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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,)	C-17-00220 LHK
)	
PLAINTIFF,)	SAN JOSE, CALIFORNIA
)	
VS.)	JANUARY 29, 2019
)	
QUALCOMM INCORPORATED, A)	VOLUME 11
DELAWARE CORPORATION,)	
)	PAGES 2095-2183
DEFENDANT.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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ALSO PRESENT:

MARK SNYDER
JEFF DAHM
KEN KOTARSKI

21

(MR. VAN NEST GAVE HIS CLOSING ARGUMENT ON BEHALF OF

22

QUALCOMM.)

23

MR. VAN NEST: GOOD AFTERNOON, YOUR HONOR.

24

THE EVIDENCE YOU'VE HEARD DURING TRIAL ABOUT WHAT ACTUALLY

25

TOOK PLACE IN THE MARKET SIMPLY WILL NOT SUPPORT A FINDING OF

1 ANY VIOLATION.

2 THE FTC FAILED TO SHOW ACTUAL HARM TO COMPETITION. THEY
3 FAILED TO SHOW THAT QUALCOMM'S LICENSING PRACTICES HAVE BEEN
4 ANTICOMPETITIVE, AND THE EVIDENCE IS SIMPLY OVERWHELMING THAT
5 QUALCOMM EARNED ITS POSITION AND SUCCESS THROUGH SUPERIOR
6 INNOVATION AND BETTER PRODUCTS.

7 TO ESTABLISH A VIOLATION, IT WAS THEIR BURDEN TO SHOW
8 SUBSTANTIAL HARM TO COMPETITION RESULTING FROM QUALCOMM'S
9 CONDUCT.

10 THEY HAVE ABSOLUTELY FAILED TO DO THAT. THE MARKET IS
11 THRIVING. EVERYONE AGREES THIS IS A DYNAMIC AND HIGHLY
12 INNOVATIVE MARKET.

13 PARTICIPANTS ARE THRIVING. COMPETITION IS GROWING AND
14 INTENSE.

15 INTEL IS NOW THE SOLE SUPPLIER FOR NEW IPHONES FROM APPLE.

16 MEDIATEK IS THE NUMBER 2 SUPPLIER IN THE WORLD.

17 SAMSUNG AND HUAWAI ARE NOW SUPPLYING MANY OF THEIR OWN
18 CHIPS.

19 AND CONSUMERS ARE BENEFITING, TOO, YOUR HONOR. AS YOU
20 HEARD YESTERDAY FROM PROFESSOR SHAPIRO, QUALITY IS UP,
21 PERFORMANCE IS UP, AVERAGE SMARTPHONE PRICES ARE DOWN, AND ALL
22 THE EXPERTS AGREE.

23 THE FTC HAS PRESENTED EVIDENCE OF A HANDFUL OF OEM'S
24 CLAIMING THEY FELT THREATENED DURING LICENSING NEGOTIATIONS. I
25 WANT TO PUT THAT IN CONTEXT, AND I WILL.

1 THESE ARE ALL LARGE, SOPHISTICATED COMPANIES, ALL WITH
2 THEIR OWN LEVERAGE, WHO NO DOUBT WANT TO PAY LESS FOR
3 QUALCOMM'S TECHNOLOGY. THE WITNESSES WERE LAWYERS. THE
4 TESTIMONY WAS COMPLETELY SELF-SERVING.

5 THE FULL PICTURE IS THAT QUALCOMM HAS NEVER CUT OFF
6 COMMERCIAL CHIP SUPPLY TO ANY CUSTOMER DURING ANY LICENSING
7 NEGOTIATION, EVER. AND THEY MADE NO ATTEMPT, THE FTC DID, TO
8 SHOW THAT EVEN IN THIS HANDFUL OF EXAMPLES, THE NEGOTIATED
9 OUTCOMES, WHICH OFTEN TOOK MONTHS, WOULD HAVE BEEN ANY
10 DIFFERENT IN A BUT FOR WORLD.

11 THE EXPERT TESTIMONY THEY PRESENTED WAS WEAK.
12 MR. LASINSKI CAME IN HERE WITH A MADE-FOR-LITIGATION MODEL THAT
13 NO COURT HAS ACCEPTED OR ENDORSED.

14 HIS TOP-DOWN APPROACH IS ARBITRARY AND CONTRADICTED BY
15 EMPIRICAL ANALYSIS OF HUNDREDS OF LICENSES SIGNED BY QUALCOMM
16 AND INDUSTRY PLAYERS FOR MORE THAN 25 YEARS.

17 AND AS I SAID REPEATEDLY, PROFESSOR SHAPIRO IS ALL ABOUT
18 THEORY, BUT NO EMPIRICAL FACTS TO BACK IT UP. HE SIMPLY
19 IGNORES WHAT HAPPENED IN THE MARKET. HE PREDICTS INEVITABLE
20 HARM, BUT HE DIDN'T LOOK AT ANY ACTUAL OUTCOME OR CONSIDER ANY
21 ALTERNATIVE EXPLANATION.

22 A THEORY OF HARM IS NOT ACTUAL HARM, AND IT'S NOT ENOUGH
23 TO CARRY THEIR BURDEN.

24 QUALCOMM'S ROYALTY RATES CAME INTO EXISTENCE, AS YOUR
25 HONOR KNOWS, BEFORE ITS TECHNOLOGY WAS IN ANY STANDARD AND

1 BEFORE IT HAD A CHIP BUSINESS OF ANY KIND.

2 AND QUALCOMM'S COMPETITORS HAVE COME AND GONE AND
3 SUCCEEDED AND FAILED FOR A HOST OF REASONS THAT HAVE ABSOLUTELY
4 NOTHING TO DO WITH QUALCOMM.

5 NOR ARE QUALCOMM'S LICENSING PRACTICES ANTICOMPETITIVE.
6 DEVICE LEVEL LICENSING IS ABSOLUTELY INDUSTRY STANDARD.
7 WITNESS AFTER WITNESS, INCLUDING FROM OUR COMPETITORS AND FROM
8 THE FTC, AGREED THAT DEVICE LEVEL LICENSING IS INDUSTRY
9 STANDARD AND HAS BEEN AROUND FOREVER.

10 THEY ALSO AGREE TO THE COROLLARY OF THAT. IT FLOWS JUST
11 LIKE ANYTHING ELSE. CHIP LEVEL LICENSING IS NOT CUSTOMARY WHEN
12 DEVICE LEVEL LICENSING IS PREVALENT. THAT'S THE WAY THE
13 INDUSTRY HAS OPERATED FOR YEARS AND QUALCOMM IS WITHIN THAT
14 TRADITION.

15 NOW, QUALCOMM'S PRACTICE OF SELLING CHIPS ONLY TO LICENSED
16 OEM'S, THAT IS UNIQUE, BUT THAT'S BECAUSE QUALCOMM'S BUSINESS
17 IS UNIQUE. IT HAS CREATED END-TO-END SYSTEM TECHNOLOGY, AND
18 POPULAR CHIPS, AND IT'S ENTITLED TO A FAIR RETURN ON BOTH.

19 AND FINALLY, YOUR HONOR, IT'S NOW UNDISPUTED THAT QUALCOMM
20 ACHIEVED ITS SUCCESS THROUGH INNOVATION, BETTER ENGINEERING,
21 AND BETTER PRODUCTS. QUALCOMM'S TECHNOLOGY HAS DRIVEN THE
22 INDUSTRY FORWARD FROM 3G, 4G, AND 5G.

23 AND I WELCOME THE FTC'S ADMISSION, NOW FOR THE FIRST TIME
24 AFTER TWO YEARS OF LITIGATION, THAT QUALCOMM EARNED ITS MARKET
25 SHARE THROUGH INNOVATION.

1 THEY CAN'T HAVE IT BOTH WAYS. IT CAN'T BE TRUE THAT OUR
2 TECHNOLOGY IS WASHED UP AND NOT WORTH THE ROYALTY RATES, AND
3 YET SO STRONG AND POWERFUL IN 5G THAT QUALCOMM MUST BE STOPPED.

4 ITS PRODUCTS ARE SIMPLY BETTER THAN ANYBODY ELSE'S, AS ALL
5 THE CUSTOMERS AND CHIP MAKERS ADMITTED, AND YEAR AFTER YEAR
6 THEY'RE WINNING BASED ON THAT TECHNOLOGY.

7 NOW, I APPRECIATE THE OPPORTUNITY, YOUR HONOR, TO
8 SUMMARIZE THE EVIDENCE IN MORE DETAIL, AND I WANT TO START WITH
9 THE FTC'S FAILURE OF PROOF OF ANTICOMPETITIVE HARM.

10 THEY HAVE THE BURDEN TO PROVE THAT THE CHALLENGED
11 RESTRAINT -- THAT'S THE CONDUCT OF QUALCOMM -- HAS A
12 SUBSTANTIAL ANTICOMPETITIVE EFFECT.

13 TO ESTABLISH A VIOLATION OF EITHER THE SHERMAN ACT OR
14 SECTION 5 OF THE FTC ACT, THEY MUST PROVE THAT QUALCOMM'S
15 PRACTICES HAD A SUBSTANTIAL ANTICOMPETITIVE EFFECT.

16 POTENTIAL HARM, CAPABILITY OF HARM, A THEORY OF HARM,
17 THOSE AREN'T ENOUGH, YOUR HONOR. THEY HAVE TO SHOW ACTUAL
18 HARM.

19 THEY HAVEN'T DONE IT.

20 THE INDUSTRY IS THRIVING, AS YOU HEARD FROM EVERY EXPERT
21 THAT APPEARED BEFORE YOU. THESE CHARTS WERE PRESENTED BY
22 PROFESSOR SNYDER AND NEVO.

23 CHIP PRICES ARE FALLING. HANDSET PRICES ARE FALLING.
24 DATA SPEEDS ARE ROCKETING UP. AND COST OF DATA HAS DROPPED TO
25 ALMOST NOTHING FOR CONSUMERS.

1 WHEN PROFESSOR SHAPIRO WAS HERE YESTERDAY, HE CALLED THIS
2 AN IMPRESSIVE PACE OF INNOVATION, AND IT'S A CRITICAL SIGN,
3 YOUR HONOR, OF A HEALTHY, COMPETITIVE MARKET.

4 AND THE MARKET IS DYNAMIC, AS THE EXPERTS ALSO AGREED,
5 INCLUDING PROFESSOR SHAPIRO.

6 MR. MOYNIHAN FROM MEDIATEK SAYS, COMPETITION WAS VERY,
7 VERY HIGH.

8 MR. MCGREGOR, WHOSE FACE I COULDN'T FIT ON THE SLIDE,
9 TESTIFIED THAT BROADCOM LEFT BECAUSE THE MARKET WAS INTENSELY
10 COMPETITIVE.

