

APPENDIX 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1		
2		
3	LOGGERHEAD TOOLS, LLC,)
4)
5	Plaintiff,) Docket No. 12 C 9033
6	vs.)
7	SEARS HOLDINGS CORPORATION) Chicago, Illinois
8	and APEX TOOL GROUP, LLC.,) April 28, 2017
9	Defendants.) 9:57 a.m.

VOLUME 1
TRANSCRIPT OF PROCEEDINGS -
BEFORE THE HONORABLE REBECCA R. PALLMEYER, and a jury

APPEARANCES:

10	For the Plaintiff:	SKIERMONT DERBY LLP
11		BY: MR. PAUL J. SKIERMONT
12		MS. SARAH E. SPIRES
13		MS. SADAF ABDULLAH
14		2200 Ross Avenue, Suite 4800W
15		Dallas, Texas 75201

16	BARTLIT BECK HERMAN PALENCHAR
17	& SCOTT
18	BY: MR. JASON L. PELTZ
19	MS. ASHA L.I. SPENCER
20	MS. JEANNIE K. TINKHAM
21	54 West Hubbard Street, Suite 300
22	Chicago, Illinois 60654

23	For the Defendant	WINSTON & STRAWN
24	Sears Holdings	BY: MR. JAMES M. HILMERT
25	Corporation:	35 West Wacker Drive, Suite 4100
		Chicago, Illinois 60606

26	For the Defendants	KIRKLAND & ELLIS LLP
27	Sears Holdings	BY: MR. MARCUS E. SERNEL
28	Corporation and	MR. IAN J. BLOCK
29	Apex Tool Group:	MR. ERIC D. HAYES
30		MS. KATHERINE E. RHOADES
31		300 North LaSalle
32		Chicago, Illinois 60654

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

Court Reporter:

FRANCES WARD, CSR, RPR, RMR, FCRR
Official Court Reporter
219 S. Dearborn Street, Suite 2144D
Chicago, Illinois 60604
(312) 435-5561
frances_ward@ilnd.uscourts.gov

1 THE CLERK: 12 C 9033, LoggerHead versus Sears and
2 Apex.

3 THE COURT: Okay. I believe our jurors are
4 completing their questionnaires. I will just check on that
5 and make sure we are making progress.

6 (A brief recess was taken at 9:57 a.m. until 10:20 a.m.)

7 THE COURT: We have got our questionnaires. Ladies
8 and gentlemen, I am ready to bring in the jurors and begin
9 the process of jury selection.

10 I did take a quick look at the questionnaires. I
11 don't think that we have a large number of problems.

12 Are there any of the questionnaires that you think
13 right now should generate a cause challenge before we even
14 bring people in?

15 Did you see that we have a patent lawyer on our
16 jury -- our panel?

17 MR. SERNEL: Yes. And that was one of the ones
18 that we had flagged. I think a patent lawyer, as he says in
19 his own comments, "I think I'd have undue influence." I
20 think that's somebody we should strike.

21 THE COURT: What's the plaintiff's view on that?

22 MR. SKIERMONT: No objection.

23 THE COURT: We will excuse him. That's kind of a
24 shame.

25 Any other person who you think really is not likely

1 IN THE UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION

4 LOGGERHEAD TOOLS, LLC,)
 5 Plaintiff,) Docket No. 12 C 9033
 6 vs.)
 7 SEARS HOLDINGS CORPORATION)
 8 and APEX TOOL GROUP, LLC.,) Chicago, Illinois
 9 Defendants.) May 3, 2017
 9:39 a.m.

10 VOLUME 2
 11 TRANSCRIPT OF PROCEEDINGS - Trial
 12 BEFORE THE HONORABLE REBECCA R. PALLMEYER, and a jury

13 APPEARANCES:

14 For the Plaintiff: SKIERMONT DERBY LLP
 15 BY: MR. PAUL J. SKIERMONT
 16 MS. SARAH E. SPIRES
 17 MS. SADAF ABDULLAH
 2200 Ross Avenue, Suite 4800W
 Dallas, Texas 75201

18 BARTLIT BECK HERMAN PALENCHAR
 & SCOTT
 19 BY: MR. JASON L. PELTZ
 20 MS. ASHA L.I. SPENCER
 21 MS. JEANNIE K. TINKHAM
 54 West Hubbard Street, Suite 300
 Chicago, Illinois 60654

22 For the Defendant WINSTON & STRAWN
 23 Sears Holdings BY: MR. JAMES M. HILMERT
 Corporation: 35 West Wacker Drive, Suite 4100
 24 Chicago, Illinois 60606
 25

1 APPEARANCES (Continued):

2 For the Defendants KIRKLAND & ELLIS LLP
3 Sears Holdings BY: MR. MARCUS E. SERNEL
4 Corporation and MR. IAN J. BLOCK
Apex Tool Group: MR. ERIC D. HAYES
MS. KATHERINE E. RHOADES
300 North LaSalle
Chicago, Illinois 60654

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23 Court Reporter:

24

25

FRANCES WARD, CSR, RPR, RMR, FCRR
Official Court Reporter
219 S. Dearborn Street, Suite 2144D
Chicago, Illinois 60604
(312) 435-5561
frances_ward@ilnd.uscourts.gov

1 THE CLERK: 12 C 9033, LoggerHead versus Sears and
2 Apex. On trial.

3 THE COURT: I believe everybody else is here on
4 LoggerHead, correct? Good.

5 I believe all the jurors are here. I am going to
6 double-check on that and we can bring them in.

7 Is everyone ready?

8 MR. SKIERMONT: Your Honor, we do have a couple of
9 disputes about the opening slide exchange that we did, that
10 we could not resolve last night.

11 THE COURT: Let's talk about those right now.

12 (Document tendered.)

13 MR. SKIERMONT: LoggerHead has some objections to
14 the slides.

15 There are three categories. What I would like to
16 handle is -- there are three slides, I believe it is, related
17 to the advice-of-counsel issue.

18 If you turn to their Slide DDX 19, DDX 19 has
19 document excerpts with Mr. John Owen as a recipient or an
20 author, and Mr. Owen, as you will recall, is the outside
21 patent counsel who Apex is relying on for the
22 advice-of-counsel defense to willfulness.

