1544/3 1554/8 1561/8 1561/9 1567/4 1576/25 1580/12 1587/8 1588/14 1588/23 1592/24 1599/18 1604/14 1604/23 1605/15 1605/18 1606/2 1610/9 1611/25 1612/10 1622/22 1624/11 1631/7 1638/1 1638/18</p> <p>used [57] 1478/5 1478/13 1480/8 1481/3 1481/14 1489/3 1495/13 1496/2 1496/15 1503/17 1509/16 1513/24 1515/9 1515/23 1516/14 1516/16 1521/11 1528/21 1528/25 1530/25 1532/16 1535/22 1541/9 1556/23 1556/25 1559/9 1561/13 1561/21 1563/21 1564/13 1572/14 1572/15 1573/17 1578/10 1583/12 1587/14 1588/5 1588/17 1592/23 1594/10 1594/13 1598/9 1598/11 1599/21 1610/8 1612/9 1614/20 1615/6 1615/8 1617/11 1617/16 1619/20 1619/22 1620/4 1624/9 1631/3 1639/14</p> <p>useful [2] 1566/13 1566/24</p> <p>user [19] 1515/25 1515/25 1516/2 1516/7 1531/17 1531/25 1569/23 1571/11 1574/18 1574/23 1579/7 1584/21 1589/8 1589/10 1589/12 1590/20 1592/1 1592/8 1593/3</p> <p>users [9] 1474/24 1476/5 1484/13 1532/3 1586/15 1593/12 1611/24 1615/10 1615/13</p> <p>uses [2] 1516/13 1517/20</p> <p>using [15] 1523/23 1528/2 1557/6 1559/13 1559/15 1563/24 1566/20 1572/3 1581/9 1588/16 1595/1</p>

U	V	W	weighing [3]
<p>using... [4] 1601/2 1606/6 1606/24 1610/16 utility [3] 1528/19 1530/23 1563/23</p> <p>valid [17] 1519/17 1520/3 1527/2 1536/6 1549/5 1551/21 1553/15 1554/21 1555/21 1564/17 1564/24 1565/7 1596/19 1613/6 1613/11 1614/12 1631/16 validated [1] 1552/5 validity [11] 1510/14 1516/11 1517/1 1517/5 1519/18 1549/15 1564/21 1601/17 1613/18 1628/2 1628/20 valuable [3] 1566/9 1566/19 1566/24 value [17] 1526/7 1526/10 1526/10 1526/12 1527/15 1528/11 1529/3 1531/2 1531/6 1531/8 1531/9 1531/13 1560/15 1566/14 1611/16 1614/18 1631/16 variety [1] 1600/19 various [6] 1476/23 1497/7 1508/13 1535/20 1583/18 1638/15 vast [2] 1537/15 1609/17 vastly [1] 1620/12 verdict [54] 1485/23 1500/1 1500/12 1500/22 1502/5 1511/4 1533/16 1533/19 1533/22 1533/23 1551/22 1554/14 1565/23 1574/11 1595/14 1608/14 1634/20 1635/17 1635/19 1635/20 1635/20 1636/7 1636/11 1636/14 1636/17 1636/17 1636/24 1636/25 1637/1 1638/9 1638/25 1639/4 1639/6 1640/18 1641/3 1641/6 1641/8 1641/10 1641/24 1642/9 1642/24 1643/2 1643/3 1643/6 1643/8 1644/7 1644/9 1644/12 1644/15 1644/18 1644/21 1644/24 1645/2 1645/6 verdicts [2] 1502/1 1634/24 version [8] 1476/18 1490/17 1491/8 1492/22 1577/13 1587/17 1587/21 1603/22 versions [1] 1561/7 versus [1] 1576/5 very [37] 1474/18 1479/6 1479/8 1492/12 1495/4 1498/6 1498/9 1499/11 1499/13 1536/11 1537/22 1538/4 1538/19 1539/22 1545/24 1556/11 1556/18 1557/15 1566/2 1569/19 1570/18 1570/22 1576/2 1578/7 1586/12 1598/7 1599/13 1606/24 1609/10 1613/15 1615/18 1618/7 1623/16 1624/22 1631/10 1646/22 1647/22 