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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC, CELCO PARTNERSHIP
d/b/a VERIZON WIRELESS, VERIZON CORPORATE
SERVICES GROUP INC., T-MOBILE USA, INC.,
SPRINT LLC f/k/a SPRINT CORP.,
AND AT&T SERVICES, INC.,

Petitioners,

v.

HEADWATER RESEARCH LLC,

Patent Owner.

Case IPR2024-00944

U.S. Patent No. 8,589,541

REMOTE AUDIO CONFERENCE CALL

October 31, 2024

12:00 p.m. EST

Reported by:

Janice M. Kocek, CSR, CLR

Job No. 56342

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1 Proceedings held before Judge Scott
2 Howard, Judge Stephen Belisle, and Judge Hyun
3 Jung, via audio conference call, reported
4 stenographically by Janice M. Kocek, License
5 No. 084-002871, Certified Shorthand Reporter,
6 Certified LiveNote Reporter, and Notary Public of
7 the state of Illinois, commencing at the hour of
8 12:00 p.m. EST, on the 31st day of October, 2024.

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

2 ** ALL PARTIES APPEARING REMOTELY **

3 PANEL:

4 JUDGE SCOTT HOWARD

5 JUDGE STEPHEN BELISLE

6 JUDGE HYUN JUNG

7 FOR THE PETITIONERS:

8 FINNEGAN, HENDERSON, FARABOW,

9 GARRETT & DUNNER, LLP

10 1875 Explorer Street, Suite 800

11 Reston, Virginia 20190-6023

12 571.203.2700

13 BY: ALEXANDER M. BOYER, ESQ.

14 alexander.boyer@finnegan.com

15 DANIEL C. TUCKER, ESQ.

16 daniel.tucker@finnegan.com

17 901 New York Avenue, NW

18 Washington, DC 20001-4413

19 202.408.4000

20 BY: CARA E. REGAN, ESQ.

21 cara.regan@finnegan.com

22 -and-

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

2 DUANE MORRIS LLP

3 901 New York Avenue N.W., Suite 700

4 Washington, DC 20001-4795

5 202.776.7800

6 BY: KEVIN P. ANDERSON, ESQ.

7 kpanderson@duanemorris.com

8

9 FOR THE PATENT OWNER:

10 RUSS AUGUST KABAT

11 12424 Wilshire Boulevard

12 Los Angeles, California 90025-1052

13 310.826.7474

14 BY: JAMES A. MILKEY, ESQ.

15 jmilkey@raklaw.com

16 AMY E. HAYDEN, ESQ.

17 ahayden@raklaw.com

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1 JUDGE HOWARD: Good afternoon. This
2 is a conference call for IPR 2024-00944.
3 This Judge Howard. I have Judge Belisle
4 and Judge Young with me on the line.

5 I'll start with a roll call. 12:01
6 Who is appearing for petitioner?

7 MR. BOYER: Yes, Your Honor, Alex
8 Boyer on behalf of petitioner Google. Also
9 on the line with me is Dan Tucker and Cara
10 Regan. We're from the law firm Finnegan. 12:01
11 Also on the call is Kevin Anderson of Duane
12 Morris on behalf of the carrier
13 petitioners.

14 JUDGE HOWARD: Thank you. And who
15 will be appearing for patent owner? 12:01

16 MR. MILKEY: Yes, Your Honor, this is
17 James Milkey on behalf of patent owner with
18 the law firm of Russ August & Kabat. And
19 from Russ August & Kabat with me today is
20 Amy Hayden. 12:01

21 JUDGE HOWARD: Okay. Thank you. And
22 I understand from listening before the call

6

1 started that there is a court reporter on
2 the line; is that correct?

3 THE STENOGRAPHER: Yes. It's Janice
4 Kocek. I'm the court reporter.

5 JUDGE HOWARD: Thank you. And were 12:02
6 you hired by the petitioner or patent
7 owner?

8 THE STENOGRAPHER: I believe we were
9 hired by Finnegan. I just don't have my
10 paperwork handy.

11 MR. BOYER: Correct, yes, the
12 petitioner.

13 JUDGE HOWARD: In that case,
14 Mr. Boyer, once the transcript is prepared,
15 if you could please file the transcript as 12:02
16 an exhibit.

17 MR. BOYER: Absolutely. Yes, Your
18 Honor.

19 JUDGE HOWARD: Now, I guess we'll
20 begin. 12:02

21 The purpose of this conference
22 is to discuss petitioners's request for

1 authorization to file a reply brief to
2 address patent owner's request that we
3 exercise our discretion to deny the
4 petition based on Fintiv and to respond to
5 patent owner's arguments regarding
6 Claims 79 and 83.