23 THE COURT: Right.

24 MR. SKIERMONT: These documents -- for example, the
25 one -- the second excerpt that says "from Owen to Broadway"

1 THE COURT: You may be seated.

2 All right. The plaintiff is free to call their
3 first witness.

4 MS. SPIRES: Your Honor, plaintiff calls its first
5 witness, Loggerhead's president, Dan Brown.

6 THE COURT: Mr. Brown, could you step forward,
7 please?

8 DAN BROWN, PLAINTIFF'S WITNESS, DULY SWORN

9 THE COURT: You may proceed, Counsel.

10 MR. SKIERMONT: Your Honor, can you switch the
11 connection?

12 THE COURT: Sure.

13 MR. SKIERMONT: Thank you.

14 THE COURT: Do you want to use your computer or the
15 --

16 MS. SPIRES: Counsel table.

17 THE COURT: Counsel table. Got it.

18 (Brief pause.)

19 THE COURT: Is that right?

20 MS. SPIRES: Yes. Thank you.

21 DIRECT EXAMINATION

22 BY MS. SPIRES:

23 Q. Good afternoon.

24 A. Hello.

25 Q. Could you please introduce yourself to the jury?

1 Q. Yes. Once you got over the shock of seeing the photos,
2 what did you do?

3 A. Well, I was shocked, because we patented this embodiment
4 of our wrench. And I went to the patents that I had and took
5 the image, and I sent an e-mail to Pete Hannon, who was our
6 rep at Sears to show him what we had found.

7 Q. Did Sears or Apex ever contact you prior to selling the
8 Max Axess to ask you for a license to your patents?

9 A. No, no.

10 Q. Have they ever contacted you to ask for a license to
11 your patents?

12 A. No.

13 Q. If Sears or Apex had contacted you in 2012 and said they
14 wanted to license your patents so they could sell this, would
15 you have done it?

16 A. Never.

17 Q. Why not?

18 A. Because they make -- they're a Chinese manufacturer.
19 They make their products in China. And I wanted to control
20 where my product was made. I explained that -- you know, I
21 proved the business model. I proved that we can make a
22 product in the States and sell it and do it in a socially
23 responsible way. I'm not dissing anybody else, but I feel I
24 have the right to do with my invention what I believe in, and
25 that's my value system.

1 Q. Has LoggerHead ever licensed its patents?

2 A. Never.

3 Q. Since you formed LoggerHead, have you ever considered
4 licensing your patents?

5 A. Been approached and not interested.

6 Q. Why not?

7 A. Well, because I -- not everybody believes in

8 American-made and doing it this way that I do; and if you

9 give a license out, they can make it wherever they want, and

10 it destroys, I think, the overall value of what I did.

11 Q. What about the effect on your brand?

12 A. It would -- well, the rest of our products, it would

13 destroy -- this is our keystone product. This is the

14 flagship. I don't know how I could keep the business afloat

15 without having another flagship in my back pocket to run to.

16 This is the cornerstone of our business.

17 Q. Now, assuming that you didn't have a choice, you were

18 forced to license your patents to Sears and Apex in 2012

19 right before they started selling this, what would you have

20 asked them to pay?

21 A. Well, I -- the premise is -- I just said -- how much

22 could they pay per wrench to destroy my business? That's

23 what you're asking me?

24 Q. I'm asking if you were forced to license your patents in

25 2012 to Sears and Apex so they could make the Max Axess, what

1 would you have charged?

2 A. Well, it is a hypothetical. I mean, I wouldn't do it.
3 But I don't want -- I wouldn't give somebody a gun to shoot
4 me with in the marketplace. They would have to be -- have
5 the -- no advantage of going offshore. If they want to make
6 it in the States -- well, one, I would want to be convinced
7 that they're not going to use those -- put them on the
8 Internet or whatever, drop the price in the market, you know,
9 to kill the market price and sink my boat.

10 They have to -- they have to have an equivalent
11 price to the American-made price. We sell the wrench for
12 13.99, so if you make it for four or five bucks in China,
13 it's got to be -- it's got to be 8 or 9, \$10.00.

14 Q. Is that per wrench?

15 A. Yes.

16 Q. I want to talk to you about the first time you actually
17 saw the Max Axess in person, not from photos. When was that?

18 A. So, I had asked a customer to go to Sears -- I went to
19 Sears to try to find it. I didn't see it at our Sears. I
20 asked a customer to go out there and get some and send them
21 overnight to me, and I would pay him back. So, he sent them
22 to me I think probably the following Tuesday or Wednesday.

23 Q. Where were you when you saw them for the first time?

24 A. In the LoggerHead office.

25 Q. And what was your reaction when you saw them?

1 you know, we'd been to the shows. We'd done all the
2 paperwork. We had worked out everything. And all of a
3 sudden, they dropped -- they said, "We're not going with
4 you." The buyer said, "It wasn't my call. I was overruled."

5 I found out on Black Friday that it was -- the Max
6 Axess had somehow overruled it.

7 Q. When did --

8 A. That's how we live, right? We live on these Christmas
9 sales and programs.

10 Q. When did you file this lawsuit?

11 A. October -- the fall of 2012.

12 Q. Why did you file this lawsuit against Sears and Apex?

13 A. I filed it because it's my dignity. It's my right to
14 file it. And I'm trying to save this business. And frankly,
15 I want to recoup the losses. I'm on the hook.

16 I started this company by, you know, using up money
17 I had and taking basically a paid-off house and refinancing
18 it and borrowing and getting money for the tooling. I owe
19 \$400,000 still on tooling. This is not just a wham-bam
20 thing. You know, you've got to run a business.

21 I've taken so much risk, it's unbelievable. And
22 I've done it -- I'm proud to say I don't mind taking the
23 risk. I don't mind competing fairly. But this is wrong. I
24 followed the rules. I did it right. I got an American
25 dream. It worked.

1 I filed this suit because this is wrong, not just
2 for me, but for anybody in my shoes. How are we going to
3 ever get jobs in this -- if we can't create new products and
4 at least make the new products here, if everything's got to
5 go offshore, who's going to work? Are we going to sell ice
6 cream and shirts to each other forever? It just doesn't make
7 any sense to me.

8 I want -- I would love to have the win here and a
9 statement that this is wrong.

10 Now, this -- for a patent, for the inventor, this
11 is it. I get a jury of my peers. This is it. I think --
12 well, I'm not going to go there, but if we can't say that
13 this is wrong, why invent? Why take the risk? Why do it? I
14 don't know how I could face my students. It's almost a joke.

15 We have rules. We have laws. And then people that
16 don't follow them, they don't get punished, or the
17 punishment's so low that they make more money doing it and
18 getting away with it, it doesn't work. So they do it and do
19 it and do it. And maybe they get caught once in a while, but
20 this is ridiculous.

