

# Petitioner's Demonstratives

Apple Inc. v. MemoryWeb, LLC  
IPR2022-00031 (US 10,621,228)

*Contains Protective Order Materials*

## 37 C.F.R. § 42.5(c)(3)

**(3) *Late action.*** A late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice.

Paper 46 at 19-20.

“Patent Owner did not raise the RPI issue in its post-institution Response. We agree with Petitioner that Patent Owner ***has thus forfeited any RPI arguments.***”

*Unified Patents v. JustService.net LLC*, IPR2020-01258, 2022 WL 494800, at \*1  
(PTAB Feb. 16, 2022)

*Also Unified Patents Inc. v. Mobility Workx, LLC*, IPR2018-01150, 2019 WL 6481774, at \*1 (PTAB Dec. 2, 2019); *Funai Elec. Co. v. Gold Charm Ltd.*, No. IPR2015-01468, 2016 WL 7995297, at \*22 (PTAB Dec. 27, 2016); *Unified Patents Inc. v. Nonend Inventions N.V.*, IPR2016-00174, Paper 26 at 6-7 (PTAB May 8, 2017)

Paper 46 at 15-16.

# MemoryWeb's RPI & Estoppel Arguments in *Samsung* (September 6, 2022)

“Should the Board determine in a final written decision that Samsung is an unnamed RPI in the Unified IPR, **Samsung should be estopped from maintaining the present IPR challenge under Section 315(e)(1)[.]**”

*Samsung*, IPR2022-00222, Paper 19 (PO Response) at 64.

Paper 46 at 6.

“The record overwhelmingly indicates that the **estoppel should apply if the Board rules that Samsung was an unnamed RPI**. For example, like Petitioner here, Unified relied on Okamura as its primary reference. While Unified did not rely on Belitz, Belitz is certainly “published” prior art that Unified could have identified “through prior art searching,” just as Samsung had.”

*Samsung*, IPR2022-00222, Paper 19 (PO Response) at 65.

Paper 46 at 6.

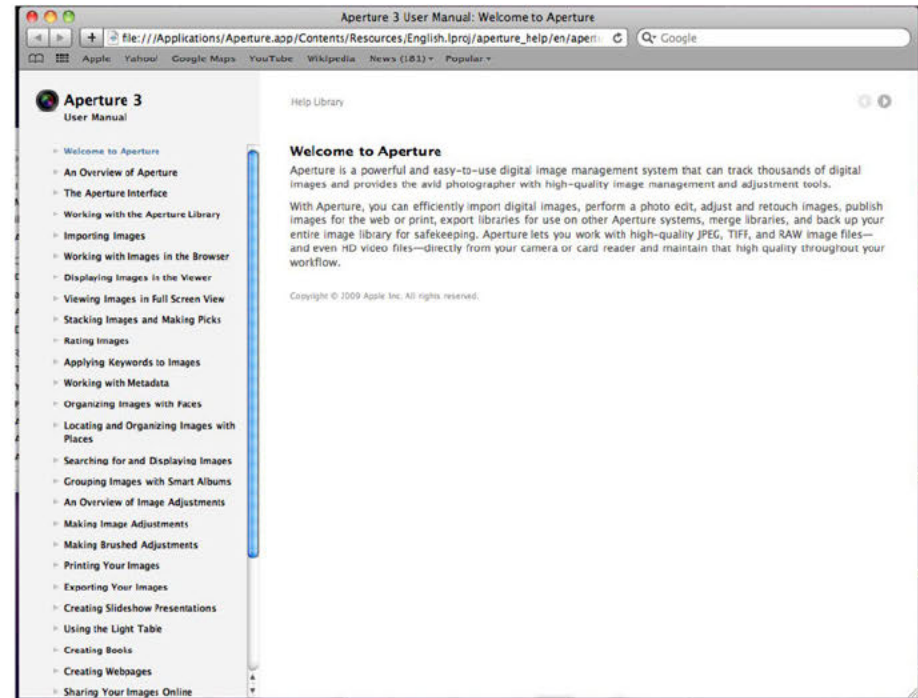
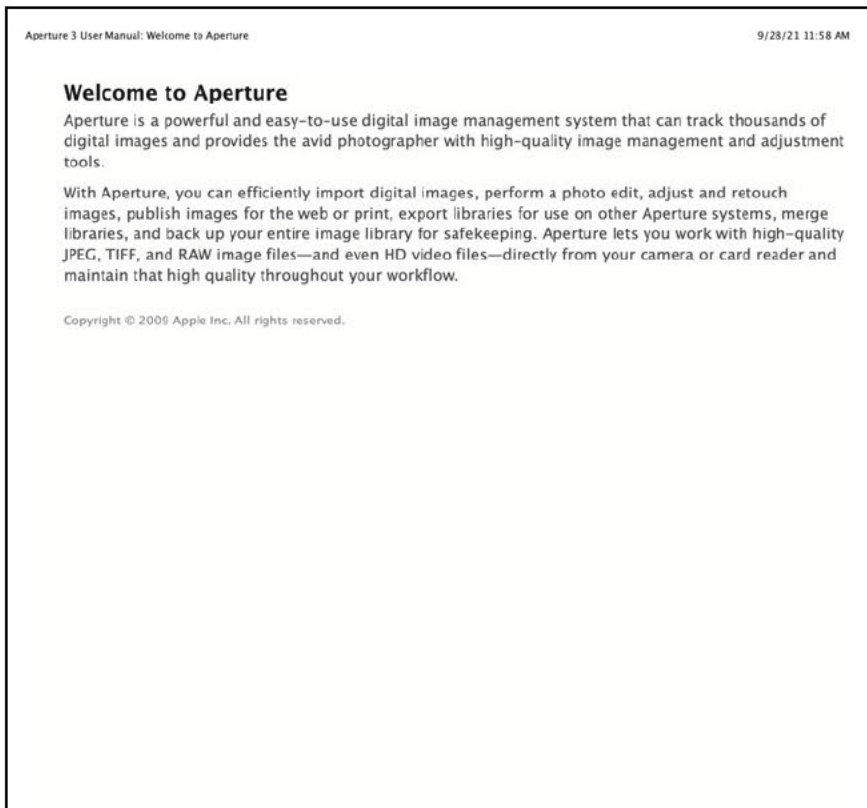
## ***In re Micron Tech., Inc.***

“We also note a scenario that presents at least ***an obvious starting point for a claim of forfeiture***, whether based on timeliness or consent or distinct grounds: ***a defendant's tactical wait-and-see bypassing of an opportunity*** to declare a desire for a different forum, ***where the course of proceedings might well have been altered by such a declaration.***

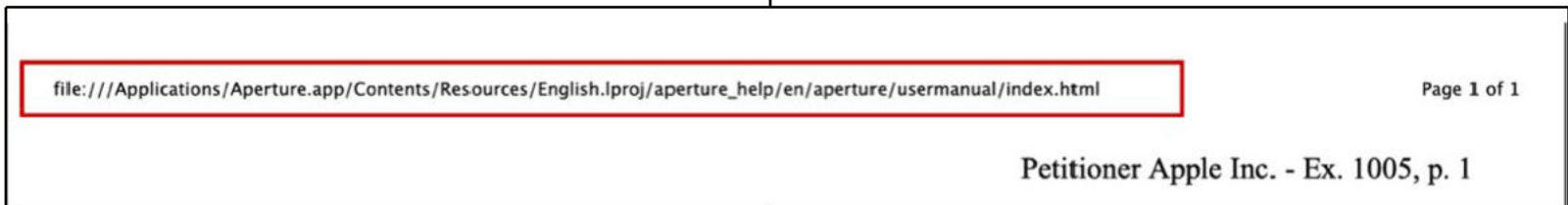
*In re Micron Tech., Inc.*, 875 F.3d 1091, 1102 (Fed. Cir. 2017)  
(emphasis added).

Paper 46 at 20.

# EX1005 – A3UM; EX1003 – Dr. Terveen



EX1003, ¶¶75-76, 94; Petition, 15-16; Reply, 1-2, 8, 13-14; Pet. Opp. Mot. to Exclude, 2



EX1005, 1; Petition, 25; Reply, 14-15; Pet. Opp. Mot. to Exclude, 8-10

# EX2010 – Feb. 17, 2010 Apple.com Archive

The screenshot shows a web browser window displaying the Apple.com Aperture user manual archive. The address bar shows the URL: <http://web.archive.org/web/20100217035025/http://documentation.apple.com/en/aperture/usermanual/>. The browser's address bar also shows the current page URL: <http://documentation.apple.com/en/aperture/usermanual/>. The browser's status bar indicates the date is February 17, 2010, and the time is 12:10:20. The page title is "User Manual". The main content area is a list of links for the Aperture user manual, including: Welcome to Aperture, An Overview of Aperture, The Aperture Interface, Working with the Aperture Library, Importing Images, Working with Images in the Browser, Displaying Images in the Viewer, Viewing Images in Full Screen View, Sticking Images and Making Picks, Rating Images, Applying Keywords to Images, Working with Metadata, Organizing Images with Faces, Locating and Organizing Images with Places, Searching for and Displaying Images, Grouping Images with Smart Albums, An Overview of Image Adjustments, Making Image Adjustments, Making Brushed Adjustments, Printing Your Images, Exporting Your Images, Creating Slideshow Presentations, Using the Light Table, Creating Books, Creating Webpages, Sharing Your Images Online, Backing Up Your Images, Customizing the Aperture Workspace, Appendix A: Calibrating Your Aperture System, Appendix B: Setting Up an Aperture System, and Glossary. The footer of the page contains the text: "Copyright © 2011 Apple Inc. All rights reserved." and "MemoryWeb Ex. 2010 Apple v. MemoryWeb – IPR2022-00031 1 of 2".

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MemoryWeb Ex. 2010  
Apple v. MemoryWeb – IPR2022-00031  
1 of 2

EX2010, 1; Pet. Opp. Mot. to Exclude, 5.

# MemoryWeb's Original Position on EX1005

“Petitioner has failed to establish that such a POSITA would. Instead, the evidence shows that: (1) a **POSITA** exercising reasonable diligence would not have known to search for Aperture 3 or A3UM, and (2) a **POSITA** exercising reasonable diligence would not have found the website version of A3UM on Apple.com.”

PO Response at 17-18.

“Even if Petitioner sufficiently demonstrated the user manual page met the threshold for public accessibility discussed above, Petitioner has not established that the PDF version of A3UM submitted to the Board (Ex. 1005) accurately represents what a visitor to the Aperture 3 user manual page would have seen before June 2010.”

PO Response at 23.

Opp. at 6.

# Institution Decision re: A3UM

Here, Petitioner submits evidence that A3UM, Apple’s Aperture 3 User Manual (Ex. 1005) was publicly available and publicly disseminated as early as February 2010. 4 Petitioner provides the declaration of Mr. Matthew Birdsell (Ex. 1020), a Content Manager at Apple, who testifies that he worked for Apple since 2002 and has been a full-time Apple employee since June 2010. Ex. 1020 ¶¶ 1–2. Mr. Birdsell testifies that he “personally worked on Apple documentation and publications regarding each version of Aperture throughout its lifespan, including Aperture 3.” Id. ¶ 2.

In our view, Petitioner provides credible testimonial evidence in the form of Mr. Birdsell’s declaration that Apple made the Aperture 3 User Manual (A3UM) available to the public through the Apple website as early as February 2010 in connection with the release of Apple’s Aperture 3 product. Mr. Birdsell testifies that he worked for Apple since 2002 and has been a full-time employee at Apple since June 2010. Ex. 1020 ¶ 1. Mr. Birdsell testifies that he has “personally worked on Apple documentation and publications regarding each version of Aperture throughout its lifespan, including Aperture 3,” and that he is “personally familiar with the Aperture 3 User Manual that was distributed with the Aperture 3 product,” confirming that Exhibit 1005 “is an accurate copy of the Aperture 3 User Manual that was distributed with the initial version of the Aperture 3 product (i.e., version 3.0).” Id. ¶¶ 2, 4.

ID (Paper 12) at 30, 35; Opp. at 6.



## 35 U.S.C. § 315(d) & (e)

**(d) Multiple Proceedings.**—Notwithstanding sections 135(a), 251, and 252, and chapter 30, during the pendency of an *inter partes* review, if another proceeding or matter involving the patent is before the Office, the Director may determine the manner in which the *inter partes* review or other proceeding or matter may proceed, including providing for stay, transfer, consolidation, or termination of any such matter or proceeding.

**(e) Estoppel.**—

**(1) Proceedings before the office.**—The petitioner in an *inter partes* review of a claim in a patent under this chapter that results in a final written decision under section 318(a), or the real party in interest or privy of the petitioner, may not request or maintain a proceeding before the Office with respect to that claim **on any ground that the petitioner raised or reasonably could have raised during that *inter partes* review.**

Opp. at 31-32.

## *Ironburg Inventions Ltd. v. Valve Corp.*

“Accordingly, we hold that, provided the other conditions of the statute are satisfied, § 315(e)(2) estops a petitioner as to invalidity grounds a **skilled searcher conducting a diligent search reasonably could have been expected to discover**, as these are grounds that the petitioner ‘reasonably could have raised’ in its petition.”

“If [the skilled searcher] **employed ‘scorched earth’ tactics** to find the references making up the Non-Petitioned Grounds, then its experience may be **irrelevant** to a determination of what would have been discovered by an **ordinarily skilled searcher acting with merely reasonable diligence.**”

*Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274, 1298-99 (Fed. Cir. 2023) (emphasis added); Opp. at 4-5.

# MemoryWeb's Position Now

“A skilled searcher would have located Aperture 3 and A3UM. Mot., 27-31. The path to locating A3UM is straightforward[.]”

Motion to Terminate Reply at 11.

## EX2038 – Director Decision Vacating *Unified* RPI Order

The Board can and should make a determination of the real parties in interest or privity in any proceeding in which that determination may impact the underlying proceeding, for example, but not limited to, a time bar under 35 U.S.C. § 315(b) or an estoppel under 35 U.S.C. § 315(e) that might apply. That is not the situation here. The Board should not have determined whether Apple and Samsung are RPIs in this proceeding given that determination was not necessary to resolve the proceeding.

### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Board's real party in interest determination in the Final Written Decision (Section I.B.) is vacated; and

FURTHER ORDERED that the Board's Order Identifying Real Party in Interest (Paper 56) is vacated.

EX2038, at 5; Opp. at 15 n.4.

# MemoryWeb's Definition of a POSITA (as of June 9, 2011)

## **IV. LEVEL OF SKILL IN THE ART**

Petitioner contends that a person of ordinary skill in the art (“POSITA”) “would have had (1) at least a bachelor’s degree in computer science, computer engineering, or electrical engineering, and (2) at least one year of experience designing graphical user interfaces for applications such as photo management systems.” Petition, 9. For purposes of this proceeding, Patent Owner does not dispute Petitioner’s proposed level of skill.

Patent Owner Response, 15; Petition, 9 (“earliest filing date claimed by the ’228 patent is June 9, 2011”).

# Palomar Technologies v. MRSI Systems

“Finally, **every reasonable search must have a stopping point.**

Kunin's opinion assumes that a reasonably diligent searcher would have not stopped once Isaacs was located, and would have continued beyond that point. **But without hindsight analysis, a searcher would have no reason to know that additional helpful references existed and remained undiscovered.** Nor, for that matter, would a diligent search necessarily continue if significant prior art had already been located.”

“It stands to reason, therefore, that **in hindsight there will almost always be a seemingly simple search pathway** that could have led a searcher from the patent to the reference.”

*Palomar Techs., Inc. v. MRSI Sys., LLC*, No. 18-10236-FDS, 2020 WL 2115625, \*12, 14 (D. Mass. May 4, 2020) (emphasis added); Opp. at 5.

# MemoryWeb's Expert (Lhymn) Opining re: Perspective of a Skilled Searcher (as of Sept. 3, 2021)

## I. BACKGROUND AND QUALIFICATIONS

5. In formulating my opinions, I have relied on my knowledge, training, and experience, which I will summarize below. A copy of my *curriculum vitae* (CV) is appended to this declaration.

6. I am the CEO and Founder of Sherman Patent Search Group ("SPSG"), patent search firm based in Pasadena, California. SPSG is a patent search firm that has technical experience that spans across all technology areas. Currently, I supervise four SPSG employees who run patent research projects.

7. I am also currently CEO and Founder of Visualize (VIP), a computer vision A.I. patent search startup headquartered in Pasadena, CA. VIP developed an

8. I received a Bachelor's Degree in Mechanical Engineering from Penn State University in 2004.

9. Between 2000 and 2004 I worked as an engineer at Bayer Corporation, Applied Research Lab (PSU) and Air Products and Chemicals.

10. Between 2004 and 2005, I was employed as a patent examiner in Art Unit 3727 at the United States Patent and Trademark Office. During my time as an examiner, I searched for prior art and issued office actions.

11. Between 2005 and 2012, I was employed as a senior patent analyst at Cardinal Intellectual Property Inc. My job responsibilities included performing patent searches, including prior art searches.

12. I have extensive experience performing patent searches. Throughout my career, I have personally performed approximately 3,000 searches. I have managed or supervised approximately 7,000 additional patent searches. I have personally performed more than 500 patent searches in the software field. The prior art searches include invalidity, clearance, and patentability searches.

13. Based on my education and experience, I am qualified to render opinions on prior art invalidity searches and prior art in the software field, including the prior art at issue here.

1 Q. So what standard do you use to  
2 judge whether a search is reasonably  
3 diligent?

4 A. So as a skilled searcher, we  
5 often -- patent searching is a very complex  
6 art form. So it does require dynamics, it  
7 requires responding to references that  
8 you're seeing, adjusting and iterating; for  
9 a skilled searcher to know when a diligent  
10 search should, for instance, stop, where  
11 reference is located, are the references  
12 converging, are we seeing the same  
13 references over and over again, are  
14 references becoming divergent, becoming  
15 more and more irrelevant, away from the  
16 core of what we're searching for.

EX2111, ¶¶ 5-13, 23 ("relevant timeframe"); EX1115 at 24:1-16; Opp. at 12; MW Mot. at 28 (citing EX2111 as testimony of a skilled searcher); MW Reply at 12 (same).

# Mr. Lhymn Did Not Use PatWorld in 2021

10 Q. Now, you testified that an  
11 ordinarily skilled searcher in 2021 based  
12 on your experience would have used PatWorld  
13 and that it worked in materially the same  
14 way on or before September 3, 2021,  
15 correct?

16 A. Correct.

17 Q. But your search firm didn't  
18 actually use PatWorld in 2021, did it?

19 A. Back in 2021 we did not. It  
20 was readily available at that time. It's  
21 very common for patent searchers to try out  
22 different tools over time.

23 Q. And you didn't have experience  
24 with it back in September 2021 personally.

25 A. I had heard of it at that time.

1 We had not subscribed to it or secured a  
2 license to it at that time.

3 Q. So you had not used it.

4 A. Correct. At that time I had  
5 not used it.

23. Specifically, I have been asked to provide an opinion as to whether the A3UM and Belitz references detailed below would have been located by an ordinarily skilled searcher's reasonably diligent search on or before September 3, 2021 (the "Timeframe" or relevant timeframe) by someone searching for prior art in the technical field of the '228 patent.

38. I conducted an investigation in September 2023 to determine whether A3UM and Belitz would have been identified by an ordinarily skilled searcher through reasonable diligence in the Timeframe using available prior art searching resources. As part of this investigation, I ran search strings that a skilled searcher would have generated to identify relevant prior art references for claims 1-19 of the '228 patent through prior art searching tools available and widely used by prior art searchers in the Timeframe (e.g., Patworld, Google, Wayback Machine, and eBay). Based on my experience, all of the search tools used, including Patworld, Google, Wayback Machine, and eBay, work in materially the same way as they did during the Timeframe.

EX1115 at 62:10-63:5; Opp. at 9-10; EX2111 ¶¶ 23, 38.



# Mr. Lhymn's Assignment Was Based on Hindsight

13 Q. Is it your understanding that  
14 the opinion you're giving here is about  
15 what would be a reasonably diligent search  
16 in the context of an invalidity search?

17 A. My search strings only relate  
18 to whether a skilled searcher would have  
19 located the references.

20 Q. And the references are meant to  
21 do what? What's their relationship to the  
22 '228 patent?

23 A. The references were provided to  
24 me in that those were references that as a  
25 skilled searcher, can they be found by a  
1 skilled searcher of ordinary skill in a  
2 reasonably diligent search within the time  
3 frame. That was my assignment.

16. I further understand that one way of showing an ordinarily skilled searcher's reasonably diligent search is to identify the relevant search string and search source that could identify the allegedly unavailable prior art and explain why such a criterion would be part of a skilled searcher's diligent search.

EX1115 at 32:13-33:3; EX2111, ¶16; Opp. at 9-10.

# EX1005 (A3UM) vs. EX2107 (Lhymn “Search Result”)

**EX1005**

**EX2107**

Aperture 3 User Manual: Welcome to Aperture 9/28/21 11:58 AM

**Welcome to Aperture**

Aperture is a powerful and easy-to-use digital image management system that can track thousands of digital images and provides the avid photographer with high-quality image management and adjustment tools.


With Aperture, you can efficiently import digital images, perform a photo edit, adjust and retouch images, publish images for the web or print, export libraries for use on other Aperture systems, merge libraries, and back up your entire image library for safekeeping. Aperture lets you work with high-quality JPEG, TIFF, and RAW image files—and even HD video files—directly from your camera or card reader and maintain that high quality throughout your workflow.

