

EXHIBIT 41

In The Matter Of:

***RED BEND, LTD., and RED BEND SOFTWARE, INC., v.
GOOGLE, INC.,***

BAKEWELL, W. CHRISTOPHER - Vol. 1

March 12, 2010

REDACTED

MERRILL CORPORATION

LegalLink, Inc.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

RED BEND, LTD., and RED)
BEND SOFTWARE, INC.,)
)
Plaintiffs,)
)
vs.)
)
GOOGLE, INC.,)
)
Defendant.)

Case Number:
09-CV-11813-DPW

CONFIDENTIAL and ATTORNEYS' EYES ONLY
PORTIONS REDACTED
VIDEOTAPED DEPOSITION OF
W. CHRISTOPHER BAKEWELL
Washington, D.C.
Friday, March 12, 2010
9:11 a.m.

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Reported by: John L. Harmonson, RPR

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		Page 8
1	W. CHRISTOPHER BAKEWELL	
2	today is John Harmonson of Merrill New York.	
3	Would the reporter please swear in the	
4	witness.	
5	W. CHRISTOPHER BAKEWELL,	
6	after having been first duly sworn, was examined	
7	and did testify under oath as follows:	
8	EXAMINATION	
9	BY MR. SCHEINFELD:	
10	Q. Good morning, Mr. Bakewell.	
11	A. Good morning.	
12	Q. Could you please state your full name	
13	and home address for the record.	
14		
15		
16		
17	Q. And you've been deposed many times	
18	before?	
19	A. Oh, I don't know what you mean by many.	
20	Q. How many?	
21	A. 15 to 20.	
22	Q. So you're familiar with the process of	
23	the deposition, correct?	
24	A. Yes, sir.	
25	Q. So I'm going to ask questions and	

		Page 7
1	W. CHRISTOPHER BAKEWELL	
2	P R O C E E D I N G S	
3	THE VIDEOGRAPHER: Here begins Tape	
4	No. 1 in the deposition of W. Christopher	
5	Bakewell, in the matter of Red Bend, Ltd., et al.,	
6	v. Google, Inc., in the United States District	
7	Court, District of Massachusetts, Eastern	
8	Division, Civil Action No. 09-CV-11813-DPW.	
9	Today's date is March 12th, 2010. The	
10	time is 9:11 a.m.	
11	The video operator today is Cali Day.	
12	This deposition is taking place at	
13	Baker Botts, 1299 Pennsylvania Avenue, Northwest,	
14	Washington, D.C., 20004.	
15	Would counsel please identify	
16	themselves and state whom they represent.	
17	MS. MANNING: Sure. Susan Baker	
18	Manning of Bingham McCutchen for defendant and	
19	counterclaim plaintiff Google, Inc. and the	
20	witness.	
21	MR. SCHEINFELD: Robert Scheinfeld,	
22	Baker Botts, for the Red Bend plaintiffs.	
23	MS. TEMPESTA: Jennifer Tempesta, Baker	
24	Botts, for the Red Bend plaintiffs.	
25	THE VIDEOGRAPHER: The court reporter	

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1	W. CHRISTOPHER BAKEWELL	
2	you'll provide answers to the extent you	
3	understand the questions. And what I'll ask if	
4	you don't understand a question, you'll let me	
5	know.	
6	A. I'll do my best.	
7	Q. Okay. Also, if at any time you need a	
8	break, let me know.	
9	A. I will.	
10	Q. I would ask that you not ask for a	
11	break while a question is pending.	
12	A. Okay.	
13	Q. Are you under any medication that would	
14	influence your testimony today?	
15	A. No, sir.	
16	Q. No alcohol, nothing else?	
17	A. No, sir.	
18	Q. Okay. And you're here today; you've	
19	been retained by Google to testify today?	
20	A. I have to look at the engagement letter	
21	and see who the retention is, whether it's with	
22	Bingham McCutchen or Google.	
23	Q. You don't recall?	
24	A. I would just want to refresh my memory	
25	and see the engagement letter. It could be	

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1 W. CHRISTOPHER BAKEWELL
2 either.
3 Q. Do you recall when you were first
4 contacted about this case?
5 A. I think in December of 2009,
6 approximately.
7 Q. Do you recall who contacted you?
8 A. I'm trying to remember if it was Susan
9 Baker Manning first or one of her colleagues. But
10 somebody from Bingham McCutchen.
11 Q. Had you worked with Bingham before?
12 A. No, sir.
13 Q. You haven't worked with Ms. Manning or
14 any other lawyer from Bingham before?
15 A. No.
16 Q. Have you worked for Google before?
17 A. Yes.
18 Q. And when was that?
19 A. In 2009. I worked on a patent
20 infringement matter.
21 Q. What matter was that?
22 A. The name of the matter is Performance
23 Pricing v. Google. That's the style of the case.
24 Q. Are there any other cases in which
25 you've worked for Google?

Page 11

1 W. CHRISTOPHER BAKEWELL
2 A. No, sir.
3 Q. Is the case still pending?
4 A. I believe that it is.
5 Q. Did you provide any advice to Google
6 regarding that case?
7 MS. MANNING: Objection; vague.
8 THE WITNESS: I don't know what you
9 mean by advice.
10 BY MR. SCHEINFELD:
11 Q. Did you provide your opinion?
12 A. I submitted an expert report with my
13 opinions, and I was deposed.
14 Q. When was your deposition?
15 A. I think it was during -- it was either
16 during December or January.
17 Q. Of '09? December of '09?
18 A. Well, that's why I didn't give the
19 year, because there was two different years,
20 December '09, January '10.
21 Q. And is Google a plaintiff or defendant
22 in that case?
23 A. Defendant.
24 Q. And you don't know when -- if there is
25 a trial date set or whether it's resolved?

Page 12

1 W. CHRISTOPHER BAKEWELL
2 A. The trial date was vacated. It was
3 scheduled for trial in April.
4 Q. And was your opinion related to
5 damages?
6 A. Yes.
7 Q. Did it have anything to do with
8 irreparable harm?
9 A. No.
10
11
12
13
14
15
16
17
18
19 MR. SCHEINFELD: Court Reporter, may
20 you please mark this document as Red Bend
21 Exhibit 32.
22 (Exhibit 32 marked for identification and
23 attached hereto.)
24 BY MR. SCHEINFELD:
25 Q. You mentioned an engagement letter that

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1 W. CHRISTOPHER BAKEWELL
2 you had with either Google or Bingham. Is this
3 the document you were referring to?
4 A. Yes, sir.
5 Q. Is that your signature on page 4?
6 A. Yes, sir.
7 Q. Does this refresh your recollection as
8 to whether your engagement was with Google -- or
9 is with Google or with Bingham?
10 A. It does. It does. The first paragraph
11 states that we have been retained as an expert
12 consultant to assist Bingham McCutchen in its
13 rendering of legal services to Google.
14 Q. Does this refresh your recollection as
15 to when you were first contacted by someone at
16 Bingham?
17 A. It does. It may have been -- I think I
18 stated December or late 2009. Since the
19 engagement letter was signed on December 1st, it's
20 more likely that it was -- Well, I'm certain that
21 it was in November. When I say that was in
22 November, that was when I was first contacted by
23 Bingham McCutchen.
24 Q. Did anyone at Google contact you about
25 this case before you were first contacted by

4 (Pages 10 to 13)

Page 14

1 **W. CHRISTOPHER BAKWELL**
2 **Bingham?**
3 A. No, sir.
4 **Q. Do you recall what you discussed with**
5 **the Bingham lawyer who contacted you first during**
6 **that first discussion?**
7 A. I think it was pretty high level.
8 There was some description about this dispute,
9 this particular dispute, meaning Red Bend v.
10 Google. Some discussion about my background.
11 **Q. Do you recall in any further detail**
12 **what the description about the suit was?**
13 A. No, sir, I don't.
14 **Q. Do you recall what you were considered**
15 **to be asked to do?**
16 MS. MANNING: Objection; vague. You're
17 referring to just that conversation?
18 MR. SCHEINFELD: Yes.
19 MS. MANNING: Okay.
20 THE WITNESS: I think at that point it
21 was very shortly after in the sequence of events
22 after this lawsuit had been filed. And so the
23 questions about the scope of services that my firm
24 would provide were fairly general in nature.
25 BY MR. SCHEINFELD:

Page 15

1 **W. CHRISTOPHER BAKWELL**
2 **Q. Can you provide any more specifics**
3 **about that? And I'm talking about this first**
4 **conversation that you had with a lawyer at**
5 **Bingham.**
6 A. Well, I laugh because I said the
7 conversation was very general. You asked if I
8 could be more specific.
9 **Q. If you can't, you can't.**
10 A. I'm trying. I guess now it's four
11 months ago. I think that my recollection is that
12 the complaint, the allegations in the complaint,
13 were described to me and perhaps even what I
14 describe in my declaration as the PI memo.
15 Although I'm not certain if the conversations were
16 that detailed. But I'm doing my best to give you
17 my best recollection.
18 **Q. That's fine.**
19 **Do you recall in the first conversation**
20 **whether you discussed with counsel that your**
21 **opinion would be limited to the preliminary**
22 **injunction motion that was filed, or something**
23 **more than that?**
24 MS. MANNING: You can answer the
25 question to the extent you recall, but I will

Page 16

1 **W. CHRISTOPHER BAKWELL**
2 caution the witness not to speculate.
3 THE WITNESS: I'm just reflecting on my
4 past answers. I don't think I can get any more
5 specific than that. And I don't think that the
6 conversations were -- that the conversation was
7 really any more specific than that, than how I
8 characterized it.
9 BY MR. SCHEINFELD:
10 **Q. Do you recall whether or not before you**
11 **signed this engagement letter, whether you**
12 **provided a draft to Bingham for their review**
13 **first?**
14 A. Oh, no, I wouldn't have done that. I
15 don't recall doing that.
16 **Q. Do you recall whether any changes were**
17 **made to the draft you provided to Bingham**
18 **regarding this letter of engagement before it was**
19 **executed by the parties?**
20 MS. MANNING: Objection; vague. What
21 draft are you referring to?
22 MR. SCHEINFELD: Well, I'll rephrase
23 the question. Strike the one I --
24 THE WITNESS: I had the same question.
25 I was a little bit confused.

Page 17

1 **W. CHRISTOPHER BAKWELL**
2 BY MR. SCHEINFELD:
3 **Q. Okay. So we're looking at Red Bend**
4 **Exhibit 32. Were there any drafts that were**
5 **exchanged prior to this exhibit being signed?**
6 A. I don't recall any.
7 MR. SCHEINFELD: If you'll mark as Red
8 Bend Exhibit No. -- You can leave that one there
9 because we're going to talk a little more about
10 it.
11 THE WITNESS: Okay.
12 MR. SCHEINFELD: Exhibit 33, Red
13 Bend -- I'm sorry, documents bearing Bates numbers
14 CB0016 to CB0022.
15 (Exhibit 33 marked for identification and
16 attached hereto.)
17 BY MR. SCHEINFELD:
18 **Q. Can you identify these documents?**
19 A. This appears to be correspondence
20 between myself and Ms. Manning.
21 **Q. And if you could turn to page CB0022.**
22 A. Right. They're in reverse
23 chronological order.
24 **Q. That's correct.**
25 A. Okay.

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1 W. CHRISTOPHER BAKEWELL
2 Q. That's how they were produced to us.
3 A. That's fine. I'm not complaining. I
4 was just making an observation.
5 Q. Okay, yes. So I'm going to turn to
6 what is dated the first e-mail, which is the last
7 page. That's all.
8 Does this refresh your recollection as
9 to when you were first contacted by Bingham?
10 A. It's consistent with my prior
11 testimony, I believe. I don't know that I can
12 provide any additional information.
13 Q. It's the later part of November,
14 November 30th to be exact, that you were first
15 contacted by Bingham?
16 A. I think I can agree with your premise
17 that November 30th is the later part of November.
18 Q. What about November 30th being the
19 first time you were contacted by somebody at
20 Bingham?
21 MS. MANNING: Objection; asked and
22 answered.
23 THE WITNESS: I really don't understand
24 your question. What about November -- Maybe you
25 can retry it.

Page 19

1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 Q. Sure.
4 Was November 30th the first date you
5 were contacted by somebody?
6 A. Oh, I would anticipate it would be a
7 few days before. It would have been a few days
8 before November 30th.
9 Q. Okay. And if you turn to CB0021, do
10 you recall receiving that e-mail on November 30th?
11 A. Just generally.
12 Q. Do you recall receiving the attached
13 documents?
14 A. I'm sure that I did. These are cited
15 in my report. I recall at some point reading
16 these.
17 Q. And did you on December 1st send to --
18 Strike that.
19 By looking at the e-mails, does this
20 refresh your recollection as to who at Bingham
21 first contacted you regarding this case?
22 A. Yes.
23 Q. And who was that?
24 A. It was actually Mr. Burton.
25 Q. Okay. And do you recall that first

Page 20

1 W. CHRISTOPHER BAKEWELL
2 conversation that you had with Mr. Burton?
3 MS. MANNING: Objection; assumes facts
4 not in evidence.
5 BY MR. SCHEINFELD:
6 Q. How did Mr. Burton contact you?
7 A. By telephone.
8 Q. Do you recall the conversation?
9 A. Just generally.
10 Q. Did he ask you whether or not he would
11 like you to assist regarding Red Bend's
12 preliminary injunction motion?
13 A. No. Not the way you asked that
14 question. It's awkward. I have to answer no to
15 the way you asked it.
16 Q. Okay. What details can you provide
17 about that first conversation that you had with
18 Mr. Burton?
19 A. I don't think I can provide any more
20 details. It was some time ago. I just have a
21 general recollection that he called me and we
22 discussed the case generally, as I testified
23 previously about five questions ago, maybe more,
24 maybe ten questions ago.
25 Q. If you could flip to page CB0019 and I

Page 21

1 W. CHRISTOPHER BAKEWELL
2 think part of CB0018. I would like you to focus
3 on the top -- well, the bottom of CB0018 and the
4 top of CB0019.
5 It seems to be an e-mail sent by
6 Ms. Manning on December 1st to you. Do you see
7 that?
8 A. I do.
9 Q. And she says: "I've sent the letter to
10 Google with very minor edits."
11 Do you see that?
12 A. I do.
13 Q. Do you have an understanding as to what
14 she was saying there?
15 A. I think I understand it.
16 Q. Was she talking about your engagement
17 letter?
18 A. Yes.
19 Q. Do you know whether or not -- Does this
20 refresh your recollection as to whether or not
21 there were edits made to a draft of the engagement
22 letter before the -- before the Red Bend Exhibit
23 No. 32 was executed?
24 A. I don't think it provides any more
25 information, in my mind, beyond what's on this

6 (Pages 18 to 21)

Page 22

1 W. CHRISTOPHER BAKEWELL
2 page.
3 **Q. Well, were there edits made to your**
4 **letter of engagement?**
5 A. Apparently there were very minor edits.
6 **Q. Right. Do you recall what they were?**
7 A. No. I just recall that they were very
8 minor.
9 **Q. So this would indicate that there was a**
10 **draft of the engagement letter that existed prior**
11 **to the final that was signed; would you not agree?**
12 A. I'm not sure what you mean by "draft"
13 in this context. I would have sent the letter of
14 engagement in Word form. And I don't recall any
15 material edits to this engagement letter.
16 **Q. When you say that you sent it over in**
17 **Word form, was that an executed version that you**
18 **sent over in Word form?**
19 A. I don't believe so. Sometimes I'll
20 send an engagement letter with my electronic
21 signature embedded in it. Although, more often
22 than not, I'll send one without my electronic
23 signature.
24 Apparently this one did not have a
25 signature on it. It looks like this page CB0004

Page 23

1 W. CHRISTOPHER BAKEWELL
2 was scanned in; the entirety of it was scanned in
3 at some point.
4 That's the best that I can do to answer
5 your question.
6 **Q. Were there versions of this document**
7 **that existed before it was executed in its final**
8 **form?**
9 MS. MANNING: Objection; vague.
10 THE WITNESS: Let me answer this in
11 my -- as I understand it, is that I or somebody
12 from my office would have sent an engagement
13 letter in Word format, and there may have been
14 edits, very minor edits. I don't really consider
15 that to be a draft, in my mind.
16 And then the letter came back and it
17 was executed.
18 BY MR. SCHEINFELD:
19 **Q. Well, I'll ask it another way, then.**
20 A. Okay.
21 **Q. Are there documents in existence,**
22 **whether electronic form or hard copy, which**
23 **predated or were pre-existing versions of the**
24 **final draft that was executed?**
25 MS. MANNING: Objection to the extent

Page 24

1 W. CHRISTOPHER BAKEWELL
2 it calls for speculation.
3 MR. SCHEINFELD: If the witness knows.
4 THE WITNESS: I just -- I really don't
5 remember. There was a -- Apparently there was a
6 letter sent and there were some very minor edits
7 and it came back. And I don't know how the
8 documents were saved.
9 MR. SCHEINFELD: Well, to the extent
10 any are in existence, we ask for their production.
11 MS. MANNING: Noted.
12 BY MR. SCHEINFELD:
13 **Q. If you'll turn to page 2 of the**
14 **engagement letter.**
15 A. Oh, okay.
16 **Q. See at the top of the page it says:**
17 **"Bingham will provide me with all information of**
18 **which Bingham is aware or becomes aware that may**
19 **be relevant to my work such that I can provide a**
20 **fully informed opinion."**
21 **Do you see that?**
22 A. Yes.
23 **Q. Did I read that correctly?**
24 A. Yes, sir.
25 **Q. Do you know whether or not Bingham has**

Page 25

1 W. CHRISTOPHER BAKEWELL
2 provided you with all information that it's aware
3 of or becomes aware of that may be relevant to
4 your work?
5 A. I assume that they've done so, yes.
6 **Q. On page 3, do you see the current**
7 **hourly billing rates in the box --**
8 **A. Yes, sir.**
9 **Q. -- on the bottom of the page?**
10 A. I do.
11 **Q. And those were hourly rates that you**
12 **set forth in this engagement letter, correct?**
13 A. Yes.
14 **Q. Are they still in effect for 2010? Or**
15 **did they increase after 2009?**
16 A. I don't believe we've increased our
17 billing rates on this engagement.
18 **Q. If you turn to CB6.**
19 A. Yes.
20 **Q. You'll see that seemingly Google --**
21 **someone from Google executed this document on**
22 **December 7th.**
23 A. Yes.
24 **Q. Is that your recollection?**
25 A. I don't recall one way or the other,

7 (Pages 22 to 25)

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1 W. CHRISTOPHER BAKEWELL
2 but the document says what it says.
3 **Q. Do you recall whether or not you had**
4 **any discussions with anyone at Google between**
5 **December 1st and December 7th regarding this case?**
6 A. I don't recall any discussions at all
7 with Google.
8 **Q. During that period of time?**
9 A. During that period of time.
10 **Q. From December 1st to December 7th, do**
11 **you recall having any discussions -- substantive**
12 **discussions about the merits -- Strike that.**
13 **Between December 1st and December 7th,**
14 **do you recall having any discussions about your**
15 **opinion that's referred to in your engagement**
16 **letter with anyone at Bingham?**
17 A. No.
18 **Q. Did you render any preliminary opinions**
19 **during that period of time, between December 1st**
20 **and December 7th --**
21 MS. MANNING: Objection; vague.
22 BY MR. SCHEINFELD:
23 **Q. -- '09?**
24 A. I don't know what a preliminary opinion
25 is.

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1 W. CHRISTOPHER BAKEWELL
2 **Q. Did you share with them your**
3 **preliminary views or any views regarding the scope**
4 **of services that you were going to perform for**
5 **them --**
6 MS. MANNING: Objection; vague.
7 BY MR. SCHEINFELD:
8 **Q. -- during that time?**
9 MS. MANNING: Sorry.
10 THE WITNESS: We would have discussed
11 the case and the engagement at some period of time
12 in December. I can't recall with any specificity
13 the particular time frame that you're referring
14 to. But certainly we discussed the case.
15 BY MR. SCHEINFELD:
16 **Q. All right. Did anyone at Bingham ask**
17 **for your preliminary views regarding your opinion**
18 **between December 1st and December 7th?**
19 MS. MANNING: Objection; vague.
20 THE WITNESS: I don't recall anybody
21 asking like that, "Mr. Bakewell, I'd like your
22 preliminary views."
23 BY MR. SCHEINFELD:
24 **Q. Well, do you recall sharing your views**
25 **on the merits of your opinion to be rendered?**

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1 W. CHRISTOPHER BAKEWELL
2 MS. MANNING: Objection; vague.
3 THE WITNESS: The views on the merits
4 of my opinion? I don't know what that means.
5 BY MR. SCHEINFELD:
6 **Q. Well, you -- What did you understand**
7 **your scope of services to include?**
8 A. At that point I think the focus was on
9 providing commercial perspective on the documents
10 that were sent on November 30th.
11 **Q. What documents were those?**
12 A. The documents specified in the e-mail
13 on CB0019.
14 **Q. And what do you mean when you say**
15 **"commercial perspective"?**
16 A. I mean my thoughts given my background.
17 **Q. About what?**
18 A. These documents.
19 **Q. Okay. And during that time between,**
20 **let's say, November 30th when you received these**
21 **documents and December 7th, did you give anyone at**
22 **Bingham your preliminary thoughts given your**
23 **background about the commercial perspective of**
24 **those documents that were sent to you?**
25 MS. MANNING: Objection; vague.

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: I don't know what a
3 preliminary thought is in the context of your
4 question. I shared my views, and I had questions.
5 There was a dialogue. It was back and forth --
6 BY MR. SCHEINFELD:
7 **Q. What views did you share --**
8 A. -- that's what I recall.
9 **Q. I'm sorry.**
10 **What views did you share with them?**
11 A. They would be consistent with the
12 opinions that are in my declaration.
13 **Q. What questions did you have for them**
14 **between December 1st and December 7th; do you**
15 **recall?**
16 A. I would have asked about Red Bend, the
17 products that are at issue in this case, the
18 schedule, maybe what some of the legal standards
19 are.
20 Those would be the types of questions
21 that I would have had.
22 **Q. And expectations? You would have asked**
23 **them what they expected from you?**
24 MS. MANNING: Objection to the form of
25 the question.

8 (Pages 26 to 29)

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1 W. CHRISTOPHER BAKEWELL
2 MR. SCHEINFELD: I'm sorry?
3 MS. MANNING: Objection to the form of
4 the question.
5 THE WITNESS: I don't know if I would
6 have asked that expressly, but it would have been
7 implied in our discussion.
8 BY MR. SCHEINFELD:
9 Q. If you could turn to document CB0017.
10 This purports to be an e-mail from you to
11 Ms. Manning on December 16th?
12 A. Yes.
13 Q. What did you mean when you asked her to
14 drop you a line or give you a call to update you
15 on expectations?
16 A. Well, it says: "Give me a call to
17 update me on schedule, expectations, et cetera."
18 It was consistent with what I testified to
19 previously. It was just some general thoughts
20 that I had or questions that I had. And among
21 them, one of the things -- this refreshes my
22 memory -- was expectations regarding deadlines and
23 ultimately what evolved into the document, my
24 declaration.
25 Q. Okay.

