

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

WESTERNGECO LLC,)
)
) Petitioner,)
)
) v.) No. 16-1011
)
) ION GEOPHYSICAL CORPORATION,)
)
) Respondent.)

Pages: 1 through 67

Place: Washington, D.C.

Date: April 16, 2018

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrccourtreporters.com

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

WESTERNGECO LLC,)
 Petitioner,)
 v.) No. 16-1011
 ION GEOPHYSICAL CORPORATION,)
 Respondent.)

- - - - -

Washington, D.C.

Monday, April 16, 2018

The above-entitled matter came on for oral
 argument before the Supreme Court of the United
 States at 10:57 a.m.

APPEARANCES:

PAUL D. CLEMENT, ESQ. Washington, D.C.; on behalf
 of the Petitioner.

ZACHARY D. TRIPP, Assistant to the Solicitor General,
 Department of Justice, Washington, D.C.; on
 behalf of the United States, as amicus curiae,
 in support of the Petitioner.

KANNON K. SHANMUGAM, ESQ., Washington, D.C.; on
 behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	PAUL D. CLEMENT, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	ZACHARY D. TRIPP, ESQ.	
7	On behalf of the United States	
8	in support of the Petitioner	20
9	ORAL ARGUMENT OF:	
10	KANNON K. SHANMUGAM, ESQ.	
11	On behalf of the Respondent	33
12	REBUTTAL ARGUMENT OF:	
13	PAUL D. CLEMENT, ESQ.	
14	On behalf of the Petitioner	64
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (10:57 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument next in Case 16-1011, WesternGeco
5 versus ION Geophysical.

6 Mr. Clement.

7 ORAL ARGUMENT OF PAUL D. CLEMENT

8 ON BEHALF OF THE PETITIONER

9 MR. CLEMENT: Mr. Chief Justice, and
10 may it please the Court:

11 Congress enacted Section 271(f) to
12 address this Court's decision in Deepsouth and
13 to prohibit a specific domestic act of
14 infringement with foreseeable foreign
15 consequences. Congress targeted a specific
16 domestic act, the supply of components from the
17 United States, with a particular intent, that
18 the components be combined abroad in a way
19 that, if it happened in the United States,
20 would constitute infringement.

21 Congress provided a cause of action
22 for the domestic infringement and provided a
23 damages remedy that guaranteed the victim of
24 the infringement damages adequate to compensate
25 for the infringement.

1 The plain text of the Patent Act,
2 therefore, gives the victim of Section 271(f)
3 infringement an entitlement to adequate
4 damages, including lost profits. And the
5 presumption against extraterritoriality raises
6 no obstacle to that commonsense result.

7 There's no case of this Court that
8 applies the presumption to a damages provision,
9 and there's no case of this Court that applies
10 the presumption in a case of domestic injury
11 caused by domestic consequence -- conduct,
12 rather.

13 JUSTICE GINSBURG: Except there's one
14 feature of this that's -- I mean, it's one --
15 Congress, in 271(f), wanted the infringer to be
16 liable. And that's -- that's -- there's no
17 doubt about that.

18 But all of the activity occurs -- not
19 only does the activity occur abroad sweeping
20 the high seas, but the one who is causing the
21 injury is not the infringer; it's the customer
22 of the infringer. Do we have another situation
23 like that where -- where you can collect from
24 the infringer on the basis of activity by the
25 customer?

1 MR. CLEMENT: We -- we do, Justice
2 Ginsburg. The -- the general rule in a
3 domestic context is that you can sue the party
4 who's guilty of contributory infringement and
5 get lost profits for what they did, the
6 foreseeable consequences of what they did, even
7 if that's primarily damages that are caused by
8 their downstream direct infringer.

9 So I think it's helpful actually to
10 think about if this whole case happened on Lake
11 Michigan instead of on the high seas, we could
12 sue ION and only ION, not its customers who
13 practice the patent on Lake Michigan, and we
14 could recover our lost profits damages.

15 Now it's true that, in the domestic
16 case, the parties -- ION's customers who were
17 practicing the patent on Lake Michigan would
18 also be guilty of direct infringement. And
19 that's one difference. But that's exactly the
20 difference that Congress intended with Section
21 271(f).

22 They specifically created a form of
23 either contributory or inducement liability,
24 understanding that what was being induced was
25 the combination of components outside the

1 United States in a way that would constitute
2 infringement in the United States.

3 Now I do think it's important to
4 recognize, though, that what is the infringing
5 conduct is what ION does in the United States.
6 What the foreign combiners of the components do
7 on the high seas is not infringement of a U.S.
8 patent at all, which is why I think the
9 presumption against extraterritoriality is
10 really a misfit here.

11 And you have to resort to the general
12 principle, which is, in U.S. law, if somebody's
13 injured domestically by domestic conduct,
14 there's no rule that says that, in order to
15 calculate the compensatory damages to make them
16 whole, if you have to include in your
17 calculation some foreign thing, there's no rule
18 against that.

19 If I run over a French citizen on my
20 way to court this morning, I can't say, well, I
21 don't have to pay your hospital bills if
22 they're incurred in France because that would
23 be foreign and the presumption against
24 extraterritoriality --

25 JUSTICE GORSUCH: Well, Mr. -- Mr.

1 Clement, though, the difference I wonder -- and
2 I don't know, but I wonder -- might be this:
3 That, as Justice Ginsburg indicated under
4 271(f), fine, you get royalties because it's as
5 if the -- the bits were manufactured here. But
6 you don't have a -- a monopoly, a lawful
7 monopoly, to use this technology abroad. That
8 doesn't belong to you. That's outside the
9 patent laws.

10 And so why would you get lost profits
11 by -- because of a third party's use entirely
12 abroad? That -- the lost profits aspect of the
13 damages is the bit that concerns me. And the
14 difference with the common law rule, for
15 example, might be because of the patent law's
16 territorial limits.

17 MR. CLEMENT: I don't think so,
18 Justice Gorsuch, and here's how I'd respond,
19 which is we're not collecting damages for the
20 combination itself. What we're doing is we are
21 collecting damages for the foreseeable
22 consequences of the domestic act of
23 infringement. And --

24 JUSTICE GORSUCH: Well, let's -- let's
25 just segregate out again the -- the royalties,

1 put those aside, okay?

2 MR. CLEMENT: Can -- can I --

3 JUSTICE GORSUCH: And just -- just
4 focus on the profits for me, okay?

5 MR. CLEMENT: Okay.

6 JUSTICE GORSUCH: And they arise from
7 a third party's use over which you have no
8 lawful monopoly. Your patent doesn't run to
9 the high seas, and so your uses aren't
10 protected there. So help me out with that
11 portion of the damages alone.

12 MR. CLEMENT: Sure. The -- the reason
13 that we can collect those damages, even though
14 that -- that conduct is not proscribed by a
15 U.S. patent, is because it is the reasonably
16 foreseeable result of domestic infringement.
17 And so it's no different from what this Court
18 faced in Dowagiac and Goulds, two century-old
19 cases, where what happened -- if --

20 JUSTICE GORSUCH: This Court -- this
21 --

22 MR. CLEMENT: And I see
23 skepticism creeping --

24 JUSTICE GORSUCH: All right. Well,
25 here's the -- here's the degree of my

1 skepticism. I -- I have yet to see a case from
2 this Court at least where -- even under 271(a)
3 where the manufacture entirely takes place
4 here, third-party uses abroad give rise to lost
5 profit damages.

6 MR. CLEMENT: With all due respect,
7 Your Honor, that's Goulds. In Goulds, the
8 Canadian sales are allowed as part of the
9 compensation for the domestic making --

10 JUSTICE GORSUCH: In passing. The
11 Court doesn't even address the issue. We -- we
12 use the word "Canadian." That's all we've got.
13 So what --

14 MR. CLEMENT: But in Dowagiac, when
15 somebody comes into court and says, I can
16 collect my damages against the Canadian
17 wholesaler, because of Goulds, this Court says:
18 Not so fast.

19 JUSTICE GORSUCH: Right.

20 MR. CLEMENT: Because you're suing a
21 wholesaler who did nothing in the United
22 States, nothing infringing, and they
23 specifically say that Goulds is different
24 because there the party, the plaintiff -- the
25 patent holder, sued the right party, the party

1 who made the article in the United States and
2 then was guilty of infringement.

3 If I could get to your point about
4 reasonable royalty, though, I think it's very
5 important to show why that's not a way out
6 here, and my friend's concession on page 35 of
7 his brief, that you can take into account the
8 expected foreign use in calculating the rate
9 for the royalty, is a very damaging concession,
10 because reasonable royalties are not some
11 alternative to damages adequate to compensate
12 for the infringement. This is not like the
13 copyright context, where statutory damages are
14 an alternative to actual damages.

15 Reasonable royalties are just a way of
16 calculating adequate damages. Indeed, they're
17 the preferred method when you have a patent
18 holder who voluntarily licenses the technology
19 to third parties.

20 Then you say: Okay, you voluntarily
21 licensed it for 20 cents, the bit. That's what
22 we're going to impose as the reasonable royalty
23 to compensate you for the infringement.

24 JUSTICE BREYER: All that will
25 happen -- imagine you have the converse case.

1 I mean, if we can have a law like this, so can
2 every other country. And now an American firm
3 makes a part in some other country, all right?
4 And that happens more and more. They have
5 laboratories all over the world. They make a
6 part. They bring it back here. It doesn't
7 violate the patent law of the other -- of our
8 country, not at all. They sue to sell it all
9 over the place.

10 And suddenly a foreign patent holder,
11 in, say, Switzerland, had -- takes this
12 American company and obtains enormous profits
13 on the basis of the sales in the United States,
14 where those sales do not violate American law.

15 I mean, suppose 10 countries do this.
16 I try to think about that and I see chaos or
17 confusion. And at that point, I think part of
18 comity is, what happens if everybody does it?
19 And then I become uncertain about whether
20 there's no place for our concern with what
21 happens when we apply American law abroad.

22 MR. CLEMENT: Well, a couple --

23 JUSTICE BREYER: With effects abroad.

24 MR. CLEMENT: A couple of points,
25 Justice Breyer. First of all, this has been

1 the rule for basically 100 years.

2 JUSTICE BREYER: I know. I've read
3 the cases and I've read the -- both sides and
4 -- and I think you have an excellent case. And
5 they also point out that it's simply a
6 different situation or it's just passing and
7 they did it as -- you've read those too. Okay.

8 So I -- I -- I -- I -- you get a plus
9 for that, in my mind, and -- but not a total
10 plus because they get a plus too. All right.

11 So -- so I -- I -- I accept the
12 argument, but I think I know the argument. Is
13 there anything else?

14 MR. CLEMENT: The other thing is, I
15 mean, I -- I would say, you know, I get a
16 couple of pluses because this has also been the
17 rule --

18 (Laughter.)

19 MR. CLEMENT: This is -- but this has
20 also been the rule --

21 JUSTICE BREYER: Yes, yes.

22 MR. CLEMENT: -- in the copyright
23 context. And --

24 JUSTICE BREYER: Yes.

25 MR. CLEMENT: -- the world hasn't

1 ended in the copyright context.

2 JUSTICE BREYER: These --

3 MR. CLEMENT: And I think the key is,
4 here's the key, which is in all of these cases
5 what you need to have, before you can have any
6 of this liability, is a determination by the
7 legislature that some domestic act of
8 infringement is sufficiently serious that we're
9 going to provide full compensation, even if
10 that has some foreseeable increase abroad.

11 And if that creates some situation
12 where some country has a very idiosyncratic
13 view of what constitutes infringement, then
14 maybe governments --

15 JUSTICE BREYER: It's not
16 idiosyncratic. We cover, for example, computer
17 programs. The Europeans don't.

18 MR. CLEMENT: But --

19 JUSTICE BREYER: I mean, there --
20 there are different views all over the world.

21 Now what's bothering me are not the
22 cases, but I can't find that they are in your
23 favor 100 percent. So let's assume that I'm
24 right, that they're not clearly on your side.
25 They're -- they may be open.

1 What's bothering me is the practical
2 problem that I brought up before of what
3 happens in respect to third-party behavior
4 where they are not violating the law and
5 damages are here, are calculated on the basis
6 of that. What happens if 10 countries do that,
7 if 20 countries do that?

8 I see three possible ways of trying to
9 deal with the problem. One way is what they
10 want. Another way is through the notion of
11 proximate cause, because there's a D.C. case,
12 after Empagran, that takes that route. And
13 there may be a -- a -- a third route. I don't
14 know.

15 I'm posing a practical problem and
16 asking you what, if anything, you want to
17 respond with.

18 MR. CLEMENT: I want to respond with
19 two things, Your Honor: First of all is, if I
20 understand the concern to be double damages, I
21 think there are ways --

22 JUSTICE BREYER: No, it's not double
23 damages. It is the chaos that would ensue if
24 10 countries have the same rule that you are
25 advocating.

1 MR. CLEMENT: With all due respect,
2 there would be no chaos. And that is my
3 principal response. And we would have seen
4 chaos in some context if this were really a
5 problem.

6 And the reason we don't see chaos is
7 because every country, in order for there to be
8 the domestic act of infringement, has to say,
9 look, there's something about this that we
10 really don't want to happen in the United
11 States, and, if it happens in the United
12 States, we want to provide damages that make
13 the victim whole.

14 And I think it's a little odd to think
15 of every country doing this because my friend
16 on the other side concedes that you can have an
17 injunctive remedy to prohibit this kind of
18 domestic supply. And if you got the injunctive
19 remedy, it wouldn't happen at all. These
20 foreign combinations would not have happened.

21 And so the principle of damages that's
22 been around in the common law forever, and
23 hasn't caused international friction, is
24 there's no special rule when somebody injures
25 somebody domestically that says you can't

1 possibly look at any foreign evidence in order
2 to evaluate what would it take to put the party
3 back in the position they were.

4 I mean, at some level, this case is
5 pretty simple. Because of ION's domestic act
6 of infringement, my client has \$90 million less
7 in its wallet in Houston than it otherwise
8 would have if they had obeyed the law.

9 And there's nothing in the presumption
10 of extraterritoriality or concerns about
11 comity. I do think it is telling that, unlike
12 Empagran, unlike Kiobel, unlike many of this --
13 unlike Morrison, unlike many of these Court's
14 cases, there are no foreign governments filing
15 briefs here telling you, boy, would this be a
16 problem if this happens.

17 And I think that's, A, because it's
18 not a problem. And in some ways, I mean, it
19 would be more of a problem if the rule were the
20 other way. I think you would have more comity.

21 I mean, if you were to tell me that if
22 I hit the French Ambassador with my car in
23 Philadelphia that I'd pay less in damages than
24 I otherwise would because he's French and he's
25 probably going to have his medical bills paid

1 by a French hospital, I would say: I don't
2 think the French are going to be very pleased
3 about that.

4 I think they would think, no, there is
5 a domestic injury here and you compensate it
6 and you take the victim the way you find it,
7 which is the other problem with ION's
8 proposition here.

9 At times in their brief they seem to
10 say, if only my client had a different business
11 model, then maybe we could collect our lost
12 profit damages.

13 JUSTICE GORSUCH: I -- I -- I hear
14 that, but -- but the -- to the extent we're
15 talking about the injury here and the poor
16 French Ambassador, I -- I get that we're --
17 we're supposed to treat the manufacturer as if
18 it took place here, but how do we pretend that
19 the use on the high seas took place in Lake
20 Michigan?

21 That's where I'm struggling and I -- I
22 could still use your help.

23 MR. CLEMENT: So --

24 JUSTICE GORSUCH: I -- the high seas
25 and Lake Michigan are -- are just not the same

1 to me.

2 MR. CLEMENT: Well, two things, Your
3 Honor: One is, well, I think Congress made it
4 about as clear as it could in 271(f) that it
5 wanted you to treat the infringement on the
6 high seas as if it took place on Lake Michigan.

7 The second thing I would say, though,
8 is it just doesn't matter whether some action
9 by third parties that exacerbates damage is
10 independently lawful or unlawful.

