

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RAILWARE, INC.,)
) CV-25-05725 BLF
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) NOVEMBER 20, 2025
 PENINSULA CORRIDOR JOINT POWERS)
 BOARD D/B/A CALTRAIN,) PAGES 1 - 30
)
 DEFENDANT.)

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

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

FOR THE PLAINTIFF: ROBINS KAPLAN LLP
BY: BRYAN J. VOGEL
DERRICK J. CARMAN
1325 AVENUE OF THE AMERICAS
SUITE 2601
NEW YORK, NEW YORK 10019

FOR THE DEFENDANT: VENABLE LLP
BY: ANDREW P. MACARTHUR
HUBERT F. NING
151 WEST 42ND STREET, 49TH FLOOR
NEW YORK, NEW YORK 10036

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANT: VENABLE LLP
BY: DON Z. WANG
101 CALIFORNIA STREET, SUITE 3800
SAN FRANCISCO, CALIFORNIA 94111

SAN JOSE, CALIFORNIA

NOVEMBER 20, 2025

P R O C E E D I N G S

(COURT CONVENED AT 11:30 A.M.)

THE CLERK: YES, YOUR HONOR. FOR OUR LAST CASE,
WE'RE GOING TO BE CALLING 5:25-CV-05725 BLF, RAILWARE VERSUS
PENINSULA CORRIDOR JT POWERS BOARD.

THANK YOU. THOSE WHO WILL BE PRESENTING TO THE COURT,
RAISE YOUR HAND, AND I'LL PERMIT YOU TO PANELIST.

COUNSEL, PLEASE STATE YOUR APPEARANCES STARTING WITH
COUNSEL FOR THE PLAINTIFF.

MR. VOGEL: GOOD MORNING, YOUR HONOR.

BRYAN VOGEL FROM ROBINS KAPLAN ON BEHALF OF PLAINTIFF
RAILWARE.

WITH ME IS MY COLLEAGUE, DERRICK CARMAN.

THE COURT: GOOD MORNING.

MR. MACARTHUR: GOOD MORNING, YOUR HONOR.

ANDREW MACARTHUR OF VENABLE REPRESENTING DEFENDANT
CALTRAIN.

AND WITH ME IS HUBERT NING OF VENABLE, AND MY OTHER
COLLEAGUE, DON WANG, FROM THE SAN FRANCISCO OFFICE IS ALSO WITH
ME.

THE COURT: WELCOME. WELL, GIVEN THE KIND OF TRAVEL
YOU ALL WOULD HAVE NEEDED, I THINK DOING THIS ON ZOOM IS
PROBABLY A GREAT BENEFIT TO YOU IN THIS LEAD UP TO
THANKSGIVING.

1 IN LOOKING AT ALL OF THESE ISSUES, I WOULD HAVE LOVED TO
2 HAVE HAD YOU IN THE COURTROOM BUT NOT BY TRAVELLING FOR 3 DAYS
3 TO SPEND 40 MINUTES WITH ME. SO I WILL LOOK FORWARD TO HAVING
4 YOU IN THE COURTROOM, BUT WE'LL MAKE THIS ZOOM WORK AS WELL AS
5 WE CAN.

6 I WILL SAY FIRST, THANK YOU FOR A VERY THOROUGH CASE
7 MANAGEMENT STATEMENT. I WAS A LITTLE BIT DISTRESSED BY THE
8 LEVEL OF DISCORD THAT I SENSED BETWEEN COUNSEL IN LOOKING AT
9 THESE ISSUES, AND I DON'T KNOW WHETHER YOU ALL HAVE A LONG
10 HISTORY FIGHTING ABOUT THESE PATENTS ALL OVER THE COUNTRY OR IF
11 YOU'VE JUST COME TOGETHER AS LITIGATION TEAMS FOR THIS CASE,
12 BUT IT SEEMED A LITTLE BIT MORE DISAGREEMENT THAN I WOULD HAVE
13 EXPECTED THIS EARLY IN THE CASE.

14 SO I'M GOING TO TRY TO WORK THROUGH SOME OF THAT AND WALK
15 AWAY WITH A GOOD SOLID SCHEDULE SO THAT WE CAN MOVE FORWARD.

16 I THINK OVERALL I WANT TO MAKE IT REALLY CLEAR THAT WE
17 APPLY OUR PATENT LOCAL RULES, AND WE DON'T HAVE EXCEPTIONS TO
18 THEM VERY OFTEN. SO WHAT OTHER DISTRICTS DO, EVEN IF THEY'VE
19 COPIED OURS, BECAUSE OURS SEEM TO BE THE MOTHER SHIP OF PATENT
20 LOCAL RULES, WE REALLY IN THE NORTHERN DISTRICT GENERALLY ABIDE
21 BY THEM PRETTY STRICTLY, AND I THINK IT GIVES BOTH SIDES THE
22 CONFIDENCE OF KNOWING HOW THE CASE WILL UNFOLD.

23 SO I'VE NOTED A NUMBER OF ISSUES THAT I WANT TO WALK
24 THROUGH THAT YOU RAISED IN YOUR PAPERS, BUT BEFORE WE GET TO
25 THOSE, IS THERE ANYTHING ELSE GENERALLY ABOUT THE CASE THAT YOU

11:33AM 1 WANTED TO LET ME KNOW THAT I WOULDN'T HAVE PICKED UP FROM THE
11:33AM 2 PAPERS?

11:33AM 3 MR. VOGEL, LET ME START WITH YOU.

11:33AM 4 MR. VOGEL: WELL, JUST QUICKLY ON YOUR POINT ABOUT
11:33AM 5 HISTORY AND PERHAPS SOME OF THE ISSUES THAT WERE RAISED PRETTY
11:33AM 6 SUBSTANTIVELY IN THE PAPERS THAT MAY NOT HAVE OTHERWISE BEEN
11:33AM 7 RAISED AT THIS STAGE, WE DO HAVE A SIGNIFICANT HISTORY NOT ONLY
11:33AM 8 WITH THE TECHNOLOGY THAT IS AT ISSUE BEING USED BY MULTIPLE
11:34AM 9 PARTIES ACROSS MULTIPLE PRIOR LITIGATIONS BUT ALSO WITH THE
11:34AM 10 COUNSEL AT VENABLE BEING INVOLVED IN ALL OF THOSE CASES IN THE
11:34AM 11 PAST IN SOME WAY, SHAPE OR FORM.

11:34AM 12 THE COURT: IT SEEMS LIKE THERE MIGHT HAVE BEEN A
11:34AM 13 LITTLE BAGGAGE HERE, AND I WASN'T WRONG.

11:34AM 14 MR. VOGEL: THAT'S CORRECT, YOUR HONOR.

11:34AM 15 THE COURT: THANK YOU FOR THAT, MR. VOGEL.

11:34AM 16 MR. MACARTHUR, DID YOU HAVE ANY COMMENTS YOU WANTED TO
11:34AM 17 MAKE?

11:34AM 18 MR. MACARTHUR: JUST A COUPLE OF BRIEF COMMENTS.

11:34AM 19 VENABLE PREVIOUSLY REPRESENTED AMTRAK, AND THAT CASE
11:34AM 20 SETTLED. THAT WAS BROUGHT BY ROBINS KAPLAN, AND WE HAVE
11:34AM 21 REPRESENTED OR DO REPRESENT WEBTECH, AND THEY RECEIVED A THIRD
11:34AM 22 PARTY SUBPOENA AND THAT SETTLED BY VIRTUE OF THE SEPTA PATENT
11:34AM 23 LITIGATION, BUT WE DID NOT REPRESENT SEPTA. THAT WAS A
11:34AM 24 DIFFERENT FIRM.

11:34AM 25 THEN THE NEW JERSEY TRANSIT CASE, WHICH IS STAYED RIGHT

11:34AM 1 NOW PENDING THE SUPREME COURT CASE, WHICH IS -- MAY BE
11:34AM 2 INTERESTING TO YOU THAT THE SUPREME COURT CASE SOMEHOW FOUND
11:34AM 3 ITS WAY INTO PATENT LITIGATION.

11:34AM 4 THE COURT: I WAS SURPRISED.

11:35AM 5 MR. MACARTHUR: THAT'S A DIFFERENT LAW FIRM AS WELL,
11:35AM 6 AND THAT'S PENDING.

11:35AM 7 YOUR HONOR, IF I COULD JUST NOTE ONE MORE POINT. AS WE
11:35AM 8 REPRESENT WEBTECH, THEY FILED INTER PARTES REVIEW LAST NIGHT ON
11:35AM 9 THREE OF THESE PATENTS.

11:35AM 10 THE COURT: GOOD LUCK ON THAT. WHERE IS THAT GOING
11:35AM 11 TO GO UNDER THE NEW DIRECTOR?

11:35AM 12 MR. MACARTHUR: SO WE'LL FILE A NOTICE OR SOMETHING.
11:35AM 13 WE REPRESENT CALTRAIN.

