IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FORCE MOS TECHNOLOGY, CO, LTD.,	(	CAUSE NO. 2:22-CV-460-JRG
	)	
Plaintiff,	(	
	)	
vs.	(	
	)	
ASUSTEK COMPUTER, INC.,	(	MARSHALL, TEXAS
	)	FEBRUARY 12, 2025
Defendant.	(	8:30 A.M.

VOLUME 4

TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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EXAMINATION

THE COURT: Be seated, please.

Are the parties prepared to read into the record those items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MR. DaMARIO: We are, Your Honor.

THE COURT: Please proceed.

MR. DaMARIO: Defendants seek to admit JX 51, DX 20, JX 24, JX 25, DX 5, DX 14, and DX 18.

THE COURT: Any objection from the opposing party?

MR. THANE: No objection, Your Honor.

THE COURT: Does Plaintiff have anything additional to add?

MR. THANE: We do not, Your Honor.

THE COURT: Then those exhibits having been used during yesterday's portion of the trial are considered admitted exhibits and not merely pre-admitted exhibits.

Counsel, is there anything you can think of that needs to be raised with the Court before we bring in the jury and continue with Dr. Ugone?

MR. HANBA: No, Your Honor.

MR. McMAHON: No, Your Honor.

THE COURT: All right. Dr. Ugone, if you'll return to the witness stand. I remind you, you remain under oath.

And, Ms. Pellegrino, you may go to the podium to prepare for cross examination.

MS. PELLEGRINO: Thank you, Your Honor. May we also distribute binders.

THE COURT: You may.

MS. PELLEGRINO: Thank you.

THE COURT: All right. Let's bring in the jury.

(Whereupon, the jury entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen. Welcome back. Please have a seat.

Thank you for being on time. And just so you'll know, I've seen several of you come in with heavier and heavier clothing this week. I want you to know that I have no control over the temperature in this courtroom. The temperature for the 43 counties that comprise the Eastern District of Texas are all determined out of central control in Tyler, Texas, so we don't have any local control over the thermostats.

All right. We left off yesterday with the Defendant having completed its direct examination of Dr. Keith Ugone, and we'll now transition to cross examination by Plaintiff's counsel.

Ms. Pellegrino, you may proceed with cross.

MS. PELLEGRINO: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. PELLEGRINO:

Q. Good morning, Dr. Ugone. How are you?

A. I'm doing all right. Thank you.

Q. You testified a number of times yesterday on your direct examination that Mr. Lamotta has offered what you called, quote, primary and alternative opinions. Right?
A. Yes. That was based on his reports that he issued in this case.
Q. Now, during his direct testimony yesterday, Mr. Lamotta actually only testified to a single amount of damages that he believes is appropriate in this case. Right?
A. I'll agree with that.
Q. Okay. And he testified that it's his opinion that the appropriate amount of damages in this case is $20.1 million. Right?
A. That's what he testified to the jury, yes.
Q. Okay. Now, Mr. Underwood asked some questions about other analyses Mr. Lamotta performed. Correct?
A. Are you referring to on cross examination of Mr. Lamotta?
Q. That's right.
A. Yes.
Q. You understand that what Mr. Underwood says is not evidence. Right?
A. I understand that -- guess the short answer is yes.
Q. And you understand that Mr. Lamotta's report is not evidence. Correct?
A. I can't speak to that. I don't -- that seems like a legal issue to me.

Q. You understand that your report is not evidence. Correct?
A. I understand that evidence is what's presented at trial and what's accepted by the Court as evidence. We've issued reports that are the foundation for evidence, but I can't speak to the legalities of what's technically what evidence is.
Q. Okay. You understand that what's presented at trial is what's evidence. That's what you just said?
A. Or that would be my layman's understanding. I'm not an attorney.
Q. Okay.
MS. PELLEGRINO: Mr. Doyle, if I could please have Mr. Ugone's slide 4.
Q. (BY MS. PELLEGRINO) These were slides that you used in your testimony yesterday. Right, Mr. Ugone?
A. Yes.
Q. And this slide is titled Summary of Opinions. Correct?
A. That's correct, yes.
Q. And in the middle there, it describes what you've called Mr. Lamotta's, quote, primary royalty approach. Right?
A. Yes.
Q. But on his direct testimony yesterday, Mr. Lamotta did not testify that that's his opinion about the appropriate amount of damages in this case. Correct?

A. Correct. He did not present that to the jury. It was in his report.

MS. PELLEGRINO: Your Honor, object. Move to strike that last portion as non-responsive.

THE COURT: The witness answered the question when he responded correct. The balance of what the Defendant offered goes beyond the question asked. I'll sustain the objection and order his response struck except as to the first word "Correct."

Let's continue.

MS. PELLEGRINO: And let's go to the next slide, please, Mr. Doyle.

Q. (BY MS. PELLEGRINO) Now, on this slide you have again identified various royalty rates at the top there under what you've called the, quote, primary royalty approach. Right?

A. Yes.

Q. And, again, that was not Mr. Lamotta's testimony on direct examination yesterday. Correct?

A. I'll agree with that.

Q. Okay.

MS. PELLEGRINO: If I could have slide 10, please, Mr. Doyle.

Q. (BY MS. PELLEGRINO) On this bar chart on that bar on the right, you describe what you call Mr. Lamotta's high-end at 7.7 billion MOSFETs. Right?

A. Yes.
Q. And, again, Mr. Lamotta didn't actually offer that opinion to the jury yesterday. Correct?
A. I don't believe that was in his testimony yesterday.
Q. Okay.
MS. PELLEGRINO: Mr. Doyle, could I please have JX 7?
Q. (BY MS. PELLEGRINO) You recognize this document, Dr. Ugone?
A. I'm sorry. I didn't quite hear the question.
Q. You recognize this document?
A. Yes.
Q. Okay. Your testimony yesterday was that the appropriate amount of damages in this case is approximately $615,000. Correct?
A. Correct.
Q. And that opinion relies on the maximum quantity data in JX 7. Correct?
A. I would agree with that.
Q. ASUS's lawyers in Taiwan combined various data to create this file. Correct?
A. I understand that they helped with the presentation of it, so if that's what you mean by combining, I'll agree with that. But I think the underlying counts were not done by the attorneys. But if what you mean is they helped assemble it,

I'll agree with that.

Q. Dr. Ugone, you were present for the testimony of ASUS's representative, Mr. Fu. Right?

A. Yes.

MS. PELLEGRINO: Mr. Doyle, if I could have the trial transcript at 589:23 to 25.

Q. (BY MS. PELLEGRINO) Mr. Fu was asked whether ASUS's lawyers had combined certain data into JX 7, and he said that was correct. Right?

A. Yes. I'm not disagreeing with that testimony.

Q. Okay. Now, during your direct examination yesterday, Mr. Chen asked you what you thought about, and I'm going to quote here, "Force MOS's approach of criticizing ASUSTeK's data without testing that criticism." You remember that?

A. Is it -- is that -- was that an exact question or is that paraphrasing? I may need to hear it again. I may not be disagreeing with what you're saying. I just need to hear your question again.

Q. Sure. The question was what you thought about Force MOS's approach of criticizing ASUSTeK's data without testing that criticism?

A. I don't remember the exact question, but I think I remember something very similar to that, sure.

Q. Okay. Force MOS did try to investigate ASUS's data in JX 7, didn't it?

A. You're going to have to refresh my memory. I'm not sure what you're referring.

Q. Force MOS deposed ASUS's corporate representatives about that data?

A. Oh, sure, I'll agree with that.

Q. Okay. It asked Mr. Fu about the underlying sources of that data. Right?

A. I believe so, yes.

Q. Force MOS asked Mr. Fu if he had ever verified the data. Right?

A. You would have to show me -- I'll accept your representation. You'd have to show me the exact question in the deposition.

MS. PELLEGRINO: Mr. Doyle, can we please have the trial transcript at 590, lines 11 to 12?

Q. (BY MS. PELLEGRINO) You see here, Dr. Ugone, Mr. Fu was asked whether he personally verified this data. Correct?

A. Yes.

Q. And he said he didn't. Right?

A. Yes. I'm assuming -- is this a trial transcript? It doesn't say what it is. Is this the deposition or trial?

Q. This is the trial transcript.

A. Yes. I'll accept its representation.

Q. And Force MOS asked Mr. Fu the same question at his deposition in this case, didn't it?

A. You would have to show me.
Q. You don't recall sitting here today?
A. Well, I remember that I used the deposition transcripts for support in my report, so there was enough information there that I was able to use the spreadsheet. And so I had support from the deposition testimony to help me understand the spreadsheet that was produced, and that's referenced in my report.

But if you want to have me comment on certain questions, I would need to see those questions, but I do remember the subject matter in the depositions. I will agree to that.

MS. PELLEGRINO: Objection, Your Honor. Move to strike as non-responsive.

THE COURT: Overruled. He's responding to your questions.

Q. (BY MS. PELLEGRINO) Mr. Fu testified that he didn't recall whether anyone had verified this day attachment. Right?
A. You would have to show me.

MS. PELLEGRINO: Mr. Doyle, can I please have 590 at 13 to 15?

Q. (BY MS. PELLEGRINO) You see that Mr. Fu was asked whether anyone had verified this data, and he testified that he didn't know?
A. I'll accept that representation, sure.

Q. It's not a representation. It's on your screen. Correct?
A. Yeah. But is that deposition or is that trial?
Q. That's at trial, as I said, Dr. Ugone.
A. Okay. I'll agree with it then.
Q. Now, Force MOS also deposed Mr. Hung. Right?
A. Yes.
Q. Mr. Hung is ASUS's director of research and development. Right?
A. I believe so, yes.
Q. You would agree that that would be a good person to ask questions to about JX 7?
A. Yeah, I wouldn't disagree with that, sure, and he testified to that at trial, if I recall properly.
Q. Well, let's talk about what he testified to at trial.
Were you here on Friday, Dr. Ugone?
A. I'm sorry?
Q. Were you here on Friday?
A. Yes.
Q. Okay. You know that Mr. Hung has testified twice in this case. Correct?
A. Yes.
Q. Once by deposition on Friday?
A. If I recall properly, yes.
Q. Okay. And when he was asked about this data the first

time he testified about it which was played in the trial on Friday, he testified it was the first time he'd ever seen JX 7. Right?

A. I believe so.

Q. And he testified that he hadn't seen any document like JX 7 at ASUS. Right?

A. I'm not sure if I remember that exactly, but I don't disagree with what you're saying. I think there was other aspects which I won't get into, but, I'm not disagreeing with you.

Q. Now, when Mr. Hung testified for the second time in this trial, which I believe was yesterday, you were here. Correct?

A. Yes.

Q. When he testified for the second time, he admitted that this trial is the first time he's attempted to explain JX 7. Correct?

A. You would have to show me. I don't remember those exact words. He -- I'll just stop there.

MS. PELLEGRINO: Mr. Doyle, can I please have 747, lines 15 through 17?

Q. (BY MS. PELLEGRINO) Mr. Hung was asked, This is the first time you've attempted to explain the data in JX 7, isn't it?

And he answered, that's correct. Right, Dr. Ugone?

A. If this is the trial transcript, I'm not going to

disagree what's in the transcript.

THE COURT: Counsel, approach the bench, please.

(The following was had outside the hearing of the jury.)

THE COURT: I can't stop you from using the trial transcript, Ms. Pellegrino, but I told the jury in my preliminary instructions the transcript would not be available to them to consider during deliberations. And as this continues to get flashed in front of them, I'm worried I'm going to get a note that the lawyers got to see the transcript, why can't we.

And also I don't know how proper it is to use this witness to just walk down memory lane of what all these other witnesses said. If you want to cross him on what's in his report, I think that's fine, but we seem to be getting a little far afield.

MS. PELLEGRINO: You'd be happy to know that's the last time.

THE COURT: Let's proceed then.

MS. PELLEGRINO: Okay. Thank you, Your Honor.

(The following was had in the presence and hearing of the jury.)

THE COURT: Let's proceed.

MS. PELLEGRINO: Thank you, Your Honor.

Q. (BY MS. PELLEGRINO) You agree, Dr. Ugone, that JX 7 does

not tell us which accused MOSFETs actually go into which accused ASUS products. Right?
A. Correct.
Q. And ASUS does not know the mix or combination of MOSFETs in the accused products?
A. I will agree with that.
Q. Okay. You would agree that it's important in your work to rely on data that is, in fact, reliable.
A. Sure. I'll agree with that.
Q. And the damages opinion that you've offered in this case is based on the belief that JX 7 is reliable. Correct?
A. Correct.
Q. And if the jury determines that that data is unreliable, you have not offered a damages opinion based on the unreliable records approach set forth by Mr. Lamotta. Correct?
A. I have not provided a number that uses the same methodology that Mr. Lamotta presented to the jury. If that's what you're asking, I'll agree with that.
Q. Okay.
MR. PELLEGRINO: No further questions. I pass the witness. Thank you, Your Honor.
THE COURT: All right. Is there redirect, Mr. Chen?
MR. CHEN: Yes, Your Honor.
THE COURT: Proceed with redirect examination.
MR. CHEN: Thank you, Your Honor.

