

1 Congress's understanding when it enacted the 1952 Act?

2 Now, we also have --

3 JUSTICE GINSBURG: What about the
4 well-established understanding that laches cannot bar
5 claims for the legal relief that have their own time
6 limitation?

7 MR. WAXMAN: So, there is a maxim, and it
8 clearly did apply. It -- it doesn't apply in many
9 contexts, some of which are rehearsed in
10 Justice Breyer's dissent in the Petrella case. But in
11 any event, even if there -- even if patent law were the
12 only case, and I -- I've cited Title VII as another
13 example, but even if patent law were the only case, the
14 fact of the matter is, that what -- that as this Court
15 has explained repeatedly, including as recently as the
16 Halo decision this term -- last term, this year,
17 Congress was attempting to retain and reflect patent law
18 as it existed, not some general maxim that might apply
19 in another context. And in this case, whatever force
20 the general maxim had, and there are plenty of
21 exceptions to it, in patent law, the case law was
22 uniform and substantial that --

23 JUSTICE KAGAN: But speaking of the general
24 maxim, Mr. Waxman, wouldn't we expect that if Congress
25 wanted to make an exception for patent law or wanted to

1 continue exception that existed as a result of the
2 preexisting practice, that Congress actually would have
3 said so?

4 MR. WAXMAN: I -- I think not in a context
5 in which we are -- Congress is not enacting something
6 new. It's simply continuing the 1897 six-year
7 limitation against a backdrop of uniform case law,
8 uniform treatise writers.

9 The -- the legislative history of
10 Senator McCarren making one of the four amendments in
11 the Patent Act be unenforceability to include in what
12 became Section 282 and a cognate provision in the
13 damages remedy, Section 284.

14 JUSTICE GINSBURG: Did the senator that you
15 just quoted, did he use unenforceability the -- the way
16 you do?

17 MR. WAXMAN: Well, he said we need to
18 include unenforceability because of the -- and this
19 is -- this is recited; I can't remember what the
20 relevant language in our red brief -- we have to amend
21 this to include unenforceability, because there are
22 doctrines that are reported in the cases -- and these
23 are all equitable doctrines, including laches -- that
24 prevent the recovery of damages where -- even if a
25 patent is determined to be valid and infringed.

1 And that's why, he explained, there also had
2 to be an amendment in what became Section 284 so that it
3 didn't simply apply damages to patents that were valid
4 and infringed but only in cases in which the plaintiff
5 isn't otherwise entitled.

6 JUSTICE SOTOMAYOR: But the problem with
7 that argument that you're making is that, yes, that was
8 said. But we don't know what they had in mind. There's
9 nothing to show us directly what they had in mind, other
10 than what they spoke, and they spoke about the
11 traditional conditions like patent misuse and the other
12 things that are specified.

13 MR. WAXMAN: I -- I --

14 JUSTICE SOTOMAYOR: I still don't see in the
15 history where the people who were drafting at the time,
16 not two years later or time later, really were thinking
17 of this in the way you're speaking of.

18 MR. WAXMAN: Justice Sotomayor, you are
19 correct that in amending the statute to include an
20 unenforceability defense, and again, I want to reiterate
21 that even if you don't think unenforceability applies to
22 the litany of equitable defenses that have long since
23 been imported into substantive patent law on both sides,
24 even if you don't agree with that, you still have to
25 interpret 286, which they claim is the bar to the

1 application of laches against a backdrop of uniform,
2 very substantial case law from every circuit that
3 considered the question, that recognized that laches
4 was, in fact, such a defense.

5 But you -- you are --

6 JUSTICE SOTOMAYOR: You won't get very far
7 with me on that, because I don't know how to import
8 something in that's not stated by Congress in any way.

9 MR. WAXMAN: What is stated by Congress, and
10 this Court has accepted repeatedly, is that Congress in
11 1952 intended to retain and reflect patent law as it
12 existed, and that's why, for example, this Court found,
13 even though there is no codification, that the doctrine
14 of equivalence is still applicable after the 1952 Act,
15 even though nothing was said about it. And --

16 JUSTICE GINSBURG: There is a whole series
17 of decisions in the courts of appeal. On the legal
18 question it turns on the interpretation of a statutory
19 text.

20 This Court has never ruled on it. Is the
21 Court estopped because there have been a number of
22 courts of appeals who have ruled one way? This Court
23 has never addressed the question.

24 MR. WAXMAN: This Court is never estopped
25 from anything that it doesn't think it's estopped from.

1 But the legal -- the legal question in the
2 case, Justice Ginsburg, is what did Congress in -- did
3 Congress in -- in enacting the 1952 Act intend to retain
4 and reflect the patent law, laches case law, as it
5 intended to retain and reflect patent law in general?
6 And there are -- I mean, I gave you the example, for
7 example, to Justice Sotomayor's question of where was
8 the -- you know, an express intent to include laches, I
9 gave you the example of the doctrine of equivalence.

10 There are many, many other doctrines that
11 were continued and that this Court has found were
12 continued.

13 JUSTICE BREYER: A weak point in your
14 argument is all -- most of those prior cases were --
15 were equity cases, but the weak point's weakened because
16 most of those equity cases after 1897 were under
17 provisions that had a statute of limitations, and the
18 reason you didn't have laches in equity is because it
19 didn't have a statute of limitations. But here you did
20 have a statute of limitations.

21 So you have all those cases; that's your
22 argument. And I'm -- I'm actually just trying to
23 summarize it so you'll tell me where it's not correct.

24 MR. WAXMAN: I just want to strengthen it.

25 JUSTICE BREYER: Okay. Strengthen it, but

1 when you strengthen it, will you please spend about a
2 minute or two on what I thought was another argument,
3 which now has been seriously undercut, and I want to be
4 sure you have a chance to address it.

5 MR. WAXMAN: And this is --

6 JUSTICE BREYER: I was -- I was afraid of --
7 and I think I might have been well wrong to be afraid of
8 it -- but moved in part by the Dell brief, I was afraid
9 that a person with a patent or the transferee of that
10 patent, in year 2, would have told the -- a licensee, go
11 right ahead, go ahead, or not said anything when he
12 could have or something like that, that would have given
13 rise to laches. That licensee would have spent billions
14 on technology that is very hard to change.

15 MR. WAXMAN: Justice Breyer --

16 JUSTICE BREYER: And then in year 18, this
17 person, now the transferee of the patent, sues him, and
18 he is going to get six years worth of profits and
19 nothing deducted. Now they have told me that's totally
20 wrong because what you would have done is gone back to
21 year two, figured out a reasonable rate of return, and
22 that's what it would have gotten.

23 I'm still a little worried that he brings
24 the same lawsuit in 19 -- year 19, year 20, years
25 thereafter, and thereby really fixes this guy who has,

1 in fact, invested \$4 billion on the old technology.

2 MR. WAXMAN: Yep.

3 JUSTICE BREYER: But I want to give you a
4 chance.

5 MR. WAXMAN: Thank you.

6 Justice Breyer, the Dell brief is one of a
7 dozen briefs that addresses the very significant
8 consequences to extending Petrella to the very, very
9 different statutory and commercial context. The -- the
10 industry as a whole, across the board, is so clear that
11 -- that laches should apply and continue to apply, that
12 the -- the Intellectual Property Owner's Association,
13 the group that represents people against whom laches are
14 asserted, has told this Court in an amicus brief
15 supporting neither party that laches existed, exists,
16 and should continue to exist in this case. And the
17 reason why is, in addition to --

18 JUSTICE SOTOMAYOR: Mr. Waxman, can you get
19 to Justice Breyer's question? What is the economic
20 consequence other than paying a reasonable royalty?
21 Let's assume somebody waits till year 19. They are only
22 going to get a reasonable royalty from year 14 or -- my
23 math is horrible -- year 13 to 19. What else? What's
24 the other economic loss?

25 MR. WAXMAN: Well, the -- the economic -- of

1 course we're now just talking about retrospective
2 damages. And as this Court explained in *Petrella*,
3 and -- and explained first in 1880 in the *Menendez* case,
4 laches can apply when the -- the severity that the
5 unreasonableness, and inexcusably, the delay is long
6 enough, and the prejudice is substantial, to defeat all
7 forms of remedy.

8 But the prejudice here is that, unlike in
9 the copyright area where Congress adds -- adds two whole
10 Roman numerals of this majority's opinion, and *Petrella*
11 explains, there are many, many signals otherwise in the
12 way that the copyright law is constructed, that Congress
13 was knowledgeably and intentionally assuming and
14 accepting that -- that claims would be brought years and
15 years after the fact that would limit the damages to
16 only those net profits for three years out of the
17 hundred-plus years of the copyright life.