12:02

7 Before we begin, though, I'd
8 just like to get some clarification from
9 patent owner. I understand that patent
10 owner objects to the request to file the
11 reply brief. I just wanted to know if you
12 could please confirm whether you're
13 objecting to the entirety of the request or
14 only as it relates to the portion relating
15 to Claims 79 and 83.

12:03

12:03

16 MR. MILKEY: Yes, Your Honor. This
17 is James Milkey on behalf of patent owner
18 and we only object to the merits portion
19 regarding Claims 79 and 83. We do not
20 object to the Fintiv portion of the reply.

12:03

21 JUDGE HOWARD: Okay. Thank you. And
22 with that clarification, petitioner, you

1 may begin.

2 MR. BOYER: Yes, thank you, Your
3 Honor. Alex Boyer on behalf of the
4 petitioners.

5 Petitions seek a four-page 12:03
6 preliminary reply to patent owner's
7 preliminary response. As you mentioned, we
8 want to address the discretionary denial
9 under Fintiv arguments and we also want to
10 address the argument the patent owner 12:03
11 raises with respect to dependent Claims 79
12 and 83.

13 And Your Honors, we submit there
14 is good cause for a preliminary reply in
15 this case. But before reaching good cause, 12:04
16 I think it would be helpful to understand
17 the circumstances that led to this point.

18 The carrier petitioners and
19 patent owner are involved in district court
20 litigation. And their patent owner has 12:04
21 asserted all 174 claims of the patent
22 against the carriers.

1 And in that litigation the
2 carriers move to focus patent owner's
3 allegations to limit the number of asserted
4 claims. And patent owner opposed.

5 And what that caused, Your 12:04
6 Honors, is petitioners to challenge all 174
7 claims in this proceeding and two other
8 proceedings. And this, Your Honor, was a
9 significant undertaking given the word
10 limits and the number of claims that had to 12:04
11 be challenged in each petition.

12 Fast-forwarding, you know, to
13 the preliminary response in this petition,
14 in this proceeding, Your Honor, patent
15 owner elected to disclaim all but two 12:05
16 dependent claims.

17 This includes the sole
18 independent Claim 1 and instead is moving
19 forward with only two dependent Claims 79
20 and 83. And in its preliminary response, 12:05
21 Your Honors, patent owner focused solely on
22 these two dependent claims and essentially

10

1 one -- one issue in those claims.

2 Now, critical to petitioner's
3 request for a preliminary reply here,
4 patent owner introduced new evidence in the
5 form of an expert declaration which it 12:05
6 submitted with the preliminary response as
7 Exhibit 2001.

8 And it's this evidence, Your
9 Honor, that -- that petitioners would like
10 to address in their preliminary reply. 12:05
11 Because we believe it would be helpful to
12 -- for us to explain why this new evidence,
13 first, mischaracterizes the petitioners's
14 grounds.

15 Patent owner and this new 12:05
16 declarant assert that the grounds that are
17 asserted in with respect to claim 79 are
18 based on inherency only, which we believe
19 is correct. The new evidence also
20 misunderstands the teachings of the 12:06
21 asserted reference Rao on its use of an
22 application programming interface, or ATI.

11

1 But Your Honors, most
2 importantly we believe that the substance
3 of this declaration actually supports the
4 petition and the arguments that were put
5 forth for Claim 79.

12:06

6 And it is that issue, Your
7 Honor, we believe it supports good cause.
8 And, you know, we believe that explaining
9 why the -- that new evidence supports the
10 petition, you know, would be helpful to the
11 Board in its analysis of -- of the grounds.

12:06

12 And Your Honor, we would direct
13 the Board to other Board decisions that
14 have granted a preliminary reply in this
15 situation, notably the Samsung v. Netlist
16 case, which is IPR 2022-00711. And that
17 was Paper 9 in 2022.

12:06

18 There the petitioner submitted,
19 like here, an expert declaration and the
20 Board authorized additional briefing and
21 said it would be helpful for the Board in
22 assessing the issues presented.

12:07

12

1 And Your Honor, we would like to
2 do the same here. And we believe that
3 authorizing a preliminary reply would
4 assist the Board in analyzing the evidence
5 and reviewing the grounds submitted. 12:07

6 In addition to, you know, in
7 addition to, you know, those prior -- that
8 prior case supporting us, we believe, you
9 know, fundamental fairness and an
10 opportunity to respond to this new evidence 12:07
11 is good cause for the preliminary reply.
12 You know, we are asking for four pages to
13 address this argument but also Fintiv. So
14 our -- our -- our arguments would be
15 limited. 12:08

16 Additionally, good cause is --
17 there's good cause to authorize the reply,
18 Your Honors, because, you know, petitioner
19 could not enforce that petitioner -- that
20 patent owner would have submitted this new 12:08
21 evidence and that the evidence would have
22 really mischaracterized what the prior art

13

1 teaches and what petitioner's grounds are
2 and that it actually supports, like I said,
3 what is in the petition.