REDIRECT EXAMINATION

By Mr. Chen:

Q. Dr. Ugone, Microtech tore down six products and made 15 separate MOSFET counts in its tear-down analysis?

A. Yes.

Q. And ASUSTeK provided its slot counts, JX 7, without knowing that Microtech was performing any tear-downs. Right?

A. That's my understanding.

Q. ASUSTeK provided its slot counts without knowing what products Microtech tore down. Correct?

A. Correct.

Q. For each slot counts in the ASUSTeK data, it could be either consistent or inconsistent with the Microtech count if -- in the abstract. Those are the two possible results. Right--consistent or inconsistent?

A. Yeah, I'm taking your question to be if you took Microtech count and the ASUSTeK data, they're either similar or they're not. They're either consistent or not consistent. If that's what you're asking, I'll agree with you.

Q. That's 50/50.

A. I'm not quite sure how to answer that, but if you were just flipping a coin ahead of time, I suppose you could talk about those probabilities.

Q. And a coin flip expressed in decimal terms, that would be 0.5?

A. Yes.
Q. Sir, what are the chances that a person can correctly predict the results of 15 consecutive coin tosses?
A. It would be pretty low. You would have to go 0.5, .5, 0.5 .5 15 times, and that's a small number.
Q. That's 0.5 times .5 14 times. Right?
A. More times, yes.
Q. Yes. Or, mathematically, it's 0.5 to the 15th power?
A. I think that would be accurate, yes.
Q. Let's try to show the Court what that number would look like.

MR. CHEN: Mr. Bupp, can you pull up a blank Excel spreadsheet? Could you fill the first 15 rows with the value 0.5 in each cell.

THE COURT: Mr. Chen, I'm happy for you to show the Court, but it's the jury you need to show this to.

MR. CHEN: Thank you, Your Honor.

THE COURT: I'll certainly look.

MR. CHEN: Appreciate it, Your Honor.

And, Mr. Bupp, can you multiply the values in rows A1 through A15, and could you display a greater number of decimal places? And why don't we convert that to percentage terms?

Q. (BY MR. CHEN) Dr. Ugone, can you share with the jury what's the percentage -- what's the probability percentage of correctly predicting the results of 15 consecutive coin

tosses?
A. Yes. If I understand the numbers, so that 0 to the left of the decimal point would be like a whole percentage number, like if a 1 there, that would be 1 percent. So as we start moving to the right of the decimal, you've got a 10th, you've got a hundredth, and you've got thousandths. So I think that's 3 one-thousandths of a percent if I'm reading it properly.
Q. And if we apply that percentage to the ASUSTeK data that is in JX 07, what does that tell you about the reliability of the ASUSTeK data?
A. Well, I would interpret it from an economic perspective which is ASUSTeK turned over the data, Microtech had done their analysis, and the chances that they just randomly matched like you were asking about is very, very low; that there's a higher inference that these were counting the accused components and we're getting similar answers because of the underlying data.
Q. Sir, you understand Mr. Lamotta submitted his latest supplemental report on February 8th?
A. Yes.
Q. This past Saturday.
A. Yes.
Q. And did you use the word 'alternative' approach or was it Mr. Lamotta who used the word 'alternative' approach --

A. Those are Mr. Lamotta's terms. I did not make those terms up. He called it his alternative approach.
Q. And you were in the courtroom when Mr. Hung testified?
A. Yes.
Q. Do you understand, sir, when Mr. Hung previously testified at his deposition, that was May of 2024?
A. Yes, I do remember that actually.
Q. And when he testified in this courtroom, that was obviously February of 2025.
A. Correct.
Q. By my count, that's about nine months. Is that right?
A. Sure.
Q. And did you hear Mr. Hung when he testified that over the past few months, he did verify the information in JX 7 against the information in the bill of materials?
A. Yes. He seemed very knowledgeable of the spreadsheet.
MR. CHEN: We pass the witness.
THE COURT: All right. Is there further cross examination?
MS. PELLEGRINO: There is not, Your Honor. Thank you.
THE COURT: You may step down, Dr. Ugone.
Defendant, call your next witness.
MR. McMAHON: Your Honor, Defendant rests.
THE COURT: All right. The Defendant has rested its

case in chief.

Does the Plaintiff have a rebuttal case to present to the jury?

MR. HANBA: Yes, Your Honor.

THE COURT: Call your first rebuttal witness.

MR. THANE: Your Honor, Plaintiffs call by video deposition Chia-Chun Pan, the chief financial officer of Inergy Technology, Incorporated. Plaintiff's time is 7 minutes, 14 seconds. Defendant's time is 1 minute, 38 seconds.

THE COURT: Proceed with this witness by deposition, please.

CHIA-CHUN PAN,

BY VIDEO DEPOSITION

Q. Good morning, Ms. Pan. Thank you for your time this morning. Could you please state and then spell your name in English, if possible, for the record?

A. Chia C-H-I-A, Chun C-H-U-N, Pan P-A-N.

Q. And where are you right now, Ms. Pan?

A. Taipei of Taiwan.

Q. Are you currently an employee of Inergy Technology, Inc.?

A. Yes.

Q. And what is your job title?

A. Chief financial officer.

Q. Can you explain to me your understanding of this lawsuit?

A. As I said previously, these two products perhaps are potentially infringing, but as for other products, I don't have -- I don't really know.

Q. Does Inergy sell any MOSFETs or products containing MOSFETs to ASUSTeK directly?

A. No. No.

Q. Does Inergy provide any MOSFETs or products containing MOSFETs indirectly to ASUSTeK through Panjit International, Inc.

A. Yes.

Q. Does Inergy have an interest in the outcome of this litigation between Force MOS and ASUSTeK?

A. No.

Q. Are you aware that Inergy itself is challenging the validity of multiple of Force MOS's patents that are involved in this litigation through another action at the United States Patent and Trademark Office?

A. Yes.

Q. And did you execute it before a notary public in Taiwan Taipei?

A. Yes.

Q. And was that the first time that you saw this document?

A. No.

Q. When was the first time that you saw this document?

A. A few days before my signing.

Q. And who sent it to you then?
A. Attorneys.
Q. And then could you tell me how many pages Exhibit 2 is?
A. I do not know.
Q. Okay. Let's turn to page 1, the very first page. Do you see on page 1 at the top on left there is stapling on the certification?
A. Yes.
Q. And would you please turn to page 7? It's the last page of this document. And if you look on the top right, do you also see stapling on the certification? Do you also see stapling on page 7 on the back of the certification?
A. Yes.
Q. And could you explain to me how this document was created?
A. This document was created by -- through calculations of the data pulled from the company's EIP system.
Q. Okay. Could you please explain how it was created then?
A. It's not directly input, but, rather, it's populated by use of a formula after the calculations are performed by the system.
Q. Okay. As an example, could you explain to me -- if we look at column 4 that talks about the gross profit margin, how that is calculated?
A. The system will pull the -- the sales revenue and sales

gross profit margin of that particular product, and then we would divide the sales profit margin by the sales revenue to obtain the gross margin -- the sales -- sales profit margin.

Q. Okay. So the information such as the sales profit margin or sales revenue, that's something that Inergy keeps in its databases. Is that correct?

A. Correct.

Q. But these percent that we have, say, in the gross profit margin, there's no separate database of just gross profit margins, is there?

A. Basically all the data are derived from the same accounting system, and they are calculated based on the data in the accounting system.

Q. So this particular document, Exhibit 3 that you have up on your screen, was this document something that Inergy had before the start of the litigation between Force MOS and ASUSTeK? Sorry.

A. Yes, in terms of the data source.

Q. And did you provide those independent data sources to ASUSTeK as well?

A. No.

Q. I just want -- for clarity, when you say in your affidavit that the record is from the electronic database of Inergy Technology, Inc., you're not attesting that this document, as it appears on your screen, is in the electronic

database; rather, that's a summary of the information that you keep in those electronic databases. Is that correct?

A. The information is derived from information that has existed in the system and is information that is directly populated through a program.

Q. Okay. And could you explain to me the two components that are listed in the columns, the IW8370 and IW8001, why were those particular components chosen in this document?

A. Because according to the information that we receive at the first time was that these two products may have -- may be involving infringement issues. That's why we singled out these two products and pulled data for analysis.

Q. And did you know that Force MOS had had letters rogatory, discovery requests, issued from the court in the United States to the courts in Taiwan that were requesting that Inergy produce technical and financial information relating to the MOSFETs that are mentioned in Exhibit 3?

A. No.

Q. And do you -- to your knowledge, Inergy has not turned over any financial information to Force MOS?

A. Correct. It's not -- it has never been turned over.

Q. So at any point did Inergy produce to ASUSTeK, or Panjit, or other outside counsel, the underlying printouts or information from these electronic databases that were used to create the summary in Exhibit 3?

A. No.

THE COURT: Does that complete this witness by deposition?

MR. THANE: It does, Your Honor.

THE COURT: Call your next witness, please.

MR. THANE: Your Honor, Plaintiffs call by video deposition Tso Ming Chen, the chief operating officer for Panjit International, Incorporated. The Plaintiff's run time is 7 minutes and 32 seconds and the defendant's is 1 minute and 41 seconds.

THE COURT: Proceed with this witness by deposition.

TSO MING CHEN,

BY VIDEO DEPOSITION

Q. Good morning, Mr. Chen. Could you please state and spell your name in English, if possible, for the record?

A. Tso Ming Chen, T-S-O, M-I-N-G, C-H-E-N.

Q. And where are you right now, Mr. Chen?

A. In a conference room at the Sheraton Hotel in Taipei.

Q. And are you currently an employee of Panjit International, Inc.?

A. Yes.

Q. What is your job title?

A. COO, chief operating officer.

Q. And are you aware that you are here today testifying because there is a lawsuit between Force MOS and ASUSTeK?

A. Yes.
Q. And do you know what that lawsuit is about?
A. I generally know.
Q. Could you please explain to me what you understand the litigation to involve?
A. What I know is the portion of this lawsuit that involves Panjit, but I don't know the other portions.
Q. Are you aware that there is a patent infringement claim against ASUSTeK made by Force MOS that involves certain Panjit components?
A. Yes.
Q. And does Panjit sell MOSFETs or products that contain MOSFETs to ASUSTeK directly?
A. Yes.
Q. All right. I've put a marked exhibit in the marked exhibit folder for you, Mr. Chen. It should be marked as Panjit 1 or Exhibit 1. And this is the indemnification agreement between Panjit and ASUSTeK.
A. Sure.
Q. Have you pulled up that Exhibit 1? Can you see that in front of you right now?
A. Yes.
Q. Okay. Now, at the bottom of page 1 in paragraph 25, the last paragraph on the page, it notes that Panjit will be responsible for paying the fees and costs incurred by the

defense counsel in this ASUS litigation.

Were you aware of this?

A. Yes.

Q. Do you understand that Panjit has financial responsibility that is tied to the outcome of the litigation between Force MOS and ASUSTeK?

A. I understand.

Q. Is this what you understand the record that's purported to be Panjit_00000001 to be?

A. Yes, in my understanding, yes.

Q. And now that we see Exhibit 3, do you see this record in Exhibit 2?

A. Yes.

Q. Do you recognize Exhibit 3?

A. Yes.

Q. Okay. Could you explain to me how this document was created then?

A. This is an Excel file.

Q. So is it an Excel chart that you input in the information--the MOSFET module name, the die name, and quantity? Not you specifically, but when this document was made, there was an Excel file, and then somebody input in these various names and quantities. Is that correct?

A. Yes.

Q. So this particular chart, it's not something that you can

click on a Panjit database and the exact chart shown in Exhibit 3 pops up. Is that correct?

A. That's correct.

Q. So in the business records affidavit, the affiant attested that the record that they're talking about was the exact document from the electronic database of Panjit International, Inc., but you've testified that Exhibit 3 is not an exact printout of Panjit's electronic database. Correct?

A. I disagree.

Q. So Exhibit 3 is a record that is directly shown in Panjit's electronic database?

A. We're talking about records from, but as to what is a record -- actually, the record that's created based on the system -- the record -- the data in the -- in the system is called record. It's not -- it's not true that it has to be something that is printed out entirely from the system.

Q. We can go back to Exhibit 3, the chart itself.

Was this compiled after the litigation between Force MOS and ASUSTeK began?

A. Yes.

Q. And is Exhibit 3, the document there, is that what you would consider to be a record, or is it a summary of this information that is the records?

A. This is a summary of the information that is -- that we

provide according to the information that is required for this case.

Q. And are these all of the MOSFETs that Panjit makes, or is there a particular reason why these three MOSFETs were chosen?

