

**In the Matter of:**

***MICROSOFT CORPORATION***

***v.***

***SURFCAST, INC.***

---

***RICHARD GEORGE ANDREW BONE***

***February 19, 2014***

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**M E R R I L L L A D**

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UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE FOR PATENT TRIAL AND APPEAL BOARD

--oOo--

MICROSOFT CORPORATION

Petitioner,

vs.

SURFCAST, INC.

Patent Owner.

Patent No. 6,724,403

Issued: April 20, 2004

Filed: October 30, 2000

Inventors: Ovid Santoro, et al.

Title: SYSTEM AND MOTHOD FOR SIMULATANEIOUS DISPLAY  
OF INFORMATION SOURCES

Inter Partes Review Nos. IPR2013-00292,  
IPR2013-00293, IPR2013-00294  
and IPR2013-00295

VIDEOTAPED DEPOSITION OF  
RICHARD GEORGE ANDREW BONE  
Wednesday, February 19, 2014

Job No.: 0124-245041

REPORTER: COREY W. ANDERSON, CSR 4096 (SF-001020)

1	I N D E X	
2	INDEX OF EXAMINATIONS	
3	EXAMINATION	Page
4		
5	EXAMINATION BY MR. SUH	7
6	INDEX TO EXHIBITS	
7		
8	No. Description	Page
9	Exhibit 2008 SurfCast, Inc.'s Declaration Of	24
10	Richard G. A. Bone Under 35 USC	
11	Section 317(a)(8)	
12	Exhibit 2035 1999 Timesheets, Richard	29
13	Bone/Pennie & Edmonds	
14		
15	Exhibit 2049 August 14, 1999 Invoice 283818	35
16	(SC0058852 through 58861)	
17	Exhibit 2050 November 22, 1999 Telefacsimile	35
18	Message to Sandy Reyes from Helen	
19	J. D'Alessandro (SC0058862	
20	through 58866)	
21		
22	Exhibit 2010 November 16, 1999 Invoice 296240	35
23	(PENY4 - 771034.1)	
24	Exhibit 2052 Diligence Calendar: June 21,	59
25	1999 through October 29, 1999	

1 A P P E A R A N C E S

2

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20

21       ALSO PRESENT:

22       VIDEO SOLUTIONS, a Merrill Legal

23       Solutions Company

24       PATRICIA GUERRERO, VIDEOGRAPHER

25

1 --oOo--

2 BE IT REMEMBERED that pursuant to notice  
3 and on Wednesday, February 19, 2014 commencing at 9:01  
4 A.M. thereof, at the Law Offices of DLA PIPER, 2000  
5 University Avenue, Palo Alto, California, before me,  
6 Corey W. Anderson, a Certified Shorthand Reporter  
7 and Realtime Reporter, personally appeared

8 RICHARD GEORGE ANDREW BONE

9

10 called as a witness by the PETITIONER, who, having  
11 been first duly sworn, was examined and testified as  
12 follows:

13 --oOo--

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1 PALO ALTO, CALIFORNIA

2 Wednesday, February 19, 2014

3 9:01 A.M.

4 --o0o--

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

6 THE VIDEOGRAPHER: Here begins volume one,  
7 videotape number one in the deposition of Richard  
8 Bone in the matter of Microsoft Corporation versus  
9 SurfCast, Inc., Patent Owner, in the United States  
10 Patent And Trademark Office before the Patent Trial  
11 And Appeal Board.

12 The Inter Partes Review Numbers are  
13 IPR2013-00292, et al.

14 Today's date is February 19th, 2014. The  
15 time on the video monitor is 9:01.

16 The videographer today is Patricia  
17 Guerrero, a notary public employed by the Merrill  
18 Corporation, San Francisco, California.

19 This video deposition is taking place at  
20 the Law Offices of -- excuse me, DLA Piper, 1900 --  
21 excuse me, 2000 University Avenue, East Palo Alto,  
22 California.

23 Counsel, please voice identify yourselves  
24 and state whom you represent.

25 MR. SUH: Wonjoo Sun at Sidley Austin

1 representing Microsoft Corporation.

2 MS. BOYD: And this is Karen Boyd of Turner  
3 Boyd representing the witness.

4 MS. PASCAL: And Erica Pascal of DLA Piper  
5 on behalf of SurfCast, Inc., Patent Owner.

6 MR. MICALLEF: On the telephone, Joe  
7 Micallef from the firm Sidley Austin representing  
8 Microsoft.

9 MR. HEINTZ: And Jim Heintz from DLA Piper  
10 representing SurfCast.

11 THE VIDEOGRAPHER: Thank you.

12 The court reporter is Corey Anderson of  
13 Merrill Court Reporting.

14 Would the court reporter please swear in  
15 the witness?

16 RICHARD GEORGE ANDREW BONE  
17 having been sworn by the Reporter,  
18 testified as follows:

19 THE WITNESS: I do.

20 THE VIDEOGRAPHER: Thank you. Please  
21 begin.

22 EXAMINATION

23 BY MR. SUH:

24 Q. Could you please state your full name and  
25 residence address for the record, please?

1           A.    Richard George Andrew Bone, 777 San  
2   Antonio Road, No. 60, Palo Alto, California, 94303.

3           Q.    Do you understand that you are under oath  
4   today?

5           A.    I do.

6           Q.    Have you ever been deposed before?

7           A.    Yes.

8           Q.    When?

9           A.    July of last year.

10          Q.    Is that it?

11          A.    That's one time.

12          Q.    What was it about?

13          A.    It was in connection with Microsoft --  
14   sorry, SurfCast versus Microsoft in the District  
15   Court of Maine, case that's pending at the moment.

16          Q.    Have you ever testified at trial before?

17          A.    No.

18          Q.    Other than these, have you ever testified  
19   under oath?

20          A.    I don't believe so.

21          Q.    Are you on any medications that might  
22   impact your ability to testify today?

23          A.    No.

24          Q.    Are there any reasons you cannot testify  
25   truthfully?

1 A. No.

2 Q. Seems like you are already familiar with  
3 the rules since you already were deposed, but I'd  
4 like to go over the rules again just to make sure we  
5 are on the same page.

6 A. Okay.

7 Q. Your answers are recorded by a court  
8 reporter, so please answer verbally. That means no  
9 shaking heads or nodding.

10 A. Uh-huh.

11 Q. When I ask a question, could you wait for  
12 me to finish my question before you start answering?

13 A. Okay.

14 Q. If you don't understand the question,  
15 please ask for a clarification. Otherwise I will  
16 assume you heard it, understood it, and gave me your  
17 best answer.

18 Is that fair?

19 A. Okay.

20 Q. We'll try to take short breaks every hour.  
21 But if you need a break at any time for any reason,  
22 you should tell me or your counsel.

23 A. Okay.

24 Q. All that I ask is that if we are in the  
25 middle of a question we can take a break after you

1 finish your answer.

2 Is that fair?

3 A. Yes.

4 Q. Now that this deposition has begun, you  
5 are not permitted to speak with your attorney about  
6 the substance or conduct of this deposition unless  
7 you have legitimate questions about privilege.

8 Do you understand that?

9 A. Understood.

10 Q. Understand that you are the lead counsel  
11 in this case?

12 A. Correct.

13 Q. But today you are here as a fact witness,  
14 so you should not be making any objections to my  
15 question. Your counsel will do that for you.

16 Do you understand?

17 A. I understand.

18 Q. Could you tell me about your educational  
19 background beginning after high school?

20 A. I took a Bachelor's degree at University  
21 of Cambridge in the United Kingdom. It's called  
22 Bachelor's of -- a Bachelor's of natural science.

23 And then I stayed at Cambridge and did a  
24 Ph.D. there in theoretical chemistry.

25 Q. Chemistry?

1           A.    Yes.

2                   After that, I did a post doctoral  
3   fellowship, it's called a NATO fellowship from the  
4   U.K.  I spent a year in Canada and a year in the  
5   United States.

6                   And then I spent a few years in industry.

7           Q.    So you said natural science.  What was  
8   that about?

9           A.    Natural science is -- is the name that  
10   Cambridge gives that -- basically their pure science  
11   educational curriculum.  So you take three sciences  
12   in the first year and then most people, as did I,  
13   take two subjects in the second year, I took  
14   chemistry and mathematics, and in the final year you  
15   take one subject, and I took chemistry.

16          Q.    Did you take any computer science classes?

17          A.    I took one, one computer -- yes, computer  
18   programming class in the first year.  It was an  
19   accelerated class.

20          Q.    And that's the only computer science class  
21   you took?

22          A.    As a formal class, that's correct.  Except  
23   I actually did take a C programming class later on  
24   after I left Cambridge when I was working in  
25   industry.

1 Q. And when was that?

2 A. That was in 1995, I think.

3 Q. So before June 1999, did you have any  
4 formal training in the programming of graphical user  
5 interfaces?

6 A. Formal --

7 MS. PASCAL: Object.

8 MR. SUH: You can answer.

9 THE WITNESS: Okay. Formal training, no.

10 BY MR. SUH:

11 Q. What about programming in general?

12 A. So from the beginning of my Ph.D. which  
13 was in -- began in 1988, which is in theoretical  
14 chemistry, I would say more than half of that time  
15 as a graduate student I was writing computer  
16 programs.

17 And then when I left Cambridge and was a  
18 post doc for I think I would say for three to four  
19 years as a post doc, I would say more than 75  
20 percent of what I was doing was writing computer  
21 programs in a variety of languages.

22 And then when I stayed in industry after  
23 that from around 1994 to 1999, my job was almost  
24 exclusively writing computer programs.

25 Q. Which languages, may I ask?

1           A.    So beginning in my Ph.D. it would be  
2   Fortran, principally, and then a number of the UNIX  
3   based languages, the scripting languages that are  
4   common on the UNIX platforms.

5                   And then for the balance of the time in  
6   industry mixture of Fortran, C, UNIX languages, and  
7   then some proprietary programming languages to the  
8   company that I worked at immediately up until 1999.

9           Q.    Did you have any training in software  
10   architecture?

11           A.    Formal training, I would say no. But the  
12   programs I was writing were quite extensive, so  
13   required some design, yes.

14           Q.    Could you tell me about your employment  
15   history?

16           A.    Okay. So beginning from the time my post  
17   doctoral fellowship finished in 1994, I worked for a  
18   small company called -- it was called Provin  
19   Terrapin, and that was a position I held as a  
20   computational chemist for about two-and-a-half  
21   years. That was writing some of the software I  
22   previously described.

23                   And then when I left that company I went  
24   back to the U.K. for about two and a half years and  
25   I worked at a company there also writing software in

1 the computational chemistry field.

2 And then after that I came back to the  
3 States and joined Pennie and Edmonds as a law clerk.

4 Q. When was that?

5 A. June of 1999.

6 Q. And then?

7 A. So I remained as a law clerk at Pennie and  
8 Edmonds up until basically the time I graduated from  
9 law school. And in 2002 I took the bar exam at the  
10 beginning of 2003 and I became an associate at  
11 Pennie and Edmonds at that time.

12 Pennie and Edmonds dissolved at the end of  
13 2003. I moved with a group of attorneys from Pennie  
14 and Edmonds to Morgan, Lewis & Bockius in Palo Alto.  
15 I stayed there for almost 18 months as an associate.

16 I left Morgan Lewis in basically the end  
17 of June of 2005, I went to Fish & Richardson as an  
18 associate. I became a principal there in I think  
19 the beginning of 2008.

20 And I left Fish & Richardson in April 2010  
21 and joined my current firm, VLP Law Group, at that  
22 time.

23 Q. So when you were at Pennie Edmonds, so  
24 before June 1999, have you ever prosecuted a patent  
25 application?

1 A. No, I have not.

2 Q. So while you were at Fish & Richardson,  
3 did you ever work on any Microsoft matters?

4 A. No, I did not.

5 Q. Okay. So we can step back to when you  
6 were a law clerk at Pennie and Edmonds.

7 A. That's correct.

8 Q. And you were not an attorney. Correct?

9 A. Not initially, correct.

10 Q. Until 2003 you were not an attorney?

11 A. That's correct.

12 Q. And you were not a member of the U.S.  
13 Patent Bar before 2003.

14 Is that correct?

15 A. I took and passed the Patent Bar  
16 registration exam in November -- or rather October  
17 of 2000 -- I think October-November 2000. At that  
18 time because I was not a U.S. permanent resident,  
19 under the rules that the OED promulgates, they  
20 couldn't give me a full reg number, but they could  
21 give me something called limited recognition. At  
22 the time it was under CFR 10.39 A, I think. Maybe  
23 B.

24 So that meant that I was qualified to  
25 practice in terms of being able to sign papers at

1 the PTO as long as I accompanied whatever I signed  
2 with that certificate. And that was tied to my  
3 employment at Pennie and Edmonds, or essentially at  
4 a firm where I was employed under the terms of my  
5 visa to engage in patent related matters.

6 And then when I got a U.S. green card and  
7 became a permanent resident, I was given a reg  
8 number. And that was in I think March of 2004.

9 Q. So when you were holding your license  
10 under limited recognition, you couldn't hold  
11 yourself out as a patent agent.

12 Is that correct?

13 A. That is correct. So I had to explain to  
14 people that, the actual qualification that I had,  
15 that is correct.

16 Q. And of course, you couldn't hold yourself  
17 out as a patent attorney.

18 Correct?

19 A. That is correct.

20 Q. And you said you passed -- passed the  
21 patent bar in November of 2000. So prior to  
22 November 1999, you were not licensed to practice  
23 before the United States Patent Office at all.

24 Correct?

25 A. That's correct.

1 Q. Were you working full time as a law clerk?

2 A. I was required to under the terms that  
3 Pennie had, I was required to I think in the first  
4 year bill 1500, 1500 billable hours in the system.  
5 So effectively I was working full time in the sense  
6 that I was there five days a week during the day  
7 time. But once I started law school I had to spend  
8 evenings in law school.

9 So the actual billable hour requirement  
10 would be less than associate, but I consider it a  
11 full time job.

12 Q. Was it listed as a full time job in your  
13 employment agreement?

14 A. I believe it was, yes.

15 Q. And you say you never drafted a patent  
16 application before joining Pennie.

17 Is that correct?

18 A. That's correct.

19 Q. And you never received any training on how  
20 to draft a patent application before joining Pennie.

21 Is that correct?

22 A. That's correct, other than reading that I  
23 had done. I had done some introductory reading  
24 about the subject before I joined the firm.

25 Q. When was that?

1 A. Well, in the 1998, 1999 timeframe.

2 Q. Other than --

3 A. Oh, sorry, I would add one more thing.

4 When I was at the company called Terrapin, I had in

5 fact been listed as an inventor on a patent

6 application. So I worked quite closely with a

7 patent attorney and outside counsel there who took

8 me through the process.

9 Q. Did you draft the patent application  
10 yourself?

11 A. I did not.

12 Q. Do you have any relationship with SurfCast  
13 other than being outside counsel?

14 A. Can you define relationship?

15 Q. I mean were you ever an employee or  
16 in-house counsel or consultant for SurfCast?

17 A. No.

18 Q. Do you have any interest in the outcome of  
19 the litigation?

20 A. This has been made of record, I have some  
21 stock options that SurfCast has granted me.

22 Q. How many shares?

23 A. I don't know the precise, I don't know the  
24 precise number in my head.

25 Q. Do you know roughly how, what the

1 percentage is?

2 A. Percentage of what?

3 Q. Of shares you have.

4 A. I believe it amounts to .4 percent, maybe  
5 .39 percent.

6 Q. So you would have gained financially if  
7 SurfCast obtained a money judgment against  
8 Microsoft, wouldn't you?

9 A. I believe I would.

10 Q. And do you have an interest in the outcome  
11 of the IPR?

12 MS. PASCAL: Objection.

13 THE WITNESS: I do not have an interest in  
14 the outcome of the IPR.

15 BY MR. SUH:

16 Q. Do you have any type of contingency fee  
17 arrangements with SurfCast?

18 THE WITNESS: This may be privileged.

19 MS. PASCAL: Yeah.

20 THE WITNESS: I will ask my counsel for  
21 advice.

22 MS. PASCAL: I think at this point we'll  
23 assert a privilege.

24 BY MR. SUH:

25 Q. So you won't be answering this question

1 based on privilege.

2 Correct?

3 MS. PASCAL: You'll have to ask him if he  
4 wants to follow advice of counsel.

5 THE WITNESS: Actually, I can ask -- answer  
6 correctly and say that my fee agreement with  
7 SurfCast has no contingency based on the outcome of  
8 the IPR.

9 BY MR. SUH:

10 Q. What about the litigation?

11 A. I think that's priveledged.

12 MS. PASCAL: Objection. Same objection  
13 from all of us.

14 THE VIDEOGRAPHER: Speak up.

15 THE REPORTER: Could we go off the record,  
16 Counsel?

17 THE VIDEOGRAPHER: Off the record, the time  
18 is 9:17.

19 (Whereupon, a recess was taken  
20 commencing at 9:17 A.M. and  
21 concluding at 9:23 A.M.)

22 THE VIDEOGRAPHER: We are back on the  
23 record. The time is 9:23.

24 BY MR. SUH:

25 Q. So if you can go back to the previous

1 question you asserted privilege objection to, the  
2 question was whether you do have a contingency fee  
3 arrangement.

4 Is that --

5 MS. PASCAL: Which are you asking?

6 MR. SUH: I'm not interested in the term.

7 I'm just interested in --

8 MS. PASCAL: No, no. Just so we are clear  
9 on the question, you asked him about his fee  
10 agreement with the IPR and you asked him about his  
11 fee agreement with respect to the litigation.

12 MR. SUH: Yes.

13 Q. Whether or not you do have a fee,  
14 contingency fee arrangement.

15 MS. PASCAL: In which matter?

16 MR. SUH: In either one.

17 MS. PASCAL: I'll object to compound.

18 But --

19 MR. SUH: Okay. First the District Court  
20 Maine litigation.

21 Q. Do you have any contingency fee  
22 arrangement, whether or not you have it --

23 A. Can you define contingency?

24 MS. BOYD: If it's privileged you are --  
25 hang on just a minute.

1 MS. PASCAL: Hang on just a second.

2 THE VIDEOGRAPHER: Shall we go off the  
3 record?

4 MS. BOYD: Yeah.

5 THE VIDEOGRAPHER: Off the record, the time  
6 is 9:24.

7 (Whereupon, a recess was taken  
8 commencing at 9:24 A.M. and  
9 concluding at 9:25 A.M.)

10 THE VIDEOGRAPHER: We are back on the  
11 record. The time is 9:25.

12 MR. MICALLEF: Can I say something? This  
13 Joe Micallef for Microsoft. I explicitly want to  
14 make sure everybody in this deposition understands  
15 the rules of the Board as far as defense counsel  
16 objecting are extremely strict. What I have heard  
17 already was a discussion about which question are  
18 you asking and isn't that privileged. If that goes  
19 on again in front of the witness we are going to  
20 have to call the Board because that's actually not  
21 permitted in the deposition.

22 MS. BOYD: We have heard your comment, Joe.

23 MR. MICALLEF: Thank you.

24 BY MR. SUH:

25 Q. Are there documents that you reviewed in

1 order to prepare for this deposition?

2 A. Yes.

3 Q. What are they?

4 A. I reviewed my -- the declaration that I  
5 submitted, and I have reviewed some case law, some  
6 cases, and I have reviewed the time entry logbook, a  
7 copy of it that I have submitted as an exhibit.

8 Q. Anything else?

9 A. That's all.

10 Q. And you are represented by counsel today.  
11 Correct?

12 A. I am.

13 Q. Are you represented by DLA Piper as well,  
14 or...

15 A. DLA Piper counsel is -- sorry. DLA Piper  
16 has an attorney here representing patent owner  
17 SurfCast.

18 Q. So DLA Piper is not representing you.  
19 Is that correct?

20 A. That is correct.

21 Q. Are you paying your counsel for the  
22 representation?

23 A. I believe my client SurfCast is paying  
24 them.

25 Q. For both DLA Piper and your counsel?

1           A.    I can't say anything about the  
2    relationship, the fee agreement between SurfCast and  
3    DLA Piper, but SurfCast had told me they would pay  
4    for my counsel.

5           Q.    Okay.

6           A.    Sorry, I want to add one more thing.  
7    Technically my counsel is also representing my firm,  
8    VLP Law Group.

9           Q.    Okay.

10                So I'm handing you Exhibit 2008, take a  
11   look at it.

12           A.    Okay.

13                (Whereupon, Exhibit 2008 was marked  
14   for identification)

15                (Pause)

16                BY MR. SUH:

17           Q.    Do you recognize this document?

18           A.    I do.

19           Q.    If you can turn to page 5? You mentioned  
20   Andrew Gray?

21           A.    Yes.

22           Q.    Brett Lovejoy?

23           A.    Yes.

24           Q.    Paul DeStefano?

25           A.    Stefano.

1 Q. Stefano?

2 A. Yes.

3 Q. And William S. Galliani?

4 A. Yes.

5 Q. Who are they?

6 MS. PASCAL: Objection, form.

7 THE WITNESS: Andrew Gray at the time was  
8 an attorney at Pennie and Edmonds.

9 Dr. Lovejoy at the time was a law clerk at  
10 Pennie and Edmonds.

11 Mr. DeStefano was an attorney at Pennie  
12 and Edmonds at that time, as was Mr. Galliani.

13 BY MR. SUH:

14 Q. Mr. Galliani was an attorney too?

15 A. That's correct.

16 Q. What were their titles?

17 A. I believe at the time Mr. Gray was an  
18 associate, Dr. Lovejoy was a law clerk,  
19 Mr. DeStefano was a partner, and Mr. Galliani was a  
20 partner.

21 Q. Did they have -- were they licensed to  
22 practice before the United States Patent Office?

23 MS. BOYD: Objection, form.

24 BY MR. SUH:

25 Q. Was Mr. Andrew Gray licensed to practice

1 before the United States Patent Office?

2 A. Yes.

3 Q. Was Mr. Lovejoy?

4 A. I believe he was at the time, yes.

5 Q. What about Paul DeStefano?

6 A. No.

7 Q. William S. Galliani?

8 A. Yes.

9 Q. What is Mr. Andrew Gray's technical  
10 background?

11 A. I don't know specifically what his  
12 technical background is other than I know that at  
13 the time I was working with him he had quite some  
14 experience with software related matters, software  
15 related inventions.

16 Q. What is Mr. Brett Lovejoy's technical  
17 background?

18 A. He had a Ph.D. in some type of protein  
19 chemistry, protein crystallography, I think. I  
20 don't remember more specifically than that.

21 Q. What was Paul's technical background?

22 A. I don't know that he has a technical  
23 background. He is a corporate attorney.

24 Q. Corporate?

25 A. Correct.

1 Q. What was Mr. Galliani's technical  
2 background?

3 A. I don't know specifically, but I believe  
4 it's something in electrical engineering or computer  
5 science, because his practice was almost entirely in  
6 software related patent, patent practice.

7 Q. Are there any reasons why Mr. Andrew Gray,  
8 Mr. Lovejoy, and Mr. Galliani could not draft a  
9 patent application?

10 MS. PASCAL: Objection, form.

11 THE WITNESS: I don't know that there is a  
12 reason why they -- why they -- I mean, do you mean  
13 could not as a matter of capability or could not as  
14 a matter of time?

15 BY MR. SUH:

16 Q. Let's start with capability.

17 A. I believe that either of them could have  
18 drafted the application.

19 Q. They could?

20 A. Could have.

21 Q. Could have?

22 A. Yes.

23 Q. What about time?

24 A. I think that is, you know, that is --  
25 that -- the answer to that is they might have had

1 the time. At that time in the office there were a  
2 lot of new projects coming in.

3 Q. Do you know that they did not have time,  
4 or are you guessing?

5 A. No. From my best recollection of the  
6 time, everybody was extremely busy.

7 Q. How many lawyers or patent agents did  
8 Pennie have?

9 MS. BOYD: Objection, form.

10 THE WITNESS: Do you mean in the entire  
11 firm?

12 MR. SUH: Entire firm.

13 THE WITNESS: I don't remember  
14 specifically, although my recollection, it could  
15 have been around 200.

16 BY MR. SUH:

17 Q. And they could all have drafted a patent  
18 application.

19 Is that correct?

20 MS. PASCAL: Objection, form.

21 THE WITNESS: I don't know. Are you asking  
22 could any of them could have drafted any patent  
23 application?

24 MR. SUH: Yes. That's the question.

25 THE WITNESS: I don't believe that's the

1 case. I mean, for example, one of the -- one of the  
2 attorneys in the firm who does exclusively  
3 litigation I believe probably would not have held  
4 themselves out as somebody to draft a patent  
5 application, and for example, somebody whose  
6 practice was exclusively in biotechnology probably  
7 would not have drafted a software application, and  
8 vice versa.

9 BY MR. SUH:

10 Q. So how many lawyers or patent agents do  
11 you think Pennie had back in the 1990 timeframe that  
12 could draft a patent application?

13 A. 1990 or 1999?

14 Q. 1999.

15 A. Draft any patent application?

16 Q. Yes.

17 A. Best guess, at least a hundred.

18 Q. Okay. So I'm handing you out

19 Exhibit 2035.

20 (Whereupon, Exhibit 2035 was marked  
21 for identification)

22 BY MR. SUH:

23 Q. Actually, can you -- this is single-sided.

24 A. Okay.

25 Q. And double-sided ones are for the counsels

1 just to save trees.

2 Do you recognize this document?

3 A. I do.

4 Q. Did you write these entries each day?

5 A. Yes, I did.

6 Q. Did anybody see you write these entries  
7 each day?

8 A. If you mean literally was somebody in the  
9 room as I was writing them, I think that's highly  
10 unlikely.

11 Q. Do you have copies of the drafts that you  
12 were working on?

13 MS. PASCAL: Objection, form.

14 THE WITNESS: Sorry, drafts of what?

15 BY MR. SUH:

16 Q. Drafts of the patent application, SurfCast  
17 patent application.

18 A. I -- I do not, no.

19 Q. There is no evidence of your work product  
20 during this period.

21 Correct?

22 MS. BOYD: Objection.

23 MS. PASCAL: Objection, lacks foundation.

24 THE WITNESS: I don't believe that's  
25 correct.

1 BY MR. SUH:

2 Q. Why?

3 A. I believe that there are in existence some  
4 e-mails that contain copies of drafts that were sent  
5 from Pennie and Edmonds to one or more persons at  
6 SurfCast.

7 Q. Those e-mails included drafts, did you  
8 say?

9 A. Either e-mails or faxes. I believe that  
10 those exist. I have not reviewed them.

11 Q. But you don't have any copies of the  
12 drafts?

13 A. I personally do not, no.

14 Q. Do you know if anybody has copies of that?

15 A. If they have been produced in connection  
16 with the concurrent litigation, then I believe they  
17 are there.

18 Q. Can you tell me under oath that you  
19 specifically remember what you did on each day?

20 A. I think for the majority of days I could  
21 not say I specifically remember.

22 Q. Are there any days that you can  
23 specifically remember?

24 MS. PASCAL: Objection.

25 THE WITNESS: I believe there are, yes.

1 BY MR. SUH:

2 Q. Could you point me to an example?

3 A. Okay. I have a copy of this document  
4 which has fewer redactions in it --

5 Q. I think --

6 A. -- and which was served on you a few days  
7 ago. May I refer to that?

8 Q. We objected to that as untimely.

9 A. Okay.

10 MS. BOYD: I don't think you answered the  
11 question, though. He is asking if he can refer to  
12 it, not make it in evidence.

13 MR. SUH: No.

14 THE WITNESS: Okay. So --

15 MS. PASCAL: I'm going to object as best  
16 evidence.

17 You can continue.

18 THE WITNESS: Okay. July 29, Thursday.

19 BY MR. SUH:

20 Q. So what did you do?

21 A. That was a meeting that took place in New  
22 York City, mostly at the New York office of Pennie  
23 and Edmonds. I do remember that meeting.

24 I believe there is also --

25 Q. No, back to that meeting.

1 A. Sorry.

2 Q. Do you know what was discussed during the  
3 meeting specifically?

4 A. We --

5 MS. PASCAL: Objection to the -- no.

6 THE WITNESS: I believe that aspects of  
7 that would be covered by attorney-client privilege.

8 BY MR. SUH:

9 Q. The question was do you remember what was  
10 specifically discussed.

11 A. I remember some things that were  
12 specifically discussed.

13 Q. Are there any non-privileged discussions  
14 you had with -- during that meeting?

15 A. I don't believe so, and certainly not that  
16 I remember.

17 I can provide another day that I remember  
18 also, if you are finished with this day.

19 Q. Sure.

20 Actually, back to July 29th --

21 MS. PASCAL: I'm sorry, he is in the middle  
22 of an answer.

23 MR. SUH: Is that an objection?

24 MS. PASCAL: Yes.

25 THE WITNESS: I would just relate to you

1       that I also remember October 19.

2               MR. SUH: Okay.

3               THE WITNESS: There are a couple of entries  
4       there that reference a meeting with Mr. Carberry. I  
5       remember -- I remember meeting with Mr. Carberry.

6               BY MR. SUH:

7               Q.    Other than remembering a meeting with  
8       Mr. Carberry, do you specifically remember what you  
9       did this day?

10              A.    Not based on the narratives that are in  
11       front of me here. The other narratives are  
12       redacted. So you know...

13              Q.    Do you know what you discussed during that  
14       meeting?

15              A.    I do remember some things that I discussed  
16       with Mr. Carberry, but I believe they are covered by  
17       the attorney-client privilege.

18              Q.    At the beginning of the deposition I asked  
19       you not to make any objections, that's for counsel  
20       the make that okay.

21              A.    Okay. Understood.

22              Q.    So could you answer my question?

23                     MS. BOYD: I -- no.

24                     MS. PASCAL: We --

25                     MS. BOYD: I think we'll both make the

1 objection that -- and the instruction to respect  
2 attorney-client privilege. And that wasn't an  
3 objection that the witness made, it was an  
4 observation in his role as an attorney saying that  
5 something is privileged.

6 BY MR. SUH:

7 Q. And you are here as a fact witness. Is  
8 that correct? Not as a lead counsel?

9 A. That is correct.

10 Q. Okay. Let's turn to Exhibit 2049, 2050,  
11 and 2010.

12 (Whereupon, Exhibit 2049 was marked  
13 for identification)

14 (Whereupon, Exhibit 2050 was marked  
15 for identification)

16 (Whereupon, Exhibit 2010 was marked  
17 for identification)

18 BY MR. SUH:

19 Q. Do you recognize these documents?

20 MS. BOYD: Objection, form.

21 THE WITNESS: I will answer document by  
22 document.

23 MR. SUH: Sure.

24 THE WITNESS: So Exhibit 2050, I reviewed  
25 this document in connection with preparing my

1 declaration, Exhibit 2008, although as you can  
2 probably tell from the actual document itself this  
3 is not a document that I prepared personally or  
4 transmitted at the time it was -- at the time it was  
5 sent. It's a facsimile. But I mean, I recognize  
6 the overall form of the contents and where it came  
7 from.

8 For Exhibit 2049 and Exhibit 2010, I can  
9 answer in the same way. I mean, I know what these  
10 documents are.

11 But again, other than review them in  
12 connection with preparing my declaration, I was not  
13 the author of them or reviewer of them at the time  
14 they were created.

15 BY MR. SUH:

16 Q. Are you finished answering?

17 A. Yes.

18 Q. So did you produce all the invoices that  
19 were in your possession for the period of June 29th  
20 to October 29th, 1999?

21 MS. BOYD: Objection, form.

22 THE WITNESS: Are you asking me personally?

23 BY MR. SUH:

24 Q. Yes. I could only find these three. Are  
25 there others that I missed?

1           A.    I have no invoices in my possession, and I  
2   never had any invoices in my possession.

3           Q.    So where did this come from?

4           MS. BOYD: Objection to form.

5           MS. PASCAL: Objection.

6           THE WITNESS: I believe they were produced  
7   by other persons involved in either the litigation  
8   in Maine or in connection with this inter partes  
9   review.

10          BY MR. SUH:

11          Q.    So you are not aware of any invoices that  
12   exist other than these three.

13          Correct?

14          A.    Me personally, no, that's correct.

15          Q.    If you could turn to page 11 of  
16   Exhibit 2010? Do you see an entry from Mr. Galliani  
17   on October 30th, 1999?

18          A.    I do.

19          Q.    Do you agree that this time has nothing to  
20   do with the reduction to practice of the provisional  
21   application filed on October 29th?

22          A.    If that --

23          MS. PASCAL: Objection.

24          THE WITNESS: If that is an accurate time  
25   entry, I agree with you.

1 BY MR. SUH:

2 Q. Let's then turn to page 5 of  
3 Exhibit No. 2050.

4 A. Yes.

5 Q. Do you see that you billed 34.1 hours from  
6 September 14th to September 30th in the Total  
7 amount?

8 MS. PASCAL: Objection.

9 THE WITNESS: I haven't added up all these  
10 numbers, but I don't know that the 34.1 hours begins  
11 at September 14th.

12 BY MR. SUH:

13 Q. Okay.

14 MS. PASCAL: Excuse me, can he finish his  
15 answer, please?

16 MR. SUH: Sorry.

17 THE WITNESS: These invoices are typically  
18 generated on a monthly billing cycle, and I would  
19 assume that the summary for each person is based on  
20 a complete month, although I don't know that that's  
21 absolutely the case for this invoice.

22 I mean, the first page, page 3, says  
23 "Legal services rendered for the period ending  
24 September 30th."

25 BY MR. SUH:

1 Q. Are you done?

2 A. Yes.

3 Q. So in the bottom of page 5, do you see the  
4 number 34.1 hours next to your name?

5 A. I do.

6 Q. And your time was written off down to 26  
7 hours.

8 Correct?

9 MS. PASCAL: Objection, lacks foundation.

10 THE WITNESS: I believe that is probably  
11 what happened here.

12 BY MR. SUH:

13 Q. That means your work should have only  
14 taken 26 hours rather than 34.1 hours.

15 Correct?

16 MS. BOYD: Objection.

17 MS. PASCAL: Objection.

18 THE WITNESS: If you ask me to look at this  
19 document in total, then my understanding of this  
20 document is that there are some entries on the  
21 initial part of it that are being struck because  
22 they were ended on the wrong matter and should not  
23 have been billed to SurfCast.

24 BY MR. SUH:

25 Q. Do you have evidence showing that?

1           A.    Yes.  There is a billing number which says  
2   in the middle of the -- of page 3, it says  
3   09555.0003999.  That is for another client matter  
4   that I worked on.

5                   I believe that it's possible in that  
6   timeframe some matters were entered in the time  
7   system on the wrong -- I'm sorry, some entries were  
8   entered in the time system on the wrong matter and  
9   they appeared on the SurfCast bill and they should  
10  not have done.

11                  This fax is being sent from  
12  Mr. DeStefano's secretary to somebody in the  
13  accounting department at Pennie and Edmonds, and I  
14  believe it's for the purposes of correcting the  
15  invoice.

16                  BY MR. SUH:

17           Q.    So you pointed to page 3.  And I see 0.75  
18  hours, 0.25 hours, 0.25 hours and 0.25 hours.  If  
19  you add that up, that's only 1.5 hours.

20           A.    Okay.

21           Q.    What is your basis for saying that this is  
22  what was struck down from 34.1 hours down to 26  
23  hours?  That's almost 25 percent.

24                  MS. BOYD:  Objection.

25                  BY MR. SUH:

1 Q. Write-off?

2 MS. BOYD: Objection.

3 MS. PASCAL: Objection, lacks foundation.

4 Argumentative.

5 THE WITNESS: There is a blank page 4, and

6 I can't tell you what happened on that page 4.

7 If you give me a minute, I will add up the

8 entries on page 5.

9 Okay. So the entries on page 5 for me,  
10 they total 17.6 hours.

11 MR. SUH: Okay.

12 THE WITNESS: Which is less than 34.1. So  
13 there is some incompleteness in the document in  
14 front of us.

15 BY MR. SUH:

16 Q. So you would agree that this Exhibit 2550  
17 is incomplete.

18 Correct?

19 A. Well, there is a redacted page, there is a  
20 blank page here. And none of us sitting here can  
21 tell you what's on that blank page.

22 Q. Okay. Were you responsible for billing?

23 MS. PASCAL: Objection.

24 THE WITNESS: Can you explain the question?

25 BY MR. SUH:

1 Q. Were you responsible for billing these to  
2 SurfCast?

3 MS. BOYD: Objection.

4 THE WITNESS: I did not personally review,  
5 edit, or send out bills from Pennie and Edmonds.

6 BY MR. SUH:

7 Q. And you don't have any personal knowledge  
8 as to whether these bills were in fact billed.

9 Correct?

10 MS. PASCAL: Objection, form.

11 THE WITNESS: I find that a peculiar  
12 question. In a large complex organization like a  
13 law firm there is lots of things I may not have  
14 personal knowledge of, but I believe they actually  
15 happened. I mean, I believe the firm sends out  
16 bills, even though I don't personally do that  
17 myself.

18 BY MR. SUH:

19 Q. So the bills that I'm talking about are  
20 Exhibit Nos. 2010, 2049 and 2050. And you don't  
21 have personal knowledge as to whether these were in  
22 fact billed.

23 Correct?

24 MS. PASCAL: Objection, form. And  
25 objection, relevance.

1 THE WITNESS: I mean, I'll answer the  
2 question using what I believe is common sense. Yes,  
3 it's correct, I did not personally supervise the  
4 process of sending these bills out.

5 But I think it would strain credulity if I  
6 were to say these bills didn't get sent out, you  
7 know, if that follows from me having no personal  
8 knowledge of these documents being prepared.

9 BY MR. SUH:

10 Q. And you don't have -- you don't have  
11 personal knowledge as to whether SurfCast paid these  
12 bills, Exhibit Nos. 2010, 2049, and 2050, in 1999.

13 Correct?

14 MS. BOYD: Objection.

15 MS. PASCAL: Objection.

16 MS. BOYD: Relevance.

17 MS. PASCAL: And form.

18 THE WITNESS: Again, my role at Pennie and  
19 Edmonds, I was not concerned with accounting  
20 matters.

21 So again, I have no personal -- I have no  
22 personal knowledge of almost any client actually  
23 transmitting money into the firm, although again,  
24 I'm, you know, working in an operating business. I  
25 assume that the firm is getting paid on the invoices

1 it sends out. It has ways of taking appropriate  
2 action if that's not the case.

3 And SurfCast remained a client of the firm  
4 throughout the years I spent there.

5 BY MR. SUH:

6 Q. Okay. Thank you.

7 So if you can turn back to Exhibit 2008?  
8 If you turn to page 9, you mention a lot of numbers  
9 related to SurfCast, and I'll read the numbers:  
10 9982-0009-999, and the second number is  
11 9982-0009-888, and the third number is  
12 9982-0005-999, and the fourth number I see is  
13 9982-0002-999.

14 Were there any other numbers for SurfCast,  
15 or is this it?

16 A. There were other matter numbers for  
17 SurfCast that I personally did not work on.

18 Q. And page 9 says, page 9 of Exhibit 2008  
19 says "Pennie firm's unique client number for  
20 SurfCast is 09982."

21 Correct?

22 MS. BOYD: Objection.

23 THE WITNESS: We would write either four  
24 digits, 9982, or with a leading zero making five  
25 digits. Either is used interchangeably.

1 BY MR. SUH:

2 Q. Okay. And the numbers following 9982,  
3 were these numbers for different tasks that SurfCast  
4 asked Pennie to undertake?

5 MS. BOYD: Objection, form.

6 THE WITNESS: Yes. The numbers following  
7 the hyphen after 9982 relate to different matters.

8 BY MR. SUH:

9 Q. So what were the different tasks?

10 MS. PASCAL: Objection.

11 MS. BOYD: Objection.

12 MS. PASCAL: Form.

13 THE WITNESS: Are you asking me about these  
14 numbers or any number?

15 BY MR. SUH:

16 Q. The four numbers that you mention in your  
17 declaration.

18 A. Okay. So 9982-00 -- 0009-999 referred to  
19 a utility patent application. 9982-0009-888  
20 referred to a provisional patent application.  
21 9982-0005-999 related I think to an opinion matter.  
22 9982-0002-999 related to a general billable matter,  
23 and sometimes -- sometimes called general corporate.