4 So -- so in that way, Your
5 Honor, we -- we submit there is good cause 12:08
6 for a reply in this case.

7 And if you allow me, I just want
8 to briefly touch on some of the particular
9 issues in that new evidence that we think
10 supports the petition and what we would -- 12:08
11 what we would explain in a preliminary
12 reply.

13 JUDGE HOWARD: Mr. Boyer, at this
14 time -- Mr. Boyer, I'm sorry, at this time
15 we're looking -- the part -- yeah, a 12:08
16 standard is good cause. And rather than
17 getting into the merits, I think it's
18 better at this point if we just stick to
19 the arguments directly related to good
20 cause. 12:09

21 MR. BOYER: Thank you, Your Honor.

22 JUDGE HOWARD: Do you have any --

14

1 MR. BOYER: With that we would just
2 submit there's good cause and we would
3 request authorization for the preliminary
4 reply.

5 JUDGE HOWARD: Okay. Thank you. 12:09
6 Mr. Milkey.

7 MR. MILKEY: Yes, Your Honor. This
8 is James Milkey on behalf of patent owner.
9 And so I can't speak to the exact procedure
10 the district court petitioner raised. 12:09

11 I believe that Headwater at the
12 district court has narrowed the claims at
13 the district court consistent with the
14 schedule in that case. I believe that
15 petitioner was seeking an early claim 12:09
16 narrowing and, you know, we declined to
17 provide that. But we have narrowed the
18 claims subsequently.

19 I also note that, you know,
20 petitioner mentioned that they were 12:10
21 struggling to comply with word limits in
22 dealing with all these claims. But this --

15

1 this petition was actually approximately
2 1400 words under the word limit. So it's
3 not clear to me that that's the cause of
4 the issue here.

5 Regarding the new evidence 12:10
6 submitted, I -- we actually requested
7 clarity from petitioner in terms of, you
8 know, what -- what issues they -- they want
9 to argue here. They -- they didn't really
10 say substantively what they wanted to 12:10
11 argue. And so we can't speak to what
12 they're talking about regarding
13 mischaracterizing the petition.

14 But what I will say is that if
15 -- if their argument is that the new 12:10
16 evidence, you know, the expert declaration
17 mischaracterizes the argument and the
18 petition, that is something that, you know,
19 our expert evidence -- I don't believe,
20 Your Honor, that the Board is going to rely 12:11
21 on any expert evidence regarding what was
22 the theory in the petition.

16

1 That's not -- Your Honors are
2 more than capable of determining what the
3 theory of the petition was and what the
4 arguments set forth in the petition were.
5 I don't believe that additional briefing is 12:11
6 necessary to clear up any purported
7 confusion regarding what the evidence, you
8 know, our expert evidence is saying about
9 what this theory of the petition was.

10 Regarding purported 12:11
11 mischaracterizations of the prior art, I'm
12 frankly not aware of what that could
13 possibly relate to. But I don't think that
14 there is anything -- I mean, I -- frankly,
15 Your Honors, I think that the evidence we 12:12
16 submitted was extremely straightforward and
17 I think is largely apparent from the
18 references themselves.

19 You know, we've noted that
20 there's no explicit disclosure of this 12:12
21 teaching in the primary reference regarding
22 Claim 79, for example. They rely on a

17

1 theory of inherency because the only
2 rationale for why this would be present in
3 the prior art is if the primary reference
4 must operate in a particular way.

5 And so the evidence is just 12:12
6 making abundantly clear that the prior art
7 -- that's not correct that the prior art
8 must operate in that particular way.

9 So you know, we think that
10 evidence is pretty narrowly focused and 12:12
11 there doesn't need to be additional
12 briefing on this point.

13 One -- one other point I'll
14 briefly raise is that the petition actually
15 spent just under a page on Claim 79 12:13
16 analysis. And they're seeking two pages of
17 reply to address that. So they're actually
18 seeking to expand the argument set forth in
19 the petition. They're seeking to more than
20 double that. So you know, we don't think 12:13
21 that's appropriate either.

22 JUDGE HOWARD: Okay. Thank you.

18

1 Mr. Boyer, do you have a quick
2 reply you'd like to make at this point?

3 MR. BOYER: Yes, Your Honor.

4 A few points here. So patent
5 owner referenced not being clear what we 12:13
6 were seeking a reply on. Patent owner
7 didn't ask for a clarification on a
8 particular issue we would be moving on.

9 We -- we said we wanted some
10 pages to address the patent owner 12:13
11 preliminary response and they didn't seek
12 clarification. So not sure, you know, why
13 they're complaining about that now.