A. These three are related to this litigation.

Q. So this summary was made to help identify the die name and the quantities for this litigation. Is that correct?

A. Correct.

Q. And then these die names and quantities, are these kept in Panjit's electronic databases?

A. Yes.

Q. Did Panjit produce this document that is Exhibit 3 to ASUS or its counsel?

A. Yes.

Q. Did you produce any portions or printouts, any images of what those databases looked like or contained?

A. We just provide -- we just provided a summary or a table.

Q. Why did Panjit provide that summary from Exhibit 3 to ASUSTeK?

A. Because this could be helpful for clarifying facts.

Q. So this production was related to litigation? You can answer just yes or no if it's privileged.

A. Yes.

Q. Okay. So this document was prepared for the litigation, and again, without, you know, anything privileged, just yes or

no.
A. The summary document that was prepared based on the database was created for this case.
Q. So this document marked Exhibit 4 or Panjit 4 is a copy of the subpoena that Force MOS attempted to send to Panjit. I was wondering if you had seen this document before.
A. First of all, I have not seen this. Secondly, I don't think this was sent to Panjit -- oh, it was sent to Panjit. I have not seen this before.
Q. Did Panjit voluntarily provide documents to ASUSTeK during this litigation?
A. Yes.
THE COURT: Does that complete this witness by deposition?
MR. THANE: It does, Your Honor.
THE COURT: All right. Plaintiff, call your next rebuttal witness.
MR. HANBA: Your Honor, Plaintiff calls Dr. Dean Neikirk.
THE COURT: All right. Dr. Neikirk, if you'll return to the witness stand. You remain under oath, sir.
MR. HANBA: Your Honor, may we pass out binders?
THE COURT: You may.
And you may go to the podium to prepare when you're ready, Mr. Hanba.

All right, counsel. You may proceed with direct examination.

MR. HANBA: Thank you, Your Honor. May it please the Court.

DEAN NEIKIRK, Ph.D,

having been previously duly sworn, testified further under oath as follows:

DIRECT EXAMINATION

BY MR. HANBA:

Q. Welcome back and good morning, Dr. Neikirk.

A. Good morning.

Q. And why are you here today?

A. I'm here to provide my opinions about the validity of the '409 Patent.

Q. And were you in the courtroom yesterday when Dr. Shanfield provided his invalidity opinions?

A. I was.

Q. And have you analyzed that same prior art that Dr. Shanfield analyzed?

A. I have.

Q. And what is your conclusion?

A. That prior art does not disclose the features required by claim 1 of the '409 Patent, so the '409 Patent is valid.

Q. And sir, let's start with Dr. Shanfield's anticipation theory, if you will.

Dr. Neikirk, can you remind the jury what anticipation requires?

A. My understanding is that anticipation requires that a single piece of prior art shows or teaches each and every element of the claim. It has to be clearly taught, it can't simply be something that you infer. It has to be there.

MR. HANBA: Mr. Doyle, would you please pull up JX 3.12 and zoom in on claim 1?

Q. (BY MR. HANBA) This is the '409 Patent, I believe.

And, Dr. Neikirk, do you agree with Dr. Shanfield's conclusion that claim 1 of the '409 Patent is anticipated by Kobayashi?

A. No, I do not.

Q. Dr. Neikirk, will you please identify which claim limitation of claim 1 you opine that Kobayashi does not disclose?

A. Well, I focused on the claim element that Dr. Shanfield focused on, which is the closed cells constituting substantially square-shaped cells with rounded corners.

Q. And just to clarify, what in claim 1 has to be rounded?

A. The square-shaped cells have to have rounded corners.

MR. HANBA: And so, Mr. Doyle, would you please put up JX 24.7? And I believe that's figure 6 of Kobayashi. Or, excuse me, figure 6C of Kobayashi. And if you would, would you please put it next to JX 24.6, and then it's column 7,

line 57 to column 8, line 4, please.

Q. (BY MR. HANBA) And, Dr. Neikirk, do you remember Dr. Shanfield discussing these parts of Kobayashi?

A. I do.

Q. In your opinion, what do they describe?

A. Well, both the figure and the text, the text refers to the figure, are describing what the trenches look like in a side view.

Q. And so -- but what does claim 1 require?

A. Claim 1 refers to the substantially square-shaped cell and the requirement that it has rounded corners. That would be something you would observe from a top view.

Q. And, Dr. Neikirk, what is your opinion regarding whether these passages relied on by Dr. Shanfield satisfy that substantially square-shaped cells with rounded corners limitation?

A. They do not.

Q. Dr. Neikirk, do you have a demonstrative that you've prepared to show the jury on this issue?

A. I have.

MR. HANBA: Mr. Doyle, could you please bring up PDX 5.1? Thank you.

Q. (BY MR. HANBA) Dr. Neikirk, what does this show?

A. Well, on the left is the Kobayashi figure, and on the right the text from Kobayashi. The text does refer to

corners, but it's the corners of the trench. And as we can see, it is referring to the corners as seen from the side.

So I believe there are circles here that would point out two bottom corners and blue circles that would point to top corners. That's on the left.

On the right is figure 3 from the '409 Patent. As an illustration of one of the embodiments of the '409 that reflects the substantially square-shaped cells with rounded corners.

Q. Just to be clear, sir, you're not comparing the prior art of Kobayashi to the figure in '409 -- in the '409 Patent. Right?

A. No, I'm not. I'm comparing it to the claim language.

Q. And so what is the right side supposed to illustrate?

A. Well, one of ordinary skill has to understand what all this means in terms of that claim language, and they would look to the figures in trying to understand what the claim language was trying to convey. So I've used the figure to illustrate that, but I have to compare the prior art to the claim language.

Q. And so turning to the image on the left, that figure 6C of Kobayashi, what are the red and blue circles located in context of -- excuse me. Where are the red and blue circles located in context of Kobayashi's device?

A. Yes. The red and blue circles, the red circles, the

blue, those are what you can see when you look at this from the side and look at the trench.

Q. And also to be clear, who added the red and blue circles to figure 6 at those places?

A. Dr. Shanfield did.

Q. We didn't see this yesterday. What do you mean Dr. Shanfield did?

A. Well, I believe this is copied directly from his report. I don't think I -- I didn't see this with circles on it yesterday.

Q. And what passage of Kobayashi was Dr. Shanfield using the annotations to illustrate?

A. He referred to Kobayashi at column 7, lines 57 through 60, which is this section of text right here in the box.

Q. And so, sir, what is your opinion as to whether Dr. Shanfield's annotated version of figure 6C of the Kobayashi patent shows substantially square-shaped cells with rounded corners as recited in claim 1 of the '409 Patent?

A. It does not. That figure in this text doesn't show substantially square-shaped cells and it certainly doesn't indicate that the corners of such a square-shaped cell has rounded corners.

Q. And, sir, what is your opinion as to whether Kobayashi anticipates claim 1 of the '409 Patent?

A. It does not.

Q. So let's turn to Dr. Shanfield's obviousness theory.

MR. HANBA: Mr. Doyle, if you would, could you please pull up side by side JX 24.1, which is the Kobayashi '196, and JX 25.1, which is the Hshieh '914 reference.

Q. (BY MR. HANBA) Dr. Neikirk, do you agree with Dr. Shanfield's conclusion that claim 1 of the '409 Patent is obvious over a combination of Kobayashi and Hshieh '914?

A. I do not.

Q. Dr. Neikirk, what is a motivation to combine?

A. Well, as I understand it, a motivation to combine is something that would motivate one of ordinary skill to take one piece of art and use it with another. There needs to be something there that would motivate that person to do it. Not just simply a random selection of components from each -- from one and random selection from another.

Q. So it has to be a reason for the combination. Is that right?

A. That's my understanding, yes.

Q. Can you give an example kind of an everyday example to the jury of this concept?

A. Well, I -- for instance, my wife's favorite old car was a VW Beetle. If my truck needs a new engine, I wouldn't look to take the engine out of her old VW Beetle. Just because they're both automobiles is not motivation to try to use an

engine in my truck that wouldn't fit and probably wouldn't get me up the hill.

Q. For a motivation -- for proper motivation to combine, is it enough to just say THAT the references are in the same field?

A. No, it's not.

Q. Can they just say that for a proper motivation it's enough to say that the references address similar problems?

A. No, that's not sufficient, either.

Q. What's your opinion as to whether Dr. Shanfield articulated yesterday a proper motivation to combine those two references?

A. He did not.

Q. And why?

A. Well, as I recall, he simply said they're in the same field. In my analogy, just because two things are cars doesn't mean you take the engine out of one and put it in the other.

Q. And what's your opinion regarding whether a person of ordinary skill in the art at the time of the '409's filing date would be motivated to combine Kobayashi and Hshieh in the manner of claim 1?

A. They would not.

Q. If there's no motivation to combine, then what happens to obviousness?

A. Then the obviousness argument fails.

MR. HANBA: Mr. Doyle, would you please put up JX 25.1 and zoom in on the abstract of Hshieh?

Q. (BY MR. HANBA) So, Dr. Neikirk, what is Hshieh focused on?

A. Well, Hshieh is focused on power transistor cells, but in particular, and, yes, the phrase does show I've highlighted in yellow -- well, I think actually there's an even better section right here. Hshieh is focused on the use of non-orthogonal parallelograms. The portion that's highlighted down there at the bottom is sort of explaining why Hshieh is so interested in this kind of shape.

Q. And what does orthogonal mean?

A. Orthogonal means at a right angle, so if the angle between two things is 90 degrees, those two things are orthogonal.

Q. Is a square orthogonal?

A. A square has four sides of equal length and the angle between two adjacent sides is 90 degrees, so, yes, it uses orthogonal sides.

Q. What other kinds of shapes are orthogonal?

A. Rectangles are orthogonal. They have opposite sides of equal length, but the angle between each pair of sides is still 90 degrees.

MR. HANBA: Mr. Doyle, you can just keep that front

page, if you would. And maybe zoom in on the bottom -- excuse me. There you go. The figure there.

Q. (BY MR. HANBA) Sir, can squares be non-orthogonal parallelograms like you just circled?

A. No. A square is not a non-orthogonal parallelogram, it is an orthogonal parallelogram. By putting the non in front, you exclude squares.

Q. So a square can't be just a non-orthogonal parallelogram and an orthogonal parallelogram. Right?

A. No.

Q. It's an either/or?

A. Yes.

MR. HANBA: And, Mr. Doyle, please pull up JX 11, figure 8, of Hshieh there. And please put up next to it JX 25.17, column 5, lines 23 through 28 of Hshieh.

Q. (BY MR. HANBA) Sir, were you here when Dr. Shanfield said that figure 8 of Hshieh on the left has substantially -- is substantially square with rounded corners?

A. I was.

Q. What does Hshieh say is shown in figure 8A?

A. Well, as we can see from this extract from Hshieh, it clearly states that figure 8A is about non-orthogonal parallelogram cells, not squares.

Q. And, sir, do you agree with Dr. Shanfield that figure 8A depicts substantially square-shaped cells with rounded

corners?
A. No, it does not.
Q. What part of this passage did Dr. Shanfield show the jury yesterday?
A. I don't recall exactly where -- what he quoted from in terms of the specification.
Q. Was it this passage?
A. It wouldn't surprise me. That looks familiar, but I can't remember right off the top of my head whether this was the exact citation.
Q. And are you familiar with the concept of teaching away?
A. I am.
Q. What does that mean?
A. Well, teaching away means if you looked at two references, two pieces of prior art, and you looked to one to tell you to pick some shape, it tells you to pick squares, and you go to another piece of art looking for something else but that piece of art says, oh, don't ever use squares, use triangles, well, that second piece of art is teaching away from the very squares that you selected, saying don't use those. That's teaching away.
MR. HANBA: Mr. Doyle, would you please bring up JX 25, pages 15 to 16 with column 2, line 64 through column 3, line 5.
Q. (BY MR. HANBA) Dr. Neikirk, how does this inform your

opinion regarding whether there is a motivation to combine?
A. Well, in this piece of art, it's specifically telling you that you should use non-orthogonal parallelograms as opposed to squares. All the squares it shows are listed as prior art. It then goes on and says don't use those because if you use non-orthogonal squares -- they're not squares, non-orthogonal parallelograms, you can increase the packing density. And Hshieh is primarily about showing away to increase packing density so that's -- this teaches away from the use of squares, which is what the other reference was about.
Q. So you say teaches away. Does it say, don't use squares?
A. It does.
Q. Did Dr. Shanfield show the jury this passage?
A. I don't think so.
Q. Dr. Neikirk, does the Hshieh say anything about why it is rounding corners?
A. No, it doesn't. Oh, no, I'm sorry. It does. It does have a description of why it would suggest rounding two of the corners of the non-orthogonal parallelogram.
MR. HANBA: Mr. Doyle, would you please bring up JX 25.7, columns 5, lines 3 through 17, please.
Q. (BY MR. HANBA) Dr. Neikirk, how does this inform your opinion as to whether one would be motivated to combine Hshieh's rounded corners with Kobayashi?
A. So this text talks about a thing called -- he called

corner vulnerability, but specifically that at sharp corners there can be what's called a three-dimensional diffusion effect. And then he goes on to discuss figure 6A and 6B that do have blunted or rounded corners, but it is to deal with this three-dimensional diffusion effect. At least that's what Hshieh explains.

Q. You say this three-dimensional diffusion effect. How does that relate to, if it does, the paralytic drain or avalanche that's described in the '409 Patent?

A. At best it would be very indirect. This is looking at a problem where the dopants look -- are arranged differently in the device near the corners is relative to other locations in the device.

Q. Did Dr. Shanfield show this passage to the jury yesterday?

A. No, I don't believe he did.

Q. Did Dr. Shanfield explain at all why Hshieh uses rounding?

A. I don't recall that he did.

Q. And so let's go back to the beginning of your analysis.

When you're doing an analysis on invalidity -- strike that. Excuse me.