24 Q. So your task, Pennie's task included  
25 general corporate matters. Is that correct? Just

1 wanted to understand what you just said when you  
2 said general corporate.

3 A. That is correct.

4 Q. And did it also include trademark matters?

5 A. Yes, it did.

6 Q. What about financing?

7 A. I don't know specifically.

8 Q. Let's go to Exhibit 2010 -- 2010 on page  
9 13. And the second description is "series of  
10 financing."

11 Do you see that?

12 A. You see page 13?

13 Q. Page 13.

14 A. Oh, "Series." It's highlighted. Okay.  
15 "Series A financing," it says.

16 Q. What was this about?

17 MS. BOYD: Objection, relevance.

18 MS. PASCAL: Lacks foundation.

19 THE WITNESS: I don't know. I have no  
20 specific recollection of working on that matter.

21 BY MR. SUH:

22 Q. Is this matter for SurfCast?

23 MS. PASCAL: Same objection.

24 THE WITNESS: I believe it is.

25 BY MR. SUH:

1 Q. So you agree that SurfCast engaged Pennie  
2 for other matters in addition to preparing a patent  
3 application.

4 Is that correct?

5 A. That is correct.

6 Q. In page 9, if you can go back to  
7 Exhibit 2008? Page 9? On page 9 you say 9982 --

8 A. Yes.

9 Q. -- dash 0009-999 is for preparation of  
10 patent application.

11 Do you see that?

12 A. Second -- second and third line of the  
13 page?

14 Q. And you agree that other matter numbers  
15 are not for preparation of patent application.

16 Correct?

17 MS. PASCAL: Objection, form, lacks  
18 foundation.

19 MS. BOYD: Irrelevant.

20 THE WITNESS: The matter that ends in 888  
21 would have been used for preparation of a  
22 provisional patent application.

23 BY MR. SUH:

24 Q. So I can rephrase my question.

25 Do you agree that matter numbers other

1       than 9982-0009-999 or 9982-0009-888, other than  
2       these two numbers, the other matter numbers are not  
3       for preparation of patent application.

4               Is that correct?

5               MS. PASCAL: Objection, form, lacks  
6       foundation.

7               THE WITNESS: That is correct.

8               BY MR. SUH:

9               Q.    Do you agree that matter numbers that do  
10       not start with 9982-0009 are not related to patents  
11       at all.

12               Correct?

13               MS. BOYD: Objection.

14               MS. PASCAL: Objection, form.

15               THE WITNESS: Can you repeat the question,  
16       please?

17               BY MR. SUH:

18               Q.    Matter numbers that do not start with  
19       9982-0009 are not related to preparing patents at  
20       all?

21               MS. PASCAL: Objection, form.

22               THE WITNESS: I don't agree with that  
23       statement.

24               BY MR. SUH:

25               Q.    Why is that?

1           A.     Because that statement encompasses almost  
2     any other matter that the firm has.  If it does not  
3     start with 9982 it pertains to other clients and  
4     therefore --

5           Q.     No, no.  9982-0009.

6           MS. PASCAL:  Objection, form.

7           THE WITNESS:  Of the numbers that are  
8     referenced in this document, the only ones that  
9     pertain to patent applications are the ones that  
10    begin with 9982-0009.

11          BY MR. SUH:

12          Q.     Okay.  Thank you.

13                 Was it your practice to enter the time  
14    under the correct billing number?

15          A.     That was my habit.  I mean, I can't say  
16    that I did not make occasional clerical errors, but  
17    I think the overwhelming majority of the time that  
18    is what I did.

19          Q.     Did you review your time entries before  
20    they were sent out to the client?

21          A.     I reviewed them before they were sent to  
22    the partner for review, the partner being the person  
23    who sends out the bill.

24          Q.     And do you have any reason to believe that  
25    any of these entries in your notebook are

1 inaccurate?

2 A. I do not.

3 Q. Page 8 of, if we can go back to  
4 Exhibit 2035, if you go the page 8? It's the entry  
5 for June 22nd, 1999.

6 MS. PASCAL: I'm sorry, Counsel, what page?

7 MR. SUH: Page 8.

8 THE WITNESS: May I just modify my previous  
9 answer? You asked me if I believe any of these are  
10 inaccurate, other than for a minor clerical error.

11 MR. SUH: Okay.

12 THE WITNESS: Yes.

13 BY MR. SUH:

14 Q. And page 8 of Exhibit 2035 has an entry  
15 under 992-0005?

16 A. Yes.

17 Q. 999. And the description is "Writing"  
18 plus "Web searching."

19 A. Yes.

20 Q. And if you turn to page 9 of the same  
21 exhibit, it has an entry under 9982-0009-999 with a  
22 description "Writing/Web Searching."

23 Do you see that?

24 A. Yes.

25 Q. Is there any difference between writing

1 plus Web searching and writing hyphen Web searching?

2 MS. PASCAL: Objection, form.

3 THE WITNESS: I don't have a recollection  
4 of why those terms were written differently, or  
5 whether there was an intent that there was a  
6 different meaning from writing them differently.

7 BY MR. SUH:

8 Q. You agree that what you did on June 22nd  
9 and June 23rd were different enough to be billed  
10 under different matter numbers?

11 A. I believe this may be either -- either one  
12 of the minor clerical errors that I previously  
13 referred to or it may be that at that time I had  
14 been with the firm for looks like six or seven days,  
15 I may have just lacked clarity about which matter I  
16 was working on.

17 Q. Looking at these two entries, you can't  
18 say, tell whether these are accurate entries.

19 Correct?

20 A. No, I disagree.

21 MS. BOYD: Objection.

22 BY MR. SUH:

23 Q. Why is that?

24 A. Because I was not in the habit of writing  
25 things down inaccurately.

1 Q. So can you -- so then why did you use  
2 different billing numbers for what appears to be  
3 identical activities?

4 MS. BOYD: Objection. Argumentative.

5 THE WITNESS: I think I have already  
6 answered this question, but I'll say this, I will  
7 say it again.

8 MR. SUH: Okay.

9 THE WITNESS: I think that as you can see  
10 from the dates, this, you know, this actually is the  
11 fifth working day I'm with the firm. It's possible  
12 that I didn't fully understand at that time how to  
13 apportion my time for different projects, and you  
14 know, I may not have actually been aware that there  
15 was a separate number at that time for the patent  
16 application from the opinion matter, and that may  
17 have been clarified to me literally overnight from  
18 the 22nd or 23rd of June.

19 But again, I'm speculating a little bit  
20 here. But I don't looking at these entries have  
21 cause to believe that these are, you know,  
22 fundamentally inaccurate.

23 BY MR. SUH:

24 Q. You agree that you can't tell what you did  
25 on these dates based on these descriptions alone,

1       then.

2                   Correct?

3           A.    I disagree.

4                   MS. BOYD: Objection.

5                   THE WITNESS: I disagree.

6                   BY MR. SUH:

7           Q.    So can you tell me what you specifically  
8       did on these two dates?

9                   MS. BOYD: Caution the witness not to  
10       reveal attorney-client communications or attorney  
11       work product.

12                  MR. SUH: You can answer.

13                  THE WITNESS: I believe in general terms  
14       that I was writing portions of a patent application  
15       and I was also carrying out some searching on the  
16       Internet related to that.

17                  BY MR. SUH:

18           Q.    Do you have any evidence of what you  
19       specifically did on this date?

20                  MS. BOYD: Objection.

21                  THE WITNESS: I believe this logbook is  
22       evidence of what I did on that day.

23                  BY MR. SUH:

24           Q.    Other than this logbook, do you have any  
25       evidence of what you did on this day?

1 MS. PASCAL: Same objection.

2 THE WITNESS: Me personally? I don't  
3 believe I have other materials from that time.

4 BY MR. SUH:

5 Q. Did you have any communications with  
6 SurfCast on these two dates?

7 A. I don't specifically recall.

8 Q. Is there any reason you would be looking  
9 for patents that are not prior art to that  
10 application?

11 MS. PASCAL: Objection, lacks foundation,  
12 form.

13 THE WITNESS: I don't have a specific  
14 recollection.

15 BY MR. SUH:

16 Q. When you were looking for prior art, you  
17 did determine whether the SurfCast application  
18 included patentable subject matter.

19 Is that correct?

20 MS. BOYD: Objection.

21 THE WITNESS: I believe that's covered by  
22 attorney-client privilege and attorney work product.

23 BY MR. SUH:

24 Q. Your counsel have not objected based on  
25 attorney-client privilege.

1 MS. BOYD: Sir, if we have to get the Board  
2 on the phone to clarify that an attorney witness can  
3 assert attorney-client privilege, we can certainly  
4 do that. But I doubt that you would like to do  
5 that.

6 MR. MICALLEF: Excuse me, this is Joe  
7 Micallef. I don't have any problem if you'd like to  
8 do that. I think it's important for a clear record  
9 of whether or not a privilege is being asserted. I  
10 don't think it's a lot to ask for the counsel who is  
11 defending to actually assert a privilege.

12 MS. BOYD: Okay.

13 MR. MICALLEF: Do you want to go off the  
14 record and discuss it?

15 MS. PASCAL: No. If you want us to echo  
16 it, as long as it's clear that --

17 MR. SUH: I want the record to be clear.

18 MS. PASCAL: Can I finish my sentence?

19 All I'm saying, so we are all on the same  
20 page, is it's, you know, clear that Mr. Bone -- or  
21 Dr. Bone, excuse me -- can make his record when he  
22 feels he needs to protect privilege of one or more  
23 of his clients. And if you want his counsel or  
24 SurfCast counsel or both to echo it, as long as we  
25 are on that same page, we shall do so.

1 MR. MICALLEF: That's what I'm asking for.

2 Thank you.

3 MS. PASCAL: Okay. Objection, privilege.

4 MS. BOYD: Objection and instruction  
5 privilege.

6 BY MR. SUH:

7 Q. Did you work on any non-patent application  
8 matters for SurfCast?

9 MS. BOYD: Objection, form.

10 THE WITNESS: I believe that you can say  
11 that some of these entries under 9982-0005-999 I  
12 probably characterized or may have characterized at  
13 the time as being more closely related to the -- the  
14 opinion matter than to the patent application.

15 But to the best of my recollection, I  
16 considered those activities to be essentially  
17 unified in my head.

18 BY MR. SUH:

19 Q. You say opinion matter. Can you explain  
20 more about that?

21 MS. BOYD: Objection, privilege.

22 THE WITNESS: I believe it's listed in one  
23 of the invoices, and that is the only description I  
24 can really give you.

25 Well, actually, it's in my -- excuse me.

1 BY MR. SUH:

2 Q. Are you talking about --

3 MS. PASCAL: Excuse me, let him finish.

4 THE WITNESS: I'm talking about in fact  
5 Exhibit 2008, my declaration. If you look at  
6 paragraph 18 on page 9, this basically states what  
7 that matter referred to.

8 BY MR. SUH:

9 Q. So if I understand correctly, the opinion  
10 was for a patentability assessment and prior art  
11 search.

12 Is that correct?

13 A. That's correct.

14 Q. And you prepared an opinion on that.

15 Correct?

16 A. I did not personally prepare an opinion.

17 Q. And why is that an opinion matter? I'm  
18 just confused.

19 MS. PASCAL: Objection.

20 THE WITNESS: The matter was opened and  
21 established before I joined Pennie and Edmonds, and  
22 that is how the matter was designated when it was  
23 opened and established.

24 BY MR. SUH:

25 Q. Well, do you know the purpose of that

1 matter?

2 MS. BOYD: Objection.

3 MS. PASCAL: Objection, and objection to  
4 the extent it calls for privilege.

5 THE WITNESS: I can repeat to you what I  
6 put in my declaration. It's a separate matter  
7 number established for a patentability assessment  
8 and prior art search carried out for the invention  
9 described in the patent application.

10 BY MR. SUH:

11 Q. Okay. Other than that, did you work on  
12 any other non-patent application matters for  
13 SurfCast?

14 A. There may be some entries under this  
15 0002-999 matter, and I may have put time on that if  
16 for instance I was sitting in a meeting for SurfCast  
17 where the discussion may not have been about the  
18 patent or something like that.

19 But that's not very much of the time that  
20 I spent.

21 Q. So you mentioned 9982-0002-999. And if  
22 you can turn to Exhibit 2010, page 1, I think this  
23 is what you are referring to.

24 A. Yes.

25 Q. You agree that this number is not the

1 number for preparation of patent application.

2 Correct?

3 MS. PASCAL: Objection.

4 THE WITNESS: That's correct.

5 BY MR. SUH:

6 Q. The same activity appears in what I'm  
7 going to hand out to you, which is Exhibit 2052.

8 (Whereupon, Exhibit 2052 was marked  
9 for identification)

10 MR. SUH: It seems thicker. Thicker page.

11 MS. BOYD: Here.

12 THE WITNESS: Thank you.

13 BY MR. SUH:

14 Q. So I just handed out to you  
15 Exhibit No. 2052. And can you please turn to page 8  
16 of Exhibit 2052?

17 A. Okay.

18 Q. On October 26 there is this entry "Met  
19 with Mr. Dechaene, Dr. Lovejoy to discuss current  
20 status of patent filings."

21 Do you see that?

22 A. I see that.

23 Q. You agree that Exhibit 2052 includes  
24 activities that cannot be categorized as preparation  
25 of patent application.

1 Correct?

2 MS. BOYD: Objection.

3 MS. PASCAL: Objection.

4 MS. BOYD: Argumentative, form, calls for  
5 legal conclusion.

6 THE WITNESS: What's your basis for that  
7 question?

8 BY MR. SUH:

9 Q. You just -- I think you just testified  
10 that 9982-0002-999 is not a number for, quote,  
11 preparation of patent application, end quote.

12 MS. BOYD: Objection, form.  
13 Mischaracterization.

14 THE WITNESS: That's correct.

15 BY MR. SUH:

16 Q. And this entry seems to correspond to what  
17 was listed in Exhibit 2052.

18 A. Yes, that's correct. But if you look on  
19 the same day in Exhibit 2052, I have -- I have an  
20 entry for revised figures and streamlined claims,  
21 spoke with Mr. Galliani, and that clearly is  
22 connected with preparing the patent application.  
23 And that's on the same day.

24 Q. No, that's not my question.

25 My question is, Exhibit 2052 includes

1 activities that cannot be categorized as preparation  
2 of patent application.

3 MS. BOYD: Objection.

4 MS. PASCAL: Objection. Form.

5 MS. BOYD: Argumentative.

6 MS. PASCAL: Relevance.

7 THE WITNESS: It seems to include this one  
8 activity. I don't know of any other activities that  
9 meet your description.

10 BY MR. SUH:

11 Q. So you agree that this activity cannot be  
12 categorized as preparation of patent application.

13 Correct?

14 MS. BOYD: Can you please just read which  
15 activity you are talking about? Because I have lost  
16 track of it.

17 MR. SUH: Okay. I can repeat. It's page 8  
18 of Exhibit 2052, the entry under October 26th where  
19 it says "Met with Mr. Dechaene, Dr. Lovejoy, to  
20 discuss current status of patent filings."

21 MS. BOYD: Thank you.

22 THE WITNESS: So I believe I do have memory  
23 of that meeting where Mr. Dechaene came to our  
24 office, and I believe that speaking with him and  
25 discussing, you know, the status and progress of the

1 patent application, although I made a judgment call  
2 at the time to put it on matter 0002, I don't  
3 believe that's separate and distinct from working on  
4 the patent application.

5 BY MR. SUH:

6 Q. So what did you say during the meeting?

7 MS. BOYD: Objection.

8 MS. PASCAL: Objection. Privileged.

9 MS. BOYD: Calls for attorney-client  
10 privileged communication. Instruct the witness not  
11 to answer.

12 THE WITNESS: That's correct. That would  
13 be an attorney-client privileged communication.

14 BY MR. SUH:

15 Q. So why did you bill this entry under  
16 general billing matter rather than under the matter  
17 number specifically for preparation of patent  
18 application?

19 MS. PASCAL: Objection, relevance.

20 MS. BOYD: Objection, argumentative.

21 THE WITNESS: I don't have a specific  
22 recollection of why, but I can only speculate that I  
23 just decided I would do that based maybe on the  
24 majority of discussion. I don't exactly remember.

25 BY MR. SUH:

1 MS. BOYD: If there is a convenient time to  
2 take a short break?

3 MR. SUH: Yeah. Can we --

4 THE WITNESS: Well, I would add one  
5 sentence to my answer, then we can break.

6 MR. SUH: Sure.

7 THE WITNESS: I mean, it is clear from my  
8 recollection that Mr. Dechaene stopped by the office  
9 in large part to discuss the patent application, and  
10 therefore I think that this is appropriately  
11 considered as something connected with the filing  
12 and preparation of the patent application.

13 BY MR. SUH:

14 Q. So during the meeting, did you actually  
15 draft the patent application with him?

16 MS. PASCAL: Objection. Form.

17 THE WITNESS: I have told you I don't  
18 have -- or rather, the content of what was discussed  
19 at the meeting is protected by the attorney-client  
20 privilege.

21 BY MR. SUH:

22 Q. No, my question was not asking you the  
23 content of what was discussed. Did you draft the  
24 patent application during the meeting, was the  
25 question.

1 MS. BOYD: Objection.

2 THE WITNESS: Based on the best of my  
3 recollection, I was not sitting in that room with  
4 him drafting the patent application.

5 BY MR. SUH:

6 Q. Okay. Are you done?

7 A. I'm done.

8 MR. SUH: Okay. We can take a break.

9 THE VIDEOGRAPHER: Okay. Off the record,  
10 the time is 10:15 -- 10:16.

11 (Whereupon, a recess was taken  
12 commencing at 10:16 A.M. and  
13 concluding at 10:30 A.M.)

14 THE VIDEOGRAPHER: We are back on the  
15 record. This is the beginning of volume one,  
16 videotape number two in the deposition of  
17 Dr. Richard Bone. The time is 10:30.

18 BY MR. SUH:

19 Q. So I want to go back the our previous  
20 question and revisit whether you had any type of  
21 contingency fee arrangement with SurfCast for the  
22 main litigation.

23 MS. PASCAL: Objection, relevance.

24 THE WITNESS: Okay. So I believe I have  
25 permission to waive the privilege on this.

1 MS. BOYD: It's not a waiver of privilege,  
2 it's -- it's a non-assertion of privilege.

3 MS. PASCAL: Correct.

4 THE WITNESS: Thank you. Okay.

5 My fee agreement with SurfCast is  
6 structured in this way. I bill my services out  
7 month by month at my regular hourly rate.

8 If SurfCast is successful in litigation in  
9 Maine in collecting an award based on patent  
10 infringement, then I would then be eligible for a  
11 bonus which is tied to the number of hours that I  
12 have billed for SurfCast for the duration of my  
13 representation.

14 So it has a multiplying factor on my  
15 billable hour rate.

16 BY MR. SUH:

17 Q. Do you have a similar contingency fee  
18 arrangement with SurfCast in connection with the  
19 IPR?

20 A. Not separately. My fee agreement with  
21 SurfCast is for all my services, regardless of what  
22 it's in connection with.

23 Q. Thank you.

24 So if you can turn back to Exhibit 2008?  
25 You list a number of matters that you worked on.

1 And the first one shows, appears on page 11, the  
2 invalidity opinion.

3 A. Yes, I see that.

4 Q. Can you explain generally what this matter  
5 relates to?

6 MS. BOYD: I'll caution the witness to not  
7 disclose any attorney-client privileged  
8 communications.

9 THE WITNESS: Understood. Thank you.

10 I can say generally that it was a -- an  
11 opinion for a client of invalidity of a third party  
12 U.S. patent.

13 BY MR. SUH:

14 Q. Was it related to SurfCast?

15 A. Not at all.

16 Q. When did you finish this project?

17 MS. PASCAL: Objection, form.

18 THE WITNESS: I will refresh my memory of  
19 that by looking at Exhibit 2008.

20 (Pause)

21 THE WITNESS: In paragraph 38 on page 17 it  
22 looks like the opinion was finalized on October  
23 18th, 1999.

24 BY MR. SUH:

25 Q. And if you can turn to page 12, you

1 mentioned the Hydrogen Exchange Portfolio.

2 A. Yes.

3 Q. Can you explain generally what this matter  
4 related to?

5 A. It's a portfolio of patent applications  
6 that was owned by a client of Pennie and Edmonds.

7 Q. Was it related to SurfCast?

8 A. No.

9 Q. When did you finish this project?

10 A. It's not a single project. It's -- it's a  
11 patent portfolio. It has multiple matters within  
12 it. And I continued to work on it until -- well,  
13 two or three years later, I think.

14 Q. So you said multiple matters. Do you know  
15 roughly how many matters were in that portfolio?

16 MS. BOYD: Objection.

17 MS. PASCAL: Objection.

18 MS. BOYD: Relevance.

19 MS. PASCAL: Objection, relevance.

20 MS. BOYD: And I'll caution the witness on  
21 attorney-client privilege.

22 THE WITNESS: Uh-huh.

23 I believe that most of the patent matters  
24 in that portfolio became published through the U.S.  
25 PTO. Recollection is there were six to ten matters.

1 BY MR. SUH:

2 Q. Six to ten matters.

3 And on page 13 you mentioned  
4 Antimicrobials Portfolio. Can you generally explain  
5 what this matter related to?

6 A. The Antimicrobials Portfolio? It is  
7 another portfolio of patent applications owned by  
8 another client of Pennie and Edmonds.

9 Q. Was this related to SurfCast?

10 A. No.

11 Q. And when did you finish this project?

12 A. Same answer. It's a portfolio of patent  
13 applications in this case U.S. and foreign, lot of  
14 ongoing matters were in it. So there isn't a finish  
15 point. It was ongoing.

16 Q. Do you recall roughly how many matters  
17 there were in this project?

18 A. That portfolio was quite large. Possibly  
19 50 or more matters.

20 Q. Now, the last one you mentioned was on the  
21 same page, the Macromolecular Design Application.

22 A. Yes.

23 Q. Can you explain what this matter generally  
24 related to?

25 A. That was a patent application owned by

1 a -- I think I say here a European research  
2 laboratory.

3 Q. And was this related to SurfCast?

4 A. No.

5 Q. And when did you finish this project?

6 A. I will refer to my declaration. Paragraph  
7 30 on page 14, the application was filed on August  
8 31st, 1999.

9 Q. So these four, among these four different  
10 matters that are not related to SurfCast, did  
11 anybody tell you to work on one rather than the  
12 other on a given date?

13 MS. PASCAL: Objection, form.

14 THE WITNESS: I don't specifically recall  
15 anybody saying to me you have to work on project X,  
16 but not on project Y.

17 However, at various time periods it became  
18 necessary to work on one project due to an imminent  
19 or urgent deadline, and therefore work on other  
20 projects could not be carried out with the same  
21 level of commitment on that day or several days.

22 BY MR. SUH:

23 Q. So similar, but slightly different. Did  
24 anybody tell you to work on these matters rather  
25 than the SurfCast matter on any given day?

1 MS. PASCAL: Objection.

2 MS. BOYD: Objection, form.

3 THE WITNESS: I have no recollection of  
4 anybody ever saying that to me.

5 BY MR. SUH:

6 Q. From June 29th to October 29th, 1999, did  
7 you have an unreasonable backlog of work that  
8 prevented you to diligently draft the SurfCast  
9 patent application?

10 MS. PASCAL: Objection, form, lacks  
11 foundation.

12 THE WITNESS: I don't believe I had an  
13 unreasonable backlog. I want to refer you to my  
14 declaration again, if you just give me a minute,  
15 refresh my memory.

16 (Pause)

17 A. Paragraphs 14 and 15 on pages 6 and 7.

18 Q. Page --

19 A. Paragraphs 14 and 15.

20 Q. 14 and 15.

21 A. These explain that, in paragraph 14 I  
22 explain that the types of projects I was working on  
23 had different types of due dates on them.

24 And paragraph 15 explains that during that  
25 period of time from the day I started at Pennie and

1 Edmonds on June 16th onwards, at least for several  
2 months I was essentially ramping up and taking on a  
3 lot of different projects in order to fill my docket  
4 out.

5 Q. So if I understand correctly, from June  
6 29th to October 29th you did not have an  
7 unreasonable backlog.

8 Is that correct?

9 MS. PASCAL: Objection, form.

10 THE WITNESS: Can you define what you mean  
11 by unreasonable backlog?

12 BY MR. SUH:

13 Q. Did you have a backlog of work?

14 MS. BOYD: Objection.

15 MR. SUH: Ask that.

16 THE WITNESS: I don't think there was a  
17 backlog, no.

18 BY MR. SUH:

19 Q. So you mentioned page 7, paragraph 14.  
20 You say "It was not necessarily possible to take on  
21 work strictly chronologically in the sense of  
22 managing an initial influx of work."

23 So here you agree that the SurfCast  
24 application invalidity opinion on page 11, the  
25 Hydrogen Exchange Portfolio on page 12, the

1 Antimicrobials Portfolio on page 13, and the  
2 Macromolecular Design Application on page 13, were  
3 not taken up in chronological order.

4 Correct?

5 MS. BOYD: Objection.

6 MS. PASCAL: Objection. Lacks foundation,  
7 form.

8 THE WITNESS: The way you are putting it is  
9 an oversimplification. As I explained at least with  
10 respect to the two portfolios, each of those  
11 portfolios has within it a number of matters with a  
12 number of due dates. Many of those due dates were  
13 set prior to my involvement with the project.

14 BY MR. SUH:

15 Q. So why did you make the statement where  
16 you say "Work on a given project can often be --"  
17 I'm sorry, I'm looking at something else.

18 "It was not necessarily possible to take  
19 on work strictly chronologically in the sense of  
20 managing an initial influx of work." Why did you  
21 make that statement?

22 MS. BOYD: Objection, form, calls for  
23 attorney work product. Caution the witness not to  
24 disclose that work product.

25 THE WITNESS: It's consistent with

1 everything else I'm telling you in the sense that I  
2 could be given projects on two consecutive days, but  
3 the due dates for each of them may be different from  
4 one another.

5 BY MR. SUH:

6 Q. So these were not taken up in  
7 chronological order.

8 Correct?

9 MS. BOYD: Objection.

10 MS. PASCAL: Objection, form and  
11 foundation, mischaracterizes testimony.

12 THE WITNESS: What do you mean by  
13 chronological order?

14 BY MR. SUH:

15 Q. What I mean is your first assignment at  
16 Pennie was a SurfCast patent application.

17 Is that correct?

18 A. I would have to check my logbook and see  
19 if that's correct.

20 Q. Do you know if the invalidity opinion was  
21 assigned to you before the SurfCast patent  
22 application?

23 A. I know that my first discussion on that  
24 project was after I started work on SurfCast, but it  
25 may have been assigned to me before that. I don't

1 know.

2 Q. Do you have any records showing that this  
3 was assigned to you before you were assigned the  
4 SurfCast patent application?

5 A. I do not.

6 Q. So did you start the invalidity opinion  
7 before you finished drafting the SurfCast  
8 application?

9 A. I started work on that project, yes,  
10 before the SurfCast application was complete.

11 Q. So you agree that the SurfCast application  
12 and the invalidity opinion were not taken up in  
13 chronological order.

14 Correct?

15 MS. BOYD: Objection, form.

16 MS. PASCAL: Objection, form, lacks  
17 foundation, mischaracterizes testimony, asked and  
18 answered.

19 THE WITNESS: I don't understand the  
20 question. I have -- could you please restate?

21 BY MR. SUH:

22 Q. Okay. Let's go back to page 7 of your  
23 declaration. What did you mean when you say  
24 chronological?

25 A. I can read back to you what it says here.

1 Q. No. My question is, what did you mean  
2 when you say, chose the word "chronological"?

3 A. Again, the meaning is provided by the  
4 second half of the sentence in the sense of managing  
5 an initial influx of work according to the most  
6 immediate due dates.

7 Q. So chronological order means in time order  
8 as they come in.

9 Is that correct?

10 MS. BOYD: Objection.

11 MS. PASCAL: Objection.

12 THE WITNESS: Well, I'll think about that.

13 (Pause)

14 THE WITNESS: I don't talk here about the  
15 time they come in. What do you mean by the time  
16 they come in?

17 BY MR. SUH:

18 Q. Well, you mentioned initial influx.

19 A. Yes.

20 Q. That means the time they come in?

21 A. Does it?

22 MS. BOYD: Objection.

23 BY MR. SUH:

24 Q. What does it mean, then?

25 A. I believe that means time it is assigned

1 to me.

2 Q. Okay. So did you work on these five  
3 matters, the SurfCast application, invalidity  
4 opinion, Hydrogen Exchange Portfolio, Antimicrobials  
5 Portfolio, and Macromolecular Design Application in  
6 a chronological order in the sense of managing an  
7 initial influx of work?

8 MS. BOYD: Objection, form.

9 THE WITNESS: I think I have already stated  
10 that in this paragraph of the declaration. I said  
11 it was not necessarily possible to do that.

12 BY MR. SUH:

13 Q. So is that a no? Just wanted to clarify  
14 for the record.

15 A. I can't tell you about the absolute  
16 ordering of any one project relative to the others.  
17 But I can say that in -- in -- in general terms that  
18 I might have started work on a later project before  
19 completing an earlier project. That's correct.

20 BY MR. SUH:

21 Q. So you said might have. So you agree that  
22 you don't know as a matter of fact that you worked  
23 on it in the order it came to you.

24 Correct?

25 MS. PASCAL: Objection, form.

1 THE WITNESS: You can see from this  
2 declaration and the time entry narratives that many,  
3 if not most of these projects ongoing and receive  
4 attention over several weeks, if not two or three  
5 months. And I'm working on each of them over those  
6 periods of time.

7 BY MR. SUH: I understand.

8 THE WITNESS: And they get started, they  
9 get -- the first action occurs on different days and  
10 they get finished to the extent that finished can be  
11 ascribed to some of them on different days.

12 I don't see that as -- I don't see that as  
13 inconsistent with what I'm saying in this  
14 declaration.

15 BY MR. SUH:

16 Q. Do you know the order in which any of  
17 these matters were assigned to you?

18 MS. PASCAL: Objection, form.

19 THE WITNESS: By -- I can tell you by  
20 looking at the time entry book what was the first  
21 day that I might have talked about a given matter.

22 BY MR. SUH:

23 Q. So could you --

24 A. Or --

25 Q. Sorry.

1           A.     Worked on a given matter.

2           Q.     Yeah.  Could you tell me the order in  
3     which these given matters were assigned to you?

4           MS. BOYD:  Objection, form.

5           THE WITNESS:  I would have to --

6           MS. PASCAL:  Objection, best evidence.

7           Sorry.

8           THE WITNESS:  I would have to look at this  
9     declaration and give you the time entry.

10          MR. SUH:  Sure.

11          THE WITNESS:  All right.  Excuse me.

12          (Pause)

13          MS. BOYD:  Jot down as you are figuring  
14     things out.

15          (Pause)

16          THE WITNESS:  Is your -- is your question,  
17     just to refresh my memory, that you wanted to know  
18     the first date I worked on each of these projects?

19          MR. SUH:  That's right.

20          THE WITNESS:  Okay.  Based on the redacted  
21     book?

22          MR. SUH:  Yes.

23          THE WITNESS:  I can't tell necessarily with  
24     precision.  I believe that the dates are  
25     approximately June 18, 1999 for SurfCast, June 29

1 for the invalidity opinion, July 23rd for the  
2 Hydrogen Exchange and the Antimicrobials.

3 But I feel confident in my recollection  
4 that that date is actually earlier for both of  
5 those.

6 BY MR. SUH:

7 Q. Oh, can you repeat the last date?

8 A. July 23rd.

9 Q. July 23rd. And --

10 A. And August 4th for the Macromolecular  
11 Design Application, which I will clarify it's  
12 actually a utility application, it's not a patent  
13 design application.

14 Q. So these were the dates that you were  
15 assigned each of these projects.

16 Correct?

17 MS. BOYD: Objection, misstates the  
18 witness' testimony.

19 MS. PASCAL: And objection, best evidence.

20 THE WITNESS: Again, I'm not saying when  
21 they were assigned to me. I'm saying what I believe  
22 is the first day I either worked on the project or  
23 discussed them with a supervising attorney.

24 BY MR. SUH:

25 Q. So do you know when any of these matters

1 were assigned to you?

2 A. I do not.

3 Q. But you would agree that you were assigned  
4 the SurfCast application at least by June 18th.

5 Correct?

6 A. Well, again, I started discussing it on  
7 June 18th. You know, whether somebody had assigned  
8 it to me before that day, as an example, knowing I  
9 was going to join the firm, I don't know.

10 Q. Can you turn to page 4 of Exhibit 2035?

11 A. Yes.

12 Q. I'm sorry, I have got the wrong page  
13 number.

14 Page -- actually, it's page 11 of  
15 Exhibit 2008. Here you say you worked on writing  
16 initial drafts of the background figures and  
17 descriptions of figures for the SurfCast application  
18 until June 28th, 1999.

19 Then you say you took on two new projects  
20 from June 29th, 1999.

21 Correct?

22 MS. PASCAL: Objection, mischaracterizes  
23 document. Best evidence.

24 THE WITNESS: Can you just point me to the  
25 sentences you are relying on, please?

1 BY MR. SUH:

2 Q. Yeah. So there is, if you go to paragraph  
3 23?

4 A. Okay.

5 Q. "From June 29th to July 1, I worked  
6 principally on projects for two clients other than  
7 SurfCast."

8 Do you see that?

9 A. Yes.

10 Q. And June 29th, 1999 is the first day you  
11 worked on invalidity opinion and the Hydrogen  
12 Exchange Portfolio.

13 Correct?

14 MS. PASCAL: Objection, best evidence.

15 MS. BOYD: Objection, misstates the  
16 witness' testimony.

17 THE WITNESS: Okay, you're right. So in my  
18 answer to one of your earlier questions I had said  
19 July 23rd for the Hydrogen Exchange Portfolio, I  
20 missed this, so I would revise that answer to be  
21 June 29th.

22 BY MR. SUH:

23 Q. Thank you.

24 Isn't it correct that you were tasked to  
25 draft the SurfCast patent application before being

1 asked whether you could take on the invalidity  
2 opinion and the Hydrogen Exchange Portfolio?

3 A. Again, I have answered this question  
4 before. I don't know specifically when a given  
5 supervising attorney at Pennie and Edmonds decided  
6 they wanted me to work on a project. I can only  
7 tell you from my time entry logs when I first have  
8 noted that I discussed or entered time related to  
9 work on the project.

10 BY MR. SUH:

11 Q. So if I understand, understand correctly,  
12 you are telling me that you don't have any records  
13 showing the specific dates when any of the cases  
14 were assigned to you.

15 Is that correct?

16 MS. PASCAL: Objection.

17 THE WITNESS: I'm sorry.

18 That's correct, yes.

19 BY MR. SUH:

20 Q. And you don't have docketing records  
21 showing these dates, the dates in which these five  
22 cases were assigned to you.

23 Correct?

24 MS. PASCAL: Objection.

25 MS. BOYD: Objection, form.

1 THE WITNESS: That's correct, I don't know.

2 BY MR. SUH:

3 Q. Can you turn to page 13 of Exhibit 2008?

4 You say "I additionally began with assisting the  
5 drafting of a utility patent application for a  
6 complex invention in computer simulated prediction  
7 of protein structures through a European research  
8 laboratory," quote, "The Macromolecular Design  
9 Application," end quote. "This application had a  
10 bar date of August 31st, 1999, and I worked with law  
11 clerks in the Palo Alto and New York offices of the  
12 Pennie firm and one attorney in the New York office  
13 to complete the application."

14 And you cite to Exhibit 2035 at page 46  
15 and 47, which points to August 2nd and 3rd of 1999  
16 of your logbook.

17 Is that correct?

18 A. Right. So I would revise also then my  
19 answer to the previous question that August 2nd and  
20 3rd would be the first day I worked on this as  
21 opposed to August 4th.

22 Q. Was it common practice to work with other  
23 offices in the 1999 timeframe?

24 MS. PASCAL: Objection, form.

25 THE WITNESS: Yes, it was.

1                   Actually, I'll ask for clarification of  
2     your question. Common for me or common for others?

3                   MR. SUH: Others.

4                   THE WITNESS: Yes.

5                   BY MR. SUH:

6           Q.     And in fact, you did work with people in  
7     the New York office of Pennie.

8                   Is that correct?

9           A.     Yes.

10          Q.     As of August 2nd, 1999, did you finish the  
11     SurfCast patent application?

12          A.     I don't believe it was complete, no.

13          Q.     Isn't it correct that you were tasked to  
14     draft the SurfCast patent application before being  
15     asked whether you could take on the Macromolecular  
16     Design Application?

17                   MS. PASCAL: Objection, form,  
18     mischaracterizes testimony.

19                   THE WITNESS: These cases were asked of me  
20     by different people.

21                   BY MR. SUH:

22          Q.     That's not my question. My question was  
23     the dates.

24          A.     I started work, me personally, I started  
25     work on the Macromolecular Design Application at a

1 later date than I started work on SurfCast. I  
2 believe the Macromolecular Design Application had  
3 been worked on by the firm, by people at the firm  
4 for several months, even prior to my joining the  
5 firm. And it was not -- the work was not --

6 MS. BOYD: Let me -- let me caution the  
7 witness not to disclose attorney work product.

8 THE WITNESS: No. Okay.

9 MS. BOYD: Okay?

10 THE WITNESS: Okay.

11 BY MR. SUH:

12 Q. Would you work on a case even though it's  
13 not assigned to you?

14 MS. PASCAL: Objection, form.

15 THE WITNESS: What do you mean by assigned  
16 to me?

17 BY MR. SUH:

18 Q. Docket it in your docket sheet.

19 MS. PASCAL: Objection, lacks foundation.

20 MS. BOYD: Objection, lacks foundation.

21 THE WITNESS: If that's your definition of  
22 assigned, then a number of these cases might not  
23 have actually been on my docket sheet.

24 BY MR. SUH:

25 Q. Which cases are those?

1           A.    I -- it's possible that initially the  
2    Macromolecular Design Application might not have  
3    been on my docket sheet.

4           Q.    But did somebody tell you to work on it?

5           A.    Yes.

6           Q.    Do you know when?

7           A.    It would have been on the first day I  
8    started working on it or shortly before that.

9           Q.    That would be approximately August 2nd.  
10                Is that correct?

11          A.    Yes.

12          Q.    Why didn't you say no to the  
13    Macromolecular Design Application project?

14                MS. PASCAL: Objection.

15                THE WITNESS: I think that's related in my  
16    declaration, paragraphs -- 15, I think, it talks  
17    about me having a general need to fill out my  
18    docket.

19                BY MR. SUH:

20          Q.    So you wanted to build your docket.

21                Is that correct?

22          A.    That was certainly something I needed to  
23    do at that point.

24          Q.    There were other patent attorneys at  
25    Pennie that could do this project.

1 Correct?

2 MS. BOYD: Objection, form.

3 THE WITNESS: Which project are you talking  
4 about?

5 BY MR. SUH:

6 Q. I'm sorry about that. Let me clarify.  
7 The Macromolecular Design Application?

8 A. Actually, that one I felt I would have  
9 been the best suited person in the firm.

10 Q. So nobody other than you could work on  
11 this project.

12 Is that correct?

13 MS. BOYD: Objection.

14 THE WITNESS: I would not say that.

15 BY MR. SUH:

16 Q. So there were other patent attorneys at  
17 Pennie who were law clerks or patent agents that  
18 could work on these projects.