21 So, I'm fighting this. It's a principle fight, and
22 I want to recoup my losses. And I want to build that
23 American-made company that I dreamed of, and I want to make
24 it happen. And I don't feel it's fair to have somebody take
25 my intellectual property and destroy my marketplace.

1 A. Yeah. And that's not a 55 percent price increase. It's
2 another misrepresentation of what I said over and over again.
3 I disagree with that.

4 Q. The price that you sent to Sears February 16 was
5 13.99 -- can you let me finish the question, please.

6 A. Okay. No problem.

7 Q. The price that you sent to Sears February 16 was 13.99,
8 and there was going to be no subsidy, DRTV subsidy
9 whatsoever, correct?

10 A. We cleared the deck, and so there would be no confusion,
11 we started at our normal price. And we were willing -- I've
12 got to tell you, as you know, there was a lot of conversation
13 after that. We negotiated from our standard price back down,
14 and we never got to a -- Sears signing the agreement that we
15 agreed to, but they ended up just going off and canceling our
16 orders.

17 But after this, just to represent, if you're saying
18 my intent was to walk away and go somewhere else, we
19 continued to negotiate, but we negotiated from our standard
20 price so there was no confusion that you're trying to spin
21 right now.

22 Q. So --

23 A. We didn't give them that price increase that you said.

24 Q. So, if you can pull back up what we had, the next
25 sentence.

1 A. I believe so. I would need to see the full email, but I
2 believe so.

3 Q. In this email, I am going to call out the sentence
4 toward the bottom where they state, "The only competitor I
5 could identify was LoggerHead."

6 Do you see that?

7 A. Yes.

8 Q. And what does this tell you about whether or not the
9 Bionic Wrench and the Max Axess were direct competitors in
10 the marketplace?

11 A. Well, again, as I said, there are numerous things that I
12 look to, source documents. So this is a sample of one of the
13 things I look to, to indicate that there were no other
14 competitors.

15 MS. SPENCER: Your Honor, we would like to offer
16 Plaintiff's Exhibit 154 into evidence.

17 MR. HAYES: No objection, your Honor.

18 THE COURT: That will be admitted.

19 (Plaintiff's Exhibit 154 was received in evidence.)

20 BY MS. SPENCER:

21 Q. How does the fact that Max Axess is a direct competitor
22 to the Bionic Wrench impact LoggerHead?

23 A. Well, as a result of having a competitor, the first
24 thing you are going to suffer -- or the first thing they
25 suffered is, he is not selling the Bionic Wrench now in the

1 same volumes, because he is losing those sales to the Max
2 Axess. So he would have had those Max Axess sales.

3 But we have additional problems and additional
4 losses that they are incurring, the first of which is price
5 erosion. As Mr. Brown testified to and as the type of
6 documents have indicated, the price that he is able to charge
7 now for the Bionic Wrench is going down. He can't charge as
8 much for it nor can't increase his price. That's causing him
9 to lose money.

10 But beyond that, Mr. Brown testified that, as a
11 result of the competition and Max Axess out there with the
12 product, because he is no longer unique with being the only
13 one out there with the Bionic Wrench, he is having a hard
14 time making inroads to new customers or expanding sales with
15 current customers. So he is losing sales to those types of
16 customers.

17 Q. Let's start with price erosion.

18 And you mentioned Mr. Brown's testimony. I am
19 putting up the transcript from Mr. Brown's testimony. I want
20 to talk about if this is the testimony that you are
21 referencing?

22 So at the top of the page Mr. Brown is asked, "Once
23 Sears and Apex started selling the Max Axess, what kind of
24 impact did that have on LoggerHead?"

25 And what was Mr. Brown's response?

1 A. I would go down to, basically, Line 4 to get the
2 summary.

3 "We have a competitive wrench that's a copy in the
4 market selling at lower prices."

5 He is indicating that now he has got the Max Axess
6 as a competitor, and they are selling at lower prices.

7 I think he continues on after that.

8 Q. Now, when you say "he continues on," are you referencing
9 where he says, "We lost sales to Sears. We lost sales to
10 other retailers. It's like doing business with a black cloud
11 over your head"?

12 A. Yes.

13 Q. And is this the testimony you are referencing when you
14 say, as part of the information to help you determine that
15 the presence of the Max Axess in the market caused price
16 erosion and also lost sales to other customers to LoggerHead?

17 A. Well, this is one thing. I have also seen other
18 documents, and I have analysis that would support that.

19 Q. Beyond Mr. Brown's testimony, did you independently
20 evaluate whether, in fact, prices for the Bionic Wrench have
21 dropped since the Max Axess was introduced by Sears and Apex?

22 A. Yes. Part of my study and part of the report, I did
23 look to those prices. And it was clear, after looking at it
24 over a period of years, that the prices did go down.

25 Q. You have talked about the impact that Sears and

1 defendants selling the Max Axess had on LoggerHead and
2 Mr. Brown in the form of lost sales and price erosion.

3 Did you determine the appropriate form of damages
4 to compensate Mr. Brown for that harm?

5 A. Yes, I did. It was my opinion that the appropriate form
6 would be in what's called a reasonable royalty. It's how
7 much Sears and Apex would pay Mr. Brown basically for the use
8 of his patents.

9 Q. And just so we can slow down and describe for the jury,
10 how do you best describe what a reasonable royalty is?

11 A. Well, a reasonable royalty is an amount that has to be
12 fair for one side to pay another side for the use of their
13 technology that both would agree to.

14 Q. And is the reasonable royalty that you determined, is
15 that based on total sales? Is that based on each wrench?

16 What's the base of your reasonable royalty?

17 A. Well, the way I have looked at it, since we have a
18 6-inch and an 8-inch wrench and we have unit numbers, I look
19 at it on a per-wrench basis rather than a big dollar amount.
20 So it would be so much for a 6-inch wrench and so much for a
21 4-inch wrench on a per-wrench basis.

22 Q. Now, before we talk about your determination of an
23 appropriate royalty rate, did Dan Brown ever agree with the
24 defendants on a royalty to let them license his patent?

25 A. No, he never did. As he testified to, he didn't want

1 to. He didn't want to give up control. And he didn't want
2 to license to someone who would use an offshore model to just
3 increase their profits at the expense of what he was trying
4 to do.

5 Q. So if Mr. Brown never agreed with the defendants on a
6 rate for licensing his invention, how do you figure out what
7 the rate should be?

8 A. Well, you do it by -- you have to take a look at all the
9 financial information and the other information you have and
10 determine a range that they would negotiate it in. What's
11 the minimum amount that Mr. Brown would be willing to accept,
12 and what's the maximum amount that Sears and Apex would be
13 willing to pay?

