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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)
Defendant. (FEBRUARY 7, 2025)
(9:00 A.M.)

VOLUME 1

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

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09:04 1 THE COURT: Thank you. Be seated, please.

2 Good morning, ladies and gentlemen. My name is Rodney
3 Gilstrap, and I am the chief United States district judge for
09:08 4 the U.S. District Court for the Eastern District of Texas. I
5 have lived in Marshall since 1981. I practiced law in this
6 area for about 30 years before I was nominated by the
7 president and confirmed as a United States district judge.

8 They say, ladies and gentlemen, that confession is good
9 for the soul so we'll start with a confession from me to you
10 this morning. I was not born in Texas, but I got here just
09:08 11 about as quick as I could. I came to Texas at the ripe old
12 age of 18 to enroll as a freshman at Baylor University in
13 Waco. I did my undergraduate work there, and then I stayed
14 and did my law degree at Baylor University School of Law.

15 I am married. I have two grown children and four
16 grandchildren. One of my children passed away a couple of
17 years ago. My wife is now retired. She used to run and own a
09:08 18 retail floral business here in Marshall.

19 Now, I tell you all those things about myself because in
20 a few minutes I'm going to ask each of you to tell me the same
21 kind of information about yourselves, and I think you're
22 entitled to know as much about me as I'm going to find out
23 about each of you-all.

24 Now, we're about to engage in the selection of a jury in
25 a civil case involving allegations of patent infringement.

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09:09 1 But if you'll indulge me for just a minute, I'd like to go
2 back and briefly review with you how we came to have our
3 American civil jury trial system.

4 If you go back in ancient history, if you begin with the
5 Pentateuch, the first five books of the Old Testament, you'll
6 find that the ancient Hebrew nation impaneled juries to
7 determine questions of property ownership and property value.

8 The ancient Greeks began using a jury system about 1500
9 BC. The Romans, as in many areas, copied the jury system from
09:10 10 the Greeks, and made it a part of their culture. And it was
11 the Romans who brought the jury system to what we now know to
12 be Great Britain when they crossed the English Channel in the
13 4th century AD and conquered that island.

14 And the jury system did follow the Romans across the
15 English Channel to Great Britain and it took root there and it
16 flourished for 800 years until in the 12th century a rather
09:10 17 tyrannical king came to the throne of Great Britain named King
18 John. And King John became embroiled in a long list of
19 disputes with his subjects and his nobles that led to the
20 brink of a civil war.

21 But a civil war at that time was avoided because the
22 disputes between the king and his nobles were resolved through
23 a lengthy document negotiated and signed at a place in England
24 called Runnymede. And one of the disputes that led to that
09:10 25 resolution and led to that crisis was King John's efforts to

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1 curtail the right to trial by jury. But that was avoided by
2 this resolution set forth in a document that's famous in
3 history. You've probably heard of called the Magna Carta.
4 And in the Magna Carta, the right to trial by jury for all
5 English men is guaranteed and spelled out.

09:11 6 So you can see the right to trial by jury was engrained
7 in our American forefathers who came across the Atlantic as
8 English colonists and settled British North America. And the
9 jury system flourished in colonial British North America for
10 over a hundred years until another rather tyrannical king came
11 to the throne of Great Britain. This time his name was King
12 George III.

09:11 13 And like King John, King George III became embroiled in
14 many controversies with his subjects here in colonial North
15 America. One of those disputes was King George's efforts to
16 curtail the right to trial by jury among his English subjects
17 here in America.

09:12 18 In fact, ladies and gentlemen, when Thomas Jefferson sat
19 down and wrote the Declaration of Independence, which is in
20 essence a letter to the king explaining why the subjects in
21 North America felt compelled to separate from Great Britain
22 and form our own independent nation, his efforts to curtail
23 the right to trial by jury are one of the reasons expressly
24 spelled out in the Declaration of Independence.

25 If you ever take the time to read the Declaration of

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09:12

1 Independence, you'll see that it's called out verbatim in
2 there as one of the several disputes that led our forefathers
3 to determine they had no alternative but to separate from
4 Great Britain and form our own independent nation.

5 And in this case, as you all know from studying American
6 history, there was a revolution and we did separate from Great
7 Britain and we did form our own independent nation. And
8 shortly after we secured our freedom, we set about the process
9 of developing the supreme law of the land to govern the United
10 States of America.

09:13

11 That supreme law in the United States you should all know
12 as our U.S. Constitution. The Constitution was adopted and
13 ratified in 1789, and several of the original 13 states only
14 voted for ratification because there was an additional express
15 promise made that as soon as it was ratified, they would go
16 ahead and add 10 important amendments that were not in the
17 original document.

09:14

18 And the Constitution was ratified in 1789, and those 10
19 important amendments were immediately added. You all know
20 those first 10 amendments to the U.S. Constitution as what we
21 call the Bill of Rights. And those were all ratified and
22 added in 1791. And among those 10 amendments in the Bill of
23 Rights, the first 10 amendments to the Constitution, you'll
24 find the Seventh Amendment. The Seventh Amendment to the U.S.
25 Constitution guarantees the right to a trial by jury in a

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09:14 1 civil dispute between any and all Americans.

2 So since 1789, well more than 200 years ago, every
3 American has had a constitutionally-guaranteed right to
4 resolve their disputes through trial by jury. So by being
5 here this morning and presenting yourselves for jury duty in
6 this case, in a very real way, ladies and gentlemen, you are
7 doing your part to preserve, protect, and defend our

09:14 8 Constitution, particularly the Seventh Amendment.

9 I always tell citizens who appear for jury duty, as you
10 have this morning, that in my personal opinion jury service is
11 the second highest form of public service that any American
12 citizen can render for our country. In my personal opinion,
13 the highest form of public service that any American can
14 render are those men and women that serve in our armed forces.

15 Now, when the lawyers address you later in the process
09:15 16 this morning, they're going to ask you various questions, and
17 I want you to understand, ladies and gentlemen, that they are
18 not seeking to inquire into your personal affairs unduly.
19 Said another way, they are not intentionally trying to be
20 nosy; they are simply trying to gather relevant information to
21 work with the Court to secure a fair and an impartial jury to
22 hear the evidence in this case.

23 The important thing for you to remember when we get to
09:15 24 the part of the process where you may be asked questions by
25 the lawyers is this: There are no wrong answers to any

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1 question you may be asked as long as your response is full,
2 complete, and truthful. As long as it's full, complete, and
3 truthful, it's the right answer.

4 Now, I don't know if it will happen today, it rarely
5 does, but it's possible that you may be asked a question that
6 you think is so personal and so private in your own situation
09:16 7 that you're not comfortable answering it in front of everybody
8 else on the panel. If that should happen, you always have the
9 option to say, I'd like to discuss that with Judge Gilstrap.
10 And if that's your answer, I'll provide an opportunity where
11 you can answer that outside the presence of everyone else on
12 the panel.

13 But let me tell you, ladies and gentlemen, I have been
14 doing this for over 13 years as a U.S. district judge, and
15 I've tried more than a hundred civil cases to a verdict. I
09:16 16 think this has happened two or three times in over a hundred
17 cases. So it's a rare thing, but I want you to know if it
18 should happen today, you do have that option.

19 Now, the trial in this case is going to begin today
20 immediately after the jury is selected, and it's going to
21 reconvene next Monday and probably will go through either
22 Thursday or Friday of next week. So today is the 7th, Friday
09:17 23 of next week is Valentine's Day, the 14th, and I need to know
24 if there are any of you on the panel if you were selected to
25 serve on the jury would have a serious impediment to being

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1 able to be present throughout the trial through today and
2 we'll just say for purposes of this throughout next week.

3 Now, when I say serious impediment, ladies and gentlemen,
4 I don't mean it's inconvenient for you to serve on the jury.
09:17 5 Jury service by its nature is inconvenient. That's why it's
6 valuable public service.

7 When I say a serious impediment, I mean things like you
8 or an immediate family member who's dependent upon you has a
9 surgical procedure scheduled between now and the end of this
10 trial and it can't be easily rescheduled. You and your family
11 have bought six non-refundable airline tickets costing
12 thousands of dollars and you can't get your money back if you
09:18 13 don't go next week. I'm talking about serious impediments,
14 not inconvenient.

15 Every one of you here today had other places to be this
16 morning, other things to do that were important to each of you
17 and your respective lives, and you set that aside and you
18 appeared for jury duty as you were summonsed to do as good
19 citizens. But it's inconvenient. And those of you selected
20 on the jury are going to have to come and go and be here
21 throughout this trial, and that's going to be inconvenient.
09:18 22 Inconvenience is not a reason not to serve on a jury. But a
23 serious impediment like I've described is.

24 So if there are any of you that feel like you would have
25 a serious impediment to being able to be here throughout the

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1 trial which may extend as late as Thursday or Friday of next
2 week, if you feel like you fall in that category, if you'd
3 raise your hands and let me make a note of it. Okay. I don't
4 see anybody in the jury box.

09:19 5 I see a gentleman 20, No. 20 on the panel. And what's
6 your number, ma'am? I can't see it.

7 UNIDENTIFIED PANEL MEMBER: No. 32. I just have a
8 question.

9 THE COURT: I can't take questions right now.

10 THE PANEL MEMBER: Okay. No. 32.

11 THE COURT: 32?

12 THE PANEL MEMBER: Yes, sir.

13 THE COURT: Okay. Anybody besides Panel Member No.
14 20 and No. 32? No. 3. Okay. Anybody else? All right.
15 Thank you.

09:19 16 Okay. At this time I'm going to call for announcements
17 on the record in the case of Force MOS Technology Company,
18 Ltd., versus ASUSTeK Computer, Inc. This is Civil Case No.
19 2:22-CV-460.

20 Counsel, as you give your announcements from the podium,
21 please identify yourself, the members of your trial team, and
22 any corporate representative that you have with you.

23 We'll begin with the Plaintiff. What says the Plaintiff?

09:20 24 MR. THANE: Good morning, Your Honor. Josh Thane on
25 behalf of the Plaintiff Force MOS. And with me today is Mr.

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1 Rafael Chung, the corporate representative for Force MOS; Mr.
2 Christopher Hanba; and Ms. Ariana Pellegrino. We're ready to
3 proceed, Your Honor.

4 THE COURT: All right. Thank you, counsel.

5 What says the Defendant?

6 MR. UNDERWOOD: Good morning, Your Honor.

7 Ladies and gentlemen, my name is Travis Underwood, and I
09:20 8 represent the Defendant ASUSTeK Computer, Inc. With me, first
9 and foremost, is Mr. Max Fu. He is our corporate
10 representative. He is a product manager at ASUSTeK.

11 Members of our trial team are Mr. Charlie McMahon, Mr. Li
12 Chen, Ms. Kathleen Lynch, and Mr. Tom DaMario.

13 And we're also ready to proceed, Your Honor.

14 THE COURT: All right. Thank you, counsel.

15 Now, as I've told you, ladies and gentlemen, this is a
16 patent case arising under the patent laws of the United
09:21 17 States. And what the Plaintiff Force MOS is claiming is that
18 two of its patents have been infringed by the Defendant
19 ASUSTeK, and it is seeking money damages because of that
20 alleged infringement.

21 Now, the Defendant ASUSTeK denies that it infringes
22 either of the two patents owned by the Plaintiff, and it
23 contends that the Plaintiff's two patents are invalid.

09:21 24 Now, what I've just told you is a very short-form
25 informal way of describing what's at issue in layman's terms.

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1 I know you've all seen the video this morning prepared by the
2 Federal Judicial Center, and having seen that, you already
3 know a lot more about this subject matter than most people do.

09:22

4 Now, the lawyers for both sides are going to question the
5 members of the panel to gather relevant information to
6 exercise their peremptory challenges and work with the Court
7 in securing a jury that's fair and impartial to hear this
8 evidence.

9 Again, ladies and gentlemen, if the lights will stay on,
10 there are no wrong answers to any question you might be asked
11 as long as the answers you give are full, complete, and
12 truthful. And the lawyers are entitled to gather the
13 information that they'll be asking for. I want you to be
14 aware of that.

09:22

15 And I also want you to know, ladies and gentlemen, these
16 are very experienced trial lawyers. This is not their first
17 trial before a jury, and they understand the rules--the
18 Federal Rules of Civil Procedure, the Federal Rules of
19 Evidence. They understand the binding local rules of this
20 Court. I don't expect any improper questions.

21 Now, if there should be, I won't hesitate to jump into
22 the middle of the process, but I really don't expect that to
23 come up at all.

24 Now, one thing I want to call your attention to before
25 the lawyers begin addressing you, because they may ask you in

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1 their questioning about your ability to apply this if you're
09:23 2 selected on this jury, is what we call the burden of proof.
3 In any case there's a required amount of evidence necessary to
4 prevail, and we call that the burden of proof.

5 In a patent case like this, the jury selected may be
6 called upon to apply two different burdens of proof. The jury
7 selected in this case will apply the first burden of proof
8 known as the preponderance of the evidence, and the second
09:23 9 burden of proof known as clear and convincing evidence.

10 Now, when responding to any potential questions from the
11 lawyers about the burden of proof, I need to instruct you that
12 when a party has the burden of proof on any claim or defense
13 by a preponderance of the evidence, that means that you, the
14 jury, must be persuaded by the credible and believable
15 evidence that that claim or defense is more probably true than
09:24 16 not true. I'll say that again--more probably true than not
17 true. This is sometimes talked about as being the greater
18 weight and degree of credible testimony.

19 Let me give you an example that hopefully will be helpful
20 to you. In front of me seated is our Courtroom Deputy and our
21 court reporter. In front of the court reporter, you'll see a
22 statue of the Lady of Justice. A couple of things to note
23 about that statue. First of all, she's blindfolded. Second
09:24 24 of all, she holds lowered at her right side the sword of
25 justice to enforce the law. She holds in her left hand raised

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1 above her the scales of justice.

2 It's those scales I want you to focus on. Those scales
3 are exactly balanced and equal, and that's where these two
4 competing parties must start out in this case--in the same
5 position, balanced and equal.

09:25

6 Think of it this way, ladies and gentlemen. Over the
7 course of the trial, the Plaintiff is going to present its
8 evidence and its evidence goes on one side of those scales.
9 Then when the Plaintiff rests its case, the Defendant will put
10 on its evidence and the Defendant's evidence will go on the
11 other side of those scales.

09:25

12 And when all the evidence is in and it's all on one side
13 or the other of those scales, if a party has the burden of
14 proof on an issue by a preponderance of the evidence and if
15 those scales tip in that party's favor, even if they tip ever
16 so slightly, then that party has met its burden of a
17 preponderance of the evidence--more probably true than not
18 true, the greater weight and degree of credible testimony.

09:26

19 Now, on the other hand, when a party has the burden of
20 proof on any defense by clear and convincing evidence, the
21 second burden of proof, that means that the jury must have an
22 abiding conviction that the truth of the party's factual
23 contentions are highly probable. Let me say that again--an
24 abiding conviction that the truth of the party's factual
25 contentions are highly probable. That's a higher standard, a

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1 higher burden of proof than the preponderance of the evidence.

09:26 2 Let's go back to the same example. Both parties start
3 out in the same position--equal. The scales are equal. The
4 Plaintiff puts its side of the evidence -- its evidence on one
5 side of those scales during the course of the trial. The
6 Defendant then puts all its evidence on the other side of the
7 scales during the course of the trial.

8 And when all the evidence is in, if a party has the
9 burden of proof on an issue by clear and convincing evidence,
10 and those scales tip in that party's favor, but they must tip
11 definitely, it's not adequate that they tip ever so slightly,
09:27 12 if they tip definitely in that party's favor, then that party
13 has met this second and higher burden of proof known as clear
14 and convincing evidence.

15 Now, there is a third and altogether different burden of
16 proof that does not apply in this case at all, but I'm sure
17 you've all heard about it, you've read about it, you've seen
18 it in movies and on television called beyond a reasonable
19 doubt.

09:28 20 Beyond a reasonable doubt, ladies and gentlemen, is the
21 burden of proof applied in a criminal case, and it has
22 absolutely no application whatsoever in a civil case like
23 this. Clear and convincing evidence is not as high a burden
24 as beyond a reasonable doubt, but it is a higher burden of
25 proof than the preponderance of the evidence.

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09:28 1 I give you these instructions in case one or both sides
2 in their presentations and questioning ask you about your
3 ability to apply those burdens of proof to the evidence in
4 this case.

5 Now, before the lawyers address you, I'm going do ask you
6 to give me the same kind of information about each of
7 yourselves that I gave you about me when we started. All of
8 you should have either in printed form or it's on the monitors
9 nine standard questions that I'm going to ask everybody on the
10 panel to answer one at a time.

09:28 11 And let me explain to you how we're going to do this,
12 ladies and gentlemen. We're going to begin with Panel Member
13 No. 1, Mr. Adams, and at that time the Court Security Officer
14 will bring you a handheld microphone. If you'll take that
15 handheld microphone and then stand up and then hold the
16 microphone near your mouth and answer those nine questions,
17 then we'll go on to the next member of the panel and follow
18 the same process all the way through.

09:29 19 A couple of things to remember, ladies and gentlemen. I
20 told you I've been doing this 13 years and have tried more
21 than a hundred cases to a verdict. Sometimes we get folks on
22 a jury panel that talk with their hands. And if you're
23 holding the microphone and you're talking with your hands,
24 it's not amplifying your voice. And this is a big courtroom,
25 it's nearly full, there are a lot of people in here, it's

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1 important that everybody hear your answers. So if you're
2 somebody that talks with your hands, make yourself hold it at
3 your mouth to amplify your voice.

4 The other kind of people we sometimes get on jury panels
5 are those that I call the belt-buckle people. They take the
09:29 6 microphone and it immediately goes to their waist or their
7 belt buckle. It's not going to amplify your voice adequately
8 if you hold the microphone down at your waist. Hold it up
9 near your mouth so it will function adequately and we can all
10 hear what you have to say.

11 And another thing, ladies and gentlemen, after everybody
12 has given their answers to these nine questions, later in the
13 process the lawyers are going to be able to ask individual
14 questions of members of the panel they want to talk to
09:30 15 individually. If you get a question addressed to you
16 individually, don't just answer it; wait until the Court
17 Security Officer brings you that handheld microphone and we'll
18 do it the same way. When you get the microphone, stand up,
19 hold it where it will do its job and then answer the
20 questions. So we'll do it the same way then as we're going to
21 do it now.

22 And we'll begin with those instructions with Panel Member
23 No. 1. Mr. Adams, if you'll take the microphone, stand up and
09:30 24 answer those nine questions for us, please, sir.

25 THE PANEL MEMBER: My name is Loye Adams. I live in

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1 Naples, Texas. I have two grown children.

2 I own and operate a small HVAC company along with my
3 wife. We employ four people. I Also work for Cooper Tire as
4 an HVAC tech. I've been there for three years. I've ran
5 Adams Air for 22 years. I hold a certificate in HVAC from
6 Paris Junior College, have roughly 64 hours outside of that.

09:31 7 My wife's name is Jennifer Adams. She also works for our
8 small company. She's been there for 22 years.

9 And I have never served on a jury before.

10 THE COURT: All right. Thank you, Mr. Adams. If
11 you'll pass the microphone to Mr. Hess, No. 2.

12 If you'll answer those questions for us, please, sir.

13 THE PANEL MEMBER: Hello. My name is Bradley he is.
14 I live in Gladewater, Texas. I have three grown children.

15 I am medically retired as a federal firefighter. I was a
09:31 16 federal firefighter for 10 years. I have many technical
17 certifications in that background.

18 My wife's name is Christy Hess. She is a property
19 manager. She's been doing that for about two years.

20 And I've never served on a jury.

21 THE COURT: All right, sir. Thank you.

22 Next is No. 3, Ms. Childress.

23 THE PANEL MEMBER: My name is Amber Childress. I
24 live in Ore City, Texas. I do not have no children.

25 I work at Dollar Tree in Ore City where I'm a cashier.

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09:32

1 I've worked there roughly about two years. And I have a high
2 school diploma from Moorings Port. Like you, I am not from
3 Texas, originally from Louisiana.

4 And I don't have -- I'm not married.

5 THE COURT: Have you ever served on a jury?

6 THE PANEL MEMBER: I have never served on a jury.

7 THE COURT: Okay. Thank you, ma'am.

8 Next is No. 4, Mrs. Bennett?

9 THE PANEL MEMBER: Hello. I'm Gay Bennett. I live
10 in Longview Texas. I have no children.

09:32

11 I work for the City of Longview. I'm the manager of the
12 Longview Convention Complex. I have been there for four
13 years. I have an undergraduate college degree.

14 My husband is Randy Paul Bennett, and he is retired from
15 the insurance and investment business. He did that for 35
16 years.

17 I have been on a civil trial jury before.

18 THE COURT: And when and where was that, Mrs.
19 Bennett?

20 THE PANEL MEMBER: That was in Gregg County,
21 Longview.

22 THE COURT: In state court?

23 THE PANEL MEMBER: Yes.

24 THE COURT: You've never served on a federal jury
25 before?

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1 THE PANEL MEMBER: No federal.

2 THE COURT: Thank you, ma'am.

3 No. 5 is next.

4 THE PANEL MEMBER: My name is Savannah Lindsey. I'm
5 from Atlanta, Texas. I have two small children.

09:33 6 I actively work at Longhorn Steakhouse, but I'm also
7 insured and licensed for health -- yeah, Life Health HMO and
8 PPO. I've done that since I was 18 so four -- three years.
9 Dropped out of high school, but I got a GED, graduated three
10 years early with it.

11 I'm married to Justin Grimes. He works at McLarty Ford.
12 He's been there for four years now.

13 And I have not been on a jury before.

14 THE COURT: All right. Thank you, ma'am.

15 Next is No. 6?

09:33 16 PANEL MEMBER: Hello. My name is Dawn Haigh. I
17 live here in Marshall. I have four children, four
18 grandchildren.

19 I'm retired active duty Air Force, and I have -- I'm
20 working on a Master's degree in aerobatic sciences and my
21 husband's name is Chris. He works over at Pratt Recycling
09:34 22 over in Shreveport, Louisiana. He's been with the company
23 since 2014, but we've moved here in 2017.

24 And I have no prior jury service.

25 THE COURT: And do you have any children?

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1 THE PANEL MEMBER: My name is Chelsea Higginbotham.
2 I have three grown children.

09:34

3 I work at Reel Rush Entertainment, which is online
4 sweepstakes. I've done that for the past 10 years. Before
5 that, I was a stay-at-home mom. I do have my GED.

6 And I am divorced, and I have never served on a jury.

7 THE COURT: And do you have any children?

8 THE PANEL MEMBER: Three grown children.

9 THE COURT: Thank you, ma'am.

10 All right. We'll go around to the back row. No. 8 is
11 next.

12 THE PANEL MEMBER: My name is Carol Modisette. I
13 have three children.

09:35

14 I'm retired. I worked for a company called Romco
15 Equipment Company for almost 21 years prior to that. I have a
16 high school diploma.

17 My husband's name is Randy Modisette. He also is
18 retired, and he also retired from Romco Equipment Company for
19 20 years.

20 And I have been on two civils and one criminal case here
21 in Harrison County.

22 THE COURT: Have you ever served on a jury in this
23 court before?

24 THE PANEL MEMBER: No, sir.

25 THE COURT: Always in the Harrison County

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09:36 1 courthouse.

2 THE PANEL MEMBER: Yes, sir.

3 THE COURT: And what did you do at Romco, ma'am,
4 before you retired?

5 THE PANEL MEMBER: I worked in the service
6 department as a warranty administrator.

7 THE COURT: All right. Thank you very much, Mrs.
8 Modisette.

9 Next is No. 9, Mrs. Walker?

10 THE PANEL MEMBER: My name is Sabrina Walker. I
11 have one child.

12 I own Bookkeepers on the Go, which I started about eight
13 years ago. I have a high school diploma.

14 My spouse is James Walker. He works at Taxes on the Go,
15 which he started three years ago.

09:36 16 And I have served on a federal civil court jury and a
17 criminal jury.

18 THE COURT: Okay. When and where were those?

19 THE PANEL MEMBER: The criminal was in Minden,
20 Louisiana. The civil federal was in Shreveport, Louisiana.
21 They were both over 20 years ago.

22 THE COURT: Okay. The case that you served on in
23 federal court in Shreveport, was it a patent case?

24 THE PANEL MEMBER: It was not. It was an injury
25 case.

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1 THE COURT: All right. Thank you, ma'am.

2 Next is No. 10.

09:36

3 THE PANEL MEMBER: Yes, hello. Good morning. My
4 name is Mark Scirto. I live in Diana, Texas. My wife and I
5 have been blessed with five children.

6 I work for Deloitte U.S. as a software application
7 analyst consultant. I've worked with Deloitte for
8 approximately five months now. I have a Bachelor of Arts.

9 My wife's name is Lea Therice Scirto. She works for
10 Dr. Kenny Hall here in Marshall as a registered nurse in the
11 OR. She's worked there for approximately two years.

09:37

12 And I did serve on a jury in a federal court in Tyler,
13 Texas, and it was a criminal case.

14 THE COURT: It wasn't a civil case.

15 THE PANEL MEMBER: No, sir.

16 THE COURT: Okay. How long ago was that?

17 THE PANEL MEMBER: Approximately three years ago, I
18 believe.

19 THE COURT: Okay. And you said you worked for
20 Deloitte for the past five months?

21 THE PANEL MEMBER: Yes, sir.

22 THE COURT: What did you do before you went to work
23 for Deloitte?

24 THE PANEL MEMBER: I worked for Christus Health, and
25 I worked there for over 10 years.

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1 THE COURT: Thank you very much, Mr. Scirto.

2 THE PANEL MEMBER: Yes, sir.

3 THE COURT: Next is No. 11, Mr. Sloan.

09:37 4 THE PANEL MEMBER: My name is Ricky Sloan. I live
5 in Hughes Springs, Texas. I've got four daughters, five
6 granddaughters and one great grandson.

7 I worked at -- retired from US Steel in Lone Star and did
8 various machine operations out there. I worked there for like
9 21 years. High school graduate.

10 My spouse's name is Guinn Sloan. She works for Great
09:38 11 American Foods corporate operations, corporate office. She's
12 in accounts payable. She worked there for around 12 years.

13 And I've had prior jury service in Linden, Texas, but I
14 don't remember what -- where it was civil or --

15 THE COURT: Okay. State court, county court there
16 in Linden? Never in federal court? Thank you, sir.

17 Next is No. 12, Mr. Hardwick?

18 THE PANEL MEMBER: James Hardwick. I live in
09:38 19 Hallsville, Texas. I've got three children.

20 I'm retired. I had a convenience store for 31 years.
21 High school grad.

22 My wife's name is Paula Hardwick. She works for Allen
23 Goodman, CPA, and she's worked there for five, six years.

09:39 24 And I've been on one criminal case.

25 THE COURT: And where was that, sir?

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1 THE PANEL MEMBER: Gregg County.

2 THE COURT: Thank you very much.

3 Next is No. 13, Mr. Crumpler?

4 THE PANEL MEMBER: My name is Jonathan Crumpler. I
5 live in Bloomburg, Texas. I have one daughter that is 14
6 months.

7 I'm an owner/operator of a production company, oil field.
8 I also manage my dad's oil field company. I've worked there
9 for 10 years.

09:39 10 My wife's name is Kate. I graduated from Bloomburg High
11 School. My wife's name is Kate. She's a stay-at-home mom and
12 going to college right now, radiology tech.

13 And I've served on a criminal case in Linden, Texas.

14 THE COURT: That's your only prior jury duty?

15 THE PANEL MEMBER: That's it.

16 THE COURT: Thank you. Next is No. 14, Ms. Neal?

17 THE PANEL MEMBER: My name is Karen Neal. I'm from
18 Hallsville, Texas. I have three kids, 13, 15, and 21.

19 I'm currently a substitute teacher in Hallsville, and I
09:40 20 also do temp work for a private club that is located in
21 Longview.

22 My background is administrative assistant, employment
23 services, marketing, IT, substitute, and -- anyway. So
24 that's -- let's see. My educational background, I went to
25 Baylor University, studied management information systems,

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09:40

1 came back here and got an associate of applied science at
2 Texas Tech Technical College, and then went to ETBU here and
3 got a business degree.

4 I do not have a spouse, and I have no prior service. I
5 have no prior jury.

6 THE COURT: Never served on a jury?

7 THE PANEL MEMBER: No, sir.

8 THE COURT: Thank you.

9 THE PANEL MEMBER: Thanks.

10 THE COURT: All right. We'll go to the front row in
11 the gallery, No. 15, Ms. Cox.

12 THE PANEL MEMBER: My name is Deborah Cox. I live
13 in Pittsburg, Texas. I have three precious children that are
14 adopted.

09:41

15 I'm an LVN at the pediatric clinic in Mt. Pleasant. I've
16 been there for almost 25 years -- this year will be 25, so 24
17 technically. I have a Bachelor's degree in general studies.
18 I have an LVN.

19 I'm no longer married. And I have served here once on a
20 civil court or a civil trial.

21 THE COURT: In this courtroom?

22 THE PANEL MEMBER: Yes, sir. And I served once in
23 Morris County on a civil trial.

24 THE COURT: At the prior time when you served in
25 this court, how long ago was that and what was the case about

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1 you served on?

09:42

2 THE PANEL MEMBER: Some guy got kicked by a police
3 officer.

4 THE COURT: It wasn't a patent case.

5 THE PANEL MEMBER: No, sir, it wasn't.

6 THE COURT: And how long ago was that?

7 THE PANEL MEMBER: Gee, I lived in Morris County. I
8 know that, but -- and I've been in Pittsburg for two, so I
9 really don't know. Last five maybe?

10 THE COURT: All right. And that prior case here is
11 the only time you've served on a jury in a federal court.

12 THE PANEL MEMBER: Yes, sir.

13 THE COURT: Thank you very much, ma'am.

14 All right. No. 16 is next.

09:42

15 THE PANEL MEMBER: My name is Jason Falish, and I
16 live in Hallsville, Texas. I have two children.

17 I work for MPLX in the oil field and been there for about
18 a year in measurement. I have an instrumentation degree from
19 TSTC in Marshall.

20 My wife's name is Morgan Falish, and she's a PTA in a
21 nursing home for about three years.

22 And I have no jury experience or served on a jury.

09:42

23 THE COURT: All right, sir. Thank you, Mr. Falish.

24 Next is No. 17, Mrs. Pyle.

25 THE PANEL MEMBER: My name is Elner Pyle. I've

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09:43

1 worked at Christus St. Michael's Hospital in Texarkana for 11
2 years. The last part of my employment and I was the house
3 supervisor. I have an associate degree from Texarkana and
4 William McGinnia School of Nursing.

5 My husband is deceased. And I served on a jury -- a
6 criminal case in Cass County.

7 THE COURT: Never in federal court?

8 THE PANEL MEMBER: Sir?

9 THE COURT: You've never served in federal court on
10 a jury?

11 THE PANEL MEMBER: No.

12 THE COURT: Thank you, ma'am.

13 Next is No. 18?

14 THE PANEL MEMBER: Good morning. My name is Becky
15 Magers. I live in Gilmer, Texas, the last three years. Prior
16 to that, I lived in Longview, Texas. We have no children.

09:43

17 Place of employment is Walmart in Longview. I've been
18 there 40 years. I have high school education plus two years
19 of college in secondary ed.

20 My husband's name is Donald. He also works for Walmart.
21 He has worked for them for 28 years.

22 And I have had a civil jury summons and I attended, but
23 they settled out of court before the trial started.

24 THE COURT: So you actually never served on a jury?

25 THE PANEL MEMBER: No. I was chosen, but we never

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1 went through it.

09:44 2 THE COURT: All right. Thank you, ma'am. Will you
3 hand that microphone back to the Court Security Officer,
4 please? He'll take it to No. 19, who is next.

5 THE PANEL MEMBER: My name is Joyce Waldon. I live
6 in Linden, Texas. I have two children and three stepchildren.

7 I was an insurance agent at BB Boone Insurance Agency in
8 Linden for 15 years. I have a high school education.

09:44 9 And my spouse's name is Mike Waldon. He's a cabinet
10 maker, and he has been doing that for 54 years in Linden,
11 Texas.

12 And I have no prior jury service.

13 THE COURT: All right. Thank you, Mrs. Waldon.

14 Next is No. 20?

15 THE PANEL MEMBER: My name is Jason Boham. I live
16 in Waskom. I have four kids, one stepdaughter.

17 I work for FedEx Freight. I'm a driver. I've worked
18 there for about four years. I have -- went to high school.

09:45 19 My wife, she works at FedEx Freight as well. She drives.
20 She's been there for about five years.

21 And I have never served on a jury.

22 THE COURT: What's your wife's name?

23 THE PANEL MEMBER: Terri.

24 THE COURT: Thank you, sir.

25 No. 21 is next?

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1 THE PANEL MEMBER: My name is Jack K. Precise, Jr.
2 I live in Daingerfield, got two children.

3 And I worked for Texas Department of Criminal Justice for
09:45 4 10 years and then went to work at an armored car, and then
5 after that, I just finished with Northeast Texas Community
6 College. All of them were security officers, armed. And then
7 I had a high school diploma or high school education.

8 And then my spouse's name is Teresa E. Precise.
9 She's -- works as a manager for a while, but she's retired
10 now. And she worked for retail store, Dollar General. And
09:46 11 she worked there for about 20 years, I guess.

12 And I have been on one criminal trial in Morris County.

13 THE COURT: All right, sir. Thank you very much,
14 Mr. Precise.

15 No. 22 is next, Mr. Tucker?

16 THE PANEL MEMBER: My name is Brandon Tucker. I
17 live in Longview, Hallsville. I have two kids.

18 I work at Komatsu, and I'm a machinist. I've worked
09:47 19 there two years. I have a high school diploma.

20 My wife's name is Mary. She stays at home. She's been
21 doing that for probably 10, 12 years.

22 THE COURT: Have you ever served on a jury?

23 THE PANEL MEMBER: No, I've never served on a jury.

24 THE COURT: Okay. Thank you, Mr. Tucker.

25 Next is No. 23, Mr. Dixon.

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09:47 1 THE PANEL MEMBER: Good morning.

2 THE COURT: Good morning.

3 THE PANEL MEMBER: My name is Roderick Dixon. I
4 live in the city of Marshall. I have five kids.

5 I work at General Cable Prysmian Group. I've been there
6 for about 36 years. I have an associate degree from TSTC
7 Marshall.

8 My spouse's name is Edna Lacy Dixon. She's an LVN with
09:47 9 Thurston Pediatric. She's been there about 30 years. I've
10 served on a criminal case over in the other building, never
11 federal.

12 THE COURT: All right, sir. And who is your wife's
13 employer?

14 THE PANEL MEMBER: Thurston Pediatrics.

15 THE COURT: Okay. Thank you, Mr. Dixon. If you'll
16 pass that microphone back, I'll ask the Court Security Officer
17 to hand it to Panel Member No. 24, Mr. Reber?

18 THE PANEL MEMBER: My name is Frank Reber. I live
19 in Ore City, Texas. I have four beautiful daughters.

09:48 20 I work for Ore City ISD. I'm in maintenance and also a
21 school bus driver. I've worked there for about 13 years. I
22 have a high school education.

23 My wife's name is Dana Reber. She also works at Ore City
24 ISD and is a bus driver. She's worked there for 13 years as
25 well.

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1 And no prior jury.

2 THE COURT: All right. Thank you, Mr. Reber.

3 Next is No. 25, Mr. Calhoun?

09:48

4 THE PANEL MEMBER: My name is James Calhoun. I live
5 in Diana, Texas. I have two grown children.

6 I am retired U.S. military and retired federal employee.

7 I have a Bachelor's degree.

8 My wife's name is Judy. She's an account manager. She's
9 been doing that for 24 years.

10 And I've never served on a prior jury.

11 THE COURT: Thank you, sir.

12 No. 26 is next, Mr. Pope.

09:49

13 THE PANEL MEMBER: My name is John Pope. I live in
14 Ore City, Texas. I've got two little girls and a wife named
15 Sophia Pope.

16 I'm an AC technician for C Woods Company. I've been
17 doing that for two years. I graduated high school.

18 My wife works for Lincare. She's a sales representative
19 for them. She's been there for about three to four years.

20 I've never served on a jury.

21 THE COURT: Thank you.

22 Next is No. 27, Mr. Fair.

09:49

23 THE PANEL MEMBER: Good morning. My name is Richard
24 Fair. I live in Diana, Texas. I have one daughter.

25 I work for Dollar General as a restruc operator for

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1 three-and-a-half years was my previous job. I have a high
2 school diploma.

3 My wife's name is Patty. She's a floor designer. She's
4 been a floor designer for 40 years, 40-plus years.

5 And I've never served on a jury.

6 THE COURT: Thank you.

7 No. 28 is next, Mrs. Ingram?

8 THE PANEL MEMBER: Hello. My name is Carlie Ingram.

09:50

9 I don't have any children.

10 I'm currently unemployed. Used to work at Right At Home
11 as a CNA for about six months. I graduated from high school
12 in '22.

13 My spouse's name is Jerimie. He works at O'Riley's.
14 He's been there about six to nine months now.

15 And I've never served on a jury before.

16 THE COURT: All right. Thank you, ma'am.

09:50

17 If you'll pass the microphone back, I'll ask the Court
18 Security Officer to hand it to Panel Member No. 29.

19 THE PANEL MEMBER: Hello. My name is Jamie
20 Reed-Mayeaux. I have three grown children.

21 I currently work for Upshur County. I just recently
22 started there about two weeks ago. Prior to that, I did
23 commercial construction. I'm an Air Force veteran. I have a
24 high school diploma and some college.

25 My spouse's name is Daniel Mayeaux. He works commercial

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09:51 1 construction on a nationwide level. He's been doing that for
2 the last 35 years. I do have prior jury experience in
3 municipal traffic court.

4 THE COURT: All right. What do you do for Upshur
5 County, ma'am?

6 THE PANEL MEMBER: Building maintenance.

7 THE COURT: Okay. Thank you very much.

8 Next is No. 30, Ms. Strong.

9 THE PANEL MEMBER: Hi. I'm Janice Strong. I have
10 three grown children.

11 I am retired. I retired in '22 as a nurse for Longview
09:52 12 ISD. I did go to Panola College.

13 I'm divorced, and I've never served on a jury.

14 THE COURT: All right. Thank you.

15 Next is No. 31, Mr. Gutierrez?

16 THE PANEL MEMBER: My name is Ramon Gutierrez. I
17 live here in Marshall, Texas. I do not have any kids.

18 I work for Gecko Pest Control here in town, do customer
09:52 19 service representative and accounts receivable. I've worked
20 there about six years. I have a high school diploma.

21 My wife's name is Cherokee Gutierrez. She works for
22 Tyler Technologies doing technical support for eFile, eFile
23 technical support. She's worked there, I think, two years.

24 And I have never severed on a jury before.

25 THE COURT: Thank you very much, sir.

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1 No. 32 is next, Ms. Wade?

09:52

2 THE PANEL MEMBER: Yes. My name is Deann. I live
3 in Gilmer, Texas. I have two children.

4 I work for the City of Longview as a development
5 technician. I've worked there for about 10 years. I have a
6 high school diploma. I am not married.

