

# APPENDIX 2-8

## Li Willfulness Merged on 5\_12 PA DC

Designation	Source	Tx Duration	Elapsed	Remains	Media File	Barcode
<b>7:25-8:3</b>	Li, Peng 2015-12-04	00:00:10	00:00:00	00:16:53	Li_P-120415-1of4.M	M9.1
	7:25 Q. Would you please state and spell your					
	8:1 full name for the record?					
	8:2 A. Yes. My name is Peng Li. Last name					
	8:3 L-i. First name P-e-n-g.					
<b>17:12-17:17</b>	Li, Peng 2015-12-04	00:00:16	00:00:10	00:16:43	Li_P-120415-1of4.M	M9.2
	17:12 Q. And your last position listed here					
	17:13 is vice president engineering and program					
	17:14 management at Apex Tool Group LLC, formerly					
	17:15 Danaher Tool Group, and is this the position					
	17:16 you currently hold?					
	17:17 A. It is.					
<b>28:6-28:24</b>	Li, Peng 2015-12-04	00:01:35	00:00:26	00:16:27	Li_P-120415-1of4.M	M9.3
	28:6 Q. And what was your involvement with the					
	28:7 Max Axess Locking Wrench development?					
	28:8 A. My involvement, it was on a high					
	28:9 level. Basically, make sure this product,					
	28:10 it's developed in a way that we offer					
	28:11 competitive product, has Craftsman advantage,					
	28:12 while not infringe any other -- any other					
	28:13 patent, has different look, and ship on time.					
	28:14 That was my -- my -- I would say my					
	28:15 biggest objective at that time on this project,					
	28:16 is that the -- we need to make -- ship this					
	28:17 product without infringing on any other people's					
	28:18 patent and ship it on time.					
	28:19 Q. And what did you mean when you said					
	28:20 has different look?					
	28:21 A. It -- my understanding, it's -- we					
	28:22 need to develop something that look different					
	28:23 than any product out there in the market and					
	28:24 offers Craftsman advantage.					
<b>35:22-35:24</b>	Li, Peng 2015-12-04	00:00:16	00:02:01	00:14:52	Li_P-120415-1of4.M	M9.4
<a href="#">Link &gt; P64.1</a>	35:22 Q. Looking at Li Exhibit 3, Mr. Li, this					
	35:23 is an analysis of the Loggerhead Bionic wrench?					
	35:24 A. Okay.					
<b>35:25-36:3</b>	Li, Peng 2015-12-04	00:00:15	00:02:17	00:14:36	Li_P-120415-1of4.M	M9.5
	35:25 Q. I'm asking, do you understand this to					
	36:1 be an analysis of the Loggerhead Bionic wrench?					
	36:2 A. I would call this a test report of the					
	36:3 Bionic wrench.					