vetted [1] 1629/22</p>	<p>viable [1] 1564/3 vice [1] 1647/9 video [10] 1503/12 1506/24 1507/21 1596/22 1597/1 1602/10 1602/11 1627/23 1628/7 1632/12 videos [5] 1508/1 1568/10 1589/8 1602/4 1631/20 view [10] 1517/3 1552/1 1588/14 1589/23 1608/21 1635/22 1640/8 1643/23 1647/11 1647/13 views [3] 1474/15 1636/3 1637/9 VII [1] 1471/13 VINCENT [1] 1473/16 violence [1] 1635/23 virtually [1] 1576/14 Visual [2] 1572/4 1606/25 voice [1] 1484/24 Volcano [1] 1594/21 volume [2] 1471/13 1549/19 voluntarily [1] 1529/18 vote [3] 1635/14 1637/16 1637/16 votes [1] 1635/12</p>	<p>watermark [1] 1621/19 way [63] 1487/14 1489/7 1490/21 1493/8 1493/11 1497/19 1498/17 1499/11 1502/13 1503/4 1503/9 1504/17 1506/4 1514/11 1523/20 1526/14 1526/15 1530/20 1535/23 1537/11 1537/13 1539/16 1541/23 1543/7 1547/16 1547/18 1547/24 1551/18 1552/18 1553/19 1554/8 1555/10 1555/14 1557/18 1557/22 1561/25 1563/10 1574/4 1577/4 1585/22 1586/6 1586/6 1586/22 1588/3 1589/5 1593/5 1594/8 1594/19 1613/3 1612/25 1613/23 1615/25 1617/1 1618/17 1620/23 1621/12 1624/13 1624/14 1624/14 1627/18 1630/10 1636/24 1638/22 ways [6] 1563/17 1578/9 1578/10 1604/12 1605/5 1634/2 we [232] we'd [1] 1646/17 we'll [19] 1487/24 1487/25 1499/14 1500/21 1533/3 1533/8 1533/11 1533/23 1534/14 1548/22 1579/12 1598/6 1646/20 1646/24 1648/7 1648/8 1648/16 1648/24 1649/1 we're [37] 1474/8 1474/9 1478/20 1479/12 1481/15 1481/18 1481/25 1482/2 1483/2 1483/23 1486/8 1498/12 1500/5 1500/6 1500/9 1500/11 1534/23 1541/19 1550/18 1557/19 1558/24 1559/11 1564/8 1567/9 1577/1 1599/4 1606/13 1611/5 1619/13 1623/5 1626/7 1626/11 1629/5 1629/7 1630/4 1634/18 1642/1 we've [10] 1476/18 1483/3 1485/13 1488/21 1533/21 1553/23 1589/11 1592/3 1621/13 1648/22 wealth [1] 1549/13 wearing [1] 1505/5 web [3] 1559/9 1559/15 1620/2 website [9] 1546/16 1569/2 1600/12 1600/14 1600/24 1601/6 1606/7 1628/11 1638/6 WeChat [1] 1638/7 week [26] 1536/12 1544/16 1544/19 1544/22 1567/11 1567/19 1569/14 1569/25 1583/19 1595/18 1609/18 1610/5 1611/18 1612/7 1624/23 1628/22 1628/23 1629/4 1629/4 1629/6 1629/14 1629/20 1631/24 1648/6 1648/13 1648/19</p>	<p>weight [8] 1475/19 1505/9 1505/11 1505/15 1505/20 1506/17 1507/16 1636/5 Weinstein [26] 1555/16 1556/1 1556/13 1556/16 1557/8 1558/7 1558/17 1563/2 1564/13 1565/8 1565/18 1565/21 1614/20 1615/2 1615/3 1615/4 1616/5 1616/6 1616/24 1617/11 1617/19 1617/21 1618/15 1619/18 1619/24 1620/11 Weinstein's [3] 1557/3 1564/6 1622/6 welcome [3] 1488/14 1501/9 1642/21 well [50] 1476/12 1478/1 1479/6 1480/2 1480/23 1481/2 1483/8 1488/1 1489/12 1493/8 1493/12 1494/7 1497/8 1497/19 1498/10 1507/13 1536/6 1540/20 1541/18 