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file:///Applications/Aperture.app/Contents/Resources/English.lproj/aperture\_help/en/aperture/usermanual/index.html Page 1 of 1

Petitioner Apple Inc. - Ex. 1005, p. 1



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**Aperture 3**  
User Manual

MemoryWeb Ex. 2107  
Apple v. MemoryWeb - IPR 2022-00031

# Mr. Lhymn's Patworld Search Did Not Identify A3UM

3 Q. Okay, so you agree that the  
4 search results in Exhibit 2100 do not  
5 include the document that is Exhibit 1005,  
6 right?

7 A. The search results in Exhibit  
8 2100 show the Salvador reference, the '543  
9 reference, which cites, based on my  
10 declaration -- let me just pull that up so  
11 I get the exact title correct. The Apple  
12 Computer, the technical manual for Aperture  
13 Getting Started from 2006.

14 Q. Which is not A3UM, right?

15 A. Those two documents are  
16 different, correct.

17 Q. And so the list of 141 search  
18 results does not include the document that  
19 is Exhibit 105, A3UM. You agree, right?

20 A. That's correct.

EX1115 at 121:3-20; Opp. at 7, 12.

# Mr. Lhymn Did Not Find A3UM (Copyright 2009)

3 Q. All right, Mr. Lhymn, in your  
4 Exhibit 2105 we talked about the "view as  
5 PDF" link, correct?

6 A. Yes.

7 Q. What's the number of the  
8 exhibit that results if you click on that  
9 link in 2105?

10 A. I believe that's 2107.

11 Q. Looking at 2107, Mr. Lhymn,  
12 will you open that up, please.

13 A. Would you mind dropping that in  
14 the chat?

15 Q. Sure. Let me know when you can  
16 see it, Mr. Lhymn.

17 A. I have it.

18 Q. Looking at the second page of  
19 Exhibit 2107, Mr. Lhymn, what's the  
20 copyright date on that document?

21 A. At the bottom of page 2?

22 Q. We're looking at Exhibit 2107,  
23 at the top of page 2. Let's make sure  
24 we're looking at the same document.

25 A. I have the wrong exhibit up,  
1 I'm sorry.

2 Okay, 2107. 2012.

EX1115 at 137:3-138:2; Opp. at 7.

22 Q. Mr. Lhymn, do any of the  
23 exhibits to your declaration contain a copy  
24 of A3UM with a 2009 copyright date?

25 A. I need to double-check that.

1 Can you repeat the question one  
2 more time?

3 MR. BAUGHMAN: Sue, can you  
4 read that back, please.

5 (Whereupon, the referred to  
6 question was read back by the  
7 reporter.)

8 A. No, I don't believe so.

EX1115 at 135:22-136:8; Opp. at 7, 9.

# Lhymn Deposition: Found a Different Document Than EX1005

2 Q. Now, Mr. Lhymn, can I ask you  
3 to look at your Exhibit 2107 again, page 2.

4 A. Yes.

5 Q. Does it have a copyright date  
6 of 2012?

7 A. Yes.

8 Q. I'd like you to look at Exhibit  
9 1005, A3UM.

10 A. Yes.

11 Q. Does it have a copyright date  
12 of 2009?

13 A. That's correct.

25 Mr. Lhymn, is Exhibit 2107 the  
1 same document as A3UM, which is Exhibit  
2 1005?

3 A. I can confirm the dates are  
4 different between the two documents.

5 Q. So they contain different  
6 information, right? They contain different  
7 dates.

8 A. I can confirm the dates are  
9 different.

16 Q. Mr. Lhymn, you testified that  
17 Exhibit 2104 indicates to a skilled  
18 searcher that the Apple Aperture manual was  
19 archived as early as February 13, 2010, but  
20 you would agree that Exhibit 2107 is not a  
21 copy of a manual archived on February 13,  
22 2010, correct?

23 A. That is correct.

9 Q. Mr. Lhymn, 2107 and A3UM,  
10 Exhibit -- sorry. Exhibit 2107 and A3UM,  
11 Exhibit 1005, have different copyright  
12 dates, correct?

13 A. Yes, they do.

14 Q. In that sense they're different  
15 versions.

16 MR. CHRISTOPHER: Objection.

17 A. I can confirm the dates are  
18 different.

19 Q. And so you got to Exhibit  
20 2104 -- excuse me, 2107 from Exhibit 2104,  
21 right? That's the path you take in  
22 paragraphs 45, 46, 47 and 48, correct?

23 A. Yes. Ultimately from 2104 we  
24 end up at 2107.

25 Q. And the copyright date on 2107  
1 is 2012, right?

2 A. That is correct.

EX1115 at 141:2-13, 141:25-142:9, 158:16-23, 157:9-158:2; Opp. at 7, 9.

# Lhymn Deposition: EX2107 Is After Critical Date

18 Q. Mr. Lhymn, did you apply a date

19 restriction in your declaration?

20 A. It's common for a skilled  
21 searcher to apply date restrictions based  
22 on critical date given to us by the client.

23 Q. And did you do so?

24 A. I need to -- I'm going to  
25 reference my exhibit again.

1 I did do so, yes.

2 Q. Now, Mr. Lhymn, can I ask you  
3 to look at your Exhibit 2107 again, page 2.

4 A. Yes.

5 Q. Does it have a copyright date  
6 of 2012?

7 A. Yes.

8 Q. I'd like you to look at Exhibit  
9 1005, A3UM.

10 A. Yes.

11 Q. Does it have a copyright date  
12 of 2009?

13 A. That's correct.

5 Q. So they contain different  
6 information, right? They contain different  
7 dates.

8 A. I can confirm the dates are  
9 different.

20 Q. If you could take a look at  
21 your paragraph 48, please, we've been  
22 talking about Exhibit 2107 that has a 2012  
23 copyright date, right?

24 A. Yes.

25 Q. That 2012 document with a  
1 copyright -- sorry, the document with a  
2 2012 copyright date was archived, according  
3 to the link you clicked, in 2017, right?

4 A. That is correct, with an  
5 earliest date of October 11, 2011.

6 Q. October 11, 2011 is after the  
7 date you have argued is the earliest  
8 priority date for the '228 patent, right?

9 MR. CHRISTOPHER: Objection to  
10 form.

11 A. It is correct that this date is  
12 after the critical date.

13 Q. The earliest date, October 11,  
14 2011 that you just testified about, is  
15 after June 9, 2011 that you reference in  
16 paragraph 37 of your declaration.

17 A. That is correct.

EX1115 at 140:18-141:13, 142:5-9, 142:20-143:17; Opp. at 9.

# MemoryWeb's Reply

- A skilled searcher would have learned of Aperture by reviewing the references on the face of the '228 patent or running keyword searches (EX2111, ¶¶34-35, 41-42, 51);
- A simple Google search for the Aperture manual yields a webpage literally titled “How to find the Aperture User Manual” with a link to a Wayback Machine capture of the “index” page on apple.com (EX2111, ¶¶43-45; EX2102; EX2103; *cf.* EX2104 and EX1021, 6);
- The searcher would know a physical copy could be obtained via eBay (EX2111, ¶50); and
- Once an Aperture 3 DVD was acquired (as both parties did in this case), the searcher or a POSITA (*e.g.*, Unified's expert) could access the manual (Mot., 28-29).

MW Reply at 12.

# MemoryWeb's Reply

Apple's suggestion that a skilled searcher would not have located A3UM on the DVD (Opp., 11 n.2) is also inconsistent with its argument that "knowledge of the existence of A3UM cannot be disputed" because "[a]nyone . . . could access and inspect A3UM using the Aperture help window" (Reply, 2-3). Apple also argued a POSITA could locate the HTML files on the DVD. Petition, 1, 14-17; Reply, 2-3, 7-14. In fact, Apple argued that "[t]he artisan would expect an application's help files in HTML format would be in the Resources subfolder . . . and could be opened with a web browser" and that "installing Aperture 3 from the v3.0 Aperture installer DVD is trivial." Reply, 12-13.

MW Reply at 14-15.



# Lhymn Deposition: Hindsight Search Methodology

5 Q. And I believe your testimony in  
6 your declaration is that Exhibit 2100 is  
7 the results of a search that you ran,  
8 correct?

9 A. That is correct.

10 Q. And I think there are 141  
11 results, but you can check me.

12 A. That is correct.

13 Q. And you give testimony in your  
14 declaration about the 100th result on this  
15 list, right?

16 A. That is correct.

17 Q. That's the Salvador patent that  
18 you talk about?

19 A. Correct, Exhibit 2101.

20 Q. Mr. Lhymn, when you were  
21 looking at the results -- you did look at  
22 these results in Exhibit 2100, right?

23 A. Yes.

24 Q. When you were looking at the  
25 results between the first result and the  
1 100th result, what was your assessment  
2 about whether the results were converging  
3 or diverging?

4 A. I did not take notes on that.  
5 I do not know.

15 Q. And you agree that PatWorld  
16 does relevance ranking, right? That's how  
17 it sorts results, unless you choose to do  
18 it by title.

19 A. They do have a relevance  
20 ranking.

21 Q. Okay, so you'd expect the lower  
22 numbers, like 1, to be more relevant than  
23 the higher numbers, like 141, right? Based  
24 on your search.

25 A. I believe that's what PatWorld  
1 aims for.

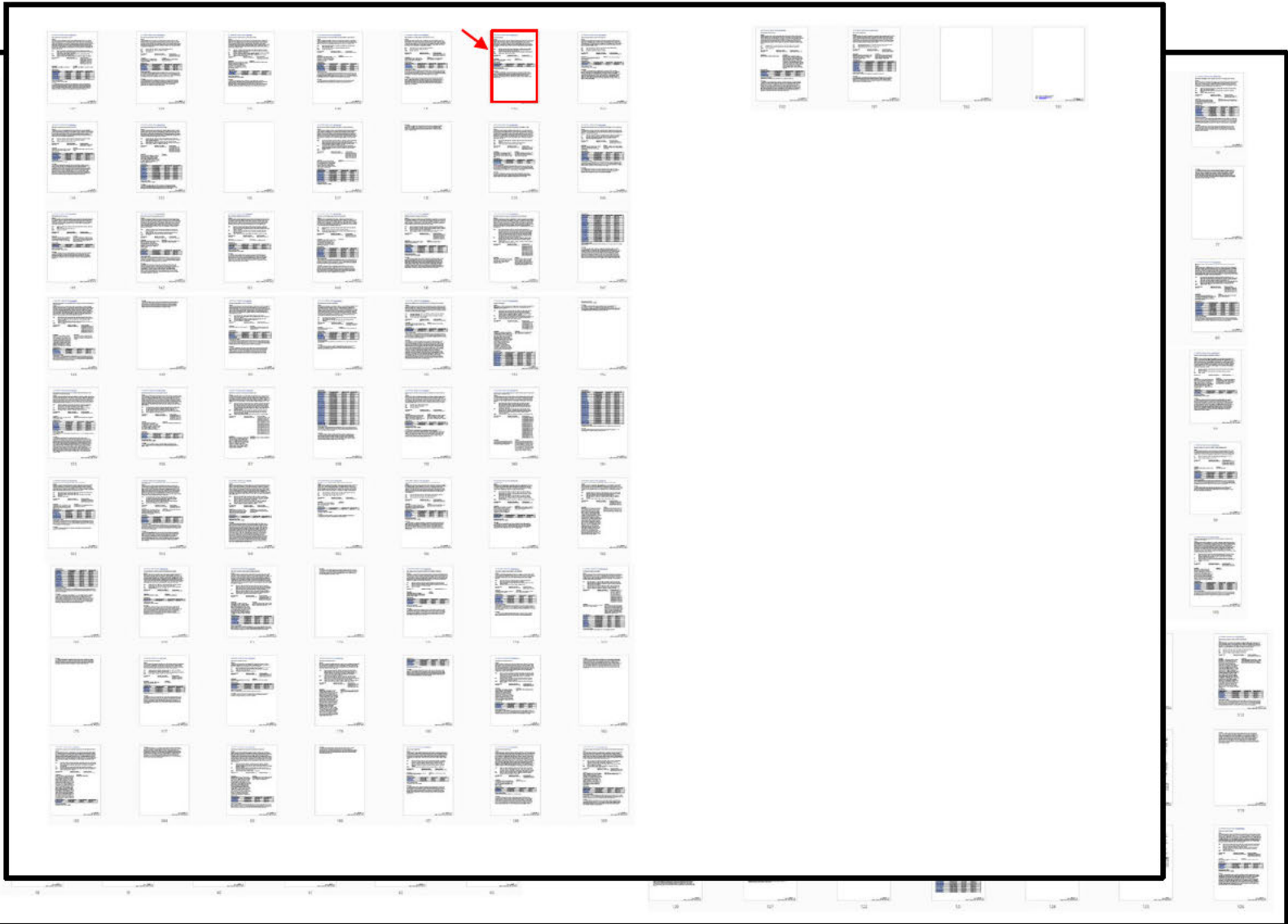
13 Q. So you just kept looking until  
14 you can find anywhere in the search results  
15 something that you could argue pointed to  
16 the A3UM document?

17 MR. CHRISTOPHER: Objection to  
18 form.

19 A. My task was to determine if a  
20 skilled searcher -- if an ordinarily  
21 skilled searcher performing a reasonably  
22 diligent search in the time frame would  
23 have located the Belitz reference in the  
24 Aperture 3 manual. My task was not to show  
25 every other reference that could be  
1 relevant. That was not my task.

EX1115 at 51:5-52:5, 58:15-59:1, 56:13-57:1; Opp. at 10.

# EX2100 – Mr. Lhymn’s PatWorld Search



# Mr. Lhymn's PatWorld Search

10 Q. And by the time an ordinarily  
11 skilled searcher reached this result in the  
12 relevance ranked list that PatWorld  
13 provides in Exhibit 2100, they would have  
14 looked at 99 other patents and the  
15 references that they cite, right?  
16 A. Correct.

EX1115 at 89:10-16, 82:18-83:25; EX2100 at 132; Opp. at 10.

18 Q. By the way, just to be clear,  
19 you don't talk at all about results 1  
20 through 99 in your declaration, do you?  
21 A. No, I do not detail those  
22 references.  
23 Q. You don't just not detail them,  
24 you don't say a word about them, do you?  
25 A. No, I do not. My -- again, my  
1 task was to determine if an ordinarily  
2 skilled searcher performing a reasonably  
3 diligent search in the time frame would  
4 have located Belitz in the Aperture 3  
5 manual. My assignment was not to discuss  
6 or analyze every single reference that  
7 appears in any of the search results.  
8 Q. But your testimony is that a  
9 reasonably skilled searcher would have  
10 reviewed these as part of a reasonably  
11 diligent search.  
12 A. Yes. At least reviewing the  
13 information presented in Exhibit 2100,  
14 correct.  
15 Q. So that would include the first  
16 hit, which is Exhibit 1106, right?  
17 A. Exhibit 1106 --  
18 Q. Sorry, that's the patent that  
19 ends in '354.  
20 A. Yes, this was the first hit in  
21 Exhibit 2100.  
22 Q. So as part of a reasonably  
23 diligent search, an ordinarily skilled  
24 searcher would review that.  
25 A. Yes.

# Mr. Lhymn re: When to End a Reasonably Diligent Search

1 Q. So what standard do you use to  
2 judge whether a search is reasonably  
3 diligent?

4 A. So as a skilled searcher, we  
5 often -- patent searching is a very complex  
6 art form. So it does require dynamics, it  
7 requires responding to references that  
8 you're seeing, adjusting and iterating; for  
9 a skilled searcher to know when a diligent  
10 search should, for instance, stop, where  
11 reference is located, are the references  
12 converging, are we seeing the same  
13 references over and over again, are  
14 references becoming divergent, becoming  
15 more and more irrelevant, away from the  
16 core of what we're searching for.

17 Those are some of the  
18 qualitative standards that a skilled  
19 searcher uses to determine what is a  
20 diligent search.

21 Q. Mr. Lhymn, do you speak in your  
22 declaration about -- in your opinions about  
23 a search for the '228 patent whether  
24 references were converging or diverging in  
25 the searches you did?

1 A. No.

8 Q. Do the results of the search  
9 dictate when it's finished, in your mind?

10 A. That can be one factor, of  
11 course.

12 Q. What are the other factors in  
13 deciding that a search is concluded?

14 A. Well, as I stated previously, a  
15 skilled searcher will actively and  
16 dynamically adjust the search, respond to  
17 the references being presented to the  
18 searcher during the search, whether the  
19 references are converging, repeating  
20 themselves, seeing the same references over  
21 and over again. Whether the references are  
22 diverging based on certain search strings.

20 Q. Mr. Lhymn, when you were  
21 looking at the results -- you did look at  
22 these results in Exhibit 2100, right?

23 A. Yes.

24 Q. When you were looking at the  
25 results between the first result and the  
1 100th result, what was your assessment  
2 about whether the results were converging  
3 or diverging?

4 A. I did not take notes on that.  
5 I do not know.

EX1115 at 24:1-25:1, 50:8-22, 51:20-52:5; Opp. at 12.

# Mr. Lhymn: Scope of a Reasonable Search

15 Q. · Would you agree that an  
16 ordinary skilled searcher would typically  
17 expect to review a thousand or more  
18 references generated by reasonable search  
19 strings?

20 A. · Yes.

21 Q. Would you agree that they would  
22 do that in an effort to review the most  
23 relevant -- to find the most relevant prior  
24 art references?

25 A. Yes.

EX1115 at 68:15-25; Opp. at 10.

17 Q. And you did that for each of  
18 the results, 1 through 99 in this case?

19 A. Yes. Yes. The number of  
20 search hits in this particular search  
21 string is 141. That's very low. That's a  
22 very low number for a skilled searcher to  
23 review. I have reviewed search strings  
24 upwards of 1,000 hits or more.

EX1115, 53:17-24; Opp. at 10.

# EX2100 – Mr. Lhymn’s Alleged Search Methodology

20 Q. Thank you. Is it U.S. Patent  
 21 9,767,354?  
 22 A. Yes.  
 23 Q. Do you agree that that's the  
 24 patent that is the first hit from the  
 25 PatWorld search report that is Exhibit  
 1 2100?  
 2 A. Yes.  
 3 Q. How many references does it  
 4 cite on its face?  
 5 A. I don't know the total count.  
 6 Q. Is it a lot?  
 7 A. I'm sorry, was there a  
 8 question?  
 9 Q. Yes. Is it a lot?  
 10 A. Yes, I would say it's a lot.  
 11 Q. In fact, there are nine pages  
 12 of references here, right?  
 13 A. Yes.

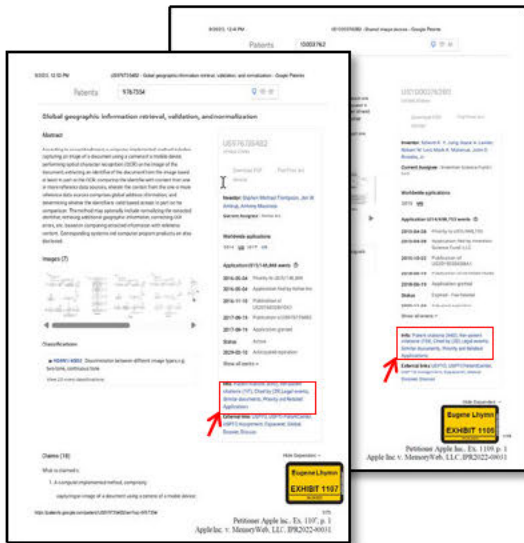
6 (Whereupon, Google Patents  
 7 Screenshot was marked as Exhibit 1107  
 8 for identification as of this date by  
 9 the Reporter.)  
 10 Q. If you could please open that  
 11 up and let me know when you've got it,  
 12 Mr. Lhymn. Thanks.  
 13 A. I have it in front of me.  
 14 Q. Great. Do you recognize the  
 15 format of the page before you?  
 16 A. It appears to be a Google  
 17 Patent screenshot.  
 18 Q. Have you seen the sort of  
 19 rectangle of information that's on the  
 20 right, even if it's not that specific  
 21 information before?  
 22 A. I have seen that.

\*\*\*  
 2 Q. You see there it says, "Patent  
 3 citation 695, non-patent citation 161." Do  
 4 you have any reason to doubt that that's an  
 5 accurate number of patents that are cited  
 6 and non-patent literature that's cited in  
 7 this patent?  
 8 A. I would have no reason to doubt  
 9 that's correct.

\*\*\*  
 22 Q. So that would be 856, if you  
 23 add those two together, 856 references  
 24 cited on the face of the first hit in the  
 25 search report, right?  
 1 A. That is correct.  
 2 Q. And your paragraph 34 would  
 3 suggest the reasonably diligent search  
 4 would require reading all of them, right?  
 5 And after that the references cited on the  
 6 face of those 856 documents, correct?  
 7 A. Correct.

17 (Whereupon, Google Patents  
 18 Screenshot, U.S. Patent 10,003,762  
 19 was marked as Exhibit 1109 for  
 20 identification as of this date by the  
 21 Reporter.)  
 22 Q. If you could open that up, it  
 23 should be a little quicker.  
 24 A. Okay, I have it up.  
 25 Q. Do you recognize that that  
 1 appears to be a Google Patent search screen  
 2 for the same patent number as the second  
 3 hit on Exhibit 2100, and that is  
 4 10,003,762?  
 5 A. Yes.  
 6 Q. And do you see on the  
 7 right-hand side there's a box there again  
 8 with information about the number of patent  
 9 citations and non-patent literature  
 10 citations?  
 11 A. Yes.  
 12 Q. And those numbers are 660  
 13 patent citations and 106 non-patent  
 14 citations, is that right?  
 15 A. Correct.  
 16 Q. You don't have reason to  
 17 dispute the count that Google has for  
 18 those.  
 19 A. I don't have reason.  
 20 Q. And you can probably do the  
 21 math better than I do, but I think those  
 22 add up to 766 references cited, is that  
 23 right?  
 24 A. Correct.