18 In this case, we are talking about six years
19 of a 20 -- really more like 17 years -- and we are
20 talking about instances recounted in the amicus briefs
21 in which defendants are locked in. And they are not
22 just defendants in copyright law.

23 In order to be a defendant, you have to
24 copy. You have to know that you are copying something.
25 And copyright law doesn't apply to third parties or

1 people who use it or make nonpublic displays.

2 In the patent law, there is strict
3 liability. Independent invention is no defense.

4 JUSTICE ALITO: Well, Mr. Waxman, to follow
5 up on this point, Mr. Black made several -- made several
6 points. One is that asserting a laches defense is
7 obligatory, and therefore it leads to a lot of pointless
8 litigation, according to his submission.

9 And second, that the reasonable royalty is
10 not such a tremendous penalty.

11 So could you just respond briefly to those
12 two?

13 MR. WAXMAN: Well, I don't know how often
14 laches is asserted or not asserted. It is true that it
15 is not often found to have been satisfied. I mean, the
16 -- the existence of laches is -- and laches as a defense
17 to damages -- and then I will get to the economic harm
18 part -- was so settled, that -- I mean, that's the
19 reason why this Court has never addressed it. It was so
20 settled, that in this very case in which the plaintiff
21 sued for an injunction and damages and laches was
22 asserted, until after this Court announced its decision
23 in *Petrella*, the defendant never in any of its pleadings
24 or briefings or defenses said, laches? Laches doesn't
25 apply to damages.

1 JUSTICE GINSBURG: The Federal Circuit --
2 the Federal Circuit was the final word until this Court
3 stepped in.

4 JUSTICE SOTOMAYOR: All right.

5 JUSTICE GINSBURG: And the Federal Circuit's
6 position was clear.

7 MR. WAXMAN: That -- that's entirely right.
8 The point here is that -- that the principle that laches
9 applied to damages was so unexceptional, that it simply
10 wasn't defended.

11 Now, on the monetary damages, you have --
12 you can say, oh, yes, you know, perhaps the appropriate
13 remedy is reasonable royalty. Although reasonable
14 royalty is the floor, it's damages not less than
15 reasonable -- than a reasonable royalty. But it's being
16 applied against not just people who -- who make or sell
17 the invention, but people who use the invention, like in
18 theory -- in theory, any of us with respect to devices
19 that have chips that can't be marked, and against people
20 who had no idea that they were necessarily infringing a
21 patent.

22 The Petitioner's own amici make the point of
23 how difficult it is to know, even if you know of a
24 patent, how the claims will be construed, or whether it
25 will be -- you'll be ascertained to have, in fact,

1 infringed that particular --

2 JUSTICE BREYER: The part -- the part I'm
3 missing in your argument, I've focused it -- look. Year
4 13, okay? It all turns on a license. License. Year 1.
5 Gone. Disappeared. Far. Can't find any witnesses,
6 okay? So therefore, laches, if laches exists.

7 Now, you say, the difference with copyright
8 is that the people there involved are really locked in,
9 that -- those are your words, "locked in." I want to
10 say respect, locked in. So what? Why does that make a
11 difference?

12 MR. WAXMAN: Well, because, in the -- in the
13 copyright context, since in order to even commit the
14 tort of copyright infringement you have to know you're
15 copying, and you can always choose some other form of
16 expression.

17 In the patent doctrine, where it is -- it is
18 strict liability where independent invention is not a
19 defense, there are many, many opportunities recounted in
20 the amicus briefs in which there's every opportunity to
21 design around a particular patent claim.

22 JUSTICE BREYER: "Locked in" means you can't
23 change. Why is it relevant that you can't change?

24 MR. WAXMAN: It's relevant you can't change
25 because at the point -- at the later point in which the

1 -- the plaintiff who unreasonably and without excuse
2 comes in to your substantial prejudice and says, a-ha, I
3 got you, you don't have the option of mitigating.

4 You've built a \$1 billion plant, or the -- you're using
5 the patent to -- a -- a standards-essential patent --

6 JUSTICE GINSBURG: How much do you have to
7 pay? You have -- it's only six years. And if what you
8 have to pay is a reasonable royalty, that doesn't sound
9 so horrendous, does it? And it sounds like just what
10 Congress meant when it gave you a six-year statute of
11 limitations.

12 MR. WAXMAN: It is damages not less than a
13 reasonable royalty.

14 JUSTICE GINSBURG: What does the judge
15 usually charge -- now in many of these cases, at least
16 one of the briefs said, are tried to a jury. What does
17 the judge instruct the jury about the monetary recovery
18 in a patent suit?

19 MR. WAXMAN: Oh, there are -- I mean,
20 ordinarily, what plaintiffs will seek are the lost
21 profits of the -- of the plaintiff, or another measure
22 of damages, and the judge instructs the jury that as a
23 safeguard, the floor is not less than a reasonable
24 royalty. In other words, the judge instructs the jury
25 in accordance with the provisions of -- of Section 284.

1 But the point here is -- I mean, again, I --
2 you keep saying -- and whatever is -- and it is
3 certainly true that in the -- may I finish my sentence?

4 CHIEF JUSTICE ROBERTS: Sure.

5 MR. WAXMAN: In the event that there is a
6 statute of limitations, whether you call the 1897
7 provision one or not, what is one to make of a laches
8 defense? The case law and the commentators answered
9 that question pellucidly for the 1952 Congress.

10 Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you, counsel.

12 Mr. Black, you have four minutes remaining.
13 Five minutes. Sorry.

14 REBUTTAL ARGUMENT OF MARTIN J. BLACK

15 ON BEHALF OF THE PETITIONERS

16 MR. BLACK: Thank you, Your Honor.

17 Patent law is an important branch of the
18 law, but it is just a branch, and this Court's
19 precedence is the trunk and the roots. And this Court's
20 precedent were very clear before 1952 -- in Homebrook in
21 1946, U.S. v. Mack, 1935; Wehrman, 1894 -- that laches
22 cannot bar damages within the period of a Federal
23 statute of limitations. On the equity side of the
24 Court, laches could bar a claim. It was almost treated
25 like a jurisdictional issue, and an issue in copyright

1 as well as in patent, because the way the equity courts
2 worked, if you wanted to seek injunctive relief, you
3 went to equity.

4 If you only wanted to seek a monetary
5 remedy, you could not go to the equity court. That's
6 under the Root case, and naked accounting was not an
7 acceptable basis for equity jurisdiction.

8 So plaintiffs would go to the equity court.
9 They would seek an injunction, and then they would
10 get -- as additional remedy if they survived the
11 liability phase and the laches findings, they would then
12 go on to -- go to see a Special Master to deal with an
13 accounting, an accounting of the profits. That was the
14 remedy on the equity side.

15 They've got a statistic in their brief about
16 damages in equity cases, but they were very rarely
17 awarded because the real candle was disgorging the
18 opponent's profits just as in copyright law. It's not
19 available in patent law.

20 The number of damages cases, if you really
21 wanted to look at it, you'd have to look at all the
22 cases on the law side because those are always about
23 damages, and a small fraction in which a Special Master
24 awarded on the equity side damages rather than the --
25 the accounting for profits.

1 Congress abolished that provision in 1946
2 because it was unworkable. The legislative history of
3 that Act reads like Bleak House. It was a horrible
4 procedure which frustrated the parties, which they
5 described as -- in terms of "justice delayed is justice
6 denied," and they abolished that.

7 So it was in front of Congress in 1952 with
8 three things. This Court's precedent that said that
9 laches could not be used to bar legal relief. You had
10 the merger of law and equity in 1938 which scrambled all
11 the eggs. You had the 1946 Lanham Act, which also went
12 through the committee on patents and copyrights where
13 they specifically included the word "laches" in the
14 statute. And you had the abolition of the remedy that
15 parties had been seeking as the primary means of
16 monetary relief in patent law for 60 years.

17 There is no way that you can look at that,
18 that fact, and get around it by pointing to a book, a
19 treatise, which, by the way, does not have a section in
20 it on unenforceability.

21 JUSTICE KAGAN: Well, Mr. Black, I take it
22 that Mr. Waxman's principal point is that what separates
23 out the patent context is that laches was operating true
24 in equity but with a statute of limitations, and that
25 that just wasn't true in other places. The Congress was

1 used to the notion that laches would operate with a
2 statute of limitations in place.