1544/10 1544/13 1544/24 1547/13 1550/17 1557/20 1564/11 1568/6 1571/19 1574/2 1575/12 1575/12 1579/3 1579/13 1584/10 1586/3 1591/11 1598/23 1599/21 1605/16 1609/16 1612/11 1616/25 1627/8 1627/17 1628/7 1628/10 1628/11 1633/9 1634/15 1647/14 well-known [1] 1571/19 went [19] 1535/23 1536/17 1573/12 1574/4 1574/4 1581/18 1611/3 1611/3 1611/16 1616/12 1618/25 1624/7 1624/8 1624/13 1624/14 1624/14 1624/15 1624/15 1628/13 were [91] 1489/25 1490/12 1490/14 1492/9 1493/21 1495/25 1496/11 1496/13 1499/5 1499/6 1503/10 1508/8 1508/12 1510/3 1521/10 1527/2 1530/17 1531/21 1533/18 1537/4 1539/20 1541/11 1544/19 1550/5 1550/5 1550/14 1556/4 1557/6 1558/14 1563/24 1564/15 1564/17 1564/25 1567/18 1568/6 1568/9 1568/24 1569/8 1570/23 1570/23 1572/17 1574/2 1574/2 1575/11 1575/11 1576/3 1576/11 1578/2 1578/15 1582/1 1584/5 1586/5 1586/20 1587/14 1588/16 1590/20 1597/23 1598/8 1598/10 1598/11 1598/11 1600/25 1604/18 1604/19 1606/5 1606/6 1606/20 1608/6 1610/18 1611/5 1611/24 1612/16 1612/17 1613/16 1614/9 1614/12 1618/24 1620/20 1621/5 1621/24</p>

W	Whereupon [3]	1600/18 1601/23 1601/24	1613/3 1635/23
<p>were... [11] 1621/24 1623/2 1627/20 1627/21 1627/24 1627/24 1632/17 1633/14 1633/18 1646/10 1647/6 weren't [5] 1492/22 1542/25 1589/7 1633/10 1647/5 wet [1] 1505/6 what [217] what's [11] 1534/2 1574/25 1578/25 1579/1 1587/8 1589/13 1592/11 1592/15 1596/21 1598/18 1602/15 whatever [6] 1505/15 1505/19 1507/15 1548/13 1617/8 1635/14 WhatsApp [1] 1638/7 when [105] 1475/4 1475/6 1478/17 1488/3 1488/25 1489/20 1508/17 1509/11 1513/11 1516/14 1516/16 1516/25 1517/8 1520/5 1524/6 1526/8 1531/10 1533/3 1534/22 1534/23 1535/1 1535/1 1535/2 1536/12 1537/22 1539/4 1539/10 1539/10 1540/11 1544/6 1544/15 1545/6 1547/11 1547/24 1547/25 1548/16 1549/16 1551/7 1552/20 1553/7 1553/13 1553/17 1554/10 1555/8 1555/8 1556/2 1556/21 1557/1 1557/11 1557/24 1559/14 1561/11 1561/12 1562/2 1562/7 1562/18 1564/2 1565/7 1568/23 1570/17 1574/3 1575/23 1577/18 1581/18 1582/5 1586/7 1586/8 1586/11 1586/15 1586/24 1587/14 1588/22 1589/24 1590/3 1590/8 1590/22 1593/25 1594/22 1594/23 1599/19 1600/14 1600/23 1608/14 1611/24 1611/25 1613/14 1614/25 1615/9 1615/20 1616/1 1619/5 1619/11 1621/23 1625/23 1627/8 1628/17 1628/19 1629/9 1633/13 1633/14 1633/17 1636/13 1639/5 1641/25 1646/16 where [47] 1477/14 1478/19 1478/21 1482/22 1482/22 1490/11 1490/25 1498/14 1513/15 1517/10 1535/4 1537/17 1540/8 1540/16 1541/9 1543/13 1543/14 1545/11 1546/22 1547/21 1551/15 1554/1 1555/17 1559/12 1564/21 1564/23 1571/2 1575/9 1575/25 1581/13 1582/17 1583/22 1583/24 1589/16 1592/16 1594/15 1594/17 1603/12 1607/13 