14 Once you have this bracket, then you go through
15 this negotiation to decide who has the strength and who has
16 the weakness, what are their various negotiating points, to
17 try and find a point somewhere in between that they would
18 agree to.

19 Q. So let's start with what you first said.

20 You have to think about a negotiation between Dan
21 Brown and the defendants.

22 Why are we talking about a negotiation between Dan
23 Brown and the defendants?

24 A. We are talking about a negotiation. It's a hypothetical
25 negotiation that we have to construct because it never

1 And the gross profits would be at that upper end. That
2 really, in my mind, would represent where the ceiling would
3 be.

4 Q. Are you saying that defendants would be willing to pay
5 all of their gross profits to license Mr. Brown's technology?

6 A. From an economic standpoint, if you make one penny more
7 than what you would otherwise, sure. But they are not going
8 to do that. They have got other costs and other factors they
9 have to consider.

10 So as you go through the negotiation, they are
11 going to want to come down and should come down from that
12 maximum ceiling.

13 Q. So let's turn to the floor, then, or, as you described
14 it, the minimum amount that Mr. Brown would accept.

15 How did you determine the minimum amount that Dan
16 Brown would accept, which sets the floor for the negotiation
17 range?

18 A. As I mentioned before, the various ways that Mr. Brown
19 has been harmed and the direct loss of sales of the Max Axess
20 wrench, where he should have sold a Bionic Wrench, but we
21 also have the price erosion and the loss of sales to other
22 customers or the expansion.

23 So Mr. Brown would want to negotiate something that
24 wouldn't make him any worse off than what he would be had
25 Sears and Apex never introduced the product.

1 So that would represent the floor.

2 Q. Did you prepare a slide to show us what you believe the
3 floor is for the negotiating range in this case?

4 A. Well, I represented it, actually, at a point where you
5 would start to calculate where the floor begins, but yes.

6 Q. So you talked about earlier that, because of the types
7 of losses LoggerHead has suffered -- lost sales, price
8 erosion, lost customers -- and you said that LoggerHead would
9 suffer these losses because every sale of the Max Axess is a
10 lost sale of the Bionic; is that right?

11 A. Correct.

12 Q. How do you know that LoggerHead even had the
13 manufacturing capability to supply enough Bionic Wrenches if
14 the Max Axess wasn't on the market?

15 A. Well, Mr. Brown testified that his manufacturer, Penn,
16 had sufficient capacity, and I've also seen documents that
17 suggested that they had capacity.

18 And it always comes down to, given the lead time,
19 you can produce it.

20 Q. Turning back to lost sales, then, did you prepare a set
21 of slides to help us understand or calculate how much
22 LoggerHead lost because competitors bought the Max Axess
23 instead of the Bionic Wrench?

24 A. Yes, I did.

25 Q. What is the first step you have to ask to figure out the

1 Apex for the year 2012, on a per-unit basis, it would be
2 \$12.15 for the 6-inch wrench and \$13.54 for the 8-inch
3 wrench.

4 Q. And is that what you called the ceiling of the
5 negotiating range?

6 A. Yes. That would be the ceiling.

7 Q. And we were about to talk about how you figured out the
8 low end, or the floor, of the negotiating range; is that
9 right?

10 A. Yes.

11 Q. And I believe you prepared some slides to help us walk
12 through a calculation to figure that out?

13 A. Yes.

14 Q. To determine the low end, or the floor, of the
15 negotiating range, what's the first step?

16 A. Well, the first step -- and again, I'm using 2012 as an
17 example. We have two wrenches, the 6 and the 8. Rather than
18 have you go through lots of calculations, I am just going to
19 explain the 8-inch, and the same methodology would apply to
20 the 6.

21 But the first thing I have to do -- or I did was
22 determine the number of 8-inch wrenches that were sold that
23 were Max Axess. And there were 275,448 wrenches sold.

24 Q. And is that in the year 2012?

25 A. That is in the year 2012.

1 Q. Once you knew the number of wrenches sold, what was your
2 next step?

3 A. Well, to get the gross revenue number, I need to have a
4 selling price. In this case, the selling price is \$13.99.

5 Q. When you say a "selling price," that's the price -- who
6 is selling it to who at that price?

7 A. That would be the price that Mr. Brown and LoggerHead
8 would charge to Sears or others for the sale of a LoggerHead
9 wrench.

10 Q. I want to stop here, and I am going to put up a document
11 that has been marked as Plaintiff's Exhibit 280.

12 MS. SPENCER: Your Honor, I don't believe there are
13 any objections to this document, so I would move to admit it.

14 MR. HAYES: No objections.

15 THE COURT: That will be admitted.

16 (Plaintiff's Exhibit 280 was received in evidence.)

17 BY MS. SPENCER:

18 Q. This document, Plaintiff's Exhibit 280, is an email.

19 Can you tell us who this email is between?

20 A. Well, it's emails back and forth between Stephanie
21 Kaleta and Dan Brown, Jr.

22 Q. In the email from Stephanie Kaleta -- and can you remind
23 us who Stephanie Kaleta is.

24 A. She is an employee at Sears that Mr. Brown and
25 Mr. Brown, Jr., were negotiating with.

1 Q. And what is Ms. Kaleta telling Dan Brown, Jr., in this
2 email?

3 A. Well, basically it says, "Hi, Dan. Following up on our
4 conversation of last week, I've approved cost changes on the
5 8-inch and 6-inch Bionic Wrench in IMA to \$13.99 and
6 \$12.59 respectively."

7 Q. Does this tell you how much LoggerHead would have
8 charged the defendants -- would have charged for each sale of
9 the Max -- if the Max Axess wrench had been a Bionic Wrench?

10 A. Yes. And that's the same price that Mr. Brown testified
11 to, and the documents and the records show that the price was
12 charged to many other customers as well.

13 Q. Did LoggerHead ever actually charge these prices, 13.99
14 and 12.59, to Sears for the Bionic Wrench?

15 A. Yes. They did continue to make some sales. In fact, it
16 was tens of thousands of units. And the prices they paid
17 were the 12.99 and -- I'm sorry. It just went away. But the
18 13.99 and 12 -- I'm sorry. There is a lot of numbers.

19 But the prices that were on there and the prices I
20 used are what they actually did receive and Sears paid.

21 Q. Let's turn back to your calculation.

22 You had explained that, once you have the number of
23 Max Axess wrenches sold and the price that LoggerHead would
24 have sold those wrenches for, you get lost gross revenue.

