IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE QUALCOMM ANTITRUST LITIGATION	17-MD-02773-LHK 17-CV-00220-LHK
	SAN JOSE, CALIFORNIA
	MARCH 22, 2018
	PAGES 1-82

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: SUSMAN GODFREY, LLP
1900 AVENUE OF THE STARS
SUITE 1400
LOS ANGELES, CA 90067
BY: AMANDA K. BONN

FOR THE PLAINTIFF: HAGENS BERMAN SOBOL SHAPIRO LLP
715 HEARST AVENUE, SUITE 202
BERKELEY, CA 94710
BY: RIO SHAYE PIERCE

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES CONTINUED:

FOR THE PLAINTIFF: FTC	FEDERAL TRADE COMMISSION 600 PENNSYLVANIA AVENUE, N.W. WASHINGTON, D.C. 20580 **BY: ELIZABETH GILLEN** **JOSEPH BAKER**
FOR THE DEFENDANT: QUALCOMM	KEKER, VAN NEST & PETERS LLP 633 BATTERY STREET SAN FRANCISCO, CA 94111 **BY: ROBERT ADDY VAN NEST** **JUSTINA SESSIONS**
FOR THE DEFENDANT: QUALCOMM	CRAVATH, SWAINE AND MOORE WORLDWIDE PLAZA 825 EIGHTH AVE. NEW YORK, NY 10019 **BY: GARY ANDREW BORNSTEIN**

SAN JOSE, CALIFORNIA MARCH 22, 2018

P R O C E E D I N G S

(COURT CONVENED AT 1:46 P.M.)

01:46:39 THE CLERK: YOUR HONOR, CALLING CASE 17-CV-00220.

01:46:43 FEDERAL TRADE COMMISSION VERSUS QUALCOMM, INCORPORATED, AND THE RELATED MATTER OF 17-MD-2773, IN RE QUALCOMM ANTITRUST LITIGATION.

01:46:55 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

01:46:56 MS. BONN: GOOD AFTERNOON, YOUR HONOR.

01:46:58 AMANDA BONN FOR THE MDL PLAINTIFFS.

01:47:00 MR. VAN NEST: GOOD AFTERNOON, YOUR HONOR.

01:47:01 BOB VAN NEST, TOGETHER WITH JUSTINA SESSIONS FROM KEKER, VAN NEST & PETERS FOR QUALCOMM.

01:47:09 MR. BORNSTEIN: AND GOOD AFTERNOON, YOUR HONOR.

01:47:12 GARY BORNSTEIN FROM CRAVATH FOR QUALCOMM AS WELL.

01:47:15 THE COURT: OKAY. GOOD AFTERNOON AND WELCOME TO EVERYONE.

01:47:21 THE CLERK: YOUR HONOR, I BELIEVE WE ALSO HAVE COUNSEL ON THE PHONE.

01:47:24 THE COURT: OKAY. GO AHEAD, PLEASE. SORRY I DIDN'T MEAN TO OMIT ANYONE.

01:47:29 MS. GILLEN: IT'S ELIZABETH GILLEN FOR THE FEDERAL TRADE COMMISSION.

01:47:33 MR. BAKER: AND JOSEPH BAKER FOR THE FEDERAL TRADE COMMISSION AS WELL. GOOD AFTERNOON.

THE COURT: OKAY. GIVE ME JUST ONE MINUTE, PLEASE.

SO JOSEPH BAKER, AND WHO WAS THE OTHER PERSON, ELIZABETH GILLEN?

MS. GILLEN: YES, THAT'S RIGHT.

THE COURT: ALL RIGHT. THANK YOU.

OKAY. THE MARCH 9TH JOINT CASE MANAGEMENT STATEMENT ON PAGE 6 SAID THAT QUALCOMM WAS SUBSTANTIALLY COMPLETE WITH ITS PRODUCTION TO THE FTC AND THE MDL PLAINTIFFS.

WHAT IS STILL OUTSTANDING TO BE PRODUCED?

MR. BORNSTEIN: YOUR HONOR, THE ONLY THINGS THAT REMAIN OUTSTANDING TO BE PRODUCED ARE DOCUMENTS THAT ARE RESPONSIVE TO SUBSEQUENTLY SERVED RFP'S THAT WE RECEIVED FROM THE FEDERAL TRADE COMMISSION.

AND WE ARE -- WE HAVE PRODUCED A NUMBER OF THOSE. THE ONLY ONES OUTSTANDING ARE MATTERS IN WHICH WE CONTINUE TO MEET AND CONFER. BUT IT'S A SMALL VOLUME RELATING TO ISSUES THAT THE FEDERAL TRADE COMMISSION RAISED MUCH LATER IN THE DISCOVERY PROCESS.

THE COURT: WHAT WAS THE DATE OF THAT DISCOVERY REQUEST?

MR. BORNSTEIN: THERE WERE MORE THAN ONE, YOUR HONOR. AND THEY CAME IN, I BELIEVE, FEBRUARY 26TH AND FEBRUARY 28TH. I WOULD HAVE TO LOOK TO BE PRECISE, BUT FEBRUARY 28TH WAS THE LAST DAY ON WHICH REQUESTS COULD BE SERVED IN A TIMELY WAY, AND I BELIEVE THAT'S WHEN THEY CAME IN.

01:49:21 THE COURT: ALL RIGHT. LET ME HEAR FROM THE FTC.
01:49:25 DO YOU AGREE WITH THAT CHARACTERIZATION?
01:49:29 MS. GILLEN: YOUR HONOR, THIS IS ELIZABETH GILLEN.
01:49:31 WE AGREE WITH MR. BORNSTEIN'S CHARACTERIZATION OF THE
01:49:34 REQUEST, AND THE PARTIES ARE STILL MEETING AND CONFERRING ABOUT
01:49:37 THOSE REQUESTS AND THE DOCUMENTS TO BE PRODUCED.
01:49:40 HOWEVER, AS WE NOTED IN THE CASE MANAGEMENT STATEMENT, THE
01:49:44 PLAINTIFFS ARE ALSO RECEIVING A NUMBER OF ADDITIONAL DOCUMENTS,
01:49:50 BOTH AS A RESULT OF THE PRIVILEGE RE-REVIEW PROCESS THAT IS
01:49:58 BEING MANAGED BY MAGISTRATE JUDGE COUSINS, AND ALSO DOCUMENTS
01:50:02 PRODUCED IN THE SOUTHERN DISTRICT OF CALIFORNIA ACTION WHICH
01:50:04 ARE BEING PRODUCED TO THE FTC AND THE MDL PLAINTIFF, AS A
01:50:09 RESULT OF THE COORDINATION ORDER.
01:50:11 THE COURT: RIGHT.
01:50:12 I THINK THE WAY TO REMEDY THAT IS TO GIVE AN ADDITIONAL
01:50:16 AMOUNT OF DEPOSITION TIME THAT'S TARGETED FOR DOCUMENTS THAT
01:50:20 ARE PRODUCED AFTER A RELEVANT WITNESS HAS BEEN DEPOSED.
01:50:27 SO I TALKED TO JUDGE COUSINS ABOUT THAT, WE ARE IN
01:50:30 AGREEMENT THAT THAT'S THE RIGHT WAY TO DEAL WITH THIS. BECAUSE
01:50:33 I DON'T THINK IT'S FAIR TO MAKE PEOPLE TAKE DEPOSITIONS WHEN
01:50:36 THEY DON'T HAVE THE DOCUMENTS FOR THAT WITNESS.
01:50:37 MR. BORNSTEIN: YOUR HONOR, MAY I ADDRESS THAT
01:50:39 BRIEFLY, UNDERSTANDING THAT YOU HAVE DISCUSSED THAT WITH
01:50:42 JUDGE COUSINS, JUST TO BE HEARD VERY BRIEFLY ON THAT?
01:50:45 THE COURT: GO AHEAD.

MR. BORNSTEIN: WE HAVE RESPONDED COMPLETELY TO THE NORTHERN DISTRICT OF CALIFORNIA REQUESTS FROM THE FTC AND THE MDL PLAINTIFFS. THE DOCUMENTS THAT ARE BEING PRODUCED IN THE SOUTHERN DISTRICT --

THE COURT: NO, NOT THE PRIVILEGE RE-REVIEW.

I'M DEEPLY DISTURBED BY THE HIGH RATES OF DOCUMENTS THAT YOU ARE ALL ARE PUTTING ON YOUR PRIVILEGE LOG THAT ARE NOT PRIVILEGED.

YOU KNOW, I WOULD HAVE APPOINTED A SPECIAL MASTER, OKAY. I HAVE DEFERRED TO JUDGE COUSINS ON THIS. I WOULD HAVE APPOINTED A SPECIAL MASTER, BUT I'M DEFERRING TO HIM ON THIS. BUT IF THERE'S A SIGNIFICANT AMOUNT OF DOCUMENTS THAT ARE BEING RE-REVIEWED BECAUSE THEY SHOULD NOT HAVE BEEN DESIGNATED AS PRIVILEGED, THEN I THINK THE WITNESSES WHO WERE DEPOSED FOR WHOM THOSE ARE RELEVANT DOCUMENTS, SHOULD BE RE-DEPOSED.

MR. BORNSTEIN: WITH RESPECT --

THE COURT: FOR A TARGETED LIMITED AMOUNT OF TIME.

THIS IS NOT A DO-OVER, IT WILL NOT BE UNLIMITED, BUT I THINK THAT'S ONLY FAIR. IT'S NOT RIGHT TO HAVE WITNESSES BEING DEPOSED WITHOUT THEIR DOCUMENTS.

MR. BORNSTEIN: YOUR HONOR, WITH RESPECT TO THE PRIVILEGE RE-REVIEW, I'M PERFECTLY HAPPY TO DISCUSS WITH THE FEDERAL TRADE COMMISSION AND WITH THE MDL PLAINTIFFS, WHAT AN APPROPRIATE SCOPE WOULD BE, BASED ON THE PARTICULAR DOCUMENTS THAT WERE PRODUCED.

THE COURT: WELL, IT WOULD ALSO BE THE TOPICS RAISED IN THOSE DOCUMENTS.

MR. BORNSTEIN: SURE.

THE COURT: RIGHT. THAT'S FAIR GAME.

MR. BORNSTEIN: WITHIN A REASONABLE SCOPE YOUR HONOR. I'M SURE WE CAN WORK OUT APPROPRIATE ADDITIONAL TIME FOR WITNESSES WHO WERE AFFECTED BY THAT ON MATERIAL ISSUES. THAT WAS NOT WHAT I WAS INTENDING TO ADDRESS WHEN I WAS RESPONDING TO YOUR HONOR.

THE COURT: WELL, I'M GLAD YOU AGREE WITH ME, BECAUSE I DON'T WANT TO SEE A LOT OF DISPUTES OVER WHETHER PEOPLE SHOULD BE RE-DEPOSED OR NOT.

MR. BORNSTEIN: I HOPE THERE WOULD BE AT LEAST SOME SHOWING, YOUR HONOR, THAT THERE ARE MATERIAL DOCUMENTS THAT ARE RELEVANT.

IT CAN'T JUST BE, IN OUR VIEW, A COMPLETE -- WE HAVE 30 OR 40 WITNESSES WHO HAVE BEEN DEPOSED. I WOULDN'T WANT TO SEE EACH AND EVERY ONE RE-DEPOSED WITHOUT A BASIS SHOWING THAT THERE WERE DOCUMENTS BEING PRODUCED SUBSEQUENT TO THEIR DEPOSITION THAT ARE IN SOME WAY RELEVANT OR MATERIAL TO THE ISSUES IN THE CASE.

THE COURT: AND SO WHAT DO YOU THINK THAT'S GOING TO BE?

IF YOU ARE SAYING THEY NEED TO JUST SAY, THESE DOCUMENTS WERE PRODUCED ON X DATE, THE DEPOSITION TOOK PLACE 30 DAYS

BEFORE X DATE? AND THEN YOU ARE SAYING THEY ARE GOING TO HAVE TO BRIEF IT AS TO WHY THOSE DOCUMENTS ARE RELEVANT TO A MATERIAL ISSUE?

BECAUSE I DON'T WANT TO CREATE TOO MUCH OF A BURDEN. WE ARE GETTING CLOSE TO THE END OF -- I MEAN, FACT DISCOVERY IS SUPPOSED TO END NEXT WEEK. SO I'M NOT GOING TO CREATE A HIGH BURDEN.

I AGREE WITH YOU, THEY NEED TO SHOW THAT SOMETHING WAS PRODUCED AFTER THAT RELEVANT WITNESS WAS DEPOSED, BUT I'M NOT GOING TO REQUIRE THEM TO BRIEF WHY THAT IS RELEVANT, WHY THIS IS MATERIAL, WHAT ELEMENT IS THIS MATERIAL TO, NO.

I'M NOT GOING TO CREATE A LOT OF UNNECESSARY SATELLITE LITIGATION. IT'S ONLY FAIR IF A WITNESS IS BEING DEPOSED WITHOUT THAT WITNESS'S DOCUMENTS, THEN THEY NEED TO BE RE-DEPOSED FOR A LIMITED TARGETED DEPOSITION.

MR. BORNSTEIN: I WAS NOT SUGGESTING WE GO THROUGH A BRIEFING PROCESS, YOUR HONOR, YOUR GUIDANCE IS VERY CLEAR, BUT I DO THINK THAT WE CAN AND SHOULD HAVE A DISCUSSION ON A WITNESS-BY-WITNESS BASIS WITH THE FTC AND THE MDL PLAINTIFFS.

I'M SURE WE CAN BE GROWNUPS ABOUT IT AND JUST MAKE SURE THAT WE ARE NOT BRINGING PEOPLE BACK FOR DOCUMENTS THAT REALLY ARE TANGENTIAL.

AND SO I WOULD JUST LIKE TO HAVE THE OPPORTUNITY TO HAVE THOSE CONVERSATIONS WITH THE FTC AND THE MDL PLAINTIFFS. I'M SURE THEY DON'T WANT TO WASTE THEIR TIME EITHER, AND COME TO

GROUNDS ON WHO THE RIGHT PEOPLE ARE.

I DON'T EXPECT, GIVEN YOUR HONOR'S GUIDANCE, THAT WE WILL HAVE A LOT OF DISAGREEMENTS --

THE COURT: THERE SHOULDN'T BE, OTHERWISE YOU ARE GOING TO HAVE TO SIT DOWN WITH ME, AND WE WILL GO INTO MY JURY ROOM AND WE WILL HAVE TO HASH IT OUT, AND I WILL BE RIGHT THERE BREATHING DOWN YOUR NECKS, BECAUSE I THINK THAT IT'S ONLY FAIR THAT IF DOCUMENTS HAVE NOT BEEN PRODUCED UNTIL AFTER A WITNESS HAS BEEN DEPOSED, THAT PERSON SHOULD BE DEPOSED.

AND I DON'T WANT A LOT OF SATELLITE LITIGATION, OH, THIS IS A TANGENTIAL DOCUMENT, THAT'S NOT MATERIAL TO YOUR ELEMENTS. BRIEF WHY IT'S MATERIAL. I'M NOT GOING TO HAVE -- THAT IS A BUNCH OF BUSY WORK THAT'S UNNECESSARY.

I'M REALLY DISTURBED BY THE VERY HIGH PERCENTAGE OF OVER-DESIGNATED PRIVILEGE DOCUMENTS. 67 PERCENT OF DOCUMENTS ARE BEING UNDESIGNATED AS INAPPROPRIATELY WITHHELD FOR PRIVILEGE.

SO I THINK THE BURDEN IS NOT GOING TO BE HIGH. IF YOU HAVE A WITNESS THAT HAS BEEN DEPOSED AND A LOT OF DOCUMENTS WERE PRODUCED AFTER THAT WITNESS WAS DEPOSED, I WOULD ALLOW ADDITIONAL DEPOSITION TIME, OKAY?

AND IF I HAVE TO CHANGE THE CASE SCHEDULE IN ORDER TO MAKE THAT HAPPEN, I WILL DO IT.

MR. BORNSTEIN: YOUR HONOR'S VIEW IS VERY CLEAR. THANK YOU.

01:55:14 THE COURT: NOW, I DON'T WANT THAT TO BE ABUSED BY
01:55:20 THE PLAINTIFFS.
01:55:21 YOU KNOW, PLAINTIFFS OVERREACH ALL THE TIME, AND IT JUST
01:55:25 WILL CAUSE YOU MORE HEADACHES AS WELL. SO DON'T OVERREACH.
01:55:30 THIS NEEDS TO BE ONLY TARGETED, ONLY LIMITED. THIS IS NOT A
01:55:33 FREE DO-OVER ON EVERYBODY. IT'S GOT TO BE TARGETED AND
01:55:36 LIMITED, AND YOU NEED TO BE REASONABLE IN WHAT YOU ARE
01:55:38 REQUESTING.
01:55:38 MS. BONN: ABSOLUTELY, YOUR HONOR.
01:55:40 THE ONE ADDITIONAL POINT I WOULD MAKE IS THAT WE ARE
01:55:44 SEEING THAT IT'S NOT MERELY THE PRIVILEGE LOG PROBLEMS THAT ARE
01:55:47 CAUSING ADDITIONAL DOCUMENTS TO BE PRODUCED, BUT RATHER THERE
01:55:51 ARE SIGNIFICANT VOLUMES OF DOCUMENTS THAT QUALCOMM HAS BEEN
01:55:55 PRODUCING IN THE LAST SIX WEEKS, INCLUDING OVER THIS WEEKEND,
01:55:58 PURPORTEDLY IN THE SD CAL CASE, AND YET THEY ARE DOCUMENTS THAT
01:56:03 ARE FROM CUSTODIANS IN OUR CASE, AND WE ARE SEEING THAT THEY
01:56:07 ARE HIGHLY RELEVANT DOCUMENTS.
01:56:08 AND, FOR EXAMPLE, EVEN THIS WEEKEND, QUALCOMM PRODUCED
01:56:11 OVER 100,000 DOCUMENTS FOR CUSTODIANS IN OUR CASE, BUT WITH THE
01:56:16 APPLE BATES LABEL. WE ARE SEEING THAT THERE ARE RELEVANT
01:56:20 DOCUMENTS.
01:56:20 AND AS JUST ONE EXAMPLE, IT APPEARS THAT 30,000 OF THOSE
01:56:25 DOCUMENTS RELATE TO MR. GONELL WHO IS A QTL LICENSING EXECUTIVE
01:56:29 WHO FREQUENTLY INTERACTED WITH APPLE. HE HAS KNOWLEDGE OF
01:56:33 RELEVANT PATENT ISSUES FOR THE MDL PLAINTIFFS IN HIS DEPOSITION

PAST.

SO IT'S NOT MERELY THE PRIVILEGE LOG ISSUE, BUT THERE ARE RELEVANT DOCUMENTS, A SIGNIFICANT VOLUME OF WHICH QUALCOMM IS PRODUCING IN THE SD CAL CASE, AND WE ARE AFRAID IT WILL CONTINUE BECAUSE APPARENTLY THEIR DISCOVERY CUTOFF IN THE SD CAL CASE DOESN'T COME UNTIL MID-MAY.

SO THEY ARE ESSENTIALLY CONTINUING TO ROLL OUT LARGE VOLUMES OF DOCUMENTS, PURPORTEDLY IN THAT CASE, AND YET WE ARE FINDING IN OUR REVIEW THAT THEY ARE ALSO RELEVANT IN OUR CASE AND SHOULD HAVE BEEN PRODUCED IN OUR CASE.

THE COURT: I WILL ALLOW WITNESSES TO BE DEPOSED THREE TIMES, IF THAT'S NECESSARY. THAT'S MY WARNING TO QUALCOMM.

IF IT TURNS OUT THAT YOU ARE PRODUCING DOCUMENTS THAT ARE HIGHLY RELEVANT IN THIS CASE, AT THE END OF THE FACT DISCOVERY PERIOD, AND THESE WITNESSES HAVE ALREADY BEEN DEPOSED, THEN I WILL ALLOW THEM TO BE DEPOSED AGAIN.

AND THEN IF IT TURNS OUT ON MAY 1ST YOU ARE DUMPING A LOT OF DOCUMENTS IN THE SAN DIEGO CASE THAT WOULD HAVE BEEN RELEVANT TO THESE ISSUES, I WILL ALLOW THEM TO BE DEPOSED AGAIN IN MAY. SO THAT IS THE RISK THAT YOU TAKE.