What is your opinion as to whether the combination of Hshieh and Kobayashi invalidate as obvious claim 1 of the '409 Patent?

A. That combination does not render claim 1 of the '409 invalid as obvious.

Q. Now let's go back to the beginning of your analysis.

When you start your analysis, when doing an invalidity analysis, what are the presumptions that you must start with?

A. I always have to assume that the claim is valid.

Q. And why is that?

A. Because the USPTO has issued the claim and the assumption is that they were correct in issuing that claim.

Q. What opinions did Dr. Shanfield present yesterday that rebutted that presumption of validity?

A. I don't believe he presented any valid opinion that rebutted that.

Q. And, sir, just to wrap this up, what is your opinion as to whether Dr. Shanfield has shown that claim 1 of the '409 Patent is invalid?

A. It is not invalid. He has not shown that it is invalid.

Q. Thank you, Dr. Neikirk.

MR. HANBA: I pass the witness.

THE COURT: All right. Cross examination by the Defendant.

You may proceed when you're ready, Mr. McMahon.

MR. McMAHON: Thank you, Your Honor. May it please the Court.

CROSS EXAMINATION

BY MR. McMAHON:

Q. Dr. Neikirk, good morning.

A. Good morning, sir.

Q. You and I have not always agreed on everything in this case. Fair?

A. Fair.

Q. And I think it's also fair to say that you and Dr. Shanfield have not always seen eye-to-eye on every issue. Right?

A. Yes.

Q. Okay. I'd like to focus right now on the issues on which we do agree. Okay? Is that okay?

A. Yes, sir.

Q. Okay. We agree that the two prior art references that Dr. Shanfield talked about and that you just talked about, those are the Kobayashi patent and the earlier Hshieh patent. The Patent Office did not consider either of those prior art patents when examining the '409 Patent. Correct?

A. To the best of my knowledge, that is correct.

Q. And we know that from the face of the '409 Patent itself. Right?

A. Yes. That would certainly be part of it.

MR. McMAHON: Mr. Bupp, could you please bring up the '409 Patent cover? And on the left side, you see there's

a heading -- scroll down just a little bit -- a heading that says reference cited -- references cited.

Q. (BY MR. McMAHON) Do you see that, Dr. Neikirk?

A. I do.

Q. And if we look, there are three of them listed there, and that list continues on the top of the next column where there are, if I count correctly, nine more references. Correct?

A. Yes.

Q. So that's 12 references that -- 12 prior art references that the examiner considered when deciding whether to grant the '409 Patent and its claims. Correct?

A. Yes. The star is I think to make it clear that those were cited by the examiner, and all those have a star, so yes.

Q. That's right. And the star is there to distinguish references that were cited by the applicant. Right?

A. Yes, sir.

Q. So if I am reading this correctly, all 12 have a star. Correct?

A. Correct.

Q. Which means the examiner cited all 12 of these. Right?

A. Yes.

Q. The applicant did not cite any references. Correct?

A. That would appear to be -- yes, correct.

Q. And the applicant was the inventor Fwu Iuan Hshieh. Right?

A. Yes.
Q. And that's the same inventor listed on the Hshieh '914 Patent. Right?
A. Oh, yes.
Q. Which was not cited to the Patent Office.
A. Yes.
MR. McMAHON: Mr. Bupp, you can take that down. Thank you.
Your Honor, I'd like to return to the boards that we looked at yesterday. May I have leave to bring the easel back out?
THE COURT: You may.
MR. McMAHON: Thank you, sir.
Q. (BY MR. McMAHON) Dr. Neikirk, do you recall this claim checklist that Dr. Shanfield testified about?
A. I do.
Q. And I understand, sir -- can you see the whole board?
A. Well, I can see the checkmarks and the figures written, and I can see the rest of the claim on my monitor. So I can see it.
Q. Okay. We'll keep the claim on the monitor so that you can refer to it as needed.
A. Thank you.
Q. And I'd like to return to discussing the points on which we agree.

So if we start at that first limitation 1.pre -- I'll just read that -- "a trenched semiconductor power device comprising a plurality of trenched gates surrounding a plurality of transistor cells formed in a semiconductor substrate, wherein." Did I read it correctly?

A. Yes, sir.

Q. You have not offered any opinion that Kobayashi does not teach that feature. Right?

A. That's correct.

Q. Okay. We'll skip 1[a] for now. We'll come back to that, but let's go to 1[b]. "Each of said closed cells further includes a circular trench contact disposed substantially in a central portion of said closed cells, penetrating through a source region surrounding said trenched gates and extending into a body region encompassing said source region."

You have not disputed Dr. Shanfield's opinion that Kobayashi teaches that feature. Correct?

A. Correct.

Q. The next one is 1[c], "Said circular trench contact comprises a hole opened from a top surface of said semiconductor substrate and is filled with a contact metal plug."

Dr. Neikirk, you have not disputed Dr. Shanfield's opinion that Kobayashi teaches that feature. Right?

A. Correct.

Q. Next limitation, 1[d], "Wherein sidewalls of said hole are surrounded by and in contact with said source and body regions." You have not disputed Dr. Shanfield's opinion that Kobayashi teaches that feature. Right?

A. Yes.

Q. Yes, you have not disputed him. Correct?

A. Yes, I have not disputed it.

Q. Thank you for clarifying.

1[e], "And said circular trench contact is separate from said trenched gates with said source region and body region disposed between a gate oxide lining of said trenched gates and all circumferential points of the circular trench contact, and".

Dr. Neikirk, you have not disputed Dr. Shanfield's opinion that Kobayashi teaches that feature. Right?

A. Yes, that is correct. I have not disputed it. Excuse me.

Q. No dispute.

A. No dispute.

Q. Thank you.

The last limitation here, 1[f], "Said contact metal plug connected to a source metal disposed on top of said circular trench contact."

You have no dispute with Dr. Shanfield's opinion that Kobayashi teaches that feature. Right?

A. I do not have a dispute --
Q. Thank you.
A. -- with Dr. Shanfield.
Q. Thank you.
So your disputes, as you presented this morning, are focused on limitation 1[a]. Right?
A. Yes.
Q. And particularly the language 'substantially square-shaped cells with rounded corners.' Am I right?
A. Yes.
Q. Thank you.
The claim says substantially square-shaped. Right?
A. It does.
Q. So the claim doesn't require specifically a square. Correct?
A. That's correct. It does not require an exact square, yes.
Q. Thank you.
MR. McMAHON: Mr. Bupp, could we please go to figure 3 of the '409 Patent?
Q. (BY MR. McMAHON) Dr. Neikirk, you would agree this is the example that the '409 Patent provides of that shape--substantially square-shaped cell with rounded corners. Correct?
A. I don't recall whether this is the only example, but it

is certainly an example it provides.

Q. An example. We agree on that?

A. Yes.

Q. Thank you.

And we see this from the top looking down. Correct?

A. Yes.

Q. This is a top-view image.

A. Yes.

Q. And from the top view, we see the opening of the trench. Right?

A. Well, to be precise, no.

Q. In this -- this is a two-dimensional image so we don't actually -- can't see any depth. There's no actual trench to look down into in this image. Correct, sir?

A. Correct.

Q. But if we were looking at an actual device before the trench had been filled from this perspective, we would be looking down into the trench opening. Correct?

A. Yes.

MR. McMAHON: Mr. Bupp, let's go to JX 24, the Kobayashi reference, please, column 7, line 59.

Q. (BY MR. McMAHON) Dr. Neikirk, I want to just be clear that you and I agree on what the words are on this page. Starting with the second sentence of this paragraph, it reads, "In this event, corners of each trench 6 at an opening portion

may also be rounded." Agreed?
A. Agreed.
Q. Thank you.
Let's go on to the obviousness combination. This is the one that Dr. Shanfield testified he beliefs claim 1 is obvious in view of Kobayashi plus Hshieh. Right?
A. Yes.
MR. McMAHON: Your Honor, may I bring up the second board?
THE COURT: You may.
Q. (BY MR. McMAHON) Dr. Neikirk, this is the board that Dr. Shanfield testified about yesterday?
A. It looks like it, yes.
Q. And it includes the same checkmarks that he provided for each of the features in the Kobayashi column?
A. It does.
Q. As well as two checkmarks that he provided for those first two features in the Hshieh column. Right?
A. I did not provide those checkmarks.
Q. I'm sorry. If I said you did, I didn't mean to. Dr. Shanfield provided those checkmarks.
A. That's -- well, yes, I understand he said, please put the checkmarks there.
Q. Okay.
MR. McMAHON: Could we go, Mr. Bupp --

Q. (BY MR. McMAHON) Dr. Shanfield pointed to figure 8A. Right, Dr. Neikirk?
A. From Hshieh, yes, he did.
MR. McMAHON: Mr. Bupp, let's go to figure 8A of the Hshieh reference, JX 25.
Q. (BY MR. McMAHON) This is the figure that Dr. Shanfield pointed at. Correct?
A. I believe it is, yes.
Q. Now, if I heard you correctly a few minutes ago, you said that Hshieh taught rounding two corners. Right?
A. I believe I did.
Q. And when you said that, you were referring actually to a different figure which is figure 6A. Right?
A. Yes, you are correct.
Q. We'll look at that in a moment, but would you agree that figure 8A actually shows rounding all four corners?
A. Yes, I would.
Q. Okay.
MR. McMAHON: Let's go to figure 6A, please.
Q. (BY MR. McMAHON) This is what actually -- I'm sorry. Not 6A. 6B. My mistake, Dr. Neikirk. This is the figure you were referring to when you said rounding two corners. Correct?
A. Yes, it is.
Q. Okay.

MR. McMAHON: Mr. Bupp, can we please go to column 4, lines 8 to 11?

Q. (BY MR. McMAHON) Dr. Neikirk, this is the part of the patent text that describes figure 6A and 6B. Right?

A. It does.

Q. And it reads, "Figure 6A and 6B show the transistor cells with poly silicon openings have the sharp corners blunted and rounded, respectively, to remove punch-through vulnerable points at the sharp corners of the parallelogram cells."

Did I read that correctly, sir?

A. Yes, sir.

Q. So the rounded corners are to remove punch-through vulnerable points at the sharp corners of the parallelogram cells.

A. Yes.

Q. Okay.

MR. McMAHON: Mr. Bupp, can we move down a little bit to lines 18 to 22 in that same column?

Q. (BY MR. McMAHON) Dr. Neikirk, this is the portion of the text in the Hshieh '914 prior art reference that describes figures 8 and B. Correct?

A. Yes.

Q. And it reads, "Figures 8A and 8B show the transistor cell arrangement, respectively, in parallelogram, centered at lattice points of a hexagonal lattice and parallelogram

centered at lattice points of a parallelogram, lattice configurations of the rounded sharp-corner parallelogram cells." Did I read that correctly?

A. Yes, sir.

Q. Thank you.

MR. McMAHON: You can take that down, Mr. Bupp. Thank you.

Q. (BY MR. McMAHON) Dr. Neikirk --

MR. McMAHON: Actually, Mr. Bupp, do you have Dr. Neikirk's demonstrative? Could we bring that back up, please?

Q. (BY MR. McMAHON) Dr. Neikirk, this is the demonstrative you discussed earlier today. Right?

A. It is.

Q. And you've put a big not equal sign here to indicate your opinion that the Kobayashi reference does not teach rounded corners. Correct?

A. Yes.

Q. Okay. You did not provide any graphic like this for the Hshieh reference. Correct?

A. I did not.

Q. Because we agree that Hshieh does teach rounded corners. Right?

A. It does.

Q. Thank you, sir.

MR. McMAHON: Your Honor, pass the witness.

THE COURT: All right. Is there redirect from the Plaintiff?

MR. HANBA: Briefly, Your Honor.

THE COURT: All right. Mr. McMahon, you'll need to take your boards down and move the easel back.

Go ahead, Mr. Hanba.

MR. HANBA: If it please the Court.

REDIRECT EXAMINATION

BY MR. HANBA:

Q. Mr. McMahon showed you page 1 of the '409 Patent. Do you recall?

A. Yes.

Q. And so I believe -- you went through the references that were cited by the examiner. Right?

A. Yes.

Q. I think you-all agreed that the ones with the star, those are patent examiner cited references?

A. Yes. Well, yes, cited by examiner.

Q. Yeah. And the patent examiner, I think you-all agreed that the patent examiner searched a number of sources for those references. Is that right?

A. I assume that's how they come up with the references.

Q. And probably including the Patent Office's own library of patents?

A. I would certainly expect so.
Q. And, sir, what country issued Kobayashi and Hshieh -- the Kobayashi and Hshieh patents?
A. They're U.S. patents.
Q. Just like the '409 Patent?
A. Yes.
MR. HANBA: Mr. Doyle, can we go to column 4:18 through 22? I think it's describing figure 8A.
Q. (BY MR. HANBA) And we just saw this passage, and I've always found this passage a little bit misunderstanding. Could you please maybe describe in layman's terms for the jury just why the Kobayashi patent is problematic and just cannot anticipate?
A. This is from Hshieh. I'm sorry, so --
Q. I'm sorry. Yes.
MR. HANBA: Can you drop that down? I'm sorry. It's still -- I'll strike that because I was going to comment.
Q. (BY MR. HANBA) If you could, why is it that the Kobayashi patent cannot anticipate claim 1 of the '409 Patent in -- for the jury in layman's terms?
A. So Kobayashi makes reference to rounding of the trench and specifically shows it in cross section. It does make reference to rounding the bottom corners and the top corners, but it never makes reference to the four corners of the square. And, in fact, the description there does not

necessarily tell you that the corners of a square or rectangle would be rounded.