EX1115 at 78:20-79:13, 80:6-82:7, 87:17-  
 88:24, 89:10-16, 81:22-82:7, 82:18-22;  
 Opp. at 10.



# EX2100, Entry 100

100.F#:38878415 | Publication Number: [US2008005771A1](#)

**Title:** Displaying images

**Abstract:**

Displaying an image is described. A method for displaying an image includes determining, for each of multiple images, metric associated with the image. The multiple images are displayed in a view in which each of the multiple images is associated with at least one visually perceivable attribute that reflects at least the determined metric. The attributes that reflect the metrics are logically independent of the metrics. In one implementation, the metric relates to a significance value associated with the image. In one implementation, the visually perceivable attribute relates to a size with which the multiple images are displayed in relation to each other.

**Assignee(s):**

Apple Computer; Apple Computer Inc California;  
Apple Inc; Salvador Richard H

**Inventor(s):**

Salvador Richard H

**Family Members:**

Publication Number	Application Number	Publication Date	Application Date
<a href="#">US2008005771A1</a>	US20060478761	2008-01-03	2006-06-29
<a href="#">US7859543B2</a>	US20060478761	2010-12-28	2006-06-29

Salvador  
(EX2101)



**Family Designated States:**

No designated states currently available

**First Claim:**

1. A method for displaying images, comprising: determining, for each image of a plurality of images, a value associated with said image, wherein said value is associated with a metric; concurrently displaying a plurality of display-images that correspond to said plurality images; wherein each display-image possesses a visually perceivable attribute that reflects the value of the metric for the image that corresponds to the display-image; and wherein said at least one attribute is logically independent of said at least one metric.

# Salvador (EX2101)

(12) <b>United States Patent</b> <b>Salvador</b>	(10) <b>Patent No.:</b> US 7,859,543 B2
	(45) <b>Date of Patent:</b> Dec. 28, 2010
(54) <b>DISPLAYING IMAGES</b>	20020833006 A1* 3/2002 Takiguchi et al. .... 707/908.1
(75) <b>Inventor:</b> Richard H. Salvador, Hawthorne, CA (US)	20020869218 A1* 6/2002 Sall et al. .... 707/908.1
	20030995197 A1* 5/2003 Wheeler et al. .... 548/241
(73) <b>Assignee:</b> Apple Inc., Cupertino, CA (US)	20030154190 A1* 8/2003 Murano et al. .... 507/1
	20050125454 A1* 6/2005 Hang ..... 707/904.1
(*) <b>Notice:</b> Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(f) by 929 days.	20060829033 A1* 6/2006 Land et al. .... 715/723
	20060846675 A1* 7/2006 Weiss et al. .... 545/666
	20080967788 A1* 1/2009 Good et al. .... 358/302
(21) <b>App. No.:</b> 11/478,761	<b>OTHER PUBLICATIONS</b>
(22) <b>Filed:</b> Jun. 29, 2006	JEITA CP-3451, "Exchangeable image file format for digital still cameras: ExifVersion 2.2", Standard of Japan Electronics and Information Technology Industries Association, Apr. 2002.*
	Flickr, "Popular Tags on Flickr Photo Sharing" printed Sep. 27, 2006, <a href="http://www.flickr.com/photos/tags">http://www.flickr.com/photos/tags</a> , pp. 1-2.

## OTHER PUBLICATIONS

JEITA CP-3451, "Exchangeable image file format for digital still cameras: ExifVersion 2.2", Standard of Japan Electronics and Information Technology Industries Association, Apr. 2002.\*

Flickr, "Popular Tags on Flickr Photo Sharing" printed Sep. 27, 2006, <http://www.flickr.com/photos/tags>, pp. 1-2.

Apple Computer, Inc. Technical Manual, "Aperture Getting Started" 2006, [http://manuals.info.apple.com/en/Aperture\\_Getting\\_Started.pdf#search=%22%22Introducing%20Aperture%20%22%20%2B%22Learning%20About%20the%20Aperture%20Interface%22%22](http://manuals.info.apple.com/en/Aperture_Getting_Started.pdf#search=%22%22Introducing%20Aperture%20%22%20%2B%22Learning%20About%20the%20Aperture%20Interface%22%22), pp. 1-222.

1 Q. Did you ever try this link,  
2 Mr. Lhymn?  
3 A. I did not cut and paste that  
4 link into a browser.  
5 Q. Did you type it into a browser?  
6 A. I did not.  
7 Q. Now, you've used Wayback  
8 Machine in this declaration, correct?  
9 A. Yes.  
10 Q. Did you ever try dropping that  
11 address into Wayback Machine?  
12 A. I did not. For the simple  
13 reason that searching in Google for Apple  
14 Aperture manual produced the first hit  
15 being "how to find the Aperture manual."

16 Q. So if you take the address on  
17 the face of Salvador next to this document  
18 and you search on it in Wayback Machine you  
19 can get it.  
20 A. That is correct. That is one  
21 option.  
22 Q. And you agree that this  
23 document is not what you refer to as A3UM,  
24 correct?  
25 A. Correct.  
1 Q. So simply from the face of  
2 Salvador you could retrieve this document  
3 without further searching in Google.  
4 A. Yes, by cutting and pasting the  
5 URL. This is one option a skilled searcher  
6 could take. Again, a skilled searcher has  
7 often multiple options in terms of how to  
8 proceed with a search.

11 Q. And just to be clear, that  
12 citation on the face of Salvador does not  
13 refer to Aperture 3, correct?  
14 A. That is correct.  
15 Q. Do you know if Aperture 3 even  
16 appears in that "getting started"  
17 document  
18 that we looked at?  
19 A. I don't know.

EX1115 at 97:1-15, 101:16-102:8, 148:11-18; EX2101; Opp. at 10-11.



# Exhibit 2103 and 2104 – Mr. Lhymn’s 2018 Capture



léonie

Level 10 (193,597 points)

## How to find the Aperture User Manual

★★★★★ 1 | 1 like | 741 views | Last modified Feb 22, 2020 2:01 AM

The Aperture 3 User Manual is currently missing from the Support pages.

A version has been saved by the Internet Archive here:

<https://web.archive.org/web/20180504121246/http://documentation.apple.com/en/aperture/usermanual/index.html>

The screenshot shows a web browser window displaying the Aperture 3 User Manual page from the Internet Archive. The address bar shows the URL: [web.archive.org/web/20180504121246/http://documentation.apple.com/en/aperture/usermanual/index.html](https://web.archive.org/web/20180504121246/http://documentation.apple.com/en/aperture/usermanual/index.html). The page content includes a table of contents on the left side with the following items:

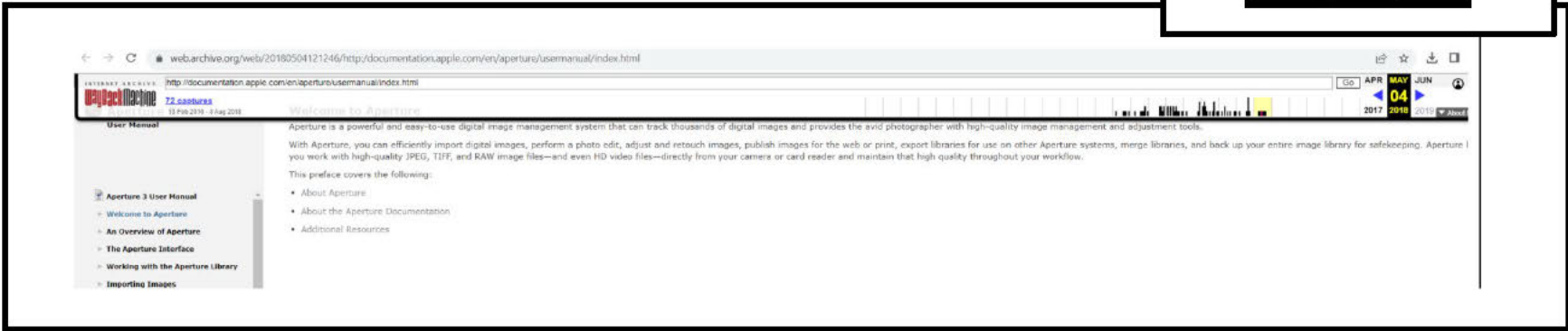
- Aperture 3 User Manual
- Welcome to Aperture
- An Overview of Aperture
- The Aperture Interface
- Working with the Aperture Library
- Importing Images

The main content area of the page is partially visible, showing the beginning of the user manual text.

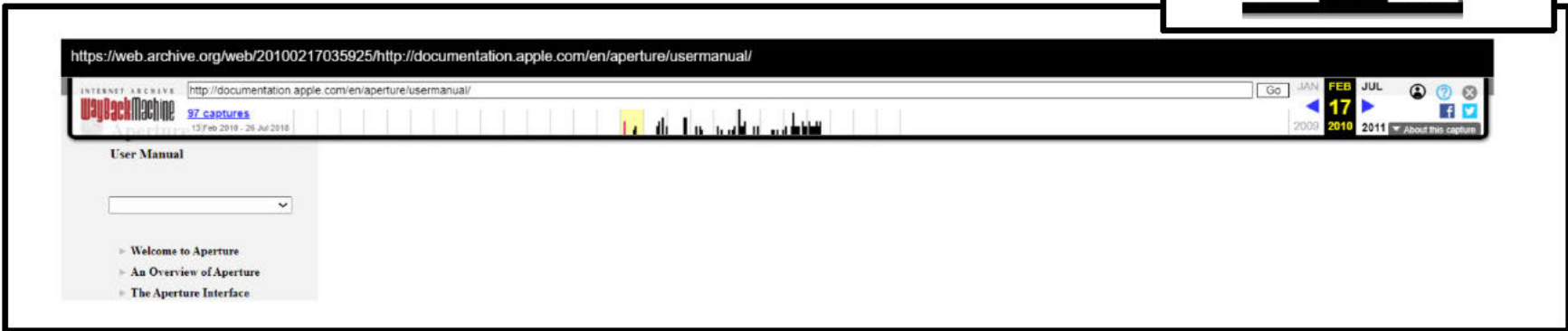
EX2103; EX2104; MW Mot. at 30; MW Reply at 12.

# Exhibits 2104 and 2010 Are Meaningfully Different Captures

## EX2104

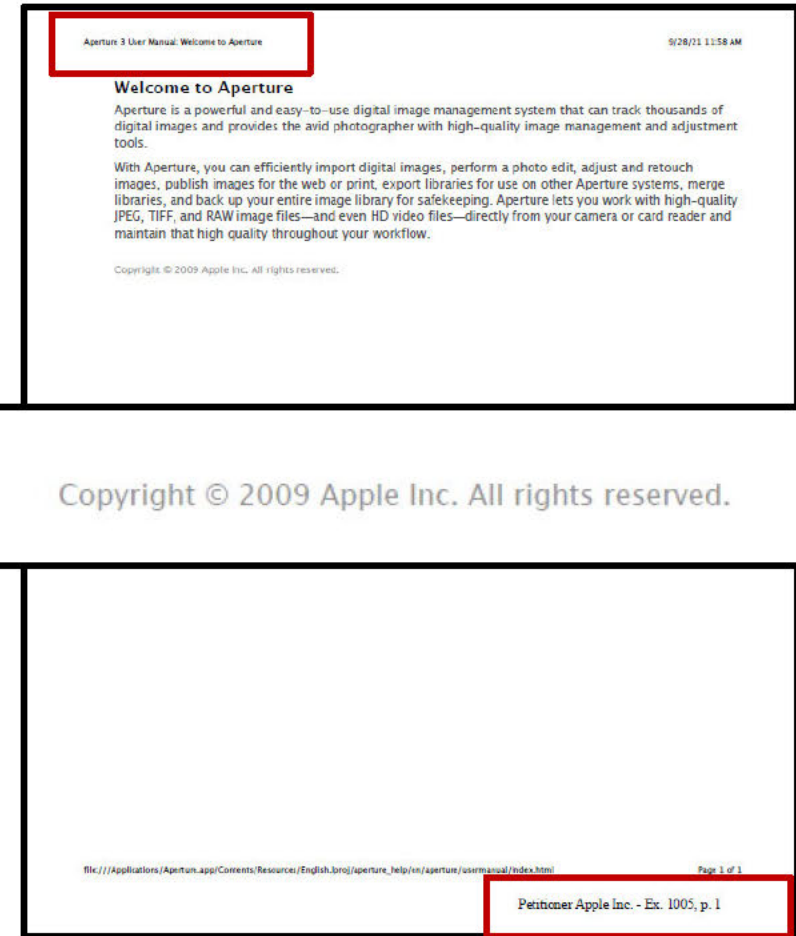
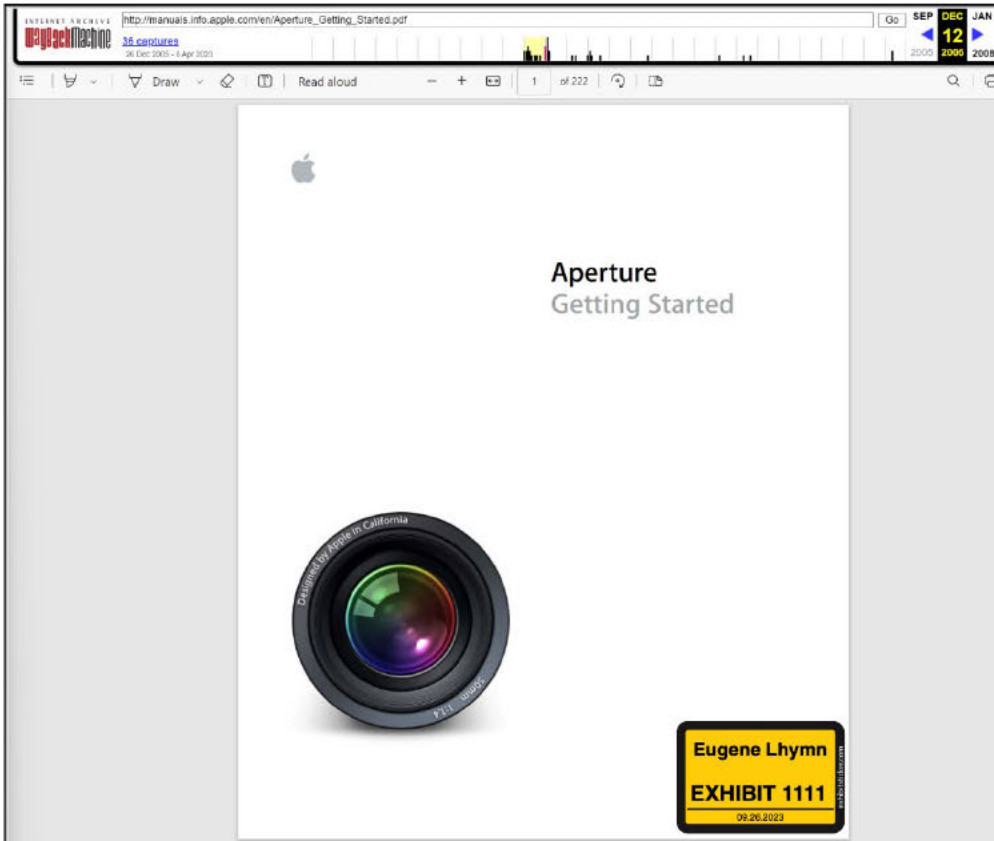


## EX2010



PO Response at 26; MW Reply at 12.

# EX1111 (Aperture Getting Started) Is Not EX1005 (A3UM)



Opp. at 10-11 (citing EX1005 and EX1115 at 99:22-101:25 (re: EX1111));

# EX1074 (Aperture 3)


Apple - Aperture - Pro performance with iPhoto simplicity. 11/29/22, 12:47 AM

The Wayback Machine - https://web.archive.org/web/20100316213353/http://www.apple.com/80/aperture/

EX 01074  
SEP 12 01:22

## Aperture 3

What's New What is Aperture? In Action How To Resources Tech Specs For You For You



### Taking photos. Further.

The new Aperture 3 gives you powerful yet easy-to-use tools to refine images, showcase your photography, and manage massive libraries on your Mac. It's pro performance with iPhoto simplicity. [Learn more](#)

**What is Aperture?**  
It's the way to better photos on a Mac. With tools to network photos, organize libraries, share work online, and print professionally designed books. [Learn more](#)

**New in Aperture 3**  
Organization with Faces and Places. Brushes and adjustment presets to perfect and enhance images. True full-screen browsing. And over 200 more new features. [Learn more](#)

**Aperture in Action**  
Aperture 3 helps National Geographic photographer Jim Richardson connect the places he's been with the pictures he's taken, using GPS maps to match video.

**From iPhoto to APERTURE**  
You've taken some amazing shots and iPhoto has been a solid photo assistant. Now you're ready to go further. The move to Aperture 3 is designed to be seamless. [Learn more](#)

**200+ New Features**  
More power, more ease of use, and more possibilities. [Learn More](#)

**Enjoy Aperture 3 now.**  
Find an Apple Retail Store. Find your local authorized reseller. Get Apple education pricing. Call 1-800-MY-APPLE. [View system requirements](#)

**Download the 30-day free trial.**  
[Download Free Trial](#)

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https://web.archive.org/web/20100316213353/http://www.apple.com/aperture/ Page 1 of 1  
IPR2022-00031 / IPR2022-00032 / IPR2022-00033 / PGR2022-00006 Page 0001  
Petitioner Apple, Inc., Ex. 1074  
Petitioner Apple Inc., Ex. 1074, p. 1  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031

## New in Aperture 3

Organization with Faces and Places. Brushes and adjustment presets to perfect and enhance images. True full-screen browsing. And over 200 more new features.

[Learn more](#)



MW Motion to Terminate Reply at 10.

# EX1077 (Macworld, Apple Releases Aperture 3)

11/00/22, 2:44 PM Apple releases Aperture 3 | Photography | Digital Photo | iStockphoto.com

The Wayback Machine - <https://web.archive.org/web/20100211033049/http://www.macworld.com>

The Apple, Mac, iPod, and iPhone Experts

## Macworld

- Feb 9, 2010 8:40 am
- [0 Comments](#)
- [0 Recommendations](#)
- [ShareThis](#)

### Apple releases Aperture 3

#### Updated interface, Faces, Places highlight new features

by [Jason Snell, Macworld.com](#)

Apple may not be at [Macworld 2010](#) this week, but the company still managed to announce a new product just in time for the trade show. On Tuesday Apple announced [Aperture 3](#), the latest version of the company's \$199 pro-level photo-editing and management software.

"We've added over 200 new features, so it's a pretty big release," Kiri Paulsen, senior director of photo applications at Apple, told [Macworld](#). "And we've addressed the entire workflow, from import all the way to output. Our focus has been on keeping the pro performance, but streamlining and simplifying Aperture for iPhoto users who want to do more. So the yin-and-yang of performance and simplicity is what we focused on."



The update (\$99 for existing Aperture users, a free trial will also be available) includes advanced versions of the Faces and Places features previously seen in iPhoto '09. There's a new image-refinement tool called Brushes, which allow users to

<https://web.archive.org/web/20100211033049/http://www.macworld.com/article/146231/201002/aperture3.html> 1/3

IPR2022-00031 / IPR2022-00032 / IPR2022-00033 / PGR2022-00006

Petitioner Apple, Inc., Ex. 1077  
Petitioner Apple Inc., Ex. 1077, p. 1  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031

# Macworld

- Feb 9, 2010 8:40 am
- [0 Comments](#)
- [0 Recommendations](#)
- [ShareThis](#)

## Apple releases Aperture 3

MW Reply at 10.

## Mr. Lhymn's Search - eBay

50. Additionally, as discussed above, a skilled searcher of ordinary skill conducting a reasonably diligent search in the Timeframe would be aware that physical copies of older technical manuals are easily accessible online, via eBay. Physical copies of technical manuals obtained directly from their source can be ideal to a skilled searcher so as to ensure the technical manual is complete. Running the search string “Apple Aperture Manual” in eBay returns numerous listings of Aperture 3 installation DVD’s, which contain the official technical manual of Aperture 3. Based on my experience, eBay works in materially the same way as they did during the Timeframe. Ex. 2109 shows that Aperture DVDs were indeed available during the relevant Timeframe.

EX2111, ¶ 50; Opp. at 11.

## Mr. Lhymn's Search - eBay

21 Q. Mr. Lhymn, in paragraph 50 you  
22 testify that an ordinarily skilled observer  
23 performing a reasonably diligent search  
24 would know about **Ebay** as a source of  
prior

25 art, right?

1 A. Yes.

2 Q. And then **you ran a search**  
3 **string Apple Aperture manual**, correct?

4 A. That's correct.

5 Q. It looks different than the one  
6 we just talked about in 49, correct?

7 A. That's correct.

8 Q. But the same as the one in 43,  
9 right?

10 A. Yes.

11 Q. And it was **similarly motivated**,  
12 **in your opinion, by the search for the**  
13 **document listed on the face of Salvador**,  
14 **right?**

15 A. That's correct.

4 Q. Mr. Lhymn, **you don't know**  
5 **whether any of these items in Exhibit 2109**  
6 **were actually listed on Ebay on or before**  
7 **September 3, 2021, do you?**

8 A. If you go to the top of Exhibit  
9 2109, **Ebay does not offer a functionality**  
10 **where we can search according to the date.**  
11 But if you scroll down through the 11 pages  
12 of this exhibit, you can see the months  
13 moving in chronological order.

