

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

META PLATFORMS, INC.;	)	
INSTAGRAM INC.;	)	
WHATSAPP LLC; META	)	
PLATFORMS TECHNOLOGIES,	)	
LLC; AND GIPHY, INC.,	)	
Petitioners,	)	
v.	)	Case IPR2023-00924
	)	U.S. Patent 7,436,980
VL COLLECTIVE IP LLC,	)	
Patent Owner.	)	

DEPOSITION OF SYLVIA HALL-ELLIS, PH.D.

July 18, 2024

11:41 a.m. Mountain Daylight Time

Reported by: Lori J. Goodin, RPR, CRR, RSA,
California CSR #13959

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1 INDEX TO EXAMINATION

2 WITNESS: SYLVIA HALL-ELLIS, PH.D.

3

4 EXAMINATION BY

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2 SYLVIA HALL-ELLIS, PH.D.
3 Meta Platforms, Inc. v. VL Collective IP LLC
4 Thursday, July 18, 2024
5 Lori J. Goodin, RPR, CLR, CRR,
6 RSA, California CSR #13959
7

8 PREVIOUSLY MARKED EXHIBITS
9 FIRST REFERRAL
10

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1 THURSDAY, JULY 18, 2024, 11:41 a.m. MDT

2 PROCEEDINGS

3 * * *

4 Whereupon,

5 SYLVIA HALL-ELLIS, PH.D.,

6 a witness called for examination, having been
7 first duly sworn, was examined and testified as
8 follows:

9 * * *

10 EXAMINATION

11

12 BY MR. CARDENAS-NAVIA:

13 Q. Could you please state your full
14 name?

15 A. My name is Sylvia Hall-Ellis.

16 Q. And where are you located right now?

17 A. I am in Arapahoe County, Colorado.

18 Q. And, we just wrapped up your
19 deposition in a different proceeding, so, I'm
20 sure some of these questions will be, you have
21 heard before today already, but I need to ask
22 some of them again.

1 A. Okay.

2 Q. Is there any reason why you cannot
3 testify truthfully and completely today?

4 A. No.

5 Q. Do you have any documents in front
6 of you?

7 A. I do.

8 Q. And which documents are those?

9 A. I have a copy of my declaration for
10 Patent '980. It is a Meta 1050.

11 Q. Okay. Yes. That is Exhibit 1050 in
12 this proceeding. I'm going to go ahead and drop
13 it into the Box.

14 A. Yes, I have that printed out.

15 Q. Okay. I'm going to drop it in the
16 Chat Box but feel free to use your paper copy as
17 well.

18 (Previously marked Exhibit
19 Number 1050
20 first referral.)

21 THE WITNESS: Okay, great. Hold on
22 a second -- it comes back, it is weird --

1 okay.

2 BY MR. CARDENAS-NAVIA:

3 Q. Okay. I'm going to refer to
4 Exhibit 1050 --

5 A. Right.

6 Q. -- as either Exhibit 1050 or as your
7 declaration, okay?

8 A. Okay, fine.

9 Q. And, could you please turn to
10 Page 17 of your declaration?

11 A. Okay. Let me get there.

12 I am there.

13 Q. And you see down towards the bottom
14 of Page 17 there is a Section 5, Publication?

15 A. Yes. I see that.

16 Q. Okay. And this is where you provide
17 your opinions about Exhibit 1009 which is a
18 document titled Tracking Loose-Limbed People; is
19 that correct?

20 A. Yes. This is it.

21 Q. And let me go ahead and put
22 Exhibit 1009 into the record.

1 (Previously marked Exhibit
2 Number 1009
3 first referral.)

4 BY MR. CARDENAS-NAVIA:

5 Q. And I will refer to Exhibit 1009
6 either as Exhibit 1009 or as a TLP, is that okay?

7 A. TLP, okay.

8 Q. That is a short for Tracking
9 Loose-Limbed People which is the title.

10 A. All right.

11 Q. Now, if you could turn to Page 22 of
12 your declaration.

13 A. 22, I see Page 22.

14 Q. And to Paragraph 48.

15 A. Yes.

16 Q. It says, "For these reasons, it is
17 my opinion that Exhibit 1009 was published and/or
18 publicly accessible at least by January 31st,
19 2004."

20 Do you see that?

21 A. Yes.

22 Q. Okay. And in this paragraph, you

1 are discussing the TLP reference, correct?

2 A. Yes.

3 Q. What do you mean when you say it was
4 published?

5 A. This is a conference paper. The way
6 we treat conference papers and the way, the way
7 we treat conference papers is quite different
8 from the way we treat other types of documents.

9 And then in this case published
10 refers to a printed book -- in this case a
11 two-volume series, or set that has the paper
12 included in it.

13 So, published here is more formal,
14 and from a legal point of view, you would think
15 of it more like a treatise.

16 Q. Okay. And so was it, and let me
17 actually direct you to, can I direct you back to
18 Paragraph 40 of your declaration?

19 A. Yes.

20 Q. And feel free to read it, if you
21 need to.

22 But I generally understand in

1 Paragraph 40 you are discussing Exhibit 1009 as
2 being published in a two-volume set.

3 A. Uh-huh.

4 Q. Proceedings of the 2004 IEEE
5 Computer Science Conference on Computer
6 Recognition and Pattern Recognition; is that
7 right?

8 A. Right, right. This paragraph is
9 designed to introduce the exhibit.

10 What is it, who wrote it, what is it
11 called, where was it presented, when was it
12 presented and where was it published.

13 Q. Okay. And for Exhibit 1009, you
14 later on go on to analyze how Exhibit 1009 would
15 have been, correct me if I'm misstating this.

16 A. Uh-huh.

17 Q. But my understanding is that you
18 later explained that Exhibit 1009 would have been
19 accessible by its MARC record as of August 30,
20 2004; is that correct?

21 A. Let me look at that. I am looking
22 at Paragraph 42 near the bottom. And this is the

1 MARC record from, let me think, from OCLC, from
2 WorldCat, basically, and that is the date,
3 August 30, 2004. Uh-huh.

4 Q. Okay. And so, in your opinion,
5 Exhibit 1009, TLP was published by August 30,
6 2004. Is that right?

7 A. In that print volume form, yes.

8 Q. Okay. And so, then going back to
9 Paragraph 48, when you use the word published for
10 Exhibit 2009, are you referring to that
11 publication or to a different publication?