Q. Is there an everyday example that you could provide the jury?

A. I don't know. I think the simplest one is that tabletop over there. I've been making furniture for 50--no, that's a terrifying thought--45 years, and that tabletop, if you looked at it from the side, you'd see that the tabletop has -- that's a fancier edge shape than just a simple rounding, but it's rounded.

And if you looked at the ends, so look at it this way, you'd see the rounding. If you look that way, the ends, you'd see it's rounded. But if you just look at the corner, it's not rounded at all. In fact, if anything, it's sharper than it probably was before that router bit was used to shape the edges.

So just because you shape the edges doesn't mean that the corner, of the rectangle in that case, but the corner of the square would be rounded at all.

MR. HANBA: No further questions. Pass the witness.

THE COURT: All right. Any additional cross examination?

MR. McMAHON: Nothing further, Your Honor. Thank you.

THE COURT: You may step down, Dr. Neikirk.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're welcome.

Plaintiff, call your next rebuttal witness.

MR. HANBA: Your Honor, Plaintiff has no further witnesses and rests.

THE COURT: So subject to final instructions and closing argument, Plaintiff rests and closes. Is that correct?

MR. HANBA: That's correct, Your Honor.

THE COURT: Likewise, subject to final instructions and closing argument, Defendant rests and closes?

MR. McMAHON: Yes, Your Honor.

THE COURT: Thank you, counsel.

Ladies and gentlemen of the jury, that means you have now heard all the evidence in this case. There are certain things I need to take up with counsel that doesn't require your presence. I won't give you an explanation; just trust me, there are certain things within the rules of civil procedure that the Court has to take up with counsel that doesn't directly involve the jury, and I intend to do that through the remainder of the day. I expect it's going to take several hours to cover those matters, but I'm confident I can cover all of them during the remainder of today.

It is my plan to excuse you in just a few minutes for the remainder of today, but to very emphatically remind you I need

you back in the morning at 8:30. It is my hope and it's my expectation that when you return at 8:30 tomorrow morning, I'll be able to immediately begin giving you my final instructions on the law that you are to apply in deciding this case. Again, as I've told you, this is commonly referred to sometimes as the Court's charge to the jury.

After, I will -- after I've given you that charge, then counsel for the competing parties will present their closing arguments. And after you've heard closing arguments from the competing parties, that's when I will say, "Ladies and gentlemen of the jury, you may now retire to the jury room to deliberate on your verdict."

And as you'll recall from our earlier discussions, that's when you will immediately transition from being prohibited from discussing the evidence that you've heard during this trial to being required to discuss among the eight of yourselves the evidence presented during this trial as you work together to arrive at unanimous answers to the questions that will be set forth in the verdict form.

We are getting very close to the end of this trial. Please let me remind you to be especially diligent and vigilant about continuing to observe and comply with the instructions I've given to you. It would be an absolute travesty if all the effort, work, and expense that's been put into this trial were jeopardized because somebody at the 11th

hour failed to follow those instructions.

So please do not discuss or communicate in any way with anyone about this case. And until I give you those instructions we just talked about tomorrow, do not discuss or communicate about the case with each other in any way.

It is just about 10:00 a.m. I'm sorry, but lunch is not going to be here until noon. I don't think any of you want to wait around two hours to have lunch on the government, so I'm going to ask Ms. Clendening to cancel lunch for today given the time.

But if you will, take your notebooks with you when you leave in a minute to the jury room. Leave them closed on the table there so they'll be waiting for you tomorrow morning. I hope maybe a free afternoon or a free morning and afternoon will help make up for some of the late evenings we've been working.

I appreciate your diligence, I appreciate your careful consideration of everything that's transpired. Again, we're getting close, and I hope to have this case in your hands by or before lunchtime tomorrow.

So with that, ladies and gentlemen of the jury, you are now excused until tomorrow morning.

(Whereupon, the jury left the courtroom.)

THE COURT: All right. Be seated, please.

Mr. Hanba, where is Mr. Shanfield--excuse me--Mr.

Lamotta?

MR. HANBA: Mr. Lamotta is not here. I believe he went back to Houston.

THE COURT: And, Mr. McMahon, where is Dr. Shanfield?

MR. McMAHON: He is not here. He is traveling back to Boston.

THE COURT: And no party asked the Court to excuse any of these witnesses. The last time I had a trial and somebody just sent their witnesses on their merry way without consulting the Court, I made an expert fly back from California to ask to be excused.

I'm not going to do that in this case, but you-all need to remember that these witnesses are here under the Court's control and they're not to be released until you ask for and obtain leave of the Court. There are circumstances where one or other of them or some other witness might be necessary.

So I don't know how the expectations in other courts are placed upon you, but in this court you don't send witnesses home unless you get leave of the Court and the Court expressly excuses them. I'm a little surprised that neither Mr. Thane nor Mr. Underwood made that clear to you. They certainly understand what the Court's expectations are in that regard. But going forward, consider yourselves warned, and as the golfers would say, this is your one mulligan. All right?

Now, I'm going to take a short recess and then I'm going to return to the bench, and at that time I will take up motions that either party wishes to offer pursuant to Rule 50(a).

As is the Court's usual practice in this regard, those counsel that are going to be presenting closing arguments tomorrow are not required to be here during either the motion practice under Rule 50(a) or the informal and formal charge conferences that will follow. We've got plenty of staffing here, so I think it's certainly reasonable and fair that counsel that are going to present closing arguments tomorrow have the available time to work on that rather than be here during those other matters.

Mr. Hanba, I'm guessing that you will present closing argument for the Plaintiff, but tell me who you intend to present closings tomorrow.

MR. HANBA: I will be presenting, Your Honor.

THE COURT: Okay. And, Mr. McMahon, who's going to present closing from the Defendant's standpoint?

MR. McMAHON: Your Honor, with the Court's leave, Mr. Underwood and I intend to share that responsibility.

THE COURT: All right. And, Mr. Hanba, you understand--I think we've already covered it--but you're required to use at least 50 percent of your time in your first closing.

MR. HANBA: Yes, Your Honor.

THE COURT: Okay. Well, those three gentlemen are no longer required to be here this afternoon.

And let me just say this, being candid with everybody here. I understand that there are often younger lawyers who don't get to take witnesses, and it's typical that they get saddled with the responsibility to argue 50(a) motions before the Court.

I have had young lawyers go to the podium in that context and look at me in a very earnest expression and say, "Your Honor, this is a patent case." I know it's a patent case. So whoever's going to present 50(a) motions, I'm happy for younger members of either trial team to have an opportunity to participate, I applaud that, but I don't want you to read me a 15-page brief that you've prepared. I want you to give me your arguments in a concise form, understanding the Court has heard, seen, and considered all the evidence presented during the trial.

After I've heard and ruled on motions presented by either party under Rule 50(a), then I'll conduct an informal charge conference, in all likelihood in my chambers, where we'll take up and review the most current submitted iteration of both the final jury instructions and verdict form.

I've looked at your most recent submission there. I don't think they are terribly far apart. I'm hopeful that

that process will go smoothly.

Once I've had the fulsome input from both sides as to the charge and verdict form, I'll take your input, make any changes I think are necessary and appropriate, and I'll generate what I believe to be the proper final jury instruction and verdict form for use in this trial.

I'll then furnish that to both sides with an opportunity to review it. And after that, I will hold a formal charge conference on the record where either party may offer such objections to those documents as they feel both the law and their client's best interest necessitate.

Once I've heard and ruled on any objections through the formal charge conference, then I will generate eight printed copies of the final jury instructions, as I intend to give each member of the jury their own printed copy to review once they retire to deliberate. I'll also print one clean copy of the verdict form.

And I'll send all those documents back to the jury when they leave the courtroom to retire and deliberate on your verdict. And if all goes as planned and hoped, the jury should have this case in their hands before lunch tomorrow.

Any questions from either side?

MR. HANBA: No, Your Honor.

MR. McMAHON: There is one matter that we wanted to bring to the Court's attention, Your Honor.

THE COURT: Tell me what that is, Mr. McMahon.

MR. McMAHON: During the designations played this morning, the first one, Ms. Pan, there was a reference to a PTAB proceeding. The parties jointly prepared these designations. It was a mistake, we missed it, but I wanted to bring it to the Court's attention because of MIL 13. We have considered it. I have not had a chance to confer with the other side, but we wanted to bring it at the Court's attention.

Our position is that any sort of curative instruction at this point would just make matters worse, so we are not in favor of that, but we wanted to clarify that that proceeding will not be discussed in closing arguments.

THE COURT: You're aware of that, Mr. Hanba?

MR. HANBA: Yes, Your Honor, and we completely agree with counsel.

THE COURT: Well, I'm glad you agree, because I agree it would just make it worse to try and give the jury some kind of a curative instruction. It was brief, it was passing, it was not dwelled on, and I think it would be a mistake to try and -- it would just draw more attention to it than it would cure anything to bring it back up with the jury. So that's how we'll handle that.

MR. McMAHON: Thank you, Your Honor.

THE COURT: All right. Unless there's something

else, let's take about a 10- or 12-minute recess, and then I'll come back and hear motions under Rule 50(a).

Court stands in recess.

(Brief recess.)

THE COURT: Be seated, please.

All right, counsel. The Court will next turn and take up motions from either party pursuant the Rule 50(a) of the Federal Rules of Civil Procedure.

Let me explain how I'd like to pursue this, counsel. Before I hear substantive argument, I'd like to get an announcement from each side as to substantively topically which matters you want to seek relief on under Rule 50(a). And once I've identified those matters from both parties, that will better position the Court to direct argument, because it is very likely there will be diametrically-opposed motions that can be argued concurrently.

So with that, let me ask Plaintiff to go to the podium and identify for me what matters, if any, Plaintiff seeks relief on pursuant to Rule 50(a).

MR. CHEN: Your Honor, if I may?

THE COURT: What's that, Mr. Chen?

MR. CHEN: Defendant asks that Dr. Ugone be released.

THE COURT: Dr. Ugone is released.

MR. CHEN: Thank you, Your Honor.

THE COURT: All right. Let me hear from Plaintiff.

MS. GARSSON: Good morning, Your Honor. May it please the Court. Jordan Garsson representing the Plaintiff Force MOS.

Plaintiff respectfully moves for Rule 50(a) -- for judgment as a matter of law on the following four issues:

First, Plaintiff moves for judgment as to ownership of the '409 Patent; second, Plaintiff moves for validity of claims 1 through 3 of the '634 Patent, that it's not invalid under §102 and §103; third, Plaintiff moves for validity of claim 1 of the '409 Patent, that it is not invalid as obvious under §103; fourth and separately, Plaintiff moves for validity of claim 1 of the '409 Patent that it is not invalid as anticipated under §102.

THE COURT: All right. Let me ask Defendant to give me a similar offering as to those substantive matters regarding which it seeks relief under Rule 50(a).

MS. LYNCH: Good morning, Your Honor. Kathleen Lynch on behalf of Defendant.

We have six separate 50(a) motions. The first is for no standing of the '409 Patent; the second is for invalidity as to claim 1 of the '409 Patent; third, for direct infringement--I'm sorry; excuse me--for no direct infringement of the '634 and '409 Patents; fourth, for no indirect infringement; fifth, for no willfulness --

THE COURT: Just a moment, Ms. Lynch. You can speak quicker than I can write.

All right. After no willfulness, what?

MS. LYNCH: Finally is on the issue of damages. And, Your Honor, we'll have two different attorneys arguing, if it would be helpful to know.

THE COURT: I am happy to have anybody argue on either -- or any of these issues, as long as you first filed an appearance in the case and, second, you announce who you are for the record when you get to the podium.

MS. LYNCH: Understood.

THE COURT: All right. Well, it looks like there are diametrically-opposed motions with regard to validity of the '409 Patent or invalidity of the '409 Patent, so we'll take that up first as far as argument is concerned.

Since that's a matter on which Defendant has the burden, let me hear from Defendant first and then I'll hear from Plaintiff.

MS. LYNCH: Good morning, Your Honor. Still Kathleen Lynch on behalf of Defendant. May it please the Court.

THE COURT: Go ahead, Ms. Lynch.

MS. LYNCH: There is no dispute that the '409 Patent requires substantially square-shaped cells with rounded corners. Dr. Shanfield presented evidence that Kobayashi '196

anticipates every element of the '409 Patent, including these rounded corners. Dr. Neikirk agreed, or at least offered no opinion, as to 1[b] through 1[g]. 1[a] is the rounded corners.

Dr. Neikirk testified that the trenched image in Kobayashi was a side view. That's figure 6C. But he also agreed that if you were to look from the top down at the same device, we would see the shape of a cell. He also agreed that the text of Kobayashi states at the top of the trench, which is the cell, may be rounded.