7 And I have never served on a jury; just been jury
8 summonsed.

9 THE COURT: Thank you.

10 And last is No. 33, Mr. Kirk.

09:53

11 THE PANEL MEMBER: Good morning. My name is Barrett
12 Kirk, and I live in Jefferson, Texas. I have no children.

13 I work at Pore Technology, and I'm a moldmaker. I've
14 worked there for like five months. I graduated high school,
15 and I got a certification in trade school for HVAC technician.

16 I don't -- I'm not married, and I never served on a jury.

17 THE COURT: All right. Thank you, Mr. Kirk. We'll
18 pass that microphone back to the Court Security Officer,
19 please.

09:53

20 Thank you for that information, ladies and gentlemen.
21 That's helpful.

22 Now, I need to say a couple of things to you before I
23 turn the questioning over to the lawyers in the case.

24 Those of you that are selected to serve on this jury will
25 serve in the role as the judges of the facts, and the jury

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1 selected will make the sole determination about what the facts
2 are in the case.

09:54

3 Now, my job as the judge is to rule on questions of law,
4 evidence, or procedure that arise during the trial, to oversee
5 an efficient flow of the evidence, and to maintain the decorum
6 of the courtroom.

7 Now, I additionally want to say a couple of things to you
8 about our judicial system that I hope will put things in a
9 proper perspective for you.

09:54

10 In every jury trial, including this one, besides the
11 parties themselves, there are always three groups of
12 participants--the jury, the judge, and the lawyers. Now, with
13 regard to the lawyers, I think it's important for all of you
14 to understand that our judicial system is an adversary system,
15 which simply means that during the course of the trial the
16 parties through their counsel will seek to present their
17 respective cases to the jury in the very best light possible.

09:55

18 Now, it's no surprise to any of you that lawyers are
19 sometimes criticized in the media, but the Court's observed
20 that some of this is the result of a basic misunderstanding of
21 our adversary system in which the lawyers act as advocates for
22 the competing parties.

23 And as an advocate, a lawyer is legally and ethically
24 obligated to zealously assert his or her client's position
25 under the rules of our adversary system. And by presenting

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1 the best case possible on behalf of their clients, the lawyers
2 hopefully will enable the jury to better weigh the relevant
3 evidence, to determine the truth and to arrive at a just
4 verdict based on that evidence.

09:55

5 This system, this adversary system of justice has served
6 our country well for over 200 years, and America's lawyers
7 have been, are today, and will be in the future an integral
8 part of this system.

9 So as we go forward, even though it's possible over the
10 course of the trial you might see me roll my eyes or frown at
11 the lawyers from time to time, I'm just trying to make sure
12 their advocacy doesn't get outside the boundaries of our
13 adversary system. But please keep in mind, ladies and
14 gentlemen, they're just doing their job and I think it's
15 important for all of you to understand that as we go forward.

09:56

16 Also, ladies and gentlemen, for those of you that are
17 selected on this jury, I want you to be aware that over the
18 course of the trial I am going to do my very best to make sure
19 that nobody on the jury knows what I think about the evidence
20 in this case, because determining the facts from the evidence
21 in this case is not my job, it is the jury's job. So you
22 should not take into account anything you see or hear or think
23 you see or hear coming from me as something to consider in
24 deciding what the ultimate facts are in this case if you serve
25 on this jury.

09:57

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1 Now, at this time counsel's going to address the panel.
2 We'll begin with the Plaintiff.

3 Mr. Thane, you may address the panel on behalf of the
4 Plaintiff. Would you like a warning on your time?

5 MR. THANE: Yes, Your Honor; three minutes.

6 THE COURT: I'll warn you when you have three
09:57 7 minutes remaining. You may proceed when you're ready.

8 MR. THANE: May it please the Court, counsel.

9 Ladies and gentlemen of the jury, my name is Josh Thane,
10 as you heard. I'm a lawyer up in Texarkana. It's my honor to
09:58 11 be here with you today.

12 I want to start by being the first of many thank yous
13 that you'll get today. Thank you for your service. Thank you
14 for being here. As His Honor already stated, this is an
15 essential part of being an American is serving in the judicial
16 system. So thank you very much for being here.

17 You-all were kind enough to tell us about yourselves; you
18 deserve to know a little bit about me. It's not all that
19 interesting, but I'll give it to you. I grew up in Texarkana,
09:58 20 went to law school in Arkansas. Please don't hold that
21 against me.

22 I am married. My wife's name is Jacqueline. We have two
23 kids, two boys, 8 and 10. We have a very busy house. They
24 like to play baseball, basketball, hunt, shoot guns, draw, do
25 art. It's a fun time. I'm sure this morning my wife spent

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09:58 1 most of her morning breaking up wrestling matches or debates
2 over who's going to win the Super Bowl. It's just what we do.

3 That's a little about me. I've been practicing law here
4 in East Texas for about 18 years. I have never served on a
5 jury. It's something I've come close to doing twice, and
6 hopefully I get to do that one day.

7 With me, I introduced them already. During this case,
8 you'll hear from Mr. Chris Hanba. Mr. Hanba is from down in
09:59 9 Austin. And you'll hear from Ms. Ariana Pellegrino. She's
10 from up in Detroit but practices down here in Texas quite a
11 bit, and we've worked together for quite a while.

12 Let me give you just a little roadmap of how voir dire's
13 going to work. I'm going to give you a very brief overview of
14 the case. I'm not going to argue it. His Honor would get
15 onto me if I did that and I don't want to affect, you know,
16 your thoughts about the case before you actually hear the
17 evidence.

18 You guys in front of me, I'm going to call you the jury
19 box when I'm talking today. I'll probably try to talk to each
09:59 20 one of you. You have a good chance of being on the jury along
21 with kind of the first two rows in the gallery. I'll call you
22 the gallery. You guys in the back are probably in the safe
23 zone so I may not spend as much time with you. Please don't
24 be offended if you don't get as many direct questions as the
25 folks up in front of me.

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10:00 1 Let me start with a question. Who all, whenever you got
2 the summons and you came here today and you realized that you
3 were going to be deciding a dispute, a commercial dispute
4 between two companies, who all was excited to be here? Was
5 anybody excited to be here?

6 Who all, whenever you heard about this, that you were
7 going to be resolving a commercial dispute, said, you know
8 what, if I'm going to court, I want to be fair? Can you raise
9 your hand if you agree you want to be fair to both sides?

10 Did anybody come in and say, you know what? I'm not
11 going to be fair today. I'm leaning so far one direction,
10:00 12 either for the Defendant or for the Plaintiff, that I can't be
13 fair today? No one. Okay. Thank you.

14 Some of you are probably thinking, because I have this
15 tendency, that if I sit still, be quiet, and don't answer any
16 of Mr. Thane's questions, I probably won't serve on this jury.
17 Well, it's the exact opposite of that. If I don't know much
10:01 18 about you and whether or not you have a leaning one way or the
19 other, I don't have any reason to think that maybe you
20 wouldn't be appropriate for this case, maybe you have a life
21 experience that wouldn't be great for this case.

22 So I would encourage you, as His Honor has, speak up,
23 answer the questions. If you have something to say, feel free
24 to say it. We're here to hear from you. You don't want to
25 hear much from me. We want to hear from you guys.

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1 Let me start by telling you a little bit about this case.
10:01 2 I represent a company named Force MOS. Force MOS was founded
3 in 2007 by two gentlemen, Mr. Dover Chung and Mr. Fu-Yuan
4 Hsieh. Both are named inventors on patents that Force MOS
5 owns. You'll actually see some of Dr. Hsieh's patents during
6 this case. Dr. Hsieh and his partner, Dr. Chung, wanted to
7 create semiconductors that would advance the industry. That
10:02 8 was their goal. I introduced him earlier, Mr. Rafael Chung.

9 Mr. Chung, if you can stand.

10 Mr. Chung is the deputy general manager for Force MOS.
11 He'll be with us during the entire trial.

12 Thank you, Mr. Chung.

13 Mr. Chung's dad, Mr. Dover Chung, was one of the
14 co-founders of Force MOS.

15 Now, Force MOS has patents in the U.S. They have close
16 to 150 patents to protect their inventions, and we're here
10:02 17 because Force MOS is claiming that ASUS is infringing upon
18 those patents or they're using those patents, using those
19 inventions, without permission.

20 Now, ASUS on the other hand says, we don't use those
21 patents at all. In fact, they'll say that one of those
22 patents is actually invalid.

23 And then we also have a dispute about if ASUS is using
24 Force MOS's property, using their inventions without
25 permission, how much do they owe. We're going to say that

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10:03 1 ASUS owes north of \$20 million. ASUS is going to say not
2 nearly that much. Even if we're using your property without
3 your permission, we don't owe you nearly that much money.

4 So those are the basics of this lawsuit. And some of you
5 are probably sitting there saying, Mr. Thane, that's not much.
6 I need to know more than that to be able to make a decision.

7 I'm not trying to help you make a decision right now.
8 That's what the week's going to be for.

10:03 9 So let me start. I don't know any of you. Did anybody,
10 whenever they came in today, look and say, hey, I know this
11 other person on the jury panel? So does anybody on the jury
12 panel know anybody else that's on the jury panel? We all live
13 in small towns and that happens quite a bit, but surprisingly
14 no one. Okay.

15 You heard a little bit about the case. Okay? Has
16 anybody ever heard of Force MOS? Can you raise your hand if
17 you've heard of Force MOS?

10:04 18 Has anybody ever heard of the Defendant ASUS or ASUSTeK?
19 Juror No. 2, Juror No. 4, Juror No. 14, Juror No. 11. Anybody
20 in the gallery heard of ASUS or ASUSTeK? Juror No. 31. Thank
21 you.

22 So is there anything about knowing who ASUS is that makes
23 you come into this jury selection and this case thinking, you
24 know what? I'm probably going to start off leaning towards

10:05 25 ASUS. Anybody that raised their hand, does anybody feel that

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1 way? Nobody feels like they would start off leaning towards
2 ASUS, that they would have the upper hand because you've had
3 their products or seen their products or are familiar with
4 them? Nobody feels that way? Thank you.

10:05 5 So ASUS's products are sold here in Texas. You guys have
6 not heard of Force MOS, which we -- you'll find out more about
7 the company and probably why you haven't. Has anybody
8 thought, you know what? Because I've never heard of Force
9 MOS, that I'm probably leaning against them because I don't
10 know anything about this company? Does anybody feel that way?
11 If you could, raise your hands if you feel that way. No one
12 feels that way? Thank you.

10:05 13 There's a number of lawyers that represent ASUS. Some of
14 them are -- live around here. I want to make sure and see if
15 any of you know any of those lawyers. The first one is Mr.
16 Travis Underwood. Mr. Underwood, I believe, lives over around
17 the Tyler area. He works in East Texas. We've done a lot of
18 things together. Does anyone know Mr. Underwood?

10:06 19 Mr. Underwood works for the law firm of Gillam & Smith
20 that has an office here in Tyler [sic] just kind of behind the
21 courthouse. Has anybody heard of the law firm Gillam & Smith?
22 Anybody heard of Melissa Smith? That's one of Mr. Underwood's
23 partners. Mr. Gil Gillam? No one's heard of them? Okay.

24 Let's talk about the patents in this case. So this case
25 involves a foreign company that has patents here in the U.S.

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10:06

1 So they've invented something and they've come to the U.S. and
2 had their inventions here. Does anyone have a problem with
3 the fact that a foreign company like Force MOS can get patents
4 in the U.S. and come here and protect their inventions in the
5 U.S.? No one has a problem with it.

6 Mr. Adams, you're No. 1. I'm going to pick on you first
7 just because you're No. 1. Can you tell us your thoughts on
8 that, Force MOS coming to the U.S. with their patents and
9 enforcing those? Do you have any issues with that?

10:07

10 THE PANEL MEMBER: I don't really have any issues
11 with it. You know, anything that can contribute to technology
12 and especially our economy, I'm all for it.

13 MR. THANE: Thank you, sir.

14 Miss Childress?

15 THE PANEL MEMBER: I don't have any trouble. I'm
16 kind of with No. 1. Anything that will contribute to the
17 economy and boost it, I'm all for it.

18 MR. THANE: Thank you, ma'am.

10:07

19 Does everyone kind of agree with Mr. Adams and Miss
20 Childress that if there's an invention that helps and improves
21 and progresses science, that that's a good thing? Does
22 everyone agree with that? If you do raise your hands, please.
23 Thank you.

24 ASUS in this case does not actually make the accused
25 product that you're going to be hearing about. So ASUS buys

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10:08 1 the product from another company, a supplier like Force MOS.
2 Force MOS is bringing this lawsuit against ASUS because, as
3 you'll hear, the law in the U.S. is that if you make, use,
4 sell, even offer for sale, or import goods into the United
5 States that are protected by a U.S. patent, those could
6 potentially infringe.

10:09 7 So ASUS doesn't make the product. Force MOS is suing
8 them because they included the product into something. Does
9 anyone have a problem with the fact that Force MOS is here
10 suing ASUS, the company that doesn't actually make the
11 product, but is incorporating it into one of their products?
12 Does anyone have a problem with that? No one has a problem
13 with that.

14 Mrs. Lindsey, can I pick on you? Are you okay with the
15 fact that ASUS doesn't actually make the product that's being
16 accused in this case and Force MOS is still accusing that
17 product of infringement?

10:09 18 THE PANEL MEMBER: You'd be surprised how many
19 things are actually made by other people that are sold and
20 produced, so there's really no discrimination towards either
21 side on it.

22 MR. THANE: Okay. Thank you, ma'am.

23 Mr. Adams?

24 THE PANEL MEMBER: I had a question that may be
25 inappropriate or not applicable, but are they also suing the

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1 entity that's providing the parts?

10:09

2 MR. THANE: That's something we're going to learn
3 about during this trial if you serve on it, yes, sir.

4 THE PANEL MEMBER: Okay.

5 MR. THANE: Does anyone have a problem with Force
6 MOS being a Taiwanese company coming to the U.S. and filing a
7 lawsuit against another Taiwanese company?

8 Ms. Modisette, can I pick on you?

10:10

9 THE PANEL MEMBER: Sure.

10 MR. THANE: Do you have thoughts about that, ma'am?

11 THE PANEL MEMBER: One company from another country
12 suing another company from another country?

13 MR. THANE: Yes, ma'am.

14 THE PANEL MEMBER: But we're here in the United
15 States?

16 MR. THANE: Yes, ma'am.

17 THE PANEL MEMBER: This is the United States. You
18 know, if somebody did something wrong and they think it's, you
19 know, they're in the right and they have the right here in the
20 United States to voice their opinion.

21 MR. THANE: Can you pass the microphone to Mrs.
22 Walker?

10:10

23 Mrs. Walker, what are your thoughts on that?

24 THE PANEL MEMBER: I don't have a problem with it
25 personally as long as it's all being done legally. It doesn't

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1 affect me.

2 MR. THANE: Thank you, ma'am.

3 Now, part of the questionnaires that you guys all filled
4 out had some questions about lawsuits in general, and I want
5 to ask a couple of additional questions about that.

6 Some people just feel like lawsuits should never be filed
10:11 7 no matter what--personal reasons, religious reasons, tax
8 reasons.

9 Ms. Haigh, can I pick on you? Do you have any opinions
10 about lawsuits and whether or not they should actually be
11 filed?

12 THE PANEL MEMBER: Well, lawsuits are designed to
13 help people protect their -- their property, so I don't
14 have -- I don't lean disfavorably towards lawsuits.

15 MR. THANE: So you're okay if somebody has some
10:11 16 right or some protection that they feel like has been
17 infringed upon or violated, them coming into court and
18 filing --

19 THE PANEL MEMBER: They have a right to, yeah.

20 MR. THANE: All right. Thank you, ma'am.

21 Ms. Jackson, same question for you.

22 THE PANEL MEMBER: It's actually Higginbotham. I
23 know it says Jackson.

24 MR. THANE: Oh.

25 THE PANEL MEMBER: Name change. I actually believe

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1 in lawsuits if my rights have been infringed on and I need to
2 be reimbursed for that, then I do believe we have the right to
3 file a lawsuit.

10:12

4 MR. THANE: Thank you, ma'am.

5 Anybody else on the panel feels the same way as Ms.
6 Higginbotham that, look, if your rights are infringed upon,
7 you have the right to file a lawsuit? Everybody that agrees
8 with that, can you raise your hand?

9 Mr. Hardwick, can I pick on you, sir?

10 THE PANEL MEMBER: Yes, sir.

11 MR. THANE: What are your thoughts and opinions on
12 lawsuits?

10:12

13 THE PANEL MEMBER: In my opinion or my experience, I
14 got a bad taste in my mouth.

15 MR. THANE: Can you explain that to me a little bit?

16 THE PANEL MEMBER: They were junk lawsuits, maybe?
17 But I still believe in what's right or wrong. It's just in my
18 case it was not like this. It was junk lawsuits.

10:13

19 MR. THANE: I understand. So more like a frivolous
20 lawsuit where maybe there wasn't a real dispute between the
21 parties, but somebody had filed a lawsuit?

22 THE PANEL MEMBER: To me, anyway.

23 MR. THANE: Okay. Were you sued in a lawsuit?

24 THE PANEL MEMBER: Several times.

25 MR. THANE: Can you tell me what those involved?

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1 THE PANEL MEMBER: I was self-employed, so it --
2 what they call them, slip-and-falls and parking lot issues and
3 shootings. So there was a bunch of them.

10:13

4 MR. THANE: Okay. Thank you, sir.

5 Mr. Crumpler, do you have any opinions about lawsuits?

6 THE PANEL MEMBER: This is the same thing. Some are
7 bad, some are good. We've been sued and sometimes have
8 to -- we've had to sue to get our money from some companies.
9 So there is lawsuits that mean nothing, and there's some that
10 you have to do.

10:14

11 MR. THANE: And you're okay if a company feels like
12 they have to sue to get compensated for something that
13 happened, you're okay with that?

14 THE PANEL MEMBER: Right. Sometimes you have to.

15 MR. THANE: Okay. Thank you, sir.

16 Could we go to Juror No. 2, Mr. Hess?

17 Mr. Hess, can I pick on you?

18 Mr. Hess, do you have any opinions about lawsuits, sir?

19 THE PANEL MEMBER: I guess as long as they're not
20 frivolous like, I'm okay with it. But it really depends on
21 the lawsuit.

22 MR. THANE: So something like this where you have a
23 genuine business dispute between two companies, you're okay
24 with that?

10:14

25 THE PANEL MEMBER: I would be, yeah.

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1 MR. THANE: Okay. Thank you, sir.

2 Let me ask this. Mrs. Walker, No. 9. So sometimes in
3 businesses you have somebody that just relies upon somebody
10:15 4 else's work and sometimes they go do the work themselves to
5 investigate. Do you think it's okay to rely upon someone
6 else's work to make a decision about something or should you
7 check that work yourself to see if it's okay?

8 THE PANEL MEMBER: Owning a business myself, I do
9 not rely on anybody's work. I always check it.

10 MR. THANE: Thank you, ma'am.

10:15 11 Mr. Sloan, Juror No. 11, what are your thoughts on that?
12 Do you think it's okay just to rely upon somebody else's work
13 to make a decision, or would you lean more to the side of, you
14 know what, I'm going to do my own work, my own investigation,
15 to make sure whatever it is is correct and accurate?

16 THE PANEL MEMBER: I think, you know, you should do
17 your own, but if it's a legitimate company and that's doing it
18 for you, then I don't see any problem with that.

19 MR. THANE: Okay. Thank you, sir.

10:16 20 Juror No. 10, Mr. Scirto. And I hope I didn't butcher
21 that, sir.

22 THE PANEL MEMBER: That's okay.

23 MR. THANE: Okay. What are your thoughts on that?

24 THE PANEL MEMBER: It depends on the task. Some
25 tasks, you can let someone do their own work. Other tasks,

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1 there's higher stakes so sometimes it's good to have double
2 checks, triple checks on it, depending also on who you're
3 presenting that work to.

4 MR. THANE: Okay. Thank you, sir.

5 Does everybody agree with Mr. Scirto that, you know, if
10:16 6 there's something really significant, that you should go and
7 do your own investigation and your own work? Does everyone
8 agree with that? If you do, could you just raise your hand?
9 Does anyone disagree with that?

10 Mrs. Bennett, Juror No. 4. Can I pick on you? Sorry,
11 ma'am. I noticed you didn't raise your hand.

12 THE PANEL MEMBER: I may not be qualified to judge
13 that work.

14 MR. THANE: Okay.

15 THE PANEL MEMBER: I may not have the expertise.

16 MR. THANE: Okay. Thank you, ma'am.

10:17 17 Relatedly, some people would just take another person's
18 word as the truth, and some people are like I must see it to
19 make a decision. Is there anyone in the jury box is that a
20 I-must-see-it-to-make-a-decision type person. If you could
21 just raise your hand--Juror No. 7, No. 5, No. 11, No. 9, and
22 No. 1. Thank you.

10:18 23 So the rest of you are, you know, I don't really have to
24 see it, I could make a decision without actually seeing
25 something. Is that correct? Would you raise your hand if you

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1 agree with that in the jury box?

2 UNIDENTIFIED PANEL MEMBER: I think it depends on
3 the authority --

4 MR. THANE: Yes, sir, Mr. Hess?

5 THE PANEL MEMBER: I said I would think it would
6 depend on the authority given that answer.

7 MR. THANE: Okay. In the gallery, I want to ask you
8 the same question. Who thinks it's okay just to take
10:18 9 someone's word as the truth or who thinks they're the type of
10 person that is an I-must-have-to-see-it-to-believe-it type
11 person? If you're the I-must-see-it-to-believe-it, could you
12 raise your hand in the gallery? On the first two rows, Juror
13 No. 18, Juror No. 19.

14 So the rest of you on the first two rows, you're kind of
15 I can take somebody's word, I don't really have to see it to
16 believe it?

17 UNIDENTIFIED PANEL MEMBER: It really depends.

18 MR. THANE: Ms. Cox, Juror No. 15?

10:18 19 THE COURT: While he's handing the microphone to No.
20 15, let me just say, ladies and gentlemen, you're here to
21 answer questions, you're not here to ask questions. These
22 lawyers have a set amount of time the Court gives them to go
23 through this material. They would be asking you questions for
24 two days if I didn't put them on a certain amount of time.

25 So they need to be the ones asking the questions. If you

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1 have questions, it's up to them to call on you. Okay?

2 Go ahead, Mr. Thane.

3 THE PANEL MEMBER: It depends on a lot of things.
4 It depends on your expertise like she said. It depends on
10:19 5 what the task is. It depends on a lot of things. It would
6 have to be far more specific for me to give you an accurate
7 answer.

8 MR. THANE: Okay. Thank you, Ms. Cox. I do have
9 another question for you, though. You mentioned you served on
10 a jury trial?

11 THE PANEL MEMBER: I did.

12 MR. THANE: And that was here in this courtroom?

13 THE PANEL MEMBER: It was.

14 MR. THANE: Can you explain what that case was
15 about?

16 THE PANEL MEMBER: A young man was helping his
17 cousin -- the narcotics found -- I don't know if he was found,
18 he didn't get caught. He interceded to keep his cousin from
10:20 19 getting caught, the cop told him to get on the ground, and
20 there was a lot of discrepancy on that.

21 On this side of the jury -- I mean, on this side of the
22 trial, I have a lot of different opinions than I had on the
23 inside of the trial and I have a lot of remorse honestly. But
24 the kid was kicked, his ankle was in a million pieces, and he
25 was filing for -- for money, for the damages. But it -- do I

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1 have to keep going?

10:20

2 MR. THANE: No, ma'am. That's enough. Thank you,
3 though can I ask you another question? Did the jury find for
4 the Plaintiff, the person that had been injured, or did you
5 find for the defendant?

6 THE PANEL MEMBER: We found for the defendant.

7 MR. THANE: Okay. Thank you, ma'am.

8 Now, His Honor talked about the burden of proof a little
9 bit earlier and described it based upon the scales of justice
10 and the tipping of the scales ever so slightly for
11 preponderance of the evidence and a different level for clear
12 and convincing.

10:20

13 So I think about this generally as a football field
14 because my kids are into sports, and for me the preponderance
15 of the evidence, the standard that we have to prove for
16 infringement, is like taking a football field and just getting
17 the football right across the 50-yard line. So to prove
18 infringement, we just have to barely get across the 50 yard
19 line, just tip that scale a little bit.

10:21

20 Is everyone comfortable with that being Force MOS's
21 burden of proving infringement in this case, that they just
22 have to get the football a little bit across the 50-yard line,
23 not all the way into the end zone? Is everybody okay with
24 that?

25 Mr. Hardwick, Juror No. 12? Are you okay with that being

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1 Force MOS's burden to prove infringement, that they need to
2 bring you enough evidence that just kind of gets the football
3 past the 50-yard line?

4 THE PANEL MEMBER: I need to know a lot more.

10:21 5 MR. THANE: Okay. That's understandable.

6 THE PANEL MEMBER: I can't give an answer on that.

7 MR. THANE: Okay. Thank you, sir.

8 So -- and the other piece to this, His Honor talked about
9 the clear and convincing burden, and that's the burden to find
10 a patent invalid. So patents are presumed valid. So the
11 burden is a little bit higher to prove that they're invalid.
12 And so I like to think about that again with the football
10:22 13 field analogy is that you have to get the football like down
14 into the red zone, much further down the field, not a
15 touchdown, that's clear and convincing but down to the end
16 zone.

17 Is everyone in the jury box okay having a different
18 standard for us to prove infringement than for ASUS to prove
19 that any of the patents in this case are invalid? Is everyone
20 okay with that? Everyone agrees that they can listen to His
21 Honor, follow the law, apply it to the facts, and enforce that
10:22 22 burden as needed under the law?

23 Ms. Haigh, can I pick on you again?

24 THE PANEL MEMBER: Sure.

25 MR. THANE: You're okay with applying the burdens as

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1 I've described them and as His Honor will describe them?

2 THE PANEL MEMBER: Yeah. It's the burden of proof,
3 so yeah. It makes sense.

4 MR. THANE: Okay. Thank you, ma'am.

5 THE COURT: And let me interject. No matter what
6 the lawyers may give you as their idea about what the burden
7 of proof is, my instructions to you are the instructions you
8 have to follow.

10:23 9 Go ahead, Mr. Thane.

10 MR. THANE: Thank you, Your Honor.

11 I want to talk briefly to you about the damages in this
12 case. I mentioned earlier that the damages in this case will
13 probably be asking for somewhere north of \$20 million. Is
14 there anyone in the jury box that says, you know what? No
15 matter what the evidence shows, no matter what the law is, I
16 could never award a company \$20 million? Anyone in the jury
10:23 17 box feel that way?

18 Miss Childress, can I pick on you again, ma'am? Miss
19 Childress, you would be okay if the evidence shows and the law
20 and under the law that Force MOS is entitled to \$20 million,
21 you'd be okay awarding that type of money?

22 THE PANEL MEMBER: Yes. It just -- because you
23 never know how much they spent to get the patent and
24 everything going. So, yeah, I'd be okay with that.

25 MR. THANE: Okay. Does everyone in the jury box

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10:24 1 agree with Miss Childress? Can you raise your hands if you
2 agree with her? Anyone in the gallery disagree with what Miss
3 Childress said, that if the evidence shows that, they could do
4 that that? No one? Thank you.

5 THE COURT: You have three minutes remaining,
6 counsel.

7 MR. THANE: Thank you, Your Honor.

8 When I think of patent lawsuits, one way I relate it in
10:24 9 my head is growing up in East Texas you see these beautiful
10 forests of pine trees that maybe have been in somebody's
11 family for a long time. And you've driven by them a lot, but
12 then maybe you stop going out there. And then you go out
13 there another day and you find out that that entire forest has
14 been clear cut, all the trees are gone, everything is gone.
15 And they're your trees or your family's trees. Right?

10:25 16 So would everyone in the jury box agree that they would
17 want to be compensated for every tree that was cut out of that
18 forest? Does everyone agree with that? If you do, could you
19 raise your hand?

20 Does anyone think that they would just take the person
21 who cut the trees word for it with respect to the number of
22 trees that were there or how much money they made selling
23 those trees to the paper mill, would anybody take that
10:25 24 person's word for it? Raise your hand if you would just take
25 their word.

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1 Would you want to do a count or go have an inspection or
2 have an expert look and look at the stumps and make sure that
3 you knew exactly what trees were there? Does everyone agree
4 with that?

5 Ms. Higginbotham, I'm going to pick on you one more time.
6 You'd be okay with that, ma'am? And you would probably
7 require--right?--for somebody to go out and actually do that
8 count?

10:26 9 THE PANEL MEMBER: Yes, I would want an accurate
10 count as to what I'm owed for.

11 MR. THANE: Okay. Thank you, ma'am.

12 My time is done with you for jury selection. I'll be
13 back with you later in the week. I do appreciate your
14 attention. I appreciate your responses. On behalf of Force
15 MOS, on behalf of Mr. Chung, we appreciate your service today.

16 We appreciate those of you that get picked for the jury,
17 your service for a week. I know it is -- takes you away from
10:26 18 your families and that's difficult at times, so thank you very
19 much.

20 Thank you, Your Honor.

21 THE COURT: All right. Defendant may address the
22 panel.

23 Mr. Underwood, would you like a warning on your time?

24 MR. UNDERWOOD: Yes, please, Your Honor. Could I
25 get warnings at five minutes remaining and two minutes

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1 remaining?

2 THE COURT: All right. I'll warn you with five
3 minutes remaining and two minutes remaining.

4 You may proceed.

5 MR. UNDERWOOD: Thank you, Your Honor. And may it
6 please the Court. Counsel.

10:27 7 Ladies and gentlemen, by way of reintroduction, like I
8 said, my name is Travis Underwood, and like Mr. Thane did, I
9 need to thank each and every one of you for showing up today,
10 because, like Mr. Thane said, you-all's participation is a
11 very important part to this process. The process doesn't work
12 if you're not here.

13 I saw the questionnaires. I appreciate you-all for
14 taking the time to fill those out. I know there's a lot of
15 questions, a lot of information. You probably had to spend a
16 lot of time putting that together. We read every one of them.
17 Thank you so much.

10:27 18 And I also notice that some of you-all drove from a great
19 distance to be here. The Marshall Division is more than just
20 Harrison County, as you-all can attest to, because many of you
21 are not from Harrison County, so thank you for showing up
22 today.

23 Like the Judge did, like each and every one of you have
24 done, like Mr. Thane did, I think it's appropriate to tell you
25 a little bit about myself.

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10:28

1 I live over in Tyler, Texas. I'm married. My wife's
2 name is Lindsey. We have three children. I've got a
3 four-year-old, a three-year-old--they're both girls--and I've
4 got an 8-month-old boy, so I haven't slept in eight months.

5 Mr. Crumpler, I know you said you had -- was it a
6 14-month-old?

7 Could you give Mr. Crumpler the microphone?

8 Fourteen-month-old?

9 THE PANEL MEMBER: Yes.

10 MR. UNDERWOOD: Boy or a girl?

11 THE PANEL MEMBER: Girl.

12 MR. UNDERWOOD: What's her name?

13 THE PANEL MEMBER: Sadie.

14 MR. UNDERWOOD: Sadie. It's a pretty name.

15 THE PANEL MEMBER: Thank you.

16 MR. UNDERWOOD: Is that a family name?

17 THE PANEL MEMBER: No. It -- we really didn't know
18 until about two weeks before she was born, and we come up with
19 that name.

10:29

20 MR. UNDERWOOD: Did you-all have a big debate about
21 that?

22 THE PANEL MEMBER: Yeah, you could say that.

23 MR. UNDERWOOD: So who won?

24 THE PANEL MEMBER: My wife.

25 MR. UNDERWOOD: Your wife won.

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1 THE PANEL MEMBER: You didn't have to ask that.

2 MR. UNDERWOOD: My wife won with our kids as well.

3 Have you slept in 14 months?

4 THE PANEL MEMBER: Very little.

5 MR. UNDERWOOD: All right. Well, I appreciate that.

6 Thank you.

7 I'm originally from a small town outside of Waco called

8 Lorena, Texas. I went to law school at Baylor, and right

10:29 9 after law school, I moved straight here to Marshall where I

10 served as a law clerk in this Court for one year. I've been

11 practicing law primarily in East Texas ever since, a little

12 bit elsewhere. And I've never served on a jury. I'd like to

13 do it some day, but it's never happened.

14 Now, Mr. Thane asked you-all the question who is excited

15 to be here, and no one raised their hands, which isn't that

16 surprising. Right?

10:29 17 I'm going to flip that on its head. Who is not excited

18 to be here?

19 And actually before anyone answers, I want to just cover

20 one of the grounds rules of voir dire, which is there are no

21 wrong answers as long as it's the truth.

22 So I'll ask again, who was not excited to show up? All

23 right. Okay. Honesty. Good policy. I like it. Okay?

10:30 24 I've done this several times now, and sometimes I hear

25 people say that they're not interested in serving on juries

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1 because it's really a dispute between other people and it's
2 none of their business. They don't want to stick their nose
3 into someone else's business.

4 Anyone feel that way? Anyone feel like you don't really
5 want to serve on a jury because it's just none of your
6 business? Don't want to mess around with it? All right. I'm
7 going to have to start calling on some people then.

10:30 8 Let's go with Miss Childress. What do you think about
9 that idea that I've heard some people say, None of my
10 business, someone else's dispute, I don't want to mess with
11 it?

12 THE PANEL MEMBER: Well, you got to know the truth.
13 So I don't think that everybody's business is everybody's
14 business, but sometimes you've got to get the truth out, so...

15 MR. UNDERWOOD: Okay. Mr. Hess, No. 2, what do you
10:31 16 think about that?

17 THE PANEL MEMBER: I generally like to stay out of
18 other people's business, but sometimes if people can't work it
19 out amongst themselves, they have to go to a court situation,
20 and that's just how it goes.

21 MR. UNDERWOOD: Okay. Thank you. I appreciate
22 that.

23 Let's go to No. 8, Ms. Modisette. Do you have that
24 right?

25 THE PANEL MEMBER: Correct.

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1 MR. UNDERWOOD: All right. Thank you.

2 Tell me your thoughts on that. Do you have this sense
10:31 3 that, You know what, these disputes, not my business, that's
4 their business, let them resolve it? Do you feel that way?

5 THE PANEL MEMBER: No, not really. I hope some day
6 if the roles are reversed and I was there, that I would want
7 the jury to, you know -- it's a privilege, you know, actually
8 to be here. It's a little inconvenient for some, but it is a
9 privilege. And I just think, you know, it's not my business
10:32 10 what they're doing, but it is kind of if it's -- if I'm living
11 in the United States and this is our God-given right for us to
12 do, then it is, you know, my business in a way.

13 MR. UNDERWOOD: I appreciate that. And I'll add
14 that's all we can ask for. That is all that parties involved
15 in litigation can ask for, so I thank you very much.

16 Related to that, anyone here think, You know what, folks
17 should just resolve their disputes out of court, shouldn't
10:32 18 bring them into court, should resolve them out of court? No
19 one? No hands.

20 Let me ask -- let's go down the line. Mrs. Walker, No.
21 9, what are your thoughts on that statement?

22 THE PANEL MEMBER: I believe there are certain cases
23 that can happen, but when there's not, that's what the court
24 system's for.

25 MR. UNDERWOOD: Okay. Now, while you have the

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1 microphone, ma'am, did I hear you say you're from Minden,
2 Louisiana?

3 THE PANEL MEMBER: No. I used -- I served in a jury
4 in Minden. I didn't --

5 MR. UNDERWOOD: You served in a jury?

6 THE PANEL MEMBER: I lived in Bivens.

7 MR. UNDERWOOD: You didn't live in Minden?

8 THE PANEL MEMBER: No.

10:33 9 MR. UNDERWOOD: Oh, okay. My wife's uncle is from
10 Minden, so I wasn't sure if --

11 THE PANEL MEMBER: No. I'm from Dorlene (ph).

12 MR. UNDERWOOD: Oh, okay. All right. All right.
13 Thank you very much.

14 Now, I've got an opportunity, like Mr. Thane did, to give
15 you just a very brief overview of the case. You already heard
16 a little bit about the case from him. I'll reiterate some of
17 that. I'll add just a little bit as well.

18 So like Mr. Thane said, a case about computer parts
19 called MOSFETs. He also called them semiconductors. They're
10:33 20 these little chips. I think, if you serve on the case, you
21 might actually see some of them. They're commodities. They
22 cost less than a penny. The Plaintiff here, they make MOSFETs
23 and they sell MOSFETs.

24 As Mr. Thane mentioned, my client ASUSTeK, we don't make
25 MOSFETs, we don't sell MOSFETs; we make computers. And

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1 computers, as you can probably guess, involve a lot of parts,
2 so we have to buy those parts from other people. And the
10:34 3 MOSFETs are one of those parts that we buy from other people.

4 There's a handful of vendors or suppliers, if you will,
5 that we bought parts from over the years. In fact, one of
6 those companies that we bought parts from was the Plaintiff in
7 this lawsuit. We actually bought parts from the Plaintiff for
8 a number of years.

9 I won't go into it right now, but if you serve on the
10 jury, I think you'll hear a little bit more about how in 2021
11 we went our separate ways and we decided we were not going to
10:34 12 be able to do that anymore and buy parts from them. After
13 that, we were filed -- they filed the lawsuit, and that's why
14 we're here today.

15 And our positions in this patent lawsuit are very simple.
16 It boils down to three things. The first is, ASUSTeK's
17 position is we don't infringe on these patents; we do it
18 differently; we don't use the invention that is contained in
19 the patents.

20 Mr. Thane asked some questions about doing your own work
10:35 21 or relying on somebody else's work. And after we got their
22 allegations of infringement, we went to the suppliers we get
23 the parts from and we asked them, What do you think about
24 this? And they gave us pages of analysis that said, No, our
25 products that you buy from us, they don't use this technology.

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1 We relied upon that.

2 Our other position is that one of the patents that you're
3 going to hear about is invalid; it never should have been
4 issued. More on that later.

5 And the final position is that we did nothing wrong and,
10:35 6 as a result, we don't owe them any money damages.

7 Now, Mr. Thane asked about this, so I'm going to have to
8 do it myself as well. Anyone here recognize him? He's from
9 Texarkana, like he said. Haltom & Doan law firm. His
10 partner -- one of his partners is Jennifer Doan. Anyone
11 recognize that name?

12 All right. Anyone recognize the other folks sitting here
13 at this table? Mr. Hanba, he's from Austin. Anyone recognize
10:36 14 him? No. Okay. All right. Very good.

15 What about ASUSTeK? A few of you-all raised your hand.
16 You said, Yeah, we are familiar with ASUSTeK. Can I see those
17 hands again, folks that are familiar with ASUSTeK? Okay.

18 Let me speak with Mrs. Bennett about that.

19 And she's No. 4. I apologize.

20 How are you familiar with ASUSTeK, ma'am?

21 THE PANEL MEMBER: It's just a brand name on a
22 computer.

23 MR. UNDERWOOD: Do you own any ASUSTeK products?

10:36 24 THE PANEL MEMBER: I don't -- I think I owned an
25 ASUS back in 2001, 2002.

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1 MR. UNDERWOOD: Did it work okay for you?

2 THE PANEL MEMBER: Yeah.

3 MR. UNDERWOOD: No problems with it?

4 THE PANEL MEMBER: No.

5 MR. UNDERWOOD: Nothing about that experience gonna
6 cause you to lean one way or the other in this lawsuit?

7 THE PANEL MEMBER: No.

8 MR. UNDERWOOD: Nothing else you know about ASUSTeK
9 that's going to cause you to lean one way or the other?

10 THE PANEL MEMBER: No.

11 MR. UNDERWOOD: Okay. Thank you.

12 Can I see those hands again? Did I see Mr. Sloan? Did
13 you have -- okay.

14 Let's go back to Sloan, No. 11.

15 How are you familiar with ASUSTeK, sir?

16 THE PANEL MEMBER: I've had several of those
17 products over the years and stuff.

10:37 18 MR. UNDERWOOD: Do you currently have one?