1625/4 1625/5 1627/3 1628/22 1634/20 1646/2 1647/16 1648/14 whereas [1] 1483/22</p>	<p>whether [82] 1474/22 1484/12 1486/22 1489/2 1493/4 1493/24 1493/25 1497/12 1506/11 1506/12 1506/18 1506/20 1511/15 1511/18 1512/4 1513/21 1513/22 1517/8 1518/4 1518/6 1518/11 1518/18 1518/22 1518/24 1519/1 1519/3 1519/6 1519/13 1520/2 1520/5 1521/7 1523/3 1523/16 1523/17 1523/22 1523/24 1524/1 1524/3 1524/5 1524/13 1524/16 1524/18 1524/20 1524/22 1524/24 1528/6 1530/15 1530/18 1531/23 1532/3 1532/5 1535/12 1535/13 1535/15 1548/9 1548/10 1549/10 1550/4 1550/21 1552/9 1553/13 1554/10 1556/5 1556/6 1556/7 1556/8 1560/9 1566/4 1566/6 1584/9 1586/25 1587/2 1597/18 1609/5 1609/9 1630/4 1630/7 1630/8 1633/22 1634/1 1634/1 1643/7 which [76] 1476/25 1477/1 1484/15 1485/16 1493/9 1493/13 1496/17 1496/25 1502/6 1502/17 1503/14 1504/24 1505/7 1508/24 1508/25 1514/13 1514/17 1514/19 1515/6 1516/20 1521/1 1521/6 1523/9 1525/5 1529/1 1529/19 1529/24 1530/9 1532/20 1535/17 1541/2 1541/23 1541/24 1547/8 1559/9 1561/3 1563/24 1564/4 1568/18 1570/14 1571/16 1576/8 1577/15 1577/15 1577/23 1580/12 1581/7 1581/19 1581/21 1583/1 1592/15 1593/18 1596/16 1599/20 1599/20 1600/14 1604/2 1610/8 1610/10 1611/7 1614/2 1616/8 1618/8 1618/16 1619/22 1619/25 1621/13 1621/19 1621/21 1622/21 1623/4 1624/6 1626/18 1627/17 1629/8 1633/2 while [13] 1488/4 1499/5 1499/15 1500/5 1500/22 1501/2 1503/10 1525/10 1534/3 1591/6 1616/18 1623/15 1647/23 white [1] 1587/17 who [37] 1482/25 1484/23 1484/24 1485/6 1507/5 1528/25 1529/20 1529/25 1548/2 1550/8 1550/25 1557/12 1557/12 1557/12 1560/19 1560/19 1563/2 1566/14 1579/25 1579/25 1586/5 1590/7 1593/20 1597/5 1597/15 1600/17</p>	<p>1600/18 1601/23 1601/24 1605/21 1604/5 1604/5 1604/6 1606/5 1606/9 1635/9 1636/20 who's [3] 1580/24 1594/21 1618/1 whoever [2] 1571/14 1645/25 whole [10] 1475/22 1477/2 1477/22 1478/21 1479/21 1480/14 1481/12 1483/24 1502/25 1532/11 whom [1] 1527/24 why [39] 1487/1 1489/17 1491/9 1494/10 1494/20 1536/20 1545/24 1546/19 1557/14 1558/3 1558/8 1562/16 1562/18 1564/4 1576/17 1580/4 1580/16 1582/16 1585/22 1585/22 1586/7 1586/21 1586/22 1587/6 1589/11 1591/6 1593/10 1598/3 1599/7 1605/13 1607/4 1612/3 1618/20 1620/6 1622/12 1629/19 1630/20 1634/9 1648/14 will [73] 1483/18 1483/25 1486/13 1486/22 1492/19 1492/24 1494/14 1497/9 1498/16 1499/8 1500/13 1500/16 1500/21 1501/19 1501/20 1501/22 1501/23 1501/24 1502/3 1502/5 1502/6 1503/22 1504/22 1508/9 1509/20 1511/2 1511/3 1511/23 1512/4 1512/10 1512/14 1512/15 1512/18 1513/20 1517/7 1519/11 1519/12 1520/13 1523/10 1532/23 1537/25 1540/22 1551/22 1551/24 1552/9 1554/13 1565/23 1573/2 1573/24 