Dr. Neikirk also agreed that 1[a] of the '409 Patent requires only substantially square-shapes, but, quote, it does not require an exact square. That is to anticipation.

As to obviousness, Dr. Shanfield also presented evidence that Kobayashi '196, in view of Hshieh '914, invalidates claim 1 of the '409 Patent. Doctors Neikirk and Shanfield agree that Hsheigh '914 shows rounding on all four corners of the cell. Doctors Neikirk and Shanfield also agree that Hshieh teaches rounding the corners to avoid punch-through at the sharp edge--that is, they seek to solve the same problem.

Thank you, Your Honor.

THE COURT: All right. What's the response? And you can affirmatively argue your motion as a part of responding.

MS. GARSSON: Thank you, Your Honor. Again, Jordan

Garsson on behalf of Plaintiff Force MOS.

With regards to anticipation, Defendant did not demonstrate that the '409 Patent was anticipated by the prior art with clear and convincing evidence. For example, Defendant failed to identify any evidence that Kobayashi discloses each and every limitation of the '409 Patent because they do not disclose substantially square-shaped cells with rounded corners.

Dr. Shanfield admitted that the figures of Kobayashi do not show rounded corners on the square-shaped cells. And when discussing the specification, Dr. Shanfield only pointed to a description of a figure that he admitted did not show this feature and then read the specification sentence that said, "In this event, corners of each trench 6 at the opening portion may also be rounded."

Importantly, Your Honor, the claims of the '409 Patent require both circular trenches, which is that inner circle from the top view, and substantially square-shaped cells with rounded corners. That's the rounded-square shape on the outside of that circle.

Dr. Shanfield did not point to any evidence or any feature in Kobayashi that would teach the rounding of the corners on the square-shaped cells; he merely points to the trenches and conflates those with the cells.

Dr. Neikirk agreed to the rounded trenches being a

possibility based on the teachings of Kobayashi, but did not agree to anything pointing to rounded cells, which are not taught in Kobayashi.

This theory should not be permitted to go to the jury since Defendant bears the burden to provide clear and convincing evidence as to why each and every limitation of claim 1 of the '409 Patent is taught exclusively by Kobayashi, and Defendant has failed to provide any evidence as to one of those claimed features.

Then on the issue of validity with respect to obviousness, Defendant has not provided evidence of a motivation to combine these references. And in Dr. Shanfield's testimony there is one single question regarding how a person of ordinary skill in the art would combine these references. And this is on page 814.

The question of how one of ordinary skill in the art may combine these references, Dr. Shanfield only opines that these are both trying to solve the same problem. So it's the same subject matter, it's the same kind of device, and it would be very reasonable that someone of skill in the art would combine these.

These blanket statements that merely state that the two prior art references are in the same field and involve the same problem are insufficient. The Federal Circuit has held as a matter of law that expert testimony concerning mere

knowledge of a problem or the mere motivation to generally try and solve that problem is insufficient to establish obviousness because it is entirely different from a motivation to combine two particular references.

This theory should not be permitted to go to the jury since, again, Defendant bears this burden by clear and convincing evidence as to why making this combination in the manner that's claimed would be obvious for the '409 Patent.

Thank you.

THE COURT: Thank you, counsel.

Let's transition next to the Defendant's motions for judgment as a matter of law of no direct infringement and no indirect infringement as to the patents-in-suit.

And let me hear from Defendant on that motion first.

Go ahead, Ms. Lynch.

MS. LYNCH: Thank you, Your Honor.

Starting with no direct infringement of the '634 Patent, the parties agree that under the Court's claim construction, the '634 Patent requires specific relative doping concentrations. This is the P, P*, and P+. Plaintiff's witnesses Mr. Diep and Dr. Neikirk, as well as Defendant's expert Dr. Shanfield, all agree that SEM images cannot show doping concentration.

In fact, none of the image types in evidence, which is SEM primarily, as well as EDS and TEM images, provide any

information about the concentration of dopants. Dr. Neikirk testified that even in combination, these SEM and EDS images cannot show doping concentration.

There is no dispute that the evidence of record cannot establish doping concentrations of any of the accused components. Dr. Neikirk admitted that he did not present any measurement of doping concentrations to the jury.

Since there is no evidence upon which a reasonable jury could rely, ASUSTeK moves for no infringement of the '634 Patent.

As to the '409 Patent, Plaintiff submitted no credible evidence to show that any of the ASUSTeK accused components infringe the '409 Patent. Claim 1[a] describes a particular shape of cells surrounded by trenched gates. Again, this is the substantially square with rounded corners.

Dr. Neikirk testified that the gate surrounds the square-shaped cells, but Dr. Neikirk also testified that in the SEM images that Plaintiff presented, they show thick black lines surrounding the cells where these gates used to be. Dr. Neikirk, Dr. Shanfield, and Mr. Diep agree that hot acid, or possibly a base, removed the material that was once the trenched gates; thus, there is no image in evidence of the gates themselves.

Plaintiffs point to absence of the gates as evidence of the shape of the gates, of the cells, despite Dr. Neikirk

admitting that the process of preparing these samples for imaging damages them. Dr. Neikirk also testified that the process of tearing a device apart to be able to get to it for imaging damages the device.

Dr. Shanfield testified that the etchant used to remove the trenched gates remove not only these gates, but likely eat into the cells themselves in the process. Dr. Neikirk agreed with this.

Thus, there are no images in evidence that show the unaltered shape of the cell. Plaintiff has not presented one image of an unaltered device. Plaintiff has not -- presented not one image of an intact cell. No reasonable jury could find that there was sufficient evidence to show the shape of the cell necessary to infringe at least claim 1[a] of the '409 Patent.

Thank you.

THE COURT: All right. Let me hear from Plaintiff on this.

MS. GARSSON: Again, Jordan Garsson for Plaintiff, Your Honor.

THE COURT: Go ahead, Ms. Garsson.

MS. GARSSON: Thank you.

With respect to the '634 Patent, Dr. Neikirk testified that the SEM images that were provided showed tapered sources. He provided testimony as to how each of the SEMs for each of

the accused components showed the features in respect to each limitation of the '634 Patent.

After discussing how the tapered sources were shown, he also mentioned that he based his decision on the P* doping, not only on the SEM images but on a variety of factors. One of those factors included the admissions from the component suppliers that were cited in Dr. Shanfield's own report.

Dr. Shanfield then testified and confirmed that the -- that each of the accused component suppliers performed ion injection. Dr. Neikirk gave an opinion that the ion injection plus the tapered sources that were shown in the SEMs evidenced the P* doping that was required of these claims.

In respect to the '409 Patent, Dr. Neikirk opined that there were rounded corners shown through the SEM images of the cells. He also mentioned that the thick black lining was the oxide, not the gates. He provided both top-view images and side-view images of the SEMs in which he highlighted each of these components, including the gates, that would be evidenced based on what was in the--sorry--based on what was in the SEM images, what he knew must be present because these components were trenched MOSFETs, and based on both the presence of structures and the absence of structures that were shown in the SEM images.

The jury can infer from the evidence, including the pictures of these cells, the shape of the cell, and how it

matches to what was claimed in terms of these rounded corners of the cell and the gates that were present.

Unless Your Honor has any questions --

THE COURT: Thank you.

Let's go on to the issue of no willfulness, as raised by Defendant.

Let me hear from the Defendant on this first.

MR. DaMARIO: Good morning, Your Honor. Tom DaMario on behalf of Defendant.

THE COURT: Please proceed.

MR. DaMARIO: One point of clarification, Your Honor. Ms. Lynch spoke to direct infringement. I'm also happy to speak to indirect infringement, and I think this may be a good opportunity to do so as well, because the factors relating to indirect infringement also relate to willfulness. So with your permission?

THE COURT: That's fine. That's perfectly fine, counsel.

MR. DaMARIO: Thank you, Your Honor.

With respect to indirect infringement, Defendants respectfully move under Rule 50(a) for judgment as a matter of law that ASUSTeK does not infringe -- induced infringement of the asserted patents. Proof of induced infringement requires proof that Defendant knew the induced acts were infringing. The record shows that ASUSTeK did not think that it was

infringing and still does not think that it is infringing the asserted patents.

Upon receiving the notice letter from Force MOS, ASUSTeK obtained six different opinions showing -- stating that ASUSTeK did not infringe the asserted patents. ASUSTeK also received a copy of the letter that was sent back to Force MOS's attorneys from its supplier that--excuse me--stating that the products do not infringe. And finally, ASUSTeK received a warranty from its supplier that the accused components do not infringe.

ASUSTeK did not think it infringed, ASUSTeK still believes that it does not infringe the asserted patents, and for that reason we believe there is no induced infringement, Your Honor.

With respect to willfulness, the same factors apply here. Upon receiving Defendant's May '22 -- excuse me. Upon receiving Force MOS's May 2022 notice letter, ASUSTeK reached out to Force MOS. It acted reasonably. The May 2022 notice letter did not identify a product that ASUSTeK manufactures. They had the wrong product number in it. ASUSTeK reached out to Force MOS and said, What's going on here; what product are you actually accusing of infringement. Once we figured that out, ASUSTeK reached out to its suppliers to see what was going on with the suppliers and the actual accused components. The suppliers responded by providing those six opinions of

non-infringement, Your Honor.

As I mentioned earlier, ASUSTeK did not think it infringed and it still does not think it infringes the patents. As such, we respectfully request that Your Honor grant our judgment as a matter of law with respect to indirect infringement and willfulness.

THE COURT: All right. Let me hear from the Plaintiff in response.

MS. GARSSON: Thank you, Your Honor.

THE COURT: Go ahead, Ms. Garsson.

MS. GARSSON: With respect to the indirect infringement issue, Plaintiff put forth evidence from a presentation of Dr. Neikirk that Defendant was indirectly infringing based on acts of its importers, its resellers, and its users, and we presented that--I'm sorry--Plaintiff presented evidence that Defendant did have knowledge of this patent.

Mr. Chung testified in detail about the notice letters that were sent to Defendant regarding the asserted patents, and he also testified how the business relationship between the parties would have alerted Defendant to the existence of the asserted patent, such as on pages 181 and 182 when he showed how they point of pride in their patents; they show their business relationships through proudly displaying their patents on their office wall.

And additionally, with respect to the issue of willful blindness, there was evidence presented from Defendant's employee Mr. Jim Tso that Defendant actively stopped an attempt to determine the MOSFETs inside its products as soon as Plaintiff became aware of such an investigation.

For the non-infringement opinions that Defendant has put forward in terms of these components, they all come from a single supplier Inergy. Defendant has not put forth any non-infringement letters from any of the other suppliers of these accused components.

Plaintiff has also presented evidence that after having this knowledge and after this willful blindness, Defendant still has its subsidiary company ACI import, offer for sale, and sell on behalf of Defendant its products into the United States. Mr. Fu testified -- Mr. Fu, ASUS' corporate representative, testified that the whole purpose of Defendant's website was to generate sales of these accused products in the United States.

And to the extent that Defendant says that the testimony from these corporate representatives rebuts Defendant's knowledge or intent, that is an issue of credibility for the jury. There were numerous items on which both Mr. Fu and Mr. Hung were cross examined, to which their credibility was called into question.

And so, therefore, for indirect infringement, this is a

question that should go to the jury.

Similarly for willfulness, Your Honor, Plaintiff provided evidence of the notice letters outlining the particular acts of infringement, and then additionally provided evidence that, after receiving notice, Defendant continued to practice Plaintiff's patents.

After this complaint, Defendant did not make any attempt to redesign, cease sales, or in any way alter their activity with respect to the accused components.

Plaintiff has set forth evidence from nearly every single one of Defendant's witnesses, from its corporate representatives to its experts, showing a pattern that it would refuse to stop its sale of accused products containing accused components, and that it would not change its practices despite the infringement notice from Plaintiff.

Plaintiff has also set forth evidence through the examination of Mr. Fu and Mr. Hung that Defendant did not conduct any independent investigation into its infringement, and did not try to cease or in any way decrease any potential infringement of Plaintiff's patents.

Further, as confirmed by Mr. Fu, Defendant continued to sell these products containing the accused MOSFETs that had no corresponding non-infringement letters from the suppliers.

So for these reasons, Your Honor, we believe this motion should be denied.

THE COURT: All right. Thank you.

Let's turn next to the Plaintiff's motion for judgment as a matter of law regarding ownership of the '409 Patent as well as Defendant's motion for judgment as a matter of law of no standing regarding the '409 Patent.

The Court is persuaded that these are part and parcel the same issue, and I'd like to hear competing argument from the parties in succession with regard to these.

Let's start with the Plaintiff, and then I'll hear from the Defendant next.

MS. GARSSON: Jordan Garsson on behalf of the Plaintiff Force MOS.

Plaintiff moves for judgment as a matter of law that no reasonable jury could find that Plaintiff is not the owner of the '409 Patent, and, thus, Plaintiff has standing to assert the '409 Patent against Defendant.

Defendant failed to present any evidence at trial showing that Dr. Hsieh did not intend to assign the application -- the '366 application that later issued as the '409 Patent to Force MOS Technology, Co., Ltd. Cayman Islands under the 2006 agreement.

