IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MYW SEMITECH, LLC,	)	
	)	
Plaintiff,	)	C.A. No. 25-504-RGA
	)	
v.	)	
	)	
APPLE, INC.,	)	
	)	
Defendant.	)	

Thursday, February 12, 2026
2:00 p.m.
Courtroom 6A

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE RICHARD G. ANDREWS
United States District Court Judge

APPEARANCES:

STAMOULIS & WEINBLATT, LLC
BY: RICHARD C. WEINBLATT, ESQ.

-and-

DAIGNAULT IYER, LLP
BY: DONALD JACKSON, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2

POTTER, ANDERSON & CORROON, LLP
3 BY: DAVID ELLIS MOORE, ESQ.

4 -and-

5 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
BY: JAMES L. DAVIS, JR., ESQ.
6 BY: DANIEL W. RICHARDS, ESQ.

7 Counsel for the Defendant

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14:01:22 10

14:01:22 11 COURT CLERK: All rise.

14:01:31 12 THE COURT: Please be seated. And so this is

14:01:35 13 MYW Semitech versus Apple, number 25-504.

14:01:45 14 Mr. Weinblatt, good afternoon. Good to see you.

14:01:51 15 MR. WEINBLATT: Good afternoon, Your Honor.

14:01:51 16 Good to see you too. With me today is Don Jackson, and

14:01:53 17 we're representing plaintiff.

14:01:55 18 THE COURT: All right. Mr. Jackson, welcome.

14:01:58 19 You don't need to come forward just yet.

14:02:03 20 Mr. Moore, been a while since I've seen you.

14:02:05 21 Hello.

14:02:07 22 MR. MOORE: Good afternoon, Your Honor. Good to

14:02:08 23 see you. David Moore from Potter Anderson on behalf of

14:02:09 24 Apple. I'm joined by my co-counsel from Sheppard Mullin,

14:02:14 25 Jim Davis and Daniel Richards. And we're also joined by

14:02:20 1 Natalie Pous from Apple.

14:02:20 2 THE COURT: Okay. All right. So I read the

14:02:24 3 letters and I looked at some of the exhibits that were

14:02:28 4 attached. And I think I would like to start with -- well,

14:02:38 5 I'll just call it Semitech's request from Apple. And in the

14:02:46 6 proposed order there is, on the second page, a list of

14:02:53 7 documents, there's like 25 of them, which corresponds, I

14:03:01 8 think, exactly to a list of documents that is in the

14:03:06 9 correspondence back and forth between Apple and Semitech,

14:03:15 10 and in particular, on page 5 of docket item 71-1, which is a

14:03:27 11 letter from Semitech to Mr. Richards that says here's a

14:03:34 12 whole bunch of stuff that we want.

14:03:38 13 It's unclear to me, is there, in fact, agreement

14:03:44 14 that this is stuff that Semitech should get? I think the

14:03:58 15 question whether there's agreement is going to be coming

14:04:02 16 from Apple, not Semitech.

14:04:07 17 MR. RICHARDS: I can just briefly address that,

14:04:08 18 Your Honor. Dan Richards on behalf of Apple. There are two

14:04:11 19 categories of documents here and from Apple's perspective a

14:04:13 20 lot of these documents are, in fact, things that are already

14:04:16 21 produced to Semitech.

14:04:18 22 THE COURT: Well, okay. So that's an

14:04:22 23 interesting answer. The things that aren't already produced

14:04:25 24 to Semitech, is there -- those are the things I'm interested

14:04:30 25 in.

14:04:31 1 MR. RICHARDS: Yes, Your Honor. And those kind
14:04:33 2 of fall into really two categories, one of which is there's
14:04:38 3 a bunch of things that are related to what you see on the
14:04:42 4 list referred to as thermal specs in that second list of
14:04:46 5 paragraph four of the order. Those documents we're in the
14:04:49 6 process of collecting right now, but the reasoning that is
14:04:52 7 set forth in Semitech's letter as to the relevance of those
14:04:55 8 documents is that they say that those are relevant to a
14:05:00 9 claim limitation that relates to the coefficient --
14:05:03 10 THE COURT: Well, so you're collecting them so
14:05:05 11 that you will produce them, right?
14:05:07 12 MR. RICHARDS: We're working on that to confirm,
14:05:09 13 but we don't think they're going to be relevant. What we're
14:05:13 14 also producing is actually --
14:05:15 15 THE COURT: So if you're collecting them, then
14:05:18 16 I'm going to ask that you produce them and that will resolve
14:05:22 17 the thermal spec portion of this. What's the other bucket?
14:05:27 18 MR. RICHARDS: The other bucket is there's a
14:05:27 19 couple of documents here we just candidly do not understand
14:05:28 20 what exactly is being requested.
14:05:31 21 THE COURT: Like, for example?
14:05:32 22 MR. RICHARDS: An example of that is the second
14:05:35 23 bullet on the second page where it says Ansys model .db and
14:05:42 24 .rst files. It's not clear that those are actually
14:05:45 25 documents that exist and that is part of the challenge that

14:05:47 1 we're having is depending on what it is, the information
14:05:52 2 Semitech is trying to connect to that it's likely we'd
14:05:57 3 produce overlapping information, but that needs to be the
14:05:59 4 subject of additional meet and confers so we can actually
14:06:02 5 understand what it is that's missing.
14:06:05 6 THE COURT: All right. So is there anything in
14:06:07 7 this list that you know -- that you have determined you're
14:06:17 8 not going to produce?
14:06:19 9 MR. RICHARDS: No, Your Honor.
14:06:20 10 THE COURT: Okay. So here's what I'm going to
14:06:22 11 do. I'm going to order you to produce all of that say
14:06:25 12 within a month. Is that a reasonable amount of time?
14:06:30 13 MR. RICHARDS: Just I want to make sure what it
14:06:32 14 is that you're referring to, Your Honor.
14:06:34 15 THE COURT: Well, so it's the same list that
14:06:36 16 we've just been talking about in paragraphs four and second
14:06:43 17 four in the proposed order. I say second four, because it's
14:06:48 18 paragraph four and five are both number four, which is the
14:06:51 19 same thing that's in that e-mail from December. And so what
14:06:55 20 you've told me is some of that you've already produced, some
14:07:00 21 of that you are collecting to produce, and some of that you
14:07:02 22 don't understand. So what I'm telling you or what I want to
14:07:06 23 tell you is when you've already produced it, you can say
14:07:10 24 here's where we produced it, and that would count as
14:07:14 25 production. You can collect it and produce it and that will

14:07:19 1 count as production. And if the response is we don't know
14:07:23 2 what this is, then I guess that will lead to a further
14:07:29 3 discussion about what it is.
14:07:31 4 MR. RICHARDS: Okay. I think I understand what
14:07:33 5 you're saying, Your Honor. So if we look at the first list
14:07:36 6 of the -- the first paragraph four, so the one that is at
14:07:39 7 the top of the page there, that's the one where to the
14:07:42 8 extent there's something more that is needed, I think that
14:07:45 9 needs to be the subject of meet and confers because we don't
14:07:47 10 know what additional information is missing.
14:07:49 11 THE COURT: Well, so no. So at this point,
14:07:53 12 because I've gotten your letter and, you know, maybe it's a
14:07:58 13 product of we limit it to three pages, your letter was full
14:08:02 14 of generalities and so what I want you to do -- what is
14:08:10 15 today? The 12th. I don't have my calendar in front of me.
14:08:18 16 Is March 14th a day of the week?
14:08:22 17 COURT CLERK: That's a Saturday.
14:08:23 18 THE COURT: Okay. March 13th, I want you to
14:08:27 19 either say for each of these bullet point items, we have
14:08:32 20 produced it, then you can give them some reference as to
14:08:36 21 where you produced it, or say here it is and then you
14:08:40 22 produce it, or say we don't know what you're talking about,
14:08:44 23 in which case there will probably be some further discussion
14:08:47 24 as to what they're talking about.
14:08:50 25 MR. RICHARDS: I think -- if that's the point is

14:08:52 1 by then either production or meet and confer is necessary,
14:08:55 2 Your Honor, I think that's --
14:08:55 3 THE COURT: Well, no, no. I want you to put --
14:08:59 4 you know, meet and confer is only necessary if you actually
14:09:01 5 don't understand what they're talking about. You said Ansys
14:09:05 6 model db and rst files for the IC packages with included
14:09:11 7 materials. If the answer is you don't know what that is,
14:09:14 8 well, okay, say you don't know what that is. Otherwise,
14:09:18 9 produce it.
14:09:20 10 MR. RICHARDS: Yes. Your Honor, I think I
14:09:22 11 understand what you're saying. I just wanted to confirm you
14:09:26 12 are asking us to do by that date is first, if we know what
14:09:30 13 the file is, then that is something that should be produced.
14:09:32 14 I just want to confirm if we don't know what the file is
14:09:36 15 what it is that should be done with those. There's a
14:09:40 16 separate issue for some of these --
14:09:41 17 THE COURT: If you don't know what the file is,
14:09:43 18 first thing is to put in some kind of formal response, we
14:09:46 19 don't know what this is. And then that will lead to further
14:09:52 20 discussion. But among other things, this will narrow the
14:09:55 21 amount of disputes. Part of my, I don't know -- you know,
14:10:05 22 you've said there hasn't been enough meeting and conferring.
14:10:12 23 They said you're stalling. I don't know who is right, but I
14:10:15 24 think that what I'm saying here will lead to, among other
14:10:21 25 things, narrowing what the disputes are. Right now I can't

14:10:25 1 tell whether you've produced any of this stuff. But you're
14:10:28 2 telling me you have. Okay. Great. But I need it to be --
14:10:33 3 I need it to be, you know, pinned down, so to speak, okay?
14:10:42 4 MR. RICHARDS: And that makes sense, Your Honor.
14:10:44 5 I think for the documents that we understand what they're
14:10:47 6 looking for and the relevance, those are things that we can
14:10:51 7 certainly produce by that date. The concern I have with
14:10:54 8 respect to the things we don't understand exactly what
14:10:57 9 they're asking for, certainly for some of those there might
14:11:00 10 be a concern about the breadth of this where the documents
14:11:03 11 don't have any bearing on what's here, and that's something
14:11:06 12 we can address at that time.
14:11:07 13 THE COURT: Well, so, in fact, you give me the
14:11:10 14 good idea, which is for the ones where you truly don't know
14:11:16 15 what they're asking for, you can list them and tell them
14:11:21 16 that by the end of February, and maybe that will start
14:11:24 17 promoting the discussion of what it is that they actually
14:11:30 18 think they're asking for. But I have no way of parsing this
14:11:37 19 otherwise.
14:11:42 20 So, basically, tell them by February 28th the
14:11:53 21 ones you don't understand and for the rest of them, produce
14:11:59 22 something by March 13th. Okay?
14:12:03 23 MR. RICHARDS: I think that makes sense, Your
14:12:05 24 Honor. And just to be clear for the ones we don't
14:12:08 25 understand, that's the ones including we need clarification

14:12:11 1 of what the scope is of what it is they're producing.

14:12:14 2 THE COURT: That's different. Then you

14:12:19 3 understand it. You're then saying essentially, I don't

14:12:21 4 know, it's overbroad or something. But if you understand

14:12:32 5 it, I want you to produce it. Okay? I don't want you to

14:12:37 6 argue about the scope. I want you to produce it. And --

14:12:46 7 all right?

14:12:48 8 MR. RICHARDS: Okay, Your Honor.

14:12:49 9 THE COURT: Okay. Thank you.

14:12:51 10 All right. So that resolves one third of the

14:12:58 11 request. So then we've got the Taiwanese Semiconductor

14:13:08 12 Manufacturing Company or whatever. And so is it the case

14:13:13 13 that Apple -- and so, as I understand it, the Taiwan

14:13:21 14 Semiconductor Manufacturing Company fabricates these, I

14:13:25 15 guess, chips, and Apple pays them money so that they supply

14:13:32 16 them to Apple, right?

14:13:34 17 MR. RICHARDS: Roughly, Your Honor, yes. That's

14:13:36 18 a good summary.

14:13:37 19 THE COURT: Okay. And I gather that then the

14:13:40 20 chips go into, among other things, iPhones?

14:13:44 21 MR. RICHARDS: Among other things, yes, Your

14:13:46 22 Honor.

14:13:46 23 THE COURT: Okay. If I have an iPhone, am I

14:13:51 24 recused?

14:13:51 25 MR. RICHARDS: I'm sorry, say that again.

14:13:53 1 THE COURT: If I have an iPhone, should I recuse
14:13:57 2 myself?
14:13:58 3 MR. RICHARDS: I defer to Your Honor whether
14:14:00 4 that gives rise to that, Your Honor. I don't know that
14:14:03 5 that's necessary in this instance, Your Honor.
14:14:04 6 THE COURT: Might be kind of hard to find a
14:14:07 7 judge if that is a conflict.
14:14:10 8 All right. So what is it that you are going to
14:14:17 9 produce -- just tell me, start off in generic terms. You
14:14:22 10 say you're working on -- actually, let's not do that.
14:14:26 11 So they asked for an order, a grievance with,
14:14:35 12 I'm just going to call it the Taiwanese about the accused
14:14:41 13 chips as well as all related or follow-on periodic
14:14:45 14 statements of work, contractually required reports,
14:14:48 15 production supply forecasts, commercial invoices, price
14:14:52 16 quotes, and specification sheets. What's objectionable
14:14:59 17 about that request?
14:15:01 18 MR. RICHARDS: There's two things, Your Honor.
14:15:03 19 First, just at the outset, the thing that Apple is in the
14:15:06 20 process of producing right now are what are referred to as
14:15:10 21 statements of work that you see that are listed there.
14:15:12 22 THE COURT: Okay.
14:15:13 23 MR. RICHARDS: That's the information that sets
14:15:17 24 the relationship between the parties with respect to the
14:15:22 25 accused products themselves.

14:15:23 1 THE COURT: Does that include -- I would think
14:15:25 2 that would include specifications too?
14:15:27 3 MR. RICHARDS: So what I was referring to, Your
14:15:30 4 Honor, is the agreements. In addition to that, anything
14:15:32 5 that is a technical document relating to the accused
14:15:36 6 functionality Apple either has already or is in the process
14:15:42 7 of collecting and producing what it is aware of.
14:15:43 8 THE COURT: Okay. So that would be the
14:15:44 9 specifications?
14:15:45 10 MR. RICHARDS: Yes, Your Honor.
14:15:46 11 THE COURT: So what are -- so you said you
14:15:51 12 either -- the statements of work, have you already produced
14:15:55 13 them?
14:15:55 14 MR. RICHARDS: No. We are in the process of
14:15:56 15 collecting those right now. We expect to be able to produce
14:15:59 16 them soon.
14:16:00 17 THE COURT: All right. Well, so "soon" is not a
14:16:03 18 word that I like, though it's better than some other words,
14:16:07 19 but I'd like to have a date here. The statements of work,
14:16:13 20 the technical thing, which I guess includes specifications,
14:16:17 21 I want to put you down for producing them by March 13th
14:16:22 22 also.
14:16:23 23 MR. RICHARDS: That should be fine, Your Honor.
14:16:25 24 As far as I'm aware, we've already produced everything that
14:16:28 25 we are aware of to date.

14:16:30 1 THE COURT: Okay.

14:16:31 2 MR. RICHARDS: So we can supplement with

14:16:32 3 anything we became aware of by then.

14:16:34 4 THE COURT: All right. So, right. To the

14:16:41 5 extent I sign some order directing you to produce stuff and

14:16:45 6 you already produced it, you don't have to produce it again.

14:16:51 7 So, but there's also then what they call

14:16:55 8 contractually required reports, production supply forecasts,

14:17:00 9 commercial invoices, and price quotes. I take it that at

14:17:05 10 least what you pay -- what consideration you give for

14:17:10 11 Taiwan, the Taiwanese for making these chips, that's a

14:17:14 12 relevant thing to produce, right?

14:17:16 13 MR. RICHARDS: Yes, Your Honor. And that

14:17:18 14 information is actually in the statement of work -- the

14:17:21 15 statements of work, if my understanding is correct, it lists

14:17:24 16 the pricing information there. If, after looking at that,

14:17:27 17 Semitech believes there's additional detail that's needed,

14:17:30 18 we're happy to investigate that additional detail.

14:17:32 19 THE COURT: So what you're telling me is the

14:17:35 20 request for commercial invoices and price quotes is

14:17:38 21 essentially redundant because whatever the actual prices are

14:17:43 22 are going to be in the agreements?

14:17:45 23 MR. RICHARDS: Yeah. In terms of financial

14:17:48 24 information between the information -- the other financial

14:17:51 25 information Apple just produced a couple of days ago, which

14:17:54 1 speaks to financial information in the relevant time period,
14:17:58 2 as well as the statements of work, we believe that that
14:18:01 3 should be sufficient. But financial information to address
14:18:06 4 what is Semitech going forward.
14:18:07 5 THE COURT: Then there's two other things in
14:18:10 6 their request. Contractually required reports. I'm not
14:18:16 7 entirely sure what they mean by that. Production supply
14:18:21 8 forecasts. I could guess more or less that there's -- that
14:18:32 9 Apple might send to the Taiwanese forecasts for how many of
14:18:37 10 these chips they need?
14:18:39 11 MR. RICHARDS: Your Honor, I don't know if
14:18:42 12 that's the way that this works in the relationship, and I'm
14:18:45 13 not sure that that's how Apple does the procurement for
14:18:49 14 these.
14:18:51 15 THE COURT: Well, so -- all right. So Mr.
14:18:55 16 Richards, why don't you hold, just stand there for a minute.
14:18:59 17 Mr. Jackson, so I think you either have or will
14:19:04 18 get the statements of work, the prices and the specification
14:19:09 19 sheets. So that leaves what you describe here as
14:19:15 20 contractually required reports and production supply
14:19:18 21 forecasts. What is it that you think you're getting there
14:19:23 22 that is helpful?
14:19:25 23 MR. JACKSON: Thank you, Your Honor. If you
14:19:27 24 need me to go to a microphone --
14:19:29 25 THE COURT: I actually thought you'd come stand

14:19:32 1 next to your friend, Mr. Richards, and that presumably you
14:19:37 2 will not come to blows. So it might be helpful.
14:19:42 3 MR. JACKSON: Thank you, Your Honor. Yeah. So
14:19:46 4 in each of those categories, contractually required reports,
14:19:49 5 now obviously we don't know exactly what's being exchanged
14:19:53 6 between them.
14:19:54 7 THE COURT: Well, so if you get these
14:19:56 8 agreements, then you'll find out whether anything is
14:19:58 9 required at all, right?
14:20:00 10 MR. JACKSON: True.
14:20:01 11 THE COURT: Okay.
14:20:02 12 MR. JACKSON: I would expect there to be some
14:20:04 13 testing. There's going to be, you know -- TSMC has to do
14:20:10 14 some degree of work even if they get the design.
14:20:10 15 THE COURT: Well, so testing, would that fall
14:20:12 16 under the technical documents that you've said are being
14:20:15 17 produced, Mr. Richards?
14:20:16 18 MR. RICHARDS: The information relating to
14:20:18 19 testing that is in Apple's possession, yes, Your Honor, that
14:20:21 20 is the stuff that is being collected and produced.
14:20:24 21 THE COURT: All right. So what else is in these
14:20:27 22 contractually required reports that you might want, Mr.
14:20:30 23 Jackson?
14:20:30 24 MR. JACKSON: Yes, Your Honor. So I think those
14:20:34 25 were primarily the area of concern. As counsel previously