MR. BORNSTEIN: YOUR HONOR, THIS WAS THE ISSUE I WAS GOING TO ADDRESS RATHER THAN THE PRIVILEGE ISSUE, BECAUSE WE DID, IN THIS CASE, A VERY FULL PRODUCTION IN RESPONSE TO THE REQUESTS THAT WERE SERVED IN THIS CASE. WE VALIDATED IT WITH

OUR TECHNOLOGY-ASSISTED REVIEW MODEL. WE SHARED THE STATISTICS WITH THE PLAINTIFFS. IT WAS EXTREMELY ROBUST, 89 PERCENT RECALL COMPARED TO A 75 OR SO PERCENT THAT IS IN THE LITERATURE AND HAS BEEN ACCEPTED IN PRIOR CASES.

WE ARE PRODUCING DOCUMENTS IN THE SOUTHERN DISTRICT IN RESPONSE TO DIFFERENT REQUESTS.

THE COURT: IF THEY ARE RELEVANT TO THIS CASE, THEN I'M GOING TO ALLOW ANOTHER DEPOSITION.

SO I'M JUST TELLING YOU, YOU RUN THE RISK, IF YOU ARE HOLDING OFF, BECAUSE I WANT THIS CASE DECIDED ON THE MERITS. I DO NOT LIKE CASES TO BE DECIDED ONE WAY OR THE OTHER BECAUSE RELEVANT INFORMATION HAS BEEN WITHHELD, OKAY?

SO I AM JUST TELLING YOU, IF YOU ARE GOING TO DELAY PRODUCTION OF RELEVANT DOCUMENTS, I WILL ALLOW AS MANY DEPOSITIONS AS IS NECESSARY FOR A WITNESS TO BE APPROPRIATELY DEPOSED ON THEIR OWN DOCUMENTS.

MR. BORNSTEIN: YOUR HONOR, I NEED TO BE VERY CLEAR. THERE IS ABSOLUTELY NO DELAY OF PRODUCTION IN THIS CASE.

WE ARE GETTING STILL, REQUESTS FROM APPLE AND FROM THE CONTRACT MANUFACTURERS IN THE SOUTHERN DISTRICT. WE HAVE RECEIVED LITERALLY HUNDREDS, I THINK WE ARE ON 300 RFP'S 350-SOME RFP'S IN THE SOUTHERN DISTRICT.

OUR DOCUMENT PRODUCTION IN THAT CASE, WE REQUESTED TO HAVE A SUBSTANTIAL COMPLETION DATE, AND MAGISTRATE IN THE SOUTHERN DISTRICT SET A SUBSTANTIAL COMPLETION DATE OF MAY 11TH. WE

ACTUALLY WOULD HAVE PREFERRED SOMETHING EARLIER SO WE COULD HAVE GOTTEN APPLE'S DOCUMENTS EARLIER.

WE ARE IN NO WAY DELAYING OUR PRODUCTION OF DOCUMENTS IN THIS CASE OR --

THE COURT: WELL, I'M NOT SAYING THAT YOU ARE DELAYING PRODUCTION, WHAT I'M JUST TELLING YOU IS THAT THIS CASE WILL BE DECIDED ON THE MERITS.

SO EVERY WITNESS WILL BE DEPOSED WITH REGARD TO THEIR RELEVANT DOCUMENTS. AND IF IT TURNS OUT THAT THERE ARE RELEVANT DOCUMENTS THAT WERE NOT PRODUCED IN TIME FOR THIS PERSON'S DEPOSITION, THEY WILL BE DEPOSED AGAIN.

MR. BORNSTEIN: BUT YOUR HONOR, THIS IS PURELY AN ARTIFACT OF THE SCHEDULES THAT WE HAVE THAT DON'T OVERLAP WITH ONE ANOTHER.

WE HAD TO HAVE OUR DEPOSITIONS COMPLETED IN THIS CASE BY MARCH 30TH, SUBJECT TO THE FEW THAT I KNOW ARE IN THE CASE MANAGEMENT STATEMENT.

WE COULDN'T GET ALL OF THE DOCUMENTS DONE THAT ARE RELEVANT IN THE SOUTHERN DISTRICT EARLIER. WE COULDN'T PUSH THESE DEPOSITIONS OUT BECAUSE WE HAD A SCHEDULE THAT REQUIRED US TO GET THEM DONE BY MARCH 30TH.

THE COURT: I JUST THINK IT'S INCONSISTENT. WITH REGARD TO THE SANCTIONING OF APPLE YOU SAID, LOOK, THESE ARE ALL THE SAME THINGS, THESE ARE ESSENTIALLY THE SAME CASES, THE DOCUMENTS THAT ARE RELEVANT IN THAT CASE ARE RELEVANT HERE.

02:00:16 SO I GUESS I'M JUST -- IN MY MIND, THE CASES ARE NOT SO
02:00:19 DISTINCT THAT THE DISCOVERY IS NOT OVERLAPPING.
02:00:22 MR. BORNSTEIN: BUT YOUR HONOR, THERE ARE A NUMBER OF
02:00:25 CLAIMS IN THE SOUTHERN DISTRICT CASE THAT ARE ENTIRELY NOT
02:00:28 BEFORE THIS COURT RELATING TO CONTRACT ISSUES, PATENT ISSUES.
02:00:31 THE COURT: WELL, THE PATENT ISSUES, YOU DON'T EVEN
02:00:33 HAVE TO PRODUCE ON. DIDN'T I SEE THAT FOOTNOTE THAT YOU ARE
02:00:36 NOT REQUIRED TO PRODUCE ANY DOCUMENTS IN EITHER THE FTC CASE OR
02:00:41 THE MDL BASED ON THOSE PATENTS?
02:00:43 MR. BORNSTEIN: WE DON'T PRODUCE THE PATENT ONES,
02:00:45 THAT'S TRUE. BUT WE HAVE A NUMBER OF CLAIMS THAT ARE SEPARATE,
02:00:47 AND WE ALSO HAVE A LARGE NUMBER OF CUSTODIANS IN THE SOUTHERN
02:00:51 DISTRICT CASE FROM WHOM DOCUMENTS ARE BEING PRODUCED THAT WERE
02:00:54 NOT CUSTODIANS HERE BECAUSE WE REACHED AGREEMENT WITH APPLE ON
02:00:57 THE PRODUCTION.
02:00:58 AND THERE ARE DOCUMENTS THAT MAY COME FROM THE FILE OF THE
02:01:01 FILES OF AN INDIVIDUAL WHO WAS A CUSTODIAN IN THE SOUTHERN
02:01:04 DISTRICT WHO CORRESPONDS WITH SOMEBODY WHO IS A CUSTODIAN HERE
02:01:10 THAT ARE PRODUCED BECAUSE THEY ARE BROUGHT IN THROUGH THE
02:01:13 SOUTHERN DISTRICT PRODUCTION.
02:01:14 THERE'S JUST NO WAY WE COULD HAVE GOTTEN EVERYTHING DONE
02:01:17 WITHIN A TIME THAT WE WOULD HAVE PRODUCED EVERYTHING BEFORE THE
02:01:20 DEPOSITIONS IN THIS CASE HAD TO HAPPEN.
02:01:22 SO THE RESULT --
02:01:23 THE COURT: WELL, IT DOESN'T MATTER. THEY ARE GOING

TO BE DEPOSED AGAIN. LET'S MOVE ON, PLEASE.

OKAY. NOW, LET'S GO THROUGH THE OTHER ISSUES THAT YOU ALL HAVE RAISED. NOW, I'M JUST WONDERING WITH REGARD TO ANY OUTSTANDING MEETING AND CONFERRING THAT'S HAPPENING NOW, IS THAT WITH REGARD TO ANY CUSTODIANS WHO HAVE YET TO BE DEPOSED, OR IS THAT FOR CUSTODIANS THAT HAVE ALREADY BEEN DEPOSED?

I GUESS THIS IS A QUESTION FOR THE FTC FOR MS. GILLEN, OR MR. BAKER.

MS. GILLEN: YOUR HONOR, THERE ARE A FEW DIFFERENT MEET AND CONFER DISCUSSIONS THAT ARE ONGOING.

THE FIRST IS WITH RESPECT TO THE DEPOSITION OF DR. JACOBS FROM QUALCOMM. HE HAS NOT BEEN DEPOSED YET. HIS DEPOSITION WAS SCHEDULED TO OCCUR NEXT WEEK ON MARCH 29TH AND 30TH. WE JUST LEARNED TWO DAYS AGO THAT HE IS NO LONGER AVAILABLE FOR HIS DEPOSITION.

THE COURT: WHAT'S HIS REASON FOR BECOMING UNAVAILABLE?

MR. BORNSTEIN: YOUR HONOR, I DON'T KNOW. THE CIRCUMSTANCES WITH DR. JACOBS, YOU MAY HAVE SEEN IN THE PRESS, HE WAS THE EXECUTIVE CHAIRMAN OF THE COMPANY, HE WAS A BOARD MEMBER OF THE COMPANY. HE CEASED TO BE EXECUTIVE CHAIRMAN A COUPLE OF WEEKS AGO, AND AS OF TOMORROW, HE WILL NO LONGER BE ON THE BOARD.

AND HE, AS HAS BEEN REPORTED IN THE PRESS, IS IN THE PROCESS OF TRYING TO GATHER INVESTORS TO PURCHASE QUALCOMM AND

TAKE IT PRIVATE.

SO HIS -- HE'S NOT WITHIN OUR CONTROL, IF I CAN PUT IT THAT WAY, YOUR HONOR. SO HE INFORMED US A COUPLE OF DAYS AGO THAT HE HAD A CONFLICT THAT DEVELOPED, BUT HE OFFERED US TO BE DEPOSED THE VERY NEXT WEEK.

I UNDERSTAND THE FEDERAL TRADE COMMISSION HAS A CONFLICT THAT FIRST WEEK OF APRIL, BUT I BELIEVE WE'VE REACHED A DATE THAT IS ACCEPTABLE FOR DR. JACOBS AND FOR THE FTC.

AND THIS IS SOMETHING THAT I LEARNED JUST AN HOUR BEFORE --

THE COURT: THIS IS WHAT, APRIL 17TH?

MR. BORNSTEIN: I BELIEVE THAT'S THE DATE THAT THE FTC COUNSEL IS CONSIDERING AND WAS GOING TO GET BACK TO US ON, YES.

WE HAD OFFERED APRIL 4TH AND 5TH WHEN HE WAS AVAILABLE, AND THEY HAD CONFLICT AND THAT DIDN'T WORK OUT. WE ADVISED THEM AS SOON AS WE WERE ADVISED.

MS. GILLEN: YES.

AND THE FEDERAL TRADE COMMISSION HAS ASKED QUALCOMM TO CHECK WHETHER DR. JACOBS IS AVAILABLE THE WEEK PRIOR, THE WEEK OF APRIL 9TH. HOWEVER, WE ARE AVAILABLE TO TAKE HIS DEPOSITION ON APRIL 17TH AND 18TH, IF NECESSARY.

THE COURT: WHAT'S YOUR CONFLICT?

MS. GILLEN: I UNDERSTAND OUR LEAD COUNSEL HAS A PERSONAL CONFLICT THE FIRST WEEK OF APRIL THAT WAS SCHEDULED

LONG AGO, ANTICIPATING THAT DISCOVERY WOULD BE CLOSING ON MARCH 30TH.

THE COURT: NOW, IF YOU DON'T GET THE DEPOSITION OF DR. JACOBS UNTIL THE 17TH, I DON'T KNOW, WILL YOU GET A ROUGH TRANSCRIPT THE SAME DAY, OR -- BECAUSE YOUR OPENING EXPERT REPORT IS CURRENTLY DUE ON APRIL 20TH, WHICH WOULD BE THREE DAYS LATER. HOW ARE YOU GOING TO MAKE THAT WORK?

I MEAN, I COULD ORDER HIM TO BE AVAILABLE. YOU CAN HAVE A COURT ORDER AND I WILL HOLD HIM IN CONTEMPT IF HE DOESN'T SHOW UP NEXT WEEK. I'M NOT EVEN HEARING A REASON WHY HE'S NOT AVAILABLE NEXT WEEK.

MR. SPEAKER 2: I DON'T HAVE A REASON TO GIVE YOU. THERE'S NOTHING I'M WITHHOLDING, I'M GIVING YOU AND THE FTC AND THE MDL PLAINTIFFS EVERYTHING I KNOW.

AS I SAID, HE IS NO LONGER SOMEBODY THAT IS WITHIN THE COMPANY'S CONTROL, AND I JUST DON'T HAVE ANY FURTHER INFORMATION.

THE COURT: WELL, I COULD HOLD HIM IN CONTEMPT AND WE WILL GO IN QUASI-CRIMINAL PROCEEDINGS AS TO WHY HE'S NOT SHOWING UP.

I MEAN, WHY IS HE SUDDENLY NOT AVAILABLE? NOT BEING DEPOSED UNTIL THE 17TH THEN CREATES PROBLEMS FOR THE SCHEDULE BECAUSE THEN THEY HAVE TWO BUSINESS DAYS BEFORE THEIR EXPERT REPORT IS DUE.

MR. VAN NEST: EXCUSE ME, YOUR HONOR.

I THOUGHT -- I HAVE BEEN PARTICIPATING ON THE OUTSIDE OF THIS, BUT I THINK AS WE PUT IN THE CMC STATEMENT, WE HAVE ALL AGREED TO A SHORT BUMP IN THE EXPERT SCHEDULE TO ACCOMMODATE JUST EXACTLY THAT.

IF YOU LOOK AT PAGE 2 OF THE SUPPLEMENTAL THAT WE FILED YESTERDAY.

THE COURT: IS THAT GOING TO GIVE THEM ENOUGH TIME? IT'S LESS THAN TWO WEEKS.

MR. VAN NEST: WELL, THEY WERE AWARE, I THINK, I WILL LET THEM SPEAK FOR THEMSELVES, BUT THEY WERE AWARE OF THESE DATE ISSUES WHEN WE ALL AGREED, AND I THINK WE ALL AGREED THEY WOULD GET IT DONE.

MS. GILLEN: YOUR HONOR, THIS IS ELIZABETH GILLEN.

THE FTC AGREES THAT WITH THE SHORT EXTENSION WE PROPOSED OF MAKING OUR EXPERT REPORTS DUE ON APRIL 30TH, THAT THE DEPOSITION OF DR. JACOBS ON APRIL 17TH AND 18TH WOULD BE WORKABLE IN THAT CASE.

THE COURT: ALL RIGHT. LET'S TALK ABOUT SOME OF THE OTHER ISSUES IN YOUR JOINT CASE MANAGEMENT STATEMENTS.

THE REQUEST FOR ADMISSION FOR THE PLAINTIFFS TO DEFINE THE CLASS NOW, I DON'T REQUIRE THEM TO DO THAT NOW. THEY WILL DEFINE THAT IN THEIR MOTION FOR CLASS CERT. SO LET'S AVOID, UNNECESSARILY, A BUNCH OF DISCOVERY DISPUTES AND SAVE JUDGE COUSINS ON THAT, OKAY?

NOW, LET'S GO TO THE NEXT ISSUE. DEPOSING SIX NEW

QUALCOMM EMPLOYEES, QUALCOMM SAYS PLAINTIFF HAS KNOWN ABOUT THESE EMPLOYEES FOR MONTHS. BUT ALSO, QUALCOMM SAYS THAT THEY ONLY GOT THE DOCUMENTS FOR THESE EMPLOYEES WEEKS AGO, AS OF MARCH 9TH.

SO I GUESS TO ME, IT SEEMS REASONABLE THAT IF YOU DON'T GET THE DOCUMENTS FOR SOMEBODY, AND YOU ARE GETTING A LARGE VOLUME OF DOCUMENTS, THAT IT'S GOING TO TAKE A FEW WEEKS TO FIGURE OUT WHAT'S IN THOSE DOCUMENTS AND WHETHER YOU NEED THOSE WITNESSES.

SO I WOULD ALLOW THOSE SIX QUALCOMM EMPLOYEE DEPOSITIONS.

MR. VAN NEST: YOUR HONOR, WITH ALL DUE RESPECT, WE HAVE ALREADY WORKED OUT MOST OF THAT. WE ALREADY AGREED THAT AS TO THE FIRST THREE, WE WOULD PROVIDE ONE, AND WITHDRAW THE OTHER TWO THAT WERE ON OUR RULE 26 DISCLOSURES.

THE OTHER WITNESSES WERE NEVER ON OUR RULE 26 DISCLOSURES AT ALL. WE DON'T INTEND TO RELY ON THEM. IT'S NOT A QUESTION OF DOCUMENTS, THEY WERE PEOPLE THAT CAME UP THAT HAD BEEN KNOWN TO THE PLAINTIFF SINCE DAY ONE. THEY WERE MENTIONED IN DEPOSITIONS BACK IN JANUARY AND EARLY FEBRUARY. WE ARE STILL NEGOTIATING, SO --

THE COURT: WELL, I MEAN, THEY CAME UP IN DEPOSITIONS LAST MONTH. SO I GUESS I DON'T SEE WHAT'S SO LATE. I'M LOOKING AT WHAT YOU FILED, ECF 376, PAGE 15, THAT SAYS, "PLAINTIFF'S IMPLICATION THAT QUALCOMM HAS NOT PRODUCED ANY RESPONSIVE DOCUMENTS FROM THE FILES OF THESE WITNESSES IS

SIMPLY FALSE. QUALCOMM PRODUCED DOCUMENTS FOR THESE WITNESSES WEEKS AGO AND TOLD PLAINTIFFS SO BEFORE THE LAST JCMS WHEN THEY INQUIRED."

MR. VAN NEST: BUT, YOUR HONOR --

THE COURT: I MEAN, I GUESS IT SEEMS REASONABLE THAT IF YOU GET DOCUMENTS FROM A WITNESS AND YOU GET SOME TIME TO REVIEW THOSE DOCUMENTS, YOU COULD MAKE A DECISION THAT THIS WITNESS SHOULD BE DEPOSED. THAT DOES NOT SEEM UNREASONABLE.

MR. VAN NEST: NO. THAT'S NOT UNREASONABLE.

THESE DOCUMENTS DON'T PERTAIN TO THE WITNESSES THAT WE STILL HAVE AN OPEN ISSUE ON. THOSE DOCUMENTS PERTAIN TO WITNESSES THAT WE'VE RESOLVED.

THE WITNESSES THAT WE ARE STILL WORKING ON ARE WITNESSES THAT WERE NEVER ON OUR RULE 26 LIST TO BEGIN WITH, WE ARE NOT GOING TO CALL THEM IN THE TRIAL.

WE ARE STILL MEETING AND CONFERRING, FRANKLY, WITH THE CLASS PLAINTIFFS ON THEM, BUT THEY ARE NOT PEOPLE THAT ARE AFFECTED BY DOCUMENTS, THEY'RE NOT PEOPLE THAT WERE EVER ON OUR LIST. THEY ARE NOT PEOPLE WE ARE GOING TO CALL IN THE TRIAL.

AND, FRANKLY, WE SAID, WHY DID YOU GUYS WAIT SO LONG TO INDICATE YOU WANTED THESE PEOPLE, IF YOU DID?

AS YOUR HONOR KNOWS, WE HAD VERY EARLY DEADLINES FOR PRODUCTION, WE HAD VERY EARLY DEADLINES FOR SUBPOENAS. WE HAVE BEEN WORKING VERY HARD TO GET ALL THE DEPOSITIONS DONE. IT WASN'T UNTIL AFTER THE LAST CMC WHEN YOUR HONOR ASKED FOR THE

LODESTAR THAT THIS REQUEST WAS EVEN MADE.

IN OTHER WORDS, THEY HAVE BEEN GOING ALONG VERY HAPPY TO COATTAIL WITH THE FTC, AND IT WASN'T UNTIL AFTER THE LAST CMC WHEN YOUR HONOR SAID, I WOULD LIKE IT SEE YOUR LODESTAR, THE VERY FIRST TIME WE GET A 30(B)(6) NOTICE, REQUEST FOR DEPOSITIONS, A BUNCH OF SUBPOENAS TO THIRD PARTIES.