12 A. Well, when you read through this,
13 you will see that there has been quite a
14 travelling activity for this particular paper and
15 this paper, while it appeared in a printed
16 manual, was also written much earlier than that
17 because of the requirement to submit the paper
18 for presentation at the conference.

19 And, therefore, the paper itself was
20 distributed, although not as widely perhaps as
21 the book, much earlier than that August date.

22 So, this is a situation where it

1 pays to examine more than just the printed book.

2 Q. And, we will be getting into that in
3 a little bit.

4 I just want to understand. My
5 original question was just to understand what you
6 mean when you said published in Paragraph 48.

7 A. Yeah, when you look at this paper,
8 it is published initially in ResearchGate which
9 is a digital repository. And that has the
10 January date.

11 And that to me is the critical time
12 that the paper was out and available for anyone
13 to read, should they choose to do so.

14 So, that is the date that makes
15 sense to me as available for the, this particular
16 paper.

17 Q. So, are you saying that TLP was
18 published on ResearchGate in January 2004?

19 A. Yes, I am.

20 Q. Could you please turn to
21 Paragraph 30 of your declaration.

22 A. Uh-huh. Okay.

1 Q. So, ResearchGate, well, the first
2 sentence of Paragraph 30 you say, "Founded in
3 2008 by a virologist and computer scientist
4 Dr. Ijad Madisch with physician Dr. Soren
5 Hofmayer and computer scientist Horst
6 Fickenscher."

7 A. Right.

8 Q. "ResearchGate restricts its user
9 accounts to people at recognized institutions and
10 published researchers." Do you see that?

11 A. I do see that.

12 Q. And so ResearchGate wasn't around
13 until 2008, correct?

14 A. In this form, that is true.

15 But this fellow announced that he
16 published his paper in January of 2004.

17 And so, we look at various things to
18 see that, including activities related to the
19 conference.

20 So, to just jump in here and say oh
21 my, is not appropriate.

22 Q. Well, let me clarify a few things

1 there about what you just said.

2 A. Uh-huh.

3 Q. And I just want to be very clear
4 because my understanding is that ResearchGate
5 didn't exist until 2008.

6 Do you have a different
7 understanding?

8 A. No, I don't. Because I have a cite
9 there myself.

10 Q. Okay. And so then, TLP couldn't
11 have been published on ResearchGate in
12 January 2004 because ResearchGate didn't exist in
13 January of 2004, correct?

14 A. It was published there, in
15 January 2004 it was published.

16 And when the author uploaded to the
17 ResearchGate, he indicated a publication date for
18 that paper of January, 2004.

19 The fact that that was four years
20 later, notwithstanding.

21 Q. I just want to make sure I get an
22 answer to my question.

1 Was, is it your --

2 A. The answer to your question is,
3 since authors control the posting of their papers
4 to ResearchGate, and Semantic Scholar, they can
5 indicate when the item was published, whether or
6 not that was before or after the establishment of
7 the digital repository.

8 So, for the sake of accuracy, we as
9 researchers tell you when we wrote a paper.

10 The fact that it was posted later is
11 also important, but it does not mean that we
12 couldn't have written anything before
13 ResearchGate was present.

14 Q. And I just want to make sure I have
15 a clear answer to my question because I think you
16 might have testified differently earlier.

17 And so I want to make sure we have a
18 clear record, which is you agree that TLP was not
19 available on ResearchGate prior to 2008.
20 Correct?

21 A. I agree that it was not on that site
22 at that time.

1 Q. TLP was not available on
2 ResearchGate prior to 2008, correct?

3 A. That is true.

4 Q. Okay. Thank you. One thing you
5 have said a couple of times now is that the
6 author indicated TLP had a, was published on
7 January 2004.

8 But the author never -- what is your
9 basis for that?

10 And I will tell you, I'm not aware
11 of the author ever indicating January 2004 as a
12 publication date.

13 A. That is the date that you see in
14 ResearchGate for this item. And if you look at
15 my report, my declaration here in Paragraphs 44
16 and 45 to 46, it is clear how this paper came to
17 be written and was sent, that it is not a
18 publication from 2008 or whatever date
19 ResearchGate was put in place.

20 But, in fact, because of that
21 timing, it seemed to me that there was more going
22 on and I needed to investigate that. And I did

1 so. And I described that here in my declaration.

2 Q. Give me just one minute to look at
3 that.

4 Could you turn to Attachment 1E to
5 your declaration?

6 A. No, I didn't print that out. Have
7 you got that online somewhere?

8 Q. If you open up the PDF I dropped in
9 the Chat, I can direct you to it.

10 A. Okay. Because I only printed the
11 main document here.

12 Let me see. 1009. Let me save
13 that, and then I have to, oh gracious. Okay.
14 Then I can open this, 1009 tracking, let me open
15 this.

16 Q. Oh, it is Exhibit 1050, that PDF.

17 A. Okay. So I'm looking at the actual
18 document. So, I don't want that one, right.

19 I want.

20 Q. That's right, it is a complete copy
21 of your declaration, Exhibit 1050?

22 A. With all of the exhibits. Okay.

1 Let me go back here. And see -- no, I don't want
2 that, I want your chat room here, chat, chat,
3 150, yes?

4 Q. That's correct.

5 A. So, we have to save that one. Go
6 here, open this, 1050. Okay. And you want
7 Exhibit 1E?

8 Q. Yes, and I can also look on mine,
9 I'm also going to share my screen so that I can
10 show you on the screen as well.

11 A. Yes, because 1E, I have no -- I had
12 to look for it here.

13 Q. Yes.

14 A. It is pretty long here. 1E, what is
15 1E? 1E, starts on Page 36.

16 Q. That is --

17 A. That is 1D.

18 Q. Yes. So, 1E which is just two
19 pages, three pages later.

20 A. Okay, 1E. All right.

21 Q. If you switch back to the Zoom, can
22 you see that I have shared my screen?

1 A. Yeah.

2 Q. Okay. And I'm showing Page 43, PDF
3 Page 43 of Exhibit 1050. I don't believe these
4 pages otherwise have numbers on them.