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1 W. CHRISTOPHER BAKEWELL
2 A. Can I set these aside?
3 Q. Yes.
4 A. Okay.
5 MR. SCHEINFELD: I'm just going to mark
6 as one exhibit CB8 to CB15 and CB134 to 138.
7 (Exhibit 34 marked for identification and
8 attached hereto.)
9 MR. SCHEINFELD: That's Exhibit 34.
10 BY MR. SCHEINFELD:
11 Q. Are these your firm's invoices to
12 Google in connection with this matter?
13 A. Yes, sir, they appear to be.
14 Q. So I understand the relationship,
15 Bingham retained you but your invoices go to and
16 are paid by Google?
17 MS. MANNING: Objection; lacks
18 foundation.
19 MR. SCHEINFELD: Well, I'm asking.
20 BY MR. SCHEINFELD:
21 Q. Is that the case?
22 A. Well, it's described in the engagement
23 letter. Duff & Phelps was retained to assist
24 Bingham McCutchen in its rendering of legal
25 services, and then invoicing and payment

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1 W. CHRISTOPHER BAKEWELL
2 procedures are described, I think in some detail,
3 in the letter.
4 Q. And these invoices were provided
5 consistent with your engagement letter, correct?
6 A. I would expect that to be the case,
7 yes.
8 Q. And these are accurate
9 representations -- These reflect the total amount
10 that you've charged Google for your services in
11 connection with this case?
12 A. I believe these are all of our
13 invoices --
14 Q. So --
15 A. -- to date.
16 Q. I'm sorry. Are you finished?
17 A. I said to date.
18 Q. So if I added the total amount due for
19 each invoice, that would be the total amount of
20 services that your firm has charged Google in
21 connection with this case so far?
22 A. Yes, sir.
23 Q. Okay. If you turn to the first invoice
24 for services through December.
25 A. Yes.

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1 W. CHRISTOPHER BAKEWELL
2 Q. On CB0011. Do you see that?
3 A. Yes.
4 Q. Could you tell me in greater detail
5 what Tamara Turek did during December?
6 A. Tamara Turek?
7 Q. Yes. Sorry.
8 A. She's a vice president in our firm, and
9 she would have performed research. She would have
10 been responsible for organizing any documents that
11 we might have, in some ways having some managerial
12 responsibility for the project, but essentially
13 assisting me in my work.
14 Q. If you could turn to -- Oh, I'm sorry.
15 What about -- forgive me if I pronounce the name
16 incorrectly -- Soha Bhardwaj?
17 A. Bhardwaj. That was a good try.
18 Q. Thanks. What services did he perform?
19 A. It's a she.
20 Q. She.
21 A. That's okay.
22 What services did she perform?
23 Q. That are reflected here in December.
24 A. She -- Oh, I'm sorry, I spoke over you.
25 Q. In December.

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1 **W. CHRISTOPHER BAKEWELL**
2 A. She is an analyst, and she would have
3 mostly done research.
4 **Q. If you could turn to the next invoice,**
5 **please.**
6 A. Which one is the next one?
7 **Q. That one (indicating).**
8 A. This one?
9 **Q. Uh-huh.**
10 A. Okay.
11 MS. MANNING: You're referring to
12 CB0012?
13 MR. SCHEINFELD: Yes. And 15 in
14 particular.
15 BY MR. SCHEINFELD:
16 **Q. Can you describe in greater detail what**
17 **services Tanya provided during the month of**
18 **January?**
19 A. Oh, Ms. Andrien? She would have
20 performed some research. I would have discussed
21 the engagement with her.
22 **Q. And what --**
23 A. She would have essentially assisted
24 with preparing the declaration.
25 **Q. And what about Eric Barney; what did he**

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1 **W. CHRISTOPHER BAKEWELL**
2 **do in January?**
3 A. He would have done research and
4 probably some financial analysis. He would
5 have -- I think Eric was a little more focused on
6 Red Bend's financial documents.
7 **Q. If you could turn to the next invoice.**
8 **And CB137.**
9 A. Yes.
10 **Q. Can you describe in any greater detail**
11 **what services Tanya performed in January?**
12 A. She would have read the declaration,
13 discussed it with me, performed research.
14 **Q. And same question regarding Tamara.**
15 A. She would have done that as well. She
16 had some responsibility for organizing documents
17 and assisting with getting the declaration done
18 ultimately.
19 **Q. Did she --**
20 Let me ask this: You mentioned the
21 **declaration. Was she principally involved in**
22 **drafting the declaration?**
23 MS. MANNING: Objection; vague.
24 THE WITNESS: No. I drafted the
25 declaration.

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1 **W. CHRISTOPHER BAKEWELL**
2 **BY MR. SCHEINFELD:**
3 **Q. Did you draft the declaration with any**
4 **assistance from others?**
5 A. Well, as I described to you, there are
6 other people from my firm who worked on the
7 engagement, and I would have sought their
8 assistance.
9 **Q. Was counsel involved in drafting the**
10 **declaration?**
11 A. I think at some point we would have had
12 questions of counsel. I had questions of counsel.
13 But the actual -- the drafting of the declaration
14 I did. It was a document that I created and
15 edited.
16 MR. SCHEINFELD: I would like to mark
17 as the next Exhibit 35 a document that appears to
18 be Mr. Bakewell's CV. I'll let him describe it.
19 (Exhibit 35 marked for identification and
20 attached hereto.)
21 BY MR. SCHEINFELD:
22 **Q. If you can, please tell us what this**
23 **document is.**
24 A. This is my CV.
25 **Q. Is it accurate?**

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1 **W. CHRISTOPHER BAKEWELL**
2 A. To the best of my ability.
3 **Q. Is it current?**
4 A. At the time it was submitted, it would
5 have been current. I can't think of any changes
6 that I would make to it today.
7 **Q. If you could turn to page 9, please.**
8 A. Yes.
9 **Q. Under "Professional Business History,"**
10 **this lists the companies for whom you've worked**
11 **over the last 20 years?**
12 A. Yes.
13 **Q. There aren't any other companies other**
14 **than these listed?**
15 A. I interned when I was in graduate
16 school with the Securities and Exchange
17 Commission.
18 **Q. What did you do with Andersen**
19 **Consulting as a consultant in 1990, if you can**
20 **recall?**
21 A. I designed and programmed computers.
22 **Q. What language?**
23 A. A variety of languages.
24 **Q. Do you recall any?**
25 A. I recall several. We had a design

10 (Pages 34 to 37)

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1 W. CHRISTOPHER BAKEWELL
2 tool; I think it was actually called Design or
3 Design I. I recall some languages for graphical
4 user interface. I recall some C. I recall
5 Cobalt. Too much Cobalt.
6 That's the best that I can recall.
7 **Q. What did you do with C.W. Amos?**
8 A. I focused on intellectual property
9 valuation, some work in a damages context as well.
10 **Q. Were you ever retained, do you recall,**
11 **during that period of time as an expert to testify**
12 **or provide your opinion in an intellectual**
13 **property dispute?**
14 A. No, although I would have worked on
15 those types of engagements.
16 **Q. When was the first time you were**
17 **actually engaged to work in connection with a**
18 **litigation?**
19 A. Engaged? The first time that I -- that
20 I was engaged? You mean I personally as opposed
21 to a firm?
22 **Q. Correct. Well, you working at a firm**
23 **but you being the lead, the reason for the**
24 **engagement.**
25 MS. MANNING: Objection; vague.

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: There were matters that I
3 worked on when I worked for Wartsila. Although I
4 was an employee, so I don't think there would have
5 been an engagement letter. But I was asked to
6 provide my opinions more than once in litigation
7 that the company was involved in.
8 BY MR. SCHEINFELD:
9 **Q. Not as a party but in litigation where**
10 **the company was retained to provide services to**
11 **one of the parties?**
12 A. No, as a party.
13 **Q. As a party to litigation?**
14 A. As a party.
15 **Q. Could you explain what that was about?**
16 A. Well, I recall an arbitration where I
17 provided testimony regarding damages.
18 MS. MANNING: And I'll object to this
19 area of questioning to the extent it might call
20 upon Mr. Bakewell to disclose confidential
21 information of a third party.
22 BY MR. SCHEINFELD:
23 **Q. Did you provide testimony at a**
24 **deposition, in trial, and/or by submitting an**
25 **expert report?**

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1 W. CHRISTOPHER BAKEWELL
2 A. All three.
3 **Q. When did that trial take place? Was**
4 **there more than one --**
5 A. It was an arbitration.
6 **Q. I'm sorry. When did that arbitration**
7 **take place?**
8 A. Sometime in the late 1990s.
9 **Q. And you provided testimony at that**
10 **arbitration regarding --**
11 A. Damages.
12 **Q. -- damages?**
13 A. Yes, sir.
14 **Q. Was it a patent matter?**
15 A. No, sir. It was a breach of contract.
16 **Q. When was the first time you provided --**
17 **Strike that.**
18 **When was the first time you were**
19 **retained to provide an opinion in an intellectual**
20 **property dispute?**
21 A. The matter Alt v. Medtronic.
22 **Q. Which company were you employed with at**
23 **the time?**
24 A. CRA. Or the firm might have been known
25 as InteCap at the time.

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1 W. CHRISTOPHER BAKEWELL
2 **Q. I'm looking for the Medtronic listing**
3 **in your CV.**
4 A. It's on page 3, the very back. Eckhard
5 Alt v. Medtronic.
6 **Q. Ah, yes. Thank you.**
7 **And that case was brought in 2006?**
8 A. Apparently so, yes.
9 **Q. So before 2006, you were not involved**
10 **in rendering an opinion in an intellectual**
11 **property dispute?**
12 A. No, sir, I wouldn't agree with that.
13 **Q. Please explain.**
14 A. Well, I was involved in rendering
15 opinions in intellectual property disputes when I
16 worked at C.W. Amos & Company and CRA/InteCap.
17 **Q. Okay. Let's back up a second, then.**
18 **What was the intellectual property dispute that**
19 **you were involved in at C.W. Amos?**
20 A. There were a variety of them.
21 **Q. The intellectual property ones.**
22 A. Do you want me to name them?
23 **Q. Well, how many were there?**
24 A. Oh, boy. Ten to 20, something like
25 that.

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1 W. CHRISTOPHER BAKWELL
2 Q. So there were ten to 20 IP disputes
3 that you were involved in when you were at C.W.
4 Amos?
5 A. That question is awkward. IP disputes
6 that I was involved in. My firm worked on
7 intellectual property matters, and I would have
8 been a member of a team that would have worked on
9 those matters.
10 Q. And did those matters include patent
11 disputes?
12 A. Yes.
13 Q. How many of the IP matters involved
14 patent disputes?
15 A. Most of them.
16 Q. The Medtronic case that you identified,
17 that was the first case in which you were lead
18 damages expert?
19 A. Lead damages expert? That was the
20 first time that I -- Yeah, I think I would agree
21 with that. I could agree with that.
22 Q. In an IP case? In an IP case?
23 A. Right.
24 Q. And that was a patent matter, the
25 Medtronic case?

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1 W. CHRISTOPHER BAKWELL
2 A. Yes.
3 Q. And you were retained by the plaintiff
4 patentee in that case?
5 A. Yes.
6 Q. Is it still pending?
7 A. No.
8 Q. What was the next patent -- What was
9 the next intellectual property dispute where you
10 were retained as lead damages expert?
11 A. BMC v. NetIQ. They flow in reverse
12 chronological order.
13 Q. Okay.
14 A. That's generally how this works, so the
15 question would be the same all the way through it.
16 Q. For any of the cases that are listed on
17 pages 2 and 3 -- Strike that.
18 For the cases listed on pages 2 and
19 3 through the Eckhard case, which ones are patent
20 cases?
21 A. I told you the ones on page 3.
22 Dr. Alt. BMC Software.
23 On page 2 --
24 Q. I'm sorry. Dr. --
25 A. Alt v. Medtronic.

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1 W. CHRISTOPHER BAKWELL
2 Q. We just discussed --
3 A. On page 3.
4 Q. Oh, page 3. I thought you said page 2.
5 Okay.
6 A. You have them both checked. Alt v.
7 Medtronic and BMC v. NetIQ.
8 And then turn to page 2.
9 Q. Uh-huh.
10 A. Visto v. Good. It's at the bottom.
11 We'll go backwards.
12 Q. Okay.
13 A. BridgeLux v. Cree.
14 Joovy v. BabyTrend.
15 Rambus v. Samsung.
16 Versata v. Sun.
17 Now we have to turn to page 1.
18 Q. Yes. Yes, and the same question for
19 page 1.
20 A. Okay. Because you didn't ask for --
21 Q. That's a very good witness. Correct.
22 A. You be the judge of that.
23 MarcTec v. Cordis.
24 Seoul v. Nichia.
25 Hitachi v. LG.

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1 W. CHRISTOPHER BAKWELL
2 Versata v. SAP.
3 Realtime v. F5.
4 Sovereign v. Newegg.
5 And Performance Pricing v. Google.
6 Q. Which you discussed earlier today --
7 A. Yes, sir.
8 Q. -- with me?
9 Of all these cases that you just
10 identified on pages 1 and 2 and 3, did any involve
11 your rendering an opinion in connection with a
12 preliminary injunction matter?
13 A. No, sir.
14 Q. Did any involve your rendering an
15 opinion in connection with irreparable harm?
16 A. No.
17 Q. And I'll broaden that question out to
18 all the cases that are identified on pages 1,
19 2 and 3. Did any of those cases involve your
20 rendering an opinion regarding a preliminary
21 injunction or irreparable harm?
22 A. No. The issue would have come up at
23 some point in some of these matters, and it's
24 something that I've addressed in other work that
25 I've done, consulting work and publications. But

12 (Pages 42 to 45)

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1 W. CHRISTOPHER BAKEWELL
2 to answer your question directly, no.
3 **Q. And when you say "would have come up,"**
4 **do you recall specifically it coming up?**
5 A. I'm trying to recall specifically.
6 There's at least a couple of things that come to
7 mind.
8 **Q. Please share them with me.**
9 A. In some of the research that I've done
10 for publications that I've written.
11 **Q. I'm sorry. I thought you were saying**
12 **that it would have come up in these cases that are**
13 **identified on pages 1, 2 and 3.**
14 A. Oh, I thought --
15 **Q. And then perhaps other work and perhaps**
16 **publications. I was just taking one category or**
17 **one bucket at a time.**
18 **Do you recall it specifically coming up**
19 **in any of the cases listed on 1, 2 and 3 where you**
20 **were retained?**
21 A. No, I don't recall.
22 **Q. Do you recall it coming up in other**
23 **work, which is the other bucket you identified?**
24 A. I started with a different bucket in my
25 answer.

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1 W. CHRISTOPHER BAKEWELL
2 **Q. And that was publications?**
3 A. Publications where I've discussed eBay
4 and injunctive relief in particular, and in
5 consulting work that I've performed for clients.
6 **Q. So in your publication where you**
7 **discussed eBay, did you particularly talk about**
8 **preliminary injunctions or permanent injunctions?**
9 A. I don't recall.
10 **Q. And in the consulting work, could you**
11 **expand on that, please?**
12 A. I can expand on it. I can only
13 describe what I've done generally, because I can't
14 disclose specifics about engagements or clients.
15 But I can describe generally that there have been
16 instances where clients have asked for my thoughts
17 on those types of issues.
18 **Q. Do you recall how many times?**
19 A. I would say a handful; three to five.
20 **Q. Three to five different clients?**
21 A. Something like that.
22 **Q. And what clients were they?**
23 A. I don't -- That I can't disclose. That
24 I can't disclose. I can tell you that I can
25 recall companies in the software field and in the

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1 W. CHRISTOPHER BAKEWELL
2 medical device field.
3 **Q. Okay. Any other fields?**
4 A. Manufacturing.
5 **Q. And in the software field, what were**
6 **the requests that your clients made in the**
7 **software field?**
8 MS. MANNING: Objection to the extent
9 this would require Mr. Bakewell to disclose either
10 work product or the confidential information of
11 nonparties. And relevance.
12 THE WITNESS: All three of the examples
13 I gave I can provide you with a general
14 description that would cover them all.
15 BY MR. SCHEINFELD:
16 **Q. Sure. I'll take that for now.**
17 A. They were all -- The ones that come to
18 mind were consulting engagements where I was
19 working with management of a company to evaluate
20 the financial aspects of the options they had
21 given their intellectual property portfolio.
22 **Q. Did any of those consulting engagements**
23 **involve your opinion regarding a preliminary**
24 **injunction?**
25 A. It would have been something that was

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1 W. CHRISTOPHER BAKEWELL
2 an element of a broader assignment.
3 **Q. You say "it would have been." But you**
4 **don't recall specifically?**
5 A. Not much more than what I described.
6 I'm not sure that I can add to that. And to the
7 extent that I recall anything, I don't think I can
8 describe it with -- without providing confidential
9 information.
10 **Q. Do you recall discussing with any of**
11 **these clients, these three to four clients --**
12 **three to five clients or three to five instances**
13 **where you rendered an opinion regarding a party's**
14 **chances of obtaining a preliminary injunction?**
15 MS. MANNING: Objection to the extent
16 it would require him to disclose confidential
17 information he has an obligation to keep
18 confidential.
19 THE WITNESS: To the extent that was
20 part of the work or my assignment under those
21 three or five that I can recall, I can recall a
22 little bit more than that.
23 Can you repeat your question? I think
24 I lost track of it. I want to do my best to
25 answer it.

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 Q. Okay. Do you recall discussing with
4 any of these clients your views regarding
5 irreparable harm?
6 MS. MANNING: Same objection.
7 THE WITNESS: Irreparable harm? No, I
8 don't recall that.
9 BY MR. SCHEINFELD:
10 Q. Do you recall discussing your views
11 regarding your clients -- Strike that.
12 Do you recall discussing your views
13 regarding preliminary injunction?
14 MS. MANNING: Same objection.
15 THE WITNESS: Yes.
16 BY MR. SCHEINFELD:
17 Q. Do you recall in the context of a
18 preliminary injunction whether in these cases
19 intellectual property was involved?
20 A. Yes.
21 Q. And do you recall whether patents were
22 involved?
23 A. Yes. And the answer is yes.
24 Q. But it's fair to say that none of these
25 discussions involved your sharing your views

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1 W. CHRISTOPHER BAKEWELL
2 regarding irreparable harm or injury?
3 A. I don't recall -- I don't recall that.
4 Q. If you could turn to page 9. Are you
5 there? Page 9 of your CV.
6 A. Yes.
7 Q. You know, I see that you've listed your
8 affiliation with Wartsila.
9 A. That's right.
10 Q. From 1995 to 2002. And then you also
11 list an affiliation with KPMG in 2001.
12 A. Right.
13 Q. Could you explain that?
14 A. Oh, sure. I left Wartsila during 2001
15 for several months to work at KPMG, and I came
16 back to Wartsila to work on another project.
17 Q. Why did you leave Wartsila?
18 A. I felt it was a better opportunity at
19 KPMG.
20 Q. And why did you leave KPMG?
21 A. I saw a better opportunity at Wartsila.
22 Q. Why did you leave Wartsila eventually?
23 I'm assuming it was in 1990 -- I'm sorry --
24 A. It was in 2002.
25 Q. -- 2005?

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1 W. CHRISTOPHER BAKEWELL
2 A. I'm sorry.
3 Q. 2002?
4 A. Yes.
5 Q. To join InteCap?
6 A. Correct.
7 Q. Why did you --
8 A. That was my answer to that question.
9 Q. Okay. Well, did you leave Wartsila on
10 good terms or bad terms?
11 A. Good terms.
12 Q. Then you became a director at InteCap?
13 A. Yes.
14 Q. And why did you leave InteCap?
15 A. I left for Kroll because I felt that
16 Kroll provided me a better opportunity.
17 Q. Did you leave InteCap on good terms
18 or --
19 A. Yes, sir, on good terms.
20 Q. And why did you leave Kroll?
21 A. The same. I saw a better opportunity
22 at Duff & Phelps.
23 Q. And did you leave Kroll on good terms
24 or bad terms?
25 A. Good terms.

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1 W. CHRISTOPHER BAKEWELL
2 MS. MANNING: Is this a good time for a
3 short break, Rob?
4 MR. SCHEINFELD: You know, I was really
5 hoping --
6 MS. MANNING: It's okay if it's not.
7 MR. SCHEINFELD: No, I was just really
8 hoping to go to the end of the tape because --
9 MS. MANNING: Oh, sure.
10 MR. SCHEINFELD: -- I think that's the
11 way that we'll get out of here at a reasonable
12 time today.
13 MS. MANNING: That's fine.
14 THE WITNESS: I'll do my best, but if I
15 need a break, I'll have to --
16 MR. SCHEINFELD: Oh, of course. I
17 mentioned that at the outset. If I didn't, I
18 meant to. If you need a break --
19 THE WITNESS: We have that
20 understanding at least.
21 BY MR. SCHEINFELD:
22 Q. In those cases that you list in your
23 CV, was there ever an instance where your
24 testimony was precluded?
25 A. No, sir.

14 (Pages 50 to 53)

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1 W. CHRISTOPHER BAKEWELL
2 **Q. How many times did you appear at trial?**
3 A. I believe four or five. Four.
4 **Q. Which cases were those? I'm sorry to**
5 **backtrack.**
6 A. That's okay.
7 I'll work from the back forward again.
8 **Q. Uh-huh.**
9 A. The last one that's listed, American
10 Arbitration Association.
11 **Q. That was an arbitration. Okay. So you**
12 **testified at an arbitration.**
13 A. It seemed like a trial.
14 **Q. Are you including that in the four?**
15 A. Yes. It seemed like a trial to me.
16 **Q. Well, that's understandable.**
17 **When was that?**
18 A. In the late 1990s.
19 InSyst v. Applied Materials.
20 Versata v. Sun. Versata v. Sun is on
21 page 2, the third one down -- no, second one down.
22 And then on the first page, Versata v.
23 SAP.
24 **Q. I missed the -- So I have the two**
25 **Versatas and the last arbitration. I missed the**

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1 W. CHRISTOPHER BAKEWELL
2 **third one.**
3 A. InSyst v. Applied Materials. It's at
4 the bottom of page 2.
5 **Q. Okay. For any of these four cases, did**
6 **they involve patents?**
7 A. The two Versata cases.
8 **Q. And when were those trials?**
9 A. In 2009.
10 **Q. And in both instances you testified on**
11 **behalf of the plaintiff patentee?**
12 A. Yes.
13 **Q. What were the results of those cases,**
14 **the verdicts?**
15 A. The first one, there was no liability
16 found. So...
17 **Q. The first one on page --**
18 A. Oh, I'm sorry. For the Versata v. Sun?
19 **Q. Uh-huh.**
20 A. No liability, and so there was no
21 damages.
22 **Q. What was your opinion regarding**
23 **damages?**
24 MS. MANNING: Objection; vague.
25 THE WITNESS: Oh, I don't recall.

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1 W. CHRISTOPHER BAKEWELL
2 There were different categories.
3 BY MR. SCHEINFELD:
4 **Q. Do you recall what the -- Well, what**
5 **categories were they?**
6 A. Patent infringement.
7 MS. MANNING: Same objection.
8 THE WITNESS: Patent infringement.
9 BY MR. SCHEINFELD:
10 **Q. Regarding patent infringement.**
11 A. Well, that was it. Patent infringement
12 was an issue.
13 **Q. Right. And did you render an opinion**
14 **regarding how much the patentee would be entitled**
15 **or should be entitled to if the jury found, or if**
16 **the fact finder found the patent valid and**
17 **infringed and enforceable?**
18 A. Yes.
19 **Q. And what was your opinion?**
20 MS. MANNING: Objection to the extent
21 it might ask Mr. Bakewell to reveal confidential
22 information of a third party. Also not relevant.
23 BY MR. SCHEINFELD:
24 **Q. As you testified at trial?**
25 MS. MANNING: Same objection.

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: I don't recall the
3 specific dollar amount. But it was something like
4 \$20 million for patent infringement.
5 BY MR. SCHEINFELD:
6 **Q. And in the first case -- I'm sorry, the**
7 **case on page 1 --**
8 A. Right.
9 **Q. -- did you render an opinion**
10 **regarding --**
11 A. Yes.
12 **Q. -- damages?**
13 **And what was your opinion in that**
14 **case --**
15 MS. MANNING: Objection; vague.
16 BY MR. SCHEINFELD:
17 **Q. -- at trial?**
18 MS. MANNING: Objection; vague.
19 BY MR. SCHEINFELD:
20 **Q. Regarding how much the plaintiff**
21 **patentee should recover if the fact finder found**
22 **infringement, validity and enforceability.**
23 A. There was a range, but the range was --
24 and the range was approximately \$150 million. It
25 was in that order of magnitude.