NOW WE HAVE WORKED THESE ALL OUT. WE HAVE TWO MORE WE ARE WORKING ON, AND WHAT I WOULD LIKE TO DO IS HAVE AN OPPORTUNITY TO WORK THAT OUT WITH THE FTC OR GET IT RESOLVED BY JUDGE COUSINS IF WE CAN'T DO IT.

BUT IT'S NOT A SITUATION WHERE THEY GOT DOCUMENTS LATE ON THESE PEOPLE OR ANYBODY SANDBAGGED ANYBODY, OTHER THAN THEY HAVE KNOWN ABOUT THESE GUYS ALL ALONG, THEY SHOULD HAVE GIVEN US NOTICE MUCH EARLIER WHEN WE WORKED OUT THE SCHEDULE.

AND WE HAVE AGREED TO GIVE THEM ONE OF THE SIX ALREADY. AND WE ARE DOWN TO TWO WITNESSES THAT WE ARE TALKING ABOUT THAT ARE AT ISSUE WHERE THERE'S NO DOCUMENT ISSUE AT ALL.

MS. BONN: MAY I RESPOND, YOUR HONOR?

THE COURT: GO AHEAD, PLEASE.

MS. BONN: THE TWO WITNESSES WHO WERE LEFT IN DISPUTE ARE MR. TIEDEMANN AND MR. KATOUZIAN. AND THE ISSUE HERE IS PRECISELY THAT QUALCOMM OMITTED THEM FROM THE INITIAL DISCLOSURES.

THE POINT OF THE INITIAL DISCLOSURES IS NOT, HERE ARE THE WITNESSES I INTEND TO CALL AT TRIAL, IT'S HERE ARE PEOPLE WHO

THEY HAVE DISCOVERABLE INFORMATION.

AND WHAT QUALCOMM DID IS THEY LISTED ON THEIR RULE 26 DISCLOSURES, PEOPLE WHO WERE DIRECT REPORTS TO MR. KATOUZIAN AND MR. TIEDEMANN, AND SAID THEY WOULD HAVE KNOWLEDGE ON CERTAIN KEY ISSUES.

AND YET WHEN WE DEPOSED THOSE DIRECT REPORTS, THEY FREQUENTLY SAID THINGS LIKE, I ACTUALLY DON'T KNOW ABOUT THAT, YOU HAVE TO ASK MY BOSS.

AND WITH THE LARGE VOLUME OF DOCUMENTS THAT HAVE BEEN ROLLING IN IN THE LAST SIX WEEKS, COMBINED WITH WHAT'S HAPPENED IN THOSE DEPOSITIONS, WE REALIZED THAT THESE TWO KEY EXECUTIVES ARE PARTICULARLY IMPORTANT.

MR. TIEDEMANN IS OFTEN DESCRIBED AS THE HEAD OR THE CHIEF STRATEGIST BEHIND QUALCOMM'S STANDARDS SETTING ACTIVITIES, AND MR. KATOUZIAN IS THE HEAD OF THEIR MOBILE CHIP UNIT, AND THERE WERE KEY PRICING AND MARGIN-RELATED QUESTIONS THAT HIS SUBORDINATE WAS NOT ABLE TO ANSWER.

AND SO, YOU KNOW, IF THEY HAVE BEEN INCLUDED ON QUALCOMM'S INITIAL DISCLOSURES EARLIER, WE MAY HAVE MADE A REQUEST EARLIER. THEY WEREN'T. AND SO AS SOON AS IT BECAME APPARENT THAT THESE WERE NECESSARY WITNESSES, WE MADE A REQUEST FOR THEM ON MARCH 6TH, YOU KNOW, WELL IN ADVANCE.

THE COURT: WHAT'S THE STATUS OF ALL SIX THAT WERE IN YOUR JOINT CASE MANAGEMENT STATEMENT OF MARCH 9, 2018, I TOLD THE PARTIES PLEASE MEET AND CONFER, TRY TO WORK THIS OUT AS

MUCH AS YOU CAN.

YOU FILED A SUPPLEMENTAL JOINT CASE MANAGEMENT STATEMENT ON MARCH 20TH OF 2018, AND THIS IS STILL NOT RESOLVED, EVEN THOUGH I GAVE YOU AN OPPORTUNITY, THAT WAS THE TIME TO WORK IT ALL OUT.

SO WHAT'S THE STATUS OF ALL SIX? THAT YOU DON'T NEED, WHAT IS THAT, YOU DON'T NEED THREE?

MS. BONN: CORRECT, YOUR HONOR.

THE REMAINING THREE DEPOSITIONS THAT ARE STILL IN DISPUTE ARE MR. TIEDEMANN, MR. KATOUZIAN AND OUR 30(B)(6) NOTICE WHICH WE'RE CONTINUING TO MEET AND CONFER ON. WE HAVE MADE AN EFFORT TO NARROW IT IN RESPONSE TO QUALCOMM'S --

THE COURT: WAIT, I THOUGHT YOUR SIX NEW QUALCOMM EMPLOYEES IS SEPARATE FROM YOUR 30(B)(6) DISPUTE.

MS. BONN: CORRECT. THOSE ARE THE ONLY THREE DEPOSITION DISPUTES WITH QUALCOMM THAT ARE REMAINING.

THE COURT: OKAY.

SO OF THE SIX, QUALCOMM HAS AGREED TO GIVE YOU ONE. AND YOU HAVE WITHDRAWN YOUR REQUEST FOR THREE OUT OF THE SIX; IS THAT RIGHT?

MS. BONN: CORRECT.

AND WE ARE STILL MEETING AND CONFERRING ON THE OTHER TWO, YOUR HONOR.

THE COURT: THE OTHER TWO SHOULD BE DEPOSED.

MR. VAN NEST: IF I MAY, YOUR HONOR.

02:12:57 THE RULE 26 DISCLOSURES THAT BOTH SIDES PROVIDED THE
02:13:02 PEOPLE WITH RELEVANT KNOWLEDGE THAT YOU INTEND TO RELY ON TO
02:13:06 PRESENT OR DEFEND A CLAIM, OUR RULE 26 DISCLOSURES WERE FULL
02:13:09 AND COMPLETE. WE MADE DOCUMENT PRODUCTIONS EARLY. WE WERE
02:13:14 SUBSTANTIALLY COMPLETE BY LATE NOVEMBER.
02:13:17 TO THE EXTENT THEY WANTED THESE PEOPLE, THEY SHOULD HAVE
02:13:20 ASKED FOR THEM EARLIER. I DISAGREE THAT THE FOLKS THAT REPORT
02:13:23 TO THEM, AND IN SOME CASES THEIR BOSSES WERE ALL DEPOSED,
02:13:27 PROVIDED RELEVANT INFORMATION, IT IS NOW WITHIN A WEEK OF THE
02:13:35 CLOSE OF DISCOVERY. AND AGAIN, THIS DIDN'T COME UP UNTIL THE
02:13:38 LAST CMC WITH RESPECT TO THESE FOLKS.
02:13:41 SO MY REQUEST FOR YOUR HONOR IS SIMPLY TO ALLOW US TO
02:13:44 CONTINUE MEETING AND CONFERRING.
02:13:47 THE COURT: YOU'VE ALREADY HAD AN OPPORTUNITY TO MEET
02:13:49 AND CONFER. DISCOVERY CLOSES NEXT WEEK. THOSE TWO NEED TO BE
02:13:53 DEPOSED TIEDEMANN AND KATOUZIAN.
02:13:56 WE ARE RUNNING OUT OF TIME HERE, AND I'M GOING TO DECIDE
02:13:59 WHAT'S LEFT. LET'S SEE, NOW THIS THIRD PARTY, I UNDERSTAND YOU
02:14:05 BRIEFED IT ON MARCH 9TH IN YOUR JOINT CASE MANAGEMENT STATEMENT
02:14:08 AND YOUR SUPPLEMENTAL SAYS IT'S STILL OUTSTANDING; IS THAT
02:14:13 RIGHT?
02:14:13 MS. BONN: CORRECT, YOUR HONOR.
02:14:14 THE COURT: I JUST SEE THE MDL PLAINTIFFS AT QUALCOMM
02:14:17 DISAGREE AS TO WHETHER OUTSTANDING THIRD-PARTY DISCOVERY
02:14:17 WARRANTS A CHANGE IN THE CASE SCHEDULE.

IS THAT JUST RELATING TO THE CASE SCHEDULE, OR WHAT'S THE DISPUTE WITH REGARD TO THE THIRD PARTIES?

MS. BONN: THE DISPUTE IS THAT PLAINTIFFS'S EXPERTS, IN REVIEWING SOME OF THE PASS-THROUGH RELATED DATA THAT HAS BEEN PRODUCED BY THE PARTIES WE HAVE SUBPOENAED, IDENTIFY THREE ADDITIONAL COMPANIES THAT THEY BELIEVE ARE WITHIN THE CHAIN OF DISTRIBUTION AND HAVE CRITICAL INFORMATION RELATING TO THE PASS-THROUGH.

SO WE HAVE SERVED ADDITIONAL DOCUMENT SUBPOENAS ON THOSE ENTITIES NOT ANY DEPOSITION SUBPOENAS. QUALCOMM HAS TAKEN THE POSITION THAT WE SHOULD BE FORECLOSED FROM SERVING THOSE SUBPOENAS BECAUSE WE DIDN'T DO SO BEFORE DECEMBER 15TH OF LAST YEAR.

AND THE POINT WE ARE MAKING, YOUR HONOR, IS THAT WE WERE UNAWARE THAT THEY WERE RELEVANT ENTITIES IN THE CHAIN OF DISTRIBUTION UNTIL AFTER WE RECEIVED PASS THROUGH DATA FROM THE OTHER ENTITIES THAT RESPONDED TO OUR SUBPOENAS BY DECEMBER 15TH.

AND IT CAME TO LIGHT THROUGH OUR EXPERT'S REVIEW OF THAT DATA.

MR. VAN NEST: YOUR HONOR, I THINK THE ONLY ISSUE WITH RESPECT TO THESE IS THE SCHEDULE. THE SUBPOENAS WENT OUT. THE THIRD PARTIES WERE ADVISED OF WHAT THE SCHEDULE HAD BEEN. YOUR HONOR ORDERED ALL THIRD PARTY DISCOVERY COMPLETED BY JANUARY 5TH. SO THE THIRD PARTIES ARE AWARE OF THAT, AND THEY

WILL EITHER ACT ON IT OR THEY WON'T.

BUT I THINK THE ONLY OUTSTANDING ISSUE IS THE PLAINTIFFS ARE ASKING FOR A BUMP IN THE CLASS CERT SCHEDULE. AND THAT'S WHAT WE ARE OBJECTING TO.

I THINK YOUR HONOR WILL REMEMBER THAT WE HAD A LOT OF DISCUSSION WHEN WE SET THIS SCHEDULE ABOUT HOW TIGHT THINGS WERE. RIGHT NOW, WE HAVE A CLASS CERT HEARING IN JULY, AND ON THE 26TH, AND THE EXPERT REPORTS ARE DUE STARTING IN EARLY SEPTEMBER.

SO THESE ARE A FEW ADDITIONAL FOLKS -- I'M SORRY, YOUR HONOR, DID YOU WANT TO --

THE COURT: I'M SORRY, I HAVE A JURY NOTE. I HAVE A JURY THAT'S BEEN DELIBERATING SINCE TUESDAY.

MR. VAN NEST: SO THEY ARE ASKING FOR A TWO-WEEK BUMP, BUT IN FACT, I THINK THE INFORMATION IN THE DEPOSITIONS ARE NOT LIKELY TO BE RELEVANT. IF THEY ARE, THEY CAN EASILY BE PLUGGED IN AS CITATIONS.

THESE SUBPOENAS WERE SENT BY THEM AT A TIME OF THEIR CHOOSING. AND SO THEY'RE ASKING FOR A TWO-WEEK BUMP. UNDER THEIR SCHEDULE, YOUR HONOR WOULD THEN HAVE SIX DAYS BETWEEN THE REPLY BRIEFS AND THE HEARING TO CONSIDER THINGS.

AND FRANKLY, GIVEN THE COMPLEXITY OF THE CERT ISSUE IN THIS CASE, I THINK THAT'S -- I DON'T THINK THAT'S WARRANTED AND I DON'T THINK THEY NEED THE TWO WEEKS.

THE COURT: ALL RIGHT.

WELL, CAN WE ADDRESS -- IF WE DISENTANGLED THE SCHEDULE FOR CLASS CERT, WHAT IS YOUR VIEW ON JUST THESE? I GUESS YOU DON'T WANT TO DEPOSE THEM; IS THAT RIGHT?

YOU HAVE SERVED FOUR DOCUMENT REQUEST SUBPOENAS AND YOU WANT TO COLLECT TRANSACTIONAL DATA, BUT YOU DON'T PLAN TO DEPOSE THEM OR CALL THEM AS TRIAL WITNESSES? I MEAN, THIS IS WHAT YOU SAID ON MARCH 9TH.

MS. BONN: CORRECT.

THESE ARE ESSENTIALLY SUBPOENAS FOR TRANSACTIONAL DATA THAT IS RELEVANT FOR OUR EXPERTS WHO ARE ANALYZING PASS-THROUGH.

THE COURT: ALL RIGHT.

WELL, WHAT IS YOUR VIEW ON THIS? THEY DON'T WANT TO DEPOSE THEM, THEY ARE NOT GOING TO CALL THEM AS WITNESSES, BUT THEY WANT THEIR TRANSACTIONAL DATA, WHICH I DON'T EVEN KNOW WHAT THAT MEANS. WHAT IS THAT?

MS. BONN: GOOD QUESTION, YOUR HONOR.

FOR THE MOST PART, MY UNDERSTANDING OF WHAT OUR EXPERTS ARE DOING WITH PASS-THROUGH IS THAT THEY NEED TO COLLECT DATA FROM DIFFERENT LEVELS IN THE DISTRIBUTION CHAIN TO USE IN THEIR EXPERT ANALYSIS TO DEMONSTRATE CLASS WIDE IMPACT. AND THAT'S WHAT THIS DATA IS RELATED TO.

THE COURT: ALL RIGHT. WHAT'S YOUR VIEW ON THAT?

MR. VAN NEST: MY VIEW ON THAT, YOUR HONOR, IS THAT THEY SHOULD HAVE SERVED THE SUBPOENAS MONTHS AGO SINCE YOU

ORDERED THIRD-PARTY DISCOVERY DONE BY JANUARY 5TH.

EVERYBODY MOVED HEAVEN AND EARTH TO GET THIS STUFF DONE. THEY CERTAINLY HAD EXPERTS SINCE THE BEGINNING OF THE CASE. THEY KNEW WHAT THEY NEEDED. BUT OBVIOUSLY THEY HAVE SUBPOENAS OUT THERE. THE THIRD PARTIES ARE EITHER GOING TO PROVIDE DATA OR THEY ARE NOT.

MY POINT IS SIMPLY, WE DON'T NEED TO MOVE THE SCHEDULE AND CREATE A VERY, VERY, I THINK UNDESIRABLE CLASS CERT BRIEFING AND ARGUMENT SCHEDULE BASED ON SOME LATE SUBPOENAS THAT THESE FOLKS SERVED VERY LATE IN THE GAME.

THE COURT: WHEN IS THE DUE DATE ON THE SUBPOENAS?

MS. BONN: I BELIEVE IT'S BY THE END OF THE MONTH, WE HAVE ALREADY STARTED MEETING AND CONFERRING WITH COUNSEL WHO HAVE ACCEPTED SERVICE OF THE SUBPOENAS.

BUT I BELIEVE THE DEADLINE IS AT THE END OF THE MONTH. THE DEADLINE ON THE FACE OF THE SUBPOENAS, IT MAY TAKE A LITTLE BIT LONGER TO GET THE DATA, PRACTICALLY.

AND YOUR HONOR, PART OF THE REASON WE ARE REQUESTING A BRIEF TWO-WEEK EXTENSION OF THE CLASS CERT BRIEFING IS NOT SOLELY THAT ISSUE, BUT THERE ARE DEPOSITIONS THAT ARE ONGOING INTO THE MONTH OF APRIL.

AND FOR EXAMPLE, WE JUST HEARD THIS MORNING THAT ERICSSON, WHO HAS KEY WITNESSES WHO WERE SET TO TESTIFY NEXT WEEK IN STOCKHOLM, CAN NO LONGER DO SO, AND THAT NEEDS TO BE RESCHEDULED FOR APRIL.

SO THERE ARE CRITICAL WITNESSES BEING DEPOSED IN APRIL, AND QUALCOMM SEEMS TO ACKNOWLEDGE THAT JUSTIFIES TEN-DAY EXTENSIONS OF FTC'S EXPERT REPORT DEADLINE. AND YET WHEN IT COMES TO PLAINTIFFS, WHO ALSO HAVE EXPERT REPORTS, OR DECLARATIONS AT LEAST, DUE WITH THEIR CLASS CERT MOTION, THEY ARE UNWILLING TO GIVE US WHAT'S A BRIEF EXTENSION OF TWO WEEKS. IT'S NOT JUST PREJUDICIAL, AND I THINK THIS IS JUST AN EFFORT TO JAM US UP.

THE COURT: LET ME ASK ON THE THIRD PARTY, ARE WE THEN JUST GOING TO WAIT AND SEE IF THOSE THIRD PARTIES RESPOND? OR I DON'T REALLY KNOW, WHAT IS THERE TO DO ON THIS?

MR. VAN NEST: NOTHING, YOUR HONOR. NO ONE HAS MOVED TO QUASH AND NO ONE HAS MOVED TO QUASH THE SUBPOENAS, AND APPARENTLY THEY ARE MEETING AND CONFERRING THAT THOSE PARTIES WILL DO WHATEVER THEY ARE GOING TO DO.

BUT IT SOUNDS LIKE THAT'S NOT A REASON TO MOVE THE SCHEDULE BECAUSE THAT INFORMATION IS GOING TO BE PROVIDED EITHER LATER THIS MONTH OR IN EARLY APRIL.

AND THE DEPOSITIONS DON'T RELATE TO CLASS CERT. THE DEPOSITIONS THAT ARE HANGING OUT INTO APRIL ARE LIABILITY-TYPE DEPOSITIONS OF OEM AND THE LIKE. THEY DON'T HAVE ANYTHING TO DO WITH PRICING OR PASS-THROUGH. SO THOSE AREN'T AN EXCUSE.

THERE'S NO EXCUSE FOR, AS FAR AS WE ARE CONCERNED, KEEPING THE CLASS CERT ON THE SCHEDULE IT IS NOW, WHICH IS ALREADY TIGHT.

THE COURT: LET ME ASK, WITH REGARD TO THIRD PARTY RETAILER TRANSACTIONAL DATA, YOU ARE NOT ASKING FOR ANY RULING. IS THAT JUST A HEADS UP? WHY IS THIS IN HERE?

MS. BONN: WE RAISED IT BECAUSE THE DATE WE SERVED THE SUBPOENAS QUALCOMM INDICATED THEY HAD AN OBJECTION AND THEY THOUGHT IT WAS UNTIMELY.

AND SO BECAUSE WE RECEIVED THAT EMAIL, WE PROMPTLY RAISED IT FOR YOUR HONOR, BUT APPARENTLY THEY DON'T INTEND TO MOVE TO QUASH OR MAKE AN ISSUE OF IT, SO PERHAPS THERE IS NO ISSUE.

THE COURT: ARE YOU INTENDING TO MOVE TO QUASH THOSE?

MR. VAN NEST: NO. WE DON'T HAVE STANDING TO MOVE TO QUASH THOSE, YOUR HONOR.

THE COURT: OKAY.

MR. VAN NEST: THE THIRD PARTIES MAY, BUT THEY ARE THIRD PARTIES.

THE COURT: OKAY.

WELL, I'M GOING TO SAY FOR THE -- I WOULD LIKE TO TRY TO LIMIT AS MUCH AS WE CAN, SATELLITE LITIGATION ON ISSUES THAT ARE REALLY NOT WARRANTING SATELLITE LITIGATION.

SO TO THE EXTENT THAT YOU ARE NOT SEEKING TO DEPOSE THESE PEOPLE, YOU ARE NOT GOING TO CALL THEM AS WITNESSES, THEN I'M JUST SAYING THAT THEY SHOULD RESPOND TO YOUR SUBPOENAS FOR THIS PASS-THROUGH DATA, OKAY?