1577/3 1577/4 1592/13 1608/15 1611/10 1611/11 1612/8 1613/2 1625/2 1635/4 1635/5 1636/12 1636/12 1636/14 1636/15 1636/16 1637/19 1637/20 1641/11 1642/4 1643/4 1646/11 1646/12 1646/14 willful [10] 1486/24 1512/6 1518/12 1518/13 1519/9 1535/16 1552/10 1554/12 1554/17 1640/25 willfully [2] 1518/9 1518/18 willfulness [1] 1519/11 willing [6] 1496/13 1527/2 1529/23 1529/25 1530/11 1530/12 willingly [1] 1564/24 Wilmington [1] 1471/18 win [5] 1525/5 1544/11 1614/1 1627/19 1636/20 window [1] 1588/9 within [3] 1513/13 1517/21 1572/17 without [10] 1498/8 1542/6 1543/8 1543/11 1548/8 1560/23 1573/7 1599/23</p>	<p>1613/3 1635/23 withstood [1] 1551/20 witness [16] 1504/14 1504/25 1506/7 1506/12 1506/14 1506/18 1506/19 1506/21 1507/3 1507/15 1507/19 1508/17 1543/16 1548/14 1576/14 1582/14 witness' [4] 1506/6 1506/9 1506/13 1507/1 witnesses [10] 1503/10 1503/18 1508/5 1508/13 1540/4 1541/16 1542/1 1577/1 1586/12 1616/16 word [35] 1486/11 1486/17 1486/18 1505/23 1515/6 1516/13 1516/13 1521/18 1543/24 1549/7 1549/8 1549/9 1568/12 1568/15 1571/19 1572/3 1572/4 1572/8 1572/18 1573/9 1587/13 1601/10 1606/17 1606/22 1607/2 1607/6 1607/10 1607/17 1607/19 1607/20 1607/23 1607/25 1608/9 1629/21 1631/23 wording [2] 1485/17 1495/24 words [35] 1475/5 1477/20 1477/21 1478/17 1479/4 1479/8 1479/11 1479/15 1479/19 1479/20 1480/25 1481/10 1481/11 1495/13 1496/2 1496/10 1496/15 1496/24 1512/21 1513/4 1513/15 1513/24 1516/8 1516/20 1516/25 1522/9 1525/8 1532/9 1532/10 1625/10 1625/13 1626/19 1627/3 1632/9 1638/10 work [26] 1499/15 1537/7 1537/10 1539/5 1544/8 1547/18 1562/2 1567/14 1573/8 1577/4 1578/17 1580/14 1582/16 1582/19 1585/5 1587/3 1587/6 1588/13 1596/15 1604/9 1610/17 1610/25 1620/1 1637/11 1647/15 1647/18 workable [1] 1543/7 worked [3] 1572/22 1601/25 1609/5 working [5] 1520/22 1561/6 1573/8 1591/7 1603/16 works [7] 1541/12 1589/3 1603/4 1603/8 1609/3 1615/23 1617/2 world [4] 1478/20 1555/17 1566/21 1594/17 worth [3] 1536/7 1621/25 1634/6 would [123] 1475/15 1476/8 1478/9 1478/11 1484/20 1485/16 1486/1 1486/10 1486/17 1489/5 1489/24 1491/3 1491/5 1492/2 1492/12 1493/3 1493/3 1493/4 1493/14 1493/18 1494/11 1494/23 1495/20 1495/24 1496/13 1496/17 1496/22 1498/2 1498/25</p>

W
would... [94] 1499/1 1505/1
1505/6 1508/5 1510/6
1512/13 1522/25 1523/5
1523/18 1524/5 1525/25
1526/18 1526/23 1527/4
1527/6 1527/10 1529/16
1529/22 1529/24 1530/3
1530/9 1530/11 1530/12
1530/18 1530/19 1538/10
1538/16 1542/17 1542/24
1544/7 1548/19 1548/20
1549/23 1550/10 1550/11
1551/8 1553/2 1553/4 1556/5
1557/17 1558/6 1562/4
1562/16 1562/18 1563/4
1564/16 1576/19 1580/8
1580/15 1583/9 1584/6