5 A. I think they don't. Okay.

6 Q. And can you see towards the bottom
7 of PDF Page 43 there is an 2004-9 --

8 A. Uh-huh.

9 Q. Tracking Loose-Limbed People.

10 A. Uh-huh, I see that.

11 Q. Okay. And it continues onto the top
12 of Page 44.

13 A. Yes.

14 Q. Is the ResearchGate entry that you
15 are referring to in your declaration?

16 A. No. This is, this is not. This is,
17 let me see, I will tell you what 1E is. 1E is,
18 this is the entry for ResearchGate of all of the
19 articles written by one of the authors during a
20 two-year period. He is very prolific. So,
21 dividing his work and stratifying it by years is
22 helpful. And that is what this is.

1 So, this is his 9th paper of 2004.

2 And you will notice he does give
3 that January 2004 date.

4 Q. Okay. And, you are correct that it
5 is called Attachment 1E, it --

6 A. Yes.

7 Q. It appears to list all of the
8 publications from ResearchGate of Michael J.
9 Black from 2003 to 2005?

10 A. Right.

11 Q. And Michael Black is one of the
12 authors of TLP, correct?

13 A. Yes.

14 Q. Okay. And I was specifically
15 directing you to this entry which starts on the
16 bottom of Page 43, which is Tracking Loose-Limbed
17 People, right?

18 A. Yes.

19 Q. So, that is the TLP, the reference
20 to TLP, or Exhibit 1009 that we have been
21 discussing, correct?

22 A. Yes, that is a reference to that

1 paper, yes.

2 Q. Okay. And so, and so, in, you see
3 four lines down to the next, it says
4 January 2004. Correct?

5 A. Yes, it does.

6 Q. Okay. And, this is, this
7 January 2004 is what you are using as part of --

8 A. I --

9 Q. There was a January 2004 publication
10 in your view, correct?

11 A. Yes. Give me a minute, please.
12 Someone is at my door, I will get rid of them.

13 MR. CARDENAS-NAVIA: Sure.

14 (Recess taken -- 12:02 p.m.)

15 (After recess -- 12:03 p.m.)

16 THE WITNESS: Okay, so, we are
17 talking about this. And I, I believe I
18 answered your last question.

19 BY MR. CARDENAS-NAVIA:

20 Q. You did. And so --

21 A. Okay.

22 Q. Again, I'm looking at bottom of

1 Page 43, top of Page 44 --

2 A. Sure. Uh-huh.

3 Q. Of your declaration, Attachment 1E.

4 A. Uh-huh.

5 Q. And it says January 2004, but it
6 doesn't say published on January 2004. Correct?

7 A. It does not have that word, that is
8 correct.

9 Q. Okay. And so, that is your -- that
10 it was published on January 2004, that is an
11 inference you are making based on the date and
12 the year, correct?

13 A. It is not the only piece of
14 information. But, definitely is a piece of
15 information. Yes.

16 Q. Okay. And, you do in parts of your
17 declaration also discuss the fact that TLP, the
18 TLP reference, or at least a version of it, what
19 is submitted to a committee for review prior to a
20 conference and publication, right?

21 A. Yes, it was. And you will see that
22 described in Paragraph 46. That whole process.

1 Q. Okay. And so, that is, I guess that
2 is, you know, I just kind of want to understand
3 what the basis is for your opinion that
4 Exhibit 1009 was published and/or accessible by
5 January 31st, 2004.

6 And as I understand it, there is
7 this ResearchGate entry we just looked at and
8 also the submission process.

9 A. Right.

10 Q. Prereview, or the review of those
11 submissions in the late 2003, early 2004 time
12 frame. Correct?

13 A. Yeah, and late 2003 because that was
14 the first date when the call for papers, I
15 believe, went out.

16 So, if we look at that process and
17 we understand the process, and this again is an
18 IEEE conference, which is important to remember
19 because they sponsor around 1,500 conferences a
20 year. They use this same process for every
21 conference.

22 So, understanding how an author or a

1 team of authors, as in this case there were
2 several individuals, prepares and submits their
3 manuscript for consideration for presentation at
4 the conference, is important to know because it
5 is indicative both of the timing and the process.

6 And we need, I think, to pay
7 attention to that.

8 Q. Okay. And we will get to the
9 details of this more in a little bit.

10 I just want to understand if,
11 besides -- let me, besides from the submission of
12 IEEE and this January 2004 ResearchGate, is there
13 any other basis you have for believing that the
14 paper TLP was published in January 2004?

15 A. I believe it was finished and
16 available at that time if someone knew to do
17 that.

18 And there are two reasons for that.
19 One is because the author said so. And as a
20 researcher, and I don't know if you write
21 research, but as a person who does conduct and
22 publishes research, we believe each other.

1 When we say I did this, this is my
2 process, and this is when I finished something,
3 we are respectful and courteous and know that we
4 are telling the truth.

5 So, he has said this in multiple
6 places, the timeline for submission for the
7 conference lines up with this, and I believe that
8 he is telling us that is when it was done.

9 Q. Will you understand that in the
10 context of patents, something in a printed
11 publication has a very specific meaning, correct?

12 A. I do understand that, which is why
13 when writing these, I have to go all over the
14 place to look at various documents to see how
15 does this fit.

16 Q. Okay. And, authors --

17 A. Uh-huh.

18 Q. Many of them are not familiar with
19 the legal requirements of what makes something a
20 printed publication. Correct?

21 A. They may not know; I'm sure they
22 don't worry about it.

1 Q. And so many authors, they might say
2 something was published on a date.

3 A. Uh-huh.

4 Q. If that is the date they intended to
5 say, that -- that is not necessarily meaning it
6 was a printed publication for purposes of patent
7 laws, correct?

8 A. It might not be. And, we also have
9 to know if the documents themselves were
10 distributed at the conference. Sometimes they
11 are, sometimes they are not.

12 So, we can't just make these
13 generalizations about anything except to say we
14 need to look at all of the pieces of information.

15 Q. Okay. Well, the conference, if
16 anything was distributed there, the conference
17 wasn't until, didn't start until June 27, 2004.
18 Right?

19 A. Right. That is absolutely true.
20 And we know that because it appears on the MARC
21 records and on the actual printed volumes. So,
22 we know that is when the conference took place.

1 Q. Okay. And do you have any reason to
2 believe that the TLP authors that put the TLP
3 reference on ResearchGate were familiar with the
4 patent requirements for something being a printed
5 publication when they uploaded the document to
6 ResearchGate?