MS. BONN: YES, YOUR HONOR. THANK YOU.

THE COURT: NOW I'M TAKING THE PLAINTIFFS AT YOUR

WORD THAT YOU ONLY LEARNED ABOUT THIS THIRD PARTY RETAILER TRANSACTIONAL DATA ONCE YOUR EXPERT STARTED DOING ANALYSIS OF DATA THAT WAS PRODUCED AFTER DECEMBER 15TH, 2017.

MS. BONN: CORRECT, YOUR HONOR.

THE COURT: AND YOUR SUBPOENA DID NOT ASK FOR DEPOSITION, DID IT?

MS. BONN: NO, IT DID NOT.

THE COURT: ALL RIGHT.

SO IT'S NOT FOR THE PURPOSE OF DEPOSITION OR FOR TRIAL TESTIMONY, BUT ONLY TO PRODUCE THE PASS-THROUGH DATA. I WILL ALLOW THAT. OKAY.

NOW, LET'S SEE, WHAT IS NEXT? WHAT ARE THE DIFFERENT EXPERTS THAT YOU ARE ANTICIPATING AND WHAT ARE THEIR TOPICS? I DON'T KNOW IF THAT'S DIFFERENT FOR ALL THE PARTIES.

MR. VAN NEST: IT IS, YOUR HONOR.

THE COURT: OKAY.

MR. VAN NEST: I THINK SPEAKING JUST FOR QUALCOMM ON THE MDL CASE, WE HAVE, WE WILL HAVE EXPERTS ON CLASS CERT. THAT'S ABOUT AS FAR AS --

THE COURT: AND WILL THEY BE ECONOMISTS?

MR. VAN NEST: YES.

THE COURT: OKAY. AND DO YOU HAVE A SENSE OF THE NUMBER? AND IF YOU DON'T NOW, THAT'S FINE.

MR. VAN NEST: I DON'T, YOUR HONOR, BUT IT WILL BE A SMALL NUMBER.

THE COURT: OKAY.

MR. VAN NEST: ON THE CERT ISSUE.

THE COURT: ALL RIGHT. ANY OTHERS THAT YOU ANTICIPATE FOR THE MDL CASE?

MR. VAN NEST: THERE WILL CERTAINLY BE OTHERS DEPENDING ON WHETHER OR NOT THE CLASS IS CERTIFIED, AND IF SO, ON WHAT POINTS. THERE WILL BE ECONOMISTS AND EXPERTS IN A VARIETY OF FIELDS.

I CAN'T REALLY GIVE YOUR HONOR AN EXHAUSTIVE LIST BECAUSE WE HAVEN'T THOUGHT THAT FAR AHEAD YET.

THE COURT: THAT'S FINE. AND WHAT ABOUT THE FTC, DO YOU KNOW IN THIS CASE? I ASSUME ON ALL OF THESE, THEY ARE ALL GOING TO BE ECONOMISTS.

MS. BONN: FOR THE FTC OR MDL PLAINTIFFS?

THE COURT: FOR BOTH.

MR. VAN NEST: SO I WILL LET MR. BORNSTEIN SPEAK FOR QUALCOMM ON THE FTC, AND I WILL LET THE FTC SPEAK FOR THEMSELVES.

MR. BORNSTEIN: SO FOR THE FTC CASE, WE DO HAVE ECONOMISTS, YOUR HONOR.

THE COURT: OKAY. AND YOU DON'T HAVE TO KNOW NOW, BUT DO YOU HAVE A SENSE OF THE NUMBERS AT THIS POINT?

MR. BORNSTEIN: I DON'T KNOW NOW, YOUR HONOR.

THE COURT: OKAY. THAT'S FINE.

MR. BORNSTEIN: WITH THE WAY THE SCHEDULE IS SET UP,

WE HAVE RESPONSIVE REPORTS.

THE COURT: IT'S FURTHER OUT. THAT'S FINE.

WHAT ABOUT THE MDL PLAINTIFFS, WHAT DO YOU ENVISION IN TERMS OF EXPERTS AND WHAT TOPICS?

MS. BONN: YES. WE HAVE SEVERAL ECONOMISTS THAT WE ARE WORKING WITH. WE WILL TRY TO STREAMLINE THE NUMBER OF ECONOMISTS, BUT THERE MAY BE MORE THAN ONE.

WE ALSO HAVE A PATENT LICENSING EXPERT.

THE COURT: OKAY.

MS. BONN: AND A TECHNICAL EXPERT WHOSE WORK INTERTWINES WITH THE PATENT LICENSING EXPERT. HE'S SOMEONE WHO MAY OFFER OPINIONS ON CERTAIN PATENTS.

MS. GILLEN: YOUR HONOR, THE FTC IS ANTICIPATING A SMALL NUMBER OF EXPERTS, AT LEAST ONE ECONOMIST, AND A SMALL NUMBER OF ADDITIONAL EXPERTS ON TOPICS SUCH AS PATENT LICENSING.

THE COURT: OKAY. AND THE TECHNICAL PATENT EXPERT WILL BE WHAT, TALKING ABOUT WHETHER THE PATENTS ARE STANDARD, ESSENTIAL OR WHAT?

MS. BONN: CORRECT, YOUR HONOR.

AND OTHER ISSUES RELATING TO THE PATENTS THAT MAY, FOR EXAMPLE, BE RELEVANT TO DETERMINING THE RELATIVE STRENGTH OF QUALCOMM'S PORTFOLIO COMPARED TO OTHER PATENT PORTFOLIOS THAT ARE PART OF THE RELEVANT, ESSENTIALLY ROYALTY STACKS IN THIS CASE.

02:25:49 THE COURT: OKAY. IS THE FTC GOING TO HAVE A
02:25:51 TECHNICAL PATENT EXPERT?
02:25:57 MS. GILLEN: WE ARE STILL WORKING THAT OUT AT THIS
02:26:00 TIME, BUT THE FTC CURRENTLY PLANS TO HAVE A SMALL NUMBER.
02:26:06 THE COURT: OKAY. AND THEN I WOULD ASSUME FOR
02:26:09 QUALCOMM, YOU WILL HAVE REBUTTAL EXPERTS FOR WHOMEVER -- LIKE,
02:26:12 YOU MAY HAVE YOUR OWN PATENT LICENSING EXPERTS, AND TECHNICAL.
02:26:19 MR. BORNSTEIN: TO THE EXTENT WE DEEM IT NECESSARY
02:26:21 AFTER SEEING THE REPORTS, YES, YOUR HONOR.
02:26:22 THE COURT: OKAY. ALL RIGHT.
02:26:24 WE DON'T HAVE TO DECIDE THIS NOW, BUT I WOULD LIKE TO,
02:26:29 BEFORE ALL THE FILING DEADLINES, PUT SOME LIMITS ON THE NUMBER
02:26:33 OF DAUBERTS.
02:26:34 I SUSPECT THAT MOST OF THE DAUBERTS WILL BE DENIED BECAUSE
02:26:39 IT'S REALLY GOING TO GO TO WEIGHT AND ADMISSIBILITY AND THAT
02:26:44 YOU WILL RAISE VERY, YOU KNOW, STRONG OBJECTIONS TO EACH
02:26:49 OTHER'S EXPERTS, BUT THAT REALLY IS MORE NEAR CROSS-EXAMINATION
02:26:52 OR FOR CLOSING ARGUMENT AND NOT FOR EXCLUDING AN EXPERT.
02:26:58 SO I DON'T WANT A HUGE NUMBER OF DAUBERTS. I WOULD LIKE
02:27:01 YOU TO THINK ABOUT FOR NEXT TIME WHAT YOU THINK THE APPROPRIATE
02:27:04 NUMBER IS, ESPECIALLY BECAUSE THERE ARE MULTIPLE CASES GOING ON
02:27:10 HERE. I JUST WANT IT TO BE OVERWHELMING.
02:27:14 I WOULD PREFER TWO DAUBERTS PER CASE, PER SIDE. BUT IF
02:27:27 YOU WOULD PLEASE THINK ABOUT IT FOR NEXT TIME. WE DON'T HAVE
02:27:30 TO DECIDE NOW, IT'S AWFULLY EARLY, BUT THERE WILL BE A LIMIT,

THE QUESTION IS WHAT THAT LIMIT IS GOING TO BE.

OKAY. SO THAT'S EXPERTS, THAT'S DAUBERTS. SO WHO DO YOU HAVE LEFT? WE HAVE DR. JACOBS, WE HAVE THE FOLKS, THE THIRD PARTIES THAT ARE ON YOUR MARCH 20TH CASE MANAGEMENT CONFERENCE STATEMENT. WE HAVE TIEDEMANN AND KATOUZIAN, AND THEN THE 30(B)(6).

IS THERE ANY OTHER OUTSTANDING DEPOSITION, OR ARE YOU LARGELY DONE?

MR. BORNSTEIN: WE HAVE A NUMBER OF PEOPLE BEING DISPOSED NEXT WEEK WHO ARE ALREADY SCHEDULED AND WHO WILL BE GOING FORWARD.

THE COURT: AND HOW MANY ARE THOSE?

MR. BORNSTEIN: ON THE ORDER OF 5 OR 6.

MS. BONN: SOMETHING LIKE THAT.

MR. BORNSTEIN: THAT ARE HAPPENING NEXT WEEK. AND THOSE INCLUDE, INCIDENTALLY, BOTH QUALCOMM WITNESSES AND THIRD-PARTY WITNESSES, BUT WHO ARE ON CALENDAR AND GOING FORWARD.

THE COURT: AND DOCUMENTS FOR THOSE DEPONENTS HAVE BEEN PRODUCED; IS THAT RIGHT?

MR. BORNSTEIN: YES, THE DOCUMENTS HAVE BEEN PRODUCED. THERE ARE DOCUMENTS WHICH I'M SURE WILL BE PART OF THIS CONVERSATION WE WILL HAVE REGARDING THE SOUTHERN DISTRICT PRODUCTION, BECAUSE WE KNOW WE HAVE MORE DOCUMENTS TO PRODUCE IN THE SOUTHERN DISTRICT, GIVEN THE SCHEDULE THERE. WE CAN'T

AVOID THAT.

WE ALSO HAVE THE ISSUE THAT MS. BONN RAISED REGARDING ERICSSON, WHICH IS ONE OF THE THIRD PARTY WITNESS. WE WERE INFORMED, LITERALLY THIS MORNING, THAT THE SWEDISH GOVERNMENT RAISED AN OBJECTION TO THE DEPOSITIONS HAPPENING IN STOCKHOLM AND DOESN'T WANT THE DEPOSITIONS TO HAPPEN ON SWEDISH SOIL.

THE COURT: OKAY. WHY IS THAT?

MR. BORNSTEIN: I DON'T KNOW, THIS WAS NEWS TO US, IT WAS APPARENTLY NEWS TO THE FTC AS WELL, WHOSE INTERNATIONAL AFFAIRS DIVISION HAS BEEN IN TOUCH WITH THE RELEVANT AUTHORITY IN SWEDEN. WE WERE ALL TAKEN BY SURPRISE.

SO ARE WORKING WITH ERICSSON'S COUNSEL TO FIND AN ALTERNATE LOCATION, AND IF NECESSARY, THE ERICSSON WITNESSES HAVE INDICATED THEIR WILLINGNESS TO TRAVEL TO THE UNITED STATES FOR DEPOSITIONS.

THE COURT: OKAY. THANK YOU. BUT YOU DON'T HAVE DATES THEN, THAT WILL PROBABLY BE SOME TIME IN APRIL.

MR. BORNSTEIN: WE ANTICIPATE IT WILL BE IN APRIL, YOUR HONOR. BUT THIS WAS A LATE BREAKING DEVELOPMENT THAT WAS OUTSIDE OF ALL PARTIES'S CONTROL.

THE COURT: OKAY. THAT'S FINE. I'M HOPING YOU ARE ABLE TO SCHEDULE IT IN THE FIRST HALF OF APRIL, IF AT ALL POSSIBLE.

MR. BORNSTEIN: WE WILL WORK WITH ERICSSON'S COUNSEL TO HAVE THEM DONE AS SOON AS WE CAN.

AND ASIDE FROM THAT, THERE ARE JUST THE DEPOSITIONS THAT HAVE BEEN IDENTIFIED IN THE CASE MANAGEMENT, THE SUPPLEMENTAL CASE MANAGEMENT STATEMENT.

THE COURT: OKAY.

MR. BORNSTEIN: THE THIRD PARTIES, INCLUDING THE ONE FROM APPLE WHO HAD BEEN SCHEDULED AND NEEDED TO BE RESCHEDULED FOR PERSONAL REASONS.

THE COURT: ALL RIGHT. AND YOU DON'T HAVE A DATE FOR MR. SEWELL.

MR. BORNSTEIN: WE DON'T HAVE A DATE FOR MR. SEWELL. WE HAVE BEEN TOLD BY APPLE'S COUNSEL THAT WE CAN EXPECT ONE SOON, BUT WE HAVEN'T RECEIVED IT YET.

THE COURT: OKAY. WELL, IF YOU HAVE TROUBLE GETTING DATES FROM THEM, YOU LET ME KNOW.

MR. BORNSTEIN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. SO LET'S TALK ABOUT -- I AM JUST TRYING TO HOPEFULLY JUST BRING CLOSURE SINCE WE ARE RUNNING OUT OF TIME, TO AS MANY OF THESE DISPUTES AS POSSIBLE.

TELL ME, WHAT IS THE ISSUE WITH THE 30(B)(6), THE NOTICE IS TOO LATE, THE TOPICS ARE OVERBROAD, I THINK IS WHAT I READ AS THE OBJECTION.

NONE OF THE TOPICS LOOKED OVERBROAD TO ME FROM LOOKING AT WHAT'S CITED IN HERE. WHEN WAS IT SERVED? WHY IS IT TOO LATE?

MR. BORNSTEIN: YOUR HONOR, WE HAVE TWO DIFFERENT 30(B)(6) NOTICES. MAYBE WE CAN TAKE THEM SEPARATELY.

THE COURT: OKAY.

MR. BORNSTEIN: THE FTC SERVED ITS 30(B)(6) NOTICE, I BELIEVE ON FEBRUARY 28TH.

THE COURT: OKAY.

MR. BORNSTEIN: AND IT HAD 11 TOPICS. WE HAVE RESOLVED MANY OF THEM.

WE PROVIDED WITNESSES TO TESTIFY AS TO THREE OF THEM, PROVIDED A WITNESS TO TESTIFY AS TO PART OF A FOURTH, AND WE ARE WORKING TO COOPERATIVELY RETROACTIVELY DESIGNATE TESTIMONY OF A WITNESS AS 30(B)(6) TESTIMONY TO FINISH THAT FOURTH TOPIC.

THE COURT: OKAY.

MR. BORNSTEIN: THE FTC, AS PART OF OUR DISCUSSIONS, WITHDREW TWO OF THE TOPICS, WHICH LEAVES US WITH FIVE TOPICS.

THIS MORNING WE RECEIVED A PROPOSAL FROM THE FTC ON HOW WE MIGHT ADDRESS ONE OF THOSE FIVE IN AN ALTERNATE WAY, WHICH WE WILL CONSIDER AND CONTINUE TO MEET AND CONFER WITH THEM ON.

AND THERE WERE FOUR OTHERS WHICH ARE ONES WHERE I THINK WE'VE REACHED DISAGREEMENT. AND THAT'S THE STATUS OF THOSE.

WE HAVE NOT HEARD ONE WAY OR THE OTHER FROM THE FTC ON WHERE THEY INTEND TO GO WITH THE FOUR THAT WE'VE DISCUSSED WHERE WE DON'T HAVE ANY FURTHER PROPOSALS.

SO I THINK WE ARE WAITING TO HEAR FROM THEM ON THE MEET AND CONFER PROCESS AS TO WHETHER THERE'S ANYTHING WE HAVE TO DO.

THE COURT: WELL, I GUESS I'M UNCLEAR, THE FACT

DISCOVERY IS CLOSING NEXT FRIDAY. SO -- TODAY IS MARCH 22ND, DOESN'T FACT DISCOVERY CUTOFF CLOSE MARCH 30TH, IN A WEEK?

MR. BORNSTEIN: IT DOES. WE HAVE MADE OUR POSITION CLEAR, WE DIDN'T THINK WE NEEDED TO AND DON'T BELIEVE WE NEED TO PUT SOMEBODY UP ON THOSE FOUR OTHER TOPICS.

THE COURT: ALL RIGHT. I'M GOING TO DECIDE IT RIGHT NOW. THAT 30(B)(6) WAS SERVED MARCH 28TH. SO I MEAN, THIS IS WHAT I AM AFRAID IS HAPPENING. EVERYTHING IS JUST GETTING BOGGED DOWN IN THESE DISPUTES.

LET ME SEE THE TOPICS, I'M GOING TO MAKE A DECISION RIGHT NOW. GIVE ME THE TOPICS, PLEASE. DO YOU HAVE YOUR 30(B)(6) NOTICES?

I'M NOT GOING TO HAVE THIS GRINDING ON GOING TO JUDGE COUSINS IN A MONTH. I'M DOING IT RIGHT NOW. FACT DISCOVERY CLOSES NEXT FRIDAY. TODAY IS THURSDAY, MARCH 22ND, LET'S GET THIS DONE.

GIVE ME BOTH THE PLAINTIFF'S MDL 30(B)(6) NOTICE AND THE FTC NOTICE, PLEASE. WE ARE GOING TO RESOLVE THIS TODAY.

YOU'VE HAD A MONTH TO MEET AND CONFER. IT'S TIME TO COME TO DECISIONS AND GET THIS FACT DISCOVERY DONE. GIVE ME BOTH NOTICES, PLEASE.

MR. VAN NEST: DO YOU WANT THEM HANDED UP, YOUR HONOR?

THE COURT: YES, PLEASE.

MR. VAN NEST: I'VE GOT ONE THAT'S HIGHLIGHTED. I

APOLOGIZE, BUT THIS IS THE -- MR. BORNSTEIN HAS BEEN SPEAKING ABOUT THE FTC NOTICE.

THE COURT: I UNDERSTAND. AND THEN THERE'S ALSO -- WHEN WAS THE MDL PLAINTIFF'S NOTICE SERVED.

MS. BONN: MARCH 1ST --

MR. VAN NEST: MARCH 2ND. AND THEN WE GOT, WE MET AND CONFERRED AND THEY SENT US ANOTHER ONE TUESDAY NIGHT ABOUT 9:30.

THE COURT: ON MARCH 20TH.

MR. VAN NEST: ON MARCH 20TH, YEAH. AND I HAVE THE MARCH 20TH ONE THAT I CAN HAND UP.

THE COURT: AND HOW MANY TOPICS DID THEY HAVE ON MARCH 2ND.

MR. VAN NEST: THEY HAD ABOUT 30. THAT'S NOT A PRECISE NUMBER, YOUR HONOR, BUT SOMETHING LIKE THAT.

NOW THEY HAVE 11, BUT THE 12TH TOPIC IS ALL TOPICS NOTICED IN THE FTC NOTICE. SO IT'S WHATEVER THEY HAVE THEIR OWN 11 AND THE 12TH IS EVERYTHING IN THE FTC NOTICE.

THE COURT: OKAY. ALL RIGHT. I DON'T WANT TO LOOK AT YOUR HIGHLIGHTS, JUST IN CASE, I DON'T WANT TO SEE YOUR WORK PRODUCT.

YOU HAVE A CLEAN -- CAN I JUST RECESS THIS CASE AND YOU ALL CAN HAND ME UP CLEAN COPIES, AND THEN I CAN TAKE CARE OF MY JURY NOTE.

THE CLERK: YOUR HONOR, THEY CAN ALSO E-MAIL ME A

COPY IF THAT'S EASIER, AND I CAN PRINT IT.

THE COURT: WHY DON'T YOU DO THAT.

I WOULD PREFER NOT TO HAVE ANYONE'S HIGHLIGHTS OR COMMENTS AND NOTATIONS.

ALL RIGHT. IF WE CAN RECESS THIS CASE MOMENTARILY, PLEASE.

(A RECESS WAS TAKEN AT 2:35 P.M.)