14 The issue with the claim
15 narrowing in the district court is the 12:14
16 claim narrowing -- so the carriers move to
17 focus the claims. As opposed to dealing
18 with 174 claims, the carriers move to have
19 a claim reduction. And while the Court did
20 ultimately require a claim reduction, that 12:14
21 claim reduction did not have until after
22 the one year bar date. So that was not

19

1 enough to really move the needle. The
2 petitioners had to challenge all 174
3 claims.

4 With respect to the argument
5 that the petitioner only dedicated a page 12:14
6 or two on Claim 79, this is part of the
7 issue, right. We didn't have a lot of
8 space to deal with it and the patent
9 owner's preliminary response presents 12
10 pages of arguments and submits an entire 12:14
11 expert declaration on the issue.

12 And the issue is really their
13 expert talking about a system that isn't
14 disclosed in Rao. Their expert talks about
15 some other efficient system that doesn't 12:15
16 use an API. And that's really not what is
17 at issue.

18 And the expert declaration also
19 admits in paragraph 38, Your Honors, that
20 API requests and responses would need to be 12:15
21 transmitted in a system like Rao that uses
22 APIs. So that's what we're talking about

20

1 when we say the expert declaration actually
2 supports the petition.

3 And that, Your Honor, with that
4 we'll just leave it there.

5 JUDGE HOWARD: Okay. Thank you. And 12:15
6 I'd like to put you all on hold for a
7 minute while the panel discusses this.

8 (Whereupon, a recess was taken
9 from 12:15 p.m. to 12:24 p.m.)

10 JUDGE HOWARD: This is Judge Howard. 12:24
11 I just want to make sure everyone can hear
12 me.

13 THE STENOGRAPHER: Yes.

14 MR. MILKEY: Yep, Your Honor.

15 JUDGE HOWARD: Okay. Thank you. 12:24

16 The panel has conferred on the
17 matter. Given the unique situations of
18 this case, we do find that good cause
19 exists and we're going to grant
20 petitioner's request to be able to file the 12:24
21 four-page reply brief that they've asked
22 directed to both Fintiv and responding to

21

1 the arguments relating to Claims 79 and 83.

2 With regard to the replying to
3 the argument on Claims 79 and 83, we do
4 wish to remind petitioner, however, this is
5 only -- you're only being given an

12:25

6 opportunity to reply to the arguments that
7 were made. You're not allowed to go and
8 make new arguments beyond the scope of
9 what's reflected in your petition, in the
10 same way as if this was in briefing on the
11 merits. You're allowed to reply. You
12 can't make new arguments.

12:25

13 Are there any questions from the
14 parties on this?

15 MR. BOYER: No, Your Honor.

12:25

16 MR. MILKEY: Thank you, Your Honor.

17 MR. BOYER: Thank you very much.

18 JUDGE HOWARD: How long will
19 petitioner need for its briefing?

20 MR. BOYER: Yes, Your Honor. In the

12:25

21 -- in the other petitions the Board

22 authorized the preliminary reply that was

22

1 -- I think we were given a week. We're
2 happy to keep that same schedule. But if
3 the Board needs -- needs the reply sooner,
4 we're happy to work with -- with whatever
5 your schedule demands.

12:26

6 JUDGE HOWARD: Okay. And for patent
7 owner if we gave you a week after that to
8 go and do your surreply, would that be
9 enough time?

10 MR. MILKEY: Yes, Your Honor. That
11 would be -- that would be enough time.

12:26

12 JUDGE HOWARD: Okay. So we will
13 follow this up with a written order but you
14 should not wait for the written order to
15 begin working on this.

12:26

16 Petitioner can file its reply
17 within one week from today. So that would
18 be November 7th. And then if patent owner
19 can file its surreply by November 14th.

20 In doing so both parties can
21 cite to the record but no new evidence is
22 authorized at this time.

12:26

23

1 Any other questions or issues?

2 MR. BOYER: None for petitioner.

3 Thank you, Your Honor.

4 MR. MILKEY: And none from patent

5 owner, Your Honor. Thank you. 12:26

6 JUDGE HOWARD: Okay. Thank you. In

7 that case we are adjourned.

8 (Time concluded: 12:27 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, Janice M. Kocek, Certified
3 Shorthand Reporter, Certified LiveNote
4 Reporter, and Notary Public in and for the
5 State of Illinois, County of Cook, the
6 officer before whom the proceedings were
7 taken, do hereby certify that the foregoing
8 transcript is a true and correct record of
9 these proceedings; that said proceedings
10 were taken in Stenotype notes by me on the
11 31st day of October, 2024, via audio
12 conference call, commencing at 12:00 p.m.
13 EST and ending at 12:27 p.m. EST.