7 A. That is outside the scope of
8 anything I would know. I don't know these
9 people.

10 Q. Could you turn back to Paragraph 47
11 of your declaration.

12 A. Sure. I have that here.

13 Q. Okay. You say, "Second, I examined
14 the 29 ResearchGate entries that Michael J.
15 Black posted during period 2003 to 2005 (see
16 Attachment 1E).

17 A. Uh-huh:

18 Q. "For each of the entries the date
19 indicated closely aligned with an official
20 publication date for the document.

21 A. Uh-huh.

22 Q. Do you see that?

1 A. Right.

2 Q. And then you go on to say, "I
3 identified the publication date for each
4 conference paper and journal article, the Segal
5 paper reflected the longest gap, but it aligned
6 appropriately with the requirements stated in the
7 conference call for papers."

8 Do you see that?

9 A. I do.

10 Q. When you say that the Segal paper
11 reflected the longest gap --

12 A. Uh-huh.

13 Q. What gap are you referring to?

14 A. The time between publication or
15 completing of the writing of the paper and the
16 conference, and then the actual publication of
17 the monograph. Because generally they are a
18 little closer. But, there is no real rule about
19 this.

20 So, if, in fact, more weeks passed,
21 more weeks passed. I don't know why. It doesn't
22 really concern me because the people in control

1 of the conference know why, and they are the ones
2 who count.

3 Q. And you are, just to make sure I
4 understand this gap.

5 A. Uh-huh.

6 Q. And if you look at my shared screen
7 again.

8 A. Right.

9 Q. Page 43 of Exhibit 1050, we see that
10 for the TLP reference in ResearchGate --

11 A. Right. Right.

12 Q. There is a date of January 2004.
13 And then there is a citation to the conference
14 and that has a date of June 27th to July 2, 2004.
15 Correct?

16 A. I do understand that. And those are
17 accurate dates.

18 But I would refer you back to page,
19 or Paragraph 46 because the timing of submission
20 of manuscripts for consideration for presentation
21 even predates that January date.

22 Q. Well, I want to -- I want to thank

1 you. I think I understand now what you mean by
2 gap.

3 A. Right.

4 Q. And given this TLC entry in this
5 Exhibit 1050 as an example, you are talking about
6 the difference between the date that is listed
7 which in this case is January 2004 date of kind
8 of what everyone agrees is a publication, here it
9 is a citation, well here it is a citation to a
10 conference. But, I should say it is a more
11 formal citation to a publication.

12 A. It is definitely more complete than
13 some of the others. Yes.

14 Q. Okay. And so from January 2004 to
15 June 27th, February, March, April, May, June,
16 that is a five-month gap.

17 A. Well, yes. But if you look at the
18 requirements as described in Paragraph 46, now
19 remember this is a pretty major conference. The
20 papers had to be submitted, then they had to be
21 resubmitted as camera ready.

22 And at that point, the sponsors, I

1 guess you could call them, IEEE, took all of the
2 manuscripts for all of the papers accepted and
3 put them together in what would become the
4 printed book, or the two-volume set, actually, in
5 this case.

6 So, there is a gap but remember
7 there are a lot of papers and a lot of documents
8 for them to handle to be ready for the conference
9 to start at the end of June.

10 So, that gap makes sense in terms of
11 how much work was it for them to prepare both for
12 the conference, distribution of materials at the
13 conference, and to make sure that everything was
14 appropriately ready to be included in the printed
15 treatise which would come later.

16 Q. So, you are saying the January 2004
17 date may be when the TLP reference was in its
18 final form?

19 A. I believe it was in its final form
20 by the end of November because the proposal for
21 the paper had to be submitted to the conference
22 committee by that time.

1 And, because of that, the paper had
2 to be written -- I admit that Dr. Black is so
3 well known they are probably going to take his
4 paper no matter what.

5 But he is a good guy and follows the
6 rules and submits his manuscript by November 19th
7 as the committee requested for anyone who
8 proposed to present at this conference.

9 Q. Okay. Well, you understand that
10 when you submit a paper for inclusion in the
11 conference, you then received feedback and you
12 can actually modify the paper after that.

13 Are you aware of that?

14 A. I understand that because I have
15 chaired a national conference. So, I do
16 understand how this works. I understand exactly
17 how this works.

18 And he could have been asked to
19 modify, he may not have been asked to modify.

20 But we do know that he got an
21 acceptance by early March of 2004.

22 So, his own indication, the paper

1 was done in January to me is a good indication.

2 It was done in November to submit, it may have
3 been revised, it may not have been.

4 But, by January it was done. They
5 submitted it on time by March, and they
6 presented, someone from the team presented in
7 June.

8 Now, who that was, I don't know,
9 probably it doesn't matter.

10 Q. Do you have any personal knowledge
11 as to when the TLP reference was finalized in the
12 form that it eventually ended up being published?

13 A. It had to have been done by
14 April 9th of 2004 because that is when the
15 manuscripts had to be submitted to IEEE as camera
16 ready for the printed treatise.

17 So, it had to have been done by
18 then. Or it wouldn't be in the volumes.

19 And we know it is in the volumes
20 because we got copies of it from the volumes.

21 Q. Okay. So at least before April 19th
22 2004, you don't know when before then, exactly,

1 it was in a final form. You have no personal
2 knowledge about that, right?

3 A. No, it could have been April 8th, it
4 could have been January 1st.

5 Q. Okay. And, you are, you know, you
6 are making an inference based on a deadline but
7 you also don't know if maybe the manuscript
8 actually was turned in a little bit late, right?

9 A. Knowing IEEE, it was not late.

10 Q. So, you are familiar with --

11 A. Yes, I have been working with IEEE
12 and conferences and conference papers for more
13 than a decade.

14 And I can tell you, they are highly
15 respected, you want to speak at their
16 conferences, and you want to follow their rules
17 so that you get invited back. And you get a good
18 time slot to present.

19 Q. Could you please let me ask a
20 question before you answer it?

21 A. Maybe. Yes, I will.

22 Q. Okay. Things will go smoother if

1 you could do me that courtesy.

2 A. Uh-huh.

3 Q. Are you familiar with IEEE's
4 publication policies for papers in 2004?

5 A. I would say yes.

6 Q. So, sitting here today, or I should
7 say sitting at the time you were drafting your
8 declaration, you remembered what those policies
9 were?

10 A. They have not changed in a long
11 time, as far as I know.

12 Q. Okay. And so, you are sure by
13 April 9th, 2004, it would have been submitted?

14 A. Yes.

15 Q. Okay. Do you know, let's say this
16 paper was submitted by April 9th, 2004, do you
17 know who would have then had access to the paper?