THE CLERK: RECALLING CASE 17-CV-00220, FEDERAL TRADE COMMISSION VERSUS QUALCOMM INCORPORATED, AND THE RELATED MATTER 17-MD-02773, IN RE QUALCOMM ANTITRUST LITIGATION.

COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

MS. BONN: GOOD AFTERNOON.

AMANDA BONN FOR MDL PLAINTIFF. AND WITH ME IS RIO PIERCE FOR MDL PLAINTIFFS AS WELL.

THE COURT: OKAY. HIS NAME IS --

MR. PIERCE: RIO PIERCE WITH HAGENS BERMAN.

THE COURT: OKAY. HAVE YOU FILED A NOTICE OF APPEARANCE?

MR. PIERCE: YES, YOUR HONOR.

THE COURT: IS HE ON THE DOCKET?

MS. BONN: YES, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT. WHO ELSE IS --

MR. VAN NEST: YOUR HONOR, BOB VAN NEST AND JUSTINA SESSIONS FROM KEKER, VAN NEST, PETERS FOR QUALCOMM.

MR. BORNSTEIN: AND GARY BORNSTEIN FROM CRAVATH, ALSO

FOR QUALCOMM.

THE COURT: ALL RIGHT. WELL, WELCOME BACK AND GOOD AFTERNOON.

ALL RIGHT. LET ME GO THROUGH, WE ARE GOING TO TAKE A BREAK, BUT I WOULD LIKE TO FIND OUT, LET'S I GUESS FIRST GO THROUGH, I HAVE THE FTC'S DEPOSITION NOTICE, IT IS DATED FEBRUARY 28TH, 2018, AND I SEE THAT THERE ARE 11 TOPICS.

CAN YOU LET ME KNOW WHICH ARE THE TWO THAT THE FTC HAS WITHDRAWN? OH, WAIT, ARE THE FOLKS STILL ON THE PHONE FROM THE FTC? MS. GILLEN?

MS. GILLEN: YES. ELIZABETH GILLEN FOR THE FTC.

MR. BAKER: AND JOE BAKER AS WELL.

THE COURT: OKAY. ALL RIGHT.

SO WHICH TOPICS DID YOU WITHDRAW?

MS. GILLEN: THE FTC WITHDREW TOPICS NUMBER 1 AND 9.

THE COURT: NUMBER 1 AND 9. OKAY. SO THOSE ARE OFF.

AND WHICH ARE THE THREE THAT YOU HAVE AGREED TO?

MR. BORNSTEIN: WE PROVIDED FOUR, YOUR HONOR

YOUR HONOR, NUMBERS 2, 3, 4 AND 5.

THE COURT: OKAY. DOES THE FTC AGREE WITH THAT?

MS. GILLEN: YES, THE FTC AGREES.

THE COURT: OKAY. SO WITNESSES HAVE ALREADY BEEN

DEPOSED ON TOPICS 2, 3, 4 AND 5, CORRECT?

MR. BORNSTEIN: CORRECT, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

02:50:25 ALL RIGHT. AND THEN I THOUGHT THERE WAS ONE WHERE YOU
02:50:28 ONLY AGREED TO PART OF IT.
02:50:30 MR. BORNSTEIN: WELL, THAT WAS NUMBER 2, YOUR HONOR,
02:50:31 WHERE WE PROVIDED A WITNESS TO TESTIFY AS TO A PORTION WITHIN
02:50:34 HIS KNOWLEDGE, AND THEN WE ARE RETROACTIVELY DESIGNATING
02:50:38 TESTIMONY FROM A DIFFERENT WITNESS FOR PORTIONS THAT WAS WITHIN
02:50:41 THAT INDIVIDUAL'S KNOWLEDGE. SO BETWEEN THE TWO WITNESSES,
02:50:44 NUMBER 2 IS COVERED.
02:50:45 THE COURT: ALL RIGHT. DOES THE FTC AGREE WITH THAT?
02:50:48 MS. GILLEN: YES, THE FTC AGREES.
02:50:49 THE COURT: OKAY. ALL RIGHT.
02:50:51 SO THEN THERE'S ONE THAT THE FTC HAS AN ALTERNATIVE
02:50:59 PROPOSAL THAT QUALCOMM IS STILL CONSIDERING, WHICH ONE IS THAT?
02:51:03 MR. BORNSTEIN: THAT'S NUMBER 11, YOUR HONOR. WE
02:51:04 RECEIVED THAT PROPOSAL THIS MORNING.
02:51:06 THE COURT: OKAY.
02:51:13 MS. GILLEN: YOUR HONOR, JUST FOR MORE CLARITY, TOPIC
02:51:16 NUMBER 11 RELATES TO QUALCOMM'S SALES AND ROYALTY REVENUE DATA.
02:51:22 AND THE PROPOSAL THE FTC RAISED THIS MORNING, RAISED A
02:51:25 SUGGESTION OF HAVING OUR RESPECTIVE EXPERT TEAMS PARTICIPATE IN
02:51:29 A GROUP TO BETTER UNDERSTAND THE DATA.
02:51:32 IF WE ARE ABLE TO ARRANGE FOR THIS PROCESS TO OCCUR
02:51:34 THROUGH MORE INFORMAL MEANS, WE CAN WORK HARD TO MINIMIZE THE
02:51:39 NEED AND BURDEN FOR ADDITIONAL DEPOSITIONS HERE.
02:51:42 THE COURT: OKAY. AND YOU ARE SAYING THAT FTC'S

EXPERTS WILL TALK TO QUALCOMM'S EXPERTS OR QUALCOMM'S EMPLOYEES? I WAS NOT CLEAR ON WHAT THE PROPOSAL IS, EXACTLY.

MS. GILLEN: OUR PROPOSAL WOULD BE FOR FOLKS FROM OUR EXPERTS TO GET ON THE PHONE WITH THE INDIVIDUALS FROM THE QUALCOMM SIDE. I'M NOT SURE YET WHETHER THOSE WOULD BE EMPLOYEES AT QUALCOMM OR OTHERS WORKING ON QUALCOMM'S BEHALF. I THINK MR. BORNSTEIN MAY BE ABLE TO ANSWER THAT.

MR. BORNSTEIN: SO YOUR HONOR, WE RECEIVED IT THIS MORNING. I DON'T KNOW EXACTLY WHO THE RIGHT PEOPLE WOULD BE TO ANSWER THESE QUESTIONS. IT WOULD PROBABLY BE PEOPLE EMPLOYED BY THE COMPANY.

BUT WHAT WE ARE CONSIDERING, WHICH WAS SOMETHING THAT COUNSEL FOR THE FTC RAISED IN THEIR PROPOSAL, IS WHETHER IT WOULD BE EASIER TO ADDRESS THESE IN WRITING RATHER THAN BY HAVING PEOPLE ON THE PHONE. AND THAT'S SOMETHING WE WERE GOING TO TAKE A LOOK AT AFTER WE DISCUSS WITH THE PEOPLE ABOUT KNOWLEDGE OF THESE ISSUES.

THE COURT: OKAY.

ALL RIGHT. SO FTC BASICALLY JUST WANTS TO UNDERSTAND HOW THIS DATA WAS GENERATED OR COLLECTED, PRESENTED.

MS. GILLEN: YES, THAT'S RIGHT.

THE COURT: OKAY. ALL RIGHT.

WELL, IT SOUNDS LIKE 11, YOU MAY BE ABLE TO WORK SOMETHING OUT, SHORT OF A DEPOSITION. I CAN SEE AN INTERROGATORY BEING PROBLEMATIC THOUGH. AND THAT EVEN IF YOU DO SOMETHING IN

WRITING BE INITIALLY, THERE MAY NEED TO BE JUST A FOLLOW-UP DISCUSSION JUST TO UNDERSTAND.

MR. BORNSTEIN: AS BACKGROUND, YOUR HONOR, WE HAVE HAD EXTENSIVE CORRESPONDENCE ON THESE ISSUES GOING BACK TO, FRANKLY, TO THE INVESTIGATION BEFORE THE COMPLAINT WAS FILED. BUT ALSO DURING THE LITIGATION, WE HAVE EXCHANGED A NUMBER OF LETTERS BACK AND FORTH AND PROVIDED A WEALTH OF INFORMATION ON THESE SUBJECTS.

THE MAIL THAT WE RECEIVED THIS MORNING FROM THE FTC HAS WHAT LOOKED TO ME LIKE FOLLOW-UP QUESTIONS, NOT INITIAL FOUNDATIONAL QUESTIONS, BUT A NUMBER OF MORE FOCUSED ISSUES ABOUT, EXPLAIN THIS PARTICULAR FIELD AND WHY IT LOOKS THIS WAY IN CERTAIN REPORTS AND THAT SORT OF THING.

SO I THINK IT'S MORE TARGETED AND WE SHOULD BE ABLE TO ADDRESS IT WITH SOME WRITTEN ANSWERS, BUT I NEED TO TALK TO PEOPLE WHO UNDERSTAND THE DATA BETTER THAN I DO BEFORE I CAN BE DEFINITIVE ABOUT THAT.

THE COURT: SURE. BUT THAT TOPIC, I'M ACTUALLY FAIRLY CONFIDENT, IT SOUNDS LIKE YOU WILL BE ABLE TO WORK IT OUT.

MR. BORNSTEIN: I'M HOPEFUL WE CAN, YOUR HONOR.

THE COURT: ALL RIGHT. OKAY. SO THEN THE ONLY OTHER ONES ARE THE FOUR REMAINING WHICH ARE 6, 7, 8, AND 10, CORRECT?

MR. BORNSTEIN: THAT'S CORRECT.

THE COURT: OKAY. ALL RIGHT. THEN LET'S GO TO THE

MDL ONE.

DO YOU HAVE ANY AGREEMENT ON ANY OF THESE TOPICS OR NOT?

MS. BONN: WE DON'T BELIEVE SO, YOUR HONOR.

MR. VAN NEST: I DON'T BELIEVE WE DO, YOUR HONOR.

WE HAVE BEGUN DISCUSSING WHETHER -- WE JUST GOT THIS VERSION LATE TUESDAY NIGHT. AND WE HAVE BEGUN DISCUSSING WHETHER THERE'S CERTAIN AREAS, AND WE'VE ASKED THAT THE PLAINTIFFS WHO HAVE TAKEN, AS YOU KNOW, A LOT OF DEPOSITIONS, WHETHER THERE'S SOME AREAS WHERE WE CAN DESIGNATE TESTIMONY THAT'S ALREADY BEEN TAKEN.

WE HAVE OBJECTIONS TO THE OVERBREADTH OF SOME OF THESE, NOT ALL OF THEM, BUT SOME OF THESE ARE VERY OVERBROAD. BUT A LOT OF THEM ARE AREAS WHERE THEY'VE HAD MULTIPLE PEOPLE FROM THE COMPANY ALREADY TESTIFY.

AND SO I THINK THE TESTIMONY COULD BE DESIGNATED AND DEEMED 30(B)(6) IN SOME CASES, BUT IT DOESN'T SEEM FAIR TO WAIT UNTIL YOU'VE DEPOSED EVERYBODY AND THEN SEND THE 30(B)(6) WITH THE TOPICS THAT YOU WANT. THAT'S KIND OF WHAT'S HAPPENED HERE. SO THERE'S A COUPLE OF THESE THAT I DON'T THINK ARE THAT CONTROVERSIAL.

NUMBER ONE, I THINK "CUSTOMER'S SEGMENT SCHEME," I THINK WE COULD PROVIDE, DESIGNATE SOME TESTIMONY FOR.

NUMBER THREE, "SOURCES OF PUBLICLY AVAILABLE DATA," I'M NOT SURE WHY WE KNOW THAT ANY BETTER THAN THEY DO. BUT WE COULD CERTAINLY POINT THEM TO THE PUBLICLY AVAILABLE DATA THAT

WE USE. I DON'T THINK THAT'S CONTROVERSIAL.

BUT THE REST OF THESE, I MEAN, FOR EXAMPLE, NUMBER TWO, "COMPETITIVE CONDITIONS IN THE MARKETS FOR BASEBAND PROCESSORS, INCLUDING COMPETITORS, POTENTIAL COMPETITORS, MARKET CONDITIONS, MARKET SHARES, PROFITABILITY, AVAILABILITY OF SUPPLY, SUPPLY AND DEMAND, BUSINESS PLANS, FORECASTS."

THEY HAVE ALREADY DEPOSED THE HEAD OF OUR CHIP BUSINESS, THE PERSON THAT DOES OUR ROADMAPS FOR THE CHIP BUSINESS. THEY HAVE DEPOSED A LOT OF THIRD PARTIES WHO WERE IN THE CHIP BUSINESS WITH US. IF THEY WANTED SOMETHING LIKE THIS, IT SHOULD HAVE BEEN ISSUED AT THE VERY BEGINNING OF THE CASE, NOT AFTER WE'VE PUT UP ALL OUR CHIP BUSINESS PEOPLE.

I'M NOT EVEN SURE WHAT THEY REALLY WANT HERE OTHER THAN THEY'VE ASKED OUR PEOPLE WHO THEY COMPETE WITH AND WHO'S BEEN IN THE MARKET, AND THEY HAVE GOTTEN OUR FORECAST AND OUR STRATEGIC PLANS AS PART OF THE PRODUCTIONS.

THIS IS OVERBROAD. I WOULDN'T KNOW WHERE TO START, EXCEPT THAT WE HAVE ALREADY PUT UP PEOPLE THAT RUN THAT BUSINESS AND THE FOLKS THAT PLAN THAT BUSINESS AND THE FOLKS THAT FORECAST IT.

THE COURT: COULD YOU DESIGNATE THEIR TESTIMONY?

MR. VAN NEST: SURE. WE COULD CERTAINLY TRY. ABSOLUTELY. I THINK THAT WOULD BE THE BEST WE COULD DO.

AND I WOULD PROBABLY HAVE TO DESIGNATE, I GUESS I CAN'T DESIGNATE THIRD PARTIES, BUT A NUMBER OF THIRD PARTIES HAVE

TESTIFIED TOO. BUT WE COULD DESIGNATE.

THE COURT: WELL, BUT IT NEEDS TO BE A CORPORATE REPRESENTATIVE OF QUALCOMM.

MR. VAN NEST: YES, BUT THIS IS SO BROAD, I'M NOT SURE HOW SUCCESSFUL THAT WOULD BE.

IF THEY COULD BE MORE SPECIFIC ABOUT WHAT THEY DON'T HAVE, WHAT WE'VE SAID IS, YOU'VE HAD ALL THE PEOPLE, YOU'VE DEPOSED THE CHIP BUSINESS FOLKS, WHAT IS IT THAT YOU ARE LACKING. TELL US.

THE COURT: WELL, I THINK THEY NEED SOMEBODY SPEAKING FOR THE CORPORATION.

MR. VAN NEST: WELL, THESE PEOPLE ARE ALL SPEAKING FOR THE COMPANY, THE PEOPLE THEY HAVE DEPOSED.

THE COURT: WELL, WOULD YOU HAVE ANY OBJECTION TO JUST HAVING QUALCOMM DESIGNATE THE TESTIMONY THAT'S PREVIOUSLY BEEN TAKEN? WHY DO YOU NEED A NEW WITNESS?

MS. BONN: SO WE MAY NOT.

I THINK IF WE ARE GOING TO GO THE DESIGNATION ROUTE, WHAT PROBABLY MAKES SENSE IS FOR US TO ISSUE KIND OF SPECIFIC QUESTIONS THAT WE WOULD HAVE INTENDED TO ASK AT THIS DEPOSITION, THAT WE WANT A COMPANY WITNESS TO TESTIFY ABOUT.

AND TO THE EXTENT THAT THEY BELIEVE THEY CAN ANSWER THOSE QUESTIONS USING PREVIOUSLY SWORN TESTIMONY, WE HAVE NO OBJECTION TO THAT.

MR. VAN NEST: AS LONG AS THAT'S NOT A REDO OF THE

DEPOSITIONS, AND AS LONG AS IT'S NARROW AND TAILORED, YOUR HONOR, I THINK THAT'S APPROPRIATE.

BUT IT CAN'T BE, HERE'S THE 50 DEPOSITION QUESTIONS WE MEANT TO ASK WHEN WE HAD THE HEAD OF YOUR CHIP BUSINESS THERE, AND I WANT TO ASK THEM.

BUT IF THEY ARE NARROW AND TAILORED, CERTAINLY.

THE COURT: WHAT ABOUT NUMBER FOUR?

MR. VAN NEST: THAT'S ANOTHER ONE, THE EXTENT AND VALUE OF QUALCOMM'S AND OTHER SEP HOLDERS. CEMA, GSM, UMTS PORTFOLIOS.

I MEAN, THAT IS VASTLY BROAD. THEY HAVE ALREADY DEPOSED THE HEAD OF QTL, THAT'S OUR LICENSING DIVISION. THEY HAVE DEPOSED LAWYERS WITHIN QTL. THEY DEPOSED THE PEOPLE THAT NEGOTIATE PORTFOLIO LICENSES. THE EXTENT AND VALUE, THERE'S BEEN LITIGATION IN FRONT OF JUDGE COUSINS ABOUT WHAT'S PRIVILEGED AND WHAT ISN'T WITHIN THE VALUATION. MUCH WAS DONE, SOME OF IT IS DONE BY --

THE COURT: SO YOU ARE BASICALLY SAYING THEY DON'T GET A 30(B)(6), THEY ARE STUCK WITH WHATEVER THEY HAVE GOTTEN SO FAR? BECAUSE THAT'S NOT SATISFACTORY TO ME EITHER.

MR. VAN NEST: IF THEY HAD DONE THIS AT THE BEGINNING, WE WOULDN'T BE IN THIS BOAT.

WE HAVE ALREADY PRODUCED ALL OF THE PEOPLE THAT KNOW ABOUT THAT, AND THEY HAVE THIS A FULL CHANCE TO DEPOSE THEM. I'M NOT SAYING THEY DON'T GET A 30(B)(6), I'M SAYING ON SOMETHING LIKE

THIS, YOU'VE GOT TO BE MORE FOCUSED.

I WOULD CERTAINLY BE WILLING TO DESIGNATE WHAT TESTIMONY WE HAVE. I THINK THAT'S A REASONABLE SOLUTION. IF THEY CAN BE SPECIFIC ABOUT WHAT IT IS. BUT THIS TOPIC IS SO BROAD, I'M NOT SURE WHERE I WOULD START.

MS. BONN: THE PROBLEM THAT WE HAVE HAD ON THIS TOPIC, YOUR HONOR, IS THAT NUMBER ONE, THIS IS CRITICAL INFORMATION FOR OUR LICENSING EXPERT.

NUMBER TWO, WE HAVE HEARD A COMMON REFRAIN THROUGHOUT THE COURSE OF VARIOUS FACT WITNESS DEPOSITIONS WE HAVE TAKEN, INCLUDING ONES WHO WERE DISCLOSED AS HAVING KNOWLEDGE ABOUT PATENTS OR THEIR STANDARD CENTRAL ACTIVITIES, THAT EITHER NUMBER ONE, I DON'T KNOW ANYTHING ABOUT PATENTS, YOU WOULD HAVE TO ASK SOMEBODY ELSE; OR NUMBER TWO, I JUST DON'T KNOW SITTING HERE; OR NUMBER THREE, YOU KNOW, I THINK THAT BECAUSE I TALKED TO AN ATTORNEY ABOUT THE PATENTS, IT'S PRIVILEGED.

AND SO WE HAVE SERVED WHAT WE THINK IS A TARGETED TOPIC THAT GOES DIRECTLY TO THE CORE LICENSING ISSUES IN THIS CASE AND THE ESTABLISHMENT OF WHAT A FRAND RATE FOR QUALCOMM'S PATENTS SHOULD BE. AND WE DON'T THINK IT'S SATISFACTORY ON THIS ONE TO SIMPLY SAY THEY CAN DESIGNATE PAST TESTIMONY, BECAUSE IN OUR EXPERIENCE, THE PAST TESTIMONY HAS NOT BEEN USEFUL ON THIS TOPIC

THE COURT: 4 OR 5? WHAT ARE YOU REFERRING TO, 4 OR 5 OR BOTH?

MS. BONN: BOTH. 4 THROUGH 7.

MR. VAN NEST: WELL, YOUR HONOR, LET'S TAKE A LOOK AT THOSE. TAKE A LOOK AT 6.