14:20:41 1 mentioned, there are some coefficient of temperature
14:20:44 2 requirements.
14:20:44 3 THE COURT: All that's either in the agreements
14:20:47 4 or the specification or that's in the testing.
14:20:49 5 MR. JACKSON: Yes.
14:20:50 6 THE COURT: So I think we're good there. What
14:20:54 7 about production supply forecasts? So the agreements -- if
14:20:58 8 there's some -- I'm guessing. The agreements are going
14:21:04 9 to -- you know, this might be what's called a requirements
14:21:11 10 contract, it might require -- it might say you need to give
14:21:17 11 us an estimate of how many of these chips you're going to
14:21:20 12 need in the future. Is that what you have in mind?
14:21:22 13 MR. JACKSON: Exactly, Your Honor. Exactly,
14:21:24 14 Your Honor. So there are going to be periodic forecasts,
14:21:27 15 maybe it's done quarterly, maybe it's done on a different
14:21:30 16 time period, but it's going to be an indication of demand,
14:21:35 17 how much expected demand there is for those chips going
14:21:38 18 forward on a rolling basis.
14:21:39 19 THE COURT: Okay. So do you know whether such
14:21:41 20 things -- I think Mr. Richards has already said you don't,
14:21:45 21 but do you know whether such things exist or are called for
14:21:49 22 by the contracts?
14:21:50 23 MR. RICHARDS: I do not know at this time, Your
14:21:52 24 Honor.
14:21:52 25 THE COURT: Okay. So based on what's been said,

14:22:07 1 I'm going to cross out contractually required reports. I'm
14:22:11 2 going to leave production supply forecasts in there with the
14:22:15 3 understanding that that's essentially -- that that's really
14:22:26 4 directed towards anything Apple says to the Taiwanese about
14:22:32 5 their needs in the future, what I think Mr. Jackson has
14:22:38 6 referred to as demand. It's probably going to be pretty
14:22:43 7 clear once you look at the contract whether -- whether such
14:22:49 8 things exist, I would think. And if they do exist, then you
14:22:54 9 need to find them. I imagine it's not going to be real
14:23:00 10 hard, so I'm going to leave them in as something to be
14:23:03 11 produced. The specification sheets, I'm going to write down
14:23:06 12 specification sheets and testing, but that's really just to
14:23:13 13 reflect what Mr. Richards has said, really something that he
14:23:21 14 thinks is already being produced. And commercial invoices
14:23:28 15 and price quotes, with the understanding that that's not
14:23:31 16 anything actually additional, assuming that the financial
14:23:34 17 information is in the agreements that are going to be
14:23:37 18 produced. All right?
14:23:40 19 Yes, Mr. Jackson.
14:23:41 20 MR. JACKSON: Can I interject one more thing on
14:23:44 21 this point? We had asked for this order. Apple's
14:23:47 22 agreements with TSMC concerning the accused chips as well as
14:23:52 23 related or follow-on periodic statements of work. So the
14:23:55 24 bigger picture, and maybe we should have spelled this out
14:23:58 25 more clearly, is typically there's something called a master

14:24:01 1 services agreement between two companies, especially large
14:24:05 2 sophisticated companies like this. The master service
14:24:07 3 agreement typically specifies all the general terms and
14:24:10 4 conditions that the parties are going to agree to for
14:24:13 5 delivery under that agreement. And then what happens is as
14:24:16 6 each new product, for example, each new chip in this case is
14:24:20 7 issued, there's a specific statement of work directed to
14:24:22 8 that chip that fills in specific details like timelines,
14:24:27 9 what the specific deliverables might be under that statement
14:24:29 10 of work.
14:24:30 11 THE COURT: So, Mr. Jackson, as much as I
14:24:33 12 appreciate the broader picture, what is the relevance of
14:24:37 13 what you're telling me?
14:24:38 14 MR. JACKSON: We don't know where the terms,
14:24:40 15 relevant terms are going to be split. Are they going to be
14:24:43 16 in the master services agreement or the statements of work,
14:24:46 17 so we'd like to get the master services agreement.
14:24:49 18 THE COURT: Well, so I'm going to leave that up
14:24:51 19 to Apple. If there's two agreements covering this
14:24:56 20 relationship, they need to produce both agreements. If
14:24:59 21 there's only one agreement, then they need to produce one
14:25:02 22 agreement, right, Mr. Richards?
14:25:06 23 MR. RICHARDS: So I just want to unpack what it
14:25:09 24 is you're saying for a second, Your Honor, because Apple and
14:25:14 25 TSMC have a very broad relationship. Only a small part on

14:25:18 1 that relates to the parties' relationship as relevant to the
14:25:20 2 accused functionalities here. The statements of work that
14:25:23 3 I've indicated that we're collecting and producing are the
14:25:26 4 agreements that specify the relationships between the
14:25:29 5 parties with respect to those particular chips.
14:25:31 6 THE COURT: With respect to the accused chips?
14:25:33 7 MR. RICHARDS: Yes, Your Honor.
14:25:34 8 THE COURT: Right. I don't think Mr. Jackson is
14:25:36 9 asking for statements of work relating to the rest of it.
14:25:40 10 What he is asking for, though, is if there is a separate
14:25:44 11 agreement that you need to understand all the relevant terms
14:25:51 12 related to the chips, you need to produce that. Right?
14:25:57 13 MR. RICHARDS: If there's an agreement like
14:25:59 14 that, then it would be something that -- the statements of
14:26:04 15 work on their own we believe are sufficient to understand
14:26:07 16 the relevant aspects of the Apple/TSMC relationship.
14:26:11 17 THE COURT: Well, so they may or they may not
14:26:14 18 be. If you think they are, you can produce them, and say
14:26:19 19 the master services agreement is irrelevant, assuming there
14:26:24 20 is such a thing. But it better be irrelevant that the
14:26:27 21 statement of work is a self-contained contract that -- but
14:26:34 22 if there are terms that are being supplied from somewhere
14:26:37 23 else, you're going to need to provide where that somewhere
14:26:40 24 else is. But in the first instance, that's your call as to
14:26:44 25 whether contract A has any relationship to the accused

14:26:48 1 chips, okay?

14:26:50 2 MR. RICHARDS: Okay.

14:26:51 3 THE COURT: And presumably when you produce

14:26:53 4 this, if Mr. Jackson thinks he can't understand it without

14:26:58 5 contract A, it will be followed up, but you'll be a lot

14:27:04 6 closer to the solution.

14:27:05 7 Okay. So I'm going to grant paragraph two as

14:27:11 8 I've amended it to cross out contractually required reports

14:27:16 9 to add in "and testing," and with the gloss that I put on

14:27:20 10 this -- on the record here. So that resolves two. And I am

14:27:29 11 changing the date to March 13th, as I have done in paragraph

14:27:42 12 four and second paragraph four.

14:27:53 13 All right. So the paragraph three about

14:28:01 14 defendant Apple has already produced any documents to be

14:28:05 15 obtained by Taiwan but in Apple's possession, custody or

14:28:08 16 control based on agreements between Taiwan and Apple, I'm

14:28:12 17 not sure what that paragraph is directed at, but I'm

14:28:15 18 inclined to just cross that out because it seems to me that

14:28:18 19 based on what you're getting from paragraph two, that covers

14:28:22 20 what you need.

14:28:23 21 MR. JACKSON: It's unclear whether three will

14:28:27 22 encompass more documents. The idea of three was is to say,

14:28:32 23 okay, if they've taken a narrow read of paragraph two, which

14:28:37 24 is contractual-related document, then we want to obviously

14:28:40 25 make sure we obtain any other technical documents especially

14:28:43 1 relating to the accused products they may have obtained in a
14:28:46 2 less formal exchange with TSMC.
14:28:49 3 THE COURT: Well, I think Mr. Richards already
14:28:52 4 said you're going to get all the technical documents, so I
14:28:55 5 think paragraph three is superfluous, so I'm just going to
14:29:00 6 cross that out. I'll renumber first paragraph four as three
14:29:09 7 and restore some order here.
14:29:11 8 MR. JACKSON: I apologize, Your Honor. I was
14:29:13 9 going to point that out. I noticed that yesterday.
14:29:15 10 THE COURT: It's not the worst thing in the
14:29:17 11 world. That's for sure.
14:29:20 12 So then as I gather paragraphs five and six
14:29:24 13 relate to financial information, is that right, Mr. Jackson?
14:29:30 14 MR. JACKSON: Five relates to financial
14:29:34 15 information. When I say five, by the way, that's the
14:29:37 16 originally numbered one?
14:29:38 17 THE COURT: There's only one five.
14:29:43 18 MR. JACKSON: It should be six, right?
14:29:45 19 THE COURT: No.
14:29:47 20 MR. JACKSON: And then six is relating more to a
14:29:49 21 date restriction.
14:29:50 22 THE COURT: But a date restriction for what?
14:29:53 23 MR. JACKSON: Date restriction for both the
14:29:55 24 technical as well as the financial documents. This doesn't
14:29:57 25 necessarily have specifically to do with TSMC. This is more

14:30:01 1 when we exchanged e-mails and meet and confers with Apple
14:30:04 2 they took the position that the only documents that were
14:30:07 3 relevant were documents that were generated or dated from
14:30:10 4 the date of the first patent to issue forward, that was in
14:30:15 5 2021, and our point is that this technology --
14:30:18 6 THE COURT: Mr. Jackson, I thought I saw saw in
14:30:21 7 Apple's letter that they were saying, yes -- in somebody's
14:30:29 8 letter, there seemed to be an acknowledgment that some
14:30:35 9 documents that predate the issuance -- some Apple documents
14:30:39 10 that predate the issuance would be relevant or would be
14:30:42 11 produced, so maybe the best thing for me to do is ask Mr.
14:30:45 12 Richards, what -- am I correct that that is your position?
14:30:49 13 And if so, what kind of thing that predates the issuance of
14:30:54 14 the patents do you expect to -- do you concede that you
14:30:59 15 should produce?
14:31:00 16 MR. RICHARDS: Your Honor, what I would say is
14:31:02 17 what we are collecting and producing without date
14:31:06 18 limitations is technical information relating to the accused
14:31:10 19 products. We gave an example of a document that we have
14:31:12 20 produced that goes back more than a decade back from when
14:31:17 21 the complaint was actually filed as one example of that.
14:31:21 22 But all of the technical documents relating to each of the
14:31:25 23 accused products that we're able to locate that relate to
14:31:28 24 the accused functionality we are producing without date
14:31:31 25 restrictions.

14:31:32 1 THE COURT: Okay. Anything besides these
14:31:38 2 technical documents?
14:31:38 3 MR. RICHARDS: So far, no, Your Honor. And part
14:31:40 4 of the reason for that is if you take a look at the requests
14:31:46 5 that are at issue in paragraph six, which is talking about
14:31:49 6 the date limitations, I have a slide that shows some of the
14:31:53 7 language from those if it would be helpful.
14:31:55 8 THE COURT: Show me, because I have not looked
14:31:58 9 at all these -- or actually any of these requests for
14:32:02 10 production.
14:32:02 11 MR. RICHARDS: Certainly, Your Honor. If I may
14:32:04 12 approach with a copy of some slides that I have.
14:32:16 13 THE COURT: All right. Tell me which page.
14:32:18 14 MR. RICHARDS: For this, if we go to slide 19.
14:32:24 15 THE COURT: Okay.
14:32:26 16 MR. RICHARDS: This is not all of the requests
14:32:28 17 that have been moved on, but these are exemplars of them
14:32:32 18 that show that the types of information for which Semitech
14:32:38 19 is asking really needs to be the subject of narrowing before
14:32:41 20 we focus on what actually needs to be produced. For
14:32:44 21 example, you look at request 31, any revenue information
14:32:48 22 relating to --
14:32:48 23 THE COURT: Right. Right. I guess you'll make
14:32:52 24 a record here, so I'm sorry I should let you speak.
14:32:56 25 MR. RICHARDS: I can be succinct about it, but

14:32:59 1 if you look at those it's really any information relating to
14:33:03 2 Apple products, marketing, all agreements relating to
14:33:06 3 manufacturing that's not limited to the accused
14:33:09 4 functionality, forecasts, divisional financial statements,
14:33:13 5 strategic planning documents, substantial numbers of
14:33:17 6 documents like this that go far beyond the scope of what is
14:33:20 7 relevant to this case both from a temporal perspective but
14:33:24 8 also from subject matter perspective.
14:33:26 9 THE COURT: Okay. Mr. Jackson, what's your
14:33:27 10 response to that?
14:33:28 11 MR. JACKSON: Thank you, Your Honor. So when we
14:33:30 12 refer to, you know, revenue, we're specific to the Apple
14:33:36 13 chips or Apple chips with Apple products. And so, I think
14:33:41 14 we're trying to link it to the chips, but there's also the
14:33:44 15 issue that the chips do get embedded into the product and
14:33:47 16 then what Apple sells is actually obviously the phone,
14:33:51 17 right? They don't sell the chip. So if we're going to try
14:33:54 18 to get relevant financial information that they likely have,
14:33:57 19 we're going to have to at least start with the phone
14:34:00 20 information, the phone revenue, and then there's going to
14:34:04 21 have to be an apportionment to get back to the value of the
14:34:07 22 inventions.
14:34:07 23 THE COURT: Why do you need anything before
14:34:09 24 let's say January 1 of 2021 for this?
14:34:13 25 MR. JACKSON: So it goes to -- the technology we

14:34:16 1 believe was introduced I think it's 2015 or 2016 with the
14:34:20 2 iPhone 7.
14:34:21 3 THE COURT: Okay.
14:34:22 4 MR. JACKSON: That's the patented technology.
14:34:24 5 There's a development cycle that we understand takes two to
14:34:28 6 three years. Because it relates to financial information,
14:34:30 7 it would have been in the 2015 time frame, I believe with
14:34:34 8 the iPhone 7. But we also want to get the forecasts before
14:34:37 9 they introduced the technology, any financial analysis.
14:34:41 10 There's going to be tons of financial analysis relating to
14:34:44 11 the phone as a whole, obviously, but also specifically this
14:34:48 12 new technology, what does it bring, what advantages does it
14:34:51 13 bring.
14:34:51 14 THE COURT: Well, so the new technology, are
14:34:54 15 these chips, are they called the A8 and the A9 chips?
14:35:00 16 MR. JACKSON: The accused chips, there's three
14:35:02 17 different series. There's an A series an M series and an S
14:35:07 18 series. The A series, the first accused chip is A10.
14:35:11 19 THE COURT: Okay.
14:35:13 20 MR. JACKSON: We asked for the A8 and A9 to look
14:35:16 21 at the financial picture with respect to the prior
14:35:20 22 generations of those chips before the new technology was
14:35:25 23 introduced so that we can see the change in financial --
14:35:29 24 from the financial perspective of how the new technology
14:35:33 25 impacts Apple's revenue and profits, etc., etc. So that's

14:35:38 1 why we wanted to get a benchmark to look at, A8 and A9 and
14:35:46 2 start with the accused chip, the A10. That introduction, as
14:35:48 3 I said, of the A10 we think is, off the top of my head right
14:35:50 4 now I don't remember if it was 2015 or '16, but it was the
14:35:54 5 iPhone 7, whatever year that was. So we want to get the
14:35:58 6 benchmark and then look at the change because that's going
14:36:01 7 to drive a lot of the expert's damages analyses as it
14:36:04 8 relates to the reasonable royalty that's going to be
14:36:06 9 appropriate. They're going to see what incremental value,
14:36:10 10 what incremental change in the profitability, for example,
14:36:13 11 of Apple's products or perhaps its cost reduction which
14:36:17 12 would of course increase indirectly profitability.
14:36:21 13 THE COURT: So I realize how much Apple pays in
14:36:30 14 chips may not be something one wants to say out loud in a
14:36:34 15 public courtroom, but in -- can you give me a ballpark of
14:36:45 16 what -- I guess first off, are there multiple chips in an
14:36:50 17 iPhone or just one chip?
14:36:52 18 MR. JACKSON: My understanding is that in each
14:36:55 19 phone, just to take that example, this is the central master
14:36:59 20 processor, so there's one.
14:37:01 21 THE COURT: Okay. And is it true that at this
14:37:06 22 point, Mr. Jackson, you don't know how much Apple pays for
14:37:10 23 this central master processor?
14:37:12 24 MR. JACKSON: That's correct. I don't know.
14:37:14 25 THE COURT: What is -- so take a guess. What do

14:37:17 1 you think -- what's your guess as to how much they pay.
14:37:21 2 MR. JACKSON: Per unit, honestly, Your Honor, if
14:37:24 3 I had to guess, I would say -- maybe on the order of $200.
14:37:33 4 But obviously there could be massive volume discounts.
14:37:36 5 THE COURT: Okay. All right. So it's -- it
14:37:39 6 would be your guess this is a significant percentage of the
14:37:44 7 actual iPhone cost?
14:37:46 8 MR. JACKSON: It's purely a guess, Your Honor.
14:37:48 9 THE COURT: Okay. That's all right. And then
14:37:57 10 this processor that you think costs -- that you guess costs
14:38:02 11 $200, this is a processor they've been using since 2015, you
14:38:07 12 think?
14:38:07 13 MR. JACKSON: The first accused product was 2015
14:38:11 14 commercially sold in the iPhone 7. Each -- I won't say
14:38:16 15 every year because I didn't go back and look to be sure, but
14:38:20 16 typically when Apple introduced a new phone like the iPhone
14:38:24 17 8, often times they'll introduce a new master processor, so
14:38:27 18 the next one would be the A11. And you'll see or we've seen
14:38:32 19 in their marketing literature online, especially they tout
14:38:38 20 the enhanced improvements of the A11 over the A10, it's
14:38:41 21 faster, it has greater computing processing power, etc.,
14:38:42 22 etc. And so then at some other point, again, I don't know
14:38:46 23 that it tracks every single year, but they'll introduce an
14:38:49 24 A12 and then an A13. So the A10 remains resident, as I
14:38:54 25 understand it in the iPhone 7 until its end of life, no

14:39:00 1 longer being some. So there's going to be this overlap of
14:39:03 2 generations of chips with the older phones maintaining the
14:39:07 3 original A chip, the master processor chip, until they're no
14:39:11 4 longer being sold by Apple in which case then the oldest
14:39:15 5 phone might be the iPhone 8 and it will have an A11 and it
14:39:21 6 will be sold continuously until that iPhone is discontinued
14:39:24 7 by Apple. Did that answer your question?
14:39:26 8 THE COURT: It's helpful. I'm just trying to
14:39:29 9 absorb it, so I'm just thinking for a second.
14:39:44 10 All right. So my thought is this. It's
14:40:04 11 possible that plaintiff has a theory as to why revenue,
14:40:24 12 marketing, promotion, planning, annalist reports relating to
14:40:32 13 these earlier chips is relevant. I do think, just looking
14:40:44 14 at the requests, that even given that plaintiff -- even
14:40:57 15 accepting the plaintiff has a theory here, I'm not going to
14:41:04 16 order responses to all these RFPs because they are written
14:41:11 17 in grossly overbroad terms and I do think that the parties
14:41:21 18 need to spend some time trying to work this out as to what
14:41:32 19 plaintiff may actually need.
14:41:36 20 Let me just ask you, Mr. Richards, the general
14:41:42 21 gist of what Mr. Jackson has said, that the history,
14:41:52 22 profitability of these chips over time, and the expectations
14:41:57 23 of profitability are something that the plaintiff needs for
14:42:11 24 apportionment in developing its damages theory. That's
14:42:20 25 plausible, right?