18 A. Well, the committee that reviewed,
19 and there is always the committee, can be rather
20 large or not so large.

21 Everyone on the committee would have
22 been reading or could have read this paper. And

1 there has to be agreement for the acceptance.

2 So, it was not one person, it was
3 more than one person. Sometimes the call for
4 papers indicates who is on the committee.

5 Sometimes it doesn't. And I don't recall if it
6 is on this one or not.

7 Q. Okay. And I think you answered the
8 question I meant to ask, which was not
9 necessarily who reviewed it after April 9, 2004,
10 but who had access to TLP when it was submitted
11 to IEEE for inclusion in this conference.

12 A. Uh-huh.

13 Q. Is that right?

14 A. Right. So, it is the members of the
15 committee charged with reviewing submissions to
16 select the papers that would, in fact, be
17 presented.

18 Q. Okay. And do you know whether
19 that -- do you know the size of the committee
20 that reviewed the TLP at this 2004 IEEE
21 conference?

22 A. I don't recall the size of the

1 committee. I do know that in my document here, I
2 did submit with the document, the website where I
3 found the call for papers.

4 It may or may not have had the names
5 of the committee members. I just don't remember.

6 Q. Okay. And so, in your view, was the
7 submission of the paper, the TLP reference to the
8 2004 IEEE conference committee, was that a
9 publication in your view?

10 A. I think you could call it that.
11 But, it certainly was not as formal as the
12 publication became.

13 Q. And, for a more formal publication,
14 would that be going off the MARC record date of
15 August 30, 2004?

16 A. No. That, no. No, no, no. The
17 MARC record has to do with the treatise itself,
18 the two-volume set.

19 It doesn't relate to any of this
20 other dating. It relates solely to the treatise.

21 Q. Then in your view, what was the more
22 formal publication of TLP?

1 A. Well, I don't know if the paper was
2 handed out at the conference. Sometimes that
3 happens for IEEE, sometimes it doesn't.

4 I would agree that the most formal
5 form of the paper would be in the treatise. I
6 would say that is accurate to say that.

7 Q. Okay. So, and again this is all in
8 the interest of understanding what you are
9 referring to when you say published and/or
10 publicly accessible in Paragraph 58.

11 Are there any other potential
12 publications of the TLP that we haven't discussed
13 yet?

14 A. Well, definitely it appeared in the
15 IEEE database because papers presented at all of
16 the IEEE conferences and in all of their journals
17 appear in their database which has nigh on to 6
18 million things in it now.

19 So, it definitely appeared in that
20 particular database.

21 Q. Do you have the dates of when that
22 was?

1 A. Well, let me look and see if I
2 included that. Sometimes I do. And no, I do
3 not.

4 Q. Okay.

5 A. So it could have been, I don't know.

6 Q. Okay. So, then we've got the IEEE
7 publication which is not, there is no date in
8 your declaration.

9 We've got the submission to the IEEE
10 committee.

11 A. Uh-huh.

12 Q. We've got the more formal
13 publication as part of the compendium, is that
14 what you referred to it as?

15 A. I don't know if I would call it
16 that. Compendium, I'm not sure I would call it
17 that.

18 Q. It was the two-set volume of
19 conference proceedings.

20 A. Right. To me that was a conference
21 proceedings set.

22 Q. Okay.

1 A. Because of, and, IEEE publishes the
2 sets. The largest I have seen is ten volumes for
3 one conference. So, they publish what it takes
4 to make sure everyone's paper is included.

5 Q. Okay. Okay.

6 Besides those, are there any other
7 potential publications that you are referring to
8 in Paragraph 48?

9 A. Well, no. Because it was in
10 ResearchGate and it was in Semantic Scholar.

11 So, those and the IEEE database and
12 the treatise, that is four places. To me that is
13 pretty good.

14 Q. Okay. And we already talked about
15 ResearchGate. The paper wasn't available there
16 until at least 2008.

17 A. Right.

18 Q. And the same is true for Semantic
19 Scholar, right? TLC wouldn't have been in
20 Semantic Scholar until well after 2004?

21 A. Yes, Semantic Scholar is the
22 European, kind of the sister publication, if you

1 will. And it wasn't around much before

2 ResearchGate.

3 So, those dates would be pretty
4 parallel.

5 Q. Okay. And in case it helps, in
6 Paragraph 26 of your declaration --

7 A. Uh-huh.

8 Q. You say that Semantic Scholar was
9 publicly released in November 2015.

10 A. Right. So, what happened at that
11 point, we scurried around as researchers and
12 decided if this was where we should put copies of
13 our papers.

14 So sometimes there is a paper,
15 sometimes there is a box that says request full
16 text.

17 And then someone, it generates an
18 e-mail and you get the e-mail and then you say oh
19 golly gee, isn't this wonderful and you send a
20 copy to that individual.

21 Q. Got it. Okay.

22 So then for Paragraph 48, we have

1 discussed the potential, what you mean when you
2 are referring to published.

3 A. Uh-huh.

4 Q. Is there anything beyond that that
5 you are referring to when you say publicly
6 accessible?

7 A. No, I don't think so. I mean, this
8 gentleman that I picked up on here is so well
9 known and so prolific, I imagine people knew he
10 was up to something.

11 But he continues to write quite a
12 bit and he has for decades now. I don't suppose
13 this paper was a surprise when he submitted it.

14 But people would, you know, he would
15 have something to say at the conference.

16 Q. And are you personally familiar with
17 Mr. Black?

18 A. No. Only on paper when I did some
19 digging to see how much did he write, what was
20 his pattern for contributing his papers to
21 ResearchGate, did he speak at a lot of
22 conferences. And I found that, yes, indeed he

1 does write a lot and yes, indeed, he presents a
2 few times a year.

3 So, he is, he is a very involved
4 researcher, I would say.

5 Q. Okay. Does that tell you anything
6 about the quality of his research or do you have
7 any opinions about the quality of his research
8 based on your review of these records?