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1 W. CHRISTOPHER BAKEWELL
2 Q. And was there a finding of liability?
3 A. Yes.
4 Q. And did the fact finder come back with
5 a damages verdict?
6 A. Yes.
7 Q. And what was that?
8 A. \$148.6 million.
9 Q. And what's the status of that case?
10 A. It's continuing through the legal
11 process.
12 Q. Did you testify regarding an injunction
13 in that case?
14 A. No.
15 Q. What did you do to prepare for today's
16 deposition?
17 A. I reviewed documents. I had
18 discussions with my colleagues. I had discussions
19 with counsel.
20 Q. How many hours would you say you spent
21 preparing for today's deposition?
22 A. 20, maybe 30.
23 Q. Did you meet in person with counsel to
24 prepare for today's deposition?
25 A. Yes.

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1 W. CHRISTOPHER BAKEWELL
2 Q. And when did you meet? Yesterday?
3 A. Yes.
4 Q. Did you meet at any other time in
5 person to prepare for today's deposition?
6 A. No.
7 Q. Who did you meet with yesterday?
8 Ms. Manning?
9 A. Yes.
10 Q. Anyone else at Bingham?
11 A. A couple of her colleagues.
12 Q. And who were they?
13 A. Well, I'll mess up their last names but
14 their first names are Chris and Liz.
15 Q. Did you meet with anyone else to
16 prepare for today's deposition?
17 A. My colleagues.
18 Q. Did you meet with anyone from Google to
19 prepare for today's deposition?
20 A. No.
21 Q. Did you have any discussions with
22 anyone at Google to prepare for today's
23 deposition?
24 A. No, sir.
25 Q. Did you have any discussions with

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1 W. CHRISTOPHER BAKEWELL
2 Google at all in connection with this case?
3 A. No, not other than reading deposition
4 transcripts and declarations.
5 Q. But you didn't have any other
6 discussions by phone or in person with anyone
7 else -- with anyone at Google, correct?
8 A. No, sir. I think that the information
9 that was provided in the declarations and through
10 my research, review of 10Ks was sufficient.
11 Review of deposition transcripts.
12 Q. No, I understand. I'm just trying to
13 learn whether or not you spoke with anyone at
14 Google or met with anyone at Google in connection
15 with your deposition or your declaration.
16 A. I gave you that answer.
17 Q. Which is -- I mean, I don't know
18 whether I understand it, so I would like you to be
19 more clear. Is the answer no but you felt
20 comfortable with the materials that you reviewed?
21 A. Yes.
22 Q. Okay. You mentioned that you reviewed
23 documents to prepare for today's deposition. What
24 documents did you review?
25 A. Deposition transcripts. Additional

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1 W. CHRISTOPHER BAKEWELL
2 production that -- excuse me -- that has occurred
3 subsequent to my declaration. I reviewed the
4 documents that I cited to in my declaration.
5 Q. What additional production are you
6 referring to?
7 A. I can't recall specifically.
8 Q. Generally?
9 A. They would have been e-mails and
10 correspondence.
11 Q. And e-mails and correspondence
12 involving Google employees? Strike the question.
13 You look puzzled.
14 So what types of e-mails and
15 correspondence?
16 A. What I recall is I reviewed documents
17 in particular that Red Bend had produced.
18 Q. So you don't recall that any of the
19 additional documents that you reviewed after your
20 declaration was submitted were documents generated
21 by Google?
22 A. I don't recall specifically. It's
23 possible. They would have all been documents that
24 were Bates-numbered. So it's really impossible
25 for me to tell when the documents were produced,

16 (Pages 58 to 61)

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1 W. CHRISTOPHER BAKEWELL
2 but my general understanding was that at least
3 some of them were produced after the date of my
4 declaration.
5 **Q. And of the documents produced -- What**
6 **I'm trying to get a handle on is whether the**
7 **documents that you looked at that were produced**
8 **after your declaration were Google documents or**
9 **Red Bend documents.**
10 A. It could be both. I'm not sure that I
11 was that specific in my review. I mean, I can
12 definitely tell the difference between a
13 Google-produced document and a Red Bend-produced
14 document.
15 I know generally there were documents
16 that were produced after the date of my
17 declaration, and part of the time that I spent
18 yesterday was reviewing -- I spent reviewing those
19 types of documents. I just can't recall
20 specifically if any Google documents fell into
21 that category.
22 **Q. But the majority were Red Bend**
23 **documents; that's fair to say? Is that correct?**
24 A. No, I don't know one way or another.
25 **Q. Okay.**

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1 W. CHRISTOPHER BAKEWELL
2 MR. SCHEINFELD: Oh, I'm sorry. Were
3 all those documents produced that he's reviewed?
4 MS. MANNING: Yes.
5 BY MR. SCHEINFELD:
6 **Q. So there came a time that you prepared**
7 **and submitted a declaration in this case, correct?**
8 A. Yes, sir.
9 MR. SCHEINFELD: Let's do that.
10 THE WITNESS: This seems like a good
11 time for a break. I need a break, and it seems
12 like you're in a segue.
13 MR. SCHEINFELD: I am.
14 THE VIDEOGRAPHER: This marks the end
15 of Tape 1 in the deposition. We are going off the
16 record. The time is 10:36 a.m.
17 (A recess was then taken.)
18 THE VIDEOGRAPHER: This marks the
19 beginning of Tape 2 in the deposition. We are
20 back on the record. The time is 10:47 a.m.
21 BY MR. SCHEINFELD:
22 **Q. You mentioned that you reviewed**
23 **deposition transcripts yesterday in preparing for**
24 **today's deposition.**
25 A. Yes.

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1 W. CHRISTOPHER BAKEWELL
2 **Q. Do you recall which transcripts you**
3 **reviewed?**
4 A. Dr. Walker's.
5 **Q. Dr. Walker's deposition transcript?**
6 A. Yes.
7 **Q. From this past Tuesday?**
8 A. I don't know what date it was. I don't
9 remember. But it was recent.
10 And Mr. Bershad. I hope I got his name
11 correct. That's a hard one for me to remember for
12 some reason.
13 **Q. So you reviewed -- Were the transcripts**
14 **clear, or were they rough?**
15 MS. MANNING: Objection; vague.
16 BY MR. SCHEINFELD:
17 **Q. Were they --**
18 A. They were both, actually.
19 **Q. Fair enough.**
20 **Did you review the entire transcript of**
21 **each?**
22 A. Yes.
23 MR. SCHEINFELD: If you could please
24 mark as Exhibit 36 the declaration of W.
25 Christopher Bakewell.

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1 W. CHRISTOPHER BAKEWELL
2 (Exhibit 36 marked for identification and
3 attached hereto.)
4 BY MR. SCHEINFELD:
5 **Q. Is this your declaration, sir, that you**
6 **submitted in connection with this case?**
7 A. It appears to be.
8 **Q. Is that your signature on page 16?**
9 A. Yes.
10 **Q. And you executed this on March 1st?**
11 A. Yes.
12 **Q. And you mentioned -- I believe you**
13 **testified earlier that you typed this declaration?**
14 A. Yes.
15 **Q. Were there prior drafts?**
16 MS. MANNING: Objection. The
17 protective order specifically provides that drafts
18 are not within the scope of discovery.
19 MR. SCHEINFELD: That production of
20 drafts are not subject to discovery. I mean, I'm
21 allowed to ask him whether or not he's got drafts.
22 MS. MANNING: Or the subject of
23 deposition testimony.
24 MR. SCHEINFELD: Is it your position
25 that I can't ask him whether or not there are

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1 W. CHRISTOPHER BAKEWELL
2 drafts? Is that your position?
3 MS. MANNING: The stipulation was it's
4 outside the scope of discovery.
5 MR. SCHEINFELD: Well, I don't have it
6 memorized so...
7 If you're going to direct him not to
8 answer that -- Are you going to direct him not to
9 answer the question?
10 MS. MANNING: I'm not directing him not
11 to answer the question.
12 BY MR. SCHEINFELD:
13 Q. Were there drafts?
14 A. Here's how I'll answer that question.
15 I typed this report, and I kept one file. I
16 continuously edited it. And it changed over time,
17 but it's not as if there was version one, version
18 two, version three. The way that I do this, it's
19 a continuous process.
20 Q. That's -- That's all I wanted to know.
21 And I would like to know also who had input into
22 the continuous development of this declaration.
23 A. The people that you saw on the
24 invoices. And I think at some point we would have
25 had questions of counsel.

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1 W. CHRISTOPHER BAKEWELL
2 Q. As you sit here today, is your
3 declaration that you submitted on March 1st
4 accurate?
5 A. It is accurate.
6 Q. Are the opinions that you render in
7 this declaration affected at all by what you
8 reviewed yesterday?
9 MS. MANNING: Objection; overbroad.
10 THE WITNESS: No. Although there is a
11 document that I reviewed from the date that --
12 from March 1st -- between March 1st and today that
13 would have caused me to change what I wrote in
14 Paragraph 10. And specifically Paragraph 10
15 relates to Red Bend's financial condition.
16 I would have --
17 BY MR. SCHEINFELD:
18 Q. Let's start with this -- if I -- Go
19 ahead.
20 A. I'm not finished.
21 Q. Go ahead.
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1 W. CHRISTOPHER BAKEWELL
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6 Q. What document did you review that
7 triggers your recent answer?
8 A. There were a couple. I believe there
9 were PowerPoint presentations, and I believe they
10 were presented to the board of directors at Red
11 Bend. I'm less certain about that last statement
12 than I am the prior two.
13 Q. I'm sorry. What last statement are you
14 referring to?
15 A. Whether it's a board of directors
16 presentation.
17 Q. Oh, okay.
18 A. I'm confident it was, but it wouldn't
19 surprise me if, when I saw the actual PowerPoint
20 position, that it was directed to somebody else.
21 But it was in a PowerPoint-type of document.
22 Q. Since you're on Paragraph 10 --
23 A. Yes.
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1 W. CHRISTOPHER BAKEWELL
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11 Q. I'm trying to get an answer to it,
12 that's all. I just -- I just don't -- I would
13 like you to answer how it factors into your
14 conclusion regarding irreparable harm.
15 MS. MANNING: Objection; asked and
16 answered. Argumentative.
17 THE WITNESS: Well, I describe in
18 Paragraph 10 how that provides background
19 information, and it's relevant to Georgia-Pacific
20 Factor 8, at least.
21 BY MR. SCHEINFELD:
22 Q. Any others?
23 A. Well --
24 Q. Any other factors in connection with
25 your opinion regarding irreparable harm?

18 (Pages 66 to 69)

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1 **W. CHRISTOPHER BAKEWELL**
2 A. It might relate to another one of the
3 Georgia-Pacific factors. But if your question is
4 broader than that -- Well, let me ask you back.
5 Is your question broader than that? Were you
6 asking about the Georgia-Pacific factors or were
7 you asking about generally my opinions?
8 **Q. Your opinion regarding irreparable**
9 **harm.**
10 A. Well, my opinions are informed by
11 Exhibit 3, and that's described throughout the
12 report. And the context of the body of my report
13 is -- There is background in Paragraph 10
14 specifically. Those are ones that come to mind.
15 **Q. Uh-huh.**
16 A. There could be others. If we go
17 through my report, as I anticipate that you will
18 today, if something comes to mind, I'll let you
19 know. But those are two things that come to front
20 of mind.
21 **Q. Okay. Fair enough.**
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1 **W. CHRISTOPHER BAKEWELL**
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1 **W. CHRISTOPHER BAKEWELL**
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20 **Q. Okay. Any other changes that you would**
21 **make to the declaration based on information that**
22 **you may have learned after March 1st, 2010?**
23 A. Nothing material. I noticed a
24 typographical error or two. And there might be a
25 couple of citations, one or two, where the page

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1 **W. CHRISTOPHER BAKEWELL**
2 numbering is off by maybe a page. Nothing that is
3 something -- It's not anything that would affect
4 somebody's reading of this report.
5 **Q. Is your understanding regarding the**
6 **scope of your work in connection with your**
7 **retention limited to the preliminary injunction**
8 **phase, or are you -- is it your understanding that**
9 **you're hired for purposes regarding damages should**
10 **this case -- when this case goes to trial?**
11 A. We haven't discussed that. My firm,
12 again, is the one that is retained. But I haven't
13 discussed that with anybody.
14 **Q. If you could turn to Paragraph 5.**
15 A. Oh, Paragraph 5. I'm sorry. I turned
16 to page 5.
17 Yes.
18 **Q. In Paragraph 5 you say -- the last**
19 **clause. I'm not going to read the whole sentence**
20 **just to save time. You say: "...for example, in**
21 **the form of a reasonable royalty." Feel free to**
22 **read the sentence, of course.**
23 Are there other examples that you had
24 in mind there other than reasonable royalty?
25 A. No. I think that what I had in mind

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1 W. CHRISTOPHER BAKEWELL
2 was Paragraph 16.
3 **Q. Okay. In Paragraph 6, your first**
4 **sentence says: "I disagree with Mr. Salinger's**
5 **positions regarding the financial and economic**
6 **impact to Red Bend from Google's Courgette as it**
7 **relates to this lawsuit."**
8 **What is your understanding of Google's**
9 **Courgette?**
10 A. That's a broad question.
11 **Q. When I say "Courgette," what does that**
12 **mean to you?**
13 A. That is a product that is at issue. It
14 is a software used for delivery of information in
15 a concise format. That's just my lay person's
16 description.
17 **Q. But you understand that Google's**
18 **Courgette is the basis, or a basis, for Red Bend's**
19 **patent infringement allegation, correct?**
20 A. It's a product that has been accused by
21 Red Bend of infringing.
22 **Q. And for purposes of your -- of this**
23 **declaration, you have assumed that Google's**
24 **Courgette infringes, correct?**
25 A. I'm not sure. In a patent infringement

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1 W. CHRISTOPHER BAKEWELL
2 case, that's an explicit assumption for the
3 determination of damages. I understand that the
4 allegation of infringement is disputed. And so
5 the considerations under the Georgia-Pacific
6 analysis would include that assumption, because
7 without infringement there is no reason to
8 calculate damages.
9 And I suppose that in my analysis of
10 the three prongs, the loss of market share, loss
11 of revenue and market opportunities, and
12 unrecoverable loss of goodwill, I've assumed
13 infringement as well.
14 **Q. And have you assumed infringement --**
15 **Well, do you have an understanding of what direct**
16 **infringement is?**
17 A. Yes.
18 **Q. What is your understanding?**
19 A. I think I've explained it in my report.
20 **Q. Can you let me know without looking at**
21 **your report?**
22 MS. MANNING: Objection. To the extent
23 the witness would like to consult his report, he
24 should certainly be able to do that.
25 MR. SCHEINFELD: Sure, if he needs to.

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: Well, if it's in my
3 report, I think the most efficient thing to do for
4 the record is to point you to the specific place
5 in the report.
6 (Witness peruses document.)
7 Paragraph 21 goes to that point. It
8 provides a comparison between direct and indirect
9 infringement.
10 BY MR. SCHEINFELD:
11 **Q. So my question is: What's your**
12 **understanding of direct infringement?**
13 A. That is if a party itself infringes.
14 **Q. And what's your understanding of**
15 **indirect infringement?**
16 A. I specifically describe that in the
17 third sentence of Paragraph 21: Indirect
18 infringement stems from, potentially, inducement
19 or contributory infringement. It's, in commercial
20 terms, when a party would induce -- I can't think
21 of a word to substitute for that -- or contribute
22 to a third party infringing a patent.
23 **Q. And for purposes of this -- of your**
24 **opinion regarding irreparable harm, did you assume**
25 **that there's direct infringement and that there's**

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1 W. CHRISTOPHER BAKEWELL
2 **indirect infringement?**
3 MS. MANNING: Objection; compound.
4 BY MR. SCHEINFELD:
5 **Q. I'll take one at a time if you like.**
6 **I'm just trying to --**
7 A. No. I think I understand the question.
8 I answered this previously. I think that the
9 answer is yes. I think the answer is yes.
10 **Q. And looking back at Paragraph 6 and the**
11 **sentence I read, is there a difference in your**
12 **mind between the financial impact and the economic**
13 **impact? You say the financial and economic**
14 **impact. I'm just wondering, you know, whether you**
15 **had in mind a difference.**
16 A. No. I think I could have written it
17 financial/economic impact.
18 **Q. Okay. We've talked --**
19 A. Where do you see that? Oh, I see.
20 Okay.
21 **Q. We've talked a bit about irreparable**
22 **harm. What is your understanding of irreparable**
23 **harm?**
24 MS. MANNING: Objection to the extent
25 it calls for a legal conclusion.

20 (Pages 74 to 77)

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: My understanding is that
3 under the law there are three prongs that go to
4 irreparable harm. So there's a legal definition.
5 And I'm not a lawyer, so I would defer to where
6 it's codified. But my understanding is that there
7 are three prongs, the lost revenue market
8 opportunities, unrecoverable loss of goodwill, and
9 loss of market share.
10 BY MR. SCHEINFELD:
11 Q. And what's your understanding of
12 goodwill?
13 A. There's various --
14 MS. MANNING: Objection; vague.
15 THE WITNESS: As I pointed out in my
16 report, there are various definitions of goodwill.
17 So you would need to specify.
18 BY MR. SCHEINFELD:
19 Q. Well, when you mention here in
20 Paragraph 6 goodwill, what did you have in mind?
21 A. I will tell you if you give me a
22 moment.
23 (Witness peruses document.)
24 I described what I had in mind in
25 Paragraphs 42 and 43.

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1 W. CHRISTOPHER BAKEWELL
2 Q. So in 42, for example, when you say
3 that "It follows that Red Bend has not established
4 any loss of 'goodwill'", in quotes, what did you
5 mean by that?
6 A. Well, I put it in quotes because Red
7 Bend hasn't defined what it means by goodwill. So
8 I'm using -- That's why I wrote Paragraph 43. Red
9 Bend hasn't specified what it means by goodwill,
10 and the term can have several definitions.
11 I've seen no evidence that there is any
12 loss of goodwill, because there is no lost market
13 share, no lost business opportunities, and there
14 was no support provided in any of the documents,
15 legal pleadings and declarations that I reviewed
16 for that claim, no specific support.
17 Q. What's your understanding of goodwill?
18 I understand what you're saying, that Red Bend
19 hasn't provided that definition. But --
20 A. What would my definition be?
21 Q. Correct.
22 A. I provided direction to the definition
23 of goodwill in footnote 79, at least two different
24 definitions of goodwill.
25 Q. And so you accept those definitions of

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1 W. CHRISTOPHER BAKEWELL
2 goodwill?
3 A. For their stated purposes.
4 Q. Just for clarification, what do you
5 mean by "for their stated purposes"?
6 A. Well, one of the definitions comes from
7 a business valuation textbook. One of the
8 definitions comes from a legal dictionary.
9 Another definition comes from an accounting
10 document.
11 Q. Which one do you believe applies?
12 A. It depends. And I think conceptually
13 they overlap with one another. It's unclear to me
14 because Red Bend hasn't provided any specific
15 examples of what the definition is that Red Bend
16 is using.
17 And so I noted in my report that
18 there's several possible definitions, and people
19 can mean different specific things when they say
20 loss of goodwill. And because Red Bend hasn't
21 defined specifically what it means, it's not clear
22 to me how Red Bend can claim a loss of goodwill.
23 Q. Well, you have experience in valuating
24 a company's goodwill, correct?
25 A. Yes.

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1 W. CHRISTOPHER BAKEWELL
2 Q. So when -- Can you tell me what you
3 mean by goodwill when you have conducted those
4 valuations?
5 A. Yes. Generally, in those situations
6 there are an array of intangible assets that are
7 valued, and goodwill is the portion that is left
8 over after ascribing a value to specific and
9 tangible assets.
10 Q. I'm sorry, after ascribing a value to
11 specific intangible assets?
12 A. And tangible assets. I'm adding that.
13 Q. Okay.
14 A. And tangible assets.
15 Q. How would you define what's left over?
16 A. Goodwill.
17 Q. Right. And what's your definition of
18 goodwill in that instance?
19 A. I just defined it. It's what is left
20 over after that exercise.
21 Q. Can you give me some examples?
22 A. Of what might be included in goodwill?
23 Q. Right.
24 A. Reputation.
25 Q. Anything else?

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1 **W. CHRISTOPHER BAKEWELL**
2 A. Sometimes customer relationships.
3 **Q. Anything else?**
4 A. Sometimes the strategic value of a
5 firm, meaning its value to somebody who might
6 acquire the firm.
7 **Q. Anything else?**
8 A. That's all I can think of right now. I
9 would go back to the sources that I listed in
10 paragraph -- or in footnote 79. I would defer to
11 those. You asked me for my definition off the top
12 of my head.
13 **Q. Are those sources reliable sources, in**
14 **your view?**
15 A. I believe so.
16 **Q. And when you say you would defer to**
17 **those sources, you're not saying that your prior**
18 **answer or examples are incorrect, are you?**
19 A. No, I have no reason to believe that
20 they're incorrect. But if I was to perform a
21 specific analysis instead of going back to my
22 testimony and using that as a guide, I would go to
23 one of these resources and be more specific.
24 That's what I'm saying.
25 **Q. Did you -- Did you consider Red Bend's**

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1 **W. CHRISTOPHER BAKEWELL**
2 **reputation in opining that there is no irreparable**
3 **harm?**
4 A. It's something I thought about. But as
5 I noted, Red Bend hasn't pointed to anything to
6 support that in particular.
7 **Q. But --**
8 A. It came to mind.
9 **Q. But you didn't note it in your report.**
10 **Is there a reason for that?**
11 A. No, there is no reason. I didn't put
12 every single thought that I had in my report or it
13 would be -- it would be too long to read. I think
14 what I said is, look, it's unclear what Red Bend
15 is -- what Red Bend means by goodwill, and until I
16 know specifically what they mean by loss of
17 goodwill, I can't evaluate that specifically.
18 However, I noted that Red Bend hasn't
19 lost any market share or business opportunities,
20 and it provided no evidence to support its alleged
21 loss. So my opinion is that Red Bend hasn't
22 established any loss of goodwill.
23 **Q. Did you -- Is it your opinion that Red**
24 **Bend doesn't have a reputation in the industry?**
25 A. No, that's not my opinion.