14 Q. So **which item here is it that**  
15 **you're relying on for before September**  
16 **2021?**

17 A. Again, as a skilled searcher,  
18 Exhibit 2104 shows us the Apple Aperture  
19 manual was available and archived as early  
20 as February 2010. **That provides an**  
21 **indication to a skilled searcher to pursue**  
22 **the manual and present that to the client.**

EX1115 at 152:21-153:15, 161:4-22; Opp. at 11.

# Mr. Lhymn Did Not Obtain or Inspect Any DVDs From eBay

6 Q. Is your testimony that you know  
7 it was A3UM with a copyright date of 2009  
8 that was contained on any of the DVDs  
9 listed in Exhibit 2109?

10 A. Based on Exhibit 2104, that  
11 told us that the Apple Aperture manual was  
12 archived as early as February 13, 2010.  
13 It's outside of the purview of a skilled  
14 searcher to make a determination whether a  
15 reference is prior art. That gave us  
16 enough indication to -- where a skilled  
17 searcher would pursue obtaining physical --  
18 a physical DVD, an installation DVD of  
19 Aperture 3 in this regard.

20 Q. Did you do that?

21 A. I did not do that in this case.  
22 I did not order a physical DVD.

2 Q. I think you're testifying that  
3 a reasonably -- excuse me, an ordinarily  
4 skilled searcher performing a reasonably  
5 diligent search would have retrieved items  
6 from Ebay, including from this list in  
7 2109, right?

8 A. Yes.

9 Q. But you don't know what they  
10 would have found if they did that, correct?

11 A. Without physically obtaining  
12 the DVDs.

13 Q. And you didn't do that.

14 A. In this case we did not. That  
15 was outside the scope of my project.

EX1115 at 155:6-22, 159:2-15; Opp. at 11.



# MemoryWeb's Statements About the Aperture DVD

Petitioner does not contend that the installation DVD included any search functionality for locating the HTML file set. Dr. Terveen's suggestion that a POSITA would somehow look for hidden files, locally save and decompress one, then navigate through numerous sub-folders is implausible and does not satisfy the requirements of public accessibility. Ex. 1003 at ¶ 93. A physical analogy would be requiring a person to know about a hidden section of a library (the \*pkg. files), move a portion of the hidden library section to another location (decompressing the Archive.pax.gz file), then navigate through thousands of shelves to collect 746 books (the HTML file set).

In sum, Petitioner cannot demonstrate that a skilled artisan exercising reasonable diligence would locate the HTML file set on the Aperture 3 installation DVD.

POPR (Paper 8) at 31; Opp. at 8.

# MemoryWeb's Statements About the Aperture DVD

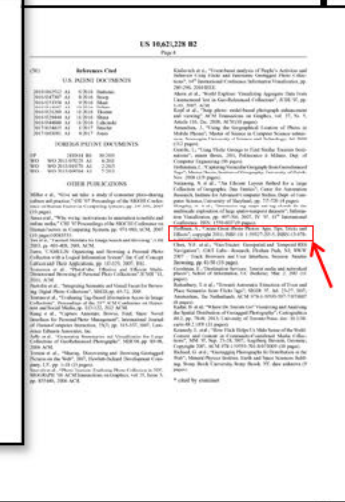
Without means to search by subject matter, one would have to take several actions to locate the HTML file set on the Apple website, similar to how one would have to scour the installation DVD (*supra* § VIII.A.1.a). First, one would have to visit apple.com and select “Introducing Aperture 3” on the homepage. Ex. 1020 at ¶ 19. Petitioner’s Wayback Machine printout for the homepage is dated February 17, 2010. Ex. 1021 at 1. However, all references to Aperture 3 were removed from the homepage less than a month later, so there was only a limited window where this was possible. *Cf.* Ex. 1021 at 1 (Feb. 17, 2010) and Ex. 2013 (Mar. 12, 2010). In any event, a person would still have to navigate through at least four more pages to reach the manual. Ex. 1003 at ¶ 101; Ex. 1020 at ¶ 19.

POPR (Paper 8) at 43, Opp. at 8.

# EX1115 – Lhymn Deposition re: Hoffman



7 Q. Looks like it's Exhibit 1113.  
 8 Mr. Lhymn, if you could pull that up,  
 9 please.  
 10 Do you have it?  
 11 A. Yes.  
 12 Q. Do you recognize this again as  
 13 a Google Patent search format?  
 14 A. Yes.  
 15 Q. And it's for patent 10,621,228?  
 16 A. Yes.  
 17 Q. Which is the '228 patent listed  
 18 in this IPR?  
 19 A. That's correct.  
 20 Q. If you look in the box on the  
 21 right, do you see that it says there are  
 22 491 patent citations and 28 non-patent  
 23 citations?  
 24 A. Yes.  
 25 Q. Does that sound reasonable to  
 1 you?  
 2 A. Yes.  
 3 Q. No reason to doubt it?  
 4 A. No reason to doubt.  
 5 Q. Okay, and if you add them up, I  
 6 think that's 519 references on the face of  
 7 this patent.  
 8 A. Correct.  
 9 Q. And you picked Hoffman to look  
 10 at.  
 11 A. Yes.



EX1115 at 162:9-17, 163:7-13, 164:1-8, 165:7-166:11; Opp. at 11; EX1113; EX1001 at 1-4.

# EX1115 – Lhymn Deposition re: Hoffman

19 Q. How many pages is Hoffman,  
20 Mr. Lhymn?

21 A. According to my PDF reader,  
22 **216.**

23 Q. And you're pointing to page 18  
24 of that?

25 A. Correct.

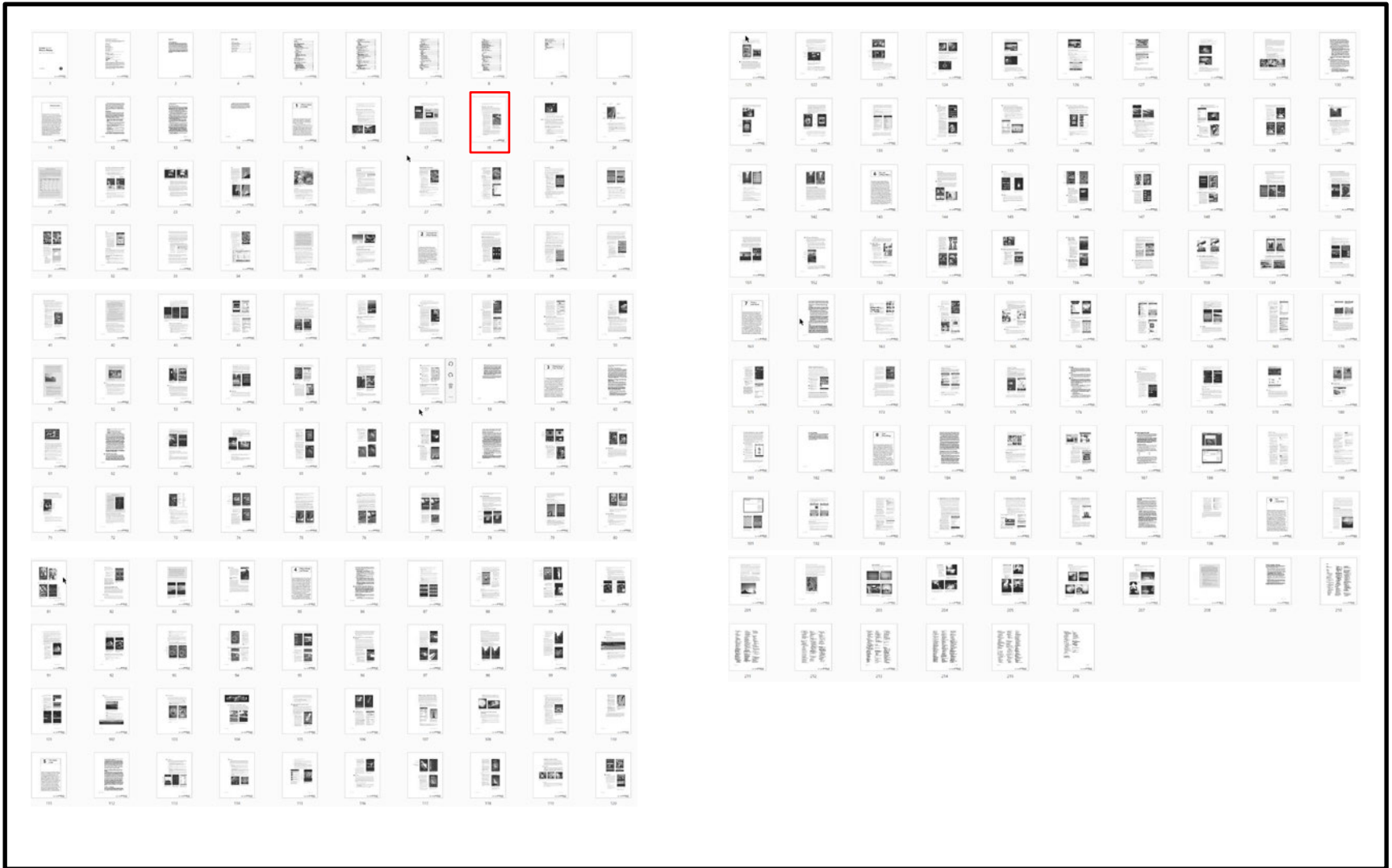
1 Q. And is it your testimony that  
2 to perform a reasonably diligent search, an  
3 ordinarily skilled searcher would have read  
4 every page of Hoffman and search for every  
5 product that Hoffman mentions in those 216  
6 pages?

\*\*\*

15 A. Yes. Yes.

EX1115 at 166:19-167:15; Opp. at 11; EX2111, ¶51.

# Mr. Lhymn's "Search" - Hoffman



EX2004; MW Reply at 13.

# Lhymn Deposition re: Hoffman

16 Q. And would the same be true for  
17 the other references among the 518  
18 references on the face of the '228?

19 A. Certainly as a skilled  
20 searcher, if we're presented with a search,  
21 an invalidity search for example, against a  
22 certain patent, one of the very first steps  
23 we are going to take, and this is something  
24 we do every time, is we have to review  
25 every single reference on the face of that  
1 patent. That's highly -- that could be  
2 highly useful information to us to  
3 understand where -- what references the  
4 examiner found previously, so on and so  
5 forth.

6 So it's standard practice for a  
7 skilled searcher to review references cited  
8 on the face of the patent.

9 Q. And then to read every page of  
10 every reference and search for the products  
11 they describe?

12 A. Sure. During a reasonably  
13 diligent search. And again, these are  
14 references cited on the face of the patent  
15 that we're searching against.

EX1115 at 167:16-168:15; Opp. at 11.

# Mr. Lhymn's Actual Path to Hoffman

9 Q. Mr. Lhymn, in paragraph 51 you  
10 talk about a document called Hoffman,  
11 right?

12 A. Yes.

13 Q. And you say it's one of many  
14 references -- sorry, it's one of the  
15 references cited on the face of the '228,  
16 correct?

17 A. That's correct.

7 A. The references cited I  
8 reviewed -- I reviewed the Hoffman  
9 reference on the face of the '228 patent.

10 Q. How did you find that one to  
11 review?

12 A. Hoffman was presented to me by  
13 counsel.

1 Q. Any others?

2 A. No.

3 Q. Just the one. Okay, you say  
4 you don't recall -- or you don't know how  
5 many references are cited on the face of  
6 the '228 patent?

7 A. I don't have the patent in  
8 front of me.

EX1115 at 162:9-17, 163:7-13, 164:1-8; Opp. at 11.

EX2080 – Vacated *Unified* RPI Order re: [REDACTED]

**MemoryWeb:** “And, while the Board referred to [REDACTED] in the RPI Order, such discussion was not determinative of the Board’s ultimate findings.”

Reply at 4.



EX2080, 10; Opp. at 2.

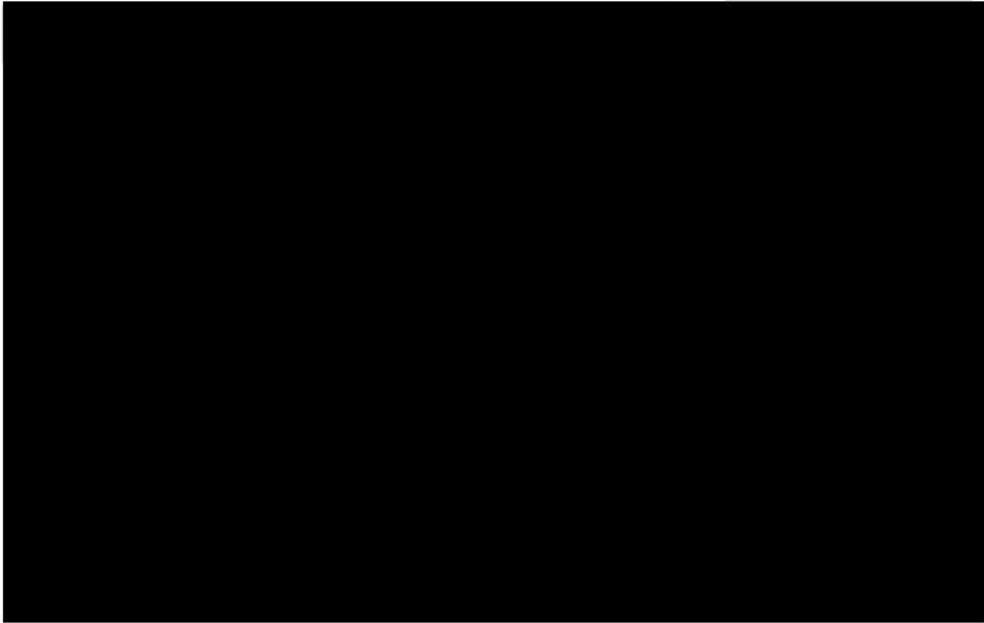


EX2080 – Vacated *Unified* RPI Order re: [REDACTED]

**MemoryWeb:** “And, while the Board referred to [REDACTED] in the RPI Order, such discussion was not determinative of the Board’s ultimate findings.”

3. *Common Members Among Unified, Apple, and Samsung*


The record in this case indicates that Unified, Apple, and Samsung do not have any board members in common. Ex. 1023 ¶ 23. [REDACTED]




Reply at 4.

EX2080, 24-25; Opp. at 2.

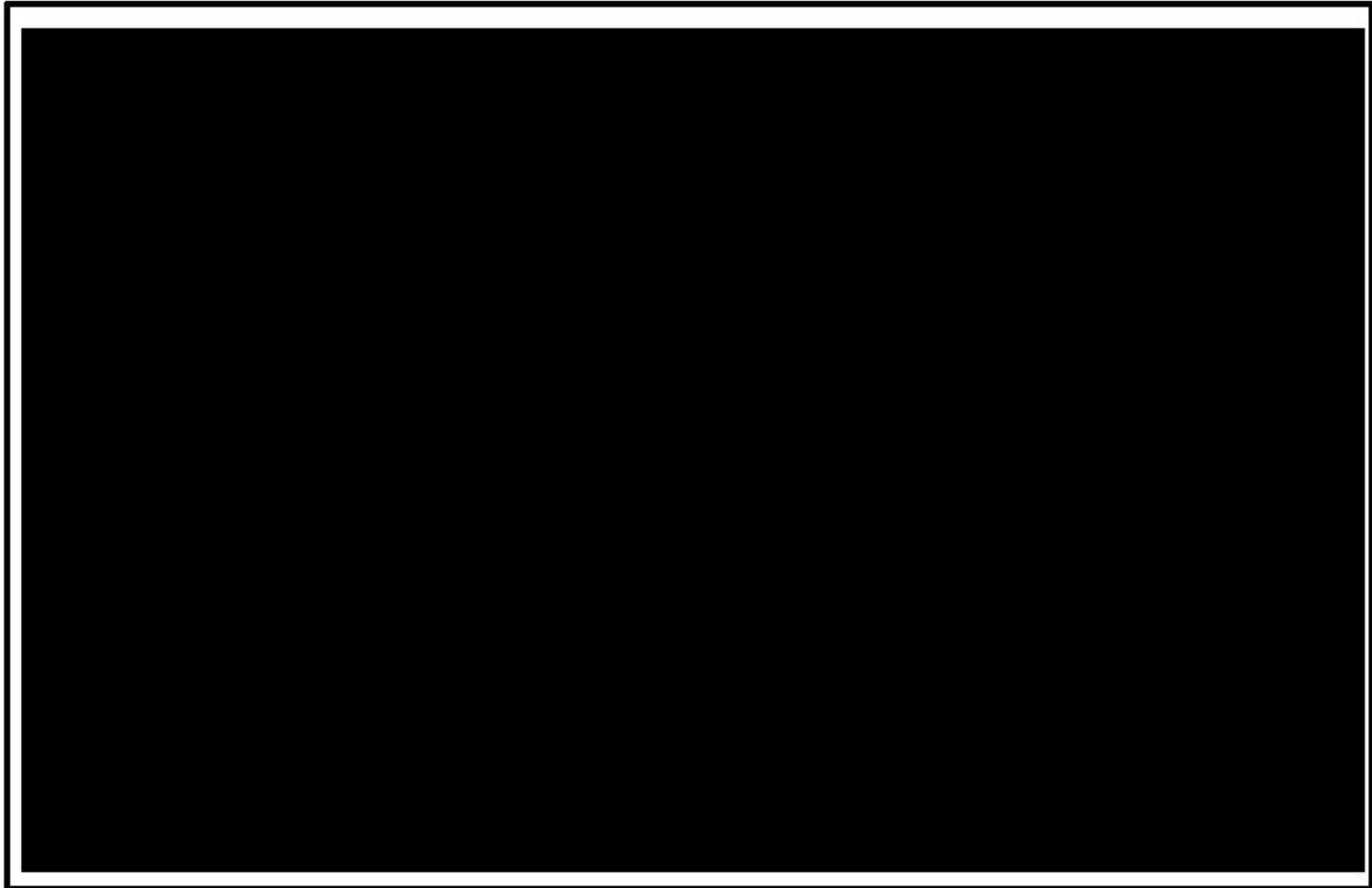
# EX2080 – Vacated *Unified* RPI Order re: “Advisory Counsel”



The record shows that part of Unified’s strategy for dealing with NPE patent litigation is to create “complete business alignment” between Unified and its member companies through Unified’s various activities. Ex. 2015; Ex. 2016. These activities include PTAB patent validity challenges, where, according to Unified’s own documents, Unified has filed 185 petitions for IPR since 2012, claiming a 95% success rate in 2020. Ex. 2017, 1; Ex. 2018, 1–2.

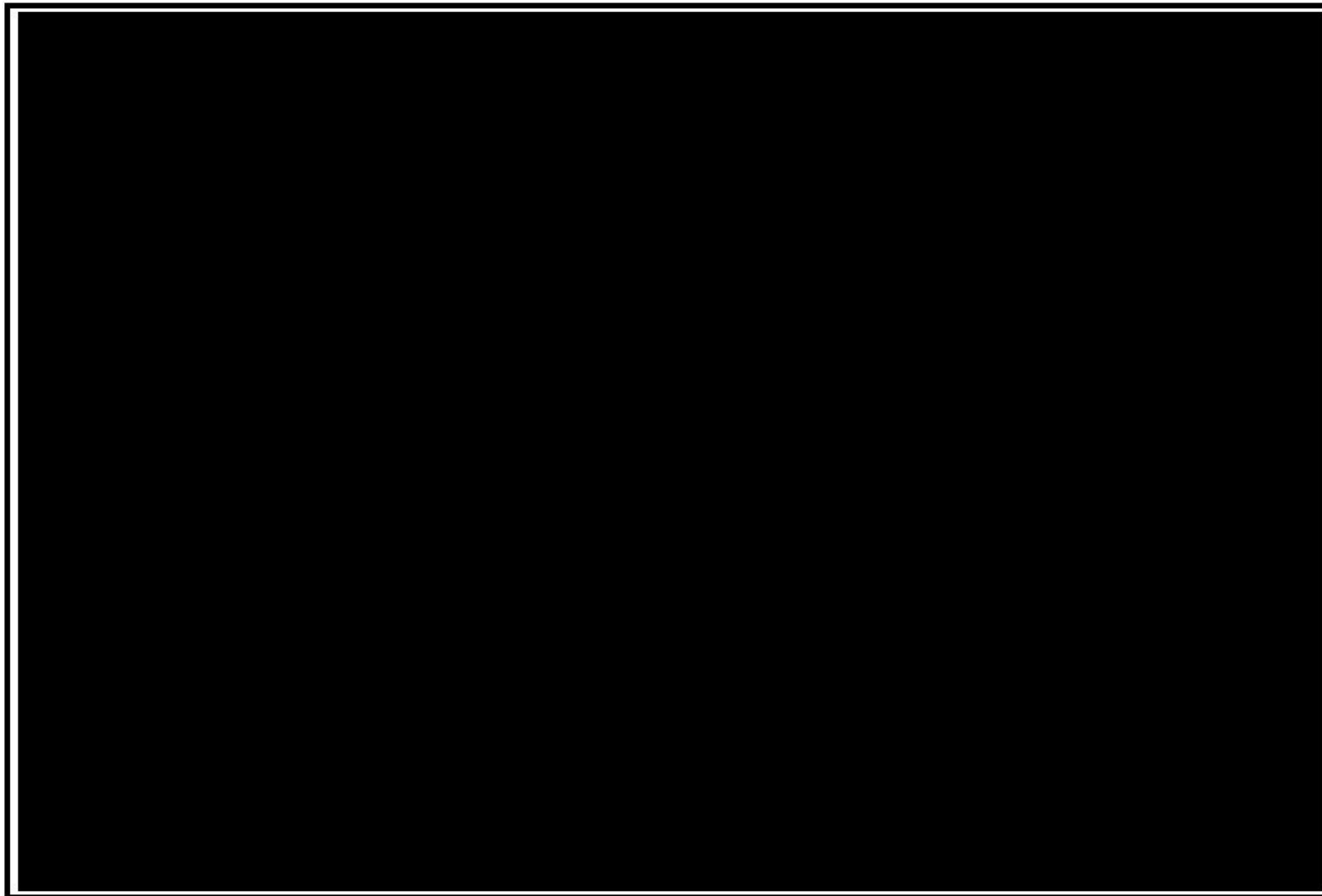


EX2069: [REDACTED] Apple-Unified Membership Agreement



EX2069, at 2-3; Opp. at 16.