9 A. That is outside the scope of what I
10 would be willing to say.

11 He is not the most prolific writer I
12 have run into in this work, but he certainly is
13 among the most prolific.

14 Q. Give me one minute and I will go
15 ahead sharing my screen.

16 A. All right.

17 Q. Can I direct you to Paragraph 42 of
18 your declaration.

19 A. Sure.

20 Q. And in Paragraph 42 your
21 Attachment 1A to your declaration which is a copy
22 of MARC record.

1 A. Uh-huh.

2 Q. For the IEEE publication, for a
3 publication of TLP.

4 Is that right?

5 A. It is for the two-volume set in
6 which the TLP paper is included, yes.

7 Q. Okay. Thank you for clarifying
8 that.

9 And you note that the entered
10 field --

11 A. Uh-huh.

12 Q. -- for this, for this document is
13 August 30th, 2004.

14 Do you see that?

15 A. Yes.

16 Q. What does that indicate?

17 A. It indicates in this case that the
18 record was created that is constructed, the data
19 were transcribed at this particular library on
20 that date.

21 Q. When would the -- in your view, when
22 would the conference proceedings -- we've got to

1 come up with a name to refer to this publication.

2 What is your preferred way of
3 referring to it?

4 A. You can call it The Book if you
5 want. Although, we know it is a two-volume set.
6 The paper appeared, I think, in Volume I; is that
7 right, yes, in Volume I.

8 But, you can call it The Book if
9 that will be easier.

10 Q. Maybe, it is longer, I like the
11 brevity of that, I can't help myself.

12 So, what if we call it the 2004 IEEE
13 Proceedings?

14 A. Fine.

15 Q. Okay. So, in your view, when was
16 the 2004 IEEE Proceedings, when was it catalogued
17 and indexed?

18 A. It was catalogued on August 30,
19 2004. Which means that all of the bibliographic
20 data were transcribed which also means it was, as
21 lawyers call it, indexed.

22 Q. Okay.

1 A. The way you call indexing and the
2 way we call it are quite different.

3 But, in this situation, that all
4 happened on that same day.

5 Q. Okay. There wasn't a couple of days
6 lag or anything like that for it to be searchable
7 at other libraries?

8 A. No. Because what this implies, and
9 we know it to be true, having used OCLC since the
10 1970s, I know that it means when this library
11 tried to find a record, that is a MARC record for
12 this proceedings, they did not find one,
13 therefore, the rule is you create it and they did
14 so.

15 And other libraries used the record
16 created at Linda Hall. When they received the
17 books, they would use the record created here at
18 this library as their model for cataloguing.

19 So, no, this was the first
20 indication of a MARC record for that proceedings.

21 Q. Okay. And so there was not a, the
22 2004 IEEE proceeding were not catalogued before

1 August 30, 2004?

2 A. No, I do not find evidence of that.

3 Q. Okay. We have been going for almost
4 an hour, why don't we go ahead and take a break.
5 Off the record.

6 (Recess taken -- 12:34 p.m.)

7 (After recess -- 12:47 p.m.)

8 BY MR. CARDENAS-NAVIA:

9 Q. Dr. Hall-Ellis, did you discuss the
10 substance of your testimony with your attorney
11 during the break?

12 A. No.

13 Q. Okay. I'm going to direct you back
14 to Attachment 1E of your declaration.

15 A. Okay.

16 Q. And I'm going to share my screen
17 again as well.

18 A. Oh, good. Because I just closed
19 that one. All right.

20 MR. BAKER: 1E?

21 THE WITNESS: 1E as in effort.

22 MR. BAKER: Got it.

1 MR. CARDENAS-NAVIA: E as in
2 elephant.

3 THE WITNESS: Yeah, okay. Here we
4 are.

5 BY MR. CARDENAS-NAVIA:

6 Q. Okay. And I'm on again at the
7 bottom of PDF Page 43 and at the top PDF Page 44.

8 A. Okay.

9 Q. And this is the, you pulled these,
10 these are a collection of entries from
11 ResearchGate for Michael J. Black from the 2003
12 to 2005 time period, correct?

13 A. Right.

14 Q. And here the gap between the date
15 that is entered, January 2004 --

16 A. Right.

17 Q. And the citation to a potential
18 publication which here is the conference from
19 June 27th to July 2nd, 2004.

20 It is about a five-month gap,
21 correct?

22 A. Yes, yes, I think that is accurate.

1 Q. Okay. I'm going to scroll up to the
2 top of Attachment 1E.

3 A. Okay.

4 Q. And now let's look at Page 37 of the
5 PDF.

6 A. Right.

7 Q. The entry on the bottom half of the
8 page and here we see a date of February 2005.

9 A. Uh-huh.

10 Q. And a citation to a date of
11 January 17th to 18th, 2006, right?

12 A. I do see that.

13 Q. Okay. And so that is about an
14 11-month gap?

15 A. Yes. It is also a conference in
16 China.

17 Q. Okay. I'm going to scroll down to
18 the next entry on the top of PDF Page 38.

19 A. Okay.

20 Q. And again we have for this entry,
21 Motor Cortical Decoding Using an Autoregressive
22 Moving Average Model?

1 A. Uh-huh.

2 Q. And we have about an 11-month gap
3 between February 2005 to about January 18, 2006.
4 Correct?

5 A. Again, a conference in China, yes.

6 Q. If we scroll down to the bottom of
7 Page 38 of the PDF, the next entry is for
8 Modeling Neural Population Spiking Activity With
9 Gibbs Distributions and here we have a gap of
10 January 2005 to December 2005.

11 A. Uh-huh, I see that.

12 Q. And so that is another 11-month gap?

13 A. Yes.

14 Q. Okay. And then if we scroll down to
15 the next entry at the top of PDF Page 39.

16 A. Uh-huh.

17 Q. We see a gap from January 2005 to
18 June 2005, correct?

19 A. Uh-huh. Yes.

20 Q. So, that is about that same
21 five-month gap, right?

22 A. It is, it is. Uh-huh.

1 Q. Okay. And the next entry just On
2 the Spatial Statistics of Optical Flow conference
3 paper.

4 A. Uh-huh.

5 Q. We have a gap from January 2005 to
6 October 2005, correct?

7 A. Yes, you will see the gaps vary
8 between where was the conference, was it in the
9 U.S., was it not.

10 Q. Okay. And so for this entry it is
11 about a nine-month gap?

12 A. Yeah, eight or nine, yes.

13 Q. Okay. Then let me scroll down to
14 Page 42 of the PDF, the entry is Closed-Loop
15 Neural Control of Cursor Motion Using a Kalman
16 Filter, and here the gap is February 2004 to
17 September 2004, which is about seven months,
18 correct?