3 So what's your response to that?

4 MR. BLACK: Laches could bar the suit in
5 equity, but -- and then the plaintiff was out of court
6 but not on the law side. On the law side, damages were
7 available to the plaintiff.

8 There was an overall -- there was an overall
9 requirement, though, in Section 286. And in the
10 original 1897 version, which was just called a statute
11 of limitations, that said no matter what, if you're in
12 law, if you're in equity, you cannot get damages more
13 than six years before suit.

14 But what happened in the equity courts is
15 the courts would take a look at whether or not the
16 plaintiff had clean enough hands to continue pursuing
17 the case. And if they'd waited too long, the equity
18 courts had that power which was granted to them back at
19 common law -- not in common law -- back in England, and
20 they exercised the power to say, you know what, equity
21 is not going to help you because you waited too long.
22 Not true on the law side.

23 Now, my opponent says there weren't any
24 cases on the law side, but part of the reason for that
25 was you couldn't plead laches in a case of law. You

1 couldn't even plead it prior to 274(b), which I think
2 was 1919. Then courts got -- that was the beginning of
3 merger. Then courts got a little confused, and you have
4 cases like Banker, which just got it wrong.

5 But courts did not consider laches in cases
6 of law because they couldn't. It would have been like
7 pleading contributory negligence in a contract case. It
8 just wasn't a recognized defense.

9 But when we look at this Court's precedence,
10 it was very clear, laches cannot bar legal relief.

11 Petrella has a tremendous benefit to it. It
12 has a very clear -- clear rule of decision that decides
13 this case and any others that might come before the
14 Court on the nature of laches. We look to the nature of
15 the remedy in modern litigation, not to the vagaries of
16 the merger of law and equity or ancient equity practice.
17 We look to the remedy.

18 CHIEF JUSTICE ROBERTS: Thank you, counsel.

19 The case is submitted.

20 (Whereupon, at 12:02 p.m., the case in the
21 above-entitled matter was submitted.)

22

23

24

25

A				
a-ha 46:2	afraid 40:6,7,8	32:16	4:23 22:10,12	backdrop 25:23
a.m 1:16 3:2	agree 7:1 37:24	applicable 8:14	arm's 21:2	36:7 38:1
ABA 23:25	agrees 19:20	15:20 25:8,22	articulation	backwards
abolish 9:22	ahead 17:13	27:12 33:9	33:22	20:24
abolished 49:1,6	19:22 22:9	38:14	ascertained	bad 5:22 13:1
abolition 49:14	40:11,11	application 18:7	44:25	bank 12:3
above-entitled	AIPLA 23:25	38:1	asking 5:10	Banker 51:4
1:14 51:21	Aktiebolag 1:3	applied 4:4 9:6	asserted 8:12	bar 26:22 35:4
absence 26:6	3:5	10:1 19:13,15	41:14 43:14,14	37:25 47:22,24
accept 12:7 33:3	AL 1:4,8	27:11 28:25	43:22	49:9 50:4
acceptable 48:7	ALITO 43:4	29:3 31:9 44:9	asserting 19:9	51:10
accepted 38:10	alleged 28:4	44:16	43:6	barred 25:9
accepting 42:14	alongside 32:17	applies 4:2,10	assertion 21:12	based 22:14
accounting 48:6	32:19	6:12 8:15 13:2	21:17	basis 48:7
48:13,13,25	Alsterbach 4:13	13:4,5 14:11	Association	began 21:4
accustomed	amend 36:20	24:14 37:21	41:12	beginning 29:22
27:1	amended 8:3	apply 3:13 5:21	assume 13:4	51:2
Act 3:21 8:14,25	amending 31:20	6:14 9:4,19	19:7 41:21	behalf 1:18,20
16:5 25:20	37:19	12:11,12 14:19	assuming 12:14	2:4,7,10 3:8
33:25 35:1	amendment 8:2	15:4 20:7,24	12:16 42:13	25:16 47:15
36:11 38:14	37:2	24:14 35:8,8	attempting	behave 12:14
39:3 49:3,11	amendments	35:18 37:3	35:17	behavior 12:15
action 17:11	36:10	41:11,11 42:4	attorneys 16:12	13:1,1 17:12
25:22 34:12	amici 44:22	42:25 43:25	Aukerman 4:14	believe 7:6,10
actions 4:10	amicus 19:11	applying 4:18	authoritative	11:13 14:10
15:20 23:3	41:14 42:20	approaching	34:8,20	believed 8:10
29:7	45:20	5:10	authorities	benefit 51:11
actual 16:17	amount 25:4	appropriate	28:17	big 4:21 11:18
17:4 21:18	ancient 51:16	13:18 28:19	available 25:24	33:18
added 8:1	anew 27:24	44:12	29:21 30:8	billion 41:1 46:4
addition 41:17	announced	approval 19:21	33:15,16,23	billions 11:8,11
additional 48:10	43:22	approximately	34:5 48:19	40:13
address 5:8 7:13	anomalous	11:13	50:7	Black 1:18 2:3,9
7:18 11:20	32:20	area 6:7 42:9	awarded 48:17	3:6,7,9 4:3 5:8
40:4	answer 12:8	areas 19:16 24:5	48:24	5:13,19 6:2 7:6
addressed 9:6	24:12 31:12	arena 21:17	aware 34:21	7:9,16 8:7 9:8
14:12 38:23	33:25 34:17	arguing 13:6		11:19 12:8,20
43:19	answered 47:8	argument 1:15	B	12:23 13:7,10
addresses 41:7	answers 24:16	2:2,5,8 3:4,7	Baby 1:7 3:5	13:14 14:3,20
adds 42:9,9	anyway 4:19	4:12 9:2 11:3	back 4:14,22	15:8,11,16,25
adjudicating	24:24	12:13 13:9	11:14 15:1	17:2 20:17
32:16	appeal 38:17	20:16 25:15	16:15 17:21	23:8,11 25:15
adopt 33:21	appeals 14:23	27:21 29:20	18:3,25 19:17	43:5 47:12,14
adopted 29:6	38:22	33:3 37:7	22:7 24:10	47:16 49:21
30:16	APPEARAN...	39:14,22 40:2	26:18 32:25	50:4
	1:17	45:3 47:14	33:5 40:20	Bleak 49:3
	applicability	arguments 4:21	50:18,19	Blonder-Tong...

<p>26:25 27:14,17 board 4:2 28:3,3 41:10 book 49:18 books 32:8 bought 23:17 bound 22:25 23:3,3 24:11 branch 47:17,18 Breyer 4:11 5:9 5:16,20 7:2 10:5 12:7,9,22 12:24 13:16 19:17 23:5,9 39:13,25 40:6 40:15,16 41:3 41:6 45:2,22 Breyer's 35:10 41:19 brief 7:24 11:9 13:22 19:11 23:6 24:1 26:7 36:20 40:8 41:6,14 48:15 briefings 43:24 briefly 43:11 briefs 41:7 42:20 45:20 46:16 bring 20:3 32:23 bringing 22:21 brings 6:10 20:4 40:23 broad 24:1 brought 29:7,19 30:1 34:4 42:14 built 46:4 burden 24:2 burned 12:19 business 24:22 buying 23:2 buys 22:24</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 calculating</p>	<p>20:12 call 12:16 21:12 47:6 called 4:7 6:25 9:15 18:1 50:10 Campbell 9:16 candle 48:17 cap 28:14 capable 16:13 case 3:4 5:5 6:4 6:15,21 7:2,10 10:7,9,14 11:4 11:8,25 13:3,5 13:18 14:18 16:16 19:19 23:12,19 24:16 25:2,5 27:17 27:20,25 28:10 28:12,17,19,19 29:10,10 32:13 32:14 33:5 34:4,18 35:10 35:12,13,19,21 36:7 38:2 39:2 39:4 41:16 42:3,18 43:20 47:8 48:6 50:17,25 51:7 51:13,19,20 cases 4:13,17,20 4:20,23,25 5:3 5:12,14 6:23 7:4 9:13 15:12 15:17 17:4,20 22:7 23:21,22 24:17 25:8 27:10 28:12,23 28:25 29:3,14 29:18,23,25 30:1,7,7,10,11 30:15,17,20,21 36:22 37:4 39:14,15,16,21 46:15 48:16,20 48:22 50:24 51:4,5</p>	<p>cast 26:17 century 4:5 certainly 6:12 7:21 8:20 15:12 29:4 47:3 chance 40:4 41:4 change 4:21 11:7,16 17:12 40:14 45:23,23 45:24 charge 46:15 Chief 3:3,9 4:1 7:7,22 9:1 15:23 16:23 25:13,17 28:22 29:1,12 30:13 33:6 34:6 47:4 47:11 51:18 child 23:15 chips 16:25 44:19 choice 9:17 18:15 choices 17:8 choose 45:15 circuit 6:4 7:20 19:14 24:13 26:4 30:7 38:2 44:1,2 Circuit's 44:5 circuits 33:6,7 cited 27:10 28:17 30:3 35:12 claim 16:15 18:3 27:20 32:23 37:25 45:21 47:24 claiming 24:12 claims 28:19 29:21 32:16 33:10,11 35:5 42:14 44:24 clarify 11:23 20:18</p>	<p>clarity 8:2 clean 50:16 clear 8:24 9:1,3 9:13 17:23 19:7,9,10 22:24 41:10 44:6 47:20 51:10,12,12 clearly 35:8 close 11:11 20:17 codification 26:1 38:13 codified 25:21 26:5 34:15 codifying 33:2 coexists 34:22 cognate 36:12 collapse 19:3 collateral 15:21 27:2,21 collect 17:14 collected 21:15 collecting 22:13 22:15 collects 10:23 come 4:22,25 5:2 11:14 21:1 24:3 32:14 51:13 comes 46:2 comfortably 32:19 comment 5:11 commentary 7:14,18,25,25 8:9 commentators 47:8 commercial 41:9 commit 45:13 committee 34:19 49:12 common 50:19 50:19 companies</p>	<p>11:10 13:24 22:3,4 company 11:6 11:16 21:25 22:1,2 23:2 compels 3:22 complaint 24:9 complete 31:12 completely 33:21 complex 19:22 comply 16:16 18:4 22:8 concede 26:16 26:20 30:14 concededly 27:7 concerned 21:11 concluded 22:17 conclusion 5:1,2 25:7 conclusions 21:18 conditions 37:11 conduct 6:12 14:1,8,9 15:1 27:8,22 confidential 21:16 conflicts 14:7 conformed 19:16 conforming 24:4 confused 51:3 Congress 3:12 3:15,19 9:12 9:22 16:7,21 17:23 18:24 19:5,7 28:10 29:5 30:16,19 31:6,19 32:7 33:2,17 34:14 34:20 35:17,24 36:2,5 38:8,9 38:10 39:2,3 42:9,12 46:10 47:9 49:1,7,25 Congress's 35:1</p>
---	--	--	--	--