11:35AM 14 THE COURT: OKAY. SO ON THE IPR, GENERALLY I WAIT
11:35AM 15 TO SEE IF PROCEEDINGS ARE INSTITUTED BEFORE I WOULD CONSIDER
11:35AM 16 STAYING THE CASE, AND SO IT'S NOT HELPFUL TO ME FOR YOU TO FILE
11:35AM 17 THAT NOW. YOU JUST FILED IPR?

11:35AM 18 MR. MACARTHUR: WEBTECH JUST FILED, YES.

11:35AM 19 THE COURT: OKAY. ARE YOU GOING TO JOIN IT?

11:35AM 20 MR. MACARTHUR: SO WEBTECH NAMED CALTRAIN AS A REAL
11:35AM 21 PARTY IN INTEREST AS A CAUTION.

11:35AM 22 THE COURT: GOT IT. OKAY. WELL, IF THERE COMES A
11:36AM 23 POINT WHERE YOU -- IPR HAS BEEN INSTITUTED AND YOU THINK A STAY
11:36AM 24 IS APPROPRIATE, YOU'LL FILE A MOTION. OKAY?

11:36AM 25 MR. MACARTHUR: THANK YOU, YOUR HONOR.

11:36AM 1 THE COURT: ALL RIGHT. AND, YOU KNOW, FROM WHAT
11:36AM 2 I'VE READ IN THE PRESS, THE NEW DIRECTOR IS GOING A DIFFERENT
11:36AM 3 DIRECTION IT SOUNDS LIKE, BUT I DON'T KNOW HOW THAT PLAYS OUT
11:36AM 4 IN ANY PARTICULAR CASE.

11:36AM 5 BUT I GATHER WHAT YOU'RE TELLING ME, AND IT WAS A QUESTION
11:36AM 6 THAT I HAD, THERE HAS BEEN A LOT OF LITIGATION BY RAILWARE. IT
11:36AM 7 LOOKS LIKE NOT MANY SUBSTANTIVE ISSUES HAVE ACTUALLY BEEN
11:36AM 8 DECIDED ON THESE PATENTS.

11:36AM 9 IS THAT ACCURATE, MR. VOGEL?

11:36AM 10 MR. VOGEL: WELL, THERE WERE THREE IPR'S FILED
11:36AM 11 PREVIOUSLY THAT WERE DENIED AT THE PETITION STAGE. SO THE
11:36AM 12 BOARD DID CONSIDER THE REFERENCES AND DECIDED NOT TO INSTITUTE,
11:36AM 13 AND ACTUALLY THEY'RE THE SAME REFERENCES THAT ARE BEING RAISED
11:36AM 14 BY WEBTECH. THAT IS BASED ON A QUICK REVIEW. OBVIOUSLY THEY
11:36AM 15 DID ONLY RECENTLY CATCH OUR ATTENTION THIS MORNING, BUT WE'VE
11:36AM 16 TAKEN A QUICK PEEK AND SEE THAT THEY'VE REHASHED THE SAME
11:37AM 17 ISSUES.

11:37AM 18 AS FAR AS THE AMTRAK AND SEPTA LITIGATIONS, WE DID REACH
11:37AM 19 IN SEPTA CLAIMS CONSTRUCTION FILINGS, BUT NO SUBSTANTIVE ISSUES
11:37AM 20 WERE DECIDED.

11:37AM 21 THE COURT: DID THE COURT CONSTRUE CLAIMS?

11:37AM 22 MR. VOGEL: THEY DID NOT, YOUR HONOR.

11:37AM 23 THE COURT: THEY DID NOT. OKAY.

11:37AM 24 MR. VOGEL: AND THEN ON 101 PATENTABLE SUBJECT
11:37AM 25 MATTER, IN THE AMTRAK CASE YOU PROBABLY HAVE SEEN OR WE DID

1 INDICATE IN OUR FILINGS THUS FAR THAT THE JUDGE THERE,
2 JUDGE FAILLA, DECIDED 101 AND DID NOT GRANT AMTRAK'S MOTION ON
3 THAT BASIS.

4 THE COURT: OKAY. AND OF COURSE ALL OF THOSE ISSUES
5 COME NEWBORN TO ME UNLESS THE PATENT HAD BEEN INVALIDATED,
6 WHICH OBVIOUSLY I KNEW THAT HADN'T HAPPENED.

7 OKAY. THAT'S VERY HELPFUL. OF COURSE I HAVE ALL OF THOSE
8 ISSUES TEED UP FOR ME ON FEBRUARY 19TH, WHEN I'LL SEE YOU FOR
9 THE MOTION TO DISMISS. SO THAT'S VERY HELPFUL. THANK YOU.

10 I LIKE TO KEEP PRETTY TIGHT CONTROL OVER THE PATENT CASES.
11 IT DOESN'T MEAN IT'S GOING TO TRIAL SOON. AND, IN FACT, WHEN I
12 GIVE YOU YOUR TRIAL DATE, IT'S ABOUT TWO YEARS FROM NOW, AND
13 WE'LL GET TO THAT IN A FEW MINUTES.

14 BUT I DID WANT TO GO THROUGH WHAT I THOUGHT -- WHAT I
15 GLEANED WERE THE ISSUES THAT YOU WERE ASKING ME TO DISCUSS
16 TODAY.

17 SO THE FIRST ONE WAS THAT IT APPEARS THAT YOU'VE GOT A
18 LITTLE BIT OF A DUSTUP OVER WHETHER THE DEFENDANT'S RESPONSE TO
19 PENDING DISCOVERY IS DUE ON -- WELL, IT IS DUE ON NOVEMBER 24TH
20 OR IT COULD BE EXTENDED TO DECEMBER 4TH.

21 HAVE YOU WORKED THAT OUT?

22 MR. VOGEL: WE HAVE NOT, YOUR HONOR, AND IT WOULD
23 HAVE BEEN A MUTUAL EXTENSION. WE HAVE JUST -- WE HAVE NOT
24 WORKED IT OUT. IT WOULD HAVE BEEN A MUTUAL EXTENSION BETWEEN
25 THE PARTIES BECAUSE BOTH PARTIES HAVE DISCOVERY RESPONSES DUE

11:38AM 1 THAT DAY.

11:38AM 2 THE COURT: AND SO YOU'RE NOT, YOU'RE NOT WILLING TO
11:38AM 3 MUTUALLY AGREE TO THAT EXTENSION?

11:39AM 4 MR. VOGEL: WELL, WE DID AGREE, YOUR HONOR, WITH THE
11:39AM 5 UNDERSTANDING THAT CALTRAIN WOULD ENGAGE WITH OUR DISCOVERY IN
11:39AM 6 GOOD FAITH. THEY DID NOT.

11:39AM 7 THE COURT: WELL, THEY HAVE AN OBLIGATION TO ENGAGE
11:39AM 8 IN GOOD FAITH WHETHER YOU ASKED THEM TO OR NOT. DOUBLE GOOD
11:39AM 9 FAITH?

11:39AM 10 MR. VOGEL: YES, DOUBLE GOOD FAITH.

11:39AM 11 GIVEN OUR HISTORY, YOUR HONOR, WE DIDN'T THINK IT WAS MUCH
11:39AM 12 TO ASK FOR THAT TYPE OF COMMITMENT AT THIS STAGE.

11:39AM 13 THE COURT: MR. MACARTHUR, ANY COMMENT?

11:39AM 14 MR. MACARTHUR: YEAH, YOUR HONOR. I THINK IT'S --
11:39AM 15 CALTRAIN IS THE ONE ASKING FOR THE EXTENSION FOR A WEEK AND A
11:39AM 16 HALF, AND I FEEL IT'S JUST AN EXTENSION THAT SHOULD NORMALLY BE
11:39AM 17 GRANTED AS A PROFESSIONAL COURTESY WITHOUT PRE-CONDITIONS OF
11:39AM 18 WE'RE GOING TO ANSWER SUBSTANTIVELY TO EVERY DOCUMENT REQUEST.

11:39AM 19 WE RECEIVED 100 DISCOVERY REQUESTS, 89 DOCUMENT REQUESTS,
11:39AM 20 AND 11 INTERROGATORIES, AND I THINK THAT JUST OUT OF
11:39AM 21 PROFESSIONAL COURTESY THAT WOULD BE GRANTED WITHOUT ANY
11:39AM 22 REASONING, BUT WE GAVE THEM REASONING OF IT'S ON THANKSGIVING
11:39AM 23 WEEK, WE HAVE 100 DISCOVERY REQUESTS, AND WE WOULD JUST
11:40AM 24 APPRECIATE A WEEK AND A HALF.

11:40AM 25 THE COURT: SO I DON'T WANT GRAVY STAINS ON THE

11:40AM 1 DISCOVERY RESPONSES, SO I AM GOING TO GRANT THAT REQUEST, AND I
11:40AM 2 AGREE THAT PROFESSIONAL COURTESY FOR A TEN-DAY EXTENSION IS
11:40AM 3 SOMETHING THAT SHOULD NOT BE QUIBBLED OVER.