19 Correct?

20 MS. PASCAL: Objection.

21 THE WITNESS: If you are talking about  
22 technical expertise, then certainly probably one or  
23 more others could.

24 In terms of time, I don't know.

25 BY MR. SUH:

1 Q. And you had the time?

2 A. I believe I had the time --

3 MS. BOYD: Objection.

4 THE WITNESS: -- at that point.

5 BY MR. SUH:

6 Q. So you felt you could push off the  
7 SurfCast drafting application since there was no  
8 application for the SurfCast application.

9 Correct?

10 MS. BOYD: Objection.

11 MS. PASCAL: Objection.

12 MS. BOYD: Foundation.

13 THE WITNESS: I haven't said any of the  
14 things that you just put in your question to me.

15 BY MR. SUH:

16 Q. So --

17 A. So --

18 Q. Let me rephrase.

19 A. Yes.

20 Q. What do you mean, you had time?

21 A. I have seven or eight hours each day to  
22 work on matters.

23 Q. Are you done?

24 A. Yes.

25 Q. So why didn't you finish the SurfCast

1 patent application?

2 MS. BOYD: Objection.

3 MS. PASCAL: Objection, form.

4 THE WITNESS: I believe it's documented  
5 through my sequence of time entries that there is a  
6 ongoing process of the drafting, there is review and  
7 feedback from both SurfCast and the other attorneys  
8 I'm working with during that period of time.

9 BY MR. SUH:

10 Q. So was there a due date for the SurfCast  
11 patent application?

12 A. I don't recall a specific date being told  
13 of me.

14 Q. So you would agree that there were no due  
15 dates.

16 Correct?

17 MS. BOYD: Mr. Suh, could I ask you to not  
18 put your hand in front of your mouth? Makes it hard  
19 for me to hear and understand your questions.

20 Thank you.

21 THE WITNESS: I believe the project was  
22 assigned with a view to getting it done quickly. I  
23 would not say that there was no due date.

24 BY MR. SUH:

25 Q. What do you mean, quickly?

1 A. Um...

2 Q. As soon as possible?

3 A. Um, I don't recall exactly where that  
4 phrase was used. There was certainly a desire to  
5 get a patent application prepared and filed.

6 Q. But you accepted the Macromolecular Design  
7 Application on August 2nd.

8 Correct?

9 MS. PASCAL: Objection, form.

10 THE WITNESS: Again, that looks like the  
11 first day that I worked on it.

12 BY MR. SUH:

13 Q. And why didn't you say no, because you  
14 just mentioned that you had to work on the patent,  
15 drafting patent application for SurfCast quickly and  
16 you haven't finished the SurfCast application as of  
17 August 2nd?

18 A. Well, I can refer, I will refer to my  
19 declaration and see how I -- see how I characterize  
20 that period of time.

21 (Pause)

22 A. You will see on paragraph 26 on page 12 of  
23 Exhibit 2008, in that paragraph I describe that  
24 throughout July, in fact -- well, from July 9th to  
25 August 4th I was actually working on the SurfCast

1 application in some form on each non-weekend day.

2 And on August 4th, I sent to one of the  
3 inventors, Mr. Lagermann, by fax a copy of an  
4 initial draft and some figures. It's my  
5 recollection that I did that in order to provide --  
6 in order to solicit some feedback from him on those  
7 figures.

8 And in the subsequent week, August 5th to  
9 10th, I -- while I was waiting to receive feedback I  
10 diverted my attention to the Macromolecular Design  
11 Application and the invalidity opinion.

12 I believe there is a record on August 10th  
13 or 11th of me asking SurfCast whether they have had  
14 a chance to look at the figures, and you can see  
15 that from August 11th I then continued to work on  
16 the SurfCast matter.

17 So from my point of view, the narrative is  
18 pretty clear and consistent.

19 Q. So you said you faxed a copy of initial  
20 drafts and figures for the patent applications to  
21 Lagermann on August 4th?

22 A. That's what I say here at the end of  
23 paragraph 26.

24 Q. Do you recall what you said?

25 MS. PASCAL: Objection. And now objection

1 to the extent calls for any privileged  
2 communications.

3 MR. SUH: Counsel, he opened the door to  
4 this subject, so we are entitled to that question.

5 MS. PASCAL: I don't know what you are  
6 saying he opened the door to. If you want...

7 THE WITNESS: I don't remember which  
8 specific figures of the figures that appear in the  
9 ultimate patent or that were filed with the patent  
10 application I sent to Mr. Lagermann on that day.

11 BY MR. SUH:

12 Q. So you don't recall what figures you sent  
13 to Mr. Lagermann on August 4th, 1999.

14 Is that correct?

15 A. I don't recall specifically which figures.

16 However, if you asked me to speculate, my  
17 speculation would be that it's all of the figures I  
18 had drafted to that point and that I considered to  
19 be complete and informed for his review.

20 Q. At this point, did you have a complete  
21 draft of the patent application as well?

22 A. I don't recall.

23 I will add, though, certain portions of it  
24 had been written by that point as you will note from  
25 the various time entries that are not redacted.

1 Q. On page 14, you say you worked on the  
2 Macromolecular Design Application culminating,  
3 culminating with its filing on August 31st.

4 A. This is of Exhibit 2008?

5 Q. 2008.

6 A. Sorry, which paragraph?

7 Q. It is 30.

8 A. Ah. Yes, I see.

9 Q. Did you file the Macromolecular Design  
10 Application in time?

11 A. In time for what?

12 Q. Well, you mentioned that there was a due  
13 date.

14 A. My recollection is that there was a bar  
15 date on that application due to either a forthcoming  
16 conference presentation by the inventors or due to a  
17 prior publication. So there was a date that had to  
18 be met.

19 I did not personally file the application.  
20 As I recall, it was filed from the New York office  
21 of Pennie and Edmonds. But it was filed in order to  
22 meet the date.

23 Q. Okay. You also say it was complex. How  
24 complex was it?

25 A. That's a rather vague question, I will

1 say. I believe that the specification ran to quite  
2 possibly a hundred pages. I believe there were a  
3 number of equations based on molecular mechanics,  
4 which is a subject that's -- was something I was  
5 very familiar with from my prior career as a  
6 scientist, but I think most law clerks and attorneys  
7 at Pennie and Edmonds would not be familiar with.

8 It was a computer based invention. I  
9 believed it was complicated.

10 Q. So you would agree that the SurfCast  
11 application was not as complex.

12 Correct?

13 A. I don't know.

14 MS. PASCAL: Objection.

15 THE WITNESS: I don't know that I would  
16 make that characterization.

17 BY MR. SUH:

18 Q. How long was the SurfCast patent at the  
19 time, do you recall?

20 A. I don't recall, although I think it's 40  
21 or 50 pages with I think some 25 or more figures.

22 Q. And you said the Macromolecular Design  
23 Application was how long?

24 A. About a hundred, I think.

25 Q. )t took you less than a month to start and

1 finish drafting the Macromolecular Design  
2 Application.

3 Correct?

4 MS. PASCAL: Objection, misstates  
5 testimony.

6 THE WITNESS: It's not correct. I actually  
7 was starting with a draft that a law clerk in the  
8 New York office had worked on.

9 BY MR. SUH:

10 Q. Do you know how long he worked on it?

11 A. It was a lady. I don't know how much time  
12 she spent on it, but the draft was substantial, a  
13 substantial draft to start with.

14 Q. How many patent applications have you  
15 drafted?

16 A. Me personally?

17 Q. Yes.

18 A. In my entire career?

19 Q. Yeah.

20 A. Two or 300 probably.

21 Q. And how long does it normally take to  
22 draft from first to finish?

23 MS. BOYD: Objection.

24 MS. PASCAL: Objection.

25 MS. BOYD: Form.

1 THE WITNESS: Again, I don't know that  
2 there is -- there is -- there is a simple answer to  
3 that because every one is different.

4 Certainly there are cases I might spend  
5 several months on if there is backwards and forwards  
6 with inventors and so on, equally there have been  
7 cases that I have written in less than a day if they  
8 are very simple.

9 BY MR. SUH:

10 Q. Less than a day?

11 A. You have to also factor in that over a  
12 15-year career, one actually gets more efficient at  
13 doing the same tasks. So a case that might only  
14 take me a day this year might well have taken me two  
15 or three weeks ten years ago.

16 Q. Back in 1999, could you write a patent  
17 application within a week?

18 MS. PASCAL: Objection, form.

19 THE WITNESS: I don't know if I can  
20 reasonably answer that question, because as I said  
21 in my answer to your previous question, there is a  
22 lot of variety of the type of technology that could  
23 go into a patent application, and it's difficult for  
24 me to project backwards as to what my level of skill  
25 was then.

1 BY MR. SUH:

2 Q. On page 14, you say you worked principally  
3 on the Macromolecular Design Application and the  
4 invalidity opinion, also "familiarized myself with  
5 the aspects of the Hydrogen Exchange Portfolio."  
6 And this is from August 5th to 10th, 1999.

7 Do you see that?

8 A. Yes.

9 Q. As of August 15th, did you finish the  
10 SurfCast patent application?

11 A. I believe you have already asked me this  
12 question. The answer is I don't believe I had  
13 finished it.

14 Q. That was August 2nd.

15 A. Well, I'll refer to the logbook just one  
16 minute.

17 (Pause)

18 A. So I have some entries on August 3rd and  
19 4th for SurfCast.

20 Q. That's what I asked.

21 A. Right. So I believe that as of August 5th  
22 I had not finished the SurfCast application.

23 Q. And isn't it correct that you were tasked  
24 to draft a patent application for SurfCast before  
25 being asked whether you could take on this

1 Macromolecular Design Application, invalidity  
2 opinion, and Hydrogen Exchange Portfolio?

3 MS. BOYD: Objection, asked and answered.

4 MS. PASCAL: Objection to the extent it  
5 lacks foundation.

6 MR. SUH: I agree, I believe we have  
7 already covered this ground, but just wanted to make  
8 a quick reference.

9 THE WITNESS: I'll answer again. My  
10 logbook shows that I started work or first had  
11 meetings on those cases after the time that I  
12 started working on the SurfCast matter.

13 BY MR. SUH:

14 Q. In fact, you didn't work on drafting the  
15 SurfCast patent application at all during the period  
16 of August 5th to 10th.

17 Is that correct?

18 A. I'll refer to my logbook.

19 (Pause)

20 A. I don't see any entries for SurfCast  
21 during those days. So best that I can tell, yes,  
22 that's correct.

23 Q. Still on page 14 of Exhibit 2008, you also  
24 say that you worked on some initial matters that  
25 required immediate attention in the Antimicrobials

1 Portfolio, and point to Exhibit 2035 at pages 70,  
2 71, 74, and 75 which corresponds to August 26th,  
3 27th, 30, and 31.

4 A. I see that.

5 Q. As of August 26th, did you finish the  
6 SurfCast patent application?

7 A. To the best of my recollection, no, though  
8 did you -- did you say August 31?

9 Q. It was August 26th, 27, 30, and 31.

10 A. Yes. So on August 31, I did do some work  
11 on the SurfCast patent application.

12 Q. But as of August 26th, did you finish the  
13 SurfCast patent application?

14 A. I don't believe I did.

15 Q. And isn't it correct that you were tasked  
16 to draft the SurfCast patent application before  
17 being asked to take on the Antimicrobials Portfolio?

18 MS. PASCAL: Objection, asked and answered.  
19 Argumentative.

20 THE WITNESS: I believe that's true. I  
21 have a -- well, if I refer you to Exhibit 2035 at  
22 page 11?

23 MR. SUH: Yes.

24 THE WITNESS: The top entry that says 45  
25 minutes, 8067-034?

1 MR. SUH: Yes.

2 THE WITNESS: That refers to the  
3 Antimicrobials Portfolio. And you'll see that that  
4 is -- that may not be the earliest entry I have for  
5 that matter, but it at least dates back to June  
6 25th, which is literally days after I started  
7 working on SurfCast.

8 BY MR. SUH:

9 Q. Literally days after you first or  
10 literally days after you -- I didn't hear your --

11 A. Sorry. Literally days after I first  
12 started working on SurfCast, yes.

13 Q. My recollection is that you first worked  
14 on SurfCast way back in June 18th.

15 MS. PASCAL: Objection, argumentative,  
16 form.

17 BY MR. SUH:

18 Q. Isn't that correct?

19 A. Yes. But June 18th to June 25 is --

20 Q. We are talking about August here, just  
21 to --

22 A. No, I'm talking about June. So I'm  
23 referring you to Exhibit 2035 at page 11.

24 Q. All right.

25 A. There was a time entry narrative for June

1 25, 80 -- excuse me 8067-034, that is the  
2 Antimicrobials Portfolio.

3 Q. Thank you. Thanks for the clarification.

4 A. That is just a few days after starting  
5 work on SurfCast.

6 Q. So as of June 25th, had you finished  
7 drafting the SurfCast patent application?

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

9 Q. So why didn't you say no to this new  
10 project? You testified that it included more than  
11 one matter.

12 A. I believe I had answered this previously,  
13 but I am new to the firm and with essentially an  
14 empty docket, and there is a process of trying to  
15 get me up to speed on various types of matters and  
16 to fill that docket.

17 Q. So you didn't have enough work to do. Is  
18 that a fair characterization?

19 MS. PASCAL: Objection, form.

20 THE WITNESS: I don't think that's a fair  
21 characterization. I think that I am starting off  
22 and I am taking in work, you know, to the extent I  
23 have time available.

24 BY MR. SUH:

25 Q. You also mentioned it required immediate

1 attention. We are back to page 14 of Exhibit 2008.

2 A. Yes.

3 Q. Why did it require immediate attention?

4 MS. PASCAL: Objection, form.

5 MS. BOYD: Caution the witness not to  
6 disclose attorney-client privileged communications.

7 THE WITNESS: I don't have a specific  
8 recollection, but I can -- I can speculate, given  
9 the types of matters involved.

10 MR. SUH: Please do.

11 THE WITNESS: I will refer also to my  
12 logbook.

13 BY MR. SUH: And this is in your  
14 declaration. I'd like to note that.

15 THE WITNESS: I understand. But it refers  
16 to Exhibit 2035 at some pages.

17 (Pause)

18 THE WITNESS: Again, I don't have a  
19 specific recollection of the actual work that I did  
20 in that timeframe, but I can -- but I can speculate  
21 based on the type of the portfolio in question.

22 BY MR. SUH:

23 Q. So what is your basis of saying that it  
24 required immediate attention?

25 A. So providing speculation for you, I think

1 that what happened is that one or more patent  
2 applications in that portfolio had docketed dates  
3 that required some action.

4 Q. So I'm trying to understand. So you  
5 are -- are you saying that your declaration is based  
6 on speculation?

7 MS. PASCAL: Objection.

8 THE WITNESS: No, because I base the  
9 declaration on the original copy of this exhibit,  
10 which I do not have in front of me. The original  
11 copy was not redacted.

12 So I'm speculating as of based on what's  
13 in front of me now.

14 BY MR. SUH:

15 Q. So based on the Exhibit 2035 that was  
16 filed, you can't tell me why it required immediate  
17 attention.

18 Is that correct?

19 A. No. I can tell you that it required  
20 attention because of some due dates.

21 Q. No, no. Why it required immediate  
22 attention.

23 MS. PASCAL: Objection, form,  
24 argumentative.

25 THE WITNESS: I believe I just answered the

1 question.

2 BY MR. SUH:

3 Q. I'm sorry, I thought you answered whether  
4 it required immediate attention. But my question  
5 was you can't tell me why it required immediate  
6 attention based on Exhibit 2035 as filed?

7 A. Based on what I believe to be likely to  
8 have happened with that particular matter, I believe  
9 there was some due dates in that period that  
10 required addressing. That's my best recollection.  
11 I can't tell you what specifically.

12 Q. Was there any attorney-client  
13 communications that triggered this immediate  
14 attention?

15 MS. PASCAL: Objection.

16 THE WITNESS: I don't recall.

17 BY MR. SUH:

18 Q. So you don't recall if there were any  
19 attorney-client communications on this matter.

20 Is that correct?

21 MS. PASCAL: Objection to form.

22 THE WITNESS: There were definitely some  
23 attorney-client communications in the period covered  
24 in this logbook. I don't remember specifically  
25 whether it's this exact date.

1 BY MR. SUH:

2 Q. Isn't it true that you didn't work on  
3 drafting the SurfCast patent application at all  
4 during the period of August 20 to 30th?

5 A. Let me look at the declaration.

6 (Pause)

7 A. Looks like I had a meeting with Mr. Gray  
8 August 24th, 1999, paragraph 31 of Exhibit 2008, and  
9 that meeting was to discuss according to my  
10 narrative the timing of completing a first draft of  
11 the SurfCast application.

12 Q. Which day is this?

13 A. It's August 24th, 1999. So it would be  
14 page 68 of Exhibit 2035.

15 MS. BOYD: Sorry.

16 (Pause)

17 THE WITNESS: I don't see any other entries  
18 for SurfCast during the time period you mentioned.

19 BY MR. SUH:

20 Q. And even on August 24th, it only says  
21 "Talked with Andrew Gray regarding timing of  
22 SurfCast application." It doesn't say that you  
23 worked on drafting the patent application, does it?

24 A. It does not say that.

25 Q. And what did you talk about with Andrew

1 Gray?

2 MS. BOYD: Objection.

3 MS. PASCAL: Objection. Calls for  
4 privileged information.

5 MR. SUH: Are you instructing him not to  
6 answer?

7 MS. PASCAL: I am giving -- I am objecting  
8 to privilege.

9 MR. SUH: Just for the record.

10 MS. PASCAL: If you want to ask him if he  
11 is going to follow the instructions of counsel you  
12 ask can ask him that. I don't believe he testified  
13 to that.

14 BY MR. SUH:

15 Q. Are you going to answer?

16 A. I can only state to you what the time  
17 entry log says and what I put in my declaration, and  
18 they both say the same thing, that the meeting  
19 discussed the timing of completing the first draft  
20 of the application.

21 Q. Other than this, you don't recall  
22 discussing any other matters with Andrew Gray on  
23 this date, do you?

24 (Pause)

25 A. That's -- well, I do not recall, and there

1 is no entry on it.

2 Q. On page 15 of Exhibit 2008?

3 A. Yes.

4 Q. And looking at September 5 to 10, 1999,  
5 you say you worked on the Hydrogen Exchange  
6 Portfolio in order to file an application by a  
7 statutory bar date.

8 And you also say this work could not be  
9 postponed any later than this period of time due to  
10 the statutory bar on claiming benefit of the  
11 priority to the provisional application.

12 Do you see that?

13 A. I do.

14 Q. So why didn't you ask others for help on  
15 this Hydrogen Exchange Portfolio?

16 MS. PASCAL: Objection, lacks foundation.

17 BY MR. SUH:

18 Q. It could not be postponed, as you stated?

19 A. I don't --

20 MS. BOYD: Same objection.

21 THE WITNESS: I don't remember asking  
22 others for help. I was supervised by an attorney in  
23 that matter.

24 BY MR. SUH:

25 Q. So isn't it correct that you postponed

1 work on the SurfCast application because of this  
2 Hydrogen Exchange Portfolio?

3 MS. PASCAL: Objection, form.

4 THE WITNESS: I will look at my logbook  
5 again.

6 (Pause)

7 THE WITNESS: I don't have any entries for  
8 SurfCast in that period, that's correct.

9 BY MR. SUH:

10 Q. And when you say that period, are you  
11 talking about September 5th to 10th?

12 A. I am.

13 Q. So you agree that you didn't work on  
14 drafting the SurfCast patent application at all  
15 during the period of September 5th to 10th.

16 Right?

17 MS. PASCAL: Objection, asked and answered.

18 THE WITNESS: That's correct. I believe I  
19 would have said that.

20 BY MR. SUH:

21 Q. We can move on to page 16 of Exhibit 2008.  
22 If you look at September 15th to 21, you say you  
23 worked on preparing the first draft of the  
24 invalidity opinion and attended to a number of  
25 outstanding matters in the Antimicrobials Portfolio.

1 Do you see that?

2 A. Yes.

3 Q. As of September 15th, did you finish the  
4 SurfCast patent application?

5 A. I don't specifically recall, but I don't  
6 believe so.

7 Q. Was there any due date for the invalidity  
8 opinion?

9 MS. BOYD: Caution the witness about  
10 attorney-client privileged communications.

11 THE WITNESS: Noted.

12 I don't recall there being a specific due  
13 date, but there was a sense of urgency for that  
14 project, and although I don't have a specific  
15 recollection of the reason for this project, as a  
16 general matter projects of that nature are prompted  
17 by -- typically by either a client having been  
18 contacted by the patent owner or by the client  
19 wanting to release a product, and therefore wanting  
20 to have the opinion done before that date.

21 BY MR. SUH:

22 Q. Was there any contact by the client on  
23 this matter?

24 MS. BOYD: Objection. Calls for  
25 attorney-client privileged communication. Caution

1 the witness not to reveal that communication.

2 THE WITNESS: There was contact with the  
3 client on that project.

4 BY MR. SUH:

5 Q. What was that about?

6 MS. BOYD: Objection and instruction.

7 THE WITNESS: I can't reveal  
8 attorney-client privilege. All I can say is that I  
9 and the other attorneys working on that matter had  
10 contact with the client during the period that's  
11 covered in this logbook.

12 BY MR. SUH:

13 Q. If we focus down to September 15th to  
14 21st, was there any contact with the client?

15 A. I would have to look at my logbook and  
16 see.

17 Q. Please do.

18 (Pause)

19 MS. BOYD: I'll object to this question as  
20 irrelevant as well.

21 (Pause)

22 THE WITNESS: I can't tell that -- I can't  
23 tell exactly what was done because those entries are  
24 redacted in the copy that's in front of us. I know  
25 that there were several, well, I will say more than

1 one visit by the client to our office in the period  
2 covered in the logbook. It's possible one of those  
3 was in that period. I can't say.

4 BY MR. SUH:

5 Q. So based on the evidence, evidence of  
6 record, you can't -- you can't tell me whether there  
7 was a client contact during this period.

8 Is that correct?

9 MS. BOYD: Objection, form.

10 THE WITNESS: I can't tell you based on,  
11 that's correct, based on what's in front of me.

12 BY MR. SUH:

13 Q. Isn't it true that you didn't work on  
14 drafting of the SurfCast patent application at all  
15 during the period of September 15th to 21st?

16 A. Again, let me look at the chart and the  
17 logbook.

18 (Pause)

19 MS. BOYD: Can you read that question back  
20 for me, please?

21 (Whereupon, the reporter read back  
22 the record as follows:

23 "Isn't it true that you didn't work  
24 on drafting of the SurfCast patent  
25 application at all during the

1 period of September 15th to 21st?")

2 MS. BOYD: Thank you.

3 MS. PASCAL: Objection, asked and answered.

4 THE WITNESS: Did you say between September  
5 15 and 21?

6 MR. SUH: September 15 and 21. It's a  
7 different range.

8 THE WITNESS: No, that's the range I was  
9 just talking about in answer to your previous  
10 question about the invalidity opinion.

11 MR. SUH: Okay.

12 THE WITNESS: Do you agree?

13 BY MR. SUH:

14 Q. I might have forgotten. But is that a yes  
15 or no? I just wanted to clarify the record.

16 A. Well, I would like to clarify it too. I  
17 understood your previous question about the  
18 invalidity opinion and whether there was a client  
19 contact to refer to the period September 15 through  
20 21.

21 Q. Is that right?

22 A. 1999. I answered based on that.

23 I understand now you asked what I did for  
24 SurfCast during the same period, September 15  
25 through 21.

1 Q. That's right. That's why I asked you a  
2 different question.

3 A. I thought it was a different period.  
4 There is some work for SurfCast on  
5 September 15th, and on September 17th.

6 (Pause)

7 A. And on -- that's it, exactly. September  
8 15th, September 17th.

9 Q. September 15th you write time entry .1  
10 hour. Is this what you were referring to?

11 A. Let me take a look.

12 (Pause)

13 A. No. There is -- there is an item that's  
14 actually redacted. It's further up the page, one  
15 quarter hour, middle of the page, 9982-009-999.

16 Q. That's .25 hours?

17 A. Yes. And September 17 there is an entry  
18 there.

19 Q. Are you done?

20 A. I am.

21 Q. Where is that entry on the 17th? Can't  
22 find it.

23 A. Oh.

24 (Pause)

25 A. It's the fourth line, or fifth line up

1 from the bottom of the page. It's not redacted.

2 Q. Arrange for a transfer --

3 A. Yes.

4 Q. -- of documents to be prepared?

5 A. Yes.

6 Q. This says nothing about drafting a patent  
7 application, does it?

8 A. Correct.

9 Q. So other than the .25 hours on September  
10 15th -- well, strike that.

11 From September 16th to September 21st, you  
12 didn't work on drafting the SurfCast patent  
13 application at all.

14 Is that correct?

15 MS. BOYD: Objection, misstates the  
16 witness' testimony, misstates the document.

17 THE WITNESS: I can say there is no time  
18 entry that reflects that.

19 So just to be clear, the period you  
20 mentioned contains two business days, 16th and 17th,  
21 Thursday, Friday, and two weekend days, 18th, 19th,  
22 and then two further days, Monday 20 -- Monday the  
23 20th and Tuesday the 21st.

24 BY MR. SUH:

25 Q. You mentioned September 18th and 19th?

1 A. Yes.

2 Q. Isn't it correct that there are six matter  
3 entries on these dates?

4 A. It is.

5 Q. So why did you work on these days?

6 MS. PASCAL: Objection. Strike that.

7 THE WITNESS: Again, I mean, without  
8 specific recollection, I can only speculate that it  
9 would be because I had not completed the work in the  
10 prior week and I felt that it needed to be done or  
11 had been told that it needed to be done.

12 BY MR. SUH:

13 Q. Did you work on a SurfCast matter during  
14 these days?

15 A. There is no entry to reflect that I did on  
16 those two days, that's correct.

17 Q. Did you finish drafting the SurfCast  
18 patent application as of September 17th?

19 A. Not as far as I recall.

20 Q. Do you recall why you didn't work on the  
21 SurfCast patent application rather than these  
22 redacted entries which amount to almost seven hours  
23 per day each?

24 MS. PASCAL: Objection, form.

25 THE WITNESS: I do not recall.

1 BY MR. SUH:

2 Q. So if you go to page 14 of Exhibit 2008,  
3 you say that you had to attend classes on campus  
4 from 6:00 to 9:00 on four nights per week beginning  
5 on August 11th.

6 Do you see that?

7 A. Yes.

8 Q. Did Pennie assign anyone else to help you  
9 since you had to go to school?

10 A. Not that I am aware.

11 Q. Did you ask for help?

12 A. Did I ask for help with what?

13 Q. To accommodate your going to school  
14 schedule.

15 A. I don't believe I did.

16 MR. SUH: So I think this is a good time to  
17 have a break. What time is it now?

18 MS. PASCAL: Quarter to 12:00.

19 MR. SUH: You want to have a lunch break?

20 Or --

21 MS. BOYD: Sure.

22 THE VIDEOGRAPHER: Okay. Going off the  
23 record, the time is 11:45.

24 (Whereupon, the lunch recess taken at 11:45 P.M.)

25 --oOo--

1 AFTERNOON SESSION 12:36 P.M.

2 THE VIDEOGRAPHER: We are back on the  
3 record. The time is 12:36.

4 BY MR. SUH:

5 Q. Did you talk to your counsel during the  
6 break?

7 A. We had a conversation.

8 Q. About what?

9 A. Schools for our children, where, which  
10 firms we had worked at.

11 Q. So you didn't talk to your counsel about  
12 anything about the case during the break.

13 Is that correct?

14 A. Correct. Yes.

15 Q. So let's turn to Exhibit 2035, at page 7.  
16 And there is an entry, 0.5 hours of Web searching  
17 for software patent. You can't tell me specifically  
18 what software patents are referred to in this, in  
19 this entry, can you?

20 A. I can, actually.

21 Q. Which ones?

22 A. It's the SurfCast patent application.

23 Q. Do you specifically remember what you did  
24 on this date?

25 A. No, beyond what's written here.

1 Q. So you don't have any evidence of what you  
2 specifically did on this date, do you?

3 MS. PASCAL: Objection.

4 THE WITNESS: This is the evidence of what  
5 I did on that day.

6 BY MR. SUH:

7 Q. Other than this, you don't have any  
8 evidence of what you specifically did on this date,  
9 do you?

10 A. Not other than this, me personally, no.

11 Q. On this day you were looking at what  
12 existed before, not the SurfCast alleged invention.

13 Is that correct?

14 MS. PASCAL: Objection, form.

15 THE WITNESS: Could you restate the  
16 question, please?

17 BY MR. SUH:

18 Q. You were looking at prior art rather than  
19 the invention.

20 Is that correct?

21 MS. PASCAL: Objection.

22 THE WITNESS: I think that's likely, yes.

23 BY MR. SUH:

24 Q. Let's go to page 8, this is for June 22nd.  
25 Do you specifically remember what you did on this

1 date?

2 A. Not with greater detail than what is  
3 described this logbook.

4 Q. So other than what's written here, you  
5 don't remember anything about what you did on this  
6 day.

7 Is that correct?

8 A. That's correct.

9 Q. So you don't specifically remember what  
10 you talked about on this day it says "Talk with  
11 Brett about, talk with Brett and Andrew."

12 Do you remember what you talked about on  
13 this date?

14 A. Not specifically.

15 Q. So other than this, you don't have any  
16 evidence of what you did on this day, do you?

17 MS. PASCAL: Objection, form.

18 THE WITNESS: I believe you have asked me  
19 this. But the answer is no. What is written here  
20 is the best description I have of what I did on that  
21 day.

22 BY MR. SUH:

23 Q. And there is a billing number here. The  
24 billing number 9982-0005-999 appears, and this  
25 billing number indicates that these conversations

1 were related to patentability assessment.

2 Is that correct?

3 A. Based on the matter numbers we have  
4 already talked about today that's correct. But I  
5 have also already told you in answer to a previous  
6 question that particularly in this period of time of  
7 the first few days I worked at Pennie there may have  
8 been some inaccuracy in the way I characterized, or  
9 the way I associated the matter number with a  
10 description.

11 Q. This description writing in "Web  
12 searching" relates to writing about the  
13 patentability assessment.

14 Isn't that right?

15 MS. PASCAL: Objection, overbroad.

16 THE WITNESS: I don't believe it is,  
17 because I personally did not write anything in  
18 connection with patentability assessment. My  
19 writing was on the SurfCast patent application.

20 BY MR. SUH:

21 Q. You mentioned the invalidity opinion  
22 before.

23 MS. PASCAL: Objection, form.

24 THE WITNESS: So when did I -- when did I  
25 talk about that? What are you -- what are you

1 referring to?

2 BY MR. SUH:

3 Q. When we were talking about writing and Web  
4 searching you mentioned an opinion.

5 Do you recall that?

6 A. No, I don't. Perhaps you can have them  
7 read the transcript back.

8 MR. SUH: Yeah, can you find the portion?

9 (Whereupon, the reporter read back  
10 the record as follows:

11 "9982-0009-888 referred to a

12 provisional patent application.

13 9982-0005-999 related I think to an  
14 opinion matter.")

15 BY MR. SUH:

16 Q. Can you elaborate on that?

17 MS. PASCAL: Objection, form.

18 THE WITNESS: Would you please repeat the  
19 exact narrative or the exact answer that I gave to  
20 the question?

21 (Whereupon, the reporter read back  
22 the record as follows:

23 "Q. Okay. And the numbers

24 following 9982, were these numbers

25 for different tasks that SurfCast

1 asked Pennie to undertake?

2 "MS. BOYD: Objection, form.

3 "THE WITNESS: Yes. The

4 numbers following the hyphen after

5 9982 relate to different matters.

6 "BY MR. SUH:

7 "So what were the different tasks?

8 "MS. PASCAL: Objection.

9 "MS. BOYD: Objection.

10 "MS. PASCAL: Form.

11 "THE WITNESS: Are you asking

12 me about these numbers or any

13 number?

14 "BY MR. SUH:

15 "Q. The four numbers that you

16 mention in your declaration.

17 "A. Okay. So 9982-00 -- 0009-999

18 referred to a utility patent

19 application. 9982-0009-888

20 referred to a provisional patent

21 application. 9982-0005-999 related

22 I think to an opinion matter.

23 9982-0002-999 related to a general

24 billable matter, and sometimes --

25 sometimes called general

1 corporate.")

2 BY MR. SUH:

3 Q. So you referred to 9982-0005-999 as an  
4 opinion matter.

5 A. That's correct. And if you look at my  
6 declaration, Exhibit 2008, it's paragraph --  
7 paragraph 18 on page 9, you can see that the entries  
8 designated as 9982-0005-999 -- I'm reading from this  
9 paragraph now -- pertain to a separate matter number  
10 established for a patentability assessment and prior  
11 art search carried out for the invention described  
12 in the SurfCast patent application.

13 I used the term "opinion" loosely in the  
14 sense that it's a matter that calls for a attorney  
15 analysis.

16 Q. So you put that number down indicating  
17 that you were working on a patentability assessment  
18 just after doing a Web search for prior art, and are  
19 you telling me that you are not really doing a  
20 patentability assessment?

21 MS. PASCAL: Objection.

22 MS. BOYD: Mischaracterizes the witness'  
23 testimony.

24 THE WITNESS: I believe that I have  
25 addressed almost this exact question at least once

1 now during this deposition.

2 So firstly, in this period of time, this  
3 is within my first week at Pennie and Edmonds, it's  
4 entirely possible that I was grouping, for example,  
5 writing and Web searching under one matter number,  
6 maybe not knowing at that time what the patent  
7 application matter number was.

8 My recollection of my activities at the  
9 firm were that I did not do any writing in  
10 connection with patentability assessment. My  
11 writing was on the patent application itself.

12 So where it says "Writing and Web  
13 searching," I believe I was beginning to write  
14 perhaps initial portions of the patent application.  
15 Web searching is in connection with the types of  
16 research you do in that process. You need to know  
17 something about references, material that come  
18 before in time.

19 BY MR. SUH:

20 Q. So can you show me anywhere in this  
21 document, 2030, Exhibit No. 2035 where it suggests  
22 that these entries do not relate the patentability  
23 assessment?

24 MS. PASCAL: Objection, form.

25 THE WITNESS: I have told you this is -- I

1 wrote the entries in this document, and so I know  
2 what they describe. And I have told you that they  
3 describe some writing, and my only writing for  
4 SurfCast was for the patent application.

5 BY MR. SUH:

6 Q. Isn't it common for inventors to have a  
7 patentability assessment performed before they spend  
8 money on drafting a patent application?

9 MS. BOYD: Objection, form.

10 MS. PASCAL: Objection, form. Relevance.

11 THE WITNESS: I can't say the answer to  
12 that is yes. I think different people behave in  
13 different ways. Sometimes the patentability  
14 assessment is done concurrently or in conjunction  
15 with drafting a patent application.

16 BY MR. SUH:

17 Q. Did you have any experience in drafting,  
18 doing a patentability analysis before drafting a  
19 patent application?

20 MS. BOYD: Objection, form.

21 THE WITNESS: Over what period of time are  
22 you addressing the question?

23 BY MR. SUH:

24 Q. Any time.

25 A. Can you restate the question?

1 Q. Have you ever, has it ever happened to you  
2 drafting a patentability analysis before drafting a  
3 patent application?

4 MS. BOYD: Objection, form. Objection,  
5 relevance.

6 THE WITNESS: I believe during my career I  
7 have almost certainly carried out a patentability  
8 assessment before drafting an application. That's  
9 correct.

10 Whether I have actually reduced the  
11 patentability assessment to writing, I don't think I  
12 very often do that. In fact, hardly ever.

13 BY MR. SUH:

14 Q. So you never take notes?

15 MS. BOYD: Objection.

16 MS. PASCAL: Objection.

17 THE WITNESS: That's not what I said.  
18 That's -- that's a large step from what I said.

19 BY MR. SUH:

20 Q. "Writing" is a broad term. Don't you  
21 agree?

22 A. Well, I say "Reducing the patentability,"  
23 et cetera, "to writing." That's totally different  
24 from taking notes.

25 Q. Well, I am looking at this entry, it says

1 "Writing."

2 A. Yes.

3 Q. That's all it says.

4 A. And I have already told you that I believe  
5 it means writing in the patent application.

6 Q. So you say you believe. Do you know as a  
7 matter of fact?

8 A. I am confident.

9 Q. It is documented there is no mention of  
10 tiles or refresh rates on this date.

11 Is that correct?

12 A. So could you please restate the question?

13 Q. The entry on this date, June 22nd, it's at  
14 page 8 of Exhibit 2035?

15 A. Yes.

16 Q. Is there any mention of tiles or refresh  
17 rates?

18 A. There is no mention of tiles and refresh  
19 rates. And I also-- I am also prepared to say that  
20 in this logbook I don't think you will find those  
21 terms mentioned.

22 Q. Thank you.

23 A. Right.

24 Q. Let's go to page 24. It's your entry on  
25 July 9th. Says "Miscellaneous activity for SurfCast

1 in SurfCast's patent download."

2 Do you specifically remember what you did  
3 on this date?

4 A. I don't specifically remember, no.

5 Q. So other than this notebook, you don't  
6 have any evidence of what you did on this date, do  
7 you?

8 A. Well, if you would permit me to look at  
9 the un-redacted form of this notebook, the entries  
10 that you see in front of you is redacted may give me  
11 some indication of other things I did on that day.

12 But beyond that, I can't say that I know  
13 now specifically what I did on July 9th, 1999.

14 Q. Okay. So as documented, you did not work  
15 on drafting the SurfCast patent application on this  
16 date.

17 Correct?

18 A. I don't believe that's a fair  
19 extrapolation.

20 Q. Where does it say you worked on drafting  
21 the SurfCast patent application on this date?

22 A. It doesn't say that. But it said I  
23 carried out some work for SurfCast, and at that time  
24 my work for SurfCast was working on the patent  
25 application.

1 I don't believe that -- I don't believe  
2 that working on the patent application is limited to  
3 drafting portions of it. Working on it can include  
4 research.

5 Q. So if I understand correctly, as  
6 documented, there is no mention of drafting a patent  
7 application for SurfCast on this date.

8 Is that correct?

9 A. Based on what's in this logbook it does  
10 not say "drafting the patent application for  
11 SurfCast," that's correct.

12 Q. So let's move on to page 30.

13 A. I also before we do that, I also want to  
14 draw your attention to a paragraph in my  
15 declaration, if you let me find that for a minute.

16 (Pause)

17 A. You will see, I am in Exhibit 2008 on page  
18 8, footnote 3, in that footnote I describe my work  
19 habit for writing entries in my logbook, and it  
20 states that over the period of time you were just  
21 looking at including July 9th, my narratives were  
22 quite brief and not necessarily fully descriptive,  
23 and I developed a more consistent habit later on  
24 during this period.

25 Q. Okay. So if you can turn to page 30?

1 A. Yes.

2 Q. This is for July 15th, and there is one  
3 hour of SurfCast patent download and one hour of  
4 SurfCast reading.

5 A. Yes.

6 Q. Do you specifically remember what you did  
7 on this date?

8 A. I do not specifically remember beyond what  
9 is -- what is described here.

10 And I'll repeat my answer to your prior  
11 question, there is a portion of time here that's  
12 redacted. It's possible that if I see the  
13 un-redacted version I may be reminded of other  
14 things I did on that day.

15 Q. Okay. And you don't have any evidence of  
16 what you specifically did on this date other than  
17 what's written here on Exhibit 2035?

18 A. I don't believe I do, that's correct.

19 Q. You were looking at what existed before,  
20 not SurfCast alleged investigation on this day.

21 Correct?

22 A. I don't believe that's correct.

23 Q. Why is that?

24 A. There is an entry one hour SurfCast  
25 reading.

1 Q. And do you specifically remember what you  
2 were reading on this day?

3 A. I don't specifically remember, but I know  
4 that as part of preparing the patent application I  
5 was reading about aspects of the technology that I  
6 was going to write about, not just what might have  
7 been in the prior art.