<b>36:21 -37:18</b>	Li, Peng 2015-12-04	00:01:33	00:02:32	00:14:21	Li_P-120415-1of4.M	M9.6
	36:21 Q. Do you have any knowledge of who may					
	36:22 have created this report?					
	36:23 A. I do. It's probably our test lab					
	36:24 in Sparks, and the tech -- the lab technician's					
	36:25 name is Tim Parson.					
	37:1 Q. Can you spell his last name?					
	37:2 A. Parson, P-a-r-s-o-n.					
	37:3 Q. Thank you.					
	37:4 Do you have any knowledge of why a					
	37:5 Bionic wrench test report may have been created?					
	37:6 A. I think so.					
	37:7 We -- we -- one of the -- one					
	37:8 of the -- this is to try show a Craftsman					
	37:9 advantage. Like I mentioned a moment ago,					
	37:10 Craftsman product needs to be better than					
	37:11 any retail product in the market. So when we					
	37:12 develop a new innovation product for Craftsman,					
	37:13 we would normally test the product in the					
	37:14 market, see where they are, and the Craftsman					
	37:15 product needs to be better than that. Like,					
	37:16 in this case, we test the torque performance of					
	37:17 Bionic wrench, and the Craftsman spec needs to					
	37:18 be higher than the Bionic wrench.					
<b>38:6 -38:17</b>	Li, Peng 2015-12-04	00:00:30	00:04:05	00:12:48	Li_P-120415-1of4.M	M9.7
<a href="#">Link &gt; P64.1.1</a>	38:6 Q. Under wrench markings, if you look at					
	38:7 Page 1, --					
	38:8 A. Yeah.					
	38:9 Q. -- it's Column A, Row 11, --					
	38:10 A. Yeah.					
	38:11 Q. -- do you see it reads, Pat., number					
	38:12 sign, --					
	38:13 A. Mm-hmm.					
	38:14 Q. -- 6,889,579?					
	38:15 A. I see it, yes.					
	38:16 Q. That's a patent number, isn't it?					
	38:17 A. Yes, it is.					
<b>38:18 -39:8</b>	Li, Peng 2015-12-04	00:00:55	00:04:35	00:12:18	Li_P-120415-1of4.M	M9.8
<a href="#">Link &gt; Hide</a>	38:18 Q. Did Apex investigate this patent					
	38:19 number, to your knowledge?					
	38:20 A. Yes. We -- we do invest -- we did					
	38:21 investigate this patent.					
	38:22 Q. Do you know how it was investigated?					
	38:23 A. I was -- you know, my involvement					
	38:24 was not on a detailed patent investigation. It					

38:25 was -- Eric Broadaway was responsible for that  
 39:1 regard, but I recall that we have done extensive  
 39:2 patent research on that to make sure that we  
 39:3 do not -- any -- our product developed for  
 39:4 Craftsman do not infringe that patent and any  
 39:5 other -- to that regard, any other patents in  
 39:6 the market.  
 39:7 That was -- that's just our standard  
 39:8 practice for Apex Tool Group.

	<b>91:5-91:13</b>	Li, Peng 2015-12-04	00:00:40	00:05:30	00:11:23	Li_P-120415-2of4.M	M9.9
Link >	P131.1	91:5 Q. I'm introducing Li Exhibit 10. This					
		91:6 is Apex 9233.					
Link >	P131.1.1	91:7 This is an e-mail chain between you					
		91:8 and others most recently dated May 20th, 2012.					
		91:9 The subject is, re: The Bionic (Max Axess AW),					
		91:10 I'm paraphrasing what I believe that to be,					
		91:11 design work.					
		91:12 Do you see that?					
		91:13 A. Yes, I do.					
	<b>96:18-97:4</b>	Li, Peng 2015-12-04	00:00:30	00:06:10	00:10:43	Li_P-120415-2of4.M	M9.10
Link >	P131.1.2	96:18 Q. Let me draw your attention on Page 1					
		96:19 at the very end, Mr. Broadaway writes, this is					
		96:20 the last line of that page, --					
		96:21 A. Yeah.					
Link >	P131.2.1	96:22 Q. -- and we're going to go to the next					
		96:23 page, we need to pay close attention to the					
		96:24 six-inch Bionic. Sears will likely compare					
		96:25 them. Our design should be the same, or even					
		97:1 better than the Bionic in fastener range and					
		97:2 handle spread. Thanks, Eric.					
		97:3 Do you see that?					
		97:4 A. I do.					
	<b>148:25-149:6</b>	Li, Peng 2015-12-04	00:00:32	00:06:40	00:10:13	Li_P-120415-3of4.M	M9.11
Link >	P504.1	148:25 Q. Okay. I'm introducing Li Exhibit 17,					
		149:1 which is Apex 18268 through 18269. This is an					
		149:2 e-mail chain of two e-mails from Eric Broadaway					
		149:3 to Apex's general counsel, Michael Munn and					
		149:4 others. It includes Apex's president John					
		149:5 Constantine, correct?					
		149:6 A. Correct.					
	<b>149:15-150:9</b>	Li, Peng 2015-12-04	00:01:05	00:07:12	00:09:41	Li_P-120415-3of4.M	M9.12
Link >	P504.1.1	149:15 Q. In the top e-mail, Mr. Broadaway's					
		149:16 third sentence reads, this will likely evoke					
		149:17 a response from Loggerhead (Brown patent					