EX1095: [REDACTED] Apple-Unified [REDACTED] Agreement



EX1095, at 1; Opp. at 16.

# Jakel Declaration re: Advisory Counsel

**HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY**

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC  
Petitioner

v.

MEMORY WEB, LLC  
Patent Owner

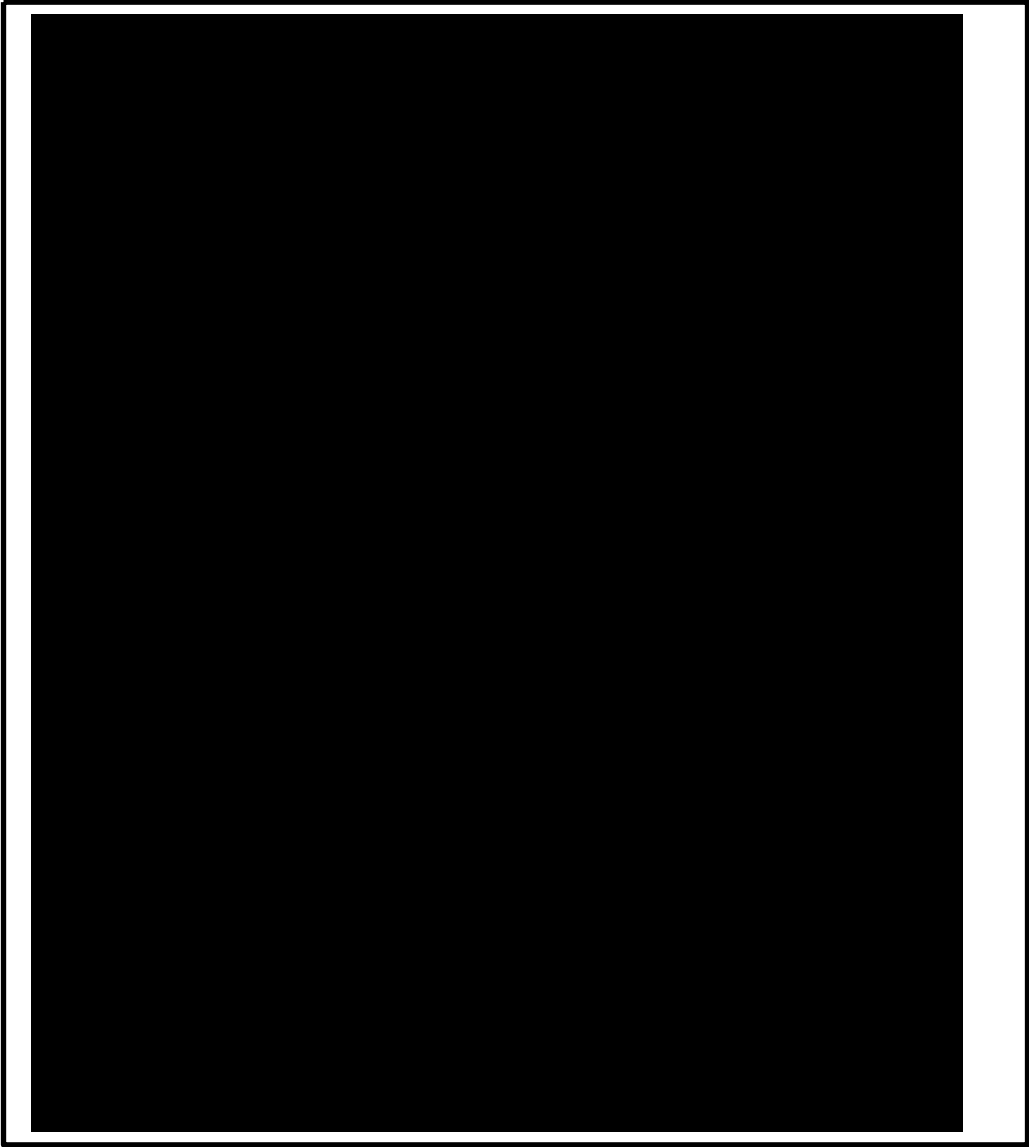
Case No. IPR2021-01413  
Patent 10,621,228

**SUPPLEMENTAL DECLARATION OF KEVIN JAKEL**



EX2077 at 9 n.1; Opp. at 16.

# Jakel Deposition re: Advisory Counsel



EX2091, at 141:20-142:23;  
Opp. at 16.

# Lasker Declaration re: [REDACTED]

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPEAL  
Petitioner

MEMORANDUM  
Patent

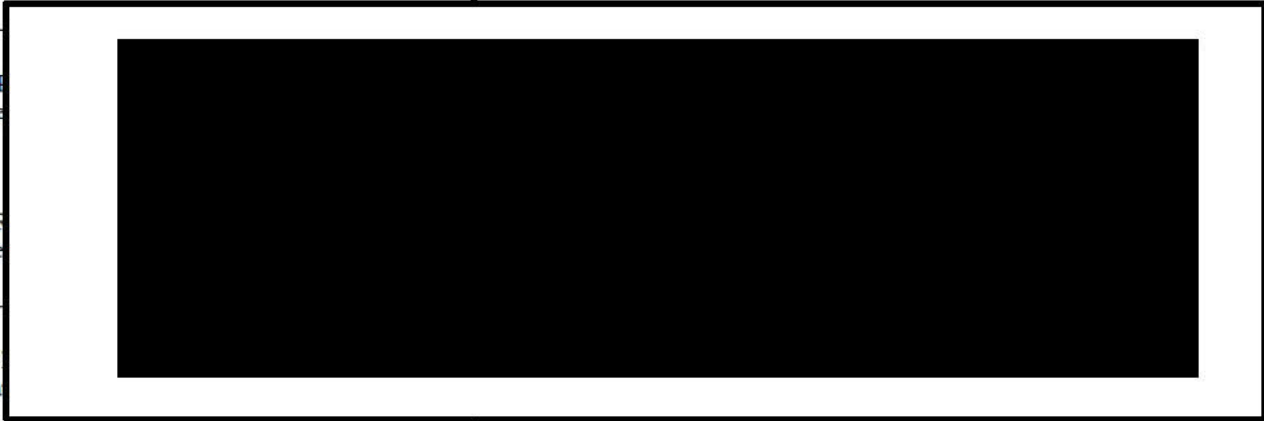
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Case No. \_\_\_\_\_  
U.S. Patent No. \_\_\_\_\_

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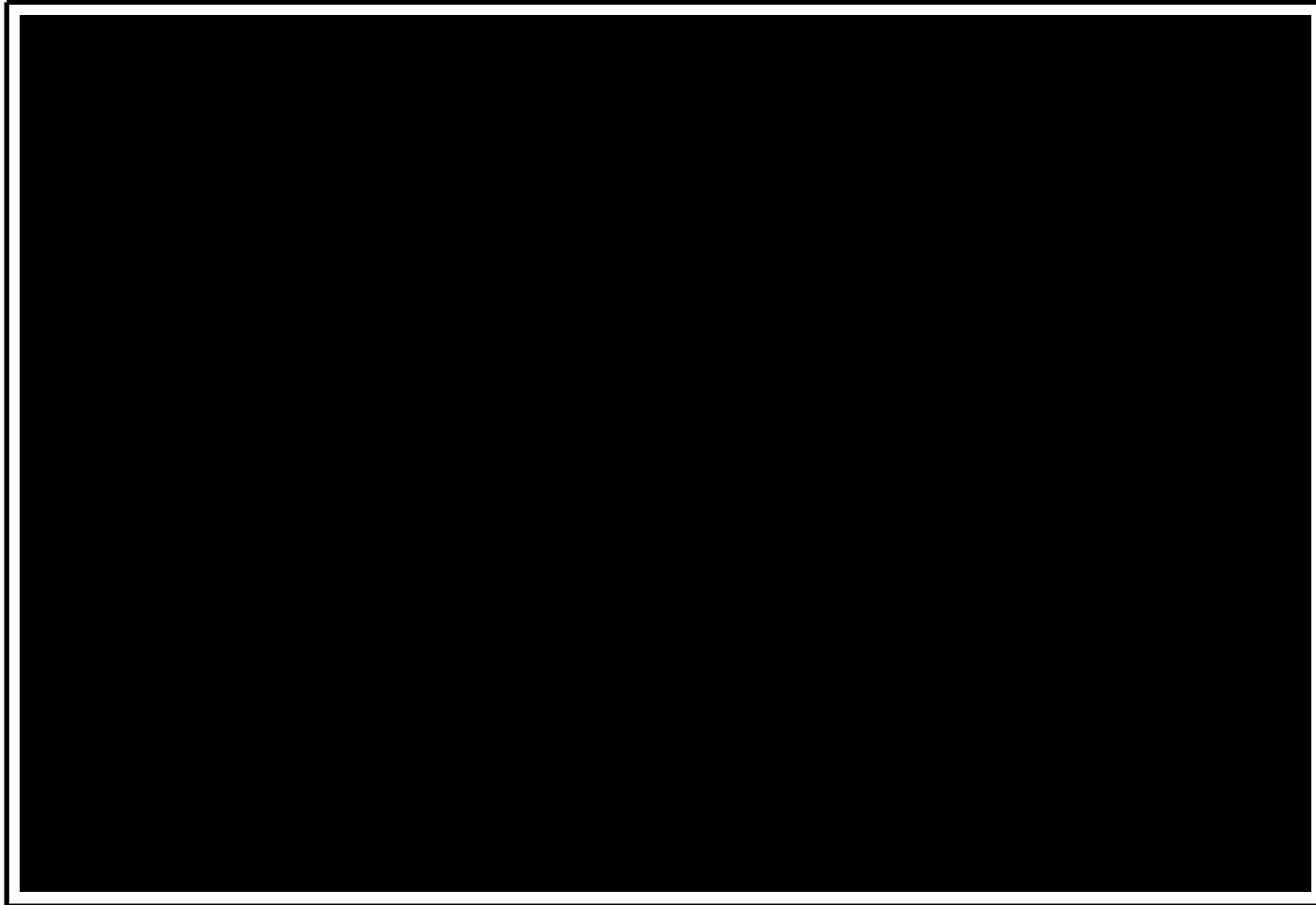
**DECLARATION OF JEFF LASKER**

Petitioner Apple Inc., Ex. 1118, Cover  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031



EX1118; Opp. at 15.

# Apple-Unified Membership Agreement



EX2069, at 5; Opp. at 23.



# Lasker Declaration re: [REDACTED]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

APPLE INC.,  
Petitioner,

v.

MEMORYWEB, LLC  
Patent Owner.

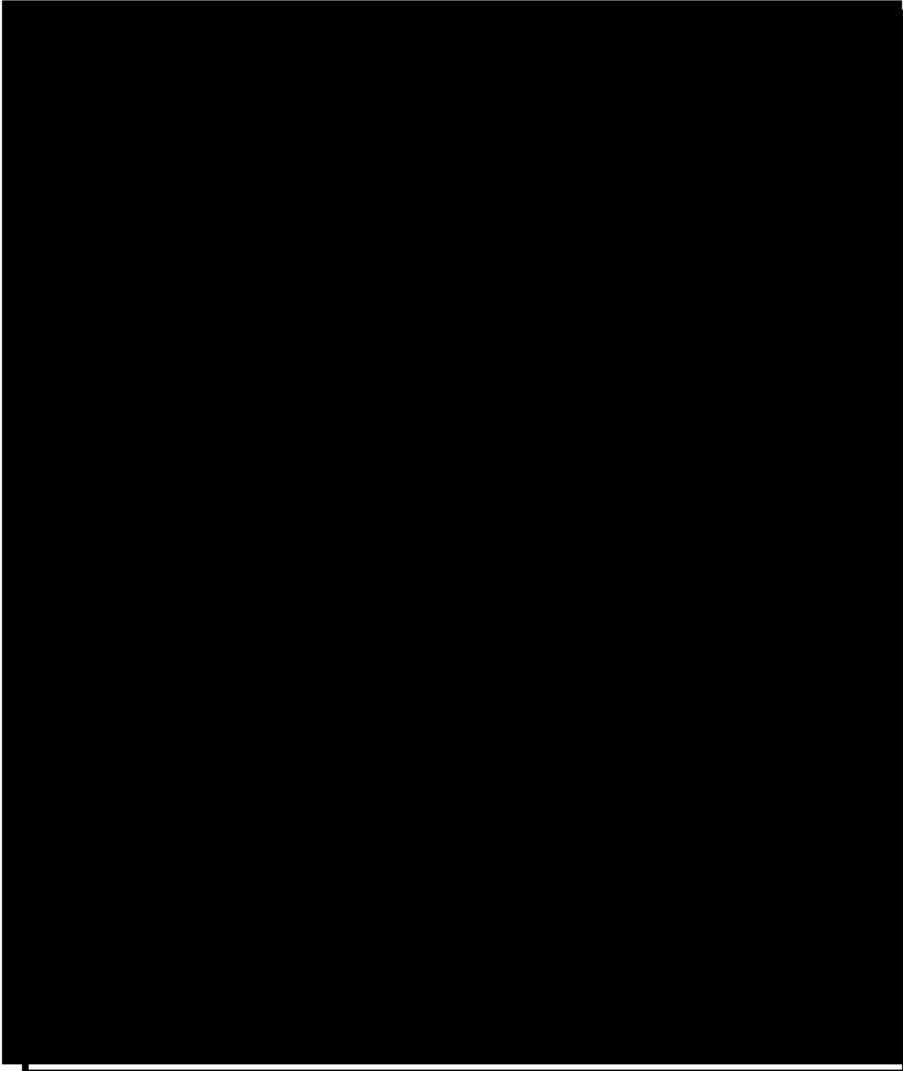
Case No. IPR2022-00031  
U.S. Patent No. 10,621,212

DECLARATION OF JEFF L. LASKER

Petitioner  
Apple Inc. v. Memoryweb, LLC

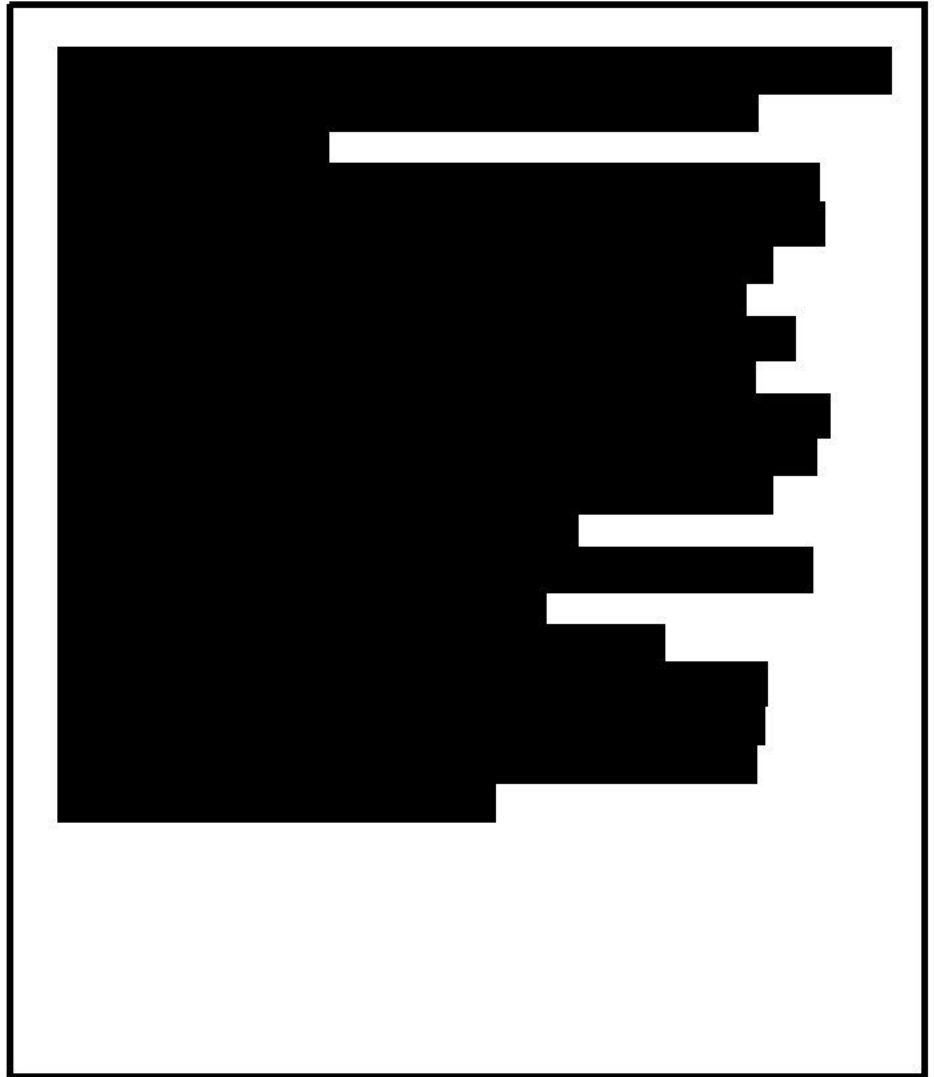
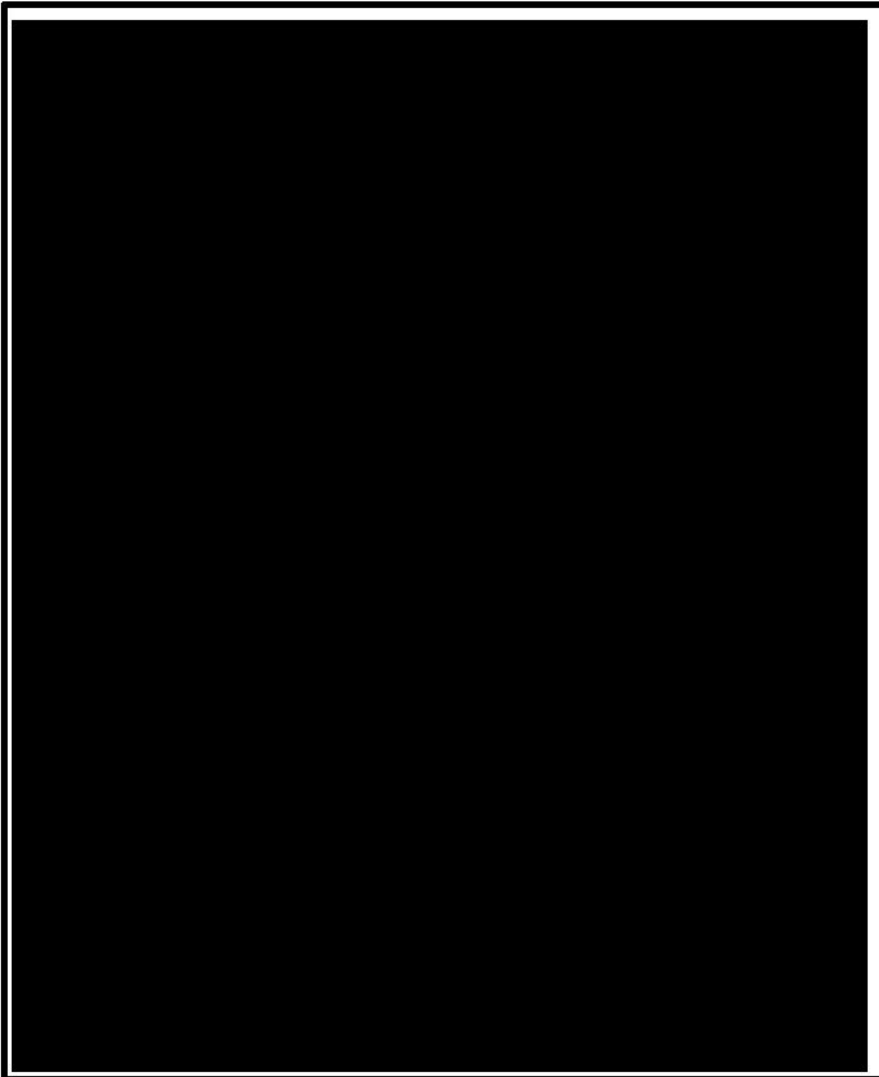
[REDACTED]

Lasker Deposition: [REDACTED]