19 THE PANEL MEMBER: Yes.

20 MR. UNDERWOOD: And how does it work for you?

21 THE PANEL MEMBER: Fine.

22 MR. UNDERWOOD: It works fine for you? Did the ones
23 in the past work fine for you?

24 THE PANEL MEMBER: Yes.

25 MR. UNDERWOOD: What are your thoughts about

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1 ASUSTeK?

2 THE PANEL MEMBER: I think they're a fine company.

3 MR. UNDERWOOD: They're a fine company?

4 Nothing about that experience going to cause you to lean
5 one way or the other in this case?

6 THE PANEL MEMBER: No.

7 MR. UNDERWOOD: All right. Thank you.

8 I'm sorry. Who else had their hands up about knowledge
9 of ASUS?

10 Okay. Right here. We'll make it easy for you.

11 Ms. Neal, No. 14. All right. How are you familiar with
12 ASUSTeK?

10:37

13 THE PANEL MEMBER: I've had a monitor, an ASUS
14 monitor, and I think I was looking at laptops once, and the
15 ASUS was the cheaper version --

16 MR. UNDERWOOD: Okay.

17 THE PANEL MEMBER: -- and so I got the cheaper
18 laptop and it was an ASUS.

19 MR. UNDERWOOD: And how did it work for you?

20 THE PANEL MEMBER: It was okay.

21 MR. UNDERWOOD: It was okay?

22 THE PANEL MEMBER: Yeah.

23 MR. UNDERWOOD: Anything about that experience going
24 to cause you to lean one way or the other?

25 THE PANEL MEMBER: No. And, in fact, when you-all

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10:38

1 asked if we were familiar -- if anyone was familiar with ASUS,
2 it took me a moment to realize that I had had an ASUS a long
3 time ago, so no, definitely not.

4 MR. UNDERWOOD: I get that reaction a lot. Thank
5 you very much.

6 And I think, Mr. Hess, did you have your hand up as well?

7 Let's go to No. 2, Mr. Hess.

8 Same question, sir.

10:38

9 THE PANEL MEMBER: I worked at Circuit City and Best
10 Buy before I became a firefighter, and they sold those
11 products. Back in the early days I don't think they had a
12 very good reputation, but they have become better by the time
13 I got to Best Buy in 2010, 2011.

14 MR. UNDERWOOD: Better reputation now?

15 THE PANEL MEMBER: Yes, sir.

16 MR. UNDERWOOD: Anything about your experience
17 working at those places that would cause you to favor one of
18 these parties over the other?

19 THE PANEL MEMBER: I don't think so.

20 MR. UNDERWOOD: Okay. You'll treat both fairly?
21 I'd expect so. Thank you, Mr. Hess.

22 All right. Did I see any hands in the gallery?

23 Let's go to No. 16, Mr. Falish. All right. Tell me
24 about that.

25 THE PANEL MEMBER: Bought a computer like 10 years

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1 ago. Worked pretty well.

10:39

2 MR. UNDERWOOD: Worked pretty well?

3 THE PANEL MEMBER: Yeah.

4 MR. UNDERWOOD: Do you still own it today?

5 THE PANEL MEMBER: We have it, but it's not -- the
6 kids have done pretty much finished that off.

7 MR. UNDERWOOD: How old are your kids?

8 THE PANEL MEMBER: Ten and eight.

9 MR. UNDERWOOD: How did they finish it off? Games
10 or something?

11 THE PANEL MEMBER: I don't know. It won't even
12 connect to the internet anymore, so I don't know what they've
13 done.

14 MR. UNDERWOOD: Maybe you need to talk to Mr. Hess.
15 He might know a little bit about that based on his work
16 experience.

17 Anything about that going to cause you to favor one of
18 these parties over the other?

19 THE PANEL MEMBER: I don't think so.

10:39

20 MR. UNDERWOOD: Don't think so?

21 Thank you, Mr. Falish.

22 And did I pronounce that correctly--Falish?

23 THE PANEL MEMBER: You did really well.

24 MR. UNDERWOOD: Thank you. I try to.

25 Okay. Anyone else, ASUSTeK, back there? Did I see one

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1 more hand? Okay. You know, let's go back.

2 Mr. Gutierrez, way in the back, No. 31. You got an
3 ASUSTeK computer?

4 THE PANEL MEMBER: Yes.

5 MR. UNDERWOOD: How it's work for you?

6 THE PANEL MEMBER: No problems.

7 MR. UNDERWOOD: No problems?

10:40 8 All right. Thank you very much. I appreciate it.

9 There were some questions in your questionnaire -- and
10 actually I'm going to read it. You-all have to forgive me my
11 allergies with these weather changes; just killing me.

12 All right. No. 17, the question was, "Do you believe
13 that individuals or small businesses have little chance of
14 protecting their interests when they conflict with powerful
15 groups or large corporations?"

10:40 16 All right. I want to ask some of you-all about that
17 question.

18 Let's go to Mr. Adams, No. 1. You're smiling.

19 THE PANEL MEMBER: Yeah. I knew you were going to
20 call on me for that one.

21 MR. UNDERWOOD: I'm curious. Why did you know I was
22 going to call on you?

23 THE PANEL MEMBER: Well, okay. So I've been sued
24 before and I lost, and I felt like it was a matter of I just
25 could not afford a proper representation against who I was

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1 sued by.

2 MR. UNDERWOOD: Okay.

10:41

3 THE PANEL MEMBER: And, you know, I know our system
4 is supposed to be fair and balanced, but, you know -- you can
5 watch the news and make your own opinion, but when you have
6 people that you know, you know, are guilty of things and have
7 a really, really good legal team to kind of smoke things up,
8 you know, it just -- it just -- I don't know. Just leaves a
9 bad taste in my mouth.

10 MR. UNDERWOOD: How long ago was that experience?

11 THE PANEL MEMBER: It's been about six years.

10:41

12 MR. UNDERWOOD: Six years. You still remember all
13 the details, I take it?

14 THE PANEL MEMBER: I'll never forget it.

15 MR. UNDERWOOD: You'll never forget it?

16 You will recall one of those things His Honor provided
17 earlier and provided information on was that the trial lawyers
18 in this case on both sides are very experienced, very
19 experienced trial lawyers, so I don't imagine we're going to
20 have that problem here, but I do want to follow up.

10:42

21 There was another question on the questionnaire that
22 asked about opinions of global companies, and you -- I have in
23 my notes you indicated you had some negative opinions about
24 global companies.

25 THE PANEL MEMBER: What exactly was the question

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1 again? I don't remember that one.

2 MR. UNDERWOOD: You're putting me on the spot now.
3 I'm supposed to be putting you on the spot.

4 The question was, "In general, what are your opinions of
5 global companies today?"

6 THE PANEL MEMBER: Okay. That's a pretty wide-open
7 question.

8 MR. UNDERWOOD: It's pretty wide open. That's why
9 I'm asking you about it.

10 THE PANEL MEMBER: All right. So --

11 MR. UNDERWOOD: You said you had negative opinions.

12 THE PANEL MEMBER: Yeah, to some extent I do. I
10:42 13 think there's -- because of the difference in labor costs and
14 legal standards for production, I think a lot of times
15 American companies have a very difficult time competing with
16 foreign companies.

17 MR. UNDERWOOD: Okay. Now, you understand, sir,
18 that this is a case involving two companies who are based in
19 Taiwan?

20 THE PANEL MEMBER: I absolutely do.

21 MR. UNDERWOOD: Okay. So we don't have an American
22 company here.

23 THE PANEL MEMBER: Correct.

24 MR. UNDERWOOD: Are you familiar with Taiwan?

10:43 25 THE PANEL MEMBER: Vaguely, yes.

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1 MR. UNDERWOOD: What's your understanding of Taiwan?

2 THE PANEL MEMBER: I know that Taiwan produces a lot
3 of our microchips. During I believe it was COVID, that we had
4 a shortage of chips because we couldn't get parts from Taiwan
5 to fulfill the needs of our own -- our own needs and our tech
6 and our industry. And that's, you know, in my opinion just
7 evidence that things that may need to be brought back to the
10:43 8 United States instead of farming out to other companies --
9 other countries.

10 MR. UNDERWOOD: I appreciate you saying that.

11 I learned -- remind me, Mr. Adams, where are you from?

12 THE PANEL MEMBER: Naples, Texas.

13 MR. UNDERWOOD: Naples. So you are not from
14 Marshall, but nonetheless, I learned something yesterday about
15 Taiwan and Marshall.

16 So the capital of Taiwan is a city called Taipei. Are
17 you familiar with Taipei?

18 THE PANEL MEMBER: I am.

19 MR. UNDERWOOD: Taipei and Marshall, Texas, believe
20 it or not, are sister cities. Did you know that?

10:44 21 THE PANEL MEMBER: I did not.

22 MR. UNDERWOOD: So in the 1970s the Texas
23 legislature passed a resolution officially recognizing the
24 city of Marshall and the city of Taipei, Taiwan as being
25 sister cities. What do you think about that?

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1 THE PANEL MEMBER: I really don't have an opinion.

2 MR. UNDERWOOD: Okay. All right. Well, I thank you
3 for answering my questions. I picked on you a little longer
4 than I intended.

5 THE PANEL MEMBER: It's all right.

6 THE COURT: Let me interject for a minute. For
7 everybody's benefit, the court reporter is taking down
10:44 8 everything that's said, but that depends on everybody talking
9 one at a time. So please don't talk over each other, whether
10 it's the question or the answer.

11 Let's continue.

12 MR. UNDERWOOD: Thank you very much, Your Honor, and
13 my apologies.

14 Miss Childress, No. 3, a couple of the same questions.

15 The question on the questionnaire said, "Do you believe
16 that individuals or small businesses have little chance of
10:45 17 protecting their interests when they conflict with powerful
18 groups or large corporations?" And you indicated that you
19 strongly agreed with that statement.

20 THE PANEL MEMBER: Well, it goes -- in my opinion,
21 it goes to the money. The big company is going to have the
22 power more over a little company just because they have the
23 power and the money to have more control--I'm talking with my
10:45 24 hands; sorry--have more control over everything; that they can
25 do more than a smaller company.

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1 MR. UNDERWOOD: Okay. Well, if you're on this jury,
2 I think you'll hear evidence that my client ASUSTeK is a
3 larger company than the Plaintiff. Okay?

4 THE PANEL MEMBER: Okay.

5 MR. UNDERWOOD: And I think it's going to be
6 significantly larger. Okay?

7 Now, knowing that and knowing nothing else about this
10:46 8 case, knowing none of the evidence, is the fact that my client
9 is a larger company, is that going to cause the Plaintiff to
10 start out ahead of us in this case?

11 THE PANEL MEMBER: No.

12 MR. UNDERWOOD: No?

13 THE PANEL MEMBER: I'm going to give them equal
14 chance to -- I'm going to give them equal opportunity to state
15 their cases and equal -- I'm going to give them -- start off
16 equal.

17 MR. UNDERWOOD: Like Lady Justice and the scales?

18 THE PANEL MEMBER: Yes.

19 MR. UNDERWOOD: Equally balanced?

20 THE PANEL MEMBER: Yes.

10:46 21 MR. UNDERWOOD: Thank you. I appreciate it.

22 Let's go to Mr. Crumpler again, No. 13.

23 All right. Same question. Big company, little company.
24 You start off favoring one or the other?

25 THE PANEL MEMBER: No, not really.

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1 MR. UNDERWOOD: Why not?

2 THE PANEL MEMBER: Like she said, some companies --
10:47 3 and he said that some companies do have more money and can
4 throw a smokescreen and bully a smaller company into settling
5 out of court, but obviously we made it this far.

6 MR. UNDERWOOD: Okay. Nothing about this is going
7 to cause you to favor the Plaintiff over my client?

8 THE PANEL MEMBER: No.

9 MR. UNDERWOOD: I don't need to be worried?

10 THE PANEL MEMBER: No.

11 MR. UNDERWOOD: I didn't think so, but I needed to
12 ask. Thank you.

13 All right. Mr. Hess, No. 2, I had in my notes that you
10:47 14 answered that question that you strongly agreed with that
15 statement.

16 THE PANEL MEMBER: Yeah. Unfortunately in this
17 country I do think that the more money and the more power
18 enables companies or people to use that to get better
19 representation and lawyers, and the person or the company with
20 more money would probably have an advantage.

21 MR. UNDERWOOD: Okay. Well, as I've said before,
22 we've got a case with two companies. One of the companies, my
10:48 23 client, is bigger than the Plaintiff. Do I need to be
24 worried?

25 THE PANEL MEMBER: Maybe. I don't think so, but...

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1 MR. UNDERWOOD: Well, so, Mr. Hess, I'm just going
2 to pry a little bit more. And I'm not trying to be rude or
3 anything, but this is the only chance I get to speak with
4 you-all and have conversations --

5 THE PANEL MEMBER: Yes, sir.

6 MR. UNDERWOOD: -- and so I hope you'll forgive me.

7 But are you confident? Are you not confident? Because I
8 need to know that you're confident and you are certain that
9 both of these companies are going to start off on even
10 footing. If there's any doubt in your mind, I do need to know
11 that.

12 THE PANEL MEMBER: I believe that from what I've
13 gathered from listening to both sides so far, that both are
14 pretty well-established companies and both have the monetary
15 means to hire good representation. And I don't think it's a
16 David versus Goliath in this case, but I don't know what each
17 company has spent or how much they have in reserves to run
18 lawsuits like this. But from what I've heard, it sounds like
19 they're more equal than not.

20 MR. UNDERWOOD: Okay. Thank you. Thank you. I
21 appreciate that.

22 Can I get a showing of hands that just because of the
23 size of the companies, that you-all are going treat the
24 parties in this case equally, they're going to start off on
25 equal footing? Show of hands. If anyone is not confident of

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10:49 1 that, then keep your hand down, but if you're going to treat
2 us equally can I get that showing of hands, please?

3 Mr. Falish, can I speak with you? I didn't see your hand
4 up. Are you not confident?

5 THE PANEL MEMBER: I mean, I just went through -- a
6 power company needed an easement through my property, and a
7 lot of lawyers didn't even want to take it because they had
10:50 8 eminent domain and so they said there wasn't enough money for
9 them to even do it, and they had the money to say I'm going to
10 take it, and that's kind of how it was.

11 MR. UNDERWOOD: Was that a recent experience?

12 THE PANEL MEMBER: Yeah. I final -- I settled
13 because I couldn't really take it to court about three weeks
14 ago.

15 MR. UNDERWOOD: So it just happened.

16 THE PANEL MEMBER: We fought for a year-and-a-half.

17 MR. UNDERWOOD: Okay. Well, as I've told the
18 others, and I'll tell you again, these companies, they're both
10:50 19 companies; it's not a situation where we've got one person
20 versus a company. They're both companies, but my client is a
21 larger company. And I need to be sure that just because we're
22 a larger company that we're not going to be treated unfairly;
23 that you-all are going to -- that you are going to come to
24 this case and if you're on the jury you're going to go back
25 into that jury room treating us equally.

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1 THE PANEL MEMBER: I can do that.

2 MR. UNDERWOOD: You can do that?

3 THE PANEL MEMBER: Yeah.

4 MR. UNDERWOOD: I appreciate it. Thank you very
5 much, Mr. Falish.

10:51 6 Who here has been accused of doing something that you
7 didn't do? I'm going to phrase it another way. Who here's
8 been wrongfully accused? No one's been wrongfully accused? I
9 don't believe that.

10 Mr. Scirto, thank you. No. 10.

11 All right, my first question: How's your dad enjoying
12 retirement?

13 THE PANEL MEMBER: He's enjoying it. Thank you very
14 much.

10:51 15 MR. UNDERWOOD: Yeah. All right. I miss seeing him
16 on TV.

17 THE PANEL MEMBER: Thank you.

18 MR. UNDERWOOD: All right. Tell me about being
19 wrongfully accused.

20 THE PANEL MEMBER: Well, when you have siblings, it
21 just happens. I'm answering your question honestly, and yes,
22 that's -- you're wrongfully accused, yes.

23 MR. UNDERWOOD: So you, sir, you've been wrongfully
24 accused --

25 THE PANEL MEMBER: Yes.

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1 MR. UNDERWOOD: -- by a sibling.

2 THE PANEL MEMBER: Yes.

3 MR. UNDERWOOD: Is there a particular instance that
4 stands out in your mind?

5 THE PANEL MEMBER: No, but just, yeah, growing up
6 that just happens.

7 MR. UNDERWOOD: Okay.

10:52 8 THE COURT: Five minutes remaining.

9 MR. UNDERWOOD: Thank you, Your Honor.

10 And in that situation, or situations, probably, when you
11 were wrongfully accused, what do you do?

12 THE PANEL MEMBER: I mean, you do your best in this
13 case to tell your parents, I promise I did not do it, but
14 sometimes it just doesn't pan out that way, and -- you just
15 end up -- for us growing up, you just, you know, get over it
10:52 16 and you still loving your siblings, so --

17 MR. UNDERWOOD: Okay. Well, you know, there is
18 another word for that, for what you just described what you
19 were doing. What is it? It's you were defending yourself.
20 Right?

21 THE PANEL MEMBER: Correct.

22 MR. UNDERWOOD: Did you stand up for yourself?

23 THE PANEL MEMBER: Yes, I did.

24 MR. UNDERWOOD: You defended yourself.

25 THE PANEL MEMBER: Yes, I did.

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1 MR. UNDERWOOD: And why did you do that?

2 THE PANEL MEMBER: Because I felt like -- I mean, it
3 goes back, I was wrongfully accused, I did not do that, or I
4 did not do what they said I did.

5 MR. UNDERWOOD: Okay.

6 THE PANEL MEMBER: Yes.

7 MR. UNDERWOOD: Now, you recognize, sir, we've got a
8 lawsuit here. Right?

9 THE PANEL MEMBER: Yes.

10 MR. UNDERWOOD: And in this lawsuit my client
11 10:53 believes they've been wrongfully accused. All right? And so
12 does my client have the right to defend themselves in this
13 case?

14 THE PANEL MEMBER: Yes, they do.

15 MR. UNDERWOOD: Why is that?

16 THE PANEL MEMBER: Because if they feel like they
17 were wrongfully accused, in our legal system of the United
18 States we feel -- we have that right to do that. So if
19 they're doing business in the United States and they're under
20 our legal system, they have the right to defend themselves if
21 they feel like they are being wrongfully accused.

22 MR. UNDERWOOD: Thank you.

10:53 23 I have one more question for you, so I don't want you to
24 hand over the mic.

25 But for the rest of the panel, who here agrees that if

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1 you think you've been wrongfully accused, you have the right
2 to defend yourself? Can I get a showing of hands? Thank you.

3 Mr. Scirto, you had in your questionnaire one of my
4 favorite responses I've ever seen. There's a question at the
5 very end and it says, Is there anything else we need to know
6 about you? You're nodding your head. What did you say?

10:54

7 THE PANEL MEMBER: I said, if I remember correctly,
8 I like to hear both sides of the story to -- yes, that's what
9 I said.

10 MR. UNDERWOOD: How many children do you have?

11 THE PANEL MEMBER: We have five.

12 MR. UNDERWOOD: And how old are they?

13 THE PANEL MEMBER: They are -- okay. Our youngest
14 is Joshua, he's 7; 9, 12, 14, and 15.

15 MR. UNDERWOOD: And I can't imagine this would be
16 true, but is it possible they've ever gotten in fights with
17 one another?

10:54

18 THE PANEL MEMBER: It's absolutely true.

19 MR. UNDERWOOD: And like you did when you were
20 growing up and you got in fights with your siblings and you
21 ran to your parents to plead your case, do they ever run to
22 you when you get in fights?

23 THE PANEL MEMBER: Yes; absolutely.

24 MR. UNDERWOOD: And do they say, He did it, she did
25 it?

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1 THE PANEL MEMBER: Yes.

2 MR. UNDERWOOD: And whenever someone runs to you do,
3 you just take their word for it, or do you wait to see what
4 their sibling has to say about it, too?

5 THE PANEL MEMBER: I like to hear what their sibling
6 has to say and what the other sibling has to say.

7 MR. UNDERWOOD: All right. And why is that?

10:55 8 THE PANEL MEMBER: Just to make sure we're getting
9 all -- as clear of a picture as possible as to what happened.

10 MR. UNDERWOOD: Okay.

11 THE COURT: Two minutes remaining.

12 MR. UNDERWOOD: Thank you, Your Honor.

13 Now, in this case the Plaintiff gets to go first.
14 They're going to do their opening statement this afternoon
15 before we do, then we'll go. And then throughout the rest of
16 today and the rest of next week we're going to put on our
17 evidence, but they're going to go first. And I think -- I
18 think our witnesses might not even go on until a few days from
19 now.

10:55 20 So knowing that, are you going to be able to wait to hear
21 our side of the case before you make up your mind?

22 THE PANEL MEMBER: Yes.

23 MR. UNDERWOOD: All right. Anyone else? All right.
24 We go second. They go first. Can everyone else raise your
25 their hand and show me that you're going be able to wait to

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1 hear all the evidence before you make up your mind in this
2 case? All right. Thank you very much.

10:56

3 Last question, not for you, Mr. Scirto. I don't know all
4 the questions to ask. Is there anyone sitting there thinking,
5 You know what; if he had just asked this question, there's
6 something I really want to share, something I want to say
7 about why I may not be good for this case? Anyone feel that
8 way? I'm not seeing any hands.

9 Thank you very much, ladies and gentlemen. For those of
10 you who serve on this jury, we look forward very much to
11 trying your case. Thank you.

12 Thank you, Your Honor.

13 THE COURT: Counsel, approach the bench, please.

10:57

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

16 THE COURT: Mr. Thane, does the Plaintiff have any
17 challenges for cause?

18 MR. THANE: We do not, Your Honor.

19 THE COURT: Mr. Underwood, does the Defendant have
20 any challenges for cause?

21 MR. UNDERWOOD: We do not, Your Honor.

10:57

22 THE COURT: All right. I have Miss Childress, No. 3
23 as having indicated a potential scheduling problem. The next
24 one is No. 20, Mr. Boham, and the other one is 32. Without
25 challenges for cause, I don't see how we get to No. 20, so I

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1 intend to send the jury out -- or the panel out for recess but
2 keep back only Miss Childress, and we'll address her
3 scheduling issue here at the bench.

4 Does anybody see a problem with that?

5 MR. UNDERWOOD: No, Your Honor.

6 MR. THANE: No, Your Honor.

7 THE COURT: All right. Take your seats, please.

8 MR. UNDERWOOD: Thank you.

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

11 THE COURT: Ladies and gentlemen, I am going to send
10:57 12 most of you out for a recess. There is one member of the
13 panel I'm going to ask to stay back so I can talk to them
14 briefly here at the bench, and that's you, Miss Childress, but
15 everybody else is about to have a recess.

16 In a minute when I excuse you for recess, a couple of
17 things. If you'll go through the double doors in the back,
18 and as you go through the double doors and exit the courtroom,
19 if you turn to your left and go around the corner, you'll find
20 two important things--a water fountain and the restrooms.

10:58 21 The other thing I'm going ask is while you're on recess,
22 don't leave this floor and don't leave the building; stay on
23 this floor and stay in the building.

24 Third thing, while you're on recess, ladies and
25 gentlemen, if you'd like to have a conversation with somebody

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1 else on the panel, that's perfectly fine, and if you'd rather
2 not talk to anybody else on the panel, that's perfectly fine,
3 too; it's up to you.

4 But if you do have a conversation with anyone who's on
5 the jury panel this morning while you're on recess, don't talk
10:58 6 about anything that happened in the courtroom this morning.

7 Let me remind you, you have heard zero--zero--evidence in this
8 case. So please, if you have a conversation during recess
9 with one of the other members of the panel, talk about the
10 weather, talk about your family, your grandkids, talk about
11 sports--I think we have a football game coming up soon called
12 the Super Bowl--talk about whatever you want to talk about,
13 but don't talk about anything that happened in the courtroom.

10:59 14 With that, everyone but Miss Childress is excused for
15 recess, and she'll be joining you shortly. If you-all would
16 leave.

17 And, Ms. Higginbotham, why don't you lead the way.

10:59 18 (Whereupon, is the jury panel left the courtroom.)

11:00 19 THE COURT: All right. Be seated, please.

20 Counsel, approach the bench.

21 And, Miss Childress, would you come up and talk with us
22 here, please?

23 (The following was had at the bench.)

11:01 24 THE COURT: Good morning, Miss Childress.

25 THE PANEL MEMBER: Good morning.

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1 THE COURT: This is the microphone. We're just
2 going to talk quietly here.

3 THE PANEL MEMBER: Okay.

4 THE COURT: When we started this morning, I asked if
5 there was anybody who, if selected, to serve on the jury would
6 have a serious impediment to being here throughout the trial,
7 and you raised your hand. Tell me about that.

8 THE PANEL MEMBER: I live at my mother and she is
9 disabled and she's on oxygen 24/7 a day, and she's a high fall
10 risk, too. So me being this far away from the house would
11 cause --

11:02

12 THE COURT: Where is your home?

13 THE PANEL MEMBER: Ore City.

14 THE COURT: Okay.

15 THE PANEL MEMBER: I have to get somebody -- like
16 today I had to pay somebody to stay with her, so -- because
17 she's so high fall risk. I do work, but I work one block from
18 the house. And my manager knows my mother's health issues, so
19 she done told me if anything arises, I can leave work. And
20 I've had to do that. So it was just --

11:02

21 THE COURT: And your mother lives -- you live with
22 your mother, and there's nobody else there?

23 THE PANEL MEMBER: Just me and mama, my mother.

24 THE COURT: Okay. And is there anybody else, friend
25 or family close by, that could watch your mother for you if

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1 you were on this jury --

2 THE PANEL MEMBER: No.

3 THE COURT: -- that you can think of?

4 THE PANEL MEMBER: No.

5 THE COURT: Okay. And --

6 THE PANEL MEMBER: Because --

7 THE COURT: You had to hire somebody to --

8 THE PANEL MEMBER: I had -- to -- yes, I had to pay
9 somebody to sit with her when I'm here.

10 THE COURT: Okay.

11 THE PANEL MEMBER: Because I've done tried to --
12 I've done tried to -- like friends to set with her, and they
13 want to leave and not -- when it comes down to it, friends
14 ain't friends.

11:03

15 THE COURT: How old is your mother?

16 THE PANEL MEMBER: She's 63 years old.

17 THE COURT: Okay. And you told me she was on oxygen
18 all the time?

19 THE PANEL MEMBER: Yes.

20 THE COURT: What other medical conditions --

21 THE PANEL MEMBER: She's got breathing problems.
22 She has cervical cancer. She has back issues, back problems.

23 THE COURT: Okay. Mr. Thane, do you have any
24 questions of Miss Childress?

25 MR. THANE: I do not, Your Honor.

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11:03

1

THE COURT: Mr. Underwood?

2

MR. UNDERWOOD: No, Your Honor.

3

THE COURT: Okay. Miss Childress, I'm going to let you join the rest of the jury panel outside the courtroom for recess. Just don't discuss anything we talked about in here.

6

THE PANEL MEMBER: Yes, sir.

7

THE COURT: Thank you, ma'am.

8

(The Panel Member left the courtroom.)

9

THE COURT: I'm going to excuse Miss Childress. We have plenty of people. And she had to hire somebody to be with her mother today. I don't see there's any realistic way she wouldn't be in the same position throughout the trial, and probably be distracted worrying about it, so I'm going release No. 3.

11:03

13

14

15

We are going to seat eight, each side's going to strike four, so we should strike through No. 17, if my math is correct.

18

Anybody see it differently?

19

All right. It's about 4 minutes after 11:00. If you'll have your strike list to the Courtroom Deputy about 11:25.

21

Okay?

22

MR. UNDERWOOD: Thank you, Your Honor.

11:04

23

MR. THANE: Thank you, Your Honor.

24

(The following was had in open court.)

25

THE COURT: All right. While counsel exercise their

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1 peremptory challenges, the Court will stand in recess.

2 (Brief recess.)

11:07 3 THE COURT: Be seated, please.

11:34 4 Ladies and gentlemen, if you'll listen carefully when the
11:34 5 Courtroom Deputy calls your name, at that time if you'll come
6 forward and take a position in the jury box.

7 Let me explain to you how I'd like to position the jury
8 in the box. We're going to have eight jurors serve on this
9 jury. I want the first four to be on the front row and the
10 second four to be on the back row. And I'd like you to be
11 positioned in the jury box so thT there is an empty chair
12 between each member of the jury.

11:34 13 So whoever is called first, if you will come forward,
14 enter the front row of the jury box, walk all the way down to
15 the end, and stand in front of the last chair. Then whoever's
16 called second, come forward, walk down, and stand in front of
17 the third chair, leaving an empty chair between. And No. 3
18 will do the same thing. No. 4 will do the same thing. And
19 whoever is called fifth will come forward, enter the back row
20 of the jury box, walk all the way down, and stand in front of
11:35 21 the next chair. And 6, 7, and 8 will do the same thing on the
22 back row.

23 That way we'll have four jurors on the front row, four
24 jurors on the back row, and everybody will have an empty chair
25 or space between you and the next member of the jury. And

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1 those will be your positions throughout the trial.

2 And if you would, those of you that are called to serve
3 on the jury, if all eight of you would be standing in the box
4 until all eight of you get there, then I'll give you
5 instructions from there.

6 So with that, I'm going to ask Ms. Brunson to call out
11:35 7 the names of the eight members of the panel who have been
8 selected as jurors in this case.

9 THE CLERK: Bradley Hess, Gay Bennett, Savannah
11:36 10 Lindsey, Dawn Haigh, Sabrina Walker, Jonathan Crumpler, Karen
11 Neal, Jason Falish.

11:37 12 THE COURT: All right. Members of the panel who are
13 in the jury box, if you'll raise your right hand, I'm going to
14 ask Ms. Brunson to administer the oath to you at this time.

15 (Whereupon, the oath was administered by the Clerk.)

16 THE COURT: Please have a seat, members of the jury.
11:37 17 Those of you on the venire panel that were not selected
18 to serve on this jury, I'm about to excuse you. But before I
19 do that, ladies and gentlemen, I want to say thank you on
20 behalf of the Court, the Court staff, and the parties and
21 counsel in this case. Everybody on this side of the
22 gallery -- excuse me, this side of the bar recognizes that
23 you've rendered very important public service by being here
24 today.

11:37 25 Even though you weren't ultimately selected to serve on

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1 this jury, every one of you had other places to be and things
2 to do that were important in each of your respective lives,
3 and you set those aside and you appeared as summonsed and you
4 presented yourself for jury duty in this case. And even
5 though you weren't selected, the process could not have worked
6 without you, and you have, in fact, rendered a very important
7 service to our country and to the Court as a part of your
11:38 8 presence and participation this morning. So thank you on
9 behalf of all of us.

10 Also, as you leave the courtroom in just a minute through
11 the double doors in the back, if you'll exit to the right,
12 that will take you right past the Clerk's Office where Ms.
13 Clendening is. She is going to retrieve these very valuable
14 plastic numbers all of you are wearing on your clothing.
15 Don't take those home as a souvenir. We'll use them with the
16 next jury.

17 Also, if you need any written verification for an
11:38 18 employer or anyone else as to why you were here this morning
19 and not at your place of work or somewhere else, she will
20 furnish that to you. And if you have any general questions
21 beyond that about your service this morning, Ms. Clendening
22 will be happy to address that with you.

23 So with that, ladies and gentlemen, those of you not
24 selected to serve on the jury, with the thanks of the Court,
25 you're excused.

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11:39 1 (Whereupon, the jury panel left the courtroom.)

2 THE COURT: All right. Be seated, please.

3 Ladies and gentlemen of the jury, I have a few
4 instructions to give you and then I'm going to release you for
5 lunch.

6 Let me start with that. The Court has ordered the
7 Clerk's Office to provide lunch to you each day when we are in
8 trial. That means you are not going to have to go out of the
11:40 9 building and into the community and look for places to get
10 lunch. I know some of you are not familiar with the local
11 community and the eating establishments.

12 It will also save the Court time and we'll be able to
13 keep the trial moving without the time it takes for you-all to
14 go out and find lunch and get back. So plan each day while
15 you're here in trial to have lunch provided for you by the
16 Clerk's Office.

17 Also, ladies and gentlemen, while you are at your lunch
18 break today, if you haven't already done so, please make sure
11:40 19 Ms. Clendening has a good cell phone number for you. There is
20 an outside chance, not a great chance but there is an outside
21 chance that something could happen where we would need to get
22 in touch with you before you arrive for jury duty any
23 particular morning. Between the time you leave and the time
24 you come back, there might be something that would arise that
25 would cause us to need to get in touch with you. So if you

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1 haven't already done so, please make sure Ms. Clendening and
2 her office has a good working cell phone number for you.

11:41

3 And in that regard, I'm sure you probably have gotten
4 instructions on this from her already, but cell phones can be
5 brought into the jury room, but they are not to be brought
6 into the courtroom.

11:41

7 I don't allow any electronic devices in here that would
8 potentially interrupt or distract the process. Invariably,
9 the cell phone you think is on silent is not on silent. So if
10 you've got a SmartWatch that makes noise, either leave it in
11 the jury room or in your car but don't bring it into the
12 courtroom. If you have a cell phone, any kind of electronic
13 device, don't bring it into the courtroom.

11:42

14 Also, you're going to see the lawyers with smartphones
15 and laptops and tablets and other electronic devices. Those
16 are more or less, ladies and gentlemen, tools of the trade
17 now. We used a legal pad and a pen when I was in law school,
18 but now everything's digital. So if you see them with a
19 smartphone or an iPad or a similar electronic device,
20 understand that's why they have them and why you don't have
21 them.

22 They are under strict orders not to let them invariably
23 sound or disrupt the process, either. But they are
24 intended -- or they are entitled, rather, to have them and to
25 use them.

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1 Also, ladies and gentlemen, I need to give you a couple
2 of instructions about the trial and your conduct during the
3 trial. These are very important.

11:42 4 First of all, do not discuss this case with anyone. And
5 when I say do not discuss the case with anyone, I mean don't
6 communicate about the case in any way with anyone. That means
7 not to have a conversation orally. That means not to send an
8 email or a text message. That especially means not to post
9 anything for the world to see on some social media site. Do
10 not communicate with anyone about this case.

11 And let me tell you why, ladies and gentlemen. There is
11:43 12 a fundamental premise to a jury trial like this one that when
13 all the evidence is in and the jury retires to the jury room
14 to deliberate on its verdict--and the verdict is simply a list
15 of questions that the jury will then be asked to answer--when
16 you are working together to answer those questions, it is
17 imperative that the only information you have before you and
18 that you have to draw upon is the evidence that was presented
11:43 19 during this trial--the sworn testimony of the witnesses given
20 under oath and subject to cross examination and the exhibits
21 that the Court has found are admissible under the Federal
22 Rules of Evidence.

23 The exhibits and the testimony, that is the entirety of
24 the evidence in this case, and that must be the sole universe
25 of the material that you would draw upon when you address the

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1 questions in the verdict form during your deliberations.

11:44 2 Also, when I say don't communicate with anyone about the
3 case, that includes the eight of yourselves. You are not to
4 discuss the case among the eight of yourselves until all the
5 evidence is in, until I give you my final instructions on the
6 law that you are to apply, and until counsel for the competing
7 parties present their closing arguments.

11:44 8 And after those closing arguments from the competing
9 parties, I will say, ladies and gentlemen of the jury, you may
10 now retire to the jury room to deliberate on your verdict.
11 And that phrase is almost like magic, because before that
12 phrase comes out of my mouth, you must not communicate with
13 each other in any way about this case.

14 But when I say, ladies and gentlemen of the jury, you may
15 now retire to the jury room to deliberate on your verdict, you
16 go from being prohibited to discussing the evidence among
17 yourselves to being required to discuss the evidence that
11:45 18 you've heard and seen during this trial among yourselves as
19 you work together to reach a unanimous decision about how to
20 answer those questions in the verdict form.

21 I think of it kind of like a light switch. Before I send
22 you back to deliberate on your verdict, the light switch is
23 off. But when I say, you may now retire to the jury room to
24 deliberate on your verdict, that's like somebody flips the
25 light switch and it goes from off to on, and you go from being

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1 prohibited to talk about this case and the evidence among
11:45 2 yourselves to being required to as you work together to answer
3 those questions that are in the verdict form.

4 So please do not communicate with anyone in any way about
5 this case.

6 And let me just say this, folks. Unless you live alone,
7 when you get home this evening, whoever is there, the second
8 you walk through the door, they're going to say something
9 like, tell me what happened in federal court in Marshall
10 today. When you get that question, don't even attempt to
11:46 11 answer it, because if you do, you'll almost assuredly violate
12 this instruction I've given you.

13 When you get that question, just say that very serious
14 federal judge told me not to even try to answer that question.
15 Blame it on me. But it is imperative that you not communicate
16 with anyone in any way about this case, and including the
17 eight of yourselves, until all the evidence is in and you
18 retire to the jury room to deliberate on the verdict.

19 And when I say communicate, ladies and gentlemen, that
11:46 20 includes doing research. You are not to do any research about
21 anything related to this case. You are not to go online and
22 search regarding any of these parties or any of these lawyers
23 or anything that comes up. That, too, would inject other
24 information besides the sworn testimony of the witnesses and
25 the exhibits, and those two things must, again, be the only

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11:47 1 things that drives your decisions about how to answer the
2 questions in the verdict form at the end of the trial.

3 Also, ladies and gentlemen, I don't think this is likely,
4 but I can't tell you it's outside the realm of possibility.
5 This is an important case. There are no unimportant cases
6 that get to a jury trial in a United States District Court.
7 That being the case, it is possible--I don't think it's
8 likely, but it is possible--some outside party might try to
9 approach you during this trial process while you're away from
11:47 10 the courthouse and try to influence how you might decide any
11 of the issues in this case.

12 Again, I don't think that's likely, but if you should
13 have -- if you should be approached by anybody in any way that
14 you feel is awkward or out of place or not right, if you have
15 any suspicions at all, you should let Ms. Clendening know the
16 details of it, she will inform the Court, and the Court will
17 deal with it. I don't think it's likely; I can't tell you
18 that it's absolutely beyond the realm of possibility. So I
11:48 19 mention it for that reason.

20 Also, during the course of the trial through today and
21 probably through most, if not all, of next week, there are
22 going to be times when you come in the morning and leave in
23 the evening there, are going to be other times when you come
24 in close contact with some of these lawyers, some of these
25 witnesses, some of the representatives that are here for these

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1 two competing parties. And when that happens, none of these
2 people are going to talk to you. None of them are going to
3 say, good morning, how are you, I hope you had a good evening.
11:49 4 They are not going to be friendly; they're not going to be
5 gregarious like we are used to in East Texas.

6 But the reason is because I have instructed them not to,
7 and the reason I've instructed them not to interact with you
8 in any way is, again, the sole source of the information that
9 should drive your answers to the questions in the verdict form
10 must be limited to the sworn testimony of the witnesses and
11 the exhibits admitted by the Court over the course of the
12 trial. That's it.