11 I mean, if in hitting the French
12 Ambassador there is then an ambulance service
13 that takes the French Ambassador to the most
14 expensive hospital --

15 JUSTICE GORSUCH: Help -- help -- help
16 me out with just the language of the statute.
17 You say it's obvious from the language of the
18 statute.

19 What -- what -- what would you point
20 me to? What's your best textual argument to
21 show me that the -- the use on the high seas is
22 to be treated as if it took place in Lake
23 Michigan?

24 MR. CLEMENT: Because the violator of
25 271(f) is liable for either contributory or

1 inducing infringement, whether it's (f)(1) or
2 (f)(2), if they induce a combination that, if
3 the combination occurred in the United States,
4 would violate the patent laws here.

5 So, as the Court said in *Limelight*,
6 you effectively have a contributory
7 constructive infringement. You're supposed to
8 treat that foreign infringement, even though,
9 for reasons of comity, we're not making the
10 foreign combination itself unlawful, we're
11 supposed to treat the domestic infringer just
12 like they induced a domestic act of
13 infringement.

14 Of course, it doesn't stop there. I
15 mean, if you look at 281, which is the analog
16 of the cause of action issue at *RJR*, it says
17 for the infringement.

18 If you look at the 284, the provision
19 my friend wants you to look at and nothing
20 else, it says damages adequate to compensate
21 for the infringement.

22 There's no principle --

23 JUSTICE GINSBURG: What -- what about
24 -- what about proximate cause? Wouldn't you
25 have to establish at least that the reason that

1 -- that you have -- that the sales that you
2 lost to the foreign, whatever the people who
3 sweep the high seas, that you would have gotten
4 those contracts if they didn't?

5 MR. CLEMENT: Absolutely. We have to
6 satisfy proximate cause. It provides
7 sufficient protection here. It's one way in
8 which I think 271(a) and 271(f) infringement is
9 different, because in the -- in the mine-run
10 case of 271(f) infringement, it's going to be
11 very easy to show damages that are reasonably
12 foreseeable from the foreign combination
13 because, in order to be liable at all, you have
14 to intend or induce that very foreign
15 combination.

16 If I could reserve my time.

17 JUSTICE SOTOMAYOR: So --

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 Mr. Tripp.

21 ORAL ARGUMENT OF ZACHARY D. TRIPP

22 ON BEHALF OF THE UNITED STATES, AS AMICUS

23 CURIAE, IN SUPPORT OF THE PETITIONER

24 MR. TRIPP: Mr. Chief Justice, and may
25 it please the Court:

1 I just have a few points I'd like to
2 make in follow-up to that. Of course, we're
3 asking the Court to reject the categorical rule
4 that a patentee can never be awarded damages
5 like these.

6 The Patent Act provides for damages
7 that are adequate to compensate for the
8 infringement, not damages that leave the victim
9 worse off than it would have been if the
10 infringement had never occurred.

11 If I could turn to the comity point
12 and the international relations point that
13 there were questions about, we're here as the
14 United States and we are supporting Petitioner.

15 The rule that we're advocating of full
16 compensation is already the rule that applies
17 basically everywhere else in U.S. law, in tort,
18 in contract, in copyright, that this Court
19 previously assumed applied in patent law as
20 well, and it hasn't given rise to any
21 significant foreign relations problems in -- in
22 any of those areas. And -- and we don't think
23 that there's any reason to believe that it
24 would here.

25 And I think one important piece of

1 that and one of the ways this is different for
2 actually regulating the conduct on the high
3 seas is that, if -- if U.S. law was actually
4 regulating the third parties on the high seas,
5 you'd have a different set of defendants.

6 The customers who actually were -- did
7 -- did these surveys, they would be here right
8 now before -- before the Court, and they're
9 not.

10 The only --

11 JUSTICE BREYER: Then maybe this is an
12 easy case, but what's in the back of my mind, I
13 reverse the idea, see, France has this law that
14 you want here, right? Joe Smith goes to France
15 one day and he makes a tiny particle, which it
16 turns out violates somebody else's French
17 patent. He ships it back to the United States,
18 where it forms a very small part of a very
19 large and valuable gizmo. And all of a sudden,
20 we discover that he's paying the entire profit
21 of the entire gizmo industry to some French
22 company that had a small patent on a small
23 part.

24 Now all I have to do is generalize
25 from that and I think, my God, we have a lot of

1 problems here. Now there should be some
2 principle in law that cuts that off so my
3 horrible example becomes just what you think it
4 is, a horrible example with no practical bite.

5 MR. TRIPP: Yes --

6 JUSTICE BREYER: I'm looking for that
7 principle.

8 MR. TRIPP: So I think there's two
9 pieces to that. I think one is that (f) is, I
10 think, narrower than you're describing in your
11 hypothetical. It doesn't go that far. It
12 reaches conduct that is basically tantamount to
13 actually just making the thing in -- in the
14 United States and then exporting it. This only
15 reaches the supply of all or a substantial
16 portion of the components, or a component that
17 is especially designed and has no other
18 purpose, other -- other than for -- for use in
19 the invention. And, of course, you need to do
20 it with intent.

21 And then the other -- the other
22 principle that cuts off -- and I recognize the
23 -- the intuition that there may be situations
24 where it seems like the damages are running too
25 far afield from the wrongful conduct that

1 happened in -- either in the United States or
2 in France, in the hypothetical. All that we're
3 saying is the right way to approach that
4 problem is with the doctrines of
5 causation-in-fact and proximate cause that are
6 tailor-made to answer those kinds of questions.

7 JUSTICE BREYER: The D.C. Circuit did
8 that with Empagran follow-up in -- in a case
9 which you may not have read. Tell me if you
10 haven't read it; I'll stop.

11 MR. TRIPP: I'm not sure if I have or
12 not. I'm not sure which case you're --

13 JUSTICE BREYER: Well, they're --
14 they're using proximate cause to try to deal
15 with this. Does that ring a bell? Forget it.

16 MR. TRIPP: We -- so we think profit,
17 like as in an ordinary tort case in -- in the
18 French tourist hypothetical, in order for her
19 to prove -- obtain recovery of lost wages, she
20 needs to prove that the lost wages were the
21 proximate cause -- were proximately caused by
22 the underlying tort. But her ability to
23 recover those wages does not depend on whether
24 she would have earned them in Florida or in
25 France because that is totally irrelevant to

1 the question at the damages stage, which is how
2 big an award does the court need to give to the
3 victim to compensate her, to get her back into
4 the position that she would have been if that
5 tort had never occurred.

6 JUSTICE SOTOMAYOR: Well, you do --
7 you do have to prove, don't you, that -- that
8 this company would have, in fact, made that
9 sale abroad? What happens in a situation where
10 you need a license from a foreign government
11 and there's no evidence that you will
12 necessarily get that license?

13 MR. TRIPP: Well, I think --

14 JUSTICE SOTOMAYOR: Isn't that too
15 attenuated then?

16 MR. TRIPP: It may well be, and I
17 think that gets to an important point, which
18 actually in -- in patent cases, it's quite
19 difficult to prove even causation-in-fact for
20 lost profits. If you look at the -- the
21 instructions in this case on -- even just on
22 causation-in-fact, they're in the JA from --

23 JUSTICE SOTOMAYOR: I have.

24 MR. TRIPP: Yeah, I mean, this is --
25 this is quite detailed, and so you have -- you

1 have that. And then you have the proximate
2 cause overlay on top of it.

3 I think the -- the other place that I
4 think is helpful to look at this is Professor
5 Yelderman's amicus brief, which does a nice job
6 of walking through the doctrine both of
7 causation-in-fact and proximate cause in the
8 federal circuit when dealing with problems that
9 are analogous to these. These are a robust
10 check.

11 But more than anything, what we're
12 saying is that the right way to approach it is
13 with that -- through that lens and not through
14 this ham-handed rule that basically, as soon as
15 you get across the international border, the
16 causal chain is automatically severed, no
17 matter what, no matter how clear the causal
18 link is. That rule, frankly, just -- just
19 doesn't make any sense, and we're asking the
20 Court to reject it.

21 JUSTICE KAGAN: Mr. Tripp, may I ask
22 about your theory for getting to that result,
23 which is different from Mr. Clement's theories,
24 and there are quite a number of theories over
25 on that side of the table. And some seem to

1 emphasize 271(f) and how that came to be and
2 what its particular terms are. Some seem to
3 emphasize that this is a damages provision that
4 we're talking about.

5 Why did you pick the one you picked
6 and why do you think it's better than the one
7 Mr. -- than the ones Mr. Clement picked, if you
8 still do?

9 MR. TRIPP: Yeah, we absolutely do.
10 We're asking the rule -- affirmatively to adopt
11 this rule as a matter of Section 284, the
12 general damages provision that applies all
13 throughout the Patent Act. It applies
14 basically everywhere in American law and should
15 apply basically everywhere in the Patent Act as
16 well, and not just in the rare cases that come
17 up under 271(f).

18 I think one piece of that is that
19 really the point of (f) is to treat the supply
20 of components for assembly abroad the same way
21 as just making it here and then exporting it.
22 But that's an (a) case, and we think the rule
23 of damages should be the same in both of them.

24 And then I think in terms of our --
25 our theory, I think our -- our -- our principal

1 submission is that when -- once you get to
2 compensatory damages, right, you have a
3 plaintiff that is standing in front of the
4 court and has already proven its case under
5 U.S. law. It's proven that it's been wronged
6 by the defendant. Right? And then all the
7 court is trying to do is to compensate the
8 victim, to get the victim back into the
9 position that it would have been in if that
10 legal wrong had never occurred.

11 And we think the focus of that inquiry
12 of compensatory damages, that's always domestic
13 because the victim is just standing right there
14 in front of the U.S. court.

15 JUSTICE GORSUCH: So -- so just to
16 follow up on this, would you -- would you agree
17 that the -- that the other alternative creates
18 a potential incongruity? Because, if we were
19 to rely on 271(f), we might be in a situation
20 where we're permitting greater damages for
21 someone who only partially manufactured, only
22 partially completed the -- the patent
23 infringement in this country, as compared to
24 someone under (a), who did the entire act here.

25 MR. TRIPP: Yes, I -- I think that's

1 right, and I think actually the -- the sort of
2 the quintessential, the easiest case are these
3 (a) cases that was Goulds and as this Court
4 understood it in Dowagiac, which is that there
5 was a manufacturer here followed by a sale
6 abroad, right. A manufacturer for export, I
7 think, is the easiest example of this, we use
8 it in our brief, is the -- the Acme and Copycat
9 example.

10 But, of course, it could also arise in
11 (f) cases, and -- and I agree with Petitioner
12 that it's particularly likely to arise in (f)
13 cases because every (f) case has this intent
14 element where you're intending that it will be
15 combined abroad. That happens in some (a)
16 cases but -- but not in all of them.

17 JUSTICE KAGAN: Mr. Clement has
18 another theory, which just says the presumption
19 against territory -- territoriality doesn't
20 apply at all to damages provisions.

21 Is there a real difference between
22 that and what you're saying? I mean, can you
23 imagine a damages provision where you would
24 say, yes, the presumption against
25 territoriality applies and this is an

1 extraterritorial application?

2 MR. TRIPP: So I don't think there's a
3 significant difference between the two. We're
4 talking about compensatory damages here. And I
5 think all that we're saying -- I think you
6 could look at it either way. You would
7 basically get to the same place: Either say
8 that it's inapplicable or apply it and just say
9 that it doesn't change the result.

10 JUSTICE KAGAN: So it's not something
11 special about this damages provision; you're
12 saying as to any damages provision?

13 MR. TRIPP: I -- I think our rule
14 would apply to any general compensatory damages
15 provision. I have not been able to think of
16 any situation where the focus of compensatory
17 damages would be doing anything other than
18 compensating the victim, and we think that is
19 always going to involve a domestic application
20 of the statute. You could come at that and
21 just say that it's inapplicable in that
22 context. I think it basically gets the same
23 results, and we don't -- wouldn't have a
24 problem with that.

25 JUSTICE BREYER: Is there --

1 JUSTICE ALITO: Well, what is the --
2 what is the domestic injury?

3 MR. TRIPP: The -- I mean, the
4 domestic legal wrong here is the infringement
5 for --

6 JUSTICE ALITO: The legal wrong, yeah.

7 MR. TRIPP: Yeah.

8 JUSTICE ALITO: But this is what makes
9 this case difficult, because there's such a gap
10 between the legal injury, which is --

11 MR. TRIPP: Yeah.

12 JUSTICE ALITO: -- ephemeral, and the
13 practical injury, which occurs completely
14 abroad.

15 MR. TRIPP: Yeah, so I think two
16 responses to that. So, first, the patent is a
17 property right, and we often think of the
18 invasion of a property right as -- as being
19 something significant, even if it doesn't have
20 additional tangible harm. But also, more
21 fundamentally, it's quite common to hold a
22 tortfeasor responsible for the harm that it
23 causes when it sets into motion a series of
24 events by which the victim will be -- will be
25 hurt, even if they're not hurt at the time.

1 So, in -- in the French tourist
2 hypothetical that -- that we've been
3 discussing, imagine that what happened was that
4 she brings her car to the shop, the brakes are
5 broken, and the shop doesn't repair the brakes.
6 They tortiously don't do anything and send her
7 back out on the road with a car with no brakes.

8 Of course, she could recover for her
9 lost wages that were -- were caused by that
10 tort, and it would not matter -- if I could
11 just finish the answer to the question -- it --
12 and it would not matter that the tort in a
13 sense didn't hurt her at the time. It set into
14 motion her injury and would be liable for the
15 whole thing.

16 JUSTICE KENNEDY: I -- I had one
17 question the Chief Justice agreed I could ask.

18 Suppose the Petitioner had a foreign
19 subsidiary in the Bahamas and it used that in
20 order to conduct a sweeping operation, so it
21 sells -- it sells the device to the -- to the
22 subsidiary, and the subsidiary then uses it.
23 What -- what result?

24 MR. TRIPP: If the Petitioner under
25 the facts of the case was basically selling the

1 item to itself?

2 JUSTICE KENNEDY: Yes, as a foreign
3 subsidiary.

4 MR. TRIPP: I think maybe in that case
5 it would have difficulty proving lost profits
6 because I'm not sure how big a profit it would
7 get in a sale made to itself.

8 JUSTICE KENNEDY: But then the facts
9 are the same; the subsidiary loses the job
10 because ION does it itself.

11 MR. TRIPP: I -- I think so long as
12 they could prove causation in fact and
13 proximate cause, that -- that if there's
14 infringement here, they're on the hook for the
15 whole thing.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel.

18 Mr. Shanmugam.

19 ORAL ARGUMENT OF KANNON K. SHANMUGAM

20 ON BEHALF OF THE RESPONDENT

21 MR. SHANMUGAM: Thank you, Mr. Chief
22 Justice, and may it please the Court:

23 The presumption against
24 extraterritoriality applies with particular
25 force to the Patent Act. And as the government

1 recognized at least in its brief, the
2 presumption applies independently to remedial
3 provisions as well as substantive ones because
4 remedial provisions can create a similar risk
5 of conflict with foreign law.

6 Now, in our view, this case involves
7 the extraterritorial application of the
8 remedial provision in the Patent Act, Section
9 284, which by its terms has no extraterritorial
10 reach. And while the act of infringement here,
11 all of the parties now agree, was concededly
12 domestic, our submission is that the damages
13 here were, in fact, foreign. And, indeed,
14 Petitioner repeatedly describes those damages
15 as foreign.

16 JUSTICE KENNEDY: Well, suppose there
17 were a different business model and what the
18 Petitioner did was to sell the device to
19 others, rather than to conduct the operation
20 itself. And it's about ready to sell to X, a
21 foreign company, and then ION sells the same
22 device and takes the sale away.

23 Would the Petitioner be entitled to
24 the lost profits from that sale?

25 MR. SHANMUGAM: Yes. The answer would

1 be different in that circumstance because the
2 situs of the injury in that circumstance would
3 be the United States, at least absent any
4 additional facts, because I think you could add
5 facts to alter the analysis.