14:42:24 1 MR. RICHARDS: We can debate out the merits of
14:42:28 2 it, but we understand the plaintiff's position on this. And
14:42:31 3 you are saying or suggesting, Your Honor, it sounds like if
14:42:34 4 there's some information that is needed, we're happy to work
14:42:37 5 with plaintiff to try to find a way of getting something
14:42:40 6 that is more focused.
14:42:42 7 THE COURT: I understand Apple is a pretty big
14:42:45 8 company and has got a lot of ability to spend money in
14:42:51 9 defense of itself, but it does strike me that, that this is
14:43:02 10 not the place to just say, yeah, you know, do the best you
14:43:06 11 can. So I'm going to -- so at least as far as RFP 6 goes,
14:43:17 12 I'm going to deny that, but I think that's something --
14:43:24 13 something that the parties need to go through more than I
14:43:29 14 think they have done so far in terms of making a reasonable
14:43:38 15 request for documents. So I'm going to cross out paragraph
14:43:51 16 six. What is it -- so paragraph five, which talks about
14:43:55 17 damages and financial documents relating to -- hold on a
14:44:11 18 second. So there was -- I think you've said, Mr. Richards,
14:44:16 19 that there was some very recent production of financial
14:44:20 20 information.
14:44:20 21 MR. RICHARDS: Yes, Your Honor. We made a
14:44:22 22 supplemental production of financial information two days
14:44:25 23 ago.
14:44:26 24 THE COURT: Two days ago?
14:44:29 25 MR. RICHARDS: Yes, Your Honor.

14:44:30 1 THE COURT: My favorite thing, after the dispute
14:44:34 2 is sent to me. Tell me generally what is it you produced
14:44:39 3 two days ago?
14:44:42 4 MR. RICHARDS: Two things to preface that, prior
14:44:44 5 to this dispute being brought to Your Honor, we notified
14:44:47 6 Semitech that we would produce this.
14:44:50 7 THE COURT: To be fair to you, I think I saw
14:44:53 8 that in here.
14:44:54 9 MR. RICHARDS: The information we believe is
14:44:57 10 more than sufficient financial information for the damages
14:44:58 11 window that goes back to 2021.
14:45:01 12 THE COURT: Well, and so these would be how much
14:45:04 13 you actually pay for the chips and how much you actually
14:45:08 14 sell the phones for and, I don't know, stuff, you know,
14:45:15 15 information, papers, analyses as to contribution of the
14:45:28 16 chips to the overall profitability of the iPhones and things
14:45:29 17 like that?
14:45:29 18 MR. RICHARDS: I think that's about right, Your
14:45:30 19 Honor. It includes your typical revenue sort of
14:45:34 20 information. It also includes the cost breakdown of the
14:45:38 21 different phones. It includes that for all of the damages
14:45:42 22 period.
14:45:42 23 THE COURT: Okay. So Mr. Jackson, I imagine --
14:45:46 24 well, so first off, how big of a production was this, Mr.
14:45:50 25 Richards?

14:45:52 1 MR. RICHARDS: I have to double-check the exact
14:45:55 2 number of pages. It was several hundred documents, I
14:45:58 3 believe.
14:45:58 4 THE COURT: Several hundred documents. I
14:46:00 5 understand a document is a smaller unit than a page, right?
14:46:05 6 MR. RICHARDS: Not necessarily. Several of the
14:46:08 7 documents that were produced are native Excel files. Of
14:46:11 8 course Excel files can be much broader, so those ones a
14:46:15 9 single page for purposes --
14:46:16 10 THE COURT: So when exactly two days ago did you
14:46:20 11 produce this?
14:46:21 12 MR. RICHARDS: I believe it was in the morning
14:46:22 13 two days ago.
14:46:25 14 THE COURT: Is this something where you have
14:46:28 15 some shared space where they have a password and they can
14:46:32 16 log in or do you actually send them a, I don't know, a thumb
14:46:37 17 drive with a bunch of documents?
14:46:39 18 MR. RICHARDS: It's a secure file transfer, so
14:46:42 19 the moment it goes out it's in their e-mail inboxes so they
14:46:46 20 can download it immediately.
14:46:47 21 THE COURT: So, Mr. Jackson, I'm not saying you
14:46:49 22 should have, but have you studied what you got two days ago?
14:46:53 23 MR. JACKSON: Me personally, I have not. We
14:46:55 24 have people on our team that have started looking at those
14:46:57 25 documents. And Judge, just to clarify, Mr. Richards is

14:47:00 1 correct in the way that they're sent. There's a link and
14:47:05 2 separately using your separate password, you click on the
14:47:11 3 link and you can download the files when you enter the
14:47:12 4 password.
14:47:14 5 THE COURT: You were going to say?
14:47:15 6 MR. JACKSON: We've heard it a lot today and
14:47:18 7 honestly we've heard it a lot in the meet and confer,
14:47:21 8 there's a lot of discussion about, you know, Apple will
14:47:26 9 determine what is sufficient or Apple will determine what's
14:47:28 10 relevant. And I think that's part of the problem. We asked
14:47:31 11 for categories of documents. There may be irrelevant
14:47:35 12 documents there, but there may, we believe, very well be
14:47:39 13 lots of relevant information in there as well. So when
14:47:42 14 someone like Apple is taking it upon themselves to determine
14:47:45 15 what's sufficient, sufficient typically means some bare
14:47:49 16 minimum amount of information that because of their
14:47:52 17 knowledge of what that information means in their minds they
14:47:56 18 know or believe at least that they've complied with the
14:47:59 19 requirement. We don't have the same level of background
14:48:02 20 knowledge.
14:48:03 21 THE COURT: Okay. Well, so I accept what your
14:48:06 22 saying, but I think -- I think I'm going to cross out
14:48:12 23 paragraph five too and ask that after you have reviewed the
14:48:37 24 information you got two days ago that you then follow up
14:48:44 25 with Apple as to what you actually need. You know, the way

14:48:53 1 that you -- don't mean you personally necessarily, but
14:48:56 2 whoever wrote the letter with the bullet points of, you
14:49:00 3 know, we need this, we need that -- you know, you can do
14:49:09 4 your job better than I can, but, you know, the more specific
14:49:16 5 you are about what you continue to need after you've
14:49:19 6 reviewed their financial documents, the more productive any
14:49:26 7 meet and confer will be, and in the end the more amenable to
14:49:33 8 a resolution by a judge any further disputes would be. So
14:49:41 9 I'm going to cross that out, though I see Mr. Weinblatt
14:49:46 10 standing.
14:49:46 11 MR. WEINBLATT: So, Your Honor --
14:49:47 12 THE COURT: I'm guessing that's for some reason
14:49:50 13 other than --
14:49:50 14 MR. WEINBLATT: Yeah. I've perused some of
14:49:52 15 Apple's production and what we've noticed is there are PDFs
14:49:57 16 that were produced that have links in the document. You can
14:49:58 17 see there's a difference in color to other file names for
14:50:01 18 documents, and those were not produced. And we're seeing a
14:50:05 19 trend in Apple's production of making productions like that
14:50:08 20 and then wanting us to go back and say these weren't
14:50:11 21 produced. So one of the reasons why we're here is we just
14:50:14 22 want all of the information, not for Apple to say this is
14:50:17 23 relevant or this is what you need.
14:50:19 24 THE COURT: Well, you know, I get a lot of
14:50:20 25 documents that have links in them too and they're not from

14:50:24 1 spammers, a lot of them are just not important.

14:50:29 2 MR. WEINBLATT: I believe Mr. Jackson may have a

14:50:32 3 printout of one of them.

14:50:33 4 THE COURT: Yeah, yeah. All right. Well, one

14:50:36 5 link is not going to do much for me, so I'm going to cross

14:50:40 6 out number five. Review the financial information and get

14:50:47 7 back specifically.

14:50:48 8 There's one other thing I wanted to say. So I'm

14:50:51 9 going to -- so that's going to resolve this, so I'm actually

14:50:55 10 just going to sign this marked up order. Today is the 12th.

14:51:01 11 MR. RICHARDS: Your Honor, just one quick thing

14:51:05 12 to interject with respect to clarification. We had been

14:51:07 13 discussing list of bulleted items that are on the second

14:51:11 14 page of the order. Paragraph three has that phrasing

14:51:15 15 "including but not limited to" there. My understanding of

14:51:18 16 Your Honor's order is that we're going to be producing the

14:51:21 17 documents that are listed in that bullet point list unless

14:51:24 18 we need additional clarification as is previously corrected,

14:51:28 19 but it's focused on that list. Is that correct, Your Honor?

14:51:32 20 THE COURT: I'm sorry, say that again.

14:51:34 21 MR. RICHARDS: My concern is there's the

14:51:36 22 language in the paragraph that is identifying requests for

14:51:39 23 production.

14:51:40 24 THE COURT: Right. It's limited to that list.

14:51:42 25 MR. RICHARDS: Okay. That's what I wanted to

14:51:44 1 confirm, Your Honor.

14:51:46 2 THE COURT: Okay. Which is not to say that in

14:51:48 3 the future they cannot ask for more documents when they get

14:51:52 4 those. There is kind of an iterative process to this.

14:51:58 5 And so one other thing, which is there were

14:52:02 6 maybe in one of e-mails and certainly in the Semitech's

14:52:09 7 letter reference to illegible documents. I don't really

14:52:18 8 know any other way to address that then to just say if you

14:52:22 9 get an illegible document and you think there might be a

14:52:27 10 legible document somewhere, you got to identify it to Apple

14:52:30 11 and say do you have a legible document. You would think if

14:52:34 12 it was illegible in the first place that Apple might not

14:52:38 13 have produced it, but who knows. That's something you got

14:52:40 14 to work out on, you know, document by document. And if you

14:52:45 15 do that, I don't think you'll be bringing that complaint

14:52:49 16 back. I assume that Apple isn't purposefully making these

14:52:54 17 documents illegible.

14:52:56 18 MR. RICHARDS: No, Your Honor.

14:52:57 19 THE COURT: Okay. So I'm going to --

14:52:59 20 MR. JACKSON: Your Honor, I have an example of

14:53:01 21 illegible as well if you wanted to see it.

14:53:04 22 THE COURT: Nope.

14:53:05 23 MR. JACKSON: Just so you know we're not making

14:53:07 24 this up.

14:53:07 25 THE COURT: You know, you should be able to

14:53:09 1 resolve this without me.

14:53:11 2 Okay. So I'm going to give the proposed order

14:53:14 3 to my deputy clerk -- so is some of this -- so my deputy

14:53:31 4 clerk alertly asked, is the specificity in paragraphs three

14:53:41 5 and four something that is revealing very confidential

14:53:46 6 information if it's just published.

14:53:48 7 MR. RICHARDS: Yes, Your Honor. Paragraph four,

14:53:51 8 if you see there, the first word that appears in some of

14:53:55 9 those bullet points is Apple highly confidential information

14:53:59 10 there.

14:54:00 11 THE COURT: Okay. All right. Well, we will

14:54:02 12 redact paragraph four's bullet point list, okay?

14:54:09 13 MR. RICHARDS: Yes. And then there's also the

14:54:11 14 last word that's listed in bullet point four.

14:54:15 15 THE COURT: Sorry. What?

14:54:15 16 MR. RICHARDS: In addition to that, in the first

14:54:17 17 sentence there for the bullet points, the label of the

14:54:19 18 document that is listed, it describes the name of a document

14:54:22 19 at the end of the sentence in bullet point four. The name

14:54:26 20 of that document is also something that Apple considers

14:54:29 21 sensitive information.

14:54:30 22 THE COURT: So I was just going to redact -- in

14:54:38 23 the public version, just redact all the bullet point stuff

14:54:42 24 in paragraph four. I don't see anything else.

14:54:47 25 MR. RICHARDS: The word after Apple's product

14:54:51 1 there, the word after that is one addition that we'd
14:54:55 2 request.
14:54:55 3 THE COURT: Where it begins with a small S?
14:54:57 4 MR. RICHARDS: That's correct, Your Honor.
14:54:58 5 That's referring to a specific type of document that Apple
14:55:10 6 considers sensitive information.
14:55:12 7 THE COURT: Okay. I have my doubts about that,
14:55:14 8 but we'll do that.
14:55:17 9 All right. So that leaves us with the Apple's
14:55:20 10 requests of Semitech, which is essentially for -- well,
14:55:34 11 first off, there was a reference, I think it was actually
14:55:38 12 the other set of letters that said Semitech has produced no
14:55:44 13 documents in this case. That cannot possibly be right, is
14:55:51 14 it?
14:55:54 15 MR. RICHARDS: Yes, Your Honor. The only thing
14:55:56 16 that Semitech has produced in this case are the file
14:55:59 17 histories themselves. We actually sent a letter to
14:56:02 18 Semitech, I think it was maybe a week, two weeks ago now,
14:56:06 19 asking for even the documents that were cited in their
14:56:09 20 infringement contentions to be produced. Those have yet to
14:56:12 21 be produced.
14:56:12 22 THE COURT: Okay. Mr. Jackson, do you have any
14:56:15 23 comment on that?
14:56:16 24 MR. JACKSON: Yes, Your Honor. We are going to
14:56:19 25 produce all of the documents in the client's possession that

14:56:23 1 have been requested by the end of this month. So there have
14:56:27 2 been some -- you know, he mentioned file histories.
14:56:30 3 Personally I thought that the infringement contention
14:56:32 4 documents had been produced, so that's news to me. I'm
14:56:36 5 going to go back and make sure we get those collected and
14:56:39 6 produced if they haven't already been produced. But in
14:56:41 7 addition to that --
14:56:41 8 THE COURT: Well, I mean, infringement
14:56:43 9 contentions, I'm not sure that's a document of -- I wouldn't
14:56:48 10 have understood that to be included. But have you got
14:56:51 11 infringement contentions?
14:56:53 12 MR. RICHARDS: We've gotten contentions, Your
14:56:54 13 Honor, but in those contentions --
14:56:56 14 THE COURT: -- the things that are referred to.
14:56:58 15 MR. RICHARDS: Yes, Your Honor.
14:57:00 16 THE COURT: Okay. All right. Well, Mr.
14:57:05 17 Jackson, yeah, I think February 28th, you should produce
14:57:13 18 those things.
14:57:15 19 MR. JACKSON: February 28th I know we can get
14:57:17 20 the non-infringement contention documents produced. I think
14:57:20 21 we can probably get the infringement contention documents
14:57:23 22 produced. But as I said, that's a new category that I
14:57:26 23 wasn't aware of was at issue. I assumed it had already been
14:57:30 24 produced. The other stuff in the client's possession, which
14:57:33 25 I assume -- infringement contentions is somewhere in the

14:57:36 1 public domain. So at least that's my understanding. So
14:57:41 2 we're going to get the stuff from the client that needs to
14:57:44 3 be produced certainly by February 28th.
14:57:47 4 THE COURT: Okay. Well, do the client stuff by
14:57:49 5 February 28th. But you ought to get the rest of the stuff.
14:57:52 6 The prosecution history is in the public domain too, but you
14:57:55 7 still have to produce it, right?
14:57:57 8 MR. JACKSON: True.
14:57:58 9 THE COURT: Okay. All right. So we've got a
14:58:01 10 request that -- so I have the impression that the inventor
14:58:14 11 formed the Semitech company or formed some company and -- so
14:58:24 12 actually, Mr. Richards, why don't you tell me in less than
14:58:31 13 one minute what the factual scenario is that's leading you
14:58:37 14 to ask for these documents. In other words, the inventor
14:58:46 15 got these three patents in 2021 and after, been working on
14:58:50 16 it for a long time. When -- do you know when the Semitech
14:58:55 17 company was formed? Does it have some existence before the
14:58:57 18 first of these patents? Oh, Mr. Davis.
14:59:01 19 MR. DAVIS: Yes, Your Honor. If it's all right,
14:59:03 20 I'll be addressing this.
14:59:04 21 THE COURT: Yeah, yeah. I just didn't look up
14:59:07 22 to see that you switched.
14:59:08 23 MR. DAVIS: No problem. Yeah, so -- with
14:59:11 24 respect to the formation of the company, I understand that
14:59:13 25 it was later on, more recently. I don't have an exact date

14:59:17 1 in front of me. And Your Honor had asked at the beginning
14:59:22 2 of that, I believe, what was the genesis of these different
14:59:26 3 requests.
14:59:26 4 THE COURT: Yeah, kind of. Try it.
14:59:28 5 MR. DAVIS: We understand there's kind of at
14:59:32 6 least three groupings of discussions and pieces of
14:59:37 7 information that are relevant here. There could be more,
14:59:41 8 but they at least include -- we understand that there was an
14:59:44 9 attempt to sell the patents at one point through a patent
14:59:47 10 broker. We understand that there's also going to be some
14:59:52 11 transfer of the patents -- assignment of the patents, so
14:59:57 12 things relating to ownership. We also understand, related
15:00:00 13 to that, that the named inventor had different employers
15:00:05 14 over time, and so would have had different IP obligations,
15:00:09 15 assignment obligations to those employers.
15:00:12 16 THE COURT: Okay. So let me -- so the one in
15:00:18 17 the middle there, the assignments, is that basically a
15:00:23 18 standing case?
15:00:25 19 MR. DAVIS: Yes, Your Honor. So it's
15:00:26 20 assignments relating to the patent and any other IP
15:00:29 21 agreements that you might have with employers, with his
15:00:33 22 employers during the relevant time periods, those all relate
15:00:37 23 to standing in ownership.
15:00:41 24 THE COURT: And then you said the patent broker.
15:00:47 25 MR. DAVIS: Yes, Your Honor.

15:00:49 1 THE COURT: And then what was the third one?

15:00:51 2 MR. DAVIS: The third one I hadn't mentioned

15:00:53 3 yet, Your Honor.

15:00:54 4 THE COURT: Okay.

15:00:55 5 MR. DAVIS: The third one was anything relating

15:00:57 6 to litigation funding. Specifically we're aware of funding

15:01:05 7 by an entity named Piccadilly and we believe that's tied

15:01:09 8 with another entity named Davidson Kempner. We appreciate

15:01:14 9 that Your Honor has issued prior orders on that topic, and I

15:01:17 10 can go further into that.

15:01:18 11 THE COURT: Let's do that one third. Because I

15:01:21 12 understood somewhere in here that I think Mr. Jackson has

15:01:26 13 said that he's going to -- or maybe he hasn't. The

15:01:31 14 assignments of -- Mr. Jackson. Yeah, sorry. I just wanted

15:01:36 15 to make sure you knew I was asking you a question.

15:01:40 16 MR. JACKSON: Yes, Your Honor.

15:01:40 17 THE COURT: Mr. Davis, just stay there.

15:01:43 18 So the request for essentially the assignment

15:01:49 19 history of the patents, documents relating to that, as well

15:01:54 20 as documents relating to the inventor's agreements, if any,

15:02:02 21 with his employers, is that something you're going to

15:02:06 22 produce?

15:02:06 23 MR. JACKSON: Yes. We've committed to producing

15:02:09 24 anything that touches on standing. So anything that

15:02:13 25 validates standing, in particular.