8 Q. You downloaded patents. Do you know what  
9 you downloaded?

10 A. I don't remember specifically which  
11 patents I downloaded.

12 Q. Does it say that you did not read these  
13 downloaded patents on this date?

14 MS. PASCAL: Objection, form.

15 THE WITNESS: It does not say that I did  
16 not read those patents.

17 BY MR. SUH:

18 Q. So that is a possibility. Correct?

19 A. It is a possibility. But as I said to you  
20 earlier, those patent -- well, as I said to you  
21 earlier, part of my reading to have included reading  
22 material, reading about material that I described in  
23 the application, and that may have been included in  
24 some of the patents I downloaded.

25 Q. But you don't remember as a fact whether

1     you did read the draft patent application rather  
2     than something else, do you?

3             MS. PASCAL: Objection, form.

4             THE WITNESS: That's correct, I do not  
5     remember.

6             BY MR. SUH:

7             Q.    And as documented, you did not work on  
8     drafting the SurfCast patent application on this  
9     date.

10            Is that correct?

11            MS. BOYD: Objection, form.

12            THE WITNESS: So I'll answer as I have  
13    answered the previous questions. There is not a  
14    written narrative on this page that says I drafted  
15    the patent application.

16            But I consider my work for SurfCast in  
17    this period to be unified in the sense that it  
18    was -- it was directed towards the patent  
19    application preparation process.

20            BY MR. SUH:

21            Q.    So let's turn to page 31. It's an entry  
22    for July 16th, .5 hours of get book from Stacy's for  
23    SurfCast, and expense form for SurfCast, and this is  
24    for one hour.

25            Who is Stacy?

1           A.    Stacy's is the name of a bookstore that  
2           existed at that time on University Avenue in Palo  
3           Alto.  It specialized in scientific and computer  
4           based books.

5           Q.    Do you remember what books you got from  
6           Stacy's?

7           A.    I don't remember them by title, although  
8           I -- I think I remember just generally what they  
9           were about.

10          Q.    What was that about?

11          A.    There was -- it was either about -- I'm  
12          just trying to remember.  Either about computer  
13          networks or something called Web channels, I think.

14          Q.    So you -- are you finished?

15          A.    I am.

16          Q.    So you were looking at what existed  
17          before, not SurfCast alleged invention.

18                   Is that correct?

19                   MS. PASCAL: Objection.  Form.

20                   THE WITNESS: I don't know if that's  
21          correct.

22                   BY MR. SUH:

23          Q.    Why is that?

24          A.    I don't know.  You can deduce that from  
25          this entry.  I went to get a book.

1           Q.    In fact, there is no indication as to  
2           whether you even read the book, is that correct, on  
3           this day?

4           A.    On this day, that's correct, it does not  
5           say that I read the book.

6           Q.    So as documented, you did not work on  
7           drafting the SurfCast patent application on this  
8           day.

9                   Is that correct?

10           MS. PASCAL: Objection.

11           MS. BOYD: Objection.

12           MS. PASCAL: Form.  Mischaracterizes  
13           testimony.

14           THE WITNESS: As I have said to you  
15           previously, I consider at that time there were a lot  
16           of things that I did that went towards the  
17           preparation of the patent application, including  
18           getting materials.

19                   BY MR. SUH:

20           Q.    That was not my question.  My question  
21           was, did you work on drafting the patent application  
22           on this date?

23           MS. PASCAL: Objection, form.  And asked  
24           and answered.

25           MS. BOYD: Argumentative.

1 THE WITNESS: I believe I have already  
2 answered this question, but I'll state again,  
3 according to these entries on this page I did not  
4 draft portions of the patent application on this  
5 day.

6 BY MR. SUH:

7 Q. Okay. Let's go to page 36. This is an  
8 entry for July 21st.

9 A. Okay.

10 Q. There is an entry for one-and-a-half-hour  
11 meeting with AG -- AJG in August and Klaus Lagermann  
12 and .25 hour for talking with AJG, and half an hour  
13 organizing trip to New York.

14 Do you remember what you did on this day?

15 A. Okay. Consistent with my previous answer,  
16 what is written here describes what I did. I don't  
17 have specific recollection, recollection of these  
18 events beyond what is written.

19 Q. So you don't remember what you talked  
20 about on this date.

21 Is that --

22 A. Correct.

23 Q. And as documented, you did not work on  
24 drafting the SurfCast patent application.

25 Correct?

1 MS. BOYD: Objection.

2 MS. PASCAL: Object to form.

3 BY MR. SUH:

4 Q. On this date, just to clarify.

5 A. Again, I will reiterate, the narratives do  
6 not state that I drafted the application. But as I  
7 have said before, I considered meetings,  
8 discussions, and other activities were all connected  
9 with the process of preparing the patent  
10 application.

11 Q. So if we can go to page 36?

12 A. We are on --

13 MS. BOYD: We are on --

14 BY MR. SUH:

15 Q. Oh, I'm sorry, page 37. And this is an  
16 entry for July 22nd?

17 A. Yes.

18 Q. I see .25 hours of travel arrangements and  
19 1.5 hours of SurfCast patent downloading. And do  
20 you remember what you were downloading?

21 A. I do not specifically remember.

22 Q. You would agree you were downloading what  
23 existed before, not SurfCast alleged invention.

24 Correct?

25 MS. PASCAL: Objection, object to form.

1 THE WITNESS: I believe I use this term  
2 "patent downloading" to mean retrieving patents from  
3 Websites such as the PTO Website or maybe a third  
4 party vendor called MicroPatent.

5 Sometimes I was downloading patents that I  
6 considered to be exemplary in the software space.  
7 Sometimes I was downloading patents that I thought  
8 were relevant to the SurfCast invention.

9 BY MR. SUH:

10 Q. So you were looking at what existed  
11 before, not the invention.

12 Correct?

13 MS. BOYD: Objection.

14 MS. PASCAL: Objection.

15 MS. BOYD: Form.

16 MS. PASCAL: Form.

17 THE WITNESS: It's correct to say I was  
18 looking at things that existed before, but that's an  
19 essential part of the process of preparing a patent  
20 application.

21 BY MR. SUH:

22 Q. And as documented, you did not work on  
23 drafting the SurfCast patent on this date.

24 Correct?

25 MS. BOYD: Objection.

1 MS. PASCAL: Objection.

2 MS. BOYD: Form.

3 THE WITNESS: Again, as I have answered  
4 before, there is no narrative that says on this  
5 document drafting application, but I consider my  
6 work for SurfCast during that time to be part of an  
7 overall process of preparing the application.

8 BY MR. SUH:

9 Q. Go to page 38. And here there is an entry  
10 of 0.25 hours downloading sample patent for SurfCast  
11 and e-mailing Klaus.

12 Do you remember what this was about?

13 A. Not specifically beyond what is written.

14 Q. And as documented, you did not work on  
15 drafting the SurfCast patent application on this  
16 date.

17 Correct?

18 MS. PASCAL: Objection, form.

19 THE WITNESS: Again, the narrative does not  
20 include the term "drafting patent application," but  
21 I consider that the time spent was in connection  
22 with preparing the patent application for SurfCast.

23 BY MR. SUH:

24 Q. And do you have evidence showing that this  
25 was in connection with drafting the SurfCast patent

1 application?

2 A. It says in the narrative that what I did  
3 was for SurfCast. I also sent an e-mail to Klaus,  
4 that is, Mr. Lagermann.

5 Q. Okay. Let me rephrase it.

6 Do you have evidence showing that you  
7 drafted the SurfCast patent application on this  
8 date?

9 MS. PASCAL: Objection, form.

10 THE WITNESS: The entries in this logbook  
11 are the best evidence I have for this day.

12 BY MR. SUH:

13 Q. And we can go to page 40. This is an  
14 entry for July 27th, 0.75 hours for reviewing  
15 materials for SurfCast to take to New York.

16 Do you specifically remember what you did  
17 on this date?

18 A. I do not specifically remember.

19 Q. And as documented, you did not draft the  
20 SurfCast patent application on this day.

21 Is that correct?

22 MS. PASCAL: Objection, form.

23 THE WITNESS: Again, the narrative does not  
24 say that I drafted the patent application.

25 However, I was reviewing materials in

1 connection with that process and in connection with  
2 a forthcoming meeting in New York City that we have  
3 previously talked about today with other Pennie and  
4 Edmonds attorneys and SurfCast personnel.

5 BY MR. SUH:

6 Q. Let's go to page 41. There is two  
7 entries, two hours of preparing for meeting on  
8 SurfCast, this is for July 28th, and three hours of  
9 meeting on SurfCast with Ovid, Klaus, Tom, AG -- AGG  
10 and P. DeStefano.

11 Do you see that?

12 A. Yes.

13 Q. Do you specifically remember what you did  
14 on this date?

15 A. In part.

16 Q. What was it?

17 MS. BOYD: Caution the witness not to  
18 disclose attorney-client privileged communications.

19 THE WITNESS: I remember we had a meeting,  
20 the persons listed in the second narrative in a  
21 conference room of Pennie and Edmonds in New York  
22 City.

23 BY MR. SUH:

24 Q. Is that it? Are you done?

25 A. I remember some of what is talked about,

1 but I believe it's covered by attorney-client  
2 privilege.

3 Q. You can answer.

4 MS. BOYD:

5 MS. PASCAL: Excuse me?

6 MS. BOYD: What?

7 THE WITNESS: I just answered.

8 MR. SUH: There was no objection by  
9 counsel.

10 MS. PASCAL: Fine. Attorney-client  
11 privilege. We have already agreed that --

12 MS. BOYD: And I already instructed him not  
13 to answer if it was attorney-client privileged. You  
14 know, this is -- this is getting just a tad abusive,  
15 and I'm -- I'd appreciate if you could keep that  
16 under control. I really would. Thank you.

17 MR. SUH: I just want the record to be  
18 clear. Did you not --

19 MS. PASCAL: She made an objection to --

20 MS. BOYD: We don't have to object to  
21 everything that comes out of your mouth. There is  
22 an ongoing -- it was an ongoing line of questioning,  
23 the objection stands, if you could move on I would  
24 appreciate it.

25 MR. SUH: I would like an objection for

1 each question if you want to object to the question.

2 MS. BOYD: I will object when I want to  
3 object, and my witness will follow my instructions  
4 as I give them.

5 MR. SUH: And I did not hear any  
6 instructions from you on this question. He asserted  
7 his own objection.

8 THE WITNESS: No, I believe she told me  
9 that I need not answer. I heard that.

10 MR. SUH: Okay. Maybe I did not hear that.

11 MS. BOYD: You need to take a lesson in how  
12 to take a deposition, sir.

13 MR. MICALLEF: I think we should take a  
14 break and maybe get the Board on the phone now,  
15 Counsel.

16 MR. SUH: Okay.

17 MR. MICALLEF: You are making narrative  
18 objections and you are making arguments to counsel,  
19 and I really think we ought to have the Board's view  
20 on that because that's not your -- your -- your  
21 right there.

22 MS. BOYD: Okay.

23 MR. MICALLEF: So let's call them up.

24 THE VIDEOGRAPHER: This is the end of  
25 volume one, videotape number two in the deposition

1 of Dr. Richard Bone. We are going off the record,  
2 the time is 1:07.

3 (Whereupon, a recess was taken  
4 commencing at 1:07 P.M. and  
5 concluding at 1:10 P.M.)

6 THE VIDEOGRAPHER: We are back on the  
7 record. This is the beginning of volume one,  
8 videotape number three in the deposition of  
9 Dr. Richard Bone. The time is 1:10.

10 BY MR. SUH:

11 Q. Okay. If you can turn to page 42?

12 A. Of Exhibit 2035?

13 Q. That's right. And there are entries for  
14 July 29th?

15 A. Yes.

16 Q. And there is an hour of breakfast with  
17 Ovid, Tom, Paul, et cetera.

18 A. Yes.

19 Q. Do you specifically remember what you did  
20 on this day?

21 A. Yes, I have some recollection.

22 Q. Okay. Can you tell me about that?

23 MS. PASCAL: I'm going to caution you  
24 against revealing attorney-client privilege in your  
25 answer. But you can answer to the extent that that

1 does not reveal privileged information.

2 THE WITNESS: Noted. Thank you.

3 I also want to refresh my recollection of  
4 the following page of this exhibit.

5 MR. SUH: Sure.

6 THE WITNESS: Okay. There was a breakfast  
7 meeting with the persons listed here and probably  
8 also Mr. Lagermann and Mr. Gray. As I recall, I  
9 think it occurred in a location in Midtown,  
10 Manhattan.

11 Then there was a long meeting at one of  
12 the conference rooms in the Pennie and Edmonds  
13 offices that at least Mr. Lagermann and myself were  
14 there and Mr. Gray, and I think also Mr. Santoro.

15 BY MR. SUH:

16 Q. Okay. Do you remember what you talked  
17 about on this date?

18 A. I have a partial recollection.

19 MS. PASCAL: Same caution to not reveal  
20 attorney-client privileged information.

21 BY MR. SUH:

22 Q. Are you going to answer?

23 A. You haven't asked me a question.

24 Q. I asked if you specifically remember what  
25 you talked about this day.

1           A.    And I answered in part.

2           Q.    And what was it about?

3                   MS. PASCAL: And I'm going to caution you  
4   in your answer not to reveal any attorney-client  
5   privilege.

6                   MS. BOYD: And I will reiterate that  
7   caution and instruction not to -- not to testify  
8   regarding any attorney-client privileged  
9   communication.

10                  Is this really what you want your record  
11   to look like, though? Really?

12                  THE WITNESS: I believe that's correct.  
13   What I talked about on that day is covered by  
14   attorney-client privilege.

15                  BY MR. SUH:

16           Q.    So you are not answering. Correct?

17           A.    I just answered.

18           Q.    Okay. And as documented, you did not work  
19   on drafting the SurfCast patent application on this  
20   day.

21                  Correct?

22                  MS. BOYD: Objection mischaracterize  
23   witness' testimony.

24                  MS. PASCAL: Objection to form.

25                  THE WITNESS: As I have answered you in

1 response to previous questions of this nature, the  
2 narrative does not say that I drafted the patent  
3 application on this day.

4 However, my work over this time period was  
5 dedicated to preparing a patent application for  
6 SurfCast, and this meeting was intimately connected  
7 with that process.

8 I can't say more than that.

9 BY MR. SUH:

10 Q. Okay. Let's go to page 43. There is 0.5  
11 hours of tidying notes from SurfCast meeting. Do  
12 you specifically remember what you did on this date?

13 A. Not beyond what is written there. And as  
14 you'll note, there are portions that are redacted,  
15 and if I had access to the un-redacted portions I  
16 may have a better ability to refresh my memory of  
17 that day.

18 Q. And as documented, you did not work on  
19 drafting the SurfCast patent application on this  
20 date.

21 Correct?

22 MS. BOYD: Objection.

23 MS. PASCAL: Objection to form,  
24 mischaracterization.

25 THE WITNESS: Again, there is no language

1 that says that. But again, I will reiterate that  
2 whatever narrative I have related to SurfCast is  
3 connected with a process of preparing a patent  
4 application.

5 BY MR. SUH:

6 Q. Let's turn to page 46. This is an entry  
7 for August 2nd, 0.5 hours talk with Brett about  
8 SurfCast.

9 Do you specifically remember what you  
10 talked about on this date?

11 MS. PASCAL: I'm going to caution the  
12 witness to the extent that it reveals  
13 attorney-client privilege that, not to answer that  
14 aspect of the question.

15 But you may answer so long as it does not  
16 reveal privilege.

17 THE WITNESS: Right. Or attorney work  
18 product.

19 MS. PASCAL: Yes. Thank you.

20 THE WITNESS: Yes. I don't have a specific  
21 recollection of what I talked about on that day.

22 BY MR. SUH:

23 Q. And as documented, you did not work on  
24 drafting the patent application for SurfCast.

25 Correct?

1 MS. PASCAL: Objection, form.

2 MS. BOYD: Object.

3 MS. PASCAL: And mischaracterizes  
4 testimony.

5 THE WITNESS: Again, at the risk of being  
6 repetitive, my answer is that although the narrative  
7 does not explicitly say I drafted the patent  
8 application, my activities over this period were  
9 focused on preparing a patent application for  
10 SurfCast.

11 BY MR. SUH:

12 Q. So go to page 48.

13 MS. BOYD: Are you skipping page 47?

14 MR. SUH: Yes.

15 MS. BOYD: Okay.

16 BY MR. SUH:

17 Q. So 48 is for August 4th. Says "Figures,  
18 facts to Klaus, listen to tapes."

19 Do you know how long this was for? There  
20 is no time entry. There is no direction.

21 A. I understand. So it says "rest of day,"  
22 and it may be possible to correlate activities on  
23 this day with what is in one of the invoices, the  
24 Pennie and Edmonds, if it covers that period of  
25 time.

1           In the absence of making that connection,  
2   I am -- only best that I would speculate that I have  
3   spent some hours on SurfCast. It's a Wednesday. I  
4   only have two hours noted for other matters. If I  
5   put something like "rest of day," it's most likely  
6   that I spent several hours.

7           I can also add that the narrative says  
8   "figures" and includes "listen to tapes." Both of  
9   those would have required some time.

10          Q.    Okay. And as documented, you did not work  
11   on drafting the SurfCast patent application on this  
12   date.

13                Correct?

14                MS. BOYD: Objection.

15                MS. PASCAL: Form.

16                MS. BOYD: Mischaracterizes the testimony.

17                MS. PASCAL: Same objection for both of us.

18                THE WITNESS: I disagree, and to the extent  
19   that I do reference figures, which I think means  
20   that I quite probably worked on preparing some  
21   figures, which I would -- I would say is part of  
22   drafting a patent application.

23                BY MR. SUH:

24          Q.    Let's go to page 63. And this is an entry  
25   for August 19th.

1 A. Yes.

2 Q. And "0.25 hours of SurfCast (Klaus e-mail  
3 plus print)."

4 Do you specifically remember what you did  
5 on this day?

6 A. I do not specifically remember.

7 Q. And as accounted, you did not work on  
8 drafting the SurfCast patent application on this  
9 date.

10 Correct?

11 MS. BOYD: Objection.

12 MS. PASCAL: Objection to form,  
13 mischaracterizes testimony.

14 THE WITNESS: Again, as I have stated  
15 before, the narrative does not state that I drafted  
16 a patent application.

17 However, I am involved in at least some  
18 communication with SurfCast, and that I consider to  
19 be connected with preparing a patent application.

20 BY MR. SUH:

21 Q. Well, you don't specifically remember what  
22 you did on this day.

23 Is that correct?

24 A. I don't specifically remember.

25 Q. Let's go to page 68. This is an entry for

1 August 24th, there is a 0.25 hour entry which says  
2 "Talked with Andrew Gray regarding timing of  
3 SurfCast application."

4 Do you remember what you talked about on  
5 this day?

6 MS. PASCAL: I'm going to caution the  
7 witness not to reveal any attorney-client or  
8 attorney work product communications.

9 MS. BOYD: Same caution and instruction.

10 THE WITNESS: While I have no specific  
11 recollection, the narrative says "Talked with Andrew  
12 Gray re timing of SurfCast application."

13 BY MR. SUH:

14 Q. So other than talking about the timing of  
15 the SurfCast application, you don't recall anything  
16 else you talked about.

17 Is that correct?

18 MS. PASCAL: Same caution.

19 THE WITNESS: That's correct, if you are  
20 talking about with Mr. Gray. But as I have said  
21 before, there are other entries on this day that are  
22 redacted, and if I could see what they were, I may  
23 be -- I may be able to remember other things I did  
24 on that day.

25 BY MR. SUH:

1 Q. And as documented in this exhibit, you did  
2 not recall drafting the SurfCast patent application  
3 on this day.

4 Correct?

5 MS. BOYD: Objection, mischaracterizes the  
6 witness' testimony.

7 MS. PASCAL: Same objection.

8 THE WITNESS: So the narrative does not say  
9 that I drafted the patent application on that day,  
10 that's correct. But clearly I was -- I was  
11 addressing aspects of preparing the patent  
12 application due to a discussion with Mr. Gray on  
13 that subject.

14 BY MR. SUH:

15 Q. And what is your basis for saying that?

16 A. The narrative references SurfCast and the  
17 timing of the application.

18 Q. It only mentions the timing. Does it  
19 mention anything else?

20 A. It does not.

21 Q. Are you done?

22 A. I am.

23 Q. Let's go to page 75. And this is a time  
24 entry for August 31st. And there is 1.5 hours of  
25 background materials for SurfCast patent.

1                   Do you specifically remember what you were  
2   looking at?

3           A.    I don't specifically remember, no.

4           Q.    So you don't have any evidence of what you  
5   specifically did on this date, do you?

6           A.    I have this logbook which is in front of  
7   both of us which narrates what I did on that day  
8   whilst at Pennie and Evans.

9           Q.    So other than this logbook, you don't have  
10   any evidence of what you did on this date.

11                   Correct?

12           A.    Not me personally, I do not, that's  
13   correct.

14           Q.    And as documented, you did not work on  
15   drafting the SurfCast patent application on this  
16   date.

17                   Correct?

18                   MS. PASCAL: Objection to form,  
19   mischaracterizes testimony.

20                   THE WITNESS: Again, I'll give you the same  
21   answer I have been giving. Whilst the narrative  
22   does not say that I drafted the patent application,  
23   it is part of an overall process of preparing an  
24   application.

25                   And you'll notice also that it says one

1 and a half hours background materials. That's a  
2 significant amount of time. And it is -- it is in  
3 my view clearly connected with preparing the patent  
4 application.

5 BY MR. SUH:

6 Q. Well, you were looking at what existed  
7 before, not SurfCast invention.

8 Correct?

9 MS. PASCAL: Objection.

10 THE WITNESS: Possibly. But this may also  
11 have been part of drafting the background section of  
12 the patent application.

13 BY MR. SUH:

14 Q. Is there any portion indicating that?

15 A. There is not. But there is not also a  
16 portion that indicates I was -- I was only looking  
17 at prior materials.

18 Q. Okay. Let's go to page 87. This is for  
19 September 12th, and 1.5 hours of "SurfCast, read  
20 about XML."

21 Do you specifically remember what you did  
22 on this day?

23 A. I did not specifically remember beyond  
24 what is referenced in this narrative.

25 Q. And what is XML?

1           A.    It's a markup language that was I think  
2 relatively new at that time.

3           Q.    Did it exist before the SurfCast alleged  
4 invention?

5                   MS. PASCAL: Objection, form.

6                   THE WITNESS: I don't know the answer to  
7 that.

8                   BY MR. SUH:

9           Q.    As documented, you did not work on  
10 drafting the SurfCast patent application on this  
11 date.

12                   Correct?

13                   MS. BOYD: Objection.

14                   THE WITNESS: Again, and I'll repeat my  
15 answer, although the narrative does not state  
16 drafting patent application, I was working for  
17 SurfCast on this day, a Sunday, and I was reading  
18 about something that I considered to be relevant to  
19 preparing the patent application, and therefore this  
20 entry is part of the overall process of preparing  
21 the patent application.

22                   BY MR. SUH:

23           Q.    Okay. Let's go to page 88. There is an  
24 entry of 0.25 hours, "Talked with Mr. Gray about  
25 SurfCast," and one hour for "Read further about

1 XML."

2 Do you specifically remember what you  
3 talked about on this day?

4 MS. PASCAL: I'm going to caution the  
5 witness to the extent the answer calls for  
6 revelation of attorney-client or attorney work  
7 product, you may answer except for that.

8 THE WITNESS: Yeah, I don't specifically  
9 remember what I talked about on that day.

10 BY MR. SUH:

11 Q. And as documented, you don't, you did not  
12 work on drafting the SurfCast patent application on  
13 this day.

14 Correct?

15 MS. PASCAL: Objection, form, and  
16 mischaracterizes prior testimony.

17 MS. BOYD: Same objections.

18 THE WITNESS: I'll repeat. There are two  
19 entries on this day, September 13, for SurfCast, the  
20 one you just read to me and then a second one read  
21 further about MS -- XML. I consider that both of  
22 those are consistent with the fact that I was  
23 preparing the patent application for SurfCast over  
24 that time.

25 BY MR. SUH:

1 Q. Let's go to page 89, September 14th.  
2 There is 0.5 hours of read more XML, and 0.25 of  
3 talk to Mr. Gray about U.S. 5,918,237, and one hour  
4 of "Retrieved plus read about U.S. 5,918,237."

5 Do you specifically remember what you did  
6 on this date?

7 A. No, I do not.

8 Q. Do you specifically remember what you  
9 talked about on this date?

10 MS. PASCAL: And I'm going to caution the  
11 witness not reveal any attorney work product or  
12 attorney-client privileged information. But  
13 otherwise you may answer.

14 THE WITNESS: I do not remember what I  
15 talked about on this day.

16 BY MR. SUH:

17 Q. You are looking at what existed before,  
18 not SurfCast's alleged invention.

19 Correct?

20 MS. PASCAL: Objection, form.

21 THE WITNESS: Can you be more specific?  
22 There are several narrative entries on this day.

23 BY MR. SUH:

24 Q. You talked -- you read about XML, talked  
25 about a U.S. patent that existed before this date.

1 So isn't it correct that you were looking at what  
2 existed before, not SurfCast's invention.

3 Correct?

4 MS. PASCAL: Objection, form.

5 THE WITNESS: The U.S. patent 5,918,237  
6 clearly already existed at the time I was reading  
7 it. I don't know temporally whether it's before  
8 SurfCast or not.

9 The first entry that says "Read more XML,"  
10 again, I don't know exactly what the date the XML  
11 came into existence was.

12 BY MR. SUH:

13 Q. And as documented, you did not work on  
14 drafting the SurfCast patent application on this  
15 date.

16 Correct?

17 MS. PASCAL: Objection, form,  
18 mischaracterizes testimony.

19 THE WITNESS: Again, I'll repeat the answer  
20 you have now heard several times. There is no  
21 narrative on this day that describes drafting the  
22 patent application. But everything I was doing for  
23 SurfCast in this period of time was connected with  
24 the process of preparing the patent application.

25 BY MR. SUH:

1 Q. Let's turn to page 92. There is 0.25  
2 hours of "Arrange for transfer documents to be  
3 prepared."

4 Do you specifically remember what you did  
5 on this day?

6 A. No.

7 Q. And as documented, you did not work on  
8 drafting the SurfCast patent application on this  
9 date.

10 Correct?

11 MS. PASCAL: Object to the form,  
12 mischaracterizes testimony.

13 THE WITNESS: I believe that's correct, I  
14 do not see a narrative that refers to drafting a  
15 patent application on this day.

16 BY MR. SUH:

17 Q. Let's turn to page 104. There is 0.1 hour  
18 of "Talk to Andrew Gray about patent process."  
19 There is a .1 hour of "Talked to Gray Williams about  
20 current status."

21 Do you specifically remember what you  
22 talked about on this day?

23 MS. PASCAL: I'm going to caution the  
24 witness not to reveal any attorney-client or  
25 attorney work product communications.

1 MS. BOYD: Same caution, same instruction.

2 THE WITNESS: I don't remember what I  
3 talked about on this day.

4 BY MR. SUH:

5 Q. As documented, you did not work on  
6 drafting the SurfCast patent application on this  
7 day.

8 Correct?

9 MS. PASCAL: Objection to form.

10 MS. BOYD: Objection.

11 MS. PASCAL: Mischaracterizes testimony.

12 THE WITNESS: That's correct, there is not  
13 a narrative that talks about drafting the patent  
14 application on this day.

15 BY MR. SUH:

16 Q. So if you can go to page 109, that is an  
17 entry, this is for October 4th, and there is an  
18 entry of 0.1 hours, "Talked to Andrew Gray about  
19 SurfCast."

20 Do you specifically remember what you  
21 talked about on this day?

22 MS. PASCAL: I'm going to caution the  
23 witness not to reveal any attorney work product or  
24 attorney-client communications in your answer.

25 MS. BOYD: Same caution.

1 THE WITNESS: I don't recall what I talked  
2 about on this day.

3 BY MR. SUH:

4 Q. As documented --

5 MS. PASCAL: Excuse me. Would it be  
6 possible to take a short bio break?

7 MR. SUH: Sure. I'll just finish this one  
8 and I can.

9 MS. PASCAL: Okay.

10 BY MR. SUH:

11 Q. And as documented, you did not work on  
12 drafting the SurfCast patent application on this  
13 date.

14 Correct?

15 MS. PASCAL: Objection, form,  
16 mischaracterizes testimony.

17 THE WITNESS: It's correct. There is not a  
18 narrative that describes drafting the patent  
19 application.

20 But I consider this entry and the previous  
21 two or three that we just discussed to be connected  
22 with the process of preparing the application and  
23 working towards that goal.

24 MR. SUH: We can take a break.

25 MS. PASCAL: Thank you.

1 THE VIDEOGRAPHER: Okay. Going off the  
2 record, the time is 1:31.

3 (Whereupon, a recess was taken  
4 commencing at 1:31 P.M. and  
5 concluding at 1:43 P.M.)

6 THE VIDEOGRAPHER: Okay. We are back on  
7 the record. The time is 1:43.

8 BY MR. SUH:

9 Q. Let's go to page 110 of 2035.

10 A. Okay.

11 Q. And this entry is for October 5th.

12 A. Yes.

13 Q. And there is 0.5 hours of "Discussed draft  
14 of patent with Andrew Gray and Brett Lovejoy." Do  
15 you specifically remember what you talked about on  
16 this day?

17 MS. PASCAL: I'll caution you not to reveal  
18 any attorney work product or attorney-client  
19 privilege.

20 MS. BOYD: Objection.

21 THE WITNESS: I don't specifically  
22 remember, no.

23 BY MR. SUH:

24 Q. And as documented, you did not talk about  
25 the SurfCast patent application.

1 Correct?

2 MS. BOYD: Objection.

3 MS. PASCAL: Objection, form,  
4 mischaracterizes testimony.

5 MS. BOYD: Mischaracterizes the document.

6 THE WITNESS: The narrative does not say  
7 drafted patent application, but clearly from the  
8 narrative I am involved in the process of preparing  
9 the patent application because I'm discussing the  
10 draft with two other persons at Pennie and Edmonds.

11 BY MR. SUH:

12 Q. Let's go to page 111. There is a 0.4  
13 hour, this is for October 6th, 0.4 hour of "Talked  
14 to Brett Lovejoy about status of patent," and  
15 "Meeting with Ovid Santoro, Gabriel, Brett Lovejoy  
16 (Klaus Lagermann via speakerphone). Print out copy  
17 of patent, followup conversation with Brett Lovejoy  
18 about timeline. Drew up timeline, arranged for  
19 e-mail of encrypted document to Ovid, Klaus, and  
20 telephone call with Andrew Gray, e-mail timeline to  
21 Andrew Gray, Ovid, and Klaus."

22 Do you specifically remember what you  
23 talked about on this day?

24 MS. PASCAL: I'm going to offer the same  
25 caution to the witness regarding attorney-client,

1 attorney work product privileges.

2 MS. BOYD: Same caution.

3 THE WITNESS: I don't remember  
4 specifically.

5 BY MR. SUH:

6 Q. As documented, you did not work on  
7 drafting the SurfCast patent application on this  
8 date.

9 Correct?

10 A. I disagree.

11 MS. PASCAL: Objection.

12 THE WITNESS: The last narrative that you  
13 did not read just now says "1.5 hours, revisions to  
14 draft of patent." I conclude that that is working  
15 on drafting the patent application.

16 BY MR. SUH:

17 Q. Other than that, you did not work on  
18 drafting the SurfCast patent application on this  
19 date.

20 Correct?

21 MS. PASCAL: Objection, form, misstates  
22 testimony and document.

23 THE WITNESS: I mean, I hope you don't mind  
24 me saying I think that's actually fatuous. There is  
25 1.5 hours entry on this day in which I am basically

1 carrying out revisions to the patent draft  
 2 application. There is 1.9 hours in which I am  
 3 talking with the client, talking with other people  
 4 at Pennie and Edmonds about the patent application.

5 That looks to me like half of the day I'm  
 6 working on SurfCast and working on matters in  
 7 connection with preparing the patent application,  
 8 including revising a draft.

9 BY MR. SUH:

10 Q. Let's go to page 113. This is for October  
 11 8th. And there is an entry of 0.25 hours, "Updated  
 12 Andrew Gray about current timetable."

13 Do you specifically remember what you  
 14 talked about on this date?

15 MS. PASCAL: Same caution regarding  
 16 privilege information.

17 MS. BOYD: Same caution.

18 THE WITNESS: I don't specifically remember  
 19 what I talked about, no.

20 BY MR. SUH:

21 Q. And as documented, you did not work on  
 22 drafting the SurfCast patent application on this  
 23 day.

24 Correct?

25 MS. BOYD: Object.

1 MS. PASCAL: Objection.

2 MS. BOYD: Mischaracterizes witness'  
3 testimony and the document.

4 THE WITNESS: That is correct. The  
5 narrative does not say that I worked on drafting a  
6 patent application.

7 But I can say that on that day you can  
8 tell from the time entry below it five and  
9 three-quarter hours on a matter that by the billing  
10 number I know is a training matter, and I know that  
11 throughout the period that we have been talking  
12 about in this deposition I actually attended a lot  
13 of training related matters at Pennie and Edmonds.  
14 So it looks as if on this particular day most of my  
15 day was in a training matter.

16 So you know, I still managed to find some  
17 time to discuss the patent application with  
18 Mr. Gray.

19 BY MR. SUH:

20 Q. What aspects of the patent application did  
21 you discuss?

22 MS. BOYD: Objection.

23 MS. PASCAL: Objection.

24 MS. BOYD: Caution the witness not to  
25 disclose attorney or work product information.

1 THE WITNESS: I don't recall what I  
2 specifically discussed beyond what is written in the  
3 narrative on this page.

4 BY MR. SUH:

5 Q. Let's go to page 117. This is for October  
6 12th?

7 A. Okay.

8 Q. And there is an entry of 0.33 hours which  
9 says "Teleconference with Ovid Santoro, Klaus  
10 Lagermann, Paul DeStefano and Brett Lovejoy." Do  
11 you specifically remember about what you talked  
12 about on this day?

13 MS. PASCAL: Caution to the witness  
14 regarding the revealing attorney-client and attorney  
15 work product classifications.

16 MS. BOYD: Same caution.

17 THE WITNESS: Again, I do not specifically  
18 remember what was discussed on this teleconference.

19 BY MR. SUH:

20 Q. As documented, you did not work on  
21 drafting the SurfCast patent application on this  
22 day.

23 Correct?

24 MS. BOYD: Objection, form.

25 MS. PASCAL: Objection.

1 MS. BOYD: Mischaracterizes the testimony  
2 and the document.

3 THE WITNESS: According to the narrative I  
4 did not draft the patent application on this day.  
5 But as previously stated, activities I carried out  
6 for SurfCast were connected with and part of a  
7 process of preparing the patent application.

8 BY MR. SUH:

9 Q. Let's go to page 118. This is a time  
10 entry for October 13th. There is 1.25 hours of  
11 teleconference with Brett Lovejoy, Ovid Santoro,  
12 Klaus Lagermann about patent and followup discussion  
13 with Brett Lovejoy and Andrew Gray.

14 Do you specifically remember what you  
15 talked about on this day?

16 MS. PASCAL: Caution to the witness with  
17 regard to revealing privileged conversation.

18 MS. BOYD: Same caution.

19 THE WITNESS: I do not specifically  
20 remember what I talked about on this day.

21 But it should be clear, as with my answer  
22 to previous questions, this is a  
23 one-and-a-quarter-hour entry, it's a teleconference  
24 with both the inventors as well as other personnel  
25 at Pennie and Edmonds, and it's part of the process

1 of preparing the patent application.

2 BY MR. SUH:

3 Q. And as -- let's go to page 123. This is  
4 an entry for October 18th.

5 A. Yes.

6 Q. And there is 0.25 hours of talk to Brett  
7 Lovejoy about TCP/IP. Do you remember what you  
8 talked about on this day?

9 MS. PASCAL: Same cautions regarding  
10 privilege.

11 THE WITNESS: Beyond what is discussed, I  
12 mean, beyond what is recited in this narrative I do  
13 not remember specifically what I discussed.

14 BY MR. SUH:

15 Q. And you were looking at what existed  
16 before, not the SurfCast invention.

17 Correct?

18 MS. PASCAL: Objection, form.

19 MS. BOYD: Objection.

20 THE WITNESS: I don't know that I can say  
21 that what I'm talking about there is before  
22 SurfCast's invention. I do know that I am talking  
23 about TCP/IP.

24 BY MR. SUH:

25 Q. As documented, you did not work on

1 drafting the SurfCast patent application on this  
2 day.

3 Correct?

4 MS. BOYD: Objection.

5 MS. PASCAL: Objection. Form,  
6 mischaracterization.

7 THE WITNESS: I did not -- so excuse me.  
8 The narratives do not describe drafting the patent  
9 application on this day, but this discussion is in  
10 connection with preparing the patent application.

11 BY MR. SUH:

12 Q. Can we go to page 124, please? There is a  
13 time entry for October 19th.

14 A. Uh-huh.

15 Q. And there is an entry of 0.7 hours  
16 attending meeting with Mr. Carberry, talking with  
17 Brett Lovejoy about TCP/IP, and 0.5 hours of prep  
18 for meeting with Mr. Carberry and one hour of  
19 meeting with Mr. Carberry, Andrew Gray, and Brett  
20 Lovejoy.

21 Do you remember what you talked about on  
22 this day?

23 MS. PASCAL: Same caution revealing --  
24 regarding revealing privileged information.

25 MS. BOYD: Same caution.

1 THE WITNESS: I don't specifically remember  
2 what I talked about with Mr. Lovejoy and Mr. --  
3 well, with Mr. Lovejoy.

4 I have some recollection of what was  
5 discussed with Mr. Carberry, but I believe that's  
6 covered by attorney-client privilege.

7 BY MR. SUH:

8 Q. As documented, you did not work on  
9 drafting the SurfCast patent application.

10 Correct?

11 MS. PASCAL: Objection, form,  
12 mischaracterization.

13 THE WITNESS: Again, the narratives do not  
14 describe drafting a patent application. But the  
15 meetings and the discussions are all connected with  
16 the process of preparing the patent application.

17 BY MR. SUH:

18 Q. Turn to page 133. This is for October  
19 28th. There is one hour of "Reviewed prior art and  
20 attention to docket."

21 Do you specifically remember what you did  
22 on this day?

23 A. I do not specifically remember, no.

24 Q. And as documented, you did not work on  
25 drafting the SurfCast patent application on this

1 date.

2 Correct?

3 MS. BOYD: Objection.

4 MS. PASCAL: Objection, form,  
5 mischaracterization.

6 THE WITNESS: According to the narrative  
7 there is no description of me drafting the patent  
8 application on this day, that's correct.

9 BY MR. SUH:

10 Q. In fact, you were looking at what exists,  
11 not SurfCast's alleged invention.

12 Correct?

13 MS. PASCAL: Objection, form.

14 THE WITNESS: The narrative "Reviewed prior  
15 art" would appear to suggest that I am looking at  
16 things that came before, that is correct.

17 MR. SUH: Microsoft objects to the  
18 privilege and work product objections asserted in  
19 this deposition, and Microsoft also objects to all  
20 of Dr. Bone's testimony that was based on  
21 speculation and any other basis beyond his own  
22 memory as irrelevant, lacking foundation, and based  
23 on hearsay.

24 And I think I'm done, but I'll have to  
25 confer with Joe. So can we go on a five-minute

1 break?

2 MS. PASCAL: Yeah. Just to make clear that  
3 we may need to go back on the record ourselves. So  
4 this deposition is still open.

5 MR. SUH: All right.

6 THE VIDEOGRAPHER: Going off the record,  
7 the time is 1:55.

8 (Whereupon, a recess was taken  
9 commencing at 1:55 P.M. and  
10 concluding at 1:55 P.M.)