25 What's the next step in your calculation?

1 A. Well, the next step to calculate lost profits is deduct
2 the costs, because there are costs to manufacture,
3 distribute, and sell the product.

4 So what I did is, I went back to Mr. Brown and
5 LoggerHead's financial statements, and I went through on a
6 line-by-line basis to determine which costs would have
7 increased had volume increased.

8 And as a result, I have determined that for the
9 \$3.8 million in sales, LoggerHead would have incurred
10 \$2.9 million of additional costs and would have had
11 additional profits or, in this case, lost profits of an extra
12 \$887,000.

13 Q. And once you figured out lost profits, what is the last
14 step in your calculation?

15 A. Well, my opinion and the way I have looked at it and the
16 way you have seen in a lot of the documents is, everything is
17 talked about on a per-wrench basis. So I determined and
18 calculated the royalty again on a per-wrench basis.

19 For the 8-inch model, it would be \$3.22.

20 Q. And did you do this same calculation for the 6-inch
21 model?

22 A. Yes. Using the same methodology, it would come out to
23 \$2.88 per unit.

24 Q. So these prices that we have right up on this screen,
25 3.22 for the 8-inch wrench and 2.88 for the 6-inch wrench, is

1 this the floor of the negotiating range?

2 A. It's not quite the floor because, as I said before,
3 Mr. Brown still has other losses in the form of price
4 erosion, because Sears and Apex, with the sales of the Max
5 Axess wrench, is undercutting his price. So he is suffering
6 that.

7 And he is also losing his sales to other customers
8 and inability to expand sales. So those numbers aren't
9 included in here.

10 So the 3.22 and the 2.88 aren't the floor. The
11 floor is going to be something above that.

12 Q. Let's say that tomorrow all of the Max Axess wrenches
13 are pulled off the market, and there is only Bionic Wrenches
14 left to buy.

15 Can LoggerHead start charging the prices it used to
16 be able to charge for the Bionic Wrench again?

17 A. No, they wouldn't be able to. If you have been buying a
18 product and the price goes down and you have you have been
19 buying it and see it -- if you are a purchaser for a
20 department store or hardware store or whatever and are going
21 to be approached to buy more product and the product price is
22 high, you are going to say, wait a second. Yesterday this
23 price was X; now you're telling me it's Y. You are going to
24 have a hard time selling that.

25 Q. Based on this, did you determine the floor of the

1 hypothetical negotiating range?

2 A. Well, the absolute floor, no. But it would be something
3 north of, or greater than, the \$2.88 for the 6-inch wrench
4 and the \$3.22 for the 8-inch wrench because of these other
5 factors.

6 Q. So now we have figured out the range in which the
7 parties are going to be negotiating at this hypothetical
8 negotiation.

9 But how did you determine where they would actually
10 end up, what price they would settle on?

11 A. Well, it's a business negotiation. And there is a court
12 case out there called *Georgia-Pacific* that gives you some of
13 the business and economic criteria you should consider as to
14 who has the bargaining power in this negotiation.

15 If you go through these factors, it helps you
16 narrow it down to come to where they would end up.

17 Q. You mentioned the factors and the Georgia-Pacific
18 factors.

19 Did you prepare a slide that discusses these
20 factors?

21 A. Yes, I did.

22 Q. Is this that slide?

23 A. Yes.

24 Q. It's a lot of factors. We are going to talk about them,
25 hopefully, briefly.

1 A. Well, I guess I would agree with this letter, because he
2 states they have a lot of negotiating power right now. And
3 based on my review, I would agree with that.

4 Q. Going back to your overall determination, based on the
5 Georgia-Pacific factors and this email that we have just
6 discussed, in the hypothetical negotiation, what is your
7 conclusion about what reasonable royalty rate the parties
8 would have agreed to?

9 A. Well, again, I did everything on a per-unit basis. I
10 did it between the 6-inch and the 8-inch wrench. It's my
11 opinion that, at a minimum, the parties would have agreed to
12 a rate for the 6-inch wrench at something less than \$5 a
13 unit -- a bit less than \$5 a unit, and a bit less for the
14 8-inch wrench, at a bit less than \$6 for the 8-inch wrench.

15 Q. Now, once we have this per-wrench royalty rate -- you
16 said just under \$5 for the 6-inch, just under \$6 for the
17 8-inch -- how do you actually determine the total amount of
18 damages?

19 A. Well, what you would do -- I can't see the chart here,
20 but you have 180-some-odd thousand 6-inches and 500,000 of
21 the 8-inch. You would take a dollar rate and multiply it by
22 it. It's simple math.

23 Q. Have you prepared a slide laying out this calculation?

24 A. Yes, I have.

25 Q. Does this slide walk through essentially what you just

1 described?

2 MR. HAYES: Your Honor, we would just like to
3 maintain our objection to No. 4 and the *Daubert* objection
4 throughout this.

5 THE COURT: So noted for the record.

6 BY MS. SPENCER:

7 Q. You can continue.

8 Does this slide that we are discussing lay out your
9 calculation for how you determined the total dollar amount of
10 damages once you have determined a reasonable royalty rate?

11 A. Yes. It gives what the royalty rate would be for the
12 6-inch at \$4, \$5, and \$6. Again, it's simple math. And for
13 \$5, \$6, and \$7 for the 8-inch.

14 Q. I think you said that your determination would be that,
15 based on just the hypothetical negotiation, the parties would
16 agree to a royalty rate just under \$5 or just under \$6.

17 So what does that tell you about the total dollar
18 amount of the damages in this case?

19 A. Well, again, the minimum amount would be something less
20 than the \$5 and \$6. After going through everything, it would
21 be about, roughly, no more than 10 percent less than that.

22 So approximately -- if we have 4.4 million for -- well, I can
23 clear it here -- 4.4 million for the \$6 and the \$5 rate, it
24 would really be the minimum amount they would agree to. It
25 is something more in the neighborhood -- it would be in the

1 neighborhood of 4 to 4.1 million.

2 Q. And if the jury determines that a different royalty rate
3 is appropriate, how do they figure out the dollar amount that
4 that sets, in terms of total damages?

5 A. It's very simple. Again, you would take the 183,456 and
6 multiply it by a number. And you would do the same for the
7 586,928 8-inch wrenches.

8 Q. Now, I believe you were here when you heard Mr. Dan
9 Brown testify about what royalty rate he would require if he
10 was forced to license his patent in a hypothetical
11 negotiation.

12 A. Yes.

13 Q. Do you remember what Dan Brown testified is the rate he
14 would require if he was forced to license his patents in a
15 hypothetical negotiation?