11:49 13 And if there is anything that injects itself into this
14 process besides that that could be a part of your decision in
15 this case, then that will jeopardize the entire process. And
16 in the worst possible scenario, I might have to declare a
17 mistrial, excuse you, impanel a whole new room full of people,
18 pick a brand new jury, and start again from scratch, which
19 would waste tons of time and money and resources.

11:50 20 So, please, the stakes are high. Be sure that you follow
21 that instruction not to communicate in any way with anyone
22 about this case, as well as the other instructions that I've
23 given you.

24 And I'm going to have some additional instructions for
25 you after lunch, but at this point those are the instructions

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1 that I have for you.

2 Also, by way of housekeeping matter, in addition to lunch
11:50 3 being provided to you each day, I want you to know that the
4 Court has learned over the last 13 years that people in our
5 area would prefer to be away from their families and their
6 work and their other responsibilities the shortest number of
7 days possible, and to do that we have to work long day each
8 day.

9 I can try this case in a week if we start at 8:30 each
10 morning and we go till 5:30 or 6:00 each evening. If we start
11:50 11 at 9:00 or 10:00 and I quit at 4:30, it will take us two weeks
12 to try this case. And, invariably, the citizens that serve on
13 juries like you have tell me after the fact they were much
14 more willing to work a long day each day than to take twice as
15 many days away from all their other responsibilities.

16 So we're going to do it that way. And starting Monday,
17 I'm going to ask you to be in the jury room ready to go by or
11:51 18 before 8:30. And we'll have a recess in the morning, we'll
19 have a lunch break in the middle of the day around the noon
20 hour, give or take, and as I say, lunch will be provided to
21 you, and then we'll have one or two recesses each afternoon.

22 And let me also say this. There are going to be some
23 witnesses on the witness stand that are going to be there a
24 long time. If we get to 5:30 in the afternoon one day and a
25 witness has been on the witness stand for two hours and I can

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11:52 1 go another 20 minutes and get them finished, I'm probably
2 going to go another 20 minutes and get them finished rather
3 than send them home and make them come back to add the last 20
4 minutes the next morning.

5 So it's a little bit more art than it is science about
6 when to start and when to stop, but don't plan on us stopping
7 before about 5:30, and I don't think in the worst case we
8 would go any later than 6:30, probably closer to 6:00. But
11:52 9 let your families and the people that you're associated with
10 know that that's going to be the general timeline each day.

11 Also, many of you don't live right next door. You're
12 going to have to travel back and forth each day. I tell
13 juries that my dad was in the Navy during World War II, and he
14 always told us growing up as kids that a convoy is only as
11:52 15 fast as its slowest ship. Usually it's when I was late
16 getting to Sunday School or getting to the car to go
17 somewhere. That was his pet phrase, a convoy moves only as
18 fast as its slowest ship.

19 Well, a jury is like a convoy. If seven of you are here
20 at 8:30 in the morning and ready to go and one of you is not,
21 I can't start. I have to wait until everybody's here. So
22 please keep that in mind. And I'm sure there won't be a
23 problem, but I just want to bring that to your attention.

24 I'm going to give you one other bit of information, and
11:53 25 then I'm going to recess and let you go to lunch. I'm going

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1 to give you a thumbnail sketch of how the case is going to be
2 structured. When we come back from lunch, I'm going to have
3 some additional instructions to give to you.

4 After I give you those preliminary instructions, is what
5 they're called, counsel for the competing parties will present
6 to you what's called an opening statement. An opening
7 statement is not supposed to be an argument; it's supposed to
8 give you, the jury, a roadmap to lay out where each side
11:53 9 believes the evidence in this case will take you. It's to be
10 informative, not argumentative.

11 But each side will give you their opening statement about
12 the case. And then after each side, first the Plaintiff and
13 then the Defendant, and then after those two opening
14 statements are given, then we will begin with the actual
15 evidence. And the Plaintiff goes first because on most issues
16 the Plaintiff has the burden of proof. And the Plaintiff will
17 call their witnesses, they'll be examined by Plaintiff's
11:54 18 counsel on direct examination, they'll be cross-examined by
19 Defense counsel on cross examination.

20 And then when they've been asked all the questions that
21 they're going to be asked, they'll step down and we'll bring
22 up the next Plaintiff's witness. That's called the
23 Plaintiff's case in chief. And we'll go through each of the
24 Plaintiff's witnesses just like that.

25 And when we've heard the last Plaintiff's witness, the

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1 Plaintiff will then announce that they rest their case in
2 chief. And when the Plaintiff rests their case in chief, then
11:54 3 we'll pivot to the Defendant's case in chief. And the
4 Defendants will call their first witness, they'll be examined
5 on direct examination by Defense counsel, and they'll be
6 cross-examined on cross examination by Plaintiff's counsel.
7 And we'll go through each Defendant's witness just like we did
8 with the Plaintiff's witnesses.

9 And when we've heard the testimony of the last Defense
10 witness, then the Defendant will announce that they rest the
11 Defendant's case in chief. When the Defendant rests its case
11:55 12 in chief, the Plaintiff has an option to call what are known
13 as rebuttal witnesses to rebut the testimony of the
14 Defendant's witnesses. Plaintiff does not have to call
15 rebuttal witnesses; it's optional.

16 If they do call rebuttal witnesses, then we'll hear them
17 in the same way--they'll testify on direct examination with
18 questions from Plaintiff's counsel, they'll be cross-examined
19 with cross examination from Defense counsel, and then when all
11:55 20 the rebuttal witnesses, if there are any, are complete, that
21 will finish the Plaintiff's rebuttal case.

22 If there is no rebuttal case from the Plaintiff, then at
23 the time the Defendant rests its case in chief, that is when
24 you will have heard all the evidence. If the Plaintiff opts
25 to call rebuttal witnesses, then when the Plaintiff's rebuttal

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1 case ends, then in that situation that's when you will have
2 heard all the evidence in the case. And when all the evidence
11:56 3 is in, that's when I'll proceed to give you my final
4 instructions on the law that you must apply.

5 And let me just be clear, ladies and gentlemen. The
6 Court's instructions to you is the only source of instructions
7 on the law that you are to follow. Counsel and the parties
8 will not instruct you on the law, but the Court will. And
9 when I've given you those final instructions on the law, they
10 are sometimes called and you might have heard them referred to
11 as the Court's charge to the jury. When I give you my charge
11:56 12 to the jury, then they'll present their closing arguments,
13 first the Plaintiff and then the Defendant, and that's when I
14 will say, after the closing arguments are complete, ladies and
15 gentlemen, you may retire to the jury room to deliberate on
16 your verdict.

17 And that's when the light switch gets turned from off to
18 on. That's when you go from being prohibited to discussing
19 all the evidence you've heard to being required to discuss all
20 the evidence you've heard as you work together to come to a
11:57 21 unanimous decision as to how to answer the questions in the
22 verdict form. And I've used that word unanimous a couple of
23 times. Your answers to the questions in the verdict form have
24 to be unanimous.

25 All right, ladies and gentlemen. As I say, I'll have

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1 additional instructions after lunch. It is about 3 minutes
2 till. Lunch should be waiting for you in the jury room. So
3 with that, the jury's excused for lunch at this time.

4 (Whereupon, the jury left the courtroom.)

11:58 5 THE COURT: Counsel, is there anything that either
6 party needs to raise with the Court before we recess for
7 lunch? Anything from Plaintiff?

8 MR. THANE: Nothing from the Plaintiff, Your Honor.

9 THE COURT: Anything from the Defendant?

10 MR. UNDERWOOD: No, Your Honor.

11 THE COURT: All right. We will take approximately
12 45 minutes, and I'll be back to give the jury my preliminary
11:58 13 instructions.

14 With that, the Court stands in recess.

15 (Lunch recess.)

16 THE COURT: Be seated, please.

12:51 17 Counsel, one thing I want to take up before we bring the
18 jury in, and that is as of -- within the last 24 hours, the
19 parties have narrowed by dropping one of the three previously
20 asserted patents. I want to make sure there's no lack of
21 clarity in the record that both that asserted patent and any
22 corresponding counterclaims by the parties are no longer live
12:51 23 or part of this case.

24 Is it Plaintiff's request that the Court dismiss the
25 previously asserted patent? I believe that may be -- is that

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1 the '409 Patent?

2 MR. HANBA: '346, Your Honor.

3 THE COURT: '346? Wrong number. Is it Plaintiff's
4 request the Court dismiss the '346 Patent as well as is
5 Defendant's request that the Court dismiss any corresponding
6 counterclaims related to the '346 Patent?

12:52 7 MR. HANBA: Yes, Your Honor.

8 MR. McMAHON: Yes, Your Honor.

9 THE COURT: All right. Then based on that, the
10 Court dismisses and -- dismisses those asserted claims from
11 the '346 and the corresponding counterclaims both as to
12 non-infringement and validity. I just want to keep the court
13 of appeals at the Federal Circuit happy.

14 All right. Is the jury prepared to come back in? Let's
15 bring in the jury, please.

12:53 16 (Whereupon, the jury entered the courtroom.)

17 THE COURT: Welcome back from lunch, ladies and
18 gentlemen. Please have a seat.

12:53 19 I now have some preliminary instructions that I want to
20 give you on the record before we start with the opening
21 statements from the lawyers and then get on to the evidence.

22 You've now been sworn as the jurors in this case, and as
23 the jury you are the sole judges of the facts and, as such,
24 you will decide and determine what all the facts are in this
25 case. As the Judge, I will give you instructions on the law,

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12:53 1 decide any questions of law that arise during the trial, and
2 handle all matters related to evidence and procedure. I'm
3 also responsible for managing an efficient flow of the
4 evidence and maintaining the decorum of the court.

5 At the end of the evidence, I'll give you detailed
6 instructions about the law to apply in deciding this case and
7 I'll give you a list of questions that you are then to answer.
8 As I mentioned, this list of questions is called the verdict
9 form, and your answers to the questions in the verdict form
12:54 10 will need to be unanimous. And those unanimous answers to the
11 questions in the verdict form will constitute the jury's
12 verdict in this case.

13 Now, let me briefly tell you what this case is about.
14 This case involves a dispute regarding two United States
15 patents. I know you've all seen the video prepared by the
16 Federal Judicial Center regarding patent litigation, but I
17 need to give you these instructions on the record about a
18 patent and how one is obtained.

12:54 19 Patents are granted or denied by the United States Patent
20 and Trademark Office, which you'll hear sometimes referred to
21 simply as the PTO. You may hear it referred to simply as the
22 Patent Office. The United States Patent and Trademark Office
23 is an agency of the United States government. It is a part of
24 the U.S. Department of Commerce.

25 A valid United States patent gives the holder of the

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1 patent the right for up to 20 years from the date the
2 application is filed to prevent others from making, using,
12:55 3 offering to sell, or selling the patented invention within the
4 United States, or from importing it into the United States,
5 without the patent holder's permission.

6 A patent is a form of property called intellectual
7 property, and like all forms of property, a patent can be
8 bought or sold.

9 The violation of a patent holder's rights is called
10 infringement. And a patent holder may try to enforce a patent
12:55 11 against persons it believes to be infringers by filing a
12 lawsuit in federal court, and that's what we have in this
13 case.

14 Now, the process of obtaining a patent is called patent
15 prosecution. To obtain a patent, one must first file an
16 application with the USPTO. As I've told you, the USPTO is a
17 government agency, and it employs trained examiners to review
18 patents and applications for patents.

12:56 19 The application filed with the patent includes something
20 in it called a specification. The specification contains a
21 written description of the claimed invention telling what the
22 invention is, how it works, how to make it, and how to use it.
23 The specification concludes or ends with one or more numbered
24 sentences, and these numbered sentences, ladies and gentlemen,
25 are called the patent claims. And when a patent is granted by

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12:56 1 the PTO, it is the claims that define the boundaries of its
2 protection and give notice to the public of those boundaries.

3 Now, patent claims may exist in two forms called
4 independent claims or dependent claims. An independent patent
5 claim does not refer to any other claim in the patent; it is
6 independent. It's not necessary to look at any other claim to
7 determine what an independent claim covers.

12:57 8 On the other hand, a dependent patent claim covers at
9 least one other claim in the patent. A dependent claim
10 includes each of the elements or limitations of that other
11 claim or claims to which it refers, or as we sometimes say,
12 from which it depends, as well as the additional elements or
13 limitations recited within the dependent claim itself.

14 As a result, to determine what a dependent claim covers,
12:57 15 it's necessary to look at both the dependent claim and the
16 independent claim or claims from which it depends, or from
17 which it refers. It's said both ways, as I've noted.

18 Now, the claims of the patents in this suit use the
19 word 'comprising'. 'Comprising' means including or
20 containing. A claim that includes the word 'comprising' is
21 not limited to the elements or methods or devices having only
12:58 22 the elements that are recited in the claim, but it also covers
23 other methods or devices that add additional elements.

24 If you will take, for example, a claim that covers a
25 table, if the claim recites a table comprising a tabletop,

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12:58 1 legs, and glue, that claim will cover any table as long as it
2 contains a tabletop, legs, and glue, even if it also contains
3 other structures, such as leaves that would expand the size of
4 the tabletop or wheels that might go on the ends of the legs.

5 Now, that's a very simple example using the
6 word 'comprising' and what it means. In other words, it can
7 have other features in addition to those that are covered by
8 the patent.

9 Now, after the application is filed with the PTO, the PTO
10 assigns an examiner who reviews the application to determine
11 whether or not the claims in the application are
12:59 12 patentable--that is to say, appropriate for patent protection,
13 and to determine whether or not the specification adequately
14 describes the claimed invention.

15 In examining the application, the examiner also reviews
16 certain information about the state of the technology at the
17 time the application was filed. The Patent Office searches
18 for and reviews this type of information that is publicly
12:59 19 available or might have been submitted by the applicant. This
20 type of information is called prior art.

21 The examiner reviews this prior art to determine whether
22 or not the invention is truly an advance over the state of the
23 art at the time. Now, prior art is defined by law and I'll
24 give you specific instructions at a later time as to what
25 constitutes prior art, but in general, prior art includes

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01:00 1 information that demonstrates the state of the technology that
2 existed before the claimed invention was made or before the
3 application for a patent was filed.

4 Now, a patent contains within it a list of certain prior
5 art that the examiner has considered. The items on this list,
6 as is set forth in the patent itself, are called the cited
7 references.

01:00 8 Now, after the prior art search and the examination of
9 the application, the examiner informs the applicant in writing
10 as to what the examiner has found and whether the examiner
11 considers any claim to be patentable, in which case it would
12 be allowed. And this writing from the examiner to the
13 applicant is called an office action.

14 Now, if the examiner rejects the claims, the applicant
15 has an opportunity to respond to the examiner to try to
16 persuade the examiner to allow the claims. The applicant also
17 has the opportunity to change or amend the claims or to submit
01:01 18 altogether new claims. And the papers generated during these
19 communications back and forth between the applicant and the
20 examiner are called the prosecution history.

21 And this process, this prosecution history process, may
22 go back and forth for some time until the examiner ultimately
23 is satisfied that the application meets the requirements for a
24 patent, and, in that case, the application issues as a United
01:01 25 States patent; or, alternatively, if the examiner ultimately

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1 concludes that the application should be rejected, then no
2 patent is ever issued. Sometimes patents are issued after
3 appeals within the Patent Office or to a court.

4 Now, the fact that the Patent Office grants a patent does
5 not necessarily mean that the invention claimed in the patent,
6 in fact, deserves the protection of a patent. While issued
01:02 7 United States patents are presumed to be valid under the law,
8 a person accused of infringement has the right to argue here
9 in federal court that a claimed invention in a patent is
10 invalid.

11 It's your job, ladies and gentlemen, to consider the
12 evidence presented by the parties and to determine
13 independently and for yourselves whether or not the Defendant
14 has proven that a patent is invalid.

15 Now, to help you follow the evidence I'll give you a
01:02 16 brief summary of the positions of the parties.

17 As you know, the party that brings a lawsuit is called
18 the plaintiff. The Plaintiff in this case is Force MOS
19 Technology Company, Ltd., which you'll hear referred to simply
20 as the Plaintiff or as Force MOS. And as you know, the party
21 against whom a lawsuit is brought is called the defendant, and
22 the Defendant in this case is ASUSTeK Computer, Inc., who
23 you'll hear referred to throughout the trial simply as
01:03 24 Defendant or as ASUSTeK.

25 As I told you during jury selection, this is a case that

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1 involves allegations of patent infringement brought by Force
2 MOS against ASUSTeK. And as I've mentioned, there are two
3 United States patents that have been asserted by Force MOS
4 against ASUSTeK in this case. The first of these is United
5 States Patent No. 7,629,634. And as you may know from the
01:04 6 patent video, patents are generally referred to by the last
7 three digits of the patent number. So in this case Patent No.
8 7,629,634 will be referred to and you'll hear it referred to
9 as the '634 Patent.

10 Now, the second patent-at-issue is United States Patent
11 No. 7,812,409, which you'll hear referred to during the trial
12 as the '409 Patent. Now, these two patents will also be at
01:04 13 various times referred to collectively as the patents-in-suit.
14 You may also hear them referred to collectively as the
15 asserted patents. And these asserted patents, ladies and
16 gentlemen, generally relate to semiconductor devices.

17 Now, the Plaintiff Force MOS contends that the Defendant
18 ASUSTeK is infringing certain claims of the two
19 patents-in-suit by making, using, importing, selling, or
01:04 20 offering for sale in the United States certain products that
21 include its patented technology. Force MOS also contends that
22 ASUSTeK has induced and continues to induce infringement by
23 others.

24 Force MOS also contends that it's entitled to money
25 damages as a result of that infringement.

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1 Additionally, Force MOS contends that it's
2 entitled -- excuse me. Additionally, Force MOS contends that
01:05 3 ASUSTeK's infringement has been and is willful.

4 Now, ASUSTeK denies that it infringes any of the asserted
5 claims from the two patents-in-suit. It also denies that any
6 infringement has been willful. It further asserts that it
7 does not owe any money to Force MOS.

8 And ASUSTeK also contends that the asserted claim of the
01:05 9 '409 Patent is invalid. I say asserted claim because there is
10 only one claim from the '409 Patent that has been asserted in
11 this case, and ASUSTeK contends that it is invalid based on
12 two different theories: First, a theory of invalidity known
13 as anticipation; and, secondly and alternatively, based on a
14 theory of invalidity known as obviousness. I'll give you more
15 instructions about those two concepts later.

01:06 16 Now, I want to say this, ladies and gentlemen. I know
17 that there have been a lot of new words and terms and concepts
18 that have been thrown at you since you got to court this
19 morning. I'm going to define a lot of these terms and
20 concepts for you as we go through these instructions, the
21 attorneys are going to discuss them with you in their opening
22 statements, and then the witnesses are going to help you
23 understand them as we go through their testimony and address
24 these terms and concepts. So please, ladies and gentlemen, do
01:07 25 not feel overwhelmed at this point. I promise you, it will

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1 all come together as we go through the trial.

2 Now, your job is to decide whether or not the asserted
3 claims of the patents-in-suit have been infringed. And if you
4 decide that the asserted claim of the '409 Patent has been
5 infringed, you'll then decide whether or not that asserted
01:07 6 claim is invalid. And you'll need to decide whether or not
7 the infringement by the Defendant, if you find it, has been
8 willful. And you'll then need to decide also what amount of
9 money damages should be awarded to Plaintiff to compensate it
10 for that infringement, if you find infringement.

11 Now, my job in this case, as I've mentioned, is to tell
12 you what the law is, to handle rulings on evidence and
13 procedure, and to oversee the conduct of the trial and
14 maintain the decorum of the court.

01:07 15 In determining the law, ladies and gentlemen, it is
16 specifically my job to determine the meaning of any claim
17 language from within the asserted claims that needs to be
18 interpreted. And you should know that I have already
19 determined the meanings of various claim language from the
20 patents-in-suit that needs to be construed or interpreted, and
21 you must accept those meanings, sometimes called
22 constructions, that I will give you.

01:08 23 And you must decide whether the issues of infringement or
24 validity -- you must decide those issues relying on -- relying
25 upon and using the constructions or interpretations of that

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1 claim language that I give you. And you're going to be given
2 a document in a few moments that sets forth the meanings of
3 this language from the asserted claims that the Court has
4 interpreted or construed already.

01:09 5 Now, for any claim term or language that the Court has
6 not already construed or interpreted and has not supplied you
7 with a definition, then you are to apply the plain and
8 ordinary meaning of that language. However, if I have
9 supplied you with a definition, you must apply my definition
10 to that language and those terms throughout the case.

01:09 11 However, my interpretation of the language from the
12 claims should not be taken by you as any indication that the
13 Court has a personal opinion regarding the issue of
14 infringement or any other issue in this case because those,
15 ladies and gentlemen, are issues for you, the jury, to decide.

16 Now, I'll provide you with more detailed instructions on
17 the meaning of the claims before you retire to deliberate and
18 reach your verdict.

01:09 19 In deciding the issues that are before you, you're going
20 to be asked to consider specific legal rules, and I'll give
21 you an overview of those rules now, and then at the conclusion
22 of the case I'll give you much more detailed instruction.

23 The first issue that you're asked to decide is whether
24 the Defendant ASUSTeK has infringed any of the asserted claims
25 of the patents-in-suit. Infringement is assessed on a

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1 claim-by-claim basis. And Force MOS, the Plaintiff, must show
2 by a preponderance of the evidence that a claim has been
3 infringed. As a result, there may be infringement of one
01:10 4 claim within a patent but no infringement of another claim.

5 And also there are a few different ways that a patent can
6 be infringed, and I'll explain the requirements for each of
7 these types of infringement to you in more detail at the
8 conclusion of the case. But, in general, a defendant may
9 infringe the asserted patents by making, using, selling, or
10 offering for sale in the United States, or importing into the
11 United States, a product meeting all the requirements of that
01:11 12 claim, or one that practices all the required steps of that
13 claim, or by inducing others or contributing to others doing
14 the same.

15 Now, you're going to be asked to decide whether the
16 asserted claim of the '409 Patent is invalid. Invalidity is a
17 defense to infringement, and even though the USPTO has allowed
18 the asserted claim and even though a U.S. patent that has been
01:11 19 issued by the PTO is presumed to be valid, you, the jury, must
20 decide whether that asserted claim from the '409 Patent is
21 invalid after hearing the evidence presented during the trial.

22 You may find that a patent claim is invalid for a number
23 of reasons, including because it claims subject matter that is
24 anticipated or is obvious.

01:11 25 Now, for a patent claim to be invalid because it is

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1 anticipated, the party challenging the validity must show by
2 clear and convincing evidence that the claim is not new and
3 that all of the claim's elements are sufficiently described in
4 a single previously printed publication or patent. If a claim
5 is not new, ladies and gentlemen, it is said to be anticipated
6 by the prior art. For a patent claim to be invalid because it
01:12 7 is obvious, the Defendant must show by clear and convincing
8 evidence that the claim would have been obvious to a person of
9 ordinary skill in the field of the technology of the patent at
10 the relevant time.

11 Now, you'll need to consider a number of questions in
12 deciding whether the invention claimed in the asserted patent
13 is obvious, and I'll provide you with more detailed
01:12 14 instructions on these questions at the end of the trial. If
15 you decide that any claim from the patents-in-suit has been
16 infringed and is not invalid, that is, the presumption of
17 validity has been upheld, then you'll need to decide whether
18 the Defendant's infringement has been willful.

19 The Plaintiff has the burden to prove willful
20 infringement by a preponderance of the evidence, and if you
01:13 21 decide that any infringement you have found has been willful,
22 that should not and must not impact any award that you would
23 give. The Court will take willfulness into account later, if
24 you find it.

25 Further, if you decide that any of the claims of the

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1 patents-in-suit have been infringed and are not invalid,
2 you'll also need to decide at that time what amount of money
3 damages should be awarded to the Plaintiff to compensate for
4 that infringement.

01:13 5 A damage award made in a patent case like this must be
6 adequate to compensate the patent holder for the infringement,
7 and in no event may a damage award be less than what the
8 patent holder would have received if it had been paid a
9 reasonable royalty for the use of its patent.

10 However, the damages you award, if any, are meant to
11 compensate the patent holder, and they are not meant to punish
01:14 12 the Defendant, and you may not award any damages in the form
13 of an additional amount as a fine or a penalty above what is
14 necessary to fully compensate the patent holder for the
15 infringement.

16 Also, ladies and gentlemen, damages cannot be
17 speculative, and the Plaintiff Force MOS must prove the amount
18 of its damages for the alleged infringement by a preponderance
19 of the evidence. However, the fact that I'm instructing you
01:14 20 about damages now does not mean that Force MOS is or is not
21 entitled to recover damages.

22 Now, over the course of the trial you're going to be
23 hearing from a number of witnesses, and I want you to keep an
24 open mind as you're listening to the evidence and not decide
25 any facts until you have heard all the evidence. And this is

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01:15

1 important, ladies and gentlemen. While the witnesses are
2 testifying, remember you will have to decide the degree of
3 credibility and believability to allocate to each of the
4 witnesses and all of the evidence.

01:15

5 So while the witnesses are testifying, you should be
6 asking yourselves things like this: Does the witness impress
7 you as being truthful? Did he or she have a reason not to
8 tell the truth? Does he or she have any personal interest in
9 the outcome of the case? Does the witness seem to have a good
10 memory? Did he or she have the opportunity and ability to
11 observe accurately the things that they've testified about?
12 Did the witness appear to understand the questions clearly and
13 answer them directly? And, of course, does the witness'
14 testimony differ from the testimony of other witnesses? And
15 if it does, how does it differ? These are some of the kinds
16 of things that you should be thinking about while you're
17 listening to each and every witness over the course of the
18 trial.

19 Also I want to talk to you briefly about expert
20 witnesses.

01:16

21 When knowledge of a technical subject may be helpful to
22 the jury, a person who has special training or experience in
23 that particular field--we refer to them as an expert
24 witness--is permitted to testify to you about his or her
25 opinions on those technical matters. However, ladies and

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1 gentlemen, you're not required to accept the opinions of any
2 expert witness. It's up to you to decide whether you believe
3 what the expert witness, or any witness for that matter, has
01:16 4 to say, and whether you believe it's correct or incorrect, or
5 whether you want to believe it or give it any weight.

6 Now, I anticipate there are going to be expert witnesses
7 testifying in support of each side in this case, but when they
8 do, and when you listen to their qualifications, and when they
9 give you an opinion and explain the basis for that opinion,
10 you will have to evaluate what they say, whether you believe
11 it, and to what degree, if any, that you want to give that
12 opinion weight --

01:17 13 Remember, ladies and gentlemen, judging and evaluating
14 the credibility and the believability of each and every
15 witness is an important part of your job as jurors.

16 Now, during the trial, it's possible that there will be
17 testimony presented from one or more witnesses that will be
18 presented to you through what we call a deposition. In trials
19 like this, it's difficult to get every witness here in person
20 at the same time. So before the trial begins, the lawyers for
01:17 21 each side take the depositions of the witnesses.

22 In a deposition, the court reporter -- a court reporter
23 is present, the witness is present and sworn and placed under
24 oath just as if he or she were in open court, and then the
25 parties through their counsel asked the witness questions and

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1 the witness answers those questions, and all of that is taken
2 down, transcribed, and recorded. Often it is recorded through
3 video equipment in addition to being transcribed in writing.

01:18

4 Now, during the course of this trial, there may be
5 witnesses who don't appear and testify live from the witness
6 stand who have previously been deposed under oath, and it may
7 be that the lawyers presenting that witness' testimony believe
8 that only a portion of what they said during the deposition is
9 important for you to hear.

01:18

10 Let me say it this way, ladies and gentlemen. Most
11 depositions last for up to seven hours. It may be that a
12 party that wants to present some testimony from a witness
13 through a deposition who can't be here in person has decided
14 that only 20 minutes of what they said was relevant and
15 important for you to hear.

01:19

16 We will not sit here and listen to seven hours of
17 questions and answers to get 20 minutes of information. There
18 is a process through which those particular questions and
19 answers that make up that 20 minutes of relevant information
20 in this example can be cut and spliced and put together. That
21 means that when you're presented with testimony through a
22 deposition witness, you are likely to see irregularities and
23 glitches and hear things that reveal where those splicing and
24 reattaching functions have taken place.

25 When that happens, don't focus on those irregularities or

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1 those glitches or those differences; focus on what the witness
2 says under oath, what the questions are, and what the answers
3 are. But by doing that, we save a lot of time to get the
01:19 4 relevant information without having to listen to the entirety
5 of the deposition.

6 Deposition testimony is entitled to the same
7 consideration insofar as possible and is to be judged as to
8 its credibility, weight, and otherwise considered by you, the
9 jury, in the same way as if the witness had been present in
10 open court and given their testimony live from the witness
01:20 11 stand.

12 Now, I want you to also know, ladies and gentlemen, it's
13 possible some of the documents that you may be shown during
14 the course of the trial may have words or sections or portions
15 that have been blacked out or, as we say, redacted. If you're
16 shown documents that have redactions in them, understand that
17 those are there because the Court determined that that
18 material should not be shown to the jury, and the Court
19 ordered those redactions.

01:20 20 Do not try to guess what's been blacked out. Do not
21 focus on what's not visible through the redactions. Focus on
22 what is visible, focus on what has not been redacted, and give
23 that your attention when those exhibits are presented to you.

24 Now, during the course of the trial, it's possible that
25 from time to time the lawyers will raise objections, and when

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01:21 1 they do, I will give rulings on those objections. You should
2 understand it's the duty of an attorney to object when the
3 other side offers testimony or other evidence that the
4 attorney believes is not proper under the rules of the Court,
5 the rules of evidence, or the rules of federal
6 procedure -- the Federal Rules of Civil Procedure.

7 Upon allowing the testimony or other evidence to be
8 introduced over the objection of an attorney, the Court, in so
9 doing, does not indicate an opinion as to the weight or effect
10 of that testimony.

01:21 11 Also, ladies and gentlemen, you should know that prior to
12 today, the Court has already made certain rulings prohibiting
13 reference to certain matters in this case, and you may hear
14 these referred to during the course of the trial as limine
15 orders or motions in limine. You might even hear it called
16 M-I-L for short, which stands for motion in limine. That
17 means the Court has ordered that that material should not be
01:22 18 presented during the trial, either because it's not relevant
19 or for other appropriate reasons.

20 If you hear one of the lawyers during the case refer to a
21 limine matter, an order in limine, or a motion in limine,
22 that's what they're referring to. If a question or response
23 violates one of these prior limine rulings by the Court, then
24 I will instruct you just to disregard that question and
25 answer. But I'm giving you these instructions now simply to

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01:22 1 explain to you what the word 'limine' means and so you won't
2 be confused if you hear it during the trial.

3 As I've told you, ladies and gentlemen, you are the sole
4 judges of the credibility and the believability of all the
5 witnesses and the weight and the effect to give to all the
6 evidence.

7 Now, I want to compliment the parties because prior to
01:23 8 today through extended pretrial procedures we have already
9 dealt with many issues that would otherwise have to come up
10 during the trial and you would have to sit through and listen
11 to.

12 The Court has considered the admissibility of all the
13 exhibits that you'll be shown during the trial. I've already
14 heard arguments about why they should be admitted or why they
15 shouldn't be admitted under the Rules of Evidence. And having
16 heard those arguments and had an opportunity to question
17 counsel about them, I've issued rulings.

01:23 18 So all the exhibits that are admissible in this case have
19 already been determined. That means when either of the sides
20 wants to show you an exhibit that I've already found to be
21 admissible, they don't have to go through the process of
22 formally offering it, explaining the basis for it, hearing an
23 objection to it, and the basis for that objection, and then
24 related argument and questioning from the Court.

25 Said another way, that has saved you a lot of time that

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1 you will not have to listen to in sitting in that jury box,
01:24 2 and I want to compliment the parties for working with the
3 Court through their counsel in taking up all of those matters
4 in advance of trial to save us time during the process of the
5 trial and to avoid disruptions and interruptions.

6 Even though that's already happened, it is still possible
7 objections from counsel will arise during trial. If I should
8 sustain an objection to the question addressed to a witness,
01:24 9 then you must disregard the question entirely and you may not
10 draw any inference from the wording of the question or you may
11 not guess or speculate about what the witness would have said
12 if the Court had permitted them to answer that question.

13 However, if I overrule an objection to a question
14 addressed to the witness, then you must consider the question
15 and the answer just as if no objection had been made in the
16 first place.

17 Now, you should know, ladies and gentlemen, that the law
01:25 18 of the United States permits a United States district judge to
19 comment to the jury on the evidence presented through a jury
20 trial such as this. However, the jury's not required to
21 accept those comments and may disregard them completely
22 because when they're made, they're simply an expression of the
23 Court's own opinion.

24 That being the case and even though the law may permit me
25 to make comments to you on the evidence during the trial, as I

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01:25 1 told you during jury selection, I'm going to work very hard to
2 make sure you have no idea what I think about the evidence in
3 this case, because deciding the facts from the evidence
4 presented is your job and it is not my job in this case.

5 And even though the law might allow me to make comments
6 to you on the evidence presented, I'm going to work diligently
7 to avoid doing that. And you should not take anything you
8 hear or see coming from me or you think you hear or see coming
01:26 9 from me as something to consider in deciding what the ultimate
10 facts are in this case.

11 Now, Mr. McRoberts, our court reporter sitting in front
12 of me, is taking down everything that's said during the course
13 of the trial. He's been taking down everything that was said
14 during jury selection this morning, and he will take down
15 everything that's said in the courtroom until you are
16 discharged and the verdict has been accepted and you leave the
17 courtroom. That's why it's important for people to talk one
01:26 18 at a time and not talk two at a time so it can be clearly
19 heard and transcribed.

20 However, I want you to know that the written
21 transcription of what's said during the trial is not going to
22 be available for you to take back to the jury room with you
23 and review during your deliberations. That means you're going
24 to have to rely on your memory of the evidence when you
25 deliberate on your verdict in this case.

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01:27 1 The transcript that the court reporter prepares is
2 prepared in case there is an appeal of this decision to a
3 higher court. Again, it's not going to be available for you
4 to review during your deliberations. However, in a few
5 minutes you're going to be given a juror notebook, and in
6 these notebooks you will find places where you can take notes
7 over the course of the trial, if you wish to. You're not
8 required to take notes, but you have the option of taking
01:27 9 notes. And the notes are to help you recall and refresh your
10 recollection of the evidence, your memory of the evidence.

11 If a juror does not take notes, that juror should not be
12 overly influenced by the notes of another juror. Again, notes
13 are only for the purpose of refreshing your recollection about
14 the memory of the testimony and evidence given during the
15 trial. And a juror should not abandon their own recollection
01:28 16 because the notes of some other juror shows something
17 differently.

18 Now, I'm going to ask our Court Security Officer to pass
19 out these juror notebooks to you at this time.

20 (Pause in proceedings.)

01:29 21 THE COURT: Thank you, Mr. Barnett.

22 In these notebooks, ladies and gentlemen, you'll find
23 several things. First of all, at the beginning of the
24 notebooks, you should find a complete copy of the two U.S.
25 patents that are at issue in this case. As I told you, we

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1 call these the asserted patents or the patents-in-suit.

01:29 2 Behind the actual patents or following the actual
3 patents, you will find a section where certain language from
4 the claims that have been asserted has been interpreted or
5 construed by the Court. You'll see a chart with language on
6 one column and constructions or interpretations on the
7 corresponding column.

8 Those are cases where the Court has already interpreted
9 the meaning of certain language from the asserted claims, and
10 as I've told you, you must apply my constructions or
01:29 11 interpretations to that language throughout the trial and as
12 you discharge your duties in dealing with the issues of
13 infringement and invalidity.

14 Now, behind that claim construction ledger or chart, you
15 should find a section of tabbed witness pages. Those are for
16 each witness that may testify in the case, and there should be
17 a page for each witness with their photograph imposed at the
18 top, their name underneath the photograph, and then the
01:30 19 remainder of that page with ruled lines on it in case you'd
20 like to take notes about that witness while you're listening
21 to them testify.

22 And then behind all those witness pages, you should find
23 a new three-hole punch legal pad so that you can take
24 additional notes there if you wish to during the course of the
25 trial. And in the front pocket of each notebook, there should

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1 be a pen for taking notes in case you don't have one readily
2 available to you.

01:30 3 Now, these notebooks, ladies and gentlemen, are for your
4 use, and they are not meant to be laying around where somebody
5 who shouldn't see them has access to them. So they should be
6 in your possession at all times, unless I instruct you
7 otherwise.

8 When you leave at the end of the day, I'll ask you to
9 take them to the jury room, close them, and leave them on the
10 table there so they'll be available the next day when you come
11 in. During lunch, I'll instruct you to take them with you
12 while you recess for lunch in the jury room.

01:31 13 Now, there may be times during the trial when we take a
14 short recess, mid-morning, mid-afternoon, and you're not going
15 to be out of the jury box very long. In those cases I may
16 say, ladies and gentlemen, simply close and leave your
17 notebooks in your chairs. And if I do, that's fine. But the
18 notebooks are not to be left laying around where someone
19 besides each of you has ready access to them.

01:31 20 All right. In a moment we're going to hear opening
21 statements from the attorneys, and as I've told you, the
22 purpose of those opening statements is to give you, the jury,
23 a roadmap of what each side expects to offer by way of its
24 evidence.

25 And you should remember now and throughout the trial,

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1 ladies and gentlemen, that what the lawyers tell you is not
2 evidence. The evidence is the sworn testimony from the
3 witnesses, either presented live from the witness stand in
01:32 4 open court or presented to you through a deposition, as I've
5 already described to you, as well as the exhibits that the
6 Court has already found admissible and has allowed to be
7 admitted during this trial.

8 Those two things, the witnesses' testimony live or by
9 deposition and the exhibits shown during the trial constitute
10 all the evidence in this case. What the lawyers tell you is
01:32 11 not evidence, but what the lawyers tell you is their
12 impression of what the evidence is. And the lawyers have a
13 duty trying to point out to you, the jury, what they believe
14 the evidence will show. But just remember what they tell you
15 is not evidence.

16 Now, after opening statements have been given, the
17 Plaintiff will have an opportunity to call its witnesses and
18 present its evidence, and we'll proceed at that time with what
19 I've described to you as the Plaintiff's case in chief. Then
01:33 20 we'll proceed to the Defendant's case in chief, as I have
21 described, and if the Plaintiff calls rebuttal witnesses,
22 we'll hear any rebuttal witnesses. After that, you will have
23 heard all the evidence in this case.

24 After you have heard all the evidence in this case, I
25 will give you instructions on the law that you are to apply,

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01:33 1 which I mentioned to you is sometimes called the Court's
2 charge to the jury. After I have given you my charge to the
3 jury or final instructions on the law, then counsel for the
4 competing parties will present their closing arguments.

5 And after those closing arguments, I will instruct you to
6 retire to the jury room to deliberate on your verdict. And at
7 that time I will send a written verdict form containing
8 various questions in it with you when you retire to the jury
9 room.

01:34 10 Let me repeat my earlier instruction that you are not to
11 discuss the case among yourselves at any time during the trial
12 until I direct you to retire to the jury room and deliberate
13 on your verdict. Only then should you discuss the evidence in
14 the case, but then you must discuss the evidence in the case
15 as you work together to arrive at a unanimous decision as to
16 how to answer those questions that will be set forth in the
17 verdict form.