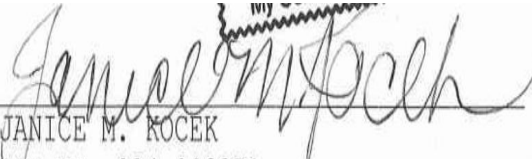
14 I further certify that present
15 on behalf of Petitioners Google LLC, Cellco
16 Partnership d/b/a Verizon Wireless, Verizon
17 Corporate Services Group Inc., T-Mobile
18 USA, Inc., Sprint LLC f/k/a Sprint Corp.,
19 and At&T Services, Inc., were Alexander
20 Boyer, Cara Egan, Daniel Tucker of
21 Finnegan, Henderson, Farabow, Garrett &
22 Dunner, LLP, and Kevin Anderson of Duane

1 Morris; and present on behalf of Headwater
2 Research LLC, were James Milkey and Amy
3 Hayden of Russ August & Kabat.

4 I further certify that I am not
5 related to, nor associated with any of the
6 parties or their attorneys, nor do I have
7 any disqualifying interest, personal or
8 financial in the actions within.

9 Dated this 31st day of October, 2024,
10 at the County of Cook, State of Illinois.

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JANICE M. ROCEK
CSR NO. 084-002871

A	16:17 APPEAL 1:2 appearing 3:2 5:6,15 application 10:22 appropriate 17:21 approximately 15:1 argue 15:9,11 argument 8:10 12:13 15:15 15:17 17:18 19:4 21:3 arguments 7:5 8:9 11:4 12:14 13:19 16:4 19:10 21:1,6,8,12 art 12:22 16:11 17:3,6,7 asked 20:21 asking 12:12 assert 10:16 asserted 8:21 9:3 10:17,21 assessing 11:22 assist 12:4 associated 25:5 At&T 1:6 24:19 ATI 10:22 attorneys 25:6 audio 1:15 2:3 24:11 August 4:10 5:18,19 25:3 authorization 7:1 14:3 authorize 12:17 authorized 11:20 21:22	22:22 authorizing 12:3 Avenue 3:17 4:3 aware 16:12	B bar 18:22 based 7:4 10:18 behalf 5:8,12 5:17 7:17 8:3 14:8 24:15 25:1 believe 6:8 10:11,18 11:2,7,8 12:2 12:8 14:11 14:14 15:19 16:5 Belisle 2:2 3:5 5:3 better 13:18 beyond 21:8 Board 1:2 11:11,13,13 11:21 12:4 15:20 21:21 22:3 Bored 11:20 Boulevard 4:11 Boyer 3:13 5:7 5:8 6:11,14 6:17 8:2,3 13:13,14,21 14:1 18:1,3 21:15,17,20 23:2 24:20 brief 7:1,11 20:21 briefing 11:20 16:5 17:12 21:10,19	briefly 13:8 17:14 C C 3:1,15 4:1 California 4:12 call 1:15 2:3 5:2,5,11,22 24:12 capable 16:2 Cara 3:20 5:9 24:20 cara.regan... 3:21 carrier 5:12 8:18 carriers 8:22 9:2 18:16,18 case 1:12 6:13 8:15 11:16 12:8 13:6 14:14 20:18 23:7 cause 8:14,15 11:7 12:11 12:16,17 13:5,16,20 14:2 15:3 20:18 caused 9:5 Cellco 1:4 24:15 CERTIFICATE 24:1 Certified 2:5,6 24:2,3 certify 24:7,14 25:4 challenge 9:6 19:2 challenged 9:11 circumstanc... 8:17 cite 22:21	claim 9:18 10:17 11:5 14:15 16:22 17:15 18:14 18:16,19,20 18:21 19:6 claims 7:6,15 7:19 8:11,21 9:4,7,10,16 9:19,22 10:1 14:12,18,22 18:17,18 19:3 21:1,3 clarification 7:8,22 18:7 18:12 clarity 15:7 clear 15:3 16:6 17:6 18:5 CLR 1:21 25:15 commencing 2:7 24:12 complaining 18:13 comply 14:21 concluded 23:8 conference 1:15 2:3 5:2 6:21 24:12 conferred 20:16 confirm 7:12 confusion 16:7 consistent 14:13 Cook 24:5 25:10 Corp 1:6 24:18 Corporate 1:5 24:17 correct 6:2,11 10:19 17:7
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24:8 County 24:5 25:10 court 6:1,4 8:19 14:10 14:12,13 18:15,19 critical 10:2 CSR 1:21 25:15	directed 20:22 directly 13:19 disclaim 9:15 disclosed 19:14 disclosure 16:20 discretion 7:3 discretionary 8:8 discuss 6:22 discusses 20:7 disqualifying 25:7 district 8:19 14:10,12,13 18:15 doing 22:20 double 17:20 Duane 4:2 Dunner 3:9 24:22	11:9 12:4,10 12:21,21 13:9 15:5,16 15:19,21 16:7,8,15 17:5,10 22:21 exact 14:9 example 16:22 exercise 7:3 exhibit 6:16 10:7 exists 20:19 expand 17:18 expert 10:5 11:19 15:16 15:19,21 16:8 19:11 19:13,14,18 20:1 explain 10:12 13:11 explaining 11:8 explicit 16:20 Explorer 3:10 extremely 16:16	8:9 12:13 20:22 firm 5:10,18 first 10:13 focus 9:2 18:17 focused 9:21 17:10 follow 22:13 foregoing 24:7 form 10:5 forth 11:5 16:4 17:18 forward 9:19 four 12:12 four-page 8:5 20:21 frankly 16:12 16:14 fundamental 12:9 further 24:14 25:4	12:5 13:1 Group 1:5 24:17 guess 6:19
D				H
d/b/a 1:5 24:16 Dan 5:9 Daniel 3:15 24:20 daniel.tucke... 3:16 date 18:22 Dated 25:9 day 2:8 24:11 25:9 DC 3:18 4:4 deal 19:8 dealing 14:22 18:17 decisions 11:13 declarant 10:16 declaration 10:5 11:3,19 15:16 19:11 19:18 20:1 declined 14:16 dedicated 19:5 demands 22:5 denial 8:8 deny 7:3 dependent 8:11 9:16,19 9:22 determining 16:2 direct 11:12	E E 3:1,1,20 4:1 4:1,16 early 14:15 efficient 19:15 Egan 24:20 either 17:21 elected 9:15 enforce 12:19 entire 19:10 entirety 7:13 ESQ 3:13,15 3:20 4:6,14 4:16 essentially 9:22 EST 1:17 2:8 24:13,13 evidence 10:4 10:8,12,19	F f/k/a 1:6 24:18 fairness 12:9 Farabow 3:8 24:21 Fast-forwar... 9:12 file 6:15 7:1,10 20:20 22:16 22:19 financial 25:8 find 20:18 Finnegan 3:8 5:10 6:9 24:21 Fintiv 7:4,20	G Garrett 3:9 24:21 getting 13:17 given 9:9 20:17 21:5 22:1 go 21:7 22:8 going 15:20 20:19 good 5:1 8:14 8:15 11:7 12:11,16,17 13:5,16,19 14:2 20:18 Google 1:4 5:8 24:15 grant 20:19 granted 11:14 grounds 10:14 10:16 11:11	handy 6:10 happy 22:2,4 Hayden 4:16 5:20 25:3 Headwater 1:9 14:11 25:1 hear 20:11 held 2:1 helpful 8:16 10:11 11:10 11:21 Henderson 3:8 24:21 hired 6:6,9 hold 20:6 Honor 5:7,16 6:18 7:16 8:3 9:8,14 10:9 11:7,12 12:1 13:5,21 14:7 15:20 18:3 20:3,14 21:15,16,20 22:10 23:3,5 Honors 8:13 9:6,21 11:1 12:18 16:1 16:15 19:19 hour 2:7 Howard 2:2 3:4 5:1,3,14 5:21 6:5,13 6:19 7:21 13:13,22 14:5 17:22 20:5,10,10 20:15 21:18 22:6,12 23:6 Hyun 2:2 3:6