149:18 6,889,579) because the product is so close  
 149:19 to their Bionic wrench TM.  
 149:20 Do you see that?  
 149:21 A. Yes.  
 149:22 Q. Do you have an understanding of  
 149:23 Mr. Broadway's third sentence about a likely  
 149:24 response from Loggerhead?  
 149:25 A. I do. I do.  
 Link > Hide 150:1 Q. And what do you understand?  
 150:2 A. I would assume it's a lawsuit.  
 Link > P504.1.2 150:3 Q. At the bottom of the e-mail to  
 150:4 Mr. Munn and Mr. Constantine, Mr. Broadway  
 150:5 introduces or includes side-by-side images of  
 150:6 the then-current view of the Craftsman Bionic  
 150:7 with Loggerhead's Bionic wrench.  
 150:8 Do you see that?  
 150:9 A. I see the two pictures, yes.

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**154:20 -155:1** Li, Peng 2015-12-04 00:00:31 00:08:17 00:08:36 Li\_P-120415-3of4.M M9.13  
 Link > P97.1 154:20 Q. Okay. I'm introducing Li Exhibit 19,  
 Link > P97.1.1 154:21 which is Apex 2744 through 2749. It's an e-mail  
 154:22 chain between you and Dave Fortin, and copying  
 154:23 others, dated May 30th, 2012. The subject is  
 154:24 re: Schedule of Bionic wrench, and it includes  
 154:25 four attachments. Do you see that?  
 155:1 A. Yes.

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**155:12 -156:6** Li, Peng 2015-12-04 00:01:24 00:08:48 00:08:05 Li\_P-120415-3of4.M M9.14  
 Link > P97.1.2 155:12 Q. In the first paragraph Mr. Fortin is  
 155:13 discussing the display design for the Max Axess  
 155:14 Adjustable Wrench.  
 155:15 A. Okay.  
 155:16 Q. Do you see that?  
 155:17 A. I do.  
 Link > P97.3 155:18 Q. And the attachments on -- beginning  
 155:19 on Page 3 through 6, those are of the Loggerhead  
 155:20 display?  
 155:21 A. Okay. Yeah.  
 Link > P97.1.3 155:22 Q. And on Page 1 Mr. Fortin writes at  
 155:23 the very end of his e-mail, attached are how the  
 155:24 Bionic wrenches are captured in their display.  
 155:25 I feel something similar would work for our  
 156:1 tool.  
 156:2 Do you see that?  
 156:3 A. I do.  
 156:4 Q. And he's referring to the Loggerhead  
 156:5 version of the Bionic wrench, correct?

156:6 A. I think so.