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1 **W. CHRISTOPHER BAKEWELL**
2 **Q. So is it your opinion -- Did you**
3 **discount Red Bend's reputation when considering**
4 **that Red Bend has not lost any goodwill?**
5 A. What do you mean by "discount"? That's
6 a financial word.
7 **Q. Well --**
8 A. You have to use another word.
9 **Q. -- did you reject --**
10 **MS. MANNING: Gentlemen, if I can just**
11 **caution you both, there is a little talking**
12 **over --**
13 **MR. SCHEINFELD: Cautioning us both?**
14 **MS. MANNING: Yes, if you would allow**
15 **me to. Let's make sure we get a clear transcript.**
16 **MR. SCHEINFELD: Okay.**
17 **BY MR. SCHEINFELD:**
18 **Q. Would you agree that Red Bend has a**
19 **reputation in the industry?**
20 A. I would expect that.
21 **Q. Did you investigate whether or not Red**
22 **Bend has a reputation in the industry?**
23 A. That's an odd question. I saw no need
24 to investigate if Red Bend has a reputation in the
25 industry. I expect that they have a reputation in

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1 **W. CHRISTOPHER BAKEWELL**
2 the industry.
3 **Q. And did you consider that reputation in**
4 **the industry in opining that there is no**
5 **irreparable harm?**
6 A. It was one of the thoughts that came to
7 mind, that I saw no evidence that was cited by Red
8 Bend in particular in its documents relating to
9 that.
10 **Q. If you saw evidence regarding Red**
11 **Bend's reputation, would that affect your opinion**
12 **regarding irreparable harm?**
13 **MS. MANNING: Objection; vague. Lacks**
14 **foundation.**
15 **THE WITNESS: You would have to be more**
16 **specific.**
17 **BY MR. SCHEINFELD:**
18 **Q. Well, you mentioned that you saw no**
19 **evidence in particular regarding Red Bend's**
20 **reputation, and I'm asking whether if you did see**
21 **such evidence, would that affect your opinion**
22 **regarding irreparable harm?**
23 **MS. MANNING: Objection; calls for**
24 **speculation. Lacks foundation.**
25 **MR. SCHEINFELD: He's an expert.**

22 (Pages 82 to 85)

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: I've just seen
3 information --
4 MR. SCHEINFELD: Google is producing
5 him as an expert, I should say. So it's an
6 appropriate question.
7 THE WITNESS: Seeing information
8 regarding a company's reputation in and of itself
9 is something that is -- might be noteworthy, but
10 it's not in and of itself something that affects
11 an analysis of loss of goodwill.
12 BY MR. SCHEINFELD:
13 Q. But you would agree it's a factor in
14 the analysis of loss of goodwill?
15 A. It could be. Depending upon what the
16 definition is of goodwill that's being used.
17 Q. Using yours.
18 A. I told you my definition is that
19 there's multiple definitions, and I would look to
20 the specific standard or definition before I
21 performed any further analysis.
22 Q. When you mention that reputation is an
23 example of goodwill, all I'm asking is, if you saw
24 evidence of Red Bend's reputation, would you
25 consider that in concluding whether Red Bend's

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1 W. CHRISTOPHER BAKEWELL
2 goodwill was affected?
3 MS. MANNING: Objection. It
4 mischaracterizes his testimony.
5 THE WITNESS: Your question to me is
6 odd. Because seeing a company's reputation is a
7 consideration, but to take that evidence of
8 reputation and translate it into a loss of
9 goodwill requires a lot more analysis and
10 substantiation.
11 BY MR. SCHEINFELD:
12 Q. What additional analysis and
13 substantiation?
14 A. I would be focused on, first of all, if
15 reputation is something that's being measured,
16 changes to the reputation.
17 Q. What do you mean by changes to the
18 reputation?
19 A. I don't know if I can express that any
20 better or more clearly. I'm not sure I understand
21 your question. A change to a reputation is a
22 change to a reputation.
23 Q. What about customer relationships? You
24 mentioned that as an example of goodwill.
25 A. Potentially.

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1 W. CHRISTOPHER BAKEWELL
2 Q. Potentially.
3 A. Depending upon what standard you're
4 using and --
5 Q. What -- Have you considered Red Bend's
6 customer relationships when you opine regarding
7 irreparable harm?
8 A. Well, I considered that that could
9 possibly be something that's captured under one of
10 the definitions of goodwill. But it's unclear to
11 me if that's what Red Bend means.
12 Q. Assume that Red Bend means that it
13 cares about its customer relationships and that's
14 part of its goodwill that's being affected. Would
15 that help in your answer?
16 A. No. I think my answer would be the
17 same. I would want to see specifically how Red
18 Bend is characterizing that and how they might be
19 assessing a change.
20 Q. A change to its customer relationships?
21 A. Yes.
22 Q. In Paragraph 9.
23 A. Okay.
24 Q. You mention that "Red Bend's firmware
25 over-the-air technology has been embedded in 620

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1 W. CHRISTOPHER BAKEWELL
2 million mobile devices spanning over 455 device
3 models."
4 Do you see that?
5 A. Yes.
6 Q. Why do you mention that?
7 A. It provides an overview of Red Bend.
8 Q. Do you view that as significant?
9 MS. MANNING: Objection; vague.
10 THE WITNESS: Significant for what?
11 BY MR. SCHEINFELD:
12 Q. Well, a significant amount of mobile
13 devices.
14 A. Oh, 620 million?
15 Q. Yeah.
16 A. It depends upon the context.
17 Q. And what do you mean by that? The
18 total amount of mobile devices -- Well, explain
19 what you mean by that.
20 A. That's one example. The total amount
21 over time, forever, relative to competitors, those
22 types of things.
23
24
25

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1 W. CHRISTOPHER BAKEWELL	1 W. CHRISTOPHER BAKEWELL
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12	12
13	13
14	14
15	15
16 A. Yes.	16
17 Q. Do you have an understanding of what	17
18 vRapid Mobile is?	18
19 A. Yes.	19
20 Q. What's your understanding?	20
21 A. It's a firmware over-the-air	21
22 application. And now, because it's combined with	22
23 the Current Mobile, it's potentially a software	23
24 components over-the-air application.	24
25 Q. And do you have an understanding of how	25
Page 91	Page 93
1 W. CHRISTOPHER BAKEWELL	1 W. CHRISTOPHER BAKEWELL
2 Red Bend generates revenues from vRapid Mobile and	2
3 vCurrent Mobile?	3
4 A. Yes.	4
5 Q. What's your understanding?	5
6 A. Mr. Salinger described that in his	6
7 deposition, so that's the best place to refer to.	7
8 I noted that in my report. So I would defer to	8
9 what I described in my report, because I took the	9
10 time to write it. I don't know if you want to	10
11 wait for me to find it.	11
12 Q. Yeah, might as well. Since you wrote	12
13 it, you know better than I.	13
14 A. (Witness peruses document.)	14
15 Paragraph 10, the second-to-last	15
16 sentence and the last sentence.	16
17	17
18	18
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24. (Pages 90 to 93)

Page 94	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	W. CHRISTOPHER BAKEWELL
Page 96	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	W. CHRISTOPHER BAKEWELL
Page 95	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	W. CHRISTOPHER BAKEWELL
Page 97	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	W. CHRISTOPHER BAKEWELL MS. MANNING:

25 (Pages 94 to 97)

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1 W. CHRISTOPHER BAKEWELL	1 W. CHRISTOPHER BAKEWELL
2	2
3	3
4	4 THE WITNESS:
5	5
6	6
7	7
8	8
9	9
10	10
11	11 You've changed pages. I have to take a
12	12 break, and I think it's probably a good time for
13	13 lunch, at least judging by my stomach.
14	14 MR. SCHEINFELD: Okay.
15	15 THE WITNESS: What do you think?
16	16 MR. SCHEINFELD: I mean, I would prefer
17	17 to press along, but you're the witness, and if
18	18 you're comfortable taking a break now, then that's
19	19 fine. I just get concerned about going very late
20	20 in the evening, and I prefer, you know --
21	21 THE WITNESS: Well, it's almost noon.
22	22 MR. SCHEINFELD: And that's fine. I
23	23 don't want to debate you on it.
24	24 THE WITNESS: Lunch is around noon in
25	25 my practice. I don't know about yours.
Page 99	Page 101
1 W. CHRISTOPHER BAKEWELL	1 W. CHRISTOPHER BAKEWELL
2	2 MR. SCHEINFELD: That's fine.
3	3 THE VIDEOGRAPHER: We are going off the
4	4 record. The time is 11:50 a.m.
5	5 (A recess was then taken.)
6	6 THE VIDEOGRAPHER: We are back on the
7	7 record. The time is 12:36 p.m.
8	8 BY MR. SCHEINFELD:
9	9 Q. Good afternoon.
10	10 A. Good afternoon.
11	11 Q. You understand that you're still under
12	12 oath?
13	13 A. Yes, sir.
14	14 Q. If I could ask you to turn to page 5 of
15	15 your report -- of your declaration, I should say.
16	16 A. Yes.
17	17 Q. Paragraph 13. You state that "Google
18	18 owns and operates a leading Internet search
19	19 engine, Google.com."
20	20 Do you see that?
21	21 A. Yes.
22	22 Q. And you cite the Datamonitor January
23	23 '07 report. Do you see that?
24	24 A. I do.
25	25 Q. Is there a reason why you use the 2007

26 (Pages 98 to 101)

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1 W. CHRISTOPHER BAKEWELL
2 report and not something more recent?
3 A. No, there is no reason.
4 Q. I'm going to show you a 2009 report and
5 ask you a few questions about it.
6 A. Okay.
7 MS. MANNING: Just to be clear, is this
8 a document produced in the case?
9 MR. SCHEINFELD: No, it isn't. We just
10 got it.
11 (Exhibit 37 marked for identification and
12 attached hereto.)
13 BY MR. SCHEINFELD:
14 Q. You would agree that -- Well, strike
15 that.
16 You cite Datamonitor, and I'm assuming
17 you did because you find it to be reliable.
18 A. I cite to Datamonitor because sometimes
19 they consolidate information in a useful way.
20 Q. Was the Datamonitor report that you
21 cited in footnote 21, was that something that you
22 uncovered, or was that something someone else
23 uncovered for you?
24 A. What do you mean, uncovered? I don't
25 know what that means.

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1 W. CHRISTOPHER BAKEWELL
2 Q. Retrieved?
3 A. Retrieved?
4 Q. Yeah.
5 A. I don't recall one way or another.
6 Q. Did counsel provide that to you, or was
7 that something that your firm provided to you?
8 A. In all likelihood, it was my firm.
9 Q. Would you say that on page 4, in the
10 company overview of Google, where it states
11 "Google is a global technology leader focused on
12 improving the ways people connect with
13 information" -- Do you see that?
14 A. I do.
15 Q. Do you think that's a fair description
16 of Google's business today?
17 MS. MANNING: Objection; lacks
18 foundation. Overbroad.
19 THE WITNESS: I think that it's a
20 sentence in a report with a lot of sentences, and
21 you need to read everything to keep it in context.
22 The next page provides Google's business
23 description.
24 I think the best place to look is where
25 I've cited actually more often and where I would

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1 W. CHRISTOPHER BAKEWELL
2 first look for information and direct you to for
3 questions like that, it would be Google's 10K.
4 BY MR. SCHEINFELD:
5 Q. You would find that to be the most
6 reliable source of information about Google?
7 MS. MANNING: Objection; vague.
8 THE WITNESS: It depends for what, but
9 I would expect for that information to be
10 reliable.
11 BY MR. SCHEINFELD:
12 Q. More reliable than the Datamonitor
13 reports that you've cited here in your
14 declaration?
15 A. It depends upon the context.
16 Ultimately, Datamonitor gets a lot of the
17 information in here from Google's 10K. And that's
18 the first place I would look, is in Google's 10K
19 and investor relation materials.
20 Q. Okay. Do you have an understanding as
21 to whether or not Google's business changed
22 from 2007, or January 2007 to today?
23 A. Oh, I'm sure that its business changed
24 between those two years. But you'll also find the
25 same description as the second sentence in

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1 W. CHRISTOPHER BAKEWELL
2 footnote 13 in the 2009 Datamonitor report.
3 Q. Right. Was this sentence the first
4 sentence in the 2007 Datamonitor report?
5 A. I don't know. I haven't done that
6 comparison. But I'm just pointing out to you that
7 in the business description on page 5 of the 2009
8 report it has essentially the same thing that I
9 wrote in the second sentence of Paragraph 13.
10 So that's something that apparently
11 didn't change between 2007 and 2009.
12 Q. Would you agree that between 2007,
13 January 2007 and today, three years, that Google's
14 business has broadened?
15 MS. MANNING: Objection; vague.
16 THE WITNESS: I would agree that its
17 business has changed, evolved.
18 BY MR. SCHEINFELD:
19 Q. Let's look at the 10Ks.
20 MR. SCHEINFELD: If you could pull out
21 the 10K. I'll ask the reporter to mark as the
22 next exhibit.
23 (Exhibit 38 marked for identification and
24 attached hereto.)
25 BY MR. SCHEINFELD:

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1 W. CHRISTOPHER BAKEWELL
2 Q. Is this the 10K you were referring to a
3 moment ago?
4 A. Yes, sir.
5 Q. And this is the 10K you cited in your
6 report?
7 A. Yes, apparently. I haven't read
8 through every page.
9 Q. Well, if you'll turn to page 101.
10 A. Okay.
11 Q. So you'll see that's dated
12 February 13th, 2009?
13 A. Yes.
14 Q. So I believe -- correct me if I'm
15 wrong -- that in your footnote 22 of your
16 declaration, this is the 10K that you're reciting.
17 A. That's right, it is. Because on the
18 first page it says "For the fiscal year ended
19 December 31, 2008."
20 Q. Correct. So if you turn to page 1.
21 A. Okay.
22 Q. The first sentence reads: "Google is a
23 global technology leader focused on improving the
24 ways people connect with information."
25 Do you see that?

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1 W. CHRISTOPHER BAKEWELL
2 A. Yes, I do.
3 Q. And so that's a fair description of
4 Google's overview, correct?
5 A. Well, I have a problem with your
6 question kind of technically. A fair description
7 of Google's overview, or a fair overview of
8 Google's business said more precisely, is the
9 three paragraphs in the overview section of the
10 10K.
11 Q. Okay. We will come back to this a
12 little later, if that's okay.
13 If you could turn to Paragraph 14 of
14 your declaration --
15 A. Yes, sir.
16 Q. -- the last sentence. "Google does not
17 charge for the Google Chrome web browser or
18 Courgette."
19 Do you see that?
20 A. I do.
21 Q. What benefit, if any, does Google gain
22 from Courgette?
23 MS. MANNING: Objection; lacks
24 foundation. Beyond the scope of his report.
25 THE WITNESS: The benefit to Google I

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1 W. CHRISTOPHER BAKEWELL
2 think can be captured in a document I've seen
3 describing the benefits of providing and
4 supporting open source software generally.
5 BY MR. SCHEINFELD:
6 Q. What is open source software? Your
7 understanding.
8 A. Well, there's probably a technical
9 definition. Any time in a patent case somebody
10 asks me to define something, it's I think
11 appropriate to say -- refer to a technical expert
12 for an official definition or a claim construction
13 ruling, whatever it is. Don't look to me for a
14 technical definition of open source.
15 Q. I'm not. I'm asking your understanding
16 of open source.
17 A. My understanding as a lay person is
18 that open source software is software that is open
19 and available to use and modify and potentially
20 improve by the software community.
21 Q. So how does Google benefit, if at all,
22 from making Courgette open?
23 MS. MANNING: Objection; assumes facts
24 not in evidence. Lacks foundation. Beyond the
25 scope of his report.

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: There is a pretty
3 detailed description of that in a document that I
4 pointed you to. I think it's -- it's available on
5 Google's website. It describes the benefits of
6 open source, and "The Meaning of Open" I think is
7 what it's entitled.
8 It's cited in Google's response to one
9 of your pleadings, and I would direct you to that.
10 But that's a very thorough description
11 of the benefits of providing open source software
12 and supporting open source software.
13 BY MR. SCHEINFELD:
14 Q. Why is it that you included in your
15 declaration this sentence: "Google does not
16 charge for the Google Chrome web browser or
17 Courgette"?
18 A. Because it's true.
19 Q. There are a lot of things that --
20 Strike that.
21 A. There are a lot of things that are true
22 in my report.
23 Q. There are a lot of things that are true
24 outside of your report, too.
25 A. That's true.

28 (Pages 106 to 109)

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1 W. CHRISTOPHER BAKEWELL
2 **Q. So what I am asking is: Why did you**
3 **include this statement, this sentence? I'm not**
4 **debating. You know, I would like to know why you**
5 **included it, other than your belief that it's**
6 **true.**
7 A. I'm trained in finance and valuation,
8 and that's something certainly that's interesting
9 to me. It emphasizes the point that Courgette is
10 open source. I guess it's a bit redundant --
11 redundant in that I stated in the prior software
12 that it published the Courgette code as open
13 source code subject to a BSD license.
14 The implication of that sentence in and
15 of itself is that Google does not charge for
16 Google Chrome web browser or Courgette.
17 **Q. And other than the document that you**
18 **referred to, can you describe in your own words**
19 **what benefit Google receives from publishing**
20 **Courgette code as open source code subject to the**
21 **BSD license?**
22 MS. MANNING: Objection. Beyond the
23 scope. Lacks foundation.
24 THE WITNESS: I can paraphrase. For
25 details, I would refer you to that document. But

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1 W. CHRISTOPHER BAKEWELL
2 my understanding is that Google supports open
3 source software with the intention of growing,
4 essentially, interest and use of the Internet;
5 making the pie, I think is what Google's words
6 are, the pie bigger for everybody, and thereby
7 Google benefits.
8 BY MR. SCHEINFELD:
9 **Q. And how does Google benefit?**
10 MS. MANNING: Objection; vague. Beyond
11 the scope. Lacks foundation.
12 THE WITNESS: They are able to provide
13 additional software and services to the community.
14 And I think as Google describes in its 10K, their
15 innovations make their website ultimately a top
16 Internet property. Their mission is described in
17 their 10K.
18 BY MR. SCHEINFELD:
19 **Q. Can we just say it's fair to say that**
20 **it drives advertising revenues for Google?**
21 MS. MANNING: Objection; vague. Lacks
22 foundation. Beyond the scope.
23 THE WITNESS: I think that here is how
24 Google would say it, is that they provide open
25 source software or support open source software

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1 W. CHRISTOPHER BAKEWELL
2 because they're dedicated to putting users first.
3 And as they state in their 10K, it's
4 reflected in three commitments: They do their
5 best to make the most relevant and useful search
6 results possible;
7 They do their best to provide the most
8 relevant and useful advertising;
9 And they are generally committed to
10 never stop working to improve their user
11 experience through search technology and other
12 important areas of information organization.
13 BY MR. SCHEINFELD:
14 **Q. You mentioned a moment ago that they**
15 **drive to make the pie bigger for everyone and**
16 **therefore benefit.**
17 A. Right. I think the more specific
18 language they use in their 10K is they're
19 dedicated to putting users first. Google says
20 that they place a premium on products that matter
21 to many people and have the power -- excuse me,
22 the potential to improve their lives.
23 **Q. I just would like your understanding.**
24 A. That's it.
25 **Q. Well, you know, of how it is that**

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1 W. CHRISTOPHER BAKEWELL
2 **making the pie bigger for everyone, Google**
3 **benefits.**
4 MS. MANNING: Objection; lacks
5 foundation. You haven't established that he has
6 any basis for such a view, and it's certainly
7 beyond the scope of --
8 MR. SCHEINFELD: It's his view.
9 MS. MANNING: You haven't established
10 he has any basis for that testimony, and you
11 haven't -- you're straying really quite far beyond
12 the scope of his report.
13 BY MR. SCHEINFELD:
14 **Q. Can you answer my question, please?**
15 A. I would direct you to their 10K. I
16 think Google describes its strategy and its
17 business model in great detail throughout their
18 10K, and that's the best place to ultimately find
19 the answers to the types of questions that you're
20 asking.
21 **Q. You're saying that you prefer not to**
22 **answer my question and just direct me to the 10K?**
23 MS. MANNING: Objection;
24 mischaracterizes testimony.
25 MR. SCHEINFELD: Well, that's what I --

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1 W. CHRISTOPHER BAKEWELL
2 the witness made it -- he gave me an answer before
3 about making the pie bigger for everyone and
4 therefore Google benefits.
5 BY MR. SCHEINFELD:
6 Q. And I just want you to expand on that
7 and tell me how it is, in your mind, Google
8 benefits.
9 MS. MANNING: Same objection.
10 BY MR. SCHEINFELD:
11 Q. If you want to direct me to the 10K,
12 that's your prerogative. I mean, I'm just asking
13 you your view.
14 A. Well, I've directed you to two --
15 MS. MANNING: Hold on. Same
16 objections.
17 THE WITNESS: I've directed you to two
18 documents. I've directed you to the meaning of
19 open source, and I've directed you to the 10K.
20 Those are the places that I believe you should
21 look for answers to those specific questions.
22 BY MR. SCHEINFELD:
23 Q. Okay. If you could turn the page to
24 page 6.
25 A. Of what?

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1 W. CHRISTOPHER BAKEWELL
2 Q. Your declaration.
3 A. Declaration. I'm sorry.
4 Q. Paragraph 15.
5 A. Yes.
6 Q. The last sentence of your paragraph
7 says: "I understand that as a matter of law, the
8 availability of monetary damages precludes a
9 finding of irreparable injury and thus precludes
10 issuance of a preliminary injunction."
11 Do you see that?
12 A. Yes, sir.
13 Q. I read that correctly, I hope.
14 A. You did, I believe.
15 Q. Okay. What did you -- What's the basis
16 for your understanding there?
17 A. Really from counsel.
18 Q. Did you review any case law yourself?
19 A. I've certainly cited some cases in my
20 report.
21 Q. Did you read those cases?
22 A. Yes. As it relates to this point, I
23 would direct you to the cases that Google cited to
24 in its documents. That's the source for and the
25 authority -- the authorities for that.

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1 W. CHRISTOPHER BAKEWELL
2 Q. Do you recall which cases you read?
3 A. The cases that I read would be the
4 cases that I cited in my report.
5 Q. Okay. In this sentence on Paragraph 15
6 you talk about the availability of monetary
7 damages. Do you see that in Paragraph 15?
8 A. Yes.
9 Q. What did you mean by that?
10 A. I don't follow your question. That
11 seems very clear. Availability of monetary
12 damages, what is your question about that?
13 That's --
14 Q. Well, there are different scenarios in
15 my mind when I read that. I'm just wondering what
16 you're thinking about there. I'll give you an
17 example. I'll try to help us along.
18 A. Okay.
19 Q. So if the defendant did not have enough
20 money to pay a judgment, is that what you meant by
21 availability of money damages, that if the
22 defendant had no ability to pay, then it would be
23 a factor in determining irreparable injury?
24 A. I'm not sure that's something I gave a
25 lot of thought to. What I gave thought to is, in

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1 W. CHRISTOPHER BAKEWELL
2 particular, the remainder of my report, the
3 Georgia-Pacific factors. Mr. Salinger's
4 testimony. Those are the types of things that I
5 had in mind.
6 Q. Well, if you were able to
7 hypothetically render an opinion regarding a
8 particular royalty rate but you could not assess
9 the royalty base, would that be a situation where
10 monetary damages are still available, in your
11 mind, because you could assess a royalty rate even
12 though you can't, with accuracy, assess a royalty
13 base?
14 A. Well, that question is hypothetical.
15 And the foundation of it is, I think, a bit
16 lacking in that you're setting aside the
17 possibility of a lump sum type of royalty or no
18 royalty at all.
19 Q. I'm going to go back to my question,
20 and what I would like to know from you is whether
21 or not if a particular aspect of monetary damages
22 is not calculated -- cannot be calculated with
23 precision but another aspect can, does that
24 preclude, in your mind, a finding of irreparable
25 injury?

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1 **W. CHRISTOPHER BAKEWELL**
2 MS. MANNING: Objection; vague.
3 **THE WITNESS:** No. Because you're
4 artificially constraining the definition of what a
5 royalty is. You're limiting the definition to a
6 rate and a base, and royalties come in other forms
7 than running royalties.
8 **BY MR. SCHEINFELD:**
9 **Q. I understand.**
10 **I'll try it this way. If you could**
11 **accurately assess a lump sum payment, or an**
12 **upfront payment, but you cannot with precision**
13 **assess a royalty rate or a royalty base, would**
14 **that, in your mind, still constitute a finding**
15 **of -- still allow for a finding of irreparable**
16 **injury?**
17 MS. MANNING: Objection to the form of
18 the question.
19 **THE WITNESS:** I'm not sure I understand
20 the question. But I don't think you've been able
21 to cause me to change my thinking that I provided
22 in your -- as answers to your prior questions.
23 A lump sum is still available as a
24 form, or that upfront payment might be all there
25 is.