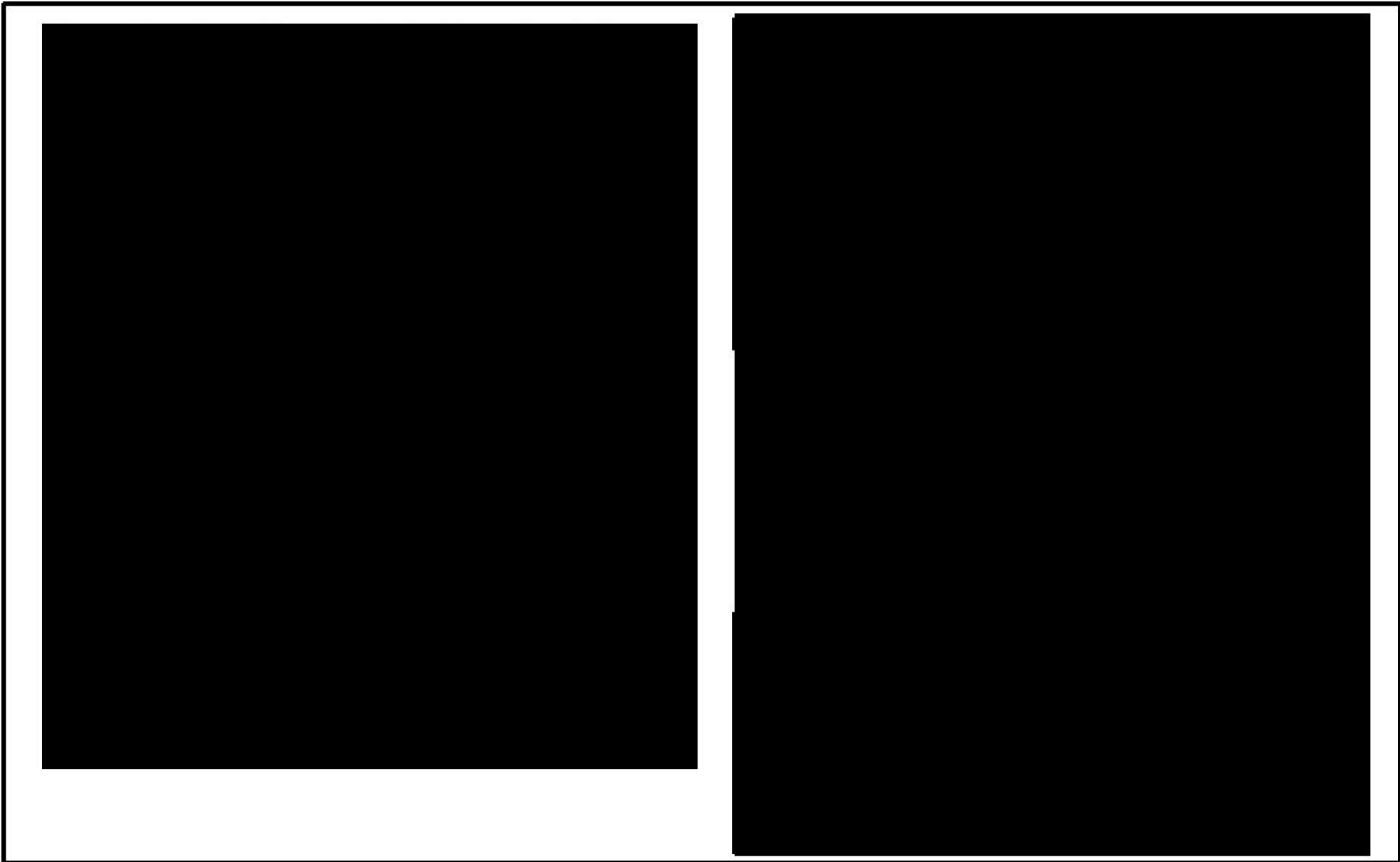


EX2115; EX2117 at 92:16-93:10.

Lasker Deposition: [REDACTED]

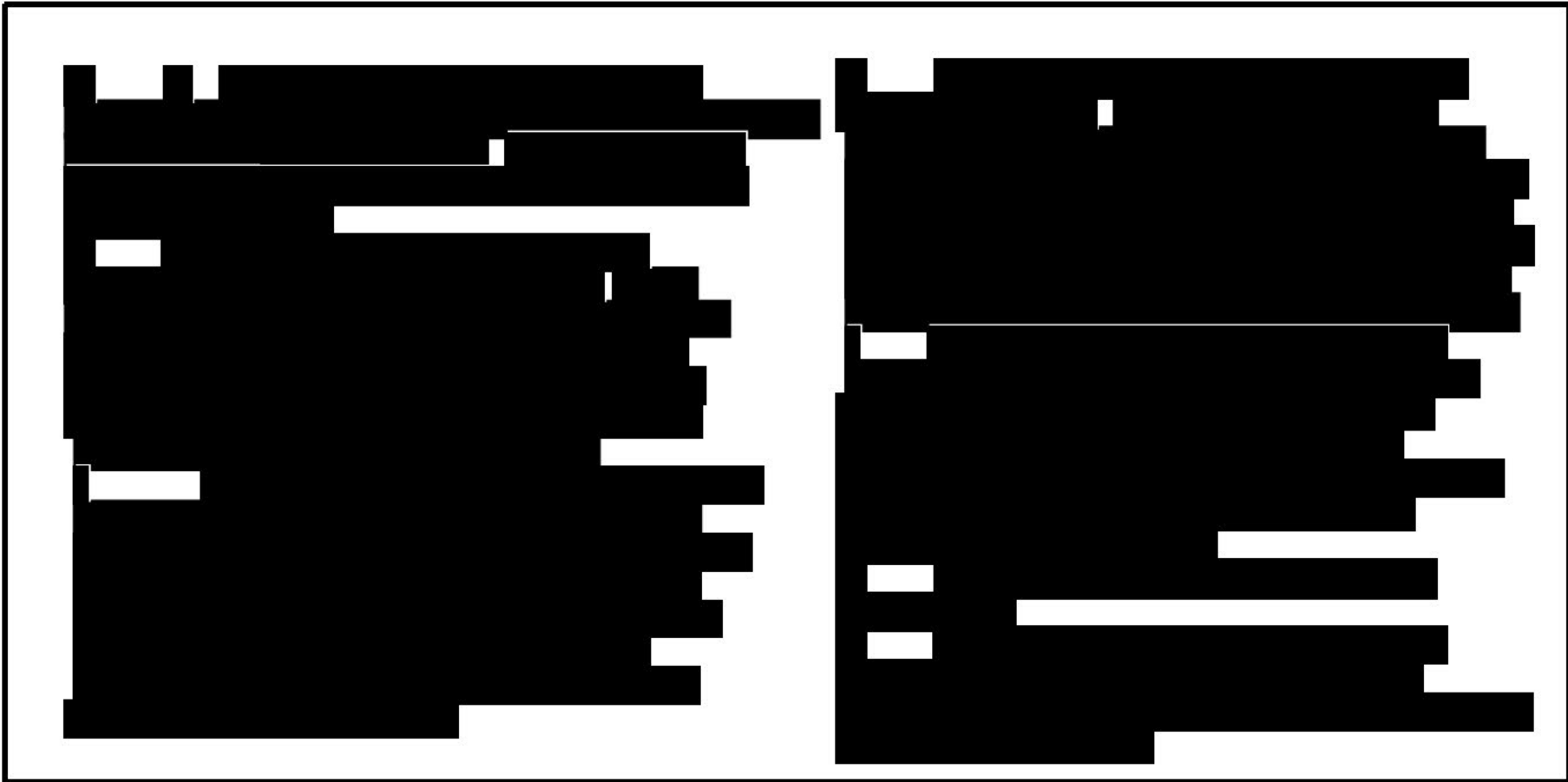


Lasker Deposition:



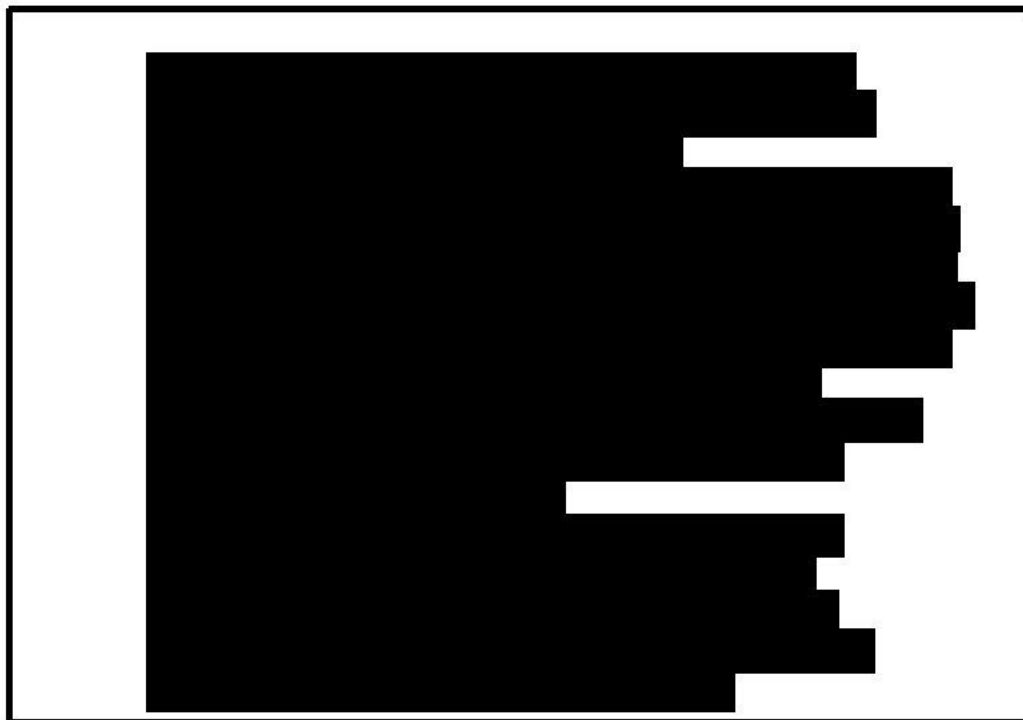
EX2117, at 39:22-41:24.

Lasker Deposition:



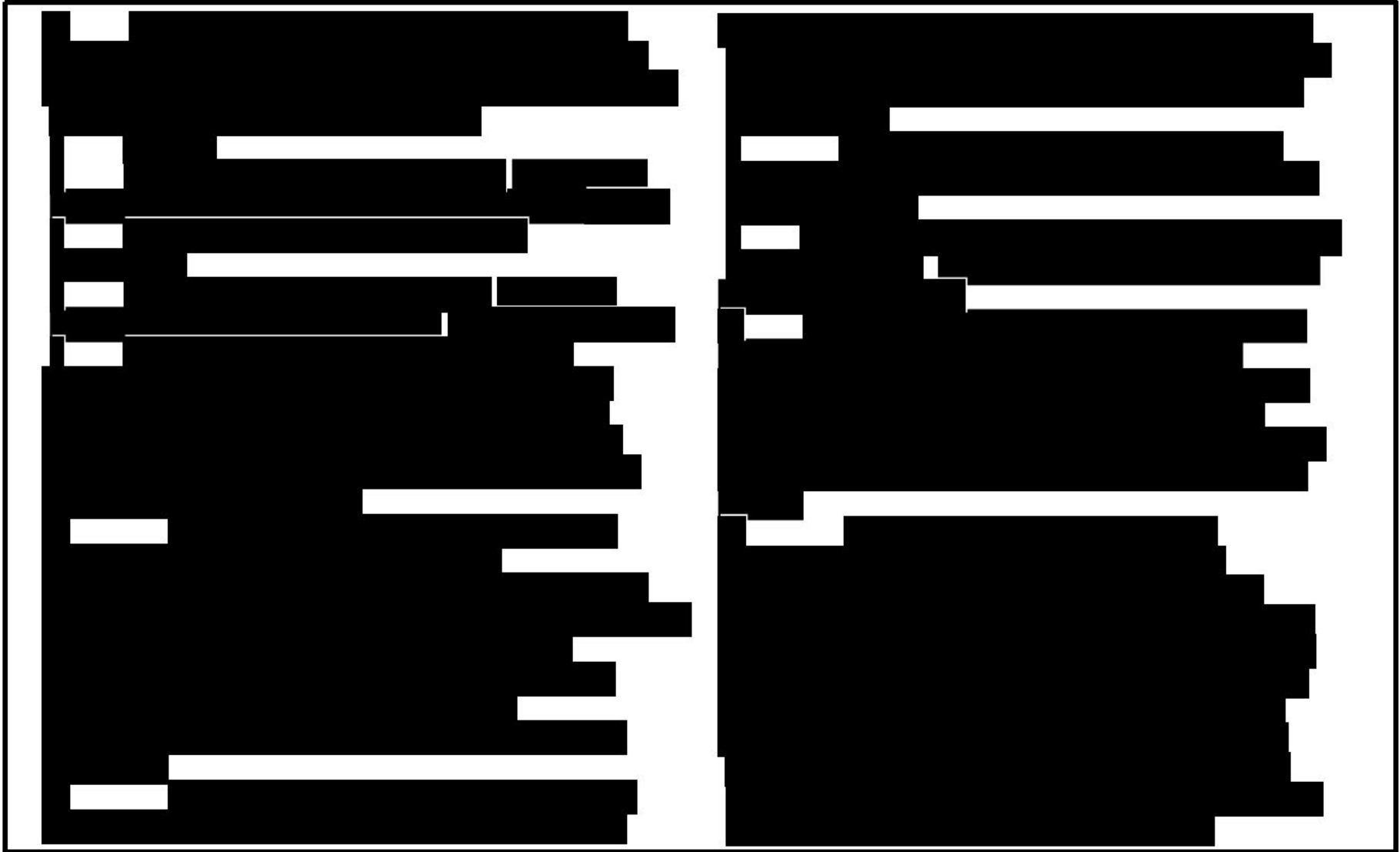
EX2117 at 42:16-43:10, 43:25-44:20.

Lasker Deposition:



EX2117 at 86:25-87:16.

Lasker Deposition: [REDACTED]



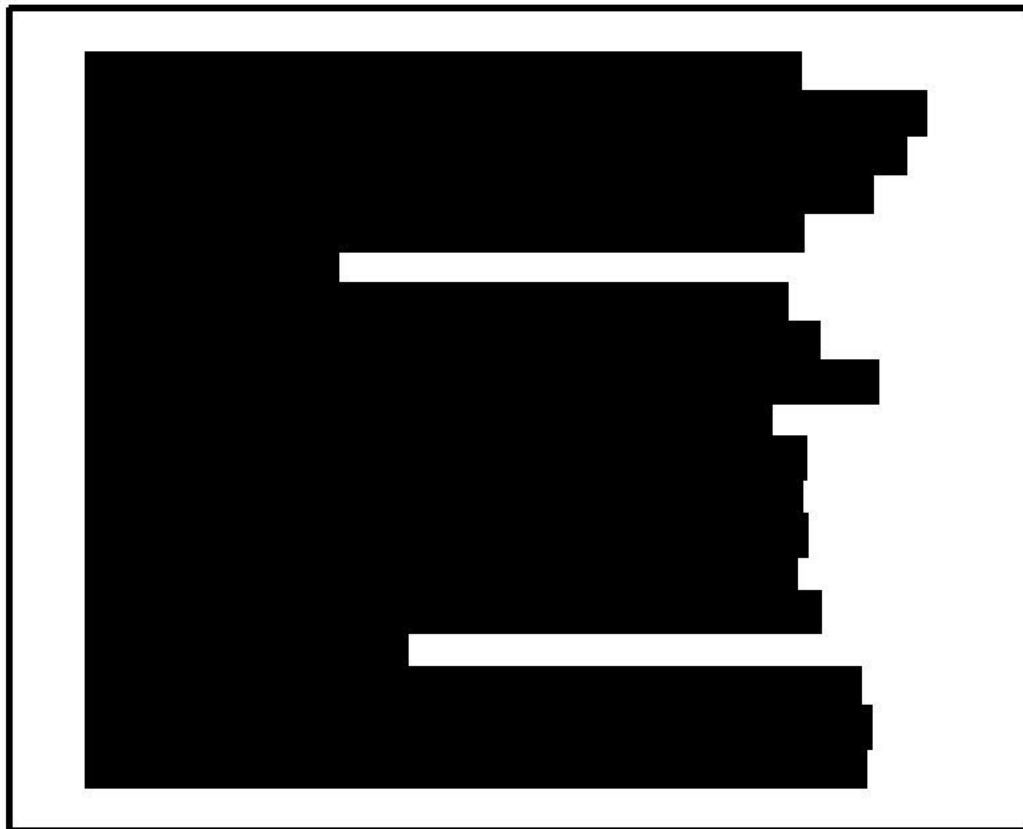
EX2117 at 71:23-74:3.

Lasker Deposition: [REDACTED]



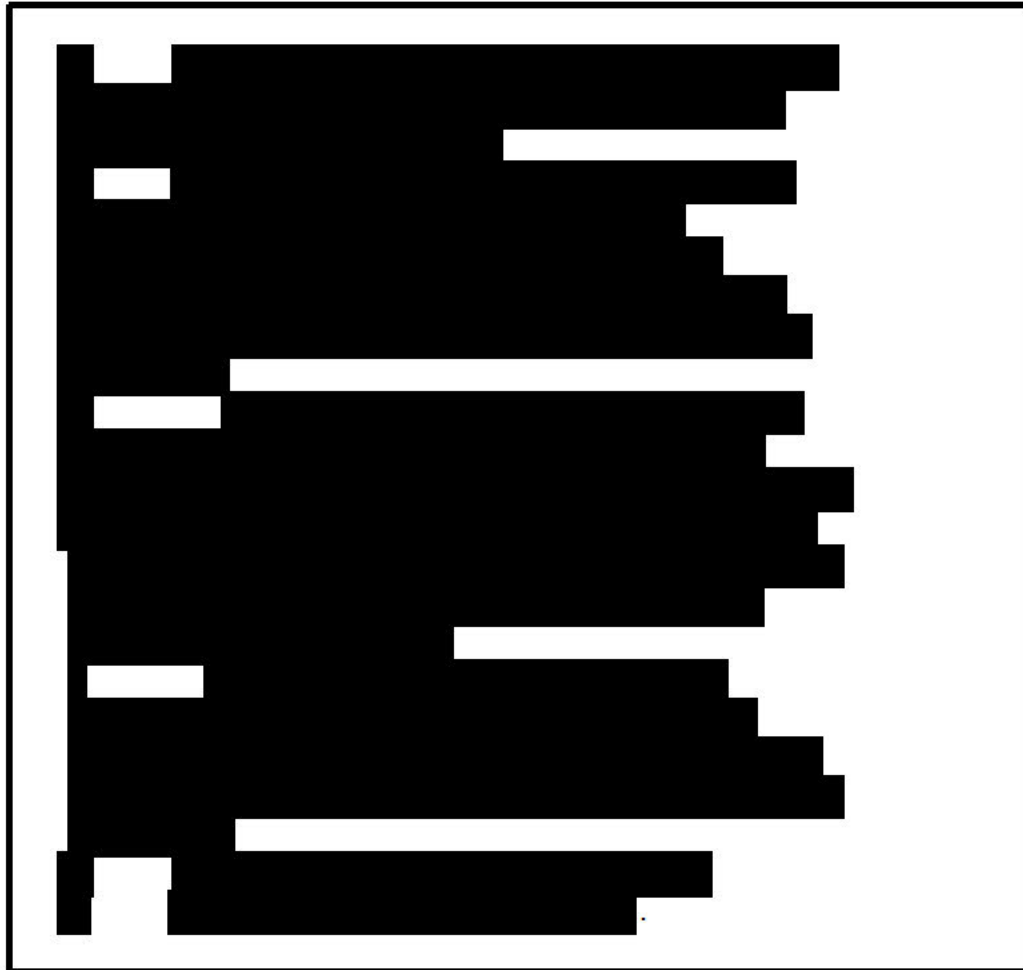


Lasker Deposition: [REDACTED]



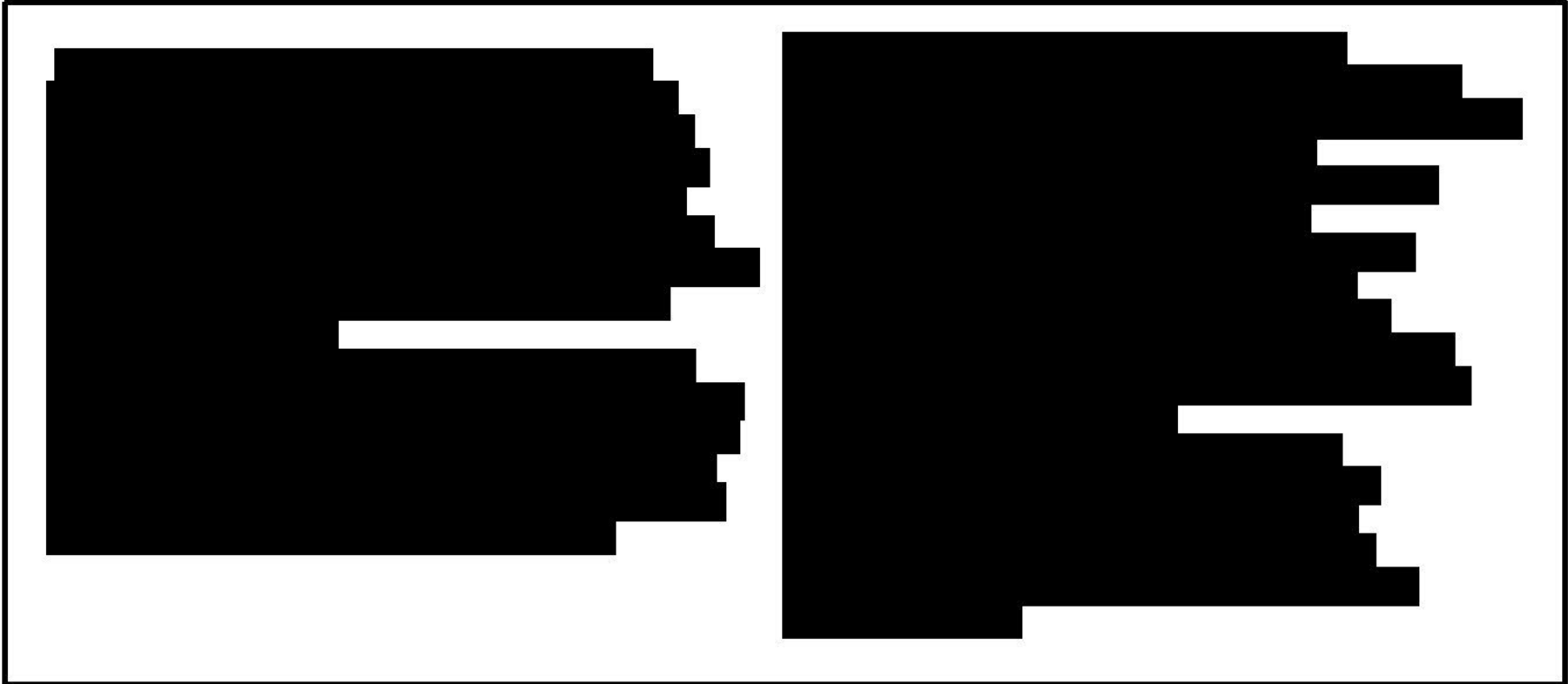
EX2117 at 81:24-82:17.