QUALCOMM'S AGREEMENTS WITH LICENSEES. THERE ARE HUNDREDS OF THOSE, INCLUDING THE RIGHTS AND COMPENSATION GRANTED UNDER EACH OF THEM.

THEY HAVE TAKEN THE HEAD OF OUR LICENSING BUSINESS, THEY HAVE TAKEN THE PERSON THAT NEGOTIATED MANY OF THE AGREEMENTS, THEY HAVE TAKEN THE FORMER HEAD OF OUR LICENSING BUSINESS, THEY HAVE TAKEN ALL OF OUR LICENSING PEOPLE. THEY WANT A 30(B)(6) ON ALL 300 OR 400 AGREEMENTS OVER TIME? THAT'S RIDICULOUS.

THE SAME IS TRUE OF 7. THEY WANT NEGOTIATIONS WITH ALL LICENSEES. THERE ARE A HUNDREDS OF LICENSEES. AND AGAIN, THE PEOPLE THAT NEGOTIATED OUR LICENSES SAT FOR DEPOSITIONS.

THEY HAVEN'T MOVED TO COMPEL, YOUR HONOR, FURTHER TESTIMONY FROM ANY OF THESE PEOPLE. THERE HAVE BEEN NO MOTIONS TO COMPEL FROM ANY OF OUR QTL PEOPLE.

NUMBER 6 AND 7, YOU CAN'T SEND A 30(B)(6) FOR INFORMATION ABOUT HUNDREDS OF AGREEMENTS. YOU CAN DEPOSE THE PEOPLE THAT NEGOTIATED THEM, AND YOU COULD DEPOSE THE PEOPLE THAT RUN THE DIVISION, AND THEY HAVE ALREADY DONE ALL OF THAT.

I WOULD BE PERFECTLY WILLING AGAIN TO TRY TO DESIGNATE WHAT TESTIMONY WAS GIVEN BECAUSE WE DIDN'T GIVE TESTIMONY ABOUT VARIOUS OF THE AGREEMENTS. ANY AGREEMENT THEY ASKED ABOUT, WE HAVE TESTIFIED ABOUT.

AND SO WITH RESPECT TO 4, 5, 6 AND 7, THESE ARE ALL VASTLY OVERBROAD. AND AGAIN, IF THEY WANT TO BE SPECIFIC ABOUT AGREEMENTS, THEY DIDN'T ASK ABOUT, OR PARTICULAR FACTS ABOUT AGREEMENTS THEY DID ASK ABOUT, FINE. GIVE US A TAILORED REQUEST AND WE WILL EITHER DESIGNATE TESTIMONY, OR IF WE HAVEN'T DONE IT, WE WILL PUT SOMEONE UP TO ANSWER IT.

BUT I MEAN, TO THROW THIS OUT WITHIN THREE WEEKS OF THE CLOSE OF DISCOVERY, IS COMPLETELY UNFAIR. AND AGAIN, THEY HAVE SHOULD DONE THIS AT THE VERY BEGINNING. THEY'VE HAD ALL THESE WITNESSES.

THE COURT: OKAY. THIS IS WHAT I'M GOING TO DO, WITH THE FTC NOTICE, I'M GOING TO ORDER A 30(B)(6) WITNESS BE PROVIDED FOR TOPICS 6, 7, 8 AND 10.

MR. BORNSTEIN: YOUR HONOR, MAY I BE HEARD ON THAT?

THE COURT: THOSE SEEM FAIR TO ME.

MR. BORNSTEIN: MAY I BE HEARD ON THAT, YOUR HONOR, BECAUSE I HAVEN'T HAD THE OPPORTUNITY TO ADDRESS THESE.

THESE ARE -- THERE ARE TWO PROBLEMS WITH THESE, THREE, ACTUALLY.

NUMBER ONE IS THE BREADTH. NUMBER TWO IS THE TIMING. AND NUMBER THREE IS THE LARGE NUMBER OF PEOPLE WHO HAVE ALREADY BEEN DEPOSED ON THESE SUBJECTS.

JUST TO TAKE NUMBER 6 AS AN EXAMPLE, THEY ARE ASKING FOR THE EXTENT AND VALUE OF QUALCOMM'S PATENT PORTFOLIO, PERIOD. THAT WOULD REQUIRE, WE ARE TALKING ABOUT TENS OF THOUSANDS OVER

100,000 PATENTS. WE HAVE HAD PEOPLE FROM THE IP DEPARTMENT AT QUALCOMM, THE HEAD OF THE IP DEPARTMENT AND OTHERS TESTIFY ABOUT THE PATENT PORTFOLIO. AND WE HAVE HAD THE LICENSING PEOPLE WHO ARE RESPONSIBLE FOR THE NEGOTIATING OF THE CONTRACTS, SET THE VALUE FOR THESE PATENTS, TESTIFY.

WE'VE HAD, BY MY COUNT, SEVEN VERY SENIOR CURRENT OR FORMER EMPLOYEES IN THE LICENSING DIVISION RESPONSIBLE FOR NEGOTIATING THESE CONTRACTS ALREADY TESTIFY.

HAD WE BEEN GIVEN A NOTICE ABOUT THE EXTENT AND VALUE OF A HUNDRED THOUSAND PATENT PORTFOLIO 30(B)(6) REQUESTS EARLY IN THE DISCOVERY PROCESS, WE COULD HAVE WORKED TO TRY TO FIGURE OUT AT LEAST HOW WE COULD RESPOND TO SOME OF THIS. BUT I WOULDN'T KNOW HOW TO BEGIN TO FIND A PERSON WHO CAN SPEAK TO THE FULL EXTENT AND THE FULL VALUE OF THE COMPANY'S PATENT PORTFOLIO IN A 30(B)(6) CAPACITY, ESPECIALLY AT THIS POINT IN TIME. WE ARE REALLY HAVING A REDO.

THE COURT: I GUESS I DON'T REALLY UNDERSTAND THE TIMELINESS ISSUE. THIS WAS SERVED ON FEBRUARY 28TH. IT'S TIMELY. YOU ARE SAYING YOU SHOULD HAVE, AND YOU WOULD HAVE PUT UP A 30(B)(6) BEFORE ANY OTHER WITNESS WAS DEPOSED?

MR. BORNSTEIN: WHAT I'M SAYING, YOUR HONOR, IS IF YOU ARE SERVING A 30(B)(6) WITNESS ON THE LAST DAY OF THE 30-DAY PERIOD AT THE END OF DISCOVERY, IT OUGHT TO BE A TARGETED 30(B)(6) NOTICE.

PEOPLE WHO SERVE 30(B)(6) NOTICES THAT ARE THIS BROAD

TYPICALLY SERVE THEM AT THE BEGINNING AND WE WORK TO GET THEM RESOLVED. THERE'S NO REASON IF THIS WAS SOMETHING THE FTC WAS INTERESTED IN, IT'S CERTAINLY NOT A SURPRISE THIS WAS SUBJECT OF A DISCUSSION. THERE'S NO REASON -- IF IT WAS SOMETHING THEY WERE INTERESTED IN, THEY COULD HAVE SERVED THIS NOTICE A LONG TIME AGO.

THE COURT: I DON'T SEE -- WHY IS THERE A PROBLEM?

"ALL MEASURES, METRICS AND THIRD-PARTY STUDIES RELIED ON BY QUALCOMM TO DETERMINE THE QUALITY OR VALUE OF ITS CELLULAR PATENT PORTFOLIO."

WHY IS THAT SOMETHING -- IF ANYTHING, YOU SHOULD NOW BE ABLE TO PREP SOMEONE MORE EASILY BECAUSE YOU ARE SAYING YOU ALREADY HAVE TESTIMONY ON EVERYTHING.

MR. BORNSTEIN: YOUR HONOR, TO HAVE A PERSON TESTIFY ABOUT THE EXTENT AND VALUE OF THE PORTFOLIO, THE WAY THAT IT'S MEASURED, NUMBER 7 FOR EXAMPLE GETS INTO WHERE PARTICULAR PATENTS ARE SUBSTANTIALLY EMBODIED, WHICH AS YOUR HONOR KNOWS IS AN INCREDIBLY COMPLEX ISSUE. WE CERTAINLY CAN'T DO THAT FOR HUNDREDS OF THOUSANDS OF PATENTS. THIS IS A VERY, VERY BURDENSOME TASK.

THE COURT: YOU ARE CHANGING THE QUESTION. I SAID 8. WHAT IS YOUR OBJECTION TO 8?

MR. BORNSTEIN: NUMBER 8 FOCUSES ON THE MEASURES AND METRICS RELIED ON TO DETERMINE THE VALUE OF THE PATENT PORTFOLIO OR OTHER PATENT HOLDERS, RIGHT, AND EVERYTHING CITED

OR RELIED ON BY QUALCOMM IN ITS COMMUNICATIONS.

THAT WOULD REQUIRE US TO GO THROUGH AND IDENTIFY AND FIGURE OUT WHICH EACH OF THESE METRICS ARE, WHICH THE MEASURES ARE, WE ARE TALKING ABOUT COMMUNICATIONS OVER A VERY LONG PERIOD OF TIME BY QUALCOMM TO LICENSEES IN PRIVATE COMMUNICATIONS, TO CUSTOMERS IN PRIVATE COMMUNICATIONS, AND THEN INVESTORS IN OTHER PUBLIC COMMUNICATIONS OVER THE COURSE OF DECADES.

SO TO GO THROUGH AND TRY AND HAVE SOMEONE BE EDUCATED AND PREPPED TO TALK ABOUT EACH AND EVERY STUDY, EACH AND EVERY FORWARD CITATION ANALYSIS, EACH AND EVERY STANDARD, IS A MAMMOTH TASK.

MS. GILLEN: YOUR HONOR, MAY I RESPOND?

THE COURT: YES.

AND IF YOU ARE GETTING 3.8 MILLION PAGES OF DOCUMENTS NOW, I THINK IT'S NOT FAIR TO THEN SAY WELL, I'M ONLY GOING TO GIVE YOU TESTIMONY ON WHAT YOU SPECIFICALLY IDENTIFIED BY REPORT BY DATE. I THINK THAT'S UNREASONABLE.

I THINK WHAT YOU ARE DOING IS NOT REASONABLE. YOU ARE DOING THIS HUGE DOCUMENT DUMP THE AT END OF THE CASE AND THEN SAYING UNLESS I GIVE ME BY THIRD PARTY, BY DOCUMENT, BY DATE, I'M NOT GOING TO GIVE YOU 30(B)(6) DEPOSITION TESTIMONY. I JUST THINK THAT'S UNFAIR.

MR. BORNSTEIN: YOUR HONOR, I HAVE TO OBJECT ONE MORE TIME.

WE ARE NOT DOING A DOCUMENT DUMP AT THE END OF THE CASE. I REALLY STRENUOUSLY OBJECT TO THAT CHARACTERIZATION. WE FINISHED OUR DOCUMENT PRODUCTION IN NOVEMBER AS WE WERE ORDERED TO DO, AND WE COMPLIED, WE NEVER HAD A WIT OF COMPLAINT ABOUT THAT, YOUR HONOR.

THE COURT: OH, COME ON, THE PRIVILEGE DOCUMENT, 67 PERCENT BEING OVERLY WITHHELD AS PRIVILEGED?

MR. BORNSTEIN: YOUR HONOR, I UNDERSTAND THE PRIVILEGE ISSUE.

THE COURT: OKAY. THAT IS DEEPLY DISTURBING TO ME.

SO YOU ARE SAYING "WE PRODUCED EVERYTHING," I HAVE SERIOUS CONCERNS ABOUT IT BASED ON THE OVER-DESIGNATION AND OVER-WITHHOLDING OF ALLEGEDLY PRIVILEGED DOCUMENTS.

BUT LET ME HEAR FROM THE FTC. WHAT'S YOUR ANSWER ON 6, 7, 8 AND 10?

MS. GILLEN: YOUR HONOR, THE COMMON THREAD THROUGH TOPICS 6, 7, 8 AND 10 IS THAT THESE TOPICS ALL RELATE TO PATENT VALUATION ISSUES. AND QUALCOMM'S ASSESSMENTS OF THE VALUE OF THIS PATENT PORTFOLIO IS IT'S CLEARLY AN IMPORTANT PART OF THIS CASE AND WILL BE A KEY FACT IN ASSESSING WHETHER QUALCOMM'S ROYALTIES ARE REASONABLE.

THE FTC HAS TRIED TO PURSUE THESE TOPICS WITH A NUMBER OF DIFFERENT FACT WITNESSES SINCE THE BEGINNING OF THE DEPOSITION PHASE OF THIS CASE, AND QUALCOMM HAS CONTINUALLY CLAIMED PRIVILEGE OVER THIS INFORMATION AND INSTRUCTED ITS WITNESSES

NOT TO ANSWER QUESTIONS ON THESE TOPICS.

SO TO THE EXTENT QUALCOMM CLAIMS THAT THE FTC WAITED TOO LONG TO SERVE THESE 30(B)(6) TOPICS, IT'S SIMPLY BECAUSE WE ANTICIPATED OBTAINING TESTIMONY FROM FACT WITNESSES WHO DID NOT KNOW THEY WERE ALL GOING TO REFUSE TO ANSWER QUESTIONS ON THESE TOPICS.

MR. BORNSTEIN: YOUR HONOR, THAT'S JUST NOT CORRECT. WE HAVE NOT INSTRUCTED A SINGLE PERSON ON PRIVILEGE WITH RESPECT TO ISSUES OF VALUE. WE HAVE INSTRUCTED PEOPLE NOT TO TESTIFY ABOUT THE ANALYSIS OF SPECIFIC PATENTS, BUT WHEN PEOPLE HAVE BEEN ASKED ABOUT THE VALUE OF THE PORTFOLIO, THEY HAVE NEVER BEEN INSTRUCTED NOT TO TESTIFY. THAT'S SIMPLY NOT THE CASE.

WE HAVE HAD PERSON AFTER PERSON TESTIFY ABOUT THE VALUE OF THE PATENTS THAT ARE LICENSED TO THIRD PARTIES BASED ON THEIR NEGOTIATIONS, AND BASED ON THEIR EXPERIENCE AS LICENSES AND PROFESSIONALS. AGAIN, AND AGAIN, AND AGAIN WE HAVE HAD TESTIMONY ON THAT. THERE'S SIMPLY BEEN NO INSTRUCTION ON VALUE, ON A PRIVILEGE BASIS.

THE COURT: DO YOU HAVE A RESPONSE TO THAT?

MS. GILLEN: THE FTC DISAGREES WITH THE CHARACTERIZATION OF THE TESTIMONY THAT'S BEEN GIVEN. I DON'T HAVE THE TRANSCRIPTS OF ALL THOSE WITNESSES IN FRONT OF ME RIGHT NOW. BUT THIS HAS CONTINUALLY BEEN A PROBLEM FOR US IN DEPOSITIONS IN TRYING TO OBTAIN ACTUAL TESTIMONY ON THESE

TOPICS DUE TO PRIVILEGE ISSUES.

AND WE ALSO HAVE A MOTION THAT'S ABOUT TO BE FILED I BELIEVE BEFORE MAGISTRATE JUDGE COUSINS, RELATING TO PATENT VALUATION ISSUES AND QUALCOMM'S CLAIMS OF PRIVILEGE ON THESE VERY TOPICS.

THE COURT: ALL RIGHT. 6, 7, 8, AND 10 YOU ARE ORDERED TO PRODUCE A WITNESS.

LET'S GO TO THE PLAINTIFF'S MDL.

MS. BONN: I THINK, YOUR HONOR, THOSE TOPICS SEEM TO SUBSTANTIALLY OVERLAP WITH OUR TOPIC 4. I THINK OUR TOPIC 4 IS LIKELY SUBSUMED WITHIN THOSE TOPICS.

THE COURT: I WAS GOING TO ORDER NUMBER 4, AND 5. 4 AND 5.

MR. VAN NEST: I THINK THOSE ARE SUBSUMED, YOUR HONOR, WITHIN WHAT YOU JUST ORDERED ON THE FTC SIDE.

THE COURT: I KNOW. I WAS GOING TO ORDER NUMBER 4 AND 5.

MR. VAN NEST: EXCUSE ME.

ON 4, HOW COULD WE PRESENT SOMEBODY ON THE VALUE OF THE OTHER SEP HOLDER'S PORTFOLIOS? I MEAN, THAT'S UNREASONABLE.

OUR OWN PORTFOLIO, FINE, BUT WHY AND HOW WOULD WE BE EXPECTED TO KNOW WHAT THE VALUE OF ANYONE ELSE'S PORTFOLIO IS. I THINK THAT'S OUTSIDE THE SCOPE OF ANYTHING WE WOULD HAVE KNOWLEDGE OF. THEY'VE HAD AN OPPORTUNITY TO DEPOSE THE THIRD PARTIES. ERICSSON, NOKIA, THEY ARE ALL BEING DEPOSED.

ERICSSON WILL BE DEPOSED. NOKIA IS BEING DEPOSED TODAY. THE FOLKS AT MEDIA TECH. THE FOLKS THAT HAVE PORTFOLIOS, THEY ARE BEING DEPOSED AND THEY CAN ASK THEM THAT QUESTION. THAT'S NOT A REASONABLE 30(B)(6) TO QUALCOMM.

MS. BONN: WE CERTAINLY INTEND TO, YOUR HONOR, AND YET WE ALSO BELIEVE THAT QUALCOMM MAY HAVE CONDUCTED ANALYSIS AND OTHER WORK ON THEIR OWN TO ASSESS NOT ONLY THE STRENGTH OR VALUE OF THEIR PORTFOLIO STANDING ALONE, BUT THE RELATIVE STRENGTHS COMPARED TO OTHER LICENSORS IN THE STACK.

AND IT'S JUST ONE EXAMPLE, BUT QUALCOMM TOLD THE PARTIES LAST NIGHT THAT THEY WERE PRODUCING ADDITIONAL DOCUMENTS RELATING TO THE AVANCI PATENT POOL, WHERE QUALCOMM PARTICIPATES WITH ERICSSON. AND AVANCI DISTRIBUTES LICENSING REVENUE TO THE COMPANIES BASED IN PART ON THEIR RELATIVE PORTFOLIO STRENGTH.

AND SO WE ARE NOT ASKING THIS QUESTION TO SEEK INFORMATION THAT'S SOLELY WITHIN THE HANDS OF THIRD PARTIES, BUT RATHER TO SEEK INFORMATION ABOUT QUALCOMM'S VIEW OF THE RELATIVE STRENGTH OF ITS PORTFOLIO COMPARED TO OTHER LICENSORS IN THE STACK.

THE COURT: OBVIOUSLY, IF YOU DON'T HAVE ANY INFORMATION ON ANY COMPETITORS, THEN YOU JUST DON'T HAVE THE INFORMATION. BUT IF YOU ARE TELLING ME QUALCOMM HAS NEVER DONE ANY COMPETITIVE ANALYSIS, THEN THAT'S THE ANSWER. THAT THEY DON'T LOOK AT ANY OTHER STANDARD ESSENTIAL PATENT HOLDER'S PORTFOLIOS AND HAVE NO KNOWLEDGE ABOUT ANY OTHER STANDARD ESSENTIAL PATENT HOLDER'S PORTFOLIOS.

I WOULD BE SURPRISED IF THERE'S NEVER BEEN ANY COMPARATIVE ANALYSIS OR COMPETITIVE ANALYSIS, BUT IF THAT'S THE CASE, THAT'S THE ANSWER, WE JUST DON'T HAVE ANY OTHER INFORMATION ABOUT ANY OTHER PARTIES'S PORTFOLIO.

MR. VAN NEST: WITH RESPECT TO THE ANSWER COUNSEL GAVE AVANCI, THAT IS AN AREA WHERE A NUMBER OF MANUFACTURERS HAVE POOLED PATENTS IN A CERTAIN WAY. THEY ASKED FOR A 30(B)(6) ON AVANCI FROM QUALCOMM AND WE PROVIDED IT.

MR. GONELL WAS A 30(B)(6) WITNESS ON AVANCI. HE TESTIFIED. THAT'S PERFECTLY APPROPRIATE.

BUT AGAIN, TO THROW THIS IN AT THE ELEVENTH HOUR, AFTER ALL OF OUR QTL PEOPLE HAVE TESTIFIED, IS JUST NOT FAIR, ESPECIALLY WHEN YOU ARE ASKING US HOW TO VALUE OTHER PEOPLE'S PORTFOLIOS.