19 A. Yes.

20 Q. And the next entry Automatic Spike
21 Sorting For Neural Decoding, that is also a gap
22 of February 2004 to September 2004, so that is

1 about seven months, right?

2 A. Okay. Fine.

3 Q. Okay. And let's scroll down to the
4 middle of page PDF Page 43 the entry for Tracking
5 Complex Objects Using Graphical Object Models,
6 here we see a gap of January 2004 to
7 October 2004, correct?

8 A. Right.

9 Q. So, that is again about a nine-month
10 gap?

11 A. Yeah.

12 Q. Okay. Then we get to our TLP
13 reference. And if we keep scrolling on page PDF
14 Page 44, well, here we see the same gap of about
15 five months.

16 A. Sure.

17 Q. For this entry, Gibbs Likelihoods
18 For Bayesian Tracking, right?

19 A. Yes.

20 Q. Okay. And then we scroll to the
21 bottom half of page, the bottom half of Page 47
22 of the PDF, we see an entry for Neural Decoding

1 of Cursor Mode Using the Kalman Filter.

2 A. Uh-huh.

3 Q. And here the gap is from June 2003
4 through December 2002, right?

5 A. Yeah, about six months.

6 Q. That is right. And in this instance
7 the date that is listed, June 2003 --

8 A. Uh-huh.

9 Q. That is after the citation to a
10 publication, correct?

11 A. Yeah.

12 Q. Okay. And in fact, in a number of
13 these entries, the date listed is months after
14 the date of a cited publication. Correct?

15 A. Yeah, they go each way.

16 Q. Okay. So, the date listed on these
17 ResearchGate entries is sometimes before a more
18 formal publication and sometimes after, right?

19 A. Yeah, so?

20 Q. And sometimes it is within,
21 sometimes the two dates are within a month of
22 each other, right?

1 A. They are close sometimes, yes. And
2 sometimes not.

3 Q. That's right. Sometimes they are up
4 to 11 months apart, right?

5 A. Yeah.

6 Q. Okay. So, given that, isn't the
7 date that is listed without a citation not a very
8 good indicator of when a document was formally
9 published?

10 A. You are not going to get me to go
11 down that road because it is up to the author to
12 put any date. And there are many entries in
13 ResearchGate and Semantic Scholar with no date at
14 all. Absolutely no date.

15 And perhaps a link or a, an
16 indication of where the formal publication
17 occurred.

18 So, to say the date is accurate or
19 it is close, or it is not close, I think that is
20 asking a lot from the authors who are very busy,
21 who really do what they do when they do it.

22 And I know that sounds foolish, but

1 in many cases including mine, I don't even post
2 my own stuff. I have assistants who do that for
3 me, because I don't do it. I don't have time for
4 that.

5 So, to say this is when I finished
6 writing the paper that I have put up there is
7 great. I'm glad you did it.

8 I don't think we can take that and
9 say because of the gap we shouldn't trust any of
10 the dates. I don't believe that. I have never
11 believed that.

12 I think that we are making a
13 judgment about what a particular researcher does
14 and how he or she does it and we cannot make
15 those kinds of generalizations. I just don't
16 think we can.

17 I think where we are able to say
18 things is here is the formal publication, be it
19 in a conference proceedings volume or a journal
20 itself.

21 And you will notice not all of these
22 are IEEE publications. He has various places

1 where things are published.

2 I don't think we can make those
3 generalizations. And I'm not willing to do so.

4 I'm willing to believe the man knows
5 what he is doing and when he does it.

6 And the fact that it isn't perfect
7 in alignment or it isn't consistent across
8 publications and conferences, I don't worry about
9 that.

10 I worry about where was it that I
11 can put my hands on it, and if he says it was
12 done at a certain point in time, I am going to
13 believe him because as a researcher, he is a busy
14 person and this is how he spends his time.

15 So, I think it is great to look at
16 all of these. But I do not believe making a
17 generalization is necessary or appropriate and I
18 will not be doing that.

19 Q. So, then let's look at this entry at
20 the bottom of Page 47 for Neural Decoding of
21 Cursor Motion Using a Kalman Filter.

22 Do you see it?

1 A. I do.

2 Q. And so here the listed date is
3 June 2003. But the cite is to a date of
4 December 9th through 14 of 2002. Right?

5 A. Yeah.

6 Q. So, do you think this June 2003 is a
7 reliable indication of when this article was
8 published?

9 A. Let me see. That is a conference
10 proceedings from Canada.

11 I would say that that was the date
12 it was posted. And he put that date on it
13 somewhere saying I am going to contribute this
14 here.

15 Whether or not it matters, is that
16 when it was posted in this other place, this NIPs
17 cc. paper, that is when it was put there. I
18 don't know. I haven't investigated that. That
19 is outside the scope of what I did. I have no
20 real opinion about that except to say the
21 conference was six months before that June date
22 for whatever reason.

1 Q. So, for this entry, you would need
2 to do more investigation. Is that what you are
3 saying?

4 A. Yes, I would have to do quite a bit
5 more investigation. I am not familiar with the
6 conference. It was in another country. I don't
7 know, I would have to take a very deep look at
8 this in order to make any opinion. And I don't
9 have one right now.

10 Q. Okay. Well, would you agree that in
11 terms of making a decision under the patent laws
12 on whether something was publicly accessible or
13 not, you need more information than just the date
14 that is listed on these ResearchGate entries?

15 A. I would never take these solely on
16 face value, never. Everything has to be
17 investigated more fully.

18 Q. Okay. And, as we went through
19 earlier, ResearchGate didn't exist in 2003 to
20 2005 time frame, correct?

21 A. That is my understanding. Yes.

22 Q. And so all of these articles that

1 were uploaded were uploaded years after they were
2 actually finished by the author and published,
3 correct?

4 A. Well, definitely they were not as
5 timely as they are these days.

6 Q. Okay. So the author and presumably
7 whoever uploads to ResearchGate of articles from
8 the 2003 to 2005 time frame are for these dates
9 at best going off of memory or metadata, right?

10 A. I would suggest that all of us know
11 when we did things and we have copies.

12 How carefully we transcribe this, I
13 think varies from person to person.

14 Q. Okay. Okay. I'm going to go ahead
15 and stop sharing my screen.

16 A. Okay.

17 Q. Dr. Hall-Ellis, in, you know, in the
18 work you did for putting together this
19 declaration, Exhibit 1050, is there any other
20 work you have done that isn't in your declaration
21 and we haven't already discussed?