<b>161:25-162:10</b>	Li, Peng 2015-12-04	00:00:40	00:10:12	00:06:41	Li_P-120415-3of4.M	M9.15
<a href="#">Link &gt; P356.1</a>	161:25 Q. I'm introducing Li Exhibit 21, which					
	162:1 is Sears 388 through 392.					
<a href="#">Link &gt; P356.1.1</a>	162:2 This is an e-mail chain between					
	162:3 Jennifer Miles-Losapio to Matthew McDonnell,					
	162:4 Jennifer Blum, Iqbal Singh, and you are copied,					
	162:5 among others, on this e-mail. It's dated August					
	162:6 17th, 2012, and the subject is Max Axess Locking					
	162:7 Wrench and other types of fasteners, and it					
	162:8 includes two attachments.					
	162:9 Do you see that?					
	162:10 A. Yes.					
<b>162:23-163:2</b>	Li, Peng 2015-12-04	00:00:11	00:10:52	00:06:01	Li_P-120415-3of4.M	M9.16
<a href="#">Link &gt; P356.1.2</a>	162:23 Q. Ms. Miles says she's attaching images					
	162:24 of the Bionic wrench packaging. Do you see					
	162:25 that?					
	163:1 A. I do not see the picture. I see she					
	163:2 says there --					
<b>163:12-163:20</b>	Li, Peng 2015-12-04	00:00:20	00:11:03	00:05:50	Li_P-120415-3of4.M	M9.17
<a href="#">Link &gt; P356.5</a>	163:12 Q. It's Sears 391 and 392. These are					
	163:13 pictures of the actual Loggerhead Bionic wrench					
	163:14 packaging, correct?					
	163:15 A. I think so, yes.					
	163:16 Q. Do you need a moment to look at four					
	163:17 and five to see the picture?					
	163:18 A. No. I'm looking at it now. It looks					
	163:19 like it is a Bionic wrench picture packaging,					
	163:20 yes.					
<b>163:21-163:24</b>	Li, Peng 2015-12-04	00:00:15	00:11:23	00:05:30	Li_P-120415-3of4.M	M9.18
<a href="#">Link &gt; Hide</a>	163:21 Q. All right. And back to Page 1, do					
	163:22 you know who requested these images of the					
	163:23 Bionic wrench packaging?					
	163:24 A. No, I do not.					
<b>163:25-164:7</b>	Li, Peng 2015-12-04	00:00:14	00:11:38	00:05:15	Li_P-120415-3of4.M	M9.19
	163:25 Q. Ms. Miles writes that they're attached					
	164:1 per your request --					
	164:2 A. Correct.					
	164:3 Q. -- on this morning's call, and the to					
	164:4 line appears to be all Sears --					
	164:5 A. Correct.					
	164:6 Q. -- personnel; is that correct?					
	164:7 A. That's correct.					

<b>164:8 -164:10</b>	Li, Peng 2015-12-04	00:00:07	00:11:52	00:05:01	Li_P-120415-3of4.M	M9.20
	164:8 Q. Do you know why photos of Loggerhead's					
	164:9 Bionic wrench packaging were relevant to Max					
	164:10 Axxess packaging?					
<b>164:14 -164:14</b>	Li, Peng 2015-12-04	00:00:02	00:11:59	00:04:54	Li_P-120415-3of4.M	M9.21
	164:14 THE WITNESS: I don't.					
<b>165:25 -166:5</b>	Li, Peng 2015-12-04	00:00:20	00:12:01	00:04:52	Li_P-120415-3of4.M	M9.22
	165:25 Q. Do you recall when you learned the					
	166:1 fact that the Loggerhead Bionic wrench had a					
	166:2 patented mark on it or was patent protected?					
	166:3 A. I think I -- I do know that the -- the					
	166:4 Bionic wrench was patented. I think from very					
	166:5 early on I think we do know that.					
<b>186:5 -186:16</b>	Li, Peng 2015-12-04	00:00:43	00:12:21	00:04:32	Li_P-120415-3of4.M	M9.23
	186:5 Q. Earlier when we were discussing the					
	186:6 rigorous patent clearance process that Apex					
	186:7 instituted and you felt, very clearly, that the					
	186:8 Max Axxess Locking Adjustable Wrench would not					
	186:9 infringe the Brown patent, what were you basing					
	186:10 that on?					
	186:11 A. That's a lot of word for -- I mean,					
	186:12 what Eric told me. In many cases, what Eric					
	186:13 told me, maybe in an e-mail saying we do not					
	186:14 infringe or we got the lawyer's approval, stuff					
	186:15 like that. But I normally do not read those					
	186:16 lawyer's opinion myself very, very closely.					
<b>186:17 -186:22</b>	Li, Peng 2015-12-04	00:00:18	00:13:04	00:03:49	Li_P-120415-3of4.M	M9.24
	186:17 Q. How much responsibility do you					
	186:18 feel that you bear for helping Apex avoid					
	186:19 infringement?					
	186:20 A. Well, I would say not much. I would					
	186:21 say their responsibility bears -- I would say					
	186:22 in this case Eric takes responsibility of that.					
<b>188:19 -188:20</b>	Li, Peng 2015-12-04	00:00:08	00:13:22	00:03:31	Li_P-120415-3of4.M	M9.25
Link > P169.1	188:19 Q. I'm introducing Li Exhibit 26, which					
	188:20 is Apex 18748.					
<b>192:23 -193:19</b>	Li, Peng 2015-12-04	00:01:14	00:13:30	00:03:23	Li_P-120415-3of4.M	M9.26
Link > P169.1.2	192:23 Q. What did you mean in this e-mail by					
	192:24 using the 95 pat -- the 1957 patent?					
	192:25 A. I think I -- you notice Eric's					
	193:1 copied on that, too. I think what happened					
	193:2 was, this was Eric's proposal that he was					
	193:3 reporting to me. So I sent this to my boss					