01:34 18 Also, I want to briefly remind you that during the course
19 of the trial you are not going to be spoken to or engaged with
20 or interacted with any of the trial teams or any of the
21 support staff or anybody related to either of these two sides
22 of this case, and that's because I've instructed them not to.
23 And that's because the only matters before you that you should
24 consider when you deliberate on your verdict is the sworn
25 evidence and testimony of the witnesses, either presented live

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01:35 1 or by deposition, as well as the exhibits that have been shown
2 to you and admitted during the course of the trial. There
3 must not be any other information injected into the case from
4 any source.

5 And quite honestly, ladies and gentlemen, that
6 fundamental instruction is so important, you're probably going
7 to hear that from me over and over throughout the trial. As a
8 matter of fact, you're probably going to be sick from hearing
9 that from me by the time we get to the end of the trial. But
10 I will repeat it time and time again because it is so
01:35 11 fundamentally important and because the violation of it would
12 jeopardize the entirety of the whole process.

13 So with those instructions, ladies and gentlemen, we will
14 now hear opening statements from counsel for the respective
15 parties.

16 Mr. Hanba, you may make or present the Plaintiff's
17 opening statement at this time. Would you like a warning on
18 your time?

19 MR. HANBA: Yes, Your Honor; two minutes.

20 THE COURT: I'll warn you when you have two minutes
21 remaining. You may proceed with Plaintiff's opening
22 statement.

23 MR. HANBA: Thank you.

01:36 24 May it please the Court.

25 THE COURT: Please proceed --

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1 MR. HANBA: This case involves tiny complex
2 semiconductors called MOSFETs, which are used in almost every
01:37 3 modern electronic device today. But at its core this case
4 isn't just about the technology; it's about the fact that no
5 matter who you are, where you live, you can't use someone
6 else's patented technology here in the United States, period.
7 It's against the law. And the evidence will show that's
8 exactly what ASUS has done and continues to do, as we sit here
9 today in court.

01:37 10 My name is Chris Hanba. I represent Force MOS, the
11 Plaintiff in this case. I want to talk to you about three
12 things today. First, I want to talk to you about Force MOS,
13 the folks who developed the technology and who own the
14 asserted patents.

15 Second, I want to talk to you about some of the evidence
16 that you're likely to see and hear over the course of the
17 trial, including some of the patents -- the ASUS products
18 accused of infringing the patents, and some of the witnesses
19 that you'll likely see and hear --

01:37 20 And, third, I'd like to preview some of the defenses that
21 you may hear from ASUS this week.

22 So let's start with Force MOS. You'll hear this week
23 that Force MOS is a leader in modern MOSFET design. You'll
24 hear that the company was founded in September of 2007 by two
25 long-time friends, Dr. Dover Chung and Dr. Fu-Yuan Hsieh.

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1 Dr. Chung is the current chairman of the company, and
01:38 2 Dr. Hsieh has since retired from Force MOS.
3 So you've heard the term MOSFET a bit, so what is a
4 MOSFET? Well, MOSFET is an acronym. It stands for metal
5 oxide semiconductor field effect transistor. And don't worry,
6 we'll all just call it a MOSFET this week. You'll hear
7 testimony that these tiny electronic components are integral
01:38 8 to modern technology. They're everywhere, from cell phones to
9 cars to panels like this, and they're even in battery-powered
10 drills. There are thousands of them in this courtroom between
11 all of our cell phones and computers and all of the other
12 electronics here.
13 Now, in its simplest terms, a MOSFET is a switch. They
14 are small electronic components that manage the flow of
15 current in an electronic circuit.
01:39 16 So you'll learn all about MOSFETs from the technical
17 expert, Dr. Neikirk. And here we see an image of a sample
18 -- or, excuse me, of a simple MOSFET. And so we'll fade in on
19 the bottom, and you'll hear that this is called a source line.
20 And on the top, you'll hear that this is a drain line.
21 The source line has power or current coming into it.
22 Now, I'll show you a control line on the left-hand side. And
01:39 23 as you'll hear from the testimony, you can think of the
24 control line a little like a dimmer switch or a water valve.
25 And the control signal is represented in blue. It's over on

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1 the left there.

2 And so what you'll hear is when it's off, there's no
3 signal going to the MOSFET, so the MOSFET doesn't send that
4 power or current from the source line up through the drain
5 line. But when you turn it up just a little bit, the signal
01:40 6 tells the MOSFET, let in some of that source. And it goes
7 through the MOSFET out through the drain. We'll represent
8 that in a lighter shade of red.

9 Now, if we crank it up all the way to six, well, then the
10 MOSFET switch is fully open and all the power from the source
11 line makes its way through the MOSFET and out the drain line.
12 And when we go down to zero, it's off again, there's no power
13 or current that makes it through the MOSFET.

01:40 14 So in modern devices like cell phones and computers, this
15 process of on and off happens millions of times. This is
16 obviously an oversimplification of how a MOSFET works, but it
17 gives you some background of what you'll hear this week.

18 The patented technology that Dr. Neikirk will talk about
19 is all about what's inside the MOSFETs, the materials that are
20 used and the configuration of those materials.

01:41 21 So you'll hear that going back to the early days of Force
22 MOS, Dr. Chung and Dr. Hsieh understood the critical role that
23 MOSFETs would play. They didn't invent MOSFETs, but they
24 wanted to improve them. This focus and effort resulted in
25 Force MOS developing a number of inventions, and they have 150

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01:42 1 United States patents from those inventions. And they did
2 this all while being a relatively small company of about 50
3 people.

4 Now, you would think with all this patented technology
5 that they'd have no problem breaking into the consumer
6 electronics market, but that wasn't the case. You'll hear
7 testimony that the hurdles were immense because what you'll
8 hear is you'll hear, as you heard this morning, that Force MOS
9 is a Taiwanese company, and the electronics market in Taiwan
01:42 10 is brutal and occupied by older larger players. Markets
11 filled with a lot of well-established companies that don't
12 want to see any of these newcomers come in and upset the
13 status quo.

14 Being a small company, you'll hear that Force MOS
15 initially struggled to gain traction, but over time you'll
16 also hear that they started to gain momentum and build a good
17 list of clients.

18 Now, you'll hear testimony, and Mr. Underwood said it
01:42 19 this morning, that ASUS is a big company and they're pretty
20 big. They're the fifth largest computer maker in the world by
21 sales; they have about 17,000 employees. And as the testimony
22 will show, that's why this date, July 18th, 2017, is such an
23 important date in the history of Force MOS. That's the date
24 that Force MOS started selling its MOSFETs to ASUS, one of
01:43 25 these great established well-established companies in Taiwan.

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1 This business relationship marked a significant milestone
2 for Force MOS. And you'll hear that, although ASUS wasn't
3 Force MOS's biggest client, it was an important client because
4 of ASUS's status as a company in Taiwan.

5 Now, even with all these -- even with ASUS and all of
01:43 6 their other clients, Force MOS remained very small, but it was
7 growing and things were good. Well, you'll hear things were
8 good until they weren't good. That's usually how it happens.

9 You'll hear evidence that things took an unexpected turn
10 and I think you heard it a little bit this morning that ASUS
11 failed to renew its annual contract with Force MOS. Force MOS
12 was disappointed, and you'll also hear evidence that, faced
13 with this set-back, Force MOS did what it always did--it
14 continued to innovate and worked hard.

01:44 15 You'll hear testimony that this went on for a few months,
16 and Force MOS started to hear some rumblings in the
17 marketplace. They heard that some manufacturers were buying
18 infringing MOSFETs and putting them in their computers. So
19 Force MOS did what anyone would do. You'll hear that they
20 went out and started looking into those rumors.

21 The evidence will show, and you'll hear it from Force
01:44 22 MOS, that they started looking into ASUS, mainly because that
23 relationship ended so abruptly. So they went out and they
24 bought a computer, a simple ASUS computer. They opened up
25 that computer, they took a look.

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1 And here Dr. Neikirk will describe there are a lot of
2 MOSFETs in there. They took out those MOSFETs, examined the
3 MOSFETs, and had them tested. And guess what they found?

01:45 4 Well, the evidence will show that ASUS was using infringing
5 MOSFETs at the time it had a contractual relationship with
6 Force MOS.

7 And the evidence will show that Force MOS wanted to do
8 something about that, so they sent them a letter. They asked
9 them to stop. You'll hear later today from an ASUS employee
10 by the name of Jim Tsao, ASUS didn't stop. What they did is
01:45 11 they attempted to effectively ban Force MOS's products from
12 the industry. That's what Mr. Tsao will tell you.

13 You will hear that Force MOS would rather compete in a
14 fair marketplace. Whoever builds and designs the best MOSFETs
15 for the best value wins. But the evidence will show that ASUS
16 isn't interested in fair competition, and that's why we're
17 here, in front of you, to hold them accountable.

18 And so with that background for context, I'd like to
01:46 19 preview some of the evidence you'll see and hear this week.

20 So we'll present evidence to you in a number of different
21 ways and with different witnesses. First, we'll present
22 evidence through live witnesses. An example of that live
23 witness is Mr. Rafael Chung.

24 Mr. Chung, would you please stand?

25 Thank you, Mr. Chung. Thank you.

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1 You met Mr. Chung this morning. Mr. Chung is Force MOS's
2 corporate representative, and he will be our first witness.
01:47 3 Mr. Chung is the company's deputy general manager and, as you
4 heard, he's the son of the co-founder.

5 Mr. Chung is a businessman. Mr. Chung went and got his
6 Master's degree in business from the Brunel University in
7 England. He's going to tell us about the business aspects of
8 Force MOS. Mr. Chung is a fact witness, meaning he'll share
9 facts in his personal knowledge.

01:47 10 Another example of a live witness that you'll hear is
11 Dr. Dean Neikirk. Dr. Dean Neikirk is an expert witness in
12 UT, decades of experience down in UT. And as an expert
13 witness, Dr. Neikirk can share not just his personal
14 knowledge, but he can share his opinions, his expert opinions.
15 Like Mr. Chung, though, his testimony is also evidence.

16 Now, Dr. Neikirk will show you two types of evidence.
01:47 17 The first type of evidence that he'll show you are admitted
18 exhibits that His Honor mentioned earlier. Those are the
19 exhibits that you'll have when you want -- after the end of
20 the case when you deliberate. The other are demonstrative
21 exhibits. These are the graphics and the visual aid to his
22 testimony. I think we've all heard that a picture is worth a
23 thousand words.

24 So we'll talk more about Dr. Neikirk in a little bit.

01:48 25 As another example, we'll call some of ASUS's employees

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1 as adverse witnesses. An adverse witness works for ASUS, so
2 they are adverse to us. But we want you to hear their
3 evidence in our case because we think it's so important.

4 There are two ways to call an adverse witness. We can
5 call them up on the stand. The second way is through a video
6 deposition. As His Honor described in his preliminary
01:48 7 instructions, deposition testimony is given under oath, and
8 deposition testimony is every bit as important as the live
9 witness testimony.

10 You'll see and hear evidence over the next few days
11 related to a lot of things, technical evidence about the
12 patents and the accused technology, you'll hear financial and
13 business records about some of the companies and some of the
14 accused products.

15 So with that, let's take a look at some of the technical
16 evidence that you'll see starting with the Force MOS patents.

01:49 17 So here we see two patents owned by Force MOS. The first
18 one is U.S. Patent No. 7,629,634. As you heard in the patent
19 video and from His Honor this morning, we refer to patents
20 as -- by their last three numbers. So we'll just call this
21 the '634 Patent.

22 You'll see that the named inventor of this patent is
23 Dr. Fu-Yuan Hsieh, one of the co-founders of Force MOS.

01:49 24 The next patent is the '409 Patent. And, again, if we
25 look, we'll see that Dr. Fu-Yuan Hsieh, a pioneer in the

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1 industry, is one of the co-founders -- is a co-founder -- who
2 is a co-founder is the inventor.

3 Now, Dr. Neikirk will testify about the technical
4 benefits of the patent. You'll hear from Dr. Neikirk that the
5 '634 and the '409 Patents inventions result in improved
6 ruggedness and resistance to failure and provide more
01:50 7 flexibility in circuit design. That's very technical. But
8 what does it mean to you and me? Well, it means they cost
9 less, work better, last longer, and are safer. That's what
10 these patents do.

11 So with that, let's take a look at some of ASUS's -- some
12 of the ASUS products that are accused of infringing. And so
13 here up on the screen, we have three representative ASUS
14 products. They're laptops. And on the bottom, we have four
01:50 15 representative components that go into desktops or gaming
16 computers. These are representative products.

17 For the trial, the parties agreed to narrow the scope of
18 products and say these are the products that represent all of
19 ASUS's products. This keeps us from having to go through the
20 thousands of computers that ASUS sells.

21 Now, when you open up these computers like we saw
22 earlier, you see the MOSFETs, and these are some of the
23 MOSFETs that you will see highlighted in red. There are
01:51 24 hundreds of these in each computer. You'll hear names like
25 PANJIT and UBIQ and LRC.

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1 Now, just a few minutes ago I told you about the benefits
2 of the patents, the benefits of the technology. I'd like to
3 spend a few moments now talking about some of the technology
4 that creates that benefit.

01:51 5 We'll use the '634 Patent as an example. So on the
6 bottom of the page, you see a figure within this patent.
7 You'll hear from Dr. Neikirk that this is figure 2G of the
8 patent. And Dr. Neikirk will say and the evidence will be
9 presented that this is just an example within the patent.

10 This figure, as you'll hear, has a number of shapes that
11 are in a MOSFET. These different shapes represent tiny, tiny
12 components and structures in the MOSFET. These structures are
01:52 13 arranged in a specific configuration using specific materials.
14 It's this design of the specific configuration and the
15 specific materials that's described in the claims.

16 And as His Honor noted in his preliminary instructions to
17 you, it's the claims that bind -- excuse me, that set the
18 boundaries of the invention.

19 Now, what do these structures look like in real life?
01:52 20 Well, we'll put one up here. As Dr. Neikirk will tell you and
21 see in more detail, this image was taken by a scanning
22 electron microscope, an SEM for short. You'll hear that these
23 are called *trenched MOSFETs*. Quite simply because you see
24 that red line there, those *Us*, those are *trenched gates*.
25 That's why they call them *trenched MOSFETs*. You'll hear later

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1 about these more in the case.

01:53 2 Now, remember when I said that these were tiny? Well,
3 what you'll learn is that these gates are about a half a
4 micron in width. And to put that into some perspective, the
5 white blood cells in our body are 20 times bigger than that.
6 So these -- that's why we need that scanning electron
7 microscope to see what's in there.

8 So if we could, we'll bring up claim 1 of the '634
9 Patent, which you'll hear about throughout the trial and
01:53 10 Dr. Neikirk will talk about. You can see the claim is broken
11 down into different paragraphs. Each one of those paragraphs
12 represents a different element.

13 To prove that ASUS is infringing the patent claims, Force
14 MOS must show that ASUS practiced -- excuse me, that the ASUS
15 products have MOSFETs that meet each and every one of those
16 claims, every one of them. That's our burden and we're eager
17 to show you.

01:54 18 Our technical expert, Dr. Neikirk, will discuss the
19 technology, and he'll walk you through the infringement
20 evidence. He'll show you a number of things, including like
21 this, a specification sheet of one of the products. He'll
22 also show you more SEMs like we just looked at previously, and
23 he'll also show you another type of image called an EDS.

24 Dr. Neikirk will show you the images -- excuse me, show you
01:54 25 the evidence, and if that element is infringed, he'll check

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1 that box that you see over on the left.

2 Now, a little more about Dr. Neikirk. Dr. Neikirk is out
3 in the gallery.

4 Would you please stand?

5 Thank you, Dr. Neikirk.

6 Dr. Neikirk is a retired professor from UT, the
7 University of Texas down in Austin, where he's taught and
8 performed research for over 40 years in a number of different
9 electronics areas, including semiconductors, which is what a
01:55 10 MOSFET is. Dr. Neikirk earned his Ph.D. and Master's from Cal
11 Tech, and Dr. Neikirk has served as an expert in a number of
12 cases.

13 Related to how the SEM images were taken or those
14 pictures, we'll hear testimony from some -- from Mr. Ben Diep.
15 Mr. Diep works for a company called Microtech down the road in
16 Plano. So Microtech specializes in taking SEM images like the
01:55 17 one I showed you later. As a matter of fact, Mr. Diep is the
18 one that took that image.

19 Dr. Neikirk will testify that he relies on Microtech to
20 take these images, to prepare the samples and to take these
21 images. In fact, Dr. Neikirk will tell you he's used
22 Microtech a number of times, and he's actually even toured
23 that facility.

24 Mr. Diep will describe the process of going through
01:56 25 taking that MOSFET and making it ready and then creating the

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1 SEM image.

2 Another expert you'll hear from this week is Mr. Ryan
3 Lamotta.

4 Ryan -- excuse me, Mr. Lamotta, will you please stand?

5 Thank you.

6 Mr. Lamotta is an experienced damages expert. Mr.
7 Lamotta went to Baylor University where he got his BBA and
8 MBA. You'll hear that he is also a certified licensing
9 professional. He's issued over 100 expert reports in cases
01:56 10 like this for companies like Amazon, Ford, Lowe's, and Home
11 Depot.

12 You'll hear testimony from Mr. Lamotta that damages are
13 calculated to determine the economic harm caused when a
14 defendant infringes a patent. And Mr. Lamotta will explain
15 what the damages are in this case.

16 When Mr. Lamotta testifies, you'll learn that this is
17 actually a fairly extraordinary patent case. The evidence
01:57 18 will show that ASUS doesn't have records of how many MOSFETs
19 they have in their devices. And you heard that right. The
20 evidence will show that ASUS doesn't know how many or which
21 infringing MOSFETs are in their own devices.

22 And you don't have to take my word for it. You'll hear
23 it straight from one of ASUS's own employees. This will be
24 one of those adverse witnesses I talked about earlier.

01:57 25 His name--and it will be by deposition testimony--is

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1 Chao-Liang Hung. Mr. Hung will be asked during the
2 deposition, does ASUS have any BOM that definitively tells you
3 which MOSFET is in which ASUS device? You'll hear Mr. Hung
4 say ASUS doesn't have one, doesn't have such a BOM.

5 Now, putting it in context, a BOM is a bill of materials.
01:58 6 It's what tells -- it's what lists the components that are in
7 a product and who supplied that product. The evidence will
8 show that for some reason ASUS just doesn't keep track of how
9 many MOSFETs are in its products.

10 Because of ASUS's recordkeeping, we don't know the exact
11 number of MOSFETs that are in their products. But we do know,
12 and the evidence will show, that since 2017, ASUS has sold
01:58 13 over -- excuse me, ASUS has sold tens of millions of laptops
14 each with hundreds of MOSFETs in them.

15 Mr. Lamotta will explain what a reasonable royalty is,
16 how it's calculated, and how -- excuse me, and that the
17 reasonable royalty for ASUS's infringement in this case is \$20
18 million.

19 Now, after Force MOS presents its case, as His Honor
20 mentioned -- as His Honor -- excuse me, as His Honor stated in
01:59 21 the preliminary instructions, ASUS gets to present their
22 witnesses and their evidence. In general, their witnesses
23 will try to convince you that they don't infringe, they'll try
24 to convince you that one of the patents is invalid, and that
25 even if the patent is infringed that they shouldn't have to

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1 pay very much. They'll likely criticize the SEM images.
2 They'll tell you Mr. Diep didn't do a good job.

01:59

3 With regards to the patent validity, they'll tell you, it
4 wasn't us; it was the United States Patent Office. They were
5 the ones that made the mistake; not us.

6 Regarding damages, they'll criticize Mr. LaMotta's
7 damages opinion. They'll say it should be a lot less, less
8 than -- excuse me, less than \$1 million.

02:00

9 Regarding the counts, number of MOSFETs in the accused
10 devices, ASUS will likely say that Force MOS's estimate is too
11 high. You'll hear that ASUS provided a spreadsheet. It is
12 called the maximum number spreadsheet. That's what they'll
13 say that you should use. And this maximum number spreadsheet,
14 they'll say that's the calculation that should be used and
15 it's even generous.

16 But the evidence will show that there's three problems
17 with that. First, we already saw what Mr. Hung said. From
18 Mr. Hung's testimony, we know that ASUS doesn't keep track of
19 how many MOSFETs are in the device.

02:00

20 Second, you'll hear that ASUS doesn't have any idea on
21 the number of MOSFETs in the power supplies, display panels,
22 battery modules, or any other components. Neither party has
23 any idea, and that's not in dispute.

24 And, third, the evidence will show that that spreadsheet,
25 it wasn't put together by the engineers or the designers. The

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02:01 1 spreadsheet was put together by the lawyers for the
2 litigation.

3 The evidence will show that ASUS's accounting and
4 financial records are flawed at best, and that the reasonable
5 royalty calculation performed by Mr. LaMotta is both fair and
6 accurate.

7 Now, I'm a parent, and I completely understand that every
8 story has two sides. And so please listen to ASUS's story.
9 And while you'll hear a lot of criticism, they'll criticize
02:01 10 the evidence, what you won't hear from the witnesses or from
11 ASUS's counsel is that even after criticizing those SEM
12 images, that they went out and took their own SEM images,
13 because they didn't.

14 They never prepared a sample like we had Microtech do.
15 They never sectioned and polished the MOSFETs so they can look
16 at those tiny gates that are smaller than a white blood cell.
17 Instead, they'll spend their time this week criticizing our
02:02 18 evidence, and they'll say, we don't have the burden. And
19 they're right; ASUS doesn't have the burden. As His Honor
20 said, we have the burden.

21 But don't you think if there was actually a better way to
22 do an is SEM or a technology that showed that the MOSFETs
23 didn't infringe, don't you think that they would show you?
02:02 24 Because ASUS will present their validity case, we get to come
25 back up and, as His Honor noted, put on a rebuttal case.

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1 We'll keep it short, less than an hour.

2 Thank you for your service as jurors. We very much
3 appreciate it. Force MOS has waited a long time to share this
4 case with you. I invite you to listen to what the parties
5 say, but also what the parties don't say. And at the end of
02:03 6 the week, when you've seen and heard all the evidence, I'm
7 confident you'll find the right answers.

8 Thank you.

9 THE COURT: All right. Defendant may now present
10 its opening statement.

11 Mr. McMahon, would you like a warning on your time?

12 MR. McMAHON: Yes, please, Your Honor, warnings at
13 10 and three minutes.

14 THE COURT: All right. I'll warn you with 10
15 minutes remaining and three minutes remaining. You may
02:03 16 proceed with Defendant's opening statement.

17 MR. McMAHON: May it please the Court.

18 THE COURT: Please proceed.

19 MR. McMAHON: Counsel.

20 Ladies and gentlemen, good afternoon. My name is Charlie
21 McMahon, and I have the privilege of representing ASUSTeK in
22 this case.

02:04 23 You've now heard one side of the story, and as Mr. Hanba
24 said, there is another side. The ASUSTeK team and I stand
25 here to tell that story to you now.

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1 You were all kind enough this morning to share details
2 about your personal lives so that we can ensure that this is a
3 fair trial, so I will do the same.

02:04 4 I was born in Algona, Iowa. That's a town about the size
5 of Hallsville. And I went to the University of Notre Dame and
6 studied electrical engineering. Then I went to law school at
7 George Washington University. I live in Chicago with my wife
8 and my two sons, ages 14 and 10.

9 I want to tell you that I love my job. My job combines
10 technology and law, two things that I'm passionate about, and
11 I really enjoy doing this job. If my sons were here, they
12 would tell you it's really just because I'm a nerd. And
13 they're right, I can't disagree with that. But I hope that
02:05 14 I'll be able to share with you this week some of my passion
15 for both law and technology.

16 ASUSTeK began as a small company in Taiwan 35 years ago.
17 Today ASUSTeK is one of the world's largest manufacturers of
18 computers and computer technology. ASUSTeK is an innovator.
19 ASUSTeK has been awarded over 2500 U.S. patents and over
20 10,000 patents globally.

02:05 21 In 1998 ASUSTeK sent a laptop to space. Now, I know not
22 all of you are old enough to remember 1998, but for those of
23 you who are, you may remember the large desktop computers we
24 used at that time, dial-up internet service? It was a
25 different technological era, and ASUSTeK sent a laptop to

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1 space.

02:06 2 Just two years ago, to commemorate that mission's 25th
3 anniversary, ASUSTeK introduced a Space Edition of its Zenbook
4 14X. And that computer satisfies the U.S. Space Command's
5 standard for computers in space. ASUSTeK laptops have also
6 been to the top of Mount Everest. But mostly ASUSTeK makes
7 computers for people like you and me. They make a range of
8 different models for use in business, for gaming, or for just
9 checking email and browsing the internet.

02:06 10 As an innovator, ASUSTeK respects other companies'
11 patented technology. We don't use technology from other
12 companies without permission, and we take very seriously
13 accusations that we have done that. When we have been wrongly
14 accused, we will stand up and defend ourselves, as we are here
15 to do today.

02:07 16 We're grateful for -- to each of you for being here to
17 help us resolve this dispute. We also realize that your job
18 may be a little bit overwhelming. That is okay. Over the
19 next week, we will give you the facts and the evidence that
20 you need to decide the case according to the instructions and
21 the law that the Court will provide for you.

22 Now, I want to walk through why ASUSTeK could not in good
23 faith just pay Force MOS to avoid this trial.

24 Let's begin with MOSFETs. You heard this a couple of
25 times, and you're going to hear it a lot more. MOSFET stands

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02:07 1 for metal oxide semiconductor field effect transistor. To be
2 clear, and you just heard it, Force MOS did not invent
3 MOSFETs. MOSFETs have been around for more than 60 years.
4 And they are very small. You can't see it, but I'm actually
5 holding a MOSFET in my hand right now.

6 Ms. Brunson, can I please have the elmo?

02:08 7 So you can see here, this is a penny and a MOSFET sitting
8 right next to it. This particular MOSFET is called a
9 2N7002KDW. That's the model number, and it was made by a
10 company called Panjit. That's right. ASUSTeK does not make
11 MOSFETs. We buy them from companies that specialize in making
12 them, like Panjit.

02:09 13 Interestingly, this MOSFET is worth less than the penny
14 it's sitting next to. ASUSTeK buys these for about half a
15 penny. In this case, Force MOS has accused seven specific
16 MOSFET models infringing these patents. ASUSTeK does not make
17 any.

18 Thank you, Ms. Brunson.

02:09 19 If we can go to the next slide, you'll see that the list
20 of companies that actually make the MOSFETs that are accused
21 in this case. They are Panjit International, Leshan Radio
22 Company, uPI Semi, UBIQ, and Excelliance MOS. You may
23 interested to know that there's another company we can add to
24 this list, and that's Force MOS, because ASUSTeK used to buy
25 MOSFETs from the Plaintiff, Force MOS.

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02:09 1 From 2017 to 2021, ASUSTeK did just that. During that
2 time for more than four years, Force MOS never said anything
3 to us about patent infringement. Then about three years ago
4 before this lawsuit, ASUSTeK stopped buying MOSFETs from Force
5 MOS due to reliability problems. A few months later, Force
6 MOS sued us. So ask yourselves why, after all those years,
7 did Force MOS suddenly drag ASUSTeK into court. Keep that
8 question in mind as you hear the evidence.

02:10 9 As you know, Force MOS is alleging patent infringement.
10 ASUSTeK has looked at the evidence, we've studied the
11 technology, and we are confident that ASUSTeK does not
12 infringe Force MOS's patents. ASUSTeK owns patents, too. We
13 respect patents. If we thought we were in the wrong, we would
14 not be here.

15 The evidence will show that ASUSTeK does not need and
16 does not use Force MOS's technology.

02:10 17 This case is not about MOSFETs generally. As I said,
18 MOSFETs have been around for decades. And Force MOS admits
19 that its patents do not cover all MOSFETs. You will hear from
20 Force MOS that the patents involved in this case are directed
21 to specific features designed to improve the ruggedness of
22 MOSFETs.

23 Those features might be important if you're pushing
24 MOSFETs to their limits, topping them out on their
25 specifications. These MOSFETs are designed to operate at 30

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02:11 1 volts or even 60 volts. We don't come anywhere near that. In
2 our products, they operate at 3.3 volts or 1.8 volts. We're
3 nowhere near the limits; we don't need rugged MOSFETs.

4 ASUSTeK doesn't need Force MOS's technology, and we don't
5 use it.

6 Importantly, I need to talk to you about the burden of
7 proof. As the Plaintiff in this case, Force MOS bears the
8 burden of proving to you that ASUSTeK has infringed its
9 patents, that it's more likely than not that we have
10 infringed. Force MOS will not be able to do that.

11 You will hear from several witnesses in the coming days.
12 As you do, I encourage you to ask yourself this
02:11 13 question--where is the proof? If Force MOS is showing you
14 evidence, does that evidence back up its allegations? Is the
15 evidence reliable?

16 Some of you may remember a famous Wendy's TV commercial
17 from the 1980s, Where is the beef? You should ask yourself a
18 similar question as we proceed through this case--where is the
19 proof.

20 Now I would like to introduce ASUSTeK's witnesses. As
21 the Plaintiff, Force MOS gets to go first. So you'll hear
02:12 22 from their witnesses first. As you do, I'd like you to keep
23 an open mind and don't make any decisions until you've heard
24 from our witnesses and seen our evidence, too.

25 Our first witness you've already met. This is Mr. Max

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1 Fu, our corporate representative and product manager from
2 ASUSTeK. Mr. Fu earned a Master's degree in technology
3 management, and he has worked at ASUSTeK in Taiwan for more
4 than 13 years. Mr. Fu will tell you about ASUSTeK, our
02:12 5 innovations, our respect for other companies' patents, and
6 about the steps that ASUSTeK took to ensure that it was not
7 infringing Force MOS's patents.

8 Thank you, Mr. Fu.

9 You will also hear from another ASUSTeK employee,
10 Mr. Chao-Liang Hung. Mr. Hung is a director in ASUSTeK's
11 research and development department. He earned Bachelor's and
12 Master's degrees in electrical and control engineering, and he
13 has worked at ASUSTeK for more than 25 years. Mr. Hung will
02:13 14 tell you about how ASUSTeK designs its products and how it
15 selects and qualifies MOSFETs for use in its products.

16 Now, to address Force MOS's allegations, ASUSTeK hired a
17 leading expert to investigate Force MOS's claims. His name is
18 Dr. Stanley Shanfield. Since 2003, Dr. Shanfield has served
19 as the technical director of advanced hardware development at
20 MIT's Draper Laboratory in Cambridge, Massachusetts.

02:13 21 Dr. Shanfield will tell you more about his background,
22 his awards, and his impressive accomplishments. He will also
23 tell you about his opinion as an expert that Force MOS has not
24 met its burden of proving infringement.

25 Finally, you will hear from Dr. Keith Ugone. Dr. Ugone

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1 is an expert in economics. He earned degrees from the
2 University of Notre Dame, the University of Southern
3 California, and Arizona State University. Dr. Ugone now just
4 lives just up the road in Grand Saline, Texas. He will be
02:14 5 here to testify about the damages claims that Force MOS has
6 made.

7 As you know, this case is about MOSFETs, which ASUSTeK
8 does not make. ASUSTeK buys the MOSFETs for use in its
9 products like the laptop that you see here. This is the same
10 laptop that you saw in physical example just a few minutes
11 ago, the E410MA. ASUSTeK designed this laptop, and we're
12 proud of it. To see the MOSFETs, we need to take a look
13 inside.

14 Here you can see what you would find if you opened up the
02:15 15 laptop. That green part near the bottom of the photo is
16 called the motherboard. You can't see the MOSFETs in this
17 photo because they're too small, so we have to zoom in. But
18 if we do, in the top right of this photo, you can see one of
19 those MOSFETs labeled K72. That's the same MOSFET I showed
20 you before, model 2N7002KDW made by Panjit International.

02:15 21 Like all transistors, a MOSFET is essentially a switch.
22 All MOSFETs include three main parts: a gate, a source, and a
23 drain. When you apply voltage to a gate, it lets current flow
24 from the source to the drain. A MOSFET is a little bit like a
25 water faucet. When you turn the handle on a water faucet, it

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1 allows the water to flow from the source to the drain.

02:15 2 You may be asking yourselves, if ASUSTeK does not make
3 these MOSFETs, how do they get into our computers? I'll tell
4 you. ASUSTeK designs its computers, but they're manufactured
5 by other companies that specialize in assembling computers and
6 electronic hardware. These manufacturers build ASUSTeK's
7 computers according to our designs. In our designs, we
8 designate slots where MOSFETs will be placed during assembly.
9 One slot for each MOSFET. One slot for each MOSFET.

02:16 10 During assembly, the manufacturers install the MOSFETs in
11 those slots. Now, you can't just put any old MOSFET in a
12 slot. You have to use one that's designed to be used in that
13 slot, and so ASUSTeK qualifies MOSFETs to be used in a
14 particular slot. Sometimes more than one. So the contract
15 manufacturers can choose any of these qualified MOSFETs for
16 that slot, for example, depending on availability or price at
17 the time of assembly.

02:17 18 The idea of slots is very important in this case, so I'll
19 come back to that a little bit later.

20 Now I'd like to talk a little bit about the patents that
21 Force MOS is asserting in this case and about how patent
22 claims work generally.

23 You heard the Court refer earlier to an example of a
24 table, a patent claim covering a table. Patent rights are
25 defined by a series of numbered paragraphs that appear at the

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1 end of the patent. We call those paragraphs claims. Each
2 claim -- patent claims are a little bit like a property deed.
02:17 3 They define the specific scope of rights that the patent
4 protects. Each claim usually lists a number of features, and
5 we call those features claim elements or claim limitations.

6 Here is an example. Imagine a patent claim that covers
7 the stool with four features, four limitations. It has four
8 legs, four cross-members connecting the legs, and a stool top
9 wherein the stool top is circular. The stool we see here on
02:17 10 the left satisfies all four of those requirements. That stool
11 infringes.

12 The stool on the right satisfies only three of the
13 requirements. It does not have a circular stool top. That
14 stool does not infringe. If even a single requirement is
15 missing, then there's no infringement. That's how patents
16 work. If even a single requirement is missing, there's no
17 infringement.

18 Now, you should also know that there are two different
19 types of patent infringement--direct and indirect. If I make
02:18 20 a circular top stool, then I infringe that patent claim
21 directly.

22 Alternatively, if I induce someone else to make that
23 stool with a circular top, then I might be infringing
24 indirectly, but there are a couple of additional requirements.
25 In this case, Force MOS alleges that ASUSTeK has infringed

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02:18 1 indirectly by inducing another company to sell our products
2 here in the United States. To prove indirect infringement,
3 Force MOS must prove that ASUSTeK knew about the patents and
4 also that we specifically intended that company to infringe.

5 Now, to the asserted patents. The first is the '634
6 Patent, which you've already seen and you have a copy in your
7 juror notebooks. I'm not going to go deep into the technology
8 here, but I do want to show you one of the patent claims.

02:19 9 Here we see claim 1 of the '634 Patent, which lists
10 several claim elements. Force MOS must show you proof of
11 every element. For now, I'd like to direct your attention to
12 just one of those elements, which is called the lateral
13 contact layer. We can also see here figure 2E of the '634
14 Patent, and that figure shows an example of the claimed
15 invention.

16 In figure 2E, we can see four lateral contact layers
17 labeled 209. We've highlighted them in red here so you can
02:19 18 see them. As you listen to the testimony today and next week,
19 I encourage you to keep an eye on that lateral contact layer
20 and ask yourself, where is the proof?

21 The other patent Force MOS is asserting is the '409
22 Patent. You've also seen that and you have a copy of that in
23 your juror notebook. Here we see claim 1 of the '409 Patent
24 alongside figure 3, which shows an example of the claimed
25 invention.

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1 As you listen to the testimony about the '409 Patent,
02:20 2 keep an eye on the shape that we've highlighted here in red.
3 The '409 Patent calls this substantially square shaped with
4 rounded corners. You'll hear much more about those rounded
5 corners from the witnesses in the coming days. As you do,
6 again, ask yourself, where is the proof?

7 For the '409 Patent in particular, there are two other
8 things that you need to know. First, the evidence will show
9 that Force MOS doesn't actually own this patent. On the cover
02:20 10 of the patent, you can see that it was assigned to a company
11 called Force MOS Technology Corp, KY. That is not the
12 Plaintiff in this case. The letters KY stand for Cayman
13 Islands, and the evidence will show that this company listed
14 on the face of the patent doesn't exist. It never did.

15 Force MOS will tell you that that doesn't matter, and
16 they'll explain why they believe that, but Force MOS bears the
17 burden of proving that it owns the '409 Patent. So as you
02:21 18 listen to the testimony, ask yourself, where is the proof?

19 The other thing I need to tell you about the '409 Patent
20 in particular is that you will need to decide whether the
21 claim 1 of that patent is valid, whether it was ever valid.

22 Remember, this morning you-all watched a video about how
23 the patent system works, and one of the things that that video
24 said is that sometimes the Patent Office makes a mistake.
25 Sometimes the Patent Office doesn't have all of the

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02:21 1 information it needs and sometimes it grants a patent that
2 shouldn't have been granted. The '409 Patent is one of those
3 cases, as the evidence will show.

4 You will hear and see evidence that rounded corners were
5 not a new invention. Multiple previous patents described
6 rounded corners before the '409 Patent. The evidence will
7 show that the patent examiner at the Patent Office did not
8 know about these previous patents, didn't have all of the
02:22 9 necessary information, didn't -- wasn't able to consider those
10 prior patents.

11 But you will be able to consider them, and you will be
12 asked to decide whether Force MOS was entitled to a second
13 patent on rounded corners. If not, then claim 1 is invalid
14 and cannot be infringed.

15 There's one other thing that you will be asked to decide
16 in this case, and you've heard about it already. Force MOS
17 alleges that ASUSTeK not only has infringed but has infringed
02:23 18 willfully. The Court will instruct you on what exactly that
19 means and what the standards are.

20 In part, it relates to whether a company behaves
21 reasonably when it's put on notice of an infringement
22 allegation. How do you react to that allegation? You'll hear
23 from witnesses about what ASUSTeK did and, as you do, ask
24 yourself, where's the proof that Force MOS's offering that
25 ASUSTeK willfully infringed?

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02:23 1 Now, I've told you that the evidence will show that
2 there's no infringement, so you may be asking yourself, why
3 are we here? I mentioned this question earlier--why has Force
4 MOS brought all of us into this courtroom to decide this
5 dispute?

6 The evidence will answer that question, and I'll tell you
7 how. It requires going back a few years. I've already told
8 you that ASUSTeK does not make MOSFETs. ASUSTeK and its
9 manufacturers buy MOSFETs from companies that make them,
02:23 10 companies that specialize in supplying MOSFETs, and I also
11 told you that Force MOS was one of those companies, one of
12 those companies that used to supply ASUSTeK.

13 In 2017 ASUSTeK started buying MOSFETs from Force MOS.
14 You heard about that from Force MOS just today. By then, the
15 '634 Patent and the '409 Patent had already issued. For more
16 than four years, Force MOS said nothing to us about --

17 THE COURT: Ten minutes remaining, counsel.

18 MR. McMAHON: Thank you, Your Honor.

02:24 19 For more than four years, Force MOS said nothing about
20 patent infringement. But things changed in 2021. That was
21 when ASUSTeK started getting complaints from customers about
22 failures in our products. We traced those failures to Force
23 MOS components, components we had bought from Force MOS.