11 ALL THE EXPERTS AGREE, THIS IS FAST MOVING, HIGHLY
12 COMPETITIVE, DYNAMIC MARKET.

13 AND COMPETITION IS INCREASING, NOT DECREASING. QUALCOMM'S
14 SHARE, ACCORDING TO PROFESSOR SHAPIRO, OF WHAT HE CALLS THE
15 PREMIUM LTE MARKET FELL IN 2015 AND 2016 AS SAMSUNG, INTEL, AND
16 MEDIATEK CAME INTO THE MARKET.

17 BY DEFINITION, IF QUALCOMM'S MARKET SHARE IS FALLING,
18 COMPETITION FROM OTHERS IS ON THE RISE, ANOTHER KEY ELEMENT OF
19 A HEALTHY MARKET.

20 NOW, BOTH DR. SNYDER AND PROFESSOR SHAPIRO TESTIFIED THAT
21 IN A MARKET LIKE THIS WHERE RESEARCH AND DEVELOPMENT IS KEY,
22 YOU'D ONLY EXPECT TO HAVE A FEW COMPETITORS, EXACTLY WHAT WE
23 HAVE TODAY.

24 NOW, COMPETITION IS ESPECIALLY STRONG IN THE PREMIUM
25 MARKET. MR. WYATT TESTIFIED THAT 90 PERCENT OF THE PREMIUM

1 HANDSET TIER -- HANDSET TIER IS PROVIDED BY THREE OEM'S,
2 SAMSUNG, HUAWEI, AND APPLE.

3 TAKE A LOOK, YOUR HONOR, AT WHERE QUALCOMM SITS AS OF THE
4 END OF 2017, EARLY 2018. THEIR SHARE OF PREMIUM TIER SHIPS AT
5 SAMSUNG IS DOWN TO 35 PERCENT BECAUSE SAMSUNG CAN NOW
6 SELF-SUPPLY.

7 HUAWEI IS SELF-SUPPLYING AND BUYING FROM OTHERS ENTIRELY
8 FOR PREMIUM DEVICES.

9 AND AT APPLE, AS YOUR HONOR HAS HEARD, INTEL HAS 100
10 PERCENT OF THE NEW DESIGN.

11 FOLKS ARE MOVING AWAY FROM QUALCOMM IN THE PREMIUM TIER.

12 I HEARD THE FTC CLAIM THAT PROFESSOR SNYDER DIDN'T DO
13 ANYTHING EMPIRICAL. THAT'S CERTAINLY NOT WHAT I HEARD.

14 HE EXPLAINED THAT INDEPENDENT FACTORS EXPLAIN WHAT
15 HAPPENED IN THE MARKET, AND HE IDENTIFIED THREE: FORESIGHT,
16 INVESTMENT, AND EXECUTION.

17 AND YOUR HONOR WILL RECALL THAT HE DID 14 CASE STUDIES,
18 THAT'S 14 MORE THAN SHAPIRO DID, AND HE LOOKED AT EVERY
19 COMPETITOR IN THE MARKET FOR THE LAST DECADE OR SO.

20 HE TESTIFIED HERE ABOUT TWO OR THREE OF THEM. INTEL WAS
21 LATE. THEY DIDN'T TAKE MS. EVANS'S ADVICE TO GET INTO CDMA.

22 MEDIATEK DID FINE FOLLOWING A FAST FOLLOWER STRATEGY.

23 BROADCOM LACKED FORESIGHT AND MISSED THE CDMA MARKET.

24 AND THAT'S WHAT TOOK PLACE.

25 THEY HAVE MADE NO EFFORT, NONE, TO SHOW THAT QUALCOMM'S

1 CONDUCT CAUSED THE RESULTS FOR ANY OF THE CHIP MAKER
2 COMPETITORS. NOT ONE.

3 AND IT'S ALSO TRUE THAT THESE COMPETITORS MADE THEIR OWN
4 BUSINESS DECISIONS. YOUR HONOR HEARD FROM A NUMBER OF THEM.

5 MR. MOYNIHAN TESTIFIED THAT MEDIATEK CHOSE TO ENTER THE
6 WCDMA MARKET, WHICH IS MUCH BIGGER, AND THEY DECIDED NOT TO
7 ENTER CDMA BECAUSE CDMA WAS PERCEIVED BY MANY TO BE A NICHE
8 MARKET WITH A LIMITED FUTURE.

9 THAT'S WHY, ALTHOUGH MS. EVANS WAS PRESSING INTEL TO GET
10 CDMA TECHNOLOGY, IT TOOK HER FOUR YEARS TO DO IT. PEOPLE
11 DIDN'T PERCEIVE IT AS A LUCRATIVE MARKET, AND ONLY QUALCOMM
12 INVESTED, WHICH, AS THE FTC ADMITTED THIS THEIR CLOSING,
13 QUALCOMM IS THE ONE RESPONSIBLE FOR CDMA, AND THEY EARNED THEIR
14 POSITION THROUGH HARD WORK AND INVESTMENT.

15 AND PROFESSOR NEVO IS THE ONLY ONE TO HAVE PERFORMED ANY
16 EMPIRICAL TESTS ON RATES. WHAT HE SHOWED US WAS THAT
17 QUALCOMM'S ROYALTY RATES HAVE REMAINED CONSISTENT ACROSS TIME,
18 ACROSS STANDARDS, AND ACROSS MARKETS.

19 THAT MEANS WHETHER YOU'RE IN A MARKET WHERE THEY CLAIM
20 MARKET POWER OR NOT, RATES ARE THE SAME. THEY DON'T GO UP WHEN
21 QUALCOMM'S ALLEGED TO HAVE MARKET POWER, THEY DON'T GO DOWN
22 WHEN QUALCOMM IS ALLEGED TO HAVE NO MARKET POWER.

23 NOW, HE LOOKED AT RATES, UPFRONT PAYMENTS, PERIODS BEFORE
24 THE STANDARDS, PERIODS BEFORE CHIPS EXISTED, AND I THINK, YOUR
25 HONOR, THE MOST IMPORTANT THING HE LOOKED AT IS THIS THAT'S ON

1 THE SCREEN NOW.

2 THIS IS A BUT FOR WORLD. NOBODY IS CONTENDING THAT
3 QUALCOMM HAS MARKET POWER. THEY'VE GOT THE BURDEN OF PROOF.
4 IF PROFESSOR SHAPIRO THOUGHT QUALCOMM HAD MARKET POWER IN
5 WCDMA, HE HAD EVERY CHANCE TO PROVE IT.

6 THEY DON'T, AND NOT A SINGLE WITNESS HAS SAID SO.

7 AND IN THAT MARKET, WHICH IS THE BUT FOR WORLD WE OFTEN
8 LOOK FOR IN CASES LIKE THIS, QUALCOMM'S RATES ARE CONSISTENT
9 AND THE SAME, WHICH DEMONSTRATES THAT THOSE RATES ARE BASED ON
10 THE QUALITY OF QUALCOMM'S TECHNOLOGY AND THE QUALITY OF ITS
11 PATENTS AND NOT ANYTHING ELSE.

12 NOW, PROFESSOR SHAPIRO CAME IN FOR THE FIRST TIME
13 YESTERDAY AND LOBBIED SOME CRITIQUES AT PROFESSOR NEVO. HE
14 CRITICIZED HIM FOR LOOKING AT THE 5 PERCENT CONTRACT RATE.

15 WELL, YOUR HONOR, THAT'S BEEN THEIR CASE THEORY FROM DAY
16 ONE. THE COMPLAINT, PARAGRAPH 58, ALLEGES THAT OUR 5 PERCENT
17 RATE IS ABOVE FRAND. THAT'S WHAT THEY'RE RELYING ON. THAT'S
18 WHAT THEY'VE BASED THEIR CLAIM ON.

19 AND PROFESSOR SHAPIRO HASN'T SHOWN THAT LOOKING AT THE
20 CONTRACT RATE IS ANY DIFFERENT THAN LOOKING AT EFFECTIVE RATES
21 OR ANYTHING ELSE. HE'S DONE NO EMPIRICAL WORK WHATSOEVER.

22 NOW, PROFESSOR NEVO TESTIFIED THAT SOME LICENSES WERE
23 REMOVED FROM HIS ANALYSIS BECAUSE THEY JUST DON'T FIT THE
24 CLAIM.

25 LICENSES NEGOTIATED UNDER THE EYE OF FOREIGN GOVERNMENTS

1 CAN'T POSSIBLY BE INFLUENCED BY CHIP LEVERAGE. HE TOOK THOSE
2 OUT.

3 AND PROFESSOR SHAPIRO DOESN'T CLAIM THEY SHOULD COME BACK
4 IN.

5 AND THE ONLY OTHER LICENSES THAT HE REMOVED WERE LICENSES
6 WHERE EVERYTHING WAS PAID UPFRONT AND THERE'S VIRTUALLY NO WAY
7 TO DETERMINE AN EFFECTIVE RATE UNTIL YEARS LATER WHEN YOUR
8 SALES ARE DONE.

9 YOUR HONOR HAS AN EXHIBIT, I THINK IT'S A DEMONSTRATIVE,
10 CDX 204. CDX 204 HAS ALL THE COMPANIES THAT ARE IN NEVO'S
11 ANALYSIS AND A LOT OF THEM ARE THERE, HUAWEI, ALL THE CONTRACT
12 MANUFACTURERS, THE BIG PLAYERS IN CHINA, THEY'RE ALL THERE.
13 THERE ARE DOZENS OF THEM. AND THEY'RE -- AND THIS ANALYSIS
14 SHOWS, AND IT'S THE ONLY EMPIRICAL ANALYSIS IN THE CASE, THAT
15 MARKET POWER PLAYS NO ROLE IN QUALCOMM'S ROYALTY RATES.

16 NOW, WHAT DID THEY BRING YOU?

17 MICHAEL LASINSKI. NO FINDING OF A ROYALTY OVERCHARGE
18 COULD POSSIBLY REST ON THIS TESTIMONY.

19 BY HIS OWN ADMISSION ON THE SCREEN, HE'S NOT AWARE OF
20 ANYBODY ELSE WHO APPROACHES IT THIS WAY AND NO ONE ELSE HAS
21 APPROVED IT.

22 HE TOOK TWO FLAWED INPUTS, SO-CALLED DEEMED SEPS, AND
23 APPROVED CONTRIBUTIONS, HE BLENDS THEM IN A FORMULA THAT EVEN
24 HE COULDN'T EXPLAIN TO US, AND HE CLAIMED HERE, RIGHT IN FRONT
25 OF YOUR HONOR, THAT EVEN IF BOTH INPUTS WERE WRONG AND

1 INCORRECT, THE OUTPUT WAS JUST FINE.

2 LET'S CONSIDER HIS INPUTS.

3 APPROVED CONTRIBUTIONS DON'T MEASURE VALUE OF ANYTHING, AS
4 MR. CASACCIA EXPLAINED IN GREAT DETAIL. THE HARD WORK IN
5 STANDARD SETTING HAPPENS, YOUR HONOR, IN THE SUBSTANTIVE WORK
6 PHASE. THE DOCUMENTS SUBMITTED THERE ARE ACTUAL INVENTIONS.
7 THAT'S WHERE THE VALUE IS.