6 In our view, that hypothetical,
7 Justice Kennedy, is basically the fact pattern
8 of Goulds. And there is an established body of
9 law for determining the situs of the sale of a
10 product and where you are exporting a product
11 from the United States to a foreign country, at
12 least arguably the situs of the sale is the
13 United States. But this case --

14 JUSTICE KENNEDY: But isn't the situs
15 of the contract here? You have the contract to
16 conduct the sweep.

17 MR. SHANMUGAM: So there is
18 importantly no evidence in the record to that
19 effect. In fact, if you take a look at page
20 41A of the Petition Appendix, the federal
21 circuit says that there is no contention that
22 the service contracts were entered into in the
23 United States.

24 The only thing that you have
25 domestically here -- and we all agree that this

1 is true -- is the initial act of infringement.
2 And, indeed, there is an immediate factual
3 injury that takes place at the point of
4 infringement.

5 The patentee at that point could
6 potentially lose sales of a component if the
7 patentee, in fact, sold a competing version of
8 the component. That is not the fact pattern
9 here.

10 And there is also the loss of
11 royalties at that point. And that's where the
12 reasonable royalty remedy comes in to
13 compensate that immediate factual injury.

14 JUSTICE SOTOMAYOR: I'm -- I'm sorry,
15 I didn't think damages were awarded for a
16 hypothetical. They're awarded for what you
17 lose.

18 And since this company didn't sell its
19 products, it only used them, why should it only
20 get the value of a royalty, since that's not
21 its business? Its business was to sell
22 products, to sell its services, your point,
23 abroad or anywhere in the world where it could.
24 And it wasn't going to ship the part. It
25 wasn't going to permit someone to get a

1 royalty, to pay a royalty.

2 MR. SHANMUGAM: Justice Sotomayor,
3 Petitioner, in fact, did get a reasonable
4 royalty, to the tune of \$22 million, which
5 compensates for the act of infringement; that
6 is to say, the initial factual injury from
7 supplying the infringing component from the
8 United States.

9 And that is hypothetical only in the
10 sense that the way a reasonable royalty is
11 calculated, because, obviously, there was no
12 license and no actual royalty, looks at a
13 hypothetical negotiation. It looks at the
14 negotiation that the patentee and the infringer
15 would have conducted for a license for what
16 turns out to be the act of infringement.

17 JUSTICE SOTOMAYOR: Well, if the jury
18 wasn't permitted to find lost profits, because
19 then the royalty might be something different.

20 MR. SHANMUGAM: Well, in fact, in this
21 case, the jury awarded both. They awarded lost
22 profits on top of the reasonable royalty,
23 which, as my friend recognizes, is the
24 traditional default remedy to provide for full
25 compensation.

1 But I do want to address very briefly
2 Petitioner's suggestion in the reply brief and
3 at oral argument that somehow the recognition
4 that the calculation of the royalty could take
5 into account expected foreign use is somehow
6 contrary to our fundamental submission
7 concerning the lost profits damages here.

8 I would refer the Court to Judge
9 Taranto's very thoughtful opinion in the
10 Carnegie Mellon case on this point, that's the
11 opinion that we cite on the page of the brief
12 that Mr. Clement cited, but I think that, in
13 calculating the reasonable royalty, you
14 naturally look to the commercial value of the
15 component that's being supplied from the United
16 States.

17 And engaging in that but-for analysis,
18 of course, one of the things that makes the
19 component lucrative is the fact that ION's
20 customers would value it for its subsequent
21 use. But there you're not taking into account
22 actual foreign use. You're taking into account
23 the expected foreign use as a way of
24 determining the commercial value of the
25 component.

1 JUSTICE KENNEDY: But -- but it seems
2 to me that you're confining the right of the
3 Petitioner to decide how it's going to use its
4 own patent. Isn't it up to the Patent Owner to
5 decide how it's going to capitalize on its
6 patent?

7 MR. SHANMUGAM: The right that is
8 conferred by Section 271(f), Justice Kennedy,
9 is a limited right. We agree with Petitioner
10 and the government that 271(f) was enacted to
11 fill a gap to essentially overrule this Court's
12 holding in *Deepsouth*, but Congress in doing
13 that acted in a restrained and limited fashion,
14 consistent with the traditional territorial
15 scope of the patent laws.

16 As this Court recognized in its
17 opinion in *Microsoft*, Congress acted narrowly
18 to regulate only the act of supply from the
19 United States. This might be a different case
20 if Congress had acted more broadly, if Congress
21 had prohibited the foreign combination, or if
22 Congress had amended Section 284 to make
23 broader damages available.

24 But it's important, I think, to keep
25 in mind that *Deepsouth* itself didn't involve

1 this type of damages. If you go back and look
2 at the Court's opinion in Deepsouth, it is
3 clear that Laitram, the patent holder in that
4 case, was seeking an injunction and it was also
5 seeking lost profits from the lost sales of
6 deveining equipment. But it was not --

7 JUSTICE ALITO: Well, if Congress had
8 prohibited the foreign combination, wouldn't
9 that be the end of the case? Would you still
10 argue that you'd have to analyze whether the
11 damages provision applies extraterritorially?

12 MR. SHANMUGAM: Well, I think you
13 would, Justice Alito, for the reasons given in
14 your opinion for the Court in RJR Nabisco. In
15 other words, the analysis doesn't end simply
16 because the underlying substantive provision
17 has extraterritorial reach. You do have to go
18 on and conduct an independent analysis of the
19 remedial provision.

20 Now I think there would be a question
21 about whether the remedial provision, say,
22 sufficiently incorporates the substantive
23 provision, such that the remedial provision
24 should be read to reach extraterritorially as
25 well. That was the debate between the majority

1 and the dissent in RJR Nabisco.

2 JUSTICE ALITO: Well, there -- there
3 are differences between this case and RJR
4 Nabisco, which I won't go into, but if -- if
5 you have a liability provision that says there
6 is liability for acts that are committed
7 abroad, what sense does it make to say, well,
8 although Congress thinks there should be
9 liability for these acts committed abroad, we
10 have to analyze the -- the remedial provisions
11 separately to see whether they wanted any
12 remedy for these acts that are committed
13 abroad.

14 MR. SHANMUGAM: I do think, Justice
15 Alito, that that was an aspect of the scheme at
16 issue in RICO insofar as, in the first part of
17 the Court's opinion, the Court essentially
18 construed Section 1962 to reach
19 extraterritorially because certain predicate
20 acts reached extraterritorially.

21 But I do, if you'll allow me to
22 briefly --

23 JUSTICE ALITO: Well, just tell me why
24 it makes sense. And forget about RJR Nabisco
25 for a minute.

1 MR. SHANMUGAM: Well, that's --

2 JUSTICE ALITO: Why does that make any
3 sense whatsoever?

4 MR. SHANMUGAM: Well, I think that
5 that actually illustrates why this is an easier
6 case than RJR Nabisco, because what really
7 doesn't make any sense is to conclude that
8 Congress, in regulating only domestic
9 substantive conduct, intended to make foreign
10 damages available as well.

11 And, again, in DeepSouth, this sort of
12 lost profits damages for downstream foreign use
13 was certainly not at issue. Laitram was not
14 seeking to obtain lost profits for the use of
15 deveining equipment.

16 At most, they were seeking lost
17 profits for the lost sales. But, with your
18 leave, let me say just one thing about RJR
19 Nabisco, having been told to forget it. I do
20 want to address just one aspect of it, which is
21 the effort to distinguish it by Petitioner in
22 its reply brief.

23 I think Petitioner attempts to draw a
24 distinction between a provision that merely
25 creates a private right of action on the one

1 hand and a damages provision on the other.

2 But, as you will recall in the latter
3 part of the Court's opinion, the Court
4 addressed Section 1964(c). That provision both
5 creates the private right of action and
6 provides for treble damages. And in the
7 Court's discussion of the risk to comity from
8 that provision, the Court discussed not only
9 the fact that you'd be creating a private right
10 of action in contexts where foreign governments
11 might not do likewise but also cited the risk
12 of treble damages.

13 And although there were no amicus
14 briefs in that case and, indeed, the European
15 Community was a plaintiff in that case, the
16 Court looked back to Empagran and the amicus
17 briefs that were filed in Empagran as support
18 for the proposition that damages provisions, no
19 less than substantive provisions, can give rise
20 to comity concerns. What this Court --

21 JUSTICE BREYER: What are they?

22 MR. SHANMUGAM: Well --

23 JUSTICE BREYER: I mean, that's --
24 that's where I'm -- I'm having trouble to be --
25 actually, to be specific. I can imagine a

1 problem if a large British or French or Swiss
2 company, which makes items sold all over the
3 world, farms out through a -- through a branch
4 in North Carolina and makes a tiny part which
5 it turns out infringes someone else's American
6 patent.

7 And, as a result for that -- of that,
8 that French or British or Spanish company must
9 pay to that North Carolina firm its profits
10 from billions of dollars of sales across the
11 world.

12 Now that's not just hypothetical
13 because an amicus brief cites to us the Marvel
14 case where that really happened. Okay? I can
15 see how that would, in fact, upset foreign
16 countries a lot, because, after all, it wasn't
17 even a violation of any foreign patent law.
18 And I can imagine them having similar statutes
19 which then cause more problems.

20 And that's all in your favor. Yeah.
21 But there is a principle of law that should
22 deal with that and it's called proximate cause.
23 And that's why I brought up the Empagran case
24 below. They didn't seem -- your opponents here
25 did not seem very willing to embrace it. But

1 doesn't -- why doesn't that work? I mean, the
2 problem is one of proximate cause and knowing
3 where to cut it off. And take comity into
4 account when you apply proximate cause. Don't
5 have an absolute rule. I thought that would be
6 a fallback position for them.

7 MR. SHANMUGAM: So I have several
8 responses to the various aspects of your
9 question, so let me attempt at least four of
10 them if I can get them out.

11 The first is that while there is a
12 substantial cleavage between Petitioner and the
13 government, I think that if you look at
14 Petitioner's reply brief in particular, it is
15 clear that Petitioner, like the government,
16 thinks that the same rule should apply to
17 Section 271(f) as to Section 271(a).

18 And, indeed, if you look at the first
19 10 pages of the reply brief in this argument,
20 an excursus about legal injury, the implication
21 would be the same in the 271(a) context. So,
22 to the extent that you cite perhaps a simpler
23 hypothetical in the 271(a) context, the rule, I
24 think, would have to be the same, and that's
25 why this case is so important.

1 I think, second, your hypothetical
2 earlier was exactly on point. At page 49 of
3 our brief, we give the example of computer
4 software. And as this Court will be aware from
5 the Alice case, there are very real limitations
6 under American law on the patentability of
7 computer software, but other countries, such as
8 Japan, have a different rule. And so you could
9 have the very same comity concern that you laid
10 out 20 minutes ago, where you have a foreign
11 country that, say, because an American company
12 engages in testing in that country, seeks to
13 impose liability for the downstream production
14 of the same product or downstream foreign uses.
15 And --

16 JUSTICE GINSBURG: But the liability
17 is -- is imposed on a U.S. entity. There's
18 nothing in this picture that regulates anything
19 that occurs abroad. The question is the
20 damages that flow from domestic conduct and not
21 regulation of conduct elsewhere.

22 MR. SHANMUGAM: I mean, to be fair,
23 Justice Ginsburg, I think that what Petitioner
24 is trying to do in this case is effectively to
25 hold us secondarily liable for what would be or

1 what might not be an act of foreign direct
2 infringement.

3 But I think that the concern that this
4 case presents is exactly the concern that Your
5 Honor stated in the opinion for the Court in
6 the Microsoft case; namely, in the Court's own
7 words, converting a single act of supply from
8 the United States into a springboard for what
9 would effectively be worldwide damages. And
10 the Court was citing the brief filed by my
11 learned friend Mr. -- Mr. Clement on behalf of
12 the United States when it said that. That is
13 exactly what is going on here.

14 And the last point I wanted to make in
15 response to your point, Justice Breyer, is the
16 one thing that we haven't heard anything about
17 in any of Petitioner's filings or at oral
18 argument is the fact that Petitioner and its
19 many, many corporate affiliates hold patents in
20 numerous countries around the world. And that
21 is the remedy in this circumstance, where what
22 you're talking about is a downstream foreign
23 use or downstream foreign infringement.

24 And, yes, this case arises in the
25 context of the high seas, but as we point out

1 and as the amicus brief on behalf of the
2 technology industry points out as well, even in
3 the high seas context, you do have a remedy.
4 You can go to the countries where the ships are
5 flagged and prosecute your patents.

6 And as we point out in our brief,
7 Petitioner and its affiliates have patents in
8 all these countries. Now I will say that those
9 countries could reach different judgments. In
10 fact -- and this is not in the briefs, but I
11 think this is established on the facts of this
12 case -- Petitioner's corporate affiliates
13 sought patents elsewhere; they sought patents
14 from the European Community. And they actually
15 abandoned the patent that is the equivalent to
16 the primary patent at issue in this case, the
17 '520 patent.

18 And I just think that that reflects
19 the fact that there could be different
20 judgments in different countries. And what
21 Petitioner is really trying to do in this case
22 is precisely what this Court ought to be
23 concerned about. It's attempting to convert an
24 American court, here the Eastern District of
25 Texas, into a one-stop shop for worldwide

1 damages.

2 JUSTICE GINSBURG: That is a different

3 --

4 JUSTICE KENNEDY: Well, your -- your
5 position is that the Petitioner is not entitled
6 to full compensation for its injury? That's
7 your position?

8 MR. SHANMUGAM: Petitioner is not
9 entitled to compensation for foreign damages;
10 in other words --

11 JUSTICE KENNEDY: Which is the full
12 compensation for its injury. Your whole
13 position is that this Petitioner is not
14 entitled to full compensation for his injury,
15 yes or no?

16 MR. SHANMUGAM: Yes, as a consequence
17 of the application of the presumption against
18 extraterritoriality. And I really do think
19 that this Court established in RJR Nabisco that
20 provisions that afford relief are no different
21 from substantive provisions, jurisdictional
22 provisions, the other types of provisions to
23 which this Court has applied the presumption.

24 Now I will say, Justice Kennedy, that
25 our submission here is a modest one. I think

1 you can have reassurance that a rule in our
2 favor in this case is not going to create
3 problems for other statutes, and it may leave
4 the door open for damages of the sort we were
5 discussing earlier, damages of the type that
6 were at issue in the Goulds case, where you
7 have, for instance, the shipment of a product
8 from the United States abroad.

9 Our test is quite simple. In
10 determining whether damages are foreign or
11 domestic, you should look to the situs of the
12 factual injury and you should also look to
13 whether there is subsequent substantial foreign
14 conduct after the act of infringement that
15 gives rise to the injury.

16 And this case is a very
17 straightforward case on the facts to apply that
18 principle because everything relevant after the
19 initial act of infringement took place abroad.
20 What Petitioner is trying to obtain here is
21 lost profits damages for losing out on
22 contracts to perform entirely foreign surveys.
23 And that's because --

24 JUSTICE GINSBURG: Isn't that exactly
25 how the copyright law is applied under the

1 so-called predicate act doctrine? The
2 copyright owner can get damages flowing from
3 the exploitation abroad of domestic acts of
4 infringement. Isn't this an application to the
5 patent field of the same doctrine?

6 MR. SHANMUGAM: Yes and no, Justice
7 Ginsburg.

8 In the copyright context, the reason
9 why you can obtain profits for things that take
10 place abroad is because the copyright law makes
11 infringers' profits available.

12 And as Judge Hand explained in the
13 original opinion on this issue, infringers'
14 profits are -- are an equitable remedy. They
15 are a form of disgorgement. And they rely on
16 the legal fiction that you impose a
17 constructive trust on infringing articles so
18 that whatever happens to those articles, you
19 have a constructive trust on the profits as
20 well.

21 In 1946, Congress amended the
22 predecessor to Section 284 to eliminate that
23 form of profit, to eliminate infringers'
24 profits. And what you can't get even under the
25 Copyright Act is the sort of lost profits that

1 are at issue here, the lost profits of the
2 copyright holder. And I would refer this Court
3 to Judge O'Scannlain's opinion for the Ninth
4 Circuit in the Los Angeles News Service case,
5 which draws this distinction and makes that
6 distinction clear.