24 ASUSTeK confronted Force MOS about the failures, and the
25 evidence will show that Force MOS gave ASUSTeK the run-around.

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02:25 1 ASUSTeK felt that Force MOS was not being honest about the
2 defects that we found in their products. So ASUSTeK stopped
3 buying from Force MOS based on the distrust.

4 That is when Force MOS first accused us of patent
5 infringement. Only after we experienced the defective Force
6 MOS products and only after distrust led ASUSTeK to stop
7 buying from Force MOS, only after both of those things did
02:25 8 Force MOS first -- for the first time say, hey, you're
9 infringing our patents.

10 The evidence will show that ASUSTeK reacted, immediately
11 investigated Force MOS's claims, contacted the suppliers who
12 provide the MOSFETs that Force MOS said were infringing.
13 Those suppliers, the evidence will show, assured ASUSTeK that
14 their products were not infringing.

15 Asustek encouraged Force MOS to contact those suppliers
02:25 16 and work it out. Force MOS never did that. Instead, in
17 November 2022, Force MOS filed this lawsuit against ASUSTeK
18 for patent infringement. Force MOS didn't sue the suppliers
19 that make the MOSFETs; Force MOS sued ASUSTeK.

20 So as you consider the evidence, ask yourself this: Are
21 we here in this case because ASUSTeK is infringing Force MOS's
22 patents or are we here because ASUSTeK after stopped buying
02:26 23 products from Force MOS and Force MOS reacted by filing this
24 lawsuit?

25 I know that I've given you a lot of information. It

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1 probably feels a little bit overwhelming, and that's okay.
2 You don't need to take my word for anything. My job is to
3 bring the evidence to you.

02:26 4 I believe one of the most important parts of your job is
5 to judge the credibility of each of the witnesses who will
6 testify in the coming days. Look each witness in the eye,
7 decide for yourself, is this person telling me the truth, does
8 this testimony make sense, or is this witness trying to sell
9 me something. For each witness, you will decide whether the
10 testimony is credible.

11 Here is an important example. You just heard Force
12 MOS -- you've heard that Force MOS wants you to award more
13 than \$20 million in damages if you find infringement. Now,
14 normally I wouldn't talk about damages at all because there's
02:27 15 no infringement. No infringement--no damages. But this case
16 is different. I want to talk about damages because in this
17 case there is a big credibility issue that turns on damages.

18 Remember when I told you earlier that the slots, the
19 MOSFET slots, would play an important role in the credibility?
20 Now I'll tell you why those slots are important. Force MOS
21 contends that ASUSTeK has sold more than 8 billion accused
02:27 22 MOSFETs. That is 13 times more than the number of slots that
23 have been in the products ASUSTeK has sold.

24 Why is there such a big difference? Well, that's the
25 credibility question. Most of the witnesses in this case are

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1 going to talk about those numbers, the component counts and
2 the slot counts. It will be up to each of you to decide which
3 witnesses you believe.

4 One of those witnesses you've already heard about Mr.
02:28 5 Vinh Diep who Force MOS hired to count how many of the accused
6 MOSFETs were in three ASUS products, three mother boards, one
7 graphics card. Why am I highlighting a witness that Force MOS
8 hired? The reason is that we agree with Mr. Diep's counts.
9 We agree with him. Mr. Diep did not count -- did not find
10 more than a hundred accused MOSFETs in any laptop.

02:28 11 Now, you heard just today Force MOS says that you will
12 find hundreds of these MOSFETs in each computer. Remember
13 that. See if the evidence backs that up.

14 You will see a video of Mr. Diep's testimony perhaps
15 today that he triple checked the component counts, and we
16 agree that his counts were accurate. But Force MOS was not
17 satisfied with Mr. Diep's counts. So the evidence will show
18 that Force MOS took those counts, Mr. Diep's counts with which
02:29 19 we agree, and inflated them. That is how Force MOS got to 8
20 billion components, 8 billion accused MOSFETs.

21 How will you know if that number is right or wrong? The
22 evidence will show that, according to Force MOS, ASUSTeK sells
23 more MOSFETs than there are slots in our computers. Does that
24 make sense? The Court will instruct you that you can use
25 common sense in evaluating the testimony and the evidence.

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02:29 1 Now, I brought this little game to make the point. I
2 know it's a little bit hard for you guys to see, but maybe
3 you've seen it before. I bought this at Cracker Barrel.

4 There are 15 golf tees that you can play with this board
5 game. There are 15 slots in the board, and the golf tees fit
6 into the slots. 15 tees, 15 slots. I can't fit more than 15
7 tees in this game because there are only 15 slots, so I can't
8 fit 16 or 20 or a hundred tees into this game.

02:30 9 But Force MOS would have you believe that ASUSTeK's
10 products can hold more MOSFETs than there are slots. So when
11 Force MOS's witnesses tell you that ASUSTeK has sold 8 billion
12 accused MOSFETs, ask yourself, does that make sense?

13 Listen carefully to the testimony, consider credibility,
14 and use your common sense. Watch the counts. Watch the
02:30 15 counts. And if you cannot believe Force MOS's witnesses when
16 it comes to the simple math of counting MOSFETs, then ask
17 yourself, can you believe them about anything else?

18 Force MOS has accused us wrongfully of infringing its
19 patents. ASUSTeK takes those allegations very seriously. In
20 the coming days, we will defend ourselves by challenging Force
21 MOS to show you the evidence.

22 THE COURT: Three minutes remaining.

23 MR. McMAHON: Thank you, Your Honor.

24 As we do that, please keep an open mind, listen to the
02:31 25 testimony from both sides, and ask yourself, where's the

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1 proof? Which witnesses do you find credible? Which testimony
2 makes sense? And watch the counts. Remember I told you that
3 those component counts are going to affect credibility, so
4 watch the counts.

5 We're here to defend ourselves against wrongful
6 accusations, but we can't do it alone. We need your help. We
02:31 7 need you to ask, where's the proof? We need you to watch the
8 counts. And we need you to decide whether Force MOS has met
9 its burden of proving that ASUSTeK infringes.

10 We respectfully submit that Force MOS will not be able to
11 meet that burden because ASUSTeK does not infringe.

12 Thank you.

13 THE COURT: Counsel, does either party wish to
14 invoke the Rule?

15 MR. McMAHON: Yes, Your Honor.

02:32 16 THE COURT: And is it my understanding that the Rule
17 to be invoked would exclude expert witnesses but cover fact
18 witnesses?

19 MR. McMAHON: Yes, Your Honor.

20 THE COURT: All right. That means if you're an
21 expert designated to testify in this case, you can remain in
22 the courtroom until you're called.

23 If you are a fact witnesses, not an expert witness and
24 you're not a designated corporate representative, then you'll
25 need to be outside the courtroom until you are called to

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1 testify.

02:32 2 And, counsel, I'll trust you to let me know if there's
3 anybody that is here who should be under the Rule outside.

4 All right. Is Plaintiff prepared to call their first
5 witness?

6 MS. PELLEGRINO: Yes, Your Honor.

7 THE COURT: Call your first witness, please.

8 MS. PELLEGRINO: Your Honor, Force MOS calls
9 Mr. Rafael Chung, as its first witness.

10 THE COURT: All right. Mr. Chung, if you'll come
11 forward and be sworn by our Courtroom Deputy.

12 (Whereupon, the oath was administered by the Clerk.)

02:33 13 THE COURT: Please come around, sir, have a seat on
14 the witness stand.

15 MS. PELLEGRINO: Your Honor --

16 THE COURT: Are there witness binders to distribute?

17 MS. PELLEGRINO: I was just going to ask. We have
18 some witness binders if we may approach.

19 THE COURT: You have leave to distribute them.

02:33 20 MS. PELLEGRINO: Thank you, Your Honor.

21 Your Honor, may I approach to give the witness a bottle
22 of water?

23 THE COURT: There's water in the carafe. But if
24 you'd like to give him a bottle of water, I'll allow you to.

25 MS. PELLEGRINO: Thank you, Your Honor.

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1 THE COURT: And, Mr. Chung, feel free to pour
2 yourself some water before we start.

3 THE WITNESS: Yes. Thank you, Your Honor.

02:34

4 THE COURT: All right, counsel. You may proceed
5 with direct examination.

6 MS. PELLEGRINO: Thank you, Your Honor.

7 PING 'RAFAEL' CHUNG,
8 having been first duly sworn, testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MS. PELLEGRINO:

11 Q. Good afternoon, Mr. Chung. How are you today?

12 A. Good afternoon. I'm well, thank you.

13 Q. Could you please tell your name to the jury?

14 A. Yes. My name is Ping Chung, Rafael Chung.

15 Q. How did you get the name Rafael?

16 A. When I was studying Spanish as an undergrad and the class
17 gave me that name and it stuck.

18 Q. Did you receive an undergraduate degree?

19 A. Yes.

20 Q. In what?

02:34

21 A. I received my undergraduate degree in Spanish and English
22 from Wenzhou University of foreign languages, and it is
23 important to learn the Spanish and English for business.

24 Q. Do you have any additional education beyond your
25 undergraduate degree?

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1 A. Yes. I have -- I received my Master's degrees in
2 business from University -- from Brunel University of London.
3 I majored in brand and marketing management.

4 Q. Are you currently employed by Force MOS?

5 A. Yes.

02:35 6 Q. What role do you hold in Force MOS?

7 A. Well, I'm the deputy general manager, and I'm also a
8 member of the board of directors.

9 Q. What does it mean to be a deputy general manager?

10 A. In Force MOS, general manager is similar to a CEO. So
11 typically general manager is like a deputy CEO.

12 Q. Now, we're going to talk about a number of topics today.
13 But if you could just summarize for the jury a little bit
14 about what you expect to testify about today?

02:35 15 A. Okay. I'm here to talk about the business side of Force
16 MOS, what we do as a company. In innovative invention of
17 MOSFET, we have patent. And the business relationship that we
18 had with ASUSTeK. And I'm also going to explain how this
19 patent set us apart in the market and why we believe that ASUS
20 infringe our patent and what we did about it.

02:36 21 Q. Let's start with the business side of Force MOS. You
22 said that you're the deputy general manager. Right?

23 A. That's correct.

24 Q. In that role, what are your responsibilities?

25 A. My primary duties include communicating with individuals

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1 both inside and outside of our company. I talk to people who
2 provide the materials for us to make our product. I talk to
3 people who test our products. I also talk to some of our
4 customers.

02:36

5 Q. Now, in general terms, could you tell the jury what Force
6 MOS does as a business?

7 A. Well, Force MOS is a semiconductor -- is a technology
8 semiconductor design house, and we specialize in MOSFET
9 technology. We develop the innovative solution of MOSFET and
10 focusing on making MOSFET works better, last longer, and less
11 expensive.

12 Q. About how many people does Force MOS employ?

13 A. Approximately 50.

14 Q. So fair to say Force MOS is a smaller business?

15 A. Yes.

02:37

16 Q. Now, we've heard the word 'MOSFET' a lot today. What is
17 a MOSFET?

18 A. Well, my understanding on MOSFET is a semiconductor that
19 act like a switch to control the flow of a current in
20 electrical circuit, and they are used in almost every modern
21 electronic devices from smartphone to laptop computers.

22 Q. Are they used in other kinds of products?

02:37

23 A. Yes. For example, like the monitor we are looking at and
24 the battery pack, a power adapter, and tablet, almost every
25 modern electronic devices.

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1 Q. They're fairly common.

2 A. Yes.

3 Q. When was Force MOS founded?

4 A. Force MOS was founded in 2007 in Taiwan.

5 Q. Who founded Force MOS in Taiwan?

6 A. Well, Force MOS was founded by the small group of
7 innovators, including my father, Dr. Ming-Tau Chung, Dover,
02:38 8 and he founded this company with his long-time friend,
9 Dr. Hsieh. And he's an inventor.

10 Q. When you talked about your father, Dr. Chung, you said
11 Dover. What did you mean by that?

12 A. Dover is his English name.

13 Q. Kind of like Rafael.

14 A. Yes.

15 Q. Had your father previously worked in the component
16 industry?

17 A. Yes. He has been in component industry for over 30
18 years, and he found his company with Dr. Hsieh focusing on
02:38 19 providing a revolutionary MOSFET product to the market.

20 Q. Are you involved in the technology side like your father
21 is?

22 A. No. My father's focus has always been technology, but my
23 passion and focus has always been business. That works well
24 for our company as both of us bring different strength.

25 Q. Is Dr. Hsieh still with the company?

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1 A. No. He retired from Force MOS.

02:39 2 Q. You said that Force MOS was founded in Taiwan. Was it
3 also registered in other companies?

4 A. Yes. Force MOS was initially registered in Cayman
5 Islands, and we have a wholly-owned subsidiary company in
6 China.

7 Q. Who founded Force MOS in the Cayman Islands?

8 A. Dr. Hsieh; my father, Dr. Chung; and Faishon Enterprise.

9 Q. When was Force MOS Cayman established?

02:39 10 A. It's about in 2006.

11 Q. What was Dr. Hsieh's role in Force MOS Cayman?

12 A. He is an employee and directors.

13 Q. Why was Force MOS originally registered in the Cayman
14 Islands?

15 A. Well, because before Force MOS was founded in Taiwan in
16 2007, Dr. Hsieh, he is already in the process of filing some
17 patents. It's a relatively new improvement on MOSFET, and the
02:40 18 registrations process was lengthy in Taiwan with many
19 regulations. So the founders looked for a place where to set
20 up the company quickly to hold this patent.

21 Q. It was faster to set up.

22 A. Yes.

23 Q. What was Force MOS in the Cayman Islands called?

24 A. It's registered name is Force MOS Technology Company,
02:40 25 Ltd., but because the company name was translate from Chinese

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1 to English, so we often use the other name interchangeably to
2 refer to Force MOS-Cayman, including Force-MOS Technology
3 Corporations, Force-MOS Technology Corps, and Force MOS
4 Technology Company, Ltd.

5 Q. You said because how words are translated. What did you
6 mean by that?

7 A. Well, company and corporations are the same word in
02:41 8 Chinese. So sometimes when we use those word in English, we
9 often referred Force MOS in English, both Force MOS company
10 and Force MOS corporations.

11 Q. I want to make sure I understand. Is it -- am I
12 understanding correctly that there's just one word for company
13 and corporation in Chinese?

14 A. Yes.

15 Q. But two in English?

16 A. Yes, that's correct.

02:41 17 Q. Okay. Now, you mentioned a moment ago that Dr. Hsieh was
18 in the process of filing some patent applications. Do you
19 remember that?

20 A. Yes.

21 Q. Was he the inventor on those applications?

22 A. Yes.

23 Q. Did Dr. Hsieh assign those applications?

24 A. Yes.

25 Q. To whom?

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1 A. To Force MOS-Cayman.

2 Q. When did Dr. Hsieh assign those applications?

02:42

3 A. On the same day that we filed the application, we filed
4 an assignment agreement assigning that application from
5 Dr. Hsieh to Force MOS-Cayman.

6 Q. Why would Dr. Hsieh assign the application on the same
7 day that the application was filed?

8 MR. UNDERWOOD: Objection, speculation.

9 THE COURT: Sustained.

10 Q. (BY MS. PELLEGRINO) Do you know, Mr. Chung, whether
11 Force MOS has any policies relating to coming up with an
12 invention by an employee?

02:42

13 A. Yes. It is part of the employment agreement that
14 people -- for example, like our CTO currently, Dr. Tu, he
15 assign all of -- he assign over his -- assign his -- like his
16 patents assign to the company, always assigned to a company.

17 Q. Was Dr. Hsieh an employee of Force MOS-Cayman?

02:43

18 A. Yes. He is the employee, both -- of both Force
19 MOS-Cayman and Force MOS-Taiwan.

20 Q. Did Dr. Hsieh's employment require him to assign any
21 patents to the company?

22 A. Yes. It is a part of his employment. He has to
23 sign -- assign a patent which he is an inventor over to one of
24 this company, and because the Force MOS-Taiwan has not
25 registered yet, so he assigned the patent to Force MOS-Cayman.

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1 Q. Would that be true of any employee of the company who had
2 developed an invention?

02:43 3 A. Yes-MS. PELLEGRINO: If I could please have JX 6 at page
4 1054, please.

5 Q. (BY MS. PELLEGRINO) Mr. Chung, do you recognize this
6 document?

7 A. Yes.

8 Q. What is this?

9 A. This is the assignment agreement from Dr. Hsieh and Force
10 MOS -- Force-MOS Technology Corporation.

02:44 11 Q. Who is FORCE-MOS Technology Corporation?

12 A. That is one of the name used to refer to Force
13 MOS -- used to refer to Force MOS-Cayman.

14 Q. When Dr. Hsieh was with Force MOS, did he ever pay
15 himself any of the fees associated with his patents?

16 MR. UNDERWOOD: Objection, speculation.

17 THE COURT: Can you lay a foundation for why this
18 witness would have personal knowledge of what Dr. Hsieh did?

02:45 19 If you can't, I'll sustain the objection.

20 MS. PELLEGRINO: I will give it a go, Your Honor.

21 Q. (BY MS. PELLEGRINO) Mr. Chung, are you familiar with
22 Force MOS's process for paying maintenance payments?

23 A. Yes. Maintenance fees has always paid by Force
24 MOS -- paid by the company.

25 Q. Does Force MOS keep accounting records or payment records

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1 of the payments it makes regarding its patents?

2 A. Yes.

02:45 3 Q. If you know, has Dr. Hsieh ever paid for any of the fees
4 associated with the patents owned by Force MOS?

5 MR. UNDERWOOD: Same objection, Your Honor.

6 THE COURT: I'll sustain.

7 Q. (BY MS. PELLEGRINO) Does Force MOS-Cayman still hold
8 these patents today?

9 A. No.

10 Q. Why not?

11 A. Because Force MOS-Cayman was not intended to be the
12 ultimate owner. Force MOS-Taiwan was. So this patent
02:45 13 transfer and assign over to Force MOS-Taiwan in 2011.

14 Q. And now sitting here today, Mr. Chung, how many United
15 States patents has Force MOS been awarded?

16 A. We have been awarded over 150 United States patent.

17 Q. What caused Force MOS to seek that many patents?

18 A. To stand out in the competitive market, we focus on
19 innovations. We've work very hard to provide a better MOSFET
02:46 20 and the patent come after the innovations. And -- excuse me.
21 Can you repeat again?

22 Q. Sure. I asked what caused Force MOS to seek so many
23 patents?

24 A. Yeah, I see. So we believe that a better technology will
25 give us a competitive edge and will help us to succeed. So

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02:46 1 then the MOSFET industry was dominated by many large and
2 established players in the market such as Panjit, UPI, and
3 Excelliance.

4 Q. Did Force MOS invent MOSFETs?

5 A. No. We just make them better.

6 Q. Does Force MOS consider its patents critical to its
7 business?

8 A. Yes.

9 Q. Why?

10 A. Because patents protect a large amount of money and time
11 that we have invest in innovations. And without the
02:47 12 protection of patents, we cannot justify our investment. So
13 my father and the other founders believes that they understood
14 that protect our invention and leveraging that innovation are
15 a critical part for Force MOS business, and it is a point of
16 pride of our company actually.

17 Q. When you say a point of pride, what do you mean by that?

02:47 18 A. Force MOS many patents set us apart in the market, and we
19 focus on innovation and improvement of MOSFET. That is our
20 strength. So -- and but other MOSFET company, they don't.
21 They just making and selling a cheaper and lower quality
22 MOSFET.

23 So at Force MOS, we proudly display this patent in the
24 dedicated award in our office to emphasizing the strength of
02:48 25 our patented technology. And we will hold a signed part in

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1 front of -- hold a signed part when we have a business
2 engagement with our client.

3 Q. If you could take a look at the screen, Mr. Chung, can
4 you please tell the jury what we're looking at?

5 A. Yes. That is the conference room in our office.

6 Q. Are these the patents you just discussed?

7 A. Yes.

8 Q. How did Force MOS's many patents set it apart in the
9 marketplace?

02:48 10 A. Well, infringement of intellectual property has been a
11 big problem in Taiwan and China. And over last decades, Force
12 MOS -- sorry. Over last decades, Taiwan make great effort to
13 be more like United States when it comes to recognizing the IP
14 rights. So this is one of the reason that we filed a United
15 States patent. And at Force MOS, we make technical

02:49 16 improvement and protect this technology through IP rights.

17 Q. Let's look again at that wall, Force MOS's point of
18 pride. Are the patents that are the part of this case on
19 those walls?

20 A. Yes. They are two patents involved in today's case,
21 which is the '409 Patent and '634 Patents, and both of them
22 are proudly displayed on a wall in our office.

23 Q. Let's talk a little bit about those patents, and let's
24 please start with what has been marked as JX 3.

02:50 25 Do you recognize this document, Mr. Chung?

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1 A. Yes.

2 Q. What is it?

3 A. It's Force MOS's '409 Patent.

4 Q. Who is the inventor of the '409 Patent?

5 A. It's Dr. Hsieh, one of the founder of Force MOS.

6 Q. And who is the assignee?

7 A. It states Force-MOS Technology Corporation.

8 Q. And who is that?

9 A. It's one of the name used to refer Force MOS-Cayman.

02:50 10 Q. When was the '409 Patent filed?

11 A. It's filed in -- it was filed in 2006.

12 Q. Who held the '409 Patent at the time it was filed with
13 the USPTO?

14 A. Force MOS-Cayman.

15 Q. Does Force MOS-Cayman still hold the '409 Patent?

16 A. No.

17 Q. Who holds it?

18 A. Force MOS-Cayman transferred this patent to Force
19 MOS-Taiwan in 2011.

02:50 20 Q. Was there a written agreement between Force MOS-Cayman
21 and Force MOS-Taiwan transferring the '409 Patent?

22 A. Yes.

23 Q. And if you could take a look at your screen at what has
24 been marked as JX 6 at 1055, please.

25 Do you recognize this document, Mr. Chung?

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1 A. Yes.

2 Q. And what is this?

3 A. This is a transfer agreement that transferred Force
4 MOS-Cayman's patent from Force MOS-Cayman to Force MOS-Taiwan.

5 Q. When was this agreement effective?

02:51 6 A. Let me see. The effective on October 5th, 2011.

7 Q. Did the Cayman Islands company remain open after this
8 transfer?

9 A. No. The Cayman entity was closed in 2012.

10 Q. Now, Mr. Chung, let's please look at what's been marked
11 as JX 2. Do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. It's Force MOS '634 Patent.

15 Q. And who is the inventor of this patent?

02:51 16 A. It's also Dr. Hsieh.

17 Q. When was the '634 Patent filed?

18 A. It was filed in 2008.

19 Q. Who initially held the '634 Patent?

20 A. Well, it's filed in 2008 and shortly after Force MOS was
21 founded in Taiwan in 2007. So this patent assigned
22 immediately to Force MOS-Taiwan.

02:52 23 Q. Let's talk a little bit about MOSFETs now. Does Force
24 MOS sell MOSFETs?

25 A. Yes.

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1 Q. Is that all Force MOS sells?

2 A. When -- not. The majority of Force MOS sales come from
3 the MOSFET products, but we also sells bipolar junction
4 transistor, or BJT.

5 Q. What is the difference between a MOSFET and BJT?

02:52

6 A. Well, both MOSFET and BJT has -- have essential roles in
7 electronics, but they are two different products and suitable
8 for different application.

9 Q. What do you mean when you say they are suited for
10 different applications?

02:53

11 A. Well, for example, BJT works as an electric current
12 amplifier. It is an older technology, and it's often used on
13 analog use devices. Whereas, MOSFET, it works as the switch
14 to control flow of current in electric circuit, and it is a
15 newer technology. And it's often used on digital devices such
16 as CPU and GPU.

17 Q. And now the patents that we're talking about today, the
18 '409 Patent and the '634 Patent, what products do those
19 patents relate to?

20 A. Well, both of them are patents on superior performance
21 MOSFET.

22 Q. Did Force MOS's patented technology impact its business?

23 A. Yes.

24 Q. How so?

02:53

25 A. Well, because we are able to provide a solution to our

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1 customer in order to make the consumer products works better,
2 last longer, and less expensive. And they may feel safe if
3 they sell the product into United States market with our
4 protection of patent.

5 Q. Do you believe Force MOS's patented technology helps it
6 secure customers?

7 A. Yes.

8 Q. Could you provide examples?

02:54 9 A. We have many large customer, some of the largest system
10 company in the world. And eventually in 2017, we enter a
11 business relationship with ASUS. That is a significant
12 milestone for us.

13 Q. And so Force MOS had a business relationship with ASUS,
14 the Defendant in this case.

15 A. Yes.

16 Q. What was the nature of that relationship?

17 A. Well, we supply our MOSFET product and BJT product
18 directly to ASUS.

02:54 19 Q. Now, with respect to the MOSFETs that Force MOS supplied
20 to ASUS, in what form were those sold to ASUS?

21 A. They are sold by the package -- a finished packaged
22 MOSFET product.

23 Q. Did ASUS ever buy an unfinished MOSFET from Force MOS?

24 A. No.

25 Q. To your knowledge, was Force MOS ASUS's only supplier of

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1 MOSFETs?

02:55 2 A. No, we are not a sole supplier to ASUS. As many large
3 company, ASUS work with multiple suppliers, and some of them
4 are a major player in the field. For example, like UPI and
5 Panjit, Excelliance.

6 Q. Given those kinds of major players in the field, how was
7 Force MOS able to secure business in this market?

02:55 8 A. Well, we are able to secure the business by showing our
9 product contain patented technology and by showing -- excuse
10 me. Let me explain again. By showing our product contain
11 patented technology that improve efficiency and reduce cost.

12 Q. How would Force MOS show potential customers that its
13 MOSFETs incorporated this patented technology?

02:56 14 A. Well, during the visit or the conference with our client,
15 we were showing them the wall photos of our patented
16 technology to them.

17 Q. Are you talking about that wall we saw on the screen
18 earlier?

19 A. Yes, exactly.

20 Q. Now, during your business relationship with ASUS, did
21 ASUS express any problems with the MOSFET components supplied
22 by Force MOS to ASUS?

02:56 23 A. No, never. They did has one complaint about one of the
24 MOSFET product, 200 -- 7002, but we did an investigation for
25 them. And after that, we found out the problem MOSFET was not

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1 provide by us. It was provided by another supplier.

2 Q. And so has ASUS ever raised a complaint about a MOSFET
3 actually supplied by Force MOS?

4 A. No, never.

5 Q. You said earlier that Force MOS also supplied I think you
6 called them BJTs to ASUS. Right?

02:57 7 A. Yes.

8 Q. Did ASUS ever raise any concerns about the BJTs?

9 A. Yes. There was one issues raised by ASUS that one of our
10 BJT product named 3904, and it was the product like we buy and
11 sell to ASUS. And we asked the third-party vendor, help us to
12 make it. And when we inform ASUS, it is not okay for ASUS to
13 accept our also same partner.

02:57

14 Q. How many BJTs did Force MOS sell to ASUS?

15 A. More than 640 millions pieces of BJT products.

16 Q. Of those 640 million pieces, how many BJTs did ASUS have
17 concerns about?

18 A. How many pieces?

19 Q. Yes. How many pieces was ASUS concerned about?

02:58 20 A. Two pieces per million, less than two pieces per million.

21 Q. So about one out of every 500,000?

22 A. Yes.

23 Q. Do you know roughly what percentage of those BJTs did not
24 have any issues?

25 A. Not issues?

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1 Q. Uh-huh.

2 A. 99.999 percent.

3 Q. Did Force MOS address ASUS's concern regarding those
4 BJTs?

5 A. Yes.

6 Q. What did it do?

7 A. We offer our quality assurance letter to ASUS to ensure
02:58 8 the products can meet the performance standard and can
9 work -- can operate as required.

10 Q. What's a quality assurance letter?

11 A. Where we often provide a quality assurance letter when
12 our customer has a concern or issues about our product, we
13 will provide a letter to standing behind our product.

14 Q. Were the BJTs made using the same process as Force MOS's
15 MOSFETs?

02:59 16 A. No. The BJT product that is we simply buy and sells to
17 ASUS; whereas, the MOSFET product we design by ourself, we tap
18 all the mask, we consign the material, and we fabricate in a
19 foundry, we do the backgrounding, back (unintelligible),
20 assembling for testing before we send them to assembly house
21 for packaging.

02:59 22 Q. Mr. Chung, were you present for ASUS's counsel's opening
23 statements just a bit ago?

24 A. Yes.

25 Q. Do you recall ASUS's claim that it stopped purchasing

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1 MOSFETs from Force MOS because, quote, there were defects in
2 Force MOS's transistors?

3 A. Yes.

4 Q. Was that related to the MOSFETs that are at issue in this
5 case?

6 A. No.

7 Q. What did that relate to?

8 A. It relate to BJT product that we sold to them.

03:00 9 Q. And those quality assurance letters that we just talked
10 about, has Force MOS ever issued a quality assurance letter to
11 ASUS regarding the MOSFETs supplied by Force MOS?

12 A. With MOSFET, no. No.

13 Q. Why not?

14 A. Because we didn't heard any quality issues of our MOSFET
15 products from ASUS.

16 Q. Does Force MOS still have a business relationship with
17 ASUS today?

18 A. No, not anymore.

19 Q. When did that relationship end?

03:00 20 A. The last order from ASUS was in November 2021.

21 Q. Who ended that relationship?

22 A. ASUS.

23 Q. Did they tell you why?

24 A. No, they didn't. They just decide not to renew its
25 contracts with Force MOS. It was very surprising.

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1 Q. Why was Force MOS's relationship with ASUS important?

03:01

2 A. Because -- because ASUS holds a dominant position in
3 Taiwan in this industry, and it has a lot of inference along
4 the electronics manufacturer and semiconductor company like
5 us.

6 Q. Does Force MOS have customers other than ASUS?

7 A. Yes.

8 Q. Was ASUS Force MOS's largest customer?

9 A. No. ASUS is not the largest customers of Force MOS, not
10 even the top three, but ASUS is the only brand customers
11 that -- that we have, which make the relationship significant.

03:01

12 Q. What do you mean when you say a brand customer?

13 A. Well, brand customer -- brand customer usually buy the
14 finished electronic devices from system company and sell them
15 to the consumer market under their brand. So ASUS is like --
16 like -- like Samsung.

17 Q. And you said system companies. How is a brand company
18 different than a system company?

03:02

19 A. System company integrate all the component into the
20 finish electronic devices, but they do not sell their devices
21 to the consumer market under their brand. So we provide a
22 MOSFET to system company, and they integrate the system
23 company into the finished electronic devices.

24 Q. Why is it significant to have a brand company as a
25 customer?

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03:02 1 A. Because the brand company hold a significant influence,
2 and to be on the list, to be on the approved vendor list of
3 list brand company is significant for Force MOS.

4 Q. Are any of Force MOS's sales to customers in the United
5 States?

6 A. No. Force MOS don't make any sales in the United States.

7 Q. Has Force MOS ever licensed its patents before?

8 A. No.

9 Q. Why not?

03:03 10 A. Because we are focusing on building up our business by
11 making and selling our own product rather than licensing our
12 technology.

13 THE COURT: Counsel, approach the bench, please.

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

16 THE COURT: I understand this is a lengthy direct
17 and a lengthy cross. We've been back over two hours from
18 lunch. We're going to take a short recess.

19 MS. PELLEGRINO: I would love that.

20 THE COURT: All right.

21 MS. PELLEGRINO: Thank you.

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

03:04 24 THE COURT: Ladies and gentlemen of the jury, it's
25 been more than two hours since we came back from lunch. This

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1 witness has got considerable more testimony to give, so we're
2 going to break at this juncture and take a short recess.

3 If you will, this is one of those times you can simply
4 close and leave your notebooks in your chairs. Remember to
5 follow all my instructions, including not to discuss the case
6 with each other, and we'll be back shortly to continue with
7 this examination of this witness.

8 The jury's excused for recess.

03:04 9 (Whereupon, the jury left the courtroom.)

10 THE COURT: Be seated, please.

11 Counsel, we talked in chambers early this morning before
03:04 12 jury selection about the excessive number of demonstratives at
13 issue, and I gave you an opportunity to work on that problem.
14 I'm not trying to say that your time is up, but I'd like an
15 interim report if there's any progress to report. If there's
16 not, I'd like to know that, too.

17 Can both sides give me a brief statement as to where you
18 might be? Or are there people outside the courtroom working
19 on it, that you need to check with them first? Where are we?

20 MR. McMAHON: Yes and yes, Your Honor. We received
03:05 21 an update from Plaintiff. We are reviewing it right now. We
22 have not had a chance to get back to them. We are working
23 through it.

24 THE COURT: Anything from Plaintiff to add to that?

25 MR. HANBA: I believe yes and yes was the correct

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1 answer, Your Honor.

2 THE COURT: All right. And let me say again, if
3 we're going to have disputes about something as outside the
4 scope of an expert's report, whether it relates to a
5 demonstrative or relates to anything else, I expect there to
03:05 6 be a specific citing to that report by paragraph number, not a
7 go find it yourself among 300 pages of expert report.

8 All right. I'll check with you on this matter later.
9 Continue to work on it. In the meantime, we'll take a short
10 break.

11 Court stands in recess.

03:06 12 (Brief recess.)

03:06 13 THE COURT: Be seated, please.

03:18 14 All right. Mr. Chung, if you'll return to the witness
15 stand, please. I remind you, you remain under oath.

16 And, Ms. Pellegrino, you may return to the podium.

17 MS. PELLEGRINO: Thank you, Your Honor.

18 THE COURT: And while they're getting situated, you
19 may bring in the jury, Mr. Barnett.

20 (Whereupon, the jury entered the courtroom.)

03:19 21 THE COURT: Welcome back, ladies and gentlemen.

22 Please have a seat.

03:19 23 And we'll continue with the direct examination of Mr.
24 Chung, the Plaintiff's representative.

25 Counsel, you may continue with your direct examination.

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1 MS. PELLEGRINO: Thank you, Your Honor.

2 Q. (BY MS. PELLEGRINO) Mr. Chung, why did Force MOS bring
3 this case?

4 A. Well, we try to protect our investment in technology that
5 we have worked very hard to offer this technology to the
03:19 6 market. So when ASUS suddenly terminate the business
7 relationship with us, we become suspicious that they are using
8 the components from the other suppliers using our technology.

9 Q. When you became suspicious, what did you do?

10 A. Well, we have the investigation. And after our
11 investigation, we found out that was the case. So we feel
03:20 12 like we have no choice but to enforce our intellectual
13 property rights.

14 Q. And when you said you had an investigation, could you
15 explain what you mean?

16 A. Yeah. We purchased ASUS laptop computer, module, graphic
17 card in the United States and send them to their certified
18 copy independent laboratory Matech for -- for ACN -- for
03:20 19 teardown and ACN to analyze the microstructure of the
20 components and in a very high magnification and match it with
21 our patent claim.

22 Q. After Force MOS --

23 MR. UNDERWOOD: Your Honor, I apologize. May we
24 approach to address a limine issue?

25 THE COURT: Approach the bench.

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

3 THE COURT: What's the issue?

4 MR. UNDERWOOD: Your Honor, I think it's possible
5 that the witness might have misspoken, but he mentioned a
6 company that he referred to as Matech. It's also been
03:21 7 referred to as Matech. The parties had filed a joint motion
8 in limine to remove that part of the case, Your Honor. And
9 I'll -- if I'm incorrect, then I'll allow you to speak to it.

10 MS. PELLEGRINO: Sure. Yeah. The agreed motion in
11 limine specifically excluded the notice letters that were sent
12 to ASUS, which is what Mr. Chung is describing. It excluded
13 those letters by name.

14 MR. UNDERWOOD: Okay.

15 THE COURT: And so there's no objection from the
16 Defendant that that agreed MIL was being violated?

03:21 17 MR. UNDERWOOD: Not with that explanation, Your
18 Honor.

19 THE COURT: All right. Then let's continue.

20 MR. UNDERWOOD: Thank you.

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

23 THE COURT: Let's continue, please.

24 Q. (BY MS. PELLEGRINO) Mr. Chung, after Force MOS received
25 the results of that investigation, what did you-all do next?

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03:22 1 A. Well, our lawyer send a notice letter to ASUS to request
2 that they stop using the infringing component.
3 Q. Mr. Chung, if you could please look at what has been
4 marked as JX 55. Do you recognize this document?
5 A. Yes.
6 Q. What is it?
7 A. It is the notice letter that was sent to ASUS regarding
8 the infringement of '409 Patent.
9 Q. When did Force MOS send this letter?
10 A. May 2022.
11 Q. To whom did Force MOS send this letter?
03:22 12 A. To ASUS in Taiwan.
13 Q. And now let's please look at what has been marked as JX
14 57.
15 Do you recognize this document?
16 A. Yes.
17 Q. What is it?
18 A. It is the notice letter that we send to ASUS regarding
19 the infringement of '634 Patent.
20 Q. To whom did Force MOS send this letter?
21 A. To ASUS in United States.
03:23 22 Q. And when did Force MOS send this letter?
23 A. September 2022.
24 Q. Why did Force MOS send letters to ASUS in the United
25 States and Taiwan?

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1 A. Well, because the business relationship that we had with
2 this ASUS in Taiwan, that is whom we sold our MOSFET, our
3 product to. And as we know that ASUS is selling these product
03:23 4 in the United States and the patent protect our technologies
5 is United States patent.

6 Q. Now, in each of the letters that we've just looked at, JX
7 55 and JX 57, did Force MOS attach anything to those letters?

8 A. Yes.

9 Q. What did it attach?

10 A. We attach the patent that were the subject of the letters
11 and the chart describing our infringing -- infringement
12 evidence.

13 Q. When you say your evidence, what do you mean?

03:24 14 A. We attached the SEM image from the independent labs
15 Matech.

16 Q. Let's look for example at JX 57.

17 MS. PELLEGRINO: And if we could turn to page 19.
18 Thank you.

19 Q. (BY MS. PELLEGRINO) Can you please explain to the jury
20 what we're looking at here?

03:24 21 A. Yes. This is the electron microscope image taken from
22 the independent lab Matech of the accusing infringement
23 components. It's the component from Panjit 2N7002, and we
24 provided a SEM image of the cross section of the component and
25 compare it to the claims of our patents.

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1 MS. PELLEGRINO: And if we could turn to the next
2 page, please.

3 Q. (BY MS. PELLEGRINO) What about this page? What are we
4 looking at here, Mr. Chung?

03:25 5 A. There are more SEM image from the third-party independent
6 laboratory Matech.

7 Q. And if we look at the next page, what about here, Mr.
8 Chung?

9 A. Yes. This is a cross section of our -- of the component
10 that infringe our patents, and we point out to ASUS how
11 this -- how this component infringe our patents.

12 Q. Now, what about the letter we saw regarding the '409
03:25 13 Patent? What did Force MOS show ASUS in that letter?

14 A. Well, same. We provide the patents and the SEM image
15 from independent labs. Yes.

16 Q. After Force MOS sent these letters, did ASUS stop using
17 the components accused of infringement?

18 A. No. They choose to continue using the infringing
19 component.

20 Q. Did ASUS respond to the letters?

03:26 21 A. Well, yes, they reply the email to our lawyers, but like
22 they didn't pay for the use of our technology and they didn't
23 stop using the infringing component.

24 Q. When you say they replied, who do you mean?

25 THE COURT: Let me interrupt a minute. The question

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1 to the witness, did they respond to the letters, the answer
2 was, well, yes, and then you went on to say and they didn't
3 pay and they kept using our technology.