15:02:14 1 THE COURT: When are you going to produce that
15:02:17 2 by?
15:02:18 3 MR. JACKSON: Much of that will be in the
15:02:20 4 February 28th production, if not all of it. Again, all of
15:02:23 5 it should be on February 28th.
15:02:25 6 THE COURT: Okay. All right. So that's number
15:02:34 7 two in your proposed order, Mr. Davis, right, documents
15:02:38 8 relating to standing including any agreements involving the
15:02:41 9 named inventor, agreements including those agreements
15:02:44 10 involving current and former employees. That's --
15:02:50 11 MR. DAVIS: Yes, Your Honor.
15:02:51 12 THE COURT: So we'll make that within -- well,
15:03:01 13 so in any event, that's February 28th.
15:03:06 14 Okay. And then the other part is the patent
15:03:11 15 broker. Let's do that second.
15:03:16 16 Mr. Jackson, was there a patent broker who made
15:03:23 17 some efforts to settle these patents?
15:03:27 18 MR. JACKSON: Well, we don't know who they're
15:03:29 19 referring to. There is a patent broker, but I don't know if
15:03:32 20 it's the same broker that they're referring to because they
15:03:35 21 haven't specified who that entity is.
15:03:38 22 THE COURT: I don't think they have to specify
15:03:39 23 the patent broker, all they have to say is patent broker and
15:03:44 24 if you know a patent broker, right?
15:03:46 25 MR. JACKSON: Yes.

15:03:46 1 THE COURT: So are you going to produce anything
15:03:48 2 in relation to the patent broker?
15:03:51 3 MR. JACKSON: I have not looked at the documents
15:03:54 4 myself. These are documents from the client. But if there
15:03:58 5 are unprivileged, you know, I'm reaching out to engage you
15:04:01 6 type of e-mails, certainly.
15:04:03 7 THE COURT: Well, it's hard for me to believe
15:04:06 8 that anything with a patent broker would be privileged.
15:04:13 9 so -- so I'm going to direct that as to the -- do you have a
15:04:19 10 sense -- actually I should ask this, I suppose. Was the
15:04:23 11 patent broker engaged after 2021?
15:04:26 12 MR. JACKSON: I honestly don't know, Your Honor.
15:04:29 13 As I said, I'm not sure exactly who they are thinking of,
15:04:33 14 but they've indicated they're planning to subpoena somebody,
15:04:36 15 so I don't know that it's the same entity, but with respect
15:04:40 16 to the broker that I'm aware of, I don't know when the
15:04:42 17 engagement occurred.
15:04:44 18 And just if I could point out, Your Honor, at
15:04:46 19 some point there likely would be a common interest privilege
15:04:49 20 that would attach. At least initially there's going to be
15:04:53 21 more of an introduction and sort of here's what I have, and,
15:04:56 22 you know, let's form a relationship of some sort. But once
15:05:00 23 a relationship is formed, I think there's going to be a
15:05:02 24 common interest that attaches from that point forward. Both
15:05:05 25 entities, both the patent owner as well as the broker are

15:05:08 1 going to have an interest in being successful in whatever
15:05:12 2 vehicle they decide to go with respect to --
15:05:14 3 THE COURT: Yeah, that's the commercial success.
15:05:16 4 I mean, I think your argument is not a patent broker that
15:05:20 5 has some common interest privilege, you know. If you feel
15:05:25 6 the need to assert that, you can do it and you can list the
15:05:28 7 documents and we can go from there, but I think that's -- in
15:05:33 8 my experience, that's a losing argument.
15:05:40 9 So if you have any -- so I'm going to ask, first
15:05:46 10 off, that if you do nothing else by February 28th, identify
15:05:51 11 the patent broker that you know about to Mr. Davis, okay?
15:05:55 12 MR. JACKSON: Yes, Your Honor.
15:05:58 13 THE COURT: If you have any documents relating
15:06:01 14 to the patent broker, and I'm imagining you do or your
15:06:06 15 client does -- sorry, not your client. The inventor does.
15:06:09 16 Well, actually the inventor, is he, so to speak, a
15:06:13 17 consultant with Semitech?
15:06:15 18 MR. JACKSON: So, again, my understanding is
15:06:19 19 that the inventor was the original owner of the patents and
15:06:23 20 he created Semitech. So my understanding is it's his
15:06:26 21 company. And so --
15:06:27 22 THE COURT: Is it his company today?
15:06:30 23 MR. JACKSON: His company today.
15:06:31 24 THE COURT: Okay. Well, then --
15:06:35 25 MR. JACKSON: At least in part.

15:06:36 1 THE COURT: So if there was a patent broker,
15:06:39 2 it's inconceivable that he doesn't have documents relating
15:06:42 3 to it, right?
15:06:43 4 MR. JACKSON: I assume if they exist that he
15:06:45 5 would, yes. And that's part of the -- I just don't know
15:06:52 6 what the retention policies were, for example. I don't want
15:06:56 7 to commit to something, Your Honor, and then I turn out to
15:06:59 8 be wrong.
15:06:59 9 THE COURT: Okay. I understand that. Well, so
15:07:08 10 I'm going to direct -- I'm going to say that by March 13th,
15:07:17 11 while they're busy producing stuff to you, you need to
15:07:21 12 either produce everything that you have about the patent
15:07:24 13 broker or whatever you don't produce submit a privilege log
15:07:34 14 with your claimed privilege, okay?
15:07:37 15 MR. JACKSON: Understood, Your Honor.
15:07:38 16 THE COURT: All right. So that takes care of
15:07:40 17 that.
15:07:41 18 Then there's the litigation funding. And so
15:07:47 19 when do you think, Mr. Davis, this litigation funding was
15:07:53 20 taken place, sometime after 2021 and before this suit was
15:07:57 21 filed earlier this year or earlier last year?
15:08:00 22 MR. DAVIS: Last year. I believe that's
15:08:02 23 correct, Your Honor. We don't have further information,
15:08:05 24 other than the fact that there was a security interest that
15:08:08 25 was registered at the patent office by Piccadilly, one of

15:08:19 1 the funders.

15:08:23 2 THE COURT: Okay. So litigation funding is more

15:08:39 3 sensitive and it's also more remote from any damages

15:08:55 4 analysis, because it's about the success at trial, it's not

15:09:03 5 at -- I'll let you speak in a bit, Mr. Davis. It's not --

15:09:12 6 it's a step further removed than trying to sell the patents

15:09:18 7 from the value of the patents. And unlike the patent broker

15:09:22 8 thing, you know, in the past I've seen it, you know,

15:09:32 9 basically the defendant wants to see how much financing the

15:09:35 10 plaintiff has. And that's, I think, more for tactical

15:09:45 11 reasons more than it actually has any relevance. So my

15:09:49 12 inclination here is to say to the plaintiff that you need to

15:10:06 13 identify -- and so I guess one other thing is, sometimes

15:10:13 14 litigation funding, if it's not done correctly, also has an

15:10:17 15 impact on standing. So that's part of the reason why

15:10:25 16 often -- and I'm often thinking of permitting discovery into

15:10:30 17 that. And so my inclination is to allow, because it's not

15:10:46 18 briefed up here, is to basically sign the order with the

15:10:52 19 understanding that the response may be a whole lot of

15:10:57 20 privilege log. And in any event, contrary to my normal

15:11:05 21 policy of not allowing partial redactions, allowing, if it

15:11:13 22 is produced, for the plaintiff to redact the financial terms

15:11:20 23 so that you have -- so that the defendant doesn't see how

15:11:34 24 much funding the plaintiff actually has. But, as I said,

15:11:43 25 I've had more than one case where the litigation funding

15:11:46 1 resulted in the litigation funder having enough control in
15:11:55 2 the litigation so there was a serious standing issue. So in
15:11:58 3 any event, that's what I'm inclined to do.
15:12:01 4 Mr. Davis, you wanted to speak. Maybe Mr.
15:12:04 5 Jackson wants to speak. What do you want to say?
15:12:07 6 MR. DAVIS: Yes, Your Honor. Thank you. And I
15:12:09 7 understand the Court's preference with respect to the
15:12:11 8 litigation funding agreement. There's an additional set of
15:12:17 9 communications that we would also like to address, Your
15:12:21 10 Honor. Prior to the actual signing of the funding
15:12:27 11 agreement, the parties would be having a negotiation
15:12:30 12 concerning what the terms of that funding agreement should
15:12:32 13 be, and there are three topics in particular that would come
15:12:36 14 up that we believe are relevant to the case. One is the
15:12:40 15 value of the patents where the parties -- that those parties
15:12:45 16 being Semitech and the funder, wouldn't be aligned on what
15:12:49 17 that value is, so any discussion of the value of the
15:12:53 18 patents. Second is with the scope of the -- what the scope
15:12:56 19 of the patents are and relatedly strengths and weakness of
15:13:00 20 infringement and validity. Again, the parties wouldn't be
15:13:03 21 aligned on that. Semitech would be saying it has a strong
15:13:08 22 case and the funder may have the opposite view or may be
15:13:12 23 trying to poke holes in that as they're trying to negotiate
15:13:15 24 the funding agreement.
15:13:16 25 THE COURT: So before you go on to the third

15:13:18 1 thing, what's the relevance of the funder saying your
15:13:21 2 patents are terrible?
15:13:22 3 MR. DAVIS: Your Honor, it's a correspondence
15:13:25 4 and a back and forth between the parties. It's at minimum
15:13:28 5 relevant what Semitech has said about its patents. And I
15:13:33 6 understand there could be more of a debate on what the
15:13:36 7 funder has said, but at minimum --
15:13:38 8 THE COURT: But Semitech is going to say these
15:13:40 9 are the greatest patents in the world. How does that help
15:13:43 10 you?
15:13:44 11 MR. DAVIS: Or maybe they don't. Maybe they say
15:13:46 12 something else regarding the scope of the patents. I don't
15:13:50 13 know what that correspondence was. But at minimum there's
15:13:52 14 no common interest at this point regarding that subject --
15:13:56 15 THE COURT: No, no. I understand that part of
15:13:58 16 your argument. What I don't understand is how this has any
15:14:01 17 relevance to anything.
15:14:03 18 MR. DAVIS: Well, Your Honor, presumably -- and
15:14:09 19 as courts have recognized, those discussions wouldn't be
15:14:13 20 about things that are irrelevant. They'd be about things
15:14:16 21 that are relevant to the case. So Semitech's perspectives
15:14:21 22 on what the scope of its patents are, what they do and don't
15:14:27 23 cover or in the third topic is relatedly is who owns those
15:14:32 24 patents and who has rights to them. So those three topics,
15:14:36 25 value of the patents, their scope, and their ownership and

15:14:40 1 standing, anything in the negotiations leading up to the
15:14:43 2 funding agreement, that wouldn't be covered by a common
15:14:47 3 interest.
15:14:48 4 THE COURT: Okay. Mr. Jackson, I said I'd give
15:14:53 5 you a chance too.
15:14:54 6 MR. JACKSON: Thank you, Your Honor. Thank you,
15:14:55 7 Your Honor. So this is a lot of fishing, right? There's
15:14:59 8 no -- he's assuming a lot of things that he thinks may exist
15:15:03 9 that may or may not exist. I think your point is well
15:15:07 10 taken. What's the relevance? I don't think -- contrary to
15:15:10 11 the suggestion, I don't think that the patent owner is going
15:15:12 12 to say my patents have holes, I'm aware of them, it's -- the
15:15:17 13 patents are not worth very much. If you decide to invest or
15:15:22 14 provide funding, then good luck with getting your money
15:15:26 15 back. I don't think that's a realistic view of what
15:15:29 16 happened. But that's really the basis, the implied basis
15:15:33 17 for making the request. As Your Honor said, what the funder
15:15:37 18 may or may not say is really completely irrelevant. They're
15:15:40 19 not a party. They don't own the patents. I'm not even sure
15:15:43 20 they would have made any comments. But assume that they did
15:15:46 21 make comments, those would be completely irrelevant. And
15:15:49 22 frankly, the whole discussion of valuation, I mean, I take
15:15:52 23 issue really with foundation number one on that issue.
15:15:55 24 Valuation is a very general word that can have different
15:15:59 25 meanings in the patent context depending on the particular

15:16:02 1 situation. Sale of a patent, for example, is one situation.
15:16:06 2 Licensing is another.
15:16:07 3 THE COURT: Well, no, no. That's, I think,
15:16:10 4 true, but that's a question to be resolved where everybody
15:16:15 5 has the information. You know, sometimes there are
15:16:24 6 circumstances, peoples' estimates on the value of the patent
15:16:28 7 are, particularly the owner of the patent's estimate of the
15:16:36 8 value is irrelevant. Sometimes it's not. But it's kind of
15:16:41 9 hard to tell until you have the context.
15:16:44 10 MR. JACKSON: So I can respond two ways. Two
15:16:47 11 points, rather. First of all, there were no formal
15:16:51 12 valuations where somebody sketched out an analysis and came
15:16:54 13 up with the value of the patent. We've looked. There
15:16:56 14 aren't any of those. Other parties may have done that, but
15:17:00 15 our client certainly didn't do that, doesn't have any of
15:17:04 16 those either.
15:17:05 17 Secondly, I think -- this is going to be a
15:17:08 18 reasonable royalty case. And so you have to tie relevance
15:17:11 19 back to the reasonable royalty analysis. And we don't have
15:17:15 20 the parties at issue in the funding context that we have in
15:17:18 21 the reasonable royalty analysis. The royalty analysis, as
15:17:22 22 Your Honor well knows, you have to have the licensor, the
15:17:25 23 patent owner, and the licensee, somebody who is making the
15:17:29 24 product, presumed to infringe, presumes the patents are
15:17:32 25 valid. None of that is at play, for example, in the funding

15:17:36 1 context. Each party may have their own views, but there
15:17:39 2 isn't that assumption that's what we're dealing with. There
15:17:40 3 isn't a licensor, there isn't a licensee. And then of
15:17:44 4 course the factors that go into the actual analysis, for
15:17:48 5 example, under Georgia Pacific where you look at
15:17:50 6 profitability and success of the invention, etc., etc., none
15:17:54 7 of that is at play.
15:17:56 8 THE COURT: No, no. That's all consistent with
15:17:57 9 what I said, which is, you know, how much relevance it has
15:18:07 10 is an issue for -- I didn't say this -- but an issue for
15:18:11 11 another day. But the fact that it has some marginal
15:18:15 12 relevance, that's hard to argue. So you haven't addressed
15:18:18 13 the question of who owns the patents.
15:18:21 14 MR. JACKSON: Semitech owns the patents.
15:18:23 15 THE COURT: No, no, no. I mean, Mr. Davis says
15:18:26 16 three things we're interested in, discussion that would
15:18:31 17 reflect on the ownership of the patents. To the extent
15:18:42 18 there is any, that would be relevant, wouldn't it?
15:18:45 19 MR. JACKSON: Yes. And I think that's -- I
15:18:48 20 didn't get his three bullet points written down exactly, but
15:18:52 21 if we're talking about standing, we've committed to giving
15:18:55 22 the standing documents. So anything that touches on
15:18:57 23 ownership, ownership of rights, whatever, transfer of
15:19:02 24 rights, whatever there might be, we've committed to giving
15:19:06 25 those.

15:19:07 1 THE COURT: All right. Well, you have anything
15:19:12 2 more you want to say, Mr. Davis?
15:19:15 3 MR. DAVIS: Just a couple quick points, Your
15:19:17 4 Honor, that I thought might be helpful. These are
15:19:20 5 Semitech's -- cited cases that Semitech cites to in its
15:19:25 6 briefing, particularly *Entangled Media* has some language
15:19:28 7 that's helpful to this issue. It says, "If the withheld
15:19:29 8 documents include some that comment on the value of the
15:19:32 9 asserted patents and or the merits of the claims and
15:19:37 10 defenses asserted in the case, such documents should be
15:19:39 11 considered relevant." This is the authority that Semitech
15:19:43 12 has been citing. I believe Your Honor's decision in *TQ*
15:19:49 13 *Delta v. ADTRAN* as well as *Acceleration Bay* are consistent
15:19:52 14 with that.
15:19:52 15 MR. JACKSON: So, Your Honor, if we don't have
15:19:54 16 any documents that comment on the value or the infringement,
15:19:57 17 then we don't.
15:19:58 18 THE COURT: Well, that's a different -- if you
15:19:59 19 don't have them, you don't have them.
15:20:01 20 MR. JACKSON: Right.
15:20:03 21 THE COURT: So.
15:20:04 22 MR. JACKSON: My point, Your Honor, was what he
15:20:07 23 said was if there -- there was an "if/then" clause there.
15:20:11 24 If the documents have this information in it, then they're
15:20:14 25 relevant. But if we don't have the documents, then they're

15:20:17 1 not relevant and we shouldn't have to produce them, if we
15:20:20 2 don't have documents commenting on the value or merits of
15:20:24 3 the case exchanged between the two entities.
15:20:27 4 THE COURT: All right. So I'm not sure that --
15:20:35 5 all right. So here's -- Mr. Jackson, the -- I have to say
15:22:05 6 at some point I imagine if there is a litigation funding, as
15:22:16 7 there seems to be here, the parties, through the litigation
15:22:24 8 funding, whether it was Semitech and some other company,
15:22:29 9 they came to an agreement. The involvement of your law
15:22:35 10 firm, is that after the agreement was formed or before, if
15:22:40 11 you know?
15:22:41 12 MR. JACKSON: Your Honor, I joined this firm
15:22:43 13 November 3rd of last year. I don't have any knowledge of
15:22:46 14 what happened prior to that. And I haven't seen any
15:22:48 15 information about that period of time.
15:22:50 16 THE COURT: Okay. Well, that's -- I understand
15:22:54 17 that answer.
15:22:56 18 Do you have a sense of how much documentation
15:23:11 19 Semitech has? You know, you said you're going to produce
15:23:16 20 some other things on February 28th. How big of a stack of
15:23:22 21 documents are we talking about?
15:23:25 22 MR. JACKSON: My understanding is it's not a
15:23:28 23 large volume.
15:23:28 24 THE COURT: Yeah, so not large, like if it was
15:23:31 25 paper, would it be, I don't know, a foot high?

15:23:36 1 MR. JACKSON: Your Honor, the way it was
15:23:37 2 characterized to me was not large. I don't have a good
15:23:40 3 sense. It's mostly going to be electronic. I think e-mail
15:23:44 4 type stuff that we're going to produce, you know, without
15:23:47 5 having to go through the ESI procedures, but, yes, honestly
15:23:53 6 Your Honor, I don't have any characterization beyond that.
15:23:55 7 THE COURT: Okay. And I take it, Mr. Davis,
15:24:28 8 from the way you've talked about before Semitech came to an
15:24:34 9 agreement with the litigation funder, is you're using the
15:24:39 10 date of that agreement as kind of a cutoff?
15:24:43 11 MR. DAVIS: Your Honor, I think there's two
15:24:47 12 categories of information. We are requesting all -- we
15:24:49 13 disagree overall with the common interest claim. I
15:24:54 14 understand the Court may disagree with that. I just put
15:24:57 15 that out there. But it creates two different segments of
15:25:01 16 time. There's presigning of the litigation funding
15:25:03 17 agreement and post. And there's also the litigation funding
15:25:07 18 agreement. I guess it's in the middle. So at minimum what
15:25:12 19 should be produced is the presigning, because we think there
15:25:19 20 can be no common interest on those documents there. We
15:25:23 21 appreciate the Court's suggestion. We'd ask for the whole
15:25:27 22 agreement, but we understand that the Court's, if I
15:25:31 23 understand you correctly, saying the agreement should be
15:25:33 24 produced, but the funding agreement should be produced but
15:25:37 25 the amount should be redacted. We'd request post funding

15:25:40 1 agreement correspondence as well. We understand Your Honor
15:25:44 2 may disagree on that. That is part of the overall request.
15:25:49 3 THE COURT: Okay.
15:25:52 4 MR. JACKSON: Your Honor, if I could just make
15:25:54 5 one comment about the middle category. Mr. Davis --
15:25:57 6 THE COURT: The agreement itself?
15:25:58 7 MR. JACKSON: The agreement itself. Just wanted
15:26:01 8 to clarify. So typically these are relatively complex
15:26:03 9 agreements. There's not going to be just a dollar amount
15:26:08 10 someplace in an agreement to be redacted. I'm just telling
15:26:11 11 you this, Your Honor, because I don't want there to be
15:26:13 12 certain expectations that don't turn out to be true.
15:26:16 13 Basically the commercial terms, the financial related terms
15:26:19 14 we would certainly redact. I think that those are very
15:26:23 15 sensitive. They're not relevant, as Your Honor said
15:26:25 16 earlier.
15:26:26 17 THE COURT: Well, by commercial terms, other
15:26:30 18 than the amount funded and maybe the timetable for funding
15:26:35 19 that amount.
15:26:41 20 MR. JACKSON: So I haven't seen this agreement
15:26:44 21 myself, but often times there are repayment schedules or
15:26:48 22 percentages that will be, you know, returned to the
15:26:53 23 interested parties in these agreements. So that's, you
15:26:57 24 know, financial in nature, but it's not a dollar figure
15:27:02 25 necessarily. So all of that information seems to us as

15:27:05 1 highly irrelevant.