<p>consensus 25:23 29:5 30:15 consequence 41:20 consequences 41:8 consider 51:5 considered 16:7 30:4,5,16 33:7 38:3 consistent 8:21 constructed 42:12 construed 44:24 contemporary 34:21 context 4:19 9:4 11:24 31:18 33:23 35:19 36:4 41:9 45:13 49:23 contexts 19:15 35:9 continue 36:1 41:11,16 50:16 continued 32:7 33:25 34:16 39:11,12 continuing 31:20 36:6 contract 51:7 contrary 28:20 contributory 51:7 control 17:22 controls 5:15 22:12 coordinate 15:21 copy 42:24 copying 42:24 45:15 copyright 13:18 15:19 17:18 18:9,9 20:15 20:22 31:17,18 33:19 42:9,12</p>	<p>42:17,22,25 45:7,13,14 47:25 48:18 copyrights 49:12 correct 4:3 7:24 37:19 39:23 correctly 20:16 costs 13:20 20:13,24 counsel 25:13 47:11 51:18 couple 11:20 13:15 17:8 18:8,13 course 4:12 42:1 court 1:1,15 3:10,11,23 4:5 4:6 8:11,21 9:16,20 10:2 14:23 15:3 16:2 19:6,12 19:15 21:19 22:10 23:15 24:25 25:18,19 26:4,7,25 27:11 28:13,15 30:3 31:3,7 32:14 34:2,25 35:14 38:10,12 38:20,21,22,24 39:11 41:14 42:2 43:19,22 44:2 47:24 48:5,8 50:5 51:14 Court's 9:15 27:10,13 47:18 47:19 49:8 51:9 courts 3:13,24 6:24 8:23 14:14,15 26:7 29:22 38:17,22 48:1 50:14,15 50:18 51:2,3,5 covered 27:7</p>	<p>create 3:19,23 9:14 creating 31:19 creation 3:22</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 3:1 D.C 1:11,20 damage 8:16,22 damages 6:15 8:25 9:11 16:15,16 17:25 18:1,4,25 22:7 23:16 24:11 28:14,19 29:8 29:22 31:4,8 32:3,3,17,17 32:24 33:11 36:13,24 37:3 42:2,15 43:17 43:21,25 44:9 44:11,14 46:12 46:22 47:22 48:16,20,23,24 50:6,12 data 21:16,18 date 3:16 6:16 6:16 18:6 day 6:7 12:18 17:15 21:4 days 31:7 32:24 32:24 deal 24:2,18 48:12 dealt 16:21 18:24 decades-long 25:23 decide 18:18 32:15 34:25 decided 17:13 23:13,19,23 26:25 28:13 30:12 decides 51:12 decision 28:15 35:16 43:22</p>	<p>51:12 decisions 25:7 30:4,5 38:17 declaratory 17:11 deduct 11:1,5 deducted 40:19 deduction 11:15 defeat 17:10 42:6 defeated 27:21 defendant 10:23 14:25 16:8,19 20:6,20,23 21:7 24:11,21 27:25 42:23 43:23 defendant-spe... 26:15 defendants 42:21,22 defended 44:10 defender 16:18 defense 15:20 24:18 25:24 26:9,15,17 27:23 28:18 29:21 33:9 34:6,16 37:20 38:4 43:3,6,16 45:19 47:8 51:8 defenses 8:3,4 25:22 26:10 27:4,6,12 37:22 43:24 definition 6:17 6:21 delay 14:5,6,13 31:9 42:5 delayed 49:5 delineation 17:24 Dell 11:9 13:22 23:6 40:8 41:6 demand 19:8 demonstrably</p>	<p>28:16 denied 49:6 departure 19:7 deposition 25:5 described 49:5 design 45:21 determined 36:25 developed 14:14 devices 44:18 Dickerson 4:6 dictionary 6:17 6:20 difference 10:13 11:18 13:17,17 14:4 33:18 45:7,11 differences 14:2 different 19:14 21:16 27:18 41:9 difficult 11:6 44:23 direction 30:10 directly 37:9 disagree 9:8 Disappeared 45:5 discovery 25:5 discretion 3:17 discuss 6:2 discussion 19:10 disgorging 48:17 displays 43:1 dispute 4:1,12 dissent 10:18 35:10 dissented 10:6 dissenting 10:10 distinction 34:7 district 16:2 23:15 28:15 34:3 disturbed 14:11 doctrine 3:13 6:9 9:24 13:2</p>
--	--	--	---	---