8 ONCE THE SPECIFICATION IS STABLE, THOSE DOCUMENTS ARE PUT
9 AWAY, IN MR. CASACCIA'S WORDS. THEY'RE GONE. AND WE'RE
10 LOOKING AT APPROVED T DOCS WHICH CAN BE ANYTHING FROM CHANGING
11 A HYPHEN OR A PERIOD TO CHANGING AN EDITORIAL COMMENT TO MAKING
12 A MINOR REVISION. THAT'S WHAT IS BEING, QUOTE, "COUNTED" IN
13 APPROVED DOCS. NOBODY BELIEVES THAT CREATES VALUE AND IT
14 IGNORES THE KEY DOCUMENTS THAT CREATED THE INVENTIONS IN THE
15 FIRST PLACE.

16 WHAT'S HIS OTHER INPUT? PATENT COUNTING.

17 WELL, EVEN MR. DONALDSON ADMITTED THAT NOT ALL PATENTS ARE
18 CREATED EQUAL, AND A SINGLE PATENT CAN DOMINATE AN INDUSTRY,
19 AND THAT'S WHAT MR. LASINSKI AGREED TO AS WELL.

20 AND MR. LASINSKI GAVE ABSOLUTELY NO WEIGHT, NONE, ZERO, TO
21 QUALCOMM'S PORTFOLIO OF NON-STANDARD ESSENTIAL PATENTS, WHICH
22 IS VERY, VERY SIGNIFICANT.

23 AND HIS TOP-DOWN APPROACH IS SIMPLY, "I PICKED OUT A
24 STATEMENT MADE BY INDUSTRY REPRESENTATIVES WITH AN ARBITRARY
25 CAP, AN ARBITRARY CAP ON ALL ROYALTIES, AND I WENT FROM THERE."

1 WELL, THAT'S BEEN REJECTED BY COURTS. IT'S BEEN REJECTED
2 BY ETSI. THERE'S NO EMPIRICAL BASIS FOR IT.

3 BUT THAT'S THE WAY HE ARRIVES AT WHAT HE SAYS IS A
4 SUPRA-FRAND ROYALTY. IT'S ABSOLUTE NONSENSE.

5 AND THEIR ONLY ANSWER TO THIS THAT I HEARD WAS AVANCI.
6 AVANCI.

7 WELL, YOU KNOW FROM THE TESTIMONY OF MR. GONELL THAT
8 AVANCI IS AN EXPERIMENTAL PROGRAM THAT DOESN'T AFFECT HANDSETS,
9 THAT COVERS SMART METERS AND AUTOMOTIVE USE, AND THAT QUALCOMM
10 HAS NOT ADOPTED IT IN ANY OTHER AREA OF ITS BUSINESS.

11 NOW, LET'S LOOK AT PROFESSOR SHAPIRO.

12 IT'S NOT JUST, YOUR HONOR, THAT HE HASN'T QUANTIFIED
13 THINGS. IT'S THAT HE IGNORES COMPLETELY WHAT'S OUT THERE IN
14 THE MARKET STARING HIM IN THE FACE.

15 HE'S NOW CONCEDED, AND THEY'VE CONCEDED, THAT HIS
16 SO-CALLED TAX APPLIES WHETHER THE FRAND IS REASONABLE, THE
17 ROYALTY IS REASONABLE OR NOT.

18 WELL, IF THAT'S TRUE, YOU'D HAVE TO MAKE SOME EFFORT TO
19 MEASURE THE THING TO KNOW WHERE THE IMPACT IS COMING FROM
20 BECAUSE IF THE IMPACT IS COMING FROM A LEGITIMATE FRAND
21 ROYALTY, ACCORDING TO SHAPIRO AND WHAT I HEARD MS. MILICI SAY,
22 YOU HAVE THE SAME IMPACT ON CHIP MAKERS.

23 WHAT HAPPENED HERE?

24 HE HASN'T QUANTIFIED THE EFFECTS OF QUALCOMM'S PRACTICES
25 ON ANY OTHER CHIP MAKER.

1 AND REMEMBER, YOUR HONOR, IT'S NOT HIGH PRICES THEY'RE
2 COMPLAINING ABOUT. THEIR THEORY OF HARM IS THAT THE CHIP
3 MAKERS WERE HARMED THROUGH THE TAX THEORY.

4 SO IF YOU HAVEN'T QUANTIFIED THE EFFECTS OF QUALCOMM'S
5 BUSINESS PRACTICES ON THE CHIP MAKERS, YOU HAVEN'T EVEN STARTED
6 THE EVALUATION.

7 HE DID NOTHING TO ANALYZE WHETHER RIVALS' R&D SPENDING AND
8 RESEARCH WERE UP, DOWN, OR SIDEWAYS. AND MY POINT IS THIS IS
9 NOTHING MORE THAN A THEORY.

10 FURTHERMORE, HE JUST ASSUMES THERE'S AN OVERCHARGE WITHOUT
11 HAVING MADE ANY EFFORT TO QUANTIFY IT.

12 WELL, IF THE -- IF THE FRAND ROYALTY IS A TAX, TOO, THEN
13 YOU'VE GOT TO FIGURE OUT WHAT AMOUNT OF THAT, WHAT AMOUNT OF
14 THE ROYALTY IS ACTUALLY AN OVERCHARGE?

15 HE MADE NO EFFORT TO DO THAT OR TO QUANTIFY THE EFFECTS OF
16 CONDUCT ON HANDSET PRICES.

17 YOU CANNOT ESTABLISH ACTUAL HARM UNDER THE LAW WITH A
18 THEORY OF HARM THAT IGNORES WHAT HAPPENED IN THE MARKET.

19 THE ONLY PERSON TO DO THE KIND OF EMPIRICAL WORK THAT IS
20 NECESSARY ON MARKET PARTICIPANTS WAS PROFESSOR SNYDER. HE USED
21 INDUSTRIAL ORGANIZATION TECHNIQUES, HE DISCERNED THAT
22 INVESTMENT, EXECUTION AND FORESIGHT ARE THE FACTORS IMPORTANT
23 TO THIS INDUSTRY, AND HE LOOKED AT THAT AND APPLIED IT ACROSS
24 ALL OF THE COMPETITORS AND TESTIFIED THAT IN EVERY CASE,
25 INDEPENDENT FACTORS THAT HAVE NOTHING TO DO WITH QUALCOMM,

1 EXPLAINED OUTCOMES.

2 AND NO ONE ON THE FTC SIDE HAS EVEN LOOKED AT THIS ISSUE
3 WHERE THEIR MAIN CLAIM IS HARM TO CHIP MAKERS.

4 NOW, LET'S PUT ASIDE THAT PROFESSOR SHAPIRO DIDN'T
5 ACTUALLY DO THE WORK.

6 EVEN HIS THEORY WAS UNABLE TO PREDICT WHAT'S HAPPENED IN
7 THE MARKET. HE PREDICTED THAT THROUGH THE EXERCISE OF MONOPOLY
8 POWER, QUALCOMM'S MARKET SHARE WOULD RISE AND INTEL'S WOULD
9 FALL.

10 WELL, WE KNOW THAT THE OPPOSITE HAS OCCURRED. QUALCOMM'S
11 MARKET SHARE IS FALLING AND INTEL'S IS RISING.

12 HE ALSO PREDICTED THAT PRICES WOULD RISE AND OUTPUT WOULD
13 FALL.

14 AGAIN, THE OPPOSITE'S HAPPENED. PRICES HAVE FALLEN AND
15 OUTPUT HAS SOARED.

16 HE HASN'T BEEN ABLE TO PREDICT WHAT HAPPENED. HIS THEORY
17 IS SIMPLY DIVORCED FROM WHAT'S GOING ON IN THE REAL WORLD.

18 ANOTHER KEY FLAW IS THAT HE ASSUMES SOME SORT OF A
19 NEGOTIATION BETWEEN QUALCOMM, CHIP MAKERS, AND OEM'S THAT NEVER
20 TAKES PLACE. LICENSE AGREEMENTS ARE NEGOTIATED FOR A PERIOD OF
21 YEARS AND CHIP PRICES, THEY'RE NEGOTIATED OVER A PERIOD OF
22 MONTHS.

23 THE ROYALTY THAT QUALCOMM SEEKS FOR ITS I.P. IS CHIP
24 AGNOSTIC. EVERYBODY PAYS THE SAME AMOUNT. IT'S TRANSPARENT.

25 AND THEN THE OEM'S HAVE A CHOICE. THEY CAN BUY A QUALCOMM

1 CHIP OR A COMPETITOR CHIP. AND AS MR. MADDEROM FROM MOTOROLA
2 SAYS, WE DON'T LOOK AT THE ROYALTY. WE LOOK AT THE CHIP PRICE,
3 THE AVAILABILITY, AND THE PERFORMANCE, WHICH IS WHAT YOU'D
4 EXPECT.

5 AND PROFESSOR NEVO STUDIED WHAT'S GOING ON IN THIS MARKET
6 AND HOW IT PLAYS OUT, AND, AGAIN, SINCE THE ROYALTY IS CHIP
7 AGNOSTIC, IT DOESN'T AFFECT PURCHASE DECISIONS ON CHIPS.

8 SIMILARLY, THEY MAKE A BIG DEAL OUT OF THE FACT THAT CHIP
9 MAKERS DON'T HAVE EXHAUSTIVE LICENSES FROM QUALCOMM.

10 THAT HASN'T MADE ANY DIFFERENCE AT ALL. SAMSUNG, HUAWEI,
11 SPREADTRUM, MEDIATEK, THEY'RE ALL DOING WELL. THEY'RE THRIVING
12 WITHOUT ANY LICENSE AT ALL FROM QUALCOMM.

13 AND HERE WAS TESTIMONY FROM MR. MOYNIHAN. THEY DID IT ONE
14 TIME, MEDIATEK HAD A NON-EXHAUSTIVE, NON-ASSERTION AGREEMENT.
15 THEY CAME TO QUALCOMM, THEY SAID, WE'RE WORRIED YOU MAY SUE US,
16 SO QUALCOMM ENTERED INTO A NON-EXHAUSTIVE AGREEMENT. WHAT
17 MOYNIHAN SAID WAS IT DIDN'T MAKE ANY DIFFERENCE. ONCE IT
18 EXPIRED, OUR BUSINESS DIDN'T CHANGE. WE DIDN'T DO BETTER WITH
19 IT THAN WE DID WITHOUT IT.