11:40AM 4 SO YES.

11:40AM 5 AND THEN MAYBE IT WOULD HAVE BEEN CRANBERRY SAUCE, I'M NOT
11:40AM 6 SURE, BUT WE'LL GIVE YOU A LITTLE BREATHER ON THAT TO
11:40AM 7 DECEMBER 4TH, AND I THINK THAT'S REASONABLE.

11:40AM 8 ALL RIGHT.

11:40AM 9 MR. VOGEL: YOUR HONOR, JUST TO CLARIFY?

11:40AM 10 THE COURT: YES.

11:40AM 11 MR. VOGEL: IS THAT MUTUAL FOR BOTH PARTIES?

11:40AM 12 THE COURT: I ASSUME, MR. MACARTHUR, THAT YOU
11:40AM 13 ACCEPTED THAT TO BE MUTUAL?

11:40AM 14 MR. MACARTHUR: YES, YES, YOUR HONOR, AND WE PUT
11:40AM 15 THAT IN OUR PAPER. WE MOVED FOR THEM AS WELL.

11:40AM 16 THE COURT: YES, THAT IS MUTUAL. THANK YOU FOR
11:40AM 17 RAISING IT JUST TO MAKE SURE EVERYONE IS CLEAR. I APPRECIATE
11:40AM 18 THAT. ALL RIGHT.

11:40AM 19 SO THERE ARE SOME REQUESTS TO LIMIT -- PLACE LIMITATIONS
11:41AM 20 ON DISCOVERY.

11:41AM 21 SO I, ALONG WITH ALL OF MY COLLEAGUES IN THE SAN JOSE
11:41AM 22 DIVISION, WE REFER ALL DISCOVERY DISPUTES TO THE MAGISTRATE
11:41AM 23 JUDGE ASSIGNED TO THE CASE. SO I JUST WANT YOU TO KNOW, I'M
11:41AM 24 NOT GOING TO CHANGE THAT. AND, IN FACT, BECAUSE I'VE DONE THAT
11:41AM 25 FOR THE LAST 12 YEARS, I'M NOT REALLY UP TO SPEED ON DISCOVERY

11:41AM 1 DISPUTES.

11:41AM 2 SO I WILL BE REFERRING ALL DISCOVERY DISPUTES TO THE
11:41AM 3 MAGISTRATE JUDGE.

11:41AM 4 AND ON THIS LIMITATIONS ON DISCOVERY, I THINK THAT REALLY
11:41AM 5 COMES IN UNDER THE GUISE OF WHEN YOU HAVE OBJECTIONS TO
11:41AM 6 PARTICULAR DISCOVERY REQUESTS THAT YOU'RE LOOKING FOR SOME
11:41AM 7 LIMITATIONS ON THAT DISCOVERY.

11:41AM 8 SO I AM GOING TO REFER ALL OF THAT TO THE MAGISTRATE
11:41AM 9 JUDGE. IT'S NOT A GENERAL REQUEST TO FORECLOSE A WHOLE AREA OF
11:41AM 10 DISCOVERY THAT I COULD GLEAN AT THIS POINT.

11:41AM 11 I ALSO NOTED THAT YOU MAY BE HAVING SOME TROUBLE WITH A
11:42AM 12 PROTECTIVE ORDER.

11:42AM 13 SO, YOU KNOW, THIS IS AN AREA OF GROWING CONCERN TO ME.
11:42AM 14 WHY DON'T YOU -- I REALLY THINK YOU OUGHT TO CONSIDER THIS
11:42AM 15 RECORD IN THE WAY THAT YOU WOULD HAVE TO PRESENT IT TO THE
11:42AM 16 FEDERAL CIRCUIT, AND I THINK THAT CLARIFIES A LOT BECAUSE YOU
11:42AM 17 KNOW THEIR RULES, AND ULTIMATELY IF YOU DON'T -- IF SOMEONE
11:42AM 18 DOESN'T LIKE WHAT I DO IN THE CASE, THAT'S WHAT YOU'LL HAVE TO
11:42AM 19 DO.

11:42AM 20 SO I DON'T THINK THE PROTECTIVE ORDER SHOULD BE SOMETHING
11:42AM 21 THAT GETS IN THE WAY OF DISCOVERY. SO I AM GOING TO HAVE -- I
11:42AM 22 AM GOING TO REQUIRE THAT YOU MEET AND CONFER AND EITHER AGREE
11:42AM 23 TO A PROTECTIVE ORDER OR SUBMIT YOUR DISAGREEMENTS TO THE
11:42AM 24 MAGISTRATE JUDGE, BECAUSE THAT'S ANOTHER THING THAT I REFER TO
11:42AM 25 THE MAGISTRATE JUDGE, BY DECEMBER 12TH. HOPEFULLY YOU CAN GET

11:42AM 1 THAT WORKED OUT IN ADVANCE.

11:42AM 2 I KNOW THAT THERE ARE OFTEN ATTORNEYS' EYES ONLY ISSUES
11:43AM 3 THAT WE HAVE TO DEAL WITH, AND THAT'S OFTEN WHERE THE RUB IS,
11:43AM 4 BUT I THINK -- I DON'T WANT THIS TO BOG DOWN. SO YOU'LL HAVE A
11:43AM 5 WHOLE WEEK AFTER THAT DISCOVERY IS DUE THAT YOU CAN WORK ON
11:43AM 6 THIS.

11:43AM 7 MR. VOGEL: YOUR HONOR, IF I MAY JUST INTERJECT ON
11:43AM 8 TWO POINTS. WE DO NOT HAVE A MAGISTRATE JUDGE ASSIGNED YET TO
11:43AM 9 THIS CASE.

11:43AM 10 THE COURT: ONE WAS ASSIGNED IMMEDIATELY UPON THE
11:43AM 11 CASE BEING ASSIGNED TO ME, SO I'M SURPRISED, BUT THANK YOU FOR
11:43AM 12 MENTIONING THAT. I'LL MAKE SURE THAT HAPPENS TODAY.

11:43AM 13 THAT'S AN INTERNAL THING, AND THERE SHOULD BE A DOCKET
11:43AM 14 ENTRY. SO WE'LL MAKE SURE THAT THAT HAPPENS, AND THEN THAT'S
11:43AM 15 JUST RANDOMLY ASSIGNED IN THE SAN JOSE DIVISION. IT WILL BE
11:43AM 16 ONE OF OUR MAGISTRATE JUDGES HERE.

11:43AM 17 ALL RIGHT. I WAS -- I DIDN'T ACTUALLY UNDERSTAND THE
11:44AM 18 LENGTHY DISCUSSION ABOUT THE ISSUE OF DAMAGES, THE DAMAGES
11:44AM 19 THEORY. MY REAL QUESTION IS DO I NEED TO BE CONCERNED ABOUT
11:44AM 20 THAT NOW?

11:44AM 21 SO, MR. MACARTHUR, I THINK YOU RAISED THE CONCERN, AND I'M
11:44AM 22 NOT ACTUAL -- I ACTUALLY DIDN'T UNDERSTAND IT, SO HELP ME OUT
11:44AM 23 THERE.

11:44AM 24 MR. MACARTHUR: THANK YOU, YOUR HONOR. IN ESSENCE
11:44AM 25 WE UNDERSTAND THAT RAILWARE BELIEVES THAT, FOR EXAMPLE, THE

11:44AM 1 PATENT TECHNOLOGY SAVES A HUMAN PERSON'S LIFE. SO, FOR
11:44AM 2 EXAMPLE, IT CAUSED -- A PATENT WOULD HAVE SAVED \$10 MILLION IN
11:44AM 3 LITIGATION AND INSURANCE FEES AND PAYMENT TO WORKERS BECAUSE IF
11:44AM 4 YOU HAD THAT TECHNOLOGY IMPLEMENTED, IT WOULD HAVE PREVENTED
11:44AM 5 ALL OF THAT. RAILWARE BELIEVES, THEREFORE, DAMAGES ARE
11:44AM 6 \$10 MILLION.

11:44AM 7 SO IF RAILWARE'S PATENT WOULD HAVE SAVED \$50 MILLION IN
11:45AM 8 LITIGATION, THAT'S WHAT THEY BELIEVE IS THE VALUE OF THEIR
11:45AM 9 PATENT. AND THAT WAS JUDGE PHIL --

11:45AM 10 THE COURT: I'M NOT GOING TO HAVE A REASONABLE
11:45AM 11 ROYALTY AND A LICENSE LIKE EVERY OTHER PATENT CASE I'VE EVER
11:45AM 12 SEEN?