16 MR. HAYES: Your Honor, we have an objection to
17 this. This is outside the scope of the expert report.

18 THE COURT: I want to talk to you about this for a
19 minute at sidebar.

20 (The following proceedings were had at sidebar:)

21 THE COURT: I don't know what the report says about
22 this, but my problem with it is, I feel like, did you hear
23 this witness say this or that? The jurors heard whatever it
24 is they heard. We should just get to whatever the issue is.

25 MR. SERNEL: Is the issue, then, we are going to do

1 a multiplication based on what Mr. Brown threw out versus --

2 MR. HAYES: I got it, Marc.

3 He threw out 8, 9, and 10, and I don't expect to
4 see 8, 9, and 10 go up on the board or even talked about
5 here.

6 MS. SPENCER: Your Honor, we have no intention of
7 setting out a multiplication. We simply want and think it's
8 appropriate for Mr. Bokhart to discuss the information he
9 heard, in terms of evidence, and say how you figure out what
10 a rate -- what the outcome is based on, the rate that the
11 jury sets.

12 He is essentially just explaining math, and he is
13 not going to come to a total.

14 THE COURT: He is welcome to explain that, but I
15 still don't know what that has to do with what Mr. Brown
16 says.

17 Remember, Mr. Brown's position was, I wasn't going
18 to license -- you know, there is no amount of money that you
19 could pay me for this. That's essentially what he was
20 saying, which is silly. All we ever do in the court is award
21 money. So if he doesn't want money because he just wants
22 justice, he is in the wrong place.

23 But that having been said, if you just want to ask
24 him about math, that's fine. I just don't like this
25 predicate.

1 head-to-head competitors, and there are, as the testimony has
2 shown, no other wrenches like that. It's basically a
3 two-party market, and that's the test or a test.

4 Q. You recognized in your opinions in this case, though,
5 that Craftsman is a well-known brand, right?

6 A. I own Craftsman tools or some Craftsman tools, yes.

7 Q. And you would agree with me that some people buy a tool
8 just because it's Craftsman, right?

9 A. Well, if they are going out to a store and they would go
10 to buy it from Sears for Craftsman, sure. I mean, people do
11 that. Sure.

12 Q. And people sometimes buy Craftsman tools just because of
13 the Craftsman advantage, right?

14 A. I'm not sure what you mean by "the Craftsman advantage"
15 per se as separate from Craftsman.

16 Q. You have been here for the testimony. I think you
17 testified on direct you have been here for every day of the
18 testimony, right?

19 A. Yes.

20 Q. And there has been a lot of discussion about the
21 Craftsman advantage?

22 A. You are talking about the positioning of the tool, not
23 an advantage of Craftsman.

24 Q. That's right. The Craftsman advantage that we have
25 discussed.

1 A. Okay.

2 Q. So just to be sure, it's your testimony that not one
3 person buys the Max Axess because of the Craftsman branding?

4 A. The standard is to a reasonable degree. Is it
5 reasonable to assume that they would have? Yes. And I think
6 that's a safe assumption.

7 Q. And is your opinion that one person buys the Max Axess
8 because of the Craftsman advantage?

9 A. That in absence of the Max Axess being on the market, a
10 Bionic Wrench would have been sold for each of those Max
11 Axess wrenches.

12 Q. And the Max Axess has a locking feature here that holds
13 the handle grips in place, right?

14 A. Yes.

15 Q. And that's a feature that the LoggerHead Bionic Wrench
16 does not have, right?

17 A. That's correct.

18 Q. And you were here for Mr. Pope's testimony when he said
19 what this lock allows is you to lock it in place. And then
20 for folks with smaller hands or not as strong hands, they can
21 use all of their force to actually turn it and not have to
22 hold it or hold the wrench together anymore.

23 Did you hear him testify to that?

24 A. Yes.

25 Q. So it's your testimony here today that not one person

1 bought the Max Axess because of this locking feature that
2 LoggerHead's Bionic Wrench does not have?

3 A. I think your question is a little bit off.

4 The question is, if that Max Axess was not on that
5 shelf, would they have bought a Bionic Wrench? And the
6 answer there is yes.

7 Q. My question was not that. It's a little simpler.

8 Sitting here today, it's your opinion that not one
9 person would go out and buy this Max Axess when they see --
10 someone maybe with smaller hands or not as strong hands --
11 when they see this locking feature, and they realize, I can
12 use this around the home. It's beneficial because it has the
13 lock?

14 A. Again, it's the wrong test to prove and show lost sales.
15 The test for lost sales is, if that product is not in the
16 market, would they have bought the Bionic Wrench? And the
17 answer is yes.

18 Q. Okay. I understand you want to apply your test. I want
19 to apply common sense. Okay?

20 Would you agree with me that at least one person or
21 more would buy the Max Axess Locking Wrench because of the
22 lock feature?

23 A. Is it possible that you may have had some customers do
24 that, yes, but that's not the test for damages.

25 Q. Your next bases to prop up your royalty in this case

1 instruction.

2 MR. PELTZ: Judge, how about this? Could we just
3 reserve ruling on whether it's in evidence? He displays it,
4 and then we can --

5 THE COURT: All right. That's fine.

6 MS. SPENCER: Thank you.

7 (End of sidebar proceedings.)

8 MR. HAYES: Josh, can we pull up the KPMG report
9 that we have been talking about.

10 BY MR. HAYES:

11 Q. Mr. Bokhart, you can see on your screen there this
12 report from KPMG talking about the profitability and royalty
13 rates across industries.

14 Do you see that?

15 A. Yes. It follows up with preliminary evidence.

16 Q. Let's take a look at Chart 2 on Page 12.

17 Mr. Bokhart, you would agree with me that Chart 2
18 is the reported royalty rates and gross profit margins for
19 various industries.

20 Do you see that?

21 A. Yes.

22 Q. I have got an arrow there. The arrow was actually on
23 the original document that talks about energy, machines, and
24 tools industry.

25 Do you see that?

1 A. Yes, I do.

2 Q. And it reports that the average royalty rates are
3 somewhere between 4 and 6 percent. Is that fair?

4 A. Well, it's the average royalty rate for those that they
5 were -- only those that were reported for this study, and
6 this was marked "preliminary."

7 Q. There were hundreds of companies that provided
8 information in this study, didn't they?

9 A. Within this segment, I don't believe so. There were
10 hundreds overall. But within the energy, machine, and tool,
11 I'm not sure that is right. I would have to go through and
12 read the report.