15:27:05 2 THE COURT: All right. So here's what I'm going

15:27:07 3 to do. I'm going to direct that you produced the litigation

15:27:10 4 funding agreement. You can remove or redact any of what you

15:27:16 5 called commercial information about dollars, the amounts

15:27:26 6 loaned or the repayment schedule, anything that where the

15:27:31 7 numbers would give -- show how much is actually the subject

15:27:38 8 of the agreement. You know, when Mr. Davis gets the

15:27:46 9 agreement, if there's something in there that he thinks --

15:27:51 10 you know, that can be the subject of further discussion.

15:27:55 11 But I don't think -- I agree with you at this point that

15:27:58 12 there's no reason to produce any of the numbers.

15:28:02 13 On the other hand, if there's something about

15:28:04 14 obviously ownership interests or right to control or, you

15:28:10 15 know procedures like that, obviously that's relevant, that

15:28:14 16 could be relevant to standing and, you know, that shouldn't

15:28:19 17 be redacted. But the numbers, yeah, I think you should

15:28:27 18 redact those and hopefully that will be the end of that.

15:28:31 19 MR. JACKSON: Your Honor, I think that we -- I

15:28:34 20 don't recall if this specifically was teased out in the

15:28:37 21 communications back and forth, but I think consistent with

15:28:39 22 what we said previously, if there are those kind of

15:28:44 23 standing-related terms in the agreement, we would certainly

15:28:48 24 be willing to provide those. We're not -- we're not trying

15:28:51 25 to hide those.

15:28:52 1 THE COURT: What I'm saying is provide the whole
15:28:54 2 agreement, but you can redact out the numbers that seem to
15:29:02 3 be sensitive and relevant financial information.
15:29:04 4 MR. JACKSON: The commercial stuff, yes, Your
15:29:06 5 Honor.
15:29:06 6 THE COURT: All right. I think the only reason
15:29:09 7 I hesitate with the commercial stuff is it's all commercial.
15:29:13 8 MR. JACKSON: Well, in my mind, I was
15:29:15 9 separating --
15:29:16 10 THE COURT: So by commercial, if you mean
15:29:18 11 numbers, that's what we're talking about.
15:29:21 12 MR. JACKSON: Numbers and the structure of the
15:29:23 13 repayments. Assuming that there's, you know, any recovery,
15:29:28 14 that kind of thing. So we're talking about earlier the who
15:29:32 15 gets what and that sort of thing. I think all of that is
15:29:36 16 irrelevant.
15:29:37 17 THE COURT: So I'm not sure it's irrelevant.
15:29:41 18 You know, the -- but where there's a percentage or a number
15:29:56 19 relating to money, you can redact that and it will be up to
15:30:12 20 Mr. Davis to raise an issue if he thinks you've
15:30:15 21 over-redacted, okay?
15:30:17 22 MR. JACKSON: Okay, Your Honor. And is I said,
15:30:19 23 I haven't seen the agreement.
15:30:21 24 THE COURT: Understood. So you know, the thing
15:30:23 25 that's left is this question of the communication before

15:30:28 1 there was an agreement, and taking it that I suspect that
15:30:34 2 the communications were not too extensive, I'm going to
15:30:43 3 direct that you produce all of the ones that predate the
15:30:47 4 agreement. Again, you can redact things where people are
15:30:51 5 asking for a certain amount or offering a certain amount and
15:31:10 6 again, Mr. Davis will preserve the right to complain about
15:31:14 7 the redactions. But I -- I think it would be a lot easier
15:31:19 8 to deal with a concrete document where there was a few
15:31:23 9 things missing that you can just talk about this in general
15:31:28 10 terms. So I'm going to ask that you do that by March 13th.
15:31:45 11 And I'm going to leave the order the way it's written up by
15:31:52 12 Apple, but the transcript here will count as an order of the
15:32:00 13 Court too, and so the written order, which is brief, should
15:32:07 14 be read in the context of the various things that I've said
15:32:12 15 here. All right, Mr. Jackson?
15:32:13 16 MR. JACKSON: The transcript limits the written
15:32:16 17 text, Your Honor?
15:32:17 18 THE COURT: Yes.
15:32:18 19 MR. JACKSON: Okay. Thank you, Your Honor.
15:32:20 20 THE COURT: All right.
15:32:21 21 MR. DAVIS: Yes, Your Honor. Thank you.
15:32:22 22 THE COURT: Okay. So I'm going to sign this
15:32:25 23 February 12th. And so this says March 13th, but the things
15:32:40 24 that you have said you are going to produce by
15:32:42 25 February 28th, you should go ahead and do that date, okay?

15:32:46 1 MR. JACKSON: We will, Your Honor.

15:32:46 2 THE COURT: All right. Well, thank you for --

15:32:48 3 I'm going to -- all right. And so we'll keep one of these

15:32:55 4 Semitech demonstratives for the -- to put in the -- do you

15:33:02 5 have an electronic version of it?

15:33:04 6 MR. DAVIS: Yes, Your Honor.

15:33:05 7 THE COURT: Can you just file an electronic

15:33:08 8 version of it, because I think we're supposed to keep a

15:33:11 9 record of these demonstratives these days.

10 MR. DAVIS: I don't believe there's anything

15:33:15 11 confidential, but I'll double check.

15:33:15 12 THE COURT: Okay. Well, double check with the

15:33:16 13 other side, but otherwise see if you can't file it tomorrow,

15:33:18 14 okay?

15:33:19 15 MR. DAVIS: Yes, Your Honor.

15:33:20 16 THE COURT: All right. Thank you for your time

15:33:23 17 today.

15:33:23 18 COURT CLERK: All rise.

15:33:26 19 (Court adjourned at 3:33 p.m.)

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I hereby certify the foregoing is a true and

24 accurate transcript from my stenographic notes in the proceedings.

25

1 /s/ Stacy M. Ingram, RPR
Official Court Reporter
2 U.S. District Court
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10
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15
16
17
18
19
20
21
22
23
24
25

$

$200 [2] - 26:3, 26:11

'

'16 [1] - 25:4

/

/s [1] - 59:1

1

1 [1] - 23:24
12 [1] - 1:10
12th [3] - 6:15, 33:10, 57:23
13th [7] - 6:18, 8:22, 11:21, 19:11, 44:10, 57:10, 57:23
14th [1] - 6:16
19 [1] - 22:14

2

2015 [5] - 24:1, 24:7, 25:4, 26:11, 26:13
2016 [1] - 24:1
2021 [6] - 21:5, 23:24, 29:11, 38:15, 42:11, 44:20
2026 [1] - 1:10
25 [1] - 3:7
25-504 [1] - 2:13
25-504-RGA [1] - 1:4
28th [11] - 8:20, 37:17, 37:19, 38:3, 38:5, 41:4, 41:5, 41:13, 43:10, 52:20, 57:25
2:00 [1] - 1:10

3

31 [1] - 22:21
3:33 [1] - 58:19
3rd [1] - 52:13

5

5 [1] - 3:10

6

6 [1] - 28:11
6A [1] - 1:11

7

7 [5] - 24:2, 24:8, 25:5, 26:14, 26:25
71-1 [1] - 3:10

8

8 [2] - 26:17, 27:5
844 [1] - 1:13

A

A10 [5] - 24:18, 25:2, 25:3, 26:20, 26:24
A11 [3] - 26:18, 26:20, 27:5
A12 [1] - 26:24
A13 [1] - 26:24
A8 [3] - 24:15, 24:20, 25:1
A9 [3] - 24:15, 24:20, 25:1
ability [1] - 28:8
able [3] - 11:15, 21:23, 34:25
absorb [1] - 27:9
Acceleration [1] - 51:13
accept [1] - 31:21
accepting [1] - 27:15
accurate [1] - 58:24
accused [16] - 10:12, 10:25, 11:5, 16:22, 18:2, 18:6, 18:25, 20:1, 21:18, 21:23, 21:24, 23:3, 24:16, 24:18, 25:2, 26:13
acknowledgment [1] - 21:8
actual [4] - 12:21, 26:7, 46:10, 50:4
add [1] - 19:9
addition [4] - 11:4, 35:16, 36:1, 37:7
additional [7] - 5:4, 6:10, 12:17, 12:18, 16:16, 33:18, 46:8
address [5] - 3:17, 8:12, 13:3, 34:8, 46:9
addressed [1] - 50:12
addressing [1] - 38:20
adjourned [1] - 58:19
ADTRAN [1] - 51:13
advantages [1] - 24:12
afternoon [3] - 2:14, 2:15, 2:22
ago [9] - 12:25, 28:23, 28:24, 29:3, 30:10, 30:13, 30:22, 31:24, 36:18
agree [2] - 17:4, 55:11
agreement [39] - 3:13, 3:15, 17:1, 17:3, 17:5, 17:16, 17:17, 17:21, 17:22, 18:11, 18:13, 18:19, 46:8, 46:11, 46:12, 46:24, 48:2, 52:9, 52:10, 53:9, 53:10, 53:17, 53:18, 53:22, 53:23, 53:24, 54:1, 54:6, 54:7, 54:10, 54:20, 55:4, 55:8, 55:9, 55:23, 56:2, 56:23, 57:1, 57:4
agreements [20] - 11:4, 12:22, 14:8, 15:3, 15:7, 15:8, 16:17, 16:22, 17:19, 17:20, 18:4, 19:16, 23:2, 39:21, 40:20, 41:8, 41:9, 54:9, 54:23
ahead [1] - 57:25
alertly [1] - 35:4
aligned [2] - 46:16, 46:21
allow [1] - 45:17
allowing [2] - 45:21
amenable [1] - 32:7
amended [1] - 19:8
amount [9] - 5:12, 7:21, 31:16, 53:25, 54:9, 54:18, 54:19, 57:5
amounts [1] - 55:5
analyses [2] - 25:7, 29:15
analysis [8] - 24:9, 24:10, 45:4, 49:12, 49:19, 49:21, 50:4
Anderson [1] - 2:23
ANDERSON [1] - 2:2
ANDREWS [1] - 1:16
annalist [1] - 27:12
answer [4] - 3:23, 7:7, 27:7, 52:17
Ansys [2] - 4:23, 7:5
apologize [1] - 20:8
APPEARANCES [2] - 1:19, 2:1
Apple [45] - 2:13, 2:24, 3:1, 3:5, 3:9, 3:16, 3:18, 9:13, 9:15, 9:16, 10:19, 11:6, 12:25, 13:9, 13:13, 16:4, 17:19, 17:24, 19:14, 19:16, 21:1, 21:9, 23:2, 23:12, 23:13, 23:16, 25:13, 25:22, 26:16, 27:4, 27:7, 28:7, 31:8, 31:9, 31:14, 31:25, 32:22, 34:10, 34:12, 34:16, 35:9, 35:20, 36:5, 57:12
APPLE [1] - 1:6
Apple's [11] - 3:19, 14:19, 16:21, 19:15, 21:7, 24:25, 25:11, 32:15, 32:19, 35:25, 36:9
Apple/TSMC [1] - 18:16
apportionment [2] - 23:21, 27:24
appreciate [3] - 17:12, 40:8, 53:21
approach [1] - 22:12
appropriate [1] - 25:9
area [1] - 14:25
argue [2] - 9:6, 50:12
argument [3] - 43:4, 43:8, 47:16
aspects [1] - 18:16
assert [1] - 43:6
asserted [2] - 51:9, 51:10
assignment [3] - 39:11, 39:15, 40:18
assignments [3] - 39:17, 39:20, 40:14
assume [4] - 34:16, 37:25, 44:4, 48:20
assumed [1] - 37:23
assuming [4] - 16:16, 18:19, 48:8, 56:13
assumption [1] - 50:2
attach [1] - 42:20
attached [1] - 3:4
attaches [1] - 42:24
attempt [1] - 39:9
authority [1] - 51:11
aware [8] - 11:7, 11:24, 11:25, 12:3, 37:23, 40:6, 42:16, 48:12

B

background [1] - 31:19
ballpark [1] - 25:15
bare [1] - 31:15
based [3] - 15:25, 19:16, 19:19
basis [3] - 15:18, 48:16
Bay [1] - 51:13
bearing [1] - 8:11
became [1] - 12:3
BEFORE [1] - 1:16
beginning [1] - 39:1
begins [1] - 36:3
behalf [2] - 2:23, 3:18
believes [1] - 12:17
benchmark [2] - 25:1, 25:6
best [2] - 21:11, 28:10
better [3] - 11:18, 18:20, 32:4
between [9] - 3:9, 10:24, 12:24, 14:6, 17:1, 18:4, 19:16, 47:4, 52:3
beyond [2] - 23:6, 53:6
big [3] - 28:7, 29:24, 52:20
bigger [1] - 16:24
bit [1] - 45:5
blows [1] - 14:2
breadth [1] - 8:10
breakdown [1] - 29:20
brief [1] - 57:13
briefed [1] - 45:18
briefing [1] - 51:6
briefly [1] - 3:17
bring [2] - 24:12, 24:13
bringing [1] - 34:15
broad [1] - 17:25
broader [2] - 17:12, 30:8
broker [20] - 39:10, 39:24, 41:15, 41:16, 41:19, 41:20, 41:23, 41:24, 42:2, 42:8, 42:11, 42:16, 42:25, 43:4, 43:11, 43:14, 44:1, 44:13, 45:7
brought [1] - 29:5

bucket [2] - 4:17, 4:18
bullet [11] - 4:23, 6:19, 32:2, 33:17, 35:9, 35:12, 35:14, 35:17, 35:19, 35:23, 50:20
bulleted [1] - 33:13
bunch [3] - 3:12, 4:3, 30:17
busy [1] - 44:11
BY [5] - 1:20, 1:23, 2:3, 2:5, 2:6

C

C.A [1] - 1:4
calendar [1] - 6:15
candidly [1] - 4:19
cannot [2] - 34:3, 36:13
care [1] - 44:16
case [15] - 6:23, 9:12, 17:6, 23:7, 27:4, 36:13, 36:16, 39:18, 45:25, 46:14, 46:22, 47:21, 49:18, 51:10, 52:3
cases [1] - 51:5
categories [5] - 3:19, 4:2, 14:4, 31:11, 53:12
category [2] - 37:22, 54:5
central [2] - 25:19, 25:23
certain [3] - 54:12, 57:5
certainly [9] - 8:7, 8:9, 22:11, 34:6, 38:3, 42:6, 49:15, 54:14, 55:23
certify [1] - 58:23
challenge [1] - 4:25
chance [1] - 48:5
change [3] - 24:23, 25:6, 25:10
changing [1] - 19:11
characterization [1] - 53:6
characterized [1] - 53:2
check [3] - 30:1, 58:11, 58:12
chip [8] - 17:6, 17:8, 23:17, 24:18, 25:2, 25:17, 27:3
chips [27] - 9:15, 9:20, 10:13, 12:11, 13:10, 15:11, 15:17, 16:22, 18:5, 18:6, 18:12, 19:1, 23:13, 23:14, 23:15, 24:15, 24:16, 24:22, 25:14, 25:16, 27:2, 27:13, 27:22, 29:13, 29:16
circumstances [1] - 49:6
cited [2] - 36:19, 51:5
cites [1] - 51:5
citing [1] - 51:12
claim [2] - 4:9, 53:13
claimed [1] - 44:14
claims [1] - 51:9
clarification [3] - 8:25, 33:12, 33:18
clarify [2] - 30:25, 54:8
clause [1] - 51:23
clear [3] - 4:24, 8:24, 16:7
clearly [1] - 16:25
CLERK [3] - 2:11, 6:17, 58:18
clerk [2] - 35:3, 35:4
click [1] - 31:2
client [6] - 38:2, 38:4, 42:4, 43:15, 49:15
client's [2] - 36:25, 37:24
closer [1] - 19:6
co [1] - 2:24
co-counsel [1] - 2:24
coefficient [2] - 4:9, 15:1
collect [1] - 5:25
collected [2] - 14:20, 37:5
collecting [8] - 4:6, 4:10, 4:15, 5:21, 11:7, 11:15, 18:3, 21:17
color [1] - 32:17
coming [1] - 3:15
comment [4] - 36:23, 51:8, 51:16, 54:5
commenting [1] - 52:2
comments [2] - 48:20, 48:21
commercial [12] - 10:15, 12:9, 12:20, 16:14, 43:3, 54:13, 54:17, 55:5, 56:4, 56:7, 56:10
commercially [1] - 26:14
commit [1] - 44:7
committed [3] - 40:23, 50:21, 50:24
common [7] - 42:19, 42:24, 43:5, 47:14, 48:2, 53:13, 53:20
communication [1] - 56:25
communications [3] - 46:9, 55:21, 57:2
companies [2] - 17:1, 17:2
company [9] - 28:8, 38:11, 38:17, 38:24, 43:21, 43:22, 43:23, 52:8
Company [2] - 9:12, 9:14
complain [1] - 57:6
complaint [2] - 21:21, 34:15
completely [2] - 48:18, 48:21
complex [1] - 54:8
complied [1] - 31:18
computing [1] - 26:21
concede [1] - 21:14
concern [4] - 8:7, 8:10, 14:25, 33:21
concerning [2] - 16:22, 46:12
concrete [1] - 57:8
conditions [1] - 17:4
confer [4] - 7:1, 7:4, 31:7, 32:7
conferring [1] - 7:22
confers [3] - 5:4, 6:9, 21:1
confidential [3] - 35:5, 35:9, 58:11
confirm [4] - 4:12, 7:11, 7:14, 34:1
conflict [1] - 10:7
connect [1] - 5:2
consideration [1] - 12:10
considered [1] - 51:11
considers [2] - 35:20, 36:6
consistent [3] - 50:8, 51:13, 55:21
consultant [1] - 43:17
contained [1] - 18:21
contention [3] - 37:3, 37:20, 37:21
contentions [6] - 36:20, 37:9, 37:11, 37:12, 37:13, 37:25
context [5] - 48:25, 49:9, 49:20, 50:1, 57:14
continue [1] - 32:5
CONTINUED [1] - 2:1
continuously [1] - 27:6
contract [5] - 15:10, 16:7, 18:21, 18:25, 19:5
contracts [1] - 15:22
contractual [1] - 19:24
contractual-related [1] - 19:24
contractually [8] - 10:14, 12:8, 13:6, 13:20, 14:4, 14:22, 16:1, 19:8
contrary [2] - 45:20, 48:10
contribution [1] - 29:15
control [3] - 19:16, 46:1, 55:14
copy [1] - 22:12
correct [7] - 12:15, 21:12, 25:24, 31:1, 33:19, 36:4, 44:23
corrected [1] - 33:18
correctly [2] - 45:14, 53:23
correspondence [4] - 3:9, 47:3, 47:13, 54:1
corresponds [1] - 3:7
CORROON [1] - 2:2
cost [3] - 25:11, 26:7, 29:20
costs [2] - 26:10
counsel [2] - 2:24, 14:25
Counsel [2] - 1:24, 2:7
count [3] - 5:24, 6:1, 57:12
couple [3] - 4:19, 12:25, 51:3
course [3] - 25:12, 30:8, 50:4
COURT [156] - 1:1, 2:11, 2:12, 2:18, 3:2, 3:22, 4:10, 4:15, 4:21, 5:6, 5:10, 5:15, 6:11, 6:17, 6:18, 7:3, 7:17, 8:13, 9:2, 9:9, 9:19, 9:23, 10:1, 10:6, 10:22, 11:1, 11:8, 11:11, 11:17, 12:1, 12:4, 12:19, 13:5, 13:15, 13:25, 14:7, 14:11, 14:15, 14:21, 15:3, 15:6, 15:19, 15:25, 17:11, 17:18, 18:6, 18:8, 18:17, 19:3, 20:3, 20:10, 20:17, 20:19, 20:22, 21:6, 22:1, 22:8, 22:13, 22:15, 22:23, 23:9, 23:23, 24:3, 24:14, 24:19, 25:13, 25:21, 25:25, 26:5, 26:9, 27:8, 28:7, 28:24, 29:1, 29:7, 29:12, 29:23, 30:4, 30:10, 30:14, 30:21, 31:5, 31:21, 32:12, 32:24, 33:4, 33:20, 33:24, 34:2, 34:19, 34:22, 34:25, 35:11, 35:15, 35:22, 36:3, 36:7, 36:22, 37:8, 37:14, 37:16, 38:4, 38:9, 38:21, 39:4, 39:16, 39:24, 40:1, 40:4, 40:11, 40:17, 41:1, 41:6, 41:12, 41:22, 42:1, 42:7, 43:3, 43:13, 43:22, 43:24, 44:1, 44:9, 44:16, 45:2, 46:25, 47:8, 47:15, 48:4, 49:3, 50:8, 50:15, 51:1, 51:18, 51:21, 52:4, 52:16, 52:24, 53:7, 54:3, 54:6, 54:17, 55:2, 56:1, 56:6, 56:10, 56:17, 56:24, 57:18, 57:20, 57:22, 58:2, 58:7, 58:12, 58:16, 58:18
Court [6] - 1:16, 53:14, 57:13, 58:19, 59:1, 59:2
Court's [3] - 46:7, 53:21, 53:22
Courtroom [1] - 1:11
courtroom [1] - 25:15
courts [1] - 47:19
cover [1] - 47:23
covered [1] - 48:2
covering [1] - 17:19
covers [1] - 19:19
created [1] - 43:20
creates [1] - 53:15