7 Again, we come back to the sort of
8 fundamental proposition that this Court has
9 taught in RJR Nabisco that you have to apply
10 the presumption to remedial provisions. There
11 is no indication on the face of Section 284
12 that in -- that it provides for
13 extraterritorial damages. All it provides, as
14 Justice Kennedy pointed out, is that you're
15 allowed to obtain damages adequate to
16 compensate for the infringement.

17 That language, while broad on its
18 terms, does not overcome the presumption
19 against extraterritoriality. And so then you
20 have to proceed to the second step. And,
21 again, as this Court laid out in RJR Nabisco,
22 at the second step, what you do is you look at
23 the focus of the relevant provision. The focus
24 of Section 284 is damages. And you determine
25 whether the damages are foreign or domestic.

1 No different from what the Court did
2 at the second step in RJR Nabisco, which was to
3 determine whether the factual injury, because
4 that statute was worded in terms of injury, is
5 foreign or domestic.

6 And -- and in -- again, in this case,
7 it is very easy to conceive of why the damages
8 are foreign, because there really are two
9 distinct factual injuries here.

10 And since we're talking about car
11 crashes this morning, let me give you an
12 example. If, for instance, I was driving to
13 the Court this morning, I was driving over the
14 Roosevelt Bridge, and I crashed into somebody
15 on a motorcycle, and that individual was
16 concussed, the individual then got off the
17 motorcycle and wandered down the bridge,
18 perhaps across the Potomac and across the state
19 line into the District of Columbia, and then
20 got hit by another car, you would say that that
21 person had two injuries: The person had the
22 immediate injury, the concussion, and then had
23 the downstream injury, having, say, their foot
24 run over by another driver.

25 And, here, our argument is that the

1 downstream injury is entirely foreign. And,
2 again, critically, it relies on the intervening
3 conduct of third parties that would constitute
4 an act of direct infringement.

5 Suppose that the ships in question
6 were all Norwegian ships, at least one of them
7 was a Norway-flagged ship. And assume that
8 Norway had coterminous patent laws to the
9 United States. In this case, Norway would have
10 the ability to impose liability for direct
11 infringement on our customers, the ones who
12 engaged in not just the combination but the
13 downstream use, and Norway would be able to go
14 after us under its equivalents to Section
15 271(b) and 271(c) as a --

16 JUSTICE KENNEDY: I'll think about
17 your hypo, but it seems to me it's as if you
18 got back in the car and then hit him again when
19 he went in Virginia.

20 (Laughter.)

21 MR. SHANMUGAM: Well, critically --

22 JUSTICE KENNEDY: That -- that -- that
23 would be more like what happened in this case.

24 MR. SHANMUGAM: We did nothing
25 further, Justice Kennedy. Keep in mind that

1 Section 271(f) regulates only the act of
2 supply. And, indeed, there is no further
3 requirement under Section 271(f) that the
4 combination actually occur.

5 I heard my friend, Mr. Clement,
6 suggest at one point in his argument that
7 Section 271(f) has as an element some
8 additional act of inducement. He referred to
9 whether the parties induced a combination
10 abroad.

11 All that the relevant provision here
12 in 271(f)(2) does is to regulate the supply
13 with an intent that a combination occur.
14 Indeed, in this case, as to a percentage of the
15 DigiFINs at issue, there was no ultimate
16 subsequent combination.

17 And so, again, all that we're saying
18 -- and I think that this is a submission that
19 flows directly from the language of Section
20 271(f) -- is all Congress did was to regulate
21 the domestic act of supply, consistent with the
22 traditionally territorial nature of the patent
23 laws. And so all you get is damages for that
24 act of supply --

25 JUSTICE KAGAN: Mr. --

1 MR. SHANMUGAM: -- for the initial act
2 of supply.

3 JUSTICE KAGAN: Mr. Shanmugam, what
4 struck me about your hypo is that it's a
5 classic law school proximate cause hypo. I
6 mean, that's what that hypo is. And it
7 suggests that if there's a problem here, it's a
8 problem about where you draw the causal line.
9 It's not a problem about some categorical
10 extraterritoriality rule.

11 MR. SHANMUGAM: So I do want to
12 address that, Justice Kagan.

13 I think that, in my hypothetical, I'm
14 willing to concede that for purposes of
15 proximate causation and going back to Palsgraf
16 and all of those wonderful cases, that I could
17 be held liable for both of those injuries.

18 And, to be sure, this analysis is not
19 entirely disconnected from causation because,
20 as I indicated earlier, the fact that there is
21 subsequent foreign conduct matters to the test.

22 What makes this case different from
23 the earlier French ambassador hypothetical is
24 that the injury is immediate. It may very well
25 be that you need to have further treatment, but

1 there is not subsequent conduct.

2 I will say --

3 JUSTICE BREYER: You could -- you
4 could -- well, go ahead.

5 MR. SHANMUGAM: I do want to address
6 any suggestion that causation is somehow the
7 solution here by making a couple of points.

8 The first is that, with regard to
9 proximate causation, the federal circuit has
10 adopted a quite expansive test which requires
11 only mere foreseeability, I would refer the
12 Court to an en banc opinion called Rite-Hite,
13 which sets out that test. There is no
14 proximate causation argument in this case.

15 Professor Yelderman in his amicus
16 brief suggests that this is an easy case for
17 proximate causation. So I don't know that
18 proximate causation, at least under the
19 existing state of the law, unless this Court
20 wants to address that down the road, is going
21 to provide much solace to companies like my
22 client.

23 We do have an argument that Justice
24 Sotomayor adverted to, that there is not
25 sufficient but-for causation here. That is an

1 issue that remains to be resolved on remand.
2 And in the event that this Court were to
3 reverse, it certainly should remand to the
4 federal circuit so that it can address that
5 issue.

6 JUSTICE BREYER: However, it doesn't
7 quite answer it, because the -- your client, I
8 don't want to prejudice your client, but it
9 didn't seem to me he was the strongest case for
10 your argument. I mean, the damages here are
11 pretty closely related, I think, but there -- I
12 can easily imagine cases where it's not.

13 And so it's come -- the proximate
14 cause -- yes, it's true, if you have a tough
15 proximate cause law, tough, you will stop
16 people from being fully compensated, but the
17 reason you do it is because you're afraid with
18 92 district courts and juries and so forth
19 it'll get out of control and be a kind of major
20 problem with other countries.

21 MR. SHANMUGAM: Well, that is --

22 JUSTICE BREYER: The argument the
23 other way -- and that's argument for you, say:
24 Just cut it off. The argument the other way is
25 there are cases that will deserve it, deserve

1 the damages. And that's --

2 MR. SHANMUGAM: I --

3 JUSTICE BREYER: Anything you want to
4 say about that?

5 MR. SHANMUGAM: I would like to say
6 two things about that, Justice Breyer.

7 I mean, the first is that this Court
8 has crossed that bridge. And I would cite this
9 Court's opinion in Empagran for the
10 proposition, the modest proposition that these
11 sorts of damages awards can create comity
12 concerns.

13 And, yes, we're not necessarily
14 dealing with treble damages, though, of course,
15 enhanced damages are available in patent cases
16 and were, in fact, awarded here. But what we
17 are dealing with is the very real risk that
18 American juries in patent cases award much
19 bigger damages awards than courts do in other
20 countries.

21 And so, even leaving aside the fact
22 that other countries could have totally
23 different substantive patent laws, the risk of
24 runaway jury awards here certainly does present
25 substantial comity concerns.

1 And I think that that is really, you
2 know, fundamentally the reason why the
3 presumption should apply. And I think that the
4 problem that the other side has, which was
5 illustrated by Justice Gorsuch's question, is
6 that it can't point to anything that overcomes
7 the presumption.

8 Sure, Congress was thinking about the
9 possibility of eventual foreign combinations
10 when it enacted Section 271(f), but what it
11 didn't do was to attempt to regulate abroad.

12 And this Court in Morrison and RJR has
13 made clear that it is not sufficient to
14 overcome the presumption simply that Congress
15 might have contemplated the possibility of
16 downstream foreign activity. Congress has to
17 give a clear and unmistakable indication of its
18 desire to have extraterritorial reach.

19 It doesn't have to necessarily do so
20 in the language of the statute, though this
21 Court made clear in RJR Nabisco that it would
22 be a rare case where the presumption is
23 overcome in the absence of explicit statutory
24 language.

25 JUSTICE SOTOMAYOR: I'm sorry, did you

1 say earlier that if this sensor was
2 manufactured and sold from the United States to
3 someone abroad, you -- the infringer, would be
4 liable for that sale, correct?

5 MR. SHANMUGAM: So the -- yes.

6 JUSTICE SOTOMAYOR: All right. So, if
7 the infringer knows that the only way that this
8 product is going to be sold is tied to
9 services, why isn't -- they -- why aren't they
10 responsible for that deprivation of the use of
11 the product?

12 MR. SHANMUGAM: Because the damages
13 are foreign. And to be sure, it is an element
14 of liability that you have to have this
15 foreign-oriented intent. Under Section 271(f),
16 you have to have an intent that the combination
17 ultimately occur.

18 And we're obviously not disputing
19 before this Court --

20 JUSTICE SOTOMAYOR: Well, the -- the
21 statute by its own is -- is addressing a
22 combination, an intent to have the infringement
23 completed abroad. So we know it applies
24 extraterritoriality -- with extraterritoriality
25 in that situation.

1 MR. SHANMUGAM: No. I mean, I think
2 that everyone agrees, and I think it's a better
3 reading of this Court's opinion in Microsoft,
4 that Section 271(f) by its terms regulates only
5 domestic conduct. The Court --

6 JUSTICE SOTOMAYOR: Yes.

7 MR. SHANMUGAM: -- did invoke the
8 presumption, but it invoked the presumption to
9 reject a reading that would have given Section
10 271(f) effectively extraterritorial effect.

11 But, again, just to be clear, I don't
12 think that Petitioner's argument ultimately
13 depends on Section 271(f). I think that
14 Petitioner's bottom line is that not only are
15 the federal circuit's decision in this case,
16 but also its earlier decisions in cases such as
17 Power Integrations and Carnegie Mellon, a case
18 where a jury awarded \$1.17 billion in a
19 reasonable royalty for foreign sales, those
20 decisions would also have to come out the other
21 way.

22 To the extent that Petitioner is
23 relying on Section 271(f), that's really window
24 dressing on its argument because, at bottom,
25 the rule would be the same under Petitioner's

1 interpretation in the 271(f) or the 271(a)
2 context.

3 And, critically, we all agree that
4 271(f) was designed to overturn this Court's
5 decision in Deepsouth, but the way that
6 Congress did that was to regulate a form of
7 domestic conduct, a form of domestic conducts
8 -- domestic conduct that as a result of this
9 Court's decision in Deepsouth did not in and of
10 itself constitute infringement.

11 Congress was certainly not thinking
12 about making available this sort of downstream
13 damages. And to get back to what I think was
14 really sort of driving your question with
15 respect, Justice Sotomayor, the answer to all
16 of this is that Petitioner can go to foreign
17 courts and obtain damages if Petitioner has
18 foreign patent rights and if the law of those
19 respective jurisdictions permits it.

20 And there is a mechanism in place, the
21 WIPO process, that streamlines and makes it
22 easier for companies in Petitioner's position
23 to obtain those patents and to enforce them
24 abroad.

25 We'd ask that the judgment be

1 affirmed. Thank you.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Three minutes, Mr. Clement.

5 REBUTTAL ARGUMENT OF PAUL D. CLEMENT
6 ON BEHALF OF THE PETITIONER

7 MR. CLEMENT: Thank you, Mr. Chief
8 Justice.

9 I'd just like to clarify two details
10 and make a couple of points.

11 One detail, my friend mistakenly
12 referred to this case being brought in the
13 Eastern District of Texas. It was, in fact,
14 brought in the Southern District of Texas,
15 where both of these companies are located.

16 It may be a pedantic point, but the
17 Eastern District of Texas has a certain
18 implication to it that I wanted to clarify.

19 (Laughter.)

20 MR. CLEMENT: The second point is that
21 -- just to be crystal-clear, and my friend
22 concedes this in Footnote 3 of the red brief,
23 but there were not royalties and lost profits
24 on the -- the same components. The -- the lost
25 profits damages for those particular

1 components, we got only lost profit damages,
2 and the reasonable royalties are only
3 calculated on other units.

4 And I think the concession that you
5 can take into account the expected foreign use
6 for calculating the royalty really gives the
7 game away, because calculating reasonable
8 royalties is just another counterfactual
9 exercise, determine -- that -- the whole point
10 of which is to determine what would my client's
11 position be in the absence of the infringement
12 in the United States. And there's no reason to
13 treat those two situations differently.

14 I'm, of course, happy to win this case
15 on any of the three theories we present in our
16 brief or on the government's theory. I would
17 say, though, that Justice Alito's question is
18 the reason that I do think the better way to
19 resolve this case is to say cleanly, once and
20 for all, the presumption does not apply to
21 damages provisions, because if you walked my
22 friend's theory through and applied the
23 extraterritoriality principles woodenly to a
24 generic damages provision that complimented an
25 expressly extraterritorial liability provision,

1 it would -- you'd end up saying: Well, this is
2 a foreign application and I guess I can't give
3 damages, even though Congress made this
4 expressly extraterritorial.

5 And that's not a trivial concern. I
6 mean, Congress acted to overturn this Court's
7 decision in EEOC versus Aramco and applied
8 Title VII abroad. And it supplements it with a
9 -- with a generic damages provision.

10 It would be really weird if you
11 couldn't get damages for that expressly
12 extraterritorial application. And I think it
13 would be just as weird, with all due respect,
14 to say that you couldn't get compensatory
15 damages for the full amount of the loss in a
16 271(f) case because the foreign combination
17 occurred abroad.

18 Congress understood what it was doing.
19 It was imposing liability on a domestic actor
20 for combinations that intentionally took place
21 abroad. And I do think proximate cause is the
22 solution to a lot of the problems, but
23 proximate cause isn't going to be a lot of help
24 to defendants in 271(f) cases because, if you
25 have to intend or induce the foreign

1 combination, I would say it's reasonably
2 foreseeable.

3 So we think you should reverse the
4 decision below. Thank you.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel. The case is submitted.