15:18 24:4 28:11 31:10 38:13 39:9 45:17 doctrines 36:22 36:23 39:10 doing 5:22 10:11 dollars 11:8 13:25 18:20 dozen 41:7 drafting 34:19 37:15 draw 7:3	entitled 9:10 37:5 entity 23:17 equitable 4:2,4,8 4:20 8:3 19:13 27:6,11,22 30:2 36:23 37:22 equity 4:10 8:19 14:14 19:8 28:23,24 29:7 29:13,20,22 30:8,24 31:1 31:22 32:9 33:12 34:5 39:15,16,18 47:23 48:1,3,5 48:7,8,14,16 48:24 49:10,24 50:5,12,14,17 50:20 51:16,16	32:22 35:13 38:12 39:6,7,9 examples 13:21 23:6,9 exception 3:23 25:3 28:15 34:2 35:25 36:1 exceptions 35:21 excerpts 25:6 excuse 31:25 46:1 exercised 50:20 exhaustively 10:3 exist 27:5 41:16 existed 25:21 32:8,18 35:18 36:1 38:12 41:15 existence 43:16 existential 18:22 existing 13:2 exists 41:15 45:6 expanded 24:22 expect 35:24 expense 11:1 12:6 18:19 20:9 expert 21:1 expired 30:2 explained 7:25 11:24 35:15 37:1 42:2,3 explains 42:11 express 39:8 expression 45:16 expressly 34:10 extending 41:8 extensions 16:20 extent 34:6 extra 31:9,9	31:18 33:1 35:14 38:4 41:1 42:15 44:25 49:18 facts 6:3 fairly 7:2 far 5:25 10:13 38:6 45:5 fear 10:25 11:2 Federal 3:25 6:4 7:20 8:13 10:2 18:19 19:14 24:12 26:4 44:1,2,5 47:22 Federico 7:8,8,9 26:8 34:19 Federico's 7:10 7:13,18 8:9 figured 40:21 file 17:11 22:6 22:20 24:11 filed 11:9 24:16 files 24:9 filing 18:6 filings 16:10 fill 31:1 final 44:2 find 4:17 9:24 10:3 25:10 33:5 34:11 45:5 finding 14:24 findings 48:11 finish 29:25 47:3 first 1:7 3:5 11:21 14:4 16:10 18:13 21:24 23:14 27:20 42:3 five 22:3 47:13 fixes 40:25 floor 44:14 46:23 focused 45:3 follow 43:4 force 35:19 Ford 30:6,11	form 8:12 45:15 forms 33:11 42:7 forth 4:14 found 10:13,17 38:12 39:11 43:15 four 30:14 36:10 47:12 fourth 27:25 fraction 48:23 frankly 33:17 fraud 6:13 front 25:4 49:7 frustrate 3:18 frustrated 49:4 FTC 21:10,11 22:16 full 17:13 fully 16:12 function 13:1 fundamental 3:20
<hr/> E <hr/>				<hr/> G <hr/>
E 2:1 3:1,1 earned 10:24 eBay 19:12 economic 41:19 41:24,25 43:17 economy 21:13 edition 34:9 effect 21:13,22 eggs 49:11 egregious 6:12 14:8 either 6:1 9:18 33:2 34:15 emanates 15:18 15:19 enacted 9:13 16:14 33:24 35:1 enacting 26:9 30:19 36:5 39:3 enacts 3:12 enforce 7:12 enforceable 26:2 enforced 6:11 6:15 enforcement 5:17 enforcing 26:22 England 50:19 entirely 44:7 entities 21:12	established 27:24 estopped 38:21 38:24,25 estoppel 4:2,4,7 4:8 12:20,21 13:9 14:9,9,11 14:19,22,24 15:6,8,17,18 15:21 23:12,13 26:14,16 27:2 27:22 28:4 ET 1:4,8 event 35:11 47:5 evidence 12:19 19:9 exactly 21:21 26:13 examine 32:15 example 10:4 12:17 26:14 27:19 29:10	<hr/> F <hr/>	face 10:1 33:16 fact 13:17 14:25	G 3:1 gap 31:1 general 15:19 35:18,20,23 39:5 generally 15:20 genuine 14:24 getting 12:13 24:3 Ginsburg 11:22 14:17 25:25 26:11,14,19,24 27:15 28:2,7,9 30:22 31:11,13 31:23 32:1,21 33:14,22 34:24 35:3 36:14 38:16 39:2 44:1,5 46:6,14 give 16:17 17:4 22:8 41:3 given 19:21 20:5

40:12	help 9:2 50:21	43:3 45:18	interposed	6:23 7:1,7,15
gives 9:4	hill 29:2 30:9	industry 41:10	34:12,12	7:22 9:1 10:5
go 5:4 17:9	32:10,12	inequitable	interpret 8:8	11:22 12:7,9
18:10,18 19:17	history 4:14,18	12:12 27:8,22	37:25	12:22,24 13:8
24:25 28:3	5:1,4 6:22	27:22	interpretation	13:12,16 14:17
40:10,11 48:5	10:14 36:9	inexcusably	38:18	15:6,9,14,23
48:8,12,12	37:15 49:2	42:5	interpreting	16:23 19:17
goes 19:22	Hobson's 9:17	infringed 36:25	33:4	23:5,9 25:13
going 4:14 8:6	Homebrook	37:4 45:1	interrogatory	25:17,25 26:11
10:19 11:12	47:20	infringement	24:19	26:14,19,24
13:10,13 17:21	Honor 4:3 5:8	9:12 16:9 21:4	invalid 5:17	27:15 28:2,7,9
19:1,3,6 20:3,8	5:13 6:2 9:9	24:10 27:20	invalidity 23:20	28:22 29:1,12
23:18 34:11	11:19 12:8,21	45:14	invented 30:24	30:13,22 31:11
40:18 41:22	13:10 14:20	infringer 14:10	invention 43:3	31:13,23 32:1
50:21	15:25 23:11	16:22 17:5,6	44:17,17 45:18	32:21 33:6,14
good 19:10	25:12 27:8	17:18 18:17	invested 41:1	33:22 34:6,24
gotten 40:22	29:24 47:16	20:21 28:4	investment 11:8	35:3,10,23
granted 8:23	hope 32:13	infringing 44:20	invite 3:24	36:14 37:6,14
14:22 50:18	horrendous 46:9	Injecting 3:17	involved 45:8	37:18 38:6,16
greater 8:2	horrible 41:23	injunction 8:15	involving 11:9	39:2,7,13,25
grounds 22:11	49:3	29:8 43:21	issue 9:6 10:3	40:6,15,16
group 41:13	House 49:3	48:9	13:3 14:18,18	41:3,6,18,19
guess 23:14	hundred 4:9	injunctions 8:18	14:24 23:16	43:4 44:1,4,5
guy 5:23 40:25	hundred-plus	17:24	25:1 27:16,18	45:2,22 46:6
	42:17	injunctive 30:2	28:8 47:25,25	46:14 47:4,11
	hundreds 11:7	48:2	issued 8:19	49:5,5,21
	13:25	insignificant		51:18
	hurt 22:4	29:4	J	
	Hygiene 1:3 3:4	insisted 19:15	J 1:18 2:3,9 3:7	K
H		instances 33:10	25:15 47:14	KAGAN 35:23
haec 32:7		42:20	Jones 19:21,23	49:21
Halo 22:10,12	I	instruct 46:17	Jones' 19:20	keep 47:2
35:16	idea 44:20	instructs 46:22	judge 9:24,24	kind 19:22
hands 50:16	import 38:7	46:24	20:4,12 34:3	20:23
happen 10:19	important 47:17	integrated 18:5	46:14,17,22,24	know 4:21 5:21
happened 14:21	imported 37:23	Intellectual	judgment 14:22	7:3 16:8,22
14:21 17:12	inactionable	41:12	17:11 23:19	18:18 21:20,21
24:24 50:14	31:16	intend 39:3	25:6	21:22,22 26:19
happening	include 5:23 8:3	intended 19:7	judgments 7:3	26:20 27:21
22:18	36:11,18,21	38:11 39:5	judicial 3:17	37:8 38:7 39:8
happens 16:4	37:19 39:8	intent 9:21 39:8	jurisdiction 48:7	42:24 43:13
17:6 19:1 21:7	included 7:19	intentionally	jurisdictional	44:12,23,23
21:19 24:8	8:10 49:13	42:13	47:25	45:14 50:20
happy 19:24	includes 5:24	interest 22:21	jury 25:4 46:16	knowing 11:11
hard 29:13	8:20	interesting 6:3	46:17,22,24	knowledge
40:14	including 27:7	21:18	justice 3:3,9 4:1	31:16,16
harm 43:17	35:15 36:23	Internet 16:11	4:11 5:9,16,20	knowledgably
Haverhill 9:16	independent			
hear 3:3 13:12				
heart 5:6				
held 4:6				