20 AND, AGAIN, THEY HAVEN'T SHOWN ANY EVIDENCE THAT THIS
21 MATTERS TO ANYONE.

22 DRAGONFLY, VERY BRIEFLY, YOUR HONOR, MR. ABERLE TESTIFIED
23 ABOUT THIS. AT THE TRANSCRIPT AT PAGES 302 AND 303, HE WAS
24 TOLD BY DRAGONFLY THAT THEY COULDN'T AGREE AMONGST THEMSELVES
25 ON HOW TO SET UP THE GROUP OR WHAT TERMS WERE GOING TO BE.

1 THEY ABANDON THE NEGOTIATION WITH QUALCOMM, NOT THE OTHER WAY
2 AROUND.

3 THE TESTIMONY THAT MS. MILICI CITED FROM MR. HONG WAS THAT
4 HE WASN'T SURE WHAT THE REASONS WERE, AND HE WASN'T INVOLVED
5 DIRECTLY.

6 MR. ABERLE TESTIFIED THAT HE SPOKE TO THE DRAGONFLY PEOPLE
7 AND THAT WAS IT.

8 NOW, EVIDENCE AT TRIAL WAS OVERWHELMING THAT RIVAL CHIP
9 MAKERS EXPERIENCED A WIDE RANGE OF RESULTS BASED ON FACTORS
10 THAT HAVE NOTHING TO DO WITH QUALCOMM'S LICENSING PRACTICES.

11 HERE'S MR. ZANDER, WHICH YOU SAW ON VIDEO LAST WEEK. WHAT
12 HAPPENED AT ST-ERICSSON? LACK OF PROCESS, ORGANIZATIONAL
13 STRUCTURE, MANAGEMENT TEAM, DECISION MAKING.

14 HE'S TALKING ABOUT HIS OWN COMPANY HERE.

15 THEY FAILED ON EXECUTION.

16 THAT HAS NOTHING TO DO WITH ANYTHING THAT QUALCOMM DID.

17 INTEL'S TO THE SAME EFFECT. INTEL AND BAIN TOGETHER PUT
18 THIS SLIDE DECK TOGETHER THAT YOUR HONOR SAW FRIDAY WITH
19 MR. JOHNSON, AND THEY CONCLUDED THAT ALTHOUGH INTEL WAS
20 SPENDING JUST AS MUCH MONEY AS QUALCOMM, THEIR OUTPUT WAS
21 LOUSY, LESS THAN A THIRD OF WHAT QUALCOMM GENERATED. AND THAT
22 THEY WERE BEHIND NOT BECAUSE OF ANYTHING QUALCOMM DID, BUT
23 BECAUSE THEY MADE A DECISION TO SUPPORT MULTIPLE ARCHITECTURES.

24 THAT'S WHAT'S HAPPENING IN THE REAL WORLD. THERE IS
25 SIMPLY NO EVIDENCE FROM ANY MARKET PARTICIPANT OF ANY HARM TO

1 COMPETITION.

2 NOW, LET'S TALK ABOUT THREATS.

3 THE FTC PRESENTED A HANDFUL OF WITNESSES AND E-MAILS TO
4 SUPPORT THEIR CLAIM THAT QUALCOMM THREATENED CHIP SUPPLY TO
5 COERCE HIGH ROYALTIES.

6 EVERY ONE OF THESE LICENSEES, HUAWEI, SONY, LENOVO,
7 SAMSUNG, THEY'RE ALL BIG, SOPHISTICATED COMPANIES WITH THEIR
8 OWN LEVERAGE. EVERYONE WAS A BIG CUSTOMER OF QUALCOMM.

9 ALL THE WITNESSES YOU SAW, YOUR HONOR, WERE LAWYERS. NOT
10 EVERY ONE, BUT MOST OF THEM. GRUBBS, YU, BLUMBERG, THEY WERE
11 LAWYERS, AND THEIR TESTIMONY WAS, OH, YEAH, WE FELT THREATENED
12 AND WE HAD TO DO WHAT WE DID.

13 I WILL SAY THAT THIS TESTIMONY WAS PRESENTED TO THIS COURT
14 IN A VERY MISLEADING FASHION. THE FTC INSISTED THAT WE SAVE
15 OUR RESPONSES FOR OUR OWN CASE.

16 SO, FOR EXAMPLE, MR. GRUBBS TESTIFIED FOR 25 MINUTES ON
17 VIDEO. "I FELT LIKE I HAD TO DO IT, I WAS DESPERATE FOR CHIPS,
18 I WAS WORRIED THAT IF I COMPLAINED, MY CHIP SUPPLY WOULD BE CUT
19 OFF."

20 AND THEN, YOUR HONOR, THERE WAS THIS A WEEK LATER WHEN WE
21 GOT TO OUR CASE.

22 **(THE VIDEOTAPED OF JOHN GRUBBS WAS PLAYED IN OPEN COURT**
23 **OFF THE RECORD.)**

24 MR. VAN NEST: YOUR HONOR, TO THE SAME EFFECT WAS
25 MR. BLUMBERG FROM LENOVO. THE MR. BLUMBERG CAME IN AND SAID HE

1 WAS THREATENED BY MR. REIFSCHEIDER, THAT HE WAS FEARFUL FOR
2 HIS CHIP SUPPLY.

3 HE COULDN'T IDENTIFY WHERE THE CHIPS CAME FROM, WHAT CHIPS
4 HE NEEDED OR WHAT CHIPS THEY WERE BUYING.

5 HE'S ALSO A LAWYER. WE LISTENED TO HIM FOR AN HOUR.

6 AND THEN DURING OUR CASE, WE PLAYED THE TESTIMONY FROM
7 MR. MADDEROM WHO WAS ACTUALLY IN THE MEETING WHERE HIS BOSS
8 COMPLAINED TO QUALCOMM ABOUT CHIP SUPPLY, AND HERE'S WHAT HE
9 SAID.

10 **(THE VIDEOTAPED DEPOSITION OF TODD MADDEROM WAS PLAYED IN**
11 **OPEN COURT OFF THE RECORD.)**

12 MR. VAN NEST: YOUR HONOR, WITNESS AFTER WITNESS
13 PRESENTED BY THE FTC CONCEDED WHAT'S ON THIS NEXT SLIDE: THAT
14 QUALCOMM NEVER STOPPED SUPPLYING CHIPS DURING A LICENSING
15 NEGOTIATION WHEN THERE WERE COMMERCIAL QUANTITIES; THAT IN MANY
16 CASES, PEOPLE WHO FTC CLAIMED WERE THREATENED SAID NO. MR. LEE
17 IS TALKING ABOUT A NEGOTIATION HE HAD. MS. YANG FROM PEGATRON
18 IS TALKING ABOUT NEGOTIATIONS SHE HAD.

19 THEIR BIG EMPHASIS WAS ON SONY.

20 WELL, YOUR HONOR HAS HEARD THE SONY STORY, AND I'LL POINT
21 OUT THAT THERE WAS A PRODUCT HOLD. BUT MR. MOLLENKOPF
22 TESTIFIED THAT WITHIN HOURS OF THAT, HE REVERSED IT AND HE
23 COMMUNICATED IMMEDIATELY TO SONY THAT THIS IS NOT GOING TO
24 HAPPEN, I'M SORRY THAT IT HAPPENED, MY TEAM IS REVERSING IT.

25 AND YOU HEARD NO TESTIMONY FROM ANYONE WHATSOEVER FROM

1 ANYONE FROM SONY, NOT ON VIDEO, NOT IN COURT. NO ONE FROM SONY
2 CAME TO BACK THIS UP. THIS IS ALL SOMETHING THAT THE FTC HAS
3 PUT TOGETHER WITH SNIPPETS FROM THIS E-MAIL AND THAT.

4 BUT THE TESTIMONY IS CRYSTAL CLEAR AND THE DOCUMENTS AND
5 THE E-MAILS BACK IT UP 100 PERCENT.

6 ANOTHER POINT IS THAT WHENEVER A LICENSEE ASKED FOR
7 ASSURANCE, THEY GOT IT. MR. MADDEROM TESTIFIED THAT THEY ASKED
8 AND GOT ON ASSURANCE.

9 MR. WILLIAMS SAID THEY HAD A CONTRACT ASSURANCE.

10 MR. LEE FROM SAMSUNG SAID THEY ASKED FOR IT AND IT WAS
11 GIVEN.

12 TIME AND TIME AGAIN, THE FOLKS IN THESE LICENSE
13 NEGOTIATIONS CONFIRM WHAT I'VE BEEN SAYING, THAT CHIP SUPPLIES
14 FOR COMMERCIAL PRODUCTS WERE NEVER CUT OFF AND THESE THREATS
15 ARE HIGHLY EXAGGERATED WHEN YOU'RE TALKING ABOUT LAWYERS.

16 NOW, THIS NEXT SLIDE SHOWS THAT THERE'S ABSOLUTELY NO
17 EVIDENCE THAT THE OUTCOMES OF ANY OF THESE WOULD HAVE BEEN
18 DIFFERENT. THEY PRESENTED NO EVIDENCE TO SHOW THAT ANY OF
19 THESE OUTCOMES WOULD HAVE BEEN DIFFERENT IN THE REAL WORLD.

20 AND TAKE A LOOK, YOUR HONOR. WE'VE GOT THE TRIAL CITES
21 AND THE EXHIBIT CITES. WHAT ACTUALLY HAPPENED IN THESE IS NOW
22 IN THE RECORD.

23 SO SONY, FOR EXAMPLE, NEGOTIATED FOR TEN MORE MONTHS AFTER
24 THE EVIDENCE YOU SAW. THERE WAS NO DISRUPTION, THEY AGREED ON
25 RATES AND A THREE YEAR TERM.

1 AND EVEN THOUGH THE AGREEMENT EXPIRED IN THE INTERIM,
2 SUPPLY CONTINUED.

3 HUAWEI'S TO THE SAME EFFECT. THEY NEGOTIATED ON AN LTE
4 LICENSE FOR TWO YEARS AND WON AN ARBITRATION CLAUSE FOR A NEW
5 AGREEMENT IF THE PARTIES DIDN'T RENEW. BY THEN THEY WERE
6 PRODUCING THEIR OWN CHIPS ANYWAY.

7 SAMSUNG NEGOTIATED FOR TWO YEARS AND GOT A LOWER ROYALTY
8 RATE.

9 LENOVO TO THE SAME EFFECT.

10 MOST OF THESE EXAMPLES THEY PRESENTED ARE OLD. I NOTICED
11 ONE IN THE CLOSING OF THE FTC FROM 2001, A SAMSUNG EXAMPLE.
12 2001. NOBODY IS CLAIMING THAT QUALCOMM HAD ANY MARKET POWER
13 THEN, AND THAT NEGOTIATION HAPPENED BECAUSE SAMSUNG STOPPED
14 PAYING ROYALTIES AT ALL AND THEY REALIZED THEY WERE WRONG AND
15 PAID UP.