7 (Whereupon, at 11:57 a.m., the case
8 concluded.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Official

\$	account ^[6] 10:7 38:5,21,22 45:4 65:5 Acme ^[1] 29:8 across ^[4] 26:15 44:10 53:18,18 act ^[3] 3:13,16 4:1 7:22 13:7 15:8 16:5 19:12 21:6 27:13,15 28:24 33:25 34:8,10 36:1 37:5,16 39:18 47:1,7 50:14,19 51:1,25 54:4 55:1, 8,21,24 56:1 acted ^[4] 39:13,17,20 66:6 action ^[6] 3:21 18:8 19:16 42:25 43:5,10 activity ^[4] 4:18,19,24 60:16 actor ^[1] 66:19 acts ^[5] 41:6,9,12,20 51:3 actual ^[3] 10:14 37:12 38:22 actually ^[1] 5:9 22:2,3,6 23:13 25: 18 29:1 42:5 43:25 48:14 55:4 add ^[1] 35:4 additional ^[3] 31:20 35:4 55:8 address ^[8] 3:12 9:11 38:1 42:20 56:12 57:5,20 58:4 addressed ^[1] 43:4 addressing ^[1] 61:21 adequate ^[7] 3:24 4:3 10:11,16 19: 20 21:7 52:15 adopt ^[1] 27:10 adopted ^[1] 57:10 adverted ^[1] 57:24 advocating ^[2] 14:25 21:15 affiliates ^[3] 47:19 48:7,12 affirmatively ^[1] 27:10 affirmed ^[1] 64:1 afford ^[1] 49:20 afield ^[1] 23:25 afraid ^[1] 58:17 ago ^[1] 46:10 agree ^[6] 28:16 29:11 34:11 35:25 39:9 63:3 agreed ^[1] 32:17 agrees ^[1] 62:2 ahead ^[1] 57:4 Alice ^[1] 46:5 ALITO ^[10] 31:1,6,8,12 40:7,13 41: 2,15,23 42:2 Alito's ^[1] 65:17 allow ^[1] 41:21 allowed ^[2] 9:8 52:15 alone ^[1] 8:11 already ^[2] 21:16 28:4 alter ^[1] 35:5 alternative ^[3] 10:11,14 28:17 although ^[2] 41:8 43:13 Ambassador ^[5] 16:22 17:16 18: 12,13 56:23 ambulance ^[1] 18:12 amended ^[2] 39:22 51:21 American ^[10] 11:2,12,14,21 27: 14 44:5 46:6,11 48:24 59:18 amicus ^[8] 1:20 20:22 26:5 43:13, 16 44:13 48:1 57:15 amount ^[1] 66:15 analog ^[1] 19:15 analogous ^[1] 26:9	analysis ^[5] 35:5 38:17 40:15,18 56:18 analyze ^[2] 40:10 41:10 Angeles ^[1] 52:4 another ^[6] 4:22 14:10 29:18 53: 20,24 65:8 answer ^[5] 24:6 32:11 34:25 58:7 63:15 APPEARANCES ^[1] 1:15 Appendix ^[1] 35:20 application ^[7] 30:1,19 34:7 49:17 51:4 66:2,12 applied ^[5] 21:19 49:23 50:25 65: 22 66:7 applies ^[10] 4:8,9 21:16 27:12,13 29:25 33:24 34:2 40:11 61:23 apply ^[1] 11:21 27:15 29:20 30:8, 14 45:4,16 50:17 52:9 60:3 65:20 approach ^[2] 24:3 26:12 April ^[1] 1:10 Aramco ^[1] 66:7 areas ^[1] 21:22 aren't ^[2] 8:9 61:9 arguably ^[1] 35:12 argue ^[1] 40:10 argument ^[26] 1:12 2:2,5,9,12 3:4, 7 12:12,12 18:20 20:21 33:19 38: 3 45:19 47:18 53:25 55:6 57:14, 23 58:10,22,23,24 62:12,24 64:5 arise ^[3] 8:6 29:10,12 arises ^[1] 47:24 around ^[2] 15:22 47:20 article ^[1] 10:1 articles ^[2] 51:17,18 aside ^[2] 8:1 59:21 aspect ^[3] 7:12 41:15 42:20 aspects ^[1] 45:8 assembly ^[1] 27:20 Assistant ^[1] 1:18 assume ^[2] 13:23 54:7 assumed ^[1] 21:19 attempt ^[2] 45:9 60:11 attempting ^[1] 48:23 attempts ^[1] 42:23 attenuated ^[1] 25:15 automatically ^[1] 26:16 available ^[5] 39:23 42:10 51:11 59: 15 63:12 award ^[2] 25:2 59:18 awarded ^[7] 21:4 36:15,16 37:21, 21 59:16 62:18 awards ^[3] 59:11,19,24 aware ^[1] 46:4 away ^[2] 34:22 65:7	become ^[1] 11:19 becomes ^[1] 23:3 behalf ^[13] 1:16,20,23 2:4,7,11,14 3:8 20:22 33:20 47:11 48:1 64:6 behavior ^[1] 14:3 believe ^[1] 21:23 bell ^[1] 24:15 belong ^[1] 7:8 below ^[2] 44:24 67:4 best ^[1] 18:20 better ^[3] 27:6 62:2 65:18 between ^[7] 29:21 30:3 31:10 40: 25 41:3 42:24 45:12 big ^[2] 25:2 33:6 bigger ^[1] 59:19 billion ^[1] 62:18 billions ^[1] 44:10 bills ^[2] 6:21 16:25 bit ^[2] 7:13 10:21 bite ^[1] 23:4 bits ^[1] 7:5 body ^[1] 35:8 border ^[1] 26:15 both ^[7] 12:3 26:6 27:23 37:21 43: 4 56:17 64:15 bothering ^[2] 13:21 14:1 bottom ^[2] 62:14,24 boy ^[1] 16:15 brakes ^[3] 32:4,5,7 branch ^[1] 44:3 BREYER ^[23] 10:24 11:23,25 12:2, 21,24 13:2,15,19 14:22 22:11 23: 6 24:7,13 30:25 43:21,23 47:15 57:3 58:6,22 59:3,6 Bridge ^[3] 53:14,17 59:8 brief ^[18] 10:7 17:9 26:5 29:8 34:1 38:2,11 42:22 44:13 45:14,19 46: 3 47:10 48:1,6 57:16 64:22 65:16 briefly ^[2] 38:1 41:22 briefs ^[4] 16:15 43:14,17 48:10 bring ^[1] 11:6 brings ^[1] 32:4 British ^[2] 44:1,8 broad ^[1] 52:17 broader ^[1] 39:23 broadly ^[1] 39:20 broken ^[1] 32:5 brought ^[4] 14:2 44:23 64:12,14 business ^[4] 17:10 34:17 36:21, 21 but-for ^[2] 38:17 57:25
1		C	
10 ^[4] 11:15 14:6,24 45:19 10:57 ^[2] 1:13 3:2 100 ^[2] 12:1 13:23 11:57 ^[1] 67:7 16 ^[1] 1:10 16-1011 ^[1] 3:4 1946 ^[1] 51:21 1962 ^[1] 41:18 1964(c) ^[1] 43:4		calculate ^[1] 6:15 calculated ^[3] 14:5 37:11 65:3 calculating ^[5] 10:8,16 38:13 65:6, 7 calculation ^[2] 6:17 38:4 called ^[2] 44:22 57:12 came ^[2] 1:11 27:1 Canadian ^[3] 9:8,12,16 capitalize ^[1] 39:5 car ^[6] 16:22 32:4,7 53:10,20 54:18 Carnegie ^[2] 38:10 62:17	
2			
20 ^[4] 2:8 10:21 14:7 46:10 2018 ^[1] 1:10 271(a) ^[6] 9:2 20:8 45:17,21,23 63: 1 271(b) ^[1] 54:15 271(c) ^[1] 54:15 271(f) ^[29] 3:11 4:2,15 5:21 7:4 18:4, 25 20:8,10 27:1,17 28:19 39:8,10 45:17 55:1,3,7,20 60:10 61:15 62: 4,10,13,23 63:1,4 66:16,24 271(f)(2) ^[1] 55:12 281 ^[1] 19:15 284 ^[7] 19:18 27:11 34:9 39:22 51: 22 52:11,24			
3			
3 ^[2] 2:4 64:22 33 ^[1] 2:11 35 ^[1] 10:6			
4			
41A ^[1] 35:20 49 ^[1] 46:2			
5			
520 ^[1] 48:17			
6			
64 ^[1] 2:14			
9			
92 ^[1] 58:18			
A			
a.m. ^[3] 1:13 3:2 67:7 abandoned ^[1] 48:15 ability ^[2] 24:22 54:10 able ^[2] 30:15 54:13 above-entitled ^[1] 1:11 abroad ^[30] 3:18 4:19 7:7,12 9:4 11:21,23 13:10 25:9 27:20 29:6, 15 31:14 36:23 41:7,9,13 46:19 50:8,19 51:3,10 55:10 60:11 61:3, 23 63:24 66:8,17,21 absence ^[2] 60:23 65:11 absent ^[1] 35:3 absolute ^[1] 45:5 Absolutely ^[2] 20:5 27:9 accept ^[1] 12:11			

<p>Carolina [2] 44:4,9 Case [68] 3:4 4:7,9,10 5:10,16 9:1 10:25 12:4 14:11 16:4 20:10 22:12 24:8,12,17 25:21 27:22 28:4 29:2,13 31:9 32:25 33:4 34:6 35:13 37:21 38:10 39:19 40:4,9 41:3 42:6 43:14,15 44:14,23 45:25 46:5,24 47:4,6,24 48:12,16,21 50:2,6,16,17 52:4 53:6 54:9,23 55:14 56:22 57:14,16 58:9 60:22 62:15,17 64:12 65:14,19 66:16 67:6,7 cases [18] 8:19 12:3 13:4,22 16:14 25:18 27:16 29:3,11,13,16 56:16 58:12,25 59:15,18 62:16 66:24 categorical [2] 21:3 56:9 causal [3] 26:16,17 56:8 causation [9] 33:12 56:15,19 57:6,9,14,17,18,25 causation-in-fact [4] 24:5 25:19,22 26:7 cause [20] 3:21 14:11 19:16,24 20:6 24:5,14,21 26:2,7 33:13 44:19,22 45:2,4 56:5 58:14,15 66:21,23 caused [5] 4:11 5:7 15:23 24:21 32:9 causes [1] 31:23 causing [1] 4:20 cents [1] 10:21 century-old [1] 8:18 certain [2] 41:19 64:17 certainly [4] 42:13 58:3 59:24 63:11 chain [1] 26:16 change [1] 30:9 chaos [5] 11:16 14:23 15:2,4,6 check [1] 26:10 CHIEF [10] 3:3,9 20:18,24 32:17 33:16,21 64:2,7 67:5 Circuit [6] 24:7 26:8 35:21 52:4 57:9 58:4 circuit's [1] 62:15 circumstance [3] 35:1,2 47:21 cite [3] 38:11 45:22 59:8 cited [2] 38:12 43:11 cites [1] 44:13 citing [1] 47:10 citizen [1] 6:19 clarify [2] 64:9,18 classic [1] 56:5 cleanly [1] 65:19 clear [9] 18:4 26:17 40:3 45:15 52:6 60:13,17,21 62:11 clearly [1] 13:24 cleavage [1] 45:12 CLEMENT [39] 1:16 2:3,13 3:6,7,9 5:1 7:1,17 8:2,5,12,22 9:6,14,20 11:22,24 12:14,19,22,25 13:3,18 14:18 15:1 17:23 18:2,24 20:5 27:7 29:17 38:12 47:11 55:5 64:4,5,7,20 Clement's [1] 26:23 client [5] 16:6 17:10 57:22 58:7,8 client's [1] 65:10 closely [1] 58:11</p>	<p>collect [4] 4:23 8:13 9:16 17:11 collecting [2] 7:19,21 Columbia [1] 53:19 combination [18] 5:25 7:20 19:2,3,10 20:12,15 39:21 40:8 54:12 55:4,9,13,16 61:16,22 66:16 67:1 combinations [3] 15:20 60:9 66:20 combined [2] 3:18 29:15 combiners [1] 6:6 come [5] 27:16 30:20 52:7 58:13 62:20 comes [2] 9:15 36:12 comity [11] 11:18 16:11,20 19:9 21:11 43:7,20 45:3 46:9 59:11,25 commercial [2] 38:14,24 committed [3] 41:6,9,12 common [3] 7:14 15:22 31:21 commonsense [1] 4:6 Community [2] 43:15 48:14 companies [3] 57:21 63:22 64:15 company [8] 11:12 22:22 25:8 34:21 36:18 44:2,8 46:11 compared [1] 28:23 compensate [10] 3:24 10:11,23 17:5 19:20 21:7 25:3 28:7 36:13 52:16 compensated [1] 58:16 compensates [1] 37:5 compensating [1] 30:18 compensation [8] 9:9 13:9 21:16 37:25 49:6,9,12,14 compensatory [7] 6:15 28:2,12 30:4,14,16 66:14 competing [1] 36:7 completed [2] 28:22 61:23 completely [1] 31:13 complimented [1] 65:24 component [7] 23:16 36:6,8 37:7 38:15,19,25 components [8] 3:16,18 5:25 6:6 23:16 27:20 64:24 65:1 computer [3] 13:16 46:3,7 concede [1] 56:14 concededly [1] 34:11 concedes [2] 15:16 64:22 conceive [1] 53:7 concern [6] 11:20 14:20 46:9 47:3,4 66:5 concerned [1] 48:23 concerning [1] 38:7 concerns [5] 7:13 16:10 43:20 59:12,25 concession [3] 10:6,9 65:4 conclude [1] 42:7 concluded [1] 67:8 concussed [1] 53:16 concussion [1] 53:22 conduct [2] 4:11 6:5,13 8:14 22:2 23:12,25 32:20 34:19 35:16 40:18 42:9 46:20,21 50:14 54:3 56:21 57:1 62:5 63:7,8 conducted [1] 37:15 conducts [1] 63:7</p>	<p>conferred [1] 39:8 confining [1] 39:2 conflict [1] 34:5 confusion [1] 11:17 Congress [24] 3:11,15,21 4:15 5:20 18:3 39:12,17,20,22 40:7 41:8 42:8 51:21 55:20 60:8,14,16 63:6,11 66:3,6,18 consequence [2] 4:11 49:16 consequences [3] 3:15 5:6 7:22 consistent [2] 39:14 55:21 constitute [4] 3:20 6:1 54:3 63:10 constitutes [1] 13:13 constructive [3] 19:7 51:17,19 construed [1] 41:18 contemplated [1] 60:15 contention [1] 35:21 context [12] 5:3 10:13 12:23 13:1 15:4 30:22 45:21,23 47:25 48:3 51:8 63:2 contexts [1] 43:10 contract [3] 21:18 35:15,15 contracts [3] 20:4 35:22 50:22 contrary [1] 38:6 contributory [4] 5:4,23 18:25 19:6 control [1] 58:19 converse [1] 10:25 convert [1] 48:23 converting [1] 47:7 Copycat [1] 29:8 copyright [10] 10:13 12:22 13:1 21:18 50:25 51:2,8,10,25 52:2 corporate [2] 47:19 48:12 CORPORATION [1] 1:6 correct [1] 61:4 coterminous [1] 54:8 couldn't [2] 66:11,14 counsel [4] 20:19 33:17 64:3 67:6 counterfactual [1] 65:8 countries [14] 11:15 14:6,7,24 44:16 46:7 47:20 48:4,8,9,20 58:20 59:20,22 country [10] 11:2,3,8 13:12 15:7,15 28:23 35:11 46:11,12 couple [5] 11:22,24 12:16 57:7 64:10 course [8] 19:14 21:2 23:19 29:10 32:8 38:18 59:14 65:14 COURT [52] 1:1,12 3:10 4:7,9 6:20 8:17,20 9:2,11,15,17 19:5 20:25 21:3,18 22:8 25:2 26:20 28:4,7,14 29:3 33:22 38:8 39:16 40:14 41:17 43:3,8,16,20 46:4 47:5,10 48:22,24 49:19,23 52:2,8,21 53:1,13 57:12,19 58:2 59:7 60:12,21 61:19 62:5 Court's [13] 3:12 16:13 39:11 40:2 41:17 43:3,7 47:6 59:9 62:3 63:4,9 66:6 courts [3] 58:18 59:19 63:17 cover [1] 13:16 crashed [1] 53:14 crashes [1] 53:11</p>	<p>create [3] 34:4 50:2 59:11 created [1] 5:22 creates [4] 13:11 28:17 42:25 43:5 creating [1] 43:9 creeping [1] 8:23 critically [3] 54:2,21 63:3 crossed [1] 59:8 crystal-clear [1] 64:21 curiae [2] 1:20 20:23 customer [2] 4:21,25 customers [5] 5:12,16 22:6 38:20 54:11 cut [2] 45:3 58:24 cuts [2] 23:2,22</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C. [6] 1:9,16,19,22 14:11 24:7 damage [1] 18:9 damages [90] 3:23,24 4:4,8 5:7,14 6:15 7:13,19,21 8:11,13 9:5,16 10:11,13,14,16 14:5,20,23 15:12,21 16:23 17:12 19:20 20:11 21:4,6,8 23:24 25:1 27:3,12,23 28:2,12,20 29:20,23 30:4,11,12,14,17 34:12,14 36:15 38:7 39:23 40:1,11 42:10,12 43:1,6,12,18 46:20 47:9 49:1,9 50:4,5,10,21 51:2 52:13,15,24,25 53:7 55:23 58:10 59:1,11,14,15,19 61:12 63:13,17 64:25 65:1,21,24 66:3,9,11,15 damaging [1] 10:9 day [1] 22:15 deal [3] 14:9 24:14 44:22 dealing [3] 26:8 59:14,17 debate [1] 40:25 decide [2] 39:3,5 decision [6] 3:12 62:15 63:5,9 66:7 67:4 decisions [2] 62:16,20 DeepSouth [7] 3:12 39:12,25 40:2 42:11 63:5,9 default [1] 37:24 defendant [1] 28:6 defendants [2] 22:5 66:24 degree [1] 8:25 Department [1] 1:19 depend [1] 24:23 depends [1] 62:13 deprivation [1] 61:10 describes [1] 34:14 describing [1] 23:10 deserve [2] 58:25,25 designed [2] 23:17 63:4 desire [1] 60:18 detail [1] 64:11 detailed [1] 25:25 details [1] 64:9 determination [1] 13:6 determine [4] 52:24 53:3 65:9,10 determining [3] 35:9 38:24 50:10 deveining [2] 40:6 42:15 device [3] 32:21 34:18,22 difference [6] 5:19,20 7:1,14 29:21 30:3</p>
---	---	--	--