And, further, all evidence presented during trial demonstrates that Dr. Hsieh intended for the 2006 agreement to assign this application to Force MOS Technology, Co., Ltd. Cayman Islands.

Force MOS's corporate representative, Mr. Chung, testified that Force MOS was initially founded and registered in the Cayman Islands in 2006 by the inventor himself, Dr. Hsieh, as well as Dr. Chung in an enterprise they formed.

Mr. Chung further testified that the registered name of Cayman Islands entity is Force MOS Technology Company, Ltd., but that it is also repeatedly referred to as Force MOS-Cayman, Force-MOS Technology Corporations, Force-MOS Technology Corps., and Force-MOS Technology, Co., Ltd.

Mr. Chung explained that the reason for these differences and different references to the name is because the words 'company' and 'corporation' are the same word in Chinese. In fact, during this trial, we saw from Defendant's own witness and translator that the corporate ending of business names can easily be mistranslated.

Just as no reasonable juror would have thought that Mr. Hung intended to testify that he was working for a non-existent entity when he was up on the stand, no reasonable juror would think that Dr. Hsieh meant to assign his patent or his patent application to a non-existent entity instead of the Force MOS that he worked for and was founding -- and was founded for the purpose of having this patent assigned to it.

Further, the testimony from Mr. Chung, accompanied by the filed assignment, which is Exhibit JX 6, showed that Dr. Hsieh assigned the '366 application on the same day that the

application was filed. Mr. Chung testified that Dr. Hsieh was an employee of Force MOS-Cayman, and his employment agreement required him to assign his inventions to the company. And Force MOS-Cayman was the only Force MOS entity that existed at the time of the 2006 assignment.

Defendant presented no evidence of any intent of Dr. Hsieh not to assign the '409 Patent to the very company that Force MOS's representative, Mr. Chung, noted was founded to hold this very intellectual property as the Taiwanese entity was in the process of being established.

Further, Defendant presented no evidence that the 2006 agreement was not effective, as the only Cayman Islands entity in existence was the Force MOS Technology Co., Ltd. Cayman Islands company.

As such, the Court as a matter of law should find that the 2006 agreement assigned the '366 application to Force MOS Technology Co., Ltd. Cayman Islands and, consequently, the Court as a matter of law should find that Plaintiff is the owner of and has standing to assert the '409 Patent.

Thank you.

THE COURT: Thank you.

Let me hear from Defendant on this.

Go ahead, Ms. Lynch.

MS. LYNCH: Thank you, Your Honor.

Plaintiff has offered no evidence from which a reasonable

jury could find that Plaintiff has standing to assert the '409 Patent. No reasonable jury could find that Force MOS Technology Corp., (KY), which is Cayman Islands, was a proper assignee. The evidence shows that this is an entity that did not and does not exist. This assignment is, therefore, void as a matter of law.

This means that the patent rights would revert to the sole named inventor, Dr. Hsieh, not Plaintiff. There is no other assignment of record in evidence.

As Plaintiff's counsel just noted, Mr. Chung attempts to fix this assignment error after the fact, but this is not supported by any record evidence.

Mr. Chung tried to explain that the assignment was due to a translation error, but there is no dispute that Force MOS Technology Corp. Cayman Islands is registered in an English-speaking country under an English-speaking name and the patent assignment at issue is in English. There is no evidence in the record to indicate that there is a translation.

Mr. Chung confirmed that this non-existent company Force MOS Technology Corp. Cayman Islands was submitted to the PTO twice on the first -- on the face of the assignment and also on the cover page for the submission. This name was listed in multiple places.

Mr. Chung suggested without any record evidence that

Dr. Hsieh was obligated to assign his rights to Force MOS-Cayman, not Force MOS Technology Corp. Cayman Islands, but no reasonable jury could find this to be credible as Force MOS has failed to produce any employment agreement or other obligation to substantiate this claim.

Plaintiff has presented no credible evidence to establish that Plaintiff Force MOS Technology, Co., Ltd., owns the '409 Patent.

Defendant respectfully moves for judgment as a matter of law as to Plaintiff's lack of standing on the '409 Patent.

THE COURT: All right. Thank you, counsel.

Let's turn next to the Defendant's request for judgment as a matter of law regarding the issue of damages.

Let me hear from Defendant on that.

MR. DaMARIO: Thank you, Your Honor. Tom DaMario on behalf of Defendant.

THE COURT: Please proceed.

MR. DaMARIO: ASUSTeK respectfully moves under 50(a) that Force MOS failed to prove damages on three independent bases: First, Mr. Lamotta's alternative approach, which he calls his unreliable records theory, is legally flawed; second, Mr. Lamotta's alternative approach is unsupported by the record; and third, Mr. Lamotta's accused component count is unsupported by the record.

Mr. Lamotta testified to a single damages theory in which

he apportioned a hundred percent of the value of the MOSFETs to arrive at his damages calculation. This is what he calls his unreliable records theory. This theory is legally flawed for violating the entire market value approach. The legal bases purportedly supporting Mr. Lamotta's hundred percent apportionment merely state that damages cannot be speculative.

We heard testimony throughout the trial that ASUSTeK provided documents showing the maximum possible number of MOSFETs in the accused products.

Force MOS also engaged an independent testing facility, Microtech, to count each and every MOSFET in the various accused products. There is sufficient evidence in the record such that the maximum number of MOSFETs in the accused products is not speculative. Damages is not speculative, and Mr. Lamotta's alternative approach is not justified.

With respect to Mr. Lamotta's alternative approach, it's also factually unsupported by the record we just heard this week. Dr. Neikirk testified that the purported technical advances of the '409 and '634 Patents were not responsible for 100 percent of the value of the accused MOSFETs. Mr. Lamotta confirmed this on the stand. He admitted that the apportioned technological contribution to the overall MOSFET was 40 percent for the '409 Patent and 13.3 percent for the '634 Patent. Nevertheless, Mr. Lamotta testified that a hundred percent apportionment is appropriate.

To my third point, Mr. Lamotta's accused component count is unsupported by the record. Mr. Lamotta testified that his low-end estimate is tied to Dr. Neikirk's conservative estimate. Dr. Neikirk failed to tie his conservative estimate to any particular evidence that we saw in the record. We heard testimony that for every product category, Dr. Neikirk's estimated MOSFET numbers were higher than the actual counts that Mr. Diep from Microtech conducted in his report. This inflation is not supported by any evidence in the record.

Accordingly, on these three bases, we move for judgment as a matter of law that Force MOS failed to prove its damages theory.

THE COURT: All right. Thank you, counsel.

Let me hear the other side's response, please.

MS. GARSSON: Your Honor, Jordan Garsson on behalf of Plaintiff.

THE COURT: Go ahead, counsel.

MS. GARSSON: Thank you.

Throughout trial, it was clear there was a disagreement between the experts regarding the reliability of the evidence and the damages calculations that followed as a result of these reliability questions.

§284 requires an award of damages adequate to compensate for infringement, but no less than a reasonable royalty. Plaintiff's damages expert Mr. Lamotta did present his opinion

as to a reasonable royalty based on an apportionment. He notes the smallest saleable unit, he comes to a royalty base, he comes to a rate, and from these determinations he gives a damages amount. The evidence was sufficient to support the component count that Mr. Lamotta used.

Dr. Neikirk gave an opinion and testified regarding the estimated counts, and the evidence showed that Defendant's records were inadequate and that Microtech's counts did not always match Defendant's records.

Further, Mr. Lamotta testified to different methodologies of apportionment for different approaches, but ultimately Mr. Lamotta testified that he calculated a reasonable royalty based on the apportioned value of the patented technology that he based on all of the evidence that he had.

And based on the evidence that was shown at trial, Mr. Lamotta testified that the reasonable royalty rate would be a lump sum amount, especially in light of the incompleteness of the data that was received from Defendant.

Mr. Lamotta's testimony was based on technical benefits of the patents, as established by the testimony of Plaintiff's technical expert, Dr. Neikirk, and who opined that the claims provided technical benefits to the packaged MOSFETs. And then Mr. Lamotta noted that from these component count information from Dr. Neikirk, from the technical benefits that he heard from Dr. Neikirk, he was able to take that information and

perform his royalty calculation to come to the damages position that he testified to.

Further, there's evidence for a jury to determine reasonable royalty, as both parties put forward their damages positions based on the competing reasonable royalties and based on the questions for reliability of the evidence.

So the defense that the Defendant is questioning the credibility of Dr. Neikirk's estimates for component count, it doesn't change the fact that the issue of damages should also go to the jury.

Thank you, Your Honor.

THE COURT: Thank you, counsel.

All right. Let's move to the last issue for argument regarding relief under Rule 50(a), and that is the Plaintiff's motion that judgment as a matter of law is appropriate that the '634 Patent is valid.

Let me hear from Plaintiff first.

MS. GARSSON: Thank you, Your Honor.

THE COURT: I assume this is in response to Defendant's counterclaim --

MS. GARSSON: Yes.

THE COURT: -- of invalidity.

MS. GARSSON: Yes, Your Honor.

THE COURT: Okay. Go ahead.

MS. GARSSON: On the issue of validity as to claims

1 through 3 of the '634 Patent, Plaintiff respectfully moves for judgment as a matter of law that no reasonable jury could find the asserted claims of the '634 Patent invalid. Defendant simply presented no evidence on this issue and, in particular, Dr. Shanfield, their technical expert, presented no evidence on these issues.

In fact, on page 852 of the trial transcript, when asked if Dr. Shanfield was here to opine that claims 1 through 3 are invalid in reference to the '634 Patent, Dr. Shanfield affirmatively stated that he was not providing that opinion. There was no evidence that came forward in the trial that was targeted by Defendant directly to a validity challenge of the '634 Patent.

And with that, Your Honor, I'll yield the podium to Defendant, unless you have any questions.

THE COURT: No.

I'd like to hear Defendant's argument in response next.

MR. McMAHON: Your Honor, in accordance with the Court's schedule for disclosing narrowing of claims, Defendants withdrew their invalidity argument as to the '634 Patent and proceeded to trial only with respect to claim 1 of the '409 Patent.

THE COURT: So, in essence, you're telling me, Mr. McMahon, that this is not a live issue; therefore, it's not subject to relief under Rule 50(a)?

MR. McMAHON: Correct, Your Honor.

THE COURT: Was there some lack of understanding on this regard? Because I don't know why Plaintiff would move for relief under Rule 50(a) as to an issue that's no longer live in the case.

Was your withdrawal or abandonment of the invalidity counterclaim as to the '634 Patent clearly communicated to and understood by Plaintiff?

MR. McMAHON: It was -- clearly communicated to, yes. Understood, I can't speak to.

THE COURT: Ms. Garsson, do you have an explanation as to why I just heard argument on an issue that the opposing party says is no longer live in the case?

MS. GARSSON: Yes, Your Honor. It is purely, because Defendant did not formally withdraw the counterclaims, we wanted to make sure the belt-and-suspenders that this was taken care of.

THE COURT: All right. Given this and to ensure that there is an abundance of clarity in the record, the Court's inclination is simply to dismiss the counterclaim of invalidity as to claims 1 through 3 of the '634 Patent, which would moot the 50(a) motion.

Does either party object to that?

MR. McMAHON: No objection, Your Honor.

MS. GARSSON: No objection, Your Honor.

THE COURT: All right. Consequently, the Court will dismiss without prejudice the counterclaim raised previously by Defendant regarding the asserted invalidity of claims 1 through 3 of the '634 Patent, and the Court will consequently find that Plaintiff's motion for judgment as a matter of law on that issue is moot.

All right. Then with respect to the other matters that the competing parties have sought relief from the Court in regard to -- pursuant to Rule 50(a), on the issue of validity or invalidity of the '409 Patent, claim 1 under both a theory of anticipation and obviousness, that motion for judgment as a matter of law is denied.

As to the issues of direct infringement of the asserted claims from the asserted patents and with regard to the issue of indirect infringement of the asserted claims from the patents-in-suit, those motions are denied.

With regard to the motion for a finding of no willfulness as a matter of law, that motion is denied.

With regard to the issue of ownership of the '409 Patent and Defendant's assertion of a lack of standing, based on that ownership issue, those competing motions for judgment as a matter of law are denied.

And with regard to the Defendant's motion for judgment as a matter of law regarding damages, that motion is denied.

As earlier stated, the motion for judgment as a matter of

law regarding validity of the '634 Patent is deemed moot based on the Court's agreed dismissal of that counterclaim as set forth in the record and as raised by the parties.

All right. That will complete the 50(a) practice, counsel.

It's right -- a couple of minutes after 11:00 a.m. Why don't you meet me in chambers, those of you that are going to participate in the informal charge conference, and we'll go into that immediately. And those of you that are present, all of you are welcome.

If you're not participating and care to be other places, you are free to leave as long as I have somebody that can address the charge and the verdict form fully in regard to the two competing parties. But you're all welcome to be there if you choose to be there.

Court stands in recess. I'll see you in chambers.

(Recess.)

THE COURT: Be seated, please.

Previously the Court -- after the close of the evidence and dismissing the jury for the day, the Court took up and heard motions from both parties with regard to relief pursuant to Rule 50(a) of the Federal Rules of Civil Procedure.