16 NOW, I WANT TO MAKE A KEY POINT HERE, YOUR HONOR, WHICH IS
17 HIGH ROYALTIES ALONE IS NOT THE BASIS FOR THEIR CLAIM OF HARM
18 BECAUSE HIGH ROYALTIES ALONE ARE NOT ANTICOMPETITIVE EFFECT OR
19 ANTITRUST INJURY.

20 THEY HAVE TO SHOW HARM TO COMPETITION, AND WHAT THEY'VE
21 CHOSEN TO TRY TO PROVE IS HARM TO THE RIVAL CHIP MAKERS.

22 THAT'S WHY THEY'RE PRESENTING THIS TAX THEORY FROM
23 SHAPIRO.

24 SO EVEN IF YOUR HONOR WERE TO FIND THAT LASINSKI IS
25 CREDIBLE, WHICH I DON'T THINK YOU COULD, AND EVEN IF YOU WERE

1 TO FIND THAT THESE NEGOTIATIONS RESULTED IN HIGHER ROYALTIES,
2 THAT'S NOT THE ANTICOMPETITIVE EFFECT THEY'RE TRYING TO PROVE.

3 THEY'RE TRYING TO PROVE THIS TAX THEORY, AND THAT'S WHY
4 THIS IS IMPORTANT, WHAT WE TALKED ABOUT WITH PROFESSOR SHAPIRO.

5 THEY'RE SAYING THAT THERE WAS A SUPRA-FRAND TAX THAT HE
6 PREDICTS WOULD RAISE RIVALS' COST -- THOSE ARE CHIP MAKERS --
7 HE PREDICTS WOULD REDUCE RIVALS' INCOME, HE PREDICTS WOULD
8 REDUCE RIVALS' SPENDING IN R&D, HE PREDICTS WOULD CAUSE HARM.

9 THE PROBLEM FOR HIM IS THAT THE TIME FOR THEORIES AND
10 PREDICTIONS IS PRETRIAL, NOT TRIAL. YOU HAVE TO PROVE IT. YOU
11 HAVE TO HAVE EVIDENCE.

12 HE ADMITTED NOT LOOKING AT ANY ONE OF THESE FACTORS, YOUR
13 HONOR, FOR ANY PARTICIPANT IN THIS MARKET.

14 I DIDN'T LOOK AT ANYONE'S ACTUAL COST AND ANYONE'S ACTUAL
15 INCOME.

16 AND YOUR HONOR KNOWS WHAT HAPPENED WITH RIVALS' R&D.
17 INTEL HAD PLENTY OF MONEY, BUT THE RESEARCH EFFORTS WERE
18 FUTILE.

19 ST-ERICSSON HAD MORE THAN ENOUGH MONEY, BUT THEIR RESEARCH
20 EFFORTS WERE BUNGLED.

21 BROADCOM HAD PLENTY OF MONEY, BUT THEY CHOSE TO LEAVE AN
22 INTENSELY COMPETITIVE MARKET.

23 MY POINT ON PROFESSOR SHAPIRO IS YOU DON'T GET PAST THE
24 BURDEN BY JUST TELLING ME WHAT YOUR THEORY IS, AND HE
25 REPEATEDLY TREATED US LIKE IDIOTS BECAUSE WE COULDN'T

1 UNDERSTAND THAT.

2 NOW, I HEARD SOMETHING ABOUT STRAT FUNDS, WHICH MS. MILICI
3 REFERRED TO AS A CHIP DISCOUNT.

4 THEIR THEORY OF HARM FROM STRAT FUNDS IS BAFFLING. THESE
5 ARE MONIES, EVEN THEIR UNDER THEORY, PAID FROM QUALCOMM BACK TO
6 LICENSEES.

7 IF QUALCOMM HAS THE MARKET POWER TO DEMAND A SUPRA-FRAND
8 ROYALTY, WHY IN THE WORLD WOULD THEY SPEND MILLIONS OF DOLLARS
9 ON STRAT FUNDS?

10 NOW, MR. ABERLE EXPLAINED THESE AT PAGE 297 OF THE
11 TRANSCRIPT, YOUR HONOR. I'M SORRY, I DON'T HAVE A SLIDE ON IT.

12 BUT WHAT HE SAID WAS WE CONTRIBUTE TO A STRAT FUND AND THE
13 LICENSEE CONTRIBUTES, AND WE DO DEVELOPMENT WORK TOGETHER TO
14 PROMOTE OUR TECHNOLOGY AND THEIR PRODUCTS.

15 NOW, THEIR THEORY IS THAT THESE STRAT FUNDS ARE ONLY USED
16 WITH RECALCITRANT LICENSEES WHO WEREN'T DEPENDENT ON QUALCOMM.

17 THAT'S BALONEY. PROFESSOR NEVO LOOKED AT THOSE STRAT
18 FUNDS THAT WERE NEGOTIATED, ALONG WITH LICENSING AGREEMENTS,
19 AND THEY'RE ALL GIVEN TO PEOPLE WHO ARE BUYING MOST OR ALL OF
20 THEIR CHIPS FROM QUALCOMM.

21 SUGGESTING THAT THESE PEOPLE ARE USING THEIR OWN LEVERAGE
22 TO SAY, HEY, I'M A HUGE CUSTOMER, YOU BETTER TAKE CARE OF ME
23 AND HELP ME OR I'M NOT GOING TO BUY YOUR CHIPS ANYMORE.

24 PROFESSOR NEVO DISCUSSED THIS TEST AT TRANSCRIPT PAGE
25 1907.

1 LET'S TALK ABOUT APPLE BRIEFLY.

2 THIS IS A SEPARATE, INDEPENDENT CLAIM, YOUR HONOR, ASIDE
3 FROM THE WHOLE TAX THEORY. THEY'RE CLAIMING THIS CAUSED HARM
4 BY EXCLUDING PEOPLE.

5 BUT LET'S BE CLEAR. PROFESSOR SHAPIRO IS ONLY TALKING
6 ABOUT INTEL, AND HE'S ONLY TALKING ABOUT A ONE YEAR DELAY, AND
7 HE'S ONLY TALKING ABOUT THIS ONE CONTRACT, AND HE'S NOT TALKING
8 ABOUT ANYTHING ELSE.

9 AND WE NOW KNOW, JUST LIKE MR. MOLLENKOPF SAID, THIS WHOLE
10 TRANSACTION WAS INITIATED BY APPLE.

11 MR. WILLIAMS SAID THE OTHER PIECE IS WE WERE GOING TO MOVE
12 OUR BUSINESS FROM INFINEON TO QUALCOMM BECAUSE WE NEEDED
13 QUALCOMM TECHNOLOGY. WE ASKED FOR TRANSITION FUNDS.

14 THIS IS COMING FROM APPLE. THEY WERE DEMANDING BIG
15 UPFRONT PAYMENTS IN EXCHANGE FOR MOVING THE BUSINESS, AND THEY
16 GOT THAT.

17 BUT ALONG WITH IT, THEY HAD TO MAKE A COMMITMENT THAT IF
18 THEY DIDN'T BUY CHIPS, THEY WOULDN'T GET THE MONEY.

19 AND THAT'S WHAT MR. WILLIAMS CALLED IT. THIS IS
20 ABSOLUTELY CONSISTENT WITH WHAT MR. MOLLENKOPF SAID. THE
21 TRANSITION AGREEMENT ALLOWED QUALCOMM TO PROTECT ITSELF FROM
22 MAKING THESE LARGE INCENTIVE PAYMENTS IF APPLE DIDN'T BUY
23 CHIPS.

24 THAT'S RIGHT.

25 THE FUNDS WERE A PRICE VOLUME REBATE THAT'S A STANDARD

1 PRACTICE.

2 REMEMBER, YOUR HONOR, WE'RE CALLING THIS AN EXCLUSIVE
3 DEAL. BUT IN REALITY, THERE WAS NO MINIMUM GUARANTEED PURCHASE
4 FROM QUALCOMM. THEY DIDN'T HAVE TO BUY A SINGLE CHIP. AND
5 THEY HAD THE RIGHT TO SELECT A SECOND SOURCE, AND THEY DID,
6 INTEL IN 2016.

7 NOW, THE IDEA THAT THIS WAS SOMEHOW EXCLUSIONARY,
8 MR. MOLLENKOPF TESTIFIED, AND IT'S PRETTY OBVIOUS FROM
9 MR. WILLIAMS, IT'S A WINNER TAKE ALL DEAL, AND IF IT'S A WINNER
10 TAKE ALL DEAL, THERE'S GOING TO BE ONE WINNER AND ONE LOSER,
11 AND QUALCOMM WANTED TO BE THE WINNER. THAT'S WHY THEY BID ON
12 IT, AND THAT'S WHY MR. MOLLENKOPF TOOK THIS NEXT SLIDE TO THE
13 BOARD.

14 THIS ONE IS UNDER SEAL, YOUR HONOR. IT'S JX 86.

15 TAKE A LOOK. THIS IS WHAT HE WAS PREDICTING UNDER THIS
16 DEAL. ON THE TOP, THAT'S MAVERICK DEAL. ON THE BOTTOM, THAT'S
17 NO DEAL. THERE'S A HUGE DIFFERENCE IN UNITS AND A HUGE
18 DIFFERENCE IN DOLLARS. BUT IT'S ALL PROFITABLE. THIS WAS NOT
19 A LOSS LEADER. THIS WAS NOT SOME SORT OF A SUNKEN FUND. THIS
20 WAS NOT ANYTHING LIKE WHAT THE FTC OR PROFESSOR SHAPIRO CLAIMS.

21 THIS WAS A STRAIGHT-UP PROFIT DEAL WITH A LOT OF OPPORTUNITY
22 FOR QUALCOMM, AND THEY MADE PROFIT, AND LOTS OF IT ACCORDING TO
23 MR. MOLLENKOPF.

24 NOW, THERE'S ANOTHER REASON WHY THIS IS ALL MUCH ADO ABOUT
25 NOTHING, AND THAT IS EVEN THE ONE YEAR PERIOD THAT SHAPIRO

1 CLAIMS WAS A PERIOD OF DELAY IS NOT SUPPORTED BY THE EVIDENCE
2 BECAUSE INTEL WASN'T READY TO PROVIDE A PRODUCT UNTIL 2016, AS
3 THIS SLIDE SHOWS.

4 HERE'S MR. SAUER, WHOM WE CALLED FROM APPLE. HE WAS
5 RUNNING THE PROJECT FROM THE APPLE SIDE. INTEL WAS STRUGGLING
6 TO MATCH QUALCOMM IN 2015. THEY WEREN'T ABLE TO DO IT. THEY
7 DIDN'T HAVE WHAT APPLE WANTED ON THE SCHEDULE APPLE WANTED,
8 WHICH IS WHY APPLE STAYED WITH QUALCOMM.