Lasker Deposition: [REDACTED]



EX2117 at 70:14-71:11.

Lasker Deposition:



EX2117 at 95:4-96:11.

# Jakel Deposition: Unified Has No Obligation to File IPR Challenges

12 Is there any other structure within  
13 Unified Patents that permits Apple to provide input  
14 to Unified on which patents Unified should  
15 challenge?

16 A. No. There is no structure in Unified in  
17 any way that allows Apple to provide us any input or  
18 control, direction over any of our filing  
19 activities.

20 Q. Do [REDACTED] between Apple and  
21 Unified require Unified to file challenges to any  
22 specific patent?

23 A. They don't even require us to file  
24 challenges. So not just -- not just on any patents  
25 but also there's no requirement that we actually  
1 file challenges. It's Unified's decision to choose  
2 to use challenges as a deterrence tool or not.

EX2091, at 158:12-159:2; Opp. at 24.

3 Q. My first question, Mr. Jakel, do [REDACTED] obligate  
4 [REDACTED] Unified to file any challenges to patents?

5 A. No. Actually, [REDACTED]  
6 don't obligate us to do any specific action, at all.  
7 We have a whole list of things listed, but we  
8 believe that deterrence can be achieved with lots of  
9 different things: our tools, our data, our  
10 monitoring activity, all the things that we do,  
11 filing, patent challenges based on validity is not  
12 obligated, but it's one of the tools we think is  
13 effective in creating the deterrence that we want to  
14 generate for our zones.

EX2068, at 136:3-15; Opp. at 24.

# Jakel Declaration: Unified Has Sole Discretion and Control Over IPR Decisions

HIGHLY CONFIDENTIAL - ATTORNEY WORK PRODUCT

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

UNIFIED PATENTS,  
Petitioner

v.

MEMORY WEB, L.P.,  
Patent Owner

Case No. IPR2021-01001  
Patent 10,621,228

SUPPLEMENTAL DECLARATION

22. In every Unified proceeding, past and present, including this one, Unified has not coordinated or communicated with members regarding litigation or the substance of its IPR. As mentioned, Unified contractually prohibits members' influence in Unified's challenges (including when and what patents Unified may challenge), and Unified is free to challenge its members' patents, which it has done. Because Unified does not coordinate with members regarding its filings, it has never needed or attempted to avoid a last-minute statement of coordination.

24. Unified has not acted at another's behest, and it has sole control, direction, and funding over this IPR. No Unified member funded this petition. As a result, no member has control, has opportunity to control, or has coordinated this or any other challenge Unified chooses to pursue.

18. Unified filed this IPR to deter the use of invalid patents in its Content Zone, not to protect the interests of any one member.

# Jakel Declaration: Unified Acts Independently

**HIGHLY CONFIDENTIAL - ATTORNEY**

UNITED STATES PATENT AND TRADE

BEFORE THE PATENT TRIAL AND A

UNIFIED PATENTS, LLC  
Petitioner

v.

MEMORY WEB, LLC  
Patent Owner

Case No. IPR2021-01413  
Patent 10,621,228

**SUPPLEMENTAL DECLARATION OF**

5. As stated in Exhibit 1017 (at ¶¶2-3), Unified is a first-of-its-kind company whose sole purpose is to deter NPE litigation by protecting technology sectors. Unified bolsters patent quality by deterring assertions of invalid patents by non-practicing entities (NPEs) in various technology zones without any coordination with members. Unified was built to operate independently to serve its deterrence goals. Thus, Unified has sole and absolute discretion over its decision to contest patents. Based on its own analysis, Unified determines which patents are worth pursuing in terms of searching for prior art or taking action, including filing a PGR, IPR, or EPR, or foreign opposition in the case of non-U.S. patents. Unified's decisions to file a PGR, IPR, EPR, or foreign opposition are made independently without the input, assistance, or approval of any of Unified's Members. Unified members are unable to participate or exercise any direction or control over Unified's filings, and Unified does not coordinate with members regarding Unified's filings or members' litigation. Should Unified decide to challenge a patent in a post-grant proceeding, Unified controls every aspect of such a challenge, including controlling which patent and claims to challenge, which prior art to apply and the grounds raised in the challenge, when to bring any challenge, and whether to settle or otherwise end or terminate any challenge.

EX2077; Opp. at 23.

# Jakel Declaration: Unified Acts Independently

HIGHLY CONFIDENTIAL -

UNITED STATES PATENT A

BEFORE THE PATENT TRI

UNIFIED PA

Petiti

V

MEMORY

Patent

Case No. IPR

Patent 10

SUPPLEMENTAL DECLAR

10. Furthermore, Unified has always acted independently to protect its technology zones. Unified's members are contractually forbidden from influencing Unified's filings, including whether Unified will or will not file a petition, and may be unilaterally dismissed from their membership for even attempting to do so. Unified also often files against patents not asserted against any member. Further, Unified does not consult with members or any third party about any of their challenges or potential litigation strategies. A specific member cannot reasonably expect Unified will undertake any particular action or inaction, at least because Unified has over 3,000 members. Thus, Unified could never coordinate the conflicting interests and expectations of each member. For these reasons, Unified likely takes positions inconsistent with those taken by litigation defendants, including members, such as in claim construction or with respect to motions to amend.

12. Unified files regardless of whether members are in parallel litigation.

EX2077; Opp. at 17-18, 23.

Lasker: [REDACTED]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

APPLE INC.  
Petitioner,

v.

MEMORYWEB, LLC  
Patent Owner

Case No. IPR2022-00031  
U.S. Patent No. 10,111,111

DECLARATION OF JEFFREY LASKER

Petitioner Apple Inc., Ex. 1118, Cover  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031

EX1118; Opp. at 26.



# Jakel Deposition: Unified Learned About '228 Patent From Automated Litigation Notice re: Samsung

24 Q. Apple counsel returned to a topic that I  
25 had asked about earlier. And during Apple's  
1 examination it was referenced again that you first  
2 learned of the MemoryWeb '228 patent when Samsung  
3 was sued. Do you recall that?

4 A. I recall that, yeah.

5 Q. Okay. And then you were asked: Would  
6 Unified have challenged MemoryWeb's '228 patent if  
7 MemoryWeb had not sued Apple as well. And then you  
8 answered:

9 "We believe deterrence was going  
10 to be valuable here and it was not  
11 related to the fact that Samsung or  
12 Apple were sued."  
13 Do you recall that?

14 A. I do.

15

Q. And then you continue:

16

"I think, you know, we have  
17 independently decided to challenge  
18 this patent regardless of whether or  
19 not Apple had been sued in addition  
20 to Samsung."

21

Right?

22

A. Yeah, I mean, I don't know if that's  
23 exactly what I said but it sounds pretty close.

24

Q. Okay. But the truth is, you didn't even  
25 know about the '228 patent until your members were  
1 sued, correct?

2

A. It could have been anyone getting sued but  
3 in this particular case it was Samsung that got  
4 sued.

4

EX2091, at 216:24-218:4; Opp. at 27.

# MemoryWeb Acknowledges Unified's IPR Was Not Filed Because the '228 Patent Was Asserted Against Apple

<sup>3</sup> Apple notes Unified already knew of the '228 patent when Apple was sued because Samsung was sued one month earlier, but this is a distinction without a difference. Paper 64, 27. Unified filed the Unified IPR within four months of learning of both suits, understanding two paying members could benefit. Paper 57, 2.

MW Reply at 8 n.3.

# Jakel Declaration – Unified Does Not Target Patents Filed Against Members

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

UNITED STATES PATENT

BEFORE THE PATENT TRI

UNIFIED P.  
Pet

MEMORY  
Patent

Case No. IPR2021-01413  
Patent 10,621,228

SUPPLEMENTAL DECLARATION OF KEVIN JAKEL

21. According to public records, less than 5% of the patents asserted against Apple or Samsung since they became Unified members were also challenged by Unified (via IPR or EPR). According to public records, both Apple and Samsung have had hundreds of patents asserted against them since they became Unified members.

EX2077; Opp. at 28.

Lasker: [REDACTED]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT

APPEALS

PERMISSION

MEMORANDUM

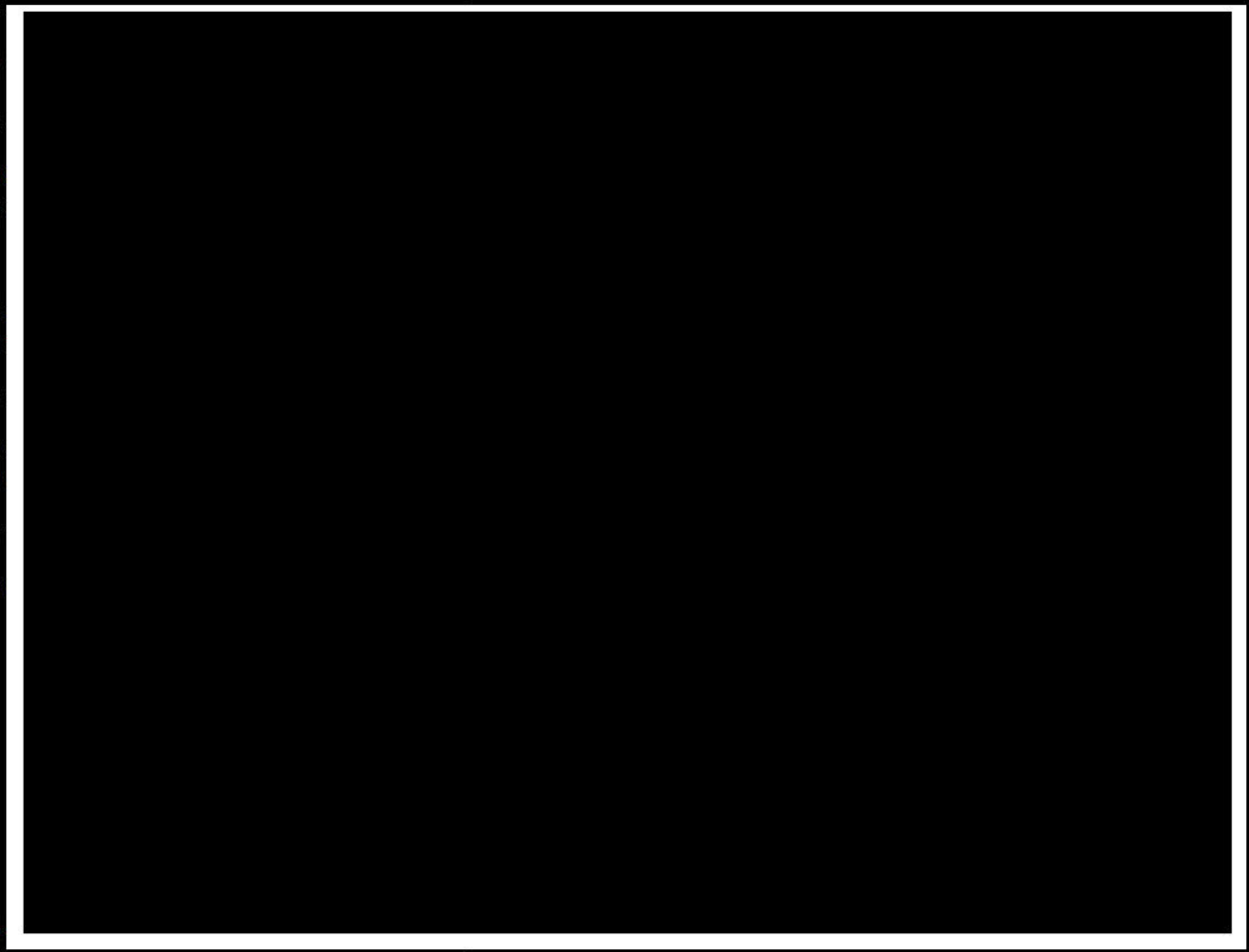
Patent

Case No.

U.S. Patent

DECLARATION

Applicant



# Jakel: No Pre-Filing Communications with Members

HIGHLY CONFIDENTIAL

UNITED STATES

BEFORE THE PATENT

TRADING OFFICE

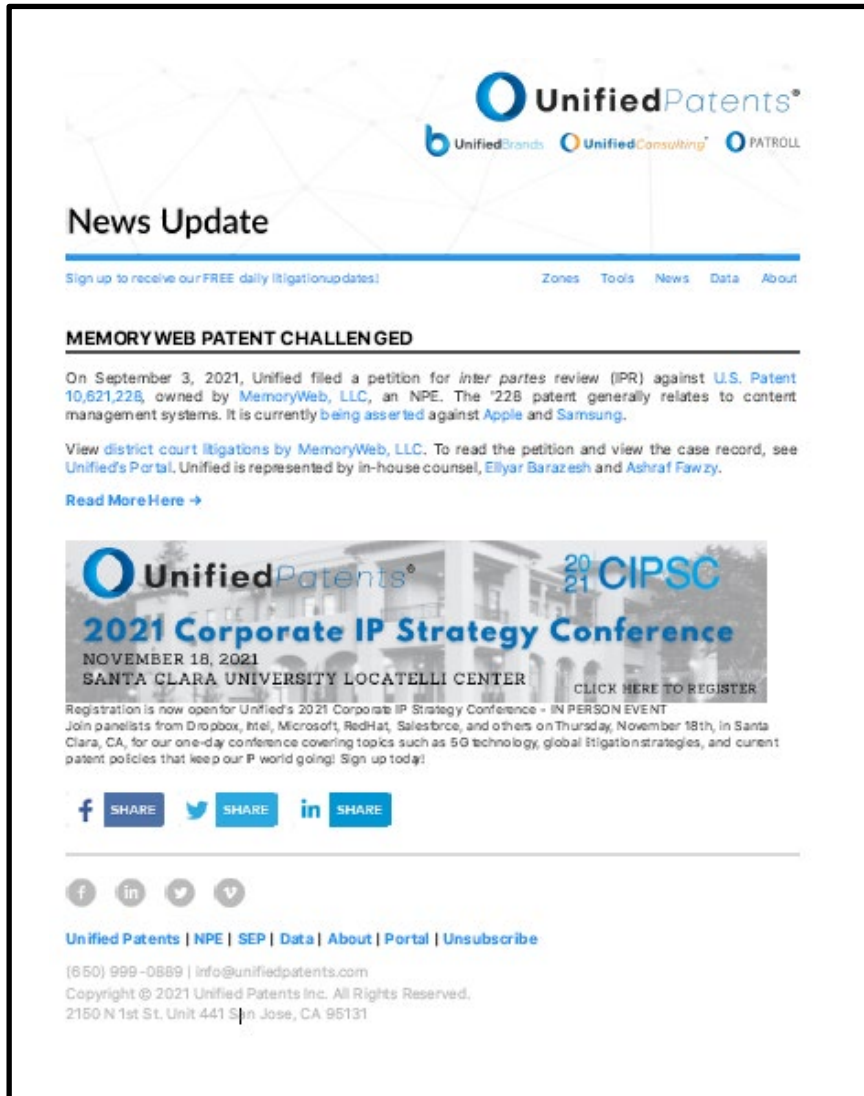
SUPPLEMENTAL

15. As with all of Unified's challenges, no member, including Apple and Samsung, received prior notice of Unified's intent to challenge the '228 Patent, and no members, including Apple and Samsung, were given an opportunity to participate in or an opportunity to even know that Unified was contemplating filing an IPR against the '228 Patent.

16. Unified has conducted a search for any communications with Unified members prior to the filing of this IPR regarding the '228 Patent, related patents, the IPR, the patent owner, or any related litigation. None exist. Therefore, for at least this reason, Unified had no knowledge of any its 3,000+ members' desires with respect to the '228 patent (and the same continues to be true, as noted below). Unified never conveyed any of its plans regarding the '228 patent to any member at any time nor coordinated with them in any way.

EX2077; Opp. at 18, 26.

# Unified Public News Updates (EX2074 & EX2078)



The screenshot shows the Unified Patents website with a news update titled "MEMORYWEB PATENT CHALLENGED". The page features the Unified Patents logo and navigation links for Zones, Tools, News, Data, and About. The main content discusses a petition for *inter partes* review (IPR) against U.S. Patent 10,621,228, owned by MemoryWeb, LLC, an NPE. The patent generally relates to content management systems and is currently being asserted against Apple and Samsung. A link is provided to read more about the district court litigations by MemoryWeb, LLC.

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## News Update


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### MEMORYWEB PATENT CHALLENGED

On September 3, 2021, Unified filed a petition for *inter partes* review (IPR) against U.S. Patent 10,621,228, owned by MemoryWeb, LLC, an NPE. The '228 patent generally relates to content management systems. It is currently being asserted against Apple and Samsung.

View district court litigations by MemoryWeb, LLC. To read the petition and view the case record, see Unified's Portal. Unified is represented by in-house counsel, Elyyar Barazesh and Ashraf Fawzy.

[Read More Here →](#)



**Unified Patents®** 2021 CIPSC  
**2021 Corporate IP Strategy Conference**  
NOVEMBER 18, 2021  
SANTA CLARA UNIVERSITY LOCATELLI CENTER  
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Registration is now open for Unified's 2021 Corporate IP Strategy Conference - IN PERSON EVENT. Join panelists from Dropbox, Intel, Microsoft, RedHat, Salesforce, and others on Thursday, November 18th, in Santa Clara, CA, for our one-day conference covering topics such as 5G technology, global litigation strategies, and current patent policies that keep our IP world going! Sign up today!

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The screenshot shows the Unified Patents website with a news update titled "MEMORYWEB PATENT LIKELY INVALID". The page features the Unified Patents logo and navigation links for Zones, Tools, News, Data, and About. The main content discusses a trial instituted by the Patent Trial and Appeal Board (PTAB) on all challenged claims in an IPR filed by Unified against U.S. Patent 10,621,228, owned by MemoryWeb, LLC, an NPE. The patent generally relates to content management systems and is currently being asserted against Apple and Samsung. A link is provided to read more about the district court litigations by MemoryWeb, LLC.

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## News Update

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### MEMORYWEB PATENT LIKELY INVALID

On March 14, 2022, the Patent Trial and Appeal Board (PTAB) instituted trial on all challenged claims in an IPR filed by Unified against U.S. Patent 10,621,228, owned by MemoryWeb, LLC, an NPE. The '228 patent generally relates to content management systems. It is currently being asserted against Apple and Samsung.

View district court litigations by MemoryWeb, LLC. To read the petition and view the case record, see Unified's Portal. Unified is represented by in-house counsel, Elyyar Barazesh.

[Read More Here →](#)



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EX2074 (left); EX2078 (right); MW Mot. at 17.

# Jakel: No Relevant Communications Between Apple & Unified

HIGHLY CONFIDENTIAL - ATTORNEY WORK PRODUCT

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

UNIFIED PATENTS, LLC  
Petitioner

v.

MEMORY WEB, LLC  
Patent Owner

Case No. IPR2021-01413  
Patent 10,621,228

SUPPLEMENTAL DECLARATION OF UNIFIED PATENTS, LLC

17. And as with other challenges, after filing the IPR there were no communications with any members (including Apple and Samsung) regarding the '228 Patent, related patents, the IPR, the patent owner, or any related litigation other than public information (e.g., the filing of the IPR petition in this case) or summaries regarding such public information. For example, Unified sends members a "News Update" announcing filed petitions and posts announcements to the general public regarding its public filings on Facebook, LinkedIn, Twitter, and via weekly "Newsletters." Unified sent such a News Update to members and a Newsletter to the thousands of people subscribed to its public mailing list that announced the petition's filing in this proceeding. *See* EX1028; EX1029; EX1026; EX1027. Unified also posted a public blog post to its website announcing the petition's filing in this proceeding. EX1021. Unified issues such press releases and mass emails for all aspects of its business, including challenges against patents not involved in litigation and non-validity-based activities such as amicus briefing, legal reviews, data analytics, and updates on the patent marketplace.