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1 **W. CHRISTOPHER BAKEWELL**
2 **BY MR. SCHEINFELD:**
3 **Q. Right. And if it is -- Well, let's say**
4 **a lump sum payment is not all there is, but you**
5 **can't calculate in precision damages in addition**
6 **to a lump sum payment. Would that still, in your**
7 **mind, preclude a finding of irreparable injury?**
8 MS. MANNING: Objection to the form of
9 the question.
10 **THE WITNESS:** Well, precluding a form
11 of irreparable injury, that's a legal
12 consideration. But from a financial and a
13 licensing point of view, I'm still having problems
14 with the premise of your question that lump sum
15 damages aren't available. And in addition to
16 that, the royalty rate and the royalty base, to
17 the extent that's the appropriate form of royalty,
18 can be estimated.
19 **BY MR. SCHEINFELD:**
20 **Q. And what I'm asking you is that if a**
21 **royalty base or royalty rate cannot be estimated**
22 **but you can -- you can estimate a lump sum or**
23 **assess the lump sum to make up for the harm that's**
24 **been caused by the infringement, because you could**
25 **do that, does that still preclude a finding of**

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1 **W. CHRISTOPHER BAKEWELL**
2 **irreparable injury?**
3 MS. MANNING: Objection to the form. I
4 at least am struggling with the negatives. I
5 don't know if anybody else is.
6 **THE WITNESS:** I am. I'm doing my best
7 to answer these questions. They're a little bit
8 awkward.
9 If -- I'm focused on the four words
10 "availability of monetary damages" that you
11 initially called out.
12 **BY MR. SCHEINFELD:**
13 **Q. Yes.**
14 A. And if a lump sum is quantified, then
15 monetary damages are available. So I don't
16 understand the remainder of your question, on top
17 of the fact that it's got these double negatives
18 that are difficult to follow.
19 **Q. Well, my question is: If a portion of**
20 **monetary damages are available as opposed to the**
21 **full amount of monetary damages, would that**
22 **preclude a finding of irreparable injury, in your**
23 **mind?**
24 A. I think that's just very difficult to
25 even imagine commercially because when -- in

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1 **W. CHRISTOPHER BAKEWELL**
2 licensing, parties just don't necessarily give up
3 and say it's impossible to quantify a royalty.
4 And in valuation -- I'm trying to think
5 of a scenario from a valuation context where the
6 conclusion is that it's not possible to determine
7 what a value is. And certainly considering what I
8 know about the facts of this case to date, your
9 hypothetical is just incongruent with the facts
10 that are available to me.
11 **Q. Is it -- is it your understanding that**
12 **Red Bend has to show irreparable injury as opposed**
13 **to a likelihood of irreparable injury?**
14 A. I'm pretty sure I defined the standard
15 in my report. I think one of the places where I
16 worded it -- And I would go back, actually, to
17 Google's response to the preliminary injunction
18 memo for this precise legal definition.
19 But what I evaluated is described in
20 the second sentence of Paragraph 6. "I have seen
21 no evidence supporting Red Bend's claim of
22 irreparable harm and specifically its claims
23 regarding likely losses and market share revenues,
24 opportunity and goodwill." There's a comma
25 missing, market share, comma, revenues,

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1 W. CHRISTOPHER BAKEWELL
2 opportunity and goodwill.
3 There is another sentence,
4 Paragraph 25, that says: "I understand that in a
5 matter that is involving preliminary injunction,
6 lost market share must be proven or at least
7 substantiated with some evidence to support entry
8 of a preliminary injunction."
9 I think I've done a pretty good job of
10 describing my understanding in this report, and to
11 the extent there's -- you're asking me for legal
12 opinions, I'm not a lawyer and you should look to
13 the actual cases.
14 And I think that -- I would think from
15 a lay person's perspective that Google's response
16 would provide reasonable guidance there, too.
17 **Q. Let me be clear. I'm not asking for**
18 **your legal conclusion. I recognize you're not a**
19 **lawyer. I'm asking for your understanding.**
20 **When you generated this report, I just**
21 **wanted to know what you had in mind as to what Red**
22 **Bend needed to show, whether a likelihood of**
23 **irreparable injury or irreparable injury.**
24 A. It's the likelihood of those three
25 specific prongs as I've described in my report.

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1 W. CHRISTOPHER BAKEWELL
2 **Q. Okay. If we could go back to**
3 **Paragraph 15.**
4 A. 15, okay.
5 **Q. Could you give me some examples of**
6 **situations where, in your mind, there would be a**
7 **likelihood there would be irreparable injury?**
8 MS. MANNING: Objection; vague.
9 Overbroad. Calls for a legal conclusion.
10 THE WITNESS: As I sit here today, I
11 can't think of any concrete examples. I'm sure
12 it's possible, but I can't think of any off the
13 top of my head.
14 BY MR. SCHEINFELD:
15 **Q. What if the loss threatened the very**
16 **existence of Red Bend; would that qualify in your**
17 **mind as irreparable injury?**
18 A. Did you say a loss or the loss? I
19 didn't hear you.
20 MR. SCHEINFELD: Could you read back
21 the question, please.
22 (Whereupon, the requested portion was read
23 back by the Reporter.)
24 THE WITNESS: What loss are you talking
25 about?

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 **Q. The loss to Red Bend, assuming that**
4 **there is infringement of valid and enforceable**
5 **patents.**
6 A. What loss?
7 **Q. The loss of -- of -- that results --**
8 **the loss that results from Google's infringement.**
9 A. What loss?
10 **Q. I just -- I just said that if Google**
11 **infringes the patent and you can -- and there is**
12 **availability of monetary damages but by the time**
13 **of the verdict Red Bend is no longer in existence**
14 **because of the infringement that had been**
15 **occurring during the pendency of the case, would**
16 **that, in your mind, qualify as irreparable injury?**
17 A. No. It's still possible that in that
18 scenario there can be compensation via monetary
19 damages.
20 **Q. Even if Red Bend went out of business**
21 **in the meantime?**
22 A. Sure.
23 **Q. And how would you compensate Red Bend**
24 **for that?**
25 A. The change in value that occurred over

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1 W. CHRISTOPHER BAKEWELL
2 time.
3 **Q. Would you consider as irreparable a**
4 **loss to Red Bend that's inherently unpredictable**
5 **or not quantifiable?**
6 MS. MANNING: Objection; vague.
7 THE WITNESS: I've got the same
8 question. It's what loss? I come back to -- I
9 come back to that. And I come back to the first
10 sentence of Paragraph 24, which I understand to be
11 the three prongs, at least that I was asked to
12 evaluate. There's three dimensions under which
13 you can measure that loss.
14 BY MR. SCHEINFELD:
15 **Q. And what I'm asking you is whether or**
16 **not there would be irreparable harm if you cannot**
17 **measure the loss --**
18 MS. MANNING: Objection.
19 BY MR. SCHEINFELD:
20 **Q. -- that you just identified.**
21 MS. MANNING: Objection; calls for a
22 legal conclusion.
23 MR. SCHEINFELD: In the witness's view.
24 MS. MANNING: Well, in that case,
25 objection; relevance.

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1 W. CHRISTOPHER BAKWELL
2 THE WITNESS: I still don't -- You're
3 speaking about the loss, and I think that in order
4 to address that question, you would need to
5 provide more specificity. I would need more
6 information.
7 I understand, and my assignment is to
8 evaluate the three prongs laid out in the first
9 paragraph [sic] of 24. To the extent there is a
10 legal element to your question, I'm not a lawyer
11 and I would ask you -- suggest to you that you
12 consult Google's response.
13 BY MR. SCHEINFELD:
14 Q. I have, thank you. But I appreciate
15 where you're coming from.
16 If you could turn to Paragraph 25.
17 A. Okay.
18 Q. You read a moment ago, I think, the
19 first sentence of Paragraph 25. And then you
20 say -- There is a sentence in here that says: "I
21 further understand that this is because granting
22 preliminary injunctions on the basis of
23 speculative loss of market share would result in
24 the issuance of preliminary injunctions 'in every
25 patent case where the patentee practices the

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1 W. CHRISTOPHER BAKWELL
2 invention."
3 Do you see that?
4 A. Yes.
5 Q. And you cite in footnote 42 to two
6 cases.
7 A. Yes.
8 Q. Did you read those cases?
9 A. Yes.
10 Q. Do you have -- do you understand what
11 it means to -- what it means to be -- Strike that.
12 Do you know if either of these cases
13 are precedential in nature? Do you know what I
14 mean when I say "precedential"?
15 A. I'm not a lawyer, but I would expect
16 that they form some sort of precedent. They're
17 Federal Circuit decisions.
18 Q. And do you have a view as to whether
19 it's Red Bend's position, actual position, that if
20 there is a possibility of lost market share,
21 they're entitled to a preliminary injunction as
22 opposed to a likelihood?
23 A. Possibility versus likelihood? I would
24 have to review again, to refresh my memory, Red
25 Bend's PI memo as to exactly what Red Bend's

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1 W. CHRISTOPHER BAKWELL
2 position is. I was asked to evaluate what I was
3 asked to evaluate in this report.
4 Q. Would you agree or disagree with --
5 Well, strike that.
6 If Red Bend suffered price erosion --
7 Do you understand what I mean by the term "price
8 erosion"?
9 MS. MANNING: Objection; vague.
10 THE WITNESS: Price erosion can have
11 different meanings in different contexts. I think
12 I understand generally what you mean. If I see
13 any reason why we're off track with one another,
14 I'll let you know.
15 BY MR. SCHEINFELD:
16 Q. Why don't you give me your
17 understanding of price erosion so we make sure
18 we're on the same page.
19 A. Well, price erosion is a form of lost
20 profits damages. That's the first definition that
21 comes to mind.
22 Q. And what does it mean, price erosion?
23 Eroding -- What does it mean?
24 A. You were almost going to give me an
25 answer.

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1 W. CHRISTOPHER BAKWELL
2 Q. I was. But I'm not the witness.
3 A. It means that prices would go down in a
4 way that can be attached to patent infringement.
5 In that context, that's what price erosion mean.
6 Q. You mean caused by patent infringement?
7 Is that what you mean?
8 A. I don't know about --
9 Q. What do you mean by "attached"?
10 A. I don't know about "caused by."
11 What I mean is there is some sort of
12 economic attachment. "Caused by" and "causality,"
13 that's another legal word, and I'm more familiar
14 with saying the word "attached," that you can make
15 an association.
16 Q. Well, if Red Bend were to suffer price
17 erosion because of Google's infringement, would
18 that, in your mind, qualify as irreparable harm?
19 MS. MANNING: Objection; vague.
20 Incomplete hypothetical.
21 THE WITNESS: I don't think so, because
22 price erosion is a form of damages.
23 BY MR. SCHEINFELD:
24 Q. So -- so -- Strike that.
25 Paragraph 17.

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1 W. CHRISTOPHER BAKEWELL
2 A. Yes, sir.
3 Q. Here you refer to the Georgia-Pacific
4 factors?
5 A. Yes.
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19
20 I notice she passed you a note about
21 the time.
22 Q. I did. She did.
23 A. She didn't?
24 Q. She did.
25 A. How much time do we have on the tape?

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1 W. CHRISTOPHER BAKEWELL
2 Q. Probably four minutes now, or maybe
3 three.
4 A. Okay, so we used it up. Can we take a
5 break? Because I would like to take a break.
6 MR. SCHEINFELD: Sure.
7 THE WITNESS: Okay, thank you.
8 MR. SCHEINFELD: I'm trying to work
9 with you on your request to use the tape.
10 THE VIDEOGRAPHER: This marks the end
11 of Tape 2 in the deposition. We are going off the
12 record. The time is 1:26 p.m.
13 (A recess was then taken.)
14 THE VIDEOGRAPHER: This marks the
15 beginning of Tape 3 in the deposition. We are
16 back on the record. The time is 1:37 p.m.
17 BY MR. SCHEINFELD:
18 Q. If I could direct your attention to
19 your Exhibit 3.
20 A. Yes, sir.
21 MS. MANNING: You mean Exhibit 3 to
22 Exhibit 36?
23 MR. SCHEINFELD: Correct.
24 BY MR. SCHEINFELD:
25 Q. And Factor No. 11.

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1 W. CHRISTOPHER BAKEWELL
2 A. Yes.
3 Q. You state that "Google has used
4 Courgette in conjunction with its Google Chrome
5 web browser for Windows computers."
6 Do you have an understanding of how
7 many users there are?
8 A. Of what?
9 Q. Of the Chrome web browser.
10 A. Yes.
11 Q. What's your understanding?
12 A. There is a document that was submitted
13 in connection with Google's response that
14 quantifies the Chrome web browser in one way or
15 another. It's a pie chart. I just can't recall
16 the data contained on that pie chart.
17 Q. Does 40 million users sound about
18 right?
19 MS. MANNING: Objection; lacks
20 foundation. Calls for speculation.
21 MR. SCHEINFELD: If he knows.
22 THE WITNESS: I can't remember. I
23 would want to see a document.
24 BY MR. SCHEINFELD:
25 Q. Do you recall -- I'm just trying to get

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1 W. CHRISTOPHER BAKEWELL
2 a sense of your understanding of how many in terms
3 of is it millions or thousands or hundreds.
4 A. Well, it's millions, I can tell you
5 that. When you start talking about -- like you
6 threw out some numbers. I think you need to be
7 more specific, because it's really users over time
8 or at a moment in time, and you need to put that
9 number, like we talked about earlier, into
10 context.
11 So I don't know what you mean when you
12 say X million users unless you're more specific.
13 But it's millions of users.
14 Q. Approximately today. And I'm talking
15 about today. Approximately.
16 A. I think I just answered your question.
17 Q. Do you know how many times Google has
18 actually used Courgette to update its Chrome
19 browser?
20 A. No, not at this moment.
21 Q. And you can't approximate the number of
22 times Google has used Courgette to update the
23 Chrome browser?
24 MS. MANNING: Objection; calls for
25 speculation. He just said he didn't know.

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: What I can't do and won't
3 do is just provide you with a flip answer off the
4 top of my head. What I can tell you is that I
5 believe that number can be estimated.
6 BY MR. SCHEINFELD:
7 Q. By who? I'm sorry. I missed that last
8 point. Estimated by you, or estimated --
9 A. Not just by me. I think that others
10 can estimate it. I would expect. I haven't
11 undertaken that effort, but I would expect that it
12 could be estimated.
13 Q. So you don't know how many times Google
14 has used Courgette to update the Chrome browser?
15 MS. MANNING: Asked and answered.
16 THE WITNESS: I just gave you the
17 answer. I said I'm not going to provide just a
18 flip answer off the top of my head. I haven't
19 undertaken that exercise, but I would expect that
20 it's something that could be estimated through
21 analysis.
22 BY MR. SCHEINFELD:
23 Q. Is it your view that the number of
24 times Google has actually used Courgette to update
25 its Chrome browser is not relevant to your

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1 W. CHRISTOPHER BAKEWELL
2 opinions that are set forth in your declaration?
3 A. The specific number of times?
4 Q. Or general number of times.
5 A. I think the fact that I would expect
6 for that number to be estimable is a consideration
7 at this point.
8 Q. And did you consider the number of
9 times that Google used Courgette to update Chrome
10 browser in rendering your opinions set forth in
11 this declaration?
12 MS. MANNING: Asked and answered.
13 BY MR. SCHEINFELD:
14 Q. If you could give me your answer,
15 please.
16 A. Oh, I was wondering if you were going
17 to say something.
18 I think it's a consideration.
19 Q. I'm asking you if you considered it. I
20 hear what you're saying, that it's a
21 consideration. I'm asking you --
22 MS. MANNING: Mr. Scheinfeld, please
23 let him finish his answer.
24 BY MR. SCHEINFELD:
25 Q. I'm sorry. Go ahead.

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1 W. CHRISTOPHER BAKEWELL
2 A. Now I'm confused what your question is.
3 Are you asking another question?
4 Q. No, I'm asking whether you considered,
5 in connection with rendering your opinions that
6 are set forth in this declaration, the number of
7 times Google used Courgette to update the Chrome
8 browser.
9 MS. MANNING: Asked and answered.
10 THE WITNESS: I considered that that
11 number is estimable. I also considered what
12 relates to that on Exhibit 3.
13 MR. SCHEINFELD: I'm going to ask the
14 court reporter to mark as Exhibit 39 a document
15 bearing Bates numbers CB110 to CB123.
16 (Exhibit 39 marked for identification and
17 attached hereto.)
18 BY MR. SCHEINFELD:
19 Q. I believe you cited this -- Well, what
20 is this? Can you testify about what this is, this
21 document?
22 A. It appears to be a section of a book
23 written by Russell Parr.
24 Q. And do you view this book as reliable,
25 a reliable source?

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1 W. CHRISTOPHER BAKEWELL
2 A. I think it's informative.
3 Q. You cited this book in your
4 declaration?
5 A. Yes.
6 Q. If you go to page 115.
7 A. Yes.
8 MS. MANNING: Is that Bates 115 or page
9 of the book 115?
10 MR. SCHEINFELD: Fair enough. Page 115
11 of the book.
12 BY MR. SCHEINFELD:
13 Q. The last sentence of that section says:
14 "Prestige alone may not be directly profitable,
15 but an improved image in the eyes of customers can
16 have an overall benefit to the company. One
17 caveat, the degree to which this exists can
18 sometimes be difficult to quantify."
19 Do you agree that this is a component
20 of the 11th factor of the Georgia-Pacific factors?
21 A. These two sentences are the author's
22 view of that factor.
23 Q. Do you share that view?
24 A. I can't see anything at this point that
25 jumps out that I would disagree with. I think any

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1 W. CHRISTOPHER BAKEWELL
2 time I'm asked if that sort of information -- or
3 information from a general textbook is always
4 applicable, I would want to see some specifics to
5 test that premise.
6 But right now I don't see anything that
7 jumps off the page that I disagree with.
8 **Q. And going back to your assessment in**
9 **your declaration of Factor 11 --**
10 A. I'm turning there.
11 **Q. That's fine.**
12 **You say: "Additional information**
13 **regarding usage, to the extent it exists, is**
14 **typically assessed during discovery."**
15 **Do you see that?**
16 A. Yes.
17 **Q. And you understand -- Based on your**
18 **testimony earlier today, you understand that**
19 **indirect infringement involves third-party users?**
20 A. Yes.
21 **Q. And how would you suggest in this case**
22 **understanding the extent of usage of the third**
23 **parties?**
24 A. Well, I describe that in my report,
25 too. On the top of page 8, the first two full

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1 W. CHRISTOPHER BAKEWELL
2 sentences.
3 **Q. And what types of surveys, market**
4 **studies, expert research are you referring to**
5 **there?**
6 A. I think that those can all be generally
7 categorized as surveys or studies. And I gave
8 four -- actually four examples: surveys, market
9 studies, expert research, and through the
10 discovery process. Those are specific examples.
11 To me, a survey is a survey and a market study is
12 a market study.
13 **Q. And how would you go about -- And you**
14 **would use those tools to go about discovering or**
15 **learning the extent of third-party use?**
16 A. One could.
17 **Q. I'm asking you, how would you do that?**
18 A. Well, I pointed you to the first two
19 sentences. The first sentence -- the first
20 sentence says: "I further understand it is the
21 plaintiff's burden to prove and measure indirect
22 infringement." It's your burden.
23 **Q. Yeah. So what I'm asking you is, what**
24 **would you do to determine the extent of**
25 **third-party use, given what you said here about**

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1 W. CHRISTOPHER BAKEWELL
2 **surveys and market studies?**
3 A. A survey or a market study or expert
4 research or review of documents that are attained
5 through the discovery process. I don't know yet.
6 **Q. So let's talk about surveys. What did**
7 **you have in mind about a survey?**
8 A. Questions that are asked of users.
9 **Q. And users of Courgette in this**
10 **particular case?**
11 A. Oh, I don't know. I think that the
12 sentence was written just generally.
13 **Q. Well, how would you go about**
14 **determining who is using Courgette?**
15 MS. MANNING: Objection; vague. Beyond
16 the scope.
17 THE WITNESS: Through surveys, market
18 studies, expert research, and through the
19 discovery process. I'm sure there might be other
20 means by which one could do that.
21 BY MR. SCHEINFELD:
22 **Q. Are you aware of any tools that are**
23 **available to identify users of Courgette?**
24 A. I don't know. That seems it might be
25 possible. That's certainly something else I would

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1 W. CHRISTOPHER BAKEWELL
2 investigate. So we can add that to the list here,
3 to the extent any exist.
4 **Q. What if you could not determine who was**
5 **using Courgette?**
6 MS. MANNING: Objection; vague and
7 incomplete hypothetical.
8 BY MR. SCHEINFELD:
9 **Q. In other words --**
10 A. That its impossible? Is that what
11 you're asking me?
12 **Q. Yeah. What if it's impossible to**
13 **identify the users of Courgette? In that**
14 **particular case would you not agree that damages**
15 **couldn't be quantified and therefore there would**
16 **be irreparable harm?**
17 MS. MANNING: Objection; vague. Is
18 your question limited to third parties?
19 MR. SCHEINFELD: Yes. Third-party use
20 of Courgette.
21 THE WITNESS: I find it highly unlikely
22 given the sophistication of the world that we live
23 in today that it's impossible. There's plenty of
24 information tools that are available, and there
25 are experts in conducting surveys, market studies,

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1 W. CHRISTOPHER BAKEWELL
2 and there is a variety of technical information
3 that's available. So it's highly, highly
4 implausible.
5 I don't think, my initial thought,
6 hypothetically, is that if it's impossible to do
7 any of these things, you would have -- I don't
8 think it means that you can't quantify damages,
9 because use should still be estimable through
10 discovery, and there may be an established pattern
11 of licenses that suggest a royalty rate in that
12 situation.
13 BY MR. SCHEINFELD:
14 **Q. But would the extent of usage be**
15 **estimable, in your mind?**
16 MS. MANNING: Objection; calls for
17 speculation. Lacks foundation.
18 MR. SCHEINFELD: The witness said the
19 use would still be estimable, and I'm asking him
20 would the extent of use be estimable, the full
21 extent of use.
22 MS. MANNING: Vague.
23 THE WITNESS: I'm not sure what you
24 mean by full extent of use as separated from use.
25 BY MR. SCHEINFELD:

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1 W. CHRISTOPHER BAKEWELL
2 **Q. Well, if you could identify only**
3 **5 percent or 10 percent of the users of Courgette**
4 **as opposed to the remaining users of Courgette,**
5 **that's what I mean. If you could only identify a**
6 **small percentage, would that, in your mind, be**
7 **enough to quantify and put a value on the harm**
8 **suffered by Red Bend?**
9 A. Well, I'm not sure if you're aware of
10 how you asked your question. But if you can
11 identify a small percentage, then it's possible to
12 extrapolate. So your question is circular. You
13 have an answer embedded in your question.
14 MR. SCHEINFELD: I'm going to mark
15 as -- I'm going to ask the court reporter to mark
16 as the next exhibit No. 40.
17 BY MR. SCHEINFELD:
18 **Q. Do you know whether or not Google has**
19 **the ability to quantify the number of times the**
20 **Courgette source code has been accessed?**
21 MS. MANNING: Objection; vague.
22 I just caution the witness not to
23 speculate.
24 THE WITNESS: I don't think I know
25 that.