<p>differences [1] 41:3 different [22] 8:17 9:23 12:6 13:20 17:10 20:9 22:1,5 26:23 34:17 35:1 37:19 39:19 46:8 48:9,19,20 49:2,20 53:1 56:22 59:23 differently [1] 65:13 difficulty [2] 25:19 31:9 difficultly [1] 33:5 DigiFINs [1] 55:15 direct [5] 5:8,18 47:1 54:4,10 directly [1] 55:19 disconnected [1] 56:19 discover [1] 22:20 discussed [1] 43:8 discussing [2] 32:3 50:5 discussion [1] 43:7 disgorgement [1] 51:15 disputing [1] 61:18 dissent [1] 41:1 distinct [1] 53:9 distinction [3] 42:24 52:5,6 distinguish [1] 42:21 District [6] 48:24 53:19 58:18 64:13,14,17 doctrine [3] 26:6 51:1,5 doctrines [1] 24:4 doing [5] 7:20 15:15 30:17 39:12 66:18 dollars [1] 44:10 domestic [35] 3:13,16,22 4:10,11 5:3,15 6:13 7:22 8:16 9:9 13:7 15:8,18 16:5 17:5 19:11,12 28:12 30:19 31:2,4 34:12 42:8 46:20 50:11 51:3 52:25 53:5 55:21 62:5 63:7,7,8 66:19 domestically [3] 6:13 15:25 35:25 door [1] 50:4 double [2] 14:20,22 doubt [1] 4:17 Dowagiac [3] 8:18 9:14 29:4 down [2] 53:17 57:20 downstream [11] 5:8 42:12 46:13,14 47:22,23 53:23 54:1,13 60:16 63:12 draw [2] 42:23 56:8 draws [1] 52:5 dress [1] 62:24 driver [1] 53:24 driving [3] 53:12,13 63:14 due [3] 9:6 15:1 66:13</p> <hr/> <p style="text-align: center;">E</p> <p>earlier [6] 46:2 50:5 56:20,23 61:1 62:16 earned [1] 24:24 easier [2] 42:5 63:22 easiest [2] 29:2,7 easily [1] 58:12 Eastern [3] 48:24 64:13,17 easy [4] 20:11 22:12 53:7 57:16 EEOC [1] 66:7 effect [2] 35:19 62:10 effectively [4] 19:6 46:24 47:9 62:10</p>	<p>effects [1] 11:23 effort [1] 42:21 either [5] 5:23 18:25 24:1 30:6,7 element [3] 29:14 55:7 61:13 eliminate [2] 51:22,23 else's [2] 22:16 44:5 elsewhere [2] 46:21 48:13 embrace [1] 44:25 Empagran [7] 14:12 16:12 24:8 43:16,17 44:23 59:9 emphasize [2] 27:1,3 en [1] 57:12 enacted [3] 3:11 39:10 60:10 end [3] 40:9,15 66:1 ended [1] 13:1 enforce [1] 63:23 engaged [1] 54:12 engages [1] 46:12 engaging [1] 38:17 enhanced [1] 59:15 enormous [1] 11:12 ensue [1] 14:23 entered [1] 35:22 entire [3] 22:20,21 28:24 entirely [5] 7:11 9:3 50:22 54:1 56:19 entitled [4] 34:23 49:5,9,14 entitlement [1] 4:3 entity [1] 46:17 ephemeral [1] 31:12 equipment [2] 40:6 42:15 equitable [1] 51:14 equivalent [1] 48:15 equivalents [1] 54:14 especially [1] 23:17 ESQ [6] 1:16,22 2:3,6,10,13 essentially [2] 39:11 41:17 establish [1] 19:25 established [3] 35:8 48:11 49:19 European [2] 43:14 48:14 Europeans [1] 13:17 evaluate [1] 16:2 even [15] 5:6 8:13 9:2,11 13:9 19:8 25:19,21 31:19,25 44:17 48:2 51:24 59:21 66:3 event [1] 58:2 events [1] 31:24 eventual [1] 60:9 everybody [1] 11:18 everyone [1] 62:2 everything [1] 50:18 everywhere [3] 21:17 27:14,15 evidence [3] 16:1 25:11 35:18 exacerbates [1] 18:9 exactly [5] 5:19 46:2 47:4,13 50:24 example [8] 7:15 13:16 23:3,4 29:7,9 46:3 53:12 excellent [1] 12:4 Except [1] 4:13 excursus [1] 45:20 exercise [1] 65:9 existing [1] 57:19 expansive [1] 57:10</p>	<p>expected [4] 10:8 38:5,23 65:5 expensive [1] 18:14 explained [1] 51:12 explicit [1] 60:23 exploitation [1] 51:3 export [1] 29:6 exporting [3] 23:14 27:21 35:10 expressly [3] 65:25 66:4,11 extent [3] 17:14 45:22 62:22 extraterritorial [10] 30:1 34:7,9 40:17 52:13 60:18 62:10 65:25 66:4,12 extraterritoriality [11] 4:5 6:9,24 16:10 33:24 49:18 52:19 56:10 61:24,24 65:23 extraterritorially [4] 40:11,24 41:19,20</p> <hr/> <p style="text-align: center;">F</p> <p>f(1) [1] 19:1 f(2) [1] 19:2 face [1] 52:11 faced [1] 8:18 fact [19] 25:8 33:12 34:13 35:7,19 36:7,8 37:3,20 38:19 43:9 44:15 47:18 48:10,19 56:20 59:16,21 64:13 facts [6] 32:25 33:8 35:4,5 48:11 50:17 factual [6] 36:2,13 37:6 50:12 53:3,9 fair [1] 46:22 fallback [1] 45:6 far [2] 23:11,25 farms [1] 44:3 fashion [1] 39:13 fast [1] 9:18 favor [3] 13:23 44:20 50:2 feature [1] 4:14 federal [5] 26:8 35:20 57:9 58:4 62:15 few [1] 21:1 fiction [1] 51:16 field [1] 51:5 filed [2] 43:17 47:10 filing [1] 16:14 filings [1] 47:17 fill [1] 39:11 find [3] 13:22 17:6 37:18 fine [1] 7:4 finish [1] 32:11 firm [2] 11:2 44:9 First [8] 11:25 14:19 31:16 41:16 45:11,18 57:8 59:7 flagged [1] 48:5 Florida [1] 24:24 flow [1] 46:20 flowing [1] 51:2 flows [1] 55:19 focus [5] 8:4 28:11 30:16 52:23,23 follow [1] 28:16 follow-up [2] 21:2 24:8 followed [1] 29:5 foot [1] 53:23</p>	<p>Footnote [1] 64:22 force [1] 33:25 foreign [57] 3:14 6:6,17,23 10:8 11:10 15:20 16:1,14 19:8,10 20:2,12,14 21:21 25:10 32:18 33:2 34:5,13,15,21 35:11 38:5,22,23 39:21 40:8 42:9,12 43:10 44:15,17 46:10,14 47:1,22,23 49:9 50:10,13,22 52:25 53:5,8 54:1 56:21 60:9,16 61:13 62:19 63:16,18 65:5 66:2,16,25 foreign-oriented [1] 61:15 foreseeability [1] 57:11 foreseeable [7] 3:14 5:6 7:21 8:16 13:10 20:12 67:2 forever [1] 15:22 Forget [3] 24:15 41:24 42:19 form [5] 5:22 51:15,23 63:6,7 forms [1] 22:18 forth [1] 58:18 four [1] 45:9 France [5] 6:22 22:13,14 24:2,25 frankly [1] 26:18 French [15] 6:19 16:22,24 17:1,2,16 18:11,13 22:16,21 24:18 32:1 44:1,8 56:23 friction [1] 15:23 friend [7] 15:15 19:19 37:23 47:11 55:5 64:11,21 friend's [2] 10:6 65:22 front [2] 28:3,14 full [7] 13:9 21:15 37:24 49:6,11,14 66:15 fully [1] 58:16 fundamental [2] 38:6 52:8 fundamentally [2] 31:21 60:2 further [3] 54:25 55:2 56:25</p> <hr/> <p style="text-align: center;">G</p> <p>game [1] 65:7 gap [2] 31:9 39:11 General [5] 1:18 5:2 6:11 27:12 30:14 generalize [1] 22:24 generic [2] 65:24 66:9 GEOPHYSICAL [2] 1:6 3:5 gets [2] 25:17 30:22 getting [1] 26:22 GINSBURG [9] 4:13 5:2 7:3 19:23 46:16,23 49:2 50:24 51:7 give [7] 9:4 25:2 43:19 46:3 53:11 60:17 66:2 given [3] 21:20 40:13 62:9 gives [3] 4:2 50:15 65:6 gizmo [2] 22:19,21 God [1] 22:25 GORSUCH [13] 6:25 7:18,24 8:3,6,20,24 9:10,19 17:13,24 18:15 28:15 Gorsuch's [1] 60:5 got [6] 9:12 15:18 53:16,20 54:18 65:1 gotten [1] 20:3 Goulds [8] 8:18 9:7,7,17,23 29:3</p>
---	---	---	---

Official

<p>35:8 50:6 government [5] 25:10 33:25 39:10 45:13,15 government's [1] 65:16 governments [3] 13:14 16:14 43:10 greater [1] 28:20 guaranteed [1] 3:23 guess [1] 66:2 guilty [3] 5:4,18 10:2</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>ham-handed [1] 26:14 hand [2] 43:1 51:12 happen [3] 10:25 15:10,19 happened [8] 3:19 5:10 8:19 15:20 24:1 32:3 44:14 54:23 happens [10] 11:4,18,21 14:3,6 15:11 16:16 25:9 29:15 51:18 happy [1] 65:14 harm [2] 31:20,22 hear [2] 3:3 17:13 heard [2] 47:16 55:5 held [1] 56:17 help [6] 8:10 17:22 18:15,15,15 66:23 helpful [2] 5:9 26:4 high [13] 4:20 5:11 6:7 8:9 17:19,24 18:6,21 20:3 22:2,4 47:25 48:3 hit [3] 16:22 53:20 54:18 hitting [1] 18:11 hold [3] 31:21 46:25 47:19 holder [5] 9:25 10:18 11:10 40:3 52:2 holding [1] 39:12 Honor [4] 9:7 14:19 18:3 47:5 hook [1] 33:14 horrible [2] 23:3,4 hospital [3] 6:21 17:1 18:14 Houston [1] 16:7 However [1] 58:6 hurt [3] 31:25,25 32:13 hypo [4] 54:17 56:4,5,6 hypothetical [13] 23:11 24:2,18 32:2 35:6 36:16 37:9,13 44:12 45:23 46:1 56:13,23</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea [1] 22:13 idiosyncratic [2] 13:12,16 illustrated [1] 60:5 illustrates [1] 42:5 imagine [6] 10:25 29:23 32:3 43:25 44:18 58:12 immediate [4] 36:2,13 53:22 56:24 implication [2] 45:20 64:18 important [6] 6:3 10:5 21:25 25:17 39:24 45:25 importantly [1] 35:18 impose [4] 10:22 46:13 51:16 54:10 imposed [1] 46:17 imposing [1] 66:19</p>	<p>inapplicable [2] 30:8,21 include [1] 6:16 including [1] 4:4 incongruity [1] 28:18 incorporates [1] 40:22 increase [1] 13:10 incurred [1] 6:22 Indeed [7] 10:16 34:13 36:2 43:14 45:18 55:2,14 independent [1] 40:18 independently [2] 18:10 34:2 indicated [2] 7:3 56:20 indication [2] 52:11 60:17 individual [2] 53:15,16 induce [3] 19:2 20:14 66:25 induced [3] 5:24 19:12 55:9 inducement [2] 5:23 55:8 inducing [1] 19:1 industry [2] 22:21 48:2 infringement [49] 3:14,20,22,24,25 4:3 5:4,18 6:2,7 7:23 8:16 10:2,12,23 13:8,13 15:8 16:6 18:5 19:1,7,8,13,17,21 20:8,10 21:8,10 28:23 31:4 33:14 34:10 36:1,4 37:5,16 47:2,23 50:14,19 51:4 52:16 54:4,11 61:22 63:10 65:11 infringer [9] 4:15,21,22,24 5:8 19:11 37:14 61:3,7 infringers' [3] 51:11,13,23 infringes [1] 44:5 infringing [4] 6:4 9:22 37:7 51:17 inital [4] 36:1 37:6 50:19 56:1 injunction [1] 40:4 injunctive [2] 15:17,18 injured [1] 6:13 injures [1] 15:24 injuries [3] 53:9,21 56:17 injury [24] 4:10,21 17:5,15 31:2,10,13 32:14 35:2 36:3,13 37:6 45:20 49:6,12,14 50:12,15 53:3,4,22,23 54:1 56:24 inquiry [1] 28:11 insofar [1] 41:16 instance [2] 50:7 53:12 instead [1] 5:11 instructions [1] 25:21 Integrations [1] 62:17 intend [2] 20:14 66:25 intended [2] 5:20 42:9 intending [1] 29:14 intent [7] 3:17 23:20 29:13 55:13 61:15,16,22 intentionally [1] 66:20 international [3] 15:23 21:12 26:15 interpretation [1] 63:1 intervening [1] 54:2 intuition [1] 23:23 invasion [1] 31:18 invention [1] 23:19 invoke [1] 62:7 invoked [1] 62:8 involve [2] 30:19 39:25 involves [1] 34:6</p>	<p>ION [7] 1:6 3:5 5:12,12 6:5 33:10 34:21 ION's [4] 5:16 16:5 17:7 38:19 irrelevant [1] 24:25 Isn't [7] 25:14 35:14 39:4 50:24 51:4 61:9 66:23 issue [11] 9:11 19:16 41:16 42:13 48:16 50:6 51:13 52:1 55:15 58:1,5 it'll [1] 58:19 item [1] 33:1 items [1] 44:2 itself [8] 7:20 19:10 33:1,7,10 34:20 39:25 63:10</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>JA [1] 25:22 Japan [1] 46:8 job [2] 26:5 33:9 Joe [1] 22:14 Judge [3] 38:8 51:12 52:3 judgment [1] 63:25 judgments [2] 48:9,20 juries [2] 58:18 59:18 jurisdictional [1] 49:21 jurisdictions [1] 63:19 jury [4] 37:17,21 59:24 62:18 Justice [102] 1:19 3:3,9 4:13 5:1 6:25 7:3,18,24 8:3,6,20,24 9:10,19 10:24 11:23,25 12:2,21,24 13:2,15,19 14:22 17:13,24 18:15 19:23 20:17,18,24 22:11 23:6 24:7,13 25:6,14,23 26:21 28:15 29:17 30:10,25 31:1,6,8,12 32:16,17 33:2,8,16,22 34:16 35:7,14 36:14 37:2,17 39:1,8 40:7,13 41:2,14,23 42:2 43:21,23 46:16,23 47:15 49:2,4,11,24 50:24 51:6 52:14 54:16,22,25 55:25 56:3,12 57:3,23 58:6,22 59:3,6 60:5,25 61:6,20 62:6 63:15 64:2,8 65:17 67:5</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>KAGAN [6] 26:21 29:17 30:10 55:25 56:3,12 KANNON [3] 1:22 2:10 33:19 keep [2] 39:24 54:25 KENNEDY [15] 32:16 33:2,8 34:16 35:7,14 39:1,8 49:4,11,24 52:14 54:16,22,25 key [2] 13:3,4 kind [2] 15:17 58:19 kinds [1] 24:6 Kiobel [1] 16:12 knowing [1] 45:2 knows [1] 61:7</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>laboratories [1] 11:5 laid [2] 46:9 52:21 Laitram [2] 40:3 42:13 Lake [7] 5:10,13,17 17:19,25 18:6,22 language [6] 18:16,17 52:17 55:19 60:20,24</p>	<p>large [2] 22:19 44:1 last [1] 47:14 latter [1] 43:2 Laughter [3] 12:18 54:20 64:19 law [27] 6:12 7:14 11:1,7,14,21 14:4 15:22 16:8 21:17,19 22:3,13 23:2 27:14 28:5 34:5 35:9 44:17,21 46:6 50:25 51:10 56:5 57:19 58:15 63:18 law's [1] 7:15 lawful [3] 7:6 8:8 18:10 laws [6] 7:9 19:4 39:15 54:8 55:23 59:23 learned [1] 47:11 least [8] 9:2 19:25 34:1 35:3,12 45:9 54:6 57:18 leave [3] 21:8 42:18 50:3 leaving [1] 59:21 legal [6] 28:10 31:4,6,10 45:20 51:16 legislature [1] 13:7 lens [1] 26:13 less [3] 16:6,23 43:19 level [1] 16:4 liability [11] 5:23 13:6 41:5,6,9 46:13,16 54:10 61:14 65:25 66:19 liable [7] 4:16 18:25 20:13 32:14 46:25 56:17 61:4 license [4] 25:10,12 37:12,15 licensed [1] 10:21 licenses [1] 10:18 likely [1] 29:12 likewise [1] 43:11 Limelight [1] 19:5 limitations [1] 46:5 limited [2] 39:9,13 limits [1] 7:16 line [3] 53:19 56:8 62:14 link [1] 26:18 little [1] 15:14 LLC [1] 1:3 located [1] 64:15 long [1] 33:11 look [16] 15:9 16:1 19:15,18,19 25:20 26:4 30:6 35:19 38:14 40:1 45:13,18 50:11,12 52:22 looked [1] 43:16 looking [1] 23:6 looks [2] 37:12,13 Los [1] 52:4 lose [2] 36:6,17 loses [1] 33:9 losing [1] 50:21 loss [2] 36:10 66:15 lost [29] 4:4 5:5,14 7:10,12 9:4 17:11 20:2 24:19,20 25:20 32:9 33:5 34:24 37:18,21 38:7 40:5,5 42:12,14,16,17 50:21 51:25 52:1 64:23,24 65:1 lot [4] 22:25 44:16 66:22,23 lucrative [1] 38:19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made [7] 10:1 18:3 25:8 33:7 60:</p>
---	--	---	--