11:45AM 13 MR. MACARTHUR: YOUR HONOR, I COULDN'T AGREE WITH
11:45AM 14 YOU MORE. THERE HAVE ALREADY BEEN MULTIPLE LICENSES AND THAT
11:45AM 15 IS WITH BIGGER, BIGGER RAILROADS THAN CALTRAIN, AND -- BUT I'M
11:45AM 16 JUST MENTIONING WE JUST WANT TO POINT THAT FACT FROM
11:45AM 17 JUDGE FAILLA, THAT WAS HER ISSUE OR CONCERN, THERE ARE MANY
11:45AM 18 CONTRIBUTING FACTORS TO AN ACCIDENT AND HOW CAN YOU ALLOCATE OR
11:45AM 19 EQUIVOCATE ONE ACCIDENT TO YOUR PATENT, THAT YOUR PATENT WOULD
11:45AM 20 HAVE SAVED THAT ONE ACCIDENT, AND, THEREFORE, CAPTURED ALL OF
11:45AM 21 THAT VALUE?

11:45AM 22 THE COURT: WELL, I DIDN'T ACTUALLY SEE THAT THEORY
11:45AM 23 IN THE COMPLAINT. MAYBE I DIDN'T READ IT THAT CAREFULLY, BUT I
11:45AM 24 LOOKED AT THE -- I DIDN'T ACTUALLY SEE THAT.

11:45AM 25 SO IS THAT SOMETHING THAT YOU ANTICIPATE IN THE DISCLOSURE

11:45AM 1 UNDER PATENT LOCAL RULES FOR DAMAGES?

11:45AM 2 MR. MACARTHUR: YES, YOUR HONOR. AND FROM THE
11:46AM 3 PLAINTIFF, THERE ARE DISCLOSURE OBLIGATIONS.

11:46AM 4 I WOULD JUST ADD ONE MORE THING. I THINK YOU'RE RIGHT,
11:46AM 5 THIS IS ONE MORE OF THOSE DISCOVERY DISPUTES THAT YOU
11:46AM 6 MENTIONED, AND IT'S PREMATURE RIGHT NOW UNTIL THERE IS AN
11:46AM 7 ACTUAL DISCOVERY REQUEST AND RESPONSE. AND SO I AGREE WITH YOU
11:46AM 8 ON THAT.

11:46AM 9 THE COURT: MR. VOGEL, I WANT TO UNDERSTAND YOUR
11:46AM 10 CASE. BUT YOU'RE NOT HERE TO ARGUE WHETHER I ALLOW A THEORY TO
11:46AM 11 GO FORWARD. IT'S INTERESTING. YOU ARE ALLEGING INFRINGEMENT,
11:46AM 12 AND SO YOU'LL BE SEEKING PAST DAMAGES, AND THEN A FUTURE,
11:46AM 13 EITHER AN INJUNCTION OR A REASONABLE ROYALTY? IS THAT -- I
11:46AM 14 MEAN, THAT'S HOW WE NORMALLY SEE THESE.

11:46AM 15 MR. VOGEL: THAT'S CORRECT. THAT'S CORRECT,
11:46AM 16 YOUR HONOR, YES. AND AS PART OF --

11:46AM 17 THE COURT: AS PART OF A MEASURE, YOU WOULD BE
11:46AM 18 SEEKING A ROYALTY OF PAST DAMAGES AS --

11:46AM 19 MR. VOGEL: THE BENEFITS AS UNDER THE
11:47AM 20 GEORGIA-PACIFIC FACTORS, AND MANY OF THOSE FACTORS GO TO THE
11:47AM 21 VALUE OF THE USE OF THE TECHNOLOGY TO THE INFRINGER.

11:47AM 22 AND OUR VIEW OF THAT ANALYSIS SHOULD TAKE INTO ACCOUNT A
11:47AM 23 NUMBER OF THE THINGS THAT MR. MACARTHUR LAID OUT, AND THAT
11:47AM 24 WOULD BE PART OF RAILWARE'S PIECE OF MIND AS PART OF COMING TO
11:47AM 25 THAT HYPOTHETICAL NEGOTIATION THAT IS STRUCTURED UNDER THE

11:47AM 1 GEORGIA-PACIFIC FACTORS, AND THERE IS OBVIOUSLY GOING TO BE
11:47AM 2 OTHER FACTORS THAT PLAY IN AS WELL, BUT THAT IS ONE ASPECT OF
11:47AM 3 IT IS THE VALUE OF A LIFE, THE VALUE OF SAVING INJURIES, THE
11:47AM 4 VALUE OF PREVENTING REPUTATIONAL HARM AND THINGS ALONG THOSE
11:47AM 5 LINES, AND THAT'S ALL SUPPORTED BY FEDERAL CIRCUIT CASE LAW AS
11:47AM 6 WELL, COST SAVINGS.

11:47AM 7 THE COURT: OKAY. WELL, AS I SAID, I'M NOT HERE TO
11:47AM 8 LIMIT DISCOVERY OR DAMAGES THEORIES, BUT THERE COMES A TIME
11:47AM 9 WHEN I WILL DO THAT. SO THAT IS A NOVEL THEORY OF RECOVERY.
11:48AM 10 AND WE'LL SEE WHETHER IT GOES FURTHER AND AS WE GET FURTHER
11:48AM 11 DOWN THE LINE.

11:48AM 12 WHEN YOU MAKE YOUR DAMAGES DISCLOSURES, YOU'RE GOING TO
11:48AM 13 PUT A NUMBER ON THE VALUE OF THE CASE SO THAT MR. MACARTHUR CAN
11:48AM 14 SEE IT, AND I GUESS YOU WILL GO FROM THERE.

11:48AM 15 MR. VOGEL: WELL, IT CERTAINLY IS GOING TO BE
11:48AM 16 DEPENDENT ON WHAT DISCLOSURES WE GET FROM CALTRAIN BETWEEN NOW
11:48AM 17 AND THEN BECAUSE IT IS DEPENDENT ON THE AMOUNT OF USE THAT THEY
11:48AM 18 ARE MAKING OF THE TECHNOLOGY AT CALTRAIN. SO, YES, YOUR HONOR,
11:48AM 19 THAT'S OUR INTENT.

11:48AM 20 THE COURT: WELL, I DON'T KNOW HOW YOU ESTIMATE THE
11:48AM 21 NUMBER OF PEOPLE WHO DIDN'T DIE BECAUSE OF IT. THAT'S AN
11:48AM 22 INTERESTING CONCEPT.

11:48AM 23 BUT YOU CAN MEASURE THE NUMBER OF LIVES LOST, BUT THE
11:48AM 24 NUMBER OF LIVES SAVED IS PRETTY TRICKY. I MEAN, EVERY DAY I
11:48AM 25 DRIVE DOWN THE HIGHWAY, I DIDN'T KILL ALL THE PEOPLE I DROVE

11:48AM 1 BY, ARE THOSE LIVES SAVED? I'M NOT QUITE SURE. I DON'T THINK
11:48AM 2 THEY WERE IMPERILLED TO THAT EXTENT. MAYBE THEY WERE. BUT
11:49AM 3 WE'LL SEE.

11:49AM 4 AS I SAY, I'M NOT CUTTING IT OUT NOW, AND IT MAY BE A
11:49AM 5 DISCOVERY ISSUE. IT MAY BE SOMETHING -- I MEAN, I HOPE THAT
11:49AM 6 DOESN'T BECOME TOO CONTENTIOUS IN THE CASE. I DON'T KNOW HOW
11:49AM 7 MUCH DISCOVERY YOU'RE LOOKING FOR.

11:49AM 8 CLEARLY THE EXTENT TO WHICH THE PRODUCTS THAT YOU CLAIM
11:49AM 9 INFRINGE ARE IN USE IS PART OF THE MEASURE OF DAMAGE, BUT I
11:49AM 10 DON'T IMAGINE THERE'S ANY DISCOVERY FROM CALTRAIN ON THE NUMBER
11:49AM 11 OF PEOPLE THEY DIDN'T KILL. I MEAN, 40 MILLION PEOPLE IN
11:49AM 12 CALIFORNIA AND THE TRAINS RUN THROUGH OUR POPULATIONS, I DON'T
11:49AM 13 KNOW WHAT THAT NUMBER IS, OR THE NUMBER OF CALTRAIN LINEMAN WHO
11:49AM 14 ARE OUT ON THE TRACK WHOSE LIVES ARE SAVED. BUT I'LL LET YOU
11:49AM 15 SPIN THAT OUT.

11:49AM 16 OKAY. SO FOR ADR, MR. MACARTHUR, YOU ARE SUGGESTING GOING
11:50AM 17 TO A MAGISTRATE JUDGE FOR ADR.

11:50AM 18 AND, MR. VOGEL, I DIDN'T SEE A COMMENT FROM YOU ON THE
11:50AM 19 FORM OF ADR THAT YOUR CLIENT IS WILLING TO ENGAGE IN.