9 SO THERE IS NOTHING WHATSOEVER EXCLUSIONARY ABOUT THESE
10 SERIES OF TRANSACTIONS BECAUSE THERE WAS NOBODY ELSE TO DO IT.

11 AND GUESS WHAT? INTEL GOT THE BUSINESS IN 2016, BUT
12 THAT'S ALL THEY EVER WANTED. AS MS. EVANS SAYS, THEY DON'T
13 HAVE A PROGRAM TO BE IN HANDSETS MORE BROADLY. YOU'VE GOT TO
14 BE MAKING SYSTEM ON A CHIP TO BE A REAL COMPETITOR, AS
15 MS. CHIPTY'S CHART ON THE RIGHT SHOWS.

16 THEY'RE NOT THERE. THEY'RE NOT EVEN INTERESTED IN IT.

17 SO THE ONE YEAR DELAY WAS NO DELAY AT ALL. THEY GOT THE
18 BUSINESS THEY WANTED. THEY NOW HAVE THE BUSINESS THEY WANT.

19 AND THE FTC HAS MADE NO EFFORT TO SHOW WHAT PORTION OF ANY
20 MARKET WAS FORECLOSED BY THIS SINGLE TRANSACTION.

21 SO THERE'S BEEN ABSOLUTELY NO SHOWING UNDER THE TAX
22 THEORY, UNDER THIS THEORY, OR ANY OTHER THEORY, THAT THERE'S
23 BEEN ANY HARM TO COMPETITION.

24 AND, YOUR HONOR, UNDER THE LAW, THAT'S WHERE THE ANALYSIS
25 STOPS. YOU DON'T EVEN GET TO PROCOMPETITIVE REASONS OR ANY OF

1 THE REST OF IT. THEY'VE GOT TO SHOW BURDEN -- THEY'VE GOT TO
2 SHOW HARM TO COMPETITION.

3 BUT LET ME TALK ABOUT QUALCOMM'S LICENSING PRACTICES
4 BECAUSE THAT'S THEIR OTHER BEEF.

5 YOUR HONOR, LICENSING AT THE HANDSET LEVEL IS INDUSTRY
6 STANDARD AND ALWAYS HAS BEEN. THIS IS IMPORTANT TO THE DUTY TO
7 DEAL THAT WE TALKED ABOUT PRETRIAL.

8 EVERY ONE OF THESE WITNESSES -- AND I GOT SIX ON THE
9 CHART -- INCLUDING MR. DONALDSON FROM THE FTC, MR. MOYNIHAN
10 FROM MEDIATEK, MR. WEILER FROM ETSI, PETERSSON, MCELVAINE, AND
11 RAHNASTO FROM NOKIA, INTERDIGITAL, ERICSSON, THEY ALL SAID THE
12 SAME THING. WE LICENSE AT THE HANDSET LEVEL BECAUSE IT'S MORE
13 EFFICIENT, YOU HAVE A SINGLE TRANSACTION, EVERYBODY IS
14 PROTECTED, AND THE VALUE OF OUR PATENTS IS PRACTICED AT THE
15 HANDSET.

16 NOW, THERE'S A COROLLARY TO THAT. IT'S THE OTHER SIDE OF
17 THE SAME COIN. IF YOU LICENSE AT THE HANDSET LEVEL, YOU DON'T
18 LICENSE AT THE COMPONENT LEVEL, AND THE WITNESSES ALL SAID
19 THAT, TOO.

20 MR. MOYNIHAN SAID, IPR HOLDERS GO OUT OF THEIR WAY TO MAKE
21 IT CLEAR THEY'RE NOT LICENSING THE CHIPSET COMPANY.

22 INTERDIGITAL DOES NOT ENTER INTO STANDALONE PATENT LICENSE
23 AGREEMENTS.

24 PETERSSON, ST-ERICSSON COULD RELY ON THE INDUSTRY PRACTICE
25 AND WAS NEVER APPROACHED BY THE PATENT HOLDERS.

1 THE COROLLARY IS THAT CHIPSET LEVEL LICENSING IS NOT
2 CUSTOMARY.

3 AND BY THE WAY, THE FTC DIDN'T INTRODUCE A SINGLE CHIP
4 LEVEL LICENSE IN THIS CASE TO BACK UP ITS CLAIM THAT QUALCOMM
5 IS SOMEHOW OUT OF THE MAIN STREAM. THEY'RE NOT.

6 THESE WITNESSES ALL EXPLAINED WHY HANDSET LEVEL LICENSING
7 IS IMPORTANT AND WHY QUALCOMM'S PRACTICES ARE IN LINE. THEY
8 ALL EXPLAIN THAT WHY WOULD YOU WANT TO HAVE TEN NEGOTIATIONS
9 WITH EACH OF THE COMPONENT SUPPLIERS IF YOU CAN HAVE ONE WITH
10 THE DEVICE LEVEL OEM AND COVER EVERYBODY? THAT'S WHAT EVERYONE
11 HAS DONE. THAT'S BEEN INDUSTRY PRACTICE FOR YEARS. WE'RE NOT
12 AN OUTLIER IN ANY RESPECT.

13 AND YOU HEARD FROM ETSI, YOUR HONOR. MR. WEILER CAME IN
14 AND TESTIFIED THAT ETSI CONSIDERS HANDSET LEVEL LICENSING
15 CONSISTENT WITH INDUSTRY PRACTICE AND FULLY IN LINE WITH THE
16 POLICY OBJECTIVES.

17 NOW, MR. ROGERS, AND MR. GONELL, AND MR. WEILER TESTIFIED
18 THAT ETSI POLICY IS THE POLICY THAT PEOPLE IN 3GPP, WHICH IS
19 THE CELLULAR STANDARDS ORGANIZATION, LOOK TO FOR IPR POLICY.

20 NO ONE MAKING A FRAND COMMITMENT IN THE PAST, YOUR HONOR,
21 HAS CONSIDERED IT THEIR OBLIGATION TO LICENSE A CHIP MAKER.
22 THAT'S NOT BEEN THE WAY PEOPLE HAVE BEHAVED IN THE INDUSTRY.
23 IT'S NOT BEEN THE WAY THE INDUSTRY HAS OPERATED.

24 THE WAY THE INDUSTRY HAS OPERATED IS THE WAY QUALCOMM HAS
25 OPERATED, HANDSET LEVEL LICENSING.

1 AS MR. GONELL HAS SAID, QUALCOMM HAS NEVER GRANTED AN
2 EXHAUSTIVE LICENSE TO A CHIP MAKER. IT'S NOT A SITUATION WHERE
3 QUALCOMM HAD A PRACTICE THAT CHANGED OR QUALCOMM MADE A
4 COMMITMENT THAT THEY UNDERSTOOD REQUIRED LICENSING AT THE
5 COMPONENT LEVEL.

6 GOOD REASONS EXIST FOR DOING IT THE WAY THEY DO, AND
7 THAT'S THE WAY THEY'VE ALWAYS DONE IT.

8 SO YOU COULDN'T FIND ANTICOMPETITIVE MALICE FROM THIS IF
9 IT'S WHAT THE INDUSTRY DOES, AND THERE'S TESTIMONY THAT IT'S
10 ABSOLUTELY CONSISTENT WITH ETSI.

11 I UNDERSTAND THE FUTURE MAY BE DIFFERENT, MAY BE. BUT THE
12 PAST IS CRYSTAL CLEAR THAT THIS IS HOW FOLKS HAVE OPERATED.

13 AND, YOUR HONOR, THE ONLY THING I HEARD TO COUNTER THIS
14 WAS CROSS-LICENSING, CROSS-LICENSING.

15 YOU HEARD ABOUT CROSS-LICENSING FROM MR. GONELL AND
16 MR. WEILER, TOO. CROSS-LICENSING IS ABSOLUTELY INDUSTRY
17 STANDARD, BUT IT'S FUNDAMENTALLY DIFFERENT FROM COMPONENT LEVEL
18 LICENSING.

19 IF YOU ARE GIVING A PORTFOLIO LICENSE TO A LICENSEE, IT
20 MAKES NO SENSE NOT TO HAVE A COMPREHENSIVE AGREEMENT.

21 OTHERWISE YOU SIGN YOUR LICENSE WITH THE LICENSEE, YOU GIVE
22 THEM YOUR RIGHTS TO ALL YOUR PATENTS, AND THE NEXT DAY THEY SUE
23 YOU ON THEIR PORTFOLIO.

24 THAT MAKES ABSOLUTELY NO SENSE AND NOBODY OPERATES THAT
25 WAY.

1 MR. GONELL TESTIFIED THAT'S COMMON, AND MR. WEILER SAID
2 THAT'S HOW ETSI OPERATES, TOO. YOU'RE ALLOWED TO, IN A FRAND
3 WORLD, YOU ARE ABSOLUTELY ALLOWED TO ASK FOR A CROSS-LICENSE IF
4 YOU'RE PROVIDING A FRAND LICENSE.

5 NOW, THAT MEANS THAT THERE IS NO ANTITRUST DUTY TO DEAL
6 BASED ON THE ROADMAP THAT YOUR HONOR LAID OUT IN THE MOTION TO
7 DISMISS. YOU LAID IT OUT. YOU GAVE THEM A CLEAR ROADMAP, AND
8 IT WAS CORRECT. YOU SAID THERE HAS TO BE A CHANGE OR
9 ABANDONMENT OF A PROFITABLE COURSE OF DEALING, AND
10 ANTICOMPETITIVE MALICE, NAMELY, SOMETHING NOT RATIONAL DONE FOR
11 AN ANTICOMPETITIVE PURPOSE.

12 THERE'S NO EVIDENCE OF THAT HERE. THEY FAILED TO PROVE
13 IT. THEY HAD THE ROADMAP, BUT THEY DIDN'T GET ON THE ROAD.

14 OUR REFUSAL TO LICENSE CHIP MAKERS IS INDUSTRY STANDARD,
15 IT'S NEVER CHANGED, IT'S BEEN CONSISTENT WITH ETSI POLICY
16 THROUGHOUT, AND THERE IS NOW ABSOLUTELY NO BASIS FOR A FINDING
17 OF A DUTY TO DEAL WITH COMPETITORS.

18 NOW, SOMETHING THAT IS NOT INDUSTRY STANDARD IS QUALCOMM'S
19 POLICY OF SELLING ONLY TO LICENSED OEM'S. I THINK IN THAT
20 RESPECT QUALCOMM IS UNIQUE, AND WE SAID THAT RIGHT UPFRONT.