<p>13,21 66:3 major ^[1] 58:19 majority ^[1] 40:25 manufacture ^[1] 9:3 manufactured ^[3] 7:5 28:21 61:2 manufacturer ^[3] 17:17 29:5,6 many ^[4] 16:12,13 47:19,19 Marvel ^[1] 44:13 matter ^[7] 1:11 18:8 26:17,17 27:11 32:10,12 matters ^[1] 56:21 mean ^[21] 4:14 11:1,15 12:15 13:19 16:4,18,21 18:11 19:15 25:24 29:22 31:3 43:23 45:1 46:22 56:6 58:10 59:7 62:1 66:6 mechanism ^[1] 63:20 medical ^[1] 16:25 Mellon ^[2] 38:10 62:17 mere ^[1] 57:11 merely ^[1] 42:24 method ^[1] 10:17 Michigan ^[7] 5:11,13,17 17:20,25 18:6,23 Microsoft ^[3] 39:17 47:6 62:3 might ^[8] 7:2,15 28:19 37:19 39:19 43:11 47:1 60:15 million ^[2] 16:6 37:4 mind ^[4] 12:9 22:12 39:25 54:25 mine-run ^[1] 20:9 minute ^[1] 41:25 minutes ^[2] 46:10 64:4 misfit ^[1] 6:10 mistakenly ^[1] 64:11 model ^[2] 17:11 34:17 modest ^[2] 49:25 59:10 Monday ^[1] 1:10 monopoly ^[3] 7:6,7 8:8 morning ^[3] 6:20 53:11,13 Morrison ^[2] 16:13 60:12 most ^[2] 18:13 42:16 motion ^[2] 31:23 32:14 motorcycle ^[2] 53:15,17 much ^[2] 57:21 59:18 must ^[1] 44:8</p>	<p>Norway-flagged ^[1] 54:7 Norwegian ^[1] 54:6 nothing ^[6] 9:21,22 16:9 19:19 46:18 54:24 notion ^[1] 14:10 number ^[1] 26:24 numerous ^[1] 47:20</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O'Scannlain's ^[1] 52:3 obeyed ^[1] 16:8 obstacle ^[1] 4:6 obtain ^[7] 24:19 42:14 50:20 51:9 52:15 63:17,23 obtains ^[1] 11:12 obvious ^[1] 18:17 obviously ^[2] 37:11 61:18 occur ^[4] 4:19 55:4,13 61:17 occurred ^[5] 19:3 21:10 25:5 28:10 66:17 occurs ^[3] 4:18 31:13 46:19 odd ^[1] 15:14 often ^[1] 31:17 okay ^[6] 8:1,4,5 10:20 12:7 44:14 once ^[2] 28:1 65:19 one ^[25] 4:13,14,20 5:19 14:9 18:3 20:7 21:25 22:1,15 23:9 27:5,6,18 32:16 38:18 42:18,20,25 45:2 47:16 49:25 54:6 55:6 64:11 one-stop ^[1] 48:25 ones ^[3] 27:7 34:3 54:11 only ^[21] 4:19 5:12 17:10 22:10 23:14 28:21,21 35:24 36:19,19 37:9 39:18 42:8 43:8 55:1 57:11 61:7 62:4,14 65:1,2 open ^[2] 13:25 50:4 operation ^[2] 32:20 34:19 opinion ^[13] 38:9,11 39:17 40:2,14 41:17 43:3 47:5 51:13 52:3 57:12 59:9 62:3 opponents ^[1] 44:24 oral ^[9] 1:11 2:2,5,9 3:7 20:21 33:19 38:3 47:17 order ^[6] 6:14 15:7 16:1 20:13 24:18 32:20 ordinary ^[1] 24:17 original ^[1] 51:13 other ^[29] 11:2,3,7 12:14 15:16 16:20 17:7 23:17,18,18,21,21 26:3 28:17 30:17 40:15 43:1 46:7 49:10,22 50:3 58:20,23,24 59:19,22 60:4 62:20 65:3 others ^[1] 34:19 otherwise ^[2] 16:7,24 ought ^[1] 48:22 out ^[21] 7:25 8:10 10:5 12:5 18:16 22:16 32:7 37:16 44:3,5 45:10 46:10 47:25 48:2,6 50:21 52:14,21 57:13 58:19 62:20 outside ^[2] 5:25 7:8 over ^[9] 6:19 8:7 11:5,9 13:20 26:24 44:2 53:13,24 overcome ^[3] 52:18 60:14,23 overcomes ^[1] 60:6</p>	<p>overlay ^[1] 26:2 override ^[1] 39:11 overturn ^[2] 63:4 66:6 own ^[3] 39:4 47:6 61:21 Owner ^[2] 39:4 51:2</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>PAGE ^[5] 2:2 10:6 35:19 38:11 46:2 pages ^[1] 45:19 paid ^[1] 16:25 Palsgraf ^[1] 56:15 part ^[10] 9:8 11:3,6,17 22:18,23 36:24 41:16 43:3 44:4 partially ^[2] 28:21,22 particle ^[1] 22:15 particular ^[5] 3:17 27:2 33:24 45:14 64:25 particularly ^[1] 29:12 parties ^[7] 5:16 10:19 18:9 22:4 34:11 54:3 55:9 party ^[5] 5:3 9:24,25,25 16:2 party's ^[2] 7:11 8:7 passing ^[2] 9:10 12:6 Patent ^[41] 4:1 5:13,17 6:8 7:9,15 8:8,15 9:25 10:17 11:7,10 19:4 21:6,19 22:17,22 25:18 27:13,15 28:22 31:16 33:25 34:8 39:4,4,6,15 40:3 44:6,17 48:15,16,17 51:5 54:8 55:22 59:15,18,23 63:18 patentability ^[1] 46:6 patentee ^[4] 21:4 36:5,7 37:14 patents ^[6] 47:19 48:5,7,13,13 63:23 pattern ^[2] 35:7 36:8 PAUL ^[5] 1:16 2:3,13 3:7 64:5 pay ^[4] 6:21 16:23 37:1 44:9 paying ^[1] 22:20 pedantic ^[1] 64:16 people ^[2] 20:2 58:16 percent ^[1] 13:23 percentage ^[1] 55:14 perform ^[1] 50:22 perhaps ^[2] 45:22 53:18 permit ^[1] 36:25 permits ^[1] 63:19 permitted ^[1] 37:18 permitting ^[1] 28:20 person ^[2] 53:21,21 Petition ^[1] 35:20 Petitioner ^[34] 1:4,17,21 2:4,8,14 3:8 20:23 21:14 29:11 32:18,24 34:14,18,23 37:3 39:3,9 42:21,23 45:12,15 46:23 47:18 48:7,21 49:5,8,13 50:20 62:22 63:16,17 64:6 Petitioner's ^[8] 38:2 45:14 47:17 48:12 62:12,14,25 63:22 Philadelphia ^[1] 16:23 pick ^[1] 27:5 picked ^[2] 27:5,7 picture ^[1] 46:18 piece ^[2] 21:25 27:18 pieces ^[1] 23:9 place ^[14] 9:3 11:9,20 17:18,19 18:</p>	<p>6,22 26:3 30:7 36:3 50:19 51:10 63:20 66:20 plain ^[1] 4:1 plaintiff ^[9] 9:24 28:3 43:15 please ^[3] 3:10 20:25 33:22 pleased ^[1] 17:2 plus ^[3] 12:8,10,10 pluses ^[1] 12:16 point ^[23] 10:3 11:17 12:5 18:19 21:11,12 25:17 27:19 36:3,5,11,22 38:10 46:2 47:14,15,25 48:6 55:6 60:6 64:16,20 65:9 pointed ^[1] 52:14 points ^[5] 11:24 21:1 48:2 57:7 64:10 poor ^[1] 17:15 portion ^[2] 8:11 23:16 posing ^[1] 14:15 position ^[9] 16:3 25:4 28:9 45:6 49:5,7,13 63:22 65:11 possibility ^[2] 60:9,15 possible ^[1] 14:8 possibly ^[1] 16:1 potential ^[1] 28:18 potentially ^[1] 36:6 Potomac ^[1] 53:18 Power ^[1] 62:17 practical ^[4] 14:1,15 23:4 31:13 practice ^[1] 5:13 practicing ^[1] 5:17 precisely ^[1] 48:22 predecessor ^[1] 51:22 predicate ^[2] 41:19 51:1 preferred ^[1] 10:17 prejudice ^[1] 58:8 present ^[2] 59:24 65:15 presents ^[1] 47:4 presumption ^[21] 4:5,8,10 6:9,23 16:9 29:18,24 33:23 34:2 49:17,23 52:10,18 60:3,7,14,22 62:8,8 65:20 pretend ^[1] 17:18 pretty ^[2] 16:5 58:11 previously ^[1] 21:19 primarily ^[1] 5:7 primary ^[1] 48:16 principal ^[2] 15:3 27:25 principle ^[8] 6:12 15:21 19:22 23:2,7,22 44:21 50:18 principles ^[1] 65:23 private ^[3] 42:25 43:5,9 probably ^[1] 16:25 problem ^[17] 14:2,9,15 15:5 16:16,18,19 17:7 24:4 30:24 44:1 45:2 56:7,8,9 58:20 60:4 problems ^[6] 21:21 23:1 26:8 44:19 50:3 66:22 proceed ^[1] 52:20 process ^[1] 63:21 product ^[6] 35:10,10 46:14 50:7 61:8,11 production ^[1] 46:13 products ^[2] 36:19,22 Professor ^[2] 26:4 57:15</p>
<p style="text-align: center;">N</p> <p>Nabisco ^[11] 40:14 41:1,4,24 42:6,19 49:19 52:9,21 53:2 60:21 namely ^[1] 47:6 narrower ^[1] 23:10 narrowly ^[1] 39:17 naturally ^[1] 38:14 nature ^[1] 55:22 necessarily ^[3] 25:12 59:13 60:19 need ^[5] 13:5 23:19 25:2,10 56:25 needs ^[1] 24:20 negotiation ^[2] 37:13,14 never ^[4] 21:4,10 25:5 28:10 News ^[1] 52:4 next ^[1] 3:4 nice ^[1] 26:5 Ninth ^[1] 52:3 North ^[2] 44:4,9 Norway ^[3] 54:8,9,13</p>			