193:4 so he's in the loop.  
 193:5 I think what I meant is that  
 193:6 the -- our design could be based on the 1957  
 193:7 Buchanan patent to avoid any kind of patent  
 193:8 issue.  
 193:9 Q. Yes. And your e-mail does state  
 193:10 that, our thought is to launch this project  
 193:11 without any patent issue this year, correct?  
 193:12 A. Yes.  
 193:13 Q. Did you believe that if you designed  
 193:14 your product with the 1957 patent design you  
 193:15 would not be infringing the Loggerhead patents?  
 193:16 A. Well, my understanding is, if our  
 193:17 design is based on a 1957 Buchanan patent, we  
 193:18 would not infringe other people's patent because  
 193:19 the 19 -- 1957 patent has already expired, yes.

	199:22 -200:16	Li, Peng 2015-12-04	00:01:22	00:14:44	00:02:09	Li_P-120415-4of4.M	M9.27
Link > P161.1	199:22	Q. So I am introducing Li Exhibit 28,					
	199:23	which is Apex 18395.					
	199:24	A. I got it.					
Link > P161.1.1	199:25	Q. This is an e-mail between Michael					
	200:1	Munn, Apex's general counsel, Mr. Broadaway,					
	200:2	and Apex president John Constantine copying					
	200:3	you, dated May 22nd, 2012. The subject is,					
	200:4	re: Confidential attorney-client privileged					
	200:5	communication, and it includes one attachment					
	200:6	which looks, likely, an inline signature. It's					
	200:7	Image 001.jpg. Actually, I shouldn't say that.					
	200:8	Did you receive the e-mail in Li					
	200:9	Exhibit 28?					
	200:10	A. Yes. Yes.					
Link > P161.1.2	200:11	Q. And in the second e-mail, do you					
	200:12	see that Mr. Broadaway asks Mike if -- if Apex					
	200:13	should wait on another clearance documentation					
	200:14	from Michael Munn or John Owen?					
	200:15	Do you see that?					
	200:16	A. Yes, I see it. I see it.					
	200:21 -201:2	Li, Peng 2015-12-04	00:00:23	00:16:06	00:00:47	Li_P-120415-4of4.M	M9.28
	200:21	Q. From your responsibility at Apex, do					
	200:22	you have any understanding of what the purpose					
	200:23	of seeking a clearance document might be?					
	200:24	A. My understanding it's -- we're seeking					
	200:25	a clear document to make sure our design do					
	201:1	not infringe any patent out there. That's					
	201:2	my understanding of the clearance document.					



**201:8-201:10** Li, Peng 2015-12-04 00:00:07 00:16:29 00:00:24 Li\_P-120415-4of4.M M9.29  
[Link > P161.1.3](#)  
 201:8 Q. In the top e-mail, Mr. Munn responds,  
 201:9 no need to wait. Please go forward.  
 201:10 A. Mm-hmm.

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**201:13-201:18** Li, Peng 2015-12-04 00:00:17 00:16:36 00:00:17 Li\_P-120415-4of4.M M9.30  
 201:13 Q. And do you understand Mr. Munn's  
 201:14 instruction as it relates to the project?  
 201:15 A. I do.  
 201:16 Q. And what was that instruction?  
 201:17 A. I think, basically, no need to wait.  
 201:18 We can -- we can provide Sears today.

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**Total time for all Scripts in this report: 00:16:53**