cross [8] - 16:1, 19:8, 19:18, 20:6, 28:15, 31:22, 32:9, 33:5
current [1] - 41:10
custody [1] - 19:15
cutoff [1] - 53:10
cycle [1] - 24:5

D

DAIGNAULT [1] - 1:22
damages [6] - 25:7, 27:24, 28:17, 29:10, 29:21, 45:3
Dan [1] - 3:18
DANIEL [1] - 2:6
Daniel [1] - 2:25
date [15] - 7:12, 8:7, 11:19, 11:25, 19:11, 20:21, 20:22, 20:23, 21:4, 21:17, 21:24, 22:6, 38:25, 53:10, 57:25
dated [1] - 21:3
David [1] - 2:23
DAVID [1] - 2:3
Davidson [1] - 40:8
Davis [15] - 2:25, 38:18, 40:17, 41:7, 43:11, 44:19, 45:5, 46:4, 50:15, 51:2, 53:7, 54:5, 55:8, 56:20, 57:6
DAVIS [20] - 2:5, 38:19, 38:23, 39:5, 39:19, 39:25, 40:2, 40:5, 41:11, 44:22, 46:6, 47:3, 47:11, 47:18, 51:3, 53:11, 57:21, 58:6, 58:10, 58:15
days [9] - 12:25, 28:22, 28:24, 29:3, 30:10, 30:13, 30:22, 31:24, 58:9
db [2] - 4:23, 7:6
deal [1] - 57:8
dealing [1] - 50:2
debate [2] - 28:1, 47:6
decade [1] - 21:20
December [1] - 5:19
decide [2] - 43:2, 48:13
decision [1] - 51:12
Defendant [2] - 1:7, 2:7
defendant [3] - 19:14, 45:9, 45:23
defense [1] - 28:9
defenses [1] - 51:10
defer [1] - 10:3
degree [1] - 14:14
DELAWARE [1] - 1:1
Delaware [1] - 1:13
deliverables [1] - 17:9
delivery [1] - 17:5
Delta [1] - 51:13
demand [3] - 15:16, 15:17, 16:6
demonstratives [2] - 58:4, 58:9
deny [1] - 28:12
deputy [2] - 35:3
describe [1] - 13:19
describes [1] - 35:18
design [1] - 14:14
detail [2] - 12:17, 12:18
details [1] - 17:8
determine [3] - 31:9, 31:14
determined [1] - 5:7
developing [1] - 27:24
development [1] - 24:5
difference [1] - 32:17
different [10] - 9:2, 15:15, 24:17, 29:21, 39:2, 39:13, 39:14, 48:24, 51:18, 53:15
direct [4] - 42:9, 44:10, 55:3, 57:3
directed [3] - 16:4, 17:7, 19:17
directing [1] - 12:5
disagree [3] - 53:13, 53:14, 54:2
discontinued [1] - 27:6
discounts [1] - 26:4
discovery [1] - 45:16
discussing [1] - 33:13
discussion [9] - 6:3, 6:23, 7:20, 8:17, 31:8, 46:17, 48:22, 50:16, 55:10
discussions [2] - 39:6, 47:19
dispute [2] - 29:1, 29:5
disputes [3] - 7:21, 7:25, 32:8
DISTRICT [2] - 1:1, 1:1
District [2] - 1:16, 59:2
divisional [1] - 23:4
docket [1] - 3:10
document [16] - 11:5, 19:24, 21:19, 30:5, 32:16, 34:9, 34:10, 34:11, 34:14, 35:18, 35:20, 36:5, 37:9, 57:8
documentation [1] - 52:18
documents [64] - 3:7, 3:8, 3:19, 3:20, 4:5, 4:8, 4:19, 4:25, 8:5, 8:10, 14:16, 19:14, 19:22, 19:25, 20:4, 20:24, 21:2, 21:3, 21:9, 21:22, 22:2, 23:5, 23:6, 28:15, 28:17, 30:2, 30:4, 30:7, 30:17, 30:25, 31:11, 31:12, 32:6, 32:18, 32:25, 33:17, 34:3, 34:7, 34:17, 36:13, 36:19, 36:25, 37:4, 37:20, 37:21, 38:14, 40:19, 40:20, 41:7, 42:3, 42:4, 43:7, 43:13, 44:2, 50:22, 51:8, 51:10, 51:16, 51:24, 51:25, 52:2, 52:21, 53:20
dollar [2] - 54:9, 54:24
dollars [1] - 55:5
domain [2] - 38:1, 38:6
Don [1] - 2:16
DONALD [1] - 1:23
done [7] - 7:15, 15:15, 19:11, 28:14, 45:14, 49:14
double [3] - 30:1, 58:11, 58:12
double-check [1] - 30:1
doubts [1] - 36:7
down [4] - 8:3, 11:21, 16:11, 50:20
download [2] - 30:20, 31:3
drive [2] - 25:7, 30:17
during [1] - 39:22

E

e-mail [3] - 5:19, 30:19, 53:3
e-mails [3] - 21:1, 34:6, 42:6
easier [1] - 57:7
efforts [1] - 41:17
either [8] - 6:19, 7:1, 11:6, 11:12, 13:17, 15:3, 44:12, 49:16
electronic [3] - 53:3, 58:5, 58:7
ELLIS [1] - 2:3
embedded [1] - 23:15
employees [1] - 41:10
employers [5] - 39:13, 39:15, 39:21, 39:22, 40:21
encompass [1] - 19:22
end [6] - 8:16, 26:25, 32:7, 35:19, 37:1, 55:18
engage [1] - 42:5
engaged [1] - 42:11
engagement [1] - 42:17
enhanced [1] - 26:20
Entangled [1] - 51:6
enter [1] - 31:3
entirely [1] - 13:7
entities [2] - 42:25, 52:3
entity [4] - 40:7, 40:8, 41:21, 42:15
ESI [1] - 53:5
especially [3] - 17:1, 19:25, 26:19
ESQ [5] - 1:20, 1:23, 2:3, 2:5, 2:6
essentially [5] - 9:3, 12:21, 16:3, 36:10, 40:18
estimate [2] - 15:11, 49:7
estimates [1] - 49:6
etc [6] - 24:25, 26:21, 26:22, 50:6
event [3] - 41:13, 45:20, 46:3
exact [2] - 30:1, 38:25
exactly [9] - 3:8, 4:20, 8:8, 14:5, 15:13, 30:10, 42:13, 50:20
example [13] - 4:21, 4:22, 17:6, 21:19, 21:21, 22:21, 25:10, 25:19, 34:20, 44:6, 49:1, 49:25, 50:5
Excel [2] - 30:7, 30:8
exchange [1] - 20:2
exchanged [3] - 14:5, 21:1, 52:3
exemplars [1] - 22:17
exhibits [1] - 3:3
exist [7] - 4:25, 15:21, 16:8, 44:4, 48:8, 48:9
existence [1] - 38:17
expect [3] - 11:15, 14:12, 21:14
expectations [2] - 27:22, 54:12
expected [1] - 15:17
experience [1] - 43:8
expert's [1] - 25:7
extensive [1] - 57:2
extent [3] - 6:8, 12:5, 50:17

F

fabricates [1] - 9:14
fact [5] - 3:13, 3:20, 8:13, 44:24, 50:11
factors [1] - 50:4
factual [1] - 38:13
fair [1] - 29:7
fall [2] - 4:2, 14:15
far [5] - 11:24, 22:3, 23:6, 28:11, 28:14
faster [1] - 26:21
favorite [1] - 29:1
February [14] - 1:10, 8:16, 8:20, 37:17, 37:19, 38:3, 38:5, 41:4, 41:5, 41:13, 43:10, 52:20, 57:23, 57:25
few [1] - 57:8
figure [1] - 54:24
file [9] - 7:13, 7:14, 7:17, 30:18, 32:17, 36:16, 37:2, 58:7, 58:13
filed [2] - 21:21, 44:21
files [5] - 4:24, 7:6, 30:7, 30:8, 31:3
fills [1] - 17:8
financial [26] - 12:23, 12:24, 13:1, 13:3, 16:16, 20:13, 20:14, 20:24, 23:4, 23:18, 24:6, 24:9, 24:10, 24:21, 24:23, 24:24, 28:17, 28:19, 28:22, 29:10, 32:6, 33:6, 45:22, 54:13, 54:24, 56:3
financing [1] - 45:9
fine [1] - 11:23

firm [2] - 52:10, 52:12
first [19] - 6:5, 6:6, 7:12, 7:18, 10:19, 18:24, 20:6, 21:4, 24:18, 25:16, 26:13, 29:24, 34:12, 35:8, 35:16, 36:11, 38:18, 43:9, 49:11
fishing [1] - 48:7
five [8] - 5:18, 20:12, 20:14, 20:15, 20:17, 28:16, 31:23, 33:6
focus [1] - 22:20
focused [2] - 28:6, 33:19
follow [3] - 10:13, 16:23, 31:24
follow-on [2] - 10:13, 16:23
followed [1] - 19:5
foot [1] - 52:25
FOR [1] - 1:1
forecasts [10] - 10:15, 12:8, 13:8, 13:9, 13:21, 15:7, 15:14, 16:2, 23:4, 24:8
foregoing [1] - 58:23
form [1] - 42:22
formal [3] - 7:18, 20:2, 49:11
formation [1] - 38:24
formed [5] - 38:11, 38:17, 42:23, 52:10
former [1] - 41:10
forth [4] - 3:9, 4:7, 47:4, 55:21
forward [5] - 2:19, 13:4, 15:18, 21:4, 42:24
foundation [1] - 48:23
four [15] - 4:5, 5:16, 5:17, 5:18, 6:6, 19:12, 20:6, 35:5, 35:7, 35:14, 35:19, 35:24
four's [1] - 35:12
frame [1] - 24:7
frankly [1] - 48:22
friend [1] - 14:1
front [2] - 6:15, 39:1
full [1] - 6:13
functionalities [1] - 18:2
functionality [3] - 11:6, 21:24, 23:4
funded [1] - 54:18
funder [7] - 46:1, 46:16, 46:22, 47:1, 47:7, 48:17, 53:9
funders [1] - 45:1
funding [24] - 40:6, 44:18, 44:19, 45:2, 45:14, 45:24, 45:25, 46:8, 46:10, 46:12, 46:24, 48:2, 48:14, 49:20, 49:25, 52:6, 52:8, 53:16, 53:17, 53:24, 53:25, 54:18, 55:4
future [3] - 15:12, 16:5, 34:3

G

gather [2] - 9:19, 20:12
general [4] - 17:3, 27:20, 48:24, 57:9
generalities [1] - 6:14
generally [1] - 29:2
generated [1] - 21:3
generations [2] - 24:22, 27:2
generic [1] - 10:9
genesis [1] - 39:2
Georgia [1] - 50:5
gist [1] - 27:21
given [1] - 27:14
gloss [1] - 19:9
grant [1] - 19:7
great [1] - 8:2
greater [1] - 26:21
greatest [1] - 47:9
grievance [1] - 10:11
grossly [1] - 27:17
groupings [1] - 39:6
guess [14] - 6:2, 9:15, 11:20, 13:8, 22:23, 25:16, 25:25, 26:1, 26:3, 26:6, 26:8, 26:10, 45:13, 53:18
guessing [2] - 15:8, 32:12

H

HAMPTON [1] - 2:5
hand [1] - 55:13
happy [2] - 12:18, 28:4
hard [5] - 10:6, 16:10, 42:7, 49:9, 50:12
head [1] - 25:3
heard [2] - 31:6, 31:7
hello [1] - 2:21
help [1] - 47:9
helpful [6] - 13:22, 14:2, 22:7, 27:8, 51:4, 51:7
hereby [1] - 58:23
hesitate [1] - 56:7
hide [1] - 55:25
high [1] - 52:25
highly [2] - 35:9, 55:1
histories [2] - 36:17, 37:2
history [3] - 27:21, 38:6, 40:19
hold [2] - 13:16, 28:17
holes [2] - 46:23, 48:12
honestly [4] - 26:2, 31:7, 42:12, 53:5
Honor [98] - 2:15, 2:22, 3:18, 4:1, 5:9, 5:14, 6:5, 7:2, 7:10, 8:4, 8:24, 9:8, 9:17, 9:22, 10:3, 10:4, 10:5, 10:18, 11:4, 11:10, 11:23, 12:13, 13:11, 13:23, 14:3, 14:19, 14:24, 15:13, 15:14, 15:24, 17:24, 18:7, 20:8, 21:16, 22:3, 22:11, 23:11, 26:2, 26:8, 28:3, 28:21, 28:25, 29:5, 29:19, 32:11, 33:11, 33:19, 34:1, 34:18, 34:20, 35:7, 36:4, 36:15, 36:24, 37:13, 37:15, 38:19, 39:1, 39:19, 39:25, 40:3, 40:9, 40:16, 41:11, 42:12, 42:18, 43:12, 44:7, 44:15, 44:23, 46:6, 46:10, 47:3, 47:18, 48:6, 48:7, 48:17, 49:22, 51:4, 51:15, 51:22, 52:12, 53:1, 53:6, 53:11, 54:1, 54:4, 54:11, 54:15, 55:19, 56:5, 56:22, 57:17, 57:19, 57:21, 58:1, 58:6, 58:15
Honor's [2] - 33:16, 51:12
HONORABLE [1] - 1:16
hopefully [1] - 55:18
hundred [2] - 30:2, 30:4

I

IC [1] - 7:6
idea [2] - 8:14, 19:22
identify [3] - 34:10, 43:10, 45:13
identifying [1] - 33:22
if/then [1] - 51:23
illegible [5] - 34:7, 34:9, 34:12, 34:17, 34:21
imagine [3] - 16:9, 29:23, 52:6
imagining [1] - 43:14
immediately [1] - 30:20
impact [1] - 45:15
impacts [1] - 24:25
implied [1] - 48:16
important [1] - 33:1
impression [1] - 38:10
improvements [1] - 26:20
IN [1] - 1:1
inboxes [1] - 30:19
INC [1] - 1:6
inclination [2] - 45:12, 45:17
inclined [2] - 19:18, 46:3
include [4] - 11:1, 11:2, 39:8, 51:8
included [2] - 7:6, 37:10
includes [4] - 11:20, 29:19, 29:20, 29:21
including [4] - 8:25, 33:15, 41:8, 41:9
inconceivable [1] - 44:2
increase [1] - 25:12
incremental [2] - 25:9, 25:10
indicated [2] - 18:3, 42:14
indication [1] - 15:16
indirectly [1] - 25:12
information [48] - 5:1, 5:3, 6:10, 10:23, 12:14, 12:16, 12:24, 12:25, 13:1, 13:3, 14:18, 16:17, 20:13, 20:15, 21:18, 22:18, 22:21, 23:1, 23:18, 23:20, 24:6, 28:4, 28:20, 28:22, 29:9, 29:10, 29:15, 29:20, 31:13, 31:16, 31:17, 31:24, 32:22, 33:6, 35:6, 35:9, 35:21, 36:6, 39:7, 44:23, 49:5, 51:24, 52:15, 53:12, 54:25, 55:5, 56:3
infringe [1] - 49:24
infringement [9] - 36:20, 37:3, 37:8, 37:11, 37:20, 37:21, 37:25, 46:20, 51:16
Ingram [1] - 59:1
instance [2] - 10:5, 18:24
interest [9] - 42:19, 42:24, 43:1, 43:5, 44:24, 47:14, 48:3, 53:13, 53:20
interested [3] - 3:24, 50:16, 54:23
interesting [1] - 3:23
interests [1] - 55:14
interject [2] - 16:20, 33:12
introduce [2] - 26:17, 26:23
introduced [4] - 24:1, 24:9, 24:23, 26:16
introduction [2] - 25:2, 42:21
invention [1] - 50:6
inventions [1] - 23:22
inventor [7] - 38:10, 38:14, 39:13, 41:9, 43:15, 43:16, 43:19
inventor's [1] - 40:20
invest [1] - 48:13
investigate [1] - 12:18
invoices [4] - 10:15, 12:9, 12:20, 16:14
involvement [1] - 52:9
involving [2] - 41:8, 41:10
IP [2] - 39:14, 39:20
iPhone [12] - 9:23, 10:1, 24:2, 24:8, 25:5, 25:17, 26:7, 26:14, 26:16, 26:25, 27:5, 27:6
iPhones [2] - 9:20, 29:16
irrelevant [10] - 18:19, 18:20, 31:11, 47:20, 48:18, 48:21, 49:8, 55:1, 56:16, 56:17
issuance [3] - 21:9, 21:10, 21:13
issue [13] - 7:16, 21:4,