42:13 known 4:8 6:19	15:19,20 17:18 18:9,11 19:16 19:16 20:22,25 21:1 23:1 24:4 24:5 25:21 27:12 28:10,24 28:25 29:3 30:1,8,12,19 31:1,4,7 32:14 33:5,12 34:5 34:11,13,16,18 35:11,13,17,21 35:21,25 36:7 37:23 38:2,11 39:4,4,5 42:12 42:22,25 43:2 47:8,17,18 48:18,19,22 49:10,16 50:6 50:6,12,19,19 50:22,24,25 51:6,16	45:4,4 licensee 40:10 40:13 licenses 23:1,3 licensing 22:14 lie 11:5 life 18:6 21:8 42:17 light 33:24 limit 9:5 42:15 limitation 8:25 9:11 16:15 17:25 30:25 31:24 32:2,17 32:24 33:17 35:6 36:7 limitations 3:12 9:14,18,21,22 10:2 14:16 18:1 30:23 31:2,5,5,8,14 31:17,19 32:23 33:19 39:17,19 39:20 46:11 47:6,23 49:24 50:2,11	12:10 45:3 48:21,21 49:17 50:15 51:9,14 51:17 lookback 3:16 looked 10:2,12 33:5 looking 16:13 21:14 30:14,20 30:20,23 34:18 34:18,20 looks 20:1 lose 13:9 loss 11:15 41:24 lost 10:7,7 46:20 lot 5:11 17:14 22:13 23:22 24:7 43:7 lots 21:16 lower 3:24 22:18 26:4 27:11 Lucent 11:10 lying 13:14,14 16:1 lying-in-wait 13:15 16:7	28:16 34:3 Master 48:12,23 material 10:21 14:24 math 41:23 matter 1:14 26:17 33:1,8 35:14 50:11 51:21 mattered 34:7 maxim 35:7,18 35:20,24 McCarren 36:10 mean 5:9 7:1 9:3 21:21 29:2 32:12 39:6 43:15,18 46:19 47:1 means 17:3 18:7 45:22 49:15 meant 6:6 33:4 46:10 measure 46:21 Medinol 19:11 21:25 memories 26:18 Menendez 42:3 mentioned 10:13 27:16 merger 30:8 49:10 51:3,16 mesa 32:10 mid-18th 4:5 millions 13:25 18:20 mind 6:10 11:18 23:10 32:11 37:8,9 minus 13:19 minute 40:2 minutes 47:12 47:13 misapplied 28:16 misleading 14:9 misrepresenta...
<hr/> L <hr/> laches 3:13 4:18 5:2,23,24 6:6,8 6:14 7:1,12,19 8:4,10,12,20 9:4,5,25 10:1 12:11,12,16 13:2,4,5 14:1,5 14:12,22 15:3 15:15,16 19:19 20:6 22:3 23:13,23 24:1 24:4,8,12,14 24:17 25:8,9 25:24 26:8 27:23 28:18 29:3,21 30:24 31:6,17 32:16 32:18 33:9,15 33:23 34:5,12 34:22 35:4 36:23 38:1,3 39:4,8,18 40:13 41:11,13 41:15 42:4 43:6,14,16,16 43:21,24,24 44:8 45:6,6 47:7,21,24 48:11 49:9,13 49:23 50:1,4 50:25 51:5,10 51:14 laid 10:20 language 8:24 9:2,3,7 10:15 36:20 Lanham 49:11 late 11:16 law 3:15,22 4:4 4:5,10 5:6 6:21 7:2 8:13 9:17 9:18,19 10:11 10:14 14:15	lawsuit 12:2 20:3,4 40:24 lawsuits 22:20 22:21 leads 14:10 43:7 leave 21:6 led 11:12 legal 4:9,18 35:5 38:17 39:1,1 49:9 51:10 legislative 6:21 36:9 49:2 Lemley 29:19 length 21:2 let's 6:2 19:23 20:20 41:21 letters 22:14 level 16:2 23:15 28:13 lever 16:25 liability 26:6 43:3 45:18 48:11 license 19:22 20:1,2 22:23	limited 18:11 list 4:13 litany 37:22 literal 28:12 litigated 27:24 litigation 3:24 18:19,20 24:8 43:8 51:15 little 18:21 29:12 40:23 51:3 live 16:3 32:13 LLC 1:7 locked 42:21 45:8,9,10,22 long 4:13,18 5:1 5:7 23:17 32:13 37:22 42:5 50:17,21 look 4:16 5:3 10:15 11:17	<hr/> M <hr/> Mack 47:21 major 10:18 majority 10:19 10:25 majority's 42:10 making 5:5 20:9 22:20 36:10 37:7 man 4:15 margin 20:21 mark 16:19 17:1 17:3 marked 44:19 marketplace 18:14 MARTIN 1:18 2:3,9 3:7 25:15 47:14 Massachusetts	

<p>26:23 missing 45:3 mistaken 4:24 misunderstood 32:6 misuse 6:13 26:23 27:8,23 28:3 37:11 mitigating 46:3 modern 51:15 mole 29:2 30:9 32:10,12 monetary 44:11 46:17 48:4 49:16 monetize 22:9 money 10:21,24 11:14 12:2 13:23 22:13,15 22:20 monkeying 5:22 months 22:3 23:16,19 mountain 28:12 28:22 29:2,13 29:17 30:9 32:10,11 moved 40:8</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1 naked 48:6 nature 51:14,14 necessarily 44:20 necessary 23:13 24:2 need 36:17 negligence 51:7 negotiation 21:3 neither 5:4 41:15 net 42:16 never 8:11 10:1 10:25 11:2 32:11 33:7 38:20,23,24</p>	<p>43:19,23 new 17:10 36:6 nine 33:6,7 non-mutual 27:1 non-mutuality 27:6 nonpublic 43:1 normally 20:6 22:6 notably 31:15 notice 16:17 17:4,7,13 22:9 notion 50:1 November 1:12 number 16:20 21:4 38:21 48:20 numerals 42:10</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 obligatory 43:7 occasionally 7:12 14:14 occurs 32:21 October 21:11 22:17 offensive 27:2 office 6:13 17:9 18:9 26:23 oh 44:12 46:19 okay 10:7 13:7 14:3 24:18 32:11 39:25 45:4,6 old 17:10 31:7 41:1 once 17:6 18:15 ones 30:7 operate 50:1 operating 21:25 22:1,2,4 49:23 opinion 27:13 42:10 opinions 27:11 27:11</p>	<p>opponent 50:23 opponent's 48:18 opportunities 45:19 opportunity 45:20 option 46:3 oral 1:14 2:2,5 3:7 25:15 order 18:3 42:23 45:13 ordered 31:6 ordinarily 12:15 46:20 origin 30:24 original 50:10 originally 4:7 overall 50:8,8 overcome 11:3 overrule 8:23 Owner's 41:12</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 1:20 2:6 3:1 p.m 51:20 Pa 1:18 page 2:2 20:18 34:10 paid 10:24 part 4:4 6:6 23:1 40:8 43:18 45:2,2 50:24 participants 21:16 particular 45:1 45:21 parties 42:25 49:4,15 party 19:9 27:3 27:3,5 41:15 passages 8:6 patent 3:15,17 3:21,22 4:20 5:22,23 6:11 6:13,13,14,25 8:14,25 9:12</p>	<p>9:17 13:21 15:9 16:5,10 16:12,16,18,20 16:22 17:9,10 17:20 18:6,8 18:11 19:1,3 19:16,20,24,25 19:25 20:1,1,5 20:20,25 21:1 21:9,9,12,17 21:20,24 22:6 22:6,13,19,23 22:24 23:1,2 23:17 24:2,4 24:10,17 25:9 25:20,20,22 26:12,22,22,23 27:8,20,23 28:10 30:2 32:4 33:18 35:11,13,17,21 35:25 36:11,25 37:11,23 38:11 39:4,5 40:9,10 40:17 43:2 44:21,24 45:17 45:21 46:5,5 46:18 47:17 48:1,19 49:16 49:23 patentholder 18:15,16,23 patents 4:19 6:25 18:12 34:9 37:3 49:12 pay 17:15 32:25 46:7,8 paying 41:20 pays 4:7 pellucidly 47:9 penalty 43:10 pending 22:1,2 people 21:20 37:15 41:13 43:1 44:16,17 44:19 45:8</p>	<p>percent 20:22 20:22 21:5,6 29:19 period 3:13,14 3:16 9:18,21 9:23 19:4 20:14 47:22 permits 27:2 person 40:9,17 petition 22:1,2 petitioner 30:11 Petitioner's 44:22 Petitioners 1:5 1:19 2:4,10 3:8 25:16 47:15 Petrella 3:11 10:3,6,10,17 11:24 18:18 33:20 35:10 41:8 42:2,10 43:23 51:11 phase 48:11 Philadelphia 1:18 phoned 12:18 phrase 19:23 PJ 26:8 place 15:18 21:3 25:3 28:14 31:21 50:2 places 49:25 plaintiff 10:20 15:1 17:3,3 24:9,10,17,23 37:4 43:20 46:1,21 50:5,7 50:16 plaintiffs 11:5 46:20 48:8 plant 46:4 play 12:16 plead 50:25 51:1 pleading 51:7 pleadings 43:23 please 3:10 12:24 25:18</p>
--	---	---	---	---