21 YOU HEARD TESTIMONY ABOUT THIS FROM MR. MOLLENKOPF,
22 MR. GONELL, MR. NEVO, PROFESSOR NEVO.

23 AND THE ANSWER IS QUALCOMM'S UNIQUE. IT STARTED OFF AS A
24 LICENSING BUSINESS WITH SYSTEM END-TO-END TECHNOLOGY. IT NEVER
25 INTENDED TO GET PAID BASED ON PRODUCT SALES. FROM THE VERY

1 BEGINNING, THE VALUE IN ITS I.P. WAS RECOVERED FROM LICENSING.

2 SO IN EFFECT, THEY HAVE TWO BUSINESSES. THERE'S A
3 LICENSING BUSINESS WITH THE SYSTEM END-TO-END TECHNOLOGY THAT
4 READS ALL OVER THE HANDSET; AND THERE'S A CHIP BUSINESS. THE
5 I.P. FOR THE SYSTEM IS NOT PRICED INTO THE CHIP.

6 AND QUALCOMM SHOULDN'T BE AT A DISADVANTAGE JUST BECAUSE
7 THEY HAVE A CHIP BUSINESS. IT SHOULDN'T BE THE CASE THAT THEY
8 SHOULD PUT THEMSELVES AT RISK OF SOMEBODY CLAIMING, I DON'T
9 HAVE TO PAY FOR YOUR I.P. BECAUSE I BOUGHT A CHIP. THAT'S NOT
10 BEEN THE WAY THE BUSINESS HAS DEVELOPED. THAT'S NOT BEEN THE
11 WAY QUALCOMM HAS DEALT WITH ITS LICENSEES FOR THE LAST 30
12 YEARS.

13 IT'S ABSOLUTELY FAIR, AS PROFESSOR NEVO SAID, BECAUSE IT'S
14 TRANSPARENT. ALL LICENSEES PAY THE RATE. THEY KNOW THE STATED
15 RATE. THEY NEGOTIATE A DEAL, AND THEN EVERYBODY COMPETES ON
16 THE CHIPS.

17 THERE'S NO OVERLAP BETWEEN THOSE. FOLKS ARE COMPETING ON
18 CHIPS. IT DOESN'T MATTER, ONCE YOU HAVE A LICENSE, WHOSE CHIPS
19 YOU BUY. YOU COMPETE ON THE MERITS OF THE CHIPS.

20 PERFORMANCE, PRICE, AVAILABILITY.

21 AND PROFESSOR NEVO SAID THAT'S A FAIR WAY TO DO IT, AND I
22 DIDN'T HEAR ONE WORD FROM PROFESSOR SHAPIRO IN RESPONSE.

23 AND ALL THIS TESTIMONY THAT YOU HEARD ABOUT THE DOCUMENTS
24 THAT GOOD OLD BCG PREPARED WAS ABSOLUTELY CONSISTENT WITH THIS.

25 BCG PROVIDED A SLIDE DECK NOT TO MR. MOLLENKOPF AND NOT TO

1 MANAGEMENT AND NOT TO MR. JACOBS, THEY PRESENTED IT TO AN
2 INDEPENDENT COMMITTEE OF THE BOARD.

3 MR. MOLLENKOPF SAID CLEARLY, THE REASON WE KEPT THE
4 BUSINESS TOGETHER WAS BECAUSE HAVING A CHIP BUSINESS HELPS US
5 WITH CREDIBILITY WITH THE STANDARDS ORGANIZATIONS, IT HELPS
6 WITH THEIR CONFIDENCE THAT A STANDARD THAT WE'RE PROPOSING CAN
7 ACTUALLY BE TURNED INTO A PRODUCT, AND ON THE OTHER SIDE, THE
8 CHIP BUSINESS IS BETTER OFF BECAUSE WE'VE GOT AN INVENTION
9 MACHINE OVER HERE IN OUR CORPORATE R&D THAT ALLOWS US TO GET
10 PRODUCTS TO MARKET SOONER.

11 THERE ARE ABSOLUTELY GOOD, FAIR, LEGITIMATE REASONS TO
12 KEEP THE BUSINESS TOGETHER, AND THERE'S NOBODY IN MANAGEMENT OR
13 ANYWHERE ELSE AT QUALCOMM THAT SAYS USING STICKS AND CARROTS IS
14 A GREAT THING.

15 NOW, MY FINAL POINT MAYBE HAS BEEN CONCEDED, AND THAT IS
16 THAT QUALCOMM EARNED ITS PLACE THROUGH SUPERIOR INNOVATION AND
17 BETTER PRODUCTS.

18 WHY IS THAT IMPORTANT?

19 THIS QUOTE, YOUR HONOR, IS FROM THE FTC'S PROPOSED
20 CONCLUSIONS OF LAW, AND THE GIST OF IT IS THEY'VE GOT THE
21 BURDEN TO SHOW THAT QUALCOMM MAINTAINED ITS MARKET POSITION
22 THROUGH ILLEGAL CONDUCT RATHER THAN GROWTH OR DEVELOPMENT AS A
23 CONSEQUENCE OF A BETTER PRODUCT, BUSINESS ACUMEN, ET CETERA.

24 WELL, WE HAVE PROVED TO A TEE THAT QUALCOMM GOT HERE AND
25 STAYED HERE BASED ON THE SUCCESS OF ITS ENGINEERING PROGRAM.

1 AND THE EVIDENCE IS ESSENTIALLY UNDISPUTED ON THAT.

2 LET'S LOOK AT WHAT YOU HEARD FROM MR. JACOBS. WE'RE
3 LOOKING FOR A WAY TO MAKE A MAJOR STEP AND TAKE A SYSTEMS
4 APPROACH. WE DON'T WANT TO IMPROVE THINGS JUST A LITTLE. WE
5 WANT TO IMPROVE THEM A LOT.

6 AND THE FTC NOW ADMITS THAT CDMA IN MOBILE WAS AN
7 INVENTION OF QUALCOMM AND THAT WAS A HUGE STEP FORWARD FOR
8 VOICE COMMUNICATIONS IN THE EARLY DAYS.

9 BUT THAT'S NOT THE END OF IT. THAT'S NOT THE END OF IT.
10 YOU HEARD FROM MR. MALLADI AND FROM DR. JACOBS THAT QUALCOMM
11 HAS KEPT PUSHING THE INDUSTRY FORWARD.

12 WHAT WAS THE NEXT BIG THING? HDR, HIGH DATA RATES.
13 THAT'S A BREAKTHROUGH TECHNOLOGY.

14 WHY DO WE HAVE CELL PHONES AND SMARTPHONES NOW THAT CAN
15 CARRY ALL THIS DATA AND YOUTUBE AND VIDEO AND EVERYTHING ELSE?
16 IT'S BECAUSE OF HDR. THAT WAS A BREAKTHROUGH THAT'S MADE
17 BILLIONS OF DOLLARS FOR THE INDUSTRY, INCLUDING ALL OF OUR OEM
18 LICENSEES. THAT HAS PUSHED THE INDUSTRY FROM 2G TO 3G TO 4G.

19 AND PROFESSOR ANDREWS PUT A FINE POINT ON IT. HE SAID
20 QUALCOMM HAS BEEN INSTRUMENTAL IN TWO AREAS, FUNDAMENTAL
21 ESTABLISHMENT OF THE WAVEFORMS AND CONTROL THAT AFFECTS
22 SMARTPHONE OPERATION. THAT'S WHERE QUALCOMM HAS FOCUSED ITS
23 WORK.

24 AND BROAD PATENT COVERAGE IN THESE NEW AREAS THAT ARE
25 TAKING US TO 4G AND 5G, CARRIER AGGREGATION, CELLULAR IN

1 UNLICENSED SPECTRUM, HETEROGENOUS NETWORKS.

2 HE TESTIFIED THAT THE PORTFOLIO WAS BROAD AND DEEP AND
3 THAT THESE WERE ALL FUNDAMENTAL TECHNOLOGIES WITHOUT WHICH THE
4 INDUSTRY WOULDN'T BE ABLE TO MOVE FORWARD.

5 AND MR. CHEN FROM QUALCOMM EXPLAINED THAT RESEARCH GIVES
6 US A LOT OF PATENTS, INCLUDING IN THE NON-STANDARD ESSENTIAL
7 PATENT AREAS THAT READ ALL OVER THE PHONE, AREAS OUTSIDE OF
8 CELLULAR, AREAS THAT ARE NOT CELLULAR, AREAS THAT ARE
9 FUNDAMENTAL FEATURES ON YOUR SMARTPHONE THAT DON'T HAVE
10 ANYTHING TO DO WITH CELLULAR.

11 NOT ONLY HAS MR. LASINSKI IGNORED THOSE, BUT THE FTC
12 HASN'T PROVEN ANYTHING ABOUT ANY OTHER COMPETING PORTFOLIO,
13 NOTHING. THERE'S NO EVIDENCE IN THE RECORD ABOUT ANYBODY
14 ELSE'S PORTFOLIO.

15 AND I WOULD SUGGEST TO YOUR HONOR THERE'S A REASON FOR
16 THAT. THE REASON QUALCOMM LEADS IN ROYALTIES, AND THE REASON
17 QUALCOMM'S ROYALTY RATES HAVE REMAINED THE SAME, AND THE REASON
18 THOSE RATES HAVE BEEN THE SAME NO MATTER WHAT THEIR MARKET
19 SHARE IS, IS THIS, IT'S THEIR TECHNOLOGY, THEIR PORTFOLIO.
20 IT'S SIMPLY BETTER THAN EVERYBODY ELSE'S.

21 AND NO WITNESS CAME ON THE FTC SIDE TO CONTRADICT THAT.
22 NOTHING IN THE RECORD.

23 AND IT'S BACKED UP BY OUR COMPETITORS AND OUR CUSTOMERS,
24 TOO. HERE'S WHAT BAIN AND INTEL CAME UP WITH. THEY'RE TALKING
25 NOW NOT ABOUT THE FUNDAMENTAL SYSTEM TECHNOLOGY, BUT OUR CHIP

1 BUSINESS. INTEL RECOGNIZES QUALCOMM R&D DRIVES THE PACE OF
2 INNOVATION.

3 IT'S QUALCOMM THAT'S OUT FRONT BUILDING THE BETTER
4 PRODUCTS.

5 AND YOU MAY REMEMBER, YOUR HONOR, MR. MOYNIHAN FROM
6 MEDIATEK SAID WE BENCHMARK AGAINST QUALCOMM. THEY'RE THE
7 LEADER. THAT'S AT PAGES 325 EXAMINE 326. AGAIN, FORGIVE ME, I
8 DON'T HAVE A SLIDE. BUT IT'S TRANSCRIPT 325 AND 326. MOYNIHAN
9 SAID, FROM MEDIATEK, WE BENCHMARK.

10 THE CUSTOMERS ALL AGREED. THIS TESTIMONY WAS FEATURED BY
11 THEM. QUALCOMM HAD THE BEST CHIPSET AVAILABLE.

12 NOBODY ELSE WAS THERE. QUALCOMM WAS AHEAD IN LTE.
13 QUALCOMM'S PERFORMANCE WAS A YEAR AHEAD OF INTEL. QUALCOMM HAD
14 A SUPERIOR OFFERING.