11:50AM 20 MR. VOGEL: WE'RE OKAY WITH BEING ASSIGNED TO A
11:50AM 21 MAGISTRATE FOR PURPOSES OF ADR. I GUESS THE THING WE WANTED TO
11:50AM 22 TALK THROUGH WITH YOUR HONOR AND WE NEEDED A LITTLE MORE TIME
11:50AM 23 FROM THE TIME THE CMC STATEMENT WAS SUBMITTED UNTIL THE HEARING
11:50AM 24 HERE TODAY, BUT THE PARTIES HAVE ENGAGED IN SOME SETTLEMENT
11:50AM 25 DISCUSSIONS WITHOUT MUCH PROGRESS, AND SO WE DO NOT BELIEVE AT

11:50AM 1 THIS TIME ASSIGNMENT TO A MAGISTRATE JUDGE TO START THAT
11:50AM 2 PROCESS IS APPROPRIATE. WE'RE WILLING TO CONSIDER THAT AT SOME
11:50AM 3 POINT IN THE FUTURE, BUT WE DON'T BELIEVE NOW IS THE
11:50AM 4 APPROPRIATE TIME.

11:50AM 5 THE COURT: SO I CERTAINLY UNDERSTAND IT'S VERY
11:50AM 6 EARLY IN THE CASE, BUT YOU'VE SEEN THESE CASES BEFORE, SO YOU
11:50AM 7 HAVE A LITTLE BIT OF A HEAD START.

11:50AM 8 I AM GLAD TO ASSIGN IT TO A MAGISTRATE JUDGE. THERE ARE A
11:51AM 9 COUPLE OF ISSUES, PRELIMINARY ISSUES, AND THEN THE TIMING.

11:51AM 10 SO I CAN APPRECIATE THAT THE NEXT COUPLE OF MONTHS MAY NOT
11:51AM 11 BE THE RIGHT TIME, AND YOU NEED TO MAKE ALL OF YOUR DISCLOSURES
11:51AM 12 UNDER THE PATENT LOCAL RULES. SO I'M OKAY WITH THAT.

11:51AM 13 AND I AM BASICALLY THINKING THAT IT MAY BE THAT I WANT YOU
11:51AM 14 TO HAVE A SETTLEMENT CONFERENCE WITH A MAGISTRATE JUDGE WITHIN
11:51AM 15 90 DAYS OF MY CLAIMS CONSTRUCTION ORDER BECAUSE THAT MIGHT BE
11:51AM 16 AN APPROPRIATE TIME. IT'S A LONG TIME FROM NOW, BUT I THINK
11:51AM 17 THAT MIGHT BE REASONABLE AND NOT IMPOSE ON A MAGISTRATE JUDGE
11:51AM 18 UNNECESSARILY.

11:51AM 19 DOES THAT SEEM REASONABLE TO YOU?

11:51AM 20 MR. VOGEL: YES, YOUR HONOR, THAT'S REASONABLE.

11:51AM 21 THE COURT: MR. MACARTHUR?

11:51AM 22 MR. MACARTHUR: YES, YOUR HONOR.

11:51AM 23 THE COURT: OKAY. AND OF COURSE NOTHING PREVENTS
11:51AM 24 YOU FROM MEETING EARLIER OR HIRING A PRIVATE MEDIATOR EARLIER.

11:52AM 25 SO IN OUR DISTRICT THERE ARE TWO WAYS THAT I CAN ASSIGN

11:52AM 1 THIS CASE TO A MAGISTRATE JUDGE FOR SETTLEMENT. THERE CAN BE A
11:52AM 2 RANDOM ASSIGNMENT OF A MAGISTRATE JUDGE OR YOU CAN MEET AND
11:52AM 3 CONFER AND IF YOU CAN AGREE ON A SINGLE MAGISTRATE JUDGE
11:52AM 4 ANYWHERE IN OUR DISTRICT, NOT JUST MY DIVISION, WE WILL RESPECT
11:52AM 5 THAT REQUEST, AND THE CASE WILL BE ASSIGNED FOR SETTLEMENT TO
11:52AM 6 THAT MAGISTRATE JUDGE. SO I'D LIKE TO GIVE YOU THE OPPORTUNITY
11:52AM 7 TO DO THAT.

11:52AM 8 AND WHY DON'T I PUT THE SAME DECEMBER 12TH DEADLINE FOR
11:52AM 9 YOU TO GET BACK TO ME ON WHETHER YOU'VE MUTUALLY AGREED TO A
11:52AM 10 MAGISTRATE JUDGE OR WOULD JUST APPRECIATE A RANDOM ASSIGNMENT.
11:52AM 11 OKAY?

11:52AM 12 MR. MACARTHUR: YES, YOUR HONOR.

11:52AM 13 THE COURT: ALL RIGHT. GOOD. I WILL ORDER ADR
11:53AM 14 WITHIN 90 DAYS OF THE MARKMAN ORDER.

11:53AM 15 ALL RIGHT. THERE WAS A REQUEST TO ALLOW AMENDMENT TO
11:53AM 16 INFRINGEMENT CONTENTIONS WITHOUT THE NEED OF LEAVE OF COURT,
11:53AM 17 AND THAT WAS DENIED. THAT WILL GO TO THE MAGISTRATE JUDGE IF
11:53AM 18 THERE IS SUCH A REQUEST.

11:53AM 19 SO I THINK THAT COVERS ALL OF THE ISSUES THAT I'VE
11:53AM 20 IDENTIFIED IN YOUR PAPERS SHORT OF THE SCHEDULING, WHICH I'LL
11:53AM 21 MOVE TO.

11:53AM 22 BUT, MR. VOGEL, WERE THERE ANY OF THESE OTHER SPECIFIC
11:53AM 23 ISSUES THAT I'VE MISSED OR THAT YOU WOULD LIKE ME TO COVER THIS
11:53AM 24 MORNING?

11:53AM 25 MR. VOGEL: NOT THAT I CAN RECALL, YOUR HONOR.

11:53AM 1 THE COURT: MR. MACARTHUR, ANYTHING THAT I'VE MISSED
11:54AM 2 OR THAT YOU WOULD LIKE TO ADD?

11:54AM 3 MR. MACARTHUR: YOUR HONOR, IT MIGHT BE RELATED TO
11:54AM 4 THE SCHEDULE, BUT THE MEET AND CONFER. WE HAD A REQUEST IN
11:54AM 5 THERE ABOUT SPLITTING COSTS FOR TRANSCRIPTION OF MEET AND
11:54AM 6 CONFERS. VENABLE -- YOU'RE SHAKING YOUR HEAD ALREADY.

11:54AM 7 THE COURT: I'M SHAKING MY HEAD, IS IT REALLY THAT
11:54AM 8 BAD THAT YOU CAN'T TRUST EACH OTHER?

11:54AM 9 MR. MACARTHUR: YOU PROBABLY SAW MY DECLARATION WHEN
11:54AM 10 WE HAD -- AND, OF COURSE, I SWORE I'M A MEMBER IN
11:54AM 11 NORTH CAROLINA AND THE CALIFORNIA BAR AND THE
11:54AM 12 NORTHERN DISTRICT. YOUR HONOR, WE'LL PROCEED. I APPRECIATE
11:54AM 13 YOUR COMMENT EARLIER ABOUT THE CONTENT OF THE CASE MANAGEMENT
11:54AM 14 STATEMENT. SO WE'LL PROCEED OTHERWISE.

11:54AM 15 THE COURT: SO I'M NOT SAYING IT WON'T HAPPEN. I'M
11:54AM 16 GOING TO LET YOU BRING THIS TO A MAGISTRATE JUDGE IF THESE MEET
11:54AM 17 AND CONFERS REALLY FALL APART. YOUR CAREER IN LAW IS GOING TO
11:55AM 18 BE AWFULLY LONG IF YOU GET BOGGED DOWN IN YELLING AT EACH ABOUT
11:55AM 19 THE ACCURACY OF WHAT HAPPENS IN A MEET AND CONFER.

11:55AM 20 AND I HOPE YOU GET TO THE POINT IN YOUR CAREER WHERE I AM
11:55AM 21 AND YOU CAN LOOK BACK AND SAY THE BEST THING ABOUT MY JOB WAS
11:55AM 22 MY COLLEAGUES ON BOTH SIDES OF THE CASE. THAT'S NOT HAPPENING
11:55AM 23 HERE IF YOU NEED A COURT REPORTER TO TAKE IT ALL DOWN.

11:55AM 24 I'M GOING TO LEAVE IT IN YOUR HANDS NOW. AND, YOU KNOW,
11:55AM 25 YOU KNOW HOW TO FOLLOW UP WITH AN EMAIL CONFIRMING THINGS, AND

11:55AM 1 IF IT REALLY FALLS APART, MR. MACARTHUR, YOU CAN BRING THAT UP
11:55AM 2 TO THE MAGISTRATE JUDGE, AND I HOPE THAT'S NOT WHERE YOU END
11:55AM 3 UP.

11:55AM 4 MR. MACARTHUR: THANK YOU VERY MUCH, YOUR HONOR.