<p>32:6 40:1 plenty 29:23 35:20 plow 17:13 point 7:17 10:18 12:4 19:2 20:18 21:9 26:6 29:7,18 30:9 32:5,6 39:13 43:5 44:8,22 45:25 45:25 47:1 49:22 point's 39:15 pointing 49:18 pointless 43:7 points 14:3 15:24 43:6 polite 21:12 position 6:5,19 7:21 8:20 44:6 post-1952 8:9 poster 23:14 power 8:23 50:18,20 practicalities 16:2 practice 6:7 36:2 51:16 pre-1938 30:20 precedence 47:19 51:9 precedent 47:20 49:8 preclusion 27:16 27:18 28:8 predecessor 22:25 predecessor's 22:25 preexisting 36:2 prejudice 14:6 24:20,21 42:6 42:8 46:2 prescribed 3:15 presumption 24:15</p>	<p>presumptions 15:4 24:13 pretty 24:1,11 prevent 36:24 previous 31:12 previously 13:23 primary 49:15 principal 49:22 principle 3:12 4:9 19:12,13 27:1,5 44:8 principles 8:19 prior 23:3 27:3 27:13 34:5 39:14 51:1 probably 15:13 22:19 24:23 problem 16:7,8 16:21 18:24 37:6 procedure 49:4 produce 13:20 13:24 producing 20:13 product 16:19 Products 1:3,7 3:4,5 Professor 29:19 profit 10:23,24 11:1,15 13:19 13:20,22,24 20:9,10,21 profits 17:14,19 40:18 42:16 46:21 48:13,18 48:25 Property 41:12 prosecution 27:23 proven 33:10 provide 19:9 provided 17:23 provides 8:16 provision 8:15 31:21,22 32:18 32:19 33:24 34:10 36:12</p>	<p>47:7 49:1 provisions 39:17 46:25 public 16:10 purpose 9:13 pursuing 50:16 put 9:16 18:2 28:14 31:21 32:9</p> <hr/> <p style="text-align: center;">Q</p> <p>Quality 1:7 3:5 question 5:6 9:5 10:5 13:15 28:9 29:17 30:4,6 32:15 33:1,7,14,15 33:16,22 34:24 38:3,18,23 39:1,7 41:19 47:9 questioned 34:4 quickly 22:21 quite 5:7 quote 8:1,1,1 34:11 quoted 8:5 36:15</p> <hr/> <p style="text-align: center;">R</p> <p>R 3:1 raise 15:24 27:3 range 3:24 rarely 48:16 rate 40:21 reach 8:9 25:7 read 4:25 5:12 5:14,14,25 23:7 reading 5:12 7:23 reads 49:3 reaffirmed 3:11 real 21:7 24:8 48:17 reality 24:6 really 5:3 9:2</p>	<p>11:2 15:18 16:4,6 17:21 20:2 21:20,21 21:22 32:20 37:16 40:25 42:19 45:8 48:20 reason 6:6 20:10 29:6 39:18 41:17 43:19 50:24 reasonable 17:16,19 20:11 20:12 21:2 23:18 40:21 41:20,22 43:9 44:13,13,15,15 46:8,13,23 REBUTTAL 2:8 47:14 recited 36:19 recognize 32:18 recognized 25:19 26:8 27:10 28:18 33:9 38:3 51:8 recounted 42:20 45:19 recover 32:3 recovery 36:24 46:17 red 7:24 36:20 referring 27:9 reflect 25:20 35:17 38:11 39:4,5 rehearsed 35:9 reiterate 37:20 rejected 22:11 relates 26:21 relating 6:24 relatively 19:4 relevant 36:20 45:23,24 reliance 13:25 relied 11:7 14:25</p>	<p>relief 30:3 33:11 35:5 48:2 49:9 49:16 51:10 remaining 47:12 remedial 8:15 remedies 17:24 remedy 8:17,22 17:19 34:23 36:13 42:7 44:13 48:5,10 48:14 49:14 51:15,17 remember 36:19 Render 15:9 rendering 6:10 repeat 10:10 repeatedly 25:19 26:7 35:15 38:10 report 21:10 reported 36:22 represents 41:13 requirement 18:3 50:9 requires 14:5,9 17:16 reserve 25:11 resounding 34:1 respect 15:3 44:18 45:10 Respectfully 9:8 respond 31:12 43:11 Respondent's 6:19 Respondents 1:9 1:21 2:7 10:4 16:6 response 50:3 rest 25:11 result 8:9 9:20 36:1 resulted 21:3 retain 25:20 35:17 38:11 39:3,5 retrospective</p>
---	--	--	---	--

<p>42:1 return 31:11 40:21 reversed 14:23 revised 31:22 rid 24:3 right 5:9 7:8 10:7 17:2 26:3 28:23 29:2,9 31:3 40:11 44:4,7 rise 14:1 40:13 road 18:21 ROBERTS 3:3 4:1 7:7,22 9:1 15:23 16:23 25:13 28:22 29:1,12 30:13 47:4,11 51:18 rolling 18:10 19:2 Romag 22:1 Roman 42:10 Root 48:6 roots 47:19 royalty 17:16,19 20:11,12,13 21:2,6 23:18 41:20,22 43:9 44:13,14,15 46:8,13,24 rule 3:22 9:12 9:20 14:6,7,7 14:13 17:22 30:17 34:15 51:12 ruled 38:20,22 rules 17:10,10 19:8 ruling 9:15 run 19:2 29:16 31:15</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 safeguard 46:23 satisfaction</p>	<p>15:21 satisfied 43:15 saying 9:4,17 18:25 19:19 20:8 47:2 says 5:24 8:18 16:17 20:2 24:18,21,23 32:25 34:10 46:2 50:23 SCA 1:3 3:4 21:24 scheme 3:18 scrambled 49:10 search 25:8 searchable 16:11 searching 23:22 second 16:14 27:25 43:9 section 8:14,16 8:18,22,24 9:10 16:5,14 16:17 17:22 18:4 22:8 25:21 31:14,22 34:16,23 36:12 36:13 37:2 46:25 49:19 50:9 see 10:20 11:5 12:1,5,18 23:21 26:1 28:7 33:17 37:14 48:12 seek 46:20 48:2 48:4,9 seeking 6:15 31:4 49:15 seeks 24:10 sees 18:16,16 selected 9:12 sell 44:16 sells 19:23 semicolons 8:8 Senate 8:2 senator 36:10,14</p>	<p>send 24:19 sending 22:14 sense 7:5 sent 15:1 sentence 47:3 separate 18:3 separates 49:22 series 38:16 seriously 40:3 set 18:2 19:5 33:17 SETH 1:20 2:6 settled 43:18,20 Seventh 30:7 severity 42:4 short 19:4 shorten 3:14 show 37:9 showing 29:23 side 4:5 16:12 29:20 31:1,2 32:9 33:12,12 47:23 48:14,22 48:24 50:6,6 50:22,24 sides 7:2 10:16 37:23 signals 42:11 significant 10:12 14:4 41:7 simple 29:6 simply 31:20 32:7 33:13 36:6 37:3 44:9 single 10:4 28:12,17 30:5 six 10:22 11:1 13:19,23 18:25 19:1 24:15 32:3 40:18 42:18 46:7 50:13 six-year 3:16 18:11 20:14 28:14 32:17 36:6 46:10</p>	<p>small 18:16,17 48:23 Smith 19:20,21 so-called 25:9 somebody 11:11 22:24 41:21 soon 34:11 sorry 13:8 32:1 47:13 sort 8:8 31:20 Sotomayor 6:23 7:15 13:8,12 15:6,9,14 37:6 37:14,18 38:6 41:18 44:4 Sotomayor's 39:7 sought 25:20 29:9,22 30:3 sound 46:8 sounds 46:9 sparse 7:2 speaking 35:23 37:17 Special 48:12,23 specific 16:15 specifically 49:13 specified 37:12 specify 26:4 spend 10:21 12:2 13:25 18:20 40:1 spent 11:10 40:13 spoke 37:10,10 Sprint 11:10 standards-ess... 46:5 State 9:19 31:13 State-by-State 9:21,22 stated 38:8,9 statement 19:10 States 1:1,15 statistic 48:15 statute 4:15,16</p>	<p>5:14,15,16 6:1 8:11 9:14 10:2 14:15 17:15,21 18:1,2 19:5 22:12 30:23,25 31:2,5,5,8,14 31:17,19,22 32:8,22 33:18 33:19 37:19 39:17,19,20 46:10 47:6,23 49:14,24 50:2 50:10 statutes 3:25 statutory 3:14 3:18 38:18 41:9 stay 5:2 step 19:17 stepped 44:3 stick 32:11 stop 7:22 stratum 22:18 strengthen 39:24,25 40:1 strict 43:2 45:18 stripped 17:18 20:23 strongly 24:3 structure 19:5 study 21:15 22:16 submission 43:8 submitted 25:6 51:19,21 substantial 35:22 38:2 42:6 46:2 substantive 37:23 subtract 20:13 subtracting 13:23 success 10:21,22 successfully 27:4 sue 11:12 12:18</p>
---	--	--	---	---