I	21:18 22:6 22:12 23:6 Jung 2:3 3:6	long 21:18 looking 13:15 Los 4:12 lot 19:7	narrowing 14:16 18:15 18:16 narrowly 17:10 necessary 16:6 need 17:11 19:20 21:19 needle 19:1 needs 22:3,3 Netlist 11:15 new 3:17 4:3 10:4,12,15 10:19 11:9 12:10,20 13:9 15:5,15 21:8,12 22:21 notably 11:15 Notary 2:6 24:4 note 14:19 noted 16:19 notes 24:10 November 22:18,19 number 9:3,10 NW 3:17	opportunity 12:10 21:6 opposed 9:4 18:17 order 22:13,14 owner 1:10 4:9 5:15,17 6:7 7:9,10,17 8:10,19,20 9:4,15,21 10:4,15 12:20 14:8 18:5,6,10 22:7,18 23:5 owner's 7:2,5 8:6 9:2 19:9
Illinois 2:7 24:5 25:10 importantly 11:2 includes 9:17 independent 9:18 inherency 10:18 17:1 interest 25:7 interface 10:22 introduced 10:4 involved 8:19 IPR 5:2 11:16 IPR2024-009... 1:12 issue 10:1 11:6 15:4 18:8,14 19:7 19:11,12,17 issues 11:22 13:9 15:8 23:1	K Kabat 4:10 5:18,19 25:3 keep 22:2 Kevin 4:6 5:11 24:22 know 7:11 9:12 11:8,10 12:6,7,9,12 12:18 14:16 14:19 15:8 15:16,18 16:8,19 17:9 17:20 18:12 Koczek 1:21 2:4 6:4 24:2 25:15 kpanderson... 4:7	M M 1:21 2:4 3:13 24:2 25:15 making 17:6 matter 20:17 mean 16:14 mentioned 8:7 14:20 merits 7:18 13:17 21:11 Milkey 4:14 5:16,17 7:16 7:17 14:6,7,8 20:14 21:16 22:10 23:4 25:2 minute 20:7 mischaracte... 16:11 mischaracte... 12:22 mischaracte... 10:13 15:17 mischaracte... 15:13 misundersta... 10:20 Morris 4:2 5:12 25:1 move 9:2 18:16,18 19:1 moving 9:18 18:8	O object 7:18,20 objecting 7:13 objects 7:10 October 1:16 2:8 24:11 25:9 OFFICE 1:1 officer 24:6 Okay 5:21 7:21 14:5 17:22 20:5,15 22:6 22:12 23:6 once 6:14 operate 17:4,8	P P 3:1,1 4:1,1,6 p.m 1:17 2:8 20:9,9 23:8 24:12,13 page 17:15 19:5 pages 12:12 17:16 18:10 19:10 panel 3:3 20:7 20:16 Paper 11:17 paperwork 6:10 paragraph 19:19 part 13:15 19:6 particular 13:8 17:4,8 18:8 parties 3:2 21:14 22:20 25:6 Partnership 1:4 24:16 patent 1:1,2,10 1:13 4:9 5:15 5:17 6:6 7:2
J James 4:14 5:17 7:17 14:8 25:2 Janice 1:21 2:4 6:3 24:2 25:15 jmilkey@rak... 4:15 Job 1:22 Judge 2:1,2,2 3:4,5,6 5:1,3 5:3,4,14,21 6:5,13,19 7:21 13:13 13:22 14:5 17:22 20:5 20:10,10,15	L largely 16:17 law 5:10,18 leave 20:4 led 8:17 License 2:4 25:16 limit 9:3 15:2 limited 12:15 limits 9:10 14:21 line 5:4,9 6:2 listening 5:22 litigation 8:20 9:1 LiveNote 2:6 24:3 Llc 1:4,6,9 24:15,18 25:2 LLP 3:9 4:2 24:22	N N 3:1 4:1 N.W 4:3 narrowed 14:12,17		