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 **Q. Do you know whether or not Google has**
4 **the ability to show the number of times the**
5 **Courgette code has been downloaded by a third**
6 **party?**
7 A. I don't think I know that one way or
8 another.
9 **Q. Would that matter to you?**
10 A. It depends. It depends.
11 **Q. It depends on?**
12 MS. MANNING: Objection. This question
13 and the last are vague. Are you speaking in the
14 context of what he's been asked to do in this
15 particular report or some other context?
16 MR. SCHEINFELD: This report.
17 THE WITNESS: You've lost me.
18 BY MR. SCHEINFELD:
19 **Q. I'll do my best to try to get you back.**
20 **So you've testified that you don't know**
21 **whether or not Google has the capability of**
22 **identifying the number of times the Courgette**
23 **source code has been accessed or downloaded by a**
24 **third party. I think that's what you said.**
25 **Correct?**

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1 W. CHRISTOPHER BAKEWELL
2 A. That's right, I don't know one way or
3 another.
4 **Q. So would it matter to you in connection**
5 **with the opinions that you rendered in this**
6 **declaration regarding third-party use whether or**
7 **not Google had that capability?**
8 A. No, I don't think it affects the
9 outcome of my analysis or my ultimate opinions.
10 **Q. And why do you say that?**
11 A. Because there's other ways to measure
12 usage. We just talked about them. They're at the
13 top of page 8.
14 **Q. Well, if Google, assuming, can't**
15 **identify the number of third-party users, you're**
16 **suggesting that Red Bend can in some other way?**
17 A. Okay. That question is what I call a
18 lawyer question because you're mixing two
19 concepts. You're talking about Google measuring
20 via downloads.
21 You're actually mixing three concepts.
22 The first is Google measuring via downloads versus
23 the possibility of measuring all different kinds
24 of ways, some of which I provided on the top of
25 page 8. And then the third component I also

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1 W. CHRISTOPHER BAKEWELL
2 described on the top of page 8, it's the
3 plaintiff's burden to prove and measure indirect
4 infringement.
5 So your question is disaligned with
6 each of those things.
7 **Q. I'll break it up, if I can.**
8 **Is it your testimony that third-party**
9 **use of Courgette is quantifiable in some way?**
10 A. My testimony is that I've seen no
11 evidence indicating that that could not be
12 performed.
13 **Q. And would you agree that if the extent**
14 **of third-party use of Courgette were not**
15 **quantifiable, that that would be a factor in**
16 **determining irreparable harm?**
17 A. Well, I'm not sure I would agree with
18 that. We talked earlier about there potentially
19 be licenses, lump sum licenses in particular, that
20 could be informative.
21 **Q. You mean a lump sum license that Red**
22 **Bend would enter into with Google to cover all the**
23 **third-party use? Is that what you have in mind?**
24 A. That's conceivable.
25 **Q. Would such a license, though -- Would a**

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1 W. CHRISTOPHER BAKEWELL
2 factor in reaching such a license be the extent of
3 third-party use?
4 A. It may or it may not.
5 **Q. In the instances where it may, would**
6 **then the volume of third-party use then be**
7 **important to deciding that fee that you just**
8 **testified to?**
9 A. I don't know. I haven't encountered
10 that step in my analysis. So I guess you're
11 asking me a hypothetical question.
12 **Q. Yes. I'll take that.**
13 A. I don't have enough information to
14 answer that hypothetical question.
15 **Q. Did you take into consideration in**
16 **rendering your opinion -- I may have asked this**
17 **before.**
18 A. It's okay. I may have answered it
19 before.
20 **Q. The extent of third-party use.**
21 MS. MANNING: I believe that one is
22 asked and answered, actually.
23 THE WITNESS: What did you ask me? It
24 got broken up.
25 BY MR. SCHEINFELD:

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1 W. CHRISTOPHER BAKEWELL
2 **Q. Okay. In concluding or opining that**
3 **there is no irreparable harm, did you take into**
4 **consideration the extent of third-party use of**
5 **Courgette?**
6 A. My answer to that question is on page 2
7 of Exhibit 3, and I think we have come full
8 circle, that the specific -- You basically read
9 Georgia-Pacific Factor 11, the extent to which the
10 infringer has made use of the invention.
11 And the considerations I listed under
12 that factor, or next to that factor, is that
13 Google has used Courgette in conjunction with
14 Google Chrome web browser for Windows computers.
15 It's made the code available as open source code
16 since July 2009. Additional information regarding
17 usage, to the extent it exists, is typically
18 assessed during discovery.
19 **Q. So you would agree, though, because we**
20 **read an excerpt from the text I believe you relied**
21 **on in another footnote, that in some instances the**
22 **extent of use is -- I don't want to**
23 **mischaracterize the document.**
24 A. You are mischaracterizing it.
25 **Q. I didn't ask a question. I don't want**

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1 W. CHRISTOPHER BAKEWELL
2 to mischaracterize a document. Well, strike that.
3 In determining whether or not there is
4 irreparable harm, would the identity of the
5 third-party users -- of third-party users of
6 Courgette be a factor in your consideration?
7 MS. MANNING: Objection; vague.
8 Incomplete hypothetical.
9 THE WITNESS: What do you mean by
10 "identity"? You mean -- I don't know what you
11 mean by "identity."
12 BY MR. SCHEINFELD:
13 **Q. Well, we've talked about third-party**
14 **use of Courgette source code, right?**
15 A. Yes.
16 **Q. And you've testified that you don't**
17 **know whether Google can determine the extent or**
18 **the number of times Courgette source code has been**
19 **downloaded or accessed, correct?**
20 A. I think I can agree with that.
21 **Q. And my question to you is whether you**
22 **know Google has information or can obtain**
23 **information regarding the identity of such**
24 **third-party users of Courgette.**
25 MS. MANNING: Objection; lacks

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1 W. CHRISTOPHER BAKEWELL
2 foundation. Vague.
3 THE WITNESS: Can you read back the
4 question, please?
5 (Whereupon, the requested portion was read
6 back by the Reporter.)
7 THE WITNESS: I'm glad I had it read
8 back. I don't know.
9 MR. SCHEINFELD: So I'm going to now
10 mark, if I haven't already, this next document, a
11 letter from Ms. Manning to Mr. Williams dated
12 December 22nd, 2009.
13 (Exhibit 40 marked for identification and
14 attached hereto.)
15 BY MR. SCHEINFELD:
16 Q. Have you seen this document before?
17 A. I don't recall seeing this document.
18 Q. Did you ever discuss with counsel
19 Google's ability to track the number of times
20 Courgette source code has been accessed or
21 downloaded by a third party, a nonparty?
22 A. I believe so.
23 Q. What did you talk about in connection
24 with that, the number of times -- Strike that.
25 What did you talk about in connection

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1 W. CHRISTOPHER BAKEWELL
2 with tracking the number of times Courgette source
3 code has been accessed or downloaded by a
4 nonparty?
5 A. I don't recall anything specific.
6 Q. Who did you speak to? Who was that
7 conversation with?
8 A. Ms. Manning.
9 Q. Did you speak with anyone about
10 Google -- Strike that.
11 Did you speak with anyone at Google
12 about their ability to track the number of times
13 the Courgette source code has been accessed or
14 downloaded?
15 A. No.
16 Q. Would you agree that nonparty or
17 third-party use of Courgette source code is not
18 easily traceable or quantifiable?
19 MS. MANNING: Objection; vague.
20 THE WITNESS: I don't think I --
21 MS. MANNING: Lacks foundation.
22 THE WITNESS: I don't think I could
23 agree with that at this stage, no.
24 BY MR. SCHEINFELD:
25 Q. You say "at this stage." Why do you

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1 W. CHRISTOPHER BAKEWELL
2 say "at this stage"?
3 A. Today.
4 Q. So I'll just converse the question and
5 say, so in your mind, third-party use of Courgette
6 source code is easily traceable and quantifiable?
7 MS. MANNING: Objection. Are you done?
8 MR. SCHEINFELD: I'm done for now.
9 MS. MANNING: Objection; vague and
10 lacks foundation.
11 THE WITNESS: I didn't say that.
12 BY MR. SCHEINFELD:
13 Q. I'm asking that.
14 A. I don't think that necessarily -- I
15 don't have an opinion about that.
16 Q. One way or the other? Is that what
17 you're saying?
18 A. I think I can agree with that, yes.
19 Q. And would you say that that would be a
20 factor in determining whether or not to be
21 irreparable harm?
22 MS. MANNING: Objection; vague.
23 THE WITNESS: What does that mean?
24 BY MR. SCHEINFELD:
25 Q. What that means is --

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1 W. CHRISTOPHER BAKEWELL
2 A. No. You misunderstood my question.
3 That. You had the word "that" in your question.
4 What do you mean by "that"?
5 Q. What I mean is the ability to trace or
6 quantify the number of third-party users of
7 Courgette. Is that not a factor in determining
8 whether or not damages are easily quantifiable?
9 MS. MANNING: Objection; vague.
10 THE WITNESS: It may or may not be.
11 There are other potential ways to ascertain that
12 information. And I described those at length;
13 they're on page 8.
14 So just because Google doesn't have
15 documents in its possession, custody or control
16 sufficient to show the number of times the
17 Courgette source code was accessed or to show the
18 identity of each machine or person who has
19 accessed or downloaded source code, it doesn't
20 mean that you can't quantify damages. There's
21 other ways to estimate those things.
22 And on top of that, even if you
23 couldn't estimate those things, you asked me
24 hypothetically would that preclude a calculation
25 of damages. I said no, it's conceivable that lump

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1 W. CHRISTOPHER BAKEWELL
2 sum license would cover that.
3 BY MR. SCHEINFELD:
4 Q. And that a lump sum license may or may
5 not take as a -- or consider the extent of use. I
6 think that was your testimony, too. Is that
7 correct?
8 A. That sounds familiar.
9 Q. Have you -- In Paragraph 21 of your
10 declaration, in the second sentence you say: "I
11 understand Red Bend has offered no evidence in
12 support of the preliminary injunction motion that
13 any third party has directly infringed the '552
14 patent."
15 Do you see that?
16 A. Yes.
17 Q. Have you seen any evidence since the
18 signing of this declaration?
19 MS. MANNING: Objection; vague. Any
20 evidence? Because he's limiting his testimony to
21 in conjunction with the PI papers. Are you asking
22 something more broad than that or --
23 MR. SCHEINFELD: Susan --
24 MS. MANNING: I'm trying to figure out
25 what your question is.

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1 W. CHRISTOPHER BAKEWELL
2 MR. SCHEINFELD: No, no. I think --
3 The question stands.
4 MS. MANNING: Okay.
5 MR. SCHEINFELD: It's in the context of
6 the PI motion.
7 MS. MANNING: Okay.
8 THE WITNESS: No, I haven't seen such
9 information.
10 BY MR. SCHEINFELD:
11 Q. And I believe -- Will you agree that
12 Google's open sourcing Courgette is intended to
13 have users use Courgette? I'll strike that.
14 What's your understanding of Google's
15 open sourcing -- open sourcing the Courgette
16 source code?
17 MS. MANNING: Objection; vague.
18 THE WITNESS: That question doesn't
19 make sense to me. I think you need to rephrase
20 it. You missed a word somehow at the beginning.
21 BY MR. SCHEINFELD:
22 Q. I did.
23 What's your understanding of Google's
24 intent in open sourcing the Courgette source code?
25 A. We talked about that, and I pointed you

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1 W. CHRISTOPHER BAKEWELL
2 to a document that describes Google's open
3 sourcing strategy in great detail. It was
4 provided in connection with Google's response. I
5 think it's called "The Meaning of Open Source."
6 And we also discussed how it's described in
7 Google's 10K.
8 Q. And it's fair to say that Google wants
9 people to use the Courgette source code, correct?
10 MS. MANNING: Objection; lacks
11 foundation. Vague.
12 THE WITNESS: I think what Google wants
13 is for people to use Chrome.
14 THE VIDEOGRAPHER: I'm sorry. If I
15 could just go off the record for one second.
16 We are going off the record. The time
17 is 2:18 p.m.
18 (Off-the-record discussion.)
19 THE VIDEOGRAPHER: We are back on the
20 record. The time is 2:20 p.m.
21 BY MR. SCHEINFELD:
22 Q. And your understanding is that you
23 think Google wants to use -- wants people to use
24 Chrome as well as Courgette, or just Chrome?
25 A. I think that the focus at Google, as I

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1 W. CHRISTOPHER BAKEWELL
2 understand it, is on Chrome. I've seen documents
3 that describe Google's intentions with Courgette.
4 I think they're actually -- they've been produced
5 in this case from Google's website.
6 Q. Okay. Let's look at some of them.
7 MR. SCHEINFELD: I'll ask the reporter
8 to mark as Exhibit 41, I believe, a document
9 Bates-numbered Google 23522.
10 (Exhibit 41 marked for identification and
11 attached hereto.)
12 BY MR. SCHEINFELD:
13 Q. Have you seen this document before?
14 A. It's not cited in my report, but I
15 recall seeing documents that are similar.
16 Q. I asked because I didn't see it listed
17 in your declaration. That's why I asked the
18 question whether you've seen it before.
19 A. Right. I haven't seen this particular
20 document before, but I've seen similar documents.
21 Q. Do you know who Brian Bershah is?
22 A. Yes. He was deposed. I told you I
23 read his deposition transcript.
24 Q. Do you know his position at the
25 company?

40 (Pages 154 to 157)

Page 158

1 **W. CHRISTOPHER BAKWELL**
2 A. I don't recall his exact job title.
3 It's in his deposition transcript.
4 **Q. Do you know who Linus Upson is?**
5 A. Yes. He's a Google employee. I
6 believe he's a fairly senior Google employee.
7 **Q. Do you know whether he reports to Brian**
8 **or Brian reports to him?**
9 MS. MANNING: Objection; lacks
10 foundation. Relevance.
11 THE WITNESS: I would have to give you
12 my understanding. It could be -- It could be
13 neither. They could be in different organizations
14 now. I don't recall -- I do recall in
15 Mr. Bershad's deposition transcript he was asked
16 about that. So I would want to go back to that to
17 refresh my memory.
18 BY MR. SCHEINFELD:
19 **Q. Asked about the relationship between**
20 **him and Linus?**
21 A. I think that may have been addressed.
22 Q.
23
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25

Page 159

1 **W. CHRISTOPHER BAKWELL**
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3 A.
4 Q.
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6
7 MS. MANNING:
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10 THE WITNESS:
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16 BY MR. SCHEINFELD:
17 **Q. Do you know what Google's official**
18 **position is regarding the use of Courgette?**
19 MS. MANNING: Lacks foundation.
20 MR. SCHEINFELD: No. The witness just
21 said he doesn't know whether this is Google's
22 official position. I'm asking whether he knows
23 what Google's official position is regarding
24 Courgette.
25 MS. MANNING: My objection is that it

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1 **W. CHRISTOPHER BAKWELL**
2 lacks foundation because we have not established
3 that there is an official position.
4 MR. SCHEINFELD: He used the words. If
5 there isn't, there isn't.
6 BY MR. SCHEINFELD:
7 **Q. If you know, please tell me. If you**
8 **don't know, then tell me that, too.**
9 A. I don't know.
10 **Q. Just to be clear, you don't know**
11 **whether or not Google has an official position**
12 **regarding the use of Courgette?**
13 A. I don't know. I don't even know what
14 you mean by "official position."
15 **Q. Using your words, that's all.**
16 A. Well, what you're doing is taking words
17 from an answer and taking them out of context.
18 **Q. Please, I don't want to do that. I**
19 **just want to understand what your understanding**
20 **is. When you say Google's official position, what**
21 **do you mean?**
22 A. We can go back and read through the
23 whole dialogue that we had and try to figure out
24 where we were. I don't think that would be a very
25 productive use of time.

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1 **W. CHRISTOPHER BAKWELL**
2 **Q. I agree.**
3 A. I think you're making -- I just don't
4 think it would be productive.
5 **Q. I agree.**
6 **So let me just -- Do you understand**
7 **whether or not Google has an official position**
8 **regarding its desire to have Courgette used by a**
9 **large number of people or not?**
10 A. I don't know if Google has that
11 official position one way or another. I don't
12 even know what you mean by "official position" in
13 the context of your question.
14 **Q. Do you know whether Google would like**
15 **to have a large number of people use Courgette?**
16 MS. MANNING: Objection; vague. Lacks
17 foundation. Far beyond the scope of his report
18 once again.
19 THE WITNESS: I don't know one way or
20 another. I haven't investigated that.
21 BY MR. SCHEINFELD:
22 **Q. Do you think Google's intent regarding**
23 **the use of Courgette is a factor in considering**
24 **irreparable harm?**
25 A. I haven't thought about it in that way.

Page 162	Page 164
<p>1 W. CHRISTOPHER BAKEWELL</p> <p>2 The factors in considering irreparable harm are</p> <p>3 what I laid out in my report: Red Bend's claims of</p> <p>4 lost market share, loss or likely to lose any</p> <p>5 business opportunities, and we discussed this</p> <p>6 undefined loss of goodwill.</p> <p>7 Q. Would Google's intent regarding the use</p> <p>8 of Courgette in other applications outside of</p> <p>9 Chrome or outside -- in addition -- Strike that.</p> <p>10 Would Google's intent regarding the use</p> <p>11 of Courgette in applications other than for the</p> <p>12 Chrome web browser be a factor in considering</p> <p>13 irreparable harm?</p> <p>14 A. I don't know. I'd need to have more</p> <p>15 specifics.</p> <p>16 Q. And what specifics would you need to</p> <p>17 have?</p> <p>18 A. I would need more information to put</p> <p>19 your question into context.</p> <p>20 Q. Have you heard the term "Android"?</p> <p>21 A. Yes.</p> <p>22 Q. What's your understanding of the term</p> <p>23 "Android"?</p> <p>24 A. I have a bunch of different</p> <p>25 understandings of the term "Android." You need to</p>	<p>1 W. CHRISTOPHER BAKEWELL</p> <p>2 Q. And what type of information would you</p> <p>3 need?</p> <p>4 A. You need to be more specific.</p> <p>5 Q. Okay. Would Google's intent to use</p> <p>6 Courgette for the Android operating system</p> <p>7 platform be a factor in your consideration of</p> <p>8 irreparable harm?</p> <p>9 MS. MANNING: Assumes facts not in</p> <p>10 evidence. Lacks foundation.</p> <p>11 THE WITNESS: I would consider that as</p> <p>12 I would consider any information in connection</p> <p>13 with the three prongs that I evaluated in my</p> <p>14 analysis in my report.</p> <p>15 BY MR. SCHEINFELD:</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 163	Page 165
<p>1 W. CHRISTOPHER BAKEWELL</p> <p>2 be more specific.</p> <p>3 Q. In connection with this case.</p> <p>4 MS. MANNING: Lacks foundation.</p> <p>5 THE WITNESS: Android is an open source</p> <p>6 platform for mobile phones. Now, that's my</p> <p>7 understanding as a lay person and I'm not a</p> <p>8 technical person. To the extent that you're</p> <p>9 asking me questions that have anything to do with</p> <p>10 claim constructions or technical issues, don't use</p> <p>11 that answer. But that's my understanding</p> <p>12 generally.</p> <p>13 BY MR. SCHEINFELD:</p> <p>14 Q. And that's how I took it.</p> <p>15 Does Google's intent regarding the use</p> <p>16 of Courgette or some similar type updating program</p> <p>17 for Android, would that be a factor in your</p> <p>18 consideration of irreparable harm?</p> <p>19 MS. MANNING: Objection; compound and</p> <p>20 vague as to "some similar type of updating</p> <p>21 program."</p> <p>22 THE WITNESS: I don't know. I think I</p> <p>23 would need more information to put your question</p> <p>24 into context.</p> <p>25 BY MR. SCHEINFELD:</p>	<p>1 W. CHRISTOPHER BAKEWELL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 MS. MANNING: You said Chrome. Did you</p> <p>22 mean Courgette?</p> <p>23 THE WITNESS: No.</p> <p>24 MS. MANNING: Okay. Sorry.</p> <p>25 BY MR. SCHEINFELD:</p>

42 (Pages 162 to 165)

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1 W. CHRISTOPHER BAKEWELL
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14 **Q. Okay. Do you recall him testifying**
15 **about a company -- Well, strike that.**
16 **Do you recall him testifying about The**
17 **Linux Foundation?**
18 A. Yes.
19 **Q. And do you recall him testifying about**
20 **Moblin?**
21 A. Yes.
22 **Q. And what's your recollection of that**
23 **testimony?**
24 A. I recall it just generally. The
25 testimony is what it is. You have it right there.

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1 W. CHRISTOPHER BAKEWELL
2 **Q. I do. But I was hoping to avoid --**
3 **shortcut this, but I guess not.**
4 MR. SCHEINFELD: Let's mark as an
5 exhibit -- I don't have to mark it. I'm going to
6 just put it in front of you.
7 BY MR. SCHEINFELD:
8 **Q. And does that refresh your recollection**
9 **as to that testimony?**
10 MS. MANNING: Do you have a specific
11 passage you want him to look at?
12 MR. SCHEINFELD: Sure. Page 218 to
13 219.
14 MS. MANNING: Rob, is this the entirety
15 of Mr. Salinger's testimony that concerns Moblin
16 and Red Hat?
17 MR. SCHEINFELD: I don't know.
18 MS. MANNING: I ask simply because it's
19 an excerpt that goes from 215 to 226, and I just
20 don't know if there is more testimony relevant to
21 your question.
22 MR. SCHEINFELD: I don't think so.
23 MS. MANNING: Okay.
24 MR. SCHEINFELD: I thought this would
25 be sufficient to refresh the witness's

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1 W. CHRISTOPHER BAKEWELL
2 recollection.
3 THE WITNESS: I recall reading this.
4 BY MR. SCHEINFELD:
5 **Q. Do you recall Mr. Salinger's belief --**
6 **Strike that.**
7 **Do you know whether or not Red Bend**
8 **acted on Moblin's downloading of Courgette?**
9 MS. MANNING: Objection; vague as to
10 downloading, Moblin's downloading.
11 THE WITNESS: I think you actually
12 misspoke when you asked your question. I don't
13 know that Moblin would do the downloading.
14 BY MR. SCHEINFELD:
15 **Q. I'm sorry. The Linux Foundation**
16 **through Moblin.**
17 A. I don't think you asked me a question.
18 **Q. Do you know if Red Hat downloaded**
19 **Courgette?**
20 MS. MANNING: Objection; lacks
21 foundation.
22 THE WITNESS: What I recall seeing -- I
23 think it's a document you're holding in that
24 folder so that I can't see it -- is that Red Bend
25 sent a cease and desist letter to Red Hat.