11 THE VIDEOGRAPHER: Back on the record. The  
12 time is 1:55.

13 MS. PASCAL: Just before we broke, I  
14 believe Mr. Wu raised some objections. I would like  
15 him to state the basis for each of the objections  
16 that he raised.

17 MR. MICALLEF: Erica, if I may, if we are  
18 going to do that, I would like to have the witness  
19 leave to room, please.

20 MS. PASCAL: On what basis?

21 MS. BOYD: Yeah.

22 MR. MICALLEF: He is not entitled to hear  
23 the narrative.

24 MS. PASCAL: Why?

25 MR. MICALLEF: Because it may affect his

1 testimony.

2 MS. PASCAL: I'm not following. Can you  
3 cite a rule or a law which would prevent Dr. Bone  
4 from being in the room? Since Mr. Wu raised these  
5 objections?

6 MR. MICALLEF: Go ahead. If you are going  
7 to take the position that he may hear this, then we  
8 may have to do something about it. Because while --

9 MS. PASCAL: I'm just --

10 MR. HEINTZ: This is Tim Heintz here.

11 Joe, I have got to say I object to this.  
12 Mr. Suh is taking this deposition, not you. You and  
13 I are listening on the phone. We should not be on  
14 the record.

15 So I object to this continued  
16 participation on your behalf.

17 MR. MICALLEF: Understood.

18 MR. HEINTZ: That's all I'm going to say  
19 on the record.

20 MR. MICALLEF: I am backup lead counsel and  
21 I am entitled to do this. And this narrative in  
22 front of the witness is literally improper.

23 MS. PASCAL: I believe Mr. Suh raised this  
24 himself with the witness in the room, and --

25 MR. MICALLEF: The ongoing narrative is

1 improper.

2 MS. PASCAL: Whose? Mrs. Suh's or mine?

3 MR. MICALLEF: What's going on right now  
4 between you and me. I can't make -- obviously I  
5 can't make anybody do it. I'm going to ask you  
6 again to have the witness leave the room, then we  
7 can have the discussion.

8 MS. PASCAL: Okay. For now we'll -- we'll  
9 ask Dr. Bone to leave the room. We may revisit this  
10 after we have heard the basis for Mr. Wu's  
11 objections.

12 Dr. Bone, would you just step out for a  
13 few minutes and we will call you back in?

14 THE WITNESS: Certainly.

15 MS. PASCAL: Thank you. I apologize.

16 THE WITNESS: Okay. Exit stage left.

17 MS. PASCAL: Okay. Mr. Suh, you are on the  
18 record with some objections, so I'd like you to now  
19 go through the basis of each of your -- go through  
20 each objection and the basis for each objection.

21 MR. SUH: The basis for the objecting to  
22 the privileged and work product is because Dr. Bone  
23 relied on the billing records.

24 MS. PASCAL: Which billing records?

25 MR. SUH: That is Exhibit 2035.

1 MS. PASCAL: That you are calling his time  
2 entry log a billing record?

3 MR. SUH: That's right. And Exhibit 2010,  
4 Exhibit 2049, and Exhibit 2050.

5 MS. PASCAL: Okay. Just for  
6 clarification, again for clarity of record, are  
7 you -- you said Mr. -- your basis for the privilege  
8 objection was Mr. or Dr. Bone's -- I believe you  
9 addressed him as Mr. Bone's -- reliance. And now I  
10 want to be clear on which exhibits that you are  
11 actually speaking to.

12 MR. SUH: Exhibit 2035.

13 MS. PASCAL: Okay. So stop right there.  
14 Are you calling Exhibit 2035 a billing record?

15 MR. SUH: Time entry record, same as  
16 billing records.

17 MS. PASCAL: Okay. And what is the basis  
18 of your objection as it refers to --

19 MR. SUH: Basically you can't have it both  
20 ways.

21 MS. PASCAL: Could you let me finish my  
22 question before you --

23 MR. SUH: I thought you were finished.  
24 Sorry.

25 MS. PASCAL: What is your basis with regard

1 to specifically Exhibit 2035 and the objection you  
2 have raised?

3 MR. SUH: You have raised a lot of  
4 objections based on privilege and instructed the  
5 witness not to answer based on privilege. And this  
6 was offered as evidence by Mr. Bone himself. So our  
7 position is that Mr. Bone, SurfCast waived the  
8 privilege.

9 MS. PASCAL: First of all, two things. You  
10 might recall we don't believe we have with regard to  
11 the entries that are in here, we -- we have -- in  
12 other words, what we have redacted, what is  
13 un-redacted you are entitled to have. In fact, we  
14 offered you even a more un-redacted logbook which  
15 you objected to and did not want to use today.

16 But set that aside, I believe in answer to  
17 each of your questions -- and you are free to review  
18 the record, Ms. -- Dr. Bone said he did not recall,  
19 which did give you your answer, regardless of  
20 privilege.

21 So I'm not really sure what you are  
22 expecting to get even without that if his answer is  
23 "I don't recall."

24 But if you know, please let me know so we  
25 can clear it up.

1 MR. SUH: My recollection -- okay, if you  
2 are finished? My recollection is that you made a  
3 series of objections and instructed the witness not  
4 to answer, so that that is the basis.

5 MS. PASCAL: Right.

6 MS. BOYD: So --

7 MR. MICALLEF: So we are going to stand by  
8 our objection. You know, the record is what it is.  
9 So I don't know what you want. We are not going to  
10 back off of that objection.

11 MS. BOYD: Yeah. And I'll just -- if -- if  
12 you have an argument which you are required actually  
13 to make on the record under -- you are required to  
14 explain your objection on the record, what is your  
15 explanation for how the logbook is a waiver of  
16 privilege? Can you point me to privileged  
17 information that's in the logbook as it's been  
18 entered as an exhibit?

19 MR. SUH: For example, I pointed to the  
20 log, portions in the logbook where it says "Talked  
21 with Andrew Gray," and I questioned about it.

22 MS. BOYD: Right. So "Talked with Andrew  
23 Gray," that's foundational information for a  
24 privilege. That is not privileged information.

25 MR. MICALLEF: Well, I don't -- I'm not so

1 sure that's right.

2 But we are entitled to explore all of  
3 these documents, and when he put them into the  
4 record, then -- and cited to them in his direct  
5 testimony, in his declaration, in our view that  
6 opened it up. And your assertions of privilege are  
7 improper.

8 Now, you can tell the Board otherwise and  
9 we'll tell the Board our, our story. You know what  
10 our objection is now with respect to the privilege.

11 So I don't know what you are trying to do.

12 MS. BOYD: Okay. So -- so no, I'm going to  
13 echo Jim's objection, which is you are not taking  
14 this deposition. All right. So this isn't your --  
15 this isn't currently your argument to make. So I  
16 will echo that.

17 Mr. Suh, if there is particular  
18 information in the logbook that you believe is  
19 itself a waiver of privilege, I would like you to  
20 point it out right now because we would --

21 MR. MICALLEF: No, we are not -- we are  
22 not going to do that.

23 MR. SUH: We are not going to do that.

24 MS. PASCAL: Excuse me, Mr. Micallef, I  
25 think we are going to caution you again about who is

1 taking the deposition.

2 But we will say here we are all convened  
3 here with the witness who is presently standing  
4 outside the room. You have the opportunity and the  
5 time as it is only now 2:00 o'clock Pacific time and  
6 you have I believe up to a certain number of hours  
7 on the record to take this deposition.

8 If there is something that we can rectify  
9 here, then we should do it because I think it's  
10 going to be hard to explain to the Board why you  
11 forego several hours of deposition with witness and  
12 attorney time here because you don't want to tell us  
13 what it is we can address.

14 MR. MICALLEF: We told you, and you are  
15 welcome to address it on redirect.

16 MS. PASCAL: No.

17 MR. MICALLEF: Give you something to clear  
18 up.

19 MS. PASCAL: Just --

20 MR. MICALLEF: And I am -- I am not going  
21 to be made to be quiet. I'm not asking questions of  
22 the witness, he is out of room, I am backup lead,  
23 lead counsel and lead counsel is here, I am entitled  
24 to do this.

25 MS. PASCAL: Okay. I disagree with you.

1           Regardless of this, I'm going to ask  
2     whoever it is going to answer, whether it's Mr. Suh,  
3     and I apologize if I am misspeaking on your name,  
4     I'm not -- is it Suh or Suh.

5           MR. SUH: Suh.

6           MS. PASCAL: Mr. Suh, I'm very sorry about  
7     that. Mr. Suh.

8           It's your intention to say that you have  
9     an objection about the witness' testimony. You have  
10    a certain number of hours left to you allocated on  
11    the record on which we could object -- we could  
12    address this objection. That is the whole point of  
13    objections, so that they can be addressed,  
14    particularly ones that can be addressed while the  
15    witness is still present and has time to do it as  
16    well as the attorneys.

17          So as was asked of you, will you please,  
18    if there are particular entries that you believe are  
19    a waiver of privilege, and for example, just so we  
20    can help this process along, have information that  
21    would not appear on a privilege log, for example, if  
22    I write you a letter as a client, my privilege log  
23    is going to say talk to or wrote letter, whatever it  
24    is, oral, verbal, our names and the date and some  
25    general description of the subject matter without

1 revealing the actual ins and outs content, if there  
2 is something in here that you think goes beyond a  
3 privilege log entry I would --

4 MS. BOYD: Please point it out to us.

5 MS. PASCAL: Yeah, point it out.

6 MS. BOYD: So we can take that under  
7 consideration.

8 And if we -- if you persuade us that we  
9 have indeed waived privilege with regard to an  
10 entry, then right now we have the witness, we have  
11 the videographer, we have the court reporter, we  
12 have the attorneys. If you can -- if you can show  
13 us something where we have actually waived privilege  
14 then we can address it now.

15 MR. MICALLEF: No, wait a second. We asked  
16 the questions, you asserted the privilege. So it's  
17 now incumbent on you if you think there is something  
18 to clear up. We don't have a burden to go back and  
19 start this deposition all over again and ask the  
20 same questions over again because you improperly  
21 asserted a privilege, and we are not going to do it.  
22 You have four and a half hours of redirect.

23 MS. PASCAL: Okay. I just want to clear a  
24 statement that you are unwilling to do this, and if  
25 that's the record you want to make, then I'm fine

1 with it. I just want a clear statement that it's  
2 2:04 P.M. Pacific time and it's my understanding  
3 from Mr. Micallef's representation here as I guess  
4 he is backup lead counsel -- if I mistook that, my  
5 apologies, but it's the backup lead counsel's  
6 representation that they do not want to address and  
7 try to rectify this situation here, in which case  
8 we -- if that is -- is that correct, we will go off  
9 the record for a short break and then we will let  
10 you know if there will be redirect testimony.

11 MR. MICALLEF: That is not my position. My  
12 position is we did it once, and it's not incumbent  
13 on us to go back and take the deposition all over  
14 again, it's incumbent on to you clear up the record.  
15 I don't have to do it twice.

16 MS. PASCAL: I'm just going to be clear  
17 here on the record. We don't believe we have waived  
18 privilege, we believe that the entries in the  
19 logbook as Mr. Suh addressed them in the deposition  
20 are no different than what would appear on a  
21 privileged log in terms of the people involved, the  
22 date and a very general description of the subject  
23 matter.

24 If there are entries you believe that do  
25 not conform to that, I am simply asking for you to

1 put at least an example, if not more than one  
2 example on the record to see if we can then address  
3 those specific entries in Dr. Bone's deposition  
4 today.

5 If you don't want to do that, then so be  
6 it, but I need to know what your position is on  
7 that.

8 MR. SUH: One comment --

9 MR. MICALLEF: No -- go ahead, Wonjoo.

10 MR. SUH: One comment I would like to make  
11 is this is not just a privilege log. Dr. Bone is  
12 relying on these entries to establish a diligence,  
13 and he even put a chart, Exhibit 2051 and 2052, on  
14 it.

15 MS. PASCAL: Uh-huh.

16 MR. SUH: And it includes these narratives,  
17 attend meeting with attorneys about TCP/IP, about  
18 time entries. And these, by presenting these  
19 evidence and relying on these evidence, SurfCast  
20 waived the attorney-client privilege. And that's  
21 our position.

22 MS. BOYD: Okay. So --

23 MR. MICALLEF: So and so now we have the  
24 positions on the table, and no one's going to decide  
25 them today.

1 So what do you want to do?

2 MS. PASCAL: What do you mean, no one's  
3 going to decide them today? I'm not following.

4 MR. MICALLEF: No one's going to resolve  
5 this dispute today. It will get resolved, I'm sure,  
6 or it won't matter. But no one's going to resolve  
7 it today.

8 MS. PASCAL: I think if I follow, or I  
9 think I understand what you are saying, I guess at  
10 this point we can go off the record and take a  
11 break.

12 MR. MICALLEF: Okay.

13 THE VIDEOGRAPHER: Okay. Off the record,  
14 the time is 2:07.

15 (Whereupon, a recess was taken  
16 commencing at 2:07 P.M. and  
17 concluding at 2:18 P.M.)

18 THE VIDEOGRAPHER: We are back on the  
19 record. The time is 2:18.

20 BY MR. SUH:

21 Q. Mr. Bone, did you talk to your counsel  
22 during the break?

23 A. Briefly, yes.

24 Q. What about?

25 A. They mentioned the fact that I'm going

1       come in here, I'm going to listen to some more  
2       questions from you, and then I understand that the  
3       deposition will be closed.

4               MR. SUH: Okay. I would like to pass the  
5       witness.

6               MS. PASCAL: I have no questions at this  
7       time.

8               THE WITNESS: Sorry, you would like to do  
9       what?

10              MS. PASCAL: Pass the witness. He means he  
11       is asking me if I am going to do redirect.

12              THE WITNESS: Okay.

13              MS. PASCAL: And no, at this time we have  
14       no redirect.

15              MR. SUH: All right.

16              MS. PASCAL: So I believe the deposition is  
17       closed.

18              THE VIDEOGRAPHER: Okay. This is the end  
19       of volume one, videotape number three in the  
20       deposition of Dr. Richard Bone. We are going off  
21       the record. The time is 2:19.

22                   (Whereupon, the deposition was  
23                   adjourned at 2:19 P.M.)

24                               --oOo--

25

1                   I declare under penalty of perjury the  
2   foregoing is true and correct.   Subscribed at  
3   \_\_\_\_\_, California, this \_\_\_\_ day  
4   of \_\_\_\_\_ 2014.

5                   \_\_\_\_\_  
6                   Richard George Andrew Bone

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## 1 CERTIFICATE OF REPORTER

2 I, COREY W. ANDERSON, a Certified  
3 Shorthand Reporter, hereby certify that the witness  
4 in the foregoing deposition was by me duly sworn to  
5 tell the truth, the whole truth, and nothing but the  
6 truth in the within-entitled cause;

7 That said deposition was taken down in  
8 shorthand by me, a disinterested person, at the time  
9 and place therein stated, and that the testimony of  
10 the said witness was thereafter reduced to  
11 typewriting, by computer, under my direction and  
12 supervision;

13 That before completion of the deposition,  
14 review of the transcript was not requested. If  
15 requested, any changes made by the deponent (and  
16 provided to the reporter) during the period allowed  
17 are appended hereto.

18 I further certify that I am not of counsel  
19 or attorney for either or any of the parties to the  
20 said deposition, nor in any way interested in the  
21 event of this cause, and that I am not related to  
22 any of the parties thereto.

23 DATED:

24 \_\_\_\_\_  
25 COREY W. ANDERSON, CSR 4096

<b>A</b>			
<b>ability</b> 8:22 146:16	<b>addition</b> 47:2	<b>ahead</b> 174:6 184:9	132:12 135:15 141:3
<b>able</b> 15:25 151:23	<b>additionally</b> 83:4	<b>AJG</b> 135:11,12	141:13 142:9 143:25
<b>absence</b> 149:1	<b>address</b> 7:25 180:13,15 181:12 182:14 183:6 184:2	<b>al</b> 1:13 6:13	143:25 144:22 145:4
<b>absolute</b> 76:15	<b>addressed</b> 123:25 176:9 181:13 181:14 183:19	<b>alleged</b> 118:12 130:20 133:17 136:23 155:3 157:18 172:11	147:13,15 148:6
<b>absolutely</b> 38:21	<b>addressing</b> 104:10 125:22 152:11	<b>allocated</b> 181:10	153:21 155:6,15
<b>abusive</b> 141:14	<b>adjourned</b> 186:23	<b>allowed</b> 188:16	156:5,7 157:13
<b>accelerated</b> 11:19	<b>advice</b> 19:21 20:4	<b>Alto</b> 5:5 6:1,21 8:2 14:14 83:11 133:3	158:19 160:24
<b>accepted</b> 90:6	<b>affect</b> 173:25	<b>amount</b> 38:7 115:22 154:2	168:21 177:5,16,19
<b>access</b> 146:15	<b>AFTERNOON</b> 117:1	<b>amounts</b> 19:4	177:22 178:4 181:2
<b>accommodate</b> 116:13	<b>AG</b> 135:11 140:9	<b>analysis</b> 123:15 125:18 126:2	<b>answered</b> 32:10 52:6 74:18 82:3 98:3 99:18 101:12
<b>accompanied</b> 16:1	<b>agent</b> 16:11	<b>Anderson</b> 1:25 5:6 7:12 188:2,25	103:25 104:3 108:17
<b>accounted</b> 150:7	<b>agents</b> 28:7 29:10 87:17	<b>Andrew</b> 1:21 5:8 7:16 8:1 24:20 25:7,25 26:9 27:7 105:21,25 106:22 119:11 151:2 151:11 159:18 160:18 162:14 163:20,21 165:12 168:13 170:19 178:21,22 187:6	112:3,22 132:13
<b>accounting</b> 40:13 43:19	<b>AGG</b> 140:9	<b>answer</b> 9:8,17 10:1 12:8 20:5 27:25 33:22 34:22 35:21 36:9 38:15 43:1 50:9 53:12 62:11 63:5 68:12 81:18,20 83:19 96:2 96:20,21 97:12 98:9 106:6,15 112:9 119:19 120:5 121:19 125:11 130:10	134:24 135:2 138:3
<b>accurate</b> 37:24 51:18	<b>ago</b> 32:7 96:15		141:7 145:1,17,25
<b>action</b> 44:2 77:9 103:3	<b>agree</b> 37:19,25 41:16 47:1 47:14,25 48:9,22 51:8 52:24 58:25 59:23 61:11 71:23 74:11 76:21 80:3 89:14 94:10 98:6 108:13 112:12 126:21 136:22		<b>answering</b> 9:12 19:25 36:16 145:16
<b>activities</b> 52:3 56:16 59:24 61:1 61:8 124:8 136:8 148:8,22 168:5	<b>agreed</b> 141:11		<b>answers</b> 9:7
<b>activity</b> 59:6 61:8,11,15 127:25	<b>agreement</b> 17:13 20:6 21:10,11 24:2 65:5,20		<b>Antimicrobials</b> 68:4,6 72:1 76:4 79:2 98:25 99:17 100:3 101:2 108:25
<b>actual</b> 16:14 17:9 36:2 102:19 182:1	<b>Ah</b> 93:8		<b>Antonio</b> 8:2
<b>add</b> 18:3 24:6 40:19 41:7 63:4 92:23 149:7			<b>anybody</b> 30:6 31:14 69:11,15 69:24 70:4 175:5
<b>added</b> 38:9			<b>apologies</b> 183:5
			<b>apologize</b> 175:15 181:3
			<b>Appeal</b> 1:2 6:11
			<b>appear</b> 92:8 172:15 181:21 183:20
			<b>appeared</b> 5:7 40:9
			<b>appears</b> 52:2 59:6 66:1 119:24
			<b>appended</b> 188:17
			<b>application</b>

14:25 17:16,20 18:6 18:9 27:9,18 28:18 28:23 29:5,7,12,15 30:16,17 37:21 45:19 45:20 47:3,10,15,22 48:3 52:16 53:14 54:10,17 56:7,14 58:9,12 59:1,25 60:11,22 61:2,12 62:1,4,18 63:9,12,15 63:24 64:4 68:21,25 69:7 70:9 71:24 72:2 73:16,22 74:4,8,10 74:11 76:3,5 79:11 79:12,13 80:4,17 81:25 83:5,9,13 84:11,14,16,25 85:2 86:2,13 87:7 88:7,8,8 89:1,11 90:5,7,15,16 91:1,11 92:10,21 93:2,10,15,19 94:11 94:23 95:2 96:17,23 97:3,10,22,24 98:1 98:15 99:6,11,13,16 101:7 105:3,11,22,23 106:20 107:6,11 108:1,14 109:4 111:14,25 114:7,13 115:18,21 117:22 120:19 121:12 122:19,21 123:12 124:7,11,14 125:4,8 125:15,19 126:3,8 127:5 128:15,21,25 129:2,7,10 131:4,23 132:1,8,15,19 134:7 134:17,21 135:4,24 136:6,10 137:20 138:5,7,15,20,22 139:1,7,20,24 145:19 146:3,5,19 147:4,24 148:8,9 149:11,22 150:8,16,19 151:3,12 151:15 152:2,9,12,17 153:15,22,24 154:4 154:12 155:10,16,19	155:21 156:12,23 158:14,22,24 159:8 159:15 160:6,14 161:12,19,22 162:25 163:7,9 164:7,15,18 165:2,4,7,22 166:6 166:17,20 167:21 168:4,7 169:1 170:1 170:9,10 171:9,14,16 171:25 172:8 <b>applications</b> 49:9 67:5 68:7,13 91:20 95:14 103:2 <b>apportion</b> 52:13 <b>appreciate</b> 141:15,24 <b>appropriate</b> 44:1 <b>appropriately</b> 63:10 <b>approximately</b> 78:25 86:9 <b>April</b> 1:11 14:20 <b>architecture</b> 13:10 <b>argument</b> 178:12 179:15 <b>argumentative</b> 41:4 52:4 60:4 61:5 62:20 99:19 100:15 103:24 134:25 <b>arguments</b> 142:18 <b>Arrange</b> 114:2 159:2 <b>arranged</b> 163:18 <b>arrangement</b> 21:3,14,22 64:21 65:18 <b>arrangements</b> 19:17 136:18 <b>art</b> 54:9,16 57:10 58:8	118:18 123:11,18 131:7 171:19 172:15 <b>ascribed</b> 77:11 <b>aside</b> 177:16 <b>asked</b> 21:9,10 34:18 45:4 50:9 74:17 82:1 84:15,19 92:16 97:11 97:20,25 98:3 99:17 99:18 108:17 112:3 112:23 113:1 119:18 122:1 134:23 144:23 144:24 181:17 182:15 <b>asking</b> 21:5 22:18 28:21 32:11 36:22 45:13 56:1 63:22 91:13 107:21 122:11 180:21 183:25 186:11 <b>aspect</b> 147:14 <b>aspects</b> 33:6 97:5 131:5 152:11 166:20 <b>assert</b> 19:23 55:3,11 <b>asserted</b> 21:1 55:9 142:6 172:18 182:16,21 <b>assertions</b> 179:6 <b>assessment</b> 57:10 58:7 120:1,13 120:18 123:10,17,20 124:10,23 125:7,14 126:8,11 <b>assign</b> 116:8 <b>assigned</b> 73:21,25 74:3,3 75:25 77:17 78:3 79:15,21 80:1,3,7 82:14,22	85:13,15,22 89:22 <b>assignment</b> 73:15 <b>assisting</b> 83:4 <b>associate</b> 14:10,15,18 17:10 25:18 <b>associated</b> 120:9 <b>assume</b> 9:16 38:19 43:25 <b>attend</b> 116:3 184:17 <b>attended</b> 108:24 166:12 <b>attending</b> 170:16 <b>attention</b> 77:4 91:10 98:25 102:1,3,24 103:17,20 103:22 104:4,6,14 129:14 171:20 <b>attorney</b> 10:5 15:8,10 16:17 18:7 23:16 25:8,11 25:14 26:23 35:4 53:10 54:22 55:2 72:23 79:23 82:5 83:12 85:7 107:22 123:14 147:17 151:8 156:6 157:11 159:25 160:23 162:18 164:1 166:25 167:14 180:12 188:19 <b>attorneys</b> 14:13 29:2 86:24 87:16 89:7 94:6 110:9 140:4 181:16 182:12 184:17 <b>attorney-client</b> 33:7 34:17 35:2 53:10 54:22,25 55:3 62:9 62:13 63:19 66:7 67:21 102:6 104:12 104:19,23 109:10,25
--	---	--	--

141:10,13 143:24 144:20 145:4,8,14 147:13 151:7 156:6 157:12 159:24 160:24 162:18 163:25 167:14 171:6 184:20 <b>August</b> 2:15 69:7 79:10 83:10 83:15,19,21 84:10 86:9 90:7,17,25 91:2 91:8,12,15,21 92:13 93:3 97:6,9,14,18,21 98:16 99:2,5,8,9,10 99:12 100:20 105:4,8 105:13,20 116:5 135:11 147:7 148:17 149:25 151:1 152:24 <b>Austin</b> 3:4,11 6:25 7:7 <b>author</b> 36:13 <b>available</b> 101:23 <b>Avenue</b> 5:5 6:21 133:2 <b>award</b> 65:9 <b>aware</b> 37:11 52:14 116:10 <b>A.M</b> 5:4 6:3 20:20,21 22:8 22:9 64:12,13 <hr/> <b>B</b> <hr/> <b>B</b> 3:20 15:23 <b>Bachelor's</b> 10:20,22,22 <b>back</b> 13:24 14:2 15:5 20:22 20:25 22:10 29:11 32:25 33:20 44:7 47:6 50:3 64:14,19 65:24 74:22,25 96:16 100:5,14 102:1	111:19,21 117:2 121:7,9,21 143:6 162:6 173:3,11 175:13 178:10 182:18 183:13 185:18 <b>background</b> 10:19 26:10,12,17,21 26:23 27:2 80:16 152:25 154:1,11 <b>backlog</b> 70:7,13 71:7,11,13,17 <b>backup</b> 174:20 180:22 183:4,5 <b>backwards</b> 96:5,24 <b>balance</b> 13:5 <b>bar</b> 14:9 15:13,15 83:10 93:14 107:7,10 <b>base</b> 103:8 <b>based</b> 13:3 20:1,7 34:10 38:19 52:25 54:24 62:23 64:2 65:9 78:20 94:3,8 102:21 103:5,12,15 104:6,7 111:5,10,11 112:22 120:3 129:9 133:4 172:20,22 177:4,5 <b>basically</b> 11:10 14:8,16 57:6 164:25 176:19 <b>basis</b> 40:21 60:6 102:23 152:15 172:21 173:15,20 175:10,19 175:20,21 176:7,17 176:25 178:4 <b>began</b> 12:13 83:4 <b>beginning</b> 10:19 12:12 13:1,16 14:10,19 34:18 64:15	116:4 124:13 143:7 <b>begins</b> 6:6 38:10 <b>begun</b> 10:4 <b>behalf</b> 7:5 174:16 <b>behave</b> 125:12 <b>believe</b> 8:20 17:14 19:4,9 23:23 25:17 26:4 27:3,17 28:25 29:3 30:24 31:3,9,16,25 32:24 33:6,15 34:16 37:6 39:10 40:5,14 42:14,15 43:2 46:24 49:24 50:9 51:11 52:21 53:13,21 54:3 54:21 56:10,22 61:22 61:24 62:3 64:24 67:23 70:12 75:25 78:24 79:21 84:12 85:2 88:2 89:4,21 91:12 94:1,2 97:11 97:12,21 98:6 99:14 99:20 101:8,12 103:25 104:7,8 106:12 108:18 109:6 116:15 119:18 120:16 123:24 124:13 126:6 127:4,6 128:18 129:1,1 130:18,22 135:1 137:1 141:1 142:8 145:12 159:13 171:5 173:14 174:23 176:8 177:10,16 179:18 180:6 181:18 183:17 183:18,24 186:16 <b>believed</b> 94:9 <b>benefit</b> 107:10 <b>best</b> 9:17 28:5 29:17 32:15	56:15 64:2 78:6 79:19 80:23 81:14 87:9 98:21 99:7 104:10 119:20 139:11 149:2 <b>better</b> 146:16 <b>beyond</b> 117:25 128:12 130:8 135:18 138:13 146:13 154:23 167:2 169:11,12 172:21 182:2 <b>bill</b> 17:4 40:9 49:23 62:15 65:6 <b>billable</b> 17:4,9 45:22 65:15 122:24 <b>billed</b> 38:5 39:23 42:8,22 51:9 65:12 <b>billing</b> 38:18 40:1 41:22 42:1 49:14 52:2 62:16 119:23,24,25 166:9 175:23,24 176:2,14 176:16 <b>bills</b> 42:5,8,16,19 43:4,6,12 <b>bio</b> 161:6 <b>biotechnology</b> 29:6 <b>bit</b> 52:19 <b>blank</b> 41:5,20,21 <b>Board</b> 1:2 6:11 22:15,20 55:1 142:14 179:8,9 180:10 <b>Board's</b> 142:19 <b>Bockius</b> 14:14
---	--	---	--

<b>Bone</b> 1:21 2:10 5:8 6:8 7:16 8:1 55:20,21 64:17 143:1,9 174:3 175:9 175:12,22 177:6,7,18 184:11 185:21 186:20 187:6 <b>Bone's</b> 172:20 176:8,9 184:3 <b>Bone/Pennie</b> 2:13 <b>bonus</b> 65:11 <b>book</b> 77:20 78:21 132:22 133:25 134:2,5 <b>books</b> 133:4,5 <b>bookstore</b> 133:1 <b>bottom</b> 39:3 114:1 <b>Boyd</b> 4:13,16 7:2,2,3 21:24 22:4,22 25:23 28:9 30:22 32:10 34:23,25 35:20 36:21 37:4 39:16 40:24 41:2 42:3 43:14,16 44:22 45:5,11 46:17 47:19 48:13 51:21 52:4 53:4,9,20 54:20 55:1 55:12 56:4,9,21 58:2 59:11 60:2,4,12 61:3 61:5,14,21 62:7,9,20 63:1 64:1 65:1 66:6 67:16,18,20 70:2 71:14 72:5,22 73:9 74:15 75:10,22 76:8 78:4,13 79:17 81:15 82:25 85:6,9,20 87:2 87:13 88:3,10,12 89:2,17 95:23,25 98:3 102:5 105:15 106:2 107:20 109:9 109:24 110:6,19	111:9,19 112:2 114:15 116:21 122:2 122:9 123:22 125:9 125:20 126:4,15 132:11 134:11,25 136:1,13 137:13,15 137:25 138:2 140:17 141:4,6,12,20 142:2 142:11,22 145:6,22 146:22 148:2,13,15 149:14,16 150:11 151:9 152:5 155:13 156:17 160:1,10,25 162:20 163:2,5 164:2 165:17,25 166:2,22 166:24 167:16,24 168:1,18 169:19 170:4,25 172:3 173:21 178:6,11,22 179:12 182:4,6 184:22 <b>boyd@turnerboyd....</b> 4:18 <b>break</b> 9:21,25 63:2,5 64:8 116:17,19 117:6,12 142:14 161:6,24 173:1 183:9 185:11 185:22 <b>breakfast</b> 143:16 144:6 <b>breaks</b> 9:20 <b>Brett</b> 24:22 26:16 119:11,11 147:7 162:14 163:14 163:15,17 167:10 168:11,13 169:6 170:17,19 <b>brief</b> 129:22 <b>Briefly</b> 185:23 <b>broad</b> 126:20 <b>broke</b>	173:13 <b>build</b> 86:20 <b>burden</b> 182:18 <b>business</b> 43:24 114:20 <b>busy</b> 28:6 <hr/> <b>C</b> <hr/> <b>C</b> 3:1 4:1 6:5 11:23 13:6 <b>CA</b> 3:21 4:15 <b>Calendar</b> 2:24 <b>California</b> 5:5 6:1,18,22 8:2 187:3 <b>call</b> 22:20 62:1 142:23 163:20 175:13 <b>called</b> 5:10 10:21 11:3 13:18 13:18 15:21 18:4 45:23 122:25 133:13 137:4 <b>calling</b> 176:1,14 <b>calls</b> 58:4 60:4 62:9 72:22 92:1 106:3 109:24 123:14 156:5 <b>Cambridge</b> 10:21,23 11:10,24 12:17 <b>campus</b> 116:3 <b>Canada</b> 11:4 <b>can't</b> 24:1 41:6 49:15 51:17 52:24 76:15 78:23 103:16 104:5,11 110:7,22,22 111:3,6	111:6,10 113:21 117:17 125:11 128:12 146:8 175:4,5 176:19 <b>capability</b> 27:13,16 <b>Carberry</b> 34:4,5,8,16 170:16,18 170:19 171:5 <b>card</b> 16:6 <b>career</b> 94:5 95:18 96:12 126:6 <b>carried</b> 58:8 69:20 123:11 126:7 128:23 168:5 <b>carrying</b> 53:15 165:1 <b>case</b> 8:15 10:11 23:5 29:1 38:21 44:2 68:13 85:12 96:13 117:12 183:7 <b>cases</b> 23:6 82:13,22 84:19 85:22,25 96:4,7 98:11 <b>categorized</b> 59:24 61:1,12 <b>cause</b> 52:21 188:6,21 <b>caution</b> 53:9 66:6 67:20 72:23 85:6 102:5 109:9,25 140:17 143:23 144:19 145:3,7 147:11 151:6,9,18 156:4 157:10 159:23 160:1,22,25 162:17 163:25 164:2 165:15 165:17 166:24 167:13,16 168:16,18 170:23,25 179:25 <b>cautions</b> 169:9
--	--	---	---

<b>certain</b> 92:23 180:6 181:10	<b>cite</b> 83:14 174:3	109:22 110:3,10,14 111:1,7 112:18 165:3 181:22	76:19 105:10 106:19
<b>certainly</b> 33:15 55:3 86:22 87:22 90:4 96:4 126:7 175:14	<b>cited</b> 179:4	<b>clients</b> 49:3 55:23 81:6	<b>completion</b> 188:13
<b>certificate</b> 16:2 188:1	<b>City</b> 4:15 32:22 140:2,22	<b>closed</b> 186:3,17	<b>complex</b> 42:12 83:6 93:23,24 94:11
<b>Certified</b> 5:6 188:2	<b>claiming</b> 107:10	<b>closely</b> 18:6 56:13	<b>complicated</b> 94:9
<b>certify</b> 188:3,18	<b>claims</b> 60:20	<b>collecting</b> 65:9	<b>compound</b> 21:17
<b>cetera</b> 126:23 143:17	<b>clarification</b> 9:15 84:1 101:3 176:6	<b>come</b> 37:3 75:8,15,16,20 124:17 186:1	<b>computational</b> 13:20 14:1
<b>CFR</b> 15:22	<b>clarified</b> 52:17	<b>comes</b> 141:21	<b>computer</b> 11:16,17,17,20 12:15 12:20,24 27:4 83:6 94:8 133:3,12 188:11
<b>chance</b> 91:14	<b>clarify</b> 55:2 76:13 79:11 87:6 112:15,16 136:4	<b>coming</b> 28:2	<b>concerned</b> 43:19
<b>changes</b> 188:15	<b>clarity</b> 51:15 176:6	<b>commencing</b> 5:3 20:20 22:8 64:12 143:4 162:4 173:9 185:16	<b>conclude</b> 164:14
<b>channels</b> 133:13	<b>class</b> 11:18,19,20,22,23	<b>comment</b> 22:22 184:8,10	<b>concluding</b> 20:21 22:9 64:13 143:5 162:5 173:10 185:17
<b>characterization</b> 94:16 101:18,21	<b>classes</b> 11:16 116:3	<b>commitment</b> 69:21	<b>conclusion</b> 60:5
<b>characterize</b> 90:19	<b>classifications</b> 167:15	<b>common</b> 13:4 43:2 83:22 84:2,2 125:6	<b>concurrent</b> 31:16
<b>characterized</b> 56:12,12 120:8	<b>clear</b> 21:8 55:8,16,17,20 63:7 91:18 114:19 141:18 168:21 173:2 176:10 177:25 180:17 182:18,23 183:1,14,16	<b>communication</b> 62:10,13 109:25 110:1 145:9 150:18	<b>concurrently</b> 125:14
<b>chart</b> 111:16 184:13	<b>clearly</b> 60:21 152:10 154:3 158:6 163:7	<b>communications</b> 53:10 54:5 66:8 92:2 102:6 104:13,19,23 109:10 140:18 151:8 159:25 160:24	<b>conduct</b> 10:6
<b>check</b> 73:18	<b>clerk</b> 14:3,7 15:6 17:1 25:9 25:18 95:7	<b>company</b> 4:23 13:8,18,23,25 18:4	<b>confer</b> 172:25
<b>chemist</b> 13:20	<b>clerical</b> 49:16 50:10 51:12	<b>complete</b> 38:20 74:10 83:13 84:12 92:19,20	<b>conference</b> 93:16 140:21 144:12
<b>chemistry</b> 10:24,25 11:14,15 12:14 14:1 26:19	<b>clerk</b> 14:3,7 15:6 17:1 25:9 25:18 95:7	<b>completed</b> 115:9	<b>confident</b> 79:3 127:8
<b>children</b> 117:9	<b>clerk</b> 14:3,7 15:6 17:1 25:9 25:18 95:7	<b>completing</b>	<b>conform</b> 183:25
<b>chose</b> 75:2	<b>clerk</b> 83:11 87:17 94:6		<b>confused</b> 57:18
<b>chronological</b> 72:3 73:7,13 74:13,24 75:2,7 76:6	<b>client</b> 23:23 40:3 43:22 44:3 44:19 49:20 66:11 67:6 68:8 109:17,18		<b>conjunction</b> 125:14
<b>chronologically</b> 71:21 72:19			<b>connected</b> 60:22 63:11 136:8