13 Q. So if you take a look at Page 19 in the appendix --

14 A. That's where I'm looking now.

15 MR. HAYES: Could you pull that up for us, Josh.

16 BY MR. HAYES:

17 Q. We are looking at the row that says "Machines and
18 Tools." You see all the way over in the right column the
19 number of companies reporting information, 380.

20 Do you see that?

21 A. That's correct.

22 Q. Okay. So let's switch back to Chart 3.

23 A. I'm sorry. We are back to Page 12, Chart 3?

24 Q. Yes. Another chart with some additional analysis here.
25 This time they are reporting median royalty rates?

1 A. Sorry. Give me a second just to catch up.

2 That is Page 14. Okay.

3 Q. That's right.

4 So there on Page 14, we have got another chart,
5 reported median royalty rates and average operating profits
6 for the machines and tools industry somewhere between 3 and 4
7 percent. Is that accurate?

8 A. That's what it shows, yes.

9 Q. Okay.

10 MR. HAYES: Can we go back to Exhibit 17, please,
11 Josh. I would like to highlight the far right column. I
12 don't know if we can get it any bigger.

13 BY MR. HAYES:

14 Q. But if you look at that, Mr. Bokhart, you have a number
15 of entries there -- I'll give you a minute to get it.

16 A. Okay. I have my copy.

17 Q. You have a number of entries there in the far right
18 column that you pulled down from a subscription service
19 called Royalty Source; is that right?

20 A. Yes.

21 Q. That's a leading data provider in the IP industry; is
22 that right?

23 A. Yes. Well, it's one of.

24 Q. And they have been tracking IP licenses related to
25 technology for over 30 years?

1 this case.

2 MR. HAYES: Josh, if we could, pull up DDX 37.

3 BY MR. HAYES:

4 Q. Mr. Bokhart, if I understood you correctly, you are
5 expressing your royalty in this case in dollars and cents --
6 almost 5, almost \$6 per unit -- is that right?

7 A. Well, at a minimum, it would be slightly under that. At
8 a minimum.

9 Q. At a minimum. At a minimum, \$5 for the 6-inch and \$6
10 for the 8-inch; is that right?

11 A. That's correct.

12 Q. We can easily calculate the effective rate of 5 and \$6
13 by dividing that into the average selling price; is that
14 right?

15 A. Yeah. \$20 selling price, deduct the cost out.
16 Effective royalty rate is going to be, roughly, 30-some-odd
17 percent, leaving about 37 percent profit remaining for Sears
18 and Apex.

19 Q. So in this case, the average selling price for the
20 6-inch, 2012 to 2015, \$16.75. You remember we went through
21 that at your deposition?

22 A. Yeah, since the price has gone down, you know, if we are
23 talking about 2012 as the negotiating time period. Since
24 Apex and Sears have been lowering their price, 2012 would
25 probably be a better reflector.

1 Q. You have been doing this work for 38 years, right?

2 A. 35, 36.

3 Q. Since you graduated from Purdue?

4 A. Correct.

5 Q. Right.

6 You testified over 100 times?

7 A. Yes.

8 Q. And never before this case can you remember giving an
9 opinion in which the royalty -- reasonable royalty is larger
10 than the lost profits number. Is that fair?

11 A. As I sit here right now, I can't think of any instance
12 where I have done that. I can't say I haven't, but I can't
13 think of any.

14 Q. Thank you.

15 MR. HAYES: No further questions, your Honor.

16 THE COURT: Thank you.

17 Cross-examination.

18 MS. SPENCER: Your Honor, plaintiffs have no
19 redirect.

20 THE COURT: I should have said "redirect." All
21 right. No redirect examination.

22 Ladies and gentlemen of the jury, do you have any
23 questions for this witness?

24 We will give the jurors a short recess. All rise.

25 (Jury out at 3:56 p.m.)

1 how they make their sales.

2 Q. Now, if you could turn to Exhibit 282 in your binder.

3 What was the next step --

4 MR. BLOCK: And this exhibit has also been
5 pre-admitted. It's DTX 282.

6 BY MR. BLOCK:

7 Q. Now, what was the next step in the negotiation after
8 this February 16th ultimatum?

9 A. So I was very shocked by the response. It was not what
10 I expected at all. So I got my boss Adam involved. I wasn't
11 successful getting Mr. Brown on the phone. So then my boss
12 Adam tried to get him on the phone so that we could talk it
13 through.

14 Q. And were you able -- was Mr. Whitney able to have that
15 call?

16 A. No. Mr. Brown, Sr., wouldn't even speak to him on the
17 phone. Instead, he referred him to his son, Mr. Brown, Jr.

18 Q. And what was your takeaway from that call, based on what
19 happened?

20 A. It didn't go well. Mr. Brown, Jr., and Adam spoke for
21 about an hour. It was just kind of a round-and-round
22 circular argument. And it basically ended with Mr. Brown,
23 Jr., giving him an ultimatum again and saying we either need
24 to pay 13.99 or they won't do business with us.

25 Q. Now, did it make any business or financial sense for

1 Sears to enter into a long-term supply agreement with
2 LoggerHead for the Bionic Wrench at 13.99 per unit?

3 A. No, not at all.

4 Q. Why not?

5 A. Because, obviously, it's substantially higher than what
6 we had been paying, so it represented margin risk for Sears.

7 Q. So if these February 16th terms weren't feasible, did
8 Sears have to look to any other products for DRTV?

9 Strike that. Withdrawn, please.

10 What did this proposal, this ultimatum proposal,
11 mean for the likelihood of DRTV with LoggerHead going
12 forward?

13 A. Well, obviously, it put it at risk. I mean, it seemed
14 like they clearly weren't willing to partner with us. We
15 couldn't count on any kind of a TV campaign with them if they
16 weren't even going to ship us product. So as a buyer, then,
17 obviously, I needed to come up with different alternatives in
18 order to drive my sales.

19 Q. And what were some of the alternates you considered at
20 that point?

21 A. So we considered several other tools. We looked at
22 Craftsman lighted pliers. We looked at, like, a clench
23 wrench multitool, some other tools within my assortment, and
24 then we also considered new product development.

25 Q. And could you describe the new product development that

1 that are in green on this slide. And those are not part of
2 the second element, because the second element must be
3 unified with the handle. The grasping portion must be
4 integral to the tool head, meaning you can't assemble three
5 parts and have a second element. That's how the Court has
6 construed the claim, and that's why Buchanan -- apart from
7 the fact that there is no evidence that it has a gripping
8 element as claimed, it also doesn't have a second element.