I JUST THINK, YOU KNOW, THEY -- THE EXAMPLE SHE GAVE IS A PERFECTLY GOOD EXAMPLE. THEY HAD A SPECIFIC AREA WANTED TO TEST. THEY ASKED FOR A 30(B)(6), MR. GONELL PROVIDED 30(B)(6) TESTIMONY ON AVANCI. AND WE HAVE AGREED, THROUGH MEET AND CONFER, TO PRODUCE ADDITIONAL AVANCI DOCUMENTS, THAT'S RIGHT, THAT'S PART OF THE NEGOTIATION WE HAD.

MS. BONN: HERE'S PART OF THE ISSUE THERE.

THEY JUST PRODUCED 30,000 DOCUMENTS BELONGING TO MR. GONELL THIS WEEKEND AFTER HIS DEPOSITION PASSED AND INDICATED LAST NIGHT THEY WERE GOING TO PRODUCE A MORE RECENT MODEL FOR AVANCI ON HIS COMPUTER.

THAT'S JUST ONE EXAMPLE THAT WE HAVE DETERMINED FROM THE DOCUMENTS WHERE WE DO BELIEVE QUALCOMM HAS DONE SOME SORT COMPARATIVE ANALYSIS, BUT WE ARE ENTITLED TO KNOW IF THERE ARE OTHERS.

THE COURT: ALL RIGHT. OKAY. 4 AND 5. THEY ARE ORDERED.

NOW --

MS. BONN: I HAVE A SUGGESTION ON 6 AND 7.

THE COURT: WHAT'S A SUGGESTION? I HOPE IT'S A NARROWING SUGGESTION. WHAT'S YOUR SUGGESTION?

MS. BONN: SO COUNSEL HAD SAID HE WAS CONCERNED THAT THIS POTENTIALLY COVERS HUNDREDS OF LICENSEES.

THE COURT: WHICH IS A VERY VALID POINT.

MS. BONN: YES.

SO LOOKING UP THE DEFINITION OF LICENSEE, IT SAYS "ANY THIRD PARTY HOLDING A LICENSE TO YOUR STANDARD ESSENTIAL PATENTS, AND INCLUDES SAMSUNG, ALCATEL, APPLE, LG, ZTE, HUAWEI, HTC, KYOCERA, MOTOROLA, NOKIA AND BLACKBERRY. I THINK THIS MAY HAVE BEEN SOME OVERLY PROTECTIVE LAWYER DRAFTING, AND I DON'T THINK WE NEED A 30(B)(6) BROADER THAN THOSE SPECIFIC IDENTIFIED LICENSEES AND THEIR AGREEMENTS.

MR. VAN NEST: SO, YOUR HONOR, WHAT SHE'S ASKING IS TO LIMIT THE DEFINITION TO THE LICENSEES THAT ARE LISTED.

THE COURT: IN DEFINITION NUMBER 26.

MS. BONN: CORRECT.

MR. VAN NEST: THAT'S ONE WHERE I THINK WE COULD DO THAT AS LONG AS WE WERE ALLOWED TO DESIGNATE TESTIMONY THAT, FOR MANY OF THESE, I BELIEVE ALL OF THESE HAVE BEEN TESTIFIED TO. I KNOW THAT SAMSUNG WAS, I KNOW THAT APPLE WAS, I KNOW THAT NOKIA WAS, I KNOW THAT BLACKBERRY WAS.

BUT IN COMBINATION WITH NARROWING THESE AND ALLOWING US TO DESIGNATE, I THINK THAT WOULD BE ACCEPTABLE AND A REASONABLE WAY TO PROCEED.

THE COURT: ALL RIGHT.

SO 6 AND 7 ARE -- SO 6 AND 7, I WAS GOING TO ORDER THE PLAINTIFFS TO NARROW 6 AND 7. YOU ARE GOING TO LIMIT IT TO THE COMPANIES THAT ARE IDENTIFIED IN, I GUESS THAT'S PARAGRAPH NUMBER 26.

MR. VAN NEST: YES, YOUR HONOR.

THE COURT: OKAY. SO THAT'S GOING TO BE LIMITED TO COMPANIES IDENTIFIED BY NAME IN PARAGRAPH 26. OKAY. SO THAT APPLIES TO BOTH 6 AND 7. NOW LET'S GO TO --

MR. VAN NEST: AND YOUR HONOR, WOULD WE HAVE THE RIGHT TO DESIGNATE, TO THE EXTENT THEY HAVE HAD TESTIMONY ON THESE, WE WOULD LIKE THE RIGHT TO DESIGNATE THE TESTIMONY, AND THAT WILL STAND FOR THE CORPORATION. WE HAD TO HAVE OUR QTL TESTIFYING ABOUT MANY OF THESE.

MS. BONN: MY VIEW IS -- WHAT I WOULD PROPOSE, FRANKLY, THESE TOPICS ARE RELATED TO OUR LICENSING EXPERT. I HAVE A FEELING THAT WE ARE GOING TO WANT WELL-PREPARED

WITNESSES WHO CAN ANSWER SPECIFIC QUESTIONS.

SO WHAT I WOULD PROPOSE IS THAT WE CAN GIVE AN OUTLINE OF QUESTIONS IN ADVANCE, BUT THAT THEY DO PUT UP A LIVE WITNESS TO ANSWER THEM. BECAUSE I'M NOT SURE TO WHAT EXTENT THE TESTIMONY THEY WANT TO DESIGNATE WILL ACTUALLY ANSWER THE SPECIFIC QUESTIONS.

SO I THINK THAT'S A FAIR WAY FOR THEM TO BE PREPARED FOR THE DEPOSITION. IT'S NOT GOING TO BE A FREE-WHEELING DISCUSSION OF ANY TOPIC THAT THEY DON'T SEE IN ADVANCE. WE WILL GIVE THEM THE QUESTIONS WE INTEND TO COVER, AT LEAST THE TOPICS RELATED TO THESE ISSUES IN ADVANCE SO THAT THEY CAN SUFFICIENTLY PREPARE A WITNESS.

MR. VAN NEST: YOUR HONOR, THAT'S --

MS. BONN: AND IDENTIFY THE EXHIBITS AS WELL.

MR. VAN NEST: YOUR HONOR, THAT'S A REDO. THAT'S A REDO.

THEY HAD THE PEOPLE THAT NEGOTIATED THE APPLE CONTRACTS, AND SAMSUNG, AND THEY HAD TWO DAYS WITH EACH WITNESS, TWO FULL DAYS.

TO SAY NOW THAT WE ARE GOING TO GO BACK ON THESE, EVEN IF THEY ARE SPECIFIC, AND SAY WE GET A WHOLE BUNCH MORE QUESTIONS, THAT'S NOT A 30(B)(6), THAT'S NOT FAIR. THEY CHOSE THE PEOPLE TO DEPOSE. WE ARE WILLING TO HAVE THAT TESTIMONY STAND FOR THE CORPORATION AND DESIGNATE IT.

BUT TO GIVE THEM ANOTHER SHOT WHEN THEY HAVE ALREADY HAD A

FULL TWO-DAY DEPOSITION OF FOLKS THAT WERE INVOLVED IN THESE, THAT'S NOT FAIR. I WOULD ASK THAT WE BE ALLOWED TO DESIGNATE TESTIMONY, AND AFTER WE DESIGNATE, IF THEY'VE GOT SOME PROBLEM, THEY CAN RAISE IT.

THE COURT: NO, I'M SORRY. WE NEED TO SHORT CIRCUIT SOME OF THESE DISPUTES. THE END OF DISCOVERY IS FRIDAY OF NEXT WEEK. YOU WILL PRODUCE A WITNESS ON THE MORE NARROW TOPICS OF 6 AND 7.

MR. VAN NEST: WILL THEY PROVIDE -- CAN THEY PROVIDE THE WRITTEN NOTICE AHEAD OF TIME SO WE KNOW WHAT THEY NEED?

THE COURT: YES, YES.

MS. BONN: WE WILL.

THE COURT: ALL RIGHT. LET'S GO TO 8.

NOW WHY DO YOU NEED 8? DON'T YOU ALREADY HAVE THEIR FINANCIAL STATEMENTS?

MS. BONN: ON NUMBER 8, WHAT I SUGGEST IS, I HAVE A FEELING THAT THERE'S A REASON AN EXPERT HAD SPECIFIC QUESTIONS, AND I AGREE THAT THE TOPIC DOESN'T INFORM QUALCOMM OF THE SPECIFIC QUESTIONS WE INTEND TO ASK.

AND SO I WOULD SUGGEST SOMETHING SIMILAR THAT WE TALKED TO OUR EXPERTS AND PROVIDE AN OUTLINE IN ADVANCE OF THE SPECIFIC TOPICS WE INTEND TO COVER, AND THE SPECIFIC FINANCIAL STATEMENTS AND PORTIONS THEREOF, IF ANY.

MR. VAN NEST: AGAIN, THERE, YOUR HONOR, WE HAD -- OUR CFO HAS ALREADY TESTIFIED. I THINK OUR FINANCIAL

STATEMENTS ARE ALL PUBLIC, AS YOU KNOW. BUT I WOULD LIKE THE ABILITY TO DESIGNATE TESTIMONY THERE.

THE COURT: THAT SEEMS FAIR FOR THAT ONE.

I MEAN, THEIR FINANCIAL STATEMENTS, I DON'T KNOW, MAYBE THEY DON'T HAVE IT AT THE GRANULAR LEVEL THAT YOU ARE TALKING ABOUT, SEGMENT, DIVISION, UNIT, BUT I ASSUME THEIR FINANCIAL STATEMENTS ARE PUBLIC, MAYBE NOT TO THE LEVEL OF SPECIFICITY THAT'S REQUESTED IN THIS TOPIC.

MS. BONN: HERE'S WHAT I WOULD SUGGEST, YOUR HONOR, I THINK THERE MAY NOT BE A DISPUTE HERE. WHAT I WOULD PROPOSE IS I WOULD LIKE TO LOOP IN WITH MY EXPERTS AND FIGURE OUT WHAT ARE THE SPECIFIC TOPICS THEY WANT TO COVER. AND WE CAN NOTIFY QUALCOMM.

TO THE EXTENT THEY CAN DESIGNATE PRIOR TESTIMONY ON IT, THAT'S FINE. BUT TO THE EXTENT THERE ARE -- AND WE MAY ALSO ACCEPT A WRITTEN ANSWER ON SOME OF THOSE TOPICS, IN LIEU OF A PERSON SITTING IN A CHAIR.

I THINK THAT THAT CAN BE NARROWED THROUGH A MEET AND CONFER.

THE COURT: ALL RIGHT. SO FOR 8, YOU CAN DESIGNATE TESTIMONY. FOR 8 YOU CAN DESIGNATE TESTIMONY.

MR. VAN NEST: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. NOW WHAT ABOUT STRATEGIC PLANS FOR FISCAL YEARS 2012 THROUGH THE PRESENT?

I WAS GOING TO ORDER THAT, THAT SEEMS REASONABLE.

MR. VAN NEST: AGAIN, YOUR HONOR, THOSE HAVE BEEN PRODUCED.

TO THE EXTENT THEY EXIST, THEY HAD OUR QTL LEADERSHIP, EACH MEMBER THEREOF FOR TWO DAYS. THEY HAD EVERY OPPORTUNITY. THEY DID ASK, IN AT LEAST ONE OF THE DEPOSITIONS I ATTENDED, ABOUT STRATEGIC PLANS GOING FORWARD. THIS IS MORE LIKE A REQUEST FOR PRODUCTION.

THERE'S NO -- THERE NO, EVEN TOPIC HERE. THEY HAD THOSE PEOPLE, THEY HAD THOSE DOCUMENTS, THEY HAD A FULL OPPORTUNITY ON THAT. AGAIN, THAT'S ONE I SHOULD BE ABLE TO DESIGNATE ON. MR. ROGERS SAT AND TALKED FOR MORE THAN AN HOUR ABOUT THE STRATEGIC PLANS OF QTL.

THE COURT: WHAT DO YOU NEED THIS FOR? THIS IS A PRETTY BROAD TOPIC?

MS. BONN: YEAH.

I THINK THAT THE ISSUE HERE, YOUR HONOR, IS THAT WHILE QUALCOMM HAS PRODUCED STRAT PLANS AND WE HAVE TAKEN THE DEPOS OF SOME SENIOR OFFICIALS, ON THE FLIP SIDE, WE ARE GETTING THESE EXTREMELY LARGE DOCUMENT PRODUCTIONS LATE IN THE GAME, SOME OF WHICH TIE INTO THE STRATEGIC PLAN.

SO RATHER THAN TRY TO FIGURE OUT, WELL, WHAT DO WE DO, DO WE RE-DEPOSE AN INDIVIDUAL PERSON, WE THOUGHT THIS WAS A SUFFICIENTLY NARROWED TOPIC BECAUSE IT RELATES TO SPECIFIC STRATEGIC PLANS FOR QUALCOMM IN A NARROW TIME PERIOD.

MR. VAN NEST: YOUR HONOR, THEY GOT THESE PLANS IN

NOVEMBER. THE STRATEGIC PLANS WERE PRODUCED AS PART OF OUR PRODUCTION THAT WAS SUBSTANTIALLY COMPLETE BY THE END OF NOVEMBER. THEY HAD HAD THE STRATEGIC PLANS FROM VERY, VERY EARLY ON.

AND AGAIN, JUST TO THROW THIS OUT, IT'S OVERBROAD. IT EITHER SHOULD BE DENIED OR GIVEN A CHANCE TO DESIGNATE ON IT BECAUSE THEY HAD A FULL OPPORTUNITY ON THIS.

THE COURT: WHAT'S YOUR RESPONSE TO THAT?

MS. BONN: YES, BUT THE STRATEGIC PLANS ALSO HAVE TO BE UNDERSTOOD IN LIGHT OF RELATED DOCUMENTS.

AND BECAUSE WE ARE GETTING EXTREMELY LARGE PRODUCTIONS OF DOCUMENTS FROM SOME OF THE MOST SENIOR EXECUTIVES, INCLUDING, YOU KNOW, SEVERAL WHO HAVE TESTIFIED RECENTLY, YOU KNOW, WE THINK THIS IS A NARROW TOPIC, IT WILL GIVE US A CHANCE TO DEPOSE THE COMPANY ONCE ABOUT THE STRATEGIC PLANS IN LIGHT OF THE DOCUMENTS THAT HAVE BEEN --

THE COURT: I'M GOING TO ORDER IT.

I MEAN, THEY ARE GETTING A LOT OF DOCUMENTS NOW. AND SO TO SAY, NOPE, YOU ARE LIMITED TO THE DEPOSITIONS THAT YOU TOOK WHEN WE DIDN'T PRODUCE A VAST MAJORITY OF THE DOCUMENTS, BECAUSE THEY WERE OVER-WITHHELD AS PRIVILEGED, AND YOU ARE STUCK WITH THAT, IS NOT FAIR.

SO I'M ORDERING 8.

LET'S MOVE ON. I MEAN 9 -- 9. EXCUSE ME. 9.

OKAY. NOW 11 I'M GOING TO ALLOW. THAT'S FAIR. I'M

ORDERING A WITNESS BE MADE AVAILABLE FOR THAT TOPIC. NOW WHAT ABOUT 10?

MR. VAN NEST: YOUR HONOR, 11, I BELIEVE WE'VE ALREADY PRODUCED A WITNESS. THERE'S BEEN A LOT OF LITIGATION OVER THIS. A WITNESS TO EXPLAIN THAT PROCESS AND ALL OF THAT. I THINK -- LET ME ASK MS. SESSIONS, BUT I BELIEVE ON 11 --

THE COURT: BUT I THINK A 30(B)(6) ON THIS IS NECESSARY.

MR. VAN NEST: YOUR HONOR, THIS HAS BEEN THE SUBJECT OF EXTENSIVE WRITTEN COMMUNICATION BETWEEN QUALCOMM AND THE FTC AND THE MDL PLAINTIFFS.

THE COURT: BUT NOW YOU NEED A CORPORATE REPRESENTATIVE TO MAKE A CORPORATE STATEMENT ON THESE TOPICS.

OKAY. LET'S MOVE ON.

OKAY. SO LET'S GO TO 10. YES, 10. WHY DO YOU NEED THAT?

MS. BONN: CAN I EXPLAIN NUMBER 10?

SO QUALCOMM HAS CERTAIN PATENT PORTFOLIOS THAT IT CLAIMS CONTAINS STANDARD ESSENTIAL PATENTS. AND THERE ARE CERTAIN PUBLICLY AVAILABLE DATABASES WHERE ONE CAN TRY TO DOWNLOAD ALL THE PATENTS. AND YET SOME OF THAT DATA NEEDS EXTENSIVE CLEANING, IT'S GOT MESSY OCR, ET CETERA.

AND WE HAVE SEEN THAT IN SOME OF THE OTHER CASES, ERICSSON, THE PARTIES HIRED EXPERTS TO GO THROUGH THE SUBSTANTIAL EFFORT OF CREATING A CLEAN SET OF PATENTS AT ISSUE.

AND SO WE WANT TO KNOW, DOES QUALCOMM HAVE ANY CENTRALIZED

DATABASE WHERE THEY MAINTAIN A COLLECTION OF ALL OF THE PATENTS THAT THEY CONTEND TO BE STANDARD ESSENTIAL.

AND IT'S COME OUT IN DEPOSITIONS AND OTHERWISE THAT THEY MAY MAINTAIN OTHER INFORMATION. FOR EXAMPLE, I THINK PART OF THE ISSUE BEING TEED UP FOR JUDGE COUSINS IN THE FORTHCOMING MOTION IS THEY MAY HAVE INFORMATION ABOUT HOW THEY RANKED CERTAIN PATENTS. CERTAIN SCORING THAT THEY GAVE CERTAIN PATENTS.

AND SO THIS TOPIC IS REALLY GEARED AT UNDERSTANDING THE REPOSITORIES OR DATABASES WHERE THEY MAINTAIN THAT KIND OF INFORMATION AND THE TYPE OF INFORMATION THAT'S CONTAINED WITHIN IT.

THE COURT: THE WITNESSES ARE ORDERED ON THAT.

LET'S GO THROUGH THE TOPICS. YOU ARE GOING TO DESIGNATE TESTIMONY ON 1. YOU ARE GOING TO DESIGNATE TESTIMONY ON 2.

MR. VAN NEST: 1, WE ARE GOING TO DESIGNATE.

THE COURT: YES. 1 YOU ARE DESIGNATING. I THINK 2 YOU ARE DESIGNATING.

MR. VAN NEST: YES, THAT'S RIGHT, 2, WE SAID WE COULD DESIGNATE. IT'S OVERBROAD, BUT I WILL DO MY BEST.

THE COURT: 3 YOU SAID WAS NOT CONTROVERSIAL.

MR. VAN NEST: WELL, SOURCES OF PUBLICLY AVAILABLE DATA. WHY ARE WE -- WHY DO THEY NEED THAT FROM US? I CAN TELL THEM WHAT WE THINK IS OUT THERE, BUT THEY KNOW WHAT'S OUT THERE.

THE COURT: YEAH. THAT'S ALL THEY ARE ASKING FOR.

MR. VAN NEST: SO WE WILL JUST PROVIDE A LIST, WE DON'T NEED A WITNESS FOR THAT.

THE COURT: I WOULD JUST PRODUCE A WITNESS ON THAT.

MR. VAN NEST: YOU WOULD OR YOU WOULDN'T?

THE COURT: I WOULD.

SO 3, 4 -- IF YOU DON'T KNOW, YOU DON'T KNOW. JUST MAKE A CORPORATE REPRESENTATIVE SAY, AS A COMPANY, WE HAVE NO IDEA WHAT PUBLICLY AVAILABLE DATA THERE IS AS TO OUR CUSTOMERS, OUR MARKET SHARE, OUR SUPPLY, OUR DEMAND.

IT'S JUST WHAT YOU KNOW. NO ONE IS ASKING QUALCOMM TO GO SEARCH FOR THINGS THAT ARE NOT IN QUALCOMM'S KNOWLEDGE OR POSSESSION.