146:6 147:3 150:19 154:3 158:23 161:21 168:6 171:15 <b>connection</b> 8:13 31:15 35:25 36:12 37:8 65:18,22 120:18 124:10,15 138:21,25 140:1,1 149:1 165:7 170:10 <b>consecutive</b> 73:2 <b>consider</b> 17:10 132:16 134:15 138:5,21 150:18 156:21 161:20 <b>consideration</b> 182:7 <b>considered</b> 56:16 63:11 92:18 136:7 137:6 155:18 <b>consistent</b> 72:25 91:18 129:23 135:15 156:22 <b>consultant</b> 18:16 <b>contact</b> 109:22 110:2,10,14 111:7 112:19 <b>contacted</b> 109:18 <b>contain</b> 31:4 <b>contains</b> 114:20 <b>content</b> 63:18,23 182:1 <b>contents</b> 36:6 <b>contingency</b> 19:16 20:7 21:2,14,21 21:23 64:21 65:17 <b>continue</b> 32:17 <b>continued</b> 67:12 91:15 174:15 <b>control</b>	141:16 <b>Cont'd</b> 4:1 <b>convened</b> 180:2 <b>convenient</b> 63:1 <b>conversation</b> 117:7 163:17 168:17 <b>conversations</b> 119:25 <b>copies</b> 30:11 31:4,11,14 <b>copy</b> 23:7 32:3 91:3,19 103:9,11 110:24 163:16 <b>Corey</b> 1:25 5:6 7:12 188:2,25 <b>corporate</b> 26:23,24 45:23,25 46:2 123:1 <b>Corporation</b> 1:4 6:8,18 7:1 <b>correct</b> 10:12 11:22 15:7,8,9 15:11,14 16:12,13,15 16:18,19,24,25 17:17 17:18,21,22 20:2 23:11,19,20 25:15 26:25 28:19 30:21,25 35:8,9 37:13,14 39:8 39:15 41:18 42:9,23 43:3,13 44:21 45:25 46:3 47:4,5,16 48:4,7 48:12 49:14 51:19 53:2 54:19 57:12,13 57:15 59:2,4 60:1,14 60:18 61:13 62:12 65:3 71:8 72:4 73:8 73:17,19 74:14 75:9 76:19,24 79:16 80:5 80:21 81:13,24 82:15 82:18,23 83:1,17 84:8,13 86:10,21 87:1,12,19 88:9	89:16 90:8 92:14 94:12 95:3,6 97:23 98:17,22 99:15 100:18 103:18 104:20 107:25 108:8 108:18 111:8,11 114:8,14 115:2,16 117:13,14 118:13,20 119:7,8 120:2,4 123:5 126:9 127:11 128:17 129:8,11 130:18,21,22 131:18 132:4,10 133:18,21 134:2,4,9 135:22,25 136:24 137:12,17,24 138:17 139:21 145:12,16,21 146:21 147:25 149:13 150:10,23 151:17,19 152:4,10 153:11,13 153:17 154:8 155:12 156:14 157:19 158:1 158:3,16 159:10,13 160:8,12 161:14,17 163:1 164:9,20 165:24 166:4 167:23 169:17 170:3 171:10 172:2,8,12,16 183:8 187:2 <b>correcting</b> 40:14 <b>correctly</b> 20:6 57:9 71:5 82:11 129:5 <b>correlate</b> 148:22 <b>correspond</b> 60:16 <b>corresponds</b> 99:2 <b>couldn't</b> 15:20 16:10,16 <b>counsel</b> 6:23 9:22 10:10,15 18:7,13,16 19:20 20:4,16 22:15 23:10	23:15,21,25 24:4,7 34:19 35:8 50:6 54:24 55:10,23,24 92:3 106:11 117:5,11 141:9 142:15,18 174:20 180:23,23 183:4 185:21 188:18 <b>counsels</b> 29:25 <b>counsel's</b> 183:5 <b>couple</b> 34:3 <b>course</b> 16:16 <b>court</b> 7:12,13,14 8:15 9:7 21:19 182:11 <b>covered</b> 33:7 34:16 54:21 98:7 104:23 110:11 111:2 141:1 145:13 171:6 <b>covers</b> 148:24 <b>created</b> 36:14 <b>credulity</b> 43:5 <b>crystallography</b> 26:19 <b>CSR</b> 1:25 188:25 <b>culminating</b> 93:2,3 <b>current</b> 14:21 59:19 61:20 159:20 165:12 <b>currently</b> 179:15 <b>curriculum</b> 11:11 <b>cycle</b> 38:18 <hr/> <b>D</b> <hr/> <b>D</b>
---	---	---	---

2:1 6:5	135:5,14 139:11,20	<b>deduce</b>	129:22
<b>dash</b>	143:20 144:25	133:24	<b>design</b>
47:9	145:13,20 146:3,17	<b>defending</b>	13:13 68:21 72:2 76:5
<b>date</b>	147:21 148:21,23	55:11	79:11,13 83:8 84:16
6:14 53:19 69:12	149:5 150:5,22 151:5	<b>defense</b>	84:25 85:2 86:2,13
78:18 79:4,7 83:10	151:21,24 152:3,9	22:15	87:7 90:6 91:10 93:2
85:1 89:10,12,23	153:7 154:22 155:17	<b>define</b>	93:9 94:22 95:1 97:3
93:13,15,17,22	156:3,9,13,19 157:15	18:14 21:23 71:10	98:1
104:25 106:23 107:7	157:22 158:21 159:5	<b>definitely</b>	<b>designated</b>
109:7,13,20 117:24	159:15,22 160:3,7,14	104:22	57:22 123:8
118:2,8 119:1,13	160:21 161:2 162:16	<b>definition</b>	<b>desire</b>
127:10,13 128:3,6,16	163:23 164:25 165:5	85:21	90:4
128:21 129:7 130:7	165:23 166:7,14,15	<b>degree</b>	<b>DeStefano</b>
130:16 131:13 132:9	167:12,22 168:4,15	10:20	24:24 25:11,19 26:5
134:22 135:20 136:4	168:20 169:8 170:2,9	<b>department</b>	140:10 167:10
137:23 138:16 139:8	170:22 171:22 172:8	40:13	<b>DeStefano's</b>
139:17 140:14	187:3	<b>deponent</b>	40:12
144:17 146:12,20	<b>days</b>	188:15	<b>detail</b>
147:10 149:12 150:9	17:6 31:20,22 32:6	<b>deposed</b>	119:2
153:5,10,16 155:11	51:14 69:21 73:2	8:6 9:3	<b>determine</b>
157:6,9,25 158:10,15	77:9,11 98:21 100:6	<b>deposition</b>	54:17
159:9 161:13 164:8	100:9,10,11 101:4	1:20 6:7,19 10:4,6	<b>developed</b>
164:19 165:14 172:1	114:20,21,22 115:5	22:14,21 23:1 34:18	129:23
181:24 183:22	115:14,16 120:7	64:16 124:1 142:12	<b>didn't</b>
<b>DATED</b>	<b>DC</b>	142:25 143:8 166:12	43:6 52:12 86:12
188:23	3:6,13	172:19 173:4 174:12	88:25 90:13 98:14
<b>dates</b>	<b>deadline</b>	179:14 180:1,7,11	100:10 101:9,17
52:10,25 53:8 54:6	69:19	182:19 183:13,19	105:2 107:14 108:13
70:23 72:12,12 73:3	<b>Dechaene</b>	184:3 186:3,16,20,22	111:13,23 114:12
75:6 78:24 79:14	59:19 61:19,23 63:8	188:4,7,13,20	115:20 117:11
82:13,21,21 84:23	<b>decide</b>	<b>describe</b>	<b>Diego</b>
89:15 100:5 103:2,20	184:24 185:3	90:23 125:2,3 129:18	3:21
104:9 115:3	<b>decided</b>	170:8 171:14	<b>difference</b>
<b>day</b>	62:23 82:5	<b>described</b>	50:25
17:6 30:4,7 31:19	<b>declaration</b>	13:22 58:9 119:3	<b>different</b>
33:17,18 34:9 52:11	2:9 23:4 36:1,12 45:17	123:11 130:9 131:22	45:3,7,9 51:6,9,10
53:22,25 60:19,23	57:5 58:6 69:6 70:14	<b>describes</b>	52:2,13 69:9,23
69:21,25 70:25 77:21	74:23 76:10 77:2,14	135:16 158:21 161:18	70:23 71:3 73:3 77:9
79:22 80:8 81:10	78:9 86:16 90:19	<b>description</b>	77:11 84:20 96:3
83:20 86:7 88:21	102:14 103:5,9 105:5	2:8 46:9 50:17,22	112:7 113:2,3 121:25
90:11 91:1 92:10	106:17 122:16 123:6	56:23 61:9 119:20	122:5,7 125:12,13
96:7,10,14 105:12	129:15 179:5	120:10,11 172:7	126:23 183:20
115:23 118:5,11	<b>declare</b>	181:25 183:22	<b>differently</b>
119:6,10,16,21	187:1	<b>descriptions</b>	51:4,6
128:11 130:14,20	<b>dedicated</b>	52:25 80:17	<b>difficult</b>
131:2 134:3,4,8	146:5	<b>descriptive</b>	96:23

<b>digits</b> 44:24,25	<b>District</b> 8:14 21:19	12:20 96:13 123:18,19 125:18 158:22	29:25
<b>diligence</b> 2:24 184:12	<b>diverted</b> 91:10	<b>don't</b> 8:20 9:14 18:23,23	<b>doubt</b> 55:4
<b>diligently</b> 70:8	<b>DLA</b> 3:19 4:3 5:4 6:20 7:4,9	26:11,20,22 27:3,11	<b>download</b> 128:1 130:3
<b>direct</b> 179:4	23:13,15,15,18,25	28:13,21,25 30:24	<b>downloaded</b> 131:8,9,11,13,24
<b>directed</b> 132:18	24:3	31:11 32:10 33:15	<b>downloading</b> 136:19,20,22 137:2,5
<b>direction</b> 148:20 188:11	<b>doc</b> 12:18,19	38:10,20 42:7,16,20	137:7 138:10
<b>disagree</b> 51:20 53:3,5 149:18	<b>docket</b> 71:3 85:18,18,23 86:3	43:10,10 46:7,19	<b>Dr</b> 25:9,18 55:21 59:19
164:10 180:25	86:18,20 101:14,16	48:22 51:3 52:20	61:19 64:17 143:1,9
<b>disclose</b> 66:7 72:24 85:7 102:6	171:20	54:2,7,13 55:7,10	172:20 174:3 175:9
140:18 166:25	<b>docketed</b> 103:2	61:8 62:2,21,24	175:12,22 176:8
<b>discuss</b> 55:14 59:19 61:20	<b>docketing</b> 82:20	63:17 69:14 70:12	177:18 184:3,11
63:9 105:9 166:17,21	<b>doctoral</b> 11:2 13:17	71:16 73:25 74:19	186:20
<b>discussed</b> 33:2,10,12 34:13,15	<b>document</b> 24:17 30:2 32:3 35:21	75:14 76:22 77:12,12	<b>draft</b> 17:20 18:9 27:8 29:4
63:18,23 79:23 82:8	35:22,25 36:2,3	80:9 82:4,12,20 83:1	29:12,15 63:15,23
106:19 161:21	39:19,20 41:13 49:8	84:12 87:24 89:12	70:8 81:25 84:14
162:13 167:2,18	80:23 114:16 124:21	90:3 92:5,7,12,15,22	91:4 92:21 95:7,12
169:11,13 171:5	125:1 138:5 163:5,19	94:13,15,20 95:11	95:13,22 97:24 99:16
<b>discussing</b> 61:25 80:6 106:22	164:22 166:3 168:2	96:1,19 97:12 98:20	105:10 106:19
163:9	<b>documented</b> 89:4 127:9 128:14	99:14 101:8,20 102:7	108:23 132:1 135:4
<b>discussion</b> 22:17 58:17 62:24	129:6 132:7 134:6	102:18 104:16,18,24	139:19 162:13
73:23 152:12 168:12	135:23 137:22	105:17 106:12,21	163:10 164:14 165:1
170:9 175:7	138:14 139:19	107:19,21 108:7	165:8 168:4
<b>discussions</b> 33:13 136:8 171:15	145:18 146:18	109:5,5,12,14 116:15	<b>drafted</b> 17:15 27:18 28:17,22
<b>disinterested</b> 188:8	147:23 149:10 152:1	118:1,7 119:5,9,15	29:7 92:18 95:15
<b>DISPLAY</b> 1:14	153:14 155:9 156:11	120:16 121:6 126:11	132:14 136:6 139:7
<b>dispute</b> 185:5	158:13 159:7 160:5	126:20 127:20 128:4	139:24 146:2 148:7
<b>dissolved</b> 14:12	161:4,11 162:24	128:5,18 129:1,1	150:15 152:9 153:22
<b>distinct</b> 62:3	164:6 165:21 167:20	130:15,18,22 131:3	163:7
	169:25 171:8,24	131:10,25 133:7,20	<b>drafting</b> 64:4 74:7 83:5 88:7
	<b>documents</b> 22:25 35:19 36:10	133:24 135:16,19	89:6 90:15 95:1
	43:8 114:4 159:2	141:20 147:20	98:14 101:7 105:3,23
	179:3	150:21,24 151:15	108:14 111:14,24
	<b>doesn't</b> 105:22 128:22	153:3,4,9 155:6	114:6,12 115:17
	<b>doing</b>	156:8,11 158:7,10	125:8,15,17,18 126:2
		160:2 161:1 162:21	126:2,8 128:15,20
		164:3,23 165:18	129:3,6,10 132:8
		167:1 169:20 171:1	134:7,21 135:24
		177:10,23 178:9,25	137:23 138:5,15,20
		179:11 180:12	
		182:18 183:15,17	
		184:5	
		<b>door</b> 92:3,6	
		<b>double-sided</b>	

138:25 145:19 146:19 147:24 149:11,22 150:8 152:2 153:15 154:11 155:10,16 156:12 158:14,21 159:8,14 160:6,13 161:12,18 164:7,15,18 165:22 166:5 167:21 170:1,8 171:9,14,25 172:7 <b>drafts</b> 30:11,14,16 31:4,7,12 80:16 91:20 <b>draw</b> 129:14 <b>Drew</b> 163:18 <b>Drive</b> 4:5 <b>due</b> 69:18 70:23 72:12,12 73:3 75:6 89:10,14 89:23 93:12,15,16 103:20 104:9 107:9 109:7,12 152:12 <b>duly</b> 5:11 188:4 <b>duration</b> 65:12 <b>D'Alessandro</b> 2:19	<b>Edmonds</b> 2:13 14:3,8,11,12,14 14:23 15:6 16:3 25:8 25:10,12 31:5 32:23 40:13 42:5 43:19 57:21 67:6 68:8 71:1 82:5 93:21 94:7 124:3 140:4,21 144:12 148:24 163:10 165:4 166:13 168:25 <b>educational</b> 10:18 11:11 <b>effectively</b> 17:5 <b>efficient</b> 96:12 <b>eight</b> 88:21 <b>either</b> 21:16 27:17 31:9 37:7 44:23,25 51:11,11 79:22 93:15 109:17 133:11,12 188:19 <b>elaborate</b> 121:16 <b>electrical</b> 27:4 <b>eligible</b> 65:10 <b>employed</b> 6:17 16:4 <b>employee</b> 18:15 <b>employment</b> 13:14 16:3 17:13 <b>empty</b> 101:14 <b>encompasses</b> 49:1 <b>encrypted</b> 163:19 <b>ended</b> 39:22 <b>ends</b> 47:20	<b>engage</b> 16:5 <b>engaged</b> 47:1 <b>engineering</b> 27:4 <b>enter</b> 49:13 <b>entered</b> 40:6,8 82:8 178:18 <b>entire</b> 28:10,12 95:18 <b>entirely</b> 27:5 124:4 <b>entitled</b> 92:4 173:22 174:21 177:13 179:2 180:23 <b>entries</b> 30:4,6 34:3 39:20 40:7 41:8,9 49:19,25 51:17,18 52:20 56:11 58:14 89:5 92:25 97:18 98:20 105:17 108:7 110:23 115:3 115:22 123:7 124:22 125:1 128:9 129:19 135:3 139:10 140:7 143:13 151:21 156:19 157:22 177:11 181:18 183:18,24 184:3,12 184:18 <b>entry</b> 23:6 37:16,25 50:4,14 50:21 59:18 60:16,20 61:18 62:15 77:2,20 78:9 82:7 99:24 100:4,25 106:17 107:1 113:9,17,21 114:18 115:15 117:16,19 126:25 127:13,24 130:24 132:21 133:25 135:8 135:10 136:16 138:9 139:14 147:6 148:20 149:24 150:25 151:1	152:24 155:20,24 158:9 160:17,18 161:20 162:11 164:25 165:11 166:8 167:8 168:10,23 169:4 170:13,15 176:2,15 182:3,10 <b>equally</b> 96:6 <b>equations</b> 94:3 <b>Erica</b> 3:22 7:4 173:17 <b>erica.pascal@dlapi...</b> 3:24 <b>error</b> 50:10 <b>errors</b> 49:16 51:12 <b>ESQ</b> 3:7,14,22 4:8,16 <b>essential</b> 137:19 <b>essentially</b> 16:3 56:16 71:2 101:13 <b>establish</b> 184:12 <b>established</b> 57:21,23 58:7 123:10 <b>et</b> 1:13 6:13 126:23 143:17 <b>European</b> 69:1 83:7 <b>Evans</b> 153:8 <b>evenings</b> 17:8 <b>event</b> 188:21 <b>events</b> 135:18 <b>everybody</b> 22:14 28:6 <b>evidence</b>
---	---	---	--

30:19 32:12,16 39:25 53:18,22,25 78:6 79:19 80:23 81:14 111:5,5 118:1,4,8 119:16 128:6 130:15 138:24 139:6,11 153:4,10 177:6 184:19,19 <b>exact</b> 104:25 121:19,19 123:25 <b>exactly</b> 62:24 90:3 110:23 113:7 158:10 <b>exam</b> 14:9 15:16 <b>EXAMINATION</b> 2:3,5 7:22 <b>EXAMINATIONS</b> 2:2 <b>examined</b> 5:11 <b>example</b> 29:1,5 32:2 80:8 124:4 178:19 181:19,21 184:1,2 <b>Exchange</b> 67:1 71:25 76:4 79:2 81:12,19 82:2 97:5 98:2 107:5,15 108:2 <b>exclusively</b> 12:24 29:2,6 <b>excuse</b> 6:20,21 38:14 55:6,21 56:25 57:3 78:11 101:1 141:5 161:5 170:7 179:24 <b>exemplary</b> 137:6 <b>exhibit</b> 2:9,12,15,17,22,24 23:7 24:10,13 29:19 29:20 35:10,12,14,16 35:24 36:1,8,8 37:16 38:3 41:16 42:20 43:12 44:7,18 46:8	47:7 50:4,14,21 57:5 58:22 59:7,8,15,16 59:23 60:17,19,25 61:18 65:24 66:19 80:10,15 83:3,14 90:23 93:4 98:23 99:1,21 100:23 102:1 102:16 103:9,15 104:6 105:8,14 107:2 108:21 116:2 117:15 123:6 124:21 127:14 129:17 130:17 143:12 144:4 152:1 175:25 176:3,4,4,12 176:14 177:1 178:18 184:13 <b>exhibits</b> 2:6 176:10 <b>exist</b> 31:10 37:12 155:3 <b>existed</b> 118:12 130:19 133:2 133:16 136:23 137:10,18 154:6 157:17,25 158:2,6 169:15 <b>existence</b> 31:3 158:11 <b>exists</b> 172:10 <b>Exit</b> 175:16 <b>expecting</b> 177:22 <b>expense</b> 132:23 <b>experience</b> 26:14 125:17 <b>expertise</b> 87:22 <b>explain</b> 16:13 41:24 56:19 66:4 67:3 68:4,23 70:21,22 178:14 180:10 <b>explained</b>	72:9 <b>explains</b> 70:24 <b>explanation</b> 178:15 <b>explicitly</b> 22:13 148:7 <b>explore</b> 179:2 <b>extensive</b> 13:12 <b>extent</b> 58:4 77:10 92:1 98:4 101:22 143:25 147:12 149:18 156:5 <b>extrapolation</b> 128:19 <b>extremely</b> 22:16 28:6 <b>e-mail</b> 139:3 150:2 163:19,20 <b>e-mailing</b> 138:11 <b>e-mails</b> 31:4,7,9 <hr/> <b>F</b> <hr/> <b>facsimile</b> 36:5 <b>fact</b> 10:13 18:5 35:7 42:8 42:22 57:4 76:22 84:6 90:24 98:14 126:12 127:7 131:25 134:1 156:22 172:10 177:13 185:25 <b>factor</b> 65:14 96:11 <b>facts</b> 148:18 <b>fair</b> 9:18 10:2 101:18,20 128:18 <b>familiar</b> 9:2 94:5,7 <b>familiarized</b>	97:4 <b>far</b> 22:15 115:19 <b>fatuous</b> 164:24 <b>fax</b> 40:11 91:3 <b>faxed</b> 91:19 <b>faxes</b> 31:9 <b>February</b> 1:22 5:3 6:2,14 <b>fee</b> 19:16 20:6 21:2,9,11 21:13,14,21 24:2 64:21 65:5,17,20 <b>feedback</b> 89:7 91:6,9 <b>feel</b> 79:3 <b>feels</b> 55:22 <b>fellowship</b> 11:3,3 13:17 <b>felt</b> 87:8 88:6 115:10 <b>fewer</b> 32:4 <b>field</b> 14:1 <b>fifth</b> 52:11 113:25 <b>figures</b> 60:20 80:16,17 91:4,7 91:14,20 92:8,8,12 92:15,17 94:21 148:17 149:8,19,21 <b>figuring</b> 78:13 <b>file</b> 93:9,19 107:6 <b>filed</b> 1:12 37:21 69:7 90:5 92:9 93:20,21 103:16 104:6
--	--	--	---

<b>filing</b> 63:11 93:3	21:19 38:22 66:1 73:15,23 77:9,20	45:5,12 47:17 48:5 48:14,21 49:6 51:2	4:4
<b>filings</b> 59:20 61:20	78:18 79:22 81:10 82:7 83:20 86:7	54:12 56:9 60:4,12 61:4 63:16 66:17	<b>four</b> 12:18 44:23 45:16 69:9,9 116:4 122:15 182:22
<b>fill</b> 71:3 86:17 101:16	90:11 95:22 98:10 100:9,11,13 105:10	69:13 70:2,10 71:9 72:7,22 73:10 74:15	<b>fourth</b> 44:12 113:25
<b>final</b> 11:14	106:19 108:23 120:7 124:3 158:9 177:9	74:16 76:8,25 77:18 78:4 82:25 83:24	<b>Francisco</b> 6:18
<b>finalized</b> 66:22	<b>firstly</b> 124:2	84:17 85:14 87:2 89:3 90:9 91:1 95:25	<b>free</b> 177:17
<b>financially</b> 19:6	<b>Fish</b> 14:17,20 15:2	96:18 100:16 101:19 102:4 103:23 104:21	<b>Freedom</b> 4:5
<b>financing</b> 46:6,10,15	<b>five</b> 17:6 44:24 76:2 82:21 166:8	108:3 111:9 115:24 118:14 119:17	<b>Friday</b> 114:21
<b>find</b> 36:24 42:11 113:22 121:8 127:20 129:15 166:16	<b>five-minute</b> 172:25	120:23 121:17 122:2 122:10 124:24 125:9 125:10,20 126:4	<b>front</b> 22:19 34:11 41:14 89:18 103:10,13 110:24 111:11 128:10 153:6 174:22
<b>fine</b> 141:10 182:25	<b>focus</b> 110:13	128:9 131:14 132:3 132:11,23 133:19	<b>full</b> 7:24 15:20 17:1,5,11 17:12
<b>finish</b> 9:12 10:1 38:14 55:18 57:3 66:16 67:9 68:11,14 69:5 84:10 88:25 95:1,22 97:9 99:5,12 109:3 115:17 161:7 176:21	<b>focused</b> 148:9	134:12,23 136:2,25 137:15,16 138:2,18 139:9,22 145:24 146:23 148:1 149:15 150:12 153:18 155:5 156:15 157:20 158:4 158:17 159:11 160:9 161:15 163:3 164:21 167:24 169:18 170:5 171:11 172:4,13	<b>fully</b> 52:12 129:22
<b>finished</b> 13:17 33:18 36:16 74:7 77:10,10 90:16 97:13,22 101:6 133:14 176:23 178:2	<b>follow</b> 20:4 106:11 142:3 185:8	<b>formal</b> 11:22 12:4,6,9 13:11	<b>fundamentally</b> 52:22
<b>firm</b> 7:7 14:21 16:4 17:24 24:7 28:11,12 29:2 42:13,15 43:23,25 44:3 49:2 51:14 52:11 80:9 83:12 85:3,3,5 87:9 101:13 124:9	<b>following</b> 45:2,6 121:24 122:4 144:4 174:2 185:3	<b>forthcoming</b> 93:15 140:2	<b>further</b> 113:14 114:22 155:25 156:21 188:18
<b>firms</b> 117:10	<b>follows</b> 5:12 7:18 43:7 111:22 121:10,22	<b>Fortran</b> 13:2,6	<hr/> <b>G</b> <hr/>
<b>firm's</b> 44:19	<b>followup</b> 163:17 168:12	<b>forwards</b> 96:5	<b>G</b> 2:10 6:5
<b>first</b> 5:11 11:12,18 17:3	<b>footnote</b> 129:18,18	<b>foundation</b> 30:23 39:9 41:3 46:18 47:18 48:6 54:11 70:11 72:6 73:11 74:17 85:19,20 88:12 98:5 107:16 172:22	<b>Gabriel</b> 163:15
	<b>forego</b> 180:11	<b>foundational</b> 178:23	<b>gained</b> 19:6
	<b>foregoing</b> 187:2 188:4	<b>Fountain</b>	<b>Galliani</b> 25:3,12,14,19 26:7 27:8 37:16 60:21
	<b>foreign</b> 68:13		<b>Galliani's</b> 27:1
	<b>forgotten</b> 112:14		<b>general</b> 12:11 45:22,23,25 46:2 53:13 62:16
	<b>form</b> 25:6,23 27:10 28:9,20 30:13 35:20 36:6,21 37:4 42:10,24 43:17		

76:17 86:17 109:16 122:23,25 181:25 183:22 <b>generally</b> 66:4,10 67:3 68:4,23 133:8 <b>generated</b> 38:18 <b>George</b> 1:21 5:8 7:16 8:1 187:6 <b>getting</b> 43:25 89:22 134:18 141:14 <b>give</b> 15:20,21 41:7 56:24 70:14 78:9 128:10 142:4 153:20 177:19 180:17 <b>given</b> 16:7 69:12,25 72:16 73:2 77:21 78:1,3 82:4 102:8 <b>gives</b> 11:10 <b>giving</b> 106:7 153:21 <b>go</b> 9:4 20:15,25 22:2 46:8 47:6 50:3,4 55:13 64:19 74:22 81:2 96:23 116:2,9 118:24 127:24 135:7 136:11 138:9 139:13 140:6 146:10 148:12 149:24 150:25 152:23 154:18 155:23 157:1 160:16 162:9 163:12 165:10 167:5 168:9 169:3 170:12 172:25 173:3 174:6 175:19,19 182:18 183:8,13 184:9 185:10 <b>goal</b> 161:23	<b>goes</b> 22:18 182:2 <b>going</b> 22:19 32:15 59:7 80:9 106:11,15 116:13,22 131:6 143:1,23 144:22 145:3 147:11 151:6 156:4 157:10 159:23 160:22 162:1 163:24 173:6,18 174:6,18 175:3,5 178:7,9 179:12,22,23 179:25 180:10,20 181:1,2,23 182:21 183:16 184:24 185:3 185:4,6,25 186:1,11 186:20 <b>good</b> 116:16 <b>graduate</b> 12:15 <b>graduated</b> 14:8 <b>granted</b> 18:21 <b>graphical</b> 12:4 <b>Gray</b> 24:20 25:7,17,25 27:7 105:7,21 106:1,22 144:8,14 151:2,12,20 152:12 155:24 157:3 159:18,19 160:18 162:14 163:20,21 165:12 166:18 168:13 170:19 178:21,23 <b>Gray's</b> 26:9 <b>greater</b> 119:2 <b>green</b> 16:6 <b>ground</b> 98:7 <b>group</b>	14:13,21 24:8 <b>grouping</b> 124:4 <b>Guerrero</b> 4:24 6:17 <b>guess</b> 29:17 183:3 185:9 <b>guessing</b> 28:4 <hr/> <b>H</b> <hr/> <b>habit</b> 49:15 51:24 129:19,23 <b>half</b> 12:14 13:24 75:4 135:12 154:1 165:5 182:22 <b>hand</b> 59:7 89:18 <b>handed</b> 59:14 <b>handing</b> 24:10 29:18 <b>hang</b> 21:25 22:1 <b>happened</b> 39:11 41:6 42:15 103:1 104:8 126:1 <b>hard</b> 89:18 180:10 <b>haven't</b> 38:9 88:13 90:16 144:23 <b>head</b> 18:24 56:17 <b>heads</b> 9:9 <b>hear</b> 89:19 100:10 142:5,10 173:22 174:7 <b>heard</b> 9:16 22:16,22 142:9 158:20 175:10 <b>hearsay</b> 172:23 <b>Heintz</b>	4:8 7:9,9 174:10,10,18 <b>held</b> 13:19 29:3 <b>Helen</b> 2:18 <b>help</b> 107:14,22 116:8,11,12 181:20 <b>hereto</b> 188:17 <b>high</b> 10:19 <b>highlighted</b> 46:14 <b>highly</b> 30:9 <b>history</b> 13:15 <b>hold</b> 16:10,16 <b>holding</b> 16:9 <b>hope</b> 164:23 <b>hour</b> 9:20 17:9 65:15 113:10,15 130:3,3,24 132:24 135:12,12 143:16 151:1 155:25 157:3 159:17,19 163:13,13 170:18 171:19 <b>hourly</b> 65:7 <b>hours</b> 17:4 38:5,10 39:4,7,14 39:14 40:18,18,18,18 40:19,22,23 41:10 65:11 88:21 113:16 114:9 115:22 117:16 132:22 136:18,19 138:10 139:14 140:7 140:8 146:11 147:7 149:3,4,6 150:2 152:24 154:1,19 155:24 157:2 159:2
--	--	--	---

160:18 162:13 164:13,25 165:2,11 166:9 167:8 168:10 169:6 170:15,17 180:6,11 181:10 182:22 <b>hundred</b> 29:17 94:2,24 <b>Hydrogen</b> 67:1 71:25 76:4 79:2 81:11,19 82:2 97:5 98:2 107:5,15 108:2 <b>hyphen</b> 45:7 51:1 122:4	46:4 61:7 129:3 138:20 <b>included</b> 31:7 45:24 54:18 101:10 131:21,23 <b>includes</b> 59:23 60:25 149:8 184:16 <b>including</b> 129:21 134:17 165:8 <b>incomplete</b> 41:17 <b>incompleteness</b> 41:13 <b>inconsistent</b> 77:13 <b>incumbent</b> 182:17 183:12,14 <b>INDEX</b> 2:2,6 <b>indicates</b> 119:25 154:16 <b>indicating</b> 123:16 154:14 <b>indication</b> 128:11 134:1 <b>industry</b> 11:6,25 12:22 13:6 <b>influx</b> 71:22 72:20 75:5,18 76:7 <b>information</b> 1:15 106:4 144:1,20 157:12 165:16 166:25 170:24 178:17,23,24 179:18 181:20 <b>informed</b> 92:19 <b>infringement</b> 65:10 <b>initial</b> 39:21 71:22 72:20 75:5,18 76:7 80:16 91:4,19 98:24 124:14 <b>initially</b>	15:9 86:1 <b>ins</b> 182:1 <b>instance</b> 58:16 <b>Instruct</b> 62:10 <b>instructed</b> 141:12 177:4 178:3 <b>instructing</b> 106:5 <b>instruction</b> 35:1 56:4 110:6 145:7 151:9 160:1 <b>instructions</b> 106:11 142:3,6 <b>intent</b> 51:5 <b>intention</b> 181:8 <b>inter</b> 1:16 6:12 37:8 <b>interchangeably</b> 44:25 <b>interest</b> 18:18 19:10,13 <b>interested</b> 21:6,7 188:20 <b>interfaces</b> 12:5 <b>Internet</b> 53:16 <b>intimately</b> 146:6 <b>introductory</b> 17:23 <b>invalidity</b> 66:2,11 71:24 73:20 74:6,12 76:3 79:1 81:11 82:1 91:11 97:4 98:1 108:24 109:7 112:10,18 120:21 <b>invention</b> 58:8 83:6 94:8 118:12 118:19 123:11	133:17 136:23 137:8 137:11 154:7 155:4 157:18 158:2 169:16 169:22 172:11 <b>inventions</b> 26:15 <b>inventor</b> 18:5 <b>inventors</b> 1:13 91:3 93:16 96:6 125:6 168:24 <b>investigation</b> 130:20 <b>invoice</b> 2:15,22 38:21 40:15 <b>invoices</b> 36:18 37:1,2,11 38:17 43:25 56:23 148:23 <b>involved</b> 37:7 102:9 150:17 163:8 183:21 <b>involvement</b> 72:13 <b>in-house</b> 18:16 <b>IPR</b> 19:11,14 20:8 21:10 65:19 <b>IPR2013-00292</b> 1:16 6:13 <b>IPR2013-00293</b> 1:17 <b>IPR2013-00294</b> 1:17 <b>IPR2013-00295</b> 1:18 <b>irrelevant</b> 47:19 110:20 172:22 <b>isn't</b> 22:18 68:14 81:24 84:13 97:23 99:15 100:18 105:2 107:25 111:13,23 115:2 120:14 125:6 158:1 179:14,15 <b>Issued</b>
--	--	--	---

1:11 <b>item</b> 113:13 <b>it's</b> 10:21 11:3 21:24 27:4 36:5 40:5,14 43:3 46:14 50:4 52:11 55:8,10,16,20 56:22 56:25 58:6 61:17 65:1,2,2,22 67:5,10 67:10,10 68:12 72:25 79:11,12 80:14 85:12 86:1 89:4 91:4 92:17 94:20 95:6 96:23 104:25 105:13 111:2 112:6 113:14,25 114:1 117:22 123:6 123:14 124:3 127:13 127:24 130:12 132:21 137:17 141:1 149:3,5 155:1 158:7 161:17 168:23,25 178:17 180:9 181:2,8 182:16 183:1,2,5,12 183:14 <b>I'd</b> 9:3 102:14 141:15 175:18 <b>I'll</b> 21:17 43:1 44:9 52:6 66:6 67:20 75:12 84:1 97:15 98:9,18 110:19 130:10 132:12 135:2 153:20 155:14 156:18 158:19 161:7 162:17 172:24 178:11 <b>I'm</b> 21:6,7 24:10 29:18 32:15 33:21 40:7 42:19 43:24 50:6 52:11,19 55:19 56:1 57:4,17 59:6 64:7 72:17,17 73:1 77:5 77:13 79:20,21 80:12 82:17 87:6 89:8	100:22,22 103:4,12 104:3 123:8 133:11 136:15 141:15 143:23 145:3 147:11 151:6 156:4 157:10 159:23 160:22 163:9 163:24 165:5 169:21 172:24 174:2,9,18 175:5 177:21 178:25 179:12 180:21 181:1 181:4,6 182:25 183:16 185:3,5,25 186:1 <hr/> <b>J</b> <b>J</b> 2:19 3:22 <b>JAMES</b> 4:8 <b>Jim</b> 7:9 <b>Jim's</b> 179:13 <b>jim.heintz@dlapipe...</b> 4:10 <b>jmicallef@sidley.com</b> 3:16 <b>job</b> 1:24 12:23 17:11,12 <b>Joe</b> 7:6 22:13,22 55:6 172:25 174:11 <b>join</b> 80:9 <b>joined</b> 14:3,21 17:24 57:21 <b>joining</b> 17:16,20 85:4 <b>JOSEPH</b> 3:14 <b>Jot</b> 78:13 <b>judgment</b> 19:7 62:1 <b>July</b> 8:9 32:18 33:20 79:1,8	79:9 81:5,19 90:24 90:24 127:25 128:13 129:21 130:2 132:22 135:8 136:16 139:14 140:8 143:14 <b>June</b> 2:24 12:3 14:5,17,24 36:19 50:5 51:8,9 52:18 70:6 71:1,5 78:25,25 80:4,7,18 80:20 81:5,10,21 100:5,14,19,19,22,25 101:6 118:24 127:13 <hr/> <b>K</b> <b>K</b> 3:5,12 <b>Karen</b> 4:16 7:2 <b>keep</b> 141:15 <b>Kingdom</b> 10:21 <b>Klaus</b> 135:11 138:11 139:3 140:9 148:18 150:2 163:16,19,21 167:9 168:12 <b>know</b> 18:23,23,25 26:11,12 26:22 27:3,11,24 28:3,21 31:14 33:2 34:12,13 36:9 38:10 38:20 43:7,24 46:7 46:19 52:10,14,21 55:20 57:25 61:8,25 67:14 73:20,23 74:1 76:22 77:16 78:17 79:25 80:7,9 82:4 83:1 86:6 87:24 92:5 94:13,15 95:10,11 96:1,19 101:22 110:24 124:16 125:1 127:6 128:12 131:3,8 133:20,24 141:14 148:19 155:6 158:7	158:10 166:10,10,16 169:20,22 177:24,24 178:8,9 179:9,11 183:10 184:6 <b>knowing</b> 80:8 124:6 <b>knowledge</b> 42:7,14,21 43:8,11,22 <hr/> <b>L</b> <b>laboratory</b> 69:2 83:8 <b>lacked</b> 51:15 <b>lacking</b> 172:22 <b>lacks</b> 30:23 39:9 41:3 46:18 47:17 48:5 54:11 70:10 72:6 74:16 85:19,20 98:5 107:16 <b>lady</b> 95:11 <b>Lagermann</b> 91:3,21 92:10,13 135:11 139:4 144:8 144:13 163:16 167:10 168:12 <b>language</b> 146:25 155:1 <b>languages</b> 12:21,25 13:3,3,6,7 <b>large</b> 42:12 63:9 68:18 126:18 <b>law</b> 5:4 6:20 14:3,7,9,21 15:6 17:1,7,8 23:5 24:8 25:9,18 42:13 83:10 87:17 94:6 95:7 174:3 <b>lawyers</b> 28:7 29:10 <b>lead</b> 10:10 35:8 174:20 180:22,23,23 183:4,5
---	---	---	--

<b>leading</b> 44:24 <b>leave</b> 173:19 175:6,9 <b>left</b> 11:24 12:17 13:23 14:16,20 175:16 181:10 <b>legal</b> 4:22 38:23 60:5 <b>legitimate</b> 10:7 <b>lesson</b> 142:11 <b>letter</b> 181:22,23 <b>let's</b> 27:16 35:10 38:2 46:8 74:22 117:15 118:24 127:24 129:12 132:21 135:7 140:6 142:23 146:10 147:6 149:24 150:25 152:23 154:18 155:23 157:1 159:1 159:17 162:9 163:12 165:10 167:5 168:9 169:3 <b>level</b> 69:21 96:24 <b>Lewis</b> 14:14,16 <b>license</b> 16:9 <b>licensed</b> 16:22 25:21,25 <b>limited</b> 15:21 16:10 129:2 <b>line</b> 47:12 113:25,25 141:22 <b>list</b> 65:25 <b>listed</b> 17:12 18:5 56:22 60:17 140:20 144:7	<b>listen</b> 148:18 149:8 186:1 <b>listening</b> 174:13 <b>literally</b> 30:8 52:17 100:6,9,10 100:11 174:22 <b>litigation</b> 18:19 20:10 21:11,20 29:3 31:16 37:7 64:22 65:8 <b>little</b> 52:19 <b>LLP</b> 3:4,11,19 4:3 <b>location</b> 144:9 <b>log</b> 106:17 176:2 178:20 181:21,22 182:3 183:21 184:11 <b>logbook</b> 23:6 53:21,24 73:18 83:16 97:15 98:10,18 102:12 104:24 108:4 110:11,15 111:2,17 119:3 127:20 129:9 129:19 139:10 153:6 153:9 177:14 178:15 178:17,20 179:18 183:19 <b>logs</b> 82:7 <b>long</b> 16:1 55:16,24 94:18 94:23 95:10,21 144:11 147:15 148:19 <b>look</b> 24:11 39:18 57:5 60:18 78:8 91:14 105:5 108:4,22 110:15 111:16 113:11 123:5 128:8 145:11 <b>looking</b>	51:17 52:20 54:8,16 66:19 72:17 77:20 107:4 118:11,18 126:25 129:21 130:19 133:16 137:10,18 153:2 154:6,16 157:17 158:1 169:15 172:10 172:15 <b>looks</b> 51:14 66:22 90:10 105:7 165:5 166:14 <b>loosely</b> 123:13 <b>lost</b> 61:15 <b>lot</b> 28:2 44:8 55:10 68:13 71:3 96:22 134:15 166:12 177:3 <b>lots</b> 42:13 <b>Lovejoy</b> 24:22 25:9,18 26:3 27:8 59:19 61:19 162:14 163:14,15,17 167:10 168:11,13 169:7 170:17,20 171:2,3 <b>Lovejoy's</b> 26:16 <b>lunch</b> 116:19,24	31:20 49:17 62:24 <b>making</b> 10:14 44:24 142:17,18 149:1 <b>managed</b> 166:16 <b>managing</b> 71:22 72:20 75:4 76:6 <b>Manhattan</b> 144:10 <b>March</b> 16:8 <b>marked</b> 24:13 29:20 35:12,14 35:16 59:8 <b>markup</b> 155:1 <b>Marshall</b> 4:14 <b>material</b> 124:17 131:22,22 <b>materials</b> 54:3 134:18 139:15,25 152:25 154:1,17 <b>mathematics</b> 11:14 <b>matter</b> 6:8 21:15 27:13,14 39:22 40:3,8 44:16 45:21,22 46:20,22 47:14,20,25 48:2,9 48:18 49:2 51:10,15 52:16 54:18 56:14,19 57:7,17,20,22 58:1,6 58:15 62:2,16,16 66:4 67:3 68:5,23 69:25 76:22 77:21 78:1 91:16 98:12 100:5 101:11 104:8 104:19 107:23 109:16,23 110:9 115:2,13 120:3,9 121:14 122:22,24 123:4,9,14 124:5,7 127:7 166:9,10,15 181:25 183:23 185:6
---	---	--	---