9 I want to talk now just for a couple of minutes
10 about damages.

11 There is no dispute about the number of Max Axess
12 Locking Wrenches sold, 770,384. There is no dispute that
13 selling the Bionic or the Max Axess lifts the entire business
14 for Sears because of the halo effect. You have heard lots of
15 evidence of that.

16 The defendants -- remember, the defendants did not
17 bring -- we had Mr. Bokhart come and explain the hypothetical
18 negotiation and that there would be this range between two
19 numbers and how they would bargain and, in his opinion, you
20 would get to this reasonable royalty that was just below \$5 a
21 unit for the 6-inch, just below \$6 a unit for the 8-inch.

22 You heard no one from Sears or Apex come and talk
23 to you about damages. No expert.

24 The only evidence on damages from expert testimony
25 about a hypothetical negotiation is from Mr. Bokhart and from

1 Mr. Brown.

2 Now, you remember Mr. Bokhart said, just below 5 or
3 just below 6.

4 Mr. Brown said he wouldn't license his patents at
5 all. But if he did, he would hold out for something between
6 8 and 10.

7 And the Judge is going to instruct you on all the
8 factors that you have to consider about what that reasonable
9 royalty should be. And once you get to your number, you
10 multiply it by the Max Axess Locking Wrench, and that's the
11 damages.

12 I have reserved some time for rebuttal, and I will
13 come back and talk to you a little bit more about that
14 damages ask, but my time is up. So I want to just thank you
15 for your service.

16 I know that many of you -- I remember the day we
17 picked the jury that, at least for some of you, when you got
18 selected, I could actually see some disappointment on your
19 face, because I knew how burdensome this is. And I know also
20 that many of you are traveling a long distance, because the
21 district is so big. So people are coming from all over the
22 place every day to court.

23 I just wanted to say, on behalf of Mr. Brown and
24 LoggerHead Tools and my team, that we appreciate how
25 attentive you have been and the sacrifice that you have made

1 The reason why we said Buchanan doesn't have an arm
2 is because the examiner said 24 is a body, period. Every
3 statement they have shown you is misleading.

4 The Court, having seen it all, construed the claim.
5 You apply that claim construction to the arm portion of the
6 Max Axess Locking Wrench, which is undisputed, and there is
7 infringement.

8 I want to turn to damages.

9 Oh, and he did not talk about the claim
10 construction. The jury instruction to you said, you must
11 apply the Court's definition of the term "arm portion." We
12 have proved it.

13 Let's talk about damages. They have had slides in
14 opening and closing that said LoggerHead had the negotiating
15 power.

16 You remember Mr. Bokhart said the way you determine
17 damages in this case is a hypothetical negotiation between
18 LoggerHead on the one hand, Sears and Apex on the other.

19 They have conceded that in that negotiation,
20 LoggerHead had all the negotiating power, because right
21 around the time this hypothetical negotiation would happen,
22 they are saying in slides in the opening and closing, we had
23 Sears -- that LoggerHead was leveraging their negotiating
24 power. That's helpful for damages in a hypothetical
25 negotiation, because it means, when we come to the table, we

1 have the product, we have the patent. They need the product
2 on DRTV to make their margin. So we would have had the
3 negotiating power.

4 And they don't even address the Georgia-Pacific
5 factors. You haven't heard them say one thing about the
6 Georgia-Pacific factors that the Judge instructed you, you
7 will have to apply in this case.

8 You learned that they made 18 million in revenue,
9 almost 8 million in profits selling the copy version of the
10 Bionic Wrench. No fact witness came here from Sears and Apex
11 and said what reasonable royalty they think they would have
12 taken in that reasonable negotiation.

13 Dan Brown testified it would have been 8 to \$10.
14 Mr. Bokhart said it would have been in the 5 to \$6 range. If
15 it's -- and he said that the negotiation would start at
16 about -- for the 8-inches at about 3.22 -- \$3.22 on the low,
17 about \$13.54 on the high. He came out at about around 5 to
18 6. It would be around 4.1, 4.2 million, if you came out
19 exactly with Mr. Bokhart.

20 But if, in considering Mr. Bokhart and Mr. Brown's
21 testimony about he didn't want to license at all and he would
22 have had to hold out for \$8, because it's the only way he can
23 compete when they are buying Max Axess Locking Wrenches for 4
24 or \$5 from Great Knives, he said, the only way I can compete
25 in a market where I license is if the royalty is \$8.

1 If the royalty is in that \$8 range, damages are
2 more like 6.16 million. If they are at 10, which was the
3 high of Mr. Brown's range, you add a zero to the units, and
4 you get to about 7.7 million.

5 It's up to you to decide what you think a
6 reasonable royalty would have been when Dan Brown negotiated
7 with Apex and Sears.

8 There are multiple data points. We have explained
9 it before. You have got Mr. Bokhart coming in at the 5 and
10 \$6 royalty range for the 6-inch and 8-inch. You heard what
11 Mr. Brown said, who said first, before he gave any number --
12 we almost couldn't even get him to tell a number, because he
13 said, I wouldn't license my patents. It would destroy my
14 business. It would destroy the business I built, that I
15 spent eight years and hundreds of thousands of dollars
16 developing.

17 But if I was forced to license in this
18 hypothetical, since we are in a hypothetical, I would have to
19 hold out for a number that I could still compete in this
20 market when a competitive product comes in and is taking our
21 sales.

22 Thank you again for your service and your time.

23 THE COURT: That concludes the arguments, ladies
24 and gentlemen.

25 The court security officer is here. We will have

1 MR. SERNEL: I would suggest we confer and then
2 communicate with the court staff to schedule something. We
3 can call in Monday. Is that okay?

4 THE COURT: All right. That sounds good. If you
5 could, contact Judge Pallmeyer's chambers on Monday to set a
6 next court date.

7 Are you going to be taking back any exhibits?

8 THE CLERK: She usually has them take them.

9 THE COURT: On the record, I am returning the
10 exhibits to the parties. Take home whichever exhibits go
11 to -- refer to your party.

12 The parties will call regarding next court date.
13 And other than that, all I have to do is enter judgment on
14 the last portion of the verdict.

15 Anything else the Court needs to address today?

16 MR. SERNEL: I don't think so, your Honor.

17 MR. SKIERMONT: No, your Honor.

18 THE COURT: Thank you, everybody.

19 MR. SKIERMONT: Thank you.

20 (An adjournment was taken at 5:05 p.m.)

21 * * * * *

22 I certify that the foregoing is a correct transcript from the
23 record of proceedings in the above-entitled matter.

24 /s/ Frances Ward
25 Official Court Reporter
F

May 15, 2017.