11:55AM 5 THE COURT: YES. ALL RIGHT. SO I WAS -- WELL, I
11:55AM 6 FIND IT AMUSING THAT YOU COULDN'T AGREE ON A SCHEDULE AND YOU
11:56AM 7 WERE ROUGHLY TEN DAYS APART ON EVERYTHING. I WOULD HAVE BEEN
11:56AM 8 MORTIFIED TO TAKE THAT TO A FEDERAL JUDGE BUT CLEARLY YOU
11:56AM 9 WEREN'T.

11:56AM 10 SO HERE'S HOW WE'RE GOING TO WORK THIS OUT. I AM GOING TO
11:56AM 11 GIVE YOU THE DATES FOR YOUR MARKMAN HEARING, SUMMARY JUDGMENT,
11:56AM 12 FINAL PRETRIAL, AND TRIAL.

11:56AM 13 I'M GOING TO HAVE YOU MEET AND CONFER ON THE REMAINDER OF
11:56AM 14 THE DISCOVERY CUTOFF DATES CONSISTENT WITH OUR PATENT LOCAL
11:56AM 15 RULES AND HAVE YOU SUBMIT A STIPULATED, AGREED SCHEDULE. I'LL
11:56AM 16 GIVE YOU A DATE FOR THAT.

11:56AM 17 IF YOU ARE UNABLE TO REACH AN AGREEMENT ON THOSE DATES,
11:56AM 18 THEN I WILL SET A DATE WHEN YOU ARE TO APPEAR PERSONALLY IN MY
11:56AM 19 COURTROOM AND REMAIN DAY-TO-DAY UNTIL YOU COME UP WITH AN
11:56AM 20 AGREEMENT. AND IT'S VERY COMFORTABLE. I HAVE WOODEN CHAIRS,
11:56AM 21 AND I WILL TURN THE LIGHTS ON FOR YOU, AND I REALLY MEAN
11:56AM 22 DAY-TO-DAY. AND YOU CAN STAY FOR A WEEK OR A MONTH, AND I
11:57AM 23 DON'T CARE. BUT IF YOU'RE TEN DAYS APART, I'M NOT GOING TO
11:57AM 24 REFEREE THAT.

11:57AM 25 BUT I'M GOING TO GIVE YOU DATES WHERE -- YOU CERTAINLY DID

11:57AM 1 HAVE DISAGREEMENTS ON THE SCHEDULE, BUT ULTIMATELY I HAD TO
11:57AM 2 LOOK AT MY OWN SCHEDULE AS TO WHEN I COULD FIT THIS IN, AND I'M
11:57AM 3 TRYING TO DO IT IN THE BALLPARK OF WHAT YOU WERE SUGGESTING.

11:57AM 4 SO I DO MY TUTORIALS SEPARATE FROM THE CLAIMS
11:57AM 5 CONSTRUCTION. I KNOW YOU ALL ARE TRAVELLING, BUT THAT'S -- AND
11:57AM 6 I DO THEM IN PERSON. SO YOU'LL NEED TO DEAL WITH THAT.

11:57AM 7 SO LET ME JUST START AT THE TOP. I'M GOING TO SET THE
11:57AM 8 TUTORIAL ON SEPTEMBER 3RD OF 2026. THAT'S A THURSDAY. AND I'M
11:57AM 9 GOING TO SET IT AT 1:30 IN THE AFTERNOON.

11:57AM 10 I GENERALLY -- I'M GLAD TO GIVE EACH SIDE AN HOUR TO
11:57AM 11 PRESENT.

11:57AM 12 I'M GOING TO SET YOUR MARKMAN HEARING ON SEPTEMBER 11TH OF
11:58AM 13 2026 ON A FRIDAY AT 9:00 A.M. PLEASE REVIEW AND COMPLY WITH MY
11:58AM 14 STANDING ORDERS. I ONLY ALLOW ONE SUMMARY JUDGMENT MOTION IN
11:58AM 15 THE LIFE OF THE CASE PER SIDE, AND I'M GOING TO SET A LAST DAY
11:58AM 16 THAT I WILL HEAR SUMMARY JUDGMENT. THAT WILL BE JUNE 17TH OF
11:58AM 17 2027. THAT'S THE HEARING DATE, NOT THE FILING DATE. I'M GOING
11:58AM 18 TO RESERVE THAT DATE FOR YOU NOW SO THAT YOU DON'T NEED TO
11:58AM 19 WORRY ABOUT MY CALENDAR BEING FULL.

11:58AM 20 AND FOR SUMMARY JUDGMENT AND YOUR CLAIMS CONSTRUCTION, I'M
11:58AM 21 GOING TO REQUIRE THAT THE CLOSING BRIEF BE FILED AT LEAST THREE
11:58AM 22 WEEKS BEFORE THE HEARING. I KNOW OUR LOCAL RULES SAY TWO
11:58AM 23 WEEKS, BUT I AM GOING TO MODIFY THAT HERE. I NEED MORE TIME.
11:58AM 24 AND SO FOR BOTH OF THOSE MOTIONS, THAT'S MY REQUEST AND MY
11:59AM 25 ORDER.

11:59AM 1 IN MY STANDING ORDERS YOU WILL SEE VERY SPECIFIC RULES FOR
11:59AM 2 DAUBERT MOTIONS. SO I WANT TO GO OVER THEM QUICKLY NOW JUST SO
11:59AM 3 THAT IT REMINDS YOU TO HAVE ALL OF YOUR ATTORNEYS LOOK AT THIS
11:59AM 4 CAREFULLY.

11:59AM 5 IF YOU ARE BRINGING A DAUBERT OBJECTION TO A SUMMARY
11:59AM 6 JUDGMENT MOTION, IT MUST BE CONTAINED IN THE BODY OF YOUR
11:59AM 7 MOTION, RESPONSE, OR REPLY AND WITHIN THE PAGE LIMITS WE ALLOW
11:59AM 8 FOR SUMMARY JUDGMENT.

11:59AM 9 IF YOU FILE A SEPARATE DAUBERT MOTION AT THE TIME OF
11:59AM 10 SUMMARY JUDGMENT, YOU WILL NOT GET A RULING ON IT UNTIL TRIAL,
11:59AM 11 AND IT WILL NOT BE CONSIDERED WITH SUMMARY JUDGMENT. OUR LOCAL
11:59AM 12 RULES, NOT MY STANDING ORDER, OUR LOCAL RULES REQUIRE ALL
11:59AM 13 EVIDENTIARY OBJECTIONS FOR A MOTION TO BE CONTAINED IN THE BODY
11:59AM 14 OF THE PAPERS AND NOT SEPARATELY FILED.

11:59AM 15 SEPARATELY, IF YOU WANT TO BRING DAUBERT MOTIONS, YOU MUST
12:00PM 16 OBTAIN A HEARING DATE AT LEAST 60 DAYS BEFORE THE TRIAL DATE,
12:00PM 17 AND I DO NOT RESERVE THOSE EARLY LIKE I DID THE SUMMARY
12:00PM 18 JUDGMENT. YOU CAN RESERVE A HEARING DATE UP TO 14 DAYS BEFORE
12:00PM 19 YOU FILE A DAUBERT MOTION, AND IF YOU SEEK A DATE AND YOU CAN'T
12:00PM 20 GET THE HEARING DATE AT LEAST 60 DAYS BEFORE TRIAL, IT'S JUST
12:00PM 21 TOO BAD.

12:00PM 22 SO YOU'RE ON NOTICE JUST SHY OF TWO YEARS IN ADVANCE OF
12:00PM 23 THAT DEADLINE THAT THAT'S WHAT YOU HAVE TO DO.

12:00PM 24 HOWEVER, I DO HAVE A FAILSAFE FOR YOU. YOU ARE WELCOME TO
12:00PM 25 USE SOME OF YOUR MOTIONS IN LIMINE AT THE FINAL PRETRIAL AS

12:00PM 1 DAUBERTS. YOU ARE LIMITED TO FIVE PAGES PER MOTION, AND YOU'RE
12:00PM 2 LIMITED TO FIVE MOTIONS IN LIMINE PER SIDE.

12:00PM 3 SO THERE ARE TRADEOFFS, BUT I DO ALLOW THAT, SO IF YOU
12:00PM 4 MISS IT.

12:00PM 5 BUT OTHERWISE YOU'RE GOING TO BE FILING THOSE DAUBERT
12:01PM 6 MOTIONS PROBABLY EIGHT MONTHS BEFORE TRIAL IF YOU WANT TO BE
12:01PM 7 SURE OF GETTING A HEARING DATE. AND I REALLY MEAN IT. I MAKE
12:01PM 8 NO EXCEPTIONS. IF YOU'RE TOO LATE, JUST PUT IT IN A FIVE PAGE
12:01PM 9 MOTION IN LIMINE, AND THAT'S FINE WITH ME.