MR. VAN NEST: MY POINT IS, IF IT'S JUST A SOURCE, WHY CAN'T I PROVIDE A LIST OF IT? THAT'S ALL I WOULD HAVE. I WOULD JUST BE HANDING A LIST AFTER WE INTERVIEW OUR PEOPLE.

THE COURT: IT'S BROADER THAN THAT.

"ANY USES MADE BY QUALCOMM AS PART OF THE BUSINESS, ANY RELIANCE FOR BUSINESS PURPOSES, FINANCIAL REPORTING PURPOSES."

I JUST DON'T THINK A WRITTEN ANSWER WOULD BE SUFFICIENT ON THAT TOPIC.

"ANY RELIANCE UPON SAID DATA, SUPPORT STATEMENTS MADE TO INVESTORS IN SUPPORT OF QUALCOMM'S BUSINESS."

I JUST THINK A LIST WOULD BE UNSATISFACTORY.

SO 3, 4, 5, 6, 7, 9, 10, 11, YOU'RE GOING TO PRODUCE A

WITNESS ON. YOU ARE GOING TO DESIGNATE TESTIMONY ON 1, 2, AND 8.

AND IN ADDITION, ON 6 AND 7, THOSE ARE LIMITED TO THE COMPANIES THAT ARE IDENTIFIED BY NAME IN PARAGRAPH 26, AND ALSO YOU ARE GOING TO PROVIDE A LIST OF TOPICS, MORE SPECIFICALLY, FOR 6 AND 7 FOR THE DEPOSITION.

MS. BONN: YES, YOUR HONOR.

AND ONE CLARIFICATION, ON 1, 2 AND 8 WHERE QUALCOMM IS DESIGNATING TESTIMONY, ARE WE PERMITTED TO SUBMIT THE SPECIFIC QUESTIONS TO WHICH WE WANT DESIGNATED TESTIMONY AND RESPONSE TO?

THE COURT: THAT'S FINE. BUT IT NEEDS TO BE SPECIFIC, IT CAN'T BE PROFFER.

MS. BONN: YES, YOUR HONOR. IT WILL BE SPECIFIC.

MR. VAN NEST: I'M ASSUMING IT WILL BE MORE NARROW THAN WHAT'S IN HERE NOW.

MS. BONN: ABSOLUTELY, YOUR HONOR.

THE COURT: IT BETTER BE.

SO YOU ARE GOING TO SUBMIT THE QUESTIONS ON 1, 2, AND 8, RIGHT?

MS. BONN: YES, YOUR HONOR.

THE COURT: OKAY.

MR. VAN NEST: I THOUGHT 6 AND 7 AS WELL.

THE COURT: WELL, 1, 2 AND 8 THEY ARE GOING TO GIVE YOU SPECIFIC NARROW QUESTIONS TO WHICH YOU ARE GOING TO

DESIGNATE TESTIMONY. TO 6 AND 7, THEY ARE REQUESTING TO GIVE YOU A LIST OF TOPICS BEFORE THE DEPOSITION, THAT SHOULD BE NARROW, A LIST OF NARROW TOPICS.

WELL, IT NEEDS TO BE SPECIFIC.

MS. BONN: YES, YOUR HONOR. I DON'T THINK WE ARE GOING TO HAVE AN ISSUE THERE.

THE COURT: OKAY. AND THEN AS FAR AS THE FTC, I'M ORDERING A LIVE WITNESS ON 6, 7, 8, AND 10. YOU'VE WORKED OUT OR I'M HOPEFUL THAT YOU WILL WORK OUT A PROCEDURE ON 11. AND ACTUALLY, I GUESS I'M ORDERING IT ON 5 AS WELL.

MR. BORNSTEIN: WE HAVE ALREADY PRODUCED ON 5, YOUR HONOR.

THE COURT: EXCUSE ME. THE WITNESS HAS ALREADY BEEN DEPOSED ON 2, 3, 4 AND 5, AND FTC HAS WITHDRAWN 1 AND 9.

MR. BORNSTEIN: YES, YOUR HONOR.

AND I RAISE ONE SMALL THING ON NUMBER 7, WHICH --

THE COURT: YES, GO AHEAD.

MR. BORNSTEIN: I LOOKED BACK AT THIS AGAIN, NUMBER 7 IS THE ONE THAT INCLUDES A REQUEST FOR A WITNESS TO TALK ABOUT VALUE ON PATENTS THAT ARE NOT SUBSTANTIALLY EMBODIED IN CERTAIN PRODUCTS.

AND I MENTIONED THIS BEFORE, AND WE DIDN'T GET BACK TO IT. THIS WOULD REQUIRE AN IMMENSE, IF I UNDERSTAND IT CORRECTLY, AN IMMENSE AMOUNT OF WORK OF THE SORT THAT YOU WOULD DO IN A PATENT INFRINGEMENT OR EXHAUSTION CASE, WHICH YOUR HONOR KNOWS

EXTREMELY WELL.

I CAN'T POSSIBLY HAVE SOMEONE GO THROUGH AND DO A PATENT-BY-PATENT ASSESSMENT OF WHETHER OR NOT ONE OF MANY HUNDREDS, MANY TENS OF THOUSANDS OF PATENTS ARE OR ARE NOT SUBSTANTIALLY EMBODIED IN A WHOLE VARIETY OF DIFFERENT PRODUCTS THAT FALL WITHIN THE DEFINITION OF RELEVANT PRODUCT.

THIS IS GARGANTUAN. I JUST DON'T THINK THIS PIECE OF IT IS REASONABLE.

THE COURT: WHY CAN'T THE CORPORATE REPRESENTATIVE SAY THAT IS NOT AN ANALYSIS THAT QUALCOMM CONDUCTS?

MR. BORNSTEIN: IF THAT'S ALL WE NEED, THEN THAT'S FINE. I CAN HAVE SOMEONE SAY THAT. BUT IF THEY WANT US TO GO THROUGH AND DO THIS ANALYSIS ON A PATENT-BY-PATENT BASIS, THAT WE CAN'T DO.

THE COURT: WHAT IS FTC'S RESPONSE?

MS. GILLEN: YOUR HONOR, TO THE EXTENT THAT QUALCOMM IS CONCERNED THAT WE ARE GOING TO BE ASKING ABOUT INDIVIDUAL PATENTS, THAT'S CERTAINLY NOT THE FTC'S INTENT WITH THIS TOPIC.

HOWEVER, TO THE EXTENT QUALCOMM GROUPS ITS PATENTS IN A CERTAIN WAY OR IT KEEPS THIS INFORMATION IN ANY FORM, THESE ARE THE TYPES OF THINGS WE WOULD LIKE TO PURSUE WITH A CORPORATE DESIGNEE.

THE COURT: ALL RIGHT. IT'S STILL ORDERED. PLEASE PRODUCE A WITNESS ON THAT.

OKAY. NOW, WHEN IS THAT 30(B)(6) GOING TO BE? OR I WILL

LET YOU ALL WORK THAT OUT.

SINCE WE ARE NEARING THE END, I WANT EVERYONE TO STAY ON TRACK. I APPRECIATE YOUR PATIENCE, AND I'M SORRY THAT THIS HAS BEEN SUCH A LONG CMC. I WOULD LIKE TO HAVE ANOTHER CMC IN A WEEK.

WHAT WOULD -- OR WOULD YOU PREFER TO COME BACK -- I DON'T WANT TO JAM YOU BECAUSE YOU ARE PROBABLY VERY BUSY NEXT WEEK SINCE THAT'S THE CLOSE OF DISCOVERY. YOU WANT TO COME BACK ON APRIL 2ND OR APRIL 3RD?

MR. VAN NEST: IS THAT TWO WEEKS?

THE COURT: YES. THAT ACTUALLY WOULD BE -- I JUST ASSUME NEXT WEEK YOU ARE GOING TO BE REALLY SWAMPED, RIGHT?

MR. VAN NEST: YES, YOUR HONOR.

THE COURT: SO DO YOU WANT TO COME BACK THAT FOLLOWING WEEK, THE WEEK OF APRIL 2ND?

I JUST WANT TO MAKE SURE EVERYTHING STAYS ON TRACK AND, YOU KNOW, IF THERE IS SOMETHING THAT I CAN HELP OUT ON, ON RESOLVING QUICKLY SO YOU CAN MOVE FORWARD, I WOULD LIKE TO DO IT.

MR. VAN NEST: I THINK TWO WEEKS. LET'S TAKE A LOOK.

MR. BORNSTEIN: YEAH.

MS. GILLEN: THAT WOULD WORK FOR THE FTC AS WELL. TWO WEEKS.

THE COURT: WELL, LET ME ASK, I CAN'T RECALL, WE CAN'T SCHEDULE IT ON APRIL 5TH. I THINK APRIL 4TH IS TOTALLY

FULL.

THE CLERK: YES, YOUR HONOR.

(OFF-THE-RECORD DISCUSSION.)

THE COURT: WHEN DO THE PLAINTIFFS WANT TO COME BACK? IN THE MDL?

MS. BONN: WE COULD COME BACK ON THE 6TH. I THINK YOUR HONOR MENTIONED THE 2ND AS WELL. WE COULD COME BACK ON THE 2ND.

THE COURT: WELL, I WOULD NEED A JOINT CASE MANAGEMENT STATEMENT IN ADVANCE.

SO IF YOU'RE REALLY SWAMPED NEXT WEEK, BECAUSE THAT'S THE LAST WEEK OF FACT DISCOVERY, I DON'T KNOW IF YOU WOULD HAVE TIME TO MEET AND CONFER AND PRODUCE A STATEMENT.

DO YOU HAVE TIME TO DO THAT?

MR. BORNSTEIN: I WOULD SUGGEST NEXT WEEK IS GOING TO BE A CHALLENGE, YOUR HONOR.

THE COURT: SO IF YOU PROVIDED IT ON THE 2ND, OR I GUESS IF YOU NEED TIME, IF YOU PRODUCED IT ON, FILED IT ON THE 3RD, WE COULD DO IT ON THE 6TH.

WHAT TIME ARE OUR THINGS ON THE 6TH? I'M SORRY.

THE CLERK: (OFF-THE-RECORD DISCUSSION.)

THE COURT: OKAY. SO I GUESS IF YOU WANTED TO DO IT IN THE MORNING -- OR, I'M SORRY, YOU ARE FLYING IN FROM NEW YORK. WHAT IS BETTER FOR YOU, MORNING OR AFTERNOON?

MR. BORNSTEIN: AS LONG AS I CAN CATCH A FLIGHT HOME

THAT'S NOT A RED-EYE, YOUR HONOR.

THE COURT: WHY DON'T WE DO MORNING.

MS. BONN: THAT'S FINE, YOUR HONOR.

THE COURT: OKAY. SO LET'S SAY YOU WILL FILE A JOINT CASE MANAGEMENT STATEMENT BY, LET'S SAY BY APRIL 3RD.

MS. BONN: THAT'S FINE, YOUR HONOR.

THE COURT: AND THEN -- AND THAT'S IN BOTH CASES, BOTH FTC AND MDL, PLEASE.

AND THEN LET'S HAVE ANOTHER CMC ON APRIL 6TH, SHALL WE SAY, 10:00?

MR. BORNSTEIN: THAT'S FINE FOR ME, YOUR HONOR.

MS. BONN: THAT'S FINE, YOUR HONOR.

MR. BORNSTEIN: THERE ARE FLIGHTS I CAN CATCH FROM SAN FRANCISCO.

THE COURT: OKAY.

MS. GILLEN: THAT'S FINE FOR THE FTC AS WELL.

THE COURT: OKAY. LET'S SAY 10:00.

NOW I DO HAVE COURT ON THE 4TH AND 5TH, IF WE ARE DOING THIS IN THE MORNING, IS IT POSSIBLE, ACTUALLY, CAN WE DO THIS AT 11:00?

LET'S DO THIS AT 11:00, AND THEN I WON'T REQUIRE YOU TO FILE ON APRIL 3RD BY 2:00. YOU CAN HAVE THE WHOLE DAY.

AND THAT WAY, IF I HAVE TO PREPARE THIS IN THE MORNING ON FRIDAY, I WILL DO THAT. I WILL BE IN COURT ALL DAY ON THE 4TH.

MR. VAN NEST: 11:00 WORKS, YOUR HONOR.

THE COURT: IS THAT OKAY FOR YOU?

MR. BORNSTEIN: YES, YOUR HONOR.

I DON'T EXPECT IT WILL BE QUITE SO LONG.

THE COURT: I HOPE NOT. I HOPE MOST THINGS ARE RESOLVED.

YOU KNOW, I APPRECIATE HOW HARD EVERYONE IS WORKING. I'M REALLY GRATEFUL TO JUDGE COUSINS, BECAUSE HE IS JUST HANDLING SO MUCH, SO MUCH.

SO I'M HOPING THAT MOST THINGS WILL ALREADY BE RESOLVED BY THEN. AND IF IT TURNS OUT THERE'S NOTHING TO TALK ABOUT, I WILL VACATE, OR I WILL PROBABLY CONTINUE IT OUT TO SOME DATE IN THE FUTURE, BUT THERE'S NO REASON TO HAVE IT IF THERE'S NOTHING TO TALK ABOUT.

THE COURT: OKAY, ANYTHING ELSE?

MS. GILLEN: YOUR HONOR, I THINK ONE ISSUE THAT WAS TOUCHED UPON, BUT I DON'T THINK THERE WAS ANY FINAL RESOLUTION IS PLAINTIFF'S REQUEST FOR A TWO-WEEK EXTENSION ON THEIR MOTION FOR CLASS CERTIFICATION.

THE COURT: OH, OH, I'M SORRY. YOU HAD -- BOTH SIDES HAD A NUMBER OF ISSUES. OKAY.

SO LET'S GO TO THE -- THESE DEPOSITIONS THAT YOU WANTED TO SCHEDULE IN APRIL, ESSENTIAL PRODUCTS, INTERDIGITAL, LENOVO, NOKIA, APPLE, THAT'S FINE. THAT'S APPROVED. I ASSUME NOW YOU WILL HAVE TO ADD ERICSSON TO THAT LIST.

AS FAR AS FTC ACTION WANTING TO EXTEND THE EXPERT

DISCOVERY, IT LOOKS LIKE BY ABOUT TEN DAYS, ROUGHLY.

MR. BORNSTEIN: THAT'S CORRECT, YOUR HONOR.

THE COURT: OKAY. THAT'S FINE.

AS FAR AS THE CLASS CERT, I AM GOING TO ADOPT THE PROPOSAL, THE ONLY THING I WOULD DO IS I WOULD MOVE THE CLASS CERT HEARING TO AUGUST 2ND, JUST BECAUSE OTHERWISE I GET LESS THAN SIX DAYS WITH THE REPLY BRIEF, WHICH IS NOT ENOUGH TIME.

SO AUGUST 2ND, 2018, WOULD AT LEAST GIVE NOT EVEN QUITE TWO WEEKS, BUT ALMOST TWO WEEKS. IT WOULD GIVE ME LESS THAN TWO WEEKS.

MR. VAN NEST: SAME TIME, YOUR HONOR?

THE COURT: YES. 1:30, PLEASE.

SO WAIT, LET'S SAY -- CAN YOU LINE THIS UP ON A THURSDAY, THEN IT WILL GIVE ME EXACTLY TWO WEEKS BEFORE THE HEARING.

THIS IS REALLY COMPLICATED, AND I COULD USE THE TIME.

MS. BONN: YES, YOUR HONOR.

THE COURT: SO COULD WE SAY JUNE 21ST FOR THE OPPOSITION?

MR. VAN NEST: MAY 16TH FOR THE MOTION.

THE COURT: THE 17TH IS ON A THURSDAY. MAY 3RD AND MAY 17TH ARE ON A THURSDAY. SO THAT'S FIVE WEEKS FOR THE OPPOSITION, THAT'S JUNE 21ST.

AND IT WOULD BE JULY 19TH FOR THE REPLY. AND THEN -- OH, WAIT, NO, I'M SORRY. OH, YEAH, OKAY. AND THEN THE HEARING ITSELF WOULD BE AUGUST 2ND, SO THAT WOULD GIVE ME TWO FULL

WEEKS, AT 1:30.

NOW, WERE YOU ALL INTERESTED IN ANY ADR OR NOT?

MR. BORNSTEIN: YOUR HONOR, WE HAVE HAD PERIODIC CONFERENCES WITH THE ADR COORDINATOR. AT LEAST FOR PURPOSES OF THE FTC CASE, I DON'T THINK THAT WOULD BE PRODUCTIVE AT THIS TIME, PARTICULARLY GIVEN THE STATE OF THE COMMISSION IN WASHINGTON RIGHT NOW.

THE COURT: RIGHT.

WHEN HAVE THE NEW COMMISSIONERS BEEN CONFIRMED, OR WHEN DO YOU EXPECT THEM TO BE CONFIRMED?

MR. BORNSTEIN: I DON'T KNOW, YOUR HONOR, AND I'M CERTAINLY NOT IN A POSITION TO GUESS.

THE COURT: ALL RIGHT. HAVE THEY HAD HEARINGS?

MS. GILLEN: YES, AND I DO NOT HAVE ANY VISIBILITY INTO WHEN THAT WILL HAPPEN.

THE COURT: YOU SAID YOU DON'T KNOW WHEN THE CONFIRMATIONS WILL HAPPEN? DO THEY HAVE CONFIRMATION HEARINGS AT COMMITTEE VOTES?

MR. BORNSTEIN: I UNDERSTAND THAT SOME OF THEM HAVE GONE THROUGH COMMITTEE.

THE COURT: OKAY. HAVE THEY BEEN VOTED OUT OF COMMITTEE AND THEY ARE JUST WAITING FOR FLOOR TIME, OR DO YOU KNOW?

MS. GILLEN: I'M NOT SURE, YOUR HONOR.

I KNOW OUR OFFICE IS STILL WAITING FOR A FIFTH

COMMISSIONER TO BE APPOINTED.

MR. BORNSTEIN: MY UNDERSTANDING --

THE COURT: YOU MEAN NOMINATED, OR CONFIRMED?

MS. GILLEN: NOMINATED, I'M SORRY.

MR. BORNSTEIN: MY UNDERSTANDING, YOUR HONOR, IS THERE HAVE BEEN FOUR NOMINATIONS MADE, THAT THOSE FOUR INDIVIDUALS HAVE BEEN VOTED OUT OF COMMITTEE. AND THERE'S A FIFTH OPEN SLOT FOR WHICH THERE'S BEEN NO NAME PUT FORTH. AND THE FOUR THAT WERE VOTED OUT OF COMMITTEE HAVE NOT YET PROGRESSED ANY FURTHER IN THE PROCESS, TO MY KNOWLEDGE.

THE COURT: OKAY. AND DO YOU KNOW WHEN THEY WERE VOTED OUT OF COMMITTEE?

MR. BORNSTEIN: I WANT TO SAY IT WAS ABOUT A MONTH AGO, YOUR HONOR, BUT MS. GILLEN MIGHT HAVE BETTER KNOWLEDGE ON THAT.

MS. GILLEN: THAT'S MY RECOLLECTION AS WELL, ABOUT A MONTH AGO.

THE COURT: OKAY. ALL RIGHT. SO NO ON THE FTC, THEN, I COMPLETELY UNDERSTAND WHY.

NOW WHAT ABOUT THE MDL, IS THAT -- AND IF YOU ARE NOT INTERESTED, THAT'S FINE. I JUST WANT TO RAISE THE ISSUE.

MR. VAN NEST: I DON'T THINK THE TIMING IS GOOD NOW, YOUR HONOR. I THINK WE NEED TO GET THROUGH CLASS CERT.

THE COURT: OKAY. SO YOU WILL NEED A CLASS CERT RULING, YOU THINK?

03:40:11 MR. VAN NEST: YES, I THINK SO.

03:40:12 THE COURT: OKAY.

03:40:13 MR. VAN NEST: THANK YOU.

03:40:14 THE COURT: ALL RIGHT. THANK YOU ALL.

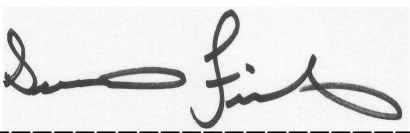
03:40:17 THANK YOU VERY MUCH.

03:40:19 (THE PROCEEDINGS WERE CONCLUDED AT 3:40 P.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF MY ABILITY.



_____
SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185 DATED: 3/26/18