15 OVER AND OVER AND OVER.

16 AND NOT ONLY THAT, YOUR HONOR, THIS IS ALL TESTIMONY THAT
17 WAS ELICITED BY THE FTC. PROFESSOR SHAPIRO CHIMED IN AND GAVE
18 US THIS HELPFUL CHART.

19 THIS CHART SHOWS, IN PROFESSOR SHAPIRO'S VIEW, THAT
20 QUALCOMM HAS BEEN FIRST TO MARKET IN EVERY SINGLE ADVANCED LTE
21 TECHNOLOGY CATEGORY. EVERY ONE.

22 THE BOXES ON THE LEFT WITH THE NICE COLORS ARE QUALCOMM,
23 AND THE BOXES ON THE RIGHT ARE THE REST OF THE INDUSTRY TRYING
24 TO CATCH UP.

25 SO CATEGORY 3, THEY'RE TWO YEARS AHEAD. CATEGORY 4,

1 THEY'RE A YEAR AHEAD. ET CETERA, ET CETERA, ET CETERA, ET
2 CETERA.

3 SO, YOUR HONOR, IF THE TASK IS TO DECIDE WHETHER QUALCOMM
4 MAINTAINED ITS POSITION THROUGH INNOVATION, SKILL, TECHNOLOGY,
5 OR THROUGH ITS LICENSING PRACTICES, IT'S A LAY DOWN HAND. THEY
6 HAVEN'T PROVEN ANYTHING WITH RESPECT TO OUR LICENSING PRACTICES
7 THAT HAD ANY IMPACT ON THE ADVANCEMENT OF THIS TECHNOLOGY.

8 AND SO FOR THOSE REASONS, I THINK THE EVIDENCE IS CRYSTAL
9 CLEAR, THERE CAN'T BE ANY VIOLATION BASED ON WHAT THEY
10 PRESENTED. EVEN THOUGH YOUR HONOR GAVE THEM A ROADMAP, THEY
11 WERE UNABLE TO PRESENT EVIDENCE TO MEET THE BURDEN.

12 BUT NOW I WANT TO TALK FOR JUST A FEW MINUTES ABOUT
13 REMEDIES, AND I WANT TO START WITH A SLIDE FROM
14 PROFESSOR SHAPIRO BECAUSE THEY SAID THAT THE PRESENCE OF
15 EXISTING CONDUCT IS ENOUGH FOR INJUNCTIVE RELIEF, AND THAT'S
16 JUST NOT THE LAW.

17 AND PROFESSOR SHAPIRO SAID WAS IF THE COST TO AN OEM OF
18 LOSING ACCESS TO CHIPS WERE NIL, THEN THE NO LICENSE, NO CHIPS
19 POLICY WOULD HAVE NO BITE, AND, THEREFORE, QUALCOMM WOULD NOT
20 BE ABLE TO ELEVATE ROYALTIES AND THE REST OF THE PROGRAM FALLS
21 APART.

22 WELL, THAT MEANS IF QUALCOMM LACKS MARKET POWER, THEN ITS
23 PRACTICES ARE NOT CAPABLE OF ANY HARM.

24 AND THE LAW ISN'T THAT IT'S ENOUGH TO SHOW CONDUCT
25 CONTINUING. YOU HAVE TO SHOW A CONTINUING VIOLATION. A

1 VIOLATION REQUIRES MARKET POWER.

2 AND THE FTC HASN'T PRODUCED ANY EVIDENCE OF MARKET POWER
3 AFTER 2016, AS THIS NEXT SLIDE SHOWS.

4 PROFESSOR SHAPIRO WAS CRYSTAL CLEAR. NOTHING IN 2017,
5 NOTHING IN 2018.

6 AND I'M NOT JUST QUIBBLING HERE, YOUR HONOR. IT'S NOT AS
7 THOUGH HE WAS SHOWING A STRAIGHT LINE UP FOR QUALCOMM WITHIN A
8 YEAR OF TRIAL. THAT'S NOT IT.

9 HE WAS SHOWING A STRAIGHT LINE DOWN, DIMINISHING MARKET
10 SHARE IN 2014, 2015, 2016.

11 AND HIS ANALYSIS STOPS COMPLETELY IN 2016.

12 SO THERE'S CURRENTLY NO BASIS IN THE RECORD, OR THE
13 EVIDENCE, FOR ANY FORM OF INJUNCTIVE RELIEF, YOUR HONOR, IF YOU
14 CAN'T SHOW SOME EVIDENCE OF MARKET POWER NOW OR WITHIN MONTHS
15 OF NOW, WHICH THEY HAVEN'T SHOWN.

16 AND WE KNOW THAT 5G IS GOING TO BE COMPETITIVE. YOU HEARD
17 A LOT OF TESTIMONY ABOUT THAT. MR. MOYNIHAN SAYS MEDIATEK HAS
18 A CHIP, AND IT'LL BE OUT.

19 MS. EVANS SAYS INTEL HAS A CHIP, AND IT'LL BE OUT.

20 MR. ROGERS SAW A HUAWEI CHIP DISPLAYED LAST JANUARY, A
21 YEAR AGO, AT THE MOBILE WORLD CONGRESS.

22 SO WE KNOW THAT THERE'S GOING TO BE STIFF COMPETITION FROM
23 WELL FUNDED ADVERSARIES, LIKE HUAWEI, IN THIS FIELD NO MATTER
24 WHAT.

25 ANOTHER POINT. THEY ARE ASKING YOUR HONOR TO THROW OUT

1 HUNDREDS OF LICENSE AGREEMENTS, RENDER THEM UNENFORCEABLE, THAT
2 HAVE BEEN NEGOTIATED WITH THIRD PARTIES OVER THE PAST 10 TO 15
3 YEARS.

4 THERE IS NO EVIDENCE OF ANY PLAUSIBLE CHIP LEVERAGE AS TO
5 ANY OF THE FOLLOWING CATEGORIES I'VE GOT ON THE BOARD. THEY'RE
6 NOT CLAIMING ANY MARKET POWER IN WCDMA.

7 MANY OF THE LICENSE AGREEMENTS THAT YOUR HONOR HAS BEFORE
8 HER ARE WCDMA.

9 NO CLAIM OF MARKET POWER IN LTE BEFORE 2011.

10 NO CLAIM OF MARKET POWER IN CDMA BEFORE 2006.

11 YOUR HONOR CLARIFIED THAT WHEN PROFESSOR SHAPIRO WAS HERE.

12 NO CLAIM OF MARKET POWER NOW OR ANY TIME AFTER 2016.

13 AND ALL TRENDS ARE SHOWING MARKET SHARE DIMINISHING.

14 THE CPLA LICENSES, YOUR HONOR, ARE THE ONES MR. ROGERS
15 ADDRESSED FRIDAY. THEY WERE EXECUTED UNDER THE NDRC
16 RECTIFICATION PLAN AND APPROVED BY THE NDRC.

17 THE SAMSUNG AGREEMENT IS TO THE SAME EFFECT. IT WAS
18 NEGOTIATED IN 2018. I'VE GOT A SLIDE ON THAT IN A MINUTE.

19 BUT MY POINT IS THAT EVEN IF YOUR HONOR WERE TO FIND SOME
20 VIOLATION OUT OF ALL THIS, WHICH I DON'T THINK YOU CAN, THERE
21 CLEARLY IS NO EVIDENCE AS TO ANY OF THE LICENSE AGREEMENTS IN
22 THESE CATEGORIES TO SUPPORT ANYTHING.

23 AND NOW MY SAMSUNG SLIDE, LET'S GO TO SAMSUNG, IS SIMPLY
24 THIS: THE TWO TOP PEOPLE, MR. AHN'S A LAWYER, MR. LEE IS NOT,
25 THE TWO TOP PEOPLE THAT NEGOTIATED THE SAMSUNG AGREEMENT THAT

1 WAS LATER PROVIDED TO THE KOREAN GOVERNMENT SAID THERE WAS
2 NOTHING WRONG WITH OUR NEGOTIATION, NO PRESSURE, NO NOTHING. I
3 WASN'T COERCED, THERE WAS NO TALK OF CHIP SUPPLY.

4 AND I THINK IMPORTANT I THINK HERE TO RECOGNIZE, YOUR
5 HONOR, AS PROFESSOR NEVO SAID, IN A MARKET LIKE THIS THAT'S
6 RAPIDLY CHANGING AND THAT'S BEEN HIGHLY SUCCESSFUL, COURT
7 INTERVENTION -- GOD BLESS YOU --

8 THE COURT: THANK YOU.

9 MR. VAN NEST: -- COURT INTERVENTION, IF IT'S GOING
10 TO HAPPEN AT ALL, HAS TO BE MEASURED. IT MUST BE MEASURED.

11 THEY'VE PROVIDED NO EVIDENCE THAT WHAT THEY WANT WILL HAVE
12 ANY EFFECT ON THE MARKET THAT'S POSITIVE.

13 AND YOU KNOW NOW THAT SINCE THE HANDSET LEVEL LICENSING
14 AND COMPONENT LICENSING, THE WAY IT'S DONE NOW -- BLESS YOU
15 AGAIN --

16 THE COURT: THANK YOU.

17 MR. VAN NEST: -- HAS BEEN SUCCESSFUL, THAT I WOULD
18 URGE THE COURT TO REVIEW THE TESTIMONY OF PROFESSOR NEVO ON
19 THIS ISSUE BECAUSE THE FTC HAS PRESENTED ABSOLUTELY NOTHING TO
20 JUSTIFY THE SWEEPING ALMOST BREATHTAKING REMEDY THEY WANT BASED
21 ON THE PALTRY EVIDENCE THEY PROVIDED.

22 AND SO NOW, YOUR HONOR, FOR ALL THE REASONS I PROVIDED IN
23 MY DISCUSSION THIS AFTERNOON, AS WELL AS OUR PRETRIAL BRIEF,
24 OUR PROPOSED FINDINGS OF FACT AND CONCLUSIONS, I THINK IT'S
25 PRETTY CLEAR, THE FTC FAILED TO MEET ITS BURDEN ON EVERY

1 ELEMENT OF THE CLAIMS AND HASN'T SHOWN THAT ANY OF THE REMEDIES
2 IT SEEKS ARE NECESSARY, TAILORED, OR IN THE PUBLIC INTEREST AT
3 ALL.

4 AND SO FOR THOSE REASONS, WE MOVE FOR THE JUDGMENT OF
5 DISMISSAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 52 (C) .

6 AND I THANK YOUR HONOR FOR YOUR ATTENTION THIS AFTERNOON
7 AND THROUGHOUT THE TRIAL. I HOPE I'VE BEEN HELPFUL.

8 THE COURT: ALL RIGHT. THANK YOU. THANK YOU VERY
9 MUCH.