1588/15 1588/25 1589/2
1590/3 1590/4 1590/24
1603/23 1604/9 1605/22
1606/10 1606/15 1607/3
1607/8 1607/18 1607/22
1608/9 1609/7 1611/15
1611/19 1614/1 1614/2
1615/9 1620/6 1621/20
1622/19 1622/23 1622/24
1623/1 1623/3 1623/23
1625/5 1627/2 1631/1 1631/2
1632/23 1632/25 1632/25
1633/1 1645/12 1645/14
1645/16 1647/18 1648/10
wouldn't [9] 1489/6 1493/12
1550/16 1562/19 1584/5
1588/18 1590/23 1590/25
1619/15
wrap [1] 1633/19
write [10] 1568/14 1568/17
1577/6 1602/14 1602/16
1605/17 1605/24 1635/3
1635/12 1635/13
writing [2] 1494/6 1501/2
written [5] 1477/12 1502/3
1508/24 1509/1 1597/22
wrong [7] 1536/4 1556/17
1596/13 1604/8 1615/6
1628/4 1637/13
wrote [1] 1607/13

X
XL [2] 1525/19 1525/20

Y
yeah [16] 1479/3 1479/17
1482/4 1482/11 1482/21
1483/12 1483/15 1484/17
1490/2 1490/4 1491/9
1491/13 1498/4 1498/20
1498/24 1616/14
year [1] 1568/18
years [18] 1535/5 1545/22
1547/23 1548/3 1549/21
1551/10 1552/22 1566/18
1569/3 1596/18 1601/4
1601/15 1605/2 1628/1
1628/17 1628/19 1632/2
1633/8
Yep [4] 1474/25 1485/12
1487/4 1646/15
yes [54] 1475/17 1486/19

1487/13 1487/17 1487/18
1488/4 1488/13 1491/14
1495/6 1495/7 1499/24
1500/17 1501/4 1501/5
1501/6 1501/13 1533/17
1534/4 1534/7 1534/10
1538/14 1538/16 1549/18
1554/19 1591/5 1608/24
1619/21 1634/17 1639/2
1639/22 1640/3 1640/10
1640/14 1641/1 1642/12
1642/15 1642/25 1643/10
1643/19 1643/20 1643/24
1643/25 1644/2 1644/6
1644/11 1644/14 1644/17
1644/20 1644/23 1645/1
1645/4 1645/7 1645/20
1646/18
yesterday [8] 1487/16 1488/6
1497/23 1555/8 1572/19
1576/7 1603/11 1607/7
yet [3] 1529/23 1560/25
1614/20
York [4] 1476/12 1476/16
1477/16 1485/2
you [783]
you'd [4] 1542/18 1542/19
1542/19 1543/9
you'll [19] 1488/8 1547/4
1549/6 1558/12 1561/16
1571/9 1598/14 1607/8
1607/25 1613/3 1613/7
1613/8 1613/13 1613/15
1613/19 1615/18 1618/25
1619/5 1628/23
you're [23] 1475/4 1475/9
1478/19 1478/22 1482/15
1501/2 1535/1 1535/11
1535/19 1562/22 1567/22
1571/17 1574/3 1586/3
1594/23 1595/13 1598/5
1605/11 1605/25 1606/2
1606/3 1609/4 1648/7
you've [38] 1480/15 1483/3
1534/19 1535/8 1535/22
1536/3 1536/5 1544/3
1567/12 1569/14 1571/17
1573/10 1573/11 1573/11
1575/1 1575/1 1577/11
1583/17 1583/18 1583/20
1585/12 1592/4 1595/17
1595/25 1608/24 1609/4
1610/5 1611/8 1611/14
1611/22 1612/6 1612/11
1615/4 1619/20 1623/12
1623/15 1624/17 1635/6
young [2] 1534/23 1535/1
your [198]
Your Honor [2] 1647/2 1648/1
yours [1] 1517/6
yourself [8] 1506/18 1568/10
1585/10 1610/24 1611/15
1621/4 1635/25 1637/23
yourselves [3] 1569/11
1609/13 1638/23
YouTube [1] 1638/6

Z
zero [1] 1480/12

EXHIBIT G

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