03:26

4 You need to limit your answers, Mr. Chung, to the
5 questions asked. When you said yes, you fully answered the
6 question. The question didn't call for all this other
7 explanation about not paying or continuing to use technology.
8 If Ms. Pellegrino wants to go into that additional testimony,
9 she is fully capable to ask those questions, but you need to
10 give answers that conform to the questions asked.

11 I hope that's clear.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: All right. Let's proceed.

03:27

14 Q. (BY MS. PELLEGRINO) Mr. Chung, when ASUS responded to
15 the letter, did ASUS stop using the components accused of
16 infringement then?

17 A. No.

18 Q. And I apologize. When you said they responded to the
19 letter, who responded?

20 A. Someone called Michelle Hsieh, who worked in the legal
21 department of today's defendant ASUS in Taiwan.

22 Q. Did Ms. Hsieh respond to the letter that Force MOS sent
23 to ASUS in Taiwan?

24 A. Yes.

25 Q. Who responded to the letter that Force MOS sent to ASUS

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03:28 1 in the United States?

2 A. The same person, Michelle Hsieh, who work in the legal
3 department from today's defendant ASUS in Taiwan.

4 Q. So after that, what did Force MOS do next?

5 A. We brought a lawsuit here and tried to protect our IP
6 rights.

7 Q. After Force MOS filed this lawsuit, did ASUS stop using
8 the components accused of infringement then?

9 A. No, they didn't.

03:28 10 Q. What did ASUS do next?

11 A. ASUS reach out to its supplier to see whether -- ban its
12 supplier from using our products.

13 Q. Did you say ban?

14 A. Yes.

15 Q. Mr. Chung, do you believe that accusing ASUS of
16 infringement has affected Force MOS's business?

17 A. Yes.

18 Q. Why do you believe that?

19 A. Because ASUS suppliers do not just supply the products to
03:28 20 ASUS only, but to other brand company and influence our
21 reputation.

22 Q. When you say -- I apologize. Did you say ASUS suppliers
23 do not just supply to ASUS?

24 A. Do not -- I mean, it's not only supply the product to
25 ASUS, but to others -- other brand company, too.

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1 Q. Could you provide an example of what you mean?

03:29

2 A. Yes. For example, one of our customers is a battery pack
3 company that used to buy the -- used to buy the MOSFET from
4 UBIQ and us. And after we sue ASUS, they stop buying a MOSFET
5 from us. And we ask them why, and they say because ASUS
6 doesn't want our products.

7 MR. UNDERWOOD: Objection; hearsay, Your Honor.

03:29

8 THE COURT: Sustained as to what some third party
9 said as to why they stopped.

10 If you haven't finished answering the question, Mr.
11 Chung, you can go ahead and finish the answer. If you have --
12 counsel, ask the next question.

13 THE WITNESS: Okay. Thank you, Your Honor.

14 And so now currently they only buying the MOSFET from
15 UBIQ.

16 Q. (BY MS. PELLEGRINO) That battery pack customer, do they
17 sell to ASUS only?

18 A. No. They sell to others brand company.

19 Q. Like who?

03:30

20 A. Like Lenovo.

21 Q. And so in your opinion, what would be the impact of a ban
22 on Force MOS's products by ASUS?

23 MR. UNDERWOOD: Objection, Your Honor. He can't
24 offer opinions.

25 THE COURT: Well, he can't offer opinions, but he is

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1 here to speak for the company. He can give the company's
2 opinion, understanding that -- he can give the company's
03:30 3 opinion. I mean, it hasn't happened. It is with regard to
4 some future time, but he does have the ability to speak for
5 the company and he can answer what the company would believe
6 the effect of that would be.

7 I'll allow it on that basis.

8 Q. (BY MS. PELLEGRINO) Would you like me to repeat the
9 question, Mr. Chung?

10 A. Yes, please.

11 Q. In your opinion, what does Force MOS believe the impact
03:31 12 of a ban on Force MOS's products by ASUS would be?

13 A. Well, as I said, the brand company like ASUS, they
14 have -- hold a significant position in industry. So when they
15 tell their suppliers do not use the MOSFET from Force MOS, it
16 will influence the whole supply chain thinking that Force MOS
03:31 17 product is not -- is lesser quality or something like this.

18 Q. And did you say that UBIQ is providing the MOSFETs to
19 that battery pack customer?

20 A. Yes.

21 Q. Who is UBIQ?

22 A. UBIQ is a MOSFET supplier, and it's merge -- it is a
23 company that supply MOSFET and is merged by a company called
24 UPI Semi, and it's a public company in Taiwan. And the co-CEO
03:32 25 from ASUS is the chairman of UPI, and I think ASUS -- excuse

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1 me, not I think -- ASUS is the second biggest -- second
2 largest shareholder of UPI and including the co-CEO, CTO, and
3 CFO from ASUS, they are all a board member of directors in
4 UPI.

03:32 5 Q. Now, if other companies like UPI that you've just
6 described are supplying these MOSFETs, why did Force MOS sue
7 ASUS?

8 A. Because these suppliers do not sell their products to
9 United States, but ASUS did.

10 Q. Sitting here today, Mr. Chung, in February 2025, is it
11 your understanding that ASUS continues to this day to use the
12 components accused of infringement?

13 A. Yes.

14 Q. Thank you, Mr. Chung.

15 MS. PELLEGRINO: I pass the witness, Your Honor.

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

03:33 18 MR. UNDERWOOD: Your Honor, may I distribute
19 binders?

20 THE COURT: You may.

03:33 21 MR. UNDERWOOD: Thank you.

22 MR. CHEN: Permission to approach, Your Honor?

23 THE COURT: Permission granted.

24 All right, counsel. You may proceed with cross
25 examination.

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1 MR. UNDERWOOD: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. UNDERWOOD:

4 Q. Good afternoon, Mr. Chung. How are you?

5 A. Good afternoon. I'm well, thank you.

6 Q. We've not met before, have we?

7 A. No.

03:34 8 Q. Is it okay with you if I ask you some questions about
9 your testimony?

10 A. Yes, sure.

11 Q. Okay if I ask you some questions about the lawsuit your
12 company filed?

13 A. Yes.

14 Q. And were you paying attention when the Judge instructed
15 the jury on how it's the lawyer's job to be a zealous advocate
16 for their clients?

17 A. Yes, I was there.

18 Q. And you understand that I'm here to advocate for my
19 client. Correct?

20 A. Yes, correct.

03:34 21 Q. So nothing that I ask you about is intended to be a
22 personal criticism of you. Do you understand that?

23 A. I understand.

24 Q. Okay. Thank you.

25 Now, you're the corporate representative in this case.

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1 Correct?

2 A. Correct.

3 Q. You are not what the Court has referred to as an expert
4 witness. Correct?

5 A. Yes, I'm not.

6 Q. You're not here to offer any expert opinions on whether
7 or not ASUSTeK infringes your company's patents. Correct?

8 A. Yes.

9 Q. And you understand that at the end of this week, the
10 jury's going to have to make a determination on infringement.

03:35 11 Correct?

12 A. Correct.

13 Q. And when it comes to them making that determination,
14 you're not the one who's offering them any expert testimony.

15 Correct?

16 A. Yes.

17 Q. And the same is true for invalidity. Correct?

18 A. Sir -- what do you mean by that?

19 Q. Well, the jury's going to have to answer a question about
20 invalidity at the end of this week.

21 A. Oh, yes.

22 Q. Right?

23 A. Yes.

24 Q. As you understand that it's my client's position that the
25 '409 Patent is invalid. Correct?

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1 A. Correct.

03:35

2 Q. And you're not here to offer the jury any expert
3 testimony on whether the '409 Patent is invalid. Fair?

4 A. Fair.

5 Q. You're also not an inventor on these patents. Correct?

6 A. Yes, I'm not an inventor on the patents.

7 Q. The inventor on these patents is a man named Dr. Hsieh.
8 Did I pronounce that correctly?

9 A. Yes, Dr. Hsieh.

10 Q. And Dr. Hsieh is the inventor on these patents, not you.
11 Correct?

12 A. Correct.

03:36

13 Q. And you didn't study engineering during your school
14 years, did you, sir?

15 A. Yes, I'm not a technical guy.

16 Q. You're not a technical guy. Right?

17 A. Yes.

18 Q. You have a relatively shallow understanding of
19 technology. Correct?

20 A. Correct.

21 Q. And, in fact, you have a general understanding of how
22 MOSFETs work, but you cannot provide this jury with an
23 in-depth understanding as to how the research or the
24 development of MOSFETs is done. Correct?

03:36

25 A. Correct.

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1 Q. That's not your deal. Right?

2 A. I mean, I'm not a technical guy, yes.

3 Q. You're the business guy.

4 A. Yes.

5 Q. You've been employed with the Plaintiff Force MOS since
6 about 2015?

7 A. Yes.

8 Q. And I think -- did I see it correctly, sir, that you were
9 hired within a year of graduating with your degree. Correct?

10 A. Yes.

03:37 11 Q. And you were hired as a special assistant to the general
12 manager. Right?

13 A. Yes, correct.

14 Q. The general manager is a term that, at least for some
15 Taiwanese companies, is kind of like the CEO. Right?

16 A. Right.

17 Q. And the general manager or the CEO that you were hired to
18 be the special assistant of is your father. Correct?

19 A. Yeah, the general manager is my father, yes.

20 Q. That's Ming-Tao Chung?

21 A. Yes.

22 Q. He goes by Dover as well. Right?

23 A. Yes.

03:37 24 Q. And today he's still the CEO. Correct?

25 A. Correct.

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1 Q. Now, within a few years of being hired as the special
2 assistant to your father, you were elevated. Correct?

3 A. What do you mean by elevated?

4 Q. You received a promotion, did you not?

5 A. Received a promotion?

6 Q. Yes, sir.

7 A. You mean currently now?

8 Q. Yes, sir.

9 A. Yes, I become the deputy general managers.

10 Q. The deputy general manager. Right?

11 A. Yes.

12 Q. And that was in 2021?

03:38 13 A. No. I have hold -- I have become the general manager
14 since 2018.

15 Q. Oh, 2018.

16 A. Yes.

17 Q. Now, you're also a member of the board of directors of
18 the Plaintiff Force MOS. Correct?

19 A. Correct.

20 Q. Mr. Chung, I think we can all agree that words matter.
21 Fair?

22 A. What do you mean by that? Sorry.

23 Q. Well, this is a complicated patent case. Right?

24 A. Yes.

03:38 25 Q. And the Judge has given the jury a bunch of instructions

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1 on the law. Right?

2 A. Right.

3 Q. And one of the instructions the Judge gave the jury was
4 that the claims within the patent define the boundaries of the
5 protection that it gives. Do you remember that?

6 A. Yes.

7 Q. And the claims are the words within the patent. Right?

8 A. Yes.

9 Q. The words define the invention. Correct?

10 A. Correct.

11 Q. So words matter. Right?

12 A. Yes.

03:39 13 Q. Details are very important in a case like this. Correct?

14 A. Correct.

15 Q. Now, it would be a problem, wouldn't it, if your company
16 filed a lawsuit alleging patent infringement without actually
17 owning the patents. Agree?

18 A. But we did own the patent.

19 Q. Sir, it would be a problem to file a lawsuit if you did
20 not own the patents. We can agree on that. Right?

21 A. Yes.

03:39 22 Q. Now, I understand it's your position you do own the
23 patents. We'll get there in a minute. But if this jury
24 decides that your company doesn't own one of the patents,
25 that's a problem. Right?

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1 A. Right.

2 Q. Okay. Now let's look at the '634 Patent.

3 MR. UNDERWOOD: JX 2, Mr. Bupp.

4 Q. (BY MR. UNDERWOOD) Now, you discussed this patent on
5 your direct examination. Recall that?

6 A. Yes.

03:40

7 Q. And that's one of the two patents that your company has
8 asserted in this lawsuit. Correct?

9 A. Correct.

10 Q. The inventor, as we've discussed, is Dr. Hsieh?

11 A. Yes.

12 Q. And the assignee -- by the way, the assignee is the owner
13 of this patent. Right?

14 A. Yes.

15 Q. And the assignee is Force MOS Technology Co., Ltd., in
16 Taiwan. Correct?

17 A. Correct.

18 Q. And that's the Plaintiff to this lawsuit. Right?

19 A. Yes.

20 Q. That's your company.

21 A. Yes.

22 Q. So you-all own this patent. Right?

23 A. Yes.

24 Q. Nothing to see here. Right?

03:40

25 A. What do you mean by that?

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1 Q. I'll move on.

2 What about the '409 Patent, sir?

3 MR. UNDERWOOD: Can we look at that, Mr. Bupp?

4 THE WITNESS: Yes.

5 MR. UNDERWOOD: That's JX 3.

6 Q. (BY MR. UNDERWOOD) The inventor is again who?

7 A. It's Dr. Hsieh also.

8 Q. Now, who's the assignee on this patent?

9 A. It's Force MOS-Cayman.

10 Q. Force MOS-Cayman.

11 A. Yes.

12 Q. And specifically which company? What are the words here?

03:41 13 What are the words on this page? Can you read it, please?

14 A. Yes. Force-MOS Technology Corps.

15 Q. KY?

16 A. KY.

17 Q. Which means?

18 A. Cayman Island.

19 Q. And that company is not the Plaintiff in this lawsuit.

20 Correct?

21 A. Correct, but the entity was closed. And before the

22 entity was closed, this patent has transferred from

23 Force-MOS-Cayman to Force-MOS-Taiwan.

24 MR. UNDERWOOD: Your Honor, I have to object as

03:41 25 non-responsive after the answer correct.

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1 THE COURT: Sustained.

2 Again, Mr. Chung, your answers need to conform to the
3 scope of the question. And Ms. Pellegrino will get a chance
4 to ask further questions in the process. So if there's
5 something you don't get to answer now and she thinks it's
6 important, she can address it later. That's why you need to
7 stay within the scope of the questions as they are asked.

8 THE WITNESS: My apologize, Your Honor.

9 THE COURT: That's fine. Just let's go forward on
03:42 10 that basis.

11 Go ahead, Mr. Underwood.

12 MR. UNDERWOOD: Thank you, Your Honor.

13 Q. (BY MR. UNDERWOOD) So, Mr. Chung, just to close the loop
14 on this, you agree with me that the assignee listed on the
15 face of this patent is not the Plaintiff in this lawsuit.
16 Correct?

17 A. Correct.

18 Q. All right. Now let's look at the assignment agreement
19 that you discussed on your direct examination.

20 MR. UNDERWOOD: Let's look at JX page 1054, please,
03:42 21 Mr. Bupp.

22 Q. (BY MR. UNDERWOOD) Now, this assignment agreement is on
23 file with the United States Patent and Trademark Office.

24 Correct?

25 A. I don't know about it.

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1 Q. You don't know?

2 A. You mean this assignment does not file to USPTO?

3 Q. Yes, sir. Do you know whether or not it is on file with
4 the United States Patent and Trademark Office?

5 A. I'm not sure about the answer of this question.

6 Q. Okay. Fair enough.

03:43

7 Well, let's look at what this assignment agreement says.
8 At the very top, do you see the field that says Inventor?

9 A. Yes.

10 Q. And it says, Whereas I, Fu-Tuan Hsieh, and then it lists
11 his address. Correct?

12 A. Yes.

13 Q. That's the inventor that's listed on the face of the '409
14 Patent. Correct?

15 A. Correct.

16 Q. And then if we can --

17 MR. UNDERWOOD: Mr. Bupp. Thank you very much.

18 Q. (BY MR. UNDERWOOD) And then there's a date. Do you see
19 the date?

20 A. Yes.

03:44

21 Q. And the date is November 29th, 2006. Correct?

22 A. Yes.

23 Q. And then --

24 MR. UNDERWOOD: Thank you.

25 Q. (BY MR. UNDERWOOD) And it says, Whereas Force-MOS

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1 Technology Corporation. Do you see that?

2 A. Yes.

3 Q. Having a place of business in the Cayman Islands. Do you
4 see that?

5 A. Yes.

03:44

6 Q. Desires to acquire the right, title, and interest of said
7 application and invention. Do you see that?

8 A. Yes.

9 Q. So the company that's listed here is a company called
10 Force-MOS Technology Corporation in the Cayman Islands.
11 Right?

12 A. Yes.

13 Q. And then --

14 MR. UNDERWOOD: Thank you, Mr. Bupp. If we can look
15 down at the bottom.

16 Q. (BY MR. UNDERWOOD) And it is signed at the bottom of the
17 page in China, and is that Dr. Hsieh's signature? Do you
18 know, sir?

19 A. Yeah, it's the signature from Dr. Hsieh.

20 Q. Okay.

03:44

21 MR. UNDERWOOD: Let's look at JX-6:1053.

22 Q. (BY MR. UNDERWOOD) All right. Now, this is a cover
23 page. Have you seen this before, Mr. Chung?

24 A. Yes.

25 Q. Okay. So this is a cover page that was attached to that

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1 assignment agreement when it was filed with the Patent Office.

2 You understand that. Right?

3 A. Yes.

03:45

4 Q. Okay. And in the top right-hand corner, it says again,
5 name and address of receiving parties. Do you see that?

6 A. Yes.

7 Q. And what is the name Listed?

8 A. Force-MOS Technology Corp.

9 Q. And it says further down again that they're in the Cayman
10 Islands.

11 A. Yes.

12 Q. Now, there's a problem with these documents, isn't there,
13 Mr. Chung?

14 A. What kind of problem?

03:45

15 Q. Well, the problem, sir, is that Force-MOS Technology Corp
16 doesn't exist. Right?

17 A. Yes. But as I say -- mentioned earlier, there is a
18 different name that refers to the same entity Force MOS-Cayman
19 because of the translation.

20 MR. UNDERWOOD: Your Honor, I have to object as
21 non-responsive again after the answer yes.

22 THE COURT: The answer yes is responsive. The
23 balance of the answer is non-responsive, and I'll strike it
24 and direct the jury not to regard that portion of the anxious.

03:46

25 Let's go ahead.

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1 MR. UNDERWOOD: Thank you, Your Honor.

2 Q. (BY MR. UNDERWOOD) Did you know, Mr. Chung, that the
3 Cayman Islands actually maintains a website that has a
4 database where you can look up whether or not companies exist?

5 A. Yes.

6 Q. You're familiar with that tool?

7 A. I'm not familiar with it, but I think that website
8 exists.

9 Q. Okay.

10 A. Yes.

03:46 11 Q. Is it okay if we run some searches on the website?

12 A. Yes.

13 Q. Okay.

14 MR. UNDERWOOD: Mr. Bupp, can you pull up the Cayman
15 Islands registry in your browser? Thank you.

16 Now, let's run a search, Mr. Bupp, first of all, for
17 Force-MOS Technology Corp (KY). Can you please press search?

18 Q. (BY MR. UNDERWOOD) Mr. Chung, what results are returned
03:47 19 from this search?

20 A. No data to display.

21 Q. Okay. So that means there's no company in the registry
22 of the Cayman Islands that's called Force-MOS Technology Corp
23 (KY). Correct?

24 A. Correct.

25 Q. And Force-MOS Technology Corp (KY) is the company that

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1 Dr. Hsieh assigned the patent to. Correct?

2 A. On the document that you provide earlier, yes.

03:47 3 Q. That's what the document says. Correct?

4 A. That's what the document says.

5 Q. Okay.

6 MR. UNDERWOOD: Let's run another search. This time
7 we'll do Force-MOS Technology Corp but without the KY in
8 parentheses.

9 Q. (BY MR. UNDERWOOD) All right. Is there any company
10 coming up this time, Mr. Chung?

11 A. No.

12 Q. All right.

03:48 13 MR. UNDERWOOD: Let's do another search. Force-MOS
14 Technology Corporation.

15 Q. (BY MR. UNDERWOOD) Any company coming up, Mr. Chung?

16 A. No.

17 MR. UNDERWOOD: Well, let's take out the dash.

18 Q. (BY MR. UNDERWOOD) Force MOS Technology Corporation, any
19 company coming up, Mr. Chung?

20 A. No, because it's not our register name.

03:48 21 MR. UNDERWOOD: Your Honor, I'm going to have to
22 object to non-responsive again.

23 THE COURT: The answer no is responsive to the
24 question. The balance goes beyond the question, is
25 non-responsive, and I'll strike that portion of the response.

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1 Let's continue.

2 MR. UNDERWOOD: Thank you, Your Honor.

3 Mr. Bupp, you can take those down.

4 Q. (BY MR. UNDERWOOD) Now, there's another assignment
5 agreement that you discussed on your direct examination.

6 Correct?

7 A. Yes.

8 Q. And it's actually two assignment agreements. Right?

03:49 9 There was one in 2009 and then one in 2011?

10 A. You mean the transfer -- patent transfer agreement?

11 Q. Yes, sir.

12 A. Yes.

13 Q. Okay. Well, let's look at the 2009 one, first.

14 MR. UNDERWOOD: Mr. Bupp, JX 6:1037.

15 Q. (BY MR. UNDERWOOD) All right. Now, this says
16 authorization agreement by and between, and there's two
17 companies listed. Do you see that, there?

18 A. Yes.

19 Q. Okay. What are the two companies listed?

03:49 20 A. Force-MOS in Taiwan and Force-MOS in Cayman.

21 Q. Well, but words matter. Right, Mr. Chung?

22 A. Yes.

23 Q. All right. So what are the actual names listed, please?

24 A. Force MOS Technology Company, Ltd., and Force MOS
25 Technology Company, Ltd. (Cayman).

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1 Q. All right.

2 MR. UNDERWOOD: And let's go down to who signed this
3 document, Mr. Bupp.

03:50

4 Q. (BY MR. UNDERWOOD) All right. This document was signed
5 on behalf of Force MOS Technology Co., Ltd., by someone named
6 Ching-Cheng Chang. Is that right?

7 A. Yes.

8 Q. Okay. And then it was signed on behalf of Force MOS
9 Technology Co. Ltd. Cayman Islands, by Ming-Tao Chung. Right?

10 A. Right.

11 Q. And Ming-Tao Chung, that's your father who also goes by
12 Dover. Correct?

13 A. Correct.

14 Q. Now let's look at the 2011 agreement.

03:50

15 MR. UNDERWOOD: Can we go to the 2011 agreement,
16 please, Mr. Bupp?

17 Q. (BY MR. UNDERWOOD) Okay. This one at the top, again who
18 are the two companies listed?

19 A. Force MOS Technology Company, Ltd., and Force MOS
20 Technology Company, Ltd. (Cayman Islands).

21 Q. Okay. Now, there is not a company listed here that is
22 Force MOS Technology Corp. Correct?

23 A. Correct.

03:51

24 MR. UNDERWOOD: Your Honor, may I use the easel?

25 THE COURT: You may.

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1 MR. UNDERWOOD: Thank you. And may I position it
2 about here so the folks can see it?

3 THE COURT: You may.

4 MR. UNDERWOOD: Thank you. Is this acceptable?

5 THE COURT: That's fine. Just put it back where you
6 found it when you're finished.

7 MR. UNDERWOOD: I will, Your Honor. Thank you.

8 THE COURT: Go ahead.

03:51 9 Q. (BY MR. UNDERWOOD) So, Mr. Chung, we've got two sets of
10 assignment agreements. Right?

11 A. Yes.

12 Q. The first is from 2006. Correct?

13 A. Yes.

14 Q. All right. And that was from Dr. Hsieh, the inventor.
15 Correct?

16 A. Yes.

17 Q. All right. Did I spell that right?

03:52 18 A. Yeah, I think so.

19 Q. Can you see, Mr. --

20 A. Yes.

21 Q. Okay. Okay. You can see it all right?

22 A. Yes.

23 Q. Okay. And he assigned the '409 Patent to a company
24 called Force MOS Technology Corp. (KY). Correct?

25 A. Correct.

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03:53 1 Q. Can you see that?
2 A. Yes.
3 Q. Can you also read my handwriting?
4 A. Yes, I can.
5 Q. Okay. Thank you.
6 So that's the first assignment agreement, isn't it?
7 A. Yes.
8 Q. Now, there was that second set of assignment agreements
9 from 2009 and 2011 we discussed. Right?
10 A. Yes.
11 Q. Okay. And those ones --
12 MR. UNDERWOOD: Mr. Bupp, can we pull those up
03:53 13 again? Let's go with the 2011 one. Thank you.
14 Q. (BY MR. UNDERWOOD) Those ones were from Force MOS
15 Technology Co., Ltd., Cayman Islands, to Force MOS Technology
16 Co., Ltd., in Taiwan. Right?
17 A. Yes.
03:53 18 Q. Okay. Okay. So the assignor in those agreements was
19 Force MOS Technology Co., Ltd. (KY). Correct?
20 A. Correct.
21 Q. All right. And Force MOS Technology Co., Ltd. (KY)
03:54 22 assigned the '409 Patent to Force MOS Technology Co., Ltd.
23 Taiwan. Correct?
24 A. Correct.
25 Q. Does that look right?

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1 A. Yes.

03:54

2 Q. Now, last summer, the summer of 2024, Force MOS, the
3 Plaintiff in this case, realized there was a problem. Right?

4 A. Yes.

5 Q. You agree.

6 A. What kind of problem we are talking about?

7 Q. Well, you agree with me Force MOS, the Plaintiff in this
8 case, the Taiwanese company, realized it had a problem last
9 summer. Right?

03:55

10 MS. PELLEGRINO: Objection; form.

11 THE COURT: Restate your question, counsel.

12 Q. (BY MR. UNDERWOOD) Well, Force MOS in Taiwan started
13 looking at these agreements and it realized that the 2006
14 agreement was to a company called Force-MOS Technology Corp.
15 (KY). Right?

16 A. Right.

03:55

17 Q. And it realized that a totally different company called
18 Force MOS Technology Co., LTD. (KY) was the assignor in the
19 '09 and '11 assignment agreement. Correct?

20 A. Well, the true is that this entity had always belonged to
21 Force MOS and the maintenance fee has always paid by us, paid
22 by Force MOS.

23 MR. UNDERWOOD: I'm going to have to object as
24 non-responsive again, Your Honor.

25 THE COURT: Sustained.

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03:56 1 Mr. Chung, you're going to have to answer the question
2 asked and not go beyond the scope of the question asked. All
3 right?

4 THE WITNESS: Okay.

5 Q. (BY MR. UNDERWOOD) So in light of this problem,
6 Mr. Chung, your father put together some declarations. Right?

7 A. Yes.

8 Q. Do you know what I'm talking about?

9 A. Yes.

10 MR. UNDERWOOD: Can we look at, Mr. Bupp,
11 JX 06:1050?

12 Q. (BY MR. UNDERWOOD) This is a declaration of Ming-Tao
13 Chung. That's your father. Correct?

03:56 14 A. Yes.

15 MR. UNDERWOOD: And can we go to the date on this
16 document, please, Mr. Bupp?

17 Q. (BY MR. UNDERWOOD) What's the date on this document?

18 A. It's May 31st and 2024.

19 Q. So just last summer?

20 A. Yes.

21 Q. And your father, Dr. Chung, filed this with the Patent
22 Office. Correct?

03:57 23 A. I'm not sure to the PTO.

24 Q. We'll get there.

25 MR. UNDERWOOD: Let's go, Mr. Bupp, to paragraph 3.

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1 Q. (BY MR. UNDERWOOD) All right. Now, in paragraph 3, your
2 father stated that he had been a supervisor and a member of
3 the board of Force MOS Company, LTD., in Taiwan. Correct?

4 A. Yes.

03:57 5 Q. Now, 'supervisor' is a specific term in Taiwan. Correct?

6 A. Correct.

7 Q. You're a Taiwanese businessman. Correct?

8 A. Yes.

9 Q. And 'supervisor' has a specific meaning. Correct?

10 A. Yes.

11 Q. What is that meaning?

12 A. They supervise the other board member of the directors.

13 Q. Okay.

14 MR. UNDERWOOD: Let's go to the next paragraph,

15 Mr. Bupp.

03:58 16 Q. (BY MR. UNDERWOOD) And here he said that he also served
17 as the president of Force MOS Technology Co., LTD., in the
18 Cayman Islands. Correct?

19 A. Correct.

20 MR. UNDERWOOD: All right. And we'll go to
21 paragraph 5.

22 Q. (BY MR. UNDERWOOD) Now, paragraph 5 is where it gets
23 interesting, isn't it, Mr. Chung?

24 A. What do you mean by that?

03:58 25 Q. Well, paragraph 5 is where last summer your father

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1 started trying to correct the errors in the chain of title.

2 Correct?

3 A. Yes.

4 Q. And what he says here is that during his tenure as the
5 president of Force MOS Technology Co., LTD., Cayman Islands,
6 it also went by all of these other names. Right?

7 A. Yes.

03:59 8 Q. And then if you go to the next paragraph, he tries to say
9 just this last summer, 18 years after the first assignment
10 agreement, he says, Oh, and by the way, these terms all refer
11 to the same company. Right?

12 A. Yes.

13 MR. UNDERWOOD: And then if we go to paragraph 11,
14 Mr. Bupp.

03:59 15 Q. (BY MR. UNDERWOOD) He says that on November 2nd, 2009,
16 he executed a patent assignment agreement by and between Force
17 MOS Technology Co., LTD., in Taiwan and Force MOS Technology
18 Co., LTD. (Cayman Islands) on behalf of both companies.

19 MR. UNDERWOOD: Can we highlight that part,
20 Mr. Bupp, "on behalf of both companies"?

21 Q. (BY MR. UNDERWOOD) Do you see that?

22 A. Yes.

23 Q. And then this declaration --

04:00 24 MR. UNDERWOOD: Mr. Bupp, can we go to JX 06:1045?

25 Q. (BY MR. UNDERWOOD) This declaration was put on file at

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1 the United States Patent and Trademark Office. Correct?

2 A. Correct.

3 Q. And it was actually filed by your lawyers in this case.

4 Correct?

5 A. Correct.

6 Q. Now, there's a couple of problems with this declaration,

7 aren't there?

8 A. Yes.

9 MS. PELLEGRINO: Your Honor, if I could approach?

10 THE COURT: Approach the bench, please.

11 (The following was had outside the hearing of the
04:01 12 jury.)

13 THE COURT: What is it?

14 MS. PELLEGRINO: We are getting into the
15 inconsistencies that form the basis of a their 2009 assignment
16 argument at summary judgment, which the Court has already
17 decided. I also think they are going to go into the
18 inconsistencies between Mr. Dover Chung's declarations, of
19 which he is not the declarant. They already designated
20 testimony where they want to call into question Mr. Dover
04:01 21 Chung's credibility, but it doesn't speak to his credibility.
22 He is not the declarant of these two statements they are
23 saying now are inconsistent or there's a problem with the
24 statements in this declaration.

25 THE COURT: Do you have any response, Mr. Underwood?

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1 MR. UNDERWOOD: I do, Your Honor. This goes
2 directly to the issue that was taken up in chambers this
3 morning where the Court found that we could point out the
4 inconsistencies in the declaration because it went to
5 credibility. Now, this is the corporate representative. It
04:01 6 is not Ming-Tao Chung, but this is a declaration by the CEO of
7 the Plaintiff.

8 MS. PELLEGRINO: If I may respond, Your Honor?

9 THE COURT: Briefly.

10 MS. PELLEGRINO: They've designated the testimony
11 about the inconsistencies. That is what we took up in court
12 this morning.

13 THE COURT: I remember.

14 MS. PELLEGRINO: And so this is a different person.
15 Again, these are not his words. And so they will certainly be
16 able to challenge Mr. Dover Chung's credibility.

17 THE COURT: Bottom line is this is not the
18 deposition designation we took up in chambers, but this
04:02 19 witness is here as the representative of the company. The
20 declaration at issue was executed on behalf of the company.
21 Even though there was a different signature on them, I don't
22 see how this corporate representative can be shielded from
23 addressing the company action through that other
24 representative. So you certainly can point out that was Dover
25 Chung, this is Rafael Chung, but the response to that is it

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1 was all done on behalf of Force MOS.

04:03

2 And so I'm going to overrule your objection. I'm going
3 to allow Mr. Underwood to go into any discrepancies because
4 we're comparing actions of the corporation with the corporate
5 representative who's here to address the actions of the
6 corporation. So these are not individual actions, and it's on
7 that basis I'm going to overrule your objection.

8 MS. PELLEGRINO: Understood.

9 THE COURT: All right. Let's proceed.

10 MR. UNDERWOOD: Thank you, Your Honor.

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

04:03

13 THE COURT: Let's proceed.

14 Q. (BY MR. UNDERWOOD) So Mr. Chung, you'd agree with me
15 there were several problems with this declaration that we've
16 just examined. Correct?

17 A. Yes, there are some error in the declaration.

18 Q. There were some errors. Fair?

19 A. Fair.

20 MR. UNDERWOOD: Let's go back to JX 6:1050,
21 Mr. Bupp, paragraph 3.

04:04

22 Q. (BY MR. UNDERWOOD) Now, you said earlier, didn't you,
23 Mr. Chung, that the term 'supervisor' had a very particular
24 meaning?

25 A. Yes.

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1 Q. And the fact is that Ming-Tao Chung was not a supervisor.

2 Correct?

3 A. Yeah, he is the member of the board of directors.

4 Q. But he was not the supervisor. Correct?

5 A. Correct.

6 Q. There was another error, wasn't there?

7 A. I'm sorry. I don't understand.

04:04 8 Q. Well, if we go -- I'm sorry. Were you done? I didn't
9 mean to cut you off, Mr. Chung. That's all I was saying.

10 A. Yes, I'm done.

11 Q. Okay. The other error is in paragraph 11, isn't it?

12 A. What kind of error are we talking about here?

13 Q. Do you remember we looked at this moments ago; we
14 highlighted "on behalf of both companies"?

15 A. Yes.

04:04 16 Q. The truth of the matter is Ming-Tao Chung did not execute
17 a 2009 assignment agreement on behalf of both companies.

18 Correct?

19 A. I'm not -- let me take a looks. Sorry.

20 Q. Maybe I can help, Mr. Chung.

21 MR. UNDERWOOD: Can we go back to JX 06:1037,
22 Mr. Bupp, and go down to the signature page? Blow that up,
23 please.

24 Q. (BY MR. UNDERWOOD) There are two signatures here.

25 Correct?

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04:05 1 A. Yes.

2 Q. There's Ching-Cheng Chang. Right?

3 A. Yes.

4 Q. And Ming-Tao Chung?

5 A. Yes.

6 Q. So Ming-Tao Chung didn't sign it on behalf of both of the

7 companies, which is what he said in his declaration. Correct?

8 A. Yes.

9 Q. And, in fact, a month later, a month after he filed his

10 original declaration, he filed a corrected one with the Patent

11 Office. Right?

12 A. Right.

04:05 13 Q. Now, there's some other problems with these declarations,

14 aren't there?

15 A. I don't know what kind of problem we are talking about

16 here.

17 Q. Well, the declarations were prepared and filed last

18 summer, weren't they?

19 A. Yes.

20 Q. But the problem is you can't change the past, can you,

21 Mr. Chung?

22 A. Yes.

23 Q. You can change the past?

24 A. Sorry. I mean he cannot. We cannot.

25 Q. I'd love it if you could change the past.

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1 A. No.

2 Q. Okay.

3 THE COURT: Counsel, no need to tell the jury what
4 you would love. Let's ask questions. Okay?

04:06 5 MR. UNDERWOOD: My apologies, Your Honor. Thank
6 you.

7 May I approach the easel again, Your Honor?

8 THE COURT: Certainly.

9 MR. UNDERWOOD: Thank you.

10 Q. (BY MR. UNDERWOOD) Mr. Chung, when were the assignment
11 agreements?

12 A. In 2006.

13 Q. And?

14 A. And 2009.

15 Q. And '11. Correct?

16 A. Yes.

04:06 17 Q. And so from 2006 to 2024, no one said a peep about these
18 assignment agreements. Right?

19 A. Correct.

20 Q. Right?

21 And from 2009 and 2011 to 2024, no one said a peep about
22 these assignment agreements. Correct?

23 A. Correct.

24 Q. The first time anyone says anything about these
25 assignment agreements is until after there's a lawsuit filed

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04:07 1 by the Plaintiff and after this issue is pointed out.

2 Correct?

3 A. Correct.

4 Q. That's a problem, isn't it?

5 A. We don't think that it's the problem because it looks
6 like there are many different kind of name, but it refers to
7 the same entity.

8 MR. UNDERWOOD: I'll have to object as
9 non-responsive, Your Honor.

10 THE COURT: "We don't think that it's a problem" is
11 a response that fits within the scope of the question asked.

04:07 12 The question did not call for why, and the "because it looks
13 like" and everything that follows that is non-responsive,
14 Mr. Chung, and I'm going to strike it.

15 And I'm sensitive to the fact that you may not have
16 testified in this court or any other court before, but I've
17 given you this instruction about five times now, and whether
18 you're an experienced witness or an inexperienced witness, you
19 need to follow my instructions, and that means keeping your
20 answers within the scope of the questions asked. I'm going to

04:08 21 insist on you doing that going forward, Mr. Chung. All right?

22 THE WITNESS: Okay. Yes, Your Honor.

23 THE COURT: All right. Let's go forward.

24 MR. UNDERWOOD: Thank you, Your Honor.

25 Q. (BY MR. UNDERWOOD) On your direct examination,

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1 Mr. Chung, you testified that Force MOS had never licensed
2 the patents to any other company. Right?

3 A. Right.

04:09

4 Q. And you know what a patent license agreement is, don't
5 you?

6 A. You mean personally I understand?

7 Q. Yes.

8 A. Well, I'm not a legal expert, so I'm not very familiar
9 with the details of the license agreement.

10 Q. Well, you know generally what they are, don't you? I
11 mean, you testified about it on direct examination.

12 A. Yes.

13 Q. Okay. Well, a patent license agreement is where one
14 company can license its patents and allow another company to
15 use them in exchange for money. Correct?

04:09

16 A. Yes correct.

17 Q. And Force MOS has never licensed the patents in this
18 lawsuit to any company ever. Correct?

19 A. Correct.

20 Q. Which means there is not a company on this planet that
21 has ever paid a nickel for these patents. Correct?

22 A. Correct.

23 Q. It's not for lack of trying, though, is it?

24 A. I'm sorry. I don't understand. What do you mean?

25 Q. Force MOS has actually made an effort to attempt to

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1 license its patents to other companies. Correct?

2 A. Correct.

04:09 3 Q. Force MOS has approached companies like Inergy, Diodes,
4 Gigabyte, and Dell about patent licensing. Correct?

5 A. Correct.

6 Q. And none of those companies asked for a license, did
7 they?

8 A. Yes, they didn't.

9 Q. They did or did not?

10 A. They did not.

11 Q. And none of those companies even expressed any interest
12 in taking a license, did they?

13 A. Yes; they did not.

14 Q. They did not express any interest, did they?

15 A. They did not.

04:10 16 Q. Now, you spoke a little bit as well, Mr. Chung, about the
17 relationship between the parties on direct examination. Do
18 you remember that?

19 A. Yes.

20 Q. And your company Force MOS in Taiwan is a company that
21 designs and sells these MOSFETs that everybody's been hearing
22 about. Right?

23 A. Right.

24 Q. You-all don't design computers. Correct?

25 A. Yeah, we are not design computer.

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1 Q. Don't design laptops?

2 A. No.

3 Q. Don't design desktops?

4 A. No.

04:10 5 Q. And my client ASUSTeK is a company that designs laptops
6 and desktops and computers. Right?