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 **Q. And do you know if Red Bend sent any**
4 **other cease and desist letters to others?**
5 A. Yes.
6 **Q. And who else did they send a cease and**
7 **desist letter to?**
8 A. Oh, I didn't memorize the list. I
9 remember that one of the parties responded and
10 said -- or implied that Courgette wasn't important
11 to their business at all.
12 **Q. Do you also have a recollection that**
13 **they took Courgette down?**
14 A. Some of them took it down, is what they
15 responded. But one in particular, I don't recall
16 the name, provided a more detailed explanation as
17 to why they agreed to take it down, and it was
18 because they said it -- I will use a colloquial
19 expression to characterize what they said.
20 Basically, it wasn't a big deal. The software
21 wasn't a big deal for them. And so to avoid the
22 possibility of a dispute, they agreed to take it
23 down.
24 **Q. So let's start with Red Hat. What is**
25 **your understanding of what Red Hat did with**

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1 **W. CHRISTOPHER BAKEWELL**
2 **Courgette?**
3 MS. MANNING: Objection; lacks
4 foundation.
5 THE WITNESS: It would be helpful to
6 see the letter. I didn't memorize it.
7 MR. SCHEINFELD: Okay. Let's mark the
8 one, two, three, four, five, six, seventh next
9 exhibits starting with 42.
10 (Exhibits 42, 43, 44, 45, 46 and 47 marked
11 for identification and attached hereto.)
12 (Off-the-record discussion.)
13 BY MR. SCHEINFELD:
14 **Q. Exhibit 42 should be a letter dated**
15 **February 12th to Red Hat.**
16 **Exhibit 43 should be a letter dated**
17 **February 16th to Linux Foundation.**
18 **Exhibit 44 should be a letter to the**
19 **Gentoo Foundation dated February 25th.**
20 **Exhibit 45 should be a letter dated**
21 **February 26th to Zeroflux.**
22 MS. MANNING: That's one I don't have.
23 MR. SCHEINFELD: Exhibit 46 should be a
24 letter dated February 26th to Novell.
25 And Exhibit 47 should be a letter dated

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1 **W. CHRISTOPHER BAKEWELL**
2 February 25th to FreeBSD Foundation.
3 BY MR. SCHEINFELD:
4 **Q. Do you have all those, Mr. Witness?**
5 A: Yes. Mr. Bakewell.
6 MS. MANNING: And I do not have 45. I
7 forget what it was. I forget what it was, but it
8 was between Gentoo and Novell.
9 MR. SCHEINFELD: You don't have 45?
10 MS. MANNING: I do not.
11 MR. SCHEINFELD: 45 is Zeroflux.
12 MS. MANNING: Thank you.
13 BY MR. SCHEINFELD:
14 **Q. Seeing these letters, does it refresh**
15 **your recollection about the names of the companies**
16 **to whom Red Bend sent a cease and desist letter?**
17 A: Yes.
18 **Q. And let's take Red Hat first,**
19 **Exhibit 42.**
20 A: Okay.
21 **Q. Understanding that this occurred, that**
22 **is that Red Hat maintained and controlled the**
23 **Fedora Project which posted the Courgette**
24 **software, would that, in your mind -- does that in**
25 **your mind create any harm to Red Bend?**

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1 **W. CHRISTOPHER BAKEWELL**
2 A: No.
3 **Q. And why is that?**
4 MS. MANNING: Objection; vague.
5 THE WITNESS: You haven't established
6 or even attempted to establish how simply posting
7 software creates harm.
8 BY MR. SCHEINFELD:
9 **Q. So if a user downloaded the software**
10 **and used Courgette, would that not rise to a level**
11 **of harm, in your mind?**
12 A: No, not necessarily.
13 **Q. Are you making a distinction between**
14 **posting the code and actually using the code to**
15 **perform updating?**
16 A: Neither of those are necessarily harm,
17 in my mind.
18 **Q. So in your mind, if a nonparty went to**
19 **the sites listed here in Exhibit 42 and downloaded**
20 **the software, Courgette software, and used it to**
21 **perform delta updating, or to update an**
22 **application of some sort, that would not create**
23 **harm, in your mind?**
24 A: No, not necessarily. I mean, you've --
25 there is a big bridge you still need to build.

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1 **W. CHRISTOPHER BAKEWELL**
2 **Q. So the fact that you have perhaps one**
3 **user who goes to the websites identified in**
4 **Exhibit 42 and actually executed the code, that,**
5 **in your mind, would not be harm to Red Bend?**
6 A: Not necessarily.
7 **Q. What would be needed, in your mind, to**
8 **create harm to Red Bend in that circumstance?**
9 MS. MANNING: Vague. Overbroad.
10 THE WITNESS: Two things, generally.
11 And this is very generally. First you have to
12 establish that that's infringing. That's out of
13 my...
14 BY MR. SCHEINFELD:
15 **Q. Correct. I'm asking you to assume**
16 **that. I'm asking you --**
17 A: That's a new question.
18 **Q. -- to assume --**
19 **I'm sorry. I'm asking you to assume**
20 **infringement.**
21 A: Okay. Then the second general category
22 I had in mind is that there needs to be some sort
23 of connection to Red Bend's business, either in
24 terms of lost sales or what the specific three
25 prongs are that I identified. And they need to be

44 (Pages 170 to 173)

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1 W. CHRISTOPHER BAKEWELL
2 unquantifiable and/or undefined.
3 So I guess there's three. The first
4 one is assume infringement.
5 Second one is you have to connect it to
6 something at Red Bend.
7 And the third is that those three
8 prongs we've discussed today at length, each
9 cannot be quantified.
10 And those are broad. That's a broad
11 description.
12 **Q. So assuming infringement, if you had a**
13 **user go to the websites identified in Exhibit 42,**
14 **for example, and executed the code there, that, in**
15 **your mind, would not cause harm to Red Bend**
16 **because it's quantifiable, that's your third**
17 **prong, and because there is no effect on Red Bend**
18 **sales?**
19 A. I think generally I can agree with
20 that. I'm always wary when a lawyer restates what
21 I said, but I think generally I can agree with
22 that.
23 **Q. What about Red Bend's ability to**
24 **license its patent to those users? Let's say**
25 **those users are not selling products in**

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1 W. CHRISTOPHER BAKEWELL
2 competition or involved in competition with Red
3 Bend. Would that not be another category of harm
4 to Red Bend, its inability to license that user
5 outside its space?
6 A. That was subsumed in the second
7 category that I gave you.
8 **Q. The effect on Red Bend, is that the**
9 **second?**
10 A. Yes.
11 **Q. So then in that circumstance you**
12 **could -- in your view, there would be harm to Red**
13 **Bend because it's not available because it's lost**
14 **the ability to license its patent to this user?**
15 A. No, I don't think I can agree with that
16 unequivocally the way you stated it.
17 **Q. Well, if there are -- if there is a**
18 **user who goes to one of these websites identified**
19 **in these letters and starts executing the code**
20 **without a license from Red Bend, assuming**
21 **infringement, isn't that harm to Red Bend?**
22 A. No, not necessarily. Not at all.
23 **Q. And why do you say that?**
24 A. Because you're presuming that there's
25 somehow some lost value associated with that

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1 W. CHRISTOPHER BAKEWELL
2 activity to Red Bend, and that's not necessarily
3 the case.
4 **Q. Well, Red Bend has the ability as the**
5 **owner of the patent to exclude others from making**
6 **and using and selling the claimed invention,**
7 **right? That's your understanding?**
8 A. That's right.
9 **Q. So there's value -- you attribute some**
10 **value to that, correct, its ability to exclude**
11 **others?**
12 A. Not always.
13 **Q. And in what instances do you attribute**
14 **value to the right to exclude and in what**
15 **instances do you not attribute value to the right**
16 **to exclude?**
17 A. There needs to be some economic or
18 incremental benefit to the claims of the patent.
19 **Q. And you don't view unlicensed --**
20 **unlicensed users as a decremental benefit to the**
21 **claims of the patent?**
22 A. Not necessarily. To put some -- to put
23 something a little more tangible around it, one of
24 the parties responded to the cease and desist
25 letters and said essentially, "Hey, look, we don't

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1 W. CHRISTOPHER BAKEWELL
2 care. We'll use BSDiff or something else."
3 **Q. Right. But you have, don't you,**
4 **situations where there may be users in the**
5 **meantime which have executed the Courgette that's**
6 **been posted; is that not correct?**
7 MS. MANNING: Objection; lacks
8 foundation. Calls for speculation.
9 THE WITNESS: I don't see how that
10 question follows my last answer.
11 BY MR. SCHEINFELD:
12 **Q. So I think we -- Are you saying that**
13 **because one chooses to do -- because one chooses,**
14 **for lack of a better term, a noninfringing**
15 **alternative, therefore there is no value that one**
16 **could attribute to the infringing use?**
17 A. I gave you a specific example of where
18 the implications of the response were that they
19 were more than happy to switch to a noninfringing
20 alternative because the implications to their
21 business were zero in fact. And to me, that
22 suggests little or no value for at least that
23 specific user.
24 **Q. Let's turn to, then, for a moment,**
25 **Google. Do you know whether or not Google has**

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1 W. CHRISTOPHER BAKEWELL
2 considered a noninfringing alternative?
3 A. Oh, I don't know.
4 Q. Would you view as a factor that goes
5 into the determination of irreparable harm a
6 company's resources that may be diverted into
7 enforcing its intellectual property rights?
8 MS. MANNING: Objection; calls for
9 speculation. Beyond the scope of his report.
10 THE WITNESS: I would have to see that
11 and measure it. But my initial reaction as I sit
12 here today is that the cost of that, the
13 incremental cost of doing that to a company,
14 particularly the size of Red Bend, would be --
15 would be minimal. It may be even nothing.
16 Immaterial.
17 BY MR. SCHEINFELD:
18 Q. Would whether or not the companies --
19 I'm going to try to handle it in one question as
20 opposed to going through it each time -- that are
21 identified in Exhibits 42 to 47, would you
22 consider their ability or inability to track those
23 who download the Courgette source code from their
24 sites as a factor in considering irreparable harm?
25 A. It might be. It might be. There would

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1 W. CHRISTOPHER BAKEWELL
2 be -- There's more that's required than just that
3 in order to demonstrate a likelihood of
4 irreparable harm.
5 Q. What more --
6 MS. MANNING: Objection.
7 BY MR. SCHEINFELD:
8 Q. -- are you referring to?
9 A. Well, what I have in mind is that that
10 would need to be traced through to Red Bend, that
11 there actually was an implication economically to
12 Red Bend.
13 Q. It's not enough that the users of
14 Courgette who have downloaded and executed the
15 Courgette posted by these companies, it's not
16 enough to know that; you need to have something
17 else to establish irreparable harm, and that is
18 some connection to Red Bend? Is that what you're
19 saying?
20 A. Well, let's back up.
21 MS. MANNING: Objection.
22 Mischaracterizes his testimony. It's vague.
23 THE WITNESS: And it calls for a legal
24 conclusion.
25 You're asking me questions about what

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1 W. CHRISTOPHER BAKEWELL
2 the definition of irreparable harm is generally,
3 and that's a question for a lawyer, not me.
4 Questions for me, I would think, would
5 relate to my analysis, and in particular what
6 you've asserted, what I've evaluated, an
7 unquantifiable loss of market share, loss of
8 revenue and market opportunities, and undefined
9 unrecoverable loss of goodwill.
10 BY MR. SCHEINFELD:
11 Q. So in your mind -- Let's look at
12 unquantifiable loss of market share for a moment.
13 I think that's what you were just pointing to in
14 Paragraph 24 of your declaration.
15 A. Yes.
16 Q. Is it necessary that the unquantifiable
17 loss be to market share as opposed to
18 unquantifiable loss?
19 MS. MANNING: Objection; vague.
20 MR. SCHEINFELD: I'm asking the
21 witness's understanding.
22 MS. MANNING: Yes. And I'm objecting
23 because the witness's report responds to the
24 allegations you've made, and you're asking him
25 about allegations you haven't made. So it's

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1 W. CHRISTOPHER BAKEWELL
2 difficult for him to understand the question.
3 MR. SCHEINFELD: I'll disagree, but
4 I'll rephrase the question. I don't want to
5 debate with you.
6 BY MR. SCHEINFELD:
7 Q. We spoke moments ago or earlier about
8 tracing third-party use. Do you recall that
9 testimony?
10 A. I don't know what you're talking about.
11 There's a couple of things that could fit into
12 that category --
13 Q. Ms. Manning's letter.
14 A. -- of question.
15 Q. I'm sorry.
16 A. Yes, I recall her letter.
17 Q. And my question to you is whether, in
18 your view, that third-party use is unquantifiable
19 or unidentifiable or measurable doesn't matter
20 unless it affects Red Bend's market share?
21 MS. MANNING: Objections.
22 Mischaracterizes the evidence. Assumes facts not
23 in evidence.
24 THE WITNESS: I don't think I said
25 that.

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 Q. I'm asking whether that's your view.
4 A. I'm not even sure that I follow what
5 you're asking. I certainly didn't say that. I
6 don't recall saying that.
7 Q. Is it your view that Red Bend has to
8 suffer an effect on its market share to qualify as
9 irreparable harm under your bucket one,
10 unquantifiable loss of market share?
11 MS. MANNING: Can we have the question
12 read back, please?
13 (Whereupon, the requested portion was read
14 back by the Reporter.)
15 THE WITNESS: I'm referring back to my
16 report. The definition of irreparable harm,
17 that's a legal question.
18 BY MR. SCHEINFELD:
19 Q. Uh-huh.
20 A. I've evaluated the claims that Red Bend
21 has made regarding likely losses in market share,
22 revenues, opportunities and goodwill. And I've
23 seen no evidence of any of those.
24 THE WITNESS: Could we take a break?
25 MR. SCHEINFELD: Sure.

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1 W. CHRISTOPHER BAKEWELL
2 THE WITNESS: Thank you.
3 THE VIDEOGRAPHER: This marks the end
4 of Tape 3 in the deposition. We are going off the
5 record. The time is 3:11 p.m.
6 (A recess was then taken.)
7 THE VIDEOGRAPHER: This marks the
8 beginning of Tape 4 in the deposition. We are
9 back on the record. The time is 3:25 p.m.
10 BY MR. SCHEINFELD:
11 Q. You have mentioned a number of times
12 today the three-pronged analysis that you
13 undertook, including unquantifiable loss of market
14 share, loss of revenue and market opportunities,
15 and undefined unrecoverable loss of goodwill.
16 A. Right. Those are the things that you
17 claimed.
18 Q. My question to you is whether or not
19 all three prongs need to be shown, in your mind,
20 to establish irreparable harm or would one or two
21 suffice.
22 A. Oh, I don't know. You would have to
23 ask a lawyer what the answer is to that question.
24 What I know is that you've claimed these three,
25 and I've evaluated each of these three, and zero

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1 W. CHRISTOPHER BAKEWELL
2 of the three have been met.
3 Q. And in your view, if one had been met,
4 would that constitute irreparable harm, in your
5 mind?
6 MS. MANNING: Asked and answered.
7 THE WITNESS: I just answered that. I
8 think that calls for a legal conclusion. I would
9 direct you to legal pleadings or to cases that are
10 cited in the legal pleadings. But don't ask me
11 that question. I answered the three questions
12 that I laid out in Paragraph 24.
13 BY MR. SCHEINFELD:
14 Q. All right. And I'm asking you whether
15 in your mind -- if you don't know, say you don't
16 know, but I'm entitled to an answer to the
17 question.
18 If one prong were met, in your view,
19 would that suffice as irreparable harm?
20 MS. MANNING: Asked and answered.
21 THE WITNESS: First of all, I already
22 answered your question.
23 Second, you're entitled to an answer,
24 but you're not entitled to the answer you want,
25 you're entitled to my answer.

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1 W. CHRISTOPHER BAKEWELL
2 Third, I've stated that that is a
3 question for a lawyer and it calls for a legal
4 determination.
5 What I've evaluated is laid out in my
6 report, and specifically in Paragraph 24.
7 BY MR. SCHEINFELD:
8 Q. Okay. If you could turn to page 9.
9 A. Okay.
10 Q. Page 9, footnote 44, you identified the
11 Google Form 10K for the period ending 12/31/08. I
12 would like to go back to that. I marked it
13 earlier today.
14 A. Okay. That's Exhibit 38.
15 Q. Exhibit 38, yes.
16 On page 22, under "Our intellectual
17 property rights..." section, do you agree with --
18 Well, have you seen this before? Let
19 me put it that way.
20 A. Yes.
21 Q. Okay. Do you agree with the section
22 under "Our intellectual property rights are
23 valuable..."?
24 Do you see that?
25 MS. MANNING: Objection; vague.

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 Q. I'm just looking at the section under
4 the heading "Our intellectual property rights are
5 valuable, and any inability to protect them could
6 reduce the value of our products, services and
7 brand."
8 Do you see that?
9 A. Yes.
10 Q. So what I'm asking is whether or not
11 you agree with the text that's underneath that
12 heading.
13 A. The entirety of it?
14 Q. Well, I'll direct your attention to the
15 sentence that reads: "Any significant impairment
16 of our intellectual property rights could harm our
17 business and our ability to compete."
18 Do you agree with that sentence?
19 MS. MANNING: Objection; vague. Lacks
20 foundation. Irrelevant. Beyond the scope of his
21 report.
22 THE WITNESS: Well, Google said it in
23 its 10K. I have no reason to disagree with what
24 Google wrote as it relates to its own business.
25 BY MR. SCHEINFELD:

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1 W. CHRISTOPHER BAKEWELL
2 Q. On page 14, if I could ask you to flip
3 back.
4 A. Yes.
5 Q. In the first paragraph -- I'm sorry,
6 under the heading "Competition."
7 A. Yes.
8 Q. It says: "We operate in a market that
9 is characterized by rapid change and converging."
10 It continues, but I'll save time by not
11 reading it all, because my question is directed to
12 the word "market" there.
13 What is your understanding of the
14 market in which Google operates? If you feel a
15 need to read the entire section or paragraph --
16 MS. MANNING: Or document. Objection;
17 lacks foundation.
18 MR. SCHEINFELD: Or document.
19 MS. MANNING: Irrelevant. Beyond the
20 scope of his report and his analysis.
21 THE WITNESS: I'm sure that it's
22 defined or described in this document. I don't
23 think your intent is for me to look through this
24 entire thing and point out where those
25 descriptions are provided.

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 Q. That's correct.
4 A. Okay.
5 Q. My intent is to get your understanding
6 of the market in which Google competes.
7 MS. MANNING: Objection; lacks
8 foundation. Beyond the scope of his analysis and
9 report. And overbroad.
10 MR. SCHEINFELD: There are going to be
11 a lot of depositions in this case, Susan.
12 BY MR. SCHEINFELD:
13 Q. So my question to you is really: What
14 is your understanding of the market in which
15 Google competes?
16 MS. MANNING: Same objections.
17 BY MR. SCHEINFELD:
18 Q. To save time, if you prefer for me to
19 rephrase the question, I will.
20 A. No. I'm thinking. I'm thinking and
21 I'm also looking.
22 Q. You can set the document aside, quite
23 frankly. I just want your understanding of the
24 market in which Google competes. But if you would
25 like to look at the document --

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1 W. CHRISTOPHER BAKEWELL
2 A. No, I'll explain to you why I'm looking
3 through the document --
4 Q. Okay.
5 A. -- when I provide my answer.
6 Google competes in a variety of markets
7 and market segments through offering many
8 products. And the reason why I was flipping
9 through this is there's products that are listed,
10 at least on the first page -- the first seven
11 pages of the 10K, if not further. Actually,
12 further. The first 10, 11, 12 pages leading up to
13 the phrase that you read, "We operate in a mark
14 that is characterized by rapid change and
15 converging."
16 In order to put that sentence into
17 context, you have to read the entirety of this
18 10K. And Google is a sophisticated business.
19 Q. You mentioned that Google competes in
20 markets and market segments. What markets are you
21 referring to?
22 A. Boy, I just flipped through 13 pages of
23 different products that are offered. And you
24 could go back through that list to obtain more
25 detail as to what specific markets and market

48 (Pages 186 to 189)

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1 W. CHRISTOPHER BAKEWELL
2 segments I was describing.
3 **Q. What market -- How would you describe**
4 **the market that includes Google's Chrome browser?**
5 MS. MANNING: Objection; lacks
6 foundation. Beyond the scope of his report.
7 If you want an on-the-fly analysis, he
8 can go through this document.
9 THE WITNESS: One thing that I've done
10 in this report is described Red Bend's customers
11 and the customer -- well, the application of
12 Courgette and where it's run in Paragraph 27.
13 Paragraph 28 as well.
14 BY MR. SCHEINFELD:
15 **Q. When you analyzed your prongs, or the**
16 **three prongs in your declaration and you**
17 **identified the unquantifiable loss of market share**
18 **and the loss of revenue and market opportunities,**
19 **what market did you have in mind?**
20 A. Just to clarify, those were prongs that
21 you identified, and it's not clear what markets
22 you had in mind. And what I did is analyzed the
23 difference between the products and the users.
24 **Q. I'm sorry. The difference between the**
25 **products and users of Red Bend's products and**

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1 W. CHRISTOPHER BAKEWELL
2 **users compared to Google's products and users? Is**
3 **that what you're saying?**
4 A. Yes, as described in my report.
5 **Q. And is there a particular market that**
6 **Red Bend's products and users are geared to?**
7 A. Red Bend's products are in the mobile
8 phone industry, machine-to-machine module vendors
9 and WiMAX modem vendors, as I wrote in
10 Paragraph 27.
11 **Q. And what products -- What market are**
12 **Google's products and users in in connection with**
13 **your analysis? What market did you --**
14 MS. MANNING: Objection; vague.
15 BY MR. SCHEINFELD:
16 **Q. -- categorize, if any, for Google**
17 **products and users?**
18 MS. MANNING: Objection; vague and
19 lacks foundation.
20 THE WITNESS: Well, if you're talking
21 about Google's products and users, go back to the
22 10K, because that's a very broad description. But
23 I think what you mean is Courgette.
24 BY MR. SCHEINFELD:
25 **Q. That's correct. I was actually**

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1 W. CHRISTOPHER BAKEWELL
2 referring back to your analysis that you did
3 comparing Red Bend's products and users to
4 Google's products and users.
5 A. And I described that in Paragraph 27,
6 among other places.
7 **Q. And you viewed it important, did you**
8 **not, that Google's Courgette is an application**
9 **that runs on personal computers running Windows**
10 **and not mobile phones; is that correct?**
11 A. Yes.
12 **Q. If Google were to provide Courgette as**
13 **an application for mobile phones, would that**
14 **change your opinion as to whether or not there's**
15 **an unquantifiable loss of market share or loss of**
16 **revenue and market opportunities?**
17 MS. MANNING: Objection; incomplete
18 hypothetical. Vague.
19 THE WITNESS: So first of all, I've
20 seen no evidence of that. So your question is
21 completely hypothetical and it runs against the
22 grain of the evidence that I've reviewed.
23 Second of all, even if that were to be
24 the case, one would need to analyze the economic
25 impact to Red Bend, if any. There might not be

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1 W. CHRISTOPHER BAKEWELL
2 any.
3 BY MR. SCHEINFELD:
4 **Q. But you would agree that you would have**
5 **to reanalyze, and it may affect your opinions as**
6 **set forth in this declaration, particularly it**
7 **being whether or not Google offers Courgette in**
8 **the mobile space?**
9 A. That hypothetical --
10 **Q. Correct.**
11 A. -- scenario? I would have to evaluate
12 it if I saw it.
13 **Q. Have you -- have you seen any evidence**
14 **which would indicate that generally the personal**
15 **computer space as you've referred to here in 27,**
16 **Paragraph 27, converged with the mobile phone**
17 **space?**
18 A. You've lost me. Where did I say
19 personal computer space?
20 **Q. You didn't say space but --**
21 A. You confused me.
22 **Q. I'm sorry. I'll rephrase the question.**
23 **You've indicated here that -- and**
24 **you've testified that it was important to you that**
25 **Courgette is an application that runs on personal**

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1 **W. CHRISTOPHER BAKEWELL**
2 **computers and not mobile phones.**
3 **My question to you is whether you've**
4 **seen any evidence indicating the convergence of**
5 **personal computers with mobile phones.**
6 MS. MANNING: Objection; vague.
7 You can answer it if you can.
8 THE WITNESS: I've seen documents and
9 I'm aware generally of a broad trend of
10 convergence that is expected to occur over time.
11 BY MR. SCHEINFELD:
12 **Q. Do you know how long?**
13 A. I've seen people make various
14 estimates. There's divergent views on that.
15 **Q. And would the convergence of PCs and**
16 **mobile phones affect your opinions regarding**
17 **irreparable harm?**
18 MS. MANNING: Objection; vague as to
19 what you mean by convergence.
20 THE WITNESS: I've considered this
21 trend, and I've been aware of this general trend
22 of convergence as I wrote my report and conducted
23 my analysis, and so I can't see how it would
24 change my opinions.
25 MR. SCHEINFELD: I'm going to ask the

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1 **W. CHRISTOPHER BAKEWELL**
2 reporter to mark as the next exhibit, 48, a
3 document bearing Bates numbers Red Bend 10374 to
4 77.
5 (Exhibit 48 marked for identification and
6 attached hereto.)
7 BY MR. SCHEINFELD:
8 **Q. Have you heard of The 451 Group?**
9 A. I don't know that I have. It doesn't
10 ring a bell.
11 **Q. Have you seen this document before?**
12 A. I don't recall seeing this particular
13 document.
14 **Q. Okay. Have you considered --**
15 MR. SCHEINFELD: Well, let me mark the
16 next document, which will be Red Bend 11213 to Red
17 Bend 11215.
18 (Exhibit 49 marked for identification and
19 attached hereto.)
20 MS. MANNING: And this is Exhibit 49;
21 is that right?
22 BY MR. SCHEINFELD:
23 **Q. Have you seen this document before?**
24 A. No, sir.
25 (Pause)

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1 **W. CHRISTOPHER BAKEWELL**
2 MS. MANNING: I don't believe there is
3 a question pending.
4 BY MR. SCHEINFELD:
5 **Q. I'm sorry, I did not hear your answer.**
6 **I see it's, "No, sir."**
7 A. That's okay. I might not hear one of
8 your questions.
9 **Q. There is a quote in this article that**
10 **says: "In three years time desktops will be**
11 **irrelevant." Do you see that?**
12 A. Yes, I do.
13 **Q. Did you speak with anyone at Google**
14 **about their views regarding desktops?**
15 MS. MANNING: Asked and answered.
16 THE WITNESS: Well, I reviewed
17 documents from Google and information that's
18 produced by Google, and it's cited in my report.
19 BY MR. SCHEINFELD:
20 **Q. And then the paragraph continues by**
21 **saying: "'In Japan, most research is done today**
22 **on smartphones, not PCs,' Herlihy told a baffled**
23 **audience, echoing comments by Google's CEO Eric**
24 **Schmidt at the recent GSM Association Mobile**
25 **World Congress 2010 that everything the company**

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1 **W. CHRISTOPHER BAKEWELL**
2 **will be doing will be -- everything the company**
3 **will do going forward will be via a mobile lens,**
4 **centering on the cloud, computing and**
5 **connectivity."**
6 Do you see that?
7 A. Yes.
8 **Q. If it were the case that Google**
9 **provided -- Strike that.**
10 **If this were the case and that**
11 **everything Google does will be for mobile phones,**
12 **and Courgette is used by Google in connection with**
13 **mobile phones, would that affect your opinion**
14 **regarding loss of market share and market**
15 **opportunities?**
16 MS. MANNING: I'll object to the
17 mischaracterization of Red Bend Exhibit 49.
18 THE WITNESS: What this document says
19 is that Google will be focused on a mobile lens,
20 not what you described. And it also -- This is
21 providing views about what one executive
22 anticipates what might happen in the future. And
23 it's on the shorter end of the scale of
24 expectations regarding convergence that I
25 mentioned a couple of answers ago.