12:01PM 10 I'M GOING TO SET YOUR TRIAL DATE ON NOVEMBER 8TH OF 2027.
12:01PM 11 AND LET ME TELL YOU THAT GENERALLY, ALTHOUGH I'M NOT MAKING AN
12:01PM 12 ORDER IN THIS CASE, YOU GET 15 HOURS PER SIDE. AND I KNOW
12:01PM 13 THAT'S GETTING CLOSE TO THANKSGIVING. I HAVE NO DOUBT THIS
12:01PM 14 CASE WILL BE DONE BEFORE THAT YEAR'S TURKEY IS EATEN.

12:01PM 15 BUT I DON'T -- THIS IS NOT -- WE DON'T DO THREE AND FOUR
12:01PM 16 WEEK TRIALS, AND I DON'T THINK YOU GET THAT ANYWHERE IN THE
12:01PM 17 COUNTRY.

12:01PM 18 SO I'LL BE CHALLENGE JUDGE GILSTRAP IN E.D. TEX AND YOU
12:01PM 19 WILL, TOO, BECAUSE YOU'RE VERY FAMILIAR WITH THAT.

12:01PM 20 I'M GOING TO SET YOUR PRETRIAL CONFERENCE ON OCTOBER 7TH
12:02PM 21 OF 2027 AT 1:30 IN THE AFTERNOON.

12:02PM 22 THOSE ARE THE DATES THAT I NEEDED.

12:02PM 23 NOW, I'M GOING TO HAVE YOU GO BACK THROUGH THE SCHEDULE,
12:02PM 24 AND NOW THAT YOU HAVE THESE DATES, I THINK YOU WILL KNOW
12:02PM 25 EXACTLY HOW TO DO THIS. PLEASE REMEMBER MY THREE-WEEK

1 REQUIREMENT FOR CLAIMS CONSTRUCTION AND SUMMARY JUDGMENT SINCE
2 I SET THOSE HEARING DATES.

3 I HAVE ONE REQUEST. IT'S MORE OF A FAVOR. IN YOUR CLAIMS
4 CONSTRUCTION GENERALLY THE PLAINTIFF FILES THE OPENING BRIEF,
5 AND YOU WILL SET AN ORDER THAT -- THE AGREED-UPON TERMS THAT
6 ARE CONTESTED.

7 IN THE OPPOSITION, DON'T SCRAMBLE THE ORDER THAT YOU
8 ADDRESS THOSE TERMS BECAUSE I READ -- I CONSIDER ONE CLAIM TERM
9 AT A TIME, AND IT'S JUST EASIER IF THE BRIEFS LINE UP.

10 SO PLEASE HELP ME ON THAT. IT REALLY IS A BIG HELP, AND I
11 DO APPRECIATE IT.

12 SO WITH ALL OF THOSE DATES AND THE REQUIREMENT FOR YOUR
13 SCHEDULE, YOU'LL EITHER -- LET'S NAIL THAT DOWN NOW. IS
14 DECEMBER -- CAN YOU GET THAT SCHEDULE TO ME BY DECEMBER 12TH?
15 IS THAT -- WE HAVE A BUNCH ON THAT DATE. I'M GLAD TO GIVE YOU
16 UNTIL DECEMBER 19TH IF YOU WOULD LIKE TO WORK OUT THE SCHEDULE.

17 MR. VOGEL: I PREFER DECEMBER 19TH GIVEN ALL OF THE
18 OTHER THINGS ON THAT DATE RIGHT NOW. THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT. SO I WILL ASK FOR A
20 STIPULATION AND PROPOSED ORDER ON THE REMAINDER OF THE
21 DISCOVERY CUTOFF DATES BY DECEMBER 19TH.

22 NOW, AS YOU KNOW, I LIKE TO CARVE OUT TIME FOR EVERYONE TO
23 TAKE A BREATH DURING THE HOLIDAYS.

24 SO IF YOU'RE UNABLE TO WORK OUT A STIPULATED SCHEDULE, I'M
25 GOING TO ASK THAT YOU -- AND THEN I'LL BE TRAVELLING THE FIRST

12:04PM 1 WEEK IN JANUARY, SO I'M GOING TO REQUIRE THAT YOU APPEAR ON
12:04PM 2 JANUARY 13TH AT 9:00 A.M. AND REMAIN FROM DAY-TO-DAY UNTIL THE
12:04PM 3 SCHEDULE IS AGREED UPON.

12:04PM 4 THAT WILL ALSO -- EVEN IF YOU SEND ME A FAILURE NOTICE ON
12:04PM 5 THE SCHEDULE ON DECEMBER 19TH, IT WILL GIVE YOU A LITTLE BIT
12:04PM 6 MORE TIME AND HOLIDAY GOOD CHEER TO WORK THAT OUT, AND SO THAT
12:04PM 7 WILL GET YOU PAST THE HOLIDAY TRAVEL AS WELL. I DO NOT EXPECT
12:04PM 8 TO SEE YOU ON THAT DATE. I AM SURE THAT YOUR PROFESSIONALISM
12:04PM 9 WILL PREVAIL AND YOU'LL WORK OUT A SCHEDULE.

12:04PM 10 ALL RIGHT. THOSE -- I THINK THAT COVERS EVERYTHING THAT I
12:04PM 11 WANTED TO GO THROUGH TODAY, AND IT'S A LOT.

12:05PM 12 SO THE LAST THING I WANT TO ASK, AND IT MAY BE MORE
12:05PM 13 APPROPRIATE TO DEAL WITH THIS WHEN I SEE YOU AT THE MOTION TO
12:05PM 14 DISMISS. I DO -- BECAUSE YOU HAVE NOT MADE YOUR INFRINGEMENT
12:05PM 15 CONTENTIONS AND PRIOR ART REFERENCES YET.

12:05PM 16 IN EVERY PATENT CASE I AM CONCERNED WITH THE INFRINGEMENT
12:05PM 17 CONTENTIONS BLOWING UP, ALTHOUGH I THINK THERE ARE ONLY THREE
12:05PM 18 CLAIMS AT ISSUE HERE, SO THAT MAY BE A FAIRLY DIRECTED CASE,
12:05PM 19 AND I WORRY ABOUT THE PRIOR ART REFERENCES AND COMBINATIONS
12:05PM 20 EXPLODING.

12:05PM 21 SO IN A CASE THAT IS GOING DOWN THAT TRACK, I TRY TO SET
12:05PM 22 UP A SCHEDULE FOR THE, FOR THE NARROWING OR FUNNELING OF THOSE
12:05PM 23 ISSUES. SO I THINK YOU'VE PROBABLY DONE THAT IN OTHER COURTS,
12:05PM 24 BUT I WOULD LIKE YOU TO THINK ABOUT IT.

12:05PM 25 AND TYPICALLY AT VARIOUS STAGES THAT GENERALLY CONCLUDE

12:06PM 1 AFTER CLAIMS CONSTRUCTION, WE'RE GOING TO START NARROWING THE
12:06PM 2 ISSUES, BUT THIS CASE MAY BE FOCUSSED ENOUGH THAT YOU CAN TELL
12:06PM 3 ME THAT YOU'RE GOOD ON IT AND THAT THE -- AND THAT THAT'S NOT
12:06PM 4 NECESSARY. SO JUST KEEP THAT IN MIND.

12:06PM 5 I'VE CERTAINLY HAD CASES WHERE THE PRIOR ART REFERENCES
12:06PM 6 AND COMBINATIONS NUMBER IN THE DOZENS, AND THAT'S VERY
12:06PM 7 EXPENSIVE. SO I WANT TO MAKE SURE THAT I HAVE A HANDLE ON IT.

12:06PM 8 WHEN YOU ULTIMATELY GET TO TRIAL, I JUST GIVE YOU THE TIME
12:06PM 9 AND YOU CAN TRY AS MANY CLAIMS AS YOU WANT TO THE JURY. I
12:06PM 10 DON'T -- IT'S YOUR CASE, AND IT GETS TRIED ONCE, SO I DON'T
12:06PM 11 LIMIT THE NUMBERS OF CLAIMS THAT CAN BE SUBMITTED TO THE JURY
12:06PM 12 OR ANY OF THAT. I JUST -- I JUST WANT TO KEEP -- MAKE SURE
12:06PM 13 THAT THE LITIGATION DOESN'T GET OUT OF CONTROL.

12:06PM 14 ALL RIGHT. SO WITH ALL OF THAT, I AM DONE.

12:06PM 15 SO, MR. VOGEL, ANYTHING ELSE YOU WOULD LIKE TO DISCUSS
12:07PM 16 THIS MORNING?

12:07PM 17 MR. VOGEL: NOTHING FURTHER FROM ME. THANK YOU,
12:07PM 18 YOUR HONOR.

12:07PM 19 THE COURT: MR. MACARTHUR?