22:5,9 23:2 sued 43:21 sues 10:22 40:17 suggest 34:22 suggested 28:20 suggests 29:24 suing 11:2,7 12:6 suit 3:16,20 6:16 12:5 27:3 46:18 50:4,13 SULLIVAN 28:24 summarize 39:23 summary 14:22 23:19 25:6 supplant 9:15 support 6:20 29:5 31:23 32:1 supporting 41:15 Supreme 1:1,15 sure 4:12 20:18 23:11 40:4 47:4 surprised 9:23 survived 48:10	tentatively 10:11 term 3:17 19:1,3 21:13 32:4 35:16,16 terms 49:5 text 38:19 Thank 25:13 41:5 47:10,11 47:16 51:18 theoretical 11:9 theory 44:18,18 they'd 50:17 thing 22:24 24:6 32:21 things 5:22 16:9 16:13,24,25 21:23 23:24 26:21 37:12 49:8 think 6:6,8 9:23 10:9 11:8 12:25 13:3 15:17 20:2 22:19 23:15 26:20 28:11 29:15 30:7,18 31:3,13 32:12 33:2,8 36:4 37:21 38:25 40:7 51:1 thinking 23:5 37:16 thinks 19:21 20:4 30:11 third 27:25 42:25 thought 10:6 40:2 threat 18:17,21 18:22,22 threats 22:14 three 14:3 16:9 33:6 42:16 49:8 three-year 18:10 tie 15:12	till 41:21 time 5:7,12 6:18 8:24 9:5,11 17:25 18:12,13 19:4 22:9 24:14,17 25:2 25:11 31:15,23 33:16,24 34:8 35:5 37:15,16 timeliness 3:20 9:11 14:6,6,7 14:13 17:22 times 11:6 timing 7:15 Title 32:22 35:12 titled 9:10 today 28:15 told 20:6 26:21 31:3 40:10,19 41:14 tort 45:14 tortfeasor 17:7 totally 40:19 traditional 37:11 transaction 21:2 transferee 40:9 40:17 treated 47:24 treatise 34:8,20 36:8 49:19 treatises 34:21 tremendous 25:4 43:10 51:11 trenches 16:3 24:9 trial 6:16 24:25 25:3 trials 25:3 tried 46:16 troll 19:24,25 20:1,1,5 21:20 21:24 22:23 trolls 21:10 22:6 22:13,19 24:3	25:9 true 11:4 43:14 47:3 49:23,25 50:22 trunk 47:19 try 11:14 15:5 17:10 trying 32:5 39:22 Tuesday 1:12 turns 18:22 38:18 45:4 two 4:22,23,23 10:15 15:12,23 21:22 23:23 28:16 32:25 37:16 40:2,21 42:9 43:12	44:9 unfair 13:1 20:5 uniform 35:22 36:7,8 38:1 unique 3:22 8:13 United 1:1,15 unjust 12:12 unquestionable 34:1 unreasonable 17:17 unreasonable... 42:5 unreasonably 46:1 unscrupulous 11:25 12:5,10 12:11,15,25 unscrupulously 12:14 unworkable 49:2 use 7:4 19:23 36:15 43:1 44:17 uses 19:23 usually 18:7 22:7 24:21 30:1 46:15
<hr/> T <hr/> T 2:1,1 take 6:5 7:16,16 7:20 10:10 25:3 29:16,16 49:21 50:15 taken 21:3 takes 18:8,13 talk 16:6 29:13 talking 14:12 42:1,18,20 technology 18:13 40:14 41:1 tell 8:6 39:23 telling 12:17 ten 18:20			<hr/> U <hr/> U.S 47:21 uncertainty 3:19 unclear 15:11 undercut 40:3 understand 16:1 19:18 27:15 34:14 understanding 35:1,4 understood 11:19 28:10 29:5 undoubtedly 23:6 unenforceabil... 5:19 6:3,5,8,10 6:18,24 7:11 7:20 8:1 26:9 26:16,21 27:7 27:9 34:15 36:11,15,18,21 37:20,21 49:20 unenforceable 5:20 6:11,25 7:4,11 15:7,7 15:10 26:5,12 unexceptional	<hr/> V <hr/> v 1:6 3:5 9:16 47:21 vagaries 51:15 valid 36:25 37:3 valuable 18:12 vast 20:9 verba 32:7 version 50:10 VII 32:22 35:12
			<hr/> W <hr/> waged 27:4 wait 10:20 11:5 11:25 12:5 13:14 14:17,17	

16:1 22:5 waited 23:17 50:17,21 waits 41:21 Walker 34:9 want 5:11 10:9 12:22 13:12 16:6 18:18,19 22:23 37:20 39:24 40:3 41:3 45:9 wanted 15:24 35:25,25 48:2 48:4,21 wants 23:2 Washington 1:11,20 wasn't 11:12,13 11:25 12:3,4 23:13 27:3 29:21 44:10 49:25 51:8 waste 5:11 Waxman 1:20 2:6 25:14,17 26:3,13,24 27:19 28:6,9 29:9,15 30:18 31:11,25 32:2 33:21 35:7,24 36:4,17 37:13 37:18 38:9,24 39:24 40:5,15 41:2,5,18,25 43:4,13 44:7 45:12,24 46:12 46:19 47:5 Waxman's 49:22 way 4:23 5:5,25 16:21 18:14 19:14 26:14 31:21 33:18,19 36:15 37:17 38:8,22 42:12 48:1 49:17,19 ways 11:20	we're 42:1 we've 26:25 27:10 weak 39:13,15 weakened 39:15 Wehrman 47:21 well-accepted 30:15 well-answered 10:18 well-established 19:8 35:4 went 13:24 14:23 20:9 30:10 31:7 48:3 49:11 weren't 50:23 Westlaw 23:22 wide 3:24 window 18:10 18:11 19:2 witnesses 45:5 woman 11:25 word 5:16,18 6:5 7:4,12 26:2 44:2 49:13 words 4:16 8:5,7 26:5 45:9 46:24 work 20:24 28:8 33:19 worked 48:2 works 20:2,25 world 24:8 27:13 worried 16:24 16:24 40:23 worry 12:17 worth 12:5 40:18 wouldn't 16:22 21:5,6 35:24 writer 34:20 writers 36:8 writes 5:24 wrong 7:24 20:10,10 40:7	40:20 51:4 wrongly 30:11 wrote 4:15 <hr/> X <hr/> x 1:2,10 <hr/> Y <hr/> yeah 5:24 year 21:11 35:16 40:10,16,21,24 40:24 41:21,22 41:23 45:3,4 years 4:9 10:19 10:22 13:19,23 17:14 18:7,8 18:10,13,20,25 19:1 21:15 24:15 26:25 32:4,25 34:17 37:16 40:18,24 42:14,15,16,17 42:18,19 46:7 49:16 50:13 years' 11:1 Yep 41:2 <hr/> Z <hr/> 0 <hr/> 1 1 1:12 45:4 46:4 10 23:16,18 106 34:10 11:01 1:16 3:2 12:02 51:20 13 41:23 45:4 14 41:22 15 25:5 15-927 1:5 3:4 17 18:7 42:19 18 40:16 18-year 32:4 180 32:23 1870 29:23 1879 4:6 1880 42:3	1894 47:21 1896 9:13,15 1897 28:13 32:9 33:24 36:6 39:16 47:6 50:10 19 40:24,24 41:21,23 1919 51:2 1935 47:21 1938 30:12 33:8 34:5 49:10 1946 33:8 47:21 49:1,11 1951 34:9,10 1952 6:18 25:20 27:5 28:11 31:18 32:7 33:8,25 34:7 35:1 38:11,14 39:3 47:9,20 49:7 <hr/> 2 <hr/> 2 26:2 40:10 20 40:24 42:19 20-year 3:17 18:6 2016 1:12 25 2:7 274(b) 51:1 282 15:22 25:21 26:2 33:3 36:12 283 8:14,18 17:24 284 8:16,22 17:24 36:13 37:2 46:25 286 8:24 9:10 14:7 17:22 31:14 33:4,4 34:16,23 37:25 50:9 287 16:5,14,17 16:17 18:4 22:8	<hr/> 3 <hr/> 3 2:4 21:5 30 10:19 300 32:24 <hr/> 4 <hr/> 4 21:5 41:1 40 11:6 20:22,22 21:5,6 4120 31:22 46 26:24 47 2:10 <hr/> 5 <hr/> 5 21:5 52 30:19 55 34:17 <hr/> 6 <hr/> 60 49:16 6th 21:11 22:17 <hr/> 7 <hr/> 7 21:5 70 18:10 <hr/> 8 <hr/> 9 <hr/> 98 29:19
---	--	--	---	---