<b>matters</b> 15:3 16:5 26:14 40:6 43:20 45:7,25 46:4 47:2 56:8 58:12 65:25 67:11,14,15,23 67:25 68:2,14,16,19 69:10,24 72:11 76:3 77:17 78:3 79:25 88:22 98:24 101:15 102:9 106:22 108:25 122:5 149:4 165:6 166:13 <b>may</b> 12:25 19:18 32:7 42:13 50:8 51:11,13 51:15 52:14,16 56:12 58:14,15,17 73:3,25 100:4 120:7 128:10 130:13 131:23 146:16 147:15 148:22 151:22,23 154:10 156:7 157:13 173:3,17,25 174:7,8 175:9 <b>mean</b> 18:15 27:12,12 28:10 29:1 30:8 36:5,9 38:22 42:15 43:1 49:15 63:7 71:10 73:12,15 74:23 75:1 75:15,24 85:15 88:20 89:25 115:7 137:2 164:23 169:12 185:2 <b>meaning</b> 51:6 75:3 <b>means</b> 9:8 39:13 75:7,20,25 127:5 149:19 186:10 <b>meant</b> 15:24 <b>mechanics</b> 94:3 <b>medications</b> 8:21 <b>meet</b> 61:9 93:22	<b>meeting</b> 32:21,23,25 33:3,14 34:4,5,7,14 58:16 61:23 62:6 63:14,19 63:24 105:7,9 106:18 135:11 140:2,7,9,19 144:7,11 146:6,11 163:15 170:16,18,19 184:17 <b>meetings</b> 98:11 136:7 171:15 <b>member</b> 15:12 <b>memory</b> 61:22 66:18 70:15 78:17 146:16 172:22 <b>mention</b> 44:8 45:16 122:16 127:9,16,18 129:6 152:19 <b>mentioned</b> 24:19 58:21 67:1 68:3 68:20 71:19 75:18 90:14 93:12 101:25 105:18 114:20,25 120:21 121:4 127:21 185:25 <b>mentions</b> 152:18 <b>Merrill</b> 4:22 6:17 7:13 <b>Message</b> 2:18 <b>met</b> 59:18 61:19 93:18 <b>Micallef</b> 3:14 7:6,7 22:12,13,23 55:6,7,13 56:1 142:13,17,23 173:17 173:22,25 174:6,17 174:20,25 175:3 178:7,25 179:21,24 180:14,17,20 182:15 183:11 184:9,23 185:4,12 <b>Micallef's</b>	183:3 <b>MicroPatent</b> 137:4 <b>Microsoft</b> 1:4 6:8 7:1,8 8:13,14 15:3 19:8 22:13 172:17,19 <b>middle</b> 9:25 33:21 40:2 113:15 <b>Midtown</b> 144:9 <b>mind</b> 164:23 <b>mine</b> 175:2 <b>minor</b> 50:10 51:12 <b>minute</b> 21:25 41:7 70:14 97:16 129:15 <b>minutes</b> 99:25 175:13 <b>Miscellaneous</b> 127:25 <b>mischaracterization</b> 60:13 146:24 170:6 171:12 172:5 <b>mischaracterize</b> 145:22 <b>mischaracterizes</b> 73:11 74:17 80:22 84:18 123:22 134:12 148:3 149:16 150:13 152:5 153:19 156:16 158:18 159:12 160:11 161:16 163:4 163:5 166:2 168:1 <b>missed</b> 36:25 81:20 <b>misspeaking</b> 181:3 <b>misstates</b> 79:17 81:15 95:4 114:15,16 164:21 <b>mistook</b>	183:4 <b>mixture</b> 13:6 <b>modify</b> 50:8 <b>molecular</b> 94:3 <b>moment</b> 8:15 <b>Monday</b> 114:22,22 <b>money</b> 19:7 43:23 125:8 <b>monitor</b> 6:15 <b>month</b> 38:20 65:7,7 94:25 <b>monthly</b> 38:18 <b>months</b> 14:15 71:2 77:5 85:4 96:5 <b>Morgan</b> 14:14,16 <b>MOTHOD</b> 1:14 <b>mouth</b> 89:18 141:21 <b>move</b> 108:21 129:12 141:23 <b>moved</b> 14:13 <b>multiple</b> 67:11,14 <b>multiplying</b> 65:14 <hr/> <b>N</b> <hr/> <b>N</b> 2:1 3:1 4:1 6:5 <b>name</b> 7:24 11:9 39:4 133:1 181:3 <b>names</b> 181:24 <b>narrates</b>
--	---	--	---

153:7	95:8 101:9,13 135:13	124:5,7 142:25 143:8	64:23 66:17 67:16,17
<b>narrative</b>	139:15 140:2,21	166:10 180:6 181:10	67:19 69:13 70:1,2
91:17 100:25 105:10	155:2	186:19	70:10 71:9,14 72:5,6
121:19 132:14 138:4	<b>nights</b>	<b>numbers</b>	72:22 73:9,10 74:15
138:19 139:2,23	116:4	6:12 38:10 44:8,9,14	74:16 75:10,11,22
140:20 142:17 146:2	<b>nodding</b>	44:16 45:2,3,6,14,16	76:8,25 77:18 78:4,6
147:2 148:6 149:7	9:9	47:14,25 48:2,2,9,18	79:17,19 80:22 81:14
150:15 151:11 152:8	<b>non-assertion</b>	49:7 51:10 52:2	81:15 82:16,24,25
152:16 153:21	65:2	120:3 121:23,24	83:24 84:17 85:14,19
154:24 155:15	<b>non-patent</b>	122:4,12,15	85:20 86:14 87:2,13
157:22 158:21	56:7 58:12	<b>NW</b>	87:20 88:3,10,11
159:14 160:13	<b>non-privileged</b>	3:5,12	89:2,3 90:9 91:25,25
161:18 163:6,8	33:13	<b>O</b>	94:14 95:4,23,24
164:12 166:5 167:3	<b>non-weekend</b>	<b>O</b>	96:18 98:3,4 99:18
168:3 169:12 172:6	91:1	6:5	100:15 101:19 102:4
172:14 173:23	<b>normally</b>	<b>oath</b>	103:7,23 104:15,21
174:21,25	95:21	8:3,19 31:18	106:2,3 107:16,20
<b>narratives</b>	<b>Nos</b>	<b>object</b>	108:3,17 109:24
34:10,11 77:2 129:21	1:16 42:20 43:12	12:7 21:17 32:15	110:6 111:9 112:3
136:5 170:8 171:13	<b>notary</b>	110:19 136:2,25	114:15 115:6,24
184:16	6:17	141:20 142:1,2,3	118:3,14,21 119:17
<b>NATO</b>	<b>note</b>	148:2 159:11 165:25	120:15,23 121:17
11:3	92:24 102:14 146:14	174:11,15 181:11	122:2,8,9 123:21
<b>natural</b>	<b>notebook</b>	<b>objected</b>	124:24 125:9,10,20
10:22 11:7,9	49:25 128:5,9	32:8 54:24 177:15	126:4,4,15,16 131:14
<b>nature</b>	<b>noted</b>	<b>objecting</b>	132:3,11 133:19
109:16 146:1	82:8 109:11 144:2	22:16 106:7 175:21	134:10,11,23 136:1
<b>necessarily</b>	149:4	<b>objection</b>	136:25 137:13,14,25
71:20 72:18 76:11	<b>notes</b>	19:12 20:12,12 21:1	138:1,18 139:9,22
78:23 129:22	126:14,24 146:11	25:6,23 27:10 28:9	141:8,19,23,25 142:7
<b>necessary</b>	<b>notice</b>	28:20 30:13,22,23	145:22,24 146:22,23
69:18	5:2 153:25	31:24 33:5,23 35:1,3	148:1 149:14,17
<b>need</b>	<b>November</b>	35:20 36:21 37:4,5	150:11,12 152:5,7
9:21 86:17 124:16	2:17,22 15:16 16:21	37:23 38:8 39:9,16	153:18 154:9 155:5
142:9,11 173:3 184:6	16:22	39:17 40:24 41:2,3	155:13 156:15
<b>needed</b>	<b>number</b>	41:23 42:3,10,24,25	157:20 158:4,17
86:22 115:10,11	6:7 13:2 15:20 16:8	43:14,15 44:22 45:5	160:9,10 161:15
<b>needs</b>	18:24 39:4 40:1	45:10,11 46:17,23	162:20 163:2,3
55:22	44:10,11,12,19 45:14	47:17 48:5,13,14,21	164:11,21 166:1,22
<b>networks</b>	49:14 52:15 58:7,25	49:6 51:2,21 52:4	166:23 167:24,25
133:13	59:1 60:10 62:17	53:4,20 54:1,11,20	169:18,19 170:4,5
<b>never</b>	64:16 65:11,25 72:11	56:3,4,9,21 57:19	171:11 172:3,4,13
17:15,19 37:2 126:14	72:12 80:13 85:22	58:2,3,3 59:3 60:2,3	175:20,20 176:8,18
<b>new</b>	94:3 108:24 119:23	60:12 61:3,4 62:7,8	177:1 178:8,10,14
28:2 32:21,22 80:19	119:24,25 120:9	62:19,20 63:16 64:1	179:10,13 181:9,12
83:11,12 84:7 93:20	122:13 123:9,16		<b>objections</b>

10:14 34:19 142:18 156:17 172:18 173:14,15 174:5 175:11,18 177:4 178:3 181:13 <b>objects</b> 172:17,19 <b>observation</b> 35:4 <b>obtained</b> 19:7 <b>obviously</b> 175:4 <b>occasional</b> 49:16 <b>occurred</b> 144:9 <b>occurs</b> 77:9 <b>October</b> 1:12 2:25 15:16 34:1 36:20 37:17,21 59:18 61:18 66:22 70:6 71:6 160:17 162:11 163:13 165:10 167:5 168:10 169:4 170:13 171:18 <b>October-November</b> 15:17 <b>OED</b> 15:19 <b>offer</b> 163:24 <b>offered</b> 177:6,14 <b>office</b> 1:1 6:10 16:23 25:22 26:1 28:1 32:22 61:24 63:8 83:12 84:7 93:20 95:8 111:1 <b>offices</b> 5:4 6:20 83:11,23 144:13 <b>Oh</b> 18:3 46:14 79:7	113:23 136:15 <b>okay</b> 9:6,13,19,23 12:9 13:16 15:5 21:19 24:5,9,12 29:18,24 32:3,9,14,18 34:2,20 34:21 35:10 38:13 40:20 41:9,11,22 44:6 45:2,18 46:14 49:12 50:11 52:8 55:12 56:3 58:11 59:17 61:17 64:6,8,9 64:24 65:4 74:22 76:2 78:20 81:4,17 85:8,9,10 93:23 112:11 116:22 121:23 122:17 128:14 129:25 130:15 135:7,9,15 139:5 142:10,16,22 143:11,22 144:6,16 145:18 146:10 148:15 149:10 154:18 155:23 161:9 162:1,6,10 167:7 175:8,16,17 176:5,13 176:17 178:1 179:12 180:25 182:23 184:22 185:12,13 186:4,12,18 <b>once</b> 17:7 123:25 183:12 <b>ones</b> 29:25 49:8,9 117:21 181:14 <b>one's</b> 184:24 185:2,4,6 <b>one-and-a-half-hour</b> 135:10 <b>one-and-a-quarter-...</b> 168:23 <b>ongoing</b> 68:14,15 77:3 89:6 141:22,22 174:25 <b>onwards</b> 71:1	<b>oOo</b> 1:3 5:1,13 116:25 186:24 <b>open</b> 173:4 <b>opened</b> 57:20,23 92:3,6 179:6 <b>operating</b> 43:24 <b>opinion</b> 45:21 52:16 56:14,19 57:9,14,16,17 66:2 66:11,22 71:24 73:20 74:6,12 76:4 79:1 81:11 82:2 91:11 97:4 98:2 108:24 109:8,20 112:10,18 120:21 121:4,14 122:22 123:4,13 <b>opportunity</b> 180:4 <b>opposed</b> 83:21 <b>options</b> 18:21 <b>oral</b> 181:24 <b>order</b> 23:1 71:3 72:3 73:7,13 74:13 75:7,7 76:6,23 77:16 78:2 91:5,6 93:21 107:6 <b>ordering</b> 76:16 <b>organization</b> 42:12 <b>organizing</b> 135:13 <b>original</b> 103:9,10 <b>ought</b> 142:19 <b>outcome</b> 18:18 19:10,14 20:7 <b>outs</b> 182:1	<b>outside</b> 18:7,13 180:4 <b>outstanding</b> 108:25 <b>overall</b> 36:6 138:7 153:23 155:20 <b>overbroad</b> 120:15 <b>overnight</b> 52:17 <b>oversimplification</b> 72:9 <b>overwhelming</b> 49:17 <b>Ovid</b> 1:13 140:9 143:17 163:15,19,21 167:9 168:11 <b>owned</b> 67:6 68:7,25 <b>owner</b> 1:8 3:18 4:2 6:9 7:5 23:16 109:18 <b>o'clock</b> 180:5 <b>oOo</b> 6:4 <hr/> <b>P</b> <hr/> <b>P</b> 3:1,1 4:1,1 6:5 140:10 <b>Pacific</b> 180:5 183:2 <b>page</b> 2:3,8 9:5 24:19 37:15 38:2,22,22 39:3 40:2 40:17 41:5,6,8,9,19 41:20,21 44:8,18,18 46:8,12,13 47:6,7,7 47:13 50:3,4,6,7,14 50:20 55:20,25 57:6 58:22 59:10,15 61:17 66:1,21,25 68:3,21 69:7 70:18 71:19,24 71:25 72:1,2 74:22
---	--	--	---

80:10,12,14,14 83:3 83:14 90:22 93:1 97:2 98:23 99:22 100:23 102:1 105:14 107:2 108:21 113:14 113:15 114:1 116:2 117:15 118:24 123:7 127:14,24 129:12,17 129:25 132:14,21 135:3,7 136:11,15 138:9 139:13 140:6 143:11 144:4 146:10 147:6 148:12,13 149:24 150:25 152:23 154:18 155:23 157:1 159:1 159:17 160:16 162:9 163:12 165:10 167:3 167:5 168:9 169:3 170:12 171:18	<b>partes</b> 1:16 6:12 37:8 <b>partial</b> 144:18 <b>participation</b> 174:16 <b>particular</b> 104:8 166:14 179:17 181:18 <b>particularly</b> 120:6 181:14 <b>parties</b> 188:19,22 <b>partner</b> 25:19,20 49:22,22 <b>party</b> 66:11 137:4 <b>Pascal</b> 3:22 7:4,4 12:7 19:12 19:19,22 20:3,12 21:5,8,15,17 22:1 25:6 27:10 28:20 30:13,23 31:24 32:15 33:5,21,24 34:24 37:5,23 38:8,14 39:9 39:17 41:3,23 42:10 42:24 43:15,17 45:10 45:12 46:18,23 47:17 48:5,14,21 49:6 50:6 51:2 54:1,11 55:15 55:18 56:3 57:3,19 58:3 59:3 60:3 61:4 61:6 62:8,19 63:16 64:23 65:3 66:17 67:17,19 69:13 70:1 70:10 71:9 72:6 73:10 74:16 75:11 76:25 77:18 78:6 79:19 80:22 81:14 82:16,24 83:24 84:17 85:14,19 86:14 87:20 88:11 89:3 90:9 91:25 92:5 94:14 95:4,24 96:18 98:4 99:18 100:15 101:19 102:4 103:7,23	104:15,21 106:3,7,10 107:16 108:3,17 112:3 115:6,24 116:18 118:3,14,21 119:17 120:15,23 121:17 122:8,10 123:21 124:24 125:10 126:16 131:14 132:3 133:19 134:10,12,23 136:2 136:25 137:14,16 138:1,18 139:9,22 141:5,10,19 143:23 144:19 145:3,24 146:23 147:11,19 148:1,3 149:15,17 150:12 151:6,18 152:7 153:18 154:9 155:5 156:4,15 157:10,20 158:4,17 159:11,23 160:9,11 160:22 161:5,9,15,25 162:17 163:3,24 164:11,21 165:15 166:1,23 167:13,25 168:16 169:9,18 170:5,23 171:11 172:4,13 173:2,13,20 173:24 174:2,9,23 175:2,8,15,17,24 176:1,5,13,17,21,25 177:9 178:5 179:24 180:16,19,25 181:6 182:5,23 183:16 184:15 185:2,8 186:6 186:10,13,16 <b>pass</b> 186:4,10 <b>passed</b> 15:15 16:20,20 <b>patent</b> 1:1,2,8,10 3:18 4:2 6:9 6:10,10 7:5 14:24 15:13,15 16:5,11,17 16:21,23 17:15,20 18:5,7,9 23:16 25:22	26:1 27:6,6,9 28:7,17 28:22 29:4,10,12,15 30:16,17 45:19,20 47:2,10,15,22 48:3 49:9 52:15 53:14 56:14 58:9,18 59:1 59:20,25 60:11,22 61:2,12,20 62:1,4,17 63:9,12,15,24 64:4 65:9 66:12 67:5,11 67:23 68:7,12,25 70:9 73:16,21 74:4 79:12 81:25 83:5 84:11,14 86:24 87:16 87:17 89:1,11 90:5 90:14,15 91:20 92:9 92:9,21 94:18 95:14 96:16,23 97:10,24 98:15 99:6,11,13,16 101:7 103:1 105:3,23 108:14 109:4,18 111:14,24 114:6,12 115:18,21 117:17,22 120:19 121:12 122:18,20 123:12 124:6,11,14 125:4,8 125:15,19 126:3 127:5 128:1,15,21,24 129:2,6,10 130:3 131:4,20 132:1,8,15 132:18 134:7,17,21 135:4,24 136:9,19 137:2,19,23 138:10 138:15,20,22,25 139:7,20,24 145:19 146:2,5,19 147:3,24 148:7,9 149:11,22 150:8,16,19 152:2,9 152:11,25 153:15,22 154:3,12 155:10,16 155:19,21 156:12,23 157:25 158:5,14,22 158:24 159:8,15,18 160:6,13 161:12,18 162:14,25 163:7,9,14 163:17 164:7,14,15
--	--	--	---

164:18 165:1,4,7,22 166:6,17,20 167:21 168:4,7,12 169:1 170:1,8,10 171:9,14 171:16,25 172:7 <b>patentability</b> 57:10 58:7 120:1,13 120:18 123:10,17,20 124:10,22 125:7,13 125:18 126:2,7,11,22 <b>patentable</b> 54:18 <b>patents</b> 48:10,19 54:9 117:18 131:8,11,13,16,24 137:2,5,7 <b>Patricia</b> 4:24 6:16 <b>Paul</b> 24:24 26:5 143:17 167:10 <b>Paul's</b> 26:21 <b>Pause</b> 24:15 66:20 70:16 75:13 78:12,15 90:21 97:17 98:19 102:17 105:6,16 106:24 108:6 110:18,21 111:18 113:6,12,24 129:16 <b>pay</b> 24:3 <b>paying</b> 23:21,23 <b>peculiar</b> 42:11 <b>penalty</b> 187:1 <b>pending</b> 8:15 <b>Pennie</b> 14:3,7,11,12,13,23 15:6 16:3 17:3,16,20 25:8,10,11 28:8 29:11 31:5 32:22	40:13 42:5 43:18 44:19 45:4 47:1 57:21 67:6 68:8 70:25 73:16 82:5 83:12 84:7 86:25 87:17 93:21 94:7 116:8 120:7 122:1 124:3 140:3,21 144:12 148:24 153:8 163:10 165:4 166:13 168:25 <b>Pennie's</b> 45:24 <b>PENY4</b> 2:23 <b>people</b> 11:12 16:14 84:6,20 85:3 125:12 165:3 183:21 <b>percent</b> 12:20 19:4,5 40:23 <b>percentage</b> 19:1,2 <b>performed</b> 125:7 <b>period</b> 30:20 36:19 38:23 70:25 89:8 90:20 98:15 104:9,23 105:4 105:18 107:9 108:8 108:10,15 110:10 111:1,3,7,15 112:1 112:19,24 113:3 114:19 120:6 124:2 125:21 129:20,24 132:17 146:4 148:8 148:24 158:23 166:11 188:16 <b>periods</b> 69:17 77:6 <b>perjury</b> 187:1 <b>permanent</b> 15:18 16:7 <b>permission</b> 64:25	<b>permit</b> 128:8 <b>permitted</b> 10:5 22:21 <b>person</b> 38:19 49:22 87:9 188:8 <b>personal</b> 42:7,14,21 43:7,11,21 43:22 <b>personally</b> 5:7 31:13 36:3,22 37:14 42:4,16 43:3 44:17 54:2 57:16 84:24 93:19 95:16 118:10 120:17 153:12 <b>personnel</b> 140:4 168:24 <b>persons</b> 31:5 37:7 140:20 144:7 163:10 <b>persuade</b> 182:8 <b>pertain</b> 49:9 123:9 <b>pertains</b> 49:3 <b>Petitioner</b> 1:5 3:3 5:10 <b>phone</b> 55:2 142:14 174:13 <b>phrase</b> 90:4 <b>Ph.D</b> 10:24 12:12 13:1 26:18 <b>Piper</b> 3:19 4:3 5:4 6:20 7:4,9 23:13,15,15,18,25 24:3 <b>place</b> 6:19 32:21 188:9 <b>platforms</b> 13:4 <b>please</b>	6:23 7:14,20,24,25 9:8 9:15 38:15 48:16 59:15 61:14 74:20 80:25 102:10 110:17 111:20 118:16 121:18 127:12 170:12 173:19 177:24 181:17 182:4 <b>plus</b> 50:18 51:1 150:3 157:4 <b>point</b> 19:22 32:2 68:15 80:24 86:23 88:4 91:17 92:18,20,24 99:1 178:16 179:20 181:12 182:4,5 185:10 <b>pointed</b> 40:17 178:19 <b>points</b> 83:15 <b>portfolio</b> 67:1,5,11,15,24 68:4,6 68:7,12,18 71:25 72:1 76:4,5 81:12,19 82:2 97:5 98:2 99:1 99:17 100:3 101:2 102:21 103:2 107:6 107:15 108:2,25 <b>portfolios</b> 72:10,11 <b>portion</b> 121:8 130:11 154:14 154:16 <b>portions</b> 53:14 92:23 124:14 129:3 135:4 146:14 146:15 178:20 <b>position</b> 13:19 174:7 177:7 183:11,12 184:6,21 <b>positions</b> 184:24 <b>possession</b> 36:19 37:1,2
--	--	---	---

<b>possibility</b> 131:18,19	170:10 171:16	63:20 64:25 65:1,2 67:21 106:8 110:8 141:2,11 143:24 145:5,14 147:13,16 162:19 165:16 169:10 171:6 172:18 176:7 177:4,5,8,20 178:16,24 179:6,10 179:19 181:19,21,22 182:3,9,13,16,21 183:18 184:11,20	160:23 162:18 164:1 166:25 167:15 172:18 175:22
<b>possible</b> 40:5 52:11 71:20 72:18 76:11 86:1 90:2 111:2 124:4 130:12 148:22 161:6	<b>present</b> 4:21 181:15	<b>privileged</b> 19:18 21:24 22:18 35:5 62:8,10,13 66:7 92:1 102:6 106:4 109:10,25 140:18 141:13 144:1,20 145:8 157:12 168:17 170:24 175:22 178:16,24 183:21	<b>programming</b> 11:18,23 12:4,11 13:7
<b>possibly</b> 68:18 94:2 154:10	<b>presentation</b> 93:16	<b>privileges</b> 164:1	<b>programs</b> 12:16,21,24 13:12
<b>post</b> 11:2 12:18,19 13:16	<b>presenting</b> 184:18	<b>probably</b> 29:3,6 36:2 39:10 56:12 87:22 95:20 144:7 149:20	<b>progress</b> 61:25
<b>postponed</b> 107:9,18,25	<b>presently</b> 180:3	<b>problem</b> 55:7	<b>project</b> 66:16 67:9,10 68:11 68:17 69:5,15,16,18 72:13,16 73:24 74:9 76:16,18,19 79:22 82:6,9 86:13,25 87:3 87:11 89:21 96:24 101:10 109:14,15 110:3
<b>practice</b> 15:25 16:22 25:22,25 27:5,6 29:6 37:20 49:13 83:22	<b>prevented</b> 70:8	<b>process</b> 18:8 43:4 89:6 101:14 124:16 132:19 136:9 137:19 138:7 140:1 146:7 147:3 153:23 155:20 158:24 159:18 161:22 163:8 168:7,25 171:16 181:20	<b>projects</b> 28:2 52:13 69:20 70:22 71:3 73:2 77:3 78:18 79:15 80:19 81:6 87:18 109:16
<b>precise</b> 18:23,24	<b>previous</b> 20:25 50:8 64:19 83:19 96:21 112:9,17 120:5 132:13 135:15 146:1 161:20 168:22	<b>produce</b> 36:18	<b>prompted</b> 109:16
<b>precision</b> 78:24	<b>previously</b> 13:22 51:12 101:12 134:15 140:3 168:5	<b>produced</b> 31:15 37:6	<b>promulgates</b> 15:19
<b>prediction</b> 83:6	<b>principal</b> 14:18	<b>product</b> 30:19 53:11 54:22 72:23,24 85:7 109:19 147:18 151:8 156:7 157:11 159:25	<b>proprietary</b> 13:7
<b>prep</b> 170:17	<b>principally</b> 13:2 81:6 97:2		<b>prosecuted</b> 14:24
<b>preparation</b> 47:9,15,21 48:3 59:1 59:24 60:11 61:1,12 62:17 63:12 132:19 134:17	<b>print</b> 150:3 163:16		<b>protect</b> 55:22
<b>prepare</b> 23:1 57:16	<b>prior</b> 16:21 54:9,16 57:10 58:8 72:13 85:4 93:17 94:5 115:10 118:18 123:10,18 130:10 131:7 154:17 156:16 171:19 172:14		<b>protected</b> 63:19
<b>prepared</b> 36:3 43:8 57:14 90:5 114:4 127:19 159:3	<b>priority</b> 107:11		<b>protein</b> 26:18,19 83:7
<b>preparing</b> 35:25 36:12 47:2 48:19 60:22 108:23 131:4 136:9 137:19 138:7,22 140:7 146:5 147:3 148:9 149:20 150:19 152:11 153:23 154:3 155:19 155:20 156:23 158:24 161:22 163:8 165:7 168:7 169:1	<b>priveledged</b> 20:11		<b>provide</b> 33:17 91:5
	<b>privilege</b> 10:7 19:23 20:1 21:1 33:7 34:17 35:2 54:22,25 55:3,9,11 55:22 56:3,5,21 58:4		<b>provided</b> 75:3 188:16
			<b>providing</b> 102:25
			<b>Provin</b> 13:18
			<b>provisional</b>

37:20 45:20 47:22 107:11 121:12 122:20 <b>PTO</b> 16:1 67:25 137:3 <b>public</b> 6:17 <b>publication</b> 93:17 <b>published</b> 67:24 <b>pure</b> 11:10 <b>purpose</b> 57:25 <b>purposes</b> 40:14 <b>pursuant</b> 5:2 <b>push</b> 88:6 <b>put</b> 58:6,15 62:2 88:14 89:18 106:17 123:16 149:5 179:3 184:1,13 <b>putting</b> 72:8 <b>P.M</b> 116:24 117:1 143:4,5 162:4,5 173:9,10 183:2 185:16,17 186:23	52:6 60:7,24,25 63:22,25 64:20 74:20 75:1 78:16 82:3 83:19 84:2,22,22 88:14 92:4 93:25 96:20,21 97:12 102:21 104:1,4 110:19 111:19 112:10,17 113:2 118:16 120:6 121:20 123:25 125:22,25 127:12 130:11 134:20,20 135:2 142:1,1,6 144:23 147:14 176:22 <b>questioned</b> 178:21 <b>questioning</b> 141:22 <b>questions</b> 10:7 81:18 89:19 132:13 146:1 168:22 177:17 180:21 182:16,20 186:2,6 <b>quick</b> 98:8 <b>quickly</b> 89:22,25 90:15 <b>quiet</b> 180:21 <b>quite</b> 13:12 18:6 26:13 68:18 94:1 129:22 149:20 <b>quote</b> 60:10,11 83:8,9	94:1 <b>range</b> 112:7,8 <b>rate</b> 65:7,15 <b>rates</b> 127:10,17,19 <b>read</b> 44:9 61:14 74:25 111:19,21 121:7,9,21 131:12,16 132:1 134:2,5 154:19 155:25 156:20,20 157:2,4,24 158:9 164:13 <b>reading</b> 17:22,23 123:8 130:4 130:25 131:2,5,21,21 131:22 155:17 158:6 <b>really</b> 56:24 123:19 141:16 142:19 145:10,11 177:21 <b>Realtime</b> 5:7 <b>reason</b> 9:21 27:12 49:24 54:8 109:15 <b>reasonably</b> 96:20 <b>reasons</b> 8:24 27:7 <b>recall</b> 54:7 68:16 69:14 89:12 90:3 91:24 92:12,15,22 93:20 94:19,20 104:16,18 106:21,25 109:5,12 115:19,20,25 121:5 144:8 151:15 152:2 161:1 167:1 177:10 177:18,23 <b>receive</b> 77:3 91:9 <b>received</b> 17:19	<b>recess</b> 20:19 22:7 64:11 116:24 143:3 162:3 173:8 185:15 <b>recited</b> 169:12 <b>recognition</b> 15:21 16:10 <b>recognize</b> 24:17 30:2 35:19 36:5 <b>recollection</b> 28:5,14 46:20 51:3 54:14 56:15 62:22 63:8 64:3 67:25 70:3 79:3 91:5 93:14 99:7 100:13 102:8,19 104:10 109:15 115:8 124:8 135:17,17 143:21 144:3,18 147:21 151:11 171:4 178:1,2 <b>record</b> 7:25 18:20 20:15,17 20:23 22:3,5,11 55:8 55:14,17,21 64:9,15 76:14 91:12 106:9 111:6,22 112:15 116:23 117:3 121:10 121:22 141:17 143:1 143:7 145:10 162:2,7 173:3,6,11 174:14,19 175:18 176:2,6,14,15 177:18 178:8,13,14 179:4 180:7 181:11 182:25 183:9,14,17 184:2 185:10,13,19 186:21 <b>recorded</b> 9:7 <b>records</b> 74:2 82:12,20 175:23 175:24 176:16 <b>rectify</b> 180:8 183:7 <b>redacted</b> 34:12 41:19 78:20
<b>Q</b> <b>qualification</b> 16:14 <b>qualified</b> 15:24 <b>quarter</b> 113:15 116:18 <b>question</b> 9:11,12,14,25 10:15 19:25 21:1,2,9 22:17 28:24 32:11 33:9 34:22 41:24 42:12 43:2 47:24 48:15	<b>R</b> 3:1 4:1 6:5 <b>raised</b> 173:14,16 174:4,23 177:2,3 <b>ramping</b> 71:2 <b>ran</b>		

92:25 103:11 110:24 113:14 114:1 115:22 128:10 130:12 146:14 151:22 177:12	<b>reg</b> 15:20 16:7	<b>reliance</b> 176:9	148:6
<b>redactions</b> 32:4	<b>regard</b> 168:17 176:25 177:10 182:9	<b>relied</b> 175:23	<b>rephrase</b> 47:24 88:18 139:5
<b>redirect</b> 180:15 182:22 183:10 186:11,14	<b>regarding</b> 105:21 145:8 151:2 163:25 165:15 167:14 169:9 170:24	<b>relying</b> 80:25 184:12,19	<b>reporter</b> 1:25 5:6,7 7:12,14,17 9:8 20:15 111:21 121:9,21 182:11 188:1,3,16
<b>reduced</b> 126:10 188:10	<b>regardless</b> 65:21 177:19 181:1	<b>remained</b> 14:7 44:3	<b>Reporting</b> 7:13
<b>Reducing</b> 126:22	<b>registration</b> 15:16	<b>remember</b> 26:20 28:13 31:19,21 31:23 32:23 33:9,11 33:16,17 34:1,5,5,8 34:15 62:24 92:7 104:24 107:21 117:23 118:25 119:5 119:9,12 128:2,4 130:6,8 131:1,3,10 131:25 132:5 133:5,7 133:8,12 135:14,19 136:20,21 138:12 139:16,18 140:13,19 140:25 143:19 144:16,24 146:12 147:9 150:4,6,21,24 151:4,23 153:1,3 154:21,23 156:2,9 157:5,8,14 159:4,21 160:2,20 162:15,22 163:22 164:3 165:13 165:18 167:11,18 168:14,20 169:7,13 170:21 171:1,21,23	<b>represent</b> 6:24
<b>reduction</b> 37:20	<b>regular</b> 65:7	<b>REMEMBERED</b> 5:2	<b>representation</b> 23:22 65:13 183:3,6
<b>Redwood</b> 4:15	<b>reiterate</b> 136:5 145:6 147:1	<b>remembering</b> 34:7	<b>represented</b> 23:10,13
<b>refer</b> 32:7,11 69:6 70:13 90:18,18 97:15 98:18 99:21 102:11 112:19	<b>relate</b> 33:25 45:7 122:5 124:22	<b>reminded</b> 130:13	<b>representing</b> 7:1,3,7,10 23:16,18 24:7
<b>reference</b> 34:4 98:8 149:19	<b>related</b> 16:5 26:14,15 27:6 44:9 45:21,22 48:10 48:19 53:16 56:13 66:14 67:4,7 68:5,9 68:24 69:3,10 82:8 86:15 120:1 121:13 122:21,23 147:2 166:13 188:21	<b>rendered</b> 38:23	<b>requested</b> 188:14,15
<b>referenced</b> 49:8 154:24	<b>relates</b> 66:5 120:12	<b>rendered</b> 38:23	<b>require</b> 102:3
<b>references</b> 124:17 152:16	<b>relationship</b> 18:12,14 24:2	<b>repeat</b> 48:15 58:5 61:17 79:7 121:18 130:10 155:14 156:18 158:19	<b>required</b> 13:13 17:2,3 98:25 101:25 102:24 103:3 103:16,19,21 104:4,5 104:10 149:9 178:12 178:13
<b>referred</b> 45:18,20 51:13 57:7 117:18 121:11 122:18,20 123:3	<b>relative</b> 76:16	<b>repetitive</b>	<b>requirement</b> 17:9
<b>referring</b> 58:23 100:23 113:10 121:1	<b>relatively</b> 155:2		<b>research</b> 69:1 83:7 124:16 129:4
<b>refers</b> 100:2 102:15 159:14 176:18	<b>release</b> 109:19		<b>residence</b> 7:25
<b>reflect</b> 115:15	<b>relevance</b> 42:25 43:16 46:17 61:6 62:19 64:23 67:18,19 125:10 126:5		<b>resident</b> 15:18 16:7
<b>reflects</b> 114:18	<b>relevant</b> 137:8 155:18		<b>resolve</b> 185:4,6
<b>refresh</b> 66:18 70:15 78:17 127:10,16,18 144:3 146:16			<b>resolved</b> 185:5
			<b>respect</b> 21:11 35:1 72:10 179:10
			<b>response</b>

146:1 <b>responsible</b> 41:22 42:1 <b>rest</b> 148:21 149:5 <b>restate</b> 74:20 118:15 125:25 127:12 <b>Reston</b> 4:7 <b>Retrieved</b> 157:4 <b>retrieving</b> 137:2 <b>reveal</b> 53:10 110:1,7 144:1 144:19 145:4 147:16 151:7 157:11 159:24 160:23 162:17 <b>revealing</b> 143:24 167:14 168:17 170:23,24 182:1 <b>reveals</b> 147:12 <b>revelation</b> 156:6 <b>review</b> 1:16 6:12 36:11 37:9 42:4 49:19,22 89:6 92:19 177:17 188:14 <b>reviewed</b> 22:25 23:4,5,6 31:10 35:24 49:21 171:19 172:14 <b>reviewer</b> 36:13 <b>reviewing</b> 139:14,25 <b>revise</b> 81:20 83:18 <b>revised</b> 60:20 <b>revising</b> 165:8 <b>revisions</b> 164:13 165:1	<b>revisit</b> 64:20 175:9 <b>Reyes</b> 2:18 <b>Richard</b> 1:21 2:10,12 5:8 6:7 7:16 8:1 64:17 143:1 143:9 186:20 187:6 <b>Richardson</b> 14:17,20 15:2 <b>right</b> 78:11,19 81:17 83:18 97:21 100:24 108:16 112:21 113:1 120:14 127:23 142:21 143:13 147:17 173:5 175:3 176:3,13 178:5 178:22 179:1,14,20 182:10 186:15 <b>risk</b> 148:5 <b>Road</b> 8:2 <b>role</b> 35:4 43:18 <b>room</b> 30:9 64:3 140:21 173:19 174:4,24 175:6,9 180:4,22 <b>rooms</b> 144:12 <b>roughly</b> 18:25 67:15 68:16 <b>rule</b> 174:3 <b>rules</b> 9:3,4 15:19 22:15 <hr/> <b>S</b> <hr/> <b>s</b> 2:9 3:1 4:1 6:5 25:3 26:7 <b>sample</b> 138:10 <b>San</b> 3:21 6:18 8:1	<b>Sandy</b> 2:18 <b>Santoro</b> 1:13 144:14 163:15 167:9 168:11 <b>save</b> 30:1 <b>saying</b> 35:4 40:21 55:19 69:15 70:4 77:13 79:20,21 92:6 102:23 103:5 152:15 164:24 185:9 <b>says</b> 38:22 40:1,2 44:18,19 46:15 61:19 74:25 99:24 105:20 106:17 114:6 119:10 124:12 126:25 127:3,25 132:14 138:4 139:2 147:1 148:17,21 149:7 151:1,11 153:25 158:9 164:13 167:9 178:20 <b>schedule</b> 116:14 <b>school</b> 10:19 14:9 17:7,8 116:9,13 <b>Schools</b> 117:9 <b>science</b> 10:22 11:7,9,10,16,20 27:5 <b>sciences</b> 11:11 <b>scientific</b> 133:3 <b>scientist</b> 94:6 <b>scripting</b> 13:3 <b>SC0058852</b> 2:16 <b>SC0058862</b> 2:19	<b>search</b> 57:11 58:8 123:11,18 <b>searching</b> 50:18,22 51:1,1 53:15 117:16 120:12 121:4 124:5,13,15 <b>second</b> 11:13 22:1 44:10 46:9 47:12,12 75:4 140:20 156:20 182:15 <b>secretary</b> 40:12 <b>section</b> 2:11 154:11 <b>see</b> 30:6 37:16 38:5 39:3 40:17 44:12 46:11,12 47:11 50:23 52:9 59:21,22 66:3 73:18 77:1,12,12 81:8 90:19,19,22 91:14 93:8 97:7 98:20 99:4 100:3 105:17 107:12 109:1 110:16 116:6 123:7 128:10 129:17 130:12 136:18 140:11 151:22 159:14 184:2 <b>send</b> 42:5 <b>sending</b> 43:4 <b>sends</b> 42:15 44:1 49:23 <b>sense</b> 17:5 43:2 71:21 72:19 73:1 75:4 76:6 109:13 123:14 132:17 <b>sent</b> 31:4 36:5 40:11 43:6 49:20,21 91:2 92:10 92:12 139:3 <b>sentence</b> 55:18 63:5 75:4 <b>sentences</b>
---	---	---	--