22:5, 23:15, 37:23, 46:2, 48:23, 49:20, 50:10, 51:7, 56:20
issued [2] - 17:7, 40:9
item [1] - 3:10
items [2] - 6:19, 33:13
iterative [1] - 34:4
itself [3] - 28:9, 54:6, 54:7
IYER [1] - 1:22

J

Jackson [26] - 2:16, 2:18, 13:17, 14:23, 16:5, 16:19, 17:11, 18:8, 19:4, 20:13, 21:6, 23:9, 25:22, 27:21, 29:23, 30:21, 33:2, 36:22, 37:17, 40:12, 40:14, 41:16, 46:5, 48:4, 52:5, 57:15
JACKSON [67] - 1:23, 13:23, 14:3, 14:10, 14:12, 14:24, 15:5, 15:13, 16:20, 17:14, 19:21, 20:8, 20:14, 20:18, 20:20, 20:23, 23:11, 23:25, 24:4, 24:16, 24:20, 25:18, 25:24, 26:2, 26:8, 26:13, 30:23, 31:6, 34:20, 34:23, 36:24, 37:19, 38:8, 40:16, 40:23, 41:3, 41:18, 41:25, 42:3, 42:12, 43:12, 43:18, 43:23, 43:25, 44:4, 44:15, 48:6, 49:10, 50:14, 50:19, 51:15, 51:20, 51:22, 52:12, 52:22, 53:1, 54:4, 54:7, 54:20, 55:19, 56:4, 56:8, 56:12, 56:22, 57:16, 57:19, 58:1
JAMES [1] - 2:5
January [1] - 23:24
Jim [1] - 2:25
job [1] - 32:4
joined [3] - 2:24, 2:25, 52:12
JR [1] - 2:5
Judge [2] - 1:16, 30:25
judge [2] - 10:7, 32:8

K

keep [2] - 58:3, 58:8
Kempner [1] - 40:8
kind [11] - 4:1, 7:18, 10:6, 21:13, 34:4, 39:4, 39:5, 49:8, 53:10, 55:22, 56:14
King [1] - 1:13
knowledge [3] - 31:17, 31:20, 52:13
knows [2] - 34:13, 49:22

L

label [1] - 35:17
language [3] - 22:7, 33:22, 51:6
large [4] - 17:1, 52:23, 52:24, 53:2
last [4] - 35:14, 44:21, 44:22, 52:13
law [1] - 52:9
lead [3] - 6:2, 7:19, 7:24
leading [2] - 38:13, 48:1
least [9] - 12:10, 23:19, 28:11, 31:18, 38:1, 39:6, 39:8, 42:20, 43:25
leave [4] - 16:2, 16:10, 17:18, 57:11
leaves [2] - 13:19, 36:9
left [1] - 56:25
legible [2] - 34:10, 34:11
less [3] - 13:8, 20:2, 38:12
letter [9] - 3:11, 4:7, 6:12, 6:13, 21:7, 21:8, 32:2, 34:7, 36:17
letters [2] - 3:3, 36:12
level [1] - 31:19
licensee [2] - 49:23, 50:3
licensing [1] - 49:2
licensor [2] - 49:22, 50:3
life [1] - 26:25
likely [3] - 5:2, 23:18, 42:19
limit [1] - 6:13
limitation [1] - 4:9
limitations [2] - 21:18, 22:6
limited [3] - 23:3, 33:15, 33:24
limits [1] - 57:16
link [4] - 23:14, 31:1, 31:3, 33:5
links [2] - 32:16, 32:25
list [14] - 3:6, 3:8, 4:4, 5:7, 5:15, 6:5, 8:15, 33:13, 33:17, 33:19, 33:24, 35:12, 43:6
listed [4] - 10:21, 33:17, 35:14, 35:18
lists [1] - 12:15
literature [1] - 26:19
litigation [15] - 40:6, 44:18, 44:19, 45:2, 45:14, 45:25, 46:1, 46:2, 46:8, 52:6, 52:7, 53:9, 53:16, 53:17, 55:3
LLC [2] - 1:3, 1:20
LLP [3] - 1:22, 2:2, 2:5
loaned [1] - 55:6
locate [1] - 21:23
log [3] - 30:16, 44:13, 45:20
look [11] - 6:5, 16:7, 22:4, 22:21, 23:1, 24:20, 25:1, 25:6, 26:15, 38:21, 50:5
looked [4] - 3:3, 22:8, 42:3, 49:13
looking [4] - 8:6, 12:16, 27:13, 30:24
losing [1] - 43:8
loud [1] - 25:14
luck [1] - 48:14

M

mail [3] - 5:19, 30:19, 53:3
mails [3] - 21:1, 34:6, 42:6
maintaining [1] - 27:2
Manufacturing [2] - 9:12, 9:14
manufacturing [1] - 23:3
March [7] - 6:16, 8:22, 11:21, 19:11, 44:10, 57:10, 57:23
march [1] - 6:18
marginal [1] - 50:11
marked [1] - 33:10
marketing [3] - 23:2, 26:19, 27:12
massive [1] - 26:4
master [9] - 16:25, 17:2, 17:16, 17:17, 18:19, 25:19, 25:23, 26:17, 27:3
materials [1] - 7:7
matter [1] - 23:8
mean [7] - 13:7, 32:1, 37:8, 43:4, 48:22, 50:15, 56:10
meanings [1] - 48:25
means [2] - 31:15, 31:17
Media [1] - 51:6
meet [7] - 5:4, 6:9, 7:1, 7:4, 21:1, 31:7, 32:7
meeting [1] - 7:22
mentioned [3] - 15:1, 37:2, 40:2
merits [3] - 28:1, 51:9, 52:2
microphone [1] - 13:24
middle [3] - 39:17, 53:18, 54:5
might [15] - 8:9, 10:6, 13:9, 14:2, 14:22, 15:9, 15:10, 17:9, 27:5, 34:9, 34:12, 39:21, 50:24, 51:4
mind [2] - 15:12, 56:8
minds [1] - 31:17
minimum [5] - 31:16, 47:4, 47:7, 47:13, 53:18
minute [2] - 13:16, 38:13
missing [3] - 5:5, 6:10, 57:9
model [2] - 4:23, 7:6
moment [1] - 30:19
money [4] - 9:15, 28:8, 48:14, 56:19
month [2] - 5:12, 37:1
MOORE [2] - 2:3, 2:22
Moore [2] - 2:20, 2:23
morning [1] - 30:12
mostly [1] - 53:3
moved [1] - 22:17
MR [151] - 2:15, 2:22, 3:17, 4:1, 4:12, 4:18, 4:22, 5:9, 5:13, 6:4, 6:25, 7:10, 8:4, 8:23, 9:8, 9:17, 9:21, 9:25, 10:3, 10:18, 10:23, 11:3, 11:10, 11:14, 11:23, 12:2, 12:13, 12:23, 13:11, 13:23, 14:3, 14:10, 14:12, 14:18, 14:24, 15:5, 15:13, 15:23, 16:20, 17:14, 17:23, 18:7, 18:13, 19:2, 19:21, 20:8, 20:14, 20:18, 20:20, 20:23, 21:16, 22:3, 22:11, 22:14, 22:16, 22:25, 23:11, 23:25, 24:4, 24:16, 24:20, 25:18, 25:24, 26:2, 26:8, 26:13, 28:1, 28:21, 28:25, 29:4, 29:9, 29:18, 30:1, 30:6, 30:12, 30:18, 30:23, 31:6, 32:11, 32:14, 33:2, 33:11, 33:21, 33:25, 34:18, 34:20, 34:23, 35:7, 35:13, 35:16, 35:25, 36:4, 36:15, 36:24, 37:12, 37:15, 37:19, 38:8, 38:19, 38:23, 39:5, 39:19, 39:25, 40:2, 40:5, 40:16, 40:23, 41:3, 41:11, 41:18, 41:25, 42:3, 42:12, 43:12, 43:18, 43:23, 43:25, 44:4, 44:15, 44:22, 46:6, 47:3, 47:11, 47:18, 48:6, 49:10, 50:14, 50:19, 51:3, 51:15, 51:20, 51:22, 52:12, 52:22, 53:1, 53:11, 54:4, 54:7, 54:20, 55:19, 56:4, 56:8, 56:12, 56:22, 57:16, 57:19, 57:21, 58:1, 58:6, 58:10, 58:15
MULLIN [1] - 2:5
Mullin [1] - 2:24
multiple [1] - 25:16
MYW [2] - 1:3, 2:13

N

name [2] - 35:18, 35:19
named [4] - 39:13, 40:7, 40:8, 41:9
names [1] - 32:17
narrow [2] - 7:20,

19:23
narrowing [2] - 7:25, 22:19
Natalie [1] - 3:1
native [1] - 30:7
nature [1] - 54:24
necessarily [4] - 20:25, 30:6, 32:1, 54:25
necessary [3] - 7:1, 7:4, 10:5
need [28] - 2:19, 8:2, 8:3, 8:25, 13:10, 13:24, 15:10, 15:12, 16:9, 17:20, 17:21, 18:11, 18:12, 18:23, 19:20, 23:23, 27:18, 27:19, 28:13, 31:25, 32:3, 32:5, 32:23, 33:18, 43:6, 44:11, 45:12
needed [3] - 6:8, 12:17, 28:4
needs [7] - 5:3, 6:9, 16:5, 22:19, 22:20, 27:23, 38:2
negotiate [1] - 46:23
negotiation [1] - 46:11
negotiations [1] - 48:1
new [9] - 17:6, 24:12, 24:14, 24:22, 24:24, 26:16, 26:17, 37:22
news [1] - 37:4
next [2] - 14:1, 26:18
non [1] - 37:20
non-infringement [1] - 37:20
none [2] - 49:25, 50:6
normal [1] - 45:20
notes [1] - 58:24
nothing [1] - 43:10
noticed [2] - 20:9, 32:15
notified [1] - 29:5
November [1] - 52:13
number [7] - 2:13, 5:18, 30:2, 33:6, 41:6, 48:23, 56:18
numbered [1] - 20:16
numbers [7] - 23:5, 55:7, 55:12, 55:17, 56:2, 56:11, 56:12

O

objectionable [1] - 10:16
obligations [2] - 39:14, 39:15
obtain [1] - 19:25
obtained [2] - 19:15, 20:1
obviously [7] - 14:5, 19:24, 23:16, 24:11, 26:4, 55:14, 55:15
occurred [1] - 42:17
OF [1] - 1:1
offering [1] - 57:5
office [1] - 44:25
Official [1] - 59:1
often [4] - 26:17, 45:16, 54:21
older [1] - 27:2
oldest [1] - 27:4
once [2] - 16:7, 42:22
one [37] - 4:2, 6:6, 6:7, 9:10, 16:20, 17:21, 20:16, 20:17, 21:21, 25:14, 25:17, 25:20, 26:18, 32:21, 33:3, 33:4, 33:8, 33:11, 34:5, 34:6, 36:1, 38:13, 39:9, 39:16, 40:1, 40:2, 40:5, 40:11, 44:25, 45:13, 45:25, 46:14, 48:23, 49:1, 54:5, 58:3
ones [6] - 8:14, 8:21, 8:24, 8:25, 30:8, 57:3
online [1] - 26:19
opposite [1] - 46:22
order [19] - 3:6, 4:5, 5:11, 5:17, 10:11, 12:5, 16:21, 20:7, 26:3, 27:16, 33:10, 33:14, 33:16, 35:2, 41:7, 45:18, 57:11, 57:12, 57:13
orders [1] - 40:9
original [2] - 27:3, 43:19
originally [1] - 20:16
otherwise [3] - 7:8, 8:19, 58:13
ought [1] - 38:5
outset [1] - 10:19
over-redacted [1] - 56:21
overall [3] - 29:16, 53:13, 54:2
overbroad [2] - 9:4, 27:17
overlap [1] - 27:1
overlapping [1] - 5:3
own [3] - 18:15, 48:19, 50:1
owner [5] - 42:25, 43:19, 48:11, 49:7, 49:23
ownership [7] - 39:12, 39:23, 47:25, 50:17, 50:23, 55:14
owns [3] - 47:23, 50:13, 50:14

P

p.m [2] - 1:10, 58:19
Pacific [1] - 50:5
packages [1] - 7:6
page [8] - 3:6, 3:10, 4:23, 6:7, 22:13, 30:5, 30:9, 33:14
pages [2] - 6:13, 30:2
paper [1] - 52:25
papers [1] - 29:15
paragraph [21] - 4:5, 5:18, 6:6, 19:7, 19:11, 19:12, 19:13, 19:17, 19:19, 19:23, 20:5, 20:6, 22:5, 28:15, 28:16, 31:23, 33:14, 33:22, 35:7, 35:12, 35:24
paragraphs [3] - 5:16, 20:12, 35:4
parsing [1] - 8:18
part [11] - 4:25, 7:21, 17:25, 22:3, 31:10, 41:14, 43:25, 44:5, 45:15, 47:15, 54:2
partial [1] - 45:21
particular [5] - 3:10, 18:5, 40:25, 46:13, 48:25
particularly [2] - 49:7, 51:6
parties [14] - 10:24, 17:4, 18:5, 27:17, 28:13, 46:11, 46:15, 46:20, 47:4, 49:14, 49:20, 52:7, 54:23
parties' [1] - 18:1
party [2] - 48:19, 50:1
password [3] - 30:15, 31:2, 31:4
past [1] - 45:8
patent [27] - 21:4, 39:9, 39:20, 39:24, 41:14, 41:16, 41:19, 41:23, 41:24, 42:2, 42:8, 42:11, 42:25, 43:4, 43:11, 43:14, 44:1, 44:12, 44:25, 45:7, 48:11, 48:25, 49:1, 49:6, 49:13, 49:23
patent's [1] - 49:7
patented [1] - 24:4
patents [29] - 21:14, 38:15, 38:18, 39:9, 39:11, 40:19, 41:17, 43:19, 45:6, 45:7, 46:15, 46:18, 46:19, 47:2, 47:5, 47:9, 47:12, 47:22, 47:24, 47:25, 48:12, 48:13, 48:19, 49:24, 50:13, 50:14, 50:17, 51:9
pay [3] - 12:10, 26:1, 29:13
pays [3] - 9:15, 25:13, 25:22
PDFs [1] - 32:15
people [2] - 30:24, 57:4
peoples' [1] - 49:6
per [1] - 26:2
percentage [2] - 26:6, 56:18
percentages [1] - 54:22
perhaps [1] - 25:11
period [4] - 13:1, 15:16, 29:22, 52:15
periodic [3] - 10:13, 15:14, 16:23
periods [1] - 39:22
permitting [1] - 45:16
personally [3] - 30:23, 32:1, 37:3
perspective [4] - 3:19, 23:7, 23:8, 24:24
perspectives [1] - 47:21
perused [1] - 32:14
phone [7] - 23:16, 23:19, 23:20, 24:11, 25:19, 26:16, 27:5
phones [3] - 27:2, 29:14, 29:21
phrasing [1] - 33:14
Piccadilly [2] - 40:7, 44:25
picture [3] - 16:24, 17:12, 24:21
pieces [1] - 39:6
pinned [1] - 8:3
place [3] - 28:10, 34:12, 44:20
plaintiff [11] - 2:17, 27:11, 27:14, 27:15, 27:19, 27:23, 28:5, 45:10, 45:12, 45:22, 45:24
Plaintiff [2] - 1:4, 1:24
plaintiff's [1] - 28:2
planning [3] - 23:5, 27:12, 42:14
plausible [1] - 27:25
play [2] - 49:25, 50:7
point [22] - 6:11, 6:19, 6:25, 16:21, 20:9, 21:5, 25:22, 26:22, 33:17, 35:12, 35:14, 35:19, 35:23, 39:9, 42:18, 42:19, 42:24, 47:14, 48:9, 51:22, 52:6, 55:11
points [6] - 32:2, 35:9, 35:17, 49:11, 50:20, 51:3
poke [1] - 46:23
policies [1] - 44:6
policy [1] - 45:21
portion [1] - 4:17
position [3] - 21:2, 21:12, 28:2
possession [4] - 14:19, 19:15, 36:25, 37:24
possible [1] - 27:11
possibly [1] - 36:13
post [2] - 53:17, 53:25
POTTER [1] - 2:2
Potter [1] - 2:23
Pous [1] - 3:1
power [1] - 26:21
predate [3] - 21:9, 21:10, 57:3
predates [1] - 21:13
preface [1] - 29:4
preference [1] - 46:7
preserve [1] - 57:6
presigning [2] - 53:16, 53:19
presumably [3] - 14:1, 19:3, 47:18
presumed [1] - 49:24
presumes [1] - 49:24
pretty [2] - 16:6, 28:7
previously [3] - 14:25, 33:18, 55:22
price [4] - 10:15, 12:9, 12:20, 16:15
prices [2] - 12:21, 13:18

pricing [1] - 12:16
primarily [1] - 14:25
printout [1] - 33:3
privilege [5] - 42:19, 43:5, 44:13, 44:14, 45:20
privileged [1] - 42:8
problem [2] - 31:10, 38:23
procedures [2] - 53:5, 55:15
proceedings [1] - 58:24
process [5] - 4:6, 10:20, 11:6, 11:14, 34:4
processing [1] - 26:21
processor [6] - 25:20, 25:23, 26:10, 26:11, 26:17, 27:3
procurement [1] - 13:13
produce [40] - 4:11, 4:16, 5:3, 5:8, 5:11, 5:21, 5:25, 6:22, 7:9, 8:7, 8:21, 9:5, 9:6, 10:9, 11:15, 12:5, 12:6, 12:12, 17:20, 17:21, 18:12, 18:18, 19:3, 21:15, 29:6, 30:11, 36:25, 37:17, 38:7, 40:22, 41:1, 42:1, 44:12, 44:13, 52:1, 52:19, 53:4, 55:12, 57:3, 57:24
produced [44] - 3:21, 3:23, 5:20, 5:23, 5:24, 6:20, 6:21, 7:13, 8:1, 11:12, 11:24, 12:6, 12:25, 14:17, 14:20, 16:11, 16:14, 16:18, 19:14, 21:11, 21:20, 22:20, 29:2, 30:7, 32:16, 32:18, 32:21, 34:13, 36:12, 36:16, 36:20, 36:21, 37:4, 37:6, 37:20, 37:22, 37:24, 38:3, 45:22, 53:19, 53:24, 55:3
producing [11] - 4:14, 9:1, 10:20, 11:7, 11:21, 18:3, 21:17, 21:24, 33:16, 40:23, 44:11
product [6] - 6:13, 17:6, 23:15, 26:13, 35:25, 49:24
production [17] - 5:25, 6:1, 7:1, 10:15, 12:8, 13:7, 13:20, 15:7, 16:2, 22:10, 28:19, 28:22, 29:24, 32:15, 32:19, 33:23, 41:4
productions [1] - 32:19
productive [1] - 32:6
products [7] - 10:25, 20:1, 21:19, 21:23, 23:2, 23:13, 25:11
profitability [6] - 25:10, 25:12, 27:22, 27:23, 29:16, 50:6
profits [1] - 24:25
promoting [1] - 8:17
promotion [1] - 27:12
proposed [4] - 3:6, 5:17, 35:2, 41:7
prosecution [1] - 38:6
provide [4] - 18:23, 48:14, 55:24, 56:1
public [4] - 25:15, 35:23, 38:1, 38:6
published [1] - 35:6
purely [1] - 26:8
purposefully [1] - 34:16
purposes [1] - 30:9
put [6] - 7:3, 7:18, 11:21, 19:9, 53:14, 58:4

Q

quarterly [1] - 15:15
quick [2] - 33:11, 51:3
quotes [4] - 10:16, 12:9, 12:20, 16:15