7 A. Right.

8 Q. ASUSTeK doesn't design MOSFETs. Right?

9 A. Right.

10 Q. ASUSTeK doesn't manufacture MOSFETs. Right?

11 A. Right.

12 Q. ASUSTeK doesn't sell MOSFETs to anyone. Right?

13 A. Directly, yes. They do not sell MOSFET directly.

04:11 14 Q. Okay. ASUSTeK does not sell MOSFETs directly. Right?

15 A. Right.

16 Q. Because you also understand, don't you, that ASUSTeK has
17 to purchase components like MOSFETs from other suppliers.

18 Right?

19 A. Yes.

20 Q. And those suppliers include companies like Panjit. You
21 talked about them. Right?

22 A. Yes.

23 Q. UPI was another one you talked about. Right?

24 A. Right.

25 Q. There's a handful of these suppliers out there. Correct?

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1 A. Correct.

04:11 2 Q. And for a period of time Force MOS was one of those
3 suppliers. Right?

4 A. Yes.

5 MR. UNDERWOOD: Can we look at JX 65? And can we
6 scroll to the English translation?

7 Q. (BY MR. UNDERWOOD) This is the material purchase and
8 sale agreement between the Plaintiff Force MOS Taiwan and the
9 Defendant ASUSTeK. Correct?

10 A. Correct.

04:12 11 Q. And this was signed in 2017. Correct?

12 A. Correct.

13 MR. UNDERWOOD: And if we go to general provision
14 1.1, Mr. Bupp.

15 Q. (BY MR. UNDERWOOD) Do you see where it says, "This
16 agreement constitutes the basic terms and conditions for the
17 purchase and sale of materials between the two parties"?
18 Correct?

19 A. Correct.

04:12 20 Q. The two parties, again, are the parties to this lawsuit.
21 Right?

22 A. Right.

23 Q. All right.

24 MR. UNDERWOOD: Mr. Bupp, can we go to provision
25 7.7.1?

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1 Q. (BY MR. UNDERWOOD) Do you see it's titled, "Handling of
2 Defective Products"?

3 A. Yes.

4 Q. And do you see where it says, "Party B shall bear the
5 responsibility for guaranteeing the defects of the materials
6 provided to Party A"?

7 A. Yes.

8 Q. Party B is the Plaintiff in this lawsuit. Right?

9 A. Yes.

04:13 10 Q. Party A is ASUSTeK. Right?

11 A. Right.

12 Q. So what this says is that the Plaintiff in this lawsuit
13 shall bear the responsibility for guaranteeing the defects of
14 the materials provided to ASUSTeK. Correct?

15 A. Correct.

16 Q. And then, of course, there were some defective products
17 that were sold, weren't there?

18 A. Yes. BJT product.

19 Q. That's right?

20 A. Yes.

21 Q. The Plaintiff in this lawsuit sold defective products to
22 ASUSTeK. Correct?

23 A. Correct.

04:13 24 Q. And, in fact, that occurred in 2021. Right?

25 A. Right.

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1 MR. UNDERWOOD: Mr. Bupp, can we go to DX 7, please?

2 Q. (BY MR. UNDERWOOD) And when the defects were discovered,
3 there was a lengthy exchange between the Plaintiff and the
4 Defendant in this case. Right?

5 A. Yes.

6 Q. There was a whole email chain --

7 MR. UNDERWOOD: Mr. Bupp, can you just scroll
8 through this?

9 Q. (BY MR. UNDERWOOD) I mean, it's pages and pages, isn't
10 it?

04:14 11 A. Yes.

12 MR. UNDERWOOD: Mr. Bupp, can you go to the page,
13 it's the Bates label 16208, and blow up that image there?

14 Q. (BY MR. UNDERWOOD) This is an email. It's a little
15 difficult to tell, but you can see at the top it says it's in
16 October 2021. Do you see that?

17 A. Yes.

04:14 18 Q. And this is an email from Stone. Do you see that?

19 A. Yes.

20 Q. And it says, "We have just received a complaint from the
21 market regarding defective substrates." Is that right?

22 A. Right.

23 Q. And then it says, "The issue has already resulted in 20
24 defective products in Indonesia." Right?

25 A. Right.

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04:15

1 Q. "The situation is quite serious since it happens on the
2 market, and the customer is urgently demanding a report on the
3 cause of the defect." Correct?

4 A. Correct.

5 Q. I mean, this was a problem, wasn't it?

6 A. Yes, it's a problem caused by our BJT product.

7 Q. That's still your product, isn't it?

8 A. Yes.

9 Q. I mean, it's not someone else's product, is it?

10 A. Yes.

11 Q. It's not Panjit's product. Right?

12 A. Right.

13 Q. It's not any of the other suppliers' product, is it?

14 A. Yes.

15 Q. It's your product. Correct, sir?

16 A. Sir, yes.

17 Q. And you agree that it was a problem. Right?

04:15

18 A. Yes.

19 Q. And so there was this lengthy exchange between the
20 parties, and it eventually culminated in the signing of a
21 quality assurance agreement. Correct?

22 A. Correct.

23 MR. UNDERWOOD: Can we look at DX 12, Mr. Bupp? And
24 can we scroll to the translated portion?

25 Q. (BY MR. UNDERWOOD) This is the quality assurance

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04:16 1 agreement signed by the Plaintiff in this lawsuit on February
2 22nd, 2022. Correct?
3 A. Correct.
4 Q. And if we go to the third paragraph, it says, "Force MOS
5 agrees to pay a discount of \$157,224, to bear the
6 responsibility for the quality defect risks of
7 METR3904-G." Correct?
8 A. Correct.
04:16 9 Q. And around this same time ASUSTeK also made the decision
10 to quit purchasing products from the Plaintiff. Correct?
11 A. Correct.
12 Q. Now, I think in your direct examination you said that
13 this was a very sudden decision by ASUSTeK to quit purchasing
14 products. Do you remember using those words?
15 A. Yes.
16 Q. Would you agree, sir, that it's fair for the jury to make
04:17 17 the determination on whether this was a sudden or surprising
18 move by ASUSTeK?
19 A. Sorry. Can you repeat that question again?
20 Q. Well, yeah.
21 MR. UNDERWOOD: Let's look at the timeline. It was
22 in the opening slide deck, slide 21, Mr. Bupp, please?
23 Q. (BY MR. UNDERWOOD) So as we've just discussed, there was
04:17 24 a purchase and sale agreement signed in 2017. Right?
25 A. Right.

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1 Q. And you see that here on the screen?

2 A. Yes.

3 Q. And the defects were discovered four years later in 2021.
4 Right?

5 A. Right.

6 Q. And also in 2021, ASUSTeK decided to stop buying from the
7 Plaintiff. Correct?

8 A. Correct.

9 Q. And it's your testimony that this was a surprising
10 decision.

11 A. I said it was surprising because first the defect issue
04:18 12 we have paid full responsibility for our defect BJT products,
13 but ASUS didn't inform us that they wanted to terminate the
14 whole business relationship, including BJT products and MOSFET
15 products.

16 Q. Well, not long after this Force MOS also made the
17 decision of accusing ASUSTeK of patent infringement. Correct?

18 A. Correct.

04:18 19 Q. I mean, we already discussed the letter so we won't get
20 into it, but you can see here on the timeline Force MOS
21 accuses ASUSTeK of patent infringement. That was in May of
22 2022. Correct?

23 A. Correct.

24 Q. And you would agree with me, that was the first time ever
25 that Force MOS accused ASUSTeK of patent infringement.

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1 Correct?

2 A. Correct.

3 Q. And they've been in business for years. Right?

4 A. Yes.

5 Q. So in 2017, force MOS did not accuse ASUSTeK of patent
6 infringement. Right?

04:19 7 A. Right.

8 Q. In 2018, force MOS did not accuse ASUSTeK of patent
9 infringement. Right?

10 A. Right.

11 Q. They didn't do it in 2019. Correct?

12 A. Correct.

13 Q. They did not do it in 2020. Correct?

14 A. Correct.

15 Q. Did not do it in 2021. Correct?

16 A. Correct.

17 Q. They did it for the first time in 2022 only after ASUSTeK
04:19 18 had discovered that there were defective products that your
19 company sold and made the decision to terminate the
20 relationship. Correct?

21 A. Correct.

22 Q. Now, Force MOS also sent a very similar letter to a
23 company called Inergy. Right?

24 MR. UNDERWOOD: Can we look at JX 54, Mr. Bupp?

25 Q. (BY MR. UNDERWOOD) We looked at a couple of letters when

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04:20 1 you were answering Ms. Pellegrino's questions. I don't think
2 this was one of them, but this is a letter addressed to a
3 company called Inergy. Do you see that?

4 A. Yes.

5 Q. And it says, "Infringement of Force MOS, Co., LTD.'s
6 limited intellectual property rights." Correct?

7 A. Correct.

8 Q. And this letter actually also mentioned ASUSTeK, doesn't
9 it?

10 A. Yes.

11 MR. UNDERWOOD: Can we highlight that, Mr. Bupp?

12 Q. (BY MR. UNDERWOOD) So this is what Force MOS wrote to
04:20 13 the company called Inergy. "Additionally, the ASUS M410E
14 infringes the '409 Patent." Right?

15 A. Right.

16 Q. That's what your company wrote. Correct?

17 A. Correct.

18 Q. "Specifically, the ASUS M410 contains at least a product
19 supplied by Panjit, which incorporates Inergy's infringing
20 technology." Correct?

21 A. Correct.

22 So Inergy developed some technology that is included
04:21 23 in Panjit products and ultimately sold to ASUSTeK. Right.

24 A. Right.

25 Q. And because Force MOS had complaints about the technology

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1 in the Inergy products that was incorporated into the Panjit
2 products and that was ultimately sold to ASUSTeK, you-all
3 wrote this letter. Correct?

4 A. Correct.

5 Q. And Inergy responded, didn't it?

6 A. Yes, I think so.

7 MR. UNDERWOOD: Can we look at JX 41?

04:21 8 Q. (BY MR. UNDERWOOD) One week later on May 31st, 2021,
9 Inergy wrote a letter to Force MOS's lawyer. Correct?

10 A. Correct.

11 Q. You see that's addressed to Mr. Hanba?

12 A. Yes.

13 Q. And it says, "We represent Inergy technology."

14 Do you see that?

15 A. Yes.

16 MR. UNDERWOOD: And let's go down to the paragraph
17 that says, "Inergy has carefully examined." Can we highlight
18 that, Mr. Bupp?

04:22 19 Q. (BY MR. UNDERWOOD) They wrote, "Inergy has carefully
20 examined the example analyses of the infringement that you
21 provided."

22 Do you see that?

23 A. Yes.

24 Q. And it mentions two examples. Correct?

25 There is the LRC?

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1 A. Yes.

2 Q. And then what's the other example they provided?

3 A. ASUS.

4 Q. ASUS M410E. Right?

5 A. Yes.

04:22 6 Q. That's the same product that was listed in the other
7 letters we've looked at. Correct?

8 A. Yes.

9 Q. And then if we go to the next paragraph, "Based on the
10 results of this thorough examination, Inergy has come to the
11 conclusion that said products, as well as all of Inergy's
12 other products and services..." do not infringe any claims of
13 the '409 Patent. Correct?

14 A. Correct.

04:23 15 Q. Nor any other patent rights of Force MOS. Correct?

16 A. Yes.

17 Q. Now, there's one other issue about the timing of these
18 letters, isn't there?

19 A. Timing issue? What do you mean by that?

20 Q. So this is in the summer of 2022. Correct?

21 A. Yes.

04:23 22 Q. The fact of the matter is, the '409 Patent that was
23 referenced in these letters was not even enforceable during
24 the summer of 2022, was it?

25 A. Well, yes.

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1 Q. You agree it was not enforceable at that time. Correct?

2 A. You mean that the -- you mean the maintenance fee has not
3 paid to PTO? You mean by that?

04:24

4 Q. That's right. Force MOS did not pay the maintenance
5 fees, which meant that the patent wasn't even enforceable, was
6 it?

7 A. Well, can I explain about it?

8 THE COURT: You can on redirect if you're asked that
9 question by your counsel, but right now you have to answer the
10 question asked by ASUSTeK's counsel.

11 THE WITNESS: Okay. Thank you, Your Honor.

12 Yes.

13 Q. (BY MR. UNDERWOOD) Yes, the patent was not enforceable.
14 Correct?

15 A. Correct.

04:24

16 Q. So when Force MOS's lawyers wrote these letters accusing
17 ASUSTeK of infringement of the '409 Patent, they did so at a
18 time when the patent was not even enforceable. Agree?

19 A. Agree.

20 MR. UNDERWOOD: No further questions, Your Honor. I
21 pass the witness.

22 THE COURT: All right. If you'll return the easel
23 to where it was and turn it to a clean sheet, please.

24 MR. UNDERWOOD: Thank you, Your Honor; I will.

25 THE COURT: Ms. Pellegrino, is there redirect?

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1 MS. PELLEGRINO: Yes, Your Honor.

2 THE COURT: All right. Let's proceed with redirect.

04:25 3 Proceed when you're ready.

4 REDIRECT EXAMINATION

5 BY MS. PELLEGRINO: ?

6 Q. Hi again, Mr. Chung.

7 A. Hello.

8 MS. PELLEGRINO: Mr. Doyle, if I can please have

9 JX 2.

10 Q. (BY MS. PELLEGRINO) Mr. Chung, when was the '634 Patent
11 filed?

04:25 12 A. It was filed in 2008.

13 Q. And when was Force MOS Taiwan formed?

14 A. Force MOS Taiwan was formed in 2007.

15 Q. Was there any need for Force MOS -- excuse me. Was there
16 any need for Force MOS Cayman to hold the '634 Patent at the
17 time it was filed?

18 A. Sorry. Can you repeat that question? I didn't get which
19 patent.

04:26 20 Q. At the time the '634 Patent was filed, was there any need
21 for Force MOS Cayman to hold that patent?

22 A. No.

23 Q. Okay.

24 MS. PELLEGRINO: And if I could have JX 3,

25 Mr. Doyle.

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1 Q. (BY MS. PELLEGRINO) When was the '409 Patent filed,
2 Mr. Chung?

3 A. It was filed in 2006.

4 Q. Was Force MOS Taiwan yet open at that time?

5 A. No, not yet.

04:26

6 Q. Do you recall when I spoke to you a little bit earlier we
7 talked about the 2009 assignment?

8 A. Yes.

9 Q. Did that agreement transfer the '409 Patent to Force MOS
10 Taiwan?

11 A. Yes.

12 Q. Do you recall Mr. Underwood asking if that assignment had
13 been filed with the U.S. Patent Office?

14 A. Yes.

15 Q. Was that assignment filed with the U.S. Patent Office?

16 A. I think I -- I don't recall that.

04:27

17 Q. Would a document refresh your recollection, Mr. Chung?

18 A. Can I see the document again?

19 MS. PELLEGRINO: Can I have JX 6 at 1054, please. I
20 apologize. Can I please have JX 6 at 1061.

04:28

21 Q. (BY MS. PELLEGRINO) If you take a look at this document,
22 Mr. Chung, does this refresh your recollection about whether
23 that assignment was filed with the United States Patent
24 Office?

25 A. Okay. Yes.

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1 Q. Okay. Was that assignment filed with the United States
2 Patent Office?

3 A. Yes.

4 Q. And if you look at this document, who is the assignor?

5 A. Force MOS Company, LTD.

04:28 6 Q. Force MOS Company, LTD., could you continue to read?

7 A. Yes, Cayman Island.

8 Q. And what does it say after Cayman Islands?

9 A. A/k/a Force-MOS Technology Corp., Cayman Island, a/k/a
10 Force-MOS Technology Corporation, Cayman Island.

11 Q. And who is the assignee in this notice from the United
12 States Patent Office?

13 A. Force MOS Company, LTD.

04:29 14 Q. Do you recall Mr. Underwood asking if after the 2009
15 assignment was signed anyone ever made a peep about the
16 assignment? I think that's the word he used.

17 A. Yes.

18 Q. Did you work at Force MOS for a time while Dr. Hsieh was
19 still with the company?

20 A. I think that -- yes, that's -- with some sort time.

04:29 21 Q. Did Dr. Hsieh ever raise a concern to you about the
22 assignment of the '409 Patent?

23 A. No, he never.

24 Q. Okay. He never made a peep about it?

25 A. Yes.

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1 Q. Now, Mr. Underwood also showed you some declarations from
2 your father Dr. Dover Chung. Do you recall that?

3 A. Yes.

4 Q. Those weren't your declarations, were they?

5 A. I didn't get it.

04:29 6 Q. Who was the signatory on those declarations?

7 A. Signatory? You mean who signed the --

8 Q. Right.

9 A. -- the agreement?

10 Q. Right.

11 A. Yeah, it was my father.

12 Q. You didn't sign those?

13 A. Of course not.

14 Q. Okay. Did Force MOS come to realize there were some
15 mistakes in that first declaration?

16 A. Yes.

17 Q. When Force MOS made that realization, what did it do?

18 A. They reassigned it and add a new declaration.

19 Q. Did Force MOS correct its mistake?

04:30 20 A. Yes, of course.

21 Q. Do you recall that Mr. Underwood asked you some questions
22 about a quality assurance letter with ASUS?

23 A. Yes.

24 Q. What product did that letter relate to?

25 A. The bipolar junction transistor, BJT product.

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1 Q. Did it have anything to do with MOSFET?

2 A. With MOSFET, not.

04:30 3 Q. Does Force MOS itself actually make or manufacture that
4 BJT product?

5 A. No, as I says earlier, the BJT products is that we buy
6 it, simply buy and sell from the third-party vendor.

7 Q. As someone who works on the business side of Force MOS,
8 do issues sometimes arise with customers?

9 A. Yes. It's very common in our industry.

10 Q. And when issues arise with customers, what does Force MOS
11 do?

04:31 12 A. We often provide a quality assurance letter to our
13 customer.

14 Q. Why do you do that?

15 A. To stand behind our product.

16 Q. Do you know or do you recall how many MOSFET products
17 Force MOS supplied to ASUS?

04:31 18 A. I'm not sure about the exact number, but I would say a
19 lot. I would say at least a few hundred millions pieces.

20 Q. In the millions?

21 A. Yes.

22 Q. Were there ever any defects in the MOSFETs supplied by
23 Force MOS to ASUS?

24 A. No, never.

25 Q. Now, Mr. Underwood also asked you about the '409 Patent,

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1 whether it was enforceable. Do you remember that?

2 A. Yes.

3 Q. And I recall that you said you wanted to explain.

4 A. Yes.

5 Q. Could you explain to the jury what you wanted to explain
6 then?

04:32 7 A. Yes. The patent was filed in 2006, and we charged the
8 person who have to pay the maintenance fee for us, so he --
9 that person will receive the notification from PTO directly;
10 but Force MOS, we cannot receive the letter notification from
11 PTO directly. And this person, he -- we trust in him and he
04:33 12 failed us. So when we realized there was a mistake, we fix it
13 immediately after we found the problem, and currently the
14 patent is revived, yes.

15 Q. When Force MOS realized those fees hadn't been paid, did
16 Force MOS pay the fees?

17 A. Yes, of course.

18 MS. PELLEGRINO: Okay. No more questions.

19 Thank you, Mr. Chung.

20 THE COURT: You pass the witness, counsel?

21 MS. PELLEGRINO: I do, Your Honor.

22 THE COURT: All right. Is there additional cross,
23 Mr. Underwood?

04:33 24 MR. UNDERWOOD: There's not, Your Honor.

25 THE COURT: Then you may step down, Mr. Chung.

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1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: You're quite welcome.

3 THE WITNESS: Do I have to --

4 THE COURT: Just leave those there.

5 Plaintiff, call your next witness.

6 MR. THANE: Your Honor, Plaintiff's next witness is
7 a video deposition. We call Mr. Jim Tsao. Mr. Tsao is the
04:34 8 deputy director for ASUSTeK Computers, Inc. Plaintiff has
9 called Mr. Tsao to testify for 20 minutes and 29 seconds, and
10 Defendant has designated Mr. Tsao for 2 minutes and 8 seconds
11 for a total run time of 22 minutes and 37 seconds.

12 THE COURT: All right. Proceed with this witness by
13 deposition, please.

14 JIM TSAO

15 BY VIDEO DEPOSITION

04:34 16 Q. Good morning, Mr. Tsao. Can you please state your name
17 and spell your name in English for the record?

18 A. Jim Tsao--J-I-M T-S-A-O. C-H-U-N T-S-A-O. So on my
19 passport my name spelling is C-H-U-N T-S-A-O.

04:35 20 Q. So Mr. Tsao, can you please describe your educational
21 background, such as any degrees or certifications that you've
22 obtained?

23 A. I have a Master's degree.

24 Q. And what school did you get your Master's degree from?

25 A. So I obtained my Master's degree from Jinan University.

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1 Q. Could you please describe in detail the responsibilities
04:35 2 of the vice manager job?

3 A. So at the moment I'm responsible for developing the cell
04:35 4 modules for the laptops of ASUS.

5 MR. CHEN: No. It's -- his response both for the
6 R&D for ASUS battery packs.

7 Q. And what do you do personally to research this design of
8 the battery packs?

04:36 9 A. So for this part, basically we work with another three
10 manufacturers in Taiwan, and we provide them with the
11 specifications to carry out the design work.

12 Q. Can you please provide the names of those three
13 manufacturers that you work with?

04:37 14 A. So the first manufacturer is SMP. D-A-Y-A-P-A-C-K.

04:37 15 So the second one is Dayapack, so D-A-Y-A-P-A-C-K. So
04:37 16 the third company is called CPT, and which was my previous
17 job.

18 Q. Do you communicate with other manufacturers than those
19 that you have now identified?

04:38 20 A. So yes, of course, as a brand manufacturer and -- we
21 will, obviously, have all kinds of different brands

04:38 22 approaching us and to make introductions of their product,
23 and -- however, I am not very clear when you talk about, you
24 know, communications with other manufacturers and what
25 specific actions are you referring to, apart from the email

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1 sendings.

2 Q. Now, I know we've just talked a lot about manufacturers,
3 but as part of your job, do you also send messages to
4 suppliers who provide ASUS with actual products?

04:39 5 A. Yes. Of course I will be sending them in terms of ASUS
6 laptops, battery packs, relevant information.

7 Q. And do you ever communicate with suppliers about
04:39 8 interchangeable components within the battery packs?

04:40 9 A. The answer is no. However, there is -- recently there's
10 one assessment carried out where a request made to have an
04:40 11 assessment on the ban of using Force MOS's material.

12 Q. Can you please explain what you meant in your previous
13 answer where you mentioned the ban on Force MOS's materials?

04:41 14 A. So that is basically referring to, we have carried out an
15 assessment or had a discussion with respect to whether we
16 would be stopping to use the MOS from Force MOS.

17 MR. CHEN: We -- we -- I thought it was, We asked
18 for the assessment so that we can have a discussion.

19 A. Yes. So just to clarify and put that on the record,
20 and -- so basically they have had an assessment or had a
04:41 21 discussion with respect to whether they would be stopping to
22 use the MOS from Force MOS.

23 Q. And from who did you receive the instruction to perform
24 this assessment?

04:42 25 A. So on 3rd of May, the procurement side had contacted to

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04:43 1 our manager and -- with respect to the assessment on the ban
2 of using the MOS product from Force MOS, and the reason being,
3 the current suit that Force MOS has set forward against ASUS.
4 And therefore, for -- on the date of 6 of May, and the manager
5 had requested us to carry out the assessment.

04:43 6 Q. So the assessment was not based on something being
7 technically wrong with Force MOS's products?

04:44 8 A. I believe that the reason was because Force MOS has
9 brought this litigation against ASUS, and therefore -- on my
10 side, and we conducted the assessment.

11 Q. Are you aware of any ASUS products that currently include
12 Force MOS's MOSFETs?

04:45 13 A. So -- because for I -- myself, I am only responsible for
14 ASUS laptop and battery design, and on the 6th of May I had
15 conducted an investigation into the materials adopted in --
16 under my responsibility. And with respect to the materials
17 used by other departments, I do not know.

04:45 18 Q. And for the materials in your department, do you know if
19 any currently include Force MOS's MOSFETs?

04:46 20 A. So according to my investigation and -- right now what I
21 understand is that for those three manufacturers they would
22 list Force MOS's MOSFET on the BOM list, and -- however, which
23 specific MOS manufacturers that they would approach the
24 purchase at the moment I do not know.

25 Q. And so did you contact those three manufacturers that you

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1 just identified regarding their use of Force MOS's MOSFETs?

04:46 2 A. Yes. I have sent out emails and -- to facilitate with
3 the assessment.

4 Q. And what did you say in those emails to facilitate the
5 assessment?

04:47 6 A. So I have asked them, first of all, to investigate, and
7 whether they have used any Force MOS's material; and secondly,
8 to ask them to assess the impact, if it were to be banned.

04:47 9 And what I would like to say is that the above is simply an
10 assessment, and a decision has not yet been made.

11 Q. At any point in those emails did you suggest that those
12 suppliers not use Force MOS's MOSFETs?

13 A. No. Because my email has said it very clearly, it is for
14 an assessment.

04:47 15 Q. Did you communicate with the suppliers that the Force MOS
16 assessment was then suspended?

17 A. So it should be said that on the 6th of May I have sent
04:48 18 out mails to ask the manufacturers to conduct the assessment.
19 And on the 7th of May, when I received the deposition notice I
20 have asked the three manufacturers to put a stop or a
21 suspension on the assessment.

22 Q. And so can you please tell me the reason why you asked
23 for a suspension on that assessment?

04:49 24 A. Because our managers had a discussion that -- with the

04:49 25 deposition notice and perhaps there will be some dispute, and

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1 thereby the decision was made to suspend the assessment on the
2 ban of using the materials for MOS -- Force MOS.

3 Q. And then do you plan to reinstate the assessment of Force
4 MOS's products?

04:50 5 A. So we would consider doing so after the conclusion of the
6 current patent suit in terms of the material used. It is
7 really the manufacturers to decide rather than ASUS.

04:50 8 Q. For the products that you work on, does Force MOS
9 directly supply any parts or components?

10 A. Again, this I don't know either, and it would mainly be
11 the suppliers to make the decisions.

12 Q. Right. So it's the suppliers who provide these parts
04:50 13 that then contain Force MOS's components. Correct?

14 A. As I said earlier, when we received the message from our
04:51 15 procurement and -- the first step of action that I took was to
16 make confirmation to try and confirm about this. And
17 therefore, we do not know whether the manufacturers have used
18 Force MOS's product.

19 Q. Okay. And that is because you only work with these
20 manufacturers. Correct? You're not working directly with
21 Force MOS.

22 A. That's correct.

04:51 23 Q. And prior to hearing about this litigation, you didn't
24 know of Force MOS. That's what you said. Correct?

25 A. That's correct.

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1 Q. So the first of the -- the qualified suppliers that you
2 mentioned, SMP, does SMP provide products to computer
3 manufacturers other than ASUS?

4 A. Yes.

04:52 5 Q. And the second manufacturer you mentioned, Dayapack, does
6 Dayapack provide products to other computer manufacturers than
7 ASUS?

8 A. Yes.

9 Q. And for the third manufacturer, CPT, does CPT sell its
10 products to other computer manufacturers than ASUS?

11 A. Yes.

12 Q. So each of the three manufacturers that you identified
13 sell their products to other companies than just ASUS?

04:53 14 A. So just to clarify and -- you are asking that the three
15 manufacturers, they would sell their battery packs to other
16 brand companies? Is that the question?

17 Q. Yes, that's correct.

18 A. Yes, they would all do that.

04:53 19 Q. And could you please explain to me what you meant by the
20 term "ban" when you said that the assessment was to determine
21 whether to place a ban on Force MOS's MOSFETs?

04:53 22 A. So when I say "ban", and what I mean is that we carry out
23 the assessment and -- to see that for the battery packs of
24 ASUS, whether we would be able to not to use the MOSFET
25 products of Force MOS.

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1 Q. If ASUS determined there was a ban, would you ask the
2 suppliers not to use Force MOS's MOSFETs in those products?

04:54 3 A. With respect to this, we would still need to wait until
4 the internal discussions with the higher management team and
5 -- whether to actually execute this. And at the moment -- at
04:55 6 the moment, we have not yet made any decisions.

7 Q. And what was the purpose of the assessment?

04:55 8 A. The purpose is that because I have received a
9 recommendation from our procurement to see whether it would be
10 possible to not to use Force MOS's MOSFET products.
11 Therefore, we conducted the assessment.

04:55 12 Q. In your work, you have never seen ASUS place a ban on a
13 component.

14 A. If there is any quality issues, then yes, we would place
15 a ban. And apart from that, I have not seen any other cases
16 of a ban.

17 Q. When there was a ban for quality issues, what did you ask
18 your suppliers to do?

04:56 19 A. Of course we would ask them to improve the qualities and
20 then reassess the effect. And if they then become
04:56 21 satisfactory, then they would be able to come back into our
22 list. And what I'm referring here is only for our battery
23 products, and I don't know about others.

24 THE COURT: Does that complete this witness by
25 deposition?

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1 MR. THANE: It does, Your Honor.

2 THE COURT: Call your next witness, please.

04:57

3 MR. THANE: Your Honor, Plaintiff calls
4 Mr. Chao-Liang Hung. Mr. Hung is the director of engineering
5 for ASUSTeK Computers, Inc. Plaintiff has called Mr. Hung to
6 testify for 8 minutes and 53 seconds; Defendants have called
7 Mr. Hung for 40 seconds; for a total run time of 9 minutes and
8 33 seconds.

9 THE COURT: Proceed with this witness by deposition.

04:58

10 CHAO-LIANG HUNG

11 BY VIDEO DEPOSITION

12 Q. Were you given a budget when you were designing a new
13 laptop?

14 A. The salespeople would give me the budget of the
15 motherboard.

16 Q. Did they give you a budget for any other components?

04:58

17 A. They wouldn't -- they wouldn't -- they wouldn't give me
18 the whole budget. They would only give me the budget of the
19 board.

20 Q. I understand. But are you saying that you do not design
21 the batteries?

04:59

22 A. That is correct. I don't design the battery. ASUS does
23 not design the battery.

24 Q. I see. So the batteries are designed by a third-party
25 vendor?

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1 A. Yes.

2 Q. So you don't know what goes in the battery. Correct?

04:59 3 A. I know the basic cells, but the components on the PCB I
4 don't know.

5 Q. So regarding what components goes into a battery, that's
6 the supplier's decision. Correct?

7 A. Yes.

8 Q. So if the supplier of a battery used a MOSFET, you -- you
9 wouldn't know so long as the battery met your requirements.
10 Right?

11 A. That's correct.

04:59 12 Q. Would the same be true for a power adapter?

13 A. That's correct.

14 Q. So if the supplier of the power adapter used a MOSFET,
15 you wouldn't know, as long as the power adapter met your
16 requirements. Right?

17 A. That's correct.

18 Q. Let me ask you, so in addition to batteries and power
05:00 19 adapters, are there other components used in ASUS products
20 that ASUS does not design?

21 A. Camera, panel, and touch pad.

22 Q. And for any of these other products not designed by ASUS,
23 ASUS doesn't know what MOSFET is used in them, as far as these
24 components met ASUS's requirement. Right?

05:01 25 A. As long as they fulfill the spec and fulfill the

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1 requirement, whether they use the MOSFET or not, I wouldn't
2 know.

3 Q. Does ASUS have any BOM that definitively -- definitively
4 tell you which MOSFETs is in which ASUS device?

05:01 5 A. ASUS doesn't have one, doesn't have such a BOM--B-O-M.

6 Q. While we're still on this -- this worksheet, this
7 particular -- this BOM doesn't include any accessories.
8 Right? Like batteries, power supplies, display panels?

05:01 9 A. No. This BOM has motherboard and a BGA card, which is
10 why a battery panel and adapter are not included.

11 Q. Let's turn to Exhibit 7, with a Bates number
12 ASUS00014775.

13 Mr. Hung, please let me know when you have Exhibit 7 open
14 on your computer.

05:02 15 A. I have it open. Thank you.

16 Q. Do you recognize this document?

17 A. This is my first time to see it.

18 Q. Have you seen this type of documents at ASUS?

19 A. No.

20 Q. If you look at the row 3, it says, "AIOT embedded." Do
21 you see that?

22 A. Yes, I see it.

23 Q. Is this -- I'm sorry.

24 A. Yes, I see it.

05:03 25 Q. Is this AIOT the same AIOT that you testified earlier as

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1 one of the business units within ASUS?

2 A. It appears so to me.

3 Q. And if you look at the columns F through N, and you can
4 see that the eight accused components are listed there in the
5 -- in row 2 in the header. Right?

6 A. Yes.

05:03 7 Q. So if you look at row 3, AIT [sic] embedded model
8 EBS-S100, it shows that there is Y for the LRC MOSFET and the
05:03 9 Y for the Panjit 2N7002KDW. Right?

10 A. Yes.

11 Q. Is it your understanding that that indicates that both
12 the L2N722S and the 2N7002KDW MOSFETs are used in the
13 AIOT-embedded model EVS-S100?

05:04 14 A. This information does not indicate that AIOT embedded did
15 use these two components.

16 Q. Looking at the spreadsheet, you won't be able to tell
17 whether any of the accused components is used in the products
18 shown in the column A and B. Right?

05:04 19 A. Could you repeat the question, please?

20 Q. Certainly. Looking at this spreadsheet, you cannot tell
21 whether any of the accused components listed in column F
22 through N is used in the products shown in columns A through
23 E.

24 A. Correct.

05:05 25 Q. And this spreadsheet also does not list any accused

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1 components used in any of the accessories, such as batteries,
2 power supplies, or display panels. Correct?

3 A. Correct.

4 Q. Now, can you open Exhibit 8 with Bates number
05:05 5 ASUS_00014733?

6 A. Yes, I have it open.

7 Q. Do you recognize this document?

8 A. This is my first time seeing it.

9 Q. Do you see that rows 2 through 7 contains the accused
10 components that we've been talking about?

11 A. Yes.

05:06 12 Q. If you look on the -- the name of this worksheet, is
13 called "average cost."

14 Do you see that?

15 A. Yes, I see that.

16 Q. So is this your understanding that what's shown in this
17 spreadsheet are the average cost of the accused components?

18 A. Yes.

19 Q. What is the full name of your employer?

20 A. ASUSTeK Computer.

05:06 21 Q. Is that ASUSTeK Computer, Inc.?

22 A. This I'm not clear.

23 Q. Does ASUS know how the internal structures of the MOSFETs
24 that it uses are designed?

25 A. ASUS does not know.

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1 Q. Do you know what an SEM imaging is?

05:07 2 A. Not clear.

3 Q. So you're not aware of ASUS performing any SEM on any
4 MOSFETs it uses in any of its devices. Right?

5 A. Correct.

6 THE COURT: Does that complete this witness by
7 deposition?

8 MR. THANE: It does, Your Honor.

9 THE COURT: All right, counsel. Approach the bench,
10 please.

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

05:08 13 THE COURT: All right, Plaintiff. You next have up
14 this deposition that's about a little over an hour?

15 MR. HANBA: It is, Your Honor.

16 THE COURT: And then you're going to follow that
05:08 17 with Neikirk who's designated for four hours direct and cross?

18 MR. HANBA: Yes.

19 THE COURT: Are those -- do you feel like those are
20 good estimates?

21 MR. HANBA: Yes. I think those are good estimates
22 for the direct. I don't know about the cross. I think
23 Charlie -- Mr. McMahon might be doing cross.

24 THE COURT: All right. I'm trying to figure out
25 whether to go into this next deposition or go home. I'm

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05:08 1 working on the assumption you-all will use every minute of
2 your designated trial time and not give me any back.

3 MR. THANE: It sure looks that way.

4 THE COURT: We're either going to have a long night
5 tonight or we're going to have some long nights Monday and
6 Tuesday, it looks to me.

7 MR. UNDERWOOD: I was going to ask, Your Honor,
8 would you like us to go ask Mr. McMahon if there's any updates
9 to his cross examination of expected time, Your Honor, or
10 would that --

11 THE COURT: I don't expect it to be anything
12 drastically different.

13 MR. UNDERWOOD: I don't either.

05:09 14 MR. HANBA: I was going to ask Mr. McMahon to come
15 up and speak for himself.

16 MR. McMAHON: It's getting crowded up here, Your
17 Honor.

18 THE COURT: On Neikirk's cross, are you comfortable
19 that your estimate is going to hold for Monday?

20 MR. McMAHON: I am. It's somewhat dependent on how
21 many of his demonstratives come in, but yes, right -- as of
22 now, yes, I am.

05:09 23 THE COURT: All right. We've got two jurors that
24 live about 50 miles away. They've got at least an hour's
25 drive. I'm going to stop for the day today. I do want to

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1 resolve the demonstrative issue with you-all before we leave,
2 so we have some time to do that, and we'll pick up Monday
3 morning with the Diep, or however we say it, deposition that's
4 about an hour-plus, and then go into Neikirk.

5 Does Plaintiff know who's going to follow Neikirk?

05:10 6 MR. HANBA: I believe Mr. Fu as an adverse witness
7 and then followed by Mr. LaMotta.

8 THE COURT: Okay.

9 MR. HANBA: And then we'll wrap up.

10 THE COURT: All right. Take your seats.

11 MR. UNDERWOOD: Thank you, Your Honor.

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

14 THE COURT: Ladies and gentlemen, the next witness
15 is over an hour, and it's 10 minutes after 5:00 on a Friday.
05:10 16 I'd like to get the time in, but I'm not inclined to keep
17 everybody that late on a Friday, so we're going to recess for
18 the day at this juncture.

19 When you leave the jury box in just a few minutes, I'm
20 going to ask you to take your jury notebooks with you, leave
21 them closed on the table in the jury room, and they'll be
22 there Monday when you get in.

23 Please make arrangements to be here in advance of 8:30 so
24 that we can start at 8:30 on Monday.

25 Let me remind you once again that it's very important

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05:11 1 that you follow all of my instructions about your conduct,
2 including not to communicate with anybody in any way about
3 this case. And I may be wrong, but I don't think I am--when
4 you get home, you're going to get asked about this and just be
5 prepared to not answer that question.

6 If you will, have a good weekend. Travel safely to your
05:11 7 homes. Be back Monday morning so that we can start at 8:30.
8 I know Ms. Clendening will have juice and pastries and things,
9 so if you get here between 8:00 and 8:15, you'll have time for
10 something before we actually start. Remember my dad's
11 admonition about a convoy--we can't start until all eight of
12 you are here. So please make your plans to be here on Monday
13 morning on time.

14 With that, ladies and gentlemen, you're excused until
15 Monday morning.

05:12 16 (Whereupon, the jury left the courtroom.)

17 THE COURT: All right, counsel. Be seated, please.

05:13 18 So you'll know, according to the Court's records we've
19 used a total of 2 hours, 13 minutes, and 33 seconds of
20 designated trial time today. The Plaintiff has used an hour,
21 22 minutes, and 58 seconds, and the Defendant has used 50
22 minutes and 35 seconds.

05:13 23 I'd like to see you in chambers in just a few minutes
24 where you can update me about this demonstrative situation
25 that we've been dealing with since before 8:00 this morning,

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1 and I'll see where you are and give you guidance one way or
2 the other depending on what your report to me is.

3 With that, we stand in recess until Monday morning.

05:13

4 Let me see counsel in chambers, please.

5 (The proceedings were concluded at 5:13 p.m.)
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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
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S/Shawn McRoberts 02/07/2025

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