<p>profit ^[7] 9:5 17:12 22:20 24:16 33:6 51:23 65:1</p> <p>profits ^[28] 4:4 5:5,14 7:10,12 8:4 11:12 25:20 33:5 34:24 37:18,22 38:7 40:5 42:12,14,17 44:9 50:21 51:9,11,14,19,24,25 52:1 64:23,25</p> <p>programs ^[1] 13:17</p> <p>prohibit ^[2] 3:13 15:17</p> <p>prohibited ^[2] 39:21 40:8</p> <p>property ^[2] 31:17,18</p> <p>proposition ^[5] 17:8 43:18 52:8 59:10,10</p> <p>proscribed ^[1] 8:14</p> <p>prosecute ^[1] 48:5</p> <p>protected ^[1] 8:10</p> <p>protection ^[1] 20:7</p> <p>prove ^[5] 24:19,20 25:7,19 33:12</p> <p>proven ^[2] 28:4,5</p> <p>provide ^[4] 13:9 15:12 37:24 57:21</p> <p>provided ^[2] 3:21,22</p> <p>provides ^[5] 20:6 21:6 43:6 52:12,13</p> <p>proving ^[1] 33:5</p> <p>provision ^[25] 4:8 19:18 27:3,12 29:23 30:11,12,15 34:8 40:11,16,19,21,23,23 41:5 42:24 43:1,4,8 52:23 55:11 65:24,25 66:9</p> <p>provisions ^[12] 29:20 34:3,4 41:10 43:18,19 49:20,21,22,22 52:10 65:21</p> <p>proximate ^[22] 14:11 19:24 20:6 24:5,14,21 26:1,7 33:13 44:22 45:2,4 56:5,15 57:9,14,17,18 58:13,15 66:21,23</p> <p>proximately ^[1] 24:21</p> <p>purpose ^[1] 23:18</p> <p>purposes ^[1] 56:14</p> <p>put ^[2] 8:1 16:2</p>	<p>reason ^[9] 8:12 15:6 19:25 21:23 51:8 58:17 60:2 65:12,18</p> <p>reasonable ^[12] 10:4,10,15,22 36:12 37:3,10,22 38:13 62:19 65:2,7</p> <p>reasonably ^[3] 8:15 20:11 67:1</p> <p>reasons ^[2] 19:9 40:13</p> <p>reassurance ^[1] 50:1</p> <p>REBUTTAL ^[2] 2:12 64:5</p> <p>recall ^[1] 43:2</p> <p>recognition ^[1] 38:3</p> <p>recognize ^[2] 6:4 23:22</p> <p>recognized ^[2] 34:1 39:16</p> <p>recognizes ^[1] 37:23</p> <p>record ^[1] 35:18</p> <p>recover ^[3] 5:14 24:23 32:8</p> <p>recovery ^[1] 24:19</p> <p>red ^[1] 64:22</p> <p>refer ^[3] 38:8 52:2 57:11</p> <p>referred ^[2] 55:8 64:12</p> <p>reflects ^[1] 48:18</p> <p>regard ^[1] 57:8</p> <p>regulate ^[5] 39:18 55:12,20 60:11 63:6</p> <p>regulates ^[3] 46:18 55:1 62:4</p> <p>regulating ^[3] 22:2,4 42:8</p> <p>regulation ^[1] 46:21</p> <p>reject ^[3] 21:3 26:20 62:9</p> <p>related ^[1] 58:11</p> <p>relations ^[2] 21:12,21</p> <p>relevant ^[3] 50:18 52:23 55:11</p> <p>relief ^[1] 49:20</p> <p>relies ^[1] 54:2</p> <p>rely ^[2] 28:19 51:15</p> <p>relying ^[1] 62:23</p> <p>remains ^[1] 58:1</p> <p>remand ^[2] 58:1,3</p> <p>remedial ^[8] 34:2,4,8 40:19,21,23 41:10 52:10</p> <p>remedy ^[9] 3:23 15:17,19 36:12 37:24 41:12 47:21 48:3 51:14</p> <p>repair ^[1] 32:5</p> <p>repeatedly ^[1] 34:14</p> <p>reply ^[4] 38:2 42:22 45:14,19</p> <p>requirement ^[1] 55:3</p> <p>requires ^[1] 57:10</p> <p>reserve ^[1] 20:16</p> <p>resolve ^[1] 65:19</p> <p>resolved ^[1] 58:1</p> <p>resort ^[1] 6:11</p> <p>respect ^[5] 9:6 14:3 15:1 63:15 66:13</p> <p>respective ^[1] 63:19</p> <p>respond ^[3] 7:18 14:17,18</p> <p>Respondent ^[4] 1:7,23 2:11 33:20</p> <p>response ^[2] 15:3 47:15</p> <p>responses ^[2] 31:16 45:8</p> <p>responsible ^[2] 31:22 61:10</p> <p>restrained ^[1] 39:13</p> <p>result ^[7] 4:6 8:16 26:22 30:9 32:23 44:7 63:8</p> <p>results ^[1] 30:23</p> <p>reverse ^[3] 22:13 58:3 67:3</p> <p>RICO ^[1] 41:16</p> <p>rights ^[1] 63:18</p>	<p>ring ^[1] 24:15</p> <p>rise ^[4] 9:4 21:20 43:19 50:15</p> <p>risk ^[5] 34:4 43:7,11 59:17,23</p> <p>Rite-Hite ^[1] 57:12</p> <p>RJR ^[13] 19:16 40:14 41:1,3,24 42:6,18 49:19 52:9,21 53:2 60:12,21</p> <p>road ^[2] 32:7 57:20</p> <p>ROBERTS ^[5] 3:3 20:18 33:16 64:2 67:5</p> <p>robust ^[1] 26:9</p> <p>Roosevelt ^[1] 53:14</p> <p>route ^[2] 14:12,13</p> <p>royalties ^[8] 7:4,25 10:10,15 36:11 64:23 65:2,8</p> <p>royalty ^[16] 10:4,9,22 36:12,20 37:1,1,4,10,12,19,22 38:4,13 62:19 65:6</p> <p>rule ^[26] 5:2 6:14,17 7:14 12:1,17,20 14:24 15:24 16:19 21:3,15,16 26:14,18 27:10,11,22 30:13 45:5,16,23 46:8 50:1 56:10 62:25</p> <p>run ^[3] 6:19 8:8 53:24</p> <p>runaway ^[1] 59:24</p> <p>running ^[1] 23:24</p>	<p>24 42:3,7</p> <p>sensor ^[1] 61:1</p> <p>separately ^[1] 41:11</p> <p>series ^[1] 31:23</p> <p>serious ^[1] 13:8</p> <p>service ^[3] 18:12 35:22 52:4</p> <p>services ^[2] 36:22 61:9</p> <p>set ^[2] 22:5 32:13</p> <p>sets ^[2] 31:23 57:13</p> <p>several ^[1] 45:7</p> <p>severed ^[1] 26:16</p> <p>SHANMUGAM ^[33] 1:22 2:10 33:18,19,21 34:25 35:17 37:2,20 39:7 40:12 41:14 42:1,4 43:22 45:7 46:22 49:8,16 51:6 54:21,24 56:1,3,11 57:5 58:21 59:2,5 61:5,12 62:1,7</p> <p>ship ^[2] 36:24 54:7</p> <p>shipment ^[1] 50:7</p> <p>ships ^[4] 22:17 48:4 54:5,6</p> <p>shop ^[3] 32:4,5 48:25</p> <p>show ^[3] 10:5 18:21 20:11</p> <p>side ^[4] 13:24 15:16 26:25 60:4</p> <p>sides ^[1] 12:3</p> <p>significant ^[3] 21:21 30:3 31:19</p> <p>similar ^[2] 34:4 44:18</p> <p>simple ^[2] 16:5 50:9</p> <p>simpler ^[1] 45:22</p> <p>simply ^[3] 12:5 40:15 60:14</p> <p>since ^[3] 36:18,20 53:10</p> <p>single ^[1] 47:7</p> <p>situation ^[7] 4:22 12:6 13:11 25:9 28:19 30:16 61:25</p> <p>situations ^[2] 23:23 65:13</p> <p>situs ^[5] 35:2,9,12,14 50:11</p> <p>skepticism ^[2] 8:23 9:1</p> <p>small ^[3] 22:18,22,22</p> <p>Smith ^[1] 22:14</p> <p>so-called ^[1] 51:1</p> <p>software ^[2] 46:4,7</p> <p>solace ^[1] 57:21</p> <p>sold ^[4] 36:7 44:2 61:2,8</p> <p>Solicitor ^[1] 1:18</p> <p>solution ^[2] 57:7 66:22</p> <p>somebody ^[9] 9:15 15:24,25 22:16 53:14</p> <p>somebody's ^[1] 6:12</p> <p>somehow ^[3] 38:3,5 57:6</p> <p>someone ^[5] 28:21,24 36:25 44:5 61:3</p> <p>soon ^[1] 26:14</p> <p>sorry ^[2] 36:14 60:25</p> <p>sort ^[7] 29:1 42:11 50:4 51:25 52:7 63:12,14</p> <p>sorts ^[1] 59:11</p> <p>SOTOMAYOR ^[13] 20:17 25:6,14,23 36:14 37:2,17 57:24 60:25 61:6,20 62:6 63:15</p> <p>sought ^[2] 48:13,13</p> <p>Southern ^[1] 64:14</p> <p>Spanish ^[1] 44:8</p> <p>special ^[2] 15:24 30:11</p> <p>specific ^[3] 3:13,15 43:25</p> <p>specifically ^[2] 5:22 9:23</p>
S			
<p style="text-align: center;">Q</p> <p>question ^[10] 25:1 32:11,17 40:20 45:9 46:19 54:5 60:5 63:14 65:17</p> <p>questions ^[2] 21:13 24:6</p> <p>quintessential ^[1] 29:2</p> <p>quite ^[7] 25:18,25 26:24 31:21 50:9 57:10 58:7</p>			
R			

Official

<p>springboard ^[1] 47:8 stage ^[1] 25:1 standing ^[2] 28:3,13 state ^[2] 53:18 57:19 stated ^[1] 47:5 STATES ^[33] 1:1,13,20 2:7 3:17,19 6:1,2,5 9:22 10:1 11:13 15:11,12 19:3 20:22 21:14 22:17 23:14 24: 1 35:3,11,13,23 37:8 38:16 39:19 47:8,12 50:8 54:9 61:2 65:12 statute ^[6] 18:16,18 30:20 53:4 60: 20 61:21 statutes ^[2] 44:18 50:3 statutory ^[2] 10:13 60:23 step ^[3] 52:20,22 53:2 still ^[3] 17:22 27:8 40:9 stop ^[3] 19:14 24:10 58:15 straightforward ^[1] 50:17 streamlines ^[1] 63:21 strongest ^[1] 58:9 struck ^[1] 56:4 struggling ^[1] 17:21 submission ^[5] 28:1 34:12 38:6 49:25 55:18 submitted ^[1] 67:6 subsequent ^[5] 38:20 50:13 55: 16 56:21 57:1 subsidiary ^[5] 32:19,22,22 33:3,9 substantial ^[4] 23:15 45:12 50:13 59:25 substantive ^[7] 34:3 40:16,22 42: 9 43:19 49:21 59:23 sudden ^[1] 22:19 suddenly ^[1] 11:10 sue ^[3] 5:3,12 11:8 sued ^[1] 9:25 sufficient ^[3] 20:7 57:25 60:13 sufficiently ^[2] 13:8 40:22 suggest ^[1] 55:6 suggestion ^[2] 38:2 57:6 suggests ^[2] 56:7 57:16 suing ^[1] 9:20 supplements ^[1] 66:8 supplied ^[1] 38:15 supply ^[1] 3:16 15:18 23:15 27: 19 39:18 47:7 55:2,12,21,24 56:2 supplying ^[1] 37:7 support ^[4] 1:21 2:8 20:23 43:17 supporting ^[1] 21:14 suppose ^[4] 11:15 32:18 34:16 54: 5 supposed ^[3] 17:17 19:7,11 SUPREME ^[2] 1:1,12 surveys ^[2] 22:7 50:22 sweep ^[2] 20:3 35:16 sweeping ^[2] 4:19 32:20 Swiss ^[1] 44:1 Switzerland ^[1] 11:11</p>	<p>Taranto's ^[1] 38:9 targeted ^[1] 3:15 taught ^[1] 52:9 technology ^[3] 7:7 10:18 48:2 terms ^[6] 27:2,24 34:9 52:18 53:4 62:4 territorial ^[3] 7:16 39:14 55:22 territoriality ^[2] 29:19,25 territory ^[1] 29:19 test ^[4] 50:9 56:21 57:10,13 testing ^[1] 46:12 Texas ^[4] 48:25 64:13,14,17 text ^[1] 4:1 textual ^[1] 18:20 theories ^[3] 26:23,24 65:15 theory ^[5] 26:22 27:25 29:18 65:16, 22 There's ^[2] 4:7,9,13,16 6:14,17 11:20 14:11 15:9,24 16:9 19:22 21:23 23:8 25:11 30:2 31:9 33:13 46:17 56:7 65:12 therefore ^[1] 4:2 thinking ^[2] 60:8 63:11 thinks ^[2] 41:8 45:16 third ^[7] 7:11 8:7 10:19 14:13 18:9 22:4 54:3 third-party ^[2] 9:4 14:3 though ^[10] 6:4 7:1 8:13 10:4 18:7 19:8 59:14 60:20 65:17 66:3 thoughtful ^[1] 38:9 three ^[3] 14:8 64:4 65:15 throughout ^[1] 27:13 tied ^[1] 61:8 tiny ^[2] 22:15 44:4 Title ^[1] 66:8 took ^[6] 17:18,19 18:6,22 50:19 66: 20 top ^[2] 26:2 37:22 tort ^[6] 21:17 24:17,22 25:5 32:10, 12 tortfeasor ^[1] 31:22 tortiously ^[1] 32:6 total ^[1] 12:9 totally ^[2] 24:25 59:22 tough ^[2] 58:14,15 tourist ^[2] 24:18 32:1 traditional ^[2] 37:24 39:14 traditionally ^[1] 55:22 treat ^[6] 17:17 18:5 19:8,11 27:19 65:13 treated ^[1] 18:22 treatment ^[1] 56:25 treble ^[3] 43:6,12 59:14 TRIPP ^[24] 1:18 2:6 20:20,21,24 23:5,8 24:11,16 25:13,16,24 26: 21 27:9 28:25 30:2,13 31:3,7,11, 15 32:24 33:4,11 trivial ^[1] 66:5 trouble ^[1] 43:24 true ^[3] 5:15 36:1 58:14 trust ^[2] 51:17,19 try ^[2] 11:16 24:14 trying ^[5] 14:8 28:7 46:24 48:21 50: 20</p>	<p>tune ^[1] 37:4 turn ^[1] 21:11 turns ^[3] 22:16 37:16 44:5 two ^[1] 8:18 14:19 18:2 23:8 30:3 31:15 53:8,21 59:6 64:9 65:13 type ^[2] 40:1 50:5 types ^[1] 49:22</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S. ^[8] 6:7,12 8:15 21:17 22:3 28:5, 14 46:17 ultimate ^[1] 55:15 ultimately ^[2] 61:17 62:12 uncertain ^[1] 11:19 under ^[14] 7:3 9:2 27:17 28:4,24 32:24 46:6 50:25 51:24 54:14 55: 3 57:18 61:15 62:25 underlying ^[2] 24:22 40:16 understand ^[1] 14:20 understanding ^[1] 5:24 understood ^[2] 29:4 66:18 UNITED ^[33] 1:1,12,20 2:7 3:17,19 6:1,2,5 9:21 10:1 11:13 15:10,11 19:3 20:22 21:14 22:17 23:14 24: 1 35:3,11,13,23 37:8 38:15 39:19 47:8,12 50:8 54:9 61:2 65:12 units ^[1] 65:3 unlawful ^[2] 18:10 19:10 unless ^[1] 57:19 unlike ^[5] 16:11,12,12,13,13 unmistakable ^[1] 60:17 up ^[6] 14:2 27:17 28:16 39:4 44:23 66:1 upset ^[1] 44:15 uses ^[4] 8:9 9:4 32:22 46:14 using ^[1] 24:14</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valuable ^[1] 22:19 value ^[4] 36:20 38:14,20,24 various ^[1] 45:8 version ^[1] 36:7 versus ^[2] 3:5 66:7 victim ^[1] 3:23 4:2 15:13 17:6 21: 8 25:3 28:8,13 30:18 31:24 view ^[3] 13:13 34:6 35:6 views ^[1] 13:20 VII ^[1] 66:8 violate ^[3] 11:7,14 19:4 violates ^[1] 22:16 violating ^[1] 14:4 violation ^[1] 44:17 violator ^[1] 18:24 Virginia ^[1] 54:19 voluntarily ^[2] 10:18,20</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wages ^[4] 24:19,20,23 32:9 walked ^[1] 65:21 walking ^[1] 26:6 wallet ^[1] 16:7 wandered ^[1] 53:17 wanted ^[5] 4:15 18:5 41:11 47:14 64:18 wants ^[2] 19:19 57:20</p>	<p>Washington ^[4] 1:9,16,19,22 way ^[22] 3:18 6:1,20 10:5,15 14:9, 10 16:20 17:6 20:7 24:3 26:12 27: 20 30:6 37:10 38:23 58:23,24 61: 7 62:21 63:5 65:18 ways ^[4] 14:8,21 16:18 22:1 weird ^[2] 66:10,13 WESTERNGECO ^[2] 1:3 3:4 whatever ^[2] 20:2 51:18 whatsoever ^[1] 42:3 Whereupon ^[1] 67:7 whether ^[12] 11:19 18:8 19:1 24: 23 40:10,21 41:11 50:10,13 52:25 53:3 55:9 who's ^[1] 5:4 whole ^[7] 5:10 6:16 15:13 32:15 33:15 49:12 65:9 wholesaler ^[2] 9:17,21 will ^[12] 10:24 25:11 29:14 31:24, 24 43:2 46:4 48:8 49:24 57:2 58: 15,25 willing ^[2] 44:25 56:14 win ^[1] 65:14 window ^[1] 62:23 WIPO ^[1] 63:21 wonder ^[2] 7:1,2 wonderful ^[1] 56:16 woodenly ^[1] 65:23 word ^[1] 9:12 worded ^[1] 53:4 words ^[3] 40:15 47:7 49:10 work ^[1] 45:1 world ^[7] 11:5 12:25 13:20 36:23 44:3,11 47:20 worldwide ^[2] 47:9 48:25 worse ^[1] 21:9 wronged ^[1] 28:5 wrongful ^[1] 23:25</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years ^[1] 12:1 Yelderman ^[1] 57:15 Yelderman's ^[1] 26:5</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>ZACHARY ^[3] 1:18 2:6 20:21</p>
<p style="text-align: center;">T</p> <hr/> <p>table ^[1] 26:25 tailor-made ^[1] 24:6 tangible ^[1] 31:20 tantamount ^[1] 23:12</p>			