R

raise [1] - 56:20
rather [1] - 49:11
reaching [1] - 42:5
read [3] - 3:2, 19:23, 57:14
real [1] - 16:9
realistic [1] - 48:15
realize [1] - 25:13
really [10] - 4:2, 16:3, 16:12, 16:13, 22:19, 23:1, 34:7, 48:16, 48:18, 48:23
reason [5] - 22:4, 32:12, 45:15, 55:12, 56:6
reasonable [6] - 5:12, 25:8, 28:14, 49:18, 49:19, 49:21
reasoning [1] - 4:6
reasons [2] - 32:21, 45:11
recent [1] - 28:19
recently [1] - 38:25
recognized [1] - 47:19
record [3] - 19:10, 22:24, 58:9
recovery [1] - 56:13
recuse [1] - 10:1
recused [1] - 9:24
redact [10] - 35:12, 35:22, 35:23, 45:22, 54:14, 55:4, 55:18, 56:2, 56:19, 57:4
redacted [4] - 53:25, 54:10, 55:17, 56:21
redactions [2] - 45:21, 57:7
reduction [1] - 25:11
redundant [1] - 12:21
refer [1] - 23:12
reference [3] - 6:20, 34:7, 36:11
referred [4] - 4:4, 10:20, 16:6, 37:14
referring [5] - 5:14, 11:3, 36:5, 41:19, 41:20
reflect [2] - 16:13, 50:17
regarding [2] - 47:12, 47:14
registered [1] - 44:25
relate [3] - 20:13, 21:23, 39:22
related [8] - 4:3, 10:13, 16:23, 18:12, 19:24, 39:12, 54:13, 55:23
relatedly [2] - 46:19, 47:23
relates [5] - 4:9, 18:1, 20:14, 24:6, 25:8
relating [22] - 11:5, 14:18, 18:9, 20:1, 20:20, 21:18, 21:22, 22:22, 23:1, 23:2, 24:10, 27:12, 28:17, 39:12, 39:20, 40:5, 40:19, 40:20, 41:8, 43:13, 44:2, 56:19
relation [1] - 42:2
relationship [9] - 10:24, 13:12, 17:20, 17:25, 18:1, 18:16, 18:25, 42:22, 42:23
relationships [1] - 18:4
relatively [1] - 54:8
relevance [10] - 4:7, 8:6, 17:12, 45:11, 47:1, 47:17, 48:10, 49:18, 50:9, 50:12
relevant [29] - 4:8, 4:13, 12:12, 13:1, 17:15, 18:1, 18:11, 18:16, 21:3, 21:10, 23:7, 23:18, 27:13, 31:10, 31:13, 32:23, 39:7, 39:22, 46:14, 47:5, 47:21, 50:18, 51:11, 51:25, 52:1, 54:15, 55:15, 55:16, 56:3
remains [1] - 26:24
remember [1] - 25:4
remote [1] - 45:3
remove [1] - 55:4
removed [1] - 45:6
renumber [1] - 20:6
repayment [2] - 54:21, 55:6
repayments [1] - 56:13
Reporter [1] - 59:1
reports [9] - 10:14, 12:8, 13:6, 13:20, 14:4, 14:22, 16:1, 19:8, 27:12
representing [1] - 2:17
request [13] - 3:5, 9:11, 10:17, 12:20, 13:6, 22:21, 28:15, 36:2, 38:10, 40:18, 48:17, 53:25, 54:2
requested [2] - 4:20, 37:1
requesting [1] - 53:12
requests [7] - 22:4, 22:9, 22:16, 27:14, 33:22, 36:10, 39:3
require [1] - 15:10
required [9] - 10:14, 12:8, 13:6, 13:20, 14:4, 14:9, 14:22, 16:1, 19:8
requirement [1] - 31:19
requirements [2] - 15:2, 15:9
resident [1] - 26:24
resolution [1] - 32:8
resolve [3] - 4:16, 33:9, 35:1
resolved [1] - 49:4
resolves [2] - 9:10, 19:10
respect [10] - 8:8, 10:24, 18:5, 18:6, 24:21, 33:12, 38:24, 42:15, 43:2, 46:7
respond [1] - 49:10
response [4] - 6:1, 7:18, 23:10, 45:19
responses [1] - 27:16
rest [3] - 8:21, 18:9, 38:5
restore [1] - 20:7
restriction [3] - 20:21, 20:22, 20:23
restrictions [1] - 21:25
resulted [1] - 46:1
retention [1] - 44:6
returned [1] - 54:22
revealing [1] - 35:5
revenue [6] - 22:21, 23:12, 23:20, 24:25, 27:11, 29:19
review [1] - 33:6
reviewed [2] - 31:23, 32:6
RFP [1] - 28:11
RFPs [1] - 27:16
RICHARD [2] - 1:16, 1:20
RICHARDS [62] - 2:6, 3:17, 4:1, 4:12, 4:18, 4:22, 5:9, 5:13, 6:4, 6:25, 7:10, 8:4, 8:23, 9:8, 9:17, 9:21, 9:25, 10:3, 10:18, 10:23, 11:3, 11:10, 11:14, 11:23, 12:2, 12:13, 12:23, 13:11, 14:18, 15:23, 17:23, 18:7, 18:13, 19:2, 21:16, 22:3, 22:11, 22:14, 22:16, 22:25, 28:1, 28:21, 28:25, 29:4, 29:9, 29:18, 30:1, 30:6, 30:12, 30:18, 33:11, 33:21, 33:25, 34:18, 35:7, 35:13, 35:16, 35:25, 36:4, 36:15, 37:12, 37:15
richards [7] - 3:11,

13:16, 21:12, 27:20, 28:18, 29:25, 30:25
Richards [9] - 2:25, 3:18, 14:1, 14:17, 15:20, 16:13, 17:22, 20:3, 38:12
RICHTER [1] - 2:5
rights [3] - 47:24, 50:23, 50:24
rise [3] - 2:11, 10:4, 58:18
rolling [1] - 15:18
roughly [1] - 9:17
royalty [5] - 25:8, 49:18, 49:19, 49:21
RPR [1] - 59:1
rst [2] - 4:24, 7:6

S

sale [1] - 49:1
Saturday [1] - 6:17
saw [3] - 21:6, 29:7
scenario [1] - 38:13
schedule [1] - 55:6
schedules [1] - 54:21
scope [8] - 9:1, 9:6, 23:6, 46:18, 47:12, 47:22, 47:25
seated [1] - 2:12
second [13] - 3:6, 4:4, 4:22, 4:23, 5:16, 5:17, 17:24, 19:12, 27:9, 28:18, 33:13, 41:15, 46:18
secondly [1] - 49:17
secure [1] - 30:18
security [1] - 44:24
see [17] - 2:14, 2:16, 2:23, 4:3, 10:21, 24:23, 25:9, 26:18, 32:9, 32:17, 34:21, 35:8, 35:24, 38:22, 45:9, 45:23, 58:13
seeing [1] - 32:18
seem [1] - 56:2
segments [1] - 53:15
self [1] - 18:21
self-contained [1] - 18:21
sell [4] - 23:17, 29:14, 39:9, 45:6
sells [1] - 23:16
Semiconductor [2] - 9:11, 9:14
SEMITECH [1] - 1:3
Semitech [31] - 2:13, 3:9, 3:11, 3:14, 3:16, 3:21, 3:24, 5:2, 12:17, 13:4, 22:18, 29:6, 36:10, 36:12, 36:16, 36:18, 38:11, 38:16, 43:17, 43:20, 46:16, 46:21, 47:5, 47:8, 50:14, 51:5, 51:11, 52:8, 52:19, 53:8, 58:4
Semitech's [5] - 3:5, 4:7, 34:6, 47:21, 51:5
send [2] - 13:9, 30:16
sense [5] - 8:4, 8:23, 42:10, 52:18, 53:3
sensitive [5] - 35:21, 36:6, 45:3, 54:15, 56:3
sent [3] - 29:2, 31:1, 36:17
sentence [2] - 35:17, 35:19
separate [3] - 7:16, 18:10, 31:2
separately [1] - 31:2
separating [1] - 56:9
series [5] - 24:17, 24:18
serious [1] - 46:2
service [1] - 17:2
services [4] - 17:1, 17:16, 17:17, 18:19
set [3] - 4:7, 36:12, 46:8
sets [1] - 10:23
settle [1] - 41:17
several [3] - 30:2, 30:4, 30:6
shared [1] - 30:15
sheets [4] - 10:16, 13:19, 16:11, 16:12
Sheppard [1] - 2:24
SHEPPARD [1] - 2:5
show [3] - 22:8, 22:18, 55:7
shows [1] - 22:6
side [1] - 58:13
sign [4] - 12:5, 33:10, 45:18, 57:22
significant [1] - 26:6
signing [1] - 46:10
single [2] - 26:23, 30:9
situation [2] - 49:1
six [5] - 20:12, 20:18, 20:20, 22:5, 28:16
sketched [1] - 49:12
slide [2] - 22:6, 22:14
slides [1] - 22:12
small [2] - 17:25, 36:3
smaller [1] - 30:5
sold [3] - 26:14, 27:4, 27:6
solution [1] - 19:6
someone [1] - 31:14
someplace [1] - 54:10
sometime [1] - 44:20
sometimes [3] - 45:13, 49:5, 49:8
somewhere [5] - 18:22, 18:23, 34:10, 37:25, 40:12
soon [2] - 11:16, 11:17
sophisticated [1] - 17:2
Sorry [1] - 35:15
sorry [5] - 9:25, 22:24, 33:20, 40:14, 43:15
sort [4] - 29:19, 42:21, 42:22, 56:15
sounds [1] - 28:3
space [1] - 30:15
spammers [1] - 33:1
speaks [1] - 13:1
spec [1] - 4:17
specific [6] - 17:7, 17:8, 17:9, 23:12, 32:4, 36:5
specifically [5] - 20:25, 24:11, 33:7, 40:6, 55:20
specification [5] - 10:16, 13:18, 15:4, 16:11, 16:12
specifications [3] - 11:2, 11:9, 11:20
specificity [1] - 35:4
specified [1] - 41:21
specifies [1] - 17:3
specify [2] - 18:4, 41:22
specs [1] - 4:4
spelled [1] - 16:24
spend [2] - 27:18, 28:8
split [1] - 17:15
stack [1] - 52:20
Stacy [1] - 59:1
stalling [1] - 7:23
STAMOULIS [1] - 1:20
stand [2] - 13:16, 13:25
standing [13] - 32:10, 39:18, 39:23, 40:24, 40:25, 41:8, 45:15, 46:2, 48:1, 50:21, 50:22, 55:16, 55:23
standing-related [1] - 55:23
start [5] - 3:4, 8:16, 10:9, 23:19, 25:2
started [1] - 30:24
statement [4] - 12:14, 17:7, 17:9, 18:21
statements [13] - 10:14, 10:21, 11:12, 11:19, 12:15, 13:2, 13:18, 16:23, 17:16, 18:2, 18:9, 18:14, 23:4
STATES [1] - 1:1
States [1] - 1:16
stay [1] - 40:17
stenographic [1] - 58:24
step [1] - 45:6
still [1] - 38:7
strategic [1] - 23:5
Street [1] - 1:13
strengths [1] - 46:19
strike [1] - 28:9
strong [1] - 46:21
structure [1] - 56:12
studied [1] - 30:22
stuff [15] - 3:12, 3:14, 8:1, 12:5, 14:20, 29:14, 35:23, 37:24, 38:2, 38:4, 38:5, 44:11, 53:4, 56:4, 56:7
subject [7] - 5:4, 6:9, 22:19, 23:8, 47:14, 55:7, 55:10
submit [1] - 44:13
subpoena [1] - 42:14
substantial [1] - 23:5
success [3] - 43:3, 45:4, 50:6
successful [1] - 43:1
succinct [1] - 22:25
sufficient [6] - 13:3, 18:15, 29:10, 31:9, 31:15
suggesting [1] - 28:3
suggestion [2] - 48:11, 53:21
suit [1] - 44:20
summary [1] - 9:18
superfluous [1] - 20:5
supplement [1] - 12:2
supplemental [1] - 28:22
supplied [1] - 18:22
supply [7] - 9:15, 10:15, 12:8, 13:7, 13:20, 15:7, 16:2
suppose [1] - 42:10
supposed [1] - 58:8
suspect [1] - 57:1
switched [1] - 38:22

T

tactical [1] - 45:10
Taiwan [4] - 9:13, 12:11, 19:15, 19:16
Taiwanese [5] - 9:11, 10:12, 12:11, 13:9, 16:4
talks [1] - 28:16
team [1] - 30:24
teased [1] - 55:20
technical [9] - 11:5, 11:20, 14:16, 19:25, 20:4, 20:24, 21:18, 21:22, 22:2
technology [8] - 21:5, 23:25, 24:4, 24:9, 24:12, 24:14, 24:22, 24:24
temperature [1] - 15:1
temporal [1] - 23:7
terms [16] - 10:9, 12:23, 17:3, 17:14, 17:15, 18:11, 18:22, 27:17, 28:14, 45:22, 46:12, 54:13, 54:17, 55:23, 57:10
terrible [1] - 47:2
testing [6] - 14:13, 14:15, 14:19, 15:4, 16:12, 19:9
text [1] - 57:17
THE [155] - 1:1, 1:1, 1:16, 2:12, 2:18, 3:2, 3:22, 4:10, 4:15, 4:21, 5:6, 5:10, 5:15, 6:11, 6:18, 7:3, 7:17, 8:13, 9:2, 9:9, 9:19, 9:23, 10:1, 10:6, 10:22, 11:1, 11:8, 11:11, 11:17, 12:1, 12:4, 12:19, 13:5, 13:15, 13:25, 14:7, 14:11, 14:15, 14:21, 15:3, 15:6, 15:19, 15:25, 17:11, 17:18, 18:6, 18:8, 18:17, 19:3, 20:3, 20:10, 20:17, 20:19, 20:22,

21:6, 22:1, 22:8, 22:13, 22:15, 22:23, 23:9, 23:23, 24:3, 24:14, 24:19, 25:13, 25:21, 25:25, 26:5, 26:9, 27:8, 28:7, 28:24, 29:1, 29:7, 29:12, 29:23, 30:4, 30:10, 30:14, 30:21, 31:5, 31:21, 32:12, 32:24, 33:4, 33:20, 33:24, 34:2, 34:19, 34:22, 34:25, 35:11, 35:15, 35:22, 36:3, 36:7, 36:22, 37:8, 37:14, 37:16, 38:4, 38:9, 38:21, 39:4, 39:16, 39:24, 40:1, 40:4, 40:11, 40:17, 41:1, 41:6, 41:12, 41:22, 42:1, 42:7, 43:3, 43:13, 43:22, 43:24, 44:1, 44:9, 44:16, 45:2, 46:25, 47:8, 47:15, 48:4, 49:3, 50:8, 50:15, 51:1, 51:18, 51:21, 52:4, 52:16, 52:24, 53:7, 54:3, 54:6, 54:17, 55:2, 56:1, 56:6, 56:10, 56:17, 56:24, 57:18, 57:20, 57:22, 58:2, 58:7, 58:12, 58:16
themselves [3] - 10:25, 31:14, 36:17
theory [3] - 27:11, 27:15, 27:24
thermal [2] - 4:4, 4:17
they've [4] - 19:23, 26:11, 31:18, 42:14
thinking [3] - 27:9, 42:13, 45:16
thinks [5] - 16:14, 19:4, 48:8, 55:9, 56:20
third [7] - 9:10, 40:1, 40:2, 40:5, 40:11, 46:25, 47:23
three [16] - 6:13, 19:13, 19:21, 19:22, 20:5, 20:6, 24:6, 24:16, 33:14, 35:4, 38:15, 39:6, 46:13, 47:24, 50:16, 50:20
thumb [1] - 30:16
Thursday [1] - 1:10
tie [1] - 49:18
tied [1] - 40:7
timelines [1] - 17:8
timetable [1] - 54:18
today [7] - 2:16, 6:15, 31:6, 33:10, 43:22, 43:23, 58:17
tomorrow [1] - 58:13
tons [1] - 24:10
took [1] - 21:2
top [2] - 6:7, 25:3
topic [2] - 40:9, 47:23
topics [2] - 46:13, 47:24
touches [2] - 40:24, 50:22
tout [1] - 26:19
towards [1] - 16:4
TQ [1] - 51:12
tracks [1] - 26:23
transcript [3] - 57:12, 57:16, 58:24
transfer [3] - 30:18, 39:11, 50:23
trend [1] - 32:19
trial [1] - 45:4
true [6] - 14:10, 25:21, 38:8, 49:4, 54:12, 58:23
truly [1] - 8:14
try [3] - 23:17, 28:5, 39:4
trying [8] - 5:2, 23:14, 27:8, 27:18, 45:6, 46:23, 55:24
TSMC [5] - 14:13, 16:22, 17:25, 20:2, 20:25
turn [2] - 44:7, 54:12
two [26] - 3:18, 4:2, 10:18, 13:5, 17:1, 17:19, 19:7, 19:10, 19:19, 19:23, 24:5, 28:22, 28:24, 29:3, 29:4, 30:10, 30:13, 30:22, 31:24, 36:18, 41:7, 49:10, 52:3, 53:11, 53:15
type [3] - 36:5, 42:6, 53:4
types [1] - 22:18
typical [1] - 29:19
typically [5] - 16:25, 17:3, 26:16, 31:15, 54:8

U

U.S [1] - 59:2
unclear [2] - 3:13, 19:21
under [4] - 14:16, 17:5, 17:9, 50:5
understood [4] - 37:10, 40:12, 44:15, 56:24
unit [2] - 26:2, 30:5
UNITED [1] - 1:1
United [1] - 1:16
unless [1] - 33:17
unlike [1] - 45:7
unpack [1] - 17:23
unprivileged [1] - 42:5
up [12] - 17:18, 19:5, 31:24, 33:10, 34:24, 38:21, 45:18, 46:14, 48:1, 49:13, 56:19, 57:11

V

valid [1] - 49:25
validates [1] - 40:25
validity [1] - 46:20
valuation [2] - 48:22, 48:24
valuations [1] - 49:12
value [13] - 23:21, 25:9, 45:7, 46:15, 46:17, 47:25, 49:6, 49:8, 49:13, 51:8, 51:16, 52:2
various [1] - 57:14
vehicle [1] - 43:2
version [3] - 35:23, 58:5, 58:8
versus [1] - 2:13
view [2] - 46:22, 48:15
views [1] - 50:1
volume [2] - 26:4, 52:23

W

wants [3] - 25:14, 45:9, 46:5
ways [1] - 49:10
weakness [1] - 46:19
week [2] - 6:16, 36:18
weeks [1] - 36:18
WEINBLATT [6] - 1:20, 1:20, 2:15, 32:11, 32:14, 33:2
Weinblatt [2] - 2:14, 32:9
welcome [1] - 2:18
whole [6] - 3:12, 24:11, 45:19, 48:22, 53:21, 56:1
willing [1] - 55:24
Wilmington [1] - 1:13
window [1] - 29:11
withheld [1] - 51:7
word [6] - 11:18, 35:8, 35:14, 35:25, 36:1, 48:24
words [2] - 11:18, 38:14
works [1] - 13:12
world [2] - 20:11, 47:9
worst [1] - 20:10
worth [1] - 48:13
write [1] - 16:11
written [5] - 27:16, 50:20, 57:11, 57:13, 57:16
wrote [1] - 32:2

Y

year [7] - 25:5, 26:15, 26:23, 44:21, 44:22, 52:13
years [1] - 24:6
yesterday [1] - 20:9