12:07PM 20 MR. MACARTHUR: YOUR HONOR, I WOULD JUST SAY THAT
12:07PM 21 CALTRAIN WOULD SUBSCRIBE TO YOUR NARROWING ASPECT AND HAVE THAT
12:07PM 22 -- I MEAN, WE WOULD THINK THAT WOULD BE A GOOD IDEA TO PUT THAT
12:07PM 23 IN ANY STIPULATED SCHEDULE FOR CLARITY FOR THE PARTIES FOR
12:07PM 24 NARROWING CLAIMS AND PRIOR ART REFERENCES. WE APPRECIATE THE
12:07PM 25 COURT DOESN'T WANT TO SEE 40 ASSERTED CLAIMS AND 200

12:07PM 1 COMBINATIONS OF THE PRIOR ART REFERENCES, AND I UNDERSTAND FROM
12:07PM 2 BOTH SIDES. AND, YEAH, THE ATTORNEYS AT MY FIRM PROBABLY DON'T
12:07PM 3 WANT TO DRAFT 400 CHARTS EITHER.

12:07PM 4 THE COURT: SO I WOULD LIKE -- IN MOST CASES I DON'T
12:07PM 5 SET -- SCHEDULE FURTHER CASE MANAGEMENT, EXCEPT IN CASES THAT
12:07PM 6 ARE A LITTLE OUT OF CONTROL, OR JUST REALLY NEED A LITTLE MORE
12:07PM 7 GUIDANCE.

12:07PM 8 I'D LIKE TO SET A FURTHER CASE MANAGEMENT IN THIS CASE.

12:07PM 9 DOES IT MAKE SENSE TO DO THAT ON FEBRUARY 19 WHEN WE HAVE
12:08PM 10 THE MOTION?

12:08PM 11 MR. VOGEL: THAT'S FINE WITH THE PLAINTIFF.

12:08PM 12 MR. MACARTHUR: YES, YOUR HONOR, IF YOU HAVE TIME,
12:08PM 13 YES, THAT WOULD BE GREAT.

12:08PM 14 THE COURT: OKAY. LET'S -- WELL, I HAVE TO LOOK AT
12:08PM 15 MY SCHEDULE. RIGHT NOW I'M GOING TO PENCIL IN A FURTHER CASE
12:08PM 16 MANAGEMENT CONFERENCE ON FEBRUARY 19TH.

12:08PM 17 I'D LIKE YOU -- AND WHEN YOU GET TOGETHER FOR YOUR JOINT
12:08PM 18 STATEMENT, I THINK THE INFRINGEMENT CONTENTIONS WILL ALREADY
12:08PM 19 HAVE BEEN DISCLOSED; IS THAT RIGHT?

12:08PM 20 MR. MACARTHUR: I DON'T WANT TO SPEAK FOR MR. VOGEL,
12:08PM 21 BUT RIGHT NOW THAT'S SET IN THE CURRENT SCHEDULE FOR AFTER THE
12:08PM 22 MOTION TO DISMISS HEARING ON FEBRUARY 25TH.

12:08PM 23 THE COURT: OKAY. THAT'S ALL RIGHT.

12:08PM 24 I WANT TO ADDRESS THE ISSUE OF NARROWING CLAIMS AND PRIOR
12:08PM 25 ART REFERENCES WHEN WE HAVE THE CASE MANAGEMENT CONFERENCE, SO

12:08PM 1 IF YOU WOULD MAKE A NOTE TO PUT THAT AS PART OF YOUR MEET AND
12:08PM 2 CONFER AND YOUR STATEMENT ABOUT THAT, BUT OBVIOUSLY WE CAN'T DO
12:08PM 3 ANYTHING UNTIL WE HAVE ALL OF THE INITIAL DISCLOSURES, AND SO
12:09PM 4 WE'LL JUST KEEP THAT GOING.

12:09PM 5 I DON'T HAVE MY PATENT LOCAL RULES HERE. BUT IS THE
12:09PM 6 DISCLOSURE OF INFRINGEMENT CONTENTIONS, IS THAT CONSISTENT WITH
12:09PM 7 OUR RULES?

12:09PM 8 MR. VOGEL: WE DID PUSH THAT DATE OUT, YOUR HONOR,
12:09PM 9 GIVEN THE HOLIDAYS AND ALL OF THE BRIEFING THAT IS ALREADY
12:09PM 10 GOING ON BETWEEN NOW AND THEN AS WELL AS OTHER OBLIGATIONS OF
12:09PM 11 COUNSEL, AND IT WAS AGREED TO BY CALTRAIN.

12:09PM 12 THE COURT: HOW MUCH -- HOW FAR DID YOU PUSH THAT
12:09PM 13 OUT? IT LOOKS LIKE YOU AGREED ON IT.

12:09PM 14 MR. VOGEL: WE DID AGREE ON IT. I CAN'T RECALL
12:09PM 15 EXACTLY HOW FAR WE PUSHED IT OUT. MAYBE A MONTH AND A HALF.

12:09PM 16 THE COURT: OKAY.

12:09PM 17 MR. MACARTHUR: YOUR HONOR, IT WAS ONLY DUE
12:09PM 18 DECEMBER 4TH I BELIEVE UNDER THE LOCAL PATENT RULES.

12:09PM 19 THE COURT: SO YOU DID PUSH IT OUT QUITE A BIT.

12:10PM 20 I'M A LITTLE CONCERNED BECAUSE I'M NOT MOVING YOUR MARKMAN
12:10PM 21 HEARING, BUT MAYBE THAT'S PLENTY OF TIME. WHAT DO YOU THINK?

12:10PM 22 MR. VOGEL: WE ACCOUNTED FOR THAT IN THE PROPOSED
12:10PM 23 SCHEDULE, YOUR HONOR.

12:10PM 24 THE COURT: OKAY. WELL, I AM OKAY WITH -- THIS IS
12:10PM 25 ITEM 5 -- THE DISCLOSURE OF YOUR INFRINGEMENT CONTENTIONS ON

12:10PM 1 FEBRUARY 27TH, BUT I WANT YOU TO STICK TO THE, I WANT YOU TO
12:10PM 2 STICK TO THE PATENT LOCAL RULES SCHEDULES. AND, YOU KNOW, HERE
12:10PM 3 YOU'RE LIKE -- YOU'RE A WEEK APART ON THE INVALIDITY
12:10PM 4 CONTENTIONS.

12:10PM 5 SO THIS ALL LOOKS FINE, BUT I DON'T KNOW IF THIS IS
12:10PM 6 CONSISTENT WITH THE DEADLINES IN THE PATENT LOCAL RULES.

12:10PM 7 MR. MACARTHUR: YOUR HONOR, I CAN SPEAK TO THAT.
12:10PM 8 CALTRAIN FOR THE INVALIDITY CONTENTIONS, WE ASKED FOR 1
12:10PM 9 ADDITIONAL WEEK RATHER THAN 45 DAYS, AND THEN THAT SEEMED TO
12:10PM 10 PUSH EVERYTHING BY A WEEK.

12:10PM 11 THE COURT: SO A WEEK I'M NOT WORRIED ABOUT. YOU
12:11PM 12 KNOW, TWO MONTHS -- YOU'VE GIVEN YOURSELF MORE THAN TWO MONTHS
12:11PM 13 ON THE INITIAL DISCLOSURES. SO THAT'S -- I WILL ALLOW THAT,
12:11PM 14 THE FEBRUARY 27TH.

12:11PM 15 AND AS YOU HAD IMAGINED IN YOUR PAPERS AND YOU'LL WORK OUT
12:11PM 16 THE REST OF YOUR SCHEDULE WITH THAT IN MIND, THAT I WILL
12:11PM 17 APPROVE THAT.

12:11PM 18 OKAY. AND, OF COURSE, YOU WILL COME TO AN AGREEMENT ON
12:11PM 19 THE ENTIRE SCHEDULE EVENTUALLY BECAUSE YOU WILL NOT WEAR OUT MY
12:11PM 20 PATIENCE ON HAVING YOU HERE DAY-TO-DAY TO WORK IT OUT.

12:11PM 21 THANK YOU. I THINK WE'VE GOTTEN A LOT ACCOMPLISHED TODAY,
12:11PM 22 MOSTLY IN YOU EDUCATING ME, AND THAT'S A BIG PART OF THIS. AND
12:11PM 23 I'VE GIVEN YOU SOME ASSIGNMENTS TO DO FOR A NUMBER OF THINGS
12:11PM 24 AND SO YOU'VE GOT THAT, AND I WILL SEE YOU IN FEBRUARY. SO
12:11PM 25 THANK YOU ALL.

12:11PM

1

MR. VOGEL: THANK YOU, YOUR HONOR.

12:11PM

2

MR. MACARTHUR: THANK YOU, YOUR HONOR, FOR YOUR

12:11PM

3

TIME.

12:11PM

4

(COURT CONCLUDED AT 12:11 P.M.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, the undersigned Official Court Reporter of the United States District Court for the Northern District of California, 280 South First Street, San Jose, California, do hereby certify:

That the foregoing transcript, certificate inclusive, is a correct transcript from the record of proceedings in the above-entitled matter.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

Irene Rodriguez, CSR, RMR, CRR
Certificate Number 8074

Dated: November 25, 2025