EX2077; Opp. at 19.

Lasker:



UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEALS BOARD

---

APPLE INC.,  
Petitioner,

v.

MEMORYWEB, LLC  
Patent Owner.

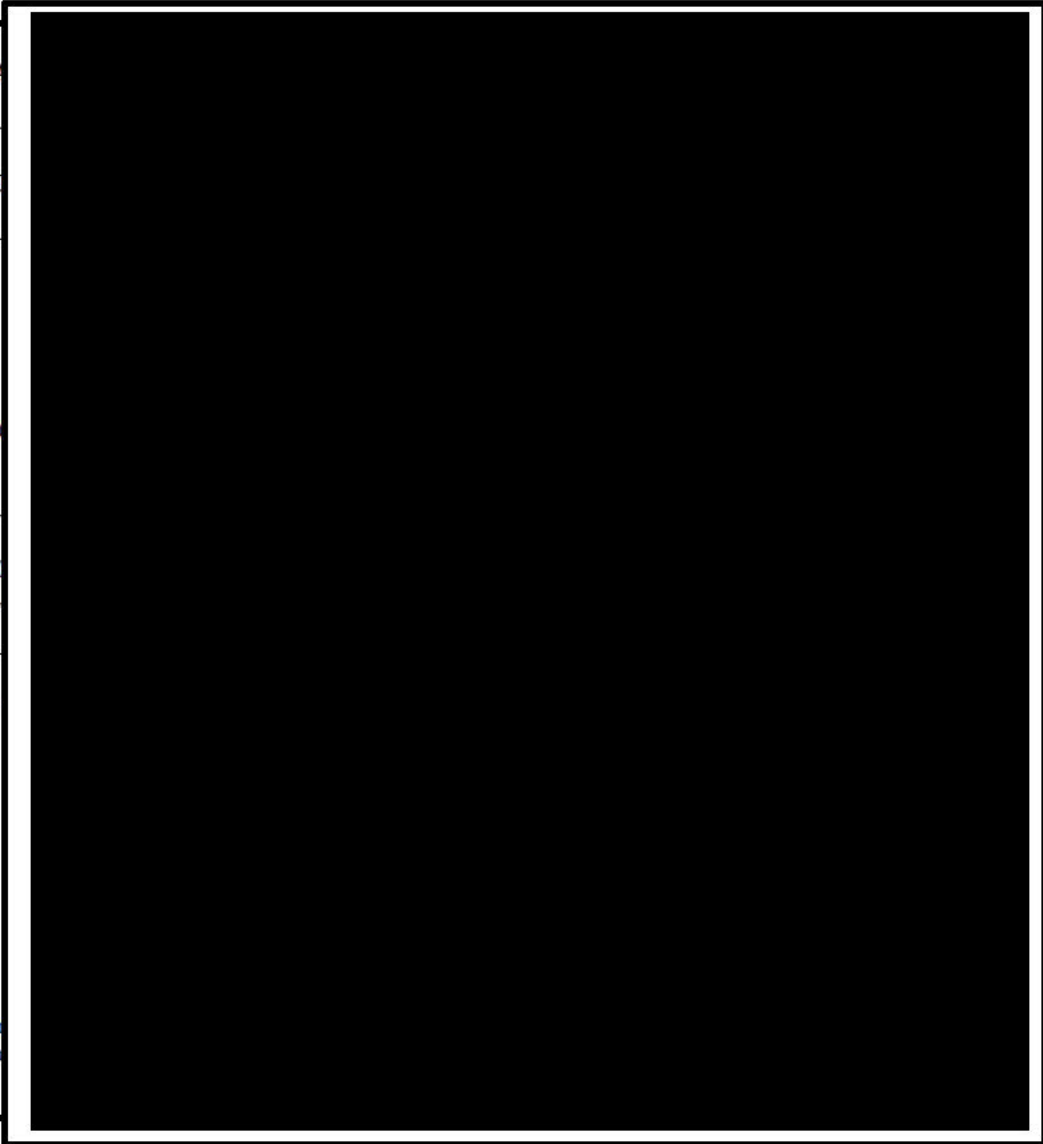
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Case No. IPR2022-00031  
U.S. Patent No. 10,621,000

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DECLARATION OF JEFFREY LASKER

Petitioner  
Apple Inc. v. Memoryweb, LLC





Lasker :



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner

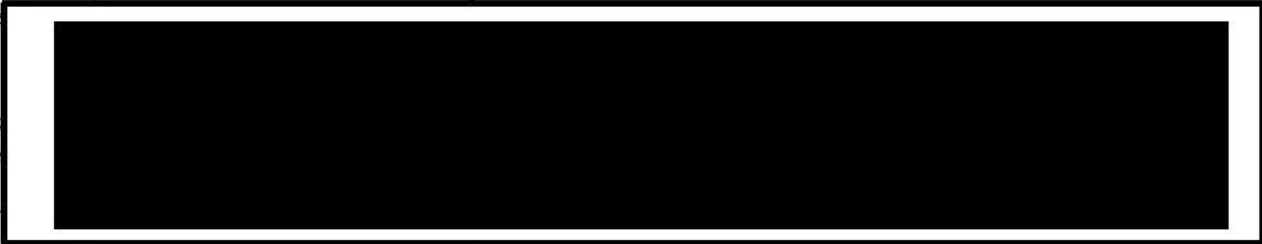
MEMORANDUM

Patent Trial and Appeal Board

Case No. IPR2022-00031  
U.S. Patent No. 10,621,228

DECLARATION OF JEFF LASKER

Petitioner Apple Inc., Ex. 1118, Cover  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031



EX1118; Opp. at 15.

# Jakel & Lasker:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,  
Petitioner,

v.

DECLARATION OF JEFF LASKER

Petitioner Apple Inc., Ex. 1118, Cover  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031

## Jakel Deposition:

22 Q. Was an [REDACTED] prepared  
23 for Apple?

24 A. I have looked at everything in my  
1 records. We do have a [REDACTED]

2 [REDACTED] for Apple, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

EX1118; EX2068, 49:22-50:5; Opp. at 19-20.

# Jakel Deposition: No Meeting with Apple re: Unified '228 IPR

4 Q. Since the filing of the petition in this  
5 matter, has Apple attended a meeting either  
6 virtually or in person with Unified?

7 A. We do not have monthly meetings with  
8 Apple. The only meeting I can think of with Apple  
9 would have happened in [REDACTED]

13 Q. That would have been [REDACTED],  
14 correct?

15 A. Yeah. [REDACTED] is what I'm referring  
16 to.

17 [REDACTED]  
[REDACTED] the petition that Unified filed [REDACTED] in  
20 September of 2021, correct?

21 A. That sounds like correct timing.

22 Q. Was the petition discussed with Apple

23 [REDACTED] ?

24 A. It was not.

EX2068, at 48:4-24; Opp. at 18.

Lasker:



UNITED STATES PATENT  
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Case No. I  
U.S. Patent

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DECLARATION

Apple

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# Jakel Deposition: No Substantive Discussion of RPI Issues

6 Q. Next, I want to talk about your

7 [REDACTED]

11 MR. MANGSINGHANI: Objection to scope.  
12 I'm going to have a standing objection to scope on  
13 all these questions that aren't part of your  
14 deposition topics notice.

15 A. [REDACTED]

19 Q. [REDACTED]

EX2091, at 81:6-82:4, 82:19-83:11; Opp. at 20.

# Jakel Declaration re: Apple's Membership Payments

HIGHLY CONFIDENTIAL

UNITED STATES PATENT

BEFORE THE PATENT

UNIFIED  
Patent

MEMORANDUM  
Patent

Case No.  
Patent

SUPPLEMENTAL DECLARATION

¶ 8: “[Member] fees are designated to many services and activities in one or more zones, and they are never designated to a particular IPR or patent, or even challenging any patent.”

¶ 9: “Unified does not solicit additional payments from its members other than its scheduled subscription fee.”

¶ 19: “Apple did not make a large lump-sum payment proximate to the filing of the Petition in this case.”

EX2077; Opp. at 23-24.

Lasker: [REDACTED]

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Case No.  
U.S. Patent



DECLARATION OF JEFF LASKER

Petitioner Apple Inc., Ex. 1118, Cover  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031

EX1118; Opp. at 15.

# Jakel Deposition: Apple's Membership Payments

2 Q. All right. Now, you talked earlier -- or  
3 you testified earlier about some of the fees that  
4 Unified received from its members, including Apple.  
5 Now, does the amount of fees that Apple pays to  
6 Unified vary based upon how many patents asserted  
7 against Apple are challenged by Unified?

8 A. No, it does not.

9 Q. Is any amount of the annual fee that Apple  
10 pays to Unified contingent on Unified challenging  
11 patents asserted against Apple?

12 A. No.

13 Q. Is amount that Apple pays Unified  
14 contingent on Unified challenging a minimum number  
15 of patents that have been asserted against Apple?

16 A. Nope.

17 Q. Are payments made by Apple only after  
18 Unified challenges patents that have been asserted  
19 against Apple?

20 A. Nope.

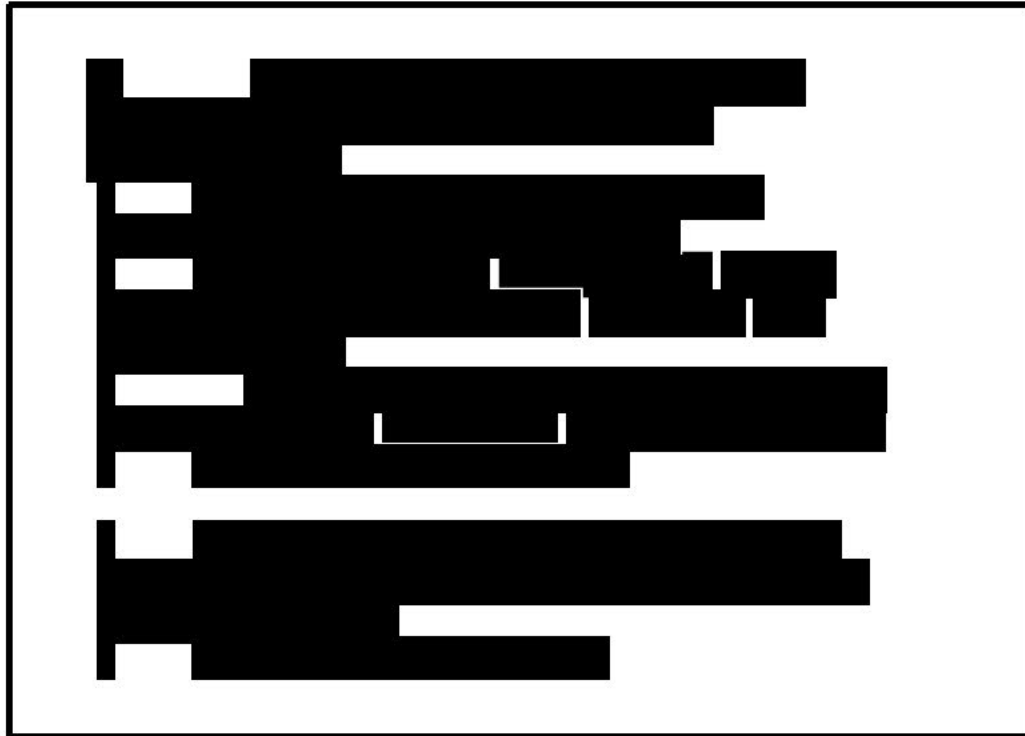
21 Q. So is it fair to say that the payments by  
22 Apple are entirely unrelated to whether or not  
23 Unified challenges patents asserted against Apple?

24 A. That is right.

EX2091, at 173:2-24; Opp. at 15.



Lasker Deposition: [REDACTED]



EX2117 at 82:24-83:9, 85:3-6.

# Lasker & Jakel Depositions: No Benefit to Apple from Unified IPR

**Lasker:**

[REDACTED]

EX2117 (Lasker) at 66:8-67:7.

**Jakel:**

14 Earlier there was testimony and  
15 questioning about whether Unified's challenge to  
16 MemoryWeb's patent benefited Apple and Samsung. And  
17 the question I have for you is, did -- is that what  
18 motivates Unified to file the -- this IPR?

19 A. So the difficulty with trying to predict  
20 at the time of filing whether or not any member or  
21 even nonmember, if anyone is actually going to be  
22 benefited by the filing of an IPR, it is extremely  
23 difficult. There's no time bar in place just using  
24 this IPR as an example. There's no time bar in  
25 place.

1 So we don't know if, you know, Apple or  
2 Samsung or any other company out there is going to  
3 file their -- their own challenge. We don't know  
4 what their litigation strategy is. We want to  
5 remain independent. And we don't want to have  
6 anyone attempting to control Unified. And so we  
7 explicitly make sure that we have none of that  
8 information.

9 But we don't know what their claim  
10 constructions are. We don't know if they are about  
11 to settle. We don't know if their -- you know, what  
12 it is that they plan on doing with their litigation  
13 strategy. They might even already be licensed to  
14 the patent behind the scenes and we just simply  
15 don't know.

EX2091 (Jakel) at 192:14-193:15.

# Unified v. Bradium, IPR2018-00952

[Trials@uspto.gov](mailto:Trials@uspto.gov)  
571-272-7822

Paper 31  
Date Entered: December 20, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIALS AND APPEALS BOARD

UNIFIED

BRADIUM TECHNOLOGIES LLC,  
Patent Owner.

Case IPR2018-00952  
Patent 9,253,239 B2

Before BRYAN F. MOORE, BRIAN J. McNAMARA, and  
MINN CHUNG, *Administrative Patent Judges*.

Opinion of the Board filed by *Administrative Patent Judge* MOORE

Opinion Dissenting filed by *Administrative Patent Judge* CHUNG

DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314

Additionally, a benefit to a member from an IPR filed by Petitioner must be weighed against the benefit that member receives from filing its own IPR in which that member can control the prior art references chosen, the counsel used, the amount of money spent, and whether or not to settle the case.

*Bradium at 10.*

9. We do not find that avoidance of the estoppel implications of an IPR alone, without other facts, is sufficient to find that the two members would benefit from the present IPR such that they should be considered an RPI. Such a benefit speaks to a party being a general non-specific beneficiary, rather than a “clear beneficiary” under *AIT* (897 F.3d at 1351) and would apply to any entity seeking review of the ’239 patent, including members other than the two members cited by Patent Owner, and also to non-members of Petitioner.

*Bradium at 10.*

Opp. at 25.

Lasker Deposition: [REDACTED]



EX2117 at 54:18-55:20.

# Jakel Declaration: Unified's Settlement Strategies

HIGHLY CONFIDENTIAL - ATTORNEY WORK PRODUCT

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

UNIFIED PATENTS, INC.  
Petitioner

v.

MEMORY WEB, LLC  
Patent Owner

Case No. IPR2021-014  
Patent 10,621,228

SUPPLEMENTAL DECLARATION OF KEVIN JAKEL

11. Unified is not a patent aggregator, and Unified has never paid for a license to a patent. Unified's business model is predicated on never paying NPEs for licensing. Unified sees its IPRs to their conclusion unless a patent owner agrees to a royalty-free license for Unified with the right to grant sub-licenses to all zone members—not simply for members in litigation. This royalty-free license is in furtherance of Unified's mission to protect a technology zone as a whole, regardless of whether the organizations are members or non-members, by shattering the value of ongoing assertions and refusing to fund an NPE. As set forth on Unified's website (<https://www.unifiedpatents.com/faq>), "Unified never pays any money to NPEs." Unified implemented this policy in furtherance of its deterrence objective.

EX2077; Opp. at 23.

# Jakel Declaration: No Shared Board Members or Attorney-Client Relationship Between Apple and Unified

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

UNITED STATES

BEFORE THE PATENT

23. Unified and its members, including Apple and Samsung, do not share any individuals on their respective boards of directors. Unified also maintains no corporate relationships between itself and its members and allows for no corporate relationships beyond the membership. Unified has no attorney-client relationship with, and does not act as legal counsel to, members.

Case No. IPR2021-01413  
Patent 10,621,228

SUPPLEMENTAL DECLARATION OF KEVIN JAKEL

EX2077; Opp. at 18.

# Lasker Declaration:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPEAL  
Petitioner

MEMORANDUM  
Patent

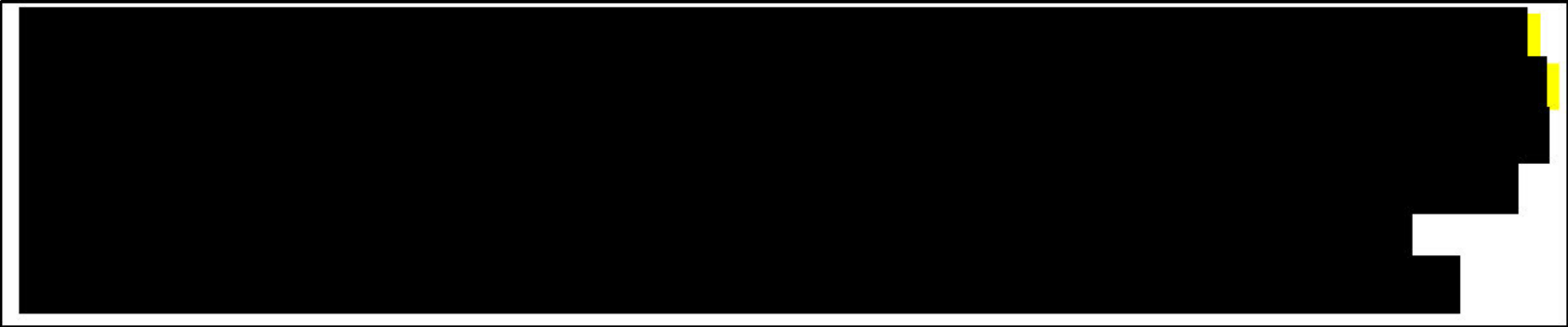
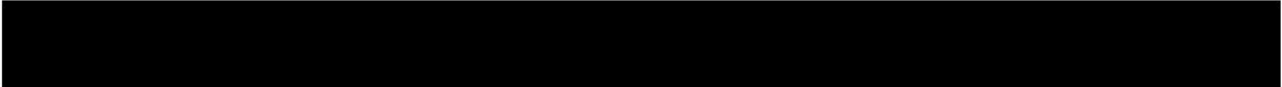
Case No.  
U.S. Patent

DECLARATION OF JEFF LASKER

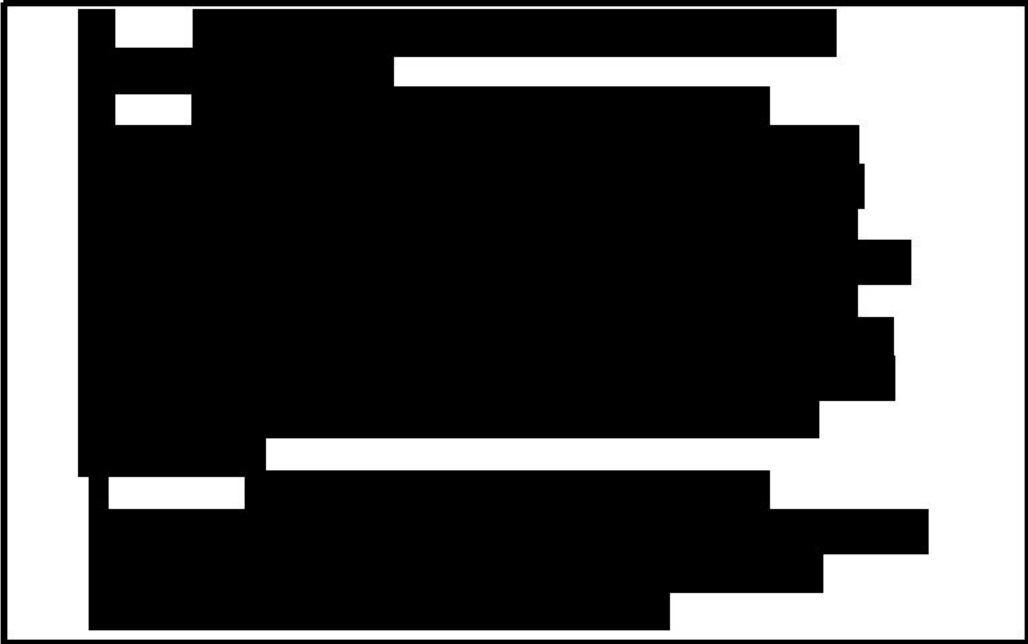
Petitioner Apple Inc., Ex. 1118, Cover  
Apple Inc. v. MemoryWeb, LLC, IPR2022-00031

EX1118; Opp. at 18.

Jakel:



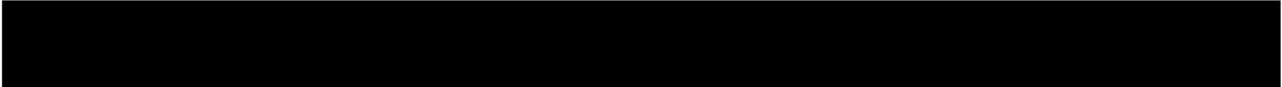
MW Reply at 4 n.2.



EX2091, at 196:15-197:5; Opp. at 17 n.5.



Jakel:



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EX2091 at 240:14-242:9; Opp. at 17 n.5.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of October, 2023, a copy of  
Petitioner's Demonstratives has been served by electronic mail on the following  
addresses for patent owner(s):

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Dated: October 17, 2023

Respectfully Submitted,

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