7:5,9,9,17 8:6,10,19,20 8:21 9:2,4,14 9:21 10:4,15 12:20 14:8 18:4,6,10 19:8 22:6,18 23:4 personal 25:7 petition 7:4 9:11,13 11:4 11:10 13:3 13:10 15:1 15:13,18,22 16:3,4,9 17:14,19 20:2 21:9 petitioner 5:6 5:8 6:6,12 7:22 11:18 12:18,19 14:10,15,20 15:7 19:5 21:4,19 22:16 23:2 petitioner's 10:2 13:1 20:20 petitioners 1:7 3:7 5:13 8:4 8:18 9:6 10:9 19:2 24:15 petitioners's 6:22 10:13 petitions 8:5 21:21 please 6:15 7:12 point 8:17 13:18 17:12 17:13 18:2 points 18:4 portion 7:14 7:18,20 possibly 16:13	preliminary 8:6,7,14 9:13 9:20 10:3,6 10:10 11:14 12:3,11 13:11 14:3 18:11 19:9 21:22 prepared 6:14 present 17:2 24:14 25:1 presented 11:22 presents 19:9 pretty 17:10 primary 16:21 17:3 prior 12:7,8,22 16:11 17:3,6 17:7 procedure 14:9 proceeding 9:7,14 proceedings 2:1 9:8 24:6 24:9,9 programming 10:22 provide 14:17 Public 2:6 24:4 purported 16:6,10 purpose 6:21 put 11:4 20:6 Q questions 21:13 23:1 quick 18:1 R R 3:1 4:1 raise 17:14 raised 14:10 raises 8:11	Rao 10:21 19:14,21 rationale 17:2 reaching 8:15 really 12:22 15:9 19:1,12 19:16 recess 20:8 record 22:21 24:8 reduction 18:19,20,21 reference 10:21 16:21 17:3 referenced 18:5 references 16:18 reflected 21:9 Regan 3:20 5:10 regard 21:2 regarding 7:5 7:19 15:5,12 15:21 16:7 16:10,21 relate 16:13 related 13:19 25:5 relates 7:14 relating 7:14 21:1 rely 15:20 16:22 remind 21:4 REMOTE 1:15 REMOTELY 3:2 reply 7:1,11,20 8:6,14 10:3 10:10 11:14 12:3,11,17 13:6,12 14:4 17:17 18:2,6	20:21 21:6 21:11,22 22:3,16 replying 21:2 reported 1:20 2:3 reporter 2:5,6 6:1,4 24:1,3 24:4 request 6:22 7:2,10,13 10:3 14:3 20:20 requested 15:6 requests 19:20 require 18:20 Research 1:9 25:2 respect 8:11 10:17 19:4 respond 7:4 12:10 responding 20:22 response 8:7 9:13,20 10:6 18:11 19:9 responses 19:20 Reston 3:11 reviewing 12:5 right 19:7 roll 5:5 Russ 4:10 5:18 5:19 25:3 S S 3:1 4:1 Samsung 11:15 saying 16:8 schedule 14:14 22:2,5	scope 21:8 Scott 2:1 3:4 seek 8:5 18:11 seeking 14:15 17:16,18,19 18:6 Services 1:5,6 24:17,19 set 16:4 17:18 Shorthand 2:5 24:3 significant 9:9 situation 11:15 situations 20:17 sole 9:17 solely 9:21 sooner 22:3 sorry 13:14 space 19:8 speak 14:9 15:11 spent 17:15 Sprint 1:6,6 24:18,18 standard 13:16 start 5:5 started 6:1 state 2:7 24:5 25:10 STATES 1:1 STENOGRA... 6:3,8 20:13 stenographi... 2:4 Stenotype 24:10 Stephen 2:2 3:5 stick 13:18 straightforw... 16:16 Street 3:10
---	--	---	---	---