50 (Pages 194 to 197)

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1 W. CHRISTOPHER BAKEWELL
2 BY MR. SCHEINFELD:
3 Q. When you say "the shorter end," you
4 mean three years is soon? Is that what you're --
5 as compared to when you're anticipating
6 convergence?
7 MS. MANNING: Objection;
8 mischaracterizes his testimony.
9 BY MR. SCHEINFELD:
10 Q. I'm trying to understand what you meant
11 by -- What do you mean by "the shorter end"?
12 A. I never said I was anticipating
13 convergence. I said that I reviewed in the course
14 of my work various market analysts' views on
15 convergence as a general trend, something that
16 will happen going on into the future.
17 There's different viewpoints as to what
18 exactly will happen when. This is one of the
19 more -- one of the views that is at the shorter
20 end of the scale of things that I've seen. That's
21 what I'm saying.
22 Q. And so you've seen things -- I'm using
23 your words -- which are longer than three years?
24 Is that what you're saying? I'm just trying to
25 get a sense of what you mean by shorter end of the

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1 W. CHRISTOPHER BAKEWELL
2 scale of things that you've seen.
3 A. These statements are -- describe the
4 trend of convergence occurring faster than other
5 people expect.
6 Q. And assuming PCs and mobile phones
7 converge, in that instance would you consider,
8 then, that Red Bend and Google would be
9 competitors?
10 MS. MANNING: Objection, what you mean
11 by the convergence of PCs and mobile phones. It's
12 been unclear throughout this line.
13 THE WITNESS: Could you clarify that?
14 BY MR. SCHEINFELD:
15 Q. What's your understanding -- When you
16 talk about convergence, what's your understanding
17 of convergence of PCs and mobile phones?
18 A. I think the general view -- and that is
19 my understanding after reviewing documents -- is
20 that eventually over time into the future the
21 products will become more similar, increasingly
22 similar.
23 Q. What products are you talking about?
24 A. The ones you mentioned, PCs and mobile
25 phones.

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1 W. CHRISTOPHER BAKEWELL
2 Q. With that in mind, in that instance
3 when PCs and mobile phones become more similar, or
4 increasingly similar, would Red Bend and -- would
5 you consider Red Bend and Google competitors with
6 regard to updating software?
7 MS. MANNING: Objection; overbroad.
8 Goes beyond the scope of products at issue in this
9 case, apparently.
10 THE WITNESS: I would evaluate that if
11 and when it happened. Certainly we're a long time
12 out from you being able to pick up your laptop
13 that's right there and hold it up to your head and
14 make a phone call.
15 BY MR. SCHEINFELD:
16 Q. Have you heard the term "Chrome OS"?
17 A. Yes.
18 Q. What's your understanding of Chrome OS?
19 A. OS is an acronym for operating system.
20 Q. And what's your understanding of the
21 use of Chrome OS?
22 A. I don't understand what you mean.
23 Q. Well, what is it to be used for?
24 A. An operating system.
25 Q. For what products?

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1 W. CHRISTOPHER BAKEWELL
2 MS. MANNING: Objection; lacks
3 foundation.
4 THE WITNESS: I understand in the
5 future for PCs.
6 BY MR. SCHEINFELD:
7 Q. Only PCs? Or for mobile phones as
8 well?
9 MS. MANNING: Same objection.
10 THE WITNESS: My recollection is that
11 the immediate plans, as I understand them, are for
12 PCs.
13 BY MR. SCHEINFELD:
14 Q. Excluding mobile phones?
15 A. I haven't really considered that. I
16 don't recall one way or another. What I've seen
17 and recall are plans for PCs.
18 Q. Do you know if Courgette is to be used
19 for Chrome OS? I'll rephrase the question.
20 Do you know if Courgette is going to be
21 included in the Chrome OS?
22 A. I don't know.
23 Q. Assuming that Courgette were to be
24 included with the Chrome OS package, would that
25 affect your decision regarding -- or I'm sorry,

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1 W. CHRISTOPHER BAKEWELL	1 W. CHRISTOPHER BAKEWELL
2 your conclusion that Google and Red Bend do not	2
3 compete?	3
4 A. I don't think so. It certainly doesn't	4
5 affect -- that possibility in the future certainly	5
6 doesn't affect my opinions as of the date of this	6
7 report and as of today.	7
8 Q. If the Chrome OS -- Chrome OS included	8
9 Courgette and was used -- or is used -- Strike	9
10 that.	10
11 If Courgette were included with Chrome	11
12 OS for mobile phones, would that affect your	12
13 conclusion that Red Bend and Google do not	13
14 compete?	14
15 A. Well, my conclusion is there is no	15
16 indication that Google's Courgette product	16
17 competes with Red Bend's products.	17
18 My other conclusions are laid out in my	18
19 report, and they relate to those three prongs.	19
20 And if that were what you described to	20
21 happen in the future, I would have to evaluate	21
22 empirically what's occurring hypothetically under	22
23 that scenario, which hasn't occurred yet today,	23
24 and there is no expectation for that to occur, at	24
25 least that I'm aware, within the very near time	25
Page 203	Page 205
1 W. CHRISTOPHER BAKEWELL	1 W. CHRISTOPHER BAKEWELL
2 frame. I mean, it's a complete hypothetical, so	2 to mark as the next exhibit Red Bend 5317 to Red
3 it doesn't affect my conclusions whatsoever.	3 Bend 5318.
4 Q. Have you asked anyone at Google whether	4 (Exhibit 50 marked for identification and
5 or not they intended to use Courgette with Chrome	5 attached hereto.)
6 OS?	6 BY MR. SCHEINFELD:
7 A. Well, I've reviewed documents and	7 Q. Have you seen this document before?
8 deposition testimony, but I have not asked that	8 A. I don't think so. I've seen things
9 question, no.	9 that are similar, but my expectation is that if I
10 MS. MANNING: Rob, I'm going to	10 looked in this documents reviewed list that I
11 designate the transcript attorneys' eyes only, and	11 have, I wouldn't find these Bates numbers.
12 we can quickly go back and clarify which portions	12 Q. Would it be fair to say you did not
13 should be subject to that designation, which	13 consider Brin's statement in the fourth paragraph
14 obviously not all of it will, but there will be	14 in generating your declaration?
15 parts of it that will be subject to that	15 A. No, that wouldn't be fair to consider.
16 designation.	16 I don't think so.
17 MR. SCHEINFELD: I appreciate you using	17 I also think that you're cherry-picking
18 the word "quickly" in that statement. Thank you.	18 a quote out of this document, because the next
19 BY MR. SCHEINFELD:	19 paragraph says: "It's not clear when Google
20	20 thinks it might want to merge the projects, but it
21	21 seems to be eyeing a future in which the
22	22 smartphones currently served by Android meld into
23	23 the Netbooks...Of course, Mr. Brin's vision might
24	24 not necessarily be shared by all members of the
25	25 Google management team."

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1 W. CHRISTOPHER BAKEWELL
2 MS. MANNING: Rob, can I ask a
3 question? There appear to be three pages of this
4 document missing. Do you have those? The second
5 page is 205. The document doesn't appear to be
6 complete, so I'm wondering if we have the rest of
7 it.
8 MR. SCHEINFELD: I don't.
9 MS. MANNING: Okay.
10 BY MR. SCHEINFELD:
11 **Q. If Courgette were included within**
12 **Android or Chrome OS, would you consider Red Bend**
13 **and Google to be competing in that instance?**
14 MS. MANNING: Objection; vague.
15 Incomplete hypothetical.
16 THE WITNESS: First of all, I have no
17 basis to believe that's a realistic hypothetical.
18 I've answered questions regarding both of those
19 platforms, and even if that were to occur sometime
20 in the future, which even in this article it says
21 it's not clear when that might even occur, and
22 they're skeptics, the relationship between the
23 companies would have to be evaluated under those
24 specific circumstances.
25 BY MR. SCHEINFELD:

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1 W. CHRISTOPHER BAKEWELL
2 **Q. In Paragraph 41 of your declaration you**
3 **state that "Courgette is used to create updates**
4 **that are delivered over the Internet to the Chrome**
5 **web browser running on Windows. Courgette is not**
6 **used to create over-the-air updates."**
7 **My question is: If Courgette were used**
8 **to create over-the-air updates, would that affect**
9 **your opinion regarding irreparable harm?**
10 A. Okay. My opinions relate to the three
11 prongs, and I would have to evaluate that change
12 situation in the future relative to each one of
13 the three prongs that you asserted.
14 **Q. Assuming that Red Bend in that instance**
15 **were not able to provide its vRapid software for**
16 **use with either the Chrome OS or Android because**
17 **Courgette is instead being used, would that not**
18 **impact your opinions regarding unquantifiable loss**
19 **of market share and loss of revenue and market**
20 **opportunities?**
21 MS. MANNING: Objection; incomplete
22 hypothetical. And it's somewhat vague as to
23 whether you're asking a technical or economic
24 question.
25 THE WITNESS: Again, you're discussing

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1 W. CHRISTOPHER BAKEWELL
2 something that there is no evidence of today. So
3 it's a complete hypothetical into some point in
4 the future. So in that regard, it's irrelevant to
5 my opinions as they are in the report.
6 And in addition to that, your
7 allegation is that the loss of market share would
8 be unquantifiable, and I would have to evaluate
9 that relative to the positions that you've taken
10 that I've analyzed.
11 MR. SCHEINFELD: It's good that I'm
12 moving documents to this pile.
13 THE WITNESS: I would agree with that.
14 BY MR. SCHEINFELD:
15 **Q. Okay. On page 10, footnote 49, you**
16 **talk about the ICQ product.**
17 A. Yes.
18 **Q. My question to you is: If Red Bend**
19 **today were powering ICQ with its vRapid software,**
20 **would you consider Red Bend and Google to be**
21 **competitors within the same market?**
22 A. No, not necessarily.
23 **Q. And that's even though ICQ is in the PC**
24 **market?**
25 A. Yes.

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1 W. CHRISTOPHER BAKEWELL
2 **Q. And why is that?**
3 A. Because I would need to know more about
4 the materiality of that use of ICQ, economic
5 materiality of that. I've seen no evidence to
6 suggest that there is any economic materiality to
7 such a hypothetical situation.
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1 W. CHRISTOPHER BAKEWELL
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9 Q. In Paragraph 32, was the word
10 "remarkably" there your word?
11 A. Yes.
12 Q. You originated that word to put it in
13 that paragraph?
14 A. I did.
15 Q. Paragraph 35 – I'm sorry,
16 Paragraph 34. The first sentence you italicize
17 "likely." Why did you do that?
18 A. Because I was contrasting it with the
19 other potential word that could fit in there.
20 Well, potentially you could remove it. Will cease
21 or have ceased payment of royalties.
22 And the second sentence really relates
23 to that word. It says: "Red Bend hasn't
24 identified a specific customer who ceased paying
25 fees or intends to cease to pay."

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1 W. CHRISTOPHER BAKEWELL
2 And that's consistent with what
3 Mr. Salinger said.
4 Q. Is it your view that, assuming it's the
5 case that licensees will likely cease payment,
6 that is insufficient, in your mind, to qualify for
7 irreparable harm?
8 MS. MANNING: Objection; calls for a
9 legal conclusion.
10 THE WITNESS: Well, again, what
11 qualifies for irreparable harm is something you
12 should ask somebody else about because I'm not a
13 lawyer. What I evaluated were the three factors
14 that you asserted to support your claim of
15 irreparable harm.
16 BY MR. SCHEINFELD:
17 Q. I'm just asking your understanding.
18 A. We've gone back and forth with this. I
19 think you've asked me this question a bunch of
20 times today, and I've answered the question the
21 same way.
22 Q. Well, if your answer is the same for
23 this sentence, then so be it.
24 A. Now you have lost me. You pointed to
25 the sentence –

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1 W. CHRISTOPHER BAKEWELL
2 Q. The first sentence in 34 regarding the
3 use of the word "likely."
4 A. You have lost me. Now you're asking a
5 different stream of questions.
6 Q. No. I'm asking whether or not you
7 italicized the word "likely" because you thought
8 that was insufficient and that Red Bend had to
9 actually show that a customer ceased payment
10 instead of stating that it's likely to cease
11 payment.
12 A. No.
13 MS. MANNING: Same objection.
14 THE WITNESS: I answered that question
15 already why I italicized "likely," because there
16 is a sentence that followed that related to that
17 word. And there is testimony that follows that
18 relates to that particular word.
19 BY MR. SCHEINFELD:
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1 W. CHRISTOPHER BAKEWELL
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18 MR. SCHEINFELD: I'm about to go on to
19 another topic. I'm just wondering how much time
20 on the tape and how you're feeling before I go on
21 to the next topic. When do you want to break?
22 THE WITNESS: I don't think you really
23 were interested in how I'm feeling but whether I
24 want a break. I can understand.
25 (Discussion off the written record.)

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1 W. CHRISTOPHER BAKEWELL
2 THE VIDEOGRAPHER: We are going off the
3 record. The time is 4:29 p.m.
4 (A recess was then taken.)
5 THE VIDEOGRAPHER: We are back on the
6 record. The time is 4:38 p.m.
7 BY MR. SCHEINFELD:
8 **Q. In your review of the evidence and the**
9 **facts you've seen, has Google gained any goodwill**
10 **by its posting of Courgette?**
11 MS. MANNING: Objection. It's outside
12 the scope of his report.
13 THE WITNESS: What do you mean by
14 "goodwill"?
15 BY MR. SCHEINFELD:
16 **Q. Well, I'm using your term that you used**
17 **earlier today.**
18 A. What I said earlier today is that you
19 have to tell me what you mean by goodwill because
20 it has a bunch of different definitions.
21 **Q. Well, okay. The record is the record.**
22 **Has Google gained any -- Well, strike**
23 **that.**
24 **Has Google's reputation been enhanced**
25 **by its posting of Courgette?**

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1 W. CHRISTOPHER BAKEWELL
2 MS. MANNING: Same objection.
3 THE WITNESS: I don't know. I haven't
4 seen any evidence of that either way. And I
5 didn't undertake to analyze that. My analysis is
6 described in my report.
7 BY MR. SCHEINFELD:
8 **Q. Assuming Google's reputation has been**
9 **enhanced by the posting of Courgette, would you**
10 **consider that as a factor in determining whether**
11 **or not Red Bend's goodwill has been affected by**
12 **Google's posting of Courgette?**
13 A. I would be interested in that. I
14 wouldn't make the assumption that you seem to be
15 implying that if one company's goodwill goes up
16 that another's goes down. In fact, it's
17 completely plausible, especially in Google's
18 instance, given their commitment to open source,
19 that if their goodwill goes up, other companies'
20 goodwill would go up.
21 **Q. And how are you using the term**
22 **"goodwill" in that answer?**
23 A. I'm using it completely conceptually.
24 I'm not using any of the precise definitions that
25 I suggested we need to use.

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1 W. CHRISTOPHER BAKEWELL
2 MR. SCHEINFELD: Let's mark as the next
3 exhibit, 51 I think it is, Google 17351.
4 (Exhibit 51 marked for identification and
5 attached hereto.)
6 BY MR. SCHEINFELD:
7 **Q. Have you seen this document before?**
8 A. Well, it's not on my documents reviewed
9 list. I need to take some time to read it.
10 (Witness peruses document.)
11 No, I don't think that I've seen this
12 before.
13
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16
17 **Q. Do you know who Stephen Adams is at**
18 **Google?**
19 A. No, I don't know his job title.
20 **Q. And you've never spoken with him**
21 **before, correct?**
22 A. No, sir, I haven't.
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1 W. CHRISTOPHER BAKEWELL
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R E D A C T E D
W. CHRISTOPHER BAKEWELL - 3/12/2010

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Page 220	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	W. CHRISTOPHER BAKEWELL
Page 219	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	W. CHRISTOPHER BAKEWELL
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W. CHRISTOPHER BAKEWELL - 3/12/2010

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57 (Pages 222 to 225)

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1 W. CHRISTOPHER BAKEWELL
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4 **Q. In this e-mail.**
5 A. I generally recall seeing documents
6 that had positive remarks about Courgette. And I
7 recall seeing a lot of documents both inside and
8 outside of this case that had positive comments
9 about Google.
10 **Q. Regarding the positive remarks about**
11 **Courgette, would you consider those comments as**
12 **enhancing Google's reputation?**
13 A. No, not necessarily.
14 **Q. And you would not consider the positive**
15 **remarks about Courgette that Google has been**
16 **receiving a factor in determining whether or not**
17 **Red Bend's goodwill has been affected?**
18 A. No. We talked about -- You asked me
19 questions about that earlier. The two are not
20 necessarily related to one another. I mean, there
21 could be -- As I've said, there could be "a rising
22 tide lifts all boats" type of effect.
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1 W. CHRISTOPHER BAKEWELL
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6 **Q. So you don't view that type of comment**
7 **as enhancing Google's reputation at the expense of**
8 **Red Bend, assuming Red Bend is the first to**
9 **generate the delta update that's covered by the**
10 **'552 patent?**
11 A. No, you have to ask me to make some
12 other assumptions. And even then, a few blog
13 posts are not something that I would consider to
14 be economic evidence.
15 **Q. And you would need to see some economic**
16 **evidence for you to conclude that Red Bend's**
17 **reputation has been negatively affected?**
18 A. I think that I can agree with that.
19 Your question is a bit of a non sequitur. It
20 didn't really follow. I don't know if you
21 intended that. But I think I could agree with
22 that statement just conceptually.
23 **Q. On Paragraph 44 of your declaration.**
24 A. Yes.
25 **Q. Your last sentence states: "Contrary**

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1 W. CHRISTOPHER BAKEWELL
2 to Red Bend's position in the PI memo, Google
3 source code cannot be broadly equated with the
4 claims of the '552 patent."
5 **Could you explain what you mean by**
6 **that?**
7 A. What I mean is they're not necessarily
8 the same thing.
9 **Q. Well, in generating your declaration,**
10 **you assumed that -- I thought you testified**
11 **earlier that you assumed that the Courgette**
12 **software infringed the '552 patent.**
13 A. That's right, for certain components of
14 my analysis. We discussed that.
15 **Q. Right. Does it matter to your analysis**
16 **that Google has published its own source code for**
17 **Courgette and not Red Bend's?**
18 A. I haven't considered the latter
19 scenario.
20 **Q. And when you testified that Google**
21 **source code and the claims of the '552 patent are**
22 **not necessarily the same thing, is that because**
23 **one is a patent and one is source code? I'm**
24 **trying to understand your testimony.**
25 A. It's because it's conceivable that a

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1 W. CHRISTOPHER BAKEWELL
2 noninfringing alternative could be generated by
3 changing only certain lines of the source code.
4 **Q. What's your basis for that statement?**
5 A. I just said it's conceivable.
6 **Q. You don't know one way or the other?**
7 A. At this point, I don't know. I think
8 that's a question for a technical expert.
9 MR. SCHEINFELD: I have no further
10 questions at this time.
11 MS. MANNING: I have no questions for
12 the witness.
13 MR. SCHEINFELD: Okay. You're free.
14 THE VIDEOGRAPHER: This marks the end
15 of the deposition. We are going off the record.
16 The time is 5:09 p.m.
17 (Whereupon, the deposition was concluded at
18 5:09 p.m.)
19
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1 W. CHRISTOPHER BAKEWELL
2 WITNESS CERTIFICATE
3
4 I, W. CHRISTOPHER BAKEWELL, have read or have had
5 the foregoing testimony read to me and hereby certify
6 that it is a true and correct transcription of my
7 testimony with the exception of any attached
8 corrections or changes.
9
10
11 W. CHRISTOPHER BAKEWELL
12 No corrections
13 Correction sheet(s) enclosed
14
15 SUBSCRIBED AND SWORN TO BEFORE ME, the
16 undersigned authority, by the witness, W. CHRISTOPHER
17 BAKEWELL, on this the ____ day of
18 _____,
19 _____
20
21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF _____
23 My Commission Expires: _____
24
25

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1 W. CHRISTOPHER BAKEWELL
2 CHANGES AND SIGNATURE
3 PAGE LINE CHANGE REASON
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24 _____
25 DATE SIGNATURE

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1 W. CHRISTOPHER BAKEWELL
2 REPORTER'S CERTIFICATE
3
4 I, the undersigned Registered Professional
5 Reporter and Notary Public, do hereby certify that
6 W. CHRISTOPHER BAKEWELL, after having been first
7 duly sworn by me to testify to the truth, did
8 testify as set forth in the foregoing pages, that
9 the testimony was reported by me in stenotype and
10 transcribed under my personal direction and
11 supervision, and is a true and correct transcript.
12 I further certify that I am not of
13 counsel, not related to counsel or the parties
14 hereto, and not in any way interested in the outcome
15 of this matter.
16 SUBSCRIBED AND SWORN TO under my hand and
17 seal this 15th day of March, 2010.
18
19 _____
20 JOHN L. HARMONSON, RPR
21 Notary Public in and for
22 the District of Columbia
23 My Commission Expires: 10/14/2010
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25

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1 W. CHRISTOPHER BAKEWELL
2 CHANGES AND SIGNATURE
3 PAGE LINE CHANGE REASON
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