22 A. I don't believe so. Because we did

1 do the MARC record we talked about briefly, where
2 it came from, how it was created, that sort of
3 thing.

4 We didn't really talk about the
5 indexing, but that is okay with me, because it is
6 described in Paragraph 43.

7 And we know this particular
8 conference proceedings is available in a few
9 libraries now. It is also available online.

10 I don't think there is anything else
11 we really need to talk about. No, I think it is
12 all here.

13 Q. Did you search -- well, let me ask
14 this question. The TLP reference is, it is cited
15 by other publications, correct?

16 A. I believe so.

17 Q. Okay. Did you find any other
18 documents -- did you search to see if there are
19 any other documents that cite to the TLP
20 reference and have a date earlier than August 30,
21 2004?

22 A. Are you asking me if I got any

1 confirmatory evidence?

2 Q. Maybe.

3 A. I think you are. The answer is no.
4 I didn't need to do that. I could have done
5 that. I have been known to do that in the past
6 but I don't always do that.

7 Q. Just give me one minute.

8 Okay, if you turn to, if you turn
9 back to your declaration. To Page 16.

10 A. All right. I am there.

11 Q. And to Paragraph 35.

12 A. I see that.

13 Q. Okay. And here you lay out your
14 understanding of the persons of ordinary skill in
15 the art for purposes of this proceeding; is that
16 right?

17 A. Yes. Yes, sir, I did.

18 Q. Are you now or at any time did you
19 meet the qualifications of a person of ordinary
20 skill in the art in this proceeding?

21 A. Oh, heavens no.

22 MR. CARDENAS-NAVIA: Okay. I have no

1 further questions at this time.

2 THE WITNESS: Okay, thank you.

3 MR. BAKER: Let's take a ten-minute
4 break so I can decide if we are going to do
5 any redirect.

6 THE WITNESS: Okay.

7 (Recess taken -- 1:07 p.m.)

8 (After recess -- 1:21 p.m.)

9 EXAMINATION

10 BY MR. BAKER:

11 Q. Thank you, Dr. Hall-Ellis. So, back
12 in the early 2000s and maybe this is still true
13 today, but please let me know.

14 A. Okay.

15 Q. In your experience, would authors
16 sometimes post papers on their personal web page
17 so that the public could access those papers and
18 avoid a pay wall such as required by IEEE; is
19 that true?

20 MR. CARDENAS-NAVIA: Objection,
21 outside the scope.

22 THE WITNESS: Yes. We have talked a

1 lot about papers that are in digital
2 repositories that do not charge.

3 And one of the great benefits is
4 that they do not charge. They don't charge
5 you to post, and they don't charge you to
6 download or to ask for a copy.

7 BY MR. BAKER:

8 Q. So, might that explain why there may
9 be on ResearchGate one date which is a
10 publication which is freely accessible to the
11 public and another more formal publication date
12 through IEEE, for example?

13 A. Well, I think that is true.

14 MR. CARDENAS-NAVIA: Same objection.
15 Sorry, same objection as outside the scope.
16 Go ahead.

17 THE WITNESS: Yeah, I think that is
18 true based on both being an author who waits
19 for things to be published in paper and also
20 sitting on an editorial board, which I am
21 currently actually doing now as well, there
22 is a time lag and the author really doesn't

1 control the publication by a commercial
2 publisher, nor the charge that might be made
3 for an item.

4 So, we really, because we are not
5 involved in that process, want to share our
6 work particularly if we are looking for
7 colleagues who want to join us or we are
8 looking for funding sometimes, or in the
9 cases of people who are at institutions of
10 higher education, we are looking to recruit
11 graduate students.

12 And we want information to be out
13 there and the commercial publishers have a
14 completely different focus, and we need to
15 run parallel and not in competition with each
16 other for that.

17 MR. BAKER: Thank you. No further
18 questions.

19 THE WITNESS: Okay.

20 FURTHER EXAMINATION

21 BY MR. CARDENAS-NAVIA:

22 Q. I just have a couple of questions.

1 A. Okay.

2 Q. Dr. Hall-Ellis, there is no evidence
3 in your declaration that TLP was made available
4 in 2003 or 2004 on an author's personal website,
5 correct?

6 A. I didn't see it on what some faculty
7 people have as my personal web page, no.

8 Q. In putting together the declaration,
9 did you search to see whether any authors of TLP
10 had posted TLP on their personal or academic web
11 pages?

12 A. I didn't find it anywhere else. The
13 most prolific author is Black, he is from the
14 U.S. but he works in Germany at a research
15 institute.

16 So, no. Nobody else is as prominent
17 as he is within this group.

18 Q. And so you didn't find that
19 Mr. Black had posted TLP on his personal or
20 professional websites?

21 A. He doesn't seem to have a real
22 website of his own. Google Scholar appears in

1 conjunction with ResearchGate and Semantic
2 Scholar to serve that purpose for him.

3 Q. Okay. And is the same true for
4 other authors of TLP?

5 A. As far as I recall, yes.

6 MR. CARDENAS-NAVIA: Okay. No
7 further questions.

8 MR. BAKER: Okay. That's all we
9 have.

10 (Whereupon, signature not having
11 been waived, the deposition ended at 1:26
12 p.m.)

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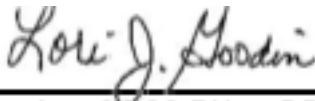
22

1 CERTIFICATE OF COURT REPORTER
I, LORI J. GOODIN, RPR, CRR,
2 CA CSR # 13959, the reporter before whom the
foregoing deposition was taken, do hereby certify
3 that the witness whose testimony appears in the
foregoing deposition was sworn by me; that the
4 testimony of said witness was taken by me in
machine shorthand and thereafter transcribed by
5 computer-aided transcription; that said
deposition is a true record of the testimony
6 given by said witness; that I am neither counsel
for, related to, nor employed by any of the
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1 Sylvia Hall-Ellis, Ph.D., c/o
2 KIRKLAND & ELLIS LLP
3 1301 Pennsylvania Avenue, Northwest
4 Washington, D.C. 20004
5

6 Case: Meta Platforms, Inc. et al. v. VL Collective IP LLC

7 Date of deposition: July 18, 2024

8 Deponent: Sylvia Hall-Ellis, Ph.D.
9

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