struggling 14:21	20:15 21:16	Verizon 1:5,5	084-002871 2:5 25:16	4
submit 8:13	21:17 23:3,5	24:16,16		5
13:5 14:2	23:6	Virginia 3:11	1	56342 1:22
submits 19:10	theory 15:22		1 9:18	571.203.2700 3:12
submitted 10:6 11:18	16:3,9 17:1	W	12 19:9	6
12:5,20 15:6	think 8:16 13:9	wait 22:14	12:00 1:17 2:8	7
16:16	13:17 16:13	want 8:8,9	24:12	700 4:3
subsequently 14:18	16:15,17	13:7 15:8	12:15 20:9	79 7:6,15,19
substance 11:2	17:9,20 22:1	20:11	12:24 20:9	8:11 9:19
substantively 15:10	time 13:14,14	wanted 7:11	12:27 23:8	10:17 11:5
Suite 3:10 4:3	22:9,11,22	15:10 18:9	24:13	16:22 17:15
supporting 12:8	23:8	Washington 3:18 4:4	12424 4:11	19:6 21:1,3
supports 11:3	today 5:19	way 13:4 17:4	1400 15:2	7th 22:18
11:7,9 13:2	22:17	17:8 21:10	14th 22:19	8
13:10 20:2	touch 13:8	we'll 6:19 20:4	174 8:21 9:6	8,589,541 1:13
sure 18:12	TRADEMARK 1:1	we're 5:10	18:18 19:2	800 3:10
20:11	transcript 6:14	13:15 19:22	1875 3:10	83 7:6,15,19
surreply 22:8	6:15 24:8	20:19 22:1,4	2	8:12 9:20
22:19	transmitted 19:21	we've 16:19	20001-4413 3:18	21:1,3
system 19:13	TRIAL 1:2	week 22:1,7	20001-4795 4:4	9
19:15,21	true 24:8	22:17	2001 10:7	9 11:17
T	Tucker 3:15	Wilshire 4:11	20190-6023 3:11	90025-1052 4:12
T-Mobile 1:5	Tucker 3:15	Wireless 1:5	202.408.4000 3:19	901 3:17 4:3
24:17	two 9:7,15,19	24:16	202.776.7800 4:5	
taken 20:8	9:22 17:16	wish 21:4	2022 11:17	
24:7,10	19:6	word 9:9 14:21	2022-00711 11:16	
talking 15:12	U	15:2	2024 1:16 2:8	
19:13,22	U.S 1:13	words 15:2	24:11 25:9	
talks 19:14	ultimately 18:20	work 22:4	2024-00944 5:2	
teaches 13:1	understand 5:22 7:9 8:16	working 22:15	3	
teaching 16:21	undertaking 9:9	written 22:13		
teachings 10:20	unique 20:17	22:14		
terms 15:7	UNITED 1:1	X		
thank 5:14,21	USA 1:5 24:18	Y		
6:5 7:21 8:2	use 10:21	yeah 13:15		
13:21 14:5	19:16	year 18:22		
17:22 20:5	uses 19:21	Yep 20:14		
V		York 3:17 4:3		
v 1:8 11:15		Young 5:4		
		Z		
		0		