80:25 <b>separate</b> 52:15 58:6 62:3 123:9 <b>separately</b> 65:20 <b>September</b> 38:6,6,11,24 107:4 108:11,15,22 109:3 110:13 111:15 112:1 112:4,6,19,24 113:5 113:5,7,8,9,17 114:9 114:11,11,25 115:18 154:19 156:19 157:1 <b>sequence</b> 89:5 <b>series</b> 46:9,14,15 178:3 <b>served</b> 32:6 <b>services</b> 38:23 65:6,21 <b>SESSION</b> 117:1 <b>set</b> 72:13 177:16 <b>seven</b> 51:14 88:21 115:22 <b>SF-001020</b> 1:25 <b>shaking</b> 9:9 <b>shares</b> 18:22 19:3 <b>sheet</b> 85:18,23 86:3 <b>short</b> 9:20 63:2 161:6 183:9 <b>shorthand</b> 5:6 188:3,8 <b>shortly</b> 86:8 <b>show</b> 124:20 182:12 <b>showing</b> 39:25 74:2 82:13,21 138:24 139:6	<b>shows</b> 66:1 98:10 <b>Sidley</b> 3:4,11 6:25 7:7 <b>sign</b> 15:25 <b>signed</b> 16:1 <b>significant</b> 154:2 <b>similar</b> 65:17 69:23 <b>simple</b> 96:2,8 <b>simply</b> 183:25 <b>SIMULATANEOUS</b> 1:14 <b>simulated</b> 83:6 <b>single</b> 67:10 <b>single-sided</b> 29:23 <b>sir</b> 55:1 142:12 <b>sitting</b> 41:20 58:16 64:3 <b>situation</b> 183:7 <b>six</b> 51:14 67:25 68:2 115:2 <b>skill</b> 96:24 <b>skipping</b> 148:13 <b>slightly</b> 69:23 <b>small</b> 13:18 <b>software</b> 13:9,21,25 26:14,14 27:6 29:7 117:17,18 137:6 <b>solicit</b>	91:6 <b>Solutions</b> 4:22,23 <b>somebody</b> 29:4,5 30:8 40:12 80:7 86:4 <b>soon</b> 90:2 <b>sorry</b> 8:14 18:3 23:15 24:6 30:14 33:1,21 38:16 40:7 50:6 72:17 77:25 78:7 80:12 82:17 87:6 93:6 100:11 104:3 105:15 136:15 176:24 181:6 186:8 <b>SOURCES</b> 1:15 <b>space</b> 137:6 <b>speak</b> 10:5 20:14 <b>speakerphone</b> 163:16 <b>speaking</b> 61:24 176:11 <b>specialized</b> 133:3 <b>specific</b> 46:20 54:13 62:21 82:13 89:12 92:8 102:7,19 109:12,14 115:8 135:17 147:20 151:10 157:21 184:3 <b>specifically</b> 26:11,20 27:3 28:14 31:19,21,23 33:3,10 33:12 34:8 46:7 53:7 53:19 54:7 62:17 69:14 82:4 92:15 104:11,24 109:5 117:17,23 118:2,8,25 119:9,14 128:2,4,13 130:6,8,16 131:1,3 131:10 136:21	138:13 139:16,18 140:13 143:19 144:24 146:12 147:9 150:4,6,21,24 153:1 153:3,5 154:21,23 156:2,8 157:5,8 159:4,21 160:20 162:15,21 163:22 164:4 165:13,18 167:2,11,17 168:14 168:19 169:13 171:1 171:21,23 177:1 <b>specification</b> 94:1 <b>speculate</b> 62:22 92:16 102:8,20 115:8 149:2 <b>speculating</b> 52:19 103:12 <b>speculation</b> 92:17 102:25 103:6 172:21 <b>speed</b> 101:15 <b>spend</b> 17:7 96:4 125:7 <b>spent</b> 11:4,6 44:4 58:20 95:12 138:21 149:3,6 <b>spoke</b> 60:21 <b>Square</b> 4:4 <b>Stacy</b> 132:25 <b>Stacy's</b> 132:22 133:1,6 <b>stage</b> 175:16 <b>stand</b> 178:7 <b>standing</b> 180:3 <b>stands</b> 141:23 <b>start</b>
---	---	---	---

<b>start</b> 9:12 27:16 48:10,18 49:3 74:6 94:25 95:13 182:19	<b>streamlined</b> 60:20 <b>Street</b> 3:5,12,20 4:14	29:9,22 30:15 31:1 32:1,13,19 33:8,23 34:2,6 35:6,18,23 36:15,23 37:10 38:1 38:12,16,25 39:12,24 40:16,25 41:11,15,25 42:6,18 43:9 44:5 45:1,8,15 46:21,25 47:23 48:8,17,24 49:11 50:7,11,13 51:7,22 52:8,23 53:6 53:12,17,23 54:4,15 54:23 55:17 56:6,18 57:1,8,24 58:10 59:5 59:10,13 60:8,15 61:10,17 62:5,14,25 63:3,6,13,21 64:5,8 64:18 65:16 66:13,24 68:1 69:22 70:5 71:12,15,18 72:14 73:5,14 74:21 75:17 75:23 76:12,20 77:7 77:15,22 78:10,19,22 79:6,24 81:1,22 82:10,19 83:2 84:3,5 84:21 85:11,17,24 86:19 87:5,15,25 88:5,15 89:9,17,24 90:12 92:3,11 94:17 95:9 96:9 97:1 98:6 98:13 99:23 100:1,8 100:17 101:24 102:10,13,22 103:14 104:2,17 105:1,19 106:5,9,14 107:17,24 108:9,20 109:21 110:4,12 111:4,12 112:6,11,13 114:24 115:12 116:1,16,19 117:4 118:6,17,23 119:22 120:20 121:2 121:8,15 122:6,14 123:2 124:19 125:5 125:16,23 126:13,19 131:17 132:6,20 133:22 134:19 135:6	136:3,14 137:9,21 138:8,23 139:12 140:5,23 141:8,17,25 142:5,10,16 143:10 144:5,15,21 145:15 146:9 147:5,22 148:11,14,16 149:23 150:20 151:13,25 152:14 154:5,13 155:8,22 156:10,25 157:16,23 158:12,25 159:16 160:4,15 161:3,7,10,24 162:8 162:23 163:11 164:5 164:16 165:9,20 166:19 167:4,19 168:8 169:2,14,24 170:11 171:7,17 172:9,17 173:5 174:12,23 175:17,21 175:25 176:3,12,15 176:19,23 177:3 178:1,19 179:17,23 181:2,4,4,5,5,6,7 183:19 184:8,10,16 185:20 186:4,15
<b>started</b> 17:7 70:25 73:24 74:9 76:18 77:8 80:6 84:24,24 85:1 86:8 98:10,12 100:6,12	<b>strict</b> 22:16 <b>strictly</b> 71:21 72:19 <b>strike</b> 114:10 115:6 <b>struck</b> 39:21 40:22 <b>structured</b> 65:6 <b>structures</b> 83:7 <b>student</b> 12:15 <b>subject</b> 11:15 17:24 54:18 92:4 94:4 152:13 181:25 183:22 <b>subjects</b> 11:13 <b>submitted</b> 23:5,7 <b>Subscribed</b> 187:2 <b>subsequent</b> 91:8 <b>substance</b> 10:6 <b>substantial</b> 95:12,13 <b>successful</b> 65:8 <b>suggest</b> 172:15 <b>suggests</b> 124:21 <b>Suh</b> 2:5 3:7 6:25 7:23 12:8 12:10 19:15,24 20:9 20:24 21:6,12,16,19 22:24 24:16 25:13,24 27:15 28:12,16,24	<b>Suh's</b> 175:2 <b>Suite</b> 3:20 4:6,14 <b>suited</b> 87:9 <b>summary</b> 38:19 <b>Sun</b> 6:25 <b>Sunday</b> 155:17 <b>supervise</b> 43:3 <b>supervised</b> 107:22 <b>supervising</b> 79:23 82:5 <b>supervision</b> 188:12	
<b>starting</b> 95:7 101:4,21 <b>state</b> 6:24 7:24 106:16 135:2 136:6 150:15 155:15 173:15 <b>stated</b> 76:9 107:18 150:14 168:5 188:9 <b>statement</b> 48:23 49:1 72:15,21 182:24 183:1 <b>states</b> 1:1 6:9 11:5 14:3 16:23 25:22 26:1 57:6 129:20 <b>status</b> 59:20 61:20,25 159:20 163:14 <b>statutory</b> 107:7,10 <b>stayed</b> 10:23 12:22 14:15 <b>Stefano</b> 24:25 25:1 <b>step</b> 15:5 126:18 175:12 <b>stock</b> 18:21 <b>stop</b> 176:13 <b>stopped</b> 63:8 <b>story</b> 179:9 <b>strain</b> 43:5			

<b>sure</b> 9:4 22:14 33:19 35:23 63:6 78:10 116:21 144:5 161:7 177:21 179:1 185:5	151:15 152:2,16,25 153:15 154:7,19 155:3,10,17,25 156:12,19,23 158:8 158:14,23 159:8 160:6,19 161:12 162:25 164:7,18 165:6,22 167:21 168:6 169:16 170:1 171:9,25 177:7 184:19	119:10,11 120:25 147:7 157:3 159:18 162:24 169:6 181:23 185:21	96:22 131:5
<b>SurfCast</b> 1:7 2:9 6:9 7:5,10 8:14 18:12,16,21 19:7,17 20:7 23:17,23 24:2,3 30:16 31:6 39:23 40:9 42:2 43:11 44:3 44:9,14,17,20 45:3 46:22 47:1 54:6,17 55:24 56:8 58:13,16 64:21 65:5,8,12,18 65:21 66:14 67:7 68:9 69:3,10,25 70:8 71:23 73:16,21,24 74:4,7,10,11 76:3 78:25 80:4,17 81:7 81:25 84:11,14 85:1 88:7,8,25 89:7,10 90:15,16,25 91:13,16 94:10,18 97:10,19,22 97:24 98:12,15,20 99:6,11,13,16 100:7 100:12,14 101:5,7 105:3,11,18,22 108:1 108:8,14 109:4 111:14,24 112:24 113:4 114:12 115:13 115:17,21 117:22 118:12 120:19 121:25 123:12 125:4 127:25 128:15,21,23 128:24 129:7,11 130:3,4,20,24 132:8 132:16,23,23 133:17 134:7 135:24 136:19 136:23 137:8,23 138:6,10,15,22,25 139:3,7,15,20 140:4 140:8,9 145:19 146:6 146:11,19 147:2,8,24 148:10 149:3,11 150:2,8,18 151:3,12	<b>SurfCast's</b> 128:1 157:18 158:2 169:22 172:11 <b>swear</b> 7:14 <b>sworn</b> 5:11 7:17 188:4 <b>system</b> 1:14 17:4 40:7,8	<b>talked</b> 77:21 105:21 119:10 119:12 120:4 135:19 140:3,25 144:16,25 145:13 147:10,21 151:2,4,11,16 155:24 156:3,9 157:9,15,24 157:24 159:19,22 160:3,18,21 161:1 162:15 163:13,23 165:14,19 167:11 168:15,20 169:8 170:21 171:2 178:20 178:22	<b>teleconference</b> 167:9,18 168:11,23 <b>Telefacsimile</b> 2:17 <b>telephone</b> 3:11 4:3 7:6 163:20 <b>tell</b> 9:22 10:18 13:14 31:18 36:2 41:6,21 51:18 52:24 53:7 69:11,24 76:15 77:19 78:2,23 82:7 86:4 98:21 103:16,19 104:5,11 110:22,23 111:6,10 117:17 143:22 166:8 179:8,9 180:12 188:5
	<b>T</b>		<b>telling</b> 73:1 82:12 123:19 <b>temporally</b> 158:7 <b>ten</b> 67:25 68:2 96:15 <b>term</b> 21:6 123:13 126:20 137:1 138:20 <b>terms</b> 15:25 16:4 17:2 51:4 53:13 76:17 87:24 127:21 183:21 <b>Terrapin</b> 13:19 18:4 <b>testified</b> 5:11 7:18 8:16,18 60:9 101:10 106:12 <b>testify</b> 8:22,24 145:7 <b>testimony</b> 73:11 74:17 79:18 81:16 84:18 95:5 114:16 123:23 134:13 145:23 148:4 149:16 150:13 152:6 153:19 156:16 158:18 159:12
	<b>t</b> 94:25 <b>table</b> 184:24 <b>tad</b> 141:14 <b>take</b> 9:20,25 11:11,13,15 11:16,23 24:10 63:2 64:8 71:20 72:18 82:1 84:15 95:21 96:14 97:25 99:17 113:11 126:14 139:15 142:11,12,13 161:6,24 174:7 180:7 182:6 183:13 185:10 <b>taken</b> 20:19 22:7 39:14 64:11 72:3 73:6 74:12 96:14 116:24 143:3 162:3 173:8 185:15 188:7 <b>talk</b> 75:14 105:25 117:5,11	<b>talking</b> 42:19 57:2,4 61:15 87:3,21 100:20,22 108:11 112:9 121:3 135:12 151:14,20 165:3,3 166:11 169:21,22 170:16 <b>talks</b> 86:16 160:13 <b>tapes</b> 148:18 149:8 <b>task</b> 45:24,24 <b>tasked</b> 81:24 84:13 97:23 99:15 <b>tasks</b> 45:3,9 96:13 121:25 122:7 <b>TCP/IP</b> 169:7,23 170:17 184:17 <b>technical</b> 26:9,12,16,21,22 27:1 87:22 <b>Technically</b> 24:7 <b>technology</b>	

160:11 161:16 163:4 164:22 166:3 168:1 172:20 174:1 179:5 181:9 183:10 188:9 <b>Thank</b> 7:11,20 22:23 44:6 49:12 56:2 59:12 61:21 65:4,23 66:9 81:23 89:20 101:3 112:2 127:22 141:16 144:2 147:19 161:25 175:15 <b>Thanks</b> 101:3 <b>that's</b> 8:11,15 11:20,22 15:7 15:11 16:25 17:18,22 20:11 22:20 23:9 25:15 28:24,25 30:9 30:24 34:19 37:14 38:20 40:19,23 44:2 54:21 56:1 57:13 58:19 59:4 60:14,18 60:23,24 62:3,12 73:19 76:19 78:19 82:18 83:1 84:22 85:21 86:15 91:22 93:25 94:4 97:20 98:22 99:20 101:20 104:10 106:25 108:8 108:18 110:10,24 111:11 112:8 113:1,1 113:7,13,16 115:16 118:22 119:8 120:4 123:5 126:8,17,18,18 126:23 127:3 128:18 129:11 130:11,18,22 132:4 133:20 134:4 137:18 142:20 143:13 145:12 151:19 152:10 153:12 154:1 159:13 160:12 164:24 171:5 172:8 174:18 176:3 178:17,23 179:1 182:25 184:20	<b>theoretical</b> 10:24 12:13 <b>thereof</b> 5:4 <b>thereto</b> 188:22 <b>thicker</b> 59:10,10 <b>thing</b> 18:3 24:6 106:18 <b>things</b> 33:11 34:15 42:13 51:25 78:14 88:14 128:11 130:14 134:16 137:18 151:23 172:16 177:9 <b>think</b> 12:2,18 14:18 15:17 15:22 16:8 17:3 19:22 20:11 26:19 27:24 29:11 30:9 31:20 32:5,10 34:25 43:5 45:21 49:17 52:5,9 55:8,10 58:22 60:9 63:10 67:13 69:1 71:16 75:12 76:9 86:15,16 94:6 94:20,21,24 101:20 101:21 102:25 116:16 118:22 121:13 122:22 125:12 126:11 127:20 133:8,13 142:13,19 144:9,14 149:19 155:1 164:24 172:24 179:25 180:9 182:2,17 185:8,9 <b>third</b> 44:11 47:12 66:11 137:3 <b>thought</b> 104:3 113:3 137:7 176:23 <b>three</b> 11:11 12:18 36:24 37:12 67:13 77:4	96:15 140:8 143:8 161:21 186:19 <b>three-quarter</b> 166:9 <b>Thursday</b> 32:18 114:21 <b>tidying</b> 146:11 <b>tied</b> 16:2 65:11 <b>tiles</b> 127:10,16,18 <b>Tim</b> 174:10 <b>time</b> 6:15 8:11 9:21 12:14 13:5,16 14:8,11,22 15:18,22 17:1,5,7,11 17:12 20:17,23 22:5 22:11 23:6 25:7,9,12 25:17 26:4,13 27:14 27:23 28:1,1,3,6 36:4 36:4,13 37:19,24 39:6 40:6,8 49:13,17 49:19 51:13 52:12,13 52:15 54:3 56:13 58:15,19 62:2 63:1 64:10,17 69:17 70:25 75:7,15,15,20,25 77:2,6,20 78:9 82:7,8 87:24 88:1,2,20 89:5 89:8 90:20 92:25 93:10,11 94:19 95:11 98:11 100:25 101:23 105:18 106:16 107:9 113:9 114:17 116:16 116:17,23 117:3 120:6 124:2,6,18 125:21,24 128:23 129:20 130:11 133:2 134:15 138:6,21 143:2,9 146:4 148:20 148:25 149:9 152:23 154:2 155:2 156:24 158:6,23 162:2,7 166:8,17 168:9	170:13 173:7,12 176:1,15 180:5,5,12 181:15 183:2 184:18 185:14,19 186:7,13 186:21 188:8 <b>timeframe</b> 18:1 29:11 40:6 83:23 102:20 <b>timeline</b> 163:18,18,20 <b>times</b> 158:20 <b>Timesheets</b> 2:12 <b>timetable</b> 165:12 <b>timing</b> 105:10,21 106:19 151:2,12,14 152:17 152:18 <b>title</b> 1:14 133:7 <b>titles</b> 25:16 <b>today</b> 6:16 8:4,22 10:13 23:10 120:4 140:3 177:15 184:4,25 185:3,5,7 <b>Today's</b> 6:14 <b>told</b> 24:3 63:17 89:12 115:11 120:5 124:25 125:2 127:4 142:8 180:14 <b>Tom</b> 140:9 143:17 <b>top</b> 99:24 <b>total</b> 38:6 39:19 41:10 <b>totally</b> 126:23 <b>track</b> 61:16
--	---	---	--

<b>trademark</b> 1:1 6:10 46:4	4:13 7:2	9:16 10:9 34:21 66:9 112:17 174:17	<b>V</b>
<b>training</b> 12:4,9 13:9,11 17:19 166:10,13,15	<b>twice</b> 183:15	<b>undertake</b> 45:4 122:1	<b>VA</b> 4:7
<b>transcript</b> 121:7 188:14	<b>two</b> 11:13 13:24 48:2 51:17 53:8 54:6 64:16 67:13 72:10 73:2 77:4 80:19 81:6 95:20 96:14 114:20 114:21,22 115:16 140:6,7 142:25 149:4 156:18 161:21 163:10 177:9	<b>unified</b> 56:17 132:17	<b>vague</b> 93:25
<b>transfer</b> 114:2 159:2	<b>two-and-a-half</b> 13:20	<b>unique</b> 44:19	<b>variety</b> 12:21 96:22
<b>transmitted</b> 36:4	<b>type</b> 19:16 26:18 64:20 96:22 102:21	<b>United</b> 1:1 6:9 10:21 11:5 16:23 25:22 26:1	<b>various</b> 69:17 92:25 101:15
<b>transmitting</b> 43:23	<b>types</b> 70:22,23 101:15 102:9 124:15	<b>University</b> 5:5 6:21 10:20 133:2	<b>vendor</b> 137:4
<b>travel</b> 136:18	<b>typewriting</b> 188:11	<b>UNIX</b> 13:2,4,6	<b>verbal</b> 181:24
<b>trees</b> 30:1	<b>typically</b> 38:17 109:17	<b>unreasonable</b> 70:7,13 71:7,11	<b>verbally</b> 9:8
<b>trial</b> 1:2 6:10 8:16		<b>untimely</b> 32:8	<b>versa</b> 29:8
<b>triggered</b> 104:13		<b>unwilling</b> 182:24	<b>version</b> 130:13
<b>trip</b> 135:13		<b>un-redacted</b> 128:9 130:13 146:15 177:13,14	<b>versus</b> 6:8 8:14
<b>true</b> 99:20 105:2 111:13,23 187:2	<b>U</b>	<b>Updated</b> 165:11	<b>vice</b> 29:8
<b>truth</b> 188:5,5,6	<b>Uh-huh</b> 9:10 67:22 170:14 184:15	<b>urgency</b> 109:13	<b>video</b> 4:22 6:15,19
<b>truthfully</b> 8:25	<b>ultimate</b> 92:9	<b>urgent</b> 69:19	<b>videographer</b> 4:24 6:6,16 7:11,20 20:14,17,22 22:2,5 22:10 64:9,14 116:22 117:2 142:24 143:6 162:1,6 173:6,11 182:11 185:13,18 186:18
<b>try</b> 9:20 183:7	<b>Um</b> 90:1,3	<b>USC</b> 2:10	<b>videotape</b> 6:7 64:16 142:25 143:8 186:19
<b>trying</b> 101:14 103:4 133:12 179:11	<b>understand</b> 8:3 9:14 10:8,10,16,17 46:1 52:12 57:9 71:5 74:19 77:7 82:11,11 89:19 102:15 103:4 112:23 129:5 148:21 185:9 186:2	<b>use</b> 52:1 137:1 177:15	<b>VIDEOTAPED</b> 1:20
<b>Tuesday</b> 114:23	<b>understanding</b> 39:19 183:2	<b>user</b> 12:4	<b>view</b> 89:22 91:17 142:19 154:3 179:5
<b>turn</b> 24:19 35:10 37:15 38:2 44:7,8 50:20 58:22 59:15 65:24 66:25 80:10 83:3 117:15 129:25 132:21 143:11 147:6 159:1,17 171:18	<b>understands</b> 22:14	<b>utility</b> 45:19 79:12 83:5 122:18	<b>visa</b> 16:5
<b>Turner</b>	<b>understood</b>	<b>U.K</b> 11:4 13:24	<b>visit</b> 111:1
		<b>U.S</b> 15:12,18 16:6 66:12 67:24 68:13 157:3,4 157:25 158:5	<b>VLP</b>

14:21 24:8 <b>voice</b> 6:23 <b>volume</b> 6:6 64:15 142:25 143:7 186:19 <b>vs</b> 1:6	120:8,9 188:20 <b>ways</b> 44:1 125:13 176:20 <b>Web</b> 50:18 51:1,1 117:16 120:11 121:3 123:18 124:5,12,15 133:13 <b>Website</b> 137:3 <b>Websites</b> 137:3 <b>Wednesday</b> 1:22 5:3 6:2 149:3 <b>week</b> 17:6 91:8 96:17 115:10 116:4 124:3 <b>weekend</b> 114:21 <b>weeks</b> 77:4 96:15 <b>welcome</b> 180:15 <b>went</b> 13:23 14:17 133:25 134:16 <b>we'll</b> 9:20 19:22 34:25 175:8,8 179:9 <b>what's</b> 41:21 60:6 103:12 111:11 117:25 119:4 129:9 130:17 175:3 <b>whilst</b> 153:8,21 <b>William</b> 25:3 26:7 <b>Williams</b> 159:19 <b>within-entitled</b> 188:6 <b>witness</b> 4:12 5:10 7:3,15,19 10:13 12:9 19:13,18 19:20 20:5 22:19 25:7 27:11 28:10,13 28:21,25 30:14,24	31:25 32:14,18 33:6 33:25 34:3 35:3,7,21 35:24 36:22 37:6,24 38:9,17 39:10,18 41:5,12,24 42:4,11 43:1,18 44:23 45:6 45:13 46:19,24 47:20 48:7,15,22 49:7 50:8 50:12 51:3 52:5,9 53:5,9,13,21 54:2,13 54:21 55:2 56:10,22 57:4,20 58:5 59:4,12 60:6,14 61:7,22 62:10,12,21 63:4,7 63:17 64:2,24 65:4 66:6,9,18,21 67:20 67:22 69:14 70:3,12 71:10,16 72:8,23,25 73:12 74:19 75:12,14 76:9 77:1,8,19 78:5,8 78:11,16,20,23 79:18 79:20 80:24 81:16,17 82:17 83:1,25 84:4 84:19 85:7,8,10,15 85:21 86:15 87:3,14 87:21 88:4,13 89:4 89:21 90:10 92:7 94:15 95:6 96:1,19 98:9 99:20,24 100:2 101:20 102:5,7,11,15 102:18 103:8,25 104:16,22 105:17 107:21 108:4,7,18 109:9,11 110:1,2,7 110:22 111:10 112:4 112:8,12 114:16,17 115:7,25 118:4,15,22 119:18 120:16,24 121:18 122:3,11 123:22,24 124:25 125:11,21 126:6,17 131:15 132:4,12 133:20 134:14 135:1 137:1,17 138:3,19 139:10,23 140:17,19 141:7 142:3,8 144:2	144:6 145:12,23,25 146:25 147:12,17,20 148:5 149:18 150:14 151:7,10,19 152:6,8 153:20 154:10 155:6 155:14 156:5,8,18 157:11,14,21 158:5 158:19 159:13,24 160:2,12,23 161:1,17 162:21 163:6,25 164:3,12,23 165:18 166:2,4,24 167:1,13 167:17 168:3,16,19 169:11,20 170:7 171:1,13 172:6,14 173:18 174:22,24 175:6,14,16 177:5 178:3 180:3,11,22 181:9,15 182:10 186:5,8,10,12 188:3 188:10 <b>Wonjoo</b> 3:7 6:25 184:9 <b>won't</b> 19:25 185:6 <b>word</b> 75:2 <b>words</b> 177:12 <b>work</b> 15:3 30:19 39:13 44:17 53:11 54:22 56:7 58:11 67:12 69:11,15,18,19,24 70:7 71:13,21,22 72:16,19,20,23,24 73:24 74:9 75:5 76:2 76:7,18 82:6,9 83:22 84:6,24,25 85:1,5,7 85:12 86:4 87:10,18 88:22 90:14 91:15 98:10,14 99:10 101:5 101:17,22 102:19 105:2 107:8 108:1,13 111:13,23 113:4 114:12 115:5,9,13,20
---	---	---	--

128:14,23,24 129:18 132:7,16 134:6,21 135:23 137:22 138:6 138:14 145:18 146:4 146:18 147:17,23 149:10 150:7 151:8 153:14 155:9 156:6 156:12 157:11 158:13 159:7,25 160:5,23 161:11 162:18 164:1,6,17 165:21 166:25 167:15,20 169:25 171:8,24 172:18 175:22	51:1,6,24 53:14 80:15 120:11,12,19 121:3 124:5,9,11,12 125:3,3 126:11,20,23 127:1,5 129:19 <b>Writing/Web</b> 50:22 <b>written</b> 39:6 51:4 92:24 96:7 117:25 119:4,19 130:17 132:14 135:16,18 138:13 146:13 167:2 <b>wrong</b> 39:22 40:7,8 80:12 <b>wrote</b> 125:1 181:23 <b>wsuh@sidley.com</b> 3:9 <b>Wu</b> 173:14 174:4 <b>Wu's</b> 175:10	32:22,22 83:11,12 84:7 93:20 95:8 135:13 139:15 140:2 140:21 <b>you'd</b> 55:7 <b>you'll</b> 20:3 100:3 146:14 153:25 <b>you're</b> 81:17	44:20 <hr/> <b>1</b> <hr/> <b>1</b> 58:22 81:5 113:9 159:19 <b>1.25</b> 168:10 <b>1.5</b> 40:19 136:19 152:24 154:19 164:13,25 <b>1.9</b> 165:2 <b>1:07</b> 143:2,4 <b>1:10</b> 143:5,9 <b>1:31</b> 162:2,4 <b>1:43</b> 162:5,7 <b>1:55</b> 173:7,9,10,12 <b>10</b> 107:4 <b>10th</b> 91:9,12 97:6 98:16 108:11,15 <b>10.39</b> 15:22 <b>10:15</b> 64:10 <b>10:16</b> 64:10,12 <b>10:30</b> 64:13,17 <b>104</b> 159:17 <b>109</b> 160:16 <b>11</b> 37:15 66:1 71:24 80:14 99:22 100:23 <b>11th</b> 91:13,15 116:5 <b>11:45</b>
<b>worked</b> 13:8,17,25 18:6 40:4 65:25 76:22 78:1,18 79:22 80:15 81:5,11 83:10,20 85:3 90:11 93:1 95:8,10 97:2 98:24 100:13 105:23 107:5 108:23 117:10 120:7 128:20 149:20 166:5	<b>wrong</b> 39:22 40:7,8 80:12 <b>wrote</b> 125:1 181:23 <b>wsuh@sidley.com</b> 3:9 <b>Wu</b> 173:14 174:4 <b>Wu's</b> 175:10	<b>zero</b> 44:24	
<b>working</b> 11:24 17:1,5 26:13 30:12 43:24 46:20 51:16 52:11 62:3 70:22 77:5 86:8 89:8 90:25 98:12 100:7,12 110:9 123:17 128:24 129:2,3 155:16 161:23 164:14 165:6 165:6	<b>X</b> 2:1 69:15 <b>XML</b> 154:20,25 156:1,21 157:2,24 158:9,10	<b>0</b>	
<b>wouldn't</b> 19:8 <b>write</b> 30:4,6 44:23 96:16 113:9 120:17 124:13 131:6 181:22 <b>Write-off</b> 41:1 <b>writing</b> 12:15,20,24 13:12,21 13:25 30:9 50:17,25	<b>Y</b> 69:16 <b>Yeah</b> 19:19 22:4 63:3 78:2 81:2 95:19 121:8 156:8 173:2,21 178:11 182:5 <b>year</b> 8:9 11:4,4,12,13,14,18 17:4 96:14 <b>years</b> 11:6 12:19 13:21,24 44:4 67:13 96:15 <b>York</b>	<b>you're</b> 81:17 <b>Z</b> <b>zero</b> 44:24 <b>0</b> <b>0.1</b> 159:17 160:18 <b>0.25</b> 40:18,18,18 138:10 150:2 151:1 155:24 157:2 159:1 165:11 169:6 <b>0.33</b> 167:8 <b>0.4</b> 163:12,13 <b>0.5</b> 117:16 146:10 147:7 157:2 162:13 170:17 <b>0.7</b> 170:15 <b>0.75</b> 40:17 139:14 <b>0002</b> 62:2 <b>0002-999</b> 58:15 <b>0009-999</b> 45:18 47:9 122:17 <b>0124-245041</b> 1:24 <b>09555.0003999</b> 40:3 <b>09982</b>	

116:23,24	130:2	12:3,23 13:8 14:5,24	57:5 65:24 66:19
<b>110</b>	<b>15-year</b>	16:22 18:1 29:13,14	80:15 83:3 90:23
162:9	96:12	36:20 37:17 43:12	93:4,5 98:23 102:1
<b>111</b>	<b>1500</b>	50:5 66:23 69:8 70:6	105:8 107:2 108:21
163:12	17:4,4	78:25 80:18,20 81:10	116:2 123:6 129:17
<b>113</b>	<b>1501</b>	83:10,15,23 84:10	<b>2010</b>
165:10	3:5,12	92:13 96:16 97:6	2:22 14:20 35:11,16
<b>117</b>	<b>16</b>	105:8,13 107:4	36:8 37:16 42:20
167:5	2:22 108:21	112:22 128:13	43:12 46:8,8 58:22
<b>118</b>	<b>16th</b>		176:3
168:9	71:1 114:11,20 132:22	<b>2</b>	<b>2014</b>
<b>11911</b>	<b>17</b>	<b>2nd</b>	1:22 5:3 6:2,14 187:4
4:5	66:21 113:17	83:15,19 84:10 86:9	<b>20190-5602</b>
<b>12</b>	<b>17th</b>	90:7,17 97:14 147:7	4:7
66:25 71:25 90:22	113:5,8,21 114:20	<b>2:00</b>	<b>202</b>
<b>12th</b>	115:18	180:5	4:14
154:19 167:6	<b>17.6</b>	<b>2:04</b>	<b>202-736-8492</b>
<b>12:00</b>	41:10	183:2	3:15
116:18	<b>1700</b>	<b>2:07</b>	<b>202-736-8831</b>
<b>12:36</b>	3:20	185:14,16	3:8
117:1,3	<b>18</b>	<b>2:18</b>	<b>2030</b>
<b>123</b>	14:15 57:6 78:25	185:17,19	124:21
169:3	123:7	<b>2:19</b>	<b>2035</b>
<b>124</b>	<b>18th</b>	186:21,23	2:12 29:19,20 50:4,14
170:12	66:23 80:4,7 100:14	<b>20</b>	80:10 83:14 99:1,21
<b>13</b>	100:19 114:21,25	1:11 105:4 114:22	100:23 102:16
46:9,12,13 68:3 72:1,2	169:4	<b>20th</b>	103:15 104:6 105:14
83:3 156:19	<b>19</b>	114:23	117:15 124:21
<b>13th</b>	1:22 5:3 6:2 34:1	<b>200</b>	127:14 130:17
168:10	<b>19th</b>	28:15	143:12 162:9 175:25
<b>133</b>	6:14 114:21,25 149:25	<b>2000</b>	176:12,14 177:1
171:18	170:13	1:12 5:4 6:21 15:17,17	<b>2049</b>
<b>14</b>	<b>1900</b>	16:21	2:15 35:10,12 36:8
2:15 69:7 70:17,19,20	6:20	<b>20005</b>	42:20 43:12 176:4
70:21 71:19 93:1	<b>1988</b>	3:6,13	<b>2050</b>
97:2 98:23 102:1	12:13	<b>2002</b>	2:17 35:10,14,24 38:3
116:2	<b>1990</b>	14:9	42:20 43:12 176:4
<b>14th</b>	29:11,13	<b>2003</b>	<b>2051</b>
38:6,11 157:1	<b>1994</b>	14:10,13 15:10,13	184:13
<b>15</b>	12:23 13:17	<b>2004</b>	<b>2052</b>
70:17,19,20,24 86:16	<b>1995</b>	1:11 16:8	2:24 59:7,8,15,16,23
107:2 112:5,6,19,24	12:2	<b>2005</b>	60:17,19,25 61:18
<b>15th</b>	<b>1998</b>	14:17	184:13
97:9 108:22 109:3	18:1	<b>2008</b>	<b>21</b>
110:13 111:15 112:1	<b>1999</b>	2:9 14:19 24:10,13	2:24 108:22 112:5,6
113:5,8,9 114:10	2:12,15,17,22,25,25	36:1 44:7,18 47:7	112:20,25

<b>21st</b> 110:14 111:15 112:1 114:11,23 135:8	2:22 <hr/> <b>3</b> <hr/>	3:20 <b>4096</b> 1:25 188:25	8:2 <b>619-699-2639</b> 3:23
<b>22</b> 2:17	<b>3</b> 38:22 40:2,17 129:18	<b>41</b> 140:6	<b>63</b> 149:24
<b>22nd</b> 50:5 51:8 52:18 118:24 127:13 136:16	<b>3rd</b> 83:15,20 97:18	<b>42</b> 143:11	<b>640</b> 4:14
<b>23</b> 81:3	<b>30</b> 1:12 69:7 93:7 99:3,9 129:12,25	<b>43</b> 146:10	<b>650-521-5930</b> 4:17
<b>23rd</b> 51:9 52:18 79:1,8,9 81:19	<b>30th</b> 37:17 38:6,24 105:4	<b>45</b> 99:24	<b>68</b> 105:14 150:25
<b>24</b> 2:9 127:24	<b>300</b> 4:6 95:20	<b>46</b> 83:14 147:6	<hr/> <b>7</b> <hr/>
<b>24th</b> 105:8,13,20 151:1	<b>31</b> 99:3,8,9,10 105:8 132:21	<b>47</b> 83:15 148:13	<b>7</b> 2:5 70:17 71:19 74:22 117:15
<b>25</b> 40:23 94:21 100:19 101:1 113:16 114:9 135:12 136:18	<b>31st</b> 69:8 83:10 93:3 152:24	<b>48</b> 148:12,17	<b>70</b> 99:1
<b>25th</b> 100:6 101:6	<b>317(a)(8)</b> 2:11	<hr/> <b>5</b> <hr/>	<b>703-773-4148</b> 4:9
<b>2550</b> 41:16	<b>34.1</b> 38:5,10 39:4,14 40:22 41:12	<b>5</b> 24:19 38:2 39:3 41:8,9 107:4 132:22	<b>71</b> 99:2
<b>26</b> 39:6,14 40:22 59:18 90:22 91:23	<b>35</b> 2:10,15,17,22	<b>5th</b> 91:8 97:6,21 98:16 108:11,15 162:11	<b>74</b> 99:2
<b>26th</b> 61:18 99:2,5,9,12	<b>36</b> 135:7 136:11	<b>5,918,237</b> 157:3,4 158:5	<b>75</b> 12:19 99:2 152:23
<b>27</b> 99:9	<b>37</b> 136:15	<b>50</b> 68:19 94:21	<b>771034.1</b> 2:23
<b>27th</b> 99:3 139:14	<b>38</b> 66:21 138:9	<b>58861</b> 2:16	<b>777</b> 8:1
<b>28th</b> 80:18 140:8 171:19	<b>39</b> 19:5	<b>58866</b> 2:20	<hr/> <b>8</b> <hr/>
<b>283818</b> 2:15	<hr/> <b>4</b> <hr/>	<hr/> <b>6</b> <hr/>	<b>8</b> 50:3,4,7,14 59:15 61:17 118:24 127:14 129:18
<b>29</b> 2:12,25 32:18 78:25	<b>4</b> 19:4 41:5,6 80:10	<b>6</b> 70:17	<b>8th</b> 165:11
<b>29th</b> 33:20 36:19,20 37:21 70:6,6 71:6,6 80:20 81:5,10,21 143:14	<b>4th</b> 79:10 83:21 90:25 91:2,21 92:13 97:19 148:17 160:17	<b>6th</b> 163:13	<b>80</b> 101:1
<b>296240</b>	<b>40</b> 94:20 139:13	<b>6,724,403</b> 1:10	<b>8067-034</b> 99:25 101:1
	<b>401</b>	<b>6:00</b> 116:4	<b>87</b> 154:18
		<b>60</b>	<b>88</b> 155:23

<b>888</b>	<b>9982-0009</b>		
47:20	48:10,19 49:5,10		
<b>89</b>	<b>9982-0009-888</b>		
157:1	44:11 45:19 48:1		
	121:11 122:19		
<b>9</b>	<b>9982-0009-999</b>		
<b>9</b>	44:10 48:1 50:21		
44:8,18,18 47:6,7,7	<b>9982-009-999</b>		
50:20 57:6 123:7	113:15		
<b>9th</b>	<b>999</b>		
90:24 127:25 128:13	50:17		
129:21			
<b>9:00</b>			
116:4			
<b>9:01</b>			
5:3 6:3,15			
<b>9:17</b>			
20:18,20			
<b>9:23</b>			
20:21,23			
<b>9:24</b>			
22:6,8			
<b>9:25</b>			
22:9,11			
<b>92</b>			
159:1			
<b>92101-4297</b>			
3:21			
<b>94063</b>			
4:15			
<b>94303</b>			
8:2			
<b>992-0005</b>			
50:15			
<b>9982</b>			
44:24 45:2,7 47:7 49:3			
121:24 122:5			
<b>9982-00</b>			
45:18 122:17			
<b>9982-0002-999</b>			
44:13 45:22 58:21			
60:10 122:23			
<b>9982-0005-999</b>			
44:12 45:21 56:11			
119:24 121:13			
122:21 123:3,8			