After having heard the motions and supporting argument from the parties on those various matters and having issued rulings on those motions, the Court then broke and met with

counsel in chambers and held an extensive informal charge conference in which the most current proposed jury instructions and verdict form from the competing parties were discussed in detail. Areas of overt disagreement were discussed, areas either party wished to raise were discussed, areas where the Court had questions that neither party had raised were discussed. It was a fulsome and free-flowing discussion.

After the Court received, considered, and took into account the input from that informal charge conference, the Court generated and now has before it what it believes to be the appropriate and proper final jury instructions and verdict form for use in this case. Having produced those documents, the Court has delivered them to the respective parties in multiple copies with an opportunity to review and consider the same.

That period of review having been completed, the Court is now prepared to undertake a formal charge conference in which either party may raise any objections to either the final jury instructions or verdict form that they believe is supported by the law and is in the best interests of their respective clients.

Counsel, what I would propose to do and as is this Court's general practice in this regard, I'd like to have a single spokesman for Plaintiff and a single spokesperson for

Defendant go to the podium. We will then begin with the final jury instructions, and I will walk through that document page-by-page one at a time, and as we address each page of the document, I'll ask if there are objections from either party, at which time either party will then be free to raise such objections as to anything include or omitted from that particular page, and I'll then rule on those objections and we'll go onto the next page. And by taking up and considering the final jury instructions on a single page-by-page basis, the Court believes it is the least likely that anything will be uintentionally overlooked or not considered.

Then once we've taken that approach with and completed the formal charge conference with regard to the final jury instructions, we'll then transition to the verdict form, and we'll follow the same approach with it on a page-by-page basis.

So with that, whoever's going to speak for Plaintiff, please go to the podium; whoever is going to speak for Defendant, please go to the podium; and then we'll begin the formal charge conference.

And for the record, it appears we have Ms. Pellegrino for the Plaintiff and Ms. Lynch for the Defendant.

So if that, ladies, if you'll turn to the final jury instructions, copies of which have been provided to you, I'll ask if either party has any objections to anything with regard

to page 1 or the cover page of the final jury instructions.

Any objections here from either party?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: None from the Defendant, Your Honor.

THE COURT: All right. Turning then, to page 2, are there objections here from either party?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning next to Page 3, are there any objections here from either party?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 4 of the final jury instructions. Does either party have any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 5. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 6. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning, then, to page 7, are there any

objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 8. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 9. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 10. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 11. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning next to page 12, are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 13 of the final jury instructions. Does either party have any objection here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next, then, is page 14. Any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 15. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 16. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning, then, to page 17. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 18. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next, then, is page 19. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 20. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning next to page 21, are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 22. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning, then, to page 23, are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 24. Are there any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Next is page 25. Are there any objections here?

MS. PELLEGRINO: Force MOS has an objection here, Your Honor.

THE COURT: State your objection, please.

MS. PELLEGRINO: In the proposed jury instruction submitted by Force MOS, Force MOS had included a jury instruction titled "Doubts Resolved Against Defendant with Respect to Damages." It is Force MOS's position that this is a critical issue in the case. The reliability and completeness of ASUS's data has been raised by both parties repeatedly and throughout argument and evidence, and Force MOS believes that the jury would benefit from some additional guidance on these issues, and so we proposed either the AIPLA standard instruction on this issue, which is based on Supreme Court and Federal Circuit law, or, in the alternative, an instruction previously provided by this Court in *Luv'N Stuff* [sic] which was based on Fifth Circuit law.

THE COURT: All right. This is a matter that garnered much discussion in the informal charge conference. The Court's considered it, the Court believes that this proposed instruction is not appropriate, that it indicates the weight of the court behind such terms as wrongdoer and must find in favor of the Plaintiff as described in that instruction.

The Court did accept one of the small number of sentences in this instruction and included it in this final jury instruction beginning as the last sentence on the bottom of page 25 and going on to the top of page 26, but except for

that sentence which reads, "You must not award Force MOS more damages than are adequate to compensate it for the infringement," the Court found that the remainder of that submission -- I'm sorry. I've recited the wrong sentence. It's the sentence at the bottom of the paragraph preceding that which states, "You must use your common" -- excuse me. "You must use your sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence." That sentence was a part of the Plaintiff's submission and the Court has accepted and implemented that sentence. The Court found the balance, however, to be unacceptable and likely to convey a preferential view of the facts from the Court to the jury, which would be improper.

And while the Court made it clear to counsel in the informal charge conference that there would be absolutely nothing wrong with arguing the reliability of the evidence in this particular instance as a part of closing arguments, the Court did not believe it would be appropriate to use the instruction requested by Plaintiff.

Consequently, Ms. Pellegrino, with that explanation, your objection is denied.

MS. PELLEGRINO: Thank you, Your Honor.

THE COURT: Anything else, counsel, with regard to page 25 of the final jury instructions?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: None from Defendant, Your Honor.

THE COURT: Okay. Then I'll turn to page 26 and ask you to do the same, and I'll ask if there are any objections from either party here.

MS. PELLEGRINO: Subject to the objection I've already raised and understanding the Court's ruling, no further objections.

THE COURT: Anything from Defendant?

MS. LYNCH: No objections, Your Honor.

THE COURT: All right. Then let's turn to page 27 of the final jury instructions. Any objections here?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: I'll note, counsel, that at the bottom of page 27 and covering all of page 28 and the very top of page 29 are the 15 *Georgia-Pacific* factors. It's my understanding from having discussed this in chambers that neither party objects to the Court charging this jury with all 15 factors. Is that correct?

MS. PELLEGRINO: That's correct, Your Honor.

MS. LYNCH: Yes, Your Honor.

THE COURT: All right. Then just for completeness, I'll ask if there's any objection to anything on page 27, 28, or the top of 29 covering the 15 *Georgia-Pacific* factors as

recited there.

MS. PELLEGRINO: No objection, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: All right. Page 29 also includes additional text, and I'll ask if there's any objection to anything remaining on page 29 of the final jury instructions from either party.

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No objection, Your Honor.

THE COURT: All right. At the end of page 29 the Court calls for closing arguments to be presented, and then resumes with its instructions on the top of page 30.

I'll ask you to turn to page 30 and I'll inquire as to whether either party has the objections here with regard to the final jury instruction.

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning, then, to Page 31, are there any objections here from either party?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning to page 32, which is the final page of the final jury instructions, are there objections here from either the Plaintiff or the Defendant?

MS. PELLEGRINO: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: All right. One other thing, counsel, I want to cover on the record before we transition to a review of the verdict form.

In our informal charge conference, it was discussed and my understanding was it was agreed by both sides that if the jury awards a reasonable royalty in this case, that that reasonable royalty will be properly considered to be in the form of a running royalty, and neither party takes the position that a reasonable royalty awarded here should be considered to be in the form of a lump sum.

Is that correct for the Plaintiff?

MS. PELLEGRINO: That's correct, Your Honor.

THE COURT: Is that correct for the Defendant?

MS. LYNCH: That's correct, Your Honor.

THE COURT: All right. Thank you for confirming that.

Let's then move to the verdict form, which has also been provided to you with an opportunity to review it, pursuant to the same process as I've already described.

Let's begin with the front page or the first page of the verdict form, are there objections here from either Plaintiff or Defendant?

MR. THANE: Not from the Plaintiff, Your Honor.

MS. LYNCH: Nor from the Defendant, Your Honor.

THE COURT: All right. And I'll note for the record Mr. Josh Thane is apparently now speaking for the Plaintiff in place of Ms. Pellegrino.

All right. Let's turn to page 2 of the verdict form where definitions are included. Are there any objections here from either party?

MR. THANE: Not for the Plaintiff, Your Honor.

MS. LYNCH: Your Honor, Defendant would request that in the definition of ASUSTeK, the second time it says ASUSTeK the K is capitalized -- or that the K be capitalized.

THE COURT: All right. You're talking about the second bullet point where ASUSTeK is in bold and then it says -- refers to Defendant ASUSTeK Computer, Inc.?

MS. LYNCH: That's correct.

THE COURT: And you're suggesting that the K in ASUSTeK as a part of the title ASUSTeK Computer, Inc., should be capitalized?

MS. LYNCH: That's correct.

THE COURT: I'll certainly do that for purposes of consistency.

MS. LYNCH: Thank you, Your Honor.

THE COURT: Is there anything else from either party on page 2 of the verdict form?

MS. LYNCH: Not from Defendant, Your Honor.

MR. THANE: No, Your Honor.

THE COURT: All right. Then let's turn to Page 3 of the verdict form where there are specific instructions included. Are there any objections here?

MR. THANE: No, Your Honor.

MS. LYNCH: None from Defendant, Your Honor.

THE COURT: Next is page 4 where Question 1 together with the following instructions -- or together with instructions which follow Question 1 are included, are there any objections here from either party?

MR. THANE: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning, then, to page 5 where Question 2A and 2B are found, are there any objections here from either party?

MR. THANE: No, Your Honor.

MS. LYNCH: Yes, Your Honor.

THE COURT: State your objection.

MS. LYNCH: Defendants object to the omission of an indirect infringement instruction because the infringement standards are different, the types of evidence are different, and the damages are different. So to omit the indirect infringement instruction is potentially confusing to the jury.

THE COURT: All right. Well, first of all, the Court provides an indirect infringement instruction in the final jury instructions and, having done that, I do not find

it necessary or appropriate to present the infringement question to the jury in a separate question as to direct infringement and a separate question as to induced infringement given the completeness and thoroughness of the instructions with regard to both of those types of infringement that's included in the final jury instructions. So with that, the Defendant's objection is denied.

MS. LYNCH: Understood, Your Honor.

THE COURT: All right. Having heard that, let's turn to page 6 of the verdict form where Question 3 is found. Is there objection here from either party?

MR. THANE: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: Turning, then, to page 7 where various instructions are presented to the jury. Are there any objections here from either party?

MR. THANE: Your Honor, Plaintiff would request that the last entry on page 7 be moved up to be either the second entry or the third entry. Both the current second entry and the last entry both push the jurors forward without having to jump through a couple of different hoops like you do in the third and fourth, and we believe it would be less confusing.

THE COURT: Well, these are not numbered, Mr. Thane, so you're use of 'second', 'third', and 'fourth' is a little confusing to me. Could you enunciate your objection with a

little more particularity?

MR. THANE: I will, Your Honor.

The Plaintiff believes that the entry that states "Finally, in your answer 'yes' to Question No. 2A, then regardless of how you answer Question No. 2B and 3 you must answer Question No. 4 and 5," should be moved up underneath--"Only answer Question No. 4 and 5 if you found that at least one of the asserted patents is infringed and not invalid."

THE COURT: And your basis for that is what?

MR. THANE: Your Honor, it seems less confusing for the jury to get to two bullet points that would push them forward all the way to Questions 4 and 5. The middle two currently have a couple of different yes and no questions that they have to consider before moving forward.

THE COURT: All right. Well, I have carefully considered and crafted these instructions, and I am satisfied that the order of them is appropriate, so that objection is going to be denied and the instructions here on page 7 will remain in the order in which they currently stand.

MR. THANE: Thank you, Your Honor.

THE COURT: Any other objections to anything on page 7?

MR. THANE: Not for the Plaintiff, Your Honor.

MS. LYNCH: And none from Defendant, Your Honor.

THE COURT: All right. Let's next turn to page 8 of the verdict form where Question 4 is found. Are there objections here from either party?

MR. THANE: Not for the Plaintiff.

MS. LYNCH: None from Defendant, Your Honor.

THE COURT: Turning, then, to page 9 where Question 5 is found, are there objections here from either party?

MR. THANE: Not for the Plaintiff.

MS. LYNCH: None from Defendant, Your Honor.

THE COURT: And turning, then, to page 10, which is the final page of the verdict form, does either party have any objections here?

MR. THANE: Not for the Plaintiff, Your Honor.

MS. LYNCH: None from Defendant, Your Honor.

THE COURT: All right. Then that will complete the formal charge conference.

I think the only thing I need to do is capitalize a K and these documents will be ready. I'm going to make that one change, I'm going to generate eight printed copies of the final jury instructions and one clean copy of the verdict form to be delivered as a group to the jury once they've heard my instructions and counsel's closing arguments and I instruct them to retire to the jury room and deliberate on their verdict.

I expect to have that done well before tomorrow morning

so that at 8:30 when the jury appears we can first read into the record any exhibits used during today's portion of the trial and then I'll proceed to orally give my final jury instructions to the jury.

Counsel, are you aware of anything else that the Court needs to take up or consider in this regard.

MR. THANE: No, Your Honor.

MS. LYNCH: No, Your Honor.

THE COURT: All right. That completes the formal charge conference. I will see you in the morning, counsel. You're excused until then.

And the Court stands in recess.

(The proceedings were concluded at 3:08 p.m.)

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER. I FURTHER CERTIFY THAT THE TRANSCRIPT FEES FORMAT COMPLY WITH THOSE PRESCRIBED BY THE COURT AND THE JUDICIAL CONFERENCE OF THE UNITED STATES.

S/Shawn McRoberts 10/12/2025

_____DATE_____
SHAWN McROBERTS, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER